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**Date:** August 24, 2016

**Case:** Consolidated Rail Corporation, Abandonment Exemption, Hudson  
County, New Jersey

Docket No. AB 167 (Sub No. 1189X)  
AB 55 (Sub No. 686X)  
AB 290 (Sub No. 306X)



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BEFORE THE SURFACE TRANSPORTATION BOARD

- - - - -X

Consolidated Rail Corporation, : Docket Number  
Abandonment Exemption, : AB 167  
Hudson County, New Jersey. :

- - - - -X

CSX Transportation, : Docket Number  
Discontinuation of Service, : AB 55  
Hudson County, New Jersey. :

- - - - -X

Norfolk Southern, : Docket Number  
Discontinuation of Service, : AB 290  
Hudson County, New Jersey. :

- - - - -X

STATUS CONFERENCE

Washington, D.C.

Wednesday, August 24, 2016

BEFORE:

HONORABLE JOHN P. DRING  
ADMINISTRATIVE LAW JUDGE

REPORTED BY:

SARA A. WICK, RPR, CRR

Page 2

1           Status conference on Wednesday, August 25,  
2   2016, before Honorable John P. Dring, in Washington,  
3   D.C., at the offices of the Federal Energy  
4   Regulatory Commission, 888 First Street Northeast,  
5   Hearing Room 1, at 10:00 a.m., when were present on  
6   behalf of the respective parties:

7

8           CHARLES H. MONTANGE, ESQ.

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12          On behalf of City of Jersey City,

13               Pennsylvania Railroad Harsimus Stem

14               Embankment Preservation Coalition, and

15               Rails to Trails Conservancy

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17          ANDREA C. FERSTER, ESQ.

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-- continued --

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Corporation

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Page 4

1 APPEARANCES (continued):

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10 JAMES RIFFIN, pro se

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

2 PRESIDING JUDGE: Good morning. My name  
3 is Administrative Law Judge John Dring, and I have  
4 been appointed by decision served July 5th, 2016, by  
5 the Surface Transportation Board to entertain and  
6 rule on discovery matters and resolve all disputes  
7 concerning discovery in Docket Number AB 167,  
8 Consolidated Rail Corporation, Abandonment Exemption  
9 in Hudson County, New Jersey, et al.

10 At this point would counsels, please,  
11 enter their appearances.

12 MR. MONTANGE: Good morning, Judge Dring.  
13 My names is Charles Montange. I'm counsel for the  
14 City of Jersey City, the Rails to Trails  
15 Conservancy, and the Pennsylvania Railroad Harsimus  
16 Stem Embankment Preservation Coalition.

17 This is Andrea Ferster, general counsel  
18 for Rails to Trails Conservancy, with me today.

19 MS. FERSTER: Good morning, your Honor.

20 PRESIDING JUDGE: Thank you. Good  
21 morning.

22 MR. HORGAN: Your Honor, my name is

Page 6

1 Daniel E. Horgan. The firm is Waters, McPherson,  
2 McNeill. And I am counsel for 212 Marin Boulevard,  
3 LLC, and then seven additional LLCs. They're in the  
4 record. I don't think I need to repeat them.

5 PRESIDING JUDGE: Yes, sir. Thank you  
6 very much. I appreciate that.

7 And Mr. Riffin is not here, I see. All  
8 right. No one having claimed to be Mr. Riffin, I  
9 have to assume he is not here.

10 Yes, Mr. Montange, do you have something  
11 to say?

12 MR. MONTANGE: Your Honor, I'm kind of  
13 nonplus because I know Mr. Riffin was in town as of  
14 11:00 p.m. last night.

15 PRESIDING JUDGE: He's not an  
16 indispensable party to this proceeding.

17 MR. MONTANGE: So I don't quite know how  
18 to deal with this situation.

19 PRESIDING JUDGE: That's all right, sir.  
20 I do. If you have a suggestion, I will entertain  
21 it, but I am perfectly capable of taking charge of  
22 this matter.

1 MR. MONTANGE: There he is now.

2 PRESIDING JUDGE: All right. Better late  
3 than never. Mr. Riffin, I presume?

4 MR. RIFFIN: Yes. Where do you want me to  
5 sit, your Honor?

6 PRESIDING JUDGE: Well, if you're more  
7 comfortable with the LLCs, you may sit over there  
8 after you've put your jacket on, sir. Thank you.  
9 We were concerned about you. All right.

10 We are here to entertain City's second  
11 motion to compel discovery filed on Mr. Riffin, and  
12 I think the nub of the matter here today concerns  
13 the relevance. Mr. Riffin has filed a response in  
14 which he has stated that he did not think, in  
15 effect, that a motion to compel discovery on his  
16 financial data that would be supposedly used in some  
17 later filing of an OFA would be relevant at this  
18 point.

19 Mr. Riffin, I just want to confirm for the  
20 record, you have not filed an OFA in this proceeding  
21 yet?

22 MR. RIFFIN: Your Honor, no one has filed

Page 8

1 an OFA, and if that ever happens, it won't happen  
2 until -- there's a Section 106 historic proceeding  
3 going on right now, and until that concludes, the  
4 OFA process can't even begin. And there's a lot of  
5 things that have to happen before the Board actually  
6 says okay, parties, you now have 10 days to file an  
7 OFA. And that could be a long time in the future.

8 PRESIDING JUDGE: All right. I understand  
9 that. I just wanted to make sure that you have not  
10 filed an OFA.

11 MR. RIFFIN: I haven't filed one. Nobody  
12 has. We're not allowed to.

13 PRESIDING JUDGE: Fine.

14 MR. RIFFIN: Mr. Montange has asked  
15 multiple times can we speed it up, and the  
16 Board's -- they stay silent, but the end result is,  
17 they're not permitted to do anything.

18 Since I was a little late, and I do  
19 apologize for being late, has Mr. Montange indicated  
20 to you that we had a meeting last night and we've  
21 resolved some of our issues?

22 PRESIDING JUDGE: No. He said he saw you

1     so knew you were in town. He did not know where he  
2     were. He expressed some concern for your safety. I  
3     suppose that's a fair paraphrase.

4                     Who would like to discuss that?

5                     MR. MONTANGE: Since we are the moving  
6     party, your Honor, I would like to at least begin by  
7     setting some stage, and then maybe we can  
8     foreshorten the hearing.

9                     PRESIDING JUDGE: Very well. Thank you.

10                    MR. MONTANGE: Again, I represent City,  
11     et al., and I will refer to them generically  
12     as "City," just to save the mouthful of all my  
13     clients.

14                    PRESIDING JUDGE: Yes, sir.

15                    MR. MONTANGE: I begin by saying for the  
16     record that the Harsimus Branch is the last  
17     underutilized transportation quarter that links  
18     downtown Jersey City with the fast-growing Journal  
19     Square and also provides a corridor which, in  
20     addition to other corridors that are underutilized,  
21     could reach Secaucus, which is a transportation hub  
22     in Northern Jersey City.

Page 10

1                   PRESIDING JUDGE: Yes, Mr. Montange. I  
2 have read everything that's been filed in this  
3 record. And although that is background, I think  
4 that anyone who is interested in reading the record  
5 at this point understands what the Harsimus Stem  
6 Embankment is. And I would appreciate it if you  
7 would attempt to address as much as possible the  
8 issue before us today.

9                   MR. MONTANGE: Okay.

10                  PRESIDING JUDGE: Thank you.

11                  MR. MONTANGE: Your Honor, in general, the  
12 law presumes that parties will cooperate with each  
13 other in discovery.

14                  We have learned, through a number of  
15 sources, that Mr. Riffin has had extensive  
16 correspondence and document exchange with the LLCs,  
17 their management past and present. There's some  
18 confusion on our part now on who is managing and who  
19 is the agent, who is directing the LLCs' activities,  
20 whether it's Mr. Hyman or his wife, Victoria. We've  
21 been told recently that Mr. Hyman no longer is  
22 manager of the LLCs because of health issues and

1     that he's resigned, that Victoria Hyman is now the  
2     manager, perhaps with someone else. We don't know  
3     what the facts are, for sure.

4             But there's been extensive e-mail and,  
5     perhaps, other correspondence going on between  
6     Mr. Riffin and the LLCs. Mr. Riffin has represented  
7     not only to the Surface Transportation Board but to  
8     the United States Supreme Court, in pleadings that  
9     he's provided me in another case, that he views  
10    himself as a backstop for Mr. Hyman to secure  
11    control of the embankment properties that are in  
12    dispute with the Harsimus Branch and, perhaps, other  
13    properties in Jersey City.

14            Any deal that exists or any prospective  
15    deal, for that matter, that exists between the  
16    developer who wishes to secure the Harsimus Branch  
17    in order to convert it to nonrail use -- high-rises,  
18    skyscrapers is what he evidently now intends -- any  
19    deal between him and an OFA applicant arguably, I  
20    think it's very relevant to the proceeding, is  
21    subverting a remedy that the Surface Transportation  
22    Board is supposed to afford shippers and communities

Page 12

1 seeking to secure a transportation corridor for  
2 continued rail use and other allowed public  
3 purposes.

4 So it's relevant, and it certainly fits  
5 the mode for any kind of discovery request where it  
6 could lead to the introduction of admissible  
7 evidence.

8 The Surface Transportation Board, your  
9 Honor, has a doctrine that discovery is disfavored  
10 in abandonment proceedings, but as Mr. Riffin has  
11 said -- and I don't agree with everything he just  
12 said, but he has indicated that this is a proceeding  
13 that is unique, I think, to the annals of the  
14 Surface Transportation Board. I have been at this  
15 case now for 11 long years.

16 PRESIDING JUDGE: If it didn't start as a  
17 unique proceeding, it certainly could be categorized  
18 as unique by this point.

19 MR. MONTANGE: Yes. So it's very  
20 prolonged. We don't have any schedule in the  
21 proceeding for STB decisionmaking. Discovery at  
22 this point does not interfere with any STB activity.

1 And in fact, the longer the proceeding goes on, the  
2 more of this kind of stuff comes out.

3 And in order to represent my clients,  
4 knowing that there are communications going on  
5 between Mr. Riffin in which he's trying to align  
6 himself to the purposes of Mr. Hyman or the LLCs or  
7 some combination thereof, I would be derelict not to  
8 seek that information.

9 Now, what has happened most recently is  
10 that Mr. Riffin found out that I was coming into  
11 town for this, and because -- he found out where I  
12 was having dinner last night and was there.

13 PRESIDING JUDGE: The fame has spread to  
14 Ithaca, as they said.

15 MR. MONTANGE: He was there; he was there  
16 with his computer. He opened up his computer and  
17 displayed to me his e-mails.

