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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Case No. 10-MD-02197-DAK

IN RE: DEPUY ORTHOPAEDICS,)
INC., ASR HIP IMPLANT)
PRODUCTS LIABILITY LITIGATION))
) West Palm Beach, Florida
) January 20, 2011
)
)

TRANSCRIPT OF HEARING ON
APPLICATIONS FOR LEADERSHIP POSITIONS
HELD BEFORE THE HONORABLE DAVID A. KATZ
SENIOR UNITED STATES DISTRICT JUDGE

Appearances:
(As noted in the record.)

Reporter Stephen W. Franklin, RMR, CRR, CPE
(561)514-3768 Official Court Reporter
701 Clematis Street, Suite 417
West Palm Beach, Florida 33401

1 (Call to the order of the Court.)

2 THE COURT: All right. Ladies and gentlemen, good
3 morning. As you can guess, I'm Judge Katz, and I want to
4 thank you for being here.

5 As you undoubtedly know, I will suspect that you have
6 much more information about me than I have about you. And
7 we'll know that I have had and continue to have with the same
8 defendants -- defendant, J&J, another MDL case, which is, if
9 not winding down, seemingly ready to wind down.

10 This, as you know, is a new MDL matter, and I
11 appreciate very much the opportunity to meet so many of
12 counsel who have or will have cases in the Depuy MDL.

13 I want to thank you for the submissions that you have
14 made and again for your appearance here today. I know there
15 are some who have been prevented by a few things, including
16 but not limited to the weather, an accident, et cetera, from
17 being here. They will be given the same consideration as each
18 of you will be given.

19 I want to take this opportunity to introduce defense
20 counsel, who are not as numerous, as you know, as Plaintiffs'
21 counsel. And I ask them to stand as I introduce them, because
22 I am sure that through the course of this MDL and its
23 proceedings, you will have an opportunity to talk to and/or
24 meet with one or more of them.

25 Bob Tucker, Susan Sharko, Kristin Meyer, Kathy Smith,

1 and John O'Shaughnessy.

2 I forgot one.

3 MR. TUCKER: Your Honor, Mike Conner, as well.

4 THE COURT: Mike Conner. Michael, thank you.

5 Forgive me, please.

6 And I want to thank you for being here.

7 As you would expect, if you've done your homework
8 about me, and I'm sure you have, I sit in a division of the
9 Northern District of Ohio where the Bar has a prideful
10 relationship between and among members of the Bar and members
11 and members -- and with members of the bench. I will expect
12 no less of counsel in the MDL. I will expect the kind of
13 courtesy that is -- that you would show to members of your own
14 staff and firm as you deal with other lawyers both within the
15 Plaintiffs bar and in the defense bar. And as you deal with
16 my staff -- I'll take the opportunity to introduce my career
17 law clerk, who you will get to know very well, Cathy
18 Garcia-Feehan, who's sitting to my left.

19 I have already, as you probably know if you went on
20 the Internet, authorized direct filings in the Northern
21 District of Ohio. I believe that was contained in CMO 1. I
22 advise you to read that. There's nothing unusual in that
23 early declaration.

24 The size of the PSC. I have not determined yet the
25 size of the PSC, nor I have determined, because I do not have

1 a grasp on need, the numerosity or need for various
2 committees, including but not limited to a science committee.
3 That will be done within the next few weeks and months.
4 Whatever the size I ultimately determine, in consultation with
5 members of the Plaintiffs bar, the PSC, you should recognize,
6 will be subject to later expansion or contraction as deemed
7 necessary and/or appropriate, and certainly the addition as
8 these matters continue to grow of liaison for various parts of
9 the MDL.

10 A word about time. Because there are so many of you
11 who have graced us with your presence today, I have indicated
12 to you two minutes. If you do less you have a leg up in front
13 of me. Now, in all seriousness, we're going to stick pretty
14 much to this. I'm going to say this with as straight a face
15 as I can. I do have other obligations which were thrust upon
16 me involving a TRO preliminary injunction later this
17 afternoon, but Cathy will hold up cue cards for "30 seconds"
18 and "time." I hope you can see them. We didn't do red and
19 green because some of us are red and green color blind. So we
20 will stick very close.

21 As I have already told a couple of you who have
22 indicated to me plane times, if we are running later than we
23 anticipate, please tell Cathy, and we will move you forward on
24 the list. The place which you have in making presentations in
25 no way will bear on anything, except that you will make a

1 presentation.

2 I hesitate to do this, but out of courtesy to you,
3 which I request of on my behalf, I will ask are there any
4 questions about what we're about to do? Hearing none, I'll
5 call the first applicant, Daniel E. "Danny" Becnel, Jr.

6 Please, for the benefit of the court reporter and for
7 me, please use the lecturn and the mike.

8 Good morning, Daniel.

9 MR. BECNEL: Good morning, Judge and staff.

10 There are probably as many lawyers here more
11 qualified than me, but I think because of my longevity, having
12 done this for 42 years, I probably have more experience than
13 almost anyone in this room in terms of MDLs.

14 Number one, I think if you look at my qualifications,
15 I've been involved in most of the major civil MDLs in the
16 country and have resolved almost every one either by trial,
17 settlement or appellate decisions. In fact, just -- I had to
18 drive 700 miles over the last 24 hours to get here because of
19 resolution with Ken Feinberg on the thousands of BP cases that
20 we had pending that are now going away.

21 In any event, I think the qualifications for this
22 case deals with the lawyers that you have introduced from the
23 defense side. Susan Sharko and I have done depositions in
24 Europe, in the Propulsid MDL, we've been involved in Ortho
25 Evra and a number of other cases, including many with her

1 former senior partner, most of home are retired now, such as
2 Tom Campion. And to say I've not visited Cleveland and Ohio,
3 I've been involved in many, many cases in Ohio. In fact, will
4 be involved in another one hopefully in the next month or two.

5 Almost every case I have has either been tried,
6 mediated or settled in 42 years. I think I have the
7 experience necessary, since I try cases, take depositions all
8 over the country, all over the world, and I think I have more
9 cases filed in this MDL than almost anyone in the room from
10 various cases -- I mean, from various referral lawyers
11 throughout the country.

12 I'd appreciate your appointment. Thank you very
13 much.

14 THE COURT: Thank you, Dan.

15 MR. BECNEL: And I didn't wear Hush Puppies today.

16 THE COURT: Okay. I can see that.

17 I do want to assure you that I have read each of the
18 I can't remember if it's 86 or 87 letters which I have
19 received. It is clear to me that most, if not all, are well
20 qualified to serve, and many are involved in this, as well as
21 other MDLs which are ongoing or which have been concluded.

22 Thank you.

23 Michael McGlermy?

24 MR. McGLAMRY: McGlamry, Your Honor.

25 THE COURT: McGlamry.

1 MR. McGLAMRY: Yes, sir.

2 And I'm from Atlanta. I appreciate being here.

3 Your Honor obviously has the unenviable task of
4 trying to determine a core group out of this crowd. And I
5 look around the room and I see friends and colleagues, and
6 there are a lot of people qualified to be here and qualified
7 to be on this. And as I look at this from an MDL standpoint,
8 and particularly looking at from the client's standpoint, we
9 need a core group that represents everybody and that seeks to
10 incorporate everybody and seeks to make everyone comfortable
11 being a part of this process. And hopefully in the context of
12 an MDL and what that stands for, that's to bring as many of
13 these cases here as possible. And essentially that this core
14 group is here to make those that are not otherwise or
15 ordinarily involved at the leadership level comfortable with
16 being a part of this case. Because, Your Honor, obviously the
17 bottom line to this is this is about our clients, this is not
18 about the lawyers in this room.

19 When I was before the MDL argument earlier in
20 November, this case to me is somewhat unique in the sense that
21 we start with a recall. And as I look at this, and my firm
22 and I have had 30, 40 years of experience in this kind of
23 work, as I'm sure a lot of people in this room have, the key
24 to this is who knew what, when, and what did they do about it.
25 And so arguably what we're talking about are privilege issues,

1 we're talking about e-discovery.

2 Presently, I sit on the Northern District of Georgia
3 committee for e-discovery. I've also been appointed for the
4 State of Georgia to set out and propose rules for e-discovery
5 for the state of Georgia. I think the bones are buried there,
6 as well as in privilege issues. And that's what our firm is
7 an expert in. We have the landmark decisions in the Eleventh
8 Circuit with regards to that.

9 And in that regard, I would also recommend to Your
10 Honor Dave Arnold, from the Robison Curphy firm in Toledo. We
11 are associated with him, and he is uniquely situated to be
12 liaison counsel not only because he's located in Toledo, but
13 more importantly his firm has the resources, and David himself
14 the professionalism, to handle something like this. And we
15 believe that we need to be a part of this for our clients and
16 as we move forward.

17 Thank you, Your Honor.

18 THE COURT: Thank you very much.

19 Turner Branch.

20 MR. BRANCH: Thank you, Your Honor.

21 It's Turner Branch, from Albuquerque, New Mexico.

22 It's a pleasure to appear before you and your staff and
23 introduce myself. Our firm stands ready and willing to help.
24 We're team players and we're hard workers, Your Honor. As
25 they say, it's not our first rodeo. We worked on about 30

1 years' worth of MDLs, and we stand ready, willing and able to
2 help on this.

3 Other than that, with time constraints, I think I'll
4 stand on my submission to you, Your Honor, and I look forward
5 to working with you.

6 THE COURT: Thank you very, very much.

7 MR. BRANCH: Yes, sir.

8 THE COURT: Michael Miller.

9 Michael's a popular name this morning.

10 MR. MILLER: My mom did that to me, but I love her.
11 It's fine.

12 Good morning, Your Honor. I am Michael Miller. Good
13 morning to your staff.

14 It's an honor to be here. And I will keep it short,
15 as well. I think the Court needs to talk about what we've
16 done in other MDLs and what sort of success we've had. Judge
17 Rufe, from Philadelphia, gave me the privilege of being on the
18 plaintiff steering committee for Avandia. My fellow members
19 of the plaintiff steering committee honored me with being the
20 co-chair of discovery.

21 At that position, I worked awful hard. I'm very
22 proud of what we got done. Wrote the discovery, worked on the
23 e-discovery, worked on the privilege log, worked with Special
24 Master Shestack, worked with the defendants in an amicable
25 way, work with what were essentially three or four competing

1 groups in the plaintiffs steering committee, and made not only
2 allies but friends out of folks that had animosity. And got
3 it all done before Daubert, got it done so well we had more
4 lawyers looking at documents than any firm in America on that
5 and loved it, enjoyed it. I did more depositions of the
6 generic people in that than anyone; loved it. It was my
7 lawyers and I that found the key documents that were later
8 written up in Time Magazine.

9 The case settled before Daubert. Which, if lawyers
10 are professional and working hard it ought to do.

11 Jack Weinstein appointed me in Zyprexa. Pretty much
12 the same story.

13 It's an honor to be here. I'm going to cut my time
14 short before my card comes up. I hope the Court considers me.
15 Have a great morning, Your Honor.

16 THE COURT: Thank you very much.

17 MR. MILLER: All right. Thank you.

18 THE COURT: Either Andy Alonso, in an alphabetical
19 order, or Jerry Parker, or Melanie.

20 MS. MULHSTOCK: Good morning, Your Honor. Melanie
21 Mulhstock, from Parker, Waichman, Alonso.

22 THE COURT: M-u-l-h-s-t-o-c-k.

23 MS. MULHSTOCK: Mr. Parker is appearing in front of
24 Judge Fallon this morning, so he regrets that he could not be
25 here.

1 THE COURT: Much more powerful than I.

2 MS. MULHSTOCK: And Mr. Alonso is currently taking a
3 deposition in a class action case in New Jersey. So you've
4 got myself and Daniel Burke --

5 MR. BURKE: Good morning, Your Honor.

6 MS. MULHSTOCK: -- instead.

7 I think the Court is familiar with our firm most
8 recently through the Ortho Evra litigation which we began
9 initially in the state court in New Jersey and ultimately sat
10 on the executive committee of the PSC. We have experience,
11 constructive experience, with these defendants in that
12 litigation, in the Levaquin litigation, and our firm has held
13 PSC executive committee and standard PSC positions and
14 subcommittee positions in almost every major MDL that has gone
15 on in this country over the last countless years.

16 MR. BURKE: Your Honor, Daniel Burke, from Parker
17 Waichman, Alonso, as well.

18 I run the orthopedic implant litigations in our
19 office, have significant experience with these cases, have
20 settled similar hip cases with other defendants, negotiated
21 settlements, have significant experience in discovery,
22 significant experience with the science. I have served on a
23 number of committees and MDLs and state-coordinated
24 proceedings over the past 10 years or so, and we'd
25 respectfully ask that the Court appoint our firm to a seat on

1 the plaintiff steering committee, whether it's Mr. Parker,
2 Mr. Alonso, Ms. Mulhstock or myself. If the Court appoints
3 one of us, it gets the benefit of all of us. We work as a
4 team, and we've proven to be able to work with a lot of the
5 other lawyers in this room and certainly with defense counsel,
6 as well.

7 THE COURT: Thank you both very much.

8 MR. BURKE: Thank you, Your Honor.

9 MS. MULHSTOCK: Thank you, Your Honor.

10 THE COURT: David Paris.

11 MR. PARIS: Good morning, Your Honor.

12 THE COURT: Mr. Paris.

13 MR. PARIS: I'm David Paris, from the Nurenberg,
14 Paris, Heller & McCarthy law firm.

15 We've requested to be appointed to the PSC for the
16 following reasons, Your Honor.

17 We're one of the oldest plaintiffs firms in Ohio,
18 having an 83-year proud tradition of representing thousands of
19 injured consumers across the country. We've established a
20 team in our office who have established remarkable track
21 records in consumer class actions, class action litigation,
22 product liability cases, cases involving complex medical
23 issues and MDL litigation. Although primarily in the aviation
24 field, each one of those has a component of product liability
25 aspects to them. With 13 attorneys and 25 support staff, I

1 believe we have the depth to make significant contributions in
2 the leadership capacity. We already represent dozens of
3 individuals who have been given this recalled hip from seven
4 states and Canada, many of whom had to have revisions, have
5 high cobalt and chromium levels and pseudo tumors.

6 As you know, Your Honor, we're located in northern
7 Ohio, a short distance to your courtroom and to depositions in
8 Warsaw, Indiana, and we would very much like to be considered
9 by this court to serve in a leadership capacity in this regard
10 and believe that we're capable of doing so.

11 Thank you.

12 THE COURT: Thank you very much.

13 I might add, you will note we are making a record of
14 this so that, besides my infallible memory and handwritten
15 notes, I will have that to refer to.

16 Thank you. Thank you, Mr. Paris.

17 Ben Gordon.

18 MR. GORDON: Good morning, Your Honor. My name's Ben
19 Gordon. I'm with the law firm of Levin Papantonio, in
20 Pensacola, Florida. Thank you.

21 I don't want to go into great detail about the
22 reasons and my qualifications that I would like to serve on
23 the PSC. They're detailed in my application.

24 I would like to say that I am privileged to have
25 worked with many of the fine lawyers in this room and co-tried

1 or tried cases with many of those lawyers, including **John**
2 **Restaino, Steve Skikos, Chris Seeger, as I look around, Dan**
3 **Bryson, Annesley DeGaris.** And I think if you talk to those
4 people, they will tell you that I've worked tirelessly and
5 been committed in those projects and spent a hundred percent
6 of my time doing whatever it takes to assist the Court in
7 bringing the cases to fruition for everyone's benefit. I
8 think that's one of the most important roles of an MDL and a
9 PSC. And if appointed to the PSC in this case, I would pledge
10 to you that I would work just as tirelessly, devote all of my
11 time, which is what I've done in 18 years of working with Mike
12 Papantonio. I have done nothing but work on complex medical
13 and scientific cases and been chair and co-chair of several
14 science committees for PSCs in various complex cases,
15 including **Fen-Phen, and breast implant, and Accutane and**
16 **others.** Which, again, that's in my papers.

17 Lastly, I would just like to say I filed about a
18 dozen confirmed ASR revision cases before Your Honor directly
19 already with my co-counsel, Eric Kennedy and have a hundred
20 other confirmed ASRs and several hundred other suspicious ones
21 that we're evaluating.

22 Thank you.

23 THE COURT: Thank you very much.

24 **Daniel Robinson.**

25 MR. ROBINSON: Good morning, Your Honor,

1 Ms. Garcia-Feehan and the rest of Your Honor's staff.

2 My father, Mark Robinson, could not be here today, as
3 we notified the Court. He has a tobacco deposition. But he
4 sends his regards and apologies and asks the Court to
5 understand that he's deeply committed to this case, to the
6 Plaintiffs in this litigation, and wants the Court to know
7 that our entire firm wants and hopes to play an active role
8 not only in conducting discovery, working with experts,
9 selecting bellwethers, but most importantly pushing these
10 cases to trial.

11 We are deeply committed to ensuring that all of these
12 clients receive justice. We've already spent considerable
13 time, energy and resources of our own retaining experts and
14 working up our clients' cases and investigating literally
15 thousands of potentially new clients.

16 Lastly, I'd just say we look forward to working with
17 the many incredible firms gathered here today and hope that
18 jurisdictions can all work together in this wonderful
19 litigation.

20 Thank you.

21 THE COURT: Thank you.

22 Is my memory correct? Didn't I meet you --

23 MR. ROBINSON: In the same courtroom, Your Honor.

24 THE COURT: Thank you.

25 **Gale Pearson.**

1 MS. PEARSON: Good morning, Your Honor. I'm Gale
2 Pearson, and I'm from the Minneapolis law firm of Pearson,
3 Randall, Gempler, Schumacher & LaBore, and we have the honor
4 of representing Ms. Lewandowski (phonetic), who is filed in
5 the District of Minnesota and will be transferred to this
6 court.

7 You have a courtroom full of attorneys that you need
8 to choose a PSC, and that will be a very difficult task. But
9 probably more difficult will be choosing the best team. And I
10 ask you to consider our firm and myself as part of that best
11 team.

12 I have a degree in laboratory medicine, and I spent
13 many years as a clinical laboratory scientist before I became
14 an attorney, and the matchup between my background and
15 practicing with medical devices and pharmaceutical has been a
16 very successful relationship. And while I've never requested
17 over the past 17 years of my practice for a position on the
18 PSC, I've had the privilege and the good fortune to be
19 involved with and be appointed to many committees and special
20 subcommittees.

21 My first experience is with the breast implant and
22 Fen-Phen litigation. I would show up, I would do the work,
23 I'd see the work that had to be done, and no one told me to go
24 home. And so I continued to do that, and that hard work and
25 perseverance, my ability to get along with others was met with

1 many appointments to committees, many negotiating teams and
2 many deposition committees.

3 In the Baycol Minnesota MDL, my client, Florence
4 Hollander (phonetic), was asked to be the lead counsel, and we
5 worked very hard with the MDL team to get her worked up for
6 the trial. In the coordinated Minnesota Guidant litigation, I
7 was chosen as plaintiffs liaison count where I -- I'm sorry,
8 the state case. Our office had to coordinate litigation, we
9 had to coordinate discovery, we handled all the banking and
10 all the negotiations with the vendors. And at the conclusion
11 of that litigation, I was actually asked to be on the
12 negotiating team for the Guidant litigation.

13 And that is my time, and I would ask that you just
14 consider the rest. And I apologize for running over and
15 running slow.

16 Thank you.

17 THE COURT: No, that's fine. Thank you very much.

18 **Ken Seeger**.

19 MR. SEEGER: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. SEEGER: Thank you for a chance to put a face on
22 the name that you have in front of you. I'll be brief, just a
23 couple of points.

24 About 10 years ago, Your Honor, I was sitting over
25 here where Bob Tucker and Susan Sharko are today in Cleveland

1 before Judge O'Malley because I was the lead defense counsel
2 for Sulzer in the recall of 30,000 hips and knees. I have an
3 understanding of what they're going through, what their
4 company's going through. I think I can bring that
5 understanding to the plaintiff's side where I am now. As part
6 of my transition to being a plaintiff's lawyer I was a
7 mediator, settled cases, you know, as settlement counsel in
8 the range of hundred million dollars, negotiating with a lot
9 of the plaintiffs lawyers here. Plaintiffs lawyer now, Your
10 Honor, in San Francisco. And California is pretty important
11 to this litigation. I'm sure you know that.

12 According to papers that the Defendants filed,
13 there's about 400 cases filed in the country, and about a
14 hundred of them, 25 percent are in the California state
15 courts. And of that hundred, 20 of them I filed. So we're
16 part of the lead in California. We expect those cases to be
17 coordinated, centralized in San Francisco, where I'm based,
18 and we're looking forward to coordinating working with the MDL
19 and with you to bring all of this to an end.

20 Thank you.

21 THE COURT: Have steps been taken for centralization
22 in Florida -- I mean, California?

23 MR. SEEGER: Yes, Your Honor. There's a hearing set
24 for March 1st before Judge Kramer in San Francisco, where we
25 expect that he'll decide to keep the cases there.

1 Thank you.

2 THE COURT: Thank you.

3 Anthony Crawford.

4 Thomas Brandi.

5 Stan Chesley.

6 MR. CHESLEY: Good morning, Your Honor. Stan

7 Chesley, from Cincinnati.

8 I would really like to take a little different tone.
9 I bring my gray hair, and I stand on our papers. And I've
10 been fortunate to develop a very, very fine firm of 20 people
11 that do all of this type of work. I see all of my friends. I
12 feel like it's -- I like the beauty contest, but beauty
13 contests are tough, and I want to talk more in my moment as to
14 how I see this case.

15 Your Honor, I see this case not as a complex case. I
16 see this case that needs a short discovery period. I know the
17 quality of the defense counsel, know them by reputation and
18 have worked with them and know them. This is a case that
19 needs flexibility, management by the Court from a standpoint
20 of resolution, and early resolution.

21 And when you mentioned a science team, I want to
22 compare this case not to Sulzer, I was in it, to the Honorable
23 Judge Arthur Spiegel's case of Shiley heart valve, which I was
24 led counsel. And that was a whole issue. We just can't
25 massively extract heart valves. We can't massively extract

1 hips. We must put together morbidity studies, we mut put
2 together those that actually need it, and we need to extend
3 the period of time so that a person does not have to rush to
4 judgment to get their hip. We have many senior citizens.

5 So I think this is a case of some sociology and some
6 compassion and working together to an early resolution.

7 And I thank you, and I would enjoy for our firm and
8 myself to be involved. Thank you.

9 THE COURT: Thank you very much, Stan.

10 Richard Arsenault.

11 I apologize to everybody for my inability at name
12 translation.

13 MR. ARSENAULT: Good morning, Your Honor. **Richard**
14 **Arsenault.**

15 My theme this morning is judicial economy, and with
16 that I will rest on my papers.

17 Thank you.

18 THE COURT: Did anybody not hear Mr. Arsenault?

19 Thank you, and I have read them, and I have it in
20 front of me.

21 Next, **David Ratner.**

22 MR. RATNER: That is a hard act to follow.

23 Good morning, Your Honor. You and I have never met.

24 **Although I've been a lawyer for 36 years, I have not been in**
25 **mass torts for 36 years. We are not in every mass tort.** We

1 try to pick our mass torts selectively.

2 I have a law firm of 16 lawyers, 25 staff. We choose
3 the mass torts we think we can handle. We believe that we can
4 and will work hard on this particular case, and my partner and
5 I bring to the table a combined 75 years of experience, the
6 ability to try cases, the ability to manage cases and the
7 ability to play well with others.

8 And with that, I rest on my papers. Thank you.

9 THE COURT: Thank you very much.

10 Seth Katz. Now, we are not related to the best of
11 either of our knowledge.

12 MR. KATZ: I've gotten that question several times in
13 the last 48 hours, Your Honor.

14 THE COURT: I assume as much, but we did meet through
15 my other MDL case.

16 MR. KATZ: Good morning, Your Honor. Good to see you
17 again, and Cathy good to see you again.

18 Largely I will rest on our papers, as well. You are
19 familiar with Burg Simpson from our leadership role before
20 Your Honor in Ortho Evra and other leadership roles in MDLs in
21 Ohio, such as the Heparin litigation before Judge Carr and the
22 Gadolinium MDL in Cleveland.

23 I've worked together, as you know in Ortho Evra, with
24 Mr. Tucker and Ms. Sharko collectively, cooperatively, and
25 that's something I bring to the table in this litigation. And

1 not only working collectively with defense counsel, but also
2 with other plaintiffs counsel. It's something I and my firm
3 are firmly committed to and look forward to working in this
4 case.

5 Things that aren't in the papers. So far we've had
6 nine cases transferred to the MDL, are going to begin direct
7 filing additional cases on behalf of the men and women we
8 represent who have this product in their body or have had it
9 recently explanted.

10 And let me just conclude by saying I'm looking
11 forward to working with the Court again, with defense counsel
12 again and with all my colleagues in the plaintiffs bar, and I
13 would be honored to serve if selected to the steering
14 committee.

15 THE COURT: Thank you very much, Seth.

16 Robert Binstock.

17 MR. BINSTOCK: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. BINSTOCK: **Bob Binstock**. I'm from Houston,
20 Texas, of the law firm of Reich & Binstock, originally from
21 Pittsburgh, Pennsylvania. I tell the Court that because my
22 mother, Tessie, who's 92, is hoping that I get on this MDL so
23 I'll be able to visit her more often than I currently am.

24 I just finished up the Levaquin trial against Johnson
25 & Johnson. Mr. O'Shaughnessy is here. And we were there for

1 four weeks, and it was a successful trial, and we really -- as
2 well as trials can go, things went very smoothly. I think
3 he'll agree we really had a cooperative atmosphere. It was in
4 front of Judge Tunheim. It was a really good experience.

5 I've been involved in Kugel Mesh PSC, also in the
6 Digitek PSC, and I know a lot of people in this room. There's
7 a lot of incredible lawyers. We have had some meetings, and
8 it would just be a real pleasure and an honor to have the
9 opportunity to work with this court and with the counsel that
10 are involved in another case against Johnson & Johnson. I'd
11 really appreciate the opportunity, as would my mom.

12 I thank you.

13 THE COURT: I hope it's not just because of Johnson &
14 Johnson.

15 Michael Goetz.

16 MR. GOETZ: Good morning, Your Honor. Michael Goetz,
17 from the Morgan & Morgan law firm, based here in Florida, but
18 with offices throughout the southeast. I appreciate the
19 opportunity to speak today.

20 And just to amplify one point from my application,
21 and then I'll sit down. I think sometimes there is a
22 disconnect between decisions that get made by the PSC and by
23 leadership and the realities of what's going on out in the
24 field. And so I think it's critical that a PSC be comprised
25 of firms that are actually representing significant number of

1 clients in this litigation and have that understanding and
2 understanding of the burdens that get placed on firms and on
3 clients on the decisions that get made and can add to a
4 greater knowledge of damages issues and settlement
5 considerations that might get lost in the shuffle somewhat if
6 there is, in fact, direct representation of those folks who
7 are ultimately going to be paying handsomely for the services
8 of the PSC.

9 So that's the only point I wanted to make there,
10 other than to say that if appointed, I would certainly
11 consider this to be a personal appointment and would pledge my
12 personal commitment, as I have for the last few months, to
13 this important case.

14 Thank you.

15 THE COURT: Thank you very much.

16 Steven Baron.

17 MR. BARON: Good morning, Your Honor, staff. I'm
18 Steve Baron, from Baron and Budd, in Dallas. I've spent the
19 lion's share of my career litigating, trying and resolving
20 mass torts. I've done that by working closely with courts and
21 their staff, defense counsel and other plaintiffs counsel.
22 I've found that I've been able to do that by either trying but
23 almost usually settling and sometimes dismissing cases and
24 suspect that some component of all three of those will exist
25 in this MDL.

1 I would like to serve and would be honored to serve.
2 I'll rest on my papers other than two brief points I'd like to
3 make, which is that in my resolution of mass torts throughout
4 my career, I think I've developed significant experience in
5 the ethical consideration of the ethics of mass tort
6 settlement, which have become complicated in
7 multi-jurisdictional not only for Plaintiffs but for the
8 Defendants, and it's an area of particular interest to me in
9 which I've worked closely with experts and something that I
10 think I could and would like to bring to this committee.

11 The other point I'd like to make is that I've also
12 worked, through my work with coordinating judges in Los
13 Angeles, San Francisco, Texas and Philadelphia, coordinating
14 state court litigation and federal court litigation. I am a
15 original member of the Texas statewide asbestos MDL. My
16 partner is an original member of the federal asbestos MDL 875.
17 And so in all of those jurisdictions, when need has arisen,
18 we've helped coordinate state court and federal court issues.

19 We do represent individuals that have filed before
20 this court, and I would be honored to serve.

21 Thank you.

22 THE COURT: Thank you very much.

23 I want to interrupt.

24 Mr. Baron makes a point that I probably should have
25 addressed. As in Ortho Evra, I believe that it is extremely

1 essential that there be cooperative efforts ongoing between
2 and among both judges and counsel in federal and state courts.
3 That's extremely important and a precondition, it seems to me,
4 of success for all litigants involved in the particular MDL.

5 I don't know who is here from Ciano & Goldwasser.

6 MR. GOLDWASSER: Your Honor, Andy Goldwasser. I'm
7 also here with my partner, Phil Ciano.

8 MR. CIANO: Good morning, Your Honor. In the
9 interest of brevity he will cover both of us.

10 THE COURT: Thank you.

11 MR. GOLDWASSER: We did fight over the two minutes,
12 Your Honor.

13 My name is Andy Goldwasser, good morning. I'm from
14 the law firm of Ciano & Goldwasser, in Cleveland, Ohio. Thank
15 you very much, Your Honor, for having us here.

16 If there is one point that I would like to reiterate
17 from our papers it is this: Our law firm is deeply committed,
18 we are competent and we are qualified to assist in any way we
19 can in this litigation and the multi-district litigation
20 that's before you. We have over a decade of mass tort
21 litigation experience, Your Honor, including serving as one of
22 the subclass counsel and one of the discovery chairs in the
23 Sulzer litigation. In that litigation we worked under the
24 leadership of Eric Kennedy who we're also associating some of
25 our cases with.

1 During the course of that litigation, what we learned
2 is that Mr. Kennedy is uniquely qualified to spearhead this
3 litigation. He works cooperatively with others. We have also
4 had the privilege of opposing Mr. Kennedy in the Welding Fume
5 Litigation. I know this is not about him, but it is just to
6 bring home the point that we believe he is uniquely qualified.
7 From our perspective, we are committed to the case, and we
8 would like to perform meaningful work.

9 Thank you, Your Honor.

10 THE COURT: Thank you very much, Andy.

11 Leonard Davis.

12 MR. DAVIS: Good morning, Your Honor. Leonard Davis,
13 from the law firm of Herman, Herman, Katz & Cotlar, out of New
14 Orleans.

15 What we bring to the table is professionalism,
16 civility and the ability to coordinate both the PSC,
17 plaintiffs, defense counsel, state and federal. I, in
18 particular, and our firm have worked very closely with Judge
19 Eldon Fallon in particular in the Vioxx MDL, the Propulsid MDL
20 and the Chinese drywall MDL. We have experience with Johnson
21 & Johnson. We have been to this before. Our firm is
22 committed. We have the resources, the experience, we have
23 doctor, lawyer on staff, and everything else is in my papers,
24 Your Honor.

25 THE COURT: Thank you very much.

1 MR. DAVIS: Thank you.

2 THE COURT: William Dirk Vandever.

3 MR. VANDEVER: Dirk Vandever, Your Honor.

4 THE COURT: Dirk Vandever. Okay. We'll drop the
5 William.

6 MR. VANDEVER: Yes, you may drop the William.

7 THE COURT: Thank you.

8 MR. VANDEVER: I come from the Kansas City law firm
9 of Popham. We've been around since 1918. Much of the
10 products liability law in the state of Missouri and in the
11 Midwest has been developed from that. I've set out in my
12 papers the fact that what I do on a day in, day out basis is I
13 actually conduct discovery, try lawsuits, and it's mainly
14 expert-heavy lawsuits. As much as anything else, however,
15 within the context of this, I believe that my issues and my
16 mediation, bringing together sides on complex litigation, is
17 of importance. And I will say this, that I have met with
18 dozens and dozens of these people who have ASRs personally,
19 one on one. And as much as anything else, I think that I have
20 a burning curiosity to answer their questions, not merely why
21 did this happen, but what happens next.

22 Specifically with regard to high cobalt levels,
23 specifically with regard to what happens, for example, if you
24 do not have elevated metal ions, but -- and you have a
25 good-looking x-ray but a bad-feeling hip. I am ready, willing

1 and able, along with Eric Kennedy, from Ohio, and Dave
2 Landever (phonetic) and Brad Honnold, from Kansas City, to
3 roll up my sleeves and get to work.

4 Thank you.

5 THE COURT: Thank you.

6 **Martin Crump.**

7 MR. CRUMP: Good morning, Your Honor. I'm Martin
8 Crump, from the law firm of Davis & Crump. It's a pleasure to
9 be here in front of you and your staff. And I'm actually
10 honored to be considered with such good members of the mass
11 tort bar.

12 Your Honor, most of what I think you would need to
13 know about me and my firm are in our papers. We've worked on
14 various MDLs over the past 20 years. There is plaintiff
15 steering committee service, various committee level service,
16 and we have participated in mass tort proceedings in states
17 such as Mississippi, back when it was acceptable, and then
18 also Pennsylvania, Illinois and California.

19 Your Honor, we're reviewing hundreds of these cases,
20 suspicious cases, and would be committed to the movement of
21 this litigation forward, the plaintiff steering committee and
22 the individual plaintiffs within the litigation.

23 So following Mr. Arsenault's theme of judicial
24 economy, we would rest on our papers.

25 THE COURT: Thank you very much, sir.

1 James Dugan.

2 MR. DUGAN: Dugan, Your Honor.

3 THE COURT: I knew it. I got a 50/50 shot.

4 MR. DUGAN: I answer to both, Your Honor.

5 May it please the Court. James Dugan, with the Dugan
6 Law Firm, in New Orleans, Louisiana. Good morning, Your Honor
7 and staff. It's a pleasure to be here.

8 I was fortunate enough in 1994 to begin my legal
9 career working with a gentleman by the name of Wendell
10 Gauthier, in New Orleans, with the seminal case Castano versus
11 the American Tobacco Company. That was a collaboration of 60
12 law firms, and it taught me that organization, professionalism
13 and the ability to work with other lawyers and the Court is
14 essential to mass tort and complex litigation.

15 Very fortunate that Mr. Chesley and Mr. Climaco, who
16 we see here today, were also involved in that litigation.
17 Since that time, I've continued to specialize in complex
18 litigation, pharmaceutical litigation in particular,
19 representing consumers, state attorney generals and private
20 healthcare plans involving pharmaceutical products.

21 Most recently, in April I tried a case in Louisiana
22 in front of Judge Fallon on behalf of the Louisiana Attorney
23 General.

24 As it relates to hip litigation, I was also fortunate
25 enough, once again, along with Mr. Chesley and Mr. Becnel and

1 Mr. Climaco and Mr. Kennedy and Mr. Barrett, who is not here,
2 to be one of six firms serving in front of Judge Kathleen
3 O'Malley in the Sulzer litigation.

4 I have 31 cases on file in the Depuy litigation, Your
5 Honor, in Louisiana, that will be transferred to the MDL. In
6 particular, I have also retained Dr. David Kessler, the former
7 FDA commissioner, to work on this case, where there will
8 undoubtedly be FDA and preemption issues.

9 I would consider it an honor to be a part of Your
10 Honor's PSC.

11 And my last point, Your Honor, I would ask that you
12 consider a diversity of a PSC. With all due respect to the
13 large firms, I would ask Your Honor to consider the midsize
14 firms and the smaller firms so Your Honor could have a diverse
15 PSC to work together.

