

**In The Matter Of:**  
*Attorney General v.*  
*Donald Trump, et. al.*

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*November 13, 2023*  
*November 13, 2023*

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*Michael Ranita - Senior Court Reporter*

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 Attorney General v.  
 Donald Trump, et. al.

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 November 13, 2023  
 November 13, 2023

Page 3972	Page 3974
<p>1 SUPREME COURT OF THE STATE OF NEW YORK</p> <p>2 COUNTY OF NEW YORK : CIVIL TERM : Part 37</p> <p>3 -----x</p> <p>4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,</p> <p>5 Index: 452564/2022</p> <p>6 Plaintiff,</p> <p>7 -against-</p> <p>8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC; AND SEVEN SPRINGS, LLC,</p> <p>12 Defendants.</p> <p>13 -----x</p> <p>14 60 Centre Street          New York, New York 10007          November 13, 2023</p> <p>15 B E F O R E: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice</p> <p>16 A P P E A R A N C E S:</p> <p>17</p> <p>18 OFFICE OF THE ATTORNEY GENERAL          OF THE STATE OF NEW YORK - LETITIA JAMES          attorneys for the Plaintiff          28 Liberty Street          New York, New York 10005</p> <p>21 BY: KEVIN WALLACE, ESQ.          COLLEEN K. FAHERTY, ESQ.          ANDREW AMER, ESQ.          ERIC HAREN, ESQ.          MARK LADOV, ESQ.          SHERIEF GABER, ESQ.</p>	<p>Proceedings</p> <p>1 THE COURT OFFICER: All rise. Part 37 is now in</p> <p>2 session. The Honorable Judge Arthur Engoron presiding.</p> <p>3 Make sure all cell phones are on silent. Laptops and cell</p> <p>4 phones will be permitted, but only to members of the press.</p> <p>5 There is absolutely no recording or photography of any kind</p> <p>6 allowed in the courtroom. Now be seated and come to order.</p> <p>7 THE COURT: Tommy, is your hand all right? You</p> <p>8 didn't bang that time. At least do the banging, as we call</p> <p>9 it. Pardon the expression.</p> <p>10 I understand there are some photographers that</p> <p>11 would like to have a moment with us.</p> <p>12 (Whereupon, there is a brief pause in the</p> <p>13 proceedings for the photographers.)</p> <p>14 THE COURT: The defense table must be looking good</p> <p>15 today. They gave you more time than normal; right? Would</p> <p>16 you like to call your first witness, defense?</p> <p>17 MR. ROBERT: Thank you, your Honor. Defense calls</p> <p>18 Donald J. Trump, Jr. to the stand.</p> <p>19 (Whereupon, the witness stepped into the witness</p> <p>20 stand.)</p> <p>21 THE COURT: I would ask who's he, but I've already</p> <p>22 used that joke.</p> <p>23 THE WITNESS: You thought you were rid of me, your</p> <p>24 Honor.</p> <p>25 THE COURT OFFICER: I'm going to swear you in.</p>
Page 3973	Page 3975
<p>1 A P P E A R A N C E S: (Continued.)</p> <p>2</p> <p>3 CONTINENTAL, PLLC</p> <p>4 attorneys for the Defendants</p> <p>5 101 North Monroe Street, Suite 750</p> <p>6 Tallahassee, Florida 32302</p> <p>7 BY: CHRISTOPHER M. KISE, ESQ.          LAZARO P. FIELDS, ESQ.          JESUS M. SUAREZ, ESQ.</p> <p>8 ROBERT &amp; ROBERT, PLLC</p> <p>9 attorneys for the Defendants</p> <p>10 526 RXR Plaza</p> <p>11 Uniondale, New York 11556</p> <p>12 BY: CLIFFORD ROBERT, ESQ.</p> <p>13 HABBA MADAIO &amp; ASSOCIATES, LLP</p> <p>14 attorneys for the Defendants</p> <p>15 1430 US Highway 296, Suite 240</p> <p>16 Bedminster, New Jersey 07921</p> <p>17 BY: ALINA HABBA, ESQ.</p> <p>18 MORIAN LAW, PLLC</p> <p>19 attorneys for the Defendants</p> <p>20 60 East 42nd Street, Suite 4600</p> <p>21 New York, New York 10165</p> <p>22 BY: ARMEN MORIAN, ESQ.</p> <p>23</p> <p>24 Michael Ranita</p> <p>25 Michele Panteloukas</p> <p>Senior Court Reporters</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert)</p> <p>1 Remain standing. Raise your right hand.</p> <p>2 (The witness complied.)</p> <p>3 THE COURT OFFICER: Do you solemnly swear or affirm</p> <p>4 that any testimony you give will be the truth, the whole</p> <p>5 truth and nothing but the truth?</p> <p>6 THE WITNESS: I do.</p> <p>7 DONALD JOHN TRUMP, JR., called by and on</p> <p>8 behalf of the Defendant, having been first duly sworn, was</p> <p>9 examined and testified as follows:</p> <p>10 THE COURT OFFICER: Please have a seat. State your</p> <p>11 name and home business address for the record?</p> <p>12 THE WITNESS: Donald John Trump, Jr., 725 Fifth</p> <p>13 Avenue, New York, New York 10022.</p> <p>14 THE COURT: Okay. Please proceed.</p> <p>15 MR. ROBERT: Thank you, your Honor.</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. ROBERT:</p> <p>18 Q Good morning, Mr. Trump.</p> <p>19 A Good morning.</p> <p>20 Q I want to spend, very briefly, talking about your</p> <p>21 educational background. Let us know your education from college</p> <p>22 on, sir.</p> <p>23 A Yeah, I went to the University of Pennsylvania,</p> <p>24 graduated with a degree in economics from the Wharton School of</p> <p>25 Finance.</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3976</p> <p>1 Q And what year did you graduate, sir?</p> <p>2 A I graduated in the year 2000.</p> <p>3 Q What, if anything, did you do right after graduation</p> <p>4 from college?</p> <p>5 A Moved to Colorado, was a bartender for about 18 months.</p> <p>6 Q And what did you do? Did you enjoy that?</p> <p>7 A I did. Although, the conversation, having that one</p> <p>8 with my father before I left to Aspen, was an interesting one.</p> <p>9 Q I could imagine.</p> <p>10 At some point in time you then ultimately joined what</p> <p>11 we ultimately know as the Trump Organization; correct?</p> <p>12 A Correct. 9/11 happened, and basically within two or</p> <p>13 three days my car was packed and I was driving home.</p> <p>14 Q From the time you joined The Trump Organization in</p> <p>15 2001, have you stayed consistently employed there?</p> <p>16 A I have.</p> <p>17 Q Why don't you take us through -- I know there's been</p> <p>18 testimony, and I'll be brief on it, as to the progression of</p> <p>19 your responsibilities at the Trump Organization. And I'm going</p> <p>20 to take it in buckets, starting from 2001 to 2017?</p> <p>21 A Okay. Started, initially, working with Hudson</p> <p>22 Waterfront Associates, that was on the West Side Yards, a</p> <p>23 project that my father really sort of had an incredible vision</p> <p>24 for and saw early on, was ongoing at one time. It was going to</p> <p>25 be the tallest building in the world. Then it became really the</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3978</p> <p>1 local's game, right? We have a lot of Huperts, but you can't</p> <p>2 just necessarily jump into a new market all over the world and</p> <p>3 assume you are going to be the guy to be able to get things</p> <p>4 done. So a lot of great real estate companies wanted to come to</p> <p>5 us, learn how to better design, build, amenitize (sic), market</p> <p>6 their projects, and so that started a whole new phase, sort of</p> <p>7 the organization, and then so on and so forth, right? We went</p> <p>8 through that, the Old Post Office, Doral.</p> <p>9 Q We'll go through those in detail later this morning,</p> <p>10 Mr. Trump, but during your testimony last week, the week</p> <p>11 before, there was different titles. I think you said you</p> <p>12 started out as a project manager; correct?</p> <p>13 A Correct.</p> <p>14 Q What would you describe as the duties of a project</p> <p>15 manager to be?</p> <p>16 A You know, honestly, it was anything and everything.</p> <p>17 Not really -- we run sort of like what is call it a large family</p> <p>18 business, like a mom and pop, so it really wasn't that I was a</p> <p>19 project manager. Certainly at Hudson Waterfront, because I</p> <p>20 didn't know anything. I was learning.</p> <p>21 By the time I got to Trump Park Avenue, you know, it</p> <p>22 was the same thing, but that was a different kind of project.</p> <p>23 Right behind every wall was a new surprise, and the plans that</p> <p>24 you have that are with the thing, you know that are registered,</p> <p>25 don't necessarily line up to what's actually been built. You</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3977</p> <p>1 largest undeveloped -- it was the largest undeveloped parcel of</p> <p>2 land left in New York City. Um, started working on there,</p> <p>3 building an array of different buildings and projects from pure</p> <p>4 condominium ground-up construction, to rental apartments,</p> <p>5 commercial space, et cetera. From there, we bought an</p> <p>6 incredible asset, what was formally Delmonico Hotel on Park</p> <p>7 Avenue, in the high 50s. Wanted to learn that aspect of the</p> <p>8 game. It was an existing prewar building. It was a different</p> <p>9 kind of construction, ground-up construction, um, was one thing.</p> <p>10 You know, taking on a building, you know, 75, 80 years old. And</p> <p>11 another entirely different ball game, as I found out. Um, took</p> <p>12 on all aspects of that from there. Got to work on Trump Tower</p> <p>13 Chicago.</p> <p>14 Ultimately, that was another ground-up construction</p> <p>15 building which would have been the largest residential building</p> <p>16 in Chicago, one of the tallest buildings ever built-in America,</p> <p>17 to Trump, Las Vegas.</p> <p>18 From there, my father saw a lot of things before other</p> <p>19 people in real estate, and so from there, going into sort of the</p> <p>20 boom of the early 2000's in real estate, there were a lot of</p> <p>21 opportunities to do licensing deals because of sort of the</p> <p>22 incredible nature over the properties that he had built for</p> <p>23 himself.</p> <p>24 Other people saw incredible value in the Trump brand,</p> <p>25 wanted to be able to do that. Real estate is often times a</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3979</p> <p>1 know, behind every wall was a new surprise, quite exactly. And</p> <p>2 so there were just so many unforeseen things that, for me, as</p> <p>3 sort of a young gregarious guy, I'll deal with that. I'll take</p> <p>4 on that problem. I'll take on; that problem, I'll deal with</p> <p>5 this. It created an opportunity to sort of advance, so I never</p> <p>6 really sought further title. But by the end of that project I</p> <p>7 was certainly the lead on that project, largely, because I was</p> <p>8 willing to deal with the stuff that no one else wanted to.</p> <p>9 Q What is the general view at the Trump Organization as</p> <p>10 to titles of people and job descriptions, if anything?</p> <p>11 A I think it's a more of a meritocracy than titles.</p> <p>12 Q What do you mean by that, sir?</p> <p>13 A If you get things done, if you are able to carry the</p> <p>14 ball. You know, my father has done that throughout his career.</p> <p>15 You know, there are people that, you know, didn't necessarily</p> <p>16 have the fancy degrees that he would allow to be in charge of</p> <p>17 projects, because they actually delivered results, not just on</p> <p>18 paper. And so, he gave opportunities to a lot of people that</p> <p>19 probably wouldn't have had the opportunities. And so, you know,</p> <p>20 it was really more about, you know, who could get something done</p> <p>21 than a formalized structure.</p> <p>22 Q I know there was some discussion about at what point in</p> <p>23 time you moved from being a vice president to executive vice</p> <p>24 president. What, if any, significance was there to that change</p> <p>25 of title?</p>

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3980

1 A Basically, ordering new business cards. Not really  
2 much significance. Didn't mean that much to me.  
3 Q And do you remember at what point in time you did  
4 become an executive vice president?  
5 A Not specifically.  
6 Q There's been a lot of talk about what The Trump  
7 Organization is and what The Trump Organization isn't. How  
8 would you, as an executive vice president, describe The Trump  
9 Organization?  
10 A Listen, it's an all encompassing real estate firm.  
11 Most real estate companies they do, you know, commercial office,  
12 or they do, you know, rental apartments, or they build  
13 condominiums, or they manage clubs, do and manage hotels, or  
14 build hotels. The two don't often -- we do all of those things,  
15 as well as retail. So I think we are one of the few companies  
16 out there that sort of does have assets, and has had, you know,  
17 world class assets in all of the buckets of what would be  
18 considered, let's say, real estate development. I think that's  
19 really unusual and sets us apart. It's from years of doing  
20 things better than others, years of experience that we've been  
21 able to do that and create a brand around it.  
22 Q If we talk about the corporate structure, if you will,  
23 of The Trump Organization, how would you explain that?  
24 A Well, I mean, you know, certainly early on it would be,  
25 you know, my father and then everyone else. That changed when

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3981

1 he assumed the role of the Presidency. It changed as my  
2 brother, sister and myself were able to take more on.  
3 I know for myself, if there's one thing my father,  
4 often times doesn't of love to do is travel, so when we had the  
5 opportunity to start seeing these deals in emerging markets  
6 around the world, starting to build high-end real estate for the  
7 first time, say, you know, Dubai, as an example, sure, I was in  
8 my late 20s, early 30s. I'll hop on a plane, go a couple of  
9 times a month, if I had. Aberdeen, Scotland, I spent four,  
10 five days a month there traveling to build just an incredible  
11 golf course.  
12 And as those international and even domestic sort of  
13 license opportunities presented themselves, you know, we spread  
14 out into other things, and that's when, you know, we created  
15 another role.  
16 Real estate is one of those things you've got to be on  
17 the ground. You've got to be there to kick the tires. You have  
18 to understand what is going on, deal with the construction teams  
19 to really have an understanding. It's hard to do from sort of,  
20 you know, a gilded office. And so you've got to be on the  
21 ground.  
22 As we started spreading out of New York City, that  
23 hierarchy changed a little bit, certainly for my brother, sister  
24 and myself, because we were the guys on the ground.  
25 Q How, if in any way, would you describe the roles and

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3982

1 responsibilities of you, and specifically Eric and Ivanka, in  
2 the period up to 2017?  
3 A You know, up to 2017, obviously a little bit of a  
4 rolling structure. I was the oldest, came in earliest. Ivanka  
5 came in next, Eric came in next, and once things -- once they  
6 were to able understand those roles quickly, sort of spread out.  
7 You didn't need three chiefs, sort of, on a job. Often times  
8 that, you know, really had nothing to do with the real estate.  
9 It had to just deal with the personal dynamic of partners we  
10 were dealing with, and if someone was better suited to that,  
11 they would assume that role. If that was Ivanka, great. If it  
12 was Eric, just as good. It didn't really matter, but we worked  
13 collectively, but each one of us had our own sort of bucket.  
14 Q Who, if anyone, would make a decision as to the  
15 respective autonomy that you and your siblings would have in  
16 terms of various projects?  
17 A I think generally we would certainly -- on those deals,  
18 as you get closer to 2017, we had a lot more of that autonomy.  
19 With every passing day we delivered, we brought in great  
20 projects, generated a lot of revenue, and so the more we did  
21 that, the more flexibility we had.  
22 Q And how would you describe the structure of the Trump  
23 Organization from the period 2017 through 2021, generally?  
24 A You know, still a bit of an evolution. Obviously my  
25 brother and myself assumed much more of a role, you know, with

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3983

1 that. You know, there were a lot of things changed because the  
2 nature of politics. We gave up our international licensing  
3 business, which was a very lucrative thing that was a big part  
4 of what I had done, you know, during that. I spent a lot of  
5 time abroad doing that. My father decided for, you know,  
6 really, I mean, we could've legally done it. We weren't dealing  
7 with governmental entities, really, but just chose, for the sake  
8 of optics, to not do those things going forward. In retrospect,  
9 that was probably -- probably a mistake because, you know,  
10 according to everything else and everyone, we were still doing  
11 those things and didn't really matter; got almost no credit for  
12 it. So -- but that was a big part of what I did. So those  
13 things changed.  
14 My father, obviously, was not involved anymore. We  
15 weren't going to bring business to him. It wasn't worth it, and  
16 it would have been very apparent very quickly if he was  
17 involved. And it was just not worth that. So my brother and I  
18 assumed a lot more responsibility, Ivanka went down to  
19 Washington, so she was also uninvolved. And, you know, we ran  
20 the business. So it was during that time, because of the nature  
21 of it, the roles changed a lot in that we were much more, at  
22 that time, as you know -- let's call it an asset manager. We  
23 weren't going to be doing new deals. It wasn't worth the  
24 headache. It would not have made sense, so we protected the  
25 incredible assets that we had. We continued the projects that

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3984

1 were under way. You know, real estate development is not buying  
2 stock. You buy stock and then you are done. You get involved  
3 with a project, you sign a deal, this could be five, six. In  
4 the case of the West Side Yards, 15, 20-year deal by the time  
5 you see sort of the vision, aggregate the land, amass, you know,  
6 the entitlements, et cetera, et cetera, that you have to do to  
7 get through a process.

8 Q And how would you describe the structure of the company  
9 from 2021 to present, sir?

10 A You know, again, I think my father could be back  
11 involved. He could get back involved, if he chooses to on  
12 certain things, but, you know, for the most part, it would be,  
13 you know, my brother and I still, you know, much more active or  
14 much more responsible than prior -- than prior to 2017. You  
15 know, Eric is definitely more involved in a lot of the  
16 day-to-day operations of the business; that's sort of his  
17 bailiwick. I was more bigger picture deal guy. And so, you  
18 know, we do that as we see fit.

19 Q And you obviously know the name Allen Weisselberg;  
20 correct?

21 A I do.

22 Q Who was -- who is Allen Weisselberg?

23 A Allen Weisselberg was a former CFO, accountant at the  
24 organization, been with us for pushing 50 years. Is no longer  
25 there, but someone who worked with us during, certainly, our

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3985

1 coming of age period of time from, you know, from me when I  
2 entered in 2021, and someone, you know, who is very involved  
3 throughout, let's call it, 2021.

4 Q And who is Jeff McConney?

5 A Jeff McConney would have been our controller. Similar,  
6 35-year plus employee, someone who had been there for a very  
7 long time. Worked in the accounting department, um, intimately  
8 involved in all aspects of accounting, and had been there for a  
9 very long period of time, but is no longer there.

10 Q How would you generally describe your relationship with  
11 Mr. Weisselberg through 2017?

12 A Very positive.

13 Q And what, if any, interaction or role did you have in  
14 doing business with him?

15 A I would have had a lot. I mean, that was, you know,  
16 our in-house, you know, numbers guy, financial guy. Obviously  
17 he worked very close with our outside accounting firms. We  
18 talked about, you know, Donald Bender at Mazars, who was, you  
19 know, another -- while he was outside, was another, you know,  
20 30-plus year guy who had intimately worked with that accounting  
21 team, who amassed, assembled everything that we had put  
22 together, who had -- and continued to. I mean, they would do  
23 the tax returns on a condominium that maybe we managed, but we  
24 literally sold off all of the units years before. They still  
25 stayed involved because we managed it, even if that management

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3986

1 contract was a small thing, because we ran those buildings well.  
2 We had sort of a bucket, you know, let's say of what The Trump  
3 Organization would do.

4 Most developers, they build and sell a building. They  
5 want out of it. They don't want to deal with a headache of  
6 dealing with a unit owner, or a unit owner that they never sold  
7 to. They don't want to deal with that. For us, the nature of  
8 the buildings, because of the value of our brand, we would  
9 actually, you know, continue to stay on and manage those  
10 buildings, because we could preserve that better than anyone and  
11 run it better than anyone, so that whole team had been there for  
12 a very long period of time.

13 Q For the period of 2017 through 2021 when you and  
14 Mr. Weisselberg were co-trustees, what, if anything, changed in  
15 terms of your interaction with him at the company?

16 A Not really -- I mean, not much. The reality is, like I  
17 said, we worked sort of like a large family business, and so,  
18 you know, I had my buckets. He didn't get involved in doing the  
19 licensing deals and he wasn't involved in architectural  
20 decisions. And, you know, if there were numbers or things, that  
21 I would rely on them to give me that, because that's what they  
22 do. And that's what they worked on.

23 Q Who --

24 THE COURT: Hold on, the person who has the most  
25 difficult job in the whole courtroom is sitting in front of

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3987

1 me to the left. Apparently, you are going a little too fast  
2 for him, so slow down a little bit.

3 THE WITNESS: I'll do my best.

4 THE COURT: Welcome back.

5 THE WITNESS: I would say it's good to be here,  
6 your Honor, but I have the feeling the Attorney General  
7 would sue me for perjury if I said that seriously.

8 MS. HABBA: Your Honor, my realtime is not working.  
9 I wanted to alert them. We could deal with it at the break.

10 THE COURT: Well, everything is relative, I guess.

11 THE WITNESS: Yes, it is, sir.

12 THE COURT: Can we proceed? okay, next question.

13 Q Who is Mark Hawthorn?

14 A Mark Hawthorn came in for the hotel, Trump Hotel  
15 Collection, do all the accounting functions there. You know, I  
16 guess chief operating officer, and has really assumed -- sort of  
17 called -- assumed the role, now, of CFO at the Trump  
18 Organization, dealing with all things financial.

19 Q So when you testified a week or two ago, you mentioned  
20 that Mark Hawthorn was the CFO of The Trump Organization. Is  
21 that actually his official title?

22 A I think he's still chief operating officer. He -- he's  
23 assumed that role, I guess I just said, sort of. So he is the,  
24 you know, the finance guy within Trump, Trump world now and has  
25 taken on all those decisional responsibilities, he is an actual

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3988</p> <p>1 CPA and does that. So it may not, again, we are not as -- not</p> <p>2 as big on title, but he's functioning in that capacity, correct.</p> <p>3 Q So in a moment, sir, I'm going to take you through what</p> <p>4 The Trump Organization is, what it operates, and how it</p> <p>5 functions, but you talked earlier about "buckets", and I just</p> <p>6 want to put things into perspective.</p> <p>7 How many buckets -- when I say "buckets", you</p> <p>8 understand what I mean, sir?</p> <p>9 A Generally, yes.</p> <p>10 Q What buckets would you say constitute the business of</p> <p>11 the Trump Organization?</p> <p>12 A Well, again, I think once -- how far do you break that</p> <p>13 down? I think we could generalize the development bucket where</p> <p>14 we buy, own, build; there's an operational bucket, but that</p> <p>15 could entail hotels, golf courses. I just mentioned, you know,</p> <p>16 managing four, condominium association buildings that we once</p> <p>17 owned, built and sold; that's not something that most developers</p> <p>18 do. Again, they want to get as far away from the things that</p> <p>19 they sell because they don't want to deal with that headache, or</p> <p>20 a leaky faucet somewhere forever, but we are a little different</p> <p>21 in that so much depends on our brand that will actually deal</p> <p>22 with those headaches to preserve that, to preserve that image</p> <p>23 that we are projecting out on the world, and it's been very good</p> <p>24 for us to do that.</p> <p>25 There's hotels, and hotel management. I could group</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3990</p> <p>1 then we are going to get into them.</p> <p>2 So based on your Honor's ruling, I don't think a</p> <p>3 further foundation needs to be laid other than one of their</p> <p>4 buckets is development, one is of their buckets is hotels,</p> <p>5 and I'm about to get into the third bucket.</p> <p>6 MR. WALLACE: As I said, we had no objection to the</p> <p>7 discussion of the Trump Organization's operations.</p> <p>8 THE COURT: Let's keep it to the Trump</p> <p>9 Organization.</p> <p>10 MR. ROBERT: Understood, your Honor. Understood,</p> <p>11 your Honor.</p> <p>12 Q Is there a third bucket you had discussed, Mr. Trump?</p> <p>13 A I would say sort of, you know, the licensing model that</p> <p>14 I brought up before. My father's been, throughout his career,</p> <p>15 been very good about finding value, doing something differently,</p> <p>16 pushing the envelope in terms of, let's call it, sexiness within</p> <p>17 a real estate project, um, seeing things that other people</p> <p>18 didn't see or wouldn't be able to envision. And because of that</p> <p>19 he built just some of the most incredible assets in the world.</p> <p>20 It was really the leading edge of development. And, again, that</p> <p>21 started off -- you know, for the most part people would think of</p> <p>22 it in terms of, you know, condominium development, but, you</p> <p>23 know, some his projects were actually hotels that he</p> <p>24 redeveloped.</p> <p>25 So because of the image that he was able to create,</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3989</p> <p>1 that into one bucket, but again in a typical hotel company, you</p> <p>2 know, the vast majority of hotel companies almost don't own any</p> <p>3 real estate. They manage for other people and they are very</p> <p>4 happy clipping four, five percent coupons, plus, plus, plus</p> <p>5 extras, and not having to own that real estate. For us, in some</p> <p>6 cases we will build them, we will own them, we will development</p> <p>7 them, we will manage them and continue.</p> <p>8 So, you know, the buckets, we can group it into three</p> <p>9 or four buckets, or we can really take it down to a base level</p> <p>10 of having numerous. So I'm not sure I have a specific answer.</p> <p>11 It just depends on how much we want to generalize.</p> <p>12 MR. WALLACE: We want to interjection an objection</p> <p>13 to the answers to the extent they are going to what other</p> <p>14 developers or other hotel operators might do.</p> <p>15 We have no objection to Mr. Trump discussing their</p> <p>16 own operations, but we object to the speculation.</p> <p>17 THE COURT: On the grounds of relevance or on the</p> <p>18 grounds of how would he know?</p> <p>19 MR. WALLACE: I would say relevance and foundation.</p> <p>20 THE COURT: "Foundation", that's the word I was</p> <p>21 looking for.</p> <p>22 Mr. Robert.</p> <p>23 MR. ROBERT: I'll rephrase the question. I mean, I</p> <p>24 think we are moving on to another topic anyway. I'm trying</p> <p>25 to lay a baseline of what it is, the different buckets, and</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3991</p> <p>1 because of the boundaries he was able to push, because of the</p> <p>2 brand that he created around himself, it allowed for him to get</p> <p>3 to a point where a lot of other, in many cases, very successful</p> <p>4 developers, in their own right, would come to him for that</p> <p>5 expertise, for that brand, for that understanding, um, and</p> <p>6 allowed him to be able to brand other people's real estate deals</p> <p>7 for -- for fees, obviously, fairly significant fees, and, you</p> <p>8 know, throughout the world and throughout the United States.</p> <p>9 We were able to do and create that business model that</p> <p>10 was really unique at the time, that has since been emulated by</p> <p>11 some of the finest luxury brands anywhere in the world.</p> <p>12 Q This is going to sound very basic, but to lay a</p> <p>13 foundation for this, when you say "development", what is it that</p> <p>14 a developer does?</p> <p>15 A You know, well, again, it can vary a lot, but</p> <p>16 development could be everything from envisioning a project,</p> <p>17 buying the land, coming up with the architectural -- building a</p> <p>18 building, but for some it's buying a building and making a</p> <p>19 couple of changes; that person could still be a developer. So</p> <p>20 you know there are levels of detail in terms of how detailed the</p> <p>21 developer, you know, will or will not get into a project.</p> <p>22 I mean, say for us, again, we've covered the full gamut</p> <p>23 from, again, land, acquisition to, you know, decades long plays</p> <p>24 figuring out how to intrinsically find the value and create, you</p> <p>25 know, create value from real estate projects.</p>

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3992

1 Q Again, we'll get into detail in a moment, but how would  
2 you then draw a distinction for the Court between a development  
3 deal and a licensing deal in real estate?  
4 A I would say, for us, a development deal would -- would  
5 generally be an equity type deal where you are putting a lot of  
6 money into the deal itself.  
7 What was unique about the license model, and, you know,  
8 again, I don't want -- I don't want to speak to other  
9 developers, but it has, again, since been emulated a lot,  
10 because by being able to do the license deal, you are able to  
11 forgo having to put in a lot of that up-front equity, which is  
12 something that, again, most would love not to do.  
13 The biggest limitations for a lot of development  
14 companies would be having to lay out all that initial capital,  
15 that time, that money. You know, for us to be able to do that,  
16 we could have -- and I still think of it almost as a development  
17 role, even thought we a licensor, because we are creating value.  
18 We are doing the marketing. We are working with them and our  
19 construction teams on the value engineering aspects of these  
20 projects, because when you've built dozens, dozens of projects  
21 all over the world, you understand how those things work. And  
22 so a developer that is say, perhaps -- again, most are a little  
23 bit more provincial. They are doing stuff in their local  
24 market. They may not have thought about taking things to the  
25 next level.