18 Now, he has the same kind of e-mail system  
19 I do, Yahoo!.com. Mine is through Frontier; his is  
20 direct. And we are both familiar how you do a  
21 search on e-mails. So he did a search  
22 putting "Hyman" up at the top and pulled up a whole

Page 14

1 sequence of e-mails. We went down the list until  
2 end of 2015, an e-mail exchange. It looked like it  
3 was material that was -- I can't remember whether it  
4 was material he sent to Hyman or Mr. Hyman sent to  
5 him or both, but there was a lot.

6 And because it was a WiFi connection, it  
7 was difficult to open. We would have been there all  
8 night. We would have been thrown out of the  
9 restaurant had I tried to view them there.

10 I imagine that -- he acknowledged to me  
11 that he has an e-mail exchange with Victoria Hyman  
12 as well. He probably has documents from Mr. Horgan.  
13 He probably has documents -- I'm certain he has  
14 documents with other attorneys that have been  
15 forwarded to him, either by the Hymans or that he's  
16 corresponded with directly by e-mail.

17 So the information exists, notwithstanding  
18 any representations to the contrary. I've seen it.  
19 Mr. Strohmeyer was there with me, who has come in a  
20 little late. Eric Strohmeyer is with CNJ Railroad.  
21 He was there. He saw it, too.

22 Now, what Mr. Riffin, I think, agreed to

1 do last night was to forward all that e-mail to me  
2 by Friday of this week. So he's going to now make  
3 available all those e-mails which we sought.

4 PRESIDING JUDGE: And this is correct,  
5 Mr. Riffin?

6 MR. RIFFIN: I beg your pardon?

7 PRESIDING JUDGE: This is correct?

8 MR. RIFFIN: Yes, your Honor, it's  
9 correct. My suggestion to him last night was I will  
10 e-mail him a copy of whatever is there, and I'm also  
11 going to send Mr. Horgan a copy so that both of them  
12 understand what the other person knows.

13 PRESIDING JUDGE: All right.

14 MR. RIFFIN: The only question I would  
15 have -- I was going to ask Mr. Horgan, but I will  
16 ask your Honor while I'm here -- would it be  
17 appropriate for me to send it to any of the other  
18 parties? Does anybody else want to see them? Do I  
19 need to send them to anybody else? At the moment,  
20 just Mr. Montange and Mr. Horgan --

21 PRESIDING JUDGE: I think that's  
22 sufficient. Who do we have here? Someone rising.

Page 16

1 Who is this?

2 MR. JENKINS: My name is Robert Jenkins.  
3 I'm counsel for Conrail. If it is of no concern to  
4 the other parties, we would be happy to have a copy  
5 as well of the e-mails.

6 PRESIDING JUDGE: All right.

7 Mr. Montange, proceed, please. Sorry for  
8 the interruption. It's all very interesting.

9 MR. MONTANGE: Yes, it is indeed, your  
10 Honor.

11 It is difficult to conduct an orderly  
12 proceeding and to engage in discovery when one is  
13 confronted with situations like this.

14 On the other hand, he has committed to  
15 providing this information by Friday. In thinking  
16 about possible outcomes for this hearing today, it  
17 occurs to me that it would be helpful, I think, to  
18 us if your Honor were to enter an order providing  
19 that, by consent of the parties, Mr. Riffin is  
20 obligated to do what he has stated here in open  
21 court that he will do in connection with his e-mail  
22 correspondence, including, as I understand it, all

1 attachments to the e-mail. And if you have deleted  
2 any e-mails but you have preserved documents, I  
3 would hope that you could provide those as well.

4 Is that agreeable to you?

5 MR. RIFFIN: Well, I will just tell you,  
6 when you delete an e-mail, I don't keep anything,  
7 and I've learned you can't print e-mails, at least I  
8 can't.

9 PRESIDING JUDGE: If it's deleted and you  
10 can't retrieve it, under the terms of Mr. Montange's  
11 suggestion, you would not be obligated to hand it  
12 over. You can't do something that you can't do.

13 MR. RIFFIN: Whatever is in my e-mail  
14 account, I have agreed I will give him a copy. I  
15 will send a copy to Mr. Jenkins also. He's  
16 expressed an interest.

17 In terms of time, he wants it by Friday.  
18 If I get back to a library where I have FiOS, that  
19 will speed the process up. He will probably have it  
20 on his e-mail account before he gets home.

21 PRESIDING JUDGE: Very good. I will enter  
22 an order to that.

Page 18

1                   MR. RIFFIN: I don't object if your Honor  
2                   wants to enter an order. I don't think it's  
3                   necessary. If you want to --

4                   PRESIDING JUDGE: I will do it.

5                   Let me just digress a bit here. I do not  
6                   intend to spend anymore time on this case than is  
7                   absolutely necessary, and that is, time entertaining  
8                   arguments on discovery.

9                   As anyone knows, in the Federal Energy  
10                  Regulatory Commission practice, I am very used to  
11                  having my orders complied with fully by parties, and  
12                  in the rare instances where parties have not  
13                  complied, I have issued sanctions.

14                  And I would certainly entertain the notion  
15                  in this case of sanctioning anyone who does not  
16                  comply fully and on a timely basis with any order  
17                  that I will issue in this case. And my idea of  
18                  sanctions -- you probably know, Mr. Riffin, under  
19                  the regulations what the sanctions are, and I'm not  
20                  limiting myself to one. I may issue all of the  
21                  sanctions.

22                  So just keep that in mind, when you agree

1 to do something and I order you to do something,  
2 it's going to be done, or there are consequences.

3 Mr. Montange, did you have something else?

4 MR. MONTANGE: Your Honor, the  
5 conversations that I had with Mr. Riffin last  
6 evening were essentially limited to the e-mails, the  
7 correspondence that he's had with Mr. Riffin --  
8 between Riffin and the Hyman interests, let me say.

9 One other aspect of the discovery we  
10 sought was into Mr. Riffin's bankruptcy proceedings.  
11 And in that, he said that anything would be in  
12 records of courts.

13 I guess that -- there have been several  
14 Riffin bankruptcies. I've attempted to find the  
15 records, the final orders in those bankruptcies.

16 PRESIDING JUDGE: He referred to a program  
17 called PACER. Is that what you're referring to?

18 MR. MONTANGE: Yes, he referred to PACER  
19 ECF. You have to kind of -- it seems like you have  
20 to know the docket numbers and so on, and I think  
21 I've gotten all of the docket numbers, but I'm not  
22 sure.

Page 20

1                   And it would be at least helpful if we had  
2   sufficient documents to indicate -- from him that  
3   would indicate that I've got the relevant dockets.  
4   And if I could just get the final orders from him in  
5   his bankruptcy proceedings, discharge orders or  
6   whatever, that would allow us to examine those  
7   files.

8                   PRESIDING JUDGE: I read these arguments  
9   in the written pleadings, Mr. Riffin, and it did  
10   make sense to me, as Mr. Montange explained in  
11   writing, that while he can go into PACER and obtain  
12   documents, he's not certain and there can be no  
13   certainty that he can obtain all of them through  
14   PACER.

15                  Can you help him with that?

16                  MR. RIFFIN: He's listed two cases. I  
17   believe he listed a 10 -- I don't remember what the  
18   number is, but it's under James Riffin. That's my  
19   primary case. He listed another case. I think that  
20   was the WMS case, and I believe there's a BRL case.  
21   I don't remember what the numbers are.

22                  PRESIDING JUDGE: All right.

1           MR. RIFFIN: I don't have a problem with  
2     telling him what the numbers are, although I think  
3     it's his duty to go find it. But I will verify the  
4     two numbers he has indicated in one of his  
5     pleadings, yes, they are two of the three numbers.  
6     I believe there were three.

7           PRESIDING JUDGE: All right.

8           MR. RIFFIN: So if he wants me to verify  
9     numbers, I will do that. They're public documents.  
10    So he has the right to go to them. But I still  
11    don't think they're relevant.

12          PRESIDING JUDGE: Well, I understand the  
13    relevance argument, and if we want to get into that,  
14    we can. But given that he has -- that these are  
15    public documents and he has two of the three, I  
16    would think it would probably be in everyone's  
17    interest to give him the third number.

18          MR. RIFFIN: I have no objection to  
19    looking it up when I get home.

20          PRESIDING JUDGE: Would you do that,  
21    please.

22          MR. RIFFIN: Yes. I just have to look in

Page 22

1 my computer and see what the number was.

2 PRESIDING JUDGE: All right. I will enter  
3 that agreement as well in my order. Thank you very  
4 much.

5 MR. RIFFIN: I will tell him the three  
6 numbers for the three bankruptcy cases. My goal and  
7 my desire is to try to limit how much time you have  
8 to spend doing what we're doing today.

9 PRESIDING JUDGE: That's very good. I  
10 think you just saved us all a lot of time with  
11 regard to the relevance arguments. I was fully  
12 prepared to go into that. It may have been  
13 enlightening for a lot of people. But if we don't  
14 have to do it, this is not my purpose, to teach  
15 here.

16 Mr. Montange?

17 MR. MONTANGE: Your Honor, with those  
18 agreements, I'm content to be satisfied. And  
19 Mr. Horgan is rising.

20 PRESIDING JUDGE: Mr. Horgan?

21 MR. HORGAN: Yes, your Honor. On behalf  
22 of the LLCs, we have no problem certainly with their

1 voluntary agreement. If Mr. Riffin wants to give  
2 Mr. Montange or everybody whatever he wants to give,  
3 that's up to him, and we have no objection to that,  
4 per se.

5 The objection we raised in this case  
6 concerned what you just mentioned, which was  
7 relevance. I understand you're going to enter an  
8 order. The order is based on a voluntary agreement.

9 My only concern is that that order then  
10 not be used in any proceeding before the STB as the  
11 basis to argue that those documents are relevant  
12 because you're making a finding.

13 PRESIDING JUDGE: I would not anticipate  
14 that that would be the case.

15 Mr. Montange, I think I hear you saying  
16 that you will be satisfied with getting these  
17 documents, and we will see where they lead. Is that  
18 correct?

19 MR. MONTANGE: That is correct, your  
20 Honor.

21 PRESIDING JUDGE: So you need not worry  
22 about entering any of these documents into the STB

Page 24

1 proceeding before the Board right now. You may want  
2 to do that later if you can --

3 MR. MONTANGE: I have no idea what the  
4 documents -- I have a glimmer of what some of the  
5 documents should say, because I have received copies  
6 through discovery against CNJ Railroad of some  
7 documents. That's why I know they exist.

