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**Dated: November 19, 2010**

**Original**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
In the Matter of

Docket No.  
TSCA-02-2010-9104

THE OKONITE COMPANY, INC.

Respondent.

Proceeding under Section 16(a) of  
the Toxic Substances Control Act  
-----X

26 Federal Plaza  
New York, New York

October 28, 2010  
10:15 o'clock a.m.

BEFORE: HON. BARBARA GUNNING,  
Administrative Law Judge

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A P P E A R A N C E S:

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

2 JUDGE GUNNING: Good morning.

3 My name is Barbara Gunning.

4 I'm a US Administrative Law Judge  
5 assigned to the US EPA.

6 Today is oral argument, on October  
7 28, 2010, in the matter of Okonite -- that's  
8 O-k-o-n-i-t-e -- Company, Inc., Docket No.  
9 TSCA-02-2010-9104.

10 Today we're having oral argument.

11 And if the parties could please  
12 introduce yourselves for the record.

13 MS. TAYLOR: Your Honor, Karen Taylor  
14 for the Complainant.

15 MR. GIULIANO: Francis Giuliano --  
16 I'm sorry, go ahead.

17 MR. PHINIZY: Coles Phinizy,  
18 co-counsel for the complainant.

19 JUDGE GUNNING: Okay.

20 MR. GIULIANO: Francis Giuliano, on  
21 behalf of the Okonite Company.

22 JUDGE GUNNING: Thank you.

23 Now, will both counsel for the EPA be  
24 speaking today, or just one?

25 MR. PHINIZY: It is our intention to

1 Proceedings

2 have Ms. Taylor to do all the talking for us  
3 today.

4 JUDGE GUNNING: All right.

5 Now, as we spoke last week on the  
6 telephone, I have allotted forty-five minutes for  
7 each side, but this is not an absolute number like  
8 oral argument on appeal. If we go over, that is  
9 fine.

10 I have some questions which may delay  
11 your forty-five minutes.

12 I have allotted up to ten minutes for  
13 rebuttal, which comes out of your forty-five  
14 minutes for the EPA.

15 Do you wish to reserve that  
16 ten-minute period?

17 MS. TAYLOR: Yes, your Honor, I would  
18 like to reserve ten minutes for rebuttal.

19 JUDGE GUNNING: Okay. Now,  
20 obviously, the IVS here is for trial level. I'm  
21 trying to elicit as much information as possible,  
22 and understand your arguments fully as possible.

23 Therefore, we're not holding to the  
24 firm forty-five-minute mark.

25 Now, any questions before we begin?

Proceedings

Any housekeeping matters?

MS. TAYLOR: No.

MR. GIULIANO: No.

JUDGE GUNNING: Okay. So I'll have EPA begin.

You will go approximately thirty-five minutes, and then Respondent will have an opportunity to speak, and a ten-minute rebuttal.

Okay.

MS. TAYLOR: May it please the Court, your Honor, the primary issue in this case is whether Respondent's use of PCB transformers without having timely filed a registration with the EPA is unauthorized.

The EPA maintains that failure to register PCB transformers no later than December 28, 1998, results in an unauthorized use, in violation of the 1978 PCB ban that began in 1998, and does not cease until the PCB transformers are either removed from service or reclassified.

This is a case of first impressions.

Ms. JUDGE GUNNING: Let me stop you there.

Now, first I want to let you know I'm

1 Proceedings

2 not picking on either side. If my questions seem  
3 a bit pointed, do not take it personally.

4 We are here for oral argument.

5 MS. TAYLOR: Okay.

6 JUDGE GUNNING: Now, EPA has alleged  
7 this in the Complaint. However, you can possibly  
8 construe the Complaint so that it is so broadly  
9 worded a charge could also be considered for  
10 failure to register.

11 Is it EPA's, or is the EPA willing to  
12 stipulate that if they were to fail on their  
13 primary argument, that it would not amend the  
14 Complaint at this stage to charge for the  
15 remaining period from the date of the inspection  
16 onward for failure to register?

17 MS. TAYLOR: The charge in the  
18 Complaint is an unauthorized use charge, and I'm  
19 not sure I understand what you mean by "amend."

20 JUDGE GUNNING: In other words, if  
21 you were to seek failure to register,  
22 alternatively, as the charge, would that be made  
23 by the EPA?

24 MS. TAYLOR: We do not intend to seek  
25 failure to register.

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JUDGE GUNNING: Okay. Please proceed.

MS. TAYLOR: This is a case of first impressions.

The last decision predates the current registration requirement, and is based on the 1985 Fire Department registration requirement.

The other cases cited by respondent, Bunker Hill, decided in 1996, and Standard Fortune, decided in 1997, also involve the Fire Department registration requirement.

The Newel case involved a PCB exposure violation.

Mays was a record case, and Rocky Well was a safe drinking water case.

At most, Lazarus provided and approached the question of regulatory interpretation.

The 1985 rule required registration with the Fire Department as of December 1, 1985. The current regulation requires registration with the EPA no later than December 28, 1998.

The first is an effective date, the second is a deadline.



1 Proceedings

2 This is complaint language  
3 interpretation of the regulation.

4 Section 761.20, states that no  
5 persons may use any polychlorinated biphenyl, or  
6 PCB, or PCB item, unless authorized under Section  
7 761.30.

8 Section 761.30 states that a  
9 transformer owner must comply with all  
10 requirements to continue a PCB transformer  
11 authorization for use pursuant to that section,  
12 and Subsection 62.

13 JUDGE GUNNING: Don't both  
14 regulations, the 85 reg and the amended reg, both  
15 use the words "unauthorized use"?

16 MS. TAYLOR: They both contain the  
17 authorization sections.

18 What was changed in '98 was the  
19 language of the registration requirement.

20 JUDGE GUNNING: Right. And what was  
21 that exact change?

22 MS. TAYLOR: In 1985, the regulation  
23 read, "As of December 1, 1985, transformers must  
24 be registered with the Fire Department."

25 The '98 regulation read; "No later

1 Proceedings

2 than December 28, 1998."

3 JUDGE GUNNING: But there were no  
4 other substantive changes to the wording of the  
5 regulation, correct? Only as of and no later  
6 than, which is primarily what the EPA is resting  
7 its argument on.

8 MS. TAYLOR: And a change from the  
9 local Fire Department to a national registration  
10 requirement.

11 JUDGE GUNNING: But the use  
12 requirement, and the terms "authorized use" remain  
13 the same?

14 MS. TAYLOR: Yes, these terms were  
15 present in both the 1985 and the 1998 regulation.

16 And this goes to my primary question  
17 here, why wasn't that done?

18 And I'll enlarge this entire matter.

19 We look at the preambles for the  
20 proposed rules, and for the final rule.

21 First, in the summary, unless I'm  
22 missing something -- and you could educate me on  
23 this, I would appreciate it -- but I saw nowhere  
24 in the summary of the preambles any reference to  
25 this increase in the ban where it would become a

1 Proceedings

2 permanent ban.

3 When they discuss the individual  
4 sections, there is a sentence -- and I'd like you  
5 to take time to go to this, if you could -- in the  
6 Federal Register now, I believe it's 35394, there  
7 is a sentence that EPA, in its brief, bases a fair  
8 amount of reliance on, and that is PCB  
9 transformers that are not registered are not  
10 authorized for use, and must be disposed of.

11 Correct?

12 MS. TAYLOR: Yes.

13 JUDGE GUNNING: Okay. And you are  
14 placing much reliance on this sentence in this  
15 matter as signifying the intent of the rule to  
16 change, in addition to the terms "as of" and "no  
17 later than."

18 MS. TAYLOR: That is correct.

19 JUDGE GUNNING: Okay.

20 When you look at this sentence, my  
21 question to you is, does this sentence qualify the  
22 preceding sentences in the paragraph, or does this  
23 sentence stand alone?

24 And if it does stand alone, this is a  
25 very significant change in the rule to now make it

Proceedings

permanent.

Why wasn't this discussed in a different manner, where it was emphasized?

MS. TAYLOR: What manner are you referring to? In the preamble itself?

JUDGE GUNNING: Yes, where it states, for example, this is a change from the previous registration.

My understanding is that this change was prompted by the State of Connecticut requesting the right to do this in addition to the lack of compliance and the need to protect the responders.

But nowhere in the preamble am I seeing language that, what the EPA sought was a permanent ban on transformers.

And if that was their wish, why isn't that sentiment not expressed somewhere?

Unless you see it is expressed somewhere.

MS. TAYLOR: I read that sentence as meaning that this is the deadline and the cutoff, as opposed to an effective date for the registration requirement, along with the rationale

1 Proceedings

2 provided the massive noncompliance, the desire for  
3 the EPA to have PCB location information on a  
4 national level, so that they can assess the  
5 possible ban on PCB's which is under discussion  
6 internationally.

7 JUDGE GUNNING: Okay. But you agree  
8 that you don't see any specific language here that  
9 tells us that they wanted to enlarge this ban?

10 Do you agree that the '85 ban did  
11 not, is not of the scope that you now allege?

12 MS. TAYLOR: The '85 registration  
13 requirement was an effective date, and the  
14 regulation community was permitted to register  
15 late.

16 My reading of this, this sentence and  
17 the preamble, and that section in its entirety,  
18 says that this is meant to be a denial, it must be  
19 disposed of. If it is not authorized for use, it  
20 must be disposed of.

21 JUDGE GUNNING: And you don't believe  
22 that this sentence pertains to the two previous  
23 sentences that discusses transferred PCB's, and  
24 taking possession of a PCB transformer after the  
25 deadline?

Proceedings

1  
2 MS. TAYLOR: Transfer and taking  
3 possession would give you thirty days to register.  
4 If you do not comply with that thirty-day window,  
5 you would be required to either remove or  
6 reclassify your transformers.

7 JUDGE GUNNING: Okay. So that's a  
8 carved-out exception that would allow you to have,  
9 "late registration."

10 MS. TAYLOR: Newly acquired, I  
11 believe the intention was for someone who acquired  
12 a building that had a transformer on-site, which  
13 would allow that individual to register the  
14 transformer.

15 JUDGE GUNNING: Okay. Please  
16 proceed.

17 I know it's difficult to get back to  
18 your train of thought.

19 MS. TAYLOR: That's not a problem.  
20 TSCA, Section 6E, Congress banned the  
21 use of PCB's in any manner other than -- unless  
22 authorized by EPA.

23 TSCA's legislative history reflects  
24 the intent to authorize the EPA to use outright  
25 prohibitions. Thus EPA's regulations reflect the

Proceedings

1978 Congressional ban on PCB use when there is a failure to comply with all of the use authorization requirements.

And the PCB ban was intended to be permanent.

The preamble to the 1994 rules advised the regulating community that the registration requirement would be part of the authorization for continued use for each PCB transformer.

The preamble to the '98 rule, as we just reviewed, stated that the national registration requirement was a petition for authorized use, for continued authorized use, and that PCB transformers that are not registered are not authorized, and must be disposed of.

Recent change to a national registration requirement included the wide scale noncompliance with the Fire Department rule.

A review of the regulated community's compliance with the regulation by the Office of Inspector General of EPA, and EPA regional personnel, found that many Fire Departments had not received the registration information.

1 Proceedings

2 A national registration requirement  
3 and PCB transformer database would allow a greater  
4 number of emergency response personnel, federal,  
5 state, in addition to local, to have information  
6 about the location of PCB transformers for  
7 emergency planning and preparedness purposes.

8 Also, a national assessment of PCB  
9 quantities in use was necessary for international  
10 discussions on a potential mandatory ban of PCB  
11 use.

12 Respondent essentially attacks the  
13 validity of the regulation when it argues that the  
14 application did not authorize by statute or is  
15 unconstitutional.

16 However, under TSCA, Section 19,  
17 challenges to regulations promulgated under TSCA,  
18 Section 16, are only permitted within sixty days  
19 after promulgation of the rule.

20 Okonite has been in business since  
21 1878, and has several locations throughout the  
22 United States.

23 Okonite's Ramsey location was  
24 constructed in 1969, and the PCB transformers have  
25 been in place since that time.



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Proceedings

The useful life of a PCB transformer is approximately forty years, if maintained.

Okonite's PCB transformers have been in service at the Ramsey location for more than forty years.

And Okonite did not take steps to comply with the PCB regulations until approximately 2005.

The evidence indicates that Okonite's PCB transformers are near or at the end of their useful life. PCB transformers are increasingly vulnerable to leaks the older that they become.

Okonite admits that the Ramsey PCB transformers were not in compliance with all of the regulations, including marking, inspection, pad mounting and burning, until the year 2005, after issues arose concerning PCB transformers at its Paterson facility.

PCB transformer violations found during the EPA inspection of Respondent Paterson's facility in October of 2004 included failure to mark a PCB transformer, failure to mark a PCB storage area, and improper storage of PCB's waiting for disposal.

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Proceedings

But they're not charges before us, correct, it's strictly failure to register, unauthorized use.

We wanted to address all of the issues raised by Respondent in this matter, so part of that is the previous complaint and settlement for the Paterson facility.

Respondent essentially claims that EPA is being arbitrary in bringing this action, and enforcing the disposal, or reclassification requirement for the transformers at the Ramsey location.

However, at the time of the inspection in Paterson, the transformers there were also registered late, but at that time they were under contract for removal. And they were removed in January of 2005.

So when EPA issued its March, 2005, complaint for the Paterson facility, it did not include an unauthorized use violation or allegation for that facility.

JUDGE GUNNING: Getting back to my primary question, this is my understanding, do the regulations before and after the amendment still

Proceedings

1  
2 employ the language of unauthorized use? And you  
3 seem to be arguing that it's the effective date  
4 versus a filing deadline.

5 MS. TAYLOR: Yes.

6 JUDGE GUNNING: Isn't this a matter  
7 of semantics?

8 MS. TAYLOR: Considering the changes  
9 and the reasons that were placed in the preamble  
10 for the changes to the regulation, to me, it's  
11 clear that it was more stringent, it was intended  
12 to be more stringent.

13 JUDGE GUNNING: Why not just come out  
14 and say it is intended to be more stringent?

15 MS. TAYLOR: We stated the mass  
16 noncompliance, the desire to have national  
17 information on locations, and an expansion in the  
18 category of mercy response personnel that have  
19 access to the information, plus creating the  
20 national database.

21 And, to me, saying that it's not  
22 registered, then it must be disposed of, is clear.

23 JUDGE GUNNING: Okay. Now a couple  
24 of other questions.

25 Am I correct in assuming that EPA

1 Proceedings

2 does not argue that Lazarus is overruled by this  
3 regulation?