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3993

1 When places like Dubai started up, they didn't have a  
2 luxury real estate market prior to you know '06, '07; that  
3 didn't exist. So we had sort of the best amenities. My father  
4 pushed those boundaries. He created things that, now, are  
5 commonplace in every luxury development around the world, but  
6 20 years ago when he started doing those things, was unheard of.  
7 You wouldn't put a gym in a building; that's space that you can  
8 sell, and we are not going to do that. He was really a  
9 visionary when it came to those things. Again, that translated  
10 into the value attributed to the brand which allowed him to do  
11 the projects where other people would pay him very significant  
12 funds to come in and help them make their projects better.  
13 Q From The Trump Organization's perspective, what, if  
14 any, distinction is there with risk in regard to a licensing  
15 deal in actually pouring concrete and putting up a building, if  
16 any?  
17 A There's a lot of difference in the risk that you are  
18 not coming out with that up-front capital. All right? There's  
19 still risk, your a brand, the thing he spent so much time,  
20 decades, creating. You know the only -- certainly at the time  
21 the only true, you know, for residential building, you know,  
22 hotels had done a little bit in the past, but for residential,  
23 he was the only brand really out there that people around the  
24 world knew. You know, so there's always still risk, which is  
25 why we still took great pride in those projects, we worked

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3994

1 tirelessly to deliver, you know, while we were able to do some  
2 pretty incredible things and out perform, you know, other  
3 projects in so many markets around the world.  
4 Q What about from the Trump Organization's perspective of  
5 profitability and from resource issues?  
6 A Well, that's, I mean, that's where the model was great.  
7 So many people would love to have a model where they didn't have  
8 to have that up-front capital where they could do that. Right?  
9 If you have it, in terms of overhead, you know, you sort of have  
10 a development team, you could have them overview a project for  
11 cents on the dollar relative to actually developing it yourself  
12 where you are sitting and worrying about every screw in a HVAC  
13 system. It's very different. So one team could handle one  
14 project, but one team could also handle 25 projects.  
15 So from a scalability standpoint, it was an incredible  
16 model. From a profitability standpoint, from a cost  
17 perspective, you know, I don't want to say it was free revenue.  
18 There's no such thing. But from a risk mitigation standpoint,  
19 it was a pretty spectacular system that we were able to create.  
20 Q Prior to 2017, how much involvement did you personally  
21 have in the licensing deals?  
22 A I would have done the vast majority of them.  
23 Q When we talk about the point person, you had certain  
24 functions, your sister had some, your brother had some. Would  
25 this be one that would have fallen within your silo or your

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 3995

1 bucket?  
2 A Again, there would be -- if Ivanka got along better  
3 with a certain partner as we were doing a deal, she could be the  
4 point person. But I would say, round numbers of the license  
5 deals, you know, I probably controlled 75 percent of them.  
6 Q Okay.  
7 MR. ROBERT: Your Honor, I would like to hand to  
8 the witness, and to the Court, and to plaintiff's Counsel,  
9 defense Exhibit 1019, and I'll take the witness through a  
10 chronology of some of the projects of The Trump  
11 Organization. And I have a Power Point that goes with it.  
12 (The exhibit was handed to the witness.)  
13 (Whereupon, the exhibit was displayed on the  
14 screen.)  
15 THE WITNESS: Thank you.  
16 Q Do you have it in front of you, Mr. Trump?  
17 A I do.  
18 Q Okay. I'm going to move to the first slide.  
19 (Whereupon, the exhibit was displayed on the  
20 screen.)  
21 Q Generally, what was the history of The Trump  
22 Organization?  
23 A Um, well, it started off as a development company, and  
24 my --  
25 MS. FAHERTY: Your Honor, can I just put on the

<p style="text-align: right;">Page 3996</p> <p>1 record an objection here.</p> <p>2 I think one, this "Trump story", this is -- I don't</p> <p>3 know what this document is, and it appears to be a hearsay</p> <p>4 document that we are now trying to get in through this</p> <p>5 witness. And this multiple page document, I'm just curious,</p> <p>6 what even it is, and where this line of testimony is going.</p> <p>7 And an additional concern about the extensive</p> <p>8 narratives that we've been getting, they are unfocused to</p> <p>9 anything relevant here, in particular.</p> <p>10 So a couple of objections that I'm just putting on</p> <p>11 right now to start what I think is probably going to be a</p> <p>12 lengthy, I don't know, line of examination.</p> <p>13 MR. ROBERT: I'm happy to address them, your Honor.</p> <p>14 THE COURT: Go ahead.</p> <p>15 (Continued on the next page.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3998</p> <p>D. J. Trump Jr. - by Defendant - Direct(Robert)</p> <p>1 testimony -- his memory seemed to be fleeting, we don't</p> <p>2 need to put an outline in front of him for him to testify</p> <p>3 about what the Trump Organization is or its history. So</p> <p>4 again, I don't see the basis for this document coming in</p> <p>5 to guide him through his responses, as to what the Trump</p> <p>6 Organization is, what it has done and its chronology over</p> <p>7 the years.</p> <p>8 And I apologize for not standing, Your Honor.</p> <p>9 THE COURT: You don't have to stand.</p> <p>10 MR. ROBERT: If you look, there are very few</p> <p>11 snippets, mostly it is photographs. We would have asked</p> <p>12 the Court to take a site visit, but it is a little</p> <p>13 aggressive to say we are going to go to Scotland and</p> <p>14 Ireland and Mar-a-Lago.</p> <p>15 THE WITNESS: I wouldn't recommend Scotland this</p> <p>16 time of year. Let's do that one in July.</p> <p>17 THE COURT: I would love to.</p> <p>18 I disagree with the plaintiff's take on this. I</p> <p>19 think the nature of the organization is important.</p> <p>20 However, let's establish what this is, who wrote it,</p> <p>21 before we --</p> <p>22 MR. ROBERT: Sure.</p> <p>23 THE COURT: -- get further answer.</p> <p>24 Q Mr. Trump, I am handing you Exhibit 1019. Do you see</p> <p>25 this?</p>
<p style="text-align: right;">Page 3997</p> <p>D. J. Trump Jr. - by Defendant - Direct(Robert)</p> <p>1 MR. ROBERT: As to the open-ended nature of it,</p> <p>2 it is my witness. I am not going to ask leading</p> <p>3 questions, I am going to ask open-ended questions so we</p> <p>4 can get a narrative from the witness.</p> <p>5 Secondly, this is extraordinarily relevant</p> <p>6 because there is equitable relief that the Attorney</p> <p>7 General is seeking basically to put the Trump Organization</p> <p>8 out of business, and the Court needs to understand where</p> <p>9 the company came from, where it is, and where it is going.</p> <p>10 To that point as well, issues of intent need to</p> <p>11 be determined by this Court in this course of the trial.</p> <p>12 And as witnesses will go throughout the next few weeks,</p> <p>13 the intent of the parties and the valuations and the</p> <p>14 numbers become more and more relevant. So it is important</p> <p>15 for this Court to understand and have a baseline</p> <p>16 understanding of how it is we view what we do, what it is</p> <p>17 we do, and exactly how the company operates.</p> <p>18 As far as the Attorney General not knowing what</p> <p>19 this is, I think that's pretty disingenuous, because they</p> <p>20 actually sent to us a more abbreviated version of this</p> <p>21 presentation in the exhibits that they plan to use. So</p> <p>22 they know exactly what this is. So I see no problem with</p> <p>23 taking the witness through it.</p> <p>24 MS. FAHERTY: Your Honor, he is an executive</p> <p>25 vice president of the company. Whereas last week, his</p>	<p style="text-align: right;">Page 3999</p> <p>D. J. Trump Jr. - by Defendant - Direct(Robert)</p> <p>1 A I do.</p> <p>2 Q Do you have an understanding of who put this</p> <p>3 together?</p> <p>4 A I believe you put it together. But it is basically,</p> <p>5 you know, a snapshot of our corporate website taking you</p> <p>6 through the history of the Trump Organization; the things that</p> <p>7 we do; the projects we work on; where we are today, et cetera.</p> <p>8 Q If you look through this quickly, and we will go</p> <p>9 through it in detail, these are, in fact, pictures from the</p> <p>10 Trump Organization's website and descriptions from the Trump</p> <p>11 Organization's website, correct?</p> <p>12 A That's correct.</p> <p>13 MR. ROBERT: I move the admissibility of</p> <p>14 Defendant's 1019.</p> <p>15 MR. WALLACE: Objection. It is hearsay what he</p> <p>16 just described.</p> <p>17 MR. ROBERT: He is an executive vice president</p> <p>18 and a defendant in the case.</p> <p>19 Q Mr. Trump, do you stand by the representations and</p> <p>20 statements contained in this document?</p> <p>21 A 100 percent.</p> <p>22 MR. WALLACE: Agreeing with hearsay, it is still</p> <p>23 hearsay.</p> <p>24 MR. ROBERT: It is not hearsay. If anything it</p> <p>25 is an admission of a party because they are a party to the</p>