8 I view them as potentially relevant on  
9 issues in the case --

10 PRESIDING JUDGE: Not necessarily with  
11 regard to an OFA that may at some point be filed,  
12 Mr. Riffin may file. This is a tangled web here. I  
13 trust you're looking for these documents for other  
14 purposes, multiple purposes?

15 MR. MONTANGE: I'm looking for them for  
16 multiple purposes. There have been allegations of  
17 fraudulent misrepresentations and all sorts of --

18 PRESIDING JUDGE: Yes, I know. It looks  
19 like one of my wife's soap operas.

20 MR. MONTANGE: Sorry, your Honor.

21 PRESIDING JUDGE: I'm well versed, at  
22 least with the written summaries, of the intrigue

1     that's been going on in this case and some of the  
2     personal history of some of the participants.

3                 MR. MONTANGE:  If we get documents that we  
4     feel are relevant to an issue in the case,  
5     ordinarily what happens in STB practice is they get  
6     attached to a pleading.  And then the other side may  
7     contest the relevance or not contest the relevance,  
8     and STB can decide to do what it wishes in terms of  
9     whether it considers the issue or not.

10                All we are about is -- or we view these  
11     kinds of things, the inquiry into possible  
12     fraudulent use of STB procedures or abuse of STB  
13     procedures, as a relevant issue.

14                And I might add, I believe that Conrail  
15     and the LLCs likewise view abuse of STB processes or  
16     remedies as a relevant issue.

17                And I believe the STB itself takes the  
18     view that an abuse of its processes or abuse of its  
19     jurisdiction or abuse of its remedies should not be  
20     allowed.

21                PRESIDING JUDGE:  It would be axiomatic.  
22     An administrative body working against itself cannot

Page 26

1 stand, to paraphrase the Bible.

2 MR. MONTANGE: Thank you, your Honor.

3 MR. HORGAN: Your Honor, I think there's  
4 one additional issue that is raised not in what is  
5 immediately before you but from your comment.

6 I have three separate discovery requests  
7 that have been served on the LLCs by Mr. Montange.  
8 The deadline to respond to two of them is this  
9 Saturday, and some of those discovery requests and  
10 questions are, I think, exactly what Mr. Riffin and  
11 Mr. Montange have agreed to and are talking about.

12 PRESIDING JUDGE: Shall we winnow that  
13 down based on today's proceeding? Is that what you  
14 suggest now? Why don't we do that?

15 MR. HORGAN: If we can do that --

16 PRESIDING JUDGE: Yes, we can, if it's all  
17 right with Mr. Montange, because there is a  
18 procedural deadline here, and I don't want this to  
19 be construed as somehow prejudicing his use of time  
20 in some way. If he wants to do that, we can.

21 MR. MONTANGE: I'm not sure what the  
22 request is, your Honor. I will say this about the

1     general discovery: Mr. Riffin had previously  
2     represented to me that he did not have e-mails that  
3     were in accessible form, although he had exchanged  
4     e-mails. And in fact, I think Mr. Horgan has  
5     acknowledged the e-mail exchanges. And also,  
6     Mr. Riffin is uncertain what he has deleted and not  
7     deleted. But they exist.

8             There may be documents on the computers of  
9     the Hymans, the LLCs, attorneys for the LLCs that  
10    relate to correspondence between Mr. Riffin and  
11    Mr. Hyman.

12            We view those as relevant and needed in  
13    the proceeding. Whether they appear -- if they've  
14    been deleted or if Mr. Riffin no longer has them, we  
15    would like to see them from these guys.

16            And they -- again, I would be derelict not  
17    to go after these things after I've been told they  
18    exist.

19            PRESIDING JUDGE: Well, Mr. Horgan, would  
20    this be an administrative burden for you to  
21    produce -- assuming you are going to produce such  
22    e-mails, for you to produce e-mails that are

Page 28

1 duplicative of what Mr. Riffin has agreed to and  
2 will produce?

3 MR. HORGAN: I don't know what he's going  
4 to produce, but I can assume from the discussion  
5 that of course, if he's sending e-mails --

6 PRESIDING JUDGE: Why don't you wait and  
7 take a look, then?

8 MR. HORGAN: Well, I can't, because I have  
9 a deadline. There's two issues, your Honor,  
10 actually.

11 One is, quite frankly, we have the same  
12 relevance issues, and it would be a burden because  
13 this is not a large company. This is an  
14 individually owned business, and there could be  
15 thousands of these things, number 1.

16 Number 2, Mr. Riffin, while he's got one  
17 computer, there have been numerous attorneys  
18 representing the LLCs since the beginning of this.  
19 There might be 10 or 12 different lawyers. It would  
20 be all over the lot.

21 But that's only some of the discovery  
22 request. Our intent, so I can be completely

1     forthright about this, is we have objections to all  
2     of the discovery requests which we would otherwise  
3     serve in a timely fashion, at the end of the week,  
4     except one. I guess we have objection to that.  
5     Which is simply that Mr. Hyman is no longer the  
6     manager because of health reasons, what Mr. Montange  
7     has already acknowledged.

8                 But we have some serious concerns that  
9     this is going to, quite frankly, take this soap  
10    opera into additional seasons and reruns, and that's  
11    what we're concerned about, quite frankly.

12                PRESIDING JUDGE: Go ahead.

13                MR. MONTANGE: Your Honor, if I might, the  
14    document request, which would encompass the e-mails,  
15    are not due until September 2nd, as I recall.

16                MR. HORGAN: That's right.

17                MR. MONTANGE: We had an e-mail exchange,  
18    and I tendered some requests for admissions and  
19    interrogatories, mainly to find out who is managing  
20    the LLCs so we could determine, on seeing these  
21    e-mails back and forth, who is making  
22    representations for the LLCs, who is making -- what

Page 30

1 the relationship is. It's hard to know what's going  
2 on over there.

3 PRESIDING JUDGE: It seems to me that this  
4 whole discussion is a bit premature, because  
5 Mr. Horgan, you have stated that you will respond to  
6 Mr. Montange's requests with objections. And  
7 typically, what would happen in that situation, the  
8 two of you would discuss your objections, and if  
9 these requests are overly broad or unduly  
10 burdensome, perhaps Mr. Montange can winnow them  
11 down or provide additional granularity that will  
12 reduce the burden on you.

13 Typically, counsels work together on these  
14 things and only come before the judge with a  
15 discovery dispute when you can't work it out. I  
16 have seen nothing so far to suggest that this is  
17 impossible for the two of you to work out.

18 MR. HORGAN: I don't disagree with that,  
19 your Honor. We've tried to address this. We've  
20 been working on this in different ways trying to  
21 reach stipulations and so forth. And maybe with  
22 today's proceedings and maybe with the materials he

1 gets from Mr. Riffin, positions will change. I  
2 don't know.

3 PRESIDING JUDGE: Well, why don't we just  
4 wait and see.

5 MR. HORGAN: That's fine, your Honor.

6 PRESIDING JUDGE: I feel it's  
7 inappropriate for me to act on this right now. At  
8 first, I thought perhaps I might be of some  
9 assistance, but I think it's better for the two of  
10 you to work it out and see where we go with it.

11 MR. HORGAN: Your Honor, my only purpose  
12 of raising this is to put it on the record so that  
13 if we do wind up back here, you are not saying to me  
14 or to him or to all of us why didn't you tell me  
15 about this.

16 PRESIDING JUDGE: I appreciate that. That  
17 suggests to me that you've been before judges with  
18 less rational approaches to life than mine, but  
19 that's all right. I can understand that.

20 MR. HORGAN: If I may not respond to  
21 that --

22 PRESIDING JUDGE: Excellent, Mr. Horgan,

Page 32

1     excellent.

2                   MR. HORGAN:   Thank you.

3                   MR. RIFFIN:   Your Honor, if I might make a  
4     point.

5                   PRESIDING JUDGE:   Yes.

6                   MR. RIFFIN:   Mr. Horgan is sort of dancing  
7     around it, but he hasn't directly asked you.   So I  
8     will make the suggestion, maybe perhaps on his  
9     behalf.

10                   He's indicated he's got a deadline of  
11    Saturday.   It's going to take a little while for all  
12    this to happen.   I might suggest that the parties  
13    sort of agree to extend that deadline maybe a week  
14    or so.

15                   PRESIDING JUDGE:   Well, that's the Board's  
16    decision, isn't it?   That's a Board deadline.

17                   MR. MONTANGE:   The deadline for the  
18    document discovery is not this Saturday.   It is  
19    September 2nd, I believe, which will give you some  
20    time to look.   And I've said that I would give a  
21    courtesy extension.

22                   MR. HORGAN:   You're correct on that.   The

1 other two items --

2 MR. MONTANGE: The interrogatories and  
3 requests for admission, yes.

4 MR. HORGAN: -- are this Saturday. You're  
5 correct about documents for September 2nd.

6 MR. MONTANGE: They are by and large  
7 independent of giving the documents, I think.

8 PRESIDING JUDGE: That's fine. I see no  
9 reason to entertain changing the date.

10 MR. MONTANGE: Your Honor, just for the  
11 record, I would note that I do not believe that a  
12 Section 106 compliance in any way slows down STB's  
13 administration of the OFA remedy. In past  
14 proceedings, the OFA remedy has been pursuant to a  
15 time schedule that has its own course and  
16 supplants --

17 PRESIDING JUDGE: I've seen that, yes.

18 MR. MONTANGE: Very good. Thank you.

19 PRESIDING JUDGE: Do we have anything else  
20 to discuss today? Mr. Riffin?

21 MR. RIFFIN: I haven't heard Mr. Montange  
22 discuss the other request he had of me. He wanted

Page 34

1 all my financial records, presumably to see if I had  
2 enough cash to actually buy this in the event it  
3 actually became available to buy.

4 PRESIDING JUDGE: Let me -- I wasn't going  
5 to get into this necessarily, but you've opened the  
6 door. Since I will be on this case for discovery  
7 purposes until you don't have anymore discovery  
8 disputes, let me at least give you my understanding  
9 of the financial responsibility component of the OFA  
10 process.

11 Now, Mr. Riffin, I don't need for you to  
12 respond to any of this, but the record shows that  
13 you have an understanding or a belief that \$23,000  
14 will stand you in good stead in meeting the  
15 requirements for financial responsibility, and  
16 you've said you have it in the bank and you can take  
17 people to the bank and see it.

18 That's all well and good. However, I  
19 think that the Board would be interested in a  
20 balance of accounts approach to that. I mean, you  
21 may have \$23,000 in the bank, but you may owe \$1  
22 million, in which case the \$23,000 really won't help

1     you very much.

