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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU: TRIAL TERM PART 25

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STATE FARM MUTUAL AUTOMOBILE INSURANCE

COMPANY,

Index No.  
606797/2017

Plaintiff,

-against-

M.V.B. COLLISION INC., d/b/a MID ISLAND  
COLLISION,

Defendant.

- - - - - X

Nassau Supreme Court  
Mineola, New York 11501  
December 12, 2018

B E F O R E: HONORABLE JACK L. LIBERT  
Justice of the Supreme Court

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

RUBIN, FIORELLA & FRIEDMAN, LLP  
Attorneys for Plaintiff  
630 Third Avenue  
New York, New York 10017  
BY: MICHAEL E. TOMSKY, ESQ.  
KYEKO M. STEWART, ESQ.

BARKET EPSTEIN KEARON ALDEA & LOTURCO LLP  
Attorneys for Defendant  
666 Old Country Road, Suite 700  
Garden City, New York 11530  
BY: ALEXANDER KLEIN, ESQ.  
KEVIN KEARON, ESQ.

PATRICIA HOLSGROVE, RPR  
OFFICIAL COURT REPORTER

1 COURT CLERK: All rise. Judge Libert  
2 presiding. Be seated and come to order.

3 (Whereupon, Court Exhibits I and II were  
4 marked in evidence.)

5 THE COURT: I guess we're taking a witness out  
6 of order now.

7 MR. TOMSKY: Right now we're still doing the  
8 cross.

9 THE COURT: You haven't finished the cross?

10 MR. TOMSKY: And then we're going to take an  
11 expert witness in order and then in the afternoon  
12 probably do a couple of my witnesses technically out of  
13 order.

14 COURT OFFICER: And you're reminded you're  
15 still under oath.

16 THE WITNESS: Good morning.

17 THE COURT: Okay, you may proceed.

18 MR. TOMSKY: Thank you, your Honor.

19 CROSS EXAMINATION

20 BY MR. TOMSKY:

21 Q. Welcome back, sir. How are you doing today?

22 A. Very good. Thank you.

23 Q. So I'm showing you what has been pre-marked as I  
24 guess Plaintiff's Exhibit-11. Do you recognize this  
25 document?

1           A.    Yes.

2           Q.    I want to talk about this for a second.  Am I  
3 correct in saying that this is a letter signed by Courtney  
4 Pope with Mid Island Collision concerning possible remedies  
5 if an agreement was not authorized between State Farm and Mid  
6 Island?

7           A.    Just so I have it clear, can you repeat that?

8           Q.    Sure.

9                       MR. TOMSKY:  Could you read it back?

10                      (The requested portion was read.)

11          A.    Yes.

12                      THE COURT:  I'm sorry, just off for a minute.

13                      (A discussion was held off the record.)

14          Q.    So in the second paragraph of this exhibit starting  
15 with "it is possible," I just want to direct your attention  
16 to that section, second paragraph.  The first part of the  
17 second paragraph is "if you have authorized."

18          A.    Okay.

19          Q.    But I'm going to the next sentence, so it's -- in  
20 this letter, it says, "it is possible that the insurance  
21 company estimate might differ from your estimate," correct?

22          A.    Yes.

23          Q.    And that there are several steps that you will take  
24 on behalf of Ms. Pope if she signs this document, correct?

25                      MR. KLEIN:  Objection as to the description of

1           what's on this document.

2                       MR. TOMSKY: It literally says "there are  
3           several steps we will take on your behalf."

4                       MR. KLEIN: Not if she signs this document.

5                       THE COURT: I'm sorry? I lost the last part.

6                       MR. KLEIN: So the question was that there  
7           would be several steps that Mid Island would take if  
8           Ms. Pope signed this document. That is not what the  
9           letter states.

10                      MR. TOMSKY: Your Honor, I'll clarify.

11                      THE COURT: Okay. Thank you.

12           Q.    The letter states in the third paragraph that there  
13           are several steps that Mid Island will take on Courtney  
14           Pope's behalf, correct, if that situation is to exist, if  
15           M.V.B. and State Farm have a disagreement in the cost of  
16           repair or the labor rate, et cetera?

17           A.    Yes.

18           Q.    Now, under the paragraph starting with "should you  
19           choose," that's the -- the third to last paragraph if you  
20           include the final line, it says, "should you choose to assign  
21           your rights to us, you will no longer be responsible for any  
22           payments to us, other than your deductible." That's what the  
23           document says, correct?

24           A.    Yes.

25           Q.    It also says, "none of these steps will delay the

1 repair of the vehicle," correct?

2 A. Yes.

3 Q. So one of those steps is seeking civil remedies in  
4 the court of law, it's step number four, correct?

5 A. Yes.

6 Q. So I want to make sure I got this straight. You  
7 guys, M.V.B., is not seeking any reimbursement from Ms. Pope  
8 for the additional \$21,000 that you believe is owed to you in  
9 this case, correct?

10 A. I'm not sure what the legal is, but I believe no.

11 Q. Well, as a general manager of the shop, are you  
12 aware of any pending litigation between Mid Island Collision  
13 as the plaintiff and Courtney Pope as a defendant for the  
14 difference in payments?

15 A. No.

16 Q. So the only civil lawsuit where Mid Island  
17 Collision is the plaintiff and someone else is a defendant  
18 for this case, that you're aware of, is the one where State  
19 Farm is the defendant for breach of contract; is that  
20 correct?

21 A. To my understanding.

22 Q. To your knowledge, that's all I could ask you, is  
23 to your knowledge.

24 Essentially, to summarize, Mid Island Collision is  
25 not seeking any additional money from Ms. Pope, besides maybe

1 an issue with the deductible; is that correct?

2 A. To my knowledge, yes.

3 Q. To your knowledge, again.

4 So the only issue in terms of money being sought by  
5 M.V.B. is through State Farm, correct?

6 A. I think it's indirectly State Farm through  
7 Ms. Pope. Ms. Pope owes the money and then we get reimbursed  
8 through State Farm.

9 Q. I understand that, but since Ms. Pope signed this  
10 document, you've indicated that should she choose to assign  
11 her rights to you, which she did do based on this document,  
12 she will not be responsible for any other payments.

13 A. Correct.

14 Q. Now, I think you mentioned yesterday that if an  
15 insurance company, in this case State Farm, and your shop  
16 does not come up with an agreed upon price, it is usually the  
17 general practice to charge the insured directly for the  
18 differences in repairs, correct?

19 A. Correct.

20 Q. But in this case, since Ms. Pope signed that  
21 document, you will not be seeking money from her directly?

22 A. Correct.

23 Q. In this instance, obviously we're here because  
24 there is a difference in agreed upon price between Mid Island  
25 Collision/M.V.B. and State Farm, correct?

1 A. Correct.

2 Q. So even though normally Ms. Pope would be  
3 responsible for the \$21,000 and change, she's not in this  
4 case based on her signing of that document?

5 A. I don't know legally if that's the case, but she's  
6 responsible for the bill, but it's being pursued through the  
7 other carrier.

8 Q. Through a breach of contract case?

9 A. Correct.

10 Q. But --

11 A. Ultimately.

12 Q. In addition, you're also holding the vehicle up on  
13 a lien until additional money is paid to Mid Island  
14 Collision, correct, that's what we're here to do today?

15 A. Yes, we liened the car.

16 Q. So in addition to the breach of contract, which  
17 would be the civil remedy where you should be suing State  
18 Farm for this money, you're also holding the vehicle hostage  
19 until you get additional money?

20 MR. KLEIN: Objection.

21 THE COURT: It calls for a legal conclusion.  
22 Sustained.

23 Q. I'm going to move on now to -- to the final bill.  
24 I forget what exhibit that was on yours, the final Mid Island  
25 Collision bill.

1 MR. KLEIN: Exhibit-E.

2 Q. If you could just show the witness again.

3 COURT OFFICER: Showing the witness  
4 Defendant's Exhibit-E.

5 Q. If I could direct your attention to number 146 on  
6 the final bill, which is "rental overage due to State Farm  
7 negligence."

8 A. Go ahead.

9 Q. Just so I'm clear here, Mid Island Collision in the  
10 final bill is charging State Farm for providing a rental  
11 vehicle to Ms. Pope?

12 MR. KLEIN: Objection to the form. The charge  
13 is not to State Farm.

14 MR. TOMSKY: It literally says -- all right,  
15 I'll rephrase.

16 THE COURT: Please rephrase.

17 Q. On the final bill is a charge for rental overage  
18 due to State Farm negligence in the amount of \$1,280,  
19 correct?

20 A. Yes.

21 Q. You indicated on direct that Mid Island Collision  
22 provided Ms. Pope a rental car in this matter; is that  
23 correct?

24 A. Well, Ms. Pope rented a car. Whether or not I  
25 provided it, I don't recall.



1 Q. I would have to look at the actual transcript, but  
2 then I guess my next question is, did that rental vehicle  
3 come from M.V.B./Mid Island Collision or somewhere else?

4 A. It came from Hertz.

5 Q. Is there a bill from Hertz that you furnished State  
6 Farm?

7 A. I'm sure.

8 Q. Well --

9 A. I'm sure there is a bill.

10 Q. Do you know if you ever gave it to State Farm?

11 A. I do not know.

12 Q. Because at this time no bill has been furnished to  
13 my office or to State Farm as far as -- withdrawn.

14 To date, I have not been furnished with a bill for  
15 this rental.

16 Do you have any proof that this rental was actually  
17 provided and the cost, besides this number on the final bill?

18 A. It was in the hard file and I assume the digital  
19 file, but I couldn't be sure.

20 Q. Do you know, as you're sitting here today, the date  
21 that the rental began?

22 A. No.

23 Q. Do you know the date the rental ended?

24 A. No.

25 Q. Do you know the daily cost of the rental?

1 A. No.

2 Q. So you don't know when it was given, when it was  
3 returned or the daily amount for the rental; is that correct?

4 A. Correct.

5 Q. Now, the final bill is dated June 7th, 2017,  
6 correct?

7 A. There are multiple dates on the document, but it  
8 says the file was created on 6-7-17, this exact file.

9 Q. So at the very latest this document was created on  
10 June 7th, 2017, correct?

11 A. At the very earliest.

12 Q. At the very earliest, okay. So at that time, is it  
13 safe to say that any rental had been returned if you were  
14 able to give a number for the final bill?

15 A. No. It just says the date it was corrected. It  
16 doesn't say the date it ended. It doesn't say the date it  
17 was edited.

18 Q. It says "created 6-7-17"?

19 A. Correct.

20 Q. So I'm saying, is it fair to say at that point that  
21 any rental would have been returned if you're able to give a  
22 final amount for rental overages?

23 A. No.

24 Q. It's not fair to say?

25 A. No, it's not.

1 Q. So there is a possibility that there is additional  
2 billing for a rental vehicle?

3 A. This document was printed on 8-2.

4 Q. It says, "created 6-7-17."

5 A. I understand. That's the date that this file is  
6 started in the computer, but the rental bill is on here and  
7 it was printed on 8-2, so anytime between 6-7 and 8-2, so it  
8 could have been added to the bill.

9 Q. Since we don't know, I'll move on to the next  
10 question about this.

11 Are you aware that in her policy Ms. Pope gets a  
12 rental vehicle from State Farm after an accident?

13 A. If she has that coverage in her policy, yes.

14 Q. I'm not asking you -- obviously -- well, have you  
15 seen the policy?

16 A. No.

17 Q. So you can't testify if that's in her policy or  
18 not?

19 A. Correct.

20 Q. And, if so, if she was given a rental car by State  
21 Farm, do you know when that was given to her?

22 A. I do not know.

23 Q. Do you know when that was returned to her?

24 A. I do not know.

25 Q. So the only thing that you know about the rental

1 car is the number on the final bill; is that correct?

2 A. Correct.

3 Q. Moving on now, what's the number of the Auto Haus  
4 bill?

5 MR. KLEIN: F.

6 MR. TOMSKY: If you could show the witness  
7 Exhibit-F.

8 COURT OFFICER: Showing the witness  
9 Defendant's Exhibit-F.

10 Q. Please indicate when you've gotten the document in  
11 your hand.

12 A. Got it.

13 Q. So on direct we talked -- well, you and Mr. Klein  
14 discussed markups. I just want to make sure I'm clarifying  
15 that a markup is something that is done on the bill to  
16 guarantee a warranty, correct? Correct me if I'm wrong. I  
17 just want to make sure that I understand it.

18 A. To guarantee warranty work done by a different  
19 vendor.

20 Q. So if it's not done by Mid Island Collision, there  
21 is an additional markup because you have to guarantee that  
22 work to the owner of the car?

23 A. Correct.

24 Q. So looking at both the final bill, which you just  
25 looked at, and the Auto Haus repair, on the final bill there

1 is a markup of \$2,171.77. Do you see that?

2 A. Yes.

3 Q. I believe you testified on direct, and, again,  
4 correct me if I'm wrong, that markup was based on the Auto  
5 Haus bill as well as the Rockaway Nissan and Certified Towing  
6 aspects of the bill; is that correct?

7 A. Correct.

8 Q. What is the address of Mid Island on the final  
9 bill? On the final bill, what is the address of Mid Island?

10 A. 478 Lakeview Avenue, Rockville Centre, New York.

11 Q. Is that -- for the work done on the vehicle at Mid  
12 Island, is that the physical address of where the repairs  
13 were made?

14 A. No.

15 Q. Where was the physical address?

16 A. It was repaired in three different locations.

17 Q. Were any repairs made at 478 Lakeview Avenue?

18 A. No.

19 Q. So no actual repairs are made there?

20 A. No, that address doesn't exist. That should be  
21 468.

22 THE COURT: I was just going to say, I'm  
23 looking at this Auto Haus repair bill --

24 MR. TOMSKY: The Mid Island Collision final  
25 bill. I just want to make sure that we're being clear

1 here.

2 THE COURT: I thought you referred him to the  
3 Auto Haus repair bill.

4 MR. TOMSKY: We're going to refer to both, if  
5 it's easier for him to have both documents at the same  
6 time.

7 THE COURT: Okay. Thank you.

8 Q. So Mid Island Collision/M.V.B., the defendant for  
9 this lien --

10 A. Yes.

11 Q. -- what is the address -- what is the business  
12 address?

13 A. 20 Lakeview Avenue, Rockville Centre, New York.

14 Q. What is the physical address where the car was when  
15 it was not being subletted out?

16 A. 20 Lakeview Avenue, Rockville Centre, New York.

17 Q. So what is 478 Lakeview?

18 A. That's an error. There is no 478.

19 Q. That was going to be something I wanted to talk  
20 about, so I'm glad we know it was an error.

21 Now, Auto Haus, is that actually at 468 Lakeview or  
22 is that a mistake as well?

23 A. 468 Lakeview.

24 Q. So 468 Lakeview Avenue in Rockville Centre is the  
25 correct legal address for Auto Haus Auto Repairs?

1 A. Yes.

2 Q. And you mentioned that that is also owned by a  
3 Mr. Jesberger who is sitting at the table?

4 A. Yes.

5 Q. So is it your testimony that the Auto Haus auto  
6 repair bill, which is \$5,601.12 was marked up by 33 percent?

7 A. Either 25 or 33. I would have to check.

8 Q. And obviously Mr. Klein, neither one of us are  
9 mathematicians, but he could certainly check my math, when  
10 you include the 5,601 and the two other charges and multiply  
11 it by point 33 or 1.33, it does come up to the exact parts  
12 amount.

13 A. Okay.

14 Q. Again, feel free to clarify the math before any  
15 deliberations are made, but that's the math that I did.

16 So the Auto Haus repair bill is marked up basically  
17 by -- you multiply the bill by 1.33 and that's the bill that  
18 comes on the final M.V.B. bill, whether it's 25 percent or  
19 33 percent, that's -- there is an amount from Auto Haus of  
20 5,601.12, you multiply it by either 25 percent or 33 percent  
21 and then you get the markup?

22 A. Correct.

23 Q. And you get that same markup for Rockaway Nissan  
24 Towing, correct?

25 A. Correct.

1 Q. So I want to make sure I got this right, so M.V.B.  
2 is owned by Mr. Jesberger?

3 A. Correct.

4 Q. He gets a bill from Auto Haus which is also owned  
5 by Mr. Jesberger, correct?

6 A. Correct.

7 Q. So he gets a bill from himself and then he marks  
8 that up again to 33 percent; is that correct?

9 A. M.V.B. Collision gets a bill from Auto Haus.

10 Q. I understand. That's all well and good, but when  
11 you actually break it down, Mr. Jesberger is the owner of  
12 M.V.B. and the owner of Auto Haus?

13 A. Correct.

14 Q. So he bills himself and then does a markup of the  
15 work that was done at another place that he owns; is that  
16 correct?

17 MR. KLEIN: Objection to the qualification.

18 THE COURT: Sustained.

19 MR. TOMSKY: All right, I can rephrase my  
20 question, I guess.

21 Q. Are you aware if Mr. Jesberger is the sole owner of  
22 M.V.B.?

23 A. Yes.

24 Q. So forgetting about things like profit margins, if  
25 there is a bill from M.V.B. -- withdrawn.



1                   He owns M.V.B. and he owns Auto Haus, so he owns  
2 both locations, right?

3           A.    Yes.

4           Q.    But on a bill that he sends to himself he still  
5 marks it up another 33 percent?

6                   MR. KLEIN:  Objection to the description.

7                   THE COURT:  You're calling for a legal  
8 conclusion as to whether the principal of each of the  
9 corporations is the same as the individual, so I'm going  
10 to sustain it.

11                   MR. TOMSKY:  All right, I'll ask it a  
12 different way.

13           Q.    The bill received by M.V.B. from Auto Haus, which  
14 is owned by the same person, is marked up 33 percent when  
15 received, correct?

16           A.    Correct.

17           Q.    And in terms of markups, the same thing is done --  
18 Rockaway Towing is not owned by Mr. Jesberger, correct?

19           A.    Correct.

20           Q.    So the same thing is done where the amount is  
21 marked up 33 percent?

22           A.    Correct.

23                   MR. TOMSKY:  If the witness can be shown  
24 Exhibit-P.

25                   COURT OFFICER:  Showing the witness

1 Defendant's Exhibit-P.

2 Q. All right, so on the tow receipts, according to the  
3 final bill there are two different charges for towing,  
4 correct?

5 A. Yes.

6 Q. So one of them was \$225 to tow the vehicle from  
7 what we believe is Ms. Pope's address. Is that to Mid Island  
8 Collision?

9 A. Yes.

10 Q. And then there is another tow charge for -- for  
11 more than double that to take it from what, M.V.B. to  
12 Rockaway Nissan?

13 A. The first tow is from a residence. The second tow  
14 is for a double tow to and from the dealer, so it's three  
15 tows.

16 Q. I'm not -- I just want to make sure that I know  
17 what I'm talking about on these bills. So one is 225 and the  
18 other you're saying is 490, which includes two different  
19 tows?

20 A. Correct.

21 Q. And then that gets marked up as well, the second  
22 tow gets marked up as well?

23 A. As well as?

24 Q. I said the -- the two tows, the Rockaway -- the  
25 Certified Towing for -- that gets marked up as well for

1 33 percent?

2 A. It gets marked up.

3 Q. Either 25 or 33?

4 A. Yes.

5 Q. Now, you mentioned the original manufacturing  
6 agreement -- withdrawn.

7 You mentioned the OEM is a requirement from Nissan,  
8 and Mr. Klein provided you with those pieces of paper?

9 A. Yes.

10 Q. And what happens if you were to use a recycled part  
11 on a vehicle? In terms of your certifications, is there  
12 something that happens to your certifications if you use a  
13 recycled part instead of an OEM, if you know? If you don't  
14 know --

15 A. I would rather not find out.

16 MR. KLEIN: Objection to a legal conclusion  
17 about what might happen to a certification.

18 THE COURT: Overruled.

19 Q. So your answer was you're not sure and you don't  
20 want to find out?

21 A. I don't want to find out.

22 Q. And you indicated that Mid Island or M.V.B., I  
23 apologize for switching around, spent a lot of money to get  
24 accredited by these different vehicle manufacturers, correct,  
25 Audi, Nissan?

1 A. Yes.

2 Q. Now I want to go back to the final bill. Is it  
3 fair to say, and I believe you stipulated as such, that the  
4 only repair that anybody is actually disputing is one  
5 recycled wheel versus two new wheels, and, I apologize, it's  
6 actually on the Auto Haus final bill for number 23?

7 A. What was the question? I'm sorry.

8 Q. I'll say it again.

9 Is it fair to say in terms of the actual repairs  
10 done with the car, not the labor rate, not the rental, not  
11 the towing, the only actual dispute, there's actually a court  
12 stipulation saying this, is on number 23 on the Auto Haus  
13 repair bill, looks like there was a charge on that final bill  
14 for two 20-inch aluminum alloy wheels, whereas on the final  
15 estimate from State Farm they wrote for a recycled part; is  
16 that correct?

17 A. I don't have a dispute with that. We purchased two  
18 wheels.

19 Q. No. No. I'm saying the only repair in dispute in  
20 this case is that -- I'm not disputing that you bought the  
21 two new wheels.

22 A. Okay.

23 Q. Is it fair to say from your recollection of the  
24 case that that is the only thing in dispute when it comes to  
25 the actual repairs?

1 MR. KLEIN: Objection. The dispute is --

2 THE COURT: No, it's overruled. If he doesn't  
3 know, he could say "I don't know."

4 A. I assume the dispute is over the entire final bill.

5 Q. Well, correct, the dispute is about the final bill  
6 and aspects of it, but there's actually a court stipulation  
7 where the only dispute on the actual repairs done is whether  
8 one recycled wheel should have been used or two new alloy  
9 wheels; is that correct? If you don't know, then say you  
10 don't know.

11 A. I don't know that.

12 Q. Okay, now, isn't it fair to say that up until the  
13 final loss determination made by State Farm that the goal of  
14 both M.V.B. and State Farm was to get the vehicle back to as  
15 close to pre-loss condition as possible?

16 A. I'm sorry, if I could ask you to repeat that.

17 Q. Is it fair to say that up until the total loss  
18 determination was made by State Farm that the goal of both  
19 sides, M.V.B. and State Farm, is to get the vehicle back to  
20 pre-loss condition or as close to?

21 MR. KLEIN: Objection, calls for speculation.

22 A. No.

23 THE COURT: No, I'm going to allow it. As a  
24 matter of fact, I think he testified as to that during  
25 direct examination.

1 Q. Well, I believe his answer was no, that that was  
2 not the goal. Why would that not be the goal, if you're  
3 repairing the car, the point of you repairing it, besides  
4 making money, obviously, is to try to get the car back to  
5 either pre-loss condition or as best as possible, correct?

6 A. When we repair cars, yes, we are -- our goal is to  
7 repair them to their pre-loss condition.

8 Q. Obviously, you can't speak for State Farm, but I  
9 would imagine that's their goal as well until a total loss  
10 determination is filed, correct?

11 MR. KLEIN: Objection.

12 THE COURT: Sustained.

13 Q. So it's fair to say that you were told there was a  
14 total loss, it was M.V.B.'s goal to get the vehicle back to  
15 pre-loss condition, correct, or as close to?

16 A. Our goal is to bring all cars back to pre-loss  
17 condition. I'm not understanding your question.

18 Q. I'll move on. Are you aware that State Farm paid  
19 Ms. Pope and her lienholder over \$40,000 after the vehicle  
20 was deemed a total loss?

21 A. I was told they paid it off. I don't know the  
22 numbers.

23 Q. And you're aware that M.V.B. has already been paid  
24 over \$29,000 or around \$29,000 so far for the repairs made on  
25 this vehicle, correct?

1 A. I believe so.

2 Q. So far, again, I didn't major in math, but 29 and  
3 40, so far State Farm has already paid \$69,000 in repairs and  
4 costs and payments for this vehicle, correct?

5 A. That's their fault.

6 MR. TOMSKY: I didn't ask for that. I ask  
7 that be stricken as nonresponsive.

8 THE COURT: It's stricken.

9 Q. Even with all that, M.V.B. is still demanding an  
10 additional \$21,000 in repairs for this vehicle?

11 A. Yes. We did those repairs.

12 Q. So that would bring it up to almost \$90,000 that  
13 you believe State Farm is responsible for this car between  
14 payments to you and payments to Ms. Pope?

15 A. Well, I did tell them to total it early on.

16 MR. TOMSKY: Again, it's not responsive. I  
17 ask that it be stricken.

18 THE COURT: Would you read the question back,  
19 please, Pat?

20 (The requested portion was read.)

21 A. I only know what they're responsible to me for is  
22 50 some odd thousand dollars.

23 Q. So that plus whatever amount was given to Ms. Pope  
24 and her lienholder in this case?

25 A. I'm not sure what State Farm's responsibility is.

1 I just know what my responsibility is to collect.

2 MR. TOMSKY: If I could have Exhibit-3 shown  
3 to the witness.

4 (Whereupon, Plaintiff's Exhibit-3 was marked  
5 into evidence.)

6 COURT OFFICER: Showing the witness  
7 Plaintiff's 3 in evidence.

8 Q. Are you looking at the document, sir?

9 A. Yes.

10 Q. Just a quick question, now, looking at the demand  
11 for appraisal, can you just explain what a demand for  
12 appraisal is?

13 A. Yes. In the standard New York policy, the consumer  
14 has a right to an appraisal clause if they feel that their  
15 insurance company is not properly estimating the car.

16 Q. And I'm looking at the date, it says March 17th of  
17 2017, which is before the collision. Do you know, as you're  
18 sitting here today, when that document was actually signed  
19 and why -- sorry, please, go ahead.

20 A. It was signed on 3-28.

21 Q. So on 3-28? That's before an initial estimate was  
22 written by State Farm, correct?

23 A. Correct.

24 Q. But by that time she had already, Ms. Pope had  
25 already signed a document saying that she was -- that you



1 were dissatisfied with the appraisal written by the -- by  
2 somebody?

3 A. That's correct.

4 Q. How would that -- well, withdrawn.

5 You said, "we find the estimate lacking in many  
6 areas."

7 A. Correct.

8 Q. But there was no estimate yet.

9 A. Correct.

10 Q. I guess I'm confused how somebody can say they were  
11 dissatisfied with an estimate that hadn't been written yet,  
12 but I guess that's just me.

13 MR. KLEIN: Is that a question?

14 THE COURT: I'm going to ignore that as an  
15 unnecessary comment.

16 Q. How would somebody -- as far as you know, how would  
17 somebody be dissatisfied with an estimate that wasn't written  
18 yet?

19 A. Historically.

20 Q. Historically what?

21 A. Predictable.

22 Q. So you basically went into this whole process  
23 thinking that State Farm was going to low ball you and not  
24 pay what you think they were supposed to pay?

25 A. And here we are, yes.

1 Q. I guess I could say the same thing, right?

2 THE COURT: Again, counsel, this probably is a  
3 little bit directed at you, please keep your comments  
4 and opinions to yourself. That can be taken care of  
5 when we conclude the case in post trial memos. Please  
6 just answer the questions.

7 THE WITNESS: I apologize.

8 THE COURT: The editorializing is not  
9 something that I want.

10 MR. TOMSKY: Sorry, your Honor. If the jury  
11 was here --

12 THE COURT: If the jury was here, I probably  
13 would have given them a curative instruction on that.

14 Q. So I just want to go back to this a little bit.  
15 This demand for appraisal was not signed because there was an  
16 actual disagreement with the appraisal at the time she signed  
17 it, correct?

18 A. No. It relates back to the other Exhibit-11 where  
19 we prepare the customer of all their rights, every right they  
20 may have during the repair process, and it's one of their  
21 rights.

22 Q. So this is one of their rights, so even though it  
23 says -- it doesn't say we might be dissatisfied, it says we  
24 are dissatisfied. She signed that before any estimate or  
25 appraisal was ever done, correct?

1           A.    But it's relevant because State Farm does not honor  
2 the right to appraisal.

3                   MR. TOMSKY:  I'm going to object.  He's not  
4 being responsive.  I ask that it be stricken.

5                   THE WITNESS:  Okay.

6                   THE COURT:  Listen carefully to the questions  
7 and answer them.  It's not your job to argue the case.  
8 I understand that you want to advocate for your  
9 employer.  It's admirable in terms of your relationship  
10 with your employer.

11                   THE WITNESS:  I understand.

12                   THE COURT:  It's not admirable in the  
13 courtroom.

14                   THE WITNESS:  Understood.  I'm sorry, the  
15 question again.  I apologize.

16                   THE COURT:  Would you read that back, Pat,  
17 please?

18                               (The requested portion was read.)

19           A.    Correct.

20                   MR. TOMSKY:  I have nothing further.  Thank  
21 you.  Thank you for your cooperation, sir.

22                   THE COURT:  Thank you.  Mr. Klein, any  
23 redirect?

24                   MR. KLEIN:  Yes, briefly, your Honor.

25 REDIRECT EXAMINATION

1 BY MR. KLEIN:

2 Q. Good morning, Mr. McGauvran.

3 A. Good morning.

4 Q. Mr. Tomsy asked you some questions concerning the  
5 gross amount of money that State Farm had paid in this case.  
6 What is your assessment of why the bill became as large as it  
7 was?

8 A. Once the insurance carrier decided that the car  
9 would be repairable, the repairs were commenced. Now, once  
10 you repair a car and it exceeds the 75 percent, because the  
11 insurance company now becomes responsible for the repairs  
12 already done and responsible for taking possession of a total  
13 loss salvaged vehicle and paying off the lienholder because  
14 the lienholder will not accept the lien on a salvaged  
15 vehicle, so the car can no longer be returned to the  
16 consumer, it has to be salvaged, the lienholder has to be  
17 paid off in full because they will not hold notes on a  
18 totaled car. So, as a result of State Farm repairing a total  
19 loss, they now become responsible for paying off the repairs  
20 and paying off the lien.

21 Q. So until the insurance company declares the car  
22 total, what is Mid Island's obligation?

23 A. To repair the car to its pre-loss condition for the  
24 consumer.

25 Q. And when did Mid Island initially inform State Farm

1 that it believed the car should be declared a total loss, and  
2 if you don't know, you could describe to the best of your  
3 recollection?

4 A. On or about the second reinspection by Mike  
5 Thompson.

6 Q. How many reinspections were there?

7 A. No less than 10.

8 Q. If State Farm had declared the car a total loss  
9 when Mid Island said so, what would have happened to the bill  
10 that Mr. Tomsy was just complaining about?

11 MR. TOMSKY: I object, your Honor. He already  
12 testified to this on his regular direct.

13 THE COURT: Yes, but I would like it  
14 clarified. What was the -- in terms of dollars, what  
15 was the amount of work that had been performed at the  
16 time Mid Island recommended totalling the vehicle?

17 THE WITNESS: At the time the recommendation  
18 was made, the only expense was for a standard  
19 disassembly, towing, and storage as of that date, so it  
20 was very minor. The bill would probably have been less  
21 than 2,000, \$2,500.

22 Q. So to be clear and not to revisit anything, if  
23 State Farm had acquiesced, how much money would State Farm  
24 have been obligated to pay, to the best of your  
25 understanding?

1 MR. TOMSKY: Again, I'll object. It calls for  
2 speculation.

3 THE COURT: It's also been asked and answered  
4 by me.

5 Q. You mentioned on cross-examination a moment ago  
6 that the demand for appraisal was predictable. Why was it  
7 predictable that this would be appropriate?

8 A. We prepare our customers for all options when they  
9 come in for expedition to make sure they don't have to keep  
10 coming back, so we have all documents ready in advance.

11 Q. What I mean is, is this the only car that you have  
12 had the occasion to be working with State Farm on?

13 A. Well, no. If you have the same result where they  
14 don't negotiate the claims when they come through the office,  
15 you get used to the same pattern and you prepare for that  
16 pattern.

17 Q. How often do you see State Farm on a monthly basis?

18 A. Everyday.

19 Q. Have their labor rates or their labor rate --  
20 withdrawn.

21 Where is Mid Island's labor rate posted in Mid  
22 Island?

23 A. Right where the adjustor sits. He faces it.

24 Q. Do they ever come in and say -- withdrawn.

25 The demand for appraisal, as Mr. Tomskey pointed

1 out, is dated the 17th, and that was incorrect, right?

2 A. Yes.

3 Q. How do you know what date it was actually signed?

4 A. Because I did that paperwork. It was all done the  
5 same day, but I'm ADD so when I write, sometimes I write the  
6 numbers wrong, so I skipped the 28th, wrote 3-17 and then 17  
7 again. I do that often.

8 Q. So Ms. Pope was at Mid Island that day?

9 A. Yes, with me.

10 Q. Did she drive her Nissan to Mid Island that day?

11 A. It was towed.

12 Q. And so she didn't come in her Nissan?

13 A. No.

14 Q. How did she get there?

15 A. I do not know.

16 Q. But you know that it wasn't in her own vehicle?

17 A. Correct.

18 Q. Mr. Tomsy asked you some questions about Auto  
19 Haus, Mid Island Collision. Are those separate entities?

20 A. Two totally separate companies.

21 Q. Does Mid Island Collision give any special  
22 privileges in its markup for Auto Haus versus anybody else?

23 A. The same.

24 Q. So any special privileges?

25 A. None.

1 Q. Was Ms. Pope aware that Mid Island had paid for  
2 some or all of a rental bill?

3 A. Yes.

4 MR. TOMSKY: Objection.

5 THE COURT: I'm going to allow it.

6 Q. When you sent the final bill, at that time, who  
7 owed you, and when I say "you," Mid Island, who owed Mid  
8 Island that money?

9 A. Ms. Pope.

10 MR. TOMSKY: I believe that's a  
11 mischaracterization as he previously testified that  
12 Ms. Pope owed them nothing.

13 MR. KLEIN: That was not his testimony. The  
14 testimony was that she owed him nothing once there was  
15 an assignment.

16 THE COURT: Correct, and the assignment was  
17 made, and, therefore, all she would be responsible for  
18 was a deductible. I think that's pretty clear. It's  
19 been brought out a number of different ways.

20 Q. To the best of your understanding, Mr. McGauvran,  
21 who was it who owed Mid Island money, if anybody, when the  
22 final bill was issued?

23 A. When I completed the final bill, Ms. Pope owed us  
24 the balance.

25 Q. And was there any privity of contract between Mid



1 Island Collision and State Farm?

2 MR. TOMSKY: I object.

3 THE COURT: That's sustained.

4 Q. Is there any contract that you're aware of between  
5 Mid Island and State Farm in connection with Ms. Pope's  
6 vehicle?

7 A. No.

8 Q. The lawsuit that Mr. Tomsky asked you about in  
9 which Mid Island is a plaintiff, is it acting in any special  
10 capacity?

11 THE COURT: Sustained.

12 MR. KLEIN: No further questions.

13 THE COURT: Thank you. Any recross?

14 MR. TOMSKY: Very briefly.

15 RECROSS EXAMINATION

16 BY MR. TOMSKY:

17 Q. As of October 2018, I'll go back a month or so,  
18 approximately, how many cases that you know of -- withdrawn.  
19 I'll rephrase it.

20 Approximately, how many lawsuits has M.V.B. been  
21 involved in for breach of contract with insurance companies  
22 as of October 2018?

23 MR. KLEIN: Objection.

24 THE COURT: Also sustained.

25 MR. TOMSKY: Nothing further.

1 THE COURT: Okay, thank you. All right, you  
2 are excused. Thank you very much.

3 THE WITNESS: Thank you, your Honor. I  
4 apologize again.

5 THE COURT: Okay, do we want to start the next  
6 witness?

7 MR. KLEIN: Yes.

8 MR. TOMSKY: I believe we can get him done  
9 this morning.

10 THE COURT: Let's just take five minutes.

11 (A recess was taken.)

12 THE COURT: Okay, are we ready?

13 MR. KLEIN: May I?

14 THE COURT: Please.

15 COURT CLERK: Please remain standing. Raise  
16 your right hand.

17 Do you solemnly swear or affirm that the  
18 testimony you're about to give in this case on trial  
19 shall be the truth, the whole truth and nothing but the  
20 truth, so help you God?

21 THE WITNESS: Yes.

22 COURT CLERK: You can have a seat.

23 Please state and spell your first and last  
24 name and state your address.

25 THE WITNESS: Lawrence Montanez, III,

1 M-O-N-T-A-N-E-Z. The address is 893 Catapala Drive,  
2 Franklin Square, New York 11010.

3 THE COURT: All right, you may inquire.

4 DIRECT EXAMINATION

5 BY MR. KLEIN:

6 Q. Good afternoon, Mr. Montanez. How are you?

7 A. Good.

8 Q. Where do you work?

9 A. I'm self-employed.

10 Q. What's the name of -- do you work at a company?

11 A. I own a company.

12 Q. What's the name of the company?

13 A. P&L Consultants, LLC.

14 Q. What do you do at P&L Consultants?

15 A. I consult for collision repair companies and I also  
16 teach classes to collision repair and industry personnel,  
17 shop owners, technicians.

18 Q. How long have you been working as a consultant to  
19 other members of the industry?

20 A. Since 2001.

21 Q. And how did you get into that line of work?

22 A. I was teaching classes for the Inter-Industry  
23 Conference on Auto Collision Repair. The acronym is I-CAR,  
24 I, hyphen, C-A-R, and at the time I was working at a shop and  
25 I was teaching classes back in 2001 and I decided that I

1 could offer some other services, like a part-time job,  
2 besides my work at the shop to assist in collision education  
3 furthering the knowledge of these advanced vehicles that were  
4 coming up at the time back in 2001, which is how I met Jeff  
5 Lange who I also worked for doing forensic engineering, I do  
6 fraud investigations and accident reconstruction with him.

7 Q. In connection with your I-CAR teaching, how many  
8 students do you have or did you have on a yearly basis?

9 A. Well, back when I worked for I-CAR from 2001 to  
10 2009 I averaged about 9,300 student units a year, which  
11 sometimes I wound up with multiple attendees being the same  
12 person, so that 9,300, probably about -- if I had to guess,  
13 probably about 5,500, 6,000 different students of that 93,  
14 9,400.

15 Q. Who were your students?

16 A. Insurance personnel, body shop personnel. That's  
17 who had to take the classes.

18 Q. Did you ever have a student by the name of James  
19 Rice?

20 A. Yes, I have.

21 Q. Where does he work?

22 A. He works for State Farm Insurance Company.

23 Q. Did you ever have a student by the name of Michael  
24 Thiele?

25 A. Yes, I have.

1 Q. Where does he work?

2 A. Also for State Farm Insurance Company.

3 Q. What did you do that qualified you to become a  
4 teacher to so many students in that industry?

5 A. I had to go through a training course with I-CAR  
6 for a week on presentation, get peer reviewed by instructors  
7 that have been around for a while who got chosen to be the  
8 people who approve new instructors, and then I had to work  
9 with an instructor by the name of Peter Pratti who is -- at  
10 the time was Progressive's national claims manager and he was  
11 stationed out of Long Island and he was the only instructor  
12 in the area and I had to work with him for six months before  
13 he signed off on me. So, all together, I would say it's  
14 probably about seven months worth of training and myself and  
15 Pete Pratti became such good friends that Pete Pratti is the  
16 P of the P&L. It's Pete & Larry Consultants. So I became  
17 very good friends with the national claims manager of  
18 Progressive.

19 Q. How long have you been working in the auto body  
20 industry or in connection with the auto body industry?

21 A. Well, when I graduated high school I went to Penn  
22 State for about three months, so I would say from the time I  
23 was 14 going to high school, the mechanic/body man that my  
24 parents knew had a shop a few blocks from my high school and  
25 I would go there and work after school as like an after

1 school job, so from 14 to 18 I worked at his shop, and then I  
2 went to college for a few months and didn't think it was for  
3 me. I played football for a while, didn't think that was for  
4 me either, and I came back to New York and I started working  
5 in the collision repair field and I started, you know, like a  
6 lot of other people start, just buffing cars, cleaning them  
7 and learning on the job.

8 Q. Approximately, what year was that that you settled  
9 into New York?

10 A. '87.

11 Q. Have you been working consistently in New York  
12 since that time?

13 A. Well, I worked for collision repair shops up until  
14 about 2005 in New York, and then I got affiliated with a shop  
15 in New Jersey, Ramsey, New Jersey, but really my job takes me  
16 all over the country between the collision hub repair,  
17 university TV show that we do once a month, the training  
18 courses I do throughout the year, consulting for shops, I'm  
19 all over the country really.

20 MR. KLEIN: Your Honor, I don't think that  
21 there is any dispute from my adversary as to him --  
22 qualifying him as an expert.

23 THE COURT: All right, we will deem him an  
24 expert witness.

25 Q. Mr. Montanez, is Mid Island Collision one of your

1 customers?

2 A. I guess you could call them a customer. They're  
3 more of a client I classify them as. They're a client of  
4 mine. I have a few select clients over the United States.

5 Q. Who are some of your other clients?

6 A. Exclusive Auto Collision, Providence Auto Body, K&M  
7 Collision down in North Carolina. Exclusive, I'm sorry, is  
8 in New Jersey. Providence is, obviously, in Providence,  
9 Rhode Island, and then I've done some work for D.C. Auto  
10 Craft out in California. They have three locations.

11 The common denominator is they're all certified by  
12 the German equipment manufacturers, basically Audi, Benz,  
13 Porsche, Land Rover, Jaguar, Tesla, basically those  
14 companies. They really need me for their aluminum repair  
15 programs to help them and assist them.

