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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO. 20-md-02924-ROSENBERG

**IN RE: ZANTAC (RANITIDINE)** .  
**PRODUCTS LIABILITY** . West Palm Beach, FL  
**LITIGATION.** . May 7, 2021  
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DISCOVERY STATUS CONFERENCE (through Zoom)  
BEFORE THE HONORABLE BRUCE REINHART  
UNITED STATES MAGISTRATE JUDGE

FOR THE PLAINTIFFS: **MICHAEL L. McGLAMRY, ESQ.**  
Pope McGlamry P.C.  
3391 Peachtree Road NE  
Suite 300  
Atlanta, GA 30326  
404-523-7706

**ROBERT C. GILBERT, ESQ.**  
Kopelowitz Ostrow Ferguson  
Weiselberg Gilbert  
2800 Ponce de Leon Boulevard  
Suite 1100  
Miami, FL 33134  
305-384-7270

FOR THE DEFENDANTS: **PAIGE H. SHARPE, ESQ.**  
Arnold & Porter Kaye Scholer LLP  
601 Massachusetts Avenue NW  
Washington, D.C. 20001  
202-942-5000

**ANAND AGNESHWAR, ESQ.**  
Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019  
212-836-8011

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Official Court Reporter: Pauline A. Stipes  
HON. ROBIN L. ROSENBERG  
Ft. Pierce/West Palm Beach, Fl  
772.467.2337

1           *THE COURT:* Good morning, everybody. This is Case  
2 Number 20-2924, In Re: Zantac (Ranitidine) Multi District  
3 Litigation. We are here for a discovery status conference  
4 relating to matters involving productions by Defendant Sanofi.

5           Let me begin with appearances, please. Let me turn to  
6 counsel for the Plaintiffs. Good morning, Mr. Gilbert.

7           *MR. GILBERT:* Good morning, your Honor, may it please  
8 the Court, Robert Gilbert, colead counsel on behalf of the  
9 Plaintiffs.

10          *THE COURT:* Good morning. On behalf of Sanofi. Good  
11 morning, Mr. Agneshwar and Ms. Sharpe.

12          *MR. AGNESHWAR:* Good morning, your Honor, Anand  
13 Agneshwar, Arnold & Porter, on behalf of Sanofi.

14          *MS. SHARPE:* Good morning, your Honor, Paige Sharpe  
15 from Arnold & Porter on behalf of Sanofi.

16          *THE COURT:* Good morning. Thank you all for making  
17 some time. I did get the memo and the emails that you  
18 submitted through the special master, so I understand that the  
19 parties have made a lot of progress and I just --

20          *MR. GILBERT:* Judge, excuse me for interrupting you,  
21 but there is something happening with your microphone that's  
22 making a lot of interference.

23          *THE COURT:* Is this better, Mr. Gilbert?

24          *MR. GILBERT:* It is, your Honor.

25          *THE COURT:* All right. I think I had put a piece of

1 paper on top of my microphone, which is never a good thing.

2 Thank you.

3 I started to say, I think the -- my understanding is  
4 the parties have made good progress and I applaud that. I just  
5 wanted to make sure I was up to speed on where you are. If I  
6 could, let me just give you the background as I understand it  
7 and why the Court is even following up on this and where I  
8 think we are going.

9 So, the Court was notified back in January that there  
10 was an issue relating to some emails that Sanofi had not  
11 preserved, which I said at the time, I will say it again, that  
12 happens with sufficiency that we actually have a specific  
13 Federal Rule of Civil Procedure to deal with it. It is what it  
14 is, but we have to deal with it.

15 So, what the Court has to anticipate is there is a  
16 possibility at some point the Plaintiffs may seek relief for  
17 the fact that certain emails were not preserved. That is  
18 normal and we have talked about that as well. If and when that  
19 day comes, the relevant factors are, did Sanofi take reasonable  
20 steps to preserve, that is the threshold question, because if  
21 they did, that ends the discussion.

22 If they did not, can the missing discovery be replaced  
23 with other discovery, so remediation, can it be remediated  
24 sufficiently.

25 Then, if not, then we have the question of have

1 the Plaintiffs been prejudiced in a way that they are entitled  
2 to relief or is there a reason to believe that the  
3 non-preservation was done intentionally with an intent to  
4 deprive, in which case there are different remedies that are  
5 available.

6 No motion has been filed, we are not there yet, but I  
7 fully anticipate there will come a time where the Plaintiffs  
8 will at least want to consider filing that motion. Being the  
9 good lawyers that they are, they are not going to file that  
10 motion unless they do their due diligence and think there is a  
11 good faith basis to believe that either there was not  
12 reasonable steps taken or there hasn't been sufficient  
13 remediation, etc.

14 So, it seems to me, and this is what I wanted to talk  
15 about this morning, that would be a threshold question, are the  
16 Plaintiffs at some point going to want to do some discovery so  
17 they can do their due diligence to determine whether Sanofi  
18 took reasonable steps to preserve.

19 It was always my presumption they would at least want  
20 to take some discovery so that they could satisfy themselves  
21 before they filed any motion that there was a basis for the  
22 motion. That is why I had asked the parties to at least come  
23 up with a schedule, or let's bring that issue to closure at  
24 least.

25 The starting point is, is there going to be any

1 discovery; is Sanofi going to object to discovery; what  
2 discovery are the Plaintiffs going to want as a first tranche  
3 of discovery. It sounds to me like you all have talked about  
4 that, you have a proposal before the Court for doing that and I  
5 will hear you on that in a second.

6 The second issue I wanted to take up is sort of the  
7 related question of remediation. Let's assume they get over  
8 that first hurdle, then again, the Plaintiffs, if they want to  
9 seek relief, are going to have to be able establish they have  
10 been prejudiced, or Sanofi may have to establish that the  
11 remediation that they have done is sufficient.

12 It seems to me that at some point in that process --  
13 and I understand it has been an ongoing process where there has  
14 been discussion of remediation, there has been additional  
15 production, Sanofi agreed to produce additional custodians,  
16 etc., but at some point Sanofi has the absolute right to say,  
17 we have done enough, we believe we have sufficiently remediated  
18 and we have done enough. If and when they ever do that, the  
19 Plaintiffs have the right to say, no, you haven't and to come  
20 to court.

21 So, I just wanted to get a sense on the remediation  
22 issue, where are we. Are we getting close to a point where  
23 Sanofi may say we think we have done enough? Do the parties  
24 believe we are never going to reach that point? Do the parties  
25 believe we have already reached that point? That is sort of

1 what I wanted to talk about today, so thank you for letting me  
2 give you the big wind up.

3 With all of that, let me turn to Mr. Gilbert and hear  
4 you on either or both of those topics.

5 *MR. GILBERT:* Thank you, your Honor. May it please  
6 the Court, Robert Gilbert, and I am joined by my colead-counsel  
7 as well, Mike McGlamry. I neglected to mention his name when I  
8 made appearances. I apologize.

9 Judge, if you wouldn't mind, I would actually allow  
10 Mr. Agneshwar to respond to your inquiry first. He and I have,  
11 as usual and as you would expect, had a lot of conversation in  
12 preparation for this hearing addressing the issues that you  
13 outlined in broad stroke, and in deference to those  
14 conversations, I'd prefer to allow him to go first.

15 *THE COURT:* I appreciate that. That is our third  
16 issue that I forgot to mention, is we have to talk about what I  
17 am going to call the clawback issue. I understand from the  
18 special master there may be some dispute as to whether it is  
19 technically a clawback, and I understand there is sensitivity  
20 on a lot of these issues, so I appreciate that, Mr. Gilbert.

21 Let me let Mr. Agneshwar go first.

22 *MR. AGNESHWAR:* Thank you, your Honor, Anand  
23 Agneshwar, Arnold & Porter, on behalf of Sanofi.

24 First of all, I appreciate your Honor's willingness to  
25 hear kind of a status update in a status conference like this

1 and to keep it high level because there is a lot of information  
2 that we have designated as highly confidential.

3 Let me just start by saying I think it was January  
4 when we had this first conference, and the steps that have  
5 happened since then are, we did our own inquiry with a  
6 consultant, and in late February we produced a report to the  
7 Plaintiff that detailed our analysis of the root cause issues,  
8 and also proposed remediation. We decided we were going to do  
9 remediation.

10 Plaintiffs responded with some followup requests for  
11 information, including requests for answers to questions and  
12 requests for documents. As you can imagine, that triggered  
13 some back and forth and discussions and negotiation about what  
14 the Plaintiffs would be entitled to. As your Honor pointed  
15 out, I am pleased to report that that has resulted in some  
16 agreements along the way.

17 For one thing, we had the Plaintiffs' consultant meet  
18 with our consultant to talk about various issues related to  
19 remediation.

20 For another thing, as your Honor noted, we just  
21 recently reached an agreement that covers the scope of root  
22 cause discovery, and I am happy to provide that to your Honor  
23 by email. There are some highly confidential things, I would  
24 prefer not to talk about the details of it in open court.

25 *THE COURT:* If the parties have agreed on discovery,



1 and I am going to assume it is, we will agree to certain  
2 initial discovery, and if followup questions arise and the  
3 Plaintiffs want to seek additional discovery, there will be  
4 further discussion on that. That is all I need to know. I  
5 don't need to see it.

6 *MR. AGNESHWAR:* Thank you, your Honor. I guess my big  
7 picture bottom line is, we have made some agreements along the  
8 way. I don't think we are going to agree on everything, I  
9 don't think we are going to necessarily agree on the scope of  
10 remediation or on every jot and diddle about discovery, but we  
11 have made some progress so far, and who knows, maybe we will be  
12 able to reach agreement on that.

13 So, let me turn to the remediation efforts that we  
14 have been doing as your Honor asked me about.

15 As your Honor knows, this issue that we have  
16 identified involves custodial email on the servers, and this  
17 affects custodians in tranche one and the tranche two  
18 custodians. What we have been trying to do, and I think we  
19 have succeeded in doing this, is doing a server-wide search of  
20 the emails of everybody that has been on the Zantac litigation  
21 for emails that are to, from, CC'd, and BCC'd from the affected  
22 custodians.

23 It sounds easy to say it, but it has been a more  
24 challenging process to implement than one might imagine. We  
25 had to collect all these emails, we had to get them on a

1 server, we had to run searches, and then there were technical  
2 issues with de-duplication and making sure that we can identify  
3 what is new that has not been produced before and what is  
4 duplicative of what has been produced before.

5 So, working with the consultant, I think we made it  
6 through most of that, and now what we have been doing is  
7 producing the remediation documents to the Plaintiff. So, for  
8 tranche one we produced those documents, or many of those  
9 documents by the end of April, which was on target, and we  
10 expect to produce the tranche two remediation documents by the  
11 end of July.

