

**In Re:**  
*HORSEHEAD HOLDING CORP., et al.*  
*Case No. 16-10287(CSS)*

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*May 2, 2016*

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 16-10287(CSS)

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In the Matter of:

HORSEHEAD HOLDING CORP., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

May 2, 2016

10:06 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

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Motion of Guy Spier for the Entry of an Order Appointing an  
Equity Committee (Filed March 23, 2016; Docket No. 334) and  
Motion of Phil Town to Allow (Pro Se Motion) for the Entry of  
an Order Appointing an Equity Committee (Filed March 31, 2016;  
Docket No. 355).

Transcribed by: Dee Ventucci

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A P P E A R A N C E S :

DRINKER BIDDLE & REATH LLP

Attorneys for Official Committee of Unsecured Creditors

BY: HOWARD A. COHEN, ESQ.

LOWENSTEIN SANDER

Attorneys for Official Creditors' Committee

BY: KENNETH A. ROSEN, ESQ.

BRUCE D. BUECHLER, ESQ.

DECHERT LLP

Attorneys for Grey Wolf

BY: ALLAN S. BRILLIANT, ESQ.

KIRKLAND & ELLIS LLP

Attorneys for Debtors

BY: RYAN PRESTON DAHL, ESQ.

JAMIE ROSE NETZNIK, ESQ.

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PACHULSKI STANG ZIEHL & JONES LLP

Attorneys for Debtors

BY: LAURA DAVIS JONES, ESQ.

JAMES O'NEILL, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee

BY: TIMOTHY J. FOX, JR., ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Ad Hoc Group of Pre-Petition Senior Secured  
Note Holders and DIP Holders

BY: MEREDITH A. LAHAIE, ESQ.

SARA LYNNE BRAUNER, ESQ.

ANTHONY LORING

ASHBY & GEDDES, P.A.

Attorneys for Ad Hoc Group of Pre-Petition Senior Secured  
Note Holders and DIP Holders

BY: WILLIAM P. BOWDEN, ESQ.

ABID QURESHI, ESQ.

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SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP  
Attorneys for U.S. Bank, NA, Trustee and Collateral Agent  
Secured Notes  
BY: DAVID J. MCCARTY, ESQ.

ALSO PRESENT:  
GUY SPIER, Shareholder  
THOMAS BOSWELL, Boswell Capital Management Limited  
ANDREW HARITON, Shareholder  
PHILLIP TOWN, Shareholder

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Please be seated. Good morning.

IN UNISON: Good morning, Your Honor.

MR. DAHL: For the record, Ryan Preston Dahl of Kirkland & Ellis for the debtors, Your Honor.

THE COURT: Yes.

MR. DAHL: Your Honor, we had filed an amended notice of agenda on the 29th; we propose to proceed in that order. And note that a number of matters have either been continued or orders have been entered following a certificate of no objection or certification of counsel, which leaves one matter on the agenda for the Court's hearing today, which are the pro se motions filed by Mr. Guy Spier, Mr. Phillip Town, CV appointment of an official committee of equity security holders. That, you notice, obviously, a number of joinders were also filed with respect to those motions, as well as objections by the office of the U.S. Trustee, her official committee of unsecured creditors, and also, the debtors, Your Honor.

But if it would please the Court, I would be happy to cede the party into the movants, and then of course, reserve time for rebuttal and argument.

THE COURT: Of course, thank you. Movant.

MR. SPIER: Your Honor, I have written out a statement

1 that will take some time to fill out. I'd like to have your  
2 forbearance in listening to it.

3 THE COURT: I would be happy -- I need you to identify  
4 your -- I know who you are, but you need to identify yourself  
5 for the record.

6 MR. SPIER: My name is Guy Spier, and I'm one of the  
7 movants in this case. And should I identify myself some more?

8 THE COURT: No, that's fine.

9 MR. SPIER: Should I launch straight into it?

10 THE COURT: If you wish.

11 MR. SPIER: From here?

12 THE COURT: Yes, please --

13 MR. SPIER: Okay.

14 THE COURT: -- from the podium.

15 MR. SPIER: So Judge Sontchi, thank you for agreeing  
16 to hear us. All of us here deeply value the American system of  
17 justice and the opportunity you've given us to make our voice  
18 heard. This is not the case in many countries in the world  
19 where proxy rights and the right to due process are regularly  
20 ignored and summarily dismissed. And just so you know, I have  
21 a copy of this for everyone to have afterwards.

22 I'm grateful to be able to participate in the world's  
23 leading democracy where proxy rights are respected and where  
24 the extinguishment of proxy rights is something to be taken  
25 very seriously; something not to be done light-heartedly and

1 not without careful consideration. And forgive me if this is  
2 corny: God bless the United States of America; it's an amazing  
3 country. I came here twenty years ago; it transformed my life.  
4 And I was telling Timothy Fox how deeply impressed I am with  
5 this process.

6 By way of instruction, I'm a professional investor. I  
7 run a fund of about 160 million dollars in assets investing in  
8 equities. I've been doing that for almost twenty years. In  
9 comparison to funds like Grey Wolf and Hotchkis & Wiley, who  
10 are both shareholders in this case, who run of the order of  
11 three or four billion dollars each, I am miniscule. My annual  
12 operation budget is about 1.5 million dollars a year. I am the  
13 sole professional in my firm; I have a couple of assistants.

14 In 2014, I published a book titled The Education of a  
15 Value Investor. As you know, I'm appearing here on my own  
16 account, on account of my personal ownership of Horsehead  
17 shares; not the shares purchased by the fund I manage. I'm  
18 here on a pro se capacity and can only represent myself. Also  
19 by way of background, you should know that I studied law for a  
20 couple of years at University. In addition, I have an MBA, and  
21 I'm familiar with the system of common law, and since the  
22 Horsehead filing, I've been racing to learn as much as time  
23 allows about U.S. bankruptcy law. And I've also had the  
24 opportunity to talk to a number of professionals, and a number  
25 of academics, about the byways of this Court, and how U.S.

1 bankruptcy law works.

2           But I do not have the enormous legal talent and  
3 knowledge that is arrayed against us. These lawyers here, Your  
4 Honor, are being paid by Horsehead, all of them. By companion,  
5 there are probably hundreds, if not some of them, thousands of  
6 dollars to oppose us. And they're paying -- they're using our  
7 company's money to do so.

8           By contrast, I and my fellow shareholders appear here  
9 on our own part on account of our own personal investment. We  
10 appear here on our own dime. We do not cost the company one  
11 penny; we do not cost the courts one penny, or the taxpayer.  
12 We all traveled here from many miles, there are some people who  
13 have come from overseas for this. I just want you to know that  
14 we feel very strongly.

15           I also want to apologize to you for my lack of  
16 knowledge of the law, and I appreciate all of you for accepting  
17 that I am not presenting in the Court the way a lawyer would.  
18 And I request you, Judge Sontchi, that although I am ignorant  
19 of the law, that you should listen carefully to the arguments  
20 that I make. And if there is an appropriate legal basis for my  
21 submission, that you should help me to find it as a pro se  
22 submitter, or help me with the resources to get there.

23           There is another, perhaps misconception that I want  
24 dispel. We are most certainly not a group of embittered  
25 shareholders who refuse to face the harsh hard facts of

1 bankruptcy. We understand, and I met many of the shareholders  
2 yesterday, I met all of them for the first time, actually,  
3 except one or two, who were at the Berkshire Hathaway meeting  
4 with me.

5           But everybody here understands that sometimes  
6 companies fail, and when companies fail if you're an equity  
7 investor, you lose your money. But I have now read about  
8 plenty of bankruptcies, and in almost all cases, there was  
9 plenty of forewarning by the company that they were entering  
10 the zone of insolvency. More importantly, in all of those  
11 cases, the company communicated through its filings and news  
12 releases, explicitly warning the investors that they might have  
13 to file. In one high-profile case right now, Valiant failed to  
14 file its 10Q, that was a violation of his covenant, and they  
15 announced -- they said we may have issues with our creditors.

16           By contrast, Horsehead's bankruptcy filing came as a  
17 complete surprise to all of Horsehead's shareholders. I follow  
18 the company very closely, and it came as a big surprise to me.

19           And in a certain way, I want you to know that the  
20 assembled group here are kind of here to see what this system  
21 does with them. I and other shareholders, as well as other  
22 observers of this process are asking: can investors trust the  
23 market; can they invest and trust the system will protect them;  
24 do the SEC rules of fair disclosure mean anything; do the New  
25 York Stock Exchange rules mean anything; do the Delaware Rules

1 of Chancery on the means by which somebody or a group of people  
2 can take control of a corporation mean anything.

3 In short, can the well-healed, the aggressive, the  
4 powerful, and the rich, take advantage of their superior  
5 knowledge and resources to use the American bankruptcy system  
6 to take control of assets that were in the hands of the less  
7 well-off, the less powerful, and the less connected. And we  
8 ask, where is the financial system moving? Are we moving  
9 towards more democracy where more and more people participate  
10 in enterprise capitalism in the knowledge that they will be  
11 protected, or is it the opposite?

12 We believe that your decision in this case will affect  
13 our, and many observers' opinions, of the bankruptcy system,  
14 about what the bankruptcy system is all about.

15 I also want to apologize to you in my submission, I  
16 addressed you as Justice Sontchi. It is because when I decided  
17 to file a pro se motion, I did have a lawyer called Selena  
18 Sontchi (ph.) representing me in my submission to the U.S.  
19 Trustee. That I spent 100,000 dollars of my own money doing  
20 that, and she informed me that to do this through lawyers would  
21 cost a quarter of a million dollars; that it would have put my  
22 business into a loss, it would have had to have me reach deep  
23 into my pockets and do something that I wasn't prepared to do.  
24 But when I did the pro se motion, I knew it had to be genuine,  
25 and so I made sure that I purchased shares of the company, and

1 I set about writing the motion on my own. So I now know to  
2 address you as Judge Sontchi, and I apologize for that.

3 THE COURT: I'll take the compliment; that's fine.

4 MR. SPIER: Thank you. Well, I should tell you that  
5 in hearsay, you have an extraordinary reputation, and that is  
6 far and wide. So we were encouraged by that.

7 I also want to apologize to you for another reason. I  
8 can understand that we are -- our presence here does not make  
9 your life easy, and we understand which way the wind is  
10 blowing. We have been getting -- we're watching the docket,  
11 and we see the recovery rate, for example, for the unsecured  
12 creditors. And all of us understand the rules of priority. We  
13 know that in order to receive a meaningful distribution, every  
14 single one of the other claimants should be made whole. And  
15 we're not here to claim that they should not be made whole.  
16 And even though I'm requesting an equity committee, I  
17 understand that the most easy thing for this Court to do would  
18 be to approve a course of action that leaves us with nothing.

19 I am sure, Judge Sontchi, and I have not had the  
20 opportunity to really read in depth, but I know that there have  
21 been battles that have been taking place over adequate  
22 protection, and other issues raised as to the bankruptcy that  
23 take up your time. I just want you to know I am not here --  
24 we're not here -- to make your life difficult. We don't want  
25 to waste your Court's time; in a certain way, it's taxpayer

1 money that funds this. And I understand that you've got plenty  
2 of other things on your mind in addition to us, you have many  
3 other cases, and enormous amounts of work to get through. And  
4 I do not -- we are not here, emphatically not here, to seek a  
5 distribution where we don't deserve to get any by the  
6 bankruptcy rules.

7           But I just want you to remember that there's plenty in  
8 the United States that is extraordinarily efficient, but  
9 justice is by its nature, not efficient and not meant to be  
10 efficient. If we are willing to live as a society with a lot  
11 more injustice, we could model ourselves on a country like  
12 Russia where courts often approve assets grabs; we don't do  
13 that here. But it takes time, it creates headaches, it is a  
14 very good court. It is a court based on fairness and justice,  
15 and that's why we're here.

16           So in a certain sense, the argument is for efficiency.  
17 Yeah, sufficiency is good, and we should not spend enormous  
18 amounts where it's not warranted. But we're also about  
19 justice.

20           So now I want to go to the objections as I see them.  
21 And I would love to get a sip of water, if I so may? There's a  
22 cup there, actually. Thank you. And thank you so much.

23           I want you to know that in spite of my English accent,  
24 my wife and children are all American.

25           THE COURT: You are South African, I believe; is that

1 correct?

2 MR. SPIER: I was born in South Africa, yeah. And my  
3 son, so he speaks -- my daughter can do a great British accent;  
4 my son refuses to. And he said that he will never have it in  
5 his life, I kind of wish he did, but.

6 So I want to just dismiss a couple of objections.  
7 Actually, there are objections which I feel are not reasonable  
8 and are kind of like, blocking and tackling that I don't want  
9 to get into; they're petty and I'm going to leave them aside,  
10 you can read them. But here is how I see the objections as  
11 they were placed on the docket a few days ago.

12 First, that the KPMG report is based on old data; the  
13 second is that the KPMG report is flawed; the third is the book  
14 value is not a guide to valuation; and the fourth is that the  
15 market valuation of the securities of the company as they  
16 traded before bankruptcy proves the objectives to my motion's  
17 point.

18 I want to start with the first one, that the KPMG  
19 report is based on old data. Your Honor, the reason why the  
20 KPMG report is based on old data is that it's the only reliable  
21 data that we have. At the time of my motion, the company had  
22 filed its third quarter 10Q with the SEC. Over and above that,  
23 they made some declarations in their first-day filings that  
24 showed enormous book value, and more than eighteen million  
25 dollars of (indiscernible) two years out.

1           But Your Honor, the debtor through the control of the  
2 corporation and the secured creditors, through the  
3 extraordinary influence over this process, are seeking to  
4 squash down the value of the corporation. It is in their  
5 interest to do so. And they control the flow of information.  
6 It was only a few days ago that they filed exhibits to the plan  
7 of reorganization that they filed a week or two before. We  
8 have not had the time -- I am alone, I don't have a lawyer, I  
9 can't send it to somebody to examine these and understand  
10 these, or to properly challenge these assumptions.

11           And even if you look at those plans, and look at their  
12 filings, they don't want to hold themselves to the very  
13 assumptions and conclusions that they are drawing because the  
14 documents themselves are riddled with hedging assumption  
15 statements that say that they are making estimates that they  
16 cannot be held to. And where they reserve the right to change  
17 their estimates and their assumptions. And that the figures  
18 presented can be subject to change. How can we be expected to  
19 provide a convincing valuation report when they are giving us  
20 the data and they control the data?

21           And we're being asked to file a valuation of Horsehead  
22 where the company has not even filed its 10K, a statement that  
23 we as public investors, are used to seeing. And we count on  
24 the accounting -- we count on the accounting oversight and the  
25 legal responsibility for the statements made in that that come

1 with a 10K filing.

2           In this regard, I want you to also note the very  
3 statements and the other joinders that were filed on the  
4 dockets by shareholders who called up the company to find out  
5 what was going on. And they were told by Ali Alavi, the  
6 director of investor relations, that they should rely on the  
7 public filings of the company. Except that the company is not  
8 making that information available. So on the one hand, the  
9 company is telling its shareholders to rely on its statements  
10 and public filings, and on the other hand it is not giving us  
11 the information we need. And is also timing that information  
12 to make it difficult for us to respond. And when it provides  
13 that information, their statements are surrounded by hedging  
14 language that these are estimates and should not be relied up,  
15 and these do not have the blessing of an auditor or the  
16 scrutiny that comes from a filing with the SEC.

17           It does not appear right to me that the Court should  
18 require us to prove valuation when we don't have access to  
19 reliable data. And moreover, the company itself is not willing  
20 to certify the data they're providing. That's just not fair.  
21 You're sending us into a punching match with Mohammed Ali, with  
22 our hands tied behind our back; well, one hand tied behind our  
23 backs, at least.

24           And there's another broader point. If you deny an  
25 equity committee, you'll be giving blessing to the debtors and

1 the creditors' actions. Effectively, the secured creditors'  
2 actions. You'll be saying that it is all right for a company  
3 to declare bankruptcy, shut down communication with its  
4 investors, and there are multiple examples of how it did that,  
5 and just leave us to rely on unaudited, heavily hedged  
6 statements, finding information where we can, to prove a  
7 valuation contest in this Court with this law. I think that's  
8 extraordinary (sic) hard, and I don't think it's right, and I  
9 don't think the U.S. bankruptcy system wants to go to a place  
10 where you bless the situation where the fox is watching the  
11 chickens.

12           So let's go to the KPMG report. First of all, I am an  
13 investment professional. We have all seen plenty of valuation  
14 reports. Let's be clear, KPMG does not produce forward  
15 valuation reports. They're not in the business of doing that;  
16 they have a reputation to protect. Everybody who wants to be  
17 direct and honest will understand that it is a perfectly valid  
18 valuation report. What they can do is argue with the  
19 assumptions. And of course, the different people have costs,  
20 different people will take different discount rates to prove  
21 their point, different people will take different assumptions  
22 on the future price of zinc. But the KPMG valuation report, it  
23 took great pains to show that every single assumption that is  
24 made is based on externally verifiable sources that come from  
25 reputable people.

1           Of course the debtor and the secured creditors want to  
2 take the most conservative assumptions, and of course they want  
3 to disagree with it. But it's not flawed; it's a valid  
4 statement, and it's a valid item for the Court to take a look  
5 at. It's a report that I have no doubt that any one of the  
6 people here would gladly and happily use if they are trying to  
7 prove that the valuation was higher. And I think that nobody  
8 can in good conscience deny that.

9           And I want to go into assumptions, just to show that  
10 some of the attacks on the specifics of the report are also not  
11 true, or not properly guided. And with a great respect to the  
12 U.S. Trustee, the U.S. Trustee states in their objection that  
13 the KPMG report does not reflect current conditions. So we  
14 have statements around, and I'm not so close to it. Oh, you  
15 know, zinc price is down, the industry is, you know, it's just  
16 current conditions are really bad. The U.S. Trustee contends  
17 that the EBITDA multiples are too rich.

18           Your Honor, that betrays a fundamental  
19 misunderstanding of cyclical industries. It is well-known and  
20 well-understood amongst investment analysts that cyclical  
21 industries show their highest EBITDA multiples at cyclical  
22 lows. And they show their lowest EBITDA multiples at cyclical  
23 highs. That may be counterintuitive, but it makes sense  
24 because markets and rational actors look forward; they don't  
25 focus on the current. They look at what will this business do

1 over time. And everybody understands that zinc prices move in  
2 a certain way; everybody understands that businesses have  
3 temporary setbacks.

4 We have seen many times in the public markets, when a  
5 company takes a charge against earnings and its stock price  
6 goes up, why the market is relieved the charge against earnings  
7 has been taken. The fact that the company is going through  
8 difficulties is in itself quite the most bullish sign you can  
9 possibly have.

10 So when we do, when I do, when anybody I respect, does  
11 a valuation analysis of a cyclical business, you try and look  
12 at it in a steady state; not at the peak and not at the trough.  
13 But the debtors, or somebody, seem to have convinced the U.S.  
14 Trustee, and others, that at its cyclical lows, the multiples  
15 have to be low, as well, when it is the exact opposite. Your  
16 Honor, the KPMG report represents a perfectly valid valuation  
17 of Horsehead, one that any person would use in deciding how  
18 much to pay for the business.

19 I want to talk to you about good value. Your Honor,  
20 there is, in addition, I hate to tell you folks, there's also  
21 an accounting profession. People take a long time to study and  
22 learn the rules of accounting. Book value is absolutely,  
23 certainly, a guide to valuation. If it is not, what is it? It  
24 represents the investments in plans and equipment of a  
25 corporation. There is a very famous investor that many of us

1    revere called Ben Graham who mentored Warren Buffett, who built  
2    a very successful investment career using book value as a guide  
3    to the intrinsic value of the businesses that he invested in.  
4    Outside of the bankruptcy system, book value is a very valid  
5    way to look at things.

6           And if it doesn't represent the vast approximation of  
7    value of the company, then what does it? Is it just another  
8    number? What is it -- so here's the most important point  
9    relating to accounting and book values. If the Mooresboro  
10   Plant was impaired, if the business was so bad, why did  
11   Horsehead not take a write-down? That is what you do when  
12   business is bad.

13           And let me remind the Court of the accounting  
14   standards, Statement of Financial Accounting Standards 144, I  
15   haven't brought a copy because it's in the public domain, it's  
16   a widely-available accounting standard. But let me remind you,  
17   under SFAS 144, impairment is a condition that exists when the  
18   carrying amount of a long-lived asset, something like the  
19   Mooresboro Plant, exceeds fair value. An impairment loss shall  
20   be recognized only if the carrying amount of the long-lived  
21   asset is not recoverable and exceeds fair value.

22           The debtors and the creditors are claiming that the  
23   plant is absolutely impaired; that it has big problems. But  
24   the accountants didn't say anything; the company didn't say  
25   anything; their filings didn't say anything. SFAS 144 is very

1 specific. And if you want to take a write-down, you've got to  
2 sit down and talk to the accountants and see if you can do it.  
3 This is not just a game where you move values around; there are  
4 specific rules. And the rules are inaccurate, but they are  
5 rules, and they have to be applied, and we have to respect  
6 them.

7           And as I said in my motion, the company did not  
8 recognize a write-down of their assets. Any disinterested  
9 observer cannot rule out the possibility, or should I say the  
10 probability in my mind, that the debtor did not write-down the  
11 value of Mooresboro because they did not believe that it had  
12 been impaired. In other words, the debtor's own actions prior  
13 to bankruptcy are utterly inconsistent with what they are  
14 claiming now in bankruptcy.

15           And Your Honor, I have had the opportunity to have  
16 legal advice, in various ways. One of the key things that  
17 destroys your credibility in law is when your actions and your  
18 statements are not consistent with what you said you would do.  
19 If you form a corporation, and then the corporation doesn't do  
20 what you can -- as I understand, the legal system says you can  
21 brush that aside because you have to act consistently with the  
22 way you set yourself up and what you said. And there's extreme  
23 inconsistency on the side of the debtor.

24           If the debtor wants to claim, as they do, the more  
25 than 400 million dollars of value was inexplicably wiped out

1 since the last audited 10Q, and since their bankruptcy filing,  
2 then I think, Judge Sontchi, that this Court should make them  
3 go to the auditors and do an official write-down of the assets.  
4 I think we deserve that. And I expect that the auditors would  
5 refuse to write-down the assets because they do not meet the  
6 accounting test. A write-down of the assets only happens when  
7 there's been an other than temporary impairment of the value of  
8 the asset. And it is clear to anybody the problems getting a  
9 plant up and running, as well as a temporary decline in the  
10 price of zinc, which has already reversed itself to large  
11 degree, is very much temporary. You cannot with a straight  
12 face say, we've got to write-down the value of these assets.  
13 Why? You have to go through the procedure. I don't see that  
14 the debtor has done that.

15           And if the debtor managed to convince the auditors to  
16 do a 400 million dollar write-down, then I would want to read  
17 in the footnotes, and my job is to read footnotes, to  
18 understand why this happened. What if the auditors write that  
19 the decline in the value of the business had little to do with  
20 temporary problems before bankruptcy, and a lot to do with the  
21 actions that the management took after bankruptcy? I don't  
22 know that we shall all should be made to be responsible for  
23 that.

24           Your Honor, if the company had made statements prior  
25 to bankruptcy that the plant was impaired, if they'd done what

1 Valiant has gone and done and said, you know, we haven't filed  
2 a 10Q, we're in violation of some covenants, this is difficult  
3 for us, if they'd made statements in that regard, then I think  
4 that what they're asking you for in denying us an equity  
5 committee, would be more plausible. And if this valuation  
6 fight was between two equal parties with equal resources, where  
7 you're allocating pieces of the pie, well, then perhaps.

8 But as it is, they're seeking to do something that,  
9 again, I think that we have to be very careful. They're  
10 seeking to use the power that this Court has to extinguish our  
11 state law property rights. And I submit to you that you need  
12 to move very slowly and carefully before you go ahead and do  
13 that and allow for that to happen.

14 Last point on the trading valuation of the debtor's  
15 securities, which in one of the submissions says, proves their  
16 point. The debtor has charts in their submission showing that  
17 the market was already marking down the value of the company's  
18 securities prior to bankruptcy, thus indicating insolvency.  
19 Your Honor, I know this may sound not as good as it should;  
20 they're wrong. They're implying that the market is efficient  
21 and that it accurately reflects all of the available  
22 information.

23 Market efficiency is a theory that has been thoroughly  
24 debunked many times. Securities prices move for all sorts of  
25 reasons: they move because of liquidity reasons, and also

1 because of cycles of fear and greed, not to mention market  
2 sentiment. It regularly occurs that every rational seller is  
3 selling a liquid asset and its price goes down while he is  
4 selling only for the price to go up when he stops. The idea  
5 that the market price of the securities is a guide to value at  
6 all times is risible and naïve.

7           But in this regard what is certainly not naïve, is  
8 that the precipitous drop of the market price of the debtor's  
9 security around bankruptcy was a result of the realization  
10 within the equity markets that the ad hoc group had gotten a  
11 hold of Horsehead and that their intent was to grab as much  
12 value as they possibly could. And while this explanation of  
13 that precipitous drop may well be true, it does not make it  
14 fair or right, or for the correct outcome in this case.

15           And you should know, Judge Sontchi, I was speaking to  
16 Ryan Dahl beforehand. I have enormous respect for the  
17 professionalism of this group. They are incredible. I have  
18 never seen -- I have not been around the bankruptcy court, but  
19 they're operating with incredible efficiency. The ad hoc group  
20 know exactly what they are doing, and on the one level, I have  
21 enormous respect for their professionalism. I just think that  
22 you shall not allow them to pull through what they are doing.

23           They will do what the law allows them to do, they will  
24 do what this Court allows them to do. But that doesn't mean  
25 that you should go ahead and let them do it.

1           In other words, and forgive me for the analogy, just  
2 because the wolf, perhaps a grey wolf, has half swallowed the  
3 rabbit. That does not mean that the Court should give it the  
4 right to eat the rabbit. In this analogy, in case you hadn't  
5 noticed, the rabbit is Horsehead, and the ad hoc creditors are  
6 the wolf. And I think grey wolf is a very bad name because it  
7 advertises what you're up to. You can watch videos on YouTube  
8 of what gangs of grey wolves do to elks, and I can send them to  
9 the Court if you like.

10           My point to you is that we're asking to prove that the  
11 rabbit, Horsehead, is alive and well, when the wolf has half  
12 swallowed it. Well, if you, Judge Sontchi, allow the wolf to  
13 swallow it, of course, it's dead. But if you allow us to pry  
14 open the wolves' jaws and pull the rabbit out, you will see  
15 that the rabbit is very much alive.

16           I want to address one case that has been mentioned by  
17 a number of the objectors, Spansion. So they cite Spansion,  
18 it's kind of like beating us over the head with Spansion. I  
19 don't have access to LexisNexis, I can't read up on the facts,  
20 even if I had the time. Well, if you Google Spansion, you get  
21 some of the facts, you get some of the judgments. Another  
22 case, funny enough, Exide, I couldn't find anything on it. So  
23 I didn't have a complete statement of the facts, but based on  
24 the fragments of that case that are available on the Internet,  
25 I'd like to point out the following distinction in this

1 Spanion case, and I think it's a very important distinction:  
2 In Spanion where an equity committee was denied, we're talking  
3 about the valuation of a company, a participant in the  
4 semiconductor industry, that is a fast-moving industry in the  
5 midst of rapid technological change where prices drop every  
6 year, and technologies that are in demand today can easily be  
7 obsolete tomorrow. It's an area where patent and intellectual  
8 property of the subject of disruption, and where projections  
9 are certainly difficult and uncertain.

10           So if somebody came and asked me, Judge Sontchi, to  
11 model a business like that, I'd say you can't, it's very hard.  
12 What's the value of the business, somewhere between low and a  
13 very high number, depending on what happens. Does this  
14 technology succeed, does this plan succeed; I can understand  
15 that. In the case of Horsehead, we're not talking about an  
16 industry with rapid technological change, and where the  
17 company's product line can become obsolete in a matter of  
18 years. They take zinc and recycle it. Zinc is used to  
19 galvanize steel; it's a standard thing that we're going to have  
20 to use for years.

21           And there are time-tested processes whose economics  
22 are clear and simple to understand. The economics of an  
23 electrolytic recycling plant are clear and simple to  
24 understand. There are electrolytic recycling plants around the  
25 world with exactly the same design as the Mooresboro plant, and

1 so it's relatively straightforward to model because you know  
2 what the economics are going to be during far out.

3 So the idea that Spansion says that projections are  
4 not a valid basis for valuing the company, and to beat us over  
5 the head with Spansion, I don't think is right. And I think  
6 it's a relative distinction, and I want to give you that  
7 relevant distinction to use in putting aside Spansion.

8 Let me repeat, Spansion does not apply. And I believe  
9 the other cases don't apply, but they -- I just don't have  
10 access to the case law, and I wouldn't have the time, I don't  
11 think.

12 Let me address valuation. We understand full well  
13 that in circumstances where the equity is out of the money,  
14 then awarding an equity committee would be an unjustifiable  
15 gift; we are not here to ask you for unjustifiable gifts. And  
16 that is at its heart, the point that the objectors to the  
17 motion are making. Their claim is that there is no value to  
18 the equity, and allowing the equity committee would  
19 unjustifiably burden the estate. I am fully in agreement with  
20 that.

21 And then to the extent that we were to just exercise  
22 nuisance value, it would enable us to extract something out of  
23 the situation that would not be ours to claim, given the rules  
24 of priority that exist in bankruptcy. I understand that, and I  
25 am not here to deny any of the creditors their right to a full

1 recovery. But only a full recovery; not more. You are allowed  
2 the face value of your credit to the company, not to swallow  
3 the company or the whole company.

4 But let me state emphatically, I would like to believe  
5 that these arguments have convinced you. But if they have not,  
6 we are unlikely to be able to demonstrate substantial recovery  
7 to the equity if you do not allow us the resources to  
8 demonstrate it. You should know that I learned from an  
9 informal conversation, one that I had with counsel for the UCC,  
10 that one option that might be -- you might consider is to  
11 dismiss our motion without prejudice. In other words, that you  
12 might decide to base yourself on the narrow valuation arguments  
13 that the objectors have made, and to deny this motion.

14 But without prejudice, that in theory we could come  
15 back and make our case at a later date; perhaps with more  
16 facts, perhaps with circumstances changed. I want you to know,  
17 and I state this with emphasis, that is not an option for us.  
18 We face an enormous number of obstacles of resources and  
19 information. This is the end of the road for us. Telling us  
20 that we can come back to mount a valuation fight while denying  
21 us the resources to do so, is no different to denying us an  
22 equity committee. And in saying this, I am fully cognizant of  
23 the inefficiencies that this would introduce.

24 THE COURT: I'm listening.

25 MR. SPIER: Oh, you're listening?

1 THE COURT: I'm making notes.

2 MR. SPIER: All right, I'm just -- you'll get a full  
3 copy of this, and I'm just concerned --

4 THE COURT: No, no, I often take notes.

5 MR. SPIER: Okay.

6 THE COURT: So.

7 MR. SPIER: And you know, I didn't know how this would  
8 go, and it's long, and I appreciate your --

9 THE COURT: It's all right.

10 MR. SPIER: -- willingness to listen.

11 Even if you decide that, like the U.S. Trustee, that  
12 we have not met the burden of proving a substantial likelihood  
13 of recovery to the equity, you have to accept that we have done  
14 the best we can with the information and resources at our  
15 disposal. And you have to allow for the possibility that if we  
16 had the resources that there is a strong probability, I would  
17 argue a high probability, and if we had a level playing field,  
18 that we'd be able to demonstrate value.

19 And I just want to remind you of the stark contrast  
20 between the debtor's actions and post-bankruptcy. The optimism  
21 with which they talked about the business pre-bankruptcy, and  
22 the sudden shutdown in communication and the pessimism of their  
23 submissions subsequently. Is it so wrong in this case that we  
24 burden the estate with an equity committee that can properly  
25 represent our interests; in which we carefully examine the

1 debtor's statements, their data and their witnesses?

2           Even if the probability that we win a valuation fight  
3 were less than a hundred percent, is it not right to give us a  
4 fair chance? Is it not right to -- do we extinguish property  
5 rights that easily? And I think that the company can afford  
6 it; it sure as hell can afford enormous legal fees over here.  
7 Proportionately, the extra fees are not that great.

8           And just some extra facts that I think are not in  
9 dispute. And in the interest of time, I think I'm going to  
10 move on because I don't want to take too much time; I'm  
11 cognizant of your time. And you'll get the chance to read  
12 this.

13           But just a few of the debtor's statements and  
14 inconsistencies that I want to point out and make sure that  
15 you've taken on board, which I think are revealing. When the  
16 company went into technical default on the Macquarie loan of  
17 this year, they did not make an announcement that the company  
18 was in danger of insolvency; they didn't solicit the  
19 shareholders for more money; they didn't announce to the  
20 shareholders or to the market that unless we came up with the  
21 money, they might have to file for bankruptcy. Instead, they  
22 told us that they were within the grace period and that they  
23 would make the required 1.8 million dollar payment by the end  
24 of the month.

25           And if the debtor is claiming that the value is so low

1 and that there's hardly recovery for the unsecured creditors,  
2 why would they not allow the equity to participate? You would  
3 think that they would welcome our willingness to put fresh  
4 money into this, as Phil Town in his motion said. Instead,  
5 they shut us out and put together a plan that only allows the  
6 credited investors to participate.

7 Are these the actions of a corporation that really  
8 thinks its value is so low? If they truly disagree with us,  
9 they should allow us to put our money where our mouth is, allow  
10 us to participate, allow us to come up with fresh capital.  
11 It's important that you should know that we had a show of  
12 hands, I met many of these shareholders for the first time  
13 yesterday at the DoubleTree Hotel. I was blown away, I said  
14 just a show of hands, if the company does a rights issue, who  
15 here would participate. The whole room's hands went up, and  
16 they went up enthusiastically. I was really blown away by  
17 that.

18 You know, it's also just curious to me how the members  
19 of the ad hoc group appeared on the shareholder list. Up to  
20 the time of, and the bankruptcy filing, various members of the  
21 ad hoc group owned shares. Does this strike you as the actions  
22 of somebody who does not believe in the value of the business?

23 Moreover, one member of the ad hoc group owns --  
24 probably still does own -- a dominant position at all levels of  
25 the capital structure. That speaks to me as somebody who is

1 very interested in this business; very interested for reasons  
2 that I perfectly well understand that are clearly shown in the  
3 KPMG report. And I can show you other investment reports and  
4 analysis that I've done that show why it's an extraordinary  
5 business.

6 Now, think about how the company, in conversation with  
7 the creditors, sought to remedy the technical default. Rather  
8 than seek out money from the shareholders, announcer rights  
9 issue, rather than to make an announcement to the market that  
10 they're in dire need; nothing like that in the public record.  
11 They filed for bankruptcy with a proposed ninety million dollar  
12 debt facility. So on the one hand the company is hopelessly  
13 insolvent, on the other hand the creditors come and we know  
14 that a member of the ad hoc group is also the DIP lender. So  
15 no, we don't want any equity, yeah, but will allow us to be  
16 super-primed or to be primed by the DIP loan. Does that -- no,  
17 that is just an inconsistency there.

18 And Your Honor, that is a big part of why we have such  
19 a large turnout. The world can see it. And when you have  
20 informal conversations, everybody understands what is going on  
21 here, and I'm sorry, it's not going to make your life easier  
22 but you cannot make your decision on us not knowing these  
23 things.

24 We have said to the company numerous times, sell  
25 Zochem and INMETCO their healthy, valuable businesses, and we

1 can use that to pay down debt. I know from hearsay that the  
2 unsecured creditors' committee has said the same thing. If the  
3 debtor was really interested in maximizing the value of the  
4 business, which they really ought to be doing, yeah, you would  
5 think that they would share information about these businesses  
6 widely; that there would be a depth that people can see. They  
7 would respond to me and say, can you help us find buyers  
8 because we would like to hear about them. Nothing -- nothing  
9 of the sort. Attempts to get in touch with the debtor's  
10 counsel and with the debtor's financial advisor Lazard  
11 Brothers, resulted in quite aggressive communication; not the  
12 communication that you would expect from me coming along and  
13 saying, hey, how can I help.

14           And I will tell you that one call to one friend at  
15 Glencore, who happens to work for a senior at Glencore, had the  
16 interest of the head of zinc assets at Glencore; a substantial  
17 mining company with zinc assets around the world. And there  
18 were conversations that took place, I had a friend of mine help  
19 me in the conversations who is an informal investment banker,  
20 and then they went dead. And I don't know what happened, maybe  
21 they lost interest, or may they're talking to the creditors  
22 because why try and buy the company for any more than what the  
23 creditors will take it for. And it's only through you that  
24 that -- a fair auction or a fair getting interest in these  
25 assets will only happen if you protect us. If they think they

1 can get around us, if Glencore can get around us, they will do  
2 it.

3 And I'm aware of at least one buyer that is very  
4 interested in Zochem; it is a well-known company. Why not sell  
5 it to pay down debt that's pay is fourteen percent, it would  
6 seem to be pretty obvious to me.

