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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 61

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In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK
by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner,

For an order pursuant to CPLR Section 2308(b)
to compel compliance with a subpoena issued
by the Attorney General

- against -

PRICEWATERHOUSECOOPERS LLP and
EXXON MOBIL CORPORATION,

Respondents .

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Index No. 451962/2014

June 16, 2017
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE BARRY R. OSTRAGER, Justice.

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

STATE OF NEW YORK OFFICE OF THE
ATTORNEY GENERAL ERIC T. SCHNEIDERMAN
120 Broadway
New York, New York 10271-0332
BY: JOHN OLESKE, ESQ.
MANISHA M. SHETH, ESQ.
MANDY DeROCHE, ESQ.

(Continued on next page for certification.)

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Proceedings

A P P E A R A N C E S (Continuing):

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys at Law
1285 Avenue of the Americas
New York, New York 10019-6064
BY: THEODORE V. WELLS, JR., ESQ.
DANIEL J. TOAL, ESQ.
JUSTIN ANDERSON, ESQ.

Terry-Ann Volberg, CSR, CRR
Official Court Reporter.

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Proceedings

THE COURT: Normally ExxonMobil is outnumbered in the courtroom, but not today.

I have orders to show cause which contain ExxonMobil's motion to quash, and for a protective order, and the Attorney General's motion to compel.

As has been the case with respect to all of our many prior proceedings, I have read all of the papers, and I have some historical experience with respect to these kinds of issues and disputes. So what I would like to do is take as the point of departure the orders that were issued in connection with the March 22nd transcript which I've reviewed in anticipation of this morning's proceedings, and passing the issue of what depositions and what interrogatories the Attorney General may seek, I want to start today's discussion about documents because it was my understanding that everybody agreed that after 16 months of document production, and after complete agreement on search terms and custodians and additional search terms and additional custodians, that there would be a certification within ten days after March 31st that ExxonMobil had fully complied with its obligations to produce documents, and that the Attorney General would have the opportunity to depose affiants who would attest to ExxonMobil's compliance with the

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1 Proceedings

2 court orders of March 22nd, and with the agreements
3 that were reached at the March 22nd hearing.

4 Now if the affidavits were insufficient or
5 the depositions of the affiants were not satisfactory
6 and additional deponents are required with respect to
7 compliance with the orders issued on March 22nd and the
8 agreements reached on March 22nd, that seems like a
9 reasonable thing for the Attorney General to seek and
10 request although I understand ExxonMobil has a
11 different view. With respect to interrogatories, it
12 seems to me that the Attorney General is entitled to
13 ask non-burdensome, non-overbroad, non-abusive
14 interrogatories.

15 Let's start with the issue of the Attorney
16 General's request for additional documents and
17 correspondence, the motion to quash that request.

18 So who wants to go first?

19 MR. WELLS: I will go first.

20 THE COURT: Mr. Wells has grabbed the floor.

21 MR. WELLS: Your Honor, I asked your staff
22 if next time I can bring a computer and use a
23 PowerPoint instead of these somewhat archaic boards.

24 THE COURT: We love the old-fashioned paper
25 presentations.

26 MR. WELLS: For much of my life and yours

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1 Proceedings

2 this is how we used to do it, so I am comfortable doing
3 it this way.

4 My first line is consistent with the comments
5 by your Honor because I think we need to start with
6 what happened on March 22nd.

7 I note, and we go back --

8 MR. OLESKE: We can't see.

9 THE COURT: The attorney cannot see your
10 charts.

11 MR. WELLS: I can hand a copy of the slides
12 to your Honor.

13 THE COURT: I am happy to take it.

14 (Handing.)

15 MR. WELLS: We will mark that as Exxon
16 Exhibit Number One.

17 (Exxon Exhibit Number 1 marked in
18 evidence.)

19 MR. WELLS: On November 21, 2016, the New
20 York AG stated, "The production of documents from a
21 company like Exxon has to have an end date. We have to
22 have some expectation of the finality." Then on
23 March 22nd the New York AG stated, "No one wants more
24 than the Attorney General to complete the process of
25 obtaining these documents and moving on to the next
26 stage of the investigation."

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Proceedings

We understood the next stage of the investigation would be where they would begin taking substantive depositions of the witnesses who they had identified based on the production of almost three million pages of documents. We have no objection to them going to that next stage and taking those depositions. I want to be clear.

Now what happened after that -- also, what happened that day, again consistent with your Honor's comments, I stood up and I said, here's what I understand I am supposed to do. I am supposed to give certain documents to them by the 31st. I am supposed to get a certification by April the 10th.

We moved heaven and earth to finish the document production. We got them the certification on time as required, and they were even permitted, as indicated by the court, to depose my partner, Michele Hirshman, with respect to certification, but the whole purpose of the certification was that it was to certify that the process was over. Again, we did that.

I even talked about, I said, I will do that with this final certification which usually comes at the end of process. You tried to ask me to get it by March 31, you gave me ten extra days, but everyone was on the same page. We knew what we were talking about,

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1 Proceedings

2 we would end the document production and move to
3 depositions.

4 Now what happened thereafter is that on
5 May 8th we were served with a new subpoena requesting
6 depositions and requesting documents. Now the
7 depositions they requested, which we have no objection
8 to involve depositions, that would be part of the next
9 stage, the substantive witnesses. These witnesses are
10 very important because they asked for five substantive
11 witnesses. One we don't control, we can deal with that
12 later, but the other four people who we agreed to
13 immediately were Bill Colton, vice president of
14 Corporate Strategic Planning. His deposition is
15 scheduled for June 27. That's the date they asked for.
16 We didn't negotiate with them about extending it. They
17 asked for June 27. We said that he is happy to
18 testify, we will produce him, and we plan to produce
19 him on June 27. They asked for Robert Bailes, he is
20 scheduled for July 19, Pete Trelenberg, he is scheduled
21 for July 25, and Guy Powell, he is scheduled for
22 July 28.

23 What is important about these four people is
24 that all of them are involved in identifying what the
25 proxy costs are, and how it's developed, and also
26 how -- what GHG costs are, and how they are developed.

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1 Proceedings

2 They are two very different concepts, but in their
3 papers what they talk about is, they seem to say
4 there's a difference between proxy costs and GHG costs,
5 and they suggest someone -- we have two sets of books.
6 The fact of the matter is, proxy cost is a different
7 concept than GHG cost, and they are used for different
8 purposes.

9 The important thing is that Mr. Colton is the
10 author of the Energy Outlook, and he is also the head
11 of corporate planning which deals with the budgeting
12 part, and they asked for him first, and we told them
13 that's the right person to talk to because he can
14 explain all of the role of the proxy cost to you, he
15 can explain how those costs are used with respect to
16 budgeting, he can explain GHG, how all of this is done.
17 They just waited to take the deposition of Mr. Colton
18 because he really is the boss, so to speak, he is the
19 author of the Energy Outlook, and because he heads the
20 budgeting process on the corporate planning side, he
21 brings the two things together.

22 So they waited to take this deposition. They
23 wanted to see if it would be necessary. They asked for
24 all these documents. It would be unnecessary to file
25 these outrageous allegations about sham accounting, and
26 double books, and two numbers. It was just wrong, what

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1 Proceedings

2 they did.

3 I want to be clear: All of these people are
4 scheduled to be deposed, and we didn't fight them. We
5 said, happy to bring them in, and this is the first
6 date they asked for, and he will be produced.

7 Now turning to what else they did do on the
8 8th, they served a subpoena which we contend is
9 contrary to the agreements reached on March 22nd, is
10 unnecessary, is overly burdensome, which is grounded in
11 some notion of sham transactions that if they bothered
12 to take the depositions first, we wouldn't have to be here and
13 spend all of this time on all of these papers. What
14 they did, they asked for the depositions which we agreed to,
15 but yet they asked for us to put together 12 years of
16 analysis involving every business decision in terms of
17 oil and gas exploration that Exxon has made over 12
18 years. This is not pushing some button. There is no
19 pushing a button. This would take a year, two years to
20 do. It would take a long time. Nobody really knows.
21 Nobody has ever engaged in that type of exercise.

22 THE COURT: Subject to what the Attorney
23 General is going to say, that seems unreasonable on its
24 face.

25 Now let me be clear: The four people who are
26 being deposed, those were custodians from whom

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1 Proceedings

2 documents were previously requested?

3 MR. WELLS: Yes, that's how they know their
4 names, and they identified -- they have had hundreds of
5 pages of documents on proxy costs and the Outlook, and
6 based on their review of the documents they knew
7 exactly who they asked for.

8 They set up Mr. Colton first. We agreed, he
9 is the boss. He is the one that can tell you
10 everything. He is the author of the Energy Outlook.
11 He is --

12 THE COURT: Look, subject to what the
13 Attorney General says, it seems to me that these
14 deponents were previously identified as custodians, and
15 you produced all the documents in their files that were
16 called for by the search terms that were expanded at
17 prior, at a prior hearing that we had, and that there
18 shouldn't be any more documents produced because over
19 16 months the Attorney General has made multiple
20 motions to compel, revised the number of custodians,
21 revised the search terms, and they are going to get a
22 lot more information from the depositions than they are
23 going to get from these documents.

24 MR. WELLS: Yes, it's not like they would
25 even have these documents by June 27 because this would
26 take an enormous amount of manpower to even produce.

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1 Proceedings

2 It's not like we are taking a dep. June 27, and we need
3 this particular piece of paper next week. There is a
4 complete disconnect, in fact.

5 THE COURT: Let me ask you this, Mr. Wells,
6 because I know that you have a dozen more boards.

7 MR. WELLS: I wish it was only a dozen.

8 THE COURT: At the rate we are going, we
9 will be here until 4:00 o'clock.

10 You would agree that the Attorney General can
11 supplement its document requests with tailored
12 interrogatories requesting responses to certain
13 questions that arise from the content of the documents
14 that you already produced?

15 MR. WELLS: I agree that they have the
16 statutory power to pose interrogatories that are
17 reasonable. I would argue if they are taking the deps
18 of 14 people, that they will take the deps first before
19 people start running around engaging in
20 interrogatories, but the concept, I agree, that they
21 have the statutory power to request an interrogatory.
22 I agree that they have that power. Whether they --
23 whether it makes any sense given that they are
24 producing witnesses is something, I guess, you have to
25 see is it a targeted interrogatory or not. You would
26 have to look at the interrogatory. But do they have

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1 Proceedings

2 the power? I agree they have the power.

3 THE COURT: Okay, because I believe they
4 have the power to propound interrogatories as long as
5 the interrogatories are not excessively burdensome,
6 unreasonable and abusive.

7 I'm sorry. I interrupted you.

8 MR. WELLS: I thought you were going to
9 interrupt me in the way you wanted us to short
10 circuit --

11 THE COURT: I am comfortable that you should
12 be producing witnesses, responding to interrogatories,
13 and not producing any more documents subject to what
14 the AG says.

15 MR. WELLS: May I have one second, your
16 Honor?

17 THE COURT: Yes.

18 (Discussion off the record.)

19 (The discussion off the record
20 concluded and the following occurred in
21 open court:)

22 MR. WELLS: I am going to try and cut some
23 of this short.

24 What I want to do for the court's edification
25 is state for the record that there's a difference
26 between what we call proxy costs and GHG costs,

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Proceedings

1
2 greenhouse gas costs.

3 THE COURT: I get it. I get it that if you
4 know exactly how much it costs to take oil out of the
5 ground in Alberta, you don't need to have a proxy cost.

6 MR. WELLS: That's what I want to clarify.
7 We actually used both. There are two different
8 concepts.

9 When the Energy Outlook talks about proxy
10 costs, that is the cost of proxy that ExxonMobil uses
11 for purposes of developing what it thinks the demand
12 will be for energy, oil and gas over the years.

13 THE COURT: Understood, but you start with
14 how much it costs to get it out of the ground, and then
15 you figure out how much you can sell it for.

16 MR. WELLS: Yes. We actually start with
17 what we think the demand will be before we get to cost.
18 We do both, whether it's a chicken or an egg, but the
19 proxy cost refers to the development of the demand
20 curve.

21 When you take into consideration a proxy
22 cost, what you are saying is that the actions of
23 governments in the future may be such as to suppress
24 the demand for oil and gas, move people to use other
25 types of energy sources, and that's going to suppress
26 the demand, and that affects our supply and demand

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

Proceedings

1 which ultimately affects the price.

2 THE COURT: I understand. We said the same
3 thing differently.

4 MR. WELLS: The GHG, those are specific
5 costs for specific projects, and they both come
6 together, but the proxy costs are really baked in to
7 our demand forecast. This is a document that we
8 produced to the New York AG, and what this document in
9 front of it is a GHG Stabilization Challenge and Carbon
10 Asset. This shows that the Energy Outlook takes all
11 sorts of things into consideration: macroeconomics,
12 technology, climate policy, all to ultimately produce,
13 again, a price curve, what's going to be the demand.
14 Then we figure out what the prices are. So the Energy
15 Outlook is one of the most important documents at
16 Exxon, and it's used to analyze every project because
17 that's where we end up getting our prices.

18 Now I want to show one document that they
19 refer to in their brief, they did not supply it to the
20 court or us, but it's a document from
21 PricewaterhouseCoopers. It's a critical document, four
22 pages. I won't go through all of it, but what this
23 document shows is ExxonMobil having discussions with
24 its accountants about both proxy costs and GHG costs,
25 and how it goes about doing what it does in terms of
26

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1 Proceedings

2 taking into consideration climate change issues.

3 All of this was discussed with our
4 accountants, they know all of this, and how, with
5 knowledge of this document, they can file papers where
6 they wrongly state that we were involved in some kind
7 of sham transaction or had two sets of books, it's just
8 wrong what they did.

9 I would like to hand the court a copy. I
10 will make this Exxon Exhibit 2.

11 (Exxon Exhibit Number 2 marked in
12 evidence.)

13 MR. WELLS: Your Honor, do you have the
14 document?

15 THE COURT: I do.

16 I am having a hard time understanding what
17 the dispute is here.

18 MR. WELLS: They filed -- they filed a
19 brief --

20 THE COURT: They filed a brief. They said
21 you did terrible things. You're unhappy that they
22 filed the brief that said you did terrible things. You
23 did what you did. The documents that you produce say
24 what they say. The witnesses that you are going to
25 produce are going to testify to what they are going to
26 testify to. The interrogatories that you are going to

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1 Proceedings

2 answer are going to be admissible against you in any
3 trial proceeding.

4 I'm having a hard time understanding how it
5 is that the New York AG after receiving all of these
6 millions of documents and deposing all of the witnesses
7 that they have scheduled and are going to schedule in
8 the future are going to be unable to satisfy themselves
9 as to what the true state of facts is here.

10 MR. WELLS: Well, your Honor, we believe
11 based on documents we have given them, and, for
12 example, this document (indicating), that they should
13 know that the true state of facts is that ExxonMobil
14 has not done anything wrong.

15 THE COURT: Okay. They have one
16 interpretation of the documents that you've produced.
17 You have a different interpretation of the documents
18 that you've produced. The two briefs that have been
19 submitted here can't be reconciled, and I can't decide
20 who's right and who's wrong on the papers. I suppose I
21 could conduct a trial and hear the witnesses that the
22 AG is going to depose, and review the documents in the
23 context of the testimony and form some very accurate
24 conclusions about whose version of the facts is
25 correct, but we are not here for that. We are here to
26 decide whether or not you have to produce any more

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Proceedings

1
2 documents, whether or not you have to produce any more
3 witnesses, and whether or not you have to answer any
4 interrogatories, right?

5 MR. WELLS: That is correct, your Honor.

6 MR. OLESKE: I think I can help with these
7 points specifically, if I may. I mean, I think I can
8 cut to exactly --

9 THE COURT: I don't want to interrupt
10 Mr. Wells, but if he does not object --

11 MR. OLESKE: I mean --

12 MR. WELLS: I do not object.

13 THE COURT: He dose not object.

14 MR. OLESKE: Thank you, your Honor.

15 I mean, I am prepared to speak to everything
16 Mr. Wells raised, and, obviously, based on what the
17 court said, the Attorney General has its work cut out
18 to make sure it's clear to the court the stakes here,
19 and what's at issue specifically in terms of the
20 document requests that the court has focused on.

21 But just to come from where the court was
22 just speaking, this is not a merits dispute. The
23 posture we are in on subpoena compliance in a law
24 enforcement investigation does not allow for the
25 weighing of merits disputes.

26 THE COURT: I complete and totally agree.

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1 Proceedings

2 MR. OLESKE: And so based on the papers and
3 the record that we have here, the Attorney General has
4 the right to proceed with this investigation. I think
5 your Honor has already pointed to the right to take
6 interrogatories, the right to take witnesses. The key
7 stumbling block it seems for the court is whether or
8 not the Attorney General has the right to get these
9 additional documents to support its investigation, and
10 it appears that there is kind of a dangerous
11 possibility of Exxon managing, through what we view as
12 a contemptible history of compliance, of establishing
13 some new now non-existent legal standard that if a
14 company produces X million documents over X period of
15 time, that's it, you are done.

16 Going to your Honor's initial point about the
17 last time we were here for compliance and your Honor
18 ordered what your Honor ordered with respect to
19 compliance on the original subpoena, to your Honor's
20 implicit question of time, we are deeply unsatisfied
21 with the information that we got out of Exxon's
22 compliance witness both in the affidavit and in the
23 testimony. There's years worth of destroyed documents
24 that the company still has not accounted for, and
25 that's the four records witness subpoenas that we have
26 issued that Exxon's also contesting and doesn't want to

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1 Proceedings

2 submit to, to find out where these destroyed documents
3 are and how that happened.

4 Putting that aside for a moment, it's really
5 not about whether or not Exxon finished its compliance
6 under the first subpoena, which we don't think they
7 did. We have issues there. The real issue is based on
8 what we have learned in fits and starts as Exxon has at
9 every move grudgingly given us information over this
10 extended period of time, lost and destroyed documents
11 along the way, had to redo everything at the end, at
12 the end of that we have. As your Honor suggested in
13 our prior appearances, we focused our investigation on
14 the specific allegations that the evidence Exxon has
15 produced in that first round evidences, are
16 contradictory to Exxon's representations.

17 I am not getting into everything that
18 Mr. Wells said about what Exxon has disclosed which is
19 unfortunately false. Exxon's disclosure is there was a
20 product that was one price. It was used for both
21 purposes. It's in the record. I will not argue it,
22 but that's the merits question that we won't get to.

23 The question is, the Attorney General has
24 formulated requests for documents based on the gaps,
25 the missing information, what should be there that we
26 are not getting even though we are using these search

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1 Proceedings

2 terms, GHG and proxy costs, but all of this stuff that
3 now for the first time in an attorney affirmation Exxon
4 is explaining to us, because in an attorney's brief
5 Exxon is explaining to us about the facts of how they
6 do this. We don't have these documents. The search
7 terms should have caught them, but we don't have these
8 documents.

9 Exxon has continued to make these same
10 representations after November of 2015 when we issued
11 the subpoena. In fact, their CEO chairman made the
12 most unqualified statements about this process at the
13 annual shareholders meeting in 2016.

14 Our subpoena's instructions called for Exxon
15 to produce documents up to the date of the production.
16 They didn't finish their management documents until two
17 or three months ago because they did it wrong the first
18 time, they had to redo it, but they refused. They
19 refused to ongoing -- supplement their production by
20 giving us the documents from 2016. They refused to do
21 that even though they are obviously relevant.

22 We asked for documents relating to Exxon's
23 impairment and write-down of assets because we learned
24 in the course of the investigation, your Honor
25 instructed us to go to Exxon's accounts first to
26 prosecute our subpoena there, get the documents from

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Proceedings

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2 them, before asking, this was in an appearance last
3 year, before asking Exxon in a subsequent subpoena for
4 a broad range of counter-documents.

5 We listened to the court. We went through
6 PricewaterhouseCoopers' documents. We learned that
7 Exxon, contrary to its representations to the public,
8 never applied the proxy costs when it came to this
9 apparent analysis. We learned it through the
10 PricewaterhouseCoopers documents, but we still don't
11 have Exxon documents.

12 THE COURT: Look, you told me, Mr. Oleske,
13 that we are not arguing merits here. We are just
14 arguing compliance with discovery.

15 MR. OLESKE: Your Honor, it's not discovery,
16 it's our investigative subpoenas, and our new
17 investigative subpoenas are focused and have a factual
18 connection, direct factual connection to the factual
19 basis that we have established as the basis for our
20 investigation, and so legally there is no basis to
21 restrict the Attorney General from obtaining additional
22 documents simply because the target argues that they
23 complied in full with a first subpoena. Even if it's
24 millions of pages, even if it takes a long time, the
25 cases we cite in our brief are directly on point about
26 companies exactly like Exxon that say the reason why we

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1 Proceedings

2 need all of these documents, the reason why we need to
3 look over Exxon's business it because it has a big
4 complex business, and it chose to make the
5 representations that it applies this process all across
6 its business, across its many units for all of its
7 decisions.

8 So there is no legal basis. It's just a
9 question of whether or not Exxon can talk its way out
10 of it by saying we produced X million documents so far,
11 you should have gotten these documents in what you were
12 looking for so far, but we haven't.

13 We have not seen -- this is the other
14 thing -- Exxon -- Mr. Wells says they can't push a
15 button to respond to this. In addition to the other
16 ways in which Exxon's new assertions and attorney
17 argument violate, contradict its representations to the
18 public, Exxon has represented to the public that it has
19 a comprehensive, uniform, rigorous system for keeping
20 track of all of this, and now we are hearing Exxon cry
21 that it cannot report to a government investigation,
22 let alone for its own business purposes for
23 shareholders, this very information that Exxon claims
24 in its disclosure should be at its fingerprints about a
25 process that it's applying all over the company in
26 order to satisfy investors concerns about a specific

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1 Proceedings

2 risk.

3 So the problem that we have is that we have
4 demonstrated the factual basis. Exxon said X, they did
5 Y, and in response they have come up with Z, attorney
6 admissions of what they did and attorney rewritings of
7 their disclosures. That's not a basis to resist the
8 investigation. It's specifically on the document
9 requests.

10 We have shown in our papers, I can walk
11 through each one, how these are focused on obtaining
12 additional information that is necessary to follow up
13 on the first feed. That's within our office's power,
14 and the scope or the duration of the prior production
15 does not legally have an effect on that. As to our
16 request for information --

17 THE COURT: I'm trying to make this simple.

18 When you were here on March 27 Mr. Toal stood
19 up, and Mr. Toal said properly, it's our obligation as
20 attorneys for ExxonMobil to make a continuing
21 production of documents that come to our attention that
22 are responsive to the requests that have been made that
23 weren't produced, however it is that they come to learn
24 about things. It's a big company, and they have
25 certified that they've complied with the production of
26 all responsive documents from all of the custodians

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1 Proceedings

2 that you have asked them to produce documents from,
3 using all of the search terms that you've agreed.

4 You are going to depose multiple witnesses,
5 you are going to propound interrogatories, and it seems
6 to me that during the course of the depositions that
7 you are going to conduct including additional
8 depositions to verify compliance, because I think
9 you've made a showing that their two affiants who they
10 have produced did not satisfy you that they have fully
11 complied with what they undertook to do. So I'm not
12 precluding you from taking further depositions with
13 respect to their compliance.

