



Planet Depos[®]
We Make It *Happen*[™]

Transcript of Hearing on Motions

Date: July 2, 2021

Case: Crescent Hotels & Resorts, LLC, et al. -v- Zurich American Insurance Co., et al.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of Hearing on Motions
Conducted on July 2, 2021

<p style="text-align: center;">1</p> <p>1 V I R G I N I A: 2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY 3 -----x 4 CRESCENT HOTELS & RESORTS, LLC, 5 et al., 6 Plaintiff, 7 v. CASE NO. 2021 02974 8 ZURICH AMERICAN INSURANCE CO., 9 and INTERSTATE FIRE & 10 CASUALTY, CO., 11 Defendants. 12 -----x 13 14 Hearing on Motions 15 BEFORE THE HONORABLE MICHAEL F. DEVINE, Judge 16 Conducted Virtually 17 Friday, July 2, 2021 18 12:20 p.m. 19 20 Job No.: 384291 21 Pages: 1 - 91 22 Transcribed by: Bobbi J. Fisher, RPR</p>	<p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S (Continued) 2 ON BEHALF OF THE PLAINTIFFS: 3 NATHAN M. DAVIS, ESQ. (Pro Hac Vice) 4 PASICH LLP 5 10880 Wilshire Boulevard, Suite 2000 6 Los Angeles, California 90024 7 (424) 313-7860 8 9 ON BEHALF OF THE DEFENDANTS: 10 DAVID J. GOGAL, ESQ. 11 TIMOTHY C. BENJAMIN, ESQ. 12 BLANKINGSHIP & KEITH, P.C. 13 4020 University Drive, Suite 300 14 Fairfax, Virginia 22030 15 (703) 691-1235 16 17 PHILIP SILVERBERG, ESQ. (Pro Hac Vice) 18 HILARY HENKIND, ESQ. (Pro Hac Vice) 19 MOUND COTTON WOLLAN & GREENGRASS, LLP 20 One New York Plaza 21 New York, New York 10004 22 (212) 804-4257</p>
<p style="text-align: center;">2</p> <p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PLAINTIFFS: 3 ARDEN B. LEVY, ESQ. 4 ARDEN LEVY LAW, PLLC 5 2121 Eisenhower Avenue, Suite 200 6 Alexandria, Virginia 22314 7 (703) 519-6800 8 9 MICHAEL S. GEHRT, ESQ. (Pro Hac Vice) 10 PASICH LLP 11 1230 Rosecrans Avenue, Suite 690 12 Manhattan Beach, California 90266 13 (424) 313-7860 14 15 PETER HALPRIN (Pro Hac Vice) 16 PASICH LLP 17 757 Third Avenue, 20th Floor 18 New York, New York 10017 19 (212) 686-5000 20 21 22</p>	<p style="text-align: center;">4</p> <p>1 A P P E A R A N C E S (Continued) 2 ON BEHALF OF THE DEFENDANTS: 3 BRIAN J. YOUNG, ESQ. 4 DLA PIPER, LLP 5 500 8th Street, Northwest 6 Washington, D.C. 20004 7 (202) 799-4523 8 9 BRETT INGERMAN, ESQ. 10 DLA PIPER, LLP 11 6225 Smith Avenue 12 Baltimore, Maryland 21209 13 (410) 580-3000 14 15 ALSO PRESENT: 16 William Flinter (intern/observer) 17 18 19 20 21 22</p>

5		7	
1	I N D E X	1	THE COURT: All right. And I have got
2	WITNESS/DESCRIPTION	2	Ms. Levy is here for Plaintiffs. Mr. Davis is
3	MOTION CRAVING OYER	3	here. I have got Mr. Schunk as Plaintiff's
4	Argument by Mr. Ingerman	4	representative.
5	Argument by Mr. Gehrt	5	And who is arguing for our defense today?
6	Ruling	6	MR. SILVERBERG: Your Honor, this is
7	MOTION FOR DEMURRER	7	Phillip Silverberg, and there are two, I guess,
8	Argument by Mr. Silverberg	8	motions on. One is to crave oyer and the other is
9	Argument by Mr. Ingerman	9	the demurrer. I will be arguing on the demurrer
10	Argument by Mr. Gehrt	10	motion except for, you know, one issue that relates
11	Further Argument by Mr. Silverberg	11	to co-defendant, Interstate.
12	Further Argument by Mr. Ingerman	12	THE COURT: All right. And who else is
13	Ruling	13	arguing today?
14		14	MR. INGERMAN: Your Honor, it's Brett
15	E X H I B I T S	15	Ingerman from DLA Piper. I'll be arguing the
16	(None.)	16	motion to crave oyer and the pollution
17		17	contamination exclusion, which is the specific
18		18	exclusion for Interstate.
19		19	THE COURT: Okay. And I have got
20		20	Ms. Henkind is here, Mr. Gogal is here, Mr. Young
21		21	is here, all on the defendant's side. And
22		22	Mr. Flinter is here as an observer.
6		8	
1	P R O C E E D I N G S	1	Mr. Flinter, this may make you decide you
2	THE COURT: Let me start by swearing our	2	don't want to practice law, but, with that warning,
3	court reporter.	3	let's go ahead and proceed.
4	(The court reporter was duly sworn.)	4	We are -- we should probably start on the
5	THE COURT: All right. I have got a note	5	motion craving oyer. Counsel, go ahead, please.
6	here. Mr. Levy, can't not hear. Let's see. Oh,	6	MOTION CRAVING OYER
7	Ms. Levy. Well, Ms. Levy, we want you to hear	7	MR. INGERMAN: Thank you, Your Honor,
8	everything that's going on.	8	Brett Ingerman on behalf of the defendants.
9	Ms. Levy, can you hear us now? Doesn't	9	The purpose of this motion, Your Honor,
10	look like it.	10	really was to aid the Court in its choice of law
11	MS. LEVY: I can hear now.	11	analysis. We do not believe that the plaintiffs
12	THE COURT: Okay. Excellent. All right.	12	have adequately pled facts in the complaint to
13	Very good.	13	allow the Court to make a choice of law
14	MS. LEVY: I really --	14	determination which, as we mentioned in our
15	THE COURT: All right. We are here in	15	demurrer motion, is actually an independent grounds
16	the case of Crescent Hotels and Resorts, LLC,	16	to dismiss the complaint.
17	et al., against Zurich American Insurance, et al.	17	But all we're asking the Court to do is
18	It is Civil Case No. 2021-2974.	18	really to consider two groups of documents. One
19	Who is going to be arguing this morning	19	are the ten cover letters that went along with the
20	for plaintiffs?	20	policy that came from Interstate and then the nine
21	MR. GEHRT: That's me, Your Honor.	21	endorsements that followed, including the
22	Michael Gehrt on behalf of Plaintiffs.	22	endorsements that include the contamination and

Transcript of Hearing on Motions
Conducted on July 2, 2021

<p style="text-align: right;">9</p> <p>1 pollution contamination exclusions, as well as an 2 email that transmitted Zurich's policy, all going 3 to the broker for the insured, Marsh, in New York. 4 And we believe that these documents are an 5 important part of the transaction and necessary for 6 this Court to make a choice of law determination. 7 As Your Honor knows, under the Burn case, 8 the standard for craving oyer is when there's a 9 missing document that is essential to the claim, 10 and that standard has been expanded over the years. 11 We believe the cover letters that transmitted the 12 policy to the insured's broker in New York are 13 essential here because this Court is required to 14 make a choice of law determination at the outset. 15 And I know we have inundated Your Honor with many, 16 many, many, many COVID-19 decisions that have come 17 out as recently as today and -- 18 THE COURT: I'm going to confess: I 19 haven't looked at that one. 20 MR. INGERMAN: Okay. We barely looked at 21 it, Your Honor, as well. But, you know, I have had 22 the -- I'm not sure I'll call it the honor, but I</p>	<p style="text-align: right;">11</p> <p>1 don't know if you want to hear from me on which law 2 applies or not -- 3 THE COURT: No, I really don't, not at 4 this point. 5 MR. INGERMAN: Okay. 6 THE COURT: What I'm having difficulty 7 with is I want to intercept the idea that we can do 8 a motion craving oyer to affect the choice-of-law 9 issue. My difficulty is whether or not these 10 documents actually inform -- potentially the 11 transmittal documents -- inform that question. And 12 that's where I'm having difficulty understanding 13 how it matters if an email, attaching a policy, is 14 sent from someone in Boston to someone in New York 15 about a policyholder in Virginia, and that somehow 16 controls my choice of law. 17 Could you hit on that issue? 18 MR. INGERMAN: Yes, thank you, Your 19 Honor. So the Essex case, I think, where Judge 20 Ellis, in 2016, dealt with this issue is probably 21 the best indicator of why it matters. And Judge 22 Ellis cited both to Willis on contracts and Couch</p>
<p style="text-align: right;">10</p> <p>1 have read nearly all of the 400-plus opinions that 2 have complete out. They all start with a choice of 3 law analysis because that can be important to the 4 decision. And so, here, you know, you have got 5 four of the five of the plaintiff's claims are 6 contract based or breach of covenant of this 7 agent's fair dealing, and what law applies will be 8 important to the Court's analysis of that. 9 Now, with respect to that, why is that 10 important? I want to be clear: We actually don't 11 think there's a conflict between the rules of 12 contract interpretation under New York law and the 13 rules of interpretation under Virginia law, but if 14 Your Honor determines, as we allege, that New York 15 law applies, you have about 20 decisions out of the 16 New York federal state courts that have granted 17 motions to dismiss or motions for judgment on the 18 pleading on these very issues, and so, you know, we 19 thought it would be important for the Court to 20 understand. 21 Now, with respect to -- Your Honor, so 22 that's the argument on the motion to crave oyer. I</p>	<p style="text-align: right;">12</p> <p>1 on insurance in Footnote 11 to that opinion where 2 he said, Look, the deciding factor in determining 3 which choice of law applies when interpreting an 4 insurance contract is when does the insured take a 5 visible step to put the policy beyond the insurer's 6 control. 7 THE COURT: But you said an important 8 word there, and the word you said was "when" not 9 "where." So I think we have to be careful in 10 making a distinction between a timing question, 11 which is a "when," versus a "where" question, which 12 I think affects the choice of law. 13 MR. INGERMAN: I agree with that, Your 14 Honor. I think what Judge Ellis was saying was 15 where -- it could be -- your point's exactly right. 16 It's where do you deliver it -- where is the last 17 step the insured takes to deliver the policy to the 18 insured where the insurer can no longer make any 19 changes to it -- 20 THE COURT: I don't think that's quite 21 it, to be quite honest. I think the issue is 22 delivery occurs when you drop it in the mail or</p>

<p style="text-align: right;">13</p> <p>1 when the insurer releases control over it. Where 2 it occurs has no bearing on that person's location. 3 MR. INGERMAN: Well, I think the way the 4 cases have come down is you have to make a "where" 5 determination because that's going to drive what 6 the -- which choice of law applies. Right? 7 THE COURT: But didn't Judge Ellis cite a 8 statute that said that the -- that, in Virginia -- 9 under Virginia law -- and I don't have the statute 10 number in my head -- but there's a footnote in 11 Judge Ellis's opinion about a statute in Virginia 12 that says that a broker or an agent is always an 13 agent for the insurer and not for the insured. 14 MR. INGERMAN: Well, a broker here -- 15 THE COURT: That's in one of his 16 footnotes; right? 17 MR. INGERMAN: Well, the -- 18 THE COURT: Go ahead. 19 MR. INGERMAN: I apologize, Your Honor. 20 The video is sometimes difficult. Go ahead. 21 THE COURT: No, you go. 22 MR. INGERMAN: I think that -- I don't</p>	<p style="text-align: right;">15</p> <p>1 timing of it -- so you don't blow your time 2 limit -- occurs when you drop it off at the post 3 office with the right postage and a return receipt 4 requested. That takes care of the "when." But the 5 "where" is down in Richmond. 6 So as soon as I drop it off at the post 7 office in Fairfax, like I used to do, that's the 8 when it's the filed, but it's deemed where it's 9 filed is down in Richmond. And so I think we have 10 got a similar situation here where the "when" is 11 when you release it and the "where" is where your 12 insured is. I think the code section -- my clerk 13 is helping me out here -- is 38.2-1801(a), Virginia 14 Code 38.2-1801(a). 15 MR. GEHRT: And it's Footnote 9 in the 16 decision, Your Honor. 17 THE COURT: Thank you. 18 MR. INGERMAN: Your Honor, I think -- and 19 by the way, as a young associate, I was running to 20 the FedEx at BWI Airport dropping filings off, so I 21 know exactly what you mean by the "when." 22 THE COURT: Well, let me caution you in</p>
<p style="text-align: right;">14</p> <p>1 think there's a dispute here that Marsh was the 2 insured's broker here, so... 3 THE COURT: But Virginia law treats them 4 as working for the insurer under that code section 5 that Judge Ellis had mentioned that I can't recall. 6 MR. INGERMAN: I apologize, Your Honor. 7 I don't have that code section in front of me, but 8 I don't think there's a meaningful -- I don't think 9 there's a meaningful dispute that, once we deliver 10 it to the broker here, Marsh in New York, we have 11 taken that step that puts it beyond our control. 12 And if you read that -- 13 THE COURT: I -- I agree. So that 14 answers the "when" question, but it doesn't answer 15 the "where" question. The "where" question, I 16 think, has to be bound by where your insured is, 17 and that's in Virginia. 18 So I'll give you an example that I'm more 19 familiar with as a litigator, and maybe you are 20 too. Most courts -- our courts in Virginia have a 21 mail rule. If you're going to file a brief with 22 the appellate courts, it is deemed filed, the</p>	<p style="text-align: right;">16</p> <p>1 this case: If you do that in Virginia, you'll be 2 untimely because we only accept U.S. Mail. 3 MR. INGERMAN: I do know that too. 4 THE COURT: You learn that one the hard 5 way. 6 MR. INGERMAN: Yes, you do. Yes, you do, 7 Your Honor. Thank you. 8 There are a number of cases that we cited 9 in our brief, Your Honor, where the Virginia courts 10 are looking to where -- where it is delivered, and 11 it's not always the location of the insured. So, 12 for instance, there's a case we cite in our brief 13 that mentions the fact that the insured was in 14 Norfolk at the time but applies a different state's 15 law there because it's actually where it was 16 delivered and put beyond the insured's control. 17 And it's not always the location of the 18 insured because, in that case, you wouldn't need 19 the rule necessarily. It would always be -- the 20 rule would be, if the insured's in Virginia, then 21 Virginia law applies. And that's not the analysis 22 that the Courts have undertaken in the several</p>

Transcript of Hearing on Motions
Conducted on July 2, 2021

<p style="text-align: right;">17</p> <p>1 cases that we put into our brief, Your Honor. 2 THE COURT: All right. 3 MR. INGERMAN: So that's -- I mean, you 4 know, again, I want to reiterate the fact that we 5 don't think there was a material difference 6 necessarily in deciding the demurrer. We think the 7 rules of contract interpretation in both in 8 Virginia and in New York are the same, but you have 9 got considerably more cases on the New York side to 10 draw from, if New York law applies, and we 11 recognize that there's Elegant Massage on the 12 Virginia side and Mr. Silverberg will be prepared 13 to address that. 14 THE COURT: All right. Okay. Thank you. 15 (Indiscernible) today on the motion craving oyer. 16 MR. GEHRT: I'm sorry, Your Honor, I 17 didn't catch the first part of that. 18 THE COURT: Plaintiff's on motion craving 19 oyer? 20 MR. GEHRT: Thank you. Your Honor, I 21 don't have a whole lot to add to that. I mean, I 22 think, as the insured has pointed out, the test is</p>	<p style="text-align: right;">19</p> <p>1 So it is hard to say it is essential for 2 an analysis that is irrelevant to -- 3 THE COURT: Well, I'm not convinced the 4 analysis would be irrelevant. I tend to agree that 5 the choice-of-law rules -- I'm sorry -- the 6 contract interpretation rules don't vary in any 7 significant way I think in any of the U.S. states. 8 I think everybody's gotten on the same board for 9 that for the most part. 10 But there is the issue of, once we start 11 trying to construe the language within these 12 insurance contracts, New York has, I think, a much 13 more developed body of law, for example; 14 Massachusetts has a developed body of law. 15 Everybody seems to have a developed body of law 16 other than Virginia. Virginia seems to have no 17 body of law on this out of our state courts. Not 18 an unusual circumstance. 19 So I think it is relevant to determine 20 whether or not we're dealing with something that 21 this Court might have to look at as binding versus 22 something that is merely persuasive authority.</p>
<p style="text-align: right;">18</p> <p>1 whether or not it's essential to the claim, and 2 it's not whether or not it's essential to an 3 argument they'd like to make. 4 THE COURT: Well, it does raise a 5 threshold question. Can choice-of-law issues be 6 addressed on a motion craving oyer? You know, 7 because it does seem -- it does seem you have got 8 to resolve the choice-of-law issue, and that would 9 seem to make it essential to the decision, wouldn't 10 it? Not even applying this case but in general. 11 Isn't it some -- couldn't -- it seems to make 12 sense, doesn't it? 13 MR. GEHRT: I don't think so, Your Honor, 14 because, again, we're on a demurrer here, and so if 15 there needs to be evidentiary development for 16 choice of law, that's a matter for evidence, not a 17 matter to be handled here. But ultimately, you 18 know, I think, as counsel acknowledged, if there is 19 no conflict, which is what the insured have said, 20 then I struggle with seeing how it's essential to 21 the claim to a choice-of-law analysis if the 22 choice-of-law analysis need not be done.</p>	<p style="text-align: right;">20</p> <p>1 All right. My view of it is this: I do 2 think that the Court can reach a choice-of-law 3 question on a motion craving oyer. That is, if the 4 Court is faced with a choice-of-law issue, a motion 5 craving oyer makes that -- that can be helpful to 6 that, that issue is essential, and under our recent 7 Supreme Court decision, which tends to clarify the 8 use of motions craving oyer to things that are 9 essential or necessary to resolution of that 10 dispute, I think it's cognizable on a motion 11 craving oyer. 12 I disagree with defense counsel. I don't 13 think that these -- I don't think these letters -- 14 the transmittal letters control or answer the 15 question as to where -- where these things were 16 delivered. I think that there's, you know, the 17 insurance contracts themselves identify the insured 18 as being in Virginia with a mailing address here in 19 Fairfax. We have got that code section that we 20 talked about, which provides that the -- let me 21 take another look at it -- that the licensed agent 22 shall be an agent of the insurer, and I think that</p>

<p style="text-align: right;">21</p> <p>1 that applies even if it tends -- if the insurer -- 2 if the agents working for the insured, they're 3 still deemed under this code section to be an agent 4 for the insurer. Merely sending a document to your 5 own agent, as they are considered to be under this 6 code section, isn't releasing the document 7 unconditionally. I think that unconditional 8 release doesn't occur until it's received by the 9 insured in Virginia. 10 So I don't think these documents answer 11 that question at all. Whether you look at that as, 12 you know, I think I can grant the motion craving 13 oyer, but it doesn't answer the question. And so 14 it's my considerate opinion at this point that 15 Virginia law applies. I'm going -- and since the 16 documents don't answer the question, I think the 17 motion craving oyer should be denied. So that's 18 the holding of the Court under the motion craving 19 oyer. 20 But I do make it an opinion that Virginia 21 law is the applicable law here, and I appreciate 22 all the work the other states have done. We can</p>	<p style="text-align: right;">23</p> <p>1 Now, let me start by saying there's 2 absolutely zero question here that this plaintiff 3 has suffered financial loss, and, in fact, much of 4 the world businesses, enterprises, have suffered 5 financial loss as a result of the pandemic, 6 particularly businesses that deal with the public. 7 And, here, we certainly have an operation that 8 deals with the public. It's a hotel. It has a 9 restaurant. It has gymnasium, spas, conference 10 centers and all of that, all require, in order to 11 do business, allowing in the general public. 12 The reason COVID is particularly harsh on 13 those businesses is because COVID is a mortal 14 danger to human beings. It does not cause direct 15 physical loss of or damage to property. And, 16 indeed, that is the reason why there have been and 17 continue, including today, decisions being handed 18 down all over the country -- state courts, federal 19 courts, and now we have an Eighth Circuit 20 decision -- essentially holding that COVID does not 21 cause physical loss or damage to property. 22 What is at issue here is, in fact, a</p>
<p style="text-align: right;">22</p> <p>1 argue about those and whether Virginia would adopt 2 those same -- the same reasoning. But with that in 3 mind, let's move on to the demurrer. 4 All right. Go ahead. 5 MOTION FOR DEMURRER 6 MR. SILVERBERG: All right. Thank you, 7 Your Honor. Phil Silverberg from the law firm of 8 Mound Cotton. I am arguing the motion for 9 demurrer. We represent Zurich. There is another 10 defendant, Interstate, and as noted earlier, 11 counsel for Interstate will be speaking, at least 12 in part, with respect to this motion. 13 And we understand Your Honor's ruling 14 that Virginia law applies, and we trust Your Honor 15 appreciates that, in our demurrer motion, we did 16 argue law from all jurisdictions, including 17 Virginia, and, in fact, we do, as co-counsel noted, 18 we do agree with the rules of construction, and we 19 believe the rules of construction get us to the 20 place where over 300 other court decisions have 21 gotten with respect to COVID-19 first-party 22 property claims.</p>	<p style="text-align: right;">24</p> <p>1 first-party property policy of insurance that 2 insures against direct physical loss of or damage 3 to property. Tangible physical loss or damage. 4 What I just read in that is, you know, 5 the grant of coverage, "Direct physical loss of or 6 damage to property" is, in our view -- and in the 7 opinion of over 300 courts -- clear and 8 unambiguous. The rules of contract construction -- 9 and I have in my notes, in New York and Virginia -- 10 I'm dropping the New York part now, because Your 11 Honor has ruled -- the rules of construction in 12 Virginia are clear: A policy should be construed 13 in accordance with its plain and ordinary meaning. 14 Courts across -- as I said, courts across 15 the country -- and if Your Honor noted, the rules 16 of construction essentially are the same across the 17 country in terms of clear and unambiguous. There's 18 nothing unambiguous about physical loss or damage. 19 THE COURT: I mean, nothing ambiguous. 20 There's nothing ambiguous. 21 MR. SILVERBERG: Did I say -- thank you, 22 Your Honor.</p>

25

1 Elegant Massage doesn't bind this Court.
2 It is a federal court decision of Judge Jackson.
3 We do disagree with the decision. It stands really
4 as a stark outlier, and, in fact, it's been
5 characterized as an outlier by more than one other
6 court in the country. I think a New Jersey court,
7 I think a West Virginia court, and maybe one other
8 court has specifically singled it out as an
9 outlier.
10 Now, further sort of evidence or proof
11 from a contextual nature of the fact that you need
12 physical loss or damage is if you look at the time
13 element provision of this policy, and for that, I
14 would refer you to Section 4.03.01.01. And it
15 really proves the point. Because much of what, if
16 not entirely Plaintiff's claim here is business
17 income loss, time element loss, incumbent loss,
18 profits loss for a period of time. But how do you
19 measure that under the policy? With due diligence
20 and dispatch to effectuate repairs. There's no
21 repairs to be done here. The hotels were no more
22 damaged than your or my home was damaged.

