		Telephone Confere	Juce - July	
			1	3 counsel, for your comments on CMO 19 and for
			2	your willingness to confer today on
		1	3	
	SUPREME COURT OF THE UNITED No. 142, Original	STATES	4	relatively short notice.
			4 5	I thought, before I responded to your
	STATE OF FLORIDA,)		6	comments and suggestions, that I would be sure that I understood where each of you
	Plaintiff,)		7	stood on them. So I'm going to ask you by
	V.) STATE OF GEORGIA,)		8	
) Defendants.)		9	category what your position is.
	TELEPHONE CONFERENCE before SP	ECIAL MASTER	9 10	Mr. Gray, I'm not sure that it's necessary for you to respond except on the
	RALPH I. LANCASTER, held at the law o	ffices of Pierce	10	amicus for the United States; but feel free
	Atwood, LLP, at Merrill's Wharf, 254		12	to pitch in even if I don't call on you.
	Portland, Maine, on July 12, 2016, con 10:00 a.m., before Claudette G. Mason		13	So let's start with the first one,
	Notary Public in and for the State of		14	deadline for deposition cross-designations.
	APPEARANCES:		15	Florida?
	ABID R.	J. PERRY, ESQ. QURESHI, ESQ.	16	MR. PERRY: Your Honor, I think both
		N L. WILLIAMS, ESQ.	17	parties are in agreement on that; and I
		. PRIMIS, ESQ. RANT, ESQ.	18	believe it was September 23 that we
	For the U.S.A.: MICHAEL	T. GRAY, ESQ.	19	suggested.
	Also Present: JOSHUA MARY CL	D. DUNLAP, ESQ.	20	SPECIAL MASTER LANCASTER: Georgia?
	MART CL	IFFORD	21	MR. PRIMIS: That's correct, your Honor.
			22	SPECIAL MASTER LANCASTER: Page limit
			23	for pretrial briefs, 40 pages. Florida?
	THE REPORTING GROUP Mason & Lockhart		24	MR. PERRY: Your Honor, that's fine with
			25	us.
			20	THE REPORTING GROUP
				Mason & Lockhart
		2		4
1	PROCEEDINGS	2	1	ج SPECIAL MASTER LANCASTER: Georgia?
2	SPECIAL MASTER LANCASTER	Good morning.	2	MR. PRIMIS: Yes, your Honor.
3	counsel.	a coou morning,	3	SPECIAL MASTER LANCASTER: Staggered
4	MR. PRIMIS: Good morning,	vour Honor.	4	filing of direct testimony. Georgia?
5	MS. GRANT: Good morning,		5	MR. PRIMIS: Yes. Yes, your Honor. We,
6	MR. PERRY: Good morning, y		6	Georgia, proposed that in our response to
7	SPECIAL MASTER LANCASTER		7	Order 19. We believe that in a normal trial,
8	as we have a full room here. We	-	8	the plaintiff would present their evidence
9	and Mary and Claudette.		9	first; and then the defendant would go second
10	We'll begin, as always, with		10	and address directly the issues that were
11	appearances. Florida?		11	actually raised by the plaintiff instead of,
12	MR. PERRY: Your Honor, it's	Phil Perry	12	you know, all possible issues that might have
13	for Florida. And with me on the p	hone are	13	been presented. And the simultaneous filing
14	Abid Qureshi and then Jonathan V	Villiams from	14	that the Order currently has doesn't allow
15	the Solicitor General's Office.		15	for that. And so we're concerned, A, that we
16	SPECIAL MASTER LANCASTER	: Georgia?	16	will overtestify in that certainly Florida
17	MR. PRIMIS: Good morning,	your Honor.	17	will narrow and trim its case before it
18	Craig Primis from Kirkland & Ellis	for	18	proceeds to trial; and we will spend a lot of
19	Georgia. I also have on the line v	vith me the	19	time trying to anticipate and address through
20	Solicitor General of Georgia, Britt	Grant.	20	testimony all the potential arguments that
21	SPECIAL MASTER LANCASTER	: United	21	could be made. And then, second, we only
22	States?		22	want to join issue directly on their most
23	MR. GRAY: Good morning, ye	ou Honor.	23	forceful points; and only by actually seeing
24	This is Michael Gray for the United	d States.	24	what the testimony is will we be able to do
25	SPECIAL MASTER LANCASTER	: Thank you,	25	that effectively.
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	Mason & Lockhart			Mason & Lockhart
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Telephone Conference - July 12	2 2016
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Florida v. Georgia

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1	SPECIAL MASTER LANCASTER: Mr. Primis?	1	why we proposed simultaneous exchange, that
2	MR. PRIMIS: That was Mr. Primis.	2	we will learn guite a bit from their pretrial
3	Sorry. You said Georgia, so I just jumped	3	briefs about what their case is. And, thus,
		-	
4	in, your Honor.	4	that will help us in determining which
5	SPECIAL MASTER LANCASTER: Oh, I'm	5	witnesses to file direct for what it is
6	sorry.	6	they're going to assert.
7	MR. PRIMIS: If you understood that to	7	Now, if I might put that in a little bit
	be Florida's position, then that's okay, too,	-	broader context, I think it might be helpful.
8	• • • • • •	8	· _ ·
9	with Georgia; but I think Mr. Perry may	9	Last fall, as discovery was ongoing, it
10	disagree.	10	became clear to us that Georgia had a whole
11	SPECIAL MASTER LANCASTER: I apologize.	11	range of arguments it was going to make to
12	The voices all sound the same.	12	try to attribute the harm in the bay and the
13	MR. PRIMIS: My fault for not	13	river to other causes. And so in preparing
14	acknowledging that that was Craig Primis.	14	our experts, we certainly prepared those that
15	SPECIAL MASTER LANCASTER: Okay.	15	proved the elements of the case that we have
16	Florida?	16	to prove; but we also hired and prepared a
	MR. PERRY: Your Honor, this is Phil	17	whole range of other experts to address what
17	-		
18	Perry for Florida.	18	appeared from their 360 requests for
19	We have three reasons why we oppose the	19	admissions and voluminous written discovery
20	staggered submission of direct filed	20	to be a whole range of other kind of kitchen
21	testimony. The first we have identified	21	sink arguments.
