

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WORKERS' COMPENSATION COURT
IN AND FOR THE STATE OF MONTANA

DEBRA STAVENJORD,)	WCC No. 2000-0207
)	
Petitioner,)	March 8, 2012
)	8:30 a.m.
v.)	
)	
MONTANA STATE FUND,)	Omnibus Hearing
)	
Respondent.)	

ROBERT FLYNN and CARL)	WCC No. 2000-0222
MILLER, Individually and)	
on Behalf of Others)	
Similarly Situated,)	
)	
Petitioners,)	
)	
v.)	
)	
MONTANA STATE FUND)	
)	
and)	
)	
LIBERTY NORTHWEST)	
INSURANCE COMPANY,)	
)	
Respondents.)	

CASSANDRA SCHMILL,)	WCC No. 2001-0300
)	
Petitioner,)	
)	
v.)	
)	
LIBERTY NORTHWEST)	
INSURANCE CORPORATION)	
)	
and)	

1 MONTANA STATE FUND,)
)
2 Respondents.)

3

4 DALE REESOR,) WCC No. 2002-0676
)
5 Petitioner,)
)
6 v.)
)
7 MONTANA STATE FUND,)
)
8 Respondent.)

9

10

11 BEFORE THE HONORABLE JAMES JEREMIAH SHEA

12

13 The omnibus hearing in the above-entitled
14 matter was held on Thursday, March 8, 2012, at 8:30
15 a.m., at the Workers' Compensation Court, 1625 11th
16 Avenue, Helena, Montana.

17

18

19

20

21

22

23

24

25

1 A-P-P-E-A-R-A-N-C-E-S

2

3 APPEARING ON BEHALF OF FLYNN/MILLER, et al:

4 Rex Palmer
5 Attorney at Law
6 301 West Spruce
7 Missoula, Montana 59802

8 APPEARING ON BEHALF OF SCHMILL:

9 Laurie Wallace
10 Attorney at Law
11 PO Box 2020
12 Columbia Falls, Montana 59912

13 APPEARING ON BEHALF OF LIBERTY NW INS. CORP:

14 Larry W. Jones
15 Attorney at Law
16 2291 W. Broadway
17 Suite 3
18 Missoula, Montana 59808

19 APPEARING ON BEHALF OF MONTANA STATE FUND:

20 Bradley J. Luck
21 Attorney at Law
22 PO Box 7909
23 Missoula, Montana 59807

24 Thomas E. Martello
25 Special Assistant Attorney General
PO Box 4759
Helena, Montana 59604

ALSO PRESENT:

23 Steven W. Jennings
24 Attorney at Law
25 PO Box 2529
Billings, Montana 59103

25

1 A-P-P-E-A-R-A-N-C-E-S (continued)

2

3 Also Present, continued:

4 Ron Atwood
5 Attorney at Law
6 PO Box 40028
7 Portland, Oregon 96240

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
Kathy Strobel, Claims Examiner for MSF

1 BE IT REMEMBERED that on Thursday, March 8,
2 2012, before the Honorable James Jeremiah Shea, at
3 the Workers' Compensation Court in Helena, Montana,
4 the following proceedings were had:

5
6 THE COURT: We are here in -- actually,
7 it's an omnibus hearing for all of the open common
8 fund or, I guess, in the case of Reesor and
9 Stavenjord, since they haven't been, a formal
10 decision made, I would characterize them as common
11 fund-related cases.

12 I have looked at the submissions as
13 pertains to Reesor and Stavenjord, and I actually
14 -- I have no issues with those. Those look fine in
15 terms of the order and the proposed, the status
16 report and everything, and was in line with what we
17 discussed previously.

18 And what I want to do is kind of just
19 allow kind of everybody to speak in turn, and what
20 I am hoping to do is just any kind of, for lack of
21 better way to put it, any kind of mopping up to
22 kind of try to get on the final path for
23 implementation here that we can do that.

24 One of the things that I did just for my
25 own perspective, and this is in line with the last

1 Flynn appeal, in terms of the paid-in-full
2 designation, is I'd kind of like people's thoughts
3 in terms of what they are contemplating in terms of
4 the process. Of those cases that may never come to
5 fruition, but we have that one caveat about if a
6 case, for instance, a case that was, would be
7 considered paid in full but either, you know,
8 there's -- well, we may be beyond 60 months from
9 the closure date anyway, so maybe not even getting
10 more medical benefits.

11 But, you know, a changing condition would
12 be the best example, as Laurie had raised in her
13 briefing, and what exactly would, if there is some
14 sort of a process, either in the software or just
15 kind of a checklist that flags a case to check to
16 see if a case, as an example, has a claimant who
17 would have had a case that was closed, paid in full
18 prior to the implementation date of whichever case
19 we are talking about but then, say, has a change in
20 condition or something like that, how that may be
21 flagged. And I guess ancillary to that and for
22 your concerns, I would -- my thinking would be, and
23 I don't know if there would be any dispute that
24 that would be subject to the common fund fee. I
25 think those are things probably that that would

1 have to be addressed, really, on a case-by-case
2 basis, if and when they were to come up.

3 I guess I'm just more curious about ideas
4 in terms of the process, whether it's just
5 something that, you know, somebody has a change in
6 condition and there's checklist that says, well --
7 and it wouldn't just be making the claim, it would
8 be, you know, if there is an actual payment of some
9 claim, you know, impairment rating changes,
10 whatever, their condition changes. So there's some
11 additional benefits that are paid that then it's
12 just kind of checked off that, okay, this person
13 doesn't fall within any of these classes, or what
14 have you.

15 So that would be my own thought so, Brad,
16 you are looking like you are spring-loaded in your
17 chair there.

18 MR. LUCK: No, no, that's okay.

19 THE COURT: That's fine. I was just kind
20 of, like I said, this is -- I look at this as much
21 as anything as a spit-balling session to try to get
22 everything, whatever issues we may have remaining
23 off the table, so please go ahead.

24 MR. LUCK: Your Honor, we have one
25 housekeeping matter. I noticed this morning, as I

1 was looking through our draft letters, two of the
2 Stavenjord questionnaires still have the editing
3 in, two words were changed. And I thought I had
4 changed that out and cleaned that up, but we would
5 make that modification so the strike-through is not
6 there.

7 THE COURT: I assumed that.

8 MR. LUCK: We did it, and the others made
9 a more definite statement in a sentence and we took
10 the strike-through out. We have been giving an
11 awful lot of thought to the exact issue you have
12 raised, and our review in considering the Flynn
13 rule, we have a lot of cases that haven't been paid
14 on since the -- to Flynn and Stavenjord decisions,
15 and that's 8 and 12 years ago, I believe, at this
16 point, and I wondered about how to handle that
17 potential in the future. Our hope was that the
18 Court might consider an order finalizing the review
19 after this many years to those people that would be
20 on the final mailing list, at this point in time.
21 We didn't put it in proposed order, but wanted to
22 at least discuss that.

23 Understanding that the literal application
24 of the Flynn rule says it's basically open-ended
25 forever.

1 THE COURT: Uh-huh.

2 MR. LUCK: But we are not positive about
3 how practically to keep track of that because,
4 especially given the reality, it's one thing to
5 have the theory and another thing to have reality.
6 And at this point in time, we have a group of
7 people who would be considered paid in full who
8 haven't received anything in 12 years. So to
9 design a process that takes that hypothetical
10 consideration into account for the rest of time,
11 first, our suggestion would be that we could have
12 some finality. If we can't have some finality, we
13 are not sure how to flag them. At a minimum, it
14 would be a case-by-case situation, but the
15 identification is easier said than done.

16 THE COURT: Right, and that's kind of my
17 own thought, and I have been thinking about it as
18 well. My own thought is, I think, of necessity, it
19 would have to be just a case-by-case basis. I
20 mean, if they are paid in full as of the date right
21 now, I mean, it would seem they are out of the
22 class and may very well -- and I suspect given the
23 time that has passed, the vast majority would be.
24 I think that probably the people who are identified
25 now are probably going to account for 99-plus

1 percent. And then you are going to have that small
2 fraction that -- and you know, and I recognize
3 there's probably in practice no perfect system.

4 I think, you know, I'm just, like I said,
5 curious as to somebody comes in and, I mean, I
6 guess my own thought would be -- and I will leave
7 this more to the people who are really much more in
8 the trenches as far as nuts and bolts go. But if
9 somebody comes in the first step, you look at,
10 okay, was this case paid in full before these X
11 dates? And it may still be even after you are
12 paying and they say, okay, now their condition has
13 changed, we agreed it has changed, so we owe X
14 amount of whatever kind of benefit. When we pay
15 that, just check off the, you know, the various
16 cases that may apply.

17 MR. LUCK: The concern, I guess, is it's
18 going from theoretical to practical. For instance,
19 we have people who haven't been paid in 12 years.
20 To the extent somebody then requests a payment or
21 issues a payment, there are questions about what
22 happened in that interim. The real practical issue
23 is: Are they entitled? Were there aggravations
24 and other injuries? And the hope would be in our
25 mind and in my mind, two things: One, we could

1 figure out a way to have finality, given that
2 practical problem, notwithstanding the language of
3 the decision, and two, I'm real concerned that the
4 lines of reasonableness in terms of claim handling
5 and what our obligations are and people down the
6 road ten years from now get upset because there
7 were four or five cases that got payments at some
8 point that were almost impossible to identify.

9 It's, it's the reason why we argued
10 against the standard in the first place because the
11 -- especially when we get this far out. So we
12 would love to have some guidance. We would love to
13 have some finality and we would really hope that we
14 we could, whatever we end up with, doesn't create
15 some ancillary claim-handling problem down the road
16 for some justifiable conduct in the inability to
17 locate people.

18 THE COURT: Well, I guess my -- and I have
19 had all of these thoughts myself or all of these
20 questions myself. And I guess my own thought on
21 that is, from a reasonableness standpoint, you
22 know, we are obviously, just to your point exactly,
23 we are dealing in hypotheticals that may never come
24 to fruition. And so but from a reasonableness
25 standpoint, that's almost something where it would

1 just have to be, again, on a case-by-case basis
2 and, I mean, certainly as with any reasonableness
3 determination as far as the penalty and fees would
4 go on a case, there would be a, you know, I mean, I
5 guess -- to kind of give the difference of two
6 examples, if you know, if somebody were to come in
7 and it was a situation where the claims adjuster,
8 you know, says, well, this person is entitled to
9 additional benefits under -- this person's
10 condition changed, now they are no longer paid in
11 full and, oh, I note there's in the claims notes
12 they would be entitled to Schmill benefits now but
13 probably isn't going to ask for them, so that would
14 probably be unreasonable.

15 MR. LUCK: That wouldn't be in the State
16 Fund file, Your Honor.

17 THE COURT: So that's why I don't think I
18 can give a perspective ruling on, you know, the
19 failure to recognize and pay benefits on somebody
20 who, you know, comes into the class because of a
21 post-date changing condition or something that
22 allows them to qualify for other additional
23 benefits. I don't think I can give a prospective
24 ruling on that.

25 That being said, the other end of the

1 spectrum would be if, whatever the circumstances
2 were, that it just was not clear at all that this
3 person, you know, there was -- just as with any
4 kind of dispute, I guess, where we determine where,
5 you know, a claimant is saying it was an
6 unreasonable denial or delay and it was
7 inadvertently overlooked, or it was a situation
8 where we looked at it and did not -- honestly, you
9 know, did not believe that they qualified for
10 additional benefits under any of the common fund
11 cases and therefore it was denied. And you have to
12 look at, just as with everything, have to look at
13 on a case-by-case basis.

14 MR. LUCK: My concern gets back to
15 practical, is that monitoring process. Once you
16 see it, that's what you do. But we have a
17 situation again where we are 12 and 8 years out, we
18 haven't had payments, practically speaking, the
19 monitoring process until the end of time, you can't
20 handle it on case-by-case basis unless it jumps out
21 at you. And that's the practical problem that we
22 have and that's why it would be nice if there was a
23 way to have finality in years or something tied to
24 statutes of limitation or the ability to maintain a
25 claim or something.

1 I'm not sure what your thoughts are or
2 what you feel you are able to do given the actually
3 holding but, again, it's one thing to talk about
4 and we would handle them on a case-by-case basis,
5 but another thing to set up a standard for
6 reasonableness to identification to identify in the
7 first place. And that's very difficult and
8 everybody has given it a lot of thought, but we
9 don't have any easy answer. You can always design
10 a system but it becomes cost prohibitive at some
11 point to do that, to identify the theoretical,
12 especially if this is one year after the decision.
13 It would be one thing. But this many years after.
14 I'm thinking of Reesor and Stavenjord.

15 THE COURT: Right. Steve?

16 MR. JENNINGS: Your Honor, I get Brad's
17 argument and I have some agreement with it. In the
18 case of Flynn, in the case of Laurie's Schmillers,
19 we are talking about an apportionment. If we have
20 a change of condition in the future that creates a
21 payment of benefits, it is unlikely that we will
22 have an apportionment for non-occupational factors
23 because that's not the law of the land, and I was
24 wondering, Laurie's view on whether or not she
25 thinks future benefits are going to create a common

1 fund lien, a lien against what? We probably won't
2 be taking the A --

3 MS. WALLACE: So --

4 THE COURT: -- take one before the
5 effective date.

6 MS. WALLACE: And I agree with that and
7 that's where the lien is because then, at that
8 point, as I understand Flynn, it kicks in the
9 obligation to pay those the benefits you didn't
10 pay, and so that's where the fee attaches is to
11 those benefits. That's where it's always attached,
12 never to --

13 THE COURT: I think maybe in, and I don't
14 know if we can get consensus on this, but this is
15 the reality of it, in terms of standpoint of
16 finality, is it strikes me that, you know, there's
17 obviously a process in place to identify the people
18 who are in the, in the class, for lack of a better
19 way to put it now. That is, they were. And even
20 under the Flynn decision that these are people who,
21 for whatever reason, just looking back from today's
22 date, they were not paid in full after the
23 effective date, and so they are within the class
24 and then, you know, get those screened and you know
25 something. And some of them, for various and

1 sundry other reasons, may nevertheless be entitled
2 to additional benefits.

3 But screen those people in the process
4 that is identified for -- you know, not holding
5 everybody to that exact same process but, you know,
6 akin to the process that State Fund has come up
7 with in Stavenjord and Reesor and pay them.

8 And obviously, like I said, we have and
9 then the case can be, you know, the cases can be
10 closed, and then those people who are out there
11 who, it strikes me, as I said before, at this
12 point, because we are so far removed, probably are
13 going to be, we are talking about, I would think,
14 you know, a fairly small number of cases, you know
15 because most of which are never going to come to
16 fruition given the passage of time.

17 I think the two examples I used in my
18 order on Flynn, or at least two of them were, you
19 know, payment of additional medical benefits and
20 the change in condition, well, it strikes me that
21 probably the medical benefits issue is probably
22 taken off the table simply because if they haven't,
23 if they are more than 60 months out now anyway. So
24 if they haven't used their medical benefits now --
25 if they have used the medical benefits, they are

1 probably within the class already. If they
2 haven't, then they are probably, the statute of
3 repose has probably run on their medical so they
4 wouldn't be getting those additional benefits.

5 And I mean, the key distinction there is
6 the actual payment of benefits, not just making the
7 claim for it that they would have to so they may
8 otherwise be entitled to, you know, maybe they had
9 a legitimate medical claim but if they are beyond
10 the statute of repose and there was a determination
11 that, well, we are not going to pay because you are
12 beyond the statute of repose, therefore your claim
13 remains paid in full.

14 MR. LUCK: Some of those don't go back to
15 '87, though, Your Honor.

16 THE COURT: Oh, yeah, well, like I said, I
17 think still in the final analysis, I mean, it's
18 almost one of those things, and I guess what I am
19 saying is I recognize from a practical standpoint
20 that maybe there just isn't an actual process other
21 than trying to, you know, let's get the ones taken
22 care of who are clearly identified and the ones who
23 may have a change in condition or something that
24 would then put them into the class because their
25 claim now is no longer paid in full because of

1 their change in condition. I mean, if and when
2 they come up, you know, hopefully they get
3 identified and, if they don't, you know, it's -- I
4 don't know what to do about it.

5 MR. LUCK: So is it fair to say, Your
6 Honor, that what you mean and for us to take back
7 to the State Fund would be it is not required given
8 these years and some of the impracticality that a
9 strict monitoring process be figured out and
10 implemented. But to the extent any cases
11 previously subject to Flynn might have a change in
12 status that they be reconsidered and determined on
13 case-by-case basis?

14 THE COURT: Yeah, that's basically all you
15 can do. It's, umm, you know, I just don't know
16 what else you can do about that. They are not in
17 the class now. They may get into the class. And
18 like I said, when I was -- it even had occurred to
19 me this, you know, when I wrote the decision, but
20 it was kind of like, you know, just kind of paying
21 deference to the English language, if you get more
22 benefits then it means you weren't paid in full
23 before you got those benefits.

24 So -- but the practicality of it I
25 recognize is a problem, so I guess what we can do

1 now is try to, you know, there's processes in
2 place, we have parameters for retroactivity issue
3 and application, so we have people who are clearly
4 in there now, and let's get those folks screened
5 and paid and everything, and then the ones who, you
6 know, may at some point in the future, you know,
7 you just -- hopefully they get identified as they
8 come up.

9 I don't think -- for one thing, I don't
10 think I would have the jurisdiction to on a case
11 that isn't even whether we consider it a ripeness
12 doctrine or whatever you want to say, if somebody
13 doesn't have, if they are not in the class now and
14 they -- because they were paid in full before the
15 date, and so they are out of the class, whichever
16 case. You referred to Flynn. This obviously
17 applied to Schmill and other cases as well, just
18 setting the broad parameters of retroactivity for
19 any of the common fund.

20 But my point is that I don't think even
21 jurisdictionally, I don't think I can say, "Yeah,
22 you have to have a process that I approve of for
23 people who don't even have a claim yet and may
24 never."

25 And like I said, my suspicion is 99

1 percent of them never will just given the passage
2 of time.

3 MR. LUCK: I think the added consideration
4 in the State Fund's consideration in terms of
5 Reesor and Stavenjord, Your Honor, is we have a
6 settlement designed to create finality which was
7 approved by the Court.

8 THE COURT: Right.

9 MR. LUCK: And now this final mailing list
10 being approved by the Court under a process that
11 was under some pretty strict scrutiny as you came
12 and went through everything in that hearing we had
13 some time ago. So it seems like, given the
14 settlement situation, that there could be, there
15 could be some, some finality in terms of taking
16 care of these hypothetical problems down the road
17 as opposed to all the other open remediation issues
18 that other carriers have.