7 To me and many observers, the patent of facts is  
8 extraordinarily consistent with an attempt to gain control of  
9 valuable assets through the back door of this bankruptcy court.  
10 By contrast, an equity committee would provide us with the  
11 ability to justly restructure the company's obligations in the  
12 manner actually intended by the Bankruptcy Code.

13 And so Your Honor, we're not just looking to make a  
14 claim against the company, we feel deprived of the opportunity  
15 we had to stay with the assets, to invest in them if they  
16 needed more money so that we could participate in the upside on  
17 the other side. We have not been given that opportunity. I  
18 don't believe that you should deprive us of the property rights  
19 before we have that.

20 I want to give you other bases of action that are  
21 aside from valuation that I think is very important. So point  
22 one is, I think we meet the value criteria established in the  
23 law and as laid out in cases like Spansion. And as you know,  
24 what I've said is that if Spansion, if we fail to meet the  
25 criteria, I want you to consider that Spansion actually doesn't

1 apply. And that there are some other courses, reasons why you  
2 would grant an equity committee that do not go to valuation.

3           The first is rules of fair disclosure. You know, I  
4 hope it's clear to you, and I am certain, Judge Sontchi, that  
5 the company's statements before Kirkland & Ellis got involved  
6 are giving them big headaches. But I hope it has become clear  
7 to you that there is an extraordinarily high likelihood that  
8 prior to bankruptcy, the company may well have violated rules  
9 of fair disclosure; there's prima facie evidence for that. The  
10 company clearly did not communicate numerous and important  
11 material facts to the market. Several class action suits have  
12 been announced, class action lawyers are very interested in  
13 being followed because we have access to this e-mail list, and  
14 it's only a matter of time before a complaint is filed here in  
15 Delaware.

16           But doesn't it strike you that your Court would be a  
17 very fortunate way for the company to engage in violations of  
18 security law before the bankruptcy, and then use the bankruptcy  
19 and the split between the estate and old co. and new co. to  
20 whitewash all of that. And then all we have is a potential  
21 claim through a class action lawsuit against the estate, or  
22 against the insurance clause; we're not interested in that.  
23 We're interested in our ownership of the company. I think that  
24 there are plenty of facts that point to this, and I submit to  
25 you that you cannot allow the U.S. Bankruptcy Court to become a

1 venue where debtor's pre-bankruptcy violation of law are  
2 whitewashed. It's not just fair and unjust, it thwarts the SEC  
3 and it thwarts the legislation behind the SEC and the  
4 protections that exist for public investors. And even worse,  
5 Judge Sontchi, it would encourage other investors, or other  
6 activist funds, to do the same thing; it would encourage bad  
7 behavior.

8 And please note, we don't have recourse to another  
9 venue to prosecute this issue. And I think that it's important  
10 for this Court to establish based on my understanding, to send  
11 a clear message that if you think that you can -- it's a form,  
12 Judge Sontchi, of fraudulent conveyance; it's analogous to  
13 fraudulent conveyance. You're saying it doesn't matter because  
14 bankruptcy will happen and all this will go away.

15 And I believe that if I had the opportunity, or if  
16 counsel had the opportunity, to access the case law, they would  
17 find the basis in the Bankruptcy Code and in the case law for  
18 you to find a judgment like that. An informed judgment that  
19 sets a protection for investors; that is a lighthouse that  
20 tells creditors' counsel and activist hedge funds, hey, you  
21 guys, there is a limit to what you can do because you'll get  
22 either thrown out or, in spite of valuation issues, you'll have  
23 to deal with an equity committee. I think that's a very  
24 important principal to establish, and I would like to provide  
25 you with everything that I can to help you to establish that.

1 It's a claim that I'm not making because it will protect us, I  
2 think it makes U.S. Bankruptcy Law better.

3 In an analogous way, I look at 13G filings and 13D  
4 filings, I look at who is an influential shareholder, I want to  
5 know that; I have the right to know that. The New York Stock  
6 Exchange, and the SEC Rules, require people to disclose when  
7 they have intent with the company. It's annoying, you go above  
8 five percent, and there are all sorts of disclosures that you  
9 have to make. You become "an insider", I become an insider,  
10 and I don't know anything more than the public market, but my  
11 behavior is restricted. I have to check in with attorneys what  
12 I can and can't do, what I can and can't trade.

13 And it's fair, we need to know. The public  
14 shareholders need to know, is somebody influencing this  
15 corporation; who is in charge here. And it seems to me, it is  
16 clear, suddenly I realized in late last year, or I realize that  
17 now, that in late last year the people who were shareholders  
18 became creditors by buying out debt in the market. And I can  
19 only surmise that they started influencing the company. I have  
20 the right to know that. Why should I invest my money in  
21 publicly traded companies who come to the markets to raise  
22 money if I don't have that protection where on the face of it  
23 the law gives me that protection?

24 But now there's a backdoor to just put that all aside.  
25 We can get control of corporations using the opacity of the

1 distressed debt markets. That cannot be right.

2           Again, your Court, I learned a little bit about the  
3 Chancery Court, the place to argue for corporate control, if we  
4 want to have a battle over control of the corporation, the  
5 place to do it is in the Chancery Court, through the annual  
6 meeting, through the normal procedures that exist, which are  
7 still very hard for us to make progress in. I don't you can --  
8 if the nature of this thing is an attempt to control a  
9 corporation, then you can't treat it as a bankruptcy. You have  
10 to pierce through that and say no, this is not about  
11 bankruptcy, it's about control. And don't come to my court  
12 seeking control; that's not the place to do it. These people  
13 have protections, they're public market investors, and you  
14 can't sidestep those from coming to me and dressing this up as  
15 a bankruptcy.

16           The right way for this company to have gone, they made  
17 a mistake, they should have done a rights issue, simple as  
18 that.

19           I'm almost done. I really appreciate your time here.

20           So I just want you to be cognizant of the message that  
21 you send in your judgments here. I don't think that you should  
22 be giving your blessing to activist investors who want to use  
23 the bankruptcy as a way to sidestep investor protections. The  
24 message you'd be sending to rich and powerful funds, activist  
25 funds everywhere, is that if you can't get what you want

1 because of the protections provided in the public markets, find  
2 an excuse or orchestrate a situation where a company should  
3 file for bankruptcy and all your wishes will be granted.

4           And Your Honor, I can't see Ryan Dahl's notes here,  
5 but if I was coming from his side, I would say these are all  
6 very nice words, Your Honor, but the law is the law and this is  
7 a bankruptcy, and this company did violate its covenants, even  
8 if it was a minor technical violation, and every single one of  
9 the people here were within their rights to do what they did.  
10 But we have to stand back and say what is actually going on  
11 here, and if you come to the conclusion that what is actually  
12 going on here has anything to do with what I'm saying here, I  
13 believe that we need to find the basis for you to act.

14           And let me remind you, I'm not asking to deprive them  
15 anything that the law requires them to receive. I'm not asking  
16 for them to reduce their ultimate recovery on account of us  
17 having an equity committee. I just want a seat at the table.  
18 They're seeking to extinguish our property rights. What is  
19 this society if people don't have confidence in their property  
20 rights? I'm asking for a seat at the table; a very, very  
21 different request.

22           In summary, and these are the most important points  
23 that I want to make, and I want you to know that I feel very  
24 lucky because I have been trying to get attention onto this  
25 case. And so I've responded to any journalist who will get in

1 touch with me, and I found in my e-mail box an e-mail from a  
2 professor at Seattle University who had extensive discussions,  
3 had a lot of sympathy for what we are doing here. She's a  
4 professor of bankruptcy law at Seattle University. And my  
5 discussions with her, Your Honor, have only reinforced the  
6 legal and moral validity of our quest for an equity committee  
7 in this case, and to achieve adequate representation.

8           Simply put, without an official committee to advocate  
9 on our behalf, this case has the potential to violate all of  
10 the fundamental principles that supposedly govern both the  
11 financial markets and the bankruptcy system. In saying this,  
12 I've learned of what some used to call the goldfish bowl  
13 quality of bankruptcy; i.e., the capacity of the bankruptcy  
14 process to put the debtors operation under an unfair and  
15 glaring light. Also, bankruptcy requires much more disclosure,  
16 including opportunities to examine the debtor's officers that  
17 is generally required in a nonbankruptcy financial  
18 reorganization. That's because we all know only in bankruptcy  
19 can our state law rights be legally compromised.

20           For the reasons, and now I know a little bit about the  
21 U.S. Bankruptcy Code, the drafters expressed, and I'm giving  
22 you reasons here to find for us, and I think that -- and I know  
23 who your law clerks are, I'd like to meet some of them -- you  
24 need to go study this and look carefully at the original intent  
25 of the law and the underlying justice of what is going on here.

1           The legislatures of history reveals that Congress  
2 believed that it was essential -- as so we thought Congress  
3 here, so I'm deeply respectful of you, and Congress sits above  
4 us -- it was essential for the public to have legislatures  
5 assurance that their interests would be protected. And that  
6 such assurance should not be left to a plan negotiated by a  
7 debtor in distress, and senior or institutional creditors who  
8 have their own best interests to look after. Recognizing the  
9 unique collective action obstacles faced by shareholders, the  
10 drafters hoped that the appointment of an official equity  
11 committee in appropriate cases would counteract the tendency  
12 for debtors to appease creditors at the ultimate expense of the  
13 shareholders.

14           And just to go over the facts of this case: Jim  
15 Hensler and Bob Scherich, the CEO and the CFO, were under, no  
16 doubt, an enormous amount of pressure. The company, they were  
17 suffering and the plant was taking a lot longer to get going  
18 than they expected. And they certainly needed to invest more  
19 money into it; money that we're willing to provide as  
20 shareholders. We want to build American capitalism, we're not  
21 here to just make claims. But I can understand the personal  
22 distress that they felt, the number of people that they were  
23 letting down.

24           And then you have the most incredible law firm on the  
25 planet, Kirkland & Ellis, they are awesome. How would you not

1 want to listen to what they have to say? And they come from  
2 the bankruptcy world. And then you have Allan Brilliant here.  
3 You know, I have deep respect for him. You shake in your  
4 boots; of course, you do, it is an awful situation to be in, my  
5 heart goes out to them. And I can understand why they would  
6 approve of -- there's a certain shame in what was going on  
7 there -- and I can understand why they would jump into their  
8 arms; what do we need to do; we'll do it; can we just keep our  
9 jobs afterwards. And it's perfectly -- I don't have any ill-  
10 will or ill feeling towards them, they are decent, honest  
11 people, who want to do a good job.

12 But that doesn't mean that that tendency that will  
13 happen should -- you can understand why they abandoned us, but  
14 that doesn't mean that you should allow them to abandon us. Of  
15 course, they want to appease creditors at our ultimate expense.  
16 And so that's why Congress, or the drafters of the law viewed  
17 these as protections that are especially necessary during  
18 bankruptcy, as these reorganizations are the last chance to  
19 convert the shareholders' values, the corporate financial  
20 distress for insolvency, are placed in jeopardy.

21 And I've got one page to go, so we're almost done.  
22 Thank you. Thank you, everyone, for listening. Thank you, I  
23 appreciate your willingness to sit through this, and I want to  
24 say again, we do not want you not to get a recovery.

25 The drafters ultimately adopted a discretionary

1 standard for the appointment of official equity committees in  
2 recognition of the fact that many companies in bankruptcy are  
3 hopelessly insolvent. And an equity committee would, in those  
4 circumstances, simply impose additional unnecessary costs. But  
5 in cases such as Horsehead, where the most recent disclosures  
6 suggest considerable equity value, and the debtor has not  
7 disclosed enough to suggest a major departure from those  
8 figures, it seems clear to me, and I hope to this Court, that  
9 the drafters would have wanted the Court to err on the side of  
10 appointing an official equity committee. Otherwise, Your  
11 Honor, the Court would basically be saying that notwithstanding  
12 the debtor's own first-day filings that claimed nearly half a  
13 billion dollars in equity, the company shareholders must  
14 overcome a truly impossible hurdle in order to obtain an  
15 official committee.

16           They would have to put forth -- we would have to put  
17 forth a successful valuation trial, and we would have to do  
18 this without the benefit of professional advisors who are being  
19 paid by the estate, and with only a few days to even digest  
20 their plan-related disclosures. In reading the legislative  
21 history of the Bankruptcy Code, this cannot be what the  
22 drafters intended, nor does it seem fair or equitable.

23           And in conclusion, Your Honor, I urge you to consider  
24 this case from the public investors' perspective. Please do  
25 not allow bankruptcy to overturn the investment-backed

1 expectations of the company's public equity shareholders on the  
2 basis of the company's own public disclosures, who are entitled  
3 to a seat at the negotiation table, and we need an official  
4 equity committee for adequate representation.

5 Thank you, Your Honor, for your time.

6 THE COURT: You're welcome. Thank you. Mr. Town, do  
7 you wish to be heard?

8 MR. SPIER: Can I hand this over now or later?

9 THE COURT: Yes, please. Please approach.

10 MR. SPIER: There's some notes on there.

11 THE COURT: Thank you.

12 MR. TOWN: Judge Sontchi, thank you for hearing us  
13 today. My name is Phil Town, I have a small hedge fund with  
14 about ten million dollars of capital that I started just a  
15 couple years ago. And apparently, I am also an author, I have  
16 written two books about value investing, one about this style  
17 investing. And we teach investing to about 3,000 students a  
18 year in value investing. And I'm a personal investor in  
19 Horsehead Holdings, and Horsehead Holdings is an investment in  
20 the hedge fund.

21 Essentially, what I'd like to talk about briefly, is  
22 the value of the business from our perspective. We were  
23 extraordinarily shocked as the company went into bankruptcy in  
24 Februar. Prior to that, all of the communications with us as  
25 investors, indicated a fairly constant theme from management,

1 and that is that the plant was coming along, even as late as  
2 November. The company brought on an expert to oversee the  
3 plant construction who went through the plant carefully, came  
4 up with a list of sixty-eight construction projects. And  
5 essentially, was while not given a specific amount of time and  
6 a specific amount of money that it would take to finish the  
7 plant, the communication with investors, literally within days  
8 of them going bankrupt, was that this plant was imminently  
9 fixable, and it was simply a matter of time and money to get it  
10 done.

11           The plant is the essence of the value of this  
12 business. And I think as Mr. Spier has pointed out, we've been  
13 at a loss of data for quite some time, but recently in April --  
14 I think April 14th, management came out with a ramp-up scenario  
15 and an idle scenario as a business plan, which they have  
16 presented out to the public. And I thought it might be useful  
17 to take a look at management's current plan in terms of the  
18 valuation of the business.

19           They presented this idle scenario which essentially,  
20 Your Honor, is that the plant has essentially no value in this  
21 business scenario, that it is not operable, in fact, it's a  
22 cost of maintenance. And the only real business operation is  
23 born by the two subsidiaries, INMETCO and Zochem. In this idle  
24 scenario, they offer that within about two years, these two  
25 subsidiaries will be producing twenty-nine million dollars a

1 year, roughly, in earnings before interest, taxes,  
2 depreciation, and amortization; EBITDA. The 29 million dollar  
3 EBITDA, Your Honor, bearing a reasonable multiple of EBITDA,  
4 let's use KPMG's number which was 9XEBITDA, results at a 270  
5 million dollar evaluation of those two subsidiaries in idled  
6 scenario. In other words, if you just dump the plant and said  
7 it's worth zero, the business two years from now should sell  
8 for something in the ballpark of 270 million dollars.

9           Being able to appreciate the value of that today,  
10 requires an understanding of the probability of them getting to  
11 that level of revenue and earnings before interest, taxes, and  
12 depreciation. And we think that the businesses are basically  
13 there; there's no indication of any significant amount of cap  
14 actually that they're going to put into them, there's no magic  
15 that they're going to do to these two subsidiaries; they're  
16 just simply going to turn them on and let them run, and in two  
17 years they'll be at 29 million EBITDA, 270 million dollars in  
18 value.

19           So essentially, what would a reasonable person pay for  
20 that today? And I think that essentially, the amount of  
21 valuation for the entire business that's being offered up by  
22 management and counsel is pretty much reflecting what  
23 reasonable people would pay for those two subsidiaries today.  
24 They're basically saying, if we understand correctly, that  
25 they're worth about 210 million dollars. We would probably say

1 they're worth more than that, but we're really arguing in the  
2 range of maybe 210 to 250. So we're not in disagreement with  
3 the idled scenario and the value taking the plant down to zero  
4 in value.

5 Then the question kind of becomes, okay, well, if  
6 these things are worth, let's just say 250 million from our  
7 point of view, then what's the value of the plant? Is it  
8 really zero?

9 And what they're arguing here is that it is. And  
10 we're arguing that it isn't, and we're going to use the ramp-up  
11 scenario that they've presented us as an indication that the  
12 value cannot possibly be zero of this plant. In this ramp-up  
13 scenario they're saying that within three years this company  
14 will be doing about eighty-six million dollars in EBITDA. And  
15 that corresponds pretty closely to what management has been  
16 saying for the last three years; it's a bit of a depreciation,  
17 we're not sure why they've reduced it from their recurring  
18 theme over the last three years. If the plant is going to go  
19 to 155,000 tons of zinc, which is what's in the business plan,  
20 we don't know why they'd be reducing their EBITDA from their  
21 three-year after of 90 to 110 million dollars of additional  
22 EBITDA, Your Honor, above and beyond the two subsidiaries.

23 So we think we'd better look at what the overall value  
24 of this plant would be. Looking out three years, and look at  
25 the probability of getting there. And so we come back to this

1 recent communication that the company had with us, which is a  
2 world expert looking at this plant. This plant being in  
3 existence around the world in two or three other places, has  
4 come back and said that this is simply a matter of time and  
5 money. Management has had an extraordinary amount of time to  
6 figure out how much time and money it's going to take to give  
7 an excellent probability of success. And so they've come back  
8 with a plan that says, well, three years or so, and about  
9 eighty million dollars, which follows exactly along the line  
10 that they have been saying earlier in terms of the amount of  
11 capital. Although, they have in the last two months extended  
12 the amount of time to completion of the plant to this level of  
13 a full nameplate production from their estimate in January of  
14 one to one-and-a-half years, to their estimate in April of  
15 three years or slightly more.

16 We don't know why they've made that change. It was as  
17 far as we know, again, we're in the dark on a great deal of  
18 what's going on, but as far as we know the only real reason to  
19 make that change, would be to reduce the current value of the  
20 business. The longer it takes to complete this plant to get to  
21 that level of EBITDA, the less it's worth currently today.

22 What's extraordinary is that they have not really  
23 changed the amount of dollars that it's going to require to get  
24 to that place. It was eighty-two million dollars in January,  
25 and according to the summary P&L ramp-up scenario, it's still

1 about eighty million dollars.

2 So we have to think about what would be the result of  
3 achieving this level of success with EBITDA in three years.  
4 They arrive at an 86 million dollar EBITDA, Your Honor, and  
5 that would produce a valuation of a company again, at 9XEBITDA,  
6 of 783 million dollars at that time, three years from now.  
7 We're looking, essentially, to make an argument that --

8 THE COURT: Well, that's the present value. It's not  
9 the net present value.

10 MR. TOWN: Um-hum.

11 THE COURT: It's not free to get there.

12 MR. TOWN: That's correct, Your Honor. 783 million  
13 dollars would be the value in three years. So now we have to  
14 go from here to there.

15 Now, what we're going to try to argue here is that the  
16 amount of money to get from here to there at eighty million  
17 dollars, creates a rate of return that doesn't exist in the  
18 real world. In other words, if the current value of the plant  
19 is zero, and they can invest 80 million dollars, and that would  
20 result in a 783-million-dollar value in three years, their  
21 compounded annual growth rate of their money, that 80 million  
22 dollars, is 114 percent per year.

23 We would just simply like to say to the Court that  
24 this level of return is stunning. Venture capital returns for  
25 good companies, the top quartile of venture capital companies,

1 averages about twenty-five percent per year, Your Honor. A  
2 recent study by the National Bureau of Economic Research said  
3 that targets for -- target returns for venture capital  
4 companies run about fifty-seven percent. In other words, if  
5 you were to go out and look at a company, it's a start-up, it's  
6 got a tremendous amount of risk to it, you don't know if you're  
7 going to get there, they're going to try to figure out a  
8 valuation of that business down the road that would give them a  
9 fifty-seven percent per-year rate of return.

10 This group is asking us to believe that they're going  
11 to take a worthless plant, add 80 million dollars, and produce  
12 783 million dollars of value in three years, which would result  
13 in 114 percent compound annual growth rate. That's -- it's  
14 just crazy on the face of it. Nobody's expecting that kind of  
15 return from real money.

16 And what that implies, Your Honor, is that that plant  
17 has a lot of value to it. Now, figuring out how much value  
18 that is depends a lot on what kind of probability they will  
19 have of getting there.

20 So if I put my money away for three years into a U.S.  
21 Treasury note, they're going to pay me about one percent per  
22 year, because my probability of receiving my money is going to  
23 be very high; it's a hundred percent, because the U.S.  
24 government has a printing press.

25 Obviously this company does not deserve a one hundred

1 percent probability of arriving at this goal. But we would  
2 look at this -- at this plan, and we would have a reasonable  
3 assumption that management is going to go out and raise  
4 capital. They're going to get creditors. And they're going to  
5 propose that they're going to get there.

6 And if we refer back to what these engineers have said  
7 about this plant from management, they're saying they're going  
8 to get there. It's simply a matter of some time and some  
9 money. Now we know how much money; now we know how much time.

10 So we can't put the probability of this happening at  
11 fifty-fifty. I mean, that's a coin flip in Las Vegas. The  
12 probability of this coming right has got -- it has to be up in  
13 the ninety percentile range somewhere. It's not absolutely  
14 certain, but it's very, very, very likely, given the amount of  
15 time and the amount of money.

16 If we apply that probability, then we would expect not  
17 to have to receive a fifty-seven percent compounded annual  
18 growth rate of our money. This is not venture capital. We're  
19 just looking at a reasonable investment in a fairly sure thing.  
20 And the result of that is we would expect far less return on  
21 our capital.

22 I mean, the market goes out there and invests in  
23 things like this all the time at a seven or eight percent  
24 return, Your Honor. We would look at a normal business and try  
25 to figure out the value based on a fifteen percent compounded

1 return, which we think adequately covers the risk of being  
2 involved. Warren Buffet goes out and compounds his money at  
3 twenty percent a year, and he's the best investor in the world.

4 So I don't think the risk that they're showing the  
5 world here about getting to this point on this plant would  
6 justify a very high venture capital level of return, much less  
7 114 percent a year.

8 So arguing from that point brings us back to a kind of  
9 a conclusion about value. If you will, I'd like to just kind  
10 of walk through my notes for a second and see if we can figure  
11 out -- by the way, KPMG came in at a value of one billion  
12 dollars, Your Honor, and they're not hayseeds. These guys  
13 understand what they're looking at, number one.

14 Number two, the market on August 6th, 2014, before  
15 this plant was even close to completion, while it still had  
16 problems, in August of 2014, the market put a price on this  
17 company at \$20.43 with fifty million, fifty-one million shares  
18 outstanding of slightly over \$1 billion, before the plant was  
19 even completed.

20 So I think both from a market side and from KPMG -- by  
21 the way the EBITDA at that point in time, sir, was 47 times  
22 EBITDA. So let me walk through, if you will, what we think,  
23 probably, the value of this is.

24 A reasonable rate of return with a ninety-five percent  
25 probability, we think fifteen percent is a minimum acceptable

1 rate of return. If we use fifteen percent per year --

2 THE COURT: Are you --

3 MR. TOWN: -- we get three years -- sorry, sir.

4 THE COURT: Hang on. Are we talking enterprise value  
5 or equity value?

6 MR. TOWN: We're talking enterprise value.

7 THE COURT: All right.

8 MR. TOWN: Excuse me, sir. We're talking about the  
9 plant value.

10 THE COURT: You're talking about the asset.

11 MR. TOWN: Just that val -- just that aspect of the  
12 assets. Not the two subsidiaries, which we already are --

13 THE COURT: So the EBITDA is being produced by the  
14 asset. So the --

15 MR. TOWN: Sorry?

16 THE COURT: -- EBITDA that you're talking about is  
17 EBITDA from the asset?

18 MR. TOWN: Just from the plan.

19 THE COURT: So you're talking about enterprise value  
20 of the EBITDA, you're not talking about equity value. You're  
21 talking about the enterprise value of the asset, you're not  
22 talking about equity.

23 MR. TOWN: Right.

24 THE COURT: In other words, we're ignoring debt.

25 MR. TOWN: Right. Well, we're ignoring debt, yes.

1 THE COURT: Okay.

2 MR. TOWN: But we're only doing it on the plant.

3 MR. DAHL: Your Honor --

4 MR. TOWN: So we've already sort of established that  
5 the two subsidiaries have 200, 250 million dollars of value.

6 MR. DAHL: It would also be helpful to understand the  
7 assumption in terms of the costs of the fix required at  
8 Mooresboro, that's being antici --

9 THE COURT: I think he said 85 million dollars.

10 MR. TOWN: Eighty is the number I'm seeing, yeah.

11 THE COURT: Eighty -- eighty million dollars.

12 MR. DAHL: Thank you.

13 MR. TOWN: And we understand in their notes -- in  
14 their filings, sir, that they are showing a negative free cash  
15 flow of about 112 million, but there's reasons why we could  
16 argue that the true cost going into the plant is eighty  
17 million. And that's the number that they're showing in there  
18 as well.

19 THE COURT: All right.

20 MR. TOWN: So looking at just the plant aspect of  
21 this, and arriving at this 783-million-dollar value, if we  
22 expect to receive that back in three years, and we expect to  
23 get a compounded annual growth rate on our money of double what  
24 the market is, fifteen percent a year, then the plant currently  
25 has a value of about 514 million dollars.

1           In addition, there's 200 to 250 million dollars of  
2 value in the two subsidiaries. And we're arriving very quickly  
3 at something over 700, 750 million dollars of value. We  
4 subtract the original debt of 400 million dollars, the DIP  
5 financing of 90, million, and we still have nearly 200 million  
6 dollars of equity.

7           I'm using their numbers, sir, not what numbers they  
8 were presenting to us a year ago. If we were to produce  
9 number -- if we were to produce a number based on that, this  
10 would be even higher.

11           The value of this using management's old expectations,  
12 we see no reason whatsoever why management would change its  
13 expectations on EBITDA since they're not changing their  
14 expectations on the production of the plant or the price of  
15 zinc, why are they changing the EBITDA suddenly? And if we  
16 were to use those, where EBITDA originally, when they started  
17 this process of building the plant was about 40 million,  
18 management came out and said we're going to add an additional  
19 90 to 110 million dollars of EBITDA from this plan, that gives  
20 the EBITDA about 130 to 150 million dollars when completed.

21           In addition, the management came out and said that the  
22 nameplate production of this plant is 155,000 tons, sir. But  
23 in fact, with slightly more capital expenditures, not a lot,  
24 they can drive it to about 170,000 tons, which is fifteen  
25 percent above nameplate. That aside -- and if we stay with the

1 lower number that management was proposing, about 130 million,  
2 at 9X EBITDA, we have a 1.2-billion-dollar company.

3 So in January, they were proposing that this process  
4 was going to take one to one-and-a-half years. If we assume a  
5 year-and-a-half of completion, that's what actually happens in  
6 the future, and we look to the EBITDA which they were  
7 originally proposing, then the current value, sir, is 949  
8 million dollars, very close to what KPMG said it was.

9 Again, if the debt is 490 million, then there's  
10 approximately 494 million dollars of equity.

11 So in summary, we think that the ability to invest  
12 eighty million dollars and make one billion dollars,  
13 potentially, in gross returns, in the plant alone, do not  
14 reflect the real world in any way, shape, or form, that it  
15 cannot be a zero value. The plant must be worth considerably  
16 more money in order to be able to take eighty million dollars  
17 and have a real-world return. And we think everybody knows  
18 that and that's why they're fighting so hard to keep us out of  
19 an equity committee.

20 The company has spent over 550 million dollars  
21 building a state-of-the-art plant. It will take approximately  
22 80 million, maybe 112 million dollars to get the thing running  
23 to top level. And the real value, we think, is pretty  
24 obviously, when you do that, in a year-and-a-half to three  
25 years, something in the neighborhood of 1.1, 1.2 billion. And

1 for that reason, there is equity, and therefore we deserve an  
2 equity committee to defend our interest in this business.

3           Furthermore, we are intensely interested -- and we --  
4 and putting our money where our mouth is, this is not a  
5 hypothetical version of valuation. We would very much like to  
6 invest more. And I would just submit to this entire group,  
7 those of you who are shareholders, how many of you would be  
8 interesting in putting more money in the company, hands up? So  
9 we're vastly interested in investing in the potential that this  
10 company has to reach these levels, and we see no reason why we  
11 shouldn't have an equity committee to defend ourselves in this  
12 case. Thank you.

13           THE COURT: You're welcome. All right. We're going  
14 to take just a very short recess and -- well, before we do  
15 that, let me say this. I know that there were well over 250  
16 joinders filed. I know people are here from a long way away  
17 who want to participate in the process. And I have a couple of  
18 things to say about that.

19           One, you don't have to. I know the joinders have been  
20 filed. You don't need to say anything further to defend your  
21 rights, but you are welcome to do so. That's why we have  
22 court.

23           However, you're not a movant, you're joining in a  
24 motion. So if you want to be heard, fine. I will definitely  
25 hear you. I would hold you to a very brief statement of

1 joinder, maybe not more than a couple minutes, at most. If all  
2 forty or so of you wish to be heard, or fifty of you -- I don't  
3 know how many are here at this point, it's pretty full -- we'll  
4 be here for another hour, hour-and-a-half just hearing your  
5 joinders before we turn to the objections. If that's what it  
6 is, that's what it is.

7 But I am going to have to hold you to a brief  
8 statement if you wish to be heard, which you're welcome to be  
9 heard, but you don't have to. It's really up to you.

10 So we're going to take a short recess. Then I'll come  
11 back and I'll hear anybody that wants to be heard, and then  
12 I'll turn it over to the objectors, and we'll move forward. So  
13 five minutes or so. We should be back on the record by 11:30.

14 (Recess from 11:22 a.m. until 11:53 a.m.)

15 THE CLERK: All rise.

16 THE COURT: Please be seated. Thank you for your  
17 patience, and I apologize for the delay, but I had something  
18 arise in chambers I had to take care of. The paper dove never  
19 stops, even when you're in court.

20 So this would be an opportunity for anyone who filed a  
21 joinder to be heard. And why don't we start -- because I  
22 understand there was someone on the telephone who wanted to be  
23 heard. So let's take care of the telephone first.

24 MR. HARRISON: Good morning, Judge Sontchi.

25 THE COURT: Good morning. Could you identify yourself

1 for the record?

2 MR. HARRISON: Certainly. This is Andrew Harrison.

3 THE COURT: Go ahead, sir.

4 MR. HARRISON: First of all, thank you for letting me  
5 speak to you by telephone. I would have loved to have come up.  
6 Unfortunately work got in the way. And work is relevant to  
7 what I'm going to be discussing.

8 By background, I'm a CPA. I've got over eighteen  
9 years of experience. I've worked in both audits of public  
10 companies and providing tax services. My wife and I currently  
11 own 5,500 shares of Horsehead Holdings, and we're obligated to  
12 purchase another 7,000 shares in put options. And we purchased  
13 these shares based on management's assertion of having  
14 sufficient liquidity and their ability to complete the plant.

15 And I'd ask the Court to consider whether there's  
16 truly insufficient equity for the shareholders as is being  
17 asserted, obviously therefore no need to appoint an equity  
18 committee. And I'd ask the Court to consider that for that to  
19 be truthful, several things would all have to have happened.  
20 First is that management would have had to have make materially  
21 false published statements on at least five separate occasions  
22 during both 2015 and 2016. Secondly, that management filed  
23 materially false statements with the SEC on several occasions  
24 during 2015. Third, that Grant Thornton, the company's  
25 auditors and one of the country's leading accounting firms,

1 falsely opined that the financial statements were not  
2 materially misstated when they issued an unqualified audit  
3 opinion, as well as when they performed their review services  
4 on the interim financial statements. And finally, regarding  
5 the KPMG valuation, as I'm sure you know, Your Honor, KPMG is  
6 the world's fourth largest accounting firm, and it's being  
7 alleged that for there to be no equity, that they misstated the  
8 valuation of Horsehead by at least fifty percent.

9           And if you'll grant me the liberty, Your Honor, I'd  
10 like to address each of these just very briefly.

11           THE COURT: All right. Please keep it brief.

12           MR. HARRISON: Yes, sir. First regarding the public  
13 statements. They had several earnings calls between February  
14 2015 and November 2015, and each time the CFO stated that  
15 Horsehead Holdings had sufficient liquidity to support the  
16 operations of the business and to continue making progress on  
17 the plant. And to quote Ali Alavi in regards to the missed  
18 payment that Mr. Spier referred to before, Mr. Alavi -- and I'm  
19 quoting him here -- said: "We are still within the grace  
20 period of the missed payment, so describing it as a missed  
21 payment or a failure to pay may be viewed as a bit of a  
22 mischaracterization in light of the existence of the grace  
23 period, and that the plan is to make the payment within the  
24 grace period."

25           At no point during 2015 or 2016 did the company ever

1 indicate a lack of sufficient financial liquidity. And in  
2 fact, it was quite the opposite with management consistently  
3 stating they believed they had sufficient liquidity.

4           Next, Your Honor, regarding the financial statements,  
5 the company is very aware that under generally accepted  
6 accounting principles, they're required to disclose any  
7 probability of an inability to meet their ongoing financial  
8 needs. And we know that they're aware of these, because under  
9 Accounting Standards Update 2014-15, the FASB updated the  
10 going-concern disclosure requirements, and the company  
11 specifically addressed that in their 2015 10-K stating that  
12 they did not believe the adoption of that would have any  
13 material effects on their financial statements. And I believe  
14 we can all agree that the going-concern disclosure stating that  
15 they would not be able to meet their obligations within the  
16 next year would certainly be a material impact on their  
17 financial statements.

18           And that accounting update applies not only to year-  
19 end financial statements, but interim as well. So at no point  
20 during the year did they ever issue a going-concern footnote  
21 disclosure stating that they were having problems meeting their  
22 obligations.

23           The next item I'd like to address under generally  
24 accepted accounting principles, I would -- I'll add to what Mr.  
25 Spier addressed earlier concerning the asset impairment. And

1 he did, I think, an outstanding job describing it. I won't  
2 waste the Court's time expanding on that, other than the fact  
3 that in the real world, it's not possible for a company to  
4 acquire an impairment of a 400-million-dollar asset down to  
5 zero and not make that disclosure. They're not going to miss  
6 it, and Grant Thornton is not going to allow them to miss it,  
7 in this world of SEC oversight, PCAOB oversight. They're not  
8 going to miss a material item like that.

9           Finally, Your Honor, with regards to the KPMG  
10 valuation, KPMG is the world's fourth largest accounting firm.  
11 Their valuation report showed a valuation of approximately one  
12 billion dollars. And for the Court to believe that there's  
13 simply no equity in the company, they would have had to  
14 misstate that by over -- by over fifty percent.

15           So in summary, Your Honor, I would respectfully  
16 request, whether you consider which is the more likely scenario  
17 of the two: first that management knowingly and repeatedly  
18 made materially false statements, and that management  
19 materially filed false statements with the SEC; and that Grant  
20 Thornton failed to detect the financial hardship so severe that  
21 there's a 500-million-dollar reduction in the equity of the  
22 company; and that Grant Thornton expressed a clean opinion on  
23 the company's annual financial statement and their review under  
24 analytical procedures on the quarterly financial statements  
25 failed to detect any asset impairment or going-concern issues;

1 and finally that KPMG misvalued the company by almost fifty  
2 percent; because for there to be no equity in the company, all  
3 five of those things would have had to happen.

4           The alternative to that is that a savvy hedge fund  
5 which specialized in distressed debt and who's extremely  
6 knowledgeable of the bankruptcy court rules, supported by their  
7 team of attorneys, requested an unheard-of time frame for the  
8 bankruptcy proceeding, knew they could control the proceedings  
9 to their own benefit and at the detriment of all the other  
10 parties. Sir, the Court has been presented with an either/or  
11 decision, as there can be no in between of those two scenarios.  
12 I respectfully ask the Court to consider the possibility that  
13 there are, in fact, significant assets remaining in the  
14 company. There is sufficient liquidity for the secured and  
15 unsecured creditors to be made whole, and that there's  
16 certainly sufficient equity remaining in the company for the  
17 shareholders. And sir, I'd respectfully request that you  
18 consider the possibility of doubt, and if there's any  
19 possibility that you agree, that you would consider appointing  
20 an equity committee. And I thank you for your time, sir.

21           THE COURT: Thank you. Is there anyone else on the  
22 telephone that would like to make any statements?

23           MR. BOSWELL: Yes, this is Thomas Boswell, calling  
24 from Hong Kong. May I speak?

25           THE COURT: Yes, briefly, sir.

1 MR. BOSWELL: Your Honor, just to let you know that  
2 I'm Thomas Boswell, managing director of Boswell Capital  
3 Management in Hong Kong. I completely concur with what Guy  
4 Spier and Phil Town have said and stand behind the joinders I  
5 sent you this April. Thanks very much.