26

1 Now, there were certain civil authority
2 law was handed down in various states to limit the
3 activity in those facilities because it was to keep
4 the public apart to prevent the transfer of the
5 COVID virus from human to human. But we're not a
6 personal -- we're not a first-party personal injury
7 policy. What we are is a first-party property
8 policy.
9 There's nothing changed about those
10 hotels. What has changed is civil authority orders
11 have lifted and people have gotten injects, people
12 have gotten vaccines. That's what's changed.
13 Nothing's changed. And, in fact, I know counsel
14 will point to and has pointed to in the brief that
15 its restaurant was closed or its spa or its gym
16 facility was closed. There was nothing wrong with
17 the gym facility. There was nothing wrong with
18 that restaurant. They didn't need to be repaired.
19 There wasn't Chinese drywall in the restaurant that
20 was causing a toxic condition that had yellow tape
21 and said, "This facility is uninhabitable." It was
22 to keep people apart. You don't have restaurants

27

1 open because you want people to wear their masks.
2 You don't have gyms because you don't want people
3 closely congregating and breathing heavily. Those
4 were the reasons behind it. There's no question
5 about that. It has nothing --
6 THE COURT: Let me ask you this question:
7 Wouldn't that implicate the communicable disease
8 coverage?
9 MR. SILVERBERG: Well, Your Honor, it
10 zeros in on the one provision in the policy, and
11 I'm happy to speak to that. Your Honor, it zeros
12 in on the one provision in the policy that does not
13 require physical loss or damage. There's no
14 question. Every other provision in the policy
15 requires physical loss or damage to property, which
16 we contend, along with 300-plus other courts, did
17 not occur. There is no physical loss or damage.
18 THE COURT: So holding a communicable
19 disease coverage to one side, if your side prevails
20 on physical loss or damage, that takes care of 99
21 percent of the case.
22 MR. SILVERBERG: Well, holding that

28

1 endorsement aside, you are correct, Your Honor.
2 THE COURT: All right. Go ahead.
3 MR. SILVERBERG: Would you like me to
4 address the communicable disease endorsement?
5 THE COURT: If you wish to do it now.
6 I'm sure you'll get to it at some point. And I
7 don't mean to derail your argument.
8 MR. SILVERBERG: No, I'm happy to deal
9 with it now and then go back to my argument or
10 answer --
11 THE COURT: Very good. Let's do it. So
12 why should the demurrer be sustained on -- given
13 the communicable disease coverage?
14 MR. SILVERBERG: Sure. So while it
15 doesn't require direct physical loss or damage, it
16 requires a necessary suspension of business
17 activities at the insured's location if the
18 suspension is caused by a governmental order
19 declaring uninhabitable where access is prohibited.
20 Access wasn't prohibited. People could go -- I'm
21 not saying customers necessarily, because I
22 understand -- and it's the lack of customers that

Transcript of Hearing on Motions
Conducted on July 2, 2021

<p style="text-align: right;">29</p> <p>1 resulted in a loss of business, but, you know, 2 there was no yellow tape across the restaurant, 3 there was no prohibition to enter those facilities, 4 and there was no declaration of uninhabitability. 5 Furthermore, Your Honor -- 6 THE COURT: So let me clarify. So when 7 the government agency says you can't run your gym, 8 you can't run your pool, and you can't run your 9 indoor restaurant because of the threat of 10 spreading communicable diseases in that 11 environment, because you're only limiting customers 12 and not employees, for example, or the cleaning 13 crew or the maintenance crew, this coverage is not 14 implicated? Is that your argument? 15 MR. SILVERBERG: In part, Your Honor. 16 THE COURT: In part. 17 MR. SILVERBERG: There was also no order 18 directed specifically to the hotels that said 19 there's an outbreak of COVID in your facility. 20 THE COURT: But this language, there 21 doesn't have to be an outbreak. This language 22 speaks specifically about being declared</p>	<p style="text-align: right;">31</p> <p>1 your view, uninhabitability means not just 2 customers but it would have to be anyone else 3 presumably who is not wearing some kind of a HAZMAT 4 type of precaution? I mean, I'm thinking, you 5 know, the containment building at Chernobyl, we all 6 understand that's uninhabitable. Well, there was 7 no containment building, but that's another issue. 8 But in this context, is that what's 9 required to be uninhabitable? That even the hotel 10 employees can't go in there? It's not enough that 11 just the public and their customers can't go in 12 there, to be uninhabitable? 13 MR. SILVERBERG: Well, I think the focus, 14 I think more, Your Honor, is on the prohibition, 15 that there was no prohibition that no one could go 16 in to those particular areas, and that, in fact, 17 you know, the doors were open. I understand 18 customers were not going in there, and I understand 19 it resulted in financial -- potentially financial 20 loss, so I'm not sure -- 21 THE COURT: Well, we can assume our way 22 through that for right now. So if the prohibition</p>
<p style="text-align: right;">30</p> <p>1 uninhabitable due to a threat. A threat means I 2 think the harm has not occurred yet necessarily. 3 It's the risk of the harm. 4 So I'm not sure -- and is your position 5 that this declaration of uninhabitability can't 6 apply to everybody's pool and everybody's gym; it 7 has to be individual? 8 MR. SILVERBERG: That is the way we read 9 it, as something required with respect to the 10 insured location, Your Honor. And, also, the 11 prohibition -- and I understand what Your Honor is 12 saying, but there was no inability or 13 inaccessibility of persons to those areas. I 14 understand that the operations -- the activities, 15 whether it's a restaurant or whether it's a gym -- 16 the activities ceased because of the civil 17 authority orders -- these general state and local 18 civil authority orders, but, in fact, there was no 19 uninhabitability and there was nothing specific for 20 those particular locations. 21 THE COURT: So I want to focus, then, 22 again on this uninhabitability question. So, in</p>	<p style="text-align: right;">32</p> <p>1 is only on customers and not on employees, that 2 means it has not been declared uninhabitable. Is 3 that your position? 4 MR. SILVERBERG: Yes, Your Honor. 5 THE COURT: Okay. All right. I 6 understand that. 7 MR. SILVERBERG: So going back, Your 8 Honor, to my argument -- and it does pretty much -- 9 you know, and I would -- going back to the 10 argument, I think we have sort of covered on the 11 physical loss or damage, and we did -- and, you 12 know, we did find out about a couple of decisions. 13 In fact, I just found out about another decision 14 while I was in the waiting room of this Webex where 15 another court yet again, involving a sports 16 facility, found no physical loss or damage. 17 So I realize that there's no shortage of 18 case law on that point, but the point with the 19 physical loss or damage is all the other coverages, 20 putting aside, again, the contagious disease 21 endorsement. 22 And I would note, with respect to the</p>

33

1 contagious disease endorsement, it's subject to a
2 \$1 million sub-limit. It's not per location. And
3 that's clear from the declaration page of the
4 policy. It's a very limited policy.
5 But all the other coverages under
6 which -- counts under which Plaintiffs are seeking
7 coverage, putting aside the endorsement we just
8 discussed, all require direct physical loss of or
9 damage to, whether it's civil authority, whether
10 it's ingress/egress --
11 THE COURT: Well, they didn't make a
12 claim on ingress and egress. I think we're all
13 agreed on that.
14 MR. SILVERBERG: Okay. They all require
15 some -- they all require physical loss or damage
16 but by a covered cause of loss. So, again, it all
17 goes back to sort of the threshold requirement here
18 that there be physical loss or damage, and it's our
19 position that -- even if there were the presence of
20 COVID -- and by the way, while they alleged they
21 believed COVID exists, there's no evidence of
22 COVID. But even, you know, assuming for purposes

34

1 of the demurrer that's not physical loss or damage,
2 at least according to the great weight of authority
3 nationwide.
4 Now, in addition, even if one were to get
5 past that argument, there is a virus exclusion in
6 the policy.
7 THE COURT: Okay.
8 MR. SILVERBERG: And that exclusion has
9 been upheld by various courts around the company
10 [verbatim]. The policy, it's a contamination
11 exclusion, and I understand my co-counsel has a
12 separate exclusion which he also wants to speak to
13 whenever Your Honor would like.
14 But the contamination exclusion, it
15 defines -- the policy defines contamination has to
16 include virus and it's clear that it would apply
17 here.
18 Now, you know, the other thing that I
19 think is notable is that, you know, when I keep
20 saying there's 300-plus cases, that's a fact.
21 Many, many, many of those cases where the party --
22 where the insurers move to dismiss the complaint or

35

1 to dismiss the pleadings, you know, they argued in
2 the first instance no physical loss or damage, and
3 in the alternate -- and in the second instance,
4 even if it is, the virus exclusion applies.
5 The overwhelming majority or many of
6 those cases don't even get to the virus exclusion,
7 and we submit, Your Honor, the same results should
8 happen here. With respect to -- but if Your Honor
9 does consider it, the virus exclusion, there's no
10 question that COVID is a virus.
11 Now, you know, we understand Plaintiff
12 has argued why you need a virus exclusion, a virus
13 doesn't constitute physical loss or damage. You
14 know, a couple of responses to that. First of
15 all -- and certain decisions have even made this
16 remark in dealing with this very same argument.
17 A belt-and-suspenders approach by an
18 insurance company to make sure it doesn't have to
19 deal with the issue doesn't -- isn't -- doesn't
20 serve as an acknowledgment that virus is physical
21 loss or damage.
22 Another point which we think is worth

36

1 making is there are numerous policies that insure,
2 among other things, livestock. Livestock is
3 property and virus can kill livestock. So it's not
4 necessarily inconsistency. And, frankly, when you
5 get to the rules of construction in Virginia and
6 elsewhere, the policy should be read to make sense
7 and not to be -- and not to not make sense. And
8 we, again -- so we would submit for certain that
9 the virus exclusion does apply here, if you even
10 get to it. And as I noted, we don't think you get
11 to it.
12 Now, another issue that Plaintiff has
13 raised that I'd like to address is something called
14 a Louisiana endorsement. With respect to
15 Louisiana, that took out the word "virus" from the
16 contamination exclusion. Again, we don't think you
17 get to the contamination exclusion here, but the
18 argument that the Louisiana endorsement wipes out
19 "virus" for all locations simply has been rejected
20 by numerous courts already, including most recently
21 the federal district court in Pennsylvania. It's
22 one of the cases we just sent you, Babcock (ph),

<p style="text-align: right;">37</p> <p>1 which I note --</p> <p>2 THE COURT: What does it do in Louisiana?</p> <p>3 MR. SILVERBERG: What is it doing --</p> <p>4 THE COURT: And we have a property in</p> <p>5 Louisiana here; right?</p> <p>6 MR. SILVERBERG: Yeah.</p> <p>7 THE COURT: So what does it do in</p> <p>8 Louisiana for that property?</p> <p>9 MR. SILVERBERG: With respect to this</p> <p>10 case, nothing because it's not physical loss or</p> <p>11 damage in the first instance. And there are</p> <p>12 Louisiana cases that say that.</p> <p>13 Now, I would acknowledge, Your Honor,</p> <p>14 that if this were a -- you know, if this were a</p> <p>15 sole Louisiana location and if there were physical</p> <p>16 loss or damage, you know, or a finding of physical</p> <p>17 loss or damage, then we would not have the virus</p> <p>18 exclusion in that particular -- we would not have</p> <p>19 virus as part of the definition of "contamination."</p> <p>20 THE COURT: Right. But the Louisiana --</p> <p>21 the Louisiana endorsement talks about basically any</p> <p>22 irritant. That's the language that it uses.</p>	<p style="text-align: right;">39</p> <p>1 the exact same policy wording. The Court went to</p> <p>2 great length in rejecting all of the insured's</p> <p>3 argument, including that the Louisiana endorsement</p> <p>4 should apply across the border. That involved</p> <p>5 department stores with locations -- various</p> <p>6 locations around the country, and we essentially --</p> <p>7 it's our position here, and that's the same exact</p> <p>8 argument we have made here. With the exception of</p> <p>9 Louisiana, it does not (inaudible).</p> <p>10 And, again, at the risk of repeating</p> <p>11 myself, like the 300 other courts around the</p> <p>12 country, we don't think you get to the exclusion</p> <p>13 anyway because it's not physical loss or damage.</p> <p>14 THE COURT: I understand. I understand.</p> <p>15 Okay. Go ahead. Anything else on your argument?</p> <p>16 MR. SILVERBERG: You know, the only other</p> <p>17 thing I would say at this point, Your Honor, other</p> <p>18 than to answer whatever questions, Your Honor may</p> <p>19 have, is when you look at the case, this is really</p> <p>20 a loss of use case, and that's excluded, and we</p> <p>21 noted that in our policy. There is a loss of use</p> <p>22 exclusion.</p>
<p style="text-align: right;">38</p> <p>1 MR. SILVERBERG: Yeah, yeah. And with --</p> <p>2 THE COURT: I'm trying to think what</p> <p>3 falls outside of an irritant. Why would -- I mean,</p> <p>4 it almost seems like, by limiting the language, you</p> <p>5 have substituted something that is arguably</p> <p>6 broader, an irritant. I mean, is a COVID-19, you</p> <p>7 know, virus -- the COVID 2 virus an irritant?</p> <p>8 Irritant seems very broad. It would seem to cover</p> <p>9 a lot of ground.</p> <p>10 MR. SILVERBERG: You know, I am not --</p> <p>11 you know, I'm not prepared to say if a virus is an</p> <p>12 irritant, but what I would say, it's limited to</p> <p>13 Louisiana. There are some 31 state-specific</p> <p>14 endorsements, and, again, this argument has been</p> <p>15 raised several times that the Louisiana endorsement</p> <p>16 suddenly wipes out virus for all locations under</p> <p>17 the policy. That's been rejected. I think we</p> <p>18 cited at least two cases where that specific</p> <p>19 argument has been rejected.</p> <p>20 Just recently, the Eastern District of</p> <p>21 Pennsylvania -- and it's one of the cases we sent,</p> <p>22 Babcock. And I would note, Your Honor, that it's</p>	<p style="text-align: right;">40</p> <p>1 Yes, to some extent, they lost the</p> <p>2 ability to use property, but there's no tangible</p> <p>3 physical loss or damage to the property. And the</p> <p>4 policy -- the threshold touched onto this policy is</p> <p>5 direct physical loss of or damage to property.</p> <p>6 That's an issue that's been answered in favor of</p> <p>7 the insurers time and time again in states all over</p> <p>8 the country.</p> <p>9 THE COURT: But the insurers have also</p> <p>10 lost that argument in other courts, haven't they?</p> <p>11 MR. SILVERBERG: Oh, I'm not saying we're</p> <p>12 batting a thousand, Your Honor, and I'm not -- I'm</p> <p>13 for sure not saying that but --</p> <p>14 THE COURT: If all 50 states are close</p> <p>15 enough, you know, follow the same rules of</p> <p>16 construction, what would you say accounts for these</p> <p>17 differences in construing what is essentially the</p> <p>18 same language?</p> <p>19 MR. SILVERBERG: You know, I have to be</p> <p>20 careful here because I'm on the record.</p> <p>21 THE COURT: Well, let's just pretend</p> <p>22 that's not true.</p>

<p style="text-align: right;">41</p> <p>1 MR. SILVERBERG: Listen, there are -- 2 there are -- listen, there are judges in courts -- 3 you know, let me back up a minute. What is most 4 remarkable to me, because I have been -- 5 notwithstanding my youthful looks, I have been 6 doing this for quite a while, and, you know, there 7 are jurisdictions and there are courts who are not 8 necessarily known for going out of their way for 9 insurance companies in coverage disputes. And 10 here -- and, yes, there are exceptions and there 11 are, as other courts have described Elegant Massage 12 outliers. And I'm talking about state courts, 13 federal courts. It's really been across the board. 14 States like Florida, you know, that can -- from 15 time to time, have been known to be tough on 16 insurance companies. 17 This has really been across the board. 18 Are we batting a thousand? No, we're not batting a 19 thousand. And I can't justify or know the reasons 20 why courts here and there have come down the other 21 way. You know, I can say that Elegant Massage was 22 wrongly decided. I do believe it was wrongly</p>	<p style="text-align: right;">43</p> <p>1 quickly, a couple of the arguments that the 2 plaintiff makes just to our exclusion. The first 3 is they suggest that there's been no release or 4 migration or discharge, escape, or dispersal of the 5 virus on the insured premises, and, therefore, this 6 exclusion wouldn't apply. 7 Just the plain -- Virginia follows the 8 rules of contract interpretation of interpreting 9 the words as to their plain meaning. "Dispersal" 10 clearly means to spread widely under the Webster's 11 Dictionary definition, and all you need to do is 12 look at their complaint, Your Honor. You can start 13 at paragraph 130, and you can go for 10 or 15 or 20 14 paragraphs forward, but just looking at 130, they 15 allege one way SARS-CoV-2 spreads is in the air. 16 When an infected person breathes, speaks, coughs or 17 sneezes, thousands of droplets carrying SARS-CoV-2 18 physically permeated the air around the person. 19 And it goes on from there. 20 It's clearly a dispersal of the virus on 21 the premises that they allege triggers coverage. 22 And to be sure, just three days ago, in the Teal</p>
<p style="text-align: right;">42</p> <p>1 decided. I believe Judge Jackson was wrong. I 2 don't believe he followed the rules of 3 construction. I mean, it is clear and unambiguous, 4 "direct physical loss or damage." 5 So, you know, do I have to bat a thousand 6 to win? I hope not. I think the facts, I think 7 the policy wording, I think the logic is on our 8 side, and it's for those reasons, Your Honor, that 9 we respectfully submit that our demurrer be 10 granted. 11 THE COURT: All right. Thank you. 12 There's further argument on the demurrer 13 for the defense? 14 MR. INGERMAN: Yes. Thank you, Your 15 Honor. Brett Ingerman on behalf of Interstate. We 16 have a pollution contamination exclusion that is 17 limited only to Interstate. It also does not have 18 the Louisiana endorsement issue associated with it. 19 We think that the plain language of that exclusion 20 bars coverage here and warrants grant of the 21 demurrer. 22 Let me just address just a couple --</p>	<p style="text-align: right;">44</p> <p>1 (ph) Metro Entertainment case out of the Northern 2 District of Oklahoma, one of the cases we provided 3 to Your Honor this morning, the plaintiff made the 4 exact same argument there as to a nearly identical 5 exclusion, and what the Court said there was -- and 6 I'm quoting from the opinion now at page 20 -- they 7 say, "COVID-19 travels by discharge, dispersal, or 8 release. As COVID-19 spreads when an infected 9 person breathes out droplets in very small 10 particles that contain the virus, these droplets 11 and particles can be breathed in by other people or 12 land on their eyes, noses, or mouth. Accordingly, 13 the plain language of the policy's pathogenic 14 materials exclusion excludes losses and damage 15 caused by COVID-19." 16 It was a nearly identical exclusion. It 17 didn't even use the word "virus"; it used the word 18 "pathogen" but the Court still found that it 19 applied. 20 The same was true in the Circus Circus 21 versus AIG case out of Nevada. They said the 22 plaintiff's own pleading support a finding that the</p>

45

1 virus has been released, dispersed, and discharged
2 into the atmosphere.
3 And this Willow versus Lexington case out
4 of the Western District of Missouri finds the same
5 thing.
6 Just one other argument I wanted to
7 address, Your Honor, and then I'm happy to take any
8 questions on this exclusion. There is a reference
9 in the plaintiff's brief to Elegant Massage
10 rejecting a virus exclusion, so let me just address
11 that quickly.
12 In that case, it was very clear that the
13 plaintiff actually was not alleging that if losses
14 were caused by the virus. In that case, as Judge
15 Gaffin (ph) said, he said, quote, "Here, Plaintiff
16 is neither alleging that there is a presence of the
17 virus at the covered property nor that a virus is
18 the direct cause of the property's physical loss."
19 He goes on to explain that what the
20 plaintiffs there are alleging was that their losses
21 were caused by the civil authority orders. There's
22 a suggestion that Judge Jackson determined that --

46

1 and the anti-concurrent causation language in the
2 policy here also had not been recognized in
3 Virginia. And I think that either the parties did
4 not bring to his attention or he was not aware of
5 the Lower Chesapeake versus Valley Forge case,
6 which is cited in our brief, Virginia Supreme Court
7 case from 2000, that expressly enforced a similar
8 anti-concurrent causation provision in an insurance
9 policy.
10 So, Your Honor, we believe that, in
11 addition to all of the reasons that Mr. Silverberg
12 laid out that we adopt on behalf of Interstate,
13 that there's a further basis to grant the demurrer
14 as to Interstate with respect to its pollution and
15 contamination exclusion.
16 THE COURT: All right. Thank you.
17 All right. Then arguing for plaintiffs.
18 MR. GEHRT: Yes, Your Honor. Thank you.
19 So lots to unpack, and I'll try to do that in an
20 orderly fashion.
21 THE COURT: I appreciate it. I agree
22 with you. It's a lot to unpack.