12 I have learned in this business, I have practiced long  
13 enough, to never say never and never say always and never say  
14 definitive things. So, those are my targets. Things come up,  
15 but hopefully, knock on wood, we are on target to at least make  
16 it most of the way there.

17 Then what we have decided to do, your Honor -- and I  
18 should say that in this meeting between technical consultants,  
19 their technical consultant offered some ideas for additional  
20 remediation that we have been taking under advisement and  
21 discussing with our person, so we may do some of those things  
22 as well.

23 We have a schedule that we are on track to produce a  
24 report to Plaintiffs on the tranche one remediation effort  
25 within 30 days of the production of those documents, so that

1 means by the end of May, and we are on track to do that.

2 For the tranche two custodians, for that remediation,  
3 our goal is to produce a remediation report within 30 days of  
4 the production of those remediation emails. After that, I  
5 suspect we will have more meet and confers, whether it is  
6 meeting and conferring about additional steps or anything else,  
7 and then, as your Honor said, either we will keep going and  
8 doing what the Plaintiffs ask or we will say, that's it, and  
9 the Plaintiffs will have to decide whether to do a motion  
10 practice.

11 So far, we have been engaging in these efforts in a  
12 pretty collaborative way.

13 *THE COURT:* All right. I appreciate all of that, that  
14 is all very, very helpful. Let me hear from Mr. Gilbert.

15 Mr. Gilbert, I should have said this earlier as well,  
16 all of this, I think, arises in the context as well -- I know  
17 the Plaintiffs, I think it is due today, but you are filing a  
18 proposed modification to PTO 30, and I know at least when this  
19 issue first arose it resulted in having to delay some  
20 depositions until you could get some replacement and  
21 remediation done.

22 I didn't know whether you felt that the path that you  
23 are on with Mr. Agneshwar right now is impeding the litigation  
24 in a material way, or is going to have a material effect on the  
25 PTO 30 decision that the Court has to make, or whether that is

1 being factored into the request that you are going to be making  
2 to Judge Rosenberg. So, incorporate that, if you could, in  
3 your remarks wherever it is appropriate.

4 *MR. GILBERT:* Thank you, Judge, again Robert Gilbert  
5 on behalf of the Plaintiffs.

6 Let me answer that question you just raised first.  
7 Clearly the email deletion or destruction issue with Sanofi  
8 factors into the PTO 30 modification motion that we are going  
9 to be filing today.

10 We understand the schedule of the remediation that  
11 Sanofi has been working under. We take Mr. Agneshwar at his  
12 word that his client and counsel and consultants that are  
13 assisting them are working as fast as they can under these  
14 circumstances, and based on what he just reported to you, and  
15 it is codified in a prior order, they are required to finish  
16 their remediation efforts on tranche two by July 30th, and they  
17 are going to give us -- I will talk about the report in just a  
18 minute.

19 But the short answer is, absolutely it is a factor, it  
20 is part of our PTO 30 modification, but by no means is it the  
21 only factor.

22 *THE COURT:* Of course not and I understand that. I  
23 just wanted to make sure -- that is good to know. When Judge  
24 Rosenberg and I get that motion we will understand that this  
25 concept is incorporated into many other concepts. Thank you.

1           MR. GILBERT: Thank you. Judge, to respond to my  
2 colleague's remarks and to help the Court, I will be brief.

3           First of all, I generally concur that what Mr.  
4 Agneshwar reported is accurate with regard to what has taken  
5 place since they first notified us in late December of this  
6 email issue and the issue was brought to the Court's attention  
7 and discussed briefly at the January 6th status conference. It  
8 is a complicated process, it is a sensitive process. It  
9 involves substantive rights both on the Plaintiffs' side as  
10 well as on Sanofi's side.

11           Mr. Agneshwar, as you can imagine, is a zealous  
12 advocate for his client, and we, Mr. McGlamry and I and others  
13 on our side, hope that we are equally zealous in our  
14 representation of the Plaintiffs. We have agreements, we have  
15 disagreements, we have many discussions along the way.

16           I concur with what my colleague reported that just a  
17 few days ago, as a result of ongoing and difficult  
18 negotiations, we did finally strike an understanding and  
19 agreement about how this discovery into the email issue is  
20 going to move forward, and we are embarking upon that now.

21           I also concur with what Mr. Agneshwar reported with  
22 regard to the remediation process, the meeting between the  
23 lawyers and the consultants.

24           I simply want to note for the record, or point out for  
25 the record, and I am sure you understand this, but I don't want

1 it to be implicit that I didn't say it, that nothing about our  
2 process at this point should be taken as any agreement on the  
3 part of the Plaintiffs that we have agreed that the remediation  
4 efforts are either satisfactory or will not result in some sort  
5 of substantive right on our part.

6 Again, we have full confidence that they are working  
7 at and putting forth their very best effort and we will  
8 continue to work with them to try to do this in a professional  
9 and appropriate and efficient manner.

10 *THE COURT:* I appreciate that, and you have made very  
11 clear and I think the Court has made clear all along that these  
12 move on two parallel tracks. Just because you are negotiating  
13 about certain things doesn't mean you are waiving any rights at  
14 all that you have to ultimately seek a remedy under Rule 37.

15 As I said earlier, part of my goal is to make sure  
16 that you have the information you need to make an informed  
17 decision whether you are entitled to a substantive remedy, and  
18 it sounds to me like we are not there yet. It sounds to me  
19 like on the remediation issue, Sanofi has not objected to  
20 producing what you have been asking for, or at least have  
21 negotiated for during the process.

22 They haven't reached the point of saying, we are done,  
23 we believe remediation is over, you have gotten what you are  
24 going to get, so that is good. There is still ongoing  
25 dialogue, and I don't think you can make your ultimate decision

1 until they are done.

2 That's why I did want to stay on top of it, because I  
3 think there is value to the Plaintiffs and there is value to  
4 the case in at least knowing when that process has run its  
5 course. When Sanofi decides we have done enough, I assume and  
6 I know they will be transparent with the Plaintiffs, and then  
7 the Plaintiffs will decide -- by the way, just a brief side  
8 note.

9 I am always fascinated by this requirement because how  
10 are you supposed to know whether you have sufficiently replaced  
11 something that is gone? If you don't know what is gone, how do  
12 you know if you have replaced it? Presumably the Rules  
13 Committee and the Supreme Court think we can do that process,  
14 so we will do that process if we get there.

15 *MR. GILBERT:* That is why we have experts.

16 *THE COURT:* Exactly. Right.

17 Remediation, it seems to me, is moving along, and that  
18 is great. To me, the most important thing on the remediation  
19 side is to stay on the schedule we have set so that whatever  
20 the Plaintiffs are going to get, they get it in an efficient  
21 and orderly manner so they can use it and the case can move  
22 forward.

23 We can always have a fight later about whether they  
24 are entitled to some other substantive remedy for whatever may  
25 have occurred, but let's keep the case moving, and we have had

1 this conversation before and I appreciate that the parties to  
2 this aspect of the case are doing what the Court has asked.

3 I will say as to the initial -- you used the term root  
4 cause, so I will adopt your term. Maybe it was Mr. Agneshwar's  
5 term. It seems to me the sooner we can get that resolved, the  
6 better, simply because of this.

7 If the Court's ruling is, on the one hand, they did  
8 take reasonable steps, then a lot of other things go away or  
9 maybe the negotiations change or -- it doesn't mean they still  
10 don't have an obligation to make document productions of  
11 relevant and proportional documents in the case, but it may  
12 streamline some other things.

13 On the flip side, if the Court rules they didn't take  
14 reasonable steps, then the negotiations may go in a different  
15 direction and the parties will have to strike different  
16 agreements, etc. I have no view on that, I haven't seen the  
17 evidence, I don't know, but it seemed to me, and this is what I  
18 wanted to talk to you all about today, that is a historical  
19 fact. Whatever happened, happened.

20 That is why I am glad to hear and wanted to push you a  
21 little bit to get that discovery started, because it seems to  
22 me, when that discovery is ended the parties can bring that  
23 issue to the Court, even if you bring it to the Court as a  
24 discrete issue, because it seems to me that node in the  
25 decision tree is a very important node to reach. That was my



1 final thought on that.

2 Mr. Gilbert, if you have any followup or any response,  
3 I will be happy to hear you, and then I will turn to Mr.  
4 Agneshwar.

5 MR. GILBERT: Your Honor, we appreciate your comments  
6 and we understand them, and I think that the agreement that we  
7 finally reached this week will enable us to move forward with  
8 this discovery, will help us uncover those historical facts, to  
9 use your phrase, and allow us on the Plaintiffs' side to make  
10 an assessment as to what those historical facts show under the  
11 guise of Rule 37.

12 My anticipation -- I haven't charted out every detail  
13 in terms of the timeline, but my anticipation is, based on that  
14 agreement, that this first phase of the discovery as provided  
15 for under the agreement will be completed -- I am thinking out  
16 loud here, which is always dangerous -- but will be completed,  
17 based on our agreed upon schedule, by -- before the end of the  
18 summer. Let's put it that way.

19 THE COURT: Okay.

20 MR. GILBERT: I think it is a little bit sooner, but I  
21 don't want to say an earlier date and find out afterwards that  
22 I was mistaken.

23 THE COURT: I can assure you, I don't wake up every  
24 morning checking Pacer to see whether you filed a Rule 37  
25 motion, so you are not wasting my time.

1           I guess the message I wanted to send is, it would seem  
2 to me it might make sense to bifurcate those issues, that if  
3 that issue becomes ripe before the remediation issue is  
4 finalized, to go ahead and tee it up and let the Court rule on  
5 that discrete issue because that might streamline some things  
6 for everyone else, but I will defer to you. You litigate your  
7 case the way you want to litigate your case.

8           *MR. GILBERT:* If you don't mind me responding quickly  
9 to that, if we had been -- I am not trying to suggest that -- I  
10 am not casting aspersions here. If we had started with -- if  
11 we had been able to start with this discovery of root cause  
12 historical facts in January, it might have been completed  
13 before remediation efforts were completed, but we were unable  
14 to reach agreement on that until just this week.

15           So, now we will begin on that and I sense that the  
16 root cause historical fact discovery will be completed right  
17 about the same time the remediation for the tranche two  
18 custodians is completed.

19           *THE COURT:* Again, if that is ripe and it makes sense  
20 to tee them up at the same time, I will hear you on whatever  
21 you file. I wanted to make sure you understood -- maybe this  
22 is the better way to put it:

23           If you decide that it makes sense to bifurcate it, the  
24 Court is fine with that. We can do a bifurcated Rule 37 set of  
25 proceedings if that makes sense.

1           Let me hear from Mr. Agneshwar.

2           *MR. AGNESHWAR:* Thank you, your Honor. That is  
3 definitely something that we can consider. I will say the  
4 reason that we have been focusing so much on remediation is  
5 because of the schedule in the case that requires --

6           *THE COURT:* And because I told you to.

