

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN  
OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE  
UNCITRAL ARBITRATION RULES

----- X  
 :  
 In the Matter of Arbitration :  
 Between: :  
 :  
 MERRILL & RING, L.P., :  
 :  
 Claimant, :  
 :  
 and :  
 :  
 GOVERNMENT OF CANADA, :  
 :  
 Respondent. :  
 :  
 ----- X

FIRST PROCEDURAL MEETING

Thursday, November 15, 2007

The World Bank  
1800 G Street, N.W.  
U Building  
Conference Room 3-345  
Washington, D.C.

The hearing in the above-entitled matter came  
on, pursuant to notice, at 11:04 a.m. before:

PROF. FRANCISCO ORREGO VICUÑA, President

PROF. KENNETH DAM, Arbitrator

MR. J. WILLIAM ROWLEY, Arbitrator

## Also Present:

MR. HOWARD DEAN,  
Secretary to the Tribunal

## Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR  
B&B Reporters  
529 14th Street, S.E.  
Washington, D.C. 20003  
(202) 544-1903

## APPEARANCES: (Continued)

## On behalf of the Respondent:

MS. MEG KINNEAR  
MS. SYLVIE TABET  
MS. LORI DI PIERDOMENICO  
Trade Law Bureau  
Department of Foreign Affairs  
and International Trade  
125 Sussex Drive  
Ottawa, Ontario K1A 0G2, Canada

## APPEARANCES:

## On behalf of the Claimant:

MR. BARRY APPLETON  
MR. HERNANDO OTERO  
MR. NICK GALLUS  
MR. ADAM KAY  
Appleton & Associates  
International Lawyers  
77 Bloor Street West  
Suite 1800  
Toronto, Ontario M5S 1M2  
(416) 966-8800

## On behalf of Merrill &amp; Ring:

MR. NORM P. SCHAAP

## C O N T E N T S

AGENDA ITEMS:	PAGE
1. The Parties	8
2. Commencement of the Arbitration	12
3. Constitution of the Tribunal	13
4. Exclusion of Liability	14
5. Arbitral Jurisdiction	17
6. Arbitration Rules	17
7. Applicable Law	18
8. Place of Arbitration	18
9. Service of Documents and Copies of Instruments	21
10. Procedural Language	27
11. Confidentiality	28
12. Power to Fix Time Limits	28
13. Written and Oral Procedures-Pleadings: Number, Sequence, Time Limits	28
14. Motions Procedure	32
15. Production of Evidence and Witness Statements	34
16. Quorum	34
17. Decisions of the Tribunal	35
18. Record of Hearings	35
19. Dates of Subsequent Sessions	35

## C O N T E N T S (Continued)

AGENDA ITEMS:	PAGE
20. Fees and Expenses of the Tribunal; Administrative Services	36
21. Apportionment of Costs and Advance Payments	47
22. Professional Assistance to Arbitrators	48
FURTHER ARGUMENT ON AGENDA ITEMS:	
8. Place of Arbitration	
By Mr. Gallus	61
By Ms. Kinnear	72
By Mr. Gallus	83
By Mr. Appleton	88
By Ms. Kinnear	92
5. Jurisdiction	
By Ms. Kinnear	96
By Mr. Appleton	109
By Ms. Kinnear	123
11. Confidentiality	
By Mr. Appleton	145
By Ms. Tabet	158
By Mr. Appleton	169
By Ms. Tabet	178
By Mr. Appleton	180
15. Production of Evidence	
By Mr. Appleton	190
By Ms. Tabet	192
By Mr. Appleton	193
By Ms. Tabet	196
By Mr. Appleton	198

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

1  
2           PRESIDENT ORRREGO: Good morning. We are very  
3 pleased to welcome you on behalf of the Tribunal, and  
4 become acquainted with all of you, particularly myself  
5 and having had the occasion to do so in other cases,  
6 and express to you that we will be devoting the best  
7 of our efforts to help the parties to come to a  
8 resolution of the differences that are present that  
9 are on the table, so you can count certainly on that.  
10           Well, as you know, we have some draft Minutes  
11 before us that were first suggested by both parties  
12 jointly; and then, on the basis of those submissions,  
13 we built in a few aspects that the Tribunal thought  
14 would be useful more than anything for the sake of  
15 completeness and covering some of the general issues  
16 that the NAFTA rules usually--I'm sorry, the UNCITRAL  
17 Rules usually require, although some are really  
18 aspects that are supplementary to those that were  
19 there already.  
20           So, the Tribunal would like to propose to  
21 you, if you all agree, to go item by item, and then  
22 see in respect of each whether there is anything

11:04:58 1 additional that you want to state or the submissions  
2 you have made, particularly in respect of the pending  
3 issues do contain all the arguments. We have those  
4 and we read those, so we would invite you to make only  
5 comments that are additional or new or different from  
6 what you already had to say and not necessarily to  
7 repeat what we already know about.

8           So, are you agreed to that, to go item by  
9 item? Okay.

## THE PARTIES

11           PRESIDENT ORRREGO: Well, first, we have the  
12 reference to "the parties." I suppose that there is  
13 no mistake there, but if there is, of course, you are  
14 welcome to send in an amendment and say, "No, my name  
15 is not exactly that" or so. And the same holds true  
16 for the addresses and particularly the e-mails, which  
17 have proven to be very effective in this case.

18           Any corrections?

19           MS. KINNREAR: If I may, I have several very  
20 small housekeeping items.

21           In the preamble, as you will soon realize,  
22 Ms. Tabet is going to be a spokesperson for Canada as

11:06:26 1 well, and so perhaps where it speaks to spokespeople  
2 for Canada, it could be Ms. Tabet and Ms. Kinnear.  
3           Again, a very small item in paragraph one; it  
4 speaks to disputing parties. And as I'm sure you will  
5 realize, NAFTA has many idiosyncratic statements, and  
6 one of them is that disputing parties is a small "P"  
7 because NAFTA always uses capital "P" for the NAFTA  
8 States. So, as I say, that's a very small thing; but,  
9 as we are going through that, perhaps it's worth doing  
10 that.

11           Otherwise, in terms of the parties, it is all  
12 correct. One of our counsel who will be joining us  
13 here, but is not here today, perhaps should be added  
14 to this list, although it's not necessary, but we will  
15 have one more counsel as part of Canada's team in this  
16 file. It is Mr. Raahool Watchmaker, and I can give  
17 you his address and e-mail address written down, which  
18 is probably more simple, at the break.

19           PRESIDENT ORRREGO: That's fine.

20           Howard, would you please note those names.

21           MS. KINNREAR: And those would be my comments  
22 on paragraph one. Mr. Appleton may have some, as

B&amp;B Reporters

529 14th Street, S.E. Washington, DC 20003

(202) 544-1903

10

11:07:47 1 well.

2 MR. APPLETON: Thank you.

3 First, I would like to thank the President

4 and Members of the Tribunal and, of course, our friend

5 Mr. Dean and his team here at ICSID for putting

6 everything here together on this beautiful day in

7 Washington, D.C. We thank everybody for change of

8 times and venue and the place, and all the other

9 flexibilities that go on, and I know Ms. Kinnear joins

10 me in expressing thanks to everyone here.

11 On this issue number one, I notice that there

12 is a slight error in terms of our address. I will

13 just provide that to Mr. Dean.

14 In addition, I just want to make it very

15 clear that this list--the same point, actually, that

16 Ms. Kinnear actually made, that this is just an

17 indicative list now at this point, and it's--

18 PRESIDENT ORREGO: Exactly.

19 MR. APPLETON: --and that, so that if we add

20 counsel or change counsel and all of those things, it

21 doesn't require to be done by way of the Order.

22 I do think it might be useful, though, for us

11

11:08:38 1 to provide some information to Mr. Dean about ways of

2 dealing with e-mail, since particularly it looks like

3 we are going to be relying on e-mail. And I travel

4 extensively, as I know many of the Members of the

5 Tribunal do, so I think it's important we have a way

6 of making sure that multiple people get it and that at

7 least one of them is sort of in one of our main

8 offices or at least some time zone that we can expect

9 rather than the unexpected.

10 But these are all administrative matters that

11 I don't think need to take up time now. I just want

12 to point out that as long as the Tribunal is amenable

13 to that as a mode of conveyance, we are just trying to

14 find practical, simple answers, and I think our system

15 works best in that way.

16 PRESIDENT ORREGO: Fine. There is certainly

17 agreement on that to expedite and facilitate

18 communication, so it shall not be a problem. Just let

19 us know who and where to send a copy and so, and we

20 will proceed that way. And the same holds true for

21 Canada.

22 Right.

12

11:09:39 1 COMMENCEMENT OF THE ARBITRATION

2 PRESIDENT ORREGO: Well, item two is the

3 reference to the commencement of arbitration. Just

4 for the sake of completeness, as I mentioned, that the

5 arbitration is deemed to have commenced upon the

6 Respondent's receipt of the Claimant's Notice of

7 Arbitration. We do not have the date for that.

8 SECRETARY DEAN: I could circulate that to

9 you.

10 PRESIDENT ORREGO: Okay.

11 MS. KINNEAR: If I may, Canada was served on

12 December 27, 2006, and that would be the appropriate

13 date. I'm certain Mr. Appleton would agree.

14 PRESIDENT ORREGO: It's the same date of

15 the--

16 MR. APPLETON: The NAFTA says the submission

17 of the Claim of Arbitration occurs when the Notice of

18 Arbitration or the Notice of Arbitration Statement of

19 Claim are submitted, and that was on December the

20 27th, 2006.

21 PRESIDENT ORREGO: Correct. Okay. That's

22 very good.

13

11:10:43 1 CONSTITUTION OF THE TRIBUNAL

2 PRESIDENT ORREGO: Well, then, we have item

3 three on the constitution of the Tribunal, which is

4 the standard language on the constitution itself in

5 terms of appointments. And then in respect to the

6 declarations of the Members and disclosure--and, of

7 course, we did follow the IBA Guidelines that was

8 requested by the parties, and this was sent around on

9 the 7th of November, if I remember rightly.

10 Now, on this point, there has been, in the

11 past--but I gather that is over--some discussion about

12 the appointment of one Arbitrator in respect of what

13 ICSID was requested or not requested to do, but, if I

14 am right, that it's considered settled. Would that be

15 the case, Mr. Appleton?

16 MR. APPLETON: Mr. President, I think we are

17 happy to (A) adopt the language that you have here;

18 and I think, formally for the record, while we had

19 some concerns about the timing of Mr. Rowley's

20 appointment, we had no problem with Mr. Rowley's

21 ability to serve. It was just a question of whether

22 he was appointed in the time that Canada had

11:12:12 1 capacity--under the provisions set out in the NAFTA,  
2 we would have preferred that Canada had made the  
3 appointment earlier, which is what would have been  
4 called the "green period," the period when they are  
5 entitled as a party to appoint--a disputing party with  
6 a small "P." But the fact of the matter is, we are  
7 very happy to have Mr. Rowley here as a member of this  
8 Tribunal, and we have no objection whatsoever.

9 And, furthermore, in light of the IBA  
10 disclosures, which we think are the best practices  
11 that should be followed, we have absolutely no  
12 reservations at this time, and we would like to put  
13 that formally on the record.

14 PRESIDENT ORREGO: Thank you very much.  
15 Does Canada have any comment on that?

16 MS. KINNEAR: Not at all.

17 PRESIDENT ORREGO: Not at all. Thank you.  
18 So, we are done with item three.

19 EXCLUSION OF LIABILITY

20 PRESIDENT ORREGO: Then there is item four,  
21 which is the exclusion of liability. This is also a  
22 rather standard clause in many current arbitrations,

11:14:41 1 perspective, somewhat unusual.

2 On the other hand, we are not prepared to  
3 throw the baby out with the bath water. We have no  
4 problem with the first paragraph. But, jointly,  
5 counsel thought we are not very comfortable with the  
6 second paragraph. We don't think that it's--or  
7 hopefully, although we think it's not very likely,  
8 that the second paragraph would ever be a necessity,  
9 but we don't think it would be appropriate to put it  
10 in at this time. I thought it was important that  
11 counsel were in agreement on this because it's a  
12 somewhat delicate point. But if, Ms. Kinnear, you  
13 have anything to add...

14 MS. KINNEAR: I think simply to reiterate  
15 what Mr. Appleton said, it's not a clause that we have  
16 seen in the NAFTA cases, and I'm not completely  
17 certain that it would be necessary. Frankly, I don't  
18 think so, but obviously that's a judgment that lies  
19 more in the Tribunal's bailiwick than ours, but  
20 certainly it is not a clause that we have ever seen or  
21 worked with before, and we wanted to raise that with  
22 you.

11:13:20 1 and it covers two aspects--one is liability itself,  
2 and the other one is not being called in subsequent  
3 procedures that might be done in terms of challenges  
4 or else--and we would like to hear whether the parties  
5 are in agreement in respect of this language or you  
6 have any suggestions to this effect.

7 MR. APPLETON: Thank you, Mr. President.  
8 Ms. Kinnear and I had the opportunity to discuss this  
9 this morning specifically to be able to address.

10 You should know that, together, we have a  
11 great deal of institutional experience when it comes  
12 to NAFTA arbitration here; I think that's probably  
13 safe to say. This is the first time in a NAFTA  
14 arbitration that we have ever seen this language at  
15 all on the exclusion of liability. It is not at all  
16 the norm that we have seen here. And, furthermore, I  
17 have done a fair bit of practice in terms of Bilateral  
18 Investment Treaty arbitration. We have also never  
19 used that in any arbitration I have been familiar  
20 with; but, of course, the Members of the Panel have  
21 far more experience on investor-State arbitration, I'm  
22 sure, than I do. But it's fairly, from our

11:15:45 1 PRESIDENT ORREGO: Right.  
2 Would Ken or Bill have a comment to make?  
3 (Tribunal conferring.)

4 PRESIDENT ORREGO: Well, we will look again  
5 into the matter and be back to you before the end of  
6 the meeting to suggest whatever is considered urgent  
7 in that re-examination. So, thank you for those  
8 remarks.

9 ARBITRATION JURISDICTION

10 PRESIDENT ORREGO: Then we have the  
11 arbitration jurisdiction. This, of course, refers to  
12 the fact that it is a tribunal under NAFTA, but, of  
13 course, it does not prejudice or preempt the discussion  
14 on whether there is actual jurisdiction to hear the  
15 case or not, as you know only too well from your own  
16 exchange, so that's taken.

17 Would that be agreeable, too?

18 MS. KINNEAR: Yes.

19 MR. APPLETON: (Nods head.)

20 PRESIDENT ORREGO: Okay.

21 ARBITRATION RULES

22 PRESIDENT ORREGO: Then the applicable

18

11:17:05 1 Arbitration Rules, NAFTA and UNCITRAL in particular.  
2 Is that something that you agree with?  
3 MR. APPLETON: For the record, to assist the  
4 transcription, especially in light of the noise, we  
5 just record that both counsel have confirmed yet to  
6 number five and number six, then.  
7 PRESIDENT ORREGO: Thank you.  
8 APPLICABLE LAW  
9 PRESIDENT ORREGO: Then we have the  
10 applicable law.  
11 Are there any remarks in respect of the  
12 applicable law? No, that's it?  
13 MR. APPLETON: It's much easier in a NAFTA  
14 case than it is under an ICSID case. It's spelled out  
15 specifically in the NAFTA. I believe we don't have to  
16 have the usual discussion about that.  
17 PRESIDENT ORREGO: Absolutely. It's of great  
18 help.  
19 PLACE OF ARBITRATION  
20 PRESIDENT ORREGO: Well, then there is the  
21 question of the place of arbitration, which, of  
22 course, has not been decided. And, on this point, we

19

11:18:07 1 have, indeed, the submissions from both parties and  
2 their arguments.  
3 So, on this item, I would like to ask both  
4 parties if you have anything additional or different  
5 from what you sent in in writing so as to illustrate  
6 the Tribunal further, and it is certainly a matter  
7 which the Tribunal will not decide right now, but it  
8 will take a few days' time to do that, on the basis of  
9 your submissions; and, if you have anything to add,  
10 this would be the occasion to do that.  
11 Ms. Kinnear?  
12 MS. KINNEAR: I have some further submissions  
13 that I would like to make which are in reply solely to  
14 those of Mr. Appleton. As the Tribunal will note, we  
15 exchanged our submissions simultaneously, and so we  
16 did not know what the other was saying. My points  
17 will be solely in response to new points that are  
18 raised. I don't intend, of course, to repeat anything  
19 that Canada has said.  
20 I'm glad to do that later, if you would like  
21 to, or certainly do it now in the context of going  
22 through the draft Order, and I await your direction on

20

11:19:19 1 that.  
2 PRESIDENT ORREGO: Maybe, if I may suggest  
3 this, it would be preferable to go through the  
4 standard agenda first and then address the pending  
5 issues to the extent that each--so that we won't  
6 interfere with the standard clauses that are easier to  
7 deal with.  
8 MS. KINNEAR: I think that would be a good  
9 way to proceed, thank you.  
10 PRESIDENT ORREGO: Thank you.  
11 MR. APPLETON: I concur, and then in this  
12 way, we could basically get through this very quickly,  
13 get the standards out, and we know that there are just  
14 a couple of issues that seem to be contentious. It  
15 should make for easier discussion. If everyone is  
16 amenable, I think that's excellent.  
17 PRESIDENT ORREGO: Right. That's very good.  
18 Then we have--well, this particular item has  
19 a second paragraph to it, which is the conduct of  
20 hearings. I'm not too sure, but maybe I have  
21 overlooked, was there an agreement of the parties to  
22 have the hearings in Washington?

21

11:20:32 1 MR. APPLETON: I think so. I believe that  
2 both sides have agreed that, notwithstanding any  
3 determination of the place of arbitration, that we  
4 have agreed to have the hearings in Washington, D.C.  
5 That's my understanding. I believe Ms. Kinnear has  
6 put that in writing, but I leave it to Canada just to  
7 confirm.  
8 MS. KINNEAR: Canada agrees to having  
9 hearings in Washington. We consented to ICSID  
10 administration and, obviously, hearings in Washington  
11 or anywhere elsewhere the Tribunal might think is  
12 appropriate in those circumstances. Obviously, that  
13 was without prejudice to the place of arbitration, and  
14 that's a discussion we will have later on this  
15 morning.  
16 PRESIDENT ORREGO: Fine, thank you so much.  
17 So, that is done and noted.  
18 SERVICE OF DOCUMENTS AND COPIES OF INSTRUMENTS  
19 PRESIDENT ORREGO: Then there is the question  
20 of the service of documents, which basically is that  
21 communications be sent first among the parties and  
22 simultaneously to ICSID, and the Secretary of the

11:21:35 1 Tribunal, who would normally be in charge of the  
 2 distribution of all these documents.  
 3 And then there is the reference to the former  
 4 in terms of PDF and e-mails and dates and so forth,  
 5 and some paper-copy submissions, if necessary, and  
 6 faxes and transmissions under certain circumstances.  
 7 This, I understand, Howard, is the standard  
 8 ICSID practice?  
 9 SECRETARY DEAN: Yes.  
 10 PRESIDENT ORREGO: Okay. Do you have any  
 11 comments on this?  
 12 MR. APPLETON: We are very happy. We think  
 13 it's a very efficient way to go; and, if the Tribunal  
 14 is comfortable with it, we are delighted to proceed in  
 15 this way.  
 16 MS. KINNEAR: We put in the record the e-mail  
 17 addresses and, secondly, the exact addresses to which  
 18 paper copies are to be sent, I assume, separately to  
 19 each Tribunal Member, although one possibility would  
 20 be to send it simply to ICSID to forward it on to  
 21 Tribunal Members. I suspect sending directly to  
 22 Tribunal Members is more efficient, and we simply ask

11:22:52 1 that the correct mail address be placed in the  
 2 Procedural Order.  
 3 MR. APPLETON: If I could speak to that, what  
 4 I suggest we just put a notice provision--it could be  
 5 an annex to the Order--rather than make it a part of  
 6 the Order. And I think it's very important that one  
 7 of the differences of the NAFTA/UNCITRAL process  
 8 rather than the ICSID process is that the  
 9 communications do not have to go to the ICSID to be  
 10 communicated to the Members of the Tribunal.  
 11 And while I love the idea of being able to  
 12 deposit instruments with the ICSID, I don't want that  
 13 to have to be another step in the process because,  
 14 since 9/11, the process for ICSID to get paper is much  
 15 more complicated, everyone at the World Bank Group,  
 16 and there is a special process that it goes out of the  
 17 house, it has to be vetted, and it adds a lot of  
 18 delay. And it's hard to anticipate how long that  
 19 takes and where that goes, and I don't want to delay  
 20 the other process. Basically, it's much more  
 21 convenient to send the Members of the Tribunal a copy  
 22 of material. Of course, everything electronic doesn't

11:23:51 1 have that problem, so we love electronics. And on  
 2 ICSID cases, we do everything we can to encourage  
 3 electronic transmission, specifically for that  
 4 purpose. But, because hard copies are necessary and  
 5 useful, I just think that maybe we could address it in  
 6 that way, and I'm sure that that makes a simple way  
 7 for everybody to proceed.  
 8 PRESIDENT ORREGO: Yes, Howard?  
 9 SECRETARY DEAN: I would just say, as long as  
 10 a hard copy is also provided to the ICSID Secretariat,  
 11 so we it for the files.  
 12 MR. APPLETON: I think we are all in  
 13 agreement for that.  
 14 PRESIDENT ORREGO: Okay. Now, one question  
 15 to Howard. If I understand rightly, then, of course,  
 16 ICSID would send everything, both e-mails and papers  
 17 and couriers and faxes and whatnot, but, in addition  
 18 this would be sent directly to Tribunal Members; is  
 19 that the idea?  
 20 ARBITRATOR DAM: Just to raise one point, I  
 21 don't think it needs to be in here, but faxes are  
 22 fine, but you have to know you have one under certain

11:24:56 1 circumstances. So, there should be an e-mail  
 2 notification if there is a fax, in which case some  
 3 question whether the fax is the best way of  
 4 communicating, because I have a problem that  
 5 frequently I have faxes that I don't realize I have  
 6 because of my particular customs of travel and so  
 7 forth.  
 8 MR. APPLETON: I think we are prepared  
 9 to--the difficulty is, because I as well travel  
 10 extensively, is that there can be a situation where I  
 11 don't have access to e-mail but I could get a fax.  
 12 You have faxes all over the world. But the idea, I  
 13 think, is, wherever possible, I think we are all  
 14 agreed to send some type of e-mail. If there is a  
 15 fax--and, from our perspective, unless there is some  
 16 extraordinary reason, we would probably prefer to do  
 17 things by e-mail generally as the preferred way of  
 18 having things--I just don't want to preclude the  
 19 ability to be able to send something because, of  
 20 course, the minute I put that in the Order, that's  
 21 exactly when the e-mail goes down. Like, in our  
 22 office, the entire e-mail for this section of

11:25:58 1 Washington, D.C., for--was it Verizon or  
 2 Allstream?--the Allstream is done for this morning.  
 3 So, since 5:00 a.m., we have been down, and we would  
 4 not have been able to send anything. I actually had  
 5 to pick up my e-mail going to a hotspot.  
 6 PRESIDENT ORREGO: So, it's well-taken, so we  
 7 will proceed that way.  
 8 And then, Howard, we would have to just  
 9 clarify that this goes to Tribunal Members, as well.  
 10 SECRETARY DEAN: Yes.  
 11 PRESIDENT ORREGO: Because it could be read  
 12 as if everything had to be sent to ICSID, and then  
 13 that would be sort of an additional step that would  
 14 delay things.  
 15 SECRETARY DEAN: It says here in the first  
 16 paragraph, "All written communications"--in the first  
 17 paragraph, it stipulates, "All written communications  
 18 by one part of the Tribunal shall be copied  
 19 simultaneously to the other party and to ICSID  
 20 Tribunal counsel."  
 21 PRESIDENT ORREGO: Right, okay. That's fine.  
 22 Thanks.

11:27:09 1 SECRETARY DEAN: Are parties okay with that?  
 2 MS. KINNEAR: Yes.  
 3 MR. APPLETON: Mr. Dean, can you confirm, do  
 4 you want us to copy you? Do you want us to copy  
 5 Eloïse Obadia and you?  
 6 SECRETARY DEAN: Both.  
 7 MR. APPLETON: Both? All right. We are  
 8 happy to copy wherever you like. So long as we know,  
 9 we will send everybody. That's a beautiful thing  
 10 about e-mail.  
 11 SECRETARY DEAN: What I propose is that, in  
 12 the attached notification, I will indicate in there to  
 13 whom all material should be copied within the ICSID  
 14 Secretariat.  
 15 MR. APPLETON: Excellent.  
 16 PRESIDENT ORREGO: Great, thank you.  
 17 PROCEDURAL LANGUAGE  
 18 PRESIDENT ORREGO: Well, item 10, it's  
 19 already agreed to, procedural language, which is  
 20 English.  
 21 There is an additional reference to evidence  
 22 that might not be in English, which does not appear

11:28:07 1 very much to be the case here, but still...  
 2 And, in that case, they would have to be  
 3 translated into English. That's a standard item.  
 4 MR. APPLETON: I believe we are all in  
 5 agreement here.  
 6 PRESIDENT ORREGO: Okay. That's very good.  
 7 Ms. Kinneare, are you in agreement?  
 8 MS. KINNEAR: Yes, I am. Thank you.  
 9 CONFIDENTIALITY  
 10 PRESIDENT ORREGO: Then there is the  
 11 confidentiality question that we can again leave to  
 12 discuss at the end of this agenda--  
 13 POWER TO FIX TIME LIMITS  
 14 PRESIDENT ORREGO: --and proceed to the  
 15 question of the power to fix time limits, which is the  
 16 kind of standard clause.  
 17 Would you be in agreement with that as well,  
 18 Mr. Appleton?  
 19 MR. APPLETON: Yes.  
 20 MS. KINNEAR: Yes, that's fine.  
 21 PRESIDENT ORREGO: Thank you.  
 22 WRITTEN AND ORAL PROCEDURES-PLEADINGS: NUMBER,

11:29:05 1 SEQUENCE, TIME LIMITS  
 2 PRESIDENT ORREGO: Well, then there is the  
 3 question of the issue of written and oral proceedings,  
 4 time limit and sequence and so.  
 5 The only thing that's already decided in this  
 6 respect is that both parties have submitted the Notice  
 7 of Arbitration and Statement of Claim for the Claimant  
 8 and the Statement of Defense for the Respondent with  
 9 the respective dates. And although sometimes there is  
 10 the question of reserving, particularly the Notice of  
 11 Arbitration that was before the Tribunal has  
 12 considered it, but I think we all can state we have it  
 13 and read it and don't need to be reserved in the  
 14 formal way.  
 15 Are we all agreed on that?  
 16 MR. APPLETON: Yes. And, in fact, the NAFTA  
 17 rules really dispense with that problem, but we are  
 18 happy to stipulate that. We have no problem with  
 19 that.  
 20 PRESIDENT ORREGO: Yes. So, it will be clear  
 21 we are all aware that they do exist and we have them.  
 22 Okay.



11:30:10 1 Then I suggest, then--  
 2 SECRETARY DEAN: My suggestion is this last  
 3 sentence be deleted.  
 4 PRESIDENT ORREGO: No, not to be deleted, but  
 5 it's a sort of understanding that there is no need for  
 6 reserving.  
 7 SECRETARY DEAN: Okay.  
 8 MR. APPLETON: We might, though--when I first  
 9 read this, I was a little confused by the word  
 10 "reserve" because we thought you mean "re-serve,"  
 11 which might be re-serve rather than reserve, which  
 12 means deliberate and hold back.  
 13 PRESIDENT ORREGO: There is a dash there.  
 14 MR. APPLETON: Yes, but we have no problem  
 15 with the context here, and we are happy to be in  
 16 agreement. And the parties all agree that what you  
 17 have is what you have, and you don't need to have any  
 18 submissions again. And as long as you have the  
 19 materials, we are all very happy to go from there.  
 20 PRESIDENT ORREGO: Right. So, if you can  
 21 introduce your small hyphen, that would be great.  
 22 Well, perhaps the last paragraph here would

11:31:30 1 be relevant at this point, which is that if there is  
 2 nonservice of a given reply or statement or rejoinder  
 3 for whatever reason that one might agree to that in  
 4 the schedule, then that doesn't mean admissions--it's  
 5 simply a procedural facility--nor any adverse  
 6 inference or so.  
 7 Would you like to have that? Any thoughts on  
 8 it?  
 9 MR. APPLETON: Fine with me. We have no  
 10 objections to it.  
 11 We haven't seen this before, but I'm happy to  
 12 learn new tricks, and so we have no problems  
 13 whatsoever with this.  
 14 MS. KINNEAR: We are also happy with this.  
 15 What I would have said, though, is I don't  
 16 believe that it's necessary right now. The parties  
 17 have basically joined issue through the initial claim  
 18 and defense, and it's probably not necessary. If we  
 19 are going to do it, obviously, we would like to keep  
 20 open the possibility of a rejoinder with the paragraph  
 21 at the end concerning no adverse inference; but I do  
 22 suggest that it's probably not necessary in this case.

11:32:42 1 PRESIDENT ORREGO: Okay. We will look at it  
 2 again, and we will get back to you before the end of  
 3 the meeting, as well.  
 4 MR. APPLETON: What I take very clearly from  
 5 this--and I think this is the important point for us  
 6 all--is that I think it's a very polite and gentle  
 7 admonition to the parties to not repeat themselves and  
 8 that perhaps in responsive pleadings just be  
 9 responsive. And if that's the intention of the  
 10 Tribunal, I think we have received that very clearly.  
 11 PRESIDENT ORREGO: It was more innocent than  
 12 that, but still it looks better as you put it.  
 13 Fine, thank you for that.  
 14 ARBITRATOR DAM: He's put our prose into  
 15 poetry.  
 16 PRESIDENT ORREGO: Yes, right.  
 17 Well, then we have item--well, of course, we  
 18 leave pending the question of the particular schedule  
 19 and bifurcation that would come in at this point, and  
 20 we will talk about it in a few minutes' time.  
 21 MOTIONS PROCEDURE  
 22 PRESIDENT ORREGO: Again, a standard clause,

11:33:46 1 which is the motions procedure that you can find in  
 2 paragraph 14. That's a standard, too.  
 3 MR. APPLETON: The only question we have is  
 4 whether you want to have the motions procedure or you  
 5 want to have a procedure for leave for a motion.  
 6 There are two ways that are followed. To be  
 7 very honest, I usually have the one that asks for  
 8 leave; but, at the end of the day, if someone really  
 9 wants a motion, you have all the material there  
 10 anyways, there is really no point asking for the leave  
 11 because the party just sends all the materials in  
 12 anyways; and by that time it's so substantial, if you  
 13 are going to deny it, you are just going to deny it.  
 14 If you are going to grant it, it's not going to be on  
 15 the basis of leave. So, I think we are happy with it,  
 16 but I just wanted to make sure that that was your  
 17 intention, you didn't want to seek leave before a  
 18 motion is made. But, if you're happy with that, I  
 19 think we have no objection.  
 20 PRESIDENT ORREGO: Ms. Kinnear?  
 21 MS. KINNEAR: We're happy with the clause as  
 22 drafted, and I think a process of seeking leave is an

34

11:34:49 1 extra formality that probably doesn't give much  
2 benefit.  
3 PRESIDENT ORREGO: So, we would have the  
4 motions straight on to that extent.  
5 MR. APPLETON: We just want to make sure you  
6 are comfortable with that, that's all.  
7 PRESIDENT ORREGO: That's not a problem.  
8 PRODUCTION OF EVIDENCE AND WITNESS STATEMENTS  
9 PRESIDENT ORREGO: Then we have item 15,  
10 production of evidence and witness statements, and  
11 this we have to discuss as a pending issue, so we will  
12 leave that for a few minutes' time.  
13 QUORUM  
14 PRESIDENT ORREGO: We have quorum, which is  
15 again a standard clause, plus a small addition which  
16 is nothing new, either, in respect of eventual hearing  
17 on procedural matters, if that will be a serious  
18 matter that cannot be solved any other way.  
19 Would you be comfortable with the quorum  
20 paragraphs?  
21 MS. KINNEAR: Canada is happy with the clause  
22 as drafted.

35

11:36:20 1 MR. APPLETON: We concur.  
2 PRESIDENT ORREGO: Thank you.  
3 DECISIONS OF THE TRIBUNAL  
4 PRESIDENT ORREGO: Decisions of the Tribunal,  
5 paragraph 17, is also very standard.  
6 So, we are agreed to that, I assume? Thank  
7 you.  
8 RECORD OF HEARINGS/DATES OF SUBSEQUENT SESSIONS  
9 PRESIDENT ORREGO: Then there is item 18, the  
10 record of hearings in terms of transcription and  
11 LiveNote and corrections of transcripts and so forth,  
12 which is very standard, too.  
13 MS. KINNEAR: For the record, Canada is fine  
14 with 16, 17, 18, and 19.  
15 MR. APPLETON: If you don't want to go  
16 through those items, I think we can stipulate and  
17 concur on those, as well, and then we can talk about  
18 20.  
19 PRESIDENT ORREGO: Records and dates of  
20 submissions, the date of sessions, and so forth?  
21 MR. APPLETON: Yes.  
22 PRESIDENT ORREGO: Fine. That's very good.

36

11:37:21 1 FEES AND EXPENSES OF THE TRIBUNAL; ADMINISTRATIVE  
2 SERVICES  
3 PRESIDENT ORREGO: Then we have item 20. On  
4 this item, I suggest, if I could meet very briefly at  
5 the break in a few minutes' time with counsel for each  
6 party so as to mention a couple of items, but that  
7 would be applicable to letter A in particular if I  
8 remember rightly.  
9 And then there would be letter B, which we  
10 might discuss now, if you wish, which is the  
11 reimbursement of expenses, including one that is not  
12 expressly mentioned, but we should perhaps do that  
13 because it's again standard practice, which is the  
14 question of travel time, which ICSID doesn't always  
15 apply but maybe should be referenced explicitly.  
16 I think there is a limit--am I right,  
17 Howard?--of eight hours a day as a cap as the longest  
18 time allowance. Would that be agreed to you? In  
19 letter B, with the reference to travel time, and then  
20 that would be perhaps more complete.  
21 Then there is ICSID administration, and then  
22 there is the administrative and support services.

37

11:39:14 1 Would that be agreeable to all the parties?  
2 MR. APPLETON: We agree on this. Absolutely.  
3 PRESIDENT ORREGO: Okay.  
4 Then there is the item of a cancellation fee,  
5 which sometimes it is addressed, sometimes not. The  
6 feeling is that it would be helpful, particularly to  
7 encourage parties not to cancel any meetings, but are  
8 there any views on that?  
9 MR. APPLETON: Mr. President, this is another  
10 clause we never had in any of our cases; however, I  
11 don't think it is unreasonable. I think it's very  
12 important that we all recognize that the Members of  
13 the Tribunal have to block a period of time, and that  
14 that is not something that's very easy for you to  
15 reallocate. But I think one of the things we might  
16 want to clarify in view of cancellation and not having  
17 the hearing, well, what happens if you reschedule the  
18 hearing?  
19 For example, there was a case involving  
20 Canada and the American investor in Canada, the Myers  
21 case, the case that is already before us in some other  
22 things; and, in the Myers case, a piece of evidence

11:40:30 1 became available to the parties. And out of a  
2 continuing obligation of disclosure, it was disclosed  
3 by one party to the other party, and the Tribunal  
4 decided to move the hearing by four weeks or five  
5 weeks so everyone would have time to be able to absorb  
6 the nature of that evidence.

7           Would you call that cancellation? I mean,  
8 that's the only time--as far as I know, there has  
9 never been a cancellation from any hearing we have  
10 ever been involved with; but, to the extent that there  
11 might be a rescheduling, especially something caused  
12 by the Tribunal, I think we should try to clarify  
13 that, if we are going to have this clause in.

14           So, I don't think it's unfair. I think it's  
15 actually a very good idea that helps focus the minds  
16 of the parties about what we are doing here and the  
17 costs that are associated with it, but I would just  
18 like to make sure that I understand what you would  
19 want to do in that type of circumstance.

20           PRESIDENT ORREGO: Yes. Well, generally  
21 speaking, the thought of applying a cancellation fee  
22 is related to the fact that an arbitrator might have

11:43:14 1 reasonable one. It is intended to guard against the  
2 Tribunal losing time by reason not of its own conduct  
3 but by reason of the conduct of the case or the  
4 parties' inability to proceed.

5           If a hearing is moved and canceled and  
6 reheard, it depends on the reason for the move. If it  
7 is sometimes you simply have to reschedule because the  
8 parties are not in a position to go forward, that  
9 calls for a cancellation. And if, on the other hand,  
10 it is something spelled out here, incapacity or  
11 illness of an arbitrator, no cancellation. There is a  
12 halfway house that is not covered, and I think the  
13 best thing, rather than to try to write it perfectly,  
14 it to leave it as it is but with this Tribunal being  
15 open-minded to hear from the parties, should that  
16 arise.

17           MR. APPLETON: So, you mean the word "may"  
18 here is the discretionary element?

19           ARBITRATOR ROWLEY: Yes.

20           MR. APPLETON: I'm happy with that. I just  
21 wanted to get a better understanding--I don't want  
22 there to be a misunderstanding with anyone here.

11:41:37 1 blocked a given date and, because of that, refused to  
2 give it work, so eventually it applied to a  
3 rescheduling. But, of course, that will be something  
4 which is, I suppose, to be taken up on the  
5 circumstances of the case. For example, say the  
6 Tribunal itself would say, "Look, we better postpone  
7 this for a week or two or three or four." Well, that  
8 would be absurd because it would be the Tribunal  
9 itself deciding, but it is the kind of issues. But on  
10 this I must say I have had just one occasion in which  
11 it happened and in which the postponement was for  
12 about six months, and it did apply.

13           But I'm happy to hear from our colleagues  
14 whether you had cases in which this has happened.

15           ARBITRATOR ROWLEY: A word or two about this  
16 particular clause. There are a variety of  
17 cancellation clauses in current use around the world  
18 in arbitrations. This one happens to be the one that  
19 it is not, technically speaking, the LCIA clause, but  
20 it is the clause adopted for use in LCIA arbitrations.  
21 It's probably the most moderate of the cancellation  
22 clauses, and so I agree with Mr. Appleton that it is a

11:44:31 1 That's the whole idea of this session today, and so I  
2 appreciate, Mr. Rowley, for you to explain working  
3 from--I suspect it came from the LCIA vernacular, but  
4 I was hoping that that was the explanation I was going  
5 to get.

6           PRESIDENT ORREGO: Yes, that is correct.

7           MS. KINNEAR: Canada is agreeable to  
8 proposing it that way. Thank you.

9           PRESIDENT ORREGO: Thank you.

10           Well, there is one other item that's not  
11 included in this particular paragraph, which is the  
12 question of eventual taxes, indirect taxes, not income  
13 taxes for which an individual is liable in his own  
14 country, but this came up as a consequence in some  
15 arguments that Mr. Appleton made in the context of the  
16 seat of arbitration. It has nothing to do with fees,  
17 but it reminded all of us that there is this question,  
18 and Canada, if I'm not mistaken, in particular, but  
19 eventually elsewhere from the point of view of VAT or  
20 some other tax. For example, in Europe, the  
21 International Chamber of Commerce has developed a very  
22 specific clause to that effect because the European

11:45:56 1 Community applies VAT to all European nationals who  
2 are sitting in a given arbitration, and the clause is  
3 simply to have the parties supplement the costs in the  
4 amount of those indirect taxes. Either in some cases  
5 it's done directly to the Arbitrator, but in others,  
6 of course, it could be done through the administrative  
7 handling of ICSID in this case, I suppose. Would that  
8 be a possibility?

9 SECRETARY DEAN: Well, that's a more tricky  
10 issue. I mean, ICSID is part of the World Bank Group,  
11 and there are certain privileges and immunities, and  
12 the World Bank Group always seeks to avoid being  
13 involved in the payment of the VAT or an issue  
14 concerning the VAT. What the World Bank typically  
15 does in situations in which VAT is involved and the  
16 parties to a particular matter want to include VAT  
17 somehow, which is gross up the amount that's paid to  
18 cover any VAT.

19 ARBITRATOR ROWLEY: I have provided a clause  
20 to the Members of the Tribunal to deal with VAT, but  
21 we thought we would discuss it with you before putting  
22 it in a draft.

11:48:51 1 it, but...

2 MR. APPLETON: And this actually was an issue  
3 that arose in another NAFTA case, and in that case the  
4 Members of the Tribunal very unhappily were all  
5 subjected to having to charge GST on their fees. This  
6 was in the Myers case. In that case, there was a  
7 Canadian arbitrator, Ed Chasen--in fact, there were  
8 two Canadian Arbitrators in that case--and the  
9 President was from the U.K., Martin Hunter, and there  
10 was a lot of unhappiness.

11 So, the difficulty here is that--and they  
12 asked on the record specifically the Government of  
13 Canada to provide assurances in the record to deal  
14 with this, and so there would need to be a ruling or  
15 something on this issue if we wanted to be able to  
16 rely on it.

17 What we are saying is this has already  
18 occurred, so I don't want there to be any surprises.  
19 I guess that's the whole purpose here. I'm very  
20 interested to see what it is that you have proposed by  
21 way of wording, but we have some concerns.

22 It all comes to costs, we would figure it

11:47:34 1 The reason I have done so is, in previous  
2 cases where I have been involved and a Canadian entity  
3 has been involved as one of the parties, and that  
4 Canadian entity has been responsible for part of the  
5 bill, part of my bill, usually half, in some  
6 circumstances, I'm obliged to charge VAT. So, in this  
7 case, I'm not sure whether that applies when the party  
8 is the Canadian Government.

9 So, over to Ms. Kinnear for a moment, and  
10 then I will come back to my issues, if any, remaining.

11 MS. KINNEAR: Thank you.

12 Well, this tweaked my interest yesterday as a  
13 Canadian who hates GST as much as anybody, so we asked  
14 our Revenue Department whether this would, indeed, be  
15 payable, and they got back to us, and they told us, in  
16 effect, in this circumstance, because the hearings are  
17 in Washington and fees will be payable through ICSID,  
18 services are rendered in Washington, it certainly  
19 wouldn't be subject to GST. So, that's what I was  
20 advised yesterday by the CRA, Canada Revenue Agency.

21 ARBITRATOR ROWLEY: If they would like to  
22 give me a letter to that effect, I would be happy with

11:50:06 1 out, but I would be very loath as someone who operates  
2 a law firm in the Canada as well as the United States,  
3 we are very careful to meet and follow all the  
4 appropriate taxation laws in each of the jurisdictions  
5 very, very carefully.

6 MS. KINNEAR: If I may, the Myers case had  
7 hearings in Canada, and that was the difference. The  
8 service was rendered in Canada. But I think perhaps  
9 the easy way to get through this is to see the  
10 proposed clause and to add something to the effect of  
11 "if payable, then," et cetera, et cetera, and that's a  
12 way to end this discussion, perhaps.

13 ARBITRATOR ROWLEY: If I could end my  
14 discussion quite as quickly, I was just going to say  
15 that, in Methanex, for example, my tax people  
16 determined that we were obliged; and, in that case, it  
17 was a case similar to this, we had ICSID act as  
18 administrator--that is all--they were the fund  
19 holder--we started with the LCIA holding funds, and  
20 then we moved it to ICSID--and what I did was I  
21 rendered two separate accounts always: one to the  
22 Claimant; one to the Respondent, the U.S. Government.

11:51:21 1 The one that was rendered to Claimant, the Canadian  
2 party had whatever our GST tax on it, and it was paid,  
3 and that Claimant grossed up its contributions and was  
4 obliged to do that.

5 So, I'm happy for us, if the President  
6 agrees, for us to circulate after the break the  
7 clause. I don't know whether it says "if payable,"  
8 but I would be quite happy to have "if payable." But  
9 I would be quite unhappy to have to pay the GST  
10 myself.

11 PRESIDENT ORREGO: It does begin exactly  
12 saying that, insofar and to the extent that the fees  
13 of Arbitrators are subject to VAT, according to the  
14 applicable tax laws, et cetera, et cetera, the parties  
15 shall--but we will have this, Howard, copied and  
16 circulated to you.

17 ARBITRATOR ROWLEY: What I suggest that we do  
18 is that, if the President agrees, I think it really  
19 only applies to me, if the two Canadian parties and I  
20 can have a direct discussion on this and see if we can  
21 come to a resolution as to whether it's payable or  
22 not.

11:53:56 1 has not had any change, and the deposits have been  
2 made, we are told by ICSID, and so that's all done  
3 with.

4 PROFESSIONAL ASSISTANCE TO ARBITRATORS

5 PRESIDENT ORREGO: And, finally, there is a  
6 paragraph on professional assistance, which we suggest  
7 is relevant, but particularly thinking maybe it's not  
8 the case or it is--I don't know yet--of, for example,  
9 the expert that will help the Tribunal to evaluate a  
10 given damage or given situation, if that were the  
11 case, that that be considered part of the expenses of  
12 the arbitration and not personal expenditures of  
13 arbitrators. That's the gist of the clause.

14 MR. APPLETON: This is a common clause, and  
15 we have absolutely no problem with it. You put the  
16 wording in that we would need that whoever that person  
17 you would appoint would have to meet the same types of  
18 impartiality and independence. We have no problem  
19 with that.

20 Things that help the Tribunal to be able to  
21 move things along we are very happy to assist with.

22 PRESIDENT ORREGO: Thank you.

11:52:46 1 PRESIDENT ORREGO: Well, there is just one  
2 Canadian party.

3 ARBITRATOR ROWLEY: Yes, forgive me, there  
4 would be in this kind of case.

5 MS. KINNEAR: Ms. Tabet just makes a very  
6 good point, that Methanex had a place of arbitration  
7 in Washington, so that makes it even more complicated.  
8 But I'm certainly pleased to proceed this way,  
9 Mr. Rowley.

10 ARBITRATOR ROWLEY: One of the difficulties  
11 is that I live and work and I'm a professional in  
12 Canada, and I don't do my work on a case only during  
13 the five days when we are at a hearing.

14 PRESIDENT ORREGO: Okay. Fine. So, subject  
15 to a further discussion of wording and so forth, the  
16 principle is that normally it would not be taxable;  
17 but, if it is, it would be supplementary amount for  
18 the same amount of the tax.

19 Fine, thank you so much.

20 APPORTIONMENT OF COSTS AND ADVANCE PAYMENTS

21 PRESIDENT ORREGO: Then we have item 21,  
22 which is apportionment of costs and payments, and that

11:55:12 1 Ms. Kinnear?

2 MS. KINNEAR: We are equally happy with that.  
3 My only question would be, when I first read this, I  
4 wondered if this was to be somebody who would be  
5 giving legal assistance to the Tribunal, which I think  
6 perhaps has some other issues. If it's simply factual  
7 or expert assistance, then there is no objection  
8 whatsoever.

9 PRESIDENT ORREGO: No objection. That would  
10 be terrible to have to rely on legal advice.

11 MS. KINNEAR: If it is, in fact, expert, I  
12 think we will cross that bridge when we get to it, but  
13 NAFTA Article 1133 provides for experts, and I think  
14 the Tribunal appointed one, and the UNCITRAL Rules  
15 have specific procedures. Assuming we get to that  
16 stage, obviously we will go through that procedure;  
17 but, in principle, in terms of covering the  
18 remuneration, this clause is certainly appropriate.

19 PRESIDENT ORREGO: Fine, thank you so much.

20 So, that would cover the standard agenda that  
21 we have before us. But before breaking for a few  
22 minutes, I would like to ask the parties whether they

11:56:19 1 have any other agenda item that they would wish to  
2 raise, aside, of course, of the pending issues that we  
3 will address after the break.

4 (Off the record.)

5 MR. APPLETON: There is some issue I would  
6 like to canvass with the Tribunal. I didn't put it  
7 into our proposed joint Order, but it's a  
8 question--and I think it's fair, as we get to know  
9 each other today--as to what type of reasonable  
10 expectation the Tribunal has about the timeliness of  
11 bringing an award out. And the reason I say that is,  
12 I wrote an article in Global Arbitration Review,  
13 looking at the amount of time the tribunals have been  
14 taking in various venues to be able to render awards  
15 on jurisdiction, on merits and things like that, and I  
16 thought that it might be fair because sometimes the  
17 expectations of the parties aren't the same, and  
18 certainly we have our client representative, Norm  
19 Schaaf, here with us today, and I thought it might be  
20 just useful to--I originally was going to suggest  
21 actually an order, something in the Order, like they  
22 have with the Stockholm Chamber which is a six-month

11:58:51 1 particularly in terms of if we are going to discuss  
2 bifurcation or not, and it will, of course, change a  
3 bit because bifurcation, by its very nature, takes a  
4 few more months than if it delves straight into the  
5 merits. That is one aspect that we have not yet  
6 touched upon.

7 However, while I have had the experience with  
8 six months under the Spanish law in arbitration, it  
9 tends to be a tight, not so much for the Tribunal, I  
10 might mention, but for the parties. Occasionally,  
11 they feel there is such a pressure to come up with  
12 things, and there is little allowance for extending  
13 two more months and so. But definitely, and subject  
14 to discussion on bifurcation, we would like to do it  
15 as quickly as it is reasonable and allowing all  
16 parties to say all they have to say before coming  
17 anywhere close to a decision, of course. But that's,  
18 of course, very vague and general, but that's the way  
19 it is.

20 MR. APPLETON: Just to clarify, I wasn't  
21 looking at six months in total for the entirety of the  
22 proceeding, which is, in fact, the Stockholm and the

11:57:46 1 rule, but I thought maybe it might just be better to  
2 raise the issue and see what type of sense the  
3 Tribunal has.

4 Certainly, this has been the--the Tribunal  
5 has gotten back to the parties very, very quickly, and  
6 we really appreciate that, but I just thought rather  
7 than put it into an order that we might discuss it for  
8 a moment.

9 PRESIDENT ORREGO: Absolutely.

10 Ms. Kinnear, do you have any views on that?

11 MS. KINNEAR: No. I understand the Tribunal  
12 works as fast as it can, and I would rather you take  
13 the time it need than set any kind of limitations, so  
14 I don't have a position on it.

15 PRESIDENT ORREGO: Thank you.

16 Well, as sort of a general reaction to it,  
17 there are two aspects, one which is definitely that  
18 the Tribunal would like to proceed as expediently as  
19 possible. That's a bit within the style of the  
20 Members of the Tribunal, and we would be more than  
21 delighted to do that.

22 Now, at this stage, it's difficult to say,

12:00:11 1 Spanish rule. I was just looking at the time for  
2 deliberation. And deliberation time, of course, is  
3 very much focused on the nature of the facts, what's  
4 the issue, with the nature of what's there. I just  
5 thought it was fair at the beginning of the process  
6 for the parties to let the Tribunal know that it can  
7 be very difficult on the parties to wait a very long  
8 period of time, and generally a year is a long period  
9 of time. Six months--well, in jurisdiction, three  
10 months is not that long. Six months is around the  
11 average now--used to be shorter--but we have had some  
12 situations where we had 18 months, and that's why I  
13 just thought it was fair to raise to the Tribunal  
14 Members a sense about this.

15 ARBITRATOR DAM: Could I, just by way of  
16 clarification, ask whether you are saying that you  
17 would like some clarification as to how long after all  
18 of the parties' submissions have been made at any  
19 stage, whether it's a preliminary issue like  
20 bifurcation or the final determination, how long we  
21 think it will take us to do it--is that right?--so it  
22 doesn't run into these problems with the cooperation

12:01:34 1 of the parties.

2 MR. APPLETON: Yes, Mr. Dam, you have hit it  
3 exactly.

4 I think it's helpful to just to manage the  
5 expectations of the parties to give them an idea, say,  
6 "Well, we think we should be able to revert back to  
7 you in three months or four months," but otherwise we  
8 get the situation where we are out a year, and we will  
9 get a nice letter from me saying, that according to  
10 the study, you are slightly past the deadline, maybe  
11 you could tell us a little update. And then sometimes  
12 the Tribunal will respond, and sometimes they won't.  
13 Then it will go 14 months, and then we will have to  
14 contact over to the General Counsel at the World Bank  
15 Group and say, "Can you have a little check." By  
16 then, we will have sent seven letters to Mr. Dean and  
17 Ms. Obadia, saying, "Could you please tell us what's  
18 going on," because the reason people come to  
19 arbitration is to find an expeditious way, and they  
20 don't know what's going on.

21 And so, what I was hoping, rather than just  
22 have this as a legal type of debate and discussion,

12:03:52 1 arbitration with many, many days, months, weeks of  
2 hearings and so forth, and it's impossible to figure  
3 out exactly where we are. But it would seem to me,  
4 speaking only for myself, we have every incentive to  
5 finish things as promptly as feasible. But I'm just  
6 speaking for myself.

7 PRESIDENT ORREGO: I suppose that's your case  
8 as well, Bill?

9 ARBITRATOR ROWLEY: I try to do things as  
10 speedily as possible.

11 PRESIDENT ORREGO: Good. So, you can be  
12 reassured that we will be back to you before you might  
13 wish.

14 MR. APPLETON: It cuts both ways, thank you.

15 PRESIDENT ORREGO: Okay. That's great.

16 Fine, I appreciate very much your corporation  
17 and good points, and we take them all in, and we will  
18 be back to you on two items that we have pending on  
19 the question of the admissions of rejoinders and so  
20 and some others that I noted along the way, serving as  
21 a witness in some case after this proceeding.

22 So, I suggest that we take a break for, what?

12:02:35 1 was to use this just as a way to help the parties'  
2 expectations. That's all. That's the purpose. I'm  
3 not looking to formalize this or legalize this. Just  
4 to help everybody understand, and that's why I'm  
5 asking. It's really just a question. It's not an  
6 alternative plan or a new order or anything else. But  
7 that's where I think arbitration really shines.

8 If you could help us just to get a sense of  
9 your feelings, I just think it helps everybody in this  
10 process.

11 PRESIDENT ORREGO: Good point, and we are  
12 entirely in agreement.

13 Maybe what we could do is to suggest a  
14 general wording to the effect that the Tribunal will  
15 do its best efforts to come up as expeditiously. I  
16 hesitate to name months because we don't know at this  
17 stage, but definitely it would not be a question of  
18 years. Most definitely. I suppose you all agree to  
19 that. We should--

20 ARBITRATOR DAM: Well, certainly I think the  
21 only conceivable problem would arise if one of the  
22 Arbitrators were involved in a very lengthy

12:05:16 1 Fifteen minutes? Would that be convenient to you all?  
2 And we would be back and discuss the pending issues:  
3 place of arbitration, confidentiality, bifurcation,  
4 and schedule, and the production of evidence. Would  
5 that be it, I gather?

6 Fine, thank you very much.

7 (Brief recess.)

8 PRESIDENT ORREGO: We are ready to resume now  
9 our meeting, and we have some answers for you right  
10 away.

11 The first is that the Tribunal reviewed the  
12 two paragraphs that were still subject to some  
13 clarification. The first one is the one concerning  
14 the section on the exclusion of liability, the  
15 question of being called as a witness or so, and we  
16 agree that it is not really necessary, so we can drop  
17 that particular paragraph and keep just paragraph one  
18 of number four. So, we will delete that, if you agree  
19 with it.