16 Q. How common is it for an auto body or collision  
17 company to have those types of certifications?

18 A. For the German companies, it's not that -- not that  
19 common. It's -- you have to have a relationship with a  
20 dealership. The dealers are only allowed to sponsor either  
21 one or two shops. That would be inclusive of their own shop,  
22 if they have one. Most of the Metropolitan city dealerships  
23 don't have body shops. It's not cost-effective. There's  
24 enough shops in the area, but it is a select group of people  
25 that can do those aluminum high-end cars.

1 Q. What type of work have you performed for Mid Island  
2 Collision in a consulting capacity?

3 A. I've gone over estimate reviews, I've done post and  
4 pre repair inspections of vehicles, in process inspection of  
5 vehicles. I've actually covered the shop a couple of times  
6 when Mr. Jesberger and Mr. McGauvran were away on vacation  
7 basically making sure that, you know, the shop ran okay and,  
8 you know, covered for a day or two and taken care of  
9 customers and be able to help them write estimates for the  
10 personnel that are there.

11 Q. I would like to show the witness what's been marked  
12 Exhibit-E, the final bill. I believe the Court has a copy of  
13 this exhibit already.

14 THE COURT: I do. You're talking about the  
15 M.V.B. final bill?

16 MR. KLEIN: Correct.

17 COURT OFFICER: Showing the witness.

18 Q. What is that document, Mr. Montanez?

19 A. It's a final bill from Mid Island Collision for  
20 repair to a vehicle.

21 Q. Have you reviewed this final bill in advance of  
22 your testimony here today?

23 A. May I look at it?

24 Q. Yes.

25 A. Yes, I have.



1 Q. And there is an entry on that final bill pertaining  
2 to a company by the name of Auto Haus; is that right?

3 A. You're referring to line 108?

4 Q. Correct.

5 A. That says Auto Haus.

6 Q. I would like to show the witness Exhibit-F as an  
7 accompanying exhibit, please, and, again, I believe the Court  
8 has that exhibit.

9 THE COURT: That's the Auto Haus bill?

10 MR. KLEIN: Yes.

11 COURT OFFICER: Showing the witness.

12 Q. Mr. Montanez, most broadly, are there any items on  
13 Mid Island's final bill that were in your judgment not  
14 necessary to repair the car to pre-loss condition?

15 A. When I went over the bill and looked over it, no, I  
16 didn't find anything that was unnecessary. I actually found  
17 a few items that they probably could have charged for that  
18 they didn't put on there.

19 Q. There is an entry on the Auto Haus bill that has  
20 been placed at issue by the parties, item number 23 on the  
21 Auto Haus bill.

22 A. It says wheels, alloy aluminum, 20 inch. It's  
23 listing two as a quantity for \$1,823.76. That would be for  
24 the two rims together and point three for labor time to put  
25 it on, three tenths of an hour.

1 Q. What side of the Nissan was initially collided  
2 into, as far as you know?

3 A. The left rear was impacted.

4 Q. So why would there be more than one wheel that  
5 would need to be repaired?

6 A. My understanding is that, it was explained to me  
7 that the car impacted something on the right-hand side.

8 Q. Why would that happen? How could that happen?

9 A. The applied impact forces and the angle in which  
10 the bullet vehicle impacted the target vehicle would induce  
11 the vehicle forward and towards the right.

12 Q. And so what could -- what are some of the risks  
13 associated with only fixing the immediate wheel that is hit?  
14 If you would like me to rephrase that, I can.

15 MR. TOMSKY: I was going to object to calling  
16 for speculation.

17 THE COURT: I would like you to.

18 Q. So why was it appropriate to fix two wheels rather  
19 than one in terms of the safety of this vehicle?

20 MR. TOMSKY: Objection.

21 THE COURT: Overruled.

22 A. It was related to the incident. If it's part of  
23 the incident and the insurance company accepts the liability  
24 for it, then it's part of the claim. Some of the other rims  
25 on the vehicle had some light scratches on it from parking,

1 which were not part of the incident. Light, little scrapes  
2 or anything like that wouldn't be part of the incident, but  
3 something that's fresh, such as the damage on this rim would  
4 be related to this incident in question.

5 Q. And describe in terms of the safety of operating  
6 this car, if that other wheel had not been fixed --

7 MR. TOMSKY: Again, calls for speculation.

8 THE COURT: Well, as an expert, I'm going to  
9 allow him to testify as to that, but I'm somewhat  
10 confused now.

11 What you call the target wheel was on the  
12 passenger side in the rear?

13 THE WITNESS: Correct.

14 MR. KLEIN: The driver's side?

15 THE WITNESS: The driver's side was the impact  
16 wheel, so this is the left side of the vehicle. This is  
17 the right. A vehicle came in this way and hit it, and  
18 as you hit it, you're going to push the vehicle somewhat  
19 this way and it hit maybe the curb on the opposite side  
20 or the roadway, something in the roadway that did damage  
21 to the wheel.

22 THE COURT: When did you inspect this car?

23 THE WITNESS: During the repair process when  
24 it was first there, when it was first taken apart.

25 THE COURT: What was the nature of the damage

1 to that wheel on the passenger side?

2 THE WITNESS: That was a gauge and a scrape,  
3 somewhat of a semi longitudinal scrape to it.

4 THE COURT: Okay, thank you. You can proceed.

5 Q. Mr. Montanez, so was that wheel repaired?

6 A. You can't repair a wheel.

7 Q. I'm sorry, was that wheel the subject of work  
8 performed by Mid Island Collision on this car?

9 A. No. It was the subject of work completed by Auto  
10 Haus. Auto Haus charged for it. Mid Island might have  
11 ordered the part or Auto Haus might have ordered the part for  
12 Mid Island, I'm not sure how that actually worked, but I have  
13 a bill here from Auto Haus saying they purchased the rim and  
14 installed it.

15 Q. And then the Auto Haus bill became a part of the  
16 final bill, is that what your understanding of the  
17 relationship between those bills is?

18 A. Generally, how I would teach it and how  
19 Mr. Jesberger or Mr. McGauvran was following what I've always  
20 trained people to do, and I'm assuming that they took my lead  
21 on this, is they have a sublet bill, which is Exhibit-F, and  
22 they listed the total cost on Exhibit-E on their final bill.  
23 The attached bill would be from Auto Haus, a separate bill.

24 Q. With a markup?

25 A. With a markup, yes.

1 Q. Why is a markup appropriate?

2 A. Well, a markup is a company is laying out money to  
3 another company because they either, you know, don't have the  
4 equipment to do that type of repair, they don't have the  
5 skill to do that type of repair, they don't -- in some cases  
6 it's not cost-effective to have the equipment to do that type  
7 of repair, and -- or the time limits on it. You know, it all  
8 depends on different things, so when you do sublet, you're  
9 laying money out of your pocket and you have to keep the  
10 warranty on it because you're really the general  
11 subcontractor, you're subletting to somebody else who is a  
12 subcontractor. Still Mr. Jesberger's liability for his  
13 company, so he has to cover that.

14 Q. How common is it to have markups for sublet work?

15 A. On every sublet bill I've ever seen, anywhere from  
16 the construction field, aeronautic field, towing field or the  
17 collision repair field there is a markup on it.

18 Q. And is a 25 percent or a 33 percent markup, how  
19 does that compare to what you've seen in the industry?

20 A. That would be based solely on what the shop or the  
21 owner of the particular facility wants to markup their stuff.  
22 I've -- I used to do glazier work and I know glass was marked  
23 up like 300 percent. It was ridiculous. You know, in case  
24 you broke it, you would be able to put in glass. Glass is  
25 fairly cheap.

1 THE COURT: Mr. Montanez, please confine your  
2 testimony to the collision industry, and, Pat, would you  
3 read the question back because we went far afield with  
4 that answer.

5 (The requested portion was read.)

6 A. It's around the same amount of markup. I've seen  
7 anywhere between 15 to 40 percent markup, so I would say that  
8 would be in the average area.

9 THE COURT: Thank you.

10 THE WITNESS: You're welcome, your Honor.

11 Q. Now, you testified that the final bill, I believe  
12 you testified that the final bill represented what was  
13 necessary for repairing the vehicle. On the final bill, can  
14 you describe what the labor rate is or please describe what  
15 the labor rate is?

16 A. I have to look at the -- it's listed here as \$120  
17 per labor hour.

18 Q. And why would \$120 an hour be necessary for  
19 repairing the car to pre-loss condition in this case?

20 MR. TOMSKY: Objection.

21 THE COURT: Sustained. Would you rephrase,  
22 please?

23 MR. KLEIN: Sure.

24 Q. You testified that the final bill reflects work  
25 that was necessary for repairing this vehicle, correct?

1 A. Yes.

2 Q. Now, was that labor rate part of that determination  
3 that you made of necessity?

4 A. Yes. I go over the entire bill, inclusive of the  
5 labor procedures, description of the procedures, any notes  
6 that might be on there, the amount of time that's charged  
7 that might be judgemental versus what's actually in the  
8 database as a standard time, and also the labor rates. I  
9 also check the tax a lot of times too to make sure it's the  
10 right tax.

11 Q. Why was \$120 an hour in your assessment reasonable  
12 or necessary in this case?

13 MR. TOMSKY: Objection.

14 THE COURT: Overruled.

15 A. I believe that 120 an hour for that vehicle is a  
16 reasonable amount of money to charge for that, and working  
17 with Mid Island, I know their labor rates on different  
18 vehicles, you know, either being aluminum or regular steel  
19 vehicles, and that's around the area they charge for steel  
20 vehicles.

21 Q. Can you briefly describe what was required to  
22 repair this vehicle and the complexity?

23 A. Well, the vehicle had sustained damage to the upper  
24 body, which is unitized structure that's attached or affixed  
25 or bolted to a full frame, steel, high strength steel frame.

1 There were -- the vehicle sustained structural damage to the  
2 left rear quarter panel, the door assembly, the attaching  
3 floor panel in the rear, the outer wheel house, the inner  
4 wheel house, suspension components, obviously the wheel in  
5 that area, and then also caused damage to the wheel in the  
6 opposite side as secondary damage, and there was some  
7 structural damage to the frame also in this particular case.

8 Q. So why couldn't this be done at \$49 an hour?

9 MR. TOMSKY: Objection, calls for speculation.

10 THE COURT: Sustained.

11 Q. Mr. Montanez, are you familiar with how Mid Island  
12 Collision determined its \$120 labor rate?

13 A. I was part of the team that came up with that  
14 number.

15 Q. How long ago was that number come up with?

16 A. I believe it was about five years ago.

17 Q. Where did that -- was that at a gathering?

18 A. We had a meeting at Mid Island Collision.

19 Q. Where at Mid Island Collision?

20 A. There is an upstairs conference room.

21 Q. Describe what the conference room looks like,  
22 please.

23 MR. TOMSKY: Objection to relevance.

24 THE COURT: Sustained.

25 Q. And when you left that meeting, and don't say



1 anything about statements other people made at that meeting,  
2 but when you left that meeting, what was your understanding  
3 of whether Mid Island Collision could survive charging \$49 an  
4 hour?

5 MR. TOMSKY: I'll object to that.

6 THE COURT: Sustained. That's outside the  
7 scope of the witness' expertise.

8 MR. KLEIN: I'm asking him now as a fact  
9 witness because he was present for that.

10 THE COURT: As a fact witness, how would he  
11 know whether the rate would make the business itself  
12 sustainable?

13 MR. KLEIN: Because he was -- could I ask him  
14 more about that?

15 THE COURT: Sure, please.

16 Q. Mr. Montanez, could you describe some of the  
17 discussions that led to the \$120 an hour labor rate  
18 determination at that meeting?

19 A. I was asked to find out what the investment is for  
20 the equipment within Mid Island Collision for not only steel  
21 or to operate a steel, predominantly steel repair facility  
22 but also what it would cost to operate an aluminum intensive  
23 vehicle repair facility. Additionally, I had to find out the  
24 cost of the spray booths. I had to come up with the cost of  
25 what the paint on average costs per all the vehicles they

1 work on in the shop. I had to also call up Mr. Jesberger's  
2 hazardous waste companies that come in to retrieve oils, dry  
3 hazardous waste and even wet hazardous waste, calculate that.  
4 Also, I had to take into account the training that they have  
5 to go through for each one of the programs, come up with an  
6 average cost for this OEM training that they have to go to  
7 multiple times throughout the year, and a lot of that was  
8 what I used to write a white paper for the aluminum  
9 association was actually all derived from the investigation I  
10 did for the team for Mr. Jesberger to calculate what this  
11 labor rate would need to be or what a break even point would  
12 be and what his profitability area would have to be to have  
13 his labor rate at.

14 Q. Okay, based upon those discussions, what was your  
15 understanding of whether Mid Island Collision could charge  
16 \$49 an hour for labor?

17 MR. TOMSKY: Same objection.

18 THE COURT: Overruled.

19 A. We found that -- I believe the number was 86.75 was  
20 a break even, I basically can be open but be broke and not  
21 make a dime, so it would be out of the goodness of his heart  
22 he would just keep the store open and not make a dollar off  
23 of it. So there had to be a profitability built into that  
24 along with we had to take into account technicians, what they  
25 cost the shop working there, and that became a little

1 surprising, when they found out what the tech actually cost  
2 when you include their uniform allowance, some tool  
3 allowance, the vacations, health insurance, sick days, and  
4 then of course the loss of the employee when they have to go  
5 away for a week to two weeks for this intensive OEM training.

6 Q. Are you familiar with other auto body shops on Long  
7 Island?

8 A. Yes.

9 Q. And you've been working on Long Island on and off  
10 for how long again?

11 A. About 20 years.

12 Q. How many auto body shops would you say that you  
13 have come into contact with over those 20 years?

14 A. On Long Island or total?

15 Q. Let's start with Long Island.

16 A. Long Island, probably about 300, because of  
17 meetings I've talked at, but consulting wise, I probably  
18 dealt with maybe 15 shops in that time period who actually  
19 hired me for specific work not just generalized meetings.

20 Q. Is Mid Island middle of the pack of those 300 auto  
21 body shops?

22 MR. TOMSKY: Objection to the phrase "middle  
23 of the pack."

24 THE COURT: Sustained.

25 Q. How does Mid Island Collision compare to the other

1 auto body shops that you have seen?

2 A. They're probably in a select group of only about  
3 five shops in all of Long Island.

4 Q. How about in New York State?

5 MR. TOMSKY: Select shops of what?

6 Q. What do you mean by "select shops"?

7 A. Select shops of having the proper training,  
8 equipment and certifications to repair vehicles, have gone  
9 through the aluminum training programs that are out there,  
10 the stringent European requirements to stay on these  
11 programs.

12 Q. How does it compare in terms of the overall quality  
13 of the work provided to customers?

14 A. They're in the top five percent of the country of,  
15 you know, collision repair. I do probably three to 500,  
16 depending on the year, post repair inspections. A lot of  
17 them are photo reviews, and the work I see from certain shops  
18 is far superior to the average work at other shops. It's  
19 almost like they don't know they're not doing it the correct  
20 way in some cases.

21 Q. At some of the other shops that you're describing,  
22 what have you seen happen when a vehicle gets repaired on the  
23 cheap?

24 MR. TOMSKY: Objection to relevance.

25 THE COURT: Sustained.

1 MR. KLEIN: One moment, your Honor.

2 Q. Mr. Montanez, just a few more questions. Please  
3 describe the difference with some specificity in the type of  
4 work performed on a car by Mid Island versus a car -- type of  
5 work that would be performed at a shop that charges \$49 and  
6 hour?

7 MR. TOMSKY: I will object to that as well.

8 THE COURT: I'm going to allow it.

9 A. What I've seen on average is when you have less of  
10 a labor rate, and this goes to not only hourly paid employees  
11 but also the commission based or what they call flat rate  
12 where a technician gets a portion of the labor rate to repair  
13 the car, corners are cut, they try and rush it through,  
14 because, obviously, if you're on a flat rate, the more work  
15 you get through the more money you get paid, you get paid on  
16 commission, so if I can jockey around or move around stuff, I  
17 can actually, you know, get more -- get paid more money and I  
18 have to cut corners someplace.

19 With a lower labor rate, obviously the shop has an  
20 hourly rate shop. Let's say they're paying their technicians  
21 a certain amount of money every hour to be there. They're  
22 going to try and force more work out of the shop to,  
23 obviously, make more profit, which is what we're seeing  
24 nowadays. We are teaching a lot or speaking a lot at  
25 meetings, it's the busy but broke idea, meaning I have a lot

1 of work moving in and out of the shop, I have money moving in  
2 and out but the second work slows up I realize I'm broke  
3 because that money isn't flowing through anymore, bills are  
4 catching up to me, so it does become an issue. Money or  
5 labor rate per hour does relate to how much time I can put  
6 into the vehicle which leads to quality.

7 Q. Now, with your expertise in the industry, you know  
8 it would be a struggle to make a living at \$49 an hour, why  
9 would you accept \$49 an hour?

10 MR. TOMSKY: Objection.

11 THE COURT: Sustained.

12 Q. What is your understanding of the role that  
13 insurance companies, large insurance companies play in the  
14 labor rate accepted by smaller repair companies?

15 A. Insurance company has no say in the matter, on what  
16 the labor rate can be, unless you're on their direct repair  
17 program. Then it's a contractual agreement between you and  
18 the insurance company. But if you're not on their direct  
19 repair program, you charge whatever you feel is necessary and  
20 that your market, meaning the consumer, can afford, not what  
21 somebody, third-party that's uninterested wants to say or  
22 wants to payout. That's not a contract between the insurance  
23 company and the shop. Mr. Jesberger has no direct repair  
24 programs or insurance companies. So if I bring my car to  
25 Mr. Jesberger and I'm covered by ABC Insurance, ABC Insurance

1 has no contract with Mr. Jesberger, I'm the only one who can  
2 approve the labor rates, the repair procedures or anything  
3 else. The insurance company is there to indemnify the claim  
4 and they have to put a certain amount of money in the fund  
5 for the state.

6 Q. So describe how a direct repair company differs in  
7 that respect?

8 A. Well, they make an agreement like a health  
9 insurance type of thing with a doctor, I'll accept your  
10 insurance and whatever they pay me they pay me, but in some  
11 cases, even with an HMO or health insurance company, you  
12 still get a bill in the mail that they're not covering.

13 Q. Try to limit your testimony to this industry.  
14 Okay? I know you're trying to be helpful.

15 A. Okay.

16 Q. What is more common, an auto body shop that is a  
17 direct repair company or an auto body shop like Mid Island?

18 A. Well, Mid Island would not be common at all because  
19 they specialize in a select group of vehicles, because their  
20 relationship with not only the consumer but demographically  
21 the dealerships in their area and the types of cars that they  
22 work on versus other shops that will get work directed  
23 towards them as far as a direct repair program and they'll  
24 see a wide range of vehicles.

25 Q. What do you mean by "directed toward them"?

1           A.    The insurance company will -- the consumer will  
 2 call up and the insurance company will offer, if the  
 3 consumers asks for it, or sometimes they offer you can bring  
 4 it to other direct repair facilities, you can bring it to a  
 5 drive-in facility. There's a drive-in facility up the block  
 6 from Mr. Jesberger, and there's been times cars have left  
 7 that place and came directly to Mid Island because they  
 8 weren't able to repair that vehicle. They couldn't buy the  
 9 parts.

10                   THE COURT: Again, Mr. Montanez, please don't  
 11 add comments. Listen to the question and answer the  
 12 question.

13                   THE WITNESS: Sorry, your Honor. Yes.

14                   MR. KLEIN: No further questions at this time.  
 15 Thank you.

16                   MR. TOMSKY: I have very few questions, if we  
 17 could finish him before lunch.

18                   THE COURT: Yes. You may inquire.

19 CROSS EXAMINATION

20 BY MR. TOMSKY:

21           Q.    Good afternoon, Mr. Montanez. How are you? My  
 22 name is Michael Tomsky. I work at Rubin, Fiorella &  
 23 Friedman. We are State Farm's attorney in this matter.

24                   I believe you do work for State Farm as well,  
 25 correct?



1 A. I've done a lot of work for State Farm.

2 Q. A couple things, you mentioned that you were  
3 involved in creating a labor rate for Mid Island, correct?

4 A. I was part of the team that came up with them, yes.

5 Q. In the conference room that we didn't get to  
6 describe?

7 A. Correct.

8 Q. Are you aware that the posted labor rate in the  
9 shop is \$120?

10 A. It's \$120, I think, for steel vehicles, and I'm  
11 trying to remember -- I remember helping them set that up,  
12 and I believe for boron, aluminum, magnesium, I believe it's  
13 175.

14 Q. Are you aware -- only if you are, are you aware  
15 that the person who was involved in the collision, Ms. Pope,  
16 agreed to the \$120 labor rate before any estimate by State  
17 Farm or Mid Island was made?

18 A. I would believe that should be proper because it's  
19 under CR 82 of the New York State DMV law that requires the  
20 shop to let the consumer know what the rates are before they  
21 start repairs.

22 THE COURT: All right, I'm not -- that answer  
23 is stricken.

24 Pat, would you read the question back, please?

25 (The requested portion was read.)

1 THE COURT: You can answer that, if you can.

2 Q. If you are aware of an agreement.

3 THE COURT: Counsel.

4 MR. TOMSKY: I apologize.

5 A. To my knowledge, that's what Mid Island should be  
6 doing on every single case.

7 THE COURT: Strike that. Do you know if that  
8 was done in this case?

9 THE WITNESS: No, I do not know.

10 THE COURT: Thank you.

11 THE WITNESS: Sorry, your Honor.

12 Q. You indicated that there's profitability margins.  
13 It obviously makes sense that the higher the labor rate the  
14 more money you would make for the same work, correct?

15 A. Obviously, yes. That's math.

16 Q. If I charge 120 versus \$140, you'll make more money  
17 with the 140?

18 A. Correct.

19 Q. That goes to the profitability of the shop,  
20 correct, the amount of money you charge for the labor rate?

21 A. Correct, yes.

22 Q. You mentioned that you taught Mr. Rice and taught  
23 Mr. Thiele at one of your -- was it a lecture or conference  
24 or a class?

25 A. It's classes, I-CAR, the Inter-Industry Conference

1 on Auto Collision Repair, teaches a course on a wide range of  
2 subjects. Sometimes they're specific such as aluminum body  
3 repair or aluminum structure repair or steel repair or just  
4 structural damage. Sometimes it's diagnosis. Part of State  
5 Farm's, I guess, job title at the time was that the -- not  
6 the technicians, I'm sorry, the adjusters to keep their jobs  
7 or have their jobs had to go ongoing training not required by  
8 the state but by State Farm, and there would be four-hour  
9 sessions we would do and we usually do it, as a matter of  
10 fact, not too far from here. They had a drive-in center  
11 across from the mall over here by McDonald's on Stewart  
12 Avenue.

13 Q. How many sessions do you do for something like that  
14 with Mr. Rice and Mr. Thiele, how many sessions would you  
15 provide to them?

16 A. We would do a clip of about nine of them and then  
17 take off, let's say, for the summer and in the fall might do  
18 three or four more. They had a certain amount to keep what  
19 they call a gold class designation or individual platinum  
20 designation, so they had to get a certain amount of classes  
21 upfront, let's say like 10, and every year they had to take  
22 at least two classes, and they're about four hours each, so  
23 eight hours of training, and we would meet up every so often,  
24 we would meet and I would do the entire team, let's say.

25 Q. I would imagine that the point of these trainings

1 and these sessions is to improve the quality of the work and  
2 the quality of the estimates done by the State Farm team,  
3 correct?

4 A. Well, they don't perform work, but yes, increase  
5 their education on what would be required in a shop, so yes  
6 to that point.

7 Q. You think you did a good job teaching that?

8 A. I believe I did.

9 Q. So you think you did a good job teaching Mr. Rice  
10 and Mr. Thiele, right?

11 A. I believe they understood what I said, and we've  
12 had conversations.

13 MR. TOMSKY: Thanks. Nothing further.

14 THE COURT: Mr. Klein.

15 MR. KLEIN: Very brief.

16 REDIRECT EXAMINATION

17 BY MR. KLEIN:

18 Q. Mr. Montanez, what is your understanding of when it  
19 is proper for an auto body shop to enter into an agreement  
20 with a customer over a labor rate?

21 A. I believe the time they introduce the paperwork  
22 for -- in New York State you have to get a designated  
23 representative signature to be able to represent them.

24 Q. Just answer the question.

25 A. My understanding would be at the beginning of the

1 paperwork.

2 Q. Before, during or after the work is commenced?

3 A. It would have to be before the work commences. I  
4 mean, it's the only time that the customer is there, to drop  
5 off the car and again to pick up the car, so the first time  
6 is when they first bring the car to the shop you would  
7 explain the paperwork, have them sign it and explain to them  
8 what your rates are and your storage fees and anything else.

9 Q. A moment ago Mr. Tomsy asked you about whether you  
10 did -- whether you're happy with the job you did with your  
11 students, Mr. Thiele and Mr. Rice. Did you provide any  
12 actual hands-on training to them?

13 A. No, not in those classes. Those were not hands-on  
14 training classes. They were more of a classroom lecture type  
15 of thing, and then there was a fill-in sheet. You know, you  
16 have to fill in one or two words and certain paragraphs, and  
17 there would be an open book test at the end, is how I-CAR  
18 runs their classes.

19 MR. KLEIN: Thank you. No further questions.

20 MR. TOMSKY: No recross.

21 THE COURT: Thank you. You're excused.

22 All right, let's recess until about 2:15.

23 MR. TOMSKY: Just so we're clear, we are going  
24 to go -- we will be a bit out of order, as we discussed.

25 THE COURT: Yes.

1 MR. TOMSKY: I would like to preserve -- since  
2 it's the defendant's burden, I would like to preserve  
3 any post --

4 THE COURT: If necessary, you could request a  
5 recall.

6 MR. TOMSKY: I'm saying I would like -- if  
7 there are any motions or any requests that I was going  
8 to make --

9 THE COURT: Yes, understood.

10 (A recess was taken.)

11 COURT CLERK: Remain seated. Come to order.

12 THE COURT: Are we ready? I know we're taking  
13 a witness out of order.

14 MR. TOMSKY: Yes.

15 THE COURT: And all rights are reserved with  
16 respect to motions and so forth.

17 COURT CLERK: Remain standing. Raise your  
18 right hand.

19 Do you solemnly swear or affirm that the  
20 testimony you're about to give in this case on trial  
21 will be the truth, the whole truth and nothing but the  
22 truth, so help you God?

23 THE WITNESS: I do.

24 COURT CLERK: Have a seat. Please state and  
25 spell your first and last name and state your address.

1 THE WITNESS: Michael Thiele, T-H-I-E-L-E, One  
2 State Farm Drive, Ballston Spa, New York 12020.

3 THE COURT: You may inquire.

4 MR. TOMSKY: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. TOMSKY:

7 Q. Now, the address you just gave, is that a corporate  
8 office or a particular business address you work at?

9 A. It's a corporate office.

10 Q. Is there a particular address that you work out of?

11 A. I work out of my home, my home address.

12 Q. You don't have to give that. How long -- well,  
13 what company do you work for?

14 A. State Farm Insurance.

15 Q. How long have you worked for State Farm?

16 A. 22 years.

17 Q. What is your current job responsibility at State  
18 Farm?

19 A. An auto Estimatics Appraiser.

20 MR. TOMSKY: Your Honor, do you mind if I say  
21 AEA or estimator?

22 THE COURT: That's fine.

23 Q. How long have you been an estimator for State Farm?

24 A. 22 years.

25 Q. What did you do before working for State Farm?

1           A.    I worked at an independent company doing desk  
2 review of estimates.

3           Q.    Approximately, how long have you been involved in  
4 the Estimatics game, I guess?

5           A.    Probably 25 years.

6           Q.    Do you have any particular certifications as it  
7 pertains to estimating?

8           A.    I have I-CAR certifications.

9           Q.    What is that?

10          A.    It's the international -- it's an industry  
11 conference for the insurance industry and for repairs, just  
12 general knowledge of automobiles.

13          Q.    You have to do that during a particular time or  
14 every couple of years, how does that work?

15          A.    It's good to just keep up on the knowledge of the  
16 new cars coming out, so it's just an experience.

17          Q.    You've done a little bit already, but can you  
18 briefly describe what you have to do to get the I-CAR  
19 certification?

20          A.    There are certain online courses you can take.  
21 There's also in-class courses. They range three or four  
22 hours in class.

23          Q.    Do you have to do that up to a certain point for  
24 the certification or is it ongoing?

25          A.    It's an ongoing process. Right now I'm at Pro



1 Level 2, which is a certain certification. They have Pro  
2 Level 1, 2 and 3.

3 Q. Can you briefly describe Level 1 for me?

4 A. It's just a basic knowledge of courses. I can't  
5 explain how many courses there are, but it's just installing  
6 glass, they talk about suspensions, steering, damage  
7 analysis, just basic appraising knowledge.

8 Q. How about -- you mentioned that you're now a Level  
9 2. Can you please describe what that is?

10 A. It's similar as the basic knowledge it's just more  
11 involved courses. Once again, steering and suspension,  
12 airbags, electronics. They try and keep -- it keeps you up  
13 to date with the new technologies that are coming out.

14 Q. Does that assist with your day-to-day duties as an  
15 estimator?

16 A. Yes.

17 Q. How so?

18 A. Once again, just keeps me up to date with the  
19 current knowledge, the current practices, how vehicles are  
20 going -- are rebuilt, going together.

21 Q. Let's talk about your general day to day. Do you  
22 have a specific geographic area that you cover?

23 A. Mostly Nassau County, like southern Nassau County.

24 Q. And approximately how long have you been working in  
25 that area for?

1 A. Approximately, 12 years.

2 Q. On an average week, again, average, approximately,  
3 how many estimates do you write for various cars?

4 A. About 25.

5 Q. And, approximately, how many different shops will  
6 you visit in a given week?

7 A. Between 18 and 20.

8 Q. Are you an hourly employee or a salaried employee  
9 at State Farm?

10 A. Salary.

11 Q. Do you get any kind of overtime?

12 A. Yes.

13 Q. Can you just briefly describe how that works?

14 A. Whatever overtime there is on a daily basis I fill  
15 out a timecard that gets approved by management.

16 Q. How about bonuses?

17 A. They don't have necessarily bonuses. They have  
18 raises. They may have a company wide incentive program.  
19 That's not every year.

20 Q. As far as you know, is your bonus determined based  
21 on the amount of estimates you write?

22 A. No.

23 Q. Do you know -- if I say overwrite process as it  
24 refers to estimates, do you know what that means?

25 A. Yes.

1 Q. Can you describe for the Court what that is?

2 A. On certain vehicles they may send out a  
3 re-inspector to look at some of my passed vehicles that I  
4 have inspected and written an estimate on, and the re-  
5 inspector might look at it and say -- you know, he may have  
6 allowed two more hours than normal or purchased a part that  
7 wasn't needed on an estimate.

8 Q. Now, does this happen with every vehicle that you  
9 inspect?

10 A. No.

11 Q. Do you know how it's determined what vehicle is  
12 inspected in this overwrite process?

13 A. No, I don't.

14 Q. Does how well you do in the overwrites have any  
15 determination on salary, commission, bonus, anything like  
16 that?

17 A. It does. It's just not -- it's just a part of.

18 Q. Is there something that's considered a good score  
19 on an overwrite?

20 A. Pretty much anything that's less than 10 percent.

21 Q. Are you told ahead of time if there is a certain  
22 reinspection on one of your vehicles?

23 A. No.

24 Q. Are you told after the fact?

25 A. Sometimes, if it's a poor reinspection.

1 Q. Briefly, in general, what does happen if there is a  
2 larger discrepancy?

3 A. It's just a discussion between me and my manager  
4 just so I can fix the problem on the next inspection or be  
5 better alert for the next time.

6 Q. As far as this claim goes for Ms. Pope's 2015  
7 Nissan Armada, is there an -- is there an overwrite or  
8 reinspection that you're aware of?

9 A. No.

10 Q. Now, you said that you're an estimator. Can you  
11 briefly describe, again, briefly, what that means in terms of  
12 what you do for State Farm?

13 A. I would look at a vehicle, take photographs, and my  
14 estimate would be written as far as the scope of the damage  
15 from what I can see.

16 Q. What do you mean by inspecting and looking it over,  
17 what does that mean?

18 A. I would electronically write down the vehicle  
19 identification number, mileage, options, and then go over the  
20 vehicle and write an estimate for the damages that I see.

21 Q. Now, when you actually provide an estimate, is it  
22 just a final number or is it broken down in some way?

23 A. Well, it's a line by line itemized estimate.

24 Q. What is that?

25 A. So I would start at the front of the vehicle and

1 work my way back towards the damage, or, vice versa, if the  
2 damage is in the rear, work myself -- work my way in.

3 Q. And does your estimate usually involve a specific  
4 dollar amount that you believe is adequate to repair the  
5 vehicle?

6 A. Yeah, at the end there would be total with a dollar  
7 amount.

8 Q. In terms of the estimate itself in making up  
9 that -- coming to that number, what elements are needed to  
10 come up with that final dollar amount?

11 A. Well, each part may have a labor attached to it,  
12 may have a part price, a labor, and then I would -- that  
13 would be multiplied by the labor rate and you would come up  
14 with a total.

15 Q. When you say you do a line by line, does each line  
16 have a particular amount for the part and line for labor?

17 A. Yes. If it's a part that's being refinished, there  
18 would be a line for that, so there would be, say, a bumper  
19 cover, for an example, would have a part price, would have a  
20 labor attached to it, and there would be a refinish  
21 operation.

22 Q. Again, I'm going to -- keeping it general for right  
23 now, when you are drafting an estimate, do you use the repair  
24 shop's labor rate or is there a particular labor rate that  
25 State Farm uses?

1 A. It would be a labor rate State Farm supplies to me.

2 Q. Are you the person who determines the labor rate?

3 A. No.

4 Q. Do you know who provides that to you?

5 A. It would be our supervisor who usually gives out  
6 the rates for the local area.

7 Q. Just based on your experience as an estimator, can  
8 the labor rate change based on location, geographic location  
9 in the country?

10 A. I believe it does, yes.

11 Q. Does the labor rate sometimes differ based on the  
12 type of car?

13 A. Yes, it could.

14 Q. And does it, again, sometimes differ based on the  
15 type of repair that's being done?

16 A. It's possible, yes.

17 Q. Can you describe what a new part or an OEM part is?

18 A. That would be a part supplied by the original  
19 equipment manufacturer.

20 Q. And can you describe what a recycled part is?

21 A. That would be a part off a similar vehicle that was  
22 in a loss but it may actually come from a salvage yard, a  
23 salvage vehicle or part that was never used and just in a  
24 salvage yard.

25 Q. In terms of deciding again, keeping it general,

1 deciding what part to use, when you make up your estimate, do  
2 you always use either a new or recycled part or is it a  
3 mixture?

4 A. It could be a mixture of whatever is available  
5 that's a quality part and that's -- that's a lower cost.

6 Q. How would you determine, again, keeping it general,  
7 whether to use a new or recycled part for a particular  
8 repair?

9 A. Just depends on the availability of the parts  
10 really.

11 Q. Now, in general, would the use of a recycled versus  
12 a new part change the amount in the estimate?

13 A. It could.

14 Q. For that particular part?

15 A. It could, yes.

16 Q. Can you give me an example of why it would?

17 A. Most of the time, if I use a recycled part, it's  
18 probably a lower part cost than the OEM list price.

19 Q. Can you give me an example of when it would not  
20 change the cost?

21 A. I'm not sure of your question.

22 Q. Well, you indicated just now that there would be --  
23 there are times when there's a difference in price between  
24 recycled and new, correct?

25 A. Right.

1 Q. Is there an example that you can give where there  
2 would be no difference in cost between new and recycled?

3 A. Well, if there is no difference, I'm not going to  
4 allow for the recycled part. I would just go with the new  
5 part.

6 Q. Now, when you're giving your estimate, are you the  
7 one who determines new versus recycled?

8 A. Yes.

9 Q. As far as you know, do certain types of vehicles  
10 recommend only new parts as opposed to the use of a recycled  
11 part?

12 A. Yes.

13 Q. What kind of car is that, as far as you know  
14 offhand?

15 A. Most manufacturers have some sort of a  
16 recommendation for their new parts.

17 Q. Now, you say "recommendation." Is that a  
18 requirement or recommendation?

19 A. It's a recommendation on the manufacturer if they  
20 would like you to use their parts.

21 Q. Now, would you write an estimate including a part  
22 that was not recommended by the manufacturer?

23 A. Like a recycled part?

24 Q. Correct.

25 A. Okay, yeah, I would use it, yeah, if it's a lower



1 cost alternative and it came off the similar vehicle and if  
2 the quality is similar or better, I would go with the  
3 recycled part.

4 Q. When you say "quality is similar," is there a  
5 particular determination that you use to make sure that the  
6 part, the recycled part would at least be a quality part?

7 A. In the database that we use, there is a part  
8 search, and the part search will tell you if the part is --  
9 has any damage on it or if it's a decent quality part, and if  
10 it's not, I just don't choose it. If it is, I will allow for  
11 it.

12 Q. How would you go about getting a recycled part for  
13 a vehicle?

14 A. The body shop would place the order for the part  
15 and it would be delivered to the shop.

16 Q. Now, in making your estimates as it concerns making  
17 your estimate when dealing with recycled versus new, do you  
18 speak to the repair shop about whether to use a new or  
19 recycled part?

20 A. Yes.

21 Q. And why do you do that?

22 A. Because you want to get an agreed price with the  
23 shop.

24 MR. KLEIN: I'm having a little trouble  
25 hearing the witness.

1 THE COURT: Could you speak up just a bit?

2 THE WITNESS: Sure.

3 THE COURT: Thank you.

4 MR. KLEIN: Thank you, Judge.

5 Q. Now, when you're using a recycled part, does the  
6 recycled part have to come from the same make of car, for  
7 example, a Nissan, does it have to come from a Nissan or can  
8 it come from a different type of car?

9 A. If I'm buying it for a Nissan, it would come from a  
10 Nissan.

11 Q. Now, do you -- I think you started going into it,  
12 how do you actually get that recycled part to use on that --  
13 on a car?

14 A. I would choose the part from the database on my  
15 estimate, and it's the shop that would have to order the  
16 part, and he would have to look at it to see if it was a  
17 quality part to be used.

18 Q. Now, during your time as an estimator, has there  
19 come a time when you wrote for a recycled part and later on  
20 it was deemed unacceptable for the repair?

21 A. Yes, it does happen.

22 Q. And take me through what happens in that type of  
23 scenario?

24 A. Let's say maybe a fender would arrive and maybe it  
25 has damage, so the shop would present to me the invoice for

1 the recycled part and I would look at the fender and say,  
2 okay, this fender is no good, and then we would talk about  
3 what we needed to do to fix the situation. We would either  
4 give more repair on that recycled part or we would just go  
5 with a new OEM part.

6 Q. Would you draft an estimate for a recycled part  
7 that was clearly inferior to a new part?

8 A. No.

9 Q. In general, where do these recycled parts come  
10 from?

11 A. Salvage yards. They would be from salvage  
12 vehicles.

13 Q. What is a salvage vehicle?

14 A. It's a vehicle that was either in a prior loss that  
15 can no longer be deemed safe for roads and it would be parted  
16 out. They would take off pieces of it to be used and resold.

17 Q. In general, what is the goal of an estimate that  
18 you give to the repair shop?

19 A. To come up with an agreed price how to fix the car.

20 Q. What if you believe that the vehicle cannot get  
21 back to -- I guess I'll call it a pre-loss condition?

22 A. If it's over a threshold, I believe New York it's  
23 75 percent, then it would be deemed a total loss.

24 Q. Are you the one who makes a total loss  
25 determination?

1           A.    I would take the options and the estimate amount  
2 and send it up to the claim handler and they would make that  
3 determination, if it's a total loss or not.

4           Q.    Now, if it's a car that you have been working on  
5 where -- withdrawn.

6                    If it's a car that you have been involved in the  
7 estimates for, how are you notified if a car has been deemed  
8 a total loss by other people at State Farm?

9           A.    Unless they had a question, I wouldn't know about  
10 it.  If it gets to a certain threshold, I would just send  
11 them the information and the claim handler would make the  
12 determination and call the repair shop for the charges.

13          Q.    Now, is there -- can you think of an example where  
14 a vehicle would be a clear total loss from the jump, from the  
15 start?

16          A.    Sure.  Sometimes just looking at a car you can tell  
17 if the airbags have deployed, if there's some severe damage  
18 structurally, it would just be considered an obvious total  
19 loss.

20          Q.    Is there an example of the kind -- would there  
21 be -- withdrawn.

22                    Would there be an example of a car that you did not  
23 believe was a total loss initially and then later on became  
24 one?

25          A.    Yes, that has happened, yes.

1 Q. Is there a term for that where you can't tell  
2 initially but later on you deem that?

3 A. That would be called a constructive total loss.

4 Q. So I kind of mangled my question. Can you kind of  
5 describe what a constructive total loss is?

6 A. Yes.

7 Q. Please do.

8 A. It would be a car that I would write an estimate  
9 and maybe the shop might take it apart and determine it has  
10 inner damage or severe frame damage or something that would  
11 require the car, some heavy -- more repairs and we would just  
12 say, you know what, at this point, let's just total loss the  
13 car and be done with it.

14 Q. In general, how are you notified that you have to  
15 come in and inspect a vehicle and give an estimate?

16 A. I get notice through my dispatching system. They  
17 send an electronic attachment and I would get the -- sent  
18 into my estimating kit, which is on my laptop.

19 Q. And is there a particular time frame that an  
20 initial estimate must be done from the time the car gets into  
21 the repair shop?