16 Thank you.

17 THE COURT: Thank you very much.

18 Camilo Salas.

19 Ervin Gonzalez.

20 MR. GONZALEZ: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. GONZALEZ: Your Honor, I define my practice as
23 suing big companies that do bad things. I have a very diverse
24 practice involving product liability and many other matters,
25 including mass tort litigation. But what I want to chat about

1 in the next minute and a half is my philosophy in trying cases
2 and working cases on behalf of plaintiffs.

3 I believe that to be a good lawyer, you have to think
4 about the client. And what I try to do is I think about what
5 I would need from a lawyer if I were the client. And I think
6 about what would I want my lawyer to do, how would I want my
7 lawyer to prepare, how would I want my lawyer to care. And I
8 try to be that lawyer. And that's my philosophy, and that's
9 how I do things.

10 I also carry with me the wisdom of my football coach
11 and high school baseball coach, which is you can't be a leader
12 without a team. If you do that, then you're just a loner. So
13 when you work in committees like plaintiff steering
14 committees, leadership means the ability to work together with
15 other team members so that the group reaches its goals, and
16 that's a very important aspect of the way I practice law.

17 Finally, I want to share with you one of my proudest
18 moments. I am a trial lawyer, not an appellate lawyer. But I
19 was trying to bring medical monitoring to Florida in Fen-Phen
20 cases, and everyone says it doesn't exist. So I filed my case
21 for medical monitoring in Florida, got summary judgment out, I
22 tried to find an appellate lawyer to take the case up to the
23 Third District Court of Appeal. Appellate lawyers say it
24 doesn't exist, we're not going to take it.

25 So this trial lawyer had to write his brief and argue

1 to the Third District Court of Appeals. And one of my most
2 proudest moments is the decision of Petito versus A.H. Robins
3 which brought medical monitoring to the state of Florida.

4 So that shows that can't never did nothing, and you
5 gotta take your goals and your vision and make them realities
6 by giving it all you have.

7 Thank you for your time, Your Honor. I appreciate
8 your consideration.

9 THE COURT: Thank you very much.

10 Wendy Fleishman.

11 MS. FLEISHMAN: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. FLEISHMAN: I'm from Lief, Cabraser, Heimann &
14 Bernstein, which is a 200-plus-person firm. We're dedicated
15 to representing plaintiffs throughout the country. We have
16 more than 60 lawyers, and we have an enormous staff to support
17 us, and we are committed to this case. We filed cases in
18 California state court and we filed cases before the federal
19 court, and we intend to file cases in New Jersey.

20 And I have worked as both co-liaison counsel on
21 steering committees, and I'm committed to cooperation and to
22 courtesy, as well as ethics and ethical representation of the
23 Plaintiffs. And we are committed in terms of a firm to
24 working on this case and to work cooperatively both in the
25 state and federal court. And I hope to serve on the plaintiff

1 steering committee before Your Honor.

2 Thank you.

3 THE COURT: Thank you very much.

4 Ed Blizzard, or is it Blizzarde (phonetic)?

5 MR. BLIZZARD: It's the less sophisticated
6 pronunciation, Your Honor. It's Blizzard, which reminds us
7 all why we're happy to be here today instead of in Cleveland.

8 My name is Ed Blizzard. Good morning, Your Honor and
9 to your staff. I'm a trial lawyer from Houston, Texas. I
10 don't have as much gray hair as Mr. Chesley, but I'm getting
11 there. And my papers really detailed all the why I would like
12 to be on the committee and my experience that qualifies me for
13 it, but also it talks about or shows how I've gotten some of
14 these gray hairs.

15 I do want to be on the committee, Your Honor. I
16 think I'm qualified to be on the committee. But regardless of
17 whether I'm selected or not, I'm going to work cooperatively
18 with all counsel in this case and with the Court to bring this
19 MDL to a successful conclusion.

20 Thank you, Your Honor.

21 THE COURT: Thank you, sir.

22 Paul Hanley.

23 MR. HANLEY: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. HANLEY: I'm Paul Hanley. I'm from New York. I

1 have been a mass torts lawyer for some 31 years. At the
2 beginning of my career, I had the best job that any lawyer can
3 ever have and which I wish on most days I still had, which was
4 as a law clerk to a United States district judge. Following
5 that, I spent 20 of my 31 years like my friend and colleague
6 Mr. Seegar on the other side as national trial coordinating
7 and settlement counsel to the largest asbestos manufacturer in
8 the world.

9 Perhaps as a consequence of that experience, when I
10 became a plaintiffs lawyer about a decade ago, I have been
11 appointed by several federal judges to leadership positions in
12 MDLs and statewide coordinations. In particular, I was
13 appointed by Judge Breyer, of the Northern District of
14 California, to be the liaison between his court and the state
15 court in the Baxtra Celebrex litigation.

16 I've also been appointed to both 9/11 litigations
17 pending in the Southern District of New York, to the
18 leadership committee there, to the Ephedra litigation, also an
19 MDL in the Southern District of New York, and to statewide
20 coordinated Oxycontin litigation in the state of New York.

21 For these reasons, Judge, I ask Your Honor to
22 consider my application.

23 THE COURT: Thank you very, very much, Mr. Hanley.
24 John Climaco.

25 MR. CLIMACO: Good morning, Your Honor. John

1 Climaco, from Cleveland.

2 THE COURT: Good morning.

3 MR. CLIMACO: Your Honor, being a disciple of Richard
4 Arsenault, my intention was to ask you to rely on my paper and
5 sit down. You made a comment a few moments ago that I'd like
6 to address. It's something I'm very proud of.

7 In August of 2009, the need Fleet Phospho Sodium case
8 was MDL'd and sent to the then Judge Ann Aldrich. I had never
9 heard of the case, never been involved. Turns out the
10 majority of the lawyers I believe only but one, 50-some
11 lawyers involved with cases, were all previous defense lawyers
12 for the most part. Someone called me on the phone. They had
13 heard about me. They asked me to apply for a leadership
14 position. I was appointed part of the overall leadership,
15 liaison counsel.

16 One thing I'm proud of, Your Honor, is I think the
17 biggest contribution I made to that case is I was able to
18 bring everyone together. And when there were disputes, I was
19 the peacemaker. That case was settled in nine months, and
20 today people are being -- receiving millions of dollars. We
21 still have some issues to deal with. Judge Polster, whom you
22 know, has been very, very helpful in getting that resolved.
23 But being that cooperation and putting this diverse group of
24 defense lawyers together is something I'm very proud of.

25 Thank you.

1 THE COURT: Thank you very much, Mr. Climaco.
2 Peter Polos.

3 MR. POLOS: Good morning, Your Honor. My name's
4 Peter Polos, from the firm of Panish, Shea & Boyle, in Los
5 Angeles. And I appreciate the opportunity to speak here, Your
6 Honor.

7 As a lawyer, I handled -- I was involved in numerous
8 mass tort cases involving cooperation between the MDL and the
9 JCCP. In fact, the last one was almost a decade ago, Your
10 Honor. It was the Sulzer hip litigation, where my firm was
11 co-liaison in California for those cases. We handled cases in
12 the MDL and in California. I was partners at that time with
13 Mr. Skikos and worked closely with Mr. Robinson on those
14 cases. As a matter of fact, we were the only -- Mr. Robinson
15 and I were the only ones to actually start trial in California
16 before the ultimate resolution of those cases took place, and
17 I think we were instrumental in resolving those cases and
18 working cooperatively with Mr. Seeger and the defense on
19 those. What -- we were also responsible for preparing and
20 drafting the settlement agreement in that case, with other
21 lawyers as well, but we took a large role in that.

22 Thereafter, I had the pleasure and honor of serving
23 as a Superior Court judge for eight years in Orange County,
24 California. I handled complex, I oversaw and presided over
25 complex civil cases. I was appointed by the chief justice to

1 the complex -- Judicial Council Complex Advisory Committee,
2 where we oversaw and prepared the rules for handling JCCP and
3 complex litigation cases.

4 Your Honor, in this case, like Sulzer, we have
5 hundreds, maybe 200 clients. I can promise you that this is
6 the only MDL and JCCP I'll be working on if appointed to this.
7 I'm not going to work on any other ones. We're devoted
8 100 percent to this litigation and would appreciate the
9 opportunity to work with Your Honor, Mr. Skikos and any others
10 that may be involved in the litigation.

11 Thank you.

12 THE COURT: Thank you very much.

13 Trent Miracle.

14 MR. MIRACLE: Good morning, Your Honor. Trent
15 Miracle, from the Simmons firm, in Illinois.

16 I'd like to echo Mr. Blizzard's sentiment earlier
17 about thanking the Court for bringing us this beautiful
18 account. I was informed this morning that my family and
19 colleagues woke up to a foot of snow in Illinois this morning,
20 so it was my pleasure to wake up and see palm trees.

21 As far as my papers go, I'll rely on those submitted
22 to the Court. Only point out to the Court that Simmons
23 Browder firm is closely located to Illinois, quick hop to Ohio
24 for this MDL. Our resources are extensive. We have over 50
25 lawyers and over 200 support staff to help support this

1 litigation. We're fully endeavored to do so.

2 Regardless of whether this court does myself the
3 honor of putting me on the PSC, we will be fully committed to
4 the task and cooperative with whoever is chosen for the PSC
5 and happy to work on any of the committees the Court may set
6 forth from this point.

7 Thank you, Your Honor.

8 THE COURT: Thank you very much, Mr. Miracle.

9 Kirk Wood.

10 MR. WOOD: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. WOOD: Please the Court, I'm Kirk Wood. I have
13 cases filed in the Northern District of Alabama. I believe
14 it's important for the committee to have representation that
15 can speak to and address the interest of small firms and solo
16 practitioners. Your Honor, there's no one smaller than me,
17 and I would appreciate the opportunity to serve.

18 Thank you.

19 THE COURT: Well, that's the breadth of the people
20 attending this hearing. Thank you very much.

21 MR. WOOD: Thank you, Your Honor.

22 THE COURT: I didn't see David Arnold. Is he here?

23 THE LAW CLERK: Mr. Arnold is here.

24 THE COURT: Mr. Arnold. Yes, he has white hair, too.

25 MR. ARNOLD: Good morning, Your Honor.

1 THE COURT: Good morning, David.

2 MR. ARNOLD: I'm here to seek appointment as liaison
3 counsel in this case. I think the Court is familiar with my
4 background and experience and the capabilities and reputation
5 of my firm. So I don't intend to belabor those matters. I
6 think that we have the capacity and the skill sets to make
7 this a successful MDL, to ensure, to help the Court ensure
8 that the local rules of practice in Toledo, both written and
9 unwritten, are adhered to.

10 I would add one point with respect to my background,
11 Your Honor, just to remind the Court of my experience as a
12 master in very significant institutional reform litigation for
13 Judge Justice and Judge Conway. I think the skills and
14 experience there are directly relevant here in terms of the
15 amount of paper, the number of issues, the intense external
16 scrutiny, and, of course, the stakes. So I think that is
17 directly relevant to this role.

18 And finally, Your Honor, as you've heard from
19 Mr. McGlamry much earlier this morning, our firm is associated
20 with the Pope McGlamry firm-Atlanta. After significant due
21 diligence, we associated with them in this matter. We think
22 they are highly skilled and highly qualified to serve in a
23 leadership role. They're very committed to this case.
24 Mr. McGlamry is here with his partners, Bill Norwood and Kirk
25 Pope, and we would look forward to working with them and other

1 members of the PSC if we're privileged to be selected.

2 Thank you, Your Honor.

3 THE COURT: Thank you, David.

4 Eric Kennedy.

5 MR. KENNEDY: Morning, Your Honor.

6 THE COURT: Good morning, Mr. Kennedy.

7 MR. KENNEDY: I am Eric Kennedy, from the law firm of
8 Weisman Kennedy, from the Northern District of Ohio, where I
9 practiced for 30 years. I don't believe, Your Honor, we have
10 had the opportunity to meet. It is my pleasure this morning.

11 I don't want to go through my papers in detail, maybe
12 just update and explain a bit. We have been involved and I've
13 been involved in a leadership role in mass torts dating back
14 to breast implant, all the way up through the Sulzer
15 litigation. I don't think that the -- that the labels and the
16 titles in those roles is important, but what is important is
17 what characterizes our involvement, and that is basically and
18 simply been hard work in those cases, Your Honor.

19 By way of update, at the time of our papers we had
20 filed 11 cases in the Northern District of Ohio. We have now
21 filed 19 cases in the Northern District of Ohio and anticipate
22 filing another 30 cases within the next month or 60 days. At
23 the time of the filing of our papers, we mentioned to the
24 Court that we had retained two very prominent, frankly
25 world-renowned testing laboratories, retrieval laboratories,

1 that we anticipate will evaluate the explanations of our
2 clients and various clients throughout the MDL.

3 Since that point in time, together with Ben Gordon,
4 from the Papantonio law firm, we have been working with these
5 experts to develop a preservation protocol, protocols for
6 shipping, for storage and for testing. It's an item, agenda
7 item that we think is very important for the Court to address
8 in the beginning of the case.

9 Additionally, we mentioned the Sulzer case in our
10 papers and our role as lead counsel in that case not because
11 the Sulzer case is a hip case and this is a hip case. We
12 mentioned the Sulzer case because anyone involved in the
13 Sulzer case knows and understands that that case represents
14 the notion that you cannot bring about a successful resolution
15 for your clients without cooperation, teamwork and
16 extraordinary communication amongst the plaintiffs bar.

17 To wrap it up, Your Honor, this is an important case
18 for our clients. There are many, many fine lawyers in this
19 room, some that I've worked with in the past, others that I've
20 met for the first time. But the Court should know and
21 understand that no matter what the Court's determination with
22 respect to leadership in this case, we're in it for the long
23 haul, because the success of our clients is dependent upon the
24 success of this MDL. And though at this stage in a proceeding
25 there's a bit of a circus in the halls and in the back rooms,

1 I know that every lawyer in this room wants the same thing,
2 and that is to preserve and protect the rights of these 38,000
3 people.

4 Thank you for the opportunity, Your Honor.

5 THE COURT: Thank you very much.

6 I'm going to interrupt the proceedings for just a
7 moment, because several of you who have spoken thus far have
8 reminded me of certain things which I generally speak about at
9 an initial meeting of the PSC. And since I have not selected,
10 obviously, the composition of the PSC or determined its size,
11 and since you are here -- and there are those who will need to
12 leave early, and I understand that, and you will not offend
13 me -- I thought it best to do it here.

14 Those who meet with me, and those who meet with those
15 who meet with me throughout this litigation, and those who
16 have appeared before me in the Johnson & Johnson Ortho Evra
17 MDL will attest to this. I use the word "settlement" and
18 "mediation" interchange -- the words "settlement" and
19 "mediation" interchangeably. And I speak of them often,
20 because I think it is appropriate to do so and for you to keep
21 that in the forefront of your mind, because resolution of
22 cases, whether in gross or individually, needs that
23 consideration.

24 I think one needs to think about clients, their
25 needs, and those needs need to be met. Sometimes they are met

1 through trial. Most times they are met through settlement,
2 because settlement eliminates for both sides risk and
3 eliminates the lack of use of dollars for the plaintiffs.

4 You will hear me speak of this not because I am
5 afraid to try cases. Those who have appeared before me know
6 better than that. That's the most fun a federal judge has,
7 other than swearing in new citizens. But because you need to
8 keep that in the forefront of your minds as you truly keep the
9 interests of your clients in the forefront of your minds. How
10 do we get to the goal line? What's the best play? How will
11 it best benefit our respective clients, defendants and
12 plaintiffs?

13 Thank you.

14 John Romano.

15 MR. ROMANO: Hello, Your Honor.

16 THE COURT: Good morning.

17 MR. ROMANO: Your Honor, as fate would have it, when
18 we got moved up here this morning, back on Friday morning,
19 May 10th of 1974, I was sworn in as a lawyer in this very
20 courtroom. And then with the portrait on the wall, then Chief
21 Judge Fulton, one of his comments was this. As you move on
22 through your careers, remember that there are three agendas in
23 every case, the agenda of your client, the agenda of your
24 client, the agenda of your client. And I promise and pledge
25 to Your Honor I will always keep that in mind, because

1 experience has taught me in better than 250 trials, that when
2 you focus on the agenda of the client, it works out best for
3 the client, it works out best for the system of justice and
4 for society.

5 And, Your Honor, I hope when this is over, if Your
6 Honor does appoint me to this committee, that Your Honor will
7 say, I will tell everybody one thing about John Romano. That
8 is the hardest working, most effective, efficient lawyer I
9 have ever seen in this. And if all of us have as a goal to
10 make sure that we try to get to that result and do what is
11 right for these clients, we will be in great shape and Your
12 Honor will be proud of us all.

13 Thank you, Judge.

14 THE COURT: Thank you very much.

15 Christopher Seeger.

16 MR. SEEGER: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. SEEGER: This is my brother, by the way, just in
19 the interest of disclosure. He used to beat me up a lot as a
20 kid, so I'm still afraid of him.

21 THE COURT: Whoa.

22 MR. SEEGER: Judge, I understand the need for this,
23 but this is probably one of the least pleasurable things I do
24 as a lawyer, having to sell myself. And I'm sure that we all
25 feel the same way. There's a roomful of great lawyers here,

1 and you're not going to make a bad pick no matter which way
2 you go.

3 To highlight I guess some of the things in my
4 submission to you, some things I'm most proud of would be the
5 Vioxx case that I was recently appointed co-lead counsel in by
6 Judge Fallon, and I was also liaison counsel for Judge Higbee.
7 It's important I point that out, because I think at the end of
8 the day what really is one of the key things that helps an MDL
9 become successful is successful state-federal coordination.
10 And I have actively done that in a number of cases. Vioxx was
11 hugely successful in state-federal coordination. We had an
12 MDL, we had a New Jersey litigation, a California litigation
13 and a Texas litigation and some scattering of other cases.

14 That ultimately resulted in many trials being had. I
15 tried one of them with Mark Lanier, who's going to address the
16 Court, which resulted in a successful verdict and a
17 \$4.85 billion settlement at the end of the day, which brings
18 to mind something that you just made me think of, in that in a
19 mass tort there is really only one way to do justice for
20 everybody, and that is through settling. Trials will drive
21 settlements and inform settlement values, but you're not going
22 to do a hundred percent justice for everybody by trying cases,
23 because you can't win a hundred percent. And at the end of
24 the day, that's that.

25 Also, we have tried successfully bellwether cases in

1 Vioxx, in Rezulin and recently in the Accutane litigation.
2 And I was lucky enough to try the first two Chinese drywall
3 cases in the country with a group of people in front of Judge
4 Fallon, just to highlight some I wanted to give you.

5 Nice to meet you, Your Honor.

6 THE COURT: Thank you very much, sir.

7 Ellen Relkin.

8 MS. RELKIN: Good morning, Your Honor.

9 Since I know Your Honor from the Ortho Evra
10 litigation, I don't think I need to go through all of the
11 details I've put in my papers as to my background. I wanted
12 to introduce Perry White, my colleague, who's here today
13 sitting right over here.

14 MR. WHITE: Hello, Your Honor. Nice to meet you.

15 THE COURT: Same here.

16 MS. RELKIN: Just as a little update, we now have
17 five filed revision cases in this court, and we have many more
18 that we will be filing.

19 I think a very important aspect of working on mass
20 torts is professionalism and working well with adversaries.
21 Fight when you need to fight, and work things out, which is
22 generally what happens. And I know Susan Sharko and Bob
23 Tucker from Ortho Evra. I know Susan from many other
24 litigations in New Jersey. New Jersey is where I practice, as
25 well as New York, obviously, because J&J's headquartered

1 there. There will be a New Jersey state coordination, and
2 that's something I think I've successfully done on numerous
3 litigations.

4 THE COURT: Joe Saunders.

5 MR. SAUNDERS: Good morning, Your Honor. It's a
6 pleasure to be here.

7 My papers outline my experience in mass torts, and
8 one of the observations that I'd like to share over the years
9 that may be helpful is I think one of the keys to success of
10 an MDL and a steering committee is good communication with all
11 of the different lawyers around the country who have the
12 cases. And I think the task of -- one of the tasks of this
13 MDL is obviously to do that, and I think that task would be
14 made easier for the committee, whoever it is when it's
15 appointed, if there is diversity in a number of ways. Some
16 speakers have mentioned diversity in geography. And I think
17 that's important, because the different firms and the lawyers
18 here are able to reach out to lawyers who know them in their
19 own states. And I think that's a key element that can really
20 help the communication between the PSC and all of the
21 plaintiffs' lawyers and the plaintiffs' clients out there to
22 feel confidence in their PSC.

23 I also would suggest that we have a number of great
24 women lawyers here to speak and who have already spoken, and I
25 think it helps to have good representation of some of our

1 great female trial lawyers on the PSC.

2 Thank you very much.

3 THE COURT: I have certainly learned that from the
4 past.

5 Thank you very much, and for your suggestions.

6 Chris Hellums.

7 MR. HELLUMS: Good morning, Your Honor. Chris
8 Hellums, from Birmingham, Alabama, the firm of Pittman, Dutton
9 & Hellums.

10 As most people have said, I think my qualifications
11 and reasons for serving on this committee are outlined in what
12 we've submitted. The vast majority of my career has been
13 outside the MDL process until I was appointed to the executive
14 committee of MDL 1985. Some of the members of that committee
15 are here. That was the fastest, if not one of the fastest,
16 settled MDLs ever, and I think the reasons for that have been
17 outlined both by the judge and by the media. So I would leave
18 that with Your Honor.

19 I represent 81 people at this time in 19 different
20 states, and I have 12 cases filed.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 I'm intrigued by the total body. I might need that.

24 MR. HELLUMS: It has lots of chromium in it just like
25 these hips do.

1 THE COURT: Okay. Thank you very much, Chris.
2 Daniel Bryson.

3 MR. BRYSON: Good morning, Your Honor. Dan Bryson,
4 with the law firm of Lewis & Roberts, in Raleigh, North
5 Carolina. And I appreciate the opportunity to address the
6 Court this morning, although I can tell you I've been feeling
7 increasingly unqualified as I've listened to the fine
8 presentations of many of the lawyers here today.

9 I've spent the last 20 years of my practice, Judge,
10 doing defective product litigation. Over the years, I've
11 developed co-counsel arrangements with a number of attorneys
12 throughout the southeast, and we are actively investigating
13 hundreds and hundreds of these claims. We have dozens and
14 dozens of clients. We filed several cases, one in the
15 Northern District of Ohio, the first case in North Carolina.
16 There's a large concentration of these cases in North Carolina
17 I believe because -- for many reasons, but perhaps because the
18 presence of Duke University Hospital and many other hospitals
19 in the area. So I think it would be appropriate
20 geographically to have someone from North Carolina on the PSC.

21 Judge, my particular interest and passion is science
22 and expert issues. Most recently, I've been the co-chair of
23 the science and expert committee for the Chinese drywall PSC
24 before Judge Fallon, along with Ben Gordon, and I've spent the
25 last year and a half working on that litigation virtually

1 full-time. I also was on both trial teams for bellwether
2 trials for that litigation and immensely enjoyed that.

3 I've had the honor to work very closely with many of
4 the people in this room, and I am ready and willing to bring a
5 similar dedication to this litigation, to roll up my sleeves
6 and work. I think there are numerous science issues in this
7 case that will require an extensive amount of work and
8 investigation. I'd be very honored to be appointed, and I'd
9 appreciate your consideration.

10 THE COURT: Thank you very much, sir.

11 Jean -- I'm sorry. Sean Jez. I'm sorry.

12 MR. JEZ: That's okay, Your Honor.

13 Good morning, Your Honor. Sean Jez, on behalf of
14 Fleming & Associates. My number one priority, Your Honor, if
15 you appoint me to the PSC will be the men and women who have
16 this defective hip in their body. As I sit in my office every
17 day I receive calls from men and women throughout the United
18 States who have this hip and are looking for answers as to how
19 this litigation is going to go, when it's going to be over and
20 what they can expect. And no matter who you appoint to this
21 committee, Your Honor, there are going to be -- there needs to
22 be somebody that's going to prioritize those things to help
23 the men and women of this country, the hundreds if not
24 thousands who have these hips, and I stand ready, willing and
25 able to help this court and the PSC to achieve that goal.

1 Thank you.

2 THE COURT: Thank you, Sean, very much.

3 I don't know who is here for Zimmerman Reed.

4 MR. BECKER: Good morning, Your Honor. My name is
5 Tim Becker. My partner, Buckey Zimmerman, unfortunately had a
6 prior engagement and could not arrive.

7 Your Honor, by way of review, our firm has been
8 involved in mass tort for the better part of the last quarter
9 century. During that time, we've been singularly focused on
10 advancing and working within the construct of an MDL. We've
11 been on scores of PSCs in the last five years, have been
12 co-lead or lead counsel in four cases or five cases in the
13 District of Minnesota against companies that do design -- that
14 design medical devices and make pharmaceuticals, including
15 Medtronic, Guidant, Johnson & Johnson and Bayer. The vast
16 majority of those cases have resolved successfully, and the
17 reason for that is because, as you eluded to, we understand
18 two things:

19 First, settlement and resolution discussion need to
20 begin from day one. These are hard cases to settle, and
21 without that discussion you cannot -- without starting that
22 discussion early, you cannot resolve a case.

23 And, second, we understand that you need to work
24 collectively not just with our colleagues, many of whom we've
25 worked with in this room, but also with the Court and most

1 importantly with defense counsel.

2 But not every case can resolve prior to trial, and
3 our firm in the last year alone has demonstrated that we're
4 willing to go to trial. My partner, Ron Goldser, successfully
5 tried the first Levaquin trial to verdict, obtaining almost a
6 \$2 million verdict against Johnson & Johnson, and last year in
7 May, my partner, Stacy Hauer and I, tried a month-long
8 products liability case before Judge Dowd in Akron.

9 We believe, like Mr. Kennedy does, that these are
10 important cases, as I'm sure every other lawyer in this room
11 does. We're in it for the long haul, too, and we would be
12 proud to serve on this PSC.

13 Thank you.

14 THE COURT: Thank you very much.

15 The next, Michelle Kranz, cannot be here. She -- we
16 received -- oh, okay.

17 MS. BORGESS: I'm not Michelle Kranz, but I'm going
18 to cover for her.

19 THE COURT: No, you're not tall enough. But this is
20 working.

21 MS. BORGESS: I'm Pamela Borgess, from Zoll, Kranz &
22 Borgess, in Toledo. I'm here for Michelle Kranz, who
23 unfortunately had an accident this weekend and is recovering.
24 I was also asked to be here to cover for Dianne Nast, from
25 Roda Nast, who is unfortunately on the East Coast stuck in bad

1 weather. But more importantly, I am here for our firms who
2 stand behind Michelle and Dianne and more importantly whatever
3 leadership is selected for this litigation.

4 We respectfully suggest to this court that there are
5 three qualifications that we should be looking for in this
6 litigation:

7 Number one, the ability to work well with others.
8 Number two, MDL experience. And, number three, a commitment
9 to strive for prompt and fair resolution for our clients. But
10 also to be prepared for the longer haul, if necessary. And we
11 believe that our firm meets these qualifications. We have had
12 leadership experience at the highest level of MDLs, and
13 using -- as leaders, we have strove for a unified team
14 approach.

15 For example, in contaminated Heparin, we were able to
16 achieve a leadership structure that was unanimous, and we were
17 able to achieve complete coordination with the state court.
18 Relevant to this litigation, we've worked in Sulzer hips, and
19 we've also litigated separate independent actions involving
20 hips against these defendants.

21 Finally, being from Toledo, we are aware of the
22 expectations of this court, and we thank you for your
23 consideration of our firms.

24 Thank you, Your Honor.

25 THE COURT: And you know how to get to the

1 courthouse.

2 MS. BORGESS: That's right, I do.

3 Thank you, Your Honor.

4 THE COURT: Thanks, Pamela.

5 Fred Longer.

6 MR. LONGER: Good morning, Your Honor. And thank
7 you. It's a privilege to be here and a privilege to be in
8 front of you and your staff.

9 I'm from Philadelphia, and I have just thought that
10 this is my 25th year in practice, Your Honor. I've been doing
11 this for some time. I don't have as much gray hair as
12 Mr. Chesley, but I've been working on cases that include him
13 and many others that I see in this room here today going back
14 I think my first MDL was probably the bone screw, the
15 orthopedic bone screw litigation before Judge Bechtle, and
16 I've had the privilege of working with Mr. Tucker in that
17 litigation. And as we've gone on, I've done other cases also
18 in the Eastern District, including the Fen-Phen litigation.
19 Which, successfully resolved the bone screw case, successfully
20 resolved.

21 We've done cases in front of Judge Fallon, Propulsid
22 litigation, the Vioxx litigation, Chinese drywall litigation.
23 I've worked with a number of people here who I consider my
24 friends and colleagues, and we've successfully resolved those
25 litigations.

1 I think I bring to Your Honor a tremendous amount of
2 experience going forward in those cases, and I look forward to
3 working with you, my colleagues, if I'm appointed to the
4 committee, as well as defense counsel, as well, to try to
5 successfully resolve this litigation.

6 THE COURT: Thank you very, very much.

7 MR. LONGER: Thank you, sir.

8 THE COURT: Felicia Stern.

9 MS. STERN: Good morning, Your Honor. I'm from
10 Bernstein Liebhard, in New York. Normally I like to be guided
11 by the principle that modesty is a virtue, but vying for a
12 coveted position among such talented counsel and being a new
13 face to this mass torts bar, I feel like I have to highlight a
14 few of my qualifications.

15 I have 18 years of experience in large-scale complex
16 civil litigation. I had the privilege of clerking on the
17 Second Circuit. I spent the first 10 years of my career at
18 Simpson Thatcher representing large defense companies,
19 including pharmaceutical corporations. I've spent the last
20 eight years on the plaintiffs bar at Bernstein Liebhard
21 representing injured shareholders and consumers in class
22 actions. In that time, I've been able to recover hundreds of
23 millions of dollars for my clients.

24 In cases that I've worked on on both sides of the "V"
25 I've been involved in massive amounts of discovery involving

1 tens of millions of pages, coordination among counsel and
2 multiple parties, negotiated and drafted complex settlement
3 agreements.

4 I am supported by a well-respected firm, Bernstein
5 Liebhard in New York, who has been appointed by the National
6 Law Journal to the Plaintiffs Hot List for the last eight
7 consecutive years. My firm has both the legal talent and the
8 financial resources to see this litigation through.

9 Equally important, and something that I wasn't able
10 to get across necessarily in the two-page application, is my
11 commitment to these cases. My firm has over 60 clients. We
12 filed one case that's already been transferred to the MDL.
13 I've spent the last few months since the recall talking to
14 these clients, speaking with their doctors, speaking with
15 hospitals, speaking with other lawyers. I am absolutely
16 committed to doing what's best for them here.

17 I recognize that I'm a new face to the mass torts
18 bar. I have so relished the opportunity to be exposed to
19 something different, and I hope that Your Honor can see the
20 benefits of allowing a fresh face to sit at the table,
21 especially one who's so eager and willing to work and to work
22 hard.

23 Thank you.

24 THE COURT: Thank you very much.

25 J.W. Phebus. Ms. or Mr. Phebus.

1 All right. Gregg Borri. Did I mispronounce your
2 last name, sir?

3 MR. BORRI: Yes, Your Honor, but that's -- I'm on
4 good company. No, it's Borri.

5 Oh, you did, I'm sorry.

6 THE COURT: I got it right.

7 MR. BORRI: My name's Greg Borri. I'm from New York
8 City, Your Honor.

9 I won't repeat what I said in my application about
10 background and experience. Suffice it to say I have 30 years
11 of litigation experience on commercial and products experience
12 on a plaintiff and defense side. I've handled and disposed of
13 thousands of asbestos cases from a defense side for Fortune
14 500 companies. I bring whatever insights that does bring, and
15 I think it's a lot. I can see what drives litigation from the
16 defense point of view, yet I have enough plaintiff's
17 experience in products cases that I think I can, in terms of
18 the science and in terms of the development of expert
19 witnesses, I could be of service to the steering committee.

20 What I've done beyond background is I've got involved
21 in these cases on the early side. Following the publication
22 of the March article in the New York times I started to look
23 into it. So I have already retained and was getting cases
24 before the recall. The experts from the United Kingdom, Dave
25 Langton and Tom Joyce, who I think the United Kingdom is going

1 to be sort of the epicenter of the science of this. Those
2 two -- Langton's an orthopedic surgeon still in residency, but
3 he's also getting a Ph.d. in sort of biomechanical engineering
4 under the tutelage of Joyce. They have looked at more ASRs
5 than anybody. They've looked at BHRs, which is the Birmingham
6 product, and they've done the publications. They're looking
7 at the -- I mean, they're looking at chromium levels,
8 surrogates for wear, and really they're way ahead of anything
9 that's been done in the United States.

10 So -- and I -- to carry that a little farther,
11 I've -- not only are they looking at cases for me, but I took
12 the step of introducing -- I have a couple of cases filed with
13 Mr. Seeger's firm in California, revision cases. And I took
14 the step of introducing or arranging for the introduction of
15 Dr. Langton to Mr. Seeger's firm and Mike Kelly and Matt
16 Davis, for the Walkup firm, who are going to be leaders in the
17 California litigation.

18 And as I said, I've got two cases in the California
19 litigation, but the bulk, the other cases I've filed, I have
20 six cases I just filed in the last couple weeks, revision
21 cases, which are federal cases which will be to the MDL. I've
22 got about seven or eight more revision cases which we are in
23 the process of filing, and I'm going to -- they all will be
24 federal, and they will go to the MDL, with one exception,
25 which is a case where the doctor will be involved also, which

1 will be a state court case.

2 I think -- so where I think I can be of value, Your
3 Honor, it's -- I'm a somewhat smaller firm, although I think I
4 point out in my papers I have the resources to stay with this
5 in the sense that I'm not entirely -- I have a commercial
6 litigation practice also, as well as a products practice.
7 Where I think I can really add to the mix here is the
8 development of the expert testimony, and I think that's in
9 addition to the fact of the issue of what Johnson & Johnson
10 knew and when they knew it. There's definitely going to have
11 to be development of expert testimony and protocols even if
12 you want to do a matrix-type settlement, and I think I can
13 contribute a lot to that. And you're going to have to develop
14 that to be in a strong position, a strong enough position to
15 get a worthwhile settlement for the clients.

16 Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 Daniel Lapinski.

19 MR. LAPINSKI: Good morning, Your Honor. Daniel
20 Lapinski, from the Wilentz firm, in Woodbridge, New Jersey.

21 I just wanted to bring up the point, Your Honor, that
22 my firm is a New Jersey-based firm where Johnson & Johnson's
23 world corporate headquarters is located. In addition to the
24 MDL, there's likely to be a large number of cases filed into
25 the state of New Jersey.

1 Those who have known me and have worked with me,
2 although I can't stand here and speak of the amount of
3 experience that others have, I've always been known as one
4 that works hard and plays well with others, and I'm looking
5 forward to the opportunity to be able to coordinate between
6 the federal and state.

7 Other than that, I'll stand on my submission, Your
8 Honor. Thank you.

9 THE COURT: Thank you very much, sir.

10 Daniel McDonald.

11 MR. McDONALD: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. McDONALD: Dan McDonald, from Fort Worth, Texas.

14 Your Honor, since our submission we have filed our
15 first case directly in the Northern District of Ohio. We have
16 many more to file. Your Honor, I'm qualified to serve and
17 committed to be a good steward of the plaintiffs' interest if
18 appointed.

19 Other than that, I'll stand on my submission.
20 Pleasure to meet you.

21 THE COURT: Thank you very much, sir.

22 Lawrence Gornick.

23 MR. GORNICK: Good morning, Your Honor. My name's
24 Larry Gornick, from the law firm of Levin, Simes, Kaiser &
25 Gornick, in San Francisco. Thank you for hearing from me

1 today. This is truly humbling to be making this application
2 in front of all these esteemed lawyers.

3 Your Honor, my application is based on three things,
4 experience, commitment and work ethic. My experience hasn't
5 changed much since I submitted the application three or four
6 weeks ago, so I'm not going to belabor that.