4 MS. TAYLOR: It's different language.

5 JUDGE GUNNING: And it is EPA's  
6 position that this is a continuing violation?

7 MS. TAYLOR: Not in the sense of a  
8 continuing violation doctrine.

9 The continuing violation doctrine  
10 allows for the special accrual rate to extend the  
11 five-year general statute of limitations.

12 So violation, we say it's continuing  
13 because the PCB ban is permanent, which is why  
14 this violation does not cease until the  
15 transformers are either removed from service or  
16 reclassified.

17 JUDGE GUNNING: Okay. Now, in this  
18 particular case, the parties agree that the PCB  
19 transformers in question were registered on April  
20 5, 2005, on the form described in the information.

21 I don't know if a registration fee  
22 was collected.

23 Do you know if there was money  
24 involved?

25 MS. TAYLOR: No.

Proceedings

1 JUDGE GUNNING: Okay. Now, EPA did  
2 accept this registration form, correct, did not  
3 notify Respondent that it was meaningless?  
4

5 MS. TAYLOR: The December, 2009,  
6 inspection was necessary to confirm the violation.

7 JUDGE GUNNING: Four years later.

8 MS. TAYLOR: Four years later.

9 In part, because there is a window  
10 for newly-acquired transformers, or  
11 newly-discovered transformers.

12 JUDGE GUNNING: Okay. Now, by  
13 possibly being deemed as an acceptance of this  
14 regulation, or this application, do you see  
15 equitable estoppel coming into play here?

16 MS. TAYLOR: We could not determine  
17 if there was a violation of registration  
18 requirements until after the inspection.

19 Otherwise, to refuse transformer  
20 registration forms would not allow an individual  
21 to have newly-identified, or newly-acquired  
22 transformers to complete their registration.

23 JUDGE GUNNING: But don't you think a  
24 more timely inquiry would be appropriate?

25 MS. TAYLOR: We don't have the



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resources, and I believe that within a five-year period it's not considered untimely to perform an inspection.

JUDGE GUNNING: Let's just say it's not, it does not rise to the level of equitable estoppel.

Could it be perhaps another factor justice may require consideration in the penalty phase?

MS. TAYLOR: The transformers were identified in '98. Okonite hired a Director of Environmental Services in '94.

Prior to the issuance of the proposed rule, PCB's were banned in '78.

I believe the greater delay here is their August, 2005, filing of the PCB transformer registration form.

JUDGE GUNNING: Okay. Now, there were the rules on PCB, there were other changes during the same time frame.

MS. TAYLOR: Yes.

JUDGE GUNNING: Where disposal of now requires a determination that, I believe, that they pose a risk. In other words, the burden

1 Proceedings

2 shifted more to the government in that respect.

3 I interpret such as possibly being a  
4 liberalization of some of the rules.

5 And this is a strengthening of the  
6 rules.

7 Do you see any contradiction here?

8 MS. TAYLOR: I'm not sure I follow  
9 the shifting of the burden to the government.

10 In 1978, transformers were part of  
11 the environment.

12 JUDGE GUNNING: Disposal questions of  
13 PCB's, which is beyond the scope of this argument,  
14 I recognize. But the disposal requirements, I  
15 believe, were also altered during the same time  
16 frame.

17 MS. TAYLOR: They were in place in  
18 1978.

19 That was the first regulation, and  
20 that included disposal.

21 JUDGE GUNNING: Yes.

22 MS. TAYLOR: And, as far as I know,  
23 all the burden is on the regulated community for  
24 proper disposal.

25 JUDGE GUNNING: Correct. The burden

1 Proceedings

2 remains, but in terms of demonstrating it, there  
3 was a shift in responsibility.

4 Well, it may not apply here, it may  
5 not be a good analogy. But you do agree that this  
6 was clearly a tightening of the regulation?

7 MS. TAYLOR: Yes.

8 JUDGE GUNNING: Now, when regulations  
9 are tightened to cover more of the regulated  
10 community, and to be strengthened, don't you think  
11 it's incumbent upon the Federal Register notice to  
12 clearly and explicitly state this?

13 MS. TAYLOR: PCB's were banned in  
14 1978 by Congress. Without EPA's use  
15 authorizations, the regulated community would have  
16 had to dispose of their transformers in 1978.

17 JUDGE GUNNING: So this was a  
18 carved-out exemption, so to speak?

19 MS. TAYLOR: Yes, it is.

20 JUDGE GUNNING: Okay. And yet they  
21 returned, they realized the lack of compliance,  
22 for whatever reason, they wanted to strengthen  
23 this rule.

24 But, as I said before, isn't it  
25 incumbent upon the agency, when doing so, to



1 Proceedings

2 provide fair notice to the regulated community  
3 that from the text of the rule itself, do you  
4 believe the text of the rule in the amended form,  
5 along with the preamble, provides fair notice of  
6 this rather significant more stringent approach?

7 MS. TAYLOR: Your Honor, yes, I do.

8 No later than December 28, 1998, is  
9 clear. It is plain language.

10 We did not alter some of the other  
11 sections of the regulation, it still reads "as  
12 of."

13 JUDGE GUNNING: Some of the other  
14 sections remained in place?

15 MS. TAYLOR: Yes.

16 JUDGE GUNNING: Thank you.

17 Once again, if you want to continue.

18 MS. TAYLOR: With respect to the May  
19 7, 2009, inspection date, Okonite argues that May  
20 7, 2009, is the only relevant date in the present  
21 matter.

22 The May 7, 2009, Ramsey facility  
23 confirmed the PCB transfer violations in that the  
24 PCB transfers were identified from information,  
25 and should have been registered in 1998.

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The EPA contends that the period of violation began in 1998, and continues until the unauthorized PCB transformers are either removed from service or reclassified.

This is a time period before the Court for adjudication.

The selection of the May 7, 2009, inspection date in EPA's exchange is a point of reference for the Paperwork Production Act analysis.

The PCB penalty policy does not associate a time period for violations to the assessment of the penalty.

Although TSCA's statutory maximum allows for a curving penalty, the PCB penalty policy graduates a one-day penalty based on a gravity matrix.

Given that the PCB penalty policy does not associate a time period for the violations to the penalty assessment, and that the violation began in 1998, an action for penalty could be sustained by any day within the violation period.

Your Honor, the 1978 PCB ban, the

1 Proceedings

2 1994 proposed rule, and the 1998 final rule,  
3 clearly puts Respondent on notice of the EPA's  
4 national registration requirement.

5 Respondent's transformers were  
6 identifiable as PCB transformers, and Respondent  
7 should have been able to comply with the rule.  
8 And yet, Respondent failed to meet the  
9 requirement, and thus is strictly liable under  
10 TSCA.

11 Thank you.

12 JUDGE GUNNING: Just give me a  
13 moment. I just want to go over my notes and make  
14 sure that I didn't miss anything.

15 (Pause.)

16 JUDGE GUNNING: You're relying on the  
17 language of the rules, the preambles.

18 Is there any other guidance document  
19 and/or directive that you are relying on to make  
20 your case?

21 I want to make sure I have a full  
22 record before me.

23 Was there any guidance document  
24 published on this matter, to the best of your  
25 knowledge?

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Proceedings

MS. TAYLOR: By the records, I'm assuming you mean something from the headquarter's office.

JUDGE GUNNING: Yes, anything that a reference or authority for the position that you're taking; or an exculpatory document.

Is there any other document that you are aware of that discusses this topic?

MS. TAYLOR: The regulatory interpretation of the 1998 registration requirement.

Is that what you're referring to, the guidance document for that?

JUDGE GUNNING: Yes, anything of that nature.

I don't mean internal work documents, or product, I'm talking about guidance documents which are sometimes published, some type of rulings, some type of directive from headquarters.

MS. TAYLOR: I have not located a headquarters directive.

I have seen press releases from the 1998 time period emphasizing the requirement that transformers must be registered or removed, for

1 Proceedings

2 some of the cases out in Region 9.

3 JUDGE GUNNING: But no official  
4 guidance document, a press release versus a  
5 guidance document?

6 MS. TAYLOR: To this date, I have not  
7 seen a headquarters statement.

8 JUDGE GUNNING: Okay. Thank you.  
9 Give me just a minute.

10 Just out of curiosity, what do you  
11 see as the Lazarus role in this matter?

12 MS. TAYLOR: Lazarus gives the  
13 framework for regulatory interpretation in  
14 determining the continuing nature of violations.

15 However, with the amendment to the  
16 1998 regulation, it imposes the PCB ban, 1978 PCB  
17 ban, somewhat different from the violation  
18 discussed in Lazarus.

19 JUDGE GUNNING: So you still see it  
20 as a viable decision for the continuing obligation  
21 doctrine?

22 MS. TAYLOR: The continuing nature of  
23 violations.

24 JUDGE GUNNING: You don't see it  
25 modified, so to speak, by this amended rule?

1 Proceedings

2 MS. TAYLOR: Lazarus did not have the  
3 1998 regulation. That's not the regulation that  
4 was at issue.

5 JUDGE GUNNING: Right. It was issued  
6 well before that.

7 But what happens to Lazarus now, if  
8 this were the interpretation attached to the rule?  
9 Do you see any modification of Lazarus?

10 MS. TAYLOR: The legislative history  
11 is still the same because TSCA was enacted in  
12 1976, and you still have the indication that  
13 Congress intended the violations to be continuing  
14 in nature, which tracks the discussion in Lazarus.

15 The point at which the analysis  
16 diverges is the language, the wording of the  
17 regulatory test.

18 JUDGE GUNNING: Okay. Thank you very  
19 much.

20 MS. TAYLOR: Thank you.

21 MR. GIULIANO: May it please the  
22 Court, based on the directive we received from  
23 your Honor, indicating that we would have this  
24 argument today, based on the comments in that  
25 directive that your Honor gleaned from the

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Proceedings

prehearing exchange documents, it is very clear to me that the last thing we need to do today is to repeat what is in the brief.

There is no question your Honor has digested entirely what has been presented in both briefs. And so I don't propose to go over again what I said in the brief, and I'll simply rely on the contents of the brief for responses to a number of the things in the Complainant's papers, in the Complainant's brief.

However, that having been said, I would like to go forward with certain points that may not have been made in my brief as clearly as they might have, or as thoroughly as they might have.

And so to that end, your Honor, I'm going to start exactly with the language that your Honor first referred to in your questioning of the Complainant's counsel.

So if, again, we could go to the promulgation of the final rule, page 35394.

Your Honor asked what did the EPA understand to be the meaning of that sentence, "PCB transformers that are not registered are not

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Proceedings

authorized for use, and must be disposed of."

So with all due respect, I may answer that question as I see it, as we see it, then I'd like to do that.

JUDGE GUNNING: That was my first question to you.

MR. GIULIANO: Well, maybe I should have waited. But I think clearly the first part of the answer is that that sentence modifies what comes before.

I think there's very little question but that it's intended to relate to a situation where maybe a company buys another company or facility, and that facility has PCB transformers, and if it should turn out that they're not registered, well, then, you make a decision, you register them or you don't.

If you don't, you can't use them, you take them out.

JUDGE GUNNING: Why should they be different than other PCB transformers?

MR. GIULIANO: I don't think they should be.

JUDGE GUNNING: But you're saying it



1 Proceedings

2 applies to the two preceding sentences, but it  
3 does say they are not authorized to produce and  
4 must be disposed of.

5 Why would those transformers be  
6 treated differently than other transformers that  
7 are not registered?

8 MR. GIULIANO: I don't think they  
9 would be, your Honor.

10 I think if a PCB transformer owner  
11 has PCB transformers, there's an obligation under  
12 that rule to register them.

13 And if you make a decision not to do  
14 so, then I have to agree, you can't keep them, you  
15 can't use them.

16 This is not something that the EPA  
17 was playing games about. They had a serious  
18 purpose behind their rules.

19 What Okonite has been trying to  
20 convey from the beginning is that we, frankly,  
21 agree with that premise.

22 The purpose was, you register the PCB  
23 transformer, and you bring it into the daylight.

24 And now it becomes subject to all the  
25 other, the entire panoply of the rules that EPA

1 Proceedings

2 can enforce.

3 JUDGE GUNNING: So you're saying if  
4 they had come to conduct the inspection before  
5 your registration, you agree it should have been  
6 removed?

7 MR. GIULIANO: No. No, your Honor.

8 I think a company, as happened in  
9 Lazarus, the EPA made the inspection, and then,  
10 after that, they registered the transformers.

11 JUDGE GUNNING: Yes.

12 MR. GIULIANO: After that.

13 I don't think it matters either way.

14 Okonite's situation, the registration  
15 was not provoked by an EPA inspection. So we made  
16 the decision -- we'll get into that in a moment,  
17 the circumstances -- but we made a decision to  
18 register.

19 I think the company had the option,  
20 if you intend to use them, if you intend to keep  
21 using PCB transformers, you've got to register  
22 them.

23 If you make a decision not to do so,  
24 then I don't see any basis.

25 JUDGE GUNNING: It's still

1 Proceedings

2 unauthorized use.

3 MR. GIULIANO: Sure.

4 If a company decides not to register  
5 its PCB transformers, that is a condition of use.

6 What I'm saying is it's not a matter  
7 of fortuitous circumstance whether that's driven  
8 by EPA inspection or not.

9 Let assume that an EPA inspection  
10 does take place, and by that means, the company  
11 becomes aware of its obligation to register. Then  
12 it has to do so.

13 All I'm saying is --

14 JUDGE GUNNING: But you registered  
15 these transformers before the inspection.

16 MR. GIULIANO: Yes.

17 JUDGE GUNNING: So my question to you  
18 is, had EPA appeared and observed that they were  
19 not registered.

20 MR. GIULIANO: Yes.

21 JUDGE GUNNING: What should have  
22 happened to Okonite then? What should they have  
23 been charged with?

24 MR. GIULIANO: We could have been  
25 fined.

1 Proceedings

2 That would be a violation of the  
3 registration requirement.

4 And then we had the option to  
5 register them immediately. Having learned of our  
6 failure to comply with the law, then we should  
7 have had the option to register them.

8 So a fine would be clearly  
9 appropriate.

10 It's the construction -- well, your  
11 Honor is well aware, the issue before you is the  
12 construction of the regulation, does it mean you  
13 have not forfeited, and we'll get to that, as  
14 well.

15 I think we would have had the option  
16 to register, and we should have registered. But  
17 this language means if we don't.

18 Even if you want to look at the  
19 language in the abstract, even if in some way you  
20 can justify what EPA wants to do with this  
21 language, which is to take it out of the context,  
22 which is to say it doesn't relate to the sentences  
23 before, even if you do that, for the sake of  
24 argument, it doesn't say what they want it to say.