22	previously. And that is that we believe	22	We hope that we're not in a position,
23	Georgia's request to stagger is based on the	23	when it comes to trial, to have to put all
24	notion that we bear all the burdens in this	24	that material on. And, certainly, we would
25	case and that it does not bear the burdens.	25	love to put that material on in rebuttal if
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	Mason & Lockhart		Mason & Lockhart
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	9		11
1	submit prefiled direct in advance of trial.	1	of live direct, we thought that ordinary
2	And, of course, we spent a lot of time	2	proceeding in the ordinary order should
3	thinking about the workability of the	3	prevail.
4	schedule. And we informed Mr. Primis of that	4	And then in terms of the point about
5	at that time that we would be making a	5	economizing, I don't think that that's
6	proposal to use prefiled direct. And he, of	6	it's not going to change anything if we file
7	course, opposed it; but he didn't mention at	7	simultaneous written directs. Florida will
8	any stage at that point that he was thinking	8	still have to put on what it plans to submit
9	about a staggered submission of prefiled	9	as its case in chief, and they will not have
10	direct. And had he, had we realized that one	10	the benefit of seeing our written direct
11	of his positions would have been the schedule	11	testimony when they do that. So rather than
12	should be staggered, that could well have	12	have both sides guess, we should just have
13	affected in very specific ways what we	13	Florida put in what it intends to put in; and
14	proposed in terms of a schedule for pretrial	14	then Georgia, as the defendant, can respond
15	briefs, for all the other submissions, and	15	to it and really engage on the actual issues
16	indeed even for the trial date.	16	rather than both sides trying to present
17	So our third reason is for opposing	17	everything that might come up.
18	staggering is that this is an issue that	18	SPECIAL MASTER LANCASTER: Thank you.
19	could have been raised multiple months ago	19	Let's move on to written objections to
20	when we were working through what would be	20	prefiled testimony. Florida?
21	appropriate for a pretrial schedule. And to	21	MR. PERRY: Well, your Honor, we're
22	take two weeks away from us now that we had	22	flexible in terms of the timing of written
23	budgeted for to prepare our prefiled direct	23	objections; but we think that it's better for
24	seems quite inequitable.	24	the parties, particularly for us and perhaps
25	So those are the three reasons why we	25	for the Court, to have those written
	THE REPORTING GROUP		THE REPORTING GROUP
	Mason & Lockhart		Mason & Lockhart
1			
	10		12
1	10 oppose the request for staggered submissions,	1	12 objections filed before a witness takes the
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18the more important issues or even one of the18expert discovery now. And so if there is a		•		
		-		
	19	more important disagreements among the	19	time when the United States wants to receive
20parties. It just and we do acknowledge20information regarding expert reports or				
21that this was the procedure used in Kansas21expert discovery, we're very happy to talk to	21	-		
22versus Nebraska. We understand that. It22them about that. But I would defer to them	22		22	
23just seemed to us that it was inappropriate23in terms of their preference.	23		23	•
24for parties to characterize what a witness24I might also note that your Honor has, I	24	-	24	
25 was going to say, especially when the witness 25 think, pretty clearly identified what the	25		25	
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	17		19
1	rules are for other potential amici. And so	1	to us. We were we didn't have an
2	one question that might come up as you	2	objection to that.
3	consider this is whether or not the time	3	SPECIAL MASTER LANCASTER: Okay. Last
4	frames would change for other amicus filings.	4	item on my list is the length of opening and
5	SPECIAL MASTER LANCASTER: Thank you.	5	closing statements. My understanding is that
6	Mr. Gray?	6	you have agreed on 75 minutes each. Is that
7	MR. GRAY: Yes. Thank you, your Honor.	7	correct, Mr. Perry?
8	Maybe it would be helpful for me to	8	MR. PERRY: Yes, your Honor.
9	provide a little bit of clarification as to	9	SPECIAL MASTER LANCASTER: And,
10	what we envision our pretrial amicus brief to	10	Mr. Primis?
11	be. I don't think we intend in that filing	11	MR. PRIMIS: Yes, your Honor.
12	to address sort of factual and expert	12	SPECIAL MASTER LANCASTER: Thank you
13	testimony issues that Georgia is concerned	13	very much. This has been very helpful. We
14	about. Instead, any amicus brief we would	14	will turn to it and get out an Order as soon
15	file would be focused on legal issues that	15	as we can.
16	have been raised in either the motions or the	16	Do you have anything else, Mr. Perry?
17	pretrial briefs of the parties.	17	MR. PERRY: Nothing else, your Honor.
	As an example, you know, I think one of	18	SPECIAL MASTER LANCASTER: Mr. Primis?
18	the things we're evaluating whether we would	18	MR. PRIMIS: Yes, your Honor. Just one
19			
20	want to weigh in on is this burden of proof	20	item. Craig Primis for Georgia.
21	issue that the parties have raised several	21	We raised in our response and objection
22	times in the past few months; and we imagine	22	the notion of having live testimony rather
23	we'll be joined again at that stage. We	23	than submissions by written direct. And
24	think we might be potentially be of use	24	we your Honor hasn't raised that issue;
25	there, particularly since the United States	25	but we certainly don't want to waive it, and
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	Mason & Lockhart		Mason & Lockhart
	18		20
1	18 is a party in many of these proceedings. And	1	20 we believe that the trial would be better
1 2	18 is a party in many of these proceedings. And so it would be that sort of legal issue that	1	20 we believe that the trial would be better conducted in that fashion.
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2 3	18 is a party in many of these proceedings. And so it would be that sort of legal issue that we would intend to address pretrial. And then the Order contemplates the	2 3 4	20 we believe that the trial would be better conducted in that fashion. SPECIAL MASTER LANCASTER: Mr. Perry? MR. PERRY: We were fine with prefiled
2 3 4 5	18 is a party in many of these proceedings. And so it would be that sort of legal issue that we would intend to address pretrial. And then the Order contemplates the further Order on post-trial briefing and	2 3 4 5	20 we believe that the trial would be better conducted in that fashion. SPECIAL MASTER LANCASTER: Mr. Perry? MR. PERRY: We were fine with prefiled direct, your Honor, and support and have no
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2 3 4 5 6 7	18 is a party in many of these proceedings. And so it would be that sort of legal issue that we would intend to address pretrial. And then the Order contemplates the further Order on post-trial briefing and we would appreciate and agree that that would be the appropriate time for us to address any	2 3 4 5 6 7	20 we believe that the trial would be better conducted in that fashion. SPECIAL MASTER LANCASTER: Mr. Perry? MR. PERRY: We were fine with prefiled direct, your Honor, and support and have no objection to the Court's Order on that score. SPECIAL MASTER LANCASTER: Thank you.