7 Evidence of my firm's commitment, there's a few
8 things there. One is we now have agreed to represent more
9 than 150 plaintiffs with ASRs. Over the last several months,
10 I've personally spent countless hours meeting with experts,
11 talking with experts on the phone, retaining experts to help
12 us in this litigation. I've introduced some of those experts
13 to a number of people in this room.

14 In addition to that, Your Honor, I've personally
15 traveled to England to meet with some of the leading experts
16 in the world, some of whom have been mentioned here. My staff
17 has pulled together what I believe to be most of the English
18 language literature that's going to be related to this. I've
19 shared some of that work product with people in this room.

20 Your Honor, I could personally tell you that not only
21 am I completely committed to this litigation, but my firm is.

22 Last, Your Honor, work ethic. I think work ethic
23 obviously is key to this. As evidence of what me and my firm
24 can do when called upon is the Gadolinium litigation, where I
25 currently serve on the PSC. There, because of a somewhat

1 unique procedural rule in California, I had a case set to go
2 to trial against one of the defendants which wasn't the
3 Defendant that was being focused on by the PSC.

4 In short, Your Honor, my firm, in nine months, took
5 90 percent or more of the corporate depositions, the expert
6 depositions and basically took that case from the point of
7 document discovery to the eve of trial in just nine months.
8 So we do have the demonstrated work ethic when called upon,
9 and we would be honored to serve on the plaintiff steering
10 committee here, and I believe we would make a valuable
11 contribution.

12 Thank you.

13 THE COURT: Gadolinium is before Judge Polster; is
14 that correct?

15 MR. GORNICK: Yes, it is, Your Honor.

16 THE COURT: Thank you.

17 Philip Bohrer. Mr. Bohrer, B-o-h-r-e-r, in case I'm
18 . . .

19 All right. Steven Johnson.

20 MR. JOHNSON: Good morning, Judge Katz.

21 THE COURT: Good morning.

22 MR. JOHNSON: My name's Steven Johnson. I'm from
23 Fort Worth, Texas. I, too, was a law clerk for a federal
24 judge when I began approximately 20 years ago.

25 I've been involved in a number of these hip cases,

1 including the Sulzer hip implants, as well as the Zimmer Durom
2 hip implant cases over the years.

3 I primarily rely on my papers that I've already
4 submitted. The only thing that really distinguishes me among
5 the speakers I've heard so far is that I've been working on
6 these cases for over a year now. I've gotten experts
7 developed to a very high level that are going to be
8 significant in this case, and I think that as a result of the
9 work I've already done, I can assist in speeding along the
10 resolution of these cases, and therefore I would appreciate it
11 if you would consider me for the MDL PSC.

12 THE COURT: Thank you.

13 MR. JOHNSON: Thank you, Judge.

14 THE COURT: Greg Davis.

15 MR. DAVIS: Good morning, Your Honor and staff.

16 THE COURT: Good morning.

17 MR. DAVIS: It's a pleasure to be here. My name's
18 Greg Davis. I'm from Montgomery, Alabama, the firm of Davis &
19 Tyler. We currently have two cases filed in front of Your
20 Honor. We have 12 cases that we're about to file, and we have
21 interviewed over a hundred potential clients there in
22 Montgomery and Georgia. And we're here because we want to be
23 a part of this litigation. We have listened to the clients,
24 we've listened to their fears, their concerns, their
25 unfamiliarity with the MDL process. We want to be in this

1 litigation for the long haul, regardless of whether we receive
2 a position here.

3 We like to work, we've got good work ethic, and I
4 pledge to Your Honor that if you put us in a position, that
5 we'll work hard and try to do the best for the clients.

6 Thank you.

7 THE COURT: Thank you very much, Mr. Davis.

8 Marc Stevenson. Mr. Stevenson.

9 Tom Anapol.

10 MR. ANAPOL: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. ANAPOL: Thomas Anapol, from Philadelphia,
13 Pennsylvania, from the law firm of Anapol Schwartz.

14 As I look around the room and see a lot of familiar
15 faces and look at some of the magnitude of the attorneys in
16 this room, I think Your Honor has a daunting task in front of
17 him in selecting this panel.

18 I'm not going to go over my qualifications which are
19 part of my papers that have been submitted. I just want to
20 touch on two things. I, too, have been looking at these cases
21 since before the recall. I've been talking with, meeting with
22 these clients, hearing their stories, feeling their pain, and
23 have become entrenched and really passionate about this
24 litigation, so much so that I sought leadership within AAJ and
25 was fortunate enough to be appointed as one of the co-lead

1 chairs of that litigation group specific to Depuy.

2 As far as listening to Your Honor, you talked briefly
3 in the midstream of the hearing about the settlement process
4 and the importance of that. So the only thing I wanted to add
5 to my, I guess, qualifications is the work they did in Guidant
6 and Medtronic, where I was acutely involved in the allocation
7 process and really was able, with a lot of the attorneys in
8 this room, to get our arms around that inventory as it was
9 settling to figure out what these cases were worth and who
10 should be entitled to what. And I played a fairly important
11 role I think in that process, and I hope if I am selected by
12 Your Honor to do the same in this litigation.

13 And I thank you for your time.

14 THE COURT: Thank you, sir, very much.

15 Michael Heaviside.

16 MR. HEAVISIDE: Good morning, Your Honor. My name is
17 Mike Heaviside. I'm from Washington, D.C, and my firm is
18 Ashcraft & Gerel. We have offices in the District of
19 Columbia, Maryland and the Commonwealth of Virginia.

20 Over the past 20 years or so, we've been involved in
21 many MDLs, being prescription drugs, over-the-counter drugs,
22 medical devices. For the specifics of those enterprises, I
23 would respectfully refer you to our submission.

24 I suppose what -- and we've had the honor to work in
25 leadership positions, discovery positions, expert committee

1 positions, settlement positions, trial counsel positions. And
2 over the course of the years, we've had the pleasure of
3 working with many, if not most, of the attorneys in the room,
4 both plaintiffs and defense counsel.

5 And I suppose the only point I want to make is I'm
6 absolutely confident that these attorneys with whom we've
7 worked would confirm our sincere and resolute commitment in
8 any case in which we're involved to getting the work done, and
9 I think that's what we bring to this case.

10 Having said that, I appreciate your consideration,
11 and I would rely on our submission.

12 THE COURT: Thank you very much.

13 MR. HEAVISIDE: Thank you.

14 THE COURT: Ari Kresch. Well, there's more than one.

15 MR. KRESCH: Good morning, Your Honor. My name is
16 Ari Kresch, from Detroit, Michigan. And my partner, Alyson
17 Oliver.

18 MS. OLIVER: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. KRESCH: First of all, I wanted to acknowledge
21 and commend the Court for an amazingly efficient job in
22 hearing so many pitches from so many qualified and talented
23 law firms. It's gone smoothly, and hopefully with the
24 guidance of this court, the MDL and the steering committee
25 will operate as efficiently.

1 One of the things that I bring to the table in this
2 litigation is that we are the point of first contact for many,
3 many of the clients that come to the law firms here. We've
4 worked with more than a dozen firms. We've already intaked
5 more than 2000 Depuy hip inquiries. And until now we've not
6 been directly involved in the steering committee. We've got a
7 lot of skin in the game in this litigation, and we want to
8 take a more active role.

9 We are very heavily technology oriented, very
10 efficient. We have a six-to-one staff ratio of lawyers versus
11 support staff, and we understand the efficiencies that are
12 involved in having paralegals and law students do work. I
13 think that our commitment to this project can be seen over the
14 years. We've been working with many of the firms here for
15 more than 10 years. We're about an hour away from your
16 courtroom, Your Honor. And in the interest of efficiency, we
17 both drive Priuses. We can get there in under two gallons of
18 gas.

19 And I want to thank you for your consideration.

20 MS. OLIVER: Thank you, Your Honor.

21 THE COURT: Thank you very much for being here.

22 I must say, to interrupt again, it warms the cockles
23 of this old judge's heart to hear how many cases are going to
24 be filed over the next months and years in this litigation. I
25 hope to outlive them.

1 Next is Larry Jones.

2 MR. JONES: Good morning, Your Honor. Larry Jones,
3 from Louisville, Kentucky. I'm here today on behalf of Brian
4 Boone and approximately 200 others that I represent.

5 Judge, I respectfully apply for a position on the
6 committee. And in doing so, I'd like to highlight that I
7 think the best PLC members possess three skill sets. I think
8 they possess the experience and intellect to handle a complex
9 case, I think they possess the ability to work well with
10 others, and I think that they also possess the ability to
11 adequately serve the constituency that they represent. The
12 individual lawyers represent the clients. The PLC, their
13 constituency is the lawyers.

14 So if I can briefly go over the experience and
15 intellect. I don't like to brag about myself, but I'll
16 highlight one -- probably my proudest accomplishment, and
17 that's my recent service as a Special Justice on the Kentucky
18 Supreme Court. That was an appointment by the Governor in
19 Kentucky. When there's a recusal situation, the Governor,
20 according to the Kentucky Constitution, appoints someone to
21 sit as a Special Justice. I've recently completed my service,
22 or actually after I write my opinion I'll be finished.

23 The ability to work well with others. I think that
24 my active role in leadership positions in state and local bar
25 associations, I've been a member of my Board of Governors of

1 my state TLA for several years, I've been on the Board of
2 Governors of my local bar association. In addition, the
3 Governor in Kentucky has saw fit to appoint me to the Kentucky
4 Higher Education Assistance Authority, Kentucky Student Loan
5 Corporation, which manages \$8 billion in student loans.

6 Finally, the ability to adequately serve the
7 constituencies -- the constituency that the PLC represents.
8 Judge, many times in these MDLs, the individual lawyers feel
9 like they lose control of their cases. I think that's because
10 there's a lack of communication many times. I am a -- not one
11 of the usual suspects. I bring a fresh perspective to the
12 cases, and I think that I've been on the side who I've felt
13 neglected because I didn't know what was going on in the
14 litigation.

15 Therefore, Judge, I vow to you that if I'm selected
16 for a position on the committee, that I will communicate with
17 our constituency.

18 Thank you.

19 THE COURT: Thank you very much.

20 James Onder.

21 MR. ONDER: Your Honor, Jim Onder, from St. Louis,
22 Missouri.

23 Sir, our firm and myself are firmly committed to this
24 litigation, having undertaken to represent over a hundred
25 confirmed Depuy hip implant clients. It's in their interest

1 that I realize the effect~-- the need for effective leadership
2 in this litigation and offer my services to this court and to
3 this litigation. I think our firm and myself offer a number
4 of leadership aspects which will be helpful.

5 First, obviously our background in MDL litigation.
6 Most recently, our firm being appointed co-lead counsel in the
7 Yaz birth control litigation, as well as my position as
8 executive committee of the Bayer aspirin class action
9 litigation.

10 We've handled all aspects, including obviously
11 discovery, medical and science, law and briefing, but in the
12 area of science I think our firm holds particular expertise.
13 In addition to family relationships in the medical field, my
14 brother is an MDJD with the firm, board certified in the field
15 of allergy and immunology. These Depuy cases have issues
16 involving metal hypersensitivity and allergic reaction to the
17 Depuy products which I think will prove vital in this
18 litigation.

19 Finally, in an arena that can be quite competitive
20 and political, I think I offer a unique Midwestern
21 perspective. Those values of the Midwest I think tend to draw
22 people together toward a common goal to working together.
23 I've also developed a reputation of coming up with unique and
24 creative solutions in cases where people swore up and down the
25 cases could never be resolved or settled.

1 I think thinking outside the box is important,
2 especially in a situation like this, where Depuy has taken a
3 unique and creative approach to their recall and their
4 attempts to compensate the injury victims. I think our unique
5 and creative approach to resolution will also prove helpful to
6 this litigation. I offer my services to the Court and
7 appreciate your time.

8 Thank you.

9 THE COURT: Thank you very much.

10 Mike London.

11 MR. LONDON: Good morning, Your Honor.

12 THE COURT: Don't start with me, Mr. London.

13 MR. LONDON: I'm not going to start with you, Your
14 Honor. I only have two minutes.

15 Michael London. I currently represent three
16 plaintiffs with filed cases, and we represent many more that
17 we're looking at.

18 Your Honor, I seek a position on your plaintiff
19 leadership committee as liaison counsel, steering committee
20 member, or frankly in whatever way Your Honor thinks I can
21 serve the plaintiffs bar and frankly the Court in this
22 litigation.

23 Like my colleague Chris Seeger said, you know, it's
24 difficult to stand in a room like this and stand before a
25 court and, you know, speak about your qualifications. I

1 submitted a letter, as everyone else did, and I'm in a room
2 here with, you know, truly terrific and extremely talented
3 lawyers.

4 Because this is an application process, I do want to
5 highlight a few of the qualifications and I think successes
6 that suggest that I should and am fit for this position. I
7 have been fortunate enough to be appointed to serve as
8 leadership, as lead counsel or liaison counsel in five major
9 national complex pharmaceutical and medical device
10 litigations. In addition to that, I've served as just simple
11 steering committee members in seven other major pharmaceutical
12 and class action litigations. I firmly believe that my skills
13 in coordination and cooperation, as well as, of course,
14 litigation, make me and my firm a suitable member of this
15 committee.

16 I also, Judge, without overstepping my two minutes
17 here, do want to suggest -- or my 30 seconds -- that the PSC
18 be experienced, that the PSC and the members be willing to
19 work, and I think everyone here will. I think that it's
20 important that the PSC members represent plaintiffs, and I
21 think many of them do. I think that the PSC must be able to
22 work together, have resources and become a cohesive team,
23 which frankly might be the hardest part that Your Honor has to
24 look to when you're picking from 83-odd folks. It has to be a
25 good team in order to accomplish what our clients need, the

1 Court needs. And out of time.

2 I thank Your Honor. I certainly -- I don't have time
3 to go into why I meet those qualifications, but I've certainly
4 worked with the Defendants here in countless litigations, and
5 defense counsel. I thank the Court for its time.

6 Take care.

7 THE COURT: Thank you, Michael.

8 Ed Wallace.

9 MR. WALLACE: Unless Your Honor has any questions,
10 I'm going to rest on my papers.

11 THE COURT: Let me check, see what I . . .

12 I think not. Thank you very much.

13 Sam Davis.

14 MR. DAVIS: May it please the Court. Good morning,
15 Your Honor. My name is Sam Davis. I am from the small law
16 firm of Davis, Saperstein & Salomon, in Teaneck, New Jersey.

17 I was reminded this morning in riding up the elevator
18 with Mike Conner that it was 15 years ago that we had our
19 first J&J case. And, of course, back then the issue was bad
20 plastics, defective plastics. Since that time, Judge, there
21 have been many, many causes of failure in the devices that
22 over a million Americans a year now use to implant in their
23 bodies. But never, never has pain in the acetabulum been
24 associated with the kind of problems that we're seeing in this
25 case.

1 Your Honor, you pointed to something that is going to
2 become a very important issue in this case, and that is for
3 every one of the retained claims that our client -- that the
4 fine lawyers in this room have now, there may be four or five,
5 there may be 10 times that many in the years to come. Because
6 for the first time with this ASR Depuy Johnson & Johnson
7 product, there is the specter of people who are totally
8 asymptomatic, needing justice, needing help for harm that may
9 not happen while we are still together.

10 So it's a very important issue. It's about science.
11 Judge, it's 10 years to this month that I formed an
12 organization within the American Trial Lawyers Association
13 then. It was called -- it is called the Orthopedic Implant
14 Device Litigation Group. We are the forward radar for that
15 organization. We fulfilled an important promise, and it was
16 in 2003 that we brought this issue public in the Bar. We
17 brought the issue of metal on metal. And it was last October
18 that a child went through when we read in the Journal of the
19 American Orthopedic Association, JBJS, of a doctor who, in
20 fact, was stricken with lead poisoning from this.

21 Judge, these are some of the most talented and
22 tenacious defense lawyers. There are no gimmies on science. I
23 offer my services humbly in the science of arthroplasty, and
24 if -- I would be honored if the Court would accept my
25 assistance in this litigation.

1 Thank you so much.

2 THE COURT: Thank you.

3 Five minutes.

4 (A recess was taken from 11:12 a.m. to 11:21 a.m., after
5 which the following proceedings were had:)

6 THE COURT: Thank you very much. Please take your
7 seats, if you can find them. Thank you, ladies and gentlemen.
8 Mezekiah Sistrunk.

9 MR. SISTRUNK: Good morning, Your Honor. I'm
10 Hezekiah Sistrunk. I'm an attorney from Atlanta, Georgia, and
11 I am with The Cochran Firm. I've the chairman of the board of
12 partners of The Cochran Firm and head the Atlanta office of
13 The Cochran Firm.

14 In listening to all the lawyers today and trying to
15 figure out what to say to try to get your attention as to who
16 should be on this PSC, I thought all the things you've talked
17 about today. You've talked about diversity, you've talked
18 about team work, you've talked about expertise, you've talked
19 about compassion for clients and commitment to the practice
20 that we have. How do you do that? I've submitted papers to
21 tell you what I've done for 28 years. I've been sitting where
22 these gentlemen have sat and ladies have sat representing
23 corporations. I now represent consumers. I've done them all.

24 I'm also a mediator. I do that. I serve on my state
25 board's commission to determine ethics for lawyers in the

1 state of Georgia. I've done that. You've talked about that
2 today.

3 But let's tell you about me, because you're going to
4 have to decide about me, not just about other stuff. I'm just
5 an old 60-year-old guy with no hair -- not gray hair, no hair,
6 from a farm community in South Carolina. I'm a Vietnam Era
7 veteran. I'm an ex-athlete, football player, which is kind of
8 obvious. So I understand about teamwork, Judge.

9 I was a partner in a defense firm, teamwork, because
10 if you don't play team in a defense firm you lose it. I'm now
11 one of the senior partners in The Cochran Firm, probably one
12 of the largest plaintiffs firms in America. We have offices
13 in 23 cities in 20 states. And I think we're perfectly poised
14 not just to bring the expertise outlined in our submission,
15 but to deal with clients across the board. Because I feel
16 like based on where I'm from and what I've done in life, but
17 for God and a few other things, I could be one of these folks.

18 That's the compassion I bring to this practice.
19 That's the compassion I brought to the hundreds of trials I've
20 tried and the cases I've mediated, settled and defended for
21 the last 28 years.

22 Thank you. I hope you consider me and my firm
23 favorably, and I appreciate your time.

24 THE COURT: Thank you, sir.

25 And you might help when the Court needs some

1 strong-arming of some of the lawyers involved who may be
2 recalcitrant.

3 MR. SISTRUNK: Thank you, Judge.

4 THE COURT: Thank you very much, sir.

5 Zollie Steakley.

6 MR. STEAKLEY: Very nicely done on the pronunciation.

7 I was very impressed.

8 THE COURT: Thank you.

9 MR. STEAKLEY: You may not believe this, but I used
10 to be a nose guard for the University of Texas, so -- oh, you
11 don't believe that, because it's not true. Not even close.

12 THE COURT: He played center guard, center of the
13 line.

14 MR. STEAKLEY: Not a chance. I would definitely need
15 a hip, as well.

16 May it please the Court, and good morning. My name
17 is Zollie Steakley. I'm from Harrison, Davis, Steakley, in
18 Morrison, Texas. Appreciate the honor to be here.

19 I filed my application on the theory of nothing
20 ventured, nothing gained, or the why the heck not. I really
21 want this position, but I've never been on a plaintiff
22 steering committee. I've been a member or a part of what
23 feels like every MDL in the last 10 years, so I know how it
24 works, but I've never been on nor applied for a position. And
25 so I wanted to do that now, because there's a first time for

1 everything. And I hope you see from our application that I
2 feel like we're imminently qualified. I teach law school, I
3 teach product liability, and I've been doing this for long
4 enough now that I think I could contribute to your MDL and to
5 the PSC. So you would pick me if you want a fresh face and
6 some energy, because I know we would also, just like everybody
7 else, work tirelessly for the successful resolution, and I ask
8 for your appointment.

9 Thank you very much.

10 THE COURT: Thank you very much.

11 I should state that we've heard from some of you some
12 questions with regard to receipt of documents from you. Our
13 fax machine, government owned and operated, has been
14 malfunctioning. I just made a call during the break and find
15 out we now have a new machine in chambers which is, quote,
16 guaranteed, unquote, to be operative.

17 Thank you.

18 Either David Shelton, or Rick Davis or both.

19 MR. DAVIS: Good morning, Your Honor. Rick Davis,
20 from Jackson, Mississippi. I'm here on behalf of myself and
21 David Shelton. David couldn't be here today. He's in a
22 deposition in the welding fume litigation.

23 I'll be brief, as well. I want to highlight one
24 point from our submission letter, and that is David Shelton
25 and I have tried seven of the last nine bellwether trials in

1 the welding fume MDL. That's in front of Judge O'Malley in
2 the Northern District of Ohio. I highlight that, Judge,
3 because -- and those trials are in the last four-and-a-half
4 years.

5 I highlight that, Judge, because, as everyone in this
6 room knows, as well as Your Honor, the dedication and
7 commitment and consumption of energy and time that it takes to
8 prepare and try seven trials in that period of time is -- it's
9 extensive. I highlight that to tell this court that if
10 selected to serve in any capacity in this MDL, we'll bring the
11 same level of commitment to the Depuy litigation, and we hope
12 we're given an opportunity to do that.

13 I'd also add, Judge, that in those trials, we've had
14 an opportunity to build relationships with John Climaco, Mike
15 Papantonio, Eric Kennedy, Phil Ciano, Andy Goldwasser, other
16 individuals that you've heard from today, all imminently
17 qualified to serve this MDL.

18 I thank you for your time, Judge.

19 THE COURT: Thank you very much.

20 Bradley Honnold.

21 MR. HONNOLD: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. HONNOLD: My name is Brad Honnold, from Kansas
24 City, the law firm of Goza & Honnold.

25 The real reason I'm standing before you today, Your

1 Honor, is our clients. That doesn't make me unique, but it
2 makes me very much alike and akin to the others that have
3 stood before me.

4 Over the past six months, we have spoken to hundreds
5 of these individuals and have learned what they've gone
6 through and looked at their medical records and talked to the
7 orthopedic surgeons, spoken to their spouses and to their
8 children. And the natural instinct and reaction that we, as
9 lawyers, have is how do I help, what do I do, where do I go,
10 who do I talk to, when do I start. And the answers are I hope
11 we can start soon, today, work with all of the fine lawyers
12 that have spoken before me today.

13 Our firm wants to be involved in this litigation
14 because of our clients. We feel that we need to be involved
15 in the development of this case on their behalf.

16 Your Honor, in addition to the letter I submitted, I
17 would urge you that our firm is willing to take on any and all
18 work. We would love to look at documents, we would love to
19 take depositions of detail reps. There's not a lawyer that
20 has spoken in here that I would not be willing to work
21 cooperatively with on any task and take direction from if we
22 would have the opportunity to work on any of the various
23 committees put together to -- in the prosecution of this case.

24 Your Honor, you have mentioned the concept of
25 resolution, as have others. I look around this room, and the

1 relationships that I have built with many of the people in
2 this room came from resolution efforts that I was involved
3 with before I was representing injured folks, and I was at a
4 law firm that represented corporate defendants. I spent much
5 of my time between 1995 and 2005 working on innovative
6 programs of resolution. That included the Sulzer case, which
7 I worked closely with Eric Kennedy on, all aspects of that
8 case, from the beginning through the final fairness hearing,
9 the Baycol litigation. I would commend the Court to speaking
10 to Judge Davis, who oversaw our settlement efforts there. PPA
11 litigation, all innovative settlement programs that I think
12 were carried out efficiently and effectively.

13 Finally, Your Honor, we have filed a case, an injury
14 case. We have filed a medical monitoring case under Missouri
15 common law, under that theory. Because of that, we feel
16 especially compelled to participate in this case. So that
17 case is worked up and developed to its greatest potential.

18 Thank you for your time, Your Honor.

19 THE COURT: Thank you very much, Brad.

20 Esther Berezofsky.

21 Close?

22 MS. BEREZOFSKY: Very close. Excellent.

23 Good morning, Your Honor. I'm Esther Berezofsky,
24 from the law firm of Williams, Cuker, Berezofsky, with offices
25 in Philadelphia and New Jersey.

1 As with most of the counsel who have presented before
2 Your Honor, I've been -- I've held leadership positions in
3 various mass tort litigations as liaison counsel in both New
4 Jersey and Philadelphia. And as such, have been very involved
5 in the coordination of state and federal court efforts. I
6 have also worked with Susan Sharko and Bob Tucker in both
7 litigating and resolving cases in various other litigations.

8 But, however, what may set me apart somewhat from the
9 many qualified counsel in this room, in addition to being one
10 of the small but growing number of women seeking these
11 positions is the fact that my firm has actively litigated,
12 settled and resolved and been involved with Depuy hip implant
13 cases in the past. In that regard, we have conducted
14 significant discovery, depositions of Depuy's corporate
15 personnel and representatives that were responsible for both
16 the design, the marketing, as well as the navigating of the
17 FDA process of the Depuy hip implant devices in the past.

18 In addition, and lastly, my experience as a
19 psychologist often serves me well in dealing with the multiple
20 personalities that are often present in these types of
21 litigations.

22 And with that, I thank you, Your Honor, for
23 considering me.

24 THE COURT: Thank you.

25 Steve Skikos.

1 MR. SKIKOS: Good morning. I was really hoping by
2 the time we got to the seventies, that I wouldn't have to go,
3 because we would have seen the white flag by Mr. Tucker and
4 Ms. Sharko, but maybe they left it at home.

5 Whether or not I'm appointed, I really understand the
6 importance of coordinating our state, California, with the
7 great trial lawyers we have there, with you. We learned that
8 lesson in Ortho. It was very successful, and I hope we can do
9 that here.

10 Thank you.

11 THE COURT: Thank you very much, Steve.

12 Amy Solomon.

13 Christopher Placintella. No, I put an "N" in there.
14 I'm sorry.

15 MR. PLACITELLA: You wouldn't be the first.

16 Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. PLACITELLA: It's humbling to stand before the
19 Court in the presence of probably some of the greatest lawyers
20 in our country, and I feel privileged to call them many of
21 my -- as friends and colleagues. I filed cases in both the
22 MDL and in New Jersey, and in that sense I think I'm in a
23 unique position to assist the Court. I grew up in Middlesex
24 County, New Jersey, the home of Johnson & Johnson, and spent
25 the majority of my practicing years there, and I look forward

1 to the opportunity to help coordinate the litigation in New
2 Jersey with Your Honor's efforts. And after that I will stand
3 on my papers.

4 Thank you.

5 THE COURT: Thank you very much, sir.

6 Whoever may be here from Keefe & Bartels.

7 MR. KINCANNON: Good morning, Your Honor.

8 THE COURT: Good morning.

9 Sorry, there are three names, and I don't want to
10 call the wrong one.

11 MR. KINCANNON: I understand.

12 The partners at my firm were unable to be here. My
13 name is Josh Kincannon, from Keefe Bartels, so they sent the A
14 Team.

15 THE COURT: The underpaid A Team.

16 MR. KINCANNON: That's right.

17 I hasten to say that despite my two-week-old beard
18 that I keep telling my wife is going to look fantastic when it
19 comes in, I may be the youngest attorney here. So as many of
20 the attorneys here, who I am quite in awe of and humbled by, I
21 thought of ways that I might distinguish myself and my firm as
22 I ask to be appointed to this committee and for my firm's
23 appointment.

24 So I had fresh face written down, that got crossed
25 off, and energy got crossed off, and nose guard at UT got

1 crossed off.

2 But what I'd like to stress, and then I won't belabor
3 the Court, and I'll rely on my papers, is that my firm and I
4 have a great deal of experience litigating hip and knee
5 implant cases. We've been doing this for my 11 years on the
6 bar. I've done almost nothing but knee and hip implant
7 litigation. We run a department within my firm dedicated to
8 knee and hip implant litigation, of which I chair.

9 I run my own separate website -- I won't plug it
10 here. It's in my papers -- that's dedicated simply to
11 informing clients and acquiring clients who have need who have
12 suffered from defective knee and hip implants.

13 I've worked with Ms. Sharko before. I've litigated
14 against the major manufacturers before. I've taken personally
15 the depositions of the head of research and development for
16 Stryker Orthopedics and for Zimmer, their competitors. I
17 haven't gotten to Depuy yet, but I will.

18 And I see I have 30 seconds left. I will say that
19 we're a New Jersey firm. We're happy to coordinate with -- at
20 the state level, because undoubtedly we will be there due to
21 Johnson & Johnson's presence there.

22 And my final thought is just that we are willing to
23 work in any capacity that the Court seems -- deems fit for us,
24 but we want to work, we want to work hard. This is the
25 litigation that we do. We've done class actions, we've done

1 mass tort, we've been a part of MDLs, but this is really our
2 bread and butter, and we feel we can add a great deal of value
3 to this litigation.

4 Thank you, Your Honor.

5 THE COURT: Thank you very much. You look pretty
6 young anyway.

7 The next was Dianne Nast, and as heard I think from
8 Pam Borgess, her plane was canceled. We received word of that
9 late yesterday or early this morning, and we'll move on.

10 The next is Don Berrett.

11 We'll move on.

12 And the next is, in order of gender preference,
13 Janine Avila, or Steve Collier, or both.

14 MS. AVILA: This is beauty before age.

15 MR. COLLIER: May it please the Court.

16 As you know, I'm with the law firm of Connelly,
17 Jackson & Collier, here with my partner Janine Avila. I am
18 from Toledo, and in all likelihood our expectation is we will
19 still be in Toledo when this litigation concludes. I say that
20 because from your opening comments, I believe we have a full
21 appreciation of this court's philosophy on how attorneys
22 should conduct themselves with each other and before the
23 Court, and I believe that we will bring to this litigation
24 that understanding.

25 Our firm, Connelly, Jackson & Collier, and the

1 precursor, Connelly, Suda & Jackson, has practiced in this
2 federal court for over 30 years. I began with Bill Conelly
3 and Rich Jackson, who are prominent trial lawyers before this
4 court. And one thing that they taught me and they taught
5 Janine is that integrity and trust are important. And while
6 your client's interests are obviously important and you're an
7 advocate for your client, the integrity and the trust is going
8 to go on, and it's going to be there after the litigation
9 concludes. And I think that we bring that.

10 We bring a long history of trial experience in the
11 court. We are working with Mr. Rick Shulty, from Dayton,
12 Ohio, on these cases. Our proximity to the courthouse could
13 only be challenged by Mr. Arnold. We have not done a survey,
14 so it's within a block or two. We would be happy to serve in
15 whatever leadership capacity this court would find
16 appropriate.

17 And, finally, I'd say that our introduction to the
18 mass torts is more recent with the Ortho Evra litigation. We
19 notice that there's a shortage of attorneys in this area, and
20 so we think that our addition would be very important.

21 Thank you, Your Honor.

22 THE COURT: Thanks, Steve.

23 John Restaino.

24 MR. RESTAINO: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. RESTAINO: It's a privilege to be here.

2 Catherine, thank you for the help with my fax.

3 John Restaino, of the Restaino law firm, founded in
4 18 -- no, 19 -- 28 days ago, Your Honor.

5 And, Your Honor, I bring a rather unique experience
6 to the MDL setting. Twenty years ago today I started the
7 practice of law with -- in Southern California, partners with
8 the Honorable Peter Polos and Steve Skikos. And prior to
9 that, I had practiced reconstructive surgery of the foot and
10 ankle.

11 As a result, I was given the chore of handling
12 science and developing experts. I was appointed to the PSC of
13 the diet pill litigation, made chair of the science and
14 experts and put in charge of crafting a slate of experts to
15 survive Daubert, which did and lead to the -- assisted in the
16 \$4.2 billion settlement from diet pill.

17 From then, I was selected by my brethren to chair or
18 co-chair the science and expert committees of Propulsid, where
19 I had the opportunity to work with Ms. Sharko, Zyprexa, PPA,
20 Ortho Evra, Yaz, I'm currently finishing up my chore with
21 Gadolinium. And during that time, I went to Johns Hopkins and
22 I got a degree in epidemiology, which affords me the
23 opportunity to take a look at the pharmacovigilance and
24 pharmacoepidemiology of each litigation.

25 Bringing those talents together, I try, because as

1 Your Honor has heard, plaintiff attorneys are already
2 representing experts, and somehow we have to put a slate
3 together to present to the Court. And convincing them which
4 is the proper expert takes that experience, sometimes takes a
5 little bit more than that experience for them to listen to.
6 Sometimes I have to put one of the two of the black belts that
7 I hold in Karate on the table and craft the slate that is
8 necessary.

9 That's what I offer to the Court. Selected or not, I
10 would do everything I can to bring this MDL to a conclusion.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Annesley DeGaris.

14 MR. DeGARIS: Your Honor, Annesley DeGaris, Cory,
15 Watson, Crowder & DeGaris, Birmingham, Alabama.

16 When I pondered what to say to Your Honor to
17 distinguish myself in such a distinguished company as we have
18 here today, I considered attempting to do many things. I
19 thought about charming you with my wit. I considered
20 attempting to impress you with my eloquence. I thought about
21 engaging you in a long diatribe regarding my firm's experience
22 in MDLs. And I even thought about talking to you about my
23 federal court experience, and being a law professor and my
24 activities as an attorney.

25 Ultimately, decided that none of those things would

1 likely be successful, and I decided on a two-prong approach,
2 the first of which is brevity. I rely on my submissions that
3 you have that was refaxed and refaxed until it ultimately
4 reached your office, and also personal commitment. And my
5 personal commitment to the Court is if I am selected to be on
6 the PSC, I will work to ensure that your job is easier or at
7 least not needlessly complicated.

8 Secondly, I give you my personal commitment and my
9 firm's commitment to work with the PSC to make sure there is a
10 work product that is developed that moves this case towards
11 resolution for the benefit of all these clients.

12 Thank you. I appreciate your time and consideration,
13 Your Honor.

14 THE COURT: Thank you, sir.

15 Vincent Shannon.

16 Michael Kelly.

17 Howard Nations.

18 MR. NATIONS: Good morning, Your Honor.

19 THE COURT: Good morning, Howard.

20 MR. NATIONS: I'm Howard Nations, from Houston,
21 Texas.

22 Judge, I have 44 years of trial experience, thousands
23 of product liability cases, and as I look around in this
24 courtroom, I've had the privilege of working with a number of
25 the plaintiffs' lawyers here on plaintiff steering committees

1 in other litigation. I also have an excellent working
2 relationship with Susan Sharko and Bob Tucker, and I look
3 forward to having the same type relationship with them in this
4 litigation. So we have the experience.

5 In terms of the time and resources, I recently
6 settled my Avandia and Seroquel dockets which totaled 5318
7 cases. So I have a considerable hole in my docket. My
8 personal docket now consists of 29 Gadolinium cases, and I
9 have the privilege of serving on the plaintiff steering
10 committee in Gadolinium. And I also have reviewed -- we're
11 currently reviewing 237 hip cases, and we're seriously seeking
12 ASRs. We've retained experts, we've established protocols,
13 and we're going through very carefully to be sure that we have
14 ASRs before we file them. When we do find that, we're filing
15 them directly into the MDL with this court.

16 I can commit to this court and to my fellow counsel
17 and to all of our clients the best efforts of my firm in doing
18 everything we can to move these cases to resolution.

19 Thank you very much.

20 THE COURT: Thank you. Thank you very much, Howard.
21 Donald Migliori.

22 MR. MIGLIORI: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. MIGLIORI: I'd respectfully request to be on the
25 plaintiff steering committee because I have an app for it.

1 Your Honor, I'm from the law firm of Motley Rice, and
2 I'm partner in the firm, member of the executive committee.
3 We have seven offices throughout the country from coast to
4 coast. I'm here with my associate, John Duane. He's been
5 working directly and solely on these cases. We're in the
6 process of reviewing 700 intakes. We have 50 confirmed ASRs
7 as we speak. We have about a hundred lawyers, about 300 staff
8 members in my firm. We've got about 40 years of mass tort
9 experience.

