

SUPREME COURT OF THE UNITED STATES
No. 142, Original

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 V.)
)
 STATE OF GEORGIA,)
)
 Defendants.)

TELEPHONE CONFERENCE before SPECIAL MASTER
RALPH I. LANCASTER, held at the law offices of Pierce
Atwood, LLP, at Merrill's Wharf, 254 Commercial Street,
Portland, Maine, on April 7, 2015, commencing at
10:00 a.m., before Claudette G. Mason, RMR, CRR, a
Notary Public in and for the State of Maine.

APPEARANCES:

For the State of Florida: ALLEN C. WINSOR, ESQ.
OSVALDO VAZQUEZ, ESQ.
CHRISTOPHER M. KISE, ESQ.
For the State of Georgia: CRAIG S. PRIMIS, P.C.
BRITT GRANT, ESQ.
Also Present: JOSHUA D. DUNLAP, ESQ.

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1 Grant, who is also on the line.
2 SPECIAL MASTER LANCASTER: Anyone else
3 on the line who hasn't been identified?
4 Hearing nothing, I guess the United
5 States is not represented today?
6 Okay. Well, let's start. The
7 parties -- let me commend the parties on
8 their discovery efforts to date. You have
9 jointly requested an additional 120 days to
10 complete production. The United States
11 indicated it may be unable to complete
12 production in 120 days. But since we don't
13 have a United States representative on this
14 morning, we don't know how long it's going to
15 anticipate to complete production.
16 If I'm correct, I think the current
17 deadline is July 13. What would the parties
18 propose for a written discovery deadline?
19 Let's start with Florida.
20 MR. KISE: Your Honor, our proposal --
21 and we have conferred with Georgia about
22 this -- would be to extend the existing
23 deadline 120 days from the current deadline.
24 SPECIAL MASTER LANCASTER: Georgia?
25 MR. PRIMIS: We are in agreement with --
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PROCEEDINGS

1 SPECIAL MASTER LANCASTER: Good morning,
2 counsel. It's Ralph. And I have Josh and
3 Claudette here with me.

4 Let's begin by asking who else is on the
5 line. Florida?

6 MR. WINSOR: Good morning, your Honor.
7 This is Allen Winsor, along with Os Vazquez
8 from the Florida Attorney General's Office.
9 And Chris Kise and other members of our
10 outside counsel team are also on the line.

11 SPECIAL MASTER LANCASTER: Will anyone
12 else be speaking for Florida?

13 MR. WINSOR: Mr. Kise and I will be,
14 your Honor.

15 SPECIAL MASTER LANCASTER: All right.
16 Then it's not necessary to identify the other
17 members who will be listening.

18 MR. WINSOR: Yes, sir.

19 SPECIAL MASTER LANCASTER: Georgia?

20 MR. PRIMIS: Good morning, your Honor.
21 That is Craig Primis from Kirkland & Ellis.
22 I'm on the line. I'll be speaking on behalf
23 of Georgia along with Solicitor General Britt

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1 we are in agreement with that proposal.
2 SPECIAL MASTER LANCASTER: Did someone
3 just join us?
4 I thought I heard a sound that indicated
5 someone had joined us.
6 Well, counsel, you can anticipate that
7 your motion will be granted. We'll get an
8 order out shortly. And I would urge you, as
9 I do every time, to try to complete
10 production in less than the additional 120
11 days.
12 Again, I --
13 MR. WINSOR: Yes, sir.
14 SPECIAL MASTER LANCASTER: Did someone
15 join us?
16 MR. KISE: Yes, your Honor. It's Chris
17 Kise. I got cut off right after you asked
18 that question. And I'm not sure if
19 Mr. Winsor answered it, but I'm happy to
20 respond in the event you need additional
21 information.
22 SPECIAL MASTER LANCASTER: All right.
23 Thank you.
24 That, I think, takes care of the
25 discovery question. Let's move on to --
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1 well, let's talk a little bit about
 2 settlement discussions. And please remember
 3 that the transcript will be put on our
 4 website. So if you're concerned about the
 5 media, be careful what you say. This is a
 6 personal opinion, but I think the media is
 7 relentless and ruthless. And so they will do
 8 everything they can to publish everything
 9 that they can find out.

10 Unless I'm mistaken, both Florida and
 11 Georgia have had spokespersons, Mr. Robinson
 12 and Mr. Tupps. Am I correct in identifying
 13 them?

14 Florida?

15 MR. KISE: Your Honor --

16 MR. WINSOR: Go ahead.

17 MR. KISE: Your Honor, this is Chris
 18 Kise.

19 Do you mean spokesperson -- an official
 20 spokesperson for the state on behalf of the
 21 governor?

22 SPECIAL MASTER LANCASTER: Yes.

23 MR. KISE: Yes, I believe that's
 24 correct, your Honor. There are official
 25 communication individuals that -- that

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6

1 deal -- that handle the media requests on an
 2 ongoing basis for Florida.

3 SPECIAL MASTER LANCASTER: And, Georgia?
 4 Georgia?

5 MR. PRIMIS: Yes. Solicitor General
 6 Grant, do you want to -- I'm sorry, the
 7 Solicitor General was unable to make the call
 8 today, your Honor, who I understood would be
 9 on and would be addressing these questions.
 10 I can follow up with her and get you an
 11 accurate answer.

12 SPECIAL MASTER LANCASTER: Right. I --
 13 I am constantly besieged by the media. And
 14 so when I'm told that someone named Brian
 15 Robinson is speaking and disclosing things
 16 and someone else is disclosing them for
 17 Georgia, John Tupps, I think was the name, I
 18 would suggest that if you're concerned about
 19 the media and confidentiality, you will be
 20 careful what your spokespersons are saying.

21 But let me move on. You have jointly
 22 requested a confidentiality order. Are you
 23 seeking it for more than the purposes of
 24 litigation in Florida versus Georgia, No.
 25 142?

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7

1 Florida?

2 MR. KISE: Your Honor, this is Chris
 3 Kise.

4 No. I believe the purpose is for -- for
 5 purposes of this litigation to ensure that
 6 the parties have the confidence that their
 7 discussions are and will remain confidential
 8 and inadmissible, as we set forth in the
 9 motion.