14 So I am not precluding you from propounding
15 reasonable interrogatories, I am not precluding you
16 from taking depositions, and I am not precluding you
17 from coming back here and explaining based on what the
18 additional depositions about process by which documents
19 were produced including why documents disappeared, and
20 based on what the witnesses testified to in their
21 depositions as fact witnesses, and what the
22 interrogatories you propound reveal that you need more
23 documents.

24 What I am saying is that when you have
25 engaged in a 16 month process of requesting and
26 receiving documents from Exxon's auditors, agreeing

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 with Exxon on custodians whose files you want searched,
3 agreeing with Exxon on what the search terms are that
4 are going to be used to produce documents from the
5 custodians, you can't start round two of producing
6 documents all over again.

7 MR. OLESKE: Your Honor, a couple of things.
8 I need to discuss each of the items, your Honor. Okay.

9 We have been in this process for 16 months.
10 Exxon has produced literally three million pages of
11 documents. That process took that long, and we still
12 are without the documents we need because of Exxon's
13 choices. They created this system of dribbling out
14 documents, fighting us at every turn.

15 We didn't choose the custodians. It's
16 Exxon's job to know where the documents, the relevant
17 documents are, who works with the right information.
18 Based on what we have just heard this last week now
19 there is a whole suite of relevant facts that Mr. Wells
20 is averring to for the first time on Exxon's behalf
21 ever. We have not seen any documents referring to what
22 Mr. Wells has talked about.

23 But putting aside the compliance with the
24 original subpoena and those issues that do need to be
25 resolved, that is not what we are here about. The
26 Attorney General does have the authority even if --

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Proceedings

THE COURT: I understand you have the authority to ask for additional documents. I get that. I get that.

MR. OLESKE: I will get to why --

THE COURT: You have the authority. You have to make a showing that by taking depositions, and propounding interrogatories, and taking testimony from the people who supervised the production of documents, that they have misled you, and have, you know, failed to be forthcoming.

MR. OLESKE: No, your Honor, I hear that this is the critical issue for your Honor.

There are two issues: There's a legal issue and a practical issues. The legal issue is, no, that is actually not the standard. We are not required to show, to sustain document requests that we are not going to get the information we need through alternative investigative techniques that we are also empowered to use.

On a practical level in this case, your Honor --

THE COURT: You have not shown me that you have not gotten the documents that you claim you need.

MR. OLESKE: We explained that in our papers --

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 THE COURT: I read your papers. I read
3 their papers.

4 MR. OLESKE: The simplest example of all of
5 these, your Honor, is that we have Exxon in our
6 subpoena making one, two, three, four, five, six,
7 seven, eight, eight different public representations in
8 a different language, in different places, and
9 different formats to investors and the public about how
10 they have done this. The witnesses that we are
11 talking -- by the way, they have changed that over the
12 last year.

13 THE COURT: That's your case on the merits.

14 MR. OLESKE: My point is, yes, that's what
15 we are investigating. That's what we have a --

16 THE COURT: Excuse me. Can I ask you a
17 question?

18 MR. OLESKE: Yes, your Honor. I'm sorry.

19 THE COURT: Were the words "proxy cost" not
20 one of the search terms that was used in connection
21 with the production of all of these documents?

22 MR. OLESKE: That proves two things, your
23 Honor, two things. Yes, it and GHG both were search
24 terms. First of all, they refused to search the last
25 year and a half worth of documents for those terms.
26 Second, yes, and it shows us why we need these

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

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Proceedings

interrogatories and these document requests before we decide who else we need to depose, take testimony.

The reason why we need these documents now is because, yes, we did have GHG, and we did have proxy costs as search terms, and somehow the documents that show Exxon applying this in its rigorous way and in this new alternate world that Mr. Wells has described that's never been disclosed before, they have not produced those documents.

So the answer to that is either the documents don't exist, and we will find out when they respond we don't have these documents, or Exxon was responsible for interviewing and finding the right custodians which we know from the outcome of our testimony they did not do properly. They should know where the custodians are who have the documents that substantiate any of what Mr. Wells has said. We don't have that information.

So the point is, them arguing that they complied with the first subpoena, that they executed the search terms, that this is what we have got, that, as a matter of law, cannot preclude our office from following up with additional, more specific, more targeted requests for documents, and it is, in fact, inefficient, it interferes with our ability to progress our investigation, to wait to depose witnesses only to

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 ask them so what documents are there, and then asking
3 let's just get the documents --

4 THE COURT: Can I just ask you a question?

5 Why didn't you ask Exxon 16 months ago or 12
6 months ago, please, identify individuals at ExxonMobil
7 who have information or knowledge about the application
8 of an implementation and disclosure of proxy costs and
9 greenhouse gas costs?

10 MR. OLESKE: We did, your Honor. We asked
11 them for that from the very beginning.

12 THE COURT: Did they respond to that?

13 MR. OLESKE: They identified some custodians
14 although outside counsel had no part in identifying the
15 outside custodians. ExxonMobil's legal department by
16 itself unsupervised identified the custodians.

17 THE COURT: I am not precluding you from
18 asking that question right now.

19 MR. OLESKE: The point is --

20 THE COURT: And then if it turns out there
21 are people who should have been previously identified
22 and haven't been identified, then they will have to
23 produce the documents that those people have.

24 MR. OLESKE: I guess the point is, your
25 Honor, that we think it's a waste of your time, the
26 court's time, our time, Exxon's time, for us to be

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 trying to relitigate the custodian's or search terms
3 under the first subpoena. We have issued these new
4 subpoenas, we have narrowed requests for documents and
5 for information to make sure that we are not wasting
6 everybody's time.

7 THE COURT: I think you are wasting my time
8 because Mr. Toal said he was going to produce any
9 documents that come into his possession that are
10 responsive to your first subpoena and that would
11 include 2016 and 2017.

12 MR. OLESKE: They refused, your Honor.

13 THE COURT: Well, then I am ordering them to
14 produce those documents.

15 MR. OLESKE: But the other documents we are
16 asking for, your Honor --

17 THE COURT: So those documents will be
18 produced because those are documents that they had a
19 continuing obligation to produce.

20 MR. OLESKE: We agree. Your Honor, when we
21 tried to meet and confer over this we pointed that out
22 to them. They refused to meet and confer about any of
23 these requests.

24 THE COURT: We have solved your problem with
25 respect to those custodians. They are going to honor
26 the undertaking they made in open court on March 22nd.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 MR. OLESKE: I appreciate that. We solved
3 that for one problem, for one of our document requests,
4 document question number two. We appreciate, yes, they
5 had that obligation all along and refused it. That's
6 why we issued this targeted subpoena for that.

7 THE COURT: They also have an obligation to
8 produce documents that are generally responsive to the
9 issues that you've framed in your search terms that
10 they are aware of.

11 MR. OLESKE: Right. That's why we thought
12 had they had an obligation to produce this without a
13 second subpoena, your Honor.

14 THE COURT: That's what they are going to
15 do. That's what they are going to do.

16 MR. OLESKE: The additional --

17 THE COURT: You don't need to propound any
18 additional document requests because they know what
19 their obligations are and they are going to comply with
20 their obligations.

21 MR. OLESKE: The other document requests are
22 not encompassed by their failure to produce on the
23 first subpoena. They are independently,
24 factually-based document requests for new documents.
25 They need to figure out, just like they always had an
26 obligation, the people who have these responsive

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 documents for these new requests for subject matters
3 that have grown out of our investigation for which we
4 have demonstrated a factual basis and a connection
5 between that factual basis and these new requests. For
6 example --

7 THE COURT: Let me ask Mr. Wells two
8 questions.

9 Mr. Wells, you agree that Exxon has an
10 obligation to produce documents that come to Exxon's
11 attention that are responsive to the original subpoena
12 that was issued, correct?

13 MR. WELLS: If --

14 THE COURT: A continuing obligation?

15 MR. WELLS: I don't think we have -- it's
16 just a definitional issue. I don't think after we have
17 gone out and searched the files, talked to custodians,
18 and produced the documents that every day of the week
19 until this investigation is over --

20 THE COURT: Not every day of the week, but
21 if a whole year goes by from the time that the original
22 document request was propounded, and the files get
23 filled up with a year's worth of stuff, I am not
24 suggesting you have to mark to market every document
25 that comes, that's generated on a daily or weekly
26 basis, but when a whole year goes by, and there's a

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1 Proceedings

2 plethora of documents that respond to an outstanding
3 subpoena, you have an obligation to produce those
4 documents.

5 MR. WELLS: If that's the issue, implicit in
6 what you are saying is if this investigation goes say
7 another three years, G-d forbid, that either every six
8 months or every year we have got to spend it will be
9 millions of dollars to go back and search 142 custodian
10 files on an annual basis. I don't think that's how
11 most subpoenas work. That's not how it's usually done.

12 We have produced up to the date. Now if I
13 come across something, okay, I don't think I have to
14 produce it, but whether it's civil litigation or an
15 investigatory litigation, I don't think we have, in a
16 big production like this, have to go back and redo it
17 at a cost of millions of dollars every six months. I
18 don't think that's --

19 THE COURT: What we are trying to accomplish
20 today with no cooperation from either party is to move
21 the investigation from the document phase, into the
22 deposition phase, into the subsequent phase whether
23 that's a trial, whether that's a consensual resolution,
24 whether that's an injunction hearing. We are trying to
25 get beyond, you know, being stuck in a time warp where
26 you come back to court 17 times arguing about

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1 Proceedings

2 documents.

3 I suggested 15 times that you meet and
4 confer, and come to some reasonable resolutions, and at
5 least six or seven times we have gotten these competing
6 motions to compel or motions to quash.

7 MR. WELLS: In terms of cooperation, what we
8 all agreed to, I thought on March 22, is that we would
9 move to the next stage. When they asked to depose the
10 key people with respect to proxy costs, they asked for
11 June 27, I said he will be there. When they asked for
12 the other dates, he will be there. We didn't move to
13 quash the deposition subpoenas, because that's where
14 everybody agreed where we were going.

15 So in terms of cooperation, they asked for
16 these four people, and we gave them.

17 THE COURT: I don't think it's a huge
18 concession on the part of ExxonMobil to produce four
19 people who the Attorney General has requested to give
20 deposition testimony after 16 months of document
21 production.

22 Let me interrupt these proceedings.
23 Everybody stay right where you are. I have one other
24 matter that I need to deal with.

25 (A recess was taken.)

26 (After the recess the following

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 occurred:)

3 THE COURT: Mr. Wells, I think you had the
4 floor.

5 MR. WELLS: Thank you, your Honor.

6 I will try to be brief.

7 With respect to the issue of updating the
8 document production aspect, what I want the court to
9 consider is the fact that to update a request of this
10 magnitude with 142 custodians where we are now going to
11 have to go back and interview each custodian to see
12 what additional hard copies he or she may have, we are
13 going to have to go back, get their electronic
14 documents, and load them, and search them, we will have
15 to do a privilege review, we are talking about many
16 months of works, and hundreds and hundreds of thousands
17 of dollars of work. This is not a situation -- I think
18 what Mr. Toal was referring to, if Paul, Weiss comes
19 across a document, someone has a document that we know
20 is responsive, and we have a continuing obligation to
21 produce it, that's a different representation he made
22 than going out and basically redoing this document
23 production that we have been doing for 16 months to
24 update for another year.

25 With that said, if that is what your Honor
26 wants us to do, we will go out, and we will do it.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 THE COURT: That's what I want you to do.

3 If you are asking me whether I think that the
4 Attorney General is perpetually investigating things
5 that could and should be conclusively resolved through
6 depositions and interrogatories in a much shorter
7 period of time than the Attorney General has already
8 spent investigating this issue, I would tell you the
9 answer to that question is yes. That's beside the
10 point. They have certain statutory powers that I
11 can't --

12 MR. WELLS: What we will do with the
13 depositions? That's the next implication.

14 So what's going to happen is they are going
15 to start taking depositions, these four people. I
16 assume they will keep taking depositions. It's going
17 to take us a number of months to re-update, update this
18 production. Then they are going to come back and say
19 they want to depose all the people again because now
20 they have new documents.

21 So it would seem if that's what they want,
22 that we just go back to square one and put off the
23 depositions because, otherwise, this thing will be a
24 continuous loop (indicating).

25 THE COURT: I completely understand, which
26 is why I have encouraged the parties to meet and

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 confer, and save each other a great deal of time and
3 effort, but I don't think the scope of this
4 investigation is so massive, and that issues that they
5 are investigating are so arcane and require such
6 sleuthing to get to the bottom of that, that
7 ExxonMobil's entire business has to be audited, and
8 every document in ExxonMobil's files has to be
9 produced. I think the answers to their questions
10 reside in the minds of a half dozen or more witnesses
11 who they could depose, and are reflected in some
12 manageable number of documents which is a tiny, tiny,
13 tiny fraction of the documents that you have produced
14 and are going to produce. That's very clear to me.

15 But, again, the Attorney General has certain
16 statutory powers. They are exercising those powers. I
17 can't interfere with their exercise of those powers
18 except to the extent of preventing abuses. So if they
19 want to spend another 18 months doing what they have
20 done for the last 16 months, I am not in a position to
21 stop them from doing that.

22 But I'm not ordering you to produce any
23 documents from any custodians that aren't responsive to
24 the search terms that they have already agreed to. I
25 am ordering you to produce the additional witnesses to
26 testify about the completion of the responses to their

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 document requests that you claim are fully complied
3 with, and I am ordering you to update your document
4 production in accordance with their requests.

5 MR. WELLS: May we have an understanding
6 that the update will be as of today? We need a date
7 from which we are doing this.

8 THE COURT: Surely it being June of 2017,
9 and this investigation having been ongoing for 16
10 months, June of 2016 seems like a reasonable cutoff
11 date to me. You can't keep moving the goal post.

12 MR. OLESKE: You said June of 2016.

13 THE COURT: I said June of 2016. You can't
14 keep moving the goal posts.

15 MR. OLESKE: The subpoena was issued in
16 November of 2015. Okay. The events described in the
17 subpoena run all throughout 2016. We are asking for it
18 to be updated to the date of production. If Mr. Wells
19 wants it for the purposes of this order to be today,
20 that's one thing. We don't understand the basis for
21 them only producing between November 2015 and June of
22 2016.

23 THE COURT: What do you think has changed in
24 the last six months?

25 MR. OLESKE: In our documents we show, in
26 our papers we show Exxon has changed its practices and

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 has modified its representations both in, throughout
3 the course of 2016. That's why documents from 2016 are
4 so vital for our investigation.

5 THE COURT: You want documents through the
6 conclusion of 2016?

7 MR. OLESKE: We believe we are entitled to
8 them up to the present day, your Honor.

9 THE COURT: Look, they cannot and no
10 corporation can be required to produce on a daily or
11 weekly or monthly basis every document that is
12 generated by that corporation.

13 MR. OLESKE: Your Honor, let me, first, go
14 to the purported unfairness of this.

15 Exxon did not actually finish its collection
16 of management documents until two months ago. It just
17 deliberately left out the documents from the
18 intervening gap as a matter of policy.

19 Second, Exxon issued two new reports on this
20 very subject presumably involving these same people
21 with new and different language, with new and different
22 internal policies in April of 2017. There is no legal
23 basis to arbitrarily decide the Attorney General cannot
24 investigate and ask for documents about those
25 representations which link up with all of these other
26 representations that Exxon has on the documents we have

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 seen so far.

3 THE COURT: You have those documents.

4 MR. OLESKE: No, we don't have any documents
5 from 2016 or '17.

6 THE COURT: You just told me that they
7 changed their practices.

8 MR. OLESKE: First of all, yes, we know
9 that, for example, in 2016 it appears from what we have
10 seen from PricewaterhouseCoopers, because we did that
11 first as your Honor directed us to do -- your Honor
12 said that these impairment requests, our request number
13 four in your prior order, was not responsive to our
14 first subpoena, that we had to go to Pricewaterhouse
15 and search, which we did, got the documents, we got
16 Pricewaterhouse's documents showing them never doing
17 any of this up to 2016, at least for the PWC documents,
18 and then something changes in 2016, and they start
19 doing something new on this same subject matter.

20 We don't have any of the documents from Exxon
21 because your Honor told us it wasn't responsive to the
22 first subpoena, and to go to PricewaterhouseCoopers
23 first. We did both of those things. We developed this
24 information inculcating the company. They have
25 continued to make representations to the present day.

26 We are asking for not just this update, but,

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1 Proceedings

2 for example, when it comes to impairment, when it comes
3 to Exxon's documents about value, its long-lived assets
4 that were previously ruled not part of the first
5 subpoena, we connected their relevance to our factual
6 basis, we have shown why the subject matter is tied to
7 Exxon's representations and our potential fraud case.

8 Your Honor had previously precluded us from
9 getting these documents --

10 THE COURT: I may be obtuse, but it seems to
11 me that you will have these witnesses, and these
12 witnesses have percipient knowledge of Exxon's
13 practices.

14 MR. OLESKE: They don't have knowledge of
15 that. That's part of the point of these documents.
16 Some of these document requests are not for stuff
17 covered by the first subpoena. They are not -- these
18 witnesses -- this is the other bigger picture, if I can
19 step back for a minute, your Honor.

20 The standard here for stopping us from any of
21 these requests including the document requests is that
22 it's not going to recover anything, any information
23 that is relevant. In fact, the showing has to be that
24 it's utterly irrelevant to our investigation. Now I
25 understand, your Honor has referred multiple times, so
26 has counsel, to depositions. These are, in fact, not

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 depositions. These are investigative hearings that the
3 Attorney General has chosen these four witnesses to
4 start with. We have other, many other employees from
5 Exxon --

6 THE COURT: I am sure you are going to take
7 dozens of --

8 MR. OLESKE: But we can't decide -- this is
9 the point: Exxon is inviting you into something
10 dangerous here. Exxon is inviting the court to decide
11 how the Attorney General should stage its
12 investigation, and to make judgment calls that we don't
13 really need these documents now to decide what
14 witnesses we will take down the road, we don't need
15 those witnesses now to find out whether or not we heard
16 what we need to hear from these witnesses. One of
17 these document requests is for the documents relevant
18 to the interrogatories that your Honor has already
19 ruled we take.

20 THE COURT: Look, respectfully, there is a
21 hard way to do things and there is an easy way to do
22 things.

23 MR. OLESKE: We have been trying --

24 THE COURT: The easy way to do things, the
25 easy way to do things is to examine witness X, ask
26 witness X, who knows about this, that or the other

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 thing. Then examine the witnesses who were identified
3 by witness X, and examine each of those witnesses who
4 knows about this, that or the other thing. And if you
5 had done that on day one you would be a thousand yards
6 ahead of where you are today.

7 MR. OLESKE: Your Honor, with all due
8 respect, that has not been our experience in this
9 investigation. We have examined so far two witnesses
10 in testimony, and, no, it has not been an efficient
11 process, and our discretionary determination during the
12 course of this investigation is that we needed these
13 documents to figure out who to depose, and what
14 questions to ask them, and to be able to evaluate,
15 sorry, to take testimony from and to evaluate their
16 testimony. We still need the documents for the same
17 reason.

18 There is no legal basis, Exxon has not met
19 any of the legal standards to deny us the factual basis
20 to proceed or to show that these document requests are
21 burdensome in any way. They have not met any of their
22 required factual showings.

23 THE COURT: You don't think it's burdensome
24 to search 130 custodians?

25 MR. OLESKE: As a matter of law, your Honor,
26 even if Exxon had come into this with clean hands, as a

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 matter of law, no. For large companies that are spread
3 all over the world, that have these kinds of
4 operations, and when the allegations of potential fraud
5 cover those operations, the courts have been unified,
6 no, it is not a reason to deny such a request.

7 Your Honor, more importantly, the fact is,
8 Exxon's hands have not been clean in this. Exxon
9 refused to meet and confer with us about these requests
10 before we came in here. We were happy to talk to Exxon
11 about how these could be staged or prioritized, how
12 they could be narrowed, how the interrogatories could
13 help defer the need for some of the documents. We were
14 happy. They refused, your Honor, and forced us here
15 and now have to substantiate, contrary to the law, each
16 of the bases for our document requests even though in
17 our papers we demonstrated their connection to our
18 factual basis, how they are narrow requests aiming at
19 information that either was improperly withheld the
20 recent documents from the original subpoena or requests
21 that were not covered by the original subpoena that are
22 vital for our continued investigation.

23 Again, with all respect, this is not a civil
24 discovery dispute where the court has the wide
25 discretion to gauge whether or not in what order it's
26 most efficient for us to obtain discovery. We are

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 conducting an investigation in which the choice of
3 whether to ask this question or ask for these documents
4 or examine this witness is entrusted to the good faith
5 of our office that we enjoy a presumption of, and that
6 they have not, for all of the sideshow talk, have not
7 overcome that presumption, again, the right way for
8 this to have been done was for them to meet and confer
9 with us, and talk about --

10 THE COURT: I agree that the parties should
11 have met and conferred, but I believe that I have the
12 inherent authority to assure that there is some degree
13 of proportionality and rationality in the manner in
14 which the investigation is being conducted.

15 MR. OLESKE: The issue then is, what is the
16 dispute with the proportionality or connection of these
17 specific requests in addition to the updated documents?
18 I mean, we have heard none of that. Exxon has not even
19 tried to give your Honor that.

20 THE COURT: Okay. I've indicated that you
21 can propound any interrogatories that you want that are
22 fair and non-burdensome and calculated to advance your
23 investigation. I've ordered Exxon to update its
24 production.

25 If you've identified potential documents that
26 are relevant to your investigation here in open court,

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 and Exxon is on notice of the existence of such
3 documents, they have an affirmative obligation to
4 produce them.

5 MR. OLESKE: Not for documents, your Honor,
6 that you have already ruled were not covered by the
7 first subpoena. That's why we issued these updated and
8 renewed document requests, was to obtain beyond the
9 updated information that they owed us and your Honor
10 already ordered. These other subject areas are areas
11 that were not part of the original subpoena, are not
12 part of some obligation for them to make continuing
13 production. As much as unfortunately this may be
14 distasteful to the court, the fact is, we have met our
15 burden. We have a factual basis for these requests.
16 They are connected and focused on that factual basis.

17 Exxon had a legal obligation to demonstrate
18 how any one of these requests for new information, new
19 documents that were not covered by the original
20 subpoena, at least they argued so far, why any of those
21 are burdensome in the way that meets the standards of
22 the law or disconnected from our factual basis in the
23 way that meets the standards of the law, and they have
24 not done that.

25 THE COURT: But you can secure, you can
26 secure the information by interrogatory that will

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 establish to your complete and total satisfaction in a
3 simple response to interrogatory what would take you a
4 man year to figure out by making them spend millions of
5 dollars to produce, you know, another million
6 documents.

7 MR. OLESKE: A couple of things.

8 First of all, that simply is not the case
9 with these facts, these documents, and these witnesses.
10 It shouldn't take -- it should not be a legal standard,
11 any substantial interference with Exxon's business
12 given its virtually unlimited resources which the court
13 and counsel have previously noted.