19 THE COURT: Yeah.

20 MR. LUCK: You could treat the State Fund
21 differently because it was -- we did set out to
22 settle all of our obligations under those cases.
23 We did that. The Court approved a process. The
24 Court has approved now the finalization of that
25 process and we, we could seek some -- I would hope

1 we could seek finality given these hypothetical
2 concerns as relates to State Fund because of the
3 settlement.

4 THE COURT: And Reesor and Stavenjord.

5 MR. LUCK: Reesor and Stavenjord.

6 THE COURT: I think that's true. I guess
7 the only -- and I hate to put any asterisks here,
8 would be I don't think, again, and this would go
9 back to, you know, what jurisdiction I may or may
10 not have even in Reesor and Stavenjord on somebody
11 who is -- if you have somebody who, umm, had a
12 claim that was paid in full, they are not, they are
13 out of the class right now and their condition
14 changes down the road such that under whatever
15 circumstances, it would, that it would entitle them
16 to benefits under Reesor and Stavenjord. Again,
17 that would still fall under the case-by-case basis
18 where, you know -- I can't, I think I would be
19 basically countermanding the Supreme Court's
20 decision in Flynn which affirmed me, so I would be
21 countermanding my own decision in Flynn. I can't
22 say to somebody who, you know, all of a sudden has
23 a change in condition and now they are, they might
24 otherwise be entitled to benefits under Reesor or
25 Stavenjord while you are out because I approved

1 this. Jurisdictionally, I wouldn't have the
2 authority to do that.

3 What I am saying is, though, is I think
4 from a finality standpoint, we deal with the ones
5 who are identified now and then, those that come
6 up, it's almost like any other, you know, I don't
7 want to say any other case but they are going to
8 come up and be dealt with on an individualized
9 basis, if they come up.

10 But we could finalize, that doesn't
11 preclude finalizing the process in Reesor and
12 Stavenjord and then, you know, there may be people
13 who are right now are just hypothetical.

14 MR. LUCK: I don't think -- we are back to
15 what I said before, and so I'm clear and I
16 understand the problem and we can accept that. So
17 we are down to process. We agree that if a case
18 comes up sometime down the road, we will handle it
19 on a case-by-case basis, but that we are not
20 required to have some strict process in place ad
21 infinitum to try to identify those people if they
22 become identified on a case-by-case basis, they
23 will be handled in the future.

24 THE COURT: I don't think I can require
25 that anyway under any circumstances. Just as I

1 couldn't preclude a claimant and bind a claimant to
2 a settlement that they weren't even eligible for.
3 I don't think I can require the State Fund to
4 follow a process for a hypothetical situation.

5 MR. LUCK: But I think it's reasonable if
6 we go forward from this point on that basis.

7 THE COURT: Well again, I'm hesitant to
8 say, I mean, in the metaphysical sense yeah, it
9 strikes me as reasonable. I can't give a, you
10 know, I don't want this to be taken as a
11 prospective ruling because I don't think I can do
12 that. I think that, you know, if -- and maybe
13 hopefully this will kind of illuminate my thought
14 process. If we have that hypothetical come up, I
15 don't think that I can say before that hypothetical
16 comes up, but if it does, somebody comes in and
17 they were, their condition changed, they are now
18 entitled to Reesor benefits because of that change
19 in condition. They come in and they, you know,
20 State Fund pays the Reesor benefits to them and
21 they come in saying, "But they were unreasonable
22 for not flagging it earlier," or something like
23 that, I think I just have to look at the facts of
24 how that went down, and if there was due diligence
25 employed and it wasn't something, like I said the

1 example of, you know, the claims adjuster said,
2 their note says, "Entitled to Reesor benefits but I
3 don't think he realizes it," then that would be,
4 you know, I can't prospectively rule on facts that
5 aren't before me.

6 MR. LUCK: I didn't say that very well and
7 I didn't mean to get a prospective ruling. It's
8 this process that I am concerned about that we go
9 back and advise State Fund claims people. Given
10 the number of years, given the settlements, given
11 the non-payments, given the hypothetical nature of
12 things, you don't expect that there be some strict
13 identification process. What you expect is that
14 when cases are identified in the normal course of
15 business that they be handled on a case-by-case
16 basis.

17 THE COURT: Exactly. Yeah, I think that's
18 -- candidly, I think that's all you can do. Even
19 from, I guess, you know, from a cost benefit
20 analysis, and it doesn't make sense when, as I
21 said, you may have cases, claims that even under
22 the parameters as set forth in Flynn from a
23 retroactivity paid-in-full standpoint are going to
24 be, I expect, I think would be fairly de minimus
25 given the passage of time. I think it's like you

1 said, if we were one year out, we'd probably be
2 expecting more people to all of a sudden come back
3 in either because of medical benefits or change in
4 condition or whatever, come back into the class.

5 But as we sit here right now, those people
6 who would have, you know, within the years
7 immediately after the effective date, those people
8 are already in the class and would be identified by
9 the process that's in place. Moving forward, I
10 think it, just from a common sense standpoint,
11 doesn't make sense to, you know, put in some sort
12 of elaborate process to identify over the next 20
13 years, you know, two or three people. I expect
14 there would be some sort of normal diligence in
15 seeking to, you know, some of them may jump out at
16 you, some may not be obvious at all, and that goes
17 back to the reasonable issue. If they are
18 identified and put to, you know, and come before me
19 and, you know, I'll make a judgment on that on a
20 case-by-case basis. But I think all you can try to
21 do is identify the ones who aren't already in the
22 class who may, because of a change in condition
23 down the road, try to identify them the best you
24 can. You can only do what you can do.

25 MR. LUCK: We can live with that, Your

1 Honor, thank you.

2 THE COURT: What else do we have?

3 MR. JENNINGS: Your Honor, we have settled
4 with Murphy on Reesor, and although I never
5 represented anybody in Stavenjord, we threw
6 Stavenjord in at that time. We never submitted
7 that settlement to you because it was done during
8 the process of appellate mediation, the Court
9 didn't have jurisdiction, we didn't think it was
10 necessary.

11 In reviewing for today, I notice that by
12 the time Rex had signed the agreement, the release,
13 the case had been -- Stavenjord had been remanded
14 back to the Work Comp Court, so you likely did have
15 jurisdiction at that time.

16 THE COURT: Okay.

17 MR. JENNINGS: In the release, Rex agrees
18 to do whatever action is necessary to fulfill this
19 agreement. Would you -- not Rex, I'm sorry,
20 Murphy. Would you like us to submit those now and
21 then we just ride along with State Fund's order?
22 And again, it's only settling Rex's claim for
23 common fund.

24 THE COURT: Tom's.

25 MR. JENNINGS: Tom's claim.

1 THE COURT: I'm fine with that, if you
2 want to talk to Tom about it and, you know, if
3 just, I guess in terms of crossing T's and dotting
4 I's, that's fine.

5 MR. JENNINGS: Okay.

6 THE COURT: Okay. Laurie?

7 MS. WALLACE: I had some questions on the
8 State Fund. You guys had sent me copies of letters
9 that you had sent to Schmill claimants you had
10 identified back in 2007, and I was wondering if you
11 actually sent benefits to those? Did you pay those
12 claims?

13 MR. LUCK: Your Honor, as I understand the
14 situation in Schmill, we identified people who were
15 entitled, paid them, sent you copies of letters in
16 reviewing for the hearing. In trying to do
17 additional due diligence, we actually found another
18 handful of people entitled, so some additional
19 payments will be going out to the extent that it
20 would be our belief that it's been totally
21 remediated in terms of benefits. We are waiting
22 for additional proceeding on attorney fees to
23 approve the payment of attorney fees, and we
24 withheld attorneys' fees. And I am not sure, Your
25 Honor, if you have had any of these, the hearings

1 on attorneys' fees yet.

2 THE COURT: We have, so I think we can
3 follow the same process. I think -- what did we
4 do, a 30-day notice or something like that, and we
5 allowed them to respond in writing, or basically we
6 have the template for it so we can go ahead, if you
7 want to get the other ones paid, and we can have
8 set that up for a hearing. I mean, typically what
9 we ended up having, we had a few of them now and
10 had -- I don't know if anybody has ever shown up in
11 person.

12 MR. LUCK: The FFR case had people show
13 up.

14 THE COURT: Yeah.

15 MR. LUCK: But in answer to Laurie's
16 questions, we believe, especially now with the
17 re-review, that we have remediated everything,
18 holding the money for attorneys' fees pending an
19 approval of payment.

20 THE COURT: Okay, so why don't -- you guys
21 want to just draft just from the, use the ones we
22 have done previously as a template, which I think
23 are probably online or Jackie can e-mail them to
24 you, and we can just get, just set that up and pick
25 a date and set it up for another fairness hearing,

1 or fee hearing, excuse me.

2 MR. JENNINGS: Your Honor, I don't know if
3 you are aware of this, but over the past couple
4 days, I have sent in several affidavits for
5 dismissal --

6 THE COURT: Right.

7 MR. JENNINGS: -- that begins the 90-day
8 discovery period, and they are welcome to take
9 whatever action. That's not all of my clients. In
10 one case with Rex, we have identified a Flynn
11 claimant that we already paid the benefit without
12 withholding the attorney fee. Rex, if you want to
13 get together with them, we can work something out
14 and seek the Court's approval. But looks like we
15 have five or six -- out of what is remaining, we
16 have probably five or six potential Flynn
17 candidates.

18 THE COURT: "We," talking claimants or --
19 and you represent multiple insurers --

20 MR. JENNINGS: Claimants, Your Honor. We
21 don't know for sure because what's not contained in
22 the file is their cost incurred in obtaining Social
23 Security benefits. That's not something we can
24 find out until we contact these individuals. We
25 would like to agree on some type of letter, and

1 maybe Rex and I can get together and agree on the
2 contents of the letter and seek your approval.
3 Would you be in agreement?

4 MR. PALMER: Sure. We have worked out a
5 contact letter with the State Fund, and I am sure
6 we can track something.

7 MR. JENNINGS: Okay, and Laurie, same
8 thing with you, although the insurers have
9 indicated that they have just a handful of
10 potential Flynners, have not been advised that we
11 have any potential Schmillers, so we are going to
12 continue to compile affidavits until we run into
13 one that says, "Well, we might have one here."

14 MS. WALLACE: And the only thing I have in
15 response to that, Steve, is that on the affidavits
16 that I have been looking through that you are
17 filing or have filed, you have amended them to say
18 that the individuals haven't found any Schmill
19 claims pursuant to the summons and Flynn. And I
20 don't believe that that's appropriate because as we
21 have just talked about with implementation, if they
22 don't identify all Schmill claims, even the
23 paid-in-full ones, then they won't have any way of
24 knowing that they are a part of the Schmill,
25 potentially part of the Schmill class if benefits

1 have been paid.

2 So it seems to me the insurers should be
3 required to identify all Schmill claims under the
4 original summons, and the fact that some of them
5 aren't, they don't have any benefits that were paid
6 after, I think it's June 21 or 22, 2001, simply
7 means that those individuals aren't part of the
8 class now. But I believe they still should be
9 identified by insurers, they should have to go
10 through and identify them.

11 MR. JENNINGS: I would very much like to
12 address that, Your Honor.

13 THE COURT: I'm sure you would. But if
14 they are paid in full under the Flynn decision,
15 they are not in the class right now, anyway. I
16 mean, isn't that -- strikes me that was the reason
17 we kind of went through that whole thing with both
18 Flynn where I had my scrivener's error the first
19 time, and to correct it in the second one is to
20 define the class. And so right now they are not in
21 the class. So it seems to me, I mean, we would be
22 sending a notice that -- and I recognize, you know,
23 what the original summons may have said, the
24 summons, if they have been paid in full,
25 notwithstanding the caveat that they may have

1 something happen that renders them no longer paid
2 in full, but as it stands right now, the paid in
3 full is one of the critical things that defines the
4 class. It just seems to me we have been notifying
5 people that aren't in the class.

6 MR. JENNINGS: Your Honor, that's why we
7 fought so hard on that issue is because you don't
8 really have a starting point to do the search until
9 we have the Flynn decision. We have this universe,
10 and you have got to have a date, you have to have a
11 cut-off, benefits after X. So anybody not
12 receiving benefits after X is not part of the
13 class. Yes, the summons didn't say that because
14 the summons was several years before the decision,
15 but Flynn was presumptively retroactive to this
16 case, so I would say that that did modify the
17 summons for that legal reason and for the practical
18 reason that we just needed a starting point.

19 THE COURT: I guess my thought on it is,
20 and I really hate to, I mean, A, give a ruling
21 without, you know, briefing, but more than that, I
22 really hate to see more briefing. So it's like, I
23 mean, so I guess my, umm, my thought on it is that
24 I tend to agree that, you know, it would seem to me
25 like if there is a bright line, and the record will

1 reflect I'm gesturing towards Larry.

2 MR. JONES: Thank you.

3 THE COURT: It's the date and the date is
4 kind of one of your starting point there and so if
5 they were paid in full before the date, they are
6 not in the class. And if they weren't, then they
7 are clearly in the class now, given all the other
8 factors, and they get notice. I don't think that
9 they are required to send notice to people who are
10 not in the class, I guess is the way I would put
11 it.

12 And if they are presently paid in full
13 before the effective date, then I think that they
14 are not in the class. And so I don't think they
15 are required to give that notice.

16 MS. WALLACE: Well, and I guess in terms
17 of a notice, I wouldn't expect them to be required
18 to be given a notice. But you had this long
19 discussion with Brad about identifying or a process
20 in place to identify these potential claims, and it
21 seems to me the easiest way to do that is to, I
22 mean, the paid in full is obviously the only
23 fungible category of these claims. And so it seems
24 to me that if you identify them pursuant to the
25 search processes that they have in place, Liberty

1 can identify them, they will have a list, and
2 Larry's, you know, we are working on that. They
3 already have a list that says there was
4 apportionment in this case but it was before the
5 date. And so they will have a list of claims that
6 if anything changes in those claims, they will know
7 that it is a class claim at that point in time.

8 It seems to me that's the easiest thing to
9 put in place to identify these claims down the
10 line.

11 MR. JENNINGS: I think her objection is we
12 have indeed modified the choices in the affidavit
13 to include description in the summons and as
14 required by the Flynn decision. We did that
15 because that's the only starting place we have for,
16 for the search. It's, it's, as Your Honor
17 mentioned, it's not a potential claim, not a
18 potential Schmill claim if no benefits were paid.

19 THE COURT: After the date.

20 MR. JENNINGS: After the relevant date.
21 So we start out with a universe of Montana claims,
22 and the first pass, we remove everybody who has not
23 received benefits, and then we have a smaller,
24 workable file.

25 Unlike Brad, I represent 65, 60-some

1 insurers, depending on which case, and I am not up
2 to speed on the actually archival and computer
3 technology that Brad is. I just cannot grasp that
4 for 60-some insurers. So the guidance I have
5 given, I mean, I hate to talk in too much detail
6 because I'm consulting an attorney-client privilege
7 document, but if someone were to ask me what a
8 Schmill claimant was or how to find one, I would
9 say: Identify all Montana claimants receiving
10 benefits on or after April 10, 2003, from that
11 list; remove all claimants whose claims were filed
12 after April 10, 2003; from the remaining list
13 identify all claimants whose benefits were
14 apportioned for non-occupational factors.

15 THE COURT: Sounds to me like basically
16 it's a question of what you are using as your
17 starting point. Your insurers versus what Liberty
18 did is identify the galaxy of claimants and weed
19 out the ones who were paid in full before. So you
20 started off with the broader circle and narrowed
21 down based on the paid-in-full date; is that
22 accurate, Larry?

23 MR. JONES: I don't know, Your Honor. I
24 was taken back by Laurie's comment simply because I
25 wasn't aware that we had really honed in and

1 reduced it to such a fine point that we had
2 identified paid in full. I agree, they may be
3 captured in the group that we have identified, but
4 I'm not aware of any that Liberty has said this is
5 the way that we can identify from any list, a
6 paid-in-full claim. Except by, for example, by a
7 code, we would have to look at dates. And there
8 may be something in the list that we gave Laurie
9 that would indicate no payments were made during
10 certain dates and therefore by implication they are
11 paid in full.

12 But we don't have a paid-in-full button on
13 our computer that we can hit that tells us, yes,
14 this is paid in full. So I'm a little bit at a
15 loss as to Laurie's comments that we seem to have
16 done that. We may have, but it would have been --
17 my point is by default as opposed to by explicit
18 ability to do so.

19 THE COURT: Uh-huh.

20 MR. JENNINGS: Your Honor, what I would
21 like to try to avoid is Laurie appears to express
22 some dissatisfaction with the affidavits. And I
23 would like to avoid going back to the insurers and
24 saying we have to do it all over again. I think
25 the affidavits contemplate a discovery process, and

1 if Laurie is dissatisfied with that, I think that
2 that, that perhaps the discovery process is the way
3 to address that.

4 MS. WALLACE: Well, Larry, I'm only going
5 off of your letter. Your letter says Ms. Kern was
6 able to locate the file in the computer and confirm
7 that an apportionment was made. No payment was
8 made on the claim after the Schmill common fund
9 decision. As such, it does not fall under the
10 common fund under the holding of Flynn/Miller.
11 Doesn't that say what I said?

12 MR. JONES: Your Honor, that's the idea by
13 implication. Again, we don't have an express
14 button that says paid in full, so if that's what
15 Laurie is referring to, we will stand by that.

16 THE COURT: You identified where
17 apportionment was taken first, and then screened
18 out the ones that were paid in full. And what
19 Steve is saying, their starting point is, let's
20 screen out everybody who was paid in full before
21 the effective date, and then we will look at where
22 apportionment was taken of those people who were
23 not paid in full.

24 MR. JENNINGS: Your Honor, I think that
25 makes a lot of sense from our standpoint because

1 our market share by 60-some insurers combined have
2 a very small market share. And if we throw out, if
3 we do it in the manner that we have done it, we are
4 left with a manageable number of files to review.

5 THE COURT: I guess more fundamentally,
6 and I am just going back to the legal aspect of it
7 and the, you know, the parameters that have been
8 established now through, well, ultimately through
9 the Supreme Court decisions, is one of the things,
10 that one of the fundamental parameters that was
11 established is the retroactive date, as far as the
12 paid in full goes.

13 And I, I just, I think that from a notice
14 standpoint or even an identification standpoint,
15 what the obligation is to identify people who are
16 in the class presently, umm, and that would be
17 people who, among other things, were not paid in
18 full.