22 A. Six days, yes.

23 Q. What happens when you're done making your estimate,  
24 in general?

25 A. Just if the car is repairable, I would leave an

1 estimate copy with the shop.

2 Q. When you say leave it with the shop, what do you  
3 mean by that?

4 A. Either an electronic e-mail or the estimate would  
5 be dropped on the desk of a representative of the repair  
6 shop.

7 Q. Now, again, in general, once you give an estimate,  
8 whether it's an initial or supplement, which we'll talk about  
9 soon, does the repair shop have to accept that estimate and  
10 repair the car for that price?

11 A. No.

12 MR. KLEIN: Objection.

13 THE COURT: What's the basis of your  
14 objection?

15 MR. KLEIN: He's asking Mr. Thiele about what  
16 the auto body shop has to do. It's beyond the scope  
17 of -- well, it's speculative and I think calls for a  
18 legal opinion of what Mid Island's obligations are.

19 THE COURT: Good try. Overruled.

20 Q. You could answer. I should have said this ahead of  
21 time. If you need the question repeated to you, just let me  
22 know and I could ask the Judge. Okay?

23 A. Okay.

24 Q. Would you like it redone?

25 A. I said no on the answer.

1 Q. You would not have to take your estimate and repair  
2 the car for that amount of money?

3 A. No. They can repair the car in any manner they  
4 deem safe. That's up to the shop.

5 Q. So if there is a disagreement between the estimate  
6 that you write and the determination from the repair shop,  
7 what happens?

8 A. That would be discussed and there would be what's  
9 considered a non-agreed price situation, and I would inform  
10 my claim management of the situation.

11 Q. In general, does there come a time where a shop  
12 requests something called a supplement?

13 A. Yes.

14 Q. And what is a supplement to an estimate?

15 A. The vehicle is further dismantled or exposed more  
16 damage that we have to come and take a look at it again.

17 Q. Is there any particular reason that you know of why  
18 that type of internal inspection would not be done initially?

19 A. You mean on the first inspection or --

20 Q. Correct.

21 A. Well, most of the time those internal damages can't  
22 be seen. Most vehicles, they have like bumper covers, they  
23 have things in the way or there might be some collision  
24 damage that you just can't access the inner parts of the car.

25 Q. Now, is there a particular reason why that is not

1 discussed or done immediately? For example, in this case  
2 there was more than one estimate, correct?

3 A. Correct.

4 Q. And on the initial estimate, it was -- was it a  
5 visual inspection or was that internal done?

6 A. I believe it was a physical inspection done on the  
7 vehicle by another estimator.

8 Q. Then I'll have him do that, but is there any  
9 particular reason why only an external inspection would be  
10 done initially as opposed to a more in depth inspection?

11 A. Well, you only have a certain amount of time to  
12 really do an inspection on the vehicle, and seeing it on site  
13 in the parking lot, it's not inside the repair shop, you  
14 know, in better conditions, torn down, so you kind of just  
15 write the scope of the damages pretty much what you can see.

16 Q. Again, you kind of mentioned it, as far as you  
17 know, if there is a disagreement between the shop and you on  
18 an estimate, including all supplements, what do you do?

19 A. If there is a disagreement, we discuss it with the  
20 shop that there is a disagreement. I would present my  
21 estimate and I would call my management and explain to them  
22 the situation and just upload my estimate, and that would be  
23 it for me.

24 Q. Now, in general, when you make an estimate, is it  
25 based on your physical inspection of the vehicle or is it



1 based on a photo inspection of somebody else?

2 A. It's my physical inspection.

3 Q. Now, obviously, I'm sure it changes from inspection  
4 to inspection, but approximately how long does it take for  
5 you to do an inspection of a vehicle?

6 A. Between 50 and 60 minutes on average.

7 Q. Now, if a supplement is needed, which party is the  
8 one who requests it, is it State Farm or is it the repair  
9 shop?

10 A. The repair shop would send a request to State Farm.

11 Q. Do you know how that's done?

12 A. I believe it's done electrically.

13 Q. And then what happens, again, in general, when you  
14 receive or you're dispatched for a supplement?

15 A. I usually get the assignment the night before and  
16 review what's being needed and go and inspect the vehicle  
17 physically the next day.

18 Q. Did that happen in this case?

19 A. Yes.

20 Q. Do you know, approximately, how many times that you  
21 provided a supplement for the 2015 Nissan Armada involved in  
22 this case?

23 A. I believe it was seven times. Yeah, seven times.

24 Q. Now, you indicated before that you go to many  
25 different repair shops?

1 A. Yes.

2 Q. Are all the repair shops that you go to located in  
3 Nassau County?

4 A. Most of them, yes.

5 Q. Where would the other ones be?

6 A. Possibly Suffolk.

7 Q. Now, in general, are you familiar with  
8 Mr. Jesberger sitting at the table over there?

9 A. Yes, I am.

10 Q. How do you know him?

11 A. He's the shop manager at Mid Island.

12 Q. Have you dealt with Mid Island Collision or M.V.B.  
13 prior to this claim involving Ms. Pope's Nissan Armada?

14 A. Yes, I have.

15 Q. Have you had issues reaching an agreed upon price  
16 with Mid Island Collision on more than one occasion?

17 A. I have.

18 Q. For different types of vehicles?

19 A. Yes.

20 Q. And for different types of repairs?

21 A. Yes.

22 Q. Do you have issues reaching an agreed upon price  
23 with other repair shops in the Nassau area?

24 A. No.

25 Q. In this claim, did you conduct the initial

1 inspection of the vehicle?

2 A. No, I did not.

3 Q. Do you know who did?

4 A. I believe it was Jim Rice.

5 Q. And then you indicated that you crafted multiple  
6 supplements in this claim?

7 A. Yes.

8 MR. TOMSKY: Can the witness be shown E and F,  
9 please?

10 COURT OFFICER: Showing the witness Exhibits E  
11 and F in evidence.

12 Q. Now, these documents, E and F, have you seen both  
13 these documents before today?

14 A. Yes, I have.

15 Q. When did you first, if you remember the date or  
16 around the time, when did you first see that final bill from  
17 M.V.B.?

18 A. This was shown to me when we got together in an  
19 office.

20 Q. So is it fair to say that you did not see that  
21 final bill on the day that it was created back in June 2017?

22 A. No.

23 Q. All right, now, in general, forgetting about  
24 peripheral things such as rental agreements and towing, is  
25 there anything on the final bill from M.V.B., and, again,

1 forgetting about the labor rate, is there anything on the  
2 final bill that was done, allegedly done by M.V.B. that you  
3 disagree with that should either not have been done or not  
4 have been done in the manner that you believe it should have  
5 been done? Actually, I apologize. I ask that you look at  
6 the Auto Haus bill for that.

7 A. Okay. Well, I see there's two wheels on here OEM.

8 Q. How does that differ -- well, can you please read  
9 what was done on that final Auto Haus bill involving the two  
10 wheels?

11 A. It looks like it's two OEM alloy wheels.

12 Q. Just so I'm clear, the OEM is two new wheels?

13 A. Correct, yes.

14 Q. How does that differ from what you believed was the  
15 appropriate course of action as it relates to that part?

16 A. I had written a recycled wheel for the left rear.

17 MR. TOMSKY: I believe I want the witness  
18 shown Exhibit-Y supplement nine.

19 COURT OFFICER: Showing the witness Exhibit-Y.

20 Q. I'm going to have you specifically look at  
21 subsection 44, which is on the wheels. What did you write  
22 that is in conflict with what was on the final bill from Auto  
23 Haus?

24 A. There's one wheel for \$300, plus the markup.

25 Q. Can you please explain the difference between

1 your -- what you put on your final estimate and what M.V.B.  
2 put on their final bill as it relates to this -- for this one  
3 subsection?

4 A. I see two wheels. I'm not sure why there's two  
5 wheels on here.

6 Q. Now, the wheel that you wrote, you indicated that  
7 it was a recycled part?

8 A. Correct.

9 Q. Now, why in your opinion did you write the wheel as  
10 one recycled as opposed to two new wheels based on your  
11 dealing with the car?

12 A. The damage was to the left rear and that's where  
13 the impact was on the wheel.

14 Q. Why did you write for a recycled wheel as opposed  
15 to a new wheel?

16 A. It was available and was cost-effective.

17 Q. When you say "available and cost-effective," is  
18 there a certain level of quality that you want to make sure  
19 is involved in a recycled part?

20 A. Yes.

21 Q. Please describe that.

22 A. The same quality of wheel that's on the car. In  
23 this case, it was a chrome wheel, so it has to be usable, it  
24 has to be of quality, not scratched, not damaged. You know,  
25 just like the one that was own the car.

1 Q. And why in your opinion did you not write for a  
2 second wheel at all?

3 A. The recycled, there was no recycled. I don't  
4 believe it was even ordered. I was never presented with an  
5 invoice for a recycled wheel, so I didn't change the  
6 estimate.

7 Q. So, in general, I know --

8 THE COURT: I'm sorry, I don't think -- I  
9 think there was a disconnect there.

10 Could you read the question back, please, Pat?

11 (The requested portion was read.)

12 THE WITNESS: Oh, a second wheel?

13 THE COURT: Yes.

14 Q. Correct?

15 A. I don't think I was presented with damage on  
16 another wheel.

17 Q. When you say not presented with damage, when you  
18 look -- when you do your inspection or a supplement, you look  
19 at the vehicle, correct?

20 A. Yes.

21 Q. At any time during any of your inspections, did you  
22 look at the rear right wheel?

23 A. Possibly. I'm not sure if my images show a picture  
24 of it. If I looked at it, I probably took a picture of it.

25 Q. Now, in general, when you write an estimate, is

1 that supposed to predate the work being done or postdate the  
2 work that's being done?

3 A. Usually it predates the work.

4 Q. When you say "usually," can you be more specific?

5 A. Well, sometimes, like suspension work, it might  
6 need to be replaced first. I was looking at a car on the  
7 ground, I can't physically see where the damages are. I know  
8 that there is a wheel impact, but I don't know what the  
9 severity of that damage is.

10 Q. When you say "suspension work," what do you mean by  
11 that?

12 A. Behind the wheel, the brakes, the axle, the  
13 components holding the suspension in position.

14 Q. So it was your determination that on this  
15 particular car, after looking at all -- looking at the  
16 vehicle multiple times, that the only -- for those two  
17 wheels, the only thing that needed to be done was one  
18 recycled wheel on the back left?

19 A. From the information that was presented to me, yes.

20 Q. When was the first time, and you could feel free to  
21 look at that entire exhibit, it's already been marked, when  
22 was the first time that you viewed the vehicle?

23 A. I believe it was supplement two.

24 Q. Please look at that and let me know the date.

25 A. Supplement two was April 20th.

1 Q. Of what year?

2 A. 2017.

3 Q. Now, did you actually physically write a line item  
4 estimate for the vehicle on that date?

5 A. Yes. I added damages to the original estimate,  
6 yes.

7 Q. And did you give that estimate, the supplement  
8 estimate to Mid Island Collision somehow?

9 A. Yes.

10 Q. Do you recall how that was done?

11 A. I believe it was possibly e-mailed. I don't have  
12 an exact --

13 Q. Now, when you go to Mid Island Collision to look at  
14 a vehicle, can you take me through from the time you walk in  
15 until the time you walk out? You can even limit it to the  
16 initial inspection that you did on this car, the supplements.

17 A. In general or in this particular case?

18 Q. If you recall this particular case, please answer  
19 it that way. If you don't, let me know.

20 A. I believe I walked into the shop and Bob pointed me  
21 to the vehicle. We discussed some labor operations at the  
22 vehicle and I was left to write my estimate.

23 Q. Is Mr. Jesberger or anybody else that works for  
24 M.V.B., are they with you when you write an estimate?

25 A. There might be a shop manager or a worker around,



1 but there's no discussion with them.

2 Q. On this particular -- the first supplement that you  
3 wrote, so the first time that you saw the car, do you recall  
4 if anybody from Mid Island Collision, whether Mr. Jesberger,  
5 Mr. McGauvran or anybody else who worked there, was with you  
6 as you inspected it?

7 A. No, I don't remember.

8 Q. Now --

9 A. No, I don't remember there was.

10 Q. Now, just to be clear, during all your inspections,  
11 did anyone from M.V.B., whether Bob, Brian or anybody else  
12 give you any hassle about looking at the car?

13 A. No, not about the inspection, no.

14 Q. Now, looking at that first estimate, the first  
15 supplement that you wrote, what was the labor rate you used  
16 for sheet metal?

17 A. \$49 an hour.

18 Q. What was the labor rate you used for mechanical?

19 A. 49.

20 Q. What was the labor rate you used for frame?

21 A. 51.

22 Q. And what was the labor rate you used for refinish?

23 A. 49.

24 Q. Now, starting with sheet metal, why was that the  
25 rate that you used in this case?

1           A.    This is a standard type of vehicle, nothing out of  
2 the ordinary, so I just offered the standard rate that State  
3 Farm offers.

4           Q.    Same question as it deals with mechanical/electric,  
5 why did you use the \$49 per hour rate there?

6           A.    The same reasons, it's a standard vehicle, any  
7 repair shop can repair this vehicle for the same price.

8           Q.    And the \$51 rate for frame, same question?

9           A.    That's the same rate that we offer for other shops  
10 in the same area.

11          Q.    For similar cars?

12          A.    For similar cars, yes.

13          Q.    How about finally on the refinish, the \$49 rate,  
14 what was the reason for offering that rate at that time?

15          A.    It's also the same rate that we allow for.

16          Q.    Now, as you look through your final estimate, did  
17 you give any higher labor rate for any particular part or  
18 action in this case?

19          A.    I don't believe so.

20          Q.    And why is that?

21          A.    State Farm's prevailing rate in this area is any  
22 other vehicle, any other Nissan would get the same rate in  
23 any other repair shop in Nassau County.

24          Q.    Okay, now, in your -- I'll focus on the last couple  
25 of years so we can at least be timely with that.

1           Would there be instances where you would give a  
2 higher labor rate for -- withdrawn.

3           Would you give a higher labor rate for certain  
4 repairs?

5           A. For certain specialty vehicles, yes, I would.

6           Q. Can you describe what a specialty vehicle is at  
7 least in terms of how you define it?

8           A. Specialty vehicle would be one where you would need  
9 certified -- certifications. As an example, a Tesla, you  
10 can't just fix a Tesla at the shop around the corner. It has  
11 to have certifications.

12          Q. And does the 2015 Nissan Armada fall into that  
13 category?

14          A. No, it does not.

15          Q. Now, is there certain type of work that you would  
16 authorize at a higher labor rate?

17          A. Not in this case, no.

18          Q. I'm sorry, I should have specified. In general, is  
19 there a higher labor rate that you would authorize on a  
20 particular vehicle?

21          A. If there is -- if a vehicle may have just strictly  
22 mechanical damage and it's in a strictly mechanical shop, I  
23 would offer a higher rate, yes.

24          Q. Can you just describe what you mean by that?

25          A. In Nassau County there's no prevailing competitive

1 price for mechanical repairs, whereas there is a prevailing  
2 price for body refinish and frame repairs.

3 Q. Now I want to go back to the date of your first  
4 estimate on this vehicle, which you said was April 20th. On  
5 that date, do you have any recollection of Nick from M.V.B.  
6 speaking to you about the labor rate that you put on your  
7 estimate?

8 A. Not on the first inspection, no.

9 Q. Did there come a time later on where somebody from  
10 Mid Island Collision, whether it was Mr. Jesberger,  
11 Mr. McGauvran or somebody else, spoke to you about labor  
12 rate?

13 A. I believe it was supplement number four is when we  
14 first sat down and we discussed the estimate line by line and  
15 we discussed the labor rate.

16 Q. What date was that, was supplement number four?

17 A. I believe it was May.

18 Q. Just take a look so you don't have to believe.

19 A. Yeah, let me find it. May 4th, 2017.

20 Q. What date was the collision, as far as you know?

21 A. The date of loss was March 27th.

22 Q. You said there was a supplement four. What number  
23 was your first supplement?

24 A. Supplement two.

25 Q. Did you also prepare supplement three?

1 A. Yes.

2 Q. So is it fair to say that it wasn't until the third  
3 time you went to the shop that you had any discussion about  
4 labor rate with anyone from M.V.B.

5 A. Correct.

6 Q. And without telling us what anyone from M.V.B.  
7 said, what did you talk about in that conversation?

8 A. As far as the labor rate or --

9 Q. Correct.

10 A. We discussed his posted labor rate, and I believe  
11 Bob asked me if I could move upwards on our labor rate, and I  
12 said I could not.

13 Q. And this is after supplement four?

14 A. Supplement four, yes.

15 Q. Now, at any time did somebody from Mid Island  
16 Collision tell you that they believe this vehicle was a total  
17 loss?

18 A. Yes.

19 Q. Do you recall when that was?

20 A. Probably all the supplements that I went on Bob  
21 stated that this vehicle might be a total loss.

22 Q. Now, let's focus on the first time. Again, I'm not  
23 sure what the date was, but the first time that he indicated  
24 that to you, did you agree with him?

25 A. No, I didn't agree. I was not close to the

1 threshold of being a total loss.

2 Q. Now, when you're talking about thresholds,  
3 obviously you said it was a 75 percent value, are you using  
4 your estimates or someone else's?

5 A. My estimates.

6 Q. So when you're referring to the 75 percent for this  
7 particular vehicle, that's -- your estimate at that time was  
8 not at that -- at that point yet?

9 A. Correct, using State Farm's labor rates.

10 Q. Is it fair to say at some point M.V.B. thought it  
11 was a total loss and you actually believed it was not?

12 A. Yes. In the initial supplements, yes.

13 Q. Do you recall the first time that you indicated to  
14 anybody at State Farm that you believe this was getting to  
15 the total loss threshold?

16 A. I believe it was supplement four.

17 Q. And what date was that again?

18 A. That was, I think, May 4th. Let me just confirm  
19 that. Supplement four, yeah, May 4th.

20 Q. Now, going back to the -- I guess the first time  
21 that you got to M.V.B. concerning this vehicle, that was at  
22 the supplement phase, correct?

23 A. Yes.

24 Q. And did you agree with M.V.B. that the vehicle  
25 needed additional repairs?

1 A. Did I? Yes.

2 Q. And did you write an estimate, the supplement  
3 estimate for those additional repairs?

4 A. Yes.

5 Q. And did you continue doing that on multiple  
6 occasions?

7 A. I did, yes.

8 Q. And each time you give a supplement, do you have to  
9 look at the vehicle again?

10 A. Yes.

11 Q. Now, besides the issue with the wheel, was there  
12 any repairs made by M.V.B. that you believe were  
13 inappropriate?

14 A. The removal of the body of the frame was taken off  
15 a couple of times.

16 Q. Can you please explain?

17 MR. KLEIN: Objection. We've stipulated --

18 MR. TOMSKY: Well --

19 THE COURT: If we're going to have this, we'll  
20 have a side-bar and I will have to exclude the witness.

21 MR. TOMSKY: Can we please do that?

22 THE COURT: Yes. All right, would you?

23 THE WITNESS: Yes.

24 THE COURT: You're going to have to step down  
25 for a minute.

1 THE WITNESS: Sure.

2 THE COURT: Okay, why don't you come up.

3 (Whereupon, a side-bar was held.)

4 THE COURT: The parties have previously  
5 entered into a stipulation concerning the work on the  
6 bill and limiting the objections to the second wheel,  
7 the use of an OEM wheel, and the labor rate. There are  
8 also some disagreement as to peripheral things such as  
9 towing, but in terms of the car repair, those are the  
10 only things which the parties don't agree on.

11 I am going to permit testimony concerning the  
12 removal of the body only for the purpose of showing that  
13 the witness approved some items which might have not  
14 been his preferable way of making a repair.

15 MR. TOMSKY: Okay.

16 MR. KLEIN: Thank you, Judge.

17 THE COURT: We need to get him back.

18 COURT CLERK: You're reminded you're still  
19 under oath.

20 THE COURT: Pat, read the question back,  
21 please?

22 (The requested portion was read.)

23 Q. Can you please explain your objection to that being  
24 done by M.V.B.?

25 A. Right. We had negotiated some frame time, pull



1 time to square the structure, the frame. If there was an  
2 issue with the frame at that point, it should have been noted  
3 and that could have been repaired a lot sooner or a lot  
4 earlier than it was. The repairs continued on the body and  
5 the frame should have been completed first before the body  
6 was put back down on the frame.

7 Q. Now, despite that objection, did you still allow  
8 for that final payment -- withdrawn.

9 Despite that objection, on your final estimate, did  
10 you allow for the -- for that time to be included in the  
11 final bill excluding the labor rate?

12 A. I allowed for the removal of the body twice, not  
13 three times.

14 THE COURT: All right, now I'm somewhat  
15 confused.

16 MR. KLEIN: I just would reiterate my  
17 objection at this point that his last answer be stricken  
18 from the record.

19 MR. TOMSKY: If it's better, I can say our  
20 stipulation still exists, that we're not challenging --

21 THE COURT: The issue of the body --

22 MR. TOMSKY: It's more that he allowed for a  
23 certain amount of time for something despite that.

24 THE COURT: All right, let's let it stand the  
25 way it is. I understand it. I think the record is

1 clear. Might have done it differently when we started  
2 but let's not spend anymore time on it.

3 MR. TOMSKY: All right.

4 Q. Now, in general, you indicated that you have had  
5 issues with M.V.B. in the past about labor rates, correct?

6 A. Yes.

7 Q. Now, just in general and on this case, on this  
8 claim, is it up to you to change the labor rate?

9 A. It is not.

10 MR. TOMSKY: Nothing further.

11 THE COURT: Mr. Klein.

12 CROSS EXAMINATION

13 BY MR. KLEIN:

14 Q. Good afternoon, Mr. Thiele. Thank you for coming  
15 in today.

16 A. Sure.

17 Q. In general, your estimations pertain to damaged  
18 automobiles, right?

19 A. Yes.

20 Q. In particular, damaged automobiles get brought --  
21 that get brought to an auto body shop, right?

22 A. Yes.

23 Q. And then you visit the shop and, among other  
24 things, you evaluate the damage to the car, right?

25 A. Yes, I would look at the car and write an estimate.

1 Q. In particular, what you're estimating is what's  
2 necessary to restoring the car to its pre-loss condition,  
3 right?

4 A. Yes.

5 Q. One form that these estimates take is in cost,  
6 which is to say you write the price that you think it should  
7 cost for bringing the car back to pre-loss condition, right?

8 A. Correct.

9 Q. And you try not to write a higher cost than what's  
10 necessary to fix the car, right?

11 A. In some cases, yes.

12 Q. In some cases what?

13 A. Is the higher cost.

14 Q. The question is, you try not to write a higher cost  
15 than what's necessary to fix the car, right?

16 A. Yeah, you're writing an estimate to repair the car  
17 to the cost of the car, to the repairs.

18 Q. You try not to write a higher cost than what's  
19 necessary to fixing the car, right?

20 A. I'm not sure what you're asking, your question.

21 Q. Do you try to overwrite the estimate?

22 A. No.

23 Q. You try not to write a lower cost than what's  
24 necessary to fix the car, right?

25 A. Correct.

1 Q. You've been doing this, you testified, I believe,  
2 with State Farm for 22 years?

3 A. 22 years, yes.

4 Q. And in the industry for 25 years?

5 A. Approximately, yes.

6 Q. Your services were deployed on a 2015 Nissan Armada  
7 belonging to Courtney Pope, right?

8 A. Yes.

9 Q. Your first estimate was on April 20th, 2017, right?

10 A. Yes.

11 Q. And your estimate for the cost of repairing this  
12 vehicle back to pre-loss condition was \$17,052.51, right?

13 A. Yes, it is.

14 Q. But this wasn't the first estimate that had been  
15 performed on this car, was it?

16 A. No, it was not.

17 Q. You had to revise the prior estimate upward, right?

18 A. I did in this case, yes.

19 Q. And, in fact, in comparison to the first estimate  
20 on the car, you had to revise State Farm's original estimate  
21 upward by about 69 percent, right?

22 A. I don't know about the percentages, but \$3,674.

23 Q. Your colleague that you testified to about a moment  
24 ago, Mr. Rice, had initially written the vehicle for  
25 \$10,802.70, right?

1 A. If that was the amount minus my supplement, then --

2 Q. You tell me.

3 A. His estimate was \$13,377.

4 Q. No. Mr. Rice's initial estimate was for  
5 \$10,802.70, wasn't it, on March 31st, 2017?

6 A. March 31st, there it is, yes, 10,082.

7 Q. And your estimate was higher than that by  
8 \$6,969.89, right?

9 A. If I had a calculator -- I don't have a calculator  
10 in front of me to --

11 Q. Okay. So you complete this estimate on April 20th,  
12 right, Mr. Thiele?

13 A. Yes.

14 Q. And there may have been a lower estimate in the  
15 past but you had come in and inspected the vehicle without a  
16 problem given to you by State Farm, by Mid Island, right?

17 A. I'm not understanding your question.

18 Q. Well, you testified on direct that there was,  
19 quote, no hassle, right?

20 A. Well, as far as inspecting the vehicle?

21 Q. Right.

22 A. Or walking into the shop?

23 Q. You testified on direct that you were given, quote,  
24 no hassle in inspecting the vehicle, correct?

25 A. If that was my words.

1 Q. Well, okay. So you had been given no hassle, you  
2 came in and performed another estimate on the vehicle, so now  
3 you're done, right, you were done with this car?

4 A. Are we still talking about the second inspection  
5 or --

6 Q. Was your role finished with regard to this Nissan?

7 A. On the second inspection?

8 Q. No. In general, is this the last time you saw the  
9 car?

10 A. I'm not understanding your question.

11 Q. Was this the last time that you saw Ms. Pope's  
12 Nissan?

13 MR. TOMSKY: Could we provide some dates?

14 Q. Sure. On April 20th, was April 20th the last time  
15 that you saw the car?

16 A. No, it wasn't.

17 Q. In fact, you came back six days later to give  
18 another estimate, right?

19 A. Yes.

20 Q. And you had to revise your estimate upward, right?

21 A. I believe so.

22 Q. You believe so?

23 A. Let me look estimate three. Yes, I did.

24 Q. And then you came back a third time on May 4th,  
25 2017, right?

1 A. May 4th, that was supplement four, yes.

2 Q. And this was now more than two weeks later than  
3 your first estimate, right?

4 A. I believe so.

5 Q. And this was over a month later than when State  
6 Farm had first seen the vehicle, right?

7 A. Yes.

8 Q. And so all of this while Ms. Pope was not in her  
9 Nissan, correct?

10 A. I don't know what she was in.

11 Q. But you do know that she wasn't in that car, don't  
12 you?

13 A. Correct, yes.

14 Q. So on May 4th you come in, did you finally say, I  
15 got it right, my prior estimate was correct, no change?

16 A. On May 4th I submitted a valuation to see if the  
17 car was still repairable.

18 Q. No. My question was, when you came in on May 4th,  
19 did you say, I nailed it last time, that was right?

20 A. No, I never said that.

21 Q. Did you have to revise your estimate upward again?

22 A. I did, yes.

23 Q. Then you came back six days later on May 10th  
24 again, right?

25 A. Yes, May 10th.

1 Q. And you revised your prior estimate upward again?

2 A. I did.

3 Q. And by now your view was that it would take  
4 \$23,201.24 to restore Courtney Pope's Nissan to its pre-loss  
5 condition, correct?

6 A. Yes.

7 Q. Not a dollar more, not a dollar less, right?

8 A. Sure.

9 Q. And this was now 36 percent higher than your own  
10 original estimate, right?

11 A. Yes.

12 Q. And 130 percent higher than State Farm's very first  
13 estimate on this car, right?

14 MR. TOMSKY: I'm not stipulating to the math  
15 being correct, I'm just saying I haven't checked the  
16 math to see if that's specifically accurate to the  
17 percentages.

18 THE COURT: And the witness said the same  
19 thing, he hasn't done the math. We get the point.

20 Q. At this point, were you done now after that  
21 estimate?

22 A. Well, I knew that there was going to be more  
23 damage.

24 Q. Were you done at that point?

25 A. No.



1 Q. In fact, you came back six days later again, right?

2 A. Yes, I did.

3 Q. And you had to revise your prior estimate upward  
4 again, right?

5 A. I did, yes.

6 Q. And you had to come back once again on May 25th,  
7 2017, right?

8 A. Yes, I did.

9 Q. And you revised your estimate upward again, right?

10 A. I did, yes.

11 Q. And you came back a final time on June 1st, 2017,  
12 correct?

13 A. Yes, I did.

14 Q. And you revised your estimate upward again, right?

15 A. Yes.

16 Q. So you had seen the car seven times and seven times  
17 you had to revise your prior estimate upward, right?

18 A. I did, yes.

19 Q. And on each case you thought that your estimate was  
20 correct, right?

21 A. I never said it was correct.

22 Q. On each case you thought it was though, right?

23 A. I thought I was close.

24 Q. You thought it was --

25 A. I was close, yes.

1 Q. For your visits alone, this back and forth spanned  
2 more than 40 days, didn't it?

3 A. If that's the -- I don't know if that's the  
4 timeline.

5 Q. Feel free to check. You had testified that your  
6 first visit was on April 20th.

7 A. And this is May 1st. So calendar days, is that 40  
8 days? I don't know.

9 THE COURT: What was the date of the last  
10 visit?

11 THE WITNESS: May 1st. No, I'm sorry, June  
12 1st.

13 THE COURT: So I'll take judicial notice that  
14 that's 40 days.

15 Q. And your final estimate, your final estimate was  
16 for \$28,999.89, correct?

17 A. Yes.

18 Q. Higher than State Farm's initial estimate by over  
19 187 percent, right?

20 MR. TOMSKY: Same.

21 Q. Does that sound right to you?

22 A. I guess.

23 THE COURT: Was it nearly double the original  
24 estimate?

25 THE WITNESS: Yes.

1 MR. KLEIN: Nearly triple.

2 THE COURT: Nearly triple the original  
3 estimate, I'm sorry.

4 THE WITNESS: Yes.

5 Q. Indeed, even your estimate later on was revised  
6 upward, as far as you know, right?

7 A. I believe Jim Rice looked at it again, yes.

8 Q. During this period of time, while you were coming  
9 back and forth to Mid Island, Mid Island was telling you that  
10 you were understating or underestimating the damage to this  
11 car, weren't they?

12 A. He stated it was grossly underwritten.

13 Q. In fact, you testified that Mid Island told you to  
14 deem it a total loss on, quote, all of the supplements,  
15 correct?

16 A. Correct.

17 Q. Mid Island cannot declare a car a total loss on its  
18 own, formally speaking. The only party in this case that  
19 could have done that was State Farm, correct?

20 A. Yes.

21 Q. But State Farm did not heed Mid Island's advice or  
22 request to deem it a total loss when Mid Island first  
23 requested it, correct?

24 A. When I sent the information on my supplement?

25 Q. State Farm did not deem the car a total loss when

1 Mid Island first requested it, correct?

2 A. No.

3 Q. That is correct, isn't it?

4 A. That's correct, yes.

5 Q. In fact, State Farm doesn't even claim to have  
6 reported a total loss until mid June, correct?

7 A. I don't know that.

8 Q. You don't know that?

9 A. No.

10 Q. Have you inspected the claim file in connection  
11 with this case?

12 A. Yes.

13 Q. What's your understanding of when it was declared a  
14 total loss?

15 A. I believe it was supplement nine.

16 Q. I'm sorry, the date?

17 A. I don't know what the date is. Let me look.

18 Q. Would it surprise you to hear that it was June  
19 14th?

20 MR. TOMSKY: I believe there is a question  
21 outstanding.

22 THE COURT: There is.

23 MR. KLEIN: What was the question?

24 THE COURT: The question was what was the date  
25 they declared it a total loss?

1 THE WITNESS: Actually, I don't know the  
2 specific date. I'm sorry, I don't know the specific  
3 date. I didn't look that up.

4 Q. If Mid Island had declared the car -- if State Farm  
5 had declared the car a total loss when Mid Island first  
6 pleaded for one, that would have cut off Mid Island's  
7 reasonable expectation to be paid, correct?

8 MR. TOMSKY: Objection as to M.V.B.'s state of  
9 mind.

10 THE COURT: I'm sustaining the objection not  
11 for that reason. The question is compound and a little  
12 confusing. I think you need to break it into two  
13 pieces.

14 MR. KLEIN: Sure.

15 Q. Mid Island told you, asked you to declare it a  
16 total loss on all of the supplements, correct?

17 A. Yes.

18 Q. And if that had happened, in other words, if State  
19 Farm had immediately acceded to that request, Mid Island  
20 could not have reasonably billed passed that point, could it  
21 have?

22 A. I don't know what they could bill for at that  
23 point.

24 Q. Well, is State Farm's position that billing should  
25 continue even after an auto body shop is notified of a total

1 loss declaration?

2 MR. TOMSKY: Objection to State Farm's  
3 position.

4 THE COURT: Overruled.

5 MR. KLEIN: He's here --

6 Q. Can you please answer the question?

7 A. Can you repeat the question?

8 THE COURT: Let me see if I could clarify it.  
9 If you declared the car a total loss, when I say "you,"  
10 I mean State Farm, is the body shop, in this case Mid  
11 Island, but, in any event, in any case, is the body shop  
12 permitted to continue with the work and then bill State  
13 Farm for it?

14 THE WITNESS: No. They're told to stop work  
15 and the storage will cut off a certain day.

16 Q. And if State Farm had heeded Mid Island's advice,  
17 it would have cost Mid Island money, right?

18 MR. TOMSKY: Objection.

19 THE COURT: Sustained.

20 Q. Mid Island's bill would not have been what it  
21 ultimately became, if State Farm had heeded Mid Island's  
22 advice, correct?

23 MR. TOMSKY: Objection, calls for speculation  
24 on what M.V.B.'s bill would have been. He doesn't work  
25 for M.V.B.

1 THE COURT: No, I'm going to overrule that  
2 objection. You could answer it, if you can. Do you  
3 need it read back?

4 THE WITNESS: Yes, please.

5 THE COURT: Please, Pat.

6 (The requested portion was read.)

7 A. Correct, it would not be that large.

8 Q. Would it have been -- as far as you know --

9 MR. KLEIN: Permission to continue?

10 THE COURT: Yes.

11 Q. As far as you know, Mr. Thiele, who owed Mid  
12 Island's final bill when it was issued, State Farm or  
13 Courtney Pope? Who owed money to Mid Island?

14 A. I'm not sure at what point. You mean the final  
15 bill itself who do I think?

16 Q. Who owed the money to Mid Island?

17 THE COURT: State Farm or its insured.

18 A. The final bill, I think Ms. Pope.

19 Q. I would like to show the witness what's been marked  
20 as Exhibit-E. It's a copy of the final bill. The Court has  
21 a copy.

22 THE COURT: Mr. Klein, are you going to be a  
23 lot longer on cross, because we could take a break now,  
24 if you like?

25 MR. KLEIN: I don't need a break. If the

1 Court would like one --

2 THE COURT: Let's take 10 minutes.

3 (A recess was taken.)

4 COURT CLERK: Please remain seated.

5 THE COURT: All right, why don't you come on  
6 back up.

7 COURT CLERK: You're reminded that you're  
8 still under oath.

9 THE COURT: Okay, you may now continue your  
10 inquiry.

11 MR. KLEIN: Thank you, your Honor.

12 Q. I think where we left off was that I was just  
13 showing the witness the final bill, which is Exhibit-E.

14 Would you like a moment to review that, Mr. Thiele?

15 A. Yes. Thank you.

16 Q. Let me just know when you're finished.

17 A. Yeah, I'm good.

18 Q. This bill is made up of labor, parts and taxes, for  
19 the most part, right?

20 A. Yes.

21 Q. And the number of labor hours for body work here  
22 was 128.8 hours, right?

23 A. Yes.

24 Q. And the number of hours for refinishing the paint  
25 was 47.9 hours, right?



1 A. Yes.

2 Q. Labor hours on the car's frame was 15, right?

3 A. Yes.

4 Q. And the number of labor hours on mechanical is 2.8,  
5 right?

6 A. Yes.

7 Q. So it's a total of 194 and a half hours on this  
8 vehicle, right?

9 A. I'm not sure.

10 Q. Is it your contention that 194 and a half hours is  
11 too much labor to fix this car?

12 A. What's the labor on my estimate?

13 Q. Okay, so as you sit here, you don't know whether  
14 194.5 hours was too much to fix this car?

15 A. Not without looking at my estimate.

16 Q. Would you like me to show you a copy of your  
17 estimate to refresh your recollection?

18 A. Yes, please.

19 Q. Would you like to see -- I think what would make  
20 more sense, if we could show the witness Exhibit-Y, which is  
21 all of the estimates, please.

22 If you could just quietly read the estimates to  
23 yourself, please.

24 A. Okay.

25 Q. Yes or no, 194 and a half hours was too much labor

1 on this car?

2 A. No, it's not.

3 Q. In fact, State Farm's own final estimate welcomed  
4 244.8 hours of labor, correct?

5 A. Correct.

6 Q. So there actually is a difference between the  
7 amount of work done on this car versus how much work State  
8 Farm thought should be done on this car, right?

9 MR. TOMSKY: Objection to the classification  
10 of "work." It's labor hours.

11 MR. KLEIN: Labor hours.

12 A. Labor hours, yes.

13 Q. There was actually a difference, right?

14 A. There was a difference, yes.

15 Q. Mid Island spent less than State Farm thought was  
16 appropriate, correct?

17 A. Yes.

18 Q. And not a little less, right?

19 A. No, there is a sizable difference.

20 Q. About 50 hours difference.

21 A. In this final bill, yes.

22 Q. Well, the final bill from State Farm is what State  
23 Farm deems to be necessary to repair the car to pre-loss  
24 condition. That's what you testified, right?

25 A. No, this is not the same final bill that I went

1 over the car with Bob with.

2 MR. KLEIN: Could we have the question read  
3 back, your Honor?

4 THE COURT: You did say "bill," if that's the  
5 question, State Farm bill. I think you meant estimate.

6 MR. KLEIN: Okay, I appreciate the correction.

7 Q. State Farm deemed it, in its final estimate,  
8 necessary to spend 244.8 hours to repair the car to pre-loss  
9 condition, right?

10 A. Yes.

11 Q. And Mid Island managed to do it for less, right, on  
12 its final bill?

13 A. The car wasn't completed though, was it?

14 Q. Okay, so Mid Island's final bill is for less than  
15 what State Farm welcomed on its final estimate?

16 A. Yes.

17 MR. TOMSKY: In terms of labor hours?

18 MR. KLEIN: In terms of labor.

19 Q. Do you believe that 120 hours, I'm sorry, \$120 per  
20 hour at Mid Island is unreasonable for the auto repair work  
21 that it performs?

22 A. Yes.

23 Q. But you have personally approved payments for auto  
24 repair work in general at \$120 an hour or above, correct?

25 A. At this particular shop?

1 Q. In general, correct?

2 A. No, that's not correct.

3 Q. It's not correct that you have personally approved  
4 payments for auto repair work at a labor rate of \$120 an  
5 hour?

6 A. Are you talking mechanical or body work?

7 Q. I'm asking you auto repair work.

8 A. No, not for 120.

9 Q. I'm sorry, not for 120, not for 120 or above?

10 A. For this particular type of car?

11 Q. I'm not asking you for this particular car. I  
12 suppose I could have the question read back, but I'll ask it  
13 again.

14 Have you personally approved payments for auto  
15 repair work in general at \$120 an hour or not?

16 A. Yes, I have.

17 Q. In fact, on July 10th, 2018, about four months ago,  
18 you approved payments for auto repair work at \$145 an hour,  
19 didn't you?

20 A. I guess. Is there an estimate?

21 MR. KLEIN: Could we please show the witness  
22 Exhibits AA and BB, please?

23 Q. Mr. Thiele, I point your attention to the State  
24 Farm supplement in front of you, line 80, line 238, and line  
25 28.

1 A. Yes, I see it.

2 Q. Those entries correspond to a bill for services  
3 performed at Audi, correct?

4 A. Yes.

5 Q. And what was the labor rate that Audi charged?

6 A. Looks like 145.

7 Q. And that was approved by State Farm, correct?

8 A. Yes.

9 Q. Who was the estimator who approved that?

10 A. I was.

11 Q. What was the work that Audi performed on that  
12 vehicle? You can read it, if it would help you.

13 A. It was a sublet mechanical operation.

14 Q. What was the actual mechanical operation?

15 A. Looks like a wheel alignment and electrical resets  
16 and aiming headlamps.

17 Q. Could you say that again, please?

18 A. Electrical resets, aiming the headlamps, and a  
19 wheel alignment.

20 Q. Aim the headlamps, is that what you said?

21 A. Correct.

22 Q. What's involved in aiming the headlamps?

23 A. The vehicle has to be sitting on a flat surface, it  
24 has to be -- tire pressures checked, it has to be aligned at  
25 a certain angle.