2                     The other factor in this process is, in  
3     determining financial responsibility, the Board does  
4     anticipate a real estate assessment. Now, there is  
5     record evidence or supposition at least expressed in  
6     the record that the six blocks in Jersey City, New  
7     Jersey, may have a market value of \$60 million.

8                     And if that's the case, I think that this  
9     presents a strong suggestion that even a clear and  
10    free \$23,000 in the bank would not be sufficient to  
11    meet the requirements that the Board would have to  
12    show financial responsibility.

13                    Now, I say this only because if you do  
14    file an OFA and Mr. Montange or anyone else  
15    questions the sufficiency of that, we may be back  
16    here before me to try to determine what information  
17    may be relevant. And in that context, I think that  
18    your financials would certainly be relevant, all of  
19    your financials.

20                    I don't think that that requires any  
21    comment on your part, because I'm talking about my  
22    view of the regulations and how I would conduct any

Page 36

1 proceeding that -- any additional further discovery  
2 dispute that involves the support you may file for  
3 an OFA.

4 All right. You have something to say.

5 MR. RIFFIN: My response would be, your  
6 Honor, on June 1, pursuant to an order of the Board,  
7 Conrail was required to disclose to the Board and  
8 the parties what the purchase price would be for the  
9 entirety of the Harsimus branch. And Conrail  
10 responded on page 5 of that, and if you would  
11 like --

12 PRESIDING JUDGE: They responded zero, I  
13 believe.

14 MR. RIFFIN: The total price for the  
15 entirety to the end of the line, mile post 1.34, is  
16 \$22,109.51.

17 PRESIDING JUDGE: All right.

18 MR. RIFFIN: And if Conrail says this is  
19 what the net liquidation value is, that's what it  
20 is.

21 PRESIDING JUDGE: Okay. Well, Mr. Riffin,  
22 we do engage in substantial financial discussions

1 here at the FERC, and in my experience, nothing is  
2 as simple as what you've just stated. I didn't just  
3 fall off the turnip truck. So I'm not going to  
4 accept your \$23,000 statement.

5 All I'm telling you is how I'm going to  
6 probably view these issues, should they arise. And  
7 I'm doing that gratuitously as a favor to you and  
8 everybody else so you don't create more problems for  
9 yourself than you need to.

10 All right. You don't have to say anything  
11 about that. I'm explaining it to you.

12 Mr. Montange, do you have anything else to  
13 say before we leave here today?

14 MR. MONTANGE: Your Honor, other than to  
15 state that Mr. Riffin only speaks for himself, I'm  
16 not going to try to join issue on what's required  
17 for OFAs or not. We look forward to your order.

18 PRESIDING JUDGE: We escaped that today,  
19 didn't we?

20 MR. MONTANGE: We did, and I'm happy to  
21 have done so. And hopefully, this will conclude the  
22 discovery disputes in the proceeding. I will

Page 38

1 discuss with Mr. Horgan concerning the pending stuff  
2 to see if we can work out something. And if we  
3 can't, unfortunately, we may have to visit you  
4 again.

5 PRESIDING JUDGE: I would like to agree  
6 with you, although I'm reminded of the little boy  
7 that has the shovel and he's digging through the  
8 pile of excrement because he's looking for his pony.

9 Having said that, are we finished for  
10 today?

11 MR. HORGAN: Yes, your Honor. We have  
12 nothing further.

13 MR. RIFFIN: Nothing further.

14 MR. MONTANGE: Thank you.

15 PRESIDING JUDGE: Thank you very much for  
16 attending, and it's been a pleasure to meet you all.  
17 We are off the record.

18 (Whereupon, at 10:38 a.m., the status  
19 conference was concluded.)  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, SARA WICK, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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Notary Public in and for the  
District of Columbia