47

1 MR. GEHRT: So I think, analytically,
2 where I start on these cases, as my co-counsel, I
3 have read, you know, hundreds of these. So,
4 analytically, where I start is that we're on a
5 demurrer here, and, on a demurrer, you accept as
6 true all facts that are properly pled as well as
7 all reasonable inferences from those facts. And,
8 here, we have a complaint -- specifically
9 paragraphs 129 through 149 -- that detail the
10 physical loss or damage caused by SARS-CoV-2. We
11 have paragraph 133 which details how the presence
12 of SARS-CoV-2 on surfaces turns them into fomites,
13 which is an object that's likely to spread
14 infection. At 134, details how SARS-CoV-2 causes
15 threat of physical damage by attaching to property
16 and rendering it unusable.
17 THE COURT: Let me stop you right there.
18 It sounds to me that that's -- I'm not sure that's
19 a fact so much as a conclusion that you're making.
20 You're saying that it causes physical damage by --
21 you know, I'm looking at 134 right now. Causes
22 physical damage and physical loss by, among other

48

1 things, physically permeating, attaching to,
2 binding to, and corrupting.
3 You know, I think your assertion of fact
4 there is it permeates, it attaches, it binds, it
5 corrupts, it destroys, distorting. But I think
6 that whether that amounts to physical damage,
7 that's a legal -- isn't that -- that's the ultimate
8 issue here on this construction of the contract.
9 And so I'll accept -- I think I would be
10 required to accept all your other verbs there, but
11 to accept that this equals that, which is stated
12 and meant by the contract, I'm not sure that falls
13 into a fact that, therefore, answers the question.
14 MR. GEHRT: Yeah, I don't disagree with
15 that, Your Honor. The facts as alleged, the way in
16 which the virus behaves, the way in which it
17 attaches to property, the way in which it alters
18 air space as alleged in paragraph 135, those must
19 be accepted as true. Whether or not that
20 constitutes threat of physical loss or damage,
21 that's for this Court.
22 But given those factual allegations, I

<p style="text-align: right;">49</p> <p>1 think it's hard -- you'd be hard-pressed to say 2 that that is not direct physical loss or damage as 3 those -- as that phrase has been interpreted. 4 So we have alleged, for example, a 5 physical alteration. That's what the insurers have 6 argued that we need to allege. We have alleged 7 that. That's a factual allegation. A physical 8 alteration is a factual allegation which satisfies 9 the direct physical loss or damage, you know, 10 operative phrase. 11 And so, you know, ultimately, these are 12 questions of proof, and Plaintiff will be put to 13 that proof, but that's not an issue here today. 14 Plaintiffs have, you know, factual allegations on 15 these issues are specific and they adequately 16 provide the insurers with notice as to what we 17 intend to prove, and that's, in and of itself, is 18 enough to defeat the motion. 19 But turning to the critical language, the 20 direct physical loss or damage, counsel 21 acknowledged one of the arguments we made, which is 22 that this is -- there's a logical flaw in the</p>	<p style="text-align: right;">51</p> <p>1 virus exclusions attempting to exclude losses 2 caused by viruses. 3 If you need an exclusion, then, by 4 definition -- in an all-risk policy, then, by 5 definition, the coverage grants is satisfied. And 6 it's notable here -- and the insurers here used a 7 much more broad validity exclusion -- 8 THE COURT: Can you -- can you respond to 9 the belts-and-suspenders argument that isn't it 10 just as reasonable to determine that it's a 11 belts-and-suspenders approach that it's not 12 included but just to make sure that some clever 13 lawyer somewhere doesn't argue that it is, we're 14 going to put it in there also as an exclusion? 15 MR. GEHRT: Well, Your Honor, I don't 16 think the belts and suspenders is consistent with 17 the rules of contract interpretation. There's, you 18 know, clear case law suggesting that words in a 19 contract must be given meaning and there can't be 20 any surplusage and you can't interpret a contract 21 to render a certain provision meaningless. 22 And so if the direct physical loss or</p>
<p style="text-align: right;">50</p> <p>1 insured position which is that, if a virus cannot 2 cause loss, then why do you attempt to exclude 3 virus-related losses? 4 We cited the Atwells Realty Corporation 5 case out of Rhode Island from last month which said 6 that the virus exclusion would be superfluous and 7 rendered meaningless if viruses cannot cause 8 covered losses in the first place. 9 Now, to be clear, Plaintiffs are -- 10 THE COURT: Let me just slow down for a 11 second and process what you just said so I make 12 sure I get it. 13 MR. GEHRT: Sure. 14 THE COURT: Give it to me one more time 15 because it sounded good. 16 MR. GEHRT: Maybe I stop there. The 17 point is that the insurer's theory -- and, indeed, 18 the insurance industry's theory -- is that losses 19 caused by viruses and the presence of virus in 20 property cannot cause direct physical loss or 21 damage, and, therefore, do not trigger the coverage 22 agreements, while, at the same time, they adopt</p>	<p style="text-align: right;">52</p> <p>1 damage was interpreted as a matter of law to not 2 apply to losses caused by viruses, then the virus 3 exclusion, as interpreted by the insurers -- not 4 our interpretation but as interpreted by the 5 insurers -- would be rendered meaningless. It 6 would just be surplusage, and, again, would be belt 7 and suspenders and that's not how the contracts are 8 meant to be interpreted. 9 THE COURT: Oh, okay. Go ahead. 10 MR. GEHRT: So setting aside the logical 11 issues there, I think, you know, we have indicated 12 in our briefing that we believe that Elegant 13 Massage provides the appropriate structure for 14 analyzing a direct physical loss of or damage to 15 property and the insureds haven't really identified 16 a flaw in it other than to characterize it as an 17 outlier, but the question is, is whether or not it 18 applied the contractual interpretation rules in 19 Virginia appropriately, and we believe it did. 20 And the starting point for that analysis 21 is whether the disputed policy language is 22 susceptible to more than one meaning. If it is,</p>

<p style="text-align: right;">53</p> <p>1 then the Court must construe that language in 2 Plaintiff's favor. 3 And I think it's important to note 4 here -- and I make this point as much as I can -- 5 is that it's not a contest between the 6 reasonableness of the parties' respective 7 interpretations, even if Plaintiffs believe that 8 theirs is controlling. 9 In order for the insurer to prevail here, 10 they must show their interpretation of the only 11 reasonable interpretation, and we would submit that 12 they have not done that and, indeed, cannot do 13 that. And the insurer in Elegant made the same 14 argument as the insureds do here, that direct 15 physical loss or damage requires some physical or 16 structural alteration. 17 And although we allege that -- in our 18 view, allege that physical and structural 19 alteration, the Court in Elegant went through a 20 very thorough analysis and walked through dozens of 21 cases that have interpreted this phrase, and they 22 found the phrase has been subject to, quote, "a</p>	<p style="text-align: right;">55</p> <p>1 virus. 2 And so the Court likened the presence of 3 the virus to other cases that are cited in the 4 decision. For example, asbestos, ammonia, odor, 5 toxic gases, all of those, although not resulting 6 in a physical alteration or structural damage to 7 the property, all of those have been held to be 8 direct physical loss or damage to property. 9 THE COURT: Yeah, but isn't the issue on 10 a lot of those cases that the remediation of that 11 requires rather invasive and physical destruction 12 of the property to remove, you know, a 13 chemical-laden carpeting or the Chinese drywall or 14 to remove the asbestos? That requires quite an 15 invasive process to rid the building of that 16 condition as opposed to simply wiping down exposed 17 surfaces. Is that a distinction that makes any 18 difference? 19 MR. GEHRT: No, you know, Your Honor, I 20 would submit that it doesn't. Those cases are not 21 necessarily premised on the remediation efforts, 22 although, you know, the remediation efforts for</p>
<p style="text-align: right;">54</p> <p>1 spectrum of interpretations" in Virginia. 2 Now, in order for the insurer to prevail, 3 they must establish that those interpretations, all 4 of them are unreasonable; that only one is 5 reasonable. And they haven't done that. Some 6 courts have said that direct physical loss or 7 damage is structural damage. Some courts have said 8 that direct physical loss or damage is a distinct 9 and demonstrable physical alteration, although that 10 language isn't in the policy but that's the 11 interpretation. And yet others have said, if the 12 property is rendered uninhabitable or dangerous to 13 use, the so-called functional impairment argument, 14 that satisfies the direct physical loss or damage. 15 And so, in light of those varied 16 interpretations, similar to varied interpretations 17 that have been presented here, the Court held it 18 was plausible that Plaintiffs experienced direct 19 physical loss when the property was deemed 20 uninhabitable, inaccessible, and dangerous to use 21 by the executive orders and because of the risk of 22 spreading COVID-19, an invisible but highly lethal</p>	<p style="text-align: right;">56</p> <p>1 various things might be significant. They're based 2 on the fact that humans can't use them. It's not 3 that they can't use them while they're being 4 remediated; it's that humans can't be present while 5 the asbestos is there, while the noxious odor is 6 there, while -- 7 THE COURT: And how is that any different 8 than just a loss of use, which is excluded from the 9 policies? 10 MR. GEHRT: It's not, Your Honor, and I 11 would say -- let me address the loss of use 12 exclusion because that's one of the arguments that 13 the insurers have raised as a basis to disagreement 14 with Elegant. The loss of use exclusion only 15 applies to property -- it's in the property damage 16 section of the policy, Section 3 of the policy. It 17 doesn't apply to time element or business 18 interruption losses. 19 THE COURT: There's nothing in the 20 exclusions that limit them to that. The exclusions 21 are very broad, and it doesn't say -- it's not so 22 limited. In fact, there's another section of the</p>

57

1 policy that states that, in addition to the other
2 exclusions, these other -- you know, these later
3 exclusions apply. I think the policy itself knocks
4 that argument out. And if you give me a minute, I
5 can tell you where it existed, but I remember
6 seeing that in there. I think the plain language
7 of the policy knocks that argument down.
8 MR. GEHRT: Yes, Your Honor, I'll address
9 that. It's 4.02.05, which is the lead-in to the
10 Section 4 exclusions. So Section 3 of the policy
11 applies to property damage. Section 4 of the
12 policy applies to time element or business
13 interruption, as it's commonly referred to.
14 And the lead-in to those -- it's a
15 separate set of exclusions for time element losses.
16 It says, "In addition to exclusions elsewhere in
17 the policy, the following exclusions apply to time
18 element coverage."
19 Now, I don't -- I would submit that that
20 lead-in does not clearly and ambiguously
21 incorporate in all of the Section 3 exclusions into
22 the section -- to the Section 4 exclusion. But I

58

1 think it's helpful -- and we pointed this out in
2 our briefing -- that there is some redundancy which
3 supports the reasonableness of our interpretation.
4 There is some redundancy between the two sets of
5 exclusions, which would render an interpretation
6 that Section 4 only applies to the time element,
7 reasonable. And that is that the Section 4
8 exclusions include an exclusion for strikes or
9 other work stoppage, and the Section 3 exclusions
10 also include an exclusion for loss or damage
11 arising from the interference by strikers.
12 If, indeed, the Section 3 exclusions were
13 incorporated into the Section 4 exclusions -- and
14 we would submit that's not clearly and ambiguously
15 done, but if that were the case, then why would
16 there be a need for redundant exclusions for
17 strikes and strikers?
18 So that, I think, supports the reasonable
19 interpretation that loss of use is not incorporated
20 in a time element. But the argument does not hinge
21 necessarily on that. The purpose of the loss of
22 use exclusion -- and we reference this -- the

59

1 Henderson Restaurant Systems, Incorporated, versus
2 Zurich out of the Northern District of Ohio earlier
3 this year acknowledge this as well, which is that
4 the loss of use exclusion is really meant to bar
5 compensatory damages for property damage. And if
6 it were to apply to business interruption losses,
7 it would have essentially vitiate that entire
8 coverage.
9 And so it can't be interpreted as
10 precluding business interruption losses arising
11 from the loss of use. It only applies to the
12 compensatory damages arising out of property
13 damage. So I would submit that the Court's
14 discussion there should also be considered.
15 And I'll also -- I also want to make a
16 point -- and it's related -- which is -- it's a
17 point that the Elegant Massage court made. And the
18 Court said, quote, "Defendants were fully aware of
19 cases that interpreted intangible damage as a
20 direct physical loss promulgated before the
21 issuance of the plaintiff's policy. Since
22 Defendants did not explicitly include structural

60

1 damage in the language, the policy may be construed
2 in favor of more coverage based on plausible
3 interpretations."
4 I would submit, Your Honor, that the same
5 is true here. As Plaintiffs allege in paragraph 94
6 of their complaint, the insurers were aware of
7 numerous cases -- and we have detailed them in the
8 complaint -- holding that the presence of a
9 hazardous substance in the air and on property
10 causes direct physical loss or damage. Indeed,
11 those cases include TravCo Insurance versus Ward,
12 which is another Eastern District of Virginia case.
13 And in light of the knowledge of these
14 cases -- in light of the insured's knowledge of
15 these cases, I would submit that the phrase "direct
16 physical loss or damage" should be construed in
17 favor of coverage under Virginia law. They are
18 aware of these cases. They did not make any
19 clarification in their policy that they interpreted
20 "direct physical loss or damage" to be limited to a
21 physical altercation of property or structural
22 damage of property. And in light of these cases

61

1 holding otherwise, if they wanted to so limit
2 coverage, they should have, and they didn't do it.
3 So -- and I believe the insurers --
4 excuse me, the plaintiffs, therefore, get the
5 benefit of the doubt under the contractual
6 interpretation rules.
7 The insurers also reference the period of
8 liability as a basis to support their
9 interpretation of direct physical loss or damage,
10 essentially that it limits it, it constrains that
11 phrase. And the period of liability for building
12 equipment -- and I'll be quick -- just simply
13 states -- defines it as the period starting from
14 the time the physical loss or damage and ending
15 when -- with due diligence and dispatch, the
16 building and equipment could be repaired or placed
17 and made ready for operations in the same or
18 equivalent physical and operating conditions that
19 existed prior to the damage.
20 So the period of liability makes it clear
21 that it doesn't determine whether there's been an
22 insured loss, it determines how long there's been

62

1 an insured loss. And the insured's focused on
2 repair or replace and suggests that that implies
3 some sort of limitation on direct physical loss or
4 damage, but the policy is clear that the property
5 must be made ready for operations under the same or
6 equivalent physical and operating conditions. In
7 this case, that would be when the virus is no
8 longer present or when the orders are lifted, the
9 orders that are limiting the functional impairment
10 of their property.
11 But even if repair or replace were the
12 focus and the Court wanted to dig in on those
13 words, "repair" has been defined to mean to restore
14 to a sound or healthy state. Applying that
15 definition to this policy language, the property is
16 restored to a sound or healthy state when the virus
17 is no longer present or when the civil authority
18 orders are issues -- are lifted so that they can
19 continue with the full operations that existed
20 prior to the pandemic.
21 So the period of liability, in our view,
22 is neither here nor there with respect to the

63

1 interpretation of direct physical loss or damage.
2 The question is whether or not that phrase is
3 susceptible to different interpretations, and we
4 would submit that, under the rules of Virginia --
5 of policy interpretation in Virginia, it is and,
6 therefore, must be interpreted in our favor.
7 I wanted to focus on the exclusions,
8 unless Your Honor has any questions on any of the
9 points raised with respect to direct physical loss
10 or damage.
11 THE COURT: No. I think I got your -- I
12 understand your positions on those. So go ahead to
13 the exclusions.
14 MR. GEHRT: Sure. So the first focus is
15 the contamination exclusion, and I'll focus -- I'll
16 start on Zurich because there is some unique
17 characteristics to that policy as opposed to the
18 Interstate policy.
19 The Zurich policy has an amendatory
20 endorsement, as counsel noted, that deletes "virus"
21 from the definition of "contaminant." And the
22 amendatory endorsement is very clear. It states in

64

1 bold letters, as other endorsements do, that this
2 endorsement changes the policy; please read
3 carefully.
4 And so we do. Viruses are not
5 contaminants, and, therefore, the policy does not
6 clearly and unambiguously exclude coverage from all
7 viruses.
8 THE COURT: Let me ask you a question
9 about that. It seems to me that you're asking me
10 to engage in a little bit of drafting history. I
11 realize it's there in the endorsement. The
12 endorsement is made part of the contract, but the
13 operative language -- you're asking me to consider
14 what they did to get to the operative language and
15 not just the operative language of the contract.
16 And I wonder if that doesn't lead me afoul of what
17 a judge should be doing when interpreting a
18 contract, which is you start with the four corners
19 of the document and what does the language that the
20 parties agree to say? And if that language is not
21 ambiguous, you don't go any further. We all agree
22 on that; right? You're nodding your head

<p style="text-align: right;">65</p> <p>1 affirmatively.</p> <p>2 MR. GEHRT: I do agree.</p> <p>3 THE COURT: So why do I consider what</p> <p>4 they took out?</p> <p>5 MR. GEHRT: Because we are -- I guess I'm</p> <p>6 struggling a little bit with the question, but I</p> <p>7 think what you're saying is that -- I don't think</p> <p>8 we're injecting any history into the discussion.</p> <p>9 We're limiting the interpretation to the four</p> <p>10 corners of the document; namely, in this case now,</p> <p>11 the amendatory endorsement, which clearly says</p> <p>12 that, you know, it modifies the policy and removes</p> <p>13 a definition --</p> <p>14 THE COURT: It says what they did, but</p> <p>15 you're not asking me to simply apply the language</p> <p>16 that is the operative language. You're asking me</p> <p>17 to look at what they did to get to the operative</p> <p>18 language.</p> <p>19 MR. GEHRT: I think the operative</p> <p>20 language is that "contaminant does not include</p> <p>21 viruses." The operative language -- the definition</p> <p>22 of "contaminant" that is included in the amendatory</p>	<p style="text-align: right;">67</p> <p>1 THE COURT: Okay. So the Louisiana</p> <p>2 endorsement, that's the one that uses the</p> <p>3 "irritant" language.</p> <p>4 MR. GEHRT: Correct.</p> <p>5 THE COURT: Why -- it's -- why -- what is</p> <p>6 an irritant and how is that narrowed? The irritant</p> <p>7 seems pretty broad. I can think of lots of things</p> <p>8 that irritate me. Nobody here, of course. And</p> <p>9 the -- it seems -- irritant is so broad. Why</p> <p>10 should I read this as somehow being narrowed?</p> <p>11 MR. GEHRT: Well --</p> <p>12 THE COURT: -- "solid liquid, gaseous,</p> <p>13 thermal, or other irritant." And the "including</p> <p>14 but not limited to", I don't think that really</p> <p>15 helps me one way or another.</p> <p>16 MR. GEHRT: It helps in that it helps</p> <p>17 define -- again, give context for what's being</p> <p>18 excluded, but I think -- the starting point would</p> <p>19 be I think what are -- from a layperson's</p> <p>20 perspective and from a reasonable insured's</p> <p>21 perspective, you're looking at this policy and you</p> <p>22 have originally -- and this is the plain language</p>
<p style="text-align: right;">66</p> <p>1 endorsement.</p> <p>2 THE COURT: Let's -- let me get to that</p> <p>3 endorsement because I wanted to review it with you.</p> <p>4 And that's -- where am I going to find that</p> <p>5 endorsement? Does it have a number on it?</p> <p>6 MR. GEHRT: Unfortunately, no, Your</p> <p>7 Honor. But it is in -- it's Exhibit A to the</p> <p>8 complaint, and the best I can do is give you --</p> <p>9 it's Edge 219(c), which, if you start flipping</p> <p>10 through the policy, you'll see it's essentially</p> <p>11 sequential -- not quite but largely sequential once</p> <p>12 you get to the endorsements. And so at the bottom</p> <p>13 is 219(c).</p> <p>14 THE COURT: All right. Let me get there.</p> <p>15 Just give me a moment.</p> <p>16 MR. GEHRT: Sure.</p> <p>17 THE COURT: So the -- let's see, 219(c).</p> <p>18 Okay.</p> <p>19 MR. GEHRT: Page 3 of 3, the last page.</p> <p>20 THE COURT: Oh, that's the -- is it the</p> <p>21 Louisiana endorsement that we're looking at?</p> <p>22 MR. GEHRT: Yes, Your Honor.</p>	<p style="text-align: right;">68</p> <p>1 of the policy; this is not reading in any intent of</p> <p>2 any kind, this is the plain language -- originally,</p> <p>3 you have contaminants defined to include viruses,</p> <p>4 and you now remove it and limit it to the same</p> <p>5 subset of contaminants but absent viruses. I think</p> <p>6 the reasonable interpretation, at the very least,</p> <p>7 is that viruses are no longer subject to the</p> <p>8 contamination exclusion.</p> <p>9 THE COURT: All right. And you realize</p> <p>10 that whole argument rests on going beyond the</p> <p>11 operative language to reach that conclusion.</p> <p>12 MR. GEHRT: It's -- I wouldn't say --</p> <p>13 it's not beyond the operative language in the sense</p> <p>14 of the operative language of the contract says this</p> <p>15 is deleted and this is added.</p> <p>16 THE COURT: Okay. I see that argument.</p> <p>17 I see that. Okay.</p> <p>18 MR. GEHRT: But I would also note that,</p> <p>19 even if we're assuming -- even if I were to go down</p> <p>20 that road and say, Well, now, viruses are no longer</p> <p>21 part of the operative language, the only operative</p> <p>22 language where I put blinders on and the only</p>

<p style="text-align: right;">69</p> <p>1 operative language I look at is simply the 2 definition that is now a part of the policy, that 3 language still has to be interpreted narrowly in 4 favor of coverage. 5 So if there's any ambiguity as to whether 6 or not an irritant is a virus -- and I would submit 7 that a virus that causes -- the virus itself is not 8 a solid liquid, gaseous, thermal irritant -- I know 9 it says "or other," which would be a catch-all but 10 it's not an irritant in the sense of, you know, 11 soot or chemicals or things of that nature. It 12 infects people and causes them to be sick. And I 13 guess it's irritating to be sick, but the virus 14 itself is not an irritant to people. 15 And that actually brings me to -- raises 16 another point that counsel made that I think I'd 17 like to speak on. It was a point raised that the 18 virus is a mortal danger to human beings. That's 19 true. It absolutely is a mortal danger to human 20 beings, and that's the basis for the property 21 damage. To use that as an argument suggests that, 22 oh, it doesn't harm property, it harms people, but</p>	<p style="text-align: right;">71</p> <p>1 end up with all sorts of conflicting provisions, 2 which have nothing to do with the exclusions. A 3 lot of it has to do with how can you terminate one 4 of these contracts or, you know, whatever. And it 5 seems to become a hopeless mess jumbled of 6 conflicting provisions which then, by your 7 analysis, would apply -- and how does one make 8 sense of that, except to say, Well, this must only 9 apply to this particular state? 10 MR. GEHRT: Well, first, I would note, I 11 believe as you did, I think, that our 12 interpretation -- the conflicts that they're 13 referring to has nothing to do with what's at issue 14 here with respect to the contamination exclusion. 15 There's no conflicts created by our interpretation 16 with respect to that. 17 Zurich is really referring to other 18 potential conflicts that have really nothing to do 19 with these issues. But suffice it to say -- 20 THE COURT: But we would like to be 21 consistent in interpreting the contract. 22 MR. GEHRT: Correct, correct. I don't</p>
<p style="text-align: right;">70</p> <p>1 that's why things like asbestos and smoke and, you 2 know, in this case where they try to exclude 3 chemicals, it's not -- it's because they harm 4 people that renders the property dangerous. That's 5 the direct physical loss or damage. 6 So I would submit that the fact that it 7 is a mortal danger underscores why the policy 8 provides coverage for these types of losses. 9 THE COURT: All right. Anything else, 10 sir? 11 MR. GEHRT: Certainly. And just to make 12 clear, on the amendatory endorsement issue, counsel 13 argues that the fact of the matter that Louisiana 14 appears in the heading is dispositive here, I would 15 say that's contradicted by the policy in a number 16 of ways. 17 THE COURT: But to read it the other way 18 is to say that, because it doesn't limit itself by 19 things like the Connecticut endorsement does, it 20 limits it to Connecticut, if I applied that 21 throughout all of these endorsements -- some of 22 which say they're state limited, some don't -- I</p>	<p style="text-align: right;">72</p> <p>1 dispute that. 2 But I would say that it's Zurich that has 3 the burden of making its contract clear, and if the 4 endorsements are inconsistent -- we cited the 5 Minuteman case from the Northern District of 6 Illinois from 2004. If endorsements aren't 7 consistent, the rule is to resolve the ambiguity in 8 favor of the insured. It's not to find a way to 9 reconcile the endorsements in some way that limits 10 coverage, which is what we have to be doing here if 11 we were to interpret the amendatory endorsement as 12 only applying to Louisiana properties. 13 We would also have to violate the rules 14 of contract interpretation by rendering the 15 Connecticut language and the New York language 16 superfluous. It would be meaningless to have to 17 specify, you know, that all of that language be 18 rendered meaningless because all you have to do is 19 put the heading, which, by the way, the policy says 20 have no meaning. The policy explicitly says in 21 Section 6.20 that the titles of the various 22 paragraphs and endorsements are solely for</p>