6 THE COURT: You're welcome. Thank you.

7 Anyone else on the telephone?

8 Okay, I hear none. Is there anyone in court who would  
9 like to make a statement? Yes, please?

10 MR. BURROW: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. BURROW: My name is Jack Burrow (ph.). I live in  
13 North Carolina, where Mooresboro is. I'm an engineer. I teach  
14 at the University of North Carolina, Chapel Hill, and was  
15 really excited about the Mooresboro building coming to North  
16 Carolina. I saw it while it was being built, and it was very  
17 nice. I saw it after it was operational. It's a beautiful,  
18 beautiful facility.

19 I know it's worth more than nothing. I won't go into  
20 all the details. I'm not a CPA, I'm not a lawyer, I'm an  
21 engineer. And if it's worth nothing, give it to us -- give it  
22 to me. I'd love to have it, because I'll guarantee you, I can  
23 make that thing run and make money -- make a lot of money. But  
24 to say -- I just wish you will give us the opportunity for an  
25 equity committee, so we can just prove our case. Thank you.

1 THE COURT: Thank you.

2 Anyone else? Yes, sir.

3 MR. CLAYMONT: Your Honor, my name is Robert Claymont  
4 (ph.). I came from California at my own expense to address the  
5 Court.

6 THE COURT: Very good.

7 MR. CLAYMONT: I've become familiar with the  
8 bankruptcy system, as it is present to protect equity holders.  
9 I've seen homeowners face bankruptcy with debt, many homes  
10 underwater. The court's given them significant consideration  
11 to protect whatever equity they have rather than just giving  
12 the property away to the creditor.

13 What we've seen so far has been a breakdown. The --  
14 we see a tremendous discrepancy in valuation. That discrepancy  
15 alone speaks to value. If something's worthless, why do we  
16 have such a fight over it?

17 I've spoken with Mr. Alavi. I've seen the price of  
18 the stock go down. He expressed to me that the price of the  
19 stock was dropping more because the price of the zinc metal was  
20 dropping -- which by the way has since gone up -- rather than  
21 the plant. Management had full confidence that that plant  
22 would be operational, it was just a question of when.

23 We heard -- we heard management talk about not knowing  
24 when that time would be. But they expressed full confidence,  
25 Your Honor. And that's what caused me to invest more as we

1 went along. I consistently put funds into this, to where it's  
2 become a significant portion of my retirement.

3 If this plant is worthless, grant the equity holders  
4 their runt of the litter. We're not asking you to adjudicate  
5 value at this point. We're simply asking that the equity  
6 holders be given a chance for representation and not be  
7 relegated to a summary judgment.

8 I believe so strongly in this that I am willing to put  
9 additional funds of my own money into this, should we be given  
10 the opportunity for a rights offering, and not have a rights  
11 offering that's limited only to a privileged class.

12 Your Honor, I'm here to put a face on what could be,  
13 if left unchecked, result in the capturing of serious and  
14 significant equity by an opportunistic hedge fund enriching  
15 themselves at the expense of ordinary shareholders like myself.  
16 Thank you for your consideration.

17 THE COURT: You're welcome. Thank you.

18 Anyone else? Please approach. Don't be shy.

19 MR. GEORGE: Hello, Your Honor.

20 THE COURT: Good morning -- hello. Good afternoon, I  
21 mean.

22 MR. GEORGE: Very good afternoon. My name is Ed  
23 George -- Ed George. Your Honor, I speak on behalf -- as an  
24 owner of -- on my own behalf as an owner of Horsehead Holdings.  
25 I've learned about this company for a couple of years, and a

1 little over a year-and-a-half ago, I started investing in this  
2 company.

3 I consider myself to be a very intelligent investor.  
4 I've invested in companies actively for nearly twenty years.  
5 As a result of my success, two years ago, I decided to leave a  
6 career -- a great career as a head of engineering of one of the  
7 world's largest vaccines and biotechnology facilities in order  
8 to ultimately pursue investing full-time.

9 Currently, as part of my transition plan, I'm a  
10 partner and CFO in two small businesses, as well as an advisor  
11 to other small businesses in Raleigh, North Carolina, and a  
12 full-time investor and options trader.

13 I tell you this not to boast, but to try to make the  
14 point that I have an extensive experience in evaluating  
15 companies, a strong understanding of the financial matters  
16 concerning businesses, and a high level of confidence in my  
17 business acumen. I personally have control of nearly 40,000  
18 shares of Horsehead Holdings.

19 I evaluated Horsehead by methods as outlined by Mr.  
20 Town, so I will only state that I stand in support of his  
21 conclusions. I would continue to believe in this company as a  
22 viable investment prospect, if not for the surprising events of  
23 January of this year.

24 I increased my position as a result of the third-  
25 quarter report in November of 2015. I did this because Mr.

1 Hensler and his staff clearly stated that the company had more  
2 than seventy million dollars in liquidity and that they had no  
3 concerns regarding liquidity through the end of 2016.

4 At then current commodity prices, they assured me they  
5 had sufficient funds and revenue to operate and make necessary  
6 capital investments for at least another twelve months. It's  
7 very clear in their earnings call and their reports.

8 Surely, I thought, given their confidence and liquid  
9 position, they would work through the problems in 2016, and we  
10 will have a wonderfully successful and valuable company. If  
11 what they said in November '15 was true -- 2015 was true, and  
12 all events since then would have been above-board and  
13 intelligently managed, then we would not be here talking today.  
14 We're here because either what they said then was not true, or  
15 what they say today is not.

16 It is impossible to believe that a facility which cost  
17 500 million dollars to build is suddenly worth only 25 million  
18 dollars or less. I have extensive -- my entire lifetime --  
19 background in design, construction, and operation of  
20 manufacturing facilities. I find their claims of facility  
21 value laughable and insulting.

22 Your Honor, I treat my investments as if I own the  
23 entire company. If I did own all of Horsehead, I'd have  
24 serious concerns regarding retaining the company leadership.  
25 They're either dishonest or incompetent. As a small business

1 owner, I employ neither, and would certainly not as a large  
2 business owner. And I most certainly would not surprise my  
3 partners with a sudden, unwarned announcement of bankruptcy.

4           However, with all of that having occurred, I'm here to  
5 speak with much greater concern regarding the integrity of the  
6 bankruptcy law and its application. As an investor who relies  
7 greatly on fairness of the law and the integrity of company  
8 reports to make life-affecting decisions, I'm must first rely  
9 on honest reporting and secondly on the rule of law to make  
10 sure I'm treated fairly in the event of business problems.

11           As I said, I'm an engineer and an organization leader;  
12 I'm not a lawyer. But as I understand -- humbly understand the  
13 purpose of this court, Your Honor, my expectation is I'll  
14 receive that fair treatment under the law here.

15           On the U.S. government's Web page which describes the  
16 purpose of Chapter 11 bankruptcy law, it specifically states,  
17 and I quote: "This chapter of the Bankruptcy Code generally  
18 provides for a reorganization, usually involving a corporation  
19 or partnership. A Chapter 11 debtor usually proposes a plan of  
20 reorganization to keep its business alive and pay creditors  
21 over time."

22           Your Honor, this Court is being asked by the company  
23 and the creditors to do exactly the opposite, to declare the  
24 business dead and to take it away from the owners. If that is  
25 the case, why do we have the law? How can I continue to expect

1 to be able to successfully supplement my livelihood and one day  
2 sustain my retirement in an investment world which neither  
3 requires honest information nor is backed up by the rule of law  
4 to protect me when I'm harmed?

5 Back to the government's Chapter 11 Web page. There's  
6 a clear outline of the various reasons why an equity committee  
7 may not be created. They include things such as excessive  
8 cost, excessive timing, the complexity of the case and other  
9 issue. All of these can be excluded from this case. Many of  
10 the individuals here are intelligent investors and clearly  
11 understand this business. Many of us would be happy to serve  
12 at little or no cost on the equity committee, as we believe the  
13 company we own is worth the extra effort to save it.

14 Timing is not an issue, because we are already  
15 immediately ready to get started, and would have already done  
16 so and been active had the trustee allowed the formation of the  
17 committee previously.

18 Finally, the government says one of the reasons the  
19 committee should be formed is if the interests of the  
20 shareholders is not otherwise represented. I ask you, Your  
21 Honor, as the Chapter 11 process has been proceeding, do you  
22 see anyone in this room showing any interest whatsoever in my  
23 interest and the interests of the shareholders, save my fellow  
24 investors in this room who've arrived here of our own expense  
25 and loss of our own treasure? I'm aware of none.

1           If I'm to have no expectation of honesty and fair  
2 fiduciary support and effort in regard to quarterly reports  
3 filed by the SEC, and I'm to have no confidence in the fair  
4 protection of the rule of law in the bankruptcy process, what  
5 confidence should I have in investing in U.S. companies? A  
6 significant portion of my personal wealth is at risk. I'm  
7 loathe to believe it will be lost due to a mockery of the  
8 protection offered me by bankruptcy law.

9           I plead, Your Honor, for the formation of the equity  
10 committee and for the integrity of these critical processes to  
11 be preserved. Thank you, sir.

12           THE COURT: Thank you. I saw someone in the back.  
13 Yes, please?

14           MR. KIM: Good afternoon, Your Honor. My name is  
15 Sunilet Kim (ph.) from Virginia. I just want something very  
16 brief. All the facts you have in front of you, and we strongly  
17 recommend you have an equity committee -- committee. This  
18 company is just going for bankruptcy, just not a need to  
19 obligate, what you call, it's not too much money. And the  
20 people they mistreated everyone. So it will strongly help us  
21 to have an equity committee. Thank you.

22           THE COURT: Thank you. You're welcome.  
23 Yes, ma'am?

24           MS. WHITE: Good afternoon.

25           THE COURT: Good afternoon.

1 MS. WHITE: My name is Tamzen White. I just thought  
2 I'd get a little female voice up here.

3 THE COURT: Always welcome.

4 MS. WHITE: Really, what I just want to say is thank  
5 you for hearing what we have to say today, and that for us,  
6 this is not an individual or a collective sob story. We're  
7 really after pushing through what I believe is a collective  
8 cultural resignation about the fact that big money and smart  
9 people and lots of power can run over whoever's in their way.  
10 So thank you very much for taking time to consider  
11 this today. Please grant us an equity committee, so that we  
12 can have our fair shake in the deal.

13 THE COURT: Thank you.

14 MS. WHITE: Thanks.

15 THE COURT: Anyone else? Yes, please.

16 MR. DESAI: Hello, Judge Sontchi. My name is Mitho  
17 Desai (ph.). I'm a shareholder of Horsehead Holdings. I have  
18 traveled here today at my own expense, in addition to my  
19 girlfriend who has traveled here all the way from Portugal to  
20 witness how the American justice system works for all  
21 stakeholders involved, not just the ones who are rich enough to  
22 pay for high profile lawyers.

23 Early on in my youth, I was fortunate to be part of  
24 the American Legion Boys State Program, a program which was run  
25 and sponsored by the brave veterans that fought to protect and

1 uphold the values of this great country. In this program, one  
2 of the key values we were taught is that all citizens of this  
3 great country, whether rich or poor, have the right to be  
4 heard.

5 I thank you today for allowing the shareholders of  
6 Horsehead to be heard and hope that you see to it that we  
7 continue to be heard through the rest of this case via a  
8 shareholder committee.

9 I'd just like to make a few points here. There was an  
10 article in The Wall Street Journal in 2010 which stated that  
11 bankruptcy court is the latest battleground for traders. In  
12 this article, there are a few judges mentioned, including  
13 yourself. One of the judges mentioned was Judge James Peck,  
14 who was involved in a case, and he had complained that the  
15 creditor had bought debt for cents on the dollar and then  
16 decided to hijack the bankruptcy case.

17 He wrote that the fund was using aggressive bankruptcy  
18 litigation tactics as a means to gain negotiation leverage or  
19 obtain judicial rulings that would enable it to earn outsized  
20 returns on its bargain-basement debt purchase. And as a  
21 shareholder, I kind of feel this way with the way this  
22 proceeding has gone so far in terms of Grey Wolf trying to kind  
23 of hijack this case.

24 The case also goes on to -- to mention that what's  
25 going on is a form of terrorism, financial terrorism. And I'm

1 sure the lawyers here would disagree with that. But that's how  
2 us shareholders are feeling today. And fortunately enough, we  
3 have you, who's giving us the right to speak and to let our  
4 voices be heard.

5 One additional point I would like to make is, in 2002,  
6 during the Enron and WorldCom crisis, there was legislation  
7 passed by Congress called Sarbanes-Oxley, which was passed to  
8 protect shareholders and general public from the accounting  
9 errors and fraudulent practices in enterprise, as well as  
10 improve the accuracy of corporate disclosures. Now, you've  
11 heard over and over again today and probably through the  
12 filings, that we feel that there's some kind of fraud that  
13 was -- that took place by the -- by the heads of the  
14 corporation.

15 So I would like to -- from my understanding the U.S.  
16 Trustee's Program is not paid through by the court, but is an  
17 independent individual on our executive branch of the legal  
18 system. And I would -- and I would like to request he look  
19 into this matter a little further into the statements that have  
20 been made regarding fraud practices regarding this case. Thank  
21 you.

22 THE COURT: Thank you. Anyone else?

23 Yes, sir?

24 MR. PETERSON: Good afternoon, Your Honor. My name is  
25 Matthew Peterson. I have a CFA designation and I spent about

1 ten years consulting for investment banks on Wall Street and in  
2 London; and I run a small long-term value-based fund based in  
3 Los Angeles, California.

4 I appreciate you hearing our statements today. I  
5 think that the reason so many of us have flown such great  
6 distances is because it's very clear that there's a discrepancy  
7 between what the debt-holders are stating and what the true  
8 valuation is of this business. It is quite obvious that  
9 through the deep financial analysis that there is significant  
10 equity within Horsehead. But to make this point, I would like  
11 to address three specific statements from management, and I  
12 would like to be absolutely clear that in addition to the  
13 financial statements, we have received consistent reassuring  
14 messages from management.

15 Very quickly, in November of -- in September of 2015,  
16 Your Honor, I had dinner with Robert Scherich -- the CFO  
17 Scherich. And he assured me that zinc prices were hedged; the  
18 engineering tasks at Mooresboro were manageable; and most  
19 importantly, that the future funding requirements would be met  
20 through a secondary offering.

21 Furthermore, on November 9th, 2015, in concluding the  
22 prepared remarks on the earnings call, Robert stated that:  
23 "Given our current liquidity and expected cash flow from  
24 operations, at current commodity prices, we believe we have  
25 adequate liquidity and availability of capital resources,

1 including the at-the-money program to support the business for  
2 the next twelve months." This was stated November 9th, 2015.

3 Despite those reassurances, only two months following  
4 the statement, Horsehead skipped their 1.8-million-dollar bond  
5 payment on the 30-million-dollar line of credit.

6 I then wrote to senior vice president of capital (sic)  
7 affairs, Ali Alavi, senior vice president of corporate affairs,  
8 who informed me -- pardon me -- who informed me when I -- I  
9 made a statement asking about the -- I saw a statement you made  
10 that the January missed debt payment is mischaracterized and I  
11 was wondering if there are any details.

12 He then said to me, "No public details, but I think  
13 the description as a failure or missed, without including the  
14 grace period and that payment within the grace period causes no  
15 issues, is where there may be a bit of mixed characterization."

16 Thank you very much. Either the plant and the  
17 components of Horsehead have value and management has altered  
18 its tune to be consistent with the bankruptcy claims, or they  
19 have materially misstated the financials to the public  
20 shareholders and made fraudulent statements.

21 Your Honor, today I submit to you that it is the  
22 former. Thank you.

23 THE COURT: You're welcome.

24 Yes, sir?

25 MR. HOLDER: Your Honor, I'm Tom Holder. I'm an owner

1 of Horsehead Holding's shares, and like many of my fellow  
2 shareholders, you've heard that we have purchased shares based  
3 on the value of the company and the information that the  
4 company provided to us through their SEC filings and the  
5 accounting that was done on the company.

6           Since the bankruptcy, you have heard a generally one-  
7 sided and unbelievable write-down in the assets and value of  
8 that company. And I believe, sir, that the shareholders still  
9 have equity in the company and we deserve a seat at the table,  
10 and plead to you that an equity committee be approved. Thank  
11 you, sir.

12           THE COURT: Thank you.

13           Yes, sir?

14           MR. ALDRIDGE: Hello, Your Honor.

15           THE COURT: Hello.

16           MR. ALDRIDGE: My name is Jeremy Aldridge, and I'm one  
17 of the owners of Horsehead Holding. I believe in the future of  
18 this company, as I'm sure also do the management, the  
19 creditors, and the employees. If Horsehead was in need of  
20 additional funds, I would have been happy to help recapitalize  
21 the company through a rights offering in order to bolster my  
22 original investment, and in fact, that offer still stands. But  
23 unfortunately, I was not given the opportunity to do so and I'm  
24 now facing the possibility of my entire equity position being  
25 declared worthless.

1           I have two quick points. Regarding valuation and the  
2 unsecured creditors' motion to reject the formation of an  
3 equity committee, docket number 733, they state that the  
4 committee is in the process of ana -- "The committee is in the  
5 process of analyzing the value of the debtors' business in  
6 connection with negotiations over a plan of reorganization. In  
7 addition, the committee's valuation of certain assets is not  
8 yet complete. Therefore while the committee is in the process  
9 of determining values and intends to develop an accurate  
10 valuation for the debtors, the committee is unable to say at  
11 this time that there is value in excess of the indebtedness or  
12 to what extent."

13           So by the committee's own admission, the valuation  
14 process is still in flux. And I believe we deserve to be able  
15 to participate in that process on an equal footing.

16           To dismiss the KPMG valuation out-of-hand simply  
17 because it differs from that of the creditors, is to put the  
18 cart before the horse, so to speak. In other words, a final  
19 valuation around which assets can be equitably distributed is  
20 the ultimate outcome of the Chapter 11 negotiations, and  
21 therefore cannot simultaneously serve as a prerequisite for  
22 receiving equal representation at the outset.

23           To the contrary. I think we've readily established  
24 that the equity shareholders should be a counterpart  
25 participant in negotiations with formal representation, as we

1 have a substantial likelihood of a meaningful recovery.

2           And the second point regarding costs. In the case of  
3 Energy Future Holdings, creditors want permission to  
4 investigate whether the debtor could pay them more than  
5 predicted and to look for signs that management has colluded  
6 with senior lenders to undervalue the company.

7           Your Honor, Judge Sontchi, approved rules for the  
8 probe by unsecured creditors, including groups that stood up  
9 early in the case to force the company to abandon the deal to  
10 give senior lenders ownership in return for canceling debt.  
11 Your Honor stated that the questions about the value of the  
12 company are "inevitable" and dismissed an objection by senior  
13 lenders who argued they should be spared the expenses of  
14 producing information for the investigation.

15           Information production in a bankruptcy case may be  
16 expensive, Your Honor said, but "that's the way it's going to  
17 be."

18           Your Honor, neither I nor this Court forced Horsehead  
19 Holdings to file for Chapter 11. They're here because of their  
20 own behavior and their decisions, and now they have to follow  
21 the rules to treat all stakeholders fairly.

22           I find it ironic and slightly hypocritical to listen  
23 to the lawyers' argument that it would be too expensive and  
24 burdensome to hire another lawyer to represent us. Equity is  
25 just as deserving of representation as the other parties for

1 all the reasons I've mentioned.

2 I've looked at the docket filings for compensation for  
3 the month of February, and I found the following figures.  
4 Lowenstein Sandler, 215,000, eighteen lawyers; FTI Consulting,  
5 256,000 dollars for thirteen lawyers; Kirkland & Ellis,  
6 1,164,000 dollars for thirty-one attorneys and sixteen  
7 assistants; Lazard, 1,086,000 dollars for four consultants.  
8 There was no hourly rate, but they spent 450 hours. And if you  
9 do the math, that's 2,414 dollars an hour total expenses to the  
10 company. For the month of February it's \$2,723,679.91.

11 Your Honor, that balance is being billed to and paid  
12 for by the company that I own, and yet I'm being told that no  
13 money can be spared to hire a lawyer that would actually  
14 represent my own interest? I just find that hard to believe.

15 So in closing, Your Honor, I'm not requesting any  
16 special treatment or sympathy. I understand that the  
17 bankruptcy process must exercise discretion in order to protect  
18 against the superfluous creation of equity committees. I'm  
19 happy to be the "exception rather the rule", as stated multiple  
20 times in the creditors' and debtors' objections. But no case  
21 has yet established it to be an impossibility.

22 So I'll end with just a simple question to the U.S.  
23 Trustee that I'm really curious about: When was the last time  
24 that they actually did appoint an equity committee? I don't  
25 know the answer to that. And how did that case differ from

1 this one? Thank you.

2 THE COURT: Thank you.

3 Any other statements? Yes, sir?

4 MR. BARTON: Your Honor, I'm Larry Barton, and I'm  
5 from Atlanta, Georgia. And I don't speak with the eloquence of  
6 Guy over here. I don't have "esquire" behind my name. I don't  
7 have "CPA" behind my name. I have "retired".

8 I've invested in this firm --

9 THE COURT: And that's -- I have to say, I wish I had  
10 that some days. Not yet. Not yet.

11 MR. BARTON: Your Honor, I worked fifty-two years --

12 THE COURT: Yes, sir.

13 MR. BARTON: -- for one company to do it. It was not  
14 in this courtroom, but at one across the street. And I have  
15 spent many hours in those kinds of courtrooms, and I'm reminded  
16 of some courtrooms have "we only seek justice and truth". And  
17 that's what we ask of you today in allowing us to have an  
18 equity committee, is to seek justice and truth.

19 I believe in this company. I invested in it.  
20 Investing is sometimes shaky. Some days you're the bug and  
21 some days you're the windshield. Sometimes you lose and  
22 sometimes you win.

23 THE COURT: Um-hum.

24 MR. BARTON: I think there's still opportunities to  
25 win with this company. I invested in it. My daughter invested

1 in it. My son-in-law you heard on the telephone invested in  
2 it. When we were assured, when zinc prices were going down,  
3 and also market conditions as a whole in the fall of 2015 were  
4 going down, I looked at that as an opportunity. It didn't  
5 affect the value of the company. It's just the fluctuations of  
6 the market that occurred.

7 So I took that opportunity to buy more shares of  
8 stock, because that got my average price per share down. And  
9 then I heard further assurances that there were -- that things  
10 were being taken care of, and I invested further, because I  
11 still believed there was opportunity here. And I still believe  
12 that today.

13 But we ask that you allow us to form an equity  
14 committee. No one is here representing our interest. That's  
15 the reason I'm here pro se, is to represent my interest as an  
16 individual shareholder. I've read all the joinder motions from  
17 everyone here. There's plenty of argument one way and the  
18 other on all of that. But I ask you to give due consideration  
19 to forming an equity committee so that our voice can be heard  
20 by just -- for more than just what we've been given to base  
21 decisions on. Thank you.

22 THE COURT: Thank you.

23 Anyone else? Yes, ma'am.

24 MS. STARRETT: Judge Sontchi, it's an honor to be in  
25 front of you. I'll be brief. My name is Alena Rein Starrett.

1 I know that -- how much I've invested in this company is  
2 significantly lower than the lawyer fees associated with this  
3 particular hearing, but I feel it's important for me to be up  
4 here.

5 I didn't know anybody; I didn't know Guy, I didn't  
6 know Phil, I didn't know anybody in this room before coming  
7 here today. But being here, there's been a strong sense of  
8 camaraderie amongst us all, because we've been severely  
9 misguided and are dependent on you, through the court, to  
10 provide justice.

11 There's been a surge of large investors taking  
12 advantage of distressed debt, dismissing the shareholders from  
13 any equity. This stems from the same mindset that plagued the  
14 avarice that led to the onset of the 2008 crisis. The negative  
15 ramifications this had on investors and millennials like  
16 myself, has dissolved many people's willingness to place their  
17 hard-earned dollars into supporting companies with intrinsic  
18 value, the essence of capitalism.

19 With fear comes avoidance. If you recognize that  
20 Horsehead does have value, as those who have spoken before me  
21 have clearly demonstrated, I ask that you do not allow the  
22 public to have another reason to be fearful of investing in  
23 good companies.

24 As a structural civil engineer who designs bridges,  
25 the public trust is upon me to make sure that their safety is

1 provided when they traverse each structure, and I hold the same  
2 trust in you, in that you will decide the fair and ethical  
3 course of action for this case. This is an opportunity for you  
4 to level the playing field. I appreciate your time. Thank  
5 you.

6 THE COURT: Thank you. Any further statement?

7 All right, I hear none. Thank you very much for all  
8 your submissions, both in writing, and then as augmented today  
9 orally in court. I appreciate them; and I am taking them very  
10 seriously.

11 At this point, let's turn it over to the debtor for a  
12 response.

13 MR. DAHL: Good afternoon, Your Honor. For the  
14 record, Ryan Preston Dahl of Kirkland & Ellis on behalf of the  
15 debtors.

16 Your Honor, we recognize the hardship that results  
17 from a bankruptcy filing. Even though we're restructuring  
18 professionals, we appreciate that the losses that can be  
19 imposed on our stakeholders are significant, and that in  
20 particular, for individual investors or individual  
21 shareholders, while these losses may not be large in absolute  
22 terms, they are real and they are material.

23 With that, Your Honor, the debtors and the Court are  
24 then faced with the difficult choice of how, as fiduciaries, to  
25 best manage what is a limited pool of assets and a growing pool

1 of liabilities. And in recognizing this, Your Honor, Congress,  
2 when it wrote the Bankruptcy Code, made the determination that  
3 an estate's assets ultimately need to be husbanded and  
4 allocated not in a perfect manner, because we certainly don't  
5 live in a perfect world. And while the bankruptcy system is  
6 far from perfect, the bankruptcy system is intended to address  
7 this very difficult problem.

8 And therefore, Your Honor, the appointment of an  
9 equity committee remains the extraordinary exception and not  
10 the rule. And this rule, Your Honor, is not governed by  
11 numerosity. This rule is not governed by the number of people  
12 who wish an equity committee would be appointed. But it is  
13 ultimately governed by a fair evaluation of the realities of  
14 the debtors' financial position.

15 And Your Honor, unfortunately, and we do not take this  
16 position lightly, but unfortunately, this position is one of  
17 fundamental insolvency.

18 THE COURT: Well, what happened? What's your --

19 MR. DAHL: With the debtors?

20 THE COURT: Yeah, what's your story? Because you sent  
21 to the public equity markets in December, when presumably you  
22 weren't committing fraud, raising equity, and in February  
23 you're insolvent, and in April you're hopelessly insolvent.  
24 What happened?

25 MR. DAHL: Your Honor, a number of different things,

1 Your Honor. First, the price of zinc in January was at sixty  
2 cents a pound, materially lower than it was in December,  
3 November, and prior to that, Your Honor.

4 In addition, the Mooresboro project certainly did not  
5 perform according to expectations, and nobody is standing here  
6 today saying that they are happy with how Mooresboro has  
7 performed.

8 Coupled with that, Your Honor, we did have the  
9 proverbial but very real run on the bank. We had an ABL lender  
10 who froze our cash, who blocked access to all our accounts, who  
11 prevented us from making payroll at a certain point, and we  
12 were unable to find financing. We were back in front of this  
13 Court, Your Honor, at the beginning of this case saying the  
14 debtors talked to almost thirty different financial  
15 institutions attempting to seek financing. None of those  
16 institutions were willing to provide us with financing on  
17 anything other than a priming basis, other than the DIP loan we  
18 provided, really as a defensive DIP from our secured  
19 noteholders.

20 THE COURT: Um-hum.

21 MR. DAHL: So were the debtors in a position where  
22 they could control zinc markets? Absolutely not, Your Honor.  
23 Were the debtors in a position where they could control nickel  
24 markets? Absolutely not, Your Honor. We were not.

25 And we're certainly not happy to be here. But various

1 remarks were made about this management team and this company,  
2 and I certainly don't want our lack of objection on grounds of  
3 hearsay or accuracy or validity or truth to be taken to mean  
4 that we agree with those statements, Your Honor.

5           The shareholders will certainly have their opportunity  
6 to be heard. The plan that we have on file doesn't release  
7 direct claims or causes of action held by those shareholders.  
8 But the question remains, Your Honor, are the debtors insolvent  
9 today? And while the case law is certainly clear that a mini-  
10 trial is neither required nor appropriate at this stage, Your  
11 Honor, we do submit that the answer is yes.

12           On the one hand, I should note, while it's not our  
13 burden to establish solvency, it is ultimately the movants'  
14 burden to establish solvency, I think it is fair to say that  
15 they haven't carried that burden, Your Honor. Much has been  
16 made of this KPMG report. That report is classic hearsay.

17           THE COURT: Well, let me ask you; I mean, there's some  
18 smoke here, right? Isn't there enough smoke for the Court to  
19 be concerned sufficiently about what the truth is as to value,  
20 to allow for the appointment of an equity committee to flesh  
21 out what the true value is in this case? And we've got a plan  
22 that's probably going to go up for confirmation in late  
23 June/early July, so the expense is minimal.

24           MR. DAHL: Well, two points to that, Your Honor; first  
25 is, again, the case law is clear that an appointment of an

1 equity committee is inappropriate where its only purpose would  
2 be to challenge value or to challenge plan confirmation. And I  
3 think that's worth bearing in mind. The second --

4 THE COURT: Yeah, but I don't know what the value is  
5 today, so how do I make a determination today as to whether  
6 there's a reasonable likelihood of return to equity, if I don't  
7 know what the value is?

8 MR. DAHL: Sure, Your Honor.

9 THE COURT: And if there's enough uncertainty as to  
10 what value is and to not act is to act by disenfranchising the  
11 shareholders, for practical purposes, shouldn't the Court act  
12 to preserve the potential value to equity in this unusual  
13 circumstance? And I don't just mean a situation where there's  
14 been a long trend towards insolvency. This company was making  
15 statements as late as November of 2015 that it was clearly  
16 solvent to the tunes of tens of millions of dollars.

17 MR. DAHL: Well, again, Your Honor, the statements  
18 made by the company in November and December are not in the  
19 record. And had we been provided with what those statements  
20 were, we would have had the opportunity --

21 THE COURT: You're going to walk way from the SEC --

22 MR. DAHL: No. No. Your Honor -- if I may --

23 THE COURT: Please. This isn't a game show.

24 MR. DAHL: Had we been provided with advance notice of  
25 what statements would be admitted into evidence, we would have

1 been provided with an opportunity to provide a specific  
2 rebuttal.

3 But to Your Honor's question, which I think, as I  
4 understand it, is that if an equity committee is not appointed  
5 today, will parties' opportunities to challenge value be  
6 foreclosed at some point in the future, the answer is no. But  
7 in terms of providing evidence to the Court as to what value is  
8 today, however, we can do that and we're prepared to do that.

9 As we noted in our paper, Your Honor, the debtors'  
10 valuation analysis undertaken by Lazard Freres on file with the  
11 Court -- and it was filed last week -- that valuation range is  
12 approximately 255 million to 305 million dollars, assuming the  
13 Mooresboro plant remains idle. That valuation, in turn, is  
14 predicated on a new capital investment to refinance our DIP  
15 facility of approximately 150 million dollars.

16 Your Honor, to restart the Mooresboro plant to obtain  
17 the values that I'd like to touch on a bit -- it could have  
18 been Mr. Town -- of course the debtors believe now is an  
19 incremental investment of another hundred-million-plus dollars.  
20 Your Honor, that's versus a capital structure that included 400  
21 million dollars of funded debt as of the petition date. Our  
22 current DIP balance today is forty-two and a half million  
23 dollars, and we estimate that general unsecured claims in these  
24 Chapter 11 cases approximate sixty to eighty million dollars.

25 So, Your Honor, on the one hand we have Lazard's

1 valuation on file, showing a high-end valuation range in an  
2 idle scenario of 305 million dollars, and we have claims  
3 significantly in excess of 500 million dollars, and that  
4 balance is growing the longer we stay in Chapter 11. Lazard is  
5 in the courtroom today, prepared to provide additional  
6 testimony to buttress the evidence that is in the record. But,  
7 Your Honor, that is the evidence.

8           On the other hand, we have the KPMG report. KPMG is  
9 not present in the courtroom today. KPMG is not testifying.  
10 Candidly, we're not aware that KPMG is in fact aware that its  
11 valuation report, such as it is, is being relied on as evidence  
12 of solvency. But assuming Your Honor would view the KPMG  
13 report as something other than hearsay, there're fundamental  
14 issues with that report. I think, first and foremost, the KPMG  
15 report assumes 2017 EBITDA of approximately 150 million  
16 dollars. That's assuming a Mooresboro restart at no cost to  
17 these Chapter 11 cases, which I think we heard Mr. Town  
18 recognized is not an appropriate assumption, it will be -- the  
19 cost of a Mooresboro restart will be material. The debtors  
20 project that EBITDA for 2017, even if Mooresboro restarted, is  
21 something closer to thirty million dollars, Your Honor. And,  
22 Your Honor, the timing in which the Mooresboro fix is now  
23 intended -- or I should say, the time required to fix  
24 Mooresboro, in the debtors' current projections, is not one  
25 year or even eighteen months; it's three years, Your Honor.

1           So there're fundamental issues with the valuation  
2 being relied on by KPMG, such that, fairly, Your Honor, it is  
3 not a valid basis on which to call valuation into question.  
4 What the evidence is in front of the Court today, Your Honor,  
5 is evidence that the debtors' own financial expert identifies  
6 the high-end valuation range as 305 million dollars. The  
7 debtors have more than 400 million dollars of pre-petition  
8 funded debt, but another 60 million, at least, of general  
9 unsecured claims, plus a DIP balance that is continuing to  
10 accrue and professional fees that will continue and  
11 administrative costs that will continue to accrue on top of  
12 that.

13           But, Your Honor, back to the question I heard from the  
14 Court, which is that will not appointing an equity committee  
15 today foreclose parties' opportunities to challenge value, the  
16 answer is no. Will it foreclose parties' --

17           THE COURT: Well, from a practical standpoint it will,  
18 because we're going to go to a confirmation hearing and  
19 evidence is going to be put on. And these pro se parties are  
20 not going to be in a financial position to participate  
21 meaningfully and challenge that valuation, absent a committee.  
22 Just like the unsecured trade creditors wouldn't be in a  
23 position to challenge a valuation they currently don't like,  
24 absent a committee.

25           MR. DAHL: Well, in this regard, the interests of the

1 equityholders are squarely aligned with the debtors' official  
2 committee of unsecured creditors. I think the official  
3 committee has made its position clear that it has not taken a  
4 definitive view on value at this point. So to appoint an  
5 additional committee to in effect pile on, that the work  
6 already being done by our official committee of unsecured  
7 creditors, Your Honor --

8 THE COURT: Well, no, because the committee -- an  
9 official committee of unsecured creditors and equity's  
10 interests are never truly aligned, because a recovery of  
11 ninety-five cents on the dollar is a huge victory for unsecured  
12 creditors. There's no need for them to go to the extra mile to  
13 get 105 cents on the dollar, which leaves 5 cents for equity.

14 MR. DAHL: But --

15 THE COURT: Their incentive is never perfectly aligned  
16 with equity.

17 MR. DAHL: Your Honor --

18 THE COURT: There're other residual risk-bearers in an  
19 insolvent company; I agree with you. And at that point it's  
20 not that their interests are aligned with equity; it's that  
21 equity has no interests --

22 MR. DAHL: But --

23 THE COURT: -- to defend.

24 MR. DAHL: -- Your Honor, we're not in a position  
25 where the valuation is marginally approaching the breakpoint

1 between recoveries for unsecured creditors and recoveries for  
2 equity. Again --

3 THE COURT: I understand your position there.

4 MR. DAHL: And, Your --

5 THE COURT: I understand that the creditors' committee  
6 disagrees with the three-cent plan --

7 MR. DAHL: Yeah.

8 THE COURT: -- you have on the --

9 MR. DAHL: Certainly, Your Honor.

10 THE COURT: Now, I don't know what their private  
11 position is on what would be appropriate.

12 MR. DAHL: But, Your Honor, at the present stage the  
13 burden is one, and the parties seeking the appointment of an  
14 equity committee to establish a substantial likelihood of a  
15 recovery to equity, not to establish whether, if they are  
16 provided with professionals, they could then have the  
17 opportunity to diligence a valuation and to potentially offer  
18 up a recovery to equity -- they're required to establish by a  
19 preponderance of the evidence, again, a substantial likelihood  
20 of a recovery to equity. There is no evidence of such recovery  
21 here; there's none. Again, there's the KPMG report, which is  
22 hearsay. The debtors have identified in their own pleadings  
23 the Lazard valuation; the Court is certainly entitled to take  
24 judicial notice of that. If the Court would wish, we're  
25 prepared to have Lazard on the stand to testify as to their

1 valuation, although that is not required, if not discouraged,  
2 under the case law, Your Honor.

3           Only after, then, a finding has been made of a  
4 substantial likelihood of recovery to equity, then the second  
5 question is whether the appointment of an official committee of  
6 unsecured equity -- sorry -- if an official committee of  
7 equityholders is necessary to represent the interests of  
8 equityholders. But again here, Your Honor, the case law is  
9 clear that the appointment of such a committee is inappropriate  
10 even in questions of numerosity, such as this one, where its  
11 only purpose would be to challenge valuation.