Commission Expires: NOVEMBER 14, 2017



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| <p><b>A</b></p> <p>a.m 2:5 38:18</p> <p>AB 1:3,5,7 5:7</p> <p>abandonment 1:3<br/>5:8 12:10</p> <p>absolutely 18:7</p> <p>abuse 25:12,15,18<br/>25:18,19</p> <p>accept 37:4</p> <p>accessible 27:3</p> <p>account 17:14,20</p> <p>accounts 34:20</p> <p>acknowledged<br/>14:10 27:5 29:7</p> <p>act 31:7</p> <p>action 39:12,16</p> <p>activities 10:19</p> <p>activity 12:22</p> <p>add 25:14</p> <p>addition 9:20</p> <p>additional 6:3 26:4<br/>29:10 30:11 36:1</p> <p>address 10:7 30:19</p> <p>administration<br/>33:13</p> <p>administrative 1:18<br/>5:3 25:22 27:20</p> <p>admissible 12:6</p> <p>admission 33:3</p> <p>admissions 29:18</p> <p>aferster@railstot...<br/>2:20</p> <p>afford 11:22</p> <p>agent 10:19</p> <p>agree 12:11 18:22<br/>32:13 38:5</p> <p>agreeable 17:4</p> <p>agreed 14:22 17:14<br/>26:11 28:1</p> <p>agreement 22:3<br/>23:1,8</p> <p>agreements 22:18</p> <p>ahead 29:12</p> <p>al 5:9 9:11</p> <p>align 13:5</p> <p>allegations 24:16</p> <p>allow 20:6</p> <p>allowed 8:12 12:2<br/>25:20</p> <p>Andrea 2:17 5:17</p> <p>annals 12:13</p> <p>anticipate 23:13<br/>35:4</p> <p>anybody 15:18,19</p> <p>anymore 18:6 34:7</p> <p>apologize 8:19</p> | <p>appear 27:13</p> <p>appearances 3:1 4:1<br/>5:11</p> <p>appears 39:5</p> <p>applicant 11:19</p> <p>appointed 5:4</p> <p>appreciate 6:6 10:6<br/>31:16</p> <p>approach 34:20</p> <p>approaches 31:18</p> <p>appropriate 15:17</p> <p>arguably 11:19</p> <p>argue 23:11</p> <p>argument 21:13</p> <p>arguments 18:8<br/>20:8 22:11</p> <p>asked 8:14 32:7</p> <p>aspect 19:9</p> <p>assessment 35:4</p> <p>assistance 31:9</p> <p>assume 6:9 28:4</p> <p>assuming 27:21</p> <p>attached 25:6</p> <p>attachments 17:1</p> <p>attempt 10:7</p> <p>attempted 19:14</p> <p>attending 38:16</p> <p>attorney 39:14</p> <p>attorneys 14:14<br/>27:9 28:17</p> <p>August 1:13 2:1</p> <p>available 15:3 34:3</p> <p>Avenue 4:5</p> <p>axiomatic 25:21</p> <p><b>B</b></p> <p>back 17:18 29:21<br/>31:13 35:15</p> <p>background 10:3</p> <p>backstop 11:10</p> <p>balance 34:20</p> <p>bank 34:16,17,21<br/>35:10</p> <p>bankruptcies 19:14<br/>19:15</p> <p>bankruptcy 19:10<br/>20:5 22:6</p> <p>based 23:8 26:13</p> <p>basis 18:16 23:11</p> <p>beg 15:6</p> <p>beginning 28:18</p> <p>behalf 2:6,12,21 3:8<br/>3:15 4:8 22:21<br/>32:9</p> <p>belief 34:13</p> <p>believe 20:17,20</p> | <p>21:6 25:14,17<br/>32:19 33:11 36:13</p> <p>better 7:2 31:9</p> <p>Bible 26:1</p> <p>bit 18:5 30:4</p> <p>blocks 35:6</p> <p>Board 1:1 5:5 8:5<br/>11:7,22 12:8,14<br/>24:1 32:16 34:19<br/>35:3,11 36:6,7</p> <p>Board's 8:16 32:15</p> <p>body 25:22</p> <p>Boulevard 3:8 6:2</p> <p>boy 38:6</p> <p>branch 9:16 11:12<br/>11:16 36:9</p> <p>BRL 20:20</p> <p>broad 30:9</p> <p>Brown 3:11</p> <p>burden 27:20 28:12<br/>30:12</p> <p>burdensome 30:10</p> <p>business 28:14</p> <p>buy 34:2,3</p> <p><b>C</b></p> <p>C 2:17 5:1</p> <p>called 19:17</p> <p>capable 6:21</p> <p>case 11:9 12:15 18:6<br/>18:15,17 20:19,19<br/>20:20,20 23:5,14<br/>24:9 25:1,4 34:6<br/>34:22 35:8</p> <p>cases 20:16 22:6</p> <p>cash 34:2</p> <p>categorized 12:17</p> <p>certain 14:13 20:12</p> <p>certainly 12:4,17<br/>18:14 22:22 35:18</p> <p>certainty 20:13</p> <p>CERTIFICATE<br/>39:1</p> <p>certify 39:4</p> <p>change 31:1</p> <p>changing 33:9</p> <p>charge 6:21</p> <p>Charles 2:8 5:13</p> <p>City 2:12,12 5:14<br/>5:14 9:10,12,18<br/>9:22 11:13 35:6</p> <p>City's 7:10</p> <p>claimed 6:8</p> <p>clear 35:9</p> <p>clients 9:13 13:3</p> <p>CNJ 4:4,8 14:20</p> | <p>24:6</p> <p>cnjrail@yahoo.com<br/>4:7</p> <p>Coalition 2:14 5:16</p> <p>Columbia 39:21</p> <p>com 13:19</p> <p>combination 13:7</p> <p>come 14:19 30:14</p> <p>comes 13:2</p> <p>comfortable 7:7</p> <p>coming 13:10</p> <p>comment 26:5<br/>35:21</p> <p>Commission 2:4<br/>18:10 39:22</p> <p>committed 16:14</p> <p>communications<br/>13:4</p> <p>communities 11:22</p> <p>company 28:13</p> <p>compel 7:11,15</p> <p>completely 28:22</p> <p>compliance 33:12</p> <p>complied 18:11,13</p> <p>comply 18:16</p> <p>component 34:9</p> <p>computer 13:16,16<br/>22:1 28:17</p> <p>computers 27:8</p> <p>concern 9:2 16:3<br/>23:9</p> <p>concerned 7:9 23:6<br/>29:11</p> <p>concerning 5:7 38:1</p> <p>concerns 7:12 29:8</p> <p>conclude 37:21</p> <p>concluded 38:19</p> <p>concludes 8:3</p> <p>conduct 16:11<br/>35:22</p> <p>conference 1:10 2:1<br/>38:19</p> <p>confirm 7:19</p> <p>confronted 16:13</p> <p>confusion 10:18</p> <p>connection 14:6<br/>16:21</p> <p>Conrail 16:3 25:14<br/>36:7,9,18</p> <p>consent 16:19</p> <p>consequences 19:2</p> <p>Conservancy 2:15<br/>2:21 5:15,18</p> <p>considers 25:9</p> <p>Consolidated 1:2<br/>3:15 5:8</p> | <p>construed 26:19</p> <p>content 22:18</p> <p>contest 25:7,7</p> <p>context 35:17</p> <p>continued 2:22 3:1<br/>3:18 4:1 12:2</p> <p>contrary 14:18</p> <p>control 11:11</p> <p>conversations 19:5</p> <p>convert 11:17</p> <p>cooperate 10:12</p> <p>copies 24:5</p> <p>copy 15:10,11 16:4<br/>17:14,15</p> <p>Corporation 1:2<br/>3:16 4:4,8 5:8</p> <p>correct 15:4,7,9<br/>23:18,19 32:22<br/>33:5</p> <p>corresponded 14:16</p> <p>correspondence<br/>10:16 11:5 16:22<br/>19:7 27:10</p> <p>corridor 9:19 12:1</p> <p>corridors 9:20</p> <p>counsel 5:13,17 6:2<br/>16:3 39:11,14</p> <p>counsels 5:10 30:13</p> <p>County 1:3,5,7 5:9</p> <p>course 28:5 33:15</p> <p>court 2:18 11:8<br/>16:21</p> <p>courtesy 32:21</p> <p>courts 19:12</p> <p>create 37:8</p> <p>CRR 1:22</p> <p>CSX 1:4</p> <p><b>D</b></p> <p>D 5:1</p> <p>D.C 1:12 2:3,19<br/>3:13</p> <p>dancing 32:6</p> <p>Daniel 3:3 6:1</p> <p>data 7:16</p> <p>date 33:9</p> <p>days 8:6</p> <p>deadline 26:8,18<br/>28:9 32:10,13,16<br/>32:17</p> <p>deal 6:18 11:14,15<br/>11:19</p> <p>decide 25:8</p> <p>decision 5:4 32:16</p> <p>decisionmaking<br/>12:21</p> |
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|----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>dehorgan@laww...</b><br>3:7                                                                                                                     | 24:5,7,13 25:3<br>27:8 33:5,7                      | <b>evidently</b> 11:18<br><b>exactly</b> 26:10         | <b>finding</b> 23:12<br><b>fine</b> 8:13 31:5 33:8                                                               | <b>granularity</b> 30:11<br><b>gratuitously</b> 37:7                                                                                                                                            |
| <b>delete</b> 17:6                                                                                                                                 | <b>doing</b> 22:8,8 37:7                           | <b>examine</b> 20:6                                    | <b>finished</b> 38:9                                                                                             | <b>guess</b> 19:13 29:4                                                                                                                                                                         |
| <b>deleted</b> 17:1,9 27:6<br>27:7,14                                                                                                              | <b>door</b> 34:6                                   | <b>excellent</b> 31:22 32:1                            | <b>FiOS</b> 17:18                                                                                                | <b>guys</b> 27:15                                                                                                                                                                               |
| <b>deposition</b> 39:4,6,9<br>39:12                                                                                                                | <b>downtown</b> 9:18                               | <b>exchange</b> 10:16<br>14:2,11 29:17                 | <b>firm</b> 6:1                                                                                                  |                                                                                                                                                                                                 |
| <b>derelict</b> 13:7 27:16                                                                                                                         | <b>Dring</b> 1:17 2:2 5:3<br>5:12                  | <b>exchanged</b> 27:3                                  | <b>first</b> 2:4 31:8                                                                                            | <hr/> <b>H</b> <hr/>                                                                                                                                                                            |
| <b>desire</b> 22:7                                                                                                                                 | <b>due</b> 29:15                                   | <b>exchanges</b> 27:5                                  | <b>fits</b> 12:4                                                                                                 | <b>H</b> 2:8                                                                                                                                                                                    |
| <b>determine</b> 29:20<br>35:16                                                                                                                    | <b>duly</b> 39:6                                   | <b>excrement</b> 38:8                                  | <b>Floor</b> 2:18                                                                                                | <b>hand</b> 16:14 17:11                                                                                                                                                                         |
| <b>determining</b> 35:3                                                                                                                            | <b>Dunellen</b> 4:6                                | <b>Exemption</b> 1:3 5:8                               | <b>foregoing</b> 39:3,5                                                                                          | <b>happen</b> 8:1,5 30:7<br>32:12                                                                                                                                                               |
| <b>developer</b> 11:16                                                                                                                             | <b>duplicative</b> 28:1                            | <b>exist</b> 24:7 27:7,18                              | <b>foreshorten</b> 9:8                                                                                           | <b>happened</b> 13:9                                                                                                                                                                            |
| <b>different</b> 28:19<br>30:20                                                                                                                    | <b>duty</b> 21:3                                   | <b>exists</b> 11:14,15<br>14:17                        | <b>form</b> 27:3                                                                                                 | <b>happens</b> 8:1 25:5                                                                                                                                                                         |
| <b>difficult</b> 14:7 16:11                                                                                                                        | <hr/> <b>E</b> <hr/>                               | <b>experience</b> 37:1                                 | <b>forth</b> 29:21 30:21                                                                                         | <b>happy</b> 16:4 37:20                                                                                                                                                                         |
| <b>digging</b> 38:7                                                                                                                                | <b>E</b> 3:3 5:1,1 6:1                             | <b>Expires</b> 39:22                                   | <b>forthright</b> 29:1                                                                                           | <b>hard</b> 30:1                                                                                                                                                                                |