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	Telephone Confere	ence -	· · · · · · · · · · · · · · · · · · ·
	21		23
1	time when my eyes are glazed over.	1	CERTIFICATE
2	And last, but not least well, not	2	I, Claudette G. Mason, a Notary Public
3	last, next to last, I think you now know my	3	in and for the State of Maine, hereby certify
4	feelings about the media. But that doesn't	4	that the foregoing 22 pages are a correct
5	mean that I don't read the newspaper articles	5	transcript of my stenographic notes of the
6	or watch television. And I'm impressed with	6	above-captioned proceedings.
7	the writings that relate to the droughts that	7	I further certify that I am a
8	are there and happening and are being	8	disinterested person in the event or outcome
9	predicted. I hope you're taking that into	9	of the above-named cause of action.
10	consideration.	10	IN WITNESS WHEREOF, I subscribe my hand
11	And last, but most importantly, as	11	this 13th day of July, 2016.
12	always, I urge you, again, to pursue	12	
13	mediation with diligence and vigor.	12	
14	There was a suggestion that I from	14	
	Florida, I believe, that I talk to the		Notany Dublic
15		15	Notary Public
16	mediator. I have no intention of invading	16	
17	your or influencing or discussing with the	17	
18	mediator anything that's going on. So I'm	18	My Commission Expires
19	sure she's doing a good job and that you will	19	June 9, 2019.
20	pursue it with some seriousness.	20	
21	And that's all I have for today.	21	
22	Josh?	22	
23	MR. DUNLAP: Nothing further.	23	
24	SPECIAL MASTER LANCASTER: Thank you	24	
25	very much, counsel.	25	
	THE REPORTING GROUP		THE REPORTING GROUP
	Mason & Lockhart		Mason & Lockhart
	22		
1	MR. PERRY: Thank you, your Honor.		
2	MR. PRIMIS: Thank you, your Honor.		
3	MR. GRAY: Thank you.		
4	(The telephone conference was concluded		
5	at 10:23 a.m.)		
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23			
24			
25			
	THE REPORTING GROUP		
	Mason & Lockhart		
•	Page 21 t	0 23	of 27 6 of 10 shee

24

4	ago [1] - 9:19	broader [1] - 7:8	13:21, 18:18	4:22
1	agree [2] - 8:18, 18:6	budget [1] - 8:25	consistent [1] - 10:21	directs [3] - 11:7,
10:00 [1] - 1:13	agreed [1] - 19:6	budgeted [1] - 9:23	contemplates [1] -	12:20, 12:21
10:23 [1] - 22:5			18:4	disagree [1] - 5:10
12 [2] - 1:12, 8:14	agreement [1] - 3:17	burden [5] - 6:6, 6:11,		disagreement [1] -
13th [1] - 23:11	alerted [1] - 18:17	10:7, 10:22, 17:20	contemplating [1] -	•
142 [1] - 1:1	allow [1] - 4:14	burdens [3] - 5:24,	15:15	10:8
19 [2] - 3:1, 4:7	alternative [1] - 16:4	5:25, 6:13	context [2] - 7:8, 14:1	disagreements [1] -
19 [2] - 3.1, 4.7	amici [1] - 17:1		control [1] - 14:4	14:19
0	amicus [11] - 3:11,	С	Corps [1] - 16:7	discovery [4] - 7:9,
2	15:9, 15:25, 16:16,	captioned [1] - 23:6	correct [3] - 3:21,	7:19, 16:18, 16:21
2016 [2] - 1:12, 23:11	17:4, 17:10, 17:14,	case [9] - 4:17, 5:25,	19:7, 23:4	discussed [1] - 10:15
2019 [1] - 23:19	18:8, 18:12, 18:18,	6:8, 7:3, 7:15, 10:17,	counsel [5] - 2:3, 3:1,	discussing [1] - 21:17
22 [1] - 23:4	18:25	11:9, 18:21, 20:21	18:12, 20:8, 21:25	disinterested [1] -
23 [1] - 3:18	anticipate [2] - 4:19,		couple [1] - 12:4	23:8
254 [1] - 1:11	13:24	category [1] - 3:8	course [5] - 8:1, 9:2,	documents [2] -
204[1] - 1.11	anticipating [1] -	causes [1] - 7:13	9:7, 10:16, 14:10	13:25, 14:8
3	12:19	certainly [4] - 4:16,	COURT [1] - 1:1	done [2] - 10:13, 13:8
3	apologize [1] - 5:11	7:14, 7:24, 19:25	Court [6] - 11:25,	down [1] - 8:21
360 [1] - 7:18	appearances [1] -	CERTIFICATE [1] -	12:7, 12:19, 13:2,	droughts [1] - 21:7
	2:11	23:1	15:19, 20:15	DUNLAP [2] - 1:21,
4	APPEARANCES [1] -	certify [2] - 23:3, 23:7	Court's [1] - 20:6	21:23
	1:15	change [2] - 11:6,	cover [1] - 13:24	during [2] - 8:24,
40 [1] - 3:23	appeared [1] - 7:18	17:4	Craig [4] - 2:18, 5:14,	12:25
	appreciate [1] - 18:6	characterization [1] -	15:12, 19:20	
6	appropriate [3] - 9:21,	15:4	CRAIG [1] - 1:18	Е
C 0.01	18:7, 18:25	characterize [2] -	critical [1] - 13:7	
6 [1] - 8:21	arguments [4] - 4:20,	14:24, 15:3	cross [2] - 3:14, 14:12	early [1] - 8:10
7	7:11, 7:21, 16:6	chief [1] - 11:9	cross-designations	economize [1] - 6:15
7	Army [1] - 16:7	clarification [1] - 17:9	[1] - 3:14	economizing [1] -
7 [1] - 6:21	array [1] - 13:3	Claudette [3] - 1:13,	CRR [1] - 1:13	11:5
75 [2] - 19:6, 20:24	articles [1] - 21:5	2:9, 23:2	current [1] - 6:19	effect [1] - 6:17
	assert [1] - 7:6	clear [1] - 7:10	customary [1] - 10:23	effectively [1] - 4:25
9	attribute [1] - 7:12	clearly [1] - 16:25		efficiency [1] - 12:17
_	Atwood [1] - 1:11	CLIFFORD [1] - 1:22	D	efficient [1] - 15:5
9 [1] - 23:19		closing [1] - 19:5	D	either [2] - 17:16,
	В	CMO [1] - 3:1	date [4] - 8:23, 9:16,	20:22
Α	D	commencing [1] -	16:1, 16:9	elements [1] - 7:15
a marca 1,12,00,5	based [3] - 5:23, 8:16,	1:12	dates [1] - 8:23	Ellis [1] - 2:18
a.m [2] - 1:13, 22:5	14:7	comments [2] - 3:1,	days [2] - 6:22, 12:4	Emory [1] - 18:17
Abid [1] - 2:14	bay [1] - 7:12	3:5	deadline [2] - 3:14,	end [1] - 16:1
ABID [1] - 1:16	bear [3] - 5:24, 5:25,	Commercial [1] - 1:11	15:10	engage [1] - 11:15
able [4] - 4:24, 8:18,	6:6	Commission [1] -	defendant [2] - 4:9,	entire [1] - 12:10
14:12	became [1] - 7:10	23:18	11:14	entirely [1] - 6:10
above-captioned [1] -	becomes [1] - 8:1	complaints [1] - 20:15	Defendants [1] - 1:7	envision [1] - 17:10
23:6	begin [2] - 2:7, 2:10	compressed [1] -	defenses [3] - 6:5,	equity [2] - 8:17, 10:12
	-		10:19	especially [1] - 14:25
above-named [1] -	bench [1] - 13:2	12:18	10.19	
23:9	bench [1] - 13:2 benefit [2] - 11:10.			