7           *MR. AGNESHWAR:* Exactly. Our number one goal has been  
8 to get to the Plaintiffs as quickly as we possibly could all  
9 the discovery that we could, that we could reasonably get them  
10 that they say they need for these various purposes. So, that  
11 has been our number one priority.

12           I am glad that we have reached some agreements on the  
13 root cause analysis as well, and I think Mr. Gilbert's  
14 recitation of the timeline is pretty accurate. I think it is  
15 more like mid summer, but definitely something in that  
16 timeframe.

17           *THE COURT:* Very well. Unless either side has  
18 anything else, I am satisfied I understand and I have  
19 adequately addressed those issues.

20           Anything else, Mr. Agneshwar, on those issues before  
21 we turn to the clawback issue?

22           *MR. AGNESHWAR:* No, your Honor.

23           *THE COURT:* Mr. Gilbert, anything else on those issues  
24 before we turn to the clawback issue?

25           *MR. GILBERT:* No, your Honor, and for the clawback

1 issues, I am going to turn it over to Mr. McGlamry.

2 *THE COURT:* Very well.

3 *MR. McGLAMRY:* Thank you, your Honor.

4 *THE COURT:* Good morning, Mr. McGlamry.

5 This is what I understand from the special master. I  
6 have to tell you this is a fascinating question, it is not a  
7 question I have dealt with before.

8 As I understand it, documents were produced by Sanofi  
9 which Sanofi now is arguing they should not have been produced  
10 and should be given back. I believe the underlying claim is  
11 that they are either attorney/client or work product privilege,  
12 or maybe both, that attaches to those documents.

13 As the party asserting a privilege, Sanofi has a  
14 burden to try to prove the documents are in fact privileged,  
15 and that Sanofi had proposed that it would submit to the Court  
16 the documents themselves, which I think everyone has seen, so I  
17 don't know that there is any objection to the Court seeing the  
18 actual documents, but that Sanofi had also wanted to supplement  
19 that with ex parte declarations or affidavits to try to  
20 establish the privilege.

21 I hear both sides on this. Sanofi's position is, if  
22 we have to tell the other side why it is privileged we are  
23 blowing up the privilege. It is circular, then there is no  
24 privilege anymore.

25 The Plaintiffs' position is, we live in an adversarial

1 litigation system where people don't get to litigate ex  
2 parte and talk to the Court without us knowing what they are  
3 telling them. How can we adequately challenge Sanofi's  
4 privilege assertion if we don't get to see what they are  
5 saying?

6 Candidly, I think there is merit on both sides of that  
7 argument and I don't know how that issue gets resolved. I know  
8 it would benefit me greatly to have the brilliant minds that  
9 are on both sides of this case educate me, so that is my  
10 feeling. I think I would greatly benefit from briefing on the  
11 issue.

12 Hopefully some other judge smarter than me has already  
13 decided the issue, but I don't know that. That is where I am  
14 coming from. I wanted to talk to you about that and make sure  
15 that we are all on the same page.

16 Mr. McGlamry, let me hear from you.

17 *MR. McGLAMRY:* Thank you, your Honor. Mike McGlamry  
18 on behalf of Plaintiffs.

19 I think you summed it up pretty well. We had some  
20 discussions this past weekend where this issue came up and  
21 ultimately, as your Honor knows from the email that Ms. Sharpe  
22 sent in, we have agreed on sort of an accelerated briefing  
23 schedule where Sanofi will submit a brief this -- well, today,  
24 and we will respond next Friday and they will have until  
25 Wednesday of the following week to reply and, you know,

1 depending on how that goes or whether they reply at all, I  
2 think they would notify us all whether they were having a  
3 reply, and we will get that issue resolved, and then get to the  
4 underlying clawback. There is a redaction component of that as  
5 well, but it is essentially the same.

6 Yes, I think we had good discussions this week to get  
7 to that point. Once we get that issue resolved, then we can  
8 move on to the actual underlying clawback redaction issues.

9 *THE COURT:* If I understand you correctly, under the  
10 proposed schedule, the latest that this issue will be fully  
11 briefed is May 19th, a week from Wednesday?

12 *MR. McGLAMRY:* That is correct, your Honor.

13 *THE COURT:* Would you all be looking for me to try to  
14 have a hearing the following week, the week of May 24th?

15 *MR. McGLAMRY:* That would be fine, your Honor.

16 *THE COURT:* Let me hear from Mr. Agneshwar.

17 *MR. AGNESHWAR:* Thank you, your Honor. You described  
18 the issue exactly right. Having spent some time pouring over  
19 the Court's Diamond Resorts case, I know the burden we have to  
20 meet to be able to show certain documents are privileged. I  
21 also know from looking at these emails and from litigating this  
22 issue multiple times, sometimes it is not so clear from the  
23 face of the documents what the context is and why it is  
24 privileged.

25 As your Honor pointed out, how do we explain that to

1 the Court without divulging privileged information? So, that  
2 is our position. I think it is supported by case law within  
3 the 11th Circuit and elsewhere. It is the way I have litigated  
4 these issues in the past, but we will brief it.

5 The one thing I am not sure about is, after this  
6 briefing is done, if your Honor wants to get us on a call like  
7 this, a Zoom call like this and have an argument about that,  
8 and then your Honor will give it an up or down and then we will  
9 move forward, or if your Honor is just going to rule based on  
10 the papers.

11 *THE COURT:* I like oral argument, I find it educates  
12 me, it is a way that I learn well. I think it gives the  
13 parties a chance to fill in some gaps that you just can't -- as  
14 good a writer as somebody may be, you can't always say things  
15 quite as well and you can't always answer the question quite as  
16 well as you might like to.

17 So, my general default is on substantive motions I  
18 like to have oral argument. If a party is requesting oral  
19 argument, I always grant oral argument. If you are asking, the  
20 answer is yes, I will give you an oral argument on that.

21 I agree that is the first step. The first step is, I  
22 should rule on this issue and then we need to set a hearing  
23 because, one way or the other, you have a burden to meet. Even  
24 if you are allowed to submitted this ex parte, the other side  
25 has a right to try to challenge that, call their own witnesses,

1 and do whatever they want to try to do. I think it does have  
2 to be a two-step process.

3 Are you asking for oral argument, Mr. Agneshwar, or  
4 you want to put that in your motion?

5 *MR. AGNESHWAR:* Yes, I would like oral argument on  
6 that.

7 *THE COURT:* Mr. McGlamry, let me hear from you.

8 *MR. McGLAMRY:* Yes, your Honor. I didn't realize we  
9 were going to argue this and I, obviously, do not agree with  
10 Mr. Agneshwar's --

11 *THE COURT:* I understand that. I am not here to  
12 resolve the substantive issues.

13 *MR. McGLAMRY:* Suffice it to say we do not agree with  
14 their position. We are fine to have an oral argument if that  
15 is what your Honor wants or if that is what Mr. Agneshwar  
16 suggests. We just think the Court needs to address this, and I  
17 know you will.

18 *THE COURT:* Okay. I know you are so busy and working  
19 so hard, I want to grab you while I still have you. How does  
20 Monday, May 24th, in the afternoon look for counsel?

21 I can do Monday the 24th. That will give me a couple  
22 of days to actually read the pleadings. Now, I have never  
23 known a lawyer who passed up on being able to file a reply  
24 brief, so maybe this will be the first time and Sanofi will  
25 waive their right to file a reply and then we can schedule the



1 motion argument earlier, but I am going to assume they are  
2 going to file a reply brief.

3 So, I guess I could do the morning of the 24th at nine  
4 o'clock, the afternoon of the 24th. I could do it the morning  
5 of the 25th. Mr. McGlamry, any preference from you?

6 *MR. McGLAMRY:* Your Honor, I am happy with any of  
7 those times, whatever works best with the Court. If I had my  
8 preference, it would probably be the afternoon of the 24th.

9 *THE COURT:* Okay. Mr. Agneshwar.

10 *MR. AGNESHWAR:* That is when I can't do it, but I can  
11 do the morning of the 25th.

12 *THE COURT:* How about the morning of the 26th,  
13 counsel?

14 *MR. McGLAMRY:* Your Honor, Mike McGlamry. That is  
15 fine with Plaintiffs.

16 *MR. AGNESHWAR:* Fine with me, your Honor.

17 *THE COURT:* Why don't we do 10:00 o'clock on the  
18 morning of May 26th, set aside that time for oral argument on  
19 the motions that haven't been filed yet. Great, and I don't  
20 know if I will rule from the bench or not. If I don't, I will  
21 get a ruling out right away and then we will go to the next  
22 step.

23 Mr. McGlamry, was there anything else on the clawback  
24 issue that you wanted to raise this morning?

25 *MR. McGLAMRY:* No, your Honor, I think that handled

1 it. Thank you.

2 *THE COURT:* Mr. Agneshwar, anything else?

3 *MR. AGNESHWAR:* No, that's it, your Honor.

4 *THE COURT:* That is everything I wanted to cover.

5 Anything else from the Plaintiffs that you wanted to discuss?

6 *MR. GILBERT:* No, your Honor, not today, thank you.

7 *THE COURT:* Mr. Agneshwar, anything else on behalf of  
8 Sanofi?

9 *MR. AGNESHWAR:* No, your Honor. Thank you very much  
10 for this.

11 *THE COURT:* Everybody have a good, healthy, and safe  
12 weekend and I will see you the next time I see you. Have a  
13 good day, everybody.

14 *MR. McGLAMRY:* Thank you, your Honor.

15 *MR. AGNESHWAR:* Thank you.