10 We have engaged, as the Court may be
 11 aware, in considerable discussion over the
 12 years, over the last 20 years. And orders of
 13 this nature have, at least in my experience
 14 respectfully in the last 10 or 12 and being
 15 part of the discussions, been useful in
 16 facilitating free exchange of information and
 17 free flow of points that are necessary to
 18 negotiations in a case that involves a lot
 19 of, as you can see, documents and scientific
 20 data. Having the confidence that what we
 21 discuss as specific points are and will
 22 remain confidential and inadmissible is
 23 really important. So that's why we brought
 24 this -- at least in Florida's view -- and I
 25 won't speak for Georgia; but that's certainly

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8

1 why we brought this to the Court's attention
 2 and are seeking it.

3 There have been similar orders entered
 4 in the past in the course of the ongoing
 5 litigation.

6 SPECIAL MASTER LANCASTER: Georgia?

7 MR. PRIMIS: Yes, your Honor. I agree
 8 with what Mr. Kise just said -- this is Craig
 9 Primis for Georgia.

10 And to specifically answer your
 11 question, this proposal relates just to
 12 settlement discussions concerning this case
 13 and the parties' efforts to resolve No. 142.

14 SPECIAL MASTER LANCASTER: Well, you
 15 know, I think, by now my position on
 16 settlement as opposed to litigation. And I,
 17 in passing, will compliment Governor Deal for
 18 his efforts. I'm a little more encouraged
 19 after having read what I read about the Iran
 20 negotiations, because apparently nothing is
 21 beyond settlement.

22 But what is -- what do you -- what do
 23 you do with the Freedom of Access Act laws,
 24 which I assume Georgia and Florida both have?
 25 Florida?

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9

1 MR. WINSOR: Yes, your Honor. This is
 2 Allen Winsor.
 3 Our view is that it's the Court's order
 4 that would preclude disclosure notwithstanding
 5 that statement.
 6 SPECIAL MASTER LANCASTER: Georgia?
 7 MS. GRANT: Your Honor, this is Britt
 8 Grant for Georgia. I apologize. I had a
 9 technical difficulty getting on.
 10 But it's also the case for Georgia that
 11 the -- our Open Records law creates an
 12 exemption where things are kept sealed under
 13 a court order.
 14 MR. WINSOR: Mr. Kise, feel free to
 15 supplement my response.
 16 MR. KISE: Your Honor, Mr. Winsor is
 17 correct that the court order would govern
 18 anything that's discussed or exchanged even.
 19 There is a similar exemption in Florida.
 20 SPECIAL MASTER LANCASTER: Well, fine.
 21 You can be sure that I will enter a
 22 confidentiality order shortly. I have not
 23 taken a look at the -- the points that you
 24 made; but if you're confident that it would
 25 act as a shield from the Freedom of Access

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10

1 laws, that's fine.
 2 Well, let's move on then to the motion
 3 to dismiss. Your excellent briefing is
 4 complete. Thank you very much for that.
 5 No one -- please don't misunderstand
 6 this. No one has requested oral argument,
 7 and I'm not suggesting that I need it. But I
 8 don't want to foreclose it if either party is
 9 interested in having oral arguments. So let
 10 me ask the question.
 11 Florida?
 12 MR. WINSOR: Your Honor, we are not
 13 requesting it; but certainly if you feel like
 14 it would be useful, we would make ourselves
 15 available.
 16 SPECIAL MASTER LANCASTER: Georgia?
 17 MR. PRIMIS: Yes, your Honor. Chris
 18 Primis for Georgia.
 19 We did not formally request oral
 20 argument because that was not part of the
 21 briefing schedule. We anticipated there
 22 would be a discussion in this context as to
 23 how we would propose to proceed. We do think
 24 that oral argument would be helpful in this
 25 instance. It's our motion, and there are a

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11

1 number of detailed factual points relating to
 2 the Army Corps' involvement and the facts on
 3 the ground that bear on our motion. So we
 4 would request oral argument. We do think it
 5 would be helpful to the Court.
 6 SPECIAL MASTER LANCASTER: Florida?
 7 MR. WINSOR: Well, we feel like the
 8 briefing lays it out, the arguments on both
 9 sides, and again don't believe it's
 10 necessary. But if your Honor is inclined to
 11 have it, we will make ourselves available.
 12 SPECIAL MASTER LANCASTER: Well, please,
 13 so that there is no misunderstanding, I'm not
 14 asking either party to have oral argument;
 15 but I'm willing to accede to Georgia's
 16 request.
 17 The question then is where do you want
 18 it and when?
 19 Florida -- or Georgia, I guess?
 20 MR. PRIMIS: Well, your Honor, obviously
 21 we are flexible and will appear wherever it's
 22 most convenient for your Honor and for both
 23 parties.
 24 I believe in prior discussions that
 25 Washington, D.C., had been identified as a

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12

1 potentially central location that would be
 2 easily accessible for everyone. And we could
 3 certainly make arrangements to host it here
 4 in Washington at a mutually agreeable spot.
 5 We also are available to come to New England
 6 at your convenience.
 7 SPECIAL MASTER LANCASTER: Well, let me
 8 tell you that I think the snow will end here
 9 about July 4. So I would prefer to do it
 10 before then. And we certainly can come to
 11 Florida. There will be -- I mean, to
 12 Washington. There will be Josh and I and
 13 Claudette. So it will be a little more
 14 expensive for you; but I'm happy to do that,
 15 if that's what you want.
 16 Georgia?
 17 MR. PRIMIS: I think that makes good
 18 sense if Florida is agreeable to coming to
 19 Washington. I know they have counsel here in
 20 Washington as well as in Florida.
 21 And in terms of the date, I think the
 22 most efficient thing to do would be for us to
 23 consult with Florida, perhaps after this call
 24 within the next day or so, and then propose a
 25 mutually agreeable date or dates in the near

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13

1 future to -- and then, your Honor, you could
 2 pick the one that works best for you.
 3 SPECIAL MASTER LANCASTER: I would
 4 suggest it be dates, plural, because I have,
 5 believe it or not, a couple of other things
 6 on my calendar.
 7 So as far as location is concerned, I'll
 8 make arrangements to use the appellate court
 9 in the federal building down there. So just
 10 let me know the dates, and we'll go from
 11 there.
 12 Now, let me ask a question to Florida.
 13 I seem to remember that somewhere along the
 14 way Florida indicated why it did not name
 15 Alabama as a party. I know I have a
 16 transcript of a recording which said that
 17 Alabama had decided not to try to intervene.
 18 But am I not correct that at some point
 19 Florida said something about why it did not
 20 name Alabama, Florida?
 21 MR. KISE: Yes, your Honor. That's in
 22 our complaint that was filed at the outset.
 23 And essentially we just state that we don't
 24 seek any relief against Alabama, and that's
 25 why we did not bring them in at this point.
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14