12           Your Honor, I recognize, and we appreciate, that a  
13 number of these parties are pro se; many, if not all, of them  
14 are pro se. But they've had the opportunity, and they will  
15 continue to have the opportunity, to challenge valuation, to  
16 challenge the adequacy of the debtors' disclosures, whether  
17 it's the disclosure statement or plan confirmation. But, Your  
18 Honor, the questions of numerosity do not satisfy the  
19 evidentiary standards required to appoint an equity committee.  
20 And as we sit here today, there is no evidence justifying the  
21 appointment of an equity committee. Conversely, the evidence  
22 does show that the appointment of an equity committee would be  
23 exactly what the case law teaches us is an inappropriate use of  
24 the incremental time, delay and expense by appointing a second  
25 committee, requiring the debtors' estates to bear the cost, to

1 bear the delay, to bear the time, of appointing a committee to  
2 represent parties that, again, based on the evidence that is in  
3 the record, and the only evidence that is in the record, are  
4 significantly out of the money.

5 THE COURT: All right.

6 MR. DAHL: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 Anyone else?

9 Mr. Buechler.

10 MR. BUECHLER: Thank you, Your Honor. Bruce Buechler  
11 from Lowenstein Sandler, on behalf of the official committee of  
12 unsecured creditors.

13 Very briefly, Your Honor. We set forth our position  
14 in our statement. At this point in time we do believe that the  
15 movants have failed to meet the standard for having an equity  
16 committee appointed under Section 1102. We also would simply  
17 question, as the debtors did in a footnote, whether Mr. Town  
18 actually has standing; in his motion he states that he's,  
19 quote, "a small-fund" -- or "manager of a small fund called  
20 Rule One Capital, which owns over three million shares of  
21 Horsehead capital stock". Unlike Mr. Spier, he never says that  
22 he actually owns shares individually.

23 But cutting really to the main issue, Your Honor, here  
24 is, we agree with the debtors, with regard to the KPMG report,  
25 at this point in time. The committee's still finalizing its

1 own valuation of the debtors' assets. We are very concerned to  
2 see Committee with husbanding the company's resources and  
3 having another committee. There will be -- if not a resolution  
4 with the committee, there will be a valuation fight in  
5 connection with confirmation, because the committee does not  
6 support the plan as presently put forward by the debtors. We  
7 are engaged in ongoing discovery. We have a deposition  
8 scheduled for U.S. Bank, which is the trustee and collateral  
9 agent for the pre-petition senior secured noteholders, or the  
10 ad hoc committee if you will, or the group of them that hold  
11 the senior secured position.

12 Our challenge deadline is this Friday, May 6. We have  
13 the complaint, the motion for standing, ready to go forward if  
14 we cannot reach a resolution to deal with certain issues with  
15 regard to the extent and perfection of certain of their liens  
16 and how that may impact on valuation. But at this point in  
17 time, Your Honor, we respectfully submit that the committee --  
18 excuse me -- the movant, not demonstrated the requisite cause  
19 required under the case law, to appoint an equity committee.

20 The unsecured-creditors' committee is doing what it  
21 can with regard to its investigation, views on valuation, to  
22 protect its constituency's interest. We agree with the Court  
23 that our -- or my constituency's interest, the unsecured  
24 creditors, do not completely dovetail with the unsecured  
25 creditors. That is true, and Your Honor is correct on that

1 point. But the movants bear the burden. We understand it's a  
2 difficult case. We completely understand where the  
3 equityholders are coming from and their desire with regard to  
4 what's going on here. There was a class-action lawsuit filed  
5 last week in -- I believe it was the federal district court for  
6 the District of Delaware, against certain of the mana -- excuse  
7 me -- officers and directors, asserting certain of the alleged  
8 securities claims that have been asserted here this morning.  
9 That lawsuit has been filed.

10 We were also looking at potential claims against Ds  
11 and Os and the insurance policy that the debtors have with  
12 respect to that. That's all within the purview of what a  
13 creditors' committee does for its constituency. But whether  
14 the estate should bear the burden of another set of  
15 professionals, not just lawyers, but they want to -- going to  
16 want to get financial advisors and potentially another expert  
17 with regard to valuation issues, we are concerned simply about  
18 the cost of that and whether that is appropriate in this case.

19 Unless Your Honor has any further questions, we rest  
20 upon what we stated in our submission.

21 THE COURT: Thank you, Mr. Buechler.

22 MR. BUECHLER: Thank you, Judge.

23 THE COURT: Mr. Fox?

24 MR. FOX: Good afternoon, Your Honor. May it please  
25 the Court. Tim Fox on behalf of the United States Trustee.

1 I rise briefly to echo the sentiments of the official  
2 committee of unsecured creditors. My office was presented with  
3 the request prior to these motions being filed with the Court  
4 and, under the discretionary standard that Section 1102(a)(1)  
5 provides to the U.S. Trustee, we declined to appoint a  
6 committee at the time. That's not to say that we have  
7 completely foreclosed appointment of an equity committee.  
8 Well, we were hoping that circumstances would bear out more  
9 information as to what recovery would be provided to  
10 equityholders. And with the filing of the initial plan and  
11 seeing recoveries for general unsecured creditors of several  
12 classes, I believe everyone other than the Zochem creditors  
13 receiving approximately three cents on the dollar -- our  
14 decision not to appoint a committee, without first letting the  
15 Court hear these motions, was -- I won't say "validated", but  
16 we continue to hold that same position, moving forward; just  
17 under the 1102(a)(1) standard.

18 Under 1102(a)(2), we believe that there is not  
19 currently sufficient evidence on the record to support the  
20 appointment of an equity committee, but we will defer to Your  
21 Honor's decision on those merits.

22 THE COURT: Thank you.

23 Anyone other than Mr. Qureshi has any comment?

24 MR. QURESHI: Thank you, Your Honor. For the record,  
25 Abid Qureshi, Akin Gump Strauss Hauer & Feld, on behalf of the

1 ad hoc noteholders.

2 Just very briefly, Your Honor, on the question of  
3 value. And I fully concur with the comments that Your Honor  
4 heard from the debtors. I think this is a situation where,  
5 given the evidence in the record thus far, which is that the  
6 debtors' valuation in their disclosure statement -- there is a  
7 very wide and substantial gap before there is a recovery here  
8 for equity. And while certainly I take Your Honor's comment  
9 that the incentives of an official creditors' committee are not  
10 fully aligned with equityholders at that ninety-five-cent  
11 example, I think, where we are right now, the official  
12 committee certainly has every incentive to argue aggressively  
13 for a higher valuation, which they have demonstrated that they  
14 will do.

15 To be sure, Your Honor, we have a very different view  
16 with respect to value; we think we are the fulcrum  
17 securityholder here, the fulcrum creditor. And that is a fight  
18 that is yet to come. But I just don't think, Your Honor, that  
19 on the record that is before this Court today, and given that  
20 the burden is clearly with the movants here, that this is a  
21 situation that warrants the expense, the delay that would  
22 result from the appointment of an official committee.

23 THE COURT: All right.

24 MR. QURESHI: Thank you.

25 THE COURT: Thank you, Mr. Qureshi.

1 Yes, sir.

2 MR. DAHL: Again, Your Honor, for the record, Ryan  
3 Preston Dahl for the debtors.

4 Again, we would reiterate we have Mr. Torgove  
5 available --

6 THE COURT: I understand.

7 MR. DAHL: -- from Lazard and prepared to testify as  
8 the debtors' valuation --

9 THE COURT: That's not necessary. Thank you.

10 MR. DAHL: Thank you, Your Honor.

11 THE COURT: It's unnecessary.

12 All right. First of all, thank you very much for your  
13 submissions. I am going to grant the motion and direct the  
14 appointment of an equity committee as soon as possible.

15 (Applause in the courtroom)

16 THE COURT: Please. That's not appropriate.

17 And let me just say why. It's actually -- I'm going,  
18 frankly, out on a limb here from a standpoint of where the law  
19 puts me, which is to make some sort of determination that there  
20 is a reasonable or substantial likelihood of recovery to equity  
21 here. I can't make that determination today. And I'm not  
22 basing my decision on a determination as to whether there's a  
23 substantial likelihood of a recovery to equity here. I'm doing  
24 it, frankly, based on my experience and my concern of the  
25 situation here. To put it bluntly, something doesn't smell

1 right to the Court. There were a series of statements made --  
2 they're public statements -- as to what value was. The markets  
3 were trading albeit at the press prices, certainly not  
4 insolvent prices, based on publicly available information. And  
5 there was a sudden and precipitous decline in value that  
6 occurred at the time on or about the filing of bankruptcy in  
7 February.

8 Credit markets reacted with shock, as did the equity  
9 markets. I don't know what happened, as I sit here today. I  
10 don't know if there was inappropriate conduct or not. And I'm  
11 not appointing a committee based on a concern -- well, not a  
12 concern; based on some sort of likelihood or determination  
13 there was inequitable conduct. But there was a certain  
14 valuation scenario that existed pre-petition and there's a  
15 radically different valuation scenario that exists post-  
16 petition, and there's a sufficient amount of ambiguity as to  
17 what's right and who's right, that I believe it's appropriate  
18 in this unique circumstance to appoint an equity committee.

19 Now, I know the case law says you don't just appoint  
20 an equity committee to test valuation. And I appreciate that.  
21 But I think in this situation I would take issue with that,  
22 because I think, in certain circumstances, appointing a  
23 committee to be able to contest a valuation thesis is  
24 appropriate, because the entire plan rises or files on that  
25 valuation thesis.

1           This isn't going to be carte blanche for an equity  
2 committee to spend five million dollars. I will look very  
3 carefully and very aggressively at the professional fees that  
4 will be incurred by any kind of equity committee. And this  
5 isn't an invitation for an equity committee to ask for a six-  
6 month extension of time on confirmation, to go through some  
7 sort of extended discovery process. We are on a track to a  
8 proposed plan. I understand there's opposition, of course, to  
9 the plan as it exists today, and the Court will consider that  
10 as we go forward, and make appropriate decisions on timing.  
11 But the debtors have exclusivity and have the ability to  
12 propose a plan and proceed at a reasonable pace towards  
13 confirmation of that plan.

14           I don't take this step lightly. And I know that it  
15 may involve -- it will involve -- not may; it will involve  
16 spending money that would otherwise be available to creditors.  
17 So I take that very seriously. However, I think that given the  
18 way the facts have played out here, and the dramatic adjustment  
19 in management position, the dramatic adjustment in valuation,  
20 in a very short period of time, based on a trend of activity  
21 that was occurring over a longer period of time, raises  
22 concerns in the Court's mind.

23           So I am going to enter an order -- I'll enter it today  
24 if at all possible -- directing the appointment of an equity  
25 committee. And I would ask, Mr. Fox, that you act with all

1 reasonable dispatch to form that committee. I know you have to  
2 go through your official processes, of course, and I respect  
3 that. But time is ticking away in this case, and further delay  
4 in appointment of that committee would be disadvantageous to  
5 the entire process.

6           So for those reasons I'll grant the motion. The  
7 Court'll enter an order.

8           Anything further for today?

9           MR. DAHL: No, Your Honor.

10          THE COURT: Thank you. We're adjourned.

11          UNIDENTIFIED SPEAKER: Thank you.

12          (Whereupon these proceedings were concluded at 12:58 PM)

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I N D E X

RULINGS

	Page	Line
Motions of Guy Spier and Phil Town for the	101	13
entry of an order appointing an equity		
committee, granted.		

1  
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C E R T I F I C A T I O N

I, Dee Ventucci, certify that the foregoing transcript is a true and accurate record of the proceedings.



May 3, 2016

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DEE VENTUCCI

DATE

eScribers, LLC  
700 West 192nd Street, Suite #607  
New York, NY 10040

	<b>15:24,24;19:21,22;20:9,13,14,16;22:6;59:25;60:6;61:6,9,18,24;62:10;74:8;77:5</b>	<b>90:5;92:5</b>	<b>74:11;87:25;88:17;93:2,19,21;94:8;95:2;100:2,4</b>	<b>allowing (3)</b> 27:18;73:5;81:17
<b>§</b>				<b>allows (4)</b> 8:23;24:23,24;31:5
<b>\$1 (1)</b> 52:18			<b>against (9)</b> 9:3;19:5,6;34:14;35:21,22;80:18;97:6,10	<b>almost (6)</b> 8:8;10:8;38:19;42:21;63:1;86:14
<b>\$2,723,679.91 (1)</b> 80:10	<b>accounts (1)</b> 86:10	<b>addressed (3)</b> 11:16;61:11,25	<b>agenda (2)</b> 6:9,13	<b>alone (3)</b> 15:8;56:13;65:15
<b>\$20.43 (1)</b> 52:17	<b>accrue (2)</b> 91:10,11	<b>adequacy (1)</b> 94:16	<b>Agent (2)</b> 5:3;96:9	<b>along (4)</b> 33:12;45:1;48:9;66:1
<b>A</b>	<b>accuracy (2)</b> 74:10;87:3	<b>adequate (4)</b> 12:21;40:7;44:4;75:25	<b>aggressive (3)</b> 11:3;33:11;73:17	<b>altered (1)</b> 76:17
<b>abandon (2)</b> 42:14;79:9	<b>accurate (1)</b> 78:9	<b>adequately (1)</b> 52:1	<b>aggressively (2)</b> 99:12;102:3	<b>alternative (1)</b> 63:4
<b>abandoned (1)</b> 42:13	<b>accurately (1)</b> 23:21	<b>adjourned (1)</b> 103:10	<b>ago (7)</b> 8:3;14:11;15:6;44:15;55:8;67:1,5	<b>although (3)</b> 9:18;48:11;94:1
<b>ABID (2)</b> 4:25;98:25	<b>achieve (1)</b> 40:7	<b>adjudicate (1)</b> 66:4	<b>agree (6)</b> 61:14;63:19;87:4;92:19;95:24;96:22	<b>Always (1)</b> 72:3
<b>ability (4)</b> 34:11;56:11;59:14;102:11	<b>achieving (1)</b> 49:3	<b>adjustment (2)</b> 102:18,19	<b>agreeing (1)</b> 7:15	<b>amazing (1)</b> 8:2
<b>ABL (1)</b> 86:9	<b>acquire (1)</b> 62:4	<b>administrative (1)</b> 91:11	<b>agreement (1)</b> 27:19	<b>ambiguity (1)</b> 101:16
<b>able (9)</b> 7:22;28:6;29:18;46:9;56:16;61:15;70:1;78:14;101:23	<b>across (1)</b> 81:14	<b>admission (1)</b> 78:13	<b>ahead (3)</b> 23:12;24:25;59:3	<b>amended (1)</b> 6:8
<b>above (5)</b> 14:22;37:7;41:3;47:22;55:25	<b>act (6)</b> 21:21;39:13;88:10,10,11;102:25	<b>admitted (1)</b> 88:25	<b>AKIN (2)</b> 4:13;98:25	<b>America (1)</b> 8:2
<b>above-board (1)</b> 68:12	<b>action (8)</b> 12:18;34:20;35:11,12,21;41:9;84:3;87:7	<b>adopted (1)</b> 42:25	<b>Alavi (5)</b> 16:5;60:17,18;65:17;76:7	<b>American (6)</b> 7:16;11:5;13:24;41:20;72:20,24
<b>absent (2)</b> 91:21,24	<b>actions (8)</b> 17:1,2;21:12,17;22:21;29:20;31:7,21	<b>adoption (1)</b> 61:12	<b>albeit (1)</b> 101:3	<b>amongst (2)</b> 18:20;83:8
<b>absolute (1)</b> 84:21	<b>active (1)</b> 70:16	<b>advance (1)</b> 88:24	<b>ALDRIDGE (3)</b> 77:14,16,16	<b>amortization (1)</b> 46:2
<b>absolutely (6)</b> 19:22;20:23;51:13;75:12;86:22,24	<b>actively (1)</b> 67:4	<b>advice (1)</b> 21:16	<b>Alena (1)</b> 82:25	<b>amount (16)</b> 20:18,20;41:16;45:5,6;46:13,20;48:5,10,12,23;49:16;50:6;51:14,15;101:16
<b>academics (1)</b> 8:25	<b>activist (4)</b> 36:6,20;38:22,24	<b>advisor (2)</b> 33:10;67:10	<b>Ali (4)</b> 16:5,21;60:17;76:7	<b>amounts (2)</b> 13:3,18
<b>accent (2)</b> 13:23;14:3	<b>activity (1)</b> 102:20	<b>advisors (2)</b> 43:18;97:16	<b>aligned (5)</b> 92:1,10,15,20;99:10	<b>ana (1)</b> 78:4
<b>accept (1)</b> 29:13	<b>actors (1)</b> 18:24	<b>advocate (1)</b> 40:8	<b>alive (3)</b> 25:11,15;69:20	<b>analogous (2)</b> 36:12;37:3
<b>acceptable (1)</b> 52:25	<b>actually (14)</b> 10:2;13:22;14:7;34:12,25;39:10,11;46:14;56:5;80:13,24;95:18,22;100:17	<b>affairs (2)</b> 76:7,7	<b>Allan (1)</b> 42:2	<b>analogy (2)</b> 25:1,4
<b>accepted (2)</b> 61:5,24	<b>acumen (1)</b> 67:17	<b>affect (2)</b> 11:12;82:5	<b>alleged (2)</b> 60:7;97:7	<b>analysis (4)</b> 19:11;32:4;75:9;89:10
<b>accepting (1)</b> 9:16	<b>Ad (11)</b> 4:14,22;24:10,19;25:5;31:19,21,23;32:14;96:10;99:1	<b>afford (2)</b> 30:5,6	<b>allocated (1)</b> 85:4	<b>analysts (1)</b> 18:20
<b>access (6)</b> 16:18;25:19;27:10;35:13;36:16;86:10	<b>add (3)</b> 50:11;55:18;61:24	<b>African (1)</b> 13:25	<b>allocating (1)</b> 23:7	<b>analytical (1)</b> 62:24
<b>according (2)</b> 48:25;86:5	<b>addition (9)</b> 8:20;13:2;19:20;55:1,21;72:18;75:12;78:7;86:4	<b>afternoon (8)</b> 66:20,22;71:14,24,25;74:24;84:13;97:24	<b>allow (18)</b> 23:13;24:22;25:12,13;28:7;29:15;31:2,9,9,10;32:15;35:25;42:14;43:25;62:6;82:13;83:21;87:20	<b>analyzing (1)</b> 78:5
<b>account (4)</b> 8:16,16;9:9;39:16	<b>additional (8)</b> 43:4;47:21;55:18;66:9;74:5;77:20;	<b>afterwards (2)</b> 7:21;42:9	<b>allowed (2)</b> 28:1;70:16	<b>ANDREW (2)</b> 5:10;59:2
<b>accountants (2)</b> 20:24;21:2		<b>again (16)</b> 23:9;38:2;42:24;48:17;49:5;56:9;		<b>Angeles (1)</b> 75:3
<b>accounting (18)</b>				

<b>announce (1)</b> 30:19	<b>approach (2)</b> 44:9;66:18	<b>assembled (1)</b> 10:20	22:1	<b>ballpark (1)</b> 46:8
<b>announced (2)</b> 10:15;35:12	<b>approaching (1)</b> 92:25	<b>asserted (2)</b> 59:17;97:8	<b>auditor (1)</b> 16:15	<b>Bank (3)</b> 5:3;86:9;96:8
<b>announcement (3)</b> 30:17;32:9;69:3	<b>appropriate (10)</b> 9:20;41:11;87:10; 90:18;93:11;97:18; 100:16;101:17,24; 102:10	<b>asserting (1)</b> 97:7	<b>auditors (5)</b> 22:3,4,15,18;59:25	<b>banker (1)</b> 33:19
<b>announcer (1)</b> 32:8		<b>assertion (1)</b> 59:13	<b>audits (1)</b> 59:9	<b>bankrupt (1)</b> 45:8
<b>annoying (1)</b> 37:7	<b>approve (3)</b> 12:18;13:12;42:6	<b>asset (11)</b> 20:18,21;22:8; 24:3;53:10,14,17,21; 61:25;62:4,25	<b>augmented (1)</b> 84:8	<b>bankruptcies (1)</b> 10:8
<b>annual (7)</b> 8:11;38:5;49:21; 50:13;51:17;54:23; 62:23	<b>approved (2)</b> 77:10;79:7	<b>assets (21)</b> 8:7;11:6;13:12; 21:8;22:3,5,6,12; 33:16,17,25;34:9,15; 53:12;63:13;77:7; 78:7,19;84:25;85:3; 96:1	<b>August (2)</b> 52:14,16	<b>bankruptcy (77)</b> 8:23;9:1;10:1,16; 11:5,13,14;12:22; 13:6;14:16;17:3,9; 20:4;21:13,14;22:1, 20,21,25;23:18;24:9, 18;27:24;30:21; 31:20;32:11;34:9, 12;35:8,18,18,25; 36:14,17;37:2;38:9, 11,15,23;39:3,7; 40:4,11,13,13,15,18, 21;42:2,18;43:2,21, 25;44:23;63:6,8; 65:8,9;69:3,6,16,17; 71:4,8,18;73:11,16, 17;76:18;77:6; 79:15;80:17;84:17; 85:2,5,6;101:6
<b>ANTHONY (1)</b> 4:18	<b>approximate (1)</b> 89:24		<b>author (1)</b> 44:15	
<b>antici (1)</b> 54:8	<b>approximately (7)</b> 56:10,21;62:11; 89:12,15;90:15; 98:13	<b>assistants (2)</b> 8:13;80:7	<b>availability (1)</b> 75:25	
<b>apologize (5)</b> 9:15;11:15;12:2,7; 58:17	<b>approximation (1)</b> 20:6	<b>associated (1)</b> 83:2	<b>available (6)</b> 16:8;23:21;25:24; 100:5;101:4;102:16	
<b>apparently (1)</b> 44:15	<b>April (5)</b> 45:13,14;48:14; 64:5;85:23	<b>assume (1)</b> 56:4	<b>avarice (1)</b> 83:14	
<b>appear (3)</b> 9:8,10;16:17	<b>area (1)</b> 26:7	<b>assumes (1)</b> 90:15	<b>average (1)</b> 82:8	
<b>appeared (1)</b> 31:19	<b>argue (6)</b> 17:18;29:17;38:3; 49:15;54:16;99:12	<b>assuming (3)</b> 89:12;90:12,16	<b>averages (1)</b> 50:1	
<b>appearing (1)</b> 8:15	<b>argued (1)</b> 79:13	<b>assumption (5)</b> 15:14;17:23;51:3; 54:7;90:18	<b>avoidance (1)</b> 83:19	
<b>appease (2)</b> 41:12;42:15	<b>arguing (4)</b> 47:1,9,10;52:8	<b>assurances (1)</b> 41:5,6	<b>awarding (1)</b> 27:14	
<b>Applause (1)</b> 100:15	<b>argument (5)</b> 6:23;13:16;49:7; 79:23;82:17	<b>assured (3)</b> 68:4;75:17;82:2	<b>aware (6)</b> 34:3;61:5,8;70:25; 90:10,10	<b>banks (1)</b> 75:1
<b>application (1)</b> 69:6	<b>arguments (3)</b> 9:19;28:5,12	<b>Atlanta (1)</b> 81:5	<b>away (8)</b> 31:13,16;36:14; 50:20;57:16;65:12; 69:24;103:3	<b>bargain-basement (1)</b> 73:20
<b>applied (1)</b> 21:5	<b>arise (1)</b> 58:18	<b>attacks (1)</b> 18:10	<b>awesome (1)</b> 41:25	<b>BARTON (5)</b> 81:4,4,11,13,24
<b>applies (1)</b> 61:18	<b>arms (1)</b> 42:8	<b>attempt (2)</b> 34:8;38:8	<b>awful (1)</b> 42:4	<b>base (2)</b> 28:12;82:20
<b>apply (4)</b> 27:8,9;35:1;51:16	<b>around (10)</b> 18:14;21:3;24:9, 18;26:24;33:17; 34:1,1;48:3;78:19	<b>attempting (1)</b> 86:15		<b>based (18)</b> 13:14;14:12,19, 20;17:24;25:23; 36:10;51:25;55:9; 59:13;75:2;77:2; 95:2;100:24;101:4, 11,12;102:20
<b>appoint (9)</b> 59:17;80:24;92:4; 94:19;96:19;98:5, 14;101:18,19	<b>arrayed (1)</b> 9:3	<b>Attempts (1)</b> 33:9	<b>B</b>	<b>back (17)</b> 16:22;28:15,20; 34:9;39:10;47:25; 48:4,7;51:6;52:8; 54:22;58:11,13; 70:5;71:12;86:12; 91:13
<b>appointed (3)</b> 85:12;89:4;95:16	<b>arrive (1)</b> 49:4	<b>attention (1)</b> 39:24	<b>backdoor (1)</b> 37:24	<b>backed (1)</b> 70:3
<b>appointing (7)</b> 43:10;63:19; 91:14;94:24;95:1; 101:11,22	<b>arrived (1)</b> 70:24	<b>at-the-money (1)</b> 76:1	<b>background (3)</b> 8:19;59:8;68:19	<b>background (3)</b> 8:19;59:8;68:19
<b>appointment (17)</b> 6:15;41:10;43:1; 85:8;87:20,25; 93:13;94:5,9,21,22; 98:7,20;99:22; 100:14;102:24; 103:4	<b>arriving (3)</b> 51:1;54:21;55:2	<b>Attorneys (7)</b> 4:3,14,22;5:3; 37:11;63:7;80:6	<b>backs (1)</b> 16:23	<b>backed (1)</b> 70:3
<b>appreciate (11)</b> 9:16;29:8;38:19; 42:23;46:9;75:4; 84:4,9,18;94:12; 101:20	<b>article (2)</b> 73:10,12	<b>auction (1)</b> 33:24	<b>bad (5)</b> 18:16;20:10,12; 25:6;36:6	<b>bad (5)</b> 18:16;20:10,12; 25:6;36:6
	<b>ASHBY (1)</b> 4:21	<b>audit (1)</b> 60:2	<b>balance (4)</b> 80:11;89:22;90:4; 91:9	<b>balance (4)</b> 80:11;89:22;90:4; 91:9
	<b>aside (6)</b> 14:9;21:21;27:7; 34:21;37:24;55:25	<b>audited (1)</b>		<b>base (2)</b> 28:12;82:20
	<b>aspect (2)</b> 53:11;54:20			<b>based (18)</b> 13:14;14:12,19, 20;17:24;25:23; 36:10;51:25;55:9; 59:13;75:2;77:2; 95:2;100:24;101:4, 11,12;102:20

<b>bearing (2)</b> 46:3;88:3	86:10	<b>Brilliant (1)</b> 42:2	90:6	52:6;55:23;64:2;
<b>beat (1)</b> 27:4	<b>blocking (1)</b> 14:8	<b>brings (1)</b> 52:8	<b>buy (2)</b> 33:22;82:7	68:6;75:25;76:6;
<b>beating (1)</b> 25:18	<b>blowing (1)</b> 12:10	<b>British (1)</b> 14:3	<b>buyer (1)</b> 34:3	89:14,20;95:20,21
<b>beautiful (2)</b> 64:17,18	<b>blown (2)</b> 31:13,16	<b>broader (1)</b> 16:24	<b>buyers (1)</b> 33:7	<b>capitalism (3)</b> 11:10;41:20;83:18
<b>became (1)</b> 37:18	<b>bluntly (1)</b> 100:25	<b>Brothers (1)</b> 33:11	<b>buying (1)</b> 37:18	<b>capturing (1)</b> 66:13
<b>become (7)</b> 26:17;35:6,25; 37:9,9;65:7;66:2	<b>board (1)</b> 30:15	<b>brought (2)</b> 20:15;45:2	<b>byways (1)</b> 8:25	<b>care (3)</b> 58:18,23;82:10
<b>becomes (1)</b> 47:5	<b>Bob (1)</b> 41:15	<b>Bruce (1)</b> 95:10	<b>C</b>	<b>career (3)</b> 20:2;67:6,6
<b>beforehand (1)</b> 24:16	<b>bolster (1)</b> 77:21	<b>brush (1)</b> 21:21	<b>California (2)</b> 65:4;75:3	<b>careful (2)</b> 8:1;23:9
<b>beginning (1)</b> 86:13	<b>bond (1)</b> 76:4	<b>budget (1)</b> 8:12	<b>call (6)</b> 33:14;40:12;68:7; 71:19;75:22;91:3	<b>carefully (6)</b> 9:19;23:12;29:25; 40:24;45:3;102:3
<b>behalf (7)</b> 40:9;66:23,24; 84:14;95:11;97:25; 98:25	<b>book (7)</b> 8:14;14:13,24; 19:22;20:2,4,9	<b>Buechler (5)</b> 95:9,10,10;97:21, 22	<b>called (5)</b> 11:17;16:4;20:1; 74:7;95:19	<b>Carolina (4)</b> 64:13,14,16;67:11
<b>behavior (3)</b> 36:7;37:11;79:20	<b>books (1)</b> 44:16	<b>Buffet (1)</b> 52:2	<b>calling (1)</b> 63:23	<b>carried (1)</b> 87:15
<b>behind (6)</b> 16:22,22;36:3; 64:4;81:6,7	<b>boots (1)</b> 42:4	<b>Buffett (1)</b> 20:1	<b>calls (1)</b> 60:13	<b>carrying (2)</b> 20:18,20
<b>Ben (1)</b> 20:1	<b>born (2)</b> 14:2;45:23	<b>bug (1)</b> 81:20	<b>camaraderie (1)</b> 83:8	<b>cart (1)</b> 78:18
<b>benefit (2)</b> 43:18;63:9	<b>BOSWELL (7)</b> 5:9,9;63:23,23; 64:1,2,2	<b>build (2)</b> 41:20;68:17	<b>came (11)</b> 8:3;10:16,18; 26:10;30:20;45:3; 14:52;11;55:18,21; 65:4	<b>carte (1)</b> 102:1
<b>Berkshire (1)</b> 10:3	<b>both (6)</b> 8:10;40:10;52:20; 59:9,22;84:8	<b>built (2)</b> 20:1;64:16	<b>can (67)</b> 8:18;10:22,23; 11:2,3;12:8;14:3,10; 15:18,18;17:6,18; 18:8;19:8;21:2,20, 20;25:7,8;26:6,14, 17;28:20;29:14,24; 30:5,6;32:3,19;33:1, 6,7,13;34:1,1;36:11, 21,25;37:12,12,18, 25;38:7;40:19; 41:21;42:5,7,8,13; 44:8;49:19;52:10; 55:24;61:14;63:11; 64:22,25;69:25; 70:9;72:9,12;78:19; 80:13;82:19;84:18; 89:8;96:21	<b>case (51)</b> 7:7,18;8:10;10:13; 11:12;24:14;25:4,16, 22,24;26:1,15;27:10; 28:15;29:23;36:16, 17;39:25;40:7,9; 41:14;43:24;57:12; 64:25;69:25;70:8,9; 73:7,14,16,23,24; 74:20;79:2,9,15; 80:20,25;84:3; 86:13;87:9,21,25; 94:2,8,23;96:19; 97:2,18;101:19; 103:3
<b>best (4)</b> 29:14;41:8;52:3; 84:25	<b>bought (1)</b> 73:15	<b>bullish (1)</b> 19:8	<b>can (67)</b> 8:18;10:22,23; 11:2,3;12:8;14:3,10; 15:18,18;17:6,18; 18:8;19:8;21:2,20, 20;25:7,8;26:6,14, 17;28:20;29:14,24; 30:5,6;32:3,19;33:1, 6,7,13;34:1,1;36:11, 21,25;37:12,12,18, 25;38:7;40:19; 41:21;42:5,7,8,13; 44:8;49:19;52:10; 55:24;61:14;63:11; 64:22,25;69:25; 70:9;72:9,12;78:19; 80:13;82:19;84:18; 89:8;96:21	<b>cases (9)</b> 10:8,11;13:3;27:9; 34:23;41:11;43:5; 89:24;90:17
<b>betrays (1)</b> 18:18	<b>BOWDEN (1)</b> 4:24	<b>burden (10)</b> 27:19;29:12,24; 87:13,14,15;93:13; 97:1,14;99:20	<b>canceling (1)</b> 79:10	<b>cash (3)</b> 54:14;75:23;86:10
<b>better (2)</b> 37:2;47:23	<b>bowl (1)</b> 40:12	<b>burdensome (1)</b> 79:24	<b>Candidly (1)</b> 90:10	<b>cause (1)</b> 96:18
<b>beyond (1)</b> 47:22	<b>box (1)</b> 40:1	<b>Bureau (1)</b> 50:2	<b>cap (1)</b> 46:13	<b>caused (1)</b> 65:25
<b>big (5)</b> 10:18;20:23; 32:18;35:6;72:8	<b>Boys (1)</b> 72:24	<b>BURROW (3)</b> 64:10,12,12	<b>capacity (2)</b> 8:18;40:13	<b>causes (2)</b> 76:14;87:7
<b>billed (1)</b> 80:11	<b>branch (1)</b> 74:17	<b>business (39)</b> 11:22;17:15; 18:25;19:11,18; 20:10,12;22:19; 26:11,12;29:21; 31:22;32:1,5;33:4; 44:22;45:12,15,18, 21,22;46:7,21;47:19; 48:20;50:8;51:24; 57:2;60:16;67:17; 68:25;69:2,10,20,24; 70:11;75:8;76:1; 78:5	<b>Capital (21)</b> 5:9;31:10,25; 44:14;48:11;49:24, 25;50:3;51:4,18,21;	<b>cede (1)</b> 6:22
<b>billion (7)</b> 8:11;43:13;52:11, 18;56:12,25;62:12	<b>BRAUNER (1)</b> 4:17	<b>businesses (8)</b> 19:2;20:3;32:25; 33:5;46:12;67:10,11, 16	<b>careful (2)</b> 8:1;23:9	<b>cents (6)</b> 73:15;86:2;92:11, 13,13;98:13
<b>biotechnology (1)</b> 67:7	<b>brave (1)</b> 72:25	<b>but (1)</b> 99:2	<b>careless (1)</b> 8:1;23:9	<b>CEO (1)</b> 41:15
<b>bit (6)</b> 38:2;40:20;47:16; 60:21;76:15;89:17	<b>breakdown (1)</b> 65:13		<b>careless (1)</b> 8:1;23:9	<b>certain (15)</b> 10:19;12:25; 13:16;19:2;35:4;
<b>blanche (1)</b> 102:1	<b>breakpoint (1)</b> 92:25			
<b>bless (2)</b> 8:2;17:10	<b>bridges (1)</b> 83:24			
<b>blessing (3)</b> 16:15,25;38:22	<b>brief (5)</b> 57:25;58:7;60:11; 71:16;82:25			
<b>blocked (1)</b>	<b>briefly (6)</b> 44:21;60:10; 63:25;95:13;98:1;			