10 I rely on my papers, but I'd like to highlight
11 something I think is important from my submission and relevant
12 to one of the issues the Court brought up. I'm the lead
13 lawyer, lead trial lawyer, co-lead counsel and liaison counsel
14 for all the Kugel mesh composix litigation, both in the MDL in
15 the District of Rhode Island and in the state court.

16 One of the issues that came up was the coordination
17 of state court efforts and federal court efforts on discovery.
18 And for what we believe was the first time in the history of
19 MDL, at least according to Chief Judge Mary Lisi, who presides
20 over it, we actually coordinated the two litigations, the
21 state court and federal litigation, in discovery by having
22 both judges sit together and hear issues concurrently on
23 precise issues. It worked for some things, it didn't work for
24 others. But the importance of coordination, the importance of
25 communication and the importance of not duplicating efforts

1 was our priority.

2 I tried the two bellwether cases in the MDL. I also
3 am about to start the next~-- the first state court-based
4 trial in the Florida Kugel mesh. I'm lead and liaison counsel
5 for the 9/11 aviation security litigation pending in the
6 Southern District of New York, and we're about to trial the
7 first 9/11 death case from the Flight 175 in June of this
8 year.

9 Your Honor, my firm has done mass torts for 40 years.
10 I teach mass torts at Roger Williams Law School. It would be
11 an honor to work with this court in this litigation, even if
12 Mike London makes the committee, my good friend.

13 Thank you, Your Honor.

14 THE COURT: I -- I -- no, I can't.

15 MR. MIGLIORI: I was trying to bait you.

16 THE COURT: No.

17 Thank you, sir.

18 Navan Ward. It's either a hard or a soft "A".

19 MR. WARD: It's a hard "A", but I'll certainly answer
20 to anything, and my wife definitely calls me a lot worse.

21 Good morning, Your Honor. My name is Navan Ward.
22 I'm with the firm of Beasley Allen, in Montgomery, Alabama.
23 And I do realize that I am one of few that are standing
24 between the end of this process and your next appointment, so
25 I'll do my best to be as brief as possible.

1 THE COURT: Plenty of time.

2 MR. WARD: Do I think that I would be a valuable and
3 unique addition to the PSC here if selected. My firm and I
4 have the necessary experience and skill to handle complex
5 litigation such as this, and if need be, go to trial or settle
6 these type of cases.

7 Several MDLs around the country have granted us the
8 privilege of being selected as leadership positions in MDLs,
9 such as co-lead counsel for the Vioxx MDL, in which we had an
10 integral part of that settlement, and more recently PSC
11 positions in the Toyota and BP MDLs, as well.

12 My firm and I are also heavily, heavily committed and
13 invested in these Depuy cases. We currently are looking at
14 and investigating over 1500 cases, and several of those,
15 several hundred of those are confirmed ASR cases. We have
16 filed to date 10 cases -- 12 cases, 10 of which are in federal
17 court. And at the risk of further warning the Court's heart,
18 we intend on filing more in the next few days, weeks and
19 months, as well.

20 We also, my firm and I, have had the opportunity and
21 the pleasure to work with several of the attorneys around here
22 in this particular courtroom throughout the years in a variety
23 of different capacities with different MDLs and different mass
24 tort litigations, specifically with the Depuy hip litigation.
25 I, too, am one of the co-chairs for the Depuy metal on metal

1 hip implant litigation group with the American Associates for
2 Justice, and along with that capacity, I certainly have done
3 my part and was planning on continuing to do my part with
4 working with attorneys in this room to further the goal of
5 resolving these cases on behalf of our clients.

6 I certainly think that I would bring a diverse
7 perspective to this PSC and would be honored if I would be
8 selected.

9 Thank you, Your Honor.

10 THE COURT: Thank you, sir.

11 Mark Lanier or Rich Meadow.

12 MR. LANIER: I can be both, either one.

13 THE COURT: It's all right with me.

14 MR. LANIER: Your Honor, thank you. It's a pleasure
15 to appear in front of you live. I had the honor of appearing
16 in front of you in a telephone conference where you let some
17 lowly state court lawyer appear in one of your hearings on a
18 discovery matter, and it saved me a trip to Ohio, and I never
19 had a chance to thank you. So if I do nothing else this
20 morning, I'd like to say thank you.

21 Our submission is complete and through. The only
22 thing I can add to it, Your Honor, is I'd like to introduce
23 you to some of the folks that we would bring to the table,
24 because we do bring a team of people.

25 So I have on the back row with me I have Ken Soh, who

1 operates -- Ken, would you please stand -- in the Gulf Coast
2 region, which would be Houston. Paul is in the East Coast
3 region out of New York. Jack White operates in all of our
4 offices. Jack, stand up for just a moment -- is unique
5 because he was actually the A clerk for Justice Alito on the
6 U.S. Supreme Court during the Levine contemplation and
7 decision. So he has great knowledge of preemption and
8 obviously the briefing end of this. We have from the West
9 Coast Dana Taschner. Dana, if you would stand up, please.

10 Steve Foley is not with us, but he's a pretty good
11 guy. He's from Minnesota.

12 And then Rick Meadow, from New York, heads up our New
13 York office. And he is the other applicant, Your Honor, other
14 than myself for this. And then Dara Hegar, next to her (sic).

15 In closing, I will say that Jack told me he, said,
16 Lanier, you need to preach diversity when you're up there.
17 And I said, why is that? He said, just in the courtroom look
18 what you got. You got Catholic, Protestant, Jew, white,
19 black, Asian, male, female. The only thing we're missing is a
20 sexual orientation diversity on the back row. Other than that
21 we've got it covered, Your Honor, and it would be a pleasure
22 to get to appear in front of you live and not just by phone if
23 you see fit to let us help.

24 Thank you.

25 THE COURT: Thank you, Mark.

1 Chris Coffin.

2 MR. COFFIN: Good morning, Your Honor. My name is
3 Chris Coffin, Pendley, Baudin & Coffin. As you probably know
4 by now, I was a victim of the defective government-owned fax
5 machine in Toledo. So you now have my application in front of
6 you. I appreciate Cathy's help in facilitating that this
7 morning.

8 It is an honor to be in front of you with many of my
9 colleagues and friends who I've worked with in mass torts
10 throughout the years. I want to talk about two areas in my
11 application that highlight my qualifications and the value
12 that I'll bring, the unique qualities I'll bring to this PSC
13 if appointed by Your Honor.

14 Number one, MDL experience. Many of us have MDL
15 experience. Mine is specific to medical litigations,
16 pharmaceutical cases, medical device cases. Specifically,
17 I've been appointed by two federal courts as co-lead counsel,
18 who separate MDLs, one by Judge Sippel in the Eastern District
19 of Missouri, one by Judge Gorton in the District of
20 Massachusetts. I've also been appointed by Judge Pfaelzer in
21 the Central District of California to the Paxil withdraw MDL
22 years back.

23 I think probably the most unique thing that you'll
24 see in my resume and that I'll highlight to you now is that
25 I've been a registered nurse for 15 years. I've actually

1 studied anatomy and physiology, epidemiology, pathophysiology,
2 and I've probably most importantly cared for people who have
3 had injuries to their hips and hip implants. The science is
4 extremely important, as Your Honor has mentioned and many of
5 my colleagues have mentioned. I've actually studied it, and I
6 have a bachelor's in nursing and have taken care of people who
7 are in the situation that many of my clients are.

8 Myself and my firm, we have over 500 cases to review.
9 We have approximately 150 individuals who have retained us to
10 this point. We will be dedicated and committed. We certainly
11 will be team players, as we have in the past, and I would
12 appreciate your consideration for an appointment.

13 Thank you, Your Honor.

14 THE COURT: Thank you very much, Chris.

15 Rick Schulte.

16 MR. SCHULTE: Good afternoon, Your Honor. It's good
17 to see you again.

18 I'll be brief. I, too, was a victim of the fax
19 machine, and hopefully I'll be able to resubmit my letter for
20 the third time.

21 You know, trying to distinguish myself within this
22 group of people is next to impossible. I can just tell you
23 that our firm, the average age of the attorneys in our firm is
24 33 years old. And I'd just like to point out just a couple
25 things that I think are significant.

1 We've been involved in a lot of the different drug
2 cases that people have mentioned here today, and we're usually
3 on the committees that are actually working hard and doing
4 most of the work. We're willing to go forward on this case
5 and work hard on the cases to help bring justice for our
6 clients. I think it's important to note that we are involved
7 in the Ortho Evra litigation, the Daubert committee and the
8 science committee and the discovery committee.

9 A couple other things. We also had one of the
10 important preemption decisions which I think is relevant to
11 this proceeding. We had the Flajensey (phonetic) case out of
12 Northern District, which is one of the first preemption cases
13 in favor of plaintiffs in the country.

14 The other thing I'd like to stress, I'm very honored
15 to be here with all these people and can get along well with
16 most of them. I was honored to just finish serving as the
17 youngest president of our state trial bar for the great state
18 of Ohio, and I finished that term, and now I can go back to
19 practicing law full-time. And I'm hoping to be included in
20 this prestigious list of attorneys. If not, I'll still be
21 there working and look forward to seeing you in Toledo.

22 Thank you.

23 THE COURT: Thank you very much.

24 Okay. Rick Davis.

25 MR. DAVIS: Your Honor, I've spoken already. You may

1 have me twice on the list.

2 THE COURT: All right. Thank you. My apologies.

3 Let me see who's next. Tara Sutton.

4 MS. SUTTON: Good morning, Your Honor. Tara Sutton.

5 THE COURT: Good morning.

6 MS. SUTTON: Unfortunately, I can't rest on my papers
7 because of the fax snafu, but I appreciate Your Honor's
8 patience and consideration in allowing me to appear today and
9 to introduce myself.

10 I am a partner in the 260-lawyer firm Robins, Kaplan,
11 Miller & Ciresi. We're based in Minneapolis, with offices
12 across the country. Throughout our firm's 72-year history, we
13 have had as a guiding principal the belief that ordinary
14 people, not only corporations, should be entitled to access to
15 and representation by a large law firm with the significant
16 resources, reputation and staffing that we can bring to bear
17 in litigation. So in addition to corporations, throughout our
18 firm's history we've leadership roles in trying and resolving
19 historic mass torts, beginning with the Dalkon Shield and
20 Bhopal Gas litigation in the 1980s, the tobacco litigation in
21 the 1990s, and over the past 30 years we've been involved in
22 major drug and device cases.

23 I believe I personally have the experience to help in
24 moving this MDL forward to its resolution. Our firm doesn't
25 get involved in every mass tort. We choose very carefully,

1 because we understand that in order to get the best result for
2 our clients we need to commit tremendous resources to
3 conducting discovery and trying the cases, if necessary. That
4 is what we did most recently in the Mirapex MDL, where I was
5 appointed the lead trial counsel by now retired Judge James
6 Rosenbaum. My partner and I tried two bellwether cases to
7 successful results, and I'm proud to say that we were able to
8 settle the entire litigation and allow our clients, most
9 importantly, to move on with their lives.

10 I have experience on science issues. I'm on the -- I
11 chair the science and expert committees in the Chantix MDL.
12 I'm also on the executive committee there. I'm committed to
13 working as hard as possible in whatever role in this
14 litigation and doing what it takes to make this case
15 successful.

16 I appreciate Your Honor's consideration of our
17 application. Thank you.

18 THE COURT: Thank you very much.

19 Stuart Talley.

20 MR. TALLEY: Good morning, Your Honor.

21 We are also victims of the fax situation, and we
22 should have our submission to you shortly.

23 My name's Stuart Talley. I am a partner with
24 Kershaw, Cutter & Ratinoff, in Sacramento, California. And I
25 think all of our qualifications are in the submission that we

1 will be submitting, and we rest on that submission.

2 THE COURT: Thank you, sir, very much. I'm sorry
3 about that, as I am, Tara, as you know.

4 Steve Foley.

5 MR. FOLEY: Good morning, Your Honor. Stephen Foley,
6 of Foley & Mansfield law firm in Minneapolis and a bunch of
7 other places around the country. My good friend Mark Lanier
8 introduced me earlier.

9 THE COURT: I saw you stand up.

10 MR. FOLEY: We met -- to bring you up to date on my
11 background, because we also were part of the fax mess-up,
12 founded the law firm 21 years ago, been in practice for 26
13 years. Now, I have 130-odd lawyers that work for me across
14 the country. I met Mark when I was a defense lawyer, national
15 coordinating counsel for defendants in the asbestos
16 litigation, where I spent a lot of time defending cases and
17 trying cases around the country with Mr. Baron's firm and
18 Levin Simes and all these other people. Mark and I met as
19 opponents. We became friends, and then we ended up I had the
20 pleasure of co-counsel with him in helping him in a 30-day
21 trial down in Texas a few years back.

22 I do plaintiffs work as well as defense work my
23 entire career. And recently Mr. Climaco mentioned the oral
24 sodium phosphate solution MDL in front of Judge Polster. I
25 was appointed lead counsel, co-lead counsel by Judge Aldrich

1 in that case for the plaintiffs. We had worked that file up,
2 myself and Mr. Daskal, who's going to be talking to you in a
3 minute or two. We had taken that case sort of under
4 everybody's radar, which none of the great lawyers in this
5 room actually were aware of it for about three years. We had
6 done all the discovery, taken all the experts, prepared the
7 experts on our side, found all the documents.

8 I was lead counsel in the only case that started
9 trial. Fleet rolled over in the middle of that trial, paid us
10 what we wanted. We now then went to an MDL, became co-lead,
11 and within I guess it was about 12 months we negotiated global
12 resolution of that case, extracting the maximum amount from
13 the available insurance coverage and Fleet's assets without
14 putting them in bankruptcy to pay our clients. And I'm happy
15 to say that they are being paid today. As we speak, checks
16 are going out to all these people.

17 So that is my only MDL experience as lead counsel in
18 the fleet litigation in front of Judge Polster, but I have
19 been trial counsel in massive insurance coverage cases against
20 3M arising out of the silicone breast implant litigation. I
21 was AIG's principal trial counsel. Had to work with lawyers
22 for 120 different insurance companies in that tower of
23 insurance for seven years, putting that field of people
24 together, the experts in that case, and ran the gamut from
25 knowing everything about the science of the implants to the

1 insurance coverage matters. We did that very well, and
2 ultimately we achieved a settlement of that case for my client
3 at the very end.

4 I've tried cases all across the country. I've got
5 offices in California, and I know the judges there. I'm
6 admitted in California, as well. So I know the importance of
7 coordinating state court litigation, I know the importance of
8 working well with others, and I'll do anything, Your Honor,
9 that the Court requests of me in this litigation, and I'm
10 committed to it.

11 Thank you.

12 THE COURT: Thank you, sir.

13 Scott Bickford.

14 MR. BICKFORD: The light behind me is the end of the
15 tunnel, Your Honor. Fast approaching I hope, so I'll be
16 brief. I'm Scott Bickford. I'm from New Orleans. Your
17 Honor, I appreciate the opportunity to introduce myself today.
18 I've been a lead trial counsel in a MDL litigation, I've been
19 lead trial counsel in mass tort litigations, and I've been a
20 liaison counsel on MDL litigation.

21 I've spent the last six years in addition to those
22 things settling and mediating a large number of disaster cases
23 arising out of the disasters in New Orleans, not only recently
24 the Deepwater Horizon cases, but the Katrina cases that we all
25 faced. And, of course, our latest disaster, the Saints losing

1 to the Seahawks, but that is unresolvable at this point.

2 Your Honor, I pledge to you that my law firm and I
3 will work our hardest to move this case along, to resolve it
4 whether selected or not, and so that maybe these thousands of
5 cases that are potentially going to be filed in this case,
6 that you don't have to worry about hips in your retirement,
7 and you can worry about golf courses and beaches and far away
8 lands.

9 But I thank you for your consideration, and nice to
10 meet you.

11 THE COURT: Thank you very much, Scott.

12 Frank Azar.

13 MR. AZAR: That's correct, Your Honor.

14 Judge, sorry, I was a victim of the fax, too.

15 I'm from Denver, Colorado, Your Honor. I haven't
16 appeared before you before, but we did handle all the Wal-mart
17 litigation for 18 years. It is still going on. And we did
18 settle quite a bit of it with Judge Lane Phillips, and for my
19 reward I got a Depuy chromium cobalt joint last year. So I
20 add the very distinct view to this litigation, and I know what
21 it's like to have one of these joints replaced. I know what
22 you go through. I've handled lots and lots of these mass
23 torts. But when it happens to you, I think you get another
24 perspective.

25 Your Honor, I'll send my papers to you tomorrow, and

1 you can read through them. Thank you very much.

2 THE COURT: Thank you, sir.

3 Nicholas Drakulich. I didn't even come close, did I?

4 MR. DRAKULICH: No, you came very close.

5 THE COURT: Okay.

6 MR. DRAKULICH: It's Drakulich, Your Honor, Nicholas
7 Drakulich. My friends in the defense bar sometimes forget the
8 "ich".

9 THE COURT: Yeah, I figured.

10 MR. DRAKULICH: But thank you, Your Honor, for
11 allowing me the opportunity to appear before you. I also
12 was -- I'm old school, so I faxed as opposed to e-mailed. So
13 I learned my lesson there.

14 I have practiced over 30 years, Your Honor, and a
15 number of years now has been specifically devoted to medical
16 device litigation. I can see why you spend your time here in
17 Palm Beach, because for the last five or six years, even
18 though I'm supposed to be living in San Diego, I was living in
19 Minnesota, where I was appointed on the plaintiff steering
20 committees with respect to both the Medtronic matter and the
21 Guidant matter. I was honored by my co-counsel to be selected
22 as a leader of the trial team for those matters. So I figure,
23 Your Honor, if you're going to do it, you ought to do it. So
24 principally moved to Minnesota, made it my life. All three of
25 those cases, two of them have been successfully resolved, and

1 we're working on the third one.

2 So I know what it's like to work as a member of a
3 team. I know the dedication and responsibility required and
4 demanded and expected. And I think Babe Ruth had it right,
5 Your Honor, you know, when he said, you know, you can have the
6 greatest bunch of stars in the world, but if they don't play
7 together as a team, that club's not going to be worth a dime.

8 So, you know, I like to believe that I had some
9 involvement with a lot of these fine trial lawyers in keeping
10 that team together in those three cases. This is the only
11 other case that I've applied for with respect to an MDL
12 leadership position specifically with respect to medical
13 devices. I think I can make a significant contribution, I'd
14 like to do so, and I appreciate your courtesy, and I'll stand
15 on my application.

16 THE COURT: Thank you, sir.

17 Bernard Daskal.

18 MR. DASKAL: Yes, Your Honor.

19 THE COURT: Not Drastic, Daskal.

20 MR. DASKAL: It's Bernard Daskal, like Daskal the
21 rascal.

22 THE COURT: Okay.

23 MR. DASKAL: Let me be the first, Your Honor, to wish
24 you a good afternoon. I'm sure you weren't hoping to be here
25 this late.

1 THE COURT: I thought it would be later.

2 MR. DASKAL: I apologize that I wasn't on the list
3 that initially appears, that I am a victim of the fax snafu,
4 as well.

5 I, Your Honor, am the new kid on the block. I've
6 only been involved in one MDL before, and that was the Fleet
7 phospho-soda MDL. I worked with so many wonderful lawyers.
8 Some of them are in this room, including John Climaco, working
9 and assisting them in the projects that they have asked me to
10 assist them with. But before that even began, four years
11 before the recall of the phospho-soda product and the
12 subsequent formation of the MDL, I filed the first
13 phospho-soda case, and then for the next four years developed
14 a liability case, worked with lawyers across the country, at
15 least one of whom you've spoken with earlier today, to not
16 only develop the liability case, but also take the case to
17 trial, establish settlement values. And so that when we got
18 to the MDL, we were able to focus on a global resolution and
19 coming together with a document which turned out to be a very
20 comprehensive 21-page document for criteria to establish
21 settlement values.

22 So though I am, as I say, the new kid on the block,
23 and you've had lots of people you spoke to today who have lots
24 of experience, but perhaps the freshness is something that is
25 a different type of diversity that the Court would be looking

1 for to added to plaintiffs steering committee. My experience
2 has been that coming from a different type of background and
3 having, you know, kind of run my own MDL for about four years
4 before the phospho-soda MDL was started gives me sometimes a
5 unique perspective that I think would be helpful to the PUC
6 that you put together at this litigation. And as my work in
7 the phospho-soda MDL demonstrates, I'm very easy to work with
8 together and I'm a team player.

9 That's all I have, Your Honor. Thank you very much
10 for your consideration.

11 Thank you very much.

12 Number one of the last things. Is anyone here that
13 was missed not by your spouse but by us because we failed to
14 call you?

15 Okay. It's very easy for me, because I make so many
16 mistakes, my wife tells me, to apologize. And I apologize,
17 Tara, to you, because I thought your name was very familiar,
18 and I have your letter and did, in fact, read it. So I
19 apologize.

20 I believe that it was extremely obvious to all who
21 were even paying a small modicum of attention this morning and
22 early afternoon how difficult this task before me, as the
23 fortunate judge in this case, will be. I took this case
24 because I have in the past learned that I am able to rely on
25 so many of you in this courtroom in other litigation. The

1 people who have been considered and are to be considered for
2 leadership positions either initially or as we mature as an
3 MDL are extremely well qualified.

4 If you are not selected, please, I beg you, do not be
5 offended, because I will think no less of your abilities both
6 as attorneys and as individuals who can be of tremendous value
7 to litigation, and in particularly to this litigation.

8 And so I thank you for being here. Most of you have
9 come from places where the weather ain't as good as here
10 today, but it hasn't been like this for long.

11 I am tentatively, according to my schedule,
12 contemplating a February 8th meeting of the PSC in this
13 courthouse. That could be subject to change depending on many
14 things, not the least of which are the schedules of those
15 ultimately selected for the initial plaintiffs steering
16 committee. But keep it in mind that that -- I want to get
17 this moving as quickly as reasonably possible.

18 That will be two phases. Defense counsel and the
19 executive committee of the PSC, or depending upon the size of
20 the PSC, will meet privately and off the record to discuss
21 several things, after which those same things, and perhaps
22 more, will be in open court, and all in attendance will have
23 the opportunity for questions and input.

24 Speaking of questions, I take the risk of asking and
25 will not resent any questions by any of those in attendance.

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You have each convinced one another of everything that will ever be involved on the plaintiff side of this litigation. The next task is to convince defense counsel, which task will not be as easy.

I thank you. For those traveling, safe travels.

* * * * *

CERTIFICATE

I, Stephen W. Franklin, Registered Merit Reporter, and Certified Realtime Reporter, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 15th day of MARCH, 2011.

/s/Stephen W. Franklin

Stephen W. Franklin, RMR, CRR

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/s/Stephen [1] 112/14	4	
1	40 [3] 7/22 93/8 94/9 400 [1] 18/13 417 [1] 1/17 42 [2] 5/12 6/6 44 [1] 91/22 48 [1] 21/13	
10 [9] 11/24 17/24 56/17 68/15 75/5 75/11 78/23 95/16 95/16 10-MD-02197-DAK [1] 1/2 100 percent [1] 38/8 10th [1] 44/19 11 [5] 35/16 41/20 86/5 94/5 94/7 11:12 [1] 76/4 11:21 [1] 76/4 12 [4] 49/20 64/20 95/16 104/11 120 [1] 104/22 13 [1] 12/25 130-odd [1] 103/13 15 [2] 74/18 98/25 150 [2] 62/9 99/9 1500 [1] 95/14 15th [1] 112/12 16 [1] 21/2 17 [1] 16/17 175 [1] 94/7 18 [4] 14/11 56/15 89/4 106/17 19 [3] 41/21 49/19 89/4 1918 [1] 28/9 1974 [1] 44/19 1980s [1] 101/20 1985 [1] 49/14 1990s [1] 101/21 1994 [1] 30/8 1995 [1] 82/5 1st [1] 18/24	5 50 [3] 30/3 38/24 93/6 50-some [1] 36/10 50/50 [1] 30/3 500 [2] 58/14 99/8 514-3768 [1] 1/16 5318 [1] 92/6 561 [1] 1/16	
2	6 60 [4] 30/11 33/16 41/22 57/11 60-year-old [1] 77/5	
20 [9] 1/5 18/15 19/10 29/14 35/5 50/9 63/24 66/20 77/13 200 [3] 38/5 38/25 69/4 200-plus-person [1] 33/14 2000 [1] 68/5 2003 [1] 75/16 2005 [1] 82/5 2009 [1] 36/7 2011 [2] 1/5 112/12 21 [1] 103/12 21-page [1] 109/20 23 [1] 77/13 237 [1] 92/11 24 [1] 5/18 25 [2] 12/25 21/2 25 percent [1] 18/14 250 [1] 45/1 25th [1] 55/10 26 [1] 103/12 260-lawyer [1] 101/10 28 [3] 76/21 77/21 89/4 29 [1] 92/8	7 700 [1] 93/6 700 miles [1] 5/18 701 [1] 1/17 72-year [1] 101/12 75 [1] 21/5	
3	8 81 [1] 49/19 83-odd [1] 73/24 83-year [1] 12/18 86 [1] 6/18 87 [1] 6/18 875 [1] 25/16 8th [1] 111/12	
30 [11] 4/17 7/22 8/25 41/9 41/22 58/10	9 9/11 [3] 35/16 94/5 94/7 90 percent [1] 63/5 92 [1] 22/22	
	A A.H [1] 33/2 a.m [2] 76/4 76/4 AAJ [1] 65/24 abilities [1] 111/5 ability [12] 16/25 21/6 21/6 21/7 27/16 30/13 32/14 54/7 69/9 69/10 69/23 70/6 able [19] 9/1 12/4 22/23 24/22 29/1 36/17 48/18 51/25 54/15 54/17 56/22 57/9 61/5 66/7 73/21 99/19 102/7 109/18 110/24 above [1] 112/11 above-entitled [1] 112/11 absolutely [2] 57/15 67/6 accept [1] 75/24 acceptable [1] 29/17 access [1] 101/14	

<p>A</p> <p>allergy [1] 71/15 allies [1] 10/2 allocation [1] 66/6 allow [1] 102/8 allowing [3] 57/20 101/8 107/11 almost [9] 5/13 5/16 6/5 6/9 11/14 24/23 37/9 53/5 86/6 alone [1] 53/3 along [8] 16/25 29/1 30/25 50/24 64/9 96/2 100/15 106/3 Alonso [5] 10/18 10/21 11/2 11/17 12/2 alphabetical [1] 10/18 already [13] 3/19 4/21 13/2 14/19 15/12 48/24 57/12 58/23 64/3 64/9 68/4 90/1 100/25 also [50] although [5] 12/23 20/24 50/6 60/3 61/2 always [2] 44/25 61/3 Alyson [1] 67/16 am [34] 2/22 9/12 13/24 18/5 22/23 25/14 28/25 32/18 41/7 44/4 51/4 54/1 57/4 57/15 62/21 66/11 70/10 73/6 74/15 76/11 85/20 87/17 91/5 94/3 94/23 95/25 101/10 102/23 103/3 109/3 109/5 109/22 110/24 111/11 amazingly [1] 67/21 America [2] 10/4 77/12 American [4] 30/11 75/12 75/19 96/1 Americans [1] 74/22 amicable [1] 9/24 among [5] 3/10 26/2 56/12 57/1 64/4 amongst [1] 42/16 amount [5] 40/15 51/7 56/1 61/2 104/12 amounts [1] 56/25 amplify [1] 23/20 Amy [1] 84/12 Anapol [3] 65/9 65/12 65/13 anatomy [1] 99/1 and/or [2] 2/23 4/7 Andy [5] 10/18 26/6 26/13 27/10 80/15 Angeles [2] 25/13 37/5 animosity [1] 10/2 ankle [1] 89/10 Ann [1] 36/8 Annesley [3] 14/3 90/13 90/14 another [6] 2/8 6/4 23/10 41/22 106/23 112/1 answer [3] 28/20 30/4 94/19 answers [2] 51/18 81/10 Anthony [1] 19/3 anticipate [3] 4/23 41/21 42/1 any [17] 5/3 5/21 10/4 26/18 35/2 38/7 38/9 39/5 67/8 74/9 80/10 81/17 81/21 81/22 86/23 111/25 111/25 anybody [2] 20/18 59/5 anyone [5] 5/13 6/9 10/6 42/12 110/12 anything [6] 4/25 28/14 28/19 59/8 94/20 105/8 anyway [1] 87/6 apart [1] 83/8 apologies [2] 15/4 101/2 apologize [6] 17/14 20/11 109/2 110/16 110/16 110/19 app [1] 92/25 Appeal [1] 32/23 Appeals [1] 33/1 appear [6] 8/22 96/15 96/17 97/22 101/8 107/11 appearance [1] 2/14 Appearances [1] 1/13</p>	<p>appeared [3] 43/16 44/5 106/16 appearing [2] 10/23 96/15 appears [1] 109/3 appellate [4] 5/17 32/18 32/22 32/23 applicant [2] 5/5 97/13 application [15] 13/23 23/20 35/22 57/10 58/9 62/1 62/3 62/5 73/4 78/19 79/1 98/5 98/11 102/17 108/15 APPLICATIONS [1] 1/9 applied [2] 78/24 108/11 apply [2] 36/13 69/5 appoint [5] 11/25 45/6 51/15 51/20 70/3 appointed [31] 8/3 10/11 12/15 14/9 16/19 24/10 35/11 35/13 35/16 36/14 37/25 38/6 46/5 48/15 49/13 51/8 56/3 57/5 61/18 65/25 71/6 73/7 84/5 85/22 89/12 98/13 98/17 98/20 102/5 103/25 107/19 appointment [8] 6/12 24/11 40/2 69/18 79/8 85/23 94/24 99/12 appointments [1] 17/1 appoints [2] 12/2 69/20 appreciate [23] 2/11 6/12 7/2 23/11 23/18 33/7 37/5 38/8 39/17 50/5 51/9 64/10 67/10 72/7 77/23 78/18 91/12 98/6 99/12 101/7 102/16 105/17 108/14 appreciation [1] 87/21 approach [4] 54/14 72/3 72/5 91/1 approaching [1] 105/15 appropriate [4] 4/7 43/20 50/19 88/16 approximately [3] 63/24 69/4 99/9 April [1] 30/21 area [4] 25/8 50/19 71/12 88/19 areas [1] 98/10 aren't [1] 22/5 arena [1] 71/19 arguably [1] 7/25 argue [1] 32/25 argument [1] 7/19 Ari [2] 67/14 67/16 arisen [1] 25/17 arising [2] 104/20 105/23 arming [1] 78/1 arms [1] 66/8 Arnold [5] 8/10 39/22 39/23 39/24 88/13 around [12] 7/5 14/2 28/9 48/11 65/14 66/8 81/25 91/23 95/7 95/21 103/7 103/17 arrangements [1] 50/11 arranging [1] 59/14 arrive [1] 52/6 Arsenault [4] 20/10 20/14 20/18 36/4 Arsenault's [1] 29/23 arthroplasty [1] 75/23 Arthur [1] 19/23 article [1] 58/22 asbestos [5] 25/15 25/16 35/7 58/13 103/15 Ashcraft [1] 66/18 Asian [1] 97/19 ask [11] 2/21 5/3 11/25 16/10 17/13 31/11 31/13 35/21 36/4 79/7 85/22 asked [5] 17/4 17/11 36/13 53/24 109/9 asking [1] 111/24 asks [1] 15/4 aspect [2] 32/16 47/19 aspects [4] 12/25 71/4 71/10 82/7 aspirin [1] 71/8 ASR [4] 1/4 14/18 75/6 95/15 ASRs [7] 14/20 28/18 59/4 62/9 92/12 92/14 93/6 assets [1] 104/13 assist [5] 14/6 26/18 64/9 84/23 109/10</p>	<p>assistance [2] 70/4 75/25 assisted [1] 89/15 assisting [1] 109/9 associate [1] 93/4 associated [4] 8/11 40/19 40/21 74/24 Associates [2] 51/14 96/1 associating [1] 26/24 association [3] 70/2 75/12 75/19 associations [1] 69/25 assume [1] 21/14 assure [1] 6/17 asymptomatic [1] 75/8 athlete [1] 77/7 Atlanta [4] 7/2 40/20 76/10 76/12 atmosphere [1] 23/3 attempting [2] 90/18 90/20 attempts [1] 72/4 attendance [2] 111/22 111/25 attending [1] 39/20 attention [2] 76/15 110/21 attest [1] 43/17 attorney [6] 16/14 30/19 30/22 76/10 85/19 90/24 attorneys [16] 12/25 16/7 50/11 65/15 66/7 67/3 67/6 85/20 87/21 88/19 90/1 95/21 96/4 99/23 100/20 111/6 August [1] 36/7 Authority [1] 70/4 authorized [1] 3/20 available [1] 104/13 Avandia [2] 9/18 92/6 average [1] 99/23 aviation [2] 12/23 94/5 Avila [2] 87/13 87/17 aware [2] 54/21 104/5 away [3] 5/20 68/15 106/7 awe [1] 85/20 awful [1] 9/21 Azar [1] 106/12</p> <p>B</p> <p>B-o-h-r-e-r [1] 63/17 Babe [1] 108/4 bachelor's [1] 99/6 back [11] 29/17 41/13 42/25 44/18 55/13 74/19 96/25 97/20 98/22 100/18 103/21 background [9] 16/14 40/4 40/10 47/11 58/10 58/20 71/5 103/11 110/2 bad [5] 28/25 31/23 46/1 53/25 74/19 bad-feeling [1] 28/25 bait [1] 94/15 banking [1] 17/9 bankruptcy [1] 104/14 bar [18] 3/9 3/10 3/15 3/15 4/5 22/12 29/11 42/16 56/13 56/20 57/18 69/24 70/2 72/21 75/16 86/6 100/17 107/7 Baron [4] 24/16 24/18 24/18 25/24 Baron's [1] 103/17 Barrett [1] 31/1 Bartels [2] 85/6 85/13 baseball [1] 32/11 based [7] 18/17 23/17 60/22 62/3 77/16 94/3 101/11 basically [2] 41/17 63/6 basis [1] 28/12 Baudin [1] 98/3 Baxtra [1] 35/15 Baycol [2] 17/3 82/9 Bayer [2] 52/15 71/8 Beach [3] 1/5 1/17 107/17</p>
--	--	---