<p style="text-align: right;">73</p> <p>1 reference and shall not in any way affect the 2 provisions to which they relate. 3 So we have to take the policy on its 4 word. The headings have nothing to do -- 5 THE COURT: Let me ask you this: How 6 does that argument affect your exclusion argument 7 that the exclusions only apply because they appear 8 under certain headings? 9 MR. GEHRT: I don't think the -- the 10 headings aren't being used to interpret it. It's 11 the structure of the policy itself. 12 THE COURT: What's the difference? I'm 13 not sure I see a difference there. 14 MR. GEHRT: I think if you look at -- if 15 you look at the -- we're looking at the plain 16 language of the policy. We're not using the 17 headings to interpret the Section 3 exclusion and 18 the Section 4 exclusions. We're talking about the 19 lead in to Section 4 and being separate and apart 20 from the exclusions in Section 3. 21 And, again, it's just a question of 22 whether or not it's clear and conspicuous -- again,</p>	<p style="text-align: right;">75</p> <p>1 District of New York earlier this year. And the 2 Court there was faced with a nearly identical 3 exclusion, and the Court held that it cannot be 4 said that the exclusion unambiguously forecloses 5 recovery on the insured's losses due to 6 contamination, and thus, the Court cannot conclude 7 that there's no reasonable basis for a difference 8 of opinion. Essentially the Court ruled that, 9 quote, "The provision is susceptible to more than 10 one interpretation and potentially compatible with 11 either parties' interpretation," and those 12 interpretations would be those advanced here by 13 plaintiffs and also by the insurers. 14 But then, finally, we would also contend 15 that the contamination exclusion as drafted is not 16 clear and unambiguous. It doesn't -- it's not 17 labeled a virus exclusion notwithstanding the fact 18 that the insurance industry had a clear standard 19 form virus exclusion available to it. They didn't 20 avail themselves of it. Instead, they threw in an 21 exclusion for contamination that doesn't contain 22 the word "virus." Virus is, you know, buried 37</p>
<p style="text-align: right;">74</p> <p>1 we're talking about exclusions here; we're not 2 talking about interpretation of coverage grants 3 either. 4 So in the context of exclusions, the 5 question is, is whether or not this clearly and 6 conspicuously incorporated into Section 4, and I 7 would submit that it's not. 8 But our argument doesn't rise and fall 9 with that; that is, of course, one argument with 10 respect to contamination exclusion. You can argue, 11 even if the Court were to take the logical leap 12 that the amendatory endorsement does not delete 13 viruses, notwithstanding the fact that there's 14 nothing in the policy language, you know, broadly 15 applying that amendatory endorsement, it's still in 16 the 501, the point we just raised, but also because 17 the contamination exclusion is limited to 18 contamination and any cost due to contamination. 19 And I'll refer -- and, therefore, it does 20 not exclude loss due to contamination. And I would 21 refer to the Court's holding in Thor Equities 22 versus Factory Mutual, which is the Southern</p>	<p style="text-align: right;">76</p> <p>1 pages later, and it essentially operates as a 2 hidden virus exclusion, and we would submit that 3 it's not clear and unambiguous on that basis as 4 well. 5 THE COURT: All right. And did you want 6 to address the pollutions contamination question? 7 MR. GEHRT: Sure, Your Honor. And I 8 think we have stated our arguments generally in the 9 brief on that issue, and that's -- 10 THE COURT: And that was the dispersal 11 that you're saying that basically comes out -- it 12 wasn't -- it doesn't fit within those verbs: 13 Release, migrate, discharge, escape, or dispersal. 14 MR. GEHRT: Correct, Your Honor. And as 15 well as the analysis -- that and the analysis 16 provided by the Court in Elegant which said that -- 17 rejected an even broader exclusion than that in the 18 same context and because -- and counsel pointed 19 this out that, there, the Court was really relying 20 on the fact that the insured was not relying on the 21 presence of the virus. 22 I would direct the Court's attention to</p>

77

1 paragraph 152 of the complaint, which we do argue
2 that the orders themselves result in the functional
3 impairment, which is the exact argument adopted by
4 the Court in *Elegant*. And so that argument would
5 be taken care of by those allegations. But,
6 otherwise, I would submit that the arguments are
7 the same.

8 THE COURT: Let me ask you sort of the
9 technical pleading question.

10 MR. GEHRT: Sure.

11 THE COURT: Are you making a claim for
12 the communicable disease coverage? I know you had
13 mentioned, you know, in your brief -- your
14 paragraph 106 and 152, interruption by communicable
15 disease. And that part of the complaint goes into
16 what your -- what the coverage is, but when you get
17 down to your actual claim of breach of contract,
18 I'm not sure you raise that explicitly as a grounds
19 for asserting that as a grounds for breach. Am I
20 reading this too technically?

21 MR. GEHRT: I would never accuse you of
22 reading it too technically but no, I -- to make

78

1 clear on the record, I would say that we are making
2 a claim under the communicable disease coverage,
3 but there are, in our view, multiple coverages that
4 apply here, which is why we focus primarily on the
5 time elements, civil authority, the dependent
6 properties. And I wouldn't -- I would caution the
7 Court not to lose sight of the dependent properties
8 or, excuse me, the attraction properties, which is
9 in the contingent time element coverage.

10 And the insureds have argued that, Well,
11 *Elegant Massage* is different because they were
12 required to shut down, and you guys didn't have to
13 shut down. And as Your Honor pointed out, well, we
14 did have to shut down portions of our property, and
15 the communicable disease coverage refers to
16 portions of property that it addressed.

17 THE COURT: And suspension provides
18 for --

19 MR. GEHRT: Slow down.

20 THE COURT: -- slow down. Right.

21 MR. GEHRT: Right, right. So I point
22 that out. But, also, the attraction properties,

79

1 for example, amusement parks, convention centers
2 that surround our hotels and, obviously, serve as a
3 major source of business and the reason why,
4 frankly, a lot of the hotels exist where they do is
5 because of these attraction properties, those have
6 been fully shut down.

7 So the arguments that we remained open
8 does not foreclose coverage under that piece
9 because those properties were shut down due to
10 direct physical loss or damage and that resulted in
11 the suspension of our business activities. So
12 that's a significant component of our claim, and I
13 just don't want it to be lost.

14 THE COURT: We have not lost that. All
15 right.

16 We have been at this a while but I'm
17 going to give Mr. Silverberg or Mr. Ingerman an
18 opportunity to respond briefly, if you wish.

19 MR. SILVERBERG: Thank you, Your Honor.
20 I'm going to try to be as brief as possible.

21 Restored to a sound and healthy state.
22 It was never not in a sound or healthy state, and

80

1 that's the point, because there was no physical
2 loss or damage. And I would just submit to the
3 Court, ask yourself, for instance, airlines,
4 hospitals, fire departments, police departments,
5 they weren't shut down because they needed to be
6 open because they were essential. Other
7 businesses, including stadiums, including hotels,
8 including bars and restaurants, they were either --
9 access was limited for a period of time because it
10 had do with the transmission of the virus person to
11 person. It had nothing to do with physical loss or
12 damage.

13 The *TravCo* case which Plaintiff cites in
14 its brief, it was Chinese drywall. The building
15 that -- the location was uninhabitable and it was
16 the property itself. Asbestos, same thing; it was
17 the property itself. That is not what we're
18 dealing with here.

19 As far as the Louisiana endorsement, the
20 very same argument has just been, two days ago,
21 rejected by the federal district court in New
22 Jersey in *Boscoff* (ph), also in the *Firebird* and

<p style="text-align: right;">81</p> <p>1 Manhattan Partners cases. These arguments are not 2 new. They have all been raised before. 3 The Thor case, that case has already been 4 criticized. First of all, it's New York and Your 5 Honor has said New York law is not controlling 6 here. It's been criticized by the Federal District 7 Court in New Jersey in Ralph Lauren. The Court, in 8 fact, said, As in Thor Properties, plaintiffs here 9 attempt to restrict the contamination exclusion to 10 expended costs only. This distinction is 11 superfluous. Indeed, the Court in Thor Equities 12 acknowledged that Plaintiffs reading the exclusion 13 could tend to render certain aspects of the 14 exclusions meaningless, arguing that the 15 conjunctive use of and specifically, quote, 16 "contamination" at any cost due to contamination, 17 including the ability to occupy property, destroys 18 Plaintiff's proffered interpretation of the 19 exclusion. 20 Finally, Elegant Message, which we have 21 made no bones about it, we think it was wrongly 22 decided and we think the federal court did not</p>	<p style="text-align: right;">83</p> <p>1 federal district court rejected Boscoff's argument 2 in Pennsylvania. 3 Unless Your Honor has questions -- we do 4 appreciate all the time and let me just say 5 personally, I also appreciate Your Honor doing this 6 by Zoom rather than in person, so thank you very 7 much. 8 THE COURT: You bet. All right. Thank 9 you. 10 And, Mr. Ingerman, do you have anything 11 you wish to add in rebuttal? 12 MR. INGERMAN: Thank you, Your Honor. 13 The only thing I'll add is that, if the Court looks 14 at the first paragraph of the pollution 15 contamination exclusion under the Clause 5 16 exclusions clause, it takes care of both of the 17 arguments that Plaintiff's counsel made with 18 respect to our pollution contamination clause 19 because it says we will not pay for loss/damage 20 cost or expense. So we don't have the issue that 21 was raised in the Thor Equities case. 22 And then it goes on to say, "Caused</p>
<p style="text-align: right;">82</p> <p>1 follow the rules of construction in Virginia and it 2 has been cited time and again as an outlier and 3 courts have rejected it, but even there, the Court 4 said, "However, the Court does not go as far as to 5 interpret," quote, "direct physical loss," closed 6 quote, to mean whenever property cannot be used for 7 its intended purpose due to intangible sources, 8 citing the Pentair (ph) decision. 9 So even in that case where we disagree 10 with the Court, even the Court recognizes there 11 that any intangible loss means you have got direct 12 physical loss or damage. So, again, Your Honor, we 13 did send additional decisions today. In fact, I 14 have got another decision today, literally while I 15 was in the waiting room, where counsel for 16 plaintiffs were on the other side of it in New York 17 where a lot of same arguments were made and 18 rejected. 19 So I don't know if Your Honor is going to 20 want any further briefing or any supplementation on 21 those orders. The Boscoff case, which we sent, is 22 really the same policy wording as here. The</p>	<p style="text-align: right;">84</p> <p>1 directly or indirectly," which is the 2 anti-concurrent causation language. So whether 3 it's a civil authority order or not, if the virus 4 is indirectly causing the loss, this exclusion 5 would apply. 6 That's all I have, Your Honor. Thank you 7 very much for your time. 8 THE COURT: All right. Thank you. 9 I want to tell counsel that I thought the 10 briefing quality here was outstanding, and I think 11 both sides have done an excellent job of framing 12 the issues, explaining them in a careful way, and 13 you know, in doing it in such a way that was really 14 helpful to the Court to understand the issues from 15 your perspective, to analyze a broad range of cases 16 that have been out there, and it is, frankly, an 17 example of the highest and best work that anyone in 18 our profession could do. 19 This is not easy stuff. It may be easy 20 for you; it's not easy for us poor country lawyers 21 here in Fairfax. You know? And I appreciate the 22 quality of the briefing, and the arguments today</p>

85

1 have been outstanding. I think you have done an
2 excellent job, again, of expressing your positions
3 on it in a very clear way.
4 In 1863, President Lincoln gave the
5 Gettysburg Address in which he said, "The world
6 will little note, nor long remember what we say
7 here." I believe that's true of anything I have to
8 say on this topic, and where President Lincoln was
9 wrong about the world remembering, I know that I'm
10 right.
11 If I were to take this case under
12 advisement, I'm afraid there'd be another 20
13 decisions made between now and the date that I make
14 the ruling, and I suspect that those would come out
15 in some fashion, you know, favorable to both sides,
16 at least some to some sides.
17 I don't really find that all these
18 different opinions -- I think Mr. Silverberg, you
19 expressed, I think, quite clearly, that some of
20 this has just to do with the nature of the Court's
21 philosophy of how they approach these types of
22 questions. It's interesting to me that, in

86


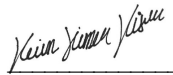
1 Virginia, we are operating on a relatively -- not
2 relative -- I think we're operating on a completely
3 blank slate on both the motion craving oyer issues
4 as to whether oyer can reach a choice of law
5 question, but even more so on the substantive
6 questions that you-all have presented, starting
7 with something as what appears to be as simple
8 initially as what does it mean to experience a
9 physical loss or damage. Perhaps where you stand
10 on this has a lot to do with where you sit.
11 I have read many -- I haven't read the
12 cases that have just come out in the last day or
13 two, and it's the last time I schedule a hearing
14 like this anywhere other than 9:00 in the morning,
15 but what I'm going to do is I'm going to sustain
16 the demurrer in its entirety because it is my view
17 that a plain reading of the statute -- of the
18 contract, that physical loss or damage is a phrase
19 that is not ambiguous, that it's clear on its face,
20 and it does not reach the circumstances that we
21 have here where there's a presence of a virus. I
22 simply disagree that that creates a physical loss

87

1 or damage. And so that takes care of many of the
2 issues.
3 In addition, I find that the
4 contamination exclusion excludes viruses. With
5 regard to the Louisiana exclusion, frankly, it's my
6 view -- this is one that Mr. Silverberg wasn't
7 willing to adopt, but I'm going to go there. I
8 think that the Louisiana exclusion is actually
9 broader than what was excised by saying "any
10 irritant." "Irritant" is -- I can't think of a
11 word broader than "irritant" and I think that it's
12 a distinction there that did not narrow that
13 exclusion, if anything had broadened it.
14 I simply just disagree that the argument
15 that having a belt-and-suspenders approach somehow
16 renders other portions of the contract not to have
17 meaning. I disagree with that. I don't see that.
18 I am -- with regard to the other
19 pollution exclusion, I think that, in the other
20 contract, that is also -- bars coverage here.
21 For all those reasons, I find that the
22 demurrer should be sustained with prejudice and the

88

1 complaint should be dismissed. I realize that --
2 and I encourage you, frankly, that this case ought
3 to be taken up and decided above my pay grade. I
4 think you have all done an excellent job in stating
5 those arguments, and I'm sure our Supreme Court
6 will grant you a petition in this case because it's
7 an important issue that I think minds greater than
8 mine, with your assistance, need to decide. But
9 that's how I come out on it. The demurrer is
10 sustained with prejudice.
11 Mr. Silverberg, I'm not sure if I have a
12 draft order to that effect. It's a pretty simple
13 order. But if you-all want to make sure that your
14 record is preserved, I'm more than willing to have
15 you-all draft an order and endorse it with your
16 objections and so forth to make sure that all of
17 the arguments that you have made, that are clearly
18 on the record here and well articulated today, are
19 preserved.
20 MR. SILVERBERG: Yes. Thank you, Your
21 Honor.
22 THE COURT: All right. Mr. Silverberg,

<p style="text-align: right;">89</p> <p>1 I'm going to put the burden on you to get that 2 order circulated and try to get it to me within, 3 say, two weeks. 4 MR. SILVERBERG: Yes, Your Honor. 5 THE COURT: All right. And that would 6 mean that any time period for running an appeal 7 wouldn't even begin until I get that order in hand 8 and I sign it, and then we would let you-all know 9 immediately when that happens so you can start 10 counting your time limits. 11 MR. SILVERBERG: Thank you, Your Honor. 12 THE COURT: All right. Thank you-all for 13 your great work. Very enjoyable argument. Thank 14 you. 15 MR. SILVERBERG: Thank you, Your Honor. 16 THE COURT: And happy 4th. 17 MR. GEHRT: Thank you, Your Honor. 18 MR. INGERMAN: Happy 4th, Your Honor. 19 Thank you. 20 (At 1:49 p.m., the above hearing 21 concluded.) 22</p>	<p style="text-align: right;">91</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 3 I, Bobbi J. Fisher, do hereby certify that 4 the foregoing transcript is a true and correct 5 record of the recorded proceedings; that said 6 proceedings were transcribed to the best of my 7 ability from the audio recording and supporting 8 information; and that I am neither counsel for, 9 related to, nor employed by any of the parties to 10 this case, and I have no interest, financial or 11 otherwise, in its outcome. 12 13  14 _____ 15 Bobbi J. Fisher, RPR 16 NCRA Registered Professional Reporter (RPR) 17 Final Prepared: July 5, 2021 18 19 20 21 22</p>
<p style="text-align: right;">90</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 3 I, Kevin Kiser, the officer before whom 4 the foregoing deposition was taken, do hereby 5 certify that said proceedings were electronically 6 recorded by me; and that I am neither counsel for, 7 related to, nor employed by any of the parties to 8 this case and have no interest, financial or 9 otherwise, in its outcome. 10 IN WITNESS WHEREOF, I have hereunto set my 11 hand and affixed my notarial seal this 2nd day of 12 July, 2021. 13 14  15 _____ 16 KEVIN KISER, Notary Public 17 for the Commonwealth of Virginia 18 19 Notary Registration Number: 7637508 20 My Commission Expires: 9/30/2024 21 22</p>	

Transcript of Hearing on Motions
 Conducted on July 2, 2021

A			
ability	across	73:6	39:15, 52:9,
40:2, 81:17,	24:14, 24:16,	affects	63:12
91:7	29:2, 39:4,	12:12	aid
about	41:13, 41:17	affirmatively	8:10
10:15, 11:15,	activities	65:1	aig
13:11, 20:20,	28:17, 30:14,	affixed	44:21
22:1, 24:18,	30:16, 79:11	90:11	air
26:9, 27:5,	activity	afoul	43:15, 43:18,
29:22, 32:12,	26:3	64:16	48:18, 60:9
32:13, 37:21,	actual	afraid	airlines
41:12, 64:9,	77:17	85:12	80:3
73:18, 74:1,	actually	again	airport
74:2, 81:21,	8:15, 10:10,	17:4, 18:14,	15:20
85:9	11:10, 16:15,	30:22, 32:15,	al
above	45:13, 69:15,	32:20, 33:16,	1:5, 6:17
88:3, 89:20	87:8	36:8, 36:16,	alexandria
absent	add	38:14, 39:10,	2:6
68:5	17:21, 83:11,	40:7, 52:6,	all
absolutely	83:13	67:17, 73:21,	6:5, 6:12,
23:2, 69:19	added	73:22, 82:2,	6:15, 7:1, 7:12,
accept	68:15	82:12, 85:2	7:21, 8:17, 9:2,
16:2, 47:5,	addition	against	10:1, 10:2,
48:9, 48:10,	34:4, 46:11,	6:17, 24:2	17:2, 17:14,
48:11	57:1, 57:16,	agency	20:1, 21:11,
accepted	87:3	29:7	21:22, 22:4,
48:19	additional	agent	22:6, 22:16,
access	82:13	13:12, 13:13,	23:10, 23:18,
28:19, 28:20,	address	20:21, 20:22,	28:2, 31:5,
80:9	17:13, 20:18,	21:3, 21:5	32:5, 32:19,
accordance	28:4, 36:13,	agent's	33:5, 33:8,
24:13	42:22, 45:7,	10:7	33:12, 33:14,
according	45:10, 56:11,	agents	33:15, 33:16,
34:2	57:8, 76:6, 85:5	21:2	35:15, 36:19,
accordingly	addressed	ago	38:16, 39:2,
44:12	18:6, 78:16	43:22, 80:20	40:7, 40:14,
accounts	adequately	agree	42:11, 43:11,
40:16	8:12, 49:15	12:13, 14:13,	46:11, 46:16,
accuse	adopt	19:4, 22:18,	46:17, 47:6,
77:21	22:1, 46:12,	46:21, 64:20,	47:7, 48:10,
acknowledge	50:22, 87:7	64:21, 65:2	54:3, 55:5,
37:13, 59:3	adopted	agreed	55:7, 57:21,
acknowledged	77:3	33:13	64:6, 64:21,
18:18, 49:21,	advanced	agreements	66:14, 68:9,
81:12	75:12	50:22	70:9, 70:21,
acknowledgment	advisement	ahead	71:1, 72:17,
35:20	85:12	8:3, 8:5,	72:18, 76:5,
	affect	13:18, 13:20,	79:14, 81:2,
	11:8, 73:1,	22:4, 28:2,	81:4, 83:4,

<p>83:8, 84:6, 84:8, 85:17, 87:21, 88:4, 88:16, 88:22, 89:5, 89:12 all-risk 51:4 allegation 49:7, 49:8 allegations 48:22, 49:14, 77:5 allege 10:14, 43:15, 43:21, 49:6, 53:17, 53:18, 60:5 alleged 33:20, 48:15, 48:18, 49:4, 49:6 alleging 45:13, 45:16, 45:20 allow 8:13 allowing 23:11 almost 38:4 along 8:19, 27:16 already 36:20, 81:3 also 4:15, 29:17, 30:10, 34:12, 40:9, 42:17, 46:2, 51:14, 58:10, 59:14, 59:15, 61:7, 68:18, 72:13, 74:16, 75:13, 75:14, 78:22, 80:22, 83:5, 87:20 alteration 49:5, 49:8,</p>	<p>53:16, 53:19, 54:9, 55:6 altercation 60:21 alternate 35:3 alters 48:17 although 53:17, 54:9, 55:5, 55:22 always 13:12, 16:11, 16:17, 16:19 ambiguity 69:5, 72:7 ambiguous 24:19, 24:20, 64:21, 86:19 ambiguously 57:20, 58:14 amendatory 63:19, 63:22, 65:11, 65:22, 70:12, 72:11, 74:12, 74:15 american 1:8, 6:17 ammonia 55:4 among 36:2, 47:22 amounts 48:6 amusement 79:1 analysis 8:11, 10:3, 10:8, 16:21, 18:21, 18:22, 19:2, 19:4, 52:20, 53:20, 71:7, 76:15 analytically 47:1, 47:4 analyze 84:15 analyzing 52:14</p>	<p>angeles 3:6 another 20:21, 22:9, 31:7, 32:13, 32:15, 35:22, 36:12, 56:22, 60:12, 67:15, 69:16, 82:14, 85:12 answer 14:14, 20:14, 21:10, 21:13, 21:16, 28:10, 39:18 answered 40:6 answers 14:14, 48:13 anti-concurrent 46:1, 46:8, 84:2 any 12:18, 19:6, 19:7, 37:21, 45:7, 51:20, 55:17, 56:7, 60:18, 63:8, 64:21, 65:8, 68:1, 68:2, 69:5, 73:1, 74:18, 81:16, 82:11, 82:20, 87:9, 89:6, 90:7, 91:9 anyone 31:2, 84:17 anything 39:15, 70:9, 83:10, 85:7, 87:13 anyway 39:13 anywhere 86:14 apart 26:4, 26:22, 73:19</p>	<p>apologize 13:19, 14:6 appeal 89:6 appear 73:7 appears 70:14, 86:7 appellate 14:22 applicable 21:21 applied 44:19, 52:18, 70:20 applies 10:7, 10:15, 11:2, 12:3, 13:6, 16:14, 16:21, 17:10, 21:1, 21:15, 22:14, 35:4, 56:15, 57:11, 57:12, 58:6, 59:11 apply 30:6, 34:16, 36:9, 39:4, 43:6, 52:2, 56:17, 57:3, 57:17, 59:6, 65:15, 71:7, 71:9, 73:7, 78:4, 84:5 applying 18:10, 62:14, 72:12, 74:15 appreciate 21:21, 46:21, 83:4, 83:5, 84:21 appreciates 22:15 approach 35:17, 51:11, 85:21, 87:15 appropriate 52:13</p>
--	--	--	---