1 SPECIAL MASTER LANCASTER: Well, the
 2 review that we have done on the briefs
 3 submitted on the motion to dismiss sparked a
 4 little question in my head. Is complete
 5 relief possible without Alabama in here,
 6 Florida?
 7 MR. KISE: This is Mr. Kise.
 8 MR. WINSOR: Go ahead.
 9 MR. KISE: We certainly think so. Yes,
 10 your Honor, we're not seeking any relief
 11 against the State of Alabama; nor do any of
 12 the specific relief that we would be seeking,
 13 we don't believe will impact them in a
 14 material way that would be adverse to their
 15 interests.
 16 SPECIAL MASTER LANCASTER: Well, you may
 17 not be seeking relief from Alabama, but isn't
 18 it possible that Alabama will be affected by
 19 any decision from the Court?
 20 MR. KISE: This is Mr. Kise again.
 21 I mean, certainly they would be impacted
 22 to the extent that additional water would
 23 flow downstream. But based on the geography
 24 and hydrology of the region, it's certainly
 25 Florida's view that that would only inure to
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15

1 their benefit, that additional water moving
 2 down the Chattahoochee River would only inure
 3 to their benefit.
 4 SPECIAL MASTER LANCASTER: Georgia?
 5 MS. GRANT: Your Honor, as you know, we
 6 have focused on the importance of the United
 7 States as a party here. Certainly Alabama's
 8 interest would be impacted in some way
 9 because they're in the basin, but it's rather
 10 minimal as compared to the interests that the
 11 United States has in this particular area.
 12 SPECIAL MASTER LANCASTER: Well, minimal
 13 or major, is Alabama a required party that
 14 must be joined under 19(a)?
 15 Florida?
 16 I'm sorry. We didn't get that. What
 17 did you say?
 18 MS. GRANT: I'm sorry. This is Britt
 19 Grant.
 20 I said not in Georgia's view, your
 21 Honor.
 22 SPECIAL MASTER LANCASTER: Florida?
 23 MR. KISE: Yes, your Honor. This is
 24 Mr. Kise.
 25 Not in Florida's view either. And it
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16

1 would appear not in Alabama's view, at least
 2 based on the representations that they made
 3 to us.
 4 SPECIAL MASTER LANCASTER: Well, let me
 5 suggest that I would like to have briefing on
 6 this point because the last thing I want to
 7 do is to file a report with the Court which
 8 gets slammed back because we didn't address
 9 this question. So I would like to have
 10 briefs on the question of whether Alabama is
 11 a required party. And if it is a required
 12 party, it can be -- whether it can be joined
 13 under 19(a). And if it can't be joined under
 14 19(a), whether it's an indispensable party
 15 under 19(b).
 16 You will get the transcript, so you will
 17 understand the questions I'm raising here.
 18 I'm going to suggest that since both of
 19 the parties apparently think that this is an
 20 easy call, that you submit simultaneous
 21 briefs by May 1 and simultaneous response
 22 briefs by May 15. I know from past
 23 experience that if those deadlines turn out
 24 to be too difficult, I'll hear from you.
 25 Any questions on that?
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17

1 MR. KISE: No, sir.
 2 MS. GRANT: No, your Honor.
 3 MR. PRIMIS: Your Honor, this is Craig
 4 Primis for Georgia.
 5 Just one question. Would it make sense
 6 to suggest arguments after May 15 so that
 7 this issue will be addressed as well at the
 8 time?
 9 SPECIAL MASTER LANCASTER: Well, yes,
 10 sure. We can argue on -- depending upon the
 11 briefs, we can add that to the argument
 12 schedule so we would be -- we would have both
 13 the -- both points, sure.
 14 MR. PRIMIS: Okay. So we would then
 15 target our discussions for proposed dates
 16 maybe in the latter half of May?
 17 SPECIAL MASTER LANCASTER: That's fine.
 18 MR. PRIMIS: Okay.
 19 MR. KISE: And, your Honor, this is
 20 Mr. Kise.
 21 If I might, is it the Court's preference
 22 or desire to have the State of Alabama submit
 23 anything with respect to its views?
 24 I mean, certainly Florida would be
 25 setting out its view as to the lack of

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18

1 necessity of Alabama being joined under the
 2 rules. But we could not speak for the State
 3 of Alabama. So just wondering if it's the
 4 Court's preference to invite them to say
 5 their views?
 6 SPECIAL MASTER LANCASTER: The answer is
 7 the more the merrier. I don't have Alabama's
 8 ear, so I can't talk to Alabama. But if you
 9 want to inquire of them as to whether they
 10 want to join the party, please be my guest.
 11 MR. KISE: Thank you, sir.
 12 SPECIAL MASTER LANCASTER: All right.
 13 All I have left on my agenda is a schedule
 14 for upcoming status conferences because,
 15 as you know, this is the last one that was
 16 scheduled. And I have arbitrarily set them
 17 down for May 5, June 9, July 14, all at
 18 10 o'clock. And as always, if there is a
 19 problem with any of those dates or times, you
 20 will let me know; I know.
 21 And that concludes my agenda, counsel.
 22 Is there anything else, Florida?
 23 MR. WINSOR: This is Allen Winsor.
 24 Just quickly just to confirm this
 25 conference that you just scheduled, would it

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19

1 be at 10 a.m., again, using the same
 2 telephone number?
 3 SPECIAL MASTER LANCASTER: Yes.
 4 MR. WINSOR: Thank you.
 5 SPECIAL MASTER LANCASTER: Unless I find
 6 out that the media has gotten the phone
 7 number, we'll stick with the same phone
 8 number.
 9 MR. WINSOR: Yes, sir. Thank you.
 10 SPECIAL MASTER LANCASTER: Anything
 11 else?
 12 Georgia?
 13 MR. PRIMIS: Nothing for Georgia, your
 14 Honor.
 15 SPECIAL MASTER LANCASTER: Anybody else?
 16 Thank you all, again, counsel. I
 17 appreciate it. I appreciate the hard work
 18 you're doing.
 19 And I certainly don't envy you with the
 20 volume of documents and other materials that
 21 you have got to address. But I think it does
 22 underscore the notion that if this matter can
 23 be settled, we'll all be in better shape.
 24 Thank you and good day.
 25 MR. WINSOR: Yes, sir.