<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4000</p> <p>1 case.</p> <p>2 MR. WALLACE: Party opponent. It is admissible</p> <p>3 as a party opponent. The party does not get to put in</p> <p>4 their website as advertising.</p> <p>5 MR. ROBERT: The photographs here, he will</p> <p>6 authenticate the photographs. If you want to fight over</p> <p>7 the descriptions, I can go through this, does that refresh</p> <p>8 your recollection what the history of the company is, does</p> <p>9 this refresh your recollection as to that. There are many</p> <p>10 ways to do this. I am trying to be efficient with time to</p> <p>11 move things along.</p> <p>12 MR. WALLACE: If it is going to refresh his</p> <p>13 recollection or demonstrative, it is fine. But it doesn't</p> <p>14 come into evidence. It is hearsay.</p> <p>15 THE COURT: It doesn't come into evidence.</p> <p>16 MR. ROBERT: If we can agree the photographs can</p> <p>17 come into evidence, the rest can be for demonstrative</p> <p>18 purposes, that's fine, I'll accept that.</p> <p>19 THE COURT: Okay. You have to accept it.</p> <p>20 That's my ruling.</p> <p>21 MR. ROBERT: I accepted that before I knew it</p> <p>22 was your ruling, but I accept that now, sir.</p> <p>23 THE COURT: Let me just say.</p> <p>24 MR. ROBERT: Yes, sir?</p> <p>25 THE COURT: It is basic evidence and you are</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4002</p> <p>1 picture.</p> <p>2 All right. Let's find out what the Trump</p> <p>3 Organization is all about by someone that would tend to</p> <p>4 know it. Let's hear it.</p> <p>5 MR. ROBERT: If it makes everyone feel better, I</p> <p>6 will take that screen off so he is not looking at the</p> <p>7 screen.</p> <p>8 Q The history of the Trump Organization, Mr. Trump?</p> <p>9 A My father started off working with his father, my</p> <p>10 grandfather, in Queens.</p> <p>11 My grandfather had an incredible, sort of, let's call</p> <p>12 it, Horatio Alger story. He was the son of immigrants. My</p> <p>13 great grandfather was a developer in his own right. Went to</p> <p>14 the Yukon during the gold rush. Started developing hotels,</p> <p>15 quite literally hotels, to deal with the miners in the Yukon</p> <p>16 territories in Canada. Came back. Had my grandfather in the</p> <p>17 early 1900s. He passed away when my grandfather was, he was 12</p> <p>18 or 13 years old. And as the oldest son, my grandfather became</p> <p>19 the man of the house.</p> <p>20 It was a little different then. There was no support</p> <p>21 structure or systems, and so he went to work. He started</p> <p>22 working on job sites, you know, around Queens. Learned the</p> <p>23 trades. Became, you know, figured out, you know, you can save</p> <p>24 this nail and that was a cent, or whatever it cost at the time.</p> <p>25 And eventually people saw his skill set, asked him to build</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4001</p> <p>1 very good at evidence, the fact that he can say it in</p> <p>2 court now, doesn't mean that the fact that it is written,</p> <p>3 even if it is the exact same words.</p> <p>4 MR. ROBERT: I get it. I was afraid if we</p> <p>5 didn't have the storyboard, I would be told it wasn't a</p> <p>6 complete set of what was on the web. But I hear Your</p> <p>7 Honor's ruling and we will deal with it.</p> <p>8 Q The history of the Trump Organization you were about</p> <p>9 to say how it started and the origins.</p> <p>10 A For decades the Trump Organization set new standards.</p> <p>11 Q Put it in your own words, please.</p> <p>12 A I am just kidding.</p> <p>13 THE COURT: I think the objection is going to be</p> <p>14 the one I just overruled on your behalf, but if you have a</p> <p>15 different objection or want to put it a different way?</p> <p>16 MS. FAHERTY: I have asserted my objection. I</p> <p>17 am going to make it a standing objection, please.</p> <p>18 THE COURT: All right. I didn't understand the</p> <p>19 first couple of words.</p> <p>20 MS. FAHERTY: I said I have asserted my</p> <p>21 objection, Your Honor, and I am going to make it a</p> <p>22 standing objection, please.</p> <p>23 THE COURT: Okay. It is standing. But it is</p> <p>24 overruled at this point. I think Mr. Robert eloquently</p> <p>25 explained why this is relevant in terms of the big</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4003</p> <p>1 them a garage. Then another. And he did it better, cheaper,</p> <p>2 faster than others. He started building things for himself,</p> <p>3 created an incredible portfolio.</p> <p>4 By the time of his passing of rental apartments</p> <p>5 around Brooklyn and Queens my father, you know, learned a lot</p> <p>6 of the business from him. But also had -- had some flare,</p> <p>7 wanted to do something differently. And so he saw New York</p> <p>8 City and Manhattan as, you know, the ultimate frontier to do</p> <p>9 that. And he came here from the, you know, late '70s, early</p> <p>10 '80s and, you know, started an organization that would</p> <p>11 ultimately change the skyline of New York.</p> <p>12 Q And Mr. Trump?</p> <p>13 MR. AMER: Your Honor, since we have gone back</p> <p>14 to the early 1900s, is Mr. Kise waiving the statute of</p> <p>15 limitations defense?</p> <p>16 MR. ROBERT: No. But I want to put things in</p> <p>17 perspective, otherwise you will say it is shot out of a</p> <p>18 canon.</p> <p>19 MR. KISE: As we have said many times, since</p> <p>20 they have gone back that far we have to go back just as</p> <p>21 far.</p> <p>22 THE COURT: Mr. Amer, I see you believe in</p> <p>23 miracles.</p> <p>24 MR. ROBERT: I won't ask if they built anything</p> <p>25 by candlelight, don't worry.</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4004</p> <p>1 Q Mr. Trump, who is depicted in this photograph?</p> <p>2 A That's my grandfather, Fred Trump.</p> <p>3 Q What about this picture?</p> <p>4 A Same thing.</p> <p>5 Q What are they overlooking, if you know?</p> <p>6 A Honestly --</p> <p>7 Q If you don't know, you don't know.</p> <p>8 A I don't know exactly, but I imagine it is one of my</p> <p>9 grandfather's places in Brooklyn and/or Queens. And I see my</p> <p>10 father's hair and I say that was probably, probably prior to my</p> <p>11 birth or around -- I have some pictures of myself as an infant</p> <p>12 where he looked, sort of, similar.</p> <p>13 Q So Mr. Trump, you testified that at some point your</p> <p>14 dad took the family business and came to Manhattan, correct?</p> <p>15 A Correct.</p> <p>16 Q And was that in or around 1976?</p> <p>17 A Yes, you know, about 18 months prior to my birth.</p> <p>18 Q And what project was that that was the first project</p> <p>19 of the Trump Organization in Manhattan?</p> <p>20 A That was the Grand Hyatt Hotel. You know that hotel</p> <p>21 was getting a little bit delapidated. My father had a vision</p> <p>22 to, you know, to change that. And he worked with the Hyatt</p> <p>23 family and the people who owned that at the time to create</p> <p>24 something that was incredibly rundown and turned it into</p> <p>25 something spectacular.</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4006</p> <p>1 THE COURT: Six.</p> <p>2 MR. WALLACE: If the answer is they can do</p> <p>3 anything they want in six weeks, I don't know what we are</p> <p>4 going to do when we object. We are objecting to specific</p> <p>5 testimony coming in, not to the time anyone is taking.</p> <p>6 THE COURT: I know, but having given you six</p> <p>7 weeks, you are going to get me in trouble with Mr. Kise.</p> <p>8 He is going to talk about how I always rule against him.</p> <p>9 No, let this stuff come in. Again, it has been 45 minutes</p> <p>10 or less. I also find it interesting, but that's -- you</p> <p>11 know.</p> <p>12 MR. WALLACE: If we can get to an understanding</p> <p>13 that Your Honor --</p> <p>14 THE COURT: I think it is relevant to get the</p> <p>15 historical perspective. Let's not have anymore objections</p> <p>16 on this particular ground. Something else, fine.</p> <p>17 THE WITNESS: I promise I will keep it less than</p> <p>18 six weeks.</p> <p>19 MR. WALLACE: Your Honor, if you are telling us</p> <p>20 you will take all of this testimony for what it is worth,</p> <p>21 that this is Mr. Trump's perspective on historical events,</p> <p>22 I am happy to end my objection.</p> <p>23 MR. AMER: I would ask that can we not have text</p> <p>24 on the screen, that basically acts as a script for the</p> <p>25 witness. I understand they want to get him to comment on</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4005</p> <p>1 Q What, if any, impact did that have on the City of New</p> <p>2 York at the time?</p> <p>3 A I think it was significant. And I think it really,</p> <p>4 you know, allowed him to grab a foothold as an outsider in a</p> <p>5 city that was, sort of, dominated by very Manhattan specific</p> <p>6 real estate families. That was, sort of, the first big</p> <p>7 project. He took something that was a disaster and turned it</p> <p>8 into something incredible. And that's no easy feat at anytime</p> <p>9 in Manhattan, and certainly probably not in the late '70s.</p> <p>10 MR. WALLACE: I am going to object at this</p> <p>11 point. I don't know if he has done academic studies that</p> <p>12 the situation in New York found itself in 1976 and is</p> <p>13 offering expert testimony, but this is all hearsay. This</p> <p>14 is not the witness's firsthand experiences of anything.</p> <p>15 MR. ROBERT: Mr. Trump is a sophisticated</p> <p>16 developer in the New York marketplace. It is his</p> <p>17 understanding of what his company's history has been and</p> <p>18 the benefit the company had to New York City and New York</p> <p>19 State as a whole. I see it for his opinion, not as an</p> <p>20 expert for the history of New York City.</p> <p>21 THE COURT: That's the problem, it is sort of</p> <p>22 expert testimony.</p> <p>23 Look, plaintiff, how many weeks did you put on</p> <p>24 your case?</p> <p>25 MR. WALLACE: I am trying to remember. Six.</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4007</p> <p>1 pictures, I think that's fine. But we have a document</p> <p>2 that the attorneys prepared.</p> <p>3 MR. ROBERT: This is from the Trump -- point of</p> <p>4 clarification, this is from the website and in the</p> <p>5 demonstratives you sent us.</p> <p>6 MS. FAHERTY: This is a DX Exhibit, Mr. Robert.</p> <p>7 MR. ROBERT: I'll pull yours out of my</p> <p>8 briefcase. Hold on.</p> <p>9 MR. AMER: I don't think it is appropriate to</p> <p>10 put a hearsay document on the screen without using it.</p> <p>11 THE WITNESS: I assure you, I don't need the</p> <p>12 text to tell you about these projects. I instructed my</p> <p>13 marketing teams to create this stuff throughout my tenure</p> <p>14 in the Trump Organization, so it is certainly not a</p> <p>15 script.</p> <p>16 MR. KISE: The witness just said what I was</p> <p>17 going to say. This is the product of his instruction.</p> <p>18 This is on the website. This isn't something that the</p> <p>19 lawyers prepared. It is simply, he is a corporate</p> <p>20 officer, he is a corporate representative, it provides the</p> <p>21 context and background.</p> <p>22 THE COURT: Mr. Kise, don't you remember my</p> <p>23 first rule?</p> <p>24 MR. ROBERT: When things are going your way.</p> <p>25 THE COURT: If I am arguing for you, you don't</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4008</p> <p>1 have to argue for you.</p> <p>2 MR. KISE: Fair enough.</p> <p>3 THE COURT: Objection is overruled. Let him go</p> <p>4 ahead and talk about how great the Trump Organization is.</p> <p>5 Q So I am going to now move us ahead eight years to</p> <p>6 1983. What was the second major project that the Trump</p> <p>7 Organization did in New York City, sir?</p> <p>8 A That would have been Trump Tower. And that was just,</p> <p>9 you know, really -- that was the first time he changed the</p> <p>10 skyline, because -- over the height. I think it was the</p> <p>11 tallest residential building in Manhattan at the time.</p> <p>12 It also, for my father, created a distinction between</p> <p>13 him and so many other developers. You had Tiffany's next door.</p> <p>14 There was an incredibly intricate negotiation for the air</p> <p>15 rights. Right? Sort of a relatively new concept, certainly</p> <p>16 for developers.</p> <p>17 These days, and for the last few years in New York,</p> <p>18 air rights has allowed people to build some of the most</p> <p>19 spectacular buildings anywhere in the world, creating view</p> <p>20 corridors that were unheard of. You see that going on with</p> <p>21 some of the tall buildings that have gone up over Central Park.</p> <p>22 My father was doing that 40-something years before everyone</p> <p>23 else figured it out. So he was able to amass the air rights.</p> <p>24 And if you look at the building, you can see unique</p> <p>25 things. It wasn't just taking, sort of, the square footage he</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4010</p> <p>1 you can take that residential apartment and put it on the</p> <p>2 68th floor, that changes things. You have that view.</p> <p>3 You know, that said, for retail to have, you know,</p> <p>4 that area on Fifth Avenue. It is great to have office</p> <p>5 in-between, again, lifting up the residential component,</p> <p>6 creating height, creating views.</p> <p>7 You know, my father was able to maximize that FAR,</p> <p>8 floor area ratio, deemed by the City, what was allowable to be</p> <p>9 built, and really maximize each aspect of it, not give up a</p> <p>10 single square foot, and create a lot of value in the process.</p> <p>11 Q At the time, are you aware if there was anything</p> <p>12 similar to this in or around that area on Fifth Avenue?</p> <p>13 A You know, I was about five so I am not sure. But I</p> <p>14 know other buildings of the era, and this was certainly</p> <p>15 certainly unique. And it was a project by which, you know, I</p> <p>16 know from conversations of some of the others throughout my</p> <p>17 career, you know, great developers really looked at it like</p> <p>18 that was genius, that play was incredible, that was unique.</p> <p>19 And really set the stage for my father in his further</p> <p>20 developments.</p> <p>21 MR. WALLACE: I want to go back to note the</p> <p>22 objection of hearsay, what he was told by other</p> <p>23 developers.</p> <p>24 THE COURT: Okay. It is stricken, the hearsay</p> <p>25 part of it, what other developers said.</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4009</p> <p>1 was able to purchase from Tiffany's and adding it to the top of</p> <p>2 his tower. If you look at the way the building, sort of, has a</p> <p>3 saw cut in it, he took a project and gave, you know, every</p> <p>4 bedroom a corner window. He was able to do that even on the</p> <p>5 lower portion. Give balconies to people. Take those air</p> <p>6 rights and not just, again, stack them into a square building</p> <p>7 that would have been, you know, X number of feet tall, but by</p> <p>8 doing the wedding caking, taking the building taller, giving</p> <p>9 everyone that corner view and really doing something truly</p> <p>10 special, I think it would be one of the first, perhaps great</p> <p>11 examples of, you know, ultra luxury real estate emerging in</p> <p>12 Manhattan. It was the, you know, sort of the -- the project by</p> <p>13 which all future high-end luxury residential condominiums would</p> <p>14 have been judged.</p> <p>15 Q What, if any, significance was there to the mixed use</p> <p>16 of it at the time?</p> <p>17 A Well, the way FAR, you know, works --</p> <p>18 Q Can you explain what FAR is?</p> <p>19 A Floor area ratio. You know, buildings can be deemed</p> <p>20 to have a certain amount of this, but you may not be able to</p> <p>21 build all of that square footage as residential.</p> <p>22 So this, as a mixed use building, the first few, you</p> <p>23 know, floors, you know, high-end luxury retail, having an</p> <p>24 apartment on the second floor of Fifth Avenue doesn't add all</p> <p>25 of that much value. Is it a prestigious address? Yes. But if</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4011</p> <p>1 MR. ROBERT: Fair point, Your Honor.</p> <p>2 Q Mr. Trump, what are we looking at here in slide</p> <p>3 seven?</p> <p>4 A It is the view of Central Park and the Plaza Hotel,</p> <p>5 another one of the projects that we, you know, had in our</p> <p>6 portfolio and developed and created at some stage in our life.</p> <p>7 And that's the view from -- actually it is the view outside of</p> <p>8 my office.</p> <p>9 Q And this is how it looks today?</p> <p>10 A It is.</p> <p>11 Q And the next slide, slide eight, what are we looking</p> <p>12 at here, Mr. Trump?</p> <p>13 A That's the atrium of Trump Tower, the same building</p> <p>14 we were just looking at, with sort of, you know, signage from</p> <p>15 Gucci, one of the great retail tenants of the world who</p> <p>16 occupies the retail space, the base level of the building.</p> <p>17 And yeah, that's basically as it is for the most part</p> <p>18 today.</p> <p>19 Q What are we looking at here in slide nine?</p> <p>20 A The elevator lobby of the same space.</p> <p>21 Q And slide ten, give us a perspective of what this is.</p> <p>22 A That was the retail, you know, component of Trump</p> <p>23 Tower when it was originally built, having that, sort of,</p> <p>24 internal vertical retail, something very unique that had not</p> <p>25 really been done. It allowed you to work within the space.</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4012</p> <p>1 Some of that actually, you know, as public space still deemed</p> <p>2 by the City, again, allowed by having it be public space, it</p> <p>3 allowed you to do certain things within it. So I think the</p> <p>4 whole project really shows the forethought, the, you know,</p> <p>5 genius of what my father was able to do; the vision that he was</p> <p>6 able to have to do things differently, to think outside of the</p> <p>7 box, to create and ultimately add value in ways that other</p> <p>8 people had never thought of before.</p> <p>9 Q So earlier you testified that your first job at the</p> <p>10 Trump Organization was, and I use the word "project manager" on</p> <p>11 the West Side Yards, correct, sir?</p> <p>12 A Yes.</p> <p>13 Q I realize you were still very young, 1984 you were</p> <p>14 eight -- six?</p> <p>15 A Yeah, New Year's Eve '77, so I guess six.</p> <p>16 Q What are we looking at here in this slide?</p> <p>17 A That is a -- that is 240, 220, 200, 180, 160, 140 and</p> <p>18 it seems like the corner of 120 Riverside Boulevard. That</p> <p>19 is -- when I said I worked for Hudson Waterfront Associates,</p> <p>20 that was the organization that ended up owning and developing</p> <p>21 this project. It was the largest piece of undeveloped land in</p> <p>22 New York. It was the former west side railway yards, and you</p> <p>23 know, it was to most people, for decades, you know, an eyesore</p> <p>24 of undeveloped land in New York. My father saw what it was.</p> <p>25 He saw the potential for that. He had numerous iterations.</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4014</p> <p>1 be 25 years. As the market in New York changed, so did what</p> <p>2 those projects and buildings were, to be able to suit the</p> <p>3 market and actually, you know, maximize value, you know, of the</p> <p>4 project.</p> <p>5 Q Slide 12, what are we looking at here?</p> <p>6 A It looks like one of the lobbies of one of the</p> <p>7 buildings. That could be 200, if I remember correctly, but I</p> <p>8 don't want to place a bet.</p> <p>9 Q Slide 13?</p> <p>10 A I believe that's 240 Riverside Boulevard lobby. And</p> <p>11 I think it should be noted that, again, at this time or at the</p> <p>12 time that these were being built, you didn't have projects like</p> <p>13 this being built. You didn't have luxury projects being built</p> <p>14 like that in those locations. You had older brick buildings.</p> <p>15 You had, you know, dated co-ops. They really -- the</p> <p>16 organization really brought a whole new level of luxury to that</p> <p>17 market. It really created something special in an area that</p> <p>18 was otherwise left for dead for a long time.</p> <p>19 Q And this is just another view of the project?</p> <p>20 A That's correct.</p> <p>21 Q So --</p> <p>22 A By the way, that's literally the north third, maybe</p> <p>23 the north quarter of the project. This went all the way down</p> <p>24 to approximately 59th Street, and that corner there is</p> <p>25 72nd. So this was a very large tract along the Hudson River.</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4013</p> <p>1 And perhaps it goes to show the nature of real estate</p> <p>2 development and how things change over time.</p> <p>3 At one point he was going to build the tallest</p> <p>4 building in the world there, as he built one of the tallest</p> <p>5 residential towers ever in Manhattan on the opposite side,</p> <p>6 across from the UN on the east side at Trump World Tower.</p> <p>7 Here you had a project that the evolution changed</p> <p>8 over 25 years to being, you know, one of the, really, one of</p> <p>9 the largest developments amassed in New York City that I can</p> <p>10 think of for the last two decades.</p> <p>11 Q From the time the Trump Organization acquired this</p> <p>12 property in 1984 to the time you joined the project and the</p> <p>13 company in 2001, what, if anything, had happened to the</p> <p>14 property during that period?</p> <p>15 A A lot of different changes, a lot of different ideas.</p> <p>16 A lot of time spent on zoning and entitlement and what you</p> <p>17 could actually do there. And it ended up -- it ended up</p> <p>18 turning into a spectacular residential project. Again, unique</p> <p>19 in that the first two buildings, really the first three</p> <p>20 buildings there are condominium. The next buildings were</p> <p>21 rental apartments. And so you had a diversification in the way</p> <p>22 in what you were building. Just keeping in touch with, as you</p> <p>23 built one building, if the markets changed in the timeframe</p> <p>24 that we talked about, we said from inception to completion on a</p> <p>25 real estate project, it could be two, it could be ten, it could</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4015</p> <p>1 And again, that was left for dead for so long.</p> <p>2 Really saw some value and created something special. It is one</p> <p>3 of the, really, the most luxury, even today, projects in that</p> <p>4 market.</p> <p>5 Q You mentioned earlier this morning this notion about</p> <p>6 the amenity space in the building. Do you remember that, sir?</p> <p>7 A I do.</p> <p>8 Q What if anything was significant about the way the</p> <p>9 Trump Organization viewed amenity spaces? And I will ask you</p> <p>10 now about residential and later on about commercial space.</p> <p>11 A It was a very big deal. It was something, as I</p> <p>12 stated that, forever, you know, most real estate developers</p> <p>13 want to build and sell every single piece of real estate you</p> <p>14 get away from the projects. But to maximize, you know, the</p> <p>15 price per square foot you were able to sell.</p> <p>16 Eventually you had to give something more. My father</p> <p>17 was on the leading edge of creating that value in things,</p> <p>18 again, that are commonplace today in ultra luxury real estate</p> <p>19 are there because my father, in my opinion, was the first guy</p> <p>20 to do that. Maybe someone put a gym in a building somewhere,</p> <p>21 but no one had done it at the scale of what my father had done.</p> <p>22 You know, so that notion of using what could have</p> <p>23 been otherwise saleable space to add value and create amenities</p> <p>24 for people, he was really on the leading edge of all of that.</p> <p>25 And again, it allowed his and his projects to out perform</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4016</p> <p>1 others in the market throughout most of his career.</p> <p>2 Q We are going to move on to a property, Mar-a-Lago.</p> <p>3 A Yes.</p> <p>4 Q What, if anything, happened in 1985 with the Trump</p> <p>5 Organization in Mar-a-Lago?</p> <p>6 A Well, my father -- my father purchased, you know,</p> <p>7 what I would say is one of the finest estates anywhere in the</p> <p>8 world, certainly, certainly in America. I guess maybe there is</p> <p>9 a couple, but I would look at it as one of the few -- one of</p> <p>10 the few, sort of, American castles, if you would. America, it</p> <p>11 is not the same as Europe or, you know, older parts of the</p> <p>12 world. This is one of the most spectacular estates anywhere in</p> <p>13 the world.</p> <p>14 My father was able to come up with some very creative</p> <p>15 ways to be able to purchase this estate. Has had it as his</p> <p>16 residence ever since. Certainly a home away from home for all</p> <p>17 of his career. It is big and my father likes to play and</p> <p>18 create and do things. And my father turned it into a club at</p> <p>19 the same time, and it has just been an amazing -- an amazing</p> <p>20 place.</p> <p>21 Q What, if anything, do you understand the history of</p> <p>22 Mar-a-Lago to be?</p> <p>23 A Well, it was a -- originally built by Marjory</p> <p>24 Merriweather Post, let's call it really maybe one of the first</p> <p>25 female industrialists in America. Someone who was really,</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4018</p> <p>1 A You can see the beach component, you see the pool on</p> <p>2 the upper end there. So it was a small component of</p> <p>3 Mar-a-Lago, but, you know, by controlling that it gave him</p> <p>4 significant control of the rest of the property.</p> <p>5 Q And what are we looking at here in slide 17?</p> <p>6 A That's the primary atrium. It is -- when you see</p> <p>7 that, you know, and again, the detail of which is just</p> <p>8 incredible, you see what that is. You understand you can't</p> <p>9 build that today. It doesn't exist.</p> <p>10 So that's why perhaps I may have taken some umbrage</p> <p>11 when the stories were out about Mar-a-Lago being worth</p> <p>12 \$18 million. You couldn't build that atrium for \$18 million</p> <p>13 today. But again, you need to understand it and see it to</p> <p>14 actually fully grasp the spectacular nature of this property.</p> <p>15 Q And this picture, sir?</p> <p>16 A Just the opposite angle, you know, of that same shot.</p> <p>17 And again, that's where Marjory Merriweather Post entertained</p> <p>18 the biggest people in the world in the early 1900s.</p> <p>19 Q And slide 19, sir, what are we looking at here?</p> <p>20 A That's the ballroom that is for the club component.</p> <p>21 That's where we host our weddings. And my father built that,</p> <p>22 spent a lot of money building a contemporary version of what</p> <p>23 would have been, you know, the lobby and the atrium, you know,</p> <p>24 that you just saw. But to be able to have, you know, what is</p> <p>25 called the wing span, the ceiling span, to be able to host</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4017</p> <p>1 maybe in the world, ahead of her time. This was her private</p> <p>2 estate. This is where she entertained titans of industry,</p> <p>3 leaders from all over the world. It was the crown jewel of</p> <p>4 Palm Beach. One of, you know, the world's leading luxury,</p> <p>5 let's call it, you know, vacation places, as well as just</p> <p>6 residences these days. And it continues to be that today.</p> <p>7 Q Do you have an understanding of how it is the Trump</p> <p>8 Organization acquired Mar-a-Lago?</p> <p>9 A Well, you know, it was pretty early, I know there was</p> <p>10 some interesting land right plays. My father, I think he</p> <p>11 bought the ocean component of Mar-a-Lago. You know, Mar-a-Lago</p> <p>12 is: From the sea to the lake. That's the intercoastal</p> <p>13 waterway in Palm Beach.</p> <p>14 If you are on the ocean, that's incredible value. If</p> <p>15 you are on the lake or the intercoastal that's incredible</p> <p>16 value. If you are on both, that's virtually unheard of. But</p> <p>17 what he was able to do is buy the ocean component, to my</p> <p>18 recollection. And basically said, hey, I am going to build a</p> <p>19 house here and block off those views. Having Mar-a-Lago</p> <p>20 without the Mar, or at least without views of the Mar, the</p> <p>21 ocean, it was not quite the same. And so it put him in a</p> <p>22 position to leverage what he had done to be able to buy the</p> <p>23 rest of the property, you know, for rather an incredible price.</p> <p>24 I think it was 7 or \$8 million.</p> <p>25 Q Look at slide 16.</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4019</p> <p>1 weddings, to not have columns, to not have this, to be able to</p> <p>2 host some of the finest events anywhere in the world.</p> <p>3 Q Do you have an understanding as to when this ballroom</p> <p>4 was built?</p> <p>5 A That was built in the early, let's call it, early</p> <p>6 2000's.</p> <p>7 Q And do you have an understanding of how much money</p> <p>8 was spent to build this?</p> <p>9 A A little approximately 15, \$16 million then.</p> <p>10 Q This is just another one of the ballrooms, right?</p> <p>11 A That was actually, sort of, the original ballroom</p> <p>12 that was actually part of the estates when we did it.</p> <p>13 Significantly smaller than the one we built. That's, sort of,</p> <p>14 the breakout room ballroom; is what we would use it as now.</p> <p>15 Q Slide 21, what is this perspective we are looking at?</p> <p>16 A I imagine that's, if you are the camera guy you are</p> <p>17 at the edge of the waterfront. So you are on the Atlantic</p> <p>18 Ocean taking a picture to the west. That's the beach club</p> <p>19 component. That's the portion of land that I was talking about</p> <p>20 in terms of my father, my understanding is, got controlling</p> <p>21 interest of that to be able to leverage to buy the rest of the</p> <p>22 property.</p> <p>23 Q And this is just another view of that beach area?</p> <p>24 A Correct.</p> <p>25 Q Moving to slide 23, sir; do you see that?</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4020</p> <p>1 A I do.</p> <p>2 Q And the house that is all the way down here on the</p> <p>3 right; do you recognize that house, sir?</p> <p>4 A I do.</p> <p>5 Q What is that house?</p> <p>6 A That, I forget the exact address, but that's --</p> <p>7 that's the house next door to the beach club that was actually</p> <p>8 my aunt's residence for a while. We purchased it for a while.</p> <p>9 It is a, you know, beautiful house that is very nice, but</p> <p>10 probably under an acre in size. And you know, has been on the</p> <p>11 market for approximately \$50 million.</p> <p>12 Just, you know, so for perspective Mar-a-Lago being</p> <p>13 just under 20 acres, to understand just the size and scope of</p> <p>14 what all of this is.</p> <p>15 Q And that's just one acre on the beach itself,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q Okay. Moving ahead.</p> <p>19 Do you remember a project involving the Wolman Rink</p> <p>20 from the Trump Organization?</p> <p>21 A I do. I used to skate there a lot on the weekends.</p> <p>22 Q What was your understanding of that project, sir?</p> <p>23 A It was a project -- it was run by the City. It was</p> <p>24 rundown and, sort of, fell apart, delapidated. In the early</p> <p>25 '80s, I remember my father used to, sort of, see it from -- you</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4022</p> <p>1 Q And this was, to your knowledge, the first time the</p> <p>2 Trump Organization did a City work type project?</p> <p>3 A To my knowledge, yes, I believe it was.</p> <p>4 Q Okay. And we are going to talk about others later this</p> <p>5 morning.</p> <p>6 I want to talk to you about the Plaza Hotel. What if</p> <p>7 any involvement did the Trump Organization have with the Plaza</p> <p>8 Hotel?</p> <p>9 A Similar thing. My father saw an opportunity to buy</p> <p>10 what was one of the great, you know, iconic projects in New York</p> <p>11 City. He got involved. He got involved with it at a time, took</p> <p>12 it over, ran it, operated it. Um, you know, sold it again. But</p> <p>13 it was a project that he saw as, you know, as a crown jewel</p> <p>14 asset in New York. He wanted to make sure that, you know, it</p> <p>15 did not fall apart and did not get there. And it was, you know,</p> <p>16 it -- it, again, a crown jewel of his portfolio for some period</p> <p>17 of time.</p> <p>18 (Whereupon, the slide was displayed on the screen.)</p> <p>19 Q Now I'm going to move to a property we heard about in</p> <p>20 this case called Seven Springs. And your brother is going to</p> <p>21 testify in a little more detail about that later on in the</p> <p>22 trial.</p> <p>23 But generally, what, if anything, did The Trump</p> <p>24 Organization do in 1994 with a property called Seven Springs?</p> <p>25 A I believe it was really the largest -- one of the</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4021</p> <p>1 could see Trump Tower there in the background. And it was one</p> <p>2 of those projects that just -- the City couldn't run it. It</p> <p>3 fell apart. My father literally offered to come in and fix it,</p> <p>4 because he was sick of looking at the eyesore that was there.</p> <p>5 He didn't want to see that in Central Park. It wasn't good for</p> <p>6 New York City. It wasn't good for what he was trying to do in</p> <p>7 New York, creating that, you know, luxury environment. And so</p> <p>8 he got involved with it. Took it over from the City. And</p> <p>9 within a few months it was up and running and he managed it.</p> <p>10 And it was spectacular for quite sometime.</p> <p>11 I think, if I remember correctly, he may have -- the</p> <p>12 City decided it wanted to do it itself, and it could do it,</p> <p>13 they took it back over. And within a short period of time the</p> <p>14 chillers for the ice were no longer working, and it fell back</p> <p>15 into disarray. My father took it back over, fixed it again.</p> <p>16 Got it up and running. And, you know, then managed it for the</p> <p>17 next, you know, 25 years, whatever it was. I don't know the</p> <p>18 exact timing, but for a very long period of time.</p> <p>19 (The following proceedings were stenographically</p> <p>20 recorded by Senior Court Reporter Michael Ranita.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4023</p> <p>1 largest contiguous undeveloped parcels of land in Westchester</p> <p>2 County. Obviously, you know, incredibly luxurious, a suburb of</p> <p>3 Manhattan, 200-something acres with an incredible, you know,</p> <p>4 estate home on it.</p> <p>5 My father took that over. It was -- they -- it really</p> <p>6 was in a trust. Just, you know, sort of falling apart sitting</p> <p>7 there. He saw the potential of this estate, just said it was</p> <p>8 too nice just to let really fall apart and sit there, so he</p> <p>9 bought this. And again, just as a vision, could it be something</p> <p>10 else? Could he go through zoning; was more intimate on details</p> <p>11 of the project. So he could take you through what it was. But,</p> <p>12 again, at the time, you know, 200-something acres in Westchester</p> <p>13 County that, you know, with this kind of spectacular home on it,</p> <p>14 and others, was just amazing.</p> <p>15 For me, I personally loved it because I would take my</p> <p>16 kids up there on the weekends and I got to let, you know, kids</p> <p>17 that were otherwise raised in New York City, ride ATVs, play in</p> <p>18 the woods and have a great time. So it was always a property</p> <p>19 near and dear to my heart, but mostly as a playground, but not</p> <p>20 as the, let's call it potential canvass for my father's art,</p> <p>21 which is development.</p> <p>22 Q What do you mean by that? Your dad's canvass is</p> <p>23 development?</p> <p>24 A I look at him -- he is an artist with real estate. He</p> <p>25 sees the things that other people don't. He creates the things</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4024</p> <p>1 that other people would never envision. He plays the long game</p> <p>2 in many cases in that. He, honestly, very rarely does he sell</p> <p>3 assets. Obviously, realty is cyclical. Sometimes it make sense</p> <p>4 that you have to, sometimes there's decisions that you can't say</p> <p>5 no, or you have the opportunity to sell one thing which allows</p> <p>6 you to buy three, four, five others. But, you know, that is --</p> <p>7 that is his canvass that he creates. He is a creative guy.</p> <p>8 He's also good at building, so that makes it even easier. You</p> <p>9 know, there are artists in real estate, as we've seen around the</p> <p>10 world, that, you know, they want to build a ski resort in the</p> <p>11 Middle East. It's wonderful, but it's not exactly efficient or</p> <p>12 makes sense. He understands and has incredible vision that</p> <p>13 other people don't, and so I think he saw that for this</p> <p>14 property. And again, it is that special.</p> <p>15 (Whereupon, the next slide was displayed on the</p> <p>16 screen.)</p> <p>17 Q What are we looking at, slide 29?</p> <p>18 A That's the main house. Although, even some of the</p> <p>19 secondary housing, you know, the Heinz estate, the Heinz</p> <p>20 ketchup, that was another house. It was their residence there.</p> <p>21 That's the main house, and it's a spectacular example of a home</p> <p>22 that built -- each one of the blocks came from literally its own</p> <p>23 quarry, hand carved, and it's this big. You have to sort of see</p> <p>24 it to understand the level of quality that was built around the</p> <p>25 time that this was put together. It's just an amazing estate.</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4026</p> <p>1 Q Finally, this is?</p> <p>2 A That is the Heinz estate. That just another one of the</p> <p>3 homes on that property.</p> <p>4 Q Okay.</p> <p>5 (Whereupon, the next slide was displayed on the</p> <p>6 screen.)</p> <p>7 Q Now, turning to another property that we all know, in</p> <p>8 this case, which is 40 Wall Street. Are you familiar with that</p> <p>9 property?</p> <p>10 A I am.</p> <p>11 Q What, if anything, did The Trump Organization do with</p> <p>12 that in 1995?</p> <p>13 A Well, you know, my father bought it, um, in a very</p> <p>14 rough real estate cycle in New York. The market was a disaster.</p> <p>15 It was falling apart. The people who had bought it didn't</p> <p>16 really know or understand real estate. They were putting, you</p> <p>17 know, dropping ceilings in it. It was, at one point in time, it</p> <p>18 was the tallest building in the world, actually. It was then</p> <p>19 displaced later on by the Empire State Building, but only</p> <p>20 slightly. And it's a commercial office building. My father,</p> <p>21 you know, took it over at a very rough time, understood, again,</p> <p>22 how to maximize the potential of this. Over a million square</p> <p>23 feet of office space in New York that was going to be largely</p> <p>24 vacant and unoccupied. And so it was a risk in a rough time,</p> <p>25 but, you know, he understood how to maximize that, how to fix it</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4025</p> <p>1 (Whereupon, the next slide was displayed on the</p> <p>2 screen.)</p> <p>3 Q What are we looking at in slide 30?</p> <p>4 A That's the -- really like one third of the primary</p> <p>5 entrance foyer. It's really the back end of it. It's quite a</p> <p>6 bit bigger than that.</p> <p>7 (Whereupon, the next slide was displayed on the</p> <p>8 screen.)</p> <p>9 A That is a full picture there of what happens when you</p> <p>10 walk in that primary front door.</p> <p>11 (Whereupon, the next slide was displayed on the</p> <p>12 screen.)</p> <p>13 Q And 32?</p> <p>14 A The library of that building.</p> <p>15 (Whereupon, the next slide was displayed on the</p> <p>16 screen.)</p> <p>17 Q And 33?</p> <p>18 A Indoor pool. Really unique at that time. I forget the</p> <p>19 exact year that it was built, but quite sometime ago. Um, you</p> <p>20 know, early mid 1900s. You know, indoor pools to be done so</p> <p>21 that, you know, again perhaps that was one of the original</p> <p>22 unique amenities, spaces in an estate, but, um, a pretty</p> <p>23 spectacular space.</p> <p>24 (Whereupon, the next slide was displayed on the</p> <p>25 screen.)</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4027</p> <p>1 up, how to bring out the potential of the asset, and he's done</p> <p>2 that. And it's been an outstanding landmark in our portfolio</p> <p>3 ever since.</p> <p>4 Q Before we show more pictures of this, what was your</p> <p>5 involvement with 40 Wall, and I know we are little bit fast</p> <p>6 forwarding, and I'll come back in a second.</p> <p>7 Once you were in The Trump Organization, what was your</p> <p>8 involvement?</p> <p>9 A I got involved in leasing probably, you know, 2011,</p> <p>10 2012, you know, I got involved in leasing of the building.</p> <p>11 Obviously coming out of a very rough real estate market, um,</p> <p>12 when you have a million and change square feet of a property, if</p> <p>13 all of those -- in this case it's commercial real estate. If</p> <p>14 all of your leases come due at a certain period of time, but</p> <p>15 that happens to be within a bad market, that changes things. So</p> <p>16 I got involved in leasing that building, you know, let's call it</p> <p>17 diversifying the time line of the rent roles, and the</p> <p>18 expiration, you know, really trying to stabilize that, and</p> <p>19 that's been great.</p> <p>20 Q Putting a little more meat on those bones, what does</p> <p>21 that exactly mean in terms of what your function was in, let's</p> <p>22 say, dealing with the lease terminations and things like that?</p> <p>23 A Took charge of the leasing of the building. So if you</p> <p>24 had, you know, any one of the dozens of tenants that occupied</p> <p>25 space within the building, I would work with them to either</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4028</p> <p>1 renew their lease. I would work with them, and/or, you know, 2 the brokers to find someone else to fill a vacant space to try 3 to maximize value, to make sure that you could stagger the 4 expiration of those leases to kind of stabilize cash flows over 5 time there. And it's been great. 6 Q For example, using 40 Wall, how does cash flow change 7 year to year, generally, with regard to a property like that for 8 The Trump Organization, specifically? 9 A I mean, it depends, right. Generally, a commercial 10 lease, ten plus years, if you take over a building, as my father 11 did, and it's vacant, you fill it all up. If all of those rents 12 and all of those leases come due at a certain time, that's great 13 if you are in a boom time; it's a disaster if you are not. And 14 that's the way the nature and the cyclical nature of the real 15 estate market works. There's a lot of luck to that. But you 16 can find times and you could do things to be able to, you know, 17 it's called spread some of that risk out. 18 You know, so for that building, you know, in 2012, you 19 had a large chunk of space coming due, you were coming out of 20 the '08, '10 sort of disaster. I don't think it's hearsay to 21 say that the real estate in New York, and frankly America, was a 22 disaster in '08 coming out of, you know, that crisis. So you 23 are spreading those out, renewing things, making sure to 24 stabilize cash flows to keep those things going, um, for the 25 project became a very important part of the job, and we did</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4030</p> <p>1 in this case to secure that. I mean these are the gambles that 2 you take as part of real estate, but, again, you wouldn't want 3 to necessarily, at an all time low, you wouldn't want to renew 4 for ten years, but you may want to renew for five, stretch 5 people out, get them into a new market, and then hopefully you 6 end up in a boom time that that's where you do the ten-year 7 lease, the ten-year plus lease. 8 THE COURT: You are using very frequently a banned 9 word in my courtroom. Mr. Kise, what is the banned word? 10 MR. KISE: Again. 11 THE COURT: Again. 12 THE WITNESS: I apologize. 13 THE COURT: Try not to repeat yourself. That's 14 all. If you are going to say something again, maybe just 15 leave out the "again", because otherwise you'll get me all 16 upset. 17 MR. KISE: I thought you were giving me a 18 ten-minute warning when I saw your eyes. 19 A It's my component in my general vernacular. I'll do my 20 best. 21 THE COURT: I'm giving you a five-minute warning 22 later. 23 Q Moving back to the presentation. 24 (Whereupon, the next slide was displayed on the 25 screen.)</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4029</p> <p>1 that. That's not a two-week, you know, wave a magic wand type 2 of thing. That took a lot of time, and, you know, we did a 3 great job of that building. The last time I checked, it was 4 leased into the tune of 90-something percent. Mid 90s, very 5 good for downtown. And so we did a great job sort of just 6 stabilizing that asset and creating value. 7 Q What is the Trump Organization's philosophy in a down 8 time when you have vacant space in a building? Do you 9 automatically immediately want to have a tenant come in and sign 10 a lease? 11 A Not necessarily. There are times you see that 12 potential for the market to come, you want to hold it, or maybe 13 you would lease it, but you wouldn't lease it for ten years; you 14 would lease it for five. You stabilize that. 15 A big part of leasing, if you get -- maybe renew an 16 existing tenant, but you wouldn't put in the same TI packages, 17 tenant improvements. You don't want to spend you know, 60, 70 18 \$80 a foot that may take three, four, five years before they 19 start actually returning, because you are getting the rent, but 20 you have to pay yourself back, essentially, for building out the 21 space for the tenant. So if I could renew a tenant rather than 22 putting a new one in there, I'm incentivized to do that because 23 I'm not necessarily spending that money on moment one. 24 So, you know, there's any number of things that you 25 would do as a real estate developer or operator, professional,</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4031</p> <p>1 Q What are we looking at here in slide 36? 2 A That is the lobby of 40 Wall Street. 3 (Whereupon, the next slide was displayed on the 4 screen.) 5 Q And slide 37. 6 A Actually, that's the safe -- that's one of four, or 7 five -- it's not even the big one, the vaults at 40 Wall Street. 8 What was interesting, when the building was built it was 9 actually used by the Federal Reserve to store, across the 10 street, to store some of America's gold currency there. There's 11 safes that the vault doors are nine feet wide, actually 12 spectacular. It's -- to me it's maybe -- as one of these guys 13 that's in into that stuff, it's truly like a mechanical work of 14 art. And that one doesn't even do it justice because there's 15 bigger ones, but we since turned these vaults that you don't 16 necessarily need in a world of digital banking, and whatnot, 17 we've turned it into an amenity space for the building. 18 But at one point in time, you know, that was used by 19 the Federal Reserve to safeguard gold. And let's just say it 20 would probably be easier to take down the building to remove 21 those safes than it would be to get them out any other way. So 22 we figured out the way to utilize them and allow other people to 23 see the nature of them. 24 (Whereupon, the next slide was displayed on the 25 screen.)</p>