14 We are only talking now -- presuming that our
15 document request number two, which is -- this is our
16 subpoena which was Exhibit T to Mr. Anderson's
17 affirmation -- our document request number two is for
18 the update. We have addressed that. Our document
19 request number one is for documents relating to or
20 substantiate the answers to our interrogatories. I
21 assume that's not really -- I assume your Honor is okay
22 with us asking for that.

23 THE COURT: Absolutely.

24 MR. OLESKE: All we are dealing with now are
25 four document requests. One of them is for, I've
26 identified in our interrogatory. One of the

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1 Proceedings

2 interrogatories they refused to answer was for a list
3 of people on a committee that handles their reserves.
4 They refused in the meet and confer to give us the list
5 of people.

6 THE COURT: They have to give you that.

7 MR. OLESKE: Number three, document request
8 number three is just to add those people, these people
9 that were on the reserve committees that they didn't
10 previously identify, add those people to the prior
11 list. That's number three. That's consistent with
12 your Honor's --

13 THE COURT: That's consistent with what I
14 have held.

15 MR. OLESKE: All we are now talking about is
16 request four, five and six.

17 Number four are those impairment documents
18 that your Honor previously ruled were not part of the
19 subpoena, told us they are the PWC. We did, we found
20 out there was inculpatory information, and now need to
21 see Exxon's documents about it. We have drawn a clear
22 line --

23 THE COURT: I don't understand. You have
24 the documents from PWC.

25 MR. OLESKE: Pricewaterhouse's accounting
26 documents about the process of taking impairments, but

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 we don't have Exxon's documents about that same process
3 where they represented to investors that they have
4 conducted this analysis, and apparently have now
5 changed their mind in the last year, started doing it.
6 We don't have that because your Honor denied our
7 original attempt to enforce the first subpoena as
8 including that subset of documents. We don't have
9 those documents.

10 You told us to go to Pricewaterhouse first
11 because we had a subpoena to them. We did. We have
12 gone through that. We have found the inculpatory
13 information there and now we need the connected
14 evidence from Exxon. It's a straight line. There is
15 no basis to restrict us from getting those documents
16 from Exxon. That's number four.

17 Number five, this is amazing, this is the
18 simplest request of all. Exxon refused this in the
19 meet and confer. They can push a button. We asked in
20 number five for documents they produced to the SEC.
21 They have that on a compact disc. They have a disc
22 sitting in their office that is document request them
23 five. They refused to give it to us.

24 Document request number six, finally, is
25 communications between Exxon and the banks. Again,
26 Exxon's position's not responsive to the first

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 subpoena. That's a very narrowly identified, easily
3 identifiable set of documents which is Exxon's
4 communications of the facts.

5 It appears that really our document requests
6 one, two and three the court's already agreed we are
7 entitled to, and four, five and six, I am trying to
8 emphasize here, these are narrow requests, not covered
9 by what your Honor was assuming would be covered by
10 counsel's representations or Exxon's ongoing
11 obligation. These are specifically targeted requests
12 for new documents that were not covered, that we have
13 connected to our factual basis, that Exxon has made no
14 showing of burdensomeness, giving us a copy of the CD.
15 That's what they are here opposing, refusing to meet
16 and confer on.

17 Your Honor, it's clear that the court has
18 seen this go on, seen us come back here, and your Honor
19 said that the court's not had help from either party in
20 moving the investigation forward. With all respect, we
21 beg to differ. We have been trying very, very hard to
22 move this investigation forward. We are moving forward
23 with the testimony. We are moving forward with the
24 questions. We need to move forward with the documents.

25 The fact that we are asking to fill in the
26 gaps of our document collection with known relevant

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 evidence that should be easy get, that we had every
3 legal entitlement to get, it's simply not on Exxon to
4 come into court and say the Attorney General should not
5 run their investigation this way, the Attorney General
6 should wait another two or three months to ask
7 witnesses, and then, oh, yes, of course, you need those
8 documents. That's not from our perspective an
9 efficient way to stage our investigation.

10 With due respect, it's not a civil discovery
11 proceeding. This is a subpoena compliance proceeding.
12 We demonstrated our legal authority to demand these
13 documents, specifics ones, all of them that we ran
14 through, and, frankly, we don't see how there is a
15 legal basis as opposed to an understandable desire. We
16 share that desire to conclude this investigation, but
17 we have to be able to conclude the investigation within
18 the ambit of our authority that's been properly
19 exercised and exercised with good faith.

20 THE COURT: Mr. Wells.

21 MR. WELLS: Well, I thought he was going to
22 try to be practical and propose some type of practical
23 solution. I was wrong. It seems we are back to the
24 very beginning because if you listen to him, he is
25 suggesting that your Honor has now ordered us to engage
26 in months and months of preparing spreadsheets for 12

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 years of projects, all the underlying documents,
3 because that's what he said. He said, okay, number one
4 is done, number two is done. He is checking boxes like
5 the court ordered something. I told him, I am
6 confused --

7 THE COURT: I have made it very clear. We
8 are not going for 12 years at every project. I have
9 made that very, very, very clear.

10 MR. WELLS: Thank you.

11 So at the moment he checked so many things
12 off. I am not sure what is being ordered and what is
13 not.

14 I started trying to be cooperative saying we
15 would update. We understand it adds costs, it will
16 take months, and what I hear them saying is no matter
17 how much updating we do, there is always going to be
18 more because we do an Energy Outlook every year. So I
19 guess we are going to be updating for three years, four
20 years. Look, there has got to be a stop date. I
21 believe that there is supposed to be a stop date, and I
22 don't have to go out and redo a multimillion dollar
23 production, multiple times. I don't think that's the
24 law. Listening to him it is clear, whatever we do, we
25 are going to be back arguing about updating again
26 because he does not want any end date.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 Maybe what we should do is have your Honor
3 rule, we will go to the Appellate Division, see what
4 the updating rules are, because I don't think they can
5 do what they are saying they can do which is
6 continually make us spend millions and millions of
7 dollars, whether it's a monthly basis or every six
8 months, ad infinitum into the future. I don't think
9 that's rational. I don't think that's proportional.

10 I tried to be reasonable. Every time that
11 you try to be reasonable, with all due respect with
12 them, you get back because they -- look, this is not a
13 normal investigation. It is a political witch hunt.
14 That's what it is. They cannot clear Exxon. The
15 Attorney General cannot be in a position of clearing
16 the largest fossil fuel oil company in the world. They
17 know it. I know it. So our documents show that we
18 have not done anything wrong, anything.

19 This investigation started in November 2015.
20 What they said was Exxon knew about secrete science,
21 Exxon was keeping the secret science buried, and going
22 out and being climate deniers. Then after months of
23 looking at our scientific documents they said, oh, we
24 don't want any scientific documents, stop giving us the
25 science because our science shows that Exxon is totally
26 innocent.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

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Proceedings

Then in August they changed the theory. They went to a stranded asset theory, and we read about it the newspaper. Every time they do something, they go right to the press. We read in the newspaper. Now we will do a stranded asset theory. That goes away.

Now we have a new theory. It's exactly opposite than the first theory. The new theory is, we say in our documents how serious climate change is, but internally we don't pay that much attention to it.

So they totally flip-flopped the theories. We are on the third theory now. There is nothing there. That's why that document that I wanted to go through with your Honor, I won't burden you with it, it's a PricewaterhouseCoopers internal document. It says with respect to proxy costs that that's what is used for projecting demand and ultimately the prices. It says with respect to GHG costs, how we apply them in specific locations, it says Exxon has one of the more conservative proxy costs of any oil company, and Exxon does this in the most conservative fashion.

All of that is in the document I wanted to walk you through. It puts the lie to all of his statements, that they are inculpatory, it's a sham. I mean, they just stand up here as officers of the court and say whatever comes to their minds even if they have

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

Proceedings

1
2 documents that contradict. At the end of the day, I am
3 quite sure, they can't clear us. They can never clear
4 us as innocent as we may be because it's politically
5 unacceptable for them to do it. So we will end up
6 continuing to produce, produce, produce.

7 THE COURT: Look, the best suggestion that
8 I've heard is the one that you just made, Mr. Wells,
9 which is you can take this to the Appellate Division.
10 Take this to the Appellate Division because we are way
11 beyond proportionality, and in my judgment no
12 reasonable court could conclude that if you are
13 searching for the search terms that they agreed to, and
14 which were subsequently supplemented in the files of
15 134 people, and you have agreed to update that search
16 through 2016, and they can propound interrogatories,
17 and they can conduct the examination of the four people
18 that they want to conduct to verify that you've fully
19 complied through 2015 with all of their demands, that
20 that isn't reasonable under all the circumstances. And
21 if the Appellate Division decides that they can spend
22 the next three years changing their theory, and
23 imposing additional documentary burdens on you when
24 they are free to depose anybody in their corporation
25 that they choose to for the benefit of several million
26 pages of documents that you have already produced and

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 the additional documents that you are going to produce,
3 then so be it.

4 MR. OLESKE: Your Honor, --

5 THE COURT: That's the ruling of the court.

6 MR. OLESKE: -- may I respond to this issue
7 of --

8 THE COURT: Look, you each have the
9 obligation to zealously represent your clients. You
10 have a different view of the world than Mr. Well's
11 client has a view of the world. I'm just trying to
12 call balls and strikes.

13 MR. OLESKE: Your Honor, I guess my -- part
14 of my point is, I want to clarify first what exactly
15 your Honor's ruling is because my understanding is that
16 your Honor is saying they have to give us the documents
17 that are responsive to our requests, one, two and three
18 which --

19 THE COURT: No. If your request is that
20 they have to give you information about every project
21 that they have been involved in for the last 12 years,
22 the answer is I absolutely, positively, definitely
23 never intimated, suggested or ruled that that's what
24 they have to do.

25 MR. OLESKE: I guess what we are a little
26 tied up on is the distinction between our requests for

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1 Proceedings

2 information and our document requests because your
3 Honor has made it clear that we have the right to ask
4 interrogatories.

5 THE COURT: Yes, you can ask all the
6 interrogatories you want, and they will respond to
7 those interrogatories. If they fail to respond to
8 those interrogatories reasonably you will be back here,
9 and I am going to sanction them for failing to answer
10 interrogatories to which they have no proper objection.

11 MR. OLESKE: Does that mean -- we are
12 talking about the interrogatories we have. Does that
13 mean the court is --

14 THE COURT: To the extent that they have
15 interposed objections, we will have to rule on the
16 objections.

17 MR. OLESKE: That's not how -- there is no
18 process for objecting to subpoena requests, your Honor.
19 The process is for them to move to quash on a specific
20 basis that they have. We should have met and conferred
21 about it, and they refused.

22 THE COURT: Yes, you should have met and
23 conferred --

24 MR. OLESKE: They refused --

25 THE COURT OFFICER: Counsel.

26 THE COURT: If they don't want to meet and

1 Proceedings

2 confer about it, then we will have to go interrogatory
3 by interrogatory and ascertain whether they should be
4 quashed or not.

5 MR. OLESKE: Your Honor, it's their burden
6 to do that on their motion to quash, and they didn't,
7 just like they didn't do any of the other things.

8 The document requests your Honor is talking
9 about quashing here are document requests that are not
10 covered by original subpoena, that we have met all of
11 the legal requirements to show. It's just not that
12 they are not utterly irrelevant, which is the actual
13 standard. We have shown their incredible probative
14 value, how they were not part of the first subpoena,
15 how we need them for our investigation --

16 THE COURT: We are talking passed each
17 other.

18 I've granted you the ability to propound any
19 interrogatories you wish that conform to reasonable
20 standards of what an interrogatory can properly request
21 under these circumstances. I've granted you the
22 ability to take the nine depositions that you are
23 seeking, several of which relate to the appropriateness
24 of their compliance with your prior document requests.
25 I've granted you the ability to depose anybody in the
26 Exxon mobile organization whom you need or want to

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 depose.

3 MR. OLESKE: One note on the testimony, your
4 Honor. Your Honor mentioned nine witnesses. We should
5 point out that it's been unresolved, but Exxon is
6 resisting producing one of those witnesses for
7 testimony who is a secundate -- I'm sorry -- an
8 employee of Imperial Oil.

9 THE COURT: I have overruled that. I
10 granted you the depositions of all of these people.
11 All nine of these people, I have granted you the right
12 to propound any interrogatories you wish to propound.

13 They have undertaken to update the document
14 production pursuant to the original subpoena.

15 MR. OLESKE: Yes, your Honor.

16 THE COURT: I believe that that is all you
17 can reasonably ask for, and all you're reasonably
18 entitled to, and if the Appellate Division disagrees,
19 the Appellate Division disagrees.

20 MR. OLESKE: Can I ask your Honor to
21 consider one thing, to begin with, on the specific
22 request?

23 Our request number five that your Honor was
24 just talking about quashing is for them to give us a
25 copy of the CD they already have that they produced to
26 the SEC. That's our document request number five.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

Proceedings

1
2 There is no years of identifying anything. It's
3 pushing a button, giving us a copy. We don't see what
4 the basis for quashing that is given that it's pushing
5 a button.

6 The other key request here though, what I
7 guess the Attorney General is asking for guidance on,
8 what the basis is for so we know what to do, is these
9 documents that we have been hunting down for impairment
10 purposes, that we, as the court directed because they
11 were not part of the first appeal, went to the PWC,
12 found this inculpatory stuff, and now are going to
13 Exxon looking for those documents. What is the basis
14 for us -- these witnesses will not answer those
15 questions. This is a different subject matter. Why is
16 it -- at what point are we able to get those documents
17 because we feel like we have done what the court asked
18 you us to do to get them. Now we are here, we have
19 made our showing, and there is no legal basis to deny
20 it, except that it's too much.

21 THE COURT: I think the information is going
22 to be disclosed in response to a properly framed
23 interrogatory.

24 MR. WELLS: Your Honor, we would like, we
25 would like to be heard on these before you rule in
26 terms of a Canadian employee. We would like to have

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 argument on that.

3 THE COURT: All right.

4 MR. WELLS: We would like to have argument
5 on Dan Bolia who is the internal Exxon lawyer with
6 respect to the compliance because we think that raises
7 attorney-client privilege issues different from the --8 THE COURT: I am not overruling any
9 privilege claims that you have which would be asserted
10 in any deposition. I am of the view, which may be one
11 that the AG disagrees with, that the deposition process
12 in this case and interrogatory process in this case is
13 a much more productive, efficient and cost-effective
14 means of securing information that the Attorney General
15 is legitimately entitled to pursue in its
16 investigation. I'm sympathetic to the fact that the
17 document demands are disproportionate to the years in
18 terms of advancing the investigation, but I will hear
19 you.20 MR. WELLS: With respect to what was an
21 offer of compromise, I offered to update through 2016.

22 THE COURT: Yes.

23 MR. WELLS: I understand they have rejected
24 the offer because they want to be able to get through
25 2017 and continually --

26 THE COURT: I am not allowing that. I think

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 your offer is reasonable. I don't believe that it is
3 your obligation to produce documents as they are
4 generated on a rolling basis. I don't believe that at
5 all.

6 MR. WELLS: It appears we are on that issue
7 heading to the Appellate Division. I am trying to
8 figure how it's couched. I am being somewhat --

9 THE COURT: Apparently you are heading to
10 the Appellate Division, and I think I have been very
11 clear that I don't believe that in an investigation
12 that started in 2015 in which you produced millions of
13 pages you have an obligation on a rolling basis to
14 produce documents as they are generated internally in
15 the conduct of ExxonMobil's business. I do believe
16 that you have an obligation to make a continuing
17 production of any relevant documents that they have
18 previously inquired about or come to your attention,
19 and you've voluntarily agreed to produce, to update
20 your production in response to the original subpoena
21 through the end of 2016.

22 MR. WELLS: Which offer they rejected.

23 THE COURT: Well, that's the order of the
24 court. That's what will go up to the Appellate
25 Division, the reasonableness of your offer which the
26 court has found to be reasonable.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 MR. WELLS: On that -- I don't plan to go
3 out spending money until we figure out what the new
4 dates are.

5 THE COURT: Nothing is precluding the
6 parties from meeting and conferring and coming to other
7 and different things that have been discussed and
8 ordered this morning.

9 MR. WELLS: Mr. Toal would like to address
10 the question of the witness who lives in Canada, and
11 also Dan Bolia.

12 MR. TOAL: Your Honor, starting with the
13 issue of Dan Bolia, this is one of the four depositions
14 the AG requested on the topic called discovery, about
15 our discovery process. Now we think the witnesses who
16 were already provided, Connie Feinstein, a 20 year
17 veteran of Exxon's IT Department, was in charge of
18 implementing holds, and Michele Hirshman, who is my
19 partner, senior partner at Paul, Weiss, who had
20 oversight over the entire discovery process, and signed
21 the affidavit of completion, we think those are more
22 than adequate. They have fully addressed the topics in
23 our submission to the court.

24 The AG said they were not satisfied with our
25 submission to the court. You found it very detailed.
26 You agreed they should get an affidavit, they should

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 have the opportunity to test the assertions in the
3 affidavit in the deposition. That's exactly what
4 happened. So those witnesses were able to testify
5 competently about the subjects of the respective
6 affidavits or certifications.

7 THE COURT: If that's true, Mr. Toal, then
8 these other witnesses are simply going to come in and
9 say everything that the two prior witnesses have
10 testified to is correct, and the AG will have wasted
11 some of its time and a lot of your time.

12 MR. TOAL: That's part of the problem, your
13 Honor.

14 THE COURT: I understand. That's what they
15 are seeking. That's what I am granting.

16 MR. TOAL: So I understand the ruling
17 generally.

18 Mr. Bolia, is in-house counsel for
19 ExxonMobil. He has day-to-day responsibility for the
20 management of this case. There is a special standard
21 that applies when the opposing part is seeking to
22 depose in-house counsel.

23 THE COURT: Agreed.

24 MR. TOAL: That's one that the AG did not
25 even take on in this case. They have to show they have
26 no other means to obtain the information they are

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 seeking. They have not shown that. They have to show
3 the information sought is relevant and not privileged.
4 They have not shown that. They have to show that the
5 information is crucial to the preparation of its case.
6 They have not shown any of those things.

7 THE COURT: Nobody is precluding an attorney
8 from asserting attorney-client privilege. Normally
9 that wouldn't attach to knowledge that the attorney has
10 about how documents are being assembled, but we can
11 deal with it on a question-by-question basis if
12 necessary.

13 MR. TOAL: Thank you, your Honor.

14 If I could turn to the issue --

15 THE COURT: I think that the one thing that
16 ExxonMobil wants to nail down here is that you have
17 fully and completely complied with the subpoena.
18 That's the one thing that I would think you would want
19 to have nailed down here, and if it takes seven
20 witnesses for the AG to be satisfied that you have
21 fully complied with the subpoena, the AG is doing you a
22 favor.

23 MR. TOAL: I don't think the AG has been
24 doing us any favors. I don't think the AG will ever be
25 satisfied. I think part of the game is to impose a
26 burden here. I do think we established through the

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 affidavits and certifications that we have complied
3 fully with our discovery obligations, and the types of
4 questions that the AG points to that the witness
5 identified somebody else have to do with details.
6 There's been no showing that that information is in any
7 way critical to their evaluation of our compliance with
8 our obligations in the subpoena, and many of them have
9 to do with the internal searches of the management
10 committee custodians which is entirely irrelevant at
11 this point because we redid the entire production of
12 management committee custodians in precisely the way
13 they say it shouldn't have been done.

14 I don't think these are good faith
15 depositions that have a reasonable basis.

16 THE COURT: If you are asking me whether
17 this is being handled in a proper, proportional manner,
18 I would tell you I don't think so, but they are
19 entitled to do this.

20 MR. TOAL: As to the witness from Imperial,
21 one of the witnesses they have sought, one of the
22 substantive witnesses, is a gentleman named Jason
23 Iwanika. Mr. Iwanika is a resident of Canada. He is
24 employed by Imperial Oil, not employed by ExxonMobil.
25 Imperial is a Canadian company. It does business
26 exclusively in Canada. Exxon owns about 69 percent of

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 its stock. The AG is of the view that ExxonMobil
3 controls Imperial, and, therefore, controls
4 Mr. Iwanika.

5 The standard for establishing corporate
6 control requires that a subsidiary be operated as a
7 mere department of a parent organization, and in that
8 circumstance the companies have to have merely
9 identical ownership interest before one corporation is
10 deemed to be a mere department of another. Imperial is
11 not a department of ExxonMobil. It's a separate
12 corporation. Thirty percent of its shares are owned
13 widely on the market. Five of the seven directors have
14 no connection with Exxon, no prior employment history.
15 Exxon does not have the ability to hire, fire or
16 discipline Imperial employees, which is important
17 because that deprives us of any way of compelling
18 Mr. Iwanika to appear.

19 We can't -- Exxon can't approve Imperial
20 employee expenses and can't enter into agreements on
21 behalf of Imperial. ExxonMobil's policy guidance takes
22 effect at Imperial if and only if Imperial, Imperial's
23 management approves those policies. So the AG has not
24 carried its burden of demonstrating here that Imperial
25 is a mere department of ExxonMobil.

26 The thing the AG does point to is that Exxon

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 produced certain documents from Mr. Iwanika. That was
3 pursuant to a request we made for Imperial to make
4 those documents available to us. They did it. At the
5 time they did they said we are doing this as an
6 accommodation both to Exxon and to the New York
7 Attorney General, but this is not going to compel us to
8 make any further productions or to do anything else.
9 They made their determination when the Attorney General
10 requested the presence of Mr. Iwanika in New York for
11 examination. They weren't willing to do that, they
12 weren't willing to make that accommodation, and Exxon
13 does not have the ability to compel an employee of a
14 separate organization to appear. So that's one I just
15 don't think we have the ability to comply with.

16 MR. OLESKE: Your Honor, I appreciate your
17 Honor's perspective that this has gone on for so long,
18 and seems to the court to be thwarted. Obviously,
19 that's obviously not our belief. We believe we have
20 been as efficient as possible. The difficulty has been
21 in dealing with representations about prior compliance
22 or about matters before the court.

23 I have got -- counsel testified, like they
24 did in their affidavit and they did in their brief,
25 they have given you attorney attestations to facts.
26 This is Imperial Oil's 10-K (indicating). "By virtue

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1 Proceedings

2 of majority stock ownership of the company by
3 ExxonMobil, the company's considered to be an entity
4 not controlled by Canadians." The company -- the
5 company is a controlled company for purposes of the New
6 York Stock Exchange and the Toronto Stock Exchange, and
7 Exxon mentions that only two of the seven directors are
8 employees of ExxonMobil. The president of Imperial Oil
9 is not an employee of Imperial Oil. He is an employee
10 of ExxonMobil Corporation. The president of Imperial's
11 salary is paid by ExxonMobil Corporation.