42:6;51:14;78:7; 86:11;96:14,15;97:6, 7;101:13,22 <b>certainly (21)</b> 9:24;19:23;24:7; 26:9;41:18;59:2; 61:16;63:16;69:1,2; 85:4;86:4,25;87:2,5, 9;93:9,23;99:8,12; 101:3 <b>certificate (1)</b> 6:11 <b>certification (1)</b> 6:12 <b>certify (1)</b> 16:20 <b>CFA (1)</b> 74:25 <b>CFO (4)</b> 41:15;60:14; 67:10;75:16 <b>challenge (11)</b> 15:10;88:2,2;89:5; 91:15,21,23;94:11, 15,16;96:12 <b>chambers (1)</b> 58:18 <b>chance (4)</b> 30:4,11;42:18; 66:6 <b>Chancery (3)</b> 11:1;38:3,5 <b>change (7)</b> 15:16,18;26:5,16; 48:16,19;55:12 <b>changed (2)</b> 28:16;48:23 <b>changing (2)</b> 55:13,15 <b>Chapel (1)</b> 64:14 <b>Chapter (10)</b> 69:16,17,19;70:5, 21;78:20;79:19; 89:24;90:4,17 <b>characterization (1)</b> 76:15 <b>charge (3)</b> 19:5,6;37:15 <b>charts (1)</b> 23:16 <b>check (1)</b> 37:11 <b>chickens (1)</b> 17:11 <b>children (1)</b> 13:24 <b>choice (1)</b> 84:24 <b>circumstance (2)</b> 88:13;101:18 <b>circumstances (5)</b> 27:13;28:16;43:4;	98:8;101:22 <b>cite (1)</b> 25:17 <b>citizens (1)</b> 73:2 <b>civil (1)</b> 83:24 <b>claim (7)</b> 12:15;21:24; 27:17,23;34:14; 35:21;37:1 <b>claimants (1)</b> 12:14 <b>claimed (1)</b> 43:12 <b>claiming (3)</b> 20:22;21:14;30:25 <b>claims (9)</b> 41:21;68:20; 76:18;87:7;89:23; 90:2;91:9;97:8,10 <b>class (4)</b> 35:11,12,21;66:11 <b>class-action (1)</b> 97:4 <b>classes (1)</b> 98:12 <b>classic (1)</b> 87:16 <b>clause (1)</b> 35:22 <b>CLAYMONT (3)</b> 65:3,3,7 <b>clean (1)</b> 62:22 <b>clear (17)</b> 17:14;22:8;26:22, 23;35:4,6;36:11; 37:16;43:8;68:7; 70:6;75:6,12;87:9, 25;92:3;94:9 <b>clearly (7)</b> 32:2;35:10;68:1; 70:10;83:21;88:15; 99:20 <b>CLERK (2)</b> 6:2;58:15 <b>clerks (1)</b> 40:23 <b>close (3)</b> 18:14;52:15;56:8 <b>closely (2)</b> 10:18;47:15 <b>closer (1)</b> 90:21 <b>closing (1)</b> 80:15 <b>co (2)</b> 35:19,19 <b>Code (6)</b> 34:12;36:17; 40:21;43:21;69:17; 85:2	<b>cognizant (3)</b> 28:22;30:11;38:20 <b>coin (1)</b> 51:11 <b>Collateral (2)</b> 5:3;96:8 <b>collective (3)</b> 41:9;72:6,7 <b>colluded (1)</b> 79:5 <b>coming (8)</b> 33:12;38:14;39:5; 45:1;51:12;64:15; 83:6;97:3 <b>comment (2)</b> 98:23;99:8 <b>comments (1)</b> 99:3 <b>committee (102)</b> 6:15,19;12:16; 16:25;23:5;26:2; 27:14,18;28:22; 29:24;33:2;34:10; 35:2;36:23;39:17; 40:6,8;41:11;43:3, 10,15;44:4;56:19; 57:2,11;59:18; 63:20;64:25;70:6,12, 17,19;71:10,17,17, 21;72:11;73:8; 77:10;78:3,4,4,8,10; 80:24;81:18;82:14, 19;85:9,12;87:20; 88:1;89:4;91:14,21, 24;92:2,3,5,6,8,9; 93:5,14;94:5,6,9,19, 21,22,25;95:1,11,16; 96:2,3,4,5,10,17,19, 20;97:13;98:2,6,7, 14,20;99:9,12,22; 100:14;101:11,18, 20,23;102:2,4,5,25; 103:1,4 <b>committees (2)</b> 43:1;80:18 <b>committee's (3)</b> 78:7,13;95:25 <b>committing (1)</b> 85:22 <b>commodity (2)</b> 68:4;75:24 <b>common (1)</b> 8:21 <b>communicate (1)</b> 35:10 <b>communicated (1)</b> 10:11 <b>communication (6)</b> 17:3;29:22;33:11, 12;45:7;48:1 <b>communications (1)</b> 44:24 <b>companies (13)</b>	10:6,6;37:21;43:2; 49:25,25;50:4; 59:10;67:4,15;71:5; 83:17,23 <b>companion (1)</b> 9:4 <b>company (101)</b> 9:10;10:9,11,18; 11:25;14:15,21; 15:22;16:4,7,7,9,19; 17:2;19:5,7;20:7,24; 21:7;22:24;26:3; 27:4;28:2,3,3;30:5, 16,17;31:14;32:6,12, 24;33:17,22;34:4,14; 35:8,10,17,23;37:7, 19;38:16;39:2,7; 41:16;43:13;44:23; 45:2;47:13;48:1; 49:5;50:5,25;52:17; 56:2,20;57:8,10; 60:25;61:5,10;62:3, 13,22;63:1,2,14,16; 66:25;67:2,21;68:1, 10,23,24;69:7,22; 70:13;71:18;77:3,4, 5,8,9,18,21;79:6,9, 12;80:10,12;81:13, 19,25;82:5;83:1; 87:1;88:14,18;92:19 <b>company's (10)</b> 9:7;23:17;26:17; 34:11;35:5;44:1,2; 59:24;62:23;96:2 <b>comparison (1)</b> 8:9 <b>compensation (1)</b> 80:2 <b>complained (1)</b> 73:14 <b>complaint (2)</b> 35:14;96:13 <b>complete (5)</b> 10:17;25:23; 48:20;59:14;78:8 <b>completed (2)</b> 52:19;55:20 <b>completely (4)</b> 64:3;96:24;97:2; 98:7 <b>completion (3)</b> 48:12;52:15;56:5 <b>complexity (1)</b> 70:8 <b>compliment (1)</b> 12:3 <b>components (1)</b> 76:17 <b>compound (1)</b> 50:13 <b>compounded (4)</b> 49:21;51:17,25; 54:23	<b>compounds (1)</b> 52:2 <b>compromised (1)</b> 40:19 <b>concern (4)</b> 69:5;100:24; 101:11,12 <b>concerned (4)</b> 29:3;87:19;96:1; 97:17 <b>concerning (2)</b> 61:25;67:16 <b>concerns (3)</b> 68:3,24;102:22 <b>concluded (1)</b> 103:12 <b>concluding (1)</b> 75:21 <b>conclusion (3)</b> 39:11;43:23;52:9 <b>conclusions (2)</b> 15:13;67:21 <b>concur (2)</b> 64:3;99:3 <b>condition (1)</b> 20:17 <b>conditions (3)</b> 18:13,16;82:3 <b>conduct (2)</b> 101:10,13 <b>confidence (7)</b> 39:19;65:21,24; 67:16;68:8;71:3,5 <b>confirmation (7)</b> 87:22;88:2;91:18; 94:17;96:5;102:6,13 <b>Congress (6)</b> 41:1,2,3;42:16; 74:7;85:1 <b>connected (1)</b> 11:7 <b>connection (2)</b> 78:6;96:5 <b>conscience (1)</b> 18:8 <b>conservative (1)</b> 18:2 <b>consider (12)</b> 28:10;34:25; 43:23;59:15,18; 62:16;63:12,18,19; 67:3;72:10;102:9 <b>considerable (1)</b> 43:6 <b>considerably (1)</b> 56:15 <b>consideration (4)</b> 8:1;65:10;66:16; 82:18 <b>consistent (4)</b> 21:18;34:8;75:13; 76:18 <b>consistently (3)</b>
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<p>21:21;61:2;66:1 <b>constant (1)</b> 44:25 <b>constituency (1)</b> 97:13 <b>constituency's (2)</b> 96:22,23 <b>construction (3)</b> 45:3,4;68:19 <b>consultants (1)</b> 80:7 <b>consulting (2)</b> 75:1;80:4 <b>contends (1)</b> 18:16 <b>contest (2)</b> 17:7;101:23 <b>continue (8)</b> 60:16;67:21; 69:25;73:7;91:10, 11;94:15;98:16 <b>continued (1)</b> 6:10 <b>continuing (1)</b> 91:9 <b>contrary (1)</b> 78:23 <b>contrast (4)</b> 9:8;10:16;29:19; 34:10 <b>control (16)</b> 11:2,6;15:1,5,20; 34:8;37:25;38:3,4,8, 11,12;63:8;67:17; 86:22,23 <b>conversation (2)</b> 28:9;32:6 <b>conversations (3)</b> 32:20;33:18,19 <b>Conversely (1)</b> 94:21 <b>convert (1)</b> 42:19 <b>conveyance (2)</b> 36:12,13 <b>convince (1)</b> 22:15 <b>convinced (2)</b> 19:13;28:5 <b>convincing (1)</b> 15:19 <b>copy (3)</b> 7:21;20:15;29:3 <b>corny (1)</b> 8:2 <b>corporate (4)</b> 38:3;42:19;74:10; 76:7 <b>corporation (12)</b> 11:2;15:2,4;19:25; 21:19,19;31:7; 37:15;38:4,9;69:18; 74:14</p>	<p><b>corporations (1)</b> 37:25 <b>correctly (1)</b> 46:24 <b>corresponds (1)</b> 47:15 <b>cost (12)</b> 9:10,11;11:21; 45:22;54:16;68:16; 70:8,12;90:16,19; 94:25;97:18 <b>costs (5)</b> 17:19;43:4;54:7; 79:2;91:11 <b>counsel (6)</b> 6:12;28:9;33:10; 36:16,20;46:22 <b>count (2)</b> 15:23,24 <b>counteract (1)</b> 41:11 <b>counterintuitive (1)</b> 18:23 <b>counterpart (1)</b> 78:24 <b>countries (1)</b> 7:18 <b>country (4)</b> 8:3;13:11;73:1,3 <b>country's (1)</b> 59:25 <b>couple (7)</b> 8:13,20;14:6; 44:15;57:17;58:1; 66:25 <b>Coupled (1)</b> 86:8 <b>course (13)</b> 6:22,24;12:18; 17:19;18:1,2;25:13; 42:4,15;84:3;89:18; 102:8;103:2 <b>courses (1)</b> 35:1 <b>COURT (153)</b> 6:3,7,21,24;7:3,8, 10,12,14;8:25;9:17; 12:3,17;13:14,14,25; 16:17;17:7;18:4; 20:13;22:2;23:10; 24:18,24;25:3,9; 28:24;29:1,4,6,9; 34:9;35:16,25; 36:10;38:2,3,5,11; 43:8,9,11;44:6,9,11; 49:8,11,23;53:2,4,7, 10,13,16,19,24;54:1, 9,11,19;57:13,22; 58:16,19,25;59:3,15, 18;60:11;62:12; 63:6,10,12,21,25; 64:6,8,11;65:1,5,6; 66:17,20;69:13,22;</p>	<p>71:12,22,25;72:3,13, 15;73:11;74:16,22; 76:23;77:12,15; 79:18;81:2,9,12,23; 82:22;83:9;84:6,9, 23;85:18,20;86:13, 20;87:17,18;88:4,9, 11,21,23;89:7,11; 91:4,14,17;92:8,15, 18,23;93:3,5,8,10,23, 24;95:5,7,9;96:22; 97:5,21,23,25;98:3, 15,22;99:19,23,25; 100:6,9,11,16;101:1; 102:9;103:10 <b>Court'll (1)</b> 103:7 <b>courtroom (4)</b> 81:14;90:5,9; 100:15 <b>courtrooms (2)</b> 81:15,16 <b>courts (2)</b> 9:11;13:12 <b>Court's (5)</b> 6:13;12:25;62:2; 65:10;102:22 <b>covenant (1)</b> 10:14 <b>covenants (2)</b> 23:2;39:7 <b>covers (1)</b> 52:1 <b>CPA (3)</b> 59:8;64:20;81:7 <b>crazy (1)</b> 50:14 <b>created (1)</b> 70:7 <b>creates (2)</b> 13:13;49:17 <b>creation (1)</b> 80:18 <b>credibility (1)</b> 21:17 <b>credit (3)</b> 28:2;76:5;101:8 <b>credited (1)</b> 31:6 <b>creditor (3)</b> 65:12;73:15;99:17 <b>creditors (38)</b> 6:19;10:15;12:12; 15:2;18:1;20:22; 25:5;27:25;31:1; 32:7,13;33:21,23; 37:18;41:7,12; 42:15;51:4;63:15; 69:20,23;77:19; 78:17;79:3,8;91:22; 92:2,7,9,12;93:1; 95:12;96:24,25;98:2, 11,12;102:16</p>	<p><b>creditors' (9)</b> 17:1,1;33:2;36:20; 78:2;80:20;93:5; 97:13;99:9 <b>crisis (2)</b> 74:6;83:14 <b>criteria (2)</b> 34:22,25 <b>critical (1)</b> 71:10 <b>cultural (1)</b> 72:8 <b>cup (1)</b> 13:22 <b>curious (2)</b> 31:18;80:23 <b>current (12)</b> 18:13,16,25; 45:17;48:19;49:18; 56:7;68:4;75:23,24; 89:22;90:24 <b>currently (6)</b> 48:21;54:24; 59:10;67:9;91:23; 98:19 <b>cutting (1)</b> 95:23 <b>CV (1)</b> 6:14 <b>cycles (1)</b> 24:1 <b>cyclical (6)</b> 18:19,20,21,22; 19:11,14</p>	<p><b>day (1)</b> 70:1 <b>days (7)</b> 14:11;15:6;43:19; 45:7;81:10,20,21 <b>dead (3)</b> 25:13;33:20;69:24 <b>deadline (1)</b> 96:12 <b>deal (5)</b> 36:23;48:17; 72:12;79:9;96:14 <b>debt (18)</b> 32:12;33:1;34:5; 37:18;38:1;53:24, 25;55:4;56:9;63:5; 65:9;73:15,20; 76:10;79:10;83:12; 89:21;91:8 <b>debt-holders (1)</b> 75:7 <b>debtor (15)</b> 15:1;18:1;21:10, 23,24;22:14,15; 23:16;30:25;33:3; 41:7;43:6;69:19; 79:4;84:11 <b>Debtors (27)</b> 4:3;6:6,19;16:25; 19:13;20:22;40:14; 41:12;78:10;84:15, 23;85:19;86:14,21, 23;87:8;89:18; 90:19;91:7;93:22; 95:17,24;96:6; 97:11;99:4;100:3; 102:11 <b>debtors' (12)</b> 78:5;80:20;85:14; 89:9;90:24;91:5; 92:1;94:16,25;96:1; 99:6;100:8 <b>debtor's (11)</b> 21:12;23:14;24:8; 29:20;30:1,13;33:9, 10;36:1;40:16;43:12 <b>debunked (1)</b> 23:24 <b>December (3)</b> 85:21;86:2;88:18 <b>decent (1)</b> 42:10 <b>decide (3)</b> 28:12;29:11;84:2 <b>decided (3)</b> 11:16;67:5;73:16 <b>deciding (1)</b> 19:17 <b>decision (6)</b> 11:12;32:22; 63:11;98:14,21; 100:22 <b>decisions (4)</b></p>
<b>D</b>				
			<p><b>Dahl (32)</b> 6:5,5,8;24:16; 54:3,6,12;84:13,14; 85:19,25;86:21; 87:24;88:8,17,22,24; 91:25;92:14,17,22, 24;93:4,7,9,12;95:6; 100:2,3,7,10;103:9 <b>Dahl's (1)</b> 39:4 <b>danger (1)</b> 30:18 <b>dark (1)</b> 48:17 <b>data (10)</b> 14:12,19,20,21; 15:20,20;16:19,20; 30:1;45:13 <b>date (2)</b> 28:15;89:21 <b>daughter (2)</b> 14:3;81:25 <b>DAVID (1)</b> 5:5 <b>DAVIS (1)</b> 4:4</p>	

69:8;79:20;82:21; 102:10 <b>declarations (1)</b> 14:23 <b>declare (2)</b> 17:3;69:23 <b>declared (1)</b> 77:25 <b>decline (3)</b> 22:9,19;101:5 <b>declined (1)</b> 98:5 <b>deep (3)</b> 11:22;42:3;75:9 <b>deeply (3)</b> 7:16;8:4;41:3 <b>default (2)</b> 30:16;32:7 <b>defend (4)</b> 57:2,11,20;92:23 <b>defensive (1)</b> 86:18 <b>defer (1)</b> 98:20 <b>definitely (1)</b> 57:24 <b>definitive (1)</b> 92:4 <b>degree (1)</b> 22:11 <b>Delaware (3)</b> 10:25;35:15;97:6 <b>delay (5)</b> 58:17;94:24;95:1; 99:21;103:3 <b>demand (1)</b> 26:6 <b>democracy (2)</b> 7:23;11:9 <b>demonstrate (3)</b> 28:6,8;29:18 <b>demonstrated (3)</b> 83:21;96:18;99:13 <b>denied (1)</b> 26:2 <b>deny (4)</b> 16:24;18:8;27:25; 28:13 <b>denying (3)</b> 23:4;28:20,21 <b>DEPARTMENT (1)</b> 4:8 <b>departure (1)</b> 43:7 <b>dependent (1)</b> 83:9 <b>depending (1)</b> 26:13 <b>depends (1)</b> 50:18 <b>deposition (1)</b> 96:7 <b>depreciation (3)</b>	46:2,12;47:16 <b>deprive (2)</b> 34:18;39:14 <b>deprived (1)</b> 34:14 <b>depth (2)</b> 12:20;33:6 <b>DESAI (2)</b> 72:16,17 <b>describes (1)</b> 69:15 <b>describing (2)</b> 60:20;62:1 <b>description (1)</b> 76:13 <b>deserve (6)</b> 13:5;22:4;50:25; 57:1;77:9;78:14 <b>deserving (1)</b> 79:25 <b>design (2)</b> 26:25;68:19 <b>designation (1)</b> 74:25 <b>designs (1)</b> 83:24 <b>desire (1)</b> 97:3 <b>Despite (1)</b> 76:3 <b>destroys (1)</b> 21:17 <b>details (3)</b> 64:20;76:11,12 <b>detect (2)</b> 62:20,25 <b>determination (6)</b> 85:2;88:5;100:19, 21,22;101:12 <b>determining (1)</b> 78:9 <b>detriment (1)</b> 63:9 <b>develop (1)</b> 78:9 <b>differ (1)</b> 80:25 <b>different (11)</b> 17:19,20,20,21,21; 28:21;39:21;85:25; 86:14;99:15;101:15 <b>differs (1)</b> 78:17 <b>difficult (7)</b> 12:24;16:12;23:2; 26:9;84:24;85:7; 97:2 <b>difficulties (1)</b> 19:8 <b>digest (1)</b> 43:19 <b>diligence (1)</b> 93:17	<b>dime (1)</b> 9:10 <b>dinner (1)</b> 75:16 <b>DIP (10)</b> 4:15,23;32:14,16; 55:4;86:17,18;89:14, 22;91:9 <b>dire (1)</b> 32:10 <b>direct (3)</b> 17:17;87:7;100:13 <b>directing (1)</b> 102:24 <b>director (2)</b> 16:6;64:2 <b>directors (1)</b> 97:7 <b>disadvantageous (1)</b> 103:4 <b>disagree (3)</b> 18:3;31:8;74:1 <b>disagreement (1)</b> 47:2 <b>disagrees (1)</b> 93:6 <b>disclose (2)</b> 37:6;61:6 <b>disclosed (1)</b> 43:7 <b>disclosure (10)</b> 10:24;35:3,9; 40:15;61:10,14,21; 62:5;94:17;99:6 <b>disclosures (6)</b> 37:8;43:5,20;44:2; 74:10;94:16 <b>discount (1)</b> 17:20 <b>discouraged (1)</b> 94:1 <b>discovery (2)</b> 96:7;102:7 <b>discrepancy (3)</b> 65:14,14;75:6 <b>discretion (1)</b> 80:17 <b>discretionary (2)</b> 42:25;98:4 <b>discussing (1)</b> 59:7 <b>discussions (2)</b> 40:2,5 <b>disenfranchising (1)</b> 88:10 <b>dishonest (1)</b> 68:25 <b>disinterested (1)</b> 21:8 <b>dismiss (3)</b> 14:6;28:11;78:16 <b>dismissed (2)</b> 7:20;79:12	<b>dismissing (1)</b> 83:12 <b>dispatch (1)</b> 103:1 <b>dispel (1)</b> 9:24 <b>disposal (1)</b> 29:15 <b>dispute (1)</b> 30:9 <b>disruption (1)</b> 26:8 <b>dissolved (1)</b> 83:16 <b>distances (1)</b> 75:6 <b>distinction (4)</b> 25:25;26:1;27:6,7 <b>distress (3)</b> 41:7,22;42:20 <b>distressed (3)</b> 38:1;63:5;83:12 <b>distributed (1)</b> 78:19 <b>distribution (2)</b> 12:13;13:5 <b>district (2)</b> 97:5,6 <b>docket (4)</b> 12:10;14:11;78:3; 80:2 <b>dockets (1)</b> 16:4 <b>documents (1)</b> 15:14 <b>dollar (10)</b> 22:16;30:23; 32:11;46:2,5;49:4; 73:15;92:11,13; 98:13 <b>dollars (68)</b> 8:7,11,12;9:6; 11:19,21;14:25; 21:25;43:13;44:14; 45:25;46:8,17,25; 47:14,21;48:9,23,24; 49:1,6,13,17,19,22; 50:11,12;52:12;54:5, 9,11,25;55:1,3,4,6, 19,20;56:8,10,12,12, 16,20,22;62:12;68:2, 17,18;80:5,6,7,9; 83:17;88:16;89:12, 15,19,21,23,24;90:2, 3,16,21;91:6,7;102:2	45:10;70:15;77:5; 92:6 <b>door (1)</b> 34:9 <b>double (1)</b> 54:23 <b>DoubleTree (1)</b> 31:13 <b>doubt (3)</b> 18:5;41:16;63:18 <b>dove (1)</b> 58:18 <b>dovetail (1)</b> 96:24 <b>down (16)</b> 15:4;17:3;18:15; 21:2;23:17;24:3; 33:1;34:5;41:23; 47:3;50:8;62:4; 65:18;82:2,4,8 <b>drafters (2)</b> 40:21;41:10; 42:16,25;43:9,22 <b>dramatic (2)</b> 102:18,19 <b>drawing (1)</b> 15:13 <b>dressings (1)</b> 38:14 <b>drive (1)</b> 55:24 <b>drop (3)</b> 24:8,13;26:5 <b>dropping (2)</b> 65:19,20 <b>Ds (1)</b> 97:10 <b>due (3)</b> 7:19;71:7;82:18 <b>dump (1)</b> 46:6 <b>during (7)</b> 27:2;42:17;59:22, 24;60:25;61:20;74:6
<b>E</b>				
<b>earlier (2)</b> 48:10;61:25 <b>Early (2)</b> 72:23;79:9 <b>earn (1)</b> 73:19 <b>earnings (7)</b> 19:5,6;46:1,11; 60:13;68:7;75:22 <b>easier (1)</b> 32:21 <b>easily (2)</b> 26:6;30:5 <b>easy (2)</b> 12:9,17 <b>eat (1)</b>				

25:4 <b>EBITDA (28)</b> 18:17,21,22;46:2, 3,3,17;47:14,20,22; 48:21;49:3,4;52:21, 22;53:13,16,17,20; 55:13,15,16,19,20; 56:2,6;90:15,20 <b>echo (1)</b> 98:1 <b>Economic (1)</b> 50:2 <b>economics (3)</b> 26:21,22;27:2 <b>Ed (2)</b> 66:22,23 <b>Education (1)</b> 8:14 <b>effect (1)</b> 92:5 <b>Effectively (1)</b> 17:1 <b>effects (1)</b> 61:13 <b>efficiency (3)</b> 13:16;23:23;24:19 <b>efficient (4)</b> 13:8,9,10;23:20 <b>effort (2)</b> 70:13;71:2 <b>eight (1)</b> 51:23 <b>eighteen (4)</b> 14:24;59:8;80:4; 90:25 <b>eighty (10)</b> 48:9;49:1,16; 54:10,11,11,16; 56:12,16;89:24 <b>eighty-six (1)</b> 47:14 <b>eighty-two (1)</b> 48:24 <b>either (5)</b> 6:10;36:22;68:14, 25;76:16 <b>either/or (1)</b> 63:10 <b>electrolytic (2)</b> 26:23,24 <b>elks (1)</b> 25:8 <b>Ellis (5)</b> 6:6;35:5;41:25; 80:5;84:14 <b>eloquence (1)</b> 81:5 <b>else (8)</b> 63:21;64:7;65:2; 66:18;72:15;74:22; 82:23;95:8 <b>e-mail (3)</b> 35:13;40:1,1	<b>embittered (1)</b> 9:24 <b>emphasis (1)</b> 28:17 <b>emphatically (2)</b> 13:4;28:4 <b>employ (1)</b> 69:1 <b>employees (1)</b> 77:19 <b>enable (2)</b> 27:22;73:19 <b>encourage (2)</b> 36:5,6 <b>encouraged (1)</b> 12:6 <b>end (5)</b> 28:19;30:23; 61:19;68:3;80:22 <b>Energy (1)</b> 79:3 <b>engage (1)</b> 35:17 <b>engaged (1)</b> 96:7 <b>engineer (4)</b> 64:13,21;69:11; 83:24 <b>engineering (2)</b> 67:6;75:18 <b>engineers (1)</b> 51:6 <b>English (1)</b> 13:23 <b>enormous (9)</b> 9:2;13:3,17;14:24; 24:16,21;28:18; 30:6;41:16 <b>enough (6)</b> 25:22;43:7;72:21; 74:2;87:18;88:9 <b>enriching (1)</b> 66:14 <b>Enron (1)</b> 74:6 <b>enter (3)</b> 102:23,23;103:7 <b>entered (1)</b> 6:11 <b>entering (1)</b> 10:9 <b>enterprise (6)</b> 11:10;53:4,6,19, 21;74:9 <b>enthusiastically (1)</b> 31:16 <b>entire (7)</b> 46:21;57:6;68:18, 23;77:24;101:24; 103:5 <b>entitled (2)</b> 44:2;93:23 <b>equal (4)</b>	23:6,6;78:15,22 <b>equipment (1)</b> 19:24 <b>equitable (1)</b> 43:22 <b>equitably (1)</b> 78:19 <b>equities (1)</b> 8:8 <b>equity (111)</b> 6:15;10:6;12:16; 16:25;23:4;24:10; 26:2;27:13,14,18,18; 28:7,22;29:13,24; 31:2;32:15;34:10; 35:2;36:23;39:17; 40:6;41:10;43:1,3,6, 10,13;44:1,4;53:5, 20,22;55:6;56:10,19; 57:1,2,11;59:16,17; 60:7;62:13,21;63:2, 16,20;64:25;65:8,11; 66:3,5,14;70:6,12; 71:9,17,21;72:11; 75:10;77:9,10,24; 78:3,24;79:24;80:18, 24;81:18;82:13,19; 83:13;85:9,12,21,22; 87:20;88:1,6,12; 89:4;91:14;92:13,16, 20,21;93:2,14,15,18, 20;94:4,6,19,21,22; 95:15;96:19;98:7, 20;99:8;100:14,20, 23;101:8,18,20; 102:1,4,5,24 <b>equityholders (6)</b> 92:1;94:7,8;97:3; 98:10;99:10 <b>equity's (1)</b> 92:9 <b>err (1)</b> 43:9 <b>errors (1)</b> 74:9 <b>especially (1)</b> 42:17 <b>ESQ (8)</b> 4:4,5,10,16,17,24, 25;5:5 <b>esquire (1)</b> 81:6 <b>essence (2)</b> 45:11;83:18 <b>essential (2)</b> 41:2,4 <b>Essentially (7)</b> 44:21;45:5,19,20; 46:19,20;49:7 <b>establish (8)</b> 36:10,24,25;87:13, 14;93:14,15,18 <b>established (4)</b>	34:22;54:4;78:23; 80:21 <b>estate (6)</b> 27:19;29:24; 35:19,21;43:19; 97:14 <b>estates (1)</b> 94:25 <b>estate's (1)</b> 85:3 <b>estimate (3)</b> 48:13,14;89:23 <b>estimates (3)</b> 15:15,17;16:14 <b>ethical (1)</b> 84:2 <b>evaluated (1)</b> 67:19 <b>evaluating (1)</b> 67:14 <b>evaluation (2)</b> 46:5;85:13 <b>even (18)</b> 12:16;15:11,22; 25:20;29:11;30:2; 36:4;39:7;43:19; 45:1;52:15,19; 55:10;58:19;84:17; 90:20,25;94:10 <b>event (1)</b> 69:10 <b>events (2)</b> 67:22;68:12 <b>everybody (6)</b> 10:5;17:16;19:1,2; 32:20;56:17 <b>everyone (5)</b> 7:21;42:22;71:20; 82:17;98:12 <b>everywhere (1)</b> 38:25 <b>evidence (17)</b> 35:9;88:25;89:7; 90:6,7,11;91:4,5,19; 93:19,20;94:20,21; 95:2,3;98:19;99:5 <b>evidentiary (1)</b> 94:19 <b>exact (1)</b> 19:15 <b>exactly (5)</b> 24:20;26:25;48:9; 69:23;94:23 <b>examine (3)</b> 15:9;29:25;40:16 <b>example (2)</b> 12:11;99:11 <b>examples (1)</b> 17:4 <b>exceeds (2)</b> 20:19,21 <b>excellent (1)</b> 48:7	<b>except (2)</b> 10:3;16:7 <b>exception (2)</b> 80:19;85:9 <b>excess (2)</b> 78:11;90:3 <b>excessive (2)</b> 70:7,8 <b>Exchange (2)</b> 10:25;37:6 <b>excited (1)</b> 64:15 <b>excluded (1)</b> 70:9 <b>exclusivity (1)</b> 102:11 <b>excuse (4)</b> 39:2;53:8;96:18; 97:6 <b>executive (1)</b> 74:17 <b>exercise (2)</b> 27:21;80:17 <b>exhibits (1)</b> 15:6 <b>Exide (1)</b> 25:22 <b>exist (4)</b> 27:24;36:4;38:6; 49:17 <b>existed (1)</b> 101:14 <b>existence (2)</b> 48:3;60:22 <b>exists (3)</b> 20:17;101:15; 102:9 <b>expanding (1)</b> 62:2 <b>expect (7)</b> 22:4;33:12;51:16, 20;54:22,22;69:25 <b>expectation (2)</b> 69:13;71:1 <b>expectations (5)</b> 44:1;55:11,13,14; 86:5 <b>expected (3)</b> 15:18;41:18;75:23 <b>expecting (1)</b> 50:14 <b>expenditures (1)</b> 55:23 <b>expense (9)</b> 41:12;42:15;65:4; 66:15;70:24;72:18; 87:23;94:24;99:21 <b>expenses (2)</b> 79:13;80:9 <b>expensive (2)</b> 79:16,23 <b>experience (3)</b> 59:9;67:14;100:24
---	---	---	--	---

<b>expert (4)</b> 45:2;48:2;91:5; 97:16	9:25;25:19,21,23; 28:16;30:8;34:7; 35:11,24;41:14; 71:16;102:18	<b>fellow (3)</b> 9:8;70:23;77:1	54:14;74:12;77:4; 80:2	<b>flown (1)</b> 75:5
<b>explanation (1)</b> 24:12	<b>fail (3)</b> 10:6,6;34:24	<b>felt (1)</b> 41:22	<b>fill (1)</b> 7:1	<b>fluctuations (1)</b> 82:5
<b>explicitly (1)</b> 10:12	<b>failed (4)</b> 10:13;62:20,25; 95:15	<b>female (1)</b> 72:2	<b>final (1)</b> 78:18	<b>flux (1)</b> 78:14
<b>expressed (4)</b> 40:21;62:22; 65:18,24	<b>failure (2)</b> 60:21;76:13	<b>few (6)</b> 14:11;15:6;30:13; 43:19;73:9,12	<b>finalizing (1)</b> 95:25	<b>focus (1)</b> 18:25
<b>extended (2)</b> 48:11;102:7	<b>fair (20)</b> 10:24;16:20; 20:19,21;24:14; 30:4;33:24,24;35:3, 9;36:2;37:13;43:22; 69:14;71:1,3;72:12; 84:2;85:13;87:14	<b>fiduciaries (1)</b> 84:24	<b>finally (4)</b> 60:4;62:9;63:1; 70:18	<b>folks (1)</b> 19:20
<b>extension (1)</b> 102:6	<b>fairly (5)</b> 44:25;51:19; 69:10;79:21;91:2	<b>fiduciary (1)</b> 71:2	<b>financial (26)</b> 11:8;20:14;33:10; 40:11,17;42:19;60:1, 4;61:1,4,7,13,17,19; 62:20,23,24;67:15; 73:25;75:9,13; 85:14;86:14;91:5, 20;97:16	<b>follow (2)</b> 10:17;79:20
<b>extensive (3)</b> 40:2;67:14;68:18	<b>fairness (2)</b> 13:14;69:7	<b>field (2)</b> 29:17;84:4	<b>financials (1)</b> 76:19	<b>followed (1)</b> 35:13
<b>extent (3)</b> 27:21;78:12;96:15	<b>fall (1)</b> 82:3	<b>fifteen (5)</b> 51:25;52:25;53:1; 54:24;55:24	<b>financing (4)</b> 55:5;86:12,15,16	<b>following (4)</b> 6:11;25:25;76:3; 80:3
<b>externally (1)</b> 17:24	<b>false (4)</b> 59:21,23;62:18,19	<b>fifty (5)</b> 52:17;58:2;60:8; 62:14;63:1	<b>find (13)</b> 9:21;16:4;25:22; 33:7;36:17,18;39:1, 13;40:22;68:20; 79:22;80:14;86:12	<b>follows (1)</b> 48:9
<b>extinguish (3)</b> 23:10;30:4;39:18	<b>falsely (1)</b> 60:1	<b>fifty-five (1)</b> 51:11	<b>finding (2)</b> 17:6;94:3	<b>footing (1)</b> 78:15
<b>extinguishment (1)</b> 7:24	<b>familiar (2)</b> 8:21;65:7	<b>fifty-one (1)</b> 52:17	<b>fine (3)</b> 7:8;12:3;57:24	<b>footnote (2)</b> 61:20;95:17
<b>extra (4)</b> 30:7,8;70:13; 92:12	<b>famous (1)</b> 19:25	<b>fifty-seven (3)</b> 50:4,9;51:17	<b>finish (1)</b> 45:6	<b>footnotes (2)</b> 22:17,17
<b>extract (1)</b> 27:22	<b>far (9)</b> 12:6;27:2;48:17, 18;51:20;65:13; 73:22;85:6;99:5	<b>fifty-two (1)</b> 81:11	<b>firm (5)</b> 8:13;41:24;60:6; 62:10;81:8	<b>forbearance (1)</b> 7:2
<b>extraordinarily (4)</b> 13:8;34:8;35:7; 44:23	<b>FASB (1)</b> 61:9	<b>fight (6)</b> 23:6;28:20;30:2; 65:16;96:4;99:17	<b>firms (1)</b> 59:25	<b>force (1)</b> 79:9
<b>extraordinary (7)</b> 12:5;15:3;17:8; 32:4;48:5,22;85:9	<b>fast-moving (1)</b> 26:4	<b>fighting (1)</b> 56:18	<b>first (17)</b> 10:2;14:12,18; 17:12;31:12;35:3; 58:23;59:4,20; 60:12;62:17;69:8; 86:1;87:24;90:14; 98:14;100:12	<b>forced (1)</b> 79:18
<b>extreme (1)</b> 21:22	<b>fear (2)</b> 24:1;83:19	<b>figure (4)</b> 48:6;50:7;51:25; 52:10	<b>firm (5)</b> 8:13;41:24;60:6; 62:10;81:8	<b>foreclose (2)</b> 91:15,16
<b>extremely (1)</b> 63:5	<b>fearful (1)</b> 83:22	<b>figures (3)</b> 15:17;43:8;80:3	<b>first-day (2)</b> 14:23;43:12	<b>foreclosed (2)</b> 89:6;98:7
<b>F</b>	<b>February (5)</b> 60:13;80:3,10; 85:22;101:7	<b>figuring (1)</b> 50:17	<b>foremost (1)</b> 90:14	<b>forewarning (1)</b> 10:9
<b>face (8)</b> 9:25;22:12;28:2, 18;37:22;50:14; 65:9;66:12	<b>Feb (1)</b> 44:24	<b>file (10)</b> 10:13,14;11:17; 15:21;30:21;39:3; 79:19;87:6;89:10; 90:1	<b>forewarn (2)</b> 8:1;25:1	<b>form (6)</b> 21:19;36:11; 56:14;73:25;82:13; 103:1
<b>faced (2)</b> 41:9;84:24	<b>February (5)</b> 60:13;80:3,10; 85:22;101:7	<b>filed (21)</b> 6:8,14,17;14:22; 15:6,7,22;16:3;23:1; 32:11;35:14;57:16, 20;58:20;59:22; 62:19;71:3;89:11; 97:4,9;98:3	<b>formal (1)</b> 78:25	<b>formation (3)</b> 70:16;71:9;78:2
<b>facie (1)</b> 35:9	<b>federal (1)</b> 97:5	<b>files (1)</b> 101:24	<b>formed (1)</b> 70:19	<b>former (1)</b> 76:22
<b>facilities (2)</b> 67:7;68:20	<b>feel (7)</b> 9:14;14:7;34:14; 39:23;73:21;74:12; 83:3	<b>filing (9)</b> 8:22;10:16;16:1, 16;22:1;31:20; 84:17;98:10;101:6	<b>forming (1)</b> 82:19	<b>formless (1)</b> 74:2
<b>facility (5)</b> 32:12;64:18; 68:16,20;89:15	<b>feeling (2)</b> 42:10;74:2	<b>filings (13)</b> 10:11;14:23; 15:12;16:7,10; 20:25;37:3,4;43:12;	<b>formation (3)</b> 70:16;71:9;78:2	<b>fort (1)</b> 74:2
<b>facing (1)</b> 77:24	<b>fees (5)</b> 30:6,7;83:2;91:10; 102:3	<b>flip (1)</b> 51:11	<b>formed (1)</b> 70:19	<b>fortified (1)</b> 74:2
<b>fact (10)</b> 19:7;43:2;45:21; 55:23;61:2;62:2; 63:13;72:8;77:22; 90:10	<b>FELD (2)</b> 4:13;98:25	<b>flow (3)</b> 15:5;54:15;75:23	<b>forming (1)</b> 82:19	<b>fortunate (2)</b> 35:17;72:23
<b>facts (12)</b>			<b>forth (3)</b> 43:16,17;95:13	<b>fortunately (1)</b> 74:2
			<b>forty (1)</b> 58:2	