19 MR. JENNINGS: Received a benefit after X.

20 THE COURT: Received a benefit after the
21 effective date of the decision date, whatever you
22 want to call it. And so they are in the class, and
23 then that's, you know, those are clearly people who
24 have to be screened. I think in terms of how those
25 parameters are applied is a nuts and bolts decision

1 that frankly, I mean, is I think almost getting a
2 little too deep into the weeds.

3 It strikes me that there's -- either
4 process -- again, I hesitate to use the word
5 "reasonable" out of abundance of caution, but I
6 think either process makes sense to me that, you
7 know, you are identifying the class and there's,
8 you know, however those parameters fall. But one
9 of those parameters is the retroactivity date and,
10 you know, you identify your claimants, you are
11 identifying people who are actual claimants. And
12 whether you start with retroactive application date
13 and then screen from there, or you start from a
14 more global perspective as in Schmill, who were
15 people who had apportionment because of
16 non-occupational factors, and then screen from
17 there, I think is just -- I don't think that it's,
18 it's, like I said, either process in terms of the
19 order that you follow in terms of setting those
20 parameters.

21 MS. WALLACE: I'm trying to understand
22 what date everybody is using for this date that you
23 can -- you are in or you are out. Is it particular
24 by case? Because if so --

25 THE COURT: The date of the decision. And

1 that's why it's not obviously a standard date. I
2 don't have all of the different dates, you know,
3 off the top of my head but it was, I mean, we set
4 the, like in Flynn, it was, we talked about this
5 specific date. There's been the decisions that
6 even came before that Judge McCarter issued that
7 said these were the cut-off dates because it was
8 the date of the decision that established the
9 entitlement to benefits basically.

10 And I am kind of speaking free form off
11 the top of my head but, you know, go ahead.

12 MS. WALLACE: Well, because in the
13 affidavit for Schmill, the claim period was from
14 July 1, 1987, until June 22, 2001. So I guess I
15 always assumed June 22, 2001, was the date that
16 would then apply pursuant to Flynn/Miller. So I
17 don't, I guess I don't know where you are coming
18 from, Steve, when you said a date of April 10,
19 2003.

20 MR. JENNINGS: That actually benefits you.
21 If you want to trade that for June 2001, I'll do
22 that.

23 MS. WALLACE: Why would it benefit me?

24 MR. JENNINGS: April 10, 2001, is the date
25 of the --

1 MS. WALLACE: You said 2003.

2 MR. JENNINGS: -- is the date of the
3 decision creating the Schmill benefit. If I'm
4 wrong, then what I am probably referring to is the
5 date finding a common fund, okay? But if it's --
6 and I don't know the date, the Flynn, the initial
7 Schmill decision came out. Do you have that?

8 MS. WALLACE: June 22.

9 MR. JENNINGS: Then I have misstated the
10 date. The date --

11 MS. WALLACE: Well, my concern is whether
12 your insurers have looked back further.

13 MR. JENNINGS: I'll have to go check that.

14 THE COURT: And that's something you guys
15 can hammer out and if there's an issue, I'll get
16 involved. But in terms of what the specific date
17 is that should have been applied, if that's an
18 issue, that's an issue, but I'll address --

19 MR. JENNINGS: If the April 10, 2003, is
20 the date that we have used, Laurie, then what we
21 have done is we have looked at a more inclusive
22 period than what we were required to because what
23 we would have been looking was for benefits paid
24 after April 10, 2003. And if I simply misquoted
25 the date -- and I don't know if I did or not --

1 then we have included essentially two years where
2 benefits could have been paid to keep the claim
3 alive that we didn't have to, but I'll go back
4 and --

5 MS. WALLACE: And I think it's the other
6 way around. You are missing two years. If they
7 paid benefits between '01 and '03, they would be in
8 the class.

9 MR. JENNINGS: You are right. You are
10 right.

11 THE COURT: So that may require a new
12 screening.

13 MR. JENNINGS: And I will take a look at
14 that.

15 MS. WALLACE: I had one other issue that I
16 know Larry is aware of this because we have talked
17 about it a number of times. I'm not sure anybody
18 else is aware of this, or maybe they are and don't
19 want to bring it up, but you issued an order in
20 this case dated July 10, 2007, in Schmill. It was
21 a decision that was written by Jay that you
22 adopted.

23 THE COURT: Oh, right.

24 MS. WALLACE: And actually found that
25 there were not cases that were paid in full. They

1 found a definition of paid in full, and it's always
2 been Schmill's position that that order was
3 controlling in this case. That order was never
4 certified as final and so it's just been sitting
5 there while these other proceedings have been going
6 on.

7 And I think that it should be certified as
8 final because one of the issues that we have always
9 maintained in Schmill is that this whole
10 controversy around paid in full doesn't apply
11 because that statute was enacted after all of the
12 Schmill claims. And we raised that in that
13 briefing and that's the order that came out of
14 that, and so we still feel as though there's yet
15 one more appeal.

16 THE COURT: Jason puts his hockey mask
17 back on. Sorry.

18 So and that's fine. I mean, if that's --
19 and I apologize if I neglected to certify it as
20 final or whether -- I'm sorry, go ahead, Larry.

21 MR. JONES: Your Honor, that might be
22 Docket No. 410.

23 THE COURT: In Schmill.

24 MR. JONES: In Schmill, Your Honor.

25 THE COURT: Okay.

1 MS. WALLACE: I forgot to write the docket
2 number, July 10, 2007.

3 THE COURT: So let me ask you then -- you
4 guys just looking at YouTube over there?

5 MR. JENNINGS: Solitaire.

6 MR. LUCK: Could I ask a question while
7 they are looking at that? You also issued kind of
8 an omnibus order that all paid-in-full issues in
9 relation to common fund concerns would be
10 controlled by Flynn, and it was repeated by the
11 Supreme Court, I believe, in the last two
12 decisions. Our feeling is this paid in full has
13 been decided at your direction applicable to all
14 claims, and whatever that order says, that wasn't
15 final would seem like would be trumped by the
16 actual Flynn decision.

17 MR. JENNINGS: Your Honor, I would second
18 that. And not only would I add, not only has this
19 Court and the Supreme Court used Flynn as the model
20 for determining the scope of retroactivity, and the
21 statute in effect, it was not about, I mean, she is
22 talking about the definition of paid in full, but
23 what the decision decided was the scope of
24 retroactivity. There's no statute describing that.

25 I would also suggest that the legal

1 doctrine that you might be looking for is the
2 doctrine of retroactivity. Flynn is presumptively
3 retroactive to the earlier Schmill case until
4 proven otherwise under the Chevron factors, so it
5 is presumptively retroactive to this case thus
6 abrogating your earlier order, Your Honor.

7 THE COURT: Let me ask you, I mean, just
8 about that, the point that I think I do think I
9 said and, umm, and I think the Supreme Court said
10 that the decision in Flynn as pertained to paid in
11 full or to retroactivity, retroactive application
12 of the decision would be essentially the
13 controlling factor. So notwithstanding the fact
14 that that Schmill decision was not certified as
15 final, is it -- would it not be controlled by --
16 I'm seriously asking because I have not read that
17 decision in probably, what was it, 2007, so five
18 years. But so I'm seriously asking, would Flynn
19 and just the statement that both this Court and the
20 Supreme Court that that would control the, be the
21 model essentially and control the issue or resolve
22 the issue of retroactivity and paid-in-full issue,
23 that doesn't control --

24 MS. WALLACE: I have a hard time with
25 that, Your Honor, because the language of paid in

1 full is tied to a statute. I mean, that's where it
2 came from and that statute was not in effect on the
3 date of any of the Schmill claims.

4 THE COURT: But if I recall correctly, my
5 decision even in the -- going back to the first
6 Flynn decision where I used the definition of
7 settled from the other statute -- but I mean, just
8 well, yeah, I mean, in the Flynn One decision, and
9 again, I'm speaking off the top of my head, I was
10 applying the statute as basically a guidance
11 because with the recodification, the definition of
12 settled, I was using the definition of settled even
13 though it wasn't technically --

14 MR. LUCK: I think you are right, Your
15 Honor. And you even said in one of the orders, and
16 I have a specific recollection of the statement of
17 the Court, this statute, we are going to borrow the
18 language from the statute even though it wasn't
19 applicable to all periods of time --

20 THE COURT: Right.

21 MR. LUCK: -- that involved, that are
22 involved in these cases, and I won't be -- I don't
23 know the exact wording, but this was an approach
24 adopted by the legislature. It makes sense in the
25 face of arguments that the statute was for totally

1 different purposes. The Court reasoned and the
2 Supreme Court approved that that kind of language
3 makes sense in relation to the workers'
4 compensation arena, and it's a language that the
5 legislature adopted that could be used for the
6 definition of settlement.

7 So I don't think it was tied at all
8 specifically because those were some of the
9 arguments that were made to when it was in effect
10 or not in relation to the claims.

11 THE COURT: Right, yeah, and no, I mean,
12 that's my recollection as well is that the statute
13 didn't technically apply because it had been when
14 the recodification had been taken out and moved
15 into whatever part, but I said, well, this was the
16 definition of settled and it included paid in full,
17 which I did not include in my final line in the
18 first Flynn order but that it was -- and so I mean,
19 regardless of whether the statute was in effect, I
20 was just using it more as a guidance as to what
21 made sense to define a settled claim. And
22 obviously in Flynn Two, what made sense to me was
23 deciding paid in full. So go ahead.

24 (Cell phone ringing.)

25 MR. JENNINGS: I would just point out that

1 we have all been proceeding under the impression
2 that Flynn is to be the model for the scope of
3 retroactivity. And if we revisit this issue now
4 and if Laurie wins, Schmill will now be retroactive
5 to Flynn and we are nowhere.

6 THE COURT: Well, here's the thing, I
7 guess, so that we can move on. I mean, I have
8 given my thoughts off the top of my head. I mean,
9 certainly, Laurie, I don't think as reluctant as I
10 am, I said to encourage more briefing, if you want
11 to, I think it's your prerogative to move to have
12 it certified as final. I guess that's the, where
13 it would go from there, and then I can, you know, I
14 think probably look at the last two Flynn
15 decisions, both the one containing the scrivener's
16 error and the more recent one. And then whether
17 that -- obviously you have, but whether that
18 controls that Schmill decision supersedes it, and
19 if it -- if you are, if you think that
20 notwithstanding that it, Schmill should be, that
21 this should be certified as final, I certainly
22 can't, and I will make, I mean -- I'm not saying
23 what my ruling would be on that one way or the
24 other, but if you want to file a motion to have
25 that decision certified as final, that's your

1 prerogative to do that and we can take it from
2 there.

3 Go ahead.

4 MR. JONES: Your Honor, just so we are
5 clear, Laurie and I were looking at the I-pad and
6 we weren't playing solitaire.

7 THE COURT: I couldn't see, couldn't see
8 --

9 MR. JONES: I think we are in agreement
10 this would be Order No. 380; is that correct?

11 THE COURT: 380 in Schmill?

12 MR. JONES: Yes, Your Honor.

13 THE COURT: Great, thank you. So Laurie,
14 why don't we just, so that we are, you know, like I
15 said, trying to bring some definitiveness to this
16 in whatever shape, say, within 30 days, if you, and
17 that will be reflected in the minute entry here --

18 MR. JONES: Your Honor, are you now
19 certifying that order as final and setting the
20 briefing schedule?

21 THE COURT: No. I'm giving Laurie 30
22 days, if she decides she wants to file a motion to
23 have it certified as final.

24 MR. JONES: Thank you.

25 THE COURT: And we will kind of cross that

1 bridge when we come to it, if there's a bridge to
2 cross. So anything else? Rex?

3 MR. PALMER: Hearing No. 4054, April 22 of
4 '09, I made a request that -- this is the minute
5 entry noting that I made a request for opportunity
6 to conduct Rule 30(b)(6) depositions to determine
7 whether the, what the insurers are doing to locate
8 claimant's potentially deserving of benefits. It
9 says the motion is denied. Mr. Palmer will be
10 granted leave to renew the motion contingent on the
11 ruling on central issue of paid in full.

12 So now we have come through that process
13 and we need to test the reasonableness of their
14 efforts. So that needs to be done in order to give
15 any life to the, umm, amendment that the Court
16 permitted over objection to determine the
17 reasonability of their actions.

18 THE COURT: You want to do 30(b)(6)
19 depositions to find out what process is being
20 followed?

21 MR. PALMER: Right.

22 MR. JENNINGS: Your Honor, I think that's
23 part of the discovery that the affidavits
24 contemplate.

25 THE COURT: Yeah, I mean, I don't, umm, I

1 think frankly at this juncture, I think what it's
2 -- I think what it's, as Steve alluded, that's
3 discovery, and so I think you notice up a 30(b)(6)
4 deposition.

5 MR. PALMER: Okay.

6 THE COURT: And if for whatever reason
7 somebody thinks that you shouldn't have one, they
8 can move to quash it and I will deal with that as
9 it comes up. But I think -- I guess for purposes
10 of going back to that order, and I appreciate you
11 bringing it up because I remember the ruling on
12 that, that I think the denial is revisited.

13 MR. PALMER: We are there now, sure.

14 THE COURT: I think it's your prerogative
15 within the discovery process. You just notice them
16 up and if, and then if whatever insurer doesn't
17 feel you should have one, for whatever reason, they
18 can move to quash and I will address it, okay?

19 Larry, go ahead.

20 MR. JONES: Your Honor, I haven't said
21 anything because State Fund has been the biggest
22 fish in the pond, and the second biggest would be
23 Steve's.

24 THE COURT: He's got a school of small
25 fish.

1 MR. JONES: It seems to me that we are
2 dealing with three categories of insurers. The
3 State Fund has had a lot more, thankfully,
4 experience dealing with this issue. And we have
5 with three categories of insurers, three different
6 categories of cases. And I am not sure that what
7 we have done today has necessarily clarified
8 Liberty's obligations. And so on this Stavenjord
9 and Reesor cases, the State Fund has had hearings
10 and they have elaborate pleadings and letters, what
11 have you, and my client has not been part of that
12 because there was no common fund attorney in those
13 cases.

14 THE COURT: Right.

15 MR. JONES: So I would ask the Court at
16 the conclusion, when we get there, of this hearing
17 for some guidance on my client's obligation on the
18 Reesor and Stavenjord given the absence of common
19 fund attorney to implement those cases.

20 Second category of cases would be just
21 because of Rex's comments, I would say the
22 Flynn/Miller category, and my sense of what Rex
23 said is that this was really directed at carriers
24 who believe they have completed the implementation
25 process in Flynn/Miller as opposed to Liberty where

1 we are still working with Rex. And with the
2 Court's permission, I would like that second
3 category of cases clarified.

4 THE COURT: Umm, and I think well, as part
5 of that, you guys are working together, I mean, on
6 that process as far as Flynn/Miller goes, I don't
7 know if Rex is contemplating, and I am not going to
8 ask you to say whether you are or not at this time
9 because you may not have made a decision whether or
10 not you are wanting to do a 30(b)(6) in
11 Flynn/Miller with Liberty or not. Sounds to me
12 like you guys are sharing information, am I wrong
13 on that, in terms of what the process is being
14 followed and whether that obviates the need for
15 30(b)(6) or not? I can't make that judgment. I
16 appreciate and I am certainly prepared to talk
17 about Reesor/Stavenjord because that's kind of a
18 unique situation because there is no common fund
19 counsel on claimant's side.

20 Let me ask you, Rex, in terms of the
21 Flynn/Miller issue.

22 MR. PALMER: Well, there was a time that
23 Liberty had its files in town and my staff, my
24 paralegal and I went over and looked at some of
25 those files in the process and we felt like in an

1 effort to cooperate with them, it's our view that
2 it's their obligation to do a process to find these
3 claimants. And I think it's their view that it's
4 not their obligation to do that. So there's an
5 issue there.

6 Now, the paper files are no longer in
7 Montana. They are in some other remote location.
8 They may be returnable, they may be digitized, but
9 we have never acquiesced that it would be our
10 obligation to go through and locate the specific
11 claimants looking through their files. That's
12 certainly not what we did with the State Fund. So
13 that's a potential issue.

14 We haven't revisited how would we look if
15 we were willing to. But it's our position what we
16 would be looking for, in a 30(b)(6) or perhaps any
17 of the multitude of affidavits that were filed, we
18 might choose the individual to sign the affidavit
19 to test and see what was done and did we believe it
20 was reasonable. And if we didn't, then they might
21 agree that it was unreasonable or they might
22 disagree and then we might bring that to you and
23 determine if the petition for a determination of
24 reasonableness as regards attorney fees and a
25 penalty should be granted or denied, which would be

1 a hearing on a given insurer.

2 We have to test the water to begin with,
3 and I think as you have already said, we are at
4 that point where a denial was contemplating that
5 after the ruling on paid in full, we would do that.

6 THE COURT: Kind of --

7 MR. JONES: Your Honor, I understand Rex's
8 comments. I think contrary to what's happened in
9 the past on these cases, which has been that rather
10 than having an insurer go out and unilaterally
11 implement a decision, come to the Court and then
12 have claimants' common fund counsel pass judgment,
13 it's adequate or inadequate, the process has been
14 the Court is required, defense counsel and
15 claimant's counsel, to attempt to agree to an
16 implementation process so we don't have this
17 constant going back and forth.

18 And so I would disagree with Rex's comment
19 that my client isn't prepared to implement the
20 decision. My client's position is that it wants to
21 follow the Court's prior practice of attempting to
22 get implementation rules so the cases, relevant
23 cases are identified one time, and once those rules
24 have been followed, there can be no question by
25 claimants' common fund counsel as to the adequacy

1 of the identification of that group of cases.

2 And that's where I then see a second stage
3 which maybe is addressing the State Fund's position
4 that Rex may want a 30(b)(6) at that point to see
5 under the terms of those implementation, mutually
6 agreed implementation procedures what, in fact, was
7 done.

8 COURT REPORTER: Excuse me, what is that
9 pop-popping sound?

10 (Off-record discussion.)

11 THE COURT: So is the transcript -- the
12 transcript is going to be littered with pop, pop,
13 pop?

14 MR. JONES: Victor Borge-type of
15 presentation, if you would.

16 So Your Honor, this is why I have tried to
17 carve Liberty out of what the State Fund has been
18 doing because they have had a head start and have
19 really done a lot more work than we have been able
20 to do. And I was hoping to propose in addition to
21 that Stavenjord/Reesor element that I think would
22 be peculiar to Steve's clients would want to
23 participate, would be dealing separately with
24 Liberty's obligations in Flynn/Miller and Liberty's
25 obligations in Schmill.