12 That's kind of a big picture.

13 THE COURT: You don't have to say any more.

14 I ordered these depositions to proceed.

15 MR. OLESKE: Thank you, your Honor.

16 But, your Honor, if I could, I just -- if we
17 dealt with all of the depositions, if we have dealt
18 with -- I presume, and I don't want to presume, I want
19 to clarify with the court, we've propounded these
20 interrogatories. We think they should have met and
21 conferred with us in the first place. Our
22 understanding is that you are ordering, as we asked,
23 for compliance with these interrogatories, but, that,
24 of course, we are going to talk to them about
25 fulfilling those interrogatories. I am asking for
26 guidance on that point.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 As to the document requests themselves, I
3 guess I am trying to drill down on, it appears that we
4 have got the court's okay for the ones that we
5 previously discussed, and I'm just getting to these
6 three other ones, the one that's a copy of the SEC
7 documents. I am asking, I guess, is it the court's
8 order that we are not entitled to get that? We are not
9 going to get that information from witnesses. That's a
10 disc of information that they have previously given to
11 another regulator that they have copied.

12 And the documents, the impairment documents,
13 we have gone through all the other routes the court
14 sent us through to get what we need, that these
15 witnesses are not about, and that we could
16 theoretically could be waiting months and months to
17 depose, to take testimony from witnesses about that in
18 the blind without these documents.

19 So, again, I understand the court's
20 perspective about the overall duration, millions of
21 pages, although many of these pages are duplicative as
22 you would expect. Putting that aside, these requests
23 are not for everything. It's for copies of a compact
24 disc and for a range of documents that PWC has already
25 produced on, and we have been looking for now for seven
26 months. They refused to give to us when we asked.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 Your Honor told us to go somewhere else to look, and we
3 did. Your Honor said you can issue another subpoena,
4 and we did.

5 So I guess the question is, can we ask the
6 court to reconsider, in addition to the other ones,
7 ordering the reproduction of that one disc or that set
8 of documents given to the SEC, and the production of
9 the documents that we have been trying to get, and that
10 we followed the steps that the court said to follow to
11 get. Now, I mean, based on what the court is saying
12 about we have to stage our investigation a certain way,
13 now we will have to figure out how to identify the
14 witnesses at Exxon for the testimony you are talking
15 about on this impairment issue that weren't covered by
16 the first subpoena because we don't have Exxon's
17 documents from -- we working from PWC's documents.

18 It doesn't make sense in terms of the very
19 issues that your Honor has talked about. There is no
20 basis to restrict us from getting responses to that
21 request. While at first I understand it seemed, based
22 on Exxon's presentation, we are asking for everything
23 in the world. We have asked for very narrow
24 categories, and we don't see a basis to quash them.

25 MR. TOAL: Your Honor, I find it difficult
26 to understand how these sets of interrogatories and

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1 Proceedings

2 these sets of document requests can be characterized as
3 targeted or specific as they attest in their brief. I
4 found that difficult to understand. They seek
5 documents for 12 years concerning virtually every
6 project Exxon has not only pursued, but even
7 considered, every impairment decision, every reserve
8 decision. It's difficult to imagine. If you were
9 trying to come up with a broader subpoena you would be
10 hard-pressed to beat this one.

11 THE COURT: I agree. I agree.

12 So what I haven't done is, I haven't ruled
13 interrogatory by interrogatory to the scope of the
14 interrogatories. I have ruled that the AG has broad
15 powers to propound reasonable interrogatories that are
16 relevant and not excessively burdensome. Clearly an
17 interrogatory that asks for information about every
18 project that Exxon has considered and every project
19 that Exxon has pursued in a 12 year period is
20 unreasonable on its face, and such an interrogatory
21 would be quashed. If we are going to have further
22 proceedings about the scope of interrogatories, if you
23 can't work out a meet and confer process, we will have
24 another meeting and I will rule interrogatory by
25 interrogatory.

26 It's the court's view, right or wrong, you're

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 free to get guidance from a higher court, that by
3 propounding interrogatories, taking depositions, and
4 obtaining full compliance with the prior subpoena with
5 the search terms that address all of the issues that
6 you are concerned about, you are in a position to get
7 any information that you need. If you disagree, you
8 have recourse.

9 MR. OLESKE: Your Honor, I guess it's not so
10 much that I disagree. Your Honor keeps pointing out
11 that we have these search terms with the original
12 subpoena. The point is, these requests are for
13 documents not covered by the first subpoena. Your
14 Honor already ruled that --

15 THE COURT: I just can't believe that you
16 don't have major amounts of information about this
17 subject based on the search terms that you utilized and
18 134 custodians.

19 MR. OLESKE: Two things: We are surprised
20 too, although after --

21 THE COURT: That's why I am giving you leave
22 to conduct the deposition of five people about the
23 appropriateness of the compliance that Exxon has made
24 in terms of your original subpoena.

25 MR. OLESKE: Right, your Honor.

26 THE COURT: So if you come back here and you

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 say we just deposed X, and X has indicated that Exxon
3 wrongfully discarded all of the relevant documents,
4 well, then we will have a different discussion than we
5 are having today.

6 MR. OLESKE: I apologize, your Honor.

7 I guess what I am getting at is, you are
8 right, we got that remedy, and we appreciate that, for
9 potential spoliation or noncompliance with the original
10 subpoena. The issue is, these are subject matters that
11 are relevant to our investigation that we have
12 connected and met our legal burden to connect with our
13 investigation that are not covered by, would not be
14 satisfied by the process your Honor is talking about,
15 and one of them is copying the compact disc, and the
16 other is giving us a production that we moved for a
17 year ago, and your Honor gave us instructions on how to
18 get these documents, and we have done that, and are not
19 covered by the process your Honor was talking about is
20 what the basis for us not being able to get those
21 documents. There is -- Exxon has not made any showing
22 that it's not legally required nor to resist these.

23 In terms of the interrogatories the fact is
24 that it is Exxon that chose to represent to the
25 investors and to the public that it does this for all
26 of its decision. It applies this across its -- and

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 they represented further that they have a comprehensive
3 computerized system to manage all of this information
4 responding to requests that ask them to give us the
5 data and information for something that we tell the
6 public to do and you tell the public you keep track of
7 vigorously cannot be on its face burdensome.

8 THE COURT: I agree with that.

9 As I have said, I have not ruled on any
10 specific interrogatory and I am prepared to rule on
11 interrogatories. Everything that you have just said
12 about, you know, what you might ask in interrogatories
13 or have asked in interrogatories sounds reasonable to
14 me.

15 MR. OLESKE: The question then on the
16 court's ruling on the interrogatories, is the court
17 denying the motion to quash, granting our motion to
18 compel, and, as we would expect, leaving it to us
19 hopefully this time to meet and confer?

20 THE COURT: I am leaving it to you to meet
21 and confer with the understanding that if you cannot
22 come to a resolution on interrogatories, we will have
23 and all day session, and I will go through the
24 interrogatories with you one by one and rule on any
25 interrogatory and any subpart. So I am not precluding
26 you from asking by interrogatory anything you want to

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

Proceedings

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2 ask, and I am not precluding them from moving to quash
3 some, most or all of the interrogatories that you
4 propound.

5 MR. OLESKE: Understood, your Honor.

6 THE COURT: I am just ruling that you have
7 an absolute right to propose reasonable
8 interrogatories.

9 MR. OLESKE: Understood, your Honor.

10 I guess my question for these document
11 requests is, could I suggest to the court,
12 respectfully, that your Honor at least not quash these
13 requests for these documents?

14 THE COURT: I am going to leave it to the
15 two of you to have a further meet and confer informed
16 by what we have spent the last two and a half hours
17 discussing. I think you have specific rulings by the
18 court which either party is free to appeal, and general
19 observations by the court which you hopefully take into
20 consideration as you meet and confer.

21 MR. OLESKE: Your Honor, I don't know what's
22 going to happen with the Appellate Division, but for
23 those purposes, because I hear that at least that will
24 happen, I just want to clarify what the court's rulings
25 are. My understanding is that your Honor has granted
26 our motion to compel on document request number two

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 which is about the updated documents, but not through
3 the current date, through the end of 2016.

4 MR. TOAL: Your Honor, this is about the
5 fifth time Mr. Oleske has tried to reframe your ruling.

6 THE COURT: My rulings are all reflected in
7 the transcript of the proceedings, and it won't be
8 difficult to read the transcript and distill the
9 rulings. I understand that Mr. Oleske is persistent.

10 MR. OLESKE: I was asking for a question of
11 clarity to determine which issues your Honor has
12 actually made a ruling on as opposed to which issues
13 have been deferred and not ripe for appeal.

14 THE COURT: What I have ruled is that you
15 are entitled to take nine depositions. I have ruled
16 that you are entitled to propound interrogatories. I
17 have not ruled on any motion to quash any portion of
18 any interrogatory that you ask. That's what you meet
19 and confer on. And I have ruled that Mr. Wells'
20 undertaking to update the production through the end of
21 2016 of your original subpoena with the search terms
22 that have been used is a reasonable concession by Exxon
23 and is being adopted by order of the court.

24 MR. OLESKE: Understood, your Honor.

25 We previously discussed -- that is a
26 modification of our document request number two which

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 is the updating one that your Honor limited to 2016.

3 Our document question number three which, I
4 believe, your Honor previously granted was for the
5 updating of the production for the individuals to be
6 listed in response to our interrogatory number nine
7 which asks for a list of people who worked on reserve
8 committees which they have not previously disclosed to
9 us.

10 THE COURT: I think that's an interrogatory,
11 and I think, maybe I am wrong, I thought Exxon agreed
12 to do that.

13 MR. OLESKE: The interrogatory asked them to
14 identify the people who served on these committees that
15 they have not identified to us yet, and to produce
16 their documents.

17 THE COURT: I think that those people need
18 to be identified.

19 MR. OLESKE: Document request number three
20 is for their responsive documents, for them to tell us
21 who they are, and give us their responsive documents.

22 THE COURT: That's something you will meet
23 and confer about.

24 MR. OLESKE: I guess the remaining ones,
25 it's really not a large list --

26 THE COURT: We will not go through this, the

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1 Proceedings

2 six items, for the eighth time. I just recited
3 everything that I have ruled. I am not going to do it
4 again.

5 MR. OLESKE: All I am looking for is whether
6 or not requests four, five and six are being quashed.

7 THE COURT: They are not being ruled on
8 today in the manner that you want them to be ruled on.

9 MR. OLESKE: I assume your Honor is
10 directing us to meet and confer about four, five and
11 six.

12 THE COURT: Yes.

13 MR. TOAL: We did ask in our motion for a
14 protective order. We have now produced 2.8 million
15 pages of documents. The AG is trying to get production
16 of even more. Your Honor's ruling that we will update
17 the production certainly will result in more documents.

18 This is highly sensitive corporate
19 information. Each of our production letters expressly
20 advises the New York Lieutenant Attorney General that
21 this is confidential commercial information. It is to
22 the benefit of ExxonMobil's competitors. We invoke the
23 legal protections under New York law for that material
24 to be treated confidentially, and we also reference in
25 each production letter the agreement of the parties
26 that produced documents not be publicly released and

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 disseminated or publicized.

3 THE COURT: They have agreed to what you are
4 seeking?

5 MR. TOAL: They have not. When they filed
6 their opposition brief they appended confidential
7 business information of Exxon to their submission
8 without conferring with us in advance, without giving
9 us any notice, without giving us any opportunity to
10 object and to seek the sealing of these documents which
11 are sensitive.

12 THE COURT: Mr. Oleske, do you object to
13 this? You agree to keep this information confidential?

14 MR. OLESKE: Your Honor, okay, we agreed not
15 to disclose documents outside of our investigation to
16 third parties unless we were required to for legal
17 purposes. Exxon came in here and challenged the
18 Attorney General's factual basis for its investigation
19 in a public proceeding. We responded by attaching
20 documents that are not trade secrets, that are simply
21 evidence of Exxon's prospective fraud. Going forward,
22 it is not appropriate to put a blanket seal --

23 THE COURT: I agree with that.

24 MR. OLESKE: -- on a case-by-case basis. If
25 Exxon wants to say this particular document is a trade
26 secret and so it should be sealed when it goes into

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 court, they can make that on a case-by-case basis. If
3 going forward they don't trust us to know what is a
4 trade secret -- now they have not actually moved to
5 seal any of the stuff we did disclose on the basis that
6 it was a trade secret because it wasn't.

7 The question is, if going forward they want
8 protocol where they have the opportunity to seal
9 documents because they are actually genuine trade
10 secrets as opposed to embarrassing or evidence of
11 fraud, it's going to be hard for us to oppose a
12 mechanism for them to preemptive protect the trade
13 secrets.

14 MR. TOAL: That's what we are asking for, a
15 mechanism, a ground rule, so we can protect our
16 confidential business information.

17 MR. OLESKE: There is a big difference
18 between those two things.

19 THE COURT: I'm assuming, despite the gulf
20 between the parties, that the attorneys are going to
21 act in a professional manner, and if you, Mr. Oleske,
22 have agreed that you are not going to disclose trade
23 secrets of Exxon, I would expect that AG's Office to,
24 at a minimum, advise counsel for ExxonMobil in advance
25 if you are planning to file something that you have any
26 reason to believe Exxon might consider to be a trade

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

Proceedings

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2 secret.

3 MR. OLESKE: Understood. If we are talking
4 about --

5 THE COURT: With respect to what has already
6 been filed, the cat's out of the bag, Mr. Toal.

7 MR. TOAL: I agree. That's why -- there is
8 nothing we can do. I think this concept is not limited
9 to trade secrets. This is not just the formula for
10 Coca-Cola. This is competitively sensitive information
11 that can be used by a competitors.

12 THE COURT: I agree with that.

13 Your agreement with the New York AG seems to
14 cover, you know, any commercially sensitive information
15 and I thought I heard Mr. Oleske say that at a minimum
16 before he files anything in court which is going to be
17 released to the newspapers, before you come to court,
18 that he give you the opportunity to object.

19 MR. TOAL: Thank you, your Honor, that's
20 what we were looking for.

21 With respect to the depositions that are
22 upcoming, we would ask --

23 THE COURT: The same rules apply.

24 MR. TOAL: Beyond --

25 THE COURT: The same rules apply. If they
26 elicit testimony that represents trade secrets or

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 sensitive commercial information, I think Mr. Oleske
3 agreed before he publishes that to the public or files
4 a report, he will extend the courtesy to you to give
5 you the opportunity to seek judicial intervention to
6 prevent that from happening.

7 MR. TOAL: Thank you, your Honor.

8 With respect to the length of the
9 depositions, we have depositions coming up. We would
10 ask that depositions presumptively be a day long. We
11 are having witnesses for the most part coming in from
12 Texas. We would agree that the AG --

13 THE COURT: I don't think he will agree to
14 that. I am not going to order that, but I think you
15 can meet and confer and come to some understanding.
16 Certainly I am not going to allow the AG to depose your
17 witnesses for a week or two weeks.

18 Again, there is going to be proportionality,
19 and I can't rule in advance that a particular witness
20 is being examined for any excessively long period of
21 time because some of your witnesses may have
22 information on a multitude of subjects, and it may take
23 more than a day to depose them about their knowledge of
24 those subjects.

25 MR. WELLS: Your Honor, a housekeeping
26 matter. I want to make sure for the record in case

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

1 Proceedings

2 either side goes to the Appellate Division that the
3 slides that I handed to the court and the
4 Pricewaterhouse documents I handed to the court were
5 marked as Exxon exhibits for the purposes of the file.

6 THE COURT: They have been marked.

7 MR. OLESKE: And the 10-K from Imperial Oil
8 Ltd. that I referenced, I would like to hand up and
9 have marked, as well.

10 THE COURT: Okay. You can check with the
11 court reporter before you leave to be sure that
12 everything that you want in the record is in the
13 record.

14 MS. SHETH: Your Honor, Manisha Sheth,
15 Executive Deputy Attorney General, Economic Justice
16 Division of the AG's Office.

17 Very briefly, Mr. Wells referred to this as a
18 politically motivated witch hunt. I would like to
19 correct the record on that.

20 THE COURT: The AG does not agree with that
21 at all.

22 MS. SHETH: The AG does not agree with that
23 at all. To the contrary, Exxon's behavior in this case
24 has not been consistent with good faith compliance with
25 the subpoena. What we have seen is a slow roll
26 production of responsive documents. The documents that

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1 Proceedings

2 were produced, many of them do not have anything to do
3 with this investigation.

4 They withheld and continue to this day to
5 withhold documents on the basis of a purported
6 accountant-client privilege that your Honor as well as
7 the First Department found is improper, and they have
8 now appealed that to the Court of Appeals.

9 They have sued us in an unprecedented
10 maneuver in a Texas federal court to enjoin our
11 investigation.

12 One of their counsel has failed to disclose
13 the existence of an e-mail of their CEO, the former
14 CEO, and then joked about it at her deposition saying
15 that she thought it was a test to see if the Attorney
16 General would find those documents interesting, and
17 whether the Attorney General was even reviewing the
18 documents they produced. As a result, documents of the
19 CEO were destroyed, and they have not put forth a
20 witness who can discuss fully the destruction of these
21 documents.

22 THE COURT: This is why you are taking these
23 other five depositions.

24 If you're asking me to state on the record
25 that Exxon has behaved in an exemplary manner, I
26 decline to do so. If Exxon is asking me to state on

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Proceedings

the record that the New York AG has pursued in an exemplary manner, I decline to do that also.

MS. SHETH: Thank you, your Honor. I do want to put that on the record.

MR. WELLS: Can we stipulate that Exxon totally disagrees with all of her comments?


THE COURT: All right.


Thank you very much. I always enjoy seeing you. Have a nice day and nice weekend.

(Received and marked Attorney General Exhibit Number 1 marked in evidence)

C E R T I F I C A T E

I, Terry-Ann Volberg, C.S.R., an official court reporter of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.


Terry-Ann Volberg, CSR, CRR
Official Court Reporter.

SO ORDERED

BARRY R. OSTRAGER, J.S.C.

Terry-Ann Volberg, CSR, CRR, Official Court Reporter

PricewaterhouseCoopers

June 16, 2017

A	adds (1) 52:15	agreeing (2) 24:26;25:3	Appeals (1) 85:8	58:3
	adequate (1) 63:22	agreement (3) 3:20;79:25;82:13	appear (2) 67:18;68:14	aside (3) 19:4;25:23;70:22
ability (7) 28:25;58:18,22,25; 67:15;68:13,15	admissible (1) 16:2	agreements (4) 4:2,8;9:9;67:20	appearance (1) 21:2	aspect (1) 35:8
able (6) 43:14;51:17;60:16; 61:24;64:4;74:20	admissions (1) 23:6	AG's (2) 81:23;84:16	appearances (1) 19:13	assembled (1) 65:10
absolute (1) 76:7	adopted (1) 77:23	ahead (1) 43:6	appears (5) 18:10;40:9;50:5; 62:6;70:3	asserted (1) 61:9
Absolutely (2) 47:23;56:22	advance (4) 45:22;80:8;81:24; 83:19	aiming (1) 44:18	Appellate (11) 53:3;55:9,10,21; 59:18,19;62:7,10,24; 76:22;84:2	asserting (1) 65:8
abuses (1) 37:18	advancing (1) 61:18	Alberta (1) 13:5	appended (1) 80:6	assertions (2) 22:16;64:2
abusive (1) 12:6	advise (1) 81:24	allegations (3) 8:25;19:14;44:4	application (1) 29:7	Asset (3) 14:11;54:3,6
accommodation (2) 68:6,12	advises (1) 79:20	allow (2) 17:24;83:16	applied (1) 21:8	assets (2) 20:23;41:3
accomplish (1) 33:19	affects (2) 13:26;14:2	allowing (1) 61:26	applies (3) 22:5;64:21;74:26	assume (4) 36:16;47:21,21; 79:9
accordance (1) 38:4	affiants (3) 3:25;4:5;24:9	almost (1) 6:5	apply (3) 54:18;82:23,25	assuming (2) 50:9;81:19
accountant-client (1) 85:6	affidavit (5) 18:22;63:21,26; 64:3;68:24	alone (1) 22:22	applying (2) 22:25;28:7	assure (1) 45:12
accountants (2) 14:25;15:4	affidavits (3) 4:4;64:6;66:2	along (2) 19:11;31:5	appreciate (4) 31:2,4;68:16;74:8	attach (1) 65:9
accounted (1) 18:24	affirmation (2) 20:3;47:17	alternate (1) 28:8	appropriate (1) 80:22	attaching (1) 80:19
accounting (2) 8:25;48:25	affirmative (1) 46:3	alternative (1) 26:19	appropriateness (2) 58:23;73:23	attempt (1) 49:7
accounts (1) 20:25	AG (26) 5:20,23;12:14;14:9; 16:5,22;61:11;63:14, 24;64:10,24;65:20,21, 23,24;66:4;67:2,23, 26;72:14;79:15; 82:13;83:12,16; 84:20,22	although (4) 4:10;29:14;70:21; 73:20	approve (1) 67:19	attention (4) 23:21;32:11;54:10; 62:18
accurate (1) 16:23	again (13) 6:10,21;14:14;25:6; 36:19;37:15;44:23; 45:7;49:25;52:25; 70:19;79:4;83:18	always (2) 31:25;52:17	approves (1) 67:23	attest (2) 3:26;72:3
across (5) 22:5,6;33:13;35:19; 74:26	against (1) 16:2	amazing (1) 49:17	arbitrarily (1) 39:23	attestations (1) 68:25
act (1) 81:21	ago (5) 20:17;29:5,6;39:16; 74:17	ambit (1) 51:18	arcane (1) 37:5	Attorney (44) 3:6,16,24;4:9,12, 15;5:9,24;9:22;10:13, 19;11:10;17:17;18:3, 8;19:23;20:3;21:21; 22:16;23:5,6;25:26; 34:19;36:4,7;37:15; 39:23;42:3,11;51:4,5; 53:15;60:7;61:14; 65:7,9;68:7,9,25; 79:20;80:18;84:15; 85:15,17
actions (1) 13:22	agree (20) 11:10,15,20,22; 12:2;17:26;30:20; 32:9;45:10;72:11,11; 75:8;80:13,23;82:7, 12;83:12,13;84:20,22	amount (1) 10:26	argue (2) 11:17;19:21	attorney-client (2) 61:7;65:8
actual (1) 58:12	agreed (19) 3:18;7:12;9:14; 10:8;24:3;34:8,14; 37:24;50:6;55:13,15; 62:19;63:26;64:23; 78:11;80:3,14;81:22; 83:3	amounts (1) 73:16	argued (1) 46:20	attorneys (2) 23:20;81:20
actually (7) 13:7,16;26:16; 39:15;77:12;81:4,9		analysis (3) 9:16;21:9;49:4	argues (1) 21:22	attorney's (1) 20:4
ad (1) 53:8		analyze (1) 14:17	arguing (5) 21:13,14;28:19; 33:26;52:25	audited (1) 37:7
ad (2) 48:8,10		Anderson's (1) 47:16	argument (3) 22:17;61:2,4	auditors (1) 24:26
addition (3) 22:15;45:17;71:6		annual (2) 20:13;33:10	arise (1) 11:13	August (1) 54:2
additional (17) 3:20,21;4:6,16; 18:9;21:21;23:12; 24:7,18;26:3;28:23; 31:16,18;35:12; 37:25;55:23;56:2		anticipation (1) 3:14	around (1) 11:19	author (3) 8:10,19;10:10
address (2) 63:9;73:5		apologize (1) 74:6	ascertain (1)	
addressed (2) 47:18;63:22		apparent (1) 21:9		
		apparently (2) 49:4;62:9		
		appeal (3) 60:11;76:18;77:13		
		appealed (1) 85:8		