16 *(Thereupon, the hearing was concluded.)*

17 \* \* \*

18 I certify that the foregoing is a correct transcript  
19 from the record of proceedings in the above matter.

20

21 Date: May 10, 2021

22 /s/ Pauline A. Stipes, Official Federal Reporter

23 Signature of Court Reporter

24

25

MR. AGNESHWAR: [13] 3/11 7/21 9/5 19/1 19/6 19/21 22/16 24/4 25/9 25/15 26/2 26/8 26/14 MR. GILBERT: [12] 3/6 3/19 3/23 7/4 12/3 12/25 15/14 17/4 17/19 18/7 19/24 26/5 MR. McGLAMRY: [10] 20/2 21/16 22/11 22/14 24/7 24/12 25/5 25/13 25/24 26/13 MS. SHARPE: [1] 3/13 THE COURT: [33]	772.467.2337 [1] 2/2 <b>8</b> 8011 [1] 1/23 <b>A</b> able [5] 6/9 9/12 18/11 22/20 24/23 about [22] 4/18 5/15 6/3 7/1 7/16 8/13 8/18 8/24 9/10 9/14 11/6 12/17 13/19 14/1 14/13 15/23 16/18 18/17 21/14 23/5 23/7 25/12 above [1] 26/19 absolute [1] 6/16 absolutely [1] 12/19 accelerated [1] 21/22 accurate [2] 13/4 19/14 actual [2] 20/18 22/8 actually [3] 4/12 7/9 24/22 additional [5] 6/14 6/15 9/3 10/19 11/6 address [1] 24/16 addressed [1] 19/19 addressing [1] 7/12 adequately [2] 19/19 21/3 adopt [1] 16/4 adversarial [1] 20/25 advisement [1] 10/20 advocate [1] 13/12 affected [1] 9/21 affects [1] 9/17 affidavits [1] 20/19 after [2] 11/4 23/5 afternoon [3] 24/20 25/4 25/8 afterwards [1] 17/21 again [5] 4/11 6/8 12/4 14/6 18/19 AGNESHWAR [20] 1/21 3/11 3/13 7/10 7/21 7/23 11/23 12/11 13/4 13/11 13/21 17/4 19/1 19/20 22/16 24/3 24/15 25/9 26/2 26/7 Agneshwar's [2] 16/4 24/10 ago [1] 13/17 agree [6] 9/1 9/8 9/9 23/21 24/9 24/13 agreed [5] 6/15 8/25 14/3 17/17 21/22 agreement [8] 8/21 9/12 13/19 14/2 17/6 17/14 17/15 18/14 agreements [5] 8/16 9/7 13/14 16/16 19/12 ahead [1] 18/4 all [20] 3/16 3/25 6/3 7/3 7/24 9/4 9/25 11/13 11/13 11/14 11/16 13/3 14/11 14/14 16/18 19/8 21/15 22/1 22/2 22/13 allow [3] 7/9 7/14 17/9 allowed [1] 23/24 along [5] 8/16 9/7 13/15 14/11 15/17 already [2] 6/25 21/12 also [4] 8/8 13/21 20/18 22/21	always [8] 5/19 10/13 15/9 15/23 17/16 23/14 23/15 23/19 am [19] 7/6 7/17 8/15 8/22 9/1 13/25 15/9 16/20 17/15 18/9 18/10 19/12 19/18 20/1 21/13 23/5 24/11 25/1 25/6 analysis [2] 8/7 19/13 ANAND [3] 1/21 3/12 7/22 and I [1] 16/1 another [1] 8/20 answer [4] 12/6 12/19 23/15 23/20 answers [1] 8/11 anticipate [2] 4/15 5/7 anticipation [2] 17/12 17/13 any [9] 5/21 5/25 14/2 14/13 17/2 17/2 20/17 25/5 25/6 anymore [1] 20/24 anything [8] 11/6 19/18 19/20 19/23 25/23 26/2 26/5 26/7 apologize [1] 7/8 appearances [2] 3/5 7/8 applaud [1] 4/4 appreciate [7] 7/15 7/20 7/24 11/13 14/10 16/1 17/5 appropriate [2] 12/3 14/9 April [1] 10/9 are [63] argue [1] 24/9 arguing [1] 20/9 argument [12] 21/7 23/7 23/11 23/18 23/19 23/19 23/20 24/3 24/5 24/14 25/1 25/18 arise [1] 9/2 arises [1] 11/16 Arnold [5] 1/19 1/22 3/13 3/15 7/23 arose [1] 11/19 as [42] aside [1] 25/18 ask [1] 11/8 asked [3] 5/22 9/14 16/2 asking [3] 14/20 23/19 24/3 aspect [1] 16/2 aspersions [1] 18/10 asserting [1] 20/13 assertion [1] 21/4 assessment [1] 17/10 assisting [1] 12/13 assume [4] 6/7 9/1 15/5 25/1 assure [1] 17/23 Atlanta [1] 1/12 attaches [1] 20/12 attention [1] 13/6 attorney [1] 20/11 attorney/client [1] 20/11 available [1] 5/5 Avenue [1] 1/19 away [2] 16/8 25/21 <b>B</b> back [3] 4/9 8/13 20/10 background [1] 4/6 based [4] 12/14 17/13 17/17 23/9
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<p><b>complicated</b> [1] 13/8</p> <p><b>component</b> [1] 22/4</p> <p><b>concept</b> [1] 12/25</p> <p><b>concepts</b> [1] 12/25</p> <p><b>concluded</b> [1] 26/16</p> <p><b>concur</b> [3] 13/3 13/16 13/21</p> <p><b>conference</b> [5] 1/8 3/3 7/25 8/4 13/7</p> <p><b>conferring</b> [1] 11/6</p> <p><b>confers</b> [1] 11/5</p> <p><b>confidence</b> [1] 14/6</p> <p><b>confidential</b> [2] 8/2 8/23</p> <p><b>consider</b> [2] 5/8 19/3</p> <p><b>consultant</b> [5] 8/6 8/17 8/18 10/5 10/19</p> <p><b>consultants</b> [3] 10/18 12/12 13/23</p> <p><b>context</b> [2] 11/16 22/23</p> <p><b>context as</b> [1] 11/16</p> <p><b>continue</b> [1] 14/8</p> <p><b>conversation</b> [2] 7/11 16/1</p> <p><b>conversations</b> [1] 7/14</p> <p><b>correct</b> [2] 22/12 26/18</p> <p><b>correctly</b> [1] 22/9</p> <p><b>could</b> [9] 4/6 5/20 11/20 12/2 19/8 19/9 19/9 25/3 25/4</p>	<p><b>counsel</b> [6] 3/6 3/8 7/6 12/12 24/20 25/13</p> <p><b>couple</b> [1] 24/21</p> <p><b>course</b> [2] 12/22 15/5</p> <p><b>court</b> [27]</p> <p><b>Court's</b> [3] 13/6 16/7 22/19</p> <p><b>cover</b> [1] 26/4</p> <p><b>covers</b> [1] 8/21</p> <p><b>custodial</b> [1] 9/16</p> <p><b>custodians</b> [6] 6/15 9/17 9/18 9/22 11/2 18/18</p> <hr/> <p><b>D</b></p> <p><b>D.C</b> [1] 1/20</p> <p><b>dangerous</b> [1] 17/16</p> <p><b>date</b> [2] 17/21 26/21</p> <p><b>day</b> [2] 4/19 26/13</p> <p><b>days</b> [4] 10/25 11/3 13/17 24/22</p> <p><b>de</b> [2] 1/15 10/2</p> <p><b>de-duplication</b> [1] 10/2</p> <p><b>deal</b> [2] 4/13 4/14</p> <p><b>dealt</b> [1] 20/7</p> <p><b>December</b> [1] 13/5</p> <p><b>decide</b> [3] 11/9 15/7 18/23</p> <p><b>decided</b> [3] 8/8 10/17 21/13</p> <p><b>decides</b> [1] 15/5</p> <p><b>decision</b> [4] 11/25 14/17 14/25 16/25</p> <p><b>declarations</b> [1] 20/19</p> <p><b>default</b> [1] 23/17</p> <p><b>Defendant</b> [1] 3/4</p> <p><b>DEFENDANTS</b> [1] 1/18</p> <p><b>defer</b> [1] 18/6</p> <p><b>deference</b> [1] 7/13</p> <p><b>definitely</b> [2] 19/3 19/15</p> <p><b>definitive</b> [1] 10/14</p> <p><b>delay</b> [1] 11/19</p> <p><b>deletion</b> [1] 12/7</p> <p><b>depending</b> [1] 22/1</p> <p><b>depositions</b> [1] 11/20</p> <p><b>deprive</b> [1] 5/4</p> <p><b>described</b> [1] 22/17</p> <p><b>designated</b> [1] 8/2</p> <p><b>destruction</b> [1] 12/7</p> <p><b>detail</b> [1] 17/12</p> <p><b>detailed</b> [1] 8/7</p> <p><b>details</b> [1] 8/24</p> <p><b>determine</b> [1] 5/17</p> <p><b>dialogue</b> [1] 14/25</p> <p><b>Diamond</b> [1] 22/19</p> <p><b>did</b> [8] 3/17 4/19 4/21 4/22 8/5 13/18 15/2 16/7</p> <p><b>diddle</b> [1] 9/10</p> <p><b>didn't</b> [4] 11/22 14/1 16/13 24/8</p> <p><b>different</b> [3] 5/4 16/14 16/15</p> <p><b>difficult</b> [1] 13/17</p> <p><b>diligence</b> [2] 5/10 5/17</p> <p><b>direction</b> [1] 16/15</p> <p><b>direction and</b> [1] 16/15</p> <p><b>disagreements</b> [1] 13/15</p> <p><b>discovery</b> [23] 1/8 3/3 4/22 4/23 5/16 5/20 6/1 6/1 6/2 6/3 8/22 8/25 9/2 9/3 9/10 13/19 16/21 16/22 17/8 17/14 18/11 18/16 19/9</p>
<p><b>C</b></p> <p><b>call</b> [4] 7/17 23/6 23/7 23/25</p> <p><b>came</b> [1] 21/20</p> <p><b>can</b> [22] 4/22 4/23 5/17 8/12 10/2 12/13 13/11 14/25 15/13 15/21 15/21 15/23 16/5 16/22 17/23 18/24 19/3 21/3 22/7 24/21 24/25 25/10</p> <p><b>can't</b> [4] 23/13 23/14 23/15 25/10</p> <p><b>Candidly</b> [1] 21/6</p> <p><b>case</b> [14] 1/3 3/1 5/4 15/4</p>		