<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4032</p> <p>1 Q And 38, is that one of those amenity spaces?</p> <p>2 A Yes.</p> <p>3 (Whereupon, the next slide was displayed on the</p> <p>4 screen.)</p> <p>5 Q Same with 39?</p> <p>6 A Correct.</p> <p>7 Q So we talked earlier about the Trump Organization being</p> <p>8 in the forefront of amenity space in residential. What about</p> <p>9 with regard to commercial space?</p> <p>10 A Similar. Similar. Doing something like this would not</p> <p>11 necessarily be heard of. Someone would usually lease it for two</p> <p>12 bucks a foot to, you know, put a storage unit there for someone.</p> <p>13 For us, it was about creating value for the other</p> <p>14 tenants in the building, and if we can do that, ultimately that</p> <p>15 ends up into creating value for us in the rents that you are</p> <p>16 able to afford.</p> <p>17 (Whereupon, the next slide was displayed on the</p> <p>18 screen.)</p> <p>19 Q And what are we looking at here?</p> <p>20 A It looks like one of the views from one of the upper</p> <p>21 tiers of the building overlooking the Brooklyn Bridge, et</p> <p>22 cetera.</p> <p>23 (Whereupon, the next slide was displayed on the</p> <p>24 screen.)</p> <p>25 Q And finally this picture of 40 Wall?</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4034</p> <p>1 hotels.</p> <p>2 Q Explain.</p> <p>3 A So this was the former Gulf and Western building. It</p> <p>4 was a commercial building. When my father bought it and he</p> <p>5 worked with the General Electric Pension Trust, I believe it</p> <p>6 was, but certainly General Electric, generally, to redevelop</p> <p>7 this project, our forte, while he dabbled in hotels, the Hyatt</p> <p>8 Hotel earlier, it wasn't necessarily part of our general</p> <p>9 portfolio.</p> <p>10 The problem with it was the zoning in the building</p> <p>11 forced you to maintain a commercial component to maximize that.</p> <p>12 So you could build residential, but to build residential, if you</p> <p>13 only did residential, you would literally have to lop off a few</p> <p>14 stories of the upper portion of the project. So that didn't</p> <p>15 make any sense. You wouldn't want to lose the value. But, what</p> <p>16 could you do? You could leave it commercial or you could create</p> <p>17 something that makes more sense. Just create a hotel component,</p> <p>18 that way if you have amenities, again, like a gym, you could</p> <p>19 amortize them over the entire building rather than just, you</p> <p>20 know, just the residences.</p> <p>21 And so, what they did was they, let's call it, you</p> <p>22 know, bottom, bottom third of that building is a hotel, and it</p> <p>23 functions that way today. We manage it, but it was a</p> <p>24 hotel/condominium whereby unit 3A of the hotel is, again, sold</p> <p>25 like you would a residential component. So a buyer can actually</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4033</p> <p>1 A That's the tower.</p> <p>2 Q We are now going to move into a different topic and the</p> <p>3 next slide.</p> <p>4 (Whereupon, the next slide was displayed on the</p> <p>5 screen.)</p> <p>6 Q Which is in 1997, the Trump International Hotel and</p> <p>7 Tower, before we talk about this. I want to talk to you about</p> <p>8 the hotel division of the Trump Organization, okay, Mr. Trump.</p> <p>9 A Yes.</p> <p>10 Q So building hotels is something The Trump Organization</p> <p>11 did in the past; correct?</p> <p>12 A Correct.</p> <p>13 Q What, if anything, was different in the way that The</p> <p>14 Trump Organization dealt with the building of hotels as opposed</p> <p>15 to others?</p> <p>16 A We would also have been on the forefront of doing it,</p> <p>17 you know, under a condominium style, right, hotel condominium</p> <p>18 had never really been done in luxury hotels prior to my father,</p> <p>19 that I could think of.</p> <p>20 Q I'm going to break it down, because this is important.</p> <p>21 Mr. Trump, forgive me for being so simplistic; a condominium is?</p> <p>22 A A "condominium" would be when you sell the real estate.</p> <p>23 Let's say you build a building, it has 500 units, unit number</p> <p>24 one is sold to John Smith. Unit number two gets sold to</p> <p>25 Samantha S, whatever it may be. We actually did that with</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4035</p> <p>1 own, um, let's call it a one-bedroom hotel, that we manage for</p> <p>2 them. They use it as a pied-à-terre when they are in New York</p> <p>3 City, if they choose to do that. They have a lock out closet</p> <p>4 and kitchen they could use when they are in New York City, and</p> <p>5 when they are not there, it's generating income for them.</p> <p>6 Again, we manage it, so Joe Q public coming off the</p> <p>7 street staying at the Trump Hotel may not realize if they stayed</p> <p>8 in unit 301, that's owned by someone different than if they</p> <p>9 stayed in unit 1503. To them, the hotel experience is seamless,</p> <p>10 but it was a unique way of doing hotel, because by, A, selling</p> <p>11 it up front, it was a unique way of financing a property.</p> <p>12 In this case it was a unique way of maximizing the</p> <p>13 saleable square footage of the building. It was just another</p> <p>14 example of my father being on the leading edge of that</p> <p>15 creativity.</p> <p>16 Someone else would have lopped it off or kept it as</p> <p>17 commercial, and this building achieves, even to this day, the</p> <p>18 highest price per square foot anywhere in the world, really, but</p> <p>19 certainly in New York City as well, but it has that hotel</p> <p>20 component in it, but that hotel component has really been sold</p> <p>21 off to individuals.</p> <p>22 Q Why did that make financing easier?</p> <p>23 A Because you didn't just have to sort of lock in a</p> <p>24 financing for a portion of the building that you were buying,</p> <p>25 that you were spending incredible amounts of money renovating.</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4036</p> <p>1 You were actually able to sell that as you were selling the rest 2 of the building and pay down your investment costs on day one, 3 not stretched out over time. So that could end, as I mentioned, 4 for a hotel company, and certainly the way the business works. 5 You want that management contract. For us we have the 6 management company. We were able to actually sell the real 7 estate on moment number one. Um, that's a no brainer. And you 8 are not carrying that debt the same way as you would for a long 9 period of time, which, again, could be, you know, problematic 10 again depending on the debt market at the time. 11 Q We'll see some other examples later on. Is this 12 something that The Trump Organization has continued to do? 13 A Yeah, we did it. We did it very effectively. We did 14 this here, in this case, in the late '90s, but also did it 15 during sort of the early 2000's boom in the real estate markets. 16 We did it in Trump Chicago. We did it in Las Vegas. We've done 17 it in a few other projects. We were the leading -- I mean, 18 honestly, it's one of these things that we were doing it, it was 19 so good that everyone then tried to emulate it, and then you had 20 a flood, sort of, in the real estate market of these products 21 when everyone figured out, this is a great way to finance a 22 hotel, or a great way to get a hotel built, or great way to 23 actually end up securing, ultimately, for a hotel company, that 24 management agreement, you know, that they want to rack up. 25 That's the long term annuity, you know, for the hotel company.</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4038</p> <p>1 component of the building up high, overlooking Central Park. 2 Q What is it looking at here? 3 A That looks like a room from one of the hotels. That's 4 not residential. That is one of the hotels used -- that's 5 probably the northeast corner of the building. 6 (Whereupon, the next slide was displayed on the 7 screen.) 8 Q And finally what is this? 9 A That is the upper component of the building as looked 10 at from, I guess, the northwest. So that would have been -- 11 that's the view of the -- let's call it the condominium 12 component of the building. 13 MR. ROBERT: Your Honor, we are going to move onto 14 another property. It may make most sense, with the Court's 15 permission, to take the morning break now rather than two 16 minutes from now when I'm in the middle of the property. 17 THE COURT: Of course. A ten-minute break, but it 18 will take us 15 minutes. Let's just say we'll be back at 19 quarter to 12, sharp. 20 MS. FAHERTY: Please provide an admonition to the 21 witness. Thank you. 22 THE COURT: I would direct the witness, as I've 23 always done, not to discuss this case, or your testimony, or 24 anything related to it, while you are still a witness, 25 meaning during this break.</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4037</p> <p>1 So, you know we were just, again, ahead of the curve. 2 (Whereupon, the exhibit was displayed on the 3 screen.) 4 THE COURT: Five-minute warning. He talks so long 5 I might have to give you a ten-minute warning. 6 MR. ROBERT: Not as long as some other people. 7 THE COURT: I'll buy that. 8 A See, I only got half the genes, so I give you half the 9 time. 10 (Whereupon, the next slide was displayed on the 11 screen.) 12 Q What are we looking at here, Mr. Trump? 13 A That's the the entrance of the Trump International 14 Hotel and Tower. To the right -- they are separated, so the 15 middle is the hotel lobby. The left is actually JEAN-Georges, 16 one of the finest restaurants anywhere in the world; that's 17 their entrance. They occupy the restaurant area. That's who 18 does the room service for the hotel. The middle lobby, again, 19 is the hotel. I apologize. I used the "A" word again. 20 THE COURT: At least you caught yourself. 21 A Yet another time, and then to the right, you have the 22 residential lobby of the building. And so that is separated -- 23 that is the upper tranche of the building, and that would be 24 like any other ultra-luxury residential, except you don't start 25 your floors on the second floor, you start the residential</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4039</p> <p>1 THE WITNESS: Yes, sir. 2 THE COURT: Thank you. 3 (Whereupon, a 15-minute break was agreed upon and 4 taken by all parties.) 5 THE COURT OFFICER: All rise. Part 37 is back in 6 session. Please be seated and come to order. 7 THE COURT: Mr. Robert, please continue. 8 MR. ROBERT: Thank you. 9 Q So, Mr. Trump, I'm now going to draw your attention to 10 1999 and talk about the first of several golf courses owned by 11 the company. Okay, sir? 12 A Sure. 13 Q Are you familiar with the 1999 acquisition of Trump 14 National Golf in West Palm Beach? 15 A I am. 16 Q What was this before it became Trump International Golf 17 Club in West Palm Beach? 18 A Literally, a flat swamp in West Palm Beach, Florida. 19 It's almost hard to believe you have an undeveloped tract of 20 land with nothing on it in that location. 21 Q And where exactly in West Palm Beach is it? 22 A This is really across from the International airport 23 right there, so five minutes from Palm Beach Island proper. 24 Q What were the circumstances surrounding The Trump 25 Organization's interests in acquiring this piece of land?</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4040</p> <p>1 A Well, my father secured, in this case, a long term</p> <p>2 lease, and he saw that and he saw the potential. And being a</p> <p>3 passionate golfer, really wanted to break into that world and</p> <p>4 try his hand at actually building and developing golf courses.</p> <p>5 And so you had this, that swampland right there, and he</p> <p>6 said, "I want to do it here." Everyone I think looked at him,</p> <p>7 perhaps, like he was crazy, but now it's one of the finest golf</p> <p>8 courses anywhere in the world.</p> <p>9 Q What, if anything, did The Trump Organization do to</p> <p>10 make this come to fruition to turn this into a golf course?</p> <p>11 A I mean, that -- um, a lot of entitlement, obviously.</p> <p>12 You know, Florida is not like New York state. There's almost no</p> <p>13 topography. The difference between the highest and lowest spot</p> <p>14 is about one foot. But if you see some of the pictures of the</p> <p>15 topography that they were able to create, it's just -- it's</p> <p>16 amazing.</p> <p>17 Q And what involvement, if any, did your dad have in the</p> <p>18 creation of this course itself?</p> <p>19 A Oh, almost entirely. He'll work with the finest golf</p> <p>20 course architects in the world, but then go out on the weekends,</p> <p>21 "I want to change this." "I want to make this bigger." It's</p> <p>22 again, that's where the artistry comes in.</p> <p>23 THE COURT: That's the banned word, remember. You</p> <p>24 don't have to say it again, because we don't want things</p> <p>25 twice.</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4042</p> <p>1 a little bit about that.</p> <p>2 A That literally would have been flat, water level, and</p> <p>3 not grass, just palm jungly Florida swamp, like you'd see, I</p> <p>4 guess, way further inland.</p> <p>5 But that's not -- if you have the flip side view -- I'm</p> <p>6 not sure what slide is next, but if you have the flip side, you</p> <p>7 could see some true topography.</p> <p>8 (Whereupon, the next slide was displayed on the</p> <p>9 screen.)</p> <p>10 A This an example of even when we started, the original</p> <p>11 clubhouse was a double-wide trailer to get things going and have</p> <p>12 people playing, and has developed into this.</p> <p>13 (Whereupon, the next slide was displayed on the</p> <p>14 screen.)</p> <p>15 Q What are we looking at here, sir, in slide 46?</p> <p>16 A That is the top of the topography that is, I believe,</p> <p>17 the 17th green, and so they created, you know, a jungle</p> <p>18 environment, um, a river into the water system. All the water</p> <p>19 systems are linked to be able to transfer water to where you</p> <p>20 need it. In Florida you get a lot of rain, so that's generally</p> <p>21 good. If you don't, you have to deal with a lot of heat, so to</p> <p>22 be able to manage and maintain the course to the highest luxury</p> <p>23 standards, it required a lot of irrigation, and so while it's</p> <p>24 beautiful it also has a functional purpose.</p> <p>25 (Whereupon, the next slide was displayed on the</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4041</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 A That is the artistry that comes to fruition over and</p> <p>3 over. But he took raw swampland that no one, for decades, had</p> <p>4 seen any value in and turned it into an area that's one of the</p> <p>5 most prestigious clubs in South Florida; one of the finest golf</p> <p>6 courses in the world. It's a who's who of membership because of</p> <p>7 the proximity to Palm Beach Island. There's not land there to</p> <p>8 do this on anymore. And truly, created something special from</p> <p>9 swampland.</p> <p>10 Q And was this the first time that the Trump Organization</p> <p>11 had been getting into the golf business?</p> <p>12 A On or about.</p> <p>13 Q Okay.</p> <p>14 A His passion for that sort of happened. At that time he</p> <p>15 had a lot of fun working on this one. They moved so much earth</p> <p>16 and he said, "Wait a minute. I could actually do this very</p> <p>17 well." And then it went into Westchester and others, and</p> <p>18 Bedminster, and really started sort of with the golf portfolio.</p> <p>19 But, yes, this would have been, I think, the earliest, to my</p> <p>20 recollection, in terms of ground-up construction there.</p> <p>21 (Whereupon, the next slide was displayed on the</p> <p>22 screen.)</p> <p>23 Q What are we looking at here in slide 47, Mr. Trump?</p> <p>24 A That is a view of the 18th fairway to the clubhouse.</p> <p>25 Q Is that the topography you were talking about? Explain</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4043</p> <p>1 screen.)</p> <p>2 Q What are we looking at here in slide 49?</p> <p>3 A There was another component -- that's the island green</p> <p>4 on what we call the new nine. There's actually three nine hole</p> <p>5 golf courses on the -- sort of the original 18 holes, and this</p> <p>6 was another one of those areas that was underdeveloped until</p> <p>7 more recently. I forget the exact year, but that, too, was</p> <p>8 swampland. And the membership, the city, "Hey, can we make this</p> <p>9 better? Do what you do best." And turned it into an entirely</p> <p>10 new nine. Allowed us to bring in more members because you could</p> <p>11 spread play out over a greater number of holes. And that's just</p> <p>12 one of the greens. The tee boxes would be over there on the</p> <p>13 right. So you are trying to hit the ball on a floating island</p> <p>14 green.</p> <p>15 MR. ROBERT: His honor will be happy. I'm not</p> <p>16 going to take you through the other 16 holes on this course.</p> <p>17 Q But I want to ask you. This attention to detail, how</p> <p>18 would you describe it on the other holes on this course?</p> <p>19 A All the same. I mean, it's, you know, that's his</p> <p>20 passion project. So when we talk about his involvement, the</p> <p>21 golf courses, he wants to be involved because he loves it.</p> <p>22 He'll sit there and tinker with a green and move a tree. And</p> <p>23 you'd think -- and trust, me I know. And I'm -- I'm like the</p> <p>24 non-golfer in the family, which has relegated me to the</p> <p>25 children's table in perpetuity, but his attention to detail for</p>

<p style="text-align: right;">Page 4044</p> <p>1 that, you think it's nothing. And then you see the move, it's</p> <p>2 oh, like, you get it. All of a sudden he just sees stuff that</p> <p>3 other people don't.</p> <p>4 (Whereupon, the next slide was displayed on the</p> <p>5 screen.)</p> <p>6 Q And I think you said earlier you have it from the other</p> <p>7 angle. What are we looking at here?</p> <p>8 A Another view of the clubhouse. A partial view of the</p> <p>9 clubhouse. You have a dining area. The ballroom. It wasn't</p> <p>10 just about, then, golf, but this golf course, because of the</p> <p>11 views, the spectacular nature, you saw the waterfall. The</p> <p>12 bird's-eye view, the bird's-eye view the other way, it's a</p> <p>13 pretty magical place, from Florida swampland to this. They'll</p> <p>14 use that ballroom and do super high-end weddings there as well.</p> <p>15 Another way to generate cash flow for the course beyond the play</p> <p>16 of golf.</p> <p>17 (Continued on the next page.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4046</p> <p>D. J. Trump Jr. - by Defendant - Direct(Robert)</p> <p>1 A The entrance.</p> <p>2 Q Sorry.</p> <p>3 A Yep.</p> <p>4 Q The entrance on?</p> <p>5 A That's actually -- that's the entrance across --</p> <p>6 facing either the UN. There is another one, sort of, that</p> <p>7 allowed, similar look, little flatter without the stairs, from</p> <p>8 the other side, so you can avoid the traffic on the main</p> <p>9 corridor there on First Avenue.</p> <p>10 Q What are we looking at here, Mr. Trump?</p> <p>11 A That's the lobby.</p> <p>12 Q And in this picture?</p> <p>13 A That's a little perspective, I guess, of the</p> <p>14 building, the way it stands out in there obviously. You see</p> <p>15 the UN building to the side there. The height allows you to</p> <p>16 get views of the East River, as well as the Hudson, certainly</p> <p>17 for the upper levels of the building.</p> <p>18 But again, I think it just makes the point of the</p> <p>19 stature of that building and that is not a simple, oh, we are</p> <p>20 going to build a building. It was an amalgamation of era and</p> <p>21 rules and this to try to create something special and unique in</p> <p>22 an area where that had not really been done before.</p> <p>23 Q Continuing in 2001. And if you want we will keep</p> <p>24 this picture up so the sketch artist gets a really good</p> <p>25 picture.</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4045</p> <p>1 Q What is the significance of the clock?</p> <p>2 A It became a marketing standard. My father put one in</p> <p>3 one of the courses, everyone commented to him on it. So it has</p> <p>4 become a fixture of all of the golf courses.</p> <p>5 Q There is one in front of Trump Tower here?</p> <p>6 A There is.</p> <p>7 Q Moving back to New York City, 2001. Explain to us a</p> <p>8 little bit about World Trump Tower and how that came about.</p> <p>9 A That was an incredible site. We obviously -- right</p> <p>10 across the street from the United Nations, an undeveloped</p> <p>11 parcel of land. And my father was able to aggregate the air</p> <p>12 rights to be able to build, I think at that time it was the</p> <p>13 tallest residential building in the world. And so for him,</p> <p>14 that is the artistry, how do we make it special. You are</p> <p>15 surrounded. There is other nice residential buildings. If you</p> <p>16 notice, it really stands out, relative to some of the other,</p> <p>17 you know, at least reasonably popular condominiums and co-ops</p> <p>18 in the area at the time. So he did something unique, something</p> <p>19 different, became a very popular building, Derek Jeter lived</p> <p>20 there for years. Just a sexy place in an area -- I guess</p> <p>21 really created a market for, we have a sexy condominium, that</p> <p>22 actually would not have been considered, sort of, an</p> <p>23 ultra-luxury real estate market at the time. He created that</p> <p>24 market by building something befitting that level of quality.</p> <p>25 Q In this picture what are we looking at?</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4047</p> <p>1 A We already had a talk. I want the AI version with</p> <p>2 the jaw and the shoulders.</p> <p>3 Q So again, we know you started, you joined the company</p> <p>4 in 2001, and now we will talk about projects you were actually</p> <p>5 involved, and the Trump Organization, as we go through.</p> <p>6 2002, we now have a golf course called Trump National</p> <p>7 Golf Course of Westchester. Are you familiar with that, sir?</p> <p>8 A I am.</p> <p>9 Q What was there before this golf course when Trump was</p> <p>10 there?</p> <p>11 A Sort of a dilapidated municipal course. This is one</p> <p>12 of those, started working on it a little bit in the summers,</p> <p>13 sort of summer internship jobs when I was still in college.</p> <p>14 And but the reality -- we turned it, what was a falling apart</p> <p>15 municipal course, into an incredible, you know, private club.</p> <p>16 Q And what kind of challenges, if any, existed in</p> <p>17 creating this, similar to the one in West Palm, or anything</p> <p>18 different?</p> <p>19 A I wasn't as involved in the zoning and the dealing of</p> <p>20 it because that was going on, sort of, right as I was coming</p> <p>21 in. For me I jumped in and worked almost exclusively on the</p> <p>22 Hudson waterfront. I didn't have, sort of, the, frankly, the</p> <p>23 knowledge base at the time to be able to work on all of these.</p> <p>24 But this was going on while I was there, but I was, sort of,</p> <p>25 cutting my teeth elsewhere.</p>

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4048

1 Q What are we looking at here in slide 57?

2 A The view from the golf course side of that clubhouse.

3 Q Okay. And slide 58?

4 A That was a unique one. That's the 13th hole.

5 Dealing with the topography, there was, sort of, an actual

6 stone wall that, sort of, created something. But we were able

7 to create this incredible waterfall facade there. So right in

8 front of the waterfall, you can't see it all that well right

9 now, but it is actually that green. So you are hitting into

10 that with that wall of water in the background. It wasn't

11 there, but we saw it and figured it out and created that. And

12 it has just become, sort of, the standout amenity of that

13 course.

14 Q And what are we looking at here in slide 59?

15 A A view of the clubhouse from, let's call it the

16 middle of the golf course. You can see the waterfall, that's

17 the 13th green. So you are basically center of the course

18 looking towards the clubhouse and the Hudson River.

19 Q What, if any, portion of this existed before the

20 Trump Organization got involved in this project?

21 A None. I mean, it was, again, a rundown municipal

22 golf course. But we didn't -- we didn't attempt to salvage

23 anything from that. It just wasn't -- it wasn't the level of

24 quality for us. Right? It may be fine for someone, but we had

25 to change the entire dynamic of what that was to bring in the

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4049

1 people to allow it to actually succeed and be successful.

2 Q So you testified earlier this morning, it is one

3 minute from afternoon, but earlier this morning, about your

4 second major project after the Hudson Yards, which was Trump

5 Park Avenue. Do you remember that, sir?

6 A I do.

7 Q So we are now going to move to 2004 and Trump Park

8 Avenue. What was Trump Park Avenue before it became Trump Park

9 Avenue?

10 A It was the former Delmonico Hotel. It was in a major

11 state of disrepair, falling apart, you know, incredible

12 location there at 502 Park Avenue.

13 Everyone talks about "prewar-like." It was actually

14 a true prewar building, built prior to the war. And it had so

15 much potential, but was really falling apart. It was in

16 disrepair. Prior owners had some, you know, just done a very

17 poor job keeping it up. So you had this amazing location with

18 this incredible facade and, you know, what we would call bones,

19 the potential. And we brought it out and turned it into, sort

20 of, one of the highest price-per-square-foot developments in

21 terms of real estate. So we changed it from a hotel use to a

22 condominium and, you know, created a new prewar condominium.

23 That was also unique. Most prewar buildings were co-ops in New

24 York. They were set up that way.

25 This was set up as a condominium and created a unique

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4050

1 thing where you didn't have to -- maybe you didn't want to go

2 through a co-op board or weren't able to go through a co-op

3 board, whatever it may be, it created a unique opportunity to

4 do something like that.

5 Q I think you testified earlier you were a project

6 manager, knowing titles didn't mean a heck of a lot. Fair

7 enough?

8 A Yes.

9 Q What were some of the jobs you did with regard to

10 Trump Park Avenue, before we get into more pictures of it? And

11 you can take us through that.

12 A Again, I started off as a project manager. I was the

13 low end on the totem pole. But, I guess I was ambitious enough

14 I wanted to learn, and maybe stupid enough to take on every

15 crazy project. Whether that is: You had some hotel stabilized

16 tenants in there. That's essentially like a rent controlled

17 apartment within a hotel, even stricter rules. How do you

18 build and redevelop an entire building that needed everything

19 from start to finish into a new project, while dealing with,

20 let's call it, mid-teens number of people living within the

21 building and occupying it. So behind every wall was a new

22 surprise. There were all sorts of unforeseen things. So I was

23 willing to, okay, I will do that. I'll deal with that

24 headache. I'll figure it out.

25 Also, the first time really for me working with the

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4051

1 banks, General Electric Pension Trust, again similar to the

2 Gulf and Western Building, Trump International. But it was my

3 first time working with them.

4 So I am the new guy. And a pension fund, you know,

5 every day: What is going on at the building?

6 Literally nothing has changed since you asked me six

7 hours ago.

8 But I am not of the position to be able to tell them

9 that. And eventually took on enough of a role that I could

10 say, I promise you are better off if I just build the project,

11 try to sell it, than me update a spreadsheet every six minutes.

12 Q What are we looking at here, slide 61?

13 A That's the lobby of the building. That's a unique

14 one in that salvaged some components of the existing, truly

15 special, prewar building. But bringing in and bringing out

16 some of the -- we had to redo a lot of the paneling. But we

17 did it in the way of the original building. Very expensive,

18 very unusual, but also allowed you to maintain, sort of, the

19 true nature of the intimate character of the original building.

20 Obviously very different than, you know, a ground-up

21 construction with massive lobbies and gilded. We really kept

22 the heart of the building there.