<p>appropriately 52:19 arden 2:3, 2:4 areas 30:13, 31:16 aren't 72:6, 73:10 arguably 38:5 argue 22:1, 22:16, 51:13, 74:10, 77:1 argued 35:1, 35:12, 49:6, 78:10 argues 70:13 arguing 6:19, 7:5, 7:9, 7:13, 7:15, 22:8, 46:17, 81:14 argument 5:4, 5:5, 5:8, 5:9, 5:10, 5:11, 5:12, 10:22, 18:3, 28:7, 28:9, 29:14, 32:8, 32:10, 34:5, 35:16, 36:18, 38:14, 38:19, 39:3, 39:8, 39:15, 40:10, 42:12, 44:4, 45:6, 51:9, 53:14, 54:13, 57:4, 57:7, 58:20, 68:10, 68:16, 69:21, 73:6, 74:8, 74:9, 77:3, 77:4, 80:20, 83:1, 87:14, 89:13 arguments 43:1, 49:21,</p>	<p>56:12, 76:8, 77:6, 79:7, 81:1, 82:17, 83:17, 84:22, 88:5, 88:17 arising 58:11, 59:10, 59:12 around 34:9, 39:6, 39:11, 43:18 articulated 88:18 asbestos 55:4, 55:14, 56:5, 70:1, 80:16 aside 28:1, 32:20, 33:7, 52:10 asking 8:17, 64:9, 64:13, 65:15, 65:16 aspects 81:13 asserting 77:19 assertion 48:3 assistance 88:8 associate 15:19 associated 42:18 assume 31:21 assuming 33:22, 68:19 atmosphere 45:2 attaches 48:4, 48:17 attaching 11:13, 47:15, 48:1 attempt 50:2, 81:9</p>	<p>attempting 51:1 attention 46:4, 76:22 attraction 78:8, 78:22, 79:5 atwells 50:4 audio 91:7 authority 19:22, 26:1, 26:10, 30:17, 30:18, 33:9, 34:2, 45:21, 62:17, 78:5, 84:3 avail 75:20 available 75:19 avenue 2:5, 2:11, 2:17, 4:11 aware 46:4, 59:18, 60:6, 60:18</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>babcock 36:22, 38:22 back 28:9, 32:7, 32:9, 33:17, 41:3 baltimore 4:12 bar 59:4 barely 9:20 bars 42:20, 80:8, 87:20 based 10:6, 56:1, 60:2</p>	<p>basically 37:21, 76:11 basis 46:13, 56:13, 61:8, 69:20, 75:7, 76:3 bat 42:5 batting 40:12, 41:18 beach 2:12 bearing 13:2 because 9:13, 10:3, 13:5, 16:2, 16:15, 16:18, 18:7, 18:14, 23:13, 24:10, 25:15, 26:3, 27:1, 27:2, 28:21, 29:9, 29:11, 30:16, 37:10, 39:13, 40:20, 41:4, 50:15, 54:21, 56:12, 63:16, 65:5, 66:3, 70:3, 70:18, 72:18, 73:7, 74:16, 76:18, 78:11, 79:5, 79:9, 80:1, 80:5, 80:6, 80:9, 83:19, 86:16, 88:6 become 71:5 been 9:10, 23:16, 25:4, 32:2, 34:9, 36:19, 38:14, 38:17, 38:19, 40:6, 41:4, 41:5, 41:13, 41:15, 41:17, 43:3,</p>
--	--	---	---

<p>45:1, 46:2, 49:3, 53:22, 54:17, 55:7, 61:21, 61:22, 62:13, 79:6, 79:16, 80:20, 81:2, 81:3, 81:6, 82:2, 84:16, 85:1 before 1:15, 59:20, 81:2, 90:3 begin 89:7 behalf 2:2, 3:2, 3:9, 4:2, 6:22, 8:8, 42:15, 46:12 behaves 48:16 behind 27:4 being 20:18, 23:17, 29:22, 56:3, 67:10, 67:17, 73:10, 73:19 beings 23:14, 69:18, 69:20 believe 8:11, 9:4, 9:11, 22:19, 41:22, 42:1, 42:2, 46:10, 52:12, 52:19, 53:7, 61:3, 71:11, 85:7 believed 33:21 belt 52:6 belt-and-suspend- ers 35:17, 87:15 belts 51:16 belts-and-suspen- ders 51:9, 51:11</p>	<p>benefit 61:5 benjamin 3:11 best 11:21, 66:8, 84:17, 91:6 bet 83:8 between 10:11, 12:10, 53:5, 58:4, 85:13 beyond 12:5, 14:11, 16:16, 68:10, 68:13 bind 25:1 binding 19:21, 48:2 binds 48:4 bit 64:10, 65:6 blank 86:3 blankingship 3:12 blinders 68:22 blow 15:1 board 19:8, 41:13, 41:17 bobbi 1:22, 91:3, 91:15 body 19:13, 19:14, 19:15, 19:17 bold 64:1 bones 81:21 border 39:4</p>	<p>boscoff 80:22, 82:21 boscoff's 83:1 boston 11:14 both 11:22, 17:7, 83:16, 84:11, 85:15, 86:3 bottom 66:12 boulevard 3:5 bound 14:16 breach 10:6, 77:17, 77:19 breathed 44:11 breathes 43:16, 44:9 breathing 27:3 brett 4:9, 7:14, 8:8, 42:15 brian 4:3 brief 14:21, 16:9, 16:12, 17:1, 26:14, 45:9, 46:6, 76:9, 77:13, 79:20, 80:14 briefing 52:12, 58:2, 82:20, 84:10, 84:22 briefly 79:18 bring 46:4 brings 69:15 broad 38:8, 51:7,</p>	<p>56:21, 67:7, 67:9, 84:15 broadened 87:13 broader 38:6, 76:17, 87:9, 87:11 broadly 74:14 broker 9:3, 9:12, 13:12, 13:14, 14:2, 14:10 building 31:5, 31:7, 55:15, 61:11, 61:16, 80:14 burden 72:3, 89:1 buried 75:22 burn 9:7 business 23:11, 25:16, 28:16, 29:1, 56:17, 57:12, 59:6, 59:10, 79:3, 79:11 businesses 23:4, 23:6, 23:13, 80:7 bwi 15:20</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c 66:9, 66:13, 66:17 california 2:12, 3:6 call 9:22 called 36:13 came 8:20 can't 6:6, 14:5,</p>
--	---	---	---

<p>29:7, 29:8, 30:5, 31:10, 31:11, 41:19, 51:19, 51:20, 56:2, 56:3, 56:4, 59:9, 87:10 cannot 50:1, 50:7, 50:20, 53:12, 75:3, 75:6, 82:6 care 15:4, 27:20, 77:5, 83:16, 87:1 careful 12:9, 40:20, 84:12 carefully 64:3 carpeting 55:13 carrying 43:17 case 1:7, 6:16, 6:18, 9:7, 11:19, 16:1, 16:12, 16:18, 18:10, 27:21, 32:18, 37:10, 39:19, 39:20, 44:1, 44:21, 45:3, 45:12, 45:14, 46:5, 46:7, 50:5, 51:18, 58:15, 60:12, 62:7, 65:10, 70:2, 72:5, 80:13, 81:3, 82:9, 82:21, 83:21, 85:11, 88:2, 88:6, 90:8, 91:10 cases 13:4, 16:8, 17:1, 17:9,</p>	<p>34:20, 34:21, 35:6, 36:22, 37:12, 38:18, 38:21, 44:2, 47:2, 53:21, 55:3, 55:10, 55:20, 59:19, 60:7, 60:11, 60:14, 60:15, 60:18, 60:22, 81:1, 84:15, 86:12 casualty 1:10 catch 17:17 catch-all 69:9 causation 46:1, 46:8, 84:2 cause 23:14, 23:21, 33:16, 45:18, 50:2, 50:7, 50:20 caused 28:18, 44:15, 45:14, 45:21, 47:10, 50:19, 51:2, 52:2, 83:22 causes 47:14, 47:20, 47:21, 60:10, 69:7, 69:12 causing 26:20, 84:4 caution 15:22, 78:6 ceased 30:16 centers 23:10, 79:1 certain 26:1, 35:15, 36:8, 51:21, 73:8, 81:13</p>	<p>certainly 23:7, 70:11 certificate 90:1, 91:1 certify 90:5, 91:3 changed 26:9, 26:10, 26:12, 26:13 changes 12:19, 64:2 characteristics 63:17 characterize 52:16 characterized 25:5 chemical-laden 55:13 chemicals 69:11, 70:3 chernobyl 31:5 chesapeake 46:5 chinese 26:19, 55:13, 80:14 choice 8:10, 8:13, 9:6, 9:14, 10:2, 11:16, 12:3, 12:12, 13:6, 18:16, 86:4 choice-of-law 11:8, 18:5, 18:8, 18:21, 18:22, 19:5, 20:2, 20:4 circuit 1:2, 23:19 circulated 89:2 circumstance 19:18 circumstances 86:20 circus 44:20</p>	<p>cite 13:7, 16:12 cited 11:22, 16:8, 38:18, 46:6, 50:4, 55:3, 72:4, 82:2 cites 80:13 citing 82:8 civil 6:18, 26:1, 26:10, 30:16, 30:18, 33:9, 45:21, 62:17, 78:5, 84:3 claim 9:9, 18:1, 18:21, 25:16, 33:12, 77:11, 77:17, 78:2, 79:12 claims 10:5, 22:22 clarification 60:19 clarify 20:7, 29:6 clause 83:15, 83:16, 83:18 cleaning 29:12 clear 10:10, 24:7, 24:12, 24:17, 33:3, 34:16, 42:3, 45:12, 50:9, 51:18, 61:20, 62:4, 63:22, 70:12, 72:3, 73:22, 75:16, 75:18, 76:3, 78:1, 85:3, 86:19 clearly 43:10, 43:20,</p>
--	--	--	--

<p>57:20, 58:14, 64:6, 65:11, 74:5, 85:19, 88:17 clerk 15:12 clever 51:12 close 40:14 closed 26:15, 26:16, 82:5 closely 27:3 co-counsel 22:17, 34:11, 47:2 co-defendant 7:11 code 14:4, 14:7, 15:12, 15:14, 20:19, 21:3, 21:6 cognizable 20:10 come 9:16, 13:4, 41:20, 85:14, 86:12, 88:9 comes 76:11 commission 90:20 commonly 57:13 commonwealth 90:17 communicable 27:7, 27:18, 28:4, 28:13, 29:10, 77:12, 77:14, 78:2, 78:15 companies 41:9, 41:16 company 34:9, 35:18</p>	<p>compatible 75:10 compensatory 59:5, 59:12 complaint 8:12, 8:16, 34:22, 43:12, 47:8, 60:6, 60:8, 66:8, 77:1, 77:15, 88:1 complete 10:2 completely 86:2 component 79:12 conclude 75:6 concluded 89:21 conclusion 47:19, 68:11 condition 26:20, 55:16 conditions 61:18, 62:6 conducted 1:16 conference 23:9 confess 9:18 conflict 10:11, 18:19 conflicting 71:1, 71:6 conflicts 71:12, 71:15, 71:18 congregating 27:3 conjunctive 81:15 connecticut 70:19, 70:20, 72:15 consider 8:18, 35:9,</p>	<p>64:13, 65:3 considerably 17:9 considerate 21:14 considered 21:5, 59:14 consistent 51:16, 71:21, 72:7 conspicuous 73:22 conspicuously 74:6 constitute 35:13 constitutes 48:20 constrains 61:10 construction 22:18, 22:19, 24:8, 24:11, 24:16, 36:5, 40:16, 42:3, 48:8, 82:1 construe 19:11, 53:1 construed 24:12, 60:1, 60:16 construing 40:17 contagious 32:20, 33:1 contain 44:10, 75:21 containment 31:5, 31:7 contaminant 63:21, 65:20, 65:22 contaminants 64:5, 68:3, 68:5 contamination 7:17, 8:22, 9:1, 34:10,</p>	<p>34:14, 34:15, 36:16, 36:17, 37:19, 42:16, 46:15, 63:15, 68:8, 71:14, 74:10, 74:17, 74:18, 74:20, 75:6, 75:15, 75:21, 76:6, 81:9, 81:16, 83:15, 83:18, 87:4 contend 27:16, 75:14 contest 53:5 context 31:8, 67:17, 74:4, 76:18 contextual 25:11 contingent 78:9 continue 23:17, 62:19 continued 3:1, 4:1 contract 10:6, 10:12, 12:4, 17:7, 19:6, 24:8, 43:8, 48:8, 48:12, 51:17, 51:19, 51:20, 64:12, 64:15, 64:18, 68:14, 71:21, 72:3, 72:14, 77:17, 86:18, 87:16, 87:20 contracts 11:22, 19:12, 20:17, 52:7, 71:4 contractual 52:18, 61:5 contradicted 70:15</p>
---	---	---	--

<p>control 12:6, 13:1, 14:11, 16:16, 20:14 controlling 53:8, 81:5 controls 11:16 convention 79:1 convinced 19:3 corners 64:18, 65:10 corporation 50:4 correct 28:1, 67:4, 71:22, 76:14, 91:4 corrupting 48:2 corrupts 48:5 cost 74:18, 81:16, 83:20 costs 81:10 cotton 3:19, 22:8 couch 11:22 coughs 43:16 could 11:17, 12:15, 28:20, 31:15, 61:16, 81:13, 84:18 couldn't 18:11 counsel 8:5, 18:18, 20:12, 22:11, 26:13, 49:20, 63:20, 69:16, 70:12, 76:18,</p>	<p>82:15, 83:17, 84:9, 90:6, 91:8 counting 89:10 country 23:18, 24:15, 24:17, 25:6, 39:6, 39:12, 40:8, 84:20 counts 33:6 county 1:2 couple 32:12, 35:14, 42:22, 43:1 course 67:8, 74:9 court's 10:8, 59:13, 74:21, 76:22, 85:20 courts 10:16, 14:20, 14:22, 16:9, 16:22, 19:17, 23:18, 23:19, 24:7, 24:14, 27:16, 34:9, 36:20, 39:11, 40:10, 41:2, 41:7, 41:11, 41:12, 41:13, 41:20, 54:6, 54:7, 82:3 covenant 10:6 cover 8:19, 9:11, 38:8 coverage 24:5, 27:8, 27:19, 28:13, 29:13, 33:7, 41:9, 42:20, 43:21, 50:21, 51:5, 57:18, 59:8, 60:2,</p>	<p>60:17, 61:2, 64:6, 69:4, 70:8, 72:10, 74:2, 77:12, 77:16, 78:2, 78:9, 78:15, 79:8, 87:20 coverages 32:19, 33:5, 78:3 covered 32:10, 33:16, 45:17, 50:8 covid 9:16, 22:21, 23:12, 23:13, 23:20, 26:5, 29:19, 33:20, 33:21, 33:22, 35:10, 38:6, 38:7, 44:7, 44:8, 44:15, 54:22 crave 7:8, 7:16, 10:22 craving 5:3, 8:5, 8:6, 9:8, 11:8, 17:15, 17:18, 18:6, 20:3, 20:5, 20:8, 20:11, 21:12, 21:17, 21:18, 86:3 created 71:15 creates 86:22 crescent 1:4, 6:16 crew 29:13 critical 49:19 criticized 81:4, 81:6 customers 28:21, 28:22,</p>	<p>29:11, 31:2, 31:11, 31:18, 32:1 <hr/><p style="text-align: center;">D</p><hr/>damage 23:15, 23:21, 24:2, 24:3, 24:6, 24:18, 25:12, 27:13, 27:15, 27:17, 27:20, 28:15, 32:11, 32:16, 32:19, 33:9, 33:15, 33:18, 34:1, 35:2, 35:13, 35:21, 37:11, 37:16, 37:17, 39:13, 40:3, 40:5, 42:4, 44:14, 47:10, 47:15, 47:20, 47:22, 48:6, 48:20, 49:2, 49:9, 49:20, 50:21, 52:1, 52:14, 53:15, 54:7, 54:8, 54:14, 55:6, 55:8, 56:15, 57:11, 58:10, 59:5, 59:13, 59:19, 60:1, 60:10, 60:16, 60:20, 60:22, 61:9, 61:14, 61:19, 62:4, 63:1, 63:10, 69:21, 70:5, 79:10, 80:2, 80:12, 82:12, 83:19, 86:9, 86:18, 87:1 damaged 25:22 damages 59:5, 59:12</p>
---	---	--	---

<p>danger 23:14, 69:18, 69:19, 70:7 dangerous 54:12, 54:20, 70:4 date 85:13 david 3:10 davis 3:3, 7:2 day 86:12, 90:11 days 43:22, 80:20 deal 23:6, 28:8, 35:19 dealing 10:7, 19:20, 35:16, 80:18 deals 23:8 dealt 11:20 decide 8:1, 88:8 decided 41:22, 42:1, 81:22, 88:3 deciding 12:2, 17:6 decision 10:4, 15:16, 18:9, 20:7, 23:20, 25:2, 25:3, 32:13, 55:4, 82:8, 82:14 decisions 9:16, 10:15, 22:20, 23:17, 32:12, 35:15, 82:13, 85:13 declaration 29:4, 30:5, 33:3</p>	<p>declared 29:22, 32:2 declaring 28:19 deemed 14:22, 15:8, 21:3, 54:19 defeat 49:18 defendant 22:10 defendant's 7:21 defendants 1:11, 3:9, 4:2, 8:8, 59:18, 59:22 defense 7:5, 20:12, 42:13 define 67:17 defined 62:13, 68:3 defines 34:15, 61:13 definition 37:19, 43:11, 51:4, 51:5, 62:15, 63:21, 65:13, 65:21, 69:2 delete 74:12 deleted 68:15 deletes 63:20 deliver 12:16, 12:17, 14:9 delivered 16:10, 16:16, 20:16 delivery 12:22 demonstrable 54:9</p>	<p>demurrer 5:7, 7:9, 8:15, 17:6, 18:14, 22:3, 22:5, 22:9, 22:15, 28:12, 34:1, 42:9, 42:12, 42:21, 46:13, 47:5, 86:16, 87:22, 88:9 denied 21:17 department 39:5 departments 80:4 dependent 78:5, 78:7 deposition 90:4 derail 28:7 described 41:11 description 5:2 destroys 48:5, 81:17 destruction 55:11 detail 47:9 detailed 60:7 details 47:11, 47:14 determination 8:14, 9:6, 9:14, 13:5 determine 19:19, 51:10, 61:21 determined 45:22 determines 10:14, 61:22 determining 12:2</p>	<p>developed 19:13, 19:14, 19:15 development 18:15 devine 1:15 dictionary 43:11 difference 17:5, 55:18, 73:12, 73:13, 75:7 differences 40:17 different 16:14, 56:7, 63:3, 78:11, 85:18 difficult 13:20 difficulty 11:6, 11:9, 11:12 dig 62:12 diligence 25:19, 61:15 direct 23:14, 24:2, 24:5, 28:15, 33:8, 40:5, 42:4, 45:18, 49:2, 49:9, 49:20, 50:20, 51:22, 52:14, 53:14, 54:6, 54:8, 54:14, 54:18, 55:8, 59:20, 60:10, 60:15, 60:20, 61:9, 62:3, 63:1, 63:9, 70:5, 76:22, 79:10, 82:5, 82:11 directed 29:18</p>
---	---	---	--

<p>directly 84:1</p> <p>disagree 20:12, 25:3, 48:14, 82:9, 86:22, 87:14, 87:17</p> <p>disagreement 56:13</p> <p>discharge 43:4, 44:7, 76:13</p> <p>discharged 45:1</p> <p>discussed 33:8</p> <p>discussion 59:14, 65:8</p> <p>disease 27:7, 27:19, 28:4, 28:13, 32:20, 33:1, 77:12, 77:15, 78:2, 78:15</p> <p>diseases 29:10</p> <p>dismiss 8:16, 10:17, 34:22, 35:1</p> <p>dismissed 88:1</p> <p>dispatch 25:20, 61:15</p> <p>dispersal 43:4, 43:9, 43:20, 44:7, 76:10, 76:13</p> <p>dispersed 45:1</p> <p>dispositive 70:14</p> <p>dispute 14:1, 14:9, 20:10, 72:1</p> <p>disputed 52:21</p> <p>disputes 41:9</p>	<p>distinct 54:8</p> <p>distinction 12:10, 55:17, 81:10, 87:12</p> <p>distorting 48:5</p> <p>district 36:21, 38:20, 44:2, 45:4, 59:2, 60:12, 72:5, 75:1, 80:21, 81:6, 83:1</p> <p>dla 4:4, 4:10, 7:15</p> <p>document 9:9, 21:4, 21:6, 64:19, 65:10</p> <p>documents 8:18, 9:4, 11:10, 11:11, 21:10, 21:16</p> <p>doing 37:3, 41:6, 64:17, 72:10, 83:5, 84:13</p> <p>done 18:22, 21:22, 25:21, 53:12, 54:5, 58:15, 84:11, 85:1, 88:4</p> <p>doors 31:17</p> <p>doubt 61:5</p> <p>down 13:4, 15:5, 15:9, 23:18, 26:2, 41:20, 50:10, 55:16, 57:7, 68:19, 77:17, 78:12, 78:13, 78:14, 78:19, 78:20, 79:6, 79:9, 80:5</p>	<p>dozens 53:20</p> <p>draft 88:12, 88:15</p> <p>drafted 75:15</p> <p>drafting 64:10</p> <p>draw 17:10</p> <p>drive 3:13, 13:5</p> <p>drop 12:22, 15:2, 15:6</p> <p>droplets 43:17, 44:9, 44:10</p> <p>dropping 15:20, 24:10</p> <p>drywall 26:19, 55:13, 80:14</p> <p>due 25:19, 30:1, 61:15, 74:18, 74:20, 75:5, 79:9, 81:16, 82:7</p> <p>duly 6:4</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 22:10, 59:2, 75:1</p> <p>eastern 38:20, 60:12</p> <p>easy 84:19, 84:20</p> <p>edge 66:9</p> <p>effect 88:12</p> <p>effectuate 25:20</p> <p>efforts 55:21, 55:22</p>	<p>egress 33:10, 33:12</p> <p>eighth 23:19</p> <p>eisenhower 2:5</p> <p>either 46:3, 74:3, 75:11, 80:8</p> <p>electronically 90:5</p> <p>elegant 17:11, 25:1, 41:11, 41:21, 45:9, 52:12, 53:13, 53:19, 56:14, 59:17, 76:16, 77:4, 78:11, 81:20</p> <p>element 25:13, 25:17, 56:17, 57:12, 57:15, 57:18, 58:6, 58:20, 78:9</p> <p>elements 78:5</p> <p>ellis 11:20, 11:22, 12:14, 13:7, 14:5</p> <p>ellis's 13:11</p> <p>else 7:12, 31:2, 39:15, 70:9</p> <p>elsewhere 36:6, 57:16</p> <p>email 9:2, 11:13</p> <p>employed 90:7, 91:9</p> <p>employees 29:12, 31:10, 32:1</p> <p>encourage 88:2</p> <p>end 71:1</p>
---	---	--	---