20 MS. KINWEAR: Yes.

21 PRESIDENT ORREGO: Then we have the paragraph  
22 at the end of the written and oral proceedings in

12:43:10 1 respect of if a party chooses not to submit a  
 2 Rejoinder, or a Reply or a Rejoinder--this is not  
 3 going to be taken as anything adverse--and that we  
 4 would like to keep, if you agree to it, basically from  
 5 the point of view that it helps to make sure that if  
 6 anyone doesn't feel that it has anything to say  
 7 further, there is no need to say it because there will  
 8 be no adverse inferences, "Well, you didn't say it,  
 9 well, nothing happens."  
 10 MR. APPLETON: I just want to clarify, of  
 11 course, if a party doesn't file a Reply, I submit that  
 12 means the other side cannot file a Rejoinder?  
 13 ARBITRATOR ROWLEY: Correct.  
 14 PRESIDENT ORREGO: Correct.  
 15 MR. APPLETON: I wanted to make sure that we  
 16 are clear on this.  
 17 PRESIDENT ORREGO: That is correct, because  
 18 each is supposed to react to the other--  
 19 MR. APPLETON: To the other. I just wanted  
 20 to make sure we are all on the same wavelength.  
 21 PRESIDENT ORREGO: Okay.  
 22 MS. KINNREAR: My only question is, will there

12:44:09 1 be a date, Reply by a certain date, Rejoinder by a  
 2 certain date?  
 3 PRESIDENT ORREGO: Well, yes, because that  
 4 way we will build in the schedule.  
 5 Well, the third pending item on the  
 6 Tribunal's side was the question of VAT at the end of  
 7 paragraph 20; and, in that respect, a draft wording  
 8 has been circulated, too, which we thought would cover  
 9 eventual situations--hopefully they will not occur;  
 10 but, if they do, they will be subject to a procedure  
 11 to deal with it in this way. Have you had a chance to  
 12 look at it?  
 13 MS. KINNREAR: I have, and I thank you.  
 14 I wonder if I would be allowed to take this  
 15 back to Canada and speak to the Canada Revenue people  
 16 and ask them if they have any particular comment. My  
 17 sense was that it would matter to the  
 18 characterization, certainly for the Canadian GST,  
 19 whether the money comes through the ICSID Secretariat,  
 20 which I think is preferable. And I would also ask  
 21 them if they could perhaps give some kind of a  
 22 statement for the record for the Tribunal that would

12:45:28 1 hopefully give some comfort to arbitrators as well.  
 2 So, I would ask if perhaps we could forebear  
 3 on this, and I will get back to that as quickly as  
 4 possible as soon as I get back to Ottawa, and I will  
 5 speak with Mr. Appleton in advance of getting back to  
 6 the Tribunal, if that would be acceptable.  
 7 PRESIDENT ORREGO: Absolutely.  
 8 Is that all right with you?  
 9 MR. APPLETON: Could we go off the record for  
 10 a moment?  
 11 PRESIDENT ORREGO: Yes, certainly.  
 12 (Discussion off the record.)  
 13 PRESIDENT ORREGO: So, now we are quite ready  
 14 to move into the pending issues, beginning with the  
 15 place of arbitration. Would the Claimant,  
 16 Mr. Appleton, think that you have additional elements  
 17 to mention in respect of what you have already stated  
 18 submitted?  
 19 MR. APPLETON: Yes, Mr. President. We  
 20 actually have some additional comments to make in  
 21 light of some of the views that have been expressed by  
 22 Canada, and apparently Ms. Kinnear has indicated to us

12:50:53 1 that she has comments to make in light of some our  
 2 views. So, it appears you have to hear from both of  
 3 the parties. Who would you like to hear from first?  
 4 PRESIDENT ORREGO: Well, certainly the  
 5 Claimant.  
 6 MR. APPLETON: Then I'm going to ask  
 7 Mr. Gallus if he would address the Tribunal briefly on  
 8 some of these issues.  
 9 PRESIDENT ORREGO: Thank you.  
 10 MR. GALLUS: Thank you.  
 11 Mr. President, in many respects, the parties'  
 12 submissions with regard to the place of arbitration  
 13 are quite similar. Both parties, for example, relied  
 14 on the UNCITRAL Notes. There is one area where the  
 15 submissions differed significantly, and it's on that  
 16 area that I would like to concentrate briefly this  
 17 morning.  
 18 Specifically, Canada relied specifically  
 19 within its submissions on the factor of neutrality,  
 20 and the Investor did not specifically rely on the  
 21 factor of neutrality within its submissions. The  
 22 Investor did rely on the factor of equality in a sense



12:52:10 1 that the factor of equality overlaps somewhat with the  
2 factor of neutrality. Indeed, the principle of  
3 neutrality can be expressed, that simply the fact that  
4 parties before a court are treated equally.  
5 Nevertheless, Canada did specifically address the  
6 principle of neutrality, and we feel that we should  
7 respond to the specific submission, given that the  
8 Investor did not specifically address the issue in its  
9 submissions.

10 Indeed, we are grateful to Canada for  
11 specifically raising the issue of neutrality because  
12 we feel that perhaps the factor of neutrality more  
13 than any other factor helps illustrate why a city in  
14 Canada cannot be a place of arbitration, and there are  
15 two main reasons for that. The first is Canada's  
16 stated position with regard to the standard of review  
17 of NAFTA Chapter Eleven Awards in Canada, and the  
18 second is Canada's sovereign powers before its courts  
19 in Canada.

20 The Investor believes that, because of these  
21 two reasons, a city in Canada can never be a neutral  
22 place for the arbitration, and let me address these

12:54:57 1 a place of arbitration that was outside of Canada.  
2 Subsequently, the Pope & Talbot Tribunal also said  
3 that it was troubled by Canada's submission, and the  
4 Tribunal said that it, too, would have relied on that  
5 factor to choose a place of arbitration outside of  
6 Canada, if the arbitration in Pope & Talbot was not so  
7 far progressed.

8 Despite these comments of the UPS and the  
9 Pope & Talbot Tribunals, Canada subsequently, in  
10 another judicial review case, reiterated the same  
11 argument. Indeed, in the Myers judicial review,  
12 Canada argued once again that NAFTA Chapter Eleven  
13 Awards should not be accorded a high level of  
14 deference.

15 Canada's position with regard to the standard  
16 of review in Canadian courts can be contrasted with  
17 the standard of review in courts in the United States,  
18 where the United States has never argued that a court  
19 should accord any lower standard of deference to a  
20 NAFTA Chapter Eleven Award and, indeed, where United  
21 States courts interpret the Federal Arbitration Act  
22 using the United States on its face.

12:53:37 1 two reasons in turn, first starting with Canada's  
2 stated position on the standard of review.

3 In the Investor's submissions, we refer the  
4 Tribunal to Canada's comments for the Metalclad  
5 judicial review court. The Metalclad court was a  
6 court of the British Columbia that reviewed the NAFTA  
7 Chapter Eleven Decision in Metalclad against Mexico.  
8 And, in that judicial review, Canada said--and I'm  
9 going to quote now the same quote that we include in  
10 our submission--Canada said that "NAFTA Chapter Eleven  
11 Awards are not supposed to be worthy of judicial  
12 deference and not supposed to be protected by a high  
13 standard of review." And if the Tribunal would like  
14 to see that quote, you can find it at Tab 12 of the  
15 authorities we appended to our submission,  
16 specifically at paragraph 12, and it's repeated again  
17 somewhat at paragraph 30.

18 Two subsequent Chapter Eleven Tribunals  
19 commented on what Canada had to say in the Metalclad  
20 judicial review case. Firstly, the UPS Tribunal said  
21 it was deeply troubled by Canada's position and,  
22 indeed, partly relied on Canada's submission to choose

12:56:19 1 So, the first reason we believe that  
2 Canada--a city in Canada can never provide a neutral  
3 venue for the arbitration is because of Canada's  
4 stated position with regard to the standard of review  
5 in Canadian courts.

6 ARBITRATOR ROWLEY: Could I ask you a  
7 question on that. Would the more relevant question as  
8 to neutrality of venue be how the courts treat  
9 arbitral awards as opposed to one of the litigating  
10 parties' arguments?

11 MR. GALLUS: I think there are two answers to  
12 your question, Mr. Rowley. The first is, indeed, a  
13 relevant question with regard to neutrality is what  
14 the standard of judicial review is that is applied by  
15 the court. And, indeed, on that issue, we believe  
16 that the standard applied by Canadian courts is also  
17 suspect. I refer the Tribunal in particular to the  
18 standard of review that was applied by the Myers  
19 Tribunal or by the Myers court, where Canada in that  
20 case argued that, on the issue of whether the Tribunal  
21 had appropriately taken jurisdiction, Canada argued  
22 that the test that should be applied by the court was

12:57:51 1 a test of correctness.

2 And while the court found for other reasons  
3 it did not need to address the issue, it went on in  
4 obiter dicta to say, indeed, it agreed that the test  
5 for reviewing the Tribunal award with regard to the  
6 decision to take jurisdiction was, indeed, a test of  
7 correctness.

8 So, the first answer or the first part to the  
9 answer to your question, Mr. Rowley, is, indeed, that  
10 the standard applied to the courts is important, and  
11 we believe that, on that issue, the standard applied  
12 by Canadian courts is also suspect and does  
13 demonstrate that Canadian courts--or Canadian cities  
14 cannot be a neutral venue for the arbitration.

15 The second part to the answer of your  
16 question is Canada's submissions before those courts  
17 is also very important because Canada's submissions  
18 before those courts indicates the submissions that  
19 Canada is likely to make in the future. It indicates  
20 the submissions that Canada is likely to make, if  
21 Canada seeks to review any award coming from this  
22 Tribunal; and, therefore, it indicates the standard of

13:00:03 1 actually requested by the applicant. Canadian has not  
2 only argued that its Access to Information Act gives  
3 it its power, but the Canadian Federal Court has  
4 supported Canada's position in a case that I suspect  
5 we will talk a little bit later. A Canadian Federal  
6 Court did, indeed, confirm that, in response to a  
7 request from anyone in Canada, from any citizen in  
8 Canada, that Canada can provide any documents from a  
9 NAFTA Chapter Eleven arbitration that had been  
10 designated as confidential by the Tribunal and go  
11 beyond the actual request to Canada.

12 So, the first sovereign power that Canada has  
13 identified in this arbitration is its sovereign power  
14 arising from the Access to Information Act. The  
15 second sovereign power is once again something I  
16 suspect we will touch on later this afternoon, but as  
17 the power arising under Canada's Evidence Act and  
18 specifically Section 39 of that Evidence Act.

19 Section 39 of Canada's Evidence Act gives  
20 Canada the right to refuse to disclose information  
21 that is requested if a clerk of the Privy Council in  
22 Canada certifies for that information contains

12:58:49 1 review that Canada will seek to hold a court reviewing  
2 any award coming from this Tribunal. If that answers  
3 your question, Mr. Rowley.

4 I would like to leave now the issue of the  
5 standard of review that Canada seeks to apply to its  
6 courts and address the second reason why Canada--a  
7 city in Canada cannot provide a neutral venue for the  
8 arbitration, and this is because of the sovereign  
9 powers that Canada enjoys. Indeed, Canada has pointed  
10 out, in its submissions to the Tribunal, to particular  
11 sovereign powers that are important to this issue, and  
12 I suspect we shall hear a little more on these  
13 sovereign powers later on this afternoon, but I shall  
14 address them briefly now.

15 The first is the sovereign power arising from  
16 the Canadian Access to Information Act. Canada argues  
17 that its Access to Information Act gives it the right  
18 to respond to a Request for Information from anyone in  
19 Canada or a resident of Canada to respond to such a  
20 request by providing information that is being  
21 designated by this Tribunal as confidential; and not  
22 only that, by providing more information that is

13:01:21 1 deliberations, cabinet deliberations. The important  
2 aspect of Section 39 of the Evidence Act is that that  
3 assertion cannot be challenged, and Canada has argued  
4 in its submissions that this NAFTA Chapter Eleven  
5 Tribunal can also not challenge that assertion.  
6 Canada argues that as soon as the clerk of the Privy  
7 Council in Canada designates a document or a class of  
8 documents as classified or privileged because they  
9 demonstrate cabinet deliberations, then this Tribunal  
10 cannot review that decision.

11 So, in its submissions already, Canada has  
12 identified these two sovereign powers, and we believe  
13 that these sovereign powers and other sovereign powers  
14 demonstrate why a city in Canada cannot be a neutral  
15 venue for the arbitration. First of all, the  
16 sovereign powers are not powers enjoyed by the  
17 Investor, and already there is inequality between the  
18 powers before a Canadian court. Secondly, there is  
19 the danger that, if Canada seeks to rely on these  
20 powers in this case, and if the Tribunal takes a  
21 different position, Canada may seek to challenge any  
22 award as contrary to its public policy.

13:02:41 1 So, the second reason that we believe no  
 2 Canada city can provide a neutral venue for the  
 3 arbitration is because of the sovereign powers that  
 4 Canada enjoys. Now, this situation can be contrasted  
 5 to the situation in U.S. cities, and particularly the  
 6 situation in Washington, D.C., which the Investor has  
 7 proposed as an appropriate place of the arbitration.  
 8 In Washington, D.C., for example, the Investor enjoys  
 9 no such special powers and the parties would appear  
 10 before a Washington, D.C. court as equal parties.  
 11 Nevertheless, Canada argued in its submissions that  
 12 Washington, D.C., is not a neutral venue. However,  
 13 Canada's own authorities that are relying on its  
 14 submissions demonstrates that that's not the case.

15 Indeed, those authorities demonstrates that,  
 16 because Washington, D.C., is the home of the ICSID, it  
 17 is a neutral venue, and I would like to refer the  
 18 Tribunal specifically to the authorities on which  
 19 Canada relies. I would like to refer the Tribunal to,  
 20 first of all, the decision of the ADF Tribunal, which  
 21 believed Canada provided at Tab 4 of its authorities,  
 22 and I would like to refer the Tribunal specifically to

13:05:15 1 specifically address, and we are grateful to Canada  
 2 for relying on the issue of neutrality because we  
 3 believe more than any other factor perhaps the factor  
 4 of neutrality demonstrates that no city in Canada can  
 5 ever be a neutral place for the arbitration. Courts  
 6 in Canada are subject to Canada's submission that they  
 7 should apply a lower standard of review to NAFTA  
 8 Chapter Eleven Decisions, and courts in Canada are  
 9 also subject to Canada's sovereign powers.

10 There are no such concerns with Washington,  
 11 D.C., and for that reason, the Investor submits that  
 12 the Tribunal should make Washington, D.C., as the  
 13 place of the arbitration.

14 Unless the Tribunal has no other questions, I  
 15 would turn to Ms. Kinnear and Canada.

16 PRESIDENT ORREGO: Thank you, Mr. Gallus.

17 We shall now hear from Ms. Kinnear, please.

18 MS. KINNEAR: Thank you.

19 I have six points I would like to address in  
 20 reply to the submissions on place of arbitration. The  
 21 first one is with respect to neutrality and equality  
 22 which have been placed together in the Investor's

13:03:57 1 paragraph 21 of that decision.

2 I would also like to refer the Tribunal to  
 3 the Methanex decision upon which Canada also relied,  
 4 and which the Tribunal can find at Tab 7 of Canada's  
 5 authorities; and, within that decision, I would like  
 6 to refer the Tribunal specifically to paragraph 39.

7 Of course, these authorities on which Canada  
 8 relies support or buttress the authorities on which  
 9 the Claimant has already relied in its submissions,  
 10 and I would like to refer the Tribunal specifically to  
 11 the UPS Decision, which the Tribunal can find at Tab 8  
 12 of the Investors' authorities, and specifically to  
 13 paragraph eight of that Decision. All of these three  
 14 decisions say that Washington, D.C., is a neutral  
 15 venue for an arbitration because Washington, D.C., is  
 16 the home of the ICSID.

17 So, just to conclude the Investor's response  
 18 to Canada's submissions with regard to the place of  
 19 arbitration, we responded specifically to the one  
 20 issue of neutrality because it was an issue that  
 21 Canada relied on specifically in its pleadings and to  
 22 which the Respondent--to which the Investor did not

13:06:29 1 submissions.

2 It is, first of all, debatable whether  
 3 neutrality is a relevant factor in choosing a place of  
 4 arbitration in Chapter Eleven cases. In particular,  
 5 Article 1130, which is the appropriate Article, says  
 6 that NAFTA cases have to be in one of the NAFTA States  
 7 and doesn't say anything to the effect that it must be  
 8 the State not implicated. So, clearly the NAFTA  
 9 drafters contemplated place of arbitration being in  
 10 the home State of one of the disputing parties.

11 Perhaps more importantly is what's happened  
 12 in practice. The fact is that every single case  
 13 against the United States has had Washington, D.C., as  
 14 the place of arbitration. It would seem to be a bit  
 15 of a double standard if when Canada, as the  
 16 Respondent, it could never have a city in Canada as  
 17 the place of arbitration. The fact is also that  
 18 several Canadian cases have located or had the place  
 19 of arbitration in Canada, in particular Montreal and  
 20 Ottawa. So, neutrality, if it is a concern at all,  
 21 certainly has not been strictly applied in this  
 22 context.

74

13:07:42 1           Neutrality and, perhaps better said, equality  
2 would also not lead you to Washington, D.C. The fact  
3 is that Washington is the capital city of the  
4 Investor's home country; and, if that is a nonneutral  
5 location, surely it is as nonneutral as Ottawa and  
6 would lead you to conclude that Vancouver would be the  
7 appropriate place. As you know, Vancouver is one of  
8 the places suggested by Canada.

9           Finally, with respect to the issue of the  
10 seat of the World Bank, there again is a debate in the  
11 NAFTA case law on that. The Canfor Tribunal in  
12 particular suggested that the fact that Washington has  
13 the World Bank is to confuse the physical location of  
14 the hearing with the legal seat of the arbitration,  
15 and we would agree with the Canfor Tribunal in that  
16 respect and suggest that the fact of the ICSID is here  
17 should not affect the Tribunal's determination about  
18 place of arbitration. That Canfor case is at Tab 6,  
19 paragraph 22, of Canada's submissions.

20           Second question on place of arbitration is  
21 the Investor's submission or suggestion in its brief  
22 that Washington is somehow a default location.

75

13:08:57 1 Obviously, Washington is not any default location for  
2 place of arbitration in these cases. This ignores the  
3 express wording of Article 1130, and I call the  
4 Tribunal Members' attention to the fact that 1130(a)  
5 says that where a question arises about place of  
6 arbitration under either an ICSID Convention or ICSID  
7 Additional Facility case, it will be determined in  
8 accordance with the ICSID Additional Facility Rules.  
9 Those give the Tribunal discretion to look at the  
10 circumstances. That is exactly the same kind of  
11 exercise, of course, that the Tribunal has to go  
12 through under the applicable rules here, which are the  
13 UNCITRAL Rules.

14           And so, in our view, what matters is the  
15 facts of the individual case. We have canvassed those  
16 facts in our submissions; and, for convenience's sake,  
17 we have a chart here which I would like to provide to  
18 my friend and to the Tribunal, which basically takes  
19 the relevant facts about place of arbitration, about  
20 the circumstances of the arbitration, from the  
21 Statement of Claim and Statement of Defense, and put  
22 them in a chart. To be honest, at the end of the day,

76

13:10:13 1 the Tribunal obviously has to balance this. It seems  
2 fairly clear to me that the balance is Vancouver,  
3 Ottawa, or Washington. The only factor at all that in  
4 any way could link this arbitration to Washington is  
5 the fact that the parties have consensually agreed to  
6 ICSID administration. There is not one single other  
7 fact that's relevant.

8           So, if I might, I would like to provide this  
9 to my friend and to the Tribunal simply because I  
10 think it is a good visual summary of relevant facts  
11 and the exercise that the Tribunal will have to go  
12 through in this arbitration.

13           I then would just like to go to the question  
14 of Canada and the suitability of Canada and its  
15 arbitral law. That's obviously one of the factors  
16 under the UNCITRAL Organizing Notes and one that the  
17 Investor has spent a considerable amount of time on in  
18 its submission.

19           The first point to make is that NAFTA Chapter  
20 Eleven Tribunals--I apologize.

21           (Pause.)

22           MS. KINNEAR: NAFTA Chapter Eleven Tribunals

77

13:11:22 1 have universally held that Canada and United States  
2 have equally suitable laws. Nobody--no Tribunal--has  
3 said otherwise or even suggested otherwise. Canada  
4 has the Commercial Arbitration Act and the Code based  
5 on the UNCITRAL Model Law.

6           The Investor then suggests that Canada  
7 somehow becomes unsuitable because of the position  
8 that the Canadian Government took on the first  
9 set-aside applications of Chapter Eleven matters, and  
10 Canada strongly disagrees with this.

11           First of all, this view is based on some  
12 comments made in the UPS case and in the Pope case  
13 which the Investor has cited to you. The fact is that  
14 these views have never been majority views. Canada  
15 has included, for the sake of completeness, all of the  
16 relevant cases here, and I would like to point you in  
17 particular to the Canfor case at Tab 6, paragraph 25;  
18 the ADF case, which is found at Tab 4, paragraphs 14  
19 to 16; and the Waste Management case, which is at Tab  
20 10 and paragraph 26. Those three tribunals have all  
21 said they were not in the least troubled by the  
22 submissions Canada made in the Metalclad case, and

13:12:50 1 that this did not in any case make Canada an  
2 unsuitable place of arbitration.  
3 They made the very important point, which  
4 Member Rowley has made, that these were positions of  
5 Canada as a litigant. They should not be confused  
6 with the positions of the Canadian judiciary. It is  
7 obvious that Canada has an independent judiciary that  
8 establishes the level of deference after hearing  
9 parties' submissions, and the fact is that is exactly  
10 what they did. They affirmed the highest level of  
11 deference, and they rejected the submissions made by  
12 Canada and Mexico.

13 So, the judiciary exercised its independence  
14 quite clearly and affirmed a very high level of  
15 deference. That high level of deference has been  
16 affirmed in every single 1136 case in Canada. There  
17 is the Metalclad case with Justice Tysoe, at paragraph  
18 50 and following. This was followed by the Federal  
19 Court of Canada in the Myers case. And I might note  
20 as an aside, were there any set-aside proceedings to  
21 come out of this arbitration, it would be that court,  
22 the Federal Court of Canada, which would be seized.

13:15:03 1 Ottawa or Ontario, then presumably you could go to the  
2 Superior Court or the Federal Court, and Ms. Tabet  
3 reminds me that it would be one of those two places  
4 selected by the party initiating the set-aside. This  
5 is in the Commercial Arbitration Act, I think, at  
6 Sections 5 and 6.

7 ARBITRATOR ROWLEY: I was just surprised when  
8 you said it was the Federal level.

9 MS. KINNEAR: No, I think that's fair. I  
10 misspoke. It would be one of those chosen by the  
11 party initiating the set-aside.

12 At the end of the day, then, Canada's  
13 position is that the independent judiciary has spoken  
14 and that there is a high level of deference, that this  
15 is no reason to disqualify Canada.

16 The next question I would just like to talk  
17 to or speak to quickly is the whole question of  
18 support services and the fact that this case is in  
19 Washington being a criteria that would lead you to  
20 suggest Washington is an appropriate place of  
21 arbitration, and I would simply like to underline  
22 there the decision about what is an appropriate place

13:13:54 1 And that court in the Myers case, at paragraphs 33 to  
2 42, again reaffirmed the highest level of deference.  
3 And then again the Ontario Superior Court and the  
4 Ontario Court of Appeal in the Feldman case, at  
5 paragraphs 34 to 43, once again affirmed the highest  
6 level of deference.

7 So, at the end of the day, there is no less a  
8 level of deference in Canada than in the United  
9 States, and the position of Canada as a litigant in  
10 the first NAFTA Chapter Eleven set-asides surely does  
11 not make Canada an unsuitable place for arbitration.

12 ARBITRATOR ROWLEY: Could I interject with a  
13 question?

14 MS. KINNEAR: Please.

15 ARBITRATOR ROWLEY: Why is it that you say  
16 that the Federal Court would be seized if there is a  
17 challenge against an award, if a seat in Canada were  
18 chosen?

19 MS. KINNEAR: Under the Commercial Code, it  
20 would be the Federal Court--okay. The Federal Court  
21 is--the option is the Federal Court or the Superior  
22 Court in the place of arbitration. Assuming it was

13:16:04 1 of arbitration is a very different decision than a  
2 decision about location of hearings. It's agreed and  
3 not at all in debate that hearings can be held in  
4 Washington. I assume that they will be. Canada is  
5 amenable to hearings being held in Washington or any  
6 other location that the Tribunal thinks is appropriate  
7 in the circumstances. So, that is a nonissue and,  
8 frankly, a nonfactor in determining place of  
9 arbitration.

10 We have talked a little bit about GST this  
11 morning, and I don't think there is anything further  
12 to say about that, but we will get back to you as we  
13 are undertaking to do so.

14 And, finally, I would like to just address  
15 quickly the matter raised by Mr. Gallus with respect  
16 to the Access to Information Act and the Canada  
17 Evidence Act; in particular, cabinet confidence.

18 Sadly or happily, the fact is that those are  
19 mandatory statutes, the Access to Information Act,  
20 much like the American FOIA, Freedom of Information  
21 Act, those apply to Canada no matter where the place  
22 of arbitration is. So, that is not a factor that

13:17:07 1 would be relevant in choosing a place of arbitration  
2 because Canada is bound by mandatory provisions in  
3 that legislation. So, it is irrelevant to place of  
4 arbitration. Ms. Tabet will speak to the whole  
5 question of access and cabinet confidence later in the  
6 rubric of confidentiality, but it is again, in our  
7 submission, a nonissue with respect to finding a place  
8 of arbitration.

9 So, in summary--and we have provided you with  
10 our chart--the Tribunal has to go through the exercise  
11 of balancing based on the circumstances of this case.

12 Not a single circumstance leads you to Washington,  
13 and, in our submission, either Ottawa or Vancouver  
14 would be the most appropriate place of arbitration.

15 Thank you.

16 PRESIDENT ORREGO: Thank you, Ms. Kinnear.

17 So, we now have heard both parties on the  
18 question of the place of arbitration, and all the  
19 statements we have heard indeed supplement what we  
20 have read. So, it's taken, and the Tribunal will have  
21 that in its mind for consideration of the issue in the  
22 next few weeks.

13:19:25 1 Ms. Kinnear said. If that is, indeed, what  
2 Ms. Kinnear was submitting, I would like to refer the  
3 Tribunal to the submission that the Investor made with  
4 regard to Chapter Twenty of the NAFTA, where within  
5 Chapter Twenty the NAFTA parties included specific  
6 rules for arbitration under Chapter Twenty, and the  
7 parties included within those rules that the place of  
8 arbitration would always be the capital city of the  
9 Respondent's State. The NAFTA parties chose not to  
10 include such a rule within Chapter Eleven, and the  
11 exclusion of such a rule within Chapter Eleven  
12 indicates that the NAFTA parties believed that the  
13 capital city of the Respondent's State was an  
14 inappropriate place of arbitration.

15 The second point that Ms. Kinnear made was  
16 with regard to Washington, D.C., as the capital of the  
17 Investor's home country. Just to respond to that  
18 point, I would to refer the Tribunal to the Methanex  
19 Decision, which is a decision on which Canada relied  
20 in its written submissions and is included as an  
21 authority to those submissions.

22 In the Methanex Decision, specifically at

13:18:25 1 So, thank you very much for that Mr. Gallus,  
2 Ms. Kinnear.

3 MR. GALLUS: Sorry to interrupt,  
4 Mr. President, I wonder whether the Investor might  
5 have an opportunity to respond briefly to the points  
6 that had just been raised by Canada.

7 PRESIDENT ORREGO: Yes, you will have every  
8 opportunity.

9 MR. GALLUS: Thank you. We will try and be  
10 as brief as we can.

11 Canada raised six points, and I would like to  
12 respond to each of those, if I might, very briefly.

13 First of all, with regard to the Access to  
14 Information Act and the Evidence Act, Mr. Appleton  
15 will be addressing these acts in detail a little later  
16 on, and I will defer to him to respond to  
17 Ms. Kinnear's comments.

18 Second, Ms. Kinnear referred to Article 1130  
19 of the NAFTA and argued that Article 1130 of the NAFTA  
20 specifically contemplated that the capital city of the  
21 Respondent could be an appropriate place of  
22 arbitration; perhaps that was my understanding of what

13:20:39 1 paragraph 38 of that Decision, the Tribunal considered  
2 the issue of a city as the capital of the Investor's  
3 home country, and what the Tribunal said was that the  
4 important factor is not the capital cities of the home  
5 country of the Investor. The important factor is, in  
6 fact, the State of the Investor.

7 And the Methanex Tribunal said that, so long  
8 as the Tribunal--so long as the place of arbitration  
9 is not in the home State of the Investor, then the  
10 Methanex Tribunal found that the place of arbitration  
11 would be neutral.

12 The third factor to which Ms. Kinnear  
13 referred was, I believe, encaptured in the spreadsheet  
14 that she has just distributed to the Investor and to  
15 the Tribunal, and the Investor obviously has not had  
16 time to review the spreadsheet in detail, and we look  
17 forward to doing that. But I would like to make one  
18 point with regard to the spreadsheet of this point,  
19 and in a sense it addresses a point I also talked  
20 about earlier with regard to our response to Canada's  
21 written submissions, and that is that, here, Canada is  
22 listed a series of factors going to Vancouver and

13:22:03 1 Ottawa and Washington. What Canada has not addressed  
2 is the actual practical consequences of nominating a  
3 place of arbitration, and the practical consequences  
4 of nominating a place of arbitration is that the  
5 courts of that country then both assist the Tribunal  
6 as we progress through the arbitration, and also have  
7 the right to review any award that the Tribunal comes  
8 up with. And on the practical consequences of  
9 nominating a city within Canada as a place of  
10 arbitration, the Investor has submitted that no city  
11 in Canada can be neutral.

12 Indeed, Canada makes much of the fact that  
13 there is very little in the column referring to  
14 Washington, D.C.; and, indeed, the ICSID sitting in  
15 that final column does look very lonely compared to  
16 the factors of Vancouver and Ottawa. However, I think  
17 it's important to make the point what the Investor has  
18 been arguing, that the Investor would accept any city  
19 within the United States as the appropriate place of  
20 arbitration for the main reason that the Investor does  
21 not believe that a city in Canada can be a neutral  
22 place in arbitration. The Investor is happy to accept

13:24:20 1 regard to the standard of judicial review, those  
2 tribunals could well have been influenced by the fact  
3 that Canada was not the Respondent State and,  
4 therefore, may not have been likely to make such a  
5 decision to any judicial review of awards coming out  
6 of those cases.

7 Then there are specific points to which I  
8 would like to respond to what Ms. Kinnear said  
9 earlier, unless Mr. Appleton has anything else to  
10 add...

11 MR. APPLETON: Maybe you will allow me for a  
12 moment.

13 MR. GALLUS: Given Mr. Appleton was directly  
14 involved in the Myers case, perhaps it's appropriate  
15 he should speak to that.

16 MR. APPLETON: As counsel in the Myers  
17 initial review, I didn't otherwise want to interrupt  
18 Mr. Gallus, and I normally wouldn't do this, but I  
19 actually have a copy of the Federal Court decision in  
20 the Myers case with me, and I will actually hand up to  
21 the Tribunal--and I'm going to give Ms. Kinnear the  
22 benefit of having Mr. Gallus's copy, which he has

13:23:13 1 New York, Chicago. The Investor would be particularly  
2 happy to accept Miami as the place of arbitration.  
3 But the Investor, I think, needs to make the point  
4 that we have suggested Washington because it is  
5 convenient and is where we are now, but we would also  
6 be willing to accept other places, other cities in the  
7 United States, as the appropriate place of  
8 arbitration.

9 The fourth point that Canada made was  
10 directly in response to the point that I made earlier  
11 with regard to Canada's submissions on the standard of  
12 review before Canadian courts, and Canada responded to  
13 the cases to which the Investor referred earlier with  
14 reference to the Canfor, ADF, and Waste Management  
15 Decisions. Once again, we have not had time to review  
16 these decisions since Canada has mentioned them a few  
17 minutes ago, but I think it's worth making one  
18 observation with regard to these cases, and that is  
19 that in each of these cases--Canfor, ADF, and Waste  
20 Management--Canada was not the Respondent State; and,  
21 therefore, whatever the Tribunal said in regard to  
22 Canada's submissions before its local courts with

13:25:23 1 marked, to specifically point out that paragraph 58 of  
2 that judicial review, what the judge says specifically  
3 says that, on the two issues raised by Canada and  
4 Mexico--they go to the jurisdiction or scope to  
5 submission of arbitration--the standard of review on  
6 the pure question of law is correctness. On the next  
7 question of law and fact is reasonableness. So, there  
8 is no question that this is actually what the court  
9 said, and that's why because I was there, and I recall  
10 exactly what was in the Award.

11 Our problem is that to have neutrality means  
12 that you shouldn't have special prerogative or  
13 privilege for standing as well as by your status, and  
14 all we are seeking is to have that same neutral  
15 position, and so the difficulty that we have isn't  
16 that we think the arbitration law in Canada is very  
17 good. It's just that the position that has been  
18 advanced with respect to that that makes it difficult  
19 in the circumstance, and all we are seeking is just to  
20 have the two parties that are to the arbitration,  
21 being Canada and Merrill & Ring, to have the same type  
22 of standing before a court that reviews them. That's

13:26:37 1 all.

2 ARBITRATOR ROWLEY: May I just ask a question  
3 about that.

4 Leaving aside the special pleading power that  
5 might be attributed to a sovereign appearing before  
6 its own courts, is it not your position also that the  
7 standard of review applied by the Canadian courts and  
8 the Federal Court in particular here is lower than in  
9 the United States?

10 MR. APPLETON: Our position is that the  
11 standard of review has been applied at a lower level  
12 in some cases, and that the position taken by the  
13 Government of Canada consistently before the various  
14 levels--I understand that we think that's very, very  
15 important--on the basis of the findings--and, in fact,  
16 some of the courts have made that finding, and that's  
17 what our problem is, because basically--the Federal  
18 Arbitration Act based on this point is identical to  
19 the UNCITRAL Model Law--they're very, very  
20 similar--and Canada is an UNCITRAL Model Law country.

21 So, we think the laws are roughly equivalent.  
22 It's how they are being applied that's a problem here.

13:28:50 1 Would you like to add any further points?

2 MS. KINNEAR: Yes, thank you.

3 First of all, I was a bit reluctant to start  
4 handing you chunks of paper, and I apologize, but if  
5 you're going to be looking at the Myers case, what  
6 Canada has put together for you is each of the  
7 judicial review Article 1136 set-aside cases. There  
8 is Metalclad, Myers, and Feldman at the Ontario  
9 Supreme Court--Superior Court, pardon me, and the  
10 Ontario Court of Appeal. I think perhaps it's best  
11 that you have that full record in front of you. So,  
12 if I might provide you with those--and I have one for  
13 Mr. Appleton, as well.

14 MR. APPLETON: Does that include the document  
15 I was about to hand out?

16 MS. KINNEAR: That's correct. It's a full  
17 compilation of those cases.

18 (Comment off microphone.)

19 MS. KINNEAR: The second question is the  
20 argument that Canada made about Article 1130 of the  
21 NAFTA, and I think Mr. Gallus misapprehended it. The  
22 point really is that Article 1130 says that place of

13:27:57 1 And when we address the other issues, you will get  
2 more of a flavor as to some of our concerns about this  
3 special standing that the government has with respect  
4 to the Evidence Act and special standing they have  
5 with respect to the Access to Information Act and the  
6 issues that could arise from other acts that we don't  
7 even know about at this point, but where Canada has  
8 special status or standing with respect to their  
9 courts, and that's why because otherwise it would be  
10 very convenient to have an arbitration in Canada.

11 But the fact of the matter is that we feel at  
12 this point, because of those finding, it wouldn't be  
13 neutral; that's why we have taken so much focus and  
14 effort here because we just want everyone to be  
15 treated here the same, and that's what Article 15 of  
16 the UNCITRAL Rules says, and what NAFTA Article 1115  
17 also says.

18 I hope that answers your question.

19 PRESIDENT ORREGO: Thank you.

20 Have you finished, Mr. Gallus?

21 MR. GALLUS: Yes.

22 PRESIDENT ORREGO: Thank you.

13:30:19 1 arbitration will be in one of Canada, Mexico, or the  
2 United States, and the point being made out of that is  
3 that the NAFTA parties were happy and, in fact,  
4 required arbitrations to be placed in one of the  
5 States and did not require it to be in the State not  
6 involved; i.e., if neutrality was that important, they  
7 would have said in a case such as this one, we would  
8 all have to go to Mexico City. That's not what they  
9 said.

10 Obviously, the NAFTA drafters comprehended  
11 place of arbitration being in either the Respondent's  
12 State or the home State of the Investor, and that that  
13 would be determined based on the circumstances of each  
14 case; in this case, for example, based on the  
15 application of the criteria in the UNCITRAL Notes.

16 The next point I would like to quickly speak  
17 to is the question about Canfor, ADF, and Waste  
18 Management. And, of course, these authorities were  
19 provided last week to my friends. The point there,  
20 the fact that Canada was not a Respondent, is totally  
21 irrelevant to the reasoning in those cases. Those  
22 cases had tribunals saying they did not accept the



13:31:35 1 kind of reasoning that was being put forward in the  
2 UPS and Pope & Talbot case, and that is why we have  
3 drawn them to your attention. The fact that the  
4 majority of tribunals have not agreed with the concern  
5 that the position of Canada as a litigant somehow  
6 taints Canada as a place of arbitration.

7 Finally, the question of Canada having a  
8 special standing before its courts or special  
9 prerogative, quite frankly, it's just untrue, and I  
10 could point you to hundreds of cases that I have lost  
11 before the Federal Court of Canada arguing on behalf  
12 of the government that there is proof needed. The  
13 fact is we have an independent judiciary, and the  
14 sovereign, Canada, hasn't got any kind of special  
15 powers or special standing and certainly none that  
16 would in any way affect Canada as a place of  
17 arbitration.

18 Thank you.

19 PRESIDENT ORREGO: Thank you very much.

20 So, we have heard from both parties in  
21 respect of the place of arbitration, and then we shall  
22 take into account all this wealth of information and

13:34:15 1 on evidence you are in agreement on the IBA Rules,  
2 except--no, not entirely?

3 MR. APPLETON: It appears that what's  
4 happened on the area of evidence is that we have  
5 proposed a specific order, which is loosely focused on  
6 the IBA Rules but is not the IBA Rules. We believe  
7 the IBA Rules can't be applicable directly into an  
8 investor-State context but would provide helpful  
9 guidance; so, therefore, we have actually drafted and  
10 proposed a specific rule that we think that should be  
11 used. I can't speak for Ms. Kinnear, but I believe  
12 that Canada is more supportive generally of the IBA  
13 Rules sort of in total, but I leave it to Ms. Kinnear  
14 on that.

15 PRESIDENT ORREGO: Okay. Let us leave that,  
16 then, towards the end, and we begin with the question  
17 of jurisdiction.

18 Well, on this point, I would reverse the  
19 order and ask Ms. Kinnear to start as the party that  
20 would like to have eventually objections to  
21 jurisdiction and hear from Canada first.

22 MS. KINNEAR: Well, thank you.

13:32:40 1 come back to you with a conclusion in a short period  
2 of time after this meeting.

3 Now, we have to aim to try to be over in this  
4 meeting about, say, 2:15, and then to have the time to  
5 write--to review the minutes. This I mentioned not to  
6 apply any pressure on the parties, but simply to  
7 suggest that if you have aspects that would take more  
8 of your time than others, then we deal briefly with  
9 those that are shorter and at length with those that  
10 are long. And because we don't want you to pass out  
11 of hunger, we invite you to take anything while we are  
12 hearing the different views, and we can have that as a  
13 sort of mini-lunch.

14 Great. Thank you.

15 So, would you like to address next the issue  
16 of confidentiality, which is in a sense linked, or do  
17 that later or...

18 MR. APPLETON: We could do that or  
19 jurisdiction, whatever you prefer.

20 PRESIDENT ORREGO: We could do perhaps  
21 jurisdiction which is important, too, and  
22 confidentiality together with evidence. I gather that

13:35:31 1 As the Tribunal knows, Canada, in its  
2 defense, had an objection to jurisdiction based on  
3 Notice 102 and that the claim was time-barred, and  
4 also we raised objections to jurisdiction on the B.C.  
5 Forest Act and that being both time-barred and not  
6 relating to the Investor. As I understand, the  
7 Investor has now confirmed that it does not challenge  
8 the B.C. Forest Act as a measure, and so the only  
9 question that Canada is requesting it be bifurcated is  
10 the question of whether Notice 102 is, in fact,  
11 time-barred under NAFTA Chapter 1116(2).

12 Our position is clear: The UNCITRAL Rules  
13 contain a presumption that preliminary objections will  
14 be dealt with on a preliminary basis--obviously, it's  
15 still a matter within the discretion of the  
16 Tribunal--and, in our case, it is both appropriate and  
17 possible here. This is a substantial and not a  
18 frivolous objection. Article 1116(2) has what might  
19 be called a "lex specialis," a very clear limitation  
20 period based on when the Investor first acquired  
21 knowledge or should have first acquired knowledge of  
22 the breach and the damage. And I know by the end of

13:36:48 1 this you will certainly be tired of hearing me say  
2 "first acquired," but it is a very clear, a very  
3 specific, and a very focused limitation period in  
4 Article 1116.

5 Bifurcating this matter would save cost and  
6 time. In fact, what it would do in this case, if  
7 Canada were to succeed, would be to eliminate the need  
8 for any further proceedings. It is also practical  
9 because it can be decided on the basis of a limited  
10 and uncontroversial record and save time and cost for  
11 all concerned.

12 Now, the Investor, not surprisingly, has  
13 tried to avoid bifurcation, and they do so, from my  
14 reading certainly of their submissions, in two main  
15 ways. The first is by stating that they have pleaded  
16 both what they call "continuing breaches"--i.e.,  
17 breaches that apparently began before December 2003  
18 but continued past that date--and what they have  
19 termed "noncontinuing breaches"; those would be  
20 breaches that apparently began after December 2003 and  
21 would not, in and of themselves, be time-barred.

22 The Investor's second main objection here to

13:39:10 1 obviously it did know about this. Instead, what it  
2 does is it tries to shield these allegations by  
3 labeling them as a "continuing breach"; and, in that  
4 respect, it cites to you the UPS case.

5 Obviously, Canada's position is contrary to  
6 that. In our view, there is a clear and express  
7 limitation period. It talks about when knowledge is  
8 first acquired, and Article 1116 makes the  
9 continuation of a breach absolutely irrelevant. The  
10 breach can continue forever. It doesn't matter when  
11 it finishes or when it's final or how long it  
12 continues because what NAFTA 1116 directs the Tribunal  
13 and the parties to is the date of first acquiring  
14 knowledge. That's what matters. So, the idea of a  
15 continuing breach, frankly, is irrelevant and does not  
16 avoid the very clear language of 1116.

17 Canada's submission today, and obviously when  
18 we argue this ultimately, will be that the correct  
19 interpretation is in the Grand River case, which we  
20 have provided to you. The Investor, for some reason,  
21 doesn't cite the Grand River case, but it will be  
22 obviously an important and pivotal case when we come

13:38:03 1 bifurcation is that, in their view, the facts so  
2 intertwined with the merits of the case that  
3 bifurcation could not practically be achieved, and  
4 these are the points I would like to address.

5 First of all, on the question of continuing  
6 breach--and I'm very aware that today, obviously, we  
7 are not going to and we should not be trying to  
8 address the merits of the actual objection--this is a  
9 question simply about whether or not to bifurcate.

10 Nonetheless, it's quite important--so that the  
11 Tribunal understands that Canada does raise a  
12 substantive objection that can be dealt with  
13 preliminarily, it's important for us to look a little  
14 bit at the claim and at the argument that the Investor  
15 is making.

16 What the Investor has done is to list  
17 numerous examples of breaches that apparently occurred  
18 before December 2003 and to say that these are clearly  
19 time-barred. It is very telling that the Investor  
20 never denies that it knew about these events and that  
21 it knew about loss flowing from misconduct. And,  
22 frankly, this cannot credibly be denied because

13:40:24 1 to the merits of this whole discussion.

2 I would note also the UPS case doesn't cite  
3 Grand River, and my only speculation would be that  
4 Grand River was decided once UPS had started  
5 deliberating and perhaps wasn't cited to them, but for  
6 today's purposes, the important point is that there is  
7 both a substantial and reasonable legal argument.

8 With respect to noncontinuing breach, the  
9 Investor in its submissions for the procedural meeting  
10 has labeled various categories of conduct that it  
11 calls "noncontinuing measures," and it points to  
12 events which apparently occurred after December 2003;  
13 and, hence, the Investor submits that they are not  
14 time-barred.

15 When you look at those--and I would urge the  
16 Tribunal, when you're deliberating, to very carefully  
17 at the kind of facts that are being addressed here,  
18 and in particular at the annex called "Statement of  
19 Particulars" that the Investor has given to you--you  
20 will see that these are in no way breaches. These are  
21 not claimed breaches of NAFTA. What these are are  
22 simply examples of conduct. They are examples before

13:41:33 1 December 2003, examples after December 2003, but none  
2 of these are pleaded in and of themselves as a breach  
3 of NAFTA. What they are are examples of the  
4 application of Notice 102, which clearly is the policy  
5 or program that's in dispute in this matter.

6 And, in our submission, simply by giving  
7 recent examples what the Claimant itself calls  
8 "particulars" cannot make these--cannot make what is  
9 otherwise just an example of something that has been  
10 happening since 1998 into something that is a fresh,  
11 new subject of inquiry for a Chapter Eleven Tribunal.  
12 All of this is simply repetition of recent examples.

13 And, in fact, interestingly, in its  
14 submission, the Claimant even suggests that they will  
15 be finding more examples of things that happened after  
16 December 2006 when they filed their claim. The fact  
17 is that you could collect as many of these examples as  
18 you want, but they are merely anecdotal examples,  
19 repetitive examples, and they are not breaches in and  
20 of themselves, and they do not allow the Claimant to  
21 avoid the 1116 limitation period. And, in this  
22 respect, I can do no better, frankly, than the Grand

13:44:03 1 manner."

2 And that is exactly what we have here. If  
3 you look at the claim what are being called here as  
4 "continuing" or "noncontinuing breaches" are merely  
5 examples of what was pleaded in the claim to be at  
6 issue in this Tribunal.

7 As the Tribunal said in Grand River, "This  
8 analysis seems to render limitation periods  
9 ineffective in any situation involving a series of  
10 similar and related actions by a Respondent State  
11 since the Claimant would be free to base its claim on  
12 the most recent transgression, even if it had  
13 knowledge of earlier breaches and injuries." In other  
14 words, there is something artificial and surely  
15 incorrect about knowing about a policy and having it  
16 applied to you since April of 1998, and yet being able  
17 to get out of bed every day and say, "Here is a new  
18 and fresh claim, and I have got three more years to  
19 pursue it." That's the problem with the analysis here  
20 and, in Canada's view, the reason that this should  
21 easily be bifurcated and that there is a substantial  
22 and reasonable argument to be made.

13:42:51 1 River Tribunal, which you will find at Tab 32 of the  
2 authorities that Canada provided to you.

3 If you turn to paragraph 81, which is found  
4 at page 35, you will find that the Grand River  
5 Tribunal heard a very, very similar kind of argument  
6 as you are hearing from the Investor today, again  
7 directed not to have the limitation period applied.  
8 That was rejected outright by the Grand River  
9 Tribunal.

10 And they said, "At the hearing, the Claimants  
11 advanced further argument to the effect that the  
12 limitations period under Articles 1116(2) and 1117(2)  
13 applied separately to each contested measure taken by  
14 each State implementing the MSA." That was the Master  
15 Settlement Agreement in that case. "Hence, they  
16 maintain there is not one limitation period but many.  
17 This is not how the Claimants pleaded their case.  
18 Their pleadings did not indicate, except in a limited  
19 and anecdotal way, the particular States and times  
20 where their products were sold; instead, the claims  
21 were directed against the adoption and enforcement of  
22 the escrow statutes and other measures in a generic

13:45:07 1 Finally, on the issue of whether the facts  
2 are intertwined with the merits, obviously Canada  
3 disagrees. If we were to bifurcate this matter, we  
4 would not have to go into any of the merits. We would  
5 not be addressing argument to things like, for  
6 example, comparators, as you would have to do, if you  
7 dealt with a national treatment issue. You would not  
8 have to look at comparative third parties that you  
9 will have to do to deal with MPN, one of the breaches  
10 alleged. You will not have to look at whether there  
11 is customary international law minimum standard  
12 applicable in this case and what that might be. All  
13 of those are what are going to have to be looked at in  
14 the context of merits.

15 Were you to bifurcate, you would have to look  
16 at a very small, limited, and uncontroversial record  
17 that would enable you to make a decision; and, if  
18 successful, no one would have to go to any further  
19 time or expense continuing this claim.

20 So, we would ask that the matter be  
21 bifurcated, and we look forward to addressing in  
22 detail at a preliminary hearing the objection Canada

106

13:46:09 1 is bringing on time-bar.  
2 Thank you.  
3 PRESIDENT ORREGO: Thank you, Ms. Kinnear.  
4 So, now we will have the possibility for the  
5 Claimant.  
6 You want to ask a question?  
7 ARBITRATOR ROWLEY: Yes, one or two  
8 questions, if I may.  
9 One or two questions, Ms. Kinnear.  
10 I think you're directing us to the  
11 proposition that the breach, the alleged breach, is  
12 the promulgation of Notice 102, not its  
13 implementation. Do I understand that correctly?  
14 MS. KINNEAR: No. In fairness--sorry, the  
15 breach has been set out by the Claimant in its claim,  
16 and I believe we cited verbatim what the Claimant  
17 said, and it was, I believe, implementation,  
18 administration--I'm trying to find the exact quote--I  
19 apologize--but it is more than simple promulgation of  
20 the legislation. That is how the claim has been  
21 framed. That is obviously the claim Canada has to  
22 respond to.

107

13:47:25 1 The point really being made here is that the  
2 kind of thing that's done in the implementation and  
3 administration, issuing export permits, applying the  
4 surplus test, that has been done day in and day out,  
5 hundreds of times every single year under Notice 102.  
6 By simply saying, "Oh, and it was done again on  
7 January 1st, 2005," doesn't make a new breach. These  
8 are evidence or examples--my friends have even called  
9 them "particulars"--but they are not citing new  
10 breaches. They are not saying, for example, there was  
11 something in the way Canada issued the surplus test on  
12 December 20, 2006, in and of itself was a breach of  
13 the minimum standard. What they are saying is a  
14 program that is repetitively administered in the same  
15 way and has been since December 1st--April 1st of 1998  
16 continues to be done that way. There is nothing new.  
17 There is nothing different.  
18 And by citing this sort of day-to-day routine  
19 stamped the permit and saying all this is a new  
20 breach, well, that's not what has been claimed here,  
21 and that's our argument with respect to the whole  
22 issue of so-called continuing breach and then the

108

13:48:33 1 Claimant's new category of so-called noncontinuing  
2 breach.  
3 So, we take the claim as it was pleaded, but  
4 we don't believe that there is anything that has  
5 been--that's new or raised as a breach that falls  
6 before the limitation period.  
7 ARBITRATOR ROWLEY: And the tight  
8 circumscribed record that we would decide on would be  
9 the pleadings as exchanged plus memorials of argument;  
10 is that what we understand from your proposed  
11 schedule?  
12 MS. KINNEAR: Yes. Our schedule is in the  
13 submissions. We would propose to put in, obviously,  
14 the Memorial. We will attach an affidavit. There  
15 will be limited factual evidence, but it will not be  
16 controversial. It will frankly be the kind of thing,  
17 for example, a list of how many times the permit was  
18 issued or the surplus test applied.  
19 And then we would also--really, that's what  
20 the record would be. So, I'm not saying there would  
21 be no facts or there would not be facts beyond what's  
22 found in the pleadings--there will be--but they are

109

13:49:42 1 limited, and they are uncontroversial, as I say.  
2 PRESIDENT ORREGO: Mr. Appleton, please.  
3 MR. APPLETON: Thank you, Mr. President.  
4 Let's just try to unpack this and figure out  
5 what's the most efficient simple way to move forward.  
6 First, Canada has misstated the Investor's  
7 claim. The Investor's claim is, in fact, about the  
8 implementation of Canada's log export control policy  
9 since December 27, 2003. Our view is that the entire  
10 claim is manifestly within the jurisdiction of this  
11 Tribunal. To assist, we provided a Statement of  
12 Particulars to give some examples. Each of those  
13 examples are, in fact, examples of a breach of the  
14 NAFTA. I could have drafted the claim with annexes of  
15 lists and lists and lists, but that's not what the  
16 claim--it's much easier to provide in the claim, and  
17 all our requirement is with the claim, is to express  
18 this is about the implementation of Canada's measure.  
19 And, in fact, there are very different types  
20 of factual issues that arise that cause problems out  
21 of different biweekly auctions that are involved.  
22 It's not the same type of thing, and we have put in

13:51:03 1 material in the pleadings already about specific types  
 2 of unfairness with respect to the adjudicative body  
 3 that has created these experts that have conflicts of  
 4 interests that are involved in adjudicating about log  
 5 exports. We talked about all types of problems,  
 6 what's called "blockmail," where the government, in  
 7 essence, permits competitors to use the governmental  
 8 system to block things. These are all different types  
 9 of issues, all applying different aspects of  
 10 NAFTA-protected obligations, like fair and equitable  
 11 treatment or from arbitrary or discriminatory  
 12 treatment, other types of issues.

13 So, there is absolutely no question that the  
 14 claim fits within the provisions of the NAFTA. But  
 15 then Canada says that the claim should be rejected  
 16 because it knew or ought to have known about Canada's  
 17 measures three years before the claims were brought,  
 18 and they suggest this is just a very simple question.  
 19 Ms. Kinnear just said this again, and this doesn't  
 20 really require any significant factual determination,  
 21 at least Ms. Kinnear this time has at least admitted  
 22 there would be facts, and the fact we are going to

13:53:31 1 the continuing pattern of actions; and, therefore, if  
 2 we have an issue about continuous breach, we must, by  
 3 necessity, look carefully at the factual record.

4 Now, what NAFTA 1116(2), that provision that  
 5 we are talking about here, where it creates a  
 6 rule--and I will agree that it's a *lex specialis*. I  
 7 will agree that international law generally doesn't  
 8 deal heavily with concepts of extinctive prescription  
 9 of time limits. It creates a time-limit rule, but  
 10 that would be used, for example, in the situation  
 11 where you have a breach of contract. You have  
 12 something, you have an action that's completed, and  
 13 then you have a three-year period. That's where it  
 14 runs. And international law generally would not  
 15 create a time limit or, to the extent that  
 16 international law does create a time limit, this is  
 17 more a question really for the "Institute de Trois  
 18 Nationale" than anything else, but they would look at  
 19 a 50-year or 70-year period when you don't have  
 20 availability of witnesses and other things like, that  
 21 there is not a standard limitation period in  
 22 international law.

13:52:16 1 suggest to you there are going to be a lot of facts  
 2 because although Canada has repeated the same actions  
 3 year after year--and that is true--Canada purports to  
 4 say now that it is exempt from Tribunal review when it  
 5 repeats these actions. But we are going to suggest to  
 6 you the case law, not just the UPS case, but case law  
 7 suggests to you that Canada's position is simply  
 8 wrong.

9 Now, as a matter of fact, in the UPS  
 10 Tribunal, Canada spends a tremendous amount of time  
 11 and effort talking about Customs Act issues that had  
 12 been known by the Investor, and they put in the same  
 13 type of evidence, a letter of complaint from UPS,  
 14 seven and a half years before the claim was brought,  
 15 within the NAFTA zone, so it's after NAFTA is into  
 16 force seven-and-a-half years before.

17 So, this very specific question was  
 18 specifically canvassed by a NAFTA Tribunal on exactly  
 19 the same circumstance, and that Tribunal found that,  
 20 if you have a continuous breach, and that is the  
 21 international law way of dealing with this as followed  
 22 by the ILC and is well established, that you look to

13:54:34 1 So, that's really what the finding was in  
 2 UPS. They said, "Well, this is a continuing breach."  
 3 You are not exempt from Tribunal review merely because  
 4 you're able to continue the wrongful behavior over a  
 5 period of time and, therefore, get out of the  
 6 jurisdiction of the Tribunal. We referred to it in  
 7 the UPS as the "torture test." You couldn't just  
 8 continue to torture someone again and again and again  
 9 but not kill them and then say, "Well, three years  
 10 you're out of luck, the Tribunal no longer has  
 11 jurisdiction."

12 That's not what the purpose of the NAFTA is  
 13 about, and that's not what the purpose of  
 14 international law adjudication is about, and that's  
 15 why the International Law Commission has specific  
 16 rules about continuous breach and all types of cases  
 17 that have come to that conclusion, and we would be  
 18 ignoring that entirely, and that, in our view, cannot  
 19 be correct. That's why international law supports  
 20 this concept.