23 Q From a developer's standpoint is that more

24 challenging having to deal with those circumstances, or not?

25 A Oh, without question.

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4052

1 Q And why?

2 A Because it is, you are working with the existing

3 stuff and trying to preserve something that, in this case, is

4 75 years old, you know, every nick, every chip.

5 We had a similar, actually, thing with the Old Post

6 Office, the hotel in Washington DC. Where it was even though

7 the government wanted to rip it down at three or four different

8 times throughout its career, once we got it -- which took a

9 literal act of Congress actually, it was kind of interesting to

10 get the project -- no, you have to maintain that door. That

11 door is 75 years old. But you had to figure out how to

12 maintain it and bring it out. And it is a lot more work and a

13 lot more expensive. But if done right, it is a lot more

14 incredible.

15 Q Turning to slide 62.

16 MR. ROBERT: I am going to check with someone

17 smarter than me, Your Honor.

18 Maybe this is a battery issue?

19 THE COURT: Is there anyone smarter than you?

20 Not about the CPLR.

21 MR. ROBERT: Thank you.

22 Just one second, Your Honor.

23 (Pause in the proceeding.)

24 MR. ROBERT: We will do it the old fashioned

25 way.

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4053

1 Nate, can you go to the next one?

2 Q Mr. Trump, what are you looking at here?

3 A That's the view from inside one of the penthouse

4 suites. And I think what was unique for Trump Park Avenue

5 there was, there was some of the unused FAR area we discussed

6 earlier. And we were actually able to add -- pretty cool,

7 because it is almost like the Louvre -- we were able to add two

8 boxes on the side of the building for the Penthouse units. I

9 don't remember the exact dimensions now, but 30 by 30, that

10 were just pure glass, floor to ceiling, at the top of the

11 building. Which allowed the penthouse units to have this, sort

12 of, extra thing that you wouldn't get in a prewar building

13 where you would have smaller windows because you were relegated

14 to the construction methodologies of the 1920s.

15 Here we were able to add a structural component. It

16 was eight floors or so of floor-to-ceiling glass, two squares

17 on two corners, the north facing side and the west facing side

18 of the building, which allowed for this great blend of old and

19 new. And again, something that most wouldn't have thought of.

20 My father, in going through the docs, recognized this

21 void. What if we did this. I am saying, wait, we are going to

22 build a structure on top of a 70, 80 year-old building? And

23 the answer is, yes, we are. And we are going to figure out how

24 do that structurally and make it happen. And it was a very

25 special extra something to do on that building.

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4054

1 Q How old is this project?

2 MR. ROBERT: And I caught the, "again," Your

3 Honor. I did catch it. So did he I think.

4 Q How long did this project take?

5 A For the most part I guess it would have been a three,

6 four year deal. We maintained, you know, this was early enough

7 going into, sort of, the downturn. We talked about the real

8 estate cycle earlier. So when I started in this, by the time

9 we got zoning, by the time we got financing and entitlements,

10 and this, and started construction and selling, you are going

11 into some of the bad real estate market times, it is called,

12 the 2006 through '09 generalized period of time.

13 And so we had sold off a lot of components of the

14 building. We maintained some units. We maintain some to this

15 date.

16 MR. ROBERT: Next slide, Nate.

17 THE COURT: Wasn't that the period called the

18 Great Recession? As opposed to the Great Depression, it

19 was the Great Recession?

20 THE WITNESS: It has been referred to as some of

21 that, yes. That's how I refer to it. Certainly for -- as

22 well honestly for the whole country.

23 Q What are we looking at here in slide 63?

24 A That is the roof for the 31-32. The top penthouse is

25 a two-floor penthouse. This is the roof. So if you are

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4055

1 actually standing, let's say, where the photographer is, right

2 there, you are at the top of one of the cubes, the

3 floor-to-ceiling glass cubes that we built. So that space and

4 the floors below it literally never existed prior to -- prior

5 to that. So we incorporated them into the building.

6 And for the ultimate penthouse, because look -- they

7 were really old penthouses, once you get to that high 20s and

8 above. But this was the penthouse penthouse. It also

9 generated an incredible balcony space, as well as an outdoor

10 amenity area, both here as well as the west corner. This would

11 believe the north facing facade of the building. So you had

12 the same thing going on the west side.

13 Q I am now going to move on to Trump Golf Club.

14 MR. ROBERT: Next slide, Nate.

15 Q What, if anything -- are you familiar with the Trump

16 National Golf Club in Bedminister, sir?

17 A I am.

18 Q What, if anything, was there before Trump

19 Organization acquired it?

20 A It was virtually John DeLorean, like from "Back to

21 the Future," it was his personal estate. A group came in.

22 They saw the topography. This is Bedminister, New Jersey. It

23 is, sort of, not everyone thinks of New Jersey this way, but it

24 is sort of horse country New Jersey. I can't help myself, as a

25 New Yorker we have to throw in the Jersey dig every once in a

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4056

1 while.

2 But, you know, this was a spectacular estate. A

3 group that came in tried doing the golf development. Everyone

4 wants to do those things, not everyone can do it well,

5 effectively. Not everyone can sell the memberships needed to

6 do it. Or frankly, just because you see the land and you see

7 maybe it could be a golf course, not everyone has the vision to

8 actual deliver it.

9 My father saw it, fell in love. It was spectacular.

10 And he turned it into, you know, one of the finest golf

11 courses, again, anywhere in the world. This held a U.S.

12 Women's Open championship. It will host the PGA championship.

13 It is a spectacular two18-hole golf courses.

14 And that's where he spends summers when not at

15 Mar-a-Lago.

16 Q Slide 65. What are we looking at here, Mr. Trump?

17 A It's a view from the side of the clubhouse

18 overlooking some of the holes.

19 Q And again, if you could describe what this looked

20 like before Trump Organization constructed this?

21 A Basically, you know, not quite farmland, but let's

22 call it farmland with a little bit of extra topography.

23 MR. ROBERT: Okay. And next slide, Nate.

24 Q What are we looking at there, Mr. Trump?

25 A A view of the clubhouse, so that was John DeLorean's

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4057

1 personal house. Rather than rip it down and build another club

2 house, he took what would have been one of the great estates,

3 you know, at the time, re-purposed it and turned it into a

4 clubhouse. And, you know, that's its function today.

5 Q Okay. During the course of the trial we have heard a

6 little about the Trump golf course in Los Angeles. I will draw

7 your attention to that.

8 Are you familiar with that golf course, Mr. Trump?

9 A I am.

10 Q What do you understand the Trump Organization's

11 involvement to be when it procured that in 2005?

12 A Waterfront is waterfront. So, my father saw an

13 opportunity to do something incredible, in Rancho Palos

14 Verdes, an incredible city, incredible zip code. Literally

15 every hole has waterfront views of the Pacific. I must admit I

16 wasn't involved in the golf course of that. I was building, I

17 guess, Park Avenue at the time in Chicago. But he was doing

18 that, I got involved later.

19 There was a bunch of residential units for sale to

20 building housing on that. I worked on selling some of those.

21 And those were overlooking an incredible golf course, as well

22 as the Pacific. Just one of those things where he noticed a

23 crown jewel and had to have it, and turned it into something

24 really special.

25 Q So you when you say, it is on the water, it is

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4058

1 literally on the Pacific ocean, correct?

2 A Literally. I can't name a single hole or a single

3 lot that doesn't have a view of the Pacific Ocean.

4 MR. ROBERT: If we can go to slide 68, Nate?

5 Q What are we looking at here, Mr. Trump?

6 A The overview of part of the course. You know, it

7 continues a little bit further to the north. But that is the

8 view of the Pacific Ocean right there. You have Catalina

9 Island, you know, to the southwest a little bit from this view.

10 And just truly unheard of to get that kind of waterfront,

11 anywhere in California, but probably anywhere in the world, but

12 certainly within a relatively short drive of Los Angeles

13 proper.

14 Q Putting things into a timeline perspective, you were

15 the first adult child to join the Trump Organization, correct?

16 A Correct.

17 Q When did your sister join?

18 A I guess probably about three years after me. I am

19 four years older, but I had my time in Colorado.

20 Q Okay. And then look at --

21 MR. ROBERT: The next slide, Nate.

22 Q -- your brother joined in 2007 correct?

23 A Correct.

24 Q I won't ask you under oath to talk about your --

25 A I want to have so much fun with that picture, but I

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4059

1 won't.

2 Q I'll move on to the next slide.

3 A A lot of Photoshop.

4 Q Moving on to 2008, The Trump Hotel in Las Vegas; are

5 you familiar with that, sir?

6 A I am, yes.

7 Q What are you familiar with regard to that?

8 A I was definitely involved in aspects of that

9 building, from Chicago to that. The development of this

10 started shortly after we were, sort of, in process with Trump,

11 Chicago.

12 And so this was a -- a great project, one of those

13 unique pieces of land, you know, ripe -- right off the strip in

14 Las Vegas. And this was one where we did the full hotel condo

15 mock. Building a hotel in that market, luckily given the

16 timing of what happened with the real estate world, being able

17 to sell off components of that, being able to not have to

18 maintain those long-term bank financing in what would be very

19 arduous times, was an incredible way to get this building done.

20 We continue to manage it to this day. It has just been a great

21 asset and success, Las Vegas.

22 Q You were making a passing reference to the time

23 period in 2008 and you were very lucky. What were you very

24 lucky about?

25 A I think our ability to execute on real estate

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4060

1 projects. Right? We started doing a lot of stuff in  
2 licensing, and that's nice, but licensing and we are good at  
3 it, isn't because you are slapping a brand on something. We  
4 actually have that expertise of developing, owning, developing,  
5 construction.  
6 I would say, if you ask my father what he is best at,  
7 it is probably construction. He spent a lot of time on the  
8 ground. On job sites. He would talk with the HVAC guy. Not  
9 the guy that owns the HVAC company, but the guy installing a  
10 chiller. And from those guys he learned how to do things  
11 better: Sir, you know, I don't know why we are doing it this  
12 way; if we do this we can salvage an extra 6 inches of ceiling  
13 height.  
14 That's a great idea.  
15 So he spent time on the job sites. That was the bane  
16 of my existence when I was in my early 20s, going out too late,  
17 I would get the call why aren't you on the job site at 7 a.m.  
18 on a Saturday morning. It is because he was doing that,  
19 walking through and figuring it out.  
20 And so this one was incredible because of the other  
21 projects here in Las Vegas that started at a similar time, we  
22 actually finished on time, ahead of schedule in many cases with  
23 construction, which allowed us to be able to get the closing  
24 cycle. This is the time where so many people around the  
25 country were, you know, trying to figure out any way to get out

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4061

1 of the apartment that they were very happy to buy on an upswing  
2 three years prior when they go into contract. But now looking  
3 for any excuse to possibly get out of closing on the deal that  
4 they would have been very happy to flip or whatever three years  
5 before. Right? That's the nature of, I guess, in the industry  
6 we call it buyer's remorse. So you are going into a rough  
7 time, but because we were ahead of schedule we sort of beat a  
8 lot of that rush, allowed us to take care of our construction  
9 financing, and not end up in a lot of the trouble that a lot of  
10 other developers got into in Vegas at the time.  
11 MR. ROBERT: Nate, slide 71.  
12 Q What are we looking at here, Mr. Trump?  
13 A That's the lobby of the building.  
14 Q And in 72?  
15 A That's the outside facade. It is very subtle.  
16 Q Even for Vegas standards, right?  
17 A Yeah, that's true.  
18 Q You mentioned earlier today that you were involved in  
19 the Trump, Chicago project, right?  
20 A Yes.  
21 MR. ROBERT: Next slide please.  
22 Q I want to draw your attention to the Trump  
23 International Hotel and Tower in Chicago. Okay, sir?  
24 A Yes.  
25 Q What was your initial involvement in this and

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4062

1 approximately what year was that?  
2 A I forget the exact year, but you know, coming out of  
3 Trump Park Avenue, the second we started getting involved in  
4 and talking about the deal, I think it was before 2009 when you  
5 are working on the deal, inception or whatever, but from there  
6 I was spending two, three days a week in Chicago.  
7 So, you know, go to the office on Monday in New York,  
8 that evening maybe hop on a plane to Chicago, spend the next  
9 two, three days, you know, in the offices of, you know, Adrian  
10 Smith from SOM, one of the great architectural firms of the  
11 world building this, designing it. It was the former Sun Times  
12 building. It was really the printing presses for the Chicago  
13 Sun Times, sort of interesting.  
14 And amazingly enough, of all of the real estate  
15 development projects I have ever worked on, it is the only one  
16 where no one actually was upset that you ripped down the  
17 existing printing presses, because they were sort of an eyesore  
18 in what would be, I guess arguably, the greatest location in  
19 Chicago, right at the juncture where the river bends at Wabash.  
20 It was a special, special project. So yes, that was sort of  
21 the next big one for me after Trump Park Avenue in terms of  
22 dedication of time.  
23 Q Fair to say, Mr. Trump, this was the first project  
24 you were dealing with from the ground up. You weren't doing a  
25 renovation like the Trump Park Avenue or something else?

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4063

1 A I learned ground up construction from the west side  
2 yards. That came out of nothing. That was, literally, sort  
3 of, a delapidated industrial site we turned into an incredible,  
4 one of the wealthier, zip codes of New York City, in terms of  
5 price per square foot of real estate sold. That was unique.  
6 So I had some experience with this.  
7 This was the next level in terms of the luxury of  
8 that. So I am still, as it is starting in, I think, it is  
9 prior to 2009, but, you know, figuring out our feet. But this  
10 was great project.  
11 Q And how is it that the project came to the Trump  
12 Organization?  
13 A That one, I don't remember.  
14 Q Okay.  
15 A It has been a while. I think it was Conrad Black who  
16 was the owner, head of the Chicago Sun Times at the time was  
17 friendly with my father. Saw a vision. Realized that having,  
18 you know, the printing presses, let's call it the at the  
19 Chicago equivalent of, you know, 57th and Fifth, you know, the  
20 Trump Tower address of Chicago. Probably not the best use of  
21 time. This was, before when we started talking about it, way  
22 before the real estate turn. This seemed like a great way to  
23 do it. This was commercial in the lower portion of the  
24 building. Hotel condominium in the middle. Condominium at the  
25 upper. So this is the full mixed use gamut to maximize the