P. 11
PricewaterhouseCoopers

June 16, 2017

<p>authority (6) 25:26;26:3,6;45:12; 51:12,18</p> <p>available (1) 68:4</p> <p>averring (1) 25:20</p> <p>aware (1) 31:10</p> <p>away (1) 54:6</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back (16) 5:7;24:17;33:9,16, 26;35:11,13;36:18, 22;41:19;50:18; 51:23;52:25;53:12; 57:8;73:26</p> <p>bag (1) 82:6</p> <p>Bailes (1) 7:19</p> <p>baked (1) 14:7</p> <p>balls (1) 56:12</p> <p>banks (1) 49:25</p> <p>based (13) 6:5;10:6;16:11; 17:16;18:2;19:7,24; 24:17,20;25:18; 71:11,21;73:17</p> <p>bases (1) 44:16</p> <p>basically (1) 35:22</p> <p>basis (41) 21:19,19,20;22:8; 23:4,7;32:4,5,26; 33:10;38:20;39:11, 23;41:6;43:18,19; 44:18;46:15,16,22; 49:15;50:13;51:15; 53:7;57:20;60:4,8,13, 19;62:4,13;65:11; 66:15;71:20,24; 74:20;80:18,24;81:2, 5;85:5</p> <p>beat (1) 72:10</p> <p>beg (1) 50:21</p> <p>begin (2) 6:3;59:21</p> <p>beginning (2) 29:11;51:24</p> <p>behalf (2) 25:20;67:21</p> <p>behaved (1) 85:25</p>	<p>behavior (1) 84:23</p> <p>belief (1) 68:19</p> <p>benefit (2) 55:25;79:22</p> <p>beside (1) 36:9</p> <p>best (1) 55:7</p> <p>beyond (4) 33:25;46:8;55:11; 82:24</p> <p>big (5) 22:3;23:24;33:16; 69:12;81:17</p> <p>bigger (1) 41:18</p> <p>Bill (1) 7:13</p> <p>blanket (1) 80:22</p> <p>blind (1) 70:18</p> <p>block (1) 18:7</p> <p>boards (2) 4:23;11:6</p> <p>Bolia (4) 61:5;63:11,13; 64:18</p> <p>books (3) 8:5;26;15:7</p> <p>boss (2) 8:18;10:9</p> <p>both (10) 13:7,18;14:6,25; 18:22;19:20;27:23; 39:2;40:23;68:6</p> <p>bothered (1) 9:11</p> <p>bottom (1) 37:6</p> <p>boxes (1) 52:4</p> <p>brief (10) 14:20;15:19,20,22; 20:4;21:25;35:6; 68:24;72:3;80:6</p> <p>briefly (1) 84:17</p> <p>briefs (1) 16:18</p> <p>bring (2) 4:22;9:5</p> <p>brings (1) 8:21</p> <p>broad (2) 21:4;72:14</p> <p>broad (1) 72:9</p> <p>budgeting (3) 8:11,16,20</p>	<p>burden (6) 46:15;54:14;58:5; 65:26;67:24;74:12</p> <p>burdens (1) 55:23</p> <p>burdensome (7) 9:10;12:5;43:21,23; 46:21;72:16;75:7</p> <p>burdensomeness (1) 50:14</p> <p>buried (1) 53:21</p> <p>business (11) 9:16;22:3,4,6,22; 37:7;47:11;62:15; 66:25;80:7;81:16</p> <p>button (6) 9:18,19;22:15; 49:19;60:3,5</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated (1) 45:22</p> <p>call (2) 12:26;56:12</p> <p>called (3) 10:16;20:14;63:14</p> <p>calls (1) 42:12</p> <p>came (3) 21:8;44:10;80:17</p> <p>can (44) 4:22;5:11;7:11; 8:13,15,16;10:9; 11:10;13:15;15:5; 17:6,7;22:9;23:10; 27:16;29:4;39:10; 41:18;45:21;46:25, 25;49:19;53:4,5;55:3, 9,16,17,21;57:5; 58:20;59:17,20; 65:10;71:3,5;72:2; 81:2,15;82:8,11; 83:15;84:10;85:20</p> <p>Canada (3) 63:10;66:23,26</p> <p>Canadian (2) 60:26;66:25</p> <p>Canadians (1) 69:4</p> <p>Carbon (1) 14:10</p> <p>carried (1) 67:24</p> <p>case (12) 3:7;26:21;27:13; 41:7;47:8;61:12,12; 64:20,25;65:5;83:26; 84:23</p> <p>case-by-case (2) 80:24;81:2</p> <p>cases (1)</p>	<p>21:25</p> <p>categories (1) 71:24</p> <p>cat's (1) 82:6</p> <p>caught (1) 20:7</p> <p>cause (1) 3:4</p> <p>CD (2) 50:14;59:25</p> <p>CEO (4) 20:11;85:13,14,19</p> <p>certain (6) 6:13;11:12;36:10; 37:15;68:2;71:12</p> <p>certainly (2) 79:17;83:16</p> <p>certification (6) 3:22;6:14,16,19,20, 23</p> <p>certifications (2) 64:6;66:2</p> <p>certified (1) 23:25</p> <p>certify (1) 6:20</p> <p>chairman (1) 20:11</p> <p>Challenge (1) 14:10</p> <p>challenged (1) 80:17</p> <p>change (2) 15:2;54:9</p> <p>changed (6) 27:11;38:23,26; 40:7;49:5;54:2</p> <p>changes (1) 40:18</p> <p>changing (1) 55:22</p> <p>characterized (1) 72:2</p> <p>charge (1) 63:17</p> <p>charts (1) 5:10</p> <p>check (1) 84:10</p> <p>checked (1) 52:11</p> <p>checking (1) 52:4</p> <p>chicken (1) 13:18</p> <p>choice (1) 45:2</p> <p>choices (1) 25:13</p> <p>choose (2) 25:15;55:25</p> <p>chose (2)</p>	<p>22:4;74:24</p> <p>chosen (1) 42:3</p> <p>circuit (1) 12:10</p> <p>circumstance (1) 67:8</p> <p>circumstances (2) 55:20;58:21</p> <p>cite (1) 21:25</p> <p>civil (3) 33:14;44:23;51:10</p> <p>claim (2) 26:24;38:2</p> <p>claims (2) 22:23;61:9</p> <p>clarify (4) 13:6;56:14;69:19; 76:24</p> <p>clarity (1) 77:11</p> <p>clean (2) 43:26;44:8</p> <p>clear (15) 6:8;9:3,25;17:18; 37:14;48:21;50:17; 52:7,9,24;53:14;55:3, 3;57:3;62:11</p> <p>clearing (1) 53:15</p> <p>Clearly (1) 72:16</p> <p>client (1) 56:11</p> <p>clients (1) 56:9</p> <p>climate (4) 14:13;15:2;53:22; 54:9</p> <p>Coca-Cola (1) 82:10</p> <p>collection (2) 39:15;50:26</p> <p>Colton (4) 7:13;8:9,17;10:8</p> <p>comfortable (2) 5:2;12:11</p> <p>coming (4) 24:17;63:6;83:9,11</p> <p>comments (2) 5:4;6:11</p> <p>commercial (2) 79:21;83:2</p> <p>commercially (1) 82:14</p> <p>committee (3) 48:3;66:10,12</p> <p>committees (3) 48:9;78:8,14</p> <p>communications (2) 49:25;50:4</p> <p>compact (3)</p>
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PricewaterhouseCoopers

June 16, 2017

<p>49:21;70:23;74:15 companies (3) 21:26;44:2;67:8 company (13) 5:21;18:14,24; 22:25;23:24;40:24; 53:16;54:20;66:25; 69:2,4,5,5 company's (1) 69:3 compel (7) 3:6;10:20;34:6; 68:7,13;75:18;76:26 compelling (1) 67:17 competently (1) 64:5 competing (1) 34:5 competitively (1) 82:10 competitors (2) 79:22;82:11 complete (5) 3:19;5:24;11:4; 17:26;47:2 completely (2) 36:25;65:17 completion (2) 37:26;63:21 complex (1) 22:4 compliance (21) 3:26;4:7;17:23; 18:12,17,19,22;19:5; 21:14;24:8,13;25:23; 51:11;58:24;61:6; 66:7;68:21;69:23; 73:4,23;84:24 complied (10) 3:23;21:23;23:25; 24:11;28:20;38:2; 55:19;65:17,21;66:2 comply (2) 31:19;68:15 comprehensive (2) 22:19;75:2 compromise (1) 61:21 computer (1) 4:22 computerized (1) 75:3 concept (3) 8:7;11:20;82:8 concepts (2) 8:2;13:8 concerned (1) 73:6 concerning (1) 72:5 concerns (1) 22:26</p>	<p>concession (2) 34:18;77:22 conclude (3) 51:16,17;55:12 concluded (1) 12:20 conclusion (1) 39:6 conclusions (1) 16:24 conclusively (1) 36:5 conduct (6) 16:21;24:7;55:17, 18;62:15;73:22 conducted (2) 45:14;49:4 conducting (1) 45:2 confer (19) 30:21,22;34:4;37:2; 44:9;45:8;48:4;49:19; 50:16;58:2;72:23; 75:19,21;76:15,20; 77:19;78:23;79:10; 83:15 conferred (4) 45:11;57:20,23; 69:21 confering (2) 63:6;80:8 confidential (4) 79:21;80:6,13; 81:16 confidentially (1) 79:24 conform (1) 58:19 confused (1) 52:6 connect (1) 74:12 connected (5) 41:5;46:16;49:13; 50:13;74:12 connection (8) 3:12;21:18,18; 27:20;32:4;44:17; 45:16;67:14 Connie (1) 63:16 consensual (1) 33:23 conservative (2) 54:20,21 consider (3) 35:9;59:21;81:26 consideration (4) 13:21;14:12;15:2; 76:20 considered (3) 69:3;72:7,18 consistent (5)</p>	<p>5:4;6:10;48:11,13; 84:24 contain (1) 3:4 contemptible (1) 18:12 contend (1) 9:8 content (1) 11:13 contesting (1) 18:26 context (1) 16:23 continually (2) 53:6;61:25 continue (1) 85:4 continued (3) 20:9;40:25;44:22 continuing (7) 23:20;30:19;32:14; 35:20;46:12;55:6; 62:16 continuous (1) 36:24 contradict (2) 22:17;55:2 contradictory (1) 19:16 contrary (4) 9:9;21:7;44:15; 84:23 control (2) 7:11;67:6 controlled (2) 69:4,5 controls (2) 67:3,3 cooperation (3) 33:20;34:7,15 cooperative (1) 52:14 copied (1) 70:11 copies (2) 35:12;70:23 copy (6) 5:11;15:9;50:14; 59:25;60:3;70:6 copying (1) 74:15 Corporate (5) 7:14;8:11,20;67:5; 79:18 corporation (7) 39:10,12;55:24; 67:9,12;69:10,11 correspondence (1) 4:17 cost (10) 8:6,7,14;13:5,10,17, 19,22;27:19;33:17</p>	<p>cost-effective (1) 61:13 costs (26) 7:25,26;8:4,4,15; 10:5;12:26,26;13:2,4, 10,14;14:6,7,25,25; 20:2;21:8;28:6;29:8, 9;34:10;52:15;54:16, 18,20 couched (1) 62:8 counsel (9) 29:14;41:26;47:13; 57:25;64:18,22; 68:23;81:24;85:12 counsel's (1) 50:10 counter-documents (1) 21:4 couple (2) 25:7;47:7 course (6) 20:24;24:6;39:3; 43:12;51:7;69:24 COURT (179) 3:2;4:2,20,24;5:9, 13;6:18;9:22;10:12; 11:5,8;12:3,11,17,21; 13:3,13;14:3,21;15:9, 15,20;16:15;17:9,13, 17,18,20,21,26;18:7, 21:5,12;23:17;26:2,6, 23;27:2,13,16,19; 29:4,12,17,20;30:7, 13,17,24,26;31:7,14, 17;32:7,14,20;33:19, 26;34:17;35:3,8;36:2, 25;38:8,13,23;39:5,9; 40:3,6;41:10;42:6,10, 20,24;43:23;44:24; 45:10,20,26;46:14,25; 47:12,23;48:6,13,23; 50:17;51:4,20;52:5,7; 54:25;55:7,12;56:5,5, 8,19;57:5,13,14,22, 25,26;58:16;59:9,16; 60:10,17,21;61:3,8, 22,26;62:9,23,24,26; 63:5,23,25;64:7,14, 23;65:7,15;66:16; 68:18,22;69:13,19; 70:13;71:6,10,11; 72:11;73:2,15,21,26; 75:8,16,20;76:6,11, 14,18,19;77:6,14,23; 78:10,17,22,26;79:7, 12;80:3,12,23;81:2, 19;82:5,12,16,17,23, 25;83:13;84:3,4,6,10, 11,20;85:8,10,22 courtesy (1) 83:4 courtroom (1)</p>	<p>3:3 courts (1) 44:5 court's (10) 12:24;29:26;50:6, 19;70:4,7,19;72:26; 75:16;76:24 cover (2) 44:5;82:14 covered (12) 41:17;44:21;46:6, 19;50:8,9,12;58:10; 71:15;73:13;74:13,19 created (1) 25:13 critical (3) 14:22;26:13;66:7 crucial (1) 65:5 cry (1) 22:20 current (1) 77:3 curve (2) 13:20;14:14 custodian (2) 33:9;35:11 custodians (22) 3:20,21,9;26:10;14, 20;23:26;25:2,5,15; 28:14,16;29:13,15,16; 30:25;32:17;35:10; 37:23;43:24;66:10, 12;73:18 custodian's (1) 30:2 cut (3) 12:22;17:8,17 cutoff (1) 38:10</p>
D				
				<p>daily (2) 32:25;39:10 Dan (3) 61:5;63:11,13 dangerous (2) 18:10;42:10 data (1) 75:5 date (12) 5:21;7:15;9:6; 20:15;33:12;38:6,11, 18;52:20,21,26;77:3 dates (2) 34:12;63:4 day (11) 6:10;32:18,20;39:8; 40:25;43:5;55:2; 75:23;83:10,23;85:4 days (2) 3:22;6:25</p>

<p>day-to-day (1) 64:19</p> <p>deal (4) 7:11;34:24;37:2; 65:11</p> <p>dealing (2) 47:24;68:21</p> <p>deals (1) 8:11</p> <p>dealt (2) 69:17,17</p> <p>decide (7) 16:19,26,28:3; 39:23;42:8,10,13</p> <p>decides (1) 55:21</p> <p>decision (4) 9:16;72:7,8;74:26</p> <p>decisions (1) 22:7</p> <p>decline (1) 85:26</p> <p>deemed (1) 67:10</p> <p>deeply (1) 18:20</p> <p>defer (1) 44:13</p> <p>deferred (1) 77:13</p> <p>definitely (1) 56:22</p> <p>definitional (1) 32:16</p> <p>degree (1) 45:12</p> <p>deliberately (1) 39:17</p> <p>demand (10) 13:11,17,19,24,26, 26;14:8,14;51:12; 54:17</p> <p>demands (2) 55:19;61:17</p> <p>demonstrate (1) 46:17</p> <p>demonstrated (4) 23:4;32:4;44:17; 51:12</p> <p>demonstrating (1) 67:24</p> <p>denied (1) 49:6</p> <p>deniers (1) 53:22</p> <p>deny (3) 43:19;44:6;60:19</p> <p>denying (1) 75:17</p> <p>dep (1) 11:2</p> <p>department (7) 29:15;63:17;67:7,</p>	<p>10,11,25;85:7</p> <p>departure (1) 3:11</p> <p>deponents (2) 4:6;10:14</p> <p>depose (17) 3:25;6:18;16:22; 24:4;28:3,26;34:9; 36:19;37:11;43:13; 55:24;58:25;59:2; 64:22;70:17;83:16,23</p> <p>deposed (3) 9:4,26;74:2</p> <p>deposing (1) 16:6</p> <p>deposition (11) 7:14;8:17,22;33:22; 34:13,20;61:10,11; 64:3;73:22;85:14</p> <p>depositions (36) 3:15;4:5;6:4,8;7:3, 6,7,8;10:22;24:6,8,12, 16,18,21;26:7;36:6, 13,15,16,23;41:26; 42:2;58:22;59:10; 63:13;66:15;69:14, 17;73:3;77:15;82:21; 83:9,9,10;85:23</p> <p>deprives (1) 67:17</p> <p>deps (4) 9:12,14;11:17,18</p> <p>Deputy (1) 84:15</p> <p>described (2) 28:8;38:16</p> <p>desire (2) 51:15,16</p> <p>despite (1) 81:19</p> <p>destroyed (4) 18:23;19:2,10; 85:19</p> <p>destruction (1) 85:20</p> <p>detailed (1) 63:25</p> <p>details (1) 66:5</p> <p>determination (2) 43:11;68:9</p> <p>determine (1) 77:11</p> <p>developed (3) 7:25,26;40:23</p> <p>developing (1) 13:11</p> <p>development (1) 13:19</p> <p>differ (1) 50:21</p> <p>difference (3) 8:4;12:25;81:17</p>	<p>different (18) 4:11;8:2,6,7;13:7; 16:17;27:7,8,8,9; 35:21;39:21,21; 56:10;60:15;61:7; 63:7;74:4</p> <p>differently (1) 14:4</p> <p>difficult (4) 71:25;72:4,8;77:8</p> <p>difficulty (1) 68:20</p> <p>direct (1) 21:18</p> <p>directed (2) 40:11;60:10</p> <p>directing (1) 79:10</p> <p>directly (1) 21:25</p> <p>directors (2) 67:13;69:7</p> <p>disagree (2) 73:7,10</p> <p>disagrees (3) 59:18,19;61:11</p> <p>disappeared (1) 24:19</p> <p>disc (6) 49:21,21;70:10,24; 71:7;74:15</p> <p>discarded (1) 74:3</p> <p>discipline (1) 67:16</p> <p>disclose (4) 80:15;81:5,22; 85:12</p> <p>disclosed (4) 19:18;28:9;60:22; 78:8</p> <p>disclosure (3) 19:19;22:24;29:8</p> <p>disclosures (1) 23:7</p> <p>disconnect (1) 11:4</p> <p>disconnected (1) 46:22</p> <p>discovery (9) 21:14,15;44:24,26; 51:10;63:14,15,20; 66:3</p> <p>discretion (1) 44:25</p> <p>discretionary (1) 43:11</p> <p>discuss (2) 25:8;85:20</p> <p>discussed (4) 15:3;63:7;70:5; 77:25</p> <p>discussing (1)</p>	<p>76:17</p> <p>discussion (4) 3:17;12:18,19;74:4</p> <p>discussions (1) 14:24</p> <p>disproportionate (1) 61:17</p> <p>dispute (4) 15:17;17:22;44:24; 45:16</p> <p>disputes (2) 3:10;17:25</p> <p>disseminated (1) 80:2</p> <p>distasteful (1) 46:14</p> <p>distill (1) 77:8</p> <p>distinction (1) 56:26</p> <p>Division (12) 53:3;55:9,10,21; 59:18,19;62:7,10,25; 76:22;84:2,16</p> <p>document (67) 3:19;6:16;7:2; 11:11;14:8,9,19,21, 22,24;15:5,14;16:12; 17:20;23:8;26:17; 28:2;31:3,4,18,21,24; 32:22,24;33:21; 34:20;35:8,19,19,22; 37:8;38:2,3;39:11; 41:16,21;42:17; 43:20;44:16;46:8; 47:15,17,18,25;48:7; 49:22,24;50:5,26; 54:13,15,22;57:2; 58:8,9,24;59:13,26; 61:17;70:2,72:2; 76:10,26;77:26;78:3, 19;80:25</p> <p>documentary (1) 55:23</p> <p>documents (192) 3:17,24;4:16;5:20, 25;6:6,13;7:6;8:24; 10:2,5,6,15,18,23,25; 11:13;12:13;14:16; 15:23;16:6,11,16,17, 22;17:2;18:9,14,23; 19:2,10,24;20:6,8,15, 16,20,22,26;21:6,10, 11,22;22:2,10,11; 23:21,26;24:2,18,19, 23,26;25:4,6,11,12, 14,16,17,21;26:3,9, 24;27:21,25;28:4,6, 10,11,13,17,24;29:2, 3,23;30:4,9,14,15,17, 18;31:8,24;32:2,10, 18;33:2,4;34:2;35:14; 36:20;37:12,13,23;</p>	<p>38:25;39:3,5,16,17, 24,26;40:3,4,15,16, 17,20;41:3,9,15; 42:13,17;43:13,16; 44:13,20;45:3,17,25; 46:3,5,19;47:6,9,19; 48:17,21,24,26;49:2, 8,9,15,20;50:3,12,24; 51:8,13;52:2;53:17, 23,24;54:9;55:2,26; 56:2,16;60:9,13,16; 62:3,14,17;65:10; 68:2,4;70:7,12,12,18, 24;71:8,9,17,17;72:5; 73:13;74:3,18,21; 76:13;77:2;78:16,20, 21;79:15,17,26;80:10, 15,20;81:9;84:4,26, 26;85:5,16,18,18,21</p> <p>dollar (1) 52:22</p> <p>dollars (5) 33:9,17;35:17;47:5; 53:7</p> <p>done (16) 8:16;16:14;18:15; 27:10;33:11;37:20; 43:5;45:8;46:24;52:4, 4;53:18;60:17;66:13; 72:12;74:18</p> <p>dose (1) 17:13</p> <p>double (1) 8:26</p> <p>down (5) 42:14;60:9;65:16, 19;70:3</p> <p>dozen (3) 11:6,7;37:10</p> <p>dozens (1) 42:7</p> <p>drawn (1) 48:21</p> <p>dribbling (1) 25:13</p> <p>drill (1) 70:3</p> <p>due (3) 43:7;51:10;53:11</p> <p>duplicate (1) 70:21</p> <p>duration (2) 23:14;70:20</p> <p>during (2) 24:6;43:11</p>
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E

earth (1)
6:15

easily (1)
50:2

easy (4)