| <b>digress</b> 18:5                                                                                                                                | <b>e-mail</b> 11:4 13:18<br>14:2,11,16 15:1        | <b>explained</b> 20:10                                 | <b>forward</b> 15:1 37:17                                                                                        | <b>Harsimus</b> 2:13 5:15<br>9:16 10:5 11:12<br>11:16 36:9                                                                                                                                      |
| <b>dinner</b> 13:12                                                                                                                                | 15:10 16:21 17:1                                   | <b>explaining</b> 37:11                                | <b>forwarded</b> 14:15                                                                                           | <b>health</b> 10:22 29:6                                                                                                                                                                        |
| <b>direct</b> 13:20                                                                                                                                | 17:6,13,20 27:5<br>29:17                           | <b>expressed</b> 9:2 17:16<br>35:5                     | <b>found</b> 13:10,11                                                                                            | <b>hear</b> 23:15                                                                                                                                                                               |
| <b>directing</b> 10:19                                                                                                                             | <b>e-mails</b> 13:17,21<br>14:1 15:3 16:5          | <b>extend</b> 32:13                                    | <b>frankly</b> 28:11 29:9<br>29:11                                                                               | <b>heard</b> 33:21                                                                                                                                                                              |
| <b>direction</b> 39:8                                                                                                                              | 17:2,7 19:6 27:2,4<br>27:22,22 28:5<br>29:14,21    | <b>extension</b> 32:21                                 | <b>fraudulent</b> 24:17<br>25:12                                                                                 | <b>hearing</b> 2:5 9:8<br>16:16                                                                                                                                                                 |
| <b>directly</b> 14:16 32:7                                                                                                                         | <b>ECF</b> 19:19                                   | <b>extensive</b> 10:15<br>11:4                         | <b>free</b> 35:10                                                                                                | <b>help</b> 20:15 34:22                                                                                                                                                                         |
| <b>disagree</b> 30:18                                                                                                                              | <b>effect</b> 7:15                                 | <hr/> <b>F</b> <hr/>                                   | <b>Friday</b> 15:2 16:15<br>17:17                                                                                | <b>helpful</b> 16:17 20:1                                                                                                                                                                       |
| <b>discharge</b> 20:5                                                                                                                              | <b>either</b> 14:15                                | <b>fact</b> 13:1 27:4                                  | <b>Frontier</b> 13:19                                                                                            | <b>hereto</b> 39:15                                                                                                                                                                             |
| <b>disclose</b> 36:7                                                                                                                               | <b>embankment</b> 2:14<br>5:16 10:6 11:11          | <b>factor</b> 35:2                                     | <b>fully</b> 18:11,16 22:11                                                                                      | <b>high-rises</b> 11:17                                                                                                                                                                         |
| <b>Discontinuation</b> 1:5<br>1:7                                                                                                                  | <b>employed</b> 39:11,14                           | <b>facts</b> 11:3                                      | <b>further</b> 36:1 38:12<br>38:13 39:13                                                                         | <b>historic</b> 8:2                                                                                                                                                                             |
| <b>discovery</b> 5:6,7 7:11<br>7:15 10:13 12:5,9<br>12:21 16:12 18:8<br>19:9 24:6 26:6,9<br>27:1 28:21 29:2<br>30:15 32:18 34:6<br>34:7 36:1 37:22 | <b>employee</b> 39:14                              | <b>fair</b> 9:3                                        | <b>future</b> 8:7                                                                                                | <b>history</b> 25:2                                                                                                                                                                             |
| <b>discuss</b> 9:4 30:8<br>33:20,22 38:1                                                                                                           | <b>encompass</b> 29:14                             | <b>fall</b> 37:3                                       | <hr/> <b>G</b> <hr/>                                                                                             | <b>home</b> 17:20 21:19                                                                                                                                                                         |
| <b>discussion</b> 28:4 30:4                                                                                                                        | <b>Energy</b> 2:3 18:9                             | <b>fame</b> 13:13                                      | <b>G</b> 5:1                                                                                                     | <b>Honor</b> 5:19,22 6:12<br>7:5,22 9:6 10:11<br>12:9 15:8,16<br>16:10,18 18:1<br>19:4 22:17,21<br>23:20 24:20 26:2<br>26:3,22 28:9<br>29:13 30:19 31:5<br>31:11 32:3 33:10<br>36:6 37:14 38:11 |
| <b>discussions</b> 36:22                                                                                                                           | <b>engage</b> 16:12 36:22                          | <b>familiar</b> 13:20                                  | <b>general</b> 5:17 10:11<br>27:1                                                                                | <b>Honorable</b> 1:17 2:2                                                                                                                                                                       |
| <b>disfavored</b> 12:9                                                                                                                             | <b>enlightening</b> 22:13                          | <b>far</b> 30:16                                       | <b>generically</b> 9:11                                                                                          | <b>hope</b> 17:3                                                                                                                                                                                |
| <b>displayed</b> 13:17                                                                                                                             | <b>enter</b> 5:11 16:18<br>17:21 18:2 22:2<br>23:7 | <b>fashion</b> 29:3                                    | <b>getting</b> 23:16                                                                                             | <b>hopefully</b> 37:21                                                                                                                                                                          |
| <b>dispute</b> 11:12 30:15<br>36:2                                                                                                                 | <b>entering</b> 23:22                              | <b>favor</b> 37:7                                      | <b>give</b> 17:14 21:17<br>23:1,2 32:19,20<br>34:8                                                               | <b>Horgan</b> 3:3 5:22 6:1<br>14:12 15:11,15,20<br>22:19,20,21 26:3<br>26:15 27:4,19<br>28:3,8 29:16 30:5<br>30:18 31:5,11,20<br>31:22 32:2,6,22<br>33:4 38:1,11                                |
| <b>disputes</b> 5:6 34:8<br>37:22                                                                                                                  | <b>entertain</b> 5:5 6:20<br>7:10 18:14 33:9       | <b>Federal</b> 2:3 18:9                                | <b>given</b> 21:14 39:10                                                                                         | <b>hub</b> 9:21                                                                                                                                                                                 |
| <b>District</b> 39:21                                                                                                                              | <b>entertaining</b> 18:7                           | <b>feel</b> 25:4 31:6                                  | <b>giving</b> 33:7                                                                                               | <b>Hudson</b> 1:3,5,7 5:9                                                                                                                                                                       |
| <b>docket</b> 1:2,4,6 5:7<br>19:20,21                                                                                                              | <b>entirety</b> 36:9,15                            | <b>FERC</b> 37:1                                       | <b>glimmer</b> 24:4                                                                                              | <b>Hyman</b> 10:20,21<br>11:1,10 13:6,22<br>14:4,4,11 19:8<br>27:11 29:5                                                                                                                        |
| <b>dockets</b> 20:3                                                                                                                                | <b>Eric</b> 4:3 14:20                              | <b>Ferster</b> 2:17 5:17,19                            | <b>go</b> 20:11 21:3,10<br>22:12 27:17 29:12<br>31:10                                                            |                                                                                                                                                                                                 |
| <b>doctrine</b> 12:9                                                                                                                               | <b>escaped</b> 37:18                               | <b>Fifth</b> 2:18                                      | <b>goal</b> 22:6                                                                                                 |                                                                                                                                                                                                 |