<p><b>D</b></p> <p><b>discrete</b> [2] 16/24 18/5</p> <p><b>discuss</b> [1] 26/5</p> <p><b>discussed</b> [1] 13/7</p> <p><b>discussing</b> [1] 10/21</p> <p><b>discussion</b> [3] 4/21 6/14 9/4</p> <p><b>discussions</b> [4] 8/13 13/15 21/20 22/6</p> <p><b>dispute</b> [1] 7/18</p> <p><b>DISTRICT</b> [3] 1/1 1/1 3/2</p> <p><b>DIVISION</b> [1] 1/2</p> <p><b>divulging</b> [1] 23/1</p> <p><b>do</b> [28]</p> <p><b>document</b> [1] 16/10</p> <p><b>documents</b> [14] 8/12 10/7 10/8 10/9 10/10 10/25 16/11 20/8 20/12 20/14 20/16 20/18 22/20 22/23</p> <p><b>does</b> [2] 24/1 24/19</p> <p><b>doesn't</b> [2] 14/13 16/9</p> <p><b>doing</b> [7] 6/4 9/14 9/19 9/19 10/6 11/8 16/2</p> <p><b>don't</b> [19] 9/5 9/8 9/9 13/25 14/25 15/11 16/10 16/17 17/21 17/23 18/8 20/17 21/1 21/4 21/7 21/13 25/17 25/19 25/20</p> <p><b>done</b> [10] 5/3 6/11 6/17 6/18 6/23 11/21 14/22 15/1 15/5 23/6</p> <p><b>down</b> [1] 23/8</p> <p><b>due</b> [3] 5/10 5/17 11/17</p> <p><b>duplication</b> [1] 10/2</p> <p><b>duplicative</b> [1] 10/4</p> <p><b>during</b> [1] 14/21</p>	<p>15/24</p> <p><b>equally</b> [1] 13/13</p> <p><b>ESQ</b> [4] 1/10 1/14 1/18 1/21</p> <p><b>essentially</b> [1] 22/5</p> <p><b>establish</b> [3] 6/9 6/10 20/20</p> <p><b>etc</b> [3] 5/13 6/16 16/16</p> <p><b>even</b> [3] 4/7 16/23 23/23</p> <p><b>ever</b> [1] 6/18</p> <p><b>every</b> [3] 9/10 17/12 17/23</p> <p><b>everybody</b> [4] 3/1 9/20 26/11 26/13</p> <p><b>everyone</b> [2] 18/6 20/16</p> <p><b>everything</b> [2] 9/8 26/4</p> <p><b>evidence</b> [1] 16/17</p> <p><b>ex</b> [3] 20/19 21/1 23/24</p> <p><b>exactly</b> [3] 15/16 19/7 22/18</p> <p><b>excuse</b> [1] 3/20</p> <p><b>expect</b> [2] 7/11 10/10</p> <p><b>experts</b> [1] 15/15</p> <p><b>explain</b> [1] 22/25</p>	<p><b>forward</b> [4] 13/20 15/22 17/7 23/9</p> <p><b>Friday</b> [1] 21/24</p> <p><b>Ft</b> [1] 2/2</p> <p><b>full</b> [1] 14/6</p> <p><b>fully</b> [2] 5/7 22/10</p> <p><b>further</b> [1] 9/4</p>
<p><b>E</b></p> <p><b>earlier</b> [4] 11/15 14/15 17/21 25/1</p> <p><b>easy</b> [1] 9/23</p> <p><b>educate</b> [1] 21/9</p> <p><b>educates</b> [1] 23/11</p> <p><b>effect</b> [1] 11/24</p> <p><b>efficient</b> [2] 14/9 15/20</p> <p><b>effort</b> [2] 10/24 14/7</p> <p><b>efforts</b> [5] 9/13 11/11 12/16 14/4 18/13</p> <p><b>either</b> [6] 5/11 7/4 11/7 14/4 19/17 20/11</p> <p><b>else</b> [9] 11/6 18/6 19/18 19/20 19/23 25/23 26/2 26/5 26/7</p> <p><b>elsewhere</b> [1] 23/3</p> <p><b>email</b> [6] 8/23 9/16 12/7 13/6 13/19 21/21</p> <p><b>emails</b> [8] 3/17 4/10 4/17 9/20 9/21 9/25 11/4 22/21</p> <p><b>embarking</b> [1] 13/20</p> <p><b>enable</b> [1] 17/7</p> <p><b>end</b> [4] 10/9 10/11 11/1 17/17</p> <p><b>ended</b> [1] 16/22</p> <p><b>ends</b> [1] 4/21</p> <p><b>engaging</b> [1] 11/11</p> <p><b>enough</b> [5] 6/17 6/18 6/23 10/13 15/5</p> <p><b>entitled</b> [4] 5/1 8/14 14/17</p>	<p><b>F</b></p> <p><b>face</b> [1] 22/23</p> <p><b>fact</b> [4] 4/17 16/19 18/16 20/14</p> <p><b>factor</b> [2] 12/19 12/21</p> <p><b>factored</b> [1] 12/1</p> <p><b>factors</b> [2] 4/19 12/8</p> <p><b>facts</b> [3] 17/8 17/10 18/12</p> <p><b>faith</b> [1] 5/11</p> <p><b>far</b> [2] 9/11 11/11</p> <p><b>fascinated</b> [1] 15/9</p> <p><b>fascinating</b> [1] 20/6</p> <p><b>fast</b> [1] 12/13</p> <p><b>February</b> [1] 8/6</p> <p><b>Federal</b> [2] 4/13 26/22</p> <p><b>feeling</b> [1] 21/10</p> <p><b>felt</b> [1] 11/22</p> <p><b>Ferguson</b> [1] 1/14</p> <p><b>few</b> [1] 13/17</p> <p><b>fight</b> [1] 15/23</p> <p><b>file</b> [5] 5/9 18/21 24/23 24/25 25/2</p> <p><b>filed</b> [4] 5/6 5/21 17/24 25/19</p> <p><b>filing</b> [3] 5/8 11/17 12/9</p> <p><b>fill</b> [1] 23/13</p> <p><b>final</b> [1] 17/1</p> <p><b>finalized</b> [1] 18/4</p> <p><b>finally</b> [2] 13/18 17/7</p> <p><b>find</b> [2] 17/21 23/11</p> <p><b>fine</b> [5] 18/24 22/15 24/14 25/15 25/16</p> <p><b>finish</b> [1] 12/15</p> <p><b>first</b> [15] 6/2 6/8 7/10 7/14 7/21 7/24 8/4 11/19 12/6 13/3 13/5 17/14 23/21 23/21 24/24</p> <p><b>FL</b> [3] 1/5 1/16 2/2</p> <p><b>flip</b> [1] 16/13</p> <p><b>FLORIDA</b> [1] 1/1</p> <p><b>focusing</b> [1] 19/4</p> <p><b>following</b> [3] 4/7 21/25 22/14</p> <p><b>followup</b> [3] 8/10 9/2 17/2</p> <p><b>foregoing</b> [1] 26/18</p> <p><b>forgot</b> [1] 7/16</p> <p><b>forth</b> [2] 8/13 14/7</p>	<p><b>G</b></p> <p><b>GA</b> [1] 1/12</p> <p><b>gaps</b> [1] 23/13</p> <p><b>general</b> [1] 23/17</p> <p><b>generally</b> [1] 13/3</p> <p><b>get</b> [22] 3/17 6/7 6/21 9/25 11/20 12/24 14/24 15/14 15/20 15/20 16/5 16/21 19/8 19/9 21/1 21/4 22/3 22/3 22/6 22/7 23/6 25/21</p> <p><b>gets</b> [1] 21/7</p> <p><b>getting</b> [1] 6/22</p> <p><b>GILBERT</b> [13] 1/14 1/15 3/6 3/8 3/23 7/3 7/6 7/20 11/14 11/15 12/4 17/2 19/23</p> <p><b>Gilbert's</b> [1] 19/13</p> <p><b>give</b> [6] 4/6 7/2 12/17 23/8 23/20 24/21</p> <p><b>given</b> [1] 20/10</p> <p><b>gives</b> [1] 23/12</p> <p><b>glad</b> [2] 16/20 19/12</p> <p><b>go</b> [6] 7/14 7/21 16/8 16/14 18/4 25/21</p> <p><b>goal</b> [3] 11/3 14/15 19/7</p> <p><b>goes</b> [1] 22/1</p> <p><b>going</b> [26] 4/8 5/9 5/16 5/25 6/1 6/2 6/9 6/24 7/17 8/8 9/1 9/8 9/9 11/7 11/24 12/1 12/8 12/17 13/20 14/24 15/20 20/1 23/9 24/9 25/1 25/2</p> <p><b>gone</b> [2] 15/11 15/11</p> <p><b>good</b> [19] 3/1 3/6 3/7 3/10 3/10 3/12 3/14 3/16 4/1 4/4 5/9 5/11 12/23 14/24 20/4 22/6 23/14 26/11 26/13</p> <p><b>gotten</b> [1] 14/23</p> <p><b>grab</b> [1] 24/19</p> <p><b>grant</b> [1] 23/19</p> <p><b>great</b> [2] 15/18 25/19</p> <p><b>greatly</b> [2] 21/8 21/10</p> <p><b>guess</b> [3] 9/6 18/1 25/3</p> <p><b>guise</b> [1] 17/11</p>
		<p><b>H</b></p> <p><b>had</b> [18] 3/25 4/10 5/22 7/11 8/4 8/17 9/25 9/25 10/1 15/25 18/9 18/10 18/11 20/15 20/18 21/19 22/6 25/7</p> <p><b>hand</b> [1] 16/7</p> <p><b>handled</b> [1] 25/25</p> <p><b>happened</b> [3] 8/5 16/19 16/19</p> <p><b>happening</b> [1] 3/21</p> <p><b>happens</b> [1] 4/12</p> <p><b>happy</b> [3] 8/22 17/3 25/6</p> <p><b>hard</b> [1] 24/19</p> <p><b>has</b> [25] 4/15 5/6 6/13 6/13 6/14 6/16 8/15 9/20 9/23 10/3 10/4 11/25 12/11 13/4 14/11 14/19 15/4 16/2 19/7 19/11 19/17 20/13 20/16</p>