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1 MR. PRIMIS: Thank you.
 2 MS. GRANT: Thank you, your Honor.
 3 (The telephone conference was concluded
 4 at 10:21 a.m.)
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CERTIFICATE

I, Claudette G. Mason, a Notary Public in and for the State of Maine, hereby certify that the foregoing 20 pages are a correct transcript of my stenographic notes of the above-captioned proceedings.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand this 9th day of April, 2015.

Notary Public

My Commission Expires
June 9, 2019.

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1	<p>accessible [1] - 12:2 accurate [1] - 6:11 Act [1] - 8:23 act [1] - 9:25 action [1] - 21:9 add [1] - 17:11 additional [5] - 3:9, 4:10, 4:20, 14:22, 15:1 address [2] - 16:8, 19:21 addressed [1] - 17:7 addressing [1] - 6:9 adverse [1] - 14:14 affected [1] - 14:18 agenda [2] - 18:13, 18:21 agree [1] - 8:7 agreeable [3] - 12:4, 12:18, 12:25 agreement [2] - 3:25, 4:1 ahead [2] - 5:16, 14:8 Alabama [14] - 13:15, 13:17, 13:20, 13:24, 14:5, 14:11, 14:17, 14:18, 15:13, 16:10, 17:22, 18:1, 18:3, 18:8 Alabama's [3] - 15:7, 16:1, 18:7 Allen [3] - 2:9, 9:2, 18:23 ALLEN [1] - 1:20 answer [3] - 6:11, 8:10, 18:6 answered [1] - 4:19 anticipate [2] - 3:15, 4:6 anticipated [1] - 10:21 apologize [1] - 9:8 appear [2] - 11:21, 16:1 APPEARANCES [1] - 1:19 appellate [1] - 13:8 appreciate [2] - 19:17 April [2] - 1:15, 21:11 arbitrarily [1] - 18:16 area [1] - 15:11 argue [1] - 17:10 argument [6] - 10:6, 10:20, 10:24, 11:4, 11:14, 17:11 arguments [3] - 10:9, 11:8, 17:6</p>	<p>Army [1] - 11:2 arrangements [2] - 12:3, 13:8 assume [1] - 8:24 attention [1] - 8:1 Attorney [1] - 2:10 Atwood [1] - 1:14 available [3] - 10:15, 11:11, 12:5 aware [1] - 7:11</p>	<p>21:7 Chattahoochee [1] - 15:2 Chris [5] - 2:11, 4:16, 5:17, 7:2, 10:17 CHRISTOPHER [1] - 1:21 Claudette [4] - 1:16, 2:5, 12:13, 21:2 coming [1] - 12:18 commencing [1] - 1:15 commend [1] - 3:7 Commercial [1] - 1:14 Commission [1] - 21:18 communication [1] - 5:25 compared [1] - 15:10 complaint [1] - 13:22 complete [6] - 3:10, 3:11, 3:15, 4:9, 10:4, 14:4 compliment [1] - 8:17 concerned [3] - 5:4, 6:18, 13:7 concerning [1] - 8:12 concluded [1] - 20:3 concludes [1] - 18:21 CONFERENCE [1] - 1:12 conference [2] - 18:25, 20:3 conferences [1] - 18:14 conferred [1] - 3:21 confidence [2] - 7:6, 7:20 confident [1] - 9:24 confidential [2] - 7:7, 7:22 confidentiality [3] - 6:19, 6:22, 9:22 confirm [1] - 18:24 considerable [1] - 7:11 constantly [1] - 6:13 consult [1] - 12:23 context [1] - 10:22 convenience [1] - 12:6 convenient [1] - 11:22 Corps' [1] - 11:2 correct [6] - 3:16,</p>	<p>5:12, 5:24, 9:17, 13:18, 21:4 counsel [6] - 2:4, 2:12, 4:6, 12:19, 18:21, 19:16 couple [1] - 13:5 course [1] - 8:4 Court [4] - 7:10, 11:5, 14:19, 16:7 court [3] - 9:13, 9:17, 13:8 COURT [1] - 1:2 Court's [4] - 8:1, 9:3, 17:21, 18:4 Craig [3] - 2:23, 8:8, 17:3 CRAIG [1] - 1:22 creates [1] - 9:11 CRR [1] - 1:16 current [2] - 3:16, 3:23 cut [1] - 4:17</p>
2	<p>20 [2] - 7:12, 21:4 2015 [2] - 1:15, 21:11 2019 [1] - 21:19 254 [1] - 1:14</p>	<p>based [2] - 14:23, 16:2 basin [1] - 15:9 basis [1] - 6:2 bear [1] - 11:3 begin [1] - 2:6 behalf [2] - 2:24, 5:20 benefit [2] - 15:1, 15:3 besieged [1] - 6:13 best [1] - 13:2 better [1] - 19:23 beyond [1] - 8:21 bit [1] - 5:1 Brian [1] - 6:14 briefing [4] - 10:3, 10:21, 11:8, 16:5 briefs [5] - 14:2, 16:10, 16:21, 16:22, 17:11 bring [1] - 13:25 Britt [3] - 2:25, 9:7, 15:18 BRITT [1] - 1:22 brought [2] - 7:23, 8:1 building [1] - 13:9</p>	<p>based [2] - 14:23, 16:2 basin [1] - 15:9 basis [1] - 6:2 bear [1] - 11:3 begin [1] - 2:6 behalf [2] - 2:24, 5:20 benefit [2] - 15:1, 15:3 besieged [1] - 6:13 best [1] - 13:2 better [1] - 19:23 beyond [1] - 8:21 bit [1] - 5:1 Brian [1] - 6:14 briefing [4] - 10:3, 10:21, 11:8, 16:5 briefs [5] - 14:2, 16:10, 16:21, 16:22, 17:11 bring [1] - 13:25 Britt [3] - 2:25, 9:7, 15:18 BRITT [1] - 1:22 brought [2] - 7:23, 8:1 building [1] - 13:9</p>	<p>B</p>
4	<p>4 [1] - 12:9</p>	<p>calendar [1] - 13:6 captioned [1] - 21:6 care [1] - 4:24 careful [2] - 5:5, 6:20 case [3] - 7:18, 8:12, 9:10 central [1] - 12:1 certainly [10] - 7:25, 10:13, 12:3, 12:10, 14:9, 14:21, 14:24, 15:7, 17:24, 19:19 CERTIFICATE [1] - 21:1 certify [2] - 21:3,</p>	<p>C</p>	