23:9 acknowledge [1] -	benefit [2] - 11:10,	concerned [2] - 4:15,	defer [2] - 16:14,	ESQ [7] - 1:16, 1:16,
23:9 acknowledge [1] - 14:20	benefit [2] - 11:10, 15:21	concerned [2] - 4:15, 17:13	defer [2] - 16:14, 16:22	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19,
23:9 acknowledge [1] - 14:20 acknowledging [1] -	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1	concerned [2] - 4:15, 17:13 conclude [1] - 20:22	defer [2] - 16:14, 16:22 deposition [1] - 3:14	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10,	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] -	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15,	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9,	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10,	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4 diligence [1] - 21:13	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8,
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15,	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] -	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4 diligence [1] - 21:13 direct [18] - 4:4, 5:20,	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3,
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4 diligence [1] - 21:13 direct [18] - 4:4, 5:20, 6:21, 7:5, 8:5, 8:8,	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11 address [6] - 4:10,	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1 briefing [1] - 18:5	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9 conference [1] - 22:4	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4 diligence [1] - 21:13 direct [18] - 4:4, 5:20, 6:21, 7:5, 8:5, 8:8, 9:1, 9:6, 9:10, 9:23,	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17 exactly [2] - 12:11,
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11 address [6] - 4:10, 4:19, 7:17, 17:12,	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1 briefing [1] - 18:5 briefs [5] - 3:23, 6:24,	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9 conference [1] - 22:4 consider [1] - 17:3	defer [2] - 16:14, 16:22 deposition [1] - 3:14 designations [1] - 3:14 determining [1] - 7:4 diligence [1] - 21:13 direct [18] - 4:4, 5:20, 6:21, 7:5, 8:5, 8:8, 9:1, 9:6, 9:10, 9:23, 10:25, 11:1, 11:10,	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17 exactly [2] - 12:11, 13:19
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11 address [6] - 4:10, 4:19, 7:17, 17:12, 18:3, 18:7	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1 briefing [1] - 18:5 briefs [5] - 3:23, 6:24, 7:3, 9:15, 17:17	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9 conference [1] - 22:4 consider [1] - 17:3 consideration [1] -	$\begin{array}{c} \textbf{defer} \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \$	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17 exactly [2] - 12:11, 13:19 examine [1] - 14:9
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11 address [6] - 4:10, 4:19, 7:17, 17:12, 18:3, 18:7 admissions [1] - 7:19	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1 briefing [1] - 18:5 briefs [5] - 3:23, 6:24, 7:3, 9:15, 17:17 BRITT [1] - 1:19	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9 conference [1] - 22:4 consider [1] - 17:3 consideration [1] - 21:10	$\begin{array}{c} \textbf{defer} \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \$	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17 exactly [2] - 12:11, 13:19 examine [1] - 14:9 examined [1] - 15:6
23:9 acknowledge [1] - 14:20 acknowledging [1] - 5:14 action [1] - 23:9 actual [2] - 11:15, 13:11 address [6] - 4:10, 4:19, 7:17, 17:12, 18:3, 18:7 admissions [1] - 7:19 advance [1] - 9:1	benefit [2] - 11:10, 15:21 better [2] - 11:23, 20:1 bit [3] - 7:2, 7:7, 17:9 borrowing [1] - 13:15 brief [8] - 8:4, 15:9, 16:1, 16:16, 17:10, 17:14, 18:8, 18:12 briefed [1] - 6:1 briefing [1] - 18:5 briefs [5] - 3:23, 6:24, 7:3, 9:15, 17:17 BRITT [1] - 1:19	concerned [2] - 4:15, 17:13 conclude [1] - 20:22 concluded [3] - 12:10, 12:16, 22:4 conducted [1] - 20:2 confer [2] - 3:2, 8:18 CONFERENCE [1] - 1:9 conference [1] - 22:4 consider [1] - 17:3 consideration [1] - 21:10	$\begin{array}{c} \textbf{defer} \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \$	ESQ [7] - 1:16, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21 essentially [1] - 14:2 evaluating [1] - 17:19 event [1] - 23:8 evidence [6] - 4:8, 10:24, 12:23, 13:3, 13:11, 15:17 exactly [2] - 12:11, 13:19 examine [1] - 14:9