1 Because we have had some preliminary work in both
2 of those cases and try to get that if the Court is
3 in agreement, try to get that implementation
4 process agreed to today and then move forward on
5 it, on all three categories of cases.

6 And we have the unique opportunity here
7 because we have Flynn/Miller common fund counsel
8 and Schmill common fund counsel as regards
9 Liberty's obligations and, again, if Steve's
10 clients would want to join in with that, seems like
11 they have taken a different path, but my client is
12 not going to take the position, at this point, we
13 are simply going to give you an affidavit and
14 engage in discovery. My client would like to
15 follow the procedure that's been done in the past
16 which is attempt to work out a mutually agreeable
17 implementation process and then implement it and
18 provide the information to common fund counsel.
19 And then presumably, if common fund counsel had any
20 questions or was dissatisfied, would bring it
21 before the Court perhaps in 30(b)(6) motion or some
22 other fashion. So that's my client's proposal for
23 the Court, Your Honor.

24 MR. PALMER: The idea that we would skip
25 past the insurer's obligation to pay on an order

1 that was entered over a year and-a-half ago and
2 which they never appealed -- granted we appealed --
3 and just say we are going to sit back and it would
4 be convenient for us to do it in a big lump, the
5 process we have gone through in this case has
6 identified a broad group of potential claimants
7 that the insurers have tried to narrow down the
8 involved group. And that's okay, but they didn't
9 appeal the last order, and so the idea that there's
10 some different process that absolves them of their
11 obligation to comply with a Court order that they
12 did not appeal, that's new. That's not, there's no
13 room that says you do that.

14 So there are two areas, see. There's that
15 area that we would be testing as far as what have
16 you done, and then would present the question, we
17 wouldn't skip past that and go to the next question
18 of what else has been done since the Supreme
19 Court's order on that order you didn't appeal.
20 That's another question.

21 But those would be various steps on a
22 group that has, would never have gotten any smaller
23 for the last year and-a-half.

24 THE COURT: Well, and I don't think, I
25 mean, I don't think that these processes are

1 necessarily mutually exclusive. What Larry is
2 talking about is you guys just come together and
3 agree. Part of that process could be, you know,
4 you were saying, well, we have this order that lays
5 out some parameters and/or some procedures and so
6 we think that's part of it, and you are
7 identifying, and I don't think that -- I don't
8 know. I don't think that Liberty is taking the
9 position that we are not going to start paying
10 anybody until the final, until everybody is
11 identified, or are they, Larry?

12 MR. JONES: Well no, Your Honor. The
13 Flynn/Miller, I guess I'm struggling with Rex's
14 comments, is though that they are prior to the
15 Flynn/Miller decision on December 29th of 2011,
16 there was a known group of Flynn/Miller claimants.
17 My client's position is until that decision came
18 down, we could not effectively identify the group
19 of people because we did not know who would be in
20 that group given the paid-in-full issue.

21 I think I hear Rex saying that somehow at
22 some point under some of yet undefined date of
23 decision or order, Liberty should have been on its
24 own going out and attempting to identify certain
25 people and paying certain benefits, I think that's

1 totally contrary to probably a decade of common
2 fund practice in which the parties have waited
3 until they could have an implementation process so
4 that the relevant group could be identified and
5 then potentially paid and systematically, if there
6 were any objections, they could be presented to the
7 Court.

8 But my client's position is they have been
9 following the common fund procedure.

10 THE COURT: Go ahead, Steve.

11 MR. JENNINGS: Your Honor, I would -- I
12 also would disagree with Rex's comment that we have
13 identified some sort of number of claimants. This
14 process so far has identified exactly zero
15 claimants. But in any event, I do disagree with
16 Larry a little bit to the extent that I think what
17 I think he is looking for is agreement on the
18 search parameters. And this is where I differ from
19 Larry and State Fund because they only have one
20 client. They can have some expertise on the
21 archival systems and computer systems and filing
22 systems that they can manipulate and access.

23 Larry talks about his trouble with, he
24 doesn't have a paid-in-full button. I'm lacking 65
25 paid-in-full buttons, so I would hope to avoid a

1 discussion of detailed parameters, and I would rely
2 on the discovery process in the affidavit. I think
3 that's what that's for.

4 THE COURT: I think it's, yeah, no, I'm
5 sorry. I'll cut you off because I'm agreeing with
6 you, Steve.

7 MR. JENNINGS: Okay.

8 THE COURT: It's a little unwieldy to do
9 this as we sit here today, too. I think that what
10 Larry is talking about does seem to, you know, make
11 sense from the standpoint of, you know, start with
12 talking to each other and, you know, try to work
13 out the process. If there are things that, you
14 know, that you see is deficient in it, then you can
15 certainly bring that to me in whatever fashion,
16 would probably be some sort of whether it's, oh,
17 you know, there are individuals that you think
18 should have been paid, you know, a long time ago
19 and, you know, so you think there's a, penalty and
20 fees are warranted. Then, you know, again, this
21 goes back to Brad's question about the, you know,
22 the reasonableness of, you know, people who aren't
23 in the class and what is -- I can only address
24 those on a case-by-case basis.

25 And I am not trying to duck the issue

1 here, but I can't say whether it was -- I suspect
2 Larry -- would come in and say Joe Smith should
3 have been identified and paid a long time ago, so
4 he is entitled to a 20 percent penalty and fees,
5 and Larry would say this is not the process we have
6 ever followed, and we were waiting for clearer
7 parameters before we did that, and I will make a
8 determination. And that then sets a precedent for,
9 you know, other people within that class. I think
10 it's a heck of a lot easier to do that than
11 globally because within the class, obviously there
12 are going to be individuals with somewhat unique
13 circumstances.

14 From a standpoint of whether they could
15 have or should have been identified and paid
16 earlier, umm, you know, so that's the best we can
17 do. But as far as the process goes -- and now I'm
18 speaking specifically to Flynn and Miller, although
19 I mean, I guess it would apply to Schmill as well
20 because there is common fund counsel there, as
21 Larry alluded to, certainly historically, was kind
22 of the process, but it certainly makes sense now to
23 work out what you can, and whatever you can't agree
24 on in terms of the implementation process then, you
25 know, bring that to me.

1 But at this juncture, you know, one of the
2 things we have, you know, been dealing with and
3 certainly made the last few trips up to the Supreme
4 Court with is to at least establish some defined
5 parameters of what constitutes the class. And so
6 with that in mind, in terms of retroactive
7 application and what have you, you know, we have at
8 least got that to start with, and then you can use
9 that as kind of your foundation to build the
10 process on, as well as using the historical
11 processes that have been followed as guidance but
12 -- and if there are disputes where you think that
13 that process is, what you have discussed, you think
14 in some fashion what Liberty wants to do is
15 inadequate and Larry, you think what Rex wants to
16 do is too onerous, if that can't be agreed on, I
17 can sort that out at that juncture. Go ahead,
18 Larry.

19 MR. JONES: Thank you, Your Honor. I
20 think you provided two things in your comments, and
21 that's the idea of identifying the class. Clearly,
22 the Court's decisions -- the Supreme Court and this
23 Court -- has given us guidance to get the process
24 started. But the second step is to the one I know
25 my client is most concerned about now, which is how

1 do we with the systems we have, identify who falls
2 in that class. And to me, that's what the
3 implementation process has been.

4 THE COURT: Right.

5 MR. JONES: For example, with the Schmill
6 case, we have sent Laurie two lists of cases -- and
7 I hope I'm not speaking out of turn, Laurie, and
8 tell me if you think I am -- but we had class codes
9 on a certain system that suggested cases falling
10 under the class codes would be occupational
11 diseases. Then we went and found out in which
12 cases there has been indemnity payments. If there
13 are no indemnity payments, there's no
14 apportionment, so we have been able to parse out
15 that category of cases.

16 Then we are now talking about the list and
17 how we might, if it's appropriate to further define
18 them. But my client's goal is to get to the point
19 with Laurie where we agreed this was, the inquiry
20 is sufficient, this is the group of cases, they are
21 sufficient. And looks like the next step may be to
22 go and hand by hand to look at the files to see if
23 apportionment was taken. And we haven't reached
24 these agreements. I'm just suggesting that's the
25 direction we take.

1 But on the Flynn/Miller case, I don't
2 think we have got to that point. We had a
3 preliminary search and, quite frankly, I would have
4 to go back and look at the file in detail to see
5 how we agreed on the group of cases and hard copy
6 that we provided Rex at that time.

7 So what I am asking the Court, at least in
8 Flynn/Miller, is a direction to the attorneys to
9 reach an agreement on the method of the search to
10 get to the point where, if that search is done
11 under the conditions contained in the search
12 criteria, that will satisfy that part of the common
13 fund process and implementation and would go to the
14 next step, which is to agree on how those files are
15 then to be examined, because that's what's happened
16 in the past.

17 What I hear Rex suggesting is it's totally
18 the obligation of my client to come up with some
19 search criteria, run a search, and then he will be
20 free on behalf of his clients to say that's
21 inadequate, do it again. So I'd like some
22 direction to both claimant's counsel and my client
23 as to those particular steps.

24 THE COURT: No, I think, I mean, I would
25 assume -- and it certainly strikes me as being more

1 expedient than to say, "Here's our process, no,
2 that doesn't look okay, let's try this," for the
3 two of you to get together and see what you can
4 agree on and, you know, try to work through -- I
5 mean, blue sky, the entire process. And you know
6 that's, maybe I'm just a cockeyed optimist, but,
7 well, actually I'm not because I don't expect that
8 to happen.

9 But I mean, I think it is incumbent on
10 both sides to come together and figure out from
11 soup to nuts, how do we get this process done? And
12 as I said, there will be probably where, Rex, you
13 think that it's the process is inadequate, and
14 Larry, you think that what Rex wants is too
15 onerous. But you do need to get something worked
16 through.

17 And you are not waiving anything by
18 engaging in that process. You are not waiving any
19 right to say, "Well, something should have been
20 done earlier with X, Y, and Z," and you know, we
21 can take that, you know, and say, "Hey, Joe Smith
22 should have been, he was clearly identified. I
23 sent Larry a letter and there was no question this
24 guy should have been paid," or whatever. And I
25 will address that on, like I said, if and when that

1 person comes before me on some sort of a, you know,
2 penalty and attorney fees petition.

3 But I do think it's incumbent on both
4 sides to try to get as much of that process nailed
5 down. If there is something in the implementation
6 of that process, as Steve eluded to, the discovery
7 where -- or just as part of that whole process, if
8 a, you know, if a formalized 30(b)(6) deposition is
9 necessary, fine, or I'm not prospectively denying a
10 motion to quash.

11 If you feel that that's necessary, you
12 know, then notice it up and either it'll happen or
13 there will be motions to quash or whatever. But it
14 is just impossible for us to sit here today and
15 say, other than to say to work together and bring
16 up and work out as much as you can. And then
17 whatever can be worked out, great. Whatever can't,
18 I'll address and take it up on a case-by-case
19 basis. But this is, as I said, my cool hand Luke
20 rule, which is, you know, to communicate.

21 So that's -- so with that, that's where --
22 I don't know, does that answer your question there,
23 Larry?

24 MR. JONES: It does very thoroughly, Your
25 Honor.

1 THE COURT: Now to back up as it would
2 pertain in Liberty's obligations in Reesor and
3 Stavenjord, you know, I mean, it is kind of a
4 unique situation and there are -- and I raise these
5 even when State Fund came before me and we had
6 counsel that there were some issues because there
7 was no formalized procedure that, that I had signed
8 off on because there is -- they have not been
9 certified as common fund and there's not -- and
10 there's not common fund counsel.

11 I mean, I guess what the best I can say at
12 this juncture is, you know, and I recognize that
13 the software and the capacities and whatever are
14 different, that they are not, you know, necessarily
15 the same for Liberty as they are for State Fund,
16 that those procedures, you know, that I am signing
17 off on are kind of maybe as a broad goal post in
18 terms of how to try to -- and you know, now we have
19 obviously the Flynn decision as at least pertains
20 to the retroactivity in defining the parameters.
21 But in terms of the nuts and bolts of how do you go
22 about identifying and contacting, you know, no more
23 than what like Steve was saying in terms of the
24 difference between do you start with the effective
25 date or do you start with, you know, who was denied

1 their benefits because they reached retirement age
2 or had their PPD benefits cut off because they
3 reached retirement age? Which one is the cart and
4 which one is the horse?

5 I don't think I have -- particularly in
6 Reesor and Stavenjord as pertains to Liberty -- the
7 jurisdiction to tell you. I think, you know, I
8 think that the process that I approved with State
9 Fund might be a good guide post. And I guess
10 that's the best I can tell you with that.

11 MR. JONES: Just so the record is clear,
12 the Court believes there is a duty on Liberty's
13 part to go back and implement those procedures now
14 -- implement those cases now that we have
15 Flynn/Miller?

16 THE COURT: (Laughter.) Umm, yeah. You
17 are talking about in Reesor and Stavenjord.

18 MR. JONES: Yes, Your Honor.

19 THE COURT: Well, again, this goes back
20 to, I don't know that -- and I know that, well,
21 actually I don't know that. I know this in terms
22 of what did you reach. Did Liberty, I know, like
23 obviously State Fund submitted a process for me to
24 approve and so that kind of puts it in a unique
25 situation distinct from Liberty. I think the best

1 I can say about that since there is no common fund
2 certification of these cases, you know, and since I
3 have not approved any sort of process that Liberty
4 has, you know, voluntarily subjected itself to the
5 Court's jurisdiction under Reesor or Stavenjord, is
6 I think the best I can probably say to that is, you
7 know, it may behoove Liberty from a standpoint of a
8 reasonableness issue, if that were to come up.

9 But I don't care. I have the -- I don't
10 have the authority to prospectively rule on whether
11 you have to or not. But if certain individuals
12 were to come up and say, "Hey, I had my PPD
13 benefits cut off at retirement, I clearly fell
14 within this class and Liberty didn't pay, I think
15 I'm entitled to penalty and attorney fees," they
16 would have to come up, as I understand, because
17 it's never been defined as common fund. So I don't
18 think I have the jurisdiction to tell you that.

19 MR. JONES: It's very helpful, Your Honor.

20 THE COURT: Okay, thank you. Okay.

21 Anything else?

22 MR. LUCK: Just to be clear, two things,
23 Your Honor. I understood from your initial
24 comments that you are deciding our proposed orders?

25 THE COURT: Yes.

1 MR. LUCK: Second thing is -- the final
2 thing would be we understand your concern about
3 prospective rulings, but based on all of this
4 interchange, I think from a retroactive ruling, you
5 will probably find State Fund has been eminently
6 reasonable in its efforts to get out in front and
7 remediate all of these problems.

8 THE COURT: Anyone else? Is there --
9 speak now or forever hold your peace. Well, not
10 forever, that much has been made clear. Thank you.
11 I appreciate everyone's efforts in coming over
12 here. This is -- hopefully, we will get a detailed
13 minute entry out actually -- and then also what we
14 will do is, Kim, I'll order from the Court, it will
15 be the Court's request to do a final transcript. I
16 think we do that on all common fund transcripts, so
17 the transcript will be posted online, as well.

18 MR. LUCK: Thank you, Your Honor.

19 THE COURT: All right, thanks, everyone.

20 (The time is 10:00 a.m.)

21 * * * * *

22

23

24

25

1 STATE OF MONTANA)
2 County of Lewis and Clark) :SS.

3
4

5 I, Kimberly Johnson, a Registered
6 Professional Reporter and Notary Public in and for
7 the County of Lewis and Clark, do hereby certify:

8

9 That the foregoing cause was taken before
10 me at the time and place herein named, that the
11 foregoing cause was reported by me, and that the
12 foregoing pages contain a true record of the
13 testimony to the best of my ability.

14

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this _____ day of _____, 2012.