<b>H</b>	<b>its</b> [1] 15/4	<b>lot</b> [6] 3/19 3/22 7/11 7/20 8/1 16/8
<b>has...</b> [2] 21/12 23/25	<b>J</b>	<b>loud</b> [1] 17/16
<b>hasn't</b> [1] 5/12	<b>January</b> [4] 4/9 8/3 13/7 18/12	<b>M</b>
<b>have</b> [87]	<b>January 6th</b> [1] 13/7	<b>made</b> [8] 3/19 4/4 7/8 9/7 9/11 10/5 14/10 14/11
<b>haven't</b> [5] 6/19 14/22 16/16 17/12 25/19	<b>joined</b> [1] 7/6	<b>MAGISTRATE</b> [1] 1/9
<b>having</b> [3] 11/19 22/2 22/18	<b>jot</b> [1] 9/10	<b>make</b> [12] 4/5 10/15 11/25 12/23 14/15 14/16 14/25 16/10 17/9 18/2 18/21 21/14
<b>he</b> [2] 7/10 12/14	<b>judge</b> [8] 1/9 3/20 7/9 12/2 12/4 12/23 13/1 21/12	<b>makes</b> [3] 18/19 18/23 18/25
<b>healthy</b> [1] 26/11	<b>July</b> [2] 10/11 12/16	<b>making</b> [4] 3/16 3/22 10/2 12/1
<b>hear</b> [12] 6/5 7/3 7/25 11/14 16/20 17/3 18/20 19/1 20/21 21/16 22/16 24/7	<b>July 30th</b> [1] 12/16	<b>manner</b> [2] 14/9 15/21
<b>hearing</b> [4] 7/12 22/14 23/22 26/16	<b>just</b> [17] 3/19 4/4 4/6 6/21 8/3 8/20 12/6 12/14 12/17 12/23 13/16 14/12 15/7 18/14 23/9 23/13 24/16	<b>many</b> [3] 10/8 12/25 13/15
<b>help</b> [2] 13/2 17/8	<b>K</b>	<b>Massachusetts</b> [1] 1/19
<b>helpful</b> [1] 11/14	<b>Kaye</b> [2] 1/19 1/22	<b>master</b> [3] 3/18 7/18 20/5
<b>here</b> [4] 3/3 17/16 18/10 24/11	<b>keep</b> [3] 8/1 11/7 15/25	<b>material</b> [2] 11/24 11/24
<b>high</b> [1] 8/1	<b>kind</b> [1] 7/25	<b>matter</b> [1] 26/19
<b>highly</b> [2] 8/2 8/23	<b>knock</b> [1] 10/15	<b>matters</b> [1] 3/4
<b>him</b> [1] 7/14	<b>know</b> [20] 9/4 11/16 11/18 11/22 12/23 15/6 15/10 15/11 15/12 16/17 20/17 21/7 21/7 21/13 21/25 22/19 22/21 24/17 24/18 25/20	<b>may</b> [18] 1/5 3/7 4/16 6/10 6/23 7/5 7/18 10/21 11/1 15/24 16/11 16/14 22/11 22/14 23/14 24/20 25/18 26/21
<b>his</b> [4] 7/7 12/11 12/12 13/12	<b>knowing</b> [2] 15/4 21/2	<b>maybe</b> [6] 9/11 16/4 16/9 18/21 20/12 24/24
<b>historical</b> [5] 16/18 17/8 17/10 18/12 18/16	<b>known</b> [1] 24/23	<b>McGLAMRY</b> [12] 1/10 1/11 7/7 13/12 20/1 20/4 21/16 21/17 24/7 25/5 25/14 25/23
<b>HON</b> [1] 2/1	<b>knows</b> [3] 9/11 9/15 21/21	<b>md</b> [1] 1/3
<b>Honor</b> [38]	<b>Kopelowitz</b> [1] 1/14	<b>me</b> [36]
<b>Honor's</b> [1] 7/24	<b>L</b>	<b>mean</b> [2] 14/13 16/9
<b>HONORABLE</b> [1] 1/8	<b>late</b> [2] 8/6 13/5	<b>means</b> [2] 11/1 12/20
<b>hope</b> [1] 13/13	<b>later</b> [1] 15/23	<b>meet</b> [4] 8/17 11/5 22/20 23/23
<b>hopefully</b> [2] 10/15 21/12	<b>latest</b> [1] 22/10	<b>meeting</b> [3] 10/18 11/6 13/22
<b>how</b> [9] 13/19 15/9 15/11 21/3 21/7 22/1 22/25 24/19 25/12	<b>law</b> [1] 23/2	<b>memo</b> [1] 3/17
<b>hurdle</b> [1] 6/8	<b>lawyer</b> [1] 24/23	<b>mention</b> [2] 7/7 7/16
<b>I</b>	<b>lawyers</b> [2] 5/9 13/23	<b>merit</b> [1] 21/6
<b>I'd</b> [1] 7/14	<b>learn</b> [1] 23/12	<b>message</b> [1] 18/1
<b>ideas</b> [1] 10/19	<b>learned</b> [1] 10/12	<b>Miami</b> [1] 1/16
<b>identified</b> [1] 9/16	<b>least</b> [8] 5/8 5/19 5/22 5/24 10/15 11/18 14/20 15/4	<b>MICHAEL</b> [1] 1/10
<b>identify</b> [1] 10/2	<b>Leon</b> [1] 1/15	<b>microphone</b> [2] 3/21 4/1
<b>imagine</b> [3] 8/12 9/24 13/11	<b>let</b> [15] 3/5 3/5 4/6 7/3 7/21 7/21 8/3 9/13 11/14 12/6 18/4 19/1 21/16 22/16 24/7	<b>mid</b> [1] 19/15
<b>impeding</b> [1] 11/23	<b>let's</b> [4] 5/23 6/7 15/25 17/18	<b>might</b> [5] 9/24 18/2 18/5 18/12 23/16
<b>implement</b> [1] 9/24	<b>letting</b> [1] 7/1	<b>Mike</b> [3] 7/7 21/17 25/14
<b>implicit</b> [1] 14/1	<b>level</b> [1] 8/1	<b>mind</b> [2] 7/9 18/8
<b>important</b> [2] 15/18 16/25	<b>LIABILITY</b> [1] 1/5	<b>minds</b> [1] 21/8
<b>including</b> [1] 8/11	<b>like</b> [11] 6/3 7/25 14/18 14/19 19/15 23/6 23/7 23/11 23/16 23/18 24/5	<b>minute</b> [1] 12/18
<b>incorporate</b> [1] 12/2	<b>line</b> [1] 9/7	<b>missing</b> [1] 4/22
<b>incorporated</b> [1] 12/25	<b>litigate</b> [3] 18/6 18/7 21/1	<b>mistaken</b> [1] 17/22
<b>information</b> [4] 8/1 8/11 14/16 23/1	<b>litigated</b> [1] 23/3	<b>modification</b> [3] 11/18 12/8 12/20
<b>informed</b> [1] 14/16	<b>litigating</b> [1] 22/21	<b>Monday</b> [2] 24/20 24/21
<b>initial</b> [2] 9/2 16/3	<b>litigation</b> [5] 1/5 3/3 9/20 11/23 21/1	<b>more</b> [3] 9/23 11/5 19/15
<b>inquiry</b> [2] 7/10 8/5	<b>little</b> [2] 16/21 17/20	<b>morning</b> [17] 3/1 3/6 3/7 3/10 3/11 3/12 3/14 3/16 5/15 17/24 20/4 25/3 25/4 25/11 25/12 25/18 25/24
<b>intent</b> [1] 5/3	<b>live</b> [1] 20/25	<b>most</b> [3] 10/6 10/16 15/18
<b>intentionally</b> [1] 5/3	<b>LLP</b> [2] 1/19 1/22	<b>motion</b> [11] 5/6 5/8 5/10 5/21 5/22 11/9 12/8 12/24 17/25 24/4 25/1
<b>interference</b> [1] 3/22	<b>long</b> [1] 10/12	<b>motions</b> [2] 23/17 25/19
<b>interrupting</b> [1] 3/20	<b>look</b> [1] 24/20	<b>move</b> [6] 13/20 14/12 15/21
<b>involves</b> [2] 9/16 13/9	<b>looking</b> [2] 22/13 22/21	
<b>involving</b> [1] 3/4		
<b>is</b> [125]		
<b>is yes</b> [1] 23/20		
<b>issue</b> [31]		
<b>issues</b> [13] 7/12 7/20 8/7 8/18 10/2 18/2 19/19 19/20 19/23 20/1 22/8 23/4 24/12		
<b>it</b> [91]		

<p><b>M</b></p> <p>move... [3] 17/7 22/8 23/9  moving [2] 15/17 15/25  Mr [34]  Mr. [1] 13/11  Mr. Agneshwar [1] 13/11  Ms [1] 3/11  Ms. [1] 21/21  Ms. Sharpe [1] 21/21  much [2] 19/4 26/9  Multi [1] 3/2  multiple [1] 22/22  my [16] 4/1 4/3 5/19 7/6 9/6  10/14 13/1 13/16 14/15 16/25  17/12 17/13 17/25 21/9 23/17  25/7</p>	<p>Official [2] 2/1 26/22  Okay [3] 17/19 24/18 25/9  Once [1] 22/7  one [10] 8/17 9/17 9/24 10/8  10/24 16/7 19/7 19/11 23/5  23/23  ongoing [3] 6/13 13/17 14/24  only [1] 12/21  open [1] 8/24  oral [9] 23/11 23/18 23/18  23/19 23/20 24/3 24/5 24/14  25/18  order [1] 12/15  orderly [1] 15/21  Ostrow [1] 1/14  other [9] 4/23 12/25 15/24  16/8 16/12 20/22 21/12 23/23  23/24  others [1] 13/12  our [15] 7/15 8/5 8/7 8/18  10/21 11/3 12/20 13/13 13/13  14/1 14/5 17/17 19/7 19/11  23/2  out [7] 8/15 13/24 17/12  17/15 17/21 22/25 25/21  outlined [1] 7/13  over [4] 6/7 14/23 20/1  22/18  own [2] 8/5 23/25</p>	<p>point [12] 4/16 5/16 5/25  6/12 6/16 6/22 6/24 6/25  13/24 14/2 14/22 22/7  pointed [2] 8/14 22/25  Ponce [1] 1/15  Pope [1] 1/11  Porter [5] 1/19 1/22 3/13  3/15 7/23  position [4] 20/21 20/25  23/2 24/14  possibility [1] 4/16  possibly [1] 19/8  pouring [1] 22/18  practice [1] 11/10  practiced [1] 10/12  prefer [2] 7/14 8/24  preference [2] 25/5 25/8  prejudiced [2] 5/1 6/10  preparation [1] 7/12  preservation [1] 5/3  preserve [2] 4/20 5/18  preserved [2] 4/11 4/17  Presumably [1] 15/12  presumption [1] 5/19  pretty [3] 11/12 19/14 21/19  prior [1] 12/15  priority [1] 19/11  privilege [6] 20/11 20/13  20/20 20/23 20/24 21/4  privileged [5] 20/14 20/22  22/20 22/24 23/1  probably [1] 25/8  Procedure [1] 4/13  proceedings [2] 18/25 26/19  process [12] 6/12 6/13 9/24  13/8 13/8 13/22 14/2 14/21  15/4 15/13 15/14 24/2  produce [4] 6/15 10/10 10/23  11/3  produced [6] 8/6 10/3 10/4  10/8 20/8 20/9  producing [2] 10/7 14/20  product [1] 20/11  production [3] 6/15 10/25  11/4  productions [2] 3/4 16/10  PRODUCTS [1] 1/5  professional [1] 14/8  progress [3] 3/19 4/4 9/11  progress and [1] 3/19  proportional [1] 16/11  proposal [1] 6/4  proposed [4] 8/8 11/18 20/15  22/10  prove [1] 20/14  provide [1] 8/22  provided [1] 17/14  PTO [4] 11/18 11/25 12/8  12/20  purposes [1] 19/10  push [1] 16/20  put [4] 3/25 17/18 18/22  24/4  putting [1] 14/7</p>
<p><b>N</b></p> <p>name [1] 7/7  NE [1] 1/11  necessarily [1] 9/9  need [5] 9/4 9/5 14/16 19/10  23/22  needs [1] 24/16  neglected [1] 7/7  negotiated [1] 14/21  negotiating [1] 14/12  negotiation [1] 8/13  negotiations [3] 13/18 16/9  16/14  never [7] 4/1 6/24 10/13  10/13 10/13 10/13 24/22  new [2] 1/23 10/3  next [3] 21/24 25/21 26/12  nine [1] 25/3  no [12] 1/3 5/6 6/19 12/20  16/16 19/22 19/25 20/23  25/25 26/3 26/6 26/9  node [2] 16/24 16/25  non [1] 5/3  non-preservation [1] 5/3  normal [1] 4/18  not [25] 4/10 4/17 4/22 4/25  5/6 5/9 5/11 8/24 10/3 12/22  14/4 14/18 14/19 17/25 18/9  18/10 20/6 20/9 22/22 23/5  24/9 24/11 24/13 25/20 26/6  note [2] 13/24 15/8  noted [1] 8/20  nothing [1] 14/1  notified [2] 4/9 13/5  notify [1] 22/2  now [6] 10/6 11/23 13/20  18/15 20/9 24/22  number [3] 3/2 19/7 19/11  NW [1] 1/19  NY [1] 1/23</p>	<p><b>P</b></p> <p>P.C [1] 1/11  Pacer [1] 17/24  page [1] 21/15  PAIGE [2] 1/18 3/14  PALM [3] 1/2 1/5 2/2  paper [1] 4/1  papers [1] 23/10  parallel [1] 14/12  part [4] 12/20 14/3 14/5  14/15  parte [3] 20/19 21/2 23/24  parte and [1] 21/2  parties [10] 3/19 4/4 5/22  6/23 6/24 8/25 16/1 16/15  16/22 23/13  party [2] 20/13 23/18  passed [1] 24/23  past [2] 21/20 23/4  path [1] 11/22  Pauline [2] 2/1 26/22  Peachtree [1] 1/11  people [1] 21/1  person [1] 10/21  phase [1] 17/14  phrase [1] 17/9  picture [1] 9/7  piece [1] 3/25  Pierce [1] 2/2  Pierce/West [1] 2/2  place [1] 13/5  Plaintiff [2] 8/7 10/7  PLAINTIFFS [28]  Plaintiffs' [4] 8/17 13/9  17/9 20/25  pleadings [1] 24/22  please [3] 3/5 3/7 7/5  pleased [1] 8/15</p>	<p><b>Q</b></p> <p>question [8] 4/20 4/25 5/15  6/7 12/6 20/6 20/7 23/15</p>
<p><b>O</b></p> <p>o'clock [2] 25/4 25/17  object [1] 6/1  objected [1] 14/19  objection [1] 20/17  obligation [1] 16/10  obviously [1] 24/9  occurred [1] 15/25  offered [1] 10/19</p>		

