

603

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CVR REFINING, LP : CONSOLIDATED
 UNITHOLDER LITIGATION : C.A. No. 2019-0062-KSJM

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Chancery Courtroom No. 12A
 Leonard L. Williams Justice Center
 500 North King Street
 Wilmington, Delaware
 Wednesday, July 28, 2021
 9:22 a.m.

- - -

BEFORE: HON. KATHALEEN St. J. McCORMICK, Chancellor

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TRIAL TRANSCRIPT - VOLUME III

 CHANCERY COURT REPORTERS
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604

1 APPEARANCES:

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 6 -and-
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605

1 THE COURT: Good morning, everyone. I
 2 apologize. I understand we're having some technical
 3 difficulties with the Zoom.

4 If people are participating by Zoom
 5 and you can hear me but not see me, I apologize.
 6 We'll work on it over our break.

7 For now, let's get going. Okay.

8 MR. GORRIS: Good morning, Your Honor.

9 THE COURT: Good morning again,
 10 Mr. Lamp.

11 THE WITNESS: Good morning.

12 DAVID LAMP, having previously been
 13 duly affirmed, resumed the stand and testified further
 14 as follows:

15 DIRECT EXAMINATION CONT'D

16 BY MR. GORRIS:

17 Q. Good morning, Mr. Lamp. Can you turn
 18 to JX 383 in your witness binder, please.

19 A. Okay.

20 Q. And this is an email on June 28, 2018,
 21 from Mr. Walter, the general counsel of CVR, to the
 22 CVR Refining board, with a copy of a letter from
 23 Butler Hall Capital.

24 Do you see that?

606

1 A. Yes.

2 Q. Okay. And can you turn to what's been
 3 marked as page 5 of 6 of the exhibit, which is the
 4 final page of the Butler Hall Capital letter?

5 A. Can I do what?

6 Q. Can you turn to page 5 of 6 --

7 A. Yes.

8 Q. -- of the exhibit? That's the final
 9 page of the Butler Hall Capital letter.

10 Do you see that?

11 A. Yes, I got it.

12 Q. Okay. And the first section of that
 13 final page has a bold, underlined heading called
 14 "Squeeze Out Concerns."

15 Do you see that?

16 A. Yes.

17 Q. And you understand that what Butler
 18 Hall was pointing out was that the exchange offer was
 19 activating the call right, and that was a material
 20 negative that the CVR Refining board should seek to
 21 prevent. Right?

22 A. Can you repeat that again?

23 Q. Sure. Have you seen this letter
 24 before, Mr. Lamp?

<p style="text-align: right;">607</p> <p>1 A. Have I seen this document?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And you understand that this</p> <p>5 section, this "Squeeze Out Concerns" section, is</p> <p>6 pointing out that it's a material negative that the</p> <p>7 exchange offer is going to activate the call right.</p> <p>8 Right?</p> <p>9 A. Could be, yes.</p> <p>10 Q. Okay. And Butler Hall is also saying</p> <p>11 that that's something that the CVR Refining board</p> <p>12 should seek to prevent. Is that right?</p> <p>13 A. I believe that's what they're saying,</p> <p>14 yes.</p> <p>15 Q. Okay. Now, the GP board never</p> <p>16 evaluated the squeeze-out concerns, did they?</p> <p>17 A. I don't recall any, no.</p> <p>18 Q. And that was because, in your view, it</p> <p>19 wasn't the GP board's decision. Right?</p> <p>20 A. Well, again, the GP board was neutral</p> <p>21 on it, on the whole exchange.</p> <p>22 Q. Okay. And do you understand that</p> <p>23 there was a board meeting to address shareholder</p> <p>24 communications, including this Butler Hall Capital</p>	<p style="text-align: right;">609</p> <p>1 And you're the CEO of CVR Energy as</p> <p>2 well. Right?</p> <p>3 A. Correct.</p> <p>4 Q. And we established yesterday afternoon</p> <p>5 that in connection with the exchange offer and also in</p> <p>6 connection with the call right, there's a conflict of</p> <p>7 interest, on the one side, between CVR Energy and IEP,</p> <p>8 and on the other side, CVR Refining and its</p> <p>9 unitholders. Right?</p> <p>10 A. Those are your words.</p> <p>11 Q. Okay. But you understand that --</p> <p>12 A. I'm not sure it's a conflict, but ...</p> <p>13 Q. Okay. Sir, you understand that on the</p> <p>14 CVR Energy and IEP side, they wanted to pay the least</p> <p>15 price possible to buy out the CVR Refining units,</p> <p>16 whether in an exchange offer or in a subsequent call</p> <p>17 right exercise. Correct?</p> <p>18 A. Again, those are your words, not mine.</p> <p>19 Q. Do you disagree with my words, sir?</p> <p>20 A. I don't necessarily disagree with</p> <p>21 them, but I don't know that that's the primary driver.</p> <p>22 The exchange offer was at a premium, so how could that</p> <p>23 be relevant?</p> <p>24 Q. And on the CVR Refining unitholder</p>
<p style="text-align: right;">608</p> <p>1 letter?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. Okay. And can you turn to page 403</p> <p>4 of -- I'm sorry, Joint Exhibit 403 in your witness</p> <p>5 binder?</p> <p>6 A. I'm there.</p> <p>7 Q. And do you recognize this as a July 9,</p> <p>8 2018, CVR Refining GM board meaning to talk about,</p> <p>9 among other things, the Butler Hall Capital letter?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I just want to go through</p> <p>12 the directors present. Do you see that on the first</p> <p>13 page?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And there's nine total</p> <p>16 directors present?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And five of those directors are</p> <p>19 representatives of IEP. Correct? Mr. Icahn, Mr. Cho,</p> <p>20 Mr. Frates, Mr. Langham, and Mr. Pastor. Right?</p> <p>21 A. I believe that's correct. I'm not</p> <p>22 sure about Pastor.</p> <p>23 Q. Okay. The record will show</p> <p>24 Mr. Pastor's position at IEP at this time.</p>	<p style="text-align: right;">610</p> <p>1 side, they wanted the highest price possible for their</p> <p>2 units, whether in an exchange offer or in a subsequent</p> <p>3 exercise of call right. Right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And what Butler Hall told you</p> <p>6 was, there is a conflict of interest, because on the</p> <p>7 back end, we could be squeezed out at a grossly</p> <p>8 inadequate price, and that was a material negative,</p> <p>9 and the board should seek to prevent it. Right?</p> <p>10 A. That's what the Butler letter said,</p> <p>11 yes.</p> <p>12 Q. Okay. And then there is a meeting</p> <p>13 held to address that, and five of the nine directors,</p> <p>14 a majority of the directors, are IEP representatives.</p> <p>15 Right?</p> <p>16 A. Assuming Pastor is. I'm not sure if</p> <p>17 he's independent or employed by IEP.</p> <p>18 Q. And you're the CEO on the CVR Energy</p> <p>19 side. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. And all of your compensation is tied</p> <p>22 to CVR Energy, not tied to CVR Refining. Correct?</p> <p>23 A. Correct, although they're</p> <p>24 interrelated.</p>

<p style="text-align: right;">611</p> <p>1 Q. And then Mr. Cozza, Mr. Lynn, and 2 Mr. Nevin are present as well. Do you see that? 3 A. Yes. 4 Q. And you previously testified that you 5 don't recall anything about this meeting. Right? 6 A. I don't recall much, other than that 7 it happened. 8 Q. Okay. Do you know why it is that 9 there's a meeting to address this issue that Butler 10 Hall has raised where there's a differing interest 11 between CVR Energy and IEP, on the one hand, and CVR 12 Refining, on the other hand, and the majority of the 13 directors at this meeting are representatives of IEP? 14 Do you know why that's the case? 15 A. Well, I think the meeting was held to 16 discuss the letter. 17 Q. Do you know why there wasn't an 18 executive session among the independent directors? 19 A. I don't. That was their decision. 20 Q. Did you suggest, as the CEO of both 21 CVR Energy and CVR Refining, that maybe it made sense 22 for the folks with ties only to CVR Refining to meet 23 and discuss this issue? 24 A. In hindsight, you could say that, yes.</p>	<p style="text-align: right;">613</p> <p>1 THE WITNESS: 423? 2 MR. GORRIS: 423. 3 THE WITNESS: Okay. I have it. 4 BY MR. GORRIS: 5 Q. Okay. And go to the second page of 6 what's marked JX 423. At the bottom of that page, 7 there's an email from a Phil Gresh at J.P. Morgan 8 Research to Jay Finks at CVR Energy. 9 Do you see that? 10 A. Yes. 11 Q. Okay. And that's forwarding 12 J.P. Morgan's CVR Refining, LP's "2Q Preview." Is 13 that right? 14 A. Yes. 15 Q. Okay. And this is the type of analyst 16 report where, after the initial earnings release but 17 before the earnings call, analysts give a preview of 18 their views, which may also include things like what 19 they want to address on the earnings call. Correct? 20 A. Correct. 21 Q. And then in the next email -- so 22 Mr. Finks forwards it to you and others. And then in 23 the next email on the chain, which is the top of page 24 2, you forward this to Mr. Cozza at IEP. Is that</p>
<p style="text-align: right;">612</p> <p>1 Q. I'm sorry. Did you discuss that in -- 2 A. I believe they were asked. At every 3 board meeting, we asked if they wanted a private 4 session; and they didn't ask for one. 5 Q. Do you see that in the minutes 6 anywhere, sir? 7 A. No. I don't believe so. 8 Q. Okay. I'd like to move forward. And 9 I'm going to apologize for this, but this is an 10 exhibit that's in the set of exhibits behind you and 11 not in your witness binder. It's JX 423. 12 A. Where do I find that? 13 Q. So on the spine, there should be 14 numbers. And you're looking for binder 423. Perhaps 15 your counsel could help you grab that as well. 16 MR. RAJU: May I approach the witness 17 to help him find the exhibit? 18 THE COURT: You may. They're in 19 numerical order. It might be in the range. It might 20 not be identified on the side. 21 MR. GORRIS: The exhibit we're talking 22 about is 423, and that's Volume 13. 23 THE WITNESS: 13? 24 MR. GORRIS: 13.</p>	<p style="text-align: right;">614</p> <p>1 right? 2 A. That's right. 3 Q. And you select out a portion that 4 says, "Exchange offer update: Can you provide any 5 update on how many common units have been exchanged 6 thus far? Is there any strategic update regarding 7 leaving 5% float outstanding?" 8 Do you see that? 9 A. That's right. 10 Q. And you asked Mr. Cozza what his 11 answer is to the strategic part of that question. 12 Right? 13 A. Right. 14 Q. And he responds, "I would say, I don't 15 have any comment regarding the 5% stub." 16 Do you see that? 17 That's on the first page, still. 18 A. Yes. I see it. 19 Q. Okay. And you respond you're not so 20 much good with that. Right? 21 A. Right. 22 Q. And then Mr. Cozza responds, "I have 23 some ideas [] [I'm] running [past] counsel." 24 Do you see that?</p>

<p style="text-align: right;">615</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Now, let's turn to the actual</p> <p>3 earnings call. The transcript is JX 442. That should</p> <p>4 be in your binder, sir.</p> <p>5 A. Do I need this other one?</p> <p>6 Q. No. You can set that to the side.</p> <p>7 Thank you.</p> <p>8 A. 442?</p> <p>9 Q. 442.</p> <p>10 A. Mm-hmm.</p> <p>11 Q. And then do you recognize this as the</p> <p>12 earnings transcript for the subsequent CVR Refining 2Q</p> <p>13 earnings call on July 26, 2018?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And can you turn to page 6 of</p> <p>16 the exhibit, please?</p> <p>17 A. Okay.</p> <p>18 Q. Okay. And there is a series of</p> <p>19 exchanges, and the fourth one down is from a Neil</p> <p>20 Mehta of Goldman Sachs.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And in this bullet point, Mr. Mehta is</p> <p>24 asking you on the earnings call about the call right</p>	<p style="text-align: right;">617</p> <p>1 that area, but ...</p> <p>2 Q. Do you recall discussing that issue at</p> <p>3 all?</p> <p>4 A. I don't believe it's brought up.</p> <p>5 Q. Okay. And did Mr. Cozza tell you not</p> <p>6 to answer that question?</p> <p>7 A. No.</p> <p>8 Q. Did -- why did you not answer the</p> <p>9 question, then?</p> <p>10 A. Because we were in the middle of an</p> <p>11 exchange, and the S-4 is the controlling document.</p> <p>12 Q. Okay. But it's a fair question that</p> <p>13 Mr. Mehta wants to know on the call. J.P. Morgan</p> <p>14 wants to know it in advance. They're communicating</p> <p>15 that through their analyst reports and other</p> <p>16 information to unitholders. Right?</p> <p>17 A. I would assume they are. I don't know</p> <p>18 if they did or didn't.</p> <p>19 Q. Okay. And so the unitholders never</p> <p>20 got an answer in real-time, while the exchange offer</p> <p>21 was pending, about the rationale for the stub being</p> <p>22 outstanding. Right?</p> <p>23 A. I don't have any recollect of that,</p> <p>24 but I'm not sure. They might have. If somehow, some</p>
<p style="text-align: right;">616</p> <p>1 and the exchange offer. Right?</p> <p>2 A. Right.</p> <p>3 Q. Okay. And what Mr. Mehta observes is,</p> <p>4 "It's just very unusual to see that sort of []</p> <p>5 change[] in corporate structure, especially if CVRR is</p> <p>6 going to continue as a publicly traded entity."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And then he asks you, "[can] you talk</p> <p>10 about the strategic rationale behind doing that?"</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And that's effectively the same</p> <p>14 question that J.P. Morgan had previewed. Correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And you don't answer the</p> <p>17 question. Instead, you refer Mr. Mehta to the S-4.</p> <p>18 Right?</p> <p>19 A. Correct.</p> <p>20 Q. And you acknowledge that the S-4</p> <p>21 doesn't answer Mr. Mehta's question and J.P. Morgan's</p> <p>22 question about the strategic rationale for leaving the</p> <p>23 stub outstanding. Correct?</p> <p>24 A. I don't recall exactly what it says in</p>	<p style="text-align: right;">618</p> <p>1 way, somebody speculated something. I don't know.</p> <p>2 Q. But you were provided with the</p> <p>3 opportunity to make that information known to the</p> <p>4 market. And after discussion with Mr. Cozza, you</p> <p>5 chose not to answer the question. Right?</p> <p>6 A. I don't know that I would put it that</p> <p>7 way. I think our official policy, once the S-4 is</p> <p>8 filed and the exchange is active, we don't comment,</p> <p>9 other than what it says in the S-4.</p> <p>10 Q. Okay. Now, if you can, in that</p> <p>11 earnings transcript, if you've still got it up, if you</p> <p>12 can turn to page 8, please.</p> <p>13 A. Okay.</p> <p>14 Q. Now, you see the top question is from</p> <p>15 Matthew Blair at Tudor, Pickering & Holt. Right?</p> <p>16 A. Yes.</p> <p>17 Q. And you considered Mr. Blair to be a</p> <p>18 very good analyst. Right?</p> <p>19 A. I do.</p> <p>20 Q. Now, Mr. Blair asked you, "If the</p> <p>21 exchange offer is successful [here], are you worried</p> <p>22 about how the remaining [CVR] units ... will trade?"</p> <p>23 Right?</p> <p>24 A. Right.</p>

<p style="text-align: right;">619</p> <p>1 Q. And then Mr. Blair continues to raise</p> <p>2 three separate concerns about how the units will</p> <p>3 trade. First, that you're looking at a stock with</p> <p>4 potentially a very low float, that that call option is</p> <p>5 out there from CVI, and that CVR might not stay in the</p> <p>6 Alerian Index. Right?</p> <p>7 A. Yes.</p> <p>8 Q. And, again, you tell Mr. Blair, no</p> <p>9 comment, and direct him to the S-4. Right?</p> <p>10 A. That's correct.</p> <p>11 Q. The S-4 doesn't address these issues,</p> <p>12 does it?</p> <p>13 A. I don't recall off the top of my head.</p> <p>14 I think we established earlier it probably doesn't.</p> <p>15 Q. Okay. And, indeed, the CVR Refining</p> <p>16 GP board never evaluated those concerns about how the</p> <p>17 units were traded, in light of the factors identified</p> <p>18 by Tudor Pickering. Correct?</p> <p>19 A. I wouldn't say they didn't evaluate</p> <p>20 it. They discussed it, but that is not evaluating it.</p> <p>21 So it was discussed, and that was all.</p> <p>22 Q. Okay. So the CVR Refining GP board</p> <p>23 had a discussion about the low float post exchange</p> <p>24 offer and how that would affect trading of CVR</p>	<p style="text-align: right;">621</p> <p>1 Q. Are you aware that Mr. Cozza, for</p> <p>2 example, testified that he didn't even know what the</p> <p>3 Alerian Index was?</p> <p>4 A. Doesn't surprise me.</p> <p>5 Q. But he attended the relevant board</p> <p>6 meetings during the pendency of the exchange offer,</p> <p>7 which I understand to only be two on the CVR Refining</p> <p>8 GP board side: the May 24, 2018, meeting and the</p> <p>9 July 9, 2018, board meeting, that we just looked at.</p> <p>10 Right?</p> <p>11 A. That doesn't mean it wasn't discussed</p> <p>12 in some form. He just doesn't recall.</p> <p>13 Q. Okay. And do you recall which meeting</p> <p>14 it is that you think these issues were discussed?</p> <p>15 A. I'm not exactly sure, but we had</p> <p>16 several of them in a row, but I believe it was in one</p> <p>17 of them.</p> <p>18 Q. Okay. Now, the next day, on July 27,</p> <p>19 after this call, Mr. Blair of Tudor Pickering issues</p> <p>20 an analyst report downgrading CVR Refining. Right?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. And that analyst report, if you can</p> <p>23 turn to it, is JX 453.</p> <p>24 A. 4?</p>
<p style="text-align: right;">620</p> <p>1 Refining units post exchange offer, sir?</p> <p>2 A. I don't specifically recall, but I'm</p> <p>3 quite sure it was in the discussion somehow, some way.</p> <p>4 Q. Okay. But you don't recall any</p> <p>5 particular discussion of that topic. Right?</p> <p>6 A. I just don't recall it.</p> <p>7 Q. Okay. And, now, did the GP board</p> <p>8 evaluate the issue that Mr. Blair identified of the</p> <p>9 overhang of the call option from CVI going forward on</p> <p>10 those CVR Refining units that remained outstanding</p> <p>11 post exchange offer?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Did the CVR Refining GP board</p> <p>14 address this issue of the risk that CVR Refining would</p> <p>15 be dropped from the Alerian Index and that would</p> <p>16 affect how the units would trade post-exchange offer?</p> <p>17 A. I believe it was brought up because</p> <p>18 the Alerian is weighted by market cap, and our number</p> <p>19 of shares or units in there were very small, so I</p> <p>20 would have figured it had very little impact.</p> <p>21 Q. When do you believe that was brought</p> <p>22 up, sir?</p> <p>23 A. I don't recall exactly when, but I</p> <p>24 recall somebody bringing it up.</p>	<p style="text-align: right;">622</p> <p>1 Q. 453. It should be in your binder.</p> <p>2 A. Okay. Okay.</p> <p>3 Q. Okay. And do you recognize this</p> <p>4 report?</p> <p>5 A. Yes.</p> <p>6 Q. And you testified that you read</p> <p>7 Mr. Blair's reports, right? Because you believe he's</p> <p>8 a good analyst?</p> <p>9 A. I do. Yes.</p> <p>10 Q. And if you go to page 4 of the TPH</p> <p>11 report -- can you let me know when you're there.</p> <p>12 A. Yes, I'm there.</p> <p>13 Q. Okay. And that identifies a recent</p> <p>14 call option example, BWP and Loews.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And what it says is that Loews</p> <p>18 disclosed that it was considering exercising its call</p> <p>19 right on the remaining units of Boardwalk Pipeline</p> <p>20 Partners, and then Boardwalk Pipeline Partners' units</p> <p>21 fell 15 percent in the following week. And it has a</p> <p>22 chart of that price action. Right?</p> <p>23 A. Right.</p> <p>24 Q. Do you recall looking at this in</p>

<p style="text-align: right;">623</p> <p>1 real-time?</p> <p>2 A. I looked at it. I don't recall doing</p> <p>3 it.</p> <p>4 Q. And then you took this report and you</p> <p>5 forwarded it to Mr. Cozza the same day it was issued.</p> <p>6 Correct?</p> <p>7 A. Correct, as I do all his reports.</p> <p>8 Q. And when you're saying "all his</p> <p>9 reports," you mean all Mr. Blair's reports. Right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then the Icahns looked at</p> <p>12 and researched the Boardwalk Pipeline case, and Jesse</p> <p>13 Lynn commented on it in connection with the exchange</p> <p>14 offer. Right?</p> <p>15 A. I don't recall that specifically, but</p> <p>16 it could have happened.</p> <p>17 MR. GORRIS: Joe, can you play clip</p> <p>18 48, please.</p> <p>19 (A video clip was played as follows:)</p> <p>20 Question: Okay. When you saw this,</p> <p>21 did you discuss it with anyone?</p> <p>22 Answer: I'm pretty sure -- well, I'm</p> <p>23 pretty sure that the Icahns got involved in it and</p> <p>24 discussed it, but I don't recall exactly how that</p>	<p style="text-align: right;">625</p> <p>1 to the CVR Refining situation. Right?</p> <p>2 A. Right.</p> <p>3 Q. Now, sir, can you turn in your binder</p> <p>4 to JX 539, please.</p> <p>5 A. I'm there.</p> <p>6 Q. And JX 539, the bottom email in the</p> <p>7 chain is from HITE Hedge to Mr. Finks, who then</p> <p>8 Mr. Finks forwards it to you, those two emails on</p> <p>9 September 20, 2018. Right?</p> <p>10 A. Right.</p> <p>11 Q. And what HITE was doing was they had</p> <p>12 done an accretion analysis showing that exercise of</p> <p>13 the call right at the market price, the trailing</p> <p>14 average market price, would be very accretive for CVR</p> <p>15 Energy. Right?</p> <p>16 A. Right.</p> <p>17 Q. Okay. And then you took that email</p> <p>18 and forwarded it to Mr. Cozza. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you went through HITE's</p> <p>21 calculations and could find no fault with them.</p> <p>22 Right?</p> <p>23 A. Correct.</p> <p>24 Q. And your takeaway was that HITE was</p>
<p style="text-align: right;">624</p> <p>1 flowed.</p> <p>2 Question: Do you recall discussing</p> <p>3 it with the Icahns at any point in connection with the</p> <p>4 exchange offer?</p> <p>5 Answer: I'm pretty sure that they</p> <p>6 researched that particular case and looked at it, and</p> <p>7 Jesse Lynn commented on it, I believe. But I don't</p> <p>8 recall what the conclusion was. But it didn't change</p> <p>9 anything in our opinion. Okay. I think if you look</p> <p>10 at some of the rest of this report, it's rather</p> <p>11 positive on the exchange.</p> <p>12 (End of video clip.)</p> <p>13 BY MR. GORRIS:</p> <p>14 Q. Sir, did I ask you those questions and</p> <p>15 did you give those answers in your deposition?</p> <p>16 A. Did you ask me?</p> <p>17 Q. Did I ask you those questions and did</p> <p>18 you give me those answers --</p> <p>19 A. Oh, yeah.</p> <p>20 Q. -- in your deposition?</p> <p>21 A. Yes. It's obviously me.</p> <p>22 Q. Thank you.</p> <p>23 Now, you viewed the Boardwalk</p> <p>24 Pipeline-Loews situation as similar but not identical</p>	<p style="text-align: right;">626</p> <p>1 right?</p> <p>2 A. Right.</p> <p>3 Q. And you discussed that conclusion with</p> <p>4 Mr. Cozza, and he didn't disagree with it, did he?</p> <p>5 A. I don't remember his response, but I</p> <p>6 think the math was right.</p> <p>7 Q. And at that point, fewer than 90 days</p> <p>8 had elapsed since the exchange offer closed on</p> <p>9 July 27, 2018. Right?</p> <p>10 A. Let's see. I'm trying to think. When</p> <p>11 did it close?</p> <p>12 Q. July 27, 2018, so --</p> <p>13 A. 27th, so right.</p> <p>14 Q. So you still have a little -- a month</p> <p>15 and a little bit more before you can exercise at the</p> <p>16 trailing average --</p> <p>17 A. Right.</p> <p>18 Q. -- as opposed to the exchange offer</p> <p>19 price.</p> <p>20 Now, can you turn to JX 551, please.</p> <p>21 A. Okay.</p> <p>22 Q. And this is an October 4th email from</p> <p>23 Mr. Jampel at HITE, and it attaches a letter. It's to</p> <p>24 you and Mr. Finks.</p>

<p style="text-align: right;">627</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And this is -- Mr. Jampel is following</p> <p>4 up on the prior discussion a couple weeks earlier,</p> <p>5 again, telling you that it's accretive to exercise the</p> <p>6 call right and that CVR Energy should do that. Right?</p> <p>7 A. Yes.</p> <p>8 Q. Now, if you flip to page 2, in</p> <p>9 particular, I want to look at the bottom paragraph.</p> <p>10 A. Okay.</p> <p>11 Q. What HITE is saying is that CVR Energy</p> <p>12 should be alerting the market through a press release</p> <p>13 or conference call that calling the outstanding CVR</p> <p>14 Refining units is now something that is being looked</p> <p>15 at closely. Right?</p> <p>16 A. That's what it says.</p> <p>17 Q. And you understood that that</p> <p>18 disclosure that HITE was suggesting was parallel to</p> <p>19 what was being done in Boardwalk. Right?</p> <p>20 A. I don't know about that, that it was a</p> <p>21 parallel, but ...</p> <p>22 Q. But we just looked at the Tudor</p> <p>23 Pickering report that said Loews made an announcement</p> <p>24 that it was considering the Boardwalk Pipeline</p>	<p style="text-align: right;">629</p> <p>1 similar disclosure that it is considering exercising</p> <p>2 the call right as to what was done in the</p> <p>3 Loews-Boardwalk Pipeline situation. Right?</p> <p>4 A. It seems to be parallel to it, but I</p> <p>5 don't think it had anything to do with the decision to</p> <p>6 disclose it.</p> <p>7 Q. Okay. And HITE's October 4th email</p> <p>8 and letter made you start thinking about exercising</p> <p>9 the call right, no question about it. Correct?</p> <p>10 A. Well, it sparked my interest, for</p> <p>11 sure.</p> <p>12 Q. But it made you start thinking about</p> <p>13 exercising the call right, and you had no question</p> <p>14 about that. Right?</p> <p>15 A. Yeah. I would say yes.</p> <p>16 Q. Now, that portion of the HITE letter</p> <p>17 says you can accomplish this through a press release</p> <p>18 or on a conference call. Right?</p> <p>19 A. I don't remember it saying that, but</p> <p>20 if it does, yes.</p> <p>21 Q. It's also on the screen if it helps</p> <p>22 you, sir, but you can refer to the document as well.</p> <p>23 A. Yes, it does.</p> <p>24 Q. And CVR Refining and CVR Energy hold</p>
<p style="text-align: right;">628</p> <p>1 potential call right exercise, and then Boardwalk</p> <p>2 Pipeline's stock or units dropped substantially in the</p> <p>3 following week. Right?</p> <p>4 A. I don't remember that part of it, but</p> <p>5 if you say yes, it is. I don't remember them issuing</p> <p>6 anything about a press release, but ...</p> <p>7 Q. Well, if you go back to JX 453 where</p> <p>8 we were looking earlier --</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Are you there, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And in particular, on page 4, the</p> <p>13 recent call option example, BWP and Loews, the second</p> <p>14 sentence says that "On April 30, 2018, Loews []</p> <p>15 disclosed [that] it was considering calling the</p> <p>16 remaining units of Boardwalk Pipeline Partners"</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then the next sentence said that</p> <p>20 Boardwalk Pipeline Partners' units fell by more than</p> <p>21 15 percent the following week. Right?</p> <p>22 A. I do see that.</p> <p>23 Q. So you understand that what HITE is</p> <p>24 suggesting on October 4th is that CVR Energy make a</p>	<p style="text-align: right;">630</p> <p>1 conference calls the same day. Right? Typically?</p> <p>2 A. Typically, yes.</p> <p>3 Q. And the upcoming earnings calls were</p> <p>4 set for three weeks later, on October 25, 2018.</p> <p>5 Right?</p> <p>6 A. Sounds correct.</p> <p>7 Q. And October 25, 2018, that's still</p> <p>8 within the 90-day period from the July 27, 2018,</p> <p>9 closing of the exchange offer. Right?</p> <p>10 A. Correct.</p> <p>11 Q. Now, after you received this letter,</p> <p>12 you follow up with HITE and set a call for October 26,</p> <p>13 2018, the day after the earnings call. Right?</p> <p>14 A. I don't recall that specifically,</p> <p>15 but ...</p> <p>16 Q. Okay. Can you turn to JX 576 in your</p> <p>17 binder?</p> <p>18 A. Yep. Looks like it.</p> <p>19 Q. And this is an appointment for a call</p> <p>20 with you and others on 9:00 a.m. in the morning</p> <p>21 following the earnings call with HITE. Right?</p> <p>22 A. I'm not sure who requested it, was it</p> <p>23 them or us, but ...</p> <p>24 Q. Okay. Now, can you turn to JX 594?</p>

<p style="text-align: right;">631</p> <p>1 A. Yes. I'm there.</p> <p>2 Q. Can you turn to the bottom of page 10.</p> <p>3 A. 10?</p> <p>4 Q. Page 10, the bottom.</p> <p>5 A. Okay.</p> <p>6 Q. And this is a question from Mr. Blair</p> <p>7 at Tudor Pickering. Right?</p> <p>8 A. Yes.</p> <p>9 Q. And Mr. Blair asks -- and this is on</p> <p>10 the CVR Refining earnings call. Right?</p> <p>11 A. Right.</p> <p>12 Q. So you're there in your capacity as</p> <p>13 the CEO of CVR Refining on this call. Correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And Mr. Blair asks you, "could you</p> <p>16 update us does CVI have any plans to exercise this</p> <p>17 call option?" Right?</p> <p>18 A. Right.</p> <p>19 Q. And then you provide a response that</p> <p>20 says first, remember the reasons why we did the</p> <p>21 exchange offer in the first place, which was trying to</p> <p>22 facilitate a potential sale of the company.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">633</p> <p>1 Mr. Lamp.</p> <p>2 THE WITNESS: Okay.</p> <p>3 A. Yeah. That doesn't appear to have</p> <p>4 that in there. However, we had messaged the market</p> <p>5 multiple times. That was one of the reasons.</p> <p>6 Q. And when do you recall messaging the</p> <p>7 market multiple times that one of the reasons was to</p> <p>8 simplify the structure and facilitate a sale of CVR</p> <p>9 Energy?</p> <p>10 A. I don't recall specifically when it</p> <p>11 was, but that was a reason for it.</p> <p>12 Q. Right. Whether or not it was a reason</p> <p>13 for it, what you seem to be indicating is that you</p> <p>14 messaged that publicly to the market, and I'm not</p> <p>15 aware of that. So I'm asking you, when do you recall</p> <p>16 messaging the market at any point before October 25th,</p> <p>17 which is obviously well after the exchange offer</p> <p>18 closed?</p> <p>19 A. I don't recall, but I'm sure it's</p> <p>20 somewhere in the records.</p> <p>21 Q. Okay. Now, moving on to the second</p> <p>22 part, again, Mr. Blair had asked you, could you update</p> <p>23 us, does CVI have any plans to exercise the call</p> <p>24 option. Right?</p>
<p style="text-align: right;">632</p> <p>1 Q. And that wasn't disclosed in the S-4</p> <p>2 as one of the reasons for the exchange offer. Right?</p> <p>3 A. I believe it was in there somewhere.</p> <p>4 Simplification, maybe not those exact words, but</p> <p>5 similar.</p> <p>6 Q. Do you recall that the S-4 only</p> <p>7 discloses as reasons for the offer that CVI wanted to</p> <p>8 own additional CVR Refining units and that's it?</p> <p>9 A. It had a second piece to it. I don't</p> <p>10 recall specifically it.</p> <p>11 Q. What was that second piece?</p> <p>12 A. I don't know.</p> <p>13 Q. If it helps you, the S-4 is in your</p> <p>14 binder, and it's JX 298.</p> <p>15 A. Yeah. Let's see if I can find the</p> <p>16 section.</p> <p>17 Q. If it helps you, one of the sections</p> <p>18 that addresses this issue, the "Reasons for the</p> <p>19 Offer," is JX 298, page 36. It's the final bolded</p> <p>20 heading.</p> <p>21 And I apologize that it's small print,</p> <p>22 Mr. Lamp. You can also use the screen next to you.</p> <p>23 A. It's challenging.</p> <p>24 THE COURT: It's on the screen,</p>	<p style="text-align: right;">634</p> <p>1 And you answered the rationale that</p> <p>2 wasn't disclosed to the market previously. Right?</p> <p>3 A. Which one was that, again?</p> <p>4 Q. I'm sorry. That's JX 594.</p> <p>5 A. 594?</p> <p>6 Q. Yes.</p> <p>7 A. Page 10?</p> <p>8 Q. The bottom of page 10 on to the top of</p> <p>9 page 11.</p> <p>10 A. And your question is?</p> <p>11 Q. Yeah, sure. So you disclosed this</p> <p>12 rationale, which the record will show whether or not</p> <p>13 it had been previously disclosed, and then you answer</p> <p>14 Mr. Blair's question about whether CVI has any plans</p> <p>15 to exercise this call option. Right?</p> <p>16 A. Correct.</p> <p>17 Q. And your answer is there was no intent</p> <p>18 on taking out CVRR at any time or even contemplated at</p> <p>19 the time, and I don't think anything has changed in</p> <p>20 that scenario. Right?</p> <p>21 A. Correct.</p> <p>22 Q. And that's not true. Right?</p> <p>23 A. No. It's true. The board has not</p> <p>24 approved anything or sanctioned anything. Until that</p>

<p style="text-align: right;">635</p> <p>1 happens, it's not contemplated.</p> <p>2 Q. Okay. But what had changed is that</p> <p>3 CVR Refining units had dropped since the -- in price</p> <p>4 since the time of the exchange offer, and HITE had</p> <p>5 told you that it was accretive to exercise the call</p> <p>6 option. You discussed that with Mr. Cozza. Right?</p> <p>7 A. Yes.</p> <p>8 Q. And then you got another letter from</p> <p>9 HITE and actually started thinking about exercising</p> <p>10 the call right. Correct?</p> <p>11 A. Think about a lot of things. That's</p> <p>12 totally normal. That doesn't mean the board approved</p> <p>13 it.</p> <p>14 Q. Okay. But the scenario had changed</p> <p>15 because what you say is back at the time of the</p> <p>16 exchange offer, no one, though, was ever thinking of</p> <p>17 exercising this call right. That's the first sentence</p> <p>18 of this --</p> <p>19 A. Correct. Our official position was</p> <p>20 still to not exercise the call option.</p> <p>21 Q. Okay. And you say you don't think</p> <p>22 anything at all has changed. Right? That's what you</p> <p>23 told the market on October 25th. Right?</p> <p>24 A. That's right.</p>	<p style="text-align: right;">637</p> <p>1 Q. Okay. And then let's fast-forward to</p> <p>2 the end of the month. On November 26, 2018, the CVR</p> <p>3 Energy board has a meeting to discuss the call right.</p> <p>4 Right?</p> <p>5 A. Right.</p> <p>6 Q. And at that November 26 board meeting,</p> <p>7 the Boardwalk Pipeline-Loews situation was brought up</p> <p>8 as one potential parallel out in the industry.</p> <p>9 Correct?</p> <p>10 A. I don't recall specifically, but it</p> <p>11 probably was.</p> <p>12 MR. GORRIS: Joe, can you play clip</p> <p>13 61, please.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Question: Do you recall if there was</p> <p>16 any discussion of the Boardwalk situation at this</p> <p>17 November 26 board meeting?</p> <p>18 Answer: I think that was the case</p> <p>19 that was brought up as one potential parallel of the</p> <p>20 industry. But that's all I remember. I can't</p> <p>21 remember the specific context of it.</p> <p>22 (End of video clip.)</p> <p>23 BY MR. GORRIS:</p> <p>24 Q. Did I ask you that question and did</p>
<p style="text-align: right;">636</p> <p>1 Q. Okay. And you have that call set with</p> <p>2 HITE at 9:00 a.m. the next morning to discuss the call</p> <p>3 option exercise. Right?</p> <p>4 A. Yeah. Trying to get more information</p> <p>5 of their thinking.</p> <p>6 Q. Okay. And then approximately one week</p> <p>7 later, now you're past the 90-day exchange offer</p> <p>8 period, just a couple days after that earnings call.</p> <p>9 Right?</p> <p>10 A. If you say so. I haven't done the</p> <p>11 math, but it sounds close.</p> <p>12 Q. Okay. And so approximately a week</p> <p>13 later, you go hire Ramey Layne at Vinson & Elkins to</p> <p>14 assist with evaluating the call option exercise.</p> <p>15 Right?</p> <p>16 A. I'm not sure what the lawyers did, but</p> <p>17 I think there was a switch in counsel.</p> <p>18 Q. Okay. And did you know Mr. Layne had</p> <p>19 represented Boardwalk Pipeline GP in connection with</p> <p>20 the Loews-Boardwalk Pipeline situation?</p> <p>21 A. I did not.</p> <p>22 Q. Did you learn that at any point in</p> <p>23 time?</p> <p>24 A. Not that I can remember.</p>	<p style="text-align: right;">638</p> <p>1 you give that answer?</p> <p>2 A. Yes. I believe I gave the same</p> <p>3 answer.</p> <p>4 Q. And Boardwalk had a parallel to the</p> <p>5 nature of the CVR Refining situation, so there was a</p> <p>6 historical discussion of what was happening in</p> <p>7 Boardwalk. Right?</p> <p>8 A. I don't recall specifics.</p> <p>9 Q. Do you recall that generally?</p> <p>10 A. I just recall that there was a</p> <p>11 discussion about it. I don't remember anything more</p> <p>12 than that.</p> <p>13 MR. GORRIS: Joe, can you play clip</p> <p>14 62, please.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: So what do you recall that</p> <p>17 was discussed at this meeting about Boardwalk as</p> <p>18 precedent?</p> <p>19 Mr. Raju: Objection to form.</p> <p>20 Answer: I'm just thinking it had a</p> <p>21 parallel to the nature of this case, so I think there</p> <p>22 was -- it was just a historical discussion of what was</p> <p>23 happening there.</p> <p>24 (End of video clip.)</p>

<p style="text-align: right;">639</p> <p>1 BY MR. GORRIS:</p> <p>2 Q. Okay, Mr. Lamp, can you pull up</p> <p>3 JX 722.</p> <p>4 A. 722. Okay.</p> <p>5 Q. And those are the minutes of the</p> <p>6 November 26, 2018, board meeting. Right?</p> <p>7 A. Yes.</p> <p>8 Q. Is there any reference in those</p> <p>9 minutes to a discussion of Boardwalk?</p> <p>10 A. I would not expect there to be. I</p> <p>11 don't think there are.</p> <p>12 Q. And you don't believe there are --</p> <p>13 there is any reference to that Boardwalk discussion.</p> <p>14 Right?</p> <p>15 A. No.</p> <p>16 Q. And now as a result of the November 26</p> <p>17 board meeting, CVR Energy issues an 8-K saying CVR</p> <p>18 Energy is now contemplating exercising the call right,</p> <p>19 but there can be no assurance that that would actually</p> <p>20 be exercised and when it will be exercised. Right?</p> <p>21 A. That's correct.</p> <p>22 Q. And that's just like the disclosure in</p> <p>23 Boardwalk. Right?</p> <p>24 A. I'm not that familiar with Boardwalk,</p>	<p style="text-align: right;">641</p> <p>1 Q. And it references, if you go to the</p> <p>2 top of the second page, "CVI is getting an</p> <p>3 unbelievable deal."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then you take that message</p> <p>7 and forward it to your mom and say, "This is what I've</p> <p>8 been working on for the last several months - Finally</p> <p>9 done."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And her response is, "Sounds like you</p> <p>13 have done excellent work! For Carl!"</p> <p>14 A. Yes.</p> <p>15 Q. And she was correct in that. Right?</p> <p>16 A. Well, I don't think she was wrong.</p> <p>17 MR. GORRIS: That's all I have for</p> <p>18 Mr. Lamp at this time.</p> <p>19 THE COURT: Thank you.</p> <p>20 Can I ask, counsel, we now have</p> <p>21 technicians to come look at the Zoom issue. If you're</p> <p>22 concerned about streaming these proceedings to your</p> <p>23 team which is not present, I recommend that we take a</p> <p>24 few minutes to allow them to review the computer and</p>
<p style="text-align: right;">640</p> <p>1 so I don't know.</p> <p>2 Q. Okay.</p> <p>3 A. Apparently, they did.</p> <p>4 Q. Now, can you turn to JX 933.</p> <p>5 A. Sure.</p> <p>6 THE COURT: Let me pause for a second.</p> <p>7 Mr. Lamp, why did you state that you</p> <p>8 didn't expect there to be any reference to Boardwalk</p> <p>9 in the minutes?</p> <p>10 THE WITNESS: Well, a lot of things</p> <p>11 are discussed that aren't captured in the notes. I</p> <p>12 think you see the general point is the board asks</p> <p>13 questions and then the management responded.</p> <p>14 THE COURT: Thank you.</p> <p>15 Please continue.</p> <p>16 BY MR. GORRIS:</p> <p>17 Q. Mr. Lamp, are you able to turn to</p> <p>18 Exhibit 933?</p> <p>19 A. Yes, sir. I'm here.</p> <p>20 Q. Okay. And Exhibit 933 is -- the</p> <p>21 bottom email is an alert to you about a Tudor,</p> <p>22 Pickering & Holt research report after the call gets</p> <p>23 exercised in January 2019. Right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">642</p> <p>1 see what's going on. If it's more important to you</p> <p>2 that we push forward, Mr. Raju, we'll do that.</p> <p>3 MR. RAJU: No. It's fine with us to</p> <p>4 take a break, Your Honor.</p> <p>5 THE COURT: Okay. Let's take five</p> <p>6 minutes. Hopefully, that will be enough time.</p> <p>7 (A brief recess was taken.)</p> <p>8 THE COURT: Thank you. Please be</p> <p>9 seated.</p> <p>10 Thank you for your patience. I</p> <p>11 understand we're back online.</p> <p>12 Please proceed, Mr. Raju.</p> <p>13 MR. RAJU: Thank you, Your Honor.</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. RAJU:</p> <p>16 Q. Good morning, Mr. Lamp.</p> <p>17 A. Good morning.</p> <p>18 Q. Mr. Lamp, could you give me a brief</p> <p>19 history of your educational history?</p> <p>20 A. I was a graduate of Michigan State</p> <p>21 University in 1980, chemical engineer.</p> <p>22 Q. And could you give me a brief</p> <p>23 description of your employment history since</p> <p>24 graduating from Michigan State?</p>

<p style="text-align: right;">643</p> <p>1 A. Sure. I left school in 1980, moved to</p> <p>2 Texas, and worked in refineries from then until -- for</p> <p>3 the next 10 to 12 years. Started with Sunoco, which</p> <p>4 was then purchased by Coke, and was with Coke for 23</p> <p>5 years in various positions, including process engineer</p> <p>6 all the way to plant manager to executive vice</p> <p>7 president of the refining and chemicals business for</p> <p>8 Coke.</p> <p>9 Then left Coke, went to a joint</p> <p>10 venture of Coke's with the Saba family out of Mexico,</p> <p>11 and they bought the Hoechst Celanese polyester assets.</p> <p>12 I was with that for about two years, and then left</p> <p>13 that and went to Aruba with El Paso Energy. Sold that</p> <p>14 plant to Valero.</p> <p>15 Left there and went to HollyFrontier,</p> <p>16 which was really Holly at the time, which was then</p> <p>17 merged with Frontier to become HollyFrontier, and I</p> <p>18 was president when I left that position and chief</p> <p>19 operating officer for HollyFrontier.</p> <p>20 I then went to Northern Tier, which</p> <p>21 was a small refiner that Western owned about</p> <p>22 42 percent of, as CEO, president and CEO. And then</p> <p>23 Western bought the rest of the ownership of NTI-N</p> <p>24 about two, two and a half years later, and I and</p>	<p style="text-align: right;">645</p> <p>1 A. Sure. You know, I think, as my</p> <p>2 history indicates, I've seen a lot of different</p> <p>3 plants, been in a lot of different environments, with</p> <p>4 a lot of different companies, and I usually use about</p> <p>5 the same MO. It's really go in and establish what our</p> <p>6 core values are to a company and make sure all</p> <p>7 employees are aligned with that. Adjust the</p> <p>8 compensation system to make sure it aligns with those</p> <p>9 values and goals. And then really look for the</p> <p>10 opportunities to improve EBITDA.</p> <p>11 And that's been my history ever since</p> <p>12 I started in the industry. And I've been relatively</p> <p>13 successful at it. Most times, I've either been</p> <p>14 marketing or integrating or trying to sell or trying</p> <p>15 to buy a refinery in some form or fashion. And I find</p> <p>16 that that formula works fairly well.</p> <p>17 Q. So can you describe a bit more for me</p> <p>18 what you mean by "opportunities to improve EBITDA"?</p> <p>19 A. Well, refineries, typically what</p> <p>20 happens is they get -- I don't know what the best word</p> <p>21 is, maybe stale. The management gets stale after a</p> <p>22 while, and they tend to forget what opportunities are</p> <p>23 out there.</p> <p>24 I'll give you an example. When I went</p>
<p style="text-align: right;">644</p> <p>1 became the president and COO of Western, which was</p> <p>2 then purchased by Tesoro, which is now Endeavor -- or</p> <p>3 which is now Marathon, and then we merged those</p> <p>4 companies together. And then I left there and went to</p> <p>5 CVI as president and CEO and director.</p> <p>6 Q. All in all, how many years have you</p> <p>7 had -- how many years of experience have you had in</p> <p>8 the refining industry?</p> <p>9 A. A lot. Forty -- over 40 years.</p> <p>10 Q. And how much experience do you have</p> <p>11 with MLPs or master limited partnerships?</p> <p>12 A. My first exposure to an MLP was when</p> <p>13 Holly formed its MLP, HEP, Holly Energy Partners.</p> <p>14 Then I was associated with NTI, because it was a</p> <p>15 variable distribution MLP. And then when Western</p> <p>16 bought that, it would merge, and it had an MLP,</p> <p>17 logistical MLP that we managed. And then CVI, of</p> <p>18 course, had two variable-distribution MLPs, one for</p> <p>19 the fertilizer business and one for refining. So I</p> <p>20 would say I had probably 20 years of experience with</p> <p>21 them.</p> <p>22 Q. Mr. Lamp, do you have a management</p> <p>23 philosophy to how you like to run a business if you're</p> <p>24 in charge?</p>	<p style="text-align: right;">646</p> <p>1 to NTI, I immediately noticed that they had spare FCC</p> <p>2 capacity. FCC is a gasoline-producing unit, which is</p> <p>3 the heart of the refinery, and it makes all the</p> <p>4 difference in the economics. And that's very rare to</p> <p>5 find in a refinery. And I never -- when I first went</p> <p>6 there, I go, why are you not filling up the cat? And</p> <p>7 the answer was, lack of feed. So let's expand the</p> <p>8 crude units. Let's put an SDA in. Let's do these</p> <p>9 various things to fill that cat up. And that's</p> <p>10 exactly what we did. And that's just one example.</p> <p>11 There's many, many others.</p> <p>12 I did essentially the same thing when</p> <p>13 I came to CVI. You know, I saw some very low-hanging</p> <p>14 fruit of various opportunities that we could do. And</p> <p>15 we were in the process of working those projects until</p> <p>16 COVID hit, and then it kind of changed the whole</p> <p>17 marketplace, as it did for most people, so ...</p> <p>18 Q. So when did you join CVR Energy?</p> <p>19 A. I joined CVR December 1st of 2017.</p> <p>20 Q. And when you joined CVR Energy, what</p> <p>21 was your role at each of the three public entities?</p> <p>22 A. When I started, I had a little overlap</p> <p>23 with the existing CEO, which is Jack Lapinski. And he</p> <p>24 stayed until the end of the year. Then I became CEO,</p>

<p style="text-align: right;">647</p> <p>1 president, and director of the three entities once he 2 departed, so January 1st. 3 Q. And did you have a -- what was your 4 title at each of the -- at CVI, UAN, and CVRR, the 5 three public entities? 6 A. Let's see. I was executive director 7 at UAN, I was president and CEO and director at CVRR 8 and at CVI. 9 Q. Did you enter into an employment 10 agreement when joining CVR? 11 A. I did. 12 Q. And tell me about the -- did your 13 employment agreement contain an incentive payment upon 14 certain events occurring? 15 A. It did. 16 Q. Can you describe those? 17 A. Yeah. I had a nominal salary plus 18 bonus and LTIPs as base compensation. Then I had a 19 lump sum payment of \$10 million should I be able to 20 sell the company within that four-year period of the 21 contract or get the stock price of CVI over 60 bucks. 22 Two triggers. 23 Q. Was that employment contract made 24 publicly available?</p>	<p style="text-align: right;">649</p> <p>1 have interest in those projects and how they could 2 actually accelerate the EBITDA of the business. 3 Q. And tell me about the 4 interrelationship between projects and how a buyer of 5 equity of the company would view the projects. 6 A. Well, let me give you -- 7 Q. In your view? 8 A. -- an example. 9 We had a suite of projects here that 10 were about \$500 million, and they resulted in about 11 200 million of additional EBITDA a year. Very 12 high-return projects. This business is high risk, so 13 you have to have a high-return project or you just 14 don't do it. But they were very solid projects, and I 15 viewed them as fairly low-hanging fruit, just as I 16 used the other example of things that could be done to 17 really enhance the business. 18 And that's what people who buy look 19 for. Do you have a plan? Do you have a vision? Do 20 you have something that can make the business better? 21 And we want to take that on. That's what most people 22 will do. It's called synergy and things that can 23 capture and improve the acquisition. 24 Q. Apart from buyers, is projects that</p>
<p style="text-align: right;">648</p> <p>1 A. Absolutely. 2 Q. And whose idea was it to include that 3 incentive payment in that employment agreement? 4 A. I don't exactly remember who came up 5 with it. I know, you know, when I went to interview 6 with Carl and Keith, that was basically, I believe, 7 what they presented as how they would want to 8 compensate me. 9 Q. So once you joined CVR, what did you 10 do to assess the business and come up with a plan to 11 how you wanted to run the business? 12 A. Sure. Well, you know, I was 13 incentivized to sell it, number one. So whenever I am 14 in that situation where the management or ownership 15 wants to sell, you know, basically, I look for ways to 16 improve at least a pipeline of projects that will 17 improve the business. I work to streamline the 18 organization, cut costs as much as possible. This is 19 a commodity business, and cost is everything. I 20 restructure it to make sure we're focused on the right 21 things and have the right people in place. And then I 22 go about executing those projects and get enough time 23 and get enough process in place to where the projects 24 are advanced enough where any potential buyer would</p>	<p style="text-align: right;">650</p> <p>1 increase EBITDA something that your existing 2 stockholders or unitholders also look for, in your 3 experience? 4 A. Usually, the analysts are interested 5 in them. They will do their own discount factors of 6 the probability of them happening. But it goes into 7 their calculation of the sum-of-the-parts and the 8 ultimate valuation of your stock or your units. 9 Q. In the summer and fall of 2018, what 10 were your -- what was your assessment of the scale of 11 potential projects, actionable projects, that CVRR 12 had? 13 A. Sure. Like I mentioned, we had a 14 suite of projects that we were working on. We have 15 two refineries. So those involved -- one, the 16 Coffeyville refinery, were to increase the stock 17 optionality and increase capture. By that, I mean 18 being able to process crudes in our backyard as well 19 as WCS, which is a particular grade of heavy crude. 20 That would substantially improve the profitability of 21 the plant. 22 We also had a project to improve our 23 production of premium gasoline by running more natural 24 gasoline, which is -- we were -- that plant happened</p>

<p style="text-align: right;">651</p> <p>1 to sit right on top of the Conway LPG system, which</p> <p>2 had a lot of natural gasoline that had to export all</p> <p>3 the way to the Gulf, in some cases, all the way to</p> <p>4 Canada for diluent. So there was a natural position</p> <p>5 there that we were close to it, we had a pipeline</p> <p>6 connected to it, and we could run a lot of it and make</p> <p>7 premium of it, which is a huge spread. So all of</p> <p>8 those were very attractive projects.</p> <p>9 And they were fixing some compliance</p> <p>10 issues also, where we had -- we had to stabilize</p> <p>11 naphtha and parallel our second -- build a second</p> <p>12 naphtha hydrotreater to improve the ability to buy</p> <p>13 this natural gasoline, but they all fit together very</p> <p>14 nicely.</p> <p>15 And we continue to work those projects</p> <p>16 today, mainly in the area of building -- removing the</p> <p>17 warehouse and -- warehouse and maintenance facilities</p> <p>18 to make room to build these process units. And that</p> <p>19 project is still active.</p> <p>20 At Wynnewood, we had two specific</p> <p>21 projects. One was to build a new isom unit, which</p> <p>22 was, again, a play on natural gasoline, and in that</p> <p>23 case was light crudes, because we're sitting on top of</p> <p>24 the Andarko Basin, which has a lot of condensates that</p>	<p style="text-align: right;">653</p> <p>1 looking for ways to improve our business. It's a way</p> <p>2 you get your stock -- your analysts interested in you,</p> <p>3 and it's a way you can improve the value of the</p> <p>4 business, which is our job.</p> <p>5 Q. Mr. Lamp, let's turn to the JX 594.</p> <p>6 We'll put it up on the screen.</p> <p>7 A. 594?</p> <p>8 Q. Yep. We'll put it up on the screen,</p> <p>9 or I think we have a copy of it there as well.</p> <p>10 Just one second. I seem to have lost</p> <p>11 my copy of it. Okay.</p> <p>12 And what is this document, Mr. Lamp?</p> <p>13 A. Pardon?</p> <p>14 Q. What is this document? I'm sorry.</p> <p>15 A. It looks like an earnings call</p> <p>16 transcript.</p> <p>17 Q. Okay. If you could turn to page 4 of</p> <p>18 12 of JX 594, please.</p> <p>19 A. Okay.</p> <p>20 Q. Do you see the big section in the</p> <p>21 middle that says you're speaking?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. If we can blow that up.</p> <p>24 I believe this is discussing the</p>
<p style="text-align: right;">652</p> <p>1 contain a lot of natural gasoline. Some people call</p> <p>2 it pipe drippings, but it's the same material that we</p> <p>3 could turn into high-octane gasoline and sell as</p> <p>4 premium gasoline for higher temperatures.</p> <p>5 We also had a project to replace the</p> <p>6 HF Alky unit with a fixed-bed catalyst, which</p> <p>7 eliminated a huge risk for us in the HFS.</p> <p>8 All those projects were highly</p> <p>9 accretive, again, about 30 to 40 percent returns. And</p> <p>10 we're still active on one of them today. The other</p> <p>11 one, we canceled when COVID hit, the isom project, but</p> <p>12 we did all the engineering, all the way through FEL 3,</p> <p>13 which is detailed engineering, and were ready to order</p> <p>14 long-lead equipment when we ended up canceling.</p> <p>15 Q. Now, after you started as CEO in late</p> <p>16 2017, December 2017, on earnings calls and other</p> <p>17 communications with analysts and the public</p> <p>18 marketplace, would you talk about these capital</p> <p>19 projects?</p> <p>20 A. Absolutely. As soon as we got them,</p> <p>21 we put that into our scripts and started to start a</p> <p>22 storyline along those.</p> <p>23 Q. And why did you do that?</p> <p>24 A. Well, it shows we're thinking and</p>	<p style="text-align: right;">654</p> <p>1 projects. Can you describe for us the projects you're</p> <p>2 describing there?</p> <p>3 A. Yes. These are the same ones I just</p> <p>4 discussed, the -- if you look in the middle of the</p> <p>5 first paragraph, it starts with increasing the</p> <p>6 processing of WCS "to around 40,000 barrels a day,</p> <p>7 while increasing shale oil, and natural gas processing</p> <p>8 could be significantly increased with a phased</p> <p>9 [operation]. Phase I would include the addition of</p> <p>10 the naphtha hydrotreater and an isom unit to increase</p> <p>11 the capacity of natural [] gasoline processing to</p> <p>12 10,000 barrels per day." Phase II would add a</p> <p>13 hydrotreater to allow additional runs of WCS. And</p> <p>14 Phase II would debottleneck the reformer and allow for</p> <p>15 the existing crude units to efficiently process</p> <p>16 40,000 barrels of WCS, shale oil and natural gas. If</p> <p>17 these projects were approved, they would "all have</p> <p>18 returns in the 25% to 30% range and [] CapEx is</p> <p>19 estimated at \$350 million."</p> <p>20 At Wynnewood, it's the same sort of</p> <p>21 story.</p> <p>22 Q. If you could turn next to JX 1001.</p> <p>23 We'll put it up on the screen. We can focus on the</p> <p>24 top third of the page.</p>

<p style="text-align: right;">655</p> <p>1 A. Yes.</p> <p>2 Q. What is this? What is this document,</p> <p>3 Mr. Lamp?</p> <p>4 A. This is an email I sent to Keith</p> <p>5 when -- I heard you say the other day that you did not</p> <p>6 know what Alex was talking about. Alex was an</p> <p>7 investment banker who was working on the CIM for the</p> <p>8 sale of the company. And this is not atypical for</p> <p>9 Keith. He doesn't follow the business that close. He</p> <p>10 leaves it to me to run it. So I was just outlining to</p> <p>11 him what all these projects were.</p> <p>12 Q. And if you see the second line there,</p> <p>13 it says, "I have been talking about these with the</p> <p>14 exception of the KSAAT project, to the street and in</p> <p>15 earnings calls and will do again tomorrow."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And then was this an up-to-date list</p> <p>19 of the projects that were in process at this time?</p> <p>20 A. I believe so, if you can scroll down</p> <p>21 some.</p> <p>22 Q. Just blow up --</p> <p>23 A. Yeah, it has all of them in there.</p> <p>24 Q. Okay. If we can pull up next JX 1051.</p>	<p style="text-align: right;">657</p> <p>1 expensive, still. And we didn't view that as a good</p> <p>2 option, looking at our leverage levels already.</p> <p>3 Q. What was your expectations as to how</p> <p>4 it made sense to finance these upcoming projects?</p> <p>5 A. Well, in the beginning, it's always</p> <p>6 good to do it out of cash flow, because it's not big</p> <p>7 money, but once you start getting into it, you need to</p> <p>8 start reserving -- either have a plan to raise</p> <p>9 capital, issue equity, or take reserves so you can pay</p> <p>10 for them as they start to ramp up.</p> <p>11 Q. In your history as CEO for -- in</p> <p>12 refineries, have you reserved for cash for upcoming</p> <p>13 capital projects?</p> <p>14 A. Yes.</p> <p>15 Q. What's your recollection in that</p> <p>16 regard?</p> <p>17 A. NTI, we did that. I believe we did it</p> <p>18 at Western. Western was a C Corp, so it was a little</p> <p>19 bit different. But, you know, history has been always</p> <p>20 to do that. We did that at HollyFrontier, Holly, all</p> <p>21 the way back.</p> <p>22 Q. Let's turn to JX 1051. If you look at</p> <p>23 the --</p> <p>24 MR. RAJU: If you can blow up the</p>
<p style="text-align: right;">656</p> <p>1 A. The other thing I'd note here, just to</p> <p>2 comment, is that we had \$4 million approved on two of</p> <p>3 these projects to further define the scope of them,</p> <p>4 so -- and that was actually a board -- a special</p> <p>5 committee action that did that.</p> <p>6 Q. And what is the spend associated with</p> <p>7 these projects?</p> <p>8 A. Well, all in, total, they were over</p> <p>9 \$500 million. Now, they're very -- when you do a</p> <p>10 capital project, they're over three years, typically,</p> <p>11 some four. And the spend curve, it looks like a</p> <p>12 hockey stick. Very little at the beginning, but very</p> <p>13 steep increase as you get into it and start FEL 3,</p> <p>14 FEL 4. You start spending a significant amount of</p> <p>15 money.</p> <p>16 Q. And typically, how would those</p> <p>17 projects be funded?</p> <p>18 A. Well, there is a number of ways that</p> <p>19 you can do it: raise equity, you can raise debt, or</p> <p>20 you can do it out of cash flow.</p> <p>21 Q. And in the 2018, early 2019 time</p> <p>22 frame, what were the prospects for raising equity?</p> <p>23 A. Well, the market was largely closed</p> <p>24 for part of the year. It did open up, but it was very</p>	<p style="text-align: right;">658</p> <p>1 upper part, Scott.</p> <p>2 Q. It says an attachment is a Project</p> <p>3 Buffalo CIM. What is that?</p> <p>4 A. That was our -- the CIM is the</p> <p>5 confidential information memorandum, which is what we</p> <p>6 usually take to the market to show the assets for</p> <p>7 sale. So it's a large package that has all the</p> <p>8 details -- I won't say all the details, but a lot of</p> <p>9 details about the assets, their competitive position,</p> <p>10 their yields, their operating costs, their capital</p> <p>11 spend, just virtually everything to do with the</p> <p>12 business in significant detail, whereas the potential</p> <p>13 buyers can do a full evaluation of the assets.</p> <p>14 Q. And Project Buffalo involved -- tell</p> <p>15 me about Project Buffalo. What was Project Buffalo?</p> <p>16 A. Project Buffalo was the sale of CVI.</p> <p>17 Q. And during what time frame were you</p> <p>18 pursuing Project Buffalo?</p> <p>19 A. I don't remember the exact timing, but</p> <p>20 I believe it was mostly in '19, after the exchange,</p> <p>21 after the call.</p> <p>22 Q. So if we turn to -- by the way, with</p> <p>23 respect to Project Buffalo, how many different</p> <p>24 potential buyers did you approach with this</p>

<p style="text-align: right;">659</p> <p>1 confidential information memorandum?</p> <p>2 A. A lot. I don't know the exact number,</p> <p>3 but, you know, 50 or more, I would say.</p> <p>4 Q. Did that involve potential strategic</p> <p>5 partners?</p> <p>6 A. Not so much strategic partners, but</p> <p>7 people that would -- that are in this space and have</p> <p>8 interest in it. So some were strategic; some were</p> <p>9 just out fishing.</p> <p>10 Q. So among industry -- well, let's talk</p> <p>11 about it. Did you also approach financial sponsors?</p> <p>12 A. I believe so. I don't recall exactly</p> <p>13 who all was on the list, but it was a lot.</p> <p>14 Q. It was approximately 50 or so?</p> <p>15 A. That's what I'm guessing.</p> <p>16 Q. If we can go to -- let's go to page 7</p> <p>17 of the CIM. It's not the JX.</p> <p>18 THE COURT: Mr. Raju, Mr. Gorris has</p> <p>19 risen.</p> <p>20 MR. GORRIS: Your Honor, last night at</p> <p>21 8:54 p.m., this document was supplemented, and I don't</p> <p>22 even have a hard copy of it. And there were eight</p> <p>23 other documents produced. I'm not sure how that's</p> <p>24 even possible, since it's Mr. Lamp's direct and he was</p>	<p style="text-align: right;">661</p> <p>1 MR. GORRIS: I just received it now,</p> <p>2 Your Honor.</p> <p>3 Look, I'm -- on this document, since</p> <p>4 it was actually on the JX list, I'm willing to go</p> <p>5 forward with the examination. There were a bunch of</p> <p>6 other documents produced. Don't have Bates numbers.</p> <p>7 Weren't produced before. Produced at 8:54 p.m. for</p> <p>8 purposes of Mr. Lamp's examination. And I think</p> <p>9 that's improper.</p> <p>10 The whole point of a JX list is to</p> <p>11 have it in advance. And if you can sandbag people and</p> <p>12 dump a bunch of documents at 9:00 the night before,</p> <p>13 then trial is never going to work.</p> <p>14 MR. RAJU: Your Honor -- Mr. Gorris,</p> <p>15 I'm happy to address it document by document, if I use</p> <p>16 it with Mr. Lamp, and happy to talk about why it's not</p> <p>17 sandbagging and there's no prejudice and it's</p> <p>18 completely consistent with the information that</p> <p>19 Mr. Gorris and the plaintiffs have had throughout and</p> <p>20 they added to the JX list.</p> <p>21 THE COURT: What I would like to see</p> <p>22 happen is during our break -- and we will take a</p> <p>23 15-minute break. I recognize that we've had multiple</p> <p>24 breaks this morning. If we need more time at the end</p>
<p style="text-align: right;">660</p> <p>1 on the stand, why they would wait until 8:54 last</p> <p>2 night to produce nine additional documents.</p> <p>3 MR. RAJU: Your Honor, this document,</p> <p>4 JX 1051, I think there was a mistake in the physical</p> <p>5 copies, but if you look at the JX list, the Bates</p> <p>6 numbers that are being used here have been in there</p> <p>7 since the outset.</p> <p>8 MR. GORRIS: And do you have a hard</p> <p>9 copy for me so I can follow along and examine?</p> <p>10 MR. RAJU: I don't know -- we'll see</p> <p>11 if we can find a hard copy.</p> <p>12 THE COURT: So -- all right. So the</p> <p>13 version I have, the electronic version I have of 1051</p> <p>14 isn't complete either.</p> <p>15 MR. RAJU: It's not complete?</p> <p>16 THE COURT: I don't see 77 pages.</p> <p>17 MR. RAJU: If it's 77 pages, it's</p> <p>18 complete, then, Your Honor.</p> <p>19 THE COURT: I have three pages, with</p> <p>20 just the email.</p> <p>21 MR. RAJU: Your Honor, I'm told that</p> <p>22 your hard copy is updated.</p> <p>23 THE COURT: All right. What about</p> <p>24 Mr. Gorris'?</p>	<p style="text-align: right;">662</p> <p>1 of the week, we'll make it up at lunch on Friday. But</p> <p>2 just talk to each other.</p> <p>3 Mr. Raju, identify which of the</p> <p>4 documents produced last night you intend to use today</p> <p>5 in Mr. Lamp's examination. Normally, we don't require</p> <p>6 that of people, but given the timing, I think it seems</p> <p>7 important. And talk about whether this is</p> <p>8 problematic. You know, talk to Mr. Gorris about that.</p> <p>9 And then let me know if you still</p> <p>10 object. All right?</p> <p>11 MR. GORRIS: All right.</p> <p>12 MR. RAJU: Thank you, Your Honor.</p> <p>13 THE COURT: Thank you.</p> <p>14 MR. RAJU: Your Honor, should I</p> <p>15 proceed with this document now?</p> <p>16 THE COURT: Go ahead. I have it on</p> <p>17 the screen, so ...</p> <p>18 MR. RAJU: Okay. Great.</p> <p>19 BY MR. RAJU:</p> <p>20 Q. Mr. Lamp, do you see a slide that says</p> <p>21 page 17 of 77. The heading is "Robust Pipeline of</p> <p>22 High-Return Growth Project Opportunities"?</p> <p>23 A. I do.</p> <p>24 Q. And what do these entail? What are</p>