- Mason & Lockhart

25

ave ant (1) 2:10				
except [1] - 3:10	GEORGIA [1] - 1:6	imagine [2] - 17:22,	L	mean [1] - 21:5
exchange [1] - 7:1	Georgia [17] - 1:18,	18:20	LANCASTER [31] -	media [1] - 21:4
expert [6] - 15:23,	2:16, 2:19, 2:20,	important [3] - 13:5,	1:10, 2:2, 2:7, 2:16,	mediation [1] - 21:13
16:5, 16:18, 16:20,	3:20, 4:1, 4:4, 4:6,	14:18, 14:19	2:21, 2:25, 3:20,	mediator [2] - 21:16,
16:21, 17:12	5:3, 5:9, 7:10, 11:14,	importantly [1] - 21:11	3:22, 4:1, 4:3, 5:1,	21:18
experts [3] - 7:14,	14:11, 15:10, 15:12,	impressed [1] - 21:6	5:5, 5:11, 5:15, 10:3,	mention [1] - 9:7
7:17, 8:6	17:13, 19:20	IN [1] - 23:10		Merrill's [1] - 1:11
Expires [1] - 23:18	Georgia's [3] - 5:23,	inappropriate [1] -	11:18, 12:13, 13:12, 14:14, 15:8, 16:12,	Michael [1] - 2:24
explain [2] - 6:19, 14:7	8:4, 14:6	14:23		MICHAEL [1] - 1:20
extent [1] - 6:9	given [1] - 18:20	incorrect [1] - 14:11	17:5, 18:9, 18:23,	midst [1] - 16:17
eyes [1] - 21:1	glazed [1] - 21:1	indeed [3] - 6:5, 6:25,	19:3, 19:9, 19:12,	might [9] - 4:12, 7:7,
	Grant [1] - 2:20	9:16	19:18, 20:3, 20:7,	7:8, 8:13, 11:17,
F	GRANT [2] - 1:19, 2:5	inequitable [1] - 9:24	21:24	15:16, 16:24, 17:2,
	Gray [1] - 2:24	influencing [1] - 21:17	large [1] - 12:20	17:24
factual [2] - 17:12,	GRAY [4] - 1:20, 2:23,	information [2] -	last [7] - 7:9, 10:11,	minutes [2] - 19:6,
18:8	17:7, 22:3	16:20, 18:22	19:3, 21:2, 21:3,	20:24
fairest [1] - 15:5	gray [2] - 3:9, 17:6	informed [3] - 9:4,	21:11	misunderstood [1] -
fall [1] - 7:9	great [1] - 8:18	15:20, 16:10	Law [1] - 18:17	20:13
far [1] - 8:12	guess [1] - 11:12	instead [4] - 4:11,	law [1] - 1:10	months [2] - 9:19,
fashion [1] - 20:2	0	10:25, 14:7, 17:14	learn [1] - 7:2	17:22
fault [1] - 5:13	н	intend [4] - 13:18,	least [3] - 6:11, 12:3,	morning [6] - 2:2, 2:4,
feelings [1] - 21:4		14:4, 17:11, 18:3	21:2	2:5, 2:6, 2:17, 2:23
few [1] - 17:22	half [1] - 20:20	intends [1] - 11:13	legal [2] - 17:15, 18:2	most [4] - 4:22, 15:4,
file [9] - 7:5, 8:5, 8:8,	hand [1] - 23:10	intention [1] - 21:16	length [1] - 19:4	15:17, 21:11
8:12, 8:20, 11:6,	happy [1] - 16:21	interested [2] - 6:4,	liberal [1] - 20:12	motions [1] - 17:16
16:15, 17:15, 18:11	harm [1] - 7:12	6:7	lieu [1] - 14:2	mouth [1] - 14:5
filed [2] - 5:20, 12:1	hear [1] - 13:3	invading [1] - 21:16	likely [4] - 12:5, 13:3,	move [4] - 6:20, 11:19,
filing [6] - 4:4, 4:13,	held [1] - 1:10	• • •	14:1, 14:9	13:13, 15:9
6:11, 14:2, 17:11,	help [2] - 7:4, 8:6	issue [5] - 4:22, 9:18,	likewise [1] - 10:11	
18:18	helpful [6] - 7:8, 8:3,	17:21, 18:2, 19:24	limit [1] - 3:22	moving [1] - 15:25
filings [2] - 6:2, 17:4	12:9, 17:8, 19:13,	issues [10] - 4:10,	limited [1] - 8:2	MR [33] - 2:4, 2:6,
fine [2] - 3:24, 20:4	20:9	4:12, 6:6, 11:15,	line [1] - 2:19	2:12, 2:17, 2:23,
first [6] - 3:13, 4:9,	hereby [1] - 23:3	14:18, 16:11, 17:13,	list [1] - 19:4	3:16, 3:21, 3:24, 4:2,
5:21, 6:16, 10:10,	hired [1] - 7:16	17:15, 18:8, 20:12	live [4] - 10:13, 11:1,	4:5, 5:2, 5:7, 5:13,
10:16	Honor [36] - 2:4, 2:5,	item [3] - 13:6, 19:4,	15:7, 19:22	5:17, 10:6, 11:21,
five [1] - 6:22	2:6, 2:12, 2:17, 2:23,	19:20	LLP [1] - 1:11	12:14, 13:15, 14:15,
flexible [3] - 11:22,	3:16, 3:21, 3:24, 4:2,		logistical [1] - 12:17	15:11, 16:14, 17:7,
12:11, 16:16	4:5, 5:4, 5:17, 6:1,	J	_	18:15, 18:24, 19:8,
FLORIDA [1] - 1:3	10:2, 10:6, 11:21,	job [1] - 21:19	love [1] - 7:25	19:11, 19:17, 19:19,
	12:14, 13:1, 13:15,	join [1] - 4:22		20:4, 21:23, 22:1,
Florida [13] - 1:16,			М	22:2, 22:3
2:11, 2:13, 3:15,	14:15, 15:11, 16:14,	joined [1] - 17:23	Maine [3] - 1:12, 1:14,	MS [1] - 2:5
3:23, 4:16, 5:16,	16:24, 17:7, 18:16,	JONATHAN [1] - 1:17	23:3	multiple [2] - 6:2, 9:19
5:18, 11:7, 11:13,	18:24, 19:8, 19:11,	Jonathan [1] - 2:14	MARY [1] - 1:22	
11:20, 13:14, 21:15	19:17, 19:19, 19:24,	Josh [2] - 2:8, 21:22	Mary [1] - 2:9	N
Florida's [1] - 5:8	20:5, 22:1, 22:2	JOSHUA [1] - 1:21	Mason [2] - 1:13, 23:2	named #1 - 02:0
focused [1] - 17:15	Honor's [2] - 8:1, 8:20	Judge [1] - 13:17	MASTER [31] - 1:9,	named [1] - 23:9
folks [1] - 18:17	hope [2] - 7:22, 21:9	July [2] - 1:12, 23:11		narrow [2] - 4:17, 8:6
forced [1] - 8:12	hoping [1] - 6:25	jumped [1] - 5:3	2:2, 2:7, 2:16, 2:21,	nature [2] - 15:23,