1 Q. Just aiming it?

2 A. Aiming headlamps, yes.

3 Q. What was the labor rate paid for that?

4 A. It was paid at a sublet operation, not at a labor  
5 rate.

6 Q. What did Audi charge for that?

7 A. Audi charged, looks like, 145.

8 Q. And State Farm paid that, correct?

9 A. Yes. On the estimate, yes.

10 Q. And the electrical, what's involved in testing the  
11 electrical that you described?

12 A. I'm not sure in this case. It was done at the Audi  
13 dealership, but it was, looks like, normalization.

14 Q. Basically plugging it in?

15 A. Pretty much plugging it in, checking everything,  
16 making sure it works.

17 Q. Plugging it in and unplugging it?

18 A. I don't think it's that simple, but yes.

19 Q. Elaborate, how difficult is it?

20 A. Obviously the dealership had to do it so it had to  
21 be an operation --

22 MR. KLEIN: I'm sorry, nonresponsive.

23 THE COURT: Well, let him finish the answer.

24 You don't make that determination. I do.

25 MR. KLEIN: Sorry.

1 THE COURT: Do you want to finish your answer  
2 or is that the full answer?

3 THE WITNESS: Yes, I would like to finish it,  
4 yes.

5 THE COURT: Please.

6 A. I believe it was more involved than that. It was  
7 probably an Audi machine that they use with an Audi  
8 technician, and he probably plugged it in and made sure that  
9 everything was working properly.

10 Q. What was the third item on the bill?

11 A. Looks like the four wheel alignment.

12 Q. What's involved in doing that?

13 A. It's having specific alignment equipment, has to go  
14 up on another machine, and they align it using probably a  
15 laser setup.

16 Q. And that was billed by Audi at what rate?

17 A. Looks like they charged 199.95.

18 Q. And was that paid?

19 A. Yes, it was.

20 Q. By State Farm?

21 A. Yes.

22 Q. I would like to show the witness what's been marked  
23 as Exhibits II and JJ, which I do not believe the Court has.

24 (Whereupon, Defendant's Exhibits II and JJ were  
25 marked into evidence.)

1 Q. So was paying a dealership's bill just limited to  
2 Audi last year?

3 A. No.

4 Q. In February of this year you approved \$174 an hour  
5 for BMW, didn't you?

6 A. Yes, I did.

7 Q. I would like to show the witness what's been marked  
8 as Exhibit-OO and PP, which the Court has, I believe.

9 Mr. Thiele, you've had a chance to review the most  
10 recent exhibit placed in front of you, OO and PP?

11 A. Yes.

12 Q. You approved \$120 an hour to Nissan, didn't you?  
13 I'm sorry, withdrawn.

14 Nissan charged \$120 an hour and you agreed to pay,  
15 right?

16 A. 125, actually.

17 Q. That's right, correct. Thank you.

18 What was the work done on that Nissan?

19 A. It was mechanical work performed at the dealership.

20 Q. What kind of mechanical work?

21 A. Four wheel alignment and also aiming the headlamps  
22 and electrical resets.

23 Q. And the labor rate for those three tasks was \$125  
24 an hour?

25 A. Yes.



1 Q. And State Farm paid it?

2 A. We did.

3 Q. And you personally approved it?

4 A. I did.

5 Q. In fact, in your experience it's regular practice  
6 at State Farm to approve \$120 an hour or above for work  
7 performed at a dealership; isn't that right?

8 A. Yes.

9 Q. And that's regardless of whether the work is easier  
10 or less superb than the work performed at an auto body shop  
11 like Mid Island, right?

12 A. That's not correct.

13 Q. Not correct?

14 A. No.

15 Q. So was the work performed on this Nissan at the  
16 dealership more or less complicated than the work that was  
17 performed at the auto body shop?

18 A. This is more complicated.

19 Q. At the dealership it was more complicated?

20 A. Yes, it is.

21 Q. That includes aiming the headlamps?

22 A. I would assume so. If it was done at the  
23 dealership, I would assume it is more complicated.

24 Q. So it is your testimony that because it is done at  
25 the dealership that means it's more complicated?

1 A. No, it is a complicated operation, it is.

2 Q. Aiming the headlamps is complicated?

3 A. Sure.

4 Q. More complicated than the work done at --

5 A. If the repair shop can't do it, then it must be a  
6 complicated operation.

7 Q. So your testimony is that the only reason why it  
8 would be done at the dealership is because of how complicated  
9 it is?

10 A. Correct.

11 Q. It has nothing to do with warranties?

12 A. The warranties wouldn't matter in this case.

13 Q. I'm sorry, does it ever matter?

14 A. Of course. The new car -- if it's a new car, sure.

15 Q. Aren't there computer programs that only the  
16 dealership has?

17 A. Yes.

18 Q. It's intellectual property?

19 A. Sure.

20 Q. That they don't give out and that makes it more  
21 complicated?

22 A. Yes.

23 Q. Is that State Farm's view or your view, as far as  
24 you know?

25 A. That's -- well, it could be both views, it could be

1 my view and State Farm's view.

2 Q. So institutionally, as far as you know, State  
3 Farm's view is if it is done at the dealership, that means  
4 it's more complicated than the work performed at the auto  
5 body shop?

6 A. Not necessarily in every case, but it could be,  
7 yes.

8 Q. But I think your testimony a moment ago was because  
9 it was done on a computer program that meant it was more  
10 complicated?

11 MR. TOMSKY: Objection, that's not what he  
12 said.

13 MR. KLEIN: I think it is.

14 THE COURT: I will allow him to answer.

15 A. No. What I said was the body shop could not do  
16 these operations so they had to send it out to a mechanical  
17 shop for these operations to be completed, so they must be  
18 more complicated than the shop can handle.

19 Q. If a hand surgeon doesn't have a Band-Aid and they  
20 send the patient to CVS to buy one, does that mean that the  
21 Band-Aid is more complicated?

22 MR. TOMSKY: Objection.

23 THE COURT: Sustained.

24 Q. On Ms. Pope's particular vehicle, the car was taken  
25 to Nissan, correct?

1 A. From seeing this estimate, yes.

2 Q. And Nissan charged what labor rate?

3 A. I don't -- do we have it here?

4 Q. I'm sorry?

5 A. I didn't handle that supplement, so that's --

6 Q. Okay, that's fine. I'll move on.

7 On November 8th, 2018, last month, you approved a  
8 payment to Mid Island directly at \$125 an hour, hadn't you?

9 A. In this particular case, I'm not sure.

10 Q. Do you need your memory refreshed?

11 A. That was a while ago, yes.

12 Q. It wasn't that long ago, but okay. It was on  
13 November 8th. You want your memory refreshed?

14 A. What kind of car? What's the name of the customer?  
15 That's how I'll remember.

16 Q. This is Exhibit-RR. Is it true that on November  
17 8th, 2018 you approved a payment directly to Mid Island at a  
18 labor rate of \$125 an hour?

19 A. Yes. 125, actually.

20 Q. And that was not the first time that you have  
21 offered Mid Island more than \$49 an hour, is it?

22 A. No, it's not.

23 Q. Back in 2012, over half a decade ago, you already  
24 were paying Mid Island close to \$100 per hour on occasion,  
25 weren't you?

1 A. If it was a complex vehicle, that's possible.

2 Q. I would like to show the witness Exhibit-TT, like  
3 Tango Tango.

4 (Whereupon, Defendant's Exhibit-TT was marked into  
5 evidence.)

6 Q. Mr. Thiele, in 2012, is it true that you paid \$95  
7 an hour directly to Mid Island Collision in connection with  
8 the repair of an automobile?

9 A. Yes.

10 Q. That was on a Mercedes-Benz, correct?

11 A. Yes. It was a complex vehicle also.

12 Q. If you could do your best to limit your answers to  
13 my questions, please.

14 Now, 2012 to now, has repairing cars gotten easier,  
15 has the job gotten easier?

16 A. No, it has not.

17 Q. How has the economy performed since 2012, as far as  
18 you know?

19 MR. TOMSKY: Objection.

20 THE COURT: Sustained.

21 Q. Are prices down in the automotive industry?

22 A. I don't think so.

23 Q. Are they up?

24 A. Sure, everything is up.

25 Q. Everything is up, right? I mean, when did GM

1 declare bankruptcy?

2 MR. TOMSKY: Objection.

3 THE COURT: Sustained.

4 Q. Up to now we've been talking about labor rates. I  
5 would like to turn your attention to parts, which is the  
6 subject that you answered some questions a moment ago from my  
7 friend Mr. Tomsy.

8 To be clear, when a car gets damaged in an  
9 accident, sometimes it's not enough to put labor into parts  
10 that are already there, sometimes you actually need to  
11 replace the hardware itself, right?

12 A. Labor into parts? I'm not sure --

13 Q. It's one thing to work on a part or on the car,  
14 it's another to replace parts, right?

15 A. Sure.

16 Q. And that happened on Courtney Pope's Nissan,  
17 correct?

18 A. There were many parts replaced, yes.

19 Q. I'm sorry?

20 A. Many parts, yes.

21 Q. Nissan has a rule about how to replace parts,  
22 doesn't it?

23 A. They have recommendations, yes.

24 Q. Recommendations?

25 MR. KLEIN: Can we please show the witness

1 Exhibit-K?

2 (Whereupon, Defendant's Exhibit-K was marked  
3 into evidence.)

4 Q. Mr. Thiele, you referred to Nissan's treatment of  
5 OEM as a, quote, recommendation, right?

6 A. Yes.

7 Q. Would you mind reading the first sentence on what's  
8 been handed to you as Exhibit-K, please?

9 A. "Nissan North America," that sentence there?

10 Q. Yes.

11 A. "Recognizes the importance of recycling, but the  
12 use of salvaged recycled parts to repair collision damaged  
13 vehicles raises serious concerns about quality, suitability,  
14 safety and warranty. For this reason, Nissan North America  
15 does not approve of the repair of our vehicles with salvaged  
16 parts or assemblies."

17 Q. That's what you would describe as a recommendation?

18 A. Correct.

19 Q. Is there another page in Exhibit-K, Mr. Thiele?

20 A. Yes, there is.

21 Q. Would you mind reading the first sentence of  
22 Exhibit-K, please?

23 A. "Original parts used on a Nissan automobile are  
24 designed and built to provide optimum fit, function, safety  
25 and structural integrity. For this reason, Nissan North

1 America does not approve of the use of aftermarket, grand  
2 market or imitation parts."

3 Q. Do they say we recommend that you don't use that or  
4 do they say they do not approve of it?

5 A. Do not approve.

6 Q. But you still say it's a recommendation, not a  
7 rule?

8 A. Of the salvaged sentence, not the -- that what you  
9 just told me to read.

10 Q. So that's a rule, the one that you just read?

11 A. We wouldn't put a non-quality part on a car, yes.

12 Q. How about the first page, that was the  
13 recommendation?

14 A. Yes.

15 Q. Does it say we recommend or does it say we do not  
16 authorize?

17 A. It says does not approve.

18 Q. I'm sorry, I don't know if we -- if the lingo has  
19 been put in, but OEM is the reference to --

20 A. Original Equipment Manufacturer.

21 Q. OEM is what's depicted on that document?

22 A. Yes.

23 Q. So when State Farm writes up an estimate for fixing  
24 a vehicle, surely they do their best to comply with these  
25 obligations?



1 A. Yes.

2 Q. Or these recommendations?

3 A. Yes.

4 Q. Because using non-OEM would violate Nissan's rule  
5 or recommendation, right?

6 A. Yes.

7 Q. And, in fact, you testified on direct examination  
8 that generally using a non-OEM part depresses the price,  
9 right, in comparison to the OEM?

10 A. Yes.

11 Q. And so when State Farm writes an estimate or if  
12 anyone writes an estimate using a non-OEM part, generally  
13 speaking, the estimate will be cheaper for the insurance  
14 company than it would have been if an OEM part was used,  
15 right?

16 A. Generally, yes.

17 Q. And if an auto body shop decided hey, we're going  
18 to abide by Nissan's recommendation as you described it and  
19 the insurance company did not, that in and of itself could  
20 cause or would cause a divergence between the estimate and  
21 the auto body shop's final bill, correct?

22 A. Correct.

23 Q. In fact, in this case that happened, correct?

24 A. Yes.

25 Q. On some of the estimates State Farm provided

1 estimates based upon the assumption of a, quote, non-OEM;  
2 isn't that right?

3 A. I'm sorry, what was that question?

4 Q. On some of State Farm's estimates the estimates  
5 were based upon the assumption of a, quote, non-OEM; is that  
6 correct?

7 A. Recycled or non-OEM?

8 Q. The question was --

9 MR. KLEIN: If we could have the question read  
10 back, Judge. Would that be okay?

11 THE COURT: Please.

12 (The requested portion was read.)

13 A. Yes. It would be correct, yes.

14 Q. Mr. Thiele, do you still have Exhibit-Y in front of  
15 you?

16 A. Yes, I do.

17 Q. Would you mind -- would you please turn to -- I  
18 suppose any one of them, but the final estimate?

19 A. Okay.

20 Q. Is that okay?

21 A. Yep.

22 Q. Now, in the print at the bottom of the estimate  
23 State Farm has some fine print you would call it, right?

24 A. Okay.

25 Q. And State Farm actually offers code letters to

1 indicate non-OEM or recycled parts, correct?

2 A. Two different things.

3 Q. Okay, does it offer code letters for each of those  
4 things?

5 A. Yes, it does.

6 Q. And then periodically it uses those code letters on  
7 an estimate, right?

8 A. Yes.

9 Q. So it's regular enough at State Farm to use a  
10 non-OEM or recycled part that it actually is on its form for  
11 its estimates, right?

12 A. Yes.

13 Q. Again, using the non-OEM parts or recycled parts  
14 reduces the cost or the amount of its estimates, generally,  
15 right?

16 A. Yes.

17 Q. And, in fact, that happened in this case, right?

18 A. Yes, there were some non-OEM.

19 Q. Now, if an auto body shop -- withdrawn.

20 In your experience, is it unreasonable for an auto  
21 body shop to comply with a manufacturer's recommendation for  
22 the use of OEM parts?

23 MR. TOMSKY: Objection. How would he know if  
24 it was unreasonable for a different entity?

25 THE COURT: Pat, read the question back,

1 please.

2 (The requested portion was read.)

3 THE COURT: Overruled. You can answer it.

4 A. No, the shop can do that. Yes, the shop can do  
5 that.

6 Q. The question was, is it reasonable for them to do  
7 that?

8 A. Sure, it's reasonable.

9 Q. You testified on direct about the terminology, I  
10 think, of an overwrite; is that right?

11 A. Okay, yes.

12 Q. Is that one word or two?

13 A. One word.

14 Q. Is that a term in the industry?

15 A. Yeah, insurance industry, yes.

16 Q. And an overwrite is when an estimator basically  
17 writes for more parts or more labor than what a supervisor  
18 later deems to have been necessary, right?

19 A. Yes.

20 Q. In fact, at State Farm, if you have too many  
21 overwrites it can negatively effect your salary, can't it?

22 A. It's possible.

23 MR. KLEIN: May I have a moment, your Honor?

24 THE COURT: Yes.

25 MR. KLEIN: Is it okay if I use a computer for

1 a moment please to show him --

2 THE COURT: Well, it depends what you're going  
3 to show. I don't mind you using a computer, but I think  
4 we're entitled to see what you intend to show him.

5 MR. KLEIN: I intend to show him his  
6 deposition testimony.

7 MR. TOMSKY: We have it. He's welcome to use  
8 our copy.

9 THE COURT: We're off now.

10 (A discussion was held off the record.)

11 Q. The page number, by the way, is 33 and 34.

12 Have you had a chance to review your testimony,  
13 Mr. Thiele? First of all, I draw your attention to page 35,  
14 which is, obviously, the next page. I'm sorry, it is on page  
15 34. There is a question read to you during your deposition  
16 -- do you remember being deposed?

17 A. Yes.

18 Q. -- and the question was:

19 "QUESTION: Initially, based upon the impression  
20 that your bonus could be determined by minimizing overwrites,  
21 right?

22 A. Well, it's not necessarily a bonus.

23 Q. No. No. That was the question on line 16 and 17,  
24 right?

25 A. Right.

1 Q. And, in fact, the question was: "So your bonus is  
2 determined by minimizing overwrites"; correct?

3 A. Yes.

4 Q. And would you mind reading what your answer was,  
5 please?

6 A. I'm not sure -- the threshold part or --

7 Q. The answer to that question beginning on line 18.

8 A. 18? "Over the years, the 22 years"?

9 Q. No. Okay, you're on page 34.

10 A. 35. You said 35.

11 Q. The confusion is my fault.

12 THE COURT: All right, line 16:

13 "QUESTION: So your bonus is determined by  
14 minimizing the overwrites?

15 ANSWER: Not my bonus, my salary increase, so  
16 the salary increase at the end of the year is determined  
17 by my performance throughout the year and the overwrites  
18 are a part of that performance."

19 Do you want any further reading?

20 MR. KLEIN: Thank you, your Honor.

21 Q. In your experience, anything over 10 percent is  
22 considered not good, right?

23 A. It would be an issue, yeah.

24 Q. Well, do you remember actually using the words "not  
25 good" during your deposition? Do you remember?

1 A. I don't remember, no.

2 Q. I call your attention to page 35, lines 18 to 20.  
3 Would you mind reading your answer that is reflected on those  
4 lines, please?

5 A. "I mean, over the years the 22 years, anything over  
6 10 percent is not good."

7 Q. Now, Mr. Thiele, as far as you understand the  
8 industry, State Farm is allowed to dictate certain limits on  
9 the amount of insurance coverage that it will provide to the  
10 general public, right?

11 A. I don't know that.

12 Q. Well, there is a difference between the amount of  
13 money an insurance company will cover or the amount of money  
14 that State Farm would cover and the amount of money an  
15 insured driver wants to devote to fixing a vehicle. That's  
16 possible, right?

17 MR. TOMSKY: Objection.

18 THE COURT: Sustained. I don't even  
19 understand the question.

20 Q. Suppose a motorist was in an accident, okay?

21 A. Yes.

22 Q. And suppose the car suffered damage in excess of  
23 what State Farm would ordinarily deem a total, okay?

24 A. Okay.

25 Q. If the motorist wanted to, the motorist could still

1 ask the auto body shop to continue working, couldn't they?

2 A. Sure.

3 Q. And what would happen in this case would be that  
4 State Farm just would probably not cover that expense, right?

5 A. Right.

6 Q. But that doesn't mean that the motorist can't still  
7 ask the auto body shop to perform the services, right?

8 A. Sure.

9 Q. And that's because there is a difference between  
10 the relationship between a customer and the auto body shop  
11 and that person and their insurance company, right?

12 A. Okay.

13 Q. Right?

14 A. Yeah.

15 Q. And so the limitations on an insurance policy do  
16 not govern what an auto body shop can do, do they?

17 MR. TOMSKY: Objection to that  
18 characterization. It's not a policy. It's not in the  
19 policy. It's not what he testified to.

20 THE COURT: Could you read the question back,  
21 please, Pat?

22 (The requested portion was read.)

23 THE COURT: It's calling for a conclusion that  
24 he can't draw. I'm going to sustain the objection.

25 MR. KLEIN: I'm sorry, could you just read the



1 question again so I could think of another way to ask  
2 it?

3 THE COURT: Please, Pat.

4 (The requested portion was read.)

5 Q. If a motorist wants to continue repairs on their  
6 vehicle and the insurance company says you're on your own, it  
7 is reasonable for the auto body shop to abide by its  
8 customers wishes, isn't it?

9 A. Sure.

10 Q. Are you familiar with whether Courtney Pope was  
11 over financed on her Nissan?

12 A. I have no idea.

13 Q. Do you know what over financed means? Never heard  
14 that term?

15 A. I've heard the term, yeah. I never looked into it  
16 though.

17 Q. It's when, correct me if I'm wrong, a motorist has  
18 more debt on the car than what it's worth, right?

19 A. Sure.

20 Q. And so in those cases, if the car is totaled, they  
21 actually still theoretically can owe money, right?

22 A. Sure.

23 Q. Isn't that one reason why a motorist might want  
24 work to continue?

25 MR. TOMSKY: Objection, calls for speculation.

1 THE COURT: Sustained.

2 Q. Have you ever heard the term corrective repairs?

3 A. Yes.

4 Q. What's a corrective repair, in general?

5 A. A shop might have fixed the vehicle in the past and  
6 it wasn't done to a quality standard and it had to be redone.

7 Q. By whom?

8 A. Whatever repair shop.

9 Q. And, in fact, corrective repairs, or using your  
10 description, basically re-repairs, can add to the complexity  
11 of the job, right?

12 A. A repair job, yes.

13 Q. It can actually inflate the cost of repairing a  
14 vehicle, right?

15 A. Sure.

16 Q. And if the corrective repair is not made, the  
17 motorist can be operating an unsafe vehicle, right?

18 A. Possible.

19 Q. Well, if the first repair needed a corrective  
20 repair, then by definition there was a problem with it,  
21 right?

22 A. It could have just been body work or paint.

23 Q. Now, you testified on direct, and I think I'm  
24 quoting exactly right, but you can tell me if I'm not, that  
25 any repair shop could have repaired at the same price, and

1 that was in reference to Courtney Pope's Nissan, right?

2 A. Okay, yes.

3 Q. Is that right? Any repair shop could have done it,  
4 right?

5 A. Within my market area, yes.

6 Q. Could any repair shop have also screwed it up?

7 A. Yes, that's possible too.

8 Q. And if they had screwed it up, it might have  
9 required a corrective repair, right?

10 A. It's possible.

11 Q. And one thing that factors into the quality of an  
12 auto body shop is how often do they need corrective repairs,  
13 isn't it?

14 A. Possibly, yeah.

15 Q. So even if an auto body shop could have performed a  
16 repair, that doesn't say anything about the risk that it  
17 would fail to do that safely, right?

18 A. I don't know. I'm guessing.

19 Q. What?

20 A. I don't know.

21 Q. You don't know -- you don't know whether it's  
22 relevant?

23 THE COURT: No. I'm sorry, could you read the  
24 question back, please, Pat?

25 (The requested portion was read.)

1 A. I don't understand the question.

2 MR. KLEIN: I will rephrase it.

3 Q. You testified that any repair shop could have done  
4 these repairs, right?

5 A. Yes.

6 Q. But the fact that other repair shops could have  
7 done them doesn't take into account the difference in risk  
8 between getting it done properly, does it?

9 MR. TOMSKY: Objection.

10 THE COURT: I will allow him to answer it, if  
11 he can.

12 A. I don't know. I mean, it's -- honestly, I don't  
13 know how to answer that. It's -- it could be done, it could  
14 not be done right. Each shop does repairs differently.

15 Q. Each shop does repairs differently?

16 A. Sure.

17 Q. But you pay most of them the same?

18 A. Yes.

19 MR. KLEIN: This is an exhibit that was not --  
20 I didn't know it would be necessary until his direct  
21 testimony.

22 THE COURT: All right, I think we're going to  
23 pick that up then tomorrow morning, if we're starting  
24 with new exhibits.

25 MR. KLEIN: It's very quick. It's very quick.

1 THE COURT: Let's get it done, a couple  
2 questions.

3 (Whereupon, Defendant's Exhibit-YY was marked  
4 for identification.)

5 MR. KLEIN: Your Honor, permission to hand a  
6 copy of this exhibit to the witness, please.

7 THE COURT: You may.

8 Q. Mr. Thiele, take a moment to read the document and  
9 let me know when you've had the chance.

10 A. Okay.

11 Q. Is this a letter sent to a State Farm customer?

12 THE COURT: He can't answer that question.  
13 It's not in evidence. It's only marked for ID.

14 Q. Do you recognize this document?

15 A. No, I do not.

16 Q. Do you recognize a -- any documents like this?

17 A. No, I don't. It looks like it was sent from a  
18 claim handler.

19 MR. KLEIN: I mean, your Honor, I view this as  
20 a party admission, a document used against the  
21 adversary.

22 THE COURT: Absolutely not. That is a huge  
23 stretch. This is not an admission. It's not even in  
24 this case.

25 MR. KLEIN: Right, but we're using it against

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State Farm.

THE COURT: Okay, we are recessing for the day. I would like to see both attorneys at the bench when we get settled.

Okay, you could step down. We'll see you tomorrow morning at 10. I'm sorry, Monday morning at 10.

\* \* \* \* \*

CERTIFIED TO BE A TRUE AND ACCURATE  
TRANSCRIPT OF THE STENOGRAPHIC MINUTES  
TAKEN HEREIN:

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PATRICIA HOLSGROVE, RPR  
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<b>\$</b>	<p><b>10th</b> [3] - 103:23, 103:25, 116:17</p> <p><b>11010</b> [1] - 35:2</p> <p><b>11501</b> [1] - 1:10</p> <p><b>11530</b> [1] - 1:19</p> <p><b>12</b> [2] - 1:10, 66:1</p> <p><b>120</b> [6] - 47:15, 58:16, 115:19, 116:8, 116:9</p> <p><b>12020</b> [1] - 63:2</p> <p><b>125</b> [2] - 120:16, 124:19</p> <p><b>128.8</b> [1] - 112:22</p> <p><b>130</b> [1] - 104:12</p> <p><b>14</b> [2] - 37:23, 38:1</p> <p><b>140</b> [1] - 58:17</p> <p><b>145</b> [2] - 117:6, 118:7</p> <p><b>146</b> [1] - 8:5</p> <p><b>14th</b> [1] - 108:19</p> <p><b>15</b> [3] - 46:7, 51:18, 113:2</p> <p><b>16</b> [2] - 133:23, 134:12</p> <p><b>17</b> [2] - 31:6, 133:23</p> <p><b>175</b> [1] - 57:13</p> <p><b>17th</b> [2] - 24:16, 31:1</p> <p><b>18</b> [5] - 38:1, 66:7, 134:7, 134:8, 135:2</p> <p><b>187</b> [1] - 106:19</p> <p><b>194</b> [3] - 113:7, 113:10, 113:25</p> <p><b>194.5</b> [1] - 113:14</p> <p><b>199.95</b> [1] - 119:17</p> <p><b>1st</b> [4] - 105:11, 106:7, 106:11, 106:12</p>	<p><b>20th</b> [7] - 87:25, 92:4, 100:9, 101:11, 102:14, 106:6</p> <p><b>22</b> [6] - 63:16, 63:24, 100:2, 100:3, 134:8, 135:5</p> <p><b>225</b> [1] - 18:17</p> <p><b>23</b> [3] - 20:6, 20:12, 41:20</p> <p><b>238</b> [1] - 116:24</p> <p><b>244.8</b> [2] - 114:4, 115:8</p> <p><b>25</b> [9] - 1:2, 15:7, 15:18, 15:20, 19:3, 45:18, 64:5, 66:4, 100:4</p> <p><b>25th</b> [1] - 105:6</p> <p><b>27th</b> [1] - 92:21</p> <p><b>28</b> [1] - 116:25</p> <p><b>28th</b> [1] - 31:6</p> <p><b>29</b> [1] - 23:2</p> <p><b>2:15</b> [1] - 61:22</p>	<b>5</b>	<p><b>5,500</b> [1] - 36:13</p> <p><b>5,601</b> [1] - 15:10</p> <p><b>5,601.12</b> [1] - 15:20</p> <p><b>50</b> [3] - 23:22, 81:6, 114:20</p> <p><b>500</b> [1] - 52:15</p> <p><b>51</b> [1] - 89:21</p>	<p><b>accepted</b> [1] - 54:14</p> <p><b>accepts</b> [1] - 42:23</p> <p><b>access</b> [1] - 79:24</p> <p><b>accident</b> [4] - 11:12, 36:6, 126:9, 135:20</p> <p><b>accompanying</b> [1] - 41:7</p> <p><b>according</b> [1] - 18:2</p> <p><b>account</b> [3] - 50:4, 50:24, 140:7</p> <p><b>accredited</b> [1] - 19:24</p> <p><b>ACCURATE</b> [1] - 142:11</p> <p><b>accurate</b> [1] - 104:16</p> <p><b>acquiesced</b> [1] - 29:23</p> <p><b>acronym</b> [1] - 35:23</p> <p><b>acting</b> [1] - 33:9</p> <p><b>action</b> [2] - 84:15, 90:18</p> <p><b>actual</b> [9] - 9:1, 13:19, 20:9, 20:11, 20:25, 21:7, 26:16, 61:12, 117:14</p> <p><b>add</b> [2] - 56:11, 138:10</p> <p><b>ADD</b> [1] - 31:5</p> <p><b>added</b> [2] - 11:8, 88:5</p> <p><b>addition</b> [2] - 7:12, 7:16</p> <p><b>additional</b> [9] - 5:8, 5:25, 7:13, 7:19, 11:1, 12:21, 23:10, 94:25, 95:3</p> <p><b>additionally</b> [1] - 49:23</p> <p><b>address</b> [17] - 13:8, 13:9, 13:12, 13:15, 13:20, 14:11, 14:12, 14:14, 14:25, 18:7, 34:24, 35:1, 62:25, 63:7, 63:8, 63:10, 63:11</p> <p><b>adequate</b> [1] - 69:4</p> <p><b>adjusters</b> [1] - 59:6</p> <p><b>adjustor</b> [1] - 30:23</p> <p><b>admirable</b> [2] - 27:9, 27:12</p> <p><b>admission</b> [2] - 141:20, 141:23</p> <p><b>advance</b> [2] - 30:10, 40:21</p> <p><b>advanced</b> [1] - 36:3</p> <p><b>adversary</b> [2] - 38:21, 141:21</p> <p><b>advice</b> [3] - 107:21, 110:16, 110:22</p> <p><b>advocate</b> [1] - 27:8</p> <p><b>AEA</b> [1] - 63:21</p> <p><b>aeronautic</b> [1] - 45:16</p> <p><b>affiliated</b> [1] - 38:14</p>
	<b>2</b>		<b>6</b>		
	<p><b>2</b> [3] - 65:1, 65:2, 65:9</p> <p><b>2,000</b> [1] - 29:21</p> <p><b>2.8</b> [1] - 113:4</p> <p><b>20</b> [7] - 14:13, 14:16, 41:22, 51:11, 51:13, 66:7, 135:2</p> <p><b>20-inch</b> [1] - 20:14</p> <p><b>2001</b> [4] - 35:20, 35:25, 36:4, 36:9</p> <p><b>2005</b> [1] - 38:14</p> <p><b>2009</b> [1] - 36:10</p> <p><b>2012</b> [4] - 124:23, 125:6, 125:14, 125:17</p> <p><b>2015</b> [4] - 68:6, 81:21, 91:12, 100:6</p> <p><b>2017</b> [11] - 10:5, 10:10, 24:17, 83:21, 88:2, 92:19, 100:9, 101:5, 102:25, 105:7, 105:11</p> <p><b>2018</b> [6] - 1:10, 33:17, 33:22, 116:17, 124:7, 124:17</p>	<b>3</b>	<b>7</b>		
		<p><b>3</b> [2] - 24:7, 65:2</p> <p><b>3-17</b> [1] - 31:6</p> <p><b>3-28</b> [2] - 24:20, 24:21</p> <p><b>300</b> [3] - 45:23, 51:16, 51:20</p> <p><b>31st</b> [2] - 101:5, 101:6</p> <p><b>33</b> [13] - 15:6, 15:7, 15:11, 15:19, 15:20, 16:8, 17:5, 17:14, 17:21, 19:1, 19:3, 45:18, 133:11</p> <p><b>34</b> [3] - 133:11, 133:15, 134:9</p> <p><b>35</b> [4] - 133:13, 134:10, 135:2</p> <p><b>36</b> [1] - 104:9</p>	<b>8</b>		
		<b>4</b>	<b>9</b>		
		<p><b>40</b> [5] - 23:3, 46:7, 106:2, 106:7, 106:14</p> <p><b>44</b> [1] - 84:21</p> <p><b>468</b> [4] - 13:21, 14:21, 14:23, 14:24</p> <p><b>47.9</b> [1] - 112:25</p> <p><b>478</b> [4] - 13:10, 13:17, 14:17, 14:18</p> <p><b>49</b> [2] - 89:19, 89:23</p> <p><b>490</b> [1] - 18:18</p> <p><b>4th</b> [8] - 92:19, 94:18, 94:19, 102:24, 103:1, 103:14, 103:16, 103:18</p>	<b>A</b>		
			<p><b>AA</b> [1] - 116:22</p> <p><b>ABC</b> [2] - 54:25</p> <p><b>abide</b> [2] - 129:18, 137:7</p> <p><b>able</b> [6] - 10:14, 10:21, 40:9, 45:24, 56:8, 60:23</p> <p><b>absolutely</b> [1] - 141:22</p> <p><b>acceded</b> [1] - 109:19</p> <p><b>accept</b> [4] - 28:14, 54:9, 55:9, 78:9</p>		
<b>1</b>					
<p><b>1</b> [2] - 65:2, 65:3</p> <p><b>1.33</b> [2] - 15:11, 15:17</p> <p><b>10</b> [8] - 29:7, 59:21, 67:20, 112:2, 134:21, 135:6, 142:6, 142:7</p> <p><b>10,082</b> [1] - 101:6</p> <p><b>10017</b> [1] - 1:15</p> <p><b>108</b> [1] - 41:3</p>					

<p><b>affirm</b> [2] - 34:17, 62:19</p> <p><b>affixed</b> [1] - 47:24</p> <p><b>afford</b> [1] - 54:20</p> <p><b>afield</b> [1] - 46:3</p> <p><b>aftermarket</b> [1] - 128:1</p> <p><b>afternoon</b> [4] - 2:11, 35:6, 56:21, 98:14</p> <p><b>ago</b> [11] - 30:5, 48:15, 48:16, 61:9, 100:24, 116:17, 123:8, 124:11, 124:12, 124:23, 126:6</p> <p><b>agree</b> [4] - 93:24, 93:25, 94:24, 96:10</p> <p><b>agreed</b> [9] - 6:16, 6:24, 57:16, 73:22, 75:19, 79:9, 82:15, 82:22, 120:14</p> <p><b>agreement</b> [6] - 3:5, 19:6, 54:17, 55:8, 58:2, 60:19</p> <p><b>agreements</b> [1] - 83:24</p> <p><b>ahead</b> [4] - 8:8, 24:19, 67:21, 78:20</p> <p><b>Aid</b> [2] - 123:19, 123:21</p> <p><b>aim</b> [1] - 117:20</p> <p><b>aiming</b> [8] - 117:16, 117:18, 117:22, 118:1, 118:2, 120:21, 121:21, 122:2</p> <p><b>airbags</b> [2] - 65:12, 76:17</p> <p><b>ALDEA</b> [1] - 1:18</p> <p><b>alert</b> [1] - 68:5</p> <p><b>ALEXANDER</b> [1] - 1:20</p> <p><b>align</b> [1] - 119:14</p> <p><b>aligned</b> [1] - 117:24</p> <p><b>alignment</b> [5] - 117:15, 117:19, 119:11, 119:13, 120:21</p> <p><b>allegedly</b> [1] - 84:2</p> <p><b>allow</b> [11] - 21:23, 32:5, 43:9, 53:8, 72:4, 73:10, 90:15, 97:7, 97:10, 123:14, 140:10</p> <p><b>allowance</b> [2] - 51:2, 51:3</p> <p><b>allowed</b> [5] - 39:20, 67:6, 97:12, 97:22, 135:8</p> <p><b>alloy</b> [4] - 20:14, 21:8, 41:22, 84:11</p> <p><b>almost</b> [2] - 23:12,</p>	<p>52:19</p> <p><b>alone</b> [1] - 106:1</p> <p><b>alternative</b> [1] - 73:1</p> <p><b>aluminum</b> [11] - 20:14, 39:14, 39:25, 41:22, 47:18, 49:22, 50:8, 52:9, 57:12, 59:2, 59:3</p> <p><b>America</b> [3] - 127:9, 127:14, 128:1</p> <p><b>amount</b> [34] - 8:18, 10:3, 10:22, 15:12, 15:19, 17:20, 23:23, 28:5, 29:15, 46:6, 47:6, 47:16, 53:21, 55:4, 58:20, 59:18, 59:20, 66:21, 69:4, 69:7, 69:10, 69:16, 71:12, 76:1, 79:2, 80:11, 97:23, 101:1, 114:7, 131:14, 135:9, 135:12, 135:13, 135:14</p> <p><b>analysis</b> [1] - 65:7</p> <p><b>AND</b> [1] - 142:11</p> <p><b>angle</b> [2] - 42:9, 117:25</p> <p><b>answer</b> [26] - 19:19, 22:1, 26:6, 27:7, 46:4, 56:11, 57:22, 58:1, 60:24, 78:20, 78:25, 88:18, 97:17, 110:6, 111:2, 118:23, 119:1, 119:2, 123:14, 132:3, 134:4, 134:7, 135:3, 140:10, 140:13, 141:12</p> <p><b>ANSWER</b> [1] - 134:15</p> <p><b>answered</b> [2] - 30:3, 126:6</p> <p><b>answers</b> [1] - 125:12</p> <p><b>anytime</b> [1] - 11:7</p> <p><b>apart</b> [2] - 43:24, 77:9</p> <p><b>apologize</b> [7] - 19:23, 20:5, 26:7, 27:15, 34:4, 58:4, 84:5</p> <p><b>applied</b> [1] - 42:9</p> <p><b>appraisal</b> [10] - 24:11, 24:12, 24:14, 25:1, 26:15, 26:16, 26:25, 27:2, 30:6, 30:25</p> <p><b>Appraiser</b> [1] - 63:19</p> <p><b>appraising</b> [1] - 65:7</p> <p><b>appreciate</b> [1] - 115:6</p> <p><b>appropriate</b> [5] - 30:7, 42:18, 45:1, 84:15, 114:16</p> <p><b>approve</b> [8] - 37:8, 55:2, 121:6, 127:15,</p>	<p>128:1, 128:4, 128:5, 128:17</p> <p><b>approved</b> [13] - 66:15, 96:13, 115:23, 116:3, 116:14, 116:18, 117:7, 117:9, 120:4, 120:12, 121:3, 124:7, 124:17</p> <p><b>April</b> [7] - 87:25, 92:4, 100:9, 101:11, 102:14, 106:6</p> <p><b>area</b> [14] - 37:12, 39:24, 46:8, 47:19, 48:5, 50:12, 55:21, 65:22, 65:25, 70:6, 82:23, 90:10, 90:21, 139:5</p> <p><b>areas</b> [1] - 25:6</p> <p><b>argue</b> [1] - 27:7</p> <p><b>Armada</b> [5] - 68:7, 81:21, 82:13, 91:12, 100:6</p> <p><b>arrive</b> [1] - 74:24</p> <p><b>aspects</b> [2] - 13:6, 21:6</p> <p><b>assemblies</b> [1] - 127:16</p> <p><b>assembly</b> [1] - 48:2</p> <p><b>assessment</b> [2] - 28:6, 47:11</p> <p><b>assign</b> [2] - 4:20, 6:10</p> <p><b>assignment</b> [3] - 32:15, 32:16, 81:15</p> <p><b>assist</b> [3] - 36:2, 39:15, 65:14</p> <p><b>associated</b> [1] - 42:13</p> <p><b>association</b> [1] - 50:9</p> <p><b>assume</b> [4] - 9:18, 21:4, 121:22, 121:23</p> <p><b>assuming</b> [1] - 44:20</p> <p><b>assumption</b> [2] - 130:1, 130:5</p> <p><b>attached</b> [4] - 44:23, 47:24, 69:11, 69:20</p> <p><b>attaching</b> [1] - 48:2</p> <p><b>attachment</b> [1] - 77:17</p> <p><b>attendees</b> [1] - 36:11</p> <p><b>attention</b> [6] - 3:15, 8:5, 116:23, 126:5, 133:13, 135:2</p> <p><b>attorney</b> [1] - 56:23</p> <p><b>Attorneys</b> [2] - 1:14, 1:18</p> <p><b>attorneys</b> [1] - 142:3</p> <p><b>Audi</b> [12] - 19:25, 39:12, 117:3, 117:5, 117:11, 118:6, 118:7, 118:12, 119:7, 119:16, 120:2</p>	<p><b>authorize</b> [3] - 91:16, 91:19, 128:16</p> <p><b>authorized</b> [2] - 3:5, 3:17</p> <p><b>Auto</b> [39] - 12:3, 12:25, 13:4, 13:23, 14:3, 14:21, 14:25, 15:5, 15:16, 15:19, 16:4, 16:9, 16:12, 17:1, 17:13, 20:6, 20:12, 31:18, 31:22, 35:23, 39:6, 39:9, 41:2, 41:5, 41:9, 41:19, 41:21, 44:9, 44:10, 44:11, 44:13, 44:15, 44:23, 59:1, 84:6, 84:9, 84:22</p> <p><b>auto</b> [35] - 15:5, 37:19, 37:20, 39:16, 51:6, 51:12, 51:20, 52:1, 55:16, 55:17, 60:19, 63:19, 78:16, 98:21, 109:25, 115:20, 115:23, 116:4, 116:7, 116:14, 116:18, 121:10, 121:17, 123:4, 129:17, 129:21, 131:19, 131:20, 136:1, 136:7, 136:10, 136:16, 137:7, 139:12, 139:15</p> <p><b>automobile</b> [2] - 125:8, 127:23</p> <p><b>AUTOMOBILE</b> [1] - 1:4</p> <p><b>automobiles</b> [3] - 64:12, 98:18, 98:20</p> <p><b>automotive</b> [1] - 125:21</p> <p><b>availability</b> [1] - 71:9</p> <p><b>available</b> [3] - 71:4, 85:16, 85:17</p> <p><b>Avenue</b> [7] - 1:15, 13:10, 13:17, 14:13, 14:16, 14:24, 59:12</p> <p><b>average</b> [8] - 46:8, 49:25, 50:6, 52:18, 53:9, 66:2, 81:6</p> <p><b>averaged</b> [1] - 36:10</p> <p><b>aware</b> [13] - 5:12, 5:18, 11:11, 16:21, 22:18, 22:23, 32:1, 33:4, 57:8, 57:14, 58:2, 68:8</p> <p><b>axle</b> [1] - 87:12</p>	<p><b>B</b></p> <p><b>balance</b> [1] - 32:24</p> <p><b>ball</b> [1] - 25:23</p> <p><b>Ballston</b> [1] - 63:2</p> <p><b>Band</b> [2] - 123:19, 123:21</p> <p><b>Band-Aid</b> [2] - 123:19, 123:21</p> <p><b>bankruptcy</b> [1] - 126:1</p> <p><b>bar</b> [2] - 95:20, 96:3</p> <p><b>BARKET</b> [1] - 1:18</p> <p><b>based</b> [17] - 6:11, 7:4, 13:4, 45:20, 50:14, 53:11, 66:20, 70:7, 70:8, 70:11, 70:14, 80:25, 80:11, 85:10, 130:1, 130:5, 133:19</p> <p><b>basic</b> [3] - 65:4, 65:7, 65:10</p> <p><b>basis</b> [4] - 30:17, 36:8, 66:14, 78:13</p> <p><b>BB</b> [1] - 116:22</p> <p><b>BE</b> [1] - 142:11</p> <p><b>became</b> [7] - 28:6, 37:15, 37:16, 44:15, 50:25, 76:23, 110:21</p> <p><b>become</b> [3] - 28:19, 37:3, 54:4</p> <p><b>becomes</b> [1] - 28:11</p> <p><b>began</b> [1] - 9:21</p> <p><b>beginning</b> [2] - 60:25, 134:7</p> <p><b>behalf</b> [3] - 3:24, 4:3, 4:14</p> <p><b>behind</b> [1] - 87:12</p> <p><b>belonging</b> [1] - 100:7</p> <p><b>bench</b> [1] - 142:3</p> <p><b>Benz</b> [2] - 39:12, 125:10</p> <p><b>best</b> [6] - 22:5, 29:2, 29:24, 32:20, 125:12, 128:24</p> <p><b>better</b> [4] - 68:5, 73:2, 80:14, 97:19</p> <p><b>between</b> [26] - 3:5, 5:12, 6:24, 11:7, 23:13, 32:25, 33:4, 38:16, 44:17, 46:7, 54:17, 54:22, 66:7, 68:3, 71:23, 72:2, 79:5, 80:17, 81:6, 84:25, 114:6, 129:20, 135:12, 136:9, 136:10, 140:8</p> <p><b>beyond</b> [1] - 78:16</p> <p><b>bill</b> [107] - 7:6, 7:23, 7:25, 8:6, 8:10, 8:17, 9:5, 9:9, 9:12, 9:14, 9:17, 10:5, 10:14,</p>
--	---	---	---	--