<p style="text-align: right;">663</p> <p>1 these?</p> <p>2 A. These are the same ones I described</p> <p>3 earlier.</p> <p>4 Q. And why were you including these</p> <p>5 projects in this CIM document?</p> <p>6 A. Again, they're a 20 percent increase</p> <p>7 in EBITDA over '19 results. That's meaningful. And</p> <p>8 that shows to the market there's a lot of potential</p> <p>9 here.</p> <p>10 I've never gone into a refinery</p> <p>11 that -- on a sale, that you don't have a page like</p> <p>12 this, whether you're selling a refinery or business or</p> <p>13 whatever. You're trying to identify to the market</p> <p>14 what is the potential. What's the potential? And a</p> <p>15 buyer may discount some of these. They may like them.</p> <p>16 They may twist them and change them. They may value</p> <p>17 them differently. But that's what you do in a sale.</p> <p>18 Q. Mr. Lamp, let's turn to JX 266.</p> <p>19 A. 266?</p> <p>20 Q. Yes. And we'll put it up on the</p> <p>21 screen as well.</p> <p>22 A. Okay.</p> <p>23 Q. These are the minutes of a CVR</p> <p>24 Refining GP board meeting on May 24, 2018.</p>	<p style="text-align: right;">665</p> <p>1 Q. As of May 24, 2018, had you heard of</p> <p>2 the Loews or Boardwalk situation?</p> <p>3 A. I don't think so, but I don't</p> <p>4 remember.</p> <p>5 Q. Let's go next to JX 403.</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Gorris discussed this document</p> <p>8 with you. This is where the board discussed the</p> <p>9 Butler Hall correspondence.</p> <p>10 Do you recall this?</p> <p>11 A. Yes.</p> <p>12 Q. As of the time of this meeting, had</p> <p>13 you heard of the Boardwalk-Loews situation?</p> <p>14 A. I don't recall. The first I heard of</p> <p>15 it was in that, I believe, in that Tudor Pickering</p> <p>16 report, but I can't remember the date on that.</p> <p>17 Q. Let's go back to the October earnings</p> <p>18 call. This is JX 594.</p> <p>19 THE COURT: Mr. Raju, I am going to</p> <p>20 take a 15-minute break now. Okay?</p> <p>21 MR. RAJU: Yes, Your Honor.</p> <p>22 THE COURT: Thank you. We'll resume</p> <p>23 in 15.</p> <p>24 (Recess taken at 10:45 a.m.)</p>
<p style="text-align: right;">664</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. In the -- on page 2, do you see the</p> <p>4 "Partnership Response to Exchange Offer" section,</p> <p>5 Section No. 4?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see about halfway down that</p> <p>8 paragraph, it says, "The board asked questions and</p> <p>9 conducted a privileged discussion regarding the []</p> <p>10 exchange offer, including ..., " and it has (A), (B)</p> <p>11 and (C)?</p> <p>12 A. Yes.</p> <p>13 Q. One of the things mentioned in (B) is</p> <p>14 that there would be a reduced float following the</p> <p>15 exchange offer.</p> <p>16 Do you see that, Mr. Lamp?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall that being discussed?</p> <p>19 A. I don't recall, but I'm sure it was.</p> <p>20 Q. At the time of the May 24th board</p> <p>21 meeting, had you heard of Boardwalk or the</p> <p>22 Boardwalk-Loews situation?</p> <p>23 A. Which meeting? The May -- what did</p> <p>24 you say? May?</p>	<p style="text-align: right;">666</p> <p>1 (Resumed at 11:00 a.m.)</p> <p>2 THE COURT: Please continue, Mr. Raju.</p> <p>3 MR. RAJU: Thank you, Chancellor.</p> <p>4 BY MR. RAJU:</p> <p>5 Q. Mr. Lamp, let's turn to JX 594.</p> <p>6 A. 594?</p> <p>7 Q. Yep. This is the October 25 earnings</p> <p>8 transcript. Let's going to the bottom, 10 of 12.</p> <p>9 Do you see on the last line, Matthew</p> <p>10 Blair asked, "So could you update us does CVI have any</p> <p>11 plans to exercise this call option?"</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Now, let's go to the top of the next</p> <p>15 page, page 11 of 12.</p> <p>16 MR. RAJU: Can we blow up Mr. Lamp's</p> <p>17 answer.</p> <p>18 Q. So in the second line, do you see</p> <p>19 where it says, "There was no intent of taking out CVRR</p> <p>20 at any time or even contemplate it at that time."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Was that a true statement, Mr. Lamp?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">667</p> <p>1 Q. Do you recall any discussions or</p> <p>2 contemplation of exercising a call right on or before</p> <p>3 October 25, 2019 -- I'm sorry, October 25, 2018?</p> <p>4 A. At the board level, no.</p> <p>5 Q. Second sentence, it says, "And I don't</p> <p>6 think anything has changed in that scenario."</p> <p>7 Is that a true statement?</p> <p>8 A. Yes.</p> <p>9 Q. Then you go on to say, "If you look at</p> <p>10 the yield right now of CVRR, it's what 13[], 14%</p> <p>11 almost and it will go up with this distribution to</p> <p>12 some degree."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What did you mean by that?</p> <p>16 A. Well, if you take the yield over a</p> <p>17 cycle, and typically you look at it on a quarterly</p> <p>18 basis, it was off the charts in terms of the low unit</p> <p>19 price and the high distribution. And that's how you</p> <p>20 get yield.</p> <p>21 Q. And you said "it will go up with this</p> <p>22 distribution to some degree." What did you mean by</p> <p>23 that?</p> <p>24 A. I think even with the -- with where</p>	<p style="text-align: right;">669</p> <p>1 conversation, if anything, about that conversation</p> <p>2 with HITE Hedge?</p> <p>3 A. Well, I think I recall these guys were</p> <p>4 extremely aggressive, in-our-face kind of meeting and</p> <p>5 call, you know, demanding we do things. And</p> <p>6 suggesting, you know, we should never have given any</p> <p>7 distribution at all.</p> <p>8 We just ignored -- it seemed to me</p> <p>9 they were playing their book. And I don't know what</p> <p>10 their book was at the time. But in hindsight, it was</p> <p>11 probably a huge short that they were talking up.</p> <p>12 MR. RAJU: No further questions,</p> <p>13 Mr. Lamp.</p> <p>14 Thank you, Your Honor.</p> <p>15 THE COURT: Thank you, Mr. Raju.</p> <p>16 Mr. Gorris.</p> <p>17 MR. GORRIS: I do have a few follow-up</p> <p>18 questions.</p> <p>19 REDIRECT EXAMINATION</p> <p>20 BY MR. GORRIS:</p> <p>21 Q. You talked about your strategy in 2018</p> <p>22 at the start of your testimony with Mr. Raju; right?</p> <p>23 A. Yes.</p> <p>24 Q. And that was to find ways to increase</p>
<p style="text-align: right;">668</p> <p>1 the unit price was and the fact that the distribution</p> <p>2 was as much as it was, it exceeds that 13, 14 percent.</p> <p>3 Q. The next sentence, it says, "We're</p> <p>4 extremely undervalued and recognize it and you got to</p> <p>5 keep thinking the market will eventually wake up to</p> <p>6 the fact that the yield is as high as it is."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And what did you mean by that?</p> <p>10 A. Well, you know, that was the problem</p> <p>11 with MLPs at the time. They were yielding a really</p> <p>12 high, high yield, with unit prices being low. And,</p> <p>13 you know, you would think eventually if you're</p> <p>14 yielding 20 percent, the market would recognize that,</p> <p>15 people would buy the units and they'd go back up.</p> <p>16 Q. Now, Mr. Gorris asked you about</p> <p>17 conversations with HITE Hedge.</p> <p>18 Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall there was conversation</p> <p>21 you had with them the day after this earnings call?</p> <p>22 A. I don't remember exact timing, but</p> <p>23 that sounds right, yes.</p> <p>24 Q. And what do you recall about that</p>	<p style="text-align: right;">670</p> <p>1 the value of CVR Refining; right?</p> <p>2 A. Right.</p> <p>3 Q. Okay. So that's step one, right,</p> <p>4 increase the value of CVR Refining; right?</p> <p>5 A. Well, the whole suite of companies.</p> <p>6 It's CVI, CVRR, and UAN.</p> <p>7 Q. Okay. But the bulk -- at that time</p> <p>8 the bulk of the value is in the assets owned by CVR</p> <p>9 Refining, and CVR Energy just owns a percentage share</p> <p>10 of that; right?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And then the next thing you did</p> <p>13 with the call right was take that value that you were</p> <p>14 in the process of creating and that you used the CVR</p> <p>15 Refining unitholder money to create and expropriate it</p> <p>16 for the CVR Energy stockholders; right?</p> <p>17 A. We offered an exchange at a premium.</p> <p>18 Q. Okay. Now --</p> <p>19 A. A significant premium.</p> <p>20 Q. And you bought out the unitholders in</p> <p>21 total for actually a quite reduced price once you</p> <p>22 blend together the value of the exchange and the call</p> <p>23 exercise; correct?</p> <p>24 A. In hindsight, that's what occurred.</p>

<p style="text-align: right;">671</p> <p>1 Q. Okay. Now, you gave some testimony 2 about these projects that you had in mind in 2018; 3 right?</p> <p>4 A. Right.</p> <p>5 Q. Okay. And only one of those projects 6 was board approved; correct?</p> <p>7 A. No, two of them were. Two were 8 sanctioned to do additional studies on.</p> <p>9 Q. Okay. But the project itself wasn't 10 board approved, other than the one \$11 million 11 project. That's what you said in the earnings call; 12 correct?</p> <p>13 A. Yeah. That was a different project 14 that I didn't even mention. These were two 15 projects -- or a suite of projects that we had 16 \$4 million approved; two on Coffeyville and two on 17 Wynnwood.</p> <p>18 Q. Okay. Now, your testimony was that it 19 was a \$500 million spend over three or four years 20 today; right?</p> <p>21 A. At that time, yes.</p> <p>22 Q. Okay. But in the earnings transcript, 23 didn't you say it was over approximately ten years?</p> <p>24 A. No. I don't believe so.</p>	<p style="text-align: right;">673</p> <p>1 A. Yes.</p> <p>2 Q. And that's over -- one, two, three, 3 four -- five years; right? 2019 estimated to 2023 4 estimated; right?</p> <p>5 A. Yes.</p> <p>6 Q. Now, if you add up that CapEx -- and I 7 didn't have this document, so I did it on the fly, so 8 this is a test of my math skills -- but I think you 9 get \$340 million.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So it's not really 13 \$500 million. When you actually put together the 14 formal CIM, these projects have a spend of 15 \$340 million over a five-year period; right?</p> <p>16 A. I don't know why there would be that 17 disparity, because on the other page it was close to 18 \$500 million. I don't recall the difference.</p> <p>19 Q. But you put that in a CIM that you 20 shared with buyers, and you intended it to be 21 accurate; right?</p> <p>22 A. Right. This probably didn't include 23 the gas oil hydrotreater, and that's what the 24 difference is because that's way out there.</p>
<p style="text-align: right;">672</p> <p>1 Q. Okay. Well, the record will show 2 that. Now, for JX 1051, that's the CIM. Do you still 3 have that in front of you?</p> <p>4 A. 1051.</p> <p>5 Q. That's what Mr. Raju was using.</p> <p>6 A. It's on the screen.</p> <p>7 Q. Okay. And Mr. Raju showed you the 8 page talking about the projects; right?</p> <p>9 Do you recall that in your testimony?</p> <p>10 A. Yes.</p> <p>11 Q. Now, there's actually a page later, 12 though, page 66 of 77, that talks about the additional 13 near-term growth opportunities, right?</p> <p>14 A. It hasn't switched yet.</p> <p>15 Q. And if you go from the second from the 16 bottom line, you see it says, "Total Growth Capex"?</p> <p>17 A. "Total Growth Capex." Yes, I see it. 18 I see it.</p> <p>19 MR. GORRIS: Your Honor, so we are at 20 a different page, JX 1051, page 66.</p> <p>21 THE COURT: Thank you.</p> <p>22 BY MR. GORRIS:</p> <p>23 Q. And the second to the bottom line says 24 "Total Growth Capex"; right?</p>	<p style="text-align: right;">674</p> <p>1 Q. Okay. Can you go to JX 590, please. 2 And that's the minutes of the CVR Refining GP board 3 meeting. This is a meeting where the reserve gets 4 created; right?</p> <p>5 A. The meeting where what's created?</p> <p>6 Q. The \$38 million additional reserve and 7 the distribution is cut; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, I'll apologize because I 10 don't have the exact page of the JX, but if you go to 11 what's in the corner, the Bates No. CVR 8104.</p> <p>12 Are you able to get there?</p> <p>13 A. I'm not seeing it.</p> <p>14 Q. It looks like page 29 of the JX.</p> <p>15 A. Okay.</p> <p>16 Q. Okay. And this is at that board 17 meeting when you're creating the reserve for these 18 projects; right?</p> <p>19 A. Yes.</p> <p>20 Q. And you and your team have put 21 together a liquidity slide; correct?</p> <p>22 A. Yes. As we do every board meeting.</p> <p>23 Q. And if you look at the capitalization 24 table in the top corner, the first very line is</p>

<p style="text-align: right;">675</p> <p>1 "Cash & Equivalents"; right?</p> <p>2 A. Right.</p> <p>3 Q. And it's estimating that at</p> <p>4 December 31, 2018, CVR Refining is going to have</p> <p>5 \$425 million of cash sitting on its balance sheet;</p> <p>6 right?</p> <p>7 A. Right.</p> <p>8 Q. Okay. And then if you go down to the</p> <p>9 "Liquidity" box underneath that, it's estimating that</p> <p>10 as of December 31, 2018, when you take that</p> <p>11 \$425 million in cash and adjust for various already</p> <p>12 outstanding financing, the total available liquidity</p> <p>13 for CVR Refining is \$715 million as of December 31,</p> <p>14 2018; right?</p> <p>15 A. Right.</p> <p>16 Q. But nonetheless, you took a</p> <p>17 \$38 million reserve to fund these \$340 million capital</p> <p>18 projects over a five-year period; right?</p> <p>19 A. I'll dispute your 348 million. But</p> <p>20 yes, in general, you're correct.</p> <p>21 Q. Okay. And how much is \$38 million a</p> <p>22 year in reserve?</p> <p>23 A. How much what?</p> <p>24 Q. So 38 million, if you do it, do it</p>	<p style="text-align: right;">677</p> <p>1 2019, if you just look at the "Cash available for</p> <p>2 distributions to common unitholders," all the way on</p> <p>3 the right side, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And for 2019, you're projecting</p> <p>6 \$650 million of additional cash generation that would</p> <p>7 be available for distribution, or you could use that</p> <p>8 for funding that little initial part of the hockey</p> <p>9 stick of those projects; right?</p> <p>10 A. Right.</p> <p>11 Q. Now, you testified in your deposition</p> <p>12 that there are many ways to fund projects; right?</p> <p>13 A. Right.</p> <p>14 Q. Now, we talked about in your</p> <p>15 deposition what CVR Refining could have done in</p> <p>16 response to CVR Energy, their 8-K teasing the market</p> <p>17 saying that we're considering exercising the call</p> <p>18 right; right?</p> <p>19 MR. RAJU: Your Honor, objection. I</p> <p>20 don't recall asking a single question to Mr. Lamp</p> <p>21 about the November announcement. And I believe this</p> <p>22 goes beyond the scope of the examination.</p> <p>23 MR. GORRIS: Your Honor, I'm going to</p> <p>24 tie this back very quickly to the distribution issue.</p>
<p style="text-align: right;">676</p> <p>1 each quarter, what's that?</p> <p>2 A. Times four?</p> <p>3 Q. Yeah.</p> <p>4 A. 140 million roughly; 130 million.</p> <p>5 Q. I get 152. Right?</p> <p>6 A. Okay.</p> <p>7 Q. And if you --</p> <p>8 A. I'll buy your math.</p> <p>9 Q. Even if you did that over, like, five</p> <p>10 years, what's that, like, 700 -- yeah, \$760 million of</p> <p>11 reserve on top of the \$715 million in projected</p> <p>12 available liquidity; right?</p> <p>13 A. Yeah. I'm unsure you understand this</p> <p>14 business, however. This business requires a lot of</p> <p>15 liquidity.</p> <p>16 Q. Sir, let's go to JX 568, which is --</p> <p>17 are you able to pull that up? Or you can look at it</p> <p>18 here. It's from Tracy Jackson to Mr. Cozza and others</p> <p>19 at Icahn copying you. "Budget Decks," October 18,</p> <p>20 2018; right?</p> <p>21 A. Yes.</p> <p>22 Q. And if you flip there and you go to</p> <p>23 what's page 8 of 9 of JX 568, and in particular, if</p> <p>24 you focus on your projected budget for fiscal year</p>	<p style="text-align: right;">678</p> <p>1 THE COURT: I think it's fine.</p> <p>2 BY MR. GORRIS:</p> <p>3 Q. Okay. So we just looked at, you had</p> <p>4 \$425 million in cash, \$715 million of total available</p> <p>5 liquidity; right?</p> <p>6 A. Right.</p> <p>7 Q. And one of the things that the CVR</p> <p>8 Refining GP board could have done was get together,</p> <p>9 declare a distribution, pay it out to the unitholders</p> <p>10 <i>pro rata</i>; correct?</p> <p>11 A. I suppose it could have.</p> <p>12 Q. Okay. Instead, what happened was that</p> <p>13 cash was used to fund the call right, right, to pay</p> <p>14 back the bridge loan that funded the exercise of the</p> <p>15 call right; correct?</p> <p>16 A. I don't know that to be a fact, but --</p> <p>17 Q. Okay.</p> <p>18 A. -- you can argue whether it's that</p> <p>19 money or some other money.</p> <p>20 Q. Okay. And now, Mr. Raju asked you</p> <p>21 about the earnings transcript of October -- late</p> <p>22 October 2018; right?</p> <p>23 A. Right.</p> <p>24 Q. Generally speaking, when you answer</p>

<p style="text-align: right;">679</p> <p>1 analyst questions, do you only provide answers that</p> <p>2 reflect prior board approval?</p> <p>3 A. Generally, yes.</p> <p>4 Q. Okay. But you discussed those</p> <p>5 projects, and they hadn't been board approved; right?</p> <p>6 A. They had been sanctioned by the</p> <p>7 special committee, which is a part of the board, so</p> <p>8 yes.</p> <p>9 Q. Okay. So the only thing you tell</p> <p>10 analysts is information that has been formally</p> <p>11 approved at a board meeting or by a special committee.</p> <p>12 Is that your testimony?</p> <p>13 A. In general, that's our procedures.</p> <p>14 Q. Okay. And do you tell the analysts</p> <p>15 that, that "I'm giving you this answer, it doesn't</p> <p>16 reflect what management has done but, instead, it's</p> <p>17 only a reflective of what the entire board has</p> <p>18 approved"?</p> <p>19 A. Do we tell them that?</p> <p>20 Q. Yes.</p> <p>21 A. No. I don't think we'd ever say that.</p> <p>22 MR. GORRIS: Okay. I don't have any</p> <p>23 further questions.</p> <p>24 THE COURT: Thank you, Mr. Gorris.</p>	<p style="text-align: right;">681</p> <p>1 million barrel a day -- a year operation. If you go</p> <p>2 to a higher operation, 2 million barrels -- you know,</p> <p>3 2 million barrels a day, or call it</p> <p>4 150 million barrels a year, it just goes up from</p> <p>5 there.</p> <p>6 Q. Mr. Lamp, were you in favor of</p> <p>7 creating a \$38 million reserve in connection with the</p> <p>8 third quarter of 2018?</p> <p>9 A. Yes.</p> <p>10 Q. Did you believe that was a prudent</p> <p>11 business decision?</p> <p>12 A. I believe it was, based on the project</p> <p>13 we had, the runway in front of us.</p> <p>14 MR. RAJU: No further questions.</p> <p>15 THE COURT: Thank you.</p> <p>16 MR. GORRIS: No further questions,</p> <p>17 Your Honor.</p> <p>18 THE COURT: Thank you, Mr. Lamp. I</p> <p>19 think you win the witness with the most breaks.</p> <p>20 (Witness excused.)</p> <p>21 THE COURT: So would you like to call</p> <p>22 your next witness?</p> <p>23 MR. FRIEDLANDER: Plaintiffs call</p> <p>24 Melissa Buhrig.</p>
<p style="text-align: right;">680</p> <p>1 Mr. Raju.</p> <p>2 MR. RAJU: Your Honor, just very</p> <p>3 briefly.</p> <p>4 REXCROSS-EXAMINATION</p> <p>5 BY MR. RAJU:</p> <p>6 Q. Mr. Lamp, what are the liquidity needs</p> <p>7 of this business, the refinery business?</p> <p>8 A. Well, I guess what I would tell you is</p> <p>9 you're subject to -- you have about 4 1/2 million</p> <p>10 barrels of inventory. And if you get a \$30 drop on \$4</p> <p>11 1/2 million, you can do the math. It's about \$200</p> <p>12 million that you have to pork out right away.</p> <p>13 So our philosophy was to avoid the</p> <p>14 revolver because you have to pay money, you have to</p> <p>15 pay interest on that money. We had that there as a</p> <p>16 safety blanket, if you will, should we need it. But,</p> <p>17 generally, you know, this business has to have about</p> <p>18 300 million of capital available to -- just to handle</p> <p>19 the ebbs and flows of crude purchasing and gaps</p> <p>20 between crude purchasing and product sales.</p> <p>21 Q. Is that need for liquidity unique to</p> <p>22 CVRR or for most refining businesses?</p> <p>23 A. Well, it depends on the size, of</p> <p>24 course. We're about a 70 million-barrel a day --</p>	<p style="text-align: right;">682</p> <p>1 THE COURT: Just a moment,</p> <p>2 Mr. Friedlander.</p> <p>3 MELISSA M. BUHRIG, having first been</p> <p>4 duly affirmed, was examined and testified as follows:</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MR. FRIEDLANDER:</p> <p>7 Q. Good morning, Ms. Buhrig.</p> <p>8 A. Good morning.</p> <p>9 Q. You're the executive vice president,</p> <p>10 general counsel, and secretary of CVR Energy, Inc.?</p> <p>11 A. That's correct.</p> <p>12 Q. In the course of this litigation, in</p> <p>13 your capacity in those roles, were you asked to review</p> <p>14 and verify certain interrogatory responses?</p> <p>15 A. Yes.</p> <p>16 Q. Can you turn to JX 1245, which is, I</p> <p>17 believe, a hard copy that we just distributed very</p> <p>18 recently. It's not in --</p> <p>19 A. I don't see that before me.</p> <p>20 Q. -- the book.</p> <p>21 MR. FRIEDLANDER: I believe we brought</p> <p>22 four copies up to the Court. It's one of the -- I'll</p> <p>23 just tell the Court, it's a new JX because it was</p> <p>24 missing the verification on the prior version.</p>

<p style="text-align: right;">683</p> <p>1 Q. Do you recognize JX 1245 as a set of</p> <p>2 interrogatory responses that you verified?</p> <p>3 A. I do.</p> <p>4 Q. Okay. Now, if you turn to page 18 of</p> <p>5 the document, you'll see there's an Interrogatory</p> <p>6 No. 3, and it refers -- it asks for information about</p> <p>7 custodians who are identified in Interrogatory No. 2.</p> <p>8 Do you see that's the introductory</p> <p>9 phrase?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And the folks identified in</p> <p>12 response to Interrogatory No. 2 were individuals with</p> <p>13 knowledge of various aspects of the case. That's set</p> <p>14 out over -- beginning on page 12 and then through the</p> <p>15 top of page 18; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you, for instance, are identified</p> <p>18 as a custodian with knowledge as to certain categories</p> <p>19 of information; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And in Interrogatory No. 3 on page 18,</p> <p>22 the question is posed -- or one of the subsets of</p> <p>23 information that's sought in that interrogatory is</p> <p>24 under (iii), "any non-traditional sources of</p>	<p style="text-align: right;">685</p> <p>1 A. Correct.</p> <p>2 Q. And if you turn to the end, you</p> <p>3 verified the accuracy of these interrogatories;</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And if you turn to page --</p> <p>7 well, 1 carrying over onto 2 -- it's a supplemental</p> <p>8 response to Interrogatory No. 3, right?</p> <p>9 A. Yes.</p> <p>10 Q. And, in particular, the last full</p> <p>11 sentence in the response states, "CVR Defendants also</p> <p>12 state that, based on witness interviews and consistent</p> <p>13 with CVR policy, CVR Defendants understand that none</p> <p>14 of the custodians used text messages or social media</p> <p>15 applications to discuss CVR business matters."</p> <p>16 Correct?</p> <p>17 A. Correct.</p> <p>18 Q. Now, if we turn to JX 1097, these</p> <p>19 are -- this is a "Supplemented and Restated Responses</p> <p>20 and Objections to Plaintiffs' Interrogatory No. 3."</p> <p>21 Correct?</p> <p>22 A. Correct.</p> <p>23 Q. And you verified these responses -- if</p> <p>24 you turn to the end of the document -- on</p>
<p style="text-align: right;">684</p> <p>1 electronically stored information that might be</p> <p>2 responsive to the First [Request For Production of</p> <p>3 documents], including instant, text, or social media</p> <p>4 messaging platforms." Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And if you look to the response, the</p> <p>7 last full sentence before the bottom of the page, it</p> <p>8 begins, "CVR Defendants also state that, based on</p> <p>9 witness interviews and consistent with CVR policy, CVR</p> <p>10 Defendants understand that none of the custodians used</p> <p>11 text messages or social media applications to discuss</p> <p>12 CVR business matters." Correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you see at the end of the</p> <p>15 document, the last two pages are your verification of</p> <p>16 July 1, 2020, about that you've reviewed the documents</p> <p>17 and subject to certain qualifications, the foregoing</p> <p>18 information is true and correct; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Now, if you turn to in your binder,</p> <p>21 JX 1073, these are the "CVR Defendants' Supplemental</p> <p>22 Responses and Objections to Plaintiffs' First Set of</p> <p>23 Interrogatories."</p> <p>24 Correct?</p>	<p style="text-align: right;">686</p> <p>1 December 10th, 2020; correct?</p> <p>2 A. Correct.</p> <p>3 Q. And if you now could turn back to</p> <p>4 page 2 of the document, which is the response, the</p> <p>5 beginning of the response to the supplemented</p> <p>6 Interrogatory No. 3. About two-thirds of the way down</p> <p>7 the page, there's a sentence, and it begins and</p> <p>8 states, "CVR Defendants also state that, based on</p> <p>9 witness interviews and consistent with CVR policy, CVR</p> <p>10 Defendants understand that none of the custodians used</p> <p>11 telephone text messaging or social media applications</p> <p>12 to discuss CVR business matters."</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. Now, I'd like to go back in time a</p> <p>16 little bit to the summer of 2018.</p> <p>17 When did you start your positions at</p> <p>18 CVR Energy?</p> <p>19 A. July 2nd, 2018.</p> <p>20 Q. Okay. And shortly after you joined</p> <p>21 CVR Energy, you helped put together, arrange for a</p> <p>22 board meeting to consider what's called the Butler</p> <p>23 Hall letter. Are you aware of that, sir -- I'm sorry,</p> <p>24 ma'am?</p>

<p style="text-align: right;">687</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So you helped set up that</p> <p>3 meeting, and you attended the meeting; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And, in fact, you were the secretary</p> <p>6 for the meeting; right?</p> <p>7 A. I was.</p> <p>8 Q. And that's -- if you turn to JX 403,</p> <p>9 those are your minutes. Actually, they're -- they say</p> <p>10 "Draft," but they're signed minutes of the meeting;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now, how many -- of the directors</p> <p>14 present, how many were affiliated with IEP, Icahn</p> <p>15 Enterprises?</p> <p>16 A. I believe that's five.</p> <p>17 Q. Which five are they?</p> <p>18 A. Mr. Icahn, Mr. Cho, Mr. Frates,</p> <p>19 Mr. Langham, and Mr. Pastor. And then Mr. Lamp with</p> <p>20 respect to his position as chairman and CEO of CVR</p> <p>21 Energy and its affiliates.</p> <p>22 Q. And of the invited guests present,</p> <p>23 there are three other employees of Icahn Enterprises:</p> <p>24 Mr. Cozza, Mr. Lynn, and Mr. Nevin. Correct?</p>	<p style="text-align: right;">689</p> <p>1 communications, including the Butler Hall letter;</p> <p>2 right?</p> <p>3 A. Correct.</p> <p>4 Q. And according to the minutes, "The</p> <p>5 Board affirmed [at this meeting] that it continued to</p> <p>6 express no opinion" about the exchange offer, and</p> <p>7 "unanimously agreed to take no further action</p> <p>8 respecting the shareholder communications." Correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, this meeting made a big</p> <p>11 impression on you, didn't it?</p> <p>12 A. Certainly.</p> <p>13 Q. And that evening, you exchanged text</p> <p>14 messages with Hunter Marckwaldt; is that right?</p> <p>15 A. That's correct.</p> <p>16 Q. And that's Exhibit 402; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you wrote "First board call here</p> <p>19 was ROUGH," with "rough" all caps. Right?</p> <p>20 A. Correct.</p> <p>21 Q. It continues on to say, "Icahn element</p> <p>22 definitely adds a different kind of pressure."</p> <p>23 Right?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">688</p> <p>1 A. Correct.</p> <p>2 Q. And as reflected in the minutes, you</p> <p>3 presented about the Butler Hall letter; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And that states at your request</p> <p>6 "Mr. Bowling led the Board in a discussion" about the</p> <p>7 letter; right?</p> <p>8 A. Correct.</p> <p>9 Q. And in between it says "Mr. Icahn</p> <p>10 joined the meeting," in the middle. That's right</p> <p>11 before it says that you invited Mr. Bowling to speak;</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. And the next paragraph of the minutes</p> <p>15 it says, "At the request of Mr. Icahn, Mr. Bowling []</p> <p>16 led the Board in a discussion regarding ... the</p> <p>17 shareholder communications and various [] [responses]</p> <p>18 ... thereto."</p> <p>19 Right?</p> <p>20 A. Correct.</p> <p>21 Q. And then, continuing on, about halfway</p> <p>22 down that paragraph, it says, "At the request of</p> <p>23 Mr. Icahn, [you] led the Board in a discussion [about]</p> <p>24 the Company's review ... and evaluation" of the</p>	<p style="text-align: right;">690</p> <p>1 Q. And in a response text message, you</p> <p>2 were asked, "What happened?" Right?</p> <p>3 A. Uh-huh. Correct.</p> <p>4 Q. Okay. And you responded, "Just a</p> <p>5 bunch of politics no one warned me about. Someone on</p> <p>6 his team forced a recommendation before the call then</p> <p>7 changed during."</p> <p>8 Right?</p> <p>9 A. I see that.</p> <p>10 Q. Then the question was posed, "On his</p> <p>11 team but not with cvr?"</p> <p>12 Right?</p> <p>13 A. Yes.</p> <p>14 Q. And you responded, "Yep"?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So what you're referring to is</p> <p>17 someone on the Icahn team -- you were led to believe</p> <p>18 going into the call there was going to be a certain</p> <p>19 recommendation that was going to be made, but then it</p> <p>20 was changed up during the call; right?</p> <p>21 A. Well, as I testified previously, I</p> <p>22 don't recall specifically. I -- it's likely relating</p> <p>23 to the primary purpose of that meeting, which is to</p> <p>24 discuss whether or not to file the Butler Hall letter.</p>

<p style="text-align: right;">691</p> <p>1 Q. So -- I'm sorry. So you're saying it</p> <p>2 was likely that it was about whether to publicly file</p> <p>3 the letter?</p> <p>4 A. That was predominantly what we were</p> <p>5 discussing during that meeting. So if I had to</p> <p>6 surmise, that's what that would relate to.</p> <p>7 Q. Well, there were a couple different</p> <p>8 questions posed at the meeting; right? There was</p> <p>9 whether to take action, such as filing the letter or</p> <p>10 not, or filing something else, I suppose.</p> <p>11 But there's the question of filing the</p> <p>12 letter, and then there's the question of the board's</p> <p>13 position respecting the exchange offer; right?</p> <p>14 A. That's discussed in the minutes,</p> <p>15 correct.</p> <p>16 Q. And what you testified in your</p> <p>17 deposition is you said you have no specific</p> <p>18 recollection of a discussion; right?</p> <p>19 A. I don't specifically recall the</p> <p>20 discussion.</p> <p>21 Q. And the minutes don't reflect that --</p> <p>22 any evolution of views about what position to take;</p> <p>23 right?</p> <p>24 A. They don't. But if that had been the</p>	<p style="text-align: right;">693</p> <p>1 A. Do I recall a specific discussion or</p> <p>2 words, no.</p> <p>3 Q. Now, on October 4, 2018, you received</p> <p>4 a copy of a letter written by HITE that was addressed</p> <p>5 to Dave Lamp and had been sent to Dave Lamp and Jay</p> <p>6 Finks; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And it was forwarded to you; right?</p> <p>9 A. Correct.</p> <p>10 Q. And you subsequently had some text</p> <p>11 messages about events that -- I'm sorry. So -- and</p> <p>12 part of that letter, if you turn to page -- JX 547,</p> <p>13 page 2 of 3.</p> <p>14 A. Okay.</p> <p>15 Q. The last paragraph of that letter</p> <p>16 talks about CVR -- recommending that if CVI is</p> <p>17 thinking about exercising the call over the next year</p> <p>18 or so, to make a public statement on that subject</p> <p>19 matter; correct?</p> <p>20 A. That's what the letter says, correct.</p> <p>21 Q. Now, on November 2nd -- I'm sorry. On</p> <p>22 November 12th, 2018, as reflected in JX 652, you</p> <p>23 received a text from Tracy Jackson; correct?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">692</p> <p>1 discussion, that is certainly something I would have</p> <p>2 recalled. As I mentioned, most likely, the</p> <p>3 predominant discussion related to what to do with the</p> <p>4 Butler Hall letter.</p> <p>5 My thought process around that</p> <p>6 certainly evolved over the time leading up to this</p> <p>7 meeting. So if I had to guess, that would be the</p> <p>8 subject of any change of perspective.</p> <p>9 Q. Okay. Now, you're testifying about</p> <p>10 something that was most likely the case. But at your</p> <p>11 deposition, you said you had no specific recollection.</p> <p>12 And you've also, I believe, as part of your testimony,</p> <p>13 just said now you have no recollection of the meeting;</p> <p>14 correct?</p> <p>15 A. I said very specifically at my</p> <p>16 deposition. You didn't ask me what it wasn't. I know</p> <p>17 as lawyers we're kind of programmed to answer very</p> <p>18 specifically only what we're asked. So I responded as</p> <p>19 to what I was specifically asked at my deposition. I</p> <p>20 wasn't asked to surmise or asked to testify as to what</p> <p>21 I was certain didn't get discussed at that meeting.</p> <p>22 Q. Okay. Well, that wasn't me. But</p> <p>23 standing here today, I'm not asking you what likely</p> <p>24 happened. Do you specifically recall --</p>	<p style="text-align: right;">694</p> <p>1 Q. And then, on the next page of the</p> <p>2 Bates, you write back to Ms. Jackson via text, "Was</p> <p>3 just walking through steps on call, sources/uses and</p> <p>4 tax implications with team. Also got GT up to date</p> <p>5 this morning."</p> <p>6 Right?</p> <p>7 A. Correct.</p> <p>8 Q. And "GT" refers to Grant Thornton;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And this is about the process of</p> <p>12 exercising the call right that was being discussed at</p> <p>13 this time; correct?</p> <p>14 A. It was about the valuation of what</p> <p>15 that would entail. I had never been through the call</p> <p>16 right process before, and I believe Tracy hadn't</p> <p>17 either, so --</p> <p>18 Q. Would you mind moving your microphone</p> <p>19 a little bit closer to you?</p> <p>20 A. Sure. Is that better?</p> <p>21 Q. Yes. Thank you.</p> <p>22 A. Sorry, can you repeat your question?</p> <p>23 Q. Yes. My question was: What you're</p> <p>24 referring to in this text message was about certain</p>

<p style="text-align: right;">695</p> <p>1 processes relating to the exercise of the call right; 2 correct? 3 A. Well, it's -- the text is from her. 4 But, yes, that is what she's referencing. 5 Q. Okay. I'm sorry. So that's what 6 she's talking about to you; right? 7 A. Correct. 8 Q. Now, if you turn to JX 698. 9 A. Okay. 10 Q. That's a text from you to Dave Lamp; 11 right? 12 A. Correct. 13 Q. Now, the printout is November 23, 14 2018. But it also says, like, around midnight, so 15 it's unclear what day it was sent. Do you recall if 16 this was sent on the 23rd or the 22nd? 17 A. I don't recall. 18 Q. Okay. But -- so this is the day after 19 Thanksgiving, the 23rd is. And you're writing to Dave 20 Lamp, "Hi Dave - Heads up Carl wants to have a call 21 either late tonight or tomorrow afternoon on the call 22 option with me and the V&E lawyer. I've asked Jesse 23 if he wants you on as well and will let you know as 24 soon as I hear back from him."</p>	<p style="text-align: right;">697</p> <p>1 Jesse Lynn and Carl Icahn that day, there was movement 2 towards exercising the call; correct? 3 A. I would say evaluation of the call. 4 I'm not sure that there would be an exercise until 5 it's decided by the board of directors. So, 6 certainly, as executives, we are -- it's incumbent 7 upon us to ensure we prepare and are aware of 8 transactions. So this is in, my mind, more 9 preparation of the potential, as opposed to a 10 definitive directive. 11 Q. Okay. So if you turn to Exhibit 699, 12 you write to Dave Lamp on November 23rd, "Spoke with 13 Jesse, Carl wants to do the call transaction 14 ASAP" 15 Right? 16 A. Correct. 17 Q. And that's referring to the exercise 18 of the call right; correct? 19 A. It's referring to Carl's thought 20 process around it. But, again, until the board of 21 directors directs the executives to proceed with that, 22 that's not -- he wasn't on the board at the time. 23 So ... 24 Q. Right. But you wanted Mr. Lamp to</p>
<p style="text-align: right;">696</p> <p>1 Correct? 2 A. Correct. 3 Q. And so the "Dave" is Dave Lamp; right? 4 A. Yes. 5 Q. "Carl" is Carl Icahn? 6 A. Yes. 7 Q. The "V&E lawyer" is Ramey Layne from 8 Vinson & Elkins; correct? 9 A. I'm not certain if it was Ramey 10 specifically or somebody on his team, but certainly a 11 V&E lawyer. 12 Q. Okay. But you came to understand when 13 the called happened that it was Ramey Layne? 14 A. Yes. But there were other lawyers in 15 addition to Ramey at V&E. There was several involved. 16 Q. Okay. "Jesse" is Jesse Lynn; right? 17 A. Correct. 18 Q. All right. And this is referring to a 19 discussion of the call right; correct? 20 A. Correct. 21 Q. And the potential exercise of the call 22 right? 23 A. Correct. 24 Q. And based on your discussion with</p>	<p style="text-align: right;">698</p> <p>1 know that Carl Icahn wanted to do the call transaction 2 ASAP; right? 3 A. Yes. That that was his opinion and 4 his sentiment. 5 Q. Now, on -- can you turn to JX 720, 6 please. 7 A. Okay. 8 Q. So this is a text from you to Tracy 9 Jackson; correct? 10 A. Correct. 11 Q. And this is on November 26th, 2018; 12 right? 13 A. Correct. 14 Q. And that's the same day as a meeting 15 of the board of CVR Energy? 16 A. The 26th, correct. 17 Q. Okay. And you write to Ms. Jackson, 18 "dial in if yuh can [], Keith just joined and talk[ed] 19 financing." 20 Right? 21 A. Correct. 22 Q. "Keith" is Keith Cozza? 23 A. Keith Cozza. Not quite sure of the 24 pronunciation.</p>

<p style="text-align: right;">699</p> <p>1 Q. But that's him?</p> <p>2 A. Yep, sure is.</p> <p>3 Q. Okay. And if -- and then you were</p> <p>4 secretary of the meeting on November 26th, 2018;</p> <p>5 correct?</p> <p>6 A. I was.</p> <p>7 Q. And those minutes are Exhibit JX 722;</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so you're secretary of the</p> <p>11 meeting, and you signed the minutes; right?</p> <p>12 A. Correct.</p> <p>13 Q. Now, according to the minutes, the</p> <p>14 meeting begins with the board affirming that "neither</p> <p>15 the Company nor the Board has previously considered,</p> <p>16 evaluated, or contemplated the exercise of the call</p> <p>17 right." Right?</p> <p>18 A. Yes.</p> <p>19 Q. And the phrasing is "neither the</p> <p>20 Company nor the Board"; right?</p> <p>21 A. Correct.</p> <p>22 Q. So "the Company" would refer to a</p> <p>23 representative, representative of the company, but --</p> <p>24 A. I mean, the company generally, as</p>	<p style="text-align: right;">701</p> <p>1 process; correct?</p> <p>2 A. I engaged him to help advise the</p> <p>3 company with respect to the potential.</p> <p>4 Q. Right.</p> <p>5 A. In the event the board wanted to move</p> <p>6 in that direction. My job is to be prepared.</p> <p>7 Q. Right. So to be prepared, the folks</p> <p>8 were prepared -- Mr. Cozza had been considering this,</p> <p>9 Mr. Lynn had been considering this, Grant Thornton had</p> <p>10 been considering this, Ms. Jackson and Mr. Lamp;</p> <p>11 correct?</p> <p>12 A. When you say "considering," I'm not</p> <p>13 sure what you're referring to. And I can't speak to</p> <p>14 the thought process of Mr. Lynn and Mr. Cozza. Were</p> <p>15 their discussions that took place around a potential</p> <p>16 call with them? Yes.</p> <p>17 Q. Okay. But you knew from your</p> <p>18 communications that they were all contemplating the</p> <p>19 potential exercise of the call right; correct?</p> <p>20 A. I knew they were discussing a -- what</p> <p>21 a call right would look like, whether -- from my</p> <p>22 perspective, they're not authorized to actually</p> <p>23 proceed or do anything with respect to exercise until</p> <p>24 there's a directive of the board. So I would fully</p>
<p style="text-align: right;">700</p> <p>1 acting through its board of directors. I'm not sure</p> <p>2 specifically what you're asking.</p> <p>3 Q. Well, Mr. Lamp is the CEO of the</p> <p>4 company; right?</p> <p>5 A. He is.</p> <p>6 Q. Okay. He had been considering the</p> <p>7 potential exercise of the call; right?</p> <p>8 A. He's been evaluating it. But to say</p> <p>9 that Mr. Lamp would have the authority to execute a</p> <p>10 transaction like that without the board is inaccurate.</p> <p>11 Q. Right. But the minutes say that the</p> <p>12 company had not "considered, evaluated or contemplated</p> <p>13 the exercise of the call"; right?</p> <p>14 A. Exercise of the call. It's a bit</p> <p>15 different than educating ourselves into a process that</p> <p>16 none of the executives have ever gone through before,</p> <p>17 and ensuring that we understand -- in the event that</p> <p>18 the board wanted to move in that direction, that at</p> <p>19 the upcoming meeting we're qualified and capable of</p> <p>20 responding to questions from them. That's our job as</p> <p>21 executives.</p> <p>22 Q. Okay. But leading up to this board</p> <p>23 meeting had been the fact that -- well, Ramey Layne</p> <p>24 from Vinson & Elkins had been part of the evaluation</p>	<p style="text-align: right;">702</p> <p>1 anticipate all of those executives to be getting ready</p> <p>2 for it.</p> <p>3 And add onto that, we had had public</p> <p>4 disclosures that we'd made around this topic. So I</p> <p>5 think it's completely appropriate to describe it with</p> <p>6 respect to the fact that what has changed at the</p> <p>7 organization starting with where we are here.</p> <p>8 So I guess I'm missing the point of</p> <p>9 what you're trying to ask me.</p> <p>10 Q. Well, when it says the board is</p> <p>11 affirming something, does that mean that they're all,</p> <p>12 like, in unison, or going around a circle saying,</p> <p>13 "Well, as we all know, we haven't previously discussed</p> <p>14 this at a board -- it hasn't been a subject of a prior</p> <p>15 meeting," or that none of them individually had</p> <p>16 contemplated? What does this reflect?</p> <p>17 A. So, typically -- again, I don't recall</p> <p>18 specifically uttering the words that I uttered. But</p> <p>19 generally I open board meetings and kind of set the</p> <p>20 table for what we're going to talk about. And so I</p> <p>21 have a little bit of a different philosophy.</p> <p>22 When we are actually taking</p> <p>23 affirmative votes, the minutes look a lot different,</p> <p>24 and you probably saw them in some of the other ones,</p>

<p style="text-align: right;">703</p> <p>1 there's a "whereas" clause and very specific dialogue 2 about what's being approved. 3 Generally, when there's other 4 discussions at the board where there's a general 5 consensus reflected, I'll use terms like "affirmed" or 6 "acknowledged" or that type of thing. And I think if 7 you look through my minutes, you'll see that 8 reflected. 9 So what this, to me -- and how I would 10 write this, reflects that there was discussions about 11 the board: Okay, where have we been. This is where 12 the company has been, this is what we've talked about 13 publicly. Everyone is in sort of a general agreement 14 to set the table of where we're starting from. Now 15 let's get into what has changed and should the board 16 now be considering something different. 17 And so my expectation is that is how 18 the meeting began. And I typically would use this 19 kind of language to denote general agreement and 20 consensus. As opposed to when it's actually a vote 21 and everyone votes, and the minutes will look quite 22 different in that circumstance. 23 Q. Right. So the minutes are not 24 purporting to say the full extent of discussions that</p>	<p style="text-align: right;">705</p> <p>1 likely been me kind of setting the table, saying, 2 "Okay, we understand we haven't -- the board hasn't 3 authorized exercising of the call. We've had public 4 disclosures, including an earnings call that took 5 place in late October where we affirmed that we 6 didn't, at that time, have an intention to exercise 7 the call." 8 And so sort of, I would have laid out 9 "Here's where we're starting from." And then from 10 that point on, it would have gone into a discussion of 11 -- or whatever the changed circumstances -- is there a 12 basis upon which we should now shift our discussion? 13 But I don't believe that it started 14 with a direct recommendation or instruction from 15 either management or anyone at Icahn to the board of 16 what was happening. That's not how I interpret the 17 beginning of those minutes. 18 BY MR. FRIEDLANDER: 19 Q. Well, in fact, this board meeting 20 was -- it was highly orchestrated exactly what 21 response you were looking for from the board to 22 conclude the meeting; correct? 23 A. No, I don't know that I agree with 24 that at all. When you say "highly orchestrated," what</p>
<p style="text-align: right;">704</p> <p>1 any individual board member -- or even guest at the 2 board meeting -- may have had about the particular 3 subject. 4 Like, for instance, "Well, as you all 5 know, Mr. Icahn really wants to get this transaction 6 done ASAP. And we've talked to the lawyers. We've 7 talked to the auditors. The senior management has all 8 spoken. And that's why we're convening this meeting." 9 You chose not to draft the minutes 10 that way? 11 A. Because I don't think that's what 12 transpired. There wasn't a meeting and we immediately 13 made a recommendation as to what, you know -- 14 THE COURT: I'm sorry, can you slow 15 down a little bit. 16 THE WITNESS: Oh, sure. Sorry. I 17 know, I talk fast. 18 A. Yeah, I don't believe that's how the 19 meeting began. I don't have a very specific 20 recollection of the exact words that were said. But I 21 don't recall there being a coordinated recommendation 22 with respect to what the company executives were 23 telling the board about what happened. 24 I think it was -- again, it would have</p>	<p style="text-align: right;">706</p> <p>1 do you mean? 2 Q. Well, the resolution of the board, in 3 the last paragraph of the minutes, it says, "the Board 4 directed the Company to consider the Potential Call 5 right" 6 That's the action item. That's one of 7 the action items; right? 8 A. Correct. 9 Q. Okay. And "the Company" in that 10 context would be the senior management of the company 11 and its outside advisors; correct? 12 A. Correct. 13 Q. And according to the last sentence, 14 "The Board directed the Company to make all 15 appropriate disclosures" Correct? 16 A. Correct. 17 Q. So the concept of a public disclosure 18 was a planned action item coming into this board 19 meeting; correct? 20 A. Well, not coming into it. But it was 21 discussed with the board, and the board then directed 22 that we make the appropriate public disclosure. 23 But to characterize it as some 24 orchestrated thing where the board wasn't having</p>

<p style="text-align: right;">707</p> <p>1 appropriate discussion or evaluating this topic, I 2 think is incredibly unfair and inaccurate. 3 Q. Okay. Well, wouldn't it be accurate 4 to say that, coming into the meeting, company 5 management and the top management of the 6 controlling -- the controller of the company and the 7 outside advisors to the company had considered the 8 potential call right and had already done what the 9 board was then directing them to do, but now there was 10 going to be a public disclosure about something that 11 was already under consideration; correct? 12 A. That is not accurate. The company had 13 not done what the board directed them to do. They had 14 initial activities around understanding what the 15 transaction is. As I've told you, neither I and I 16 believe neither Ms. Jackson or Mr. Lamp had ever done 17 a transaction like this. So, absolutely, I would have 18 expected us to gotten up to speed on it. 19 But to imply that we had done 20 everything and it was a fait accompli, that's not 21 accurate at all. There was a tremendous amount of 22 work that took place after the board had directed us 23 to act following the date of this meeting. 24 Q. Okay. So the minutes say the company</p>	<p style="text-align: right;">709</p> <p>1 Q. Okay. But putting aside the public 2 disclosure, the board direction is to consider the 3 potential call right. And, according to the minutes, 4 the company is being asked to consider a potential 5 that they had not "previously considered, evaluated or 6 contemplated." Correct? 7 A. I guess it depends on how you 8 interpret the "considered, evaluated." We certainly 9 had been preparing to answer questions from the board 10 about what a potential transaction like that would 11 look like, prior to the date of the meeting. 12 But until the direction of the board, 13 that was, from my perspective, from a governance 14 perspective, how we started moving down the 15 consideration process which, as you know, is very 16 involved. And we have very complex debt agreements 17 that we have to evaluate to determine whether we can 18 even effect a call transaction under those debt 19 agreements. 20 So there's a lot that goes into it. 21 So I think this certainly is the beginning process for 22 that, for us, from a technical perspective. 23 Q. Let's switch subjects. This is, like, 24 a very yes-no question. You were involved in</p>
<p style="text-align: right;">708</p> <p>1 had not "previously considered, evaluated or 2 contemplated the exercise of the call," but at the 3 conclusion of the board meeting they're being directed 4 to "consider the potential Call Right." Right? 5 A. Correct. 6 Q. Okay. But as reflected in your text 7 messages, Mr. Lynn, Mr. Icahn, Mr. Lamp, Ms. Jackson, 8 Grant Thornton, and Ramey Layne from Vinson & Elkins 9 had all been considering the potential exercise of the 10 call right; correct? 11 A. They were preparing for it. From my 12 perspective, from a governance perspective, until the 13 board directs us, we can do all of the preparation we 14 want to, but that is the critical portion. 15 When we talk about the board 16 considering the call, that is the trigger, in my mind, 17 for the public disclosure. Not the company preparing 18 or even -- obviously, Mr. Icahn is our controlling 19 stockholder. We do certainly care what our 20 stockholders think, in particular our controlling 21 stockholder. But from my perspective, from a 22 governance perspective, the action of the board and 23 the direction of the board is critical in this 24 circumstance.</p>	<p style="text-align: right;">710</p> <p>1 discussions about Janice DeVelasco's Form 4; correct? 2 A. Yes. 3 Q. Or Form 4s, generally; correct? 4 A. Yes. 5 Q. Okay. Now, I'm going to -- I'd like 6 to direct you, in the book is JX 1090. 7 MR. FRIEDLANDER: Which, just for the 8 benefit of the Court, JX 1090 is a giant privilege 9 log. So what we have here is in native format. So 10 this is an excerpt of certain references. 11 THE WITNESS: Okay. 12 Q. So I recognize this subject matter is 13 privileged. But I just want to -- 14 A. Sure. 15 Q. -- sort of asking you a yes-no. 16 The items in this excerpt in front of 17 you, from 1090, all reflect communications respecting 18 Janice DeVelasco and the Form -- her Form 4s; correct? 19 A. Correct. 20 Q. And the first one is December 26th, 21 2018, and you're copied on that; correct? 22 A. Correct. 23 Q. Now, if we turn to JX 902, that is 24 Ms. DeVelasco's Form 4 signed on January 15th, 2019,</p>

<p style="text-align: right;">711</p> <p>1 right?</p> <p>2 A. Correct.</p> <p>3 Q. And maybe we can blow up this tiny</p> <p>4 print. Under -- okay. So the transactions referred</p> <p>5 to are in March, May, August, and November 2018.</p> <p>6 Right?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And in tiny, tiny print,</p> <p>9 "Explanation of Responses:" -- if we can highlight</p> <p>10 that. That's, like, Footnote 1, right below the</p> <p>11 chart.</p> <p>12 A. Yep, I see it.</p> <p>13 Q. Okay. I believe it says, "The Common</p> <p>14 Units were acquired in connection with a distribution</p> <p>15 reinvestment election previously made by the reporting</p> <p>16 person. A Form 4 relating to the acquisition of these</p> <p>17 Common Units was not timely filed by the Reporting</p> <p>18 Person due to an administrative error."</p> <p>19 A. Correct.</p> <p>20 Q. Correct?</p> <p>21 So this is a Form 4 filed on</p> <p>22 January 15th, 2019, regarding transactions that</p> <p>23 happened in 2018?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">713</p> <p>1 are held of record by the Ruben P. DeVelasco Living</p> <p>2 Trust ..., for which the reporting person serves as a</p> <p>3 co-trustee, and in such capacity may be deemed to</p> <p>4 beneficially own the common units held by the Living</p> <p>5 Trust. These securities were previously incorrectly</p> <p>6 reported as held directly by the reporting person."</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. And just yes or no, you were involved</p> <p>10 in communications about Ms. DeVelasco's Form 4 for</p> <p>11 that period from the end of December through</p> <p>12 January 31, 2019; correct?</p> <p>13 A. That's not completely correct. I was</p> <p>14 copied on an email in December. This Form 4 was</p> <p>15 handled by my former assistant general counsel without</p> <p>16 my review prior to filing. I, at some point</p> <p>17 thereafter, learned -- my pattern and practice is</p> <p>18 always, in the event that there is indirect holdings,</p> <p>19 to indicate that on Form 4s. If you look at Form 4s</p> <p>20 I've filed for every prior company for which I served</p> <p>21 as general counsel, that is absolutely my process.</p> <p>22 And I came to find out later that my</p> <p>23 assistant general counsel had, I believe, conferred</p> <p>24 with outside counsel and made an election not to make</p>
<p style="text-align: right;">712</p> <p>1 Q. Right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And then if we turn to JX 967,</p> <p>4 it's a Form 4 signed by Ms. DeVelasco on January 29th,</p> <p>5 2019; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And this -- the transaction being</p> <p>8 referenced in Footnote 1 is the call right. I'm not</p> <p>9 going to read it all, but if you can see --</p> <p>10 A. Yeah. Yeah. I'm familiar with these</p> <p>11 two Form 4s, yes.</p> <p>12 Q. Okay. So it's her Form 4 regarding</p> <p>13 the call right; right?</p> <p>14 A. Correct.</p> <p>15 Q. And if we turn to JX 983, this is a</p> <p>16 Form 4 filed two days later on January 31, 2019;</p> <p>17 right?</p> <p>18 A. Correct.</p> <p>19 Q. And this is by Ms. DeVelasco, and it</p> <p>20 relates to the same transaction, the call right?</p> <p>21 A. Correct.</p> <p>22 Q. Except now, if we look at Footnote 1</p> <p>23 and can blow it up -- it's really tiny print on the</p> <p>24 second page -- it says, "The report[ing] securities</p>	<p style="text-align: right;">714</p> <p>1 that indication, which is contrary to how I generally</p> <p>2 prefer. I prefer to footnote Form 4s to ensure that</p> <p>3 we're always very clear about the nature of the</p> <p>4 transaction. And so I wasn't involved in those</p> <p>5 earlier discussions.</p> <p>6 If you see, I wasn't even a copy on</p> <p>7 most of this list. And it wasn't until later on where</p> <p>8 I became aware of this error. Obviously, it was a</p> <p>9 very frustrating experience for me. But that's really</p> <p>10 the origin and history of what transpired with respect</p> <p>11 to that Form 4.</p> <p>12 Q. Okay. So you were involved on</p> <p>13 December 26, and then --</p> <p>14 A. And I'm not -- like I said, I received</p> <p>15 it. I can't say that I actually reviewed it. I get a</p> <p>16 tremendous amount of emails and have to rely on my</p> <p>17 attorneys that work for me to manage things. So I</p> <p>18 certainly can't say today that I recall even reviewing</p> <p>19 the email on which I was copied on that December date.</p> <p>20 I just don't recall.</p> <p>21 Q. Were you made aware that between --</p> <p>22 right before January 31st that Ms. DeVelasco's Form 4s</p> <p>23 were the subject of litigation filed in this Court?</p> <p>24 A. Yeah, I was made -- absolutely made</p>

<p style="text-align: right;">715</p> <p>1 aware of that. I don't recall the date, but probably</p> <p>2 when it was filed.</p> <p>3 Q. Okay.</p> <p>4 MR. FRIEDLANDER: I have no more</p> <p>5 questions. Thank you.</p> <p>6 THE COURT: Thank you,</p> <p>7 Mr. Friedlander.</p> <p>8 Mr. Raju.</p> <p>9 MR. RAJU: Thank you, Your Honor.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. RAJU:</p> <p>12 Q. Hello, Ms. Buhrig.</p> <p>13 A. Hello.</p> <p>14 Q. Mr. Buhrig, can you describe your</p> <p>15 educational background, please.</p> <p>16 A. Sure. Got my undergrad from the</p> <p>17 University of Michigan and my law degree from the</p> <p>18 University of Miami.</p> <p>19 Q. And could you describe for me your</p> <p>20 employment history/work history since then.</p> <p>21 A. Sure. Out of law school I was --</p> <p>22 actually started as a litigator. But my -- the firm I</p> <p>23 was working for had one client who was a small,</p> <p>24 private oil company based in El Paso, Texas. And so I</p>	<p style="text-align: right;">717</p> <p>1 Andeavor, as it became known in 2017.</p> <p>2 After that I moved to Nashville to</p> <p>3 serve as a general counsel of a company called Delek.</p> <p>4 And I served there -- I was not there for very long</p> <p>5 until Dave Lamp, for whom I served as general counsel</p> <p>6 at NTI, called and talked to me about coming to join</p> <p>7 him at CVR. So I made that commitment, but I ended up</p> <p>8 staying for a long transition period.</p> <p>9 I gave the commitment to the CEO of</p> <p>10 Delek that I would stay until my replacement was</p> <p>11 found, hired, and onboarded and transitioned. So I</p> <p>12 ended up -- total, I think I was at Delek for about</p> <p>13 nine months. And then I moved to Houston and joined</p> <p>14 CVR.</p> <p>15 Q. When did you join CVR?</p> <p>16 A. July of 2018.</p> <p>17 Q. Ms. Buhrig, how much of your work</p> <p>18 experience involved MLPs, master limited partnerships?</p> <p>19 A. Significant.</p> <p>20 Q. And of the MLPs you've worked for,</p> <p>21 based on what you just said, include WNRL?</p> <p>22 A. Yeah, so I was very involved. It was</p> <p>23 kind of my baby, the IPO of WNRL logistics, which we</p> <p>24 did in 2013. And then we -- immediately there was</p>
<p style="text-align: right;">716</p> <p>1 worked on their matters with -- along with my law</p> <p>2 partner.</p> <p>3 And in 2005, I moved from Miami to</p> <p>4 El Paso, Texas, to take the company through IPO. We</p> <p>5 IPO in January of 2006. That company was Western</p> <p>6 Refining. And I remained with them or their</p> <p>7 affiliates until they were sold to Tesoro in 2017.</p> <p>8 So during the pendency of that time, I</p> <p>9 was involved in the IPO of WNRL in '13. And then also</p> <p>10 in '13, we acquired controlling interest of a company</p> <p>11 called Northern Tier Energy.</p> <p>12 Right after that, in early '14, I</p> <p>13 moved over -- I was assistant general counsel at</p> <p>14 Western. I moved over to serve as the general counsel</p> <p>15 of NTI until there was a merger of that entity back</p> <p>16 with Western Refining, which was its controlling</p> <p>17 entity.</p> <p>18 After that time, I took over, actually</p> <p>19 a nonlegal position as a senior vice president of</p> <p>20 services, responsible for what I call all kind of</p> <p>21 legal-leaning functions. So human resources,</p> <p>22 procurement supply chain, risk management, IT -- which</p> <p>23 was a new one for me. And I held that role until</p> <p>24 Western was acquired by a company called Tesoro</p>	<p style="text-align: right;">718</p> <p>1 sort of an overlap of transactions when we acquired</p> <p>2 controlling interested in NTI, which was a variable</p> <p>3 MLP.</p> <p>4 And then at Delek, when I joined,</p> <p>5 they'd had MLPs, so experience with MLPs there. And</p> <p>6 then, of course, CVI, we had two. And now we still</p> <p>7 have one MLP in our fertilizer business.</p> <p>8 Q. When you first joined CVR companies,</p> <p>9 what was your title and what was your role with the</p> <p>10 various companies?</p> <p>11 A. The same title, EVP, general counsel,</p> <p>12 secretary. And I'm also the compliance officer. So I</p> <p>13 have responsibility for all legal functions of the</p> <p>14 organization. And then I have -- at the time it was</p> <p>15 five business unit -- business areas reporting to me.</p> <p>16 So human resources, corporate affairs, risk management</p> <p>17 which relates to the procurement of insurance and</p> <p>18 management of claims, compliance, of course. And then</p> <p>19 also we had aviation at the time, which we no longer</p> <p>20 have.</p> <p>21 Q. And you have this title with three</p> <p>22 public companies; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. What did you do to get up to speed</p>

<p style="text-align: right;">719</p> <p>1 once you joined?</p> <p>2 A. Yeah, I have -- kind of having done</p> <p>3 this a couple times now at public companies, you sort</p> <p>4 of get a pattern for it. So, kind of first and</p> <p>5 foremost, I spend my time, you know, one, meeting the</p> <p>6 other leadership team, meeting my staff. And then</p> <p>7 kind of going through all of the business</p> <p>8 responsibilities really starting with compliance. I</p> <p>9 mean, that's how I sleep at night. Do we have an</p> <p>10 effective compliance program? Is there a strong code</p> <p>11 of conduct and business ethics?</p> <p>12 I walk around. Do we have posters for</p> <p>13 a hotline that people can call and raise concerns? I</p> <p>14 make sure that every one of the 1,500 employees has</p> <p>15 access to my mobile number. We have 24/7 facilities,</p> <p>16 so we need to have the guy that's on at 2:00 in the</p> <p>17 morning and that might be worried about something from</p> <p>18 a compliance perspective be able to pick up the phone</p> <p>19 and call me.</p> <p>20 So that's sort of step one. Then it's</p> <p>21 sort of do an assessment of all of that, our outside</p> <p>22 counsel slates, and do all of my reporting</p> <p>23 responsibilities.</p> <p>24 Q. Okay. Mr. Friedlander asked you about</p>	<p style="text-align: right;">721</p> <p>1 why they were involved and participated in the board</p> <p>2 meeting?</p> <p>3 A. They were advising the GP board with</p> <p>4 respect to the exchange offer.</p> <p>5 Q. Was it your understanding that Stinson</p> <p>6 and Morris Nichols were involved with the board prior</p> <p>7 to your start at the company?</p> <p>8 A. Yes. They were already engaged at the</p> <p>9 time I joined.</p> <p>10 Q. What do you recall about the substance</p> <p>11 of the discussions at this board meeting?</p> <p>12 A. Primarily, it was around what --</p> <p>13 MR. FRIEDLANDER: Your Honor, I just</p> <p>14 would like to interject that to the extent there's an</p> <p>15 attempt to elicit any attorney-client discussions,</p> <p>16 that would be inappropriate because we were never</p> <p>17 given access to any privileged material about the</p> <p>18 meeting.</p> <p>19 THE COURT: That's fair,</p> <p>20 Mr. Friedlander.</p> <p>21 Mr. Raju.</p> <p>22 MR. RAJU: I completely agree that's</p> <p>23 fair, Your Honor. And I'd like to clarify, I'm not</p> <p>24 asking for the substance of any legal communications.</p>
<p style="text-align: right;">720</p> <p>1 a July 9th board meeting. Do you recall that?</p> <p>2 A. I do, yes.</p> <p>3 Q. Let's turn to JX 403. We'll put it up</p> <p>4 on the screen, and I think it's also in the witness</p> <p>5 binder Mr. Friedlander provided.</p> <p>6 What do you remember about this</p> <p>7 meeting?</p> <p>8 A. Like I said, not necessarily very</p> <p>9 specifics, but I had been at the company for -- within</p> <p>10 a week, and found myself rather unexpectedly leading a</p> <p>11 board meeting on a transaction that had commenced</p> <p>12 prior to my joining the company. At the time I had</p> <p>13 only met one of our directors.</p> <p>14 So, certainly, it was very -- I guess</p> <p>15 most general counsels, I think, have very high</p> <p>16 standards for themselves. I don't think there's a</p> <p>17 general counsel alive that wouldn't characterize that</p> <p>18 experience, given that timing, as being rough.</p> <p>19 Q. Were outside lawyers for the board in</p> <p>20 attendance at that meeting?</p> <p>21 A. Yes.</p> <p>22 Q. And what were the firms involved?</p> <p>23 A. Stinson and Morris Nichols.</p> <p>24 Q. And what is your understanding as to</p>	<p style="text-align: right;">722</p> <p>1 I'm asking for the substance of the discussion you</p> <p>2 recall without revealing privileged legal advice.</p> <p>3 THE WITNESS: Yes, sir, I absolutely</p> <p>4 don't intend to provide a disclosure of any legal</p> <p>5 advice.</p> <p>6 BY MR. RAJU:</p> <p>7 Q. What do you recall about the substance</p> <p>8 of the discussions at the July 9th board meeting?</p> <p>9 A. Primary discussions related to what to</p> <p>10 do with the Butler Hall letter, and specifically with</p> <p>11 respect to whether it should be publicly filed.</p> <p>12 Q. Did you have views as to what should</p> <p>13 be done with respect to the Butler Hall letter?</p> <p>14 A. I did, yes.</p> <p>15 Q. Did those views evolve over time?</p> <p>16 A. They did.</p> <p>17 Q. What were those views?</p> <p>18 MR. FRIEDLANDER: Objection. We're</p> <p>19 asking a lawyer about her views about something that a</p> <p>20 board should or shouldn't do. This is exactly what</p> <p>21 we're not allowed to inquire into for the whole</p> <p>22 proceedings of this case.</p> <p>23 MR. RAJU: Your Honor, I'm not trying</p> <p>24 to elicit technical legal advice. I'm happy to</p>