5	<p>5 [1] - 18:17</p>	<p>calend [1] - 13:6 captioned [1] - 21:6 care [1] - 4:24 careful [2] - 5:5, 6:20 case [3] - 7:18, 8:12, 9:10 central [1] - 12:1 certainly [10] - 7:25, 10:13, 12:3, 12:10, 14:9, 14:21, 14:24, 15:7, 17:24, 19:19 CERTIFICATE [1] - 21:1 certify [2] - 21:3,</p>	<p>complaint [1] - 13:22 complete [6] - 3:10, 3:11, 3:15, 4:9, 10:4, 14:4 compliment [1] - 8:17 concerned [3] - 5:4, 6:18, 13:7 concerning [1] - 8:12 concluded [1] - 20:3 concludes [1] - 18:21 CONFERENCE [1] - 1:12 conference [2] - 18:25, 20:3 conferences [1] - 18:14 conferred [1] - 3:21 confidence [2] - 7:6, 7:20 confident [1] - 9:24 confidential [2] - 7:7, 7:22 confidentiality [3] - 6:19, 6:22, 9:22 confirm [1] - 18:24 considerable [1] - 7:11 constantly [1] - 6:13 consult [1] - 12:23 context [1] - 10:22 convenience [1] - 12:6 convenient [1] - 11:22 Corps' [1] - 11:2 correct [6] - 3:16,</p>	<p>D</p>
7	<p>7 [1] - 1:15</p>	<p>calendar [1] - 13:6 captioned [1] - 21:6 care [1] - 4:24 careful [2] - 5:5, 6:20 case [3] - 7:18, 8:12, 9:10 central [1] - 12:1 certainly [10] - 7:25, 10:13, 12:3, 12:10, 14:9, 14:21, 14:24, 15:7, 17:24, 19:19 CERTIFICATE [1] - 21:1 certify [2] - 21:3,</p>	<p>complaint [1] - 13:22 complete [6] - 3:10, 3:11, 3:15, 4:9, 10:4, 14:4 compliment [1] - 8:17 concerned [3] - 5:4, 6:18, 13:7 concerning [1] - 8:12 concluded [1] - 20:3 concludes [1] - 18:21 CONFERENCE [1] - 1:12 conference [2] - 18:25, 20:3 conferences [1] - 18:14 conferred [1] - 3:21 confidence [2] - 7:6, 7:20 confident [1] - 9:24 confidential [2] - 7:7, 7:22 confidentiality [3] - 6:19, 6:22, 9:22 confirm [1] - 18:24 considerable [1] - 7:11 constantly [1] - 6:13 consult [1] - 12:23 context [1] - 10:22 convenience [1] - 12:6 convenient [1] - 11:22 Corps' [1] - 11:2 correct [6] - 3:16,</p>	<p>D.C [1] - 11:25 data [1] - 7:20 date [3] - 3:8, 12:21, 12:25 dates [5] - 12:25, 13:4, 13:10, 17:15, 18:19 days [4] - 3:9, 3:12, 3:23, 4:11 deadline [4] - 3:17, 3:18, 3:23 deadlines [1] - 16:23 deal [1] - 6:1 Deal [1] - 8:17 decided [1] - 13:17 decision [1] - 14:19 Defendants [1] - 1:9 desire [1] - 17:22 detailed [1] - 11:1 difficult [1] - 16:24 difficulty [1] - 9:9 disclosing [2] - 6:15, 6:16 disclosure [1] - 9:4 discovery [3] - 3:8, 3:18, 4:25 discuss [1] - 7:21 discussed [1] - 9:18 discussion [2] - 7:11, 10:22 discussions [6] - 5:2, 7:7, 7:15, 8:12, 11:24, 17:15 disinterested [1] -</p>
9	<p>9 [2] - 18:17, 21:19 9th [1] - 21:11</p>	<p>calendar [1] - 13:6 captioned [1] - 21:6 care [1] - 4:24 careful [2] - 5:5, 6:20 case [3] - 7:18, 8:12, 9:10 central [1] - 12:1 certainly [10] - 7:25, 10:13, 12:3, 12:10, 14:9, 14:21, 14:24, 15:7, 17:24, 19:19 CERTIFICATE [1] - 21:1 certify [2] - 21:3,</p>	<p>complaint [1] - 13:22 complete [6] - 3:10, 3:11, 3:15, 4:9, 10:4, 14:4 compliment [1] - 8:17 concerned [3] - 5:4, 6:18, 13:7 concerning [1] - 8:12 concluded [1] - 20:3 concludes [1] - 18:21 CONFERENCE [1] - 1:12 conference [2] - 18:25, 20:3 conferences [1] - 18:14 conferred [1] - 3:21 confidence [2] - 7:6, 7:20 confident [1] - 9:24 confidential [2] - 7:7, 7:22 confidentiality [3] - 6:19, 6:22, 9:22 confirm [1] - 18:24 considerable [1] - 7:11 constantly [1] - 6:13 consult [1] - 12:23 context [1] - 10:22 convenience [1] - 12:6 convenient [1] - 11:22 Corps' [1] - 11:2 correct [6] - 3:16,</p>	<p>D</p>
A	<p>a.m [3] - 1:16, 19:1, 20:4 above-captioned [1] - 21:6 above-named [1] - 21:9 accede [1] - 11:15 Access [2] - 8:23, 9:25</p>	<p>calendar [1] - 13:6 captioned [1] - 21:6 care [1] - 4:24 careful [2] - 5:5, 6:20 case [3] - 7:18, 8:12, 9:10 central [1] - 12:1 certainly [10] - 7:25, 10:13, 12:3, 12:10, 14:9, 14:21, 14:24, 15:7, 17:24, 19:19 CERTIFICATE [1] - 21:1 certify [2] - 21:3,</p>	<p>complaint [1] - 13:22 complete [6] - 3:10, 3:11, 3:15, 4:9, 10:4, 14:4 compliment [1] - 8:17 concerned [3] - 5:4, 6:18, 13:7 concerning [1] - 8:12 concluded [1] - 20:3 concludes [1] - 18:21 CONFERENCE [1] - 1:12 conference [2] - 18:25, 20:3 conferences [1] - 18:14 conferred [1] - 3:21 confidence [2] - 7:6, 7:20 confident [1] - 9:24 confidential [2] - 7:7, 7:22 confidentiality [3] - 6:19, 6:22, 9:22 confirm [1] - 18:24 considerable [1] - 7:11 constantly [1] - 6:13 consult [1] - 12:23 context [1] - 10:22 convenience [1] - 12:6 convenient [1] - 11:22 Corps' [1] - 11:2 correct [6] - 3:16,</p>	<p>D</p>