25 It doesn't say -- the language



1 Proceedings

2 doesn't say PCB's -- this is the way it reads.

3 "PCB transformers that are not registered are not  
4 authorized for use and must be disposed of."

5 It doesn't say PCB transformers that  
6 have not been registered by December 28, 1998, are  
7 not authorized for use. It doesn't say that.

8 And if your Honor asked that question  
9 once or twice of EPA counsel, again, I'd like an  
10 opportunity to answer that question. And it's  
11 critical.

12 They are saying that the world  
13 changed after December 28, 1998, in a big way.

14 I was, quite frankly, very surprised  
15 to hear counsel concede, and I'm happy to hear it,  
16 extremely happy, because it, again, indicates a  
17 certain amount of candor and professionalism on  
18 the part of the EPA which Okonite has been  
19 seeking, and which, frankly, was expressed in the  
20 first prehearing exchange, when they indicated  
21 Lazarus applied.

22 Let me approach it from a different  
23 direction.

24 JUDGE GUNNING: I guess this is a  
25 good time for me to jump in.

1 Proceedings

2 Based upon my reading of your  
3 pleadings and brief, my understanding is you are  
4 arguing that the EPA claims that Lazarus has been  
5 aggregate, reversed, overruled.

6 I did not see that in the pleadings.

7 MR. GIULIANO: Okay. If I didn't say  
8 it clearly enough, then I stand corrected.

9 What I'm saying is that was the point  
10 I was trying to make a minute ago.

11 If they want this Court to adopt a  
12 view of the regulation that once December 28,  
13 1998, came and went, that violation is fixed, and  
14 it's hopeless from that point on to correct your  
15 mistake.

16 If that's what they want, then, of  
17 necessity, they're arguing that Lazarus changed.

18 I'm not saying that they explicitly  
19 said, oh, Lazarus is overruled, and I'm happy to  
20 hear today that they say it wasn't.

21 JUDGE GUNNING: Right. And they're  
22 saying that it's a continuing violation still.

23 MR. GIULIANO: You can't divorce --  
24 Lazarus didn't say continuing violation, Lazarus'  
25 analysis proceeded on the basis of the document's

Proceedings

special accrual.

And in that context, Lazarus said two things, and you can't divorce the one from the other.

Lazarus said, "We find that the obligation to register was a continuing obligation." And then, "If it's a continuing obligation, the failure to meet it is a continuing violation."

There is no problem with that. We fully agree with that.

But you can't take out "continuing obligation."

And that's the problem before your Honor today. The EPA's position is, oh, we like the continuing violation part, we don't like the continuing obligation part. That's what you're being told.

But if the law doesn't say that.

Not only did Lazarus make that holding, but every EPA decision since validated the approach of Lazarus.

So with all due respect, when the EPA today says to your Honor that they don't feel that

Proceedings

Lazarus is overruled, then that means that the document continuing obligation was not overruled.

And so, just as Lazarus held then because the goals are the same, the registration requirement's goals are all the same today, that they were on the regulation, before the regulation was amended.

Counsel said that again today, and she's right to say that.

She specifically made reference to the goals that there hadn't been compliance with the registration requirement as broadly as they should be. Of course.

And so the EPA decided to address that.

And one way that they addressed that was to strengthen, as they said themselves in the preamble, to strengthen the registration requirement by making -- you're going to register with the EPA, we're going to have control over this whole process.

That gets me to maybe the completion of the answer to your Honor's question about that sentence in the preamble.



1 Proceedings

2 If I may, with all due respect, I  
3 want to refer the Court and the EPA to a much  
4 clearer indication in the preamble of the EPA's  
5 intent about maximizing registration, maximizing  
6 compliance, with the registration requirement.

7 And it's on the same page, 35394,  
8 it's in the left-hand column, and it reads like  
9 this:

10 In addition, changes to the rule that  
11 will make it easier to enforce, such as requiring  
12 that proof of registration be kept with the annual  
13 log, should assist in abating the risk from fires  
14 involving PCB's.

15 And now this is the important  
16 language.

17 By increasing the rate of compliance,  
18 therefore, providing emergency response personnel  
19 with information about more PCB transformers.

20 There's only one way to read that  
21 language, I think.

22 Without appearing presumptuous. It  
23 says "by increasing the rate of compliance."

24 That is in direct contradiction of  
25 EPA's position that December 28, 1998, was the all

1 Proceedings

2 powerful date by which you were consigned to  
3 perdition if you didn't comply.

4 But it says just the opposite. They  
5 wanted to maximize compliance, and increasing the  
6 rate of compliance is language of continuity.

7 To paraphrase Lazarus and its  
8 project, that's language of continuity. And this  
9 is the EPA itself, by increasing the rate of  
10 compliance.

11 They're telling us, we want to  
12 maximum compliance, and rightfully so.

13 JUDGE GUNNING: You don't interpret  
14 the word "compliance" to encompass a ban?

15 MR. GIULIANO: No, because when your  
16 Honor says "ban," I think you mean it in the  
17 sense -- please, I don't want to seem in any way  
18 presumptuous, but when you say "ban," I think you  
19 mean that once December --

20 JUDGE GUNNING: Requiring disposal.

21 MR. GIULIANO: Yes.

22 JUDGE GUNNING: Okay.

23 MR. GIULIANO: That's what you mean  
24 by that?

25 JUDGE GUNNING: Yes.

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Proceedings

MR. GIULIANO: No.

No, because increasing rate of compliance means -- it's a direct contradiction. You had this up until this date. Once that date came and went, too bad, you can't do it.

So then all these thousands of transformers that are out there remain in the dark, remain not subject to the EPA's review?

This is a very unusual situation that is presented to your Honor, because the Respondent is not fighting the EPA, the Respondent has as much interest in the EPA being able to accomplish its goals as anybody, if not more.

We like the idea that the EPA has all those standards about having burns, and having markings, and having inspections, and so on and so forth.

Not that we have a choice, but it is the law, but frankly, it's a good law, and it should be enforced.

As opposed to the interpretation that they're taking now, which is, don't worry about it, if you didn't do it, your situation is hopeless, so you may as well keep them hidden. If

1 Proceedings

2 you haven't registered them, keep them hidden,  
3 because if we find out, you're going to forfeit.

4 That brings me to the very next  
5 point, if I may.

6 In my brief, page 22, I cited two  
7 cases. Those two cases were in the matter of  
8 Russell Electric Plant Board. I don't understand  
9 it, either.

10 And the other one was Weekly  
11 Utilities.

12 In both of those cases -- I'm not  
13 going to dwell on them a long time -- but in both  
14 those cases, if your Honor please, there was a  
15 failure to register. These are post-1998 cases,  
16 Post-1998 cases.

17 There was a failure to register.

18 And in most cases, a fine was paid,  
19 appropriately so.

20 But then both cases involved SEP.  
21 And the SEP was removal of the offending  
22 transformers.

23 Now, your Honor, in your position as  
24 the Administrative Law Judge assigned to the EPA,  
25 will know better than I ever will that you do not

1 Proceedings

2 get to do an SEP if what you are otherwise  
3 obligated to do, what you're otherwise obligated  
4 to do, is saying -- the SEP.

5 This is proof now by the EPA entering  
6 into these capitals. Both of these cases are  
7 capitals.

8 JUDGE GUNNING: Just for  
9 clarification for the Court Reporter, the terms  
10 that we are using here, SEP, is an acronym for  
11 Supplemental Environmental Project.

12 And the word "CAFO" is an acronym for  
13 Consent Agreement and Final Order.

14 Now you're saying both of these  
15 cases, do you know which region they are from?

16 MR. GIULIANO: Yes, I have them here.

17 JUDGE GUNNING: Okay.

18 MR. GIULIANO: They're both Region 4.

19 JUDGE GUNNING: And you're saying  
20 that the removal was contained within a SEP, and  
21 that a SEP, by its policy, would not provide for  
22 credit, so to speak, for removal if it were a  
23 requirement under the rules?

24 MR. GIULIANO: Yes.

25 Let me answer that question this way.

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Proceedings

I have never been involved in this kind of a case before. So as I said, your Honor would know much more than I ever would about this.

But my understanding of an SEP or a SEP is that you cannot enter into it if the action you are agreeing to undertake is otherwise a legal obligation.

So by -- this is the EPA, maybe region four, but it's the EPA entering into a CAFO, saying that the SEP that you will engage in is removal of the transformers.

Which is, I submit to your Honor that this is a practical construction of the very regulation that they're trying to enforce, which means that it was not required.

By violating the 1998 regulation, by late registration, it was not required that you remove the transformers, because otherwise, removal could not be part of an SEP.

That's my point.

Now, along that same line, the preamble to the promulgation of the final rule makes clear that EPA intends to put its database on its website. It says that.

1 Proceedings

2 So now I respectfully invite the  
3 Court to look at the EPA's website.

4 And if the Court were to do that,  
5 what the Court is going to find, again, from the  
6 standpoint of the EPA's own construction of this  
7 regulation, or the regulation requirement, what  
8 the Court is going to find is the registration  
9 form.

10 Today, twelve years after the  
11 regulation was enacted, there is still the  
12 registration form on the EPA's website.

13 Maybe I don't get it, but this is an  
14 invitation, it would seem to me, to the regulated  
15 community, by the EPA itself, to register a PCB  
16 transformer, if you have one.

17 JUDGE GUNNING: Didn't counsel  
18 indicate that that form was there so that if you  
19 have a newly-discovered PCB transformer, or one  
20 that was transferred in, the form was for that  
21 purpose, not necessarily to elicit new  
22 registrations?

23 MR. GIULIANO: If counsel said that,  
24 I missed it. But if counsel did say that, fine.

25 But the website doesn't say that.

1 Proceedings

2 The EPA doesn't say this form is only  
3 to be used if you fail -- if you just happen to  
4 notice now, thirty days ago, that you had a PCB  
5 transformer. The website doesn't say that.

6 That goes out to the country, go  
7 ahead and register transformers.

8 Let's continue along that line of  
9 inquiry.

10 If you look at the website, which  
11 reflects, which contains the database for  
12 registered PCB transformers, since December 28,  
13 1998, since, there have been over 2,000  
14 registrations of transformers.

15 This is not 2,000 transformers, this  
16 is 2,000 registrations.

17 I don't know how many thousands of  
18 individual PCB transformers that encompasses.

19 But this is again, the EPA by its  
20 actions, not by its words, by its actions,  
21 reflecting its own construction of the  
22 registration requirement, which is go ahead and  
23 register, even if it's late.

24 Over 2,000 of them since.

25 And they provide -- I'd be willing to



1 Proceedings

2 hand over to the Court, just to facilitate, if the  
3 Court would be inclined to do that, I have with me  
4 both the length of the registration application,  
5 and the database itself, which reflects ongoing  
6 registration right up until, I think, the site was  
7 current until 2007, up until then, well after  
8 1998.

9 So this is again the EPA, by its  
10 actions, just like those two CAFO cases,  
11 reflecting its own understanding of the  
12 regulation, as opposed to the arguments of this  
13 particular case.

14 Now, in your Honor's questioning of  
15 counsel, there was a good deal of discussion  
16 about -- which I found somewhat surprising, not  
17 your Honor's questions, but the answers of the EPA  
18 to the involvement of the Paterson factory, and  
19 their inspection of the Okonite facility in  
20 Ramsey, the headquarters. I would like to address  
21 that, if I may.

22 I didn't think that we should,  
23 because I thought that -- I didn't really expect  
24 counsel to be testifying, and that's really what  
25 happened in the brief, when they talk about why

1 Proceedings

2 they did the inspection, and when they say things  
3 like, "Well, we needed to do the inspection in  
4 order to see if there was really a violation."

5 So if I may, your Honor, I'd like to  
6 address that. And I will go back to Paterson.  
7 And since they brought it up, I would like to  
8 answer that.

9 The very same people at EPA who made  
10 the inspection in Ramsey in May of 2009 were the  
11 very same people dealing with Mr. Groome,  
12 Okonite's Director of Environmental, in connection  
13 with the Paterson factory.

14 Mr. Groome was hired, as counsel  
15 said, in 1994, having been a bureau chief at the  
16 New Jersey Department of Environmental Protection.

17 And Mr. Groome made the decision,  
18 after the involvement with Paterson, after --

19 So when he decided to take the job at  
20 Okonite, sometimes thankless, and putting Okonite  
21 on an environmentally righteous path, he didn't.  
22 He came to Paterson, we had a problem, there's no  
23 question we had a problem in Paterson, and we  
24 ponied up, so to speak.

25 There were violations, we paid the

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Proceedings

fee, and the transformers were taken out.

But that is what induced Mr. Groome then to look at what he had been told.

He was newly hired and he had been put through a training session, and he was told certain things, and so we missed the deadline for Ramsey.

When he saw the problems in Ramsey he reacted, and he looked at the situation in Ramsey, and then he cured that problem. He determined there were PCB transformers.

But for the EPA to say to your Honor, as they did in their brief -- and I say this with all due respect -- it's preposterous to say that they needed to do the inspection four years later, four years later, in order to find out there was a violation, when they knew in 2005, according to them, that the regulation meant that you forfeited your transformers by not registering in 1998.

For them to say, "Well, we didn't really know there was a violation," we had to come up there and look to make sure that Mr. Groome didn't make a mistake, after having dealt with him several months on the very issues where we had

1 Proceedings

2 made a mistake in Paterson, and we paid the price  
3 for it.

4 It's mind boggling, it's beyond  
5 preposterous there would be that explanation, that  
6 we needed to see there was a mistake.

7 I'm not talking EPA.

8 I can imagine how busy they are. And  
9 as a citizen, I'd like to see that they are  
10 enforcing the rules, so when they made a  
11 surprise -- and not just me, I'm not talking about  
12 me personally, but as a company. We don't exist  
13 in a vacuum.

14 If something happened in that  
15 transformer that's outside our ability, my office  
16 isn't far from there, I don't want to breathe the  
17 PCB's, I don't want the people in the company to  
18 breathe the PCB's.

19 It would be foolish in this day and  
20 age to think that there's this dichotomy between a  
21 company's best interest and EPA's best interest.

22 I have difficulty, if your Honor  
23 please, understanding that dichotomy in people's  
24 minds.

25 You see very often this fight, well,

1 Proceedings

2 if you're for business and industry, you have to  
3 be against environmental protection. It makes no  
4 sense.