<p><b>forty-two (1)</b> 89:22 <b>forward (7)</b> 17:14;18:24; 58:12;96:6,13; 98:16;102:10 <b>fought (1)</b> 72:25 <b>found (2)</b> 40:1;80:3 <b>four (2)</b> 8:11;80:7 <b>fourteen (1)</b> 34:5 <b>fourth (3)</b> 14:14;60:6;62:10 <b>FOX (7)</b> 4:10;8:4;17:10; 97:23,24,25;102:25 <b>fragments (1)</b> 25:24 <b>frame (1)</b> 63:7 <b>frankly (2)</b> 100:18,24 <b>fraud (3)</b> 74:12,20;85:22 <b>fraudulent (4)</b> 36:12,13;74:9; 76:20 <b>free (2)</b> 49:11;54:14 <b>Freres (1)</b> 89:10 <b>fresh (2)</b> 31:3,10 <b>Friday (1)</b> 96:12 <b>friend (2)</b> 33:14,18 <b>front (4)</b> 71:16;82:25; 86:12;91:4 <b>froze (1)</b> 86:10 <b>FTI (1)</b> 80:4 <b>fulcrum (2)</b> 99:16,17 <b>full (8)</b> 27:12,25;28:1; 29:2;48:13;58:3; 65:21,24 <b>full-time (2)</b> 67:8,12 <b>fully (4)</b> 27:19;28:22;99:3, 10 <b>fund (9)</b> 8:7,17;44:13,20; 63:4;66:14;73:17; 75:2;95:19 <b>fundamental (5)</b></p>	<p>18:18;40:10; 85:17;90:13;91:1 <b>funded (2)</b> 89:21;91:8 <b>funding (1)</b> 75:19 <b>funds (10)</b> 8:9;13:1;36:6,20; 38:24,25;66:1,9; 68:5;77:20 <b>funny (1)</b> 25:22 <b>further (8)</b> 57:20;74:19;82:9, 10;84:6;97:19; 103:3,8 <b>Furthermore (2)</b> 57:3;75:21 <b>future (6)</b> 17:22;56:6;75:19; 77:17;79:3;89:6</p>	<p>15:19;16:10,25; 35:6;38:22;40:21; 65:11;74:3 <b>gladly (1)</b> 18:6 <b>glaring (1)</b> 40:15 <b>Glencore (4)</b> 33:15,15,16;34:1 <b>goal (1)</b> 51:1 <b>God (1)</b> 8:2 <b>goes (6)</b> 19:6;24:3;42:5; 51:22;52:2;73:24 <b>going-concern (4)</b> 61:10,14,20;62:25 <b>goldfish (1)</b> 40:12 <b>Good (24)</b> 6:3,4;13:14,17; 18:8;19:19;23:19; 42:11;49:25;58:24, 25;64:10,11;65:6; 66:20,20,22;71:14, 24,25;74:24;83:23; 84:13;97:24 <b>Google (1)</b> 25:20 <b>govern (1)</b> 40:10 <b>governed (3)</b> 85:10,11,13 <b>government (2)</b> 50:24;70:18 <b>government's (2)</b> 69:15;70:5 <b>grab (1)</b> 24:11 <b>grabs (1)</b> 13:12 <b>grace (6)</b> 30:22;60:19,22, 24;76:14,14 <b>Graham (1)</b> 20:1 <b>grant (10)</b> 35:2;59:24;60:9; 62:6,19,22;66:3; 72:11;100:13;103:6 <b>granted (1)</b> 39:3 <b>grateful (1)</b> 7:22 <b>great (9)</b> 14:3;17:23;18:11; 30:7;48:17;67:6; 73:1,3;75:5 <b>greater (1)</b> 69:5 <b>greatly (1)</b> 69:7</p>	<p><b>greed (1)</b> 24:1 <b>Grey (5)</b> 8:9;25:2,6,8;73:22 <b>gross (1)</b> 56:13 <b>grounds (1)</b> 87:2 <b>Group (15)</b> 4:14,22;9:24; 10:20;11:1;24:10,17, 19;31:19,21,23; 32:14;50:10;57:6; 96:10 <b>groups (1)</b> 79:8 <b>growing (2)</b> 84:25;90:4 <b>growth (4)</b> 49:21;50:13; 51:18;54:23 <b>guarantee (1)</b> 64:22 <b>guide (4)</b> 14:14;19:23;20:2; 24:5 <b>guided (1)</b> 18:11 <b>GUMP (2)</b> 4:13;98:25 <b>GUY (6)</b> 5:8;6:14;7:6;64:3; 81:6;83:5 <b>guys (2)</b> 36:21;52:12</p>	<p>56:5 <b>happily (1)</b> 18:6 <b>happy (7)</b> 6:21;7:3;70:11; 77:20;80:19;86:6,25 <b>hard (6)</b> 9:25;17:8;26:11; 38:7;56:18;80:14 <b>hard-earned (1)</b> 83:17 <b>hardly (1)</b> 31:1 <b>hardship (2)</b> 62:20;84:16 <b>HARITON (1)</b> 5:10 <b>harmed (1)</b> 70:4 <b>HARRISON (5)</b> 58:24;59:2,2,4; 60:12 <b>harsh (1)</b> 9:25 <b>hate (1)</b> 19:20 <b>Hathaway (1)</b> 10:3 <b>HAUER (2)</b> 4:13;98:25 <b>hayseeds (1)</b> 52:12 <b>head (4)</b> 25:18;27:5;33:16; 67:6 <b>headaches (2)</b> 13:13;35:6 <b>heads (1)</b> 74:13 <b>healthy (1)</b> 32:25 <b>hear (7)</b> 7:16;33:8;57:25; 58:11;64:8;84:7; 98:15 <b>heard (25)</b> 7:18;44:7;57:24; 58:2,8,9,11,21,23; 65:23,23;73:4,6,7; 74:4,11;77:2,6;82:1, 9,19;87:6;90:17; 91:13;99:4 <b>hearing (7)</b> 6:13;44:12;58:4; 72:5;75:4;83:3; 91:18 <b>hearsay (6)</b> 12:5;33:1;87:3,16; 90:13;93:22 <b>heart (2)</b> 27:16;42:5 <b>heavily (1)</b> 17:5</p>
	<b>G</b>			
	<p><b>gain (2)</b> 34:8;73:18 <b>galvanize (1)</b> 26:19 <b>game (2)</b> 21:3;88:23 <b>gangs (1)</b> 25:8 <b>gap (1)</b> 99:7 <b>GEDDES (1)</b> 4:21 <b>general (4)</b> 74:8;89:23;91:8; 98:11 <b>generally (5)</b> 40:17;61:5,23; 69:17;77:6 <b>genuine (1)</b> 11:24 <b>GEORGE (4)</b> 66:19,22,23,23 <b>Georgia (1)</b> 81:5 <b>gift (1)</b> 27:15 <b>gifts (1)</b> 27:15 <b>girlfriend (1)</b> 72:19 <b>given (15)</b> 7:17;27:23;34:17; 45:5;51:14;65:10; 66:6,9;68:8;75:23; 77:23;82:20;99:5, 19;102:17 <b>gives (2)</b> 37:23;55:19 <b>giving (8)</b></p>			
			<b>H</b>	
			<p><b>half (4)</b> 25:2,11;43:12; 89:22 <b>HAMPTON (1)</b> 5:2 <b>hand (9)</b> 16:8,10,22;32:12, 13;44:8;87:12; 89:25;90:8 <b>hands (6)</b> 11:6;16:22;31:12, 14,15;57:8 <b>Hang (1)</b> 53:4 <b>happen (5)</b> 23:13;33:25; 36:14;42:13;63:3 <b>happened (6)</b> 22:18;33:20; 59:19;85:18,24; 101:9 <b>happening (1)</b> 51:10 <b>happens (4)</b> 22:6;26:13;33:15;</p>	

<p><b>hedge (5)</b> 36:20;44:13,20; 63:4;66:14</p> <p><b>hedged (2)</b> 17:5;75:17</p> <p><b>hedging (2)</b> 15:14;16:13</p> <p><b>held (2)</b> 15:16;87:7</p> <p><b>hell (1)</b> 30:6</p> <p><b>Hello (5)</b> 66:19,20;72:16; 77:14,15</p> <p><b>help (8)</b> 9:21,22;33:7,13, 18;36:25;71:20; 77:20</p> <p><b>helpful (1)</b> 54:6</p> <p><b>Hensler (2)</b> 41:15;68:1</p> <p><b>here's (1)</b> 20:8</p> <p><b>hey (2)</b> 33:13;36:20</p> <p><b>high (7)</b> 26:13;29:17;35:7; 50:23;52:6;67:16; 72:22</p> <p><b>high-end (2)</b> 90:1;91:6</p> <p><b>higher (3)</b> 18:7;55:10;99:13</p> <p><b>highest (1)</b> 18:21</p> <p><b>high-profile (1)</b> 10:13</p> <p><b>highs (1)</b> 18:23</p> <p><b>hijack (2)</b> 73:16,23</p> <p><b>Hill (1)</b> 64:14</p> <p><b>hire (2)</b> 79:24;80:13</p> <p><b>history (2)</b> 41:1;43:21</p> <p><b>Hoc (11)</b> 4:14,22;24:10,19; 25:5;31:19,21,23; 32:14;96:10;99:1</p> <p><b>hold (7)</b> 15:12;24:11; 57:25;58:7;84:1; 96:10;98:16</p> <p><b>Holder (2)</b> 76:25,25</p> <p><b> Holders (8)</b> 4:15,15,23,23; 6:16;65:8;66:3,6</p> <p><b>Holding (1)</b> 77:17</p>	<p><b>Holdings (9)</b> 44:19,19;59:11; 60:15;66:24;67:18; 72:17;79:3,19</p> <p><b>Holding's (1)</b> 77:1</p> <p><b>homeowners (1)</b> 65:9</p> <p><b>homes (1)</b> 65:9</p> <p><b>honest (4)</b> 17:17;42:10;69:9; 70:3</p> <p><b>honesty (1)</b> 71:1</p> <p><b>Hong (2)</b> 63:24;64:3</p> <p><b>Honor (123)</b> 6:4,6,8,20,25;9:4; 14:19;15:1;18:18; 19:16,19;21:15; 22:24;23:19;32:18; 34:13;39:4,6;40:5; 43:11,23;44:5; 45:20;46:3;47:22; 49:4,12;50:1,16; 51:24;52:12;54:3; 60:5,9;61:4;62:9,15; 64:1,10;65:3,25; 66:12,19,23;68:22; 69:13,22;70:21;71:9, 14;74:24;75:16; 76:21,25;77:14;79:7, 11,16,18;80:11,15; 81:4,11;82:24;84:13, 16,23;85:1,8,10,15, 25;86:1,3,8,13,22, 24;87:4,8,11,15,24; 88:8,17,22;89:9,16, 20,25;90:7,12,21,22, 25;91:2,4,13;92:7, 17,24;93:9,12;94:2, 8,12,18;95:6,10,13, 23;96:17,25;97:19, 24;98:24;99:2,3,15, 18;100:2,10;103:9</p> <p><b>Honor's (3)</b> 89:3;98:21;99:8</p> <p><b>hope (4)</b> 35:4,6;43:8;73:6</p> <p><b>hoped (1)</b> 41:10</p> <p><b>hopelessly (3)</b> 32:12;43:3;85:23</p> <p><b>hoping (1)</b> 98:8</p> <p><b>horse (1)</b> 78:18</p> <p><b>Horsehead (31)</b> 8:16,22;9:4;15:21; 19:17;20:11;24:11; 25:5,11;26:15;43:5; 44:19,19;59:11;60:8,</p>	<p>15;66:24;67:18,19; 68:23;72:17;73:6; 75:10;76:4,17;77:1, 17,19;79:18;83:20; 95:21</p> <p><b>Horsehead's (2)</b> 10:16,17</p> <p><b>Hotchkis (1)</b> 8:9</p> <p><b>Hotel (1)</b> 31:13</p> <p><b>hour (2)</b> 58:4;80:9</p> <p><b>hour-and-a-half (1)</b> 58:4</p> <p><b>hourly (1)</b> 80:8</p> <p><b>hours (2)</b> 80:8;81:15</p> <p><b>huge (1)</b> 92:11</p> <p><b>humbly (1)</b> 69:12</p> <p><b>hundred (3)</b> 30:3;50:23,25</p> <p><b>hundred-million-plus (1)</b> 89:19</p> <p><b>hundreds (1)</b> 9:5</p> <p><b>hurdle (1)</b> 43:14</p> <p><b>husbanded (1)</b> 85:3</p> <p><b>husbanding (1)</b> 96:2</p> <p><b>hypocritical (1)</b> 79:22</p> <p><b>hypothetical (1)</b> 57:5</p>	<p><b>ill (1)</b> 42:10</p> <p><b>ill- (1)</b> 42:9</p> <p><b>immediately (1)</b> 70:15</p> <p><b>imminently (1)</b> 45:8</p> <p><b>impact (2)</b> 61:16;96:16</p> <p><b>impaired (4)</b> 20:10,23;21:12; 22:25</p> <p><b>impairment (6)</b> 20:17,19;22:7; 61:25;62:4,25</p> <p><b>implies (1)</b> 50:16</p> <p><b>implying (1)</b> 23:20</p> <p><b>important (9)</b> 20:8;26:1;31:11; 34:21;35:10;36:9, 24;39:22;83:3</p> <p><b>importantly (2)</b> 10:10;75:19</p> <p><b>impose (1)</b> 43:4</p> <p><b>imposed (1)</b> 84:19</p> <p><b>impossibility (1)</b> 80:21</p> <p><b>impossible (2)</b> 43:14;68:16</p> <p><b>impressed (1)</b> 8:4</p> <p><b>improve (1)</b> 74:10</p> <p><b>inability (1)</b> 61:7</p> <p><b>inaccurate (1)</b> 21:4</p> <p><b>inappropriate (4)</b> 88:1;94:9,23; 101:10</p> <p><b>incentive (2)</b> 92:15;99:12</p> <p><b>incentives (1)</b> 99:9</p> <p><b>include (1)</b> 70:7</p> <p><b>included (1)</b> 89:20</p> <p><b>including (5)</b> 40:16;73:12;76:1, 13;79:8</p> <p><b>incompetent (1)</b> 68:25</p> <p><b>inconsistencies (1)</b> 30:14</p> <p><b>inconsistency (2)</b> 21:23;32:17</p> <p><b>inconsistent (1)</b> 21:13</p>	<p><b>increased (1)</b> 67:24</p> <p><b>incredible (3)</b> 24:17,19;41:24</p> <p><b>incremental (2)</b> 89:19;94:24</p> <p><b>incurred (1)</b> 102:4</p> <p><b>indebtedness (1)</b> 78:11</p> <p><b>independent (1)</b> 74:17</p> <p><b>indicate (1)</b> 61:1</p> <p><b>indicated (1)</b> 44:25</p> <p><b>indicating (1)</b> 23:18</p> <p><b>indication (2)</b> 46:13;47:11</p> <p><b>indiscernible (1)</b> 14:25</p> <p><b>individual (5)</b> 72:6;74:17;82:16; 84:20,20</p> <p><b>individually (1)</b> 95:22</p> <p><b>individuals (1)</b> 70:10</p> <p><b>industries (2)</b> 18:19,21</p> <p><b>industry (4)</b> 18:15;26:4,4,16</p> <p><b>inefficiencies (1)</b> 28:23</p> <p><b>inequitable (1)</b> 101:13</p> <p><b>inevitable (1)</b> 79:12</p> <p><b>inexplicably (1)</b> 21:25</p> <p><b>influence (1)</b> 15:3</p> <p><b>influencing (2)</b> 37:14,19</p> <p><b>influential (1)</b> 37:4</p> <p><b>informal (3)</b> 28:9;32:20;33:19</p> <p><b>information (16)</b> 15:5;16:8,11,11, 13;17:6;23:22; 28:19;29:14;33:5; 70:3;77:3;79:14,15; 98:9;101:4</p> <p><b>informed (4)</b> 11:20;36:18;76:8, 8</p> <p><b>initial (1)</b> 98:10</p> <p><b>injustice (1)</b> 13:11</p>
		<b>I</b>		
		<p><b>idea (2)</b> 24:4;27:3</p> <p><b>identified (1)</b> 93:22</p> <p><b>identifies (1)</b> 91:5</p> <p><b>identify (4)</b> 7:3,4,7;58:25</p> <p><b>idle (5)</b> 45:15,19,23; 89:13;90:2</p> <p><b>idled (2)</b> 46:5;47:3</p> <p><b>ie (1)</b> 40:13</p> <p><b>ignorant (1)</b> 9:18</p> <p><b>ignored (1)</b> 7:20</p> <p><b>ignoring (2)</b> 53:24,25</p>		

<p><b>INMETCO (2)</b> 32:25;45:23 <b>insider (2)</b> 37:9,9 <b>insolvency (6)</b> 10:10;23:18; 30:18;42:20;85:17; 88:14 <b>insolvent (7)</b> 32:13;43:3;85:23, 23;87:8;92:19;101:4 <b>Instead (2)</b> 30:21;31:4 <b>institutional (1)</b> 41:7 <b>institutions (2)</b> 86:15,16 <b>instruction (1)</b> 8:6 <b>insufficient (1)</b> 59:16 <b>insulting (1)</b> 68:21 <b>insurance (2)</b> 35:22;97:11 <b>integrity (3)</b> 69:5,7;71:10 <b>intellectual (1)</b> 26:7 <b>intelligent (2)</b> 67:3;70:10 <b>intelligently (1)</b> 68:13 <b>intended (4)</b> 34:12;43:22;85:6; 90:23 <b>intends (1)</b> 78:9 <b>intensely (1)</b> 57:3 <b>intent (3)</b> 24:11;37:7;40:24 <b>interest (15)</b> 15:5;30:9;33:16, 21,24;46:1,11;57:2; 70:22,23;80:14; 82:14,15;96:22,23 <b>interested (9)</b> 32:1,1;33:3;34:4; 35:12,22,23;57:3,9 <b>interesting (1)</b> 57:8 <b>interests (10)</b> 29:25;41:5,8; 70:19,23;91:25; 92:10,20,21;94:7 <b>interim (2)</b> 60:4;61:19 <b>Internet (1)</b> 25:24 <b>into (23)</b> 6:22;7:9;11:22,23; 14:9;16:21;18:9;</p>	<p>30:16;31:4;41:19; 42:7;44:23;46:14; 50:20;54:16;64:19; 66:1,9;74:19,19; 83:17;88:25;91:3 <b>intrinsic (2)</b> 20:3;83:17 <b>introduce (1)</b> 28:23 <b>invest (8)</b> 10:23;34:15; 37:20;41:18;49:19; 56:11;57:6;65:25 <b>invested (9)</b> 20:3;67:4;81:8,19, 25,25;82:1,10;83:1 <b>investigate (1)</b> 79:4 <b>investigation (2)</b> 79:14;96:21 <b>investing (11)</b> 8:7;44:16,17,17, 18;57:9;67:1,8;71:5; 81:20;83:22 <b>investment (14)</b> 9:9;17:13;18:20; 20:2;32:3;33:19; 44:19;51:19;67:22; 70:2;75:1;77:22; 89:14,19 <b>investment-backed (1)</b> 43:25 <b>investments (3)</b> 19:24;68:6,22 <b>investor (11)</b> 8:6,15;10:7;16:6; 19:25;38:23;44:18; 52:3;67:3,12;69:6 <b>investors (17)</b> 10:12,22;15:23; 17:4;31:6;36:4,5,19; 38:13,22;44:25; 45:7;70:10,24;83:11, 15;84:20 <b>investors' (1)</b> 43:24 <b>invests (1)</b> 51:22 <b>invitation (1)</b> 102:5 <b>involve (3)</b> 102:15,15,15 <b>involved (4)</b> 35:5;52:2;72:21; 73:14 <b>involving (1)</b> 69:18 <b>ironic (1)</b> 79:22 <b>issue (9)</b> 31:14;32:9;36:9; 38:17;61:20;70:9, 14;95:23;101:21</p>	<p><b>issued (1)</b> 60:2 <b>issues (9)</b> 10:15;12:22; 36:22;62:25;76:15; 90:14;91:1;96:14; 97:17 <b>item (3)</b> 18:4;61:23;62:8</p> <p style="text-align: center;"><b>J</b></p> <p><b>Jack (1)</b> 64:12 <b>JAMES (2)</b> 4:5;73:13 <b>January (6)</b> 48:13,24;56:3; 67:23;76:10;86:1 <b>jaws (1)</b> 25:14 <b>jeopardy (1)</b> 42:20 <b>Jeremy (1)</b> 77:16 <b>Jim (1)</b> 41:14 <b>job (3)</b> 22:17;42:11;62:1 <b>jobs (1)</b> 42:9 <b>joinder (3)</b> 58:1,21;82:16 <b>joinders (6)</b> 6:16;16:3;57:16, 19;58:5;64:4 <b>joining (1)</b> 57:23 <b>JONES (2)</b> 4:2,4 <b>Journal (1)</b> 73:10 <b>journalist (1)</b> 39:25 <b>JR (1)</b> 4:10 <b>Judge (18)</b> 7:15;9:18;12:2,19; 22:2;24:15;25:12; 26:10;35:4;36:5,12; 44:12;58:24;72:16; 73:13;79:7;82:24; 97:22 <b>judges (2)</b> 73:12,13 <b>judgment (3)</b> 36:18,18;66:7 <b>judgments (2)</b> 25:21;38:21 <b>judicial (2)</b> 73:19;93:24 <b>July (1)</b> 87:23</p>	<p><b>jump (1)</b> 42:7 <b>June/early (1)</b> 87:23 <b>JUSTICE (11)</b> 4:8;7:17;11:16; 13:9,14,19;40:25; 72:20;81:16,18; 83:10 <b>justify (1)</b> 52:6 <b>justifying (1)</b> 94:20 <b>justly (1)</b> 34:11</p> <p style="text-align: center;"><b>K</b></p> <p><b>keep (4)</b> 42:8;56:18;60:11; 69:20 <b>key (2)</b> 21:16;73:2 <b>KIM (2)</b> 71:14,15 <b>kind (13)</b> 10:20;14:5,8; 25:18;47:5;50:14, 18;52:8,9;73:21,22; 74:12;102:4 <b>kinds (1)</b> 81:15 <b>Kirkland (5)</b> 6:6;35:5;41:25; 80:5;84:14 <b>knew (2)</b> 11:24;63:8 <b>knowing (2)</b> 32:22;65:23 <b>knowingly (1)</b> 62:17 <b>knowledge (4)</b> 9:3,16;11:5,10 <b>knowledgeable (1)</b> 63:6 <b>knows (1)</b> 56:17 <b>Kong (2)</b> 63:24;64:3 <b>KPMG (29)</b> 14:12,13,18,20; 17:12,14,22;18:13; 19:16;32:3;52:11, 20;56:8;60:5,5;62:9, 10;63:1;78:16; 87:16;90:8,8,9,10, 12,14;91:2;93:21; 95:24 <b>KPMG's (1)</b> 46:4</p> <p style="text-align: center;"><b>L</b></p>	<p><b>lack (3)</b> 9:15;61:1;87:2 <b>LAHAIE (1)</b> 4:16 <b>laid (1)</b> 34:23 <b>language (1)</b> 16:14 <b>large (5)</b> 22:10;32:19;69:1; 83:11;84:21 <b>largest (3)</b> 60:6;62:10;67:7 <b>Larry (1)</b> 81:4 <b>Las (1)</b> 51:11 <b>last (11)</b> 22:1,23;14;37:16, 17;42:18;47:16,18; 48:11;80:23;89:11; 97:5 <b>late (5)</b> 37:16,17;45:1; 87:22;88:15 <b>later (2)</b> 28:15;44:8 <b>latest (1)</b> 73:11 <b>laughable (1)</b> 68:21 <b>launch (1)</b> 7:9 <b>LAURA (1)</b> 4:4 <b>law (44)</b> 8:19,21,23;9:1,16, 19;17:7;21:17; 23:11;24:23;27:10; 34:23;35:18;36:1,16, 17;37:2,23;39:6,6, 15;40:4,19,23,25, 41:24;42:16;69:6,7, 9,14,16,25;70:3; 71:4,8;87:9,25;94:2, 8,23;96:19;100:18; 101:19 <b>lawsuit (3)</b> 35:21;97:4,9 <b>lawyer (8)</b> 9:17;11:17;15:8; 64:20;69:12;79:24; 80:13;83:2 <b>lawyers (8)</b> 9:3;11:20;35:12; 72:22;74:1;80:4,5; 97:15 <b>lawyers' (1)</b> 79:23 <b>Lazard (7)</b> 33:10;80:7;89:10; 90:4;93:23,25;100:7 <b>Lazard's (1)</b></p>
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89:25 <b>leader (1)</b> 69:11 <b>leadership (1)</b> 68:24 <b>leading (2)</b> 7:23;59:25 <b>learn (2)</b> 8:22;19:22 <b>learned (4)</b> 28:8;38:2;40:12; 66:25 <b>least (6)</b> 16:23;34:3;59:21; 60:8;68:6;91:8 <b>leave (3)</b> 14:9;17:5;67:5 <b>leaves (3)</b> 6:12;12:18;92:13 <b>led (1)</b> 83:14 <b>left (2)</b> 41:6;66:13 <b>legal (8)</b> 9:2,20;15:25; 21:16,20;30:6;40:6; 74:17 <b>legally (1)</b> 40:19 <b>Legion (1)</b> 72:24 <b>legislation (2)</b> 36:3;74:6 <b>legislative (1)</b> 43:20 <b>legislatures (2)</b> 41:1,4 <b>lender (2)</b> 32:14;86:9 <b>lenders (3)</b> 79:6,10,13 <b>less (8)</b> 11:6,7,7;30:3; 48:21;51:20;52:6; 68:18 <b>letting (3)</b> 41:23;59:4;98:14 <b>level (11)</b> 24:20;29:17; 46:11;48:12,21;49:3, 24;52:6;56:23; 67:16;84:4 <b>levels (2)</b> 31:24;57:10 <b>leverage (1)</b> 73:18 <b>LexisNexis (1)</b> 25:19 <b>liabilities (1)</b> 85:1 <b>liberty (1)</b> 60:9 <b>liens (1)</b>	96:15 <b>life (5)</b> 8:3;12:9,24;14:5; 32:21 <b>life-affecting (1)</b> 69:8 <b>lifetime (1)</b> 68:18 <b>light (2)</b> 40:15;60:22 <b>light-heartedly (1)</b> 7:25 <b>lighthouse (1)</b> 36:19 <b>lightly (2)</b> 85:16;102:14 <b>likelihood (10)</b> 29:12;35:7;79:1; 88:6;93:14,19;94:4; 100:20,23;101:12 <b>likely (2)</b> 51:14;62:16 <b>limb (1)</b> 100:18 <b>limit (1)</b> 36:21 <b>Limited (3)</b> 5:9;66:11;84:25 <b>line (3)</b> 26:17;48:9;76:5 <b>liquid (2)</b> 24:3;68:8 <b>liquidity (10)</b> 23:25;59:14; 60:15;61:1,3;63:14; 68:2,3;75:23,25 <b>list (3)</b> 31:19;35:13;45:4 <b>listen (4)</b> 9:19;29:10;42:1; 79:22 <b>listening (4)</b> 7:2;28:24,25; 42:22 <b>literally (1)</b> 45:7 <b>litigation (1)</b> 73:18 <b>litter (1)</b> 66:4 <b>little (7)</b> 22:19;38:2;40:20; 67:1;70:12;72:2; 74:19 <b>live (3)</b> 13:10;64:12;85:5 <b>livelihood (1)</b> 70:1 <b>LLP (3)</b> 4:2,13;5:2 <b>loan (3)</b> 30:16;32:16;86:17 <b>loathe (1)</b>	71:7 <b>London (1)</b> 75:2 <b>long (4)</b> 19:21;29:8;57:16; 88:14 <b>longer (4)</b> 41:17;48:20;90:4; 102:21 <b>long-lived (2)</b> 20:18,20 <b>long-term (1)</b> 75:2 <b>look (21)</b> 15:11,11;18:4,24, 25;19:11;20:5;37:3, 4;40:24;41:8;45:17; 47:23,24;50:5;51:2, 24;56:6;74:18;79:5; 102:2 <b>looked (2)</b> 80:2;82:4 <b>looking (8)</b> 34:13;47:24;48:2; 49:7;51:19;52:13; 54:20;97:10 <b>LORING (1)</b> 4:18 <b>Los (1)</b> 75:3 <b>lose (2)</b> 10:7;81:21 <b>loss (4)</b> 11:22;20:19; 45:13;70:25 <b>losses (2)</b> 84:18,21 <b>lost (2)</b> 33:21;71:7 <b>lot (8)</b> 13:10;22:20;40:3; 41:17;50:17,18; 55:23;64:23 <b>lots (1)</b> 72:9 <b>love (2)</b> 13:21;64:22 <b>loved (1)</b> 59:5 <b>low (4)</b> 19:15;26:12; 30:25;31:8 <b>Lowenstein (2)</b> 80:4;95:11 <b>lower (3)</b> 56:1;83:2;86:2 <b>lowest (1)</b> 18:22 <b>lows (2)</b> 18:22;19:14 <b>lucky (1)</b> 39:24 <b>LYNNE (1)</b>	4:17 <b>M</b> <b>ma'am (2)</b> 71:23;82:23 <b>Macquarie (1)</b> 30:16 <b>magic (1)</b> 46:14 <b>main (1)</b> 95:23 <b>maintenance (1)</b> 45:22 <b>major (1)</b> 43:7 <b>makes (2)</b> 18:23;37:2 <b>making (8)</b> 15:15;16:8;27:17; 29:1;37:1;60:16; 86:11;88:14 <b>mana (1)</b> 97:6 <b>manage (2)</b> 8:17;84:25 <b>manageable (1)</b> 75:18 <b>managed (2)</b> 22:15;68:13 <b>Management (28)</b> 5:9;22:21;44:25; 45:14;46:22;47:15; 48:5;51:3,7;55:12, 18,21;56:1;59:20,22; 61:2;62:17,18;64:3; 65:21,23;75:11,14; 76:17;77:18;79:5; 87:1;102:19 <b>management's (3)</b> 45:17;55:11;59:13 <b>manager (1)</b> 95:19 <b>managing (1)</b> 64:2 <b>manner (2)</b> 34:12;85:4 <b>manufacturing (1)</b> 68:20 <b>many (21)</b> 7:18;9:12;10:1; 11:13;13:2;19:4,25; 23:24;31:12;34:7; 43:2;57:7;58:3;65:9; 70:9,11;75:5;77:1; 81:15;83:16;94:13 <b>marginally (1)</b> 92:25 <b>market (22)</b> 10:23;14:15;19:6; 23:17,20,23;24:1,5, 8;30:20;32:9;35:11; 37:10,18;38:13;	51:22;52:14,16,20; 54:24;82:3,6 <b>markets (13)</b> 18:24;19:4;24:10; 37:21;38:1;39:1; 40:11;85:21;86:22, 24;101:2,8,9 <b>marking (1)</b> 23:17 <b>match (1)</b> 16:21 <b>material (6)</b> 35:11;61:13,16; 62:8;84:22;90:19 <b>materially (7)</b> 59:20,23;60:2; 62:18,19;76:19;86:2 <b>math (1)</b> 80:9 <b>matter (8)</b> 6:12;26:17;35:14; 36:13;45:9;48:4; 51:8;74:19 <b>matters (2)</b> 6:10;67:15 <b>Matthew (1)</b> 74:25 <b>maximizing (1)</b> 33:3 <b>may (19)</b> 10:15;13:21; 18:23;23:19;24:13; 33:21;35:8;60:21; 63:24;70:7;76:15; 79:15;84:21;88:22; 96:12,16;97:24; 102:15,15 <b>maybe (4)</b> 33:20;47:2;56:22; 58:1 <b>MBA (1)</b> 8:20 <b>MCCARTY (1)</b> 5:5 <b>mean (13)</b> 10:24,25;11:2; 24:24;25:3;42:12, 14;51:11,22;66:21; 87:3,17;88:13 <b>meaningful (2)</b> 12:13;79:1 <b>meaningfully (1)</b> 91:21 <b>means (2)</b> 11:1;73:18 <b>meant (1)</b> 13:9 <b>meet (7)</b> 22:5;34:22,24; 40:23;61:7,15;95:15 <b>meeting (3)</b> 10:3;38:6;61:21 <b>member (2)</b>
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31:23;32:14 <b>members (2)</b> 31:18,20 <b>mention (2)</b> 24:1;73:24 <b>mentioned (4)</b> 25:16;73:12,13; 80:1 <b>mentored (1)</b> 20:1 <b>MEREDITH (1)</b> 4:16 <b>merits (1)</b> 98:21 <b>message (3)</b> 36:11;38:20,24 <b>messages (1)</b> 75:14 <b>met (5)</b> 10:1,2;29:12; 31:12;75:19 <b>metal (1)</b> 65:19 <b>methods (1)</b> 67:19 <b>midst (1)</b> 26:5 <b>might (6)</b> 10:12;28:10,10, 12;30:21;45:16 <b>mile (1)</b> 92:12 <b>miles (1)</b> 9:12 <b>millennials (1)</b> 83:15 <b>million (73)</b> 8:7,12;11:21; 14:24;21:25;22:16; 30:23;32:11;44:14; 45:25;46:2,5,8,17, 17,25;47:6,14,21; 48:9,24;49:1,4,6,12, 16,19,21;50:11,12; 52:17,17;54:5,9,11, 15,17,25;55:1,3,4,5, 5,17,19,20;56:1,8,9, 10,12,16,20,22,22; 68:2,17,17;89:12,12, 15,21,22,24;90:2,3, 15,21;91:6,7,8; 95:20;102:2 <b>millions (1)</b> 88:16 <b>mind (4)</b> 13:2;21:10;88:3; 102:22 <b>mindset (1)</b> 83:13 <b>mine (1)</b> 33:18 <b>mini- (1)</b> 87:9	<b>minimal (1)</b> 87:23 <b>minimum (1)</b> 52:25 <b>mining (1)</b> 33:17 <b>miniscule (1)</b> 8:11 <b>minor (1)</b> 39:8 <b>minutes (2)</b> 58:1,13 <b>mischaracterization (1)</b> 60:22 <b>mischaracterized (1)</b> 76:10 <b>misconception (1)</b> 9:23 <b>misguided (1)</b> 83:9 <b>miss (3)</b> 62:5,6,8 <b>missed (5)</b> 60:17,20,20;76:10, 13 <b>misstate (1)</b> 62:14 <b>misstated (3)</b> 60:2,7;76:19 <b>mistake (1)</b> 38:17 <b>mistreated (1)</b> 71:20 <b>misunderstanding (1)</b> 18:19 <b>misvalued (1)</b> 63:1 <b>Mitho (1)</b> 72:16 <b>mixed (1)</b> 76:15 <b>mockery (1)</b> 71:7 <b>model (3)</b> 13:11;26:11;27:1 <b>Mohammed (1)</b> 16:21 <b>money (41)</b> 9:7;10:7;11:19; 13:1;27:13;30:19, 21;31:4,9;32:8; 34:16;37:20,22; 41:19,19;45:6,9; 48:5,6;49:16,21; 50:15,20,22;51:9,9, 15,18;52:2;54:23; 56:16;57:4,8;64:23, 23;66:9;71:19;72:8; 80:13;95:4;102:16 <b>month (4)</b> 30:24;80:3,10; 102:6 <b>months (5)</b>	48:11;68:6;76:2,3; 90:25 <b>Mooreboro (17)</b> 20:9,19;21:11; 26:25;54:8;64:13, 15;75:18;86:4,6; 89:13,16;90:16,19, 20,22,24 <b>moral (1)</b> 40:6 <b>more (34)</b> 7:7;10:10;11:9,9, 9;13:11;14:24; 21:24;23:5;28:1,15; 30:19;33:22;34:16; 37:10;40:15;41:18; 47:1;48:15;55:23; 56:16;57:6,8;58:1; 62:16;64:19;65:19, 25;68:1;79:4;82:7, 20;91:7;98:8 <b>moreover (2)</b> 16:19;31:23 <b>morning (8)</b> 6:3,4;58:24,25; 64:10,11;66:20;97:8 <b>most (11)</b> 9:24;12:17;18:2; 19:8;20:8;39:22; 41:24;43:5;58:1; 69:2;75:18 <b>motion (15)</b> 11:17,24;12:1; 14:21;21:7;27:17; 28:11,13;31:4; 57:24;78:2;95:18; 96:13;100:13;103:6 <b>motions (5)</b> 6:14,17;82:16; 98:3,15 <b>motion's (1)</b> 14:16 <b>mount (1)</b> 28:20 <b>mouth (2)</b> 31:9;57:4 <b>Movant (3)</b> 6:24;57:23;96:18 <b>movants (5)</b> 6:22;7:7;95:15; 97:1;99:20 <b>movant's (1)</b> 87:13 <b>move (7)</b> 19:1;21:3;23:12, 24,25;30:10;58:12 <b>moving (3)</b> 11:8,8;98:16 <b>much (24)</b> 8:22;13:22;19:18; 22:11;24:11;25:15; 30:10;40:15;46:22; 48:6;50:17;51:9,9;	52:6;57:5;64:5;69:5; 71:19;72:10;76:16; 83:1;84:7;87:15; 100:12 <b>MULLIN (1)</b> 5:2 <b>multiple (3)</b> 17:4;46:3;80:19 <b>multiples (4)</b> 18:17,21,22;19:14 <b>must (4)</b> 43:13;56:15;69:8; 80:17 <b>myself (5)</b> 7:7;8:18;66:15; 67:3;83:16	56:25 <b>neither (4)</b> 69:1;70:2;79:18; 87:10 <b>net (1)</b> 49:9 <b>New (4)</b> 10:24;35:19;37:5; 89:14 <b>news (1)</b> 10:11 <b>Next (4)</b> 61:4,16,23;76:2 <b>nice (2)</b> 39:6;64:17 <b>nickel (1)</b> 86:23 <b>ninety (2)</b> 32:11;51:13 <b>ninety-five (2)</b> 52:24;92:11 <b>ninety-five-cent (1)</b> 99:10 <b>nobody (2)</b> 18:7;86:5 <b>Nobody's (1)</b> 50:14 <b>nonbankruptcy (1)</b> 40:17 <b>none (5)</b> 64:8;70:25;84:7; 86:15;93:21 <b>nor (4)</b> 43:22;70:3;79:18; 87:10 <b>normal (2)</b> 38:6;51:24 <b>North (4)</b> 64:13,14,15;67:11 <b>Note (7)</b> 4:15,23;6:10;16:2; 36:8;50:21;87:12 <b>noted (1)</b> 89:9 <b>noteholders (3)</b> 86:19;96:9;99:1 <b>Notes (7)</b> 5:4;29:1,4;39:4; 44:10;52:10;54:13 <b>notice (4)</b> 6:8,16;88:24; 93:24 <b>noticed (1)</b> 25:5 <b>notwithstanding (1)</b> 43:11 <b>November (10)</b> 45:2;60:14;67:25; 68:11;75:15,21; 76:2;86:3;88:15,18 <b>nuisance (1)</b> 27:22 <b>number (21)</b>
		<b>N</b>		
		<b>NA (1)</b> 5:3 <b>naïve (2)</b> 24:6,7 <b>name (14)</b> 7:6;25:6;44:13; 64:12;65:3;66:22; 71:14;72:1,16; 74:24;77:16;81:6,7; 82:25 <b>nameplate (3)</b> 48:13;55:22,25 <b>narrow (1)</b> 28:12 <b>National (1)</b> 50:2 <b>nature (2)</b> 13:9;38:8 <b>nearly (4)</b> 43:12;55:5;67:4, 17 <b>necessary (4)</b> 42:17;68:5;94:7; 100:9 <b>need (17)</b> 7:3,4;16:11;23:11; 32:10;37:13,14; 39:13;40:24;42:8; 44:3;57:20;59:17; 71:18;77:19;85:3; 92:12 <b>needed (2)</b> 34:16;41:18 <b>needs (1)</b> 61:8 <b>negative (2)</b> 54:14;83:14 <b>negotiated (1)</b> 41:6 <b>negotiation (2)</b> 44:3;73:18 <b>negotiations (3)</b> 78:6,20,25 <b>neighborhood (1)</b>	<b>NA (1)</b> 5:3 <b>naïve (2)</b> 24:6,7 <b>name (14)</b> 7:6;25:6;44:13; 64:12;65:3;66:22; 71:14;72:1,16; 74:24;77:16;81:6,7; 82:25 <b>nameplate (3)</b> 48:13;55:22,25 <b>narrow (1)</b> 28:12 <b>National (1)</b> 50:2 <b>nature (2)</b> 13:9;38:8 <b>nearly (4)</b> 43:12;55:5;67:4, 17 <b>necessary (4)</b> 42:17;68:5;94:7; 100:9 <b>need (17)</b> 7:3,4;16:11;23:11; 32:10;37:13,14; 39:13;40:24;42:8; 44:3;57:20;59:17; 71:18;77:19;85:3; 92:12 <b>needed (2)</b> 34:16;41:18 <b>needs (1)</b> 61:8 <b>negative (2)</b> 54:14;83:14 <b>negotiated (1)</b> 41:6 <b>negotiation (2)</b> 44:3;73:18 <b>negotiations (3)</b> 78:6,20,25 <b>neighborhood (1)</b>	