<p>ending 61:14 endorse 88:15 endorsement 28:1, 28:4, 32:21, 33:1, 33:7, 36:14, 36:18, 37:21, 38:15, 39:3, 42:18, 63:20, 63:22, 64:2, 64:11, 64:12, 65:11, 66:1, 66:3, 66:5, 66:21, 67:2, 70:12, 70:19, 72:11, 74:12, 74:15, 80:19 endorsements 8:21, 8:22, 38:14, 64:1, 66:12, 70:21, 72:4, 72:6, 72:9, 72:22 enforced 46:7 engage 64:10 enjoyable 89:13 enough 31:10, 40:15, 49:18 enter 29:3 enterprises 23:4 entertainment 44:1 entire 59:7 entirely 25:16 entirety 86:16 environment 29:11</p>	<p>equals 48:11 equipment 61:12, 61:16 equities 74:21, 81:11, 83:21 equivalent 61:18, 62:6 escape 43:4, 76:13 esq 2:3, 2:9, 3:3, 3:10, 3:11, 3:17, 3:18, 4:3, 4:9 essential 9:9, 9:13, 18:1, 18:2, 18:9, 18:20, 19:1, 20:6, 20:9, 80:6 essentially 23:20, 24:16, 39:6, 40:17, 59:7, 61:10, 66:10, 75:8, 76:1 essex 11:19 establish 54:3 et 1:5, 6:17 even 18:10, 21:1, 31:9, 33:19, 33:22, 34:4, 35:4, 35:6, 35:15, 36:9, 44:17, 53:7, 62:11, 68:19, 74:11, 76:17, 82:3, 82:9, 82:10, 86:5, 89:7 every 27:14</p>	<p>everybody 19:15 everybody's 19:8, 30:6 everything 6:8 evidence 18:16, 25:10, 33:21 evidentiary 18:15 exact 39:1, 39:7, 44:4, 77:3 exactly 12:15, 15:21 example 14:18, 19:13, 29:12, 49:4, 55:4, 79:1, 84:17 excellent 6:12, 84:11, 85:2, 88:4 except 7:10, 71:8 exception 39:8 exceptions 41:10 excised 87:9 exclude 50:2, 51:1, 64:6, 70:2, 74:20 excluded 39:20, 56:8, 67:18 excludes 44:14, 87:4 exclusion 7:17, 7:18, 34:5, 34:8, 34:11, 34:12, 34:14, 35:4, 35:6, 35:9, 35:12, 36:9,</p>	<p>36:16, 36:17, 37:18, 39:12, 39:22, 42:16, 42:19, 43:2, 43:6, 44:5, 44:14, 44:16, 45:8, 45:10, 46:15, 50:6, 51:3, 51:7, 51:14, 52:3, 56:12, 56:14, 57:22, 58:8, 58:10, 58:22, 59:4, 63:15, 68:8, 71:14, 73:6, 73:17, 74:10, 74:17, 75:3, 75:4, 75:15, 75:17, 75:19, 75:21, 76:2, 76:17, 81:9, 81:12, 81:19, 83:15, 84:4, 87:4, 87:5, 87:8, 87:13, 87:19 exclusions 9:1, 51:1, 56:20, 57:2, 57:3, 57:10, 57:15, 57:16, 57:17, 57:21, 58:5, 58:8, 58:9, 58:12, 58:13, 58:16, 63:7, 63:13, 71:2, 73:7, 73:18, 73:20, 74:1, 74:4, 81:14, 83:16 excuse 61:4, 78:8 executive 54:21 exhibit 66:7 exist 79:4</p>
---	--	--	--

<p>existed 57:5, 61:19, 62:19 exists 33:21 expanded 9:10 expended 81:10 expense 83:20 experience 86:8 experienced 54:18 expires 90:20 explain 45:19 explaining 84:12 explicitly 59:22, 72:20, 77:18 exposed 55:16 expressed 85:19 expressing 85:2 expressly 46:7 extent 40:1 eyes 44:12</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 86:19 faced 20:4, 75:2 facilities 26:3, 29:3 facility 26:16, 26:17, 26:21, 29:19, 32:16</p>	<p>fact 16:13, 17:4, 22:17, 23:3, 23:22, 25:4, 25:11, 26:13, 30:18, 31:16, 32:13, 34:20, 47:19, 48:3, 48:13, 56:2, 56:22, 70:6, 70:13, 74:13, 75:17, 76:20, 81:8, 82:13 factor 12:2 factory 74:22 facts 8:12, 42:6, 47:6, 47:7, 48:15 factual 48:22, 49:7, 49:8, 49:14 fair 10:7 fairfax 1:2, 3:14, 15:7, 20:19, 84:21 fall 74:8 falls 38:3, 48:12 familiar 14:19 far 80:19, 82:4 fashion 46:20, 85:15 favor 40:6, 53:2, 60:2, 60:17, 63:6, 69:4, 72:8 favorable 85:15 federal 10:16, 23:18,</p>	<p>25:2, 36:21, 41:13, 80:21, 81:6, 81:22, 83:1 fedex 15:20 file 14:21 filed 14:22, 15:8, 15:9 filings 15:20 final 91:17 finally 75:14, 81:20 financial 23:3, 23:5, 31:19, 90:8, 91:10 find 32:12, 66:4, 72:8, 85:17, 87:3, 87:21 finding 37:16, 44:22 finds 45:4 fire 1:9, 80:4 firebird 80:22 firm 22:7 first 17:17, 35:2, 35:14, 37:11, 43:2, 50:8, 63:14, 71:10, 81:4, 83:14 first-party 22:21, 24:1, 26:6, 26:7 fisher 1:22, 91:3, 91:15 fit 76:12</p>	<p>five 10:5 flaw 49:22, 52:16 flinter 4:16, 7:22, 8:1 flipping 66:9 floor 2:17 florida 41:14 focus 30:21, 31:13, 62:12, 63:7, 63:14, 63:15, 78:4 focused 62:1 follow 40:15, 82:1 followed 8:21, 42:2 following 57:17 follows 43:7 fomites 47:12 footnote 12:1, 13:10, 15:15 footnotes 13:16 foreclose 79:8 forecloses 75:4 foregoing 90:4, 91:4 forge 46:5 form 75:19 forth 88:16 forward 43:14</p>
--	--	--	---

<p>found 32:13, 32:16, 44:18, 53:22 four 10:5, 64:18, 65:9 framing 84:11 frankly 36:4, 79:4, 84:16, 87:5, 88:2 friday 1:17 front 14:7 full 62:19 fully 59:18, 79:6 functional 54:13, 62:9, 77:2 further 5:11, 5:12, 25:10, 42:12, 46:13, 64:21, 82:20 furthermore 29:5</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gaffin 45:15 gaseous 67:12, 69:8 gases 55:5 gave 85:4 gehrt 2:9, 5:5, 5:10, 6:21, 6:22, 15:15, 17:16, 17:20, 18:13, 46:18, 47:1, 48:14, 50:13, 50:16, 51:15,</p>	<p>52:10, 55:19, 56:10, 57:8, 63:14, 65:2, 65:5, 65:19, 66:6, 66:16, 66:19, 66:22, 67:4, 67:11, 67:16, 68:12, 68:18, 70:11, 71:10, 71:22, 73:9, 73:14, 76:7, 76:14, 77:10, 77:21, 78:19, 78:21, 89:17 general 18:10, 23:11, 30:17 generally 76:8 gettysburg 85:5 give 14:18, 50:14, 57:4, 66:8, 66:15, 67:17, 79:17 given 28:12, 48:22, 51:19 go 8:3, 8:5, 13:18, 13:20, 13:21, 22:4, 28:2, 28:9, 28:20, 31:10, 31:11, 31:15, 39:15, 43:13, 52:9, 63:12, 64:21, 68:19, 82:4, 87:7 goes 33:17, 43:19, 45:19, 77:15, 83:22 gogal 3:10, 7:20 going 6:8, 6:19, 9:2,</p>	<p>9:18, 13:5, 14:21, 21:15, 31:18, 32:7, 32:9, 41:8, 51:14, 66:4, 68:10, 79:17, 79:20, 82:19, 86:15, 87:7, 89:1 good 6:13, 28:11, 50:15 gotten 19:8, 22:21, 26:11, 26:12 government 29:7 governmental 28:18 grade 88:3 grant 21:12, 24:5, 42:20, 46:13, 88:6 granted 10:16, 42:10 grants 51:5, 74:2 great 34:2, 39:2, 89:13 greater 88:7 greengrass 3:19 ground 38:9 grounds 8:15, 77:18, 77:19 groups 8:18 guess 7:7, 65:5, 69:13 guys 78:12</p>	<p>gym 26:15, 26:17, 29:7, 30:6, 30:15 gymnasium 23:9 gyms 27:2</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hac 2:9, 2:15, 3:3, 3:17, 3:18 halprin 2:15 hand 89:7, 90:11 handed 23:17, 26:2 handled 18:17 happen 35:8 happens 89:9 happy 27:11, 28:8, 45:7, 89:16, 89:18 hard 16:4, 19:1, 49:1 hard-pressed 49:1 harm 30:2, 30:3, 69:22, 70:3 harms 69:22 harsh 23:12 hazardous 60:9 hazmat 31:3 head 13:10, 64:22 heading 70:14, 72:19</p>
--	--	---	---

<p>headings 73:4, 73:8, 73:10, 73:17 healthy 62:14, 62:16, 79:21, 79:22 hear 6:6, 6:7, 6:9, 6:11, 11:1 hearing 1:14, 86:13, 89:20 heavily 27:3 held 54:17, 55:7, 75:3 helpful 20:5, 58:1, 84:14 helping 15:13 helps 67:15, 67:16 henderson 59:1 henkind 3:18, 7:20 here 6:6, 6:15, 7:2, 7:3, 7:20, 7:21, 7:22, 9:13, 10:4, 13:14, 14:1, 14:2, 14:10, 15:10, 15:13, 18:14, 18:17, 20:18, 21:21, 23:2, 23:7, 23:22, 25:16, 25:21, 33:17, 34:17, 35:8, 36:9, 36:17, 37:5, 39:7, 39:8, 40:20, 41:10, 41:20, 42:20, 45:15, 46:2, 47:5, 47:8,</p>	<p>48:8, 49:13, 51:6, 53:4, 53:9, 53:14, 54:17, 60:5, 62:22, 67:8, 70:14, 71:14, 72:10, 74:1, 75:12, 78:4, 80:18, 81:6, 81:8, 82:22, 84:10, 84:21, 85:7, 86:21, 87:20, 88:18 hereby 90:4, 91:3 hereunto 90:10 hidden 76:2 highest 84:17 highly 54:22 hilary 3:18 hinge 58:20 history 64:10, 65:8 hit 11:17 holding 21:18, 23:20, 27:18, 27:22, 60:8, 61:1, 74:21 home 25:22 honest 12:21 honor 6:21, 7:6, 7:14, 8:7, 8:9, 9:7, 9:15, 9:21, 9:22, 10:14, 10:21, 11:19, 12:14, 13:19, 14:6, 15:16,</p>	<p>15:18, 16:7, 16:9, 17:1, 17:16, 17:20, 18:13, 22:7, 22:14, 24:11, 24:15, 24:22, 27:9, 27:11, 28:1, 29:5, 29:15, 30:10, 30:11, 31:14, 32:4, 32:8, 34:13, 35:7, 35:8, 37:13, 38:22, 39:17, 39:18, 40:12, 42:8, 42:15, 43:12, 44:3, 45:7, 46:10, 46:18, 48:15, 51:15, 55:19, 56:10, 57:8, 60:4, 63:8, 66:7, 66:22, 76:7, 76:14, 78:13, 79:19, 81:5, 82:12, 82:19, 83:3, 83:5, 83:12, 84:6, 88:21, 89:4, 89:11, 89:15, 89:17, 89:18 honor's 22:13 honorable 1:15 hope 42:6 hopeless 71:5 hospitals 80:4 hotel 23:8, 31:9 hotels 1:4, 6:16, 25:21, 26:10, 29:18, 79:2,</p>	<p>79:4, 80:7 however 82:4 human 23:14, 26:5, 69:18, 69:19 humans 56:2, 56:4 hundreds 47:3</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 11:7 identical 44:4, 44:16, 75:2 identified 52:15 identify 20:17 illinois 72:6 immediately 89:9 impairment 54:13, 62:9, 77:3 implicate 27:7 implicated 29:14 implies 62:2 important 9:5, 10:3, 10:8, 10:10, 10:19, 12:7, 53:3, 88:7 inability 30:12 inaccessibility 30:13 inaccessible 54:20 include 8:22, 34:16, 58:8, 58:10,</p>
--	--	--	--

<p>59:22, 60:11, 65:20, 68:3 included 51:12, 65:22 including 8:21, 22:16, 23:17, 36:20, 39:3, 67:13, 80:7, 80:8, 81:17 income 25:17 inconsistency 36:4 inconsistent 72:4 incorporate 57:21 incorporated 58:13, 58:19, 59:1, 74:6 incumbent 25:17 indeed 23:16, 50:17, 53:12, 58:12, 60:10, 81:11 independent 8:15 indicated 52:11 indicator 11:21 indirectly 84:1, 84:4 individual 30:7 indoor 29:9 industry 75:18 industry's 50:18 infected 43:16, 44:8 infection 47:14 infects 69:12</p>	<p>inferences 47:7 inform 11:10, 11:11 information 91:8 ingerman 4:9, 5:4, 5:9, 5:12, 7:14, 7:15, 8:7, 8:8, 9:20, 11:5, 11:18, 12:13, 13:3, 13:14, 13:17, 13:19, 13:22, 14:6, 15:18, 16:3, 16:6, 17:3, 42:14, 42:15, 79:17, 83:10, 83:12, 89:18 ingress 33:10, 33:12 initially 86:8 injecting 65:8 injects 26:11 injury 26:6 instance 16:12, 35:2, 35:3, 37:11, 80:3 instead 75:20 insurance 1:8, 6:17, 12:1, 12:4, 19:12, 20:17, 24:1, 35:18, 41:9, 41:16, 46:8, 50:18, 60:11, 75:18 insure 36:1 insured 9:3, 12:4,</p>	<p>12:17, 12:18, 13:13, 14:16, 15:12, 16:11, 16:13, 16:18, 17:22, 18:19, 20:17, 21:2, 21:9, 30:10, 43:5, 50:1, 61:22, 62:1, 72:8, 76:20 insured's 9:12, 14:2, 16:16, 16:20, 28:17, 39:2, 60:14, 62:1, 67:20, 75:5 insureds 52:15, 53:14, 78:10 insurer 12:18, 13:1, 13:13, 14:4, 20:22, 21:1, 21:4, 53:9, 53:13, 54:2 insurer's 12:5, 50:17 insurers 34:22, 40:7, 40:9, 49:5, 49:16, 51:6, 52:3, 52:5, 56:13, 60:6, 61:3, 61:7, 75:13 insures 24:2 intangible 59:19, 82:7, 82:11 intend 49:17 intended 82:7 intent 68:1 intercept 11:7</p>	<p>interest 90:8, 91:10 interesting 85:22 interference 58:11 intern 4:16 interpret 51:20, 72:11, 73:10, 73:17, 82:5 interpretation 10:12, 10:13, 17:7, 19:6, 43:8, 51:17, 52:4, 52:18, 53:10, 53:11, 54:11, 58:3, 58:5, 58:19, 61:6, 61:9, 63:1, 63:5, 65:9, 68:6, 71:12, 71:15, 72:14, 74:2, 75:10, 75:11, 81:18 interpretations 53:7, 54:1, 54:3, 54:16, 60:3, 63:3, 75:12 interpreted 49:3, 52:1, 52:3, 52:4, 52:8, 53:21, 59:9, 59:19, 60:19, 63:6, 69:3 interpreting 12:3, 43:8, 64:17, 71:21 interruption 56:18, 57:13, 59:6, 59:10, 77:14 interstate 1:9, 7:11,</p>
--	---	--	--

<p>7:18, 8:20, 22:10, 22:11, 42:15, 42:17, 46:12, 46:14, 63:18 inundated 9:15 invasive 55:11, 55:15 invisible 54:22 involved 39:4 involving 32:15 irrelevant 19:2, 19:4 irritant 37:22, 38:3, 38:6, 38:7, 38:8, 38:12, 67:3, 67:6, 67:9, 67:13, 69:6, 69:8, 69:10, 69:14, 87:10, 87:11 irritate 67:8 irritating 69:13 island 50:5 issuance 59:21 issue 7:10, 11:9, 11:17, 11:20, 12:21, 18:8, 19:10, 20:4, 20:6, 23:22, 31:7, 35:19, 36:12, 40:6, 42:18, 48:8, 49:13, 55:9, 70:12, 71:13, 76:9, 83:20, 88:7 issues 10:18, 18:5,</p>	<p>49:15, 52:11, 62:18, 71:19, 84:12, 84:14, 86:3, 87:2 itself 49:17, 57:3, 69:7, 69:14, 70:18, 73:11, 80:16, 80:17</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jackson 25:2, 42:1, 45:22 jersey 25:6, 80:22, 81:7 job 1:20, 84:11, 85:2, 88:4 judge 1:15, 11:19, 11:21, 12:14, 13:7, 13:11, 14:5, 25:2, 42:1, 45:14, 45:22, 64:17 judges 41:2 judgment 10:17 july 1:17, 90:12, 91:17 jumbled 71:5 jurisdictions 22:16, 41:7 justify 41:19</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 26:3, 26:22, 34:19 keith 3:12 kevin 90:3, 90:16</p>	<p>kill 36:3 kind 31:3, 68:2 kiser 90:3, 90:16 knocks 57:3, 57:7 know 7:10, 9:15, 9:21, 10:4, 10:18, 11:1, 15:21, 16:3, 17:4, 18:6, 18:18, 20:16, 21:12, 24:4, 26:13, 29:1, 31:5, 31:17, 32:9, 32:12, 33:22, 34:18, 34:19, 35:1, 35:11, 35:14, 37:14, 37:16, 38:7, 38:10, 38:11, 39:16, 40:15, 40:19, 41:3, 41:6, 41:14, 41:19, 41:21, 42:5, 47:3, 47:21, 48:3, 49:9, 49:11, 49:14, 51:18, 52:11, 55:12, 55:19, 55:22, 57:2, 65:12, 69:8, 69:10, 70:2, 71:4, 72:17, 74:14, 75:22, 77:12, 77:13, 82:19, 84:13, 84:21, 85:9, 85:15, 89:8 knowledge 60:13, 60:14 known 41:8, 41:15 knows 9:7</p>	<hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled 75:17 lack 28:22 laid 46:12 land 44:12 language 19:11, 29:20, 29:21, 37:22, 38:4, 40:18, 42:19, 44:13, 46:1, 49:19, 52:21, 53:1, 54:10, 57:6, 60:1, 62:15, 64:13, 64:14, 64:15, 64:19, 64:20, 65:15, 65:16, 65:18, 65:20, 65:21, 67:3, 67:22, 68:2, 68:11, 68:13, 68:14, 68:21, 68:22, 69:1, 69:3, 72:15, 72:17, 73:16, 74:14, 84:2 largely 66:11 last 12:16, 50:5, 66:19, 86:12, 86:13 later 57:2, 76:1 lauren 81:7 law 2:4, 8:2, 8:10, 8:13, 9:6, 9:14, 10:3, 10:7, 10:12, 10:13, 10:15, 11:1,</p>
--	---	---	--

<p>11:16, 12:3, 12:12, 13:6, 13:9, 14:3, 16:15, 16:21, 17:10, 18:16, 19:13, 19:14, 19:15, 19:17, 21:15, 21:21, 22:7, 22:14, 22:16, 26:2, 32:18, 51:18, 52:1, 60:17, 81:5, 86:4 lawyer 51:13 lawyers 84:20 layperson's 67:19 lead 64:16, 73:19 lead-in 57:9, 57:14, 57:20 leap 74:11 learn 16:4 least 22:11, 34:2, 38:18, 68:6, 85:16 legal 48:7 length 39:2 let's 6:6, 8:3, 22:3, 28:11, 40:21, 66:2, 66:17 lethal 54:22 letters 8:19, 9:11, 20:13, 20:14, 64:1 levy 2:3, 2:4, 6:6,</p>	<p>6:7, 6:9, 6:11, 6:14, 7:2 lexington 45:3 liability 61:8, 61:11, 61:20, 62:21 licensed 20:21 lifted 26:11, 62:8, 62:18 light 54:15, 60:13, 60:14, 60:22 likely 47:13 likened 55:2 limit 15:2, 26:2, 56:20, 61:1, 68:4, 70:18 limitation 62:3 limited 33:4, 38:12, 42:17, 56:22, 60:20, 67:14, 70:22, 74:17, 80:9 limiting 29:11, 38:4, 62:9, 65:9 limits 61:10, 70:20, 72:9, 89:10 lincoln 85:4, 85:8 liquid 67:12, 69:8 listen 41:1, 41:2 literally 82:14 litigator 14:19 little 64:10, 65:6,</p>	<p>85:6 livestock 36:2, 36:3 llc 1:4, 6:16 llp 2:10, 2:16, 3:4, 3:19, 4:4, 4:10 local 30:17 location 13:2, 16:11, 16:17, 28:17, 30:10, 33:2, 37:15, 80:15 locations 30:20, 36:19, 38:16, 39:5, 39:6 logic 42:7 logical 49:22, 52:10, 74:11 long 61:22, 85:6 longer 12:18, 62:8, 62:17, 68:7, 68:20 look 6:10, 12:2, 19:21, 20:21, 21:11, 25:12, 39:19, 43:12, 65:17, 69:1, 73:14, 73:15 looked 9:19, 9:20 looking 16:10, 43:14, 47:21, 66:21, 67:21, 73:15 looks 41:5, 83:13 los 3:6</p>	<p>lose 78:7 loss 23:3, 23:5, 23:15, 23:21, 24:2, 24:3, 24:5, 24:18, 25:12, 25:17, 25:18, 27:13, 27:15, 27:17, 27:20, 28:15, 29:1, 31:20, 32:11, 32:16, 32:19, 33:8, 33:15, 33:16, 33:18, 34:1, 35:2, 35:13, 35:21, 37:10, 37:16, 37:17, 39:13, 39:20, 39:21, 40:3, 40:5, 42:4, 45:18, 47:10, 47:22, 48:20, 49:2, 49:9, 49:20, 50:2, 50:20, 51:22, 52:14, 53:15, 54:6, 54:8, 54:14, 54:19, 55:8, 56:8, 56:11, 56:14, 58:10, 58:19, 58:21, 59:4, 59:11, 59:20, 60:10, 60:16, 60:20, 61:9, 61:14, 61:22, 62:1, 62:3, 63:1, 63:9, 70:5, 74:20, 79:10, 80:2, 80:11, 82:5, 82:11, 82:12, 83:19, 84:4, 86:9, 86:18, 86:22 losses 44:14, 45:13,</p>
--	--	--	---