5 What good does it do for the Okonite  
6 company if we're profitable and our employees are  
7 getting sick?

8 To me, it never made any sense.

9 That's why Mr. Groome is there.

10 They had all the information.

11 There was a violation in 2005, they  
12 had all the information they needed then.

13 When Mr. Groome filed that  
14 registration document, it said, we have PCB  
15 transformers. It said they were subject to the  
16 regulations.

17 That's why they registered them.

18 JUDGE GUNNING: Is Respondent willing  
19 to stipulate that the transformers here are PCB  
20 transformers, as alleged in the complaint that are  
21 covered by EPA?

22 Can we dispose of that question?

23 MR. GIULIANO: Absolutely.

24 JUDGE GUNNING: Okay.

25 MR. GIULIANO: I thought I admitted

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Proceedings

that in the answer, and the prehearing exchanges.

JUDGE GUNNING: I just wanted to confirm that.

MR. GIULIANO: Absolutely, absolutely, there's no question, they're PCB transformers.

And that brings up another question that your Honor posed to the EPA that I think I should address briefly.

Once again, we're getting testimony from EPA that, well, transformers have a useful life of forty years.

Well, maybe there's some statistic that says that, and there's no question again that when Okonite built that facility, that those were the transformers that were put there.

But if this weren't an evidential hearing, then we would spend two or three days with expert testimony about the fact that those transformers don't age the way maybe they would normally age in forty years, because they probably weren't even necessary, in the first place.

I know that this is subject to expert testimony.

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Proceedings

Again, I didn't really anticipate getting into this until EPA opened up the subject of forty-year-old transformers.

There was a legal question.

Now that they opened it up, I just have to say in response, we know the age of those transformers, and as I said in my brief, it is critical to the Okonite Company that those transformers not fail.

We don't need to rely on the EPA's enforcement or inspections to tell us not that we have a problem with it. The EPA would be welcome to come up once a month. They're very nice people. We've been dealing with them for a year-and-a-half.

They're welcome to come up every month and take a look at it.

We need those transformers to function. We cannot afford for those transformers to fail.

That is the reason why, when we inspect them monthly, not the quarterly requirement that the regulations say, not just quarterly, we inspect them monthly. And that's

1 Proceedings

2 just a form of inspection. We need them to work.

3 When we get the sense, the slightest  
4 evidence that they are no longer in a condition  
5 that is sound, they're going to get changed. It's  
6 that simple.

7 JUDGE GUNNING: Returning to the  
8 language of the amended rule.

9 MR. GIULIANO: Yes.

10 JUDGE GUNNING: My understanding is  
11 that you're attaching little, if no, significance  
12 to the change from "as of," rather than versus "no  
13 later than."

14 Why use different language? Why not  
15 use the language of the prior regs?

16 MR. GIULIANO: The answer to that is  
17 in the preamble. I don't have an answer in the  
18 sense that I would know what the EPA had in its  
19 mind.

20 I can't really answer that, because I  
21 can't speak for them.

22 But your Honor put your finger right  
23 on the pulse when you asked me if it's going to  
24 make such a fundamental change, why, in fifty or  
25 sixty pages of preamble, is there no mention of



1 Proceedings

2 that fundamental change?

3 So that's the answer to your Honor's  
4 question.

5 They changed the language. Okay. I  
6 don't make light of it. And I don't know why.

7 Maybe it's a little clearer to say  
8 "no later than." Maybe it was intended to  
9 encourage maybe recalcitrant PCB transformer  
10 owners. I don't know.

11 But for heaven's sake, if they  
12 intended to change what by then had been -- it  
13 would have been a simple matter.

14 Somewhere in these, about sixty pages  
15 of preamble to say, and by the way, if you do not  
16 register by December 28, 1999, you have done so at  
17 your peril. That registration requirement is time  
18 of the essence.

19 That registration requirement is not  
20 subject to being bent, it's not subject to late  
21 compliance.

22 All throughout -- you know we, in the  
23 business we're in, we have a great many  
24 environmental rules.

25 We have factories, and the factories

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Proceedings

have to comply with air, they have to comply with emissions, water, and so on and so on.

Yes, your Honor, I mean, in all candor sometimes we miss a deadline. We don't want to, but we do.

Once in awhile we do. We have never, ever been told now, you missed a deadline, you forfeited your permit, or you missed a deadline, shut the factory, because you can't let out emissions.

This is the only time where we faced this kind of a suggestion. But on what basis?

Nothing, in sixty pages of preamble, nothing in the notice of proposed rule-making, another sixty or seventy pages, nothing, not one word that this is a draconian requirement, either you read it or you lose the transformer.

At the very least, to answer your Honor's question posed to EPA, that shouldn't be.

So yes, sure, they changed the language, but to ask, as counsel suggested, the regulated community to parse those sixty pages of preambles, and parse the language changes from "as of" to "no later than," and then reach a

1 Proceedings

2 conclusion from all that parsing that they mean  
3 something here that they didn't mean before, I  
4 don't know.

5 But, to me, that sounds unrealistic  
6 in the extreme. It, frankly, sounds impossible.

7 It has nothing to do with the way  
8 business is conducted.

9 We're a small company, and our  
10 Environmental Department is a department of one.  
11 A very capable one. But it's a department of one.

12 So what the EPA is saying our burden  
13 was to sit there with the preamble, and parse it  
14 word for word, sit there with the language of the  
15 registration requirement, and parse that against  
16 the 1985 requirement as of, and then determine  
17 that it's not an effective date, it's a cut-off  
18 date.

19 The law shouldn't require that if you  
20 intend for that kind of fundamental change, say  
21 it. And it's not said there.

22 And, frankly, it was never really  
23 intended.

24 So that basically concludes the  
25 comments that I have.

1 Proceedings

2 I just was going to quote from the  
3 Complainant's brief, on page 29, where they  
4 concede the ability of Lazarus at some point.

5 But their responses to your Honor's  
6 questions today, if I understood them correctly,  
7 contain exactly that concession, that the Lazarus  
8 analysis applies because they want to rely on the  
9 document of continuing violation.

10 But you can't do that without the  
11 document of continuing obligation.

12 As long as that is the case, then  
13 this -- I know this one sounds really  
14 presumptuous -- but as long as that is the case,  
15 once they concede that the document of continuing  
16 obligation does not apply, then this case is over.

17 I respectfully ask your Honor -- we  
18 will go forward in a cooperative way with the EPA,  
19 as we always have. And we welcome them every time  
20 they come, and give them anything they want, just  
21 as we did in the past.

22 And they will not be disappointed  
23 with, as they said, themselves, the exemplary  
24 nature of our compliance.

25 But this one, this particular

1 Proceedings

2 endorsement, is overreaching in respect of  
3 Okonite.

4 Thank you.

5 JUDGE GUNNING: Thank you.

6 MS. TAYLOR: Your Honor, I would like  
7 to just address a couple of issues raised by the  
8 Respondent.

9 We differentiate between the  
10 permanency of the PCB ban and the continuing  
11 nature of the violation, and the continuing  
12 violation doctrine discussed in Lazarus.

13 Here we're saying that the PCB ban is  
14 permanent. This is not the same as saying that  
15 the continuing violations doctrine applies.

16 And with respect to the SEP's that  
17 Respondent referenced, removal of a PCB  
18 contaminated transformer would be acceptable as a  
19 supplemental environmental project.

20 However, removal of a PCB transformer  
21 is not permitted, and if that was done, it was  
22 done so in error on the part of EPA personnel.

23 EPA headquarters has made it clear  
24 that late registration is not permitted for PCB  
25 transformers, and that under the 1998 rule,

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Proceedings

transformers must be removed.

And they cannot be included in an SEP.

With respect to the regulated community keeping quiet, EPA performs unannounced multimedia inspections, which, in the past, have revealed the existence of unregistered PCB transformers.

That, in part, was one of the reasons for the change in the regulation, was the discovery of the noncompliance.

So we expect that these multimedia inspections will continue to reveal the existence of PCB transformers that have not been registered.

Any further questions?

JUDGE GUNNING: No. I believe we have thoroughly covered this subject.

MS. TAYLOR: Thank you.

MR. GIULIANO: Thank you, your Honor. Thank you very much.

JUDGE GUNNING: Thank you.

Actually, today was most illuminating, and both sides did an excellent job at presenting this question, briefing, oral

Proceedings

argument.

My job is not easy, I will be quite honest. This is a difficult task.

But I think oral argument was well worth the effort and the expenditure of resources today, and I found it to be most helpful.

So I thank you.

MS. TAYLOR: Thank you.

MR. GIULIANO: Thank you.

JUDGE GUNNING: Have a good day.

Also, for the record, I don't believe that I included, or identified the individual to my right.

Jennifer Wolf is a staff attorney within the Office of Administrative Law Judges, and a valuable member of our team.

So I apologize.

Thank you.

(Time noted: 11:15 o'clock a.m.)

C E R T I F I C A T I O N

I, STEVEN KLEIN, a Certified  
 Shorthand Reporter and Notary Public, within and  
 for the State of New York, do hereby certify that  
 I reported the proceedings in the within-entitled  
 matter, on October 28, 2010, at 26 Federal Plaza,  
 New York, New York, and that this is an accurate  
 transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto  
 set my hand this 17<sup>th</sup> day of November,  
 2010.

*Steven Klein*  
 STEVEN KLEIN

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<b>A</b>				
<b>abating</b> 40:13	<b>admits</b> 16:14	36:17	<b>argue</b> 19:2	14:15,15,17
<b>ability</b> 51:15	<b>admitted</b> 52:25	<b>analogy</b> 23:5	<b>argues</b> 15:13	31:2 32:3 36:4
59:4	<b>adopt</b> 37:11	<b>analysis</b> 25:11	24:19	36:7
<b>able</b> 26:7 42:13	<b>advised</b> 14:8	29:15 37:25	<b>arguing</b> 18:3	<b>aware</b> 27:9
<b>absolute</b> 4:7	<b>afford</b> 54:20	59:8	37:4,17	34:11 35:11
<b>absolutely</b> 52:23	<b>age</b> 51:20 53:21	<b>and/or</b> 26:19	<b>argument</b> 3:6,10	<b>awhile</b> 57:7
53:5,6	53:22 54:7	<b>annual</b> 40:12	4:8 6:4,13 9:7	<b>a.m</b> 1:14 62:20
<b>abstract</b> 35:19	<b>agency</b> 1:3 2:6	<b>answer</b> 31:3,10	22:13 29:24	
<b>accept</b> 20:3	23:25	36:10 39:24	35:24 62:2,5	<b>B</b>
<b>acceptable</b> 60:18	<b>aggregate</b> 37:5	44:25 49:8	<b>arguments</b> 4:22	<b>B</b> 1:17
<b>acceptance</b>	<b>ago</b> 37:10 47:4	53:2 55:16,17	48:12	<b>back</b> 13:17
20:13	<b>agree</b> 12:7,10	55:20 56:3	<b>arose</b> 16:18	17:23 49:6
<b>access</b> 18:19	19:18 23:5	57:19	<b>asked</b> 30:23 36:8	<b>bad</b> 42:6
<b>accomplish</b>	32:14,21 33:5	<b>answers</b> 48:17	55:23	<b>ban</b> 5:19 9:25
42:13	38:12	<b>anticipate</b> 54:2	<b>assess</b> 12:4	10:2 11:17
<b>accrual</b> 19:10	<b>agreeing</b> 45:7	<b>anybody</b> 42:14	<b>assessment</b> 15:8	12:5,9,10 14:2
38:2	<b>Agreement</b>	<b>apologize</b> 62:18	25:14,21	14:5 15:10
<b>accurate</b> 63:9	44:13	<b>appeal</b> 4:8	<b>assigned</b> 3:5	19:13 25:25
<b>acquired</b> 13:10	<b>ahead</b> 3:16 47:7	<b>appeared</b> 34:18	43:24	28:16,17 41:14
13:11	47:22	<b>appearing</b> 40:22	<b>assist</b> 40:13	41:16,18 60:10
<b>acronym</b> 44:10	<b>air</b> 57:2	<b>application</b>	<b>associate</b> 25:13	60:13
44:12	<b>allegation</b> 17:22	15:14 20:14	25:20	<b>banned</b> 13:20
<b>Act</b> 1:10 25:10	<b>allege</b> 12:11	48:4	<b>assume</b> 34:9	21:15 23:13
<b>action</b> 17:10	<b>alleged</b> 6:6	<b>applied</b> 36:21	<b>assuming</b> 18:25	<b>Barbara</b> 1:18
25:22 45:6	52:20	<b>applies</b> 32:2	27:3	3:3
<b>actions</b> 47:20,20	<b>allotted</b> 4:6,12	59:8 60:15	<b>attached</b> 29:8	<b>based</b> 7:7 25:17
48:10	<b>allow</b> 13:8,13	<b>apply</b> 23:4 59:16	<b>attaching</b> 55:11	29:22,24 37:2
<b>addition</b> 10:16	15:3 20:20	<b>appreciate</b> 9:23	<b>attacks</b> 15:12	<b>bases</b> 10:7
11:12 15:5	<b>allows</b> 19:10	<b>approach</b> 24:6	<b>attorney</b> 62:15	<b>basically</b> 58:24
40:10	25:16	36:22 38:23	<b>August</b> 21:17	<b>basis</b> 33:24
<b>address</b> 17:5	<b>alter</b> 24:10	<b>approached</b>	<b>authority</b> 27:6	37:25 57:13
39:15 48:20	<b>altered</b> 22:15	7:18	<b>authorization</b>	<b>began</b> 5:19 25:3
49:6 53:10	<b>alternatively</b>	<b>appropriate</b>	8:11,17 14:4	25:22
60:7	6:22	20:24 35:9	14:10	<b>beginning</b> 32:20
<b>addressed</b> 39:17	<b>amend</b> 6:13,19	<b>appropriately</b>	<b>authorizations</b>	<b>behalf</b> 3:21
<b>adjudication</b>	<b>amended</b> 8:14	43:19	23:15	<b>believe</b> 10:6
25:7	24:4 28:25	<b>approximately</b>	<b>authorize</b> 13:24	12:21 13:11
<b>Administrative</b>	39:8 55:8	5:7 16:3,9	15:14	21:2,16,24
1:18 3:4 43:24	<b>amendment</b>	<b>April</b> 19:19	<b>authorized</b> 8:6	22:15 24:4
62:16	17:25 28:15	<b>arbitrary</b> 17:10	9:12 10:10	61:17 62:12
	<b>amount</b> 10:8	<b>area</b> 16:24	12:19 13:22	<b>bent</b> 56:20