<p>21:8 dismiss [2] - 10:3, 14:3 documents [2] - 7:19, 19:20 done [1] - 14:2 down [3] - 13:9, 15:2, 18:17 downstream [1] - 14:23 DUNLAP [1] - 1:23</p>	<p>file [1] - 16:7 filed [1] - 13:22 fine [3] - 9:20, 10:1, 17:17 flexible [1] - 11:21 FLORIDA [1] - 1:5 Florida [29] - 1:20, 2:7, 2:10, 2:14, 3:19, 5:10, 5:14, 6:2, 6:24, 7:1, 8:24, 8:25, 9:19, 10:11, 11:6, 11:19, 12:11, 12:18, 12:20, 12:23, 13:12, 13:14, 13:19, 13:20, 14:6, 15:15, 15:22, 17:24, 18:22 Florida's [3] - 7:24, 14:25, 15:25 flow [2] - 7:17, 14:23 focused [1] - 15:6 follow [1] - 6:10 foreclose [1] - 10:8 foregoing [1] - 21:4 formally [1] - 10:19 forth [1] - 7:8 free [3] - 7:16, 7:17, 9:14 Freedom [2] - 8:23, 9:25 future [1] - 13:1</p>	<p>ground [1] - 11:3 guess [2] - 3:4, 11:19 guest [1] - 18:10</p>	<p>instance [1] - 10:25 interest [1] - 15:8 interested [1] - 10:9 interests [2] - 14:15, 15:10 intervene [1] - 13:17 inure [2] - 14:25, 15:2 invite [1] - 18:4 involvement [1] - 11:2 involves [1] - 7:18 Iran [1] - 8:19 issue [1] - 17:7</p>	<p>17:9, 17:17, 18:6, 18:12, 19:3, 19:5, 19:10, 19:15 last [4] - 7:12, 7:14, 16:6, 18:15 latter [1] - 17:16 law [2] - 1:13, 9:11 laws [2] - 8:23, 10:1 lays [1] - 11:8 least [3] - 7:13, 7:24, 16:1 left [1] - 18:13 less [1] - 4:10 line [5] - 2:7, 2:12, 2:24, 3:1, 3:3 listening [1] - 2:19 litigation [4] - 6:24, 7:5, 8:5, 8:16 LLP [1] - 1:14 location [2] - 12:1, 13:7 look [1] - 9:23</p>
<p>E</p>	<p>G</p>	<p>H</p>	<p>J</p>	<p>M</p>
<p>ear [1] - 18:8 easily [1] - 12:2 easy [1] - 16:20 efficient [1] - 12:22 efforts [3] - 3:8, 8:13, 8:18 either [3] - 10:8, 11:14, 15:25 Ellis [1] - 2:23 encouraged [1] - 8:18 end [1] - 12:8 engaged [1] - 7:10 England [1] - 12:5 ensure [1] - 7:5 enter [1] - 9:21 entered [1] - 8:3 envy [1] - 19:19 ESQ [5] - 1:20, 1:20, 1:21, 1:22, 1:23 essentially [1] - 13:23 event [2] - 4:20, 21:8 excellent [1] - 10:3 exchange [1] - 7:16 exchanged [1] - 9:18 exemption [2] - 9:12, 9:19 existing [1] - 3:22 expensive [1] - 12:14 experience [2] - 7:13, 16:23 Expires [1] - 21:18 extend [1] - 3:22 extent [1] - 14:22</p>	<p>General [3] - 2:25, 6:5, 6:7 General's [1] - 2:10 geography [1] - 14:23 GEORGIA [1] - 1:8 georgia [1] - 2:21 Georgia [24] - 1:22, 2:25, 3:21, 3:24, 5:11, 6:3, 6:4, 6:17, 6:24, 7:25, 8:6, 8:9, 8:24, 9:6, 9:8, 9:10, 10:16, 10:18, 11:19, 12:16, 15:4, 17:4, 19:12, 19:13 Georgia's [2] - 11:15, 15:20 govern [1] - 9:17 governor [1] - 5:21 Governor [1] - 8:17 Grant [4] - 3:1, 6:6, 9:8, 15:19 GRANT [6] - 1:22, 9:7, 15:5, 15:18, 17:2, 20:2 granted [1] - 4:7</p>	<p>half [1] - 17:16 hand [1] - 21:10 handle [1] - 6:1 happy [2] - 4:19, 12:14 hard [1] - 19:17 head [1] - 14:4 hear [1] - 16:24 heard [1] - 4:4 hearing [1] - 3:4 held [1] - 1:13 helpful [2] - 10:24, 11:5 hereby [1] - 21:3 Honor [30] - 2:8, 2:16, 2:22, 3:20, 4:16, 5:15, 5:17, 5:24, 6:8, 7:2, 8:7, 9:1, 9:7, 9:16, 10:12, 10:17, 11:10, 11:20, 11:22, 13:1, 13:21, 14:10, 15:5, 15:21, 15:23, 17:2, 17:3, 17:19, 19:14, 20:2 host [1] - 12:3 hydrology [1] - 14:24</p>	<p>John [1] - 6:17 join [3] - 4:3, 4:15, 18:10 joined [5] - 4:5, 15:14, 16:12, 16:13, 18:1 jointly [2] - 3:9, 6:21 Josh [2] - 2:4, 12:12 JOSHUA [1] - 1:23 July [3] - 3:17, 12:9, 18:17 June [2] - 18:17, 21:19</p>	<p>Maine [3] - 1:15, 1:17, 21:3 major [1] - 15:13 Mason [2] - 1:16, 21:2 MASTER [36] - 1:12, 2:3, 2:13, 2:17, 2:21, 3:2, 3:24, 4:2, 4:14, 4:22, 5:22, 6:3, 6:12, 8:6, 8:14, 9:6, 9:20, 10:16, 11:6, 11:12, 12:7, 13:3, 14:1, 14:16, 15:4, 15:12, 15:22, 16:4, 17:9, 17:17, 18:6, 18:12, 19:3, 19:5, 19:10, 19:15 material [1] - 14:14 materials [1] - 19:20 matter [1] - 19:22 mean [4] - 5:19, 12:11, 14:21, 17:24 media [6] - 5:5, 5:6, 6:1, 6:13, 6:19, 19:6 members [2] - 2:11, 2:19 merrier [1] - 18:7 Merrill's [1] - 1:14 might [1] - 17:21 minimal [2] - 15:10, 15:12 mistaken [1] - 5:10 misunderstand [1] - 10:5</p>
<p>F</p>	<p>I</p>	<p>K</p>	<p>L</p>	
<p>facilitating [1] - 7:16 facts [1] - 11:2 factual [1] - 11:1 far [1] - 13:7 federal [1] - 13:9</p>	<p>identified [2] - 3:3, 11:25 identify [1] - 2:18 identifying [1] - 5:12 impact [1] - 14:13 impacted [2] - 14:21, 15:8 importance [1] - 15:6 important [1] - 7:23 IN [1] - 21:10 inadmissible [2] - 7:8, 7:22 inclined [1] - 11:10 indicated [3] - 3:11, 4:4, 13:14 indispensable [1] - 16:14 individuals [1] - 5:25 information [2] - 4:21, 7:16 inquire [1] - 18:9</p>	<p>kept [1] - 9:12 Kirkland [1] - 2:23 KISE [16] - 1:21, 3:20, 4:16, 5:15, 5:17, 5:23, 7:2, 9:16, 13:21, 14:7, 14:9, 14:20, 15:23, 17:1, 17:19, 18:11 Kise [11] - 2:11, 2:15, 4:17, 5:18, 7:3, 8:8, 9:14, 14:7, 14:20, 15:24, 17:20</p>	<p>lack [1] - 17:25 LANCASTER [36] - 1:13, 2:3, 2:13, 2:17, 2:21, 3:2, 3:24, 4:2, 4:14, 4:22, 5:22, 6:3, 6:12, 8:6, 8:14, 9:6, 9:20, 10:16, 11:6, 11:12, 12:7, 13:3, 14:1, 14:16, 15:4, 15:12, 15:22, 16:4,</p>	