17

18

19

20

Kimberly E. Johnson
Registered Professional Reporter
Notary Public
My Commission Expires 3/19/2012

21

22

23

24

25

	g	58:1, 61:18, 62:3	62:19	awful [1] - 8:11
'01 [1] - 42:7	90-day [1] - 29:7	agree [12] - 15:6, 22:17, 29:25, 30:1, 32:24, 36:2, 54:21, 55:15, 59:3, 62:23, 65:14, 66:4	applying [1] - 46:10	B
'03 [1] - 42:7	99 [1] - 19:25		apportioned [1] - 35:14	balling [1] - 7:21
'09 [1] - 50:4	99-plus [1] - 9:25		apportionment [9] - 14:19, 14:22, 34:4, 37:7, 37:17, 37:22, 39:15, 64:14, 64:23	based [2] - 35:21, 71:3
'87 [1] - 17:15		agreeable [1] - 57:16	approach [1] - 46:23	basis [16] - 7:2, 9:19, 12:1, 13:13, 13:20, 14:4, 18:13, 21:17, 22:9, 22:19, 22:22, 23:6, 24:16, 25:20, 61:24, 67:19
1	A	agreed [6] - 10:13, 56:6, 57:4, 63:16, 64:19, 65:5	appropriate [2] - 30:20, 64:17	BE [1] - 5:1
1 [1] - 40:14	a.m [1] - 71:20	agreeing [1] - 61:5	approval [3] - 28:19, 29:14, 30:2	become [1] - 22:22
10 [8] - 35:10, 35:12, 40:18, 40:24, 41:19, 41:24, 42:20, 44:2	ability [2] - 13:24, 36:18	agreement [8] - 14:17, 26:12, 26:19, 30:3, 49:9, 57:3, 60:17, 65:9	approve [3] - 19:22, 27:23, 69:24	becomes [1] - 14:10
10:00 [1] - 71:20	able [4] - 14:2, 37:6, 56:19, 64:14	agreements [1] - 64:24	approved [8] - 20:7, 20:10, 20:23, 20:24, 21:25, 47:2, 69:8, 70:3	begin [1] - 55:2
12 [4] - 8:15, 9:8, 10:19, 13:17	abrogating [1] - 45:6	agrees [1] - 26:17	April [7] - 35:10, 35:12, 40:18, 40:24, 41:19, 41:24, 50:3	begins [1] - 29:7
1987 [1] - 40:14	absence [1] - 52:18	ahead [9] - 7:23, 28:6, 40:11, 43:20, 47:23, 49:3, 51:19, 60:10, 63:17	archival [2] - 35:2, 60:21	behalf [1] - 65:20
	absolves [1] - 58:10	akin [1] - 16:6	area [1] - 58:15	behoove [1] - 70:7
2	abundance [1] - 39:5	alive [1] - 42:3	areas [1] - 58:14	belief [1] - 27:20
20 [2] - 25:12, 62:4	accept [1] - 22:16	allow [1] - 5:19	arena [1] - 47:4	believes [1] - 69:12
2001 [5] - 31:6, 40:14, 40:15, 40:21, 40:24	access [1] - 60:22	allowed [1] - 28:5	argued [1] - 11:9	benefit [7] - 10:14, 24:19, 29:11, 38:19, 38:20, 40:23, 41:3
2003 [6] - 35:10, 35:12, 40:19, 41:1, 41:19, 41:24	account [2] - 9:10, 9:25	allows [1] - 12:22	argument [1] - 14:17	benefits [47] - 6:10, 7:11, 12:9, 12:12, 12:19, 12:23, 13:10, 14:21, 14:25, 15:9, 15:11, 16:2, 16:19, 16:21, 16:24, 16:25, 17:4, 17:6, 18:22, 18:23, 21:16, 21:24, 23:18, 23:20, 24:2, 25:3, 27:11, 27:21, 29:23, 30:25, 31:5, 32:11, 32:12, 34:18, 34:23, 35:10, 35:13, 40:9, 40:20, 41:23, 42:2, 42:7, 50:8, 59:25, 69:1, 69:2, 70:13
2007 [4] - 27:10, 42:20, 44:2, 45:17	accurate [1] - 35:22	alluded [2] - 51:2, 62:21	arguments [2] - 46:25, 47:9	best [7] - 6:12, 25:23, 62:16, 68:11, 69:10, 69:25, 70:6
2011 [1] - 59:15	acquiesced [1] - 54:9	almost [5] - 11:8, 11:25, 17:18, 22:6, 39:1	aspect [1] - 38:6	better [2] - 5:21, 15:18
2012 [1] - 5:2	action [2] - 26:18, 29:9	amended [1] - 30:17	assume [1] - 65:25	between [2] - 42:7, 68:24
21 [1] - 31:6	actions [1] - 50:17	amendment [1] - 50:15	assumed [2] - 8:7, 40:15	beyond [3] - 6:8, 17:9, 17:12
22 [5] - 31:6, 40:14, 40:15, 41:8, 50:3	actual [5] - 7:8, 17:6, 17:20, 39:11, 44:16	amount [1] - 10:14	asterisks [1] - 21:7	big [1] - 58:4
29th [1] - 59:15	ad [1] - 22:20	analysis [2] - 17:17, 24:20	attached [1] - 15:11	biggest [2] - 51:21, 51:22
3	add [1] - 44:18	ancillary [2] - 6:21, 11:15	attaches [1] - 15:10	bind [1] - 23:1
30 [2] - 49:16, 49:21	added [1] - 20:3	and-a-half [2] - 58:1, 58:23	attempt [2] - 55:15, 57:16	bit [2] - 36:14, 60:16
30(b) [6] [9] - 50:6, 50:18, 51:3, 53:10, 53:15, 54:16, 56:4, 57:21, 67:8	addition [1] - 56:20	answer [3] - 14:9, 28:15, 67:22	attempting [2] - 55:21, 59:24	blue [1] - 66:5
30-day [1] - 28:4	additional [10] - 7:11, 12:9, 12:22, 13:10, 16:2, 16:19, 17:4, 27:17, 27:18, 27:22	anyway [4] - 6:9, 16:23, 22:25, 31:15	attorney [9] - 27:22, 27:23, 29:12, 35:6, 52:12, 52:19, 54:24, 67:2, 70:15	bolts [3] - 10:8, 38:25, 68:21
380 [2] - 49:10, 49:11	address [7] - 31:12, 37:3, 41:18, 51:18, 61:23, 66:25, 67:18	apologize [1] - 43:19	attorney-client [1] - 35:6	Borge [1] - 56:14
4	addressed [1] - 7:1	appeal [5] - 6:1, 43:15, 58:9, 58:12, 58:19	attorneys [1] - 65:8	Borge-type [1] - 56:14
4054 [1] - 50:3	addressing [1] - 56:3	appealed [2] - 58:2	attorneys' [3] - 27:24, 28:1, 28:18	borrow [1] - 46:17
410 [1] - 43:22	adequacy [1] - 55:25	appellate [1] - 26:8	authority [2] - 22:2, 70:10	
6	adequate [1] - 55:13	applicable [2] - 44:13, 46:19	avoid [3] - 36:21, 36:23, 60:25	
60 [2] - 6:8, 16:23	adjuster [2] - 12:7, 24:1	application [5] - 8:23, 19:3, 39:12, 45:11, 63:7	aware [5] - 29:3, 35:25, 36:4, 42:16, 42:18	
60-some [3] - 34:25, 35:4, 38:1	adopted [3] - 42:22, 46:24, 47:5	applied [3] - 19:17, 38:25, 41:17		
65 [2] - 34:25, 60:24	advise [1] - 24:9	apply [5] - 10:16, 40:16, 43:10, 47:13,		
8	advised [1] - 30:10			
8 [3] - 5:1, 8:15, 13:17	affidavit [5] - 34:12, 40:13, 54:18, 57:13, 61:2			
	affidavits [7] - 29:4, 30:12, 30:15, 36:22, 36:25, 50:23, 54:17			
	affirmed [1] - 21:20			
	age [2] - 69:1, 69:3			
	aggravations [1] - 10:23			
	ago [5] - 8:15, 20:13,			

- Brad** [4] - 7:15, 33:19, 34:25, 35:3
Brad's [2] - 14:16, 61:21
bridge [2] - 50:1
briefing [6] - 6:13, 32:21, 32:22, 43:13, 48:10, 49:20
bright [1] - 32:25
bring [7] - 42:19, 49:15, 54:22, 57:20, 61:15, 62:25, 67:15
bringing [1] - 51:11
broad [3] - 19:18, 58:6, 68:17
broadener [1] - 35:20
build [1] - 63:9
business [1] - 24:15
button [3] - 36:12, 37:14, 60:24
buttons [1] - 60:25
-
- C**
-
- candidates** [1] - 29:17
candidly [1] - 24:18
cannot [1] - 35:3
capacities [1] - 68:13
captured [1] - 36:3
care [3] - 17:22, 20:16, 70:9
carriers [2] - 20:18, 52:23
cart [1] - 69:3
carve [1] - 56:17
case [60] - 5:8, 6:6, 6:15, 6:16, 6:17, 6:18, 7:1, 9:14, 9:19, 10:10, 12:1, 12:4, 13:13, 13:20, 14:4, 14:18, 16:9, 18:13, 19:10, 19:16, 21:17, 22:7, 22:17, 22:19, 22:22, 24:15, 25:20, 26:13, 28:12, 29:10, 32:16, 34:4, 35:1, 39:24, 42:20, 43:3, 45:3, 45:5, 58:5, 61:24, 64:6, 65:1, 67:18
case-by-case [15] - 7:1, 9:14, 9:19, 12:1, 13:13, 13:20, 14:4, 18:13, 21:17, 22:19, 22:22, 24:15, 25:20, 61:24, 67:18
cases [35] - 5:11, 6:4, 8:13, 10:16, 11:7, 13:11, 16:9, 16:14, 18:10, 19:17, 20:22, 24:14, 24:21, 42:25, 46:22, 52:6, 52:9, 52:13, 52:19, 52:20, 53:3, 55:9, 55:22, 55:23, 56:1, 57:2, 57:5, 64:6, 64:9, 64:12, 64:15, 64:20, 65:5, 69:14, 70:2
categories [4] - 52:2, 52:5, 52:6, 57:5
category [5] - 33:23, 52:20, 52:22, 53:3, 64:15
caution [1] - 39:5
caveat [2] - 6:5, 31:25
cell [1] - 47:24
central [1] - 50:11
certain [5] - 36:10, 59:24, 59:25, 64:9, 70:11
certainly [10] - 12:2, 48:9, 48:21, 53:16, 54:12, 61:15, 62:21, 62:22, 63:3, 65:25
certification [1] - 70:2
certified [8] - 43:4, 43:7, 45:14, 48:12, 48:21, 48:25, 49:23, 68:9
certify [1] - 43:19
certifying [1] - 49:19
chair [1] - 7:17
change [11] - 6:19, 7:5, 14:20, 16:20, 17:23, 18:1, 18:11, 21:23, 23:18, 25:3, 25:22
changed [6] - 8:3, 8:4, 10:13, 12:10, 23:17
changes [4] - 7:9, 7:10, 21:14, 34:6
changing [2] - 6:11, 12:21
characterize [1] - 5:10
check [3] - 6:15, 10:15, 41:13
checked [1] - 7:12
checklist [2] - 6:15, 7:6
Chevron [1] - 45:4
choices [1] - 34:12
choose [1] - 54:18
circle [1] - 35:20
circumstances [4] - 13:1, 21:15, 22:25, 62:13
claim [21] - 7:7, 7:9, 11:4, 11:15, 13:25, 17:7, 17:9, 17:12, 17:25, 19:23, 21:12, 26:22, 26:25, 34:7, 34:17, 34:18, 36:6, 37:8, 40:13, 42:2, 47:21
claim-handling [1] - 11:15
claimant [6] - 6:16, 13:5, 23:1, 29:11, 35:8
claimant's [4] - 50:8, 53:19, 55:15, 65:22
claimants [15] - 27:9, 29:18, 29:20, 35:9, 35:11, 35:13, 35:18, 39:10, 39:11, 54:3, 54:11, 58:6, 59:16, 60:13, 60:15
claimants' [2] - 55:12, 55:25
claims [20] - 12:7, 12:11, 24:1, 24:9, 24:21, 27:12, 30:19, 30:22, 31:3, 33:20, 33:23, 34:5, 34:6, 34:9, 34:21, 35:11, 43:12, 44:14, 46:3, 47:10
clarified [2] - 52:7, 53:3
class [40] - 9:22, 12:20, 15:18, 15:23, 17:1, 17:24, 18:17, 19:13, 19:15, 21:13, 25:4, 25:8, 25:22, 30:25, 31:8, 31:15, 31:20, 31:21, 32:4, 32:5, 32:13, 33:6, 33:7, 33:10, 33:14, 34:7, 38:16, 38:22, 39:7, 42:8, 61:23, 62:9, 62:11, 63:5, 63:21, 64:2, 64:8, 64:10, 70:14
classes [1] - 7:13
cleaned [1] - 8:4
clear [6] - 13:2, 22:15, 49:5, 69:11, 70:22, 71:10
clearer [1] - 62:6
clearly [7] - 17:22, 19:3, 33:7, 38:23, 63:21, 66:22, 70:13
client [9] - 35:6, 52:11, 55:19, 57:11, 57:14, 60:20, 63:25, 65:18, 65:22
client's [6] - 52:17, 55:20, 57:22, 59:17, 60:8, 64:18
clients [4] - 29:9, 56:22, 57:10, 65:20
closed [2] - 6:17, 16:10
closure [1] - 6:9
cockeyed [1] - 66:6
code [1] - 36:7
codes [2] - 64:8, 64:10
combined [1] - 38:1
coming [2] - 40:17, 71:11
comment [3] - 35:24, 55:18, 60:12
comments [6] - 36:15, 52:21, 55:8, 59:14, 63:20, 70:24
common [30] - 5:7, 5:10, 6:24, 13:10, 14:25, 19:19, 25:10, 26:23, 37:8, 37:10, 41:5, 44:9, 52:12, 52:18, 53:18, 55:12, 55:25, 57:7, 57:8, 57:18, 57:19, 60:1, 60:9, 62:20, 65:12, 68:9, 68:10, 70:1, 70:17, 71:16
communicate [1] - 67:20
Comp [1] - 26:14
Compensation [1] - 5:3
compensation [1] - 47:4
compile [1] - 30:12
completed [1] - 52:24
comply [1] - 58:11
computer [4] - 35:2, 36:13, 37:6, 60:21
concern [4] - 10:17, 13:14, 41:11, 71:2
concerned [3] - 11:3, 24:8, 63:25
concerns [3] - 6:22, 21:2, 44:9
conclusion [1] - 52:16
condition [17] - 6:11, 6:20, 7:6, 7:10, 10:12, 12:10, 12:21, 14:20, 16:20, 17:23, 18:1, 21:13, 21:23, 23:17, 23:19, 25:4, 25:22
conditions [1] - 65:11
conduct [2] - 11:16, 50:6
confirm [1] - 37:6
consensus [1] - 15:14
consider [2] - 8:18, 19:11
consideration [3] - 9:10, 20:3, 20:4
considered [2] - 6:7, 9:7
considering [1] - 8:12
constant [1] - 55:17
constitutes [1] - 63:5
consulting [1] - 35:6
contact [2] - 29:24, 30:5
contacting [1] - 68:22
contained [2] - 29:21, 65:11
containing [1] - 48:15
contemplate [2] - 36:25, 50:24
contemplating [3] - 6:3, 53:7, 55:4
contents [1] - 30:2
contingent [1] - 50:10
continue [1] - 30:12
contrary [2] - 55:8, 60:1
control [3] - 45:20, 45:21, 45:23
controlled [2] - 44:10, 45:15
controlling [2] - 43:3, 45:13
controls [1] - 48:18
controversy [1] - 43:10
convenient [1] - 58:4
cool [1] - 67:19
cooperate [1] - 54:1
copies [2] - 27:8, 27:15
copy [1] - 65:5
correct [2] - 31:19, 49:10
correctly [1] - 46:4
cost [3] - 14:10, 24:19, 29:22
counsel [13] - 53:19, 55:12, 55:14, 55:15, 55:25, 57:7, 57:8, 57:18, 57:19, 62:20, 65:22, 68:6, 68:10
countermanding [2] - 21:19, 21:21
couple [1] - 29:3
course [1] - 24:14
Court [33] - 5:3, 8:18, 20:7, 20:10, 20:23, 20:24, 26:8, 26:14, 38:9, 44:11, 44:19, 45:9, 45:19, 45:20, 46:17, 47:1, 47:2, 50:15, 52:15, 55:11, 55:14, 57:2, 57:21, 57:23, 58:11, 60:7,

63:4, 63:22, 63:23,
65:7, 69:12, 71:14
COURT [79] - 5:6,
7:19, 8:7, 9:1, 9:16,
11:18, 12:17, 14:15,
15:4, 15:13, 17:16,
18:14, 20:8, 20:19,
21:4, 21:6, 22:24,
23:7, 24:17, 26:2,
26:16, 26:24, 27:1,
27:6, 28:2, 28:14,
28:20, 29:6, 29:18,
31:13, 32:19, 33:3,
34:19, 35:15, 36:19,
37:16, 38:5, 38:20,
39:25, 41:14, 42:11,
42:23, 43:16, 43:23,
43:25, 44:3, 45:7,
46:4, 46:20, 47:11,
48:6, 49:7, 49:11,
49:13, 49:21, 49:25,
50:18, 50:25, 51:6,
51:14, 51:24, 52:14,
53:4, 55:6, 56:8,
56:11, 58:24, 60:10,
61:4, 61:8, 64:4,
65:24, 68:1, 69:16,
69:19, 70:20, 70:25,
71:8, 71:19
Court's [8] - 21:19,
29:14, 53:2, 55:21,
58:19, 63:22, 70:5,
71:15
create [3] - 11:14,
14:25, 20:6
creates [1] - 14:20
creating [1] - 41:3
criteria [2] - 65:12,
65:19
critical [1] - 32:3
cross [2] - 49:25, 50:2
crossing [1] - 27:3
curious [2] - 7:3, 10:5
cut [5] - 32:11, 40:7,
61:5, 69:2, 70:13
cut-off [2] - 32:11,
40:7

D

date [45] - 6:9, 6:18,
9:20, 12:21, 15:5,
15:22, 15:23, 19:15,
25:7, 28:25, 32:10,
33:3, 33:5, 33:13,
34:5, 34:19, 34:20,
35:21, 37:21, 38:11,
38:21, 39:9, 39:12,
39:22, 39:25, 40:1,
40:5, 40:8, 40:15,
40:18, 40:24, 41:2,

41:5, 41:6, 41:10,
41:16, 41:20, 41:25,
46:3, 59:22, 68:25
dated [1] - 42:20
dates [5] - 10:11, 36:7,
36:10, 40:2, 40:7
days [3] - 29:4, 49:16,
49:22
de [1] - 24:24
deal [2] - 22:4, 51:8
dealing [5] - 11:23,
52:2, 52:4, 56:23,
63:2
dealt [1] - 22:8
decade [1] - 60:1
December [1] - 59:15
decided [2] - 44:13,
44:23
decides [1] - 49:22
deciding [2] - 47:23,
70:24
decision [37] - 5:10,
11:3, 14:12, 15:20,
18:19, 21:20, 21:21,
31:14, 32:9, 32:14,
34:14, 37:9, 38:21,
38:25, 39:25, 40:8,
41:3, 41:7, 42:21,
44:16, 44:23, 45:10,
45:12, 45:14, 45:17,
46:5, 46:6, 46:8,
48:18, 48:25, 53:9,
55:11, 55:20, 59:15,
59:17, 59:23, 68:19
decisions [6] - 8:14,
38:9, 40:5, 44:12,
48:15, 63:22
deep [1] - 39:2
default [1] - 36:17
defense [1] - 55:14
deference [1] - 18:21
deficient [1] - 61:14
define [3] - 31:20,
47:21, 64:17
defined [2] - 63:4,
70:17
defines [1] - 32:3
defining [1] - 68:20
definite [1] - 8:9
definition [7] - 43:1,
44:22, 46:6, 46:11,
46:12, 47:6, 47:16
definiteness [1] -
49:15
delay [1] - 13:6
denial [3] - 13:6,
51:12, 55:4
denied [4] - 13:11,
50:9, 54:25, 68:25
denying [1] - 67:9

deposition [2] - 51:4,
67:8
depositions [2] - 50:6,
50:19
describing [1] - 44:24
description [1] - 34:13
deserving [1] - 50:8
design [2] - 9:9, 14:9
designation [1] - 6:2
designed [1] - 20:6
detail [2] - 35:5, 65:4
detailed [2] - 61:1,
71:12
determination [4] -
12:3, 17:10, 54:23,
62:8
determine [4] - 13:4,
50:6, 50:16, 54:23
determined [1] - 18:12
determining [1] -
44:20
differ [1] - 60:18
difference [2] - 12:5,
68:24
different [6] - 40:2,
47:1, 52:5, 57:11,
58:10, 68:14
differently [1] - 20:21
difficult [1] - 14:7
digitized [1] - 54:8
diligence [3] - 23:24,
25:14, 27:17
directed [1] - 52:23
direction [4] - 44:13,
64:25, 65:8, 65:22
disagree [4] - 54:22,
55:18, 60:12, 60:15
discovery [9] - 29:8,
36:25, 37:2, 50:23,
51:3, 51:15, 57:14,
61:2, 67:6
discuss [1] - 8:22
discussed [2] - 5:17,
63:13
discussion [3] -
33:19, 56:10, 61:1
diseases [1] - 64:11
dismissal [1] - 29:5
dispute [2] - 6:23,
13:4
disputes [1] - 63:12
dissatisfaction [1] -
36:22
dissatisfied [2] - 37:1,
57:20
distinct [1] - 69:25
distinction [1] - 17:5
Docket [1] - 43:22
docket [1] - 44:1
doctrine [3] - 19:12,