<p><b>best</b> 26:24 51:21 51:21 <b>better</b> 43:25 <b>beyond</b> 22:13 51:4 <b>big</b> 36:13 <b>biphenyl</b> 8:5 <b>bit</b> 6:3 <b>Board</b> 43:8 <b>boggling</b> 51:4 <b>Box</b> 2:14 <b>breathe</b> 51:16 51:18 <b>brief</b> 10:7 30:4,8 30:9,11,14 37:3 43:6 48:25 50:14 54:8 59:3 <b>briefing</b> 61:25 <b>briefly</b> 53:10 <b>briefs</b> 30:7 <b>bring</b> 32:23 <b>bringing</b> 17:10 <b>brings</b> 43:4 53:8 <b>broadly</b> 6:8 39:13 <b>Broadway</b> 2:7 <b>brought</b> 49:7 <b>building</b> 13:12 <b>built</b> 53:16 <b>Bunker</b> 7:10 <b>burden</b> 21:25 22:9,23,25 58:12 <b>bureau</b> 49:15 <b>burning</b> 16:17 <b>burns</b> 42:16 <b>business</b> 15:20 52:2 56:23 58:8 <b>busy</b> 51:8</p>	<p><b>buys</b> 31:14</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C</b> 2:2 3:1 63:2,2 <b>CAFO</b> 44:12 45:11 48:10 <b>candor</b> 36:17 57:5 <b>capable</b> 58:11 <b>capitals</b> 44:6,7 <b>carved-out</b> 13:8 23:18 <b>case</b> 5:12,22 7:4 7:13,15,16 19:18 26:20 45:3 48:13 59:12,14,16 <b>cases</b> 7:9 28:2 43:7,7,12,14 43:15,16,18,20 44:6,15 48:10 <b>category</b> 18:18 <b>cease</b> 5:20 19:14 <b>certain</b> 30:13 36:17 50:7 <b>Certified</b> 63:4 <b>certify</b> 63:6 <b>challenges</b> 15:17 <b>change</b> 8:21 9:8 10:16,25 11:8 11:10 14:18 55:12,24 56:2 56:12 58:20 61:11 <b>changed</b> 8:18 36:13 37:17 55:5 56:5 57:21 <b>changes</b> 9:4 18:8 18:10 21:20 40:10 57:24</p>	<p><b>charge</b> 6:9,14,17 6:18,22 <b>charged</b> 34:23 <b>charges</b> 17:2 <b>chief</b> 49:15 <b>choice</b> 42:19 <b>circumstance</b> 34:7 <b>circumstances</b> 33:17 <b>cited</b> 7:9 43:6 <b>citizen</b> 51:9 <b>claims</b> 17:9 37:4 <b>clarification</b> 44:9 <b>clear</b> 18:11,22 24:9 30:2 45:24 60:23 <b>clearer</b> 40:4 56:7 <b>clearly</b> 23:6,12 26:3 30:14 31:9 35:8 37:8 <b>Coles</b> 2:5 3:17 <b>collected</b> 19:22 <b>column</b> 40:8 <b>come</b> 18:13 33:4 50:22 54:14,17 59:20 <b>comes</b> 4:13 31:11 <b>coming</b> 20:15 <b>comments</b> 29:24 58:25 <b>community</b> 12:14 14:8 22:23 23:10,15 24:2 46:15 57:23 61:6 <b>community's</b> 14:21</p>	<p><b>company</b> 1:7 2:12 3:8,21 31:14,14 33:8 33:19 34:4,10 51:12,17 52:6 54:9 58:9 <b>company's</b> 51:21 <b>complainant</b> 3:14,18 <b>Complainant's</b> 30:10,11,20 59:3 <b>complaint</b> 6:7,8 6:14,18 8:2 17:7,20 52:20 <b>complete</b> 20:22 <b>completion</b> 39:23 <b>compliance</b> 11:13 14:22 16:15 23:21 39:12 40:6,17 40:23 41:5,6 41:10,12,14 42:4 56:21 59:24 <b>comply</b> 8:9 13:4 14:3 16:8 26:7 35:6 41:3 57:2 57:2 <b>concede</b> 36:15 59:4,15 <b>concerning</b> 16:18 <b>concession</b> 59:7 <b>concludes</b> 58:24 <b>conclusion</b> 58:2 <b>condition</b> 34:5 55:4 <b>conduct</b> 33:4</p>	<p><b>conducted</b> 58:8 <b>confirm</b> 20:6 53:4 <b>confirmed</b> 24:23 <b>Congress</b> 13:20 23:14 29:13 <b>Congressional</b> 14:2 <b>Connecticut</b> 11:11 <b>connection</b> 49:12 <b>Consent</b> 44:13 <b>consideration</b> 21:9 <b>considered</b> 6:9 21:3 <b>Considering</b> 18:8 <b>consigned</b> 41:2 <b>constructed</b> 15:24 <b>construction</b> 35:10,12 45:14 46:6 47:21 <b>construe</b> 6:8 <b>contain</b> 8:16 59:7 <b>contained</b> 44:20 <b>contains</b> 47:11 <b>contaminated</b> 60:18 <b>contends</b> 25:2 <b>contents</b> 30:9 <b>context</b> 35:21 38:3 <b>continue</b> 8:10 24:17 47:8 61:14 <b>continued</b> 14:10 14:15</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>continues</b> 25:3  <b>continuing</b> 19:6          19:8,9,12          28:14,20,22          29:13 37:22,24          38:7,8,9,13,17          38:18 39:3          59:9,11,15          60:10,11,15  <b>continuity</b> 41:6          41:8  <b>contract</b> 17:17  <b>contradiction</b>          22:7 40:24          42:4  <b>control</b> 1:10          39:21  <b>convey</b> 32:20  <b>cooperative</b>          59:18  <b>correct</b> 9:5          10:11,18 17:3          18:25 20:3          22:25 37:14  <b>corrected</b> 37:8  <b>correctly</b> 59:6  <b>counsel</b> 2:11          3:23 30:20          36:9,15 39:9          46:17,23,24          48:15,24 49:14          57:22  <b>country</b> 47:6  <b>couple</b> 18:23          60:7  <b>course</b> 39:14  <b>Court</b> 5:11 25:7          29:22 37:11          40:3 44:9 46:3          46:4,5,8 48:2,3  <b>cover</b> 23:9</p>	<p><b>covered</b> 52:21          61:18  <b>co-counsel</b> 3:18  <b>creating</b> 18:19  <b>credit</b> 44:22  <b>critical</b> 36:11          54:9  <b>cured</b> 50:11  <b>curiosity</b> 28:10  <b>current</b> 7:7,22          48:7  <b>curving</b> 25:16  <b>cutoff</b> 11:23  <b>cut-off</b> 58:17</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D</b> 3:1  <b>dark</b> 42:9  <b>database</b> 15:3          18:20 45:24          47:11 48:5  <b>date</b> 6:15 7:24          11:24 12:13          18:3 24:19,20          25:9 28:6 41:2          42:5,5 58:17          58:18  <b>day</b> 25:23 51:19          62:11 63:12  <b>daylight</b> 32:23  <b>days</b> 13:3 15:18          47:4 53:19  <b>deadline</b> 7:25          11:23 12:25          18:4 50:7 57:5          57:8,9  <b>deal</b> 48:15  <b>dealing</b> 49:11          54:15  <b>dealt</b> 50:24  <b>December</b> 5:17</p>	<p>7:21,23 8:23          9:2 20:5 24:8          36:6,13 37:12          40:25 41:19          47:12 56:16  <b>decided</b> 7:10,11          39:15 49:19  <b>decides</b> 34:4  <b>decision</b> 7:6          28:20 31:17          32:13 33:16,17          33:23 38:22          49:17  <b>deemed</b> 20:13  <b>delay</b> 4:10 21:16  <b>demonstrating</b>          23:2  <b>denial</b> 12:18  <b>department</b> 7:8          7:12,21 8:24          9:9 14:20          49:16 58:10,10          58:11  <b>Departments</b>          14:24  <b>described</b> 19:20  <b>desire</b> 12:2          18:16  <b>determination</b>          21:24  <b>determine</b> 20:16          58:16  <b>determined</b>          50:11  <b>determining</b>          28:14  <b>dichotomy</b> 51:20          51:23  <b>different</b> 11:4          19:4 28:17          31:22 36:22</p>	<p>55:14  <b>differentiate</b>          60:9  <b>differently</b> 32:6  <b>difficult</b> 13:17          62:4  <b>difficulty</b> 51:22  <b>digested</b> 30:6  <b>direct</b> 40:24          42:4  <b>direction</b> 36:23  <b>directive</b> 26:19          27:20,22 29:22          29:25  <b>Director</b> 21:12          49:12  <b>disappointed</b>          59:22  <b>discovery</b> 61:12  <b>discuss</b> 10:3  <b>discussed</b> 11:3          28:18 60:12  <b>discusses</b> 12:23          27:9  <b>discussion</b> 12:5          29:14 48:15  <b>discussions</b>          15:10  <b>disposal</b> 16:25          17:11 21:23          22:12,14,20,24          41:20  <b>dispose</b> 23:16          52:22  <b>disposed</b> 10:10          12:19,20 14:17          18:22 31:2          32:4 36:4  <b>diverges</b> 29:16  <b>divorce</b> 37:23          38:4</p>	<p><b>Docket</b> 1:6 3:8  <b>doctrine</b> 19:8,9          28:21 60:12,15  <b>document</b> 26:18          26:23 27:7,8          27:14 28:4,5          39:3 52:14          59:9,11,15  <b>documents</b>          27:17,18 30:2  <b>document's</b>          37:25  <b>doing</b> 23:25  <b>draconian</b> 57:17  <b>drinking</b> 7:16  <b>driven</b> 34:7  <b>due</b> 31:3 38:24          40:2 50:15  <b>dwell</b> 43:13</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>E</b> 1:17,17 2:2,2          3:1,1 63:2  <b>easier</b> 40:11  <b>easy</b> 62:3  <b>educate</b> 9:22  <b>effective</b> 7:24          11:24 12:13          18:3 58:17  <b>effort</b> 62:6  <b>either</b> 5:21 6:2          13:5 19:15          25:4 33:13          43:9 57:17  <b>Electric</b> 43:8  <b>elicit</b> 4:21 46:21  <b>emergency</b> 15:4          15:7 40:18  <b>emissions</b> 57:3          57:11  <b>emphasized</b> 11:4</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>emphasizing</b> 27:24	6:11,23 7:23 9:6 10:7 11:16 12:3 13:22,24 14:23,23 16:21 17:10,19 18:25 20:2 25:2 30:23 32:16,25 33:9,15 34:8,9 34:18 35:20 36:9,18 37:4 38:22,24 39:15 39:21 40:3 41:9 42:12,13 42:15 43:24 44:5 45:9,10 45:24 46:15 47:2,19 48:9 48:17 49:9 50:13 51:7 52:21 53:9,12 54:3,13 55:18 57:20 58:12 59:18 60:22,23 61:6	55:4 <b>evidential</b> 53:18 <b>exact</b> 8:21 <b>exactly</b> 30:18 59:7 <b>example</b> 11:8 <b>excellent</b> 61:24 <b>exception</b> 13:8 <b>exchange</b> 25:9 30:2 36:20 <b>exchanges</b> 53:2 <b>exculpatory</b> 27:7 <b>exemplary</b> 59:23 <b>exemption</b> 23:18 <b>exist</b> 51:12 <b>existence</b> 61:8 61:14 <b>expansion</b> 18:17 <b>expect</b> 48:23 61:13 <b>expenditure</b> 62:6 <b>expert</b> 53:20,24 <b>explanation</b> 51:5 <b>explicitly</b> 23:12 37:18 <b>exposure</b> 7:14 <b>expressed</b> 11:19 11:20 36:19 <b>extend</b> 19:10 <b>extreme</b> 58:6 <b>extremely</b> 36:16	24:22 31:15,15 48:19 53:16 <b>fact</b> 53:20 <b>factor</b> 21:8 <b>factories</b> 56:25 56:25 <b>factory</b> 48:18 49:13 57:10 <b>fail</b> 6:12 47:3 54:10,21 <b>failed</b> 26:8 <b>failure</b> 5:16 6:10 6:16,21,25 14:3 16:22,23 17:3 35:6 38:9 43:15,17 <b>fair</b> 10:7 24:2,5 <b>far</b> 22:22 51:16 <b>federal</b> 1:12 10:6 15:4 23:11 63:8 <b>fee</b> 19:21 50:2 <b>feel</b> 38:25 <b>fifty</b> 55:24 <b>fight</b> 51:25 <b>fighting</b> 42:12 <b>filed</b> 5:14 52:13 <b>filing</b> 18:4 21:17 <b>final</b> 9:20 26:2 30:22 44:13 45:23 <b>find</b> 38:6 43:3 46:5,8 50:17 <b>fine</b> 4:9 35:8 43:18 46:24 <b>fined</b> 34:25 <b>finger</b> 55:22 <b>Fire</b> 7:8,11,21 8:24 9:9 14:20 14:24 <b>fires</b> 40:13	<b>firm</b> 4:24 <b>first</b> 5:22,25 7:4 7:24 9:21 22:19 30:19 31:6,9 36:20 53:23 <b>five-year</b> 19:11 21:2 <b>fixed</b> 37:13 <b>follow</b> 22:8 <b>foolish</b> 51:19 <b>forfeit</b> 43:3 <b>forfeited</b> 35:13 50:19 57:9 <b>form</b> 19:20 20:3 21:18 24:4 46:9,12,18,20 47:2 55:2 <b>forms</b> 20:20 <b>forth</b> 42:18 <b>fortuitous</b> 34:7 <b>Fortune</b> 7:11 <b>forty</b> 16:3,6 53:13,22 <b>forty-five</b> 4:6,11 4:13 <b>forty-five-min...</b> 4:24 <b>forty-year-old</b> 54:4 <b>forward</b> 30:13 59:18 <b>found</b> 14:24 16:20 48:16 62:7 <b>four</b> 20:7,8 45:10 50:16,17 <b>frame</b> 21:21 22:16 <b>framework</b> 28:13
<b>F</b>				
	<b>F</b> 1:17 63:2 <b>faced</b> 57:12 <b>facilitate</b> 48:2 <b>facility</b> 16:19,22 17:8,20,22			