<p>misunderstanding [1] - 11:13 morning [4] - 2:3, 2:8, 2:22, 3:14 most [2] - 11:22, 12:22 motion [6] - 4:7, 7:9, 10:2, 10:25, 11:3, 14:3 move [3] - 4:25, 6:21, 10:2 moving [1] - 15:1 MR [40] - 2:8, 2:15, 2:20, 2:22, 3:20, 3:25, 4:13, 4:16, 5:15, 5:16, 5:17, 5:23, 6:5, 7:2, 8:7, 9:1, 9:14, 9:16, 10:12, 10:17, 11:7, 11:20, 12:17, 13:21, 14:7, 14:8, 14:9, 14:20, 15:23, 17:1, 17:3, 17:14, 17:18, 17:19, 18:11, 18:23, 19:9, 19:13, 19:25, 20:1 MS [5] - 9:7, 15:5, 15:18, 17:2, 20:2 must [1] - 15:14 mutually [2] - 12:4, 12:25</p>	<p style="text-align: center;">O</p> <p>o'clock [1] - 18:18 obviously [1] - 11:20 OF [3] - 1:2, 1:5, 1:8 Office [1] - 2:10 offices [1] - 1:13 official [2] - 5:19, 5:24 one [5] - 10:5, 10:6, 13:2, 17:5, 18:15 ongoing [2] - 6:2, 8:4 Open [1] - 9:11 opinion [1] - 5:6 opposed [1] - 8:16 oral [6] - 10:6, 10:9, 10:19, 10:24, 11:4, 11:14 order [6] - 4:8, 6:22, 9:3, 9:13, 9:17, 9:22 orders [2] - 7:12, 8:3 Original [1] - 1:2 Os [1] - 2:9 OSVALDO [1] - 1:20 ourselves [2] - 10:14, 11:11 outcome [1] - 21:8 outset [1] - 13:22 outside [1] - 2:12</p>	<p>points [5] - 7:17, 7:21, 9:23, 11:1, 17:13 Portland [1] - 1:15 position [1] - 8:15 possible [2] - 14:5, 14:18 potentially [1] - 12:1 preclude [1] - 9:4 prefer [1] - 12:9 preference [2] - 17:21, 18:4 Present [1] - 1:23 Primis [4] - 2:23, 8:9, 10:18, 17:4 PRIMIS [13] - 1:22, 2:22, 3:25, 6:5, 8:7, 10:17, 11:20, 12:17, 17:3, 17:14, 17:18, 19:13, 20:1 problem [1] - 18:19 proceed [1] - 10:23 proceedings [1] - 21:6 PROCEEDINGS [1] - 2:2 production [4] - 3:10, 3:12, 3:15, 4:10 proposal [3] - 3:20, 4:1, 8:11 propose [3] - 3:18, 10:23, 12:24 proposed [1] - 17:15 Public [3] - 1:17, 21:2, 21:15 publish [1] - 5:8 purpose [1] - 7:4 purposes [2] - 6:23, 7:5 put [1] - 5:3</p>	<p>relates [1] - 8:11 relating [1] - 11:1 relentless [1] - 5:7 relief [5] - 13:24, 14:5, 14:10, 14:12, 14:17 remain [2] - 7:7, 7:22 remember [2] - 5:2, 13:13 report [1] - 16:7 representations [1] - 16:2 representative [1] - 3:13 represented [1] - 3:5 request [3] - 10:19, 11:4, 11:16 requested [3] - 3:9, 6:22, 10:6 requesting [1] - 10:13 requests [1] - 6:1 required [3] - 15:13, 16:11 resolve [1] - 8:13 respect [1] - 17:23 respectfully [1] - 7:14 respond [1] - 4:20 response [2] - 9:15, 16:21 review [1] - 14:2 River [1] - 15:2 RMR [1] - 1:16 Robinson [2] - 5:11, 6:15 rules [1] - 18:2 ruthless [1] - 5:7</p>	<p>8:12, 8:16, 8:21 shape [1] - 19:23 shield [1] - 9:25 shortly [2] - 4:8, 9:22 sides [1] - 11:9 similar [2] - 8:3, 9:19 simultaneous [2] - 16:20, 16:21 slammed [1] - 16:8 snow [1] - 12:8 Solicitor [2] - 2:25, 6:7 solicitor [1] - 6:5 someone [5] - 4:2, 4:5, 4:14, 6:14, 6:16 somewhere [1] - 13:13 sorry [3] - 6:6, 15:16, 15:18 sound [1] - 4:4 sparked [1] - 14:3 speaking [3] - 2:14, 2:24, 6:15 SPECIAL [36] - 1:12, 2:3, 2:13, 2:17, 2:21, 3:2, 3:24, 4:2, 4:14, 4:22, 5:22, 6:3, 6:12, 8:6, 8:14, 9:6, 9:20, 10:16, 11:6, 11:12, 12:7, 13:3, 14:1, 14:16, 15:4, 15:12, 15:22, 16:4, 17:9, 17:17, 18:6, 18:12, 19:3, 19:5, 19:10, 19:15 specific [2] - 7:21, 14:12 specifically [1] - 8:10 spokesperson [2] - 5:19, 5:20 spokespersons [2] - 5:11, 6:20 spot [1] - 12:4 start [2] - 3:6, 3:19 state [2] - 5:20, 13:23 STATE [2] - 1:5, 1:8 State [7] - 1:17, 1:20, 1:22, 14:11, 17:22, 18:2, 21:3 statement [1] - 9:5 States [5] - 3:5, 3:10, 3:13, 15:7, 15:11 STATES [1] - 1:2 status [1] - 18:14 stenographic [1] - 21:5 stick [1] - 19:7</p>
<p style="text-align: center;">N</p> <p>name [3] - 6:17, 13:14, 13:20 named [2] - 6:14, 21:9 nature [1] - 7:13 near [1] - 12:25 necessary [3] - 2:18, 7:17, 11:10 necessity [1] - 18:1 need [2] - 4:20, 10:7 negotiations [2] - 7:18, 8:20 New [1] - 12:5 next [1] - 12:24 Notary [3] - 1:17, 21:2, 21:15 notes [1] - 21:5 nothing [3] - 3:4, 8:20, 19:13 notion [1] - 19:22 notwithstanding [1] - 9:4 number [4] - 11:1, 19:2, 19:7, 19:8</p>	<p style="text-align: center;">P</p> <p>P.C [1] - 1:22 pages [1] - 21:4 part [2] - 7:15, 10:20 particular [1] - 15:11 parties [6] - 3:7, 3:17, 7:6, 11:23, 16:19 parties' [1] - 8:13 party [9] - 10:8, 11:14, 13:15, 15:7, 15:13, 16:11, 16:12, 16:14, 18:10 passing [1] - 8:17 past [2] - 8:4, 16:22 perhaps [1] - 12:23 person [1] - 21:8 personal [1] - 5:6 phone [2] - 19:6, 19:7 pick [1] - 13:2 Pierce [1] - 1:13 Plaintiff [1] - 1:6 plural [1] - 13:4 point [3] - 13:18, 13:25, 16:6</p>	<p style="text-align: center;">Q</p> <p>questions [3] - 6:9, 16:17, 16:25 quickly [1] - 18:24</p>	<p style="text-align: center;">S</p> <p>schedule [3] - 10:21, 17:12, 18:13 scheduled [2] - 18:16, 18:25 scientific [1] - 7:19 sealed [1] - 9:12 see [1] - 7:19 seek [1] - 13:24 seeking [5] - 6:23, 8:2, 14:10, 14:12, 14:17 seem [1] - 13:13 sense [2] - 12:18, 17:5 set [2] - 7:8, 18:16 setting [1] - 17:25 settled [1] - 19:23 settlement [4] - 5:2,</p>	
		<p style="text-align: center;">R</p> <p>raising [1] - 16:17 Ralph [1] - 2:4 RALPH [1] - 1:13 rather [1] - 15:9 read [2] - 8:19 really [1] - 7:23 recording [1] - 13:16 Records [1] - 9:11 region [1] - 14:24</p>		