<b>Q</b>	<b>Road [1]</b> 1/11	<b>should [6]</b> 10/18 11/15 14/2 20/9 20/10 23/22
<b>questions [2]</b> 8/11 9/2	<b>ROBERT [4]</b> 1/14 3/8 7/6 12/4	<b>show [2]</b> 17/10 22/20
<b>quickly [2]</b> 18/8 19/8	<b>ROBIN [1]</b> 2/1	<b>side [10]</b> 13/9 13/10 13/13 15/7 15/19 16/13 17/9 19/17 20/22 23/24
<b>quite [2]</b> 23/15 23/15	<b>root [6]</b> 8/7 8/21 16/3 18/11 18/16 19/13	<b>sides [3]</b> 20/21 21/6 21/9
<b>R</b>	<b>ROSENBERG [4]</b> 1/3 2/1 12/2 12/24	<b>Signature [1]</b> 26/23
<b>raise [1]</b> 25/24	<b>rule [9]</b> 4/13 14/14 17/11 17/24 18/4 18/24 23/9 23/22 25/20	<b>simply [2]</b> 13/24 16/6
<b>raised [1]</b> 12/6	<b>rules [2]</b> 15/12 16/13	<b>since [2]</b> 8/5 13/5
<b>RANITIDINE [2]</b> 1/4 3/2	<b>ruling [2]</b> 16/7 25/21	<b>smarter [1]</b> 21/12
<b>RE [2]</b> 1/4 3/2	<b>run [2]</b> 10/1 15/4	<b>so [37]</b>
<b>reach [4]</b> 6/24 9/12 16/25 18/14	<b>S</b>	<b>some [28]</b>
<b>reached [5]</b> 6/25 8/21 14/22 17/7 19/12	<b>safe [1]</b> 26/11	<b>somebody [1]</b> 23/14
<b>read [1]</b> 24/22	<b>said [4]</b> 4/11 11/7 11/15 14/15	<b>something [4]</b> 3/21 15/11 19/3 19/15
<b>realize [1]</b> 24/8	<b>same [4]</b> 18/17 18/20 21/15 22/5	<b>sometimes [1]</b> 22/22
<b>reason [2]</b> 5/2 19/4	<b>Sanofi [25]</b> 3/4 3/10 3/13 3/15 4/10 4/19 5/17 6/1 6/10 6/15 6/16 6/23 7/23 12/7 12/11 14/19 15/5 20/8 20/9 20/13 20/15 20/18 21/23 24/24 26/8	<b>sooner [2]</b> 16/5 17/20
<b>reasonable [5]</b> 4/19 5/12 5/18 16/8 16/14	<b>Sanofi's [3]</b> 13/10 20/21 21/3	<b>sort [4]</b> 6/6 6/25 14/4 21/22
<b>reasonably [1]</b> 19/9	<b>satisfactory [1]</b> 14/4	<b>sounds [4]</b> 6/3 9/23 14/18 14/18
<b>recently [1]</b> 8/21	<b>satisfied [1]</b> 19/18	<b>SOUTHERN [1]</b> 1/1
<b>recitation [1]</b> 19/14	<b>satisfy [1]</b> 5/20	<b>special [3]</b> 3/18 7/18 20/5
<b>record [3]</b> 13/24 13/25 26/19	<b>say [18]</b> 4/3 4/11 6/16 6/19 6/23 9/23 10/13 10/13 10/13 10/18 11/8 14/1 16/3 17/21 19/3 19/10 23/14 24/13	<b>specific [1]</b> 4/12
<b>redaction [2]</b> 22/4 22/8	<b>saying [3]</b> 8/3 14/22 21/5	<b>speed [1]</b> 4/5
<b>regard [2]</b> 13/4 13/22	<b>schedule [9]</b> 5/23 10/23 12/10 15/19 17/17 19/5 21/23 22/10 24/25	<b>spent [1]</b> 22/18
<b>REINHART [1]</b> 1/8	<b>Scholer [2]</b> 1/19 1/22	<b>start [2]</b> 8/3 18/11
<b>related [2]</b> 6/7 8/18	<b>scope [2]</b> 8/21 9/9	<b>started [3]</b> 4/3 16/21 18/10
<b>relating [2]</b> 3/4 4/10	<b>search [1]</b> 9/19	<b>starting [1]</b> 5/25
<b>relevant [2]</b> 4/19 16/11	<b>searches [1]</b> 10/1	<b>STATES [2]</b> 1/1 1/9
<b>relief [3]</b> 4/16 5/2 6/9	<b>second [2]</b> 6/5 6/6	<b>status [5]</b> 1/8 3/3 7/25 7/25 13/7
<b>remarks [2]</b> 12/3 13/2	<b>see [5]</b> 9/5 17/24 21/4 26/12 26/12	<b>stay [2]</b> 15/2 15/19
<b>remediated [2]</b> 4/23 6/17	<b>seeing [1]</b> 20/17	<b>step [4]</b> 23/21 23/21 24/2 25/22
<b>remediation [31]</b>	<b>seek [4]</b> 4/16 6/9 9/3 14/14	<b>steps [7]</b> 4/20 5/12 5/18 8/4 11/6 16/8 16/14
<b>remedies [1]</b> 5/4	<b>seem [1]</b> 18/1	<b>still [3]</b> 14/24 16/9 24/19
<b>remedy [3]</b> 14/14 14/17 15/24	<b>seemed [1]</b> 16/17	<b>Stipes [2]</b> 2/1 26/22
<b>replaced [3]</b> 4/22 15/10 15/12	<b>seems [6]</b> 5/14 6/12 15/17 16/5 16/21 16/24	<b>streamline [2]</b> 16/12 18/5
<b>replacement [1]</b> 11/20	<b>seen [2]</b> 16/16 20/16	<b>Street [1]</b> 1/22
<b>reply [6]</b> 21/25 22/1 22/3 24/23 24/25 25/2	<b>send [1]</b> 18/1	<b>strike [2]</b> 13/18 16/15
<b>report [5]</b> 8/6 8/15 10/24 11/3 12/17	<b>sense [6]</b> 6/21 18/2 18/15 18/19 18/23 18/25	<b>stroke [1]</b> 7/13
<b>reported [4]</b> 12/14 13/4 13/16 13/21	<b>sensitive [1]</b> 13/8	<b>submit [2]</b> 20/15 21/23
<b>Reporter [3]</b> 2/1 26/22 26/23	<b>sensitivity [1]</b> 7/19	<b>submitted [2]</b> 3/18 23/24
<b>representation [1]</b> 13/14	<b>sent [1]</b> 21/22	<b>substantive [6]</b> 13/9 14/5 14/17 15/24 23/17 24/12
<b>request [1]</b> 12/1	<b>server [2]</b> 9/19 10/1	<b>succeeded [1]</b> 9/19
<b>requesting [1]</b> 23/18	<b>server-wide [1]</b> 9/19	<b>Suffice [1]</b> 24/13
<b>requests [3]</b> 8/10 8/11 8/12	<b>servers [1]</b> 9/16	<b>sufficiency [1]</b> 4/12
<b>required [1]</b> 12/15	<b>set [4]</b> 15/19 18/24 23/22 25/18	<b>sufficient [2]</b> 5/12 6/11
<b>requirement [1]</b> 15/9	<b>set of [1]</b> 18/24	<b>sufficiently [3]</b> 4/24 6/17 15/10
<b>requires [1]</b> 19/5	<b>SHARPE [4]</b> 1/18 3/11 3/14 21/21	<b>suggest [1]</b> 18/9
<b>resolve [1]</b> 24/12	<b>short [1]</b> 12/19	<b>suggests [1]</b> 24/16
<b>resolved [4]</b> 16/5 21/7 22/3 22/7		<b>Suite [2]</b> 1/12 1/16
<b>Resorts [1]</b> 22/19		<b>summed [1]</b> 21/19
<b>respond [3]</b> 7/10 13/1 21/24		<b>summer [2]</b> 17/18 19/15
<b>responded [1]</b> 8/10		<b>supplement [1]</b> 20/18
<b>responding [1]</b> 18/8		<b>supported [1]</b> 23/2
<b>response [1]</b> 17/2		<b>supposed [1]</b> 15/10
<b>result [2]</b> 13/17 14/4		<b>Supreme [1]</b> 15/13
<b>resulted [2]</b> 8/15 11/19		<b>sure [8]</b> 4/5 10/2 12/23 13/25 14/15 18/21 21/14 23/5
<b>right [12]</b> 3/25 6/16 6/19 11/13 11/23 14/5 15/16 18/16 22/18 23/25 24/25 25/21		<b>suspect [1]</b> 11/5
<b>rights [2]</b> 13/9 14/13		<b>system [1]</b> 21/1
<b>ripe [2]</b> 18/3 18/19		