<b>Francis</b> 2:10 3:15,20	47:6,22 49:6 59:18	24:16 26:12,16 27:5,15 28:3,8	<b>history</b> 13:23 29:10	5:22 7:5
<b>frankly</b> 32:20 36:14,19 42:20	<b>goals</b> 39:5,6,12 42:14	28:19,24 29:5 29:18 31:6,21	<b>holding</b> 4:23 38:22	<b>improper</b> 16:24
58:6,22	<b>goes</b> 9:16 47:6	31:25 33:3,11	<b>HON</b> 1:18	<b>inclined</b> 48:3
<b>full</b> 26:21	<b>going</b> 30:18	33:25 34:14,17	<b>honest</b> 62:4	<b>include</b> 17:21
<b>fully</b> 4:22 38:12	39:20,21 43:3	34:21 36:24	<b>Honor</b> 3:13 4:17	<b>included</b> 14:19 16:22 22:20
<b>function</b> 54:20	43:13 46:5,8	37:21 41:13,20	5:12 24:7	61:3 62:13
<b>fundamental</b>	55:5,23 59:2	41:22,25 44:8	25:25 29:23,25	<b>including</b> 16:16
55:24 56:2	<b>good</b> 3:2 23:5	44:17,19 46:17	30:5,17,19,23	<b>increase</b> 9:25
58:20	36:25 42:20	52:18,24 53:3	32:9 33:7	<b>increasing</b> 40:17 40:23 41:5,9
<b>further</b> 61:16	48:15 52:5 62:11	55:7,10 60:5 61:17,22 62:11	35:11 36:8	42:3
<b>G</b>	<b>government</b>	<b>H</b>	38:16,25 41:16	<b>increasingly</b>
<b>G</b> 3:1	22:2,9	<b>hand</b> 48:2 63:12	42:11 43:14,23	16:12
<b>games</b> 32:17	<b>graduates</b> 25:17	<b>happen</b> 47:3	45:3,13 49:5	<b>incumbent</b>
<b>general</b> 2:11	<b>gravity</b> 25:18	<b>happened</b> 33:8	50:13 51:22	23:11,25
14:23 19:11	<b>great</b> 56:23	34:22 48:25	53:9 55:22	<b>indicate</b> 46:18
<b>getting</b> 17:23	<b>greater</b> 15:3 21:16	51:14	57:4 59:17	<b>indicated</b> 36:20
52:7 53:11	<b>Groome</b> 49:11	<b>happens</b> 29:7	60:6 61:20	<b>indicates</b> 16:10 36:16
54:3	49:14,17 50:3	<b>happy</b> 36:15,16 37:19	<b>Honor's</b> 39:24	<b>indicating</b> 29:23
<b>Giuliano</b> 2:10	50:23 52:9,13	<b>headquarters</b>	48:14,17 56:3	<b>indication</b> 29:12 40:4
3:15,15,20,20	<b>guess</b> 36:24	27:20,22 28:7	57:20 59:5	<b>individual</b> 10:3
5:4 29:21 31:8	<b>guidance</b> 26:18	48:20 60:23	<b>hopeless</b> 37:14 42:25	13:13 20:20
31:23 32:8	26:23 27:14,18	<b>headquarter's</b>	<b>housekeeping</b>	47:18 62:13
33:7,12 34:3	28:4,5	27:3	5:2	<b>induced</b> 50:3
34:16,20,24	<b>Gunning</b> 1:18	<b>hear</b> 36:15,15 37:20	<b>I</b>	<b>industry</b> 52:2
37:7,23 41:15	3:2,3,19,22 4:4	<b>hearing</b> 53:19	<b>idea</b> 42:15	<b>information</b>
41:21,23 42:2	4:19 5:5,23 6:6	<b>heaven's</b> 56:11	<b>identifiable</b> 26:6	4:21 12:3
44:16,18,24	6:20 7:2 8:13	<b>held</b> 39:4	<b>identified</b> 21:12	14:25 15:5
46:23 52:23,25	8:20 9:3,11	<b>helpful</b> 62:7	24:24 62:13	18:17,19 19:20
53:5 55:9,16	10:13,19 11:7	<b>hereunto</b> 63:11	<b>illuminating</b>	24:24 40:19
61:20 62:10	12:7,21 13:7	<b>hidden</b> 42:25 43:2	61:24	52:10,12
<b>give</b> 13:3 26:12	13:15 17:23	<b>Hill</b> 7:10	<b>imagine</b> 51:8	<b>inquiry</b> 20:24 47:9
28:9 59:20	18:6,13,23	<b>Hilltop</b> 2:13	<b>immediately</b>	<b>inspect</b> 54:23,25
<b>Given</b> 25:19	19:5,17 20:2,7	<b>hired</b> 21:12	35:5	<b>inspection</b> 6:15 16:16,21 17:15
<b>gives</b> 28:12	20:12,23 21:5	49:14 50:5	<b>important</b> 40:15	20:6,18 21:4
<b>gleaned</b> 29:25	21:19,23 22:12		<b>imposes</b> 28:16	24:19 25:9
<b>go</b> 3:16 4:8 5:7	22:21,25 23:8		<b>impossible</b> 58:6	
10:5 26:13	23:17,20 24:13		<b>impressions</b>	
30:7,13,21				

<p>33:4,9,15 34:8 34:9,15 48:19 49:2,3,10 50:16 55:2 <b>inspections</b> 42:17 54:12 61:7,14 <b>Inspector</b> 14:23 <b>intend</b> 6:24 33:20,20 58:20 <b>intended</b> 14:5 18:11,14 29:13 31:13 56:8,12 58:23 <b>intends</b> 45:24 <b>intent</b> 10:15 13:24 40:5 <b>intention</b> 3:25 13:11 <b>interest</b> 42:13 51:21,21 <b>internal</b> 27:17 <b>international</b> 15:9 <b>internationally</b> 12:6 <b>interpret</b> 22:3 41:13 <b>interpretation</b> 7:19 8:3 27:11 28:13 29:8 42:22 <b>introduce</b> 3:12 <b>invitation</b> 46:14 <b>invite</b> 46:2 <b>involve</b> 7:11 <b>involved</b> 7:13 19:24 43:20 45:2 <b>involvement</b> 48:18 49:18</p>	<p><b>involving</b> 40:14 <b>issuance</b> 21:14 <b>issue</b> 5:12 29:4 35:11 <b>issued</b> 17:19 29:5 <b>issues</b> 16:18 17:6 50:25 60:7 <b>item</b> 8:6 <b>IVS</b> 4:20</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>January</b> 17:18 <b>Jennifer</b> 62:15 <b>Jersey</b> 2:15 49:16 <b>job</b> 49:19 61:24 62:3 <b>Judge</b> 1:18 3:2,4 3:19,22 4:4,19 5:5,23 6:6,20 7:2 8:13,20 9:3 9:11 10:13,19 11:7 12:7,21 13:7,15 17:23 18:6,13,23 19:5,17 20:2,7 20:12,23 21:5 21:19,23 22:12 22:21,25 23:8 23:17,20 24:13 24:16 26:12,16 27:5,15 28:3,8 28:19,24 29:5 29:18 31:6,21 31:25 33:3,11 33:25 34:14,17 34:21 36:24 37:21 41:13,20 41:22,25 43:24 44:8,17,19</p>	<p>46:17 52:18,24 53:3 55:7,10 60:5 61:17,22 62:11 <b>Judges</b> 62:16 <b>jump</b> 36:25 <b>justice</b> 21:9 <b>justify</b> 35:20</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>Karen</b> 2:4 3:13 <b>keep</b> 32:14 33:20 42:25 43:2 <b>keeping</b> 61:6 <b>kept</b> 40:12 <b>kind</b> 45:3 57:13 58:20 <b>KLEIN</b> 63:4,16 <b>knew</b> 50:18 <b>know</b> 5:25 13:17 19:21,23 22:22 43:25 44:15 45:4 47:17 50:22 53:24 54:7 55:18 56:6,10,22 58:4 59:13 <b>knowledge</b> 26:25</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>lack</b> 11:13 23:21 <b>language</b> 8:2,19 11:16 12:8 18:2 19:4 24:9 26:17 29:16 30:18 35:17,19 35:21,25 40:16 40:21 41:6,8 55:8,14,15 56:5 57:22,24</p>	<p>58:14 <b>late</b> 12:15 13:9 17:16 45:18 47:23 56:20 60:24 <b>law</b> 1:18 3:4 35:6 38:20 42:20,20 43:24 58:19 62:16 <b>Lazarus</b> 7:17 19:2 28:11,12 28:18 29:2,7,9 29:14 33:9 36:21 37:4,17 37:19,24,24 38:3,6,21,23 39:2,4 41:7 59:4,7 60:12 <b>leaks</b> 16:13 <b>learned</b> 35:5 <b>left-hand</b> 40:8 <b>legal</b> 45:7 54:5 <b>legislative</b> 13:23 29:10 <b>length</b> 48:4 <b>Let's</b> 21:5 47:8 <b>level</b> 4:20 12:4 21:6 <b>liable</b> 26:9 <b>liberalization</b> 22:4 <b>life</b> 16:2,12 53:13 <b>light</b> 56:6 <b>limitations</b> 19:11 <b>line</b> 45:22 47:8 <b>little</b> 31:12 55:11 56:7 <b>local</b> 9:9 15:5 <b>located</b> 27:21</p>	<p><b>location</b> 12:3 15:6,23 16:5 17:13 <b>locations</b> 15:21 18:17 <b>log</b> 40:13 <b>long</b> 43:13 59:12 59:14 <b>longer</b> 55:4 <b>look</b> 9:19 10:20 35:18 46:3 47:10 50:4,23 54:18 <b>looked</b> 50:10 <b>lose</b> 57:18</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>maintained</b> 16:3 <b>maintains</b> 5:16 <b>making</b> 39:20 <b>mandatory</b> 15:10 <b>manner</b> 11:4,5 13:21 <b>March</b> 17:19 <b>mark</b> 4:24 16:23 16:23 <b>marking</b> 16:16 <b>markings</b> 42:17 <b>mass</b> 18:15 <b>massive</b> 12:2 <b>matrix</b> 25:18 <b>matter</b> 1:6 3:7 9:18 10:15 17:6 18:6 24:21 26:24 28:11 34:6 43:7 56:13 63:8 <b>matters</b> 5:2 33:13</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>maximize</b> 41:5  <b>maximizing</b> 40:5                  40:5  <b>maximum</b> 25:15                  41:12  <b>Mays</b> 7:15  <b>mean</b> 6:19 27:3                  27:17 35:12                  41:16,19,23                  57:4 58:2,3  <b>meaning</b> 11:23                  30:24  <b>meaningless</b>                  20:4  <b>means</b> 34:10                  35:17 39:2                  42:4 45:16  <b>meant</b> 12:18                  50:19  <b>meet</b> 26:8 38:9  <b>member</b> 62:17  <b>mention</b> 55:25  <b>mercy</b> 18:18  <b>mind</b> 51:4 55:19  <b>minds</b> 51:24  <b>minute</b> 28:9                  37:10  <b>minutes</b> 4:6,11                  4:12,14,18 5:8  <b>missed</b> 46:24                  50:7 57:8,9  <b>missing</b> 9:22  <b>mistake</b> 37:15                  50:24 51:2,6  <b>modification</b>                  29:9  <b>modified</b> 28:25  <b>modifies</b> 31:10  <b>moment</b> 26:13                  33:16  <b>money</b> 19:23</p>	<p><b>month</b> 54:14,18  <b>monthly</b> 54:23                  54:25  <b>months</b> 50:25  <b>morning</b> 3:2  <b>mounting</b> 16:17  <b>multimedia</b> 61:7                  61:13</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 2:2 3:1 63:2  <b>name</b> 3:3  <b>national</b> 9:9                  12:4 14:13,18                  15:2,8 18:16                  18:20 26:4  <b>nature</b> 27:16                  28:14,22 29:14                  59:24 60:11  <b>near</b> 16:11  <b>necessarily</b>                  46:21  <b>necessary</b> 15:9                  20:6 53:23  <b>necessity</b> 37:17  <b>need</b> 11:13 30:3                  54:11,19 55:2  <b>needed</b> 49:3                  50:16 51:6                  52:12  <b>never</b> 45:2 52:8                  57:7 58:22  <b>new</b> 1:13,13 2:8                  2:8,15 46:21                  49:16 63:6,9,9  <b>Newel</b> 7:13  <b>newly</b> 13:10                  50:5  <b>newly-acquired</b>                  20:10,21  <b>newly-discove...</b></p>	<p>20:11 46:19  <b>newly-identified</b>                  20:21  <b>nice</b> 54:14  <b>noncompliance</b>                  12:2 14:20                  18:16 61:12  <b>normally</b> 53:22  <b>Notary</b> 63:5  <b>noted</b> 62:20  <b>notes</b> 26:13  <b>notice</b> 23:11                  24:2,5 26:3                  47:4 57:15  <b>notify</b> 20:4  <b>number</b> 4:7 15:4                  30:10</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 1:17 3:1 63:2  <b>obligated</b> 44:3,3  <b>obligation</b> 28:20                  32:11 34:11                  38:7,8,9,14,18                  39:3 45:8                  59:11,16  <b>observed</b> 34:18  <b>obviously</b> 4:20  <b>October</b> 1:14                  3:6 16:22 63:8  <b>offending</b> 43:21  <b>office</b> 14:22 27:4                  51:15 62:16  <b>official</b> 28:3  <b>oh</b> 37:19 38:16  <b>Okay</b> 3:19 4:19                  5:5,10 6:5 7:2                  10:13,19 12:7                  13:7,15 18:23                  19:17 20:2,12                  21:19 23:20</p>	<p>28:8 29:18                  37:7 41:22                  44:17 52:24                  56:5  <b>Okonite</b> 1:7 2:12                  3:7,21 15:20                  16:7,14 21:12                  24:19 32:19                  34:22 36:18                  48:19 49:20,20                  52:5 53:16                  54:9 60:3  <b>Okonite's</b> 15:23                  16:4,10 33:14                  49:12  <b>older</b> 16:13  <b>once</b> 24:17 36:9                  37:12 41:19                  42:5 53:11                  54:14 57:7                  59:15  <b>one-day</b> 25:17  <b>ongoing</b> 48:5  <b>onward</b> 6:16  <b>on-site</b> 13:12  <b>opened</b> 54:3,6  <b>opportunity</b> 5:9                  36:10  <b>opposed</b> 11:24                  42:22 48:12  <b>opposite</b> 41:4  <b>option</b> 33:19                  35:4,7,15  <b>oral</b> 3:6,10 4:8                  6:4 61:25 62:5  <b>order</b> 44:13 49:4                  50:17  <b>outright</b> 13:24  <b>outside</b> 51:15  <b>overreaching</b>                  60:2</p>	<p><b>overruled</b> 19:2                  37:5,19 39:2,3  <b>owner</b> 8:9 32:10  <b>owners</b> 56:10  <b>o'clock</b> 1:14                  62:20  <b>O-k-o-n-i-t-e</b> 3:8</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 2:2,2 3:1  <b>pad</b> 16:17  <b>page</b> 30:22 40:7                  43:6 59:3  <b>pages</b> 55:25                  56:14 57:14,16                  57:23  <b>paid</b> 43:18 49:25                  51:2  <b>panoply</b> 32:25  <b>papers</b> 30:10  <b>Paperwork</b>                  25:10  <b>paragraph</b>                  10:22  <b>paraphrase</b> 41:7  <b>parse</b> 57:23,24                  58:13,15  <b>parsing</b> 58:2  <b>part</b> 14:9 17:7                  20:9 22:10                  31:9 36:18                  38:17,18 45:20                  60:22 61:10  <b>particular</b> 19:18                  48:13 59:25  <b>parties</b> 3:11                  19:18  <b>Paterson</b> 16:19                  17:8,15,20                  48:18 49:6,13                  49:18,22,23</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