21 But, to the extent that Canada's  
 22 objections--just to come back, to the extent that

13:55:36 1 Canada's objections are, "Well, there is an action,  
2 and there was a measure that occurred a number of  
3 years ago and, therefore, it's exempt," we would say  
4 this is basically frivolous, that Canada's objection,  
5 basically they have brought this forward before. They  
6 know they have an uphill road here, and the fact of  
7 the matter is that the UPS Tribunal carefully  
8 considered this, carefully looked at this, and we  
9 believe they came to the right conclusion on this very  
10 particular obligation, and we believe it's up to you  
11 to make your own determination, but we think that's  
12 what that means.

13 But, to the extent that Canada's objection is  
14 not frivolous--and I don't believe that Canada is  
15 being frivolous generally here--then this Tribunal  
16 needs to consider evidence, and it needs to make  
17 rulings with respect to that evidence about whether  
18 the breaches that were involved, in fact, are  
19 continuous.

20 Now, this determination of the continuous  
21 period, whether they fit within the three-year period,  
22 whether Merrill & Ring knew about the information and

13:57:47 1 this Tribunal, and other fairness and treatment issues  
2 which are redolent. And while we say there could be  
3 more and we put in our particulars, as we find more  
4 information and as there will be some document  
5 production, we hope, and of course we will get to  
6 that, but should this Tribunal agree that we're  
7 entitled to some information from the government, we  
8 believe that there will be even more examples of  
9 specific types of behavior that it violates the NAFTA.

10 And if you want to say, "Well, it's all  
11 within the rubric of Exporters 102," but there are all  
12 types of issues. Some of them have started before the  
13 three-year period, and that's three years before the  
14 claim was filed on December 27, 2006, so just before  
15 December 27, 2003, is sort of our cut-off. So, the  
16 extent that they are before that period but they  
17 continue, we would say 1116(2) doesn't prevent them,  
18 and that's exactly the question that UPS had to look  
19 at. And that factual determination has to be  
20 carefully determined by this Tribunal, and we would  
21 say it's virtually identical to the determination of  
22 facts that this Tribunal necessarily needs to make for

13:56:40 1 when they knew of the damage requires a significant  
2 fact-based determination, and it cannot be done just  
3 on the basis of what's in the pleadings because it  
4 requires to go deeper. We have no choice because of  
5 the nature of what is being sought here, and we would  
6 suggest this is very much like what we are going to  
7 have to do with merits.

8 If we thought it was simple, we would say "Do  
9 this." It's in everybody's interest to have a simple  
10 dispositive answer, but we need to go through  
11 carefully this record, and that's going to require  
12 document production from Canada to deal with this  
13 issue of continuity; it's going to require witnesses;  
14 it's going to require cross-examination before the  
15 Tribunal. This is not a simple thing that you can  
16 just look at this record--we need to go more--because  
17 of the nature of looking at this continuous breach,  
18 which is an integral question, which was not put  
19 before you in Canada's objections. That's why we say  
20 they have misstated this.

21 And again, we are looking at fair and  
22 equitable treatment, the appointment of the Members of

13:58:55 1 merits.

2 So, holding a preliminary jurisdictional  
3 hearing would be highly duplicative of resources and,  
4 in our view, very inefficient. If this Tribunal needs  
5 to consider these fact--and we believe they do need to  
6 consider these facts to do merits--and they have to  
7 consider these facts again to be able to look at these  
8 preliminary projections, we think that would be just  
9 a tremendous undue and inordinate burden.

10 And more importantly, delaying the hearing on  
11 the merits in the face of a ruling that really could  
12 be made right away on Canada's objections--that is, to  
13 join it to the merits--would be unduly prejudicial to  
14 the Investor who really has a right to have the  
15 hearing heard or this claim heard in a fair and  
16 expeditious manner. And we think, though, that the  
17 Tribunal would need to consider what are the potential  
18 implications of holding a separate jurisdictional  
19 hearing? Because Ms. Kinnear has suggested that that  
20 would be the right thing and would not be particularly  
21 burdensome, and has made some suggestions of things  
22 that we wouldn't have to look at.

118

14:00:05 1 Now, if no separate preliminary phase is held  
2 and Canada succeeds on its contention at the end of  
3 the day, then the only disadvantage to the process is  
4 a possible waste of some hearing days because the bulk  
5 of what we would need to look at is going to be heard  
6 anyways. Yes, there are some other issues that need  
7 to be canvassed as well, but the bulk of the issues  
8 are the same issues because we need to go through the  
9 nature of the breaches because of the issue of  
10 continuity, continuous breach.  
11 And there are, of course, cost implications,  
12 and this Investor understands and is willing to accept  
13 that this is a financial risk on that, and it would be  
14 up to this Tribunal to determine with respect to that,  
15 but the costs to Canada for proceeding on that basis  
16 in light of these other facts that need to be  
17 determined is relatively insignificant. And, on the  
18 other hand, if a separate preliminary phase is held  
19 and Canada fails on its contention, then all the  
20 hearing time spent on the preliminary phase is  
21 unnecessary, and resolution of the Investor's claim on  
22 the merits will have been seriously delayed, and we

119

14:01:14 1 would say that would be very prejudicial to the  
2 Investor.  
3 So, what we would say is that the fairer--the  
4 better risk allocation of these two options would be  
5 to join Canada's objections to the merits and defer  
6 answering it until the completion of the proceeding of  
7 the merits.  
8 Now, not surprisingly, deferral of objections  
9 that have any possible factual aspects to it, that's  
10 the option most commonly selected by arbitration  
11 panels because expedition and fairness are the  
12 cornerstone values of arbitration, and so it's in  
13 light of those specific considerations and in light of  
14 Canada's request that we ask the Tribunal to join  
15 Canada's objection to the merits because we're going  
16 to have go there.  
17 Our suspicion, in any event, is that after we  
18 went through that whole process you would have to end  
19 up joining it to the merits in any event because of  
20 the nature of what they are seeking, and that's  
21 why--that's why we are suggesting today that you join  
22 their objections, which they have properly raised in

120

14:02:22 1 their Statement of Defense, and that we have this done  
2 as part of the merits because they're inextricably  
3 linked.  
4 PRESIDENT ORREGO: Thank you, Mr. Appleton.  
5 Let me ask you a question just for clarifying  
6 some aspects of the argument.  
7 It is quite clear in my mind which would be  
8 the situation of the kind of claim that has occurred  
9 after December 27, 2003. To the extent that there are  
10 those breaches and claims, of course, they're not  
11 subject to any limitation period. Now, I also  
12 understand quite well that, if you have a breach  
13 before and that breach continues after December 27,  
14 2003, you are regarding that as a claimable breach, as  
15 well.  
16 Now, this is a question: Would you be, in  
17 your claim as to respect of that continuing breach,  
18 claiming, say, for the damages that that might have  
19 caused after December 27, 2003, only, or you would be  
20 saying, because this happened after December 27, '03,  
21 even if it goes back 10 years--well, it's not exactly  
22 10, but whatever it is--I'm claiming for the damages

121

14:04:06 1 that arose in the early start and are continuing until  
2 this day I'm claiming for. That question I would like  
3 to have sort of more clear in my mind, which I didn't  
4 sort of quite grasp from the argument.  
5 MR. APPLETON: I believe in the submission on  
6 this point we specifically address that point, but I  
7 will give you the answer, but--which paragraph is  
8 it--it's paragraph 10.  
9 But let me tell you, so it's absolutely clear  
10 for everybody, we are only claiming damages three  
11 years before the filing of this claim. All damages  
12 come from December 27, 2003, forward. We have not  
13 claimed one cent before that period of time.  
14 PRESIDENT ORREGO: Okay.  
15 MR. APPLETON: And part of our problem with  
16 this whole issue is that there is a tremendous lack of  
17 transparency. That's one of the Investors claims  
18 here. So, it's very difficult for us, without having  
19 the assistance of the Tribunal for a limited but  
20 focused document production or information request  
21 process, to get some of the answers to be able to nail  
22 down even more. That's why the Statement of

14:05:28 1 Particulars, which I thought was obviously very  
2 helpful to get out so everyone can see it, were set as  
3 examples because we may very well find that we have  
4 suspicions about other issues; but, until there is  
5 some documentation, we can't tell you the particular  
6 dates, but those are particular dates that are well  
7 within the three-year period.

8 And that's why we say this Tribunal is going  
9 to have jurisdiction to go ahead anyways on those  
10 questions, and since we are going to be there, we want  
11 to find what is the simplest, most efficient way that  
12 is also fair to the parties involved. It would just  
13 not be fair to the Investor to just look at Canada's  
14 characterization of this issue without looking at the  
15 fundamental factual elements, and I'm afraid that's  
16 the Tribunal's job. You need to go there. That's our  
17 problem here.

18 PRESIDENT ORREGO: Fine. Thank you.

19 Would you have anything to add, Ms. Kinnear?

20 MS. KINNEAR: I would like to--yes. For the  
21 record here, I'm very concerned, and I would like to  
22 at least put it out very clearly right now, what we

14:07:41 1 So, I would urge you in particular to look  
2 the claim. At best that we have are examples and not  
3 new breaches, and so our submissions, you have heard  
4 them, but we would like to register how very concerned  
5 we are that this appears to be some rolling claim  
6 make-it-up/add-on as you go along.

7 For the record, we do not believe document  
8 production is necessary. We believe that--for the  
9 jurisdictional objection, obviously. We believe that  
10 this can be, as I say and said throughout, this is  
11 uncontroversial and limited factual record, so it's  
12 very impossible.

13 Mr. Appleton spoke about a right for your  
14 claim to be heard, almost your day in court, but the  
15 fact is NAFTA--excuse me, UNCITRAL Article 21(4) says  
16 the opposite. It says there is a presumption that  
17 jurisdictional objections will be heard on a  
18 preliminary basis, not a presumption that you will  
19 have the full day in court.

20 Finally, the full day in court here, let's  
21 not fool ourselves, is going to be a long and costly  
22 event. You have claims of breach of national

14:06:37 1 hear Mr. Appleton saying is it's just a claim about  
2 things that have happened in the last three years.  
3 What we have received is a Statement of Particulars  
4 that has all sorts of new and different instances, as  
5 we calls them. There are things that are not in the  
6 claim that Canada never answered to in the defense  
7 because they weren't pleaded as the claim. In his  
8 submissions, he said that he will probably discover  
9 new ones.

10 Well, I'm very concerned because, frankly, my  
11 understanding is that this claim is what frames the  
12 breach. An investor has to say, "Here is what I say  
13 breaches NAFTA Chapter Eleven," and they can't  
14 continue to add on in Statements of Particulars, let's  
15 see what we find in documents. This is a problem and  
16 a concern, and frankly we would like to say very  
17 clearly we are very worried about this because this is  
18 what we are seeing right now. All of a sudden there  
19 are new breaches that were never mentioned in here,  
20 and we are told today, yes, there is another breach,  
21 and we will find some more as we go along. Well,  
22 there can't be that kind of situation.

14:08:44 1 treatment, most favored nation treatment, minimum  
2 standard of treatment, performance requirement, and  
3 expropriation. Dealing with this first as a  
4 jurisdictional objection is a much more expeditious  
5 and much more cost-efficient way to go, and that is  
6 why Canada has suggested that that is how we proceed.

7 PRESIDENT ORREGO: Thank you, Ms. Kinnear.

8 Mr. Rowley, please.

9 ARBITRATOR ROWLEY: Ms. Kinnear, does this  
10 Tribunal at this stage, to your client's position,  
11 have jurisdiction with respect to allegations of  
12 breaches of NAFTA occurring after the December 2003  
13 date and for damages arising therefrom? That's the  
14 first question.

15 MS. KINNEAR: The first question is yes. If,  
16 and that is a big if here, if there were allegations  
17 in this claim of breaches in and of themselves of  
18 breaches that happened after December 26, 2003, the  
19 claim is timely in that respect, and damages obviously  
20 would flow.

21 Our submission is that, when you read this  
22 claim carefully, that is not the case. What it's



14:10:13 1 claiming is a frontal attack on a policy that was  
2 promulgated in April of 1998 and has been applied to  
3 Merrill & Ring hundreds of times a year the same way  
4 since that date; and that just saying, "Oh, and it  
5 also happened post 2003" is simply a device to get  
6 around the Article 1116(2) time limitation.

7 So, the straight answer to your question,  
8 obviously, is yes, but we don't believe that that is  
9 what has been claimed here, and that's why looking at  
10 the claim is very careful, and our submission is  
11 simply repetitive examples of implementation of this  
12 policy doesn't get you out of the problem that this  
13 policy was promulgated and has been implemented since  
14 1998 all in the same way.

15 ARBITRATOR ROWLEY: Second question. If  
16 there are credibly alleged breaches occurring after  
17 December 2003 and damages--sorry, before 2003,  
18 credibly alleged breaches before 2003, the damages for  
19 which become known only after the biting point of the  
20 limitation period, is it Canada's position that we  
21 have jurisdiction over such claims? I am saying  
22 credibly alleged. I know you said there may not be

14:13:19 1 the fact is they are saying that they are not allowed  
2 to sell their products on the international market and  
3 get a better price, every time that Canada apparently  
4 disallows them from doing so, they have knowledge of  
5 the loss because they sell it for a domestic price and  
6 not an international price.

7 So, there is no suggestion whatsoever in this  
8 claim that there is an inability to discover losses.  
9 In fact, it's almost instantaneous because the prices  
10 are out there for all to know, and these are people in  
11 the industry. We know in this case, and Canada has  
12 pleaded it, that the first application was rejected in  
13 April of 1998 and that there was loss there. So,  
14 right away we know they knew of the loss, and that's  
15 why Canada brings up the suggestion.

16 ARBITRATOR DAM: This goes to either party or  
17 both.

18 I'm a little unsure as to exactly what the  
19 facts are here as to how the system works. I just  
20 heard from Ms. Kinnear that the subsequent impacts  
21 were more or less mechanical; but, on the other hand,  
22 are there allegations that no, there was a lot of

14:11:55 1 any, but that's an issue.

2 MS. KINNEAR: First of all, yes. If there  
3 are credibly alleged breaches after December 2003--let  
4 me address the first part, which I understood was  
5 after.

6 ARBITRATOR ROWLEY: No, I changed it.  
7 Credibly changed breaches before, but the damages for  
8 which become known only after.

9 MS. KINNEAR: On the law, it's very clear  
10 that all you have to know is the fact of damages. You  
11 don't have to know a precise quantification.

12 So, if there was a credibly alleged breach  
13 before December 2003, and you had absolutely no clue  
14 whatsoever of any potential damages--you thought there  
15 were none--and then you found out later there were  
16 damages after 2003, well, yes, that's when the  
17 limitation period would happen. But if there were  
18 breach alleged before December 2003, and you could  
19 credibly know about loss--not exact amounts, but the  
20 fact of loss--then you have a limitation problem. And  
21 on the facts of this case, it's very clear, and as I  
22 say, the Investor has never even argued about this,

14:14:47 1 discretion used and, therefore, you have to look at  
2 the actual actions in understanding the way the system  
3 worked? Those are two completely different  
4 situations, it seems to me, and I'm a little unclear  
5 as to exactly what is being--what is at stake here.

6 PRESIDENT ORREGO: Would you please like to  
7 answer that.

8 MS. KINNEAR: In our submission, there are no  
9 kind of allegations about market distortion or  
10 anything like that that would postpone knowledge of  
11 the fact of damages. What's clear here is that you  
12 know, you apply, you know once a month that the  
13 application will be considered by this committee, the  
14 FTCAZ and that they will issue a decision, and you  
15 know that you will sell at the domestic or the  
16 international price. You know that one is less than  
17 the other. To the extent that it might be greatly  
18 different because of some particular market distortion  
19 in that year is, frankly, irrelevant to the knowledge  
20 of fact of loss or damage.

21 Again, it goes back to the point you don't  
22 need know the exact amount. What you need to know for

14:16:00 1 the tolling of the limitation period is the fact of  
2 loss or damage, and so there is nothing in the record  
3 in the pleadings that would lead you to conclude or  
4 that would allow you to conclude that any kind of  
5 special factor like that postponed knowledge of damage  
6 sufficient to trigger the limitation period in the  
7 NAFTA.

8 MR. APPLETON: Professor Dam, I would like to  
9 address this specifically. This is from--there are a  
10 couple of points.

11 Number one, this claim is very much about the  
12 specific implementation that's done over a period of  
13 time and the specific types of actions. It is not a  
14 mechanical/mechanistic type of claim which is exactly  
15 why we think there is such a tremendous danger of  
16 having a jurisdictional phase without having any of  
17 the evidence that's here.

18 For example, this claim deals with the  
19 appointment of specific people in 2005 to the FTEAC,  
20 the Federal Timber Export Advisory Committee, that  
21 deals specifically with applications, have specific  
22 conflicts of interest about specific log booms, and we

14:18:19 1 These all deal with discretionary types of  
2 actions on an ongoing period, and to somehow say,  
3 "Well, we have a rule that allows this discretion, but  
4 we are going to ignore the discretionary unfairness in  
5 its application, the violations of other parts of the  
6 NAFTA framework that's there because somehow they come  
7 out of a rule at we had from before," which, in the  
8 admission of Ms. Kinnear, we have done a hundred  
9 times. She says, in fact, they actually do it  
10 biweekly, so they only do it 26 times a year for that  
11 side, but there are lots of other things that go on,  
12 that somehow would not be fair or appropriate. That's  
13 what this claim is about.

14 This claim is not about we don't like a rule.  
15 This claim is about how it's been implemented, how  
16 there is a pattern of unfairness because you have the  
17 Government of British Columbia, who, involved as a  
18 governmental entity, is involved in administering TRAC  
19 and FTEAC. FTEAC is an "F" put onto TRAC. TRAC is a  
20 provincial body. It's administered and follows  
21 provincial rules. The Federal Government makes it  
22 FTEAC by having someone in Ottawa generally get on the

14:17:18 1 be very specific to be able to deal with this. They  
2 have specific interest for themselves, for their  
3 industry, for their approach--that's one example.  
4 There are examples about log blocking, where companies  
5 have either interests that are involved where the use  
6 of the governmental apparatus isn't done in a fair or  
7 appropriate manner, or nontransparent manner that  
8 causes tremendous types of loss.

9 We have issues of damage caused by excessive  
10 delays that are caused in this process, and these  
11 delays come at different times. This is not because  
12 we are required to have a formality to fill out a form  
13 or do something.

14 I recently had the opportunity to go with  
15 Mr. Schaaf and actually go out and see the extent of  
16 some of this damage in some of the logging areas so I  
17 could see for myself and describe to this Tribunal the  
18 nature of exactly what takes place. And when we get  
19 to that opportunity, I now have a new-found  
20 appreciation of exactly what has been gone through by  
21 this company and the people that work for them because  
22 of the nature of what has been done.

14:19:33 1 phone and talk to the TRAC people who have all been  
2 deputized for that power at that time.

3 So, it's basically like suggesting to this  
4 Tribunal--no offense to Mr. Dean, but all of a sudden,  
5 Mr. Dean, you are now a Member of the Tribunal only to  
6 the extent for the Federal authority and everybody  
7 else here is a member of your panel only to that  
8 extent. But they provide you with the  
9 information--the Province provides it--and the  
10 Province is involved here through B.C. Timber Sales,  
11 BCTS, as a direct competitor or market player, and yet  
12 they are using that governmental authority to be able  
13 to be involved in the regulation, which is all  
14 Canada's.

15 The problem we have is that there is a lot of  
16 provincial activity here, but all the discretion and  
17 all of the actions are being done by Canada at the  
18 Federal level. That's why we don't challenge the B.C.  
19 provincial measures because the B.C. provincial  
20 measures don't technically--they should have no effect  
21 on us, but, in fact, they do because they are adopted  
22 and followed by the Federal Government in its

14:20:30 1 discretion but in a nontransparent way. We can even  
2 get--we have application of provincial laws to us. We  
3 don't even know what those laws are because the  
4 Federal Government has never promulgated them, but yet  
5 they have applied them.

6 That's why the facts are so important here  
7 and in the nature of the measure. And this isn't just  
8 something that has been happening for such a long  
9 time. It happened at different times and in different  
10 ways. That's why we need to look at this. That's why  
11 it is just--I can agree with Ms. Kinnear that this is  
12 a worthy question, but it has got to be in the basis  
13 of the analysis of what's going on here. And so the  
14 pleading that we have put in deals with that, and the  
15 factors that we are looking at that deal with that,  
16 and that's the question that's before this Tribunal,  
17 and that's why it's not a simple basis.

18 But what we do know is that there are  
19 certainly actions that fit so clearly within the  
20 three-year window that this Tribunal is still going to  
21 be there, and as a result that the Tribunal is going  
22 to be there after, and we are still going to have to

14:22:41 1 every time.

2 And so, to rely on equality and efficiency  
3 and fairness and all of the things we have talked  
4 about today, if nothing else, we would like to have a  
5 list certain of the measures Mr. Appleton claims  
6 breaches the NAFTA. That's only fair because that's  
7 the case Canada has got to meet, and what I'm hearing  
8 today is there are all sorts of things that keep  
9 coming up that are brand new that we haven't heard of  
10 before.

11 ARBITRATOR DAM: Could I ask just a general  
12 question from my orientation.

13 Under the Federal Rules of the United States  
14 for litigation in the District Courts, the general  
15 idea is notice pleading, and you don't have to plead  
16 all of your detailed case. It emerges with the  
17 evidence. I take it that's not your view of the rule  
18 we are operating under here because of your  
19 emphasis--unless, of course, the initial claim was so  
20 clearly based on the initial legislation that you  
21 could, on that basis, exclude any evidence of what  
22 happened later.

14:21:32 1 look carefully at the nature of this issue. That's  
2 why we say it's just not efficient to do this twice.  
3 We are going to otherwise be stuck doing it twice.  
4 That's what we think isn't helpful.

5 We are fully prepared to meet our burden and  
6 to prove the case, but we would really just like to do  
7 it once because we are going to have to pull all types  
8 of witnesses and all types of issues and all types of  
9 evidence, and you, as the Tribunal, are going to have  
10 to make determinations about it.

11 PRESIDENT ORREGO: Right. Ms. Kinnear?

12 MS. KINNEAR: If I might, I would just like  
13 to ask very clearly, in fairness, Canada should know  
14 the case that it's supposed to meet, and what I have  
15 heard in Mr. Appleton's submissions is all sorts of  
16 new things. If nothing else comes out of today's  
17 discussion, may we ask that Mr. Appleton please give  
18 us a list of exactly what the claims are that he  
19 alleges breached NAFTA because we--of the measures  
20 because we have heard new measures today. We got a  
21 list of particulars which the Investor apparently  
22 claims are measures. We are just hearing new things

14:23:58 1 What standard are we using here? What is the  
2 law that governs this, or what are the precedents that  
3 govern this kind of question for our decision?

4 MS. KINNEAR: Like in domestic practice, you  
5 do not have to plead all of the evidence, obviously,  
6 but you do have to plead each measure in dispute, and  
7 what we are hearing today is they're new and different  
8 measures, measures in and of themselves, breaches in  
9 and of themselves, and that's not in the claim. If  
10 they truly are going to be part of the examination of  
11 this Tribunal and perhaps a basis for liability, they  
12 need to be listed specifically.

13 So, I'm not asking, and I don't think it's  
14 appropriate to ask, for any kind of specific complete  
15 list of breach. What I'm asking for is a specific and  
16 complete list of what are the measures that the  
17 Investor claims breaches NAFTA. We have heard all of  
18 a sudden, and we see in the particulars apparently  
19 something in 2004 when Mr. So-and-So and someone else  
20 was on a committee. This is new. This is different.  
21 And if that is, in and of itself, a breach, Canada  
22 should be put on notice by the Claimant. If they're

14:25:11 1 not complaining of the regime, if they're complaining  
2 of specific things in the last three years, we should  
3 at least know specifically what they are.

4 So, I agree completely with the concept of  
5 notice pleading. That's what we have. But the fact  
6 is we are entitled to know the exact measures in  
7 breach, and we keep hearing new things here, and that  
8 certainly alarms me, and that's why we have raised  
9 that.

10 MR. APPLETON: Professor Orrego, if I could  
11 answer that question, in fact, I had actually intended  
12 to answer this question before, but I got so worked up  
13 about talking about the nature, and I'm sorry, I  
14 apologize for that, that I didn't get a chance to  
15 address this point.

16 First of all, let's look at what the UNCITRAL  
17 Rules say, and I will tell you what some of the cases  
18 have said because this has occurred before, and the  
19 case law is very clear here. And the rule is notice  
20 pleading. That is the rule. This was brought  
21 by--Canada complained in the Pope case, Canada  
22 complained in the UPS case, and they both came to

14:27:24 1 Article 1105, this issue of not knowing, this issue of  
2 having arbitrary and inequitable treatment or  
3 discriminatory treatment. In that regard, it is part  
4 of that NAFTA obligation.

5 So, somehow you can't have it both ways. You  
6 can't say, "Well, you have to know everything up  
7 front, but--if the breach is because of that," and we  
8 pleaded those types of allegations in the claim.

9 Everything ties in together, but it's a series of  
10 conducts in implementation of a form of legislation  
11 and other regulation that's involved here.

12 And so, in fact, when we talk about the  
13 measures, "measures" mean governmental acts as defined  
14 NAFTA. In Article 201, "measure" has a broad  
15 definition that involves laws, regulations, policies,  
16 practices, requirements, various types of things, and  
17 what we have done is indicate what the measures are,  
18 but the measures aren't the breaches. What our  
19 requirement here is to indicate what the breaches are,  
20 and the breaches are with respect to the national  
21 treatment, and we have a concern about  
22 most-favored-nation treatment, and that really is an

14:26:13 1 basically exactly the same conclusion, which is the  
2 notice pleading, but the UNCITRAL Rules tell us. They  
3 tell us, first of all, in Article 3 that all we need  
4 to talk about is a general nature of the claim and an  
5 indication of the amounts involved. That's Article 3  
6 paragraph 3(e).

7 In addition, we are entitled to make  
8 amendments under Article 20. It says, "During the  
9 course of the arbitral proceedings, either party may  
10 amend or supplement his claim or defense unless the  
11 arbitral tribunal considers it inappropriate to allow  
12 such amendments having regard to the delay making it  
13 or prejudice to the other party." It goes on, but  
14 that's the main point.

15 And what the ruling was in UPS very clearly  
16 was that we had an obligation to put this out in our  
17 Memorial, because by that point we have had the  
18 benefit of some information requests back and forth.  
19 And the difficulty that we have here is that one of  
20 our allegations is about nontransparency. We can't  
21 get this information because they haven't made it  
22 available, which in itself is actionable under NAFTA

14:28:39 1 interpretive concern.

2 Let's get this out now so we all understand.

3 Our concern is about really the meaning of Article  
4 1105 and to the extent that you may find that Canada  
5 has given a better meaning of international law  
6 standards of care in another third party Treaty than  
7 you have in the NAFTA, then 1103 is involved.

8 Otherwise, there is no need for 1103. And since there  
9 is an interpretive principle of most favored nation  
10 treatment, in any event, for out of an abundance of  
11 caution we included 1103, but we are not alleging a  
12 separate 1103 action here. We are just saying that  
13 you have an obligation to follow 1103 in your  
14 determination of the meaning of 1105. And since there  
15 happens to be an interpretive principle that way, we  
16 don't think we really need to do it; but, if we don't  
17 plead it, we are not going to be able to do it.  
18 That's exactly why we have done that.

19 So, we are looking at a breach of national  
20 treatment. We are looking at a breach of the  
21 international law standard of treatment in 1105. We  
22 are looking at specific breaches of performance

14:29:45 1 requirement rules in Canada's legislation that do not  
2 comply with specific obligations in Article 1106 of  
3 the NAFTA, just like a Tax Act that is specifically  
4 laid out there, so we see that. And we are looking at  
5 expropriatory conduct in Article 1110. That those are  
6 the breaches. Those are all pleaded. The measures  
7 have to fit in within the breaches, and we have done  
8 that with tremendous (a) with notice, but (b) with no  
9 tremendous specificity specifically to help the  
10 Tribunal and Canada.

11 And I'm not sure what else we are required  
12 or, to be honest, is appropriate or fair at this time  
13 to do until we have document production from Canada to  
14 be able to cut through this problem, and then maybe we  
15 could narrow the issues down, even reduce them, we  
16 hope.

17 PRESIDENT ORREGO: Well, thanks very much.  
18 That has been a most illuminating discussion on both  
19 sides. So, of course, the Tribunal will consider all  
20 these items and views in the coming days and be back  
21 to you with a conclusion that will tend to have all  
22 the necessary elements that we have in front of us.

14:32:18 1 talk about what document production would look like.  
2 So, again, I think that would not take a long time,  
3 unless you want to have a debate about the IBA Rules  
4 themselves, and that could take some time. I don't  
5 know where you want to go. That would be my sense.  
6 Then we could probably talk about some  
7 timing, but it would be depending on where you want to  
8 go on other issues.

9 PRESIDENT ORREGO: How long do you envisage  
10 generally?

11 MS. TABB: I think perhaps 15 minutes would  
12 do it to cover both confidential and document  
13 production. But again, there is a number of things in  
14 the submissions from the Claimants that we haven't had  
15 a chance to address and particulars on the  
16 Confidentiality Order and the proposed document  
17 production. I may have a solution in order not to  
18 have to address it in detail here, but again it will  
19 depend on how the Tribunal wants to do this.

20 PRESIDENT ORREGO: Okay. Thank you.

21 (Tribunal conferring.)

22 PRESIDENT ORREGO: Fine. We suggest that we

14:31:04 1 Now, may I ask you one thing about the  
2 expected progress. We still have the question of  
3 confidentiality and production of evidence. How long  
4 would you generally think that that might take?

5 MR. APPLETON: I believe--I need to walk you  
6 through the Appleton and Privy Council decision. Once  
7 we can discuss the meaning of that, I think that takes  
8 about three or four minutes. I think I need about  
9 three minutes of observations, so let's say I need 10  
10 minutes in total to be on the liberal side to talk  
11 about confidentiality.

12 Because we provided a draft Order--and, in  
13 fact, in light of the observations raised by Canada, I  
14 actually have amended the Order because there were two  
15 issues they raised that I think need to be addressed  
16 in the draft Order, and so I'm trying to find simple  
17 answers for the Tribunal there.

18 On the issue of document production, we have  
19 put a draft Order in. We want to flag an issue which  
20 we think, in light of everything else since it has  
21 already been raised about Section 39 of the Evidence  
22 Act, we probably just need to flag it, and we could

14:34:33 1 have a short break until a quarter to 3:00 and then  
2 reconvene for what probably would be 15 minutes on  
3 each side for both pending issues. And then we would  
4 have to consider the revision of the draft Minutes and  
5 so as to be ready with some conclusion.

6 Would that be agreeable? Okay. So, you are  
7 invited to take up something now.

8 (Brief recess.)

9 PRESIDENT ORREGO: We are ready to proceed,  
10 and then we have the question of confidentiality, and  
11 we ask the Claimant to speak on that first.

12 MR. APPLETON: Thank you very much,  
13 Mr. President.

14 As you know, the parties have been unable to  
15 agree on the content of a Confidentiality Order, and  
16 you will see before you two different agreements, one  
17 that was proposed by Canada and goes back as early as  
18 March of 2007, and the other is the agreement that we  
19 annexed to our submission as Annex A.

20 And, in fact, after I had finished going  
21 through this, I found two areas that still need to be  
22 addressed, so we are actually going to propose a

15:05:23 1 revised Annex A at the end of my presentation.  
 2 The two drafts reflect a fundamental  
 3 difference and guiding principle, and Canada says that  
 4 in the Order made by this Tribunal has to be made  
 5 subject to Canada's Access to Information Act. The  
 6 Investor says that this is an international law  
 7 tribunal and that it's convened by international  
 8 agreement and that your orders not need to be subject  
 9 to the operation of Canadian law. And this issue was  
 10 recently considered by the Federal Court of Canada in  
 11 relation to a Confidentiality Order made in the UPS  
 12 NAFTA Tribunal, and that's the case of Appleton and  
 13 Privy Council Office, and that's why I can speak to  
 14 this directly because I'm afraid I am Mr. Appleton  
 15 from Appleton and Privy Council Office, and you can  
 16 ask me any questions that you would like with respect  
 17 to that case because I'm in a particularly good spot  
 18 to be able to answer them.  
 19 But what that case clearly demonstrates is  
 20 why this Tribunal should not agree to make the  
 21 Confidentiality Order subject to Canada's Access to  
 22 Information Act because, if you do so, you are going

15:06:39 1 to irreparably erode the equality of the disputing  
 2 parties, and that's not something we are allowed to do  
 3 as a Tribunal because of NAFTA Article 1115 and, of  
 4 course, the general principle of equality of the  
 5 parties that's enshrined in UNCITRAL Article 15.  
 6 Now, as a tale of two cities, there is a tale  
 7 of two orders. We have the Pope & Talbot Order, and  
 8 we have the UPS Order. And in the Pope & Talbot case,  
 9 the Tribunal's Order followed what it calls through  
 10 the standard form of international arbitration  
 11 confidentiality agreement; and, in the UPS case, the  
 12 fundamental difference is they added some words saying  
 13 that the Order would be subject to Canada's domestic  
 14 Access to Information Act requirements. Now, you will  
 15 see in our submissions why we think, in fact, Canada  
 16 is not actually subject to the Access to Information  
 17 requirements. I'm not going to spend more time  
 18 focusing on that because we don't have a lot of time,  
 19 and we have set it out in our pleadings.  
 20 But the consequences of decisions made by  
 21 this Tribunal demonstrate why we think that you should  
 22 not be following the UPS model in this case. And let

15:07:54 1 me explain to you what happened in the UPS--sorry, in  
 2 the Appleton and Privy Council case arising out of the  
 3 UPS Order.  
 4 Now, after the UPS Tribunal issued its Order,  
 5 Canada received requests under its Access to  
 6 Information Act, and this request could be made by  
 7 anyone who was resident of Canada or any citizen of  
 8 Canada can make a request. And the applicant sought  
 9 all information mentioning Appleton & Associates, our  
 10 law firm, and NAFTA Chapter Eleven. But Canada  
 11 responded by offering to disclose documents produced  
 12 during the UPS NAFTA claim that were marked as  
 13 confidential and were submitted subject to the UPS  
 14 Confidentiality Order.  
 15 Now, our law firm objected to the release of  
 16 these documents, and that's especially the case since  
 17 many of the documents did not even mention Appleton &  
 18 Associates or NAFTA Chapter Eleven. They didn't  
 19 mention it, but they were still part of the release.  
 20 And they were released because the act gives Canada  
 21 discretion to choose what to release or not. So, once  
 22 someone triggers this process, Canada is entitled to

15:09:09 1 use its absolute discretion as to what to release.  
 2 And even if released material doesn't conform to the  
 3 request, it's up to Canada to deal with it.  
 4 So, obviously, we are very concerned about  
 5 this. We went to the Federal Court, and the Federal  
 6 Court ruled that because the UPS Confidentiality Order  
 7 was made subject to the Access to Information Act,  
 8 that Canada had the discretion to decide to choose  
 9 what it wishes to disclose under the Act, and that the  
 10 act is made to allow Canada to disclose as much as  
 11 possible, and we could not rely on the UPS  
 12 Confidentiality Order to prevent the release of these  
 13 documents. And they actually distinguished the Pope &  
 14 Talbot Order from the UPS Order.  
 15 And they said that we could not complain that  
 16 more was produced than what was requested. The court  
 17 said, fundamentally the applicants have no ability to  
 18 argue that the Access to Information  
 19 Coordinator--there is one in every Federal  
 20 institution--made any error in deciding to disclose  
 21 more than what was asked for, so Canada released the  
 22 documents.

15:10:19 1 Now, I want to point out, there was nothing  
2 wrong with the Canadian courts in the making of this  
3 decision. The Canadian courts did exactly what they  
4 are required to do under the Canadian law. What we  
5 complain about is the discretion used by the Canadian  
6 Government in terms of this Order and, in fact, this  
7 case. The Merrill & Ring case is heavily about the  
8 use of discretion as well, so this seems to be a  
9 continuous type of issue.

10 But, in this case, in Appleton and Privy  
11 Council, the problem is that, for the UPS Claimant,  
12 they thought they were putting materials in that they  
13 were going to be confidential. They had an order they  
14 thought that was going to govern, the Tribunal had an  
15 order they thought was going to government, and that  
16 Canada used its powers, its sovereign powers, as  
17 special standing to be able to deal with that to be  
18 able to release more, and it did not violate the terms  
19 of the Order, according to the court, but certainly  
20 violated the spirit and the objective of that process.

21 And so, now, the benefit for us is we know  
22 exactly what could happen if this Tribunal makes an

15:12:37 1 the Tribunal. It's clear between the parties that  
2 correspond that we are unable to agree we need to have  
3 a ruling here, but there are some other problems with  
4 Canada's draft Order, and I will just read what they  
5 are, and we have tried to address them, and that found  
6 some additional problems, and that's why we have a  
7 revised order.

8 The first is that their Order doesn't apply  
9 to consultations. The NAFTA mandates a consultation  
10 process, Article 1118, and that's why we sought this  
11 Order. We sought the Order as early as, I believe it  
12 was, January or late December of 2006, saying we would  
13 like to have consultations with the parties to see if  
14 we could resolve issues here, and no consultations  
15 have taken place because we haven't been able to get a  
16 Confidentiality Order.

17 And Mr. Schaaf, who is leaving here, we know  
18 that he wanted a consultation--Mr. Schaaf, before you  
19 leave, you want a consultation, a NAFTA Article 1118  
20 consultation, in this case?

21 MR. SCHAFF: Pardon me?

22 MR. APPLETON: Do you want a NAFTA Article

15:11:25 1 order based on the UPS model. In light of Appleton  
2 and Privy Council, it was a lot of work to go to the  
3 Federal Court. It was not an easy fight. It took a  
4 lot of time and effort. But, in light of that, we now  
5 know that, regardless of whether the documents asked  
6 for or not or regardless of whether their designee is  
7 confidential or not, Canada has the discretion to be  
8 able to release that material. And, of course, there  
9 is no equality here because Merrill & Ring does not.  
10 Merrill & Ring is going to comply strictly and totally  
11 with the terms of any Confidentiality Order, keep all  
12 of Canada's information confidential; but, because of  
13 this provision of domestic law, Canada doesn't.

14 So, Canada's proposed Order here replicates  
15 the UPS Order. Out problem is that Canada's proposed  
16 Order replicates the UPS Order, and we say that can  
17 provide no equality to the parties, and that because  
18 the Investor, of course, strictly would have to comply  
19 and Canada will not.

20 Now, in addition to this issue, this was--had  
21 been the deal breaker, which made it very difficult  
22 for us to function, which is why we have to come to

15:13:32 1 1118 consultation with Canada? Does Merrill & Ring  
2 want one in this case? We are on the record.

3 MR. SCHAFF: Yes. I wasn't sure what part of  
4 the proceedings that you were referring to  
5 specifically, but yes.

6 MR. APPLETON: Have a safe trip. We wish you  
7 the best. Thank you.

8 MR. SCHAFF: Thank you all.

9 MR. APPLETON: Sorry. Mr. Schaaf, just to  
10 clarify, Merrill & Ring is very interested in having  
11 some type of discussions, but we want an agreement to  
12 cover settlement and privilege issues, and that wasn't  
13 available, so that's the first failure.

14 Second problem with this Order is that it  
15 doesn't apply to previously exchanged information, and  
16 there is some previously exchanged information in this  
17 record, and that was also an issue that we found out  
18 from the Appleton and Privy Council case, and that  
19 obviously that needed to have a provision, so we put  
20 that in.

21 Then there is the issue of if Canada wants to  
22 share information with subnational governments to be

15:14:33 1 able to defend its case, like the Government of  
2 British Columbia. Right now, the Confidentiality  
3 Order that they have wouldn't permit that, and so we  
4 think actually that's not a bad idea for them to be  
5 able to share, but they have to share with the  
6 Provinces so that they are going to be bound by the  
7 Order.

8 So, in our revised Order which we are about  
9 to present to you, we have actually put wording in  
10 that would require Canada to--if they're going to give  
11 this confidential information to the Provinces, that  
12 those Provinces have to be made aware of the terms of  
13 an order, and the Provinces have to agree to follow  
14 the obligations as if they were a party to the  
15 agreement. Just like under NAFTA Article 1129, the  
16 nondisputing NAFTA parties, if they request  
17 information, they're entitled to them so the evidence  
18 or the materials, so they have to take it on the same  
19 basis. That's the NAFTA, and we think that's  
20 appropriate, but it needs to be in an order, and so we  
21 have put that in.

22 And then, finally, Canada's form of Order

15:16:31 1 --because even if--we would say arguendo  
2 because we don't think Canada's Access to Information  
3 Act actually governs. We believe the international  
4 tribunal is not bound by the municipal law in this  
5 area. But, in fact, Canada set out in its submission  
6 to the Tribunal here the terms of the Access to  
7 Information Act.

8 And if you look carefully at Article 20--I  
9 believe it's 21(b) of the Access to Information Act,  
10 you will see that Canada is precluded from releasing  
11 certain types of information, and that information is  
12 financial, commercial, scientific, or technical  
13 information that is confidential business information  
14 and is treated consistently in a confidential manner  
15 by the party to which it relates, including--sorry,  
16 I'm reading my order. I'm not reading theirs, sorry.  
17 What that says--but it starts the same  
18 way--"Confidential information"--do we have a copy of  
19 this? I think it might make my life easier.

20 The wording is now addressed. If you look at  
21 my Annex A, and you look at the top of page 2, which  
22 is handed to you, the wording comes directly from

15:15:31 1 doesn't address confidentiality of information at the  
2 conclusion of the arbitration, and that's a problem  
3 because this Tribunal could be finished, and then what  
4 do we do if there is a question?

5 Now, in looking at Canada's submission,  
6 though, we basically want to find a simple solution.

7 And do you have a copy of the Confidentiality  
8 Order?

9 So, what we thought, rather than make it more  
10 difficult for this Tribunal, we thought we might have  
11 a simple answer.

12 Could you hand these up, please?

13 So, what I have suggested is a revised  
14 order--let's give them also to Canada first. Nick,  
15 could you hand this to Canada so they could look at  
16 this right away? I usually like to give materials to  
17 counsel firstly.

18 What I have tried to do is add specifically  
19 something that would fit within the terms of Canada's  
20 Access to Information Act because--

21 MS. KINNEAR: What are we looking at?

22 MR. APPLETON: I will get you there.

15:17:53 1 21(b), and we have to require--thank you--I need their  
2 submission--that it be financial, commercial,  
3 scientific, or technical information supplied by third  
4 parties that has been treated as confidential  
5 information by those third parties.

6 In other words, if this Tribunal is--deems  
7 the information provided here, which will come from  
8 third parties, to be financial, commercial,  
9 scientific, or technical information, then, in fact,  
10 Canada no longer has a discretion that is unfettered;  
11 and, therefore, even though we still don't think this  
12 should be made subject to the Act, any difficulty that  
13 Canada still says that it would have its Act should be  
14 gone because there will be clarity in this agreement  
15 that the information fits that requirement, that it is  
16 confidential, and that that confidence needs to be  
17 followed by that government.

18 Furthermore, if we are going to include  
19 subnational governments, each and every subnational  
20 government of Canada has its own Access to Information  
21 Act--in the United States it's called FOIA, the  
22 Freedom of Information Act--and we would need to have



15:19:06 1 wording that would protect them, and we think this  
 2 wording should also provide that, as well.  
 3 So, to the extent that this Tribunal could  
 4 help us get through this difficult part, we think the  
 5 rest should be pretty easy, but we really want this  
 6 Tribunal's help because I don't think it's fair to  
 7 make Merrill & Ring have to go through what Appleton  
 8 had to do in Appleton and Privy Council. And it  
 9 wasn't the Tribunal's fault--nobody knew--but now that  
 10 we know, we think that we need to address this issue,  
 11 and that's why I have taken the time to walk you  
 12 through this today.  
 13 PRESIDENT ORREGO: Thank you, Mr. Appleton.  
 14 Can we hear Ms. Kinnear now. Sorry,  
 15 Ms. Tabet.  
 16 MS. TABET: Yes, thank you, Mr. President.  
 17 Let me just first refer you to the draft  
 18 Procedural Order that you have circulated to us and  
 19 make a couple of comments on that.  
 20 First, I notice that, in addition to the  
 21 UNCITRAL Rules which are listed under  
 22 "confidentiality," we should probably, consistent with

15:21:21 1 should be in the Confidentiality Order and address  
 2 first the application of the Access to Information Act  
 3 and the comments that Mr. Appleton has made today as  
 4 well as in his submissions, and then some of the other  
 5 additional points that have been raised by  
 6 Mr. Appleton in his submissions and the ones again  
 7 raised today.  
 8 On the Access to Information Act, I won't  
 9 repeat our submissions, but basically our position is  
 10 very clearly that nothing in the NAFTA qualifies  
 11 Canada's domestic disclosure obligations, and what we  
 12 are asking the Tribunal to do is to recognize the  
 13 application of the Access to Information Act and to  
 14 reject the Claimant's position, which would  
 15 essentially put Canada in a situation where it cannot  
 16 comply with both the Access to Information obligations  
 17 and with the Tribunal's Confidentiality Order.  
 18 As we have pointed to in our submissions,  
 19 there is no general duty of confidentiality, and there  
 20 is a number of NAFTA cases, including Loewen and the  
 21 FTC Note of Interpretation that reaffirmed that. And,  
 22 in fact, the domestic disclosures law apply to NAFTA

15:20:13 1 the governing law, refer to the relevant Articles of  
 2 NAFTA, including Annex 1137(4), which provides for--  
 3 PRESIDENT ORREGO: You're looking at what?  
 4 MS. TABET: The draft Procedural Order.  
 5 PRESIDENT ORREGO: The draft Minutes?  
 6 MS. TABET: Yes, the draft Minutes.  
 7 So, in accordance with the governing law, I  
 8 suggest that we also refer to the relevant NAFTA  
 9 provisions governing transparency that would be  
 10 including Annex 1137(4) of NAFTA and the Free Trade  
 11 Commission Note of Interpretation, which Mr. Appleton  
 12 and Ms. Kinnear have referred to and are in the  
 13 material before you.  
 14 In particular, the Free Trade Commission  
 15 expressly provides for general disclosure of  
 16 information, subject to specific exceptions such as  
 17 protection of business confidential information. So,  
 18 I think it is relevant to refer to that. We would  
 19 also suggest including language there that would make  
 20 the Tribunal's Confidentiality Order apply to these  
 21 proceedings.  
 22 And I will now turn to the substance of what

15:22:41 1 arbitration and to the two NAFTA Parties--capital "P"  
 2 Parties.  
 3 There is a number of cases which we referred  
 4 to in our submissions. I won't repeat them, but  
 5 essentially Metalclad and UPS as well as the Mondev  
 6 case which recognizes that in the U.S. case that the  
 7 Freedom of Information Act applied.  
 8 Let me just address some of the authorities  
 9 cited by Mr. Appleton in his submission. In  
 10 particular, there is a reference to the Methanex case  
 11 for the proposition that confidentiality should be  
 12 absolute, and I think that's not a correct reading of  
 13 the Methanex case. In fact, I will circulate the  
 14 proper Procedural Order in Methanex which made it very  
 15 clear that information--it did contemplate that  
 16 information could be disclosed under the U.S. Freedom  
 17 of Information Act, notwithstanding the provisions of  
 18 the Confidentiality Order.  
 19 Again, the Claimant has referred to the IBA  
 20 Rules as providing for absolute confidentiality, but I  
 21 think it's important in the NAFTA context to look at  
 22 the IBA Rules together with the FTC Note of

15:24:10 1 Interpretation and the particular context of NAFTA,  
2 which some tribunals have referred to as achieving the  
3 highest level of transparency.

4 On the specific point of the Access to  
5 Information being contrary to the equality of the  
6 parties under the--as set out in the UNCITRAL Rules,  
7 Canada's position is that the Access to Information  
8 Act is, in fact, inconsistent with the NAFTA's  
9 objective of transparency and not in any way contrary  
10 to equality of the parties. I think it's pretty clear  
11 that the disclosure of the information obligations  
12 impose an obligation on Canada that can be both to its  
13 benefit--not to its benefit, but rather it can also be  
14 to the benefit of the Claimant.

15 Many Claimants have, in fact, used Canada's  
16 Access to Information to obtain documents in advance  
17 of arbitrations against Canada, so I don't think it's  
18 so much a question of equality as a question of  
19 obligations that do apply to any State sovereign,  
20 which, in the NAFTA context, are consistent with the  
21 objective that the parties have set out for  
22 transparency in Chapter Eleven proceedings.

15:26:51 1 in the materials before you, what was at issue was a  
2 lot of procedural correspondence that didn't contain  
3 any business confidential information, and a lot of  
4 the business confidential information that could have  
5 been disclosed was not disclosed because it was  
6 outside of the protections of the Access to  
7 Information Act.

8 So, really, I don't think the case is  
9 particularly relevant and certainly does not assist  
10 Mr. Appleton in arguing that it breaches equality of  
11 the party in any particular way.

12 Let me now just turn to certain of the  
13 particular points raised in the draft Confidentiality  
14 Order and the concerns that the Claimants have raised  
15 in their submissions on the Confidentiality Order. I  
16 think some of them are pretty basic, but given we  
17 haven't had a chance to respond to them, I want them  
18 to be on the record, so I will try to do it in as  
19 efficient a way as possible.

20 The first concern that is raised in the  
21 submission is that Canada does not properly identify  
22 the disputing parties. I don't think that's really an

15:25:30 1 In addition, it's important to point out that  
2 the Access to Information Act itself achieves a  
3 balance between this transparency objective and  
4 protection of certain confidential information. You  
5 have the Access to Information Act in the materials in  
6 front of you; and, as Mr. Appleton recognized, there  
7 are certain exemptions in the Access to Information  
8 Act, including protection of business confidential  
9 information, a process for notification to parties  
10 whose information may be at issue and may be  
11 disclosed, and a process of review by domestic courts.  
12 And on that, let me just briefly address the Appleton  
13 case versus the Privy Council Office and the points  
14 raised by Mr. Appleton.

15 It seems to me that, contrary to the  
16 assertions made by Mr. Appleton, the case illustrates  
17 very well that there are some controls and exceptions  
18 to release of information in the Access to Information  
19 Act. One of the notable things is that UPS did not  
20 object, was not a party to this litigation, and it was  
21 not troubled by the release of the information at  
22 issue. If you look at the case itself that you have

15:28:09 1 issue. However, we would note that we don't think  
2 it's appropriate to vaguely refer to Merrill & Ring  
3 and affiliated companies. We would like to have a  
4 clear idea of the parties that are party to the  
5 confidentiality agreement; and, therefore, we suggest  
6 that it be Merrill & Ring and the Respondent, the  
7 Government of Canada.

8 The second concern that is raised is a  
9 concern that Canada added wording that would permit  
10 the Government of Canada to designate information as  
11 confidential based on its own domestic law, and I  
12 think this refers to the issue we have been discussing  
13 on Access to Information, but it also refers to the  
14 language that Canada had proposed to the effect that  
15 nothing in the Order shall be considered a waiver of  
16 any claim of privilege. So, I think the purpose of  
17 this clause is not to designate any confidential  
18 information. It's more related to the issue of claim  
19 of privilege, and we are just ensuring by this  
20 language that there is--that the confidentiality  
21 agreement doesn't affect that.

22 We also suggest that the Confidentiality

15:29:28 1 Order should not deal with production of documents  
2 issue, as Mr. Appleton suggests, that the issue of  
3 document production is separate from the issue of  
4 confidentiality, and I will come back and make  
5 separate comments on the issue of document production  
6 after--at a later stage.

7 The third point that is raised in the  
8 submissions on the Confidentiality Order is with  
9 respect to the provision confidentiality as it may  
10 apply up to settlement or consultations, and frankly  
11 Canada doesn't see it as appropriate to have a  
12 provision in the Confidentiality Order dealing with  
13 the conduct of consultations, but we are more than  
14 happy to engage separately with Mr. Appleton to  
15 provide for appropriate provisions to deal with any  
16 discussion that could take place in the context of  
17 those consultations or settlement discussions. I  
18 think those certainly usually proceed as a separate  
19 matter from the arbitration, and it would confuse the  
20 issue to deal with it in the Confidentiality Order  
21 here.

22 The fourth matter raised in the submission

15:32:15 1 relates to second level of confidentiality that is  
2 proposed in Mr. Appleton's draft Confidentiality Order  
3 to deal with restricted access information. Briefly,  
4 I would say that this is probably unnecessary in this  
5 case. We can't foresee any need for such restrictive  
6 information that only goes to counsel and not to the  
7 parties themselves. I think it adds an additional  
8 level of complexity, and we would not propose that  
9 this language be included.

10 I just want to make sure I'm covering  
11 everything that has been raised.

12 Just one point on the destruction or return  
13 of information at the end of the proceeding, which is  
14 in Mr. Appleton's draft. Unfortunately, Canada is now  
15 in a difficult position and cannot--we have been given  
16 advice that we cannot agree to this kind of language,  
17 and it would be contrary to our Librarian Archives Act  
18 and our Access to Information Act, and so we would ask  
19 that this language be removed, and we cannot consent  
20 to this language in the Confidentiality Order.

21 Thank you.

22 PRESIDENT ORREGO: Thank you, Mr. Tabet.

15:30:52 1 deals with obligations pursuant to 1127 and 1129 of  
2 the NAFTA. In principle, Canada agrees that any  
3 nondisputing capital "P" Parties, the United States  
4 and Mexico, should be entitled to receive evidence and  
5 written submissions and treat the information as if  
6 they were disputing Parties, and this is recognized in  
7 the Free Trade Commission Note of Interpretation.

8 We would just like to raise a few--sorry, let  
9 me just address the additional point that Mr. Appleton  
10 raised with respect to sharing of information with the  
11 Provinces. We agree in principle subject to looking  
12 at particular language that Mr. Appleton would  
13 propose--we haven't had a chance to fully review it,  
14 but in principle we agree that they would be as well  
15 subject to the same obligations under the  
16 Confidentiality Order as if they were a party to the  
17 Confidentiality Order.

18 I would just raise, to finish my submissions,  
19 a couple of points that are in Mr. Appleton's draft  
20 Confidentiality Order which we think are not  
21 appropriate. The first one relates--in addition to  
22 the submissions I have already made, the first one

15:34:06 1 MR. APPLETON: I have brief comments, if  
2 Tribunal Members don't have any questions.

3 PRESIDENT ORREGO: Go ahead.

4 MR. APPLETON: Very brief.

5 First of all, Ms. Tabet has encouraged you to  
6 change the terms of the draft Minutes. We have no  
7 problem with reference to Annex 1137(4). That could  
8 quite properly be there. I have a lot of problems  
9 with you in putting in as part of the governing law  
10 the Free Trade Commission Notes of Interpretation  
11 here. I'm just going to delve into this briefly.

12 I think the easiest thing about this would be  
13 not to do this because then I think we need to make  
14 some formal submissions, but if we look at Article  
15 1131 of the NAFTA which is the governing law, it says  
16 that interpretation by the Commission of the provision  
17 of this agreement shall be binding on the Tribunal  
18 established under this section, and so there is no  
19 question that the Free Trade Commission is entitled to  
20 interpret a provision. But what it's not entitled to  
21 do is change the NAFTA if we are not interpreting a  
22 provision.

15:35:10 1 And so, one of the things that we are looking  
2 at--and I have a copy here of the Free Trade  
3 Commission notice that Ms. Tabet was referring to--is  
4 that not every aspect in there interprets a provision.  
5 Some of them are just in there on an extra basis--in  
6 fact, they're quite extraneous--and I think it's  
7 helpful to know what the NAFTA parties think, but it  
8 doesn't mean that it governs.

9 And so, for example, they have said in  
10 paragraph D of this Order that the parties further  
11 reaffirm that the Governments of Canada, the United  
12 States and Mexico may share with officials of the  
13 respective Federal, state and provincial governments  
14 all relevant documents in the course of dispute  
15 settlement under NAFTA Chapter 11, including  
16 confidential information. That's fine, but that isn't  
17 governing. That's just an expression.

18 Now, I have already agreed to specifically  
19 prevent that to happen and be in the term of the  
20 Order. I think that's the right way to do it, but I  
21 don't believe that this document is governing. So, to  
22 the extent that Canada asks you to put this in because

15:37:05 1 Now, Ms. Tabet gave some evidence about the  
2 nature of UPS and their views in the Appleton and  
3 Privy Council case. I don't think that was  
4 appropriate because, (a) it was not correct; and (b)  
5 she is not in position to give evidence on behalf of  
6 UPS. UPS did not have standing in that case.  
7 Mr. Appleton and Appleton & Associates had standing in  
8 the case, which is why I would be delighted to be the  
9 party before the court.