<p style="text-align: right;">723</p> <p>1 caution the witness, to the extent it relates to</p> <p>2 technical legal advice rather than just general</p> <p>3 corporate governance issues, that she ought not to</p> <p>4 testify as to those matters.</p> <p>5 THE COURT: It is a very fine line,</p> <p>6 Mr. Raju. And I think you adamantly defended it</p> <p>7 throughout this litigation.</p> <p>8 So I'll let the line of questioning</p> <p>9 proceed. But, Mr. Friedlander, if he opens the door,</p> <p>10 you can walk through it.</p> <p>11 MR. FRIEDLANDER: Okay. But --</p> <p>12 THE COURT: I know you haven't gotten</p> <p>13 to do so to date, and it makes it problematic, but</p> <p>14 let's see how this plays out.</p> <p>15 MR. FRIEDLANDER: Thank you, Your</p> <p>16 Honor.</p> <p>17 THE WITNESS: So one of the things, I</p> <p>18 guess, what I would talk about is sort of what are the</p> <p>19 facts that I consider when I think about this issue.</p> <p>20 Would that be something that --</p> <p>21 MR. RAJU: You know what, I certainly</p> <p>22 don't want to open the door at this late stage, Your</p> <p>23 Honor. We've all tried to toe the line very</p> <p>24 carefully.</p>	<p style="text-align: right;">725</p> <p>1 Q. Do you recall there being any</p> <p>2 disagreement among anyone at the meeting with respect</p> <p>3 to that ultimate conclusion?</p> <p>4 A. No.</p> <p>5 Q. Ms. Buhrig, other than the issue of</p> <p>6 whether or not to publicly file the Butler Hall</p> <p>7 letter, do you recall any other substantive issues</p> <p>8 being discussed at this board meeting?</p> <p>9 A. I believe that Tracy had looked at the</p> <p>10 content of the letter because they gave some financial</p> <p>11 information in it. And I believe that she had talked</p> <p>12 to the board about her opinion of what the financial</p> <p>13 information that Butler Hall was talking about.</p> <p>14 Q. Other than that, anything else you</p> <p>15 recall of substance being discussed at this board</p> <p>16 meeting?</p> <p>17 A. No.</p> <p>18 Q. Do you recall any discussion of</p> <p>19 potentially delegating authority to a conflicts</p> <p>20 committee at this meeting?</p> <p>21 A. No.</p> <p>22 Q. If there were such a discussion, would</p> <p>23 you remember it?</p> <p>24 A. Absolutely.</p>
<p style="text-align: right;">724</p> <p>1 BY MR. RAJU:</p> <p>2 Q. So let me just ask the question: Did</p> <p>3 your views evolve over time?</p> <p>4 A. They did, yes.</p> <p>5 Q. Was Butler Hall the only shareholder</p> <p>6 communication that the board received from unitholders</p> <p>7 regarding the exchange offer?</p> <p>8 A. No.</p> <p>9 Q. Did you know whether the Butler Hall</p> <p>10 letter was already public?</p> <p>11 A. Yes.</p> <p>12 Q. How did you know or what did you know</p> <p>13 about whether the Butler Hall letter was already</p> <p>14 public?</p> <p>15 A. Well, we were advised it was public.</p> <p>16 We saw it. And then other unitholders sent</p> <p>17 communications indicating that -- discussing that. So</p> <p>18 clearly unitholders had seen the communication.</p> <p>19 Q. With respect to -- what is the</p> <p>20 ultimate conclusion the board reached with respect to</p> <p>21 what to do with respect to whether or not to file</p> <p>22 publicly the already public Butler Hall letter?</p> <p>23 A. Just to make sure I'm being very</p> <p>24 clear, they elected not to file it.</p>	<p style="text-align: right;">726</p> <p>1 Q. Do you recall any discussion of the</p> <p>2 board potentially changing its neutral stance at this</p> <p>3 board meeting?</p> <p>4 A. No.</p> <p>5 Q. If there had been such a discussion,</p> <p>6 is that something you would remember?</p> <p>7 A. Yes.</p> <p>8 Q. Ms. Buhrig, if you go to the bottom</p> <p>9 paragraph under Section 2, I guess on the second page.</p> <p>10 A. Okay.</p> <p>11 Q. If you could look at the last five</p> <p>12 lines of that the bottom paragraph. Do you see where</p> <p>13 it says, "The Board affirmed that it continued to</p> <p>14 express no opinion regarding the Transaction and</p> <p>15 expressed concern that filing the shareholder</p> <p>16 communications or taking further action relating</p> <p>17 thereto could be construed as an endorsement of such</p> <p>18 communications"?</p> <p>19 A. Yes.</p> <p>20 Q. What did you mean by saying "The Board</p> <p>21 affirmed"?</p> <p>22 A. What I referenced before. It</p> <p>23 wasn't -- we didn't poll, we didn't take a vote, we</p> <p>24 didn't ask the specific directors. Just discussion</p>

<p style="text-align: right;">727</p> <p>1 topic. And when everyone is in general consensus and 2 there are no dissenting opinions, I would generally 3 reference it that way. 4 Q. Let's turn topics. 5 Mr. Friedlander asked you about 6 working with Vinson & Elkins at CVR. 7 Do you recall that? 8 A. Yes. 9 Q. Do you know how it came about that you 10 began to work with Vinson & Elkins while at CVR? 11 A. Yes. So when we talked about kind of 12 what my sort of process is when I step in, one of the 13 very first things I do is get outside counsel list. 14 Get a sense of who's working for the company, what 15 their rate structure looks like. And then I generally 16 have calls with each of them to understand proficiency 17 and how they're working for the company. 18 So I did that not long after joining 19 CVR, as I've done that at the other companies that 20 I've stepped in for. And given that I've spent my 21 entire career in this industry, you have a lot of 22 lawyers that you work with a lot. So one of the other 23 things I like to do is sort of amalgamate all of our 24 legal business and go out for what we call in our</p>	<p style="text-align: right;">729</p> <p>1 was Ramey Layne. 2 Q. And do you recall Mr. Beck telling you 3 that it was because Mr. Layne had a preexisting 4 relationship with CVR? 5 A. Uh-huh. Yeah. 6 Q. If we could turn next to JX 724. 7 We'll put it up on the screen for you, Ms. Buhrig. 8 MR. RAJU: Can you highlight the top 9 part. 10 Q. What is this document, Ms. Buhrig? 11 A. Looks like -- actually, my vision 12 is -- don't have my readers with me, so just a moment. 13 Q. It's on the screen. 14 A. Perfect. Looks like the 8-K from 15 November 26. 16 Q. Okay. And if you could go to the 17 second page and blow up the top part. 18 A. Perfect. Thank you. 19 Q. And what is this 8-K again? Can you 20 describe for me what this is? 21 A. This is the 8-K discussing the change 22 with respect to considering the call. 23 Q. And who filed this 8-K? 24 A. We did, CVR.</p>
<p style="text-align: right;">728</p> <p>1 field requests for production. It helps to drive down 2 rates and get people to bid against one another to 3 ensure we're getting the best legal work for the most 4 efficient rate structure. 5 So I had worked with Vinson & Elkins 6 for more than a decade at my prior companies. So they 7 were certainly one of the first people I called to 8 say, "Hey, you know, I'm going to go through this RFP 9 process. I would love for you to bid and to work on 10 our business." 11 Q. And who at Vinson & Elkins did you 12 reach out to? Was there a particular person? 13 A. Yeah, Alan Beck is who I worked with 14 for many, many years over the last decade plus. 15 Q. And what came about of your 16 communications with Mr. Beck? 17 A. He mentioned to me that CVR already 18 had an existing relationship with Vinson & Elkins, 19 which I didn't know. And having been in private 20 practice, the idea of relationship partner is sort of, 21 I think, very important to partners. And so he let me 22 know he couldn't actually be the person responsible 23 or, you know, helping me pitch our business. That 24 would have to go to the relationship partner, which</p>	<p style="text-align: right;">730</p> <p>1 Q. And which entity filed it? 2 A. The 8-K was filed by CVI. 3 Q. That's CVR Energy, Inc.? 4 A. Yes, correct. 5 Q. Were there also 13Ds filed on this 6 day? 7 A. Yes. 8 Q. And who were the 13Ds filed by? 9 A. It was filed by Icahn. 10 Q. And by "Icahn," you mean IEP? 11 A. Yeah. IEP. I'm not sure who the 12 ultimate top line reporting entity is, but they were 13 filing a 13D on that same day, which is ... 14 Q. And I just want a yes-or-no answer to 15 this: To your knowledge, were legal issues considered 16 in connection with the decision to file the 13Ds and 17 the 8-K? 18 A. Yes. 19 Q. Let me go next to JX 9 -- just one 20 second. Let's go to JX 887. 21 Ms. Buhrig, what is this document? 22 A. Minutes of the board of CVR Energy, 23 Inc., from January 11, 2019. 24 Q. Okay. And did you attend this</p>

<p style="text-align: right;">731</p> <p>1 meeting?</p> <p>2 A. Yes, I did.</p> <p>3 Q. If we go to the second page of the</p> <p>4 meeting, the second page of the minutes, do you see</p> <p>5 the section that talks about "Call Right"?</p> <p>6 A. Yes.</p> <p>7 Q. The second paragraph under that, it</p> <p>8 says, "Following additional discussion" -- and it</p> <p>9 continues -- "the Board considered delegation to the</p> <p>10 Special Committee of the Board"</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Why was any issues relating to the</p> <p>14 call right delegated to a special committee?</p> <p>15 A. Administrative efficiency.</p> <p>16 Q. Okay. So just administrative</p> <p>17 convenience?</p> <p>18 A. When the board generally has</p> <p>19 discussions, they're aware of the transaction. That's</p> <p>20 something that's not uncommon. It can sometimes be</p> <p>21 difficult to impanel very busy directors. So this is</p> <p>22 a very common thing that we and other companies do</p> <p>23 from an efficiency perspective.</p> <p>24 Q. Okay. In the first paragraph, do you</p>	<p style="text-align: right;">733</p> <p>1 the public.</p> <p>2 Q. Let's turn next to JX 912.</p> <p>3 Ms. Buhrig, can you identify this document for us?</p> <p>4 A. Minutes of the CVR Refining GP, LLC,</p> <p>5 board from January 17th, 2019.</p> <p>6 Q. Okay. And there's -- starting at No.</p> <p>7 3 on the second page, Section 3, it talks about</p> <p>8 "Approval of Resolutions."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Who prepared these resolutions?</p> <p>12 A. Vinson & Elkins.</p> <p>13 Q. Did you review these resolutions?</p> <p>14 A. I reviewed them.</p> <p>15 Q. The first "whereas" clause talks about</p> <p>16 a defined term "Call Purchase" and also has "Call</p> <p>17 Right."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And then if you look at the bottom of</p> <p>21 page 2, the last "whereas" clause that carries over</p> <p>22 into page 3, it talks about an "IEP purchase."</p> <p>23 Do you see that?</p> <p>24 A. Yes. Well, I don't see it yet on my</p>
<p style="text-align: right;">732</p> <p>1 see it talks about Ms. Jackson? That's Tracy Jackson,</p> <p>2 the CFO; correct?</p> <p>3 A. Correct.</p> <p>4 Q. She led the board in a discussion</p> <p>5 regarding the call right.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it appears about four or five</p> <p>9 lines down that she also "reported regarding the</p> <p>10 number of common units [held outstanding]" -- I'm</p> <p>11 sorry -- "held by the public as well as by American</p> <p>12 Entertainment Properties Corp. and Icahn Enterprises</p> <p>13 Holdings"</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What do you recall regarding the</p> <p>17 discussion regarding the call right and the CVRR units</p> <p>18 held by IEP and its subsidiaries?</p> <p>19 A. So the call right was not available to</p> <p>20 affiliates, which is what IEP and AEPC are. So with</p> <p>21 respect to the transaction, we wanted to bring in all</p> <p>22 of the outstanding common units. And so entered into</p> <p>23 an agreement with IEP where we would acquire theirs,</p> <p>24 common units, in the same terms as those offered to</p>	<p style="text-align: right;">734</p> <p>1 screen, but I'm familiar with that.</p> <p>2 Q. Oh, sorry.</p> <p>3 A. That's okay.</p> <p>4 Yes, I see it.</p> <p>5 Q. Yep.</p> <p>6 A. This is fine, I can see it this way.</p> <p>7 It's no problem.</p> <p>8 MR. RAJU: Okay. So that's the bottom</p> <p>9 part, and then the top carryover part. There we go.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. RAJU:</p> <p>12 Q. Do you see where it says -- defines</p> <p>13 the "IEP purchase" on the top of page 3?</p> <p>14 A. Yes.</p> <p>15 Q. Then it says, "together with the Call</p> <p>16 Purchase ...," it defines those combined terms as "the</p> <p>17 'Purchase.'"</p> <p>18 A. Correct.</p> <p>19 Q. The next "whereas" clause, it says,</p> <p>20 "Whereas, in the event the Company exercises the Call</p> <p>21 Right and completes the Purchase, the Partnership will</p> <p>22 be wholly owned, directly and indirectly, by the</p> <p>23 Company."</p> <p>24 Do you see that?</p>

<p style="text-align: right;">735</p> <p>1 A. Yes.</p> <p>2 Q. Okay. The next section, it says,</p> <p>3 "Section 16b-3 Matters."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. The first "whereas" clause under that</p> <p>7 section talks about "officers and directors of the</p> <p>8 General Partner identified on Schedule A," and defines</p> <p>9 them to be "Insiders."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And then the third "whereas" clause,</p> <p>13 under that says, "Whereas, the dispositions of the</p> <p>14 Equity Securities by Insiders in connection with the</p> <p>15 Purchase pursuant to the exercise of the Call</p> <p>16 Right...", and it defines it to be "the</p> <p>17 'Dispositions.'"</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, let's go to Schedule A.</p> <p>21 Is this your understanding, that the call right was</p> <p>22 being exercised to acquire the units held by directors</p> <p>23 and officers of the general partner?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">737</p> <p>1 Q. Let's go to the last page of this.</p> <p>2 The very last page.</p> <p>3 A. Yes. That is the correct Schedule A.</p> <p>4 Q. Okay. And this lists two people on</p> <p>5 Schedule A that own CVRR units; correct?</p> <p>6 A. Correct.</p> <p>7 Q. That's Mr. Langham?</p> <p>8 A. Correct.</p> <p>9 Q. And Ms. DeVelasco?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Ms. Buhrig, who was the -- CVR</p> <p>12 Refining is -- was a master limited partnership;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And it had a general partner?</p> <p>16 A. Yes.</p> <p>17 Q. Who was CVRR's general partner?</p> <p>18 A. CVR Refining GP, LLC.</p> <p>19 Q. And CVR Refining GP, LLC, as the name</p> <p>20 suggests, is a limited liability company?</p> <p>21 A. Correct.</p> <p>22 Q. And is it governed by a limited</p> <p>23 liability company agreement?</p> <p>24 A. It is.</p>
<p style="text-align: right;">736</p> <p>1 Q. If you go to Schedule A.</p> <p>2 MR. RAJU: Can you turn to Schedule A,</p> <p>3 the last page?</p> <p>4 Q. Do you see the Schedule A there,</p> <p>5 Ms. Buhrig?</p> <p>6 A. I do. I see it, yes.</p> <p>7 Q. Okay. There's errors on that page;</p> <p>8 correct?</p> <p>9 A. There is.</p> <p>10 Q. And what are the errors?</p> <p>11 A. For example, I did not own any common</p> <p>12 units. So that's certainly inaccurate to me, and I</p> <p>13 think it's inaccurate to most other entries on this.</p> <p>14 This was an inaccurate exhibit prepared by my</p> <p>15 assistant general counsel.</p> <p>16 Q. Was this inaccurate exhibit corrected?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Let's turn to JX 913.</p> <p>19 MR. RAJU: You can blow up the top of</p> <p>20 the first page.</p> <p>21 Q. Is this the correction to that</p> <p>22 inaccurate Schedule A?</p> <p>23 A. That's the intro. I need to look at</p> <p>24 the next page to affirm if it's the accurate schedule.</p>	<p style="text-align: right;">738</p> <p>1 Q. Okay. Let's go to JX 27. What is</p> <p>2 this document, Ms. Buhrig?</p> <p>3 A. It's the LLC agreement of CVR Refining</p> <p>4 GP, LLC.</p> <p>5 Q. Okay. Do you have a general idea of</p> <p>6 how the general partner -- let me ask this: Do you</p> <p>7 have a general idea how the limited partnership, the</p> <p>8 MLP of CVRR is governed by the general partner?</p> <p>9 A. Yes.</p> <p>10 Q. How is it governed?</p> <p>11 A. It's governed by the board of</p> <p>12 directors of CVR Refining GP, LLC, who acts in certain</p> <p>13 of its circumstances on behalf of the partnership.</p> <p>14 Q. Do you also understand generally the</p> <p>15 governance of the general partner entity itself?</p> <p>16 A. Yes.</p> <p>17 Q. And what is your general understanding</p> <p>18 of that?</p> <p>19 A. I'd put it in two buckets. There's</p> <p>20 actions that the GP takes, either as sole member or</p> <p>21 acting on its own behalf. And then the second bucket</p> <p>22 is actions they take when they're acting on behalf of</p> <p>23 the partnership.</p> <p>24 Q. Okay. If we can go to page 9, the</p>

<p style="text-align: right;">739</p> <p>1 bottom of page 9. It's page 12 of 23 of the JX. 2 Do you see -- and this is 3 Section 5.6(c). It says, "Member-Managed Decisions." 4 Do you see that? 5 A. Yes. 6 Q. Okay. 7 MR. RAJU: And then let's go to the 8 top of the next page, page 10, which is 13 of 23. And 9 highlight the first two paragraphs, Scott. Thanks. 10 Q. And it continues. Do you see that in 11 that second paragraph it says, "In addition, 12 notwithstanding anything herein to the contrary, the 13 Sole Member shall have exclusive authority to cause 14 the Company to exercise the rights of the 15 Company" 16 And then it continues at the end. It 17 says, "For illustrative purposes, a list of provisions 18 where the Company would be acting in its individual 19 capacity or is permitted to act in its sole discretion 20 is contained in Appendix A hereto." 21 Do you see that? 22 A. Yes. 23 Q. Let's go to the last page of this, 24 which is page 23 of 23, and Appendix A. This reads,</p>	<p style="text-align: right;">741</p> <p>1 under -- were there any operating entities under CVRR 2 while it was a publicly traded MLP? 3 A. Several. 4 Q. Okay. And what did those operating 5 subsidiaries entail? 6 A. Generally they're structured so that 7 assets and operations are within wholly owned 8 subsidiaries of that entity. So Coffeyville Resources 9 Refining and Marketing, LLC, that owns and operates 10 our Coffeyville refinery. Wynnwood Refining Company, 11 LLC, operates our Wynnwood refinery and so on. 12 Q. Ms. Buhrig, who is Janice DeVelasco? 13 A. She's the vice president of 14 environmental, health, safety, and security. 15 Q. And was that her -- and how long has 16 she been at CVR, do you know? 17 A. I'm not sure. A long time. 18 Q. Okay. 19 A. I'm not sure exactly. 20 Q. Okay. What's Ms. DeVelasco's role at 21 CVR? 22 A. She generally works with all of our 23 operating assets and the staffing and refinery 24 managers there to help on environmental, safety and</p>
<p style="text-align: right;">740</p> <p>1 "The following are provisions of the Partnership 2 Agreement where the Company is permitted to act in its 3 sole discretion or would be acting in its individual 4 capacity:" 5 And the last item on there is Section 6 15.1. And is that the call right? 7 A. Correct, yes. 8 Q. With respect to the general partner 9 making any determination to exercise or assign the 10 call right, who would have the authority to act on 11 behalf of the general partner? 12 A. I put it in that first bucket; it's 13 action by its sole member. 14 Q. And who was the sole member of the 15 general partner entity? 16 A. At the time, I think the name was CVR 17 Refining Holdings, LLC. I know we've since changed 18 the name. But I believe that was the name of the sole 19 member at the time. 20 Q. And who was that entity owned by? 21 A. CVR Energy. 22 Q. Okay. It's a wholly owned subsidiary? 23 A. Yes. 24 Q. Are there any operating entities</p>	<p style="text-align: right;">742</p> <p>1 security measures. 2 Q. Is her role at the operating 3 subsidiaries of the CVRR business? 4 A. Yes. 5 Q. What role does Ms. DeVelasco have with 6 respect to the general partner? 7 A. None. The only engagement at all at 8 the GP level is, for a time, our publicly traded 9 entities did have an EHS committee of the board. And 10 so I would bring her to help her talk about EHS 11 matters. 12 But other than that, she has no 13 involvement at all at the GP level or the partnership 14 level and no authority to bind any of those entities. 15 Q. Does she attend -- to your knowledge, 16 has she ever attended a general partner board meeting? 17 A. No. 18 Q. Does the general partner itself 19 conduct any operations? 20 A. No. 21 Q. Let's turn to JX 52. This is fairly 22 small print, Ms. DeVelasco [sic]. 23 Do you recognize this document? 24 A. Yes.</p>

<p style="text-align: right;">743</p> <p>1 Q. And what is this document?</p> <p>2 A. It is a delegation of authority matrix</p> <p>3 that governs what the officers can and can't do</p> <p>4 without going to the board.</p> <p>5 Q. Ms. Buhrig, did CVR have an insider</p> <p>6 trading policy?</p> <p>7 A. Yes.</p> <p>8 Q. Let's turn to JX 22. What is this</p> <p>9 document, Ms. Buhrig?</p> <p>10 A. It is the insider trading policy.</p> <p>11 Q. Whose responsibility is it to comply</p> <p>12 with an insider trading policy?</p> <p>13 A. Any person who's been designated an</p> <p>14 insider.</p> <p>15 Q. Do you recall ever giving any</p> <p>16 instructions to any employee or officer or director of</p> <p>17 CVR as to how they should trade or not trade</p> <p>18 securities?</p> <p>19 A. No.</p> <p>20 Q. Do you interface with directors,</p> <p>21 officers, or employees with respect to the trading of</p> <p>22 securities?</p> <p>23 A. Yes.</p> <p>24 Q. And what is the nature of how you</p>	<p style="text-align: right;">745</p> <p>1 directors, and employees as to potential disclosure</p> <p>2 requirements relating to their holdings in CVR</p> <p>3 entities?</p> <p>4 A. Yes. They're instructed to give me</p> <p>5 notice so that we can -- to the extent that they're</p> <p>6 Section 16 officers, because this list is more</p> <p>7 expansive than Section 16 -- so that I can ensure that</p> <p>8 filings are timely made.</p> <p>9 THE COURT: Mr. Raju, it is the</p> <p>10 lunchtime. Do you anticipate significant additional</p> <p>11 questions of Ms. Buhrig?</p> <p>12 MR. RAJU: I don't, Your Honor. May I</p> <p>13 just finish up with one or two questions of</p> <p>14 Ms. Buhrig?</p> <p>15 Thank you, Your Honor.</p> <p>16 BY MR. RAJU:</p> <p>17 Q. Do employees, officers, or directors,</p> <p>18 once they understand the disclosure requirements,</p> <p>19 sometimes choose, themselves, to not engage in certain</p> <p>20 trades so they don't have to then meet with you and</p> <p>21 comply with their disclosure requirements?</p> <p>22 A. Yes.</p> <p>23 MR. RAJU: Okay. No further</p> <p>24 questions.</p>
<p style="text-align: right;">744</p> <p>1 interface with directors, officers, and/or employees</p> <p>2 with respect to such?</p> <p>3 A. So the policy prohibits insiders from</p> <p>4 engaging in transactions that could be in violation of</p> <p>5 federal securities laws. And so I have a process that</p> <p>6 I instituted after joining CVR that provides kind of</p> <p>7 reminders and notifications to those people that are</p> <p>8 designated insiders.</p> <p>9 And then I actually do a formal</p> <p>10 interview process in the event that an insider wishes</p> <p>11 to engage in transactions in our securities, they have</p> <p>12 to sit down and have a discussion with me or my</p> <p>13 assistant general counsel to talk about it.</p> <p>14 But at the end of it, you know, I'm</p> <p>15 very careful to let them know this is just policy. So</p> <p>16 that if the SEC ever asks questions about a</p> <p>17 transaction, this is showing compliance with the</p> <p>18 company's policies. But the ultimate decision of</p> <p>19 whether to trade in securities is -- absolutely</p> <p>20 resides with and rests with the individual.</p> <p>21 So I'm very careful to ensure that</p> <p>22 they understand that. And that's generally what my</p> <p>23 process is around that policy.</p> <p>24 Q. Do you also inform officers,</p>	<p style="text-align: right;">746</p> <p>1 THE COURT: Thank you.</p> <p>2 Mr. Friedlander.</p> <p>3 MR. FRIEDLANDER: Very briefly.</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MR. FRIEDLANDER:</p> <p>6 Q. Ms. Buhrig, by the time the 8-K was</p> <p>7 issued, and by the time the board meeting of CVR</p> <p>8 Energy was held on November 26th, you knew that Ramey</p> <p>9 Layne had advised on the Boardwalk transaction; right?</p> <p>10 A. I don't recall specific timing around</p> <p>11 the Boardwalk transaction. I know Mr. Wales, in my</p> <p>12 deposition, showed me some email that had that as the</p> <p>13 subject. But, frankly, it wasn't really on my radar.</p> <p>14 So I know at some point I became aware</p> <p>15 of that, but I just don't remember specific timing.</p> <p>16 But I know at some point I was made aware of it.</p> <p>17 Q. Okay. Now, turning very briefly to</p> <p>18 Exhibit 724, which is the 8-K. It's the -- the word</p> <p>19 "contemplating" and "considering," they both have very</p> <p>20 highly stylized meanings to you; is that right,</p> <p>21 Ms. Buhrig?</p> <p>22 A. 724? Sorry.</p> <p>23 Q. Maybe if we can just blow up, on the</p> <p>24 second page, the first paragraph. You saw it on</p>

<p style="text-align: right;">747</p> <p>1 cross.</p> <p>2 A. Can you ask your question again.</p> <p>3 Q. If you look to the last sentence of</p> <p>4 the first paragraph, it begins, "Though CVI is now</p> <p>5 contemplating exercising the call right"</p> <p>6 A. Yes.</p> <p>7 Q. And so the word "contemplating." So</p> <p>8 the fact that Dave Lamp and Keith Cozza and Jesse Lynn</p> <p>9 had all been talking with Dave Lamp since September,</p> <p>10 had been looking at analyses of exercising the call</p> <p>11 right, that doesn't fall under the word</p> <p>12 "contemplating"?</p> <p>13 A. Well, not with respect to CVI, since,</p> <p>14 as I mentioned before, it's the direction of the board</p> <p>15 that really, from my perspective, sets governance</p> <p>16 process to where it goes from just thinking about it</p> <p>17 and being prepared, in the event that's something the</p> <p>18 board wants to proceed with, to the board directing us</p> <p>19 to do that. I thought we covered that.</p> <p>20 Q. Okay. But the way this 8-K is</p> <p>21 drafted, the first sentence refers to the fact that</p> <p>22 CVI had "previously disclosed" it "had no [] plans to</p> <p>23 exercise the call right." Then the board determines,</p> <p>24 next sentence, that "CVI should consider exercising</p>	<p style="text-align: right;">749</p> <p>1 "contemplating," because, as I mentioned, there's a</p> <p>2 tremendous amount of work that goes into figuring out</p> <p>3 if we can even do it, particularly with our debt</p> <p>4 covenants and that type of thing. So ...</p> <p>5 Q. Okay. But CVI contemplating</p> <p>6 something, that doesn't happen until the board</p> <p>7 determines that CVI should be considering it, even if</p> <p>8 they were previously evaluating it. That's your</p> <p>9 testimony?</p> <p>10 A. In this context, yes.</p> <p>11 Q. Okay.</p> <p>12 MR. FRIEDLANDER: I have no more</p> <p>13 questions.</p> <p>14 THE COURT: Thank you,</p> <p>15 Mr. Friedlander.</p> <p>16 Mr. Raju.</p> <p>17 MR. RAJU: Nothing further, Your</p> <p>18 Honor.</p> <p>19 THE COURT: All right. We'll take</p> <p>20 lunch. We'll resume a little later than 1:30, and</p> <p>21 we'll see you then. Thank you.</p> <p>22 (Witness excused.)</p> <p>23 (Luncheon recess taken at 12:37 p.m.)</p> <p>24</p>
<p style="text-align: right;">748</p> <p>1 this call right." And we talked about the word</p> <p>2 "consider" --</p> <p>3 A. Sure.</p> <p>4 Q. -- on direct.</p> <p>5 And now the next sentence says "CVI is</p> <p>6 now contemplating exercising the call right." But</p> <p>7 before, back in September, October, early in November,</p> <p>8 you're saying, were they contemplating it back then,</p> <p>9 without assurance that it might happen?</p> <p>10 A. Well, I don't know that they -- they</p> <p>11 were certainly evaluating. But until the board makes</p> <p>12 a decision that they're actually -- that is something</p> <p>13 that the board would contemplate. We can --</p> <p>14 Trust me, we look at transactions all</p> <p>15 the time. We get CIMs to buy refineries. I mean,</p> <p>16 that's something that happens every day. And we</p> <p>17 evaluate them. That certainly doesn't mean that it's</p> <p>18 ever a transaction that the board would say, "Yes, I</p> <p>19 want us to dedicate company time and resources to do."</p> <p>20 So until that board directs us to do</p> <p>21 that, we can contemplate or, you know -- that, to me,</p> <p>22 I put in a very, very different bucket than what</p> <p>23 happens once the board says, this is something.</p> <p>24 Now, of course, it still says</p>	<p style="text-align: right;">750</p> <p>1 AFTERNOON SESSION</p> <p>2 THE COURT: Please be seated.</p> <p>3 Mr. Gorris, would you like to call</p> <p>4 your next witness?</p> <p>5 MR. GORRIS: I would. Plaintiffs call</p> <p>6 Carl Icahn.</p> <p>7 THE COURT: Thank you.</p> <p>8 CARL C. ICAHN, having first beenduly</p> <p>9 affirmed, was examined and testified as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MR. GORRIS:</p> <p>12 Q. Good afternoon, Mr. Icahn. You should</p> <p>13 have a witness binder near you. I may refer to that.</p> <p>14 Do you have that?</p> <p>15 A. I can't hear you too well.</p> <p>16 Q. Mr. Icahn, good afternoon. By where</p> <p>17 you're seated, there should be a binder with a set of</p> <p>18 documents in that.</p> <p>19 Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. Great. I may refer to that in</p> <p>22 your testimony. I just want to make sure you have it.</p> <p>23 Mr. Icahn, you have lots of experience</p> <p>24 launching tender offers. Correct?</p>

<p style="text-align: right;">751</p> <p>1 A. Well, some. I don't launch that many, 2 but ... 3 Q. You've launched a number of tender 4 offers over your career. Right? 5 A. I would say so. 6 Q. Now, you decided the terms of CVR 7 Energy's exchange offer. Right? 8 A. It's a bad echo. Can you -- can you 9 either move over to that one? 10 THE COURT: He's not permitted, under 11 the safety precautions we have in place, Mr. Icahn. 12 Let's just try to speak up, 13 Mr. Gorris. 14 MR. GORRIS: Sure. Let me repeat that 15 question. 16 BY MR. GORRIS: 17 Q. Mr. Icahn, you decided the terms of 18 CVR Energy's exchange offer. Correct? 19 A. I was involved in it. I wouldn't say 20 I decided it. I can't recall making that decision. 21 Q. Well, your testimony was that 22 Mr. Cozza was the point person on the exchange offer. 23 Right? 24 A. Yes. I believe that's correct.</p>	<p style="text-align: right;">753</p> <p>1 Q. You were involved in setting the 2 exchange ratio. Correct? 3 A. I can't recall, but I would say it was 4 correct. 5 Q. Okay. And you were involved in 6 setting the minimum tender condition. Correct? 7 A. I don't recall specifically, but I 8 would say that's correct. 9 Q. Okay. Do you recall that there was an 10 80 percent minimum tender condition, which was the 11 amount necessary such that -- 12 A. Yes, I do. 13 Q. Okay. And do you recall there was a 14 maximum tender condition as well? 15 A. We would not take more than 16 95 percent. Correct. 17 Q. Okay. And you were involved in 18 determining that maximum tender condition. Correct? 19 A. Yes. 20 Q. Now, you decided that CVR Energy would 21 not negotiate any of the terms of the exchange offer. 22 Correct? 23 A. Repeat that. CVI Energy? 24 Q. Sure. You and your organization, you</p>
<p style="text-align: right;">752</p> <p>1 Q. Okay. And you also testified that at 2 the beginning and at the end, Mr. Cozza would come to 3 you for final approval. Right? 4 A. That's correct. 5 Q. Okay. So you are responsible for the 6 terms of CVR Energy's exchange offer. Correct? 7 A. Responsible might not be the right 8 word, but I was involved. 9 Q. Okay. And that included the exchange 10 ratio. Right? 11 A. Could you repeat that? 12 Q. Sure. You were responsible for the 13 exchange ratio of CVR Energy's exchange offer. Right? 14 A. I was involved. I don't recall the 15 incident, you know, of doing it. I do 20 deals at 16 once sometimes. Don't ask me why, why I do it, but I 17 will tell you that I was involved. 18 When you say "responsible," there was 19 a board that approved it and what have you, so ... 20 Q. Okay. So Mr. -- 21 A. I was very involved. I'm not denying 22 that. 23 Q. Okay. 24 A. Okay.</p>	<p style="text-align: right;">754</p> <p>1 and Mr. Cozza and other folks at the Icahn Enterprises 2 level, determined that CVR Energy would not negotiate 3 with CVR Refining concerning the terms of the exchange 4 offer. Correct? 5 A. I don't recall that. 6 Q. Do you recall any negotiation over the 7 terms of the exchange offer? 8 A. I do not. 9 Q. Okay. You also decided that CVR 10 Energy would not solicit in favor of its exchange 11 offer. Right? 12 A. I -- no, I don't recall that. 13 Q. Do you recall soliciting in favor of 14 the exchange offer? 15 A. No. 16 Q. Now, in other situations, you have 17 solicited stockholders to tender in favor of your 18 tender offers. Correct? 19 A. Again, you'd have to repeat it. 20 Q. Sure. 21 In other situations, you have 22 solicited stockholders to tender in favor of your 23 tender offers. Correct? 24 A. I can't remember specifics, but I must</p>

<p style="text-align: right;">755</p> <p>1 have in some cases. If you give me examples -- I</p> <p>2 mean, I've done, as you say, many of them. In some</p> <p>3 cases, we put the tender offer out. When you say</p> <p>4 solicit, in proxy fights, we solicit. Tender offers,</p> <p>5 I can't say specifically. I'm not saying we didn't,</p> <p>6 but I can't tell you that we do. I don't know.</p> <p>7 Q. Okay. Now, Mr. Icahn, do you have</p> <p>8 that binder in front of you, sir?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Okay. And I believe the first tab</p> <p>11 should be JX 1212. Do you see that?</p> <p>12 A. What are you asking me?</p> <p>13 Q. Sure. Sir, have you got JX 1212 in</p> <p>14 front of you?</p> <p>15 A. Yeah. I just want to -- these glasses</p> <p>16 got all smudged up. Let me just clean them.</p> <p>17 Q. Sure. The other option, Mr. Icahn, if</p> <p>18 it's easier for you, there is a screen right next to</p> <p>19 you where you'll be able to see it, and hopefully the</p> <p>20 video operator will --</p> <p>21 A. It will be right there for me. Right?</p> <p>22 Q. Yes. And he'll highlight what we're</p> <p>23 talking about.</p> <p>24 A. Oh, great. Okay.</p>	<p style="text-align: right;">757</p> <p>1 to bring it forward that you might recall that there</p> <p>2 was a contested tender offer where Wachtell Lipton and</p> <p>3 Goldman Sachs were on the other side defending against</p> <p>4 your tender offer. Correct?</p> <p>5 A. That's basically correct. I can't</p> <p>6 remember specifics, again, but that's correct.</p> <p>7 Q. Okay. Now, let's go back to that</p> <p>8 JX 1212.</p> <p>9 A. Is that on the screen too?</p> <p>10 Q. It's going to be on the screen, and</p> <p>11 I'm going to ask the video operator to highlight it.</p> <p>12 And before I ask you a question, we'll make sure to</p> <p>13 get the language that I'm asking about in front of you</p> <p>14 so you can see it, sir.</p> <p>15 Does that work for you?</p> <p>16 A. Say that again. What did you just</p> <p>17 say?</p> <p>18 THE COURT: Why don't you just keep</p> <p>19 the examination going, and we'll go from there.</p> <p>20 MR. GORRIS: Sure.</p> <p>21 BY MR. GORRIS:</p> <p>22 Q. So can you go to page 7 of 8 of that</p> <p>23 SEC filing from back in 2012.</p> <p>24 A. In my book?</p>
<p style="text-align: right;">756</p> <p>1 Q. And do you see what this is is -- do</p> <p>2 you recall back in 2012, you launched a tender offer</p> <p>3 to gain control of CVR Energy?</p> <p>4 A. No. I mean, we -- I don't recall</p> <p>5 that -- I can't recall the specifics of it at all,</p> <p>6 but, you know, taking control of it in 2012; however,</p> <p>7 I don't deny that I was very involved in that.</p> <p>8 Q. But you recall that there was a</p> <p>9 contested tender offer where you took control, and</p> <p>10 subsequently you've been in litigation I think that</p> <p>11 just ended last year with the Wachtell Lipton firm</p> <p>12 over that CVR tender offer. Right?</p> <p>13 A. Well, there's two different things</p> <p>14 there. We did take control of CVR Energy, CVI, I call</p> <p>15 it. The litigation with Lipton came not regarding</p> <p>16 that so much but regarding the fact that they got this</p> <p>17 huge fee.</p> <p>18 Q. Okay. And --</p> <p>19 A. Goldman Sachs got the fee, and Lipton</p> <p>20 set it up where Goldman Sachs got \$35 million for</p> <p>21 doing nothing, in our mind, pretty much nothing, so --</p> <p>22 but we had to pay it. You know, we're still, I think,</p> <p>23 in litigation on it, but, yeah.</p> <p>24 Q. I understand, sir. I was just trying</p>	<p style="text-align: right;">758</p> <p>1 Q. It's in your book, and it will be on</p> <p>2 the screen.</p> <p>3 A. I'll look on the screen.</p> <p>4 THE COURT: So there is a guy in the</p> <p>5 back of the room named Joe, and before Mr. Gorris puts</p> <p>6 documents on the screen, he's going to ask Joe to</p> <p>7 highlight them for you.</p> <p>8 THE WITNESS: And he'll put it on for</p> <p>9 me on the screen?</p> <p>10 THE COURT: Yes.</p> <p>11 THE WITNESS: So it's better that I</p> <p>12 don't have to flip through the whole thing. Great.</p> <p>13 So this is going to be on the screen, whatever you</p> <p>14 want.</p> <p>15 MR. GORRIS: This is going to be on</p> <p>16 the screen.</p> <p>17 So on page 7, Joe, if you could just</p> <p>18 highlight the top part that shows "Icahn Issues Open</p> <p>19 Letter to Shareholders of CVR Energy."</p> <p>20 THE WITNESS: Yes. Okay.</p> <p>21 BY MR. GORRIS:</p> <p>22 Q. Do you see this? This is an example</p> <p>23 of you soliciting stockholders in favor of your tender</p> <p>24 offer. Correct?</p>

<p style="text-align: right;">759</p> <p>1 A. When you say solicit, I thought you 2 sort of meant called them up and tried to get them on 3 the phone or anything. You mean solicit by writing 4 letters like this? 5 Q. Sure. So are there multiple ways 6 to -- 7 A. I know -- yeah. We've been involved 8 in a lot of that, yeah. Writing letters to solicit. 9 Q. Right. So you inform the stockholders 10 of your views directly and why they should exchange 11 into or tender into the tender offer. Correct, sir? 12 A. That's correct. 13 Q. Okay. Now, this is -- 14 MR. GORRIS: So, Joe, can you go down 15 to the paragraph that starts, "In addition to those 16 mentioned" and just zoom that. And then can you 17 highlight the last two sentences, please. 18 THE WITNESS: "It is obvious that our 19 activities -- Despite what certain PR firms and others 20 would have you believe, it is obvious that our 21 activities have been to the benefit of ALL 22 shareholders, not just us. I believe our activities 23 are positive for our economy." 24 BY MR. GORRIS:</p>	<p style="text-align: right;">761</p> <p>1 Q. Do you see that, sir? This is another 2 direct solicitation to the shareholders of CVR Energy 3 telling them why they should tender into your tender 4 offer. Correct? 5 A. You have me a little confused on 6 the -- the CVRR is the CVR refinery that we were 7 trying to get to -- this is CVR Energy. 8 Q. Okay, sir. I will do my best to call 9 CVR Energy CVI. Would that work better for you? 10 A. Wait a minute. This is back in 2012. 11 I'm sorry. Is this the -- 12 Q. This is your tender offer back in 13 2012 -- 14 A. Oh, yeah. 15 Q. -- for CVI. 16 A. I thought you said this was up into 17 the CVRR. Okay. 18 Q. And you issued an open letter, another 19 letter, to the CVI stockholders, telling them why they 20 should tender into your tender offer. Correct? 21 A. Correct. 22 Q. Okay. 23 MR. GORRIS: Now, Joe, can you go to 24 page 10 of 12, and in particular, the paragraph about</p>
<p style="text-align: right;">760</p> <p>1 Q. Right. Sir, so when you want to cause 2 stockholders to tender into one of your tender offers, 3 you will write direct letters to them explaining why 4 they should do so. Correct? 5 A. Generally, yes. 6 Q. Okay. And in this letter, you're 7 representing that your activities have been to the 8 benefit of "ALL," in all caps, shareholders -- 9 A. Yes. 10 Q. -- not just you. Correct? 11 A. Correct. 12 Q. Now, Mr. Icahn, we're going to go to 13 the next tab, which is JX 1214. 14 MR. GORRIS: And, Joe, if you can go 15 to page 9 of 11. 16 THE WITNESS: I like the way you do 17 this. I hope they do this in the future. I don't 18 have to go through the book. This is nice. 19 MR. GORRIS: And then if you can 20 highlight the top part of the press release showing 21 "Icahn Issues Open Letter to Shareholders of CVR 22 Energy." 23 THE WITNESS: Yes. 24 BY MR. GORRIS:</p>	<p style="text-align: right;">762</p> <p>1 halfway down that starts with "I believe." And if you 2 could highlight that first sentence. 3 THE WITNESS: This is terrific. I 4 hope -- this is great. 5 THE COURT: We aim to please. 6 THE WITNESS: I can see this one. 7 Okay. "I believe this offer is highly compelling ..." 8 BY MR. GORRIS: 9 Q. And, Mr. Icahn, this is part of a 10 couple-page letter, and this is one line where you're 11 explaining to the CVR Energy shareholders why they 12 should tender into your tender offer. Correct? 13 A. Yes. 14 Q. And you're telling them, "I believe 15 this offer is highly compelling for shareholders: it 16 is a win-win. Just examine the risk-reward ratio," 17 and you bold and underline "risk-reward." 18 Do you see that? 19 A. Yeah. 20 Q. Okay. 21 MR. GORRIS: Now, Joe, can you go to 22 the next paragraph and highlight the first sentence. 23 Q. Mr. Icahn, the letter continues, "As 24 my past record has demonstrated, I work assiduously to</p>

<p style="text-align: right;">763</p> <p>1 increase the value of stocks in which my companies 2 have invested, which has led to gains of billions of 3 dollars for ALL shareholders, not just my firm." 4 Do you see that? 5 A. Yes. 6 Q. Okay. And in this 2012 CVR Energy 7 tender offer, I just highlighted two, but you sent 8 multiple letters directly to the stockholders telling 9 them why they should tender into the exchange offer, 10 the tender offer for CVI. Correct? 11 A. Correct. 12 Q. Now, that's what you do when you want 13 to maximize the number of tendering shares. Right? 14 A. Yeah, but you're confusing two 15 situations in my mind. I sort of see where you're 16 going, but if I might answer it, that was a hostile 17 tender. They were fighting us. 18 The one with CVRR, we were given a 19 choice. We had shareholders, as I recall it -- and I 20 can't recall specifics because I wasn't involved 21 day-to-day, obviously. But we were getting calls from 22 some of them that they wanted to sort of cash out. 23 Others didn't. There was no hostility in it. 24 And we thought we made a very good</p>	<p style="text-align: right;">765</p> <p>1 of the exchange offer, the CVR Energy side and the CVR 2 Refining side. Correct? 3 A. Well, it's not on both sides. CVI -- 4 if you want to say "both sides," I mean, we did own -- 5 in 2012, we owned stock too, of CVI, so, yes, it's in 6 both. It's not analogous because they were fighting 7 us in the 2012 tender. Here, it was not only were 8 we -- we were on both sides. We owned 70 percent of 9 this company, and we were saying, hey, if you guys 10 want to get a premium, we'll give you a premium. If 11 you don't, stick with us. Either way. We -- I mean, 12 that was, as I recall it, generally. I can't recall 13 specifics. 14 Q. Okay. But representatives of Icahn 15 Enterprises formed a majority of the board of 16 directors of CVI and a majority of the board of 17 directors of CVRR at the time of the exchange offer. 18 Correct? 19 A. Yes. I believe that's right. 20 Q. Okay. And on the CVI side, as an 21 offeror for units of CVR Refining, you did not try to 22 persuade the CVRR unitholders that it was a good deal 23 for them, did you? 24 A. Hey, look, I -- that might have been</p>
<p style="text-align: right;">764</p> <p>1 offer, a 25 percent premium, and were actually 2 satisfying shareholders that wanted to get out, if 3 they did want to get out. And, indeed, we went to 4 95 percent to do it. There was no need to go write 5 letters and solicit. We basically did what they 6 wanted, and we believed it was a very fair offer. So 7 it really -- these two are not analogous. 8 In the one you're talking about, we 9 had a PR machine by what I considered to be a poorly 10 run company, even though we did keep Lipinski. I mean 11 it wasn't a badly managed company. I think the board 12 was way behind what management wanted to do. And so 13 we fought Wachtell and Lipton in saying that -- they 14 were telling them not to tender. We were telling them 15 to tender. We didn't have that situation here at all. 16 Here, nobody was saying don't tender, 17 so we had nobody to fight. We just sent them notice, 18 said that this is -- and I was really -- well, 19 frankly, we can get into it later. I mean I was 20 surprised we didn't get a much higher response to it. 21 But we did get a good response but nothing like I 22 thought. So they're not analogous, in my opinion. 23 Q. Okay. And, sir, they're not analogous 24 because it's not hostile because you're on both sides</p>	<p style="text-align: right;">766</p> <p>1 disingenuous on my part to try to dissuade them 2 because I wasn't tendering my own stock. In other 3 words, I -- I didn't want to be disingenuous. We 4 were -- IEP was not tendering. 5 I thought, obviously, I was making 6 this tender because I thought, wrongly, it turned out, 7 that CVRR was a very good company and was undervalued. 8 Otherwise, why would I make the tender? So you don't 9 make a tender if you don't think it's undervalued. 10 And I did have a fight -- I don't want 11 to get into legal terms, but I felt, at least morally, 12 that, hey, I'm tendering my own stock. How could I 13 call these guys up -- in a way, how do we call them up 14 and say, hey, you ought to tender, boy. You got to 15 worry about -- out of this company, why don't you 16 tender to us, when we were not tendering. So it's 17 very different. 18 Q. And you acknowledge in your deposition 19 that one effect of you not tendering the IEP CVRR 20 units in the exchange offer was that it would tend to 21 suggest to unitholders that they might want to keep 22 their shares and units because that's exactly what you 23 were doing. Correct? 24 A. I'm sorry. Could you repeat that? I</p>

<p style="text-align: right;">767</p> <p>1 just didn't hear you.</p> <p>2 Q. Sure. So one effect of not tendering</p> <p>3 those 5 million IEP units, CVR Refining units, was</p> <p>4 that it conveyed a message to CVR Refining unitholders</p> <p>5 that Icahn is not taking the offer, you may not want</p> <p>6 to take the offer, and kept the tender percentage</p> <p>7 down. Correct?</p> <p>8 A. It might, but that wasn't the purpose</p> <p>9 at all. The purpose of my not tendering was -- excuse</p> <p>10 me. I wasn't trying to convince him to do one or the</p> <p>11 other because I felt that would be wrongful and,</p> <p>12 frankly, possibly against the law. I wasn't sure.</p> <p>13 I can't recall now what the lawyers</p> <p>14 said, but there might have been some discussion. I</p> <p>15 talk to lawyers all the time, and I listen to them. I</p> <p>16 don't like to get into gray areas at all, and I think</p> <p>17 my history proves that. I mean, we've gone through</p> <p>18 years and years without having to be in these courts.</p> <p>19 So what I'm saying is I can't remember</p> <p>20 if they were against my pushing this thing, but I,</p> <p>21 myself, felt that way. So it was a different</p> <p>22 situation, completely. That's how I felt about that.</p> <p>23 Q. Now, the SEC filings in connection</p> <p>24 with the exchange offer highlighted that IEP was not</p>	<p style="text-align: right;">769</p> <p>1 their common units in the offer?"</p> <p>2 Do you see that, sir?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Okay. And then you see the</p> <p>5 highlighted sentence says, "Neither Icahn Enterprises</p> <p>6 Holdings [] nor American Entertainment Properties</p> <p>7 Corp. intends to exchange its common units in the</p> <p>8 offer."</p> <p>9 A. Yes.</p> <p>10 Q. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And do you know why that was included</p> <p>13 in the S-4?</p> <p>14 A. You ask me legal opinions. I leave</p> <p>15 that to the lawyers. I don't even remember being</p> <p>16 included, not included. Frankly, I don't remember the</p> <p>17 thing. I have no -- I just imagine they wanted to do</p> <p>18 full disclosure is my guess, if you want a guess.</p> <p>19 Q. Okay. And you testified a few minutes</p> <p>20 ago that by disclosing that Icahn Enterprises was not</p> <p>21 exchanging its units, that might send a message to CVR</p> <p>22 Refining unitholders not to exchange their units.</p> <p>23 Right?</p> <p>24 A. It might.</p>
<p style="text-align: right;">768</p> <p>1 tendering its 5 million CVR Refining units. Correct?</p> <p>2 A. I don't recall, but I'm sure if you</p> <p>3 say it's correct -- I mean, that's a legal issue that</p> <p>4 I didn't get into.</p> <p>5 Q. Okay. Can you go to JX 298, which is</p> <p>6 the S-4, and, in particular, can you go to what's page</p> <p>7 8 of the exhibit but page 2 of the S-4. The second</p> <p>8 from the bottom question starts with "Do [the</p> <p>9 affiliates of] Icahn Enterprises L.P. and CVR Energy</p> <p>10 intend to exchange their common units in the offer?"</p> <p>11 MR. GORRIS: And can you highlight the</p> <p>12 third sentence down, the sentence that starts with</p> <p>13 "Neither Icahn Enterprises."</p> <p>14 Q. Okay. Sir, this is the questions and</p> <p>15 answers that's at the very start of the S-4.</p> <p>16 Do you understand that?</p> <p>17 A. You have to speak up. I'm sorry.</p> <p>18 Q. Sir, do you see that this is the</p> <p>19 question and answer section at the very start of the</p> <p>20 S-4?</p> <p>21 A. Is this from my -- this is my S-4?</p> <p>22 Q. This is an S-4. And one of the very</p> <p>23 first questions is, "Do entities affiliated with Icahn</p> <p>24 Enterprises L.P. and CVR Energy intend to exchange</p>	<p style="text-align: right;">770</p> <p>1 Q. Okay.</p> <p>2 MR. GORRIS: Now, Joe, can you go back</p> <p>3 to page 7 of JX 298. And in particular, the very</p> <p>4 first question, "What is CVR Energy's proposed</p> <p>5 transaction?" And if you could highlight the first</p> <p>6 sentence for me, please.</p> <p>7 Q. Now, Mr. Icahn, do you see that</p> <p>8 highlighted language?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And it says, "CVR Energy is offering</p> <p>11 to acquire up to \$37,154,236 --"</p> <p>12 A. Yeah, I see it.</p> <p>13 Q. -- "outstanding [] units of CVR</p> <p>14 Refining, not otherwise directly or indirectly owned</p> <p>15 by CVR Energy and its affiliates"</p> <p>16 Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. So the exchange offer itself wasn't --</p> <p>19 it wasn't even an option for Icahn Enterprises to</p> <p>20 exchange in the exchange offer. Correct?</p> <p>21 A. Yeah. I mean, we were saying that we</p> <p>22 were going for the 30 percent that wasn't owned by us</p> <p>23 or affiliates. Yeah. I mean, I understand what</p> <p>24 you're saying. It says it.</p>

<p style="text-align: right;">771</p> <p>1 Q. Okay. So the first question makes</p> <p>2 clear that you can't even tender your IEP units in the</p> <p>3 exchange offer. Right?</p> <p>4 A. It seems that way. Yeah.</p> <p>5 Q. And then, nonetheless --</p> <p>6 A. I don't know the legalities of it.</p> <p>7 All I know is that we were buying 30 percent that we</p> <p>8 didn't own, one way or another.</p> <p>9 Q. Now, nonetheless, in that Q&A, it</p> <p>10 highlights that CVR Energy and Icahn Enterprises don't</p> <p>11 intend to exchange their units, which they actually</p> <p>12 can't do. Right, sir?</p> <p>13 MR. BEIGEL: I just note an objection</p> <p>14 for the record.</p> <p>15 A. Well --</p> <p>16 THE COURT: Wait, Mr. Icahn. Your</p> <p>17 attorney wants to object.</p> <p>18 MR. BEIGEL: I just wanted to note an</p> <p>19 objection for the record. There is no foundation for</p> <p>20 that question. No evidence of what Mr. Gorris is</p> <p>21 suggesting.</p> <p>22 THE WITNESS: Herb, you're going to</p> <p>23 have to speak up so I can hear you.</p> <p>24 MR. BEIGEL: There's no actual</p>	<p style="text-align: right;">773</p> <p>1 their own stock?</p> <p>2 So it's sort of a little oxymoron here</p> <p>3 that you're saying -- yeah, I guess it's correct, but</p> <p>4 I don't even understand your point. I mean, maybe it</p> <p>5 was done ambiguously, you might say. Of course</p> <p>6 they're not going to -- hey, these guys -- if I'm</p> <p>7 trying to buy you and I own part of you already, and</p> <p>8 I'm buying a company and I'm part of the company</p> <p>9 already, so I own both, and I say I'm exchanging to</p> <p>10 buy more of the outstanding that I don't own, well,</p> <p>11 obviously, I'm not going to exchange myself into it.</p> <p>12 I mean, it's completely obvious.</p> <p>13 Q. Okay, sir. And thank you for that,</p> <p>14 because --</p> <p>15 A. I don't understand the point. Maybe</p> <p>16 tell me where you're going with this, because --</p> <p>17 Q. You have made the point that you</p> <p>18 didn't even tender the IEP shares, unit, CVR Refining</p> <p>19 unit, in the exchange offer. Right? That's a</p> <p>20 rhetorical point that you've repeatedly made.</p> <p>21 A. I, as IEP, you know, sort of had a</p> <p>22 choice. I could have or could not have, in my</p> <p>23 opinion. The way it was worded, maybe I didn't, but</p> <p>24 that wording could have been changed, I guess. If I</p>
<p style="text-align: right;">772</p> <p>1 evidence in this case to support Mr. Gorris' question.</p> <p>2 I just note the objection for the record.</p> <p>3 THE COURT: Okay. Overruled.</p> <p>4 You can continue, Mr. Gorris.</p> <p>5 Mr. Beigel, if you'd like to put the</p> <p>6 microphone on the table and raise your hand, that's</p> <p>7 fine, when an objection needs to be made.</p> <p>8 MR. BEIGEL: It's not like I can't</p> <p>9 stand, Your Honor, so I'd like to stand, as the usual</p> <p>10 practice.</p> <p>11 THE COURT: That's fine. Thank you.</p> <p>12 BY MR. GORRIS:</p> <p>13 Q. Mr. Icahn, let me try that question</p> <p>14 again.</p> <p>15 So the S-4 highlights that Icahn</p> <p>16 Enterprises and CVR Energy don't intend to exchange</p> <p>17 their units in the exchange offer, even though it's</p> <p>18 clear that Icahn Enterprises cannot exchange its units</p> <p>19 in the exchange offer under the terms of the offer.</p> <p>20 Correct?</p> <p>21 A. It's a little ambiguous in my mind now</p> <p>22 that I look at it because CVI Energy was exchanging --</p> <p>23 they were issuing new stock to buy CVRR, the refinery.</p> <p>24 So why would they then exchange their own stock to buy</p>	<p style="text-align: right;">774</p> <p>1 really wanted to tender it, I'm sure the wording could</p> <p>2 have been changed.</p> <p>3 But I can't see how CVI -- I call it</p> <p>4 CVI. I call it CVI Energy -- how they, who are trying</p> <p>5 to buy it, can take their own stock. So they own</p> <p>6 70 percent. Are they going to take their 70 percent</p> <p>7 to exchange it to buy 30 percent? I mean, it would</p> <p>8 just be a futile waste of time.</p> <p>9 Q. Okay, sir. But the point is you're</p> <p>10 highlighting that Icahn Enterprises and CVR Energy</p> <p>11 don't intend to exchange their units in this offer,</p> <p>12 which you've acknowledged has an effect on the tender</p> <p>13 percentage for CVR Refining unitholders. There was no</p> <p>14 need to do that, because the offer wasn't even</p> <p>15 directed to CVR Energy and Icahn Enterprises. Right?</p> <p>16 A. Well, just to put it simply, in my</p> <p>17 terms -- I'm sort of a reductionist. Let's just take</p> <p>18 it down to a very simple thing and save a lot of time.</p> <p>19 We wanted to buy more of CVR Energy -- of CVR</p> <p>20 Refining. We wanted to buy CVRR. I think of it that</p> <p>21 way. We wanted to buy it. We had 70 percent. We</p> <p>22 said, we'll go to 95 percent. We want to buy your</p> <p>23 stock. However, we're not pushing you to sell it,</p> <p>24 because we want to buy it, and so we're on both sides</p>

<p style="text-align: right;">775</p> <p>1 of that equation.</p> <p>2 It's not like the 2012 deal or some</p> <p>3 others where we say, you're a terribly run company.</p> <p>4 You offer -- and we want to buy the company and fix it</p> <p>5 up, and you decide if we can fix it up. In this case,</p> <p>6 we're just saying, hey, we think it's valuable. Some</p> <p>7 of you want to sell. We've gotten calls. Some people</p> <p>8 say, hey, we'd like to have a bid for this company.</p> <p>9 We'd like to maybe see you sell it. So we say, okay,</p> <p>10 we'll buy it. It's a completely different dynamic.</p> <p>11 Q. So, sir, you acknowledge --</p> <p>12 A. I don't know why we're wasting time</p> <p>13 with it. You keep saying the same thing. I agree</p> <p>14 with everything you're saying, so why do you keep</p> <p>15 asking me?</p> <p>16 Q. So you agree that you weren't actually</p> <p>17 pushing to get to the 95 percent maximum tender</p> <p>18 condition. Correct?</p> <p>19 A. Yeah, but we keep saying the same</p> <p>20 thing. I'm on your side. I'm agreeing with you, so</p> <p>21 what's your point?</p> <p>22 Q. Okay. Now, Mr. Icahn, you did not say</p> <p>23 what your plans were if you obtained the 80 percent of</p> <p>24 the total outstanding units in the exchange offer, did</p>	<p style="text-align: right;">777</p> <p>1 paragraph on the top of page 2, the second-to-last</p> <p>2 sentence.</p> <p>3 MR. GORRIS: Can you highlight that,</p> <p>4 please.</p> <p>5 THE WITNESS: Is he highlighting it?</p> <p>6 MR. GORRIS: I believe so.</p> <p>7 THE WITNESS: I don't see it</p> <p>8 highlighted. Yeah. Good. Good.</p> <p>9 BY MR. GORRIS:</p> <p>10 Q. In these minutes of the board meeting,</p> <p>11 it reflects that "Mr. Cozza noted that the general</p> <p>12 partner and its affiliates have no current plans to</p> <p>13 exercise such call right at this time or upon</p> <p>14 consummation of the exchange."</p> <p>15 Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And what does that mean?</p> <p>18 A. That means that we had no plans to</p> <p>19 exercise. I sort of know what you're getting at, that</p> <p>20 it's maybe oddly worded, but I can tell you that we</p> <p>21 had no intention whatsoever to exercise the call right</p> <p>22 at that point. That's what it says, and that's what</p> <p>23 it means.</p> <p>24 Q. Okay. Well, why not say that in the</p>
<p style="text-align: right;">776</p> <p>1 you?</p> <p>2 A. As I recall, we said that if we got</p> <p>3 80 percent, we had the right to exercise the call</p> <p>4 right. I don't think we went any further than that.</p> <p>5 But I will tell you my state of mind, if you want me</p> <p>6 to tell it to you, at that time.</p> <p>7 Q. Sir, I'd like you to stick to my</p> <p>8 question and what you disclosed to the public and to</p> <p>9 the SEC about what your intentions were at the time of</p> <p>10 the exchange offer.</p> <p>11 A. And that's what we said. Yeah.</p> <p>12 That's what we said.</p> <p>13 Q. Okay.</p> <p>14 MR. GORRIS: And, Joe, can you go to</p> <p>15 Exhibit 270, please.</p> <p>16 Q. Okay. And these are the minutes of</p> <p>17 the board meeting of CVR Energy on May 24, 2018, to</p> <p>18 consider the exchange offer. Correct, Mr. Icahn?</p> <p>19 A. That's what it says.</p> <p>20 Q. Okay. And you're chairman of the</p> <p>21 board, presiding over the meeting of the CVR Energy</p> <p>22 board. Correct?</p> <p>23 A. I believe I was. Yeah.</p> <p>24 Q. Okay. And if you go to the first</p>	<p style="text-align: right;">778</p> <p>1 board meeting, sir, instead of --</p> <p>2 A. Listen, I'm the one that got asked. I</p> <p>3 didn't write this. Again, I don't know why the hell I</p> <p>4 do it, but I'm in 20 deals here. I'm not going to sit</p> <p>5 here and write legal -- you know, the thing here that</p> <p>6 I'm writing. In other words, it says what it says.</p> <p>7 I think a good -- you know, I read it</p> <p>8 over last night, or two nights ago, real quickly, and</p> <p>9 I see you have a point in the way it says it, but I</p> <p>10 think it says it pretty clearly, but it could have</p> <p>11 maybe been more clear, because you're going to say we</p> <p>12 could have said it precisely.</p> <p>13 But I think that Dave Lamp said it</p> <p>14 precisely that we had no intention to exercise our</p> <p>15 right.</p> <p>16 Q. Okay, sir. Now, you accept</p> <p>17 responsibility for the disclosures. Correct?</p> <p>18 A. I mean, I don't know what that means.</p> <p>19 I'm not -- look, I don't think it's bad, what it says,</p> <p>20 but I will tell you that we live by what it says. We</p> <p>21 did not exercise it at that point. At that time, we</p> <p>22 weren't -- had no plans to exercise it.</p> <p>23 Q. Okay. And you have very good lawyers,</p> <p>24 and they chose this language for a reason. Right?</p>

<p style="text-align: right;">779</p> <p>1 A. I don't know. Some lawyers sometimes 2 write stuff that who knows what the reason is. You 3 guys write a lot of stuff that I can't understand what 4 you're writing. 5 Q. Okay. Now, Mr. Iahn, there should be 6 a tab in your binder called PTO, which is the pretrial 7 order, which includes a series of stipulated facts. 8 MR. GORRIS: And can you pull that up? 9 And paragraph 57. 10 And can you show the last sentence, 11 please. 12 Q. Now, sir, in this bolded language in 13 the S-4, I'll represent to you, to save some time 14 here, that it appears in six separate bolded 15 paragraphs in the S-4. You would understand that to 16 mean it's very important language. Correct? 17 A. Could you speak into it a little more? 18 I apologize. I should have -- 19 Q. Sir, this language that we just looked 20 at in the minutes that you said doesn't quite say what 21 maybe you thought -- 22 A. Yeah. I don't say that. I just want 23 to make it clear and not spend time on it, because -- 24 I read in your pleading -- I read your pleading, you</p>	<p style="text-align: right;">781</p> <p>1 Q. Sir, you have very good lawyers who 2 drafted this language. Right? 3 A. I think they're very good, but 4 sometimes they -- no, I find stuff that, when I read 5 it, I think they -- I don't -- you know, I certainly 6 take their advice. Put it that way. But sometimes 7 their writing could be a little better, I think. 8 Q. Okay. Now, you're aware that the SEC 9 asked CVR Energy whether or not the tender offer 10 constitutes the first step in a series of transactions 11 that ultimately could produce a going-private effect, 12 thereby triggering Rule 13e-3. Right? 13 Are you aware of that, sir? 14 A. Vaguely aware of it. 15 Q. Okay. And your lawyers responded back 16 with the exact same language, which doesn't answer the 17 question at all about what's happening one day after 18 the exchange offer closes or, as was the case here, 19 six months after the exchange offer closes. Right? 20 A. You have to speak into it. I'm sorry. 21 Okay. Go ahead. I'm sorry. Just 22 talk into it. 23 Q. The language in your response to the 24 SEC was the exact same language that was carefully</p>
<p style="text-align: right;">780</p> <p>1 know, the plaintiffs' pleading, or somebody in there, 2 somebody said that it was sort of ambiguous that we 3 say that -- you made the point that we say that we're 4 not going to exercise it -- or Cozza said it. You say 5 that Cozza said that he's not going to exercise this 6 until the consummation of the exchange offer means, 7 well, you could do it the day after. And that 8 certainly wasn't my intention. And it obviously 9 turned out, we didn't for a long time. So, in other 10 words, you're saying we should have said -- and we 11 weren't going to do it for a meaningful time 12 thereafter, but maybe. 13 My feeling was we weren't going to 14 exchange. We weren't going to exercise the right. 15 And that said, it leaves it open that after the 16 exchange offer, the day after, you could do it. And 17 we certainly weren't planning to do it the day after, 18 that kind of thing. Right? And that's what you said 19 in your pleading. 20 And I think you had a point, and I 21 told that to one of my attorneys. But that doesn't 22 mean anything, because that wasn't the intention. And 23 it certainly wasn't -- we didn't take advantage of 24 that.</p>	<p style="text-align: right;">782</p> <p>1 drafted and repeated in all of the SEC disclosure 2 documents, and it doesn't say anything about whether 3 CVR Energy had any plans to exercise the call option 4 one day, three months, or six months after the 5 exchange offer closed. Right? 6 A. Yeah. The SEC, I think, yes, passed 7 on it. They said it was okay, that we weren't going 8 private. 9 Q. Okay. Now, so you understand the call 10 right had certain pricing mechanisms, two separate 11 pricing mechanisms? 12 A. Yes. 13 Q. Okay. And you're aware there was a 14 90-day price protection period where, if the general 15 partner or any of its affiliates -- 16 A. Yes, I'm aware of that. 17 Q. -- acquired units -- okay. 18 And you're aware that there was -- if 19 the 90-day didn't apply, there is a 20-day trailing 20 average. Correct? 21 A. Yes, I'm aware of it. 22 Q. Okay. Now, do you know why the public 23 filings in connection with the exchange offer don't 24 make clear the pricing provisions and, in particular,</p>