45:1, 45:2
document [1] - 35:7
done [17] - 9:15, 26:7,
28:22, 36:16, 38:3,
41:21, 50:14, 52:7,
54:19, 56:7, 56:19,
57:15, 58:16, 58:18,
65:10, 66:11, 66:20
dotting [1] - 27:3
down [13] - 11:5,
11:15, 20:16, 21:14,
22:17, 22:18, 23:24,
25:23, 34:9, 35:21,
58:7, 59:18, 67:5
draft [2] - 8:1, 28:21
duck [1] - 61:25
due [2] - 23:24, 27:17
during [2] - 26:7, 36:9
duty [1] - 69:12

E

e-mail [1] - 28:23
easier [2] - 9:15, 62:10
easiest [2] - 33:21,
34:8
easy [1] - 14:9
editing [1] - 8:2
effect [4] - 44:21,
46:2, 47:9, 47:19
effective [7] - 15:5,
15:23, 25:7, 33:13,
37:21, 38:21, 68:24
effectively [1] - 59:18
effort [1] - 54:1
efforts [3] - 50:14,
71:6, 71:11
either [7] - 6:7, 6:14,
25:3, 39:3, 39:6,
39:18, 67:12
elaborate [2] - 25:12,
52:10
element [1] - 56:21
eligible [1] - 23:2
eluded [1] - 67:6
eminently [1] - 71:5
employed [1] - 23:25
enacted [1] - 43:11
encourage [1] - 48:10
end [3] - 11:14, 12:25,
13:19
ended [2] - 8:24, 28:9
engage [1] - 57:14
engaging [1] - 66:18
English [1] - 18:21
entered [1] - 58:1
entire [1] - 66:5
entitle [1] - 21:15
entitled [11] - 10:23,
12:8, 12:12, 16:1,

17:8, 21:24, 23:18,
27:15, 27:18, 62:4,
70:15
Entitled [1] - 24:2
entitlement [1] - 40:9
entry [3] - 49:17, 50:5,
71:13
error [2] - 31:18, 48:16
especially [4] - 9:4,
11:11, 14:12, 28:16
essentially [3] - 42:1,
45:12, 45:21
establish [1] - 63:4
established [3] - 38:8,
38:11, 40:8
event [1] - 60:15
exact [3] - 8:11, 16:5,
46:23
exactly [4] - 6:13,
11:22, 24:17, 60:14
examined [1] - 65:15
example [5] - 6:12,
6:16, 24:1, 36:6,
64:5
examples [2] - 12:6,
16:17
except [1] - 36:6
exclusive [1] - 59:1
excuse [1] - 29:1
Excuse [1] - 56:8
expect [6] - 24:12,
24:13, 24:24, 25:13,
33:17, 66:7
expecting [1] - 25:2
expedient [1] - 66:1
experience [1] - 52:4
expertise [1] - 60:20
explicit [1] - 36:17
express [2] - 36:21,
37:13
extent [4] - 10:20,
18:10, 27:19, 60:16

F

face [1] - 46:25
fact [3] - 31:4, 45:13,
56:6
factor [1] - 45:13
factors [5] - 14:22,
33:8, 35:14, 39:16,
45:4
facts [2] - 23:23, 24:4
failure [1] - 12:19
fair [1] - 18:5
fairly [2] - 16:14, 24:24
fairness [1] - 28:25
fall [4] - 7:13, 21:17,
37:9, 39:8
falling [1] - 64:9

- falls** [1] - 64:1
far [9] - 10:8, 11:11, 12:3, 16:12, 38:11, 53:6, 58:15, 60:14, 62:17
fashion [3] - 57:22, 61:15, 63:14
fee [4] - 6:24, 15:10, 29:1, 29:12
fees [11] - 12:3, 27:22, 27:23, 27:24, 28:1, 28:18, 54:24, 61:20, 62:4, 67:2, 70:15
fell [1] - 70:13
felt [1] - 53:25
few [2] - 28:9, 63:3
FFR [1] - 28:12
figure [2] - 11:1, 66:10
figured [1] - 18:9
file [7] - 12:16, 29:22, 34:24, 37:6, 48:24, 49:22, 65:4
filed [3] - 30:17, 35:11, 54:17
files [7] - 38:4, 53:23, 53:25, 54:6, 54:11, 64:22, 65:14
filig [2] - 30:17, 60:21
final [18] - 5:22, 8:20, 17:17, 20:9, 43:4, 43:8, 43:20, 44:15, 45:15, 47:17, 48:12, 48:21, 48:25, 49:19, 49:23, 59:10, 71:1, 71:15
finality [10] - 9:12, 11:1, 11:13, 13:23, 15:16, 20:6, 20:15, 21:1, 22:4
finalization [1] - 20:24
finalize [1] - 22:10
finalizing [2] - 8:18, 22:11
fine [7] - 5:14, 7:19, 27:1, 27:4, 36:1, 43:18, 67:9
first [9] - 9:11, 10:9, 11:10, 14:7, 31:18, 34:22, 37:17, 46:5, 47:18
fish [2] - 51:22, 51:25
five [4] - 11:7, 29:15, 29:16, 45:17
flag [1] - 9:13
flagged [1] - 6:21
flagging [1] - 23:22
flags [1] - 6:15
Flynn [38] - 6:1, 8:12, 8:14, 8:24, 14:18, 15:8, 15:20, 16:18, 18:11, 19:16, 21:20, 21:21, 24:22, 29:10, 29:16, 30:19, 31:14, 31:18, 32:9, 32:15, 34:14, 40:4, 41:6, 44:10, 44:16, 44:19, 45:2, 45:10, 45:18, 46:6, 46:8, 47:18, 47:22, 48:2, 48:5, 48:14, 62:18, 68:19
Flynn/Miller [15] - 37:10, 40:16, 52:22, 52:25, 53:6, 53:11, 53:21, 56:24, 57:7, 59:13, 59:15, 59:16, 65:1, 65:8, 69:15
Flynners [1] - 30:10
folks [1] - 19:4
follow [5] - 23:4, 28:3, 39:19, 55:21, 57:15
followed [5] - 50:20, 53:14, 55:24, 62:6, 63:11
following [2] - 5:4, 60:9
forever [3] - 8:25, 71:9, 71:10
forgot [1] - 44:1
form [1] - 40:10
formal [1] - 5:9
formalized [2] - 67:8, 68:7
forth [2] - 24:22, 55:17
forward [3] - 23:6, 25:9, 57:4
fought [1] - 32:7
foundation [1] - 63:9
four [1] - 11:7
fraction [1] - 10:2
frankly [3] - 39:1, 51:1, 65:3
free [2] - 40:10, 65:20
front [1] - 71:6
fruition [3] - 6:5, 11:24, 16:16
fulfill [1] - 26:18
full [51] - 6:1, 6:7, 6:17, 9:7, 9:20, 10:10, 12:11, 15:22, 17:13, 17:25, 18:22, 19:14, 21:12, 24:23, 30:23, 31:14, 31:24, 32:2, 32:3, 33:5, 33:12, 33:22, 35:19, 35:21, 36:2, 36:6, 36:11, 36:12, 36:14, 37:14, 37:18, 37:20, 37:23, 38:12, 38:18, 42:25, 43:1, 43:10, 44:8, 44:12, 44:22, 45:11, 45:22, 46:1, 47:16, 47:23, 50:11, 55:5, 59:20, 60:24, 60:25
Fund [21] - 12:16, 16:6, 18:7, 20:20, 21:2, 23:3, 23:20, 24:9, 27:8, 30:5, 51:21, 52:3, 52:9, 54:12, 56:17, 60:19, 68:5, 68:15, 69:9, 69:23, 71:5
fund [29] - 5:8, 5:11, 6:24, 13:10, 15:1, 19:19, 26:23, 37:8, 37:10, 41:5, 44:9, 52:12, 52:19, 53:18, 55:12, 55:25, 57:7, 57:8, 57:18, 57:19, 60:2, 60:9, 62:20, 65:13, 68:9, 68:10, 70:1, 70:17, 71:16
Fund's [3] - 20:4, 26:21, 56:3
fund-related [1] - 5:11
fundamental [1] - 38:10
fundamentally [1] - 38:5
fungible [1] - 33:23
future [5] - 8:17, 14:20, 14:25, 19:6, 22:23
-
- G**
-
- galaxy** [1] - 35:18
gesturing [1] - 33:1
given [23] - 9:4, 9:22, 11:1, 14:2, 14:8, 16:16, 18:7, 20:1, 20:13, 21:1, 24:9, 24:10, 24:11, 24:25, 33:7, 33:18, 35:5, 48:8, 52:18, 55:1, 59:20, 63:23
global [1] - 39:14
globally [1] - 62:11
goal [2] - 64:18, 68:17
granted [3] - 50:10, 54:25, 58:2
grasp [1] - 35:3
great [2] - 49:13, 67:17
group [12] - 9:6, 36:3, 56:1, 58:6, 58:8, 58:22, 59:16, 59:18, 59:20, 60:4, 64:20, 65:5
guess [28] - 5:8, 6:21, 7:3, 10:6, 10:17, 11:18, 11:20, 12:5, 13:4, 17:18, 18:25, 21:6, 24:19, 27:3, 32:19, 32:23, 33:10, 33:16, 38:5, 40:14, 40:17, 48:7, 48:12, 51:9, 59:13, 62:19, 68:11, 69:9
guidance [7] - 11:12, 35:4, 46:10, 47:20, 52:17, 63:11, 63:23
guide [1] - 69:9
guy [1] - 66:24
guys [7] - 27:8, 28:20, 41:14, 44:4, 53:5, 53:12, 59:2
-
- H**
-
- half** [2] - 58:1, 58:23
hammer [1] - 41:15
hand [3] - 64:22, 67:19
handful [2] - 27:18, 30:9
handle [4] - 8:16, 13:20, 14:4, 22:18
handled [2] - 22:23, 24:15
handling [2] - 11:4, 11:15
hard [3] - 32:7, 45:24, 65:5
hate [4] - 21:7, 32:20, 32:22, 35:5
head [5] - 40:3, 40:11, 46:9, 48:8, 56:18
hear [2] - 59:21, 65:17
hearing [9] - 5:7, 20:12, 27:16, 28:8, 28:25, 29:1, 50:3, 52:16, 55:1
hearings [2] - 27:25, 52:9
heck [1] - 62:10
Helena [1] - 5:3
helpful [1] - 70:19
hesitant [1] - 23:7
hesitate [1] - 39:4
historical [1] - 63:10
historically [1] - 62:21
hit [1] - 36:13
hockey [1] - 43:16
hold [1] - 71:9
holding [4] - 14:3, 16:4, 28:18, 37:10
honed [1] - 35:25
honestly [1] - 13:8
Honor [41] - 7:24, 12:16, 14:16, 17:15, 18:6, 20:5, 26:1, 26:3, 27:13, 27:25, 29:2, 29:20, 31:12, 32:6, 34:16, 35:23, 36:20, 37:12, 37:24, 43:21, 43:24, 44:17, 45:6, 45:25, 46:15, 49:4, 49:12, 49:18, 50:22, 51:20, 55:7, 56:16, 57:23, 59:12, 60:11, 63:19, 67:25, 69:18, 70:19, 70:23, 71:18
Honorable [1] - 5:2
hope [6] - 8:17, 10:24, 11:13, 20:25, 60:25, 64:7
hopefully [4] - 18:2, 19:7, 23:13, 71:12
hoping [2] - 5:20, 56:20
horse [1] - 69:4
housekeeping [1] - 7:25
hypothetical [8] - 9:9, 20:16, 21:1, 22:13, 23:4, 23:14, 23:15, 24:11
hypotheticals [1] - 11:23
-
- I**
-
- I's** [1] - 27:4
I-pad [1] - 49:5
idea [4] - 37:12, 57:24, 58:9, 63:21
ideas [1] - 7:3
identification [5] - 9:15, 14:6, 24:13, 38:14, 56:1
identified [26] - 9:24, 16:4, 17:22, 18:3, 19:7, 22:5, 22:22, 24:14, 25:8, 25:18, 27:10, 27:14, 29:10, 31:9, 36:2, 36:3, 37:16, 55:23, 58:6, 59:11, 60:4, 60:13, 60:14, 62:3, 62:15, 66:22
identify [24] - 11:8, 14:6, 14:11, 15:17, 22:21, 25:12, 25:21, 25:23, 30:22, 31:3, 31:10, 33:20, 33:24, 34:1, 34:9, 35:9, 35:13, 35:18, 36:5, 38:15, 39:10, 59:18, 59:24, 64:1

identifying [6] - 33:19, 39:7, 39:11, 59:7, 63:21, 68:22
illuminate [1] - 23:13
immediately [1] - 25:7
impairment [1] - 7:9
implement [6] - 52:19, 55:11, 55:19, 57:17, 69:13, 69:14
implementation [15] - 5:23, 6:18, 30:21, 52:24, 55:16, 55:22, 56:5, 56:6, 57:3, 57:17, 60:3, 62:24, 64:3, 65:13, 67:5
implemented [1] - 18:10
implication [2] - 36:10, 37:13
impossible [2] - 11:8, 67:14
impracticality [1] - 18:8
impression [1] - 48:1
inability [1] - 11:16
inadequate [4] - 55:13, 63:15, 65:21, 66:13
inadvertently [1] - 13:7
include [2] - 34:13, 47:17
included [2] - 42:1, 47:16
inclusive [1] - 41:21
incumbent [2] - 66:9, 67:3
incurred [1] - 29:22
indeed [1] - 34:12
indemnity [2] - 64:12, 64:13
indicate [1] - 36:9
indicated [1] - 30:9
individual [1] - 54:18
individualized [1] - 22:8
individuals [6] - 29:24, 30:18, 31:7, 61:17, 62:12, 70:11
infinitum [1] - 22:21
information [2] - 53:12, 57:18
initial [2] - 41:6, 70:23
injuries [1] - 10:24
inquiry [1] - 64:19
instance [2] - 6:6, 10:18
insurer [3] - 51:16, 55:1, 55:10
insurer's [1] - 57:25

insurers [14] - 29:19, 30:8, 31:2, 31:9, 35:1, 35:4, 35:17, 36:23, 38:1, 41:12, 50:7, 52:2, 52:5, 58:7
interchange [1] - 71:4
interim [1] - 10:22
involved [4] - 41:16, 46:21, 46:22, 58:8
issue [22] - 8:11, 10:22, 16:21, 19:2, 25:17, 32:7, 41:15, 41:18, 42:15, 45:21, 45:22, 48:3, 50:11, 52:4, 53:21, 54:5, 54:13, 59:20, 61:25, 70:8
issued [3] - 40:6, 42:19, 44:7
issues [7] - 5:14, 7:22, 10:21, 20:17, 43:8, 44:8, 68:6
IT [1] - 5:1
it'll [1] - 67:12
itself [1] - 70:4

J

Jackie [1] - 28:23
James [1] - 5:2
Jason [1] - 43:16
Jay [1] - 42:21
JENNINGS [30] - 14:16, 26:3, 26:17, 26:25, 27:5, 29:2, 29:7, 29:20, 30:7, 31:11, 32:6, 34:11, 34:20, 36:20, 37:24, 38:19, 40:20, 40:24, 41:2, 41:9, 41:13, 41:19, 42:9, 42:13, 44:5, 44:17, 47:25, 50:22, 60:11, 61:7
Jeremiah [1] - 5:2
Joe [2] - 62:2, 66:21
join [1] - 57:10
JONES [22] - 33:2, 35:23, 37:12, 43:21, 43:24, 49:4, 49:9, 49:12, 49:18, 49:24, 51:20, 52:1, 52:15, 55:7, 56:14, 59:12, 63:19, 64:5, 67:24, 69:11, 69:18, 70:19
Judge [1] - 40:6
judgment [3] - 25:19, 53:15, 55:12
July [3] - 40:14, 42:20, 44:2

jump [1] - 25:15
jumps [1] - 13:20
juncture [4] - 51:1, 63:1, 63:17, 68:12
June [5] - 31:6, 40:14, 40:15, 40:21, 41:8
jurisdiction [7] - 19:10, 21:9, 26:9, 26:15, 69:7, 70:5, 70:18
jurisdictionally [2] - 19:21, 22:1
justifiable [1] - 11:16

K

keep [2] - 9:3, 42:2
Kern [1] - 37:5
key [1] - 17:5
kicks [1] - 15:8
Kim [1] - 71:14
kind [29] - 5:18, 5:19, 5:20, 5:21, 5:22, 6:2, 6:15, 7:12, 7:19, 9:16, 10:14, 12:5, 13:4, 18:20, 23:13, 31:17, 33:4, 40:10, 44:7, 47:2, 49:25, 53:17, 55:6, 62:21, 63:9, 68:3, 68:17, 69:24
knowing [1] - 30:24
known [1] - 59:16

L

lack [2] - 5:20, 15:18
lacking [1] - 60:24
land [1] - 14:23
language [6] - 11:2, 18:21, 45:25, 46:18, 47:2, 47:4
Larry [20] - 33:1, 35:22, 37:4, 42:16, 43:20, 51:19, 59:1, 59:11, 60:16, 60:19, 60:23, 61:10, 62:2, 62:5, 62:21, 63:15, 63:18, 66:14, 66:23, 67:23
Larry's [1] - 34:2
last [6] - 5:25, 44:11, 48:14, 58:9, 58:23, 63:3
laughter [1] - 69:16
Laurie [16] - 6:12, 27:6, 30:7, 36:8, 36:21, 37:1, 37:15, 41:20, 48:4, 48:9, 49:5, 49:13, 49:21, 64:6, 64:7, 64:19