10 So, the fact that UPS wasn't there doesn't  
11 say anything about their concerns, but for the record  
12 I'm happy to tell you, as I am their counsel, that  
13 they were not very happy. And I don't think it's  
14 unreasonable that any claimants--any investor would be  
15 happy that if they think there is an order and things  
16 are being marked as confidential that that  
17 confidentiality isn't met. I think the expectation of  
18 parties to arbitration is if they submit something to  
19 be confidential, they expect that to be the case, and  
20 certainly UPS respected the confidentiality  
21 provisions, and certainly so will Merrill & Ring.  
22 There is absolutely no question about that.

15:36:11 1 then what's going to happen, I'm afraid, is in the  
2 next case they're going to say, "Well, look, what  
3 happened is the Merrill & Ring Tribunal said this is  
4 governing," and then we are going to have a fight  
5 about that, and we obviously have had no argumentation  
6 to deal with that. And I don't really want to go  
7 there. What I'm actually asking you is to not go  
8 there without--if you want to go there, I would like  
9 us to make submissions on the point. If you do want  
10 to go there, it's much more complicated, and is  
11 unnecessary for your Minutes.

12 So, I guess all I'm saying is I don't consent  
13 to that part, and I'm asking you that this is a much  
14 more deep matter and that I would rather we not have  
15 to go there today. If you want, though, I'm prepared  
16 to make formal submissions now. If not, I would like  
17 to deal with the rest of Ms. Tabet's comments, if  
18 that's okay.

19 PRESIDENT ORREGO: I think it is preferable  
20 to go on with the rest.

21 MR. APPLETON: I was hoping you were going to  
22 say that, Mr. President.

15:38:09 1 Ms. Tabet is concerned about lack of  
2 precision in the draft Order where it says the  
3 disputing parties are Merrill & Ring and its  
4 affiliates. I'm happy to make it Merrill & Ring  
5 Forestry L.P., which is the named party in the claim.  
6 That should make no difference whatsoever and if that  
7 will make it easier.

8 I think the real concern that Ms. Tabet  
9 really had but didn't say is that she didn't want this  
10 order to only relate to the Government of Canada, and  
11 it's really because she was concerned that we were not  
12 going to be able to deal with the subnational  
13 government issue. And this has been the subject  
14 matter of other orders and other fights in other  
15 tribunals, that Canada basically wanted to release it  
16 without having any confidentiality provisions. And I  
17 don't want to even go there because it won't be  
18 necessary since now we have an agreement on it, and  
19 Canada has agreed with us, but the only appropriate  
20 way to govern people receiving confidential materials  
21 is to make them subject to the Order, and that is the  
22 appropriate way to deal with this, and I think we have

15:39:06 1 resolved that matter.

2 Settlement privilege is a very important  
3 issue, and when we are talking about confidentiality,  
4 that's why settlement privilege comes in, and Article  
5 1118 consultations are part of settlement privilege.  
6 Arbitration needs to preserve the right of the parties  
7 to be able to narrow issues in dispute, and if that  
8 requires discussions that may be without prejudice,  
9 they should be confidential. They should not be  
10 produced to this Tribunal. If it's going to make this  
11 job easier for you, I think you should be happy that  
12 we are able to do that, and so if Canada wants to give  
13 us a document that they are frightened later might  
14 make it into the record, I don't want to prevent them  
15 from doing that. I want to encourage discussion and  
16 debate, which is why we have been seeking this, and so  
17 that's why we would like this order to apply to that,  
18 as well. It's basically the international public  
19 policy side more than anything else.

20 Restricted access information. Ms. Tabet  
21 suggested that she can't understand why we might want  
22 to see that, and Canada's view is that this would be

15:41:18 1 there. I don't think it's overly onerous. We used it  
2 with respect to the UPS case, and it worked very well  
3 in that situation.

4 Final point about destruction. I'm afraid  
5 that--well, I do not disagree with the fact, the  
6 statement--I'm not in a position to agree or  
7 disagree--I have no knowledge--but what legal advice  
8 has been given to Ms. Kinnear or Ms. Tabet about the  
9 destruction of documents. What I could tell you is  
10 that provisions that required documents to be  
11 destroyed at the end of a case are common in the WTO;  
12 and, to the extent that Canada has been party to the  
13 WTO cases that are there, and we have made reference  
14 to that--sure they are--and they looked at the  
15 civilian aircraft cases, a particular provision that  
16 was in that. And in addition, there was also as part  
17 of the terms of the Model Rules for the Chapter  
18 Twenty.

19 And so, if it's in the NAFTA Model Rules for  
20 Chapter Twenty which are being applied, we thought  
21 that would be appropriate because the issue here is  
22 how to protect the confidential information.

15:40:15 1 onerous. I will tell you exactly why we need to have  
2 this, because in a situation of the Pope & Talbot case  
3 which involved lumber manufacturers rather than raw  
4 logs--different industry, actually--but in that case,  
5 there was all types of issues about who received  
6 quota, who received permits to be able to export, and  
7 there was concern that it would be anticompetitive  
8 information, and they didn't--the Government of Canada  
9 was concerned about producing the information because  
10 then a market player could have access to information  
11 that other players wouldn't have. To prevent that  
12 from being an issue, that's why we proposed restricted  
13 Access to Information terms.

14 If, in fact, this is not going to be a  
15 problem, and the Department of Foreign affairs, the  
16 Export/Import Control Bureau that deals with this has  
17 no problem, then we are happy with that. I think our  
18 client would love to be able to see information.  
19 That's what clients always want to do anyways so they  
20 could help us and assess it. But, to the extent that  
21 that would cause an antitrust issue, we don't want  
22 that to be the problem. That's why the provision's

15:42:30 1 Now, at the end of the day, if we have an  
2 order that is going to protect the confidentiality,  
3 especially of restricted access information, then I  
4 think that's fair. But, in another case that didn't  
5 go to the Federal Court, in the S.D. Myers case, the  
6 Government of Canada decided to take the personal tax  
7 returns of Mr. Myers and disclose those under Canada's  
8 Access to Information case, and Mr. Myers was very  
9 unhappy. He wanted to have those back. And rather  
10 than have to go to court, we looked at this, and he  
11 felt that it wasn't worth his while to have to fight  
12 in court after he has been fighting for years. He was  
13 successful in this case. One is awarded in NAFTA, and  
14 then he had to go to judicial review. He certainly  
15 didn't want to have to go again.

16 So, he wasn't very happy, though, to have his  
17 personal financial records made available under the  
18 Access to Information when he thought they were going  
19 to otherwise be covered, but they were--they were  
20 disclosed, and he didn't want to pay to have a fight.  
21 He didn't have the appetite for continued litigation.  
22 I think that is not unreasonable. That's why we put

178

15:43:34 1 that in.  
2 If, at the end of the day, the Tribunal has  
3 an order that is binding, which I think we can do now,  
4 then I have no problem not worrying about destruction,  
5 but I do need an order that is going to be binding  
6 equally on both sides, and I think that we have now  
7 provided a mechanism that doesn't have to set up a  
8 conflict between Canada's domestic law and the  
9 international law. If we want to have that fight--I  
10 mean, we have had that fight before, and I'm prepared  
11 to go there, but I think it's not necessary. It's not  
12 a fight that needs to be there.  
13 PRESIDENT ORREGO: Thank you.  
14 Further points?  
15 MS. TABET: Yes, sorry. I will make it  
16 brief, and I will not be tempted by responding to all  
17 of Mr. Appleton's points, but the one key point that I  
18 want to--there are two key points I would like to  
19 raise.  
20 First, the proposal by Mr. Appleton that I  
21 have just had a chance to look at that would deem all  
22 information to be business information, I think, is an

179

15:44:42 1 interesting proposal, but certainly it twists the  
2 reality. If there is legitimate business confidential  
3 information or tax return information, those things  
4 have to be exempt under Canada's Access to Information  
5 Act.  
6 Now, to try to make documents that deal with  
7 procedural issues, to deem them business confidential  
8 so they would be exempt under Canada's Access to  
9 Information Act, I fear, is not something that our  
10 courts, if it were ever reviewed, would look favorably  
11 upon. So, I don't think this mechanism is something  
12 that we can accept or that would resolve any problems.  
13 The second point I would like to make is just  
14 to confirm with Mr. Appleton whether there is  
15 agreement on open hearings because we haven't  
16 addressed this issue, and I thought there was  
17 agreement to have open hearings, but I would like to  
18 confirm it on the record.  
19 PRESIDENT ORREGO: Would you like to do that  
20 now?  
21 MR. APPLETON: If Ms. Tabet has finished her  
22 submissions, I'm happy to. If she's not, I wanted her

180

15:45:47 1 to finish her submissions first.  
2 MS. TABET: Yes.  
3 PRESIDENT ORREGO: She has, yes.  
4 MR. APPLETON: With respect to the issue of  
5 transparency generally, I think this merits a short  
6 discussion.  
7 Number one, we are strongly in favor of  
8 transparency, and so it's because of the ability to be  
9 able to file materials that need to stay confidential  
10 because they're proprietary and business related that  
11 we need to have this Confidentiality Agreement and  
12 that we need to be able to deal with the issue of  
13 transparency.  
14 To our view, when we put in proposals that  
15 permit things to be released, we put in proposals that  
16 permit redacted information to be dealt with. You  
17 will see that. That's all before this Tribunal. So,  
18 (a) we would propose that the hearings be open, and we  
19 are prepared to have them open by way of  
20 closed-circuit feeds, as I think that's the way they  
21 usually do it here. But, for example, if there is  
22 restricted access information, that session or that

181

15:46:47 1 part of the session where that information is would  
2 have to be not open because of the nature of the  
3 information that needs to be protected. And we had  
4 that in the UPS case, and that was very easy to  
5 effectuate, and that's why we were able to make that  
6 occur, and we think that could happen again.  
7 So, we have absolutely no problem. I thought  
8 we had made this very clear to Canada before, but just  
9 to make sure that we are very clear here, we are in  
10 favor of this, but we need to make sure that we do it  
11 so that I don't want the situation later that Canada  
12 tells me they are unable to produce documents because  
13 then they can't be--we can't control that these  
14 confidential documents from the government won't be  
15 released otherwise, or if there is an issue that deals  
16 with deliberative process, and we are going to say you  
17 as a tribunal have to decide whether something is  
18 privileged. It's not up to Canada to say, "There may  
19 or may not be a document, and we are not going to tell  
20 you; but, if it is, we are not going to produce under  
21 our Evidence Act." You have to decide, and that  
22 question in your determination, that has to be

15:47:52 1 confidential because there is confidential  
2 information. I don't want Canada to be able to say,  
3 "We are not going to produce this information because,  
4 at the end of the day, we can't protect the security  
5 around that. We need to have those safeguards." And  
6 then this Tribunal can make its own determinations,  
7 both of privilege and of the weight than any of the  
8 evidence needs to have.

9 PRESIDENT ORREGO: Fine. Thank you.

10 Does that take care of your point?

11 MS. TABET: Yes, thank you.

12 PRESIDENT ORREGO: Well, on this point, I  
13 would like perhaps to request that both parties, to  
14 the extent possible, might help the Tribunal in one  
15 particular respect, which is to draw a sort of  
16 comparative text of the two Confidentiality Orders  
17 that have been suggested, your revised, which I  
18 suppose is the last effort, and our original one or as  
19 revised as you wish. So the Tribunal could have, say,  
20 paragraph by paragraph say this is what the Claimant  
21 proposes, if eventually there is a special reason or  
22 argument; this is what the Respondent proposes or

15:50:31 1 than softer. What I mean here is that we have not  
2 been able to agree because of this fundamental first  
3 problem about whether it should be subject to the Act  
4 or not, and then we haven't been able to get anywhere.  
5 I thought we would be able to have an agreed order  
6 here today, with the exception of this issue about the  
7 applicability of Canada's Access to Information Act.

8 So, what I'm concern about, just to be very  
9 blunt, is that you are going to ask us to come up with  
10 something, and instead you are going to get a whole  
11 pile of new argument from us, and what we're telling  
12 you is we are having a problem here, sir.

13 ARBITRATOR ROWLEY: Maybe I could have  
14 another go at it.

15 We have heard you. You have written very  
16 good submissions that we found very helpful. You have  
17 now given it to us probably twice each today orally.  
18 I don't think we need to hear that further. What we  
19 want is one piece of paper where there are areas of  
20 agreement. Where there is no agreement, Mr. Appleton,  
21 put in your clause which accepts and put in your  
22 clause which includes. The Tribunal will decide. We

15:49:12 1 agrees to or disagrees because of some specific  
2 reason. I think that would be very helpful because  
3 the debate has been quite interesting, but at the same  
4 time it can become sort of confusing because there are  
5 things going back and forth. Would you think that  
6 that is feasible proposition?

7 (Tribunal conferring.)

8 ARBITRATOR ROWLEY: I had been thinking along  
9 the same lines, and I think we are saying exactly the  
10 same thing, but my proposition would be that the  
11 parties get together and produce an agreed order to  
12 the extent that they can. Where there are points of  
13 disagreement, give us alternatives. We have heard  
14 your reasoning. If you want to add a little, but it's  
15 only going to be four or five clauses that we are  
16 going to have to deal with. And in other matters that  
17 I have dealt with, that's been a sensible solution.

18 MR. APPLETON: Mr. Rowley, the parties have  
19 been trying to get an agreed draft of an order for  
20 more than eight-and-a-half months. There have been--I  
21 would love--in other words, if you would like to, I  
22 would like us to bang our heads together harder rather

15:51:40 1 don't want a great deal more argument, I don't think.  
2 Perhaps I speak for myself.

3 PRESIDENT ORREGO: No, no.

4 ARBITRATOR DAM: No.

5 MS. TABET: We are perfectly prepared to do  
6 that.

7 PRESIDENT ORREGO: To the extent possible  
8 that you might make an additional effort to agree on  
9 something that is agreeable; if it's not agreeable, it  
10 is not agreeable, of course. But let me mention to  
11 you one very particular point that might be helpful in  
12 the context of an agreed order which is that,  
13 Mr. Appleton, you referred to the WTO experience. In  
14 one panel that is actually working, there has been a  
15 very interesting mechanism because of the same  
16 questions, questions relating to transparency but at  
17 the same time confidentiality, and the situation has  
18 been that there are two stages to it, (1) submissions  
19 that are made public and circulated and posted in Web  
20 pages and so forth, and followed by a separate  
21 presentation of the same issue which contains  
22 confidential information, what they called BCI,



186

15:53:04 1 business confidential information; or HSBI, highly  
2 sensitive business information. Some of the latter  
3 goes to third parties and some not.  
4       And, finally, there is a taping, videotaping,  
5 of the whole operation relating to the public  
6 hearings, not to the private element with confidential  
7 sides of it, and that is shown to the public  
8 generally, which can go into a big room and see what  
9 the parties had to say on the video of the public  
10 sessions.  
11       It's very complicated, in fact, from the  
12 point of view of its actual operation, but the  
13 principles involved, which is the interesting point,  
14 are very useful.  
15       So, if you might look into that--  
16       MS. TABBET: I think this is very similar to  
17 what we have, in fact, agreed upon and have done in  
18 previous cases, including UPS, where we have redacted  
19 the draft Confidentiality Order. A lot of what we  
20 have already agreed upon provides that there should be  
21 also redacted version provided, and Mr. Appleton just  
22 confirmed that we would have--part of the hearing

187

15:54:24 1 would be closed when dealing with that confidential  
2 information, so it's very much the same.  
3       PRESIDENT ORREGO: That's the kind of  
4 thought.  
5       Eventually, if you distinguished between  
6 confidential information, that it's somehow  
7 restricted, and hyperconfidential information which is  
8 not to be--not even to yourselves, that might be in a  
9 sense helpful from the point of view that you might be  
10 able to do some things with one and yet not--and yet  
11 with other part of it. Say, for example--sorry to  
12 interrupt--say, for example, the question of sending  
13 these over for comments by the State's parties. You  
14 might wish to have comments on some things, but you  
15 may not wish to have comments on a number of other  
16 things.  
17       MS. TABBET: I really don't know if the issue  
18 of hypersensitive information or restricted access  
19 information will arise in this case. I suggest we  
20 defer the matter until if and when that issue arises,  
21 and we can have the provisions to deal with that. It  
22 is very burdensome upon the parties because it does

188

15:55:36 1 create a wall between the lawyers and their clients.  
2 So, as much as it could be avoided, we would recommend  
3 that. And if it does arise, we would look at those  
4 kinds of protections.  
5       MR. APPLETON: Our problem is that, if this  
6 arises, then we have to get the Tribunal back  
7 together. And since we already have the wording and  
8 we already have the practice that would work, I don't  
9 see why we would be disadvantaged by having the  
10 wording. If it arises, then we have it.  
11       I mean, we have nothing that we think  
12 conceivably could be restricted access. It's all  
13 information that would come, we would expect, from the  
14 Government of Canada or from some other branch of  
15 another government that they receive, but we don't  
16 want to have a process that is going to slow down the  
17 ability to get information, and that's why we would  
18 like to see it in this order because if we are going  
19 to think about it, we might as well think about it.  
20 If they don't use it, that's great. It's all there  
21 before you.  
22       ARBITRATOR ROWLEY: Put it in the

189

15:56:37 1 alternative.  
2       MR. APPLETON: Apparently, it will have to be  
3 in the alternative because we have no agreement, as  
4 you find most of the order will be in the alternative.  
5 But we will give you exactly what you would like.  
6       PRESIDENT ORREGO: Well, item by item because  
7 sometimes a comparison without the line by line  
8 becomes more difficult.  
9       MS. TABBET: And my only concern, and just to  
10 be perfectly honest, in previous cases where we  
11 have--including the UPS case, where we have had that  
12 alternative, it's been abused, and it's been very  
13 difficult--everything was designated not as business  
14 confidential but as restricted information and,  
15 therefore, was made very difficult to share  
16 information.  
17       PRESIDENT ORREGO: Well, we'll see how it  
18 works.  
19       So, are we ready to look at the last  
20 question, production of evidence?  
21       (Tribunal conferring.)  
22       PRESIDENT ORREGO: Can we discuss briefly the



15:58:48 1 question of production of evidence? I say "briefly"  
 2 because a number of persons have to catch planes and  
 3 other needs, so if we could look into that as to  
 4 illuminate the Tribunal, always in the understanding  
 5 that what we have already as submissions is available.  
 6 And to the extent there is anything new or additional,  
 7 we would be pleased to hear that briefly.

8 MR. APPLETON: Mr. President, perhaps I might  
 9 suggest an alternative that might be more efficient.

10 The submissions are there. There is an issue  
 11 about--that arises all the time. We brought it to  
 12 your attention. It's in the materials. We don't want  
 13 this to be a surprise if it arises again, and we  
 14 already know that this issue is going to arise because  
 15 we have been notified of this that this is likely to  
 16 happen from Canada in the letter. So, this is about  
 17 the use of Section 39 of the Canada Evidence Act.  
 18 Other tribunals have dealt with it. You have the  
 19 materials there. The other tribunals have said it  
 20 doesn't apply because you don't have power to compel  
 21 evidence, you can't be bound by it, and a certificate  
 22 not made under the Act has no power in any event, so

16:01:08 1 things that we think would work, and the idea is to  
 2 find as simple a process as possible. And given the  
 3 fact that you already know our view that there is a  
 4 need for document production or information requests  
 5 in this case, we think it's important, but I don't  
 6 want to waste any time. I don't want to talk about it  
 7 in esoteric elements. I would like to talk about  
 8 something very specific. That's really where our  
 9 views are.

10 PRESIDENT ORREGO: Right, thank you.

11 Ms. Tabet, will you agree to that?

12 MS. TABET: Well, in fact, Canada's position  
 13 is we are prepared to agree to the IBA Rules as  
 14 guidelines. We haven't had an opportunity to respond  
 15 to the draft Document Production Order that  
 16 Mr. Appleton has submitted. I don't know if it would  
 17 be most useful to go into this today or if you would  
 18 like us to address this in writing. Perhaps the  
 19 simpler way to do it is to just refer to the IBA  
 20 Guidelines and the draft Minutes.

21 And as Mr. Appleton suggests, we could deal  
 22 with issues of privilege if and when they arise. I

16:00:09 1 we don't need to go there.

2 I am proposing that we not have any  
 3 argumentation on that because you're aware of this  
 4 issue, but I do think it would be useful for us to  
 5 look at what information request order would look like  
 6 because we think that if there is going to be a  
 7 likelihood that there is going to be need for  
 8 information, and that means that we propose that there  
 9 be information that supplied basically three ways to  
 10 get information. As a tribunal, you get information  
 11 by documents, you get information by witnesses, you  
 12 get information perhaps by interrogatory.

13 PRESIDENT ORREGO: But that is what your  
 14 draft Order is about?

15 MR. APPLETON: Yes.

16 We have it there. To the extent you might  
 17 have questions that might be relevant, we think that  
 18 an order itself is what we need to need to do rather  
 19 than just reliance back on the IBA Rules, so that's  
 20 what would be, I suggest--in other words, we think  
 21 there should be an order. We have taken this order  
 22 from other NAFTA tribunals looking at these issues for

16:02:13 1 mean, objections to jurisdiction.

2 MR. APPLETON: Mr. President, we can't agree  
 3 to the IBA Guidelines. That's our problem. That's  
 4 why we suggested a rule, and the IBA Guidelines--as  
 5 guidelines, this is what we think--we have something  
 6 like that. We think it really is necessary to have  
 7 something.

8 So our problem is, let's say that you decide  
 9 that you want to have a jurisdictional phase. We are  
 10 going to need start getting information of document  
 11 production right away to be able to deal with that.  
 12 Let's say, instead, you decide you want to join the  
 13 jurisdictional objections to merits. We are going to  
 14 want to have documents or information requests right  
 15 away to get the case underway.

16 Any way we do this, we really need for this  
 17 Tribunal to come up with in terms of an order very  
 18 quickly, and that's why we produced something to try  
 19 to bring this debate forward. And most tribunals--the  
 20 parties actually haven't submitted something on this.  
 21 Tribunals have just given us an order. We have no  
 22 problem with you giving us an order, but we don't

16:03:22 1 think that the IBA Guidelines--I like them. I use  
2 them in other things. They're good in commercial  
3 arbitration. I just don't think that they're exactly  
4 the right thing here, and that's why we thought an  
5 actual order, which makes it very clear to the parties  
6 what they have to do. We want to avoid disagreements.  
7 We don't want this Tribunal to be bogged down with  
8 information issues in terms of document fights. It's  
9 not in anybody's interest to do that.

10 PRESIDENT ORRREGO: Yes, the point is taken  
11 that there are two different approaches to it.

12 And then for the purpose of the Minutes, we  
13 would just refer to the fact that the Tribunal will  
14 take a decision in terms of production of evidence or  
15 so and not do that here in any way or either way  
16 because we have to reflect, of course, on what we have  
17 read and heard.

18 Yes?

19 MS. TABBET: Would you--as I pointed out, we  
20 have not responded to the differences in the draft  
21 Procedural Order, Document Production Order, put  
22 forward by Mr. Appleton. We could probably do this

16:05:57 1 PRESIDENT ORRREGO: We will be back to you on  
2 that before we close so as to give it some  
3 consideration.

4 Well, we have come, if we understand rightly,  
5 to the end of our discussion.

6 MS. TABBET: Sorry, there is an additional  
7 point. We well--Mr. Appleton has made several  
8 references to when he would like document production,  
9 and we haven't had a chance to address that. I know  
10 we will try to agree to some kind of--as much as  
11 possible of a schedule if there is bifurcation or no  
12 bifurcation.

13 But one key point I want to raise now is I  
14 think there is fundamental disagreement on  
15 whether--first of all, whether there is a need for  
16 document production. If there is bifurcation, Canada  
17 does not believe there is any need for any document  
18 production. We would be the party that would have to  
19 make the case, bear the burden of proving our  
20 jurisdictional objection, and we do not ask for  
21 document production.

22 And the second point is, if there is no

16:04:33 1 fairly quickly and briefly in written form after this  
2 meeting, if you wish us to.

3 PRESIDENT ORRREGO: Yes, I think that the very  
4 same kind of exercise we were discussing in terms of  
5 the confidentiality order would be quite appropriate  
6 to the point that if there is agreement of certain  
7 things, fine; if there is not, why. And then we would  
8 look into whichever making again the utmost effort to  
9 come to some agreement.

10 MR. APPLETON: Can we set a very specific  
11 deadline? Shall we say five days or something so that  
12 we focus the attention and actually get something to  
13 you? What would be best to enable the Tribunal to be  
14 able to resolve this? You tell us, and we will do it.  
15 Please be harsh on us. Do not be nice to us because  
16 we won't get it done effectively, and all we will do  
17 is have more reasons as to why we can't agree rather  
18 than why we will agree. So, I would be happy if you  
19 tell us you want something tonight. I have to fly  
20 somewhere, but I will do it tonight. I really think  
21 that we need your direction. You might want to  
22 reserve for a moment.

16:06:58 1 bifurcation, Canada would request that the document  
2 production only take place after the submission of the  
3 Memorial and Counter-Memorial. And the reason for us  
4 asking this is, as you heard Ms. Kinnear, we are very  
5 concerned about assertions made in the submission that  
6 Mr. Appleton is going to make his case only once he  
7 gets our document, that he is not able to make his  
8 case or specify the measures that have breached the  
9 NAFTA, and at this point that he will tell us later  
10 what his case is once he sees our documents.

11 PRESIDENT ORRREGO: Well, the Tribunal is  
12 thinking precisely to take a short time now to discuss  
13 that very issue of general guidelines about  
14 bifurcation or nonbifurcation, and then, in that  
15 light, to have what we shown your agreed schedule and  
16 insert all of that into the Minutes.

17 Now, that--do we have any place around here  
18 where we can retire?

19 (Pause.)

20 MR. APPLETON: I would like to address a  
21 point. Why don't we get this resolved first and then  
22 we will--

16:08:34 1 PRESIDENT ORREGO: A separate point?  
 2 MR. APPLETON: I would like to respond to  
 3 something, but let's get this underway first and  
 4 then--or if you would like to retire--  
 5 PRESIDENT ORREGO: Yes, we'll retire now.  
 6 MR. APPLETON: I need to practically point  
 7 out that it will be impossible, and it would be unfair  
 8 to the Investor in this claim to have them in a  
 9 position to do the valuation of damages without having  
 10 production of documents from the government that are  
 11 in their possession, so that to this new suggestion  
 12 that just came out now that there should be memorials  
 13 first and then have document production, that that is,  
 14 in our view (a) very novel, but it's not very  
 15 practical; that the practical time-tested and fair and  
 16 efficient way to deal with this is to have some  
 17 document production, have that done, have the  
 18 Memorials filed. Then the purpose of the Reply and  
 19 Rejoinder Memorials is just to raise issues so no one  
 20 is caught by the surprise. Otherwise, what is the  
 21 purpose of this second round of pleadings, and then  
 22 you will have a need for a third round of pleading.

16:09:51 1 So, at the end of the day, this case has been  
 2 pleaded. We know what it is. The pleadings meet the  
 3 requirements as set out in the UNCITRAL Rules. We  
 4 have indicated where the measures are. We have  
 5 indicated what was precisely where the breaches are.  
 6 We have given a general indication of what the damages  
 7 are required. It is a notice pleading. That's how  
 8 the rules work, and that's how the case law works.  
 9 And change all of a sudden in the middle would be very  
 10 difficult.  
 11 It may be that the government doesn't want to  
 12 produce documents. Maybe they do want to produce  
 13 documents. I don't know. But we should be entitled  
 14 to seek production which has to be reasonable and fair  
 15 and has to be connected to what we are talking  
 16 about--all of those things. But, at the end of the  
 17 day, we should be entitled to get that material so  
 18 that you can know exactly what's going on, we could  
 19 know exactly what's going on, and that's how that  
 20 process works. And that's why we would be opposed to  
 21 this new suggestion that Ms. Tabet suggested. I just  
 22 can't see how the experts that are going to be

16:10:54 1 necessary here would be able to provide any value.  
 2 They're going to say we can't do this because they're  
 3 missing, we need this record from the government, we  
 4 need to have this information about total volumes or  
 5 whatever else, and that's why I just can't see  
 6 practically why that would work.  
 7 PRESIDENT ORREGO: Okay. We will have all  
 8 that in mind from the point of view of trying to  
 9 figure out how we should proceed next.  
 10 So, if you don't mind, that we leave you all  
 11 for a few minutes, we will be discussing it and be  
 12 back shortly.  
 13 (Tribunal conferring outside the room.)  
 14 PRESIDENT ORREGO: Well, the Tribunal has met  
 15 to consider the question of the bifurcation or  
 16 nonbifurcation, and it has come to a conclusion; but,  
 17 before letting you know the conclusion, we would like  
 18 to explain you the rationale for it, which is quite  
 19 simply a question concerning the efficiency and  
 20 expediency of the process, which is that, to the  
 21 extent that there will be events that might prove to  
 22 be breaches after December 27, 2003, those will have

16:50:03 1 to be looked at on the merits before it will be a  
 2 rather uncertain situation. So, even if there was  
 3 good ground to look at some jurisdictional aspects  
 4 before, what actually happens is that we will have, in  
 5 any event, to go to the merits or join to the merits  
 6 at that other stage because of the fact that there  
 7 would be the need to come up with the substantial  
 8 evidence on which are the events and the breaches and  
 9 the damages connected to that.  
 10 And because of all of that, we thought that  
 11 it's preferable to join jurisdiction to the merits,  
 12 not to have bifurcation, and to have all the arguments  
 13 both on jurisdiction and the merits come together.  
 14 And then, of course, they will all be available for  
 15 realize what is under the Tribunal's jurisdiction and  
 16 what is not, and in that context what has been proven  
 17 as a breach after 2003 or not proven as a breach after  
 18 2003, so it will come together.  
 19 Of course, feel comfortable that there is no  
 20 prejudgment at all of any of the issues that you have  
 21 touched on. It's simply a question that we felt that  
 22 we would have to get there most likely in any event,

16:51:42 1 so it was better to go straight there and not to make  
 2 an intermediate stop on the way.  
 3 Well, having said that, we understand that  
 4 you have come up with something in terms of a  
 5 schedule, or not quite?  
 6 (Comment off microphone.)  
 7 MR. APPLETON: Sorry.  
 8 We are prepared to sit down quickly right  
 9 now. We will obviously need to have a document  
 10 process of some form to be able to deal with this. We  
 11 have proposed that we are prepared to make our first  
 12 document request as early as December the 1st, and  
 13 that would be very quickly, but that's why we would  
 14 need to have an order or process. If you think it's  
 15 going to take a longer time than that for the Tribunal  
 16 to make an order, then we need to get some indication  
 17 of that from you because that would obviously affect  
 18 the timing and what we would want to do here.  
 19 PRESIDENT ORREGO: You mean an order on  
 20 production?  
 21 MR. APPLETON: Well, we would call it an  
 22 "information request order" because the documents

16:54:12 1 I think it certainly goes to the same concern that we  
 2 have, we spoke earlier about a Statement of Reply and  
 3 a Statement of Rejoinder, which I would assume would  
 4 be the first stage here--I'm sure they could be done  
 5 in a short period of time, 10-15 days each--but given  
 6 what we have heard today and our concern that there  
 7 seems to be a very fluid definition of what measures  
 8 at issue, we would very much like to ask that we have  
 9 the first Statement of Reply by the Investor, a  
 10 Rejoinder statement by Canada, and then go into, if  
 11 the Tribunal sees fit, either memorials, which would  
 12 be our preference, or document production and then  
 13 memorials.  
 14 But I can't state strongly enough how  
 15 concerned we are that this will be some kind of  
 16 rolling definition of the case, and we will never know  
 17 what we are supposed to be answering, and that's what  
 18 we really would like to make sure is addressed.  
 19 PRESIDENT ORREGO: Would you allow us one and  
 20 a half minute.  
 21 MR. APPLETON: Before you deliberate, perhaps  
 22 if I could have a moment, first of all, during the

16:53:05 1 could be interrogatories we are going to ask for, as  
 2 well.  
 3 PRESIDENT ORREGO: Okay. Now, one question,  
 4 Ms. Kinnear, would Canada be in agreement about  
 5 beginning with document production, the whole exercise  
 6 to begin with document production, then the Memorial  
 7 on the Merits and the Counter-Memorial, and then et  
 8 cetera, et cetera?  
 9 MS. KINNEAR: I wanted to raise that because  
 10 our preference would be, and we think that it would be  
 11 more efficient in this case, if we went first to  
 12 Memorial and Counter-Memorial so that the issues are  
 13 very clear. The Tribunal will have a very good idea  
 14 about what is and isn't in debate and, therefore, be  
 15 in a much better position to assess any kind of  
 16 differences between the parties on what's properly  
 17 producible or not.  
 18 So, our preference would be, quite frankly,  
 19 to have a first set of memorials, then document  
 20 production as needed, and then Reply and Rejoinder  
 21 Memorials.  
 22 And if I might, there is a second issue, and

16:55:14 1 break, I talked to Ms. Kinnear and Ms. Tabet. I had  
 2 misunderstood what we were talking about on the agenda  
 3 because when we talked about the Statement of Reply  
 4 and Statement of Rejoinder, it was under the word  
 5 "jurisdiction," and so I believe, or I believed, that  
 6 you're talking about Replies and Rejoinders in the  
 7 jurisdictional phase. But Ms. Kinnear is of the view,  
 8 and I believe from the conversation now that her  
 9 understanding is correct, that you were talking about  
 10 the Statement of Reply or Statement of Rejoinder  
 11 generally for the case rather than Reply and Rejoinder  
 12 in jurisdiction. It's just the way it was listed, I  
 13 thought you were referring to that. That is not the  
 14 standard way generally that NAFTA cases have unfolded,  
 15 number one.  
 16 Number two, we have no further information to  
 17 be able to provide. The reason why we can't do a  
 18 Memorial without having the document production is the  
 19 same reason I can't do anything more with the  
 20 Statement of Reply or--it's the same problem, that we  
 21 are stymied without having--we know what we have to  
 22 ask for. That's why we are prepared to move ahead

16:56:28 1 quickly on that, but without that type of information  
2 we can't go any further, and that's why we are seeking  
3 this process, and I think it's fair for you to know  
4 that I can't say anything more.

5 To the extent that I just went through this  
6 to try to compile these examples of particulars, and  
7 as we were going through it, we said, "Well, we think  
8 this is something here, but we don't know." But these  
9 are all the types of things that would become  
10 self-evident by way of a document production,  
11 information production process. And then if there is  
12 no evidence of it, it doesn't need to be there at all.  
13 If there is evidence of it, it needs to be there. But  
14 that's--you just need to know, that's our problem.

15 Our problem is, you know, I'm not advantaged  
16 by telling you anything that doesn't make sense or  
17 anything we don't have. We have what we have, and we  
18 have tried to put that all out, so I can say nothing  
19 more to you than what I have done with this Statement  
20 of Particulars. And so, to the extent that we have  
21 basically flung the doors open and shown you  
22 everything that's in the pantry, we have shown you all

17:00:26 1 reasonably has at hand in order to justify and prove  
2 the claim it is making. Documents, expert reports,  
3 whatever each party feels is necessary.

4 And, at that stage, once that stage is over,  
5 to have the document production stage, properly so, in  
6 terms that you will be able to know what is still  
7 missing, what additional items you might need to have  
8 a process of document production, to be followed by  
9 the Reply and the Rejoinder as the aftermath of all  
10 the exercise, and, of course, the hearing.

11 So, that is what actually the Tribunal would  
12 like to propose to you, and we even have not dates but  
13 time schedules, if you would like to have that, unless  
14 you have it already, among yourselves.

15 (Comment off microphone.)

16 MR. APPLETON: We would like to know what you  
17 have in mind, and we could go from there. Obviously,  
18 not having the document production means that, for  
19 example, I can give you my expert report on damages  
20 very quickly because, without having the materials  
21 about the volume of the market, they told us that they  
22 can't do very much. They required that information

16:57:32 1 the ingredients, I now need some more food, and the  
2 only way of getting that is to have a process to deal  
3 with that, and we are prepared to work expeditiously  
4 and quickly in a very focused way to do that, but that  
5 is really what we need.

6 (Tribunal conferring.)

7 PRESIDENT ORREGO: The Tribunal can come back  
8 quickly on this particular item because, in fact, we  
9 discussed it before rejoining in the room.

10 In terms of precisely because of questions of  
11 efficiency, we believe first that there is no need to  
12 have a Reply or a Rejoinder in terms of the sort of  
13 startup process. It is the possibility, under  
14 UNCITRAL Rules, at least a third round, but we feel  
15 that it wouldn't add more than what we have heard at  
16 this stage.

17 In contrast, we believe, and we considered  
18 specifically this, that the process should begin with  
19 the Memorial on the Merits to be followed by the  
20 answer or Counter-Memorial on the Merits, and each  
21 party there will have to provide the witness  
22 statements or factual information or everything it

17:01:57 1 from the government to be able to do it. So, if you  
2 would like to do it, that means that my responsive  
3 report is going to have to be really like a new  
4 report, and then there is going to be an issue of  
5 responding again. That's--I came with the specific  
6 problem. That's why.

7 PRESIDENT ORREGO: But even in that context,  
8 you would be able to acquire everything you needed  
9 after the first round, and to have every possibility  
10 of discussing whatever you have got in terms of  
11 document production in the second round. It doesn't  
12 end up with the first shot.

13 MR. APPLETON: It may just be necessary,  
14 then, to have a third round, which is what I'm trying  
15 to avoid. I'm trying to avoid for the experts--for  
16 example, one of the issues that are going to be here  
17 is going to be the impact that if the provisions of  
18 the log export control regime didn't apply to Merrill  
19 & Ring, Merrill & Ring then is able to sell, and the  
20 issue that is going to be here, then, is what is the  
21 impact of its ability to be able to sell outside of  
22 that regime? In other words, but for the fact that

210

17:03:03 1 this didn't apply to them. So, that would be one  
2 issue. That's an area where all the data is held by  
3 the Government of Canada. And without having that  
4 data, they can't value that. So, that's a very  
5 fundamental problem. That's why we came here to seek  
6 another order.

7         So, to the extent that you want to report  
8 without that data, that's fine, but I can't give you a  
9 report that's going to be meaningful. So, what we get  
10 is a lot of legal argument, which is fine--we are  
11 prepared to do that--but I can't give you the type of  
12 evidence that we would normally have in that phase.  
13 And since we are proposing to make it more efficient  
14 by not having to bifurcate merits from quantum, but  
15 putting it altogether, that's why we needed to have  
16 that information. That's really most profoundly a  
17 problem for me there, but also a problem, but we can  
18 deal with it with respect to response on other issues  
19 with respect to the operation of the regime. But  
20 since we have all types of information we cannot get  
21 and since the allegations are about the inability to  
22 get information, we have a problem.

211

17:04:16 1         Now, I'm not asking you to reconsider your  
2 decision--you have made your decision--I'm just  
3 explaining to you there is going to be very  
4 significant limitations in what we are able to  
5 provide, and we should be dealing with that now before  
6 we book times for hearings that then we would not be  
7 able to meet, and that's what I'm worried about.

8         PRESIDENT ORREGO: We did consider, in fact,  
9 the alternative scenario you were mentioning, but  
10 because of the various reasons I did mention, it's not  
11 likely that you have started a very serious claim just  
12 because of thinking that there would be potential  
13 damages because you have the convincement and the  
14 elements at hand to show what is your claim and your  
15 expectations and your arguments and so on, and then  
16 take it from there. If you need the documents, there  
17 will be that stage, and then both parties would be  
18 able to discuss it back and forth, and then there  
19 would be, of course, the hearing.

20         Well, in that scenario, the Tribunal proposes  
21 to you the following: First, Memorial on the Merits  
22 90 days after the Minutes have been finalized, I

212

17:05:38 1 suppose--I didn't see that in particular, but that  
2 would be the proper date; the answer or  
3 Counter-Memorial in 90 days following the first, of  
4 course. At that point, there would be the document  
5 production process. There would be a simultaneous  
6 request by the parties one week after the  
7 Counter-Memorial. Each would tell each other, "This  
8 is what I need."

9         One week after that, counsel, yourselves,  
10 would meet to consider if there is any difficulty or  
11 if you're all in agreement and so. Still, one week  
12 after that, the parties would formally agree or object  
13 and say, "No, this we cannot provide," or, "Yes,  
14 delighted, here you are."

15         MR. APPLETON: Two weeks after or one week  
16 after the meeting?

17         ARBITRATOR ROWLEY: One week after the  
18 meeting.

19         PRESIDENT ORREGO: Yes, one week after the  
20 meeting of counsel.

21         Then there would be one further week to apply  
22 to the Tribunal for the settlement of any differences

213

17:06:52 1 that may still survive, and then the Tribunal would  
2 come up with a decision which we don't put yet today  
3 because we don't know what we are going to get--or if  
4 we don't get anything, still better--but within this  
5 period that we discussed this morning that we will do  
6 as much as needed to be prompt and effective on coming  
7 to terms.

8         And then 60 days after that decision, there  
9 would be a Reply, and 60 days after that a Rejoinder,  
10 and then a hearing on the merits, which we won't  
11 suggest any date at this point, but generally  
12 speaking, we would be looking into sort of this time  
13 of the year next year, approximately, very  
14 approximately. It could be earlier, it could be  
15 later, but say the 90 plus 90 plus all the rest would  
16 sort of mean eight months and so.

17         (Tribunal consulting.)

18         PRESIDENT ORREGO: Fine, we very much  
19 appreciate your cooperation, but I think we should  
20 leave Professor Dam leave right away.

21         (Tribunal conferring.)

22         PRESIDENT ORREGO: Well, at this point,

17:12:54 1 Howard is going to build in all these ideas, and then  
2 we have decided that it would be enough for the  
3 President to sign on behalf of the Tribunal and for  
4 each of you to sign as well, for each party to sign,  
5 and then we would be delighted to have you hang it on  
6 the wall afterwards. And we let Professor Dam leave  
7 with our gratitude for his help.

8 ARBITRATOR DAM: Thank you all very much.

9 MS. KINNEAR: May I address one issue on the  
10 timing here?

11 PRESIDENT ORREGO: Yes, of course.

12 MS. KINNEAR: The concern that we have is the  
13 document production. First of all, could I ask for  
14 clarification? I hope that I understand it correctly.

15 PRESIDENT ORREGO: Yes, please.

16 MS. KINNEAR: First of all, perhaps you could  
17 repeat what the schedule was in terms of document  
18 production.

19 PRESIDENT ORREGO: Yes. One week after the  
20 Counter-Memorial, requests, simultaneous requests, by  
21 both parties to each other. One week after that,  
22 counsel meet to discuss the overall situation. One

17:15:36 1 is a three-week process--I have it wrong, Mr. Rowley?  
2 Can you help me because I'm confused here.

3 SECRETARY DEAN: After receipt of the

4 Counter-Memorial is the document-production phase.

5 One week after we receive the Counter-Memorial, there

6 is a simultaneous request--all right?--concerning

7 document production. One week thereafter, counsel

8 meet to discuss, they can come to terms on document

9 production, et cetera. One week thereafter, the

10 parties inform the Tribunal as to the outcome of their

11 discussion and whether or not they're requesting the

12 Tribunal to make a ruling on the request.

13 ARBITRATOR ROWLEY: No. I believe it works

14 this way: One week after specific pointed

15 rifle-not-shotgun requests for disclosure, you then

16 have a two-week period in which to make production or

17 refuse production or agree that production will be

18 made. Within that week, the President has indicated

19 that counsel should meet because this Tribunal feels  
20 it is essential for you to meet and come to grips.

21 One week following the two-week period, you

22 will make an application to the Tribunal, if advised.

17:14:30 1 week after that, if there has been no agreement or so,  
2 the objections are submitted to the Tribunal. If they  
3 are agreed, they will let the Tribunal know. If they  
4 are not in agreement one week after, they will apply  
5 for the Tribunal, and then the Tribunal will take the  
6 decision.

7 (Comment off microphone.)

8 MR. APPLETON: My apologies.

9 So, one week after the Counter-Memorial is  
10 when the request can be made. Two weeks after that  
11 point is when you would like to have any refusals  
12 formally made.

13 PRESIDENT ORREGO: Exactly, correct.

14 MR. APPLETON: If counsel can work it out  
15 before that, that's great.

16 PRESIDENT ORREGO: Of course, any time within  
17 the two.

18 MR. APPLETON: But then you want another week  
19 after that to apply to the Tribunal?

20 PRESIDENT ORREGO: No, no. Once you signed  
21 it over, that's it.

22 MR. APPLETON: So, just to make sure, there

17:17:21 1 PRESIDENT ORREGO: Correct.

2 ARBITRATOR ROWLEY: After that, the Tribunal  
3 will decide as quickly as it is able. Following the  
4 Tribunal decision, the 60-day period begins to run for  
5 the Reply.

6 PRESIDENT ORREGO: Well, sorry, I should add  
7 one element. In that decision, the Tribunal should  
8 direct the parties to produce the documents by a  
9 certain date. As from that date, we count the 60  
10 days. I had jumped it over because it was embodied in  
11 the context.

12 ARBITRATOR ROWLEY: The Tribunal would also,  
13 and intends to put in this Order that if there is to  
14 be an application to the Tribunal for documents that  
15 have been refused by the other side, that the party  
16 applying--and it may be that each will be  
17 applying--will do so supported by a Redfern schedule.  
18 And everybody probably knows what that is, but so  
19 there is no misunderstanding, a column on the  
20 left-hand side listing each document that is  
21 requested, the next column provides an articulated  
22 description of why the document is relevant and



17:19:11 1 material to your case. The next column is the  
2 opposing party's objection as to why the document is  
3 irrelevant, immaterial, unduly onerous, possibly even  
4 State secret, some such thing. And the next column is  
5 left blank for the Tribunal so it can go through.

6 So, assuming that both sides aren't able to  
7 agree on everything and there are counterapplications,  
8 there will be one or two documents from which the  
9 Tribunal can work without reference to any other  
10 document. So, if the parties decide to exchange 20  
11 letters of indignation to each other as to why  
12 documents are--it's entirely inappropriate and fishing  
13 and overreaching, you know that's a State secret, the  
14 Tribunal never sees that and doesn't have to paw its  
15 way through it. It just has one document, and it can  
16 make its decisions based on an assessment of that one  
17 document.

18 PRESIDENT ORREGO: Okay.

19 MS. KINNEAR: We are happy to go with that  
20 procedure. The concern we have is that it needs to be  
21 a little more elongated. Certainly, I know in the  
22 government context and I know Mr. Appleton--we have

17:21:35 1 you would like to make it three and it's involved in  
2 the period to produce or to refuse, it has to be the  
3 same period.

4 PRESIDENT ORREGO: One additional week for  
5 that. Would that be enough for you? Or not yet?

6 MS. KINNEAR: Or problem is we have to  
7 collect the documents to know what we could refuse,  
8 and that is difficult. If we could have two  
9 additional weeks, that would be more helpful.

10 PRESIDENT ORREGO: Two additional following  
11 the counsel's meeting?

12 MR. APPLETON: We are looking at one week for  
13 the request, then there is going to be a four-week  
14 period--in other words, there would be counsel meeting  
15 in one week--and then there will be three weeks after  
16 that to see whether there are refusals? It seems a  
17 little--that seems a little long to me.

18 Again, I don't want to be a stick in the mud.  
19 I will do whatever you want. I just need to find a  
20 way that is going to be efficient--that's all--and  
21 then we will go from there. I mean, tell me what you  
22 like, and we will just do it. I need to make sure

17:20:37 1 litigated with him before--had large document  
2 requests. We obviously would do our utmost, but I  
3 could tell you now one-week or even the two-week  
4 period is going to be too short to realistically do a  
5 good job and do justice to it, and so I would ask if  
6 the Tribunal will consider elongating that process a  
7 bit. The process is terrific, but the time frames are  
8 too attenuated certainly in the government context.  
9 And we will do our utmost, but I know now that does  
10 cause concern, and we wanted to raise it.

11 PRESIDENT ORREGO: That, I think, is  
12 reasonable.

13 Would you agree to have a slightly longer?

14 MR. APPLETON: I think three weeks would be  
15 fine.

16 We have done this with governments before  
17 with two weeks. They seem to do it.

18 The problem, of course, is nobody likes any  
19 schedule. I'm not crazy about this. It's very  
20 difficult for us. They're a small company, they will  
21 have things in different places, but we are going to  
22 do it. Whatever you tell to us we are going to do, if

17:22:44 1 that there is enough time so that it doesn't get used  
2 to not give--everything else is tight, so I want to  
3 make sure that we just get everything moving and move  
4 from there, and we will comply with whatever you  
5 order, Mr. President.

6 PRESIDENT ORREGO: In fact, it's to extend by  
7 one week the--we have the counsel meeting at a date.  
8 One week we had for objections, and that would be  
9 kept, but the application for the Tribunal would not  
10 be made within one week but within--that's where we  
11 suggest two weeks, but really we would like to be  
12 effective from the point of view that they would be  
13 able to get what you all want.

14 So, if we enlarge that one to three weeks, it  
15 doesn't seem to exaggerate it, or does it? Three  
16 weeks to apply to the Tribunal.

17 ARBITRATOR ROWLEY: We understand that the  
18 government needs more time, and perhaps you would be  
19 able to fuss with it, with that in mind.

20 PRESIDENT ORREGO: But that we should include  
21 in the Order, in the Minutes.

22 I think that it's reasonable. One week after



17:24:38 1 the Counter-Memorials, simultaneous requests by the  
2 parties. One week thereafter, the counsel meet to  
3 consider the overall situation. Two weeks  
4 thereafter--that's the one to be extended--the parties  
5 react and said, "No, this I cannot submit," and one  
6 week after that, the application to the Tribunal with  
7 the appropriate Redfern document so that it would be  
8 easier to decide.

9 All right? Does that look reasonable?

10 And after the Tribunal issues its decision,  
11 it will say documents to be produced by such a date,  
12 and following that the rest--and we will suggest to  
13 you shortly dates for a hearing. Not right now  
14 because it's good for all of you to be able to look at  
15 schedules.

16 ARBITRATOR ROWLEY: How many days for a  
17 hearing? Three days? Five days?

18 PRESIDENT ORREGO: Do you have any ideas?

19 MR. APPLETON: Generally, in the past, we  
20 looked at a five-day hearing. We could look at that.  
21 We had five days without the situation of--we often in  
22 NAFTA cases tend to separate liability as a quantum

17:27:18 1 but very quickly.

2 So, Howard, you're all set?

3 MR. APPLETON: Anything else from us right  
4 now?

5 PRESIDENT ORREGO: I think not, unless you  
6 have any other item that you would like to raise.

7 MR. APPLETON: I want to ask if the Tribunal  
8 had any other questions or anything else that would  
9 make things smoother or easier?

10 PRESIDENT ORREGO: No.

11 MR. APPLETON: We appreciate, it's been a  
12 complicated day, and this was the smallest procedural  
13 agenda we have ever had, and it's gone about as long  
14 as I ever had. I can only imagine if we had the usual  
15 ICSID 22- or 26-item agenda, we would have been here  
16 all night.

17 But if you're comfortable--I think we have  
18 anything to add, but I believe Ms. Kinnear does.

19 MS. KINNEAR: The only point is I don't  
20 believe that we have filled in the number for the  
21 Tribunal fee, and I don't know if you would like us to  
22 come back to that, or if that's a matter that has been

17:26:17 1 from merits. This case we would have it altogether,  
2 so it's a possibility of adding a day at most, I  
3 think. My sense is five should be sufficient at this  
4 time. I think that--I don't think it gets better with  
5 having more days generally, but I'm in your hands.

6 PRESIDENT ORREGO: Would Monday to Friday  
7 be--

8 MS. KINNEAR: We would be glad to have that  
9 reserved--we think that's more than ample--and three  
10 days would be appropriate. So, out of caution, that  
11 would be fine.

12 PRESIDENT ORREGO: So, we would suggest to  
13 you dates, and then you react to those whether they  
14 are feasible for all of you.

15 MR. APPLETON: To the extent you can give us  
16 suggestions because we are going to have to block time  
17 for experts, block time with clients. You need to  
18 block time--your time is the most difficult to find,  
19 so I'm sure we could do that. We have a year, but  
20 let's see if we it block it now.

21 PRESIDENT ORREGO: We will get to it  
22 promptly, not right now because we have to discuss it,

17:28:17 1 addressed sufficiently and the Tribunal will simply  
2 issue an order.

3 PRESIDENT ORREGO: If you have any views, you  
4 would be welcome to put it forth, but on that point,  
5 as we did in the morning, we would like to have that  
6 off the record for the time being, until it's  
7 submitted to fill in the dots. Would you like to  
8 discuss it now? I mean, as you wish.

9 MS. KINNEAR: We can stay here, and I don't  
10 know if we necessarily--

11 PRESIDENT ORREGO: Let's go off the record  
12 for a few minutes while Howard prepares the Minutes.  
13 (Discussion off the record.)

14 PRESIDENT ORREGO: Thank you very much. We  
15 are closing out this record for now.

16 (Whereupon, at 6:47 p.m., the hearing was  
17 adjourned.)

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision, and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.