<p><b>T</b></p> <p><b>taken</b> [3] 5/12 13/4 14/2</p> <p><b>taking</b> [1] 10/20</p> <p><b>talk</b> [9] 5/14 7/1 7/16 8/18 8/24 12/17 16/18 21/2 21/14</p> <p><b>talked</b> [2] 4/18 6/3</p> <p><b>target</b> [2] 10/9 10/15</p> <p><b>targets</b> [1] 10/14</p> <p><b>technical</b> [3] 10/1 10/18 10/19</p> <p><b>technically</b> [1] 7/19</p> <p><b>tee</b> [2] 18/4 18/20</p> <p><b>tell</b> [2] 20/6 20/22</p> <p><b>telling</b> [1] 21/3</p> <p><b>term</b> [3] 16/3 16/4 16/5</p> <p><b>terms</b> [1] 17/13</p> <p><b>than</b> [2] 9/24 21/12</p> <p><b>thank</b> [18] 3/16 4/2 7/1 7/5 7/22 9/6 12/4 12/25 13/1 19/2 20/3 21/17 22/17 26/1 26/6 26/9 26/14 26/15</p> <p><b>that</b> [193]</p> <p><b>that issue</b> [1] 5/23</p> <p><b>that's</b> [4] 3/21 11/8 15/2 26/3</p> <p><b>the Plaintiffs</b> [1] 5/1</p> <p><b>their</b> [8] 5/10 5/17 10/19 12/16 14/7 23/25 24/14 24/25</p> <p><b>them</b> [7] 9/25 12/13 14/8 17/6 18/20 19/9 21/3</p> <p><b>themselves</b> [2] 5/20 20/16</p> <p><b>then</b> [19] 4/25 4/25 6/8 8/5 10/1 10/17 11/7 15/6 16/8 16/14 17/3 20/23 22/3 22/7 23/8 23/8 23/22 24/25 25/21</p> <p><b>there</b> [31]</p> <p><b>Thereupon</b> [1] 26/16</p> <p><b>these</b> [8] 7/20 9/25 11/11 12/13 14/11 19/10 22/21 23/4</p> <p><b>they</b> [41]</p> <p><b>they would</b> [1] 5/19</p> <p><b>thing</b> [5] 4/1 8/17 8/20 15/18 23/5</p> <p><b>things</b> [9] 8/23 10/14 10/14 10/21 14/13 16/8 16/12 18/5 23/14</p> <p><b>think</b> [31]</p> <p><b>thinking</b> [1] 17/15</p> <p><b>third</b> [1] 7/15</p> <p><b>this</b> [53]</p> <p><b>those</b> [16] 7/4 7/13 10/8 10/8 10/14 10/21 10/25 11/4 17/8 17/10 18/2 19/19 19/20 19/23 20/12 25/7</p> <p><b>thought</b> [1] 17/1</p> <p><b>threshold</b> [2] 4/20 5/15</p> <p><b>through</b> [3] 1/8 3/18 10/6</p> <p><b>time</b> [10] 3/17 4/11 5/7 17/25 18/17 18/20 22/18 24/24 25/18 26/12</p> <p><b>timeframe</b> [1] 19/16</p> <p><b>timeline</b> [2] 17/13 19/14</p> <p><b>times</b> [2] 22/22 25/7</p> <p><b>to tell</b> [1] 20/22</p> <p><b>today</b> [6] 7/1 11/17 12/9 16/18 21/23 26/6</p> <p><b>told</b> [1] 19/6</p>	<p><b>took</b> [1] 5/18</p> <p><b>top</b> [2] 4/1 15/2</p> <p><b>topics</b> [1] 7/4</p> <p><b>track</b> [2] 10/23 11/1</p> <p><b>tracks</b> [1] 14/12</p> <p><b>tranche</b> [9] 6/2 9/17 9/17 10/8 10/10 10/24 11/2 12/16 18/17</p> <p><b>transcript</b> [1] 26/18</p> <p><b>transparent</b> [1] 15/6</p> <p><b>tree</b> [1] 16/25</p> <p><b>triggered</b> [1] 8/12</p> <p><b>try</b> [6] 14/8 20/14 20/19 22/13 23/25 24/1</p> <p><b>trying</b> [2] 9/18 18/9</p> <p><b>turn</b> [7] 3/5 7/3 9/13 17/3 19/21 19/24 20/1</p> <p><b>two</b> [7] 9/17 10/10 11/2 12/16 14/12 18/17 24/2</p> <p><b>two-step</b> [1] 24/2</p> <p><b>U</b></p> <p><b>ultimate</b> [1] 14/25</p> <p><b>ultimately</b> [2] 14/14 21/21</p> <p><b>unable</b> [1] 18/13</p> <p><b>uncover</b> [1] 17/8</p> <p><b>under</b> [7] 10/20 12/11 12/13 14/14 17/10 17/15 22/9</p> <p><b>underlying</b> [3] 20/10 22/4 22/8</p> <p><b>understand</b> [15] 3/18 4/6 6/13 7/17 7/19 12/10 12/22 12/24 13/25 17/6 19/18 20/5 20/8 22/9 24/11</p> <p><b>understanding</b> [2] 4/3 13/18</p> <p><b>understood</b> [1] 18/21</p> <p><b>UNITED</b> [2] 1/1 1/9</p> <p><b>unless</b> [2] 5/10 19/17</p> <p><b>until</b> [4] 11/20 15/1 18/14 21/24</p> <p><b>up</b> [14] 4/5 4/7 5/23 6/6 7/2 10/14 17/23 18/4 18/20 20/23 21/19 21/20 23/8 24/23</p> <p><b>update</b> [1] 7/25</p> <p><b>upon</b> [2] 13/20 17/17</p> <p><b>us</b> [8] 12/17 13/5 17/7 17/8 17/9 21/2 22/2 23/6</p> <p><b>use</b> [2] 15/21 17/9</p> <p><b>used</b> [1] 16/3</p> <p><b>usual</b> [1] 7/11</p> <p><b>V</b></p> <p><b>value</b> [2] 15/3 15/3</p> <p><b>various</b> [2] 8/18 19/10</p> <p><b>very</b> [8] 11/14 11/14 14/7 14/10 16/25 19/17 20/2 26/9</p> <p><b>view</b> [1] 16/16</p> <p><b>W</b></p> <p><b>waive</b> [1] 24/25</p> <p><b>waiving</b> [1] 14/13</p> <p><b>wake</b> [1] 17/23</p> <p><b>want</b> [14] 5/8 5/16 5/19 6/2 6/8 9/3 13/24 13/25 15/2 17/21 18/7 24/1 24/4 24/19</p> <p><b>wanted</b> [15] 4/5 5/14 6/6 6/21 7/1 12/23 16/18 16/20 18/1 18/21 20/18 21/14 25/24</p>	<p>26/4 26/5</p> <p><b>wants</b> [2] 23/6 24/15</p> <p><b>was</b> [15] 4/5 4/9 4/10 5/3 5/11 5/19 5/21 8/3 10/9 13/6 16/4 16/25 17/22 25/23 26/16</p> <p><b>Washington</b> [1] 1/20</p> <p><b>wasting</b> [1] 17/25</p> <p><b>way</b> [14] 5/1 8/16 9/8 10/16 11/12 11/24 13/15 15/7 17/18 18/7 18/22 23/3 23/12 23/23</p> <p><b>we</b> [123]</p> <p><b>Wednesday</b> [2] 21/25 22/11</p> <p><b>week</b> [7] 17/7 18/14 21/25 22/6 22/11 22/14 22/14</p> <p><b>weekend</b> [2] 21/20 26/12</p> <p><b>Weiselberg</b> [1] 1/15</p> <p><b>well</b> [15] 4/18 7/7 10/22 11/15 11/16 13/10 19/13 19/17 20/2 21/19 21/23 22/5 23/12 23/15 23/16</p> <p><b>were</b> [8] 4/17 8/8 10/1 18/13 18/13 20/8 22/2 24/9</p> <p><b>WEST</b> [4] 1/2 1/5 1/22 2/2</p> <p><b>what</b> [31]</p> <p><b>whatever</b> [6] 15/19 15/24 16/19 18/20 24/1 25/7</p> <p><b>when</b> [10] 4/18 6/18 7/7 8/4 11/18 12/23 15/4 15/5 16/22 25/10</p> <p><b>where</b> [10] 4/5 4/7 5/7 6/13 6/22 6/22 21/1 21/13 21/20 21/23</p> <p><b>wherever</b> [1] 12/3</p> <p><b>whether</b> [12] 5/17 7/18 11/5 11/9 11/22 11/25 14/17 15/10 15/23 17/24 22/1 22/2</p> <p><b>which</b> [7] 4/1 4/11 5/4 10/9 17/16 20/9 20/16</p> <p><b>while</b> [1] 24/19</p> <p><b>who</b> [2] 9/11 24/23</p> <p><b>why</b> [8] 4/7 5/22 15/2 15/15 16/20 20/22 22/23 25/17</p> <p><b>wide</b> [1] 9/19</p> <p><b>will</b> [50]</p> <p><b>willingness</b> [1] 7/24</p> <p><b>wind</b> [1] 7/2</p> <p><b>within</b> [3] 10/25 11/3 23/2</p> <p><b>without</b> [2] 21/2 23/1</p> <p><b>witnesses</b> [1] 23/25</p> <p><b>wood</b> [1] 10/15</p> <p><b>word</b> [1] 12/12</p> <p><b>work</b> [2] 14/8 20/11</p> <p><b>working</b> [5] 10/5 12/11 12/13 14/6 24/18</p> <p><b>works</b> [1] 25/7</p> <p><b>would</b> [15] 5/15 5/19 7/9 7/11 8/14 8/23 18/1 20/15 21/8 21/10 22/2 22/13 22/15 24/5 25/8</p> <p><b>wouldn't</b> [1] 7/9</p> <p><b>writer</b> [1] 23/14</p> <p><b>Y</b></p> <p><b>yes</b> [4] 22/6 23/20 24/5 24/8</p> <p><b>yet</b> [3] 5/6 14/18 25/19</p> <p><b>York</b> [1] 1/23</p> <p><b>you</b> [104]</p> <p><b>your</b> [49]</p>
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**Z**

**ZANTAC [3]** 1/4 3/2 9/20

**zealous [2]** 13/11 13/13

**Zoom [2]** 1/8 23/7