<p style="text-align: right;">783</p> <p>1 the 90-day trailing average? The 90-day -- I'm sorry,</p> <p>2 the 90-day provision?</p> <p>3 A. Do I know why the 90 -- I don't</p> <p>4 understand the question.</p> <p>5 Q. Yeah, sure.</p> <p>6 MR. GORRIS: So can we go back to</p> <p>7 paragraph 57 of the PTO. Can you highlight that last</p> <p>8 sentence.</p> <p>9 Q. Sir, do you see the highlighted</p> <p>10 language?</p> <p>11 A. Yes.</p> <p>12 Q. And that language doesn't explain the</p> <p>13 pricing mechanism, doesn't identify the 90-day price</p> <p>14 protection period, or that the then-current market</p> <p>15 price really means a 20-day trailing average, does it?</p> <p>16 A. Well, I don't know -- I'm not a</p> <p>17 lawyer. I know about the trailing average.</p> <p>18 Q. Okay.</p> <p>19 A. I speak to my lawyers about it. I</p> <p>20 don't know. If the S-4 doesn't say it, somewhere else</p> <p>21 it says it.</p> <p>22 Q. Okay. But reading that language, you</p> <p>23 wouldn't know what the then-current market price</p> <p>24 means. Right?</p>	<p style="text-align: right;">785</p> <p>1 the courts forever. If they tell me don't do</p> <p>2 something, I don't do it. In other words, I don't</p> <p>3 even want to get into gray areas. Seriously, I do it,</p> <p>4 and that's what I believe.</p> <p>5 So a lot of times we disagree, and</p> <p>6 they'll tell me, don't do that. I say, why can't we</p> <p>7 go after that company? Why can't we do this? As soon</p> <p>8 as they say don't do it -- I pay them a lot of money</p> <p>9 to tell me -- I say great, I don't want to get into</p> <p>10 any goddamn lawsuits.</p> <p>11 So, yeah, no they don't take my</p> <p>12 direction. However, they don't decide -- if I'm</p> <p>13 interested in tendering for a company, of course I do</p> <p>14 it, not them. They don't come and say, why don't you</p> <p>15 buy this company? That's how it works. Right?</p> <p>16 So the general thing here is me. I</p> <p>17 believe, for instance, here, and wrongly, actually,</p> <p>18 that CVRR was a valuable piece of property. I had no</p> <p>19 intention of taking it private. I wanted to buy</p> <p>20 95 percent of it. I didn't think the stock was going</p> <p>21 down, as you say in that brief of yours, that this was</p> <p>22 all intentioned to drive it down. That was not the</p> <p>23 intention whatsoever. And that's all I can say.</p> <p>24 But they write this stuff. Not me.</p>
<p style="text-align: right;">784</p> <p>1 A. Well, it would just say pursuant to</p> <p>2 the terms of the partnership agreement, so I would</p> <p>3 read the partnership agreement if I wanted to know.</p> <p>4 Q. Okay. And the current market price in</p> <p>5 the partnership agreement is the 20-day trailing</p> <p>6 average. Right?</p> <p>7 A. According to the partnership</p> <p>8 agreement, it's a 20-day trailing average, yes.</p> <p>9 Q. Okay. And it's possible to explain</p> <p>10 what the pricing mechanism is in relatively plain</p> <p>11 language, isn't it, sir?</p> <p>12 A. Speak to my lawyers. I pay them a lot</p> <p>13 of money, as you said, so -- I'm not here to -- are we</p> <p>14 here to criticize my legal team? You know, that's</p> <p>15 something. We can discuss it. But I'm not here to do</p> <p>16 that, I don't think.</p> <p>17 Q. Sir, I assume that you expect that</p> <p>18 your legal team carries out your wishes. Right?</p> <p>19 A. Would you speak into it? I hate to --</p> <p>20 I apologize. Just speak into it.</p> <p>21 Q. Sir, you expect that your legal team</p> <p>22 carries out your directions and wishes. Correct?</p> <p>23 A. Not really. I have a legal team that</p> <p>24 I respect tremendously. That's why I've stayed out of</p>	<p style="text-align: right;">786</p> <p>1 And we can -- if you don't like what they wrote, go to</p> <p>2 them. But I think it's pretty clear. I mean, if I</p> <p>3 were to read it and I was interested in -- if I were</p> <p>4 buying this stock, and it said pursuant to the terms</p> <p>5 of the partnership agreement, the first thing I would</p> <p>6 do is read the partnership agreement. I think that's</p> <p>7 very clear.</p> <p>8 I mean, I understand that your -- the</p> <p>9 people that you're suing for never bothered to read</p> <p>10 the partnership agreement. Well, how does he have the</p> <p>11 nerve, then, to say, I didn't know what was going on?</p> <p>12 He should have read the partnership agreement. That</p> <p>13 guy runs \$30 million worth of money. He's not some</p> <p>14 naive, unsophisticated person.</p> <p>15 I don't know why we're here in this</p> <p>16 courtroom anyway. I don't understand it. I'd really</p> <p>17 like to understand the whole issue here. You know,</p> <p>18 look, I respect the Court's time. I think you got</p> <p>19 five days going on in here, and I don't understand it.</p> <p>20 Q. So let's turn to what you did on the</p> <p>21 CVR Refining side in response to the exchange offer.</p> <p>22 MR. GORRIS: Joe, can you please</p> <p>23 play --</p> <p>24 A. What did I do --</p>

<p style="text-align: right;">787</p> <p>1 Q. Your role -- I'm going to transition</p> <p>2 subjects, and I'm just indicating that to you, sir, to</p> <p>3 what you did on the CVRR side of this exchange offer.</p> <p>4 A. I just don't -- I heard it, but I</p> <p>5 don't understand the question. What do you want me to</p> <p>6 do?</p> <p>7 Q. Okay.</p> <p>8 THE COURT: There is no question</p> <p>9 pending.</p> <p>10 So why don't you ask one, Mr. Gorris.</p> <p>11 MR. GORRIS: Joe, can you please play</p> <p>12 Icahn clip 26.</p> <p>13 (A video clip was played as follows:)</p> <p>14 Question: But you acknowledge you're</p> <p>15 on the board on the CVR Refining side at a meeting to</p> <p>16 consider how to respond to an offer that you made on</p> <p>17 the CVR Energy side. Right?</p> <p>18 Answer: Yeah, with CVI, we made the</p> <p>19 offer. You call it CVR Energy.</p> <p>20 Question: I'm sorry. I'll call it</p> <p>21 CVI.</p> <p>22 Answer: Yeah. And I would imagine --</p> <p>23 I'm just guessing now, I'm guessing that I would be</p> <p>24 recused, I would think, from deciding whether we</p>	<p style="text-align: right;">789</p> <p>1 MR. GORRIS: I'm going to ask a</p> <p>2 question about this.</p> <p>3 THE COURT: I'm going to -- Mr. Beigel</p> <p>4 is right. If you're going to play a clip to impeach</p> <p>5 the witness, you have to ask a question and let them</p> <p>6 answer it first.</p> <p>7 MR. GORRIS: Your Honor, I'm not</p> <p>8 playing a clip to impeach the witness. I believe I'm</p> <p>9 entitled to play the clip under Rule 32(a)(2), which</p> <p>10 we can use the deposition testimony for any purpose.</p> <p>11 And I'm going to use it for a predicate to a series of</p> <p>12 questions to Mr. Icahn.</p> <p>13 THE COURT: All right. Go ahead. I'm</p> <p>14 not convinced that this is the way to go, but go ahead</p> <p>15 and let's give it a try.</p> <p>16 MR. GORRIS: Okay.</p> <p>17 BY MR. GORRIS:</p> <p>18 Q. Now, Mr. Icahn, you thought you would</p> <p>19 be recused on the CVR Refining side of responding to</p> <p>20 the exchange offer. Correct?</p> <p>21 A. No, that's not correct. I didn't say</p> <p>22 that. I just saw it. I just heard it. I said</p> <p>23 perhaps I should have been recused.</p> <p>24 But in reading this stuff, because I</p>
<p style="text-align: right;">788</p> <p>1 should do it or not, I would think that we were -- I</p> <p>2 was recused, but I can't tell you I know.</p> <p>3 Question: And you'd be recused</p> <p>4 because you would have a conflict of interest being on</p> <p>5 both sides of the --</p> <p>6 Answer: I would think so, but I'm not</p> <p>7 even -- I'm not saying it was a conflict or not. I'm</p> <p>8 not opining legally on that, but I would think that's</p> <p>9 true.</p> <p>10 Question: Are you aware of any other</p> <p>11 circumstances where somebody is on both teams, the</p> <p>12 side that is making an exchange offer or a tender</p> <p>13 offer and then on the side determining how to respond</p> <p>14 to it?</p> <p>15 Answer: Certainly, it's happened and</p> <p>16 you recuse. Yeah. I'm sure I could give you many</p> <p>17 instances of that, but then I would tell you that in</p> <p>18 instances like that, the person doing it -- I mean --</p> <p>19 (The video was paused.)</p> <p>20 THE COURT: Mr. Beigel, are you going</p> <p>21 to ask whether there's a question pending?</p> <p>22 MR. BEIGEL: You read my mind.</p> <p>23 THE COURT: Is there a question</p> <p>24 pending, Mr. Gorris?</p>	<p style="text-align: right;">790</p> <p>1 looked into it because I was coming down here and all,</p> <p>2 and after reading it, I don't think I should be</p> <p>3 recused. It's the board -- we made a fair, good,</p> <p>4 premium offer for the company. And the board of</p> <p>5 directors of that company, of which I was part of --</p> <p>6 and I don't remember the meeting. How can you turn</p> <p>7 that -- what are you going to do, say, we don't want</p> <p>8 it? We turn it down?</p> <p>9 There was a 6, 7, 4, 25 percent</p> <p>10 premium. I mean, it's the kind of thing, if they</p> <p>11 turned it down, you might -- an activist might go</p> <p>12 after them. You make an offer. The board -- and then</p> <p>13 there's all kinds of legal things here that you know</p> <p>14 better than I do and I'm no expert on where this is a</p> <p>15 little different than a C Corp. You have to -- and</p> <p>16 there are certain fiduciary obligations.</p> <p>17 And, therefore, naturally, they went</p> <p>18 ahead and said, okay. If you want to do the exchange,</p> <p>19 go do the exchange. If you don't, you don't. I think</p> <p>20 it was completely in the purview of that board to say,</p> <p>21 shareholders, if you want to take it, take it. If you</p> <p>22 don't want to take it, don't take it. You're not</p> <p>23 being forced to take it. And, in fact, we weren't</p> <p>24 even out there soliciting them to take it.</p>

<p style="text-align: right;">791</p> <p>1 Q. Okay, Mr. Icahn, are you able to --</p> <p>2 MR. GORRIS: Joe, can you pull up</p> <p>3 JX 271, please.</p> <p>4 Q. And, Mr. Icahn, at this meeting, the</p> <p>5 directors present are you, SungHwan Cho, Jonathan</p> <p>6 Frates, Andrew Langham, David Lamp, Louis Pastor, Ken</p> <p>7 Shea, Jon Whitney, and Glenn Sander. Right?</p> <p>8 A. I'm sure you're right. I don't</p> <p>9 remember exactly, but ...</p> <p>10 Q. And what I want to ask, Mr. Cho is an</p> <p>11 employee of Icahn Enterprises. Right? At this time?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And Mr. Frates is an Icahn</p> <p>14 Enterprises employee as well.</p> <p>15 A. If you want me to say yes or -- you</p> <p>16 know it already. Yes. But I'll say yes.</p> <p>17 Q. Okay. And Mr. Langham is an Icahn</p> <p>18 Enterprises employee?</p> <p>19 A. Yes.</p> <p>20 Q. Andrew Langham worked for Icahn</p> <p>21 Enterprises at this time?</p> <p>22 A. Yes.</p> <p>23 Q. And Louis Pastor worked for Icahn</p> <p>24 Enterprises at this time. Correct?</p>	<p style="text-align: right;">793</p> <p>1 acted within their legal -- what they had to do</p> <p>2 legally. And how do you not offer -- if you're</p> <p>3 offering somebody a 25 percent premium over the price</p> <p>4 of the stock and giving him his choice, how do you not</p> <p>5 put it out?</p> <p>6 Okay. Now, they didn't tell them to</p> <p>7 tender. They didn't tell them not to tender, which I</p> <p>8 think was right. Maybe they should have told them to</p> <p>9 tender. Maybe they should not have told them to. But</p> <p>10 I wasn't tendering. And we were very specific about</p> <p>11 it. We disclosed that I was not tendering, because I</p> <p>12 believed it was worth more at that time.</p> <p>13 And I was wrong, actually. But I</p> <p>14 thought it was worth more. Wrong and right. You</p> <p>15 can't predict the market. You can't go say wrong or</p> <p>16 right. Circumstances made it worth less. I mean, the</p> <p>17 whole market broke down right after that, you know.</p> <p>18 The S&P went down 20 percent, which is huge, during</p> <p>19 that period. So, I mean, that's what happened.</p> <p>20 Q. Okay, sir. And you mentioned having</p> <p>21 lawyers at this meeting. Correct?</p> <p>22 A. Excuse me?</p> <p>23 Q. You mentioned having lawyers at the</p> <p>24 CVR Refining GP board meeting. Correct?</p>
<p style="text-align: right;">792</p> <p>1 A. They were both counsels of Icahn.</p> <p>2 Q. Okay. So that's a majority of the</p> <p>3 board in determining how to respond to this exchange</p> <p>4 offer. They have interests on the other side of the</p> <p>5 exchange offer, because they --</p> <p>6 A. If I can interrupt, I know where</p> <p>7 you're going. This is thing. We own 70 percent of</p> <p>8 this company. We are making an exchange offer to buy</p> <p>9 another 25 percent of this company at a big premium.</p> <p>10 I think it would be -- the board would be amiss, any</p> <p>11 board in this country -- forget this board, forget who</p> <p>12 they are -- not to allow the shareholders to decide if</p> <p>13 they wanted to take it.</p> <p>14 And, indeed, I'm not going to get into</p> <p>15 the legalities, but they hired lawyers to tell them</p> <p>16 that was okay. Outside of our lawyers, they had other</p> <p>17 lawyers. I looked into it a bit after reading what</p> <p>18 you said. They had lawyers. And, look, I don't get</p> <p>19 involved in the legal part of this. Once I say we're</p> <p>20 doing it, I let the lawyers run the thing. But I did</p> <p>21 look into it after reading your stuff, and your stuff</p> <p>22 is just, sort of just completely misleading.</p> <p>23 I mean, they looked at it. They have</p> <p>24 the lawyers. They have people looking at it. They</p>	<p style="text-align: right;">794</p> <p>1 A. Well, I just mentioned that Langham is</p> <p>2 a lawyer working for Icahn at that time, IEP at that</p> <p>3 time.</p> <p>4 Q. Okay. And you're aware that you and</p> <p>5 your counsel have decided in this litigation not to</p> <p>6 allow us to have access to any of the advice that was</p> <p>7 provided in connection with this transaction.</p> <p>8 A. I'm not aware of any of it.</p> <p>9 MR. BEIGEL: Your Honor, I must</p> <p>10 object.</p> <p>11 THE WITNESS: Herb, speak up.</p> <p>12 MR. BEIGEL: It's implying something</p> <p>13 negative about asserting a historical privilege that's</p> <p>14 been around for hundreds of years.</p> <p>15 THE COURT: What's the objection,</p> <p>16 Mr. Beigel?</p> <p>17 Negative implications in the courtroom</p> <p>18 happen quite frequently.</p> <p>19 MR. BEIGEL: I think it's</p> <p>20 inappropriate for a member of the Bar to suggest that</p> <p>21 to an individual who is asserting his rights which</p> <p>22 have been around for hundreds of years.</p> <p>23 THE COURT: Your statement is made for</p> <p>24 the record.</p>

<p style="text-align: right;">795</p> <p>1 Please continue, Mr. Gorris.</p> <p>2 BY MR. GORRIS:</p> <p>3 Q. Okay. Mr. Icahn, are you aware that</p> <p>4 CVR Refining had corporate governance guidelines?</p> <p>5 A. They must have, but I don't know. I</p> <p>6 can't recall now. I might have been aware then, but I</p> <p>7 don't recall now.</p> <p>8 Q. Okay.</p> <p>9 MR. GORRIS: Can you pull up Joint</p> <p>10 Exhibit 1100, page 4, particularly the "Ethics and</p> <p>11 Conflicts of Interest" section.</p> <p>12 Q. Now, sir, these are the corporate</p> <p>13 governance guidelines for CVR Refining. And what they</p> <p>14 state is "All directors shall recuse themselves from</p> <p>15 any decision affecting their personal interests."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And that was consistent with</p> <p>19 your reaction, which is you should have been recused</p> <p>20 from consideration of this exchange offer. Correct,</p> <p>21 sir?</p> <p>22 A. No, I don't say that's correct. I</p> <p>23 think that we acted -- again, I don't want to get into</p> <p>24 what the lawyers tell me, but I think we acted in good</p>	<p style="text-align: right;">797</p> <p>1 And they were getting -- they were buying it to get a</p> <p>2 great tax return. That stock was giving them a</p> <p>3 20 percent tax return -- 20 percent return on their</p> <p>4 capital. Okay? And they knew about the fact that it</p> <p>5 could be called. Most of them did. In fact, we got a</p> <p>6 lot of calls saying, we want to call it, when the</p> <p>7 stock plummeted down.</p> <p>8 So, I mean, we just keep spending a</p> <p>9 lot of time on did the board act properly. And I tell</p> <p>10 you, that's really a legal question that I'm not the</p> <p>11 one you should be asking anyway.</p> <p>12 Q. Now, sir --</p> <p>13 A. I'll also say, it's a legal question.</p> <p>14 But after looking at it, I've satisfied myself, as</p> <p>15 maybe a sophisticated nonlegal person, that they acted</p> <p>16 very properly. Okay? And that's all I can say.</p> <p>17 Q. Sir, you frequently pontificate on</p> <p>18 corporate --</p> <p>19 A. I can't hear you.</p> <p>20 Q. Sir, you frequently pontificate on</p> <p>21 corporate governance in the media. Correct?</p> <p>22 A. I can't hear. I'm sorry.</p> <p>23 Q. Sir, you frequently pontificate on</p> <p>24 corporate governance in the media. Correct?</p>
<p style="text-align: right;">796</p> <p>1 faith, which is the way we're supposed to act, and I</p> <p>2 think we acted properly.</p> <p>3 And I don't want to get into what the</p> <p>4 lawyers tell me, but the lawyers I have are pretty</p> <p>5 straight laced. In fact, I think they go the other</p> <p>6 way a lot, you know, with telling me I can't do this</p> <p>7 and don't do that and don't do this. And I always</p> <p>8 adhere to what they say.</p> <p>9 So I know where you're going, but, you</p> <p>10 know, this isn't your real case here. I mean, you're</p> <p>11 just -- like, if I might say, because I know time is</p> <p>12 relatively short, why don't you get to the real meat</p> <p>13 of the subject rather than going through whether a</p> <p>14 board should have said do you want to take a</p> <p>15 25 percent premium or not? I don't think that's</p> <p>16 germane. They took it or they didn't take it. And it</p> <p>17 wasn't up to a board to tell the shareholders, in my</p> <p>18 opinion -- and this is just a layman's opinion -- to</p> <p>19 go tell the shareholders, you know, you know already</p> <p>20 Icahn, IEP, owns 70 percent of it. Are you sure you</p> <p>21 want to take it or not?</p> <p>22 Hey, look, it's up to these people to</p> <p>23 decide what to do. Most of them, their board MLPs,</p> <p>24 despite who your client is, were pretty sophisticated.</p>	<p style="text-align: right;">798</p> <p>1 A. Yes. That's correct. And I think</p> <p>2 they acted within corporate governance here. In fact,</p> <p>3 I think they would be abrogating their corporate</p> <p>4 governance if they said to you -- if they went against</p> <p>5 it and said, we're not going to let you exchange, even</p> <p>6 though it wouldn't have mattered. I don't think it</p> <p>7 would have mattered. But even if -- if they did that,</p> <p>8 I think that would be something -- that would be the</p> <p>9 wrong corporate governance.</p> <p>10 When you get a 25 percent premium in</p> <p>11 this country and somebody wants to give it to you and</p> <p>12 pay you that, I think the shareholders have the right</p> <p>13 to decide for themselves, not a board of directors,</p> <p>14 not an -- I think it's the opposite.</p> <p>15 There are a lot of companies today,</p> <p>16 they'll say, well, you know, we don't want it, we're</p> <p>17 not for sale, and they usually lose in court on that.</p> <p>18 When somebody wants to pay a big premium, the</p> <p>19 shareholder should have the right to decide, not the</p> <p>20 board of directors.</p> <p>21 Q. Now, sir, but the board of directors</p> <p>22 had a right to express their recommendation --</p> <p>23 A. My value --</p> <p>24 (Overlapping speakers.)</p>

<p style="text-align: right;">799</p> <p>1 Q. -- and give information about the --</p> <p>2 A. I know where you're doing, and no. In</p> <p>3 this case, the board of directors, in this case, could</p> <p>4 not -- were not in a position to really go in there</p> <p>5 and decide which way the stock is going to go. And,</p> <p>6 in fact, they have Carl Icahn or Icahn, IEP, with a</p> <p>7 great record, that's done very well, to show they're</p> <p>8 going one way. How are they going to tell everybody,</p> <p>9 go against what he's doing? Oh, you shouldn't tender,</p> <p>10 you should tender. How do you know what the market is</p> <p>11 going to do? I don't know what it's going to do. And</p> <p>12 I was wrong, by the way. The guys who tendered were</p> <p>13 right, not me.</p> <p>14 Q. Well, sir, you made out pretty well.</p> <p>15 Right? Because you didn't exchange --</p> <p>16 A. I didn't --</p> <p>17 (Overlapping speakers.)</p> <p>18 Q. -- a 5 million units -- let me finish</p> <p>19 my question, sir.</p> <p>20 (Overlapping speakers.)</p> <p>21 A. How did I do well? Look at --</p> <p>22 THE COURT: So, Mr. Icahn, we've got</p> <p>23 to let Mr. Gorris ask you a question to which you</p> <p>24 respond. You've been through this before. You know</p>	<p style="text-align: right;">801</p> <p>1 in this whole case, and I could go into it, and maybe</p> <p>2 I will, if I have time. But go ahead. Go ask your</p> <p>3 questions.</p> <p>4 Q. Sir, if CVI is able to buy out the</p> <p>5 CVRR units on the cheap and get rid of that minority</p> <p>6 interest, that's highly beneficial to CVI and to IEP.</p> <p>7 Correct?</p> <p>8 A. If they bought it at the right price.</p> <p>9 I thought that was correct, by the way. I thought it</p> <p>10 was beneficial, by the way, and I was wrong. We lost</p> <p>11 a lot of money by doing it. Right? Stock went down.</p> <p>12 Okay? The way we -- the way you look at it, if we</p> <p>13 were doing -- okay. You asked the question, and I'm</p> <p>14 going to answer it as best I can.</p> <p>15 You -- what you're saying, your whole</p> <p>16 case is really saying, when you just reduce it down to</p> <p>17 the essentials, you're saying we had this</p> <p>18 Machiavellian plan to go in and buy CVR Energy, buy</p> <p>19 it, and then exercise a call right. So we were going</p> <p>20 to push it way down. We were going to push the stock</p> <p>21 down. That's what you said, from the outset, you say.</p> <p>22 Our plan was to push it down and then exercise the</p> <p>23 call right and make all this money. Correct? I'm</p> <p>24 just saying, that's what you're saying. So you're</p>
<p style="text-align: right;">800</p> <p>1 that's the way it works.</p> <p>2 THE WITNESS: I'm just trying to move</p> <p>3 it along.</p> <p>4 THE COURT: Well, it's really his</p> <p>5 show. This is his show, so let him ask the questions.</p> <p>6 THE WITNESS: I'm just trying to --</p> <p>7 okay. Go ahead.</p> <p>8 BY MR. GORRIS:</p> <p>9 Q. So Icahn Enterprises' interests are</p> <p>10 actually heavily on the CVR Energy side because they</p> <p>11 owned CVR Energy 80 percent at that time, 70 percent</p> <p>12 afterward, and that vastly outweighs the 5 million</p> <p>13 directly held CVR Refining units. Correct?</p> <p>14 A. No. I don't think you really</p> <p>15 understand the makeup of it. CVR Energy at that time,</p> <p>16 by far the largest holding was CVRR. So if you own</p> <p>17 CVRR, you are there with CVI. In other words, CVI</p> <p>18 owned -- that's what they owned. And it was really</p> <p>19 owned together. And what really -- well, we could go</p> <p>20 into it. I don't know how far you want me to go with</p> <p>21 it.</p> <p>22 Then you get me going and saying</p> <p>23 you're wrong, and I could go on for ten minutes, and</p> <p>24 that's going to take up time. So I think you're wrong</p>	<p style="text-align: right;">802</p> <p>1 saying, and, indeed, that's sort of what happened,</p> <p>2 that we did -- that the stock went down.</p> <p>3 But that was -- but that could not</p> <p>4 have been the plan. If you -- your whole case is</p> <p>5 based on an oxymoron. That could not have been the</p> <p>6 plan by any intelligent investor. I mean, if --</p> <p>7 you're really saying, I know when stock is going to go</p> <p>8 down, and the stock in this case, the stock is selling</p> <p>9 at 22 or 23.</p> <p>10 Now, I know it's going to go down, so</p> <p>11 then what I should have done, you would say, or what</p> <p>12 this Machiavellian investor would do, what you would</p> <p>13 do is say, I know CVI is going to go way down. I'm</p> <p>14 going to get it way down, or I'm going to see to it</p> <p>15 that it goes down. So what I would do is buy as</p> <p>16 little of it as I could to exercise the call right.</p> <p>17 By buying 95 percent of it, which I</p> <p>18 thought I would get, actually, by buying that</p> <p>19 95 percent, it blew up my whole great plan. So I have</p> <p>20 this ingenious plan to exercise the call right. So</p> <p>21 that would mean I buy 10 percent of it. So I was</p> <p>22 willing to buy the whole thing, which would mean I</p> <p>23 couldn't make any money by getting it to go down. So</p> <p>24 I was open to buying 22 million shares more.</p>

<p style="text-align: right;">803</p> <p>1 In other words, by bidding 95 percent, 2 by buying 95 percent of this company, it was 3 completely totally opposite to the plan that you said 4 I had. Because if I went and bought 95 percent of 5 this company, there would be no more company left to 6 buy. There would be no other holders. There's 7 30 percent holding stock, and I hold the stock. That 8 30 percent made up about 30 million shares, roughly. 9 So if I wanted to really, so to speak, 10 screw them, I would go in and simply buy 10 percent 11 more, activate the call right, or see that it goes 12 down, you know. Buy that stock, buy -- I would simply 13 buy 10 percent more and then wait for the stock to go 14 down or make it go down. And I didn't act in that way 15 whatsoever. 16 I was willing to buy 95 percent of it. 17 So I bought 22 million shares more. I was willing to 18 buy 22 million shares more. The way it worked out, it 19 did go down. But that plan would have worked. That 20 plan would have worked. If I had just bought -- if I 21 didn't buy the whole 22 million, if I just bought up 22 to 80 percent, then, yes, then I would have made 23 400 -- I gave away \$400 million. 24 And I've seen a lot of stuff in my</p>	<p style="text-align: right;">805</p> <p>1 questions and get answers, please. 2 BY MR. GORRIS: 3 Q. Sir, if you look at JX 935, which has 4 just been pulled up, we're going to the end of the 5 story. And this is a note from Tudor Pickering after 6 exercise of the call right that you, in your own 7 handwriting, wrote file in my CVR file. Right? 8 A. I don't see it. Where does it say 9 that? 10 THE COURT: On the front page of this 11 document are your handwritten notes, Mr. Icahn. 12 BY MR. GORRIS: 13 Q. Do you see, sir -- and you 14 acknowledged this at your deposition -- these are your 15 handwritten notes -- 16 A. I don't see. 17 Yeah. It says "File CVR." I see 18 that. Yes. "Equity Research." 19 Q. And you're telling your assistant to 20 put this in your hard copy CVR Energy file. Correct? 21 A. Well, it's not hard copy. I'm 22 old-fashioned. I just keep folders. 23 Q. Okay. And this is the end of the 24 story. And what Tudor reports is that "CVI is getting</p>
<p style="text-align: right;">804</p> <p>1 life. I've seen guys corner the metals markets. I've 2 seen them do all these derivatives. I've seen them, 3 you know, play in games that are dark gray. But 4 there's nobody stupid enough to go buy \$400 million 5 worth of a company -- this is what you're saying. I 6 went out and I would have bought \$400 million of a 7 company that I thought was going to go down. Why 8 would anybody spend \$400 million -- which I was 9 willing to do here. I was willing to go and spend 10 \$400 million more than I spent, or something like 11 that, to go buy the rest of this company if they had 12 all tendered. Okay? That belies the fact that I had 13 this great nefarious plan. It would have cost me 14 \$400 million. 15 So, by definition, this whole scheme 16 you're talking about makes absolutely no sense for any 17 intelligent -- you don't even have to be intelligent 18 to not do it. 19 THE COURT: So let's hear the next 20 question. 21 THE WITNESS: Okay. But we keep going 22 in and around all these things that you're saying that 23 I planned to do. 24 MR. GORRIS: Sir, can I ask my</p>	<p style="text-align: right;">806</p> <p>1 an unbelievable deal." Do you see that, sir? 2 A. Where does it say "unbelievable deal"? 3 Who says it? Oh, Tudor Pickering. 4 It says, "I see it as positive to CVI 5 in two respects." 6 Q. Sir, do you see the highlighted 7 language that says, "CVI is getting an unbelievable 8 deal"? 9 A. Yeah. I see they're saying it. I 10 don't remember this, but ... 11 Q. Okay. And you're one of the most 12 sophisticated investors in the world, and you want 13 this Court to believe that it was an accident or a 14 mistake or just pure luck that, somehow, at the end of 15 this plan, you end up with an unbelievable deal. 16 Is that your testimony, sir? 17 A. Yes, I want the Court to believe that. 18 And I would like to explain it. I would like to 19 answer the question, because -- if you tell me I 20 shouldn't answer it. That's fine with me -- 21 Q. Mr. Icahn -- 22 A. -- but I did. If you want me to 23 answer it, yes, I want the Court to believe that this 24 was -- first of all, if you really analyze it, on the</p>

<p style="text-align: right;">807</p> <p>1 one hand, you made money on the refinery. The</p> <p>2 refinery went down, but we also owned 70 percent of</p> <p>3 the refinery before this started. So the refinery</p> <p>4 went way down. So on paper, I was losing money. But</p> <p>5 let's get to the nub of the question.</p> <p>6 You want the Court to believe that I</p> <p>7 had -- first of all, I mean, I have a very credible</p> <p>8 record, I think, as far as not even getting to gray</p> <p>9 areas. I knew all these wild guys, I dealt with them,</p> <p>10 I went through the Boesky days and all the Milken</p> <p>11 things, and it never once was, you know, said that I</p> <p>12 did anything wrong. I rarely told a lie. But that's</p> <p>13 not what you're here to hear. You're not here to</p> <p>14 listen to that.</p> <p>15 The whole thing that you are doing</p> <p>16 reads -- it reads like a script for <i>Billions</i> or</p> <p>17 something. You have it that -- let's just go through</p> <p>18 it. You're saying because I got an unbelievable deal,</p> <p>19 I'm guilty. First of all, I don't think I got an</p> <p>20 unbelievable deal.</p> <p>21 You're saying I went and planned this</p> <p>22 all out. This great sophisticated investor planned it</p> <p>23 out. But if I planned it out, why would I be</p> <p>24 buying -- if I got my tender offer done, if my tender</p>	<p style="text-align: right;">809</p> <p>1 to make it go down. But then all I had to do was only</p> <p>2 buy to 81 percent and I would have saved \$400 million.</p> <p>3 Q. Okay, sir.</p> <p>4 A. Let me finish.</p> <p>5 Q. Can I ask another question, please.</p> <p>6 THE COURT: Mr. Icahn, you've got to</p> <p>7 let Mr. Gorris ask his questions.</p> <p>8 THE WITNESS: No, but he's asking a</p> <p>9 question and saying do I expect the Court to believe</p> <p>10 it, and I said, yeah, I believe, I was lucky that I</p> <p>11 didn't get --</p> <p>12 MR. GORRIS: Sir, can I ask my next</p> <p>13 question, please.</p> <p>14 THE COURT: Yes.</p> <p>15 BY MR. GORRIS:</p> <p>16 Q. Okay. You're a sophisticated</p> <p>17 investor, and you have information about the</p> <p>18 stockholder, base compensation, and you know</p> <p>19 information within a range about who is expected to</p> <p>20 tender and who is not expected to tender into a tender</p> <p>21 offer. Right?</p> <p>22 A. No. That's wrong.</p> <p>23 MR. BEIGEL: What's fair is fair with</p> <p>24 respect to that.</p>
<p style="text-align: right;">808</p> <p>1 offer was done, there would never be a deal. I would</p> <p>2 have paid -- I would have gotten completely totally</p> <p>3 whiplashed if my tender offer went through.</p> <p>4 So you're saying I'm so smart that I</p> <p>5 did a tender offer at a 25 percent premium, and people</p> <p>6 didn't tender, and, therefore, I knew they wouldn't</p> <p>7 tender, which is nonsense. Nobody risks \$400 million.</p> <p>8 In other words, you're saying I risked</p> <p>9 \$400 million to buy all that stock at 27 1/2, the</p> <p>10 stock -- if I was tendered fully, I would have had to</p> <p>11 pay 27 1/2 for all the stock. It would have cost me</p> <p>12 another \$400 million. All right? And nobody -- and</p> <p>13 then, and then I would -- then there was nothing I</p> <p>14 could do, because there would be nothing to push down,</p> <p>15 because I'm on the board. So I was willing to buy all</p> <p>16 that stock. And the reason I was willing to buy it</p> <p>17 was wrong. So I was lucky. The reason I was willing</p> <p>18 to buy it, I wanted to keep -- I wanted to keep the</p> <p>19 MLP at that point.</p> <p>20 But why would anybody do that? I</p> <p>21 didn't tender my own stock. So you're saying -- I</p> <p>22 know -- I knew that -- you're saying I knew that CVRR</p> <p>23 was going down because I was going to make it go down.</p> <p>24 I mean, I'll make it even worse for me. I was going</p>	<p style="text-align: right;">810</p> <p>1 THE COURT: Your attorney is</p> <p>2 objecting.</p> <p>3 MR. BEIGEL: That's four questions in</p> <p>4 one.</p> <p>5 THE COURT: Mr. Beigel, you know, I</p> <p>6 think Mr. Gorris is just trying to take the airwaves</p> <p>7 when he can.</p> <p>8 MR. BEIGEL: No, I know, and I tried</p> <p>9 to do that yesterday, and I didn't succeed either.</p> <p>10 But the point is the way to do it is to ask one</p> <p>11 question at a time.</p> <p>12 THE COURT: Mr. Beigel --</p> <p>13 Mr. Gorris, you can ask the questions</p> <p>14 you want.</p> <p>15 And I'm going to ask -- we're going to</p> <p>16 take a 15-minute break, and I would like lead Delaware</p> <p>17 counsel to sidebar in chambers.</p> <p>18 Thank you.</p> <p>19 (Recess taken at 2:59 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">811</p> <p>1 (Resumed at 3:15 p.m.)</p> <p>2 THE COURT: Mr. Gorris, please</p> <p>3 continue.</p> <p>4 BY MR. GORRIS:</p> <p>5 Q. Mr. Icahn, this is a yes-or-no</p> <p>6 question. Have you hired proxy solicitors in the</p> <p>7 past, yes or no?</p> <p>8 A. Have I?</p> <p>9 Q. Have you hired proxy solicitors in the</p> <p>10 past, yes or no?</p> <p>11 A. Yes.</p> <p>12 Q. This is another yes-or-no question.</p> <p>13 You and your team have access to information about the</p> <p>14 stockholder base of companies, including CVR Refining?</p> <p>15 Yes or no?</p> <p>16 A. To some extent.</p> <p>17 Q. Okay. Can we turn to JX 699.</p> <p>18 Mr. Icahn, the highlighted language in</p> <p>19 this text message from November 23, 2018, from Melissa</p> <p>20 Buhrig to David Lamp, says that she "Spoke with Jesse,</p> <p>21 Carl wants to do the call transaction ASAP"</p> <p>22 Do you see that, sir?</p> <p>23 A. I do see it.</p> <p>24 Q. Is that accurate?</p>	<p style="text-align: right;">813</p> <p>1 other transactions. And as far as this was, I mean, I</p> <p>2 just felt it was what it was. That's how I operate.</p> <p>3 You know, I do sort of okay to something put it in</p> <p>4 front of me, so -- or not okay.</p> <p>5 (End of video clip.)</p> <p>6 BY MR. GORRIS:</p> <p>7 Q. Sir, did I ask that question and did</p> <p>8 you give that answer?</p> <p>9 MR. BEIGEL: May I make a quick</p> <p>10 objection for the record about impeachment?</p> <p>11 THE COURT: Well, he asked a question,</p> <p>12 and he asked if it was a fait accompli, and he said --</p> <p>13 MR. BEIGEL: Well, but there's no</p> <p>14 time -- when we heard "fait accompli" -- the question</p> <p>15 was connected with November. The answer is not</p> <p>16 connected to any particular date.</p> <p>17 THE COURT: Overruled.</p> <p>18 BY MR. GORRIS:</p> <p>19 Q. Mr. Icahn, did I ask that question and</p> <p>20 did you give that answer at your deposition?</p> <p>21 A. That said February 16, sir.</p> <p>22 Q. Sir, did I ask you that question, the</p> <p>23 video clip just played at your deposition, and did you</p> <p>24 give that answer, yes or no?</p>
<p style="text-align: right;">812</p> <p>1 A. I have no idea. I don't remember this</p> <p>2 at all.</p> <p>3 Q. Okay. Sir, do you recall that you</p> <p>4 were presented with a decision Thanksgiving weekend</p> <p>5 about what to do regarding the call exercise,</p> <p>6 Thanksgiving weekend of 2018?</p> <p>7 A. No, I don't.</p> <p>8 Q. Okay. Do you recall that when you</p> <p>9 gave your input on the exercise of the call right, it</p> <p>10 was a fait accompli at that time?</p> <p>11 A. No, I don't.</p> <p>12 MR. GORRIS: Joe, can you play Icahn</p> <p>13 clip 48, please.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Question: Did you, in connection with</p> <p>16 how you would -- how and what you would disclose and</p> <p>17 whether you would disclose the contemplation of the</p> <p>18 call right, do you remember the Boardwalk Pipeline</p> <p>19 situation coming up?</p> <p>20 Answer: No. I just don't remember</p> <p>21 the discussions too much about it. Once we decided to</p> <p>22 do it, it was a fait accompli. Again, I don't want to</p> <p>23 keep repeating it, but maybe I got too many things to</p> <p>24 do, but we -- in those times, we were in a number of</p>	<p style="text-align: right;">814</p> <p>1 A. I couldn't hear it. I couldn't hear</p> <p>2 the answer. I'm sorry. Tell me what I said. I'm</p> <p>3 sorry, but it's muffled to me.</p> <p>4 MR. GORRIS: Joe, can you --</p> <p>5 THE COURT: You don't have to replay</p> <p>6 the clip.</p> <p>7 MR. GORRIS: Fine.</p> <p>8 Can we move on to JX 739, please.</p> <p>9 BY MR. GORRIS:</p> <p>10 Q. Mr. Icahn, these are the minutes of a</p> <p>11 special board meeting of the directors of Icahn</p> <p>12 Enterprises on November 28, 2018.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Mr. Icahn, these minutes state</p> <p>16 that at that November 28 IEP board meeting, "Mr. Icahn</p> <p>17 then explained his view that a sale of the Company's</p> <p>18 CVRR units to CVI in connection with an exercise of</p> <p>19 CVI's call right would be beneficial to the Company</p> <p>20 because it would simplify CVI's capital structure,</p> <p>21 which would make CVI more valuable to potential</p> <p>22 acquirors."</p> <p>23 Do you see that, sir?</p> <p>24 A. Yes, I do.</p>

<p style="text-align: right;">815</p> <p>1 Q. And is that a fair reflection of what</p> <p>2 you said at the November 28, 2018, IEP board meeting?</p> <p>3 A. I don't recall at all. I don't recall</p> <p>4 the meeting.</p> <p>5 Q. Sir, was that a fair reflection of</p> <p>6 what you believed on November 28, 2018?</p> <p>7 A. I told you what I believed. I had</p> <p>8 mixed feelings about it at that time. So there was</p> <p>9 some pressure on me from others, some shareholders,</p> <p>10 whatever, to do it, to do the rights offering. But I</p> <p>11 don't think I was there yet at all.</p> <p>12 Q. Sir, yes or no, do you have any reason</p> <p>13 to believe that these IEP board minutes signed by</p> <p>14 Jesse Lynn are inaccurate?</p> <p>15 A. I think it's out of context if it's</p> <p>16 accurate. I think I might have said something like</p> <p>17 that. But -- and this was, when, in November? I</p> <p>18 don't think we had decided to exercise the rights</p> <p>19 there, and I think it was still in discussion.</p> <p>20 But my own personal feeling was to</p> <p>21 hold onto it and not to do the rights. There was a</p> <p>22 part of me that didn't want to do it. I thought we</p> <p>23 could go and take over other companies using that as a</p> <p>24 template -- or a platform, rather. So I don't know.</p>	<p style="text-align: right;">817</p> <p>1 Q. Do you understand that you had to sign</p> <p>2 this Schedule 13D and it has your name underneath and</p> <p>3 then a "/s/ Carl C. Icahn," which indicates that you</p> <p>4 signed this document, sir?</p> <p>5 A. Come on, you're giving me a piece of</p> <p>6 paper with my name on it. It could be I'm giving away</p> <p>7 \$100 million. I don't know what the paper says. And</p> <p>8 then underneath it, it says 13D. I don't know what</p> <p>9 13D is. I don't know where you're going with this.</p> <p>10 Q. It says right underneath your</p> <p>11 signature, it says, "[Signature Page for Amendment</p> <p>12 No. 9 to the Schedule 13D [for] CVR Refining, [Limited</p> <p>13 Partnership]."</p> <p>14 Do you see that, sir?</p> <p>15 A. Yeah, you're right. But what does</p> <p>16 that 13D say? You're asking me to opine on whether I</p> <p>17 was there or signed it. I got to know what it said.</p> <p>18 Q. Okay.</p> <p>19 MR. GORRIS: Now, can you go to</p> <p>20 page 2, the first paragraph under item 4.</p> <p>21 Q. Sir, if you look at Item No. 4, which</p> <p>22 is the purpose of the transaction and the 13D, do you</p> <p>23 see that the last two sentences say, "On November --"</p> <p>24 A. I'm sorry. I do know this. Okay. I</p>
<p style="text-align: right;">816</p> <p>1 Q. Sir, I asked a question, and you've</p> <p>2 answered it.</p> <p>3 A. Look, the answer is I don't remember</p> <p>4 this meeting.</p> <p>5 MR. GORRIS: Can we bring up JX 750,</p> <p>6 please. And can you highlight the date of this?</p> <p>7 Q. This is a Schedule 13D filed on</p> <p>8 November 29, 2018. Do you see that, sir?</p> <p>9 A. What am I supposed to look at? I see</p> <p>10 something in yellow, November 29, 2018.</p> <p>11 Q. Okay.</p> <p>12 MR. GORRIS: And then can we go to the</p> <p>13 last page, and highlight the last signature.</p> <p>14 Q. Mr. Icahn, this is your signature on</p> <p>15 the signature page of Amendment No. 9 to the Schedule</p> <p>16 13D for CVR Refining; correct?</p> <p>17 A. I don't see my signature. I just see</p> <p>18 my name.</p> <p>19 Q. Do you see the "/s" that indicates</p> <p>20 that you signed this document, sir?</p> <p>21 A. I just don't see my signature. All I</p> <p>22 see is a piece of paper with my name on it.</p> <p>23 Q. Okay.</p> <p>24 A. I don't know what you're asking me.</p>	<p style="text-align: right;">818</p> <p>1 do recall --</p> <p>2 Q. Sir, can I finish my question, please.</p> <p>3 A. -- we started to contemplate the</p> <p>4 change around that time. That we said that we're</p> <p>5 going to contemplate exercising it -- we're now going</p> <p>6 to contemplate. I remember that. We decided we're</p> <p>7 now going to contemplate it.</p> <p>8 Q. Okay. And, sir, six days before, we</p> <p>9 saw a text message that said that you had said to</p> <p>10 exercise the call ASAP. I'm sorry, three --</p> <p>11 A. I really don't recall that at all,</p> <p>12 that I said any of that. I don't think I did.</p> <p>13 Q. Okay.</p> <p>14 A. I had mixed feelings about it at that</p> <p>15 time. So that's all I can tell you.</p> <p>16 Q. Now, sir, does this 13D disclose that</p> <p>17 you had a plan to sell IEP's CVRR units to CVR Energy</p> <p>18 in connection with the call exercise because it would</p> <p>19 simplify CVI's capital structure, which would make CVI</p> <p>20 more valuable to potential acquirors as you told the</p> <p>21 IEP board the day before?</p> <p>22 A. I don't recall that. I do recall the</p> <p>23 discussion to contemplate doing the call right. I</p> <p>24 don't recall anything about selling -- I'm not saying</p>

<p style="text-align: right;">819</p> <p>1 it didn't happen, I just don't recall that.</p> <p>2 MR. GORRIS: Okay. Can we go back to</p> <p>3 JX 699 for one minute.</p> <p>4 Q. Okay. And this is a text message from</p> <p>5 Melissa Buhrig. Do you know who Ms. Buhrig is?</p> <p>6 A. Yeah. What's the question?</p> <p>7 Q. Sir, do you know that Melissa Buhrig</p> <p>8 was, at this time, the general counsel of CVR Energy?</p> <p>9 A. I'm not sure if I knew she was. I</p> <p>10 know it now, but I don't know if I knew it then.</p> <p>11 Q. Okay. And do you understand that Dave</p> <p>12 Lamp is the CEO of CVR Energy?</p> <p>13 A. Yes, he's CEO of CVR.</p> <p>14 Q. Okay. And do you see that Ms. Buhrig</p> <p>15 is indicating she spoke with Jesse --</p> <p>16 A. Can you talk into it a little?</p> <p>17 Q. Do you see Ms. Buhrig is indicating</p> <p>18 that on November 23rd she spoke with Jesse? Do you</p> <p>19 understand that to be the IEP general counsel, Jesse</p> <p>20 Lynn, sir?</p> <p>21 A. "Spoke with Jesse" -- well, I know,</p> <p>22 yeah. Jesse is Jesse. Yeah, he's general -- I'm sure</p> <p>23 it's -- yes. So what's the question?</p> <p>24 Q. Okay. And do you have any reason --</p>	<p style="text-align: right;">821</p> <p>1 parallels to the Boardwalk Pipeline-Loews call right</p> <p>2 situation that happened a few months earlier in 2018?</p> <p>3 A. I know about something about</p> <p>4 Boardwalk. I'm no expert on it. I don't quite</p> <p>5 understand that case, so I don't want to comment on</p> <p>6 it. I mean, not that -- I don't refuse to comment on</p> <p>7 it, I just don't know the case.</p> <p>8 Q. Okay. Well, you know --</p> <p>9 A. Excuse me. I know about the case, but</p> <p>10 I don't know what -- I think some of it's different</p> <p>11 and not different. And I never wanted to get into it</p> <p>12 too much. In other words, I know about it, but I</p> <p>13 never understood the details of it.</p> <p>14 Q. Okay, sir. And you know Loews because</p> <p>15 you're friends with the Tisches; correct?</p> <p>16 A. Yeah, I know Jim Tisch socially. I</p> <p>17 don't do any business with him.</p> <p>18 Q. Okay. And you were aware of the</p> <p>19 Boardwalk Pipeline-Loews situation because you had</p> <p>20 discussed it with Keith Cozza and Jesse Lynn; correct?</p> <p>21 A. I discussed it. Very tangentially,</p> <p>22 yes.</p> <p>23 MR. GORRIS: Okay. Pass the witness.</p> <p>24 THE COURT: Thank you, Mr. Gorris.</p>
<p style="text-align: right;">820</p> <p>1 A. I could imagine --</p> <p>2 Q. Sir, do you have any reason to believe</p> <p>3 that it's inaccurate that Mr. Lynn, the general</p> <p>4 counsel of IEP, conveyed to Ms. Buhrig, the general</p> <p>5 counsel of CVI, that you wanted to do the call</p> <p>6 transaction ASAP?</p> <p>7 A. I don't know. I don't remember it.</p> <p>8 It might have been out of context. But I don't</p> <p>9 believe that I had made up my mind by that time.</p> <p>10 Q. Okay. And then, going back to that</p> <p>11 13D, it doesn't say anything about whether or not you</p> <p>12 had made up your mind; correct?</p> <p>13 A. You want me to read it again? Oh, 13D</p> <p>14 just said what it said, that we are contemplating it,</p> <p>15 right? We're deciding to consider it.</p> <p>16 Q. Okay. And it doesn't say anything</p> <p>17 about the plan you had to sell the IEP CVR Refining</p> <p>18 units to CVR Energy in connection with the call right</p> <p>19 exercise; correct?</p> <p>20 A. Yeah, I told you three times I don't</p> <p>21 remember that. I don't remember contemplating that.</p> <p>22 Q. Okay. Now, sir, do you recognize that</p> <p>23 this language about CVI announcing to the market that</p> <p>24 it should consider exercising the call right has</p>	<p style="text-align: right;">822</p> <p>1 Mr. Beigel.</p> <p>2 MR. BEIGEL: No questions.</p> <p>3 THE COURT: There you go, Mr. Icahn.</p> <p>4 You may be excused.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 (Witness excused.)</p> <p>7 THE COURT: Mr. Gorris.</p> <p>8 MR. GORRIS: Plaintiffs call Janice</p> <p>9 DeVelasco.</p> <p>10 JANICE T. DEVELASCO, having first been</p> <p>11 duly affirmed, was examined and testified as follows:</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. WALES:</p> <p>14 Q. Good afternoon, Ms. DeVelasco.</p> <p>15 A. Good afternoon.</p> <p>16 Q. You might remember, David Wales, we</p> <p>17 met back in January by Zoom.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And what's your position at</p> <p>20 CVR?</p> <p>21 A. Vice president - environmental,</p> <p>22 health, safety, and security.</p> <p>23 Q. And you joined there in about 2014?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">823</p> <p>1 Q. And when you joined, did the company</p> <p>2 issue a press release about it?</p> <p>3 A. Yes.</p> <p>4 Q. And then in 2018, you got promoted; is</p> <p>5 that correct?</p> <p>6 A. No.</p> <p>7 Q. In 2018, you became a direct report to</p> <p>8 the CEO; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And the company issued -- both</p> <p>11 CVR and CVI issued 8-Ks that included the announcement</p> <p>12 of that; is that correct?</p> <p>13 A. The announcement of what?</p> <p>14 Q. Your change in reporting.</p> <p>15 A. Yes.</p> <p>16 Q. And your responsibility includes to</p> <p>17 work on health, safety, and regulatory-type compliance</p> <p>18 matters; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And as part of your</p> <p>21 responsibilities, you report to the environmental,</p> <p>22 health, and safety committee of the board of the</p> <p>23 general partner; is that correct?</p> <p>24 A. I don't report to the committee.</p>	<p style="text-align: right;">825</p> <p>1 February 2018; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And also in a proxy statement, a 14A;</p> <p>4 is that correct?</p> <p>5 A. I'm not familiar with that.</p> <p>6 Q. Okay. To try to make things go a</p> <p>7 little more quickly -- which is always the hope, it</p> <p>8 doesn't always work out that way -- the parties have</p> <p>9 entered into what's called a pretrial stipulation and</p> <p>10 order, where we put in some facts that everyone agrees</p> <p>11 to. And I might refer to that occasionally, just to</p> <p>12 move this thing along.</p> <p>13 Okay. And you should have a binder in</p> <p>14 front of you that says "Janice DeVelasco, Witness</p> <p>15 Binder." Do you have that in front of you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can I ask you to turn to the</p> <p>18 very last tab?</p> <p>19 Okay. And do you see something that</p> <p>20 says "Pretrial Stipulation and Order"?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And if you turn to the third</p> <p>23 page, towards the bottom, it says, "Statement Of Facts</p> <p>24 Which Are Admitted And Require No Proof." That's</p>
<p style="text-align: right;">824</p> <p>1 Q. Were you aware that -- you know</p> <p>2 Melissa Buhrig, don't you?</p> <p>3 A. Yes.</p> <p>4 Q. And are you aware that she testified</p> <p>5 today that you do report to a board committee?</p> <p>6 A. I make reports to them. But my</p> <p>7 reporting relationship is to the CEO.</p> <p>8 Q. Okay. So part of your responsibility</p> <p>9 is you provide reports to the board committee; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, you became an executive</p> <p>13 officer of CVR Energy effective 2018; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And also of the general partner of CVR</p> <p>16 Refining; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you understood that the company</p> <p>19 stated in public filings to shareholders that you were</p> <p>20 an executive officer of the general partner; is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And some of those public filings</p> <p>24 include the Form 10-K that was issued in</p>	<p style="text-align: right;">826</p> <p>1 lawyer talk for: We are agreeing to those facts.</p> <p>2 Okay. Now, can I ask you to turn to</p> <p>3 page 49, please? Actually, page 50. And you have</p> <p>4 page 50 in front of you, and you see paragraph 144 at</p> <p>5 the top?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And it says, "On April 27,</p> <p>8 2018, CVR Energy filed its Schedule 14A."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And then if you go down towards the</p> <p>12 bottom, three lines from the bottom, it says it</p> <p>13 "disclosed that 'DeVelasco serves as Vice President -</p> <p>14 Environmental, Health, Safety & Security of CVR</p> <p>15 Energy, the general partner of CVR Refining, and the</p> <p>16 general partner of the CVR Partners, in each case, as</p> <p>17 of January 2018.'"</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Great. Now, as an executive at</p> <p>21 the company, you get paid; right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And your compensation consists</p> <p>24 of a base cash salary; right?</p>

<p style="text-align: right;">827</p> <p>1 A. Yes.</p> <p>2 Q. And then also a bonus; is that</p> <p>3 correct?</p> <p>4 A. If a bonus is paid.</p> <p>5 Q. Yes.</p> <p>6 A. I'm eligible for a bonus.</p> <p>7 Q. Yes. And also LTIPs; right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And I was just going to show</p> <p>10 you, if you turn to the first exhibit in your</p> <p>11 notebook, is your 2018 performance review. And do you</p> <p>12 have that in front of you?</p> <p>13 A. Yes.</p> <p>14 Q. Can I ask you to turn to the second</p> <p>15 page, please. And do you see in the middle, it says,</p> <p>16 "Compensation History"?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And it lists your total</p> <p>19 compensation for 2018 as 977,000.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And it's broken down among the three</p> <p>23 elements we just described; right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">829</p> <p>1 Ruben DeVelasco -- "The Ruben P. DeVelasco Revocable</p> <p>2 Living Trust"?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And are you a co-trustee of the</p> <p>5 trust?</p> <p>6 A. Yes.</p> <p>7 Q. Along with your husband?</p> <p>8 A. Yes.</p> <p>9 Q. And if you look at the first</p> <p>10 paragraph, right in the middle, it says, "Ruben P.</p> <p>11 DeVelasco and Janice T. DeVelasco as independent</p> <p>12 Co-trustees"</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then -- so you and your</p> <p>16 husband are the two co-trustees; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Can I ask you to turn, please, to</p> <p>19 page 13 of the document. It's 13 of 20, on the</p> <p>20 lower -- on the bottom.</p> <p>21 And do you have "Article IX, Trustee's</p> <p>22 Powers" in front of you?</p> <p>23 A. Yes.</p> <p>24 Q. And it says, for A., "Trustee shall</p>
<p style="text-align: right;">828</p> <p>1 Q. And that's accurate; right?</p> <p>2 A. Based on these figures, that would be</p> <p>3 the sum.</p> <p>4 Q. Yes. Okay. And you're not</p> <p>5 disagreeing with the figures; right?</p> <p>6 A. No.</p> <p>7 Q. Okay. Great.</p> <p>8 Ms. DeVelasco, what's your husband's</p> <p>9 name?</p> <p>10 A. Ruben.</p> <p>11 Q. And how long have you been married</p> <p>12 for?</p> <p>13 A. Almost 35 years.</p> <p>14 Q. Congratulations. And do you have</p> <p>15 children?</p> <p>16 A. Yes.</p> <p>17 Q. How many?</p> <p>18 A. Two.</p> <p>19 Q. And how old are they?</p> <p>20 A. 28 and 26.</p> <p>21 Q. Okay. And can I ask you to turn,</p> <p>22 please, to Exhibit JX 6. It should be the next</p> <p>23 document in the binder.</p> <p>24 And do you have in front of you the</p>	<p style="text-align: right;">830</p> <p>1 have the following powers with respect to each trust</p> <p>2 held under this instrument, exercisable in the</p> <p>3 discretion of the Trustee:"</p> <p>4 And you're one of the trustees; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then it lists, and goes on</p> <p>7 for a few pages. Can I ask you to turn to the next</p> <p>8 page, please, and go to No. 4.</p> <p>9 And do you see it says, "To invest in</p> <p>10 bonds, common or preferred stocks, notes, real</p> <p>11 estate ...," and other things?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And then can I ask you to go to</p> <p>14 No. 6, please. And do you see it says, "To exercise</p> <p>15 in person or by general or limited proxy all voting</p> <p>16 and other rights, powers, and privileges ...," and</p> <p>17 then it continues?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So these are two of the powers</p> <p>20 you have as a trustee; right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And just so we can go to follow</p> <p>23 this up, can I ask you to go to page 19 of 20, please.</p> <p>24 And is that your signature as the co-trustees?</p>

<p style="text-align: right;">831</p> <p>1 A. Yes.</p> <p>2 Q. And that's your husband's signature as</p> <p>3 the other co-trustees?</p> <p>4 A. Yes.</p> <p>5 Q. And you were the co-trustee in 2018;</p> <p>6 is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in 2019 as well?</p> <p>9 A. Yes.</p> <p>10 Q. And the trust hasn't been changed</p> <p>11 since it's been set up, has it?</p> <p>12 A. No.</p> <p>13 Q. Ms. DeVelasco, the trust opened up an</p> <p>14 account at Charles Schwab, didn't it?</p> <p>15 A. Yes.</p> <p>16 Q. And you had to sign some of the papers</p> <p>17 for opening that account as the co-trustees; am I</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Can I ask you to turn to the</p> <p>21 next exhibit, please, Exhibit 121. And these are a</p> <p>22 group of papers that were produced by Schwab, and can</p> <p>23 I ask you -- and right on the front it says,</p> <p>24 "R. DeVelasco & J. DeVelasco TTEE."</p>	<p style="text-align: right;">833</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And this is back in</p> <p>3 November 1995; right?</p> <p>4 A. Yes.</p> <p>5 Q. And if you turn to the next page, you</p> <p>6 signed there as well; right?</p> <p>7 A. Yes.</p> <p>8 Q. And going to page 25 of 29, you've</p> <p>9 signed twice on that page?</p> <p>10 A. Yes.</p> <p>11 Q. And if you go to the next page,</p> <p>12 page 26, and you signed again, your name is listed</p> <p>13 again and some initials by you; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And then on the next page, it</p> <p>16 looks like you signed another form related to the</p> <p>17 account in 2003.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And, finally, your signature is</p> <p>21 on page 29 as well; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, do you know a gentleman by the</p> <p>24 name John Walter?</p>
<p style="text-align: right;">832</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then it says for the "Ruben P.</p> <p>4 DeVelasco Rev[ocable] Living [Trust dated] 11/22/1995.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. So these are some documents related to</p> <p>8 the trust; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And can I ask you to turn in</p> <p>11 this document to page 22 of 29?</p> <p>12 Do you have that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Thank you.</p> <p>15 And do you see there's a Schwab trust</p> <p>16 account application for the Ruben P. DeVelasco</p> <p>17 Revocable Living Trust?</p> <p>18 A. Yes.</p> <p>19 Q. If you go down about, oh, two-thirds</p> <p>20 of the page, you're listed as one of the co-trustees;</p> <p>21 is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And on the next page, you</p> <p>24 signed as one of the co-trustees; is that correct?</p>	<p style="text-align: right;">834</p> <p>1 A. Yes.</p> <p>2 Q. Who's Mr. Walter?</p> <p>3 A. John was the general counsel at our</p> <p>4 companies.</p> <p>5 Q. Okay. And he was the general counsel</p> <p>6 in 2017 and part of 2018?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. As an employee, as an officer</p> <p>9 of the company, you dealt with John; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. When you became a direct report to the</p> <p>12 CEO, you came to understand that you would have to</p> <p>13 make certain reporting to the company and that they</p> <p>14 would be reporting then in public filings; is that</p> <p>15 correct?</p> <p>16 A. My understanding was the designation</p> <p>17 as an executive officer, but not being a direct report</p> <p>18 of the CEO.</p> <p>19 Q. Okay. Fair enough.</p> <p>20 Can I ask you to turn to the next</p> <p>21 exhibit please, Exhibit 134. And do you have an</p> <p>22 email -- well, let's start with the bottom email --</p> <p>23 from Mr. Walter to you dated December 21, 2017?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">835</p> <p>1 Q. Okay. And he's advising you in this</p> <p>2 email that you're going to have to make certain</p> <p>3 reporting of your existing ownership in CVI, CVRR, and</p> <p>4 UAN.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Great. And you discussed that</p> <p>8 with Mr. Walter; isn't that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you disclosed the existence</p> <p>11 of the trust; isn't that right? Well, let me ask you</p> <p>12 first, without looking at the document, do you recall</p> <p>13 disclosing the existence of the trust to Mr. Walter?</p> <p>14 A. Yes.</p> <p>15 Q. And you wanted to make sure you were</p> <p>16 open with him about the trust and the circumstances;</p> <p>17 is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you wanted him to have the</p> <p>20 information that he needed to make whatever calls he</p> <p>21 needed to make; is that fair?</p> <p>22 A. I'm sorry. I didn't hear what word</p> <p>23 you said.</p> <p>24 Q. You wanted to make sure you gave him</p>	<p style="text-align: right;">837</p> <p>1 information, he filled the questionnaire out, and he</p> <p>2 sent it to you for your review; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Is that yes?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I'm sorry if I missed that.</p> <p>7 Now, attached to or part of</p> <p>8 Exhibit 134 is the questionnaire. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And if you go to page 3 of 29,</p> <p>11 it lists your name. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And your address and your position;</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And then can I ask you to turn</p> <p>17 to page 20, please? That's your signature on it; is</p> <p>18 that correct?</p> <p>19 I'm sorry, page 23, I might have</p> <p>20 misspoken.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And before you signed it, you</p> <p>23 reviewed it to make sure the information was accurate</p> <p>24 to the best of your understanding; is that correct?</p>
<p style="text-align: right;">836</p> <p>1 the information that he asked for and said he needed;</p> <p>2 is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And we saw when we were just looking</p> <p>5 at the trust agreement that some of the powers you had</p> <p>6 were to invest on behalf of the trust; is that</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And to vote securities on behalf of</p> <p>10 the trust; is that correct?</p> <p>11 A. Can you repeat? I'm sorry.</p> <p>12 Q. To vote securities, like proxies and</p> <p>13 things?</p> <p>14 A. Yes.</p> <p>15 Q. And after you spoke to Mr. Walter, he</p> <p>16 prepared a questionnaire with certain information in</p> <p>17 it, and he sent it back to you to review; is that</p> <p>18 correct?</p> <p>19 A. I think I was asked to provide the</p> <p>20 information for the questionnaire. I don't remember</p> <p>21 what would have been provided by him. But I remember</p> <p>22 completing the questionnaire and providing the input</p> <p>23 for it.</p> <p>24 Q. Okay. So you gave him the</p>	<p style="text-align: right;">838</p> <p>1 A. Yes.</p> <p>2 Q. And if you had any questions, you</p> <p>3 discussed it with Mr. Walter; is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. And now, can I ask you to turn to</p> <p>6 page 29 of 29. And there it says "Biography And</p> <p>7 Beneficial Ownership."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And under "CVR Refining, LP,"</p> <p>11 it lists number of shares or number of units, "4,000."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And then it says the "Ruben P.</p> <p>15 DeVelasco, Revocable Living Trust."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And that's the trust you were</p> <p>19 co-trustees of; right?</p> <p>20 A. Yes.</p> <p>21 Q. And you understood at this time that</p> <p>22 the trust had 4,000 CVR units; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. And then it lists that the units are</p>