<p>11:6, 11:8, 12:1, 12:4, 12:15, 12:24, 12:25, 13:5, 13:6, 13:9, 13:23, 13:25, 14:3, 15:6, 15:16, 15:17, 15:18, 16:4, 16:7, 16:9, 16:25, 17:4, 17:13, 18:3, 20:2, 20:6, 20:13, 21:4, 21:5, 28:6, 29:9, 29:20, 32:2, 32:6, 32:22, 32:23, 40:12, 40:15, 40:19, 40:21, 41:1, 41:9, 41:13, 41:15, 41:19, 41:21, 44:13, 44:15, 44:16, 44:21, 44:22, 44:23, 45:15, 46:11, 46:12, 46:13, 46:24, 47:4, 55:12, 83:16, 83:21, 83:25, 84:2, 84:6, 84:9, 84:22, 85:2, 96:6, 97:11, 109:22, 110:12, 110:20, 110:24, 111:12, 111:15, 111:18, 111:20, 112:13, 112:18, 114:21, 114:22, 114:25, 115:4, 115:5, 115:12, 115:14, 117:2, 119:10, 120:1, 129:21</p> <p><b>billed</b> [2] - 109:20, 119:16</p> <p><b>billing</b> [2] - 11:2, 109:24</p> <p><b>bills</b> [4] - 16:14, 18:17, 44:17, 54:3</p> <p><b>bit</b> [5] - 26:3, 26:14, 61:24, 64:17, 74:1</p> <p><b>block</b> [1] - 56:5</p> <p><b>blocks</b> [1] - 37:24</p> <p><b>BMW</b> [1] - 120:5</p> <p><b>Bob</b> [5] - 88:20, 89:11, 93:11, 93:20, 115:1</p> <p><b>Body</b> [1] - 39:6</p> <p><b>body</b> [45] - 36:16, 37:19, 37:20, 39:16, 39:23, 47:24, 51:6, 51:12, 51:21, 52:1, 55:16, 55:17, 59:2, 60:19, 73:14, 78:16, 92:2, 95:14, 96:12, 97:4, 97:5, 97:12, 97:21, 98:21, 109:25, 110:10, 110:11, 112:21, 116:6, 121:10,</p>	<p>121:17, 123:5, 123:15, 129:17, 129:21, 131:19, 131:21, 136:1, 136:7, 136:10, 136:16, 137:7, 138:22, 139:12, 139:15</p> <p><b>bolted</b> [1] - 47:25</p> <p><b>bonus</b> [7] - 66:20, 67:15, 133:20, 133:22, 134:1, 134:13, 134:15</p> <p><b>bonuses</b> [2] - 66:16, 66:17</p> <p><b>book</b> [1] - 61:17</p> <p><b>booths</b> [1] - 49:24</p> <p><b>boron</b> [1] - 57:12</p> <p><b>bottom</b> [1] - 130:22</p> <p><b>bought</b> [1] - 20:20</p> <p><b>brakes</b> [1] - 87:12</p> <p><b>breach</b> [4] - 5:19, 7:8, 7:16, 33:21</p> <p><b>break</b> [6] - 16:11, 50:11, 50:20, 109:12, 111:23, 111:25</p> <p><b>Brian</b> [1] - 89:11</p> <p><b>brief</b> [1] - 60:15</p> <p><b>briefly</b> [9] - 27:24, 33:14, 47:21, 64:18, 65:3, 66:13, 68:1, 68:11</p> <p><b>bring</b> [6] - 22:16, 23:12, 54:24, 56:3, 56:4, 61:6</p> <p><b>bringing</b> [1] - 99:7</p> <p><b>broadly</b> [1] - 41:12</p> <p><b>broke</b> [4] - 45:24, 50:20, 53:25, 54:2</p> <p><b>broken</b> [1] - 68:22</p> <p><b>brought</b> [3] - 32:19, 98:20, 98:21</p> <p><b>buffing</b> [1] - 38:6</p> <p><b>built</b> [2] - 50:23, 127:24</p> <p><b>bullet</b> [1] - 42:10</p> <p><b>bumper</b> [2] - 69:18, 79:22</p> <p><b>burden</b> [1] - 62:2</p> <p><b>business</b> [3] - 14:11, 49:11, 63:8</p> <p><b>busy</b> [1] - 53:25</p> <p><b>buy</b> [2] - 56:8, 123:20</p> <p><b>buying</b> [1] - 74:9</p> <p><b>BY</b> [10] - 1:16, 1:20, 2:20, 28:1, 33:16, 35:5, 56:20, 60:17, 63:6, 98:13</p>	<b>C</b>	<p><b>calculate</b> [2] - 50:3, 50:10</p> <p><b>calculator</b> [2] - 101:9</p> <p><b>calendar</b> [1] - 106:7</p> <p><b>California</b> [1] - 39:10</p> <p><b>cannot</b> [2] - 75:20, 107:17</p> <p><b>capacity</b> [2] - 33:10, 40:2</p> <p><b>car</b> [109] - 7:15, 8:22, 8:24, 11:20, 12:1, 12:22, 14:14, 20:10, 22:3, 22:4, 23:13, 24:15, 28:8, 28:10, 28:15, 28:18, 28:21, 28:23, 29:1, 29:8, 30:11, 41:14, 42:7, 43:6, 43:22, 44:8, 46:19, 53:4, 53:13, 54:24, 61:5, 61:6, 70:12, 72:13, 74:6, 74:8, 74:13, 75:19, 76:4, 76:6, 76:7, 76:16, 76:22, 77:8, 77:11, 77:13, 77:20, 77:25, 78:10, 79:2, 79:3, 79:24, 85:11, 85:22, 85:25, 87:6, 87:15, 88:16, 89:3, 89:12, 96:9, 98:24, 98:25, 99:2, 99:7, 99:10, 99:15, 99:16, 99:17, 99:19, 99:24, 100:15, 100:20, 102:3, 102:9, 102:15, 103:11, 103:17, 104:13, 105:16, 107:11, 107:17, 107:25, 109:4, 109:5, 110:9, 113:11, 113:14, 114:1, 114:7, 114:8, 114:23, 115:1, 115:8, 115:13, 116:10, 116:11, 122:14, 123:24, 124:14, 126:8, 126:13, 128:11, 135:22, 137:18, 137:20</p> <p><b>CAR</b> [9] - 35:23, 35:24, 36:7, 36:9, 37:5, 58:25, 61:17, 64:8, 64:18</p> <p><b>car's</b> [1] - 113:2</p> <p><b>care</b> [2] - 26:4, 40:8</p> <p><b>carefully</b> [1] - 27:6</p> <p><b>Carolina</b> [1] - 39:7</p>	<p><b>carrier</b> [2] - 7:7, 28:8</p> <p><b>cars</b> [11] - 22:6, 22:16, 38:6, 39:25, 55:21, 56:6, 64:16, 66:3, 90:11, 90:12, 125:14</p> <p><b>case</b> [46] - 5:9, 5:18, 6:15, 6:20, 7:4, 7:5, 7:8, 20:20, 20:24, 23:24, 26:5, 27:7, 28:5, 34:18, 45:23, 46:19, 47:12, 48:7, 58:6, 58:8, 62:20, 80:1, 81:18, 81:22, 85:23, 88:17, 88:18, 89:25, 90:18, 91:17, 98:7, 100:18, 105:19, 105:22, 107:18, 108:11, 110:10, 110:11, 118:12, 122:12, 123:6, 124:9, 129:23, 131:17, 136:3, 141:24</p> <p><b>cases</b> [7] - 33:18, 45:5, 52:20, 55:11, 99:11, 99:12, 137:20</p> <p><b>Catapala</b> [1] - 35:1</p> <p><b>catching</b> [1] - 54:4</p> <p><b>category</b> [1] - 91:13</p> <p><b>caused</b> [1] - 48:5</p> <p><b>center</b> [1] - 59:10</p> <p><b>Centre</b> [4] - 13:10, 14:13, 14:16, 14:24</p> <p><b>certain</b> [22] - 52:17, 53:21, 55:4, 59:18, 59:20, 61:16, 64:20, 64:23, 65:1, 67:2, 67:21, 72:9, 76:10, 80:11, 85:18, 91:3, 91:5, 91:15, 97:23, 110:15, 117:25, 135:8</p> <p><b>certainly</b> [1] - 15:9</p> <p><b>certification</b> [4] - 19:17, 64:19, 64:24, 65:1</p> <p><b>certifications</b> [8] - 19:11, 19:12, 39:17, 52:8, 64:6, 64:8, 91:9, 91:11</p> <p><b>Certified</b> [2] - 13:5, 18:25</p> <p><b>certified</b> [2] - 39:11, 91:9</p> <p><b>CERTIFIED</b> [1] - 142:11</p> <p><b>cetera</b> [1] - 4:16</p> <p><b>challenging</b> [1] - 97:20</p> <p><b>chance</b> [3] - 120:9,</p>	<p>133:12, 141:9</p> <p><b>change</b> [7] - 7:3, 70:8, 71:12, 71:20, 86:5, 98:8, 103:15</p> <p><b>changes</b> [1] - 81:3</p> <p><b>characterization</b> [1] - 136:18</p> <p><b>charge</b> [12] - 6:17, 8:12, 8:17, 18:10, 20:13, 47:16, 47:19, 50:15, 54:19, 58:16, 58:20, 118:6</p> <p><b>charged</b> [8] - 41:17, 44:10, 47:6, 117:5, 118:7, 119:17, 120:14, 124:2</p> <p><b>charges</b> [4] - 15:10, 18:3, 53:5, 76:12</p> <p><b>charging</b> [2] - 8:10, 49:3</p> <p><b>cheap</b> [2] - 45:25, 52:23</p> <p><b>cheaper</b> [1] - 129:13</p> <p><b>check</b> [4] - 15:7, 15:9, 47:9, 106:5</p> <p><b>checked</b> [2] - 104:15, 117:24</p> <p><b>checking</b> [1] - 118:15</p> <p><b>choose</b> [5] - 4:19, 4:20, 6:10, 73:10, 74:14</p> <p><b>chosen</b> [1] - 37:7</p> <p><b>chrome</b> [1] - 85:23</p> <p><b>City</b> [1] - 1:19</p> <p><b>city</b> [1] - 39:22</p> <p><b>civil</b> [3] - 5:3, 5:16, 7:17</p> <p><b>claim</b> [13] - 42:24, 55:3, 68:6, 76:2, 76:11, 79:10, 82:13, 82:25, 83:6, 98:8, 108:5, 108:10, 141:18</p> <p><b>claims</b> [3] - 30:14, 37:10, 37:17</p> <p><b>clarified</b> [1] - 29:14</p> <p><b>clarify</b> [3] - 4:10, 15:14, 110:8</p> <p><b>clarifying</b> [1] - 12:14</p> <p><b>class</b> [4] - 58:24, 59:19, 64:21, 64:22</p> <p><b>classes</b> [10] - 35:16, 35:22, 35:25, 36:17, 58:25, 59:20, 59:22, 61:13, 61:14, 61:18</p> <p><b>classification</b> [1] - 114:9</p> <p><b>classify</b> [1] - 39:3</p> <p><b>classroom</b> [1] - 61:14</p> <p><b>clause</b> [1] - 24:14</p>
--	--	----------	--	--	--

<p><b>cleaning</b> [1] - 38:6</p> <p><b>clear</b> [11] - 3:7, 8:9, 13:25, 29:22, 32:18, 61:23, 76:14, 84:12, 89:10, 98:1, 126:8</p> <p><b>clearly</b> [1] - 75:7</p> <p><b>CLERK</b> [9] - 2:1, 34:15, 34:22, 62:11, 62:17, 62:24, 96:18, 112:4, 112:7</p> <p><b>client</b> [2] - 39:3</p> <p><b>clients</b> [2] - 39:4, 39:5</p> <p><b>clip</b> [1] - 59:16</p> <p><b>close</b> [7] - 21:15, 21:20, 22:15, 93:25, 105:23, 105:25, 124:24</p> <p><b>code</b> [3] - 130:25, 131:3, 131:6</p> <p><b>colleague</b> [1] - 100:23</p> <p><b>collect</b> [1] - 24:1</p> <p><b>college</b> [1] - 38:2</p> <p><b>collided</b> [1] - 42:1</p> <p><b>COLLISION</b> [2] - 1:7, 1:8</p> <p><b>Collision</b> [39] - 3:4, 5:12, 5:17, 5:24, 7:14, 7:25, 8:9, 8:21, 9:3, 12:20, 13:24, 16:9, 18:8, 31:19, 31:21, 33:1, 35:23, 38:25, 39:6, 39:7, 40:2, 40:19, 44:8, 48:12, 48:18, 48:19, 49:3, 49:20, 50:15, 51:25, 59:1, 82:12, 82:16, 88:8, 88:13, 89:4, 92:10, 93:16, 125:7</p> <p><b>collision</b> [15] - 24:17, 35:15, 35:16, 36:2, 38:5, 38:13, 38:16, 39:16, 45:17, 46:2, 52:15, 57:15, 79:23, 92:20, 127:12</p> <p><b>Collision/M.V.B</b> [2] - 6:25, 14:8</p> <p><b>coming</b> [7] - 30:10, 36:4, 64:16, 65:13, 69:9, 98:14, 107:8</p> <p><b>commenced</b> [2] - 28:9, 61:2</p> <p><b>commences</b> [1] - 61:3</p> <p><b>comment</b> [1] - 25:15</p> <p><b>comments</b> [2] - 26:3, 56:11</p> <p><b>commission</b> [3] - 53:11, 53:16, 67:15</p> <p><b>common</b> [6] - 39:11, 39:16, 39:19, 45:14,</p>	<p>55:16, 55:18</p> <p><b>companies</b> [10] - 31:20, 33:21, 35:15, 39:14, 39:18, 50:2, 54:13, 54:14, 54:24</p> <p><b>Company</b> [2] - 36:22, 37:2</p> <p><b>COMPANY</b> [1] - 1:5</p> <p><b>company</b> [31] - 3:21, 6:15, 24:15, 28:11, 28:21, 35:10, 35:11, 35:12, 39:17, 41:2, 42:23, 45:2, 45:3, 45:13, 54:15, 54:18, 54:23, 55:3, 55:6, 55:11, 55:17, 56:1, 56:2, 63:13, 64:1, 66:18, 129:14, 129:19, 135:13, 136:11, 137:6</p> <p><b>compare</b> [3] - 45:19, 51:25, 52:12</p> <p><b>comparison</b> [2] - 100:19, 129:9</p> <p><b>competitive</b> [1] - 91:25</p> <p><b>complaining</b> [1] - 29:10</p> <p><b>complete</b> [1] - 101:11</p> <p><b>completed</b> [5] - 32:23, 44:9, 97:5, 115:13, 123:17</p> <p><b>complex</b> [2] - 125:1, 125:11</p> <p><b>complexity</b> [2] - 47:22, 138:10</p> <p><b>complicated</b> [15] - 121:16, 121:18, 121:19, 121:23, 121:25, 122:1, 122:2, 122:4, 122:6, 122:8, 122:21, 123:4, 123:10, 123:18, 123:21</p> <p><b>comply</b> [2] - 128:24, 131:21</p> <p><b>components</b> [2] - 48:4, 87:13</p> <p><b>compound</b> [1] - 109:11</p> <p><b>computer</b> [5] - 11:6, 122:15, 123:9, 132:25, 133:3</p> <p><b>concerning</b> [5] - 3:4, 28:4, 94:21, 96:5, 96:11</p> <p><b>concerns</b> [2] - 73:16, 127:13</p> <p><b>conclude</b> [1] - 26:5</p> <p><b>conclusion</b> [4] - 7:21,</p>	<p>17:8, 19:16, 136:23</p> <p><b>condition</b> [16] - 21:15, 21:20, 22:5, 22:7, 22:15, 22:17, 28:23, 41:14, 46:19, 75:21, 99:2, 99:7, 100:12, 104:5, 114:24, 115:9</p> <p><b>conditions</b> [1] - 80:14</p> <p><b>conduct</b> [1] - 82:25</p> <p><b>conference</b> [5] - 48:20, 48:21, 57:5, 58:23, 64:11</p> <p><b>Conference</b> [2] - 35:23, 58:25</p> <p><b>confine</b> [1] - 46:1</p> <p><b>confirm</b> [1] - 94:18</p> <p><b>conflict</b> [1] - 84:22</p> <p><b>confused</b> [3] - 25:10, 43:10, 97:15</p> <p><b>confusing</b> [1] - 109:12</p> <p><b>confusion</b> [1] - 134:11</p> <p><b>connection</b> [5] - 33:5, 36:7, 37:20, 108:10, 125:7</p> <p><b>considered</b> [4] - 67:18, 76:18, 79:9, 134:22</p> <p><b>consistently</b> [1] - 38:11</p> <p><b>construction</b> [1] - 45:16</p> <p><b>constructive</b> [2] - 77:3, 77:5</p> <p><b>consult</b> [1] - 35:15</p> <p><b>consultant</b> [1] - 35:18</p> <p><b>Consultants</b> [3] - 35:13, 35:14, 37:16</p> <p><b>consulting</b> [3] - 38:18, 40:2, 51:17</p> <p><b>consumer</b> [7] - 24:13, 28:16, 28:24, 54:20, 55:20, 56:1, 57:20</p> <p><b>consumers</b> [1] - 56:3</p> <p><b>contact</b> [1] - 51:13</p> <p><b>contention</b> [1] - 113:10</p> <p><b>continue</b> [8] - 95:5, 109:25, 110:12, 111:9, 112:9, 136:1, 137:5, 137:24</p> <p><b>continued</b> [1] - 97:4</p> <p><b>contract</b> [8] - 5:19, 7:8, 7:16, 32:25, 33:4, 33:21, 54:22, 55:1</p> <p><b>contractual</b> [1] - 54:17</p> <p><b>conversation</b> [1] - 93:7</p> <p><b>conversations</b> [1] - 60:12</p>	<p><b>cooperation</b> [1] - 27:21</p> <p><b>copy</b> [7] - 40:12, 78:1, 111:20, 111:21, 113:16, 133:8, 141:6</p> <p><b>corner</b> [1] - 91:10</p> <p><b>corners</b> [2] - 53:13, 53:18</p> <p><b>corporate</b> [2] - 63:7, 63:9</p> <p><b>corporations</b> [1] - 17:9</p> <p><b>correct</b> [149] - 3:3, 3:21, 3:24, 4:14, 4:23, 5:1, 5:4, 5:9, 5:20, 6:1, 6:5, 6:13, 6:18, 6:19, 6:22, 6:25, 7:1, 7:9, 7:14, 8:19, 8:23, 10:3, 10:4, 10:6, 10:10, 10:19, 11:19, 12:1, 12:2, 12:16, 12:23, 13:4, 13:6, 13:7, 14:25, 15:22, 15:24, 15:25, 16:3, 16:5, 16:6, 16:8, 16:13, 16:16, 17:15, 17:16, 17:18, 17:19, 17:22, 18:4, 18:20, 19:24, 20:16, 21:5, 21:9, 22:5, 22:10, 22:15, 22:25, 23:4, 24:22, 24:23, 25:3, 25:7, 25:9, 26:17, 26:25, 27:19, 31:17, 32:16, 40:16, 41:4, 43:13, 46:25, 52:19, 56:25, 57:3, 57:7, 58:14, 58:18, 58:20, 58:21, 60:3, 71:24, 72:24, 79:20, 80:2, 80:3, 84:13, 85:8, 86:14, 86:19, 93:5, 93:9, 94:9, 94:22, 98:5, 99:8, 99:25, 101:24, 103:9, 103:13, 103:15, 104:5, 104:15, 105:12, 105:20, 105:21, 106:16, 107:15, 107:16, 107:19, 107:23, 108:1, 108:3, 108:4, 108:6, 109:7, 109:16, 110:22, 111:7, 114:4, 114:5, 114:16, 115:24, 116:1, 116:2, 116:3, 117:3, 117:7, 117:21, 118:8,</p>	<p>120:17, 121:12, 121:13, 122:10, 123:25, 125:10, 126:17, 127:18, 129:21, 129:22, 129:23, 130:6, 130:13, 131:1, 134:2, 137:17</p> <p><b>corrected</b> [1] - 10:15</p> <p><b>correction</b> [1] - 115:6</p> <p><b>corrective</b> [7] - 138:2, 138:4, 138:9, 138:16, 138:19, 139:9, 139:12</p> <p><b>correspond</b> [1] - 117:2</p> <p><b>cost</b> [31] - 4:15, 9:17, 9:25, 39:23, 44:22, 45:6, 49:22, 49:24, 50:6, 50:25, 51:1, 71:5, 71:18, 71:20, 72:2, 73:1, 85:16, 85:17, 99:5, 99:7, 99:9, 99:13, 99:14, 99:17, 99:18, 99:23, 100:11, 110:17, 131:14, 138:13</p> <p><b>cost-effective</b> [4] - 39:23, 45:6, 85:16, 85:17</p> <p><b>costs</b> [2] - 23:4, 49:25</p> <p><b>counsel</b> [2] - 26:2, 58:3</p> <p><b>country</b> [4] - 38:16, 38:19, 52:14, 70:9</p> <p><b>Country</b> [1] - 1:19</p> <p><b>County</b> [5] - 65:23, 82:3, 90:23, 91:25</p> <p><b>COUNTY</b> [1] - 1:2</p> <p><b>couple</b> [7] - 2:12, 40:5, 57:2, 64:14, 90:24, 95:15, 141:1</p> <p><b>course</b> [5] - 37:5, 51:4, 59:1, 84:15, 122:14</p> <p><b>courses</b> [6] - 38:18, 64:20, 64:21, 65:4, 65:5, 65:11</p> <p><b>court</b> [3] - 5:4, 20:11, 21:6</p> <p><b>COURT</b> [165] - 1:1, 1:23, 2:1, 2:5, 2:9, 2:14, 2:17, 3:12, 4:5, 4:11, 7:21, 8:3, 8:16, 12:8, 13:22, 14:2, 14:7, 16:18, 17:7, 17:25, 19:18, 21:2, 21:23, 22:12, 23:8, 23:18, 24:6, 25:14, 26:2, 26:8, 26:12,</p>
---	--	---	---	--

<p>27:6, 27:12, 27:16, 27:22, 29:13, 30:3, 32:5, 32:16, 33:3, 33:11, 33:13, 33:24, 34:1, 34:5, 34:10, 34:12, 34:14, 34:15, 34:22, 35:3, 38:23, 40:14, 40:17, 41:9, 41:11, 42:17, 42:21, 43:8, 43:22, 43:25, 44:4, 46:1, 46:9, 46:21, 47:14, 48:10, 48:24, 49:6, 49:10, 49:15, 50:18, 51:24, 52:25, 53:8, 54:11, 56:10, 56:18, 57:22, 58:1, 58:3, 58:7, 58:10, 60:14, 61:21, 61:25, 62:4, 62:9, 62:11, 62:12, 62:15, 62:17, 62:24, 63:3, 63:22, 74:1, 74:3, 78:13, 78:19, 83:10, 84:19, 86:8, 86:13, 95:19, 95:22, 95:24, 96:2, 96:4, 96:17, 96:18, 96:20, 97:14, 97:21, 97:24, 98:11, 104:18, 106:9, 106:13, 106:23, 107:2, 108:22, 108:24, 109:10, 110:4, 110:8, 110:19, 111:1, 111:5, 111:10, 111:17, 111:22, 112:2, 112:4, 112:5, 112:7, 112:9, 115:4, 118:23, 119:1, 119:5, 123:14, 123:23, 125:20, 126:3, 130:11, 131:25, 132:3, 132:24, 133:2, 133:9, 134:12, 135:18, 136:20, 136:23, 137:3, 138:1, 139:23, 140:10, 140:22, 141:1, 141:7, 141:12, 141:22, 142:2, 142:15</p> <p><b>Court</b> [10] - 1:9, 1:12, 2:3, 40:12, 41:7, 67:1, 111:20, 112:1, 119:23, 120:8</p> <p><b>Courtney</b> [9] - 3:3, 4:13, 5:13, 100:7, 104:4, 111:13, 126:16, 137:10, 139:1</p>	<p><b>courtroom</b> [1] - 27:13</p> <p><b>cover</b> [6] - 45:13, 65:22, 69:19, 135:13, 135:14, 136:4</p> <p><b>coverage</b> [2] - 11:13, 135:9</p> <p><b>covered</b> [3] - 40:5, 40:8, 54:25</p> <p><b>covering</b> [1] - 55:12</p> <p><b>covers</b> [1] - 79:22</p> <p><b>CR</b> [1] - 57:19</p> <p><b>Craft</b> [1] - 39:10</p> <p><b>crafted</b> [1] - 83:5</p> <p><b>created</b> [5] - 10:8, 10:9, 10:18, 11:4, 83:21</p> <p><b>creating</b> [1] - 57:3</p> <p><b>cross</b> [4] - 2:8, 2:9, 30:5, 111:23</p> <p><b>CROSS</b> [3] - 2:19, 56:19, 98:12</p> <p><b>cross-examination</b> [1] - 30:5</p> <p><b>curative</b> [1] - 26:13</p> <p><b>curb</b> [1] - 43:19</p> <p><b>current</b> [3] - 63:17, 65:19</p> <p><b>customer</b> [7] - 26:19, 39:2, 60:20, 61:4, 124:14, 136:10, 141:11</p> <p><b>customers</b> [5] - 30:8, 39:1, 40:9, 52:13, 137:8</p> <p><b>cut</b> [4] - 53:13, 53:18, 109:6, 110:15</p> <p><b>CVS</b> [1] - 123:20</p>	<p>79:21, 80:15, 87:7, 88:5</p> <p><b>database</b> [3] - 47:8, 73:7, 74:14</p> <p><b>date</b> [28] - 9:14, 9:20, 9:23, 10:15, 10:16, 11:5, 24:16, 29:19, 31:3, 65:13, 65:18, 83:15, 87:24, 88:4, 92:3, 92:5, 92:16, 92:20, 92:21, 93:23, 94:17, 106:9, 108:16, 108:17, 108:24, 109:2, 109:3</p> <p><b>dated</b> [2] - 10:5, 31:1</p> <p><b>dates</b> [2] - 10:7, 102:13</p> <p><b>day-to-day</b> [1] - 65:14</p> <p><b>days</b> [9] - 51:3, 77:22, 102:17, 103:23, 105:1, 106:2, 106:7, 106:8, 106:14</p> <p><b>dealer</b> [1] - 18:14</p> <p><b>dealers</b> [1] - 39:20</p> <p><b>dealership</b> [12] - 39:20, 118:13, 118:20, 120:19, 121:7, 121:16, 121:19, 121:23, 121:25, 122:8, 122:16, 123:3</p> <p><b>dealership's</b> [1] - 120:1</p> <p><b>dealerships</b> [2] - 39:22, 55:21</p> <p><b>dealing</b> [2] - 73:17, 85:11</p> <p><b>deals</b> [1] - 90:4</p> <p><b>dealt</b> [2] - 51:18, 82:12</p> <p><b>debt</b> [1] - 137:18</p> <p><b>decade</b> [1] - 124:23</p> <p><b>December</b> [1] - 1:10</p> <p><b>decent</b> [1] - 73:9</p> <p><b>decided</b> [3] - 28:8, 35:25, 129:17</p> <p><b>deciding</b> [2] - 70:25, 71:1</p> <p><b>declaration</b> [1] - 110:1</p> <p><b>declare</b> [3] - 107:17, 109:15, 126:1</p> <p><b>declared</b> [7] - 29:1, 29:8, 108:13, 108:25, 109:4, 109:5, 110:9</p> <p><b>declares</b> [1] - 28:21</p> <p><b>deductible</b> [3] - 4:22, 6:1, 32:18</p> <p><b>deem</b> [7] - 38:23, 77:2, 79:4, 107:14, 107:22, 107:25,</p>	<p>135:23</p> <p><b>deemed</b> [6] - 22:20, 74:20, 75:15, 75:23, 76:7, 115:7</p> <p><b>deems</b> [2] - 114:23, 132:18</p> <p><b>defendant</b> [4] - 5:13, 5:17, 5:19, 14:8</p> <p><b>Defendant</b> [2] - 1:8, 1:18</p> <p><b>defendant's</b> [1] - 62:2</p> <p><b>Defendant's</b> [7] - 8:4, 12:9, 18:1, 119:24, 125:4, 127:2, 141:3</p> <p><b>define</b> [1] - 91:7</p> <p><b>definition</b> [1] - 138:20</p> <p><b>delay</b> [1] - 4:25</p> <p><b>deliberations</b> [1] - 15:15</p> <p><b>delivered</b> [1] - 73:15</p> <p><b>demand</b> [5] - 24:10, 24:11, 26:15, 30:6, 30:25</p> <p><b>demanding</b> [1] - 23:9</p> <p><b>demographically</b> [1] - 55:20</p> <p><b>denominator</b> [1] - 39:11</p> <p><b>depicted</b> [1] - 128:21</p> <p><b>deployed</b> [2] - 76:17, 100:6</p> <p><b>deposed</b> [1] - 133:16</p> <p><b>deposition</b> [3] - 133:6, 133:15, 134:25</p> <p><b>depresses</b> [1] - 129:8</p> <p><b>depth</b> [1] - 80:10</p> <p><b>derived</b> [1] - 50:9</p> <p><b>describe</b> [23] - 29:2, 43:5, 46:14, 47:21, 48:21, 49:16, 53:3, 55:6, 57:6, 64:18, 65:3, 65:9, 66:13, 67:1, 68:11, 70:17, 70:20, 77:5, 85:21, 91:6, 91:24, 127:17</p> <p><b>described</b> [2] - 118:11, 129:18</p> <p><b>describing</b> [1] - 52:21</p> <p><b>description</b> [4] - 3:25, 17:6, 47:5, 138:10</p> <p><b>designated</b> [1] - 60:22</p> <p><b>designation</b> [2] - 59:19, 59:20</p> <p><b>designed</b> [1] - 127:24</p> <p><b>desk</b> [2] - 64:1, 78:5</p> <p><b>despite</b> [3] - 97:7, 97:9, 97:23</p> <p><b>determination</b> [13] - 21:13, 21:18, 22:10, 47:2, 49:18, 67:15,</p>	<p>73:5, 75:25, 76:3, 76:12, 79:6, 87:14, 118:24</p> <p><b>determine</b> [2] - 71:6, 77:9</p> <p><b>determined</b> [7] - 48:12, 66:20, 67:11, 133:20, 134:2, 134:13, 134:16</p> <p><b>determines</b> [2] - 70:2, 72:7</p> <p><b>devote</b> [1] - 135:15</p> <p><b>diagnosis</b> [1] - 59:4</p> <p><b>dictate</b> [1] - 135:8</p> <p><b>differ</b> [5] - 3:21, 70:11, 70:14, 84:8, 84:14</p> <p><b>difference</b> [15] - 5:14, 6:24, 53:3, 71:23, 72:2, 72:3, 84:25, 114:6, 114:13, 114:14, 114:19, 114:20, 135:12, 136:9, 140:7</p> <p><b>differences</b> [1] - 6:18</p> <p><b>different</b> [17] - 12:18, 13:16, 17:12, 18:3, 18:18, 19:24, 32:19, 36:13, 45:8, 47:17, 66:5, 74:8, 81:25, 82:18, 82:20, 131:2, 131:24</p> <p><b>differently</b> [3] - 98:1, 140:14, 140:15</p> <p><b>differs</b> [1] - 55:6</p> <p><b>difficult</b> [1] - 118:19</p> <p><b>digital</b> [1] - 9:18</p> <p><b>dime</b> [1] - 50:21</p> <p><b>DIRECT</b> [2] - 35:4, 63:5</p> <p><b>direct</b> [20] - 3:15, 8:5, 8:21, 12:13, 13:3, 21:25, 29:12, 54:16, 54:18, 54:23, 55:6, 55:17, 55:23, 56:4, 101:18, 101:23, 129:7, 132:9, 138:23, 140:20</p> <p><b>directed</b> [3] - 26:3, 55:22, 55:25</p> <p><b>directly</b> [6] - 6:17, 6:21, 56:7, 124:8, 124:17, 125:7</p> <p><b>disagree</b> [1] - 84:3</p> <p><b>disagreement</b> [7] - 4:15, 26:16, 79:5, 80:17, 80:19, 80:20, 96:8</p> <p><b>disassembly</b> [1] - 29:19</p> <p><b>disconnect</b> [1] - 86:9</p>
	<b>D</b>			
	<p><b>D.C</b> [1] - 39:9</p> <p><b>d/b/a</b> [1] - 1:7</p> <p><b>daily</b> [3] - 9:25, 10:3, 66:14</p> <p><b>damage</b> [29] - 43:3, 43:20, 43:25, 47:23, 48:1, 48:5, 48:6, 48:7, 59:4, 65:6, 68:14, 69:1, 69:2, 73:9, 74:25, 76:17, 77:10, 79:16, 79:24, 85:12, 86:15, 86:17, 87:9, 91:22, 98:24, 104:23, 107:10, 135:22</p> <p><b>damaged</b> [5] - 85:24, 98:17, 98:20, 126:8, 127:12</p> <p><b>damages</b> [5] - 68:20,</p>			

<p><b>discrepancy</b> [1] - 68:2</p> <p><b>discuss</b> [1] - 80:19</p> <p><b>discussed</b> [8] - 12:14, 61:24, 79:8, 80:1, 88:21, 92:14, 92:15, 93:10</p> <p><b>discussion</b> [5] - 3:13, 68:3, 89:1, 93:3, 133:10</p> <p><b>discussions</b> [2] - 49:17, 50:14</p> <p><b>dismantled</b> [1] - 79:15</p> <p><b>dispatched</b> [1] - 81:14</p> <p><b>dispatching</b> [1] - 77:16</p> <p><b>dispute</b> [9] - 20:11, 20:17, 20:19, 20:24, 21:1, 21:4, 21:5, 21:7, 38:21</p> <p><b>disputing</b> [2] - 20:4, 20:20</p> <p><b>dissatisfied</b> [5] - 25:1, 25:11, 25:17, 26:23, 26:24</p> <p><b>divergence</b> [1] - 129:20</p> <p><b>DMV</b> [1] - 57:19</p> <p><b>doctor</b> [1] - 55:9</p> <p><b>document</b> [22] - 2:25, 3:24, 4:1, 4:4, 4:8, 4:23, 6:10, 6:11, 6:21, 7:4, 10:7, 10:9, 11:3, 12:10, 24:8, 24:18, 24:25, 40:18, 128:21, 141:8, 141:14, 141:20</p> <p><b>documents</b> [5] - 14:5, 30:10, 83:12, 83:13, 141:16</p> <p><b>dollar</b> [6] - 50:22, 69:4, 69:6, 69:10, 104:7</p> <p><b>dollars</b> [2] - 23:22, 29:14</p> <p><b>done</b> [67] - 12:15, 12:18, 12:20, 13:11, 16:15, 17:17, 17:20, 20:10, 21:7, 26:25, 28:12, 31:4, 34:8, 39:9, 40:3, 48:8, 57:1, 58:8, 60:2, 64:17, 70:15, 77:13, 77:20, 77:23, 79:18, 80:1, 80:5, 80:6, 80:10, 81:11, 81:12, 84:2, 84:3, 84:4, 84:5, 84:9, 87:1, 87:2, 87:17, 88:10, 96:24, 98:1, 102:3, 104:19, 104:20,</p>	<p>104:24, 107:19, 114:7, 114:8, 118:12, 120:18, 121:22, 121:24, 122:4, 122:8, 123:3, 123:9, 138:6, 139:3, 140:3, 140:7, 140:8, 140:13, 140:14, 141:1</p> <p><b>door</b> [1] - 48:2</p> <p><b>double</b> [3] - 18:11, 18:14, 106:23</p> <p><b>down</b> [10] - 16:11, 39:7, 68:18, 68:22, 80:14, 92:14, 95:24, 97:6, 125:21, 142:5</p> <p><b>draft</b> [1] - 75:6</p> <p><b>drafting</b> [1] - 69:23</p> <p><b>draw</b> [2] - 133:13, 136:24</p> <p><b>drive</b> [4] - 31:10, 56:5, 59:10</p> <p><b>Drive</b> [2] - 35:1, 63:2</p> <p><b>drive-in</b> [3] - 56:5, 59:10</p> <p><b>driver</b> [1] - 135:15</p> <p><b>driver's</b> [2] - 43:14, 43:15</p> <p><b>drop</b> [1] - 61:4</p> <p><b>dropped</b> [1] - 78:5</p> <p><b>dry</b> [1] - 50:2</p> <p><b>due</b> [2] - 8:6, 8:18</p> <p><b>during</b> [11] - 21:24, 26:20, 43:23, 61:2, 64:13, 74:18, 86:21, 89:10, 107:8, 133:15, 134:25</p> <p><b>duties</b> [1] - 65:14</p>	<p>15:20, 19:3, 22:5, 38:4, 39:20, 45:3, 47:18, 71:2, 75:3, 75:14, 78:4, 84:3</p> <p><b>elaborate</b> [1] - 118:19</p> <p><b>electrical</b> [5] - 117:15, 117:18, 118:10, 118:11, 120:22</p> <p><b>electrically</b> [1] - 81:12</p> <p><b>electronic</b> [2] - 77:17, 78:4</p> <p><b>electronically</b> [1] - 68:18</p> <p><b>electronics</b> [1] - 65:12</p> <p><b>elements</b> [1] - 69:9</p> <p><b>employed</b> [1] - 35:9</p> <p><b>employee</b> [3] - 51:4, 66:8</p> <p><b>employees</b> [1] - 53:10</p> <p><b>employer</b> [2] - 27:9, 27:10</p> <p><b>end</b> [4] - 39:25, 61:17, 69:6, 134:16</p> <p><b>ended</b> [2] - 9:23, 10:16</p> <p><b>engineering</b> [1] - 36:5</p> <p><b>enter</b> [1] - 60:19</p> <p><b>entered</b> [1] - 96:5</p> <p><b>entire</b> [4] - 21:4, 47:4, 59:24, 87:21</p> <p><b>entities</b> [1] - 31:19</p> <p><b>entitled</b> [1] - 133:4</p> <p><b>entity</b> [1] - 131:24</p> <p><b>entries</b> [1] - 117:2</p> <p><b>entry</b> [2] - 41:1, 41:19</p> <p><b>EPSTEIN</b> [1] - 1:18</p> <p><b>equipment</b> [7] - 39:12, 45:4, 45:6, 49:20, 52:8, 70:19, 119:13</p> <p><b>Equipment</b> [1] - 128:20</p> <p><b>error</b> [2] - 14:18, 14:20</p> <p><b>ESQ</b> [4] - 1:16, 1:16, 1:20, 1:20</p> <p><b>essentially</b> [1] - 5:24</p> <p><b>estimate</b> [118] - 3:21, 20:15, 24:21, 25:5, 25:8, 25:11, 25:17, 26:24, 40:3, 57:16, 67:4, 67:7, 68:14, 68:20, 68:21, 68:23, 69:3, 69:8, 69:23, 71:1, 71:12, 72:6, 72:21, 73:17, 74:15, 75:6, 75:17, 76:1, 77:8, 77:15, 77:20, 77:23, 78:1, 78:4, 78:7, 78:9, 79:1, 79:5, 79:14, 80:2, 80:4, 80:18, 80:21,</p>	<p>80:22, 80:24, 85:1, 86:6, 86:25, 88:4, 88:5, 88:7, 88:8, 88:22, 88:24, 89:14, 90:16, 92:4, 92:7, 92:14, 94:7, 95:2, 95:3, 97:9, 98:25, 99:16, 99:21, 100:9, 100:11, 100:14, 100:17, 100:19, 100:20, 101:3, 101:4, 101:7, 101:11, 101:14, 102:2, 102:18, 102:20, 102:23, 103:3, 103:15, 103:21, 104:1, 104:10, 104:13, 104:21, 105:3, 105:9, 105:14, 105:17, 105:19, 106:15, 106:18, 106:24, 107:3, 107:5, 113:12, 113:15, 113:17, 114:3, 115:5, 115:7, 115:15, 116:20, 118:9, 124:1, 128:23, 129:11, 129:12, 129:13, 129:20, 130:18, 130:22, 131:7</p> <p><b>estimates</b> [19] - 40:9, 60:2, 64:2, 66:3, 66:21, 66:24, 73:16, 76:7, 94:4, 94:5, 99:5, 113:21, 113:22, 129:25, 130:1, 130:4, 131:11, 131:14</p> <p><b>Estimatics</b> [2] - 63:19, 64:4</p> <p><b>estimating</b> [4] - 24:15, 64:7, 77:18, 99:1</p> <p><b>estimations</b> [1] - 98:17</p> <p><b>estimator</b> [9] - 63:21, 63:23, 65:15, 68:10, 70:7, 74:18, 80:7, 117:9, 132:16</p> <p><b>et</b> [1] - 4:16</p> <p><b>European</b> [1] - 52:10</p> <p><b>evaluate</b> [1] - 98:24</p> <p><b>event</b> [1] - 110:11</p> <p><b>everyday</b> [1] - 30:18</p> <p><b>evidence</b> [8] - 2:4, 24:5, 24:7, 83:11, 119:25, 125:5, 127:3, 141:13</p> <p><b>exact</b> [3] - 10:8, 15:11,</p>	<p>88:12</p> <p><b>exactly</b> [1] - 138:24</p> <p><b>EXAMINATION</b> [8] - 2:19, 27:25, 33:15, 35:4, 56:19, 60:16, 63:5, 98:12</p> <p><b>examination</b> [3] - 21:25, 30:5, 129:7</p> <p><b>example</b> [10] - 69:19, 71:16, 71:19, 72:1, 74:7, 76:13, 76:20, 76:22, 80:1, 91:9</p> <p><b>exceeds</b> [1] - 28:10</p> <p><b>excess</b> [1] - 135:22</p> <p><b>exclude</b> [1] - 95:20</p> <p><b>excluding</b> [1] - 97:11</p> <p><b>exclusive</b> [1] - 39:6</p> <p><b>Exclusive</b> [1] - 39:7</p> <p><b>excused</b> [2] - 34:2, 61:21</p> <p><b>exhibit</b> [9] - 3:14, 7:24, 40:13, 41:7, 41:8, 87:21, 120:10, 140:19, 141:6</p> <p><b>Exhibit</b> [26] - 8:1, 8:4, 12:7, 12:9, 17:24, 18:1, 40:12, 41:6, 44:21, 44:22, 84:18, 84:19, 111:20, 112:13, 113:20, 120:8, 124:16, 125:2, 125:4, 127:1, 127:2, 127:8, 127:19, 127:22, 130:14, 141:3</p> <p><b>Exhibit-11</b> [2] - 2:24, 26:18</p> <p><b>Exhibit-3</b> [2] - 24:2, 24:4</p> <p><b>Exhibit-E</b> [6] - 8:1, 8:4, 40:12, 44:22, 111:20, 112:13</p> <p><b>Exhibit-F</b> [4] - 12:7, 12:9, 41:6, 44:21</p> <p><b>Exhibit-K</b> [5] - 127:1, 127:2, 127:8, 127:19, 127:22</p> <p><b>Exhibit-OO</b> [1] - 120:8</p> <p><b>Exhibit-P</b> [2] - 17:24, 18:1</p> <p><b>Exhibit-RR</b> [1] - 124:16</p> <p><b>Exhibit-TT</b> [2] - 125:2, 125:4</p> <p><b>Exhibit-Y</b> [4] - 84:18, 84:19, 113:20, 130:14</p> <p><b>Exhibit-YY</b> [1] - 141:3</p> <p><b>Exhibits</b> [5] - 2:3, 83:10, 116:22,</p>
	<b>E</b>			
	<p><b>e-mail</b> [1] - 78:4</p> <p><b>e-mailed</b> [1] - 88:11</p> <p><b>earliest</b> [2] - 10:11, 10:12</p> <p><b>early</b> [1] - 23:15</p> <p><b>easier</b> [4] - 14:5, 121:9, 125:14, 125:15</p> <p><b>economy</b> [1] - 125:17</p> <p><b>edited</b> [1] - 10:17</p> <p><b>editorializing</b> [1] - 26:8</p> <p><b>education</b> [2] - 36:2, 60:5</p> <p><b>effect</b> [1] - 132:21</p> <p><b>effective</b> [4] - 39:23, 45:6, 85:16, 85:17</p> <p><b>eight</b> [1] - 59:23</p> <p><b>either</b> [13] - 15:7,</p>			