<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4064</p> <p>1 ability to, you know, build the full square footage, to be able 2 to sell the most real estate and maximize the value of the land 3 in place. 4 Q So how was it then you decided to take, or the Trump 5 Organization rather, decided to take this approach that this is 6 the way we will build it, and this will the way it will be? 7 A My father wanted to do that. Chicago, incredible 8 architectural city actually, one of the finest in the country. 9 Also a place where they have, you know, a lot of very tall 10 buildings. Sears Tower, former, what used to be called the 11 Sears Tower there. So this is a place for him to utilize that 12 canvass again and build, I think what was the tallest 13 residential building in the world at the time. To do that to 14 have some fun at the third largest tallest building in all of 15 Chicago. And so, that's where he got to be an artist again. 16 MR. ROBERT: Nate, the next slide. 17 Q What are we looking at here, Mr. Trump? 18 A A small corner of the terrace. That's what we call 19 16. That's the restaurant. So the restaurant, because you 20 have the hotel above of the commercial element of the building, 21 you have this incredible deck overlooking the river. That's 22 the lake. The Wrigley building right there to the left. 23 That's Michigan Avenue. Just prime location in Chicago. And 24 unfortunately the picture doesn't do it justice. That's about, 25 like, 20 percent of the terrace. And that's the outdoor, sort</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4066</p> <p>1 was an incredible project. It was all hotel condominium in 2 Waikiki, prime location. 3 A big developer out of Los Angeles came to us: You 4 are the guys doing hotel condo. You are the experts in this. 5 How do we do this? Brought us in. 6 This is the first time we, sort of, bring in -- not 7 the first time for the license model but one of the early, sort 8 of, big full scale license deals, where we are not stroking 9 enough for equity. We came up with a different way to monetize 10 that, both in terms of a hotel management agreement in the end, 11 as well as taking advantage of being able to use our brand and 12 the saleable real estate. So we came in, worked with the 13 developers of that project. Worked with a couple people who 14 are very familiar with the Hawaii market. 15 We may still hold the record for the highest per 16 square foot real estate sales in Waikiki, but it was certainly 17 the record at the time. Sold out the building (snap) in a 18 heartbeat, as really one of the most successful development 19 projects in the history of Hawaii. 20 Q I want to dissect what you said, Mr. Trump, about 21 this being one of the licensing deals. And I want to come back 22 to that for a second. How does a licensing deal work in a 23 situation like the Trump Hotel in Waikiki, as opposed to just 24 putting up a hotel? 25 A Someone else owns the real estate. They are taking</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4065</p> <p>1 of, entertainment space, the rooftop terrace of the restaurant 2 and, you know, bar and grill of the hotel. 3 MR. ROBERT: And the next slide 75. 4 Q What are we looking at here? 5 A That's the building from Michigan Avenue. 6 Q And which portion of the building are we seeing now? 7 A That's the corner over there is the parking garage. 8 Then you have the commercial area. Some of the -- the hotel 9 and the retail on the base. 10 That's the fourth component I didn't really talk 11 about. So you have all four uses that you think of in terms 12 of -- in terms of that: The retail component, the regular 13 commercial, the condominium, and then hotel and condominium on 14 top. 15 Q Is that the first time Trump had all four in one 16 structure, if you know? 17 A Trump Tower had a retail base commercial, it didn't 18 have the hotel component, but yes, this is the first time I can 19 think of that all four were incorporated into one building. 20 MR. ROBERT: Okay. Nate, the next one, please. 21 Q Trump International Hotel in Waikiki. Are you 22 familiar with that, sir? 23 A I am. 24 Q What was your involvement in that in or around 2009? 25 A I would have been the point person on the deal. This</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4067</p> <p>1 that development risk. They are buying the land. They are 2 hoping that the market is there when it comes time to deliver 3 the project. Again, there is a big period of time between when 4 you make that initial commitment and you start spending a lot 5 of money, to when you sell it. If those markets are not 6 aligned, its problematic. Everyone shows up to close when you 7 are selling in a bad market, and you deliver in the great 8 market. If you start selling in a great market and you are 9 delivering, again, two, three years later in a bad market, 10 everyone has a reason for why you did something that would 11 justify them getting their deposit back, or whatever it may be. 12 Q And what is it exactly that Trump Organization is 13 bringing to the table in these licensing deals? You spoke 14 about the benefits that are there to the person doing the 15 business deal with you. What exactly is it that Trump 16 Organization is providing? 17 A We are bringing the brand, right? The Trump 18 International Hotel Waikiki, we are bringing that. That's 19 getting the eyes on it. We are bringing the expertise from our 20 construction teams to deliver a product in Waikiki. There was 21 never -- there was not anything that had been built to this 22 standard. You know, that expertise. Understanding not just 23 where the market is for ultra luxury today, but where it is 24 going to be. With my father's vision, understanding where that 25 is going to be.</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4068</p> <p>1 So our teams were familiar with that. When people 2 were looking at this real estate, even if we weren't 3 developing, they understood they were going to be closing on 4 the best real estate in the market, without question. You had 5 the marketing teams, you know, understanding and ability to do 6 that. You had just our ability as an organization to be able 7 get it out there. So if people are, you know, they are looking 8 at places to buy in Waikiki, whether it is a hotel condo as an 9 investment; whether it is as a pied-à-terre; whether it is just 10 buying real estate. In some cases they just want to use it and 11 they are living in a hotel. We have seen that a lot too. I 12 want the amenities of hotel, I want maid service rather than 13 doing it myself. I am going to buy it and never put it in the 14 pool. So they are getting that expertise from us and then 15 getting the ongoing management, plus. I could probably go on 16 for a few hours about this, but I am sure no one wants to hear 17 the details of that.</p> <p>18 But again, I think the reason we were able to be 19 successful and so many other luxury brands who have tried to 20 emulate us since and haven't, it is more than just slapping a 21 sticker on a product and saying we are ultra luxury. I don't 22 need to call out other brands, it doesn't matter, but there are 23 plenty. And they don't work out because, those brands may be 24 luxury, but they are good at what they do, making a handbag or 25 a car, it doesn't necessarily translate into understanding real</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4070</p> <p>1 MS. FAHERTY: Your Honor, can we just, again, 2 provide an instruction to the witness as to the Trump 3 Organization's role and work as opposed to speculating about 4 others in the industry and market.</p> <p>5 THE WITNESS: I'm not speculating. These are 6 things that happened.</p> <p>7 MR. ROBERT: I think the witness is just accounting 8 to what The Trump Organization does and how they view their 9 competitors and why their competitors either can or can't do 10 what they do. It's just his opinion.</p> <p>11 THE COURT: Well, again, I tend to have a strict 12 view of the witnesses. Either you are an expert -- 13 MR. ROBERT: Fair enough.</p> <p>14 THE COURT: -- or you are a fact. So what did you 15 see, what did you hear, but there's no jury. I'll continue 16 to allow some leeway here.</p> <p>17 MR. ROBERT: Thank you, your Honor. 18 Next slide. 19 (Whereupon, the next slide was displayed on the 20 screen.)</p> <p>21 THE COURT: Let's stick, generally, to what The 22 Trump Organization was doing, not what other people were 23 thinking or doing.</p> <p>24 MR. ROBERT: Understood. 25 Q What are we looking at here?</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4069</p> <p>1 estate. And it goes beyond that, people when they are buying 2 real estate notice that difference.</p> <p>3 And so, you know, this was one of the first where we 4 were able to do that with our brand, where we were able to 5 create that value for the company, but also for the consumers 6 and for our partners in the deal. And it was a really unique 7 model. Very few people had ever done that in saleable real 8 estate; certainly not in high-end; and certainly not as 9 effectively as us.</p> <p>10 Again, like everything else, see someone do something 11 good and they do it well and emulate it and try to copy it, and 12 sometimes it works and sometimes it doesn't.</p> <p>13 (The following proceedings were stenographically 14 recorded by Senior Court Reporter Michael Ranita)</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4071</p> <p>1 A That's one of the lounge areas overlooking Waikiki 2 Beach. That is one of the amenity spaces of the hotel.</p> <p>3 MR. ROBERT: Move to the next slide, Nate. 4 (Whereupon, the next slide was displayed on the 5 screen.)</p> <p>6 Q You have a familiarity with the Trump National Golf 7 Course in Washington, D.C., Mr. Trump?</p> <p>8 A I do. I wasn't involved in that. Golf started being 9 my father and Eric's, um, more their passion so I wasn't 10 involved intimately. But it was another one of these things, 11 sort of a golf course that was underperforming and 12 underutilized. And we, as an organization, did what we do best 13 and created a spectacular golf course overlooking the Potomac 14 River in Maryland.</p> <p>15 MR. ROBERT: Next slide, Nate.</p> <p>16 Q What are we looking at here?</p> <p>17 A That is view of the Potomac and the, you know, I guess 18 you are right there, the Virginia/Maryland border. That is the 19 an overview of the course from the river.</p> <p>20 Q And can you describe for us how this looks different 21 than it did when The Trump Organization first acquired the land?</p> <p>22 A Well, it looks spectacular now, and let's just say it 23 didn't prior to that.</p> <p>24 Q Fair enough. Moving to the next slide are you familiar 25 with the Trump Vineyard Estates in Charlottesville, Virginia?</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4072</p> <p>1 A I am.</p> <p>2 Q Let's talk about what happened in 2011, if you could,</p> <p>3 sir?</p> <p>4 A Yes, this is, you know, it was an interesting one</p> <p>5 because it's one of those that there was a long-term sort of</p> <p>6 vision of a project. We bought the vineyard estates component</p> <p>7 of what will eventually, and what was, a larger piece of land.</p> <p>8 It was a property that was a vineyard and it was an estate, um,</p> <p>9 but we were able to buy a certain component of the estate very</p> <p>10 cheaply.</p> <p>11 It then, but by controlling a certain portion of land,</p> <p>12 the house that we bought later on, was sort of worthless. It</p> <p>13 was an estate -- a wealthy family had an estate planning thing</p> <p>14 where they wanted to sort of minimize the value of the real</p> <p>15 estate, so for estate purposes basically the tax component of</p> <p>16 the estate didn't force people to sell. So what -- they had a</p> <p>17 family member they gave the front yard a piece property to, and</p> <p>18 another family member got the house. One without the other made</p> <p>19 them both sort of worthless. So we bought one, but then when</p> <p>20 the over component was up for sale, we had control of the</p> <p>21 estate. This was actually the former Kluge.</p> <p>22 THE COURT REPORTER: I'm sorry?</p> <p>23 A Kluge, K-L-U-G-E. John Kluge was sort of -- he may</p> <p>24 have been the first billionaire in America. He owned TV</p> <p>25 networks and stuff like that. It was sort of an interesting</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4074</p> <p>1 Q Next slide, what are we look at here?</p> <p>2 A An overview of the vineyard estates. You could see the</p> <p>3 various layouts there. And just, you know, an example of the</p> <p>4 property.</p> <p>5 Q Okay.</p> <p>6 MR. ROBERT: Now I'm going to move to the next</p> <p>7 slide, Nate.</p> <p>8 (Whereupon, the next slide was displayed on the</p> <p>9 screen.)</p> <p>10 Q In 2012, the Trump International Golf Links in</p> <p>11 Aberdeen. Are you familiar with that?</p> <p>12 A Very.</p> <p>13 Q That was one of the next big projects for you after</p> <p>14 Chicago?</p> <p>15 A I spent a lot of time there, yes.</p> <p>16 Q Let's start from the beginning. How did this</p> <p>17 acquisition come to the attention of The Trump Organization?</p> <p>18 A Well, it was actually a shooting estate, and the people</p> <p>19 who owned it brought it to my father and they said this would</p> <p>20 make a pretty spectacular golf course. I had gone over there</p> <p>21 literally, prior to that, and been there; that's more my thing</p> <p>22 than golf, and I just saw it fell in love, you know. For</p> <p>23 perspective -- that building -- I think it's -- that's the</p> <p>24 Castle my father referenced. I read about his testimony last</p> <p>25 week, and that building literally started construction. It was</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4073</p> <p>1 story. His wife was a passionate wine person. Very much</p> <p>2 understood luxury and quality; did not necessarily understand</p> <p>3 expense. So built something spectacular that didn't necessarily</p> <p>4 work.</p> <p>5 And so we bought the incredible vineyards and sort</p> <p>6 started just doing what we do best, creating this. And then in</p> <p>7 the end, the mansion which you'll see later on, which was just</p> <p>8 spectacular, sort of came into play. We were able to buy that</p> <p>9 for pennies on the dollar from the banks that controlled it,</p> <p>10 because, you know, again, without the front yard, a beautiful</p> <p>11 estate doesn't really do all that much. So we then, since,</p> <p>12 aggregated these parcels together to create something</p> <p>13 spectacular. And it's been rated one of the finest vineyards.</p> <p>14 And the San Francisco Wine Festival wasn't thrilled to give that</p> <p>15 to us, but we won some of their highest accolades there. So</p> <p>16 it's a great little project.</p> <p>17 Q This may be self-evident, but what is that property</p> <p>18 operating there today?</p> <p>19 A A vineyard, a vineyard with -- a bed and breakfast with</p> <p>20 a house that --</p> <p>21 Q Okay.</p> <p>22 A -- probably over performs any bed breakfast in the</p> <p>23 history of homes.</p> <p>24 (Whereupon, the next slide was displayed on the</p> <p>25 screen.)</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4075</p> <p>1 the first component of that estate. I think it was in the early</p> <p>2 1200s. So when we talk about old buildings in America, that's a</p> <p>3 little different. That was old when we discovered America.</p> <p>4 And so that's one of the components -- that's now, you</p> <p>5 know, let's call it part of the hotel on the site, intimate</p> <p>6 place. And then you have the incredible dunes overlooking the</p> <p>7 North Sea. The geomorphology, just dunes that go up 150 feet</p> <p>8 into the air, so it's truly a unique place to be able to build a</p> <p>9 links course.</p> <p>10 Even on a coast line like that, that just doesn't</p> <p>11 exist. It was a unique place where the wind and water just</p> <p>12 created a topography that doesn't exist like that. So we</p> <p>13 created a golf course. This is one of the components. We built</p> <p>14 and refurbished other old, very old, you know, buildings on</p> <p>15 there to create this incredible estate and golf course in</p> <p>16 Aberdeen, Scotland.</p> <p>17 Q I will ask you more about that in a second, but you</p> <p>18 mentioned the dunes.</p> <p>19 MR. ROBERT: Let's go to slide 83.</p> <p>20 (Whereupon, the next slide was displayed on the</p> <p>21 screen.)</p> <p>22 Q Is that what you are referring to, Mr. Trump?</p> <p>23 A Yes, sir.</p> <p>24 Q What are we seeing in this picture?</p> <p>25 A That's -- what is that? Which hole is that? I think</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4076</p> <p>1 that may be the 14th hole. Going North on, you know, that's the</p> <p>2 North Sea. So Aberdeen is the home of sort of oil from the</p> <p>3 North Sea; that's the, you know, the European capital of oil,</p> <p>4 oil and gas, a successful area. All of the oil rigs are</p> <p>5 150 miles off shore, and you see the helicopters going over</p> <p>6 there delivering -- handling that aspect of it.</p> <p>7 So, that's the North Sea. You have the topography for</p> <p>8 a golf course, and a links course in particular, it's in a class</p> <p>9 of its own.</p> <p>10 Q So what was your exact involvement -- withdrawn.</p> <p>11 What was your involvement with this project?</p> <p>12 A That's another one of those -- that's one of those I</p> <p>13 started flying over there and I probably spent you know three,</p> <p>14 four days a month over there; zoning, entitlement, land use,</p> <p>15 dealing with the environmental components of that obviously, um,</p> <p>16 is a significant thing. You know, repurposing a castle, and,</p> <p>17 you know, and eventually getting it up and running as a golf</p> <p>18 course.</p> <p>19 Q When you talk about entitlement, what are you referring</p> <p>20 to?</p> <p>21 A The ability to build something other than what is there</p> <p>22 right now. You know, you could have the dunes or you could have</p> <p>23 -- you could bring them out and create to do that. You can't</p> <p>24 just go and say, hey, I'm going shape something and throw some</p> <p>25 grass on it. It doesn't work that way. So you have to go</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4078</p> <p>1 property. But wouldn't have been viewed as iconic by people</p> <p>2 going there at the time because it was falling apart.</p> <p>3 So he saw a jewel in the rough and wanted to bring it</p> <p>4 back to its former glory, and, quite frankly, far surpassed its</p> <p>5 former glory.</p> <p>6 Q When you talk about a "jewel in the rough", is the</p> <p>7 expression you used?</p> <p>8 THE COURT: It's really a diamond in the rough.</p> <p>9 Q I'll use diamond in the rough then.</p> <p>10 A Yes.</p> <p>11 Q When you talk about it being a diamond in the rough, is</p> <p>12 that the golf course or the potential of it, or --</p> <p>13 A Always a combination. That's the nature, whether we --</p> <p>14 as we talked about with the West Side Yards. It was supposed to</p> <p>15 be the tallest building in the world with this, and then all of</p> <p>16 a sudden it becomes thousands of residential units.</p> <p>17 Things evolve. Things emerge. When my father</p> <p>18 initially looked at it, it was, you know, he wanted to own</p> <p>19 Doral, a place where they had all these championships and an</p> <p>20 incredible golf history, because it was just his passion for</p> <p>21 that.</p> <p>22 But then he said, okay, well, you know, you have four,</p> <p>23 five golf courses here. I don't know. What if you -- Miami,</p> <p>24 arguably the hottest real estate market in the world, right?</p> <p>25 What if you just took out one golf course and made condominiums.</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4077</p> <p>1 through a lengthy process, and especially when you are dealing</p> <p>2 with coastal things, and, you know, environmental issues, you</p> <p>3 have to do that properly. So there's a very vigorous and very</p> <p>4 long process involved.</p> <p>5 Q Okay.</p> <p>6 MR. ROBERT: Nate, the next slide.</p> <p>7 (Whereupon, the next slide was displayed on the</p> <p>8 screen.)</p> <p>9 Q It brings you 2012. It's The Trump National Doral in</p> <p>10 Miami, Florida, which there's been testimony about in this case.</p> <p>11 Are you familiar with this property, sir?</p> <p>12 A I am.</p> <p>13 Q And what was your involvement when The Trump</p> <p>14 Organization acquired this in 2012?</p> <p>15 A I wasn't as involved in the acquisition, just was</p> <p>16 dealing with, you know, other things at the time. Ivanka and</p> <p>17 Eric were probably more involved in the acquisition side of it.</p> <p>18 I've been involved in terms of the hotel operation side. But,</p> <p>19 you know, I remember even going there as a young child, like</p> <p>20 prior to Mar-a-Lago young. And my father always looked at it as</p> <p>21 this incredible piece of land in Miami, and this great history</p> <p>22 for golf and everything. And it, too, was getting rundown and</p> <p>23 dilapidated, and people weren't giving it the love that it</p> <p>24 deserved. And so, you know, he bought it, invested a lot of</p> <p>25 money, really, you know, polished up. It was an iconic</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4079</p> <p>1 You know, the value add, the creation of value, like in an</p> <p>2 instant, by doing that, getting that zoning. Realizing that the</p> <p>3 Blue Monster, the primary course, or the Blue Monster plus one</p> <p>4 of the other courses could still actually do 99 percent of what</p> <p>5 you need from the golf course and the hotel component, but you</p> <p>6 could create this other value there. That's always what he</p> <p>7 does, right? So he sees those things. He sort of amazing,</p> <p>8 actually, the people prior to it that had it could've done that</p> <p>9 in a second, but you got to understand, just because it is</p> <p>10 something today doesn't mean it should stay that way. It</p> <p>11 doesn't mean that's the highest and best use. So figuring out</p> <p>12 what that is and the ability to generate and create that value</p> <p>13 is a part of his magic.</p> <p>14 Q And is The Trump Organization currently in the process</p> <p>15 of determining what to do with this property?</p> <p>16 A Yes.</p> <p>17 Q And generally, what is that?</p> <p>18 A Well, there's, you know, there's schematics and zoning</p> <p>19 to maintain some of the golf course and some of the hotel, but</p> <p>20 also to zone it for condominium in Miami, again --</p> <p>21 Q Would --</p> <p>22 A -- hottest as everyone sees. A lot of people leaving</p> <p>23 New York to go down to Florida. So, you know, that seems like</p> <p>24 an incredible market opportunity right now. So they are going</p> <p>25 through the process to zone, you know, many hundreds of, you</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4080</p> <p>1 know, possible condominium units there.</p> <p>2 Q Were you familiar in 2022 Newmark had prepared a</p> <p>3 presentation for Doral?</p> <p>4 A I've see that.</p> <p>5 MR. ROBERT: Can we have the D-499 given to the</p> <p>6 Attorney General and the witness, please.</p> <p>7 (The witness was handed the exhibit.)</p> <p>8 (Whereupon, the exhibit was displayed on the</p> <p>9 screen.)</p> <p>10 Q Mr. Trump, what do you recognize this document to be?</p> <p>11 A Well, it seems like a presentation by Newmark that</p> <p>12 looks to the investment opportunities of Doral.</p> <p>13 Q And this was a document that was given to the Trump</p> <p>14 Organization by Newmark; correct?</p> <p>15 A I believe that's correct, yes.</p> <p>16 MR. ROBERT: Your Honor, I move D-499 into</p> <p>17 evidence.</p> <p>18 MR. WALLACE: Objection. This is hearsay.</p> <p>19 MR. ROBERT: I was waiting for that, and I figured</p> <p>20 I'd do it incrementally, not as to notice to the client, as</p> <p>21 Newmark putting a value on the property in February of 2022.</p> <p>22 It's not for the truth of the matter asserted.</p> <p>23 Newmark, a well-respected company, provided this to the</p> <p>24 Trump Organization in February of 2022 and valued Doral at</p> <p>25 \$1.3 billion. It's just notice to the client -- notice to</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4082</p> <p>1 pertains to the value, but that they find out something</p> <p>2 afterwards, and then experts are going to take it and use it</p> <p>3 backwards, that's not at all the same thing, and it's</p> <p>4 bootstrapping.</p> <p>5 If they, indeed, think this is an appropriate</p> <p>6 valuation of Doral as of 2022, as Mr. Robert has said many</p> <p>7 times, they are free to call Newmark and have the people</p> <p>8 that prepared this report bring it in.</p> <p>9 I also just -- I think I will note from our</p> <p>10 perspective, which we don't have any cover communications</p> <p>11 with this e-mail. I think it just appears in Eric Trump's</p> <p>12 files as a single electronic document, so we have no idea</p> <p>13 what the province of this is, or what the basis for this</p> <p>14 report is.</p> <p>15 MR. ROBERT: So first of all they, questioned one</p> <p>16 of our experts, Steve Witkoff, about this document in some</p> <p>17 detail, and I'm sure you'll hear about that tomorrow when</p> <p>18 Mr. Witkoff testifies, but, again, I'm not putting forth --</p> <p>19 THE COURT: If he is going to testify, can't we</p> <p>20 just kick the can down the road.</p> <p>21 MR. ROBERT: But he wasn't the preparer of the</p> <p>22 document, your Honor. Mr. Witkoff was not the preparer of</p> <p>23 the document.</p> <p>24 THE COURT: Let me jump in. On the one hand, I</p> <p>25 think it's completely irrelevant what somebody said -- what</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4081</p> <p>1 the witness.</p> <p>2 MR. WALLACE: For what purpose though? 2022 is not</p> <p>3 in -- there's no Statement of Financial Condition that's</p> <p>4 prepared in 2022. I'm not sure what the purpose of having</p> <p>5 this in evidence is.</p> <p>6 MR. ROBERT: This will go later on, as you hear</p> <p>7 from our experts, as to the intent and materiality, and</p> <p>8 ultimately where this pans out.</p> <p>9 The Attorney General wants to argue that they could</p> <p>10 go before the statute of limitations to show some sort of</p> <p>11 pattern.</p> <p>12 We believe it's appropriate to show, after the</p> <p>13 period in which the Attorney General is complaining, and I'm</p> <p>14 glad to see they are not complaining about anything in 2022,</p> <p>15 but nonetheless, the fact that the Trump Organization, in</p> <p>16 February of 2022, is on notice that an independent</p> <p>17 third-party is putting a value of a billion three to Doral</p> <p>18 is relevant, especially to the equitable relief and what, if</p> <p>19 anything, The Trump Organization is doing going forward.</p> <p>20 MR. WALLACE: I'm just going to make the point,</p> <p>21 when things were going in for notice to people beforehand is</p> <p>22 because they are then making decisions about valuing</p> <p>23 property after they've received information that could go</p> <p>24 against that; that they received something after the fact</p> <p>25 about value, which I don't even think this is clear that it</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4083</p> <p>1 somebody allegedly told the Trumps the property was worth in</p> <p>2 2022.</p> <p>3 On the other hand, there's no jury. I don't see</p> <p>4 any prejudice to this. So plaintiff, what am I missing</p> <p>5 here? What is the difference?</p> <p>6 MR. AMER: There is prejudice, your Honor.</p> <p>7 THE COURT: What is it?</p> <p>8 MR. AMER: They have a document that shouldn't come</p> <p>9 into evidence. They --</p> <p>10 THE COURT: That's not prejudice, you realize.</p> <p>11 MR. AMER: Let me continue. They are going to put</p> <p>12 on the stand an expert witness who is going to rely on a</p> <p>13 document that shouldn't be in evidence --</p> <p>14 MR. ROBERT: No.</p> <p>15 MR. AMER: -- so it's prejudicial because there's</p> <p>16 no basis for the expert to be relying on something that's</p> <p>17 not evidence. And it does not qualify for the hearsay</p> <p>18 reliance rule for an expert, because he's relying entirely</p> <p>19 on the document for his opinion of value for Doral.</p> <p>20 So it's highly prejudicial and it shouldn't come</p> <p>21 in. It's not appropriate evidence. They haven't laid a</p> <p>22 foundation. It's hearsay.</p> <p>23 MR. ROBERT: First of all, you Honor, Mr. Witkoff</p> <p>24 does not rely on his opinion on this. He is questioned</p> <p>25 about it and they actually ask him what his views are,</p>

<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4084</p> <p>1 because one of his developments are one of the comparable 2 developments on here, so they questioned him about that. 3 And an expert is allowed to rely on documents not 4 in evidence. An expert is allowed to rely on things that 5 are hearsay, but here I'm introducing with Mr. Trump for the 6 purpose that The Trump Organization, in 2022, was aware that 7 Newmark placed a value of 1.3 billion on Doral. You'll hear 8 tomorrow from our expert that he thinks this number is too 9 low. 10 MR. AMER: Can I just mention that Mr. Robert is 11 wrong. An expert cannot rely on a document that's hearsay. 12 It's not the type of evidence that is ordinarily relied upon 13 by a professional. So this is a draft marketing brochure. 14 This is not the type of evidence that anybody relies on for 15 valuation of a piece of property. 16 THE COURT: Mr. Robert, throughout this trial, 17 despite what some people have said, I'm giving you the 18 benefit of the doubt. I can't see any relevance to some 19 third-party, non-party said to the Trumps, oh, by the way, 20 this property is worth X dollars. 21 Am I missing something or should we just go on, 22 because right now I'm going to exclude it? 23 MR. ROBERT: You will hear, through the course of 24 the defense in this case, the lack of intent to do anything 25 improper on behalf of The Trump Organization, or any of the</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4086</p> <p>1 fine, but as to show intent for anyone before February of 2 2022, it is irrelevant and it should not come in. 3 THE COURT: Can we make it admitted conditional 4 upon, you know, relation back -- connection, that's the 5 word. 6 MR. ROBERT: Subject to connection, yes. 7 MR. AMER: I think that's fine. But let's be clear 8 that the issue of whether Mr. Witkoff can rely on this 9 information should remain an open question until Mr. Witkoff 10 is on the stand and we have an opportunity to object to his 11 reliance on this document. 12 THE COURT: Even Mr. Robert agrees with that. It's 13 in conditional -- subject to some connection I don't see at 14 this point. 15 MR. ROBERT: It may not be Mr. Witkoff, but someone 16 else down the road, but that's fair. 17 THE COURT: It's in conditionally. 18 MR. ROBERT: Thank you. 19 (Defendant's Exhibit 499 was deemed marked and 20 admitted in evidence.) 21 Q Were you aware of the existence of this document? 22 A Yes. 23 Q Are you aware that Newmark placed value of 1.3 billion 24 on Doral in February of 2022? 25 A Yes.</p>
<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4085</p> <p>1 individual defendants. 2 This goes to the fact that the way that values had 3 been placed on this was not done with any ill intent. Here 4 what we are suggesting is that in 2022, The Trump 5 Organization was aware that someone else put a value of 1.3. 6 It doesn't mean that Newmark was right or wrong. I'm not 7 seeking to introduce it to prove the truth of the matter 8 asserted. 9 To take a chapter from the Attorney General's book, 10 it's a notice issue. Was he aware that this existed in 11 2022. Was he aware that in 2022 Newmark prepared something 12 and put a value of 1.3 billion on Doral. I'm not seeking 13 anything more than that. 14 MR. AMER: I don't see how something in 2022 can go 15 to somebody's intent earlier. It makes no sense. 16 THE COURT: I'll make my offer to plaintiff, as 17 I've occasionally done. Do you want to risk a reversal over 18 this one stupid document? I don't think you do, but if you 19 want to stand or ceremony, I'll sustain the objection. 20 MR. WALLACE: If we are all agreeing it's a stupid 21 document, I'm -- I think it -- what I will say is, if they 22 want to use it for notice of something that occurs after 23 February 2022 and they can establish that this witness saw 24 this document at a period of 2022 on, we would agree that 25 that's permissible use. And if they get there eventually,</p>	<p>D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4087</p> <p>1 Q I'm going to go back to the slide show -- 2 THE COURT: Five-minute warping. 3 Q Back to the slide show, slide presentation, slide 85. 4 (Whereupon, the exhibit was displayed on the 5 screen.) 6 Q What are we looking at here, Mr. Trump? 7 A That's the view from one of the holes towards the 8 clubhouse. 9 Q And this is -- again, re-orienting us, this is Doral; 10 correct? 11 A That is Doral, correct. 12 Q And what, if any, improvements did The Trump 13 Organization put into Doral since it acquired that in 2012? 14 A I mean, just about everything. I mean, you have the 15 basic bones of the hotel remain the same, but I think we put in 16 close to \$250 million to redo the golf courses entirely, 17 reshape, elongate that. To fix up the ballrooms and the hotel 18 rooms, and literally every aspect of it. Other than the basic 19 structure itself, everything else is brand-new. 20 MR. ROBERT: Nate, the next one, please, 87. 21 (Whereupon, the next slide was displayed on the 22 screen.) 23 Q What are we looking at here, Mr. Trump? 24 A That's the main clubhouse. 25 Q That is 86, I'm sorry.</p>

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4088

1 MR. ROBERT: Eighty-seven, Nate.  
2 (Whereupon, the next slide was displayed on the  
3 screen.)  
4 Q What are we looking at here?  
5 A One of the terraces from the main clubhouse looking  
6 down into one of the dining areas and the, I guess, 18th green.  
7 MR. ROBERT: Slide 88, Nate.  
8 Q And here, Mr. Trump?  
9 A One of the holes on the course. There's multiple  
10 courses, by the way. There's four golf courses. It's not just  
11 one 18 holes. It's 600 acres in Miami. Which, again to the  
12 point of the development rights, it's not, well, can you turn  
13 the hotel into a condominium? No, it's there's 600 acres. You  
14 could actually run an incredible golf facility, take out  
15 200 acres, have three golf courses and build thousands of  
16 condominium units there.  
17 Q So for those not familiar with Miami geography, where  
18 is it in Miami?  
19 A You are ten minutes from the Miami airport. Right in  
20 the heart of Doral.  
21 MR. ROBERT: Eighty-nine, Nate, please.  
22 (Whereupon, the next slide was displayed on the  
23 screen.)  
24 Q And what are we looking at here?  
25 A You know, more holes. Again, fully refurbished,

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4089

1 totally new. Um, just everything started from -- you know, you  
2 took the base model and just really fixed everything. Took it  
3 to a whole new level.  
4 MR. ROBERT: Next one, Nate. 90, please.  
5 Q Here, Mr. Trump?  
6 A One of the seating areas inside the hotel and the  
7 clubhouse.  
8 MR. ROBERT: And next, 91.  
9 (Whereupon, the next slide was displayed on the  
10 screen.)  
11 A A bar area. One of a few. It's a large development,  
12 so this is one area. But you set up intimate -- break the area  
13 so everything doesn't just amass. This is an area that you  
14 could have a more intimate setting, even if there is a lot of  
15 stuff going on. You have multiple ballrooms, you have hundreds  
16 of hotel rooms, you have all of this. So you could have  
17 weddings going on with, you know, business conferences, regular  
18 day-to-day play, regular vacation traffic and hotel use. It's  
19 sort of catering to all things.  
20 MR. ROBERT: Next, 92.  
21 (Whereupon, the next slide was displayed on the  
22 screen.)  
23 Q What are we looking at here, Mr. Trump?  
24 A The terrace area for one of the ballrooms overlooking  
25 the 18th.

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4090

1 MR. ROBERT: And the next one.  
2 (Whereupon, the exhibit was displayed on the  
3 screen.)  
4 A That's the interior of that, you know, one of -- not  
5 one of the larger ballrooms, but one of the more spectacular  
6 ballrooms.  
7 MR. ROBERT: Just a few more in Doral, and then  
8 I'll finish. That would be a good place for a break. If  
9 you want to stop now, that's up to you.  
10 THE COURT: We could finish, and then I want to  
11 talk for like 30 seconds after you.  
12 MR. ROBERT: Okay. Next, 94.  
13 (Whereupon, the next slide was displayed on the  
14 screen.)  
15 A That's one of the bigger ballrooms. It holds thousands  
16 of people to host entire industry conferences, whatever it may  
17 be. So you get that in there for the food and beverage. They  
18 are there for the conference, then going and playing golf. They  
19 are staying in the hotel, utilizing one of the restaurants.  
20 That's how that property survives as is. But, again, it's just  
21 one component of what it actually is worth, or could be in terms  
22 of potential.  
23 MR. ROBERT: Next 95.  
24 THE COURT: We like big rooms around here, too.  
25 THE WITNESS: Yeah. I could see that.

D. Trump, Jr. - Defense - Direct (Mr. Robert) Page 4091

1 (Whereupon, the next slide was displayed on the  
2 screen.)  
3 A One of the -- another one of the ballrooms. Again, you  
4 could have -- I forget the exact number that are there. You  
5 could host a lot of separate events at any given time there, and  
6 they could all function seamlessly.  
7 MR. ROBERT: And 96, Nate.  
8 (Whereupon, the next slide was displayed on the  
9 screen.)  
10 A Inside one of the suite areas, I believe.  
11 MR. ROBERT: And 97, the final slide on Doral.  
12 (Whereupon, the next slide was displayed on the  
13 screen.)  
14 A A fairly standard room for Doral, you know, but  
15 obviously a very opulent room for any anywhere else. That would  
16 be a bedroom, one of the one bedroom suites in the hotel.  
17 MR. ROBERT: Your Honor, I think this would be a  
18 logical place to stop at this point before the lunch break.  
19 THE COURT: I just want to take judicial notice of  
20 something.  
21 Mr. Trump, when you were discussing the castle on  
22 the Aberdeen grounds, you said it was built around the 12th  
23 century or something, so it was old when America was  
24 discovered. I'm not sure whether that was the exact  
25 language. I'll take judicial notice, there were people

<p style="text-align: right;">Page 4092</p> <p>1 living here at that point. And, in fact, Columbus wasn't</p> <p>2 even first European to get here, although he may have been</p> <p>3 the first person to establish settlement, et cetera, et</p> <p>4 cetera. I'll leave you with that. I'll see you at 2:15.</p> <p>5 THE WITNESS: It is the indigenous people's day</p> <p>6 disclaimer. I understand.</p> <p>7 (Whereupon, the case on trial was adjourned until</p> <p>8 2:15 for the luncheon recess.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4094</p> <p>1 A We purchased Turnberry, one of the oldest and most</p> <p>2 exclusive famous golf courses anywhere in the world. It has</p> <p>3 hosted the British Open, the Open championship, on many</p> <p>4 occasions. Just a spectacular property on the opposite side of</p> <p>5 Scotland from the Aberdeen course that we were discussing</p> <p>6 earlier.</p> <p>7 Q And can you describe what the Trump Organization did</p> <p>8 to the Turnberry, Scotland golf course once it acquired it,</p> <p>9 sir?</p> <p>10 A Similar to Doral, acquired it, took a property that</p> <p>11 was going into a little bit of a state of disrepair, and</p> <p>12 brought out the diamond that had been there previously. This</p> <p>13 is a, you know, very old course, 150 years old. There is, I</p> <p>14 mean, some of the interesting -- some of the fairways had</p> <p>15 runways next to it, and the runways were used as landing sites</p> <p>16 for WWII bombers to stage in Scotland back in the day. A lot</p> <p>17 of pretty amazing history.</p> <p>18 That right there is the lighthouse overlooking it.</p> <p>19 And the island across the way, that's where all of</p> <p>20 the granite comes from for the curling you see on the Olympics.</p> <p>21 Apparently that's all harvested on that island for the curling</p> <p>22 stones that they use.</p> <p>23 Q Anything else specifically you remember about any of</p> <p>24 the work that the Trump Organization did in Scotland?</p> <p>25 A The entire retrofit, like I said, Doral, Doral in</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) <span style="float: right;">Page 4093</span></p> <p>1 MR. ROBERT: May I, Your Honor?</p> <p>2 THE COURT: Please, yes.</p> <p>3 MR. ROBERT: It works now, I am told.</p> <p>4 (Referring to the remote control)</p> <p>5 THE COURT: I am going to ask the witness,</p> <p>6 again, please slow down. You were talking faster than the</p> <p>7 reporters are able to take it all down.</p> <p>8 MR. ROBERT: And we won't say "again" again, I</p> <p>9 promise.</p> <p>10 THE WITNESS: I make no such promise.</p> <p>11 THE COURT: All we can ask for you to do, is do</p> <p>12 your best.</p> <p>13 Okay. Let's continue.</p> <p>14 Q When we left off --</p> <p>15 MR. ROBERT: May I proceed, Your Honor?</p> <p>16 May I proceed? I can proceed?</p> <p>17 THE COURT: Yes.</p> <p>18 MR. ROBERT: Okay. Thank you.</p> <p>19 Q Mr. Trump, when we left before the lunch break we had</p> <p>20 finished talking about Doral, and I want to draw your attention</p> <p>21 to Trump Turnberry in Scotland. Are you familiar with that job</p> <p>22 site?</p> <p>23 A I am, yes.</p> <p>24 Q What, if anything, did the Trump Organization do in</p> <p>25 2014 vis-a-vis Trump Turnberry, Scotland?</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) <span style="float: right;">Page 4095</span></p> <p>1 Scotland. Taking the hotel, refurbishing, I forget the exact</p> <p>2 dollars. Eric could tell you, he was more lead on that one.</p> <p>3 But countless dollars fixing up both courses over there as</p> <p>4 well. Just from start to finish a revamp of a once great and</p> <p>5 iconic property in bringing it back to that condition.</p> <p>6 Q I am moving to slide 99. What are we looking at</p> <p>7 here?</p> <p>8 A Looking at the lighthouse. It is sort of an --</p> <p>9 actually, inside the lighthouse they created one of the suites</p> <p>10 for the hotel. So the hotel is separate and distinct from</p> <p>11 that, but put in a room there. So that one of the holes</p> <p>12 overlooking the lighthouse, very iconic, famous golf course.</p> <p>13 Q Moving to slide 100. What are we looking at here?</p> <p>14 A That's the primary -- that's the clubhouse hotel for</p> <p>15 the property.</p> <p>16 Q And what, if any, state was this in when the Trump</p> <p>17 Organization took over the property?</p> <p>18 A I would say not nearly as nice as it is now.</p> <p>19 Q Okay. Going to slide 101.</p> <p>20 MR. ROBERT: I am so used to asking you, Nate,</p> <p>21 for it. Now I have the device back.</p> <p>22 Q What are we looking at here, Mr. Trump?</p> <p>23 A Different holes, just, sort of, showcasing the</p> <p>24 incredible topography of the course, the grandeur of the</p> <p>25 waterfront there. Different topography from Aberdeen on the</p>