PricewaterhouseCoopers

June 16, 2017

42:21,24,25;51:2 Economic (1) 84:15 edification (1) 12:24 effect (2) 23:15;67:22 efficient (5) 43:10;44:26;51:9; 61:13;68:20 effort (1) 37:3 egg (1) 13:18 eight (2) 27:7,7 eighth (1) 79:2 either (7) 28:11;33:7,20; 44:19;50:19;76:18; 84:2 electronic (1) 35:13 elicit (1) 82:26 else (5) 9:7;28:3;66:5;68:8; 71:2 e-mail (1) 85:13 embarrassing (1) 81:10 emphasize (1) 50:8 employed (2) 66:24,24 employee (6) 59:8;60:26;67:20; 68:13;69:9,9 employees (3) 42:4;67:16;69:8 employment (1) 67:14 empowered (1) 26:20 encompassed (1) 31:22 encouraged (1) 36:26 end (12) 5:21;6:24;7:2; 14:18;19:11,12; 52:26;55:2,5;62:21; 77:3,20 Energy (9) 8:10,19;10:10;13:9, 12,25;14:11,15;52:18 enforce (1) 49:7 enforcement (1) 17:24 engage (1)	51:25 engaged (2) 9:21;24:25 engaging (1) 11:19 enjoin (1) 85:10 enjoy (1) 45:5 enormous (1) 10:26 enter (1) 67:20 entire (3) 37:7;63:20;66:11 entirely (1) 66:10 entitled (9) 4:12;39:7;50:7; 59:18;61:15;66:19; 70:8;77:15,16 entitlement (1) 51:3 entity (1) 69:3 entrusted (1) 45:4 establish (1) 47:2 established (2) 21:19;65:26 establishing (2) 18:12;67:5 evaluate (2) 43:14,15 evaluation (1) 66:7 even (17) 6:17,22;10:25,26; 19:26;20:21;21:23, 24;25:26;43:26; 44:16;45:18;54:26; 64:25;72:6;79:16; 85:17 events (1) 38:16 everybody (3) 3:18;34:14,23 everybody's (1) 30:6 everyone (1) 6:25 evidence (7) 5:18;15:12;19:14; 49:14;51:2;80:21; 81:10 evidences (1) 19:15 exactly (7) 10:7;13:4;17:8; 21:26;54:7;56:14; 64:3 examination (2)	55:17;68:11 examine (4) 42:25;43:2,3;45:4 examined (2) 43:9;83:20 example (5) 16:12;27:4;32:6; 40:9;41:2 except (2) 37:18;60:20 excessively (3) 12:5;72:16;83:20 Exchange (2) 69:6,6 exclusively (1) 66:26 Excuse (1) 27:16 executed (1) 28:20 Executive (1) 84:15 exemplary (1) 85:25 exercise (2) 9:21;37:17 exercised (2) 51:19,19 exercising (1) 37:16 Exhibit (5) 5:16,17;15:10,11; 47:16 exhibits (1) 84:5 exist (1) 28:12 existence (2) 46:2;85:13 expanded (1) 10:16 expect (3) 70:22;75:18;81:23 expectation (1) 5:22 expenses (1) 67:20 experience (2) 3:9;43:8 explain (3) 8:14,15,16 explained (1) 26:25 explaining (3) 20:4,5;24:17 exploration (1) 9:17 expressly (1) 79:19 extend (1) 83:4 extended (1) 19:10	extending (1) 7:16 extent (2) 37:18;57:14 extra (1) 6:25 Exxon (92) 5:15,17,21;9:17; 14:17;15:10,11; 18:11;19:5,8,14,18; 20:3,5,9,14;21:3,7,11, 26;22:9,14,18,20,23; 23:4;25:2,3,10;27:5; 28:7,13;29:5;32:9; 38:26;39:15,19,26; 40:20;42:5,9,10; 43:18,26;44:8,10; 45:18,23;46:2,17; 49:14,16,18,25;50:13; 51:3;53:14,20,21,25; 54:19,20;58:26;59:5; 60:13;61:5;66:26; 67:14,15,19,26;68:6, 12;69:7;71:14;72:6, 18,19;73:23;74:2,21, 24;77:22;78:11;80:7, 17,25;81:23,26;84:5; 85:25,26 ExxonMobil (20) 3:2,23;4:10;13:10; 14:24;16:13;23:20; 29:6;34:18;64:19; 65:16;66:24;67:2,11, 25;69:3,8,10,11;81:24 ExxonMobil's (8) 3:5,26;29:15;37:7, 8;62:15;67:21;79:22 Exxon's (29) 18:21,26;19:16,19; 20:22,25;22:3,16; 24:26;25:12,16,20; 29:26;32:10;41:3,7, 12;44:8;47:11;48:21; 49:2,26;50:3,10; 63:17;71:16,22; 80:21;84:23	44:18;46:15,16,22; 50:13;80:18 factually-based (1) 31:24 fail (1) 57:7 failed (2) 26:10;85:12 failing (1) 57:9 failure (1) 31:22 fair (1) 45:22 faith (4) 45:4;51:19;66:14; 84:24 false (1) 19:19 far (5) 22:10,12;40:2;43:9; 46:20 fashion (1) 54:21 favor (1) 65:22 favors (1) 65:24 federal (1) 85:10 feed (1) 23:13 feel (1) 60:17 Feinstein (1) 63:16 fifth (1) 77:5 fight (1) 9:4 fighting (1) 25:14 figure (8) 13:15;14:15;31:25; 43:13;47:4;62:8;63:3; 71:13 file (4) 8:24;15:5;81:25; 84:5 filed (6) 15:18,18,20,22; 80:5;82:6 files (9) 10:15;25:2;32:17, 22;33:10;37:8;55:14; 82:16;83:3 fill (1) 50:25 filled (1) 32:23 final (1) 6:23 finality (1)
F				
face (3) 9:24;72:20;75:7 fact (13) 8:6;11:4;20:11; 24:21;28:24;35:9; 41:23,26;44:7,46:14; 50:25;61:16;74:23 facts (8) 16:9,13,24;20:5; 25:19;47:9;50:4; 68:25 factual (15) 21:17,18,18;23:4; 32:4,5;41:5;43:19,22;				

PricewaterhouseCoopers

June 16, 2017

<p>5:22 finally (1) 49:24 find (5) 19:2;28:12;42:15; 71:25;85:16 finding (1) 28:14 fingerprints (1) 22:24 finish (3) 6:15;20:16;39:15 finished (1) 19:5 fire (1) 67:15 first (43) 4:18,19;5:4;8:12; 9:5,12;10:8;11:18; 19:6,15;20:3,17,25; 21:23;23:13;25:20; 27:24;28:20;30:3,10; 31:23;39:13;40:8,11, 14,22,23;41:4,17; 46:7;47:8;49:7,10,26; 54:8;56:14;58:14; 60:11;69:21;71:16, 21;73:13;85:7 fits (1) 19:8 five (14) 7:10;27:6;48:16; 49:17,20,23;50:7; 59:23,26;67:13; 73:22;79:6,10;85:23 flip-flopped (1) 54:11 floor (2) 4:20;35:4 focused (5) 17:20;19:13;21:17; 23:11;46:16 follow (2) 23:12;71:10 followed (1) 71:10 following (3) 12:20;28:23;34:26 forbid (1) 33:7 forced (1) 44:14 forecast (1) 14:8 form (1) 16:23 formats (1) 27:9 former (1) 85:13 formula (1) 82:9 formulated (1)</p>	<p>19:24 forth (1) 85:19 forthcoming (1) 26:11 forward (8) 50:20,22,22,23,24; 80:21;81:3,7 fossil (1) 53:16 found (7) 48:19;49:12;60:12; 62:26;63:25;72:4; 85:7 four (21) 7:12,23;9:25;14:22; 18:25;27:6;34:16,18; 36:15;40:13;42:3; 47:25;48:16,17; 49:16;50:7;52:19; 55:17;63:13;79:6,10 fraction (1) 37:13 framed (2) 31:9;60:22 frankly (1) 51:14 fraud (4) 41:7;44:4;80:21; 81:11 free (3) 55:24;73:2;76:18 front (1) 14:10 fuel (1) 53:16 fulfilling (1) 69:25 full (2) 21:23;73:4 fully (9) 3:23;24:10;38:2; 55:18;63:22;65:17, 21;66:3;85:20 further (5) 24:12;68:8;72:21; 75:2;76:15 future (3) 13:23;16:8;53:8</p>	<p>gave (3) 6:25;34:16;74:17 G-d (1) 33:7 General (34) 3:16,25;4:9,12; 5:24;9:23;10:13,19; 11:10;17:17;18:3,8; 19:23;21:21;25:26; 34:19;36:4,7;37:15; 39:23;42:3,11;51:4,5; 53:15;60:7;61:14; 68:7,9;76:18;79:20; 84:15;85:16,17 generally (2) 31:8;64:17 General's (3) 3:6;4:16;80:18 generated (4) 32:25;39:12;62:4, 14 gentleman (1) 66:22 genuine (1) 81:9 GHG (12) 7:26;8:4,7,16; 12:26;14:5,10,25; 20:2;27:23;28:5; 54:18 given (8) 11:23;16:11;19:9; 47:12;60:4;68:25; 70:10;71:8 giving (8) 20:20;50:14;53:24; 60:3;73:21;74:16; 80:8,9 goal (2) 38:11,14 goes (7) 14:26;32:21,26; 33:6;54:6;80:26;84:2 good (4) 45:4;51:19;66:14; 84:24 government (1) 22:21 governments (1) 13:23 grabbed (1) 4:20 granted (7) 58:18,21,25;59:10, 11;76:25;78:4 granting (2) 64:15;75:17 great (1) 37:2 greenhouse (2) 13:2;29:9 ground (3) 13:5,14;81:15</p>	<p>grounded (1) 9:10 grown (1) 32:3 grudgingly (1) 19:9 guess (13) 11:24;29:24;52:19; 56:13,25;60:7;70:3,7; 71:5;73:9;74:7;76:10; 78:24 guidance (4) 60:7;67:21;69:26; 73:2 gulf (1) 81:19 Guy (1) 7:21</p>	<p>4:3;10:17;22:20; 33:24 hearings (1) 42:2 heaven (1) 6:15 held (1) 48:14 help (3) 17:6;44:13;50:19 here's (1) 6:11 higher (1) 73:2 highly (1) 79:18 hire (1) 67:15 Hirshman (2) 6:19;63:18 historical (1) 3:9 history (2) 18:12;67:14 holds (1) 63:18 Honor (104) 4:21;5:5,12;12:16; 15:13;16:10;17:5,14; 18:5,17,18;19:12; 20:24;21:15;25:7,8; 26:12,13,22;27:5,18, 23;29:10,25;30:12,16, 20,25;31:13;35:5,25; 39:8,13;40:11,11,21; 43:7,25;44:7,14; 45:19;46:5,9;47:21; 48:18;49:6;50:9,17, 18;51:25;53:2;54:14; 56:4,13,16;57:3,18; 58:5,8;59:4,4,15,20, 23;60:24;63:12; 64:13;65:13;68:16; 69:15,16;71:2,3,19, 25;73:9,10,14,25; 74:6,14,17,19;76:5,9, 12,21,25;77:4,11,24; 78:2,4;79:9;80:14; 82:19;83:7,25;84:14; 85:6 Honor's (7) 6:10;18:16,19; 48:12;56:15;68:17; 79:16 hopefully (2) 75:19;76:19 hours (1) 76:16 housekeeping (1) 83:25 huge (1) 34:17</p>
			H	
	G			

PricewaterhouseCoopers

June 16, 2017

<p>hundreds (3) 10:4;35:16,16</p> <p>hunt (2) 53:13;84:18</p> <p>hunting (1) 60:9</p>	<p>including (4) 24:7,19;41:21;49:8</p> <p>incredible (1) 58:13</p> <p>inculcating (1) 40:24</p> <p>inculpatory (4) 48:20;49:12;54:24; 60:12</p> <p>independently (1) 31:23</p> <p>indicated (3) 6:18;45:20;74:2</p> <p>indicating (3) 16:12;36:24;68:26</p> <p>individuals (2) 29:6;78:5</p> <p>inefficient (1) 28:25</p> <p>infinitum (1) 53:8</p> <p>information (44) 10:22;18:21;19:9, 25;22:23;23:12,16; 25:17;26:18;28:18; 29:7;30:5;40:24; 41:22;44:19;46:9,18, 26;48:20;49:13; 56:20;57:2;60:21; 61:14;64:26;65:3,5; 66:6;70:9,10;72:17; 73:7,16;75:3,5;79:19, 21;80:7,13;81:16; 82:10,14;83:2,22</p> <p>informed (1) 76:15</p> <p>inherent (1) 45:12</p> <p>in-house (2) 64:18,22</p> <p>initial (1) 18:16</p> <p>injunction (1) 33:24</p> <p>innocent (2) 53:26;55:4</p> <p>inquired (1) 62:18</p> <p>instead (1) 4:23</p> <p>instructed (1) 20:25</p> <p>instructions (2) 20:14;74:17</p> <p>insufficient (1) 4:4</p> <p>interest (1) 67:9</p> <p>interesting (1) 85:16</p> <p>interfere (1) 37:17</p> <p>interference (1)</p>	<p>47:11</p> <p>interferes (1) 28:25</p> <p>internal (4) 39:22;54:15;61:5; 66:9</p> <p>internally (2) 54:10;62:14</p> <p>interposed (1) 57:15</p> <p>interpretation (2) 16:16,17</p> <p>interrogatories (50) 3:15;4:11,14;11:12, 16,20;12:4,5,12; 15:26;17:4;18:6;24:5, 15,22;26:8;28:2;36:6; 42:18;44:12;45:21; 47:20;48:2;55:16; 57:4,6,7,8,10,12; 58:19;59:12;69:20, 23,25;71:26;72:14,15, 22;73:3;74:23;75:11, 12,13,16,22,24;76:3, 8;77:16</p> <p>interrogatory (24) 11:21,25,26;46:26; 47:3,26;58:2,3,20; 60:23;61:12;72:13, 13,17,20,24,25;75:10, 25,26;77:18;78:6,10, 13</p> <p>interrupt (3) 12:9;17:9;34:22</p> <p>interrupted (1) 12:7</p> <p>intervening (1) 39:18</p> <p>intervention (1) 83:5</p> <p>interview (1) 35:11</p> <p>interviewing (1) 28:14</p> <p>intimated (1) 56:23</p> <p>into (14) 13:21;14:12;15:2; 19:17;30:9;33:21,22; 42:9;43:26;51:4;53:8; 67:20;76:19;80:26</p> <p>investigate (1) 39:24</p> <p>investigating (4) 27:15;36:4,8;37:5</p> <p>investigation (46) 5:26;6:3;17:24; 18:4,9;19:13;20:24; 21:20;22:21;23:8; 28:26;32:3,19;33:6, 21;37:4;38:9;39:4; 41:24;42:12;43:9,12; 44:22;45:2,14,23,26;</p>	<p>50:20,22;51:5,9,16, 17;53:13,19;58:15; 61:16,18;62:11; 71:12;74:11,13; 80:15,18;85:3,11</p> <p>investigative (4) 21:16,17;26:19; 42:2</p> <p>investigatory (1) 33:15</p> <p>investors (4) 22:26;27:9;49:3; 74:25</p> <p>inviting (2) 42:9,10</p> <p>invoke (1) 79:22</p> <p>involve (1) 7:8</p> <p>involved (3) 7:24;15:6;56:21</p> <p>involving (2) 9:16;39:20</p> <p>irrelevant (3) 41:24;58:12;66:10</p> <p>issue (19) 3:15;4:15;17:19; 19:7;26:13,14,15; 32:16;33:5;35:7;36:8; 45:15;56:6;62:6; 63:13;65:14;71:3,15; 74:10</p> <p>issued (10) 3:12;4:7;18:26; 20:10;30:3;31:6; 32:12;38:15;39:19; 46:7</p> <p>issues (13) 3:10;15:2;19:7; 25:24;26:14,15;31:9; 37:4;61:7;71:19;73:5; 77:11,12</p> <p>items (2) 25:8;79:2</p> <p>Iwanika (6) 66:23,23;67:4,18; 68:2,10</p>	<p>7:15,17,19;10:25; 11:2;34:11;38:8,10, 12,13,21</p> <p>Justice (1) 84:15</p>
<p>I</p> <p>identical (1) 67:9</p> <p>identifiable (1) 50:3</p> <p>identified (14) 6:5;10:4,14;29:13, 16,21,22;43:2;45:25; 47:26;50:2;66:5; 78:15,18</p> <p>identify (4) 29:6;48:10;71:13; 78:14</p> <p>identifying (3) 7:24;29:14;60:2</p> <p>imagine (1) 72:8</p> <p>immediately (1) 7:13</p> <p>impairment (8) 20:23;40:12;41:2; 48:17;60:9;70:12; 71:15;72:7</p> <p>impairments (1) 48:26</p> <p>Imperial (17) 59:8;66:20,24,25; 67:3,10,16,19,21,22, 22,24;68:3,26;69:8,9; 84:7</p> <p>Imperial's (2) 67:22;69:10</p> <p>implementation (1) 29:8</p> <p>implementing (1) 63:18</p> <p>implication (1) 36:13</p> <p>implicit (2) 18:20;33:5</p> <p>important (5) 7:10,23;8:9;14:16; 67:16</p> <p>importantly (1) 44:7</p> <p>impose (1) 65:25</p> <p>imposing (1) 55:23</p> <p>improper (1) 85:7</p> <p>improperly (1) 44:19</p> <p>include (1) 30:11</p>	<p>K</p> <p>keep (5) 36:16;38:11,14; 75:6;80:13</p> <p>keeping (2) 22:19;53:21</p> <p>keeps (1) 73:10</p> <p>key (3) 18:6;34:10;60:6</p> <p>kind (3) 15:6;18:10;69:12</p> <p>kinds (2) 3:10;44:3</p> <p>knew (3) 6:26;10:6;53:20</p> <p>knowledge (6) 15:5;29:7;41:12,14; 65:9;83:23</p> <p>known (1) 50:26</p> <p>knows (3) 9:20;42:26;43:4</p>			
	<p>L</p> <p>language (2) 27:8;39:21</p> <p>large (2) 44:2;78:25</p> <p>largest (1) 53:16</p> <p>last (10) 18:17;21:2;25:18; 27:12,24;37:20; 38:24;49:5;56:21; 76:16</p> <p>later (1) 7:12</p> <p>law (9) 17:23;28:22;43:25; 44:2,15;46:22,23; 52:24;79:23</p> <p>lawyer (1) 61:5</p> <p>learn (1) 23:23</p> <p>learned (4) 19:8;20:23;21:6,9</p> <p>least (5) 34:5;40:17;46:20; 76:12,23</p> <p>leave (3) 73:21;76:14;84:11</p> <p>leaving (2) 75:18,20</p>			
	<p>J</p> <p>Jason (1) 66:22</p> <p>job (1) 25:16</p> <p>joked (1) 85:14</p> <p>judgment (2) 42:12;55:11</p> <p>judicial (1) 83:5</p> <p>July (3) 7:20,21,22</p> <p>June (11)</p>			

PricewaterhouseCoopers

June 16, 2017

left (1) 39:17	52:20;53:12;55:7; 56:8;71:2	32:24;67:13	47:4;53:6,6;62:12; 70:20	moved (3) 6:15;74:16;81:4
legal (18) 18:13;22:8;26:14, 15;29:15;39:22; 43:18,19;46:17; 47:10;51:3,12,15; 58:11;60:19;74:12; 79:23;80:16	looking (6) 22:12;53:23;60:13; 70:25;79:5;82:20	massive (1) 37:4	mind (1) 49:5	moving (7) 5:25;38:11,14; 50:20,22,23;76:2
legally (3) 21:20;23:15;74:22	loop (1) 36:24	material (1) 79:23	minds (2) 37:10;54:26	much (11) 4:26;13:4,14,15; 36:6;46:13;52:17; 54:10;60:20;61:13; 73:10
legitimately (1) 61:15	lost (1) 19:10	matter (11) 8:6;28:22;34:24; 39:18;40:19;41:6; 43:25;44:2;52:16; 60:15;83:26	minimum (2) 81:24;82:15	multimillion (1) 52:22
length (1) 83:8	lot (2) 10:22;64:11	matters (3) 32:2;68:22;74:10	minute (1) 41:19	multiple (4) 10:19;24:4;41:25; 52:23
letter (1) 79:25	love (1) 4:24	may (14) 3:16;7:5;12:15; 13:23;17:7;35:12; 38:5;41:10;46:13; 55:4;56:6;61:10; 83:21,22	misled (1) 26:10	multitude (1) 83:22
letters (1) 79:19	Ltd (1) 84:8	Maybe (2) 53:2;78:11	missing (1) 19:25	
level (1) 26:21	M	mean (8) 17:7,11,15;45:18; 54:25;57:11,13;71:11	mobile (1) 58:26	N
lie (1) 54:23	macroeconomics (1) 14:12	means (2) 61:14;64:26	modification (1) 77:26	nail (1) 65:16
Lieutenant (1) 79:20	magnitude (1) 35:10	mechanism (2) 81:12,15	modified (1) 39:2	nailed (1) 65:19
life (1) 4:26	major (1) 73:16	meet (19) 30:21,22;34:3; 36:26;44:9;45:8;48:4; 49:19;50:15;57:26; 72:23;75:19,20; 76:15,20;77:18; 78:22;79:10;83:15	moment (2) 19:4;52:11	named (1) 66:22
limited (2) 78:2;82:8	majority (1) 69:2	meets (2) 46:21,23	money (1) 63:3	names (1) 10:4
line (3) 5:4;48:22;49:14	makes (1) 11:23	mentioned (1) 59:4	month (1) 24:25	narrow (3) 44:18;50:8;71:23
link (1) 39:25	making (2) 27:6;47:4	mentions (1) 69:7	monthly (2) 39:11;53:7	narrowed (2) 30:4;44:12
list (5) 48:2,4,11;78:7,25	man (1) 47:4	mere (3) 67:7,10,25	months (26) 3:19;10:19;20:17; 25:9;29:5,6;33:8,17; 34:20;35:16,23; 36:17;37:19,20; 38:10,24;39:16;51:6, 26,26;52:16;53:8,22; 70:16,16,26	narrowly (1) 50:2
listed (1) 78:6	manage (1) 75:3	merely (1) 67:8	more (20) 5:23;10:18,22;11:6; 12:13;16:26;17:2; 24:22;28:23,23; 37:10;44:7;52:18; 54:19;61:13;63:21; 69:13;79:16,17;83:23	necessary (3) 8:23;23:12;65:12
listen (1) 51:24	manageable (1) 37:12	merits (5) 17:22,25;19:22; 21:13;27:13	morning (1) 63:8	need (32) 5:5;11:2;13:5;22:2, 2,24;22;25:8,12,24; 26:18,24;27:26;28:3, 4,31;17,25;34:24; 38:6;42:13,14,16; 43:16;44:13;48:20; 49:13;50:24;51:7; 58:15,26;70:14;73:7; 78:17
listened (1) 21:5	management (6) 20:16;39:16;64:20; 66:9,12;67:23	met (9) 43:18,21;45:11; 46:14;57:20,22; 58:10;69:20;74:12	morning's (1) 3:14	needed (1) 43:12
Listening (1) 52:24	managing (1) 18:11	met (9) 43:18,21;45:11; 46:14;57:20,22; 58:10;69:20;74:12	most (7) 14:16;20:12;33:11; 44:26;54:21;76:3; 83:11	negotiate (1) 7:16
literally (1) 25:10	maneuver (1) 85:10	Michele (2) 6:18;63:18	motion (9) 3:5,6;4:17;58:6; 75:17,17;76:26; 77:17;79:13	New (30) 5:19,23;7:5;14:9; 16:5;18:13;21:16; 22:16;28:8;30:3; 31:24;32:2,5;36:20; 39:19,21,21;40:19; 46:18,18;50:12;54:7, 8;63:3;68:6,10;69:5; 79:20,23;82:13
litigation (2) 33:14,15	Manisha (1) 84:14	might (2) 75:12;81:26	motions (3) 10:20;34:6,6	newspaper (2) 54:4,5
little (1) 56:25	manner (5) 45:13;66:17;79:8; 81:21;85:25	million (7) 6:6;18:14;22:10; 25:10;47:5;55:25; 79:14	motivated (1) 84:18	newspapers (1) 82:17
lives (1) 63:10	manpower (1) 10:26	millions (9) 16:6;21:24;33:9,17;	move (9) 7:2;13:24;19:9; 33:20;34:9,12;50:22, 24;57:19	
load (1) 35:14	many (8) 3:8;22:6;35:15; 42:4;52:11;66:8; 70:21;85:2			
locations (1) 54:19	March (13) 3:13,23;4:2,3,7,8; 5:6,23;6:25;9:9; 23:18;30:26;34:8			
long (7) 9:20;12:4;21:24; 25:11;68:17;83:10,20	mark (2) 5:15;32:24			
long-lived (1) 41:3	marked (5) 5:17;15:11;84:5,6,9			
Look (11) 10:12;11:26;21:12; 22:3;39:9;42:20;	market (2)			