DAVID A. KASDAN

"  
**"Confidential** [1] 156:18  
**0**  
**03** [1] 120:20  
**1**  
**1** [1] 185:18  
**10** [6] 27:18 77:20 120:21,22  
 121:8 143:9  
**10-15** [1] 204:5  
**102** [6] 97:3,10 102:4 106:12  
 107:5 116:11  
**11** [1] 170:15  
**1103** [5] 141:7,8,11,12,13  
**1105** [3] 141:4,14,21  
**1106** [1] 142:2  
**1110** [1] 142:5  
**1115** [2] 91:16 147:3  
**1116** [5] 98:4 100:8,12,16 102:  
 21  
**1116(2)** [6] 97:11,18 103:12  
 112:4 116:17 126:6  
**1117(2)** [1] 103:12  
**1118** [3] 152:10,19 174:5  
**1129** [1] 154:15  
**1130** [6] 73:5 75:3 83:18,19  
 92:20,22  
**1130(a)** [1] 75:4  
**1131** [1] 169:15  
**1133** [1] 49:13  
**1136** [2] 78:16 92:7  
**1137(4)** [3] 159:2,10 169:7  
 12 [2] 63:14,16  
**14** [3] 33:2 54:13 77:18  
**15** [5] 34:9 91:15 144:11 145:  
 2 147:5  
**16** [2] 35:14 77:19  
**17** [2] 35:5,14  
**18** [3] 35:9,14 53:12  
**19** [1] 35:14  
**1998** [6] 102:10 104:16 107:  
 15 126:2,14 128:13  
**1st** [4] 107:7,15,15 202:12  
**2**  
**2** [1] 156:21  
**2:15** [1] 95:4  
**20** [7] 35:18 36:3 59:7 107:12  
 139:8 156:8 218:10  
**2003** [23] 98:17,20 99:18 101:  
 12 109:9 116:15 120:9,14,19  
 121:12 125:12,18 126:5,17,  
 17,18 127:3,13,16,18 200:22  
 201:17,18  
**2004** [1] 137:19  
**2005** [2] 107:7 130:19  
**2006** [6] 12:12,20 102:16 107:  
 12 116:14 152:12  
**2007** [1] 145:18  
**201** [1] 140:14  
**21** [1] 47:21  
**21(4)** [1] 124:15  
**21(b)** [1] 156:9  
**22** [2] 74:19 224:15  
**25** [1] 77:17  
**26** [3] 77:20 125:18 132:10  
**26-item** [1] 224:15

**27** [10] 12:12 109:9 116:14,15  
 120:9,13,19,20 121:12 200:  
 22  
**27th** [1] 12:20  
**3**  
**3** [2] 139:3,5  
**3(e)** [1] 139:6  
**30** [1] 63:17  
**34** [1] 79:5  
**35** [1] 103:4  
**39** [6] 68:18,19 69:2 71:6 143:  
 21 190:17  
**4**  
**4** [2] 70:21 77:18  
**42** [1] 79:2  
**43** [1] 79:5  
**5**  
**5** [1] 80:6  
**5:00** [1] 26:3  
**50** [1] 78:18  
**50-year** [1] 112:19  
**6**  
**6** [3] 74:18 77:17 80:6  
**6:47** [1] 225:16  
**60** [3] 213:8,9 217:9  
**60-day** [1] 217:4  
**7**  
**7** [1] 71:4  
**70-year** [1] 112:19  
**7th** [1] 13:9  
**8**  
**8** [1] 71:11  
**81** [1] 103:3  
**9**  
**9/11** [1] 23:14  
**90** [4] 211:22 212:3 213:15,15  
**A**  
**a.m** [1] 26:3  
**ability** [6] 13:21 25:19 149:17  
 180:8 188:17 209:21  
**able** [52] 15:9 23:11 25:19 26:  
 4 38:5 44:15 48:20 50:14 54:  
 6 104:16 113:4 117:7 121:21  
 133:12 141:17 142:14 146:  
 18 150:17,18 151:8 152:15  
 154:5 173:12 174:7,12 175:6,  
 18 180:9,12 181:5 182:2 184:  
 2,4,5 187:10 193:11 195:14  
 197:7 202:10 205:17 208:6  
 209:8,19,21 211:4,7,18 217:3  
 218:6 221:13,19 222:14  
**absolute** [2] 161:12,20  
**absolutely** [12] 14:11 18:17  
 37:2 48:15 51:9 60:7 100:9  
 110:13 121:9 127:13 172:22  
 181:7  
**absorb** [1] 38:5  
**absurd** [1] 39:8  
**abundance** [1] 141:10  
**abused** [1] 189:12  
**accept** [7] 86:18,22 87:2,6 93:  
 22 118:12 179:12

**acceptable** [1] 60:6  
**accepts** [1] 184:21  
**access** [49] 25:11 67:16,17  
 68:2,14 81:16,19 82:5 83:13  
 91:5 146:5,21 147:14,16 148:  
 5 149:7,18 155:20 156:2,6,9  
 157:20 160:2,8,13,16 162:4,7,  
 16 163:2,5,7,18 164:6 165:13  
 168:3,18 174:20 175:10,13  
 177:3,8,18 179:4,8 180:22  
 184:7 187:18 188:12  
**accord** [1] 64:19  
**accordance** [2] 75:8 159:7  
**accorded** [1] 64:13  
**according** [3] 46:13 54:9 150:  
 19  
**account** [1] 94:22  
**accounts** [1] 45:21  
**achieved** [1] 99:3  
**achieves** [1] 163:2  
**achieving** [1] 162:2  
**acquainted** [1] 7:4  
**acquire** [1] 209:8  
**acquired** [4] 97:20,21 98:2  
 100:8  
**acquiring** [1] 100:13  
**act** [62] 45:17 64:21 67:16,17  
 68:2,14,17,18,19 69:2 77:4  
 80:5 81:16,17,19,21 83:14,14  
 90:18 91:4,5 97:5,8 111:11  
 142:3 143:22 146:5,22 147:  
 14 148:6,20 149:7,9,10 155:  
 20 156:3,7,9 157:12,13,21,22  
 160:2,8,13 161:7,17 162:8  
 163:2,5,8,19 164:7 168:17,18  
 179:5,9 181:21 184:3,7 190:  
 17,22  
**action** [2] 112:12 141:12  
**actionable** [1] 139:22  
**actions** [8] 104:10 111:2,5  
 129:2 130:13 132:2 133:17  
 134:19  
**activity** [1] 133:16  
**acts** [3] 83:15 91:6 140:13  
**actual** [7] 17:14 68:11 86:2  
 99:8 129:2 186:12 194:5  
**actually** [28] 10:15,16 26:4 38:  
 15 44:2 50:21 60:20 88:19,  
 20 89:8 96:9 131:15 132:9  
 138:11 143:14 145:22 147:  
 16 149:13 154:4,9 156:3 171:  
 7 175:4 185:14 193:20 195:  
 12 201:4 208:11  
**add** [12] 10:19 16:13 19:9 45:  
 10 88:10 122:19 123:14 155:  
 18 183:14 207:15 217:6 224:  
 18  
**added** [3] 9:13 147:12 165:9  
**adding** [1] 223:2  
**addition** [8] 10:14 24:17 34:  
 15 139:7 151:20 158:20 167:  
 21 176:16  
**additional** [19] 8:5 19:4 26:  
 13 27:21 60:16,20 75:7,8  
 152:6 160:5 167:9 168:7 185:  
 8 190:6 196:6 208:7 220:4,9,  
 10

**address** [34] 9:17,17 10:12  
 15:9 20:4 24:5 50:3 61:7 62:  
 5,8,22 66:3 67:6,14 72:19 81:  
 14 95:15 99:4,8 121:6 127:4  
 130:9 138:15 144:15,18 152:  
 5 158:10 161:8 163:12 167:9  
 192:18 196:9 197:20 214:9  
**addressed** [7] 37:5 101:17  
 143:15 145:22 156:20 179:  
 16 204:18  
**addresses** [4] 8:16 22:17,17  
 85:19  
**addressing** [3] 83:15 105:5,  
 21  
**adds** [2] 23:17 168:7  
**ADF** [5] 70:20 77:18 87:14,19  
 93:17  
**adjourned** [1] 225:17  
**adjudicating** [1] 110:4  
**adjudication** [1] 113:14  
**adjudicative** [1] 110:2  
**administered** [2] 107:14 132:  
 20  
**administering** [1] 132:18  
**administration** [5] 21:10 36:  
 21 76:6 106:18 107:3  
**administrative** [3] 11:10 36:  
 22 42:6  
**administrator** [1] 45:18  
**admission** [1] 132:8  
**admissions** [2] 31:4 56:19  
**admitted** [1] 110:21  
**admonition** [1] 32:7  
**adopt** [1] 13:17  
**adopted** [2] 39:20 133:21  
**adoption** [1] 103:21  
**ADVANCE** [3] 47:20 60:5  
 162:16  
**advanced** [2] 89:18 103:11  
**advantaged** [1] 206:15  
**adverse** [4] 31:5,21 58:3,8  
**advice** [3] 49:10 168:16 176:  
 7  
**advised** [2] 43:20 216:22  
**Advisory** [1] 130:20  
**affairs** [1] 175:15  
**affect** [4] 74:17 94:16 165:21  
 202:17  
**affidavit** [1] 108:14  
**affiliated** [1] 165:3  
**affiliates** [1] 173:4  
**affirmed** [4] 78:10,14,16 79:5  
**afraid** [3] 122:15 146:14 176:  
 4  
**after** [58] 46:6 50:3 53:17 56:  
 21 78:8 95:2 98:20 101:12  
 102:15 111:3,15 119:17 120:  
 9,13,19,20 125:12,18 126:16,  
 19 127:3,5,8,16 134:22 145:  
 20 148:4 166:6 177:12 197:2  
 200:22 201:17,17 209:9 211:  
 22 212:6,9,12,15,16,17,19  
 213:8,9 214:19,21 215:4,9,10,  
 19 216:3,5,14 217:2 220:15  
 221:22 222:6,10  
**aftermath** [1] 208:9  
**afternoon** [2] 67:13 68:16

<p><b>afterwards</b> <sup>[1]</sup> 214:6  <b>Again</b> <sup>[37]</sup> 9:3 17:4 28:11 30:18 32:2,22 34:15 36:13 63:16 64:12 68:15 74:10 79:2,3,5 82:6 87:15 103:6 107:6 110:19 113:8,8,8 115:21 117:7 129:21 144:2,13,18 160:6 161:19 177:15 181:6 190:13 195:8 209:5 220:18  <b>against</b> <sup>[5]</sup> 63:7 73:13 79:17 103:21 162:17  <b>Agency</b> <sup>[1]</sup> 43:20  <b>agenda</b> <sup>[6]</sup> 20:4 28:12 49:20 205:2 224:13,15  <b>ago</b> <sup>[2]</sup> 87:17 114:3  <b>agree</b> <sup>[37]</sup> 7:21 12:13 18:2 30:16 31:3 37:2 39:22 55:18 57:16,18 58:4 74:15 112:6,7 116:6 134:11 138:4 145:15 146:20 152:2 154:13 167:11,14 168:16 176:6 184:2 185:8 192:11,13 193:2 195:17,18 196:10 212:12 216:17 218:7 219:13  <b>agreeable</b> <sup>[6]</sup> 17:17 41:7 145:6 185:9,9,10  <b>agreed</b> <sup>[22]</sup> 8:8 21:2,4 25:14 27:19 29:15 35:6 36:18 66:4 76:5 81:2 94:4 170:18 173:19 183:11,19 184:5 185:12 186:17,20 197:15 215:3  <b>agreement</b> <sup>[32]</sup> 11:17 15:5 16:11 20:21 24:13 28:5,7,17 30:16 55:12 103:15 145:18 146:8 147:11 153:11 154:15 157:14 165:5,21 169:17 173:18 179:15,17 180:11 184:20,20 189:3 195:6,9 203:4 212:11 215:4  <b>agreements</b> <sup>[1]</sup> 145:16  <b>agrees</b> <sup>[4]</sup> 21:8 46:6,18 167:2  <b>ahead</b> <sup>[3]</sup> 122:9 169:3 205:22  <b>ahs</b> <sup>[1]</sup> 74:12  <b>aim</b> <sup>[1]</sup> 95:3  <b>aircraft</b> <sup>[1]</sup> 176:15  <b>alarms</b> <sup>[1]</sup> 138:8  <b>allegations</b> <sup>[8]</sup> 100:2 125:11,16 128:22 129:9 139:20 140:8 210:21  <b>alleged</b> <sup>[8]</sup> 105:10 106:11 126:16,18,22 127:3,12,18  <b>alleges</b> <sup>[1]</sup> 135:19  <b>alleging</b> <sup>[1]</sup> 141:11  <b>allocation</b> <sup>[1]</sup> 119:4  <b>allow</b> <sup>[6]</sup> 88:11 102:20 130:4 139:11 149:10 204:19  <b>allowance</b> <sup>[2]</sup> 36:18 52:12  <b>allowed</b> <sup>[2]</sup> 59:14 147:2  <b>allowing</b> <sup>[1]</sup> 52:15  <b>allows</b> <sup>[1]</sup> 132:3  <b>Allstream</b> <sup>[1]</sup> 26:2  <b>Allstream?</b> <sup>[1]</sup> 26:2  <b>almost</b> <sup>[2]</sup> 124:14 128:9  <b>along</b> <sup>[5]</sup> 48:21 56:20 123:21 124:6 183:8  <b>already</b> <sup>[21]</sup> 7:19 8:6,7 27:19 29:5 37:21 44:17 60:17 69:</p>	<p>11,17 71:9 143:21 167:22 170:18 186:20 188:7,8 190:5,14 192:3 208:14  <b>alternative</b> <sup>[6]</sup> 55:6 189:3,4,12 190:9 211:9  <b>alternatives</b> <sup>[1]</sup> 183:13  <b>although</b> <sup>[6]</sup> 7:17 9:14 16:7 22:19 29:9 111:2  <b>altogether</b> <sup>[1]</sup> 210:15  <b>always</b> <sup>[7]</sup> 9:7 36:14 42:12 45:21 84:8 175:19 190:4  <b>amenable</b> <sup>[3]</sup> 11:12 20:16 81:5  <b>amend</b> <sup>[1]</sup> 139:10  <b>amended</b> <sup>[1]</sup> 143:14  <b>amendment</b> <sup>[1]</sup> 8:14  <b>amendments</b> <sup>[2]</sup> 139:8,12  <b>American</b> <sup>[2]</sup> 37:20 81:20  <b>among</b> <sup>[2]</sup> 21:21 208:14  <b>amount</b> <sup>[6]</sup> 42:4,17 47:17,18 50:13 76:17 111:10 129:22  <b>amounts</b> <sup>[2]</sup> 127:19 139:5  <b>ample</b> <sup>[1]</sup> 223:9  <b>analysis</b> <sup>[3]</sup> 104:8,19 134:13  <b>anecdotal</b> <sup>[2]</sup> 102:18 103:19  <b>annex</b> <sup>[7]</sup> 23:5 101:18 145:19 156:21 159:2,10 169:7  <b>annexed</b> <sup>[1]</sup> 145:19  <b>annexes</b> <sup>[1]</sup> 109:14  <b>answer</b> <sup>[13]</sup> 66:8,9,15 115:10 121:7 126:7 129:7 138:11,12 146:18 155:11 207:20 212:2  <b>answered</b> <sup>[1]</sup> 123:6  <b>answering</b> <sup>[2]</sup> 119:6 204:17  <b>answers</b> <sup>[7]</sup> 11:14 57:9 65:11 67:2 91:18 121:21 143:17  <b>anticipate</b> <sup>[1]</sup> 23:18  <b>anticompetitive</b> <sup>[1]</sup> 175:7  <b>antitrust</b> <sup>[1]</sup> 175:21  <b>anybody</b> <sup>[1]</sup> 43:13  <b>anybody's</b> <sup>[1]</sup> 194:9  <b>anyone</b> <sup>[5]</sup> 40:22 58:6 67:18 68:7 148:7  <b>anything</b> <sup>[29]</sup> 7:14,22 16:13 19:4,9,18 26:4 55:6 58:3,6 73:7 81:11 88:9 95:11 108:4 112:18 122:19 129:10 172:11 174:19 190:6 205:19 206:4,16,17 213:4 224:3,8,18  <b>anyways</b> <sup>[5]</sup> 33:10,12 118:6 122:9 175:19  <b>anywhere</b> <sup>[3]</sup> 21:11 52:17 184:4  <b>apologies</b> <sup>[1]</sup> 215:8  <b>apologize</b> <sup>[4]</sup> 76:20 92:4 106:19 138:14  <b>apparatus</b> <sup>[1]</sup> 131:6  <b>apparently</b> <sup>[9]</sup> 60:22 98:17,20 99:17 101:12 128:3 135:21 137:18 189:2  <b>Appeal</b> <sup>[2]</sup> 79:4 92:10  <b>appear</b> <sup>[2]</sup> 27:22 70:9  <b>appearing</b> <sup>[1]</sup> 90:5  <b>appears</b> <sup>[3]</sup> 61:2 96:3 124:5  <b>appended</b> <sup>[1]</sup> 63:15  <b>appetite</b> <sup>[1]</sup> 177:21  <b>Appleton</b> <sup>[149]</sup> 9:22 10:2,19</p>	<p>12:13,16 13:15,16 15:7 16:15 17:19 18:3,13 19:14 20:11 22:12 23:3 24:12 25:8 27:3,7,15 28:4,18,19 29:16 30:8,14 31:9 32:4 33:3 34:5 35:15,21 37:2,9 39:22 40:17,20 41:15 44:2 48:14 50:5 52:20 54:2 56:14 58:10,15,19 60:5,9,16,19 61:6 83:14 88:9,11,13,16 90:10 92:13,14 95:18 96:3 109:2,3 120:4 121:5,15 124:13 130:8 135:17 136:5 138:10 143:5,6 145:12 146:12,14,15 148:2,9,17 150:10 152:22 153:6,9,18 155:22 158:7,8,13 159:11 160:3,6 161:9 163:6,12,14,16 164:10 166:2,14 167:9,12 169:4 171:21 172:2,7,7 178:20 179:14,21 180:4 183:18 184:20 185:13 186:21 188:5 189:2 190:8 191:15 192:16,21 193:2 194:22 195:10 196:7 197:6,20 198:2,6 202:7,21 204:21 208:16 209:13 212:15 215:8,14,18,22 218:22 219:14 220:12 222:19 223:15 224:3,7,11  <b>Appleton's</b> <sup>[5]</sup> 135:15 167:19 168:2,14 178:17  <b>applicability</b> <sup>[1]</sup> 184:7  <b>applicable</b> <sup>[9]</sup> 17:22 18:8,10,12 36:7 46:14 75:12 96:7 105:12  <b>applicant</b> <sup>[1]</sup> 148:8  <b>applicants</b> <sup>[1]</sup> 149:17  <b>application</b> <sup>[12]</sup> 93:15 102:4 128:12 129:13 132:5 134:2 160:2,13 216:22 217:14 221:9 222:6  <b>applications</b> <sup>[2]</sup> 77:9 130:21  <b>applied</b> <sup>[19]</sup> 39:2 65:14,16,18,22 66:10,11 73:21 90:7,11,22 103:7,13 104:16 108:18 126:2 134:5 161:7 176:20  <b>applies</b> <sup>[2]</sup> 43:7 46:19  <b>apply</b> <sup>[20]</sup> 36:15 39:12 67:5 72:7 81:21 95:6 129:12 152:8 153:15 159:20 160:22 162:19 166:10 174:17 190:20 209:18 212:21 215:4,19 221:16  <b>applying</b> <sup>[5]</sup> 38:21 107:3 110:9 217:16,17  <b>appoint</b> <sup>[2]</sup> 14:5 48:17  <b>appointed</b> <sup>[2]</sup> 13:22 49:14  <b>appointment</b> <sup>[5]</sup> 13:12,20 14:3 115:22 130:19  <b>appointments</b> <sup>[1]</sup> 13:5  <b>APPORTIONMENT</b> <sup>[2]</sup> 47:20,22  <b>appreciate</b> <sup>[5]</sup> 41:2 51:6 56:16 213:19 224:11  <b>appreciation</b> <sup>[1]</sup> 131:20  <b>approach</b> <sup>[1]</sup> 131:3  <b>approaches</b> <sup>[1]</sup> 194:11  <b>appropriate</b> <sup>[33]</sup> 12:12 16:9 21:12 45:4 49:18 70:7 73:5</p>	<p>74:7 80:20,22 81:6 82:14 83:21 86:19 87:7 88:14 97:16 131:7 132:12 137:14 142:12 154:20 165:2 166:11,15 167:21 172:4 173:19,22 176:21 195:5 222:7 223:10  <b>appropriately</b> <sup>[1]</sup> 65:21  <b>approximately</b> <sup>[2]</sup> 213:13,14  <b>April</b> <sup>[4]</sup> 104:16 107:15 126:2 128:13  <b>arbitral</b> <sup>[4]</sup> 65:9 76:15 139:9,11  <b>arbitrary</b> <sup>[2]</sup> 110:11 140:2  <b>arbitration</b> <sup>[107]</sup> 12:3,5,7,17,18,18 15:12,14,18,19,21 17:9,11,21 18:19,21 21:3,13 29:7,11 41:16 42:2 47:6 48:12 50:12 52:8 54:19 55:7 57:3 60:15 61:12 62:14,22 64:5,6,21 65:3 66:14 67:8 68:9,13 69:15 70:3,7 71:15,19 72:5,13,20 73:4,9,14,17,19 74:14,18,20 75:2,6,19,20 76:4,12 77:4 78:2,21 79:11,22 80:5,21 81:9,22 82:4,8,14,18 83:22 84:6,8,14 85:8,10 86:3,4,6,10,20,22 87:2,8 89:5,16,20 90:18 91:10 93:11 94:6,17,21 119:10,12 147:10 155:2 166:19 172:18 174:6 194:3  <b>arbitrations</b> <sup>[5]</sup> 14:22 39:18,20 93:4 162:17  <b>Arbitrator</b> <sup>[42]</sup> 13:12 24:20 32:14 38:22 39:15 40:11,19 42:5,19 43:21 44:7 45:13 46:17 47:3,10 53:15 55:20 56:9 58:13 65:6 79:12,15 80:7 90:2 106:7 108:7 125:9 126:15 127:6 128:16 136:11 183:8 184:13 185:4 188:22 212:17 214:8 216:13 217:2,12 221:17 222:16  <b>Arbitrators</b> <sup>[5]</sup> 44:8 46:13 48:4,13 55:22  <b>Archives</b> <sup>[1]</sup> 168:17  <b>area</b> <sup>[5]</sup> 61:14,16 96:4 156:5 210:2  <b>areas</b> <sup>[3]</sup> 131:16 145:21 184:19  <b>aren't</b> <sup>[3]</sup> 50:17 140:18 218:6  <b>argue</b> <sup>[2]</sup> 100:18 149:18  <b>argued</b> <sup>[9]</sup> 64:12,18 65:20,21 68:2 69:3 70:11 83:19 127:22  <b>argues</b> <sup>[2]</sup> 67:16 69:6  <b>arguing</b> <sup>[3]</sup> 86:18 94:11 164:10  <b>argument</b> <sup>[15]</sup> 64:11 92:20 99:14 101:7 103:5,11 104:22 105:5 107:21 108:9 120:6 121:4 182:22 184:11 210:10  <b>argumentation</b> <sup>[2]</sup> 171:5 191:3  <b>arguments</b> <sup>[6]</sup> 8:3 19:2 41:15 65:10 201:12 211:15  <b>arise</b> <sup>[8]</sup> 40:16 55:21 91:6 109:20 187:19 188:3 190:14</p>
--	---	---	--

192:22  
**arises** [6] 75:5 187:20 188:6, 10 190:11,13  
**arising** [5] 67:15 68:14,17 125:13 148:2  
**arose** [1] 44:3  
**Article** [33] 49:13 50:12 73:5, 5 75:3 83:18,19 91:15,16 92:7,20,22 97:18 98:4 100:8 124:15 126:6 139:3,5,8 140:14 141:3 142:2,5 147:3,5 152:10,19,22 154:15 156:8 169:14 174:4  
**Articles** [1] 103:12  
**articulated** [1] 217:21  
**artificial** [1] 104:14  
**aside** [3] 50:2 78:20 90:4  
**aspect** [3] 52:5 69:2 170:4  
**aspects** [8] 7:13,18 51:17 95:7 110:9 119:9 120:6 201:3  
**assertion** [2] 69:3,5  
**assertions** [2] 163:16 197:5  
**assess** [2] 175:20 203:15  
**assessment** [1] 218:16  
**assist** [5] 18:3 48:21 86:5 109:11 164:9  
**ASSISTANCE** [5] 48:4,6 49:5,7 121:19  
**associated** [1] 38:17  
**Associates** [3] 148:9,18 172:7  
**assume** [4] 22:18 35:6 81:4 204:3  
**Assuming** [3] 49:15 79:22 218:6  
**assurances** [1] 44:13  
**attach** [1] 108:14  
**attached** [1] 27:12  
**attention** [4] 75:4 94:3 190:12 195:12  
**attenuated** [1] 219:8  
**attributed** [1] 90:5  
**auctions** [1] 109:21  
**authorities** [12] 63:15 70:13, 15,18,21 71:5,7,8,12 93:18 103:2 161:8  
**authority** [3] 84:21 133:6,12  
**availability** [1] 112:20  
**available** [5] 139:22 153:13 177:17 190:5 201:14  
**average** [1] 53:11  
**avoid** [7] 42:12 98:13 100:16 102:21 194:6 209:15,15  
**avoided** [1] 188:2  
**await** [1] 19:22  
**award** [9] 50:11 64:20 66:5, 21 67:2 69:22 79:17 86:7 89:10  
**awarded** [1] 177:13  
**awards** [6] 50:14 62:17 63:11 64:13 65:9 88:5  
**aware** [4] 29:21 99:6 154:12 191:3  
**away** [7] 57:10 117:12 128:14 155:16 193:11,15 213:20

**B**

**B** [4] 36:9,19 142:8 172:4

**B.C** [5] 97:4,8 133:10,18,19  
**baby** [1] 16:3  
**back** [30] 17:5 30:12 32:2 43:10,15 51:5 54:6 56:12,18 57:2 59:15 60:3,4,5 81:12 113:22 120:21 129:21 139:18 142:20 145:17 166:4 177:9 183:5 188:6 191:19 200:12 207:7 211:18 224:22  
**bad** [1] 154:4  
**bailiwick** [1] 16:19  
**balance** [2] 76:2 163:3  
**balancing** [1] 82:11  
**bang** [1] 183:22  
**Bank** [7] 23:15 42:10,12,14 54:14 74:10,13  
**base** [1] 104:11  
**based** [1] 77:4,11 82:11 90:18 93:13,14 97:2,20 136:20 165:11 218:16  
**basic** [1] 164:16  
**basically** [16] 20:12 21:20 23:20 31:17 58:4 75:18 90:17 114:4,5 133:3 155:6 160:9 173:15 174:18 191:9 206:21  
**basis** [15] 7:12 19:8 33:15 90:15 97:14 98:9 115:3 118:15 124:18 134:12,17 136:21 137:11 154:19 170:5  
**bath** [1] 16:3  
**BCI** [1] 185:22  
**BCTS** [1] 133:11  
**bear** [1] 196:19  
**beautiful** [2] 10:6 27:9  
**become** [5] 7:4 126:19 127:8 183:4 206:9  
**becomes** [2] 77:7 189:8  
**bed** [1] 104:17  
**before** [69] 7:11 16:21 17:5 29:11 31:11 32:2 33:17 37:21 42:21 49:21,21 52:16 56:12 62:4,18 66:16,18 69:18 70:10 87:12,22 89:22 90:5, 13 94:8,11 98:17 99:18 101:22 108:6 110:17 111:14,16 114:5 115:14,19 116:12,13, 14,16 120:13 121:11,13 126:17,18 127:7,13,18 132:7 134:16 136:10 138:12,18 145:16 152:18 159:13 172:9 178:10 180:17 181:8 188:21 196:2 200:17 201:4 204:21 207:9 211:5 215:15 219:16  
**began** [2] 98:17,20  
**begin** [4] 46:11 96:16 203:6 207:18  
**beginning** [3] 53:5 60:14 203:5  
**begins** [1] 217:4  
**behalf** [4] 7:3 94:11 172:5 214:3  
**behavior** [2] 113:4 116:9  
**being** [26] 15:2 23:11 40:14 42:12 57:15 67:20 73:9 80:19 81:5 89:21 90:22 93:2,11 97:5 101:17 104:3,16 114:15 115:5 129:5 133:17 162:5

172:16 175:12 176:20 225:6  
**believe** [38] 18:15 21:5 28:4 31:16 65:15 66:11 69:12 72:3 85:13 86:21 96:6,11 106:16,17 108:4 114:9,10,14 116:8 117:5 121:5 124:7,8,9 126:8 143:5 152:11 156:3,9 170:21 196:17 205:5,8 207:11,17 216:13 224:18,20  
**believed** [3] 70:21 84:12 205:5  
**believes** [1] 62:20  
**benefit** [7] 34:2 88:22 139:18 150:21 162:13,13,14  
**best** [10] 7:6 11:15 14:10 25:3 40:13 55:15 92:10 124:2 153:7 195:13  
**better** [10] 32:12 39:6 40:21 102:22 119:4 128:3 141:5 203:15 213:4 223:4  
**between** [5] 69:17 163:3 178:8 187:5 203:16  
**beyond** [2] 68:11 108:21  
**bifurcate** [4] 99:9 105:3,15 210:14  
**bifurcated** [3] 97:9 104:21 105:21  
**Bifurcating** [1] 98:5  
**bifurcation** [14] 32:19 52:2,3, 14 53:20 57:3 98:13 99:3 196:11,12,16 197:14 200:15 201:12  
**big** [2] 125:16 186:8  
**Bilateral** [1] 15:17  
**Bill** [4] 17:2 43:5,5 56:8  
**binding** [3] 169:17 178:3,5  
**bit** [9] 15:17 51:19 52:3 68:5 73:14 81:10 92:3 99:14 219:7  
**biting** [1] 126:19  
**biweekly** [2] 109:21 132:10  
**blank** [1] 218:5  
**block** [6] 37:13 110:8 223:16, 17,18,20  
**blocking** [1] 131:4  
**blockmail** [1] 110:6  
**Bloor** [1] 3:77  
**blunt** [1] 184:9  
**body** [2] 110:2 132:20  
**bogged** [1] 194:7  
**book** [1] 211:6  
**booms** [1] 130:22  
**both** [33] 7:11 18:5 19:3 21:2 24:16 27:6,7 29:6 56:14 61:2, 13 82:17 86:5 94:20 97:5,16 98:16 101:7 128:17 138:22 140:5 142:18 144:12 145:3 160:16 162:12 178:6 182:7, 13 201:13 211:17 214:21 218:6  
**bound** [4] 82:2 154:6 156:4 190:21  
**branch** [1] 188:14  
**brand** [1] 136:9  
**breach** [42] 97:22 99:6 100:3, 9,10,15 101:8 102:2 106:11, 11,15 107:7,12,20,22 108:2,5

109:13 111:20 112:2,11 113:2,16 115:17 118:10 120:12, 13,14,17 123:12,20 124:22 127:12,18 137:15,21 138:7 140:7 141:19,20 201:17,17  
**breached** [2] 135:19 197:8  
**breaches** [37] 98:17,19,20 99:17 101:20,21 102:19 104:4, 13 105:9 107:10 114:18 118:9 120:10 123:13,19 124:3 125:12,17,18 126:16,18 127:3,7 136:6 137:8,17 140:18,19, 20 141:22 142:6,7 164:10 199:5 200:22 201:8  
**breaches"** [1] 98:16  
**break** [5] 9:18 36:5 46:6 50:3 56:22  
**breaker** [1] 151:21  
**breaking** [1] 49:21  
**bridge** [1] 49:12  
**Brief** [6] 57:7 74:21 83:10 145:8 169:4 178:16  
**briefly** [12] 36:4 61:7,16 67:14 83:5,12 95:8 163:12 168:3 169:11 189:22 190:7  
**bring** [1] 193:19  
**bringing** [1] 50:11  
**brings** [1] 128:15  
**British** [3] 63:6 132:17 154:2  
**broad** [1] 140:14  
**brought** [5] 110:17 111:14 114:5 138:20 190:11  
**build** [1] 59:4  
**built** [1] 7:13  
**bulk** [2] 118:4,7  
**burden** [3] 117:9 135:5 196:19  
**burdensome** [2] 117:21 187:22  
**Bureau** [1] 175:16  
**business** [11] 156:13 159:17 163:8 164:3,4 178:22 179:2, 7 180:10 186:2 189:13  
**butress** [1] 71:8

**C**

**C** [1] 7:1  
**cabinet** [3] 69:9 81:17 82:5  
**call** [4] 38:7 75:3 98:16 202:21  
**called** [10] 14:4 15:2 57:15 97:19 101:18 104:3 107:8 110:6 157:21 185:22  
**calls** [5] 40:9 101:11 102:7 123:5 147:9  
**came** [7] 41:3,14 114:9 138:22 198:12 209:5 210:5  
**can't** [28] 96:7,11 122:5 123:13,22 139:20 140:5,6 168:5 174:21 181:13,13 182:4 190:21 193:2 195:17 199:22 200:2,5 204:14 205:17,19 206:2,4 208:22 210:4,8,11  
**Canada** [227] 8:22 9:2 11:21 12:11 13:22 14:2,15 19:19 21:6,8 34:21 35:13 37:20,20 41:7,18 43:20 44:13 45:2,7,8 47:12 59:15,15 60:22 61:18

62:5,10,14,17,19,21 63:8,10,19 64:6,9,12 65:2,2,19,21 66:19,20,21 67:5,6,7,9,16,19,19 68:7,8,11,12,20,22 69:3,6,7,11,14,19,21 70:2,4,11,19,21 71:3,7,21 72:4,6,8,15 73:15,16,19 74:8 76:14,14 77:3,6,10,14,22 78:5,7,12,16,19,22 79:8,9,11,17 80:15 81:4,16,21 82:2 83:6,11 84:19 85:21 86:9,11,12,21 87:9,12,16,20 88:3 89:3,16,21 90:13,20 91:7,10 92:6,20 93:20 94:5,6,7,11,14,16 96:12,21 97:9 98:7 99:11 103:2 105:2,22 106:21 107:11 109:6 110:15 111:2,3,10 114:14 115:12 118:2,15,19 123:6 125:6 128:3,11,15 133:17 135:13 136:7 137:21 138:21,21 141:4 142:10,13 143:13 145:17 146:3,10 147:15 148:5,7,8,10,20,22 149:3,8,10,21 150:16 151:7,13,19 153:21 154:10 155:14,15 156:5,10 157:10,13,20 160:15 162:12,17 164:21 165:7,9,10,14 166:11 167:2 168:14 170:11,22 173:10,15,19 174:12 175:8 176:12 177:6 181:8,11,18 182:2 188:14 190:16,17 196:16 203:4 204:10 210:3 <b>Canada's</b> [63] 9:15 62:15,18 63:4,21,22 64:3,15 65:3 66:16,17 68:4,17,19 70:13 71:4,18 72:6,9 74:19 80:12 85:20 87:11,22 100:5,17 104:20 109:8,18 110:16 111:7 113:21 114:4,13 115:19 117:12 119:5,14,15 122:13 126:20 133:14 146:5,21 147:13 151:12,14,15 152:4 154:22 155:5,19 156:2 160:11 162:7,15 174:22 177:7 178:8 179:4,8 184:7 192:12 <b>Canadian</b> [29] 43:2,4,8,13 44:7,8 46:19 47:2 59:18 64:16 65:5,16 66:12,13,13 67:16 68:3,5 69:18 73:18 77:8 78:6 87:12 90:7 146:9 150:2,3,4,5 <b>cancel</b> [1] 37:7 <b>canceled</b> [1] 40:5 <b>cancellation</b> [9] 37:4,16 38:7,9,21 39:17,21 40:9,11 <b>Canfor</b> [7] 74:11,15,18 77:17 87:14,19 93:17 <b>cannot</b> [20] 34:18 58:12 62:14 66:14 67:7 69:3,10,14 99:22 102:8,8 113:18 115:2 160:15 168:15,16,19 210:20 212:13 222:5 <b>canvass</b> [1] 50:6 <b>canvassed</b> [3] 75:15 111:18 118:7 <b>cap</b> [1] 36:17 <b>capital</b> [9] 9:7 74:3 83:20 84:8,13,16 85:2,4 167:3	<b>care</b> [2] 141:6 182:10 <b>careful</b> [2] 45:3 126:10 <b>carefully</b> [9] 45:5 101:16 112:3 114:7,8 115:11 116:20 125:22 156:8 <b>case</b> [133] 8:17 13:15 17:15 18:14,14 25:2 28:2 31:22 37:19,21,21,22 39:5 40:3 42:7 43:7 44:3,3,6,6,8 45:6,16,17 47:4,12 48:8,11 56:7,21 63:20 64:10 65:20 68:4 69:20 70:14 73:12 74:11,18 75:7,15 77:12,12,17,18,19,22 78:16,17,19 79:4 80:18 82:11 88:14,20 92:5 93:7,14,14 94:2 97:16 98:6 99:2 100:4,19,21,22 101:2 103:15,17 105:12 111:6,6,6 125:22 127:21 128:11 135:6,14 136:7,16 138:19,21,22 146:12,17,19 147:8,11,22 148:2,16 150:7,7,10 152:20 153:2,18 161:6,6,10,13 163:13,16,22 164:8 168:5 171:2 172:3,6,8,19 175:2,4 176:2,11 177:4,5,8,13 181:4 187:19 189:11 192:5 193:15 196:19 197:6,8,10 199:8 203:11 204:16 205:11 <b>cases</b> [32] 7:5 16:16 24:2 37:10 39:14 42:4 43:2 73:4,6,18 75:2 77:16 87:13,18,19 88:6 90:12 92:7,17 93:21,22 94:10 113:16 138:17 160:20 161:3 176:13,15 186:18 189:10 205:14 222:22 <b>catch</b> [1] 190:2 <b>categories</b> [1] 101:10 <b>caught</b> [1] 198:20 <b>cause</b> [3] 109:20 175:21 219:10 <b>caused</b> [4] 38:11 120:19 131:9,10 <b>causes</b> [1] 131:8 <b>caution</b> [2] 141:11 223:10 <b>cent</b> [1] 121:13 <b>certain</b> [13] 12:13 16:17 22:6 24:22 42:11 59:2 136:5 156:11 163:4,7 164:12 195:6 217:9 <b>certainly</b> [27] 7:9 11:16 16:20 19:6,21 43:18 47:8 49:18 50:18 51:4 55:20 59:18 60:11 61:4 73:21 94:15 98:14 134:19 138:8 150:19 164:9 166:18 172:20,21 177:14 218:21 219:8 <b>certificate</b> [1] 190:21 <b>certifies</b> [1] 68:22 <b>cetera</b> [7] 45:11,11 46:14,14 203:8,8 216:9 <b>challenge</b> [5] 69:5,21 79:17 97:7 133:18 <b>challenged</b> [1] 69:3 <b>challenges</b> [1] 15:3 <b>Chamber</b> [2] 41:21 50:22 <b>chance</b> [7] 59:11 138:14 144:15 164:17 167:13 178:21	196:9 <b>change</b> [6] 10:7,20 52:2 169:6,21 199:9 <b>changed</b> [2] 127:6,7 <b>Chapter</b> [28] 62:17 63:7,10,18 64:12,20 68:9 69:4 72:8 73:4 76:19,22 77:9 79:10 84:4,5,6,10,11 97:11 102:11 123:13 148:10,18 162:22 170:15 176:17,20 <b>characterization</b> [2] 59:18 122:14 <b>charge</b> [2] 43:6 44:5 <b>chart</b> [3] 75:17,22 82:10 <b>Chasen</b> [1] 44:7 <b>check</b> [1] 54:15 <b>choice</b> [1] 115:4 <b>choose</b> [4] 63:22 64:5 148:21 149:8 <b>choosing</b> [1] 73:3 <b>chose</b> [1] 84:9 <b>chosen</b> [2] 79:18 80:10 <b>chunks</b> [1] 92:4 <b>circulate</b> [3] 12:8 46:6 161:13 <b>circulated</b> [4] 46:16 59:8 158:18 185:19 <b>circumscribed</b> [1] 108:8 <b>circumstance</b> [5] 38:19 43:16 82:12 89:19 111:19 <b>circumstances</b> [9] 21:12 22:6 39:5 43:6 75:10,20 81:7 82:11 93:13 <b>cite</b> [2] 100:21 101:2 <b>cited</b> [4] 77:13 101:5 106:16 161:9 <b>cites</b> [1] 100:4 <b>cities</b> [5] 66:13 70:5 85:4 87:6 147:6 <b>citing</b> [2] 107:9,18 <b>citizen</b> [2] 68:7 148:7 <b>city</b> [18] 62:13,21 65:2 67:7 69:14 70:2 72:4 73:16 74:3 83:20 84:8,13 85:2 86:9,10,18,21 93:8 <b>civilian</b> [1] 176:15 <b>Claim</b> [63] 12:17,19 29:7 31:17 75:21 97:3 99:14 102:16 104:3,5,11,18 105:19 106:15,20,21 108:3 109:7,7,10,14,16,16,17 110:14,15 111:14 116:14 117:15 118:21 120:8,17 121:11 123:6,7,11 124:2,5,14 125:17,19,22 126:10 128:8 130:11,14,18 132:13,14,15 136:19 137:9 139:4,10 140:8 148:12 165:16,18 173:5 198:8 208:2 211:1,14 <b>claimable</b> [1] 120:14 <b>Claimant</b> [19] 29:7 45:22 46:3 60:15 61:5 71:9 102:7,14,20 104:11 106:5,15,16 137:22 145:11 150:11 161:19 162:14 182:20 <b>Claimant's</b> [2] 12:6 160:14 <b>Claimants</b> [6] 103:10,17 144:14 162:15 164:14 172:14	<b>claimed</b> [4] 101:21 107:20 121:13 126:9 <b>claiming</b> [4] 120:18,22 121:2,10 <b>claims</b> [10] 103:20 110:17 120:10 121:17 124:22 126:21 135:18,22 136:5 137:17 <b>clarification</b> [4] 53:16,17 57:13 214:14 <b>clarify</b> [6] 26:9 37:16 38:12 52:20 58:10 153:10 <b>clarifying</b> [1] 120:5 <b>clarity</b> [1] 157:14 <b>class</b> [1] 69:7 <b>classified</b> [1] 69:8 <b>clause</b> [24] 14:22 16:15,20 28:16 32:22 33:21 34:15,21 37:10 38:13 39:16,19,20 41:22 42:2,19 45:10 46:7 48:13,14 49:18 165:17 184:21,22 <b>clauses</b> [4] 20:6 39:17,22 183:15 <b>clear</b> [23] 10:15 29:20 58:16 76:2 97:12,19 98:2 100:6,16 120:7 121:3,9 127:9,21 129:11 138:19 161:15 162:10 165:4 181:8,9 194:5 203:13 <b>clearly</b> [14] 32:4,10 73:8 78:14 99:18 102:4 122:22 123:17 134:19 135:13 136:20 139:15 146:19 160:10 <b>clerk</b> [2] 68:21 69:6 <b>client</b> [2] 50:18 175:18 <b>client's</b> [1] 125:10 <b>clients</b> [2] 175:19 223:17 <b>close</b> [2] 52:17 196:2 <b>closed-circuit</b> [1] 180:20 <b>closing</b> [1] 125:15 <b>clue</b> [1] 127:13 <b>Code</b> [2] 77:4 79:19 <b>colleagues</b> [1] 39:13 <b>collect</b> [2] 102:17 220:7 <b>Columbia</b> [3] 63:6 132:17 154:2 <b>column</b> [5] 86:13,15 217:19,21 218:4 <b>come</b> [32] 7:7 32:19 43:10 46:21 52:11 54:18 55:15 78:21 100:22 113:17,22 121:12 131:11 132:6 151:22 157:7 166:4 184:9 188:13 193:17 195:9 196:4 200:16 201:7,13,18 202:4 207:7 213:2 216:8,20 224:22 <b>comes</b> [7] 15:11 44:22 59:19 86:7 135:16 156:22 174:4 <b>comfortable</b> [6] 16:5 22:14 34:6,19 201:19 224:17 <b>coming</b> [7] 52:16 66:21 67:2 88:5 136:9 142:20 213:6 <b>commenced</b> [1] 12:5 <b>commencement</b> [1] 12:3 <b>comment</b> [7] 14:15 17:2 59:16 92:18 202:6 208:15 215:7 <b>commented</b> [1] 63:19 <b>comments</b> [15] 8:5 9:21 22:11 60:20 63:4 64:8 77:12 83:
---	---	---	--

<p>17 158:19 160:3 166:5 171:17 187:13,14,15  <b>Commerce</b> [1] 41:21  <b>Commercial</b> [7] 77:4 79:19 80:5 156:12 157:2,8 194:2  <b>Commission</b> [8] 113:15 159:11,14 167:7 169:10,16,19 170:3  <b>committee</b> [3] 129:13 130:20 137:20  <b>common</b> [2] 48:14 176:11  <b>commonly</b> [1] 119:10  <b>communicated</b> [1] 23:10  <b>communicating</b> [1] 25:4  <b>communication</b> [1] 11:18  <b>communications</b> [3] 21:21 23:9 26:17  <b>communications"</b> [1] 26:16  <b>companies</b> [2] 131:4 165:3  <b>company</b> [2] 131:21 219:20  <b>comparative</b> [2] 105:8 182:16  <b>comparators</b> [1] 105:6  <b>compared</b> [1] 86:15  <b>comparison</b> [1] 189:7  <b>compel</b> [1] 190:20  <b>competitor</b> [1] 133:11  <b>competitors</b> [1] 110:7  <b>compilation</b> [1] 92:17  <b>compile</b> [1] 206:6  <b>complain</b> [2] 149:15 150:5  <b>complained</b> [2] 138:21,22  <b>complaint</b> [1] 111:13  <b>complete</b> [3] 36:20 137:14,16  <b>completed</b> [1] 112:12  <b>completely</b> [3] 16:16 129:3 138:4  <b>completeness</b> [3] 7:15 12:4 77:15  <b>completion</b> [1] 119:6  <b>complexity</b> [1] 168:8  <b>complicated</b> [5] 23:15 47:7 171:10 186:11 224:12  <b>comply</b> [5] 142:2 151:10,18 160:16 221:4  <b>comprehended</b> [1] 93:10  <b>conceivable</b> [1] 55:21  <b>conceivably</b> [1] 188:12  <b>concentrate</b> [1] 61:16  <b>concept</b> [2] 113:20 138:4  <b>concepts</b> [1] 112:8  <b>concern</b> [16] 73:20 94:4 123:16 140:21 141:3 164:20 165:8,9 173:8 175:7 184:8 189:9 204:6 214:12 218:20 219:10  <b>concerned</b> [9] 98:11 122:21 123:10 124:4 149:4 173:11 175:9 197:5 204:15  <b>concerning</b> [5] 31:21 42:14 57:13 200:19 216:6  <b>concerns</b> [6] 13:19 44:21 72:10 91:2 164:14 172:11  <b>conclude</b> [4] 71:17 74:6 130:3,4  <b>conclusion</b> [7] 113:17 114:9 142:21 145:5 155:2 200:16,</p>	<p>17  <b>concur</b> [2] 20:11 35:17  <b>conduct</b> [7] 20:19 40:2,3 101:10,22 142:5 166:13  <b>conducts</b> [1] 140:10  <b>conferring</b> [7] 17:3 144:21 183:7 189:21 200:13 207:6 213:21  <b>confidence</b> [3] 81:17 82:5 157:16  <b>confidential</b> [33] 67:21 68:10 144:12 148:13 150:13 151:7,12 154:11 156:13,14 157:4,16 159:17 163:4,8 164:3,4 165:11,17 170:16 172:16,19 173:20 174:9 176:22 179:2,7 180:9 181:14 185:22 186:6 187:6 189:14  <b>CONFIDENTIALITY</b> [53] 28:9,11 57:3 82:6 95:16,22 143:3,11 144:16 145:10,15 146:11,21 147:11 148:14 149:6,12 151:11 152:16 154:2 155:7 158:22 159:20 160:17,19 161:11,18,20 164:13,15 165:5,20,22 166:4,8,9,12,20 167:16,17,20 168:2,20 172:17,20 173:16 174:3 177:2 180:11 182:16 185:17 186:19 195:5  <b>confirm</b> [5] 21:7 27:3 68:6 179:14,18  <b>confirmed</b> [3] 18:5 97:7 186:22  <b>conflict</b> [1] 178:8  <b>conflicts</b> [2] 110:3 130:22  <b>conform</b> [1] 149:2  <b>confuse</b> [2] 74:13 166:19  <b>confused</b> [3] 30:9 78:5 216:2  <b>confusing</b> [1] 183:4  <b>connected</b> [2] 199:15 201:9  <b>consensually</b> [1] 76:5  <b>consent</b> [2] 168:19 171:12  <b>consented</b> [1] 21:9  <b>consequence</b> [1] 41:14  <b>consequences</b> [4] 86:2,3,8 147:20  <b>consider</b> [12] 114:16 117:5,6,7,17 142:19 145:4 200:15 211:8 212:10 219:6 222:3  <b>considerable</b> [1] 76:17  <b>consideration</b> [2] 82:21 196:3  <b>considerations</b> [1] 119:13  <b>considered</b> [9] 13:14 17:6 29:12 48:11 114:8 129:13 146:10 165:15 207:17  <b>considers</b> [1] 139:11  <b>consistent</b> [2] 158:22 162:20  <b>consistently</b> [2] 90:13 156:14  <b>constitution</b> [2] 13:3,4  <b>consultation</b> [4] 152:9,18,19,20  <b>consultations</b> [7] 152:9,13,14 166:10,13,17 174:5  <b>consulting</b> [1] 213:17  <b>contact</b> [1] 54:14</p>	<p><b>contain</b> [3] 8:3 97:13 164:2  <b>contains</b> [2] 68:22 185:21  <b>contemplate</b> [1] 161:15  <b>contemplated</b> [2] 73:9 83:20  <b>content</b> [1] 145:15  <b>contention</b> [2] 118:2,19  <b>contentious</b> [1] 20:14  <b>contested</b> [1] 103:13  <b>context</b> [15] 19:21 30:15 41:15 73:22 96:8 105:14 161:21 162:20 166:16 185:12 201:16 209:7 217:11 218:22 219:8  <b>continuation</b> [1] 100:9  <b>continue</b> [5] 100:10 113:4,8 116:17 123:14  <b>continued</b> [2] 98:18 177:21  <b>continues</b> [3] 100:12 107:16 120:13  <b>continuing</b> [10] 38:2 98:16 99:5 100:3,15 104:4 105:19 107:22 113:2 120:17  <b>continuity</b> [2] 115:13 118:10  <b>continuous</b> [8] 111:20 112:2 113:16 114:19,20 115:17 118:10 150:9  <b>contract</b> [1] 112:11  <b>contrary</b> [6] 69:22 100:5 162:5,9 163:15 168:17  <b>contrast</b> [1] 207:17  <b>contrasted</b> [2] 64:16 70:4  <b>contributions</b> [1] 46:3  <b>control</b> [4] 109:8 175:16 181:13 209:18  <b>controls</b> [1] 163:17  <b>controversial</b> [1] 108:16  <b>convened</b> [1] 146:7  <b>convenience's</b> [1] 75:16  <b>convenient</b> [3] 23:21 87:5 91:10  <b>Convention</b> [1] 75:6  <b>conversation</b> [1] 205:8  <b>conveyance</b> [1] 11:13  <b>convincement</b> [1] 211:13  <b>cooperation</b> [2] 53:22 213:19  <b>Coordinator</b> [1] 149:19  <b>copied</b> [3] 26:18 27:13 46:15  <b>COPIES</b> [3] 21:18 22:18 24:4  <b>copy</b> [1] 11:19 23:21 24:10 27:4,4,8 88:19,22 155:7 156:18 170:2  <b>cornerstone</b> [1] 119:12  <b>corporation</b> [1] 56:16  <b>correct</b> [13] 9:12 12:21 41:6 58:13,14,17 92:16 100:18 113:19 161:12 172:4 205:9 215:13  <b>corrections</b> [2] 8:18 35:11  <b>correctly</b> [2] 106:13 214:14  <b>correctness</b> [2] 66:7 89:6  <b>correspond</b> [1] 152:2  <b>correspondence</b> [1] 164:2  <b>cost</b> [3] 98:5,10 118:11  <b>cost-efficient</b> [1] 125:5  <b>costly</b> [1] 124:21  <b>costs</b> [6] 38:17 42:3 44:22 47:</p>	<p>20,22 118:15  <b>couldn't</b> [1] 113:7  <b>Council</b> [12] 68:21 69:7 143:6 146:13,15 148:2 150:11 151:2 153:18 158:8 163:13 172:3  <b>counsel</b> [23] 9:12,15 10:20,20 16:5,11 18:5 26:20 36:5 54:14 88:16 155:17 168:6 172:12 212:9,20 214:22 215:14 216:7,19 220:14 221:7 222:2  <b>counsel's</b> [1] 220:11  <b>count</b> [2] 7:9 217:9  <b>Counter-Memorial</b> [10] 197:3 203:7,12 207:20 212:3,7 214:20 215:9 216:4,5  <b>counterapplications</b> [1] 218:7  <b>country</b> [7] 41:14 74:4 84:17 85:3,5 86:5 90:20  <b>couple</b> [5] 20:14 36:6 130:10 158:19 167:19  <b>couriers</b> [1] 24:17  <b>course</b> [43] 8:13 10:4 13:7 15:20 17:11,13 18:22 19:18 23:22 24:15 25:20 32:17 39:3 42:6 50:2 52:2,17,18 53:2 58:11 71:7 75:11 93:18 116:5 118:11 120:10 136:19 139:9 142:19 147:4 151:8,18 170:14 185:10 194:16 201:14,19 208:10 211:19 212:4 214:11 215:16 219:18  <b>court</b> [46] 62:4 63:5,5,6 64:18 65:15,19,22 66:2 68:3,6 69:18 70:10 78:19,21,22 79:3,4,16,20,20,21,22 80:2,2 88:19 89:8,22 90:8 92:9,9,10 94:11 124:14,19,20 146:10 149:5,6,16 150:19 151:3 172:9 177:5,10,12  <b>courts</b> [28] 62:18 64:16,17,21 65:5,8,16 66:10,12,13,16,18 67:6 72:5,8 86:5 87:12,22 90:6,7,16 91:9 94:8 136:14 150:2,3 163:11 179:10  <b>cover</b> [5] 42:18 49:20 59:8 144:12 153:12  <b>covered</b> [2] 40:12 177:19  <b>covering</b> [3] 7:15 49:17 168:10  <b>CRA</b> [1] 43:20  <b>crazy</b> [1] 219:19  <b>create</b> [2] 112:15,16  <b>created</b> [1] 110:3  <b>creates</b> [2] 112:5,9  <b>credibly</b> [8] 99:22 126:16,18,22 127:3,7,12,19  <b>criteria</b> [2] 80:19 93:15  <b>cross</b> [1] 49:12  <b>cross-examination</b> [1] 115:14  <b>current</b> [2] 14:22 39:17  <b>customary</b> [1] 105:11  <b>customs</b> [2] 25:6 111:11  <b>cut</b> [1] 142:14  <b>cut-off</b> [1] 116:15</p>
---	---	--	--



cuts [1] 56:14	98:9 101:4 177:6 214:2	Despite [1] 64:8	disclosure [6] 13:6 38:2 159:15 160:11 162:11 216:15
<b>D</b>	<b>deciding</b> [2] 39:9 149:20	<b>destroyed</b> [1] 176:11	15 160:11 162:11 216:15
<b>D</b> [2] 7:1 170:10	<b>decision</b> [30] 52:17 63:7 66:6	<b>destruction</b> [4] 168:12 176:4,9 178:4	<b>disclosures</b> [2] 14:10 160:22
<b>D.C.</b> [15] 10:7 21:4 70:6,8,10,12,16 71:14,15 72:11,12 73:13 74:2 84:16 86:14	69:10 70:20 71:3,5,11,13 80:22 81:2 84:19,19,22 88:5,19 105:17 129:14 137:3 143:6 150:3 194:14 211:2,2 213:2,8 215:6 217:4,7 222:10	<b>detail</b> [4] 83:15 85:16 105:22 144:18	<b>discover</b> [2] 123:8 128:8
<b>DAM</b> [12] 24:20 32:14 53:15	<b>DECISIONS</b> [8] 35:3,4 71:14	<b>detailed</b> [1] 136:16	<b>discretion</b> [10] 75:9 97:15
54:2 55:20 128:16 130:8 136:11 185:4 213:20 214:6,8	72:8 87:15,16 147:20 218:16	<b>determination</b> [1] 21:3 53:20 74:17 110:20 114:11,20 115:2 116:19,21 141:14 181:22	132:3 133:16 148:21 149:8 150:5,8 151:7 157:10
<b>damage</b> [7] 48:10 97:22 129:20 130:2,5 131:9,16	<b>declarations</b> [1] 13:6	<b>determinations</b> [2] 135:10 182:6	<b>discretionary</b> [2] 40:18 132:4
<b>damages</b> [18] 120:18,22 121:10,11 125:13,19 126:17,18 127:7,10,14,16 129:11 198:9 199:6 201:9 208:19 211:13	<b>deem</b> [2] 178:21 179:7	<b>determine</b> [1] 118:14	<b>discriminatory</b> [2] 110:11 140:3
<b>danger</b> [2] 69:19 130:15	<b>deemed</b> [1] 12:5	<b>determined</b> [5] 45:16 75:7 93:13 116:20 118:17	<b>discuss</b> [15] 15:8 28:12 34:11 36:10 42:21 51:7 57:2 143:7 189:22 197:12 211:18 214:22 216:8 223:22 225:8
<b>dash</b> [1] 30:13	<b>deems</b> [1] 157:6	<b>determining</b> [1] 81:8	<b>discussed</b> [2] 207:9 213:5
<b>data</b> [3] 210:2,4,8	<b>deep</b> [1] 171:14	<b>developed</b> [1] 41:21	<b>discussing</b> [4] 165:12 195:4 200:11 209:10
<b>date</b> [15] 12:7,13,14 35:20 59:2 98:18 100:13 125:13 126:4 212:2 213:11 217:9,9 221:7 222:11	<b>deeper</b> [1] 115:4	<b>device</b> [1] 126:5	<b>discussion</b> [20] 13:11 17:13 18:16 20:15 21:14 45:12,14 46:20 47:15 52:14 54:22 60:12 135:17 142:18 166:16 174:15 180:6 196:5 216:11 225:13
<b>dates</b> [8] 22:4 29:9 35:19 122:6,6 208:12 222:13 223:13	<b>deeply</b> [1] 63:21	<b>devoting</b> [1] 7:6	<b>discussions</b> [3] 153:11 166:17 174:8
<b>day</b> [19] 10:6 33:8 36:17 75:22 79:7 80:12 104:17 107:4,4 118:3 121:2 124:14,19,20 178:2 182:4 199:17 223:2 224:12	<b>default</b> [1] 74:22	<b>dicta</b> [1] 66:4	<b>disburse</b> [1] 29:17
<b>day-to-day</b> [1] 107:18	<b>Defense</b> [6] 29:8 31:18 75:21 97:2 123:6 139:10	<b>did</b> [24] 13:7 19:16 39:12 45:20 61:20,22 62:5,8 66:3 68:6 71:22 78:10 93:5,22 103:18 148:17 150:3,18 161:15 163:19 172:6 211:8,10 225:5	<b>dispositive</b> [1] 115:10
<b>days</b> [16] 47:13 118:4 142:20 195:11 204:5 211:22 212:3 213:8,9 217:10 222:16,17,17,21 223:5,10	<b>defer</b> [3] 83:16 119:5 187:20	<b>didn't</b> [16] 33:17 50:6 58:8 88:17 121:3 138:14 148:18 164:2 173:9,9 175:8 177:4,15,20,21 209:18	<b>dispute</b> [4] 102:5 137:6 170:14 174:7
<b>days'</b> [1] 19:8	<b>deference</b> [1] 63:12 64:14,19 78:8,11,15,15 79:2,6,8 80:14	<b>differed</b> [1] 61:15	<b>disputing</b> [7] 9:4,6 14:5 73:10 164:22 167:6 173:3
<b>deadline</b> [2] 54:10 195:11	<b>deferral</b> [1] 119:8	<b>difference</b> [4] 45:7 146:3 147:12 173:6	<b>disqualify</b> [1] 80:15
<b>deal</b> [30] 15:11 20:7 42:20 44:13 59:11 95:8 105:9 112:8 115:12 134:15 149:3 150:17 151:21 166:15,20 168:3 171:6,17 173:12,22 179:6 180:12 183:16 187:21 192:21 193:11 198:16 202:10 207:2 210:18	<b>defined</b> [1] 140:13	<b>differences</b> [5] 7:8 23:7 194:20 203:16 212:22	<b>distinguished</b> [2] 149:13 187:5
<b>dealing</b> [5] 11:2 111:21 125:3 166:12 211:5	<b>definitely</b> [4] 51:17 52:13 55:17,18	<b>different</b> [2] 8:5 19:4 69:21 95:12 107:17 109:19,21 110:8,9 123:4 129:3,18 131:11 134:9,9 137:7,20 145:16 175:4 194:11 219:21	<b>distortion</b> [2] 129:9,18
<b>deals</b> [5] 130:18 134:14 175:16 181:15	<b>definition</b> [3] 140:15 204:7,16	<b>difficult</b> [15] 51:22 53:7 89:18 121:18 151:21 155:10 158:4 168:15 189:8,13,15 199:10 219:20 220:8 223:18	<b>distributed</b> [1] 85:14
<b>dealt</b> [6] 97:14 99:12 105:7 180:16 183:17 190:18	<b>delay</b> [4] 23:18,19 26:14 139:12	<b>difficulties</b> [1] 47:10	<b>distribution</b> [1] 22:2
<b>Dean</b> [17] 10:5,13 12:8 22:9 24:9 26:10,15 27:3,6,11 30:2,7 42:9 54:16 133:4,5 216:3	<b>delayed</b> [1] 118:22	<b>difficulty</b> [6] 25:9 44:11 89:15 139:19 157:12 212:10	<b>District</b> [1] 136:14
<b>debatable</b> [1] 73:2	<b>delaying</b> [1] 117:10	<b>direct</b> [3] 46:20 133:11 217:8	<b>document</b> [5] 69:7 92:14 115:12 116:4 121:20 124:7 142:13 143:18 144:12,16 166:3,5 170:21 174:13 181:19 192:4,15 193:10 194:8,21 196:8,16,17,21 197:7 198:13,17 202:9,12 203:5,6,19 204:12 205:18 206:10 208:5,8,18 209:11 212:4 214:13,17 216:7,8 217:20,22 218:2,10,15,17 222:7
<b>debate</b> [8] 54:22 74:10 81:3 144:3 174:16 183:3 193:19 203:14	<b>delays</b> [2] 131:10,11	<b>directed</b> [2] 103:7,21	<b>document-production</b> [1] 216:4
<b>December</b> [26] 12:12,19 98:17,20 99:18 101:12 102:16 107:12,15 109:9 116:14,15 120:9,13,19,20 121:12 125:12,18 126:17 127:3,13,18 152:12 200:22 202:12	<b>delete</b> [1] 57:18	<b>directing</b> [1] 106:10	<b>documentation</b> [1] 122:5
<b>decide</b> [11] 19:7 108:8 149:8 181:17,21 184:22 193:8,12 217:3 218:10 222:8	<b>deleted</b> [2] 30:3,4	<b>direction</b> [2] 19:22 195:21	<b>DOCUMENTS</b> [34] 21:18,20 22:2 68:8 69:8 123:15 148:11,16,17 149:13,22 151:5 162:16 170:14 176:9,10 179:6 181:12,14 191:11 193:14 197:10 198:10 199:12,13 202:22 208:2 211:16 217:8,14 218:8,12 220:7 222:11
<b>decided</b> [7] 18:22 29:5 38:4	<b>delighted</b> [5] 22:14 51:21 172:8 212:14 214:5	<b>directly</b> [8] 22:21 24:18 42:5 87:10 88:13 96:7 146:14 156:22	<b>doesn't</b> [32] 10:21 23:22 31:4 36:14 53:22 58:6,11 73:7 100:10,21 101:2 107:7 110:19 112:7 116:17 126:12 149:2 151:13 152:8 153:15 165:21 166:11 170:8 172:10 178:



<p>7 190:20 199:11 206:12,16 209:11 218:14 221:15 <b>doing</b> [6] 9:9 38:16 85:17 128: 4 135:3 174:15 <b>domestic</b> [10] 128:5 129:15 137:4 147:13 151:13 160:11, 22 163:11 165:11 178:8 <b>done</b> [29] 10:21 14:18 15:3,17 21:17 26:2 42:5,6 48:2 99:16 107:2,4,6,16 115:2 130:12 131:6,22 132:8 133:17 140: 17 141:18 142:7 186:17 195: 16 198:17 204:4 206:19 219: 16 <b>doors</b> [1] 206:21 <b>dots</b> [1] 225:7 <b>double</b> [1] 73:15 <b>down</b> [8] 9:17 25:21 26:3 121: 22 142:15 188:16 194:7 202: 8 <b>draft</b> [25] 7:10 19:22 42:22 59: 7 143:12,16,19 145:4 152:4 158:17 159:4,5,6 164:13 167: 19 168:2,14 169:6 173:2 183: 19 186:19 191:14 192:15,20 194:20 <b>drafted</b> [4] 33:22 34:22 96:9 109:14 <b>drafters</b> [2] 73:9 93:10 <b>drafts</b> [1] 146:2 <b>draw</b> [1] 182:15 <b>drawn</b> [1] 94:3 <b>drop</b> [1] 57:16 <b>uplicative</b> [1] 117:3 <b>duty</b> [1] 160:19</p>	<p>207:11 <b>efficient</b> [11] 22:13,22 109:5 122:11 135:2 164:19 190:9 198:16 203:11 210:13 220: 20 <b>effort</b> [6] 91:14 111:11 151:4 182:18 185:8 195:8 <b>efforts</b> [2] 7:7 55:15 <b>eight</b> [3] 36:17 71:13 213:16 <b>eight-and-a-half</b> [1] 183:20 <b>either</b> [10] 34:16 42:4 75:6 82: 13 93:11 128:16 131:5 139:9 194:15 204:11 <b>electronic</b> [2] 23:22 24:3 <b>element</b> [3] 40:18 186:6 217: 7 <b>elements</b> [5] 60:16 122:15 142:22 192:7 211:14 <b>Eleven</b> [21] 62:17 63:7,10,18 64:12,20 68:9 69:4 72:8 73:4 76:20,22 77:9 79:10 84:10, 11 102:11 123:13 148:10,18 162:22 <b>eliminate</b> [1] 98:7 <b>Eloïse</b> [1] 27:5 <b>elongated</b> [1] 218:21 <b>elongating</b> [1] 219:6 <b>else</b> [15] 15:4 55:6 88:9 112: 18 133:7 135:16 136:4 137: 19 142:11 143:20 174:19 200:5 221:2 224:3,8 <b>elsewhere</b> [2] 21:11 41:19 <b>embodied</b> [1] 217:10 <b>emerges</b> [1] 136:16 <b>emphasis</b> [1] 136:19 <b>enable</b> [2] 105:17 195:13 <b>encaptured</b> [1] 85:13 <b>encourage</b> [3] 24:2 37:7 174: 15 <b>encouraged</b> [1] 169:5 <b>end</b> [23] 17:5 28:12 31:21 32: 2 33:8 45:12,13 57:22 59:6 75:22 79:7 80:12 96:16 97: 22 118:2 119:18 168:13 176: 11 178:2 182:4 196:5 199:16 209:12 <b>enforcement</b> [1] 103:21 <b>engage</b> [1] 166:14 <b>English</b> [3] 27:20,22 28:3 <b>enjoyed</b> [1] 69:16 <b>enjoys</b> [3] 67:9 70:4,8 <b>enlarge</b> [1] 221:14 <b>enough</b> [3] 204:14 214:2 220: 5 <b>enshrined</b> [1] 147:5 <b>ensuring</b> [1] 165:19 <b>entire</b> [2] 25:22 109:9 <b>entirely</b> [4] 55:12 96:2 113:18 218:12 <b>entirety</b> [1] 52:21 <b>entitled</b> [11] 14:5 116:7 138:6 139:7 148:22 154:17 167:4 169:19,20 199:13,17 <b>entity</b> [3] 43:2,4 132:18 <b>envisage</b> [1] 144:9 <b>equal</b> [1] 70:10 <b>equality</b> [10] 61:22 72:21 136:</p>	<p>2 147:4 151:9,17 162:5,10,18 164:10 <b>equally</b> [4] 49:2 62:4 77:2 178:6 <b>equitable</b> [2] 110:10 115:22 <b>equivalent</b> [1] 90:21 <b>error</b> [2] 10:12 149:20 <b>escrow</b> [1] 103:22 <b>esoteric</b> [1] 192:7 <b>especially</b> [4] 18:4 38:11 148: 16 177:3 <b>essence</b> [1] 110:7 <b>essential</b> [1] 216:20 <b>essentially</b> [2] 160:15 161:5 <b>established</b> [2] 111:22 169: 18 <b>establishes</b> [1] 78:8 <b>et</b> [7] 45:11,11 46:14,14 203:7, 8 216:9 <b>Europe</b> [1] 41:20 <b>European</b> [1] 41:22 <b>evaluate</b> [1] 48:9 <b>even</b> [22] 47:7 77:3 91:7 102: 14 104:12 107:8 116:8 120: 21 121:22 127:22 134:3 142: 15 148:17 149:2 157:11 173: 17 187:8 201:2 208:12 209:7 218:3 219:3 <b>event</b> [7] 119:17,19 124:22 141:10 190:22 201:5,22 <b>events</b> [4] 99:20 101:12 200: 21 201:8 <b>eventual</b> [3] 34:16 41:12 59:9 <b>eventually</b> [5] 39:2 41:19 96: 20 182:21 187:5 <b>ever</b> [8] 15:14 16:8,20 38:10 72:5 179:10 224:13,14 <b>every</b> [11] 56:4 73:12 78:16 83:7 104:17 107:5 128:3 149: 19 157:19 170:4 209:9 <b>everybody</b> [8] 10:7 24:7 27:9 55:4,9 121:10 133:6 217:18 <b>everybody's</b> [1] 115:9 <b>everyone</b> [6] 10:10 20:15 23: 15 38:5 91:14 122:2 <b>everything</b> [16] 10:6 23:22 24:2,16 26:12 140:6,9 143: 20 168:11 189:13 206:22 207:22 209:8 218:7 221:2,3 <b>evidence</b> [40] 27:21 34:8,10 37:22 38:6 57:4 68:17,18,19 69:2 81:17 83:14 91:4 95:22 96:4 107:8 108:15 111:13 114:16,17 130:17 135:9 136: 17,21 137:5 143:3,21 154:17 167:4 172:5 181:21 182:8 189:20 190:17,21 194:14 201:8 206:12,13 210:12 <b>exact</b> [5] 22:17 106:18 127:19 129:22 138:6 <b>exactly</b> [28] 8:15 10:18 25:21 46:11 54:3 56:3 75:10 78:9 89:10 104:2 111:18 116:18 120:21 128:18 129:5 130:14 131:18,20 135:18 141:18 150:3,22 183:9 189:5 194:3 199:18,19 215:13</p>	<p><b>exaggerate</b> [1] 221:15 <b>examination</b> [1] 137:10 <b>example</b> [21] 37:19 39:5 41: 20 45:15 48:8 61:13 70:8 93: 14 102:9 105:6 107:10 108: 17 112:10 130:18 131:3 170: 9 180:21 187:11,12 208:19 209:16 <b>examples</b> [21] 99:17 101:22, 22 102:3,7,12,15,17,18,19 104:5 107:8 109:12,13,13 116:8 122:3 124:2 126:11 131:4 206:6 <b>excellent</b> [2] 20:16 27:15 <b>except</b> [2] 96:2 103:18 <b>exception</b> [1] 184:6 <b>exceptions</b> [2] 159:16 163: 17 <b>excessive</b> [1] 131:9 <b>exchange</b> [2] 17:16 218:10 <b>exchanged</b> [4] 19:15 108:9 153:15,16 <b>exclude</b> [1] 136:21 <b>EXCLUSION</b> [5] 14:19,21 15: 15 57:14 84:11 <b>excuse</b> [1] 124:15 <b>exempt</b> [5] 111:4 113:3 114:3 179:4,8 <b>exemptions</b> [1] 163:7 <b>exercise</b> [6] 75:11 76:11 82: 10 195:4 203:5 208:10 <b>exercised</b> [1] 78:13 <b>exist</b> [1] 29:21 <b>expect</b> [3] 11:8 172:19 188: 13 <b>expectation</b> [2] 50:10 172:17 <b>expectations</b> [4] 50:17 54:5 55:2 211:15 <b>expected</b> [1] 143:2 <b>expediency</b> [1] 200:20 <b>expediently</b> [1] 51:18 <b>expedite</b> [1] 11:17 <b>expedition</b> [1] 119:11 <b>expeditious</b> [3] 54:19 117:16 125:4 <b>expeditiously</b> [2] 55:15 207: 3 <b>expenditures</b> [1] 48:12 <b>expense</b> [1] 105:19 <b>expenses</b> [2] 36:11 48:11 <b>experience</b> [4] 15:11,21 52:7 185:13 <b>expert</b> [5] 48:9 49:7,11 208:2, 19 <b>experts</b> [5] 49:13 110:3 199: 22 209:15 223:17 <b>explain</b> [2] 41:2 200:18 <b>explaining</b> [1] 211:3 <b>explanation</b> [1] 41:4 <b>explicitly</b> [1] 36:15 <b>export</b> [5] 107:3 109:8 130:20 175:6 209:18 <b>Export/Import</b> [1] 175:16 <b>Exporters</b> [1] 116:11 <b>exports</b> [1] 110:5 <b>express</b> [4] 7:6 75:3 100:6 109:17</p>
<b>E</b>			
<p><b>E</b> [2] 7:1,1 <b>e-mail</b> [11] 9:17 11:2,3 22:16 25:11,14,17,21,22 26:5 27:10 <b>e-mails</b> [3] 8:16 22:4 24:16 <b>each</b> [29] 7:22 20:5 22:19 36: 5 45:4 50:9 58:18 83:12 87: 19 92:6 93:13 103:13,14 109: 12 137:6 145:3 157:19 184: 17 204:5 207:20 208:3 212:7, 7 214:4,4,21 217:16,20 218: 11 <b>earlier</b> [8] 14:3 85:20 87:10, 13 88:9 104:13 204:2 213:14 <b>early</b> [3] 145:17 152:11 202: 12 <b>easier</b> [9] 18:13 20:6,15 109: 16 156:19 173:7 174:11 222: 8 224:9 <b>easiest</b> [1] 169:12 <b>easily</b> [1] 104:21 <b>easy</b> [5] 37:14 45:9 151:3 158: 5 181:4 <b>Ed</b> [1] 44:7 <b>effect</b> [10] 15:6 41:22 43:16, 22 45:10 55:14 73:7 103:11 133:20 165:14 <b>effective</b> [3] 8:17 213:6 221: 12 <b>effectively</b> [1] 195:16 <b>effectuate</b> [1] 181:5 <b>efficiency</b> [3] 136:2 200:19</p>			

<p><b>expressed</b> [2] 60:21 62:3  <b>expressing</b> [1] 10:10  <b>expression</b> [1] 170:17  <b>expressly</b> [2] 36:12 159:15  <b>expropriation</b> [1] 125:3  <b>expropriatory</b> [1] 142:5  <b>extend</b> [1] 221:6  <b>extended</b> [1] 222:4  <b>extending</b> [1] 52:12  <b>extensively</b> [2] 11:4 25:10  <b>extent</b> [29] 20:5 34:4 38:10  46:12 112:15 113:21,22 114:  13 116:16 120:9 129:17 131:  15 133:6,8 141:4 158:3 170:  22 175:20 176:12 182:14  183:12 185:7 190:6 191:16  200:21 206:5,20 210:7 223:  15  <b>extinctive</b> [1] 112:8  <b>extra</b> [1] 170:5  <b>extraordinary</b> [1] 170:6  <b>extraordinary</b> [1] 25:16</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>F</b> [1] 132:19  <b>face</b> [2] 64:22 117:11  <b>facilitate</b> [1] 11:17  <b>facility</b> [3] 31:5 75:7,8  <b>fact</b> [77] 14:6 17:12 29:16 38:  22 44:7 49:11 52:22 62:3 73:  12,17 74:2,12,16 75:4 76:5,7  77:13 78:9 80:18 81:18 85:6  86:12 88:2 89:7 90:15 91:11  93:3,20 94:3,13 97:10 98:6  102:13,16 109:7,13,19 110:  22 111:9 114:6,18 117:5 124:  15 127:10,20 128:9 129:11,  20 132:9 133:21 138:5,11  140:12 143:13 145:20 147:  15 150:6 156:5 157:9 160:22  161:13 162:8,15 170:6 172:  10 175:14 176:5 186:11,17  192:3,12 194:13 201:6 207:8  209:22 211:8 221:6  <b>fact-based</b> [1] 115:2  <b>factor</b> [16] 61:19,21,22 62:2,  12,13 64:5 72:3,3 73:3 76:3  81:22 85:4,5,12 130:5  <b>factors</b> [4] 76:15 85:22 86:16  134:15  <b>facts</b> [16] 53:3 75:15,16,19 76:  10 101:17 108:21,21 110:22  116:22 117:6,7 118:16 127:  21 128:19 134:6  <b>factual</b> [10] 49:6 108:15 109:  20 110:20 112:3 116:19 119:  9 122:15 124:11 207:22  <b>fails</b> [1] 118:19  <b>failure</b> [1] 153:13  <b>fair</b> [20] 15:17 50:8,16 53:5,13  80:9 110:10 115:21 117:15  122:12,13 131:6 132:12 136:  6 142:12 158:6 177:4 198:15  199:14 206:3  <b>fairer</b> [1] 119:3  <b>fairly</b> [2] 15:22 76:2  <b>fairness</b> [4] 106:14 119:11  135:13 136:3</p>	<p><b>falls</b> [1] 108:5  <b>familiar</b> [1] 15:19  <b>far</b> [3] 15:21 38:8 64:7  <b>fast</b> [1] 51:12  <b>fault</b> [1] 158:9  <b>favor</b> [2] 180:7 181:10  <b>favorably</b> [1] 179:10  <b>favor</b> [1] 141:9  <b>fax</b> [4] 25:2,3,11,15  <b>faxes</b> [5] 22:6 24:17,21 25:5,  12  <b>fear</b> [1] 179:9  <b>feasible</b> [3] 56:5 183:6 223:  14  <b>Federal</b> [29] 64:21 68:3,5 78:  18,22 79:16,20,20,21 80:2,8  88:19 90:8,17 94:11 130:20  132:21 133:6,18,22 134:4  136:13 146:10 149:5,5,19  151:3 170:13 177:5  <b>fee</b> [3] 37:4 38:21 224:21  <b>feeds</b> [1] 180:20  <b>feel</b> [7] 52:11 58:6 62:6,12 91:  11 201:19 207:14  <b>feeling</b> [1] 37:6  <b>feelings</b> [1] 55:9  <b>feels</b> [2] 208:3 216:19  <b>fees</b> [4] 41:16 43:17 44:5 46:  12  <b>Feldman</b> [2] 79:4 92:8  <b>felt</b> [2] 177:11 201:21  <b>few</b> [12] 7:13 19:8 32:20 34:  12 36:5 49:21 52:4 82:22 87:  16 167:8 200:11 225:12  <b>fight</b> [7] 151:3 171:4 177:11,  20 178:9,10,12  <b>fighting</b> [1] 177:12  <b>fight</b> [2] 173:14 194:8  <b>figure</b> [4] 44:22 56:2 109:4  200:9  <b>file</b> [4] 9:16 58:11,12 180:9  <b>filed</b> [3] 102:16 116:14 198:18  <b>files</b> [1] 24:11  <b>filing</b> [1] 121:11  <b>fill</b> [2] 131:12 225:7  <b>filled</b> [1] 224:20  <b>final</b> [4] 53:20 86:15 100:11  176:4  <b>finalized</b> [1] 211:22  <b>finally</b> [7] 48:5 74:9 81:14 94:  7 124:20 154:22 186:4  <b>financial</b> [5] 118:13 156:12  157:2,8 177:17  <b>find</b> [19] 11:14 54:19 63:14 71:  4,11 103:4 106:18 116:3 122:  3,11 123:15,21 141:4 143:16  155:6 189:4 192:2 220:19  223:18  <b>finding</b> [4] 82:7 90:16 91:12  102:15  <b>findings</b> [1] 90:15  <b>fine</b> [25] 9:19 11:16 21:16 24:  22 26:21 28:20 31:9 32:13  35:13,22 47:14,19 49:19 56:  16 57:6 122:18 144:22 170:  16 182:9 195:7 210:8,10 213:  18 219:15 223:11</p>	<p><b>finish</b> [2] 56:5 167:18  <b>finished</b> [4] 91:20 145:20  155:3 179:21  <b>finishes</b> [1] 100:11  <b>firm</b> [3] 45:2 148:10,15  <b>first</b> [77] 7:11 8:11 10:3 15:13  16:4 20:4 21:21 26:15,16 30:  8 49:3 57:11,13 61:3 62:15  65:12 66:8,8 67:15 68:12 69:  15 70:20 72:21 73:2 76:19  77:8,11 79:10 83:13 92:3 96:  21 97:20,21 98:2,15 99:5  100:8,13 109:6 125:3,14,15  127:2,4 128:12 138:16 139:3  145:11 152:8 153:13 155:14  158:17,20 160:2 164:20 167:  21,22 169:5 178:20 184:2  196:15 197:21 198:3,13 202:  11 203:11,19 204:4,9,22 207:  11 209:9,12 211:21 212:3  214:13,16  <b>Firstly</b> [2] 63:20 155:17  <b>fishing</b> [1] 218:12  <b>fit</b> [5] 114:21 134:19 142:7  155:19 204:11  <b>fits</b> [2] 110:14 157:15  <b>five</b> [6] 18:6 38:4 47:13 183:  15 195:11 222:17,21 223:3  <b>five-day</b> [1] 222:20  <b>FIX</b> [2] 28:13,15  <b>flag</b> [2] 143:19,22  <b>flavor</b> [1] 91:2  <b>flexibilities</b> [1] 10:9  <b>flow</b> [1] 125:20  <b>flowing</b> [1] 99:21  <b>fluid</b> [1] 204:7  <b>flung</b> [1] 206:21  <b>fly</b> [1] 195:19  <b>focus</b> [3] 38:15 91:13 195:12  <b>focused</b> [5] 53:3 96:5 98:3  121:20 207:4  <b>focusing</b> [1] 147:18  <b>FOIA</b> [2] 81:20 157:21  <b>follow</b> [4] 13:7 45:3 141:13  154:13  <b>followed</b> [10] 14:11 33:6 78:  18 111:21 133:22 147:9 157:  17 185:20 207:19 208:8  <b>following</b> [8] 78:18 147:22  211:21 212:3 216:21 217:3  220:10 222:12  <b>follows</b> [1] 132:20  <b>fool</b> [1] 124:21  <b>force</b> [1] 111:16  <b>forebear</b> [1] 60:2  <b>Foreign</b> [1] 175:15  <b>foresee</b> [1] 168:5  <b>Forest</b> [2] 97:5,8  <b>Forestry</b> [1] 173:5  <b>forever</b> [1] 100:10  <b>forgive</b> [1] 47:3  <b>form</b> [5] 131:12 140:10 147:  10 154:22 202:10  <b>formal</b> [3] 29:14 169:14 171:  16  <b>formality</b> [1] 131:12  <b>formalize</b> [1] 55:3</p>	<p><b>formally</b> [4] 13:18 14:13 212:  12 215:12  <b>former</b> [1] 22:3  <b>forth</b> [11] 22:4 25:7 35:11,20  47:15 56:2 139:18 183:5 185:  20 211:18 225:4  <b>forward</b> [9] 22:20 40:8 85:17  105:21 109:5 114:5 121:12  193:19 194:22  <b>found</b> [11] 66:2 77:18 85:10  103:3 108:22 111:19 127:15  145:21 152:5 153:17 184:16  <b>four</b> [7] 14:20 38:4 39:7 54:7  57:18 143:8 183:15  <b>four-week</b> [1] 220:13  <b>fourth</b> [2] 87:9 166:22  <b>framed</b> [1] 106:21  <b>frames</b> [2] 123:11 219:7  <b>framework</b> [1] 132:6  <b>Frankly</b> [12] 16:17 81:8 94:9  99:22 100:15 102:22 108:16  123:10,16 129:19 166:10  203:18  <b>free</b> [7] 104:11 159:10,14 167:  7 169:10,19 170:2  <b>Freedom</b> [4] 81:20 157:22  161:7,16  <b>frequently</b> [1] 25:5  <b>fresh</b> [2] 102:10 104:18  <b>Friday</b> [1] 223:6  <b>friend</b> [3] 10:4 75:18 76:9  <b>friends</b> [2] 93:19 107:8  <b>frightened</b> [1] 174:13  <b>frivolous</b> [4] 97:18 114:4,14,  15  <b>front</b> [4] 92:11 140:7 142:22  163:6  <b>FTC</b> [2] 160:21 161:22  <b>FTEAC</b> [4] 130:19 132:19,19,  22  <b>FTEAZ</b> [1] 129:14  <b>full</b> [4] 92:11,16 124:19,20  <b>fully</b> [2] 135:5 167:13  <b>function</b> [1] 151:22  <b>fund</b> [1] 45:18  <b>fundamental</b> [6] 122:15 146:  2 147:12 184:2 196:14 210:5  <b>fundamentally</b> [1] 149:17  <b>funds</b> [1] 45:19  <b>further</b> [14] 19:6,12 47:15 58:  7 81:11 98:8 103:11 105:18  170:10 178:14 184:18 205:  16 206:2 212:21  <b>furthermore</b> [3] 14:9 15:16  157:18  <b>fuss</b> [1] 221:19  <b>future</b> [1] 66:19</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>G</b> [1] 7:1  <b>Gallus</b> [12] 61:7,10 65:11 72:  16 81:15 83:3,9 88:13,18 91:  20,21 92:21  <b>Gallus's</b> [1] 88:22  <b>gather</b> [3] 13:11 57:5 95:22  <b>general</b> [13] 7:15 51:16 52:18  54:14 55:14 136:11,14 139:4  147:4 159:15 160:19 197:13</p>
---	--	---	--

199:6  
**generally** <sup>[17]</sup> 25:17 38:20 53:8 96:12 112:7,14 114:15 132:22 143:4 144:10 180:5 186:8 205:11,14 213:11 222:19 223:5  
**generic** <sup>[1]</sup> 103:22  
**gentle** <sup>[1]</sup> 32:6  
**gets** <sup>[2]</sup> 197:7 223:4  
**getting** <sup>[9]</sup> 60:5 193:10 207:2  
**gist** <sup>[1]</sup> 48:13  
**give** <sup>[23]</sup> 9:16 39:2 43:22 54:5 59:21 75:9 88:21 109:12 121:7 135:17 154:10 155:14,16 172:5 174:12 183:13 189:5 196:2 208:19 210:8,11 221:2 223:15  
**given** <sup>[16]</sup> 31:2 42:2 48:10,10 62:7 88:13 101:19 141:5 164:16 168:15 176:8 184:17 192:2 193:21 199:6 204:5  
**gives** <sup>[4]</sup> 67:17 68:2,19 148:20  
**giving** <sup>[3]</sup> 49:5 102:6 193:22  
**glad** <sup>[2]</sup> 19:20 223:8  
**Global** <sup>[1]</sup> 50:12  
**go** <sup>[62]</sup> 7:21 8:8 10:9 20:3 22:13 23:9 30:19 35:15 40:8 49:16 54:13 60:9 68:10 75:11 76:11,13 82:10 89:4 93:8 105:4,18 115:4,10,16 118:8 119:16 122:9,16 123:21 124:6 125:5 131:14,15 132:11 144:5,8 151:2 158:7 169:3 171:6,7,8,10,15,20 173:17 177:5,10,14,15 178:11 184:14 186:8 192:17 201:5 204:10 206:2 208:17 218:5,19 220:21 225:11  
**goes** <sup>[11]</sup> 23:16,19 25:21 26:9 120:21 128:16 129:21 139:13 145:17 168:6 186:3  
**going** <sup>[103]</sup> 8:22 9:9 11:3 19:21 26:5 31:19 33:13,13,14,14 38:13 41:4 45:14 50:20 54:18,20 58:3 61:6 63:9 85:22 88:21 92:5 99:7 105:13 110:22 111:5 115:6,11,13,14 118:5 119:15 122:8,10 124:21 132:4 134:13,20,21,22 135:3,7,9 137:10 141:17 145:20,22 146:22 147:17 150:13,14,15 151:10 154:6,10 157:18 169:11 171:2,4,21 173:12 174:10 175:14 177:2,18 178:5 181:16,19,20 182:3 183:5,15,16 184:9,10 188:16,18 190:14 191:6,7 193:10,13 197:6 199:18,19,22 200:2 202:15 206:7 209:3,4,16,17,20 210:9 211:3 213:3 219:4,21,22 220:13,20 223:16  
**gone** <sup>[3]</sup> 131:20 157:14 224:13  
**Good** <sup>[20]</sup> 7:2 12:22 20:8,17 28:6 35:22 38:15 47:6 55:11 56:11,17 76:10 89:17 146:17

184:16 194:2 201:3 203:13 219:5 222:14  
**gotten** <sup>[1]</sup> 51:5  
**govern** <sup>[3]</sup> 137:3 150:14 173:20  
**governing** <sup>[7]</sup> 159:7,9 169:9,15 170:17,21 171:4  
**Government** <sup>[33]</sup> 43:8 44:12 45:22 77:8 90:13 91:3 94:12 110:6 116:7 132:17,21 133:22 134:4 150:6,15 157:17,20 165:7,10 173:10,13 175:8 177:6 181:14 188:14,15 198:10 199:11 200:3 210:3 218:22 219:8 221:18  
**governmental** <sup>[5]</sup> 110:7 131:6 132:18 133:12 140:13  
**governments** <sup>[5]</sup> 153:22 157:19 170:11,13 219:16  
**governs** <sup>[3]</sup> 137:2 156:3 170:8  
**Grand** <sup>[8]</sup> 100:19,21 101:3,4 102:22 103:4,8 104:7  
**grant** <sup>[1]</sup> 33:14  
**grasp** <sup>[1]</sup> 121:4  
**grateful** <sup>[1]</sup> 62:10  
**gratitude** <sup>[1]</sup> 214:7  
**great** <sup>[8]</sup> 15:11 18:17 27:16 30:21 56:15 95:14 188:20 215:15  
**greatly** <sup>[1]</sup> 129:17  
**green** <sup>[1]</sup> 14:4  
**grips** <sup>[1]</sup> 216:20  
**gross** <sup>[1]</sup> 42:17  
**grossed** <sup>[1]</sup> 46:3  
**ground** <sup>[1]</sup> 201:3  
**Group** <sup>[4]</sup> 23:15 42:10,12 54:15  
**GST** <sup>[7]</sup> 43:13,19 44:5 46:2,9 59:18 81:10  
**guess** <sup>[2]</sup> 44:19 171:12  
**guidance** <sup>[1]</sup> 96:9  
**Guidelines** <sup>[7]</sup> 13:7 192:14,20 193:3,4,5 197:13  
**guiding** <sup>[1]</sup> 146:3

**H**

**half** <sup>[3]</sup> 43:5 111:14 204:20  
**halfway** <sup>[1]</sup> 40:12  
**hand** <sup>[9]</sup> 16:2 40:9 88:20 92:15 118:18 128:21 155:12,15 211:14  
**handed** <sup>[1]</sup> 156:22  
**handing** <sup>[1]</sup> 92:4  
**handling** <sup>[1]</sup> 42:7  
**hands** <sup>[1]</sup> 223:5  
**hang** <sup>[1]</sup> 214:5  
**happen** <sup>[5]</sup> 127:17 150:22 170:19 181:6 190:16  
**happened** <sup>[12]</sup> 39:11,14 73:11 96:4 102:15 120:20 123:2 125:18 126:5 134:9 136:22 171:3  
**happening** <sup>[2]</sup> 102:10 134:8  
**happens** <sup>[5]</sup> 37:17 39:18 58:9 141:15 201:4  
**happily** <sup>[1]</sup> 81:18  
**happy** <sup>[34]</sup> 13:17 14:7 22:12

27:8 29:18 30:15,19 31:11,14 33:15,18,21 34:21 39:13 40:20 43:22 46:5,8 48:21 49:2 86:22 87:2 93:3 166:14 172:12,13,15 173:4 174:11 175:17 177:16 179:22 195:18 218:19  
**hard** <sup>[3]</sup> 23:18 24:4,10  
**harder** <sup>[1]</sup> 183:22  
**harsh** <sup>[1]</sup> 195:15  
**hasn't** <sup>[1]</sup> 94:14  
**hates** <sup>[1]</sup> 43:13  
**haven't** <sup>[12]</sup> 31:11 136:9 139:21 144:14 152:15 164:17 167:13 179:15 184:4 192:14 193:20 196:9  
**having** <sup>[27]</sup> 7:5 21:8 25:18 37:16 44:5 88:22 94:7 104:15 121:18 130:16,16 132:22 139:12 140:2 153:10 173:16 184:12 188:9 198:9 202:3 205:18,21 208:18,20 210:3,14 223:5  
**He's** <sup>[1]</sup> 32:14  
**head** <sup>[1]</sup> 17:19  
**heads** <sup>[1]</sup> 183:22  
**hear** <sup>[12]</sup> 15:4 17:14 39:13 40:15 61:2,3 67:12 72:17 96:21 158:14 184:18 190:7  
**heard** <sup>[21]</sup> 82:17,19 94:20 103:5 117:15,15 118:5 124:3,14,17 128:20 135:15,20 136:9 137:17 183:13 184:15 194:17 197:4 204:6 207:15  
**hearing** <sup>[31]</sup> 34:16 37:17,18 38:4,9 40:5 47:13 74:14 78:8 95:12 103:6,10 105:22 117:3,10,15,19 118:4,20 135:22 136:7 137:7 138:7 186:22 208:10 211:19 213:10 222:13,17,20 225:16  
**hearings** <sup>[17]</sup> 20:20,22 21:4,9,10 35:10 43:16 45:7 56:2 81:2,3,5 179:15,17 180:18 186:6 211:6  
**HEARINGS/DATES** <sup>[1]</sup> 35:8  
**heavily** <sup>[2]</sup> 112:8 150:7  
**held** <sup>[4]</sup> 81:3,5 118:18 210:2  
**help** <sup>[13]</sup> 7:7 18:18 48:9,20 55:4,8 142:9 158:4,6 175:20 182:14 214:7 216:2  
**helpful** <sup>[11]</sup> 37:6 54:4 96:8 122:2 135:4 170:7 183:2 184:16 185:11 187:9 220:9  
**helps** <sup>[4]</sup> 38:15 55:9 58:5 62:13  
**hence** <sup>[2]</sup> 101:13 103:15  
**here** <sup>[96]</sup> 9:13,13 10:5,6,10 13:17 14:7 15:12,16 24:21 26:15 28:5 30:15,22 38:16 40:10,18,22 44:11,19 50:19 74:16 75:12,17 77:16 85:21 90:8,22 91:14,15 97:17 98:22 101:17 104:2,3,17,19 107:20 112:5 114:6,15 115:5 121:18 122:17,21 123:12,19 124:20 125:16 126:9 128:19 129:5,

11 130:17 133:7,10,16 134:6,13 136:18 138:7,19 139:19 140:11,19 141:12 144:18 151:9,14 152:3,14,17 156:6 157:7 166:21 169:11 170:2 176:21 180:21 181:9 184:6,12 194:4,15 197:17 202:18 204:4 206:8 209:16,20 210:5 212:14 214:10 216:2 224:15 225:9  
**hesitate** <sup>[1]</sup> 55:16  
**high** <sup>[5]</sup> 63:12 64:13 78:14,15 80:14  
**highest** <sup>[4]</sup> 78:10 79:2,5 162:3  
**highly** <sup>[1]</sup> 117:3  
**him** <sup>[1]</sup> 83:16  
**hit** <sup>[1]</sup> 54:2  
**hold** <sup>[1]</sup> 30:12  
**holder** <sup>[1]</sup> 45:19  
**holding** <sup>[3]</sup> 45:19 117:2,18  
**holds** <sup>[2]</sup> 8:15 11:20  
**home** <sup>[9]</sup> 70:16 71:16 73:10 74:4 84:17 85:3,4,9 93:12  
**honest** <sup>[4]</sup> 33:7 75:22 142:12 189:10  
**hope** <sup>[4]</sup> 91:18 116:5 142:16 214:14  
**hopefully** <sup>[2]</sup> 16:7 59:9  
**hoping** <sup>[3]</sup> 41:4 54:21 171:21  
**hotspot** <sup>[1]</sup> 26:5  
**hours** <sup>[1]</sup> 36:17  
**house** <sup>[2]</sup> 23:17 40:12  
**housekeeping** <sup>[1]</sup> 8:20  
**how** <sup>[26]</sup> 23:18 53:17,20 65:8 90:22 100:11 103:17 106:20 108:17 124:4 125:6 128:19 132:15,15 143:3 144:9,19 176:22 189:17 199:7,8,19,22 200:9 204:14 222:16  
**Howard** <sup>[8]</sup> 9:20 22:7 24:8,15 26:8 46:15 224:2 225:12  
**Howard?** <sup>[1]</sup> 36:17  
**however** <sup>[4]</sup> 37:10 52:7 70:12 86:16  
**hundred** <sup>[1]</sup> 132:8  
**hundreds** <sup>[3]</sup> 94:10 107:5 126:3  
**hunger** <sup>[1]</sup> 95:11  
**Hunter** <sup>[1]</sup> 44:9  
**hyperconfidential** <sup>[1]</sup> 187:7  
**hypersensitive** <sup>[1]</sup> 187:8  
**hyphen** <sup>[1]</sup> 30:21

**I**

**I'm** <sup>[68]</sup> 7:16 9:4 12:13 15:21 16:16 19:20 20:20 24:6 31:11 39:13 40:20 41:18 43:6,7 44:19 46:5 47:8,11 55:2,4 56:5 61:6 63:8 88:21 99:6 106:18 108:20 120:22 121:2 122:15,21 123:10 128:18 129:4 136:7 137:13,15 138:13 142:11 143:16 146:14,17 147:17 156:16,16 168:10 169:11 171:7,12,13,15 172:12 173:4 176:4,6 178:10 179:22 184:8 204:4 206:15 209:14,15 211:

2,7 216:2 219:19 223:5,19 <b>i.e.</b> [2] 93:6 98:16 <b>IBA</b> [14] 13:7 14:9 96:6,6,7,12 144:3 161:19,22 191:19 192: 13,19 193:3,4 <b>ICSID</b> [35] 10:5 13:13 18:14 21:9,22 22:8,20 23:8,9,12,14 24:2,10,16 26:12,19 27:13 36:14,21 42:7,10 43:17 45: 17,20 48:2 59:19 70:16 71: 16 74:16 75:6,6,8 76:6 86:14 224:15 <b>idea</b> [10] 23:11 24:19 25:12 38:15 54:5 100:14 136:15 154:4 165:4 203:13 <b>ideas</b> [1] 222:18 <b>identical</b> [2] 90:18 116:21 <b>identified</b> [2] 68:13 69:12 <b>identify</b> [1] 164:21 <b>idiosyncratic</b> [1] 9:5 <b>ignore</b> [1] 132:4 <b>ignores</b> [1] 75:2 <b>ignoring</b> [1] 113:18 <b>ILC</b> [1] 111:22 <b>illness</b> [1] 40:11 <b>illuminate</b> [1] 190:4 <b>illuminating</b> [1] 142:18 <b>illustrate</b> [2] 19:5 62:13 <b>illustrates</b> [1] 163:16 <b>imagine</b> [1] 224:14 <b>immaterial</b> [1] 218:3 <b>immunities</b> [1] 42:11 <b>impact</b> [2] 209:17,21 <b>impacts</b> [1] 128:20 <b>impartiality</b> [1] 48:18 <b>implementation</b> [8] 106:13, 17 107:2 109:8,18 126:11 130:12 140:10 <b>implemented</b> [2] 126:13 132: 15 <b>implementing</b> [1] 103:14 <b>implicated</b> [1] 73:8 <b>implications</b> [2] 117:18 118: 11 <b>important</b> [23] 11:5 16:10 23: 6 32:5 37:12 66:10,17 67:11 78:3 85:4,5 86:17 90:15 93:6 95:21 99:10,13 100:22 101:6 134:6 161:21 174:2 192:5 <b>importantly</b> [2] 73:11 117:10 <b>impose</b> [1] 162:12 <b>impossible</b> [3] 56:2 124:12 198:7 <b>inability</b> [3] 40:4 128:8 210: 21 <b>inappropriate</b> [3] 84:14 139: 11 218:12 <b>incapacity</b> [1] 40:10 <b>incentive</b> [1] 56:4 <b>include</b> [6] 42:16 63:9 84:10 92:14 157:18 221:20 <b>included</b> [7] 41:11 77:15 84: 5,7,20 141:11 168:9 <b>includes</b> [1] 184:22 <b>including</b> [10] 36:11 156:15 159:2,10,19 160:20 163:8 170:15 186:18 189:11	<b>income</b> [1] 41:12 <b>inconsistent</b> [1] 162:8 <b>incorrect</b> [1] 104:15 <b>indeed</b> [17] 43:14 62:2,10 63: 22 64:11,20 65:12,15 66:4,6, 9 67:9 68:6 70:15 82:19 86: 12,14 <b>independence</b> [2] 48:18 78: 13 <b>independent</b> [3] 78:7 80:13 94:13 <b>indicate</b> [4] 27:12 103:18 140: 17,19 <b>indicated</b> [4] 60:22 199:4,5 216:18 <b>indicates</b> [4] 66:18,19,22 84: 12 <b>indication</b> [3] 139:5 199:6 202:16 <b>indicative</b> [1] 10:17 <b>indignation</b> [1] 218:11 <b>indirect</b> [2] 41:12 42:4 <b>individual</b> [2] 41:13 75:15 <b>industry</b> [3] 128:11 131:3 175:4 <b>ineffective</b> [1] 104:9 <b>inefficient</b> [1] 117:4 <b>inequality</b> [1] 69:17 <b>inequitable</b> [1] 140:2 <b>inextricably</b> [1] 120:2 <b>inference</b> [2] 31:6,21 <b>inferences</b> [1] 58:8 <b>influenced</b> [1] 88:2 <b>inform</b> [1] 216:10 <b>Information</b> [140] 67:16,17, 18,20,22 68:2,14,20,22 81:16, 19,20 83:14 91:5 94:22 114: 22 116:4,7 121:20 133:9 139: 18,21 146:5,22 147:14,16 148:6,9 149:7,18 151:12 153: 15,16,22 154:11,17 155:20 156:2,7,9,11,11,13,13 157:3, 5,7,9,15,20,22 159:16,17 160: 2,8,13,16 161:7,15,16,17 162: 5,7,11,16 163:2,4,5,7,9,10,18, 18,21 164:3,4,7 165:10,13,18 167:5,10 168:3,6,13,18 170: 16 174:20 175:8,9,10,13,18 176:22 177:3,8,18 178:22,22 179:3,3,4,9 180:16,22 181:3 182:2,3 184:7 185:22 186:2 187:2,6,7,18,19 188:13,17 189:14,16 191:5,8,9,10,10,11, 12 192:4 193:10,14 194:8 200:4 202:22 205:16 206:11 207:22 208:22 210:16,20,22 <b>information"</b> [1] 156:18 <b>initial</b> [4] 31:17 88:17 136:19, 20 <b>initiating</b> [2] 80:4,11 <b>injuries</b> [1] 104:13 <b>innocent</b> [1] 32:11 <b>inordinate</b> [1] 117:9 <b>inquiry</b> [1] 102:11 <b>insert</b> [1] 197:16 <b>insignificant</b> [1] 118:17 <b>insofar</b> [1] 46:12	<b>instances</b> [1] 123:4 <b>instantaneous</b> [1] 128:9 <b>instead</b> [3] 103:20 184:10 193:12 <b>Institute</b> [1] 112:17 <b>institution</b> [1] 149:20 <b>institutional</b> [1] 15:11 <b>INSTRUMENTS</b> [2] 21:18 23: 12 <b>integral</b> [1] 115:18 <b>intend</b> [1] 19:18 <b>intended</b> [1] 138:11 <b>intends</b> [1] 217:13 <b>intention</b> [2] 32:9 33:17 <b>interest</b> [5] 43:12 115:9 130: 22 131:2 194:9 <b>interested</b> [2] 44:20 153:10 <b>interesting</b> [3] 183:3 185:15 186:13 <b>interestingly</b> [1] 102:13 <b>interests</b> [2] 110:4 131:5 <b>interfere</b> [1] 20:6 <b>interject</b> [1] 79:12 <b>intermediate</b> [1] 202:2 <b>International</b> [2] 41:21 105: 11 111:21 112:7,14,16,22 113:14,15,19 128:2,6 129:16 141:5,21 146:6,7 147:10 156: 3 174:18 178:9 <b>interpret</b> [2] 64:21 169:20 <b>interpretation</b> [6] 100:19 159:11 160:21 167:7 169:10, 16 <b>interpreting</b> [1] 169:21 <b>interpretive</b> [2] 141:9,15 <b>interprets</b> [1] 170:4 <b>interrogatory</b> [1] 191:12 <b>interrupt</b> [3] 83:3 88:17 187: 12 <b>intertwined</b> [2] 99:2 105:2 <b>introduce</b> [1] 30:21 <b>Investment</b> [1] 15:18 <b>investor</b> [54] 37:20 61:20,22 62:8,20 69:17 70:6,8 71:22 72:11 76:17 77:6,13 83:4 84: 3 85:5,6,9,14,15 86:10,17,18, 20,22 87:3,13 93:12 97:6,7, 20 98:12 99:14,16,19 100:20 101:9,13,19 103:6 111:12 117:14 118:12 119:2 122:13 123:12 127:22 135:21 137: 17 146:6 151:18 172:14 198: 8 204:9 <b>Investor's</b> [1] 63:3 71:17 72: 22 74:4,21 84:17 85:2 98:22 109:6,7 118:21 <b>investor-State</b> [2] 15:21 96: 8 <b>Investors</b> [1] 121:17 <b>Investors'</b> [1] 71:12 <b>invite</b> [2] 8:4 95:11 <b>invited</b> [1] 145:7 <b>involved</b> [22] 38:10 42:13,15 43:2,3 55:22 88:14 93:6 109: 21 110:4 114:18 122:12 131: 5 132:17,18 133:10,13 139:5 140:11 141:7 175:3 186:13	<b>involves</b> [1] 140:15 <b>involving</b> [2] 37:19 104:9 <b>irrelevant</b> [6] 82:3 93:21 100: 9,15 129:19 218:3 <b>isn't</b> [7] 89:15 131:6 134:7 135:4 170:16 172:17 203:14 <b>issue</b> [77] 10:11 29:3 31:17 34:11 42:10,13 44:2,15 50:5 51:2 53:4,19 62:8,11 65:15, 20 66:3,11 67:4,11 71:20,20 72:2 74:9 82:21 85:2 95:15 104:6 105:7 107:22 112:2 115:13 118:9 121:16 122:14 129:14 143:18,19 146:9 150: 9 151:20 153:17,21 158:10 163:10,22 165:12,18 166:2,2, 3,5,20 173:13 174:3 175:12, 21 176:21 179:16 180:4,12 181:15 184:6 185:21 187:17, 20 190:10,14 191:4 197:13 203:22 204:8 209:4,20 210:2 214:9 225:2 <b>issued</b> [3] 107:11 108:18 148: 4 <b>issues</b> [42] 7:15 8:3 20:5,14 39:9 43:10 49:6 50:2 57:2 60: 14 61:8 89:3 91:6 109:20 110:9,12 111:11 116:12 118: 6,7,8 122:4 131:9 135:8 142: 15 143:15 144:8 145:3 152: 14 153:12 174:7 175:5 179:7 191:22 192:22 194:8 198:19 201:20 203:12 209:16 210: 18 222:10 <b>issuing</b> [1] 107:3 <b>it'</b> [1] 121:8 <b>item</b> [26] 7:21,21 8:8,9 9:3 12: 2 13:2 14:18,20 19:3 20:18 27:18 28:3 32:17 34:9 35:9 36:3,4 37:4 41:10 47:21 59:5 189:6,6 207:8 224:6 <b>items</b> [6] 8:20 35:16 36:6 56: 18 142:20 208:7 <b>itself</b> [10] 13:4 39:6,9 102:7 107:12 137:21 139:22 163:2, 22 191:18 <hr/> <b>J</b> <b>January</b> [2] 107:7 152:12 <b>job</b> [3] 122:16 174:11 219:5 <b>join</b> [7] 117:13 119:5,14,21 193:12 201:5,11 <b>joined</b> [1] 31:17 <b>joining</b> [2] 9:12 119:19 <b>joins</b> [1] 10:9 <b>joint</b> [1] 50:7 <b>jointly</b> [2] 7:12 16:4 <b>judge</b> [1] 89:2 <b>judgment</b> [1] 16:18 <b>judicial</b> [1] 63:5,8,11,20 64: 10,11 65:14 88:5 89:2 92:7 177:14 <b>judiciary</b> [5] 78:6,7,13 80:13 94:13 <b>jumped</b> [1] 217:10 <b>JURISDICTION</b> [25] 17:9,11, 14 50:15 53:9 65:21 66:6 89: 4 95:19,21 96:17,21 97:2,4
---	--	--	---

109:10 113:6,11 122:9 125:11 126:21 201:11,13,15 205:5,12  
**jurisdictional** [1] 117:2,18 124:9,17 125:4 130:16 193:9,13 196:20 201:3 205:7  
**jurisdictions** [1] 45:4  
**Justice** [2] 78:17 219:5

---

**K**

**keep** [6] 31:19 57:17 58:4 136:8 138:7 151:11  
**Ken** [1] 17:2  
**kept** [1] 221:9  
**key** [3] 178:17,18 196:13  
**kill** [1] 113:9  
**kind** [23] 28:16 39:9 47:4 51:13 59:21 75:10 94:14 101:17 103:5 107:2 108:16 120:8 123:22 129:9 130:4 137:3,14 168:16 187:3 195:4 196:10 203:15 204:15  
**kinds** [1] 188:4  
**KINNEAR** [99] 8:19 9:2,21 10:9,16 12:11 14:16 15:8 16:12,14 17:18 19:11,12 20:8 21:5,8 22:16 27:2 28:7,8,20 31:14 33:20,21 34:21 35:13 41:7 43:9,11 45:6 47:5 49:2,11 51:10,11 57:20 58:22 59:13 60:22 72:15,17,18 76:22 79:14,19 80:9 82:16 83:2,18 84:2,15 85:12 88:8,21 92:2,16,19 96:11,13,19,22 106:3,9,14 108:12 110:19,21 117:19 122:19,20 125:7,9,15 127:2,9 128:20 129:8 132:8 134:11 135:11,12 137:4 155:21 158:14 159:12 176:8 197:4 203:4,9 205:7 214:9,12,16 218:19 220:6 223:8 224:18,19 225:9  
**Kinnear's** [1] 83:17  
**knew** [6] 99:20,21 110:16 114:22 128:14 158:9  
**know** [75] 7:10 8:7 10:9 11:4,19 15:10 17:15 19:16 20:13 24:22 27:8 38:8 46:7 48:8 50:8 53:6 54:20 55:16 74:7 91:7 97:22 114:6 126:22 127:10,11,19 128:10,11,14 129:12,12,15,16,22,22 134:3,18 135:13 138:3,6 140:6 144:5 145:14 150:21 151:5 152:17 158:10 170:7 187:17 190:14 192:3,16 196:9 199:2,13,18,19 200:17 204:16 205:21 206:3,8,14,15 208:6,16 213:3 215:3 218:13,21,22 219:9 220:7 224:21 225:10  
**knowing** [1] 104:15  
**knowledge** [10] 97:21,21 100:7,14 104:13 128:4 129:10,19 130:5 176:7  
**known** [4] 110:16 111:12 126:19 127:8  
**knows** [1] 217:18

**L**

**L.P.** [1] 173:5  
**labeled** [1] 101:10  
**labeling** [1] 100:3  
**lack** [1] 121:16  
**laid** [1] 142:4  
**language** [15] 13:4,17 15:5,14 27:17,19 100:16 159:19 165:14,20 167:12 168:9,16,19,20  
**last** [7] 30:2,22 93:19 123:2 138:2 182:18 189:19  
**late** [1] 152:12  
**later** [15] 19:20 21:14 67:13 68:5,16 82:5 83:15 95:17 127:15 136:22 166:6 174:13 181:11 197:9 213:15  
**latter** [1] 186:2  
**laws** [7] 45:4 46:14 77:2 90:21 134:2,3 140:15  
**LCIA** [4] 39:19,20 41:3 45:19  
**lead** [4] 74:2,6 80:19 130:3  
**leads** [1] 82:12  
**learn** [1] 31:12  
**least** [8] 11:7,8 77:21 110:21,21 122:22 138:3 207:14  
**leave** [19] 21:6 28:11 32:18 33:5,8,10,15,17,22 34:12 40:14 67:4 96:13,15 152:19 200:10 213:20,20 214:6  
**Leaving** [2] 90:4 152:17  
**left** [1] 218:5  
**left-hand** [1] 217:20  
**legal** [7] 49:5,10 54:22 74:14 101:7 176:7 210:10  
**legalize** [1] 55:3  
**legislation** [4] 82:3 106:20 136:20 140:10  
**legitimate** [1] 179:2  
**length** [1] 95:9  
**lengthy** [1] 55:22  
**less** [3] 79:7 128:21 129:16  
**let** [16] 11:18 53:6 62:22 96:15 120:5 121:9 127:3 147:22 158:17 161:8 163:12 164:12 167:8 185:10 214:6 215:3  
**Let's** [12] 109:4 123:14 124:20 138:16 141:2 143:9 155:14 193:8,12 198:3 223:20 225:11  
**letter** [7] 36:7,9,19 43:22 54:9 111:13 190:16  
**letters** [2] 54:16 218:11  
**letting** [1] 200:17  
**level** [14] 64:13 78:8,10,14,15 79:2,6,8 80:8,14 90:11 133:18 162:3 168:8  
**levels** [1] 90:14  
**lex** [2] 97:19 112:6  
**LIABILITY** [6] 14:19,21 15:15 57:14 137:11 222:22  
**liable** [1] 41:13  
**liberal** [1] 143:10  
**Librarian** [1] 168:17  
**lies** [1] 16:18  
**life** [1] 156:19  
**light** [10] 14:9 18:4 60:21 118:16 119:13,13 143:13,20 151:

4 197:15  
**likelihood** [1] 191:7  
**likely** [7] 16:7 66:19,20 88:4  
**likes** [1] 219:18  
**limit** [4] 29:4 36:16 112:15,16  
**limitation** [15] 97:19 98:3 100:7 102:21 103:7,16 104:8 108:6 112:21 120:11 126:6,20 127:17,20 130:6  
**limitations** [3] 51:13 103:12 211:4  
**limited** [6] 98:9 103:18 105:16 108:15 121:19 124:11  
**LIMITS** [3] 28:13,15 112:9  
**line** [2] 189:7,7  
**lines** [1] 183:9  
**link** [1] 76:4  
**linked** [2] 95:16 120:3  
**list** [10] 9:14 10:15,17 99:16 108:17 135:18,21 136:5 137:15,16  
**listed** [4] 85:22 137:12 158:21 205:12  
**listing** [1] 217:20  
**lists** [3] 109:15,15,15  
**litigant** [3] 78:5 79:9 94:5  
**litigating** [1] 65:9  
**litigation** [3] 136:14 163:20 177:21  
**little** [16] 30:9 52:12 54:11,15 67:12 68:5 81:10 83:15 86:13 99:13 128:18 129:4 183:14 218:21 220:17,17  
**live** [1] 47:11  
**LiveNote** [1] 35:11  
**local** [1] 87:22  
**located** [1] 73:18  
**location** [5] 74:5,13,22 81:2,6  
**Loewen** [1] 160:20  
**log** [5] 109:8 110:4 130:22 131:4 209:18  
**logging** [1] 131:16  
**logs** [1] 175:4  
**lonely** [1] 86:15  
**long** [21] 11:12 23:18 24:9 27:8 30:18 53:7,8,10,17,20 85:7,8 95:10 100:11 124:21 134:8 143:3 144:2,9 220:17 224:13  
**longer** [4] 113:10 157:10 202:15 219:13  
**longest** [1] 36:17  
**look** [45] 17:4 39:6 59:12 75:9 85:16 86:15 99:13 101:15 104:3 105:8,10,15,21 111:22 112:3,18 115:16 116:18 117:7,22 118:5 122:13 134:10 138:16 155:15 156:8,20,21 161:21 163:22 169:14 171:2 178:21 179:10 186:15 188:3 189:19 190:3 191:5,5 195:8 201:3 222:9,14,20  
**looked** [5] 105:13 114:8 176:14 177:10 222:20  
**looking** [20] 50:13 52:21 55:3 92:5 115:17,21 122:14 126:9 134:15 141:19,20,22 142:4

155:5,21 159:3 167:11 191:22 213:12 220:12  
**looks** [2] 11:2 32:12  
**loosely** [1] 96:5  
**losing** [1] 40:2  
**loss** [9] 99:21 127:19,20 128:5,13,14 129:20 130:2 131:8  
**losses** [1] 128:8  
**lost** [1] 94:10  
**lot** [12] 23:17 44:10 128:22 133:15 147:18 151:2,4 164:2,3 169:8 186:19 210:10  
**lots** [1] 132:11  
**love** [3] 23:11 175:18 183:21  
**lower** [4] 64:19 72:7 90:8,11  
**luck** [1] 113:10  
**lumber** [1] 175:3

**M**

**made** [51] 8:2 10:16 14:2 33:18 41:15 48:2 53:18 77:12,22 78:3,4,11 84:3,15 87:9,10 90:16 92:20 93:2 104:22 117:12,21 139:21 146:4,4,11 147:20 148:6 149:7,10,20 151:21 154:12 157:12 160:3 161:14 163:16 167:22 176:13 177:17 181:8 185:19 189:15 190:22 196:7 197:5 211:2 215:10,12 216:18 221:10  
**main** [6] 11:7 62:15 86:20 98:14,22 139:14  
**maintain** [1] 103:16  
**majority** [2] 77:14 94:4  
**make** [73] 8:4 10:14 17:2 19:13 20:15 23:5 33:16 34:5 38:18 58:5,15,20 60:20 66:19,20 72:12 76:19 79:11 85:17 86:17 87:3 88:4 102:8,8 105:17 107:7 114:11,16 116:22 135:10 139:7 146:20 148:8 155:9 156:19 158:7,19 159:19 166:4 168:10 169:13 171:9,16 173:4,6,7,21 174:10,14 178:15 179:6,13 181:5,9,10 182:6 185:8 196:19 197:6,7 202:11,16 204:18 206:16 210:13 215:22 216:12,16,22 218:16 220:22 221:3 224:9  
**make-it-up/add-on** [1] 124:6  
**makes** [9] 24:6 47:5,7 86:12 89:18 100:8 132:21 150:22 194:5  
**making** [7] 11:6 87:17 99:15 139:12 150:2 195:8 208:2  
**manage** [1] 54:4  
**Management** [4] 77:19 87:14,20 93:18  
**mandates** [1] 152:9  
**mandatory** [2] 81:19 82:2  
**manifestly** [1] 109:10  
**manner** [4] 117:16 131:7,7 156:14  
**manufacturers** [1] 175:3  
**many** [10] 9:5 11:4 14:22 61:11 102:17 103:16 108:17 148:17 162:15 222:16

<p><b>March</b> <sup>[1]</sup> 145:18  <b>marked</b> <sup>[2]</sup> 148:12 172:16  <b>market</b> <sup>[6]</sup> 128:2 129:9,18  <b>133:11 175:10 208:21</b>  <b>Martin</b> <sup>[1]</sup> 44:9  <b>Master</b> <sup>[1]</sup> 103:14  <b>material</b> <sup>[7]</sup> 23:22 27:13 33:9  <b>149:2 151:8 159:13 199:17</b>  <b>materials</b> <sup>[1]</sup> 30:19 33:11  <b>150:12 154:18 155:16 163:5</b>  <b>173:20 180:9 190:12,19 208:</b>  <b>20</b>  <b>matter</b> <sup>[23]</sup> 14:6 17:5 19:6 34:  <b>18 42:16 59:17 81:15,21 91:</b>  <b>11 97:15 98:5 100:10 102:5</b>  <b>105:3,20 111:9 114:7 166:19,</b>  <b>22 171:14 173:14 187:20</b>  <b>224:22</b>  <b>matters</b> <sup>[6]</sup> 11:10 34:17 75:  <b>14 77:9 100:14 183:16</b>  <b>may</b> <sup>[28]</sup> 8:19 9:22 12:11 20:2  <b>40:17 45:6 69:21 88:4 90:2</b>  <b>106:8 122:3 126:22 135:17</b>  <b>139:9 141:4 144:17 163:10,</b>  <b>10 166:9 170:12 174:8 181:</b>  <b>18,19 187:15 199:11 209:13</b>  <b>214:9 217:16</b>  <b>Maybe</b> <sup>[1]</sup> 20:2,20 24:5 36:  <b>15 48:7 54:10 55:13 88:11</b>  <b>142:14 184:13 199:12</b>  <b>mean</b> <sup>[13]</sup> 30:10 31:4 38:7 40:  <b>17 42:10 140:13 170:8 178:</b>  <b>10 188:11 202:19 213:16</b>  <b>220:21 225:8</b>  <b>meaning</b> <sup>[4]</sup> 141:3,5,14 143:  <b>7</b>  <b>meaningful</b> <sup>[1]</sup> 210:9  <b>means</b> <sup>[7]</sup> 30:12 58:12 89:11  <b>114:12 191:8 208:18 209:2</b>  <b>measure</b> <sup>[7]</sup> 97:8 103:13 109:  <b>18 114:2 134:7 137:6 140:14</b>  <b>measures</b> <sup>[21]</sup> 101:11 103:22  <b>110:17 133:19,20 135:19,20,</b>  <b>22 136:5 137:8,8,16 138:6</b>  <b>140:13,13,17,18 142:6 197:8</b>  <b>199:4 204:7</b>  <b>mechanical</b> <sup>[1]</sup> 128:21  <b>mechanical/mechanistic</b>  <sup>[1]</sup> 130:14  <b>mechanism</b> <sup>[3]</sup> 178:7 179:11  <b>185:15</b>  <b>meet</b> <sup>[14]</sup> 36:4 45:3 48:17 135:  <b>5,14 136:7 199:2 211:7 212:</b>  <b>10 214:22 216:8,19,20 222:2</b>  <b>meeting</b> <sup>[13]</sup> 17:6 32:3 57:9  <b>95:2,4 101:9 195:2 212:16,</b>  <b>18,20 220:11,14 221:7</b>  <b>meetings</b> <sup>[1]</sup> 37:7  <b>member</b> <sup>[5]</sup> 14:7 22:19 78:4  <b>133:5,7</b>  <b>Members</b> <sup>[17]</sup> 10:4 11:4 13:6  <b>15:20 22:21,22 23:10,21 24:</b>  <b>18 26:9 37:12 42:20 44:4 51:</b>  <b>20 53:14 115:22 169:2</b>  <b>Members'</b> <sup>[1]</sup> 75:4  <b>Memorial</b> <sup>[8]</sup> 108:14 139:17  <b>197:3 203:6,12 205:18 207:</b></p>	<p>19 211:21  <b>memorials</b> <sup>[8]</sup> 108:9 198:12,  <b>18,19 203:19,21 204:11,13</b>  <b>mention</b> <sup>[7]</sup> 36:6 52:10 60:17  <b>148:17,19 185:10 211:10</b>  <b>mentioned</b> <sup>[5]</sup> 12:4 36:12 87:  <b>16 95:5 123:19</b>  <b>mentioning</b> <sup>[2]</sup> 148:9 211:9  <b>merely</b> <sup>[3]</sup> 102:18 104:4 113:  <b>3</b>  <b>merits</b> <sup>[29]</sup> 50:15 52:5 99:2,8  <b>105:2,4,14 115:7 117:6,11,13</b>  <b>118:22 119:5,7,15,19 120:2</b>  <b>180:5 193:13 201:5,5,11,13</b>  <b>203:7 207:19,20 210:14 211:</b>  <b>21 213:10</b>  <b>Merrill</b> <sup>[16]</sup> 89:21 114:22 126:  <b>3 150:7 151:9,10 153:10 158:</b>  <b>7 165:2,6 171:3 172:21 173:</b>  <b>3,4 209:18,19</b>  <b>met</b> <sup>[2]</sup> 172:17 200:14  <b>Metalclad</b> <sup>[8]</sup> 63:4,5,7,19 77:  <b>22 78:17 92:8 161:5</b>  <b>Methanex</b> <sup>[10]</sup> 45:15 47:6 71:  <b>3 84:18,22 85:7,10 161:10,13,</b>  <b>14</b>  <b>Mexico</b> <sup>[6]</sup> 63:7 78:12 89:4  <b>93:8 167:4 170:12</b>  <b>MFN</b> <sup>[1]</sup> 105:9  <b>Miami</b> <sup>[1]</sup> 87:2  <b>microphone</b> <sup>[4]</sup> 92:18 202:6  <b>208:15 215:7</b>  <b>middle</b> <sup>[1]</sup> 199:9  <b>might</b> <sup>[48]</sup> 10:22 15:3 21:11  <b>27:22 30:8,11 31:3 36:10 37:</b>  <b>15 38:11,22 50:16,19 51:7</b>  <b>52:10 56:12 76:8 78:19 83:4,</b>  <b>12 90:5 92:12 97:18 105:12</b>  <b>120:18 129:17 135:12 143:4</b>  <b>155:10 156:19 174:13,21</b>  <b>182:14 185:8,11 186:15 187:</b>  <b>8,9,14 188:19 190:8,9 191:16,</b>  <b>17 195:21 200:21 203:22</b>  <b>208:7</b>  <b>mind</b> <sup>[7]</sup> 82:21 120:7 121:3  <b>200:8,10 208:17 221:19</b>  <b>minds</b> <sup>[1]</sup> 38:15  <b>mini-lunch</b> <sup>[1]</sup> 95:13  <b>minimum</b> <sup>[2]</sup> 105:11 107:13  <b>minute</b> <sup>[2]</sup> 25:20 204:20  <b>Minutes</b> <sup>[22]</sup> 7:10 49:22 87:  <b>17 95:5 143:8,9,10 144:11</b>  <b>145:2,4 159:5,6 169:6 171:</b>  <b>11 192:20 194:12 197:16</b>  <b>200:11 211:22 221:21 225:</b>  <b>12,12</b>  <b>minutes'</b> <sup>[3]</sup> 32:20 34:12 36:  <b>5</b>  <b>misapprehended</b> <sup>[1]</sup> 92:21  <b>misconduct</b> <sup>[1]</sup> 99:21  <b>missing</b> <sup>[2]</sup> 200:3 208:7  <b>misspoke</b> <sup>[1]</sup> 80:10  <b>misstated</b> <sup>[2]</sup> 109:6 115:20  <b>mistake</b> <sup>[1]</sup> 8:13  <b>mistaken</b> <sup>[1]</sup> 41:18  <b>misunderstanding</b> <sup>[2]</sup> 40:  <b>22 217:19</b></p>	<p><b>misunderstood</b> <sup>[1]</sup> 205:2  <b>mode</b> <sup>[1]</sup> 11:13  <b>Model</b> <sup>[6]</sup> 77:5 90:19,20 147:  <b>22 176:17,19</b>  <b>moderate</b> <sup>[1]</sup> 39:21  <b>moment</b> <sup>[6]</sup> 43:9 51:8 60:10  <b>88:12 195:22 204:22</b>  <b>Monday</b> <sup>[1]</sup> 223:6  <b>Mondev</b> <sup>[1]</sup> 161:5  <b>money</b> <sup>[1]</sup> 59:19  <b>month</b> <sup>[1]</sup> 129:12  <b>months</b> <sup>[15]</sup> 39:12 52:4,8,13,  <b>21 53:9,10,10,12 54:7,7,13</b>  <b>55:16 183:20 213:16</b>  <b>Montreal</b> <sup>[1]</sup> 73:19  <b>more</b> <sup>[64]</sup> 7:14 9:15,18 15:21  <b>16:19 22:22 23:15,20 32:11</b>  <b>36:20 42:9 47:7 51:20 52:4,</b>  <b>13 62:12 65:7 67:12,22 72:3</b>  <b>73:11 91:2 95:7 96:12 102:</b>  <b>15 104:18 106:19 112:17</b>  <b>115:16 116:3,3,8 117:10 121:</b>  <b>3,22 123:21 125:4,5 128:21</b>  <b>147:17 149:16,21 150:18</b>  <b>155:9 165:18 166:13 171:10,</b>  <b>14 174:19 183:20 189:8 190:</b>  <b>9 195:17 203:11 205:19 206:</b>  <b>4,19 207:15 210:13 218:21</b>  <b>220:9 221:18 223:5,9</b>  <b>morning</b> <sup>[8]</sup> 7:2 15:9 21:15  <b>26:2 61:17 81:11 213:5 225:</b>  <b>5</b>  <b>most</b> <sup>[16]</sup> 39:21 55:18 82:14  <b>104:12 109:5 119:10 122:11</b>  <b>141:9 142:18 189:4 192:17</b>  <b>193:19 201:22 210:16 223:2,</b>  <b>18</b>  <b>most-favored-nation</b> <sup>[1]</sup>  <b>140:22</b>  <b>motion</b> <sup>[3]</sup> 33:5,9,18  <b>MOTIONS</b> <sup>[3]</sup> 32:21 33:4 34:  <b>4</b>  <b>move</b> <sup>[7]</sup> 38:4 40:6 48:21 60:  <b>14 109:5 205:22 221:3</b>  <b>moved</b> <sup>[2]</sup> 40:5 45:20  <b>moving</b> <sup>[1]</sup> 221:3  <b>MSA</b> <sup>[1]</sup> 103:14  <b>much</b> <sup>[37]</sup> 14:14 18:13 21:16  <b>23:14,20 43:13 47:19 49:19</b>  <b>52:9 53:3 56:16 57:6 81:20</b>  <b>86:12 91:13 94:19 109:16</b>  <b>115:6 125:4,5 130:11 142:17</b>  <b>145:12 149:10 162:18 171:</b>  <b>10,13 187:2 188:2 196:10</b>  <b>203:15 204:8 208:22 213:6,</b>  <b>18 214:8 225:14</b>  <b>mud</b> <sup>[1]</sup> 220:18  <b>multiple</b> <sup>[1]</sup> 11:6  <b>municipal</b> <sup>[1]</sup> 156:4  <b>must</b> <sup>[3]</sup> 39:10 73:7 112:2  <b>Myers</b> <sup>[16]</sup> 37:20,22 44:6 45:6  <b>64:11 65:18,19 78:19 88:14,</b>  <b>16,20 92:5,8 177:5,7,8</b>  <b>myself</b> <sup>[6]</sup> 7:4 46:10 56:4,6  <b>131:17 185:2</b></p>	<p><b>Nacionale</b> <sup>[1]</sup> 112:18  <b>NAFTA</b> <sup>[94]</sup> 7:16 9:5,7,7 12:  <b>16 15:12,13 16:16 17:12 18:</b>  <b>13,15 29:16 44:3 49:13 62:</b>  <b>17 63:6,10 64:12,20 68:9 69:</b>  <b>4 72:7 73:6,6,8 74:11 76:19,</b>  <b>22 79:10 83:19,19 84:4,5,9,</b>  <b>12 91:16 92:21 93:3,10 97:</b>  <b>11 100:12 101:21 102:3 109:</b>  <b>14 110:14 111:15,15,18 112:</b>  <b>4 113:12 116:9 123:13 124:</b>  <b>15 125:12 130:7 132:6 135:</b>  <b>19 136:6 137:17 139:22 140:</b>  <b>4,14 141:7 142:3 146:12 147:</b>  <b>3 148:10,12,18 152:9,19,22</b>  <b>154:15,16,19 159:2,8,10 160:</b>  <b>10,20,22 161:21 162:20 167:</b>  <b>2 169:15,21 170:7,15 176:19</b>  <b>177:13 191:22 197:9 205:14</b>  <b>222:22</b>  <b>NAFTA's</b> <sup>[1]</sup> 162:8  <b>NAFTA-protected</b> <sup>[1]</sup> 110:  <b>10</b>  <b>NAFTA/UNCITRAL</b> <sup>[1]</sup> 23:7  <b>nail</b> <sup>[1]</sup> 121:21  <b>name</b> <sup>[2]</sup> 8:14 55:16  <b>named</b> <sup>[1]</sup> 173:5  <b>names</b> <sup>[1]</sup> 9:20  <b>narrow</b> <sup>[2]</sup> 142:15 174:7  <b>nation</b> <sup>[1]</sup> 141:9  <b>national</b> <sup>[4]</sup> 105:7 124:22  <b>140:20 141:19</b>  <b>nature</b> <sup>[15]</sup> 38:6 52:3 53:3,4  <b>115:5,17 118:9 119:20 131:</b>  <b>18,22 134:7 138:13 139:4</b>  <b>172:2 181:2</b>  <b>necessarily</b> <sup>[3]</sup> 8:6 116:22  <b>225:10</b>  <b>necessary</b> <sup>[15]</sup> 9:14 16:17 22:  <b>5 24:4 31:16,18,22 57:16</b>  <b>124:8 142:22 173:18 178:11</b>  <b>193:6 208:3 209:13</b>  <b>necessity</b> <sup>[2]</sup> 16:8 112:3  <b>need</b> <sup>[72]</sup> 11:11 29:13 30:5,17  <b>44:14 48:16 51:13 58:7 66:3</b>  <b>98:7 115:10,16 117:5,17 118:</b>  <b>5,6,8,16 122:16 129:22,22</b>  <b>134:10 137:12 139:3 141:8,</b>  <b>16 143:5,8,9,15,22 145:21</b>  <b>146:8 152:2 157:22 158:10</b>  <b>168:5 169:13 178:5 180:9,11,</b>  <b>12 181:10 182:5 184:18 191:</b>  <b>7,18,18 192:4 193:10,16 195:</b>  <b>21 196:15,17 198:6,22 200:3,</b>  <b>4 201:7 202:9,14,16 206:12,</b>  <b>14 207:5,11 208:7 211:16</b>  <b>212:8 220:19,22 223:17</b>  <b>needed</b> <sup>[6]</sup> 94:12 153:19 203:  <b>20 209:8 210:15 213:6</b>  <b>needs</b> <sup>[16]</sup> 24:21 87:3 114:16,  <b>16 116:22 117:4 154:20 157:</b>  <b>16 174:6 178:12 181:3 182:8</b>  <b>190:3 206:13 218:20 221:18</b>  <b>neutral</b> <sup>[15]</sup> 62:21 65:2 66:14  <b>67:7 69:14 70:2,12,17 71:14</b>  <b>72:5 85:11 86:11,21 89:14</b>  <b>91:13</b></p>
<b>N</b>			
<p><b>N</b> <sup>[1]</sup> 7:1</p>			



**neutrality** <sup>[17]</sup> 61:19,21 62:2, 3,6,11,12 65:8,13 71:20 72:2, 4,21 73:3,20 89:11 93:6  
**never** <sup>[15]</sup> 15:18 37:10 38:9 62:21 64:18 65:2 73:16 77: 14 99:20 123:6,19 127:22 134:4 204:16 218:14  
**Nevertheless** <sup>[2]</sup> 62:5 70:11  
**new** <sup>[28]</sup> 8:5 19:17 31:12 34: 16 55:6 102:11 104:17 107:7, 9,16,19 108:5 123:4,9,19 124: 3 135:16,20,22 136:9 137:7, 20 138:7 184:11 190:6 198: 11 199:21 209:3  
**new-found** <sup>[1]</sup> 131:19  
**next** <sup>[10]</sup> 80:16 82:22 89:6 93: 16 95:15 171:2 200:9 213:13 217:21 218:4  
**nice** <sup>[2]</sup> 54:9 195:15  
**Nick** <sup>[1]</sup> 155:14  
**night** <sup>[1]</sup> 224:16  
**Nobody** <sup>[3]</sup> 77:2 158:9 219: 18  
**Nods** <sup>[1]</sup> 17:19  
**noise** <sup>[1]</sup> 18:4  
**nominating** <sup>[3]</sup> 86:2,4,9  
**nonbifurcation** <sup>[2]</sup> 197:14 200:16  
**noncontinuing** <sup>[4]</sup> 98:19 101:8,11 104:4  
**nondisputing** <sup>[2]</sup> 154:16 167: 3  
**none** <sup>[2]</sup> 94:15 127:15  
**Nonetheless** <sup>[1]</sup> 99:10  
**nonfactor** <sup>[1]</sup> 81:8  
**nonissue** <sup>[2]</sup> 81:7 82:7  
**nonneutral** <sup>[2]</sup> 74:4,5  
**nonservice** <sup>[1]</sup> 31:2  
**nontransparency** <sup>[1]</sup> 139:20  
**nontransparent** <sup>[1]</sup> 131:7  
**norm** <sup>[2]</sup> 15:16 50:18  
**normally** <sup>[3]</sup> 47:16 88:18 210: 12  
**notable** <sup>[1]</sup> 163:19  
**note** <sup>[8]</sup> 9:20 19:14 78:19 101: 2 159:11 160:21 161:22 167: 7  
**noted** <sup>[2]</sup> 21:17 56:20  
**Notes** <sup>[4]</sup> 61:14 76:16 93:15 169:10  
**nothing** <sup>[12]</sup> 34:16 41:16 58:9 107:16,17 130:2 135:16 136: 4 160:10 165:15 188:11 206: 18  
**notice** <sup>[21]</sup> 10:11 12:6,17,18 23:4 29:6,10 97:3,10 102:4 106:12 107:5 136:15 137:22 138:5,19 139:2 142:8 158:20 170:3 199:7  
**notification** <sup>[3]</sup> 25:2 27:12 163:9  
**notified** <sup>[1]</sup> 190:15  
**notwithstanding** <sup>[2]</sup> 21:2 161:17  
**novel** <sup>[1]</sup> 198:14  
**November** <sup>[1]</sup> 13:9  
**now** <sup>[76]</sup> 10:17 11:11 13:10

19:7,21 24:14 31:16 36:10 51:22 53:11 57:8 60:13 63:9 67:4,14 70:4 72:17 82:17 87: 5 95:3 97:7 98:12 106:4 111: 4,9 112:4 114:20 119:8 120: 11,16 122:22 123:18 131:19 133:5 141:2 145:7 147:6,14 148:4,15 150:21 151:4,20 154:2 155:5 156:20 158:9,14 159:22 164:12 168:14 170: 18 171:16 173:18 178:3,6 179:6,20 184:17 196:13 197: 12,17 198:5,12 202:9 203:3 205:8 211:5 219:3,9 222:13 223:20,22 224:4 225:8,15  
**number** <sup>[16]</sup> 10:11 18:6,6 28: 22 57:18 114:2 130:11 144: 13 160:20 161:3 180:7 187: 15 190:2 205:15,16 224:20  
**numerous** <sup>[1]</sup> 99:17

O

**Obadia** <sup>[2]</sup> 27:5 54:17  
**obiter** <sup>[1]</sup> 66:4  
**object** <sup>[2]</sup> 163:20 212:12  
**objected** <sup>[1]</sup> 148:15  
**objection** <sup>[17]</sup> 14:8 33:19 49: 7,9 97:2,18 98:22 99:8,12 105:22 114:4,13 119:15 124: 9 125:4 196:20 218:2  
**objections** <sup>[14]</sup> 31:10 96:20 97:4,13 113:22 115:19 117: 12 119:5,8,22 124:17 193:13 215:2 221:8  
**objective** <sup>[4]</sup> 150:20 162:9,21 163:3  
**obligation** <sup>[6]</sup> 38:2 114:10 139:16 140:4 141:13 162:12  
**obligations** <sup>[8]</sup> 110:10 142:2 154:14 160:11,16 162:11,19 167:15  
**obliged** <sup>[3]</sup> 43:6 45:16 46:4  
**observation** <sup>[1]</sup> 87:18  
**observations** <sup>[2]</sup> 143:9,13  
**obtain** <sup>[1]</sup> 162:16  
**obvious** <sup>[1]</sup> 78:7  
**obviously** <sup>[27]</sup> 16:18 21:10, 12 31:19 49:16 76:15 85:15 93:10 97:14 99:6 100:5,17, 22 105:2 106:21 108:13 124: 9 125:19 126:8 137:5 149:4 153:19 171:5 202:9,17 208: 17 219:2  
**occasion** <sup>[3]</sup> 7:5 19:10 39:10  
**Occasionally** <sup>[1]</sup> 52:10  
**occur** <sup>[2]</sup> 59:9 181:6  
**occurred** <sup>[6]</sup> 44:18 99:17 101: 12 114:2 120:8 138:18  
**occurring** <sup>[2]</sup> 125:12 126:16  
**occurs** <sup>[1]</sup> 12:17  
**offense** <sup>[1]</sup> 133:4  
**offering** <sup>[1]</sup> 148:11  
**office** <sup>[4]</sup> 25:22 146:13,15 163:13  
**offices** <sup>[1]</sup> 11:8  
**officials** <sup>[1]</sup> 170:12  
**often** <sup>[1]</sup> 222:21  
**Oh** <sup>[2]</sup> 107:6 126:4

**Okay** <sup>[23]</sup> 8:9 12:10,21 17:20 22:10 24:14 26:21 28:6 29: 22 30:7 37:3 47:14 56:15 58: 21 79:20 96:15 121:14 144: 20 145:6 171:18 200:7 203:3 218:18  
**once** <sup>[13]</sup> 64:12 68:15 79:5 87: 15 101:4 129:12 135:7 143:6 148:21 197:6,10 208:4 215: 20  
**one** <sup>[119]</sup> 9:3,6,12,15,22 10:11 11:7,7 13:12 15:2 22:19 23:6 24:14,20,22 26:18 31:3 33:7 36:11 37:15 38:3 39:10,18, 18 41:10 43:3 45:21,22 47: 10 49:14 51:17 52:5 55:21 57:13,13,17 61:14 65:9 71: 19 72:21 73:6,10 74:7 76:6, 15,16 80:3,10 85:17 87:17 92:12 93:4,7 103:16 105:9, 18 106:7,9 121:13,17 129:16 130:11 131:3 139:19 145:16 149:19 153:2 163:19 167:21, 22 168:12 177:13 178:17 180:7 182:14,18 184:19 185: 11,14 187:10 196:13 198:19 203:3 204:19 205:15 209:16 212:6,9,11,15,17,19,21 214:9, 19,21,22 215:4,9 216:5,7,9, 14,21 217:7 218:8,15,16 220: 4,12,15 221:7,8,10,14,22 222: 2,4,5  
**one-week** <sup>[1]</sup> 219:3  
**onerous** <sup>[1]</sup> 218:3  
**ones** <sup>[2]</sup> 123:9 160:6  
**ongoing** <sup>[1]</sup> 132:2  
**only** <sup>[35]</sup> 8:4 17:15 29:5 33:3 38:8 46:19 47:12 49:3 55:21 56:4 58:22 67:22 68:2 76:3 97:8 101:3 118:3 120:19 121: 10 126:19 127:8 132:10 133: 5,7 136:6 168:6 173:10,19 183:15 189:9 197:2,6 207:2 224:14,19  
**Ontario** <sup>[4]</sup> 79:3,4 92:8,10  
**onto** <sup>[1]</sup> 132:19  
**open** <sup>[7]</sup> 31:20 179:15,17 180: 18,19 181:2 206:21  
**open-minded** <sup>[1]</sup> 40:15  
**operating** <sup>[1]</sup> 136:18  
**operation** <sup>[4]</sup> 146:9 186:5,12 210:19  
**opportunity** <sup>[6]</sup> 15:8 83:5,8 131:14,19 192:14  
**opposed** <sup>[2]</sup> 65:9 199:20  
**opposing** <sup>[1]</sup> 218:2  
**opposite** <sup>[1]</sup> 124:16  
**option** <sup>[2]</sup> 79:21 119:10  
**options** <sup>[1]</sup> 119:4  
**ORAL** <sup>[3]</sup> 28:22 29:3 57:22  
**orally** <sup>[1]</sup> 184:17  
**Order** <sup>[115]</sup> 10:21 19:22 23:2, 5,6 25:20 50:7,21,21 51:7 55: 6 96:5,19 143:12,14,16,19 144:16,17 145:15 146:4,11, 21 147:7,8,9,13 148:3,4,14 149:6,12,14,14 150:6,13,15,

19 151:11,14,15,16,16 152:4, 7,8,11,11,16 153:14 154:3,7, 8,13,20,22 155:8,14 156:16 158:18 159:4,20 160:17 161: 14,18 164:14,15 165:15 166: 8,12,20 167:16,17,20 168:2, 20 170:10,20 172:15 173:2, 10,21 174:17 177:2 178:3,5 183:11,19 184:5 185:12 186: 19 188:18 189:4 191:5,14,18, 21,21 192:15 193:17,21,22 194:5,21,21 195:5 202:14,16, 19,22 210:6 217:13 221:5,21 225:2  
**orders** <sup>[4]</sup> 146:8 147:7 173: 14 182:16  
**Organizing** <sup>[1]</sup> 76:16  
**orientation** <sup>[1]</sup> 136:12  
**original** <sup>[1]</sup> 182:18  
**originally** <sup>[1]</sup> 50:20  
**ORREGO** <sup>[163]</sup> 7:2 8:11 9:19 10:18 11:16 12:2,10,14,21 13:2 14:14,17,20 17:4,10,20, 22 18:7,9,17,20 20:2,10,17 21:16,19 22:10 24:8,14 26:6, 11,21 27:16,18 28:6,10,14,21 29:2,20 30:4,13,20 32:11,16, 22 33:20 34:3,7,9,14 35:2,4, 9,19,22 36:3 37:3 38:20 41:6, 9 46:11 47:14,21 48:5,22 49: 9,19 51:9,15 55:11 56:7,11, 15 57:8,21 58:14,17,21 59:3 60:7,11,13 61:4,9 72:16 82: 16 83:7 91:19,22 94:19 95: 20 96:15 106:3 109:2 120:4 121:14 122:18 125:7 129:6 135:11 138:10 142:17 144:9, 20,22 145:9 158:13 159:3,5 168:22 169:3 171:19 178:13 179:19 180:3 182:9,12 185:3, 7 187:3 189:6,17,22 191:13 192:10 194:10 195:3 197:11 198:5 200:7,14 202:19 203:3 204:19 207:7 209:7 211:8 212:19 213:18,22 214:11,15, 19 215:13,16,20 217:6 218: 18 219:11 220:4,10 221:6,20 222:18 223:6,12,21 224:5,10 225:3,11,14  
**other** <sup>[73]</sup> 7:5 10:8 15:2 16:2 19:16 23:20 26:19 34:18 37: 21 38:3 40:9 41:10,20 49:6 50:9 58:12,18,19 62:13 66:2 69:13 72:3,14 76:6 81:6 87:6, 6 91:6 103:22 104:13 110:12 112:20 118:6,16,18 122:4 128:21 129:17 132:5,11 139: 13 140:11 144:8 145:18 152: 3 157:6 160:4 173:14,14,14, 175:11 183:16,21 187:11,15 188:14 190:3,18,19 191:20, 22 194:2 201:6 209:22 210: 18 212:7 214:21 217:15 218: 9,11 220:14 224:6,8  
**others** <sup>[3]</sup> 42:5 56:20 95:8  
**Otherwise** <sup>[12]</sup> 9:11 54:7 77: 3,3 88:17 91:9 102:9 135:3

<p>141:8 177:19 181:15 198:20  <b>Ottawa</b> [7] 60:4 73:20 74:5            76:3 82:13 86:16 132:22  <b>ought</b> [1] 110:16  <b>ours</b> [1] 16:19  <b>ourselves</b> [1] 124:21  <b>outcome</b> [1] 216:10  <b>outright</b> [1] 103:8  <b>outside</b> [4] 64:5 164:6 200:13            209:21  <b>overall</b> [2] 214:22 222:3  <b>overlooked</b> [1] 20:21  <b>overreaching</b> [1] 218:13  <b>own</b> [9] 17:15 40:2 41:13 70:            13 90:6 114:11 157:20 165:            11 182:6</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>P</b> [5] 7:1 9:6,7 14:6 167:3  <b>p.m</b> [1] 225:16  <b>page</b> [2] 103:4 156:21  <b>pages</b> [1] 185:20  <b>paid</b> [2] 42:17 46:2  <b>Panel</b> [3] 15:20 133:7 185:14  <b>panels</b> [1] 119:11  <b>pantry</b> [1] 206:22  <b>paper</b> [4] 22:18 23:14 92:4            184:19  <b>paper-copy</b> [1] 22:5  <b>papers</b> [1] 24:16  <b>paragraph</b> [33] 9:3,22 16:4,6,            8 20:19 26:16,17 30:22 31:            20 33:2 35:5 41:11 48:6 57:            17,17,21 59:7 63:16,17 71:6,            13 74:19 77:17,20 78:17 103:            3 121:7,8 139:6 170:10 182:            20,20  <b>paragraphs</b> [4] 34:20 57:12            77:18 79:5  <b>pardon</b> [2] 92:9 152:21  <b>part</b> [23] 9:15 23:5 26:18 42:            10 43:4,5 48:11 66:8,15 120:            2 121:15 127:4 137:10 140:3            148:19 153:3 158:4 169:9            171:13 174:5 176:16 186:22            187:11  <b>particular</b> [33] 20:18 25:6 32:            18 36:7 39:16 41:11,18 42:            16 57:17 59:16 65:17 67:10            73:4,19 74:12 77:17 81:17            90:8 101:18 103:19 114:10            122:5,6 129:18 159:14 161:            10 164:11,13 167:12 176:15            182:15 185:11 207:8  <b>particularly</b> [1] 7:4 8:2,16            11:2 29:10 37:6 48:7 70:5            117:20 146:17 164:9  <b>Particulars</b> [1] 101:19 102:8            109:12 116:3 123:3,14 135:            21 137:18 144:15 206:6,20  <b>particulars</b> [1] 107:9  <b>parties</b> [95] 7:7,11 8:10,12 9:            4,6,11 13:8 15:4 19:4 20:21            21:21 29:6 30:16 31:16 32:7            37:7 38:16 40:8,15 42:3,16            43:3 46:14,19 49:22 50:17            51:5 52:10,16 53:6,7 54:5 61:            3,13 62:4 70:9,10 73:10 76:5</p>	<p>82:17 84:5,7,9,12 89:20 93:3            94:20 95:6 100:13 105:8 122:            12 145:14 147:2,5 151:17            152:13 154:16 157:4,5,8 161:            2 162:6,10,21 163:9 164:22            165:4 167:3,6 168:7 170:7,            10 172:18 173:3 174:6 182:            13 183:11,18 186:3,9 187:13,            22 193:20 194:5 203:16 211:            17 212:6,12 214:21 216:10            217:8 218:10 222:2,4  <b>parties</b> [5] 40:4 53:18 61:11            65:10 78:9  <b>partly</b> [1] 63:22  <b>parts</b> [1] 132:5  <b>party</b> [32] 14:5,5 26:19 33:11            36:6 38:3,3 43:7 46:2 47:2            58:11 80:4,11 96:19 128:16            139:9,13 141:6 154:14 156:            15 163:20 164:11 165:4 167:            16 172:9 173:5 176:12 196:            18 207:21 208:3 214:4 217:            15  <b>party's</b> [1] 218:2  <b>pass</b> [1] 95:10  <b>past</b> [4] 13:11 54:10 98:18            222:19  <b>pattern</b> [1] 132:16  <b>Pause</b> [2] 76:21 197:19  <b>paw</b> [1] 218:14  <b>pay</b> [2] 46:9 177:20  <b>payable</b> [6] 43:15,17 45:11            46:7,8,21  <b>payment</b> [1] 42:13  <b>PAYMENTS</b> [2] 47:20,22  <b>PDF</b> [1] 22:4  <b>pending</b> [10] 8:2 20:4 32:18            34:11 50:2 56:18 57:2 59:5            60:14 145:3  <b>people</b> [8] 11:6 45:15 54:18            59:15 128:10 130:19 131:21            173:20  <b>perfectly</b> [3] 40:13 185:5 189:            10  <b>performance</b> [2] 125:2 141:            22  <b>perhaps</b> [29] 9:9,13 30:22 32:            8 36:12,20 45:8,12 49:6 59:            21 60:2 62:12 72:3 73:11 83:            22 88:14 92:10 95:20 101:5            137:11 144:11 182:13 185:2            190:8 191:12 192:18 204:21            214:16 221:18  <b>period</b> [38] 14:4,4 37:13 53:8,            8 97:20 98:3 100:7 102:21            103:7,12,16 108:6 112:13,19,            21 113:5 114:21,21 116:13,            16 120:11 121:13 122:7 126:            20 127:17 130:6,12 132:2            204:5 213:5 216:16,21 217:4            219:4 220:2,3,14  <b>periods</b> [1] 104:8  <b>permit</b> [6] 107:19 108:17 154:            3 165:9 180:15,16  <b>permits</b> [3] 107:3 110:7 175:            6  <b>person</b> [1] 48:16</p>	<p><b>personal</b> [3] 48:12 177:6,17  <b>persons</b> [1] 190:2  <b>perspective</b> [1] 25:15  <b>phase</b> [7] 118:18,20 130:16            193:9 205:7 210:12 216:4  <b>physical</b> [1] 74:13  <b>pick</b> [1] 26:5  <b>piece</b> [2] 37:22 184:19  <b>pile</b> [1] 184:11  <b>pivotal</b> [1] 100:22  <b>place</b> [6] 10:8 18:19,21 21:3,            13 47:6 57:3 60:15 61:12 62:            14,22 64:5 70:7 71:18 72:5,            13,20 73:3,9,14,17,18 74:7,            18,20 75:2,5,19 78:2 79:11,            22 80:20,22 81:8,21 82:3,7,            14,18 83:21 84:7,14 85:8,10            86:3,4,9,19,22 87:2,7 92:22            93:11 94:6,16,21 131:18 152:            15 166:16 197:2,17  <b>placed</b> [2] 72:22 93:4  <b>places</b> [4] 74:8 80:3 87:6 219:            21  <b>plan</b> [1] 55:6  <b>planes</b> [1] 190:2  <b>player</b> [2] 133:11 175:10  <b>players</b> [1] 175:11  <b>plead</b> [4] 136:15 137:5,6 141:            17  <b>pleaded</b> [10] 98:15 102:2 103:            17 104:5 108:3 123:7 128:12            140:8 142:6 199:2  <b>pleading</b> [8] 90:4 134:14 136:            15 138:5,20 139:2 198:22            199:7  <b>pleadings</b> [10] 32:8 71:21            103:18 108:9,22 115:3 130:3            147:19 198:21 199:2  <b>please</b> [11] 9:20 54:17 72:17            79:14 109:2 125:8 129:6 135:            17 155:12 195:15 214:15  <b>pleased</b> [3] 7:3 47:8 190:7  <b>plus</b> [4] 34:15 108:9 213:15,            15  <b>poetry</b> [1] 32:15  <b>point</b> [73] 10:15,17 11:12 13:            10 16:12 18:22 24:20 32:5,            19 33:10 41:19 47:6 55:11            58:5 76:19 77:16 78:3 84:15,            18 85:18,18,19 86:17 87:3,9,            10 90:18 91:7,12 92:22 93:2,            16,19 94:10 96:18 101:6 121:            6,6 126:19 129:21 138:15            139:14,17 162:4 166:7 167:9            168:12 171:9 176:4 178:17            179:13 182:10,12 185:11            186:12,13 187:9 194:10 195:            6 196:7,13,22 197:9,21 198:6            200:8 212:4 213:11,22 215:            11 221:12 224:19 225:4  <b>pointed</b> [4] 67:9 160:18 194:            19 216:14  <b>points</b> [18] 19:16,17 56:17 72:            19 83:5,11 88:7 99:4 101:11            130:10 160:5 163:13 164:13            167:19 178:14,17,18 183:12  <b>policies</b> [1] 140:15</p>	<p><b>policy</b> [7] 69:22 102:4 104:15            109:8 126:12,13 174:19  <b>polite</b> [1] 32:6  <b>Pope</b> [10] 64:2,6,9 77:12 94:2            138:21 147:7,8 149:13 175:2  <b>position</b> [32] 40:8 51:14 62:            16 63:2,21 64:15 65:4 68:4            69:21 77:7 79:9 80:13 89:15,            17 90:6,10,12 94:5 97:12            100:5 111:7 125:10 126:20            160:9,14 162:7 168:15 172:5            176:6 192:12 198:9 203:15  <b>positions</b> [2] 78:4,6  <b>possession</b> [1] 198:11  <b>possibility</b> [7] 22:19 31:20            42:8 106:4 207:13 209:9 223:            2  <b>possible</b> [13] 25:13 51:19 56:            10 60:4 97:17 118:4 119:9            149:11 164:19 182:14 185:7            192:2 196:11  <b>possibly</b> [1] 218:3  <b>post</b> [1] 126:5  <b>posted</b> [1] 185:19  <b>postpone</b> [2] 39:6 129:10  <b>postponed</b> [1] 130:5  <b>postponement</b> [1] 39:11  <b>potential</b> [3] 117:17 127:14            211:12  <b>POWER</b> [12] 28:13,15 67:15            68:3,12,13,15,17 90:4 133:2            190:20,22  <b>powers</b> [17] 62:18 67:9,11,13            69:12,13,13,16,16,18,20 70:3,            9 72:9 94:15 150:16,16  <b>practical</b> [7] 11:14 86:2,3,8            98:8 198:15,15  <b>practically</b> [3] 99:3 198:6            200:6  <b>practice</b> [6] 15:17 22:8 36:13            73:12 137:4 188:8  <b>practices</b> [2] 14:10 140:16  <b>preamble</b> [1] 8:21  <b>precedents</b> [1] 137:2  <b>precise</b> [1] 127:11  <b>precisely</b> [3] 197:12 199:5            207:10  <b>precision</b> [1] 173:2  <b>preclude</b> [1] 25:18  <b>precluded</b> [1] 156:10  <b>preempt</b> [1] 17:13  <b>prefer</b> [2] 25:16 95:19  <b>preferable</b> [4] 20:3 59:20            171:19 201:11  <b>preference</b> [3] 203:10,18            204:12  <b>preferred</b> [2] 14:2 25:17  <b>prejudge</b> [1] 17:13  <b>prejudgment</b> [1] 201:20  <b>prejudice</b> [3] 21:13 139:13            174:8  <b>prejudicial</b> [1] 117:13  <b>preliminarily</b> [1] 99:13  <b>preliminary</b> [9] 53:19 97:13,            14 105:22 117:2,8 118:18,20            124:18  <b>prepared</b> [13] 16:2 25:8 135:</p>
--	---	--	---



5 171:15 178:10 180:19 185:5  
 5 192:13 202:8,11 205:22  
 207:3 210:11  
**prepares** [1] 225:12  
**prerogative** [2] 89:12 94:9  
**prescription** [1] 112:8  
**present** [2] 7:8 154:9  
**presentation** [1] 185:21  
**preserve** [1] 174:6  
**PRESIDENT** [181] 7:2 8:11 9:19  
 10:3,18 11:16 12:2,10,14,21  
 13:2,16 14:14,17,20 15:7  
 17:4,10,20,22 18:7,9,17,20  
 20:2,10,17 21:16,19 22:10  
 24:8,14 26:6,11,21 27:16,18  
 28:6,10,14,21 29:2,20 30:4,13,20  
 32:11,16,22 33:20 34:3,7,9,14  
 35:2,4,9,19,22 36:3  
 37:3,9 38:20 41:6,9 44:9 46:5,11,18  
 47:14,21 48:5,22 49:9,19  
 51:9,15 55:11 56:7,11,15  
 57:8,21 58:14,17,21 59:3  
 60:7,11,13,19 61:4,9,11 72:16  
 82:16 83:4,7 91:19,22 94:19  
 95:20 96:15 106:3 109:2,3  
 120:4 121:14 122:18 125:7  
 129:6 135:11 142:17 144:9,20,22  
 145:9,13 158:13,16  
 159:3,5 168:22 169:3 171:19,22  
 178:13 179:19 180:3 182:9,12  
 185:3,7 187:3 189:6,17,22  
 190:8 191:13 192:10 193:2  
 194:10 195:3 197:11 198:5  
 200:7,14 202:19 203:3 204:19  
 207:7 209:7 211:8 212:19  
 213:18,22 214:3,11,15,19  
 215:13,16,20 216:18 217:6  
 218:18 219:11 220:4,10 221:5,6,20  
 222:18 223:6,12,21 224:5,10  
 225:3,11,14  
**pressure** [2] 52:11 95:6  
**presumption** [3] 97:13 124:16,18  
**pretty** [3] 158:5 162:10 164:16  
**prevent** [5] 116:17 149:12  
 170:19 174:14 175:11  
**previous** [2] 186:18 189:10  
**previously** [2] 153:15,16  
**price** [4] 128:3,5,6 129:16  
**prices** [1] 128:9  
**principle** [11] 47:16 49:17 62:2,6  
 141:9,15 146:3 147:4 167:2,11,14  
**principles** [1] 186:13  
**private** [1] 186:6  
**privilege** [9] 89:13 153:12  
 165:16,19 174:2,4,5 182:7 192:22  
**privileged** [2] 69:8 181:18  
**privileges** [1] 42:11  
**Privy** [12] 68:21 69:6 143:6  
 146:13,15 148:2 150:10 151:2  
 153:18 158:8 163:13 172:3  
**probably** [15] 9:18 15:12 25:16  
 31:18,22 39:21 123:8 143:22  
 144:6 145:2 158:22 168:4

184:17 194:22 217:18  
**problem** [48] 11:18 13:20 16:4  
 25:4 29:17,18 30:14 34:7  
 48:15,18 55:21 89:11 90:17,22  
 104:19 121:15 122:17  
 123:15 126:12 127:20 133:15  
 142:14 150:11 151:15  
 153:14 155:2 169:7 175:15,17,22  
 178:4 181:7 184:3,12  
 188:5 193:3,8,22 205:20 206:14,15  
 209:6 210:5,17,17,22  
 219:18 220:6  
**problems** [8] 31:12 53:22  
 109:20 110:5 152:3,6 169:8 179:12  
**Procedural** [13] 23:2 27:17,19  
 31:5 34:17 101:9 158:18  
 159:4 161:14 164:2 179:7 194:21  
 224:12  
**PROCEDURE** [6] 32:21 33:4,5  
 49:16 59:10 218:20  
**procedures** [2] 15:3 49:15  
**PROCEDURES-PLEADIN GS** [1] 28:22  
**proceed** [13] 11:20 20:9 22:14  
 24:7 26:7 28:14 40:4 47:8 51:18  
 125:6 145:9 166:18 200:9  
**proceeding** [5] 52:22 56:21  
 118:15 119:6 168:13  
**proceedings** [8] 29:3 57:22 78:20  
 98:8 139:9 153:4 159:21  
 162:22  
**process** [34] 23:7,8,13,14,16,20  
 33:22 53:5 55:10 118:3  
 119:18 121:21 131:10 148:22  
 150:20 152:10 163:9,11 181:16  
 188:16 192:2 199:20 200:20  
 202:10,14 206:3,11 207:2,13,18  
 208:8 212:5 219:6,7  
**produce** [8] 181:12,20 182:3 183:11  
 199:12,12 217:8 220:2  
**produced** [5] 148:11 149:16 174:10  
 193:18 222:11  
**producible** [1] 203:17  
**producing** [1] 175:9  
**PRODUCTION** [49] 34:8,10 57:4  
 115:12 116:5 121:20 124:8  
 142:13 143:3,18 144:13,17  
 166:3,5 189:20 192:4,15  
 193:11 194:14,21 196:8,16,18,21  
 197:2 198:10,13,17 199:14  
 202:20 203:5,6,20 204:12  
 205:18 206:10,11 208:5,8,18  
 209:11 212:5 214:13,18  
 216:7,9,16,17,17  
**products** [2] 103:20 128:2  
**professional** [3] 47:11 48:4,6  
**Professor** [4] 130:8 138:10 213:20  
 214:6  
**profoundly** [1] 210:16  
**program** [2] 102:5 107:14  
**progress** [2] 86:6 143:2  
**progressed** [1] 64:7

**projections** [1] 117:8  
**prompt** [1] 213:6  
**promptly** [2] 56:5 223:22  
**promulgated** [3] 126:2,13 134:4  
**promulgation** [2] 106:12,19  
**proof** [1] 94:12  
**proper** [2] 161:14 212:2  
**properly** [5] 119:22 164:21 169:8  
 203:16 208:5  
**proposal** [1] 178:20  
**proposals** [2] 180:14,15  
**propose** [9] 7:20 27:11 108:13  
 145:22 167:13 168:8 180:18  
 191:8 208:12  
**proposed** [15] 44:20 45:10 50:7  
 70:7 96:5,10 108:10 144:16  
 145:17 151:14,15 165:14  
 168:2 175:12 202:11  
**proposes** [3] 182:21,22 211:20  
**proposing** [3] 41:8 191:2 210:13  
**proposition** [4] 106:11 161:11  
 183:6,10  
**proprietary** [1] 180:10  
**prose** [1] 32:14  
**protect** [3] 176:22 177:2 182:4  
**protected** [2] 63:12 181:3  
**protection** [3] 159:17 163:4,8  
**protections** [2] 164:6 188:4  
**prove** [2] 135:6 200:21  
**proven** [8] 8:17 201:16,17  
**provide** [19] 10:13 44:13 65:2  
 67:7 68:8 70:2 75:17 76:8 92:12  
 96:8 109:16 133:8 151:17 158:2  
 166:15 205:17 207:21 211:5  
 212:13  
**provided** [12] 24:10 42:19 70:21  
 82:9 93:19 100:20 103:2 109:11  
 143:12 157:7 178:7 186:21  
**provides** [6] 49:13 133:9 159:2,15  
 186:20 217:21  
**providing** [3] 67:20,22 161:20  
**Province** [2] 133:9,10  
**Provinces** [5] 154:6,11,12,13 167:11  
**provincial** [7] 132:20,21 133:16,19,19  
 134:2 170:13  
**proving** [1] 196:19  
**provision** [11] 23:4 112:4 151:13  
 153:19 166:9,12 169:16,20,22  
 170:4 176:15  
**provision's** [1] 175:22  
**provisions** [10] 82:2 110:14 159:9  
 161:17 166:15 172:21 173:16  
 176:10 187:21 209:17  
**public** [6] 69:22 174:18 185:19  
 186:5,7,9  
**pull** [1] 135:7  
**pure** [1] 89:6  
**purports** [1] 111:3

**purpose** [9] 24:4 44:19 55:2 113:12,13  
 165:16 194:12 198:18,21  
**purposes** [1] 101:6  
**pursue** [1] 104:19  
**put** [40] 14:12 16:9 21:6 22:16  
 23:4 25:20 32:12,14 48:15 50:6  
 51:7 75:21 92:6 108:13 109:22  
 111:12 115:18 116:3 122:22  
 132:19 134:14 137:22 139:16  
 143:19 153:19 154:9,21  
 160:15 170:22 177:22  
 180:14,15 184:21,21 188:22  
 194:21 206:18 213:2 217:13  
 225:4  
**putting** [5] 10:5 42:21 150:12 169:9  
 210:15

**Q**

**qualifies** [1] 160:10  
**quantification** [1] 127:11  
**quantum** [2] 210:14 222:22  
**question** [84] 13:21 18:21 21:19  
 24:14 25:3 28:11,15 29:3,10  
 32:18 33:3 36:14 41:12,17  
 49:3 50:8 55:5,17 56:19 57:15  
 58:22 59:6 65:7,7,12,13  
 66:9,16 67:3 74:20 75:5 76:13  
 79:13 80:16,17 82:5,18  
 89:6,7,8 90:2 91:18 92:19 93:17  
 94:7 96:16 97:9,10 99:5,9  
 106:6 110:13,18 111:17 112:17  
 115:18 116:18 120:5,16  
 121:2 125:14,15 126:7,15 134:12,16  
 136:12 137:3 138:11,12  
 143:2 145:10 155:4 162:18,18  
 169:19 172:22 181:22  
 187:12 189:20 200:15,19  
 201:21 203:3  
**questions** [11] 72:14 106:8,9 122:10  
 146:16 169:2 185:16,16  
 191:17 207:10 224:8  
**quickly** [15] 20:12 45:14 51:5 52:15  
 60:3 80:17 81:15 93:16  
 193:18 202:8,13 207:4,8 208:20  
 217:3  
**quite** [18] 45:14 46:8,9 60:13 61:13  
 78:14 94:9 99:10 120:7,12  
 121:4 169:8 170:6 183:3 195:5  
 200:18 202:5 203:18  
**QUORUM** [3] 34:13,14,19  
**quota** [1] 175:6  
**quote** [4] 63:9,9,14 106:18

**R**

**R** [1] 7:1  
**Raahool** [1] 9:16  
**raise** [14] 16:21 24:20 50:2 51:2  
 53:13 99:11 167:8,18 178:19  
 196:13 198:19 203:9 219:10  
 224:6  
**raised** [23] 19:18 81:15 83:6,11  
 89:3 97:4 108:5 119:22 138:8  
 143:13,15,21 160:5,7 163:14  
 164:13,14,20 165:8 166:7,22  
 167:10 168:11  
**raising** [1] 62:11  
**rather** [19] 11:9 14:22 23:5,8