| <b>document</b> 10:16<br>29:14 32:18                                                                                                               | <b>ESQ</b> 2:8,17 3:3,10                           | <b>file</b> 8:6 24:12 35:14<br>36:2                    | <b>goes</b> 13:1                                                                                                 |                                                                                                                                                                                                 |
| <b>documents</b> 14:12,13<br>14:14 17:2 20:2<br>20:12 21:9,15<br>23:11,17,22 24:4                                                                  | <b>essentially</b> 19:6                            | <b>filed</b> 7:11,13,20,22<br>8:10,11 10:2<br>24:11    | <b>going</b> 8:3 11:5 13:4<br>15:2,11,15 19:2<br>23:7 25:1 27:21<br>28:3 29:9 30:1<br>32:11 34:4 37:3,5<br>37:16 |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>estate</b> 35:4                                 | <b>files</b> 20:7                                      | <b>good</b> 5:2,12,19,20<br>17:21 22:9 33:18<br>34:14,18                                                         |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>et</b> 5:9 9:11                                 | <b>filing</b> 7:17                                     | <b>gotten</b> 19:21                                                                                              |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>evening</b> 19:6                                | <b>final</b> 19:15 20:4                                |                                                                                                                  |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>event</b> 34:2                                  | <b>financial</b> 7:16 34:1<br>34:9,15 35:3,12<br>36:22 |                                                                                                                  |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>everybody</b> 23:2<br>37:8                      | <b>financially</b> 39:15                               |                                                                                                                  |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>everyone's</b> 21:16                            | <b>financials</b> 35:18,19                             |                                                                                                                  |                                                                                                                                                                                                 |
|                                                                                                                                                    | <b>evidence</b> 12:7 35:5                          | <b>find</b> 19:14 21:3<br>29:19                        |                                                                                                                  |                                                                                                                                                                                                 |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Hymans</b> 14:15 27:9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>judge</b> 1:18 5:2,3,12<br>5:20 6:5,15,19 7:2<br>7:6 8:8,13,22 9:9<br>9:14 10:1,10<br>12:16 13:13 15:4<br>15:7,13,21 16:6<br>17:9,21 18:4<br>19:16 20:8,22<br>21:7,12,20 22:2,9<br>22:20 23:13,21<br>24:10,18,21 25:21<br>26:12,16 27:19<br>28:6 29:12 30:3<br>30:14 31:3,6,16<br>31:22 32:5,15<br>33:8,17,19 34:4<br>36:12,17,21 37:18<br>38:5,15 | <b>list</b> 14:1<br><b>listed</b> 20:16,17,19<br><b>little</b> 8:18 14:20<br>32:11 38:6<br><b>LLC</b> 3:8 6:3<br><b>LLCs</b> 6:3 7:7 10:16<br>10:22 11:6 13:6<br>22:22 25:15 26:7<br>27:9,9 28:18<br>29:20,22<br><b>LLCs'</b> 10:19<br><b>LLP</b> 3:11<br><b>long</b> 8:7 12:15<br><b>longer</b> 10:21 13:1<br>27:14 29:5<br><b>look</b> 21:22 28:7<br>32:20 37:17<br><b>looked</b> 14:2<br><b>looking</b> 21:19 24:13<br>24:15 38:8<br><b>looks</b> 24:18<br><b>lot</b> 8:4 14:5 22:10<br>22:13 28:20 | 5:13 6:10,12,17<br>7:1 8:14,19 9:5,10<br>9:15 10:1,9,11<br>12:19 13:15 15:20<br>16:7,9 19:3,4,18<br>20:10 22:16,17<br>23:2,15,19 24:3<br>24:15,20 25:3<br>26:2,7,11,17,21<br>29:6,13,17 30:10<br>32:17 33:2,6,10<br>33:18,21 35:14<br>37:12,14,20 38:14<br><b>Montange's</b> 17:10<br>30:6<br><b>morning</b> 5:2,12,19<br>5:21<br><b>motion</b> 7:11,15<br><b>mouthful</b> 9:12<br><b>moving</b> 9:5<br><b>multiple</b> 8:15 24:14<br>24:16                                                                                                                                                                                                                                                                            | <b>number</b> 1:2,4,6 5:7<br>10:14 20:18 21:17<br>22:1 28:15,16<br><b>numbers</b> 19:20,21<br>20:21 21:2,4,5,9<br>22:6<br><b>numerous</b> 28:17<br><b>NW</b> 2:9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>I</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>J</b>                                                                                                                                                                                                                                                                                                                                              | <b>K</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>N</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>O</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>idea</b> 18:17 24:3<br><b>III</b> 3:10<br><b>imagine</b> 14:10<br><b>immediately</b> 26:5<br><b>impossible</b> 30:17<br><b>inappropriate</b> 31:7<br><b>including</b> 16:22<br><b>independent</b> 33:7<br><b>indicate</b> 20:2,3<br><b>indicated</b> 8:19<br>12:12 21:4 32:10<br><b>indispensable</b> 6:16<br><b>individually</b> 28:14<br><b>information</b> 13:8<br>14:17 16:15 35:16<br><b>inquiry</b> 25:11<br><b>instances</b> 18:12<br><b>intend</b> 18:6<br><b>intends</b> 11:18<br><b>intent</b> 28:22<br><b>interest</b> 17:16 21:17<br><b>interested</b> 10:4<br>34:19 39:16<br><b>interesting</b> 16:8<br><b>interests</b> 19:8<br><b>interfere</b> 12:22<br><b>interrogatories</b><br>29:19 33:2<br><b>interruption</b> 16:8<br><b>intrigue</b> 24:22<br><b>introduction</b> 12:6<br><b>involves</b> 36:2<br><b>issue</b> 10:8 18:17,20<br>25:4,9,13,16 26:4<br>37:16<br><b>issued</b> 18:13<br><b>issues</b> 8:21 10:22<br>24:9 28:9,12 37:6<br><b>items</b> 33:1<br><b>Ithaca</b> 13:14 | <b>judges</b> 31:17<br><b>July</b> 5:4<br><b>June</b> 36:6<br><b>jurisdiction</b> 25:19                                                                                                                                                                                                                                                               | <b>keep</b> 17:6 18:22<br><b>kind</b> 6:12 12:5 13:2<br>13:18 19:19<br><b>kinds</b> 25:11<br><b>knew</b> 9:1<br><b>know</b> 6:13,17 9:1<br>11:2 18:18 19:20<br>24:7,18 28:3 30:1<br>31:2<br><b>knowing</b> 13:4<br><b>knows</b> 15:12 18:9                                                                                                                                                                                                                                                             | <b>N</b><br>N 5:1<br><b>name</b> 5:2,22 16:2<br><b>names</b> 5:13<br><b>necessarily</b> 24:10<br>34:5<br><b>necessary</b> 18:3,7<br><b>need</b> 6:4 15:19<br>23:21 34:11 37:9<br><b>needed</b> 27:12<br><b>neither</b> 39:10<br><b>net</b> 36:19<br><b>never</b> 7:3<br><b>New</b> 1:3,5,7 3:6 4:6<br>5:9 35:6<br><b>night</b> 6:14 8:20<br>13:12 14:8 15:1,9<br><b>nonplus</b> 6:13<br><b>nonrail</b> 11:17<br><b>Norfolk</b> 1:6<br><b>North</b> 4:5<br><b>Northeast</b> 2:4<br><b>Northern</b> 9:22<br><b>Northwest</b> 2:18<br>3:12<br><b>Notary</b> 39:1,20<br><b>note</b> 33:11<br><b>notion</b> 18:14<br><b>notwithstanding</b><br>14:17<br><b>NOVEMBER</b><br>39:22<br><b>nub</b> 7:12                         | <b>O</b><br>O 5:1<br><b>object</b> 18:1<br><b>objection</b> 21:18<br>23:3,5 29:4<br><b>objections</b> 29:1 30:6<br>30:8<br><b>obligated</b> 16:20<br>17:11<br><b>obtain</b> 20:11,13<br><b>occurs</b> 16:17<br><b>OFA</b> 7:17,20 8:1,4<br>8:7,10 11:19<br>24:11 33:13,14<br>34:9 35:14 36:3<br><b>OFAs</b> 37:17<br><b>officer</b> 39:3<br><b>offices</b> 2:3<br><b>okay</b> 8:6 10:9 36:21<br><b>open</b> 14:7 16:20<br><b>opened</b> 13:16 34:5<br><b>opera</b> 29:10<br><b>operas</b> 24:19<br><b>order</b> 11:17 13:3<br>16:18 17:22 18:2<br>18:16 19:1 22:3<br>23:8,8,9 36:6<br>37:17<br><b>orderly</b> 16:11<br><b>orders</b> 18:11 19:15<br>20:4,5<br><b>ordinarily</b> 25:5<br><b>outcome</b> 39:16<br><b>outcomes</b> 16:16<br><b>overly</b> 30:9<br><b>owe</b> 34:21<br><b>owned</b> 28:14 |
| <b>J</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>K</b>                                                                                                                                                                                                                                                                                                                                              | <b>L</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>M</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>P</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>jacket</b> 7:8<br><b>James</b> 4:10 20:18<br><b>Jenkins</b> 3:10 16:2,2<br>17:15<br><b>Jersey</b> 1:3,5,7 2:12<br>3:6 4:6 5:9,14<br>9:18,22 11:13<br>35:6,7<br><b>John</b> 1:17 2:2 5:3<br><b>join</b> 37:16<br><b>Journal</b> 9:18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>known</b> 9:1<br><b>know</b> 6:13,17 9:1<br>11:2 18:18 19:20<br>24:7,18 28:3 30:1<br>31:2<br><b>knowing</b> 13:4<br><b>knows</b> 15:12 18:9                                                                                                                                                                                                        | <b>large</b> 28:13 33:6<br><b>late</b> 7:2 8:18,19<br>14:20<br><b>law</b> 1:18 5:3 10:12<br><b>lawyers</b> 28:19<br><b>lead</b> 12:6 23:17<br><b>learned</b> 10:14 17:7<br><b>leave</b> 37:13<br><b>library</b> 17:18<br><b>life</b> 31:18<br><b>Lighting</b> 3:5<br><b>likewise</b> 25:15<br><b>limit</b> 22:7<br><b>limited</b> 19:6<br><b>limiting</b> 18:20<br><b>line</b> 36:15<br><b>links</b> 9:17<br><b>liquidation</b> 36:19                                                                  | <b>M</b><br>M 3:10<br><b>making</b> 23:12 29:21<br>29:22<br><b>management</b> 10:17<br><b>manager</b> 10:22 11:2<br>29:6<br><b>managing</b> 10:18<br>29:19<br><b>Marin</b> 3:8 6:2<br><b>market</b> 35:7<br><b>material</b> 14:3,4<br><b>materials</b> 30:22<br><b>matter</b> 6:22 7:12<br>11:15<br><b>matters</b> 5:6<br><b>Mayer</b> 3:11<br><b>McNeill</b> 3:4 6:2<br><b>McPherson</b> 3:4 6:1<br><b>mean</b> 34:20<br><b>meet</b> 35:11 38:16<br><b>meeting</b> 8:20 34:14<br><b>mentioned</b> 23:6<br><b>mile</b> 36:15<br><b>million</b> 34:22 35:7<br><b>mind</b> 18:22<br><b>mine</b> 13:19 31:18<br><b>misrepresentations</b><br>24:17<br><b>mode</b> 12:5<br><b>moment</b> 15:19<br><b>Montange</b> 2:8 5:12 | <b>P</b><br>P 1:17 2:2 5:1<br><b>P.C</b> 3:4<br><b>p.m</b> 6:14<br><b>PACER</b> 19:17,18<br>20:11,14<br><b>page</b> 36:10<br><b>paraphrase</b> 9:3<br>26:1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|                             |                            |                             |                             |                           |
|-----------------------------|----------------------------|-----------------------------|-----------------------------|---------------------------|
| <b>pardon</b> 15:6          | 33:8,17,19 34:4            | <b>quarter</b> 9:17         | <b>remedies</b> 25:16,19    | 20:22 21:7,10             |
| <b>part</b> 10:18 35:21     | 36:12,17,21 37:18          | <b>question</b> 15:14       | <b>remedy</b> 11:21 33:13   | 22:2 24:1 26:17           |
| <b>participants</b> 25:2    | 38:5,15                    | <b>questions</b> 26:10      | 33:14                       | 29:16 31:7,19             |
| <b>parties</b> 2:6 8:6      | <b>presumably</b> 34:1     | 35:15                       | <b>remember</b> 14:3        | 36:4,17 37:10             |
| 10:12 15:18 16:4            | <b>presume</b> 7:3         | <b>quite</b> 6:17 28:11     | 20:17,21                    | <b>rising</b> 15:22 22:19 |