<p>Street [1] - 1:14 submit [2] - 16:20, 17:22 submitted [1] - 14:3 subscribe [1] - 21:10 suggest [5] - 6:18, 13:4, 16:5, 16:18, 17:6 suggesting [1] - 10:7 supplement [1] - 9:15 SUPREME [1] - 1:2</p>	<p>16:1, 17:25 views [2] - 17:23, 18:5 volume [1] - 19:20</p>
<p style="text-align: center;">T</p>	<p style="text-align: center;">W</p> <p>Washington [5] - 11:25, 12:4, 12:12, 12:19, 12:20 water [2] - 14:22, 15:1 website [1] - 5:4 Wharf [1] - 1:14 WHEREOF [1] - 21:10 willing [1] - 11:15 WINSOR [15] - 1:20, 2:8, 2:15, 2:20, 4:13, 5:16, 9:1, 9:14, 10:12, 11:7, 14:8, 18:23, 19:4, 19:9, 19:25 Winsor [5] - 2:9, 4:19, 9:2, 9:16, 18:23 WITNESS [1] - 21:10 wondering [1] - 18:3 works [1] - 13:2 written [1] - 3:18</p>
<p>target [1] - 17:15 team [1] - 2:12 technical [1] - 9:9 telephone [3] - 1:12, 19:2, 20:3 terms [1] - 12:21 THE [1] - 1:2 today [2] - 3:5, 6:8 transcript [4] - 5:3, 13:16, 16:16, 21:5 try [2] - 4:9, 13:17 Tupps [2] - 5:12, 6:17 turn [1] - 16:23</p>	<p style="text-align: center;">Y</p>
<p style="text-align: center;">U</p> <p>unable [2] - 3:11, 6:7 under [6] - 9:12, 15:14, 16:13, 16:15, 18:1 underscore [1] - 19:22 understood [1] - 6:8 UNITED [1] - 1:2 United [5] - 3:4, 3:10, 3:13, 15:6, 15:11 unless [2] - 5:10, 19:5 up [1] - 6:10 upcoming [1] - 18:14 urge [1] - 4:8 useful [2] - 7:15, 10:14</p>	<p>years [2] - 7:12</p>
<p style="text-align: center;">V</p> <p>Vazquez [1] - 2:9 VAZQUEZ [1] - 1:20 versus [1] - 6:24 view [7] - 7:24, 9:3, 14:25, 15:20, 15:25,</p>	