<p style="text-align: right;">839</p> <p>1 owned beneficially by you. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then it's shares to which you have</p> <p>4 shared voting power of 4,000; right?</p> <p>5 A. Yes.</p> <p>6 Q. And we just saw that power in the</p> <p>7 trust; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then shares or units to which you</p> <p>10 have shared investment power, 4,000. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And that's another power that we saw</p> <p>13 you had in the trust; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So you reviewed this, you</p> <p>16 discussed it with Mr. Walter, you thought it was</p> <p>17 accurate, and you sent it back to him; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then after that, there was a</p> <p>20 filing made with the United States Securities and</p> <p>21 Exchange Commission called the Form 3.</p> <p>22 Are you aware of that?</p> <p>23 A. Yes.</p> <p>24 MR. WALES: Joe, can you please pull</p>	<p style="text-align: right;">841</p> <p>1 way. But if you go to page 7 it says "Limited Power</p> <p>2 of Attorney," and you've signed giving Ms. Ball and</p> <p>3 Mr. Walter limited power of attorney for these forms.</p> <p>4 Do you see that?</p> <p>5 A. I see -- on page 7?</p> <p>6 Q. Yeah, page 7 of 13. It should say</p> <p>7 towards the top "Limited Power of Attorney."</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then it says, "The</p> <p>10 undersigned, being a person who will be subject to the</p> <p>11 reporting obligations of Section 16 of the Securities</p> <p>12 Exchange Act of 1934, as amended ..., with respect to</p> <p>13 securities of CVR Energy, [], CVR Refining, [] and CVR</p> <p>14 Partners, [] ..., hereby constitutes and appoints each</p> <p>15 of John R. Walter and Susan M. Ball as the</p> <p>16 undersigned's true and lawful attorneys-in-fact"</p> <p>17 And then it lists a bunch of things.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And you approved this, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you understood after this SEC --</p> <p>23 after this Form 3 was filed that you and the units in</p> <p>24 the partnership would be disclosed in SEC filings; is</p>
<p style="text-align: right;">840</p> <p>1 up Exhibit 145?</p> <p>2 Q. There's an exhibit that's not in the</p> <p>3 book, so we put it up on the screen for you. Let me</p> <p>4 know if you have any problems seeing that.</p> <p>5 Ms. DeVelasco, this is a Form 3 for</p> <p>6 you; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And you see it lists the 4,000</p> <p>9 units from the trust?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then it's signed by</p> <p>12 Susan M. Ball, attorney-in-fact. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And who was Ms. Ball?</p> <p>15 A. She was the CFO.</p> <p>16 Q. Okay. And you gave her authorization</p> <p>17 to sign on your behalf; isn't that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Can I ask you to turn to the next</p> <p>20 exhibit, which is 148. It looks like the same</p> <p>21 document, but it has some more pages attached to it in</p> <p>22 the back. Do you see that?</p> <p>23 If you go down to about page 7 -- this</p> <p>24 was pulled from the SEC, and it just prints out that</p>	<p style="text-align: right;">842</p> <p>1 that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And, in fact, you and the 4,000</p> <p>4 units in the trust were disclosed in the Form 10-K</p> <p>5 filed in February 2018; isn't that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And also, you came to understand there</p> <p>8 was going to be a partial exchange offer, right,</p> <p>9 exchange of certain CVR units for CVI stock?</p> <p>10 A. In this document?</p> <p>11 Q. I'm not talking about this document.</p> <p>12 I've stepped away from the document.</p> <p>13 You understood there was going to be a</p> <p>14 partial exchange offer; right?</p> <p>15 A. Yes.</p> <p>16 Q. In connection with the partial</p> <p>17 exchange offer, there was some SEC filings. Did you</p> <p>18 understand that?</p> <p>19 A. Yes.</p> <p>20 Q. And you and the units in the -- held</p> <p>21 by the trust were listed as -- listed in those SEC</p> <p>22 filings for the exchange offer. Do you understand</p> <p>23 that?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">843</p> <p>1 Q. And just going to the pretrial order,</p> <p>2 for example. Can I ask you to go to page 52 of the</p> <p>3 pretrial order? That's the last document in the</p> <p>4 notebook. Can I ask you to go to page 52 and tell me</p> <p>5 when you're there.</p> <p>6 A. I'm there.</p> <p>7 Q. Okay. Paragraph 151 says, "On May 29,</p> <p>8 2018, CVR Energy filed the S-4, which contained a</p> <p>9 table 'set[ing] forth the names and positions of CVR</p> <p>10 Energy's directors and executive officers,' which []</p> <p>11 listed DeVelasco as [a] 'Vice President [of]</p> <p>12 Environmental, Health, Safety & Security.'"</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it continues, "further disclosed</p> <p>16 that 'DeVelasco serves as Vice President</p> <p>17 Environmental, Health, Safety & Security of CVR</p> <p>18 Energy, the general partner of CVR Refining, and the</p> <p>19 general partner of CVR Partners, in each case, as of</p> <p>20 January 2018.'"</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And "The S-4 further listed DeVelasco</p> <p>24 as the beneficial owner of 4,241 CVRR units."</p>	<p style="text-align: right;">845</p> <p>1 could tender the shares; isn't that correct?</p> <p>2 MR. CZESCHIN: I'm just going to</p> <p>3 caution the witness on privilege, Your Honor.</p> <p>4 MR. WALES: I just want a yes or no.</p> <p>5 THE COURT: I think you can answer</p> <p>6 this yes or no, Ms. DeVelasco.</p> <p>7 THE WITNESS: I'm not sure what "a</p> <p>8 number" refers to, what "a number of conversations"</p> <p>9 would refer to. But I did, you know, disclose and</p> <p>10 John was aware of where the shares were -- the account</p> <p>11 that shares were held in.</p> <p>12 MR. WALES: Okay.</p> <p>13 THE WITNESS: Because that would have</p> <p>14 been disclosed on the S-3.</p> <p>15 BY MR. WALES:</p> <p>16 Q. You wanted to tender the -- you had</p> <p>17 conversations with Mr. Walter about tendering the</p> <p>18 shares; correct?</p> <p>19 A. Well, that was the question on any</p> <p>20 shares that were held by -- you know, in his</p> <p>21 correspondence he sent it and needed to know if they</p> <p>22 would be tendered or not. And the response to him</p> <p>23 was, yes, they would be tendered.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">844</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And those were the units in the trust;</p> <p>4 is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now, with this partial exchange offer,</p> <p>7 you then started having conversations with Mr. Walter</p> <p>8 about whether the trust would exchange its units; is</p> <p>9 that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you wanted to exchange the trust</p> <p>12 units; is that correct?</p> <p>13 A. My husband wanted to because it was</p> <p>14 his trust.</p> <p>15 Q. And you told Mr. Walter that "I will</p> <p>16 tender the shares." Isn't that correct?</p> <p>17 A. Yes. He asked if they would be</p> <p>18 exchanged, and that was the response after visiting</p> <p>19 with my husband.</p> <p>20 Q. And so you told Mr. Walter, "I will</p> <p>21 tender the shares." Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now -- and you had a number of</p> <p>24 discussions with Mr. Walter about whether the trust</p>	<p style="text-align: right;">846</p> <p>1 MR. WALES: Can you please play clip</p> <p>2 8, transcript page 119, starting at line 6.</p> <p>3 (A video clip was played as follows:)</p> <p>4 Question: And whether you were</p> <p>5 tendering and the number of shares or the number of</p> <p>6 units, correct?</p> <p>7 Answer: His request was initially:</p> <p>8 Are you tendering? And the second one was to confirm</p> <p>9 the number of shares.</p> <p>10 Question: And did you have further</p> <p>11 discussions with Mr. Walter about tendering the</p> <p>12 shares?</p> <p>13 Answer: There wasn't anything</p> <p>14 different than they were to be tendered. There wasn't</p> <p>15 any change in not to tender. The tender response was</p> <p>16 the only response that was provided.</p> <p>17 (End of video clip.)</p> <p>18 BY MR. WALES:</p> <p>19 Q. The shares weren't tendered, though,</p> <p>20 were they?</p> <p>21 A. No, they weren't.</p> <p>22 Q. And you don't know why they weren't</p> <p>23 tendered, do you?</p> <p>24 A. I know there was something that just,</p>

<p style="text-align: right;">847</p> <p>1 you know, fell through the cracks, paperwork didn't 2 get done in order to have them included, you know, by 3 the date in which that offer was open. 4 The exact reason why, I don't know. 5 But, certainly, that was the intent. And it was 6 something that my husband must not have gotten 7 returned. 8 Q. Well, that's not the answer you gave 9 at your deposition. When you were asked at the 10 deposition, you said you didn't know why they were 11 tendered. Isn't that correct? 12 A. I don't know why. 13 MR. WALES: Joe, can you please play 14 clip 10? 15 (A video clip was played as follows:) 16 Question: And why wasn't -- if there 17 was an affirmative offer to tender, why weren't they 18 ultimately tendered? 19 Answer: I don't know. 20 (End of video clip.) 21 BY MR. WALES: 22 Q. Were you asked that question and did 23 you give that answer at your deposition? 24 A. Yes. And the same, I don't know</p>	<p style="text-align: right;">849</p> <p>1 gave those answers; is that correct? 2 A. Yes. 3 Q. Now, moving forward in time. In 4 December, you requested from Charles Schwab an 5 investment restriction form. 6 Do you recall that? 7 A. Yes. 8 Q. And can I ask you to turn to 9 Exhibit 844. And do you have an email in front of you 10 dated December 19, 2018, from Michael Fuller to 11 yourself? 12 A. Yes. 13 Q. And Michael Fuller is your broker for 14 the trust at Charles Schwab? 15 A. Yes. 16 Q. Okay. And it says, "Good afternoon. 17 Attached you will find the form we discussed." 18 Do you see that? 19 A. Yes. 20 Q. And you had discussed with Mr. Fuller 21 obtaining a trading restriction form for CVRR, CVI, 22 and UAN securities; isn't that correct? 23 A. Yes. 24 Q. And you were the one who reached out</p>
<p style="text-align: right;">848</p> <p>1 exactly why they would not have been. 2 Q. Please answer my question. Were you 3 asked that question and did you give that answer at 4 your deposition? 5 A. Yes. 6 MR. WALES: Joe, can you play clip 11, 7 please. 8 (A video clip was played as follows:). 9 Question: You testified that the 10 trust indicated it wanted to tender its shares. Who 11 was told that at the company? 12 Answer: Our counsel. 13 Question: And which specific 14 attorney? 15 Answer: John Walter. 16 Question: And who told him that? 17 Answer: I did. 18 Question: And do you have any 19 understanding of why the shares actually or the units 20 actually were not tendered? 21 Answer: I do not. 22 (End of video clip.) 23 BY MR. WALES: 24 Q. You were asked those questions and</p>	<p style="text-align: right;">850</p> <p>1 to Michael Fuller for that; is that correct? 2 A. Yes. 3 Q. And he sent it to you; is that 4 correct? 5 A. Yes. 6 Q. And if you go -- the first page is 7 obviously the email. And then you turn to the second 8 page, there's a -- the second and third pages and the 9 fourth pages are the restriction form itself. 10 Do you see that? 11 A. Yes. 12 Q. Okay. And this is a restriction form 13 for the trust account; is that correct? 14 A. Yes. 15 Q. And if you go down towards the bottom 16 of page 2, it lists for CVR Refining, CVR Energy, and 17 UAN. 18 Do you see that? 19 A. Yes. 20 Q. So this is the form you obtained from 21 Mr. Fuller; correct? 22 A. Yes. 23 Q. Now, counsel asked you to get that 24 form; isn't that correct?</p>

<p style="text-align: right;">851</p> <p>1 A. No.</p> <p>2 Q. You discussed -- withdrawn.</p> <p>3 MR. WALES: Joe, can you please play</p> <p>4 clip 14.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: Let me try it a different</p> <p>7 way. You had a discussion with counsel about -- you</p> <p>8 had a discussion with counsel; is that correct?</p> <p>9 Answer: Yes.</p> <p>10 Question: And after that discussion</p> <p>11 you contacted Mr. Fuller to get the investment</p> <p>12 restriction form; is that correct?</p> <p>13 Answer: Yes.</p> <p>14 Question: Was the determination to</p> <p>15 request the investment restriction form something that</p> <p>16 you had come up with on your own?</p> <p>17 Answer: In discussions with counsel</p> <p>18 were the bases of the request.</p> <p>19 (End of video clip.)</p> <p>20 BY MR. WALES:</p> <p>21 Q. Were you asked those questions and</p> <p>22 give those answers at your deposition?</p> <p>23 A. Yes.</p> <p>24 Q. And when counsel asked you to get the</p>	<p style="text-align: right;">853</p> <p>1 not made by company counsel.</p> <p>2 BY MR. WALES:</p> <p>3 Q. Well, let's take a look at what you</p> <p>4 said in your deposition.</p> <p>5 MR. WALES: Joe, can you please play</p> <p>6 clip 14.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: Let me try it a different</p> <p>9 way. You had a discussion with counsel about --</p> <p>10 (The video was paused.)</p> <p>11 MR. WALES: I'm sorry, withdrawn.</p> <p>12 Wrong clip. I already played that one.</p> <p>13 Clip 23, please. Page 43, line 24,</p> <p>14 through 45, line 19. Sorry, a little technical</p> <p>15 difficulty.</p> <p>16 THE COURT: It's happened before.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: Ms. DeVelasco, a few</p> <p>19 minutes ago, we were discussing the investment</p> <p>20 restriction form that you requested in December 2018.</p> <p>21 Do you recall that?</p> <p>22 Answer: Yes.</p> <p>23 Question: Okay. And you said you had</p> <p>24 discussed the issue with counsel. Do you recall that?</p>
<p style="text-align: right;">852</p> <p>1 trade restriction on the trust account, you complied;</p> <p>2 right?</p> <p>3 MR. CZESCHIN: Objection to form. I</p> <p>4 don't think that was the testimony.</p> <p>5 THE COURT: Response, Mr. Wales.</p> <p>6 MR. CZESCHIN: I believe she</p> <p>7 specifically said counsel did not ask her to get the</p> <p>8 form. She said that after a discussion with counsel</p> <p>9 and based on a discussion with counsel, she requested</p> <p>10 the form, but not that counsel asked her to get the</p> <p>11 form.</p> <p>12 MR. WALES: The record will reflect</p> <p>13 what she said, but she certainly is capable of</p> <p>14 answering the question.</p> <p>15 BY MR. WALES:</p> <p>16 Q. You complied with whatever request you</p> <p>17 received from counsel in connection with a trade</p> <p>18 restriction form; right?</p> <p>19 MR. CZESCHIN: Same objection.</p> <p>20 THE WITNESS: So counsel didn't ask me</p> <p>21 to restrict my investments or my husband's investments</p> <p>22 under the trust. I had discussions with counsel. I</p> <p>23 confirmed the number of shares, the information that</p> <p>24 was necessary. But decisions on personal finances are</p>	<p style="text-align: right;">854</p> <p>1 Answer: Yes.</p> <p>2 Question: Okay. Which counsel did</p> <p>3 you discuss it with?</p> <p>4 Answer: The company counsel.</p> <p>5 Question: And who specifically? Can</p> <p>6 I have their name please, or names?</p> <p>7 Answer: Linda Ludwig.</p> <p>8 Question: Anyone else?</p> <p>9 Answer: I'm not positive the specific</p> <p>10 for that particular item.</p> <p>11 Question: Just so we're clear, you</p> <p>12 discussed some issues related to the account at other</p> <p>13 times with other counsel, is that the indication, so</p> <p>14 it's hard to remember if it was other people for this</p> <p>15 particular form?</p> <p>16 Answer: Yes.</p> <p>17 Question: Okay. Fair enough.</p> <p>18 And what was your understanding of why</p> <p>19 you were requesting the form?</p> <p>20 Mr. Czeschin: Objection to form. And</p> <p>21 caution the witness not to reveal an understanding</p> <p>22 based on your communication with counsel. If you can</p> <p>23 answer the question without revealing communications</p> <p>24 with counsel, please do so.</p>

<p style="text-align: right;">855</p> <p>1 Answer: They asked for some specific</p> <p>2 verification, and the form would have been the manner</p> <p>3 in which to complete that request.</p> <p>4 Question: I don't think I understand</p> <p>5 the answer. When you say "specific verification,"</p> <p>6 what are you referring to?</p> <p>7 Answer: Restrictions on purchase.</p> <p>8 Question: Ms. DeVelasco, a few</p> <p>9 minutes ago we were discussing the --</p> <p>10 (End of video clip.)</p> <p>11 BY MR. WALES:</p> <p>12 Q. And were you asked those questions and</p> <p>13 did you give those answers?</p> <p>14 A. Yes.</p> <p>15 Q. Then you did obtain the form and put</p> <p>16 the restriction on the account; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Now, counsel also asked you to obtain</p> <p>19 information on the account; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And can I ask you to turn to</p> <p>22 Exhibit 865.</p> <p>23 Do you have in front of you a</p> <p>24 January 3rd, 2019, email from Michael Fuller to you?</p>	<p style="text-align: right;">857</p> <p>1 Answer: Yes.</p> <p>2 Question: Okay. And, again, you said</p> <p>3 that it was obtained at the request of counsel. Who</p> <p>4 was the counsel?</p> <p>5 Answer: The company counsel.</p> <p>6 Question: And who specifically?</p> <p>7 Names of people?</p> <p>8 Answer: Melissa Buhrig.</p> <p>9 (End of video clip.)</p> <p>10 BY MR. WALES:</p> <p>11 Q. And were you asked those questions and</p> <p>12 did you give those answers?</p> <p>13 A. Yes.</p> <p>14 Q. And you complied with the request of</p> <p>15 counsel to get information on the securities</p> <p>16 transactions in the trust account; right?</p> <p>17 A. Yes.</p> <p>18 Q. And you provided -- you provided that</p> <p>19 to the company; right?</p> <p>20 A. Can you repeat the question?</p> <p>21 Q. You took the information and you</p> <p>22 provided it to counsel, right, for the company?</p> <p>23 A. Yes.</p> <p>24 Q. And there had been some transactions</p>
<p style="text-align: right;">856</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you reached out to Michael</p> <p>3 Fuller to obtain information on the transactions in</p> <p>4 CVRR units in the trust account; isn't that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you're the one that spoke to</p> <p>7 Michael Fuller?</p> <p>8 A. Yes.</p> <p>9 Q. And he sent it to you in response to</p> <p>10 your request; isn't that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this is -- you did this at the</p> <p>13 specific request of Ms. Buhrig; isn't that correct?</p> <p>14 A. I don't remember if it was Ms. Buhrig</p> <p>15 or Ms. Ludwig. But it was in -- having the correct</p> <p>16 quantity of the units and those dates for the dividend</p> <p>17 reinvestments.</p> <p>18 MR. WALES: Joe, can you play clip 15,</p> <p>19 please.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: Ms. DeVelasco, I also</p> <p>22 showed you an email from January 3rd, 2019, from</p> <p>23 Michael Fuller that listed the transactions in the</p> <p>24 trust in CVRR units. Do you recall that?</p>	<p style="text-align: right;">858</p> <p>1 in CVRR units in the trust during 2018; isn't that</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And before we leave this last</p> <p>5 document. And it lists the transactions.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And the top one is a</p> <p>9 November 14, 2018, purchase of 236.2 units at</p> <p>10 \$16.7162. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then it lists three other</p> <p>13 purchases during 2018; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Can I ask you to turn to the</p> <p>16 next document, please. And this is a -- withdrawn.</p> <p>17 Do you have an exhibit, Joint</p> <p>18 Exhibit 902, in front of you? It's at the bottom. It</p> <p>19 says JX 902.</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Great.</p> <p>22 And that's a Form 4 for you, for</p> <p>23 January 15, 2019; is that correct?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">859</p> <p>1 Q. And it lists four transactions in 2018</p> <p>2 in CVRR units. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And each of those transactions</p> <p>5 are the transactions in the trust; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And did you prepare this document?</p> <p>8 A. No.</p> <p>9 Q. Did you determine that you needed to</p> <p>10 file a Form 4?</p> <p>11 A. No.</p> <p>12 Q. Did you determine what should go on</p> <p>13 the Form 4?</p> <p>14 A. I obtained the information regarding</p> <p>15 the dates and the units for the form.</p> <p>16 Q. Okay. And you provided that</p> <p>17 information to counsel; right?</p> <p>18 A. Yes.</p> <p>19 Q. And company counsel prepared the</p> <p>20 Form 4 on your behalf; is that correct?</p> <p>21 A. That's my understanding.</p> <p>22 Q. Okay. And then you reviewed it and</p> <p>23 approved it for filing; is that correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">861</p> <p>1 Q. Okay. And then you reviewed and</p> <p>2 approved it; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, the next day, or later that day,</p> <p>5 you learned that a lawsuit had been filed; is that</p> <p>6 correct?</p> <p>7 A. Can you repeat the question?</p> <p>8 Q. You learned either that day or the</p> <p>9 next day that a lawsuit had been filed against the</p> <p>10 company in connection with the call of the CVR units.</p> <p>11 Do you recall that?</p> <p>12 A. I recall learning about it, but I</p> <p>13 don't recall the day that I learned that information.</p> <p>14 Q. Okay. Can I ask you to turn to the</p> <p>15 next exhibit, please, which is Exhibit 981. And you</p> <p>16 have an email at the top that is from Dave Lamp to a</p> <p>17 batch of people?</p> <p>18 A. Yes.</p> <p>19 Q. And you're one of those people; right?</p> <p>20 A. Yes.</p> <p>21 Q. And it's the next day; it's</p> <p>22 January 30th, 2019. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says, "Icahn Refinery Deal</p>
<p style="text-align: right;">860</p> <p>1 Q. Okay. Can I ask you to turn now to</p> <p>2 Exhibit 967.</p> <p>3 Okay. And do you have another Form 4</p> <p>4 in front of you?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And this one is dated</p> <p>7 January 29, 2019. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And this lists the sale of 4,623 and</p> <p>10 some-odd units on January 29, 2019. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And those were the units in the</p> <p>13 trust; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And did you prepare this form?</p> <p>16 A. No.</p> <p>17 Q. Did you determine what would go in it?</p> <p>18 A. Verification of the number of units.</p> <p>19 Q. And did company counsel prepare this</p> <p>20 for you?</p> <p>21 A. Yes.</p> <p>22 Q. And did they determine what</p> <p>23 information would go on the form?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">862</p> <p>1 Shorts Investors by [140M, Suit Says." Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And one of the things it talks</p> <p>5 about is the units in the trust. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And then you had some</p> <p>8 conversations with Ms. Buhrig; is that correct?</p> <p>9 A. Regarding this? Is that the question?</p> <p>10 Q. Regarding the lawsuit or the trust.</p> <p>11 A. I don't remember a specific</p> <p>12 conversation about this.</p> <p>13 MR. WALES: Joe, can you play clip 19,</p> <p>14 please.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: And you're one of</p> <p>17 recipients; is that correct?</p> <p>18 Answer: Yes.</p> <p>19 Question: Okay. And this discussed</p> <p>20 the first lawsuit filed in connection with the</p> <p>21 exchange offer. Do you see that?</p> <p>22 Answer: Yes.</p> <p>23 (End of video clip.)</p> <p>24 MR. WALES: Joe, can I ask you to</p>

<p style="text-align: right;">863</p> <p>1 continue, play clip from page 160, line 22, through</p> <p>2 161, line 9.</p> <p>3 (A video clip was played as follows:)</p> <p>4 Question: Okay. And the article</p> <p>5 talks about the complaint, makes allegations about the</p> <p>6 purchases by the trust. Do you see that?</p> <p>7 Answer: Yes.</p> <p>8 Question: Okay. And after this</p> <p>9 lawsuit was filed, you had conversations with folks in</p> <p>10 the legal department; is that correct?</p> <p>11 Answer: Yes.</p> <p>12 Question: Okay. And is Ms. Buhrig</p> <p>13 one of the people you spoke to?</p> <p>14 Answer: Yes.</p> <p>15 (End of video clip.)</p> <p>16 BY MR. WALES:</p> <p>17 Q. Were you asked those questions; did</p> <p>18 you give those answers?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And then can I ask you to turn</p> <p>21 to the next exhibit, which is 983. And do you see</p> <p>22 this is a Form 4 dated two days later, January 31,</p> <p>23 2019?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">865</p> <p>1 question without revealing attorney-client</p> <p>2 communications, Ms. DeVelasco?</p> <p>3 Why don't you repeat it, Mr. Wales.</p> <p>4 MR. WALES: Sure. Let me just</p> <p>5 rephrase it.</p> <p>6 BY MR. WALES:</p> <p>7 Q. This is a yes-or-no question: Were</p> <p>8 you complying with a request to review and approve</p> <p>9 this form?</p> <p>10 A. Well, this form has the same</p> <p>11 information as the prior form for the content on the</p> <p>12 securities.</p> <p>13 Q. Were you asked to review this form</p> <p>14 before it was filed?</p> <p>15 A. I would say yes, because my electronic</p> <p>16 signature is on it.</p> <p>17 Q. And it was counsel's idea; correct?</p> <p>18 A. I'm sorry, can you repeat the</p> <p>19 question?</p> <p>20 Q. This form was counsel's idea?</p> <p>21 MR. CZESCHIN: Your Honor, I object.</p> <p>22 We just don't want to waive the privilege, and I think</p> <p>23 that does request privilege. I believe he earlier</p> <p>24 asked her if it was her idea, and she said no. But I</p>
<p style="text-align: right;">864</p> <p>1 Q. Okay. And this is for the same sale</p> <p>2 of units on the 29th we had just seen an earlier</p> <p>3 Form 4 for. Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. And this has your electronic signature</p> <p>6 on it; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. You didn't ask anyone to prepare this</p> <p>9 form for you, did you?</p> <p>10 A. No.</p> <p>11 Q. And it wasn't your idea to submit it,</p> <p>12 was it?</p> <p>13 A. No.</p> <p>14 Q. And you didn't determine the contents</p> <p>15 of this, was it?</p> <p>16 A. No.</p> <p>17 Q. And you were just complying with</p> <p>18 counsel's instructions?</p> <p>19 MR. CZESCHIN: Objection to form. I</p> <p>20 think that requests privileged information.</p> <p>21 THE COURT: Speak up, Mr. Czeschin.</p> <p>22 MR. CZESCHIN: I think that requests a</p> <p>23 privileged response.</p> <p>24 THE COURT: Can you answer that</p>	<p style="text-align: right;">866</p> <p>1 think this question, the way it's phrased, asks for</p> <p>2 privilege.</p> <p>3 THE COURT: I can run the process of</p> <p>4 elimination, Mr. Wales.</p> <p>5 MR. WALES: Let me just play clip 22,</p> <p>6 please.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: Was it your idea to submit</p> <p>9 it?</p> <p>10 Answer: No.</p> <p>11 Question: Was it your idea --</p> <p>12 withdrawn.</p> <p>13 The contents of it, did you determine</p> <p>14 what would go in it?</p> <p>15 Answer: No.</p> <p>16 Question: Okay. You were relying on</p> <p>17 counsel for this; is that correct?</p> <p>18 Answer: Yes.</p> <p>19 Question: And you followed their</p> <p>20 instructions; is that correct?</p> <p>21 Answer: Yes.</p> <p>22 (End of video clip.)</p> <p>23 BY MR. WALES:</p> <p>24 Q. Were you asked those questions and did</p>

<p style="text-align: right;">867</p> <p>1 you give those answers?</p> <p>2 A. Yes.</p> <p>3 MR. WALES: No further questions.</p> <p>4 THE COURT: Thank you.</p> <p>5 Mr. Czeschin?</p> <p>6 MR. CZESCHIN: Yes.</p> <p>7 CROSS-EXAMINATION</p> <p>8 BY MR. CZESCHIN:</p> <p>9 Q. Good afternoon, Ms. DeVelasco.</p> <p>10 A. Hello.</p> <p>11 Q. When did you start working for CVR?</p> <p>12 A. 2014, I became an employee, after</p> <p>13 serving as a consultant part-time for the company from</p> <p>14 2007.</p> <p>15 Q. So you were a consultant for the</p> <p>16 company from 2007 to 2013, is that what you said?</p> <p>17 A. '14.</p> <p>18 Q. '14.</p> <p>19 And what were you providing consulting</p> <p>20 services on?</p> <p>21 A. Environmental, health, and safety.</p> <p>22 Q. And then you became an employee in</p> <p>23 2014. What was your title?</p> <p>24 A. Vice president, environmental, health,</p>	<p style="text-align: right;">869</p> <p>1 A. No.</p> <p>2 Q. Did you have any increase in</p> <p>3 responsibilities?</p> <p>4 A. No.</p> <p>5 Q. And what did you understand the</p> <p>6 designation as executive officer to mean?</p> <p>7 A. Didn't mean anything to me, except</p> <p>8 there were required reports that had to be made.</p> <p>9 Q. Okay. We'll come back to the reports.</p> <p>10 But let's talk about your job responsibilities.</p> <p>11 How would you describe your job</p> <p>12 responsibilities as the vice president of</p> <p>13 environmental, health, safety, and security?</p> <p>14 A. Support our manufacturing facilities</p> <p>15 and operations from a regulatory compliance standpoint</p> <p>16 in each of those areas where environmental, health,</p> <p>17 safety, and security. Assure that required reports</p> <p>18 are made to the agencies and that the necessary</p> <p>19 equipment and procedures are in place at the</p> <p>20 facilities to be able to comply.</p> <p>21 Q. Okay. Now, have you ever signed a</p> <p>22 document, to your knowledge, on behalf of the general</p> <p>23 partner of the partnership?</p> <p>24 A. No.</p>
<p style="text-align: right;">868</p> <p>1 safety. Just as it is now.</p> <p>2 Q. And I believe you discussed some of</p> <p>3 this with Mr. Wales on your prior questioning. But</p> <p>4 did your position with the company change in early</p> <p>5 2018 or late 2017?</p> <p>6 A. No.</p> <p>7 Q. Okay. Did you -- did who you report</p> <p>8 to change around that time?</p> <p>9 A. Yes.</p> <p>10 Q. And what happened with regard to your</p> <p>11 reporting change?</p> <p>12 A. The organizational structure was</p> <p>13 modified. And I reported to the CEO, because the</p> <p>14 position that I had previously reported to was</p> <p>15 eliminated from our organization.</p> <p>16 Q. Okay. And at that same time, were you</p> <p>17 designated -- at or around that same time, were you</p> <p>18 designated an executive officer?</p> <p>19 A. Yes.</p> <p>20 Q. Did the designation as executive</p> <p>21 officer change your day-to-day job responsibilities at</p> <p>22 all?</p> <p>23 A. No.</p> <p>24 Q. Did you get paid any more?</p>	<p style="text-align: right;">870</p> <p>1 Q. Have you ever signed any documents, to</p> <p>2 your knowledge, on behalf of the partnership, CVRR</p> <p>3 Refining?</p> <p>4 A. No.</p> <p>5 Q. So where is -- have you signed</p> <p>6 documents on behalf of other affiliated entities?</p> <p>7 A. Yes.</p> <p>8 Q. And where do those entities lie in the</p> <p>9 structure?</p> <p>10 A. The subsidiary companies that are the</p> <p>11 operating business units, where we either have the</p> <p>12 refineries, at the individual refining level, or</p> <p>13 individual fertilizer plant level.</p> <p>14 Q. Okay. And do you have a business</p> <p>15 card?</p> <p>16 A. I have multiple business cards.</p> <p>17 Q. Okay. And what are the multiple</p> <p>18 business cards that you have?</p> <p>19 A. I have CVR Energy, Inc. I have</p> <p>20 Coffeyville Resources Refining and Marketing, I have</p> <p>21 Wynnwood Refining Company, Coffeyville Resources</p> <p>22 Fertilizer, and then East Dubuque Fertilizer, for the</p> <p>23 four manufacturing plants.</p> <p>24 Q. So for the four main operating</p>

<p style="text-align: right;">871</p> <p>1 facilities, you have business cards?</p> <p>2 A. Yes.</p> <p>3 Q. And then you have one at CVR Energy?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have one for the partnership</p> <p>6 CVR Refining?</p> <p>7 A. No.</p> <p>8 Q. Do you have one for the general</p> <p>9 partner?</p> <p>10 A. No.</p> <p>11 Q. Let's take a look at, I think it's</p> <p>12 JX --</p> <p>13 MR. CZESCHIN: Sorry, Your Honor.</p> <p>14 JX 875. I'm sorry, we'll pull it up.</p> <p>15 MR. WALES: I'm sorry. What?</p> <p>16 MR. CZESCHIN: 875.</p> <p>17 BY MR. CZESCHIN:</p> <p>18 Q. Are you familiar with this document,</p> <p>19 Ms. DeVelasco?</p> <p>20 MR. WALES: One second, please.</p> <p>21 MR. CZESCHIN: I'm sorry, JX 52. They</p> <p>22 gave us the wrong number.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. All right. And what is this</p>	<p style="text-align: right;">873</p> <p>1 A. So divesting of a company asset, I</p> <p>2 have the authority to do so if it's in the ordinary</p> <p>3 course of business for a value of up to \$50,000.</p> <p>4 Q. Would those assets, again, be at the</p> <p>5 operating company level?</p> <p>6 A. Yes.</p> <p>7 Q. Then if you can turn to the next page,</p> <p>8 it all says "None."</p> <p>9 And then go to page 5, and you have an</p> <p>10 entry under your column for "Capital Expenditures."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And it says, "In accordance with AFE</p> <p>14 directive."</p> <p>15 Can you explain what that means?</p> <p>16 A. AFE is an acronym. It's for Authority</p> <p>17 For Expenditure, the first letter of each of those</p> <p>18 words. And the directive that's referenced sets forth</p> <p>19 what each of those financial limits are for respective</p> <p>20 positions. So it's an underlying document for capital</p> <p>21 expenditures.</p> <p>22 Q. Would any capital expenditures that</p> <p>23 are authorized that you would be making, did those</p> <p>24 have to be approved in the budget?</p>
<p style="text-align: right;">872</p> <p>1 document?</p> <p>2 A. This is a document for what I refer to</p> <p>3 as delegated authorities, and describes by position</p> <p>4 and by category what those dollar limits are.</p> <p>5 Q. Okay. So is this a document that sets</p> <p>6 forth the authority limits for employees at CVR?</p> <p>7 A. Yes.</p> <p>8 Q. Can you turn to page 3 of 26 of the</p> <p>9 Joint Exhibit. And you see kind of towards the right</p> <p>10 side, there's a column that says, "Vice President,</p> <p>11 Environmental, Health, Safety, and Security," and it</p> <p>12 has your name?</p> <p>13 A. Yes.</p> <p>14 Q. And then you can go down the column,</p> <p>15 and it indicates what authority you have in various</p> <p>16 areas; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you see there's a bunch of</p> <p>19 "nones," but then there's an authority of 50,000,</p> <p>20 which corresponds to divestiture of any company asset</p> <p>21 or equipment in the ordinary course of business.</p> <p>22 A. Yes.</p> <p>23 Q. Can you explain to me what that refers</p> <p>24 to?</p>	<p style="text-align: right;">874</p> <p>1 A. Yes. Capital is part of the annual</p> <p>2 budget, which is approved in advance of the future</p> <p>3 year. And the projects or capital investments are</p> <p>4 then described in the AFE process in order to start</p> <p>5 the work to implement those.</p> <p>6 Q. Are you able to approve any capital</p> <p>7 expenditures that are not approved in the budget?</p> <p>8 A. No. They should be part of the</p> <p>9 approved business plan.</p> <p>10 Q. And if you then turn to the next page,</p> <p>11 6 of 26, it has, I guess, a row for wire transfers.</p> <p>12 How do wire transfers work at the</p> <p>13 company?</p> <p>14 A. They're transfers made from the</p> <p>15 treasury department.</p> <p>16 Q. What approvals are necessary, if any,</p> <p>17 for wire transfers that you would make?</p> <p>18 A. Oh, it's a series of approvals to</p> <p>19 assure that, one, the money is to reach the right</p> <p>20 designation, and then that it's authorized to leave</p> <p>21 the company for the payment.</p> <p>22 Q. You're not authorized to make any wire</p> <p>23 transfers on your own?</p> <p>24 A. No.</p>

<p style="text-align: right;">875</p> <p>1 Q. You know, continuing down to the next</p> <p>2 page, I think maybe two pages, page 8 of 26. Cash</p> <p>3 disbursements, are you authorized to make any cash</p> <p>4 disbursements on your own?</p> <p>5 A. No.</p> <p>6 Q. You have to get approval from other</p> <p>7 individuals?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Just to keep going, page 11 of</p> <p>10 26. Do you see under "General Contracts," what is</p> <p>11 your authority with respect to entering into contracts</p> <p>12 for the company?</p> <p>13 A. 500,000.</p> <p>14 Q. And do those contracts have to be</p> <p>15 approved as part of the ordinary course and the</p> <p>16 budget?</p> <p>17 A. Yes, the contracts have to be approved</p> <p>18 before any expenditure could be made.</p> <p>19 Q. Okay. And they're approved in the</p> <p>20 budgetary process?</p> <p>21 A. The dollar value as setting forth the</p> <p>22 budget -- our operating business plan is similar to</p> <p>23 the capital budget. It's developed and then has to be</p> <p>24 approved. And in the ordinary course of our business</p>	<p style="text-align: right;">877</p> <p>1 Q. And I don't want privilege. I don't</p> <p>2 want any privilege, but did he ask for any information</p> <p>3 from you in connection with that discussion?</p> <p>4 A. Yes.</p> <p>5 Q. What information did he request?</p> <p>6 A. To complete a questionnaire. And part</p> <p>7 of that questionnaire included the ownership of units</p> <p>8 of the three companies.</p> <p>9 Q. Okay. So he asked you to determine</p> <p>10 whether or not you owned any units in CVRR or any</p> <p>11 stock in CVI or any units in the fertilizer company,</p> <p>12 UAN?</p> <p>13 A. Yes.</p> <p>14 Q. And did you try to respond to that</p> <p>15 request for information?</p> <p>16 A. Yes.</p> <p>17 Q. How did you do so?</p> <p>18 A. I tried to reach out to the entities</p> <p>19 that would be able to tell me if it existed. I have a</p> <p>20 trust that the assets are in the trust, and I don't</p> <p>21 necessarily -- investments that are done in my</p> <p>22 husband's trust or my trust, he manages that.</p> <p>23 So I tried to reach out to gather the</p> <p>24 information to be able to complete the questionnaire,</p>
<p style="text-align: right;">876</p> <p>1 during that year, we work within those budgets.</p> <p>2 Q. And, again, these contracts would be</p> <p>3 at the operating company level?</p> <p>4 A. Yes.</p> <p>5 Q. So at the subsidiary operating</p> <p>6 companies?</p> <p>7 A. Yes.</p> <p>8 Q. I have no further questions on that</p> <p>9 document.</p> <p>10 Can I now pull up -- we'll come back</p> <p>11 to that.</p> <p>12 When you were designated as an</p> <p>13 executive officer, you mentioned there were reporting</p> <p>14 requirements; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you discuss those reporting</p> <p>17 requirements with anyone at the company?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And who was that?</p> <p>20 A. John Walter.</p> <p>21 Q. And what was the nature of that</p> <p>22 discussion?</p> <p>23 A. That the requirements for the</p> <p>24 reporting were --</p>	<p style="text-align: right;">878</p> <p>1 and that information would be used in the reports that</p> <p>2 were needed to be made.</p> <p>3 Q. Okay. And did you reach out to your</p> <p>4 husband to ask whether or not there was any ownership</p> <p>5 of those three securities?</p> <p>6 A. Yes.</p> <p>7 Q. And what did you learn?</p> <p>8 A. I learned that there was within his</p> <p>9 trust, CVRR.</p> <p>10 Q. Okay. Now, the trust, that's the same</p> <p>11 trust that we heard when you were discussing with</p> <p>12 Mr. Wales; correct?</p> <p>13 A. Yes.</p> <p>14 Q. When was that trust formed, and what</p> <p>15 were the circumstances of the formation of the trust?</p> <p>16 A. It was formed in 1995 and formed</p> <p>17 because we had a young family at that time. And part</p> <p>18 of estate planning and just assuring that our family,</p> <p>19 our children were going to, you know, be taken care</p> <p>20 of, that --</p> <p>21 At the time we lived in Oklahoma and</p> <p>22 wanted to make it as easy as possible that resources</p> <p>23 that would be needed to be care for them, you know,</p> <p>24 was established. So we developed all of that at that</p>

<p>879</p> <p>1 time, you know, having, you know, the children. We</p> <p>2 traveled extensively separate directions, and anything</p> <p>3 can go wrong.</p> <p>4 Q. Okay. Did you develop a will at the</p> <p>5 same time?</p> <p>6 A. Yes.</p> <p>7 THE COURT: Mr. Czeschin, so we're at</p> <p>8 the end of the trial day. But if you have only a few</p> <p>9 more questions, we can extend it briefly.</p> <p>10 MR. CZESCHIN: No, we actually have</p> <p>11 quite a bit more.</p> <p>12 THE COURT: Okay. So why don't we</p> <p>13 resume this tomorrow. Before we adjourn for the day,</p> <p>14 are there any housekeeping matters we should attend</p> <p>15 to?</p> <p>16 MR. GORRIS: None from plaintiffs,</p> <p>17 Your Honor.</p> <p>18 THE COURT: None from plaintiffs. And</p> <p>19 from defendants?</p> <p>20 MR. RAJU: No, Your Honor.</p> <p>21 THE COURT: Okay. Thank you. We are</p> <p>22 adjourned until tomorrow.</p> <p>23 (Proceedings concluded at 4:48 p.m.)</p> <p>24</p>	
<p>880</p> <p>1 I N D E X</p> <p>2 <u>WITNESSES:</u> <u>Page</u></p> <p>3 DAVID LAMP</p> <p>4 Direct by Mr. Gorris 605</p> <p>5 Cross by Mr. Raju 642</p> <p>6 Redirect by Mr. Gorris 669</p> <p>7 Recross by Mr. Raju 680</p> <p>8 MELISSA M. BUHRIG</p> <p>9 Direct by Mr. Friedlander 682</p> <p>10 Cross by Mr. Raju 715</p> <p>11 Redirect by Mr. Friedlander 746</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	

<p>BY MR. CZESCHIN: [2] 867/8 871/17</p> <p>BY MR. FRIEDLANDER: [3] 682/6 705/18 746/5</p> <p>BY MR. GORRIS: [28] 605/16 613/4 624/13 637/23 639/1 640/16 669/20 672/22 678/2 750/11 751/16 757/21 758/21 759/24 760/24 762/8 772/12 777/9 789/17 795/2 800/8 805/2 805/12 809/15 811/4 813/6 813/18 814/9</p> <p>BY MR. RAJU: [9] 642/15 662/19 666/4 680/5 715/11 722/6 724/1 734/11 745/16</p> <p>BY MR. WALES: [13] 822/13 845/15 846/18 847/21 848/23 851/20 852/15 853/2 855/11 857/10 863/16 865/6 866/23</p> <p>MR. BEIGEL: [14] 771/13 771/18 771/24 772/8 788/22 794/9 794/12 794/19 809/23 810/3 810/8 813/9 813/13 822/2</p> <p>MR. CZESCHIN: [12] 845/2 852/3 852/6 852/19 864/19 864/22 865/21 867/6 871/13 871/16 871/21 879/10</p> <p>MR. FRIEDLANDER: [10] 681/23 682/21 710/7 715/4 721/13 722/18 723/11 723/15 746/3 749/12</p> <p>MR. GORRIS: [52] 605/8 612/21 612/24 613/2 623/17 637/12 638/13 641/17 659/20 660/8 661/1 662/11 669/17 672/19 677/23 679/22 681/16 750/5 751/14 757/20 758/15 759/14 760/14 760/19 761/23 762/21 768/11 770/2 776/14 777/3 777/6 779/8 783/6 786/22 787/11 789/1 789/7 789/16 791/2 795/9 804/24 809/12 812/12 814/4 814/7 816/5 816/12 817/19 819/2 821/23 822/8 879/16</p> <p>MR. RAJU: [33] 612/16 642/3 642/13 657/24 660/3 660/10 660/15 660/17 660/21 661/14 662/12 662/14 662/18 665/21 666/3</p>	<p>666/16 669/12 677/19 680/2 681/14 715/9 721/22 722/23 723/21 729/8 734/8 736/2 736/19 739/7 745/12 745/23 749/17 879/20</p> <p>MR. WALES: [18] 839/24 845/4 845/12 846/1 847/13 848/6 851/3 852/12 853/5 853/11 856/18 862/13 862/24 865/4 866/5 867/3 871/15 871/20</p> <p>THE COURT: [81] 604/20 605/9 612/18 632/24 640/6 640/14 641/19 642/5 642/8 659/18 660/12 660/16 660/19 660/23 661/21 662/13 662/16 665/19 665/22 666/2 669/15 672/21 678/1 679/24 681/15 681/18 681/21 682/1 704/14 715/6 721/19 723/5 723/12 745/9 746/1 749/14 749/19 750/2 750/7 751/10 757/18 758/4 758/10 762/5 771/16 772/3 772/11 787/8 788/20 788/23 789/3 789/13 794/15 794/23 799/22 800/4 804/19 805/10 809/6 809/14 810/1 810/5 810/12 811/2 813/11 813/17 814/5 821/24 822/3 822/7 845/5 852/5 853/16 864/21 864/24 866/3 867/4 879/7 879/12 879/18 879/21</p> <p>THE WITNESS: [31] 605/11 612/23 613/1 613/3 633/2 640/10 704/16 710/11 722/3 723/17 734/10 758/8 758/11 758/20 759/18 760/16 760/23 762/3 762/6 771/22 777/5 777/7 794/11 800/2 800/6 804/21 809/8 822/5 845/7 845/13 852/20</p> <p>\$</p> <p>\$10 [1] 647/19 \$10 million [1] 647/19 \$100 [1] 817/7 \$100 million [1] 817/7 \$11 [1] 671/10 \$11 million [1] 671/10 \$16.7162 [1] 858/10 \$200 [1] 680/11 \$30 [2] 680/10 786/13 \$30 million [1] 786/13 \$340 [3] 673/9 673/15 675/17 \$340 million [3] 673/9 673/15 675/17</p>	<p>\$35 [1] 756/20 \$35 million [1] 756/20 \$350 [1] 654/19 \$350 million [1] 654/19 \$37,154,236 [1] 770/11 \$38 [4] 674/6 675/17 675/21 681/7 \$38 million [4] 674/6 675/17 675/21 681/7 \$4 [3] 656/2 671/16 680/10 \$4 million [2] 656/2 671/16 \$400 [10] 803/23 804/4 804/6 804/8 804/10 804/14 808/7 808/9 808/12 809/2 \$400 million [10] 803/23 804/4 804/6 804/8 804/10 804/14 808/7 808/9 808/12 809/2 \$425 [3] 675/5 675/11 678/4 \$425 million [3] 675/5 675/11 678/4 \$50,000 [1] 873/3 \$500 [5] 649/10 656/9 671/19 673/13 673/18 \$500 million [5] 649/10 656/9 671/19 673/13 673/18 \$650 [1] 677/6 \$650 million [1] 677/6 \$715 [3] 675/13 676/11 678/4 \$715 million [3] 675/13 676/11 678/4 \$760 [1] 676/10 \$760 million [1] 676/10</p> <p>'</p> <p>'13 [2] 716/9 716/10 '14 [3] 716/12 867/17 867/18 '19 [2] 658/20 663/7 'CVI [1] 641/2 'DeVelasco [2] 826/13 843/16 'Dispositions.' [1] 735/17 'Purchase.' [1] 734/17 'set [1] 843/9 'Vice [1] 843/11</p> <p>-</p> <p>-- or [1] 705/11 -and [3] 604/4 604/7 604/13</p> <p>/</p> <p>/s [2] 816/19 817/3</p> <p>0</p> <p>0526 [1] 603/23</p> <p>1</p> <p>1,500 [1] 719/14 1/2 [4] 680/9 680/11</p>	<p>808/9 808/11 10 [10] 631/2 631/3 631/4 634/7 634/8 643/3 666/8 739/8 761/24 847/14 10 percent [3] 802/21 803/10 803/13 10,000 barrels [1] 654/12 10-K [2] 824/24 842/4 1001 [1] 654/22 1051 [7] 655/24 657/22 660/4 660/13 672/2 672/4 672/20 1073 [1] 684/21 1090 [3] 710/6 710/8 710/17 1097 [1] 685/18 10:45 a.m [1] 665/24 10th [1] 686/1 11 [6] 634/9 666/15 730/23 760/15 848/6 875/9 11/22/1995 [1] 832/4 1100 [1] 795/10 11400 [1] 603/22 119 [1] 846/2 11:00 a.m [1] 666/1 12 [7] 643/3 653/18 666/8 666/15 683/14 739/1 761/24 121 [1] 831/21 1212 [3] 755/11 755/13 757/8 1214 [1] 760/13 1245 [2] 682/16 683/1 12:37 [1] 749/23 12A [1] 603/8 12th [1] 693/22 13 [9] 612/22 612/23 612/24 667/10 668/2 739/8 829/19 829/19 841/6 130 million [1] 676/4 134 [2] 834/21 837/8 13D [12] 730/13 816/7 816/16 817/2 817/8 817/9 817/12 817/16 817/22 818/16 820/11 820/13 13Ds [3] 730/5 730/8 730/16 13e-3 [1] 781/12 14 [4] 667/10 851/4 853/6 858/9 14 percent [1] 668/2 140 million [1] 676/4 140M [1] 862/1 144 [1] 826/4 145 [1] 840/1 148 [1] 840/20 14A [2] 825/3 826/8 15 [3] 665/23 856/18 858/23 15 percent [2] 622/21 628/21 15-minute [3] 661/23 665/20 810/16 15.1 [1] 740/6</p>	<p>150 million barrels [1] 681/4 151 [1] 843/7 152 [1] 676/5 15th [2] 710/24 711/22 16 [4] 745/6 745/7 813/21 841/11 160 [1] 863/1 161 [1] 863/2 17 [1] 662/21 17th [1] 733/5 18 [4] 676/19 683/4 683/15 683/21 19 [4] 830/23 849/10 853/14 862/13 1934 [1] 841/12 1980 [2] 642/21 643/1 19801 [1] 603/23 1995 [3] 832/4 833/3 878/16 1:30 [1] 749/20 1st [2] 646/19 647/2</p> <p>2</p> <p>2 million barrels [2] 681/2 681/3 20 [7] 625/9 644/20 752/15 778/4 829/19 830/23 837/17 20 percent [5] 663/6 668/14 793/18 797/3 797/3 20-day [4] 782/19 783/15 784/5 784/8 200 million [1] 649/11 2003 [1] 833/17 2005 [1] 716/3 2006 [1] 716/5 2007 [2] 867/14 867/16 2012 [9] 756/2 756/6 757/23 761/10 761/13 763/6 765/5 765/7 775/2 2013 [2] 717/24 867/16 2014 [3] 822/23 867/12 867/23 2017 [8] 646/19 652/16 652/16 716/7 717/1 834/6 834/23 868/5 2018 [66] 605/20 608/8 615/13 621/8 621/9 625/9 626/9 626/12 628/14 630/4 630/7 630/8 630/13 637/2 639/6 650/9 656/21 663/24 665/1 667/3 669/21 671/2 675/4 675/10 675/14 676/20 678/22 681/8 686/16 686/19 693/3 693/22 695/14 698/11 699/4 710/21 711/5 711/23 717/16 776/17 811/19 812/6 814/12 815/2 815/6 816/8 816/10 821/2 823/4 823/7 824/13 825/1 826/8 827/11 827/19 831/5 834/6 842/5 843/8</p>
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2	768/5 770/3	50,000 [1] 872/19	858/19	acronym [1] 873/16
2018... [7] 849/10	29th [2] 712/4 864/2	500 [2] 603/9 603/22	912 [1] 733/2	act [8] 707/23 739/19
853/20 858/1 858/9	2:00 in [1] 719/16	500,000 [1] 875/13	913 [1] 736/18	740/2 740/10 796/1
858/13 859/1 868/5	2:59 [1] 810/19	52 [4] 742/21 843/2	933 [3] 640/4 640/18	797/9 803/14 841/12
2018.' [2] 826/17	2nd [2] 686/19 693/21	843/4 871/21	640/20	acted [6] 793/1 795/23
843/20	2Q [2] 613/12 615/12	539 [2] 625/4 625/6	935 [1] 805/3	795/24 796/2 797/15
2019 [21] 640/23	3	547 [1] 693/12	95 percent [11] 753/16	798/2
656/21 667/3 673/3	30 [3] 628/14 652/9	551 [1] 626/20	764/4 774/22 775/17	acting [5] 700/1 738/21
677/1 677/5 710/24	654/18	568 [2] 676/16 676/23	785/20 802/17 802/19	738/22 739/18 740/3
711/22 712/5 712/16	30 million [1] 803/8	57 [2] 779/9 783/7	803/1 803/2 803/4	action [10] 622/22
713/12 730/23 733/5	30 percent [5] 770/22	576 [1] 630/16	803/16	656/5 689/7 691/9
831/8 855/24 856/22	771/7 774/7 803/7	590 [1] 674/1	967 [2] 712/3 860/2	706/6 706/7 706/18
858/23 860/7 860/10	803/8	594 [9] 630/24 634/4	977,000 [1] 827/19	708/22 726/16 740/13
861/22 863/23	300 million [1] 680/18	634/5 653/5 653/7	981 [1] 861/15	actionable [1] 650/11
2019-0062-KSJM [1]	302 [1] 603/23	665/18 665/18 666/5	983 [2] 712/15 863/21	actions [2] 738/20
603/3	30th [1] 861/22	6	9:00 [3] 630/20 636/2	738/22
2020 [2] 684/16 686/1	31 [6] 675/4 675/10	60 [1] 647/21	661/12	activate [2] 607/7
2021 [1] 603/10	675/13 712/16 713/12	61 [1] 637/13	9:22 [1] 603/11	803/11
2023 [1] 673/3	863/22	62 [1] 638/14	9th [1] 722/8	activating [1] 606/19
21 [1] 834/23	31st [1] 714/22	652 [1] 693/22	A	active [3] 618/8 651/19
22 [5] 743/8 802/9	32 [1] 789/9	66 [2] 672/12 672/20	a.m [5] 603/11 630/20	652/10
832/11 863/1 866/5	348 million [1] 675/19	698 [1] 695/8	636/2 665/24 666/1	activist [1] 790/11
22 million [4] 802/24	35 [1] 828/13	699 [3] 697/11 811/17	ability [1] 651/12	activities [5] 707/14
803/17 803/18 803/21	36 [1] 632/19	819/3	able [13] 640/17	759/19 759/21 759/22
22nd [1] 695/16	38 million [1] 675/24	7	647/19 650/18 674/12	760/7
23 [10] 643/4 695/13	383 [1] 605/18	70 [1] 792/7	676/17 719/18 755/19	acts [1] 738/12
739/1 739/8 739/24	3:15 p.m [1] 811/1	70 million-barrel [1]	791/1 801/4 869/20	actual [2] 615/2 771/24
739/24 802/9 811/19	3rd [2] 855/24 856/22	680/24	874/6 877/19 877/24	adamantly [1] 723/6
837/19 853/13	4	70 percent [7] 765/8	abrogating [1] 798/3	add [3] 654/12 673/6
236.2 [1] 858/9	4,000 [6] 838/11	774/6 774/6 774/21	absolutely [9] 648/1	702/3
23rd [4] 695/16 695/19	838/22 839/4 839/10	796/20 800/11 807/2	652/20 707/17 713/21	added [1] 661/20
697/12 819/18	840/8 842/3	700 [1] 676/10	714/24 722/3 725/24	addition [4] 654/9
24 [5] 621/8 663/24	4,241 [1] 843/24	720 [1] 698/5	744/19 804/16	696/15 739/11 759/15
665/1 776/17 853/13	4,623 [1] 860/9	722 [3] 639/3 639/4	accelerate [1] 649/2	additional [10] 632/8
24/7 [1] 719/15	40 [1] 644/9	699/7	accept [1] 778/16	649/11 654/13 660/2
24th [1] 664/20	40 percent [1] 652/9	724 [3] 729/6 746/18	access [4] 719/15	671/8 672/12 674/6
25 [7] 630/4 630/7	40,000 barrels [2]	746/22	721/17 794/6 811/13	677/6 731/8 745/10
654/18 666/7 667/3	654/6 654/16	739 [1] 814/8	accident [1] 806/13	address [8] 607/23
667/3 833/8	400 [1] 803/23	750 [1] 816/5	accompli [5] 707/20	610/13 611/9 613/19
25 percent [7] 764/1	402 [1] 689/16	77 [4] 660/16 660/17	812/10 812/22 813/12	619/11 620/14 661/15
790/9 792/9 793/3	403 [5] 608/3 608/4	662/21 672/12	813/14	837/13
796/15 798/10 808/5	665/5 687/8 720/3	8	accomplish [1] 629/17	addressed [1] 693/4
255-0526 [1] 603/23	42 percent [1] 643/22	8-K [11] 639/17 677/16	accordance [1] 873/13	addresses [1] 632/18
25th [2] 633/16 635/23	423 [6] 612/11 612/14	729/14 729/19 729/21	according [5] 689/4	adds [1] 689/22
26 [16] 615/13 630/12	612/22 613/1 613/2	729/23 730/2 730/17	699/13 706/13 709/3	adhere [1] 796/8
637/2 637/6 637/17	613/6	746/6 746/18 747/20	784/7	adjourn [1] 879/13
639/6 639/16 714/13	43 [1] 853/13	8-Ks [1] 823/11	accretion [1] 625/12	adjourned [1] 879/22
729/15 787/12 828/20	442 [3] 615/3 615/8	80 percent [5] 753/10	accretive [4] 625/14	adjust [2] 645/7 675/11
833/12 872/8 874/11	615/9	775/23 776/3 800/11	627/5 635/5 652/9	administrative [3]
875/2 875/10	45 [1] 853/14	803/22	accuracy [1] 685/3	711/18 731/15 731/16
266 [2] 663/18 663/19	453 [3] 621/23 622/1	81 percent [1] 809/2	accurate [10] 673/21	Admitted [1] 825/24
26th [5] 698/11 698/16	628/7	8104 [1] 674/11	707/3 707/12 707/21	advance [3] 617/14
699/4 710/20 746/8	48 [2] 623/18 812/13	844 [1] 849/9	736/24 811/24 815/16	661/11 874/2
27 [8] 621/18 626/9	49 [1] 826/3	865 [1] 855/22	828/1 837/23 839/17	advanced [1] 648/24
626/12 630/8 738/1	4:48 p.m [1] 879/23	875 [2] 871/14 871/16	acknowledge [4]	advantage [1] 780/23
808/9 808/11 826/7	4s [7] 710/3 710/18	887 [1] 730/20	616/20 766/18 775/11	advice [6] 722/2 722/5
270 [1] 776/15	712/11 713/19 713/19	8:54 [2] 660/1 661/7	787/14	722/24 723/2 781/6
271 [1] 791/3	714/2 714/22	8:54 p.m [1] 659/21	acknowledged [3]	794/6
27th [1] 626/13	4th [3] 626/22 628/24	9	703/6 774/12 805/14	advise [1] 701/2
28 [7] 603/10 605/20	629/7	90 [2] 626/7 783/3	acquire [3] 732/23	advised [2] 724/15
814/12 814/16 815/2	5	90-day [8] 630/8 636/7	735/22 770/11	746/9
815/6 828/20	5 million [3] 767/3	782/14 782/19 783/1	acquired [5] 711/14	advising [2] 721/3
29 [12] 674/14 816/8	768/1 800/12	783/1 783/2 783/13	716/10 716/24 718/1	835/1
816/10 832/11 833/8	5.6 [1] 739/3	902 [3] 710/23 858/18	782/17	advisors [2] 706/11
833/21 837/10 838/6	50 [4] 659/3 659/14		acquirors [2] 814/22	707/7
838/6 843/7 860/7	826/3 826/4		818/20	AEPC [1] 732/20
860/10			acquisition [2] 649/23	AFE [3] 873/13 873/16
298 [4] 632/14 632/19			711/16	874/4
				affairs [1] 718/16

A	712/9 716/20 718/13 719/7 719/21 719/22 723/23 727/23 732/21 741/22 742/7 742/13 747/9 748/14 749/19 755/16 756/5 759/21 760/8 760/8 763/3 764/15 767/9 767/15 767/16 771/7 781/17 782/1 785/22 785/23 789/13 790/1 790/13 795/14 797/16 801/23 804/2 804/12 804/22 806/24 807/7 807/9 807/10 807/19 807/22 808/9 808/11 808/12 808/15 809/1 812/2 815/3 815/11 816/21 818/11 818/15 830/15 868/22 871/24 873/8 878/24	627/23 677/21 823/11 823/13 announcing [1] 820/23 annual [1] 874/1 another [12] 635/8 728/2 761/1 761/18 771/8 792/9 808/12 809/5 811/12 833/16 839/12 860/3 answer [75] 614/11 616/16 616/21 617/6 617/8 617/20 618/5 634/13 634/17 638/1 638/3 646/7 666/17 678/24 679/15 692/17 709/9 730/14 763/16 768/19 781/16 787/18 787/22 788/6 788/15 789/6 801/14 806/19 806/20 806/23 812/20 813/8 813/15 813/20 813/24 814/2 816/3 845/5 846/7 846/13 847/8 847/19 847/23 848/2 848/3 848/12 848/15 848/17 848/21 851/9 851/13 851/17 853/22 854/1 854/4 854/7 854/9 854/16 854/23 855/1 855/5 855/7 857/1 857/5 857/8 862/18 862/22 863/7 863/11 863/14 864/24 866/10 866/15 866/18 866/21 answered [2] 634/1 816/2 answering [1] 852/14 answers [11] 624/15 624/18 679/1 768/15 805/1 849/1 851/22 855/13 857/12 863/18 867/1 anticipate [2] 702/1 745/10 anybody [2] 804/8 808/20 anyone [6] 623/21 705/15 725/2 854/8 864/8 876/17 anyway [2] 786/16 797/11 anywhere [1] 612/6 Apart [1] 649/24 apologize [7] 605/2 605/5 612/9 632/21 674/9 779/18 784/20 Apparently [1] 640/3 appear [1] 633/3 APPEARANCES [1] 603/24 appears [2] 732/8 779/14 Appendix [2] 739/20 739/24 application [1] 832/16 applications [3] 684/11 685/15 686/11 apply [1] 782/19	appointment [1] 630/19 appoints [1] 841/14 approach [3] 612/16 658/24 659/11 appropriate [4] 702/5 706/15 706/22 707/1 approval [4] 679/2 733/8 752/3 875/6 approvals [2] 874/16 874/18 approve [2] 865/8 874/6 approved [23] 634/24 635/12 654/17 656/2 671/6 671/10 671/16 679/5 679/11 679/18 703/2 752/19 841/20 859/23 861/2 873/24 874/2 874/7 874/9 875/15 875/17 875/19 875/24 approximately [4] 636/6 636/12 659/14 671/23 April [2] 628/14 826/7 April 27 [1] 826/7 April 30 [1] 628/14 area [2] 617/1 651/16 areas [6] 718/15 767/16 785/3 807/9 869/16 872/16 aren't [1] 640/11 argue [1] 678/18 Arizona [1] 604/14 around [18] 654/6 692/5 695/14 697/20 701/15 702/4 702/12 707/14 719/12 721/12 744/23 746/10 794/14 794/22 804/22 818/4 868/8 868/17 arrange [1] 686/21 article [2] 829/21 863/4 Aruba [1] 643/13 ASAP [6] 697/14 698/2 704/6 811/21 818/10 820/6 aside [1] 709/1 ask [65] 612/4 624/14 624/16 624/17 637/24 641/20 692/16 702/9 724/2 726/24 738/6 747/2 752/16 757/11 757/12 758/6 769/14 787/10 788/21 789/1 789/5 791/10 799/23 800/5 801/2 804/24 809/5 809/7 809/12 810/10 810/13 810/15 813/7 813/19 813/22 825/17 826/2 827/14 828/21 829/18 830/7 830/13 830/23 831/20 831/23 832/10 834/20 835/11 837/16 838/5 840/19 843/2 843/4 849/8 852/7 852/20 855/21 858/15 860/1	861/14 862/24 863/20 864/8 877/2 878/4 asked [45] 612/2 612/3 614/10 618/20 633/22 664/8 666/10 668/16 678/20 682/13 690/2 692/18 692/19 692/20 692/20 695/22 709/4 719/24 727/5 778/2 781/9 801/13 813/11 813/12 816/1 836/1 836/19 844/17 847/9 847/22 848/3 848/24 850/23 851/21 851/24 852/10 855/1 855/12 855/18 857/11 863/17 865/13 865/24 866/24 877/9 asking [16] 615/24 633/15 677/20 692/23 700/2 710/15 721/24 722/1 722/19 755/12 757/13 775/15 797/11 809/8 816/24 817/16 asks [7] 616/9 631/9 631/15 640/12 683/6 744/16 866/1 aspects [1] 683/13 asserting [2] 794/13 794/21 assess [1] 648/10 assessment [2] 650/10 719/21 asset [2] 872/20 873/1 assets [9] 643/11 658/6 658/9 658/13 670/8 741/7 741/23 873/4 877/20 assiduously [1] 762/24 assign [1] 740/9 assist [1] 636/14 assistant [6] 713/15 713/23 716/13 736/15 744/13 805/19 associated [2] 644/14 656/6 assume [2] 617/17 784/17 Assuming [1] 610/16 assurance [2] 639/19 748/9 assure [2] 869/17 874/19 assuring [1] 878/18 attached [3] 837/7 840/21 849/17 attaches [1] 626/23 attachment [1] 658/2 attempt [1] 721/15 attend [3] 730/24 742/15 879/14 attendance [1] 720/20 attended [3] 621/5 687/3 742/16 attorney [9] 721/15 771/17 810/1 840/12 841/2 841/3 841/7 848/14 865/1 attorney-client [2]
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<p>A</p> <p>attorney-client... [2] 721/15 865/1</p> <p>attorney-in-fact [1] 840/12</p> <p>attorneys [3] 714/17 780/21 841/16</p> <p>attorneys-in-fact [1] 841/16</p> <p>attractive [1] 651/8</p> <p>atypical [1] 655/8</p> <p>auditors [1] 704/7</p> <p>August [1] 711/5</p> <p>authorities [1] 872/3</p> <p>authority [12] 700/9 725/19 739/13 740/10 742/14 743/2 872/6 872/15 872/19 873/2 873/16 875/11</p> <p>authorization [1] 840/16</p> <p>authorized [6] 701/22 705/3 873/23 874/20 874/22 875/3</p> <p>available [8] 647/24 675/12 676/12 677/1 677/7 678/4 680/18 732/19</p> <p>average [8] 625/14 626/16 782/20 783/1 783/15 783/17 784/6 784/8</p> <p>aviation [1] 718/19</p> <p>avoid [1] 680/13</p> <p>aware [27] 621/1 633/15 686/23 697/7 714/8 714/21 715/1 731/19 746/14 746/16 781/8 781/13 781/14 782/13 782/16 782/18 782/21 788/10 794/4 794/8 795/3 795/6 821/18 824/1 824/4 839/22 845/10</p> <p>away [4] 680/12 803/23 817/6 842/12</p>	<p>802/5 828/2 852/9 854/22</p> <p>bases [1] 851/18</p> <p>basically [4] 648/6 648/15 757/5 764/5</p> <p>Basin [1] 651/24</p> <p>basis [2] 667/18 705/12</p> <p>batch [1] 861/17</p> <p>Bates [4] 660/5 661/6 674/11 694/2</p> <p>became [10] 644/1 646/24 714/8 717/1 746/14 823/7 824/12 834/11 867/12 867/22</p> <p>Beck [3] 728/13 728/16 729/2</p> <p>become [1] 643/17</p> <p>bed [1] 652/6</p> <p>began [3] 703/18 704/19 727/10</p> <p>beginning [7] 656/12 657/5 683/14 686/5 705/17 709/21 752/2</p> <p>begins [4] 684/8 686/7 699/14 747/4</p> <p>behalf [11] 738/13 738/21 738/22 740/11 836/6 836/9 840/17 859/20 869/22 870/2 870/6</p> <p>behind [3] 612/10 616/10 764/12</p> <p>BEIGEL [9] 604/14 604/15 772/5 788/20 789/3 794/16 810/5 810/12 822/1</p> <p>belies [1] 804/12</p> <p>believed [4] 764/6 793/12 815/6 815/7</p> <p>below [1] 711/10</p> <p>beneficial [5] 801/6 801/10 814/19 838/7 843/24</p> <p>beneficially [2] 713/4 839/1</p> <p>benefit [3] 710/8 759/21 760/8</p> <p>Berger [2] 604/6 604/9</p> <p>Bernstein [1] 604/6</p> <p>best [5] 645/20 728/3 761/8 801/14 837/24</p> <p>better [6] 649/20 694/20 758/11 761/9 781/7 790/14</p> <p>between [6] 609/7 611/11 649/4 680/20 688/9 714/21</p> <p>beyond [1] 677/22</p> <p>bid [3] 728/2 728/9 775/8</p> <p>bidding [1] 803/1</p> <p>big [5] 653/20 657/6 689/10 792/9 798/18</p> <p>billions [2] 763/2 807/16</p> <p>bind [1] 742/14</p> <p>binder [18] 605/18 608/5 612/11 612/14</p>	<p>615/4 622/1 625/3 630/17 632/14 684/20 720/5 750/13 750/17 755/8 779/6 825/13 825/15 828/23</p> <p>Biography [1] 838/6</p> <p>bit [10] 626/15 645/17 657/19 686/16 694/19 700/14 702/21 704/15 792/17 879/11</p> <p>Blair [12] 618/15 618/17 618/20 619/1 619/8 620/8 621/19 631/6 631/9 631/15 633/22 666/10</p> <p>Blair's [3] 622/7 623/9 634/14</p> <p>blanket [1] 680/16</p> <p>blend [1] 670/22</p> <p>blew [1] 802/19</p> <p>blow [9] 653/23 655/22 657/24 666/16 711/3 712/23 729/17 736/19 746/23</p> <p>board [166] 605/22 606/20 607/11 607/15 607/20 607/23 608/8 610/9 612/3 619/16 619/22 620/7 620/13 621/5 621/8 621/9 634/23 635/12 637/3 637/6 637/17 639/6 639/17 640/12 656/4 663/24 664/8 664/20 665/8 667/4 671/6 671/10 674/2 674/16 674/22 678/8 679/2 679/5 679/7 679/11 679/17 686/22 688/6 688/16 688/23 689/5 689/18 697/5 697/20 697/22 698/15 699/14 699/15 699/20 700/1 700/10 700/18 700/22 701/5 701/24 702/10 702/14 702/19 703/4 703/11 703/15 704/1 704/2 704/23 705/2 705/15 705/19 705/21 706/2 706/3 706/14 706/18 706/21 706/21 706/24 707/9 707/13 707/22 708/3 708/13 708/15 708/22 708/23 709/2 709/9 709/12 720/1 720/11 720/19 721/1 721/3 721/6 721/11 722/8 722/20 724/6 724/20 725/8 725/12 725/15 726/2 726/3 726/13 726/20 730/22 731/9 731/10 731/18 732/4 733/5 738/11 742/9 742/16 743/4 746/7 747/14 747/18 747/18 747/23 748/11 748/13 748/18 748/20 748/23 749/6 752/19 764/11 765/15</p>	<p>765/16 776/17 776/21 776/22 777/10 778/1 787/15 790/3 790/4 790/12 790/20 792/3 792/10 792/11 792/11 793/24 796/14 796/17 796/23 797/9 798/13 798/20 798/21 799/3 808/15 814/11 814/16 815/2 815/13 818/21 823/22 824/5 824/9</p> <p>board's [2] 607/19 691/12</p> <p>Boardwalk [32] 622/19 622/20 623/12 624/23 627/19 627/24 628/1 628/16 628/20 629/3 636/19 636/20 637/7 637/16 638/4 638/7 638/17 639/9 639/13 639/23 639/24 640/8 664/21 664/22 665/2 665/13 746/9 746/11 812/18 821/1 821/4 821/19</p> <p>Boardwalk-Loews [2] 664/22 665/13</p> <p>Boesky [1] 807/10</p> <p>bold [2] 606/13 762/17</p> <p>bolded [3] 632/19 779/12 779/14</p> <p>bonds [1] 830/10</p> <p>bonus [4] 647/18 827/2 827/4 827/6</p> <p>book [8] 669/9 669/10 682/20 710/6 757/24 758/1 760/18 840/3</p> <p>both [13] 611/20 746/19 764/24 765/3 765/4 765/6 765/8 773/9 774/24 788/5 788/11 792/1 823/10</p> <p>bothered [1] 786/9</p> <p>bottom [24] 613/6 625/6 627/9 631/2 631/4 634/8 640/21 666/8 672/16 672/23 684/7 726/8 726/12 733/20 734/8 739/1 768/8 825/23 826/12 826/12 829/20 834/22 850/15 858/18</p> <p>bought [10] 643/11 643/23 644/16 670/20 801/8 803/4 803/17 803/20 803/21 804/6</p> <p>Bowling [3] 688/6 688/11 688/15</p> <p>box [1] 675/9</p> <p>boy [1] 766/14</p> <p>break [6] 605/6 642/4 661/22 661/23 665/20 810/16</p> <p>breaks [2] 661/24 681/19</p> <p>bridge [1] 678/14</p> <p>brief [4] 642/7 642/18 642/22 785/21</p> <p>briefly [4] 680/3 746/3</p>	<p>746/17 879/9</p> <p>bring [4] 732/21 742/10 757/1 816/5</p> <p>bringing [1] 620/24</p> <p>BROCK [1] 604/11</p> <p>broke [1] 793/17</p> <p>broken [1] 827/22</p> <p>broker [1] 849/13</p> <p>brought [6] 617/4 620/17 620/21 637/7 637/19 682/21</p> <p>bucket [3] 738/21 740/12 748/22</p> <p>buckets [1] 738/19</p> <p>bucks [1] 647/21</p> <p>budget [8] 676/19 676/24 873/24 874/2 874/7 875/16 875/22 875/23</p> <p>budgetary [1] 875/20</p> <p>budgets [1] 876/1</p> <p>Buffalo [7] 658/3 658/14 658/15 658/15 658/16 658/18 658/23</p> <p>Buhrig [35] 681/24 682/3 682/7 715/12 715/14 717/17 725/5 726/8 729/7 729/10 730/21 733/3 736/5 737/11 738/2 741/12 743/5 743/9 745/11 745/14 746/6 746/21 811/20 819/5 819/5 819/7 819/14 819/17 820/4 824/2 856/13 856/14 857/8 862/8 863/12</p> <p>build [3] 651/11 651/18 651/21</p> <p>building [1] 651/16</p> <p>bulk [2] 670/7 670/8</p> <p>bullet [1] 615/23</p> <p>bunch [5] 661/5 661/12 690/5 841/17 872/18</p> <p>business [45] 643/7 644/19 644/23 648/10 648/11 648/17 648/19 649/2 649/12 649/17 649/20 653/1 653/4 655/9 658/12 663/12 676/14 676/14 680/7 680/7 680/17 681/11 684/12 685/15 686/12 718/7 718/15 718/15 719/7 719/11 727/24 728/10 728/23 742/3 821/17 870/11 870/14 870/16 870/18 871/1 872/21 873/3 874/9 875/22 875/24</p> <p>businesses [1] 680/22</p> <p>busy [1] 731/21</p> <p>but [249] 605/5 609/11 609/12 609/21 612/9 613/16 617/1 617/12 617/24 618/2 619/20 620/2 620/4 620/23 621/5 621/15 621/16 623/15 623/24 624/7</p>
<p>B</p> <p>baby [1] 717/23</p> <p>background [1] 715/15</p> <p>backyard [1] 650/18</p> <p>bad [2] 751/8 778/19</p> <p>badly [1] 764/11</p> <p>balance [1] 675/5</p> <p>Ball [4] 840/12 840/14 841/2 841/15</p> <p>banker [1] 655/7</p> <p>Bar [4] 604/6 604/8 604/14 794/20</p> <p>barrel [2] 680/24 681/1</p> <p>barrels [7] 654/6 654/12 654/16 680/10 681/2 681/3 681/4</p> <p>base [4] 647/18 809/18 811/14 826/24</p> <p>based [11] 681/12 684/8 685/12 686/8 696/24 715/24 717/21</p>				