PricewaterhouseCoopers

June 16, 2017

<p>next (9) 4:22;5:25;6:2,7; 7:8;11:3;34:9;36:13; 55:22</p> <p>nine (5) 58:22;59:4,11; 77:15;78:6</p> <p>Nobody (3) 9:20,21;65:7</p> <p>non-abusive (1) 4:13</p> <p>non-burdensome (2) 4:13;45:22</p> <p>noncompliance (1) 74:9</p> <p>none (1) 45:18</p> <p>non-existent (1) 18:13</p> <p>non-overbroad (1) 4:13</p> <p>nor (1) 74:22</p> <p>normal (1) 53:13</p> <p>Normally (2) 3:2;65:8</p> <p>note (2) 5:7;59:3</p> <p>noted (1) 47:13</p> <p>notice (2) 46:2;80:9</p> <p>notion (1) 9:11</p> <p>November (5) 5:19;20:10;38:16, 21;53:19</p> <p>Number (28) 5:16,17;10:20; 15:11;31:4;36:17; 37:12;40:12;47:15, 17,19;48:7,8,11,17; 49:16,17,20,24;52:3, 4,59;23,26;76:26; 77:26;78:3,6,19</p> <p>numbers (1) 8:26</p>	<p>35:20;46:3,12,17; 50:11;56:9;62:3,13, 16</p> <p>obligations (5) 3:24;31:19,20;66:3, 8</p> <p>observations (1) 76:19</p> <p>obtain (3) 44:26;46:8;64:26</p> <p>obtaining (4) 5:25;21:21;23:11; 73:4</p> <p>obtuse (1) 41:10</p> <p>obviously (4) 17:16;20:21;68:18, 19</p> <p>occurred (2) 12:20;35:2</p> <p>o'clock (1) 11:9</p> <p>off (4) 12:18,19;36:22; 52:12</p> <p>offer (5) 61:21,24;62:2,22, 25</p> <p>offered (1) 61:21</p> <p>office (5) 28:22;45:5;49:22; 81:23;84:16</p> <p>OFFICER (1) 57:25</p> <p>officers (1) 54:25</p> <p>office's (1) 23:13</p> <p>oil (11) 9:17;13:4,12,24; 53:16;54:20;59:8; 66:24;69:8,9;84:7</p> <p>Oil's (1) 68:26</p> <p>old-fashioned (1) 4:24</p> <p>OLESKE (84) 5:8;17:6,11,14; 18:2;21:12,15;25:7; 26:5,12,25;27:4,14, 18,22;29:10,13,19,24; 30:12,15,20;31:2,11, 16,21;38:12,15,25; 39:7,13;40:4,8,41:14; 42:8,23;43:7,25; 45:15;46:5;47:7,24; 48:7,15,25;56:4,6,13, 25;57:11,17,24;58:5; 59:3,15,20;68:16; 69:15;73:9,19,25; 74:6;75:15;76:5,9,21; 77:5,9,10,24;78:13,</p>	<p>19,24;79:5,9;80:12, 14,24;81:17,21;82:3, 15;83:2;84:7</p> <p>One (48) 5:16,23;7:11;10:9; 12:15;14:16,19; 16:15;19:20;23:11; 27:6,20;31:3,3;34:23; 36:22;38:20;42:16; 43:5;46:18;47:19,25, 26;50:6;52:3;54:19; 55:8;56:17;59:3,6,21; 61:10;63:13;64:24; 65:15,18;66:21,21; 67:9;68:14;70:6;71:7; 72:10;74:15;75:24, 24;78:2;85:12</p> <p>ones (5) 51:13;70:4,6;71:6; 78:24</p> <p>ongoing (3) 20:19;38:9;50:10</p> <p>only (7) 11:7;28:26;38:21; 47:14;67:22;69:7; 72:6</p> <p>open (3) 12:21;30:26;45:26</p> <p>operated (1) 67:6</p> <p>operations (2) 44:4,5</p> <p>opportunity (6) 3:25;64:2;80:9; 81:8;82:18;83:5</p> <p>oppose (1) 81:11</p> <p>opposed (3) 51:15;77:12;81:10</p> <p>opposing (2) 50:15;64:21</p> <p>opposite (1) 54:8</p> <p>opposition (1) 80:6</p> <p>order (10) 3:6;22:26;38:19; 40:13;44:25;62:23; 70:8;77:23;79:14; 83:14</p> <p>ordered (9) 18:18,18;45:23; 46:10;51:25;52:5,12; 63:8;69:14</p> <p>ordering (6) 30:13;37:22,25; 38:3;69:22;71:7</p> <p>orders (4) 3:4,12;4:2,7</p> <p>organization (3) 58:26;67:7;68:14</p> <p>original (16) 18:19;25:24;32:11,</p>	<p>21;44:20,21;46:11, 19;49:7;58:10;59:14; 62:20;73:11,24;74:9; 77:21</p> <p>otherwise (1) 36:23</p> <p>out (31) 13:4,14,15;14:15; 17:17;18:21;19:2; 22:9;25:13;28:12; 29:20;30:21,31,25; 32:3,17;35:22,26; 39:17;42:15;43:13; 47:4;48:20;52:22; 53:22;59:5;63:3,3; 71:13;72:23;73:10; 82:6</p> <p>outcome (1) 28:15</p> <p>Outlook (8) 8:10,19;10:5,10; 13:9;14:11,16;52:18</p> <p>outnumbered (1) 3:3</p> <p>outrageous (1) 8:25</p> <p>outside (3) 29:14,15;80:15</p> <p>outstanding (1) 33:2</p> <p>over (14) 6:21;9:17;10:18; 13:12;18:14;19:9; 22:3,25;25:6;27:11; 30:21;32:19;44:3; 63:20</p> <p>overall (1) 70:20</p> <p>overcome (1) 45:7</p> <p>overly (1) 9:10</p> <p>overruled (1) 59:9</p> <p>overruling (1) 61:8</p> <p>oversight (1) 63:20</p> <p>owed (1) 46:9</p> <p>own (1) 22:22</p> <p>owned (1) 67:12</p> <p>ownership (2) 67:9;69:2</p> <p>owns (1) 66:26</p>	<p>pages (10) 6:6;10:5;14:23; 21:24;25:10;55:26; 62:13;70:21,21;79:15</p> <p>paid (1) 69:11</p> <p>paper (2) 4:24;11:3</p> <p>papers (12) 3:9;8:3;9:13;15:5; 16:20;18:2,23;10; 26:26;27:2,3;38:26; 44:17</p> <p>parent (1) 67:7</p> <p>part (16) 7:8;8:12;29:14; 34:18;41:4,15;46:11, 12;48:18;56:13; 58:14;60:11;64:12, 21;65:25;83:11</p> <p>particular (3) 11:3;80:25;83:19</p> <p>parties (6) 36:26;45:10;63:6; 79:25;80:16;81:20</p> <p>partner (3) 6:18;63:19,19</p> <p>party (3) 33:20;50:19;76:18</p> <p>passed (1) 58:16</p> <p>passing (1) 3:14</p> <p>Paul (2) 35:18;63:19</p> <p>pay (1) 54:10</p> <p>people (30) 7:12,23;9:3,25; 11:18,19;13:24;26:9; 29:21,23;31:26; 34:10,16,19;36:15,19; 39:20;48:3,5,8,8,10; 55:15,17;59:10,11; 73:22;78:7,14,17</p> <p>percent (2) 66:26;67:12</p> <p>percipient (1) 41:12</p> <p>period (5) 18:14;19:10;36:7; 72:19;83:20</p> <p>permitted (1) 6:17</p> <p>perpetually (1) 36:4</p> <p>persistent (1) 77:9</p> <p>person (1) 8:13</p> <p>perspective (3) 51:8;68:17;70:20</p>
O		P		
<p>object (6) 17:10,12,13;80:10, 12;82:18</p> <p>objecting (1) 57:18</p> <p>objection (3) 6:6;7:7;57:10</p> <p>objections (2) 57:15,16</p> <p>obligation (18) 23:19;30:19;31:5,7, 12,26;32:10,14;33:3;</p>	<p>old-fashioned (1) 4:24</p> <p>OLESKE (84) 5:8;17:6,11,14; 18:2;21:12,15;25:7; 26:5,12,25;27:4,14, 18,22;29:10,13,19,24; 30:12,15,20;31:2,11, 16,21;38:12,15,25; 39:7,13;40:4,8,41:14; 42:8,23;43:7,25; 45:15;46:5;47:7,24; 48:7,15,25;56:4,6,13, 25;57:11,17,24;58:5; 59:3,15,20;68:16; 69:15;73:9,19,25; 74:6;75:15;76:5,9,21; 77:5,9,10,24;78:13,</p>	<p>original (16) 18:19;25:24;32:11,</p>	<p>page (1) 6:26</p>	

PricewaterhouseCoopers

June 16, 2017

Pete (1) 7:20	potential (4) 41:7;44:4;45:25; 74:9	8;47:13;48:10,18; 62:18;70:5,10;77:25; 78:4,8	20:12;22:5,25;24:18, 25;25:9,11;43:11; 48:26;49:2;57:18,19; 61:11,12;63:15,20; 72:23;74:14,19	proportional (2) 53:9;66:17
phase (3) 33:21,22,22	Powell (1) 7:21	price (3) 14:2,14;19:20	produce (38) 3:24;7:18,18;10:26; 14:13;15:23,25; 16:26;17:2;20:15; 24:2;25:4;29:23;30:8, 14,19;31:8,12,22; 32:10;33:3,14;34:18; 35:21;37:14,22,25; 39:10;46:4;47:5;55:6, 6,6;56:2;62:3,14,19; 78:15	proportionality (4) 45:13,16;55:11; 83:18
picture (2) 41:18;69:12	power (7) 11:16,21,22;12:2,2, 4;23:13	prices (3) 14:15,18;54:17	produced (29) 9:6;10:15,18;11:14; 14:9;16:16,18;19:15; 22:10;23:23;24:10, 19;25:10;28:10; 30:18;32:18;33:12; 37:9,13;49:20;55:26; 59:25;62:12;68:2; 70:25;79:14,26;85:2, 18	propose (2) 51:22;76:7
piece (1) 11:3	PowerPoint (1) 4:23	Pricewaterhouse (3) 40:14;49:10;84:4	produces (1) 18:14	propound (12) 12:4;24:5,22;31:17; 45:21;55:16;58:18; 59:12,12;72:15;76:4; 77:16
place (1) 69:21	powers (5) 36:10;37:16,16,17; 72:15	PricewaterhouseCoopers (5) 14:22;21:10;40:10, 22;54:15	producing (6) 11:24;12:12,13; 25:5;38:21;59:6	propounded (2) 32:22;69:19
places (1) 27:8	practical (4) 26:15,21;51:22,22	PricewaterhouseCoopers' (1) 21:6	product (1) 19:20	propounding (3) 24:14;26:8;73:3
plan (2) 7:18;63:2	practices (3) 38:26;40:7;41:13	Pricewaterhouse's (2) 40:16;48:25	production (35) 3:19;5:20;6:5,16; 7:2;20:15,19;23:14, 21,25;26:9;27:21; 33:16;34:21;35:8,23; 36:18;38:4,18;45:24; 46:13;52:23;59:14; 62:17,20;66:11;71:8; 74:16;77:20;78:5; 79:15,17,19,25;84:26	prosecute (1) 20:26
Planning (4) 7:14;8:11,20;81:25	precisely (1) 66:12	prior (12) 3:8;10:17,17;19:13; 23:14;40:13;48:10; 58:24;64:9;67:14; 68:21;73:4	productions (1) 68:8	prospective (1) 80:21
please (1) 29:6	preclude (1) 28:22	prioritized (1) 44:11	productive (1) 61:13	protect (2) 81:12,15
plethora (1) 33:2	precluded (1) 41:8	privilege (5) 35:15;61:7,9;65:8; 85:6	professional (1) 81:21	protections (1) 79:23
point (17) 3:11;18:16;21:25; 27:14;28:19;29:19, 24;36:10;41:15;42:9; 56:14;59:5;60:16; 66:11;67:26;69:26; 73:12	precluding (9) 24:12,14,15,16; 29:17;63:5;65:7; 75:25;76:2	privileged (1) 65:3	productivity (1) 28:25	protective (2) 3:5;79:14
pointed (2) 18:5;30:21	preemptive (1) 81:12	probative (1) 58:13	product (1) 19:20	protocol (1) 81:8
pointing (1) 73:10	preparation (1) 65:5	problem (4) 23:3;30:24;31:3; 64:12	production (35) 3:19;5:20;6:5,16; 7:2;20:15,19;23:14, 21,25;26:9;27:21; 33:16;34:21;35:8,23; 36:18;38:4,18;45:24; 46:13;52:23;59:14; 62:17,20;66:11;71:8; 74:16;77:20;78:5; 79:15,17,19,25;84:26	proves (1) 27:22
points (2) 17:7;66:4	prepared (2) 17:15;75:10	proceed (3) 18:4;43:20;69:14	producing (6) 11:24;12:12,13; 25:5;38:21;59:6	provided (1) 63:16
policies (2) 39:22;67:23	preparing (1) 51:26	proceeding (4) 16:3;51:11,11; 80:19	product (1) 19:20	proxy (21) 7:25;8:4,6,14;10:5; 12:26;13:5,9,10,19, 21;14:7,25;20:2;21:8; 27:19;28:5;29:8; 34:10;54:16,20
policy (3) 14:13;39:18;67:21	presence (1) 68:10	Proceedings (88) 3:1,8,14,4:1;5:1; 6:1;7:1;8:1,9:1;10:1; 11:1;12:1;13:1;14:1; 15:1;16:1;17:1;18:1; 19:1;20:1;21:1;22:1; 23:1;24:1;25:1;26:1; 27:1;28:1;29:1;30:1; 31:1;32:1;33:1;34:1, 22;35:1;36:1;37:1; 38:1;39:1;40:1;41:1; 42:1;43:1;44:1;45:1; 46:1;47:1;48:1;49:1; 50:1;51:1;52:1;53:1; 54:1;55:1;56:1;57:1; 58:1;59:1;60:1;61:1; 62:1;63:1;64:1;65:1; 66:1;67:1;68:1;69:1; 70:1;71:1;72:1,22; 73:1;74:1;75:1;76:1; 77:1;78:1;79:1; 80:1;81:1;82:1;83:1; 84:1;85:1	produces (1) 18:14	public (10) 21:7;22:18,18;27:7, 9;74:25;75:6,6;80:19; 83:3
political (1) 53:13	present (2) 39:8;40:25	privileged (1) 65:3	producing (6) 11:24;12:12,13; 25:5;38:21;59:6	publicized (1) 80:2
politically (2) 55:4;84:18	presentation (1) 71:22	probative (1) 58:13	production (35) 3:19;5:20;6:5,16; 7:2;20:15,19;23:14, 21,25;26:9;27:21; 33:16;34:21;35:8,23; 36:18;38:4,18;45:24; 46:13;52:23;59:14; 62:17,20;66:11;71:8; 74:16;77:20;78:5; 79:15,17,19,25;84:26	publicly (1) 79:26
portion (1) 77:17	presentations (1) 4:25	problem (4) 23:3;30:24;31:3; 64:12	product (1) 19:20	publishes (1) 83:3
pose (1) 11:16	president (3) 7:13;69:8,10	proceed (3) 18:4;43:20;69:14	productions (1) 68:8	purported (2) 39:14;85:5
position (3) 37:20;53:15;73:6	press (1) 54:5	proceeding (4) 16:3;51:11,11; 80:19	productive (1) 61:13	purpose (1) 6:20
position's (1) 49:26	presumably (1) 39:20	Proceedings (88) 3:1,8,14,4:1;5:1; 6:1;7:1;8:1,9:1;10:1; 11:1;12:1;13:1;14:1; 15:1;16:1;17:1;18:1; 19:1;20:1;21:1;22:1; 23:1;24:1;25:1;26:1; 27:1;28:1;29:1;30:1; 31:1;32:1;33:1;34:1, 22;35:1;36:1;37:1; 38:1;39:1;40:1;41:1; 42:1;43:1;44:1;45:1; 46:1;47:1;48:1;49:1; 50:1;51:1;52:1;53:1; 54:1;55:1;56:1;57:1; 58:1;59:1;60:1;61:1; 62:1;63:1;64:1;65:1; 66:1;67:1;68:1;69:1; 70:1;71:1;72:1,22; 73:1;74:1;75:1;76:1; 77:1;78:1;79:1; 80:1;81:1;82:1;83:1; 84:1;85:1	professional (1) 81:21	purposes (10) 8:8;13:11;19:21; 22:22;38:19;60:10; 69:5;76:23;80:17; 84:5
positively (1) 56:22	presume (2) 69:18,18	privileged (1) 65:3	productivity (1) 28:25	pursuant (2) 59:14;68:3
possession (1) 30:9	presuming (1) 47:14	probative (1) 58:13	project (6) 14:17;52:8;56:20; 72:6,18,18	pursue (1) 61:15
possibility (1) 18:11	presumption (2) 45:5,7	problem (4) 23:3;30:24;31:3; 64:12	projecting (1) 54:17	pursued (2) 72:6,19
possible (1) 68:20	presumptively (1) 83:10	proceed (3) 18:4;43:20;69:14	projects (2) 14:6;52:2	
post (1) 38:11	prevent (1) 83:6	proceeding (4) 16:3;51:11,11; 80:19	proper (2) 57:10;66:17	
posts (1) 38:14	preventing (1) 37:18	Proceedings (88) 3:1,8,14,4:1;5:1; 6:1;7:1;8:1,9:1;10:1; 11:1;12:1;13:1;14:1; 15:1;16:1;17:1;18:1; 19:1;20:1;21:1;22:1; 23:1;24:1;25:1;26:1; 27:1;28:1;29:1;30:1; 31:1;32:1;33:1;34:1, 22;35:1;36:1;37:1; 38:1;39:1;40:1;41:1; 42:1;43:1;44:1;45:1; 46:1;47:1;48:1;49:1; 50:1;51:1;52:1;53:1; 54:1;55:1;56:1;57:1; 58:1;59:1;60:1;61:1; 62:1;63:1;64:1;65:1; 66:1;67:1;68:1;69:1; 70:1;71:1;72:1,22; 73:1;74:1;75:1;76:1; 77:1;78:1;79:1; 80:1;81:1;82:1;83:1; 84:1;85:1	properly (5) 23:19;28:16;51:18; 58:20;60:22	
posture (1) 17:23	previously (14) 10:2,14;29:21;41:4,	process (23) 5:24;6:21,24;8:20;		

PricewaterhouseCoopers

June 16, 2017

push (2) 22:14;49:19	4:9;11:17;24:15; 34:4;38:10;53:10,11; 55:12,20;58:19;62:2, 26;66:15;72:15; 75:13;76:7;77:22	rejected (2) 61:23;62:22	40:12;41:16,21,21; 42:17;43:20;44:9,16, 18,20;45:17;46:8,15, 18;47:25;50:5,8,11; 56:17,26;57:2,18; 58:8,9,24;70:2,22; 72:2;73:12;75:4; 76:11,13;79:6	64:19
pushing (4) 9:18,19;60:3,4	reasonableness (1) 62:25	relate (1) 58:23	60:12;41:16,21,21; 42:17;43:20;44:9,16, 18,20;45:17;46:8,15, 18;47:25;50:5,8,11; 56:17,26;57:2,18; 58:8,9,24;70:2,22; 72:2;73:12;75:4; 76:11,13;79:6	responsible (1) 28:13
put (4) 9:15;36:22;80:22; 85:19	reasonably (3) 57:8;59:17,17	relating (2) 20:22;47:19	require (1) 37:5	responsive (15) 23:22,26;30:10; 31:8,26;32:11;35:20; 37:23;40:13,21; 49:26;56:17;78:20, 21;84:26
puts (1) 54:23	receiving (2) 16:5;24:26	released (2) 79:26;82:17	required (7) 4:6;6:17;26:16; 39:10;43:22;74:22; 80:16	restrict (3) 21:21;49:15;71:20
Putting (3) 19:4;25:23;70:22	recent (1) 44:20	relevance (1) 41:5	requirements (1) 58:11	result (2) 79:17;85:18
PWC (5) 40:17;48:19,24; 60:11;70:24	recess (2) 34:25,26	relevant (12) 20:21;25:16,19; 41:23;42:17;45:26; 50:26;62:17;65:3; 72:16;74:3,11	requires (1) 67:6	re-update (1) 36:17
PWC's (1) 71:17	recited (1) 79:2	relitigate (1) 30:2	reserve (3) 48:9;72:7;78:7	reveal (1) 24:22
Q	reconciled (1) 16:19	remaining (1) 78:24	reserves (1) 48:3	review (3) 10:6;16:22;35:15
quash (11) 3:5;4:17;34:6,13; 57:19;58:6;71:24; 75:17;76:2,12;77:17	reconsider (1) 71:6	remedy (1) 74:8	residing (1) 48:9;72:7;78:7	reviewed (1) 3:13
quashed (3) 58:4;72:21;79:6	record (10) 12:18,19,25;18:3; 19:21;83:26;84:12, 13,19;85:24	renewed (1) 46:8	resist (2) 23:7;74:22	reviewing (1) 85:17
quashing (3) 58:9;59:24;60:4	records (1) 18:25	report (2) 22:21;83:4	resident (1) 66:23	revised (2) 10:20,21
question-by-question (1) 65:11	recourse (1) 73:8	reporter (1) 84:11	resisting (1) 59:6	rewritings (1) 23:6
quite (1) 55:3	recover (1) 41:22	reports (1) 39:19	resolution (2) 33:23;75:22	right (21) 8:13;16:20;17:4; 18:4,5,6,8;25:17; 28:14;29:18;31:11; 34:23;45:7;54:5;57:3; 59:11;61:3;72:26; 73:25;74:8;76:7
R	redid (1) 66:11	representation (1) 35:21	resolutions (1) 34:4	rigorous (2) 22:19;28:7
raised (1) 17:16	redo (4) 19:11;20:18;33:16; 52:22	representations (13) 19:16;20:10;21:7; 22:5,17;27:7;39:2,25, 26;40:25;41:7;50:10; 68:21	resolved (2) 25:25;36:5	ripe (1) 77:13
raises (1) 61:6	redoing (1) 35:22	represented (3) 22:18;49:3;75:2	resources (1) 47:12	risk (1) 23:2
ran (1) 51:13	refer (1) 14:20	represents (1) 82:26	respect (23) 3:7,10;4:6,11;6:19; 8:15;18:18;24:13; 30:25;34:10;35:7; 43:8;44:23;50:20; 51:10;53:11;54:16, 18;61:6,20;82:5,21; 83:8	road (1) 42:14
range (2) 21:4;70:24	reference (1) 79:24	reproduction (1) 71:7	respectfully (2) 42:20;76:12	Robert (1) 7:19
rate (1) 11:8	referenced (1) 84:8	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	respective (1) 64:5	role (1) 8:14
rational (1) 53:9	referred (2) 41:25;84:17	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	respond (7) 22:15;28:12;29:12; 33:2;56:6;57:6,7	roll (1) 84:25
rationality (1) 45:13	referring (2) 25:21;35:18	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	responded (1) 80:19	rolling (2) 62:4,13
reached (3) 4:3,8;9:9	refers (1) 13:19	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	responding (2) 12:12;75:4	round (2) 19:15;25:5
read (6) 3:8;27:2,2;54:3,5; 77:8	reflected (2) 37:11;77:6	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	response (5) 23:5;47:3;60:22; 62:20;78:6	routes (1) 70:13
real (1) 19:7	reframe (1) 77:5	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	responses (3) 11:12;37:26;71:20	rule (8) 53:3;57:15;60:25; 72:24;75:10,24; 81:15;83:19
really (8) 8:18;9:20;14:7; 19:4;42:13;47:21; 50:5;78:25	refused (16) 20:18,19,20;27:24; 30:12,22;31:5;44:9, 14;48:2,4;49:18,23; 57:21,24;70:26	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19	responsibility (1)	ruled (16) 41:4;42:19;46:6; 48:18;56:23;72:12, 14;73:14;75:9;77:14, 15,17,19;79:3,7,8
reason (6) 21:26;22:2;28:4; 43:17;44:6;81:26	refusing (1) 50:15	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19		
reasonable (17)	regulator (1) 70:11	request (28) 4:10,16,17;11:21; 23:16;32:22;35:9; 40:12;44:6;47:15,17, 19;48:7,16;49:18,22, 24;56:19;58:20; 59:22,23,26;60:6; 68:3;71:21;76:26; 77:26;78:19		