<p>6:10,16;8:24,24; 20:8;25:17;26:13; 28:18;41:22;46:4; 52:13,14;54:10,17; 55:9,9;56:1;78:3; 85:11,25;94:13 <b>numbers (2)</b> 55:7,7 <b>numerosity (3)</b> 85:11;94:10,18 <b>numerous (2)</b> 32:24;35:10</p>	<p>77:21 <b>Office (3)</b> 4:9;6:18;98:2 <b>officers (2)</b> 40:16;97:7 <b>official (21)</b> 6:15,18;22:3;40:8; 41:10;43:1,10,15; 44:3;92:1,2,6,9;94:5; 6:95:11;98:1;99:9, 11,22;103:2 <b>often (2)</b> 13:12;29:4 <b>old (5)</b> 14:12,19,20; 35:19;55:11 <b>one (56)</b> 6:12;7:6;9:10,11; 10:3,13;12:14; 14:18;16:8,22;18:5; 19:17;21:16;23:15; 24:20;25:16;28:9, 10;31:23;32:12; 33:14,14;34:3,22; 39:8;42:21;44:16; 48:14;50:21,25; 52:11,13;56:4,12; 57:19;59:25;62:11; 67:6;70:1,18;73:1, 13;74:5;77:16;81:1, 13,14;82:14,17; 85:16;87:12;89:25; 90:24;93:13;94:10; 95:20 <b>one- (1)</b> 77:6 <b>one-and-a-half (2)</b> 48:14;56:4 <b>O'NEILL (1)</b> 4:5 <b>ones (1)</b> 72:21 <b>ongoing (2)</b> 61:7;96:7 <b>only (28)</b> 8:18;14:20;15:6; 20:20;22:6;24:4; 28:1;31:5;33:23,25; 35:14;37:19;40:5, 18;43:19;45:22; 48:18;54:2;61:18; 66:11;67:20;68:17; 76:3;81:16;88:1; 94:3,11;95:3 <b>onset (1)</b> 83:14 <b>onto (1)</b> 39:24 <b>opacity (1)</b> 37:25 <b>open (1)</b> 25:14 <b>operable (1)</b></p>	<p>45:21 <b>operate (1)</b> 68:5 <b>operating (1)</b> 24:19 <b>operation (4)</b> 8:12;40:14;45:22; 68:19 <b>operational (2)</b> 64:17;65:22 <b>operations (2)</b> 60:16;75:24 <b>opined (1)</b> 60:1 <b>opinion (2)</b> 60:3;62:22 <b>opinions (1)</b> 11:13 <b>opportunistic (1)</b> 66:14 <b>opportunities (4)</b> 40:16;81:24;89:5; 91:15 <b>opportunity (22)</b> 7:17;8:24;12:20; 21:15;34:14,17; 36:15,16;58:20; 64:24;66:10;77:23; 82:4,7,11;84:3;87:5; 88:20;89:1;93:17; 94:14,15 <b>oppose (1)</b> 9:6 <b>opposite (4)</b> 11:11;19:15;61:2; 69:23 <b>opposition (1)</b> 102:8 <b>optimism (1)</b> 29:20 <b>option (2)</b> 28:10,17 <b>options (2)</b> 59:12;67:12 <b>orally (1)</b> 84:9 <b>orchestrate (1)</b> 39:2 <b>order (10)</b> 6:9;8:10;12:13; 43:14;56:16;67:7; 77:21;80:17;102:23; 103:7 <b>orders (1)</b> 6:11 <b>ordinary (1)</b> 66:15 <b>organization (1)</b> 69:11 <b>original (3)</b> 40:24;55:4;77:22 <b>originally (2)</b> 55:16;56:7</p>	<p><b>Os (1)</b> 97:11 <b>others (1)</b> 19:14 <b>Otherwise (3)</b> 43:10;70:20; 102:16 <b>ought (1)</b> 33:4 <b>ours (1)</b> 27:23 <b>ourselves (2)</b> 13:11;57:11 <b>out (39)</b> 6:25;7:1;14:25; 16:4;21:9,25;25:14, 25;27:2,13,22;30:14; 31:5;32:8;34:23; 36:22;37:18;42:5; 45:12,14,16;47:24; 48:6;50:5,7,17;51:3, 22,25;52:2,11;55:18, 21;56:18;87:21; 95:4;98:8;100:18; 102:18 <b>outcome (2)</b> 24:14;78:20 <b>outline (1)</b> 70:6 <b>outlined (1)</b> 67:19 <b>out-of-hand (1)</b> 78:16 <b>outset (1)</b> 78:22 <b>Outside (1)</b> 20:4 <b>outsized (1)</b> 73:19 <b>outstanding (2)</b> 52:18;62:1 <b>over (30)</b> 12:21;14:22;15:3; 19:1;25:18;27:4; 30:6;38:4;41:14; 44:8;47:18;52:18; 55:3;56:20;57:15; 58:12;59:8;62:14, 14;65:16;67:1; 69:21;72:9;74:11, 11;78:6;81:6;84:11; 95:20;102:21 <b>overall (1)</b> 47:23 <b>overcome (1)</b> 43:14 <b>overseas (1)</b> 9:13 <b>oversee (1)</b> 45:2 <b>oversight (3)</b> 15:24;62:7,7 <b>overturn (1)</b></p>	<p>43:25 <b>own (29)</b> 8:15;9:9,9,10; 11:19;12:1;21:12; 31:24;41:8;43:12; 44:2;59:11;63:9; 65:4;66:9,24;68:22, 23;70:13,24,25; 72:18;78:13;79:20; 80:12,14;91:5; 93:22;96:1 <b>owned (1)</b> 31:21 <b>owner (5)</b> 66:24,24;69:1,2; 76:25 <b>owners (2)</b> 69:24;77:17 <b>ownership (3)</b> 8:16;35:23;79:10 <b>owns (3)</b> 31:23;95:20,22</p>
<b>P</b>				
<p><b>objection (4)</b> 6:12;18:12;79:12; 87:2 <b>objections (7)</b> 6:18;13:20;14:6,7, 10;58:5;80:20 <b>objectives (1)</b> 14:16 <b>objectors (4)</b> 25:17;27:16; 28:13;58:12 <b>obligate (1)</b> 71:19 <b>obligated (1)</b> 59:11 <b>obligations (3)</b> 34:11;61:15,22 <b>observer (1)</b> 21:9 <b>observers (2)</b> 10:22;34:7 <b>observers' (1)</b> 11:13 <b>obsolete (2)</b> 26:7,17 <b>obstacles (2)</b> 28:18;41:9 <b>obtain (3)</b> 43:14;73:19;89:16 <b>obvious (2)</b> 34:6;75:8 <b>obviously (4)</b> 6:16;50:25;56:24; 59:17 <b>occasions (2)</b> 59:21,23 <b>occurred (3)</b> 69:4;82:6;101:6 <b>occurring (1)</b> 102:21 <b>occurs (1)</b> 24:2 <b>offer (3)</b> 45:24;77:22;93:17 <b>offered (2)</b> 46:21;71:8 <b>offering (4)</b> 66:10,11;75:20;</p>	<p><b>P&amp;L (1)</b> 48:25 <b>PA (1)</b> 4:21 <b>pace (1)</b> 102:12 <b>PACHULSKI (1)</b> 4:2 <b>page (3)</b> 42:21;69:15;70:5 <b>paid (4)</b> 9:4;43:19;74:16; 80:11 <b>pains (1)</b> 17:23 <b>paper (2)</b> 58:18;89:9 <b>pardon (1)</b> 76:8 <b>part (4)</b> 9:9;32:18;67:9; 72:23 <b>participant (2)</b> 26:3;78:25 <b>participate (10)</b> 7:22;11:9;31:2,6, 10,15;34:16;57:17; 78:15;91:20 <b>particular (2)</b> 83:3;84:20 <b>parties (7)</b> 23:6;63:10;79:25; 91:19;93:13;94:13; 95:2 <b>parties' (3)</b> 89:5;91:15,16 <b>partner (1)</b> 67:10</p>			

<b>partners (1)</b> 69:3	60:3;86:7	101:24;102:8,9,12, 13	<b>points (4)</b> 39:22;73:9;78:1; 87:24	<b>preponderance (1)</b> 93:19
<b>partnership (1)</b> 69:19	<b>perhaps (5)</b> 9:23;23:7;25:2; 28:15,16	<b>planet (1)</b> 41:25	<b>policy (1)</b> 97:11	<b>prerequisite (1)</b> 78:21
<b>party (1)</b> 6:22	<b>period (8)</b> 30:22;60:20,23, 24;76:14,14;102:20, 21	<b>plan-related (1)</b> 43:20	<b>pool (2)</b> 84:25,25	<b>presence (1)</b> 12:8
<b>passed (2)</b> 74:7,7	<b>permission (1)</b> 79:3	<b>plans (2)</b> 15:11;19:24	<b>poor (1)</b> 73:3	<b>PRESENT (6)</b> 5:7;49:8,9;65:8; 90:9;93:12
<b>patent (2)</b> 26:7;34:7	<b>person (2)</b> 19:17;46:19	<b>Plant (51)</b> 20:10,19,23;22:9, 25;26:23,25;41:17; 45:1,3,3,7,8,11,20; 46:6;47:3,7,12,18, 24;48:2,2,12,20; 49:18;50:11,16; 51:7;52:5,15,18; 53:9;54:2,16,20,24; 55:14,17,22;56:13, 15,21;59:14;60:17; 65:21,21;66:3; 76:16;89:13,16	<b>portion (2)</b> 66:2;71:6	<b>presented (6)</b> 15:18;45:16,19; 47:11;63:10;98:2
<b>patience (1)</b> 58:17	<b>personal (5)</b> 8:16;9:9;41:21; 44:18;71:6	<b>plants (1)</b> 26:24	<b>Portugal (1)</b> 72:19	<b>presenting (2)</b> 9:17;55:8
<b>pay (11)</b> 19:18;33:1;34:5,5; 46:19,23;50:21; 60:21;69:20;72:22; 79:4	<b>personally (1)</b> 67:17	<b>plausible (1)</b> 23:5	<b>position (19)</b> 31:24;67:24;68:9; 77:24;85:14,16,16; 86:21,23;91:20,23; 92:3,24;93:3,11; 95:13;96:11;98:16; 102:19	<b>presently (1)</b> 96:6
<b>paying (1)</b> 9:6	<b>perspective (2)</b> 43:24;44:22	<b>played (1)</b> 102:18	<b>possibly (3)</b> 19:9;24:12;47:12	<b>preserve (1)</b> 88:12
<b>payment (8)</b> 30:23;60:18,20,21, 23;76:5,10,14	<b>per-year (1)</b> 50:9	<b>playing (2)</b> 29:17;84:4	<b>post- (1)</b> 101:15	<b>preserved (1)</b> 71:11
<b>payroll (1)</b> 86:11	<b>pessimism (1)</b> 29:22	<b>pled (2)</b> 71:9;77:10	<b>post-bankruptcy (1)</b> 29:20	<b>resident (2)</b> 76:6,7
<b>PCAOB (1)</b> 62:7	<b>PETERSON (2)</b> 74:24,25	<b>pleadings (1)</b> 93:22	<b>potential (5)</b> 35:20;40:9;57:9; 88:12;97:10	<b>press (2)</b> 50:24;101:3
<b>peak (1)</b> 19:12	<b>petition (2)</b> 89:21;101:16	<b>Please (17)</b> 6:3,21;7:12;36:8; 43:24;44:9,9;58:16; 60:11;64:9;66:18; 71:13;72:11,15; 88:23;97:24;100:16	<b>potentially (3)</b> 56:13;93:17;97:16	<b>pressure (1)</b> 41:16
<b>Peck (1)</b> 73:13	<b>petty (1)</b> 14:9	<b>plenty (7)</b> 10:8,9;13:1,7; 17:13;35:24;82:17	<b>pound (1)</b> 86:2	<b>Preston (3)</b> 6:5;84:14;100:3
<b>penny (2)</b> 9:11,11	<b>ph (5)</b> 11:18;64:12;65:4; 71:15;72:17	<b>plus (1)</b> 91:9	<b>power (2)</b> 23:10;72:9	<b>presumably (1)</b> 85:21
<b>people (22)</b> 9:12;11:1,9;17:19, 20,21,25;18:6;19:21; 33:6;37:6,17;38:12; 39:9,19;41:22; 42:11;46:23;57:16; 71:20;72:9;85:11	<b>Phil (4)</b> 31:4;44:13;64:4; 83:6	<b>PM (1)</b> 103:12	<b>powerful (3)</b> 11:4,7;38:24	<b>pretty (5)</b> 34:6;46:22;47:15; 56:23;58:3
<b>people's (1)</b> 83:16	<b>PHILLIP (2)</b> 5:11;6:14	<b>pockets (1)</b> 11:23	<b>practical (2)</b> 88:11;91:17	<b>prevented (1)</b> 86:11
<b>per (5)</b> 49:22;50:1,21; 53:1;82:8	<b>pie (1)</b> 23:7	<b>podium (1)</b> 7:14	<b>practices (2)</b> 74:9,20	<b>previously (1)</b> 70:17
<b>percent (24)</b> 30:3;34:5;37:8; 49:22;50:1,4,9,13, 21,23;51:1,17,23,25; 52:3,7,24,25;53:1; 54:24;55:25;60:8; 62:14;63:2	<b>pieces (1)</b> 23:7	<b>point (33)</b> 14:17;16:24; 17:21;20:8;23:14, 16;25:10,25;27:16; 30:14;34:21;35:24; 47:7;52:5,8,21;58:3; 60:25;61:19;66:5; 67:14;74:5;75:10; 79:2;84:11;86:11; 89:6;92:4,19;95:14, 25;96:16;97:1	<b>practical (2)</b> 88:11;91:17	<b>price (15)</b> 17:22;18:15;19:5; 22:10;24:3,4,5,8; 52:16;55:14;65:17, 18,19;82:8;86:1
<b>percentile (1)</b> 51:13	<b>per (5)</b> 38:10	<b>pointed (1)</b> 45:12	<b>pre-bankruptcy (1)</b> 29:21;36:1	<b>prices (9)</b> 19:1;23:24;26:5; 68:4;75:17,24;82:2; 101:3,4
<b>perfect (3)</b> 85:4,5,6	<b>per (5)</b> 38:10		<b>pre-bankruptcy (2)</b> 29:21;36:1	<b>prima (1)</b> 35:9
<b>perfection (1)</b> 96:15	<b>per (5)</b> 38:10		<b>precipitous (3)</b> 24:8,13;101:5	<b>primed (1)</b> 32:16
<b>perfectly (5)</b> 17:17;19:16;32:2; 42:9;92:15	<b>per (5)</b> 38:10		<b>predicated (1)</b> 89:14	<b>priming (1)</b> 86:17
<b>perform (1)</b> 86:5	<b>per (5)</b> 38:10		<b>predicted (1)</b> 79:5	<b>principal (1)</b> 36:24
<b>performed (2)</b>	<b>per (5)</b> 38:10		<b>prejudice (2)</b> 28:11,14	<b>principles (3)</b> 40:10;61:6,24
	<b>per (5)</b> 38:10		<b>prepared (6)</b> 11:23;75:22;89:8; 90:5;93:25;100:7	<b>printing (1)</b> 50:24
	<b>per (5)</b> 38:10		<b>Pre-Petition (5)</b> 4:14,22;91:7;96:9; 101:14	<b>prior (7)</b> 21:12;22:24; 23:18;35:8;44:24; 86:3;98:3
	<b>per (5)</b> 38:10			<b>priority (2)</b>



<p><b>recently (1)</b> 45:13</p> <p><b>recess (3)</b> 57:14;58:10,14</p> <p><b>recognition (1)</b> 43:2</p> <p><b>recognize (4)</b> 21:8;83:19;84:16; 94:12</p> <p><b>recognized (2)</b> 20:20;90:18</p> <p><b>Recognizing (2)</b> 41:8;85:1</p> <p><b>recommend (1)</b> 71:17</p> <p><b>record (15)</b> 6:5;7:5;32:10; 58:13;59:1;84:14; 88:19;90:6;95:3,3; 98:19,24;99:5,19; 100:2</p> <p><b>recourse (1)</b> 36:8</p> <p><b>recoverable (1)</b> 20:21</p> <p><b>recoveries (3)</b> 93:1,1;98:11</p> <p><b>recovery (19)</b> 12:11;28:1,1,6; 29:13;31:1;39:16; 42:24;79:1;92:10; 93:15,18,20,20;94:4; 98:9;99:7;100:20,23</p> <p><b>recurring (1)</b> 47:17</p> <p><b>recycle (1)</b> 26:18</p> <p><b>recycling (2)</b> 26:23,24</p> <p><b>reduce (2)</b> 39:16;48:19</p> <p><b>reduced (1)</b> 47:17</p> <p><b>reducing (1)</b> 47:20</p> <p><b>reduction (1)</b> 62:21</p> <p><b>refer (1)</b> 51:6</p> <p><b>referred (1)</b> 60:18</p> <p><b>refinance (1)</b> 89:14</p> <p><b>reflect (2)</b> 18:13;56:14</p> <p><b>reflecting (1)</b> 46:22</p> <p><b>reflects (1)</b> 23:21</p> <p><b>refuse (2)</b> 9:25;22:5</p> <p><b>refuses (1)</b> 14:4</p>	<p><b>regard (10)</b> 16:2;23:3;24:7; 71:2;91:25;95:24; 96:15,21;97:3,17</p> <p><b>regarding (10)</b> 60:4,12;61:4;68:3, 24;69:5;74:20,20; 78:1;79:2</p> <p><b>regards (2)</b> 60:17;62:9</p> <p><b>regularly (2)</b> 7:19;24:2</p> <p><b>Rein (1)</b> 82:25</p> <p><b>reinforced (1)</b> 40:5</p> <p><b>reiterate (1)</b> 100:4</p> <p><b>reject (1)</b> 78:2</p> <p><b>relating (1)</b> 20:9</p> <p><b>relations (1)</b> 16:6</p> <p><b>relative (1)</b> 27:6</p> <p><b>relatively (1)</b> 27:1</p> <p><b>release (1)</b> 87:6</p> <p><b>releases (1)</b> 10:12</p> <p><b>relegated (1)</b> 66:7</p> <p><b>relevant (2)</b> 27:7;59:6</p> <p><b>reliable (2)</b> 14:20;16:19</p> <p><b>relied (3)</b> 16:14;90:11;91:2</p> <p><b>relies (1)</b> 69:6</p> <p><b>relieved (1)</b> 19:6</p> <p><b>rely (4)</b> 16:6,9;17:5;69:8</p> <p><b>remaining (2)</b> 63:13,16</p> <p><b>remains (3)</b> 85:9;87:8;89:13</p> <p><b>remarks (2)</b> 75:22;87:1</p> <p><b>remedy (1)</b> 32:7</p> <p><b>remember (1)</b> 13:7</p> <p><b>remind (4)</b> 20:13,16;29:19; 39:14</p> <p><b>reminded (1)</b> 81:15</p> <p><b>reorganization (5)</b> 15:7;40:18;69:18,</p>	<p>20;78:6</p> <p><b>reorganizations (1)</b> 42:18</p> <p><b>repeat (1)</b> 27:8</p> <p><b>repeatedly (1)</b> 62:17</p> <p><b>report (24)</b> 14:12,13,19,20; 15:19;17:12,18,22; 18:5,10,13,19,16; 32:3;62:11;67:25; 87:16,16;90:8,11,13, 14,15;93:21;95:24</p> <p><b>reporting (1)</b> 69:9</p> <p><b>reports (6)</b> 17:14,15;32:3; 68:7;69:8;71:2</p> <p><b>represent (8)</b> 8:18;20:6;29:25; 79:24;80:14;82:15; 94:7;95:2</p> <p><b>representation (6)</b> 40:7;44:4;66:6; 78:22,25;79:25</p> <p><b>represented (1)</b> 70:20</p> <p><b>representing (2)</b> 11:18;82:14</p> <p><b>represents (2)</b> 19:16,24</p> <p><b>reputable (1)</b> 17:25</p> <p><b>reputation (2)</b> 12:5;17:16</p> <p><b>request (6)</b> 9:18;39:21;62:16; 63:17;74:18;98:3</p> <p><b>requested (1)</b> 63:7</p> <p><b>requesting (2)</b> 12:16;80:15</p> <p><b>require (3)</b> 16:18;37:6;48:23</p> <p><b>required (10)</b> 30:23;40:17;54:7; 61:6;87:10;90:23; 93:18;94:1,19;96:19</p> <p><b>requirements (2)</b> 61:10;75:19</p> <p><b>requires (4)</b> 39:15;40:15; 46:10;70:3</p> <p><b>requiring (1)</b> 94:25</p> <p><b>requisite (1)</b> 96:18</p> <p><b>Research (1)</b> 50:2</p> <p><b>reserve (2)</b> 6:22;15:16</p> <p><b>residual (1)</b></p>	<p>92:18</p> <p><b>resignation (1)</b> 72:8</p> <p><b>resolution (2)</b> 96:3,14</p> <p><b>resources (10)</b> 9:22;11:5;23:6; 28:7,18,21;29:14,16; 75:25;96:2</p> <p><b>respect (10)</b> 6:17;18:11;19:10; 21:5;24:16,21;42:3; 97:12;99:16;103:2</p> <p><b>respected (1)</b> 7:23</p> <p><b>respectful (1)</b> 41:3</p> <p><b>respectfully (4)</b> 62:15;63:12,17; 96:17</p> <p><b>respond (2)</b> 16:12;33:7</p> <p><b>responded (1)</b> 39:25</p> <p><b>response (1)</b> 84:12</p> <p><b>responsibility (1)</b> 15:25</p> <p><b>responsible (1)</b> 22:22</p> <p><b>rest (2)</b> 73:7;97:19</p> <p><b>restart (3)</b> 89:16;90:16,19</p> <p><b>restarted (1)</b> 90:20</p> <p><b>restricted (1)</b> 37:11</p> <p><b>restructure (1)</b> 34:11</p> <p><b>restructuring (1)</b> 84:17</p> <p><b>result (9)</b> 24:9;49:2,20; 50:12;51:20;66:13; 67:5,24;99:22</p> <p><b>resulted (1)</b> 33:11</p> <p><b>results (2)</b> 46:4;84:16</p> <p><b>retaining (1)</b> 68:24</p> <p><b>retired (1)</b> 81:7</p> <p><b>retirement (2)</b> 66:2;70:2</p> <p><b>return (13)</b> 49:17,24;50:9,15; 51:20,24;52:1,6,24; 53:1;56:17;79:10; 88:6</p> <p><b>returns (4)</b> 49:24;50:3;56:13;</p>	<p>73:20</p> <p><b>revealing (1)</b> 30:15</p> <p><b>reveals (1)</b> 41:1</p> <p><b>revenue (2)</b> 46:11;68:5</p> <p><b>revere (1)</b> 20:1</p> <p><b>reversed (1)</b> 22:10</p> <p><b>review (2)</b> 60:3;62:23</p> <p><b>rich (5)</b> 11:4;18:17;38:24; 72:21;73:3</p> <p><b>RICHTER (1)</b> 5:2</p> <p><b>riddled (1)</b> 15:14</p> <p><b>right (36)</b> 7:19;10:13;15:16; 16:17;17:2,8;24:14; 25:4;27:5,25;29:2,9; 30:3,4;37:5,20;38:1, 16;51:12;53:7,23,25; 54:19;57:13;60:11; 73:3;74:3;84:7; 87:18;95:5;99:11, 23;100:12;101:1,17, 17</p> <p><b>rights (17)</b> 7:19,23,24;23:11; 30:5;31:14;32:8; 34:18;38:17;39:9,18, 20;40:19;57:21; 66:10,10;77:21</p> <p><b>rise (3)</b> 6:2;58:15;98:1</p> <p><b>rises (1)</b> 101:24</p> <p><b>risible (1)</b> 24:6</p> <p><b>risk (4)</b> 50:6;52:1,4;71:6</p> <p><b>risk-bearers (1)</b> 92:18</p> <p><b>road (2)</b> 28:19;50:8</p> <p><b>Robert (3)</b> 65:3;75:16,22</p> <p><b>room (3)</b> 70:22,24;83:6</p> <p><b>room's (1)</b> 31:15</p> <p><b>roughly (1)</b> 46:1</p> <p><b>rule (9)</b> 21:9;69:9;70:3; 71:4;80:19;85:10,10, 11;95:20</p> <p><b>rules (16)</b> 10:24,25,25;</p>
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<p>12:12;13:6;19:22; 21:4,4,5;27:23;35:3, 8;37:6;63:6;79:7,21 <b>rulings (1)</b> 73:19 <b>run (9)</b> 8:7,10;46:16;50:4; 64:23;72:9,24;75:2; 86:9 <b>running (2)</b> 22:9;56:22 <b>runt (1)</b> 66:4 <b>Russia (1)</b> 13:12 <b>Ryan (5)</b> 6:5;24:16;39:4; 84:14;100:2</p>	<p>91:19;94:13,14 <b>seat (4)</b> 39:17,20;44:3; 77:9 <b>seated (2)</b> 6:3;58:16 <b>Seattle (2)</b> 40:2,4 <b>SEC (12)</b> 10:24;14:22; 16:16;36:2,3;37:6; 59:23;62:7,19;71:3; 77:4;88:21 <b>second (6)</b> 14:13;52:10;79:2; 88:3;94:4,24 <b>secondary (1)</b> 75:20 <b>Secondly (2)</b> 59:22;69:9 <b>Section (2)</b> 95:16;98:4 <b>Secured (10)</b> 4:14,22;5:4;15:2; 17:1;18:1;63:14; 86:18;96:9,11 <b>securities (6)</b> 14:15;23:15,18, 24;24:5;97:8 <b>security (3)</b> 6:15;24:9;35:18 <b>securityholder (1)</b> 99:17 <b>seeing (3)</b> 15:23;54:10;98:11 <b>seek (4)</b> 13:4;32:8;81:16; 86:15 <b>seeking (6)</b> 15:3;23:8,10; 38:12;39:18;93:13 <b>seem (3)</b> 19:13;34:6;43:22 <b>seems (2)</b> 37:15;43:8 <b>Selena (1)</b> 11:17 <b>sell (3)</b> 32:24;34:4;46:7 <b>seller (1)</b> 24:2 <b>selling (2)</b> 24:3,4 <b>semiconductor (1)</b> 26:4 <b>send (4)</b> 15:9;25:8;36:10; 38:21 <b>sending (2)</b> 16:21;38:24 <b>Senior (11)</b> 4:14,22;33:15; 41:7;76:6,7;79:6,10,</p>	<p>12;96:9,11 <b>sense (3)</b> 13:16;18:23;83:7 <b>sent (2)</b> 64:5;85:20 <b>sentiment (1)</b> 24:2 <b>sentiments (1)</b> 98:1 <b>separate (1)</b> 59:21 <b>September (1)</b> 75:15 <b>series (1)</b> 101:1 <b>serious (2)</b> 66:13;68:24 <b>seriously (3)</b> 7:25;84:10;102:17 <b>serve (2)</b> 70:11;78:21 <b>services (2)</b> 59:10;60:3 <b>set (4)</b> 12:1;21:22;95:13; 97:14 <b>setbacks (1)</b> 19:3 <b>sets (1)</b> 36:19 <b>seven (1)</b> 51:23 <b>seventy (1)</b> 68:2 <b>Several (5)</b> 35:11;59:19,23; 60:13;98:11 <b>severe (1)</b> 62:20 <b>severely (1)</b> 83:8 <b>SFAS (2)</b> 20:17,25 <b>shake (2)</b> 42:3;72:12 <b>shaky (1)</b> 81:20 <b>shall (3)</b> 20:19;22:22;24:22 <b>shame (1)</b> 42:6 <b>shape (1)</b> 56:14 <b>share (2)</b> 33:5;82:8 <b>Shareholder (9)</b> 5:8,10,11;31:19; 37:4;72:17;73:8,21; 82:16 <b>shareholders (37)</b> 8:10;9:8,25;10:1, 17,21;16:4,9;30:19, 20;31:12;32:8;</p>	<p>37:14,17;41:9,13,20; 43:13;44:1;57:7; 59:16;63:17;66:15; 70:20,23;73:5;74:2, 8;76:20;77:2,8; 78:24;83:12;84:21; 87:5,7;88:11 <b>shareholders' (1)</b> 42:19 <b>shares (14)</b> 8:17,17;11:25; 31:21;52:17;59:11, 12,13;67:18;77:1,2; 82:7;95:20,22 <b>SHEPPARD (1)</b> 5:2 <b>shock (1)</b> 101:8 <b>shocked (1)</b> 44:23 <b>short (4)</b> 11:3;57:14;58:10; 102:20 <b>show (10)</b> 17:23;18:9,21,22; 31:11,14;32:3,4; 88:23;94:22 <b>showed (2)</b> 14:24;62:11 <b>showing (6)</b> 23:16;52:4;54:14, 17;70:22;90:1 <b>shown (1)</b> 32:2 <b>shut (2)</b> 17:3;31:5 <b>shutdown (1)</b> 29:22 <b>shy (1)</b> 66:18 <b>sic (2)</b> 17:8;76:6 <b>side (5)</b> 21:23;34:17;39:5; 43:9;52:20 <b>sided (1)</b> 77:7 <b>sidestep (2)</b> 38:14,23 <b>sign (1)</b> 19:8 <b>significant (8)</b> 46:13;63:13; 65:10;66:2,14;71:6; 75:9;84:19 <b>significantly (3)</b> 83:2;90:3;95:4 <b>signs (1)</b> 79:5 <b>simple (4)</b> 26:22,23;38:17; 80:22 <b>Simply (12)</b></p>	<p>40:8;43:4;45:9; 46:16;48:4;49:23; 51:8;62:13;66:5; 78:16;95:16;97:17 <b>simultaneously (1)</b> 78:21 <b>single (3)</b> 12:14;17:23;39:8 <b>sip (1)</b> 13:21 <b>sit (4)</b> 21:2;42:23;94:20; 101:9 <b>sits (1)</b> 41:3 <b>situation (9)</b> 17:10;27:23;39:2; 42:4;88:13;99:4,21; 100:25;101:21 <b>six- (1)</b> 102:5 <b>sixteen (1)</b> 80:6 <b>sixty (2)</b> 86:1;89:24 <b>sixty-eight (1)</b> 45:4 <b>skipped (1)</b> 76:4 <b>slightly (4)</b> 48:15;52:18; 55:23;79:22 <b>slowly (1)</b> 23:12 <b>small (6)</b> 44:13;67:10,11; 68:25;75:2;95:19 <b>small-fund (1)</b> 95:19 <b>smart (1)</b> 72:8 <b>smell (1)</b> 100:25 <b>smoke (2)</b> 87:18,18 <b>sob (1)</b> 72:6 <b>society (2)</b> 13:10;39:19 <b>sole (1)</b> 8:13 <b>solicit (1)</b> 30:18 <b>solvency (3)</b> 87:13,14;90:12 <b>solvent (1)</b> 88:16 <b>somebody (7)</b> 11:1;15:9;19:13; 26:10;31:22,25; 37:14 <b>someone (2)</b> 58:22;71:12</p>
<b>S</b>				
<p><b>safety (1)</b> 83:25 <b>same (6)</b> 26:25;33:2;36:6; 83:13;84:1;98:16 <b>Sandler (2)</b> 80:4;95:11 <b>SARA (1)</b> 4:17 <b>Sarbanes-Oxley (1)</b> 74:7 <b>satisfy (1)</b> 94:18 <b>save (2)</b> 70:13,23 <b>savvy (1)</b> 63:4 <b>saw (4)</b> 64:16,17;71:12; 76:9 <b>saying (14)</b> 17:2;28:22;33:13; 36:13;39:12;40:11; 43:11;46:24;47:13, 16;48:10;51:7;86:6, 13 <b>scenario (14)</b> 45:14,15,19,21,24; 46:6;47:3,11,13; 48:25;62:16;90:2; 101:14,15 <b>scenarios (1)</b> 63:11 <b>scheduled (1)</b> 96:8 <b>Scherich (3)</b> 41:15;75:16,17 <b>scrutiny (1)</b> 16:16 <b>se (9)</b> 6:14;8:18;9:21; 11:17,24;82:15;</p>	<p><b>Secondly (2)</b> 59:22;69:9 <b>Section (2)</b> 95:16;98:4 <b>Secured (10)</b> 4:14,22;5:4;15:2; 17:1;18:1;63:14; 86:18;96:9,11 <b>securities (6)</b> 14:15;23:15,18, 24;24:5;97:8 <b>security (3)</b> 6:15;24:9;35:18 <b>securityholder (1)</b> 99:17 <b>seeing (3)</b> 15:23;54:10;98:11 <b>seek (4)</b> 13:4;32:8;81:16; 86:15 <b>seeking (6)</b> 15:3;23:8,10; 38:12;39:18;93:13 <b>seem (3)</b> 19:13;34:6;43:22 <b>seems (2)</b> 37:15;43:8 <b>Selena (1)</b> 11:17 <b>sell (3)</b> 32:24;34:4;46:7 <b>seller (1)</b> 24:2 <b>selling (2)</b> 24:3,4 <b>semiconductor (1)</b> 26:4 <b>send (4)</b> 15:9;25:8;36:10; 38:21 <b>sending (2)</b> 16:21;38:24 <b>Senior (11)</b> 4:14,22;33:15; 41:7;76:6,7;79:6,10,</p>	<p>12;96:9,11 <b>sense (3)</b> 13:16;18:23;83:7 <b>sent (2)</b> 64:5;85:20 <b>sentiment (1)</b> 24:2 <b>sentiments (1)</b> 98:1 <b>separate (1)</b> 59:21 <b>September (1)</b> 75:15 <b>series (1)</b> 101:1 <b>serious (2)</b> 66:13;68:24 <b>seriously (3)</b> 7:25;84:10;102:17 <b>serve (2)</b> 70:11;78:21 <b>services (2)</b> 59:10;60:3 <b>set (4)</b> 12:1;21:22;95:13; 97:14 <b>setbacks (1)</b> 19:3 <b>sets (1)</b> 36:19 <b>seven (1)</b> 51:23 <b>seventy (1)</b> 68:2 <b>Several (5)</b> 35:11;59:19,23; 60:13;98:11 <b>severe (1)</b> 62:20 <b>severely (1)</b> 83:8 <b>SFAS (2)</b> 20:17,25 <b>shake (2)</b> 42:3;72:12 <b>shaky (1)</b> 81:20 <b>shall (3)</b> 20:19;22:22;24:22 <b>shame (1)</b> 42:6 <b>shape (1)</b> 56:14 <b>share (2)</b> 33:5;82:8 <b>Shareholder (9)</b> 5:8,10,11;31:19; 37:4;72:17;73:8,21; 82:16 <b>shareholders (37)</b> 8:10;9:8,25;10:1, 17,21;16:4,9;30:19, 20;31:12;32:8;</p>	<p>37:14,17;41:9,13,20; 43:13;44:1;57:7; 59:16;63:17;66:15; 70:20,23;73:5;74:2, 8;76:20;77:2,8; 78:24;83:12;84:21; 87:5,7;88:11 <b>shareholders' (1)</b> 42:19 <b>shares (14)</b> 8:17,17;11:25; 31:21;52:17;59:11, 12,13;67:18;77:1,2; 82:7;95:20,22 <b>SHEPPARD (1)</b> 5:2 <b>shock (1)</b> 101:8 <b>shocked (1)</b> 44:23 <b>short (4)</b> 11:3;57:14;58:10; 102:20 <b>show (10)</b> 17:23;18:9,21,22; 31:11,14;32:3,4; 88:23;94:22 <b>showed (2)</b> 14:24;62:11 <b>showing (6)</b> 23:16;52:4;54:14, 17;70:22;90:1 <b>shown (1)</b> 32:2 <b>shut (2)</b> 17:3;31:5 <b>shutdown (1)</b> 29:22 <b>shy (1)</b> 66:18 <b>sic (2)</b> 17:8;76:6 <b>side (5)</b> 21:23;34:17;39:5; 43:9;52:20 <b>sided (1)</b> 77:7 <b>sidestep (2)</b> 38:14,23 <b>sign (1)</b> 19:8 <b>significant (8)</b> 46:13;63:13; 65:10;66:2,14;71:6; 75:9;84:19 <b>significantly (3)</b> 83:2;90:3;95:4 <b>signs (1)</b> 79:5 <b>simple (4)</b> 26:22,23;38:17; 80:22 <b>Simply (12)</b></p>	<p>40:8;43:4;45:9; 46:16;48:4;49:23; 51:8;62:13;66:5; 78:16;95:16;97:17 <b>simultaneously (1)</b> 78:21 <b>single (3)</b> 12:14;17:23;39:8 <b>sip (1)</b> 13:21 <b>sit (4)</b> 21:2;42:23;94:20; 101:9 <b>sits (1)</b> 41:3 <b>situation (9)</b> 17:10;27:23;39:2; 42:4;88:13;99:4,21; 100:25;101:21 <b>six- (1)</b> 102:5 <b>sixteen (1)</b> 80:6 <b>sixty (2)</b> 86:1;89:24 <b>sixty-eight (1)</b> 45:4 <b>skipped (1)</b> 76:4 <b>slightly (4)</b> 48:15;52:18; 55:23;79:22 <b>slowly (1)</b> 23:12 <b>small (6)</b> 44:13;67:10,11; 68:25;75:2;95:19 <b>small-fund (1)</b> 95:19 <b>smart (1)</b> 72:8 <b>smell (1)</b> 100:25 <b>smoke (2)</b> 87:18,18 <b>sob (1)</b> 72:6 <b>society (2)</b> 13:10;39:19 <b>sole (1)</b> 8:13 <b>solicit (1)</b> 30:18 <b>solvency (3)</b> 87:13,14;90:12 <b>solvent (1)</b> 88:16 <b>somebody (7)</b> 11:1;15:9;19:13; 26:10;31:22,25; 37:14 <b>someone (2)</b> 58:22;71:12</p>