<p>119:23, 119:24  <b>exhibits</b> [1] - 140:24  <b>exist</b> [2] - 4:14, 13:20  <b>exists</b> [1] - 97:20  <b>expectation</b> [1] - 109:7  <b>expedition</b> [1] - 30:9  <b>expense</b> [2] - 29:18, 136:4  <b>experience</b> [5] - 64:16, 70:7, 121:5, 131:20, 134:21  <b>expert</b> [4] - 2:11, 38:22, 38:24, 43:8  <b>expertise</b> [2] - 49:7, 54:7  <b>explain</b> [8] - 24:11, 61:7, 65:5, 80:21, 84:25, 95:16, 96:23  <b>explained</b> [1] - 42:6  <b>exposed</b> [1] - 79:15  <b>external</b> [1] - 80:9</p>	<p>6:15, 6:25, 7:18, 8:6, 8:10, 8:13, 8:18, 9:6, 9:10, 9:13, 11:12, 11:21, 20:15, 21:13, 21:14, 21:18, 21:19, 22:8, 22:18, 23:3, 23:13, 24:22, 25:23, 27:1, 28:5, 28:18, 28:25, 29:8, 29:23, 30:12, 30:17, 33:1, 33:5, 36:22, 37:2, 56:24, 57:1, 57:17, 59:8, 60:2, 63:2, 63:14, 63:15, 63:18, 63:23, 63:25, 66:9, 68:12, 69:25, 70:1, 76:8, 81:8, 81:10, 90:3, 94:14, 100:2, 101:16, 103:6, 107:19, 107:21, 107:25, 108:5, 109:4, 109:19, 110:10, 110:13, 110:16, 110:21, 111:12, 111:17, 114:8, 114:15, 114:22, 114:23, 115:5, 115:7, 115:15, 116:24, 117:7, 118:8, 119:20, 121:1, 121:6, 128:23, 129:11, 129:25, 130:23, 130:25, 131:9, 132:20, 135:8, 135:14, 135:23, 136:4, 141:11, 142:1  <b>FARM</b> [1] - 1:4  <b>Farm's</b> [15] - 23:25, 56:23, 59:5, 90:21, 94:9, 100:20, 104:12, 106:18, 109:24, 110:2, 114:3, 122:23, 123:1, 123:3, 130:4  <b>fault</b> [2] - 23:5, 134:11  <b>February</b> [1] - 120:4  <b>fees</b> [1] - 61:8  <b>fender</b> [3] - 74:24, 75:1, 75:2  <b>few</b> [6] - 37:24, 38:2, 39:4, 41:17, 53:2, 56:16  <b>field</b> [5] - 38:5, 45:16, 45:17  <b>file</b> [6] - 9:18, 9:19, 10:8, 11:5, 108:10  <b>filed</b> [1] - 22:10  <b>fill</b> [3] - 61:15, 61:16,</p>	<p>66:14  <b>fill-in</b> [1] - 61:15  <b>final</b> [72] - 4:20, 7:23, 7:24, 8:6, 8:10, 8:17, 9:17, 10:5, 10:14, 10:22, 12:1, 12:24, 12:25, 13:8, 13:9, 13:24, 15:18, 18:3, 20:2, 20:6, 20:13, 20:14, 21:4, 21:5, 21:13, 32:6, 32:22, 32:23, 40:12, 40:15, 40:19, 40:21, 41:1, 41:13, 44:16, 44:22, 46:11, 46:12, 46:13, 46:24, 68:22, 69:10, 83:16, 83:21, 83:25, 84:2, 84:9, 84:22, 85:1, 85:2, 90:16, 97:8, 97:9, 97:11, 105:11, 106:15, 111:12, 111:14, 111:18, 111:20, 112:13, 114:3, 114:21, 114:22, 114:25, 115:7, 115:12, 115:14, 115:15, 129:21, 130:18  <b>finally</b> [2] - 90:13, 103:14  <b>financed</b> [2] - 137:11, 137:13  <b>fine</b> [3] - 63:22, 124:6, 130:23  <b>finish</b> [4] - 56:17, 118:23, 119:1, 119:3  <b>finished</b> [3] - 2:9, 102:6, 112:16  <b>FIORELLA</b> [1] - 1:14  <b>Fiorella</b> [1] - 56:22  <b>first</b> [43] - 3:16, 18:13, 34:23, 43:24, 61:5, 61:6, 62:25, 79:19, 83:15, 83:16, 87:6, 87:20, 87:22, 89:2, 89:3, 89:14, 92:3, 92:8, 92:14, 92:23, 93:22, 93:23, 94:13, 94:20, 97:5, 100:9, 100:14, 100:19, 103:3, 103:6, 104:12, 106:6, 107:22, 108:1, 109:5, 124:20, 127:7, 127:21, 128:12, 133:13, 138:19  <b>fit</b> [1] - 127:24  <b>five</b> [4] - 34:10, 48:16,</p>	<p>52:3, 52:14  <b>fix</b> [10] - 42:18, 68:4, 75:3, 75:19, 91:10, 99:10, 99:15, 99:24, 113:11, 113:14  <b>fixed</b> [2] - 43:6, 138:5  <b>fixing</b> [4] - 42:13, 99:19, 128:23, 135:15  <b>flat</b> [3] - 53:11, 53:14, 117:23  <b>floor</b> [1] - 48:3  <b>flowing</b> [1] - 54:3  <b>focus</b> [2] - 90:24, 93:22  <b>following</b> [1] - 44:19  <b>football</b> [1] - 38:3  <b>force</b> [1] - 53:22  <b>forces</b> [1] - 42:9  <b>forensic</b> [1] - 36:5  <b>forget</b> [1] - 7:24  <b>forgetting</b> [3] - 16:24, 83:23, 84:1  <b>form</b> [3] - 8:12, 99:5, 131:10  <b>formally</b> [1] - 107:18  <b>forth</b> [3] - 62:16, 106:1, 107:9  <b>forward</b> [1] - 42:11  <b>four</b> [16] - 5:4, 59:8, 59:18, 59:22, 64:21, 92:13, 92:16, 92:22, 93:13, 93:14, 94:16, 94:19, 103:1, 116:17, 119:11, 120:21  <b>four-hour</b> [1] - 59:8  <b>frame</b> [15] - 47:25, 48:7, 77:10, 77:19, 89:20, 90:8, 92:2, 95:14, 96:25, 97:1, 97:2, 97:5, 97:6, 113:2  <b>Franklin</b> [1] - 35:2  <b>fraud</b> [1] - 36:6  <b>free</b> [3] - 15:14, 87:20, 106:5  <b>fresh</b> [1] - 43:3  <b>FRIEDMAN</b> [1] - 1:14  <b>Friedman</b> [1] - 56:23  <b>friend</b> [1] - 126:7  <b>friends</b> [2] - 37:15, 37:17  <b>front</b> [5] - 68:25, 101:10, 116:24, 120:10, 130:14  <b>full</b> [3] - 28:17, 47:25, 119:2  <b>function</b> [1] - 127:24  <b>fund</b> [1] - 55:4</p>	<p><b>furnished</b> [3] - 9:5, 9:12, 9:14  <b>furthering</b> [1] - 36:3</p>
<b>G</b>				
<p><b>faces</b> [1] - 30:23  <b>facilities</b> [1] - 56:4  <b>facility</b> [5] - 45:21, 49:21, 49:23, 56:5  <b>fact</b> [20] - 21:24, 49:8, 49:10, 59:10, 67:24, 100:19, 102:17, 105:1, 107:13, 108:5, 114:3, 116:17, 121:5, 129:7, 129:23, 131:17, 132:20, 134:1, 138:9, 140:6  <b>factors</b> [1] - 139:11  <b>fail</b> [1] - 139:17  <b>fair</b> [11] - 10:20, 10:24, 20:3, 20:9, 20:23, 21:12, 21:17, 22:13, 83:20, 93:2, 94:10  <b>fairly</b> [1] - 45:25  <b>fall</b> [2] - 59:17, 91:12  <b>familiar</b> [4] - 48:11, 51:6, 82:7, 137:10  <b>far</b> [26] - 9:13, 22:24, 23:2, 23:3, 25:16, 42:2, 46:3, 52:18, 55:23, 59:10, 66:20, 68:6, 68:14, 72:9, 72:13, 80:16, 92:20, 93:8, 101:20, 107:6, 111:8, 111:11, 122:23, 123:2, 125:17, 135:7  <b>Farm</b> [103] - 3:5, 4:15, 5:19, 6:5, 6:6, 6:8,</p>	<p><b>game</b> [1] - 64:4  <b>Garden</b> [1] - 1:19  <b>gathering</b> [1] - 48:17  <b>gauge</b> [1] - 44:2  <b>general</b> [33] - 5:11, 6:17, 45:10, 64:12, 65:21, 68:1, 69:22, 70:25, 71:6, 71:11, 75:9, 75:17, 77:14, 77:24, 78:7, 79:11, 80:24, 81:13, 82:7, 83:23, 86:7, 86:25, 88:17, 91:18, 98:4, 98:7, 98:17, 102:8, 115:24, 116:1, 116:15, 135:10, 138:4  <b>generalized</b> [1] - 51:19  <b>generally</b> [5] - 44:18, 129:8, 129:12, 129:16, 131:14  <b>geographic</b> [2] - 65:22, 70:8  <b>German</b> [2] - 39:12, 39:18  <b>given</b> [9] - 10:2, 11:20, 11:21, 23:23, 26:13, 66:6, 101:16, 101:23, 102:1  <b>glad</b> [1] - 14:20  <b>glass</b> [4] - 45:22, 45:24, 65:6  <b>glazier</b> [1] - 45:22  <b>GM</b> [1] - 125:25  <b>goal</b> [9] - 21:13, 21:18, 22:2, 22:6, 22:9, 22:14, 22:16, 75:17  <b>God</b> [2] - 34:20, 62:22  <b>gold</b> [1] - 59:19  <b>goodness</b> [1] - 50:21  <b>govern</b> [1] - 136:16  <b>graduated</b> [1] - 37:21  <b>grand</b> [1] - 128:1  <b>gross</b> [1] - 28:5  <b>grossly</b> [1] - 107:12  <b>ground</b> [1] - 87:7  <b>group</b> [3] - 39:24, 52:2, 55:19  <b>guarantee</b> [3] - 12:16, 12:18, 12:21  <b>guess</b> [15] - 2:5, 2:24, 9:2, 16:20, 25:10, 25:12, 26:1, 36:12,</p>			

39:2, 59:5, 64:4, 75:21, 94:20, 106:22, 116:20 <b>guessing</b> [1] - 139:18 <b>guys</b> [1] - 5:7	133:10 <b>help</b> [5] - 34:20, 39:15, 40:9, 62:22, 117:12 <b>helpful</b> [1] - 55:14 <b>helping</b> [1] - 57:11 <b>HEREIN</b> [1] - 142:12 <b>Hertz</b> [2] - 9:4, 9:5 <b>high</b> [5] - 37:21, 37:23, 37:24, 39:25, 47:25 <b>high-end</b> [1] - 39:25 <b>higher</b> [15] - 58:13, 90:17, 91:2, 91:3, 91:16, 91:19, 91:23, 99:9, 99:13, 99:14, 99:18, 101:7, 104:9, 104:12, 106:18 <b>himself</b> [3] - 16:7, 16:14, 17:4 <b>hired</b> [1] - 51:19 <b>historically</b> [2] - 25:19, 25:20 <b>hit</b> [4] - 42:13, 43:17, 43:18, 43:19 <b>HMO</b> [1] - 55:11 <b>hold</b> [1] - 28:17 <b>holding</b> [3] - 7:12, 7:18, 87:13 <b>HOLSGROVE</b> [2] - 1:23, 142:15 <b>home</b> [2] - 63:11 <b>honestly</b> [1] - 140:12 <b>honor</b> [1] - 27:1 <b>Honor</b> [19] - 2:18, 4:10, 26:10, 27:24, 29:11, 34:3, 38:20, 46:10, 53:1, 56:13, 58:11, 63:4, 63:20, 112:11, 115:3, 132:23, 134:20, 141:5, 141:19 <b>HONORABLE</b> [1] - 1:11 <b>hostage</b> [1] - 7:18 <b>hour</b> [32] - 41:25, 46:17, 46:18, 47:11, 47:15, 48:8, 49:4, 49:17, 50:16, 53:6, 53:21, 54:5, 54:8, 54:9, 59:8, 89:17, 90:5, 115:20, 115:24, 116:5, 116:15, 116:18, 120:4, 120:12, 120:14, 120:24, 121:6, 124:8, 124:18, 124:21, 124:24, 125:7 <b>hourly</b> [3] - 53:10, 53:20, 66:8	<b>hours</b> [22] - 59:22, 59:23, 64:22, 67:6, 112:21, 112:22, 112:24, 112:25, 113:2, 113:4, 113:7, 113:10, 113:14, 113:25, 114:4, 114:10, 114:11, 114:12, 114:20, 115:8, 115:17, 115:19 <b>house</b> [2] - 48:3, 48:4 <b>hub</b> [1] - 38:16 <b>huge</b> [1] - 141:22 <b>hyphen</b> [1] - 35:24	121:21 <b>including</b> [2] - 72:21, 80:18 <b>inclusive</b> [2] - 39:21, 47:4 <b>incorrect</b> [1] - 31:1 <b>increase</b> [3] - 60:4, 134:15, 134:16 <b>indeed</b> [1] - 107:5 <b>indemnify</b> [1] - 55:3 <b>independent</b> [1] - 64:1 <b>Index</b> [1] - 1:5 <b>indicate</b> [2] - 12:10, 131:1 <b>indicated</b> [11] - 6:10, 8:21, 19:22, 58:12, 71:22, 81:24, 83:5, 85:6, 93:23, 94:13, 98:4 <b>indirectly</b> [1] - 6:6 <b>individual</b> [2] - 17:9, 59:19 <b>induce</b> [1] - 42:10 <b>Industry</b> [2] - 35:22, 58:25 <b>industry</b> [16] - 35:16, 35:19, 37:4, 37:20, 45:19, 46:2, 54:7, 55:13, 64:10, 64:11, 100:4, 125:21, 132:14, 132:15, 135:8 <b>inferior</b> [1] - 75:7 <b>inflate</b> [1] - 138:13 <b>inform</b> [2] - 28:25, 79:9 <b>information</b> [3] - 76:11, 87:19, 107:24 <b>initial</b> [9] - 24:21, 77:20, 78:8, 80:4, 82:25, 88:16, 94:12, 101:4, 106:18 <b>inner</b> [3] - 48:3, 77:10, 79:24 <b>inquire</b> [3] - 35:3, 56:18, 63:3 <b>inquiry</b> [1] - 112:10 <b>inside</b> [1] - 80:13 <b>inspect</b> [4] - 43:22, 67:9, 77:15, 81:16 <b>inspected</b> [5] - 67:4, 67:12, 89:6, 101:15, 108:10 <b>inspecting</b> [3] - 68:16, 101:20, 101:24 <b>inspection</b> [22] - 40:4, 68:4, 79:18, 79:19, 80:5, 80:6, 80:9, 80:10, 80:12, 80:25, 81:1, 81:2, 81:3,	81:4, 81:5, 83:1, 86:18, 88:16, 89:13, 92:8, 102:4, 102:7 <b>inspections</b> [4] - 40:4, 52:16, 86:21, 89:10 <b>inspector</b> [2] - 67:3, 67:5 <b>installed</b> [1] - 44:14 <b>installing</b> [1] - 65:5 <b>instance</b> [1] - 6:23 <b>instances</b> [1] - 91:1 <b>instead</b> [1] - 19:13 <b>institutionally</b> [1] - 123:2 <b>instruction</b> [1] - 26:13 <b>instructor</b> [2] - 37:9, 37:11 <b>instructors</b> [2] - 37:6, 37:8 <b>insurance</b> [31] - 3:20, 6:15, 24:15, 28:8, 28:11, 28:21, 33:21, 36:16, 42:23, 51:3, 54:13, 54:15, 54:18, 54:22, 54:24, 55:3, 55:9, 55:10, 55:11, 56:1, 56:2, 64:11, 129:13, 129:19, 132:15, 135:9, 135:13, 136:11, 136:15, 137:6 <b>INSURANCE</b> [1] - 1:4 <b>Insurance</b> [5] - 36:22, 37:2, 54:25, 63:14 <b>insured</b> [3] - 6:17, 111:17, 135:15 <b>integrity</b> [1] - 127:25 <b>intellectual</b> [1] - 122:18 <b>intend</b> [2] - 133:4, 133:5 <b>intensive</b> [2] - 49:22, 51:5 <b>Inter</b> [2] - 35:22, 58:25 <b>Inter-Industry</b> [2] - 35:22, 58:25 <b>internal</b> [3] - 79:18, 79:21, 80:5 <b>international</b> [1] - 64:10 <b>introduce</b> [1] - 60:21 <b>investigation</b> [1] - 50:9 <b>investigations</b> [1] - 36:6 <b>investment</b> [1] - 49:19 <b>invoice</b> [2] - 74:25, 86:5 <b>involve</b> [1] - 69:3 <b>involved</b> [12] - 33:21,
<b>H</b>	<b>I</b>	<b>I-CAR</b> [8] - 35:23, 36:7, 36:9, 37:5, 58:25, 61:17, 64:8, 64:18 <b>ID</b> [1] - 141:13 <b>idea</b> [2] - 53:25, 137:12 <b>identification</b> [2] - 68:19, 141:4 <b>ignore</b> [1] - 25:14 <b>Il</b> [3] - 2:3, 119:23, 119:24 <b>Ill</b> [1] - 34:25 <b>images</b> [1] - 86:23 <b>imagine</b> [2] - 22:9, 59:25 <b>imitation</b> [1] - 128:2 <b>immediate</b> [1] - 42:13 <b>immediately</b> [2] - 80:1, 109:19 <b>impact</b> [4] - 42:9, 43:15, 85:13, 87:8 <b>impacted</b> [3] - 42:3, 42:7, 42:10 <b>importance</b> [1] - 127:11 <b>impression</b> [1] - 133:19 <b>improve</b> [1] - 60:1 <b>in-class</b> [1] - 64:21 <b>inappropriate</b> [1] - 95:13 <b>INC</b> [1] - 1:7 <b>incentive</b> [1] - 66:18 <b>inch</b> [1] - 41:22 <b>incident</b> [5] - 42:22, 42:23, 43:1, 43:2, 43:4 <b>include</b> [3] - 4:20, 15:10, 51:2 <b>included</b> [1] - 97:10 <b>includes</b> [2] - 18:18,		

57:3, 57:15, 64:3, 65:11, 76:6, 81:21, 85:19, 117:22, 118:10, 119:6, 119:12 <b>involving</b> [2] - 82:13, 84:9 <b>Island</b> [98] - 3:4, 3:6, 4:7, 4:13, 5:12, 5:16, 5:24, 6:24, 7:13, 7:24, 8:9, 8:21, 9:3, 12:20, 13:8, 13:9, 13:12, 13:24, 14:8, 18:7, 19:22, 28:25, 29:9, 29:16, 30:22, 31:8, 31:10, 31:19, 31:21, 32:1, 32:7, 32:8, 32:21, 33:1, 33:5, 33:9, 37:11, 38:25, 39:9, 40:1, 40:19, 44:8, 44:10, 44:12, 47:17, 48:11, 48:18, 48:19, 49:3, 49:20, 50:15, 51:7, 51:9, 51:14, 51:15, 51:16, 51:20, 51:25, 52:3, 53:4, 55:17, 55:18, 56:7, 57:3, 57:17, 58:5, 82:11, 82:12, 82:16, 88:8, 88:13, 89:4, 92:10, 93:15, 101:16, 107:9, 107:13, 107:17, 107:22, 108:1, 109:4, 109:5, 109:15, 109:19, 110:11, 110:17, 111:13, 111:16, 114:15, 115:11, 115:20, 121:11, 124:8, 124:17, 124:21, 124:24, 125:7 <b>ISLAND</b> [1] - 1:7 <b>Island's</b> [11] - 28:22, 30:21, 41:13, 78:18, 107:21, 109:6, 110:16, 110:20, 110:21, 111:12, 115:14 <b>issue</b> [8] - 6:1, 6:4, 41:20, 54:4, 95:11, 97:2, 97:21, 134:23 <b>issued</b> [2] - 32:22, 111:12 <b>issues</b> [3] - 82:15, 82:22, 98:5 <b>item</b> [3] - 41:20, 88:3, 119:10 <b>itemized</b> [1] - 68:23	<b>items</b> [3] - 41:12, 41:17, 96:13 <b>itself</b> [5] - 49:11, 69:8, 111:15, 126:11, 129:19 <b>J</b> <b>JACK</b> [1] - 1:11 <b>Jaguar</b> [1] - 39:13 <b>James</b> [1] - 36:18 <b>Jeff</b> [1] - 36:4 <b>Jersey</b> [3] - 38:15, 39:8 <b>Jesberger</b> [17] - 15:3, 16:2, 16:5, 16:11, 16:21, 17:18, 40:6, 44:19, 50:10, 54:23, 54:25, 55:1, 56:6, 82:8, 88:23, 89:4, 92:10 <b>Jesberger's</b> [2] - 45:12, 50:1 <b>Jim</b> [2] - 83:4, 107:7 <b>JJ</b> [2] - 119:23, 119:24 <b>job</b> [13] - 27:7, 36:1, 38:1, 38:7, 38:15, 59:5, 60:7, 60:9, 61:10, 63:17, 125:15, 138:11, 138:12 <b>jobs</b> [2] - 59:6, 59:7 <b>jockey</b> [1] - 53:16 <b>judge</b> [1] - 2:1 <b>Judge</b> [4] - 74:4, 78:22, 96:16, 130:10 <b>judgemental</b> [1] - 47:7 <b>judgment</b> [1] - 41:13 <b>judicial</b> [1] - 106:13 <b>July</b> [1] - 116:17 <b>jump</b> [1] - 76:14 <b>June</b> [7] - 10:5, 10:10, 83:21, 105:11, 106:11, 108:6, 108:18 <b>jury</b> [2] - 26:10, 26:12 <b>Justice</b> [1] - 1:12 <b>K</b> <b>K&amp;M</b> [1] - 39:6 <b>KEARON</b> [2] - 1:18, 1:20 <b>keep</b> [8] - 26:3, 30:9, 45:9, 50:22, 59:6, 59:18, 64:15, 65:12 <b>keeping</b> [3] - 69:22, 70:25, 71:6 <b>keeps</b> [2] - 65:12, 65:18	<b>KEVIN</b> [1] - 1:20 <b>kind</b> [9] - 66:11, 72:13, 76:20, 77:4, 80:14, 80:16, 120:20, 124:14 <b>kit</b> [1] - 77:18 <b>Klein</b> [7] - 12:13, 15:8, 19:8, 27:22, 60:14, 98:11, 111:22 <b>KLEIN</b> [71] - 1:20, 3:25, 4:4, 4:6, 7:20, 8:1, 8:12, 12:5, 16:17, 17:6, 19:16, 21:1, 21:21, 22:11, 25:13, 27:24, 28:1, 32:13, 33:12, 33:23, 34:7, 34:13, 35:5, 38:20, 40:16, 41:10, 43:14, 46:23, 49:8, 49:13, 53:1, 56:14, 60:15, 60:17, 61:19, 73:24, 74:4, 78:12, 78:15, 95:17, 96:16, 97:16, 98:13, 107:1, 108:23, 109:14, 110:5, 111:9, 111:25, 112:11, 114:11, 115:2, 115:6, 115:18, 116:21, 118:22, 118:25, 123:13, 126:25, 130:9, 132:23, 132:25, 133:5, 134:20, 136:25, 140:2, 140:19, 140:25, 141:5, 141:19, 141:25 <b>knowledge</b> [12] - 5:22, 5:23, 6:2, 6:3, 36:3, 58:5, 64:12, 64:15, 65:4, 65:7, 65:10, 65:19 <b>KYEKO</b> [1] - 1:16 <b>L</b> <b>labor</b> [89] - 4:16, 20:10, 30:19, 30:21, 41:24, 46:14, 46:15, 46:17, 47:2, 47:5, 47:8, 47:17, 48:12, 49:17, 50:11, 50:13, 50:16, 53:10, 53:12, 53:19, 54:5, 54:14, 54:16, 55:2, 57:3, 57:8, 57:16, 58:13, 58:20, 60:20, 69:11, 69:12, 69:13, 69:16, 69:20, 69:24, 70:1, 70:2, 70:8, 70:11,	84:1, 88:21, 89:15, 89:18, 89:20, 89:22, 90:17, 91:2, 91:3, 91:16, 91:19, 92:6, 92:11, 92:15, 93:4, 93:8, 93:10, 93:11, 94:9, 96:7, 97:11, 98:5, 98:8, 112:18, 112:21, 113:2, 113:4, 113:11, 113:12, 113:25, 114:4, 114:10, 114:11, 114:12, 115:17, 115:18, 116:4, 117:5, 118:3, 118:4, 120:23, 124:2, 124:18, 126:4, 126:9, 126:12, 132:17 <b>lacking</b> [1] - 25:5 <b>Lakeview</b> [8] - 13:10, 13:17, 14:13, 14:16, 14:17, 14:21, 14:23, 14:24 <b>Land</b> [1] - 39:13 <b>Lange</b> [1] - 36:5 <b>laptop</b> [1] - 77:18 <b>large</b> [3] - 28:6, 54:13, 111:7 <b>larger</b> [1] - 68:2 <b>Larry</b> [1] - 37:16 <b>laser</b> [1] - 119:15 <b>last</b> [13] - 4:5, 4:19, 34:23, 62:25, 90:24, 97:17, 102:8, 102:11, 102:14, 103:19, 106:9, 120:2, 124:7 <b>latest</b> [1] - 10:9 <b>law</b> [2] - 5:4, 57:19 <b>Lawrence</b> [1] - 34:25 <b>lawsuit</b> [2] - 5:16, 33:8 <b>lawsuits</b> [1] - 33:20 <b>laying</b> [2] - 45:2, 45:9 <b>lead</b> [1] - 44:20 <b>leads</b> [1] - 54:6 <b>learning</b> [1] - 38:7 <b>least</b> [4] - 59:22, 73:6, 90:25, 91:7 <b>leave</b> [2] - 77:25, 78:2 <b>lecture</b> [2] - 58:23, 61:14 <b>led</b> [1] - 49:17 <b>left</b> [11] - 42:3, 43:16, 48:2, 48:25, 49:2, 56:6, 84:16, 85:12, 87:18, 88:22, 112:12 <b>legal</b> [6] - 5:10, 7:21, 14:25, 17:7, 19:16, 78:18	<b>legally</b> [1] - 7:5 <b>less</b> [11] - 29:7, 29:20, 53:9, 67:20, 104:7, 114:15, 114:18, 115:11, 115:14, 121:10, 121:16 <b>letter</b> [5] - 3:3, 3:20, 4:9, 4:12, 141:11 <b>letters</b> [3] - 130:25, 131:3, 131:6 <b>level</b> [1] - 85:18 <b>Level</b> [4] - 65:1, 65:2, 65:3, 65:8 <b>liability</b> [2] - 42:23, 45:12 <b>LIBERT</b> [1] - 1:11 <b>Libert</b> [1] - 2:1 <b>lien</b> [4] - 7:13, 14:9, 28:14, 28:20 <b>liened</b> [1] - 7:15 <b>lienholder</b> [5] - 22:19, 23:24, 28:13, 28:14, 28:16 <b>light</b> [2] - 42:25, 43:1 <b>limit</b> [3] - 55:13, 88:15, 125:12 <b>limitations</b> [1] - 136:15 <b>limited</b> [1] - 120:1 <b>limiting</b> [1] - 96:6 <b>limits</b> [2] - 45:7, 135:8 <b>line</b> [19] - 4:20, 35:21, 41:3, 68:23, 69:15, 69:16, 69:18, 88:3, 92:14, 116:24, 133:23, 134:7, 134:12 <b>lines</b> [2] - 135:2, 135:4 <b>lingo</b> [1] - 128:18 <b>list</b> [1] - 71:18 <b>listed</b> [2] - 44:22, 46:16 <b>listen</b> [2] - 27:6, 56:11 <b>listing</b> [1] - 41:23 <b>literally</b> [2] - 4:2, 8:14 <b>litigation</b> [1] - 5:12 <b>living</b> [1] - 54:8 <b>LLC</b> [1] - 35:13 <b>LLP</b> [2] - 1:14, 1:18 <b>local</b> [1] - 70:6 <b>located</b> [1] - 82:2 <b>location</b> [2] - 70:8 <b>locations</b> [3] - 13:16, 17:2, 39:10 <b>longitudinal</b> [1] - 44:3 <b>look</b> [24] - 9:1, 40:23, 46:16, 67:3, 67:5, 68:13, 74:16, 75:1, 79:16, 84:5, 84:20, 86:18, 86:22, 87:21,
---	---	---	--	--

87:24, 88:13, 90:16, 92:18, 95:9, 98:25, 102:23, 108:17, 109:3 <b>looked</b> [5] - 12:25, 41:15, 86:24, 107:7, 137:15 <b>looking</b> [13] - 12:24, 13:23, 24:8, 24:10, 24:16, 68:16, 76:16, 87:6, 87:15, 89:12, 89:14, 113:15 <b>looks</b> [10] - 20:13, 48:21, 84:11, 117:6, 117:15, 118:7, 118:13, 119:11, 119:17, 141:17 <b>loss</b> [55] - 21:13, 21:15, 21:17, 21:20, 22:5, 22:7, 22:9, 22:14, 22:15, 22:16, 22:20, 28:13, 28:19, 28:23, 29:1, 29:8, 41:14, 46:19, 51:4, 70:22, 75:14, 75:21, 75:23, 75:24, 76:3, 76:8, 76:14, 76:19, 76:23, 77:3, 77:5, 77:12, 92:21, 93:17, 93:21, 94:1, 94:11, 94:15, 99:2, 99:7, 100:12, 104:4, 107:14, 107:17, 107:22, 107:25, 108:6, 108:14, 108:25, 109:5, 109:16, 110:1, 110:9, 114:23, 115:8 <b>lost</b> [1] - 4:5 <b>LOTURCO</b> [1] - 1:18 <b>low</b> [1] - 25:23 <b>lower</b> [6] - 53:19, 71:5, 71:18, 72:25, 99:23, 101:14 <b>lunch</b> [1] - 56:17	94:10, 94:21, 94:24, 95:12, 96:24, 98:5, 110:25 <b>M.V.B.'s</b> [3] - 22:14, 109:8, 110:24 <b>M.V.B./Mid</b> [1] - 9:3 <b>machine</b> [2] - 119:7, 119:14 <b>magnesium</b> [1] - 57:12 <b>mail</b> [2] - 55:12, 78:4 <b>mailed</b> [1] - 88:11 <b>major</b> [1] - 23:2 <b>mall</b> [1] - 59:11 <b>man</b> [1] - 37:23 <b>managed</b> [1] - 115:11 <b>management</b> [3] - 66:15, 79:10, 80:21 <b>manager</b> [6] - 5:11, 37:10, 37:17, 68:3, 82:11, 88:25 <b>mangled</b> [1] - 77:4 <b>manner</b> [2] - 79:3, 84:4 <b>manufacturer</b> [3] - 70:19, 72:19, 72:22 <b>Manufacturer</b> [1] - 128:20 <b>manufacturer's</b> [1] - 131:21 <b>manufacturers</b> [3] - 19:24, 39:12, 72:15 <b>manufacturing</b> [1] - 19:5 <b>March</b> [4] - 24:16, 92:21, 101:5, 101:6 <b>margins</b> [2] - 16:24, 58:12 <b>marked</b> [22] - 2:4, 2:23, 15:6, 15:16, 17:14, 17:21, 18:21, 18:22, 18:25, 19:2, 24:4, 40:11, 45:22, 87:21, 111:19, 119:22, 119:25, 120:7, 125:4, 127:2, 141:3, 141:13 <b>market</b> [3] - 54:20, 128:2, 139:5 <b>marks</b> [2] - 16:7, 17:5 <b>markup</b> [18] - 12:15, 12:21, 13:1, 13:4, 15:21, 15:23, 16:14, 31:22, 44:24, 44:25, 45:1, 45:2, 45:17, 45:18, 45:21, 46:6, 46:7, 84:24 <b>markups</b> [3] - 12:14, 17:17, 45:14 <b>math</b> [8] - 15:9, 15:14,	15:15, 23:2, 58:15, 104:14, 104:16, 104:19 <b>mathematicians</b> [1] - 15:9 <b>matter</b> [7] - 8:22, 21:24, 54:15, 56:23, 59:9, 122:12, 122:13 <b>McDonald's</b> [1] - 59:11 <b>McGauvran</b> [6] - 28:2, 32:20, 40:6, 44:19, 89:5, 92:11 <b>mean</b> [18] - 30:11, 52:6, 55:25, 61:4, 68:16, 68:17, 78:3, 79:19, 87:10, 91:24, 110:10, 111:14, 123:20, 125:25, 135:5, 136:6, 140:12, 141:19 <b>meaning</b> [2] - 53:25, 54:20 <b>means</b> [5] - 66:24, 68:11, 121:25, 123:3, 137:13 <b>meant</b> [2] - 115:5, 123:9 <b>mechanic/body</b> [1] - 37:23 <b>mechanical</b> [11] - 89:18, 91:22, 92:1, 113:4, 116:6, 117:13, 117:14, 120:19, 120:20, 123:16 <b>mechanical/electric</b> [1] - 90:4 <b>meet</b> [2] - 59:23, 59:24 <b>meeting</b> [5] - 48:18, 48:25, 49:1, 49:2, 49:18 <b>meetings</b> [3] - 51:17, 51:19, 53:25 <b>members</b> [1] - 35:19 <b>memory</b> [2] - 124:10, 124:13 <b>memos</b> [1] - 26:5 <b>mentioned</b> [9] - 6:14, 15:2, 19:5, 19:7, 30:5, 57:2, 58:22, 65:8, 80:16 <b>Mercedes</b> [1] - 125:10 <b>Mercedes-Benz</b> [1] - 125:10 <b>met</b> [1] - 36:4 <b>metal</b> [2] - 89:16, 89:24 <b>Metropolitan</b> [1] - 39:22	<b>MICHAEL</b> [1] - 1:16 <b>Michael</b> [3] - 36:23, 56:22, 63:1 <b>Mid</b> [100] - 3:4, 3:5, 4:7, 4:13, 5:12, 5:16, 5:24, 6:24, 7:13, 7:24, 8:9, 8:21, 12:20, 13:8, 13:9, 13:11, 13:24, 14:8, 18:7, 19:22, 28:22, 28:25, 29:9, 29:16, 30:21, 31:8, 31:10, 31:19, 31:21, 32:1, 32:7, 32:21, 32:25, 33:5, 33:9, 38:25, 40:1, 40:19, 41:13, 44:8, 44:10, 44:12, 47:17, 48:11, 48:18, 48:19, 49:3, 49:20, 50:15, 51:20, 51:25, 53:4, 55:17, 55:18, 56:7, 57:3, 57:17, 58:5, 78:18, 82:11, 82:12, 82:16, 88:8, 88:13, 89:4, 92:10, 93:15, 101:16, 107:9, 107:13, 107:17, 107:21, 107:22, 108:1, 109:4, 109:5, 109:6, 109:15, 109:19, 110:10, 110:16, 110:17, 110:20, 110:21, 111:11, 111:13, 111:16, 114:15, 115:11, 115:14, 115:20, 121:11, 124:8, 124:17, 124:21, 124:24, 125:7 <b>MID</b> [1] - 1:7 <b>mid</b> [1] - 108:6 <b>middle</b> [2] - 51:20, 51:22 <b>might</b> [19] - 3:21, 19:17, 26:23, 44:10, 44:11, 47:6, 47:7, 59:17, 67:5, 77:9, 79:23, 87:5, 88:25, 93:21, 96:13, 98:1, 137:23, 138:5, 139:8 <b>Mike</b> [1] - 29:4 <b>mileage</b> [1] - 68:19 <b>mind</b> [8] - 63:20, 109:9, 127:7, 127:21, 130:17, 133:3, 134:4, 135:3 <b>mine</b> [1] - 39:4 <b>Mineola</b> [1] - 1:10 <b>minimizing</b> [3] -	133:20, 134:2, 134:14 <b>minor</b> [1] - 29:20 <b>minus</b> [1] - 101:1 <b>minute</b> [2] - 3:12, 95:25 <b>MINUTES</b> [1] - 142:11 <b>minutes</b> [3] - 34:10, 81:6, 112:2 <b>mischaracterization</b> [1] - 32:11 <b>mistake</b> [1] - 14:22 <b>mixture</b> [2] - 71:3, 71:4 <b>moment</b> [10] - 30:5, 53:1, 61:9, 100:23, 112:14, 123:8, 126:6, 132:23, 133:1, 141:8 <b>Monday</b> [1] - 142:6 <b>money</b> [34] - 5:25, 6:4, 6:7, 6:21, 7:13, 7:18, 7:19, 19:23, 22:4, 28:5, 29:23, 32:8, 32:21, 45:2, 45:9, 47:16, 53:15, 53:17, 53:21, 54:1, 54:3, 54:4, 55:4, 58:14, 58:16, 58:20, 79:2, 110:17, 111:13, 111:16, 135:13, 135:14, 137:21 <b>Montanez</b> [13] - 34:25, 35:6, 38:25, 40:18, 41:12, 44:5, 46:1, 48:11, 49:16, 53:2, 56:10, 56:21, 60:18 <b>month</b> [4] - 33:17, 38:17, 103:5, 124:7 <b>monthly</b> [1] - 30:17 <b>months</b> [5] - 37:12, 37:14, 37:22, 38:2, 116:17 <b>morning</b> [7] - 2:16, 28:2, 28:3, 34:9, 140:23, 142:6 <b>most</b> [10] - 39:22, 41:12, 71:17, 72:15, 79:21, 79:22, 82:4, 112:19, 120:9, 140:17 <b>mostly</b> [1] - 65:23 <b>motions</b> [2] - 62:7, 62:16 <b>motorist</b> [8] - 135:20, 135:25, 136:6, 137:5, 137:17, 137:23, 138:17 <b>move</b> [6] - 7:23, 11:9, 22:18, 53:16, 93:11,
<b>M</b>				
<b>M-O-N-T-A-N-E-Z</b> [1] - 35:1 <b>M.V.B</b> [37] - 1:7, 4:15, 5:7, 6:5, 15:18, 16:1, 16:9, 16:12, 16:22, 16:25, 17:1, 17:13, 18:11, 19:22, 21:14, 21:19, 22:23, 23:9, 33:20, 40:15, 82:12, 83:17, 83:25, 84:2, 85:1, 88:24, 89:11, 92:5, 93:4, 93:6,				