<p>B</p> <p>beaches [1] 106/7 bear [2] 4/25 101/16 beard [1] 85/17 Beasley [1] 94/22 beat [1] 45/19 beautiful [1] 38/17 beauty [3] 19/12 19/12 87/14 became [4] 16/13 35/10 103/19 104/10 because [60] Bechtle [1] 55/15 Becker [1] 52/5 Becnel [2] 5/5 30/25 become [5] 25/6 46/9 65/23 73/22 75/2 before [47] beg [1] 111/4 began [4] 11/8 63/24 88/2 109/10 begin [3] 22/6 30/8 52/20 beginning [4] 35/2 42/8 82/8 101/19 behalf [9] 5/3 22/7 30/22 32/2 51/13 69/3 79/20 81/15 96/5 behind [2] 54/2 105/14 being [24] 2/4 2/17 3/6 7/2 7/11 7/16 9/17 9/19 18/6 36/3 36/20 36/23 46/14 54/21 56/12 63/3 66/21 68/21 71/6 83/9 90/23 95/8 104/15 111/8 belabor [3] 40/5 62/6 86/2 belief [1] 101/13 believe [26] 3/21 8/15 13/1 13/10 21/3 25/25 27/6 28/15 32/3 36/10 39/13 41/9 50/17 53/9 54/11 62/17 63/10 73/12 78/9 78/11 87/20 87/23 93/18 101/23 108/8 110/20 bellwether [5] 46/25 51/1 79/25 94/2 102/6 bellwethers [1] 15/9 belts [1] 90/6 Ben [4] 13/17 13/18 42/3 50/24 bench [1] 3/11 benefit [5] 5/6 12/3 14/7 44/11 91/11 benefits [1] 57/20 Berezofsky [3] 82/20 82/23 82/24 Bernard [2] 108/17 108/20 Bernstein [4] 33/14 56/10 56/20 57/4 Berrett [1] 87/10 besides [1] 13/14 best [15] 16/9 16/10 21/10 35/2 43/13 44/10 44/11 45/2 45/3 57/16 65/5 69/7 92/17 94/25 102/1 better [3] 44/6 45/1 52/8 between [10] 3/10 16/14 23/22 26/1 35/14 37/8 48/20 61/5 82/5 94/24 beyond [1] 58/20 Bhopal [1] 101/20 BHRs [1] 59/5 Bickford [2] 105/13 105/16 big [1] 31/23 biggest [1] 36/17 Bill [2] 40/24 88/2 billion [3] 46/17 70/5 89/16 Binstock [3] 22/16 22/19 22/20 biomechanical [1] 59/3 Birmingham [3] 49/8 59/5 90/15 birth [1] 71/7 bit [4] 41/12 42/25 90/5 106/18 black [2] 90/6 97/19 blind [1] 4/19 Blizzard [3] 34/4 34/6 34/8 Blizzard's [1] 38/16 Blizarde [1] 34/4 block [3] 88/14 109/5 109/22</p>	<p>board [5] 69/25 70/1 71/14 76/11 77/15 board's [1] 76/25 Bob [6] 2/25 17/25 22/19 47/22 83/6 92/2 bodies [1] 74/23 body [3] 22/8 49/23 51/16 Bohrer [2] 63/17 63/17 bone [3] 55/14 55/15 55/19 bones [1] 8/5 Boone [1] 69/4 Borgess [3] 53/21 53/22 87/8 Borri [3] 58/1 58/4 58/7 both [28] 3/14 12/7 26/2 26/9 27/16 30/4 33/20 33/24 35/16 40/8 44/2 49/17 51/1 56/24 57/7 67/4 68/17 79/18 83/3 83/6 83/15 84/21 87/13 93/14 93/22 96/12 107/20 111/5 bottom [1] 7/17 box [1] 72/1 Boyle [1] 37/4 BP [2] 5/19 95/11 Brad [3] 29/2 80/23 82/19 Bradley [1] 80/20 brag [1] 69/15 Branch [2] 8/19 8/21 Brandi [1] 19/4 bread [1] 87/2 breadth [1] 39/19 break [1] 79/14 breast [4] 14/15 16/21 41/14 104/20 brethren [1] 89/17 brevity [2] 26/9 91/2 Breyer [1] 35/13 Brian [1] 69/3 brief [7] 17/22 25/2 32/25 79/23 94/25 99/18 105/16 briefing [2] 71/11 97/8 briefly [2] 66/2 69/14 bring [37] 7/12 18/4 18/19 19/9 21/5 21/25 25/10 27/6 27/15 32/19 34/18 36/18 42/14 51/4 56/1 58/14 58/14 60/21 67/9 68/1 70/11 77/14 77/18 80/10 87/23 88/9 88/10 89/5 90/10 96/6 96/23 96/24 98/12 98/12 100/5 101/16 103/10 bringing [4] 14/7 28/16 38/17 89/25 brings [1] 46/17 brother [2] 45/18 71/14 brought [5] 33/3 75/16 75/17 77/19 93/12 Browder [1] 38/23 Bryson [3] 14/3 50/2 50/3 Buckey [1] 52/5 Budd [1] 24/18 build [1] 80/14 built [1] 82/1 bulk [1] 59/19 bunch [2] 103/6 108/6 burdens [1] 24/2 Burg [1] 21/19 buried [1] 8/5 Burke [2] 11/4 11/16 burning [1] 28/20 butter [1] 87/2</p> <p>C</p> <p>Cabraser [1] 33/13 California [22] 18/10 18/14 18/16 18/22 29/18 33/18 35/14 37/11 37/12 37/15 37/24 46/12 59/13 59/17 59/18 63/1 84/6 89/7 98/21 102/24 105/5 105/6 called [5] 36/12 62/24 63/8 75/13 75/13 calls [2] 51/17 94/20 came [3] 82/2 93/16 107/4</p>	<p>Camilo [1] 31/18 Campion [1] 6/2 can't [9] 6/18 19/24 19/25 32/11 33/4 46/23 61/2 94/14 101/6 Canada [1] 13/4 canceled [1] 87/8 cannot [4] 42/14 52/21 52/22 53/15 capabilities [1] 40/4 capable [1] 13/10 capacities [1] 95/23 capacity [7] 13/2 13/9 40/6 80/10 86/23 88/15 96/2 card [1] 10/14 cards [1] 4/17 care [3] 32/7 74/6 99/6 cared [1] 99/2 career [8] 3/16 24/19 25/4 30/9 35/2 49/12 56/17 103/23 careers [1] 44/22 carefully [2] 92/13 101/25 Carolina [5] 50/5 50/15 50/16 50/20 77/6 Carr [1] 21/21 carried [1] 82/12 carry [2] 32/10 59/10 case [103] cases [143] Castano [1] 30/10 Catherine [1] 89/2 Catholic [1] 97/18 Cathy [4] 3/17 4/17 4/23 21/17 Cathy's [1] 98/6 causes [1] 74/21 Celebex [1] 35/15 center [2] 78/12 78/12 Central [1] 98/21 centralization [1] 18/21 centralized [1] 18/17 century [1] 52/9 certain [1] 43/8 certainly [10] 4/7 12/5 24/10 49/3 74/2 74/3 94/19 96/2 96/6 99/10 CERTIFICATE [1] 112/7 certified [2] 71/14 112/9 certify [1] 112/9 cetera [1] 2/16 chair [9] 9/20 14/13 14/13 50/22 86/8 89/13 89/17 89/18 102/11 chairman [1] 76/11 chairs [3] 26/22 66/1 95/25 challenged [1] 88/13 chambers [1] 79/15 chance [3] 17/21 78/14 96/19 change [1] 111/13 changed [1] 62/5 Chantix [1] 102/11 characterizes [1] 41/17 charge [1] 89/14 charming [1] 90/19 chat [1] 31/25 check [1] 74/11 checks [1] 104/15 Chesley [6] 19/5 19/7 30/15 30/25 34/10 55/12 chief [3] 37/25 44/20 93/19 child [1] 75/18 children [1] 81/8 Chinese [4] 27/20 47/2 50/23 55/22 choose [3] 16/8 21/2 101/25 choosing [1] 16/9 chore [2] 89/11 89/20</p>
---	--	--

<p>C</p> <p>chosen [2] 17/7 39/4</p> <p>Chris [8] 14/2 49/6 49/7 50/1 72/23 98/1 98/3 99/14</p> <p>Christopher [2] 45/15 84/13</p> <p>chromium [4] 13/5 49/24 59/7 106/19</p> <p>Ciano [4] 26/5 26/7 26/14 80/15</p> <p>Cincinnati [1] 19/7</p> <p>Circuit [2] 8/8 56/17</p> <p>circus [1] 42/25</p> <p>Ciresi [1] 101/11</p> <p>cities [1] 77/13</p> <p>citizens [2] 20/4 44/7</p> <p>City [4] 28/8 29/2 58/8 80/24</p> <p>civil [3] 5/15 37/25 56/16</p> <p>civility [1] 27/16</p> <p>claims [2] 50/13 75/3</p> <p>class [7] 11/3 12/21 12/21 56/21 71/8 73/12 86/25</p> <p>clear [1] 6/19</p> <p>Clematis [1] 1/17</p> <p>clerk [4] 3/17 35/4 63/23 97/5</p> <p>clerking [1] 56/16</p> <p>Cleveland [6] 6/2 17/25 21/22 26/14 34/7 36/1</p> <p>client [11] 17/3 32/4 32/5 44/23 44/24 44/24 45/2 45/3 75/3 88/7 105/2</p> <p>client's [2] 7/8 88/6</p> <p>clients [45]</p> <p>clients' [1] 15/14</p> <p>Climaco [8] 30/15 31/1 35/24 36/1 37/1 80/14 103/23 109/8</p> <p>clinical [1] 16/13</p> <p>close [6] 4/20 78/11 82/21 82/22 107/3 107/4</p> <p>closely [7] 24/20 25/9 27/18 37/13 38/23 51/3 82/7</p> <p>closing [1] 97/15</p> <p>club's [1] 108/7</p> <p>CMO [1] 3/21</p> <p>co [21] 9/20 13/25 14/13 14/19 33/20 37/11 46/5 50/11 50/22 52/12 65/25 71/6 89/18 93/13 95/9 95/25 98/17 103/20 103/25 104/10 107/21</p> <p>co-chair [4] 9/20 14/13 50/22 89/18</p> <p>co-chairs [1] 95/25</p> <p>co-counsel [4] 14/19 50/11 103/20 107/21</p> <p>co-lead [9] 46/5 52/12 65/25 71/6 93/13 95/9 98/17 103/25 104/10</p> <p>co-liaison [2] 33/20 37/11</p> <p>co-tried [1] 13/25</p> <p>coach [2] 32/10 32/11</p> <p>coast [6] 53/25 93/3 93/4 97/1 97/2 97/9</p> <p>cobalt [3] 13/5 28/22 106/19</p> <p>Cochran [4] 76/11 76/12 76/13 77/11</p> <p>cockles [1] 68/22</p> <p>Coffin [3] 98/1 98/3 98/3</p> <p>cohesive [1] 73/22</p> <p>collaboration [1] 30/11</p> <p>colleague [3] 35/5 47/12 72/23</p> <p>colleagues [9] 7/5 22/12 38/19 52/24 55/24 56/3 84/21 98/9 99/5</p> <p>collectively [3] 21/24 22/1 52/24</p> <p>Collier [3] 87/13 87/17 87/25</p> <p>color [1] 4/19</p> <p>Colorado [1] 106/15</p> <p>Columbia [1] 66/19</p> <p>combined [1] 21/5</p> <p>comes [2] 10/14 85/19</p> <p>comfortable [2] 7/10 7/15</p>	<p>coming [3] 71/23 109/19 110/2</p> <p>commend [2] 67/21 82/9</p> <p>comment [1] 36/5</p> <p>comments [2] 44/21 87/20</p> <p>commercial [2] 58/11 60/5</p> <p>commission [1] 76/25</p> <p>commissioner [1] 31/7</p> <p>commit [2] 92/16 102/2</p> <p>commitment [14] 24/12 54/8 57/11 62/4 62/7 67/7 68/13 76/19 80/7 80/11 91/4 91/5 91/8 91/9</p> <p>committed [21] 14/5 15/5 15/11 22/3 26/17 27/7 27/22 29/20 33/17 33/21 33/23 39/3 40/23 57/16 61/17 62/21 70/23 95/12 99/10 102/12 105/10</p> <p>committee [54]</p> <p>committees [16] 4/2 11/23 14/14 16/19 17/1 17/2 32/13 32/14 33/21 39/5 81/23 89/18 91/25 100/3 102/11 107/20</p> <p>common [2] 71/22 82/15</p> <p>Commonwealth [1] 66/19</p> <p>communicate [1] 70/16</p> <p>communication [5] 42/16 48/10 48/20 70/10 93/25</p> <p>community [1] 77/6</p> <p>companies [5] 31/23 52/13 56/18 58/14 104/22</p> <p>company [3] 30/11 58/4 90/17</p> <p>company's [1] 18/4</p> <p>compare [1] 19/22</p> <p>compassion [4] 20/6 76/19 77/18 77/19</p> <p>compelled [1] 82/16</p> <p>compensate [1] 72/4</p> <p>competent [1] 26/18</p> <p>competing [1] 9/25</p> <p>competitive [1] 71/19</p> <p>competitors [1] 86/16</p> <p>complete [2] 54/17 96/21</p> <p>completed [1] 69/21</p> <p>completely [1] 62/21</p> <p>complex [17] 12/22 14/12 14/14 19/15 28/16 30/14 30/17 37/24 37/25 38/1 38/1 38/3 56/15 57/2 69/8 73/9 95/4</p> <p>complicated [2] 25/6 91/7</p> <p>component [2] 12/24 24/24</p> <p>composition [1] 43/10</p> <p>composix [1] 93/14</p> <p>comprehensive [1] 109/20</p> <p>comprised [1] 23/24</p> <p>concentration [1] 50/16</p> <p>concept [1] 81/24</p> <p>concerns [1] 64/24</p> <p>conclude [1] 22/10</p> <p>concluded [1] 6/21</p> <p>concludes [2] 87/19 88/9</p> <p>conclusion [3] 17/10 34/19 90/10</p> <p>concurrently [1] 93/22</p> <p>conduct [2] 28/13 87/22</p> <p>conducted [1] 83/13</p> <p>conducting [2] 15/8 102/3</p> <p>Conelly [1] 88/2</p> <p>conference [1] 96/16</p> <p>confidence [1] 48/22</p> <p>confident [1] 67/6</p> <p>confirm [1] 67/7</p> <p>confirmed [5] 14/18 14/20 70/25 93/6 95/15</p> <p>Connolly [3] 87/16 87/25 88/1</p> <p>Conner [3] 3/3 3/4 74/18</p> <p>consecutive [1] 57/7</p> <p>consequence [1] 35/9</p>	<p>consider [10] 16/10 17/14 24/11 31/9 31/12 31/13 35/22 55/23 64/11 77/22</p> <p>considerable [2] 15/12 92/7</p> <p>consideration [14] 2/17 25/5 33/8 43/23 51/9 54/23 67/10 68/19 91/12 99/12 101/8 102/16 106/9 110/10</p> <p>considerations [1] 24/5</p> <p>considered [6] 13/8 29/10 90/18 90/19 111/1 111/1</p> <p>considering [1] 83/23</p> <p>considers [1] 10/14</p> <p>consists [1] 92/8</p> <p>constituencies [1] 70/7</p> <p>constituency [4] 69/11 69/13 70/7 70/17</p> <p>Constitution [1] 69/20</p> <p>constraints [1] 9/3</p> <p>construct [1] 52/10</p> <p>constructive [1] 11/11</p> <p>consultation [1] 4/4</p> <p>consumer [1] 12/21</p> <p>consumers [4] 12/19 30/19 56/21 76/23</p> <p>consumption [1] 80/7</p> <p>contact [1] 68/2</p> <p>contained [1] 3/21</p> <p>contaminated [1] 54/15</p> <p>contemplating [1] 111/12</p> <p>contemplation [1] 97/6</p> <p>contest [1] 19/12</p> <p>contests [1] 19/13</p> <p>context [2] 7/11 28/15</p> <p>continue [2] 2/7 4/8</p> <p>continued [2] 16/24 30/17</p> <p>continuing [1] 96/3</p> <p>contraction [1] 4/6</p> <p>contribute [2] 60/13 79/4</p> <p>contribution [3] 36/17 63/11 108/13</p> <p>contributions [1] 13/1</p> <p>control [2] 70/9 71/7</p> <p>convince [1] 112/3</p> <p>convinced [1] 112/1</p> <p>convincing [1] 90/3</p> <p>Conway [1] 40/13</p> <p>cooperation [5] 33/21 36/23 37/8 42/15 73/13</p> <p>cooperative [3] 23/3 26/1 39/4</p> <p>cooperatively [6] 21/24 27/3 33/24 34/17 37/18 81/21</p> <p>coordinate [7] 17/8 17/9 25/18 27/16 61/5 85/1 86/19</p> <p>coordinated [5] 11/23 17/6 18/17 35/20 93/20</p> <p>coordinating [7] 18/18 25/12 25/13 35/6 84/6 103/15 105/7</p> <p>coordination [9] 46/9 46/11 48/1 54/17 57/1 73/13 83/5 93/16 93/24</p> <p>coordinations [1] 35/12</p> <p>core [3] 7/4 7/9 7/13</p> <p>corporate [4] 60/23 63/5 82/4 83/14</p> <p>Corporation [1] 70/5</p> <p>corporations [4] 56/19 76/23 101/14 101/17</p> <p>correct [4] 15/22 63/14 106/13 112/10</p> <p>Cory [1] 90/14</p> <p>Cotlar [1] 27/13</p> <p>couldn't [1] 79/21</p> <p>Council [1] 38/1</p> <p>counsel [66]</p> <p>count [1] 17/7</p> <p>counter [1] 66/21</p> <p>countless [3] 11/15 62/10 74/4</p> <p>country [20] 5/16 6/8 6/11 11/15 12/19 18/13</p>
--	--	---

<p>C</p> <p>country... [14] 33/15 47/3 48/11 51/23 84/20 93/3 95/7 100/13 101/12 103/7 103/14 103/17 105/4 109/14</p> <p>County [2] 37/23 84/24</p> <p>couple [6] 4/21 17/23 59/12 59/20 99/24 100/9</p> <p>course [7] 2/22 27/1 40/16 67/2 73/13 74/19 105/25</p> <p>courses [1] 106/7</p> <p>court [103]</p> <p>court's [3] 42/21 87/21 95/17</p> <p>court-based [1] 94/3</p> <p>courtesy [4] 3/13 5/2 33/22 108/14</p> <p>courthouse [3] 55/1 88/12 111/13</p> <p>courtroom [9] 13/7 15/23 16/7 44/20 68/16 91/24 95/22 97/17 110/25</p> <p>courts [4] 18/15 24/20 26/2 98/17</p> <p>cover [3] 26/9 53/18 53/24</p> <p>coverage [3] 104/13 104/19 105/1</p> <p>covered [1] 97/21</p> <p>coveted [1] 56/12</p> <p>CPE [1] 1/16</p> <p>craft [1] 90/7</p> <p>crafting [1] 89/14</p> <p>Crawford [1] 19/3</p> <p>creative [3] 71/24 72/3 72/5</p> <p>criteria [1] 109/20</p> <p>critical [1] 23/24</p> <p>crossed [3] 85/24 85/25 86/1</p> <p>crowd [1] 7/4</p> <p>Crowder [1] 90/15</p> <p>CRR [2] 1/16 112/15</p> <p>Crump [3] 29/6 29/8 29/8</p> <p>cue [1] 4/17</p> <p>Cuker [1] 82/24</p> <p>curiosity [1] 28/20</p> <p>Curphy [1] 8/10</p> <p>currently [8] 11/2 22/23 62/25 64/19 72/15 89/20 92/11 95/13</p> <p>cut [1] 10/13</p> <p>Cutter [1] 102/24</p>	<p>days [4] 35/3 41/22 89/4 95/18</p> <p>Dayton [1] 88/11</p> <p>deal [6] 3/14 3/15 36/21 77/15 86/4 87/2</p> <p>dealing [1] 83/19</p> <p>deals [1] 5/22</p> <p>death [1] 94/7</p> <p>decade [3] 26/20 35/10 37/9</p> <p>decide [2] 18/25 77/4</p> <p>decided [2] 90/25 91/1</p> <p>decision [2] 33/2 97/7</p> <p>decisions [5] 5/17 8/7 23/22 24/3 100/10</p> <p>declaration [1] 3/23</p> <p>dedicated [4] 33/14 86/7 86/10 99/10</p> <p>dedication [3] 51/5 80/6 108/3</p> <p>deemed [1] 4/6</p> <p>deems [1] 86/23</p> <p>deeply [3] 15/5 15/11 26/17</p> <p>Deepwater [1] 105/24</p> <p>defective [5] 50/10 51/16 74/20 86/12 98/4</p> <p>defendant [2] 2/8 63/3</p> <p>defendants [12] 2/8 9/24 11/11 11/20 18/12 25/8 44/11 54/20 63/2 74/4 82/4 103/15</p> <p>defended [1] 77/20</p> <p>defending [1] 103/16</p> <p>defense [29] 2/19 3/15 5/23 12/5 18/1 19/17 22/1 22/11 24/21 27/17 36/11 36/24 37/18 53/1 56/4 56/18 58/12 58/13 58/16 67/4 74/5 75/22 77/9 77/10 103/14 103/22 107/7 111/18 112/3</p> <p>define [1] 31/22</p> <p>definitely [3] 60/10 78/14 94/20</p> <p>DeGaris [4] 14/3 90/13 90/14 90/15</p> <p>degree [2] 16/12 89/22</p> <p>demanded [1] 108/4</p> <p>demonstrated [2] 53/3 63/8</p> <p>demonstrates [1] 110/7</p> <p>Denver [1] 106/15</p> <p>department [1] 86/7</p> <p>dependent [1] 42/23</p> <p>depending [2] 111/13 111/19</p> <p>deposition [4] 11/3 15/3 17/2 79/22</p> <p>depositions [9] 5/23 6/7 10/5 13/7 63/5 63/6 81/19 83/14 86/15</p> <p>depth [1] 13/1</p> <p>DEPUY [18] 1/3 2/12 31/4 66/1 68/5 70/25 71/15 71/17 72/2 75/6 80/11 83/12 83/17 86/17 95/13 95/24 95/25 106/19</p> <p>Depuy's [1] 83/14</p> <p>design [3] 52/13 52/14 83/16</p> <p>despite [1] 85/17</p> <p>detail [3] 13/21 41/11 81/19</p> <p>detailed [2] 13/23 34/11</p> <p>details [1] 47/11</p> <p>determination [1] 42/21</p> <p>determine [3] 4/4 7/4 76/25</p> <p>determined [3] 3/24 3/25 43/10</p> <p>Detroit [1] 67/16</p> <p>develop [4] 19/10 42/5 60/13 109/16</p> <p>developed [8] 25/4 28/11 50/11 64/7 71/23 82/17 91/10 109/13</p> <p>developing [1] 89/12</p> <p>development [5] 58/18 60/8 60/11 81/15 86/15</p> <p>device [5] 73/9 75/14 98/16 101/22 107/16</p> <p>devices [6] 16/15 52/14 66/22 74/21 83/17 108/13</p> <p>devote [1] 14/10</p> <p>devoted [2] 38/7 107/15</p> <p>Dianne [3] 53/24 54/2 87/7</p> <p>diatribe [1] 90/21</p>	<p>didn't [7] 4/18 6/15 15/22 39/22 70/13 93/23 107/3</p> <p>Diego [1] 107/18</p> <p>diet [2] 89/13 89/16</p> <p>different [12] 19/8 48/11 48/17 49/19 57/19 95/23 95/23 95/23 100/1 104/22 109/25 110/2</p> <p>difficult [4] 16/8 16/9 72/24 110/22</p> <p>Digitek [1] 23/6</p> <p>diligence [1] 40/21</p> <p>dime [1] 108/7</p> <p>direct [3] 3/20 22/6 24/6</p> <p>direction [1] 81/21</p> <p>directly [7] 14/18 40/14 40/17 61/15 68/6 92/15 93/5</p> <p>Dirk [3] 28/2 28/3 28/4</p> <p>disaster [2] 105/22 105/25</p> <p>disasters [1] 105/23</p> <p>disciple [1] 36/3</p> <p>disclosure [1] 45/19</p> <p>disconnect [1] 23/22</p> <p>discovery [23] 8/1 8/3 8/4 9/20 9/22 9/23 11/21 15/8 17/9 19/16 26/22 28/13 56/25 63/7 66/25 71/11 83/14 93/17 93/21 96/18 100/8 102/3 104/6</p> <p>discuss [1] 111/20</p> <p>discussion [3] 52/19 52/21 52/22</p> <p>dismissing [1] 24/23</p> <p>disposed [1] 58/12</p> <p>disputes [1] 36/18</p> <p>distance [1] 13/7</p> <p>distinct [1] 106/20</p> <p>distinguish [3] 85/21 90/17 99/21</p> <p>distinguished [1] 90/17</p> <p>distinguishes [1] 64/4</p> <p>district [30] 1/1 1/1 1/11 3/9 3/21 8/2 16/5 26/19 32/23 33/1 35/4 35/13 35/17 35/19 39/13 41/8 41/20 41/21 50/15 52/13 55/18 61/15 66/18 80/2 93/15 94/6 98/18 98/19 98/21 100/12</p> <p>diverse [4] 31/14 31/23 36/23 96/6</p> <p>diversity [7] 31/12 48/15 48/16 76/17 97/16 97/20 109/25</p> <p>division [1] 3/8</p> <p>docket [2] 92/7 92/8</p> <p>dockets [1] 92/6</p> <p>doctor [3] 27/23 59/25 75/19</p> <p>doctors [1] 57/14</p> <p>document [3] 63/7 109/19 109/20</p> <p>documents [5] 10/4 10/7 79/12 81/18 104/7</p> <p>does [6] 20/3 39/2 45/6 53/9 53/11 58/14</p> <p>doesn't [4] 32/20 32/24 81/1 101/24</p> <p>doing [11] 13/10 14/6 50/10 55/10 57/16 69/6 79/3 86/5 92/17 100/3 102/14</p> <p>dollars [4] 18/8 36/20 44/3 56/23</p> <p>Don [1] 87/10</p> <p>don't [18] 13/21 26/5 34/10 40/5 41/9 41/11 41/15 47/10 52/3 55/11 69/15 72/12 74/2 77/10 78/11 85/9 106/6 108/6</p> <p>Donald [1] 92/21</p> <p>done [33] 3/7 4/3 5/12 5/23 9/16 9/22 10/3 10/3 14/11 14/12 16/23 24/20 46/10 48/2 55/17 55/21 58/20 59/6 59/9 64/9 67/8 76/21 76/23 77/1 77/16 78/6 86/6 86/25 86/25 88/13 94/9 96/2 104/6</p> <p>Dowd [1] 53/8</p> <p>down [7] 2/9 2/9 23/21 36/5 71/24 85/24 103/21</p> <p>dozen [2] 14/18 68/4</p> <p>dozens [5] 13/2 28/18 28/18 50/13 50/14</p>
<p>D</p> <p>D.C [1] 66/17</p> <p>DAK [1] 1/2</p> <p>Dalkon [1] 101/19</p> <p>Dallas [1] 24/18</p> <p>damages [1] 24/4</p> <p>Dan [4] 6/14 14/2 50/3 61/13</p> <p>Dana [2] 97/9 97/9</p> <p>Daniel [9] 5/5 5/8 11/4 11/16 14/24 50/2 60/18 60/19 61/10</p> <p>Danny [1] 5/5</p> <p>Dara [1] 97/14</p> <p>Daskal [5] 104/2 108/17 108/19 108/20 108/20</p> <p>date [2] 95/16 103/10</p> <p>Dated [1] 112/12</p> <p>dating [1] 41/13</p> <p>Daubert [4] 10/3 10/9 89/15 100/7</p> <p>daunting [1] 65/16</p> <p>Dave [3] 8/10 29/1 58/24</p> <p>DAVID [13] 1/10 8/13 12/10 12/13 20/21 31/6 39/22 40/1 41/3 79/18 79/21 79/21 79/24</p> <p>Davis [16] 27/11 27/12 29/8 59/16 64/14 64/18 64/18 65/7 74/13 74/15 74/16 78/17 79/18 79/19 82/10 100/24</p>	<p>depth [1] 13/1</p> <p>DEPUY [18] 1/3 2/12 31/4 66/1 68/5 70/25 71/15 71/17 72/2 75/6 80/11 83/12 83/17 86/17 95/13 95/24 95/25 106/19</p> <p>Depuy's [1] 83/14</p> <p>design [3] 52/13 52/14 83/16</p> <p>despite [1] 85/17</p> <p>detail [3] 13/21 41/11 81/19</p> <p>detailed [2] 13/23 34/11</p> <p>details [1] 47/11</p> <p>determination [1] 42/21</p> <p>determine [3] 4/4 7/4 76/25</p> <p>determined [3] 3/24 3/25 43/10</p> <p>Detroit [1] 67/16</p> <p>develop [4] 19/10 42/5 60/13 109/16</p> <p>developed [8] 25/4 28/11 50/11 64/7 71/23 82/17 91/10 109/13</p> <p>developing [1] 89/12</p> <p>development [5] 58/18 60/8 60/11 81/15 86/15</p> <p>device [5] 73/9 75/14 98/16 101/22 107/16</p> <p>devices [6] 16/15 52/14 66/22 74/21 83/17 108/13</p> <p>devote [1] 14/10</p> <p>devoted [2] 38/7 107/15</p> <p>Dianne [3] 53/24 54/2 87/7</p> <p>diatribe [1] 90/21</p>	<p>didn't [7] 4/18 6/15 15/22 39/22 70/13 93/23 107/3</p> <p>Diego [1] 107/18</p> <p>diet [2] 89/13 89/16</p> <p>different [12] 19/8 48/11 48/17 49/19 57/19 95/23 95/23 95/23 100/1 104/22 109/25 110/2</p> <p>difficult [4] 16/8 16/9 72/24 110/22</p> <p>Digitek [1] 23/6</p> <p>diligence [1] 40/21</p> <p>dime [1] 108/7</p> <p>direct [3] 3/20 22/6 24/6</p> <p>direction [1] 81/21</p> <p>directly [7] 14/18 40/14 40/17 61/15 68/6 92/15 93/5</p> <p>Dirk [3] 28/2 28/3 28/4</p> <p>disaster [2] 105/22 105/25</p> <p>disasters [1] 105/23</p> <p>disciple [1] 36/3</p> <p>disclosure [1] 45/19</p> <p>disconnect [1] 23/22</p> <p>discovery [23] 8/1 8/3 8/4 9/20 9/22 9/23 11/21 15/8 17/9 19/16 26/22 28/13 56/25 63/7 66/25 71/11 83/14 93/17 93/21 96/18 100/8 102/3 104/6</p> <p>discuss [1] 111/20</p> <p>discussion [3] 52/19 52/21 52/22</p> <p>dismissing [1] 24/23</p> <p>disposed [1] 58/12</p> <p>disputes [1] 36/18</p> <p>distance [1] 13/7</p> <p>distinct [1] 106/20</p> <p>distinguish [3] 85/21 90/17 99/21</p> <p>distinguished [1] 90/17</p> <p>distinguishes [1] 64/4</p> <p>district [30] 1/1 1/1 1/11 3/9 3/21 8/2 16/5 26/19 32/23 33/1 35/4 35/13 35/17 35/19 39/13 41/8 41/20 41/21 50/15 52/13 55/18 61/15 66/18 80/2 93/15 94/6 98/18 98/19 98/21 100/12</p> <p>diverse [4] 31/14 31/23 36/23 96/6</p> <p>diversity [7] 31/12 48/15 48/16 76/17 97/16 97/20 109/25</p> <p>division [1] 3/8</p> <p>docket [2] 92/7 92/8</p> <p>dockets [1] 92/6</p> <p>doctor [3] 27/23 59/25 75/19</p> <p>doctors [1] 57/14</p> <p>document [3] 63/7 109/19 109/20</p> <p>documents [5] 10/4 10/7 79/12 81/18 104/7</p> <p>does [6] 20/3 39/2 45/6 53/9 53/11 58/14</p> <p>doesn't [4] 32/20 32/24 81/1 101/24</p> <p>doing [11] 13/10 14/6 50/10 55/10 57/16 69/6 79/3 86/5 92/17 100/3 102/14</p> <p>dollars [4] 18/8 36/20 44/3 56/23</p> <p>Don [1] 87/10</p> <p>don't [18] 13/21 26/5 34/10 40/5 41/9 41/11 41/15 47/10 52/3 55/11 69/15 72/12 74/2 77/10 78/11 85/9 106/6 108/6</p> <p>Donald [1] 92/21</p> <p>done [33] 3/7 4/3 5/12 5/23 9/16 9/22 10/3 10/3 14/11 14/12 16/23 24/20 46/10 48/2 55/17 55/21 58/20 59/6 59/9 64/9 67/8 76/21 76/23 77/1 77/16 78/6 86/6 86/25 86/25 88/13 94/9 96/2 104/6</p> <p>Dowd [1] 53/8</p> <p>down [7] 2/9 2/9 23/21 36/5 71/24 85/24 103/21</p> <p>dozen [2] 14/18 68/4</p> <p>dozens [5] 13/2 28/18 28/18 50/13 50/14</p>