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>45:20, 50:3, 50:8, 50:18, 51:1, 52:2, 56:18, 57:15, 59:6, 59:10, 70:8, 75:5 lost 40:1, 40:10, 79:13, 79:14 lot 17:21, 38:9, 46:22, 55:10, 71:3, 79:4, 82:17, 86:10 lots 46:19, 67:7 louisiana 36:14, 36:15, 36:18, 37:2, 37:5, 37:8, 37:12, 37:15, 37:20, 37:21, 38:13, 38:15, 39:3, 39:9, 42:18, 66:21, 67:1, 70:13, 72:12, 80:19, 87:5, 87:8 lower 46:5</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 35:15, 39:8, 44:3, 49:21, 53:13, 59:17, 61:17, 62:5, 64:12, 69:16, 81:21, 82:17, 83:17, 85:13, 88:17 mail 12:22, 14:21, 16:2 mailing 20:18 maintenance 29:13</p>	<p>major 79:3 majority 35:5 make 8:1, 8:13, 9:6, 9:14, 12:18, 13:4, 18:3, 18:9, 18:11, 21:20, 33:11, 35:18, 36:6, 36:7, 50:11, 51:12, 53:4, 59:15, 60:18, 70:11, 71:7, 77:22, 85:13, 88:13, 88:16 makes 20:5, 43:2, 55:17, 61:20 making 12:10, 36:1, 47:19, 72:3, 77:11, 78:1 manhattan 2:12, 81:1 many 9:15, 9:16, 34:21, 35:5, 86:11, 87:1 marsh 9:3, 14:1, 14:10 maryland 4:12 masks 27:1 massachusetts 19:14 massage 17:11, 25:1, 41:11, 41:21, 45:9, 52:13, 59:17, 78:11 material 17:5 materials 44:14</p>	<p>matter 18:16, 18:17, 52:1, 70:13 matters 11:13, 11:21 maybe 14:19, 25:7, 50:16 mean 15:21, 17:3, 17:21, 24:19, 28:7, 31:4, 38:3, 38:6, 42:3, 62:13, 82:6, 86:8, 89:6 meaning 24:13, 43:9, 51:19, 52:22, 72:20, 87:17 meaningful 14:8, 14:9 meaningless 50:7, 51:21, 52:5, 72:16, 72:18, 81:14 means 30:1, 31:1, 32:2, 43:10, 82:11 meant 48:12, 52:8, 59:4 measure 25:19 mentioned 8:14, 14:5, 77:13 mentions 16:13 merely 19:22, 21:4 mess 71:5 message 81:20 metro 44:1 michael 1:15, 2:9, 6:22</p>	<p>might 19:21, 56:1 migrate 76:13 migration 43:4 million 33:2 mind 22:3 minds 88:7 mine 88:8 minute 41:3, 57:4 minuteman 72:5 missing 9:9 missouri 45:4 modifies 65:12 moment 66:15 month 50:5 more 14:18, 17:9, 19:13, 25:5, 25:21, 31:14, 50:14, 51:7, 52:22, 60:2, 75:9, 86:5, 88:14 morning 6:19, 44:3, 86:14 mortal 23:13, 69:18, 69:19, 70:7 most 14:20, 19:9, 36:20, 41:3 motion 5:3, 5:7, 7:10, 7:16, 8:5, 8:6,</p>
--	--	---	--

<p>8:9, 8:15, 10:22, 11:8, 17:15, 17:18, 18:6, 20:3, 20:4, 20:10, 21:12, 21:17, 21:18, 22:5, 22:8, 22:12, 22:15, 49:18, 86:3 motions 1:14, 7:8, 10:17, 20:8 mound 3:19, 22:8 mouth 44:12 move 22:3, 34:22 much 19:12, 23:3, 25:15, 32:8, 47:19, 51:7, 53:4, 83:7, 84:7 multiple 78:3 must 48:18, 51:19, 53:1, 53:10, 54:3, 62:5, 63:6, 71:8 mutual 74:22 myself 39:11</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>namely 65:10 narrow 87:12 narrowed 67:6, 67:10 narrowly 69:3 nathan 3:3 nationwide 34:3</p>	<p>nature 25:11, 69:11, 85:20 ncra 91:16 nearly 10:1, 44:4, 44:16, 75:2 necessarily 16:19, 17:6, 28:21, 30:2, 36:4, 41:8, 55:21, 58:21 necessary 9:5, 20:9, 28:16 need 16:18, 18:22, 25:11, 26:18, 35:12, 43:11, 49:6, 51:3, 58:16, 88:8 needed 80:5 needs 18:15 neither 45:16, 62:22, 90:6, 91:8 nevada 44:21 never 77:21, 79:22 new 2:18, 3:20, 3:21, 9:3, 9:12, 10:12, 10:14, 10:16, 11:14, 14:10, 17:8, 17:9, 17:10, 19:12, 24:9, 24:10, 25:6, 72:15, 75:1, 80:21, 81:2, 81:4, 81:5, 81:7, 82:16 nine 8:20</p>	<p>nobody 67:8 nodding 64:22 none 5:16 norfolk 16:14 northern 44:1, 59:2, 72:5 northwest 4:5 noses 44:12 notable 34:19, 51:6 notarial 90:11 notary 90:1, 90:16, 90:19 note 6:5, 32:22, 37:1, 38:22, 53:3, 68:18, 71:10, 85:6 noted 22:10, 22:17, 24:15, 36:10, 39:21, 63:20 notes 24:9 nothing 24:18, 24:19, 24:20, 26:9, 26:16, 26:17, 27:5, 30:19, 37:10, 56:19, 71:2, 71:13, 71:18, 73:4, 74:14, 80:11 nothing's 26:13 notice 49:16 notwithstanding 41:5, 74:13,</p>	<p>75:17 noxious 56:5 number 13:10, 16:8, 66:5, 70:15, 90:19 numerous 36:1, 36:20, 60:7</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 47:13 objections 88:16 observer 4:16, 7:22 obviously 79:2 occupy 81:17 occur 21:8, 27:17 occurred 30:2 occurs 12:22, 13:2, 15:2 odor 55:4, 56:5 office 15:3, 15:7 officer 90:3 oh 6:6, 40:11, 52:9, 66:20, 69:22 ohio 59:2 okay 6:12, 7:19, 9:20, 11:5, 17:14, 32:5, 33:14, 34:7, 39:15, 52:9, 66:18, 67:1,</p>
--	--	---	--

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>68:16, 68:17 oklahoma 44:2 once 14:9, 19:10, 66:11 one 3:20, 7:8, 7:10, 8:18, 9:19, 13:15, 16:4, 25:5, 25:7, 27:10, 27:12, 27:19, 31:15, 34:4, 36:22, 38:21, 43:15, 44:2, 45:6, 49:21, 50:14, 52:22, 54:4, 56:12, 67:2, 67:15, 71:3, 71:7, 74:9, 75:10, 87:6 only 16:2, 29:11, 32:1, 39:16, 42:17, 53:10, 54:4, 56:14, 58:6, 59:11, 68:21, 68:22, 71:8, 72:12, 73:7, 81:10, 83:13 open 27:1, 31:17, 79:7, 80:6 operates 76:1 operating 61:18, 62:6, 86:1, 86:2 operation 23:7 operations 30:14, 61:17, 62:5, 62:19 operative 49:10, 64:13,</p>	<p>64:14, 64:15, 65:16, 65:17, 65:19, 65:21, 68:11, 68:13, 68:14, 68:21, 69:1 opinion 12:1, 13:11, 21:14, 21:20, 24:7, 44:6, 75:8 opinions 10:1, 85:18 opportunity 79:18 opposed 55:16, 63:17 order 23:10, 28:18, 29:17, 53:9, 54:2, 84:3, 88:12, 88:13, 88:15, 89:2, 89:7 orderly 46:20 orders 26:10, 30:17, 30:18, 45:21, 54:21, 62:8, 62:9, 62:18, 77:2, 82:21 ordinary 24:13 originally 67:22, 68:2 other 7:8, 19:16, 21:22, 22:20, 25:5, 25:7, 27:14, 27:16, 32:19, 33:5, 34:18, 36:2, 39:11, 39:16, 39:17, 40:10, 41:11, 41:20, 44:11, 45:6, 47:22, 48:10, 52:16, 55:3,</p>	<p>57:1, 57:2, 58:9, 64:1, 67:13, 69:9, 70:17, 71:17, 80:6, 82:16, 86:14, 87:16, 87:18, 87:19 others 54:11 otherwise 61:1, 77:6, 90:9, 91:11 ought 88:2 out 9:17, 10:2, 10:15, 15:13, 17:22, 19:17, 25:8, 32:12, 32:13, 36:15, 36:18, 38:16, 41:8, 44:1, 44:9, 44:21, 45:3, 46:12, 50:5, 57:4, 58:1, 59:2, 59:12, 65:4, 76:11, 76:19, 78:13, 78:22, 84:16, 85:14, 86:12, 88:9 outbreak 29:19, 29:21 outcome 90:9, 91:11 outlier 25:4, 25:5, 25:9, 52:17, 82:2 outliers 41:12 outset 9:14 outside 38:3 outstanding 84:10, 85:1 over 9:10, 13:1,</p>	<p>22:20, 23:18, 24:7, 40:7 overwhelming 35:5 own 21:5, 44:22 oyer 5:3, 7:8, 7:16, 8:5, 8:6, 9:8, 10:22, 11:8, 17:15, 17:19, 18:6, 20:3, 20:5, 20:8, 20:11, 21:13, 21:17, 21:19, 86:3, 86:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 5:2, 33:3, 44:6, 66:19 pages 1:21, 76:1 pandemic 23:5, 62:20 paragraph 43:13, 47:11, 48:18, 60:5, 77:1, 77:14, 83:14 paragraphs 43:14, 47:9, 72:22 parks 79:1 part 9:5, 17:17, 19:9, 22:12, 24:10, 29:15, 29:16, 37:19, 64:12, 68:21, 69:2, 77:15 particles 44:10, 44:11 particular 30:20, 31:16, 37:18, 71:9 particularly 23:6, 23:12</p>
--	--	--	--

<p>parties 46:3, 53:6, 64:20, 75:11, 90:7, 91:9</p> <p>partners 81:1</p> <p>party 34:21</p> <p>pasich 2:10, 2:16, 3:4</p> <p>past 34:5</p> <p>pathogen 44:18</p> <p>pathogenic 44:13</p> <p>pay 83:19, 88:3</p> <p>pennsylvania 36:21, 38:21, 83:2</p> <p>pentair 82:8</p> <p>people 26:11, 26:22, 27:1, 27:2, 28:20, 44:11, 69:12, 69:14, 69:22, 70:4</p> <p>percent 27:21</p> <p>perhaps 86:9</p> <p>period 25:18, 61:7, 61:11, 61:13, 61:20, 62:21, 80:9, 89:6</p> <p>permeated 43:18</p> <p>permeates 48:4</p> <p>permeating 48:1</p> <p>person 43:16, 43:18, 44:9, 80:10, 80:11, 83:6</p>	<p>person's 13:2</p> <p>personal 26:6</p> <p>personally 83:5</p> <p>persons 30:13</p> <p>perspective 67:20, 67:21, 84:15</p> <p>persuasive 19:22</p> <p>peter 2:15</p> <p>petition 88:6</p> <p>ph 36:22, 44:1, 45:15, 80:22, 82:8</p> <p>phil 22:7</p> <p>philip 3:17</p> <p>phillip 7:7</p> <p>philosophy 85:21</p> <p>phrase 49:3, 49:10, 53:21, 53:22, 60:15, 61:11, 63:2, 86:18</p> <p>physical 23:15, 23:21, 24:2, 24:3, 24:5, 24:18, 25:12, 27:13, 27:15, 27:17, 27:20, 28:15, 32:11, 32:16, 32:19, 33:8, 33:15, 33:18, 34:1, 35:2, 35:13, 35:20, 37:10, 37:15, 37:16, 39:13,</p>	<p>40:3, 40:5, 42:4, 45:18, 47:10, 47:15, 47:20, 47:22, 48:6, 48:20, 49:2, 49:5, 49:7, 49:9, 49:20, 50:20, 51:22, 52:14, 53:15, 53:18, 54:6, 54:8, 54:9, 54:14, 54:19, 55:6, 55:8, 55:11, 59:20, 60:10, 60:16, 60:20, 60:21, 61:9, 61:14, 61:18, 62:3, 62:6, 63:1, 63:9, 70:5, 79:10, 80:1, 80:11, 82:5, 82:12, 86:9, 86:18, 86:22</p> <p>physically 43:18, 48:1</p> <p>piece 79:8</p> <p>piper 4:4, 4:10, 7:15</p> <p>place 22:20, 50:8</p> <p>placed 61:16</p> <p>plain 24:13, 42:19, 43:7, 43:9, 44:13, 57:6, 67:22, 68:2, 73:15, 86:17</p> <p>plaintiff 1:6, 23:2, 35:11, 36:12, 43:2, 44:3, 45:13, 45:15, 49:12, 80:13</p> <p>plaintiff's 7:3, 10:5,</p>	<p>17:18, 25:16, 44:22, 45:9, 53:2, 59:21, 81:18, 83:17</p> <p>plaintiffs 2:2, 3:2, 6:20, 6:22, 7:2, 8:11, 33:6, 45:20, 46:17, 49:14, 50:9, 53:7, 54:18, 60:5, 61:4, 75:13, 81:8, 81:12, 82:16</p> <p>plausible 54:18, 60:2</p> <p>plaza 3:20</p> <p>pleading 10:18, 44:22, 77:9</p> <p>pleadings 35:1</p> <p>please 8:5, 64:2</p> <p>pled 8:12, 47:6</p> <p>pllc 2:4</p> <p>plus 10:1, 27:16, 34:20</p> <p>point 11:4, 21:14, 25:15, 26:14, 28:6, 32:18, 35:22, 39:17, 50:17, 52:20, 53:4, 59:16, 59:17, 67:18, 69:16, 69:17, 74:16, 78:21, 80:1</p> <p>point's 12:15</p> <p>pointed 17:22, 26:14, 58:1, 76:18,</p>
--	---	---	---

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>78:13 points 63:9 police 80:4 policies 36:1, 56:9 policy 8:20, 9:2, 9:12, 11:13, 12:5, 12:17, 24:1, 24:12, 25:13, 25:19, 26:7, 26:8, 27:10, 27:12, 27:14, 33:4, 34:6, 34:10, 34:15, 36:6, 38:17, 39:1, 39:21, 40:4, 42:7, 46:2, 46:9, 51:4, 52:21, 54:10, 56:16, 57:1, 57:3, 57:7, 57:10, 57:12, 57:17, 59:21, 60:1, 60:19, 62:4, 62:15, 63:5, 63:17, 63:18, 63:19, 64:2, 64:5, 65:12, 66:10, 67:21, 68:1, 69:2, 70:7, 70:15, 72:19, 72:20, 73:3, 73:11, 73:16, 74:14, 82:22 policy's 44:13 policyholder 11:15 pollution 7:16, 9:1, 42:16, 46:14, 83:14, 83:18, 87:19</p>	<p>pollutions 76:6 pool 29:8, 30:6 poor 84:20 portions 78:14, 78:16, 87:16 position 30:4, 32:3, 33:19, 39:7, 50:1 positions 63:12, 85:2 possible 79:20 post 15:2, 15:6 postage 15:3 potential 71:18 potentially 11:10, 31:19, 75:10 practice 8:2 precaution 31:4 precluding 59:10 prejudice 87:22, 88:10 premised 55:21 premises 43:5, 43:21 prepared 17:12, 38:11, 91:17 presence 33:19, 45:16, 47:11, 50:19, 55:2, 60:8, 76:21, 86:21 present 4:15, 56:4,</p>	<p>62:8, 62:17 presented 54:17, 86:6 preserved 88:14, 88:19 president 85:4, 85:8 presumably 31:3 pretend 40:21 pretty 32:8, 67:7, 88:12 prevail 53:9, 54:2 prevails 27:19 prevent 26:4 primarily 78:4 prior 61:19, 62:20 pro 2:9, 2:15, 3:3, 3:17, 3:18 probably 8:4, 11:20 proceed 8:3 proceedings 90:5, 91:5, 91:6 process 50:11, 55:15 profession 84:18 professional 91:16 proffered 81:18 profits 25:18 prohibited 28:19, 28:20 prohibition 29:3, 30:11,</p>	<p>31:14, 31:15, 31:22 promulgated 59:20 proof 25:10, 49:12, 49:13 properly 47:6 properties 72:12, 78:6, 78:7, 78:8, 78:22, 79:5, 79:9, 81:8 property 22:22, 23:15, 23:21, 24:1, 24:3, 24:6, 26:7, 27:15, 36:3, 37:4, 37:8, 40:2, 40:3, 40:5, 45:17, 47:15, 48:17, 50:20, 52:15, 54:12, 54:19, 55:7, 55:8, 55:12, 56:15, 57:11, 59:5, 59:12, 60:9, 60:21, 60:22, 62:4, 62:10, 62:15, 69:20, 69:22, 70:4, 78:14, 78:16, 80:16, 80:17, 81:17, 82:6 property's 45:18 prove 49:17 proves 25:15 provide 49:16 provided 44:2, 76:16 provides 20:20, 52:13,</p>
--	--	---	---

<p>70:8, 78:17 provision 25:13, 27:10, 27:12, 27:14, 46:8, 51:21, 75:9 provisions 71:1, 71:6, 73:2 public 23:6, 23:8, 23:11, 26:4, 31:11, 90:1, 90:16 purpose 8:9, 58:21, 82:7 purposes 33:22 put 12:5, 16:16, 17:1, 49:12, 51:14, 68:22, 72:19, 89:1 puts 14:11 putting 32:20, 33:7</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 84:10, 84:22 question 11:11, 12:10, 12:11, 14:14, 14:15, 18:5, 20:3, 20:15, 21:11, 21:13, 21:16, 23:2, 27:4, 27:6, 27:14, 30:22, 35:10, 48:13, 52:17, 63:2, 64:8, 65:6, 73:21, 74:5, 76:6, 77:9, 86:5 questions 39:18, 45:8,</p>	<p>49:12, 63:8, 83:3, 85:22, 86:6 quick 61:12 quickly 43:1, 45:11 quite 12:20, 12:21, 41:6, 55:14, 66:11, 85:19 quote 45:15, 53:22, 59:18, 75:9, 81:15, 82:5, 82:6 quoting 44:6</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise 18:4, 77:18 raised 36:13, 38:15, 56:13, 63:9, 69:17, 74:16, 81:2, 83:21 raises 69:15 ralph 81:7 range 84:15 rather 55:11, 83:6 reach 20:2, 68:11, 86:4, 86:20 read 10:1, 14:12, 24:4, 30:8, 36:6, 47:3, 64:2, 67:10, 70:17, 86:11 reading 68:1, 77:20, 77:22, 81:12, 86:17</p>	<p>ready 61:17, 62:5 realize 32:17, 64:11, 68:9, 88:1 really 6:14, 8:10, 8:18, 11:3, 25:3, 25:15, 39:19, 41:13, 41:17, 52:15, 59:4, 67:14, 71:17, 71:18, 76:19, 82:22, 84:13, 85:17 realty 50:4 reason 23:12, 23:16, 79:3 reasonable 47:7, 51:10, 53:11, 54:5, 58:7, 58:18, 67:20, 68:6, 75:7 reasonableness 53:6, 58:3 reasoning 22:2 reasons 27:4, 41:19, 42:8, 46:11, 87:21 rebuttal 83:11 recall 14:5 receipt 15:3 received 21:8 recent 20:6 recently 9:17, 36:20, 38:20 recognize 17:11</p>	<p>recognized 46:2 recognizes 82:10 reconcile 72:9 record 40:20, 78:1, 88:14, 88:18, 91:5 recorded 90:6, 91:5 recording 91:7 recovery 75:5 redundancy 58:2, 58:4 redundant 58:16 refer 25:14, 74:19, 74:21 reference 45:8, 58:22, 61:7, 73:1 referred 57:13 referring 71:13, 71:17 refers 78:15 regard 87:5, 87:18 registered 91:16 registration 90:19 reiterate 17:4 rejected 36:19, 38:17, 38:19, 76:17, 80:21, 82:3, 82:18, 83:1 rejecting 39:2, 45:10 relate 73:2</p>
---	---	--	--