forceful [1] - 4:23	hostile [2] - 13:13,	June [2] - 8:21, 23:19	2:25, 3:20, 3:22, 4:1,	16:6
foregoing [1] - 23:4	13:19		4:3, 5:1, 5:5, 5:11,	Nebraska [2] - 13:17,
frame [2] - 12:18, 13:8	hours [1] - 20:20	K	5:15, 10:3, 11:18,	14:22
framed [1] - 16:11	housekeeping [1] -		12:13, 13:12, 14:14,	necessary [1] - 3:10
frames [1] - 17:4	13:6	Kansas [2] - 13:17,	15:8, 16:12, 17:5,	need [2] - 8:8, 20:20
free [1] - 3:11	hydrological [1] - 16:6	14:21	18:9, 18:23, 19:3,	newspaper [1] - 21:5
full [1] - 2:8		Kayatta [1] - 13:17	19:9, 19:12, 19:18,	next [1] - 21:3
		kind [1] - 7:20	20:3, 20:7, 21:24	non [1] - 18:25
G	identified as 5:04	Kirkland [1] - 2:18	material [2] - 7:24,	normal [1] - 4:7
	identified [2] - 5:21,	kitchen [1] - 7:20	7:25	Notary [3] - 1:14, 23:2,
General [1] - 2:20	16:25		matter [1] - 8:9	23:15
General's [1] - 2:15	identifying [1] - 1: TH	E REPORTING G	ROUP ^{'s [1] - 20:17}	note [2] - 16:17, 16:24
		• lason & Lockha	1	

notes w. 02.5	nontras 10:1	12:10		
notes [1] - 23:5	party [1] - 18:1	13:10	Q	room [1] - 2:8
nothing [2] - 19:17,	past [1] - 17:22	present [5] - 4:8,	quite [2] - 7:2, 9:24	roughly [1] - 6:22
21:23	perhaps [1] - 11:24	11:16, 13:13, 20:21, 20:23	Qureshi [1] - 2:14	ruled [1] - 12:25
notice [3] - 3:3, 12:4,	period [1] - 8:25		QURESHI [1] - 1:16	rules [1] - 17:1
20:11	Perry [11] - 2:12, 5:9,	Present [1] - 1:21		•
notion [3] - 5:24,	5:18, 10:4, 10:8,	presentation [3] -	R	S
12:15, 19:22	10:12, 16:13, 18:14,	6:16, 12:22, 13:11 presented [3] - 4:13,	N	sat [1] - 8:21
number [3] - 8:19,	19:7, 19:16, 20:3	15:19, 15:24	raised [7] - 4:11, 9:19,	schedule [8] - 6:20,
12:21, 13:20	PERRY [14] - 1:16,		15:13, 17:16, 17:21,	6:23, 9:4, 9:11, 9:14,
0	2:6, 2:12, 3:16, 3:24, 5:17, 11:21, 13:15,	pretrial [11] - 3:23, 6:23, 7:2, 8:4, 8:22,	19:21, 19:24	9:21, 15:14, 18:24
0	16:14, 18:15, 19:8,	9:14, 9:21, 17:10,	RALPH [1] - 1:10	School [1] - 18:17
object [1] - 15:3	19:17, 20:4, 22:1	17:17, 18:3	range [3] - 7:11, 7:17,	score [2] - 18:16, 20:6
objection [4] - 14:6,	person [1] - 23:8	pretty [1] - 16:25	7:20	second [3] - 4:9, 4:21,
19:2, 19:21, 20:6	person's [1] - 12:25	prevail [1] - 11:3	rather [6] - 11:11,	6:14
objections [10] -	perspective [1] -	prevented [1] - 20:16	11:16, 13:22, 15:2,	see [1] - 16:5
11:19, 11:23, 12:1,	12:23	previously [1] - 5:22	16:2, 19:22	seeing [2] - 4:23,
12:4, 12:11, 12:12,	Phil [2] - 2:12, 5:17	primis [2] - 5:1, 5:2	read [1] - 21:5	11:10
12:24, 13:4, 13:7,	PHILIP [1] - 1:16	PRIMIS [17] - 1:18,	ready [1] - 12:18	September [1] - 3:18
20:17	phone [1] - 2:13	2:4, 2:17, 3:21, 4:2,	realized [1] - 9:10	seriousness [1] -
occurred [2] - 12:23,	Pierce [1] - 1:10	4:5, 5:2, 5:7, 5:13,	really [6] - 8:8, 8:16,	21:20
15:16	pitch [1] - 3:12	10:6, 12:14, 14:15,	10:22, 11:15, 12:16,	several [1] - 17:21
October [2] - 6:21,	plaintiff [3] - 4:8, 4:11,	15:11, 18:24, 19:11,	20:19	short [1] - 3:3
8:14	10:16	19:19, 22:2	reason [6] - 8:10,	showing [1] - 15:1
OF [3] - 1:1, 1:3, 1:6	Plaintiff [1] - 1:4	Primis [12] - 2:18,	8:15, 8:16, 9:17,	sides [3] - 11:12,
Office [1] - 2:15	plans [2] - 11:8, 14:8	5:14, 8:17, 9:4, 10:5,	15:24, 20:13	11:16, 13:9
offices [1] - 1:10	play [1] - 15:16	12:13, 14:14, 15:12,	reasonably [1] - 13:24	significant [1] - 13:10
one [8] - 3:13, 9:10,	point [7] - 6:11, 9:8,	18:23, 19:10, 19:18,	reasons [2] - 5:19,	simply [2] - 15:5, 16:4
12:5, 14:18, 16:4,	10:11, 11:4, 12:17,	19:20	9:25	simultaneous [4] -
17:2, 17:18, 19:19	13:21, 14:12	procedure [1] - 14:21	rebuttal [3] - 7:25, 8:2, 10:19	4:13, 7:1, 8:13, 11:7
ones [1] - 15:13	pointed [1] - 13:1	proceeding [3] - 11:2,	receive [2] - 6:23,	sink [1] - 7:21
ongoing [1] - 7:9	points [1] - 4:23	16:2, 16:3	16:19	Solicitor [2] - 2:15,
opening [1] - 19:4	Portland [1] - 1:12	proceedings [2] -	recognizing [1] - 14:3	2:20
oppose [4] - 5:19, 8:9,	position [6] - 3:8, 5:8,	18:1, 23:6	reference [1] - 6:19	soon [3] - 15:2, 19:14,
8:15, 10:1	6:10, 6:14, 7:22,	PROCEEDINGS [1] -	regarding [1] - 16:20	20:10
opposed [1] - 9:7	10:21	2:1	regardless [1] - 10:7	sorry [2] - 5:3, 5:6
opposing [1] - 9:17	positions [3] - 6:4,	proceeds [1] - 4:18	relate [1] - 21:7	sort [2] - 17:12, 18:2
opposite [1] - 6:17	9:11, 10:9	profile [1] - 18:20	relatively [1] - 3:3	sorts [1] - 8:24
oral [1] - 12:22	possible [1] - 4:12	proof [3] - 10:7, 10:22,	relevant [1] - 8:1	sound [1] - 5:12