<p>B</p> <p>but... [229] 624/8 624/24 626/5 627/21 627/22 628/4 628/6 629/4 629/12 629/19 629/22 630/15 630/23 632/4 633/11 633/19 635/2 635/14 636/11 636/16 637/10 637/20 639/19 649/14 650/6 651/13 652/2 652/11 656/12 656/24 657/7 657/19 658/8 658/19 659/3 659/6 659/13 660/5 662/1 662/6 663/17 664/19 665/3 665/16 668/22 669/10 670/7 671/9 671/22 673/8 673/19 674/10 675/16 675/19 678/16 679/4 679/16 680/16 687/10 690/11 690/19 691/11 691/24 692/10 692/22 695/4 695/14 695/18 696/10 696/12 696/14 697/20 697/24 699/1 699/23 700/8 700/11 700/22 701/17 702/18 704/20 705/13 706/20 706/23 707/9 707/19 708/2 708/6 708/14 708/21 709/1 709/12 710/13 712/9 714/9 715/1 715/22 717/7 720/9 723/9 723/11 723/13 730/12 734/1 740/18 742/12 744/14 744/18 746/13 746/15 746/16 747/20 748/6 748/11 749/5 751/2 752/8 752/16 753/3 753/7 754/24 755/6 756/6 756/8 756/16 756/22 756/23 757/6 763/7 763/14 763/16 763/21 764/21 764/21 765/14 766/11 767/8 767/14 767/20 768/2 768/7 773/3 773/23 774/3 774/9 775/19 776/5 777/20 778/4 778/9 778/10 778/13 778/20 780/12 780/21 781/3 781/6 783/22 784/15 785/24 786/2 787/4 787/14 788/2 788/6 788/8 788/17 789/14 789/24 791/9 791/16 792/15 792/20 793/9 793/13 795/5 795/6 795/24 796/4 796/9 797/14 798/7 798/21 801/2 802/3 802/3 803/19 804/3 804/21 806/10 806/22 807/2 807/4 807/12 807/23 808/20 809/1 809/8 810/10</p>	<p>812/23 812/24 813/13 814/3 815/10 815/17 815/20 817/15 819/10 820/8 821/9 821/12 824/6 834/17 836/21 840/21 841/1 845/9 847/5 852/10 852/13 852/24 856/15 861/12 865/24 868/3 869/10 872/19 877/2 879/8</p> <p>Butler [24] 605/23 606/4 606/9 606/17 607/10 607/24 608/9 610/5 610/10 611/9 665/9 686/22 688/3 689/1 690/24 692/4 722/10 722/13 724/5 724/9 724/13 724/22 725/6 725/13</p> <p>buy [44] 609/15 645/15 649/18 651/12 668/15 676/8 748/15 772/23 772/24 773/7 773/10 774/5 774/7 774/19 774/20 774/21 774/22 774/24 775/4 775/10 785/15 785/19 792/8 801/4 801/18 801/18 802/15 802/21 802/22 803/6 803/10 803/12 803/12 803/13 803/16 803/18 803/21 804/4 804/11 808/9 808/15 808/16 808/18 809/2</p> <p>buyer [3] 648/24 649/4 663/15</p> <p>buyers [4] 649/24 658/13 658/24 673/20</p> <p>buying [9] 771/7 773/8 786/4 797/1 802/17 802/18 802/24 803/2 807/24</p> <p>BWP [2] 622/14 628/13</p> <p>C</p> <p>C.A [1] 603/3</p> <p>calculation [1] 650/7</p> <p>calculations [1] 625/21</p> <p>call [161] 606/19 607/7 609/6 609/16 610/3 613/17 613/19 615/3 615/13 615/24 615/24 617/13 619/4 620/9 621/19 622/14 622/18 625/13 627/6 627/13 628/1 628/13 629/2 629/9 629/13 629/18 630/12 630/13 630/19 630/21 631/10 631/13 631/17 633/23 634/15 635/5 635/10 635/17 635/20 636/1 636/2 636/8 636/14 637/3 639/18 640/22 652/1 653/15 658/21 665/18 666/11 667/2 668/21 669/5 670/13 670/22 671/11 677/17 678/13 678/15 681/3 681/21</p>	<p>681/23 689/18 690/6 690/18 690/20 693/17 694/3 694/12 694/15 695/1 695/20 695/21 696/19 696/21 697/2 697/3 697/13 697/18 698/1 699/16 700/7 700/13 700/14 701/16 701/19 701/21 705/3 705/4 705/7 706/4 707/8 708/2 708/4 708/10 708/16 709/3 709/18 712/8 712/13 712/20 716/20 719/13 719/19 727/24 729/22 731/5 731/14 732/5 732/17 732/19 733/16 733/16 734/15 734/20 735/15 735/21 740/6 740/10 747/5 747/10 747/23 748/1 748/6 750/3 750/5 756/14 761/8 766/13 766/13 774/3 774/4 776/3 777/13 777/21 782/3 782/9 787/19 787/20 797/6 801/19 801/23 802/16 802/20 803/11 805/6 811/21 812/5 812/9 812/18 814/19 818/10 818/18 818/23 820/5 820/18 820/24 821/1 822/8 861/10</p> <p>called [14] 606/13 649/22 686/22 696/13 716/11 716/24 717/3 717/6 728/7 759/2 779/6 797/5 825/9 839/21</p> <p>calling [2] 627/13 628/15</p> <p>calls [9] 630/1 630/3 652/16 655/15 727/16 763/21 775/7 797/6 835/20</p> <p>can't [32] 637/20 665/16 701/13 714/15 714/18 743/3 750/15 751/20 753/3 754/24 755/5 755/6 756/5 757/5 763/20 765/12 767/13 767/19 771/2 771/12 772/8 774/3 779/3 785/6 785/7 788/2 793/15 793/15 795/6 796/6 797/19 797/22</p> <p>Canada [1] 651/4</p> <p>canceled [1] 652/11</p> <p>canceling [1] 652/14</p> <p>cap [1] 620/18</p> <p>capable [2] 700/19 852/13</p> <p>capacity [7] 631/12 646/2 654/11 682/13 713/3 739/19 740/4</p> <p>CapEx [5] 654/18 672/16 672/17 672/24 673/6</p>	<p>capital [22] 605/23 606/4 606/9 607/24 608/9 652/18 656/10 657/9 657/13 658/10 675/17 680/18 797/4 814/20 818/19 873/10 873/20 873/22 874/1 874/3 874/6 875/23</p> <p>capitalization [1] 674/23</p> <p>caps [2] 689/19 760/8</p> <p>capture [2] 649/23 650/17</p> <p>captured [1] 640/11</p> <p>card [1] 870/15</p> <p>cards [3] 870/16 870/18 871/1</p> <p>care [3] 708/19 878/19 878/23</p> <p>career [2] 727/21 751/4</p> <p>careful [2] 744/15 744/21</p> <p>carefully [2] 723/24 781/24</p> <p>Carl [13] 641/13 648/6 695/20 696/5 696/5 697/1 697/13 698/1 750/6 750/8 799/6 811/21 817/3</p> <p>Carl's [1] 697/19</p> <p>carries [3] 733/21 784/18 784/22</p> <p>carrying [1] 685/7</p> <p>carryover [1] 734/9</p> <p>case [24] 611/14 623/12 624/6 637/18 638/21 651/23 683/13 692/10 722/22 772/1 775/5 781/18 796/10 799/3 799/3 801/1 801/16 802/4 802/8 821/5 821/7 821/9 826/16 843/19</p> <p>cases [3] 651/3 755/1 755/3</p> <p>cash [14] 656/20 657/6 657/12 675/1 675/5 675/11 677/1 677/6 678/4 678/13 763/22 826/24 875/2 875/3</p> <p>cat [2] 646/6 646/9</p> <p>catalyst [1] 652/6</p> <p>categories [1] 683/18</p> <p>category [1] 872/4</p> <p>cause [2] 739/13 760/1</p> <p>caution [3] 723/1 845/3 854/21</p> <p>Celanese [1] 643/11</p> <p>Center [2] 603/9 603/22</p> <p>CEO [22] 609/1 610/18 611/20 631/13 643/22 643/22 644/5 646/23 646/24 647/7 652/15 657/11 687/20 700/3 717/9 819/12 819/13 823/8 824/7 834/12 834/18 868/13</p> <p>certain [18] 647/14</p>	<p>682/14 683/18 684/17 690/18 692/21 694/24 696/9 710/10 738/12 745/19 759/19 782/10 790/16 834/13 835/2 836/16 842/9</p> <p>certainly [22] 689/12 692/1 692/6 696/10 697/6 708/19 709/8 709/21 714/18 720/14 723/21 728/7 736/12 748/11 748/17 780/8 780/17 780/23 781/5 788/15 847/5 852/13</p> <p>CFO [2] 732/2 840/15</p> <p>chain [3] 613/23 625/7 716/22</p> <p>chairman [2] 687/20 776/20</p> <p>challenging [1] 632/23</p> <p>chambers [1] 810/17</p> <p>Chancellor [2] 603/13 666/3</p> <p>CHANCERY [3] 603/1 603/8 603/21</p> <p>change [12] 616/5 624/8 663/16 692/8 729/21 818/4 823/14 846/15 868/4 868/8 868/11 868/21</p> <p>changed [15] 634/19 635/2 635/14 635/22 646/16 667/6 690/7 690/20 702/6 703/15 705/11 740/17 773/24 774/2 831/10</p> <p>changing [1] 726/2</p> <p>characterize [2] 706/23 720/17</p> <p>charge [1] 644/24</p> <p>Charles [3] 831/14 849/4 849/14</p> <p>chart [2] 622/22 711/11</p> <p>charts [1] 667/18</p> <p>cheap [1] 801/5</p> <p>chemical [1] 642/21</p> <p>chemicals [1] 643/7</p> <p>chief [1] 643/18</p> <p>children [3] 828/15 878/19 879/1</p> <p>Cho [4] 608/19 687/18 791/5 791/10</p> <p>choice [3] 763/19 773/22 793/4</p> <p>choose [1] 745/19</p> <p>chose [3] 618/5 704/9 778/24</p> <p>CIM [8] 655/7 658/3 658/4 659/17 663/5 672/2 673/14 673/19</p> <p>CIMs [1] 748/15</p> <p>circle [1] 702/12</p> <p>circumstance [2] 703/22 708/24</p> <p>circumstances [6] 705/11 738/13 788/11 793/16 835/16 878/15</p> <p>claims [1] 718/18</p> <p>clarify [1] 721/23</p>
--	--	---	---	---

C	commented [2] 623/13 624/7	company's [3] 688/24 744/18 814/17	connected [3] 651/6 813/15 813/16	866/13
clause [6] 703/1 733/15 733/21 734/19 735/6 735/12	Commission [1] 839/21	compelling [2] 762/7 762/15	connection [21] 609/5 609/6 623/13 624/3 636/19 681/7 711/14 730/16 735/14 767/23 782/23 794/7 812/15 814/18 818/18 820/18 842/16 852/17 861/10 862/20 877/3	contested [2] 756/9 757/2
clean [1] 755/16	commitment [2] 717/7 717/9	compensate [1] 648/8	consensus [3] 703/5 703/20 727/1	context [5] 637/21 706/10 749/10 815/15 820/8
clear [10] 714/3 724/24 771/2 772/18 778/11 779/23 782/24 786/2 786/7 854/11	committee [11] 656/5 679/7 679/11 725/20 731/10 731/14 742/9 823/22 823/24 824/5 824/9	compensation [7] 610/21 645/8 647/18 809/18 826/23 827/16 827/19	consider [12] 686/22 706/4 708/4 709/2 709/4 723/19 747/24 748/2 776/18 787/16 820/15 820/24	continue [8] 616/6 640/15 651/15 666/2 772/4 795/1 811/3 863/1
clearly [2] 724/18 778/10	commodity [1] 648/19	competitive [1] 658/9	considered [10] 618/17 699/15 700/12 707/7 708/1 709/5 709/8 730/15 731/9 764/9	continued [2] 689/5 726/13
client [4] 715/23 721/15 796/24 865/1	common [14] 614/5 677/2 711/13 711/17 713/4 731/22 732/10 732/22 732/24 736/11 768/10 769/1 769/7 830/10	complete [6] 660/14 660/15 660/18 855/3 877/6 877/24	considering [16] 622/18 627/24 628/15 629/1 677/17 700/6 701/8 701/9 701/10 701/12 703/16 708/9 708/16 729/22 746/19 749/7	continues [8] 619/1 689/21 731/9 739/10 739/16 762/23 830/17 843/15
clip [49] 623/17 623/19 624/12 637/12 637/14 637/22 638/13 638/15 638/24 787/12 787/13 789/4 789/8 789/9 812/13 812/14 813/5 813/23 814/6 846/1 846/3 846/17 847/14 847/15 847/20 848/6 848/8 848/22 851/4 851/5 851/19 853/6 853/7 853/12 853/13 853/17 855/10 856/18 856/20 857/9 862/13 862/15 862/23 863/1 863/3 863/15 866/5 866/7 866/22	communicating [1] 617/14	completely [11] 661/18 702/5 713/13 721/22 767/22 773/12 775/10 790/20 792/22 803/3 808/2	consistent [5] 661/18 684/9 685/12 686/9 795/18	continuing [2] 688/21 875/1
close [5] 626/11 636/11 651/5 655/9 673/17	communication [3] 724/6 724/18 854/22	completes [1] 734/21	consolidated [1] 603/2	contract [2] 647/21 647/23
closed [4] 626/8 633/18 656/23 782/5	communications [15] 607/24 652/17 688/17 689/1 689/8 701/18 710/17 713/10 721/24 724/17 726/16 726/18 728/16 854/23 865/2	complex [1] 709/16	constitutes [2] 781/10 841/14	contracts [5] 875/10 875/11 875/14 875/17 876/2
closely [1] 627/15	companies [18] 644/4 645/4 670/5 718/8 718/10 718/22 719/3 727/19 728/6 731/22 763/1 798/15 811/14 815/23 834/4 870/10 876/6 877/8	compliance [9] 651/9 718/12 718/18 719/8 719/10 719/18 744/17 823/17 869/15	consists [1] 826/23	contrary [2] 714/1 739/12
closer [1] 694/19	company [100] 631/22 645/6 647/20 649/5 655/8 699/15 699/20 699/22 699/23 699/24 700/4 700/12 701/3 703/12 704/22 706/4 706/9 706/10 706/14 707/4 707/6 707/7 707/12 707/24 708/17 709/4 713/20 715/24 716/4 716/5 716/10 716/24 717/3 720/9 720/12 721/7 727/14 727/17 734/20 734/23 737/20 737/23 739/14 739/15 739/18 740/2 741/10 748/19 764/10 764/11 765/9 766/7 766/15 773/8 773/8 775/3 775/4 775/8 785/7 785/13 785/15 790/4 790/5 792/8 792/9 803/2 803/5 803/5 804/5 804/7 804/11 814/19 823/1 823/10 824/18 826/21 834/9 834/13 848/11 853/1 854/4 857/5 857/19 857/22 859/19 860/19 861/10 867/13 867/16 868/4 870/21 872/20 873/1 873/5 874/13 874/21 875/12 876/3 876/17 877/11	comply [3] 743/11 745/21 869/20	concept [1] 706/17	control [4] 756/3 756/6 756/9 756/14
closes [2] 781/18 781/19		complying [2] 864/17 865/8	concern [1] 726/15	controller [1] 707/6
closing [1] 630/9		computer [1] 641/24	concerned [1] 641/22	controlling [7] 617/11 707/6 708/18 708/20 716/10 716/16 718/2
co [11] 713/3 829/4 829/12 829/16 830/24 831/3 831/5 831/17 832/20 832/24 838/19		concept [1] 706/17	concerning [1] 754/3	convenience [1] 731/17
co-trustee [3] 713/3 829/4 831/5		conclude [1] 705/22	concerns [6] 606/14 607/5 607/16 619/2 619/16 719/13	convening [1] 704/8
co-trustees [8] 829/12 829/16 830/24 831/3 831/17 832/20 832/24 838/19		concluded [1] 879/23	conclusion [5] 624/8 626/3 708/3 724/20 725/3	conversation [4] 668/20 669/1 669/1 862/12
code [1] 719/10		condensates [1] 651/24	conduct [2] 719/11 742/19	conversations [6] 668/17 844/7 845/8 845/17 862/8 863/9
Coffeyville [6] 650/16 671/16 741/8 741/10 870/20 870/21		condition [5] 753/6 753/10 753/14 753/18 775/18	conducted [1] 664/9	conveyed [2] 767/4 820/4
Coke [4] 643/4 643/4 643/8 643/9		conduct [2] 719/11 742/19	conference [3] 627/13 629/18 630/1	convince [1] 767/10
Coke's [1] 643/10		confers [1] 713/23	conferred [1] 713/23	convinced [1] 789/14
column [3] 872/10 872/14 873/10		confidential [2] 658/5 659/1	conflict [5] 609/6 609/12 610/6 788/4 788/7	Conway [1] 651/1
combined [1] 734/16		confirm [1] 846/8	conflicts [2] 725/19 795/11	COO [1] 644/1
coming [6] 706/18 706/20 707/4 717/6 790/1 812/19		confirmed [1] 852/23	confused [1] 761/5	coordinated [1] 704/21
commenced [1] 720/11		congratulations [1] 828/14	confusing [1] 763/14	copied [3] 710/21 713/14 714/19
comment [6] 614/15 618/8 619/9 656/2 821/5 821/6				copies [2] 660/5 682/22

<p>C</p> <p>correction [1] 736/21</p> <p>correspondence [2] 665/9 845/21</p> <p>corresponds [1] 872/20</p> <p>cost [3] 648/19 804/13 808/11</p> <p>costs [2] 648/18 658/10</p> <p>counsel's [3] 864/18 865/17 865/20</p> <p>counsels [2] 720/15 792/1</p> <p>country [2] 792/11 798/11</p> <p>couple [5] 627/4 636/8 691/7 719/3 762/10</p> <p>couple-page [1] 762/10</p> <p>course [12] 644/18 680/24 682/12 718/6 718/18 748/24 773/5 785/13 872/21 873/3 875/15 875/24</p> <p>Court's [1] 786/18</p> <p>courtroom [3] 603/8 786/16 794/17</p> <p>courts [2] 767/18 785/1</p> <p>covenants [1] 749/4</p> <p>covered [1] 747/19</p> <p>COVID [2] 646/16 652/11</p> <p>Cozza [25] 611/1 613/24 614/10 614/22 617/5 618/4 621/1 623/5 625/18 626/4 635/6 676/18 687/24 698/22 698/23 701/8 701/14 747/8 751/22 752/2 754/1 777/11 780/4 780/5 821/20</p> <p>cracks [1] 847/1</p> <p>create [1] 670/15</p> <p>created [2] 674/4 674/5</p> <p>creating [3] 670/14 674/17 681/7</p> <p>credible [1] 807/7</p> <p>critical [2] 708/14 708/23</p> <p>criticize [1] 784/14</p> <p>cross [4] 642/14 715/10 747/1 867/7</p> <p>CROSS-EXAMINATION [3] 642/14 715/10 867/7</p> <p>crude [5] 646/8 650/19 654/15 680/19 680/20</p> <p>crudes [2] 650/18 651/23</p> <p>current [4] 777/12 783/14 783/23 784/4</p> <p>curve [1] 656/11</p> <p>custodian [1] 683/18</p> <p>custodians [4] 683/7 684/10 685/14 686/10</p> <p>cut [2] 648/18 674/7</p>	<p>CVI [59] 619/5 620/9 631/16 632/7 633/23 634/14 644/5 644/17 646/13 647/4 647/8 647/21 658/16 666/10 670/6 693/16 718/6 730/2 747/4 747/13 747/22 747/24 748/5 749/5 749/7 753/23 756/14 761/9 761/15 761/19 763/10 765/3 765/5 765/16 765/20 772/22 774/3 774/4 774/4 787/18 787/21 800/17 800/17 801/4 801/6 802/13 805/24 806/4 806/7 814/18 814/21 818/19 820/5 820/23 823/11 835/3 842/9 849/21 877/11</p> <p>CVI's [3] 814/19 814/20 818/19</p> <p>cvr [212] 603/2 605/21 605/22 606/20 607/11 608/8 609/1 609/7 609/8 609/14 609/15 609/24 610/18 610/22 610/22 611/11 611/11 611/21 611/21 611/22 613/8 613/12 615/12 618/22 619/5 619/15 619/22 619/24 620/10 620/13 620/14 621/7 621/20 625/1 625/14 627/6 627/11 627/13 628/24 629/24 629/24 631/10 631/13 632/8 633/8 635/3 637/2 638/5 639/17 639/17 646/18 646/19 646/20 647/10 648/9 663/23 670/1 670/4 670/8 670/9 670/14 670/16 674/2 674/11 675/4 675/13 677/15 677/16 678/7 682/10 684/8 684/9 684/9 684/12 684/21 685/11 685/13 685/13 685/15 686/8 686/9 686/9 686/12 686/18 686/21 687/20 690/11 693/16 698/15 717/7 717/14 717/15 718/8 727/6 727/10 727/19 728/17 729/4 729/24 730/3 730/22 733/4 737/11 737/18 737/19 738/3 738/12 740/16 740/21 741/16 741/21 743/5 743/17 744/6 745/2 746/7 751/6 751/18 752/6 752/13 753/20 754/2 754/3 754/9 756/3 756/12 756/14 758/19 760/21 761/2 761/6 761/7 761/9 762/11 763/6 765/1 765/1 765/21 767/3 767/4</p>	<p>768/1 768/9 768/24 769/21 770/4 770/10 770/13 770/15 771/10 772/16 773/18 774/10 774/13 774/15 774/19 774/19 776/17 776/21 781/9 782/3 786/21 787/15 787/17 787/19 789/19 793/24 795/4 795/13 800/10 800/11 800/13 800/15 801/18 805/7 805/17 805/20 811/14 816/16 817/12 818/17 819/8 819/12 819/13 820/17 820/18 822/20 823/11 824/13 824/15 826/8 826/14 826/15 826/16 838/10 838/22 841/13 841/13 841/13 842/9 843/8 843/9 843/17 843/18 843/19 850/16 850/16 861/10 867/11 870/19 871/3 871/6 872/6</p> <p>CVRR [41] 616/5 634/18 647/4 647/7 650/11 666/19 667/10 670/6 680/22 732/17 737/5 738/8 741/1 742/3 761/6 761/17 763/18 765/17 765/22 766/7 766/19 772/23 774/20 785/18 787/3 800/16 800/17 801/5 808/22 814/18 818/17 835/3 843/24 849/21 856/4 856/24 858/1 859/2 870/2 877/10 878/9</p> <p>CVRR's [1] 737/17</p> <p>cycle [1] 667/17</p> <p>CZESCHIN [5] 604/11 854/20 864/21 867/5 879/7</p>	<p>695/18 697/1 698/14 730/6 730/13 748/16 763/21 763/21 780/7 780/16 780/17 781/17 782/4 782/14 782/19 782/19 783/1 783/1 783/2 783/13 783/15 784/5 784/8 818/21 861/4 861/4 861/8 861/9 861/13 861/21 868/21 868/21 879/8 879/13</p> <p>days [7] 626/7 636/8 712/16 786/19 807/10 818/8 863/22</p> <p>deal [10] 765/22 775/2 806/1 806/2 806/8 806/15 807/18 807/20 808/1 861/24</p> <p>deal.' [1] 641/3</p> <p>deals [2] 752/15 778/4</p> <p>dealt [2] 807/9 834/9</p> <p>debottleneck [1] 654/14</p> <p>debt [4] 656/19 709/16 709/18 749/3</p> <p>decade [2] 728/6 728/14</p> <p>December [15] 646/19 652/16 675/4 675/10 675/13 686/1 710/20 713/11 713/14 714/13 714/19 834/23 849/4 849/10 853/20</p> <p>December 10th [1] 686/1</p> <p>December 19 [1] 849/10</p> <p>December 1st [1] 646/19</p> <p>December 2017 [1] 652/16</p> <p>December 2018 [1] 853/20</p> <p>December 21 [1] 834/23</p> <p>December 26 [1] 714/13</p> <p>December 26th [1] 710/20</p> <p>December 31 [3] 675/4 675/10 675/13</p> <p>decide [7] 775/5 785/12 792/12 796/23 798/13 798/19 799/5</p> <p>decided [10] 697/5 751/6 751/17 751/20 753/20 754/9 794/5 812/21 815/18 818/6</p> <p>deciding [2] 787/24 820/15</p> <p>decision [10] 607/19 611/19 629/5 681/11 730/16 744/18 748/12 751/20 795/15 812/4</p> <p>decisions [2] 739/3 852/24</p> <p>Decks [1] 676/19</p> <p>declare [1] 678/9</p>	<p>dedicate [1] 748/19</p> <p>deemed [1] 713/3</p> <p>defendants [8] 604/15 684/8 684/10 685/11 685/13 686/8 686/10 879/19</p> <p>Defendants' [1] 684/21</p> <p>defended [1] 723/6</p> <p>defending [1] 757/3</p> <p>define [1] 656/3</p> <p>defined [1] 733/16</p> <p>defines [4] 734/12 734/16 735/8 735/16</p> <p>definitely [1] 689/22</p> <p>definition [1] 804/15</p> <p>definitive [1] 697/10</p> <p>degree [3] 667/12 667/22 715/17</p> <p>DELAWARE [4] 603/1 603/10 603/23 810/16</p> <p>delegated [2] 731/14 872/3</p> <p>delegating [1] 725/19</p> <p>delegation [2] 731/9 743/2</p> <p>Delek [4] 717/3 717/10 717/12 718/4</p> <p>demanding [1] 669/5</p> <p>demonstrated [1] 762/24</p> <p>denote [1] 703/19</p> <p>deny [1] 756/7</p> <p>denying [1] 752/21</p> <p>departed [1] 647/2</p> <p>department [2] 863/10 874/15</p> <p>depends [2] 680/23 709/7</p> <p>deposition [20] 624/15 624/20 677/11 677/15 691/17 692/11 692/16 692/19 746/12 766/18 789/10 805/14 813/20 813/23 847/9 847/10 847/23 848/4 851/22 853/4</p> <p>derivatives [1] 804/2</p> <p>describe [8] 645/17 647/16 654/1 702/5 715/14 715/19 729/20 869/11</p> <p>described [3] 663/2 827/23 874/4</p> <p>describes [1] 872/3</p> <p>describing [1] 654/2</p> <p>description [1] 642/23</p> <p>designated [5] 743/13 744/8 868/17 868/18 876/12</p> <p>designation [4] 834/16 868/20 869/6 874/20</p> <p>despite [2] 759/19 796/24</p> <p>detail [1] 658/12</p> <p>detailed [1] 652/13</p> <p>details [4] 658/8 658/8 658/9 821/13</p> <p>determination [2] 740/9 851/14</p>
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D	813/20 813/22 813/23 818/12 823/1 842/17 845/9 846/10 847/22 848/3 848/17 852/7 854/2 855/13 855/15 856/12 857/12 859/7 859/9 859/12 860/15 860/17 860/19 860/22 863/17 864/9 866/13 866/24 867/11 868/4 868/7 868/7 868/20 868/24 869/2 869/5 873/23 876/16 877/2 877/5 877/14 877/17 878/3 878/7 879/4 didn't [58] 612/4 617/18 619/19 621/2 624/8 626/4 640/8 657/1 671/14 671/23 673/7 673/22 689/11 692/16 692/21 705/6 726/23 726/23 726/24 728/19 755/5 763/23 764/15 764/20 766/3 767/1 768/4 771/8 773/18 773/23 778/3 780/9 780/23 782/19 785/20 786/11 789/21 793/6 793/7 796/16 799/15 799/16 803/14 803/21 808/6 808/21 809/11 810/9 815/22 819/1 831/14 835/22 847/1 847/10 852/20 864/8 864/14 869/7 difference [3] 646/4 673/18 673/24 different [25] 645/2 645/3 645/4 657/19 658/23 671/13 672/20 689/22 691/7 700/15 702/21 702/23 703/16 703/22 748/22 756/13 766/17 767/21 775/10 790/15 821/10 821/11 846/14 851/6 853/8 differently [1] 663/17 differing [1] 611/10 difficult [1] 731/21 difficulties [1] 605/3 difficulty [1] 853/15 diluent [1] 651/4 direct [14] 605/15 619/9 659/24 682/5 705/14 710/6 748/4 750/10 760/3 761/2 822/12 823/7 834/11 834/17 directed [7] 706/4 706/14 706/21 707/13 707/22 708/3 774/15 directing [2] 707/9 747/18 direction [7] 700/18 701/6 708/23 709/2 709/12 747/14 785/12 directions [2] 784/22 879/2 directive [4] 697/10	701/24 873/14 873/18 directly [6] 713/6 734/22 759/10 763/8 770/14 800/13 director [5] 644/5 647/1 647/6 647/7 743/16 directors [32] 608/12 608/16 608/18 610/13 610/14 611/13 611/18 687/13 697/5 697/21 700/1 720/13 726/24 731/21 735/7 735/22 738/12 743/20 744/1 745/1 745/17 765/16 765/17 790/5 791/5 795/14 798/13 798/20 798/21 799/3 814/11 843/10 directs [3] 697/21 708/13 748/20 disagree [4] 609/19 609/20 626/4 785/5 disagreeing [1] 828/5 disagreement [1] 725/2 disbursements [2] 875/3 875/4 disclose [5] 629/6 812/16 812/17 818/16 845/9 disclosed [15] 622/18 628/15 632/1 634/2 634/11 634/13 747/22 776/8 793/11 826/13 835/10 841/24 842/4 843/15 845/14 discloses [1] 632/7 disclosing [2] 769/20 835/13 disclosure [14] 627/18 629/1 639/22 706/17 706/22 707/10 708/17 709/2 722/4 745/1 745/18 745/21 769/18 782/1 disclosures [4] 702/4 705/4 706/15 778/17 discount [2] 650/5 663/15 discretion [3] 739/19 740/3 830/3 discuss [13] 611/16 611/23 612/1 623/21 636/2 637/3 684/11 685/15 686/12 690/24 784/15 854/3 876/16 discussed [33] 619/20 619/21 621/11 621/14 623/24 626/3 635/6 638/17 640/11 654/4 664/18 665/7 665/8 679/4 691/14 692/21 694/12 702/13 706/21 725/8 725/15 821/20 821/21 835/7 838/3 839/16 849/17 849/20 851/2 853/24 854/12 862/19 868/2	discussing [10] 617/2 624/2 653/24 691/5 701/20 724/17 729/21 853/19 855/9 878/11 discussion [46] 618/4 619/23 620/3 620/5 627/4 637/16 638/6 638/11 638/22 639/9 639/13 664/9 688/6 688/16 688/23 691/18 691/20 692/1 692/3 693/1 696/19 696/24 705/10 705/12 707/1 722/1 725/18 725/22 726/1 726/5 726/24 731/8 732/4 732/17 744/12 767/14 815/19 818/23 851/7 851/8 851/10 852/8 852/9 853/9 876/22 877/3 discussions [17] 667/1 701/15 703/4 703/10 703/24 710/1 714/5 721/11 721/15 722/8 722/9 731/19 812/21 844/24 846/11 851/17 852/22 disingenuous [2] 766/1 766/3 disparity [1] 673/17 dispositions [1] 735/13 dispute [1] 675/19 dissenting [1] 727/2 dissuade [1] 766/1 distributed [1] 682/17 distribution [12] 644/15 644/18 667/11 667/19 667/22 668/1 669/7 674/7 677/7 677/24 678/9 711/14 distributions [1] 677/2 divesting [1] 873/1 divestiture [1] 872/20 dividend [1] 856/16 documents [13] 659/23 660/2 661/6 661/12 662/4 684/3 684/16 750/18 758/6 782/2 832/7 870/1 870/6 does [20] 619/12 629/20 629/23 631/16 633/23 666/10 702/11 702/16 742/5 742/15 742/18 757/15 777/17 783/15 786/10 805/8 806/2 817/15 818/16 865/23 doesn't [23] 616/21 619/11 619/14 621/4 621/11 621/12 633/3 635/12 655/9 679/15 747/11 748/17 749/6 779/20 780/21 781/16 782/2 783/12 783/13 783/20 820/11 820/16 825/8 doing [14] 616/10	623/2 625/11 752/15 756/21 766/23 788/18 792/20 799/2 799/9 801/11 801/13 807/15 818/23 dollar [2] 872/4 875/21 dollars [1] 763/3 don't [240] 607/17 609/20 609/21 611/5 611/6 611/19 612/7 614/14 616/16 616/24 617/4 617/17 617/23 618/1 618/6 618/8 619/13 620/2 620/4 620/6 620/12 620/23 623/2 623/15 623/24 624/7 626/5 627/20 628/4 628/5 629/5 629/19 630/14 632/9 632/12 633/10 633/19 634/19 635/21 637/10 638/8 638/11 639/11 639/12 640/1 641/16 645/20 648/4 649/14 658/19 659/2 659/12 659/21 660/10 660/16 661/6 662/5 663/11 664/19 665/3 665/3 665/14 667/5 668/22 669/9 671/24 673/16 673/18 674/10 677/20 678/16 679/21 679/22 682/19 690/22 691/19 691/21 691/24 695/17 702/17 704/11 704/18 704/19 704/21 705/13 705/23 714/20 715/1 720/16 722/4 723/22 729/12 733/24 745/12 745/20 746/10 746/15 748/10 751/1 752/14 752/16 753/7 754/5 754/12 755/6 756/4 756/7 757/18 758/12 760/17 764/16 765/11 766/8 766/9 766/10 766/15 767/16 768/2 769/15 769/16 771/6 771/10 772/16 773/4 773/10 773/15 774/11 775/12 776/4 777/7 778/3 778/18 778/19 779/1 779/22 781/5 782/23 783/3 783/16 783/20 784/16 785/1 785/2 785/2 785/6 785/8 785/9 785/11 785/12 785/14 785/14 786/1 786/15 786/16 786/19 787/4 787/5 787/10 790/2 790/6 790/7 790/19 790/19 790/22 790/22 791/8 792/18 795/5 795/7 795/22 795/23 796/3 796/7 796/7 796/12 796/15 798/6 798/16 799/11 800/14 800/20 804/17 805/8 805/16
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<p>D</p> <p>don't... [56] 806/10 807/19 812/1 812/7 812/11 812/20 812/22 814/5 815/3 815/3 815/11 815/18 815/24 816/3 816/17 816/21 816/24 817/7 817/8 817/9 818/11 818/12 818/22 818/24 819/1 819/10 820/7 820/7 820/8 820/20 820/21 821/4 821/5 821/6 821/7 821/10 821/17 823/24 824/2 836/20 846/22 847/4 847/12 847/19 847/24 852/4 855/4 856/14 861/13 862/11 865/3 865/22 877/1 877/1 877/20 879/12</p> <p>don't understand [1] 786/19</p> <p>done [26] 625/12 627/19 629/2 636/10 641/9 641/13 649/16 677/15 678/8 679/16 704/6 707/8 707/13 707/16 707/19 719/2 722/13 727/19 755/2 773/5 799/7 802/11 807/24 808/1 847/2 877/21</p> <p>DONNELL [1] 604/8</p> <p>door [2] 723/9 723/22</p> <p>down [54] 615/19 655/20 664/7 675/8 686/6 688/22 704/15 709/14 728/1 732/9 744/12 759/14 762/1 767/7 768/12 774/18 785/21 785/22 790/1 790/8 790/11 793/17 793/18 797/7 801/11 801/16 801/20 801/21 801/22 802/2 802/8 802/10 802/13 802/14 802/15 802/23 803/12 803/14 803/14 803/19 804/7 807/2 807/4 808/14 808/23 808/23 809/1 826/11 827/22 832/19 840/23 850/15 872/14 875/1</p> <p>downgrading [1] 621/20</p> <p>draft [2] 687/10 704/9</p> <p>drafted [3] 747/21 781/2 782/1</p> <p>drippings [1] 652/2</p> <p>drive [2] 728/1 785/22</p> <p>driver [1] 609/21</p> <p>drop [1] 680/10</p> <p>dropped [3] 620/15 628/2 635/3</p> <p>Dubuque [1] 870/22</p> <p>due [1] 711/18</p> <p>duly [4] 605/13 682/4</p>	<p>750/8 822/11</p> <p>dump [1] 661/12</p> <p>during [11] 621/6 658/17 661/22 690/7 690/20 691/5 716/8 793/18 858/1 858/13 876/1</p> <p>dynamic [1] 775/10</p> <p>E</p> <p>each [13] 646/21 647/4 662/2 676/1 727/16 826/16 830/1 841/14 843/19 859/4 869/16 873/17 873/19</p> <p>earlier [8] 619/14 627/4 628/8 663/3 714/5 821/2 864/2 865/23</p> <p>early [4] 656/21 716/12 748/7 868/4</p> <p>earnings [23] 613/16 613/17 613/19 615/3 615/12 615/13 615/24 618/11 630/3 630/13 630/21 631/10 636/8 652/16 653/15 655/15 665/17 666/7 668/21 671/11 671/22 678/21 705/4</p> <p>easier [1] 755/18</p> <p>East [1] 870/22</p> <p>easy [1] 878/22</p> <p>ebbs [1] 680/19</p> <p>EBITDA [6] 645/10 645/18 649/2 649/11 650/1 663/7</p> <p>echo [1] 751/8</p> <p>economics [1] 646/4</p> <p>economy [1] 759/23</p> <p>ed [1] 698/18</p> <p>educating [1] 700/15</p> <p>educational [2] 642/19 715/15</p> <p>effect [5] 709/18 766/19 767/2 774/12 781/11</p> <p>effective [2] 719/10 824/13</p> <p>effectively [1] 616/13</p> <p>efficiency [2] 731/15 731/23</p> <p>efficient [1] 728/4</p> <p>efficiently [1] 654/15</p> <p>EHS [2] 742/9 742/10</p> <p>eight [1] 659/22</p> <p>either [12] 645/13 657/8 660/14 694/17 695/21 705/15 738/20 751/9 765/11 810/9 861/8 870/11</p> <p>EI [3] 643/13 715/24 716/4</p> <p>El Paso [1] 716/4</p> <p>elapsed [1] 626/8</p> <p>elected [1] 724/24</p> <p>election [2] 711/15 713/24</p> <p>electronic [3] 660/13 864/5 865/15</p>	<p>electronically [1] 684/1</p> <p>element [1] 689/21</p> <p>elements [1] 827/23</p> <p>elicit [2] 721/15 722/24</p> <p>eligible [1] 827/6</p> <p>eliminated [2] 652/7 868/15</p> <p>elimination [1] 866/4</p> <p>Elkins [10] 636/13 696/8 700/24 708/8 727/6 727/10 728/5 728/11 728/18 733/12</p> <p>else [4] 691/10 725/14 783/20 854/8</p> <p>email [22] 605/20 613/7 613/21 613/23 625/6 625/17 626/22 629/7 640/21 655/4 660/20 713/14 714/19 746/12 834/22 834/22 835/2 849/9 850/7 855/24 856/22 861/16</p> <p>emails [2] 625/8 714/16</p> <p>employed [1] 610/17</p> <p>employee [7] 743/16 791/11 791/14 791/18 834/8 867/12 867/22</p> <p>employees [8] 645/7 687/23 719/14 743/21 744/1 745/1 745/17 872/6</p> <p>employment [6] 642/23 647/9 647/13 647/23 648/3 715/20</p> <p>end [29] 610/7 624/12 637/2 637/22 638/24 646/24 661/24 684/14 685/2 685/24 713/11 739/16 744/14 752/2 805/4 805/23 806/14 806/15 813/5 846/17 847/20 848/22 851/19 855/10 857/9 862/23 863/15 866/22 879/8</p> <p>Endeavor [1] 644/2</p> <p>ended [4] 652/14 717/7 717/12 756/11</p> <p>endorsement [1] 726/17</p> <p>Energy [83] 609/1 609/7 609/14 610/18 610/22 611/11 611/21 613/8 625/15 627/6 627/11 628/24 629/24 633/9 637/3 639/17 639/18 643/13 644/13 646/18 646/20 670/9 670/16 677/16 682/10 686/18 686/21 687/21 698/15 716/11 730/3 730/22 740/21 746/8 753/20 753/23 754/2 754/10 756/3 756/14 758/19 760/22 761/2 761/7 761/9 762/11 763/6 765/1 768/9 768/24 770/10 770/15</p>	<p>771/10 772/16 772/22 774/4 774/10 774/15 774/19 776/17 776/21 781/9 782/3 787/17 787/19 800/10 800/11 800/15 801/18 805/20 818/17 819/8 819/12 820/18 824/13 826/8 826/15 841/13 843/8 843/18 850/16 870/19 871/3</p> <p>Energy's [6] 751/7 751/18 752/6 752/13 770/4 843/10</p> <p>engage [2] 744/11 745/19</p> <p>engaged [2] 701/2 721/8</p> <p>engagement [1] 742/7</p> <p>engaging [1] 744/4</p> <p>engineer [2] 642/21 643/5</p> <p>engineering [2] 652/12 652/13</p> <p>enhance [1] 649/17</p> <p>enough [7] 642/6 648/22 648/23 648/24 804/4 834/19 854/17</p> <p>ensure [5] 697/7 714/2 728/3 744/21 745/7</p> <p>ensuring [1] 700/17</p> <p>entail [3] 662/24 694/15 741/5</p> <p>enter [1] 647/9</p> <p>entered [2] 732/22 825/9</p> <p>entering [1] 875/11</p> <p>Enterprises [22] 687/15 687/23 732/12 754/1 765/15 768/9 768/13 768/24 769/5 769/20 770/19 771/10 772/16 772/18 774/10 774/15 791/11 791/14 791/18 791/21 791/24 814/12</p> <p>Enterprises' [1] 800/9</p> <p>Entertainment [2] 732/12 769/6</p> <p>entire [2] 679/17 727/21</p> <p>entities [12] 646/21 647/1 647/5 740/24 741/1 742/9 742/14 745/3 768/23 870/6 870/8 877/18</p> <p>entitled [1] 789/9</p> <p>entity [9] 616/6 716/15 716/17 730/1 730/12 738/15 740/15 740/20 741/8</p> <p>entries [1] 736/13</p> <p>entry [1] 873/10</p> <p>environmental [12] 741/14 741/24 822/21 823/21 826/14 843/12 843/17 867/21 867/24 869/13 869/16 872/11</p> <p>environments [1]</p>	<p>645/3</p> <p>equation [1] 775/1</p> <p>equipment [3] 652/14 869/19 872/21</p> <p>equity [6] 649/5 656/19 656/22 657/9 735/14 805/18</p> <p>Equivalents [1] 675/1</p> <p>error [2] 711/18 714/8</p> <p>errors [2] 736/7 736/10</p> <p>especially [1] 616/5</p> <p>ESQ [14] 604/2 604/2 604/3 604/4 604/5 604/5 604/7 604/8 604/10 604/11 604/11 604/12 604/12 604/14</p> <p>essentially [1] 646/12</p> <p>essentials [1] 801/17</p> <p>establish [1] 645/5</p> <p>established [3] 609/4 619/14 878/24</p> <p>estate [2] 830/11 878/18</p> <p>estimated [3] 654/19 673/3 673/4</p> <p>estimating [2] 675/3 675/9</p> <p>ethics [2] 719/11 795/10</p> <p>evaluate [4] 619/19 620/8 709/17 748/17</p> <p>evaluated [7] 607/16 619/16 699/16 700/12 708/1 709/5 709/8</p> <p>evaluating [6] 619/20 636/14 700/8 707/1 748/11 749/8</p> <p>evaluation [4] 658/13 688/24 697/3 700/24</p> <p>even [31] 621/2 634/18 659/22 659/24 666/20 667/24 671/14 676/9 704/1 708/18 709/18 714/6 714/18 749/3 749/7 764/10 769/15 770/19 771/2 772/17 773/4 773/18 774/14 785/3 788/7 790/24 798/5 798/7 804/17 807/8 808/24</p> <p>evening [1] 689/13</p> <p>event [6] 700/17 701/5 713/18 734/20 744/10 747/17</p> <p>events [2] 647/14 693/11</p> <p>eventually [2] 668/5 668/13</p> <p>everybody [1] 799/8</p> <p>everyone [5] 605/1 703/13 703/21 727/1 825/10</p> <p>everything [4] 648/19 658/11 707/20 775/14</p> <p>evidence [2] 771/20 772/1</p> <p>evolution [1] 691/22</p> <p>evolve [2] 722/15 724/3</p>
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E	839/21 841/12 842/8 842/9 842/14 842/17 842/22 844/6 844/8 844/11 862/21 exchanged [3] 614/5 689/13 844/18 exchanges [1] 615/19 exchanging [3] 769/21 772/22 773/9 exclusive [1] 739/13 excuse [3] 767/9 793/22 821/9 excused [4] 681/20 749/22 822/4 822/6 execute [1] 700/9 executing [1] 648/22 executive [13] 611/18 643/6 647/6 682/9 824/12 824/20 826/20 834/17 843/10 868/18 868/20 869/6 876/13 executives [6] 697/6 697/21 700/16 700/21 702/1 704/22 exercisable [1] 830/2 exercise [57] 609/17 610/3 625/12 626/15 627/5 628/1 631/16 633/23 634/15 635/5 635/20 636/3 636/14 666/11 670/23 678/14 695/1 696/21 697/4 697/17 699/16 700/7 700/13 700/14 701/19 701/23 705/6 708/2 708/9 735/15 739/14 740/9 747/23 776/3 777/13 777/19 777/21 778/14 778/21 778/22 780/4 780/5 780/14 782/3 801/19 801/22 802/16 802/20 805/6 812/5 812/9 814/18 815/18 818/10 818/18 820/19 830/14 exercised [4] 639/20 639/20 640/23 735/22 exercises [1] 734/20 exercising [19] 622/18 629/1 629/8 629/13 635/9 635/17 639/18 667/2 677/17 693/17 694/12 697/2 705/3 747/5 747/10 747/24 748/6 818/5 820/24 exhibit [37] 606/3 606/8 608/4 612/10 612/17 612/21 615/16 640/18 640/20 689/16 697/11 699/7 736/14 736/16 746/18 768/7 776/15 795/10 827/10 828/22 831/21 831/21 834/21 834/21 837/8 840/1 840/2 840/20 849/9 855/22 858/17 858/18 860/2 861/15 861/15 863/21 872/9 Exhibit 121 [1] 831/21	Exhibit 134 [2] 834/21 837/8 Exhibit 145 [1] 840/1 Exhibit 270 [1] 776/15 Exhibit 402 [1] 689/16 Exhibit 699 [1] 697/11 Exhibit 724 [1] 746/18 Exhibit 844 [1] 849/9 Exhibit 865 [1] 855/22 Exhibit 902 [1] 858/18 Exhibit 933 [2] 640/18 640/20 Exhibit 967 [1] 860/2 Exhibit 981 [1] 861/15 exhibit but [1] 768/7 exhibits [1] 612/10 existed [1] 877/19 existence [2] 835/10 835/13 existing [5] 646/23 650/1 654/15 728/18 835/3 expand [1] 646/7 expansive [1] 745/7 expect [5] 639/10 640/8 784/17 784/21 809/9 expectation [1] 703/17 expectations [1] 657/3 expected [3] 707/18 809/19 809/20 expenditure [2] 873/17 875/18 expenditures [4] 873/10 873/21 873/22 874/7 expensive [1] 657/1 experience [9] 644/7 644/10 644/20 650/3 714/9 717/18 718/5 720/18 750/23 expert [2] 790/14 821/4 explain [5] 783/12 784/9 806/18 872/23 873/15 explained [1] 814/17 explaining [2] 760/3 762/11 Explanation [1] 711/9 export [1] 651/2 exposure [1] 644/12 express [3] 689/6 726/14 798/22 expressed [1] 726/15 expropriate [1] 670/15 extend [1] 879/9 extensively [1] 879/2 extent [5] 703/24 721/14 723/1 745/5 811/16 extremely [2] 668/4 669/4	871/1 fact [20] 668/1 668/6 678/16 687/5 700/23 702/6 705/19 747/8 747/21 756/16 790/23 796/5 797/4 797/5 798/2 799/6 804/12 840/12 841/16 842/3 factors [2] 619/17 650/5 facts [5] 723/19 779/7 825/10 825/23 826/1 fair [13] 617/12 721/19 721/23 764/6 790/3 809/23 809/23 815/1 815/5 834/19 835/21 838/3 854/17 fairly [3] 645/16 649/15 742/21 fait [5] 707/20 812/10 812/22 813/12 813/14 faith [1] 796/1 fall [2] 650/9 747/11 familiar [5] 639/24 712/10 734/1 825/5 871/18 family [3] 643/10 878/17 878/18 far [5] 614/6 800/16 800/20 807/8 813/1 fashion [1] 645/15 fashioned [1] 805/22 fast [2] 637/1 704/17 fast-forward [1] 637/1 fault [1] 625/21 favor [6] 681/6 754/10 754/13 754/17 754/22 758/23 FCC [2] 646/1 646/2 February [3] 813/21 825/1 842/5 February 2018 [2] 825/1 842/5 federal [1] 744/5 fee [2] 756/17 756/19 feed [1] 646/7 feeling [2] 780/13 815/20 feelings [2] 815/8 818/14 FEL [3] 652/12 656/13 656/14 FEL 4 [1] 656/14 fell [3] 622/21 628/20 847/1 felt [5] 766/11 767/11 767/21 767/22 813/2 fertilizer [6] 644/19 718/7 870/13 870/22 870/22 877/11 few [8] 641/24 669/17 769/19 821/2 830/7 853/18 855/8 879/8 fewer [1] 626/7 fiduciary [1] 790/16 field [1] 728/1 fight [2] 764/17 766/10 fighting [2] 763/17 765/6	fighths [1] 755/4 figured [1] 620/20 figures [2] 828/2 828/5 figuring [1] 749/2 file [11] 690/24 691/2 724/21 724/24 725/6 730/16 805/7 805/7 805/17 805/20 859/10 filed [24] 618/8 711/17 711/21 712/16 713/20 714/23 715/2 722/11 729/23 730/1 730/2 730/5 730/8 730/9 816/7 826/8 841/23 842/5 843/8 861/5 861/9 862/20 863/9 865/14 filing [9] 691/9 691/10 691/11 713/16 726/15 730/13 757/23 839/20 859/23 filings [9] 745/8 767/23 782/23 824/19 824/23 834/14 841/24 842/17 842/22 fill [1] 646/9 filled [1] 837/1 filling [1] 646/6 final [5] 606/4 606/8 606/13 632/19 752/3 finally [2] 641/8 833/20 finance [1] 657/4 finances [1] 852/24 financial [4] 659/11 725/10 725/12 873/19 financing [2] 675/12 698/19 find [11] 612/12 612/17 625/21 632/15 645/15 646/5 660/11 669/24 713/22 781/4 849/17 fine [8] 642/3 678/1 723/5 734/6 772/7 772/11 806/20 814/7 Finger [1] 604/13 finish [4] 745/13 799/18 809/4 818/2 Finks [6] 613/8 613/22 625/7 625/8 626/24 693/6 firm [3] 715/22 756/11 763/3 firms [2] 720/22 759/19 fiscal [1] 676/24 fishing [1] 659/9 fit [1] 651/13 five [13] 608/18 610/13 642/5 673/3 673/15 675/18 676/9 687/16 687/17 718/15 726/11 732/8 786/19 five-year [2] 673/15 675/18 fix [2] 775/4 775/5 fixed [1] 652/6 fixed-bed [1] 652/6 fixing [1] 651/9 flip [3] 627/8 676/22 758/12
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<p>F</p> <p>float [4] 614/7 619/4 619/23 664/14</p> <p>flow [2] 656/20 657/6</p> <p>flowed [1] 624/1</p> <p>flows [1] 680/19</p> <p>fly [1] 673/7</p> <p>focus [2] 654/23 676/24</p> <p>focused [1] 648/20</p> <p>folders [1] 805/22</p> <p>folks [5] 611/22 683/11 701/7 754/1 863/9</p> <p>follow [5] 630/12 655/9 660/9 669/17 830/22</p> <p>follow-up [1] 669/17</p> <p>followed [1] 866/19</p> <p>following [10] 622/21 627/3 628/3 628/21 630/21 664/14 707/23 731/8 740/1 830/1</p> <p>follows [19] 605/14 623/19 637/14 638/15 682/4 750/9 787/13 812/14 822/11 846/3 847/15 848/8 851/5 853/7 853/17 856/20 862/15 863/3 866/7</p> <p>footnote [4] 711/10 712/8 712/22 714/2</p> <p>Footnote 1 [2] 712/8 712/22</p> <p>forced [2] 690/6 790/23</p> <p>foregoing [1] 684/17</p> <p>foremost [1] 719/5</p> <p>forever [1] 785/1</p> <p>forget [3] 645/22 792/11 792/11</p> <p>form [64] 621/12 638/19 645/15 710/1 710/3 710/18 710/18 710/24 711/16 711/21 712/4 712/11 712/12 712/16 713/10 713/14 713/19 713/19 714/2 714/11 714/22 824/24 833/16 839/21 840/5 841/23 842/4 849/5 849/17 849/21 850/9 850/12 850/20 850/24 851/12 851/15 852/3 852/8 852/10 852/11 852/18 853/20 854/15 854/19 854/20 855/2 855/15 858/22 859/10 859/13 859/15 859/20 860/3 860/15 860/23 863/22 864/3 864/9 864/19 865/9 865/10 865/11 865/13 865/20</p> <p>Form 4 [2] 859/20 864/3</p> <p>formal [2] 673/14 744/9</p> <p>formally [1] 679/10</p> <p>format [1] 710/9</p> <p>formation [1] 878/15</p>	<p>formed [5] 644/13 765/15 878/14 878/16 878/16</p> <p>former [1] 713/15</p> <p>forms [1] 841/3</p> <p>formula [1] 645/16</p> <p>forth [4] 843/9 872/6 873/18 875/21</p> <p>Forty [1] 644/9</p> <p>forward [9] 612/8 613/24 620/9 637/1 641/7 642/2 661/5 757/1 849/3</p> <p>forwarded [3] 623/5 625/18 693/8</p> <p>forwarding [1] 613/11</p> <p>forwards [2] 613/22 625/8</p> <p>fought [1] 764/13</p> <p>found [2] 717/11 720/10</p> <p>foundation [1] 771/19</p> <p>four [11] 647/20 656/11 671/19 673/3 676/2 682/22 732/8 810/3 859/1 870/23 870/24</p> <p>four-year [1] 647/20</p> <p>fourth [2] 615/19 850/9</p> <p>frame [2] 656/22 658/17</p> <p>frankly [4] 746/13 764/19 767/12 769/16</p> <p>Frates [4] 608/20 687/18 791/6 791/13</p> <p>frequently [4] 794/18 797/17 797/20 797/23</p> <p>Friday [1] 662/1</p> <p>FRIEDLANDER [11] 604/2 604/3 682/2 715/7 719/24 720/5 721/20 723/9 727/5 746/2 749/15</p> <p>friends [1] 821/15</p> <p>front [19] 672/3 681/13 710/16 755/8 755/14 757/13 805/10 813/4 825/14 825/15 826/4 827/12 828/24 829/22 831/23 849/9 855/23 858/18 860/4</p> <p>Frontier [1] 643/17</p> <p>fruit [2] 646/14 649/15</p> <p>frustrating [1] 714/9</p> <p>full [5] 658/13 684/7 685/10 703/24 769/18</p> <p>Fuller [10] 849/10 849/13 849/20 850/1 850/21 851/11 855/24 856/3 856/7 856/23</p> <p>fully [2] 701/24 808/10</p> <p>functions [2] 716/21 718/13</p> <p>fund [3] 675/17 677/12 678/13</p> <p>funded [2] 656/17 678/14</p> <p>funding [1] 677/8</p> <p>further [16] 605/13</p>	<p>656/3 669/12 679/23 681/14 681/16 689/7 726/16 745/23 749/17 776/4 843/15 843/23 846/10 867/3 876/8</p> <p>futile [1] 774/8</p> <p>future [2] 760/17 874/2</p> <p>G</p> <p>gain [1] 756/3</p> <p>gains [1] 763/2</p> <p>games [1] 804/3</p> <p>gaps [1] 680/19</p> <p>gas [3] 654/7 654/16 673/23</p> <p>gasoline [10] 646/2 650/23 650/24 651/2 651/13 651/22 652/1 652/3 652/4 654/11</p> <p>gasoline-producing [1] 646/2</p> <p>gather [1] 877/23</p> <p>gave [12] 638/2 671/1 717/9 725/10 803/23 812/9 835/24 836/24 840/16 847/8 849/1 871/22</p> <p>general [59] 605/21 640/12 675/20 679/13 682/10 703/4 703/13 703/19 713/15 713/21 713/23 716/13 716/14 717/3 717/5 718/11 720/15 720/17 723/2 727/1 735/8 735/23 736/15 737/15 737/17 738/5 738/6 738/7 738/8 738/15 738/17 740/8 740/11 740/15 742/6 742/16 742/18 744/13 777/11 782/14 785/16 819/8 819/19 819/22 820/3 820/4 823/23 824/15 824/20 826/15 826/16 830/15 834/3 834/5 843/18 843/19 869/22 871/8 875/10</p> <p>generally [18] 638/9 678/24 679/3 680/17 699/24 702/19 703/3 710/3 714/1 727/2 727/15 731/18 738/14 741/6 741/22 744/22 760/5 765/12</p> <p>generation [1] 677/6</p> <p>gentleman [1] 833/23</p> <p>germane [1] 796/16</p> <p>gets [3] 640/22 645/21 674/3</p> <p>getting [11] 641/2 657/7 702/1 728/3 763/21 777/19 797/1 802/23 805/24 806/7 807/8</p> <p>giant [1] 710/8</p> <p>given [6] 662/6 669/6 720/18 721/17 727/20 763/18</p>	<p>giving [7] 679/15 743/15 793/4 797/2 817/5 817/6 841/2</p> <p>glasses [1] 755/15</p> <p>Glenn [1] 791/7</p> <p>GM [1] 608/8</p> <p>goals [1] 645/9</p> <p>goddamn [1] 785/10</p> <p>goes [9] 650/6 677/22 681/4 709/20 747/16 749/2 802/15 803/11 830/6</p> <p>going-private [1] 781/11</p> <p>Goldman [4] 615/20 756/19 756/20 757/3</p> <p>gone [4] 663/10 700/16 705/10 767/17</p> <p>good [32] 604/20 605/8 605/9 605/11 605/17 614/20 618/18 622/8 642/16 642/17 657/1 657/6 682/7 682/8 750/12 750/16 763/24 764/21 765/22 766/7 777/8 777/8 778/7 778/23 781/1 781/3 790/3 795/24 822/14 822/15 849/16 867/9</p> <p>GORRIS [25] 604/2 604/3 659/18 661/14 661/19 662/8 665/7 668/16 669/16 679/24 750/3 751/13 758/5 771/20 772/4 787/10 788/24 795/1 799/23 809/7 810/6 810/13 811/2 821/24 822/7</p> <p>Gorris' [2] 660/24 772/1</p> <p>got [27] 606/11 617/20 618/11 623/23 635/8 652/20 668/4 694/4 715/16 755/13 755/16 756/16 756/19 756/20 766/14 776/2 778/2 786/18 797/5 799/22 807/18 807/19 807/24 809/6 812/23 817/17 823/4</p> <p>gotten [5] 707/18 723/12 775/7 808/2 847/6</p> <p>governance [13] 708/12 708/22 709/13 723/3 738/15 747/15 795/4 795/13 797/21 797/24 798/2 798/4 798/9</p> <p>governed [4] 737/22 738/8 738/10 738/11</p> <p>governs [1] 743/3</p> <p>GP [22] 607/15 607/19 607/20 619/16 619/22 620/7 620/13 621/8 636/19 663/24 674/2 678/8 721/3 733/4 737/18 737/19 738/4 738/12 738/20 742/8</p>	<p>742/13 793/24</p> <p>grab [1] 612/15</p> <p>grade [1] 650/19</p> <p>graduate [1] 642/20</p> <p>graduating [1] 642/24</p> <p>Grant [3] 694/8 701/9 708/8</p> <p>gray [4] 767/16 785/3 804/3 807/8</p> <p>great [15] 662/18 750/21 755/24 758/12 762/4 785/9 797/2 799/7 802/19 804/13 807/22 826/20 828/7 835/7 858/21</p> <p>Gresh [1] 613/7</p> <p>grossly [1] 610/7</p> <p>Grossman [1] 604/6</p> <p>group [1] 831/22</p> <p>growth [5] 662/22 672/13 672/16 672/17 672/24</p> <p>GT [2] 694/4 694/8</p> <p>guess [12] 680/8 692/7 702/8 709/7 720/14 723/18 726/9 769/18 769/18 773/3 773/24 874/11</p> <p>guessing [3] 659/15 787/23 787/23</p> <p>guest [1] 704/1</p> <p>guests [1] 687/22</p> <p>guidelines [2] 795/4 795/13</p> <p>guilty [1] 807/19</p> <p>Gulf [1] 651/3</p> <p>guy [3] 719/16 758/4 786/13</p> <p>guys [8] 669/3 765/9 766/13 773/6 779/3 799/12 804/1 807/9</p> <p>H</p> <p>had had [1] 702/3</p> <p>hadn't [2] 679/5 694/16</p> <p>half [1] 643/24</p> <p>halfway [3] 664/7 688/21 762/1</p> <p>Hall [23] 605/23 606/4 606/9 606/18 607/10 607/24 608/9 610/5 611/10 665/9 686/23 688/3 689/1 690/24 692/4 722/10 722/13 724/5 724/9 724/13 724/22 725/6 725/13</p> <p>hand [4] 611/11 611/12 772/6 807/1</p> <p>handle [1] 680/18</p> <p>handled [1] 713/15</p> <p>handwriting [1] 805/7</p> <p>handwritten [2] 805/11 805/15</p> <p>hanging [2] 646/13 649/15</p> <p>happen [5] 661/22 748/9 749/6 794/18 819/1</p> <p>happened [15] 611/7</p>
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H	helped [2] 686/21 687/2	690/6 690/10 696/10 698/3 698/4 793/4 794/21 800/4 800/5 809/7 814/17 844/14 845/20 846/7 878/8	831/2 852/21 877/22	I've [19] 641/7 645/2 645/12 645/13 663/10 695/22 707/15 713/20 727/19 727/20 727/20 755/2 784/24 797/14 803/24 804/1 804/1 804/2 842/12
happened... [14] 623/16 650/24 678/12 690/2 692/24 696/13 704/23 711/23 788/15 793/19 802/1 821/2 853/16 868/10	helping [1] 728/23	historical [3] 638/6 638/22 794/13	hydrotreater [4] 651/12 654/10 654/13 673/23	Icahn [87] 608/19 676/19 687/14 687/18 687/23 688/9 688/15 688/23 689/21 690/17 696/5 697/1 698/1 704/5 705/15 708/7 708/18 730/9 730/10 732/12 750/6 750/8 750/12 750/16 750/23 751/11 751/17 754/1 755/7 755/17 758/18 760/12 760/21 762/9 762/23 765/14 767/5 768/9 768/13 768/23 769/5 769/20 770/7 770/19 771/10 771/16 772/13 772/15 772/18 774/10 774/15 775/22 776/18 779/5 787/12 789/12 789/18 791/1 791/4 791/11 791/13 791/17 791/20 791/23 792/1 794/2 795/3 796/20 799/6 799/6 799/22 800/9 805/11 806/21 809/6 811/5 811/18 812/12 813/19 814/10 814/11 814/15 814/16 816/14 817/3 822/3 861/24
happening [5] 638/6 638/23 650/6 705/16 781/17	helps [4] 629/21 632/13 632/17 728/1	history [12] 642/19 642/19 642/23 645/2 645/11 657/11 657/19 714/10 715/20 715/20 767/17 827/16	I	Icahns [3] 623/11 623/23 624/3
happens [4] 635/1 645/20 748/16 748/23	HENRY [1] 604/12	history/work [1] 715/20	I'd [9] 612/8 656/1 686/15 710/5 721/23 738/19 772/9 776/7 786/16	idea [11] 648/2 728/20 738/5 738/7 812/1 864/11 865/17 865/20 865/24 866/8 866/11
happy [3] 661/15 661/16 722/24	HEP [1] 644/13	hit [2] 646/16 652/11	I'll [13] 645/24 674/9 675/19 676/8 682/22 703/5 723/8 758/3 779/13 787/20 791/16 797/13 808/24	ideas [1] 614/23
hard [8] 659/22 660/8 660/11 660/22 682/17 805/20 805/21 854/14	HERBERT [2] 604/14 604/15	HITE [16] 625/7 625/11 625/24 626/23 627/11 627/18 628/23 629/16 630/12 630/21 635/4 635/9 636/2 668/17 669/2 693/4	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	ignored [1] 669/8
hasn't [4] 672/14 702/14 705/2 831/10	Here's [1] 705/9	HITE's [2] 625/20 629/7	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	II [2] 654/12 654/14
hate [1] 784/19	hereby [1] 841/14	hockey [2] 656/12 677/8	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	iii [2] 603/17 683/24
haven't [4] 636/10 702/13 705/2 723/12	herein [1] 739/12	holders [1] 803/6	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	illustrative [1] 739/17
having [14] 605/2 605/12 682/3 706/24 719/2 728/19 750/8 767/18 793/20 793/23 822/10 844/7 856/15 879/1	hereto [1] 739/20	holding [2] 800/16 803/7	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	imagine [3] 769/17
he'll [2] 755/22 758/8	hey [9] 728/8 765/9 765/24 766/12 766/14 773/6 775/6 775/8 796/22	holdings [5] 713/18 732/13 740/17 745/2 769/6	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	
he's [12] 610/17 622/7 700/8 751/10 758/6 780/5 786/13 799/9 809/8 819/13 819/22 835/1	HF [1] 652/6	Holly [4] 643/16 644/13 644/13 657/20	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	
head [1] 619/13	HFS [1] 652/7	HollyFrontier [4] 643/15 643/17 643/19 657/20	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787/2 787/20 787/23 787/23 788/6 788/7 788/7 788/16 789/1 789/3 789/7 789/8 789/11 789/13 790/14 791/8 792/14 794/8 797/10 797/22 800/2 800/6 801/13 801/23 802/13 802/14 805/21 807/19 808/4 808/15 810/15 814/2 814/2 817/6 817/24 818/10 818/24 819/9 819/22 821/4 825/5 827/6 835/22 836/11 837/6 837/19 842/11 843/6 845/2 845/7 853/11 854/9 865/18 871/14 871/15 871/21	
heading [3] 606/13 632/20 662/21	Hi [1] 695/20	Holt [2] 618/15 640/22	I'm [160] 608/4 608/6 608/21 609/12 610/16 612/1 612/9 614/23 617/24 620/2 621/15 622/12 623/22 623/22 624/5 625/5 626/10 630/22 631/1 633/14 633/15 633/19 634/4 636/16 638/20 639/24 640/19 653/14 659/15 659/23 660/21 661/3 661/4 661/15 664/19 667/3 674/13 676/13 677/23 679/15 686/23 691/1 692/23 693/11 693/21 695/5 696/9 697/4 700/1 701/12 702/8 704/14 710/5 712/8 712/10 714/14 718/12 721/23 722/1 722/23 722/24 724/23 728/8 730/11 732/10 734/1 741/17 741/19 744/14 744/21 752/21 755/5 757/11 757/13 761/11 766/12 766/24 767/19 768/2 768/17 773/6 773/8 773/8 773/9 773/11 774/1 774/17 775/20 775/20 778/2 778/4 778/4 778/6 778/19 781/20 781/21 782/16 782/21 783/1 783/16 784/13 784/15 785/12 787/1 787	