<p><b>something's (1)</b> 65:15</p> <p><b>sometimes (4)</b> 10:5;81:20,21,22</p> <p><b>somewhere (2)</b> 26:12;51:13</p> <p><b>son (2)</b> 14:3,4</p> <p><b>son-in-law (1)</b> 82:1</p> <p><b>Sontchi (18)</b> 7:15;9:18;11:16, 18;12:2,19;22:2; 24:15;25:12;26:10; 35:4;36:5,12;44:12; 58:24;72:16;79:7; 82:24</p> <p><b>soon (1)</b> 100:14</p> <p><b>sorry (4)</b> 32:21;53:3,15; 94:6</p> <p><b>sort (5)</b> 33:9;54:4;100:19; 101:12;102:7</p> <p><b>sorts (2)</b> 23:24;37:8</p> <p><b>sought (1)</b> 32:7</p> <p><b>sound (1)</b> 23:19</p> <p><b>sources (1)</b> 17:24</p> <p><b>South (2)</b> 13:25;14:2</p> <p><b>Spansion (13)</b> 25:17,17,18,20; 26:1,2;27:3,5,7,8; 34:23,24,25</p> <p><b>spared (2)</b> 79:13;80:13</p> <p><b>speak (7)</b> 59:5;63:24;66:23; 69:5;74:3;78:18; 81:5</p> <p><b>SPEAKER (1)</b> 103:11</p> <p><b>speaking (1)</b> 24:15</p> <p><b>speaks (3)</b> 14:3;31:25;65:15</p> <p><b>special (1)</b> 80:16</p> <p><b>specialized (1)</b> 63:5</p> <p><b>specific (6)</b> 21:1,4;45:5,6; 75:11;89:1</p> <p><b>specifically (2)</b> 61:11;69:16</p> <p><b>specifics (1)</b> 18:10</p> <p><b>spend (2)</b></p>	<p>13:17;102:2</p> <p><b>spending (1)</b> 102:16</p> <p><b>spent (5)</b> 11:19;56:20; 74:25;80:8;81:15</p> <p><b>SPIER (23)</b> 5:8;6:14,25;7:6,6, 9,11,13,15;12:4; 14:2;28:25;29:2,5,7, 10;44:8,10;45:12; 60:18;61:25;64:4; 95:21</p> <p><b>spite (2)</b> 13:23;36:22</p> <p><b>split (1)</b> 35:19</p> <p><b>spoken (2)</b> 65:17;83:20</p> <p><b>sponsored (1)</b> 72:25</p> <p><b>squarely (1)</b> 92:1</p> <p><b>squash (1)</b> 15:4</p> <p><b>staff (1)</b> 68:1</p> <p><b>stage (2)</b> 87:10;93:12</p> <p><b>stakeholders (3)</b> 72:21;79:21;84:19</p> <p><b>stand (4)</b> 39:10;64:4;67:20; 93:25</p> <p><b>standard (6)</b> 20:16;26:19;43:1; 95:15;98:4,17</p> <p><b>Standards (4)</b> 20:14,14;61:9; 94:19</p> <p><b>standing (3)</b> 86:5;95:18;96:13</p> <p><b>standpoint (2)</b> 91:17;100:18</p> <p><b>stands (1)</b> 77:22</p> <p><b>STANG (1)</b> 4:2</p> <p><b>stark (1)</b> 29:19</p> <p><b>STARRETT (2)</b> 82:24,25</p> <p><b>start (2)</b> 14:18;58:21</p> <p><b>started (5)</b> 37:19;44:14; 55:16;67:1;70:15</p> <p><b>start-up (1)</b> 50:5</p> <p><b>state (8)</b> 19:12;23:11;28:4, 17;40:19;67:20; 72:24;78:3</p>	<p><b>stated (8)</b> 60:14;68:1;73:10; 75:22;76:2;79:11; 80:19;97:20</p> <p><b>statement (16)</b> 6:25;15:22;18:4; 20:14;25:23;57:25; 58:8;62:23;64:9; 76:4,9,9;84:6;94:17; 95:14;99:6</p> <p><b>statements (39)</b> 15:15,25;16:3,9, 13;17:6;18:14; 21:18;22:24;23:3; 30:1,13;35:5;59:21, 23;60:1,4,13;61:4, 13,17,19;62:18,19, 24;63:22;74:19; 75:4,11,13;76:20; 81:3;87:4;88:15,17, 19,25;101:1,2</p> <p><b>state-of-the-art (1)</b> 56:21</p> <p><b>STATES (8)</b> 4:8,9;8:2;13:8; 18:12;69:16;95:18; 97:25</p> <p><b>stating (5)</b> 61:3,11,14,21;75:7</p> <p><b>stay (3)</b> 34:15;55:25;90:4</p> <p><b>steady (1)</b> 19:12</p> <p><b>steel (1)</b> 26:19</p> <p><b>stems (1)</b> 83:13</p> <p><b>step (1)</b> 102:14</p> <p><b>still (13)</b> 31:24;38:7;48:25; 52:15;55:5;60:19; 77:8,22;78:14; 81:24;82:11,11; 95:25</p> <p><b>Stock (7)</b> 10:25;19:5;37:5; 65:18,19;82:8;95:21</p> <p><b>stood (1)</b> 79:8</p> <p><b>stops (2)</b> 24:4;58:19</p> <p><b>story (2)</b> 72:6;85:20</p> <p><b>straight (2)</b> 7:9;22:11</p> <p><b>straightforward (1)</b> 27:1</p> <p><b>STRAUSS (2)</b> 4:13;98:25</p> <p><b>Street (3)</b> 73:10;75:1;81:14</p> <p><b>strike (2)</b></p>	<p>31:21;35:16</p> <p><b>strong (3)</b> 29:16;67:15;83:7</p> <p><b>strongly (4)</b> 9:14;66:8;71:16, 20</p> <p><b>structural (1)</b> 83:24</p> <p><b>structure (3)</b> 31:25;84:1;89:20</p> <p><b>students (1)</b> 44:17</p> <p><b>studied (1)</b> 8:19</p> <p><b>study (3)</b> 19:21;40:24;50:2</p> <p><b>stunning (1)</b> 49:24</p> <p><b>style (1)</b> 44:16</p> <p><b>subject (2)</b> 15:18;26:8</p> <p><b>submission (5)</b> 9:21;11:15,18; 23:16;97:20</p> <p><b>submissions (4)</b> 23:15;29:23;84:8; 100:13</p> <p><b>submit (6)</b> 23:11;35:24;57:6; 76:21;87:11;96:17</p> <p><b>submitter (1)</b> 9:22</p> <p><b>subsequently (1)</b> 29:23</p> <p><b>subsidiaries (9)</b> 45:23,25;46:5,15, 23;47:22;53:12; 54:5;55:2</p> <p><b>substantial (10)</b> 28:6;29:12;33:16; 79:1;93:14,19;94:4; 99:7;100:20,23</p> <p><b>subtract (1)</b> 55:4</p> <p><b>succeed (2)</b> 26:14,14</p> <p><b>success (3)</b> 48:7;49:3;67:5</p> <p><b>successful (3)</b> 20:2;43:17;68:10</p> <p><b>successfully (1)</b> 70:1</p> <p><b>sudden (3)</b> 29:22;69:3;101:5</p> <p><b>suddenly (3)</b> 37:16;55:15;68:17</p> <p><b>suffering (1)</b> 41:17</p> <p><b>sufficiency (1)</b> 13:17</p> <p><b>sufficient (9)</b> 59:14;60:15;61:1,</p>	<p>3;63:14,16;68:5; 98:19;101:16</p> <p><b>sufficiently (1)</b> 87:19</p> <p><b>suggest (2)</b> 43:6,7</p> <p><b>suits (1)</b> 35:11</p> <p><b>summarily (1)</b> 7:20</p> <p><b>summary (5)</b> 39:22;48:25; 56:11;62:15;66:7</p> <p><b>Sunilet (1)</b> 71:15</p> <p><b>superfluous (1)</b> 80:18</p> <p><b>superior (1)</b> 11:4</p> <p><b>super-primed (1)</b> 32:16</p> <p><b>supplement (1)</b> 70:1</p> <p><b>support (6)</b> 60:15;67:20;71:2; 76:1;96:6;98:19</p> <p><b>supported (1)</b> 63:6</p> <p><b>supporting (1)</b> 83:17</p> <p><b>supposedly (1)</b> 40:10</p> <p><b>sure (13)</b> 11:25;12:19;30:6, 14;47:17;51:19; 60:5;69:10;74:1; 77:18;83:25;88:8; 99:15</p> <p><b>Surely (1)</b> 68:8</p> <p><b>surge (1)</b> 83:11</p> <p><b>surmise (1)</b> 37:19</p> <p><b>surprise (3)</b> 10:17,18;69:2</p> <p><b>surprising (1)</b> 67:22</p> <p><b>surrounded (1)</b> 16:13</p> <p><b>sustain (1)</b> 70:2</p> <p><b>swallow (2)</b> 25:13;28:2</p> <p><b>swallowed (2)</b> 25:2,12</p> <p><b>sympathy (2)</b> 40:3;80:16</p> <p><b>system (17)</b> 7:16;8:21;10:20, 23;11:5,8,13,14; 17:9;20:4;21:20; 40:11;65:8;72:20;</p>
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74:18;85:5,6	<b>tendency (2)</b> 41:11;42:12	<b>thrown (1)</b> 36:22	53:3,6,8,11,15,18,23, 25:54;2,4,10,13,20;	59:19
<b>T</b>	<b>tens (1)</b> 88:16	<b>thus (2)</b> 23:18;99:5	64:4;67:20;89:18; 90:17;95:17	<b>try (6)</b> 19:11;33:22; 49:15;50:7;51:24; 67:13
<b>table (4)</b> 39:17,20;44:3; 77:9	<b>terms (6)</b> 45:17;48:10;54:7; 73:22;84:22;89:7	<b>thwarts (2)</b> 36:2,3	<b>track (1)</b> 102:7	<b>trying (3)</b> 18:6;39:24;73:22
<b>tackling (1)</b> 14:8	<b>terrorism (2)</b> 73:25,25	<b>ticking (1)</b> 103:3	<b>trade (2)</b> 37:12;91:22	<b>tune (1)</b> 76:18
<b>tactics (1)</b> 73:18	<b>test (2)</b> 22:6;101:20	<b>tied (2)</b> 16:22,22	<b>traded (2)</b> 14:16;37:21	<b>tunes (1)</b> 88:16
<b>talent (1)</b> 9:2	<b>testify (2)</b> 93:25;100:7	<b>Tim (1)</b> 97:25	<b>trader (1)</b> 67:12	<b>turn (5)</b> 46:16;58:5,12; 84:11;89:13
<b>talk (5)</b> 8:24;19:19;21:2; 44:21;65:23	<b>testifying (1)</b> 90:9	<b>times (6)</b> 19:4;23:24;24:6; 32:24;52:21;80:20	<b>traders (1)</b> 73:11	<b>turnout (1)</b> 32:19
<b>talked (2)</b> 29:21;86:14	<b>testimony (1)</b> 90:6	<b>time-tested (1)</b> 26:21	<b>trading (2)</b> 23:14;101:3	<b>twelve (2)</b> 68:6;76:2
<b>talking (13)</b> 26:2,15;33:21; 53:4,6,8,10,16,19,20, 21,22;68:13	<b>Thanks (2)</b> 64:5;72:14	<b>timing (5)</b> 16:11;70:8,14; 90:22;102:10	<b>transformed (1)</b> 8:3	<b>twenty (4)</b> 8:3,8;52:3;67:4
<b>Tamzen (1)</b> 72:1	<b>theme (2)</b> 44:25;47:18	<b>TIMOTHY (2)</b> 4:10;8:4	<b>transition (1)</b> 67:9	<b>twenty-five (1)</b> 50:1
<b>target (1)</b> 50:3	<b>theory (2)</b> 23:23;28:14	<b>titled (1)</b> 8:14	<b>traveled (3)</b> 9:12;72:18,19	<b>twenty-nine (1)</b> 45:25
<b>targets (1)</b> 50:3	<b>therefore (5)</b> 57:1;59:17;78:8, 21;85:8	<b>today (39)</b> 6:13;26:6;44:13; 46:9,20,23;48:21; 68:13,15;72:5,11,18; 73:5;74:2,11;75:4; 76:21;81:17;82:12; 83:7;84:8;86:6;87:9; 88:5,5;89:5,8,22; 90:5,9;91:4,15; 94:20;99:19;100:21; 101:9;102:9,23; 103:8	<b>traverse (1)</b> 84:1	<b>two (27)</b> 10:3;14:25;15:7; 23:6;44:16;45:23,24, 24;46:5,7,15,16,23; 47:22;48:3,11; 52:14;53:12;54:5; 55:2;62:17;63:11; 67:5,10;76:3;78:1; 87:24
<b>tasks (1)</b> 75:18	<b>there're (3)</b> 90:13;91:1;92:18	<b>together (1)</b> 31:5	<b>treasure (1)</b> 70:25	
<b>taught (1)</b> 73:2	<b>thesis (2)</b> 101:23,25	<b>Treasury (1)</b> 50:21	<b>Treaty (1)</b> 50:21	<b>U</b>
<b>tax (1)</b> 59:10	<b>third (3)</b> 14:13,22;59:24	<b>treat (3)</b> 38:9;68:22;79:21	<b>treated (1)</b> 69:10	
<b>taxes (2)</b> 46:1,11	<b>third- (1)</b> 67:24	<b>treated (1)</b> 69:10	<b>treatment (2)</b> 69:14;80:16	
<b>taxpayer (2)</b> 9:11;12:25	<b>thirteen (1)</b> 80:5	<b>tremendous (2)</b> 50:6;65:14	<b>trend (2)</b> 88:14;102:20	<b>UCC (1)</b> 28:9
<b>teach (2)</b> 44:17;64:13	<b>thirty (2)</b> 86:14;90:21	<b>trend (2)</b> 88:14;102:20	<b>trial (2)</b> 43:17;87:10	<b>ultimate (4)</b> 39:16;41:12; 42:15;78:20
<b>teaches (1)</b> 94:23	<b>thirty-one (1)</b> 80:6	<b>trial (2)</b> 43:17;87:10	<b>trough (1)</b> 19:12	<b>ultimately (5)</b> 42:25;67:8;85:3, 13;87:13
<b>team (2)</b> 63:7;87:1	<b>THOMAS (3)</b> 5:9;63:23;64:2	<b>truly (4)</b> 31:8;43:14;59:16; 92:10	<b>true (9)</b> 18:11;24:13; 54:16;68:11,11,14; 75:7;87:21;96:25	<b>Um-hum (3)</b> 49:10;81:23;86:20
<b>technical (3)</b> 30:16;32:7;39:8	<b>Thornton (4)</b> 59:24;62:6,20,22	<b>trust (4)</b> 10:22,23;83:25; 84:2	<b>truly (4)</b> 31:8;43:14;59:16; 92:10	<b>unable (2)</b> 78:10;86:12
<b>technological (2)</b> 26:5,16	<b>thoroughly (1)</b> 23:23	<b>Trustee (14)</b> 4:9;5:3;6:18; 11:19;18:12,12,16; 19:14;29:11;70:16; 80:23;96:8;97:25; 98:5	<b>trust (4)</b> 10:22,23;83:25; 84:2	<b>unaudited (1)</b> 17:5
<b>technologies (1)</b> 26:6	<b>though (2)</b> 12:16;84:17	<b>Trustee's (1)</b> 74:16	<b>truth (4)</b> 81:16,18;87:3,19	<b>unbelievable (1)</b> 77:7
<b>technology (1)</b> 26:14	<b>thought (4)</b> 41:2;45:16;68:8; 72:1	<b>truthful (1)</b> 81:16,18;87:3,19		<b>uncertain (1)</b> 26:9
<b>telephone (6)</b> 58:22,23;59:5; 63:22;64:7;82:1	<b>thousands (1)</b> 9:5			<b>uncertainty (1)</b> 88:9
<b>telling (3)</b> 8:4;16:9;28:19	<b>three (21)</b> 8:11;47:13,16,18, 24;48:3,8,15;49:3,6, 13,20;50:12,20;53:3; 54:22;56:24;75:11; 90:25;95:20;98:13			<b>unchecked (1)</b> 66:13
<b>tells (1)</b> 36:20	<b>thought (4)</b> 41:2;45:16;68:8; 72:1			<b>under (14)</b> 20:17;40:14; 41:15;61:5,8,23; 62:23;69:14;94:2; 95:16;96:19;98:4,17,
<b>temporary (5)</b> 19:3;22:7,9,11,20	<b>three-cent (1)</b> 93:6			
<b>ten (2)</b> 44:14;75:1	<b>three-year (1)</b> 47:21			

<p>18 <b>underlying (1)</b> 40:25 <b>understands (4)</b> 10:5;19:1,2;32:20 <b>undertaken (1)</b> 89:10 <b>undervalue (1)</b> 79:6 <b>underwater (1)</b> 65:10 <b>unfair (1)</b> 40:14 <b>Unfortunately (4)</b> 59:6;77:23;85:15,16 <b>unheard-of (1)</b> 63:7 <b>UNIDENTIFIED (1)</b> 103:11 <b>unique (2)</b> 41:9;101:18 <b>UNISON (1)</b> 6:4 <b>UNITED (5)</b> 4:8,9;8:2;13:8;97:25 <b>University (4)</b> 8:20;40:2,4;64:14 <b>unjust (1)</b> 36:2 <b>unjustifiable (2)</b> 27:14,15 <b>unjustifiably (1)</b> 27:19 <b>unless (2)</b> 30:20;97:19 <b>Unlike (1)</b> 95:21 <b>unlikely (1)</b> 28:6 <b>unnecessary (2)</b> 43:4;100:11 <b>unqualified (1)</b> 60:2 <b>unsecured (21)</b> 6:19;12:11;31:1;33:2;63:15;78:2;79:8;89:23;91:9,22;92:2,6,9,11;93:1;94:6;95:12;96:23,24;98:2,11 <b>unsecured-creditors' (1)</b> 96:20 <b>unusual (1)</b> 88:12 <b>unwarned (1)</b> 69:3 <b>up (28)</b> 12:23;16:4,14;19:6;21:22;22:9;24:4;25:7,19;30:20;31:10,15,16,19;</p>	<p>38:14;45:4;46:21;51:12;57:8;58:9;59:5;65:20;70:3;72:2;79:8;83:3;87:22;93:18 <b>Update (2)</b> 61:9,18 <b>updated (1)</b> 61:9 <b>uphold (1)</b> 73:1 <b>upon (2)</b> 83:25;97:20 <b>upside (1)</b> 34:16 <b>urge (1)</b> 43:23 <b>use (14)</b> 11:5;18:6;19:17;23:10;26:20;27:7;33:1;35:18;38:22;46:4;47:10;53:1;55:16;94:23 <b>used (3)</b> 15:23;26:18;40:12 <b>useful (1)</b> 45:16 <b>using (6)</b> 9:6;20:2;37:25;55:7,11;73:17 <b>usually (2)</b> 69:18,19 <b>utterly (1)</b> 21:13</p>	<p>11,11;65:14;75:8;78:1,7,10,13,16,19;89:10,11,13;90:1,1,11;91:1,3,6,21,23;92:25;93:17,23;94:1,11,15;96:1,4,16,21;97:17;99:6,13;100:8;101:14,15,20,23,25;102:19 <b>value (100)</b> 7:16;8:15;14:14,24;15:4;19:19,22;20:2,3,4,7,19,21;21:11,25;22:7,12,19;23:17;24:5,12;26:12;27:17,22;28:2;29:18;30:25;31:8,22;33:3;34:22;43:6;44:16,18,22;45:11,20;46:9,18;47:3,4,7,12,23;48:19;49:8,9,13,18,20;50:12,17,17;51:25;52:9,11,23;53:4,5,6,9,19,20,21;54:5,21,25;55:2,3,11;56:7,15,23;65:15;66:5;68:21;76:17;77:3,7;78:5,11;79:11;82:5;83:18,20;87:19,21;88:2,4,7,10,12;89:5,7;91:15;92:4;99:3,16;101:2,5 <b>value-based (1)</b> 75:2 <b>values (7)</b> 20:9;21:3;42:19;73:1,2;78:9;89:17 <b>valuing (1)</b> 27:4 <b>various (4)</b> 21:16;31:20;70:6;86:25 <b>vast (1)</b> 20:6 <b>vastly (1)</b> 57:9 <b>Vegas (1)</b> 51:11 <b>Venture (5)</b> 49:24,25;50:3;51:18;52:6 <b>venue (2)</b> 36:1,9 <b>verifiable (1)</b> 17:24 <b>version (1)</b> 57:5 <b>versus (1)</b> 89:20 <b>veterans (1)</b> 72:25</p>	<p><b>via (1)</b> 73:7 <b>viable (1)</b> 67:22 <b>vice (2)</b> 76:6,7 <b>victory (1)</b> 92:11 <b>videos (1)</b> 25:7 <b>view (4)</b> 47:7;90:12;92:4;99:15 <b>viewed (2)</b> 42:16;60:21 <b>views (1)</b> 96:21 <b>violate (2)</b> 39:7;40:9 <b>violated (1)</b> 35:8 <b>violation (4)</b> 10:14;23:2;36:1;39:8 <b>violations (1)</b> 35:17 <b>Virginia (1)</b> 71:15 <b>voice (3)</b> 7:17;72:2;82:19 <b>voices (1)</b> 74:4</p>	<p>56:14;57:16;59:6;65:20;72:9,19;73:21,21;79:16;82:17;88:21;102:18 <b>ways (1)</b> 21:16 <b>wealth (1)</b> 71:6 <b>Web (2)</b> 69:15;70:5 <b>week (4)</b> 15:7;81:18;89:11;97:5 <b>welcome (11)</b> 31:3;44:6;57:13,21;58:8;64:6;66:17;71:22;72:3;76:23;95:7 <b>well-healed (1)</b> 11:3 <b>well-known (2)</b> 18:19;34:4 <b>well-off (1)</b> 11:7 <b>well-understood (1)</b> 18:20 <b>weren't (1)</b> 85:22 <b>What's (10)</b> 26:12;47:7,19;48:18,22;73:24;85:18,20;97:4;101:17 <b>whatsoever (2)</b> 55:12;70:22 <b>Whereupon (1)</b> 103:12 <b>WHITE (5)</b> 71:24;72:1,1,4,14 <b>whitewash (1)</b> 35:20 <b>whitewashed (1)</b> 36:2 <b>whoever's (1)</b> 72:9 <b>whole (6)</b> 12:14,15;28:3;31:15;63:15;82:3 <b>who's (3)</b> 63:5;74:3;101:17 <b>whose (1)</b> 26:21 <b>who've (1)</b> 70:24 <b>wide (2)</b> 12:6;99:7 <b>widely (1)</b> 33:6 <b>widely-available (1)</b> 20:16 <b>wife (2)</b> 13:24;59:10 <b>Wiley (1)</b></p>
	<b>V</b>		<b>W</b>	
	<p><b>vaccines (1)</b> 67:7 <b>val (1)</b> 53:11 <b>Valiant (2)</b> 10:13;23:1 <b>valid (7)</b> 17:17;18:3,4;19:16;20:4;27:4;91:3 <b>validated (1)</b> 98:15 <b>validity (2)</b> 40:6;87:3 <b>valuable (3)</b> 32:25;34:9;68:10 <b>valuation (74)</b> 14:14,15;15:19,21;16:18;17:7,13,15,18,22;18:7;19:11,16,23;23:5,14;26:3;27:12;28:12,20;30:2;34:21;35:2;36:22;43:17;45:18;46:21;49:5;50:8;57:5;60:5,8;62:10,</p>	<p><b>walk (3)</b> 52:10,22;88:21 <b>Wall (2)</b> 73:10;75:1 <b>wants (4)</b> 17:9,16;21:24;58:11 <b>warning (1)</b> 10:12 <b>warranted (1)</b> 13:18 <b>warrants (1)</b> 99:21 <b>Warren (2)</b> 20:1;52:2 <b>waste (2)</b> 12:25;62:2 <b>watch (1)</b> 25:7 <b>watching (2)</b> 12:10;17:10 <b>water (1)</b> 13:21 <b>way (27)</b> 8:6,19;9:17;10:19;12:9,25;19:2;20:5;21:22;35:17;37:3;38:16,23;52:11,21;</p>		

8:9 <b>WILLIAM (1)</b> 4:24 <b>willing (5)</b> 13:10;16:19; 41:19;66:8;86:16 <b>willingness (4)</b> 29:10;31:3;42:23; 83:16 <b>win (3)</b> 30:2;81:22,25 <b>wind (1)</b> 12:9 <b>windshield (1)</b> 81:21 <b>wiped (1)</b> 21:25 <b>wish (9)</b> 7:10;14:5;44:7; 58:2,8;64:24;81:9; 85:12;93:24 <b>wishes (1)</b> 39:3 <b>within (12)</b> 24:10;30:22;39:9; 45:7,24;47:13;60:19, 23;61:15;75:10; 76:14;97:12 <b>without (7)</b> 8:1;28:11,14;40:8; 43:18;76:13;98:14 <b>witness (1)</b> 72:20 <b>witnesses (1)</b> 30:1 <b>Wolf (8)</b> 8:9;25:2,2,6,6,11, 12;73:22 <b>wolves (1)</b> 25:8 <b>wolves' (1)</b> 25:14 <b>wonderfully (1)</b> 68:10 <b>wondering (1)</b> 76:11 <b>words (9)</b> 21:12;25:1;28:11; 39:6;46:6;49:18; 50:4;53:24;78:18 <b>work (6)</b> 13:3;33:15;59:6,6; 68:9;92:5 <b>worked (2)</b> 59:9;81:11 <b>works (2)</b> 9:1;72:20 <b>world (15)</b> 7:18;26:25;32:19; 33:17;42:2;48:2,3; 49:18;52:3,5;56:14; 62:3,7;70:2;85:5 <b>WorldCom (1)</b>	74:6 <b>world's (4)</b> 7:22;60:6;62:10; 67:7 <b>worse (1)</b> 36:4 <b>worth (11)</b> 46:7,25;47:1,6; 48:21;56:15;64:19, 21;68:17;70:13;88:3 <b>worthless (4)</b> 50:11;65:15;66:3; 77:25 <b>write (1)</b> 22:18 <b>write-down (10)</b> 20:11;21:1,8,10; 22:3,5,6,12,16;77:7 <b>writing (2)</b> 12:1;84:8 <b>written (2)</b> 6:25;44:16 <b>wrong (2)</b> 23:20;29:23 <b>wrote (3)</b> 73:17;76:6;85:2  <b>Y</b>  <b>year (19)</b> 8:12;26:6;30:17; 37:16,17;44:18; 46:1;49:22;50:1,22; 52:3,7;53:1;54:24; 55:8;61:16,20; 67:23;90:25 <b>year- (1)</b> 61:18 <b>year-and-a-half (3)</b> 56:5,24;67:1 <b>years (34)</b> 8:3,8,20;14:25; 26:18,20;44:15; 45:24;46:7,17;47:13, 16,18,24;48:8,14,15; 49:3,6,13,20;50:12, 20;53:3;54:22;56:4, 25;59:9;66:25;67:4, 5;75:1;81:11;90:25 <b>yesterday (2)</b> 10:2;31:13 <b>York (2)</b> 10:25;37:5 <b>youth (1)</b> 72:23 <b>YouTube (1)</b> 25:7  <b>Z</b>  <b>zero (7)</b> 46:7;47:3,8,12; 49:19;56:15;62:5	<b>ZIEHL (1)</b> 4:2 <b>zinc (15)</b> 17:22;18:15;19:1; 22:10;26:18,18; 33:16,17;47:19; 55:15;65:19;75:17; 82:2;86:1,22 <b>Zochem (4)</b> 32:25;34:4;45:23; 98:12 <b>zone (1)</b> 10:10  <b>1</b>  <b>1,086,000 (1)</b> 80:7 <b>1,164,000 (1)</b> 80:6 <b>1.1 (1)</b> 56:25 <b>1.2 (1)</b> 56:25 <b>1.2-billion-dollar (1)</b> 56:2 <b>1.5 (1)</b> 8:12 <b>1.8 (1)</b> 30:23 <b>1.8-million-dollar (1)</b> 76:4 <b>100,000 (1)</b> 11:19 <b>105 (1)</b> 92:13 <b>10K (2)</b> 15:22;16:1 <b>10-K (1)</b> 61:11 <b>10Q (4)</b> 10:14;14:22;22:1; 23:2 <b>11 (9)</b> 69:16,19;70:5,21; 78:20;79:19;89:24; 90:4,17 <b>11:22 (1)</b> 58:14 <b>11:30 (1)</b> 58:13 <b>11:53 (1)</b> 58:14 <b>110 (2)</b> 47:21;55:19 <b>1102 (1)</b> 95:16 <b>1102a1 (2)</b> 98:4,17 <b>1102a2 (1)</b> 98:18 <b>112 (2)</b> 54:15;56:22	<b>114 (3)</b> 49:22;50:13;52:7 <b>12:58 (1)</b> 103:12 <b>130 (2)</b> 55:20;56:1 <b>13D (1)</b> 37:3 <b>13G (1)</b> 37:3 <b>144 (3)</b> 20:14,17,25 <b>14th (1)</b> 45:14 <b>15 (1)</b> 68:11 <b>150 (3)</b> 55:20;89:15;90:15 <b>155,000 (2)</b> 47:19;55:22 <b>160 (1)</b> 8:7 <b>170,000 (1)</b> 55:24  <b>2</b>  <b>2,414 (1)</b> 80:9 <b>200 (3)</b> 54:5;55:1,5 <b>2002 (1)</b> 74:5 <b>2008 (1)</b> 83:14 <b>2010 (1)</b> 73:10 <b>2014 (3)</b> 8:14;52:14,16 <b>2014-15 (1)</b> 61:9 <b>2015 (13)</b> 59:22,24;60:14,14, 25;61:11;67:25; 68:11;75:15,21; 76:2;82:3;88:15 <b>2016 (4)</b> 59:22;60:25;68:3, 9 <b>2017 (2)</b> 90:15,20 <b>210 (2)</b> 46:25;47:2 <b>215,000 (1)</b> 80:4 <b>25 (1)</b> 68:17 <b>250 (5)</b> 47:2,6;54:5;55:1; 57:15 <b>255 (1)</b> 89:12 <b>256,000 (1)</b>	80:5 <b>270 (3)</b> 46:4,8,17 <b>29 (2)</b> 46:2,17 <b>29th (1)</b> 6:9  <b>3</b>  <b>3,000 (1)</b> 44:17 <b>305 (3)</b> 89:12;90:2;91:6 <b>30-million-dollar (1)</b> 76:5  <b>4</b>  <b>40 (1)</b> 55:17 <b>40,000 (1)</b> 67:17 <b>400 (5)</b> 21:25;22:16;55:4; 89:20;91:7 <b>400-million-dollar (1)</b> 62:4 <b>450 (1)</b> 80:8 <b>47 (1)</b> 52:21 <b>490 (1)</b> 56:9 <b>494 (1)</b> 56:10  <b>5</b>  <b>5 (1)</b> 92:13 <b>5,500 (1)</b> 59:11 <b>500 (2)</b> 68:17;90:3 <b>500-million-dollar (1)</b> 62:21 <b>514 (1)</b> 54:25 <b>550 (1)</b> 56:20  <b>6</b>  <b>6 (1)</b> 96:12 <b>60 (1)</b> 91:8 <b>6th (1)</b> 52:14  <b>7</b>
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<b>7,000 (1)</b> 59:12				
<b>700 (1)</b> 55:3				
<b>733 (1)</b> 78:3				
<b>750 (1)</b> 55:3				
<b>783 (3)</b> 49:6,12;50:12				
<b>783-million-dollar (2)</b> 49:20;54:21				
<b>8</b>				
<b>80 (4)</b> 49:19,21;50:11; 56:22				
<b>85 (1)</b> 54:9				
<b>86 (1)</b> 49:4				
<b>9</b>				
<b>90 (3)</b> 47:21;55:5,19				
<b>949 (1)</b> 56:7				
<b>9th (2)</b> 75:21;76:2				
<b>9X (1)</b> 56:2				
<b>9XEBITDA (2)</b> 46:4;49:5				