<p>124:6  <b>moving</b> [3] - 12:3, 54:1  <b>MR</b> [154] - 2:7, 2:10, 2:18, 2:20, 3:9, 3:25, 4:2, 4:4, 4:6, 4:10, 7:20, 8:1, 8:12, 8:14, 12:5, 12:6, 13:24, 14:4, 16:17, 16:19, 17:6, 17:11, 17:23, 19:16, 21:1, 21:21, 22:11, 23:6, 23:16, 24:2, 25:13, 26:10, 27:3, 27:20, 27:24, 28:1, 29:11, 30:1, 32:4, 32:10, 32:13, 33:2, 33:12, 33:14, 33:16, 33:23, 33:25, 34:7, 34:8, 34:13, 35:5, 38:20, 40:16, 41:10, 42:15, 42:20, 43:7, 43:14, 46:20, 46:23, 47:13, 48:9, 48:23, 49:5, 49:8, 49:13, 50:17, 51:22, 52:5, 52:24, 53:1, 53:7, 54:10, 56:14, 56:16, 56:20, 58:4, 60:13, 60:15, 60:17, 61:19, 61:20, 61:23, 62:1, 62:6, 62:14, 63:4, 63:6, 63:20, 73:24, 74:4, 78:12, 78:15, 83:8, 84:17, 95:17, 95:18, 95:21, 96:15, 96:16, 97:16, 97:19, 97:22, 98:3, 98:10, 98:13, 102:13, 104:14, 106:20, 107:1, 108:20, 108:23, 109:8, 109:14, 110:2, 110:5, 110:18, 110:23, 111:9, 111:25, 112:11, 114:9, 114:11, 115:2, 115:6, 115:17, 115:18, 116:21, 118:22, 118:25, 123:11, 123:13, 123:22, 125:19, 126:2, 126:25, 130:9, 131:23, 132:23, 132:25, 133:5, 133:7, 134:20, 135:17, 136:17, 136:25, 137:25, 140:2, 140:9, 140:19, 140:25, 141:5,</p>	<p>141:19, 141:25  <b>multiple</b> [6] - 10:7, 36:11, 50:7, 83:5, 87:16, 95:5  <b>multiplied</b> [1] - 69:13  <b>multiply</b> [3] - 15:10, 15:17, 15:20  <b>must</b> [3] - 77:20, 122:5, 123:17  <b>MUTUAL</b> [1] - 1:4</p> <p style="text-align: center;"><b>N</b></p> <p><b>nailed</b> [1] - 103:19  <b>name</b> [10] - 34:24, 35:10, 35:12, 36:18, 36:23, 37:9, 41:2, 56:22, 62:25, 124:14  <b>NASSAU</b> [1] - 1:2  <b>Nassau</b> [7] - 1:9, 65:23, 82:3, 82:23, 90:23, 91:25  <b>national</b> [2] - 37:10, 37:17  <b>nature</b> [1] - 43:25  <b>nearly</b> [3] - 106:23, 107:1, 107:2  <b>necessarily</b> [3] - 66:17, 123:6, 133:22  <b>necessary</b> [16] - 41:14, 46:13, 46:18, 46:25, 47:12, 54:19, 62:4, 99:2, 99:10, 99:15, 99:19, 99:24, 114:23, 115:8, 132:18, 140:20  <b>necessity</b> [1] - 47:3  <b>need</b> [13] - 39:14, 42:5, 50:11, 78:21, 87:6, 91:8, 96:17, 109:12, 111:3, 111:25, 124:10, 126:10, 139:12  <b>needed</b> [8] - 67:7, 69:9, 75:3, 81:7, 81:16, 87:17, 94:25, 138:19  <b>negatively</b> [1] - 132:21  <b>negligence</b> [2] - 8:7, 8:18  <b>negotiate</b> [1] - 30:14  <b>negotiated</b> [1] - 96:25  <b>never</b> [6] - 70:23, 86:4, 103:20, 105:21, 137:13, 137:15  <b>new</b> [26] - 20:5, 20:21, 21:8, 37:8, 64:16, 65:13, 70:17, 71:2, 71:7, 71:12, 71:24, 72:2, 72:4, 72:7,</p>	<p>72:10, 72:16, 73:17, 73:18, 75:5, 75:7, 84:12, 85:10, 85:15, 122:14, 140:24  <b>NEW</b> [1] - 1:1  <b>New</b> [21] - 1:10, 1:15, 1:19, 13:10, 14:13, 14:16, 24:13, 35:2, 38:4, 38:9, 38:11, 38:14, 38:15, 39:8, 52:4, 57:19, 60:22, 63:2, 75:22  <b>next</b> [8] - 3:19, 9:2, 11:9, 34:5, 68:4, 68:5, 81:17, 133:14  <b>Nick</b> [1] - 92:5  <b>night</b> [1] - 81:15  <b>nine</b> [3] - 59:16, 84:18, 108:15  <b>Nissan</b> [36] - 13:5, 15:23, 18:12, 19:7, 19:25, 31:10, 31:12, 42:1, 68:7, 74:7, 74:9, 74:10, 81:21, 82:13, 90:22, 91:12, 100:6, 102:6, 102:12, 103:9, 104:4, 120:12, 120:14, 120:18, 121:15, 123:25, 124:2, 126:16, 126:21, 127:9, 127:14, 127:23, 127:25, 137:11, 139:1  <b>Nissan's</b> [3] - 127:4, 129:4, 129:18  <b>non</b> [12] - 79:9, 128:11, 129:4, 129:8, 129:12, 130:1, 130:5, 130:7, 131:1, 131:10, 131:13, 131:18  <b>non-agreed</b> [1] - 79:9  <b>non-OEM</b> [10] - 129:4, 129:8, 129:12, 130:1, 130:5, 130:7, 131:1, 131:10, 131:13, 131:18  <b>non-quality</b> [1] - 128:11  <b>none</b> [2] - 4:25, 31:25  <b>nonresponsive</b> [2] - 23:7, 118:22  <b>normal</b> [1] - 67:6  <b>normalization</b> [1] - 118:13  <b>normally</b> [1] - 7:2  <b>North</b> [4] - 39:7, 127:9, 127:14,</p>	<p>127:25  <b>noted</b> [1] - 97:2  <b>notes</b> [2] - 28:17, 47:5  <b>nothing</b> [10] - 27:20, 32:12, 32:14, 33:25, 34:19, 60:13, 62:21, 90:1, 98:10, 122:11  <b>notice</b> [2] - 77:16, 106:13  <b>notified</b> [3] - 76:7, 77:14, 109:25  <b>November</b> [3] - 124:7, 124:13, 124:16  <b>nowadays</b> [1] - 53:24  <b>number</b> [23] - 5:4, 8:5, 9:17, 10:14, 12:1, 12:3, 20:6, 20:12, 32:19, 41:20, 48:14, 48:15, 50:19, 68:19, 68:22, 69:9, 92:13, 92:16, 92:22, 112:21, 112:24, 113:4, 133:11  <b>numbers</b> [2] - 22:22, 31:6</p> <p style="text-align: center;"><b>O</b></p> <p><b>oath</b> [3] - 2:15, 96:19, 112:8  <b>object</b> [7] - 27:3, 29:11, 30:1, 33:2, 42:15, 49:5, 53:7  <b>objection</b> [44] - 3:25, 7:20, 8:12, 16:17, 17:6, 19:16, 21:1, 21:21, 22:11, 32:4, 33:23, 42:20, 46:20, 47:13, 48:9, 48:23, 50:17, 51:22, 52:24, 54:10, 78:12, 78:14, 95:17, 96:23, 97:7, 97:9, 97:17, 109:8, 109:10, 110:2, 110:18, 110:23, 111:2, 114:9, 123:11, 123:22, 125:19, 126:2, 131:23, 135:17, 136:17, 136:24, 137:25, 140:9  <b>objections</b> [1] - 96:6  <b>obligated</b> [1] - 29:24  <b>obligation</b> [1] - 28:22  <b>obligations</b> [2] - 78:18, 128:25  <b>obvious</b> [1] - 76:18  <b>obviously</b> [16] - 6:23, 11:14, 15:8, 22:4, 22:8, 39:8, 48:4,</p>	<p>53:14, 53:19, 53:23, 58:13, 58:15, 81:3, 94:3, 118:20, 133:14  <b>occasion</b> [3] - 30:12, 82:16, 124:24  <b>occasions</b> [1] - 95:6  <b>October</b> [2] - 33:17, 33:22  <b>odd</b> [1] - 23:22  <b>OEM</b> [27] - 19:7, 19:13, 50:6, 51:5, 70:17, 71:18, 75:5, 84:7, 84:11, 84:12, 96:7, 127:5, 128:19, 128:21, 129:4, 129:8, 129:9, 129:12, 129:14, 130:1, 130:5, 130:7, 131:1, 131:10, 131:13, 131:18, 131:22  <b>OF</b> [4] - 1:1, 1:2, 142:11  <b>offer</b> [6] - 36:1, 56:2, 56:3, 90:9, 91:23, 131:3  <b>offered</b> [2] - 90:2, 124:21  <b>offering</b> [1] - 90:14  <b>offers</b> [2] - 90:3, 130:25  <b>offhand</b> [1] - 72:14  <b>office</b> [5] - 9:13, 30:14, 63:8, 63:9, 83:19  <b>OFFICER</b> [9] - 2:14, 8:3, 12:8, 17:25, 24:6, 40:17, 41:11, 83:10, 84:19  <b>OFFICIAL</b> [2] - 1:23, 142:15  <b>often</b> [4] - 30:17, 31:7, 59:23, 139:12  <b>oils</b> [1] - 50:2  <b>Old</b> [1] - 1:19  <b>once</b> [8] - 28:8, 28:9, 32:14, 38:17, 65:11, 65:18, 78:7, 105:6  <b>One</b> [1] - 63:1  <b>one</b> [43] - 5:3, 5:18, 15:8, 18:6, 18:17, 20:4, 21:8, 26:20, 26:22, 38:25, 39:21, 39:22, 42:4, 42:19, 50:5, 53:1, 55:1, 58:23, 61:16, 67:22, 72:7, 75:24, 76:24, 80:2, 81:8, 82:16, 84:24, 85:2, 85:10, 85:25, 87:17, 91:8,</p>
--	--	--	---	--

<p>99:5, 109:6, 112:1, 123:20, 126:13, 128:10, 130:18, 132:12, 132:13, 137:23, 139:11</p> <p><b>ones</b> [1] - 82:5</p> <p><b>ongoing</b> [3] - 59:7, 64:24, 64:25</p> <p><b>online</b> [1] - 64:20</p> <p><b>OO</b> [2] - 120:8, 120:10</p> <p><b>open</b> [3] - 50:20, 50:22, 61:17</p> <p><b>operate</b> [2] - 49:21, 49:22</p> <p><b>operating</b> [2] - 43:5, 138:17</p> <p><b>operation</b> [7] - 69:21, 117:13, 117:14, 118:4, 118:21, 122:1, 122:6</p> <p><b>operations</b> [3] - 88:21, 123:16, 123:17</p> <p><b>opinion</b> [3] - 78:18, 85:9, 86:1</p> <p><b>opinions</b> [1] - 26:4</p> <p><b>opposed</b> [4] - 72:10, 80:10, 85:10, 85:14</p> <p><b>opposite</b> [2] - 43:19, 48:6</p> <p><b>optimum</b> [1] - 127:24</p> <p><b>options</b> [3] - 30:8, 68:19, 76:1</p> <p><b>order</b> [9] - 2:2, 2:6, 2:11, 2:13, 61:24, 62:11, 62:13, 73:14, 74:15</p> <p><b>ordered</b> [3] - 44:11, 86:4</p> <p><b>ordinarily</b> [1] - 135:23</p> <p><b>ordinary</b> [1] - 90:2</p> <p><b>original</b> [9] - 19:5, 70:18, 88:5, 100:20, 104:10, 106:23, 107:2, 127:23, 128:20</p> <p><b>outer</b> [1] - 48:3</p> <p><b>outside</b> [1] - 49:6</p> <p><b>outstanding</b> [1] - 108:21</p> <p><b>overage</b> [2] - 8:6, 8:17</p> <p><b>overages</b> [1] - 10:22</p> <p><b>overall</b> [1] - 52:12</p> <p><b>overrule</b> [1] - 111:1</p> <p><b>overruled</b> [8] - 19:18, 21:2, 42:21, 47:14, 50:18, 78:19, 110:4, 132:3</p> <p><b>overtime</b> [2] - 66:11, 66:14</p> <p><b>overwrite</b> [7] - 66:23,</p>	<p>67:12, 67:19, 68:7, 99:21, 132:10, 132:16</p> <p><b>overwrites</b> [6] - 67:14, 132:21, 133:20, 134:2, 134:14, 134:17</p> <p><b>owe</b> [1] - 137:21</p> <p><b>owed</b> [10] - 5:8, 32:7, 32:12, 32:14, 32:21, 32:23, 111:11, 111:13, 111:16</p> <p><b>owes</b> [1] - 6:7</p> <p><b>own</b> [8] - 31:16, 35:11, 39:21, 85:25, 104:9, 107:18, 114:3, 137:6</p> <p><b>owned</b> [5] - 15:2, 16:2, 16:4, 17:14, 17:18</p> <p><b>owner</b> [5] - 12:22, 16:11, 16:12, 16:21, 45:21</p> <p><b>owners</b> [1] - 35:17</p> <p><b>owns</b> [4] - 16:15, 17:1</p>	<p>69:16, 69:17, 69:19, 70:17, 70:18, 70:20, 70:21, 70:23, 71:1, 71:2, 71:5, 71:7, 71:12, 71:14, 71:17, 71:18, 72:4, 72:5, 72:11, 72:21, 72:23, 73:3, 73:6, 73:7, 73:8, 73:9, 73:12, 73:14, 73:19, 74:5, 74:6, 74:12, 74:14, 74:16, 74:17, 74:19, 75:1, 75:4, 75:5, 75:6, 75:7, 84:15, 85:7, 85:19, 90:17, 112:19, 126:13, 128:11, 129:8, 129:12, 129:14, 131:10, 134:6, 134:18</p> <p><b>PART</b> [1] - 1:2</p> <p><b>part-time</b> [1] - 36:1</p> <p><b>parted</b> [1] - 75:15</p> <p><b>particular</b> [29] - 45:21, 48:7, 63:8, 63:10, 64:6, 64:13, 69:16, 69:24, 71:7, 71:14, 73:5, 77:19, 79:17, 79:25, 80:9, 87:15, 88:17, 88:18, 89:2, 90:17, 91:20, 94:7, 98:20, 99:1, 115:25, 116:10, 116:11, 123:24, 124:9</p> <p><b>parties</b> [3] - 41:20, 96:4, 96:10</p> <p><b>parts</b> [25] - 15:11, 56:9, 71:9, 72:10, 72:16, 72:20, 75:9, 79:24, 112:18, 126:5, 126:9, 126:12, 126:14, 126:18, 126:20, 126:21, 127:12, 127:16, 127:23, 128:2, 131:1, 131:13, 131:22, 132:17</p> <p><b>party</b> [4] - 54:21, 81:7, 107:18, 141:20</p> <p><b>passed</b> [2] - 67:3, 109:20</p> <p><b>passenger</b> [2] - 43:12, 44:1</p> <p><b>past</b> [3] - 98:5, 101:15, 138:5</p> <p><b>Pat</b> [11] - 23:19, 27:16, 46:2, 57:24, 86:10, 96:20, 111:5, 131:25, 136:21,</p>	<p>137:3, 139:24</p> <p><b>patient</b> [1] - 123:20</p> <p><b>PATRICIA</b> [2] - 1:23, 142:15</p> <p><b>pattern</b> [2] - 30:15, 30:16</p> <p><b>pay</b> [7] - 25:24, 29:24, 55:10, 120:14, 140:17</p> <p><b>paying</b> [6] - 28:13, 28:19, 28:20, 53:20, 120:1, 124:24</p> <p><b>payment</b> [3] - 97:8, 124:8, 124:17</p> <p><b>payments</b> [10] - 4:22, 5:14, 6:12, 23:4, 23:14, 115:23, 116:4, 116:14, 116:18</p> <p><b>payout</b> [1] - 54:22</p> <p><b>peer</b> [1] - 37:6</p> <p><b>pending</b> [1] - 5:12</p> <p><b>Penn</b> [1] - 37:21</p> <p><b>people</b> [6] - 37:8, 38:6, 39:24, 44:20, 49:1, 76:8</p> <p><b>per</b> [6] - 46:17, 49:25, 54:5, 90:5, 115:19, 124:24</p> <p><b>percent</b> [26] - 15:6, 15:18, 15:19, 15:20, 16:8, 17:5, 17:14, 17:21, 19:1, 28:10, 45:18, 45:23, 46:7, 52:14, 67:20, 75:23, 94:3, 94:6, 100:21, 104:9, 104:12, 106:19, 134:21, 135:6</p> <p><b>percentages</b> [2] - 100:22, 104:17</p> <p><b>perform</b> [2] - 60:4, 136:7</p> <p><b>performance</b> [2] - 134:17, 134:18</p> <p><b>performed</b> [17] - 29:15, 40:1, 44:8, 53:4, 53:5, 100:15, 102:2, 117:3, 117:11, 120:19, 121:7, 121:10, 121:15, 121:17, 123:4, 125:17, 139:15</p> <p><b>performs</b> [1] - 115:21</p> <p><b>period</b> [2] - 51:18, 107:8</p> <p><b>periodically</b> [1] - 131:6</p> <p><b>peripheral</b> [2] - 83:24,</p>	<p>96:8</p> <p><b>permission</b> [2] - 111:9, 141:5</p> <p><b>permit</b> [1] - 96:11</p> <p><b>permitted</b> [1] - 110:12</p> <p><b>person</b> [5] - 17:14, 36:12, 57:15, 70:2, 136:11</p> <p><b>personally</b> [4] - 115:23, 116:3, 116:14, 121:3</p> <p><b>personnel</b> [4] - 35:16, 36:16, 40:10</p> <p><b>pertain</b> [1] - 98:17</p> <p><b>pertaining</b> [1] - 41:1</p> <p><b>pertains</b> [1] - 64:7</p> <p><b>Pete</b> [3] - 37:15, 37:16</p> <p><b>Peter</b> [1] - 37:9</p> <p><b>phase</b> [1] - 94:22</p> <p><b>photo</b> [2] - 52:17, 81:1</p> <p><b>photographs</b> [1] - 68:13</p> <p><b>phrase</b> [1] - 51:22</p> <p><b>physical</b> [6] - 13:12, 13:15, 14:14, 80:6, 80:25, 81:2</p> <p><b>physically</b> [3] - 81:17, 87:7, 88:3</p> <p><b>pick</b> [2] - 61:5, 140:23</p> <p><b>picture</b> [2] - 86:23, 86:24</p> <p><b>pieces</b> [3] - 19:8, 75:16, 109:13</p> <p><b>place</b> [3] - 16:15, 56:7, 73:14</p> <p><b>placed</b> [2] - 41:20, 120:10</p> <p><b>plaintiff</b> [3] - 5:13, 5:17, 33:9</p> <p><b>Plaintiff</b> [2] - 1:6, 1:14</p> <p><b>Plaintiff's</b> [3] - 2:24, 24:4, 24:7</p> <p><b>platinum</b> [1] - 59:19</p> <p><b>play</b> [1] - 54:13</p> <p><b>played</b> [1] - 38:3</p> <p><b>pleaded</b> [1] - 109:6</p> <p><b>plugged</b> [1] - 119:8</p> <p><b>plugging</b> [3] - 118:14, 118:15, 118:17</p> <p><b>plus</b> [2] - 23:23, 84:24</p> <p><b>pocket</b> [1] - 45:9</p> <p><b>point</b> [20] - 10:20, 15:11, 22:3, 41:24, 50:11, 59:25, 60:6, 64:23, 77:12, 94:8, 94:10, 97:2, 97:17, 104:19, 104:20, 104:24, 109:20, 109:23, 111:14, 116:23</p>
<b>P</b>				
<p><b>P&amp;L</b> [3] - 35:13, 35:14, 37:16</p> <p><b>pack</b> [2] - 51:20, 51:23</p> <p><b>page</b> [8] - 127:19, 128:12, 133:11, 133:13, 133:14, 134:9, 135:2</p> <p><b>paid</b> [19] - 7:13, 22:18, 22:21, 22:23, 23:3, 28:5, 28:17, 32:1, 53:10, 53:15, 53:17, 109:7, 118:3, 118:4, 118:8, 119:18, 121:1, 125:6</p> <p><b>paint</b> [3] - 49:25, 112:24, 138:22</p> <p><b>panel</b> [2] - 48:2, 48:3</p> <p><b>paper</b> [2] - 19:8, 50:8</p> <p><b>paperwork</b> [4] - 31:4, 60:21, 61:1, 61:7</p> <p><b>paragraph</b> [6] - 3:14, 3:16, 3:17, 4:12, 4:18, 4:19</p> <p><b>paragraphs</b> [1] - 61:16</p> <p><b>parents</b> [1] - 37:24</p> <p><b>parking</b> [2] - 42:25, 80:13</p> <p><b>part</b> [79] - 3:16, 4:5, 19:10, 19:13, 20:15, 36:1, 42:22, 42:24, 43:1, 43:2, 44:11, 44:15, 47:2, 48:13, 57:4, 59:4, 67:6, 67:17, 69:11, 69:12,</p>				

<p><b>pointed</b> [2] - 30:25, 88:20</p> <p><b>policy</b> [8] - 11:11, 11:13, 11:15, 11:17, 24:13, 136:15, 136:18, 136:19</p> <p><b>poor</b> [1] - 67:25</p> <p><b>Pope</b> [30] - 3:4, 3:24, 4:8, 5:7, 5:13, 5:25, 6:7, 6:9, 6:20, 7:2, 8:11, 8:22, 8:24, 11:11, 22:19, 23:14, 23:23, 24:24, 31:8, 32:1, 32:9, 32:12, 32:23, 57:15, 100:7, 103:8, 111:13, 111:18, 137:10</p> <p><b>Pope's</b> [10] - 4:14, 18:7, 33:5, 68:6, 82:13, 102:11, 104:4, 123:24, 126:16, 139:1</p> <p><b>Porsche</b> [1] - 39:13</p> <p><b>portion</b> [14] - 3:10, 23:20, 27:18, 46:5, 53:12, 57:25, 86:11, 96:22, 111:6, 130:12, 132:2, 136:22, 137:4, 139:25</p> <p><b>position</b> [3] - 87:13, 109:24, 110:3</p> <p><b>possession</b> [1] - 28:12</p> <p><b>possibility</b> [1] - 11:1</p> <p><b>possible</b> [12] - 3:4, 3:15, 3:20, 21:15, 22:5, 70:16, 125:1, 132:22, 135:16, 138:18, 139:7, 139:10</p> <p><b>possibly</b> [4] - 82:6, 86:23, 88:11, 139:14</p> <p><b>post</b> [4] - 26:5, 40:3, 52:16, 62:3</p> <p><b>postdate</b> [1] - 87:1</p> <p><b>posted</b> [3] - 30:21, 57:8, 93:10</p> <p><b>PP</b> [2] - 120:8, 120:10</p> <p><b>practice</b> [2] - 6:17, 121:5</p> <p><b>practices</b> [1] - 65:19</p> <p><b>Pratti</b> [3] - 37:9, 37:15</p> <p><b>pre</b> [18] - 2:23, 21:15, 21:20, 22:5, 22:7, 22:15, 22:16, 28:23, 40:4, 41:14, 46:19, 75:21, 99:2, 99:7, 100:12, 104:4, 114:23, 115:8</p>	<p><b>pre-loss</b> [16] - 21:15, 21:20, 22:5, 22:7, 22:15, 22:16, 28:23, 41:14, 46:19, 75:21, 99:2, 99:7, 100:12, 104:4, 114:23, 115:8</p> <p><b>pre-marked</b> [1] - 2:23</p> <p><b>predate</b> [1] - 87:1</p> <p><b>predates</b> [1] - 87:3</p> <p><b>predictable</b> [3] - 25:21, 30:6, 30:7</p> <p><b>predominantly</b> [1] - 49:21</p> <p><b>preferable</b> [1] - 96:14</p> <p><b>prepare</b> [4] - 26:19, 30:8, 30:15, 92:25</p> <p><b>present</b> [3] - 49:9, 74:25, 80:20</p> <p><b>presentation</b> [1] - 37:6</p> <p><b>presented</b> [4] - 86:4, 86:15, 86:17, 87:19</p> <p><b>preserve</b> [2] - 62:1, 62:2</p> <p><b>presiding</b> [1] - 2:2</p> <p><b>pressures</b> [1] - 117:24</p> <p><b>pretty</b> [4] - 32:18, 67:20, 80:15, 118:15</p> <p><b>prevailing</b> [3] - 90:21, 91:25, 92:1</p> <p><b>previously</b> [2] - 32:11, 96:4</p> <p><b>price</b> [18] - 6:16, 6:24, 69:12, 69:19, 71:18, 71:23, 73:22, 75:19, 78:10, 79:9, 82:15, 82:22, 90:7, 92:1, 92:2, 99:6, 129:8, 138:25</p> <p><b>prices</b> [1] - 125:21</p> <p><b>principal</b> [1] - 17:8</p> <p><b>print</b> [2] - 130:22, 130:23</p> <p><b>printed</b> [2] - 11:3, 11:7</p> <p><b>privileges</b> [2] - 31:22, 31:24</p> <p><b>privity</b> [1] - 32:25</p> <p><b>Pro</b> [2] - 64:25, 65:1</p> <p><b>problem</b> [3] - 68:4, 101:16, 138:20</p> <p><b>procedures</b> [3] - 47:5, 55:2</p> <p><b>proceed</b> [2] - 2:17, 44:4</p> <p><b>process</b> [7] - 25:22, 26:20, 40:4, 43:23, 64:25, 66:23, 67:12</p> <p><b>profit</b> [2] - 16:24, 53:23</p> <p><b>profitability</b> [4] -</p>	<p>50:12, 50:23, 58:12, 58:19</p> <p><b>program</b> [5] - 54:17, 54:19, 55:23, 66:18, 123:9</p> <p><b>programs</b> [6] - 39:15, 50:5, 52:9, 52:11, 54:24, 122:15</p> <p><b>Progressive</b> [1] - 37:18</p> <p><b>Progressive's</b> [1] - 37:10</p> <p><b>proof</b> [1] - 9:16</p> <p><b>proper</b> [3] - 52:7, 57:18, 60:19</p> <p><b>properly</b> [3] - 24:15, 119:9, 140:8</p> <p><b>property</b> [1] - 122:18</p> <p><b>provide</b> [6] - 59:15, 61:11, 68:21, 102:13, 127:24, 135:9</p> <p><b>provided</b> [7] - 8:22, 8:25, 9:17, 19:8, 52:13, 81:21, 129:25</p> <p><b>Providence</b> [3] - 39:6, 39:8</p> <p><b>provides</b> [1] - 70:4</p> <p><b>providing</b> [1] - 8:10</p> <p><b>public</b> [1] - 135:10</p> <p><b>pull</b> [1] - 96:25</p> <p><b>purchased</b> [3] - 20:17, 44:13, 67:6</p> <p><b>purpose</b> [1] - 96:12</p> <p><b>pursued</b> [1] - 7:6</p> <p><b>push</b> [1] - 43:18</p> <p><b>put</b> [12] - 41:18, 41:24, 45:24, 54:5, 55:4, 85:1, 85:2, 92:6, 97:6, 126:9, 128:11, 128:19</p>	<p>27:6, 28:4, 31:18, 33:12, 53:2, 56:14, 56:16, 61:19, 125:13, 126:6, 141:2</p> <p><b>quick</b> [3] - 24:10, 140:25</p> <p><b>quietly</b> [1] - 113:22</p> <p><b>quote</b> [6] - 101:19, 101:23, 107:14, 127:5, 130:1, 130:5</p> <p><b>quoting</b> [1] - 138:24</p>	<p>27:18, 46:3, 46:5, 57:24, 57:25, 84:8, 86:10, 86:11, 96:20, 96:22, 111:3, 111:6, 113:22, 115:2, 116:12, 117:12, 128:9, 128:10, 130:9, 130:12, 131:25, 132:2, 133:15, 136:20, 136:22, 136:25, 137:4, 139:23, 139:25, 141:8</p> <p><b>reading</b> [5] - 127:7, 127:21, 134:4, 134:19, 135:3</p> <p><b>ready</b> [3] - 30:10, 34:12, 62:12</p> <p><b>realize</b> [1] - 54:2</p> <p><b>really</b> [6] - 38:15, 38:19, 39:14, 45:10, 71:10, 80:12</p> <p><b>rear</b> [8] - 42:3, 43:12, 48:2, 48:3, 69:2, 84:16, 85:12, 86:22</p> <p><b>reason</b> [9] - 79:17, 79:25, 80:9, 90:14, 109:11, 122:7, 127:14, 127:25, 137:23</p> <p><b>reasonable</b> [6] - 47:11, 47:16, 109:7, 132:6, 132:8, 137:7</p> <p><b>reasonably</b> [1] - 109:20</p> <p><b>reasons</b> [1] - 90:6</p> <p><b>rebuilt</b> [1] - 65:20</p> <p><b>receipts</b> [1] - 18:2</p> <p><b>receive</b> [1] - 81:14</p> <p><b>received</b> [2] - 17:13, 17:15</p> <p><b>recent</b> [1] - 120:10</p> <p><b>recess</b> [4] - 34:11, 61:22, 62:10, 112:3</p> <p><b>recessing</b> [1] - 142:2</p> <p><b>recognize</b> [3] - 2:24, 141:14, 141:16</p> <p><b>recognizes</b> [1] - 127:11</p> <p><b>recollection</b> [4] - 20:23, 29:3, 92:5, 113:17</p> <p><b>recommend</b> [3] - 72:10, 128:3, 128:15</p> <p><b>recommendation</b> [12] - 29:17, 72:16, 72:17, 72:18, 72:19, 127:5, 127:17, 128:6, 128:13, 129:5, 129:18,</p>
			<b>R</b>	
			<p><b>raise</b> [2] - 34:15, 62:17</p> <p><b>raises</b> [2] - 66:18, 127:13</p> <p><b>Ramsey</b> [1] - 38:15</p> <p><b>ran</b> [1] - 40:7</p> <p><b>range</b> [3] - 55:24, 59:1, 64:21</p> <p><b>rate</b> [73] - 4:16, 20:10, 30:19, 30:21, 46:14, 46:15, 47:2, 48:12, 49:11, 49:17, 50:11, 50:13, 53:10, 53:11, 53:12, 53:14, 53:19, 53:20, 54:5, 54:14, 54:16, 57:3, 57:8, 57:16, 58:13, 58:20, 60:20, 69:13, 69:24, 70:1, 70:2, 70:8, 70:11, 84:1, 89:15, 89:18, 89:20, 89:22, 89:25, 90:2, 90:5, 90:8, 90:9, 90:13, 90:14, 90:15, 90:17, 90:21, 90:22, 91:2, 91:3, 91:16, 91:19, 91:23, 92:6, 92:12, 92:15, 93:4, 93:8, 93:10, 93:11, 96:7, 97:11, 98:8, 116:4, 117:5, 118:3, 118:5, 119:16, 120:23, 124:2, 124:18</p> <p><b>rates</b> [10] - 30:19, 47:8, 47:17, 55:2, 57:20, 61:8, 70:6, 94:9, 98:5, 126:4</p> <p><b>rather</b> [2] - 19:15, 42:18</p> <p><b>re</b> [3] - 67:3, 67:4, 138:10</p> <p><b>re-inspector</b> [1] - 67:3</p> <p><b>re-repairs</b> [1] - 138:10</p> <p><b>reaching</b> [2] - 82:15, 82:22</p> <p><b>read</b> [35] - 3:9, 3:10, 23:18, 23:20, 27:16,</p>	
			<b>Q</b>	
		<p><b>qualification</b> [1] - 16:17</p> <p><b>qualified</b> [1] - 37:3</p> <p><b>qualifying</b> [1] - 38:22</p> <p><b>quality</b> [17] - 52:12, 54:6, 60:1, 60:2, 71:5, 73:2, 73:4, 73:6, 73:9, 74:17, 85:18, 85:22, 85:24, 127:13, 128:11, 138:6, 139:11</p> <p><b>quantity</b> [1] - 41:23</p> <p><b>quarter</b> [1] - 48:2</p> <p><b>QUESTION</b> [2] - 133:19, 134:13</p> <p><b>questions</b> [12] - 26:6,</p>		

<p>131:21  <b>recommendations</b> [3] - 126:23, 126:24, 129:2  <b>recommended</b> [2] - 29:16, 72:22  <b>reconstruction</b> [1] - 36:6  <b>record</b> [4] - 3:13, 97:18, 97:25, 133:10  <b>recross</b> [2] - 33:13, 61:20  <b>RECROSS</b> [1] - 33:15  <b>recycled</b> [43] - 19:10, 19:13, 20:5, 20:15, 21:8, 70:20, 71:2, 71:7, 71:11, 71:17, 71:24, 72:2, 72:4, 72:7, 72:10, 72:23, 73:3, 73:6, 73:12, 73:17, 73:19, 74:5, 74:6, 74:12, 74:19, 75:1, 75:4, 75:6, 75:9, 84:16, 85:7, 85:10, 85:14, 85:19, 86:3, 86:5, 87:18, 127:12, 130:7, 131:1, 131:10, 131:13  <b>recycling</b> [1] - 127:11  <b>redirect</b> [1] - 27:23  <b>REDIRECT</b> [2] - 27:25, 60:16  <b>redone</b> [2] - 78:24, 138:6  <b>reduces</b> [1] - 131:14  <b>refer</b> [1] - 14:4  <b>reference</b> [2] - 128:19, 139:1  <b>referred</b> [2] - 14:2, 127:4  <b>referring</b> [2] - 41:3, 94:6  <b>refers</b> [1] - 66:24  <b>refinish</b> [4] - 69:20, 89:22, 90:13, 92:2  <b>refinished</b> [1] - 69:17  <b>refinishing</b> [1] - 112:24  <b>reflected</b> [1] - 135:3  <b>reflects</b> [1] - 46:24  <b>refresh</b> [1] - 113:17  <b>refreshed</b> [2] - 124:10, 124:13  <b>regard</b> [1] - 102:6  <b>regardless</b> [1] - 121:9  <b>regular</b> [4] - 29:12, 47:18, 121:5, 131:9  <b>reimbursed</b> [1] - 6:7  <b>reimbursement</b> [1] -</p>	<p>5:7  <b>reinspection</b> [4] - 29:4, 67:22, 67:25, 68:8  <b>reinspections</b> [1] - 29:6  <b>reiterate</b> [1] - 97:16  <b>relate</b> [1] - 54:5  <b>related</b> [2] - 42:22, 43:4  <b>relates</b> [3] - 26:18, 84:15, 85:2  <b>relationship</b> [5] - 27:9, 39:19, 44:17, 55:20, 136:10  <b>relevance</b> [2] - 48:23, 52:24  <b>relevant</b> [2] - 27:1, 139:22  <b>remain</b> [4] - 34:15, 62:11, 62:17, 112:4  <b>remedies</b> [2] - 3:4, 5:3  <b>remedy</b> [1] - 7:17  <b>remember</b> [10] - 57:11, 83:15, 89:7, 89:9, 124:15, 133:16, 134:24, 134:25, 135:1  <b>reminded</b> [3] - 2:14, 96:18, 112:7  <b>removal</b> [3] - 95:14, 96:12, 97:12  <b>rental</b> [22] - 8:6, 8:10, 8:17, 8:22, 9:2, 9:15, 9:16, 9:21, 9:23, 9:25, 10:3, 10:13, 10:21, 10:22, 11:2, 11:6, 11:12, 11:20, 11:25, 20:10, 32:2, 83:24  <b>rented</b> [1] - 8:24  <b>Repair</b> [2] - 35:23, 59:1  <b>repair</b> [103] - 4:16, 5:1, 12:25, 13:23, 14:3, 15:6, 15:16, 20:4, 20:13, 20:19, 22:6, 22:7, 26:20, 28:10, 28:23, 35:15, 35:16, 38:5, 38:13, 38:16, 39:14, 40:4, 40:20, 41:14, 43:23, 44:6, 45:4, 45:5, 45:7, 45:17, 47:22, 49:21, 49:23, 52:8, 52:15, 52:16, 53:12, 54:14, 54:16, 54:19, 54:23, 55:2, 55:6, 55:17, 55:23, 56:4, 56:8, 59:3, 69:4, 69:23,</p>	<p>70:15, 71:8, 73:18, 74:20, 75:4, 75:18, 76:12, 77:21, 78:5, 78:9, 78:10, 79:1, 79:3, 79:6, 80:13, 81:8, 81:10, 81:25, 82:2, 82:23, 90:7, 90:23, 96:9, 96:14, 99:16, 114:23, 115:8, 115:20, 115:24, 116:4, 116:7, 116:15, 116:18, 122:5, 125:8, 127:12, 127:15, 138:4, 138:8, 138:12, 138:16, 138:19, 138:20, 138:25, 139:3, 139:6, 139:9, 139:16, 140:3, 140:6  <b>repairable</b> [3] - 28:9, 77:25, 103:17  <b>repaired</b> [6] - 13:16, 42:5, 44:5, 52:22, 97:3, 138:25  <b>repairing</b> [9] - 22:3, 28:18, 46:13, 46:19, 46:25, 100:11, 125:14, 138:13  <b>repairs</b> [34] - 6:18, 13:12, 13:17, 13:19, 20:9, 20:25, 21:7, 22:24, 23:3, 23:10, 23:11, 28:9, 28:11, 28:19, 57:21, 64:11, 77:11, 82:20, 91:4, 92:1, 92:2, 94:25, 95:3, 95:12, 97:4, 99:17, 137:5, 138:2, 138:9, 138:10, 139:12, 140:4, 140:14, 140:15  <b>Repairs</b> [1] - 14:25  <b>repeat</b> [3] - 3:7, 21:16, 110:7  <b>repeated</b> [1] - 78:21  <b>rephrase</b> [7] - 8:15, 8:16, 16:19, 33:19, 42:14, 46:21, 140:2  <b>replace</b> [3] - 126:11, 126:14, 126:21  <b>replaced</b> [2] - 87:6, 126:18  <b>reported</b> [1] - 108:6  <b>REPORTER</b> [2] - 1:23, 142:15  <b>represent</b> [1] - 60:23  <b>representative</b> [2] - 60:23, 78:5  <b>represented</b> [1] -</p>	<p>46:12  <b>request</b> [4] - 62:4, 81:10, 107:22, 109:19  <b>requested</b> [15] - 3:10, 23:20, 27:18, 46:5, 57:25, 86:11, 96:22, 107:23, 108:1, 111:6, 130:12, 132:2, 136:22, 137:4, 139:25  <b>requests</b> [3] - 62:7, 79:12, 81:8  <b>require</b> [1] - 77:11  <b>required</b> [4] - 47:21, 59:7, 60:5, 139:9  <b>requirement</b> [2] - 19:7, 72:18  <b>requirements</b> [1] - 52:10  <b>requires</b> [1] - 57:19  <b>reserved</b> [1] - 62:15  <b>resets</b> [3] - 117:15, 117:18, 120:22  <b>residence</b> [1] - 18:13  <b>resold</b> [1] - 75:16  <b>respect</b> [2] - 55:7, 62:16  <b>responsibility</b> [3] - 23:25, 24:1, 63:17  <b>responsible</b> [10] - 4:21, 6:12, 7:3, 7:6, 23:13, 23:21, 28:11, 28:12, 28:19, 32:17  <b>responsive</b> [2] - 23:16, 27:4  <b>restore</b> [1] - 104:4  <b>restoring</b> [1] - 99:2  <b>result</b> [2] - 28:18, 30:13  <b>retrieve</b> [1] - 50:2  <b>returned</b> [5] - 10:3, 10:13, 10:21, 11:23, 28:15  <b>review</b> [5] - 64:2, 81:16, 112:14, 120:9, 133:12  <b>reviewed</b> [2] - 37:6, 40:21  <b>reviews</b> [2] - 40:3, 52:17  <b>revise</b> [6] - 100:17, 100:20, 102:20, 103:21, 105:3, 105:17  <b>revised</b> [4] - 104:1, 105:9, 105:14, 107:5  <b>revisit</b> [1] - 29:22  <b>Rhode</b> [1] - 39:9  <b>Rice</b> [8] - 36:19,</p>	<p>58:22, 59:14, 60:9, 61:11, 83:4, 100:24, 107:7  <b>Rice's</b> [1] - 101:4  <b>ridiculous</b> [1] - 45:23  <b>right-hand</b> [1] - 42:7  <b>rights</b> [6] - 4:21, 6:11, 26:19, 26:21, 26:22, 62:15  <b>rim</b> [2] - 43:3, 44:13  <b>rim</b> [2] - 41:24, 42:24  <b>rise</b> [1] - 2:1  <b>risk</b> [2] - 139:16, 140:7  <b>risks</b> [1] - 42:12  <b>Road</b> [1] - 1:19  <b>roads</b> [1] - 75:15  <b>roadway</b> [2] - 43:20  <b>Rockaway</b> [5] - 13:5, 15:23, 17:18, 18:12, 18:24  <b>Rockville</b> [4] - 13:10, 14:13, 14:16, 14:24  <b>role</b> [2] - 54:12, 102:6  <b>room</b> [3] - 48:20, 48:21, 57:5  <b>Rover</b> [1] - 39:13  <b>RPR</b> [2] - 1:23, 142:15  <b>RR</b> [1] - 124:16  <b>Rubin</b> [1] - 56:22  <b>RUBIN</b> [1] - 1:14  <b>rule</b> [4] - 126:21, 128:7, 128:10, 129:4  <b>runs</b> [1] - 61:18  <b>rush</b> [1] - 53:13</p>
<b>S</b>				
<p><b>safe</b> [3] - 10:13, 75:15, 79:4  <b>safely</b> [1] - 139:17  <b>safety</b> [4] - 42:19, 43:5, 127:14, 127:24  <b>salaries</b> [1] - 66:8  <b>salary</b> [5] - 66:10, 67:15, 132:21, 134:15, 134:16  <b>salvage</b> [6] - 70:22, 70:23, 70:24, 75:11, 75:13  <b>salvaged</b> [6] - 28:13, 28:14, 28:16, 127:12, 127:15, 128:8  <b>sat</b> [1] - 92:14  <b>saw</b> [4] - 89:3, 102:8, 102:11, 102:15  <b>scenario</b> [1] - 74:23  <b>school</b> [5] - 37:21, 37:23, 37:24, 37:25, 38:1</p>				