51:2	<b>peril</b> 56:17	<b>point</b> 25:9 29:15	<b>premise</b> 32:21	24:1 25:1 26:1
<b>Paterson's</b> 16:21	<b>period</b> 4:16 6:15	37:9,14 43:5	<b>preparedness</b>	27:1 28:1 29:1
<b>path</b> 49:21	21:3 25:2,6,13	45:21 59:4	15:7	30:1 31:1 32:1
<b>Pause</b> 26:15	25:20,24 27:24	<b>pointed</b> 6:3	<b>preposterous</b>	33:1 34:1 35:1
<b>PCB</b> 5:13,17,19	<b>permanency</b>	<b>points</b> 30:13	50:15 51:5	36:1 37:1 38:1
5:20 7:13 8:6,6	60:10	<b>policy</b> 25:12,17	<b>present</b> 9:15	39:1 40:1 41:1
8:10 10:8 12:3	<b>permanent</b> 10:2	25:19 44:21	24:20	42:1 43:1 44:1
12:24 14:2,5	11:2,17 14:6	<b>polychlorinated</b>	<b>presented</b> 30:6	45:1 46:1 47:1
14:10,16 15:3	19:13 60:14	8:5	42:11	48:1 49:1 50:1
15:6,8,10,24	<b>permit</b> 57:9	<b>ponied</b> 49:24	<b>presenting</b> 61:25	51:1 52:1 53:1
16:2,4,8,11,12	<b>permitted</b> 12:14	<b>pose</b> 21:25	<b>President</b> 2:11	54:1 55:1 56:1
16:14,18,20,23	15:18 60:21,24	<b>posed</b> 53:9 57:20	<b>press</b> 27:23 28:4	57:1 58:1 59:1
16:23 19:13,18	<b>personally</b> 6:3	<b>position</b> 19:6	<b>presumptuous</b>	60:1 61:1 62:1
21:17,20 24:23	51:12	27:6 38:16	40:22 41:18	63:7,10
24:24 25:4,12	<b>personnel</b> 14:24	40:25 43:23	59:14	<b>process</b> 39:22
25:16,19,25	15:4 18:18	<b>possession</b> 12:24	<b>previous</b> 11:8	<b>produce</b> 32:3
26:6 28:16,16	40:18 60:22	13:3	12:22 17:7	<b>product</b> 27:18
30:25 31:15,22	<b>persons</b> 8:5	<b>possible</b> 4:21,22	<b>price</b> 51:2	<b>Production</b>
32:10,11,22	<b>pertains</b> 12:22	12:5	<b>primarily</b> 9:6	25:10
33:21 34:5	<b>petition</b> 14:14	<b>possibly</b> 6:7	<b>primary</b> 5:12	<b>professionalism</b>
36:3,5 40:19	<b>phase</b> 21:10	20:13 22:3	6:13 9:16	36:17
46:15,19 47:4	<b>Phinzy</b> 2:5 3:17	<b>post-1998</b> 43:15	17:24	<b>profitable</b> 52:6
47:12,18 50:12	3:17,25	43:16	<b>prior</b> 21:14	<b>prohibitions</b>
52:14,19 53:6	<b>picking</b> 6:2	<b>potential</b> 15:10	55:15	13:25
56:9 60:10,13	<b>place</b> 15:25	<b>powerful</b> 41:2	<b>probably</b> 53:22	<b>project</b> 41:8
60:17,20,24	22:17 24:14	<b>practical</b> 45:14	<b>problem</b> 13:19	44:11 60:19
61:8,15	34:10 53:23	<b>preamble</b> 11:6	38:11,15 49:22	<b>prompted</b> 11:11
<b>PCB's</b> 12:5,23	<b>placed</b> 18:9	11:15 12:17	49:23 50:11	<b>promulgated</b>
13:21 16:24	<b>placing</b> 10:14	14:7,12 18:9	54:13	15:17
21:15 22:13	<b>plain</b> 24:9	24:5 39:19,25	<b>problems</b> 50:9	<b>promulgation</b>
23:13 36:2	<b>planning</b> 15:7	40:4 45:23	<b>proceed</b> 7:3	15:19 30:22
40:14 51:17,18	<b>Plant</b> 43:8	55:17,25 56:15	13:16	45:23
<b>penalty</b> 21:9	<b>play</b> 20:15	57:14 58:13	<b>proceeded</b> 37:25	<b>proof</b> 40:12 44:5
25:12,14,16,16	<b>playing</b> 32:17	<b>preambles</b> 9:19	<b>Proceeding</b> 1:9	<b>proper</b> 22:24
25:17,19,21,22	<b>Plaza</b> 1:12 63:8	9:24 26:17	<b>proceedings</b> 4:1	<b>propose</b> 30:7
<b>people</b> 49:9,11	<b>pleadings</b> 37:3,6	57:24	5:1 6:1 7:1 8:1	<b>proposed</b> 9:20
51:17 54:15	<b>please</b> 3:11 5:11	<b>preceding</b> 10:22	9:1 10:1 11:1	21:14 26:2
<b>people's</b> 51:23	7:2 13:15	32:2	12:1 13:1 14:1	57:15
<b>perdition</b> 41:3	29:21 41:17	<b>predates</b> 7:6	15:1 16:1 17:1	<b>protect</b> 11:13
<b>perform</b> 21:3	43:14 51:23	<b>prehearing</b> 30:2	18:1 19:1 20:1	<b>protection</b> 1:3
<b>performs</b> 61:6	<b>plus</b> 18:19	36:20 53:2	21:1 22:1 23:1	2:6 49:16 52:3