<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4096</p> <p>1 other side, because on the other side you are on the north 2 side, so you have the North Sea, known for its rough 3 conditions. And you can see here a little more meandering. 4 But, you know, again, just another spectacular asset. 5 Q What are we looking at here, slide 102? 6 A Different view, similar holes. A par three heading 7 over to the lighthouse. 8 Q Okay. We had -- you had spoken earlier about one of 9 the next projects you were involved in, which was the Trump 10 International Golf Links and Hotel, Doonbeg, in Ireland? 11 A That's correct. 12 Q Can you first, from 30,000 feet, explain to us what 13 your involvement was with that? And then we will get into some 14 detail. 15 A This one I was more involved. It was a -- it looks 16 and it is designed to look very old, almost like you are going 17 back it time 100 years to a coastal town in County Clare, 18 Ireland. But was designed, you know, relatively recently 19 during the real estate crisis of, let's call it 2008, the 20 development group got in trouble. 21 I got a call: Hey, is this something you would look 22 at? 23 I got on a plane. I checked it out and saw what it 24 was. It was pretty spectacular. Again similar, coastal golf 25 course. The property here is just very unique. It does have</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4098</p> <p>1 mowers and tractors and machinery to maintain the greens, we 2 can do that. You are installing sprinkler systems. We are 3 working with the best. We can do that. So we can make things 4 happen, get it up and running, be able to satisfy that 5 membership. And have it, you know, function as a great 6 operating golf course quickly. 7 Q Now, drawing your attention to slide 104, what are we 8 looking at here, Mr. Trump? 9 A That's basically the clubhouse from the practice 10 green. 11 Q And what was this before it was a clubhouse of 12 anything? 13 A It was built -- it was built as that. But again, the 14 project for -- got to a stage of completion with a prior 15 developer. The, I guess, money ran out. It was a rough time 16 in the real estate market. We came in, picked it up, took a 17 chance with our balance sheet and our cash to be able to lock 18 it up and secure it. And, you know, then spent the next time, 19 sort of, filling in the blanks to get everything else finalized 20 and assembled. 21 Q I notice the clock in the middle. Is that one of 22 those clocks in the middle? 23 A Different clock. 24 MS. FAHERTY: Can I note my objection to that 25 answer? It was entirely non-responsive to what the house</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4097</p> <p>1 an actual, you know, condominium, sort of, hotel, 2 condominium-hotel component to it. Not too much there, but you 3 also have villas along the way and along the route. And this 4 thing was up in the air. There was, certain, you know, 5 non-clarity as it relates to title and what we would be able to 6 buy in a transaction and stuff. And it was one of those that, 7 having been the only person that has seen it, you know, and 8 perhaps when my father called it is, like, hey, you know, we 9 either got to go hard, but we are risking hard money. I said, 10 listen, it is that good. We have to take a chance and hope we 11 can assemble the rest of the property, and it has been great 12 since. 13 THE COURT: We like the enthusiasm. Try to 14 eliminate the speed. 15 Q And now you have explained how it came about. What 16 exactly was your role in the development of it itself? 17 A It was developed, so it was bringing that back. It 18 was taking, you know, a golf course that would have been in a 19 state of disrepair only because, you know, the original 20 developers had run out of money. All of a sudden you have to 21 finish this, you have some existing membership. So, finishing 22 and completing that package, taking it to the next level, 23 exposing it to -- really for golf with us, there is a -- a lot 24 of economies of scale. We have golf courses now all over the 25 world we do this. So, when you have to buy dozens of new lawn</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4099</p> <p>1 was before it was a clubhouse. 2 THE WITNESS: I said it was always -- it was 3 always the same. 4 THE COURT: I see no harm. I think it was all 5 tangentially responsive answers. Overruled. 6 Q Slide 105, what are we looking at here? 7 A I guess the more northern -- more northern holes on 8 the course, par three, heading back facing the clubhouse. 9 Q And 106? 10 A Just another view. Again, you can see the topography 11 for a Links-type course, the dune systems, everything 12 incorporating the golf course into the natural environment of 13 the area. 14 Q So earlier this morning we spoke about the Wolman 15 Rink back when you were a young man. And you remember talking 16 about ice skating there; do you remember that? 17 A I do. 18 Q Now I want to fast forward to 2015 to talk about 19 another City project the Trump Organization was involved with. 20 Are you familiar with the Trump Golf Links at Ferry Point in 21 Bronx, New York? 22 A I am. 23 Q What was your involvement in this in or around 2015? 24 A I wasn't involved other than peripherally. That 25 would have been more of an Eric project. But, it was,</p>

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4100

1 honestly, it was a piece of vacant land. It was essentially  
2 landfill that for decades, feels like an old school New York  
3 mob job, someone moved a pile of dirt from here to here and  
4 then moved it back and forth, back and forth, and everyone gets  
5 paid and nothing actually gets built. And it was crazy. And  
6 you know, yet another one of those eyesores that people are  
7 wondering why there is a construction site going on for 20  
8 years, you know, under the bridge there.  
9 And my father got involved, saw potential, worked  
10 with Jack Nicklaus to build an incredible golf course in the,  
11 you know, in New York. It was just a spectacular thing, and we  
12 took it over, put a lot of money into it. And in, let's call  
13 it 18 months, built something absolutely incredible that has  
14 been operating as a golf course since.  
15 Q And the story you just told, is that a story that is  
16 contained in the Trump Organization website as a video, in  
17 part?  
18 A I imagine there is, yes. Yes.  
19 MR. ROBERT: If we could call up Defense Exhibit  
20 1018.  
21 Q I am going to ask you, Mr. Trump, if this is the  
22 video on the Trump Organization website, in part?  
23 (Whereupon the video was played in open court.)  
24 MR. ROBERT: Can you start at the beginning with  
25 a louder sound, maybe?

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4101

1 (The video was played in open court.)  
2 MR. WALLACE: We will just note an objection to  
3 this video, which is obviously pure hearsay. If Mr. Trump  
4 wants to talk about any of the subjects he covers in the  
5 video, he can. I don't know if they are planning on  
6 calling Mr. Nicklaus for any of it, but that's pure  
7 hearsay.  
8 MR. ROBERT: Just introducing as a demonstrative  
9 exhibit, not seeking to introduce it into evidence.  
10 And I asked Mr. Trump, is that a fair  
11 description of the property and what we are seeing in the  
12 video, the property itself.  
13 THE WITNESS: Yes.  
14 THE COURT: You are not seeking to have it  
15 admitted into evidence?  
16 MR. ROBERT: Just for demonstrative purposes  
17 only, Your Honor.  
18 MR. WALLACE: I don't know what that means, Your  
19 Honor.  
20 MR. ROBERT: It is a demonstrative exhibit, no  
21 different than if I went with a video or camcorder and  
22 took a video of the property.  
23 MS. FAHERTY: That's not what that was.  
24 THE COURT: What's the question, exactly?  
25 MR. ROBERT: Is that a fair representation of

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4102

1 what the course looks like from the photos that were a  
2 part of that video.  
3 THE WITNESS: It is.  
4 THE COURT: I will allow it.  
5 Q Let's go to slide 108, please.  
6 MR. ROBERT: What I am talking about -- I can do  
7 that now.  
8 Q What are we looking at here now, Mr. Trump?  
9 A Looking at a view from one of the fairways over the  
10 water and the bridge. One of the annuals from probably one of  
11 the tee boxes on the course.  
12 Q And 109?  
13 A A view of the skyline of New York City.  
14 Q 110?  
15 A A clubhouse with the skyline of New York City, from a  
16 sideways angle.  
17 Q Again, was this clubhouse there when the Trump  
18 Organization took over the project in 2015?  
19 A As I mentioned, it was raw dirt. It had been that  
20 way for a long time. People were doing construction on it for  
21 years, not actually doing anything, but probably still getting  
22 paid. And we took it over and actually created it.  
23 THE COURT: You know, I think that's a better  
24 opportunity for an objection. Question was: Was that  
25 there before you took over. I assume the answer is no?

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4103

1 THE WITNESS: That's correct.  
2 THE COURT: All right. If it is a yes or no  
3 question, answer it yes or no.  
4 MR. ROBERT: Fair enough, Your Honor.  
5 Q In what manner was it different?  
6 A As I stated, it was a raw landfill site. People  
7 were, you know, supposedly trying to build a golf course on it  
8 for years. Nothing actually got accomplished during those  
9 years. And from when we took it over to when we built it out,  
10 it turned into, you know, a spectacular asset or spectacular  
11 amenity for the City. This is with the New York City Parks  
12 Department, so like Wolman Rink, another, you know, great  
13 amenity for the City of New York.  
14 Q During the course of the ten years of 2011 through  
15 2021, sir, approximately how many people did the Trump  
16 Organization employ in New York, on average?  
17 A I would say, on average, rolling average, probably  
18 about 1,000 in New York.  
19 Q And how many people were involved beyond your  
20 employees in the various projects in New York? We are talking  
21 about construction workers, engineers, architects, maintenance  
22 crews, landscapers, any estimation of that?  
23 A Much higher than that. If we are building a building  
24 there could be hundreds of construction workers on that one  
25 building. They are not employees of the Trump Organization but

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4104

1 their employment is paid for by that development through their  
2 contractors and otherwise. So when you have, you know, even  
3 caddies, you know, they may be independent contractors but  
4 still they are generating their revenue through this. So I  
5 would say it goes very significantly up from there if you are  
6 talking about, sort of, the beneficial interest of just beyond  
7 who is on Trump Organization's payroll.

8 Q And we are going to have more specific from others,  
9 but do you have any idea of how much money in taxes the Trump  
10 Organization has paid in New York for the ten years, 2011 to  
11 2021?

12 A Huge numbers, you know.

13 Q Okay.

14 A Tens -- millions, I don't know specifically, but it  
15 is a big number.

16 Q Fair enough, sir.

17 What are we looking at here, slide 111?

18 A Bar area, dining area, inside the clubhouse at Ferry  
19 Point.

20 Q Again, this wasn't there before the Trump  
21 Organization acquired the property, correct?

22 A Correct, it was just vacant land.

23 Q And drawing your attention to 112, what are we  
24 looking at here?

25 A A view from the sky. Again, that was a landfill site

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4105

1 that we turned into an incredible asset for the City of New  
2 York.

3 Q A little earlier we spoke about the winery that was  
4 acquired, I believe it was in 2011; do you remember that?

5 A I do.

6 Q And you had talked about that there was a second  
7 component to that; do you remember that?

8 A I do.

9 Q Now, I draw your attention to 2015 and a property  
10 known as Albemarle Estate, if you could explain to the Court  
11 what this is in 2015?

12 A Well, that was the home that was part of the Kluge  
13 Estate. That was the estate that I mentioned for, like, estate  
14 planning purposes, separated out ownership between, sort of,  
15 what was a contiguous parcel. I guess they did that for  
16 themselves for tax purposes. And this was the home that we  
17 essentially owned the front yard of. So while the home is  
18 spectacular, if you don't own the front yard you can't do it,  
19 you don't know what a developer will ultimately do with that  
20 yard, sort of diminished the value of the home, allowed us to  
21 buy the home for what I believe to be, you know, well under  
22 market. Aggregate that into the rest of the vineyard. This  
23 now functions as a, you know, sort of ultra luxury bed and  
24 breakfast at a spectacular vineyard in Charlottesville,  
25 Virginia.

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4106

1 I believe it is the ridge right over the top of that  
2 where Jefferson escaped his estate during the Revolutionary  
3 War, so a lot of cool history in the area.

4 Q Slide 114. What are we looking at here, sir?

5 A The back side of the same estate.

6 Q The same one we just saw before, correct?

7 A Correct.

8 Q Okay. Now I am going to draw your attention to a  
9 property that has gotten significant discussion during this  
10 trial, which is the Old Post Office.

11 A Yes.

12 Q Do you remember that project?

13 A I know it well, yes.

14 Q And from a 30,000-foot perspective to start with,  
15 what was your involvement in that project, sir?

16 A Construction, and you know, ongoing operations  
17 once -- once we opened up the hotel component. So the hotel  
18 operations would have been my primary responsibility there.  
19 But, did have involvement in some of the construction  
20 development aspects of it. Although it was more heavily  
21 involved in, sort of, 2016 transitioning over from a  
22 construction site to an ongoing and operating hotel project.

23 Q So before we get to the stuff that you were  
24 specifically involved in, let's talk about more generally in  
25 how it came about that the Trump Organization wound up being

D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4107

1 able to build or renovate the Trump Old Post Office.

2 A Incredible property on Pennsylvania Avenue. It was  
3 going to be torn down by the government a few times. This used  
4 to be the old Washington DC post office, the Post Master  
5 General's office. We turned that into a hotel suite  
6 eventually. And my father and Ivanka very involved in the  
7 beginning, just saw this incredible jewel. And it was  
8 literally like there was a TCBY Yogurt in the basement. It was  
9 rundown delapidated. Just such an incredible building that was  
10 just totally not being utilized in a way that made any sort of  
11 sense.

12 The GSA from the government put out, basically, a  
13 bid. It was something that I would say -- I don't want to say  
14 every, you know, I imagine pretty much every hotel company I  
15 can think of put in a bid to try to buy this asset or, you  
16 know, lease the asset and get involved in the project. I think  
17 everyone else, you know, perhaps saw what we saw with it. As I  
18 said, it took a vote of Congress to actually allow that to  
19 happen. We one won that bid. Our ability to do a renovation  
20 of a very old building, a historically significant building, a  
21 landmark building, we had had that experience obviously with  
22 Trump Park Avenue and others.

23 So a lot of the development companies who had built  
24 ground up would say they could do it, but we actually had a  
25 track record of building these kinds of projects and doing it.

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4108</p> <p>1 In the end we were successful, in that in the RFP won that, and</p> <p>2 turned it into one of the finest hotels anywhere in the world.</p> <p>3 Q What was your involvement once the hotel became</p> <p>4 operational, sir?</p> <p>5 A Heavily involved in the hotel operations. All of</p> <p>6 that through the hotel company. You know, every aspect that</p> <p>7 entails, literally from the marketing materials and getting</p> <p>8 that out, group business, F&amp;B, I did a lot of work on the</p> <p>9 leasing of, you know, the restaurant spaces in the building, et</p> <p>10 cetera, et cetera, so anything and everything.</p> <p>11 Q And let's look at 116. What are we looking at here,</p> <p>12 Mr. Trump?</p> <p>13 A That's the main entrance of the building as well as</p> <p>14 the main entrance to the presidential ballroom. We, like Park</p> <p>15 Avenue again, created a new space. There was area that could</p> <p>16 be utilized, so we were able to take an old existing building,</p> <p>17 bring out its former glory, but also create new modern space to</p> <p>18 hold, really I guess, the largest ball room in Washington DC</p> <p>19 outside of the Washington DC Hilton. But in a much better</p> <p>20 location, on Pennsylvania Avenue. Create a new space for those</p> <p>21 ballrooms, very large ceiling spans. You know, better for</p> <p>22 entertaining, better for banquet. And you know, added that on</p> <p>23 to the building as part of the construction of the retrofit of</p> <p>24 the building.</p> <p>25 Q And what are we looking at here, 117, sir?</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4110</p> <p>1 going into the rooms of the hotel. You had an enclosed, you</p> <p>2 know, glass structure you had from the -- that is the lobby</p> <p>3 down there, so this incredible inside enclosed lobby. And so</p> <p>4 that's a look down from one of the suites -- or just really</p> <p>5 that's actually one of the ordinary rooms, just in the hallway</p> <p>6 in front of that, you had this great scape of what was</p> <p>7 downstairs.</p> <p>8 Q And is there any way to describe what this looked</p> <p>9 like before the renovations that you did?</p> <p>10 A A war zone.</p> <p>11 Q Okay.</p> <p>12 A Practically. I mean, it was very rough. It was</p> <p>13 very -- if you walked into it and you saw the outside of the</p> <p>14 building and even with a little bit of imagination, you would</p> <p>15 be disappointed that you could let a building that spectacular</p> <p>16 get that rundown.</p> <p>17 Q And what are we looking at here, 122, sir?</p> <p>18 A That's the ballroom I mentioned. So that's the, you</p> <p>19 know, that was actually what we built from scratch to add on to</p> <p>20 that to create, sort of, a significant amount of banquet space,</p> <p>21 you know, that the regular building wouldn't have been able to</p> <p>22 hold to be able to accommodate that food and beverage. And the</p> <p>23 banquet side of a hotel business is huge. So to be able to do</p> <p>24 that and create that space and therefore value was a big deal.</p> <p>25 Q And 123, sir?</p>
<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4109</p> <p>1 A That's the shot looking down Pennsylvania Avenue.</p> <p>2 That's the --</p> <p>3 Q And what are we looking at here, 118, Mr. Trump?</p> <p>4 A That's about a third of the main lobby.</p> <p>5 Q And is 119 showing a --</p> <p>6 A Yeah, that's the other half, so bar area. You had,</p> <p>7 you know, restaurant space and bar on the other side of that.</p> <p>8 Main entrance would be that way where you come in, so you are</p> <p>9 entering into this, maintain the structure of all of that</p> <p>10 steel. There was actually some of the structural steel that</p> <p>11 was used to hold up the old mail sorting machines at the time.</p> <p>12 Filled in some of that space because you had, sort of, a deep</p> <p>13 basement dwelling. And just, you know, created that.</p> <p>14 It was, sort of, a great, great example of a</p> <p>15 public-private partnership. It is a lease from General</p> <p>16 Services Administration from the government to work. And it</p> <p>17 was a great example of being able to, you know, work with</p> <p>18 governmental entities to bring out the best of an asset that</p> <p>19 they had, it was, you know, say highly underutilized.</p> <p>20 Q What are we looking at here at 120, sir?</p> <p>21 A That would have been the main bar area.</p> <p>22 Q Which is off the lobby?</p> <p>23 A Correct.</p> <p>24 Q And in 121, sir?</p> <p>25 A Yeah, the view from literally one of the corridors</p>	<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4111</p> <p>1 A One of the rooms in the hotel.</p> <p>2 Q Okay. And final slide, what is 124 then, sir?</p> <p>3 A The front entrance, that's off Pennsylvania Avenue.</p> <p>4 That's one of the areas that would have just been a, you know,</p> <p>5 after work drinks, coffee area. Right out there on the corner</p> <p>6 of Pennsylvania Avenue.</p> <p>7 Q And, sir, what, if any, development projects was the</p> <p>8 Trump Organization involved with after 2016?</p> <p>9 A I mean we -- obviously there is a very big asset</p> <p>10 management role of all of the properties that we own. That's</p> <p>11 not a small task. But, you know, under the umbrella of the</p> <p>12 presidency and everything, honestly, it just wasn't worth</p> <p>13 dealing with a lot of new development because of the headaches</p> <p>14 associated with that.</p> <p>15 Q And what, if any, had there been any new projects</p> <p>16 that have been from the, no pun intended, from the ground up</p> <p>17 that you recall from 2016 to the present?</p> <p>18 A There is some licensing deals that have been signed.</p> <p>19 There are some other deals that we work on, you know,</p> <p>20 extending. But the primary focus has been maintaining, adding</p> <p>21 onto, refurbishing the existing assets we have had.</p> <p>22 Q From that period forward have there been sales of any</p> <p>23 of the Trump assets in the last few years or any of the</p> <p>24 licensing deals or things like that?</p> <p>25 A Yes. We sold Ferry Point, the golf course that we</p>

<p>D. J. Trump Jr. - by Defendant - Direct(Robert) Page 4112</p> <p>1 looked at a little while ago. And we sold the Old Post Office</p> <p>2 in Washington DC.</p> <p>3 Q And what is your view as to the future development I</p> <p>4 prospects of the Trump Organization as you sit here today?</p> <p>5 A Well, I guess a lot of that depends on what happens</p> <p>6 in next November. We will probably be put on hold for a little</p> <p>7 while, and sued to oblivion for the foreseeable future; but</p> <p>8 after that, we will continue to do what we do, which is, you</p> <p>9 know, change sky lines, manage, build, acquire incredible</p> <p>10 assets and create value.</p> <p>11 MR. ROBERT: Can I have a moment, Your Honor?</p> <p>12 THE COURT: Sure.</p> <p>13 MR. ROBERT: I have no further questions at this</p> <p>14 time, Your Honor. Thank you.</p> <p>15 THE COURT: Will there be any cross examination?</p> <p>16 MS. FAHERTY: No one else from your side has any</p> <p>17 questions?</p> <p>18 MR. ROBERT: I don't believe so, no.</p> <p>19 MS. FAHERTY: One second, Your Honor. Yes.</p> <p>20 One moment, Your Honor, while I get organized.</p> <p>21 Thank you.</p> <p>22 May I proceed, Your Honor?</p> <p>23 THE COURT: Please.</p> <p>24</p> <p>25</p>	<p>D. J. Trump Jr. - by Defendant - Cross(Faherty) Page 4114</p> <p>1 A Yes.</p> <p>2 Q You are familiar with the occupancy there at that</p> <p>3 building?</p> <p>4 A It has been a little while since I have looked at it,</p> <p>5 but yes.</p> <p>6 Q I think I heard you to say earlier that it is</p> <p>7 performing well, that it is 90 percent occupied. You testified</p> <p>8 to that earlier, right?</p> <p>9 A I said the last time I checked it was in and about</p> <p>10 that range, yes.</p> <p>11 Q Yes. And are you aware that 40 Wall Street is a</p> <p>12 securitized loan; it has a securitized loan, right?</p> <p>13 A Generally.</p> <p>14 Q Isn't it true that 40 Wall Street was just placed on</p> <p>15 a Servicer Watch List?</p> <p>16 A I don't know that for sure.</p> <p>17 MS. FAHERTY: Your Honor, I have a document that</p> <p>18 I have marked as PX-3380 that I would like to hand up to</p> <p>19 the witness.</p> <p>20 (Handing)</p> <p>21 Q I draw your attention to the second page, Mr. Trump.</p> <p>22 MR. KISE: Your Honor?</p> <p>23 THE COURT: Yes, go ahead.</p> <p>24 MR. KISE: I don't think she heard me.</p> <p>25 The relevance of this document?</p>
<p>D. J. Trump Jr. - by Defendant - Cross(Faherty) Page 4113</p> <p>1 CROSS-EXAMINATION</p> <p>2 BY MS. FAHERTY:</p> <p>3 Q Good afternoon, Mr. Trump.</p> <p>4 A Good afternoon.</p> <p>5 MS. FAHERTY: Ashley, can we pull up the</p> <p>6 Defendant's Exhibit that we have been watching</p> <p>7 extensively? I think it is exhibit DX-1019. And can we</p> <p>8 turn it to page, I think, 68?</p> <p>9 Q Mr. Trump, do you recognize that image?</p> <p>10 A I believe that's the Trump Golf course in Rancho</p> <p>11 Palos, California.</p> <p>12 Q And you gave some testimony earlier about Trump</p> <p>13 National Golf Course in Los Angeles when you were speaking with</p> <p>14 Mr. Robert earlier, right?</p> <p>15 A Correct.</p> <p>16 Q I believe I heard you testify that this course is</p> <p>17 right on the Pacific Ocean; is that correct?</p> <p>18 A Correct.</p> <p>19 Q Didn't the 18th hole at this golf course literally</p> <p>20 fall into the ocean, sir?</p> <p>21 A Yes.</p> <p>22 MS. FAHERTY: Your Honor, before I get to the</p> <p>23 document --</p> <p>24 Q Mr. Trump, I believe earlier you were referencing 40</p> <p>25 Wall Street, right?</p>	<p>D. J. Trump Jr. - by Defendant - Cross(Faherty) Page 4115</p> <p>1 THE COURT: You are going to start questioning</p> <p>2 the relevance of this?</p> <p>3 MR. KISE: I mean, I just want to note that --</p> <p>4 THE COURT: I just gave you a whole opening of</p> <p>5 the relevance.</p> <p>6 MR. KISE: Agreed. But the reason this happened</p> <p>7 is because of your order, not because of anything we did.</p> <p>8 That's the whole reason this happened. But, okay. I mean</p> <p>9 if they are going to try and impute this to the company, I</p> <p>10 guess that's their prerogative. But the first time any</p> <p>11 negative action has ever been taken on any loan associated</p> <p>12 with this trial, is as a result of your order and only</p> <p>13 your order.</p> <p>14 MR. WALLACE: Your Honor, if we are going to</p> <p>15 have this kind of substantive discussion, I think the</p> <p>16 witness should step out.</p> <p>17 MR. KISE: Okay. That's fine.</p> <p>18 THE COURT: Do we need to continue it? I am</p> <p>19 obviously going to allow them to use it and question the</p> <p>20 witness.</p> <p>21 MR. KISE: If she is going to question the</p> <p>22 witness you have our objection.</p> <p>23 THE COURT: All right. Objection noted.</p> <p>24 Q Drawing your attention to the middle of the second</p> <p>25 page it states: The mortgage on 40 Wall Street has a</p>