| 16:19 18:11,12              | <b>presumes</b> 10:12      | 29:9,11                     | <b>reminded</b> 38:6        | <b>rmjenkins@maye...</b>  |
| 32:12 36:8 39:12            | <b>previously</b> 27:1     | <hr/>                       | <b>repeat</b> 6:4           | 3:14                      |
| 39:15                       | <b>price</b> 36:8,14       | <b>R</b>                    | <b>REPORTED</b> 1:21        | <b>Robert</b> 3:10 16:2   |
| <b>party</b> 6:16 9:6       | <b>primary</b> 20:19       | <b>R</b> 5:1                | <b>REPORTER</b> 39:1        | <b>Room</b> 2:5           |
| <b>pending</b> 38:1         | <b>print</b> 17:7          | <b>rail</b> 1:2 3:15 4:4,8  | <b>represent</b> 9:10 13:3  | <b>RPR</b> 1:22           |
| <b>Pennsylvania</b> 2:13    | <b>pro</b> 4:10            | 5:8 12:2                    | <b>representations</b>      | <b>rule</b> 5:6           |
| 5:15                        | <b>probably</b> 14:12,13   | <b>Railroad</b> 2:13 5:15   | 14:18 29:22                 | <hr/>                     |
| <b>people</b> 22:13 34:17   | 17:19 18:18 21:16          | 14:20 24:6                  | <b>represented</b> 11:6     | <b>S</b>                  |
| <b>perfectly</b> 6:21       | 37:6                       | <b>Rails</b> 2:15,21 5:14   | 27:2                        | <b>S</b> 4:3 5:1          |
| <b>permitted</b> 8:17       | <b>problem</b> 21:1 22:22  | 5:18                        | <b>representing</b> 28:18   | <b>safe</b> 9:12          |
| <b>person</b> 15:12         | <b>problems</b> 37:8       | <b>raised</b> 23:5 26:4     | <b>request</b> 12:5 26:22   | <b>safety</b> 9:2         |
| <b>personal</b> 25:2        | <b>procedural</b> 26:18    | <b>raising</b> 31:12        | 28:22 29:14 33:22           | <b>sanctioning</b> 18:15  |
| <b>pile</b> 38:8            | <b>procedures</b> 25:12    | <b>rare</b> 18:12           | <b>requests</b> 26:6,9 29:2 | <b>sanctions</b> 18:13,18 |
| <b>pleading</b> 25:6        | 25:13                      | <b>rational</b> 31:18       | 29:18 30:6,9 33:3           | 18:19,21                  |
| <b>pleadings</b> 11:8 20:9  | <b>proceed</b> 16:7        | <b>reach</b> 9:21 30:21     | <b>required</b> 36:7 37:16  | <b>SARA</b> 1:22 39:3     |
| 21:5                        | <b>proceeding</b> 6:16     | <b>read</b> 10:2 20:8       | <b>requirements</b> 34:15   | <b>satisfied</b> 22:18    |
| <b>please</b> 5:10 16:7     | 7:20 8:2 11:20             | <b>reading</b> 10:4         | 35:11                       | 23:16                     |
| 21:21                       | 12:12,17,21 13:1           | <b>real</b> 35:4            | <b>requires</b> 35:20       | <b>Saturday</b> 26:9      |
| <b>pleasure</b> 38:16       | 16:12 23:10 24:1           | <b>really</b> 34:22         | <b>reruns</b> 29:10         | 32:11,18 33:4             |
| <b>point</b> 5:10 7:18 10:5 | 26:13 27:13 36:1           | <b>reason</b> 33:9          | <b>resigned</b> 11:1        | <b>saved</b> 22:10        |
| 12:18,22 24:11              | 37:22                      | <b>reasons</b> 29:6         | <b>resolve</b> 5:6          | <b>saw</b> 8:22 14:21     |
| 32:4                        | <b>proceedings</b> 12:10   | <b>recall</b> 29:15         | <b>resolved</b> 8:21        | <b>saying</b> 9:15 23:15  |
| <b>pony</b> 38:8            | 19:10 20:5 30:22           | <b>received</b> 24:5        | <b>respective</b> 2:6       | 31:13                     |
| <b>positions</b> 31:1       | 33:14                      | <b>record</b> 6:4 7:20 9:16 | <b>respond</b> 26:8 30:5    | <b>says</b> 8:6 36:18     |
| <b>possible</b> 10:7 16:16  | <b>process</b> 8:4 17:19   | 10:3,4 31:12                | 31:20 34:12                 | <b>schedule</b> 12:20     |
| 25:11                       | 34:10 35:2                 | 33:11 34:12 35:5            | <b>responded</b> 36:10,12   | 33:15                     |
| <b>post</b> 36:15           | <b>processes</b> 25:15,18  | 35:6 38:17 39:9             | <b>response</b> 7:13 36:5   | <b>se</b> 4:10 23:4       |
| <b>potentially</b> 24:8     | <b>produce</b> 27:21,21    | <b>records</b> 19:12,15     | <b>responsibility</b> 34:9  | <b>search</b> 13:21,21    |
| <b>practice</b> 18:10 25:5  | 27:22 28:2,4               | 34:1                        | 34:15 35:3,12               | <b>seasons</b> 29:10      |
| <b>prejudicing</b> 26:19    | <b>program</b> 19:16       | <b>reduce</b> 30:12         | <b>restaurant</b> 14:9      | <b>Seattle</b> 2:10       |
| <b>premature</b> 30:4       | <b>prolonged</b> 12:20     | <b>reduced</b> 39:8         | <b>result</b> 8:16          | <b>Secaucus</b> 3:6 9:21  |
| <b>prepared</b> 22:12       | <b>properties</b> 11:11,13 | <b>refer</b> 9:11           | <b>retrieve</b> 17:10       | <b>second</b> 7:10        |
| <b>present</b> 2:5 10:17    | <b>prospective</b> 11:14   | <b>referred</b> 19:16,18    | <b>Riffin</b> 4:10 6:7,8,13 | <b>Section</b> 8:2 33:12  |
| <b>presents</b> 35:9        | <b>provide</b> 17:3 30:11  | <b>referring</b> 19:17      | 7:3,4,11,13,19,22           | <b>secure</b> 11:10,16    |
| <b>Preservation</b> 2:14    | <b>provided</b> 11:9       | <b>regard</b> 22:11 24:11   | 8:11,14 10:15               | 12:1                      |
| 5:16                        | <b>provides</b> 9:19       | <b>regulations</b> 18:19    | 11:6,6 12:10 13:5           | <b>see</b> 6:7 15:18 22:1 |
| <b>preserved</b> 17:2       | <b>providing</b> 16:15,18  | 35:22                       | 13:10 14:22 15:5            | 23:17 27:15 31:4          |
| <b>PRESIDING</b> 5:2,20     | <b>public</b> 12:2 21:9,15 | <b>Regulatory</b> 2:4       | 15:6,8,14 16:19             | 31:10 33:8 34:1           |
| 6:5,15,19 7:2,6             | 39:1,20                    | 18:10                       | 17:5,13 18:1,18             | 34:17 38:2                |
| 8:8,13,22 9:9,14            | <b>pulled</b> 13:22        | <b>relate</b> 27:10         | 19:5,7,8,14 20:9            | <b>seeing</b> 29:20       |
| 10:1,10 12:16               | <b>purchase</b> 36:8       | <b>related</b> 39:11        | 20:16,18 21:1,8             | <b>seek</b> 13:8          |
| 13:13 15:4,7,13             | <b>purpose</b> 22:14       | <b>relationship</b> 30:1    | 21:18,22 22:5               | <b>seeking</b> 12:1       |
| 15:21 16:6 17:9             | 31:11                      | <b>relative</b> 39:13       | 23:1 24:12 26:10            | <b>seen</b> 14:18 30:16   |
| 17:21 18:4 19:16            | <b>purposes</b> 12:3 13:6  | <b>relevance</b> 7:13       | 27:1,6,10,14 28:1           | 33:17                     |
| 20:8,22 21:7,12             | 24:14,14,16 34:7           | 21:13 22:11 23:7            | 28:16 31:1 32:3,6           | <b>send</b> 15:11,17,19   |
| 21:20 22:2,9,20             | <b>pursuant</b> 33:14      | 25:7,7 28:12                | 33:20,21 34:11              | 17:15                     |
| 23:13,21 24:10,18           | 36:6                       | <b>relevant</b> 7:17 11:20  | 36:5,14,18,21               | <b>sending</b> 28:5       |
| 24:21 25:21 26:12           | <b>put</b> 7:8 31:12       | 12:4 20:3 21:11             | 37:15 38:13                 | <b>sense</b> 20:10        |
| 26:16 27:19 28:6            | <b>putting</b> 13:22       | 23:11 24:8 25:4             | <b>Riffin's</b> 19:10       | <b>sent</b> 14:4,4        |
| 29:12 30:3 31:3,6           | <hr/>                      | 25:13,16 27:12              | <b>right</b> 6:8,19 7:2,9   | <b>separate</b> 26:6      |
| 31:16,22 32:5,15            | <b>Q</b>                   | 35:17,18                    | 8:3,8 15:13 16:6            | <b>September</b> 29:15    |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 32:19 33:5<br>sequence 14:1<br>serious 29:8<br>serve 29:3<br>served 5:4 26:7<br>Service 1:5,7<br>setting 9:7<br>seven 6:3<br>shippers 11:22<br>shorthand 39:7<br>shovel 38:7<br>show 35:12<br>shows 34:12<br>side 25:6<br>silent 8:16<br>simple 37:2<br>simply 29:5<br>sir 6:5,19 7:8 9:14<br>sit 7:5,7<br>situation 6:18 30:7<br>situations 16:13<br>six 35:6<br>skyscrapers 11:18<br>slows 33:12<br>soap 24:19 29:9<br>Sorry 16:7 24:20<br>sort 32:6,13<br>sorts 24:17<br>sought 15:3 19:10<br>sources 10:15<br>Southern 1:6<br>speaks 37:15<br>speed 8:15 17:19<br>spend 18:6 22:8<br>spread 13:13<br>Square 9:19<br>stage 9:7<br>stand 26:1 34:14<br>start 12:16<br>state 37:15<br>stated 7:14 16:20<br>30:5 37:2<br>statement 37:4<br>States 11:8<br>status 1:10 2:1<br>38:18<br>stay 8:16<br>STB 12:21,22 23:10<br>23:22 25:5,8,12<br>25:12,15,17<br>STB's 33:12<br>stead 34:14<br>Stem 2:13 5:16 10:5<br>stipulations 30:21<br>Street 2:4,9 3:12<br>Strohmeyer 4:3 | 14:19,20<br>strong 35:9<br>stuff 13:2 38:1<br>substantial 36:22<br>subverting 11:21<br>sufficiency 35:15<br>sufficient 15:22<br>20:2 35:10<br>suggest 26:14 30:16<br>32:12<br>suggestion 6:20<br>15:9 17:11 32:8<br>35:9<br>suggests 31:17<br>Suite 4:5<br>summaries 24:22<br>supplants 33:16<br>support 36:2<br>suppose 9:3<br>supposed 11:22<br>supposedly 7:16<br>supposition 35:5<br>Supreme 11:8<br>sure 8:9 11:3 19:22<br>26:21<br>Surface 1:1 5:5 11:7<br>11:21 12:8,14<br>sworn 39:6<br>system 13:18<br><br><b>T</b><br>take 28:7 29:9<br>32:11 34:16<br>taken 39:4,7,13<br>takes 25:17<br>talking 26:11 35:21<br>tangled 24:12<br>teach 22:14<br>tell 17:5 22:5 31:14<br>telling 21:2 37:5<br>tendered 29:18<br>terms 17:10,17 25:8<br>testimony 39:5,6,10<br>Thank 5:20 6:5 7:8<br>9:9 10:10 22:3<br>26:2 32:2 33:18<br>38:14,15<br>thereof 13:7<br>things 8:5 25:11<br>27:17 28:15 30:14<br>think 6:4 7:12,14<br>10:3 11:20 12:13<br>14:22 15:21 16:17<br>18:2 19:20 20:19<br>21:2,11,16 22:10<br>23:15 26:3,10 | 27:4 31:9 33:7<br>34:19 35:8,17,20<br>thinking 16:15<br>third 21:17<br>thought 31:8<br>thousands 28:15<br>three 21:5,6,15 22:5<br>22:6 26:6<br>thrown 14:8<br>time 8:7 17:17 18:6<br>18:7 22:7,10<br>26:19 32:20 33:15<br>timely 18:16 29:3<br>times 8:15<br>today 5:18 7:12<br>10:8 16:16 22:8<br>33:20 37:13,18<br>38:10<br>today's 26:13 30:22<br>told 10:21 27:17<br>top 13:22<br>total 36:14<br>town 6:13 9:1 13:11<br>Trails 2:15,21 5:14<br>5:18<br>transportation 1:1<br>1:4 5:5 9:17,21<br>11:7,21 12:1,8,14<br>tried 14:9 30:19<br>truck 37:3<br>true 39:9<br>trust 24:13<br>try 22:7 35:16 37:16<br>trying 13:5 30:20<br>turnip 37:3<br>two 20:16 21:4,5,15<br>26:8 28:9 30:8,17<br>31:9 33:1<br>typewriting 39:8<br>typically 30:7,13<br><br><b>U</b><br>uncertain 27:6<br>understand 8:8<br>15:12 16:22 21:12<br>23:7 31:19<br>understanding 34:8<br>34:13<br>understands 10:5<br>underutilized 9:17<br>9:20<br>unduly 30:9<br>unfortunately 38:3<br>unique 12:13,17,18<br>United 11:8<br>use 11:17 12:2 | 25:12 26:19<br><br><b>V</b><br>value 35:7 36:19<br>verify 21:3,8<br>versed 24:21<br>Victoria 10:20 11:1<br>14:11<br>view 14:9 24:8<br>25:10,15,18 27:12<br>35:22 37:6<br>views 11:9<br>visit 38:3<br>voluntary 23:1,8<br><br><b>W</b><br>wait 28:6 31:4<br>want 7:4,19 15:18<br>18:3 21:13 24:1<br>26:18<br>wanted 8:9 33:22<br>wants 17:17 18:2<br>21:8 23:1,2 26:20<br>Ward 2:18<br>Washington 1:12<br>2:2,10,19 3:13<br>wasn't 34:4<br>Waters 3:4 6:1<br>way 3:5 26:20 33:12<br>ways 30:20<br>we're 8:12 22:8<br>29:11<br>we've 8:20 10:20<br>30:19,19<br>web 24:12<br>Wednesday 1:13<br>2:1<br>week 15:2 29:3<br>32:13<br>went 14:1<br>WICK 1:22 39:3<br>wife 10:20<br>wife's 24:19<br>WiFi 14:6<br>wind 31:13<br>winnow 26:12 30:10<br>wishes 11:16 25:8<br>witness 39:5,7,10<br>WMS 20:20<br>work 30:13,15,17<br>31:10 38:2<br>working 25:22<br>30:20<br>worry 23:21<br>writing 20:11<br>written 20:9 24:22 | <br><b>X</b><br>x 1:2,4,6,8<br><br><b>Y</b><br>Yahoo 13:19<br>years 12:15<br><br><b>Z</b><br>zero 36:12<br><br><b>0</b><br>07096 3:6<br>08812 4:6<br><br><b>1</b><br>1 2:5 28:15 34:21<br>36:6<br>1.34 36:15<br>10 8:6 20:17 28:19<br>10:00 2:5<br>10:38 38:18<br>106 8:2 33:12<br>11 12:15<br>11:00 6:14<br>12 28:19<br>14 39:22<br>162nd 2:9<br>167 1:3 5:7<br>191 4:5<br>1999 3:12<br><br><b>2</b><br>2 28:16<br>20006 3:13<br>20037 2:19<br>201-330-7453 3:7<br>2015 14:2<br>2016 1:13 2:2 5:4<br>2017 39:22<br>202-263-3261 3:14<br>202-974-5142 2:20<br>206-546-1936 2:11<br>212 3:8 6:2<br>2121 2:18<br>22,109.51 36:16<br>23,000 34:13,21,22<br>35:10 37:4<br>238 4:5<br>24 1:13<br>25 2:1<br>290 1:7<br>2nd 29:15 32:19<br>33:5<br><br><b>3</b><br>300 3:5 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                  |  |  |  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|
| <div>4</div> <div>426 2:9</div> <div>5</div> <div>5 36:10</div> <div>55 1:5</div> <div>5th 5:4</div> <div>6</div> <div>60 35:7</div> <div>7</div> <div>8</div> <div>888 2:4</div> <div>9</div> <div>908-361-2435 4:7</div> <div>98177 2:10</div> |  |  |  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|