<p><b>provide</b> 24:2 44:21 47:25 <b>provided</b> 7:17 12:2 <b>provides</b> 24:5 <b>providing</b> 40:18 <b>provoked</b> 33:15 <b>Public</b> 63:5 <b>published</b> 26:24 27:19 <b>pulse</b> 55:23 <b>purpose</b> 32:18 32:22 46:21 <b>purposes</b> 15:7 <b>pursuant</b> 8:11 <b>put</b> 45:24 50:6 53:17 55:22 <b>puts</b> 26:3 <b>putting</b> 49:20 <b>P.O</b> 2:14</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualify</b> 10:21 <b>quantities</b> 15:9 <b>quarterly</b> 54:23 54:25 <b>question</b> 7:18 9:16 10:21 17:24 19:19 30:5 31:4,7,12 34:17 36:8,10 39:24 44:25 49:23 52:22 53:6,8,15 54:5 56:4 57:20 61:25 <b>questioning</b> 30:19 48:14 <b>questions</b> 4:10 4:25 6:2 18:24 22:12 48:17</p>	<p>59:6 61:16 <b>quiet</b> 61:6 <b>quite</b> 36:14 62:3 <b>quote</b> 59:2</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R</b> 1:17 2:2 3:1 63:2 <b>raised</b> 17:6 60:7 <b>Ramsey</b> 2:15 15:23 16:5,14 17:12 24:22 48:20 49:10 50:8,9,10 <b>rate</b> 19:10 40:17 40:23 41:6,9 42:3 <b>rationale</b> 11:25 <b>reach</b> 57:25 <b>reacted</b> 50:10 <b>read</b> 8:23,25 11:22 40:20 57:18 <b>reading</b> 12:16 37:2 <b>reads</b> 24:11 36:2 40:8 <b>realized</b> 23:21 <b>really</b> 48:23,24 49:4 50:22 54:2 55:20 58:22 59:13 <b>reason</b> 23:22 54:22 <b>reasons</b> 18:9 61:10 <b>rebuttal</b> 4:13,18 5:9 <b>recalcitrant</b> 56:9 <b>received</b> 14:25 29:22</p>	<p><b>reclassification</b> 17:11 <b>reclassified</b> 5:21 19:16 25:5 <b>reclassify</b> 13:6 <b>recognize</b> 22:14 <b>record</b> 3:12 7:15 26:22 62:12 <b>records</b> 27:2 <b>refer</b> 40:3 <b>reference</b> 9:24 25:10 27:6 39:11 <b>referenced</b> 60:17 <b>referred</b> 30:19 <b>referring</b> 11:6 27:13 <b>reflect</b> 13:25 <b>reflecting</b> 47:21 48:11 <b>reflects</b> 13:23 47:11 48:5 <b>refuse</b> 20:19 <b>reg</b> 8:14,14 <b>region</b> 1:4 28:2 44:15,18 45:10 <b>regional</b> 14:23 <b>register</b> 5:17 6:10,16,21,25 10:6 12:14 13:3,13 17:3 23:11 31:18 32:12,22 33:18 33:21 34:4,11 35:5,7,16 38:7 39:20 43:15,17 46:15 47:7,23 56:16 <b>registered</b> 8:24 10:9 14:16</p>	<p>17:16 18:22 19:19 24:25 27:25 30:25 31:17 32:7 33:10 34:14,19 35:16 36:3,6 43:2 47:12 52:17 61:15 <b>registering</b> 50:20 <b>registration</b> 5:14 7:7,8,12,20,22 8:19 9:9 11:9 11:25 12:12 13:9 14:9,14 14:19,25 15:2 19:21 20:3,17 20:20,22 21:18 26:4 27:11 33:5,14 35:3 39:5,13,19 40:5,6,12 45:18 46:8,12 47:22 48:4,6 52:14 56:17,19 58:15 60:24 <b>registrations</b> 46:22 47:14,16 <b>regs</b> 55:15 <b>regulated</b> 14:21 22:23 23:9,15 24:2 46:14 57:23 61:5 <b>regulating</b> 14:8 <b>regulation</b> 7:22 8:3,22,25 9:5 9:15 12:14 14:22 15:13 18:10 19:3 20:14 22:19 23:6 24:11</p>	<p>28:16 29:3,3 35:12 37:12 39:7,7 45:15 45:17 46:7,7 46:11 48:12 50:19 61:11 <b>regulations</b> 8:14 13:25 15:17 16:8,16 17:25 23:8 52:16 54:24 <b>regulatory</b> 7:18 27:10 28:13 29:17 <b>relate</b> 31:13 35:22 <b>release</b> 28:4 <b>releases</b> 27:23 <b>relevant</b> 24:20 <b>reliance</b> 10:8,14 <b>rely</b> 30:8 54:11 59:8 <b>relying</b> 26:16,19 <b>remain</b> 9:12 42:8,9 <b>remained</b> 24:14 <b>remaining</b> 6:15 <b>remains</b> 23:2 <b>removal</b> 17:17 43:21 44:20,22 45:12,20 60:17 60:20 <b>remove</b> 13:5 45:19 <b>removed</b> 5:21 17:18 19:15 25:4 27:25 33:6 61:2 <b>repeat</b> 30:4 <b>reported</b> 63:7 <b>Reporter</b> 44:9</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>63:5  <b>requesting</b> 11:12  <b>require</b> 21:9  58:19  <b>required</b> 7:20  13:5 45:16,18  <b>requirement</b> 7:7  7:8,12 8:19  9:10,12 11:25  12:13 14:9,14  14:19 15:2  17:12 26:4,9  27:12,24 35:3  39:13,20 40:6  44:23 46:7  47:22 54:24  56:17,19 57:17  58:15,16  <b>requirements</b>  8:10 14:4  20:18 22:14  <b>requirement's</b>  39:6  <b>requires</b> 7:22  21:24  <b>requiring</b> 40:11  41:20  <b>reserve</b> 4:15,18  <b>resources</b> 21:2  62:6  <b>respect</b> 22:2  24:18 31:3  38:24 40:2  50:15 60:2,16  61:5  <b>respectfully</b> 46:2  59:17  <b>respondent</b> 1:8  5:8 7:9 15:12  16:21 17:6,9  20:4 26:3,6,8</p>	<p>42:11,12 52:18  60:8,17  <b>Respondent's</b>  5:13 26:5  <b>responders</b>  11:14  <b>response</b> 15:4  18:18 40:18  54:7  <b>responses</b> 30:9  59:5  <b>responsibility</b>  23:3  <b>resting</b> 9:6  <b>results</b> 5:18  <b>returned</b> 23:21  <b>Returning</b> 55:7  <b>reveal</b> 61:14  <b>revealed</b> 61:8  <b>reversed</b> 37:5  <b>review</b> 14:21  42:9  <b>reviewed</b> 14:13  <b>right</b> 4:4 8:20  11:12 29:5  37:21 39:10  48:6 55:22  62:14  <b>righteous</b> 49:21  <b>rightfully</b> 41:12  <b>rise</b> 21:6  <b>risk</b> 21:25 40:13  <b>Road</b> 2:13  <b>Rocky</b> 7:15  <b>role</b> 28:11  <b>rule</b> 7:20 9:20  10:15,25 14:12  14:20 15:19  21:15 23:23  24:3,4 26:2,2,7  28:25 29:8</p>	<p>30:22 32:12  40:10 45:23  55:8 60:25  <b>rules</b> 9:20 14:7  21:20 22:4,6  26:17 32:18,25  44:23 51:10  56:24  <b>rule-making</b>  57:15  <b>rulings</b> 27:20  <b>Russell</b> 43:8</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>S</b> 2:2 3:1  <b>safe</b> 7:16  <b>sake</b> 35:23 56:11  <b>saw</b> 9:23 50:9  <b>saying</b> 18:21  31:25 33:3  34:6,13 36:12  37:9,18,22  44:4,14,19  45:11 58:12  60:13,14  <b>says</b> 12:18 38:25  40:23 41:4,16  45:25 53:15  <b>scale</b> 14:19  <b>scope</b> 12:11  22:13  <b>second</b> 7:25  <b>section</b> 1:9 8:4,6  8:8,11 12:17  13:20 15:16,18  <b>sections</b> 8:17  10:4 24:11,14  <b>see</b> 11:20 12:8  20:14 22:7  28:11,19,24  29:9 31:4,4</p>	<p>33:24 37:6  49:4 51:6,9,25  <b>seeing</b> 11:16  <b>seek</b> 6:21,24  <b>seeking</b> 36:19  <b>seen</b> 27:23 28:7  <b>selection</b> 25:8  <b>semantics</b> 18:7  <b>sense</b> 19:7 41:17  52:4,8 55:3,18  <b>sentence</b> 10:4,7  10:14,20,21,23  11:22 12:16,22  30:24 31:10  39:25  <b>sentences</b> 10:22  12:23 32:2  35:22  <b>sentiment</b> 11:19  <b>SEP</b> 43:20,21  44:2,4,10,20  44:21 45:5,6  45:11,20 61:4  <b>SEP's</b> 60:16  <b>serious</b> 32:17  <b>service</b> 5:21 16:5  19:15 25:5  <b>Services</b> 21:13  <b>session</b> 50:6  <b>set</b> 63:12  <b>settlement</b> 17:8  <b>seventy</b> 57:16  <b>shift</b> 23:3  <b>shifted</b> 22:2  <b>shifting</b> 22:9  <b>Shorthand</b> 63:5  <b>shut</b> 57:10  <b>sick</b> 52:7  <b>side</b> 4:7 6:2  <b>sides</b> 61:24  <b>significance</b></p>	<p>55:11  <b>significant</b> 10:25  24:6  <b>signifying</b> 10:15  <b>simple</b> 55:6  56:13  <b>simply</b> 30:8  <b>sit</b> 58:13,14  <b>site</b> 48:6  <b>situation</b> 31:13  33:14 42:10,24  50:10  <b>sixty</b> 15:18  55:25 56:14  57:14,16,23  <b>slightest</b> 55:3  <b>small</b> 58:9  <b>somewhat</b> 28:17  48:16  <b>sorry</b> 3:16  <b>sought</b> 11:16  <b>sound</b> 55:5  <b>sounds</b> 58:5,6  59:13  <b>speak</b> 5:9 23:18  28:25 44:22  49:24 55:21  <b>speaking</b> 3:24  <b>special</b> 19:10  38:2  <b>specific</b> 12:8  <b>specifically</b>  39:11  <b>spend</b> 53:19  <b>spoke</b> 4:5  <b>staff</b> 62:15  <b>stage</b> 6:14  <b>stand</b> 10:23,24  37:8  <b>Standard</b> 7:10  <b>standards</b> 42:16</p>
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<p><b>standpoint</b> 46:6  <b>start</b> 30:18  <b>state</b> 11:11 15:5                  23:12 63:6  <b>stated</b> 14:13                  18:15  <b>statement</b> 28:7  <b>states</b> 1:3 8:4,8                  11:7 15:22  <b>statistic</b> 53:14  <b>statute</b> 15:14                  19:11  <b>statutory</b> 25:15  <b>steps</b> 16:7  <b>STEVEN</b> 63:4                  63:16  <b>stipulate</b> 6:12                  52:19  <b>stop</b> 5:23  <b>storage</b> 16:24,24  <b>strengthen</b>                  23:22 39:18,19  <b>strengthened</b>                  23:10  <b>strengthening</b>                  22:5  <b>strictly</b> 17:3                  26:9  <b>stringent</b> 18:11                  18:12,14 24:6  <b>subject</b> 32:24                  42:9 52:15                  53:24 54:3                  56:20,20 61:18  <b>submit</b> 45:13  <b>Subsection</b> 8:12  <b>Substances</b> 1:10  <b>substantive</b> 9:4  <b>suggested</b> 57:22  <b>suggestion</b> 57:13  <b>summary</b> 9:21</p>	<p>9:24  <b>supplemental</b>                  44:11 60:19  <b>sure</b> 6:19 22:8                  26:14,21 34:3                  50:23 57:21  <b>surprise</b> 51:11  <b>surprised</b> 36:14  <b>surprising</b> 48:16  <b>sustained</b> 25:23</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T</b> 2:10 63:2,2  <b>take</b> 6:3 10:5                  16:7 31:20                  34:10 35:21                  38:13 49:19                  54:18  <b>taken</b> 50:2  <b>talk</b> 48:25  <b>talking</b> 4:2                  27:18 51:7,11  <b>task</b> 62:4  <b>Taylor</b> 2:4 3:13                  3:13 4:2,17 5:3                  5:11 6:5,17,24                  7:4 8:16,22 9:8                  9:14 10:12,18                  11:5,22 12:12                  13:2,10,19                  18:5,8,15 19:4                  19:7,25 20:5,8                  20:16,25 21:11                  21:22 22:8,17                  22:22 23:7,13                  23:19 24:7,15                  24:18 27:2,10                  27:21 28:6,12                  28:22 29:2,10                  29:20 60:6                  61:19 62:9</p>	<p><b>team</b> 62:17  <b>telephone</b> 4:6  <b>tell</b> 54:12  <b>telling</b> 41:11  <b>tells</b> 12:9  <b>ten</b> 4:12,18  <b>ten-minute</b> 4:16                  5:9  <b>terms</b> 9:12,14                  10:16 23:2                  44:9  <b>test</b> 29:17  <b>testifying</b> 48:24  <b>testimony</b> 53:11                  53:20,25  <b>text</b> 24:3,4  <b>thank</b> 3:22                  24:16 26:11                  28:8 29:18,20                  60:4,5 61:19                  61:20,21,22                  62:8,9,10,19  <b>thankless</b> 49:20  <b>thing</b> 30:3  <b>things</b> 30:10                  38:4 49:2 50:7  <b>think</b> 20:23                  23:10 31:9,12                  31:23 32:8,10                  33:8,13,19                  35:15 40:21                  41:16,18 48:6                  48:22 51:20                  53:9 62:5  <b>thirty</b> 13:3 47:4  <b>thirty-day</b> 13:4  <b>thirty-five</b> 5:7  <b>thoroughly</b>                  30:15 61:18  <b>thought</b> 13:18                  48:23 52:25</p>	<p><b>thousands</b> 42:7                  47:17  <b>three</b> 53:19  <b>tightened</b> 23:9  <b>tightening</b> 23:6  <b>time</b> 10:5 15:25                  17:14,16 21:21                  22:15 25:6,13                  25:20 27:24                  36:25 43:13                  56:17 57:12                  59:19 62:20  <b>timely</b> 5:14                  20:24  <b>today</b> 3:6,10,24                  4:3 29:24 30:3                  37:20 38:16,25                  39:6,9 46:10                  59:6 61:23                  62:7  <b>told</b> 38:19 50:4,6                  57:8  <b>topic</b> 27:9  <b>Toxic</b> 1:10  <b>tracks</b> 29:14  <b>train</b> 13:18  <b>training</b> 50:6  <b>transcription</b>                  63:10  <b>transfer</b> 13:2                  24:23  <b>transferred</b>                  12:23 46:20  <b>transfers</b> 24:24  <b>transformer</b> 8:9                  8:10 12:24                  13:12,14 14:11                  15:3 16:2,20                  16:23 20:19                  21:17 32:10,23                  46:16,19 47:5</p>	<p>51:15 56:9                  57:18 60:18,20  <b>transformers</b>                  5:13,17,20                  8:23 10:9                  11:17 13:6                  14:16 15:6,24                  16:4,11,12,15                  16:18 17:12,15                  19:15,19 20:10                  20:11,22 21:11                  22:10 23:16                  25:4 26:5,6                  27:25 30:25                  31:15,22 32:5                  32:6,11 33:10                  33:21 34:5,15                  36:3,5 40:19                  42:8 43:22                  45:12,19 47:7                  47:12,14,15,18                  50:2,12,20                  52:15,19,20                  53:7,12,17,21                  54:4,8,10,19                  54:20 60:25                  61:2,9,15  <b>treated</b> 32:6  <b>trial</b> 4:20  <b>trying</b> 4:21                  32:19 37:10                  45:15  <b>TSCA</b> 13:20                  15:16,17 26:10                  29:11  <b>TSCA's</b> 13:23                  25:15  <b>TSCA-02-201...</b>                  1:7 3:9  <b>turn</b> 31:16  <b>twelve</b> 46:10</p>
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<p><b>twice</b> 36:9  <b>two</b> 12:22 32:2          38:3 43:6,7          48:10 53:19  <b>type</b> 27:19,20</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>unannounced</b>          61:6  <b>unauthorized</b>          5:15,18 6:18          8:15 17:4,21          18:2 25:4 34:2  <b>unconstitutional</b>          15:15  <b>understand</b> 4:22          6:19 30:24          43:8  <b>understanding</b>          11:10 17:24          37:3 45:5          48:11 51:23          55:10  <b>understood</b> 59:6  <b>undertake</b> 45:7  <b>United</b> 1:3 15:22  <b>unrealistic</b> 58:5  <b>unregistered</b>          61:8  <b>untimely</b> 21:3  <b>unusual</b> 42:10  <b>use</b> 5:13,18 6:18          8:5,11,15,15          9:11,12 10:10          12:19 13:21,24          14:2,3,10,15          14:15 15:9,11          17:4,21 18:2          23:14 31:2,19          32:15 33:20          34:2,5 36:4,7</p>	<p>55:14,15  <b>useful</b> 16:2,12          53:12  <b>Utilities</b> 43:11  <b>U.S</b> 2:6</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>vacuum</b> 51:13  <b>validated</b> 38:22  <b>validity</b> 15:13  <b>valuable</b> 62:17  <b>versus</b> 18:4 28:4          55:12  <b>viable</b> 28:20  <b>Vice</b> 2:11  <b>view</b> 37:12  <b>violating</b> 45:17  <b>violation</b> 5:19          7:14 17:21          19:6,8,9,12,14          20:6,17 25:3          25:22,23 28:17          35:2 37:13,22          37:24 38:10,17          49:4 50:18,22          52:11 59:9          60:11,12  <b>violations</b> 16:20          24:23 25:13,21          28:14,23 29:13          49:25 60:15  <b>vulnerable</b>          16:13</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>waited</b> 31:9  <b>waiting</b> 16:25  <b>want</b> 5:25 24:17          26:13,21 35:18          35:24 37:11,16          40:3 41:11,17          51:16,17 57:6</p>	<p>59:8,20  <b>wanted</b> 12:9          17:5 23:22          41:5 53:3  <b>wants</b> 35:20  <b>wasn't</b> 9:17 11:3          37:20  <b>water</b> 7:16 57:3  <b>way</b> 33:13 35:19          36:2,13 39:17          40:20 41:17          44:25 53:21          56:15 58:7          59:18  <b>website</b> 45:25          46:3,12,25          47:5,10  <b>week</b> 4:5  <b>Weekly</b> 43:10  <b>welcome</b> 54:13          54:17 59:19  <b>went</b> 37:13 42:6  <b>weren't</b> 53:18,23  <b>we'll</b> 33:16          35:13  <b>we're</b> 3:10 4:23          39:21 52:6          53:11 56:23          58:9 60:13  <b>We've</b> 54:15  <b>WHEREOF</b>          63:11  <b>wide</b> 14:19  <b>willing</b> 6:11          47:25 52:18  <b>window</b> 13:4          20:9  <b>wish</b> 4:15 11:18  <b>within-entitled</b>          63:7  <b>WITNESS</b></p>	<p>63:11  <b>Wolf</b> 62:15  <b>word</b> 41:14          44:12 57:17          58:14,14  <b>worded</b> 6:9  <b>wording</b> 9:4          29:16  <b>words</b> 6:20 8:15          21:25 47:20  <b>work</b> 27:17 55:2  <b>world</b> 36:12  <b>worry</b> 42:23  <b>worth</b> 62:6</p> <hr/> <p style="text-align: center;"><b>X</b></p> <p><b>x</b> 1:5,11</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> 16:17  <b>years</b> 16:3,6          20:7,8 46:10          50:16,17 53:13          53:22  <b>year-and-a-half</b>          54:16  <b>York</b> 1:13,13 2:8          2:8 63:6,9,9</p> <hr/> <p style="text-align: center;"><b>0</b></p> <p><b>07446</b> 2:15</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p>17:21 8:23  <b>10:15</b> 1:14  <b>10007</b> 2:8  <b>102</b> 2:13  <b>11:15</b> 62:20  <b>16</b> 15:18  <b>16(a)</b> 1:9  <b>1878</b> 15:21  <b>19</b> 15:16</p>	<p><b>1969</b> 15:24  <b>1976</b> 29:12  <b>1978</b> 5:19 14:2          22:10,18 23:14          23:16 25:25          28:16  <b>1985</b> 7:8,20,21          8:22,23 9:15          58:16  <b>1994</b> 14:7 26:2          49:15  <b>1996</b> 7:10  <b>1997</b> 7:11  <b>1998</b> 5:18,19          7:23 9:2,15          24:8,25 25:3          25:22 26:2          27:11,24 28:16          29:3 36:6,13          37:13 40:25          45:17 47:13          48:8 50:20          60:25  <b>1999</b> 56:16</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p>21:4  <b>2,000</b> 47:13,15          47:16,24  <b>2004</b> 16:22  <b>2005</b> 16:9,17          17:18,19 19:20          21:17 50:18          52:11  <b>2007</b> 48:7  <b>2009</b> 20:5 24:19          24:20,22 25:8          49:10  <b>2010</b> 1:14 3:7          63:8,13          22 43:6</p>
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<b>26</b> 1:12 63:8 <b>28</b> 1:14 3:7 5:18 7:23 9:2 24:8 36:6,13 37:12 40:25 47:12 56:16 63:8 <b>29</b> 59:3 <b>290</b> 2:7 <hr/> <b>3</b> <hr/> <b>340</b> 2:14 <b>35394</b> 10:6 30:22 40:7 <hr/> <b>4</b> <hr/> <b>4</b> 44:18 <hr/> <b>5</b> <hr/> <b>5</b> 19:20 <hr/> <b>6</b> <hr/> <b>6E</b> 13:20 <b>62</b> 8:12 <hr/> <b>7</b> <hr/> <b>7</b> 24:19,20,22 25:8 <b>761.20</b> 8:4 <b>761.30</b> 8:7,8 <b>78</b> 21:15 <hr/> <b>8</b> <hr/> <b>85</b> 8:14 12:10,12 <hr/> <b>9</b> <hr/> <b>9</b> 28:2 <b>94</b> 21:13 <b>98</b> 8:18,25 14:12 21:12				
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