<p>D</p> <p>Dr. [2] 31/6 59/15 Dr. David [1] 31/6 Dr. Langton [1] 59/15 drafted [1] 57/2 drafting [1] 37/20 Drakulich [3] 107/3 107/6 107/7 Drastic [1] 108/19 draw [1] 71/21 drive [3] 5/18 46/20 68/17 drives [1] 58/15 drop [2] 28/4 28/6 drug [2] 100/1 101/22 drugs [2] 66/21 66/21 drywall [4] 27/20 47/2 50/23 55/22 Duane [1] 93/4 due [3] 31/12 40/20 86/20 Dugan [4] 30/1 30/2 30/5 30/5 Duke [1] 50/18 duplicating [1] 93/25 during [5] 27/1 52/9 79/14 89/21 97/6 Durom [1] 64/1 Dutton [1] 49/8</p>	<p>engineering [1] 59/3 England [1] 62/15 English [1] 62/17 enjoy [1] 20/7 enjoyed [2] 10/5 51/2 enormous [1] 33/16 enough [9] 30/8 30/25 47/2 53/19 58/16 60/14 65/25 73/7 79/4 ensure [3] 40/7 40/7 91/6 ensuring [1] 15/11 enterprises [1] 66/22 entire [3] 15/7 102/8 103/23 entirely [1] 60/5 entitled [3] 66/10 101/14 112/11 entrenched [1] 65/23 Ephedra [1] 35/18 epicenter [1] 59/1 epidemiology [2] 89/22 99/1 Equally [1] 57/9 Era [1] 77/6 Eric [7] 14/19 26/24 29/1 41/4 41/7 80/15 82/7 Ervin [1] 31/19 especially [3] 57/21 72/2 82/16 essential [2] 26/1 30/14 essentially [2] 7/13 9/25 establish [2] 109/17 109/20 established [3] 12/19 12/20 92/12 esteemed [1] 62/2 Esther [2] 82/20 82/23 et [1] 2/16 et cetera [1] 2/16 ethic [5] 62/4 62/22 62/22 63/8 65/3 ethical [2] 25/5 33/22 ethics [3] 25/5 33/22 76/25 Europe [1] 5/24 evaluate [1] 42/1 evaluating [1] 14/21 eve [1] 63/7 even [8] 60/11 78/11 90/22 94/11 107/3 107/17 109/10 110/21 event [1] 5/21 ever [4] 35/3 45/9 49/16 112/2 every [12] 5/16 6/5 11/14 20/25 43/1 44/23 51/16 53/2 53/10 75/3 78/23 101/25 everybody [7] 7/9 7/10 20/11 45/7 46/20 46/22 79/6 everybody's [1] 104/4 everyone [6] 7/10 32/20 36/18 73/1 73/19 80/5 everyone's [1] 14/7 everything [6] 27/23 79/1 90/10 92/18 104/25 112/1 evidence [2] 62/7 62/23 Evra [11] 5/25 11/8 21/20 21/23 25/25 43/16 47/9 47/23 88/18 89/20 100/7 ex [1] 77/7 ex-athlete [1] 77/7 example [2] 28/23 54/15 excellent [2] 82/22 92/1 except [1] 4/25 exception [1] 59/24 executive [7] 11/10 11/13 49/13 71/8 93/2 102/12 111/19 exist [3] 24/24 32/20 32/24 expansion [1] 4/6 expect [6] 3/7 3/11 3/12 18/16 18/25 51/20 expectation [1] 87/18 expectations [1] 54/22 expected [1] 108/4</p>	<p>experience [54] experienced [1] 73/18 expert [12] 8/7 28/14 50/22 50/23 58/18 60/8 60/11 63/5 66/25 89/18 90/4 102/11 expert-heavy [1] 28/14 expertise [3] 71/12 76/18 77/14 experts [19] 15/8 15/13 25/9 42/5 58/24 62/10 62/11 62/11 62/12 62/15 64/6 89/12 89/14 89/14 90/2 92/12 104/6 104/7 104/24 explain [1] 41/12 explantations [1] 42/1 explanted [1] 22/9 exposed [1] 57/18 extend [1] 20/2 extensive [3] 38/24 51/7 80/9 external [1] 40/15 extract [2] 19/25 19/25 extracting [1] 104/12 extraordinary [1] 42/16 extremely [6] 25/25 26/3 73/2 99/4 110/20 111/3</p>
<p>E</p> <p>e-discovery [4] 8/1 8/3 8/4 9/23 e-mailed [1] 107/12 each [6] 2/17 6/17 12/24 87/22 89/24 112/1 eager [1] 57/21 earlier [5] 7/19 38/16 40/19 103/8 109/15 early [8] 3/23 19/20 20/6 43/12 52/22 58/21 87/9 110/22 easier [2] 48/14 91/6 East [2] 53/25 97/2 Eastern [2] 55/18 98/18 easy [3] 110/7 110/15 112/4 echo [1] 38/16 economy [2] 20/15 29/24 Ed [3] 34/4 34/8 74/8 Education [1] 70/4 effect [1] 71/1 effective [2] 45/8 71/1 effectively [1] 82/12 efficiencies [1] 68/11 efficiency [1] 68/16 efficient [3] 45/8 67/21 68/10 efficiently [2] 67/25 82/12 efforts [9] 26/1 82/2 82/10 83/5 85/2 92/17 93/17 93/17 93/25 eight [4] 37/23 56/20 57/6 59/22 either [9] 5/16 6/5 10/18 21/11 24/22 79/18 94/18 96/12 111/2 Eldon [1] 27/19 element [1] 48/19 elevated [1] 28/24 elevator [1] 74/17 Eleventh [1] 8/7 eliminates [2] 44/2 44/3 Ellen [1] 47/7 eloquence [1] 90/20 else [6] 27/23 28/14 28/19 73/1 79/7 96/19 eluded [1] 52/17 end [8] 18/19 46/7 46/17 46/23 94/24 97/8 105/3 105/14 endeavored [1] 39/1 ended [1] 103/19 energy [4] 15/13 79/6 80/7 85/25 engagement [1] 52/6 engaging [1] 90/21</p>	<p>Ervin [1] 31/19 especially [3] 57/21 72/2 82/16 essential [2] 26/1 30/14 essentially [2] 7/13 9/25 establish [2] 109/17 109/20 established [3] 12/19 12/20 92/12 esteemed [1] 62/2 Esther [2] 82/20 82/23 et [1] 2/16 et cetera [1] 2/16 ethic [5] 62/4 62/22 62/22 63/8 65/3 ethical [2] 25/5 33/22 ethics [3] 25/5 33/22 76/25 Europe [1] 5/24 evaluate [1] 42/1 evaluating [1] 14/21 eve [1] 63/7 even [8] 60/11 78/11 90/22 94/11 107/3 107/17 109/10 110/21 event [1] 5/21 ever [4] 35/3 45/9 49/16 112/2 every [12] 5/16 6/5 11/14 20/25 43/1 44/23 51/16 53/2 53/10 75/3 78/23 101/25 everybody [7] 7/9 7/10 20/11 45/7 46/20 46/22 79/6 everybody's [1] 104/4 everyone [6] 7/10 32/20 36/18 73/1 73/19 80/5 everyone's [1] 14/7 everything [6] 27/23 79/1 90/10 92/18 104/25 112/1 evidence [2] 62/7 62/23 Evra [11] 5/25 11/8 21/20 21/23 25/25 43/16 47/9 47/23 88/18 89/20 100/7 ex [1] 77/7 ex-athlete [1] 77/7 example [2] 28/23 54/15 excellent [2] 82/22 92/1 except [1] 4/25 exception [1] 59/24 executive [7] 11/10 11/13 49/13 71/8 93/2 102/12 111/19 exist [3] 24/24 32/20 32/24 expansion [1] 4/6 expect [6] 3/7 3/11 3/12 18/16 18/25 51/20 expectation [1] 87/18 expectations [1] 54/22 expected [1] 108/4</p>	<p>F</p> <p>face [7] 4/14 17/21 56/13 57/17 57/20 79/5 85/24 faced [1] 105/25 faces [1] 65/15 facilitating [1] 98/6 fact [10] 5/17 6/3 24/6 28/12 37/9 37/14 60/9 75/20 83/11 110/18 failed [1] 110/13 failure [1] 74/21 fair [1] 54/9 fairly [1] 66/10 fairness [1] 82/8 Fallon [7] 10/24 27/19 30/22 46/6 47/4 50/24 55/21 familiar [5] 11/7 21/19 40/3 65/14 110/17 family [2] 38/18 71/13 fantastic [1] 85/18 far [6] 22/5 38/21 43/7 64/5 66/2 106/7 farm [1] 77/6 farther [1] 59/10 Fast [1] 105/15 fastest [2] 49/15 49/15 fate [1] 44/17 father [1] 15/2 favor [1] 100/13 favorably [1] 77/23 fax [9] 79/13 89/2 98/4 99/18 101/7 102/21 103/11 106/14 109/3 faxed [1] 107/12 FDA [3] 31/7 31/8 83/17 fears [1] 64/24 February [1] 111/12 February 8th [1] 111/12 federal [22] 25/14 25/16 25/18 26/2 27/17 33/18 33/25 35/11 44/6 46/9 46/11 59/21 59/24 61/6 63/23 83/5 88/2 90/23 93/17 93/21 95/16 98/17 Feehan [2] 3/18 15/1 feel [11] 19/12 45/25 48/22 56/13 70/8 77/15 79/2 81/14 82/15 84/20 87/2 feeling [3] 28/25 50/6 65/22 feels [1] 78/23 Feinberg [1] 5/19 Felicia [1] 56/8 fellow [2] 9/18 92/16 felt [1] 70/12 female [2] 49/1 97/19</p>

<p>F</p> <p>Fen [4] 14/15 16/22 32/19 55/18 Fen-Phen [4] 14/15 16/22 32/19 55/18 few [12] 2/15 4/3 24/12 36/5 56/14 57/13 62/7 73/5 77/17 94/23 95/18 103/21 field [5] 12/24 23/24 71/13 71/14 104/23 fight [3] 26/11 47/21 47/21 figure [3] 66/9 76/15 107/22 figured [1] 107/9 file [6] 31/4 33/19 61/16 64/20 92/14 104/1 filed [32] 6/9 14/17 16/4 18/12 18/13 18/15 25/19 32/20 33/17 33/18 39/13 41/20 41/21 47/17 49/20 50/14 57/12 59/12 59/19 59/20 60/24 61/14 64/19 68/24 72/16 78/19 82/13 82/14 84/21 95/16 106/5 109/12 filing [7] 22/7 41/22 41/23 47/18 59/23 92/14 95/18 filings [1] 3/20 final [2] 82/8 86/22 finally [7] 32/17 40/18 54/21 70/6 71/19 82/13 88/17 financial [1] 57/8 fine [9] 9/11 13/25 17/17 19/10 42/18 50/7 75/4 81/11 108/9 finish [1] 100/16 finished [3] 22/24 69/22 100/18 finishing [1] 89/20 firm [110] firm's [6] 62/7 85/22 90/21 91/9 101/12 101/18 firm-Atlanta [1] 40/20 firmly [3] 22/3 70/23 73/12 firms [18] 12/17 15/17 23/25 24/2 30/12 31/2 31/13 31/14 31/14 39/15 48/17 54/1 54/23 67/23 68/3 68/4 68/14 77/12 first [25] 5/5 8/25 16/21 42/20 47/2 50/15 52/19 53/5 55/14 56/17 61/15 67/20 68/2 71/5 74/19 75/6 78/25 84/15 91/2 93/18 94/3 94/7 100/12 108/23 109/12 fit [4] 70/3 73/6 86/23 97/23 five [7] 47/17 52/11 52/12 73/8 75/4 76/3 107/17 flag [1] 84/3 Flajensity [1] 100/11 fleet [4] 36/7 104/9 104/18 109/6 Fleet's [1] 104/13 Fleishman [1] 33/10 Fleming [1] 51/14 flexibility [1] 19/19 Flight [1] 94/7 Florence [1] 17/3 Florida [9] 1/5 1/17 13/20 18/22 23/17 32/19 32/21 33/3 94/4 focus [2] 45/2 109/18 focused [2] 52/9 63/3 Foley [4] 97/10 103/4 103/5 103/6 folks [6] 10/2 24/6 73/24 77/17 82/3 96/23 follow [1] 20/22 following [5] 12/16 29/23 35/4 58/21 76/5 foot [2] 38/19 89/9 football [2] 32/10 77/7 forefront [3] 43/21 44/8 44/9 foregoing [1] 112/9 forget [1] 107/7 Forgive [1] 3/5 forgot [1] 3/2 formation [1] 109/12 formed [1] 75/11 former [2] 6/1 31/6</p>	<p>Fort [2] 61/13 63/23 forth [1] 39/6 fortunate [7] 19/10 30/8 30/15 30/24 65/25 73/7 110/23 fortune [2] 16/18 58/13 forward [18] 4/23 8/16 9/4 15/16 18/18 22/3 22/11 29/21 40/25 56/2 56/2 61/5 75/14 84/25 92/3 100/4 100/21 101/24 found [3] 10/7 24/22 104/7 founded [2] 89/3 103/12 four [9] 9/25 23/1 52/12 62/5 75/4 80/3 109/10 109/13 110/3 four-and-a-half [1] 80/3 Francisco [5] 18/10 18/17 18/24 25/13 61/25 Frank [1] 106/12 Franklin [4] 1/16 112/8 112/14 112/15 frankly [4] 41/24 72/20 72/21 73/23 Fred [1] 55/5 fresh [4] 57/20 70/11 79/5 85/24 freshness [1] 109/24 Friday [1] 44/18 friend [3] 35/5 94/12 103/7 friends [8] 7/5 10/2 19/11 55/24 84/21 98/9 103/19 107/7 front [22] 4/12 10/23 17/22 20/20 23/4 29/9 30/22 31/2 47/3 55/8 55/21 62/2 64/19 65/16 80/1 96/15 96/16 97/22 98/5 98/8 103/24 104/18 fruition [1] 14/7 fulfilled [1] 75/15 full [4] 16/7 51/1 87/20 100/19 full-time [2] 51/1 100/19 fully [2] 39/1 39/3 Fulton [1] 44/21 fume [3] 27/4 79/22 80/1 fun [1] 44/6 further [2] 95/17 96/4</p>	<p>giving [1] 33/6 global [2] 104/11 109/18 goal [5] 44/10 45/9 51/25 71/22 96/4 goals [2] 32/15 33/5 God [1] 77/17 Goetz [2] 23/15 23/16 going [48] Goldser [1] 53/4 Goldwasser [5] 26/5 26/6 26/13 26/14 80/15 golf [1] 106/7 gone [4] 11/14 55/17 67/23 81/5 Gonzalez [1] 31/19 good [113] good-looking [1] 28/25 Gordon [4] 13/17 13/19 42/3 50/24 Gornick [3] 61/22 61/24 61/25 Gorton [1] 98/19 got [25] 9/22 10/2 10/3 11/4 30/3 32/21 44/18 58/6 58/20 59/18 59/22 65/3 68/6 84/2 85/24 85/25 85/25 89/22 93/8 97/18 97/18 97/21 105/4 106/19 109/17 gotta [1] 33/5 gotten [4] 21/12 34/13 64/6 86/17 government [2] 79/13 98/4 government-owned [1] 98/4 Governor [3] 69/18 69/19 70/3 Governors [2] 69/25 70/2 Goza [1] 80/24 graced [1] 4/11 granted [1] 95/7 grasp [1] 4/1 gray [5] 19/9 34/10 34/14 55/11 77/5 great [12] 10/15 13/21 45/11 45/25 48/23 49/1 84/7 86/4 87/2 97/7 100/17 104/4 greater [1] 24/4 greatest [3] 82/17 84/19 108/6 green [2] 4/19 4/19 Greg [3] 58/7 64/14 64/18 Gregg [1] 58/1 grew [1] 84/23 gross [1] 43/22 group [10] 7/4 7/9 7/14 32/15 36/23 47/3 66/1 75/14 96/1 99/22 groups [1] 10/1 grow [1] 4/8 growing [1] 83/10 guaranteed [1] 79/16 guard [3] 78/10 78/12 85/25 guess [4] 2/3 46/3 66/5 104/11 guidance [1] 67/24 Guidant [5] 17/6 17/12 52/15 66/5 107/21 guided [1] 56/10 guiding [1] 101/13 Gulf [1] 97/1 guy [2] 77/5 97/11</p>
	<p>G</p> <p>Gadolinium [6] 21/22 62/24 63/13 89/21 92/8 92/10 gained [1] 78/20 Gale [2] 15/25 16/1 gallons [1] 68/17 game [1] 68/7 gamut [1] 104/24 Garcia [2] 3/18 15/1 Garcia-Feehan [1] 3/18 gas [2] 68/18 101/20 gathered [1] 15/17 Gauthier [1] 30/10 gave [1] 9/17 Gempler [1] 16/3 gender [1] 87/12 General [1] 30/23 generally [2] 43/8 47/22 generals [1] 30/19 generic [1] 10/6 gentleman [1] 30/9 gentlemen [3] 2/2 76/7 76/22 geographically [1] 50/20 geography [1] 48/16 Georgia [6] 8/2 8/4 8/5 64/22 76/10 77/1 Gerel [1] 66/18 gets [1] 12/3 getting [5] 34/10 36/22 58/23 59/3 67/8 gimmes [1] 75/22 give [2] 47/4 91/8 given [5] 2/17 2/18 13/3 80/12 89/11 gives [1] 110/4</p>	<p>H</p> <p>hair [7] 19/9 34/10 39/24 55/11 77/5 77/5 77/5 hairs [1] 34/14 half [3] 32/1 50/25 80/3 halls [1] 42/25 handle [5] 8/14 21/3 69/8 95/4 106/16 handled [7] 17/9 37/7 37/11 37/24 58/12 71/10 106/22 handling [2] 38/2 89/11 handsomely [1] 24/7 handwritten [1] 13/14 Hanley [3] 34/22 34/25 35/23 happen [2] 28/21 75/9</p>

<p>H</p> <p>happens [4] 28/21 28/23 47/22 106/23 happy [5] 34/7 39/5 86/19 88/14 104/14 hard [18] 8/24 9/21 10/10 16/24 17/5 20/22 21/4 41/18 52/20 57/22 61/4 65/5 86/24 94/18 94/19 100/3 100/5 102/13 hardest [3] 45/8 73/23 106/3 harm [1] 75/8 Harrison [1] 78/17 hasn't [2] 62/4 111/10 hasten [1] 85/17 Hauer [1] 53/7 haul [4] 42/23 53/11 54/10 65/1 haven't [2] 86/17 106/15 having [10] 5/11 12/18 26/15 45/24 67/10 68/12 70/24 92/3 93/21 110/3 he'll [2] 18/25 23/3 he's [7] 8/12 15/5 59/3 79/21 93/4 97/10 97/11 head [2] 76/12 86/15 headquartered [1] 47/25 headquarters [1] 60/23 heads [1] 97/12 healthcare [1] 30/20 hear [4] 20/18 44/4 68/23 93/22 heard [3] 36/9 36/13 40/18 64/5 79/11 80/16 87/7 90/1 hearing [9] 1/8 5/4 18/23 39/20 61/25 65/22 66/3 67/22 82/8 hearings [1] 96/17 heart [4] 19/23 19/25 68/23 95/17 heavily [3] 68/9 95/12 95/12 Heaviside [2] 66/15 66/17 heavy [1] 28/14 heck [1] 78/20 Hegar [1] 97/14 Heimann [1] 33/13 held [3] 1/10 11/12 83/2 Heller [1] 12/14 Hello [2] 44/15 47/14 Hellums [3] 49/6 49/8 49/9 help [17] 8/23 9/2 38/25 40/7 48/20 51/22 51/25 62/11 75/8 77/25 81/9 85/1 89/2 97/23 98/6 100/5 101/23 helped [1] 25/18 helpful [5] 36/22 48/9 71/4 72/5 110/5 helping [1] 103/20 helps [2] 46/8 48/25 Heparin [2] 21/21 54/15 here [93] Herman [2] 27/13 27/13 hesitate [1] 5/2 Hezekiah [1] 76/10 Higbee [1] 46/6 high [4] 13/5 28/22 32/11 64/7 Higher [1] 70/4 highest [1] 54/12 highlight [13] 46/3 47/4 56/13 69/6 69/16 73/5 79/23 80/2 80/5 80/9 93/10 98/11 98/24 highly [2] 40/22 40/22 himself [1] 8/13 hip [27] 1/4 11/20 13/3 20/4 28/25 30/24 37/10 42/11 42/11 51/16 51/18 63/25 64/1 64/2 68/5 70/25 78/15 83/12 83/17 86/4 86/6 86/8 86/12 92/11 95/24 96/1 99/3 hips [8] 18/2 20/1 49/25 51/24 54/18 54/20 99/3 106/6 historic [1] 101/19 history [4] 88/10 93/18 101/12 101/18</p>	<p>hold [2] 4/17 90/7 holds [1] 71/12 hole [1] 92/7 Hollander [1] 17/4 home [5] 6/1 16/24 27/6 84/4 84/24 homework [1] 3/7 Honnold [4] 29/2 80/20 80/23 80/24 honor [233] Honor's [5] 15/1 31/10 85/2 101/7 102/16 HONORABLE [3] 1/10 19/22 89/8 honored [12] 9/19 22/13 25/1 25/20 29/10 51/8 63/9 75/24 96/7 100/14 100/16 107/21 hop [1] 38/23 hope [15] 4/18 10/14 15/17 23/13 33/25 45/5 57/19 66/11 68/25 77/22 79/1 80/11 81/10 84/8 105/15 hopefully [4] 6/4 7/11 67/23 99/19 hopes [1] 15/7 hoping [4] 22/22 84/1 100/19 108/24 Hopkins [1] 89/21 Horizon [1] 105/24 Hospital [1] 50/18 hospitals [2] 50/18 57/15 Hot [1] 57/6 hour [1] 68/15 hours [3] 5/18 21/13 62/10 Houston [4] 22/19 34/9 91/20 97/2 Howard [4] 91/17 91/19 91/20 92/20 however [2] 28/14 83/8 hugely [1] 46/11 humbled [1] 85/20 humbling [2] 62/1 84/18 humbly [1] 75/23 hundred [12] 14/5 14/19 14/20 18/8 18/14 18/15 46/22 46/23 64/21 70/24 93/7 95/15 hundreds [8] 29/19 38/5 50/13 50/13 51/23 56/22 77/19 81/4 Hush [1] 6/15 hypersensitivity [1] 71/16</p> <p>I</p> <p>I'd [22] 6/12 15/16 16/23 23/10 25/2 25/11 36/5 38/16 48/8 51/8 51/8 69/6 80/13 86/2 88/17 92/24 93/10 96/20 96/22 99/24 100/14 108/13 I'll [27] 3/16 5/4 9/3 17/22 22/23 23/21 25/2 38/6 38/21 61/7 61/19 69/15 69/22 79/23 86/3 94/19 94/25 98/12 98/12 98/24 99/18 99/19 100/20 105/8 105/15 106/25 108/14 I'm [114] I've [110] ich [1] 107/8 Illinois [4] 29/18 38/15 38/19 38/23 immensely [1] 51/2 imminently [2] 79/2 80/16 immunology [1] 71/15 implant [16] 1/4 11/18 14/15 16/21 41/14 64/2 70/25 74/22 75/13 83/12 83/17 86/5 86/6 86/8 96/1 104/20 implants [4] 64/1 86/12 99/3 104/25 importance [8] 28/17 66/4 84/6 93/24 93/24 93/25 105/6 105/7 important [28] 14/8 18/10 24/13 26/3 32/16 39/14 41/16 41/16 42/7 42/17 46/7 47/19 48/17 53/10 57/9 66/10 72/1 73/20 75/2 75/10 75/15 88/5 88/6 88/20 93/11 99/4 100/6 100/10 importantly [7] 8/13 15/9 53/1 54/1 54/2 99/2 102/9 impossible [1] 99/22</p>	<p>impress [1] 90/20 impressed [1] 78/7 inability [1] 20/11 INC [1] 1/4 include [1] 55/12 included [2] 82/6 100/19 including [13] 2/15 4/2 5/25 14/1 14/15 26/21 31/25 52/14 55/18 56/19 64/1 71/10 109/8 incorporate [1] 7/10 increasingly [1] 50/7 incredible [2] 15/17 23/7 independent [1] 54/19 Indiana [1] 13/8 indicated [2] 4/11 4/22 individual [3] 29/22 69/12 70/8 individually [1] 43/22 individuals [6] 13/3 25/19 80/16 81/5 99/9 111/6 infallible [1] 13/14 inform [1] 46/21 information [1] 2/6 informed [1] 38/18 informing [1] 86/11 initial [2] 43/9 111/15 initially [3] 11/9 109/3 111/2 injunction [1] 4/16 injured [3] 12/19 56/21 82/3 injuries [1] 99/3 injury [2] 72/4 82/13 innovative [2] 82/5 82/11 input [1] 111/23 inquiries [1] 68/5 insights [1] 58/14 instead [2] 11/6 34/7 instinct [1] 81/8 institutional [1] 40/12 instrumental [1] 37/17 insurance [5] 104/13 104/19 104/22 104/23 105/1 intaked [1] 68/4 intakes [1] 93/6 integral [1] 95/10 integrity [2] 88/5 88/7 intellect [2] 69/8 69/15 intend [3] 33/19 40/5 95/18 intense [1] 40/15 intention [1] 36/4 interchange [1] 43/18 interchangeably [1] 43/19 interest [8] 25/8 26/9 39/15 45/19 50/21 61/17 68/16 70/25 interests [2] 44/9 88/6 Internet [1] 3/20 interrupt [3] 25/23 43/6 68/22 interviewed [1] 64/21 intrigued [1] 49/23 introduce [8] 2/19 2/21 3/16 8/23 47/12 96/22 101/9 105/17 introduced [3] 5/22 62/12 103/8 introducing [2] 59/12 59/14 introduction [2] 59/14 88/17 inventory [1] 66/8 invested [1] 95/13 investigating [3] 15/14 50/12 95/14 investigation [1] 51/8 involved [41] involvement [2] 41/17 108/9 involving [8] 4/16 12/22 30/20 31/24 37/8 54/19 56/25 71/16</p>
--	---	---

<p>I</p> <p>ions [1] 28/24 Island [1] 93/15 issue [7] 19/24 60/9 74/19 75/2 75/10 75/16 75/17 issues [17] 7/25 8/6 12/23 24/4 25/18 28/15 31/8 36/21 40/15 50/22 51/6 71/15 93/12 93/16 93/22 93/23 102/10 it's [55] item [2] 42/6 42/7</p>	<p>keep [8] 9/14 18/25 43/20 44/8 44/8 44/25 85/18 111/16 keeping [1] 108/9 Kelly [2] 59/15 91/16 Ken [4] 5/19 17/18 96/25 97/1 Kennedy [13] 14/19 26/24 27/2 27/4 29/1 31/1 41/4 41/6 41/7 41/8 53/9 80/15 82/7 Kentucky [7] 69/3 69/17 69/19 69/20 70/3 70/3 70/4 Kershaw [1] 102/24 Kessler [1] 31/6</p>	<p>103/14 lawyers [58] lead [26] 17/4 18/1 18/16 42/10 46/5 52/12 52/12 65/25 71/6 73/8 75/20 89/15 93/12 93/13 93/13 94/4 95/9 98/17 102/5 103/25 103/25 104/8 104/10 104/17 105/18 105/19 leader [2] 32/11 107/22 leaders [2] 54/13 59/16 leadership [32] 1/9 7/15 13/2 13/9 21/19 21/20 23/23 26/24 32/14 35/11 35/18 36/13 36/14 40/23 41/13 42/22 54/3 54/12 54/16 65/24 66/25 69/24 71/1 71/4 72/19 73/8 83/2 88/15 95/8 101/18 108/12 111/2 leading [1] 62/15 learned [6] 27/1 49/3 81/5 84/7 107/13 110/24 least [5] 45/23 91/7 93/19 109/15 111/14 leave [2] 43/12 49/17 lecturn [1] 5/7 led [1] 19/24 left [3] 3/18 84/4 86/18 leg [1] 4/12 legal [2] 30/8 57/7 Leonard [2] 27/11 27/12 less [4] 3/12 4/12 34/5 111/5 lesson [2] 84/8 107/13 let [6] 22/10 74/11 96/16 97/23 101/3 108/23 let's [1] 77/3 letter [5] 73/1 79/24 81/16 99/19 110/18 letters [1] 6/18 Levaquin [3] 11/12 22/24 53/5</p>
<p>J</p> <p>J's [1] 47/25 J.W [1] 57/25 Jack [4] 10/11 97/3 97/4 97/15 Jackson [5] 79/20 87/17 87/25 88/1 88/3 James [4] 30/1 30/5 70/20 102/5 Janine [3] 87/13 87/17 88/5 January [1] 1/5 JBJS [1] 75/19 JCCP [3] 37/9 38/2 38/6 Jean [1] 51/11 Jerry [1] 10/19 Jersey [17] 11/3 11/9 33/19 46/12 47/24 47/24 48/1 60/20 60/22 60/25 74/16 82/25 83/4 84/22 84/24 85/2 86/19 Jersey-based [1] 60/22 Jew [1] 97/18 Jez [2] 51/11 51/13 Jim [1] 70/21 job [3] 35/2 67/21 91/6 Joe [1] 48/4 John [11] 3/1 14/1 35/24 35/25 44/14 45/7 80/14 88/23 89/3 93/4 109/8 Johns [1] 89/21 Johnson [24] 22/24 22/25 23/10 23/10 23/13 23/14 27/20 27/21 43/16 43/16 52/15 52/15 53/6 53/6 60/9 60/9 60/22 63/19 63/22 75/6 75/6 84/24 84/24 86/21 Johnson's [2] 60/22 86/21 joint [1] 106/19 joints [1] 106/21 Jones [2] 69/1 69/2 Josh [1] 85/13 Journal [2] 57/6 75/18 Joyce [2] 58/25 59/4 Jr [1] 5/5 judge [66] judge's [1] 68/23 judges [5] 25/12 26/2 35/11 93/22 105/5 judgment [2] 20/4 32/21 judicial [3] 20/15 29/23 38/1 June [1] 94/7 jurisdictional [1] 25/7 jurisdictions [2] 15/18 25/17 just [42] justice [12] 15/12 37/25 40/13 45/3 46/19 46/22 69/17 69/21 75/8 96/2 97/5 100/5</p>	<p>key [5] 7/23 10/7 46/8 48/19 62/23 keys [1] 48/9 kid [3] 45/20 109/5 109/22 Kincannon [1] 85/13 kind [5] 3/12 7/22 74/24 77/7 110/3 Kingdom [2] 58/24 58/25 Kirk [3] 39/9 39/12 40/24 knee [4] 86/4 86/6 86/8 86/12 knees [1] 18/2 knew [4] 7/24 30/3 60/10 60/10 know [50] knowing [1] 104/25 knowledge [3] 21/11 24/4 97/7 known [2] 61/1 61/3 knows [2] 42/13 80/6 Kramer [1] 18/24 Kranz [4] 53/15 53/17 53/21 53/22 Kresch [2] 67/14 67/16 Kristin [1] 2/25 Kugel [3] 23/5 93/14 94/4</p>	<p>level [6] 7/15 29/15 54/12 64/7 80/11 86/20 levels [3] 13/5 28/22 59/7 Levin [3] 13/19 61/24 103/18 Levine [1] 97/6 Lewandowski [1] 16/4 Lewis [1] 50/4 liability [10] 1/4 12/22 12/24 28/10 31/24 53/8 79/3 91/23 109/14 109/16 liaison [15] 4/8 8/12 17/7 33/20 35/14 36/15 37/11 40/2 46/6 72/19 73/8 83/3 93/13 94/4 105/20 Liebhard [3] 56/10 56/20 57/5 Lieff [1] 33/13 life [2] 77/16 107/24 light [1] 105/14 likelihood [1] 87/18 likely [2] 60/24 91/1 limited [2] 2/16 4/2 line [3] 7/17 44/10 78/13 lion's [1] 24/19 Lisi [1] 93/19 list [5] 4/24 57/6 100/20 101/1 109/2 listen [1] 90/5 listened [3] 50/7 64/23 64/24 listening [2] 66/2 76/14 literally [1] 15/14 literature [1] 62/18 litigants [1] 26/4 litigated [3] 54/19 83/11 86/13 litigating [3] 24/19 83/7 86/4 litigation [146] litigations [15] 11/18 35/16 47/24 48/3 55/25 73/10 73/12 74/4 83/3 83/7 83/21 93/20 95/24 98/15 105/19 little [4] 19/8 47/16 59/10 90/5 live [2] 96/15 97/22 lives [1] 102/9 living [2] 107/18 107/18 Loan [1] 70/4</p>
<p>K</p> <p>Kaiser [1] 61/24 Kansas [3] 28/8 29/2 80/23 Kaplan [1] 101/10 Karate [1] 90/7 Kathleen [1] 31/2 Kathy [1] 2/25 Katrina [1] 105/24 KATZ [5] 1/10 2/3 21/10 27/13 63/20 Keefe [2] 85/6 85/13</p>	<p>L</p> <p>labels [1] 41/15 laboratories [2] 41/25 41/25 laboratory [2] 16/12 16/13 LaBore [1] 16/3 lack [2] 44/3 70/10 ladies [3] 2/2 76/7 76/22 Landever [1] 29/2 landmark [1] 8/7 lands [1] 106/8 Lane [1] 106/18 Langton [2] 58/25 59/15 Langton's [1] 59/2 language [1] 62/18 Lanier [4] 46/15 96/11 97/16 103/7 Lapinski [2] 60/18 60/20 large [8] 31/13 37/21 50/16 56/15 56/18 60/24 101/15 105/22 large-scale [1] 56/15 Largely [1] 21/18 largest [2] 35/7 77/12 Larry [3] 61/24 69/1 69/2 last [28] 5/18 11/15 21/13 24/12 31/11 37/9 50/9 50/25 52/8 52/11 53/3 53/6 56/19 57/6 57/13 58/2 59/20 62/9 62/22 75/17 77/21 78/23 79/25 80/3 105/21 106/19 107/17 110/12 lastly [3] 14/17 15/16 83/18 late [2] 87/9 108/25 later [5] 4/6 4/16 4/22 10/7 109/1 latest [1] 105/25 law [45] Lawrence [1] 61/22 lawsuits [2] 28/13 28/14 lawyer [30] 18/6 18/9 20/24 27/23 32/3 32/5 32/6 32/7 32/7 32/8 32/18 32/18 32/22 32/25 34/9 35/1 35/2 35/10 37/7 43/1 44/19 45/8 45/24 53/10 81/19 93/13 93/13 96/17 101/10</p>	<p>level [6] 7/15 29/15 54/12 64/7 80/11 86/20 levels [3] 13/5 28/22 59/7 Levin [3] 13/19 61/24 103/18 Levine [1] 97/6 Lewandowski [1] 16/4 Lewis [1] 50/4 liability [10] 1/4 12/22 12/24 28/10 31/24 53/8 79/3 91/23 109/14 109/16 liaison [15] 4/8 8/12 17/7 33/20 35/14 36/15 37/11 40/2 46/6 72/19 73/8 83/3 93/13 94/4 105/20 Liebhard [3] 56/10 56/20 57/5 Lieff [1] 33/13 life [2] 77/16 107/24 light [1] 105/14 likelihood [1] 87/18 likely [2] 60/24 91/1 limited [2] 2/16 4/2 line [3] 7/17 44/10 78/13 lion's [1] 24/19 Lisi [1] 93/19 list [5] 4/24 57/6 100/20 101/1 109/2 listen [1] 90/5 listened [3] 50/7 64/23 64/24 listening [2] 66/2 76/14 literally [1] 15/14 literature [1] 62/18 litigants [1] 26/4 litigated [3] 54/19 83/11 86/13 litigating [3] 24/19 83/7 86/4 litigation [146] litigations [15] 11/18 35/16 47/24 48/3 55/25 73/10 73/12 74/4 83/3 83/7 83/21 93/20 95/24 98/15 105/19 little [4] 19/8 47/16 59/10 90/5 live [2] 96/15 97/22 lives [1] 102/9 living [2] 107/18 107/18 Loan [1] 70/4</p>