Order [8] - 4:7, 4:14, 8:2, 18:4, 18:5,	post [1] - 18:5	17:20	remains [1] - 12:20	SPECIAL [31] - 1:9,
19:14, 20:6, 20:9	post-trial [1] - 18:5	properly [2] - 20:23	repeat [1] - 6:2	2:2, 2:7, 2:16, 2:21,
order [1] - 11:2	potential [3] - 4:20,	proposal [2] - 9:6,	reports [2] - 16:5,	2:25, 3:20, 3:22, 4:1, 4:3, 5:1, 5:5, 5:11,
ordinary [4] - 10:11,	8:7, 17:1	13:16	16:20	5:15, 10:3, 11:18,
10:23, 11:1, 11:2	potentially [2] - 15:3,	proposals [1] - 8:21	request [3] - 5:23,	12:13, 13:12, 14:14,
Original [1] - 1:1	17:24	proposed [5] - 4:6,	8:20, 10:1	15:8, 16:12, 17:5,
outcome [1] - 23:8	practical [1] - 8:9	7:1, 9:14, 12:2, 15:4	requests [1] - 7:18	18:9, 18:23, 19:3,
overtestify [1] - 4:16	preceding [1] - 8:20	proposing [1] - 10:13	requirements [1] -	19:9, 19:12, 19:18,
	predicated [2] - 6:10,	prove [1] - 7:16	8:22	20:3, 20:7, 21:24
Р	12:16	proved [1] - 7:15	reserve [1] - 13:4	specific [1] - 9:13
	predicted [1] - 21:9	provide [1] - 17:9	resource [1] - 12:22	spend [1] - 4:18
page [1] - 3:22	preference [1] - 16:23	provided [1] - 15:18 Public [3] - 1:14, 23:2,	resources [1] - 13:10	spending [1] - 13:9
pages [2] - 3:23, 23:4	prefiled [9] - 9:1, 9:6,	23:15	respond [4] - 3:10,	spent [1] - 9:2
paper [1] - 12:3	9:9, 9:23, 11:20,	23:15 pure [1] - 12:22	10:5, 10:18, 11:14	spring [1] - 6:2
part [1] - 6:14	12:6, 13:22, 14:3,	• • • •	responded [1] - 3:4	stage [3] - 9:8, 17:23,
particularly [3] -	20:4	pursue [2] - 21:12, 21:20	response [2] - 4:6,	18:19
11:24, 12:8, 17:25	prepare [3] - 9:23,	put [10] - 7:7, 7:23,	19:21	stagger [1] - 5:23
parties [7] - 3:17,	20:20, 20:22	7:25, 10:16, 10:20,	river [1] - 7:13	staggered [8] - 4:3,
11:24, 14:20, 14:24,	prepared [2] - 7:14,	11.8 11.13 14.5	RMR [1] - 1:13	5:20, 6:18, 8:11,
15:2, 17:17, 17:21	7:16 preparing [2] - 7:1 THI	E REPORTING G	ROUP - 15:15	8:15, 9:9, 9:12, 10:1
	preparing [2] - 7.1		1	
	M	lason & Lockha	art	

Mason & Lockhart —

staggering [1] - 9:18	15:14	weeks [2] - 9:22, 12:9
stand [1] - 12:2	third [2] - 8:15, 9:17	weigh [2] - 16:11,
start [1] - 3:13	thoughts [1] - 18:13	17:20
STATE [2] - 1:3, 1:6	three [3] - 5:19, 9:25,	Wharf [1] - 1:11
State [4] - 1:14, 1:16,	12:9	WHEREOF [1] - 23:10
1:18, 23:3	tied [2] - 10:22, 10:23	whole [3] - 7:10, 7:17,
statements [1] - 19:5	timing [2] - 11:22,	7:20
States [13] - 2:22,	18:13	wide [1] - 13:3
2:24, 3:11, 15:15,	today [2] - 3:2, 21:21	Williams [1] - 2:14
15:17, 15:21, 15:22,	towards [1] - 16:1	WILLIAMS [1] - 1:17
15:25, 16:5, 16:10,	transcript [1] - 23:5	willingness [1] - 3:2
16:15, 16:19, 17:25	trial [19] - 4:7, 4:18,	wish [1] - 10:5
STATES [1] - 1:1	7:23, 8:23, 9:1, 9:16,	witness [9] - 12:1,
stenographic [1] -	10:11, 10:13, 10:24,	13:14, 13:19, 13:25,
23:5	12:10, 12:16, 12:19,	14:4, 14:9, 14:24,
still [2] - 10:10, 11:8	13:2, 13:11, 15:18,	14:25, 15:6
stood [1] - 3:7	15:19, 16:8, 18:5,	WITNESS [1] - 23:10
Street [1] - 1:11	20:1	witness's [1] - 14:5
submission [3] - 5:20,	trim [1] - 4:17	witnesses [4] - 7:5,
9:9, 10:24	try [2] - 7:12, 14:5	8:7, 10:17, 12:6
submissions [7] -	trying [3] - 4:19, 8:25,	words [1] - 14:5
6:21, 8:11, 8:16,	11:16	workability [1] - 9:3
9:15, 10:1, 19:23,	turn [1] - 19:14	works [2] - 12:7
20:16	two [3] - 9:22, 12:9,	writing [1] - 12:15
submit [4] - 9:1, 11:8,	20:20	writings [1] - 21:7
13:22, 13:23		written [16] - 6:21,
submitted [2] - 10:9,	U	7:19, 8:5, 8:7, 10:25,
12:6	U.S [2] - 15:9, 18:25	11:7, 11:10, 11:19,
submitting [1] - 12:15	U.S.A _[1] - 1:20	11:22, 11:25, 12:4,
subscribe [1] - 23:10	understood [3] - 3:6,	12:20, 12:21, 12:24,
substance M 20.10		10.0 10.00
substance [1] - 20:18	5.7 10.14	13:6, 19:23
suggested [3] - 3:19,	5:7, 10:14	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25	UNITED [1] - 1:1	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] -	UNITED [1] - 1:1 United [13] - 2:21,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5,	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23,	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12 V	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12 V versus [2] - 13:17,	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12 V versus [2] - 13:17, 14:22	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12 V versus [2] - 13:17, 14:22 view [1] - 15:20	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T	$\begin{array}{c} \textbf{UNITED} [1] - 1:1 \\ \textbf{United} [13] - 2:21, \\ 2:24, 3:11, 15:15, \\ 15:16, 15:20, 15:22, \\ 15:25, 16:4, 16:10, \\ 16:15, 16:19, 17:25 \\ \textbf{unlikely} [1] - 12:24 \\ \textbf{up} [4] - 6:21, 11:17, \\ 15:1, 17:2 \\ \textbf{urge} [1] - 21:12 \\ \hline $	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25	$\begin{array}{c} \textbf{UNITED} [1] - 1:1 \\ \textbf{United} [13] - 2:21, \\ 2:24, 3:11, 15:15, \\ 15:16, 15:20, 15:22, \\ 15:25, 16:4, 16:10, \\ 16:15, 16:19, 17:25 \\ \textbf{unlikely} [1] - 12:24 \\ \textbf{up} [4] - 6:21, 11:17, \\ 15:1, 17:2 \\ \textbf{urge} [1] - 21:12 \\ \hline $	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T telephone [2] - 1:9, 22:4	$\begin{array}{c} \textbf{UNITED} [1] - 1:1 \\ \textbf{United} [13] - 2:21, \\ 2:24, 3:11, 15:15, \\ 15:16, 15:20, 15:22, \\ 15:25, 16:4, 16:10, \\ 16:15, 16:19, 17:25 \\ \textbf{unlikely} [1] - 12:24 \\ \textbf{up} [4] - 6:21, 11:17, \\ 15:1, 17:2 \\ \textbf{urge} [1] - 21:12 \\ \hline \hline \hline \hline \hline \\ \textbf{V} \\ \textbf{versus} [2] - 13:17, \\ 14:22 \\ \textbf{view} [1] - 15:20 \\ \textbf{vigor} [1] - 21:13 \\ \end{array}$	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T telephone [2] - 1:9, 22:4 television [1] - 21:6	UNITED [1] - 1:1 United [13] - 2:21, 2:24, 3:11, 15:15, 15:16, 15:20, 15:22, 15:25, 16:4, 16:10, 16:15, 16:19, 17:25 unlikely [1] - 12:24 up [4] - 6:21, 11:17, 15:1, 17:2 urge [1] - 21:12 Versus [2] - 13:17, 14:22 view [1] - 15:20 vigor [1] - 21:13 voices [1] - 5:12 voluminous [1] - 7:19	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T telephone [2] - 1:9, 22:4	$\begin{array}{c} \textbf{UNITED} [1] - 1:1 \\ \textbf{United} [13] - 2:21, \\ 2:24, 3:11, 15:15, \\ 15:16, 15:20, 15:22, \\ 15:25, 16:4, 16:10, \\ 16:15, 16:19, 17:25 \\ \textbf{unlikely} [1] - 12:24 \\ \textbf{up} [4] - 6:21, 11:17, \\ 15:1, 17:2 \\ \textbf{urge} [1] - 21:12 \\ \hline $	13.0, 19.23
suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T telephone [2] - 1:9, 22:4 television [1] - 21:6 terms [4] - 9:14, 11:4,	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	13.0, 19.23
suggested [3] - 3:19,6:12, 15:25suggestion [2] -18:10, 21:14suggestions [4] - 3:5,18:13, 18:14, 18:15suggests [1] - 8:2summary [2] - 13:23,14:10support [1] - 20:5SUPREME [1] - 1:1Supreme [1] - 20:15suspect [1] - 8:11switched [1] - 10:25 T telephone [2] - 1:9, 22:4 television [1] - 21:6 terms [4] - 9:14, 11:4, 11:22, 16:23	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	13.0, 19.23
$suggested [3] - 3:19,6:12, 15:25suggestion [2] -18:10, 21:14suggestions [4] - 3:5,18:13, 18:14, 18:15suggests [1] - 8:2summary [2] - 13:23,14:10support [1] - 20:5SUPREME [1] - 1:1Supreme [1] - 20:15suspect [1] - 8:11switched [1] - 10:25\begin{tabular}{lllllllllllllllllllllllllllllllllll$	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	13.0, 19.23
$suggested [3] - 3:19,6:12, 15:25suggestion [2] -18:10, 21:14suggestions [4] - 3:5,18:13, 18:14, 18:15suggests [1] - 8:2summary [2] - 13:23,14:10support [1] - 20:5SUPREME [1] - 1:1Supreme [1] - 20:15suspect [1] - 8:11switched [1] - 10:25\begin{tabular}{lllllllllllllllllllllllllllllllllll$	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	13.0, 19.23
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suggested [3] - 3:19,6:12, 15:25suggestion [2] -18:10, 21:14suggestions [4] - 3:5,18:13, 18:14, 18:15suggests [1] - 8:2summary [2] - 13:23,14:10support [1] - 20:5SUPREME [1] - 1:1Supreme [1] - 20:15suspect [1] - 8:11switched [1] - 10:25 T telephone [2] - 1:9, 22:4 television [1] - 21:6 terms [4] - 9:14, 11:4, 11:22, 16:23 testimony [14] - 4:4, 4:20, 4:24, 5:21, 8:5, 10:14, 11:11, 11:20, 12:5, 12:25, 13:14,	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	13.0, 19.23
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suggested [3] - 3:19, 6:12, 15:25 suggestion [2] - 18:10, 21:14 suggestions [4] - 3:5, 18:13, 18:14, 18:15 suggests [1] - 8:2 summary [2] - 13:23, 14:10 support [1] - 20:5 SUPREME [1] - 1:1 Supreme [1] - 20:15 suspect [1] - 8:11 switched [1] - 10:25 T telephone [2] - 1:9, 22:4 television [1] - 21:6 terms [4] - 9:14, 11:4, 11:22, 16:23 testimony [14] - 4:4, 4:20, 4:24, 5:21, 8:5, 10:14, 11:11, 11:20, 12:5, 12:25, 13:14, 15:23, 17:13, 19:22 THE [1] - 1:1	$\begin{tabular}{lllllllllllllllllllllllllllllllllll$	