Laurie's [5] - 14:18, 14:24, 28:15, 35:24, 36:15
law [1] - 14:23
lays [1] - 59:4
least [6] - 8:22, 16:18, 63:4, 63:8, 65:7, 68:19
leave [2] - 10:6, 50:10
left [1] - 38:4
legal [3] - 32:17, 38:6, 44:25
legislature [2] - 46:24, 47:5
legitimate [1] - 17:9
letter [6] - 29:25, 30:2, 30:5, 37:5, 66:23
letters [4] - 8:1, 27:8, 27:15, 52:10
Liberty [17] - 33:25, 35:17, 36:4, 52:25, 53:11, 53:23, 56:17, 59:8, 59:23, 63:14, 68:15, 69:6, 69:22, 69:25, 70:3, 70:7, 70:14
Liberty's [6] - 52:8, 56:24, 57:9, 68:2, 69:12
lien [3] - 15:1, 15:7
life [1] - 50:15
likely [1] - 26:14
limitation [1] - 13:24
line [5] - 5:16, 5:25, 32:25, 34:10, 47:17
lines [1] - 11:4
list [10] - 8:20, 20:9, 34:1, 34:3, 34:5, 35:11, 35:12, 36:5, 36:8, 64:16
lists [1] - 64:6
literal [1] - 8:23
littered [1] - 56:12
live [1] - 25:25
loaded [1] - 7:16
locate [4] - 11:17, 37:6, 50:7, 54:10
location [1] - 54:7
look [14] - 5:14, 7:20, 10:9, 13:12, 23:23, 36:7, 37:21, 42:13, 48:14, 54:14, 64:22, 65:4, 66:2
looked [5] - 5:12, 13:8, 41:12, 41:21, 53:24
looking [12] - 7:16, 8:1, 15:21, 30:16, 41:23, 44:4, 44:7, 45:1, 49:5, 54:11,

54:16, 60:17
looks [2] - 29:14, 64:21
loss [1] - 36:15
love [2] - 11:12
LUCK [26] - 7:18, 7:24, 8:8, 9:2, 10:17, 12:15, 13:14, 17:14, 18:5, 20:3, 20:9, 20:20, 21:5, 22:14, 23:5, 24:6, 25:25, 27:13, 28:12, 28:15, 44:6, 46:14, 46:21, 70:22, 71:1, 71:18
Luke [1] - 67:19
lump [1] - 58:4

M

mail [1] - 28:23
mailing [2] - 8:20, 20:9
maintain [1] - 13:24
maintained [1] - 43:9
majority [1] - 9:23
manageable [1] - 38:4
manipulate [1] - 60:22
manner [1] - 38:3
March [1] - 5:1
market [2] - 38:1, 38:2
mask [1] - 43:16
matter [1] - 7:25
McCarter [1] - 40:6
mean [40] - 9:20, 9:21, 10:5, 12:2, 12:4, 17:5, 17:17, 18:1, 18:6, 23:8, 24:7, 28:8, 31:16, 31:21, 32:20, 32:23, 33:22, 35:5, 39:1, 40:3, 43:18, 44:21, 45:7, 46:1, 46:7, 46:8, 47:11, 47:18, 48:7, 48:8, 48:22, 50:25, 53:5, 58:25, 62:19, 65:24, 66:5, 66:9, 68:3, 68:11
means [2] - 18:22, 31:7
mediation [1] - 26:8
medical [8] - 6:10, 16:19, 16:21, 16:24, 16:25, 17:3, 17:9, 25:3
mentioned [1] - 34:17
metaphysical [1] - 23:8
method [1] - 65:9
might [12] - 8:18, 18:11, 21:23, 30:13,

43:21, 45:1, 54:18,
54:20, 54:21, 54:22,
64:17, 69:9
Miller [1] - 62:18
mind [3] - 10:25, 63:6
minus [1] - 9:13
minimum [1] - 24:24
minute [3] - 49:17,
50:4, 71:13
misquoted [1] - 41:24
missing [1] - 42:6
misstated [1] - 41:9
model [3] - 44:19,
45:21, 48:2
modification [1] - 8:5
modified [1] - 34:12
modify [1] - 32:16
money [1] - 28:18
monitoring [3] -
13:15, 13:19, 18:9
Montana [4] - 5:3,
34:21, 35:9, 54:7
months [2] - 6:8,
16:23
mopping [1] - 5:21
morning [1] - 7:25
most [2] - 16:15,
63:25
motion [6] - 48:24,
49:22, 50:9, 50:10,
57:21, 67:10
motions [1] - 67:13
move [5] - 48:7, 48:11,
51:8, 51:18, 57:4
moved [1] - 47:14
moving [1] - 25:9
MR [85] - 7:18, 7:24,
8:8, 9:2, 10:17,
12:15, 13:14, 14:16,
17:14, 18:5, 20:3,
20:9, 20:20, 21:5,
22:14, 23:5, 24:6,
25:25, 26:3, 26:17,
26:25, 27:5, 27:13,
28:12, 28:15, 29:2,
29:7, 29:20, 30:4,
30:7, 31:11, 32:6,
33:2, 34:11, 34:20,
35:23, 36:20, 37:12,
37:24, 38:19, 40:20,
40:24, 41:2, 41:9,
41:13, 41:19, 42:9,
42:13, 43:21, 43:24,
44:5, 44:6, 44:17,
46:14, 46:21, 47:25,
49:4, 49:9, 49:12,
49:18, 49:24, 50:3,
50:21, 50:22, 51:5,
51:13, 51:20, 52:1,
52:15, 53:22, 55:7,

56:14, 57:24, 59:12,
60:11, 61:7, 63:19,
64:5, 67:24, 69:11,
69:18, 70:19, 70:22,
71:1, 71:18
MS [17] - 15:3, 15:6,
27:7, 30:14, 33:16,
37:4, 39:21, 40:12,
40:23, 41:1, 41:8,
41:11, 42:5, 42:15,
42:24, 44:1, 45:24
multiple [1] - 29:19
multitude [1] - 54:17
Murphy [2] - 26:4,
26:20
mutually [3] - 56:5,
57:16, 59:1

N

nailed [1] - 67:4
narrow [1] - 58:7
narrowed [1] - 35:20
nature [1] - 24:11
necessarily [3] - 52:7,
59:1, 68:14
necessary [4] - 26:10,
26:18, 67:9, 67:11
necessity [1] - 9:18
need [3] - 50:13,
53:14, 66:15
needed [1] - 32:18
needs [1] - 50:14
neglected [1] - 43:19
never [13] - 6:4, 11:23,
15:12, 16:15, 19:24,
20:1, 26:4, 26:6,
43:3, 54:9, 58:2,
58:22, 70:17
nevertheless [1] -
16:1
new [2] - 42:11, 58:12
next [4] - 25:12, 58:17,
64:21, 65:14
nice [1] - 13:22
non [4] - 14:22, 24:11,
35:14, 39:16
non-occupational [3] -
14:22, 35:14, 39:16
non-payments [1] -
24:11
normal [2] - 24:14,
25:14
note [2] - 12:11, 24:2
notes [1] - 12:11
notice [12] - 26:11,
28:4, 31:22, 33:8,
33:9, 33:15, 33:17,
33:18, 38:13, 51:3,
51:15, 67:12

noticed [1] - 7:25
notifying [1] - 32:4
noting [1] - 50:5
notwithstanding [4] -
11:2, 31:25, 45:13,
48:20
nowhere [1] - 48:5
number [6] - 16:14,
24:10, 38:4, 42:17,
44:2, 60:13
nuts [4] - 10:8, 38:25,
66:11, 68:21

O

objection [2] - 34:11,
50:16
objections [1] - 60:6
obligation [9] - 15:9,
38:15, 52:17, 54:2,
54:4, 54:10, 57:25,
58:11, 65:18
obligations [7] - 11:5,
20:22, 52:8, 56:24,
56:25, 57:9, 68:2
obtaining [1] - 29:22
obviates [1] - 53:14
obvious [1] - 25:16
obviously [11] - 11:22,
15:17, 16:8, 19:16,
33:22, 40:1, 47:22,
48:17, 62:11, 68:19,
69:23
occupational [4] -
14:22, 35:14, 39:16,
64:10
occurred [1] - 18:18
Off-record [1] - 56:10
omnibus [2] - 5:7,
44:8
once [2] - 13:15, 55:23
One [1] - 46:8
one [37] - 5:24, 6:5,
7:24, 9:4, 10:25,
14:3, 14:12, 14:13,
15:4, 17:18, 19:9,
25:1, 29:10, 30:13,
31:19, 32:3, 33:4,
35:8, 38:9, 38:10,
39:8, 42:15, 43:8,
43:15, 46:15, 48:15,
48:16, 48:23, 51:7,
51:17, 55:23, 60:19,
63:1, 63:24, 69:3,
69:4
onerous [2] - 63:16,
66:15
ones [10] - 17:21,
17:22, 19:5, 22:4,
25:21, 28:7, 28:21,

30:23, 35:19, 37:18
online [2] - 28:23,
71:17
open [3] - 5:7, 8:24,
20:17
open-ended [1] - 8:24
opportunity [2] - 50:5,
57:6
opposed [3] - 20:17,
36:17, 52:25
optimist [1] - 66:6
order [25] - 5:15, 8:18,
8:21, 16:18, 26:21,
39:19, 42:19, 43:2,
43:3, 43:13, 44:8,
44:14, 45:6, 47:18,
49:19, 50:14, 51:10,
57:25, 58:9, 58:11,
58:19, 59:4, 59:23,
71:14
Order [1] - 49:10
orders [2] - 46:15,
70:24
original [2] - 31:4,
31:23
otherwise [3] - 17:8,
21:24, 45:4
overlooked [1] - 13:7
owe [1] - 10:13
own [8] - 5:25, 7:15,
9:17, 9:18, 10:6,
11:20, 21:21, 59:24

P

pad [1] - 49:5
paid [69] - 6:1, 6:7,
6:17, 7:11, 8:13, 9:7,
9:20, 10:10, 10:19,
12:10, 15:22, 17:13,
17:25, 18:22, 19:5,
19:14, 21:12, 24:23,
27:15, 28:7, 29:11,
30:23, 31:1, 31:5,
31:14, 31:24, 32:1,
32:2, 33:5, 33:12,
33:22, 34:18, 35:19,
35:21, 36:2, 36:6,
36:11, 36:12, 36:14,
37:14, 37:18, 37:20,
37:23, 38:12, 38:17,
41:23, 42:2, 42:7,
42:25, 43:1, 43:10,
44:8, 44:12, 44:22,
45:10, 45:22, 45:25,
47:16, 47:23, 50:11,
55:5, 59:20, 60:5,
60:24, 60:25, 61:18,
62:3, 62:15, 66:24
paid-in-full [11] - 6:1,
24:23, 30:23, 35:21,
36:6, 36:12, 44:8,
45:22, 59:20, 60:24,
60:25
PALMER [7] - 30:4,
50:3, 50:21, 51:5,
51:13, 53:22, 57:24
Palmer [1] - 50:9
paper [1] - 54:6
paralegal [1] - 53:24
parameters [15] -
19:2, 19:18, 24:22,
38:7, 38:10, 38:25,
39:8, 39:9, 39:20,
59:5, 60:18, 61:1,
62:7, 63:5, 68:20
parse [1] - 64:14
part [13] - 30:24,
30:25, 31:7, 32:12,
47:15, 50:23, 52:11,
53:4, 59:3, 59:6,
65:12, 67:7, 69:13
participate [1] - 56:23
particular [2] - 39:23,
65:23
particularly [1] - 69:5
parties [1] - 60:2
pass [2] - 34:22, 55:12
passage [3] - 16:16,
20:1, 24:25
passed [1] - 9:23
past [6] - 29:3, 55:9,
57:15, 57:25, 58:17,
65:16
path [2] - 5:22, 57:11
pay [9] - 10:14, 12:19,
15:9, 15:10, 16:7,
17:11, 27:11, 57:25,
70:14
paying [4] - 10:12,
18:20, 59:9, 59:25
payment [9] - 7:8,
10:20, 10:21, 14:21,
16:19, 17:6, 27:23,
28:19, 37:7
payments [7] - 11:7,
13:18, 24:11, 27:19,
36:9, 64:12, 64:13
pays [1] - 23:20
peace [1] - 71:9
peculiar [1] - 56:22
penalty [6] - 12:3,
54:25, 61:19, 62:4,
67:2, 70:15
pending [1] - 28:18
people [35] - 8:19, 9:7,
9:24, 10:7, 10:19,
11:5, 11:17, 15:17,
15:20, 16:3, 16:10,
19:3, 19:23, 22:12,
22:21, 24:9, 25:2,

- 25:5, 25:7, 25:13,
27:14, 27:18, 28:12,
32:5, 33:9, 37:22,
38:15, 38:17, 38:23,
39:11, 39:15, 59:19,
59:25, 61:22, 62:9
- people's** [1] - 6:2
- percent** [3] - 10:1,
20:1, 62:4
- perfect** [1] - 10:3
- perhaps** [3] - 37:2,
54:16, 57:21
- period** [3] - 29:8,
40:13, 41:22
- periods** [1] - 46:19
- permission** [1] - 53:2
- permitted** [1] - 50:16
- person** [5] - 7:12,
12:8, 13:3, 28:11,
67:1
- person's** [1] - 12:9
- perspective** [3] - 5:25,
12:18, 39:14
- pertain** [1] - 68:2
- pertained** [1] - 45:10
- pertains** [3] - 5:13,
68:19, 69:6
- petition** [2] - 54:23,
67:2
- phone** [1] - 47:24
- pick** [1] - 28:24
- place** [10] - 11:10,
14:7, 15:17, 19:2,
22:20, 25:9, 33:20,
33:25, 34:9, 34:15
- playing** [1] - 49:6
- pleadings** [1] - 52:10
- point** [28] - 8:16, 8:20,
9:6, 11:8, 11:22,
14:11, 15:8, 16:12,
19:6, 19:20, 23:6,
32:8, 32:18, 33:4,
34:7, 35:17, 36:1,
36:17, 37:19, 45:8,
47:25, 55:4, 56:4,
57:12, 59:22, 64:18,
65:2, 65:10
- pond** [1] - 51:22
- pop** [4] - 56:9, 56:12,
56:13
- pop-popping** [1] -
56:9
- popping** [1] - 56:9
- position** [8] - 43:2,
54:15, 55:20, 56:3,
57:12, 59:9, 59:17,
60:8
- positive** [1] - 9:2
- post** [3] - 12:21,
68:17, 69:9
- post-date** [1] - 12:21
- posted** [1] - 71:17
- potential** [9] - 8:17,
29:16, 30:10, 30:11,
33:20, 34:17, 34:18,
54:13, 58:6
- potentially** [3] - 30:25,
50:8, 60:5
- PPD** [2] - 69:2, 70:12
- practical** [7] - 10:18,
10:22, 11:2, 13:15,
13:21, 17:19, 32:17
- practicality** [1] - 18:24
- practically** [2] - 9:3,
13:18
- practice** [3] - 10:3,
55:21, 60:2
- precedent** [1] - 62:8
- preclude** [2] - 22:11,
23:1
- preliminary** [2] - 57:1,
65:3
- prepared** [2] - 53:16,
55:19
- prerogative** [3] -
48:11, 49:1, 51:14
- present** [1] - 58:16
- presentation** [1] -
56:15
- presented** [1] - 60:6
- presently** [2] - 33:12,
38:16
- presumably** [1] -
57:19
- presumptively** [3] -
32:15, 45:2, 45:5
- pretty** [1] - 20:11
- previously** [3] - 5:17,
18:11, 28:22
- privilege** [1] - 35:6
- problem** [5] - 11:2,
11:15, 13:21, 18:25,
22:16
- problems** [2] - 20:16,
71:7
- procedure** [3] - 57:15,
60:9, 68:7
- procedures** [4] - 56:6,
59:5, 68:16, 69:13
- proceeding** [2] -
27:22, 48:1
- proceedings** [2] - 5:4,
43:5
- process** [72] - 6:4,
6:14, 7:4, 9:9, 13:15,
13:19, 15:17, 16:3,
16:5, 16:6, 17:20,
18:9, 19:22, 20:10,
20:23, 20:25, 22:11,
22:17, 22:20, 23:4,
23:14, 24:8, 24:13,
25:9, 25:12, 26:8,
28:3, 33:19, 36:25,
37:2, 39:4, 39:6,
39:18, 50:12, 50:19,
51:15, 52:25, 53:6,
53:13, 53:25, 54:2,
55:13, 55:16, 57:4,
57:17, 58:5, 58:10,
59:3, 60:3, 60:14,
61:2, 61:13, 62:5,
62:17, 62:22, 62:24,
63:10, 63:13, 63:23,
64:3, 65:13, 66:1,
66:5, 66:11, 66:13,
66:18, 67:4, 67:6,
67:7, 69:8, 69:23,
70:3
- processes** [4] - 19:1,
33:25, 58:25, 63:11
- prohibitive** [1] - 14:10
- proposal** [1] - 57:22
- propose** [1] - 56:20
- proposed** [3] - 5:15,
8:21, 70:24
- prospective** [4] -
12:23, 23:11, 24:7,
71:3
- prospectively** [3] -
24:4, 67:9, 70:10
- proven** [1] - 45:4
- provide** [1] - 57:18
- provided** [2] - 63:20,
65:6
- purposes** [2] - 47:1,
51:9
- pursuant** [3] - 30:19,
33:24, 40:16
- put** [9] - 5:21, 8:21,
15:19, 17:24, 21:7,
25:11, 25:18, 33:10,
34:9
- puts** [2] - 43:16, 69:24
-
- Q**
-
- qualified** [1] - 13:9
- qualify** [1] - 12:22
- quash** [4] - 51:8,
51:18, 67:10, 67:13
- questionnaires** [1] -
8:2
- questions** [5] - 10:21,
11:20, 27:7, 28:16,
57:20
- quite** [1] - 65:3
-
- R**
-
- raise** [1] - 68:4
- raised** [3] - 6:12, 8:12,
43:12
- rather** [1] - 55:9
- rating** [1] - 7:9
- re** [1] - 28:17
- re-review** [1] - 28:17
- reach** [2] - 65:9, 69:22
- reached** [3] - 64:23,
69:1, 69:3
- read** [1] - 45:16
- real** [2] - 10:22, 11:3
- reality** [3] - 9:4, 9:5,
15:15
- realizes** [1] - 24:3
- really** [9] - 7:1, 10:7,
11:13, 32:8, 32:20,
32:22, 35:25, 52:23,
56:19
- reason** [7] - 11:9,
15:21, 31:16, 32:17,
32:18, 51:6, 51:17
- reasonability** [1] -
50:17
- reasonable** [6] - 23:5,
23:9, 25:17, 39:5,
54:20, 71:6
- reasonableness** [9] -
11:4, 11:21, 11:24,
12:2, 14:6, 50:13,
54:24, 61:22, 70:8
- reasoned** [1] - 47:1
- reasons** [1] - 16:1
- received** [4] - 9:8,
34:23, 38:19, 38:20
- receiving** [2] - 32:12,
35:9
- recent** [1] - 48:16
- recodification** [2] -
46:11, 47:14
- recognize** [6] - 10:2,
12:19, 17:19, 18:25,
31:22, 68:12
- recollection** [2] -
46:16, 47:12
- reconsidered** [1] -
18:12
- record** [3] - 32:25,
56:10, 69:11
- reduced** [1] - 36:1
- Reesor** [21] - 5:8,
5:13, 14:14, 16:7,
20:5, 21:4, 21:5,
21:10, 21:16, 21:24,
22:11, 23:18, 23:20,
24:2, 26:4, 52:9,
52:18, 68:2, 69:6,
69:17, 70:5
- Reesor/Stavenjord** [1] -
53:17
- referred** [1] - 19:16
- referring** [2] - 37:15,
41:4
- reflect** [1] - 33:1
- reflected** [1] - 49:17
- regardless** [1] - 47:19
- regards** [2] - 54:24,
57:8
- related** [1] - 5:11
- relates** [1] - 21:2
- relation** [3] - 44:9,
47:3, 47:10
- release** [2] - 26:12,
26:17
- relevant** [3] - 34:20,
55:22, 60:4
- reluctant** [1] - 48:9
- rely** [1] - 61:1
- remaining** [3] - 7:22,
29:15, 35:12
- remains** [1] - 17:13
- remanded** [1] - 26:13
- remediate** [1] - 71:7
- remediated** [2] -
27:21, 28:17
- remediation** [1] -
20:17
- remember** [1] - 51:11
- REMEMBERED** [1] -
5:1
- remote** [1] - 54:7
- remove** [2] - 34:22,
35:11
- removed** [1] - 16:12
- renders** [1] - 32:1
- renew** [1] - 50:10
- repeated** [1] - 44:10
- report** [1] - 5:16
- REPORTER** [1] - 56:8
- repose** [3] - 17:3,
17:10, 17:12
- represent** [2] - 29:19,
34:25
- represented** [1] - 26:5
- request** [3] - 50:4,
50:5, 71:15
- requests** [1] - 10:20
- require** [3] - 22:24,
23:3, 42:11
- required** [9] - 18:7,
22:20, 31:3, 33:9,
33:15, 33:17, 34:14,
41:22, 55:14
- resolve** [1] - 45:21
- respond** [1] - 28:5
- response** [1] - 30:15
- rest** [1] - 9:10
- retirement** [3] - 69:1,
69:3, 70:13
- retroactive** [9] - 32:15,
38:11, 39:12, 45:3,
45:5, 45:11, 48:4,