<p><b>scope</b> [4] - 49:7, 68:14, 78:16, 80:15</p> <p><b>score</b> [1] - 67:18</p> <p><b>scrape</b> [2] - 44:2, 44:3</p> <p><b>scrapes</b> [1] - 43:1</p> <p><b>scratched</b> [1] - 85:24</p> <p><b>scratches</b> [1] - 42:25</p> <p><b>crewed</b> [2] - 139:6, 139:8</p> <p><b>search</b> [2] - 73:8</p> <p><b>seat</b> [2] - 34:22, 62:24</p> <p><b>seated</b> [3] - 2:2, 62:11, 112:4</p> <p><b>second</b> [13] - 3:2, 3:14, 3:16, 3:17, 18:13, 18:21, 29:4, 54:2, 86:2, 86:12, 96:6, 102:4, 102:7</p> <p><b>secondary</b> [1] - 48:6</p> <p><b>section</b> [1] - 3:16</p> <p><b>see</b> [21] - 13:1, 30:17, 52:17, 55:24, 68:15, 68:20, 74:16, 80:15, 83:16, 83:20, 84:7, 85:4, 87:7, 103:16, 104:16, 110:8, 113:19, 117:1, 133:4, 142:3, 142:5</p> <p><b>seeing</b> [3] - 53:23, 80:12, 124:1</p> <p><b>seeking</b> [4] - 5:3, 5:7, 5:25, 6:21</p> <p><b>select</b> [7] - 39:4, 39:24, 52:2, 52:5, 52:6, 52:7, 55:19</p> <p><b>self</b> [1] - 35:9</p> <p><b>self-employed</b> [1] - 35:9</p> <p><b>semi</b> [1] - 44:3</p> <p><b>send</b> [7] - 67:2, 76:2, 76:10, 77:17, 81:10, 123:16, 123:20</p> <p><b>sends</b> [1] - 17:4</p> <p><b>sense</b> [2] - 58:13, 113:20</p> <p><b>sent</b> [5] - 32:6, 77:17, 107:24, 141:11, 141:17</p> <p><b>sentence</b> [5] - 3:19, 127:7, 127:9, 127:21, 128:8</p> <p><b>separate</b> [3] - 31:19, 31:20, 44:23</p> <p><b>serious</b> [1] - 127:13</p> <p><b>services</b> [4] - 36:1, 100:6, 117:2, 136:7</p> <p><b>sessions</b> [4] - 59:9, 59:13, 59:14, 60:1</p> <p><b>set</b> [1] - 57:11</p> <p><b>settled</b> [2] - 38:8,</p>	<p>142:4</p> <p><b>setup</b> [1] - 119:15</p> <p><b>seven</b> [5] - 37:14, 81:23, 105:16</p> <p><b>several</b> [4] - 3:23, 4:3, 4:7, 4:13</p> <p><b>severe</b> [2] - 76:17, 77:10</p> <p><b>severity</b> [1] - 87:9</p> <p><b>shall</b> [1] - 34:19</p> <p><b>sheet</b> [3] - 61:15, 89:16, 89:24</p> <p><b>shop</b> [94] - 5:11, 6:15, 35:17, 35:24, 36:2, 36:16, 37:24, 38:1, 38:14, 39:21, 40:5, 40:7, 45:20, 50:1, 50:25, 53:5, 53:19, 53:20, 53:22, 54:1, 54:23, 55:16, 55:17, 57:9, 57:20, 58:19, 60:5, 60:19, 61:6, 73:14, 73:15, 73:18, 73:23, 74:15, 74:25, 75:18, 76:12, 77:9, 77:21, 78:1, 78:2, 78:6, 78:9, 78:16, 79:4, 79:6, 79:11, 80:13, 80:17, 80:20, 81:9, 81:10, 82:11, 88:20, 88:25, 90:7, 90:23, 91:10, 91:22, 93:3, 98:21, 98:23, 101:22, 109:25, 110:10, 110:11, 115:25, 121:10, 121:17, 122:5, 123:5, 123:15, 123:17, 123:18, 129:17, 131:19, 131:21, 132:4, 136:1, 136:7, 136:10, 136:16, 137:7, 138:5, 138:8, 138:25, 139:3, 139:6, 139:12, 139:15, 140:3, 140:14, 140:15</p> <p><b>shop's</b> [2] - 69:24, 129:21</p> <p><b>shops</b> [24] - 38:13, 38:18, 39:21, 39:23, 39:24, 51:6, 51:12, 51:18, 51:21, 52:1, 52:3, 52:5, 52:6, 52:7, 52:17, 52:18, 52:21, 55:22, 66:5, 81:25, 82:2, 82:23, 90:9, 140:6</p> <p><b>show</b> [18] - 8:2, 12:6,</p>	<p>38:17, 40:11, 41:6, 86:23, 111:19, 113:16, 113:20, 116:21, 119:22, 120:7, 125:2, 126:25, 133:1, 133:3, 133:4, 133:5</p> <p><b>showing</b> [11] - 2:23, 8:3, 12:8, 17:25, 24:6, 40:17, 41:11, 83:10, 84:19, 96:12, 112:13</p> <p><b>shown</b> [5] - 17:23, 24:2, 83:8, 83:18, 84:18</p> <p><b>sick</b> [1] - 51:3</p> <p><b>side</b> [11] - 42:1, 42:7, 43:12, 43:14, 43:15, 43:16, 43:19, 44:1, 48:6, 95:20, 96:3</p> <p><b>side-bar</b> [2] - 95:20, 96:3</p> <p><b>sides</b> [1] - 21:19</p> <p><b>sign</b> [1] - 61:7</p> <p><b>signature</b> [1] - 60:23</p> <p><b>signed</b> [12] - 3:3, 4:8, 6:9, 6:20, 24:18, 24:20, 24:25, 26:15, 26:16, 26:24, 31:3, 37:13</p> <p><b>signing</b> [1] - 7:4</p> <p><b>signs</b> [2] - 3:24, 4:4</p> <p><b>similar</b> [7] - 65:10, 70:21, 73:1, 73:2, 73:4, 90:11, 90:12</p> <p><b>simple</b> [1] - 118:18</p> <p><b>single</b> [1] - 58:6</p> <p><b>sit</b> [1] - 113:13</p> <p><b>site</b> [1] - 80:12</p> <p><b>sits</b> [1] - 30:23</p> <p><b>sitting</b> [5] - 9:20, 15:3, 24:18, 82:8, 117:23</p> <p><b>situation</b> [5] - 4:14, 75:3, 79:9, 79:10, 80:22</p> <p><b>six</b> [5] - 37:12, 77:22, 102:17, 103:23, 105:1</p> <p><b>sizable</b> [1] - 114:19</p> <p><b>skill</b> [1] - 45:5</p> <p><b>skipped</b> [1] - 31:6</p> <p><b>slows</b> [1] - 54:2</p> <p><b>smaller</b> [1] - 54:14</p> <p><b>sole</b> [1] - 16:21</p> <p><b>solely</b> [1] - 45:20</p> <p><b>solemnly</b> [2] - 34:17, 62:19</p> <p><b>someone</b> [2] - 5:17, 94:4</p> <p><b>someplace</b> [1] - 53:18</p>	<p><b>sometimes</b> [12] - 31:5, 36:11, 56:3, 59:2, 59:4, 67:25, 70:11, 70:14, 76:16, 87:5, 126:9, 126:10</p> <p><b>somewhat</b> [4] - 43:9, 43:18, 44:3, 97:14</p> <p><b>somewhere</b> [1] - 9:3</p> <p><b>soon</b> [1] - 78:9</p> <p><b>sooner</b> [1] - 97:3</p> <p><b>sorry</b> [32] - 3:12, 4:5, 20:7, 21:16, 24:19, 26:10, 27:14, 39:7, 44:7, 56:13, 58:11, 59:6, 86:8, 91:18, 106:11, 107:3, 108:16, 109:2, 115:19, 116:9, 118:22, 118:25, 120:13, 122:13, 124:4, 126:19, 128:18, 130:3, 133:14, 136:25, 139:23, 142:6</p> <p><b>sort</b> [1] - 72:15</p> <p><b>sought</b> [1] - 6:4</p> <p><b>sound</b> [1] - 106:21</p> <p><b>southern</b> [1] - 65:23</p> <p><b>Spa</b> [1] - 63:2</p> <p><b>spanned</b> [1] - 106:1</p> <p><b>speaking</b> [4] - 53:24, 92:6, 107:18, 129:13</p> <p><b>special</b> [3] - 31:21, 31:24, 33:9</p> <p><b>specialize</b> [1] - 55:19</p> <p><b>specialty</b> [3] - 91:5, 91:6, 91:8</p> <p><b>specific</b> [8] - 51:19, 59:2, 65:22, 69:3, 87:4, 109:2, 119:13</p> <p><b>specifically</b> [2] - 84:20, 104:16</p> <p><b>specificity</b> [1] - 53:3</p> <p><b>specified</b> [1] - 91:18</p> <p><b>speculation</b> [7] - 21:21, 30:2, 42:16, 43:7, 48:9, 110:23, 137:25</p> <p><b>speculative</b> [1] - 78:17</p> <p><b>spell</b> [2] - 34:23, 62:25</p> <p><b>spend</b> [2] - 98:2, 115:8</p> <p><b>spent</b> [2] - 19:23, 114:15</p> <p><b>sponsor</b> [1] - 39:20</p> <p><b>spray</b> [1] - 49:24</p> <p><b>Square</b> [1] - 35:2</p> <p><b>square</b> [1] - 97:1</p> <p><b>stand</b> [1] - 97:24</p> <p><b>standard</b> [7] - 24:13,</p>	<p>29:18, 47:8, 90:1, 90:2, 90:6, 138:6</p> <p><b>standing</b> [2] - 34:15, 62:17</p> <p><b>start</b> [6] - 34:5, 38:6, 51:15, 57:21, 68:25, 76:15</p> <p><b>started</b> [5] - 11:6, 38:4, 38:5, 74:11, 98:1</p> <p><b>starting</b> [4] - 3:14, 4:18, 89:24, 140:23</p> <p><b>state</b> [7] - 34:23, 34:24, 55:5, 59:8, 62:24, 62:25, 109:8</p> <p><b>State</b> [122] - 3:5, 4:15, 5:18, 6:5, 6:6, 6:8, 6:15, 6:25, 7:17, 8:6, 8:10, 8:13, 8:18, 9:5, 9:10, 9:13, 11:12, 11:20, 20:15, 21:13, 21:14, 21:18, 21:19, 22:8, 22:18, 23:3, 23:13, 23:25, 24:22, 25:23, 27:1, 28:5, 28:18, 28:25, 29:8, 29:23, 30:12, 30:17, 33:1, 33:5, 36:22, 37:2, 37:22, 52:4, 56:23, 56:24, 57:1, 57:16, 57:19, 59:4, 59:8, 60:2, 60:22, 63:2, 63:14, 63:15, 63:17, 63:23, 63:25, 66:9, 68:12, 69:25, 70:1, 76:8, 81:8, 81:10, 90:2, 90:21, 94:9, 94:14, 100:2, 100:20, 101:16, 103:5, 104:12, 106:18, 107:19, 107:21, 107:25, 108:5, 109:4, 109:18, 109:24, 110:2, 110:10, 110:12, 110:16, 110:21, 111:12, 111:17, 114:3, 114:7, 114:15, 114:22, 115:5, 115:7, 115:15, 116:23, 117:7, 118:8, 119:20, 121:1, 121:6, 122:23, 123:1, 123:2, 128:23, 129:11, 129:25, 130:4, 130:23, 130:25, 131:9, 132:20, 135:8,</p>
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<p>135:14, 135:23, 136:4, 141:11, 142:1 <b>STATE</b> [2] - 1:1, 1:4 <b>statements</b> [1] - 49:1 <b>States</b> [1] - 39:4 <b>states</b> [2] - 4:9, 4:12 <b>stationed</b> [1] - 37:11 <b>stay</b> [1] - 52:10 <b>steel</b> [9] - 47:18, 47:19, 47:25, 49:20, 49:21, 57:10, 59:3 <b>steering</b> [2] - 65:6, 65:11 <b>STENOGRAPHIC</b> [1] - 142:11 <b>step</b> [3] - 5:4, 95:24, 142:5 <b>steps</b> [6] - 3:23, 4:3, 4:7, 4:13, 4:25, 5:3 <b>Stewart</b> [1] - 59:11 <b>STEWART</b> [1] - 1:16 <b>still</b> [17] - 2:7, 2:15, 17:4, 23:9, 45:12, 55:12, 96:18, 97:7, 97:20, 102:4, 103:17, 112:8, 128:6, 130:14, 135:25, 136:6, 137:21 <b>stipulated</b> [2] - 20:3, 95:17 <b>stipulating</b> [1] - 104:14 <b>stipulation</b> [4] - 20:12, 21:6, 96:5, 97:20 <b>stop</b> [1] - 110:14 <b>storage</b> [3] - 29:19, 61:8, 110:15 <b>store</b> [1] - 50:22 <b>straight</b> [1] - 5:6 <b>strength</b> [1] - 47:25 <b>stretch</b> [1] - 141:23 <b>stricken</b> [6] - 23:7, 23:8, 23:17, 27:4, 57:23, 97:17 <b>strictly</b> [2] - 91:21, 91:22 <b>strike</b> [1] - 58:7 <b>stringent</b> [1] - 52:10 <b>structural</b> [4] - 48:1, 48:7, 59:4, 127:25 <b>structurally</b> [1] - 76:18 <b>structure</b> [3] - 47:24, 59:3, 97:1 <b>struggle</b> [1] - 54:8 <b>student</b> [3] - 36:10, 36:18, 36:23 <b>students</b> [5] - 36:8, 36:13, 36:15, 37:4, 61:11</p>	<p><b>stuff</b> [2] - 45:21, 53:16 <b>subcontractor</b> [2] - 45:11, 45:12 <b>subject</b> [3] - 44:7, 44:9, 126:6 <b>subjects</b> [1] - 59:2 <b>sublet</b> [6] - 44:21, 45:8, 45:14, 45:15, 117:13, 118:4 <b>subletted</b> [1] - 14:15 <b>subletting</b> [1] - 45:11 <b>submitted</b> [1] - 103:16 <b>subsection</b> [2] - 84:21, 85:3 <b>suffered</b> [1] - 135:22 <b>Suffolk</b> [1] - 82:6 <b>suing</b> [1] - 7:17 <b>suitability</b> [1] - 127:13 <b>Suite</b> [1] - 1:19 <b>summarize</b> [1] - 5:24 <b>summer</b> [1] - 59:17 <b>superb</b> [1] - 121:10 <b>superior</b> [1] - 52:18 <b>supervisor</b> [2] - 70:5, 132:17 <b>supplement</b> [32] - 78:8, 79:12, 79:14, 81:7, 81:14, 81:21, 84:18, 86:18, 87:23, 87:25, 88:7, 89:2, 89:15, 92:13, 92:16, 92:22, 92:23, 92:24, 92:25, 93:13, 93:14, 94:16, 94:19, 94:22, 95:2, 95:8, 101:1, 103:1, 107:24, 108:15, 116:24, 124:5 <b>supplements</b> [7] - 80:18, 83:6, 88:16, 93:20, 94:12, 107:14, 109:16 <b>supplied</b> [1] - 70:18 <b>supplies</b> [1] - 70:1 <b>suppose</b> [4] - 116:12, 130:18, 135:20, 135:22 <b>supposed</b> [2] - 25:24, 87:1 <b>SUPREME</b> [1] - 1:1 <b>Supreme</b> [2] - 1:9, 1:12 <b>surely</b> [1] - 128:24 <b>surface</b> [1] - 117:23 <b>surgeon</b> [1] - 123:19 <b>surprise</b> [1] - 108:18 <b>surprising</b> [1] - 51:1 <b>survive</b> [1] - 49:3 <b>suspension</b> [5] - 48:4, 65:11, 87:5, 87:10,</p>	<p>87:13 <b>suspensions</b> [1] - 65:6 <b>sustain</b> [2] - 17:10, 136:24 <b>sustainable</b> [1] - 49:12 <b>sustained</b> [21] - 7:22, 16:18, 22:12, 33:3, 33:11, 33:24, 46:21, 47:23, 48:1, 48:10, 48:24, 49:6, 51:24, 52:25, 54:11, 110:19, 123:23, 125:20, 126:3, 135:18, 138:1 <b>sustaining</b> [1] - 109:10 <b>swear</b> [2] - 34:17, 62:19 <b>switching</b> [1] - 19:23 <b>system</b> [1] - 77:16</p> <p style="text-align: center;"><b>T</b></p> <p><b>table</b> [2] - 15:3, 82:8 <b>TAKEN</b> [1] - 142:12 <b>Tango</b> [2] - 125:3 <b>target</b> [2] - 42:10, 43:11 <b>tasks</b> [1] - 120:23 <b>taught</b> [2] - 58:22 <b>tax</b> [2] - 47:9, 47:10 <b>taxes</b> [1] - 112:18 <b>teach</b> [2] - 35:16, 44:18 <b>teacher</b> [1] - 37:4 <b>teaches</b> [1] - 59:1 <b>teaching</b> [6] - 35:22, 35:25, 36:7, 53:24, 60:7, 60:9 <b>team</b> [5] - 48:13, 50:10, 57:4, 59:24, 60:2 <b>tech</b> [1] - 51:1 <b>technically</b> [1] - 2:12 <b>technician</b> [2] - 53:12, 119:8 <b>technicians</b> [4] - 35:17, 50:24, 53:20, 59:6 <b>technologies</b> [1] - 65:13 <b>tenths</b> [1] - 41:25 <b>TERM</b> [1] - 1:2 <b>term</b> [5] - 77:1, 132:14, 137:14, 137:15, 138:2 <b>terminology</b> [1] - 132:9</p>	<p><b>terms</b> [16] - 6:4, 17:17, 19:11, 20:9, 27:9, 29:14, 42:19, 43:5, 52:12, 68:11, 69:8, 70:25, 91:7, 96:9, 115:17, 115:18 <b>Tesla</b> [3] - 39:13, 91:9, 91:10 <b>test</b> [1] - 61:17 <b>testified</b> [19] - 13:3, 21:24, 29:12, 32:11, 46:11, 46:12, 46:24, 100:1, 100:23, 101:18, 101:23, 106:5, 107:13, 114:24, 129:7, 132:9, 136:19, 138:23, 140:3 <b>testify</b> [2] - 11:17, 43:9 <b>testimony</b> [15] - 15:5, 32:13, 32:14, 34:18, 40:22, 46:2, 55:13, 62:20, 96:11, 121:24, 122:7, 123:8, 133:6, 133:12, 140:21 <b>testing</b> [1] - 118:10 <b>THE</b> [176] - 1:1, 2:5, 2:9, 2:16, 2:17, 3:12, 4:5, 4:11, 7:21, 8:16, 13:22, 14:2, 14:7, 16:18, 17:7, 19:18, 21:2, 21:23, 22:12, 23:8, 23:18, 25:14, 26:2, 26:7, 26:8, 26:12, 27:5, 27:6, 27:11, 27:12, 27:14, 27:16, 27:22, 29:13, 29:17, 30:3, 32:5, 32:16, 33:3, 33:11, 33:13, 33:24, 34:1, 34:3, 34:5, 34:10, 34:12, 34:14, 34:21, 34:25, 35:3, 38:23, 40:14, 41:9, 42:17, 42:21, 43:8, 43:13, 43:15, 43:22, 43:23, 43:25, 44:2, 44:4, 46:1, 46:9, 46:10, 46:21, 47:14, 48:10, 48:24, 49:6, 49:10, 49:15, 50:18, 51:24, 52:25, 53:8, 54:11, 56:10, 56:13, 56:18, 57:22, 58:1, 58:3, 58:7, 58:9, 58:10, 58:11, 60:14, 61:21, 61:25, 62:4, 62:9, 62:12, 62:15, 62:23, 63:1, 63:3, 63:22,</p>	<p>74:1, 74:2, 74:3, 78:13, 78:19, 86:8, 86:12, 86:13, 95:19, 95:22, 95:23, 95:24, 96:1, 96:2, 96:4, 96:17, 96:20, 97:14, 97:21, 97:24, 98:11, 104:18, 106:9, 106:11, 106:13, 106:23, 106:25, 107:2, 107:4, 108:22, 108:24, 109:1, 109:10, 110:4, 110:8, 110:14, 110:19, 111:1, 111:4, 111:5, 111:10, 111:17, 111:22, 112:2, 112:5, 112:9, 115:4, 118:23, 119:1, 119:3, 119:5, 123:14, 123:23, 125:20, 126:3, 130:11, 131:25, 132:3, 132:24, 133:2, 133:9, 134:12, 135:18, 136:20, 136:23, 137:3, 138:1, 139:23, 140:10, 140:22, 141:1, 141:7, 141:12, 141:22, 142:2, 142:11 <b>theoretically</b> [1] - 137:21 <b>therefore</b> [1] - 32:17 <b>Thiele</b> [20] - 36:24, 58:23, 59:14, 60:10, 61:11, 63:1, 78:15, 98:14, 101:12, 111:11, 112:14, 116:23, 120:9, 125:6, 127:4, 127:19, 130:14, 133:13, 135:7, 141:8 <b>THIELE</b> [1] - 63:1 <b>thinking</b> [1] - 25:23 <b>Third</b> [1] - 1:15 <b>third</b> [6] - 4:12, 4:19, 54:21, 93:2, 102:24, 119:10 <b>third-party</b> [1] - 54:21 <b>Thompson</b> [1] - 29:5 <b>thousand</b> [1] - 23:22 <b>three</b> [13] - 13:16, 18:14, 37:22, 39:10, 41:24, 41:25, 52:15, 59:18, 64:21, 92:25, 97:13, 102:23,</p>
---	--	--	---	--

<p>120:23  <b>threshold</b> [5] - 75:22, 76:10, 94:1, 94:15, 134:6  <b>thresholds</b> [1] - 94:2  <b>throughout</b> [3] - 38:18, 50:7, 134:17  <b>timecard</b> [1] - 66:15  <b>timeline</b> [1] - 106:4  <b>timely</b> [1] - 90:25  <b>tire</b> [1] - 117:24  <b>title</b> [1] - 59:5  <b>TO</b> [1] - 142:11  <b>today</b> [7] - 2:21, 7:14, 9:20, 24:18, 40:22, 83:13, 98:15  <b>together</b> [4] - 37:13, 41:24, 65:20, 83:18  <b>tomorrow</b> [2] - 140:23, 142:6  <b>Tomsky</b> [8] - 28:4, 29:10, 30:25, 31:18, 33:8, 56:22, 61:9, 126:7  <b>TOMSKY</b> [85] - 1:16, 2:7, 2:10, 2:18, 2:20, 3:9, 4:2, 4:10, 8:14, 12:6, 13:24, 14:4, 16:19, 17:11, 17:23, 23:6, 23:16, 24:2, 26:10, 27:3, 27:20, 29:11, 30:1, 32:4, 32:10, 33:2, 33:14, 33:16, 33:25, 34:8, 42:15, 42:20, 43:7, 46:20, 47:13, 48:9, 48:23, 49:5, 50:17, 51:22, 52:5, 52:24, 53:7, 54:10, 56:16, 56:20, 58:4, 60:13, 61:20, 61:23, 62:1, 62:6, 62:14, 63:4, 63:6, 63:20, 83:8, 84:17, 95:18, 95:21, 96:15, 97:19, 97:22, 98:3, 98:10, 102:13, 104:14, 106:20, 108:20, 109:8, 110:2, 110:18, 110:23, 114:9, 115:17, 123:11, 123:22, 125:19, 126:2, 131:23, 133:7, 135:17, 136:17, 137:25, 140:9  <b>took</b> [2] - 44:20, 86:24  <b>tool</b> [1] - 51:2  <b>top</b> [1] - 52:14  <b>tor</b> [1] - 80:14</p>	<p><b>total</b> [42] - 21:17, 22:9, 22:14, 22:20, 23:15, 28:12, 28:18, 28:22, 29:1, 29:8, 44:22, 51:14, 69:6, 69:14, 75:23, 75:24, 76:3, 76:8, 76:14, 76:18, 76:23, 77:3, 77:5, 77:12, 93:16, 93:21, 94:1, 94:11, 94:15, 107:14, 107:17, 107:22, 107:25, 108:6, 108:14, 108:25, 109:5, 109:16, 109:25, 110:9, 113:7, 135:23  <b>totaled</b> [2] - 28:18, 137:20  <b>totalling</b> [1] - 29:16  <b>totally</b> [1] - 31:20  <b>tow</b> [7] - 18:2, 18:6, 18:10, 18:13, 18:14, 18:22  <b>toward</b> [1] - 55:25  <b>towards</b> [3] - 42:11, 55:23, 69:1  <b>towed</b> [1] - 31:11  <b>Towing</b> [4] - 13:5, 15:24, 17:18, 18:25  <b>towing</b> [6] - 18:3, 20:11, 29:19, 45:16, 83:24, 96:9  <b>tows</b> [3] - 18:15, 18:19, 18:24  <b>trained</b> [1] - 44:20  <b>training</b> [12] - 37:5, 37:14, 38:17, 50:4, 50:6, 51:5, 52:7, 52:9, 59:7, 59:23, 61:12, 61:14  <b>trainings</b> [1] - 59:25  <b>transcript</b> [1] - 9:1  <b>TRANSCRIPT</b> [1] - 142:11  <b>treatment</b> [1] - 127:4  <b>TRIAL</b> [1] - 1:2  <b>trial</b> [3] - 26:5, 34:18, 62:20  <b>triple</b> [2] - 107:1, 107:2  <b>trouble</b> [1] - 73:24  <b>true</b> [2] - 124:16, 125:6  <b>TRUE</b> [1] - 142:11  <b>truth</b> [6] - 34:19, 34:20, 62:21, 62:22  <b>try</b> [11] - 22:4, 53:13, 53:22, 55:13, 65:12, 78:19, 99:9, 99:14, 99:18, 99:21, 99:23</p>	<p><b>trying</b> [2] - 55:14, 57:11  <b>TT</b> [2] - 125:2, 125:4  <b>turn</b> [2] - 126:5, 130:17  <b>TV</b> [1] - 38:17  <b>twice</b> [1] - 97:12  <b>two</b> [34] - 15:10, 18:3, 18:18, 18:24, 20:5, 20:14, 20:17, 20:21, 21:8, 31:20, 39:21, 40:8, 41:23, 41:24, 42:18, 51:5, 59:22, 61:16, 67:6, 84:7, 84:9, 84:11, 84:12, 85:4, 85:10, 87:16, 87:23, 87:25, 92:24, 103:2, 109:12, 131:2, 132:12  <b>type</b> [16] - 40:1, 45:4, 45:5, 45:6, 53:3, 53:4, 55:9, 61:14, 70:12, 70:15, 74:8, 74:22, 79:18, 90:1, 91:15, 116:10  <b>types</b> [5] - 39:17, 55:21, 72:9, 82:18, 82:20</p>	<p>131:24  <b>unsafe</b> [1] - 138:17  <b>up</b> [59] - 6:16, 7:12, 15:6, 15:11, 15:16, 16:8, 17:5, 17:14, 17:21, 18:21, 18:22, 18:25, 19:2, 21:12, 21:17, 23:12, 36:4, 36:11, 38:13, 45:23, 48:13, 48:15, 49:24, 50:1, 50:5, 54:2, 54:4, 56:2, 56:5, 57:4, 57:11, 59:23, 61:5, 64:15, 64:23, 65:12, 65:18, 69:8, 69:10, 69:13, 71:1, 74:1, 75:19, 76:2, 79:4, 96:2, 98:8, 109:3, 112:6, 112:18, 119:14, 125:23, 125:24, 125:25, 126:4, 128:23, 139:6, 139:8, 140:23  <b>upfront</b> [1] - 59:21  <b>upload</b> [1] - 80:22  <b>upper</b> [1] - 47:23  <b>upstairs</b> [1] - 48:20  <b>upward</b> [10] - 100:17, 100:21, 102:20, 103:21, 104:1, 105:3, 105:9, 105:14, 105:17, 107:6  <b>upwards</b> [1] - 93:11  <b>usable</b> [1] - 85:23  <b>uses</b> [2] - 69:25, 131:6</p>	<p>68:18, 68:20, 68:25, 69:5, 70:21, 70:23, 73:1, 73:13, 75:13, 75:14, 75:20, 76:14, 77:15, 79:15, 80:7, 80:12, 80:25, 81:5, 81:16, 83:1, 86:19, 87:16, 87:22, 88:4, 88:14, 88:21, 88:22, 90:1, 90:6, 90:7, 90:22, 91:6, 91:8, 91:20, 91:21, 92:4, 93:16, 93:21, 94:7, 94:21, 94:24, 95:9, 100:12, 100:24, 101:15, 101:20, 101:24, 102:2, 103:6, 113:8, 117:12, 117:23, 123:24, 125:1, 125:11, 128:24, 135:15, 137:6, 138:5, 138:14, 138:17  <b>vehicles</b> [22] - 36:3, 40:4, 40:5, 47:18, 47:19, 47:20, 49:25, 52:8, 55:19, 55:24, 57:10, 65:19, 67:2, 67:3, 67:22, 72:9, 75:12, 79:22, 82:18, 91:5, 127:13, 127:15  <b>vendor</b> [1] - 12:19  <b>versa</b> [1] - 69:1  <b>versus</b> [10] - 20:5, 31:22, 47:7, 53:4, 55:22, 58:16, 71:11, 72:7, 73:17, 114:7  <b>vice</b> [1] - 69:1  <b>view</b> [7] - 104:3, 122:23, 123:1, 123:3, 141:19  <b>viewed</b> [1] - 87:22  <b>views</b> [1] - 122:25  <b>violate</b> [1] - 129:4  <b>visit</b> [4] - 66:6, 98:23, 106:6, 106:10  <b>visits</b> [1] - 106:1  <b>visual</b> [1] - 80:5</p>
<b>U</b>				
<p><b>ultimately</b> [2] - 7:11, 110:21  <b>unacceptable</b> [1] - 74:20  <b>under</b> [5] - 2:15, 4:18, 57:19, 96:19, 112:8  <b>underestimating</b> [1] - 107:10  <b>understating</b> [1] - 107:10  <b>understood</b> [3] - 27:14, 60:11, 62:9  <b>underwritten</b> [1] - 107:12  <b>uniform</b> [1] - 51:2  <b>uninterested</b> [1] - 54:21  <b>United</b> [1] - 39:4  <b>unitized</b> [1] - 47:24  <b>units</b> [1] - 36:10  <b>university</b> [1] - 38:17  <b>unless</b> [2] - 54:16, 76:9  <b>unnecessary</b> [2] - 25:15, 41:16  <b>unplugging</b> [1] - 118:17  <b>unreasonable</b> [3] - 115:20, 131:20,</p>				
<b>V</b>				
<p><b>vacation</b> [1] - 40:6  <b>vacations</b> [1] - 51:3  <b>valuation</b> [1] - 103:16  <b>value</b> [1] - 94:3  <b>various</b> [1] - 66:3  <b>vehicle</b> [106] - 5:1, 7:12, 7:18, 8:11, 9:2, 11:2, 11:12, 13:11, 18:6, 19:11, 19:24, 21:14, 21:19, 22:14, 22:19, 22:25, 23:4, 23:10, 28:13, 28:15, 29:16, 31:16, 33:6, 40:20, 42:10, 42:11, 42:19, 42:25, 43:16, 43:17, 43:18, 46:13, 46:25, 47:15, 47:22, 47:23, 48:1, 49:23, 52:22, 54:6, 56:8, 67:8, 67:11, 68:13,</p>				
<b>W</b>				
<p><b>walk</b> [2] - 88:14, 88:15  <b>walked</b> [1] - 88:20  <b>walking</b> [1] - 101:22  <b>wants</b> [5] - 45:21, 54:21, 54:22, 135:15, 137:5  <b>warranties</b> [2] - 122:11, 122:12</p>				

<p><b>warranty</b> <sup>[4]</sup> - 12:16, 12:18, 45:10, 127:14</p> <p><b>waste</b> <sup>[3]</sup> - 50:2, 50:3</p> <p><b>ways</b> <sup>[1]</sup> - 32:19</p> <p><b>week</b> <sup>[4]</sup> - 37:6, 51:5, 66:2, 66:6</p> <p><b>weeks</b> <sup>[2]</sup> - 51:5, 103:2</p> <p><b>welcome</b> <sup>[3]</sup> - 2:21, 46:10, 133:7</p> <p><b>welcomed</b> <sup>[2]</sup> - 114:3, 115:15</p> <p><b>wet</b> <sup>[1]</sup> - 50:3</p> <p><b>wheel</b> <sup>[40]</sup> - 20:5, 21:8, 42:4, 42:13, 43:6, 43:11, 43:16, 43:21, 44:1, 44:5, 44:6, 44:7, 48:3, 48:4, 48:5, 84:16, 84:24, 85:6, 85:9, 85:13, 85:14, 85:15, 85:22, 85:23, 86:2, 86:5, 86:12, 86:16, 86:22, 87:8, 87:12, 87:18, 95:11, 96:6, 96:7, 117:15, 117:19, 119:11, 120:21</p> <p><b>wheels</b> <sup>[16]</sup> - 20:5, 20:14, 20:18, 20:21, 21:9, 41:22, 42:18, 84:7, 84:10, 84:11, 84:12, 84:21, 85:4, 85:5, 85:10, 87:17</p> <p><b>whereas</b> <sup>[2]</sup> - 20:14, 92:1</p> <p><b>white</b> <sup>[1]</sup> - 50:8</p> <p><b>whole</b> <sup>[3]</sup> - 25:22, 34:19, 62:21</p> <p><b>wide</b> <sup>[3]</sup> - 55:24, 59:1, 66:18</p> <p><b>wise</b> <sup>[1]</sup> - 51:17</p> <p><b>wishes</b> <sup>[1]</sup> - 137:8</p> <p><b>withdrawn</b> <sup>[13]</sup> - 9:13, 16:25, 19:6, 25:4, 30:20, 30:24, 33:18, 76:5, 76:21, 91:2, 97:8, 120:13, 131:19</p> <p><b>witness</b> <sup>[36]</sup> - 2:5, 2:11, 8:2, 8:3, 12:6, 12:8, 17:23, 17:25, 24:3, 24:6, 34:6, 38:24, 40:11, 40:17, 41:6, 41:11, 49:9, 49:10, 62:13, 73:25, 83:8, 83:10, 84:17, 84:19, 95:20, 96:13, 104:18, 111:19, 112:13, 113:20, 116:21, 119:22,</p>	<p>120:7, 125:2, 126:25, 141:6</p> <p><b>WITNESS</b> <sup>[30]</sup> - 2:16, 26:7, 27:5, 27:11, 27:14, 29:17, 34:3, 34:21, 34:25, 43:13, 43:15, 43:23, 44:2, 46:10, 56:13, 58:9, 58:11, 62:23, 63:1, 74:2, 86:12, 95:23, 96:1, 106:11, 106:25, 107:4, 109:1, 110:14, 111:4, 119:3</p> <p><b>witness'</b> <sup>[1]</sup> - 49:7</p> <p><b>witnesses</b> <sup>[1]</sup> - 2:12</p> <p><b>word</b> <sup>[2]</sup> - 132:12, 132:13</p> <p><b>words</b> <sup>[4]</sup> - 61:16, 101:25, 109:18, 134:24</p> <p><b>worker</b> <sup>[1]</sup> - 88:25</p> <p><b>works</b> <sup>[4]</sup> - 36:22, 66:13, 88:23, 118:16</p> <p><b>worth</b> <sup>[2]</sup> - 37:14, 137:18</p> <p><b>wound</b> <sup>[1]</sup> - 36:11</p> <p><b>write</b> <sup>[27]</sup> - 31:5, 40:9, 50:8, 66:3, 66:21, 68:18, 68:20, 72:21, 77:8, 79:6, 80:15, 84:21, 85:9, 85:14, 86:1, 86:25, 88:3, 88:22, 88:24, 95:2, 98:25, 99:6, 99:9, 99:14, 99:18, 99:23</p> <p><b>writes</b> <sup>[4]</sup> - 128:23, 129:11, 129:12, 132:17</p> <p><b>writing</b> <sup>[1]</sup> - 99:16</p> <p><b>written</b> <sup>[8]</sup> - 24:22, 25:1, 25:11, 25:17, 67:4, 68:14, 84:16, 100:24</p> <p><b>wrote</b> <sup>[6]</sup> - 20:15, 31:6, 74:19, 85:6, 89:3, 89:15</p>	<p>63:24, 64:5, 64:14, 66:1, 90:25, 100:2, 100:3, 100:4, 134:8, 135:5</p> <p><b>yesterday</b> <sup>[1]</sup> - 6:14</p> <p><b>YORK</b> <sup>[1]</sup> - 1:1</p> <p><b>York</b> <sup>[18]</sup> - 1:10, 1:15, 1:19, 13:10, 14:13, 14:16, 24:13, 35:2, 38:4, 38:9, 38:11, 38:14, 52:4, 57:19, 60:22, 63:2, 75:22</p> <p><b>yourself</b> <sup>[2]</sup> - 26:4, 113:23</p> <p><b>YY</b> <sup>[1]</sup> - 141:3</p>
	<b>Y</b>	
	<p><b>yard</b> <sup>[2]</sup> - 70:22, 70:24</p> <p><b>yards</b> <sup>[1]</sup> - 75:11</p> <p><b>year</b> <sup>[12]</sup> - 36:10, 38:8, 38:18, 50:7, 52:16, 59:21, 66:19, 88:1, 120:2, 120:4, 134:16, 134:17</p> <p><b>yearly</b> <sup>[1]</sup> - 36:8</p> <p><b>years</b> <sup>[16]</sup> - 48:16, 51:11, 51:13, 63:16,</p>	