<p>L</p> <p>loans [1] 70/5 local [3] 40/8 69/24 70/2 located [4] 8/12 13/6 38/23 60/23 log [1] 9/23 London [4] 72/10 72/12 72/15 94/12 loner [1] 32/12 long [8] 42/22 53/7 53/11 65/1 79/3 88/10 90/21 111/10 longer [2] 54/10 55/5 longevity [1] 5/11 looked [3] 59/4 59/5 81/6 looking [15] 7/8 10/4 18/18 22/10 28/25 51/18 54/5 59/6 59/7 59/11 61/4 65/20 72/17 95/13 109/25 Los [2] 25/12 37/4 lose [2] 70/9 77/10 losing [1] 105/25 lost [1] 24/5 lot [16] 7/6 7/23 12/4 18/8 23/6 23/7 45/19 58/15 60/13 65/14 66/7 68/7 94/20 100/1 103/16 108/9 lots [5] 49/24 106/22 106/22 109/23 109/23 Louis [1] 70/21 Louisiana [4] 30/6 30/21 30/22 31/5 Louisville [1] 69/3 love [3] 9/10 81/18 81/18 loved [2] 10/5 10/6 lowly [1] 96/17 luckv [1] 47/2</p>	<p>master [2] 9/24 40/12 matchup [1] 16/14 matrix [1] 60/12 matrix-type [1] 60/12 Matt [1] 59/15 matter [10] 2/10 37/14 40/21 42/21 46/1 51/20 96/18 107/20 107/21 112/11 matters [5] 4/8 31/24 40/5 105/1 107/22 mature [1] 111/2 maximum [1] 104/12 May 10th [1] 44/19 maybe [4] 38/5 41/11 84/4 106/4 McCarthy [1] 12/14 McDonald [2] 61/10 61/13 McGlamry [5] 6/24 6/25 40/19 40/20 40/24 McGlermy [1] 6/23 MD [1] 1/2 MDJD [1] 71/14 MDL [89] MDL'd [1] 36/8 MDLs [20] 5/13 5/15 6/21 9/1 9/16 11/23 21/20 29/14 35/12 49/16 54/12 66/21 70/8 87/1 90/22 95/7 95/8 95/11 95/23 98/18 me [84] Meadow [2] 96/11 97/12 mean [3] 6/10 18/22 59/7 meaningful [1] 27/8 means [1] 32/14 media [1] 49/17 mediated [2] 6/6 77/20 mediating [1] 105/22 mediation [3] 28/16 43/18 43/19 mediator [2] 18/7 76/24 medical [17] 12/22 14/12 16/15 32/19 32/21 33/3 52/14 66/22 71/11 71/13 73/9 81/6 82/14 98/15 98/16 107/15 108/12 medicine [1] 16/12 Medtronic [3] 52/15 66/6 107/20 meet [15] 2/11 2/24 15/22 21/14 41/10 43/14 43/14 43/15 47/5 47/14 61/20 62/15 74/3 106/10 111/20 meeting [4] 43/9 62/10 65/21 111/12 meetings [1] 23/7 meets [1] 54/11 Melanie [2] 10/19 10/20 member [8] 25/15 25/16 69/25 72/20 73/14 78/22 93/2 108/2 members [16] 3/10 3/10 3/11 3/11 3/13 4/5 9/18 29/10 32/15 41/1 49/14 69/7 73/11 73/18 73/20 93/8 memory [2] 13/14 15/22 men [4] 22/7 51/15 51/17 51/23 mentioned [11] 19/21 41/23 42/9 42/12 48/16 62/16 81/24 99/4 99/5 100/2 103/23 merely [1] 28/20 Merit [1] 112/8 mesh [3] 23/5 93/14 94/4 mess [1] 103/11 mess-up [1] 103/11 met [10] 16/25 20/23 28/17 42/20 43/25 43/25 44/1 103/10 103/14 103/18 metal [6] 28/24 71/16 75/17 75/17 95/25 95/25 Mexico [1] 8/21 Meyer [1] 2/25 Mezekiah [1] 76/8 Michael [10] 3/4 6/23 9/8 9/12 23/15 23/16 66/15 72/15 74/7 91/16 Michael's [1] 9/9 Michelle [4] 53/15 53/17 53/22 54/2</p>	<p>Michigan [1] 67/16 middle [1] 104/9 Middlesex [1] 84/23 midsize [1] 31/13 midstream [1] 66/3 Midwest [2] 28/11 71/21 Midwestern [1] 71/20 might [6] 13/13 24/5 49/23 73/23 77/25 85/21 Migliori [1] 92/21 mike [10] 3/3 3/4 5/7 14/11 59/15 66/17 72/10 74/18 80/14 94/12 miles [1] 5/18 Miller [3] 9/8 9/12 101/11 million [3] 18/8 53/6 74/22 millions [3] 36/20 56/23 57/1 mind [4] 43/21 44/25 46/18 111/16 minds [2] 44/8 44/9 Mine [1] 98/15 Minneapolis [3] 16/2 101/11 103/6 Minnesota [7] 16/5 17/3 17/6 52/13 97/11 107/19 107/24 minute [2] 32/1 104/3 minutes [5] 4/12 26/11 72/14 73/16 76/3 Miracle [3] 38/13 38/15 39/8 Mirapex [1] 102/4 mispronounce [1] 58/1 missed [1] 110/13 missing [1] 97/19 Mississippi [2] 29/17 79/20 Missouri [4] 28/10 70/22 82/14 98/19 mistakes [1] 110/16 mix [1] 60/7 modesty [1] 56/11 modicum [1] 110/21 mom [2] 9/10 23/11 moment [3] 19/13 43/7 97/4 moments [3] 32/18 33/2 36/5 monitoring [4] 32/19 32/21 33/3 82/14 Montgomery [3] 64/18 64/22 94/22 month [4] 6/4 41/22 53/7 75/11 month-long [1] 53/7 months [11] 4/3 24/12 36/19 57/13 62/9 63/4 63/7 68/24 81/4 95/19 104/11 morbidity [1] 20/1 Morgan [2] 23/17 23/17 morning [110] Morrison [1] 78/18 most [30] 5/15 6/1 6/19 11/7 14/8 15/9 29/12 30/21 33/1 35/3 36/12 44/1 44/6 45/8 46/4 49/10 50/22 52/25 62/17 67/3 71/6 75/21 83/1 98/23 99/2 100/4 100/16 102/4 102/8 111/8 mother [1] 22/22 Motley [1] 93/1 move [8] 4/23 8/16 44/21 87/9 87/11 92/18 102/9 106/3 moved [2] 44/18 107/24 movement [1] 29/20 moves [1] 91/10 moving [2] 101/24 111/17 Mr [2] 22/25 63/17 Mr. [50] Mr. Alonso [2] 11/2 12/2 Mr. Arnold [3] 39/23 39/24 88/13 Mr. Arsenault [1] 20/18 Mr. Arsenault's [1] 29/23 Mr. Baron [1] 25/24 Mr. Baron's [1] 103/17 Mr. Barrett [1] 31/1</p>
<p>M</p> <p>M-u-l-h-s-t-o-c-k [1] 10/22 machine [4] 79/13 79/15 98/5 99/19 Magazine [1] 10/8 magnitude [1] 65/15 mailed [1] 107/12 mainly [1] 28/13 major [6] 5/15 11/14 73/8 73/11 86/14 101/22 majority [4] 36/10 49/12 52/16 84/25 makes [3] 25/24 81/2 94/12 making [3] 4/24 13/13 62/1 male [1] 97/19 malfunctioning [1] 79/14 manage [1] 21/6 management [1] 19/19 manages [1] 70/5 Mansfield [1] 103/6 manufacturer [1] 35/7 manufacturers [1] 86/14 Marc [1] 65/8 March [3] 18/24 58/22 112/12 March 1st [1] 18/24 Mark [7] 15/2 46/15 96/11 97/25 103/7 103/14 103/18 marketing [1] 83/16 mart [1] 106/16 Martin [2] 29/6 29/7 Mary [1] 93/19 Maryland [1] 66/19 mass [33] 20/25 20/25 21/1 21/3 24/20 25/3 25/5 26/20 29/10 29/16 30/14 31/25 35/1 37/8 41/13 46/19 47/19 48/7 52/8 56/13 57/17 83/3 87/1 88/18 93/8 94/9 94/10 95/23 98/9 101/19 101/25 105/19 106/22 Massachusetts [1] 98/20 massive [2] 56/25 104/19 massively [2] 19/25 19/25</p>	<p>mediation [3] 28/16 43/18 43/19 mediator [2] 18/7 76/24 medical [17] 12/22 14/12 16/15 32/19 32/21 33/3 52/14 66/22 71/11 71/13 73/9 81/6 82/14 98/15 98/16 107/15 108/12 medicine [1] 16/12 Medtronic [3] 52/15 66/6 107/20 meet [15] 2/11 2/24 15/22 21/14 41/10 43/14 43/14 43/15 47/5 47/14 61/20 62/15 74/3 106/10 111/20 meeting [4] 43/9 62/10 65/21 111/12 meetings [1] 23/7 meets [1] 54/11 Melanie [2] 10/19 10/20 member [8] 25/15 25/16 69/25 72/20 73/14 78/22 93/2 108/2 members [16] 3/10 3/10 3/11 3/11 3/13 4/5 9/18 29/10 32/15 41/1 49/14 69/7 73/11 73/18 73/20 93/8 memory [2] 13/14 15/22 men [4] 22/7 51/15 51/17 51/23 mentioned [11] 19/21 41/23 42/9 42/12 48/16 62/16 81/24 99/4 99/5 100/2 103/23 merely [1] 28/20 Merit [1] 112/8 mesh [3] 23/5 93/14 94/4 mess [1] 103/11 mess-up [1] 103/11 met [10] 16/25 20/23 28/17 42/20 43/25 43/25 44/1 103/10 103/14 103/18 metal [6] 28/24 71/16 75/17 75/17 95/25 95/25 Mexico [1] 8/21 Meyer [1] 2/25 Mezekiah [1] 76/8 Michael [10] 3/4 6/23 9/8 9/12 23/15 23/16 66/15 72/15 74/7 91/16 Michael's [1] 9/9 Michelle [4] 53/15 53/17 53/22 54/2</p>	<p>Michigan [1] 67/16 middle [1] 104/9 Middlesex [1] 84/23 midsize [1] 31/13 midstream [1] 66/3 Midwest [2] 28/11 71/21 Midwestern [1] 71/20 might [6] 13/13 24/5 49/23 73/23 77/25 85/21 Migliori [1] 92/21 mike [10] 3/3 3/4 5/7 14/11 59/15 66/17 72/10 74/18 80/14 94/12 miles [1] 5/18 Miller [3] 9/8 9/12 101/11 million [3] 18/8 53/6 74/22 millions [3] 36/20 56/23 57/1 mind [4] 43/21 44/25 46/18 111/16 minds [2] 44/8 44/9 Mine [1] 98/15 Minneapolis [3] 16/2 101/11 103/6 Minnesota [7] 16/5 17/3 17/6 52/13 97/11 107/19 107/24 minute [2] 32/1 104/3 minutes [5] 4/12 26/11 72/14 73/16 76/3 Miracle [3] 38/13 38/15 39/8 Mirapex [1] 102/4 mispronounce [1] 58/1 missed [1] 110/13 missing [1] 97/19 Mississippi [2] 29/17 79/20 Missouri [4] 28/10 70/22 82/14 98/19 mistakes [1] 110/16 mix [1] 60/7 modesty [1] 56/11 modicum [1] 110/21 mom [2] 9/10 23/11 moment [3] 19/13 43/7 97/4 moments [3] 32/18 33/2 36/5 monitoring [4] 32/19 32/21 33/3 82/14 Montgomery [3] 64/18 64/22 94/22 month [4] 6/4 41/22 53/7 75/11 month-long [1] 53/7 months [11] 4/3 24/12 36/19 57/13 62/9 63/4 63/7 68/24 81/4 95/19 104/11 morbidity [1] 20/1 Morgan [2] 23/17 23/17 morning [110] Morrison [1] 78/18 most [30] 5/15 6/1 6/19 11/7 14/8 15/9 29/12 30/21 33/1 35/3 36/12 44/1 44/6 45/8 46/4 49/10 50/22 52/25 62/17 67/3 71/6 75/21 83/1 98/23 99/2 100/4 100/16 102/4 102/8 111/8 mother [1] 22/22 Motley [1] 93/1 move [8] 4/23 8/16 44/21 87/9 87/11 92/18 102/9 106/3 moved [2] 44/18 107/24 movement [1] 29/20 moves [1] 91/10 moving [2] 101/24 111/17 Mr [2] 22/25 63/17 Mr. [50] Mr. Alonso [2] 11/2 12/2 Mr. Arnold [3] 39/23 39/24 88/13 Mr. Arsenault [1] 20/18 Mr. Arsenault's [1] 29/23 Mr. Baron [1] 25/24 Mr. Baron's [1] 103/17 Mr. Barrett [1] 31/1</p>

<p>M</p> <p>Mr. Becnel [1] 30/25 Mr. Blizzard's [1] 38/16 Mr. Chesley [4] 30/15 30/25 34/10 55/12 Mr. Climaco [4] 30/15 31/1 37/1 103/23 Mr. Daskal [1] 104/2 Mr. Davis [1] 65/7 Mr. Hanley [1] 35/23 Mr. Kennedy [5] 27/2 27/4 31/1 41/6 53/9 Mr. London [1] 72/12 Mr. McGlamry [2] 40/19 40/24 Mr. Miracle [1] 39/8 Mr. Paris [2] 12/12 13/16 Mr. Parker [2] 10/23 12/1 Mr. Phebus [1] 57/25 Mr. Rick [1] 88/11 Mr. Robinson [2] 37/13 37/14 Mr. Seegar [1] 35/6 Mr. Seeger [1] 37/18 Mr. Seeger's [2] 59/13 59/15 Mr. Skikos [2] 37/13 38/9 Mr. Stevenson [1] 65/8 Mr. Tucker [3] 21/24 55/16 84/3 Ms. [8] 12/2 15/1 16/4 21/24 57/25 84/4 86/13 89/19 Ms. Garcia-Feehan [1] 15/1 Ms. Lewandowski [1] 16/4 Ms. Mulhstock [1] 12/2 Ms. or [1] 57/25 Ms. Sharko [4] 21/24 84/4 86/13 89/19 much [83] Mulhstock [2] 10/21 12/2 multi [2] 25/7 26/19 multi-district [1] 26/19 multi-jurisdictional [1] 25/7 multiple [2] 57/2 83/19 must [3] 20/1 68/22 73/21 mut [1] 20/1 myself [19] 8/23 11/4 12/2 16/10 20/8 39/2 45/24 69/15 70/23 71/3 79/20 85/21 90/17 97/14 99/8 99/21 101/9 104/2 105/17</p>	<p>never [11] 16/16 20/23 33/4 36/8 36/9 71/25 74/23 74/23 78/21 78/24 96/18 new [44] next [20] 4/3 6/4 20/21 28/21 32/1 41/22 53/15 68/24 69/1 87/7 87/10 87/12 94/3 94/24 95/18 97/14 99/22 101/3 109/13 112/3 nice [3] 47/5 47/14 106/9 nicely [1] 78/6 Nicholas [2] 107/3 107/6 nine [5] 22/6 36/19 63/4 63/7 79/25 no [20] 1/2 3/12 4/25 16/23 17/17 39/16 42/21 46/1 51/20 53/19 58/4 75/22 77/5 77/5 84/13 89/4 94/14 94/16 107/4 111/5 none [3] 5/4 90/25 104/4 Normally [1] 56/10 North [4] 50/4 50/15 50/16 50/20 northern [14] 1/1 3/9 3/20 8/2 13/6 35/13 39/13 41/8 41/20 41/21 50/15 61/15 80/2 100/12 Norwood [1] 40/24 nose [2] 78/10 85/25 note [2] 13/13 100/6 noted [1] 1/14 notes [1] 13/15 nothing [7] 3/22 14/12 33/4 78/19 78/20 86/6 96/19 notice [1] 88/19 notified [1] 15/3 notion [1] 42/14 November [1] 7/20 number [24] 5/14 5/25 11/23 23/25 40/15 46/10 48/15 48/23 50/11 51/14 54/7 54/8 54/8 55/23 60/24 62/13 63/25 71/3 83/10 91/24 98/14 105/22 107/15 110/12 Number one [1] 5/14 numerosity [1] 4/1 numerous [4] 2/20 37/7 48/2 51/6 Nuremberg [1] 12/13 nurse [1] 98/25 nursing [1] 99/6</p>	<p>Oliver [1] 67/17 once [1] 30/25 Onder [2] 70/20 70/21 one [77] ones [3] 14/20 37/15 38/7 ongoing [2] 6/21 26/1 only [28] 8/12 10/1 15/8 22/1 24/9 25/7 36/10 37/14 37/15 38/6 38/22 46/19 59/11 62/20 64/4 66/4 67/5 72/14 88/13 96/21 97/19 101/14 104/8 104/17 105/23 108/10 109/6 109/16 open [1] 111/22 opening [1] 87/20 operate [1] 67/25 operated [1] 79/13 operates [2] 97/1 97/3 operative [1] 79/16 opinion [1] 69/22 opponents [1] 103/19 opportunity [25] 2/11 2/19 2/23 3/16 23/9 23/11 23/19 37/5 38/9 39/17 41/10 43/4 50/5 57/18 61/5 80/12 80/14 81/22 85/1 89/19 89/23 95/20 105/17 107/11 111/23 opposed [1] 107/12 opposing [1] 27/4 oral [1] 103/23 Orange [1] 37/23 order [5] 2/1 10/19 73/25 87/12 102/1 ordinarily [1] 7/15 ordinary [1] 101/13 organization [3] 30/12 75/12 75/15 orientation [1] 97/20 oriented [1] 68/9 original [2] 25/15 25/16 originally [1] 22/20 Orleans [5] 27/14 30/6 30/10 105/16 105/23 Ortho [12] 5/24 11/8 21/20 21/23 25/25 43/16 47/9 47/23 84/8 88/18 89/20 100/7 ORTHOAEDICS [1] 1/3 orthopedic [6] 11/18 55/15 59/2 75/13 75/19 81/7 Orthopedics [1] 86/16 others [17] 14/16 16/25 21/7 27/3 38/9 42/19 54/7 55/13 61/3 61/4 69/4 69/10 69/23 81/2 81/25 93/24 105/8 otherwise [1] 7/14 ought [2] 10/10 107/23 our [104] outline [1] 48/7 outlined [3] 49/11 49/17 77/14 outlive [1] 68/25 outside [2] 49/13 72/1 over [41] over-the-counter [1] 66/21 overall [1] 36/14 oversaw [3] 37/24 38/2 82/10 overstepping [1] 73/16 own [5] 3/13 15/13 48/19 86/9 110/3 owned [2] 79/13 98/4 Oxycontin [1] 35/20</p>
<p>N</p> <p>name [17] 9/9 17/22 20/11 26/13 30/9 34/8 52/4 58/2 66/16 67/15 74/15 78/16 80/23 85/13 94/21 98/2 110/17 name's [7] 13/18 37/3 58/7 61/23 63/22 64/17 102/23 names [1] 85/9 Nast [3] 53/24 53/25 87/7 national [4] 35/6 57/5 73/9 103/14 Nations [2] 91/17 91/20 natural [1] 81/8 Navan [2] 94/18 94/21 navigating [1] 83/16 necessarily [1] 57/10 necessary [6] 4/7 6/7 54/10 90/8 95/4 102/3 need [28] 4/1 4/1 7/9 8/15 16/7 20/2 20/2 25/17 29/12 32/5 36/7 43/11 43/25 44/7 45/22 47/10 47/21 49/23 52/19 52/23 71/1 73/25 78/14 81/14 86/11 95/5 97/16 102/2 needing [2] 75/8 75/8 needlessly [1] 91/7 needs [10] 9/15 19/16 19/19 43/22 43/24 43/25 43/25 51/21 74/1 77/25 neglected [1] 70/13 negotiated [3] 11/20 57/2 104/11 negotiating [3] 17/1 17/12 18/8 negotiations [1] 17/10</p>	<p>O</p> <p>O'Malley [3] 18/1 31/3 80/1 O'Shaughnessy [2] 3/1 22/25 obligations [1] 4/15 observations [1] 48/8 obtaining [1] 53/5 obvious [2] 77/8 110/20 obviously [10] 7/3 7/16 43/10 47/25 48/13 62/23 71/5 71/10 88/6 97/8 October [1] 75/17 odd [2] 73/24 103/13 off [4] 85/25 85/25 86/1 111/20 offend [1] 43/12 offended [1] 111/5 offer [6] 71/2 71/3 71/20 72/6 75/23 90/9 office [7] 11/19 12/20 17/8 51/16 76/12 91/4 97/13 offices [8] 23/18 66/18 77/12 82/24 93/3 97/4 101/11 105/5 Official [1] 1/16 often [4] 22/23 43/19 83/19 83/20 oh [3] 53/16 58/5 78/10 OHIO [20] 1/1 3/9 3/21 6/2 6/3 12/17 13/7 21/21 26/14 29/1 38/23 41/8 41/20 41/21 50/15 61/15 80/2 88/12 96/18 100/18 okay [9] 6/16 28/4 50/1 51/12 53/16 100/24 107/5 108/22 110/15 old [6] 68/23 77/5 77/5 85/17 99/24 107/12 oldest [1] 12/17</p>	<p>P</p> <p>page [2] 57/10 109/20 pages [1] 57/1 paid [2] 104/9 104/15 pain [2] 65/22 74/23 palm [4] 1/5 1/17 38/20 107/17 Pam [1] 87/8 Pamela [2] 53/21 55/4 panel [1] 65/17</p>

<p>P</p> <p>Panish [1] 37/4</p> <p>Papantonio [4] 13/19 14/12 42/4 80/15</p> <p>paper [2] 36/4 40/15</p> <p>papers [32] 14/16 18/12 19/9 20/16 21/8 21/18 22/5 25/2 26/17 27/23 28/12 29/13 29/24 34/11 38/21 41/11 41/19 41/23 42/10 47/11 48/7 60/4 64/3 65/19 74/10 76/20 85/3 86/3 86/10 93/10 101/6 106/25</p> <p>paralegals [1] 68/12</p> <p>Paris [5] 12/10 12/12 12/13 12/14 13/16</p> <p>Parker [5] 10/19 10/21 10/23 11/16 12/1</p> <p>participate [1] 82/16</p> <p>participated [1] 29/16</p> <p>particular [11] 21/4 25/8 26/4 27/18 27/19 30/18 31/6 35/12 50/21 71/12 95/22</p> <p>particularly [2] 7/8 111/7</p> <p>parties [1] 57/2</p> <p>partner [14] 6/1 21/4 25/16 26/7 52/5 53/4 53/7 67/16 77/9 87/17 93/2 101/10 102/6 102/23</p> <p>partners [6] 37/12 40/24 76/12 77/11 85/12 89/7</p> <p>parts [1] 4/8</p> <p>passion [1] 50/21</p> <p>passionate [1] 65/23</p> <p>past [12] 11/24 16/17 29/14 42/19 49/4 66/20 81/4 83/13 83/17 99/11 101/21 110/24</p> <p>pathophysiology [1] 99/1</p> <p>patience [1] 101/8</p> <p>Paul [3] 34/22 34/25 97/2</p> <p>Paxil [1] 98/21</p> <p>pay [1] 104/14</p> <p>paying [2] 24/7 110/21</p> <p>peacemaker [1] 36/19</p> <p>Pearson [3] 15/25 16/2 16/2</p> <p>pending [3] 5/20 35/17 94/5</p> <p>Pendley [1] 98/3</p> <p>Pennsylvania [3] 22/21 29/18 65/13</p> <p>Pensacola [1] 13/20</p> <p>people [33] 7/6 7/23 10/6 14/4 19/10 23/6 28/18 36/20 39/19 43/3 47/3 49/10 49/19 51/4 55/23 62/13 62/19 71/22 71/24 75/7 82/1 96/24 99/2 99/6 99/22 100/2 100/15 101/14 103/18 104/16 104/23 109/23 111/1</p> <p>percent [6] 14/5 18/14 38/8 46/22 46/23 63/5</p> <p>perfectly [1] 77/13</p> <p>perform [1] 27/8</p> <p>perhaps [4] 35/9 50/17 109/24 111/21</p> <p>period [3] 19/16 20/3 80/8</p> <p>Perry [1] 47/12</p> <p>perseverance [1] 16/25</p> <p>person [2] 20/3 33/14</p> <p>personal [6] 24/11 24/12 91/4 91/5 91/8 92/8</p> <p>personalities [1] 83/20</p> <p>personally [6] 28/18 62/10 62/14 62/20 86/14 101/23</p> <p>personnel [1] 83/15</p> <p>perspective [6] 27/7 70/11 71/21 96/7 106/24 110/5</p> <p>Peter [3] 37/2 37/4 89/8</p> <p>Petito [1] 33/2</p> <p>Pfaelzer [1] 98/20</p> <p>Ph.d [1] 59/3</p> <p>pharmaceutical [7] 16/15 30/18 30/20 56/19 73/9 73/11 98/16</p> <p>pharmaceuticals [1] 52/14</p> <p>pharmacoepidemiology [1] 89/24</p> <p>pharmacovigilance [1] 89/23</p>	<p>phases [1] 111/18</p> <p>Phebus [2] 57/25 57/25</p> <p>Phen [4] 14/15 16/22 32/19 55/18</p> <p>Phil [2] 26/7 80/15</p> <p>Philadelphia [6] 9/17 25/13 55/9 65/12 82/25 83/4</p> <p>Philip [1] 63/17</p> <p>Phillips [1] 106/18</p> <p>philosophy [3] 32/1 32/8 87/21</p> <p>phone [3] 36/12 62/11 97/22</p> <p>phonetic [5] 16/4 17/4 29/2 34/4 100/11</p> <p>phosphate [1] 103/24</p> <p>phospho [6] 36/7 109/7 109/11 109/13 110/4 110/7</p> <p>phospho-soda [5] 109/7 109/11 109/13 110/4 110/7</p> <p>physiology [1] 99/1</p> <p>pick [3] 21/1 46/1 79/5</p> <p>picking [1] 73/24</p> <p>pill [2] 89/13 89/16</p> <p>itches [1] 67/22</p> <p>Pittman [1] 49/8</p> <p>Pittsburgh [1] 22/21</p> <p>place [2] 4/24 37/16</p> <p>placed [1] 24/2</p> <p>places [2] 103/7 111/9</p> <p>Placintella [1] 84/13</p> <p>plaintiff [17] 9/18 9/19 12/1 29/14 29/21 32/13 33/25 58/12 63/9 72/18 78/21 90/1 91/25 92/9 92/25 107/19 112/2</p> <p>plaintiff's [3] 18/5 18/6 58/16</p> <p>plaintiffs [34] 3/15 4/5 10/1 12/17 15/6 17/7 18/9 18/9 22/2 22/12 24/21 25/7 27/17 29/22 32/2 33/15 33/23 35/10 42/16 44/3 44/12 56/20 57/6 62/9 67/4 72/16 72/21 73/20 77/12 100/13 103/22 104/1 110/1 111/15</p> <p>plaintiffs' [5] 2/20 48/21 48/21 61/17 91/25</p> <p>plane [2] 4/22 87/8</p> <p>planning [1] 96/3</p> <p>plans [1] 30/20</p> <p>plastics [2] 74/20 74/20</p> <p>play [5] 15/7 21/7 44/10 77/10 108/6</p> <p>played [2] 66/10 78/12</p> <p>player [2] 77/7 110/8</p> <p>players [2] 8/24 99/11</p> <p>plays [1] 61/4</p> <p>PLC [3] 69/7 69/12 70/7</p> <p>please [13] 3/5 4/23 5/6 5/7 30/5 39/12 74/14 76/6 78/16 87/15 97/1 97/9 111/4</p> <p>pleasurable [1] 45/23</p> <p>pleasure [15] 8/22 23/8 29/8 30/7 37/22 38/20 41/10 48/6 61/20 64/17 67/2 95/21 96/14 97/21 103/20</p> <p>pledge [5] 14/9 24/11 44/24 65/4 106/2</p> <p>Plenty [1] 95/1</p> <p>plug [1] 86/9</p> <p>plus [1] 33/14</p> <p>point [22] 23/20 24/9 25/11 25/24 26/16 27/6 31/11 38/22 39/6 40/10 42/3 46/7 58/16 60/4 60/21 63/6 67/5 68/2 79/24 99/10 99/24 106/1</p> <p>pointed [1] 75/1</p> <p>points [2] 17/23 25/2</p> <p>poised [1] 77/13</p> <p>poisoning [1] 75/20</p> <p>political [1] 71/20</p> <p>Polos [3] 37/2 37/4 89/8</p> <p>Polster [4] 36/21 63/13 103/24 104/18</p> <p>pondered [1] 90/16</p> <p>Pope [2] 40/20 40/25</p>	<p>Popham [1] 28/9</p> <p>popular [1] 9/9</p> <p>portrait [1] 44/20</p> <p>position [17] 9/21 16/17 36/14 56/12 60/14 60/14 65/2 65/4 69/5 70/16 71/7 72/18 73/6 78/21 78/24 84/23 108/12</p> <p>positions [15] 1/9 11/13 11/14 35/11 66/25 66/25 67/1 67/1 67/1 69/24 83/2 83/11 95/8 95/11 111/2</p> <p>possess [4] 69/7 69/8 69/9 69/10</p> <p>possible [4] 7/13 94/25 102/13 111/17</p> <p>potential [2] 64/21 82/17</p> <p>potentially [2] 15/15 106/5</p> <p>powerful [1] 11/1</p> <p>PPA [2] 82/10 89/19</p> <p>practice [14] 16/17 31/22 31/24 32/16 40/8 47/24 50/9 55/10 60/6 60/6 76/19 77/18 89/7 103/12</p> <p>practiced [4] 41/9 88/1 89/9 107/14</p> <p>practicing [3] 16/15 84/25 100/19</p> <p>practitioners [1] 39/16</p> <p>preach [1] 97/16</p> <p>precise [1] 93/23</p> <p>precondition [1] 26/3</p> <p>precursor [1] 88/1</p> <p>preemption [4] 31/8 97/7 100/10 100/12</p> <p>preference [1] 87/12</p> <p>preliminary [1] 4/16</p> <p>prepare [2] 32/7 80/8</p> <p>prepared [3] 38/2 54/10 104/6</p> <p>preparing [1] 37/19</p> <p>prescription [1] 66/21</p> <p>presence [4] 4/11 50/18 84/19 86/21</p> <p>present [2] 83/20 90/3</p> <p>presentation [1] 5/1</p> <p>presentations [2] 4/24 50/8</p> <p>presented [1] 83/1</p> <p>Presently [1] 8/2</p> <p>preservation [1] 42/5</p> <p>preserve [1] 43/2</p> <p>presided [1] 37/24</p> <p>president [1] 100/17</p> <p>presides [1] 93/19</p> <p>prestigious [1] 100/20</p> <p>pretty [5] 4/13 10/11 18/10 87/5 97/10</p> <p>prevented [1] 2/15</p> <p>previous [1] 36/11</p> <p>prideful [1] 3/9</p> <p>primarily [2] 12/23 64/3</p> <p>principal [2] 101/13 104/21</p> <p>principally [1] 107/24</p> <p>principle [1] 56/11</p> <p>prior [3] 52/6 53/2 89/8</p> <p>prioritize [1] 51/22</p> <p>priority [2] 51/14 94/1</p> <p>Priuses [1] 68/17</p> <p>private [1] 30/19</p> <p>privately [1] 111/20</p> <p>privilege [14] 7/25 8/6 9/17 9/23 16/18 27/4 55/7 55/7 55/16 56/16 89/1 91/24 92/9 95/8</p> <p>privileged [3] 13/24 41/1 84/20</p> <p>probably [13] 3/19 5/10 5/12 16/9 25/24 45/23 55/14 69/16 77/11 84/19 98/3 98/23 99/2</p> <p>problems [1] 74/24</p> <p>procedural [1] 63/1</p> <p>proceeding [2] 42/24 100/11</p> <p>proceedings [6] 2/23 11/24 29/16 43/6 76/5 112/10</p> <p>process [11] 7/11 49/13 59/23 64/25 66/3</p>
---	--	--

<p>P</p> <p>process... [6] 66/7 66/11 73/4 83/17 93/6 94/24</p> <p>product [12] 12/22 12/24 22/8 31/24 50/10 59/6 62/19 75/7 79/3 91/10 91/23 109/11</p> <p>products [8] 1/4 28/10 30/20 53/8 58/11 58/17 60/6 71/17</p> <p>professional [1] 10/10</p> <p>professionalism [4] 8/14 27/15 30/12 47/20</p> <p>professor [1] 90/23</p> <p>programs [2] 82/6 82/11</p> <p>project [1] 68/13</p> <p>projects [2] 14/5 109/9</p> <p>prominent [2] 41/24 88/3</p> <p>promise [3] 38/5 44/24 75/15</p> <p>prompt [1] 54/9</p> <p>prong [1] 91/1</p> <p>pronunciation [2] 34/6 78/6</p> <p>proper [1] 90/4</p> <p>propose [1] 8/4</p> <p>Propulsid [4] 5/24 27/19 55/21 89/18</p> <p>prosecution [1] 81/23</p> <p>protect [1] 43/2</p> <p>Protestant [1] 97/18</p> <p>protocol [1] 42/5</p> <p>protocols [3] 42/5 60/11 92/12</p> <p>proud [9] 9/22 12/18 36/6 36/16 36/24 45/12 46/4 53/12 102/7</p> <p>proudest [3] 32/17 33/2 69/16</p> <p>prove [2] 71/17 72/5</p> <p>proven [1] 12/4</p> <p>proximity [1] 88/12</p> <p>PSC [53]</p> <p>PSCs [2] 14/14 52/11</p> <p>pseudo [1] 13/5</p> <p>psychologist [1] 83/19</p> <p>public [1] 75/16</p> <p>publication [1] 58/21</p> <p>publications [1] 59/6</p> <p>PUC [1] 110/5</p> <p>pulled [1] 62/17</p> <p>Puppies [1] 6/15</p> <p>pushing [1] 15/9</p> <p>put [11] 17/21 20/1 20/1 47/11 65/4 81/23 84/13 89/14 90/2 90/6 110/6</p> <p>putting [4] 36/23 39/3 104/14 104/23</p>	<p>ran [1] 104/24</p> <p>Randall [1] 16/3</p> <p>range [1] 18/8</p> <p>rascal [1] 108/21</p> <p>rather [1] 89/5</p> <p>Ratinoff [1] 102/24</p> <p>ratio [1] 68/10</p> <p>Ratner [1] 20/21</p> <p>ray [1] 28/25</p> <p>RE [1] 1/3</p> <p>reach [1] 48/18</p> <p>reached [1] 91/4</p> <p>reaches [1] 32/15</p> <p>reaction [2] 71/16 81/8</p> <p>read [6] 3/22 6/17 20/19 75/18 107/1 110/18</p> <p>ready [6] 2/9 8/23 9/1 28/25 51/4 51/24</p> <p>real [2] 23/8 80/25</p> <p>realities [2] 23/23 33/5</p> <p>realize [2] 71/1 94/23</p> <p>really [18] 19/8 23/1 23/3 23/4 23/11 34/11 46/8 46/19 48/19 59/8 60/7 64/4 65/23 66/7 78/20 84/1 84/5 87/1</p> <p>Realtime [1] 112/9</p> <p>reason [2] 52/17 80/25</p> <p>reasonably [1] 111/17</p> <p>reasons [6] 12/16 13/22 35/21 49/11 49/16 50/17</p> <p>recalcitrant [1] 78/2</p> <p>recall [7] 7/21 18/2 57/13 58/24 65/21 72/3 109/11</p> <p>recalled [1] 13/3</p> <p>receipt [1] 79/12</p> <p>receive [3] 15/12 51/17 65/1</p> <p>received [3] 6/19 53/16 87/8</p> <p>receiving [1] 36/20</p> <p>recent [2] 69/17 88/18</p> <p>recently [13] 11/8 22/9 30/21 46/5 47/1 50/22 69/21 71/6 92/5 95/10 102/4 103/23 105/23</p> <p>recess [1] 76/4</p> <p>recognize [2] 4/5 57/17</p> <p>recommend [1] 8/9</p> <p>reconstructive [1] 89/9</p> <p>record [4] 1/14 13/13 111/20 112/10</p> <p>records [2] 12/21 81/6</p> <p>recover [1] 56/22</p> <p>recovering [1] 53/23</p> <p>recusal [1] 69/19</p> <p>red [2] 4/18 4/19</p> <p>Reed [1] 52/3</p> <p>refaxed [2] 91/3 91/3</p> <p>refer [2] 13/15 66/23</p> <p>referral [1] 6/10</p> <p>reform [1] 40/12</p> <p>regard [6] 8/9 13/9 28/22 28/23 79/12 83/13</p> <p>regarding [1] 90/21</p> <p>regardless [3] 34/16 39/2 65/1</p> <p>regards [2] 8/8 15/4</p> <p>region [2] 97/2 97/3</p> <p>registered [2] 98/25 112/8</p> <p>regrets [1] 10/24</p> <p>Reich [1] 22/20</p> <p>reiterate [1] 26/16</p> <p>related [2] 21/10 62/18</p> <p>relates [1] 30/24</p> <p>relationship [4] 3/10 16/16 92/2 92/3</p> <p>relationships [3] 71/13 80/14 82/1</p> <p>relevant [5] 40/14 40/17 54/18 93/11 100/10</p> <p>relished [1] 57/18</p> <p>Relkin [1] 47/7</p>	<p>rely [8] 36/4 38/21 64/3 67/11 86/3 91/2 93/10 110/24</p> <p>remarkable [1] 12/20</p> <p>remember [2] 6/18 44/22</p> <p>remind [1] 40/11</p> <p>reminded [2] 43/8 74/17</p> <p>reminds [1] 34/6</p> <p>renowned [1] 41/25</p> <p>repeat [1] 58/9</p> <p>replaced [1] 106/21</p> <p>reporter [5] 1/16 1/16 5/6 112/8 112/9</p> <p>represent [13] 13/2 22/8 25/19 49/19 62/8 69/4 69/11 69/12 70/24 72/15 72/16 73/20 76/23</p> <p>representation [5] 24/6 33/22 39/14 48/25 101/15</p> <p>representatives [1] 83/15</p> <p>represented [1] 82/4</p> <p>representing [10] 12/18 16/4 23/25 30/19 33/15 56/18 56/21 76/22 82/3 90/2</p> <p>represents [3] 7/9 42/13 70/7</p> <p>reps [1] 81/19</p> <p>reputation [4] 19/17 40/4 71/23 101/16</p> <p>request [2] 5/3 92/24</p> <p>requested [2] 12/15 16/16</p> <p>requests [1] 105/9</p> <p>require [1] 51/7</p> <p>required [1] 108/3</p> <p>research [1] 86/15</p> <p>resent [1] 111/25</p> <p>residency [1] 59/2</p> <p>resolute [1] 67/7</p> <p>resolution [21] 5/19 19/20 19/20 20/6 25/3 37/16 42/14 43/21 52/19 54/9 64/10 72/5 79/7 81/25 82/2 82/6 91/11 92/18 101/24 104/12 109/18</p> <p>resolve [4] 52/22 53/2 56/5 106/3</p> <p>resolved [9] 5/16 36/22 52/16 55/19 55/20 55/24 71/25 83/12 107/25</p> <p>resolving [5] 24/19 37/17 83/7 96/5 101/18</p> <p>resources [10] 8/13 15/13 27/22 38/24 57/8 60/4 73/22 92/5 101/16 102/2</p> <p>respect [6] 31/12 40/10 42/22 107/20 108/11 108/12</p> <p>respected [1] 57/4</p> <p>respectfully [5] 11/25 54/4 66/23 69/5 92/24</p> <p>respective [1] 44/11</p> <p>responsibility [1] 108/3</p> <p>responsible [2] 37/19 83/15</p> <p>rest [10] 15/1 17/14 20/16 21/8 21/18 25/2 29/24 74/10 101/6 103/1</p> <p>Restaino [4] 14/2 88/23 89/3 89/3</p> <p>resubmit [1] 99/19</p> <p>result [4] 45/10 64/8 89/11 102/1</p> <p>resulted [2] 46/14 46/16</p> <p>results [1] 102/7</p> <p>resume [1] 98/24</p> <p>retained [6] 31/6 41/24 58/23 75/3 92/12 99/9</p> <p>retaining [2] 15/13 62/11</p> <p>retired [2] 6/1 102/5</p> <p>retirement [1] 106/6</p> <p>retrieval [1] 41/25</p> <p>review [2] 52/7 99/8</p> <p>reviewed [1] 92/10</p> <p>reviewing [3] 29/19 92/11 93/6</p> <p>revision [5] 14/18 47/17 59/13 59/20 59/22</p> <p>revisions [1] 13/4</p> <p>reward [1] 106/19</p> <p>Rezulin [1] 47/1</p>
<p>Q</p> <p>qualifications [14] 5/14 5/21 13/22 49/10 54/5 54/11 56/14 65/18 66/5 72/25 73/5 74/3 98/11 102/25</p> <p>qualified [15] 5/11 6/20 7/6 7/6 26/18 27/2 27/6 34/16 40/22 61/16 67/22 79/2 80/17 83/9 111/3</p> <p>qualifies [1] 34/12</p> <p>qualities [1] 98/12</p> <p>quality [1] 19/17</p> <p>quarter [1] 52/8</p> <p>question [1] 21/12</p> <p>questions [7] 5/4 28/20 74/9 79/12 111/23 111/24 111/25</p> <p>quick [1] 38/23</p> <p>quickly [1] 111/17</p> <p>quite [3] 71/19 85/20 106/18</p> <p>quote [1] 79/15</p>	<p>R</p> <p>radar [2] 75/14 104/4</p> <p>Raleigh [1] 50/4</p>	