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>related 59:16, 90:7, 91:9 relates 7:10 relative 86:2 relatively 86:1 release 15:11, 21:8, 43:3, 44:8, 76:13 released 45:1 releases 13:1 releasing 21:6 relevant 19:19 relying 76:19, 76:20 remained 79:7 remark 35:16 remarkable 41:4 remediated 56:4 remediation 55:10, 55:21, 55:22 remember 57:5, 85:6 remembering 85:9 remove 55:12, 55:14, 68:4 removes 65:12 render 51:21, 58:5, 81:13 rendered 50:7, 52:5,</p>	<p>54:12, 72:18 rendering 47:16, 72:14 renders 70:4, 87:16 repair 62:2, 62:11, 62:13 repaired 26:18, 61:16 repairs 25:20, 25:21 repeating 39:10 replace 62:2, 62:11 reporter 6:3, 6:4, 90:1, 91:16 represent 22:9 representative 7:4 requested 15:4 require 23:10, 27:13, 28:15, 33:8, 33:14, 33:15 required 9:13, 30:9, 31:9, 48:10, 78:12 requirement 33:17 requires 27:15, 28:16, 53:15, 55:11, 55:14 resolution 20:9 resolve 18:8, 72:7 resorts 1:4, 6:16 respect 10:9, 10:21, 22:12, 22:21,</p>	<p>30:9, 32:22, 35:8, 36:14, 37:9, 46:14, 62:22, 63:9, 71:14, 71:16, 74:10, 83:18 respectfully 42:9 respective 53:6 respond 51:8, 79:18 responses 35:14 restaurant 23:9, 26:15, 26:18, 26:19, 29:2, 29:9, 30:15, 59:1 restaurants 26:22, 80:8 restore 62:13 restored 62:16, 79:21 restrict 81:9 rests 68:10 result 23:5, 77:2 resulted 29:1, 31:19, 79:10 resulting 55:5 results 35:7 return 15:3 review 66:3 rhode 50:5 richmond 15:5, 15:9 rid 55:15</p>	<p>right 6:5, 6:12, 6:15, 7:1, 7:12, 12:15, 13:6, 13:16, 15:3, 17:2, 17:14, 20:1, 22:4, 22:6, 28:2, 31:22, 32:5, 37:5, 37:20, 42:11, 46:16, 46:17, 47:17, 47:21, 64:22, 66:14, 68:9, 70:9, 76:5, 78:20, 78:21, 79:15, 83:8, 84:8, 85:10, 88:22, 89:5, 89:12 rise 74:8 risk 30:3, 39:10, 54:21 road 68:20 room 32:14, 82:15 rosecrans 2:11 rpr 1:22, 91:15, 91:16 rule 14:21, 16:19, 16:20, 72:7 ruled 24:11, 75:8 rules 10:11, 10:13, 17:7, 19:5, 19:6, 22:18, 22:19, 24:8, 24:11, 24:15, 36:5, 40:15, 42:2, 43:8, 51:17, 52:18,</p>
--	--	--	---

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>61:6, 63:4, 72:13, 82:1 ruling 5:6, 5:13, 22:13, 85:14 run 29:7, 29:8 running 15:19, 89:6</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>said 12:2, 12:7, 12:8, 13:8, 18:19, 24:14, 26:21, 29:18, 44:5, 44:21, 45:15, 50:5, 50:11, 54:6, 54:7, 54:11, 59:18, 75:4, 76:16, 81:5, 81:8, 82:4, 85:5, 90:5, 91:5 same 17:8, 19:8, 22:2, 24:16, 35:7, 35:16, 39:1, 39:7, 40:15, 40:18, 44:4, 44:20, 45:4, 50:22, 53:13, 60:4, 61:17, 62:5, 68:4, 76:18, 77:7, 80:16, 80:20, 82:17, 82:22 sars-cov-2 43:15, 43:17, 47:10, 47:12, 47:14 satisfied 51:5 satisfies 49:8, 54:14 say 19:1, 24:21,</p>	<p>37:12, 38:11, 38:12, 39:17, 40:16, 41:21, 44:7, 49:1, 56:11, 56:21, 64:20, 68:12, 68:20, 70:15, 70:18, 70:22, 71:8, 71:19, 72:2, 78:1, 83:4, 83:22, 85:6, 85:8, 89:3 saying 12:14, 23:1, 28:21, 30:12, 34:20, 40:11, 40:13, 47:20, 65:7, 76:11, 87:9 says 13:12, 29:7, 57:16, 65:11, 65:14, 68:14, 69:9, 72:19, 72:20, 83:19 schedule 86:13 schunk 7:3 seal 90:11 second 35:3, 50:11 section 14:4, 14:7, 15:12, 20:19, 21:3, 21:6, 25:14, 56:16, 56:22, 57:10, 57:11, 57:21, 57:22, 58:6, 58:7, 58:9, 58:12, 58:13, 72:21, 73:17, 73:18, 73:19, 73:20, 74:6 see 6:6, 66:10,</p>	<p>66:17, 68:16, 68:17, 73:13, 87:17 seeing 18:20, 57:6 seeking 33:6 seem 18:7, 18:9, 38:8 seems 18:11, 19:15, 19:16, 38:4, 38:8, 64:9, 67:7, 67:9, 71:5 send 82:13 sending 21:4 sense 18:12, 36:6, 36:7, 68:13, 69:10, 71:8 sent 11:14, 36:22, 38:21, 82:21 separate 34:12, 57:15, 73:19 sequential 66:11 serve 35:20, 79:2 set 57:15, 90:10 sets 58:4 setting 52:10 several 16:22, 38:15 shall 20:22, 73:1 shortage 32:17 should 8:4, 21:17, 24:12, 28:12,</p>	<p>35:7, 36:6, 39:4, 59:14, 60:16, 61:2, 64:17, 67:10, 87:22, 88:1 show 53:10 shut 78:12, 78:13, 78:14, 79:6, 79:9, 80:5 sick 69:12, 69:13 side 7:21, 17:9, 17:12, 27:19, 42:8, 82:16 sides 84:11, 85:15, 85:16 sight 78:7 sign 89:8 signature-mig2k 91:13 signature-plkal 90:14 significant 19:7, 56:1, 79:12 silverberg 3:17, 5:8, 5:11, 7:6, 7:7, 17:12, 22:6, 22:7, 24:21, 27:9, 27:22, 28:3, 28:8, 28:14, 29:15, 29:17, 30:8, 31:13, 32:4, 32:7, 33:14, 34:8, 37:3, 37:6, 37:9, 38:1, 38:10, 39:16, 40:11, 40:19, 41:1, 46:11, 79:17,</p>
--	---	---	--

<p>79:19, 85:18, 87:6, 88:11, 88:20, 88:22, 89:4, 89:11, 89:15 similar 15:10, 46:7, 54:16 simple 86:7, 88:12 simply 36:19, 55:16, 61:12, 65:15, 69:1, 86:22, 87:14 since 21:15, 59:21 singled 25:8 sir 70:10 sit 86:10 situation 15:10 slate 86:3 slow 50:10, 78:19, 78:20 small 44:9 smith 4:11 smoke 70:1 sneezes 43:17 so-called 54:13 sole 37:15 solely 72:22 solid 67:12, 69:8 some 18:11, 28:6,</p>	<p>31:3, 33:15, 38:13, 40:1, 51:12, 53:15, 54:5, 54:7, 58:2, 58:4, 62:3, 63:16, 70:21, 70:22, 72:9, 85:15, 85:16, 85:19 somehow 11:15, 67:10, 87:15 someone 11:14 something 19:20, 19:22, 30:9, 36:13, 38:5, 86:7 sometimes 13:20 somewhere 51:13 soon 15:6 soot 69:11 sorry 17:16, 19:5 sort 25:10, 32:10, 33:17, 62:3, 77:8 sorts 71:1 sound 62:14, 62:16, 79:21, 79:22 sounded 50:15 sounds 47:18 source 79:3 sources 82:7 southern 74:22 spa 26:15</p>	<p>space 48:18 spas 23:9 speak 27:11, 34:12, 69:17 speaking 22:11 speaks 29:22, 43:16 specific 7:17, 30:19, 38:18, 49:15 specifically 25:8, 29:18, 29:22, 47:8, 81:15 specify 72:17 spectrum 54:1 sports 32:15 spread 43:10, 47:13 spreading 29:10, 54:22 spreads 43:15, 44:8 stadiums 80:7 stand 86:9 standard 9:8, 9:10, 75:18 stands 25:3 stark 25:4 start 6:2, 8:4, 10:2, 19:10, 23:1, 43:12, 47:2, 47:4, 63:16, 64:18, 66:9, 89:9</p>	<p>starting 52:20, 61:13, 67:18, 86:6 state 10:16, 19:17, 23:18, 30:17, 41:12, 62:14, 62:16, 70:22, 71:9, 79:21, 79:22 state's 16:14 state-specific 38:13 stated 48:11, 76:8 states 19:7, 21:22, 26:2, 40:7, 40:14, 41:14, 57:1, 61:13, 63:22 stating 88:4 statute 13:8, 13:9, 13:11, 86:17 step 12:5, 12:17, 14:11 still 21:3, 44:18, 69:3, 74:15 stop 47:17, 50:16 stoppage 58:9 stores 39:5 street 4:5 strikers 58:11, 58:17 strikes 58:8, 58:17 structural 53:16, 53:18, 54:7, 55:6,</p>
---	---	--	--

<p>59:22, 60:21 structure 52:13, 73:11 struggle 18:20 struggling 65:6 stuff 84:19 sub-limit 33:2 subject 33:1, 53:22, 68:7 submit 35:7, 36:8, 42:9, 53:11, 55:20, 57:19, 58:14, 59:13, 60:4, 60:15, 63:4, 69:6, 70:6, 74:7, 76:2, 77:6, 80:2 subset 68:5 substance 60:9 substantive 86:5 substituted 38:5 suddenly 38:16 suffered 23:3, 23:4 suffice 71:19 suggest 43:3 suggesting 51:18 suggestion 45:22 suggests 62:2, 69:21 suite 2:5, 2:11, 3:5, 3:13</p>	<p>superfluous 50:6, 72:16, 81:11 supplementation 82:20 support 44:22, 61:8 supporting 91:7 supports 58:3, 58:18 supreme 20:7, 46:6, 88:5 sure 9:22, 28:6, 28:14, 30:4, 31:20, 35:18, 40:13, 43:22, 47:18, 48:12, 50:12, 50:13, 51:12, 63:14, 66:16, 73:13, 76:7, 77:10, 77:18, 88:5, 88:11, 88:13, 88:16 surfaces 47:12, 55:17 surplusage 51:20, 52:6 surround 79:2 susceptible 52:22, 63:3, 75:9 suspect 85:14 suspenders 51:16, 52:7 suspension 28:16, 28:18, 78:17, 79:11 sustain 86:15 sustained 28:12, 87:22, 88:10</p>	<p>swearing 6:2 sworn 6:4 systems 59:1</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>take 12:4, 20:21, 45:7, 73:3, 74:11, 85:11 taken 14:11, 77:5, 88:3, 90:4 takes 12:17, 15:4, 27:20, 83:16, 87:1 talked 20:20 talking 41:12, 73:18, 74:1, 74:2 talks 37:21 tangible 24:3, 40:2 tape 26:20, 29:2 teal 43:22 technical 77:9 technically 77:20, 77:22 tell 57:5, 84:9 ten 8:19 tend 19:4, 81:13 tends 20:7, 21:1 terminate 71:3 terms 24:17</p>	<p>test 17:22 th 2:17 thank 8:7, 11:18, 15:17, 16:7, 17:14, 17:20, 22:6, 24:21, 42:11, 42:14, 46:16, 46:18, 79:19, 83:6, 83:8, 83:12, 84:6, 84:8, 88:20, 89:11, 89:12, 89:13, 89:15, 89:17, 89:19 theirs 53:8 themselves 20:17, 75:20, 77:2 theory 50:17, 50:18 therefore 43:5, 48:13, 50:21, 61:4, 63:6, 64:5, 74:19 thermal 67:13, 69:8 they'd 18:3 thing 34:18, 39:17, 45:5, 80:16, 83:13 things 20:8, 20:15, 36:2, 48:1, 56:1, 67:7, 69:11, 70:1, 70:19 think 10:11, 11:19, 12:9, 12:12, 12:14, 12:20,</p>
---	--	--	---

<p>12:21, 13:3, 13:22, 14:1, 14:8, 14:16, 15:9, 15:12, 15:18, 17:5, 17:6, 17:22, 18:13, 18:18, 19:7, 19:8, 19:12, 19:19, 20:2, 20:10, 20:13, 20:16, 20:22, 21:7, 21:10, 21:12, 21:16, 25:6, 25:7, 30:2, 31:13, 31:14, 32:10, 33:12, 34:19, 35:22, 36:10, 36:16, 38:2, 38:17, 39:12, 42:6, 42:7, 42:19, 46:3, 47:1, 48:3, 48:5, 48:9, 49:1, 51:16, 52:11, 53:3, 57:3, 57:6, 58:1, 58:18, 63:11, 65:7, 65:19, 67:7, 67:14, 67:18, 67:19, 68:5, 69:16, 71:11, 73:9, 73:14, 76:8, 81:21, 81:22, 84:10, 85:1, 85:18, 85:19, 86:2, 87:8, 87:10, 87:11, 87:19, 88:4, 88:7 thinking 31:4 third 2:17 thor 74:21, 81:3,</p>	<p>81:8, 81:11, 83:21 thorough 53:20 thought 10:19, 84:9 thousand 40:12, 41:18, 41:19, 42:5 thousands 43:17 threat 29:9, 30:1, 47:15, 48:20 three 43:22 threshold 18:5, 33:17, 40:4 threw 75:20 through 31:22, 47:9, 53:19, 53:20, 66:10 throughout 70:21 time 15:1, 16:14, 25:12, 25:17, 25:18, 40:7, 41:15, 50:14, 50:22, 56:17, 57:12, 57:15, 57:17, 58:6, 58:20, 61:14, 78:5, 78:9, 80:9, 82:2, 83:4, 84:7, 86:13, 89:6, 89:10 times 38:15 timing 12:10, 15:1 timothy 3:11 titles 72:21</p>	<p>today 7:5, 7:13, 9:17, 17:15, 23:17, 49:13, 82:13, 82:14, 84:22, 88:18 took 36:15, 65:4 topic 85:8 touched 40:4 tough 41:15 toxic 26:20, 55:5 transaction 9:5 transcribed 1:22, 91:6 transcriber 91:1 transcript 91:4 transfer 26:4 transmission 80:10 transmittal 11:11, 20:14 transmitted 9:2, 9:11 travco 60:11, 80:13 travels 44:7 treats 14:3 trigger 50:21 triggers 43:21 true 40:22, 44:20, 47:6, 48:19, 60:5, 69:19, 85:7, 91:4 trust 22:14</p>	<p>try 46:19, 70:2, 79:20, 89:2 trying 19:11, 38:2 turning 49:19 turns 47:12 two 7:7, 8:18, 38:18, 58:4, 80:20, 86:13, 89:3 type 31:4 types 70:8, 85:21</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 48:7 ultimately 18:17, 49:11 unambiguous 24:8, 24:17, 24:18, 42:3, 75:16, 76:3 unambiguously 64:6, 75:4 unconditional 21:7 unconditionally 21:7 under 9:7, 10:12, 10:13, 13:9, 14:4, 20:6, 21:3, 21:5, 21:18, 25:19, 33:5, 33:6, 38:16, 43:10, 60:17, 61:5, 62:5, 63:4, 73:8, 78:2, 79:8, 83:15, 85:11 underscores 70:7</p>
---	--	---	---

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>understand 10:20, 22:13, 28:22, 30:11, 30:14, 31:6, 31:17, 31:18, 32:6, 34:11, 35:11, 39:14, 63:12, 84:14 understanding 11:12 undertaken 16:22 unfortunately 66:6 uninhabitability 29:4, 30:5, 30:19, 30:22, 31:1 uninhabitable 26:21, 28:19, 30:1, 31:6, 31:9, 31:12, 32:2, 54:12, 54:20, 80:15 unique 63:16 university 3:13 unless 63:8, 83:3 unpack 46:19, 46:22 unreasonable 54:4 until 21:8, 89:7 untimely 16:2 unusable 47:16 unusual 19:18 upheld 34:9 use 20:8, 39:20, 39:21, 40:2, 44:17, 54:13,</p>	<p>54:20, 56:2, 56:3, 56:8, 56:11, 56:14, 58:19, 58:22, 59:4, 59:11, 69:21, 81:15 uses 37:22, 67:2 using 73:16</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vaccines 26:12 validity 51:7 valley 46:5 varied 54:15, 54:16 various 26:2, 34:9, 39:5, 56:1, 72:21 vary 19:6 verbatim 34:10 verbs 48:10, 76:12 versus 12:11, 19:21, 44:21, 45:3, 46:5, 59:1, 60:11, 74:22 vice 2:9, 2:15, 3:3, 3:17, 3:18 video 13:20 view 20:1, 24:6, 31:1, 53:18, 62:21, 78:3, 86:16, 87:6 violate 72:13 virginia 2:6, 3:14,</p>	<p>10:13, 11:15, 13:8, 13:9, 13:11, 14:3, 14:17, 14:20, 15:13, 16:1, 16:9, 16:20, 16:21, 17:8, 17:12, 19:16, 20:18, 21:9, 21:15, 21:20, 22:1, 22:14, 22:17, 24:9, 24:12, 25:7, 36:5, 43:7, 46:3, 46:6, 52:19, 54:1, 60:12, 60:17, 63:4, 63:5, 82:1, 86:1, 90:17 virtually 1:16 virus 26:5, 34:5, 34:16, 35:4, 35:6, 35:9, 35:10, 35:12, 35:20, 36:3, 36:9, 36:15, 36:19, 37:17, 37:19, 38:7, 38:11, 38:16, 43:5, 43:20, 44:10, 45:1, 45:10, 45:14, 45:17, 48:16, 50:1, 50:6, 50:19, 51:1, 52:2, 55:1, 55:3, 62:7, 62:16, 63:20, 69:6, 69:7, 69:13, 69:18, 75:17, 75:19, 75:22, 76:2, 76:21, 80:10, 84:3, 86:21 virus" 44:17</p>	<p>virus-related 50:3 viruses 50:7, 50:19, 51:2, 52:2, 64:4, 64:7, 65:21, 68:3, 68:5, 68:7, 68:20, 74:13, 87:4 visible 12:5 vitiate 59:7</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waiting 32:14, 82:15 walked 53:20 want 6:7, 8:2, 10:10, 11:1, 11:7, 17:4, 27:1, 27:2, 30:21, 59:15, 76:5, 79:13, 82:20, 84:9, 88:13 wanted 45:6, 61:1, 62:12, 63:7, 66:3 wants 34:12 ward 60:11 warning 8:2 warrants 42:20 washington 4:6 way 13:3, 15:19, 16:5, 19:7, 30:8, 31:21, 33:20, 41:8,</p>
--	---	--	--

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>41:21, 43:15, 48:15, 48:16, 48:17, 67:15, 70:17, 72:8, 72:9, 72:19, 73:1, 84:12, 84:13, 85:3 ways 70:16 we're 8:17, 18:14, 19:20, 26:5, 26:6, 33:12, 40:11, 41:18, 47:4, 51:13, 65:8, 65:9, 66:21, 68:19, 73:15, 73:16, 73:18, 74:1, 80:17, 86:2 wear 27:1 wearing 31:3 webex 32:14 webster's 43:10 weeks 89:3 weight 34:2 went 8:19, 39:1, 53:19 weren't 80:5 west 25:7 western 45:4 whatever 39:18, 71:4 whenever 34:13, 82:6 whereof 90:10 whether 11:9, 18:1,</p>	<p>18:2, 19:20, 21:11, 22:1, 30:15, 33:9, 48:6, 48:19, 52:17, 52:21, 61:21, 63:2, 69:5, 73:22, 74:5, 84:2, 86:4 whole 17:21, 68:10 widely 43:10 william 4:16 willing 87:7, 88:14 willis 11:22 willow 45:3 wilshire 3:5 win 42:6 wipes 36:18, 38:16 wiping 55:16 wish 28:5, 79:18, 83:11 within 19:11, 76:12, 89:2 witness 5:2, 90:10 wollan 3:19 wonder 64:16 word 12:8, 36:15, 44:17, 73:4, 75:22, 87:11 wording 39:1, 42:7, 82:22 words 43:9, 51:18,</p>	<p>62:13 work 21:22, 58:9, 84:17, 89:13 working 14:4, 21:2 world 23:4, 85:5, 85:9 worth 35:22 wouldn't 16:18, 18:9, 27:7, 43:6, 68:12, 78:6, 89:7 wrong 26:16, 26:17, 42:1, 85:9 wrongly 41:22, 81:21 <hr/> Y <hr/> yeah 37:6, 38:1, 48:14, 55:9 year 59:3, 75:1 years 9:10 yellow 26:20, 29:2 york 2:18, 3:20, 3:21, 9:3, 9:12, 10:12, 10:14, 10:16, 11:14, 14:10, 17:8, 17:9, 17:10, 19:12, 24:9, 24:10, 72:15, 75:1, 81:4, 81:5, 82:16 you-all 86:6, 88:13, 88:15, 89:8, 89:12 young 4:3, 7:20,</p>	<p>15:19 yourself 80:3 youthful 41:5 <hr/> Z <hr/> zero 23:2 zeros 27:10, 27:11 zoom 83:6 zurich 1:8, 6:17, 22:9, 59:2, 63:16, 63:19, 71:17, 72:2 zurich's 9:2 <hr/> \$ <hr/> \$1 33:2 <hr/> (<hr/> (a 15:13, 15:14 <hr/> . <hr/> .01 25:14 .05 57:9 <hr/> 0 <hr/> 00 86:14 02974 1:7 <hr/> 1 <hr/> 1 89:20 10 43:13 10004 3:21</p>
--	--	--	---

Transcript of Hearing on Motions
 Conducted on July 2, 2021

<p>10017 2:18 106 77:14 10880 3:5 11 12:1 12 1:18 1230 2:11 1235 3:15 129 47:9 130 43:13, 43:14 133 47:11 134 47:14, 47:21 135 48:18 149 47:9 15 43:13 152 77:1, 77:14 17 5:5 1801 15:13, 15:14 1863 85:4 19 5:6, 9:16, 22:21, 38:6, 44:7, 44:8, 44:15, 54:22 <hr/> <p style="text-align: center;">2</p> <hr/> 20 1:18, 2:17, 10:15, 43:13, 44:6, 85:12 200 2:5</p>	<p>2000 3:5, 46:7 20004 4:6 2004 72:6 2016 11:20 202 4:7 2021 1:7, 1:17, 6:18, 90:12, 91:17 2024 90:20 212 2:19, 3:22 21209 4:12 2121 2:5 219 66:9, 66:13, 66:17 22 5:8 22030 3:14 22314 2:6 2974 6:18 2nd 90:11 <hr/> <p style="text-align: center;">3</p> <hr/> 30 90:20 300 3:13, 22:20, 24:7, 27:16, 34:20, 39:11 3000 4:13 31 38:13 313 2:13, 3:7</p>	<p>37 75:22 38.2 15:13, 15:14 384291 1:20 <hr/> <p style="text-align: center;">4</p> <hr/> 4.02 57:9 4.03 25:14 400 10:1 4020 3:13 410 4:13 42 5:9 424 2:13, 3:7 4257 3:22 4523 4:7 46 5:10 49 89:20 4th 89:16, 89:18 <hr/> <p style="text-align: center;">5</p> <hr/> 50 40:14 500 4:5 5000 2:19 501 74:16 519 2:7 580 4:13 <hr/> <p style="text-align: center;">6</p> <hr/> 6.20 72:21</p>	<p>6225 4:11 6800 2:7 686 2:19 690 2:11 691 3:15 <hr/> <p style="text-align: center;">7</p> <hr/> 703 2:7, 3:15 757 2:17 7637508 90:19 7860 2:13, 3:7 79 5:11 799 4:7 <hr/> <p style="text-align: center;">8</p> <hr/> 804 3:22 83 5:12 84 5:13 8th 4:5 <hr/> <p style="text-align: center;">9</p> <hr/> 9 86:14 90024 3:6 90266 2:12 91 1:21 94 60:5 99 27:20</p>
---	--	--	---