63:6, 71:4
retroactivity [11] -
 19:2, 19:18, 24:23,
 39:9, 44:20, 44:24,
 45:2, 45:11, 45:22,
 48:3, 68:20
returnable [1] - 54:8
review [4] - 8:12, 8:18,
 28:17, 38:4
reviewing [2] - 26:11,
 27:16
revisit [1] - 48:3
revisited [2] - 51:12,
 54:14
Rex [18] - 26:12,
 26:17, 26:19, 29:10,
 29:12, 30:1, 50:2,
 52:22, 53:1, 53:7,
 53:20, 56:4, 59:21,
 63:15, 65:6, 65:17,
 66:12, 66:14
Rex's [6] - 26:22,
 52:21, 55:7, 55:18,
 59:13, 60:12
ride [1] - 26:21
ringing [1] - 47:24
ripeness [1] - 19:11
road [6] - 11:6, 11:15,
 20:16, 21:14, 22:18,
 25:23
room [1] - 58:13
Rule [1] - 50:6
rule [5] - 8:13, 8:24,
 24:4, 67:20, 70:10
rules [2] - 55:22,
 55:23
ruling [10] - 12:18,
 12:24, 23:11, 24:7,
 32:20, 48:23, 50:11,
 51:11, 55:5, 71:4
rulings [1] - 71:3
run [3] - 17:3, 30:12,
 65:19

S

satisfy [1] - 65:12
schedule [1] - 49:20
Schmill [32] - 12:12,
 19:17, 27:9, 27:14,
 30:18, 30:22, 30:24,
 30:25, 31:3, 34:18,
 35:8, 37:8, 39:14,
 40:13, 41:3, 41:7,
 42:20, 43:9, 43:12,
 43:23, 43:24, 45:3,
 45:14, 46:3, 48:4,
 48:18, 48:20, 49:11,
 56:25, 57:8, 62:19,
 64:5

Schmill's [1] - 43:2
Schmillers [2] - 14:18,
 30:11
school [1] - 51:24
scope [3] - 44:20,
 44:23, 48:2
screen [4] - 16:3,
 37:20, 39:13, 39:16
screened [4] - 15:24,
 19:4, 37:17, 38:24
screening [1] - 42:12
scrivener's [2] -
 31:18, 48:15
scrutiny [1] - 20:11
search [10] - 32:8,
 33:25, 34:16, 60:18,
 65:3, 65:9, 65:10,
 65:11, 65:19
second [8] - 31:19,
 44:17, 51:22, 52:20,
 53:2, 56:2, 63:24,
 71:1
Security [1] - 29:23
see [13] - 6:16, 13:16,
 32:22, 49:7, 54:19,
 56:2, 56:4, 58:14,
 61:14, 64:22, 65:4,
 66:3
seek [4] - 20:25, 21:1,
 29:14, 30:2
seeking [1] - 25:15
seem [5] - 9:21, 32:24,
 36:15, 44:15, 61:10
send [1] - 33:9
sending [1] - 31:22
sense [13] - 23:8,
 24:20, 25:10, 25:11,
 37:25, 39:6, 46:24,
 47:3, 47:21, 47:22,
 52:22, 61:11, 62:22
sent [7] - 27:8, 27:9,
 27:11, 27:15, 29:4,
 64:6, 66:23
sentence [1] - 8:9
separately [1] - 56:23
seriously [2] - 45:16,
 45:18
session [1] - 7:21
set [7] - 14:5, 20:21,
 24:22, 28:8, 28:24,
 28:25, 40:3
sets [1] - 62:8
setting [3] - 19:18,
 39:19, 49:19
settle [1] - 20:22
settled [6] - 26:3,
 46:7, 46:12, 47:16,
 47:21
settlement [6] - 20:6,
 20:14, 21:3, 23:2,

26:7, 47:6
settlements [1] -
 24:10
settling [1] - 26:22
several [2] - 29:4,
 32:14
shape [1] - 49:16
share [2] - 38:1, 38:2
sharing [1] - 53:12
Shea [1] - 5:2
show [1] - 28:12
shown [1] - 28:10
side [1] - 53:19
sides [2] - 66:10, 67:4
sign [1] - 54:18
signed [2] - 26:12,
 68:7
signing [1] - 68:16
simply [5] - 16:22,
 31:6, 35:24, 41:24,
 57:13
sit [4] - 25:5, 58:3,
 61:9, 67:14
sitting [1] - 43:4
situation [10] - 9:14,
 12:7, 13:7, 13:17,
 20:14, 23:4, 27:14,
 53:18, 68:4, 69:25
six [2] - 29:15, 29:16
skip [2] - 57:24, 58:17
sky [1] - 66:5
small [4] - 10:1, 16:14,
 38:2, 51:24
smaller [2] - 34:23,
 58:22
Smith [2] - 62:2, 66:21
Social [1] - 29:22
software [2] - 6:14,
 68:13
solitaire [2] - 44:5,
 49:6
someone [1] - 35:7
sometime [1] - 22:18
somewhat [1] - 62:12
sorry [4] - 26:19,
 43:17, 43:20, 61:5
sort [8] - 6:14, 25:11,
 25:14, 60:13, 61:16,
 63:17, 67:1, 70:3
sound [1] - 56:9
sounds [2] - 35:15,
 53:11
soup [1] - 66:11
speaking [5] - 13:18,
 40:10, 46:9, 62:18,
 64:7
specific [4] - 40:5,
 41:16, 46:16, 54:10
specifically [2] - 47:8,
 62:18

spectrum [1] - 13:1
speed [1] - 35:2
spit [1] - 7:21
spit-balling [1] - 7:21
spring [1] - 7:16
spring-loaded [1] -
 7:16
staff [1] - 53:23
stage [1] - 56:2
stand [1] - 37:15
standard [3] - 11:10,
 14:5, 40:1
standpoint [13] -
 11:21, 11:25, 15:15,
 17:19, 22:4, 24:23,
 25:10, 37:25, 38:14,
 61:11, 62:14, 70:7
stands [1] - 32:2
start [9] - 34:21,
 39:12, 39:13, 56:18,
 59:9, 61:11, 63:8,
 68:24, 68:25
started [2] - 35:20,
 63:24
starting [6] - 32:8,
 32:18, 33:4, 34:15,
 35:17, 37:19
State [24] - 12:15,
 16:6, 18:7, 20:4,
 20:20, 21:2, 23:3,
 23:20, 24:9, 26:21,
 27:8, 30:5, 51:21,
 52:3, 52:9, 54:12,
 56:3, 56:17, 60:19,
 68:5, 68:15, 69:8,
 69:23, 71:5
statement [3] - 8:9,
 45:19, 46:16
status [2] - 5:15,
 18:12
statute [15] - 17:2,
 17:10, 17:12, 43:11,
 44:21, 44:24, 46:1,
 46:2, 46:7, 46:10,
 46:17, 46:18, 46:25,
 47:12, 47:19
statutes [1] - 13:24
Stavenjord [22] - 5:9,
 5:13, 8:2, 8:14,
 14:14, 16:7, 20:5,
 21:4, 21:5, 21:10,
 21:16, 21:25, 22:12,
 26:5, 26:6, 26:13,
 52:8, 52:18, 68:3,
 69:6, 69:17, 70:5
Stavenjord/Reesor [1]
 - 56:21
step [4] - 10:9, 63:24,
 64:21, 65:14
steps [2] - 58:21,

65:23
Steve [9] - 14:15,
 30:15, 37:19, 40:18,
 51:2, 60:10, 61:6,
 67:6, 68:23
Steve's [3] - 51:23,
 56:22, 57:9
still [7] - 8:2, 10:11,
 17:17, 21:17, 31:8,
 43:14, 53:1
strict [4] - 18:9, 20:11,
 22:20, 24:12
strike [2] - 8:5, 8:10
strike-through [2] -
 8:5, 8:10
strikes [7] - 15:16,
 16:11, 16:20, 23:9,
 31:16, 39:3, 65:25
struggling [1] - 59:13
subject [2] - 6:24,
 18:11
subjected [1] - 70:4
submissions [1] -
 5:12
submit [1] - 26:20
submitted [2] - 26:6,
 69:23
sudden [2] - 21:22,
 25:2
sufficient [2] - 64:20,
 64:21
suggest [1] - 44:25
suggested [1] - 64:9
suggesting [2] -
 64:24, 65:17
suggestion [1] - 9:11
summons [8] - 30:19,
 31:4, 31:23, 31:24,
 32:13, 32:14, 32:17,
 34:13
sundry [1] - 16:1
supersedes [1] -
 48:18
Supreme [10] - 21:19,
 38:9, 44:11, 44:19,
 45:9, 45:20, 47:2,
 58:18, 63:3, 63:22
suspect [2] - 9:22,
 62:1
suspicion [1] - 19:25
system [3] - 10:3,
 14:10, 64:9
systematically [1] -
 60:5
systems [4] - 60:21,
 60:22, 64:1

T

T's [1] - 27:3

- table** [2] - 7:23, 16:22
talks [1] - 60:23
technically [2] - 46:13, 47:13
technology [1] - 35:3
template [2] - 28:6, 28:22
ten [1] - 11:6
tend [1] - 32:24
terms [25] - 5:15, 6:1, 6:3, 7:4, 11:4, 15:15, 20:4, 20:15, 27:3, 27:21, 33:16, 38:24, 39:18, 39:19, 41:16, 53:13, 53:20, 56:5, 62:24, 63:6, 68:18, 68:21, 68:23, 69:21
test [3] - 50:13, 54:19, 55:2
testing [1] - 58:15
thankfully [1] - 52:3
THE [78] - 5:6, 7:19, 8:7, 9:1, 9:16, 11:18, 12:17, 14:15, 15:4, 15:13, 17:16, 18:14, 20:8, 20:19, 21:4, 21:6, 22:24, 23:7, 24:17, 26:2, 26:16, 26:24, 27:1, 27:6, 28:2, 28:14, 28:20, 29:6, 29:18, 31:13, 32:19, 33:3, 34:19, 35:15, 36:19, 37:16, 38:5, 38:20, 39:25, 41:14, 42:11, 42:23, 43:16, 43:23, 43:25, 44:3, 45:7, 46:4, 46:20, 47:11, 48:6, 49:7, 49:11, 49:13, 49:21, 49:25, 50:18, 50:25, 51:6, 51:14, 51:24, 52:14, 53:4, 55:6, 56:11, 58:24, 60:10, 61:4, 61:8, 64:4, 65:24, 68:1, 69:16, 69:19, 70:20, 70:25, 71:8, 71:19
theoretical [2] - 10:18, 14:11
theory [1] - 9:5
therefore [3] - 13:11, 17:12, 36:10
thinking [3] - 6:22, 9:17, 14:14
thinks [2] - 14:25, 51:7
thoroughly [1] - 67:24
thoughts [4] - 6:2, 11:19, 14:1, 48:8
three [5] - 25:13, 52:2, 52:5, 57:5
threw [1] - 26:5
throw [1] - 38:2
Thursday [1] - 5:1
tied [3] - 13:23, 46:1, 47:7
today [5] - 26:11, 52:7, 57:4, 61:9, 67:14
today's [1] - 15:21
together [7] - 29:13, 30:1, 53:5, 59:2, 66:3, 66:10, 67:15
Tom [1] - 27:2
Tom's [2] - 26:24, 26:25
took [1] - 8:9
top [4] - 40:3, 40:11, 46:9, 48:8
totally [4] - 27:20, 46:25, 60:1, 65:17
towards [1] - 33:1
town [1] - 53:23
track [2] - 9:3, 30:6
trade [1] - 40:21
transcript [4] - 56:11, 56:12, 71:15, 71:17
transcripts [1] - 71:16
treat [1] - 20:20
trenches [1] - 10:8
tried [2] - 56:16, 58:7
trips [1] - 63:3
trouble [1] - 60:23
true [1] - 21:6
trumped [1] - 44:15
try [14] - 5:22, 7:21, 19:1, 22:21, 25:20, 25:23, 36:21, 57:2, 57:3, 61:12, 66:2, 66:4, 67:4, 68:18
trying [5] - 17:21, 27:16, 39:21, 49:15, 61:25
turn [2] - 5:19, 64:7
two [17] - 8:1, 8:3, 10:25, 11:3, 12:5, 16:17, 16:18, 25:13, 42:1, 42:6, 44:11, 48:14, 58:14, 63:20, 64:6, 66:3, 70:22
Two [1] - 47:22
type [2] - 29:25, 56:14
typically [1] - 28:8
-
- U**
-
- ultimately** [1] - 38:8
umm [10] - 18:15, 21:11, 32:23, 38:16, 45:9, 50:15, 50:25, 53:4, 62:16, 69:16
- undefined** [1] - 59:22
under [23] - 12:9, 13:10, 15:20, 20:10, 20:11, 20:22, 21:14, 21:16, 21:17, 21:24, 22:25, 24:21, 31:3, 31:14, 37:9, 37:10, 45:4, 48:1, 56:5, 59:22, 64:10, 65:11, 70:5
understood [1] - 70:23
unilaterally [1] - 55:10
unique [5] - 53:18, 57:6, 62:12, 68:4, 69:24
universe [2] - 32:9, 34:21
unless [1] - 13:20
unlike [1] - 34:25
unlikely [1] - 14:21
unreasonable [4] - 12:14, 13:6, 23:21, 54:21
unwieldy [1] - 61:8
up [35] - 5:21, 7:2, 8:4, 11:14, 14:5, 16:6, 18:2, 19:8, 22:6, 22:8, 22:9, 22:18, 23:14, 23:16, 28:8, 28:9, 28:10, 28:13, 28:24, 28:25, 35:1, 42:19, 51:3, 51:9, 51:11, 51:16, 63:3, 65:18, 67:12, 67:16, 67:18, 68:1, 70:8, 70:12, 70:16
upset [1] - 11:6
-
- V**
-
- various** [3] - 10:15, 15:25, 58:21
vast [1] - 9:23
versus [1] - 35:17
Victor [1] - 56:14
view [3] - 14:24, 54:1, 54:3
voluntarily [1] - 70:4
-
- W**
-
- waited** [1] - 60:2
waiting [2] - 27:21, 62:6
waiving [2] - 66:17, 66:18
WALLACE [17] - 15:3, 15:6, 27:7, 30:14, 33:16, 37:4, 39:21, 40:12, 40:23, 41:1, 41:8, 41:11, 42:5, 42:15, 42:24, 44:1, 45:24
wants [5] - 49:22, 55:20, 63:14, 63:15, 66:14
warranted [1] - 61:20
water [1] - 55:2
weed [1] - 35:18
weeds [1] - 39:2
welcome [1] - 29:8
whichever [2] - 6:18, 19:15
whole [3] - 31:17, 43:9, 67:7
willing [1] - 54:15
wins [1] - 48:4
withheld [1] - 27:24
withholding [1] - 29:12
wondered [1] - 8:16
wondering [2] - 14:24, 27:10
word [1] - 39:4
wording [1] - 46:23
words [1] - 8:3
workable [1] - 34:24
Workers' [1] - 5:3
workers' [1] - 47:3
write [1] - 44:1
writing [1] - 28:5
written [1] - 42:21
wrote [1] - 18:19
-
- Y**
-
- year** [4] - 14:12, 25:1, 58:1, 58:23
years [16] - 8:15, 8:19, 9:8, 10:19, 11:6, 13:17, 13:23, 14:13, 18:8, 24:10, 25:6, 25:13, 32:14, 42:1, 42:6, 45:18
YouTube [1] - 44:4
-
- Z**
-
- zero** [1] - 60:14