PricewaterhouseCoopers

June 16, 2017

rules (3) 53:4;82:23,25	77:21	sets (4) 8:5;15:7;71:26; 72:2	slides (2) 5:11;84:3	stage (8) 5:26;6:2;7;7:9; 34:9;42:11;51:9; 71:12
ruling (8) 56:5,15;64:16; 75:16;76:6;77:5,12; 79:16	searched (2) 25:2;32:17	seven (6) 27:7;34:5;65:19; 67:13;69:7;70:25	slow (1) 84:25	staged (1) 44:11
rulings (4) 76:17,24;77:6,9	searches (1) 66:9	several (2) 55:25;58:23	solution (1) 51:23	stakes (1) 17:18
run (2) 38:17;51:5	searching (1) 55:13	sham (4) 8:25;9:11;15:7; 54:24	solved (2) 30:24;31:2	stand (1) 54:25
running (1) 11:19	SEC (4) 49:20;59:26;70:6; 71:8	share (1) 51:16	somebody (1) 66:5	standard (7) 18:13;26:16;41:20; 47:10;58:13;64:20; 67:5
S	second (4) 12:15;27:26;31:13; 39:19	shareholders (2) 20:13;22:23	somehow (1) 28:6	standards (4) 43:19;46:21,23; 58:20
salary (1) 69:11	secret (5) 53:21;80:26;81:4,6; 82:2	shares (1) 67:12	someone (2) 8:5;35:19	start (10) 3:16;4:15;5:5; 11:19;13:13,16;25:5; 36:15;40:18;42:4
same (9) 6:26;14:3;20:9; 39:20;40:19;43:16; 49:2;82:23,25	secrete (1) 53:20	Sheth (3) 84:14,14,22	somewhat (2) 4:23;62:8	started (4) 49:5;52:14;53:19; 62:12
sanction (1) 57:9	secrets (6) 80:20;81:10,13,23; 82:9,26	short (2) 12:9,23	somewhere (1) 71:2	starting (1) 63:12
satisfaction (1) 47:2	secundate (1) 59:7	shorter (1) 36:6	sorry (4) 12:7;27:18;43:15; 59:7	starts (1) 19:8
satisfactory (1) 4:5	secure (2) 46:25,26	show (12) 3:4;14:19;26:17; 28:7;38:25,26;43:20; 53:17;58:11;64:25; 65:2,4	sought (2) 65:3;66:21	state (6) 12:25;15:6;16:9,13; 85:24,26
satisfied (4) 63:24;65:20,25; 74:14	securing (1) 61:14	showings (1) 43:22	sounds (1) 75:13	stated (2) 5:20,23
satisfy (3) 16:8;22:26;24:10	seek (5) 3:16;4:9;72:4; 80:10;83:5	showing (8) 24:9;26:7;40:16; 41:23;50:14;60:19; 66:6;74:21	sources (1) 13:25	statements (2) 20:12;54:24
save (1) 37:2	seeking (5) 58:23;64:15,21; 65:2;80:4	shows (4) 14:11,24;27:26; 53:25	special (1) 64:20	statutory (4) 11:16,21;36:10; 37:16
saying (10) 13:22;22:10;24:24; 33:6;52:14,16;53:5; 56:16;71:11;85:14	seem (2) 8:3;36:21	shown (7) 23:10;26:23;41:6; 58:13;65:2,4,6	specific (12) 14:5,6;19:14;22:26; 28:23;45:17;54:19; 57:19;59:21;72:3; 75:10;76:17	stay (1) 34:23
schedule (1) 16:7	seemed (1) 71:21	side (2) 8:20;84:2	specifically (4) 17:7,19;23:8;50:11	step (1) 41:19
scheduled (6) 7:15,20,20,21;9:4; 16:7	seems (11) 4:8,12;9:23;10:13; 18:7;24:5;38:10; 41:10;51:23;68:18; 82:13	sideshow (1) 45:6	specifics (1) 51:13	steps (1) 71:10
science (4) 53:20,21,25,25	sell (1) 13:15	signed (1) 63:20	spend (6) 9:13;33:8;37:19; 47:4;53:6;55:21	still (4) 18:24;21:10;25:11; 43:16
scientific (2) 53:23,24	senior (1) 63:19	simple (2) 23:17;47:3	spending (1) 63:3	stock (4) 67:2;69:2,6,6
scope (4) 23:14;37:3;72:13, 22	sense (2) 11:23;71:18	simplest (2) 27:4;49:18	spent (2) 36:8;76:16	stood (2) 6:11;23:18
seal (3) 80:22;81:5,8	sensitive (5) 79:18;80:11;82:10, 14;83:2	simply (5) 21:22;47:8;51:3; 64:8;80:20	spoliation (1) 74:9	stop (4) 37:21;52:20,21; 53:24
sealed (1) 80:26	sent (1) 70:14	sitting (1) 49:22	spread (1) 44:2	stopping (1) 41:20
sealing (1) 80:10	separate (2) 67:11;68:14	situation (1) 35:17	spreadsheets (1) 51:26	straight (1) 49:14
search (26) 3:20,21;10:16,21; 19:26;20:6;24:3;25:3; 27:20,23,24;28:6,21; 30:2;31:9;33:9;35:14; 37:24;40:15;43:24; 55:13,15;73:5,11,17;	serious (1) 54:9	six (2) 27:6;33:7,17;34:5; 38:24;48:16;49:24; 50:7;53:7;79:2,6,11	square (1) 36:22	stranded (2) 54:3,6
	served (3) 7:5;9:8;78:14	sleuthing (1) 37:6	Stabilization (1) 14:10	Strategic (1) 7:14
	session (1) 75:23		staff (1) 4:21	strikes (1)
	set (3) 10:8;50:3;71:7			

PricewaterhouseCoopers

June 16, 2017

56:12 stuck (1) 33:25 stuff (5) 20:2;32:23;41:16; 60:12;81:5 stumbling (1) 18:7 Subject (11) 9:22;10:12;12:13; 32:2;39:20;40:19; 41:6;46:10;60:15; 73:17;74:10 subjects (3) 64:5;83:22,24 submission (3) 63:23,25;80:7 submit (1) 19:2 submitted (1) 16:19 subpart (1) 75:25 subpoena (54) 7:5;9:8;17:23; 18:19;19:6;20:11,26; 21:3,23;25:24;27:6; 28:20;30:3,10;31:6, 13,23;32:11;33:3; 38:15,17;40:14,22; 41:5,17;44:20,21; 46:7,11,20;47:16; 48:19;49:7,11;50:2; 51:11;57:18;58:10, 14;59:14;62:20; 65:17,21;66:8;71:3, 16;72:9;73:4,12,13, 24;74:10;77:21;84:25 subpoenas (6) 18:25;21:16,17; 30:4;33:11;34:13 subpoena's (1) 20:14 subsequent (2) 21:3;33:22 subsequently (1) 55:14 subset (1) 49:8 subsidiary (1) 67:6 substantial (1) 47:11 substantiate (3) 28:17;44:15;47:20 substantive (4) 6:4;7:9,10;66:22 sued (1) 85:9 suggest (2) 8:5;76:11 suggested (3) 19:12;34:3;56:23	suggesting (2) 32:24;51:25 suggestion (1) 55:7 suite (1) 25:19 supervised (1) 26:9 supplement (2) 11:11;20:19 supplemented (1) 55:14 supply (2) 13:26;14:20 support (1) 18:9 suppose (1) 16:20 supposed (4) 6:12,12,13;52:21 suppress (2) 13:23,25 sure (7) 17:18;30:5;42:6; 52:12;55:3;83:26; 84:11 Surely (1) 38:8 surprised (1) 73:19 sustain (1) 26:17 sympathetic (1) 61:16 system (3) 22:19;25:13;75:3	ten (2) 3:22;6:25 terms (31) 3:20,21;9:16;10:16, 21;14:26;17:19;20:2, 7;24:3;25:3;27:20,24, 25;28:6,21;30:2;31:9; 34:7,15;37:24;55:13; 60:26;61:18;71:18; 73:5,11,17,24;74:23; 77:21 terrible (2) 15:21,22 test (2) 64:2;85:15 testified (3) 24:20;64:10;68:23 testify (5) 7:18;15:25,26; 37:26;64:4 testimony (15) 16:23;18:23;26:8; 28:3,15;34:20;43:10, 15,16;50:23;59:3,7; 70:17;71:14;82:26 Texas (2) 83:12;85:10 theoretically (1) 70:16 theories (1) 54:11 theory (8) 54:2,3,6,7,8,8,12; 55:22 thereafter (1) 7:4 therefore (1) 67:3 third (2) 54:12;80:16 Thirty (1) 67:12 though (4) 19:26;20:21;44:16; 60:6 thought (7) 12:8;31:11;34:8; 51:21;78:11;82:15; 85:15 thousand (1) 43:5 thousands (1) 35:16 three (16) 6:5;20:17;25:10; 27:6;33:7;48:7,8,11; 50:6;51:6;52:19; 55:22;56:17;70:6; 78:3,19 throughout (2) 38:17;39:2 thwarted (1) 68:18	tied (2) 41:6;56:26 times (5) 33:26;34:3,5;41:25; 52:23 tiny (3) 37:12,12,13 Toal (23) 23:18,19;30:8; 35:18;63:9,12;64:7, 12,16,24;65:13,23; 66:20;71:25;77:4; 79:13;80:5;81:14; 82:6,7,19,24;83:7 today (7) 3:3;33:20;38:6,19; 43:6;74:5;79:8 today's (1) 3:16 together (3) 8:21;9:15;14:7 told (8) 8:12;21:12;40:6,21; 48:19;49:10;52:5; 71:2 took (1) 25:11 topic (1) 63:14 topics (1) 63:22 Toronto (1) 69:6 total (1) 47:2 totally (3) 17:26;53:25;54:11 track (2) 22:20;75:6 trade (10) 80:20,25;81:4,6,9, 12,22,26;82:9,26 transaction (1) 15:7 transactions (1) 9:11 transcript (3) 3:13;77:7,8 treated (1) 79:24 Trelenberg (1) 7:20 trial (3) 16:3,21;33:23 tried (5) 6:24;30:21;45:19; 53:10;77:5 true (3) 16:9,13;64:7 trust (1) 81:3 try (4) 12:22;35:6;51:22;	53:11 trying (14) 23:17;30:2;33:19, 24;42:23;50:7,21; 52:14;56:11;62:7; 70:3;71:9;72:9;79:15 turn (2) 25:14;65:14 turning (1) 9:7 turns (1) 29:20 two (35) 8:2,5,21,26;9:19; 13:7;15:7;16:18; 20:16;24:9;25:5; 26:14;27:6,22,23; 31:4;32:7;39:16,19; 43:9;47:15,17;50:6; 51:6;52:4;56:17;64:9; 69:7;73:19;76:15,16, 26;77:26;81:18;83:17 type (2) 9:21;51:22 types (2) 13:25;66:3
T				
subpoena's (1) 20:14 subsequent (2) 21:3;33:22 subsequently (1) 55:14 subset (1) 49:8 subsidiary (1) 67:6 substantial (1) 47:11 substantiate (3) 28:17;44:15;47:20 substantive (4) 6:4;7:9,10;66:22 sued (1) 85:9 suggest (2) 8:5;76:11 suggested (3) 19:12;34:3;56:23	tailored (1) 11:11 talk (7) 8:3,13;22:9;44:10; 45:6,9;69:24 talked (4) 6:22;25:22;32:17; 71:19 talking (13) 6:26;27:11;35:15; 47:14;48:15;57:12; 58:8,16;59:24;71:14; 74:14,19;82:3 talks (1) 13:9 target (1) 21:22 targeted (5) 11:25;28:24;31:6; 50:11;72:3 techniques (1) 26:19 technology (1) 14:13	thereafter (1) 7:4 therefore (1) 67:3 third (2) 54:12;80:16 Thirty (1) 67:12 though (4) 19:26;20:21;44:16; 60:6 thought (7) 12:8;31:11;34:8; 51:21;78:11;82:15; 85:15 thousand (1) 43:5 thousands (1) 35:16 three (16) 6:5;20:17;25:10; 27:6;33:7;48:7,8,11; 50:6;51:6;52:19; 55:22;56:17;70:6; 78:3,19 throughout (2) 38:17;39:2 thwarted (1) 68:18	ultimately (3) 14:2,13;54:17 unable (1) 16:8 unacceptable (1) 55:5 under (5) 19:6;30:3;55:20; 58:21;79:23 underlying (1) 52:2 understandable (1) 51:15 understood (6) 6:2;13:13;76:5,9; 77:24;82:3 undertaken (1) 59:13 undertaking (2) 30:26;77:20 undertook (1) 24:11 unfairness (1) 39:14 unfortunately (2) 19:19;46:13 unhappy (1) 15:21 unified (1) 44:5 uniform (1) 22:19 units (1) 22:6	

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PricewaterhouseCoopers

June 16, 2017

<p>unless (1) 80:16</p> <p>unlimited (1) 47:12</p> <p>unnecessary (2) 8:24;9:10</p> <p>unprecedented (1) 85:9</p> <p>unqualified (1) 20:12</p> <p>unreasonable (3) 9:23;12:6;72:20</p> <p>unresolved (1) 59:5</p> <p>unsatisfied (1) 18:20</p> <p>unsupervised (1) 29:16</p> <p>up (20) 6:11;10:8;14:18; 20:15;23:5,12,19; 28:23;32:23;33:12; 39:8,25;40:17;54:25; 55:5;56:26;62:24; 72:9;83:9;84:8</p> <p>upcoming (1) 82:22</p> <p>update (15) 35:9,24;36:17;38:3, 6:40;26;45:23;47:18; 52:15;55:15;59:13; 61:21;62:19;77:20; 79:16</p> <p>updated (5) 38:18;45:17;46:7,9; 77:2</p> <p>updating (7) 35:7;52:17,19,25; 53:4;78:2,5</p> <p>use (3) 4:22;13:24;26:20</p> <p>used (11) 5:2;8:7,15;13:7; 14:17;19:20;25:4; 27:20;54:17;77:22; 82:11</p> <p>uses (1) 13:10</p> <p>using (2) 19:26;24:3</p> <p>usually (2) 6:23;33:11</p> <p>utilized (1) 73:17</p> <p>utterly (2) 41:24;58:12</p>	<p>version (1) 16:24</p> <p>veteran (1) 63:17</p> <p>vice (1) 7:13</p> <p>view (7) 4:11;18:11;56:10, 11;61:10;67:2;72:26</p> <p>vigorously (1) 75:7</p> <p>violate (1) 22:17</p> <p>virtually (2) 47:12;72:5</p> <p>virtue (1) 68:26</p> <p>vital (2) 39:4;44:22</p> <p>voluntarily (1) 62:19</p>	<p>WELLS (56) 4:19,20,21,26;5:11, 15,19;10:3,24;11:5,7, 15;12:8,15,22;13:6, 16;14:5;15:13,18; 16:10;17:5,10,12,16; 19:18;22:14;25:19, 22;28:8,18;32:7,9,13, 15;33:5;34:7;35:3,5; 36:12;38:5,18;51:20, 21;52:10;55:8;60:24; 61:4,20,23;62:6,22; 63:2,9;83:25;84:17</p> <p>Wells' (1) 77:19</p> <p>Well's (1) 56:10</p> <p>weren't (4) 23:23;68:11,12; 71:15</p> <p>what's (4) 14:14;17:19;36:14; 76:21</p> <p>whole (4) 6:19;25:19;32:21, 26</p> <p>who's (2) 16:20,20</p> <p>whose (2) 16:24;25:2</p> <p>wide (1) 44:24</p> <p>widely (1) 67:13</p> <p>willing (2) 68:11,12</p> <p>wish (3) 11:7;58:19;59:12</p> <p>witch (2) 53:13;84:18</p> <p>withheld (2) 44:19;85:4</p> <p>withhold (1) 85:5</p> <p>within (3) 3:22;23:13;51:17</p> <p>without (6) 25:12;31:12;70:18; 80:8,8,9</p> <p>witness (11) 18:22,25;42:25,26; 43:3;45:4;63:10;66:4, 20;83:19;85:20</p> <p>witnesses (47) 6:4;7:9,9,11;11:24; 12:12;15:24;16:6,21; 17:3;18:6;24:4,20,21; 27:10;28:26;37:10, 25;41:11,12,18;42:3, 14,15,16;43:2,3,9; 47:9;51:7;59:4,6; 60:14;63:15;64:4,8,9; 65:20;66:21,22;70:9,</p>	<p>15,17;71:14;83:11,17, 21</p> <p>words (1) 27:19</p> <p>work (4) 17:17;33:11;35:17; 72:23</p> <p>worked (1) 78:7</p> <p>working (1) 71:17</p> <p>works (2) 25:17;35:16</p> <p>world (6) 28:8;44:3;53:16; 56:10,11;71:23</p> <p>worth (3) 18:23;27:25;32:23</p> <p>write-down (1) 20:23</p> <p>wrong (9) 8:26;15:8;16:14,20; 20:17;51:23;53:18; 72:26;78:11</p> <p>wrongfully (1) 74:3</p> <p>wrongly (1) 15:6</p>	<p>12 (8) 9:15,17;29:5;51:26; 52:8;56:21;72:5,19</p> <p>130 (1) 43:24</p> <p>134 (2) 55:15;73:18</p> <p>14 (1) 11:18</p> <p>142 (2) 33:9;35:10</p> <p>15 (1) 34:3</p> <p>16 (9) 3:18;10:19;24:25; 25:9;29:5;34:20; 35:23;37:20;38:9</p> <p>17 (2) 33:26;40:5</p> <p>18 (1) 37:19</p> <p>19 (1) 7:20</p>	
	<p>W</p>			<p>2</p>	
	<p>wait (2) 28:26;51:6</p> <p>waited (2) 8:17,22</p> <p>waiting (1) 70:16</p> <p>walk (2) 23:10;54:23</p> <p>wants (6) 4:18;5:23;35:26; 38:19;65:16;80:25</p> <p>warp (1) 33:25</p> <p>waste (1) 29:25</p> <p>wasted (1) 64:10</p> <p>wasting (2) 30:5,7</p> <p>way (21) 5:3;12:9;19:11; 22:9;27:11;28:7; 42:21,21,24,25;43:21; 45:7;46:21,23;51:5,9; 55:10;66:7,12;67:17; 71:12</p> <p>ways (1) 22:16</p> <p>week (5) 11:3;25:18;32:18, 20;83:17</p> <p>weekly (2) 32:25;39:11</p> <p>weeks (1) 83:17</p> <p>weighing (1) 17:25</p> <p>Weiss (2) 35:18;63:19</p>			<p>2 (2) 15:10,11</p> <p>2.8 (1) 79:14</p> <p>20 (1) 63:16</p> <p>2015 (6) 20:10;38:16,21; 53:19;55:19;62:12</p> <p>2016 (22) 5:19;20:13,20; 30:11;38:10,12,13,17, 22;39:3,3,6;40:5,9,17, 18;55:16;61:21; 62:21;77:3,21;78:2</p> <p>2017 (4) 30:11;38:8;39:22; 61:25</p> <p>21 (1) 5:19</p> <p>22 (1) 34:8</p> <p>22nd (9) 3:13;4:2,3,7,8;5:6, 23;9:9;30:26</p> <p>25 (1) 7:21</p> <p>27 (7) 7:15,17,19;10:25; 11:2;23:18;34:11</p> <p>28 (1) 7:22</p>	
	<p>V</p>			<p>Y</p>	
				<p>Yards (1) 43:5</p> <p>year (14) 9:19;21:3;27:12,25; 32:21,26;33:8;35:24; 47:4;49:5;52:18; 63:16;72:19;74:17</p> <p>years (15) 9:15,18,19;13:12; 18:23;33:7;52:2,8,19, 20;55:22;56:21;60:2; 61:17;72:5</p> <p>year's (1) 32:23</p> <p>York (10) 5:20,23;14:9;16:5; 68:6,10;69:6;79:20, 23;82:13</p>	
				<p>Z</p>	
				<p>zealously (1) 56:9</p>	
				<p>1</p>	
				<p>1 (1) 5:17</p> <p>10-K (2) 68:26;84:7</p> <p>10th (1) 6:14</p>	
				<p>3</p>	
				<p>31 (1) 6:25</p>	

PSONY
PricewaterhouseCoopers

June 16, 2017

31st (2)
3:23;6:13

4

4:00 (1)
11:9

6

69 (1)
66:26

8

8th (2)
7:5;9:8