I	indicates [4] 645/2 816/19 817/3 872/15 indicating [5] 633/13 724/17 787/2 819/15 819/17 indication [2] 714/1 854/13 indirect [1] 713/18 indirectly [2] 734/22 770/14 individual [7] 704/1 739/18 740/3 744/20 794/21 870/12 870/13 individually [1] 702/15 individuals [2] 683/12 875/7 industry [6] 637/8 637/20 644/8 645/12 659/10 727/21 inform [2] 744/24 759/9 information [40] 617/16 618/3 636/4 658/5 659/1 661/18 679/10 683/6 683/19 683/23 684/1 684/18 725/11 725/13 799/1 809/17 809/19 811/13 835/20 836/1 836/16 836/20 837/1 837/23 852/23 855/19 856/3 857/15 857/21 859/14 859/17 860/23 861/13 864/20 865/11 877/2 877/5 877/15 877/24 878/1 ing [2] 712/24 843/9 ingenious [1] 802/20 initial [3] 613/16 677/8 707/14 initially [1] 846/7 initials [1] 833/13 input [2] 812/9 836/22 inquire [1] 722/21 insider [5] 743/5 743/10 743/12 743/14 744/10 insiders [4] 735/9 735/14 744/3 744/8 instance [3] 683/17 704/4 785/17 instances [2] 788/17 788/18 instant [1] 684/3 instead [4] 616/17 678/12 679/16 778/1 instituted [1] 744/6 instructed [1] 745/4 instruction [1] 705/14 instructions [3] 743/16 864/18 866/20 instrument [1] 830/2 insurance [1] 718/17 integrating [1] 645/14 intelligent [3] 802/6 804/17 804/17 intend [7] 662/4 722/4 768/10 768/24 771/11 772/16 774/11	intended [1] 673/20 intends [1] 769/7 intent [3] 634/17 666/19 847/5 intention [7] 705/6 777/21 778/14 780/8 780/22 785/19 785/23 intentioned [1] 785/22 intentions [1] 776/9 interest [11] 609/7 610/6 611/10 629/10 649/1 659/8 680/15 716/10 788/4 795/11 801/6 interested [5] 650/4 653/2 718/2 785/13 786/3 interests [3] 792/4 795/15 800/9 interface [2] 743/20 744/1 interject [1] 721/14 interpret [2] 705/16 709/8 interrelated [1] 610/24 interrelationship [1] 649/4 interrogatories [2] 684/23 685/3 interrogatory [10] 682/14 683/2 683/5 683/7 683/12 683/21 683/23 685/8 685/20 686/6 interrupt [1] 792/6 interview [2] 648/5 744/10 interviews [3] 684/9 685/12 686/9 intro [1] 736/23 introductory [1] 683/8 inventory [1] 680/10 invest [2] 830/9 836/6 invested [1] 763/2 investment [6] 655/7 839/10 849/5 851/11 851/15 853/19 investments [4] 852/21 852/21 874/3 877/21 investor [4] 802/6 802/12 807/22 809/17 investors [2] 806/12 862/1 invited [2] 687/22 688/11 involve [1] 659/4 involved [27] 623/23 650/15 658/14 696/15 709/16 709/24 713/9 714/4 714/12 716/9 717/18 717/22 720/22 721/1 721/6 751/19 752/8 752/14 752/17 752/21 753/1 753/5 753/17 756/7 759/7 763/20 792/19 involvement [1] 742/13 IPO [4] 716/4 716/5	716/9 717/23 is [490] isn't [16] 660/14 784/11 796/10 835/8 835/11 840/17 842/5 844/16 845/1 847/11 849/22 850/24 856/4 856/10 856/13 858/1 isom [3] 651/21 652/11 654/10 issue [15] 611/9 611/23 617/2 620/8 620/14 632/18 641/21 657/9 677/24 723/19 725/5 768/3 786/17 823/2 853/24 issued [6] 623/5 746/7 761/18 823/10 823/11 824/24 issues [12] 619/11 621/14 621/19 639/17 651/10 723/3 725/7 730/15 731/13 758/18 760/21 854/12 issuing [2] 628/5 772/23 item [6] 706/6 706/18 740/5 817/20 817/21 854/10 items [2] 706/7 710/16 itself [5] 671/9 738/15 742/18 770/18 850/9 IX [1] 829/21	January 29 [2] 860/7 860/10 January 29th [1] 712/4 January 30th [1] 861/22 January 31 [3] 712/16 713/12 863/22 January 31st [1] 714/22 January 3rd [2] 855/24 856/22 Jay [2] 613/8 693/5 JEFFREY [1] 604/2 Jesse [17] 623/12 624/7 695/22 696/16 696/16 697/1 697/13 747/8 811/20 815/14 819/15 819/18 819/19 819/21 819/22 819/22 821/20 Jim [1] 821/16 job [6] 653/4 700/20 701/6 868/21 869/10 869/11 Joe [25] 623/17 637/12 638/13 758/5 758/6 758/17 759/14 760/14 761/23 762/21 770/2 776/14 786/22 787/11 791/2 812/12 814/4 839/24 847/13 848/6 851/3 853/5 856/18 862/13 862/24 JOEL [1] 604/2 JOHN [8] 604/12 833/24 834/3 834/9 841/15 845/10 848/15 876/20 join [3] 646/18 717/6 717/15 joined [13] 646/19 646/20 648/9 686/20 688/10 698/18 717/13 718/4 718/8 719/1 721/9 822/23 823/1 joining [4] 647/10 720/12 727/18 744/6 joint [5] 608/4 643/9 795/9 858/17 872/9 Jon [1] 791/7 Jonathan [1] 791/5 July [13] 603/10 608/7 615/13 621/9 621/18 626/9 626/12 630/8 684/16 686/19 717/16 720/1 722/8 July 26 [1] 615/13 July 27 [4] 621/18 626/9 626/12 630/8 July 2nd [1] 686/19 July 9 [2] 608/7 621/9 July 9th [1] 722/8 July 9th board [1] 720/1 June [1] 605/20 June 28 [1] 605/20 Justice [2] 603/9 603/22 JX [81] 605/18 612/11
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J	JX 698 [1] 695/8 JX 699 [2] 811/17 819/3 JX 720 [1] 698/5 JX 722 [2] 639/3 699/7 JX 724 [1] 729/6 JX 739 [1] 814/8 JX 750 [1] 816/5 JX 875 [1] 871/14 JX 887 [1] 730/20 JX 9 [1] 730/19 JX 902 [2] 710/23 858/19 JX 912 [1] 733/2 JX 913 [1] 736/18 JX 933 [1] 640/4 JX 935 [1] 805/3 JX 967 [1] 712/3 JX 983 [1] 712/15 JX because [1] 682/23 JX list [4] 660/5 661/4 661/10 661/20	JX 698 [1] 695/8 JX 699 [2] 811/17 819/3 JX 720 [1] 698/5 JX 722 [2] 639/3 699/7 JX 724 [1] 729/6 JX 739 [1] 814/8 JX 750 [1] 816/5 JX 875 [1] 871/14 JX 887 [1] 730/20 JX 9 [1] 730/19 JX 902 [2] 710/23 858/19 JX 912 [1] 733/2 JX 913 [1] 736/18 JX 933 [1] 640/4 JX 935 [1] 805/3 JX 967 [1] 712/3 JX 983 [1] 712/15 JX because [1] 682/23 JX list [4] 660/5 661/4 661/10 661/20	661/16 662/20 663/18 664/16 666/5 666/23 669/13 677/20 680/6 681/6 681/18 687/19 693/5 693/5 695/10 695/20 696/3 697/12 697/24 700/3 700/9 701/10 707/16 708/7 717/5 747/8 747/9 778/13 791/6 811/20 819/12 861/16 Lamp's [4] 659/24 661/8 662/5 666/16 Langham [7] 608/20 687/19 737/7 791/6 791/17 791/20 794/1 language [18] 703/19 757/13 770/8 778/24 779/12 779/16 779/19 781/2 781/16 781/23 781/24 783/10 783/12 783/22 784/11 806/7 811/18 820/23 Lapinski [1] 646/23 large [1] 658/7 largely [1] 656/23 largest [1] 800/16 last [32] 641/8 659/20 660/1 662/4 666/9 684/7 684/15 685/10 693/15 706/3 706/13 726/11 728/14 733/21 736/3 737/1 737/2 739/23 740/5 747/3 756/11 759/17 777/1 778/8 779/10 783/7 816/13 816/13 817/23 825/18 843/3 858/4 late [6] 652/15 678/21 695/21 705/5 723/22 868/5 later [12] 630/4 636/7 636/13 643/24 672/11 712/16 713/22 714/7 749/20 764/19 861/4 863/22 launch [1] 751/1 launched [2] 751/3 756/2 launching [1] 750/24 law [5] 604/15 715/17 715/21 716/1 767/12 lawful [1] 841/16 LAWRENCE [1] 604/7 laws [1] 744/5 lawsuit [5] 861/5 861/9 862/10 862/20 863/9 lawsuits [1] 785/10 lawyer [7] 695/22 696/7 696/11 722/19 783/17 794/2 826/1 lawyers [26] 636/16 692/17 696/14 704/6 720/19 727/22 767/13 767/15 769/15 778/23 779/1 781/1 781/15 783/19 784/12 792/15 792/16 792/17 792/18 792/20 792/24 793/21	793/23 795/24 796/4 796/4 layman's [1] 796/18 Layne [9] 636/13 636/18 696/7 696/13 700/23 708/8 729/1 729/3 746/9 Layton [1] 604/13 lead [2] 652/14 810/16 leadership [1] 719/6 leading [3] 692/6 700/22 720/10 leaning [1] 716/21 learn [2] 636/22 878/7 learned [5] 713/17 861/5 861/8 861/13 878/8 learning [1] 861/12 least [3] 609/14 648/16 766/11 leave [3] 769/14 858/4 874/20 leaves [2] 655/10 780/15 leaving [2] 614/7 616/22 LEBOVITCH [1] 604/5 led [6] 688/6 688/16 688/23 690/17 732/4 763/2 legal [24] 716/21 718/13 721/24 722/2 722/4 722/24 723/2 727/24 728/3 730/15 766/11 768/3 769/14 778/5 784/14 784/18 784/21 784/23 790/13 792/19 793/1 797/10 797/13 863/10 legal-leaning [1] 716/21 legalities [2] 771/6 792/15 legally [2] 788/8 793/2 Leonard [2] 603/9 603/22 less [1] 793/16 let [28] 622/11 640/6 649/6 662/9 695/23 723/8 724/2 728/21 730/19 738/6 744/15 751/14 755/16 772/13 789/5 792/20 798/5 799/18 799/23 800/5 809/4 809/7 835/11 840/3 851/6 853/8 865/4 866/5 let's [48] 605/7 615/2 626/10 632/15 637/1 642/5 646/7 646/8 646/8 647/6 653/5 657/22 659/10 659/16 663/18 665/5 665/17 666/5 666/8 666/14 676/16 703/15 709/23 720/3 723/14 727/4 730/20 733/2 735/20 736/18 737/1 738/1 739/7 739/23 742/21	743/8 751/12 757/7 774/17 786/20 789/15 804/19 807/5 807/17 834/22 853/3 869/10 871/11 letter [41] 605/22 606/4 606/9 606/23 608/1 608/9 610/10 611/16 626/23 629/8 629/16 630/11 635/8 686/23 688/3 688/7 689/1 690/24 691/3 691/9 691/12 692/4 693/4 693/12 693/15 693/20 722/10 722/13 724/10 724/13 724/22 725/7 725/10 758/19 760/6 760/21 761/18 761/19 762/10 762/23 873/17 letters [5] 759/4 759/8 760/3 763/8 764/5 level [9] 667/4 742/8 742/13 742/14 754/2 870/12 870/13 873/5 876/3 levels [1] 657/2 leverage [1] 657/2 liability [2] 737/20 737/23 lie [2] 807/12 870/8 life [1] 804/1 light [2] 619/17 651/23 likely [6] 690/22 691/2 692/2 692/10 692/23 705/1 limited [11] 644/11 717/18 737/12 737/20 737/22 738/7 817/12 830/15 841/1 841/3 841/7 limits [3] 872/4 872/6 873/19 Linda [1] 854/7 line [16] 655/12 666/9 666/18 672/16 672/23 674/24 723/5 723/8 723/23 730/12 762/10 846/2 853/13 853/14 863/1 863/2 lines [3] 726/12 732/9 826/12 Lipinski [1] 764/10 Lipton [5] 756/11 756/15 756/19 757/2 764/13 liquidity [8] 674/21 675/9 675/12 676/12 676/15 678/5 680/6 680/21 list [10] 655/18 659/13 660/5 661/4 661/10 661/20 714/7 727/13 739/17 745/6 listed [7] 832/20 833/12 842/21 842/21 843/11 843/23 856/23 listen [3] 767/15 778/2 807/14 lists [13] 737/4 827/18
----------	--	--	---	--	---

<p>L</p> <p>lists... [11] 830/6 837/11 838/11 838/24 840/8 841/17 850/16 858/5 858/12 859/1 860/9</p> <p>litigation [8] 603/3 682/12 714/23 723/7 756/10 756/15 756/23 794/5</p> <p>litigator [1] 715/22</p> <p>Litowitz [1] 604/6</p> <p>little [22] 620/20 626/14 626/15 646/22 656/12 657/18 677/8 686/16 694/19 702/21 704/15 749/20 761/5 772/21 773/2 779/17 781/7 790/15 802/16 819/16 825/7 853/14</p> <p>live [1] 778/20</p> <p>lived [1] 878/21</p> <p>Living [6] 713/1 713/4 829/2 832/4 832/17 838/15</p> <p>LLC [9] 733/4 737/18 737/19 738/3 738/4 738/12 740/17 741/9 741/11</p> <p>LLP [1] 604/6</p> <p>loan [1] 678/14</p> <p>Loews [15] 622/14 622/17 624/24 627/23 628/13 628/14 629/3 636/20 637/7 664/22 665/2 665/13 821/1 821/14 821/19</p> <p>Loews-Boardwalk [2] 629/3 636/20</p> <p>log [1] 710/9</p> <p>logistical [1] 644/17</p> <p>logistics [1] 717/23</p> <p>long [8] 652/14 717/4 717/8 727/18 741/15 741/17 780/9 828/11</p> <p>long-lead [1] 652/14</p> <p>longer [1] 718/19</p> <p>looked [12] 621/9 623/2 623/11 624/6 627/14 627/22 678/3 725/9 779/19 790/1 792/17 792/23</p> <p>looking [12] 612/14 619/3 622/24 628/8 653/1 657/2 705/21 747/10 792/24 797/14 835/12 836/4</p> <p>looks [9] 630/18 653/15 656/11 674/14 727/15 729/11 729/14 833/16 840/20</p> <p>lose [1] 798/17</p> <p>losing [1] 807/4</p> <p>lost [2] 653/10 801/10</p> <p>lot [31] 635/11 640/10 644/9 645/2 645/3 645/4 651/2 651/6 651/24 652/1 658/8</p>	<p>659/2 659/13 663/8 676/14 702/23 709/20 727/21 727/22 759/8 774/18 779/3 784/12 785/5 785/8 796/6 797/6 797/9 798/15 801/11 803/24</p> <p>lots [1] 750/23</p> <p>Louis [2] 791/6 791/23</p> <p>love [1] 728/9</p> <p>low [6] 619/4 619/23 646/13 649/15 667/18 668/12</p> <p>low-hanging [2] 646/13 649/15</p> <p>lower [1] 829/20</p> <p>LP [2] 603/2 838/10</p> <p>LP's [1] 613/12</p> <p>LPG [1] 651/1</p> <p>LTIPs [2] 647/18 827/7</p> <p>luck [1] 806/14</p> <p>lucky [2] 808/17 809/10</p> <p>Ludwig [2] 854/7 856/15</p> <p>lump [1] 647/19</p> <p>lunch [2] 662/1 749/20</p> <p>Luncheon [1] 749/23</p> <p>lunchtime [1] 745/10</p> <p>Lynn [14] 611/1 623/13 624/7 687/24 696/16 697/1 701/9 701/14 708/7 747/8 815/14 819/20 820/3 821/20</p> <p>M</p> <p>ma'am [1] 686/24</p> <p>Machiavellian [2] 801/18 802/12</p> <p>machine [1] 764/9</p> <p>main [1] 870/24</p> <p>mainly [1] 651/16</p> <p>maintenance [1] 651/17</p> <p>majority [5] 610/14 611/12 765/15 765/16 792/2</p> <p>make [44] 618/3 628/24 645/6 645/8 648/20 649/20 651/6 651/18 662/1 693/18 706/14 706/22 713/24 719/14 724/23 750/22 757/12 766/8 766/9 779/23 782/24 790/12 801/23 802/23 803/14 808/23 808/24 809/1 813/9 814/21 818/19 824/6 825/6 834/13 835/2 835/15 835/20 835/21 835/24 837/23 874/17 874/22 875/3 878/22</p> <p>makes [6] 646/3 723/13 748/11 771/1 804/16 863/5</p> <p>makeup [1] 800/15</p> <p>making [6] 740/9 751/20 766/5 788/12</p>	<p>792/8 873/23</p> <p>manage [1] 714/17</p> <p>managed [3] 644/17 739/3 764/11</p> <p>management [14] 640/13 644/22 645/21 648/14 679/16 704/7 705/15 706/10 707/5 707/5 716/22 718/16 718/18 764/12</p> <p>manager [1] 643/6</p> <p>managers [1] 741/24</p> <p>manages [1] 877/22</p> <p>manner [1] 855/2</p> <p>manufacturing [2] 869/14 870/23</p> <p>Marathon [1] 644/3</p> <p>March [1] 711/5</p> <p>Marckwaldt [1] 689/14</p> <p>MARK [1] 604/5</p> <p>marked [2] 606/3 613/6</p> <p>market [25] 618/4 620/18 625/13 625/14 627/12 633/4 633/7 633/14 633/16 634/2 635/23 656/23 658/6 663/8 663/13 668/5 668/14 677/16 783/14 783/23 784/4 793/15 793/17 799/10 820/23</p> <p>marketing [3] 645/14 741/9 870/20</p> <p>marketplace [2] 646/17 652/18</p> <p>markets [1] 804/1</p> <p>married [1] 828/11</p> <p>master [3] 644/11 717/18 737/12</p> <p>material [5] 606/19 607/6 610/8 652/2 721/17</p> <p>math [5] 626/6 636/11 673/8 676/8 680/11</p> <p>matrix [1] 743/2</p> <p>matter [2] 693/19 710/12</p> <p>mattered [2] 798/6 798/7</p> <p>matters [9] 684/12 685/15 686/12 716/1 723/4 735/3 742/11 823/18 879/14</p> <p>MATTHEW [3] 604/11 618/15 666/9</p> <p>maximize [1] 763/13</p> <p>maximum [3] 753/14 753/18 775/17</p> <p>may [24] 612/16 612/18 613/18 621/8 663/15 663/15 663/16 663/16 663/24 664/20 664/23 664/24 665/1 704/2 711/5 713/3 745/12 750/13 750/21 767/5 776/17 813/9 822/4 843/7</p> <p>May 24 [3] 621/8 665/1 776/17</p> <p>May 24th [1] 664/20</p>	<p>May 29 [1] 843/7</p> <p>McCORMICK [1] 603/13</p> <p>mean [52] 621/11 623/9 635/12 645/18 650/17 667/15 667/22 668/9 699/24 702/11 706/1 719/9 726/20 730/10 748/15 748/17 755/2 756/4 759/3 764/10 764/19 765/4 765/11 767/17 768/3 770/21 770/23 773/4 773/12 774/7 777/17 778/18 779/16 780/22 786/2 786/8 788/18 790/10 792/23 793/16 793/19 796/10 797/8 802/6 802/21 802/22 807/7 808/24 813/1 821/6 869/6 869/7</p> <p>meaning [1] 608/8</p> <p>meaningful [2] 663/7 780/11</p> <p>meanings [1] 746/20</p> <p>means [7] 777/18 777/23 778/18 780/6 783/15 783/24 873/15</p> <p>meant [1] 759/2</p> <p>measures [1] 742/1</p> <p>meat [1] 796/12</p> <p>mechanism [2] 783/13 784/10</p> <p>mechanisms [2] 782/10 782/11</p> <p>media [6] 684/3 684/11 685/14 686/11 797/21 797/24</p> <p>meet [2] 611/22 745/20</p> <p>meeting [93] 607/23 610/12 611/5 611/9 611/13 611/15 612/3 621/8 621/9 621/13 637/3 637/6 637/17 638/17 639/6 639/17 663/24 664/21 664/23 665/12 669/4 674/3 674/3 674/5 674/17 674/22 679/11 686/22 687/3 687/3 687/6 687/10 688/10 689/5 689/10 690/23 691/5 691/8 692/7 692/13 692/21 698/14 699/4 699/11 699/14 700/19 700/23 702/15 703/18 704/2 704/8 704/12 704/19 705/19 705/22 706/19 707/4 707/23 708/3 709/11 719/5 719/6 720/1 720/7 720/11 720/20 721/2 721/11 721/18 722/8 725/2 725/8 725/16 725/20 726/3 731/1 731/4 742/16 746/7 776/17 776/21 777/10 778/1 787/15 790/6 791/4 793/21 793/24</p>	<p>814/11 814/16 815/2 815/4 816/4</p> <p>meetings [2] 621/6 702/19</p> <p>Mehta [5] 615/20 615/23 616/3 616/17 617/13</p> <p>Mehta's [1] 616/21</p> <p>Melissa [7] 681/24 682/3 811/19 819/5 819/7 824/2 857/8</p> <p>member [8] 704/1 738/20 739/3 739/13 740/13 740/14 740/19 794/20</p> <p>Member-Managed [1] 739/3</p> <p>memorandum [2] 658/5 659/1</p> <p>mention [1] 671/14</p> <p>mentioned [11] 650/13 664/13 692/2 728/17 747/14 749/1 759/16 793/20 793/23 794/1 876/13</p> <p>merge [1] 644/16</p> <p>merged [2] 643/17 644/3</p> <p>merger [1] 716/15</p> <p>message [8] 641/6 690/1 694/24 767/4 769/21 811/19 818/9 819/4</p> <p>messed [2] 633/4 633/14</p> <p>messages [5] 684/11 685/14 689/14 693/11 708/7</p> <p>messaging [4] 633/6 633/16 684/4 686/11</p> <p>met [2] 720/13 822/17</p> <p>metals [1] 804/1</p> <p>Mexico [1] 643/10</p> <p>Miami [2] 715/18 716/3</p> <p>MICHAEL [8] 604/3 849/10 849/13 850/1 855/24 856/2 856/7 856/23</p> <p>Michigan [3] 642/20 642/24 715/17</p> <p>microphone [2] 694/18 772/6</p> <p>middle [6] 617/10 653/21 654/4 688/10 827/15 829/10</p> <p>midnight [1] 695/14</p> <p>might [26] 612/19 612/19 617/24 619/5 684/1 719/17 748/9 752/7 757/1 763/16 765/24 766/21 767/8 767/14 769/21 769/24 773/5 790/11 790/11 795/6 796/11 815/16 820/8 822/16 825/11 837/19</p> <p>Milken [1] 807/10</p> <p>million [61] 647/19 649/10 649/11 654/19</p>
---	---	---	---	--

M	MO [1] 645/5	642/12 642/16 642/18	623/9 634/14	Mr. Layne [2] 636/18
million... [57] 656/2	mobile [1] 719/15	644/22 653/5 653/12	Mr. Bowling [3] 688/6	729/3
656/9 671/10 671/16	modified [1] 868/13	655/3 659/18 659/18	688/11 688/15	Mr. Lynn [6] 611/1
671/19 673/9 673/13	mom [1] 641/7	659/24 660/24 661/8	Mr. Cho [3] 608/19	687/24 701/9 701/14
673/15 673/18 674/6	moment [2] 682/1	661/14 661/16 661/19	687/18 791/10	708/7 820/3
675/5 675/11 675/13	729/12	662/3 662/5 662/8	Mr. Cozza [19] 611/1	Mr. Mehta [4] 615/23
675/17 675/17 675/19	money [16] 656/15	662/20 663/18 664/16	613/24 614/10 614/22	616/3 616/17 617/13
675/21 675/24 676/4	657/7 670/15 678/19	665/7 665/19 666/2	617/5 618/4 621/1	Mr. Mehta's [1] 616/21
676/4 676/10 676/11	678/19 680/14 680/15	666/5 666/16 666/23	623/5 625/18 626/4	Mr. Nevin [2] 611/2
677/6 678/4 678/4	784/13 785/8 786/13	668/16 669/13 669/15	635/6 676/18 687/24	687/24
680/9 680/11 680/12	801/11 801/23 802/23	669/16 669/22 672/5	701/8 701/14 751/22	Mr. Pastor [2] 608/20
680/18 680/24 681/1	807/1 807/4 874/19	672/7 676/18 677/20	752/2 754/1 777/11	687/19
681/2 681/3 681/4	Montague [1] 604/9	678/20 679/24 680/1	Mr. Czeschin [4]	Mr. Pastor's [1] 608/24
681/7 756/20 767/3	month [2] 626/14	680/6 681/6 681/18	854/20 864/21 867/5	Mr. Raju [16] 642/2
768/1 786/13 799/18	637/2	682/2 687/18 687/18	879/7	642/12 659/18 662/3
800/12 802/24 803/8	months [6] 641/8	687/18 687/19 687/19	Mr. Finks [4] 613/22	665/19 666/2 669/15
803/17 803/18 803/21	717/13 781/19 782/4	687/19 687/24 687/24	625/7 625/8 626/24	669/22 672/5 672/7
803/23 804/4 804/6	782/4 821/2	687/24 688/6 688/9	Mr. Frates [3] 608/20	678/20 680/1 715/8
804/8 804/10 804/14	morally [1] 766/11	688/11 688/15 688/15	687/18 791/13	721/21 745/9 749/16
808/7 808/9 808/12	Morgan [3] 613/7	688/23 697/24 700/3	Mr. Friedlander [9]	Mr. Wales [6] 746/11
809/2 817/7	616/14 617/13	700/9 701/8 701/9	682/2 715/7 719/24	852/5 865/3 866/4
mind [11] 671/2 694/18	Morgan's [2] 613/12	701/10 701/14 701/14	720/5 721/20 723/9	868/3 878/12
697/8 708/16 756/21	616/21	704/5 707/16 708/7	727/5 746/2 749/15	Mr. Walter [15] 605/21
763/15 772/21 776/5	morning [14] 605/1	708/7 708/7 708/18	Mr. Fuller [3] 849/20	834/2 834/23 835/8
788/22 820/9 820/12	605/8 605/9 605/11	715/7 715/8 719/24	850/21 851/11	835/13 836/15 838/3
mine [1] 609/18	605/17 630/20 636/2	720/5 721/20 721/21	Mr. Gorris [23] 659/18	839/16 841/3 844/7
minimum [2] 753/6	642/16 642/17 661/24	723/9 727/5 728/16	661/14 661/19 662/8	844/15 844/20 844/24
753/10	682/7 682/8 694/5	729/2 729/3 737/7	665/7 668/16 669/16	845/17 846/11
minority [1] 801/5	719/17	745/9 746/2 746/11	679/24 750/3 751/13	Ms. [56] 682/7 694/2
minute [5] 661/23	Morris [2] 720/23	749/15 749/16 750/3	758/5 771/20 772/4	698/17 701/10 707/16
665/20 761/10 810/16	721/6	750/12 750/16 750/23	787/10 788/24 795/1	708/7 710/24 712/4
819/3	most [14] 645/13	751/11 751/13 751/17	799/23 809/7 810/6	712/19 713/10 714/22
minutes [41] 612/5	646/17 649/21 680/22	751/22 752/2 754/1	810/13 811/2 821/24	715/12 717/17 725/5
639/5 639/9 640/9	681/19 692/2 692/10	755/7 755/17 758/5	822/7	726/8 729/7 729/10
641/24 642/6 663/23	714/7 720/15 728/3	760/12 762/9 762/23	Mr. Gorris' [2] 660/24	730/21 732/1 733/3
674/2 687/9 687/10	736/13 796/23 797/5	770/7 771/20 772/1	772/1	736/5 737/9 737/11
688/2 688/14 689/4	806/11	772/4 772/5 772/13	Mr. Icahn [38] 608/19	738/2 741/12 741/20
691/14 691/21 699/7	mostly [1] 658/20	775/22 776/18 777/11	687/18 688/9 688/15	742/5 742/22 743/5
699/11 699/13 700/11	move [7] 612/8 700/18	779/5 787/10 788/20	688/23 704/5 708/7	743/9 745/11 745/14
702/23 703/7 703/21	701/5 751/9 800/2	788/24 789/3 789/12	708/18 750/12 750/16	746/6 746/21 819/5
703/23 704/9 705/17	814/8 825/12	789/18 791/1 791/4	750/23 751/11 751/17	819/14 819/17 820/4
706/3 707/24 709/3	moved [6] 643/1 716/3	791/10 791/13 791/17	755/7 755/17 760/12	822/14 828/8 831/13
730/22 731/4 733/4	716/13 716/14 717/2	794/16 795/1 795/3	762/9 762/23 770/7	840/5 840/14 841/2
769/19 776/16 777/10	717/13	799/22 799/23 805/11	772/13 775/22 776/18	845/6 853/18 855/8
779/20 800/23 814/10	movement [1] 697/1	809/6 809/7 810/5	779/5 789/12 789/18	856/13 856/14 856/15
814/15 815/13 853/19	moving [4] 633/21	810/6 810/12 810/13	791/1 791/4 795/3	856/21 862/8 863/12
855/9	694/18 709/14 849/3	811/2 811/5 811/18	799/22 805/11 809/6	865/2 867/9 871/19
MIRAGLIA [1] 604/12	Mr [7] 638/19 715/14	813/19 814/10 814/16	811/5 811/18 813/19	Ms. Ball [2] 840/14
misleading [1] 792/22	723/6 752/20 771/16	816/14 820/3 821/24	814/10 814/16 816/14	841/2
missed [1] 837/6	806/21 814/15	822/1 822/3 822/7	822/3	Ms. Buhrig [27] 682/7
missing [2] 682/24	Mr. [231] 605/10	834/2 834/23 835/8	Mr. Jampel [2] 626/23	715/12 717/17 725/5
702/8	605/17 605/21 606/24	835/13 836/15 838/3	627/3	726/8 729/7 729/10
misspoken [1] 837/20	608/19 608/19 608/20	839/16 841/3 844/7	Mr. Lamp [33] 605/10	730/21 733/3 736/5
mistake [2] 660/4	608/20 608/20 608/24	844/15 844/20 844/24	605/17 606/24 632/22	737/11 738/2 741/12
806/14	611/1 611/1 611/2	845/17 846/11 849/20	633/1 639/2 640/7	743/5 743/9 745/11
mixed [2] 815/8 818/14	613/22 613/24 614/10	850/21 851/11 852/5	640/17 641/18 642/16	745/14 746/6 746/21
MLP [10] 644/12	614/22 615/23 616/3	854/20 864/21 865/3	642/18 644/22 653/5	819/5 819/14 819/17
644/13 644/15 644/16	616/17 616/21 617/5	866/4 867/5 868/3	653/12 655/3 661/16	820/4 856/13 856/14
644/17 718/3 718/7	617/13 618/4 618/17	878/12 879/7	662/20 663/18 664/16	862/8 863/12
738/8 741/2 808/19	618/20 619/1 619/8	Mr. Beck [2] 728/16	666/5 666/23 669/13	Ms. DeVelasco [16]
MLPs [8] 644/11	620/8 621/1 621/19	729/2	677/20 680/6 681/6	712/4 712/19 737/9
644/18 668/11 717/18	622/7 623/5 623/9	Mr. Beigel [7] 772/5	681/18 687/19 697/24	742/5 742/22 822/14
717/20 718/5 718/5	625/7 625/8 625/18	788/20 789/3 794/16	700/3 700/9 701/10	828/8 831/13 840/5
796/23	626/4 626/23 626/24	810/5 810/12 822/1	707/16 708/7	845/6 853/18 855/8
Mm [3] 615/10 621/21	627/3 631/6 631/9	Mr. Blair [10] 618/17	Mr. Lamp's [4] 659/24	856/21 865/2 867/9
628/9	631/15 632/22 633/1	618/20 619/1 619/8	661/8 662/5 666/16	871/19
Mm-hmm [3] 615/10	633/22 634/14 635/6	620/8 621/19 631/6	Mr. Langham [4]	Ms. DeVelasco's [4]
621/21 628/9	636/18 639/2 640/7	631/9 631/15 633/22	608/20 687/19 737/7	710/24 713/10 714/22
	640/17 641/18 642/2	Mr. Blair's [3] 622/7	791/17	741/20

<p>M</p> <p>Ms. Jackson [6] 694/2 698/17 701/10 707/16 708/7 732/1</p> <p>Ms. Ludwig [1] 856/15</p> <p>much [15] 604/8 611/6 614/20 644/10 648/18 659/6 668/2 675/21 675/23 717/17 756/16 756/21 764/20 812/21 821/12</p> <p>muffled [1] 814/3</p> <p>multiple [7] 633/5 633/7 661/23 759/5 763/8 870/16 870/17</p> <p>MURPHY [1] 604/11</p> <p>must [4] 754/24 794/9 795/5 847/6</p> <p>my [111] 609/19 619/13 629/10 644/12 645/1 645/11 653/11 673/8 692/5 692/15 692/19 694/23 697/8 701/6 701/21 703/7 703/17 708/11 708/16 708/21 709/13 713/15 713/16 713/17 713/21 713/22 714/16 715/16 715/17 715/22 716/1 717/10 717/23 719/5 719/6 719/15 719/22 720/12 727/12 727/20 728/6 729/11 729/12 733/24 736/14 744/12 744/22 746/11 746/13 747/15 757/24 761/8 762/24 763/1 763/3 763/15 764/22 766/1 766/2 766/12 767/9 767/17 767/20 768/21 768/21 769/18 772/21 773/22 774/16 776/5 776/7 780/8 780/13 780/21 783/19 784/12 784/14 785/11 788/22 796/17 798/23 799/19 802/19 803/24 804/24 805/7 807/24 807/24 808/3 808/21 809/12 815/20 816/17 816/18 816/21 816/22 817/6 818/2 820/9 824/6 834/16 844/13 844/19 847/6 848/2 852/21 852/21 859/21 865/15 877/21 877/22</p> <p>myself [4] 720/10 767/21 773/11 797/14</p>	<p>names [3] 843/9 854/6 857/7</p> <p>naphtha [3] 651/11 651/12 654/10</p> <p>Nashville [1] 717/2</p> <p>native [1] 710/9</p> <p>natural [9] 650/23 651/2 651/4 651/13 651/22 652/1 654/7 654/11 654/16</p> <p>naturally [1] 790/17</p> <p>nature [5] 638/5 638/21 714/3 743/24 876/21</p> <p>near [2] 672/13 750/13</p> <p>near-term [1] 672/13</p> <p>necessarily [3] 609/20 720/8 877/21</p> <p>necessary [4] 753/11 852/24 869/18 874/16</p> <p>need [9] 615/5 657/7 661/24 680/16 680/21 719/16 736/23 764/4 774/14</p> <p>needed [7] 835/20 835/21 836/1 845/21 859/9 878/2 878/23</p> <p>needs [2] 680/6 772/7</p> <p>nefarious [1] 804/13</p> <p>negative [5] 606/20 607/6 610/8 794/13 794/17</p> <p>negotiate [2] 753/21 754/2</p> <p>negotiation [1] 754/6</p> <p>Neil [1] 615/19</p> <p>neither [6] 699/14 699/19 707/15 707/16 768/13 769/5</p> <p>nerve [1] 786/11</p> <p>neutral [2] 607/20 726/2</p> <p>never [14] 607/15 617/19 619/16 646/5 661/13 663/10 669/6 694/15 721/16 786/9 807/11 808/1 821/11 821/13</p> <p>Nevin [2] 611/2 687/24</p> <p>new [5] 604/6 651/21 682/23 716/23 772/23</p> <p>nice [1] 760/18</p> <p>nicely [1] 651/14</p> <p>Nichols [2] 720/23 721/6</p> <p>NICOLE [1] 604/12</p> <p>night [6] 659/20 660/2 661/12 662/4 719/9 778/8</p> <p>nights [1] 778/8</p> <p>nine [4] 608/15 610/13 660/2 717/13</p> <p>No. [9] 664/5 683/6 683/7 683/12 683/21 685/8 685/20 686/6 817/12</p> <p>No. 2 [2] 683/7 683/12</p> <p>No. 3 [5] 683/6 683/21 685/8 685/20 686/6</p>	<p>No. 4 [1] 664/5</p> <p>No. 9 [1] 817/12</p> <p>nobody [5] 764/16 764/17 804/4 808/7 808/12</p> <p>nominal [1] 647/17</p> <p>non [1] 683/24</p> <p>non-traditional [1] 683/24</p> <p>none [9] 684/10 685/13 686/10 700/16 702/15 742/7 873/8 879/16 879/18</p> <p>nones [1] 872/19</p> <p>nonetheless [3] 675/16 771/5 771/9</p> <p>nonlegal [2] 716/19 797/15</p> <p>nonsense [1] 808/7</p> <p>nor [3] 699/15 699/20 769/6</p> <p>normal [1] 635/12</p> <p>Normally [1] 662/5</p> <p>North [2] 603/9 603/22</p> <p>Northern [2] 643/20 716/11</p> <p>note [5] 656/1 771/13 771/18 772/2 805/5</p> <p>notebook [2] 827/11 843/4</p> <p>noted [1] 777/11</p> <p>notes [4] 640/11 805/11 805/15 830/10</p> <p>nothing [6] 749/17 756/21 756/21 764/21 808/13 808/14</p> <p>notice [2] 745/5 764/17</p> <p>noticed [1] 646/1</p> <p>notifications [1] 744/7</p> <p>notwithstanding [1] 739/12</p> <p>November [29] 637/2 637/6 637/17 639/6 639/16 677/21 693/21 693/22 695/13 697/12 698/11 699/4 711/5 729/15 746/8 748/7 811/19 813/15 814/12 814/16 815/2 815/6 815/17 816/8 816/10 817/23 819/18 833/3 858/9</p> <p>November 12th [1] 693/22</p> <p>November 14 [1] 858/9</p> <p>November 1995 [1] 833/3</p> <p>November 2018 [1] 711/5</p> <p>November 23 [2] 695/13 811/19</p> <p>November 23rd [2] 697/12 819/18</p> <p>November 26 [6] 637/2 637/6 637/17 639/6 639/16 729/15</p> <p>November 26th [3] 698/11 699/4 746/8</p> <p>November 28 [4]</p>	<p>814/12 814/16 815/2 815/6</p> <p>November 29 [2] 816/8 816/10</p> <p>November 2nd [1] 693/21</p> <p>NTI [7] 643/23 644/14 646/1 657/17 716/15 717/6 718/2</p> <p>NTI-N [1] 643/23</p> <p>nub [1] 807/5</p> <p>number [20] 620/18 648/13 656/18 659/2 719/15 732/10 751/3 763/13 812/24 838/11 838/11 844/23 845/8 845/8 846/5 846/5 846/9 852/23 860/18 871/22</p> <p>numbers [3] 612/14 660/6 661/6</p> <p>numerical [1] 612/19</p> <p>O</p> <p>object [4] 662/10 771/17 794/10 865/21</p> <p>objecting [1] 810/2</p> <p>objection [13] 638/19 677/19 722/18 771/13 771/19 772/2 772/7 794/15 813/10 852/3 852/19 854/20 864/19</p> <p>Objections [2] 684/22 685/20</p> <p>obligations [2] 790/16 841/11</p> <p>observes [1] 616/3</p> <p>obtain [3] 855/15 855/18 856/3</p> <p>obtained [4] 775/23 850/20 857/3 859/14</p> <p>obtaining [1] 849/21</p> <p>obvious [3] 759/18 759/20 773/12</p> <p>obviously [9] 624/21 633/17 708/18 714/8 763/21 766/5 773/11 780/8 850/7</p> <p>ocable [1] 832/4</p> <p>occasionally [1] 825/11</p> <p>occurred [1] 670/24</p> <p>occurring [1] 647/14</p> <p>octane [1] 652/3</p> <p>October [18] 626/22 628/24 629/7 630/4 630/7 630/12 633/16 635/23 665/17 666/7 667/3 667/3 676/19 678/21 678/22 693/3 705/5 748/7</p> <p>October 18 [1] 676/19</p> <p>October 2018 [1] 678/22</p> <p>October 25 [5] 630/4 630/7 666/7 667/3 667/3</p> <p>October 25th [2] 633/16 635/23</p>	<p>October 26 [1] 630/12</p> <p>October 4 [1] 693/3</p> <p>October 4th [3] 626/22 628/24 629/7</p> <p>odd [1] 860/10</p> <p>oddly [1] 777/20</p> <p>off [2] 619/13 667/18</p> <p>offer [120] 606/18 607/7 609/5 609/16 609/22 610/2 614/4 616/1 617/20 618/21 619/24 620/1 620/11 620/16 621/6 623/14 624/4 626/8 626/18 630/9 631/21 632/2 632/7 632/19 633/17 635/4 635/16 636/7 664/4 664/10 664/15 689/6 691/13 721/4 724/7 751/7 751/18 751/22 752/6 752/13 753/21 754/4 754/7 754/11 754/14 755/3 756/2 756/9 756/12 757/2 757/4 758/24 759/11 761/4 761/12 761/20 762/7 762/12 762/15 763/7 763/9 763/10 764/1 764/6 765/1 765/17 766/20 767/5 767/6 767/24 768/10 769/1 769/8 770/18 770/20 771/3 772/17 772/19 772/19 773/19 774/11 774/14 775/4 775/24 776/10 776/18 780/6 780/16 781/9 781/18 781/19 782/5 782/23 786/21 787/3 787/16 787/19 788/12 788/13 789/20 790/4 790/12 792/4 792/5 792/8 793/2 795/20 807/24 808/1 808/3 808/5 809/21 842/8 842/14 842/17 842/22 844/6 847/3 847/17 862/21</p> <p>offered [2] 670/17 732/24</p> <p>offering [3] 770/10 793/3 815/10</p> <p>offeror [1] 765/21</p> <p>offers [6] 750/24 751/4 754/18 754/23 755/4 760/2</p> <p>officer [11] 643/19 718/12 743/16 824/13 824/20 834/8 834/17 868/18 868/21 869/6 876/13</p> <p>officers [8] 735/7 735/23 743/3 743/21 744/1 744/24 745/6 745/17</p> <p>officers,' [1] 843/10</p> <p>Offices [1] 604/15</p> <p>official [2] 618/7 635/19</p>
<p>N</p> <p>naive [1] 786/14</p> <p>name [14] 737/19 740/16 740/18 740/18 816/18 816/22 817/2 817/6 828/9 833/12 833/24 837/11 854/6 872/12</p> <p>named [1] 758/5</p>				

<p>O</p> <p>oh [10] 624/19 704/16 734/2 755/24 761/14 799/9 806/3 820/13 832/19 874/18</p> <p>oil [4] 654/7 654/16 673/23 715/24</p> <p>Oklahoma [1] 878/21</p> <p>old [2] 805/22 828/19</p> <p>old-fashioned [1] 805/22</p> <p>onboarded [1] 717/11</p> <p>once [12] 618/7 647/1 648/9 657/7 670/21 719/1 745/18 748/23 752/16 792/19 807/11 812/21</p> <p>ones [3] 654/3 663/2 702/24</p> <p>online [1] 642/11</p> <p>onto [3] 685/7 702/3 815/21</p> <p>open [10] 656/24 702/19 723/22 758/18 760/21 761/18 780/15 802/24 835/16 847/3</p> <p>opened [1] 831/13</p> <p>opening [1] 831/17</p> <p>opens [1] 723/9</p> <p>operate [1] 813/2</p> <p>operates [2] 741/9 741/11</p> <p>operating [13] 643/19 658/10 740/24 741/1 741/4 741/23 742/2 870/11 870/24 873/5 875/22 876/3 876/5</p> <p>operation [3] 654/9 681/1 681/2</p> <p>operations [3] 741/7 742/19 869/15</p> <p>operator [2] 755/20 757/11</p> <p>opine [1] 817/16</p> <p>opining [1] 788/8</p> <p>opinion [9] 624/9 689/6 698/3 725/12 726/14 764/22 773/23 796/18 796/18</p> <p>opinions [2] 727/2 769/14</p> <p>opportunities [6] 645/10 645/18 645/22 646/14 662/22 672/13</p> <p>opportunity [1] 618/3</p> <p>opposed [3] 626/18 697/9 703/20</p> <p>opposite [2] 798/14 803/3</p> <p>option [17] 619/4 620/9 622/14 628/13 631/17 633/24 634/15 635/6 635/20 636/3 636/14 657/2 666/11 695/22 755/17 770/19 782/3</p> <p>optionality [1] 650/17</p> <p>orchestrated [3]</p>	<p>705/20 705/24 706/24</p> <p>order [9] 612/19 652/13 779/7 825/10 825/20 843/1 843/3 847/2 874/4</p> <p>ordinary [4] 872/21 873/2 875/15 875/24</p> <p>organization [5] 648/18 702/7 718/14 753/24 868/15</p> <p>organizational [1] 868/12</p> <p>origin [1] 714/10</p> <p>others [8] 613/22 630/20 646/11 676/18 759/19 763/23 775/3 815/9</p> <p>otherwise [2] 766/8 770/14</p> <p>ought [2] 723/3 766/14</p> <p>ourselves [1] 700/15</p> <p>outlining [1] 655/10</p> <p>outset [2] 660/7 801/21</p> <p>outside [7] 706/11 707/7 713/24 719/21 720/19 727/13 792/16</p> <p>outstanding [11] 614/7 616/23 617/22 620/10 627/13 675/12 732/10 732/22 770/13 773/10 775/24</p> <p>outweighs [1] 800/12</p> <p>over [32] 605/6 644/9 647/21 656/8 656/10 663/7 667/16 671/19 671/23 673/2 673/15 675/18 676/9 683/14 685/7 692/6 693/17 716/13 716/14 716/18 722/15 724/3 728/14 733/21 751/4 751/9 754/6 756/12 776/21 778/8 793/3 815/23</p> <p>overhang [1] 620/9</p> <p>overlap [2] 646/22 718/1</p> <p>Overlapping [3] 798/24 799/17 799/20</p> <p>Overruled [2] 772/3 813/17</p> <p>own [25] 632/8 650/5 713/4 736/11 737/5 738/21 765/4 766/2 766/12 771/8 772/24 773/1 773/7 773/9 773/10 774/5 774/5 792/7 800/16 805/6 808/21 815/20 851/16 874/23 875/4</p> <p>owned [17] 643/21 670/8 734/22 740/20 740/22 741/7 765/5 765/8 770/14 770/22 800/11 800/18 800/18 800/19 807/2 839/1 877/10</p> <p>owner [1] 843/24</p> <p>ownership [6] 643/23 648/14 835/3 838/7</p>	<p>877/7 878/4</p> <p>owns [3] 670/9 741/9 796/20</p> <p>oxymoron [2] 773/2 802/5</p> <p>P</p> <p>P.A [1] 604/3</p> <p>p.m [6] 659/21 661/7 749/23 810/19 811/1 879/23</p> <p>PA [1] 604/13</p> <p>package [1] 658/7</p> <p>page [10] [1] 739/8</p> <p>page [11] [2] 666/15 875/9</p> <p>page [119] [1] 846/2</p> <p>page [12] [2] 683/14 739/1</p> <p>page [13] [1] 829/19</p> <p>page [160] [1] 863/1</p> <p>page [18] [3] 683/4 683/15 683/21</p> <p>page [19] [1] 830/23</p> <p>page [2] [5] 686/4 693/13 733/21 817/20 850/16</p> <p>page [20] [1] 837/17</p> <p>page [22] [1] 832/11</p> <p>page [23] [2] 739/24 837/19</p> <p>page [25] [1] 833/8</p> <p>page [26] [1] 833/12</p> <p>page [29] [3] 674/14 833/21 838/6</p> <p>page [3] [4] 733/22 734/13 837/10 872/8</p> <p>Page [43] [1] 853/13</p> <p>page [49] [1] 826/3</p> <p>page [50] [2] 826/3 826/4</p> <p>page [52] [2] 843/2 843/4</p> <p>page [66] [2] 672/12 672/20</p> <p>page [7] [4] 840/23 841/1 841/5 841/6</p> <p>page [8] [2] 676/23 875/2</p> <p>page [9] [2] 738/24 739/1</p> <p>pages [9] 660/16 660/17 660/19 684/15 830/7 840/21 850/8 850/9 875/2</p> <p>paid [4] 808/2 826/21 827/4 868/24</p> <p>paper [4] 807/4 816/22 817/6 817/7</p> <p>papers [2] 831/16 831/22</p> <p>paperwork [1] 847/1</p> <p>paragraph [24] 627/9 654/5 664/8 688/14 688/22 693/15 706/3 726/9 726/12 731/7 731/24 739/11 746/24 747/4 759/15 761/24 762/22 777/1 779/9</p>	<p>783/7 817/20 826/4 829/10 843/7</p> <p>paragraph [144] [1] 826/4</p> <p>Paragraph [151] [1] 843/7</p> <p>paragraphs [2] 739/9 779/15</p> <p>parallel [8] 627/18 627/21 629/4 637/8 637/19 638/4 638/21 651/11</p> <p>parallels [1] 821/1</p> <p>Pardon [1] 653/13</p> <p>part [33] 614/11 628/4 633/22 656/24 658/1 677/8 679/7 692/12 693/12 700/24 729/9 729/17 734/9 734/9 758/18 760/20 762/9 766/1 773/7 773/8 790/5 792/19 815/22 823/20 824/8 834/6 837/7 867/13 874/1 874/8 875/15 877/6 878/17</p> <p>part-time [1] 867/13</p> <p>partial [4] 842/8 842/14 842/16 844/6</p> <p>participated [1] 721/1</p> <p>participating [1] 605/4</p> <p>particular [17] 620/5 624/6 627/9 628/12 650/19 676/23 685/10 704/2 708/20 728/12 761/24 768/6 770/3 782/24 813/16 854/10 854/15</p> <p>particularly [2] 749/3 795/10</p> <p>parties [1] 825/8</p> <p>partner [27] 716/2 728/20 728/24 735/8 735/23 737/15 737/17 738/6 738/8 738/15 740/8 740/11 740/15 742/6 742/16 742/18 777/12 782/15 823/23 824/15 824/20 826/15 826/16 843/18 843/19 869/23 871/9</p> <p>partners [9] 622/20 628/16 644/13 659/5 659/6 728/21 826/16 841/14 843/19</p> <p>Partners' [2] 622/20 628/20</p> <p>partnership [21] 664/4 734/21 737/12 738/7 738/13 738/23 740/1 742/13 784/2 784/3 784/5 784/7 786/5 786/6 786/10 786/12 817/13 841/24 869/23 870/2 871/5</p> <p>partnerships [2] 644/11 717/18</p> <p>parts [1] 650/7</p> <p>Paso [3] 643/13 715/24</p>	<p>716/4</p> <p>Pass [1] 821/23</p> <p>passed [1] 782/6</p> <p>past [5] 614/23 636/7 762/24 811/7 811/10</p> <p>Pastor [6] 608/20 608/22 610/16 687/19 791/6 791/23</p> <p>Pastor's [1] 608/24</p> <p>patience [1] 642/10</p> <p>pattern [2] 713/17 719/4</p> <p>pause [1] 640/6</p> <p>paused [2] 788/19 853/10</p> <p>pay [12] 609/14 657/9 678/9 678/13 680/14 680/15 756/22 784/12 785/8 798/12 798/18 808/11</p> <p>payment [4] 647/13 647/19 648/3 874/21</p> <p>PC [1] 604/9</p> <p>pendency [2] 621/6 716/8</p> <p>pending [4] 617/21 787/9 788/21 788/24</p> <p>Pennsylvania [1] 604/8</p> <p>people [25] 605/4 646/17 648/21 649/18 649/21 652/1 659/7 661/11 662/6 668/15 719/13 728/2 728/7 737/4 744/7 775/7 786/9 792/24 796/22 808/5 854/14 857/7 861/17 861/19 863/13</p> <p>per [1] 654/12</p> <p>percent [50] 622/21 628/21 643/22 652/9 663/6 668/2 668/14 753/10 753/16 764/1 764/4 765/8 770/22 771/7 774/6 774/6 774/7 774/21 774/22 775/17 775/23 776/3 785/20 790/9 792/7 792/9 793/3 793/18 796/15 796/20 797/3 797/3 798/10 800/11 800/11 802/17 802/19 802/21 803/1 803/2 803/4 803/7 803/8 803/10 803/13 803/16 803/22 807/2 808/5 809/2</p> <p>percentage [3] 670/9 767/6 774/13</p> <p>Perfect [2] 729/14 729/18</p> <p>performance [1] 827/11</p> <p>perhaps [2] 612/14 789/23</p> <p>period [10] 630/8 636/8 647/20 673/15 675/18 713/11 717/8 782/14 783/14 793/19</p>
--	---	---	--	--

P	878/18	polyester [1] 643/11	preparation [2] 697/9	715/24 728/19 781/11
permitted [3] 739/19 740/2 751/10	plans [10] 631/16 633/23 634/14 666/11 747/22 775/23 777/12 777/18 778/22 782/3	pontificate [3] 797/17 797/20 797/23	708/13	782/8 785/19
person [13] 711/16 711/18 713/2 713/6 728/12 728/22 743/13 751/22 786/14 788/18 797/15 830/15 841/10	plant [5] 643/6 643/14 650/21 650/24 870/13	poorly [1] 764/9	prepare [5] 697/7 859/7 860/15 860/19 864/8	privilege [8] 710/8 794/13 845/3 865/22 865/23 866/2 877/1 877/2
personal [3] 795/15 815/20 852/24	plants [2] 645/3 870/23	pork [1] 680/12	prepared [8] 701/6 701/7 701/8 733/11 736/14 747/17 836/16 859/19	privileged [6] 664/9 710/13 721/17 722/2 864/20 864/23
perspective [12] 692/8 701/22 708/12 708/12 708/21 708/22 709/13 709/14 709/22 719/18 731/23 747/15	platform [1] 815/24	posed [3] 683/22 690/10 691/8	preparing [3] 708/11 708/17 709/9	privileges [1] 830/16
persuade [1] 765/22	platforms [1] 684/4	position [15] 608/24 635/19 643/18 651/4 658/9 687/20 691/13 691/22 716/19 799/4 822/19 837/13 868/4 868/14 872/3	present [7] 608/12 608/16 611/2 641/23 687/14 687/22 791/5	pro [1] 678/10
Phase [3] 654/9 654/12 654/14	play [19] 623/17 637/12 638/13 651/22 786/23 787/11 789/4 789/9 804/3 812/12 846/1 847/13 848/6 851/3 853/5 856/18 862/13 863/1 866/5	positions [4] 643/5 686/17 843/9 873/20	presented [3] 648/7 688/3 812/4	probability [1] 650/6
phased [1] 654/8	played [17] 623/19 637/14 638/15 787/13 812/14 813/23 846/3 847/15 848/8 851/5 853/7 853/12 853/17 856/20 862/15 863/3 866/7	positive [4] 624/11 759/23 806/4 854/9	president [17] 643/7 643/18 643/22 644/1 644/5 647/1 647/7 682/9 716/19 741/13 822/21 826/13 843/11 843/16 867/24 869/12 872/10	probably [7] 619/14 637/11 644/20 669/11 673/22 702/24 715/1
Phil [1] 613/7	playing [2] 669/9 789/8	possible [6] 609/15 610/1 648/18 659/24 784/9 878/22	presiding [1] 776/21	problem [2] 668/10 734/7
philosophy [3] 644/23 680/13 702/21	plays [1] 723/14	post [4] 619/23 620/1 620/11 620/16	press [5] 627/12 628/6 629/17 760/20 823/2	problematic [2] 662/8 723/13
phone [2] 719/18 759/3	pleading [4] 779/24 779/24 780/1 780/19	post-exchange [1] 620/16	pressure [2] 689/22 815/9	problems [1] 840/4
phrase [1] 683/9	please [61] 605/18 615/16 618/12 623/18 625/4 626/20 637/13 638/14 640/15 642/8 642/12 653/18 666/2 674/1 698/6 715/15 750/2 759/17 762/5 770/6 776/15 777/4 779/11 786/22 787/11 791/3 795/1 805/1 809/5 809/13 811/2 812/13 814/8 816/6 818/2 826/3 827/15 828/22 829/18 830/8 830/14 830/23 831/21 834/21 837/17 839/24 846/1 847/13 848/2 848/7 851/3 853/5 853/13 854/6 854/24 856/19 858/16 861/15 862/14 866/6 871/20	posters [1] 719/12	pretty [9] 623/22 623/23 624/5 756/21 778/10 786/2 796/4 796/24 799/14	procedures [2] 679/13 869/19
phrased [1] 866/1	plummeted [1] 797/7	potential [28] 628/1 631/22 637/8 637/19 648/24 650/11 658/12 658/24 659/4 663/8 663/14 663/14 696/21 697/9 700/7 701/3 701/15 701/19 706/4 707/8 708/4 708/9 709/3 709/4 709/10 745/1 814/21 818/20	prevent [3] 606/21 607/12 610/9	proceed [6] 642/12 662/15 697/21 701/23 723/9 747/18
phrasing [1] 699/19	plus [2] 647/17 728/14	potentially [3] 619/4 725/19 726/2	preview [2] 613/12 613/17	proceedings [3] 641/22 722/22 879/23
physical [1] 660/4	point [26] 615/23 624/3 626/7 633/16 636/22 640/12 661/10 702/8 705/10 713/16 746/14 746/16 751/22 773/4 773/15 773/17 773/20 774/9 775/21 777/22 778/9 778/21 780/3 780/20 808/19 810/10	power [7] 839/4 839/6 839/10 839/12 841/1 841/3 841/7	pretrial [5] 779/6 825/9 825/20 843/1 843/3	process [27] 643/5 646/15 648/23 650/18 651/18 654/15 655/19 670/14 692/5 694/11 694/16 697/20 700/15 701/1 701/14 709/15 709/21 713/21 727/12 728/9 744/5 744/10 744/23 747/16 866/3 874/4 875/20
pick [1] 719/18	plummeted [1] 797/7	powers [5] 829/22 830/1 830/16 830/19 836/5	previewed [1] 616/14	processes [1] 695/1
Pickering [9] 618/15 619/18 621/19 627/23 631/7 640/22 665/15 805/5 806/3	plummeted [1] 797/7	PR [2] 759/19 764/9	previously [14] 605/12 611/4 634/2 634/13 690/21 699/15 702/13 708/1 709/5 711/15 713/5 747/22 749/8 868/14	processing [3] 654/6 654/7 654/11
piece [5] 632/9 632/11 785/18 816/22 817/5	plus [2] 647/17 728/14	practice [3] 713/17 728/20 772/10	price [19] 609/15 610/1 610/8 622/22 625/13 625/14 626/19 635/3 647/21 667/19 668/1 670/21 782/14 783/13 783/15 783/23 784/4 793/3 801/8	procurement [2] 716/22 718/17
pipe [1] 652/2	point [26] 615/23 624/3 626/7 633/16 636/22 640/12 661/10 702/8 705/10 713/16 746/14 746/16 751/22 773/4 773/15 773/17 773/20 774/9 775/21 777/22 778/9 778/21 780/3 780/20 808/19 810/10	precisely [2] 778/12 778/14	prices [1] 668/12	produce [2] 660/2 781/11
pipeline [17] 622/19 622/20 623/12 624/24 627/24 628/16 628/20 629/3 636/19 636/20 637/7 648/16 651/5 662/21 812/18 821/1 821/19	plummeted [1] 797/7	precedent [1] 638/18	pricing [5] 782/10 782/11 782/24 783/13 784/10	produced [6] 659/23 661/6 661/7 661/7 662/4 831/22
Pipeline's [1] 628/2	plummeted [1] 797/7	precisely [2] 778/12 778/14	primary [3] 609/21 690/23 722/9	producing [1] 646/2
Pipeline-Loews [4] 624/24 637/7 821/1 821/19	plummeted [1] 797/7	predicate [1] 789/11	print [5] 632/21 711/4 711/8 712/23 742/22	product [1] 680/20
pitch [1] 728/23	plummeted [1] 797/7	predict [1] 793/15	printout [1] 695/13	production [3] 650/23 684/2 728/1
place [8] 631/21 648/21 648/23 701/15 705/5 707/22 751/11 869/19	plummeted [1] 797/7	predominant [1] 692/3 691/4	prints [1] 840/24	proficiency [1] 727/16
plain [1] 784/10	plummeted [1] 797/7	predominantly [1] 691/4	prior [12] 627/4 679/2 682/24 702/14 709/11 713/16 713/20 720/12 721/6 728/6 865/11 868/3	profitability [1] 650/20
plaintiffs [7] 604/9 661/19 681/23 750/5 822/8 879/16 879/18	plummeted [1] 797/7	preexisting [1] 729/3	private [6] 612/3	program [1] 719/10
plaintiffs' [3] 684/22 685/20 780/1	plummeted [1] 797/7	prefer [2] 714/2 714/2		programmed [1] 692/17
plan [18] 648/10 649/19 657/8 801/18 801/22 802/4 802/6 802/19 802/20 803/3 803/19 803/20 804/13 806/15 818/17 820/17 874/9 875/22	plummeted [1] 797/7	preferred [1] 830/10		prohibits [1] 744/3
planned [5] 706/18 804/23 807/21 807/22 807/23	plummeted [1] 797/7	prejudice [1] 661/17		project [19] 649/13 650/22 651/19 652/5 652/11 655/14 656/10 658/2 658/14 658/15 658/15 658/16 658/18 658/23 662/22 671/9 671/11 671/13 681/12
planning [2] 780/17	plummeted [1] 797/7	premium [17] 609/22 650/23 651/7 652/4 670/17 670/19 764/1 765/10 765/10 790/4 790/10 792/9 793/3 796/15 798/10 798/18 808/5		projected [2] 676/11 676/24