<p>R</p> <p>Rhode [1] 93/15 Rice [1] 93/1 Rich [2] 88/3 96/11 Richard [3] 20/10 20/13 36/3 Rick [6] 79/18 79/19 88/11 97/12 99/15 100/24 riding [1] 74/17 right [12] 2/2 10/17 45/11 47/13 55/2 58/1 58/6 63/19 85/16 96/13 101/2 108/4 rights [1] 43/2 risk [3] 44/2 95/17 111/24 RMR [2] 1/16 112/15 Robert [1] 22/16 Roberts [1] 50/4 Robins [2] 33/2 101/10 Robinson [4] 14/24 15/2 37/13 37/14 Robison [1] 8/10 Roda [1] 53/25 rodeo [1] 8/25 Roger [1] 94/10 role [11] 15/7 21/19 37/21 40/17 40/23 41/13 42/10 66/11 68/8 69/24 102/13 roles [4] 14/8 21/20 41/16 101/18 roll [2] 29/3 51/5 rolled [1] 104/9 Romano [2] 44/14 45/7 Ron [1] 53/4 room [30] 5/13 6/9 7/5 7/18 7/23 12/5 13/25 23/6 42/19 43/1 51/4 52/25 53/10 55/13 62/13 62/19 65/14 65/16 66/8 67/3 72/24 73/1 75/4 80/6 81/25 82/2 83/9 96/4 104/5 109/8 roomful [1] 45/25 rooms [1] 42/25 Rosenbaum [1] 102/6 row [2] 96/25 97/20 Rufe [1] 9/17 rule [1] 63/1 rules [3] 8/4 38/2 40/8 run [4] 11/18 86/7 86/9 110/3 running [3] 4/22 17/14 17/15 rush [1] 20/3 Ruth [1] 108/4</p>	<p>schedule [1] 111/11 schedules [1] 111/14 school [4] 32/11 79/2 94/10 107/12 Schulte [1] 99/15 Schumacher [1] 16/3 Schwartz [1] 65/13 science [22] 4/2 11/22 14/14 19/21 50/21 50/23 51/6 58/18 59/1 71/11 71/12 75/10 75/22 75/23 89/12 89/13 89/18 99/3 100/8 102/10 102/11 104/25 scientific [1] 14/13 scientist [1] 16/13 scores [1] 52/11 Scott [3] 105/13 105/16 106/11 screw [3] 55/14 55/15 55/19 scrutiny [1] 40/16 Seahawks [1] 106/1 Sean [3] 51/11 51/13 52/2 seat [1] 11/25 seats [1] 76/7 second [2] 52/23 56/17 Secondly [1] 91/8 seconds [3] 4/17 73/17 86/18 security [1] 94/5 Seegar [1] 35/6 Seeger [5] 14/2 17/18 37/18 45/15 72/23 Seeger's [2] 59/13 59/15 seeing [2] 74/24 100/21 seek [2] 40/2 72/18 seeking [2] 83/10 92/11 seeks [2] 7/9 7/10 seemingly [1] 2/9 seems [2] 26/3 86/23 seen [3] 45/9 68/13 84/3 selected [18] 22/13 34/17 41/1 43/9 54/3 66/11 70/15 80/10 89/17 90/9 91/5 95/3 95/8 96/8 106/4 107/21 111/4 111/15 selecting [2] 15/9 65/17 selectively [1] 21/1 sell [1] 45/24 seminal [1] 30/10 send [1] 106/25 sends [1] 15/4 senior [4] 1/11 6/1 20/4 77/11 sense [3] 7/20 60/5 84/22 sent [2] 36/8 85/13 sentiment [1] 38/16 separate [3] 54/19 86/9 98/18 seriously [1] 92/11 seriousness [1] 4/13 Seroquel [1] 92/6 serve [22] 6/20 13/9 13/22 22/13 25/1 25/1 25/20 33/25 39/17 40/22 53/12 61/16 62/25 63/9 69/11 70/6 72/21 73/7 76/24 80/10 80/17 88/14 served [2] 11/22 73/10 serves [1] 83/19 service [5] 29/15 29/15 58/19 69/17 69/21 services [4] 24/7 71/2 72/6 75/23 serving [6] 26/21 31/2 37/22 49/11 92/9 100/16 set [6] 8/4 18/23 28/11 39/5 63/1 83/8 Seth [2] 21/10 22/15 sets [2] 40/6 69/7 setting [1] 89/6 settle [4] 52/20 95/5 102/8 106/18 settled [10] 6/6 10/9 11/20 18/7 36/19 49/16 71/25 77/20 83/12 92/6 settlement [25] 5/17 18/7 24/4 25/6 35/7 37/20 43/17 43/18 44/1 44/2 46/17 46/21</p>	<p>52/19 57/2 60/12 60/15 66/3 67/1 82/10 82/11 89/16 95/10 105/2 109/17 109/21 settlements [2] 11/21 46/21 settling [4] 24/23 46/20 66/9 105/22 seven [7] 13/3 59/22 73/11 79/25 80/8 93/3 104/23 seventies [1] 84/2 several [13] 14/13 14/20 21/12 35/11 43/7 50/14 62/9 70/1 95/7 95/14 95/15 95/21 111/21 sexual [1] 97/20 Shannon [1] 91/15 shape [1] 45/11 share [3] 24/19 32/17 48/8 shared [1] 62/19 shareholders [1] 56/21 Sharko [10] 2/25 5/23 17/25 21/24 47/22 83/6 84/4 86/13 89/19 92/2 Shea [1] 37/4 Shelton [3] 79/18 79/21 79/24 Shestack [1] 9/24 Shield [1] 101/19 Shiley [1] 19/23 shipping [1] 42/6 short [5] 9/14 10/14 13/7 19/16 63/4 shortage [1] 88/19 shortly [1] 102/22 shot [1] 30/3 should [11] 4/5 25/24 42/20 54/5 66/10 73/6 76/16 79/11 87/22 101/14 102/22 show [2] 3/13 16/22 shows [2] 33/4 34/13 shuffle [1] 24/5 Shufty [1] 88/11 sic [1] 97/14 side [9] 5/23 18/5 35/6 58/12 58/13 58/21 70/12 104/7 112/2 sides [3] 28/16 44/2 56/24 significant [13] 11/19 11/21 11/22 13/1 23/25 25/4 40/12 40/20 64/8 83/14 99/25 101/15 108/13 silicone [1] 104/20 Simes [2] 61/24 103/18 similar [2] 11/20 51/5 Simmons [2] 38/15 38/22 simple [1] 73/10 simply [2] 41/18 86/10 Simpson [2] 21/19 56/18 since [12] 6/7 28/9 30/17 42/3 43/9 43/11 47/9 57/13 61/14 62/5 65/21 74/20 sincere [1] 67/7 singularly [1] 52/9 Sippel [1] 98/18 sir [22] 7/1 9/7 29/25 34/21 47/6 51/10 56/7 58/2 61/9 61/21 66/14 70/23 77/24 78/4 85/5 91/14 94/17 96/10 103/2 105/12 107/2 108/16 Sistrunk [2] 76/8 76/10 sit [8] 3/8 8/2 23/21 36/5 51/16 57/20 69/21 93/22 sitting [4] 3/18 17/24 47/13 76/21 situated [1] 8/11 situation [4] 69/19 72/2 99/7 102/21 six [6] 31/2 59/20 68/10 81/4 105/21 107/17 six-to-one [1] 68/10 size [5] 3/24 3/25 4/4 43/10 111/19 Skikos [5] 14/2 37/13 38/9 83/25 89/8 skill [3] 40/6 69/7 95/4 skilled [1] 40/22 skills [2] 40/13 73/12</p>
<p>S</p> <p>Sacramento [1] 102/24 safe [1] 112/5 Saints [1] 105/25 Salas [1] 31/18 Salomon [1] 74/16 Sam [2] 74/13 74/15 same [11] 2/7 2/17 10/12 15/23 43/1 45/25 47/15 66/12 80/11 92/3 111/21 San [6] 18/10 18/17 18/24 25/13 61/25 107/18 Saperstein [1] 74/16 sat [3] 11/9 76/22 76/22 Saunders [1] 48/4 saved [1] 96/18 saw [2] 70/3 103/9 say [23] 4/14 6/2 8/25 13/24 14/17 15/16 24/10 28/17 32/23 45/7 58/10 68/22 76/15 85/17 86/18 87/19 88/17 90/16 96/20 97/15 102/7 104/15 109/22 saying [1] 22/10 says [1] 32/20 scale [1] 56/15 scattering [1] 46/13</p>		

<p>S</p> <p>skin [1] 68/7 slate [3] 89/14 90/2 90/7 sleeves [2] 29/3 51/5 slow [1] 17/15 small [4] 39/15 74/15 83/10 110/21 smaller [3] 31/14 39/16 60/3 Smith [1] 2/25 smoothly [2] 23/2 67/23 snafu [2] 101/7 109/3 snow [1] 38/19 society [1] 45/4 sociology [1] 20/5 soda [5] 109/7 109/11 109/13 110/4 110/7 sodium [2] 36/7 103/24 soft [1] 94/18 Soh [1] 96/25 solely [1] 93/5 solo [1] 39/15 Solomon [1] 84/12 solution [1] 103/24 solutions [1] 71/24 somebody [1] 51/22 somehow [1] 90/2 someone [3] 36/12 50/20 69/20 something [13] 8/14 21/25 22/2 25/9 36/6 36/24 46/18 48/2 57/9 57/19 75/1 93/11 109/24 sometimes [7] 23/21 24/23 43/25 90/4 90/6 107/7 110/4 somewhat [5] 7/20 24/5 60/3 62/25 83/8 soon [1] 81/11 sophisticated [1] 34/5 sorry [8] 17/7 51/11 51/11 58/5 84/14 85/9 103/2 106/14 sort [4] 9/16 59/1 59/3 104/3 sought [1] 65/24 South [1] 77/6 southeast [2] 23/18 50/12 Southern [4] 35/17 35/19 89/7 94/6 speak [11] 23/19 37/5 39/15 43/8 43/19 44/4 48/24 61/2 72/25 93/7 104/15 speakers [2] 48/16 64/5 speaking [5] 57/14 57/14 57/15 82/9 111/24 spearhead [1] 27/2 special [4] 9/23 16/19 69/17 69/21 specialize [1] 30/17 specific [2] 66/1 98/15 specifically [6] 28/22 28/23 95/24 98/16 107/15 108/12 specifics [1] 66/22 specter [1] 75/7 speeding [1] 64/9 spend [1] 107/16 spent [15] 14/5 15/12 16/12 24/18 35/5 50/9 50/24 56/17 56/19 57/13 62/10 82/4 84/24 103/16 105/21 Spiegel's [1] 19/23 spoke [1] 109/23 spoken [8] 43/7 48/24 81/4 81/7 81/12 81/20 100/25 109/15 spouse [1] 110/13 spouses [1] 81/7 St. [1] 70/21 St. Louis [1] 70/21 Stacy [1] 53/7 staff [22] 3/14 3/16 5/9 8/22 9/13 12/25 15/1 21/2 24/17 24/21 27/23 29/9 30/7 33/16 34/9 38/25 55/8 62/16 64/15 68/10 68/11 93/7</p>	<p>staffing [1] 101/16 stage [1] 42/24 stakes [1] 40/16 Stan [3] 19/5 19/6 20/9 stand [18] 2/21 9/1 9/4 19/9 51/24 54/2 61/2 61/7 61/19 72/24 72/24 84/18 85/2 97/1 97/4 97/9 103/9 108/14 standard [1] 11/13 standing [2] 80/25 94/23 standpoint [3] 7/7 7/8 19/19 stands [2] 7/12 8/23 stars [1] 108/6 start [7] 7/21 37/15 72/12 72/13 81/10 81/11 94/3 started [4] 58/22 89/6 104/8 110/4 starting [1] 52/21 state [40] state-coordinated [1] 11/23 state-federal [2] 46/9 46/11 states [10] 1/1 1/11 13/4 29/16 35/4 48/19 49/20 51/18 59/9 77/13 statewide [3] 25/15 35/12 35/19 stay [1] 60/4 Steakley [3] 78/5 78/17 78/17 steering [24] 9/18 9/19 10/1 12/1 22/13 29/15 29/21 32/13 33/21 34/1 48/10 58/19 63/9 67/24 68/6 72/19 73/11 78/22 91/25 92/9 92/25 107/19 110/1 111/15 step [2] 59/12 59/14 Stephen [5] 1/16 103/5 112/8 112/14 112/15 steps [1] 18/21 Stern [1] 56/8 Steve [9] 14/2 24/18 83/25 84/11 87/13 88/22 89/8 97/10 103/4 Steven [3] 24/16 63/19 63/22 Stevenson [2] 65/8 65/8 steward [1] 61/17 stick [2] 4/13 4/20 still [8] 35/3 36/21 45/20 59/2 75/9 87/19 100/20 106/17 stood [1] 81/3 storage [1] 42/6 stories [1] 65/22 story [1] 10/12 straight [1] 4/14 Street [1] 1/17 stress [2] 86/2 100/14 stricken [1] 75/20 strive [1] 54/9 strong [3] 60/14 60/14 78/1 strong-arming [1] 78/1 strove [1] 54/13 structure [1] 54/16 Stryker [1] 86/16 Stuart [2] 102/19 102/23 stuck [1] 53/25 student [2] 70/4 70/5 students [1] 68/12 studied [2] 99/1 99/5 studies [1] 20/1 stuff [1] 77/4 subclass [1] 26/22 subcommittee [1] 11/14 subcommittees [1] 16/20 subject [2] 4/6 111/13 submission [14] 9/4 46/4 61/7 61/14 61/19 66/23 67/11 77/14 79/24 93/11 96/21 102/22 102/25 103/1 submissions [2] 2/13 91/2 submitted [8] 38/21 49/12 62/5 64/4 65/19</p>	<p>73/1 76/20 81/16 submitting [1] 103/1 subsequent [1] 109/12 success [5] 9/16 26/4 42/23 42/24 48/9 successes [1] 73/5 successful [14] 16/16 23/1 34/19 40/7 42/14 46/9 46/9 46/11 46/16 79/7 84/8 91/1 102/7 102/15 successfully [9] 46/25 48/2 52/16 53/4 55/19 55/19 55/24 56/5 107/25 such [9] 6/1 21/21 29/10 29/17 56/12 83/4 90/17 95/5 95/9 Suda [1] 88/1 suffered [1] 86/12 Suffice [1] 58/10 suggest [4] 48/23 54/4 73/6 73/17 suggestions [1] 49/5 suing [1] 31/23 suitable [1] 73/14 Suite [1] 1/17 Sulzer [14] 18/2 19/22 26/23 31/3 37/10 38/4 41/14 42/9 42/11 42/12 42/13 54/18 64/1 82/6 summary [1] 32/21 Superior [1] 37/23 support [5] 12/25 33/16 38/25 38/25 68/11 supported [1] 57/4 suppose [2] 66/24 67/5 supposed [1] 107/18 Supreme [2] 69/18 97/6 sure [10] 2/22 3/8 7/23 18/11 45/10 45/24 53/10 91/9 92/13 108/24 surgeon [1] 59/2 surgeons [1] 81/7 surgery [1] 89/9 surrogates [1] 59/8 survey [1] 88/13 survive [1] 89/15 Susan [7] 2/25 5/23 17/25 47/22 47/23 83/6 92/2 suspect [2] 2/5 24/24 suspects [1] 70/11 suspicious [2] 14/20 29/20 Sutton [2] 101/3 101/4 swearing [1] 44/7 swore [1] 71/24 sworn [1] 44/19 system [1] 45/3</p> <p>T</p> <p>table [7] 21/5 21/25 27/15 57/20 68/1 90/7 96/23 take [16] 2/19 3/16 6/7 19/8 32/22 32/24 33/5 68/8 74/6 76/6 81/17 81/19 81/21 89/23 109/16 111/24 taken [7] 18/21 72/2 76/4 86/14 99/6 104/3 104/6 takes [5] 14/6 80/7 90/4 90/4 102/14 taking [1] 11/2 talent [1] 57/7 talented [4] 56/12 67/22 73/2 75/21 talents [1] 89/25 talk [6] 2/23 9/15 14/3 19/13 81/10 98/10 talked [8] 66/2 76/16 76/17 76/17 76/18 76/18 77/1 81/6 talking [7] 7/25 8/1 57/13 62/11 65/21 90/22 104/2 talks [1] 34/13 tall [1] 53/19 Talley [2] 102/19 102/23</p>
--	--	---

<p>T</p> <p>Tara [4] 101/3 101/4 103/3 110/17 Taschner [1] 97/9 task [10] 7/3 16/8 39/4 48/12 48/13 65/16 81/21 110/22 112/3 112/4 tasks [1] 48/12 taught [4] 30/12 45/1 88/4 88/4 teach [3] 79/2 79/3 94/10 team [24] 8/24 12/4 12/20 16/9 16/11 17/5 17/12 19/21 32/12 32/15 54/13 73/22 73/25 76/18 77/10 85/14 85/15 96/24 99/11 107/22 108/3 108/7 108/10 110/8 teams [2] 17/1 51/1 teamwork [3] 42/15 77/8 77/9 Teaneck [1] 74/16 technology [1] 68/9 telephone [1] 96/16 tell [10] 4/23 14/4 22/21 45/7 50/6 62/20 76/21 77/3 80/9 99/22 telling [1] 85/18 tells [1] 110/16 tenacious [1] 75/22 tend [1] 71/21 tens [1] 57/1 tentatively [1] 111/11 term [1] 100/18 terms [6] 5/13 33/23 40/14 58/17 58/18 92/5 terrific [1] 73/2 Tessie [1] 22/22 testimony [2] 60/8 60/11 testing [2] 41/25 42/6 Texas [11] 22/20 25/13 25/15 34/9 46/13 61/13 63/23 78/10 78/18 91/21 103/21 thank [188] thanking [1] 38/17 Thanks [2] 55/4 88/22 that's [37] 7/12 8/6 14/8 14/16 17/17 21/25 24/9 26/3 26/20 32/8 32/8 32/16 39/19 44/6 46/24 48/2 48/17 48/19 51/12 51/22 55/2 57/12 58/3 59/9 60/8 62/18 67/9 69/17 70/9 77/18 77/19 80/1 85/16 86/10 90/9 106/13 110/9 Thatcher [1] 56/18 theme [2] 20/15 29/23 themselves [1] 87/22 theory [2] 78/19 82/15 there's [17] 3/22 18/13 18/23 23/6 39/16 42/25 45/25 50/16 60/10 60/24 62/7 67/14 69/19 70/10 78/25 81/19 88/19 Thereafter [1] 37/22 therefore [2] 64/10 70/15 they're [6] 13/23 18/3 40/23 59/6 59/7 59/8 they've [3] 59/5 59/6 81/5 thing [10] 36/16 43/1 45/7 64/4 66/4 88/4 96/22 97/19 98/23 100/14 things [29] 2/15 22/5 23/2 31/23 32/9 43/8 45/23 46/3 46/4 46/8 47/21 51/22 52/18 62/3 62/8 65/20 68/1 76/16 77/17 90/18 90/25 93/23 99/25 100/9 105/22 110/12 111/14 111/21 111/21 think [109] thinking [1] 72/1 thinks [1] 72/20 third [4] 32/23 33/1 99/20 108/1 Thomas [2] 19/4 65/12 those [50] though [3] 42/24 107/18 109/22 thought [10] 43/13 55/9 76/16 85/21 86/22 90/19 90/20 90/22 109/1 110/17</p>	<p>thousands [7] 5/19 12/18 15/15 51/24 58/13 91/22 106/4 three [13] 9/25 24/24 44/22 54/5 54/8 62/3 62/5 69/7 72/15 85/9 104/5 107/24 108/10 through [21] 2/22 11/8 18/3 18/4 21/14 25/12 41/11 41/14 44/1 44/1 44/22 46/20 47/10 57/8 75/18 81/6 82/8 92/13 96/21 106/22 107/1 throughout [13] 6/11 23/18 25/3 33/15 42/2 43/15 50/12 51/17 93/3 95/22 98/10 101/12 101/17 thrust [1] 4/15 thus [1] 43/7 Tim [1] 52/5 times [7] 4/22 21/12 44/1 58/22 70/8 70/10 75/5 tirelessly [3] 14/4 14/10 79/7 titles [1] 41/16 TLA [1] 70/1 tobacco [3] 15/3 30/11 101/20 today [32] 2/14 4/11 6/15 15/2 15/17 17/25 23/19 30/16 34/7 36/20 47/12 50/8 55/13 62/1 69/3 76/14 76/17 77/2 79/21 80/16 80/25 81/11 81/12 89/6 90/18 100/2 101/8 104/15 105/17 109/15 109/23 111/10 together [26] 15/18 20/1 20/2 20/6 21/23 28/16 31/15 32/14 36/18 36/24 42/3 62/17 71/22 71/22 73/22 75/9 81/23 89/25 90/3 93/22 104/24 108/7 108/10 109/19 110/6 110/8 told [3] 4/21 16/23 97/15 Toledo [9] 8/10 8/12 40/8 53/22 54/21 87/18 87/19 98/5 100/21 Tom [3] 6/2 58/25 65/9 tomorrow [1] 106/25 tone [1] 19/8 too [7] 39/24 53/11 63/23 65/20 95/25 99/18 106/14 took [7] 37/16 37/21 59/11 59/13 63/4 63/6 110/23 tort [16] 20/25 25/5 26/20 29/11 29/16 30/14 31/25 37/8 46/19 52/8 83/3 87/1 93/8 95/24 101/25 105/19 torts [17] 20/25 21/1 21/3 24/20 25/3 35/1 41/13 47/20 48/7 56/13 57/17 88/18 94/9 94/10 98/9 101/19 106/23 total [1] 49/23 totaled [1] 92/6 totally [1] 75/7 touch [1] 65/20 tough [1] 19/13 toward [1] 71/22 towards [1] 91/10 tower [1] 104/22 Toyota [1] 95/11 track [1] 12/20 tradition [1] 12/18 transcript [2] 1/8 112/10 transferred [4] 16/5 22/6 31/5 57/12 transition [1] 18/6 translation [1] 20/12 traveled [1] 62/15 traveling [1] 112/5 travels [1] 112/5 trees [1] 38/20 tremendous [3] 56/1 102/2 111/6 Trent [2] 38/13 38/14 trial [40] trials [10] 23/2 45/1 46/14 46/20 51/2 77/19 79/25 80/3 80/8 80/13</p>	<p>tried [14] 6/5 13/25 14/1 30/21 32/22 46/15 46/25 53/5 53/7 77/20 79/25 94/2 102/6 105/4 trip [1] 96/18 TRO [1] 4/16 true [1] 78/11 truly [3] 44/8 62/1 73/2 trust [2] 88/5 88/7 try [14] 6/7 21/1 21/6 28/13 32/4 32/8 44/5 45/10 47/2 56/4 65/5 76/15 80/8 89/25 trying [12] 7/4 24/19 24/22 32/1 32/19 46/22 76/14 94/15 99/21 101/18 102/3 103/17 Tucker [8] 2/25 17/25 21/24 47/23 55/16 83/6 84/3 92/2 tumors [1] 13/5 Tunheim [1] 23/4 tunnel [1] 105/15 turned [1] 109/19 Turner [2] 8/19 8/21 Turns [1] 36/9 tutelage [1] 59/4 Twenty [1] 89/6 twice [1] 101/1 two [28] 4/12 6/4 25/2 26/11 41/24 47/2 52/18 54/8 57/10 59/2 59/18 64/19 65/20 68/17 72/14 73/16 85/17 88/14 90/6 91/1 93/20 94/2 98/10 98/17 102/6 104/3 107/25 111/18 two gallons [1] 68/17 two-page [1] 57/10 two-prong [1] 91/1 two-week-old [1] 85/17 Tyler [1] 64/19 type [6] 19/11 60/12 92/3 95/6 109/25 110/2 types [1] 83/20</p> <p>U</p> <p>U.S [1] 97/6 ultimate [1] 37/16 ultimately [8] 4/4 11/9 24/7 46/14 90/25 91/3 105/2 111/15 unable [1] 85/12 unanimous [1] 54/16 under [6] 26/23 59/4 68/17 82/14 82/15 104/3 underpaid [1] 85/15 understand [11] 15/5 42/21 43/12 45/22 52/17 52/23 68/11 77/8 84/5 85/11 102/1 understanding [5] 18/3 18/5 24/1 24/2 87/24 understands [1] 42/13 undertaken [1] 70/24 undoubtedly [3] 2/5 31/8 86/20 unenviable [1] 7/3 unfamiliarity [1] 64/25 unfortunately [4] 52/5 53/23 53/25 101/6 unified [1] 54/13 unique [14] 7/20 63/1 71/20 71/23 72/3 72/4 81/1 84/23 89/5 95/3 97/4 98/12 98/23 110/5 uniquely [3] 8/11 27/2 27/6 UNITED [7] 1/1 1/11 35/4 51/17 58/24 58/25 59/9 University [2] 50/18 78/10 Unless [1] 74/9 unqualified [1] 50/7 unquote [1] 79/16 unresolvable [1] 106/1 until [3] 49/13 68/5 91/3 unusual [1] 3/22 unwritten [1] 40/9 update [3] 41/12 41/19 47/16</p>
--	---	---

<p>U</p> <p>upon [5] 4/15 42/23 62/24 63/8 111/19 urge [1] 81/17 us [21] 4/11 4/19 12/3 12/3 26/9 26/15 33/17 34/6 38/17 45/9 45/12 62/12 65/4 86/23 95/7 97/10 97/23 98/14 99/9 104/9 110/13 used [2] 45/19 78/9 using [1] 54/13 usual [1] 70/11 usually [2] 24/23 100/2 UT [1] 85/25</p>	<p>we'd [1] 11/24 we'll [6] 2/7 28/4 65/5 80/10 87/9 87/11 we're [45] we've [45] wear [2] 6/15 59/8 weather [3] 2/16 54/1 111/9 website [1] 86/9 week [1] 85/17 weekend [1] 53/23 weeks [5] 4/3 23/1 59/20 62/6 95/18 Weinstein [1] 10/11 Weisman [1] 41/8 welding [3] 27/4 79/22 80/1 well [43] well-respected [1] 57/4 Wendell [1] 30/9 Wendy [1] 33/10 went [5] 3/19 23/2 75/18 89/21 104/10 weren't [1] 108/24 West [3] 1/5 1/17 97/8 what's [3] 23/23 44/10 57/16 whatever [7] 4/4 14/6 54/2 58/14 72/20 88/15 102/13 where [28] 3/9 17/7 17/25 18/5 18/17 18/24 31/7 37/10 38/2 41/8 47/24 59/25 60/2 60/7 60/22 62/24 66/6 71/24 72/2 76/21 77/16 81/9 89/18 96/16 102/4 103/16 107/19 111/9 whether [7] 12/1 34/17 39/2 43/22 65/1 84/5 106/4 while [3] 16/16 75/9 88/5 whit [1] 90/19 white [5] 39/24 47/12 84/3 97/3 97/18 who's [7] 3/18 22/22 46/15 47/12 57/21 101/3 104/2 Whoa [1] 45/21 whoever [3] 39/4 48/14 85/6 whole [1] 19/24 whom [6] 13/4 36/21 52/24 62/16 67/6 109/15 why [7] 28/20 34/7 34/11 74/3 78/20 97/17 107/16 wife [3] 85/18 94/20 110/16 Wilentz [1] 60/20 William [3] 28/2 28/5 28/6 Williams [2] 82/24 94/10 willing [12] 8/23 9/1 28/25 51/4 51/24 53/4 57/21 73/18 81/17 81/20 86/22 100/4 win [1] 46/23 wind [1] 2/9 winding [1] 2/9 wisdom [1] 32/10 wish [2] 35/3 108/23 withdraw [1] 98/21 within [12] 3/14 4/3 28/15 29/22 41/22 52/10 65/24 75/12 86/7 88/14 99/21 104/11 without [6] 32/12 42/15 52/21 52/21 73/16 104/13 witnesses [1] 58/19 woke [1] 38/19 women [6] 22/7 48/24 51/15 51/17 51/23 83/10 won't [3] 58/9 86/2 86/9 wonderful [2] 15/18 109/7 Wood [2] 39/9 39/12 Woodbridge [1] 60/20 words [1] 43/18 work [78] worked [37] 8/25 9/21 9/22 9/23 9/23 9/24 13/25 14/4 17/5 17/5 19/18 21/23 25/9 25/12 26/23 27/18 29/13 33/20 37/13 42/19 52/25</p>	<p>54/18 55/23 56/24 61/1 67/7 68/4 74/4 82/7 82/17 83/6 86/13 93/23 98/9 104/1 109/7 109/14 workers [1] 8/24 working [44] works [5] 27/3 45/2 45/3 61/4 78/24 world [6] 6/8 35/8 41/25 60/23 62/16 108/6 world-renowned [1] 41/25 worry [2] 106/6 106/7 worse [1] 94/20 worth [5] 9/1 61/13 63/23 66/9 108/7 worthwhile [1] 60/15 wouldn't [2] 84/2 84/15 wrap [1] 42/17 written [3] 10/8 40/8 85/24 wrong [1] 85/10 Wrote [1] 9/22</p>
<p>V</p> <p>valuable [2] 63/10 95/2 value [4] 60/2 87/2 98/11 111/6 values [4] 46/21 71/21 109/17 109/21 valve [1] 19/23 valves [1] 19/25 Vandever [3] 28/2 28/3 28/4 variety [1] 95/22 various [11] 4/1 4/8 6/10 6/10 14/14 29/14 29/15 42/2 81/22 83/3 83/7 vast [2] 49/12 52/15 vendors [1] 17/10 ventured [1] 78/20 verdict [3] 46/16 53/5 53/6 versus [3] 30/10 33/2 68/10 very [118] veteran [1] 77/7 victim [4] 98/4 99/18 106/14 109/3 victims [2] 72/4 102/21 Vietnam [1] 77/6 view [2] 58/16 106/20 Vincent [1] 91/15 Vioxx [6] 27/19 46/5 46/10 47/1 55/22 95/9 Virginia [1] 66/19 virtually [1] 50/25 virtue [1] 56/11 vision [1] 33/5 visit [1] 22/23 visited [1] 6/2 vital [1] 71/17 vow [1] 70/15 vying [1] 56/11</p>	<p>X</p> <p>x-rav [1] 28/25</p> <p>Y</p> <p>Yaz [2] 71/7 89/20 Yeah [1] 107/9 year [11] 12/18 50/25 53/3 53/6 55/10 64/6 74/22 77/5 94/8 101/12 106/19 years [67] years' [1] 9/1 Yes [8] 7/1 9/7 18/23 28/6 39/24 58/3 63/15 108/18 yesterday [1] 87/9 yet [3] 3/24 58/16 86/17 York [13] 34/25 35/17 35/19 35/20 47/25 56/10 57/5 58/7 58/22 94/6 97/3 97/12 97/13 you'll [1] 98/23 you're [10] 32/12 46/1 46/21 53/19 60/13 73/24 77/3 88/6 97/16 107/23 you've [12] 3/7 11/3 40/18 76/16 76/17 76/17 76/18 76/18 77/1 80/16 109/15 109/23 young [1] 87/6 youngest [2] 85/19 100/17</p>	<p>X</p> <p>x-rav [1] 28/25</p> <p>Y</p> <p>Yaz [2] 71/7 89/20 Yeah [1] 107/9 year [11] 12/18 50/25 53/3 53/6 55/10 64/6 74/22 77/5 94/8 101/12 106/19 years [67] years' [1] 9/1 Yes [8] 7/1 9/7 18/23 28/6 39/24 58/3 63/15 108/18 yesterday [1] 87/9 yet [3] 3/24 58/16 86/17 York [13] 34/25 35/17 35/19 35/20 47/25 56/10 57/5 58/7 58/22 94/6 97/3 97/12 97/13 you'll [1] 98/23 you're [10] 32/12 46/1 46/21 53/19 60/13 73/24 77/3 88/6 97/16 107/23 you've [12] 3/7 11/3 40/18 76/16 76/17 76/17 76/18 76/18 77/1 80/16 109/15 109/23 young [1] 87/6 youngest [2] 85/19 100/17</p>
<p>W</p> <p>Waichman [2] 10/21 11/17 wake [1] 38/20 Wal [1] 106/16 Wal-mart [1] 106/16 Walkup [1] 59/16 wall [1] 44/20 Wallace [1] 74/8 want [33] 2/3 2/13 2/19 3/6 6/17 13/21 19/13 19/21 25/23 31/25 32/6 32/6 32/7 32/17 34/15 41/11 60/12 64/22 64/25 65/19 67/5 68/7 68/19 73/4 73/17 78/21 79/5 79/23 85/9 86/24 86/24 98/10 111/16 wanted [8] 24/9 47/4 47/11 60/21 66/4 67/20 78/25 104/10 wants [4] 15/6 15/7 43/1 81/13 Ward [2] 94/18 94/21 warms [1] 68/22 warning [1] 95/17 Warsaw [1] 13/8 Washington [1] 66/17 wasn't [3] 57/9 63/2 109/2 Watson [1] 90/15 ways [2] 48/15 85/21</p>	<p>Z</p> <p>Zimmer [2] 64/1 86/16 Zimmerman [2] 52/3 52/5 Zoll [1] 53/21 Zollie [2] 78/5 78/17 zparties [1] 1/5 Zyprexa [2] 10/11 89/19</p>	<p>Z</p> <p>Zimmer [2] 64/1 86/16 Zimmerman [2] 52/3 52/5 Zoll [1] 53/21 Zollie [2] 78/5 78/17 zparties [1] 1/5 Zyprexa [2] 10/11 89/19</p>