<p>30:11 40:13 51:6,12 54:21 155:9 162:13 171:14 175:3 177:9 183:22 191:18 195:17 201:2 205:11 <b>rationale</b> [1] 200:18 <b>raw</b> [1] 175:3 <b>re-examination</b> [1] 17:7 <b>re-serve</b> [2] 30:10,11 <b>react</b> [3] 58:18 222:5 223:13 <b>reaction</b> [1] 51:16 <b>read</b> [9] 8:4 26:11 29:13 30:9 49:3 82:20 125:21 152:4 194: 17 <b>reading</b> [4] 98:14 156:16,16 161:12 <b>ready</b> [5] 57:8 60:13 145:5,9 189:19 <b>reaffirm</b> [1] 170:11 <b>reaffirmed</b> [2] 79:2 160:21 <b>real</b> [1] 173:8 <b>realistically</b> [1] 219:4 <b>reality</b> [1] 179:2 <b>realize</b> [4] 8:21 9:5 25:5 201: 15 <b>reallocate</b> [1] 37:15 <b>really</b> [35] 7:17 29:17 33:8,10 46:18 51:6 55:5,7 57:16 92: 22 108:19 110:20 112:17 117:11,14 135:6 140:22 141: 3,16 158:5 164:8,22 171:6 173:9,11 187:17 192:8 193:6, 16 195:20 204:18 207:5 209: 3 210:16 221:11 <b>reason</b> [18] 25:16 31:3 40:2,3, 6 50:11 54:18 67:6 72:11 80: 15 86:20 100:20 104:20 182: 21 183:2 197:3 205:17,19 <b>reasonable</b> [8] 50:9 52:15 101:7 104:22 199:14 219:12 221:22 222:9 <b>reasonableness</b> [1] 89:7 <b>reasoning</b> [2] 93:21 183:14 <b>reasons</b> [5] 62:15,21 66:2 195:17 211:10 <b>reassured</b> [1] 56:12 <b>recall</b> [1] 89:9 <b>receipt</b> [2] 12:6 216:3 <b>receive</b> [3] 167:4 188:15 216: 5 <b>received</b> [5] 32:10 123:3 148: 5 175:5,6 <b>receiving</b> [1] 173:20 <b>recent</b> [3] 102:7,12 104:12 <b>recently</b> [2] 131:14 146:10 <b>recess</b> [2] 57:7 145:8 <b>recognize</b> [2] 37:12 160:12 <b>recognized</b> [2] 163:6 167:6 <b>recognizes</b> [1] 161:6 <b>recommend</b> [1] 188:2 <b>reconvene</b> [1] 145:2 <b>record</b> [37] 13:18 14:13 18:3, 5 22:16 35:8,10,13 44:12,13 50:4 59:22 60:9,12 92:11 98: 10 105:16 108:8,20 112:3 115:11,16 122:21 124:7,11 130:2 153:2,17 164:18 172: 11 174:14 179:18 200:3 225:</p>	<p>6,11,13,15 <b>Records</b> [2] 35:19 177:17 <b>redacted</b> [3] 180:16 186:18, 21 <b>Redfern</b> [2] 217:17 222:7 <b>redolent</b> [1] 116:2 <b>reduce</b> [1] 142:15 <b>refer</b> [16] 63:3 65:17 70:17,19, 22 71:2,6,10 84:2,18 158:17 159:8,18 165:2 192:19 194: 13 <b>reference</b> [10] 8:12 12:3 22:3 27:21 36:19 87:14 161:10 169:7 176:13 218:9 <b>referenced</b> [1] 36:15 <b>references</b> [1] 196:8 <b>referred</b> [9] 83:18 85:13 87: 13 113:6 159:12 161:3,19 162:2 185:13 <b>referring</b> [4] 86:13 153:4 170: 3 205:13 <b>refers</b> [3] 17:11 165:12,13 <b>reflect</b> [2] 146:2 194:16 <b>refusals</b> [2] 215:11 220:16 <b>refuse</b> [4] 68:20 216:17 220:2, 7 <b>refused</b> [1] 217:15 <b>regard</b> [17] 61:12 62:16 64:15 65:4,13 66:5 71:18 83:13 84: 4,16 85:18,20 87:11,18,21 139:12 140:3 <b>regarding</b> [1] 120:14 <b>regardless</b> [2] 151:5,6 <b>regime</b> [3] 209:18,22 210:19 <b>register</b> [1] 124:4 <b>regulation</b> [2] 133:13 140:11 <b>regulations</b> [1] 140:15 <b>reheard</b> [1] 40:6 <b>reimbursement</b> [1] 36:11 <b>reiterate</b> [1] 16:14 <b>reiterated</b> [1] 64:10 <b>reject</b> [1] 160:14 <b>rejected</b> [4] 78:11 103:8 110: 15 128:12 <b>rejoinder</b> [15] 31:2,20 58:2,2, 12 198:19 203:20 204:3,10 205:4,10,11 207:12 208:9 213:9 <b>rejoinders</b> [2] 56:19 205:6 <b>rejoining</b> [1] 207:9 <b>relate</b> [1] 173:10 <b>related</b> [4] 38:22 104:10 165: 18 180:10 <b>relates</b> [2] 156:15 167:21 <b>relating</b> [3] 97:6 185:16 186: 5 <b>relation</b> [1] 146:11 <b>relatively</b> [1] 118:17 <b>release</b> [9] 148:15,19,21 149: 12 150:18 151:8 163:18,21 173:15 <b>released</b> [5] 148:20 149:2,21 180:15 181:15 <b>releasing</b> [1] 156:10 <b>relevant</b> [14] 48:7 65:7,13 73: 3 75:19 76:7,10 77:16 159:8, 18 164:9 170:14 191:17 217:</p>	<p>22 <b>reliance</b> [1] 191:19 <b>relied</b> [8] 61:13,18 63:22 64:4 71:3,9,21 84:19 <b>relies</b> [2] 70:19 71:8 <b>reluctant</b> [1] 92:3 <b>rely</b> [7] 44:16 49:10 61:20,22 69:19 136:2 149:11 <b>relying</b> [3] 11:3 70:13 72:2 <b>remaining</b> [1] 43:10 <b>remarks</b> [2] 17:8 18:11 <b>remember</b> [2] 13:9 36:8 <b>reminded</b> [1] 41:17 <b>reminds</b> [1] 80:3 <b>removed</b> [1] 168:19 <b>remuneration</b> [1] 49:18 <b>render</b> [2] 50:14 104:8 <b>rendered</b> [3] 43:18 45:8,21 <b>repeat</b> [6] 8:7 19:18 32:7 160: 9 161:4 214:17 <b>repeated</b> [2] 63:16 111:2 <b>repeats</b> [1] 111:5 <b>repetition</b> [1] 102:12 <b>repetitive</b> [2] 102:19 126:11 <b>repetitively</b> [1] 107:14 <b>replicates</b> [2] 151:14,16 <b>Replies</b> [1] 205:6 <b>reply</b> [17] 19:13 31:2 58:2,11 72:20 198:18 203:20 204:2,9 205:3,10,11,20 207:12 208:9 213:9 217:5 <b>report</b> [5] 208:19 209:3,4 210: 7,9 <b>reports</b> [1] 208:2 <b>representative</b> [1] 50:18 <b>Request</b> [19] 67:18,20 68:7, 11 119:14 121:20 148:6,8 149:3 154:16 182:13 191:5 202:12,22 212:6 215:10 216: 6,12 220:13 <b>requested</b> [6] 13:8,13,13 68: 21 149:16 217:21 <b>requesting</b> [2] 97:9 216:11 <b>requests</b> [8] 139:18 148:5 192:4 193:14 214:20,20 216: 15 219:2 <b>require</b> [8] 7:17 10:21 93:5 110:20 115:11,13,14 154:10 <b>required</b> [7] 93:4 131:12 142: 11 150:4 176:10 199:7 208: 22 <b>requirement</b> [4] 109:17 125: 2 140:19 157:15 <b>requirements</b> [4] 140:16 147: 14,17 199:3 <b>requires</b> [2] 115:4 174:8 <b>reschedule</b> [2] 37:17 40:7 <b>rescheduling</b> [2] 38:11 39:3 <b>reservations</b> [1] 14:12 <b>reserve</b> [3] 30:10,11 195:22 <b>reserved</b> [2] 29:13 223:9 <b>reserving</b> [2] 29:10 30:6 <b>resident</b> [2] 67:19 148:7 <b>resolution</b> [3] 7:8 46:21 118: 21 <b>resolve</b> [3] 152:14 179:12 195:14</p>	<p><b>resolved</b> [1] 197:21 <b>resources</b> [1] 117:3 <b>respect</b> [39] 7:22 8:2 13:5,12 15:5 18:11 29:6 34:16 59:7 60:17 72:21 74:9,16 81:15 82:7 89:18 91:3,5,8 94:21 100:4 101:8 102:22 107:21 110:2 114:17 118:14 120:17 125:11,19 140:20 146:16 166:9 167:10 176:2 180:4 182:15 210:18,19 <b>respected</b> [1] 172:20 <b>respective</b> [2] 29:9 170:13 <b>respects</b> [1] 61:11 <b>respond</b> [13] 54:12 62:7 67: 18,19 83:5,12,16 84:17 88:8 106:22 164:17 192:14 198:2 <b>responded</b> [4] 71:19 87:12 148:11 194:20 <b>Respondent</b> [11] 29:8 45:22 71:22 73:16 83:21 87:20 88: 3 93:20 104:10 165:6 182:22 <b>Respondent's</b> [4] 12:6 84:9, 13 93:11 <b>responding</b> [2] 178:16 209:5 <b>response</b> [6] 19:17 68:6 71: 17 85:20 87:10 210:18 <b>responsible</b> [1] 43:4 <b>responsive</b> [3] 32:8,9 209:2 <b>rest</b> [5] 158:5 171:17,20 213: 15 222:12 <b>restricted</b> [9] 168:3 174:20 175:12 177:3 180:22 187:7, 18 188:12 189:14 <b>restrictive</b> [1] 168:5 <b>result</b> [1] 134:21 <b>resume</b> [1] 57:8 <b>retire</b> [3] 197:18 198:4,5 <b>return</b> [2] 168:12 179:3 <b>returns</b> [1] 177:7 <b>Revenue</b> [3] 43:14,20 59:15 <b>reverse</b> [1] 96:18 <b>revert</b> [1] 54:6 <b>Review</b> [35] 50:12 62:16 63:2, 5,8,13,20 64:10,11,16,17 65: 4,14,18 66:21 67:5 69:10 72: 7 85:16 86:7 87:12,15 88:5, 17 89:2,5 90:7,11 92:7 95:5 111:4 113:3 163:11 167:13 177:14 <b>reviewed</b> [3] 57:11 63:6 179: 10 <b>reviewing</b> [1] 66:5 <b>reviews</b> [1] 89:22 <b>revised</b> [5] 152:7 154:8 155: 13 182:17,19 <b>revision</b> [1] 145:4 <b>rifle-not-shotgun</b> [1] 216:15 <b>Right</b> [38] 11:22 13:14 19:7 20:17 26:21 27:7 30:20 31: 16 32:16 36:16 57:9 60:8 67: 17 68:20 86:7 114:9 117:12, 14,20 122:22 123:18 124:13 128:14 135:11 154:2 155:16 170:20 174:6 192:10 193:11, 14 194:4 202:8 213:20 222:9, 13 223:22 224:3</p>
--	--	--	--

<p><b>right?</b> [2] 53:21 216:6  <b>rightly</b> [4] 13:9 24:15 36:8 196:4  <b>Ring</b> [16] 89:21 114:22 126:3 150:7 151:9,10 153:10 158:7 165:2,6 171:3 172:21 173:3, 4 209:19,19  <b>risk</b> [2] 118:13 119:4  <b>River</b> [7] 100:19,21 101:3,4 103:4,8 104:7  <b>road</b> [1] 114:6  <b>rolling</b> [2] 124:5 204:16  <b>room</b> [3] 186:8 200:13 207:9  <b>roughly</b> [1] 90:21  <b>round</b> [6] 198:21,22 207:14 209:9,11,14  <b>routine</b> [1] 107:18  <b>Rowley</b> [38] 14:7 39:15 40:19 41:2 42:19 43:21 45:13 46:17 47:3,9,10 56:9 58:13 65:6, 12 66:9 67:3 78:4 79:12,15 80:7 90:2 106:7 108:7 125:8, 9 126:15 127:6 183:8,18 184:13 188:22 212:17 216:13 217:2,12 221:17 222:16  <b>Rowley's</b> [2] 13:19,20  <b>rubric</b> [2] 82:6 116:11  <b>rule</b> [12] 84:10,11 96:10 112:6, 9 132:3,7,14 136:17 138:19, 20 193:4  <b>ruled</b> [1] 149:6  <b>rules</b> [33] 7:16,17 17:21 29:17 49:14 75:8,12,13 84:6,7 91:16 96:6,6,7,13 97:12 113:16 132:21 136:13 138:17 139:2 144:3 158:21 161:20,22 162:6 176:17,19 191:19 192:13 199:3,8 207:14  <b>ruling</b> [5] 44:14 117:11 139:15 152:3 216:12  <b>ruulings</b> [1] 114:17  <b>run</b> [2] 53:22 217:4  <b>runs</b> [1] 112:14</p>	<p>15 202:5 214:17 217:17 219:19  <b>schedules</b> [2] 208:13 222:15  <b>scientific</b> [3] 156:12 157:3,9  <b>scope</b> [1] 89:4  <b>seat</b> [4] 41:16 74:10,14 79:17  <b>second</b> [20] 16:6,8 20:19 62:18 66:15 67:6 68:15 74:20 83:18 84:15 92:19 98:22 126:15 153:14 165:8 179:13 196:22 198:21 203:22 209:11  <b>secondly</b> [2] 22:17 69:18  <b>secret</b> [2] 218:4,13  <b>Secretariat</b> [3] 24:10 27:14 59:19  <b>SECRETARY</b> [12] 12:8 21:22 22:9 24:9 26:10,15 27:6,11 30:2,7 42:9 216:3  <b>section</b> [8] 25:22 57:14 68:18, 19 69:2 143:21 169:18 190:17  <b>Sections</b> [1] 80:6  <b>security</b> [1] 182:4  <b>seeing</b> [1] 123:18  <b>seek</b> [4] 33:17 69:21 199:14 210:5  <b>seeking</b> [6] 33:22 89:14,19 119:20 174:16 206:2  <b>seeks</b> [4] 42:12 66:21 67:5 69:19  <b>seem</b> [5] 20:14 56:3 73:14 219:17 221:15  <b>seems</b> [7] 104:8 129:4 150:8 163:15 204:7 220:16,17  <b>seen</b> [5] 15:14,16 16:16,20 31:11  <b>sees</b> [3] 197:10 204:11 218:14  <b>seized</b> [2] 78:22 79:16  <b>selected</b> [2] 80:4 119:10  <b>self-evident</b> [1] 206:10  <b>sell</b> [5] 128:2,5 129:15 209:19, 21  <b>send</b> [9] 8:14 11:19 22:20 23:21 24:16 25:14,19 26:4 27:9  <b>sending</b> [2] 22:21 187:12  <b>sends</b> [1] 33:11  <b>sense</b> [11] 51:2 53:14 55:8 59:17 61:22 85:19 95:16 144:5 187:9 206:16 223:3  <b>sensible</b> [1] 183:17  <b>sensitive</b> [1] 186:2  <b>sent</b> [7] 13:8 19:5 21:21 22:18 24:18 26:12 54:16  <b>sentence</b> [1] 30:3  <b>separate</b> [9] 45:21 117:18 118:18 141:12 166:3,5,18 185:20 222:22  <b>separately</b> [3] 22:18 103:13 166:14  <b>sequence</b> [1] 29:4  <b>series</b> [3] 85:22 104:9 140:9  <b>seriously</b> [2] 34:17 211:11  <b>seriously</b> [1] 118:22  <b>serve</b> [1] 13:21  <b>served</b> [1] 12:11  <b>SERVICE</b> [3] 21:18,20 45:8</p>	<p><b>SERVICES</b> [4] 36:2,22 43:18 80:18  <b>servicing</b> [1] 56:20  <b>session</b> [1] 180:22  <b>SESSIONS</b> [3] 35:8,20 186:10  <b>set</b> [12] 51:13 106:15 122:2 147:19 156:5 162:6,21 178:7 195:10 199:3 203:19 224:2  <b>set-aside</b> [5] 77:9 78:20 80:4, 11 92:7  <b>set-asides</b> [1] 79:10  <b>settled</b> [1] 13:14  <b>Settlement</b> [9] 103:15 153:12 166:10,17 170:15 174:2,4, 5 212:22  <b>seven</b> [2] 54:16 111:14  <b>seven-and-a-half</b> [1] 111:16  <b>several</b> [3] 8:19 73:18 196:7  <b>shall</b> [10] 11:18 26:18 46:15 67:12,13 72:17 94:21 165:15 169:17 195:11  <b>share</b> [5] 153:22 154:5,5 170:12 189:15  <b>sharing</b> [1] 167:10  <b>she's</b> [1] 179:22  <b>shield</b> [1] 100:2  <b>shines</b> [1] 55:7  <b>short</b> [4] 180:5 197:12 204:5 219:4  <b>shorter</b> [2] 53:11 95:9  <b>shortly</b> [2] 200:12 222:13  <b>shot</b> [1] 209:12  <b>should</b> [58] 9:13 14:11 15:10 20:15 27:13 36:12,15 38:12 40:15 54:6 55:19 62:6 64:13, 19 65:22 72:7,12 74:17 78:5 88:15 96:10 97:21 99:7 104:20 110:15 116:6 133:20 135:13 137:22 138:2 146:20 147:21 157:12,13 158:2,5,22 161:11 167:4 173:6 174:9,9,11 184:3 186:20 191:21 198:12 199:13,17 200:9 207:18 211:5 213:19 216:19 217:6,7 221:20 223:3  <b>shouldn't</b> [1] 89:12  <b>show</b> [1] 211:14  <b>shown</b> [4] 186:7 197:15 206:21,22  <b>side</b> [8] 58:12 59:6 132:11 143:10 145:3 174:19 217:15, 20  <b>sides</b> [5] 21:2 142:19 178:6 186:7 218:6  <b>sign</b> [3] 214:3,4,4  <b>signed</b> [1] 215:20  <b>significant</b> [2] 110:20 211:4  <b>significantly</b> [1] 61:15  <b>similar</b> [6] 45:17 61:13 90:20 103:5 104:10 186:16  <b>simple</b> [14] 9:18 11:14 24:6 106:19 109:5 110:18 115:8,9, 15 134:17 143:16 155:6,11 192:2  <b>simpler</b> [1] 192:19  <b>simplest</b> [1] 122:11</p>	<p><b>simply</b> [21] 16:14 22:20,22 31:5 40:7 42:3 49:6 62:3 76:9 80:21 95:6 99:9 101:22 102:6,12 107:6 111:7 126:5,11 200:19 201:21  <b>simultaneous</b> [3] 212:5 214:20 216:6  <b>simultaneously</b> [3] 19:15 21:22 26:19  <b>single</b> [5] 73:12 76:6 78:16 82:12 107:5  <b>sir</b> [1] 184:12  <b>sit</b> [1] 202:8  <b>sitting</b> [2] 42:2 86:14  <b>situation</b> [19] 25:10 48:10 54:8 70:4,5,6 104:9 112:10 120:8 123:22 160:15 175:2 176:3 181:11 185:17 201:2 214:22 222:3,21  <b>situations</b> [4] 42:15 53:12 59:9 129:4  <b>six</b> [8] 18:6 39:12 52:8,21 53:9,10 72:19 83:11  <b>six-month</b> [1] 50:22  <b>slight</b> [1] 10:12  <b>slightly</b> [2] 54:10 219:13  <b>slow</b> [1] 188:16  <b>small</b> [9] 8:20 9:3,6,8 14:6 30:21 34:15 105:16 219:20  <b>smallest</b> [1] 224:12  <b>smoother</b> [1] 224:9  <b>So-and-So</b> [1] 137:19  <b>so-called</b> [1] 107:22  <b>sold</b> [1] 103:20  <b>solely</b> [2] 19:13,17  <b>solution</b> [3] 144:17 155:6 183:17  <b>solved</b> [1] 34:18  <b>some</b> [81] 7:10,15,17 9:22 11:8 13:11,19 19:12 22:5 25:2, 14,15 37:21 41:14,20 42:4 43:5 44:21 49:6 50:5 53:11, 17 56:20,21 57:9,12 59:21 60:20,21 61:8 77:11 90:12, 16 91:2 100:20 109:12 116:4, 7,12 117:21 118:4,6 120:6 121:21 122:5 123:21 124:5 129:18 131:16,16 138:17 139:18 144:4,6 145:5 147:12 152:3,6 153:11,16 160:4 161:8 162:2 163:17 164:16 169:14 170:5 186:2,3 187:10,14 188:14 195:9 196:2,10 198:16 201:3 202:10,16 204:15 218:4  <b>somebody</b> [1] 49:4  <b>somehow</b> [9] 42:17 74:22 77:7 94:5 132:2,6,12 140:5 187:6  <b>someone</b> [5] 33:8 113:8 132:22 137:19 148:22  <b>something</b> [38] 18:2 25:19 37:14 38:11 39:3 40:10 44:15 45:10 50:21 68:15 102:9, 10 104:14 107:11 112:12 131:13 134:8 137:19 145:7 147:2 155:19 172:18 179:9,</p>
--	---	--	---

## S

S [1] 7:1

S.D [1] 177:5

Sadly [1] 81:18

safe [2] 15:13 153:6

safeguards [1] 182:5

sake [4] 7:14 12:4 75:16 77:15

Sales [1] 133:10

same [36] 8:15 10:15 11:20

12:14 47:18 48:17 50:17 58:

20 63:9 64:10 75:10 89:14,

21 91:15 107:14 109:22 111:

2,12,19 118:8 126:3,14 154:

18 156:17 167:15 183:3,9,10

185:15,17,21 187:2 195:4

205:19,20 220:3

save [2] 98:5,10

scenario [2] 211:9,20

Schaaf [5] 50:19 131:15 152:

17,18 153:9

SCHAFF [3] 152:21 153:3,8

schedule [12] 31:4 32:18 57:

4 59:4 108:11,12 196:11 197:

<p>11 181:17 184:10 185:9 192:8 193:5,7,18,20 195:11,12,19 198:3 202:4 206:8</p> <p><b>sometimes</b> [8] 29:9 37:5,5 40:7 50:16 54:11,12 189:7</p> <p><b>somewhat</b> [2] 16:12 63:17</p> <p><b>somewhere</b> [1] 195:20</p> <p><b>soon</b> [3] 8:21 60:4 69:6</p> <p><b>sorry</b> [15] 7:16 83:3 106:14 126:17 138:13 153:9 156:15,16 158:14 167:8 178:15 187:11 196:6 202:7 217:6</p> <p><b>sort</b> [15] 11:7 26:13 30:5 51:16 95:13 96:13 107:18 116:15 121:3,4 182:15 183:4 207:12 213:12,16</p> <p><b>sorts</b> [3] 123:4 135:15 136:8</p> <p><b>sought</b> [4] 115:5 148:8 152:10,11</p> <p><b>sovereign</b> [18] 62:18 67:8,11,13,15 68:12,13,15 69:12,13,13,16 70:3 72:9 90:5 94:14 150:16 162:19</p> <p><b>Spanish</b> [1] 52:8</p> <p><b>speak</b> [11] 23:3 59:15 60:5 80:17 82:4 88:15 93:16 96:11 145:11 146:13 185:2</p> <p><b>speaking</b> [3] 38:21 39:19 56:4,6 213:12</p> <p><b>speaks</b> [1] 9:4</p> <p><b>special</b> [14] 23:16 70:9 89:12 90:4 91:3,4,8 94:8,8,14,15 130:5 150:17 182:21</p> <p><b>specialis</b> [2] 97:19 112:6</p> <p><b>specific</b> [29] 41:22 49:15 62:7 84:5 88:7 96:5,10 98:3 111:17 113:15 116:9 119:13 130:12,13,19,21,22 131:2 137:14,15 138:2 141:22 142:2 159:16 162:4 192:8 195:10 209:5 216:14</p> <p><b>specifically</b> [34] 15:9 18:15 24:3 44:12 61:18,18,20 62:5,8,11 63:16 68:18 70:18,22 71:6,10,12,19,21 83:20 84:22 89:2 111:18 121:6 130:9,21 137:12 138:3 142:3,9 153:5 155:18 170:18 207:18</p> <p><b>specificity</b> [1] 142:9</p> <p><b>specify</b> [1] 197:8</p> <p><b>speculation</b> [1] 101:3</p> <p><b>speedily</b> [1] 56:10</p> <p><b>spelled</b> [2] 18:14 40:10</p> <p><b>spend</b> [1] 147:17</p> <p><b>spends</b> [1] 111:10</p> <p><b>spent</b> [2] 76:17 118:20</p> <p><b>spirit</b> [1] 150:20</p> <p><b>spoke</b> [2] 124:13 204:2</p> <p><b>spoken</b> [1] 80:13</p> <p><b>spokesperson</b> [1] 8:22</p> <p><b>spot</b> [1] 146:17</p> <p><b>spreadsheet</b> [3] 85:13,16,18</p> <p><b>stage</b> [13] 49:16 51:22 53:19 55:17 125:10 166:6 201:6 204:4 207:16 208:4,4,5 211:17</p> <p><b>stages</b> [1] 185:18</p>	<p><b>stake</b> [1] 129:5</p> <p><b>stamped</b> [1] 107:19</p> <p><b>standard</b> [41] 13:4 14:22 20:4,6 22:7 28:3,16 32:22 33:2 34:15 35:5,12 36:13 49:20 62:16 63:2,13 64:15,17,19 65:4,14,16,18 66:10,11,22 67:5 72:7 73:15 87:11 89:5 90:7,11 105:11 107:13 112:21 125:2 141:21 147:10 205:14</p> <p><b>standards</b> [2] 20:13 141:6</p> <p><b>standing</b> [10] 89:13,22 91:3,4,8 94:8,15 150:17 172:6,7</p> <p><b>start</b> [3] 92:3 96:19 193:10</p> <p><b>started</b> [4] 45:19 101:4 116:12 211:11</p> <p><b>starts</b> [1] 156:17</p> <p><b>startup</b> [1] 207:13</p> <p><b>state</b> [19] 29:12 73:8,10 84:9,13 85:6,9 87:20 88:3 93:5,12,12 103:14 104:10 162:19 170:13 204:14 218:4,13</p> <p><b>State's</b> [1] 187:13</p> <p><b>stated</b> [4] 60:17 62:16 63:2 65:4</p> <p><b>Statement</b> [22] 12:18 29:7,8 31:2 59:22 75:21,21 101:18 109:11 121:22 123:3 176:6 204:2,3,9,10 205:3,4,10,10,20 206:19</p> <p><b>statements</b> [6] 9:5 34:8,10 82:19 123:14 207:22</p> <p><b>States</b> [19] 9:8 45:2 64:17,18,21,22 73:6,13 79:9 86:19 87:7 90:9 93:2,5 103:19 136:13 157:21 167:3 170:12</p> <p><b>stating</b> [1] 98:15</p> <p><b>status</b> [2] 89:13 91:8</p> <p><b>statutes</b> [2] 81:19 103:22</p> <p><b>stay</b> [2] 180:9 225:9</p> <p><b>step</b> [2] 23:13 26:13</p> <p><b>stick</b> [1] 220:18</p> <p><b>still</b> [13] 32:12 57:12 97:15 134:20,22 143:2 145:21 148:19 157:11,13 208:6 212:11 213:4</p> <p><b>stipulate</b> [2] 29:18 35:16</p> <p><b>stipulates</b> [1] 26:17</p> <p><b>Stockholm</b> [2] 50:22 52:22</p> <p><b>stop</b> [1] 202:2</p> <p><b>straight</b> [3] 34:4 52:4 126:7</p> <p><b>Street</b> [1] 3:77</p> <p><b>strictly</b> [3] 73:21 151:10,18</p> <p><b>strongly</b> [3] 77:10 180:7 204:14</p> <p><b>stuck</b> [1] 135:3</p> <p><b>study</b> [1] 54:10</p> <p><b>style</b> [1] 51:19</p> <p><b>stymied</b> [1] 205:21</p> <p><b>subject</b> [24] 43:19 46:13 47:14 52:13 57:12 59:10 72:6,9 102:11 120:11 146:5,8,21 147:13,16 148:13 149:7 157:12 159:16 167:11,15 173:13,21 184:3</p> <p><b>subjected</b> [1] 44:5</p> <p><b>submission</b> [29] 12:16 62:7</p>	<p>63:10,15,22 64:3 72:6 74:21 76:18 82:7,13 84:3 89:5 100:17 102:6,14 121:5 125:21 126:10 129:8 145:19 155:5 156:5 157:2 161:9 164:21 166:22 197:2,5</p> <p><b>submissions</b> [62] 7:12 19:9,12,15 22:5 30:18 35:20 53:18 61:12,15,19,21 62:9 63:3 66:16,17,18,20 67:10 69:4,11 70:11,14 71:9,18 72:20 74:19 75:16 77:22 78:9,11 84:20,21 85:21 87:11,22 98:14 101:9 108:13 123:8 124:3 135:15 144:14 147:15 160:4,6,9,18 161:4 164:15 166:8 167:5,18,22 169:14 171:9,16 179:22 184:16 185:18 190:5,10</p> <p><b>submit</b> [3] 58:11 172:18 222:5</p> <p><b>submits</b> [2] 72:11 101:13</p> <p><b>submitted</b> [9] 12:19 29:6 60:18 86:10 148:13 192:16 193:20 215:2 225:7</p> <p><b>submitting</b> [1] 84:2</p> <p><b>subnational</b> [4] 153:22 157:19,19 173:12</p> <p><b>subsequent</b> [4] 15:2 35:8 63:18 128:20</p> <p><b>Subsequently</b> [2] 64:2,9</p> <p><b>substance</b> [1] 159:22</p> <p><b>substantial</b> [5] 33:12 97:17 101:7 104:21 201:7</p> <p><b>substantive</b> [1] 99:12</p> <p><b>succeed</b> [1] 98:7</p> <p><b>succeeds</b> [1] 118:2</p> <p><b>successful</b> [2] 105:18 177:13</p> <p><b>such</b> [16] 52:11 67:19 70:9 72:10 84:10,11 88:4 93:7 126:21 130:15 134:8 139:12 159:16 168:5 218:4 222:11</p> <p><b>sudden</b> [4] 123:18 133:4 137:18 199:9</p> <p><b>sufficient</b> [2] 130:6 223:3</p> <p><b>suggest</b> [28] 17:6 20:2 23:4 31:22 36:4 46:17 48:6 50:20 55:13 56:22 74:16 80:20 95:7 110:18 111:5 115:6 144:22 159:8,19 165:5,22 187:19 190:9 191:20 213:11 221:11 222:12 223:12</p> <p><b>suggested</b> [12] 7:11 74:8,12 77:3 87:4 117:19 125:6 155:13 174:21 182:17 193:4 199:21</p> <p><b>suggesting</b> [2] 119:21 133:3</p> <p><b>suggestion</b> [6] 30:2 74:21 128:7,15 198:11 199:21</p> <p><b>suggestions</b> [3] 15:6 117:21 223:16</p> <p><b>suggests</b> [5] 77:6 102:14 111:7 166:2 192:21</p> <p><b>suitability</b> [1] 76:14</p> <p><b>suitable</b> [1] 77:2</p> <p><b>summary</b> [2] 76:10 82:9</p>	<p><b>Superior</b> [4] 79:3,21 80:2 92:9</p> <p><b>supplement</b> [3] 42:3 82:19 139:10</p> <p><b>supplementary</b> [2] 7:18 47:17</p> <p><b>supplied</b> [2] 157:3 191:9</p> <p><b>support</b> [3] 36:22 71:8 80:18</p> <p><b>supported</b> [2] 68:4 217:17</p> <p><b>supportive</b> [1] 96:12</p> <p><b>supports</b> [1] 113:19</p> <p><b>suppose</b> [6] 8:12 39:4 42:7 55:18 56:7 182:18</p> <p><b>supposed</b> [5] 58:18 63:11,12 135:14 204:17</p> <p><b>Supreme</b> [1] 92:9</p> <p><b>sure</b> [24] 9:4 11:6 15:22 20:20 24:6 33:16 34:5 38:18 43:7 58:5,15,20 142:11 153:3 168:10 176:14 181:9,10 204:4,18 215:22 220:22 221:3 223:19</p> <p><b>surely</b> [3] 74:5 79:10 104:14</p> <p><b>surplus</b> [3] 107:4,11 108:18</p> <p><b>surprise</b> [2] 190:13 198:20</p> <p><b>surprised</b> [1] 80:7</p> <p><b>surprises</b> [1] 44:18</p> <p><b>surprisingly</b> [2] 98:12 119:8</p> <p><b>suspect</b> [7] 22:21 41:3 65:17 66:12 67:12 68:4,16</p> <p><b>suspicion</b> [1] 119:17</p> <p><b>suspicious</b> [1] 122:4</p> <p><b>system</b> [4] 11:14 110:8 128:19 129:2</p>
<b>T</b>			
			<p><b>Tab</b> [6] 63:14 70:21 71:4,11 74:18 77:17,18,19</p> <p><b>Tabet</b> [29] 8:22 9:2 47:5 80:2 82:4 144:11 158:15,16 159:4,6 168:22 169:5 170:3 173:8 174:20 176:8 178:15 179:21 180:2 182:11 185:5 186:16 187:17 189:9 192:11,12 194:19 196:6 199:21</p> <p><b>Tabet's</b> [1] 171:17</p> <p><b>table</b> [1] 7:9</p> <p><b>taints</b> [1] 94:6</p> <p><b>take</b> [28] 11:11 19:8 32:4 51:12 53:21 56:17,22 59:14 66:6 94:22 95:7,11 108:3 136:17 143:4 144:2,4 145:7 154:18 166:16 177:6 182:10 194:14 197:2,12 202:15 211:16 215:5</p> <p><b>taken</b> [12] 17:16 39:4 58:3 65:21 82:20 90:12 91:13 103:13 152:15 158:11 191:21 194:10</p> <p><b>takes</b> [6] 23:19 52:3 69:20 75:18 131:18 143:7</p> <p><b>taking</b> [1] 50:14</p> <p><b>Talbot</b> [8] 64:2,6,9 94:2 147:7,8 149:14 175:2</p> <p><b>tale</b> [2] 147:6,6</p> <p><b>talk</b> [10] 32:20 35:17 68:5 80:16 139:4 140:12 143:10 144:6 192:6,7</p> <p><b>talked</b> [5] 81:10 85:19 110:5</p>

<p>136:3 205:3  <b>talking</b> [8] 111:11 112:5 138:13 174:3 199:15 205:2,6,9  <b>talks</b> [1] 100:7  <b>taping</b> [1] 186:4  <b>tax</b> [8] 41:20 45:15 46:2,14 47:18 142:3 177:6 179:3  <b>taxable</b> [1] 47:16  <b>taxation</b> [1] 45:4  <b>taxes</b> [4] 41:12,12,13 42:4  <b>TEAC</b> [3] 132:21 222:22  <b>team</b> [2] 9:15 10:5  <b>technical</b> [3] 156:12 157:3,9  <b>technically</b> [2] 39:19 133:20  <b>tell</b> [17] 54:11,17 121:9 122:5 138:17 139:2,3 172:12 176:9 181:19 195:14,19 197:9 212:7 219:3,22 220:21  <b>telling</b> [3] 99:19 184:11 206:16  <b>tells</b> [1] 181:12  <b>tempted</b> [1] 178:16  <b>tend</b> [2] 142:21 222:22  <b>tends</b> [1] 52:9  <b>term</b> [1] 170:19  <b>termed</b> [1] 98:19  <b>terms</b> [29] 9:11 10:12 13:5 15:3,17 22:4 35:10 49:17 150:6,18 151:11 154:12 155:19 156:6 169:6 175:13 176:17 193:17 194:8,14 195:4 202:4 207:10,12 208:6 209:10 213:7 214:17 216:8  <b>terrible</b> [1] 49:10  <b>terrific</b> [1] 219:7  <b>test</b> [7] 65:22 66:4,6 107:4,11 108:18 113:7  <b>text</b> [1] 182:16  <b>thanks</b> [3] 10:10 26:22 142:17  <b>theirs</b> [1] 156:16  <b>themselves</b> [10] 32:7 98:21 102:2,20 125:17 131:2 137:8,9 144:4 168:7  <b>thereafter</b> [4] 216:7,9 222:2,4  <b>therefore</b> [10] 66:22 87:21 88:4 96:9 113:5 114:3 157:11 165:5 189:15 203:14  <b>therefrom</b> [1] 125:13  <b>thing</b> [13] 9:8 27:9 29:5 40:13 107:2 108:16 109:22 115:15 117:20 169:12 183:10 194:4 218:4  <b>things</b> [42] 10:20 25:17,18 26:14 37:15,22 48:20,21 50:15 52:12 56:5,9 102:15 105:5 110:8 112:20 117:21 123:2,5 132:11 135:16,22 136:3,8 138:2,7 140:16 144:13 163:19 172:15 179:3 180:15 183:5 187:10,14,16 194:2 195:7 199:16 206:9 219:21 224:9  <b>think</b> [163] 10:22 11:5,11,14 13:16,18 14:10 15:12 16:6,7,9,14,18 20:8,16 21:11 22:12 23:6 24:5,12,21 25:8,13,13</p>	<p>29:12 32:5,6,10 33:15,19,22 35:16 36:16 37:11,11,15 38:12,14,14 40:12 45:8 46:18 49:5,12,13 50:8 53:21 54:4,6 55:7,9,20 59:20 60:16 65:11 76:10 80:5,9 81:11 86:16 87:3,17 89:16 90:14,21 92:10,21 96:10 106:10 114:11 117:8,16 130:15 135:4 137:13 141:16 143:4,7,8,15,20 144:2,11 147:15,21 154:4,19 156:2,19 157:11 158:4,6,10 159:18 161:12,21 162:10,17 164:8,16,22 165:12,16 166:18 167:20 168:7 169:12,13 170:6,7,20 171:19 172:3,13,15,17 173:8,22 174:11 175:17 177:4,22 178:3,6,11,22 179:11 180:5,20 181:6 183:2,5,9 184:18 186:16 188:11,19,19 191:4,6,17,20 192:5 193:5,6 194:3 195:3,20 196:14 202:14 203:10 206:3,7 213:19 219:11,14 221:22 223:3,4,4,9 224:5,17  <b>thinking</b> [4] 48:7 183:8 197:12 211:12  <b>thinks</b> [1] 81:6  <b>third</b> [12] 59:5 85:12 105:8 141:6 157:3,5,8 166:7 186:3 198:22 207:14 209:14  <b>though</b> [8] 10:22 30:8 31:15 117:16 155:6 157:11 171:15 177:16  <b>thought</b> [28] 7:13 16:5,10 30:10 38:21 42:21 50:16,19 51:6 53:5,13 59:8 115:8 127:14 150:12,14,15 155:9,10 176:20 177:18 179:16 181:7 184:5 187:4 194:4 201:10 205:13  <b>thoughts</b> [1] 31:7  <b>three</b> [23] 13:3 14:18 39:7 53:9 54:7 71:13 77:20 104:18 110:17 113:9 116:13 121:10 123:2 138:2 143:8,9 191:9 219:14 220:15 221:14,15 222:17 223:9  <b>three-year</b> [5] 112:13 114:21 116:13 122:7 134:20  <b>throw</b> [1] 16:3  <b>ties</b> [1] 140:9  <b>tight</b> [3] 52:9 108:7 221:2  <b>Timber</b> [2] 130:20 133:10  <b>time</b> [73] 11:8,11 13:22 14:12 15:13 16:10 19:8 28:13,15 29:4 32:20 33:12 34:12 36:5,14,18,19 37:13 38:5,8 40:2 50:13 51:13 53:2,8,9 76:17 85:16 87:15 95:2,4,8 98:6,10 105:19 110:21 111:10 112:9,15,16 113:5 118:20 121:13 126:6 128:3 130:13 133:2 134:9 142:12 144:2,4 147:17,18 151:4 158:11 183:4 185:17 190:11 192:6 197:12 202:15 204:5 208:13 213:12 215:16 219:7 221:18 223:4,16,17,</p>	<p>18,18 225:6  <b>time-barred</b> [6] 97:3,5,11 98:21 99:19 101:14  <b>time-limit</b> [1] 112:9  <b>time-tested</b> [1] 198:15  <b>timeliness</b> [1] 50:10  <b>timely</b> [1] 125:19  <b>times</b> [10] 10:8 103:19 107:5 108:17 126:3 131:11 132:9,10 134:9 211:6  <b>timing</b> [4] 13:19 144:7 202:18 214:10  <b>today</b> [21] 9:13 50:9,19 99:6 100:17 103:6 119:21 123:20 135:20 136:4,8 137:7 158:12 160:3,7 171:15 184:6,17 192:17 204:6 213:2  <b>today's</b> [2] 101:6 135:16  <b>together</b> [12] 10:6 15:10 72:22 92:6 95:22 140:9 161:22 183:11,22 188:7 201:13,18  <b>told</b> [4] 43:15 48:2 123:20 208:21  <b>tonight</b> [2] 195:19,20  <b>too</b> [10] 17:15,17 20:20 33:2 35:12 59:8 64:4 95:21 219:4,8  <b>took</b> [2] 77:8 151:3  <b>top</b> [1] 156:21  <b>torture</b> [2] 113:7,8  <b>total</b> [4] 52:21 96:13 143:10 200:4  <b>totally</b> [2] 93:20 151:10  <b>touch</b> [1] 68:16  <b>touched</b> [2] 52:6 201:21  <b>towards</b> [1] 96:16  <b>Trade</b> [6] 159:10,14 167:7 169:10,19 170:2  <b>transcription</b> [2] 18:4 35:10  <b>transcripts</b> [1] 35:11  <b>transgression</b> [1] 104:12  <b>translated</b> [1] 28:3  <b>transmission</b> [1] 24:3  <b>transmissions</b> [1] 22:6  <b>transparency</b> [10] 121:17 159:9 162:3,9,22 163:3 180:5,8,13 185:16  <b>travel</b> [5] 11:3 25:6,9 36:14,19  <b>treat</b> [2] 65:8 167:5  <b>treated</b> [4] 62:4 91:15 156:14 157:4  <b>treatment</b> [12] 105:7 110:11,12 115:22 125:2 140:2,3,21,22 141:10,20,21  <b>Treaty</b> [2] 15:18 141:6  <b>tremendous</b> [7] 111:10 117:9 121:16 130:15 131:8 142:8,9  <b>Tribunal</b> [226] 7:3,13,20 10:4 11:5,12 13:3 14:8 17:3,12 19:6,7,14 21:11 22:13,19,21,22 23:10,21 24:18 26:9,18,20 29:11 32:10 35:3,4 37:13 38:3,12 39:6,8 40:2,14 42:20 44:4 48:9,20 49:5,14 50:6,10 51:3,4,11,18,20 52:9 53:6,13 54:</p>	<p>12 55:14 57:11 59:22 60:6 61:7 63:4,13,20 64:2,4 65:17,19,20 66:5,22 67:2,10,21 68:10 69:5,9,20 70:18,19,20,22 71:2,4,6,10,11 72:12,14 74:11,15 75:4,9,11,18 76:9,11 77:2 81:6 82:10,20 84:3,18 85:3,7,8,10,15 86:5,7 87:21 88:21 97:16 99:11 100:12 101:16 102:11 103:5,9 104:6,7 109:11 111:4,10,18,19 113:3,6,10 114:7,15 115:15 116:6,20,22 117:4,17 118:14 119:14 121:19 122:8 125:10 131:17 133:4,5 134:16,20,21 135:9 137:11 139:11 142:10,19 143:17 144:19,21 146:4,7,12,20 147:3,21 148:4 150:14,22 155:3,10 156:4,6 157:6 158:3 160:12 169:2,17 171:3 174:10 178:2 180:17 181:17 182:6,14,19 183:7 184:22 188:6 189:21 190:4 191:10 193:17 194:7,13 195:13 197:11 200:13,14 202:15 203:13 204:11 207:6,7 208:11 211:20 212:22 213:17,21 214:3 215:2,3,5,5,19 216:10,12,19,22 217:2,4,7,12,14 218:5,9,14 219:6 221:9,16 222:6,10 224:7,21  <b>Tribunal's</b> [10] 16:19 59:6 74:17 122:16 147:9 158:6,9 159:20 160:17 201:15  <b>tribunals</b> [16] 50:13 63:18 64:9 76:20,22 77:20 88:2 93:22 94:4 162:2 173:15 190:18,19 191:22 193:19,21  <b>tricks</b> [1] 31:12  <b>tricky</b> [1] 42:9  <b>tried</b> [4] 98:13 152:5 155:18 206:18  <b>tries</b> [1] 100:2  <b>trigger</b> [1] 130:6  <b>triggers</b> [1] 148:22  <b>trip</b> [1] 153:6  <b>Trois</b> [1] 112:17  <b>troubled</b> [4] 63:21 64:3 77:21 163:21  <b>true</b> [3] 8:15 11:20 111:3  <b>truly</b> [1] 137:10  <b>try</b> [11] 38:12 40:13 56:9 83:9 95:3 109:4 164:18 179:6 193:18 196:10 206:6  <b>trying</b> [8] 11:13 99:7 106:18 143:16 183:19 200:8 209:14,15  <b>turn</b> [4] 72:15 103:3 159:22 164:12  <b>tweaked</b> [1] 43:12  <b>Twenty</b> [5] 84:4,5,6 176:18,20  <b>twice</b> [3] 135:2,3 184:17  <b>two</b> [44] 12:2 33:6 39:7,15 44:8 45:21 46:19 51:17 52:13 56:18 57:12 62:15,21 63:18 65:11 69:12 80:3 89:3,20 98:14 106:7,9 119:4 129:3 143:</p>
--	---	---	---

14 145:16,21 146:2 147:6,7 178:18 182:16 185:18 194: 11 205:16 212:15 215:10,17 218:8 219:17 220:8,10 221: 11 222:3 <b>two-week</b> [3] 216:16,21 219: 3 <b>type</b> [12] 25:14 38:19 50:9 51: 2 54:22 89:21 109:22 111:13 130:14 150:9 153:11 210:11 <b>types</b> [19] 48:17 109:19 110:5, 8,12 113:16 116:9,12 130:13 131:8 135:7,8,8 140:8,16 156:11 175:5 206:9 210:20 <b>typically</b> [1] 42:14 <b>Tysoe</b> [1] 78:17	<b>unreasonable</b> [3] 37:11 172: 14 177:22 <b>unsuitable</b> [3] 77:7 78:2 79: 11 <b>unsure</b> [1] 128:18 <b>untrue</b> [1] 94:9 <b>update</b> [1] 54:11 <b>uphill</b> [1] 114:6 <b>UPS</b> [42] 63:20 64:8 71:11 77: 12 94:2 100:4 101:2,4 111:6, 9,13 113:2,7 114:7 116:18 138:22 139:15 146:11 147:8, 11,22 148:3,4,12,13 149:6,11, 14 150:11 151:15,16 161:5 163:19 172:2,6,6,10,20 176:2 181:4 186:18 189:11 <b>urge</b> [1] 101:15 <b>urgent</b> [1] 17:6 <b>use</b> [7] 39:17,20 110:7 131:5 150:8 188:20 190:17 <b>used</b> [7] 15:19 53:11 96:11 112:10 150:5,16 162:15 <b>useful</b> [7] 7:14 10:22 24:5 50: 20 186:14 191:4 192:17 <b>uses</b> [1] 9:7 <b>using</b> [2] 64:22 133:12 <b>usual</b> [2] 18:16 224:14 <b>usually</b> [7] 7:16,17 33:7 43:5 155:16 166:18 180:21 <b>utmost</b> [3] 195:8 219:2,9	<b>volume</b> [1] 208:21 <b>volumes</b> [1] 200:4 <hr/> <b>W</b> <hr/> <b>wait</b> [1] 53:7 <b>waiver</b> [1] 165:15 <b>walk</b> [2] 143:5 158:11 <b>wall</b> [1] 214:6 <b>want</b> [78] 10:14 11:11 23:12, 19 25:18 27:4,4 33:4,5,17 34: 5 35:15 37:16 38:19 40:21 42:16 44:18 58:10 88:17 91: 14 95:10 102:18 106:6 116: 10 122:10 143:19 144:3,5,7 152:19,22 153:2,11 155:6 158:5 164:17 168:10 171:6,8, 9,15 173:9,17 174:14,15,21 175:19,21 177:15,20 178:9, 18 181:11 182:2 183:14 184: 19 188:16 190:12 192:6,6 193:9,12,14 194:6,7 195:19, 21 196:13 199:11,12 202:18 210:7 215:18 220:18,19 221: 2,13 224:7 <b>wanted</b> [12] 16:21 33:16 40: 21 44:15 58:15,19 152:18 173:15 177:9 179:22 203:9 219:10 <b>wants</b> [4] 33:9 144:19 153:21 174:12 <b>Washington</b> [32] 10:7 20:22 21:4,9,10 43:17,18 47:7 70:6, 8,10,12,16 71:14,15 72:10,12 73:13 74:2,3,12,22 76:3,4 80: 19,20 81:4,5 82:12 84:16 86: 14 87:4 <b>wasn't</b> [8] 52:20 101:5 153:3, 12 158:9 172:10 177:11,16 <b>Waste</b> [6] 77:19 87:14,19 93: 17 118:4 192:6 <b>Watchmaker</b> [1] 9:16 <b>water</b> [1] 16:3 <b>wavelength</b> [1] 58:20 <b>ways</b> [6] 33:6 56:14 98:15 134:10 140:5 191:9 <b>we'll</b> [2] 189:17 198:5 <b>wealth</b> [1] 94:22 <b>Web</b> [1] 185:19 <b>week</b> [29] 39:7 93:19 212:6,9, 11,15,17,19,21 214:19,21 215:4,9,18 216:5,7,9,14,18, 21 220:4,12,15 221:7,8,10,22 222:2,6 <b>weeks</b> [13] 38:4,5 82:22 212: 15 215:10 219:14,17 220:9, 15 221:11,14,16 222:3 <b>weight</b> [1] 182:7 <b>welcome</b> [3] 7:3 8:14 225:4 <b>well-taken</b> [1] 26:6 <b>went</b> [5] 66:3 119:18 149:5 203:11 206:5 <b>weren't</b> [1] 123:7 <b>West</b> [1] 3:77 <b>what</b> [204] 8:6,7 13:12 14:3 16:15 19:5,16 23:3 27:11 30: 16,17 31:15 32:4 37:17 38: 16,18 42:14 43:19 44:17,20 45:20 46:17 50:9 51:2 54:21	55:13 56:22 60:17 63:19 65: 13 75:14 78:10 80:22 82:19 83:22 85:3 86:17 88:8 89:2,8, 10 90:17 91:15,16 92:5 93:8 97:18 98:6,16,18 99:16 100: 12,14 101:21 102:3,7,8 104:2, 3,5 105:12,13 106:16 107:13, 20 108:10,19 109:15 112:4 113:12,13 114:12 115:5,6 117:17 118:5 119:3,20 122: 11,22 123:3,11,12,15,18 125: 22 126:9 128:18 129:5,5,22 131:18,20,22 132:13 134:3, 18 135:4,14,18 136:7,21 137: 2,7,15,16 138:3,5,16,17 139: 15 140:17,17,18,19 142:11 145:2 146:19 147:9 148:21 149:9,16,21 150:3,4,22 152:4 153:3 155:3,9,13,18,21 156: 17 158:7 159:3,22 160:11 169:20 170:7 171:2,7 175:19 176:7,9 182:20,22 184:8,11, 18 185:22 186:8,17,19 189:5 190:5 191:5,13,18,20 193:5 194:6,16 195:13 197:10,15 198:20 199:2,5,6,15 201:4,15, 16,16 202:18 203:14 204:6,7, 17,17 205:2,21 206:17,19 207:5,15 208:6,7,11,16 209: 14,20 210:9 211:4,7,14 212:8 213:3 214:17 217:18 220:7, 21 221:13 <b>what's</b> [15] 53:3,4 54:17,20 73:11 96:3 108:21 109:5 110: 6 115:3 129:11 134:13 199: 18,19 203:16 <b>whatever</b> [12] 17:6 31:3 46:2 87:21 95:19 120:22 200:5 208:3 209:10 219:22 220:19 221:4 <b>whatnot</b> [1] 24:17 <b>whatsoever</b> [6] 14:8 31:13 49:8 127:14 128:7 173:6 <b>when</b> [36] 12:17 14:4 15:11 25:21 30:8 43:7 47:13 49:3, 12 73:15 80:7 97:20 100:7, 10,11,17,22 101:15,16 102: 16 111:4 112:19 125:21 127: 16 131:18 137:19 140:12 174:3 177:18 180:14 187:20 192:22 196:8 205:3 215:10, 11 <b>where</b> [40] 11:19 23:19 25:10 43:2 53:12 54:8 55:7 56:3 61: 14 64:18,20 65:19 75:5 81: 21 84:4 87:5 91:7 103:20 110:6 112:5,11,13 131:4,5 144:5,7 160:15 173:2 183:12 184:19,20 186:18 189:10,11 192:8 197:18 199:4,5 210:2 221:10 <b>Whereupon</b> [1] 225:16 <b>wherever</b> [2] 25:13 27:8 <b>whether</b> [34] 7:22 13:21 15:4 17:14 25:3 33:4 39:14 43:7, 14 46:7,21 49:22 53:16,19 59:19 65:20 73:2 83:4 97:10
---	---	--	--



99:9 105:10 114:17,21,22  
 151:5,6 179:14 181:17 184:3  
 196:15,15 216:11 220:16  
 223:13  
**whichever** <sup>[1]</sup> 195:8  
**while** <sup>[8]</sup> 13:18 23:11 52:7 66:  
 2 95:11 116:2 177:11 225:12  
**whoever** <sup>[1]</sup> 48:16  
**whole** <sup>[9]</sup> 44:19 80:17 82:4  
 107:21 119:18 121:16 184:  
 10 186:5 203:5  
**whom** <sup>[1]</sup> 27:13  
**why** <sup>[68]</sup> 53:12 55:4 62:13 67:  
 6 69:14 79:15 89:9 91:9,13  
 94:2 113:15,19 115:19 119:  
 21,21 121:22 122:8 125:6  
 126:9 128:15 130:15 133:18  
 134:6,10,10,17 135:2 138:8  
 141:18 146:13,20 147:15,21  
 151:22 152:6,10 158:11 172:  
 8 174:4,16,17,21 175:12,22  
 177:22 181:5 188:9,17 193:4,  
 18 194:4 195:7,17,18 197:21  
 199:20 200:5,6 202:13 205:  
 17,22 206:2 209:6 210:5,15  
 217:22 218:2,11  
**willing** <sup>[2]</sup> 87:6 118:12  
**window** <sup>[1]</sup> 134:20  
**wish** <sup>[8]</sup> 36:10 56:13 153:6  
 182:19 187:14,15 195:2 225:  
 8  
**wishes** <sup>[1]</sup> 149:9  
**within** <sup>[26]</sup> 27:13 51:19 61:19,  
 21 71:5 84:4,7,10,11 86:9,19  
 97:15 109:10 110:14 111:15  
 114:21 116:11 122:7 134:19  
 142:7 155:19 213:4 215:16  
 216:18 221:10,10  
**won't** <sup>[8]</sup> 20:5 54:12 160:8  
 161:4 173:17 181:14 195:16  
 213:10  
**wonder** <sup>[2]</sup> 59:14 83:4  
**wondered** <sup>[1]</sup> 49:4  
**word** <sup>[4]</sup> 30:9 39:15 40:17  
 205:4  
**wording** <sup>[13]</sup> 44:21 47:15 48:  
 16 55:14 59:7 75:3 154:9  
 156:20,22 158:2 165:9 188:7,  
 10  
**words** <sup>[7]</sup> 104:14 147:12 157:  
 6 183:21 191:20 209:22 220:  
 14  
**work** <sup>[11]</sup> 39:2 47:11,12 131:  
 21 151:2 188:8 199:8 200:6  
 207:3 215:14 218:9  
**worked** <sup>[4]</sup> 16:21 129:3 138:  
 12 176:2  
**working** <sup>[2]</sup> 41:2 185:14  
**works** <sup>[7]</sup> 11:15 51:12 128:19  
 189:18 199:8,20 216:13  
**World** <sup>[9]</sup> 23:15 25:12 39:17  
 42:10,12,14 54:14 74:10,13  
**worried** <sup>[2]</sup> 123:17 211:7  
**worrying** <sup>[1]</sup> 178:4  
**worth** <sup>[3]</sup> 9:9 87:17 177:11  
**worthy** <sup>[2]</sup> 63:11 134:12  
**wouldn't** <sup>[7]</sup> 43:19 88:18 91:

12 117:22 154:3 175:11 207:  
 15  
**write** <sup>[2]</sup> 40:13 95:5  
**writing** <sup>[3]</sup> 19:5 21:6 192:18  
**written** <sup>[10]</sup> 9:17 26:16,17 28:  
 22 29:3 57:22 84:20 85:21  
 167:5 184:15  
**wrong** <sup>[2]</sup> 111:8 150:2  
**wrongful** <sup>[1]</sup> 113:4  
**wrote** <sup>[1]</sup> 50:12  
**WTO** <sup>[3]</sup> 176:11,13 185:13

**Y**

**year** <sup>[11]</sup> 53:8 54:8 107:5 111:  
 3,3 126:3 129:19 132:10 213:  
 13,13 223:19  
**years** <sup>[13]</sup> 55:18 104:18 110:  
 17 111:14,16 113:9 114:3  
 116:13 120:21 121:11 123:2  
 138:2 177:12  
**yesterday** <sup>[2]</sup> 43:12,20  
**yourselves** <sup>[3]</sup> 187:8 208:14  
 212:9

**Z**

**zone** <sup>[2]</sup> 11:8 111:15