<p>P</p> <p>projects... [38] 649/1 649/4 649/5 649/9 649/12 649/14 649/24 650/11 650/11 650/14 651/8 651/15 651/21 652/8 652/19 654/1 654/1 654/17 655/11 655/19 656/3 656/7 656/17 657/4 657/13 663/5 671/2 671/5 671/15 671/15 672/8 673/14 674/18 675/18 677/9 677/12 679/5 874/3</p> <p>promoted [1] 823/4</p> <p>pronunciation [1] 698/24</p> <p>Proof [1] 825/24</p> <p>properly [3] 796/2 797/9 797/16</p> <p>Properties [2] 732/12 769/6</p> <p>property [1] 785/18</p> <p>proposed [1] 770/4</p> <p>prospects [1] 656/22</p> <p>protection [2] 782/14 783/14</p> <p>proves [1] 767/17</p> <p>provide [6] 614/4 631/19 679/1 722/4 824/9 836/19</p> <p>provided [9] 618/2 720/5 794/7 836/21 846/16 857/18 857/18 857/22 859/16</p> <p>provides [1] 744/6</p> <p>providing [2] 836/22 867/19</p> <p>provision [1] 783/2</p> <p>provisions [3] 739/17 740/1 782/24</p> <p>proxies [1] 836/12</p> <p>proxy [5] 755/4 811/6 811/9 825/3 830/15</p> <p>prudent [1] 681/10</p> <p>PTO [2] 779/6 783/7</p> <p>public [24] 646/21 647/5 652/17 693/18 702/3 705/3 706/17 706/22 707/10 708/17 709/1 718/22 719/3 724/10 724/14 724/15 724/22 732/11 733/1 776/8 782/22 824/19 824/23 834/14</p> <p>publicly [10] 616/6 633/14 647/24 691/2 703/13 722/11 724/22 725/6 741/2 742/8</p> <p>pull [9] 639/2 655/24 676/17 779/8 791/2 795/9 839/24 871/14 876/10</p> <p>pulled [2] 805/4 840/24</p> <p>purchase [8] 733/16 733/22 734/13 734/16 734/21 735/15 855/7</p>	<p>858/9</p> <p>purchased [2] 643/4 644/2</p> <p>purchases [2] 858/13 863/6</p> <p>purchasing [2] 680/19 680/20</p> <p>pure [1] 806/14</p> <p>purporting [1] 703/24</p> <p>purpose [5] 690/23 767/8 767/9 789/10 817/22</p> <p>purposes [2] 661/8 739/17</p> <p>pursuant [3] 735/15 784/1 786/4</p> <p>pursuing [1] 658/18</p> <p>purview [1] 790/20</p> <p>push [5] 642/2 801/20 801/20 801/22 808/14</p> <p>pushing [3] 767/20 774/23 775/17</p> <p>put [27] 618/6 646/8 652/21 653/6 653/8 654/23 663/20 673/13 673/19 674/20 686/21 720/3 729/7 738/19 740/12 748/22 755/3 758/8 772/5 774/16 781/6 793/5 805/20 813/3 825/10 840/3 855/15</p> <p>puts [1] 758/5</p> <p>putting [1] 709/1</p> <hr/> <p>Q</p> <p>qualifications [1] 684/17</p> <p>qualified [1] 700/19</p> <p>quantity [1] 856/16</p> <p>quarter [2] 676/1 681/8</p> <p>quarterly [1] 667/17</p> <p>questioning [2] 723/8 868/3</p> <p>questionnaire [8] 836/16 836/20 836/22 837/1 837/8 877/6 877/7 877/24</p> <p>questions [39] 624/14 624/17 640/13 664/8 669/12 669/18 679/1 679/23 681/14 681/16 691/8 700/20 709/9 715/5 744/16 745/11 745/13 745/24 749/13 768/14 768/23 789/12 800/5 801/3 805/1 809/7 810/3 810/13 822/2 838/2 848/24 851/21 855/12 857/11 863/17 866/24 867/3 876/8 879/9</p> <p>quick [1] 813/9</p> <p>quickly [3] 677/24 778/8 825/7</p> <p>quite [8] 620/3 670/21 698/23 703/21 779/20 794/18 821/4 879/11</p>	<p>R</p> <p>R. [1] 831/24</p> <p>R. DeVelasco [1] 831/24</p> <p>radar [1] 746/13</p> <p>raise [6] 619/1 656/19 656/19 657/8 719/13 772/6</p> <p>raised [1] 611/10</p> <p>raising [1] 656/22</p> <p>RAJU [19] 604/10 638/19 642/2 642/12 659/18 662/3 665/19 666/2 669/15 669/22 672/5 672/7 678/20 680/1 715/8 721/21 723/6 745/9 749/16</p> <p>Ramey [9] 636/13 696/7 696/9 696/13 696/15 700/23 708/8 729/1 746/8</p> <p>ramp [1] 657/10</p> <p>range [3] 612/19 654/18 809/19</p> <p>rare [1] 646/4</p> <p>rarely [1] 807/12</p> <p>rata [1] 678/10</p> <p>rate [2] 727/15 728/4</p> <p>rates [1] 728/2</p> <p>rather [5] 624/10 720/10 723/2 796/13 815/24</p> <p>ratio [4] 752/10 752/13 753/2 762/16</p> <p>rationale [5] 616/10 616/22 617/21 634/1 634/12</p> <p>RE [1] 603/2</p> <p>reach [5] 728/12 874/19 877/18 877/23 878/3</p> <p>reached [3] 724/20 849/24 856/2</p> <p>reaction [1] 795/19</p> <p>read [13] 622/6 712/9 778/7 779/24 779/24 781/4 784/3 786/3 786/6 786/9 786/12 788/22 820/13</p> <p>readers [1] 729/12</p> <p>reading [5] 783/22 789/24 790/2 792/17 792/21</p> <p>reads [3] 739/24 807/16 807/16</p> <p>ready [2] 652/13 702/1</p> <p>real [6] 617/20 623/1 778/8 796/10 796/12 830/10</p> <p>real-time [2] 617/20 623/1</p> <p>reason [10] 633/11 633/12 778/24 779/2 808/16 808/17 815/12 819/24 820/2 847/4</p> <p>reasons [6] 631/20 632/2 632/7 632/18 633/5 633/7</p>	<p>recall [114] 607/17 611/5 611/6 616/24 617/2 619/13 620/2 620/4 620/6 620/12 620/23 620/24 621/12 621/13 622/24 623/2 623/15 623/24 624/2 624/8 630/14 632/6 632/10 633/6 633/10 633/15 633/19 637/10 637/15 638/8 638/9 638/10 638/16 659/12 664/18 664/19 665/10 665/14 667/1 668/18 668/20 668/24 669/3 672/9 673/18 677/20 690/22 691/19 692/24 693/1 695/15 695/17 702/17 704/21 714/18 714/20 715/1 720/1 721/10 722/2 722/7 725/1 725/7 725/15 725/18 726/1 727/7 729/2 732/16 743/15 746/10 751/20 752/14 753/3 753/7 753/9 753/13 754/5 754/6 754/12 754/13 756/2 756/4 756/5 756/8 757/1 763/19 763/20 765/12 765/12 767/13 768/2 776/2 795/6 795/7 812/3 812/8 815/3 815/3 818/1 818/11 818/22 818/22 818/24 819/1 835/12 849/6 853/21 853/24 856/24 861/11 861/12 861/13 864/3</p> <p>recalled [1] 692/2</p> <p>received [7] 630/11 661/1 693/3 693/23 714/14 724/6 852/17</p> <p>recent [2] 622/13 628/13</p> <p>recently [1] 682/18</p> <p>recess [4] 642/7 665/24 749/23 810/19</p> <p>recipients [1] 862/17</p> <p>recognize [10] 608/7 615/11 622/3 661/23 668/4 668/14 683/1 710/12 742/23 820/22</p> <p>recollect [1] 617/23</p> <p>recollection [5] 657/15 691/18 692/11 692/13 704/20</p> <p>recommend [1] 641/23</p> <p>recommendation [6] 690/6 690/19 704/13 704/21 705/14 798/22</p> <p>recommending [1] 693/16</p> <p>record [13] 608/23 634/12 672/1 713/1 762/24 771/14 771/19 772/2 794/24 799/7 807/8 813/10 852/12</p> <p>records [1] 633/20</p>	<p>RECROSS [1] 680/4</p> <p>RECROSS-EXAMINATI ON [1] 680/4</p> <p>recuse [2] 788/16 795/14</p> <p>recused [7] 787/24 788/2 788/3 789/19 789/23 790/3 795/19</p> <p>REDIRECT [2] 669/19 746/4</p> <p>reduce [1] 801/16</p> <p>reduced [2] 664/14 670/21</p> <p>reductionist [1] 774/17</p> <p>refer [8] 616/17 629/22 699/22 750/13 750/21 825/11 845/9 872/2</p> <p>reference [4] 639/8 639/13 640/8 727/3</p> <p>referenced [3] 712/8 726/22 873/18</p> <p>references [2] 641/1 710/10</p> <p>referencing [1] 695/4</p> <p>referred [1] 711/4</p> <p>referring [7] 690/16 694/24 696/18 697/17 697/19 701/13 855/6</p> <p>refers [5] 683/6 694/8 747/21 845/8 872/23</p> <p>refiner [1] 643/21</p> <p>refineries [6] 643/2 645/19 650/15 657/12 748/15 870/12</p> <p>refinery [17] 645/15 646/3 646/5 650/16 663/10 663/12 680/7 741/10 741/11 741/23 761/6 772/23 807/1 807/2 807/3 807/3 861/24</p> <p>refining [88] 603/2 605/22 606/20 607/11 608/8 609/8 609/15 609/24 610/22 611/12 611/21 611/22 613/12 615/12 619/15 619/22 620/1 620/10 620/13 620/14 621/7 621/20 625/1 627/14 629/24 631/10 631/13 632/8 635/3 638/5 643/7 644/8 644/19 663/24 670/1 670/4 670/9 670/15 674/2 675/4 675/13 677/15 678/8 680/22 716/6 716/16 733/4 737/12 737/18 737/19 738/3 738/12 740/17 741/9 741/10 754/3 765/2 765/21 767/3 767/4 768/1 769/22 770/14 773/18 774/13 774/20 786/21 787/15 789/19 793/24 795/4 795/13 800/13 811/14 816/16 817/12 820/17 824/16 826/15 838/10 841/13 843/18</p>
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R	812/20 816/3 818/6 820/7 820/21 820/21 822/16 836/20 836/21 854/14 856/14 862/11 reminders [1] 744/7 removing [1] 651/16 repeat [12] 606/22 694/22 751/14 752/11 753/23 754/19 766/24 836/11 857/20 861/7 865/3 865/18 repeated [1] 782/1 repeatedly [1] 773/20 repeating [1] 812/23 rephrase [1] 865/5 replace [1] 652/5 replacement [1] 717/10 replay [1] 814/5 report [18] 613/16 621/20 621/22 622/4 622/11 623/4 624/10 627/23 640/22 665/16 712/24 823/7 823/21 823/24 824/5 834/11 834/17 868/7 reported [4] 713/6 732/9 868/13 868/14 REPORTERS [1] 603/21 reporting [17] 711/15 711/17 713/2 713/6 718/15 719/22 730/12 823/14 824/7 834/13 834/14 835/3 841/11 868/11 876/13 876/16 876/24 reports [12] 617/15 622/7 623/7 623/9 623/9 805/24 824/6 824/9 869/8 869/9 869/17 878/1 represent [1] 779/13 representative [2] 699/23 699/23 representatives [4] 608/19 610/14 611/13 765/14 represented [1] 636/19 representing [1] 760/7 request [17] 684/2 688/5 688/15 688/22 846/7 851/15 851/18 852/16 855/3 856/10 856/13 857/3 857/14 865/8 865/23 877/5 877/15 requested [4] 630/22 849/4 852/9 853/20 requesting [1] 854/19 requests [3] 728/1 864/20 864/22 require [2] 662/5 825/24 required [2] 869/8 869/17 requirements [6] 745/2 745/18 745/21 876/14 876/17 876/23	requires [1] 676/14 research [3] 613/8 640/22 805/18 researched [2] 623/12 624/6 reserve [7] 674/3 674/6 674/17 675/17 675/22 676/11 681/7 reserved [1] 657/12 reserves [1] 657/9 reserving [1] 657/8 resides [1] 744/20 resolution [1] 706/2 resolutions [3] 733/8 733/11 733/13 resources [7] 716/21 718/16 741/8 748/19 870/20 870/21 878/22 respect [27] 658/23 687/20 701/3 701/23 702/6 704/22 714/10 721/4 722/11 722/13 724/19 724/20 724/21 725/2 729/22 732/21 740/8 742/6 743/21 744/2 747/13 784/24 786/18 809/24 830/1 841/12 875/11 respecting [3] 689/8 691/13 710/17 respective [1] 873/19 respects [1] 806/5 respond [6] 614/19 787/16 788/13 792/3 799/24 877/14 responded [5] 640/13 690/4 690/14 692/18 781/15 responding [2] 700/20 789/19 responds [2] 614/14 614/22 response [24] 626/5 631/19 641/12 664/4 677/16 683/12 684/6 685/8 685/11 686/4 686/5 690/1 705/21 764/20 764/21 781/23 786/21 844/18 845/22 846/15 846/16 852/5 856/9 864/23 responses [7] 682/14 683/2 684/22 685/19 685/23 688/17 711/9 responsibilities [7] 719/8 719/23 823/21 868/21 869/3 869/10 869/12 responsibility [5] 718/13 743/11 778/17 823/16 824/8 responsible [6] 716/20 728/22 752/5 752/7 752/12 752/18 responsive [1] 684/2 rest [3] 624/10 643/23 804/11 Restated [1] 685/19 restrict [1] 852/21	restriction [10] 849/5 849/21 850/9 850/12 851/12 851/15 852/1 852/18 853/20 855/16 Restrictions [1] 855/7 restructure [1] 648/20 rests [1] 744/20 result [1] 639/16 resulted [1] 649/10 results [1] 663/7 resume [3] 665/22 749/20 879/13 resumed [3] 605/13 666/1 811/1 return [6] 649/12 649/13 662/22 797/2 797/3 797/3 returned [1] 847/7 returns [2] 652/9 654/18 Rev [1] 832/4 reveal [1] 854/21 revealing [3] 722/2 854/23 865/1 review [10] 641/24 682/13 688/24 713/16 733/13 827/11 836/17 837/2 865/8 865/13 reviewed [7] 684/16 714/15 733/14 837/23 839/15 859/22 861/1 reviewing [1] 714/18 Revocable [3] 829/1 832/17 838/15 revolver [1] 680/14 reward [2] 762/16 762/17 RFP [1] 728/8 rhetorical [1] 773/20 Richards [1] 604/13 rid [1] 801/5 rights [6] 739/14 794/21 815/10 815/18 815/21 830/16 risen [1] 659/19 risk [7] 620/14 649/12 652/7 716/22 718/16 762/16 762/17 risk-reward [2] 762/16 762/17 risked [1] 808/8 risks [1] 808/7 Robust [1] 662/21 role [7] 646/21 716/23 718/9 741/20 742/2 742/5 787/1 roles [1] 682/13 room [2] 651/18 758/5 rough [3] 689/19 689/19 720/18 roughly [2] 676/4 803/8 row [2] 621/16 874/11 Ruben [8] 713/1 828/10 829/1 829/1 829/10 832/3 832/16 838/14 Rule [2] 781/12 789/9 run [8] 644/23 648/11	651/6 655/10 764/10 775/3 792/20 866/3 running [2] 614/23 650/23 runs [2] 654/13 786/13 runway [1] 681/13
			S	
			S-3 [1] 845/14 S-4 [23] 616/17 616/20 617/11 618/7 618/9 619/9 619/11 632/1 632/6 632/13 768/6 768/7 768/15 768/20 768/21 768/22 769/13 772/15 779/13 779/15 783/20 843/8 843/23 Saba [1] 643/10 Sachs [4] 615/20 756/19 756/20 757/3 safety [15] 680/16 741/14 741/24 751/11 822/22 823/17 823/22 826/14 843/12 843/17 867/21 868/1 869/13 869/17 872/11 said [65] 610/10 627/23 628/19 667/21 671/11 691/17 692/11 692/13 692/15 704/20 714/14 717/21 720/8 761/16 764/18 767/14 774/22 776/2 776/11 776/12 778/12 778/13 779/20 780/2 780/4 780/5 780/10 780/15 780/18 782/7 784/13 786/4 789/22 790/18 792/18 796/14 798/4 798/5 801/21 803/3 807/11 809/10 813/12 813/21 814/2 815/2 815/16 817/17 818/4 818/9 818/9 818/12 820/14 820/14 835/23 836/1 847/10 852/7 852/8 852/13 853/4 853/23 857/2 865/24 867/16 salary [2] 647/17 826/24 sale [11] 631/22 633/8 655/8 658/7 658/16 663/11 663/17 798/17 814/17 860/9 864/1 sales [1] 680/20 same [28] 616/13 623/5 630/1 638/2 645/5 646/12 652/2 654/3 654/20 663/2 698/14 712/20 718/11 730/13 732/24 775/13 775/19 781/16 781/24 840/20 847/24 852/19 864/1 865/10 868/16 868/17 878/10 879/5 sanctioned [3] 634/24 671/8 679/6 sandbag [1] 661/11	

S	715/21	Security.' [1] 843/12	753/6 875/21	showed [3] 672/7 746/12 856/22
sandbagging [1] 661/17	Schwab [5] 831/14 831/22 832/15 849/4 849/14	seeing [2] 674/13 840/4	several [4] 621/16 641/8 696/15 741/3	showing [3] 625/12 744/17 760/20
Sander [1] 791/7	scope [2] 656/3 677/22	seek [3] 606/20 607/12 610/9	shale [2] 654/7 654/16	shows [3] 652/24 663/8 758/18
satisfied [1] 797/14	Scott [2] 658/1 739/9	seem [2] 633/13 653/10	shall [3] 739/13 795/14 829/24	sic [1] 742/22
satisfying [1] 764/2	screen [23] 629/21 632/22 632/24 653/6 653/8 654/23 662/17 663/21 672/6 720/4 729/7 729/13 734/1 755/18 757/9 757/10 758/2 758/3 758/6 758/9 758/13 758/16 840/3	seemed [1] 669/8	share [1] 670/9	side [24] 609/7 609/8 609/14 610/1 610/19 612/20 615/6 621/8 677/3 757/3 765/1 765/2 765/20 775/20 786/21 787/3 787/15 787/17 788/12 788/13 789/19 792/4 800/10 872/10
save [2] 774/18 779/13	script [1] 807/16	seems [3] 629/4 662/6 771/4	shared [3] 673/20 839/4 839/10	sides [6] 764/24 765/3 765/4 765/8 774/24 788/5
saved [1] 809/2	scripts [1] 652/21	seen [9] 606/23 607/1 645/2 724/18 803/24 804/1 804/2 804/2 864/2	shareholder [6] 607/23 688/17 689/8 724/5 726/15 798/19	sign [3] 817/1 831/16 840/17
saw [10] 623/20 646/13 702/24 724/16 746/24 789/22 818/9 836/4 839/6 839/12	scroll [1] 655/20	sell [10] 645/14 647/20 648/13 648/15 652/3 774/23 775/7 775/9 818/17 820/17	shareholders [17] 758/19 759/22 760/8 760/21 761/2 762/11 762/15 763/3 763/19 764/2 790/21 792/12 796/17 796/19 798/12 815/9 824/19	signature [13] 816/13 816/14 816/15 816/17 816/21 817/11 817/11 830/24 831/2 833/20 837/17 864/5 865/16
saying [46] 607/10 607/13 623/8 627/11 629/19 639/17 677/17 691/1 702/12 705/1 726/20 748/8 755/5 764/13 764/16 765/9 767/19 770/21 770/24 773/3 775/6 775/13 775/14 775/19 780/10 788/7 797/6 800/22 801/15 801/16 801/17 801/24 801/24 802/1 802/7 804/5 804/22 806/9 807/18 807/21 808/4 808/8 808/21 808/22 809/9 818/24	SDA [1] 646/8	selling [3] 663/12 802/8 818/24	shares [25] 620/19 763/13 766/22 773/18 802/24 803/8 803/17 803/18 838/11 839/3 839/9 844/16 844/21 845/1 845/10 845/11 845/18 845/20 846/5 846/9 846/12 846/19 848/10 848/19 852/23	signed [19] 687/10 699/11 710/24 712/4 815/13 816/20 817/4 817/17 832/24 833/6 833/9 833/12 833/16 837/22 840/11 841/2 869/21 870/1 870/5
says [86] 614/4 616/24 618/9 622/17 627/16 628/14 629/17 631/20 653/21 655/13 658/2 662/20 664/8 666/19 667/5 668/3 672/16 672/23 688/9 688/11 688/15 688/22 693/20 695/14 702/10 706/3 711/13 712/24 726/13 731/8 734/12 734/15 734/19 735/2 735/13 739/3 739/11 739/17 748/5 748/23 748/24 769/5 770/10 770/24 776/19 777/22 778/6 778/6 778/9 778/10 778/19 778/20 783/21 805/17 806/3 806/4 806/7 811/20 817/7 817/8 817/10 817/11 825/14 825/20 825/23 826/7 826/12 827/15 829/10 829/24 830/9 830/14 831/23 832/3 838/6 838/14 841/1 841/9 843/7 849/16 858/19 861/24 862/1 872/10 873/8 873/13	seated [3] 642/9 750/2 750/17	send [1] 769/21	she [23] 641/15 641/16 723/3 725/11 732/4 732/9 741/16 741/22 742/12 742/15 742/16 811/20 819/9 819/15 819/18 824/4 840/15 852/6 852/8 852/9 852/13 852/13 865/24	significant [5] 656/14 658/12 670/19 717/19 745/10
secretary [5] 682/10 687/5 699/4 699/10 718/12	SEC [13] 744/16 757/23 767/23 776/9 781/8 781/24 782/1 782/6 840/24 841/22 841/24 842/17 842/21	senior [3] 704/7 706/10 716/19	she's [3] 695/4 695/6 741/13	significantly [1] 654/8
section [20] 606/12 607/5 607/5 632/16 653/20 664/4 664/5 726/9 731/5 733/7 735/2 735/3 735/7 739/3 740/5 745/6 745/7 768/19 795/11 841/11	second [33] 613/5 628/13 632/9 632/11 633/21 640/6 641/2 651/11 651/11 653/10 655/12 666/18 667/5 672/15 672/23 712/24 726/9 729/17 730/20 731/3 731/4 731/7 733/7 738/21 739/11 746/24 768/7 777/1 827/14 846/8 850/7 850/8 871/20	sentence [22] 628/14 628/19 635/17 667/5 668/3 684/7 685/11 686/7 706/13 747/3 747/21 747/24 748/5 762/2 762/22 768/12 768/12 769/5 770/6 777/2 779/10 783/8	similar [4] 624/24 629/1 632/5 875/22	similarly [1] 654/8
Section 16 [2] 745/7 841/11	Section 2 [1] 726/9	sentences [2] 759/17 817/23	Shea [1] 791/7	simply [3] 774/18
Section 16b-3 [1] 735/3	Section 3 [1] 733/7	sentiment [1] 698/4	sheet [1] 675/5	Simplification [1] 632/4
Section 2 [1] 726/9	Section 5.6 [1] 739/3	separate [4] 619/2 779/14 782/10 879/2	shift [1] 705/12	simplify [3] 633/8 814/20 818/19
Section 3 [1] 733/7	sections [1] 632/17	September [3] 625/9 747/9 748/7	short [2] 669/11 796/12	simply [3] 774/16 803/10 803/12
Section 5.6 [1] 739/3	securities [17] 712/24 713/5 735/14 743/18 743/22 744/5 744/11 744/19 836/9 836/12 839/20 841/11 841/13 849/22 857/15 865/12 878/5	September 20 [1] 625/9	shortly [1] 686/20	since [13] 626/8 635/3 635/4 642/23 645/11 659/24 660/7 661/3 715/20 740/17 747/9 747/13 831/11
Section 2 [1] 726/9	Section 2 [1] 726/9	series [5] 615/18 779/7 781/10 789/11 874/18	Shorts [1] 862/1	single [1] 677/20
Section 3 [1] 733/7	Section 3 [1] 733/7	Seriously [1] 785/3	should [51] 606/20 607/12 610/9 612/13 615/3 622/1 627/6 627/12 647/19 662/14 669/6 680/16 703/15 705/12 722/11 722/12 722/20 743/17 747/24 749/7 750/12 750/17 755/11 759/10 760/4 761/3 761/20 762/12 763/9 779/5 779/18 780/10 786/12 788/1 789/23 790/2 793/8 793/9 795/19 796/14 797/11 798/19 799/10 802/11 820/24 825/13 828/22 841/6 859/12 874/8 879/14	sit [3] 651/1 744/12 778/4
Section 5.6 [1] 739/3	Section 5.6 [1] 739/3	serve [2] 716/14 717/3	shouldn't [3] 722/20 799/9 806/20	sitting [2] 651/23 675/5
sections [1] 632/17	sections [1] 632/17	served [3] 713/20 717/4 717/5	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	situation [16] 624/24 625/1 629/3 636/20 637/7 637/16 638/5 648/14 664/22 665/2 665/13 764/15 767/22 812/19 821/2 821/19
securities [17] 712/24 713/5 735/14 743/18 743/22 744/5 744/11 744/19 836/9 836/12 839/20 841/11 841/13 849/22 857/15 865/12 878/5	securities [17] 712/24 713/5 735/14 743/18 743/22 744/5 744/11 744/19 836/9 836/12 839/20 841/11 841/13 849/22 857/15 865/12 878/5	serves [3] 713/2 826/13 843/16	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	situations [3] 754/16 754/21 763/15
Section 2 [1] 726/9	Section 2 [1] 726/9	services [2] 716/20 867/20	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	six [4] 779/14 781/19 782/4 818/8
Section 3 [1] 733/7	Section 3 [1] 733/7	serving [1] 867/13	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	size [1] 680/23
Section 5.6 [1] 739/3	Section 5.6 [1] 739/3	session [3] 611/18 612/4 750/1	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	skills [1] 673/8
sections [1] 632/17	sections [1] 632/17	set [14] 612/10 615/6 630/4 630/12 636/1 683/1 683/13 684/22 687/2 702/19 703/14 750/17 756/20 831/11	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	slates [1] 719/22
securities [17] 712/24 713/5 735/14 743/18 743/22 744/5 744/11 744/19 836/9 836/12 839/20 841/11 841/13 849/22 857/15 865/12 878/5	securities [17] 712/24 713/5 735/14 743/18 743/22 744/5 744/11 744/19 836/9 836/12 839/20 841/11 841/13 849/22 857/15 865/12 878/5	sets [3] 747/15 872/5 873/18	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	
security [8] 741/14 742/1 822/22 826/14 843/17 869/13 869/17 872/11	security [8] 741/14 742/1 822/22 826/14 843/17 869/13 869/17 872/11	setting [4] 705/1 753/1	show [9] 608/23 634/12 658/6 672/1 779/10 799/7 800/5 800/5 827/9	

<p>S</p> <p>sleep [1] 719/9</p> <p>slide [2] 662/20 674/21</p> <p>slow [1] 704/14</p> <p>small [5] 620/19 632/21 643/21 715/23 742/22</p> <p>smart [1] 808/4</p> <p>smudged [1] 755/16</p> <p>social [4] 684/3 684/11 685/14 686/11</p> <p>socially [1] 821/16</p> <p>sold [2] 643/13 716/7</p> <p>sole [7] 738/20 739/13 739/19 740/3 740/13 740/14 740/18</p> <p>solicit [7] 754/10 755/4 755/4 759/1 759/3 759/8 764/5</p> <p>solicitation [1] 761/2</p> <p>solicited [2] 754/17 754/22</p> <p>soliciting [3] 754/13 758/23 790/24</p> <p>solicitors [2] 811/6 811/9</p> <p>solid [1] 649/14</p> <p>some-odd [1] 860/10</p> <p>somebody [9] 618/1 620/24 696/10 780/1 780/2 788/11 793/3 798/11 798/18</p> <p>somehow [3] 617/24 620/3 806/14</p> <p>someone [2] 690/5 690/17</p> <p>something [35] 607/11 618/1 627/14 649/20 650/1 691/10 692/1 692/10 702/11 703/16 707/10 719/17 722/19 723/20 726/6 731/20 747/17 748/12 748/16 748/23 749/6 784/15 785/2 794/12 798/8 804/10 807/17 813/3 815/16 816/10 821/3 825/19 846/24 847/6 851/15</p> <p>sometimes [6] 731/20 745/19 752/16 779/1 781/4 781/6</p> <p>somewhere [3] 632/3 633/20 783/20</p> <p>soon [3] 652/20 695/24 785/7</p> <p>sophisticated [5] 796/24 797/15 806/12 807/22 809/16</p> <p>sort [24] 616/4 654/20 703/13 705/8 710/15 718/1 719/3 719/20 719/21 723/18 727/12 727/23 728/20 759/2 763/15 763/22 773/2 773/21 774/17 777/19 780/2 792/22 802/1 813/3</p>	<p>sought [1] 683/23</p> <p>sounds [4] 630/6 636/11 641/12 668/23</p> <p>sources [2] 683/24 694/3</p> <p>sources/uses [1] 694/3</p> <p>space [1] 659/7</p> <p>spare [1] 646/1</p> <p>sparked [1] 629/10</p> <p>speak [14] 688/11 701/13 751/12 768/17 771/23 779/17 781/20 783/19 784/12 784/19 784/20 794/11 803/9 864/21</p> <p>speakers [3] 798/24 799/17 799/20</p> <p>speaking [2] 653/21 678/24</p> <p>special [6] 656/4 679/7 679/11 731/10 731/14 814/11</p> <p>specific [17] 637/21 651/20 691/17 692/11 693/1 703/1 704/19 726/24 746/10 746/15 793/10 848/13 854/9 855/1 855/5 856/13 862/11</p> <p>specifically [21] 620/2 623/15 630/14 632/10 633/10 637/10 690/22 691/19 692/15 692/18 692/19 692/24 696/10 700/2 702/18 722/10 753/7 755/5 852/7 854/5 857/6</p> <p>specifics [7] 638/8 720/9 754/24 756/5 757/6 763/20 765/13</p> <p>speculated [1] 618/1</p> <p>speed [2] 707/18 718/24</p> <p>spend [9] 656/6 656/11 658/11 671/19 673/14 719/5 779/23 804/8 804/9</p> <p>spending [2] 656/14 797/8</p> <p>spent [2] 727/20 804/10</p> <p>spine [1] 612/13</p> <p>spoke [8] 697/12 811/20 819/15 819/18 819/21 836/15 856/6 863/13</p> <p>spoken [1] 704/8</p> <p>sponsors [1] 659/11</p> <p>spread [1] 651/7</p> <p>squeeze [3] 606/14 607/5 607/16</p> <p>squeeze-out [1] 607/16</p> <p>squeezed [1] 610/7</p> <p>SRINIVAS [1] 604/10</p> <p>St [1] 603/13</p> <p>stabilize [1] 651/10</p> <p>staff [1] 719/6</p>	<p>staffing [1] 741/23</p> <p>stage [1] 723/22</p> <p>stale [2] 645/21 645/21</p> <p>stance [1] 726/2</p> <p>stand [4] 605/13 660/1 772/9 772/9</p> <p>standards [1] 720/16</p> <p>standing [1] 692/23</p> <p>standpoint [1] 869/15</p> <p>start [16] 629/8 629/12 652/21 656/13 656/14 657/7 657/8 657/10 669/22 686/17 721/7 768/15 768/19 834/22 867/11 874/4</p> <p>started [12] 635/9 643/3 645/12 646/22 652/15 652/21 705/13 709/14 715/22 807/3 818/3 844/7</p> <p>starting [6] 702/7 703/14 705/9 719/8 733/6 846/2</p> <p>starts [5] 654/5 759/15 762/1 768/8 768/12</p> <p>state [10] 603/1 640/7 642/20 642/24 684/8 685/12 686/8 776/5 795/14 814/15</p> <p>stated [1] 824/19</p> <p>statement [6] 666/23 667/7 693/18 794/23 825/3 825/23</p> <p>states [4] 685/11 686/8 688/5 839/20</p> <p>stay [2] 619/5 717/10</p> <p>stayed [2] 646/24 784/24</p> <p>staying [1] 717/8</p> <p>steep [1] 656/13</p> <p>step [4] 670/3 719/20 727/12 781/10</p> <p>stepped [2] 727/20 842/12</p> <p>steps [1] 694/3</p> <p>stick [4] 656/12 677/9 765/11 776/7</p> <p>still [14] 614/17 618/11 626/14 630/7 635/20 651/19 652/10 657/1 662/9 672/2 718/6 748/24 756/22 815/19</p> <p>Stinson [2] 720/23 721/5</p> <p>stipulated [1] 779/7</p> <p>stipulation [2] 825/9 825/20</p> <p>stock [37] 619/3 628/2 647/21 650/8 650/16 653/2 765/5 766/2 766/12 772/23 772/24 773/1 774/5 774/23 785/20 786/4 793/4 797/2 797/7 799/5 801/11 801/20 802/2 802/7 802/8 802/8 803/7 803/7 803/12 803/13 808/9 808/10 808/11 808/16 808/21</p>	<p>842/9 877/11</p> <p>stockholder [4] 708/19 708/21 809/18 811/14</p> <p>stockholders [10] 650/2 670/16 708/20 754/17 754/22 758/23 759/9 760/2 761/19 763/8</p> <p>stocks [2] 763/1 830/10</p> <p>stored [1] 684/1</p> <p>story [3] 654/21 805/5 805/24</p> <p>storyline [1] 652/22</p> <p>straight [1] 796/5</p> <p>strategic [7] 614/6 614/11 616/10 616/22 659/4 659/6 659/8</p> <p>strategy [1] 669/21</p> <p>streaming [1] 641/22</p> <p>streamline [1] 648/17</p> <p>street [3] 603/9 603/22 655/14</p> <p>strong [1] 719/10</p> <p>structure [8] 616/5 633/8 727/15 728/4 814/20 818/19 868/12 870/9</p> <p>structured [1] 741/6</p> <p>stub [3] 614/15 616/23 617/21</p> <p>studies [1] 671/8</p> <p>stuff [8] 779/2 779/3 781/4 785/24 789/24 792/21 792/21 803/24</p> <p>stupid [1] 804/4</p> <p>stylized [1] 746/20</p> <p>subject [11] 680/9 684/17 692/8 693/18 702/14 704/3 710/12 714/23 746/13 796/13 841/10</p> <p>subjects [2] 709/23 787/2</p> <p>submit [2] 864/11 866/8</p> <p>subsequent [3] 609/16 610/2 615/12</p> <p>subsequently [2] 693/10 756/10</p> <p>subsets [1] 683/22</p> <p>subsidiaries [4] 732/18 741/5 741/8 742/3</p> <p>subsidiary [3] 740/22 870/10 876/5</p> <p>substance [5] 721/10 721/24 722/1 722/7 725/15</p> <p>substantially [2] 628/2 650/20</p> <p>substantive [1] 725/7</p> <p>succeed [1] 810/9</p> <p>successful [2] 618/21 645/13</p> <p>such [8] 691/9 713/3 725/22 726/5 726/17 744/2 753/11 777/13</p> <p>suggest [3] 611/20</p>	<p>766/21 794/20</p> <p>suggesting [4] 627/18 628/24 669/6 771/21</p> <p>suggests [1] 737/20</p> <p>suing [1] 786/9</p> <p>Suit [1] 862/1</p> <p>suite [5] 603/22 649/9 650/14 670/5 671/15</p> <p>sum [3] 647/19 650/7 828/3</p> <p>summer [2] 650/9 686/16</p> <p>SungHwan [1] 791/5</p> <p>Sunoco [1] 643/3</p> <p>supplemental [2] 684/21 685/7</p> <p>supplemented [3] 659/21 685/19 686/5</p> <p>supply [1] 716/22</p> <p>support [2] 772/1 869/14</p> <p>suppose [2] 678/11 691/10</p> <p>supposed [2] 796/1 816/9</p> <p>sure [66] 606/23 608/22 609/12 610/16 617/24 620/3 621/15 623/22 623/23 624/5 629/11 630/22 633/19 634/11 636/16 640/5 643/1 645/1 645/6 645/8 648/12 648/20 650/13 659/23 664/19 694/20 697/4 698/23 699/2 700/1 701/13 704/16 710/14 715/16 715/21 719/14 724/23 730/11 741/17 741/19 748/3 750/22 751/14 752/12 753/24 754/20 755/13 755/17 757/12 757/20 759/5 767/2 767/12 768/2 774/1 783/5 788/16 791/8 796/20 819/9 819/22 835/15 835/24 837/23 845/7 865/4</p> <p>surmise [2] 691/6 692/20</p> <p>surprise [1] 621/4</p> <p>surprised [1] 764/20</p> <p>Susan [2] 840/12 841/15</p> <p>Susan M [1] 840/12</p> <p>switch [2] 636/17 709/23</p> <p>switched [1] 672/14</p> <p>synergy [1] 649/22</p> <p>system [2] 645/8 651/1</p>
			<p>T</p> <p>tab [4] 755/10 760/13 779/6 825/18</p> <p>table [6] 674/24 702/20 703/14 705/1 772/6 843/9</p> <p>take [44] 641/6 641/23 642/4 642/5 649/21</p>	

T	814/2 818/15 843/4 877/19	679/12 692/12 749/9 750/22 751/21 789/10 806/16 852/4	774/18 775/13 775/20 778/5 780/18 785/16 786/5 790/10 792/7 792/20 802/22 807/15 825/12	711/8 712/23
take... [39] 657/9 658/6 661/22 665/20 667/16 670/13 675/10 689/7 691/9 691/22 716/4 726/23 738/22 749/19 753/15 756/14 767/6 774/5 774/6 774/17 780/23 781/6 785/11 790/21 790/21 790/22 790/22 790/23 790/24 792/13 796/14 796/16 796/21 800/24 810/6 810/16 815/23 853/3 871/11	telling [11] 627/5 704/23 729/2 761/3 761/19 762/14 763/8 764/14 764/14 796/6 805/19	Texas [3] 643/2 715/24 716/4	things [25] 608/9 613/18 635/11 640/10 646/9 648/21 649/16 649/22 664/13 669/5 678/7 714/17 723/17 727/13 727/23 756/13 790/13 804/22 807/11 812/23 825/6 830/11 836/13 841/17 862/4	Tisch [1] 821/16 Tisches [1] 821/15 title [5] 647/4 718/9 718/11 718/21 867/23
takeaway [1] 625/24	temperatures [1] 652/4	text [17] 684/3 684/11 685/14 686/11 689/13 690/1 693/10 693/23 694/2 694/24 695/3 695/10 698/8 708/6 811/19 818/9 819/4	third [6] 654/24 681/8 735/12 768/12 825/22 850/8	today [8] 651/16 652/10 662/4 671/20 692/23 714/18 798/15 824/5
taken [5] 642/7 665/24 749/23 810/19 878/19	template [1] 815/24	thank [36] 615/7 624/22 640/14 641/19 642/8 642/10 642/13 662/12 662/13 665/22 666/3 669/14 669/15 672/21 679/24 681/15 681/18 694/21 715/5 715/6 715/9 723/15 729/18 745/15 746/1 749/14 749/21 750/7 772/11 773/13 810/18 821/24 822/5 832/14 867/4 879/21	thirds [2] 686/6 832/19	toe [1] 723/23
takes [1] 738/20	ten [2] 671/23 800/23	Thanks [1] 739/9	this [367]	together [9] 644/4 651/13 670/22 673/13 674/21 678/8 686/21 734/15 800/19
taking [7] 634/18 666/19 702/22 726/16 756/6 767/5 785/19	tend [2] 645/22 766/20	Thanksgiving [3] 695/19 812/4 812/6	THOMAS [1] 604/5	told [16] 610/5 635/5 635/23 660/21 707/15 780/21 793/8 793/9 807/12 815/7 818/20 820/20 844/15 844/20 848/11 848/16
talk [20] 608/8 616/9 652/18 659/10 661/16 662/2 662/7 662/8 698/18 702/20 704/17 708/15 723/18 742/10 744/13 767/15 781/22 819/16 826/1 869/10	tender [73] 750/24 751/3 753/6 753/10 753/14 753/18 754/17 754/18 754/22 754/23 755/3 755/4 756/2 756/9 756/12 757/2 757/4 758/23 759/11 759/11 760/2 760/2 761/3 761/3 761/12 761/20 761/20 762/12 762/12 763/7 763/9 763/10 763/17 764/14 764/15 764/16 765/7 766/6 766/8 766/9 766/14 766/16 767/6 771/2 773/18 774/1 774/12 775/17 781/9 788/12 793/7 793/7 793/9 799/9 799/10 807/24 807/24 808/3 808/5 808/6 808/7 808/21 809/20 809/20 809/20 844/16 844/21 845/1 845/16 846/15 846/15 847/17 848/10	their [41] 610/1 611/19 613/18 617/15 636/5 650/5 650/7 658/9 658/10 658/10 658/10 669/9 669/10 677/16 701/15 716/1 716/6 727/15 745/2 745/21 766/22 768/10 769/1 769/22 771/11 772/17 772/24 773/1 774/5 774/6 774/11 781/6 781/7 793/1 795/15 796/23 797/3 798/3 798/22 854/6 866/19	Thornton [3] 694/8 701/9 708/8	tomorrow [4] 655/15 695/21 879/13 879/22
talked [9] 669/21 677/14 703/12 704/6 704/7 717/6 725/11 727/11 748/1	tendered [11] 799/12 804/12 808/10 845/22 845/23 846/14 846/19 846/23 847/11 847/18 848/20	theirs [1] 732/23	though [7] 635/16 672/12 747/4 764/10 772/17 798/6 846/19	tonight [1] 695/21
talking [12] 612/21 655/6 655/13 669/11 672/8 695/6 725/13 747/9 755/23 764/8 804/16 842/11	tendering [16] 763/13 766/2 766/4 766/12 766/16 766/19 767/2 767/9 768/1 785/13 793/10 793/11 845/17 846/5 846/8 846/11	themselves [4] 720/16 745/19 795/14 798/13	thought [19] 692/5 697/19 701/14 747/19 759/1 761/16 763/24 764/22 766/5 766/6 779/21 789/18 793/14 801/9 801/9 802/18 804/7 815/22 839/16	too [6] 750/15 757/9 765/5 812/21 812/23 821/12
talks [10] 672/12 693/16 731/5 732/1 733/7 733/15 733/22 735/7 862/4 863/5	term [2] 672/13 733/16	then-current [2] 783/14 783/23	three [19] 619/2 630/4 646/21 647/1 647/5 656/10 660/19 671/19 673/2 687/23 718/21 782/4 818/10 820/20 826/12 827/22 858/12 877/8 878/5	took [10] 623/4 625/17 675/16 701/15 705/4 707/22 716/18 756/9 796/16 857/21
tangentially [1] 821/21	terms [15] 667/18 703/5 732/24 734/16 751/6 751/17 752/6 753/21 754/3 754/7 766/11 772/19 774/17 784/2 786/4	thereafter [2] 713/17 780/12	through [28] 608/11 617/15 625/20 627/12 629/17 652/12 683/14 694/3 694/15 700/1 700/16 703/7 713/11 716/4 719/7 723/10 728/8 758/12 760/18 767/17 796/13 799/24 807/10 807/17 808/3 847/1 853/14 863/1	top [27] 613/23 618/14 619/13 634/8 641/2 651/1 651/23 654/24 666/14 674/24 676/11 683/15 707/5 729/8 729/17 730/12 734/9 734/13 736/19 739/8 758/18 760/20 777/1 826/5 841/7 858/8 861/16
tax [3] 694/4 797/2 797/3	terrific [1] 775/3	thereto [2] 688/18 726/17	throughout [2] 661/19 723/7	topic [4] 620/5 702/4 707/1 727/1
team [13] 641/23 674/20 690/6 690/11 690/17 694/4 696/10 719/6 784/14 784/18 784/21 784/23 811/13	terribly [1] 775/3	they'd [2] 668/15 718/5 they'll [2] 785/6 798/16 they're [27] 607/13 610/23 612/18 617/14 656/9 656/10 663/6 687/9 687/10 701/22 702/11 708/3 727/17 731/19 738/22 741/6 745/4 745/5 748/12 764/22 764/23 773/6 781/3 799/7 806/9 874/14 875/19	thus [1] 614/6 tie [1] 677/24 tied [2] 610/21 610/22 Tier [2] 643/20 716/11 ties [1] 611/22 timely [2] 711/17 745/8 times [9] 633/5 633/7 645/13 676/2 719/3 785/5 812/24 820/20 854/13	total [11] 608/15 656/8 670/21 672/16 672/17 672/24 675/12 678/4 717/12 775/24 827/18 totally [3] 635/12 803/3 808/2
teams [1] 788/11	test [1] 673/8	thereby [1] 781/12	timing [6] 658/19 662/6 668/22 720/18 746/10 746/15	towards [6] 697/2 825/23 826/11 841/7 850/15 872/9
teasing [1] 677/16	testified [14] 605/13 611/4 621/2 622/6 677/11 682/4 690/21 691/16 750/9 752/1 769/19 822/11 824/4 848/9	thereto [2] 688/18 726/17	tiny [4] 711/3 711/8	TOWNSEND [1] 604/3
technical [5] 605/2 709/22 722/24 723/2 853/14	testify [2] 692/20 723/4	thing [24] 646/12 656/1 670/12 679/9 703/6 706/24 731/22 749/4 758/12 767/20 769/17		TPH [1] 622/10
technicians [1] 641/21	testifying [1] 692/9			Tracy [6] 676/18 693/23 694/16 698/8 725/9 732/1
telephone [1] 686/11	testimony [12] 669/22 671/1 671/18 672/9			trade [8] 618/22 619/3 620/16 743/17 743/17 744/19 852/1 852/17
tell [36] 617/5 619/8 647/12 649/3 658/14 679/9 679/14 679/19 680/8 682/23 752/17 755/6 773/16 776/5 776/6 777/20 778/20 785/1 785/6 785/9 788/2 788/17 792/15 793/6 793/7 795/24 796/4 796/17 796/19 797/9 799/8 806/19				traded [4] 616/6 619/17 741/2 742/8
				trades [1] 745/20
				trading [6] 619/24 743/6 743/10 743/12 743/21 849/21
				traditional [1] 683/24
				trailing [8] 625/13 626/16 782/19 783/1

<p>T</p> <p>trailing... [4] 783/15 783/17 784/5 784/8</p> <p>transaction [24] 697/13 698/1 700/10 704/5 707/15 707/17 709/10 709/18 712/7 712/20 714/4 720/11 726/14 731/19 732/21 744/17 746/9 746/11 748/18 770/5 794/7 811/21 817/22 820/6</p> <p>transactions [17] 697/8 711/4 711/22 718/1 744/4 744/11 748/14 781/10 813/1 856/3 856/23 857/16 857/24 858/5 859/1 859/4 859/5</p> <p>transcript [9] 603/17 615/3 615/12 618/11 653/16 666/8 671/22 678/21 846/2</p> <p>transfers [5] 874/11 874/12 874/14 874/17 874/23</p> <p>transition [2] 717/8 787/1</p> <p>transitioned [1] 717/11</p> <p>transpired [2] 704/12 714/10</p> <p>traveled [1] 879/2</p> <p>treasury [1] 874/15</p> <p>tremendous [3] 707/21 714/16 749/2</p> <p>tremendously [1] 784/24</p> <p>trial [3] 603/17 661/13 879/8</p> <p>tried [5] 723/23 759/2 810/8 877/18 877/23</p> <p>trigger [1] 708/16</p> <p>triggering [1] 781/12</p> <p>triggers [1] 647/22</p> <p>true [7] 634/22 634/23 666/23 667/7 684/18 788/9 841/16</p> <p>trust [54] 713/2 713/5 748/14 829/2 829/5 830/1 831/10 831/13 832/4 832/8 832/15 832/17 835/11 835/13 835/16 836/5 836/6 836/10 838/15 838/18 838/22 839/7 839/13 840/9 842/4 842/21 844/3 844/8 844/11 844/14 844/24 848/10 849/14 850/13 852/1 852/22 856/4 856/24 857/16 858/1 859/5 860/13 862/5 862/10 863/6 877/20 877/20 877/22 877/22 878/9 878/10 878/11 878/14 878/15</p> <p>trustee [6] 713/3 829/4 829/24 830/3 830/20</p>	<p>831/5</p> <p>Trustee's [1] 829/21</p> <p>trustees [9] 829/12 829/16 830/4 830/24 831/3 831/17 832/20 832/24 838/19</p> <p>try [9] 751/12 765/21 766/1 772/13 789/15 825/6 851/6 853/8 877/14</p> <p>trying [16] 626/10 631/21 636/4 645/14 645/14 663/13 702/9 722/23 756/24 761/7 767/10 773/7 774/4 800/2 800/6 810/6</p> <p>TTEE [1] 831/24</p> <p>Tudor [10] 618/15 619/18 621/19 627/22 631/7 640/21 665/15 805/5 805/24 806/3</p> <p>turned [3] 766/6 780/9 790/11</p> <p>turning [1] 746/17</p> <p>twice [1] 833/9</p> <p>twist [1] 663/16</p> <p>two-thirds [2] 686/6 832/19</p> <p>type [4] 613/15 703/6 749/4 823/17</p> <p>typically [8] 630/1 630/2 645/19 656/10 656/16 667/17 702/17 703/18</p> <hr/> <p>U</p> <p>UAN [7] 647/4 647/7 670/6 835/4 849/22 850/17 877/12</p> <p>Uh [2] 690/3 729/5</p> <p>Uh-huh [2] 690/3 729/5</p> <p>ultimate [5] 650/8 724/20 725/3 730/12 744/18</p> <p>ultimately [2] 781/11 847/18</p> <p>unanimously [1] 689/7</p> <p>unbelievable [7] 641/3 806/1 806/2 806/7 806/15 807/18 807/20</p> <p>unclear [1] 695/15</p> <p>uncommon [1] 731/20</p> <p>under [20] 683/24 707/11 709/18 711/4 726/9 731/7 735/6 735/13 741/1 741/1 747/11 751/10 772/19 789/9 817/20 830/2 838/10 852/22 873/10 875/10</p> <p>undergrad [1] 715/16</p> <p>underline [1] 762/17</p> <p>underlined [1] 606/13</p> <p>underlying [1] 873/20</p> <p>underneath [4] 675/9 817/2 817/8 817/10</p> <p>undersigned [1] 841/10</p> <p>undersigned's [1]</p>	<p>841/16</p> <p>understand [45] 605/2 606/17 607/4 607/22 609/11 609/13 621/7 628/23 642/11 676/13 684/10 685/13 686/10 696/12 700/17 705/2 727/16 738/14 744/22 745/18 756/24 768/16 770/23 773/4 773/15 779/3 779/15 782/9 783/4 786/8 786/16 786/17 786/19 787/5 800/15 817/1 819/11 819/19 821/5 834/12 842/7 842/18 842/22 855/4 869/5</p> <p>understanding [11] 707/14 720/24 721/5 735/21 738/17 834/16 837/24 848/19 854/18 854/21 859/21</p> <p>understood [6] 627/17 821/13 824/18 838/21 841/22 842/13</p> <p>undervalued [3] 668/4 766/7 766/9</p> <p>unexpectedly [1] 720/10</p> <p>unfair [1] 707/2</p> <p>unique [1] 680/21</p> <p>unison [1] 702/12</p> <p>unit [10] 646/2 651/21 652/6 654/10 667/18 668/1 668/12 718/15 773/18 773/19</p> <p>United [1] 839/20</p> <p>unitholder [3] 603/3 609/24 670/15</p> <p>unitholders [15] 609/9 617/16 617/19 650/2 670/20 677/2 678/9 724/6 724/16 724/18 765/22 766/21 767/4 769/22 774/13</p> <p>units [90] 609/15 610/2 614/5 618/22 619/2 619/17 620/1 620/10 620/16 620/19 622/19 622/20 627/14 628/2 628/16 628/20 632/8 635/3 646/8 650/8 651/18 654/15 668/15 711/14 711/17 713/4 732/10 732/17 732/22 732/24 735/22 736/12 737/5 765/21 766/20 766/22 767/3 767/3 768/1 768/10 769/1 769/7 769/21 769/22 770/13 771/2 771/11 772/17 772/18 774/11 775/24 782/17 799/18 800/13 801/5 814/18 818/17 820/18 838/11 838/22 838/24 839/9 840/9 841/23 842/4 842/9 842/20 843/24 844/3 844/8 844/12</p>	<p>846/6 848/19 856/4 856/16 856/24 858/1 858/9 859/2 859/15 860/10 860/12 860/18 861/10 862/5 864/2 870/11 877/7 877/10 877/11</p> <p>University [3] 642/21 715/17 715/18</p> <p>unsophisticated [1] 786/14</p> <p>unsure [1] 676/13</p> <p>unusual [1] 616/4</p> <p>upcoming [4] 630/3 657/4 657/12 700/19</p> <p>update [6] 614/4 614/5 614/6 631/16 633/22 666/10</p> <p>updated [1] 660/22</p> <p>upper [1] 658/1</p> <p>use [9] 632/22 645/4 661/15 662/4 677/7 703/5 703/18 789/10 789/11</p> <p>used [8] 649/16 660/6 670/14 678/13 684/10 685/14 686/10 878/1</p> <p>uses [1] 694/3</p> <p>using [2] 672/5 815/23</p> <p>usual [1] 772/9</p> <p>usually [4] 645/4 650/4 658/6 798/17</p> <p>uttered [1] 702/18</p> <p>uttering [1] 702/18</p> <hr/> <p>V</p> <p>Vaguely [1] 781/14</p> <p>Valero [1] 643/14</p> <p>valuable [4] 775/6 785/18 814/21 818/20</p> <p>valuation [2] 650/8 694/14</p> <p>value [11] 653/3 663/16 670/1 670/4 670/8 670/13 670/22 763/1 798/23 873/3 875/21</p> <p>values [2] 645/6 645/9</p> <p>variable [3] 644/15 644/18 718/2</p> <p>variable-distribution [1] 644/18</p> <p>various [8] 643/5 646/9 646/14 675/11 683/13 688/17 718/10 872/15</p> <p>vastly [1] 800/12</p> <p>venture [1] 643/10</p> <p>verification [5] 682/24 684/15 855/2 855/5 860/18</p> <p>verified [3] 683/2 685/3 685/23</p> <p>verify [1] 682/14</p> <p>version [3] 660/13 660/13 682/24</p> <p>via [1] 694/2</p> <p>vice [10] 643/6 682/9 716/19 741/13 822/21 826/13 843/16 867/24</p>	<p>869/12 872/10</p> <p>video [33] 623/19 624/12 637/14 637/22 638/15 638/24 755/20 757/11 787/13 788/19 812/14 813/5 813/23 846/3 846/17 847/15 847/20 848/8 848/22 851/5 851/19 853/7 853/10 853/17 855/10 856/20 857/9 862/15 862/23 863/3 863/15 866/7 866/22</p> <p>view [5] 607/18 649/5 649/7 657/1 814/17</p> <p>viewed [2] 624/23 649/15</p> <p>views [8] 613/18 691/22 722/12 722/15 722/17 722/19 724/3 759/10</p> <p>Vinson [10] 636/13 696/8 700/24 708/8 727/6 727/10 728/5 728/11 728/18 733/12</p> <p>violation [1] 744/4</p> <p>virtually [1] 658/11</p> <p>vision [2] 649/19 729/11</p> <p>visiting [1] 844/18</p> <p>VOLUME [2] 603/17 612/22</p> <p>vote [4] 703/20 726/23 836/9 836/12</p> <p>votes [2] 702/23 703/21</p> <p>voting [2] 830/15 839/4</p> <hr/> <p>W</p> <p>Wachtell [3] 756/11 757/2 764/13</p> <p>wait [4] 660/1 761/10 771/16 803/13</p> <p>waive [1] 865/22</p> <p>wake [1] 668/5</p> <p>WALES [8] 604/4 746/11 822/16 852/5 865/3 866/4 868/3 878/12</p> <p>walk [2] 719/12 723/10</p> <p>walking [1] 694/3</p> <p>Walter [19] 605/21 833/24 834/2 834/23 835/8 835/13 836/15 838/3 839/16 841/3 841/15 844/7 844/15 844/20 844/24 845/17 846/11 848/15 876/20</p> <p>wanted [36] 609/14 610/1 612/3 632/7 648/11 697/24 698/1 700/18 701/5 732/21 763/22 764/2 764/6 764/12 769/17 771/18 774/1 774/19 774/20 774/21 784/3 785/19 792/13 803/9 808/18 808/18 820/5 821/11 835/15 835/19 835/24</p>
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<p>W</p> <p>wanted... [5] 844/11 844/13 845/16 848/10 878/22</p> <p>wants [12] 617/13 617/14 648/15 695/20 695/23 697/13 704/5 747/18 771/17 798/11 798/18 811/21</p> <p>warehouse [2] 651/17 651/17</p> <p>warned [1] 690/5</p> <p>waste [1] 774/8</p> <p>wasting [1] 775/12</p> <p>way [52] 618/1 618/7 620/3 643/6 651/3 651/3 652/12 653/1 653/3 657/21 658/22 673/24 677/2 686/6 704/10 727/3 734/6 747/20 760/16 764/12 765/11 766/13 767/21 771/4 771/8 773/23 774/21 778/9 781/6 789/14 796/1 796/6 799/5 799/8 799/12 800/1 801/9 801/10 801/12 801/12 801/20 802/13 802/14 803/14 803/18 807/4 810/10 825/8 841/1 851/7 853/9 866/1</p> <p>ways [6] 648/15 653/1 656/18 669/24 677/12 759/5</p> <p>WCS [4] 650/19 654/6 654/13 654/16</p> <p>we'd [4] 679/21 702/4 775/8 775/9</p> <p>we'll [22] 605/6 642/2 653/6 653/8 654/23 660/10 662/1 663/20 665/22 720/3 729/7 749/19 749/20 749/21 757/12 757/19 765/10 774/22 775/10 869/9 871/14 876/10</p> <p>we've [11] 661/23 703/12 704/6 704/6 705/3 723/23 740/17 759/7 767/17 775/7 799/22</p> <p>Wednesday [1] 603/10</p> <p>week [7] 622/21 628/3 628/21 636/6 636/12 662/1 720/10</p> <p>weekend [2] 812/4 812/6</p> <p>weeks [2] 627/4 630/4</p> <p>weighted [1] 620/18</p> <p>went [23] 625/20 643/9 643/13 643/15 643/20 644/4 645/24 646/5 648/5 764/3 776/4 790/17 793/18 798/4 801/11 802/2 803/4 804/6 807/2 807/4 807/10 807/21 808/3</p>	<p>weren't [13] 661/7 775/16 778/22 780/11 780/13 780/14 780/17 782/7 790/23 846/19 846/21 846/22 847/17</p> <p>Western [10] 643/21 643/23 644/1 644/15 657/18 657/18 716/5 716/14 716/16 716/24</p> <p>what's [23] 606/2 613/6 642/1 657/15 663/14 674/5 674/11 676/1 676/10 676/23 686/22 703/2 741/20 768/6 775/21 781/17 794/15 809/23 819/6 819/23 822/19 825/9 828/8</p> <p>whatever [6] 663/13 705/11 758/13 815/10 835/20 852/16</p> <p>whatsoever [3] 777/21 785/23 803/15</p> <p>when [77] 620/21 620/23 622/11 623/8 623/20 626/10 633/6 633/10 633/15 639/20 643/18 644/12 644/15 645/24 646/5 646/12 646/18 646/20 646/22 647/10 648/5 652/11 652/14 655/5 656/9 673/13 674/17 675/10 678/24 686/17 696/12 701/12 702/10 702/22 703/3 703/20 705/24 708/15 715/2 717/15 718/1 718/4 718/8 723/19 727/1 727/11 727/12 731/18 738/22 752/18 755/3 759/1 760/1 763/12 766/16 772/7 781/4 797/6 798/10 798/18 801/16 802/7 810/7 812/8 813/14 815/17 823/1 834/11 836/4 843/5 847/9 851/24 855/5 867/11 876/12 878/11 878/14</p> <p>whenever [1] 648/13</p> <p>whereas [9] 658/12 703/1 733/15 733/21 734/19 734/20 735/6 735/12 735/13</p> <p>whether [32] 609/16 610/2 633/12 634/12 634/14 662/7 663/12 678/18 690/24 691/2 691/9 701/21 709/17 722/11 724/9 724/13 724/21 725/6 744/19 781/9 782/2 787/24 788/21 796/13 812/17 817/16 820/11 844/8 844/24 846/4 877/10 878/4</p> <p>while [5] 617/20 645/22 654/7 727/10</p>	<p>741/2</p> <p>whiplashed [1] 808/3</p> <p>Whitney [1] 791/7</p> <p>who's [3] 727/14 743/13 834/2</p> <p>whole [16] 607/21 646/16 661/10 670/5 722/21 758/12 786/17 793/17 801/1 801/15 802/4 802/19 802/22 803/21 804/15 807/15</p> <p>wholly [3] 734/22 740/22 741/7</p> <p>whom [1] 717/5</p> <p>whose [2] 648/2 743/11</p> <p>wild [1] 807/9</p> <p>Williams [2] 603/9 603/22</p> <p>willing [9] 661/4 802/22 803/16 803/17 804/9 804/9 808/15 808/16 808/17</p> <p>Wilmington [2] 603/10 603/23</p> <p>win [3] 681/19 762/16 762/16</p> <p>win-win [1] 762/16</p> <p>wire [4] 874/11 874/12 874/17 874/22</p> <p>wishes [3] 744/10 784/18 784/22</p> <p>withdrawn [4] 851/2 853/11 858/16 866/12</p> <p>within [9] 630/8 647/20 720/9 741/7 793/1 798/2 809/19 876/1 878/8</p> <p>without [9] 700/10 713/15 722/2 743/4 748/9 767/18 835/12 854/23 865/1</p> <p>witness [22] 605/18 608/4 612/11 612/16 681/19 681/20 681/22 684/9 685/12 686/9 720/4 723/1 749/22 750/4 750/13 789/5 789/8 821/23 822/6 825/14 845/3 854/21</p> <p>WITNESSES [1] 880/2</p> <p>WNRL [3] 716/9 717/21 717/23</p> <p>won't [1] 658/8</p> <p>word [7] 645/20 746/18 747/7 747/11 748/1 752/8 835/22</p> <p>worded [2] 773/23 777/20</p> <p>wording [2] 773/24 774/1</p> <p>words [16] 609/10 609/18 609/19 632/4 693/2 702/18 704/20 766/3 778/6 780/10 785/2 800/17 803/1 808/8 821/12 873/18</p> <p>work [22] 605/6 641/13 648/17 651/15 661/13</p>	<p>707/22 714/17 715/20 717/17 727/10 727/22 728/3 728/9 749/2 757/15 761/9 762/24 823/17 825/8 874/5 874/12 876/1</p> <p>worked [10] 643/2 716/1 717/20 728/5 728/13 791/20 791/23 803/18 803/19 803/20</p> <p>working [10] 641/8 646/15 650/14 655/7 715/23 727/6 727/14 727/17 794/2 867/11</p> <p>works [4] 645/16 741/22 785/15 800/1</p> <p>world [1] 806/12</p> <p>worried [2] 618/21 719/17</p> <p>worry [1] 766/15</p> <p>worse [1] 808/24</p> <p>worth [5] 786/13 793/12 793/14 793/16 804/5</p> <p>wouldn't [7] 619/19 707/3 720/17 751/19 783/23 798/6 808/6</p> <p>write [11] 694/2 697/12 698/17 703/10 760/3 764/4 778/3 778/5 779/2 779/3 785/24</p> <p>writing [6] 695/19 759/3 759/8 778/6 779/4 781/7</p> <p>written [1] 693/4</p> <p>wrong [15] 641/16 793/13 793/14 793/15 798/9 799/12 800/23 800/24 801/10 807/12 808/17 809/22 853/12 871/22 879/3</p> <p>wrongful [1] 767/11</p> <p>wrongly [2] 766/6 785/17</p> <p>wrote [3] 689/18 786/1 805/7</p> <p>Wynnewood [2] 651/20 654/20</p> <p>Wynnwood [4] 671/17 741/10 741/11 870/21</p>	<p>yet [3] 672/14 733/24 815/11</p> <p>yield [5] 667/10 667/16 667/20 668/6 668/12</p> <p>yielding [2] 668/11 668/14</p> <p>yields [1] 658/10</p> <p>York [1] 604/6</p> <p>you know [1] 821/8</p> <p>you'd [3] 754/19 772/5 788/3</p> <p>you'll [3] 683/5 703/7 755/19</p> <p>young [1] 878/17</p> <p>yours [1] 785/21</p> <p>yuh [1] 698/18</p> <hr/> <p>Z</p> <p>zoom [5] 605/3 605/4 641/21 759/16 822/17</p>
		<p>Y</p> <p>years [19] 643/3 643/5 643/12 643/24 644/6 644/7 644/9 644/20 656/10 671/19 671/23 673/3 676/10 728/14 767/18 767/18 794/14 794/22 828/13</p> <p>yellow [1] 816/10</p> <p>Yep [7] 630/18 653/8 666/7 690/14 699/2 711/12 734/5</p> <p>yes-no [2] 709/24 710/15</p> <p>yes-or-no [4] 730/14 811/5 811/12 865/7</p> <p>yesterday [2] 609/4 810/9</p>		