<p>D. J. Trump Jr. - by Defendant - Cross(Faherty) Page 4116</p> <p>1 3.67 percent coupon and matures in July 2025. According to</p> <p>2 loan documents, the tower's occupancy rate dropped to</p> <p>3 77 percent as of June 30, from 98 percent when the loan</p> <p>4 originated in 2015.</p> <p>5 Does that refresh your recollection as to the loan,</p> <p>6 the tower's occupancy rate dropping to 77 percent?</p> <p>7 A No, as I said, the last time I checked it was in the</p> <p>8 90s. Maybe the --</p> <p>9 Q Yes or no, sir?</p> <p>10 A They could be referring to the tower, which could be</p> <p>11 the upper portion of the building. We refer to that as the</p> <p>12 tower.</p> <p>13 Q No specific knowledge, right?</p> <p>14 A No.</p> <p>15 (The following proceedings were stenographically</p> <p>16 recorded by Senior Court Reporter Michael Ranita.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>D. Trump, Jr. - Defense - Cross (Ms. Faherty) Page 4118</p> <p>1 Waikiki, Hawaii has said it would rename the property? It is</p> <p>2 buying itself out of the licensing agreement with the Trump</p> <p>3 Organization.</p> <p>4 A It is buying itself for millions of dollars out of the</p> <p>5 management agreement, which is common practice in the hotel</p> <p>6 world.</p> <p>7 Q It is correct that it is ditching the Trump name to get</p> <p>8 out of that branding deal, sir? Yes?</p> <p>9 A If they want to by it out for millions of dollars, I'm</p> <p>10 okay with that.</p> <p>11 Q Turning your attention to page three of this document.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q "Also Friday the owners of the Trump International</p> <p>15 Hotel, Waikiki in Hawaii, said it would rename the property</p> <p>16 buying out a licensing agreement with the former President's</p> <p>17 company and joining a brand in Hilton Worldwide Holdings, Inc.</p> <p>18 system."</p> <p>19 Correct, this is a reflection that the hotel is</p> <p>20 abandoning the Trump brand to go with Hilton?</p> <p>21 A That is what they are doing, I guess. Yes.</p> <p>22 MS. FAHERTY: Nothing further, your Honor. Thank</p> <p>23 you.</p> <p>24 THE COURT: Any other questions? Any redirect?</p> <p>25 MR. ROBERT: Not from that, no.</p>
<p>D. Trump, Jr. - Defense - Cross (Ms. Faherty) Page 4117</p> <p>1 Q Top of the page, "The Financial District Building has</p> <p>2 been on a watch list status since February as costs and</p> <p>3 vacancies increased."</p> <p>4 Does this refresh your recollection? I don't need an</p> <p>5 explanation. I'm just asking if it refreshes your recollection,</p> <p>6 sir, that the building has been on a watch list since February?</p> <p>7 A It does not.</p> <p>8 Q I turn your attention to the first page.</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 Q "The mortgage on former President Donald Trump's</p> <p>12 Manhattan tower at 40 Wall Street has been transferred to a</p> <p>13 special servicer."</p> <p>14 Refresh your recollection that the loan has now been</p> <p>15 transferred to a special servicer, sir?</p> <p>16 A No.</p> <p>17 Q Now, you mentioned earlier that you had a point</p> <p>18 position on the Hawaii Waikiki deal, did I hear you testify</p> <p>19 about that earlier today, sir?</p> <p>20 A Yes.</p> <p>21 Q It was so good because you brought the expertise;</p> <p>22 right?</p> <p>23 A I don't know if that's exactly what I said, but it is a</p> <p>24 great project, yes.</p> <p>25 Q Isn't it true that the owner of the Trump Hotel in</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4119</p> <p>1 MS. FAHERTY: I appreciate that.</p> <p>2 THE COURT: I'm going to excuse the witness from</p> <p>3 the witness stand, unless somebody has any questions.</p> <p>4 MR. KISE: Your Honor --</p> <p>5 THE COURT: Any other witnesses at this time,</p> <p>6 defense?</p> <p>7 MR. KISE: Yes. Can we just get five minutes to</p> <p>8 coordinate the witness coming in?</p> <p>9 THE COURT: Sure.</p> <p>10 MR. KISE: Thank you.</p> <p>11 (Whereupon, there is a brief pause in the</p> <p>12 proceedings.)</p> <p>13 THE COURT: Somebody come up.</p> <p>14 (Whereupon, there is a discussion held off the</p> <p>15 record, at the bench, among the Court and Counsel.)</p> <p>16 THE COURT OFFICER: Witness entering.</p> <p>17 (Whereupon, the witness stepped into the witness</p> <p>18 stand.)</p> <p>19 THE COURT OFFICER: Please raise your right hand.</p> <p>20 (The witness complied.)</p> <p>21 THE COURT OFFICER: Do you solemnly swear or affirm</p> <p>22 that any testimony you'll give will be the truth, the whole</p> <p>23 truth and nothing but the truth?</p> <p>24 THE WITNESS: Yes.</p> <p>25 S H E R I D I L L O N, called by and on behalf of the</p>

<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4120</p> <p>1 Defendant, having been first duly sworn, was examined and 2 testified as follows: 3 THE COURT OFFICER: Please have a seat. 4 THE WITNESS: Thank you. 5 THE COURT OFFICER: Please state your name and home 6 or business address for the record. 7 THE WITNESS: Sheri Dillon, 1111 Pennsylvania 8 Avenue Northwest, Washington, D.C. 20004. 9 THE COURT: Welcome back. I feel like I'm at a 10 reunion here, the Trump trial reunion. 11 Okay, let's proceed with the direct examination. 12 MR. FIELDS: Thank you, your Honor. 13 DIRECT EXAMINATION 14 BY MR. FIELDS: 15 Q Good afternoon, Ms. Dillon. 16 A Good afternoon. 17 Q If you could briefly just reintroduce yourself to the 18 Court. I know you testified previously, but just who you are 19 and what you do? 20 A I'm a tax lawyer and I provide legal advice to my 21 clients regarding tax matters. 22 Q And what law firm are you with right now? 23 A Morgan Lewis &amp; Bockius. 24 Q At one point were you an attorney that represented 25 President Trump on some of his business entities?</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4122</p> <p>1 course, the appellate courts that go along with that. 2 Q Now, generally speaking, being a tax controversy 3 lawyer, how does that affect the way you look at an issue in 4 terms of one day the IRS potentially challenging a decision that 5 you and a client made? 6 A Well, from a controversy perspective, I would always 7 want -- if I'm looking at a transaction, and thinking that it 8 might be challenged or knowing that a particular taxpayer is 9 routinely challenged, many of our large corporations are under 10 continuous audit, as well as a lot of global high wealth 11 taxpayers and that sort, knowing that everything is going to be 12 looked at on a tax return, when you are doing a transaction, you 13 make sure that you maintain all the files, you keep all the 14 things that are necessary, all your transaction documents. You 15 try to put things in one place. You try to make sure you keep 16 good records so you could remember what happened and you could 17 explain it, and you know who was involved, things of that sort. 18 So you just keep your -- keeping everything ready and 19 making sure that, you know, you understood not just the tax code 20 and regulations, but you keep up on the case law to see -- tax 21 law is ever evolving, changing as every new tax case comes out. 22 There is usually a new little twist to something, so make sure 23 you are keeping all those changes in mind as you are advising a 24 client. 25 Q Would it be fair to say that you are familiar with</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4121</p> <p>1 A Yes. 2 Q I just want to be clear. I'm not going to ask you to 3 divulge any attorney-client communications. If you feel like my 4 question is perhaps asking that, please think otherwise. And if 5 I want you to divulge any attorney-client communications, I will 6 explicitly ask you to; is that fair? 7 A Yes. 8 Q You said you were a tax lawyer. Would you describe 9 yourself as a tax controversy lawyer? 10 A I spend the majority of my time working on tax 11 controversies, but I spend about 25 percent of my time, more or 12 less, working on tax planning, tax structuring, tax advice, tax 13 counsel, things of that nature. 14 Q For the uninitiated, would you help me understand what 15 a tax controversy lawyer does? 16 A A tax controversy lawyer will defend any challenges, 17 or, you know, work with whenever the IRS challenges a tax 18 return. When they conduct an examination, I will represent the 19 client in the examination, in the administrative appeals 20 process, and should we be unfortunate and end up in a dispute 21 that can't be resolved with the agency, I also go to court. 22 Q What courts would you go to? Would it be tax court or 23 federal district court, state court? 24 A It could be a tax court. It could be district court. 25 It could also be the court of federal claims, and then, of</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4123</p> <p>1 conservation easements? 2 A Yes, I am. 3 Q Generally, speaking what is a conservation easement? 4 A A "conservation easement" is basically a negative 5 covenant. It happens when someone owns property and they agree 6 not to do something. And it might be not to exercise economic 7 rights. It might be if it's a facade -- well, a conservation 8 easement can be to conserve a facade on a building, the historic 9 nature of that. 10 Conservation easement is often and most certainly used 11 to preserve open space, public space, sometimes natural habitats 12 protecting if there is a bald eagle that shows up on a property, 13 it can be, "I promise I have this property." This property 14 could be, you know, used for a lot of different things, but I'm 15 going to promise not to do things in order to preserve whatever 16 conservation purpose you are looking at, whether it's open 17 space, whether it's a natural habitat. So I'm going to give up 18 all of my rights, or certain of those rights that I enumerate, 19 I'm going to give these things up. 20 And the way that you do it with a conservation easement 21 is you put them in a deed and actually you deed this to a land 22 trust, and you deed the rights and the right to enforce a 23 conservation easement in this conveyance that is a deed that's 24 recorded, um, wherever the property is located. And it promises 25 not to do whatever you've promised not to do. It enumerates</p>

<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4124</p> <p>1 your rights. It enumerates the rights of the land trust, and</p> <p>2 generally provides the rights that pay land trusts. If I</p> <p>3 violate this, if I told you I'm never going to build in X area</p> <p>4 and I go build a house or build an office building, the land</p> <p>5 trust has the right to then enforce the easement that you've</p> <p>6 granted, enforce those covenants. And the land owner has to</p> <p>7 also pay for that enforcement.</p> <p>8 You also agree that if I'm found to be guilty of</p> <p>9 violating this easement and you had to sue me, I get the</p> <p>10 pleasure of paying for that as well.</p> <p>11 So that's the gist of it. And there's a lot of things,</p> <p>12 requirements that go with it in order to enforce the easement.</p> <p>13 Q And would it be fair to say, from the depth of your</p> <p>14 answer, that part of your practice is the guidance or assistance</p> <p>15 helping clients through the process of deciding whether to place</p> <p>16 a conservation easement?</p> <p>17 A That would be the bulk of it, as well as, because I am</p> <p>18 a tax lawyer, that clients are also looking for legal advice, so</p> <p>19 that the easement, congress has provided incentives for those</p> <p>20 who put the easements on, and one of those is a tax deduction</p> <p>21 equal to the value of the easement. And it's making sure that</p> <p>22 they cannot just satisfy the recording of the easement. That's</p> <p>23 part, the recording of the deed and the granting of the rights,</p> <p>24 but also making sure that the project will tax qualify for the</p> <p>25 deduction.</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4126</p> <p>1 conservation easement, what are some of the first steps that you</p> <p>2 take in order to provide that guidance to a client?</p> <p>3 A Some of the first steps would be sitting down and</p> <p>4 talking to the client to understand what their objective is,</p> <p>5 what they are trying to achieve, making sure that they</p> <p>6 understand that if they give away the easement and the rights</p> <p>7 that they give away, it's in perpetuity. So it doesn't just</p> <p>8 affect their rights, but the rights run with the land.</p> <p>9 So if that land is, you know, later on, if it's part of</p> <p>10 an inheritance, part of an estate, whoever owns that land, or if</p> <p>11 someone buys that land, they will similarly be burdened by that</p> <p>12 easement.</p> <p>13 So one of the things is to have them think very</p> <p>14 carefully about what kind of rights are you willing to give up?</p> <p>15 How large is it your property? What uses do you foresee in the</p> <p>16 future? You know, do you have kids? Do you have grandkids? Is</p> <p>17 this, you know, a 200-acre family farm? What is it you want to</p> <p>18 do?</p> <p>19 So working through the client -- with the client</p> <p>20 explaining all the legal ramifications, you know, again, the</p> <p>21 perpetuity, that a deduction, you know, may or may not be</p> <p>22 beneficial to you; that's something we would look at. Is it the</p> <p>23 right time? So it's what to give away, when to give it away.</p> <p>24 So that would be the initial steps.</p> <p>25 And then after that it would be sort of if the client</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4125</p> <p>1 Q And so would it be fair, then, to say that the value</p> <p>2 that -- you said the value of the easement, congress provides</p> <p>3 for a tax deduction for that amount; is that your testimony?</p> <p>4 A Congress has allowed, assuming you meet all the</p> <p>5 eligibility, a tax deduction for the value of the easement, but</p> <p>6 the -- it depends on the benefit of how much of that deduction</p> <p>7 you would be able to take, but there is a general rule, yes.</p> <p>8 There is a tax incentive, under the tax code, that if</p> <p>9 you donate a conservation easement and you satisfy the Internal</p> <p>10 Revenue Code, as well as the regulations and all the IRS</p> <p>11 guidance, that you would be entitled to claim a tax deduction</p> <p>12 for it.</p> <p>13 Q And in most instances, is it true that the higher the</p> <p>14 value of the easement, the greater the tax deduction for the</p> <p>15 taxpayer?</p> <p>16 MR. SOLOMON: Objection, your Honor. Leading.</p> <p>17 THE COURT: Sustained.</p> <p>18 Q All right. Assume, Ms. Dillon, for a moment that an</p> <p>19 easement is worth, let's say \$25 million, would the benefit to</p> <p>20 the taxpayer, if the easement was \$50 million, be greater or</p> <p>21 less, in terms of the deduction?</p> <p>22 A A \$50 deduction would be a higher benefit than a \$25</p> <p>23 deduction, assuming, again, that the taxpayer can use it.</p> <p>24 Q Sure.</p> <p>25 So when a client comes to you thinking about donating a</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4127</p> <p>1 decides to go forward, doing a site visit. It would be, coming</p> <p>2 to have a better understanding of the property, um, looking at</p> <p>3 the -- figuring out the other sorts of experts that need to be</p> <p>4 assembled, um, anyone from engineers, architects, tax returns --</p> <p>5 those who have knowledge of the tax return and the tax</p> <p>6 positions, um, appraisers, those sorts of folks. And getting</p> <p>7 the team together to start exploring the viability of the</p> <p>8 conservation easement and what it would need.</p> <p>9 Q And why is it important to retain an appraiser?</p> <p>10 A If a client is seeking a tax deduction, then you have</p> <p>11 to have a qualified appraisal, that appraisal that tells you the</p> <p>12 value of the deduction that you could take.</p> <p>13 Q You mentioned a few moments ago some of the -- I think</p> <p>14 you mentioned regulations, generally, that affect this area of</p> <p>15 the law, being conservation easements.</p> <p>16 Are you familiar -- I assume you are. Are you familiar</p> <p>17 with some of the Internal Revenue Code provisions and applicable</p> <p>18 Treasury Regulations that apply in the conservation easement</p> <p>19 context?</p> <p>20 A Yes.</p> <p>21 Q And just very generally speaking, for somebody who is</p> <p>22 not a tax lawyer, how do these provisions of law affect the</p> <p>23 process?</p> <p>24 A The -- well, there's section 170 of the code, that's</p> <p>25 what generally -- a portion of section 170 provides for a</p>



<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4128</p> <p>1 charitable contribution for partial interest and property that</p> <p>2 qualify as -- for conservation easement purposes. And it</p> <p>3 defines what are the purposes of a conservation easement.</p> <p>4 So there's a whole series of regulations that tells you</p> <p>5 what is -- what constitutes a qualified conservation purpose.</p> <p>6 And there's a whole series of regulations about what kinds of</p> <p>7 appraisers -- if you are going to do this, there is regulations</p> <p>8 that tell you how the deed needs to be -- articulate things. It</p> <p>9 has to be in perpetuity, and what perpetuity means.</p> <p>10 There's a series of regulations about making sure you</p> <p>11 document the environmental characteristics, and the state and</p> <p>12 condition of the property at the time it's contributed. So</p> <p>13 there's a whole series of regulations about that.</p> <p>14 And there's a whole series of regulations about</p> <p>15 qualified appraisers and qualified appraisals, and all the</p> <p>16 things it takes to be a qualified appraiser and what it takes to</p> <p>17 have a qualified appraisal.</p> <p>18 Q All right. I would like to talk to you for a few</p> <p>19 moments about conservation easement appraisals that you were</p> <p>20 just mentioning.</p> <p>21 Do conservation easement appraisals consider the</p> <p>22 concept of hypothetical buyers and hypothetical sellers?</p> <p>23 A The standard that is required in a -- to be a qualified</p> <p>24 appraisal tells you that you look at the fair market value and</p> <p>25 the standards that they apply. Are a willing a buyer and a</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4130</p> <p>1 not the apparent characteristics whoever a seller might be or a</p> <p>2 buyer might be.</p> <p>3 MR. FIELDS: If we could show the witness what has</p> <p>4 been admitted as Plaintiff's Exhibit 1465.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 (The exhibit was handed to the witness.)</p> <p>8 Q Ms. Dillon, I'm going to give you a minute to review</p> <p>9 that, but just to draw your attention, the area I'm going to ask</p> <p>10 you about, on the second page of the exhibit there is an e-mail</p> <p>11 from you to Mr. David McArdle. That's what I'll focus on, but</p> <p>12 I'll give you a minute to review.</p> <p>13 A Yes.</p> <p>14 Q On the second page of this exhibit you see that you</p> <p>15 wrote an e-mail to Mr. McArdle on October 16th of 2013?</p> <p>16 A Yes.</p> <p>17 Q And at the beginning of the paragraph you say "I spoke</p> <p>18 to Eric and he is aware that the more supportable value at this</p> <p>19 point is around \$45 million." And you continue, "I explained</p> <p>20 that certain of the appraisal standards for IRS purposes are</p> <p>21 different than those that might be used in valuing an asset held</p> <p>22 by a particular person." And you continue, "I was trying to</p> <p>23 convey that an asset in the hands of the Trump family would</p> <p>24 yield substantially more income and therefore appraise at a</p> <p>25 higher value than the same asset in the hands of a hypothetical</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4129</p> <p>1 willing seller under no compulsion to buy or sell, and then that</p> <p>2 is articulated to mean that you look at a hypothetical buyer and</p> <p>3 a hypothetical seller.</p> <p>4 Q And do you have an understanding what that means, the</p> <p>5 hypothetical buyer and hypothetical seller?</p> <p>6 A The hypothetical buyer and hypothetical seller would be</p> <p>7 referring to your standard person, every man. So it means that</p> <p>8 you can't take into account special characteristics of either</p> <p>9 the buyer or the seller. You can't take into account if a</p> <p>10 seller has special marketing skills, or if the seller is someone</p> <p>11 famous.</p> <p>12 Let's say, you know, Taylor Swift gives a charitable</p> <p>13 donation and it's of a piece of property. It can't be</p> <p>14 considered, whether it's a property that Taylor Swift owns</p> <p>15 making it super valuable, instead it would be it has to be</p> <p>16 considered just like if Sheri Dillon owned it, if that's helpful</p> <p>17 as to what it means. To not take into account not that Taylor</p> <p>18 Swift would necessarily generate more money, but one might</p> <p>19 guess.</p> <p>20 THE COURT: Every case has to have Taylor Swift in</p> <p>21 it somehow.</p> <p>22 Q So in a sense, the appraisal is considering like a John</p> <p>23 Doe?</p> <p>24 A That might be a John Doe. It's a -- it has to be a</p> <p>25 plain vanilla every day seller, a plain vanilla every day buyer,</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4131</p> <p>1 buyer."</p> <p>2 Why did you convey this to David McArdle?</p> <p>3 MR. SOLOMON: Your Honor, we'll object to this. If</p> <p>4 you recall, there was a back and forth about limiting my</p> <p>5 questions with respect to this specific e-mail and these</p> <p>6 paragraphs as to whether what she wrote was accurate or not.</p> <p>7 And when I asked about any information behind it, they</p> <p>8 objected on privilege grounds and said the witness should</p> <p>9 not answer that. And my questions were limited to only the</p> <p>10 truth and accuracy of what was there with respect to the</p> <p>11 conversation with her.</p> <p>12 So they can't use it as a shield when we are</p> <p>13 questioning the witness, and then a sword when they want to</p> <p>14 question her.</p> <p>15 MR. KISE: Your Honor, he can certainly ask today.</p> <p>16 I mean, I don't recall that Mr. Solomon -- I don't recall</p> <p>17 what Mr. Solomon is saying is accurate. I have to go back</p> <p>18 to the transcript. But even assuming that it is, if he</p> <p>19 wants to ask today, the witness is here. He's certainly</p> <p>20 free to ask the question. I don't see that there is any</p> <p>21 prejudice of any kind.</p> <p>22 MR. SOLOMON: Your Honor, there is most</p> <p>23 certainly --</p> <p>24 MR. KISE: No one is waving privilege.</p> <p>25 MR. SOLOMON: For this witness to talk about the</p>

<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4132</p> <p>1 conversations she had, the reason behind and her legal 2 advice, if you are saying is not waiving privilege, that 3 would be new to me. But they can't just waive it now. They 4 can't do this.</p> <p>5 Now there most certainly is privilege when we 6 couldn't ask, and I would also tell your Honor that earlier 7 in this case, before we got to trial, we specifically asked 8 them if they were relying on advice of counsel defense, 9 because they indicated they were relying on the advice of 10 professionals and others.</p> <p>11 There was a meet and confer. They told us they 12 were not. We sent an e-mail to them confirming that, and I 13 have it in my files if anyone has a question. I could pull 14 it up in a minute or two if there is any dispute, but we 15 sent this e-mail confirming they were not relying on advice 16 of counsel defense. They did not respond to it. They did 17 not challenge it, so therefore their silence is acquiescence 18 on that point.</p> <p>19 MR. KISE: I don't -- you are done?</p> <p>20 MR. SOLOMON: Thank you.</p> <p>21 MR. KISE: Okay. I don't think that this is advice 22 of counsel line of questioning. I don't think that's where 23 this is going. I mean, I could consult with Mr. Fields, but 24 I don't believe that what we are talking about here is any 25 advice of counsel, so that's not at issue, not to be</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4134</p> <p>1 for this witness to divulge privileged information at all, 2 and I don't think we limited them on any basis other than 3 privilege.</p> <p>4 MR. SOLOMON: First, I'm happy to hear they are not 5 trying to induce the advice of counsel defense at this late 6 date; that's off the table. I appreciate that confirmation. 7 Thank you, Counsel.</p> <p>8 Second, Mr. Field instructed the witness not to 9 waive privilege unless he asked her to. So there was a 10 qualifier in that instruction. I just want to make sure 11 that's clear for the record.</p> <p>12 And then third, you did, in fact, instruct this 13 witness not to answer questions that went to both 14 attorney-client privilege and attorney work product. If 15 your Honor recalls, there was a long discussion when I was 16 at the podium about the difference between privilege and 17 work product, attorney-client privilege and attorney work 18 product. And I believe their objection was, in fact, 19 sustained. And in any event, if he is asking what this 20 witness's understanding was, background was forgiving this 21 advice, that's classic work product, as was used as a shield 22 to my questions.</p> <p>23 MR. KISE: I don't think that the work product was 24 used to shield the question. This isn't even a 25 communication between anyone that's in the privilege loop.</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4133</p> <p>1 pejorative. We are not setting up any advice of counsel 2 issue.</p> <p>3 THE COURT: I'm more concerned with Mr. Solomon's 4 other main point, which is if you didn't let him question 5 about it, you can't just say, oh, well now we'll waive it.</p> <p>6 MR. KISE: No, no your Honor. I don't think we let 7 him question about attorney-client privilege. That's 8 correct, but I don't think we are going to ask any questions 9 that go to the privilege.</p> <p>10 And to the extent there was -- I was out 11 momentarily. To the extent there was a question that might 12 call for that, I think Mr. Fields said, up front, that he 13 wasn't asking the witness to convey any privilege, and if 14 the question needs to be reframed -- I don't know what it 15 was. Again, I apologize. I was dealing with other issues, 16 but there's no intention here to waive the privilege. The 17 objections that we made before would have been based on 18 privilege and only on privilege, so we are not using it as a 19 shield or -- and a sword. We are not going there at all. I 20 don't think, from what I recall, just looking at this 21 document, that that's the purpose of this line of 22 questioning. And Mr. Fields is shaking his head that I'm 23 right.</p> <p>24 So let's ask the question, and if there's some 25 issue, we'll take it up, but I don't believe we are calling</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4135</p> <p>1 And as Mr. Solomon did, as I recall Mr. Solomon 2 did, we are just asking about the words that are there in 3 the document, which I'm pretty sure your Honor let them ask 4 about, like what's in there? And what do those words mean?</p> <p>5 I don't think that's -- I don't think that falls within the 6 ambit of work product, what's in this e-mail of 7 communication to Mr. McArdle and copied to Mr. Leonard. I 8 don't think that's privilege or work product there.</p> <p>9 MR. SOLOMON: Your Honor, we could go back. I'm 10 not saying that it's privilege or -- I'm saying that they 11 objected when we asked, not what was in this e-mail, but 12 behind it. And I believe we could go back to the question. 13 I believe the question was her reasons for making that 14 assertion in those first two sentences.</p> <p>15 If the question is, did she say that, we have no 16 objection. It's in black and white on the screen.</p> <p>17 MR. FIELDS: I'll withdraw the question.</p> <p>18 MR. KISE: Maybe it's the question. Again, I 19 missed the question. I'm sorry.</p> <p>20 THE COURT: After all that, withdrawn.</p> <p>21 MR. FIELDS: I'll withdraw the question.</p> <p>22 Q Okay. And I want to make something abundantly clear, 23 Ms. Dillon. If I want you to disclose an attorney client 24 communication, I will say, "Ms. Dillon, please disclose an 25 attorney-client communication." Is that understood?</p>

<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4136</p> <p>1 A Yes. Thank you.</p> <p>2 Q Okay.</p> <p>3 THE COURT: I never heard that before.</p> <p>4 MR. ROBERT: And you won't hear it.</p> <p>5 MR. FIELDS: And I could assure you you won't hear</p> <p>6 it.</p> <p>7 Q I'm just going to draw your attention to the second</p> <p>8 sentence. You write, "I was trying to convey that an asset in</p> <p>9 the hands of the Trump family would yield substantially more</p> <p>10 income, and therefore appraise at a higher value than the same</p> <p>11 asset in the hands of a hypothetical buyer."</p> <p>12 And my question is: We were just discussing the</p> <p>13 hypothetical buyer, hypothetical seller concept. Do you recall</p> <p>14 that discussion a few minutes ago?</p> <p>15 A Yes.</p> <p>16 Q This sentence here, would this be consistent with the</p> <p>17 hypothetical buyer -- hypothetical buyer, hypothetical seller</p> <p>18 concept?</p> <p>19 MR. SOLOMON: Your Honor, we are going to object.</p> <p>20 Is this witness now being portrayed as an appraisal expert?</p> <p>21 She was talking about the appraisal standards, and I believe</p> <p>22 she said -- she prefaced it by explaining "it has all been</p> <p>23 explained to me" is how she prefaced her answer about the</p> <p>24 hypothetical buyer and hypothetical seller.</p> <p>25 We let it go because we wanted to move on, but now</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4138</p> <p>1 information contained in appraisals, the witness had</p> <p>2 indicated, "I don't know where this is from. I don't know</p> <p>3 what it means. I don't know what year it is. I don't know</p> <p>4 if it was a draft." But now she's going to be able to tell</p> <p>5 you or tell this court what falls within a possible</p> <p>6 hypothetical in an area where she is not a qualified expert.</p> <p>7 THE COURT: Let's have a read back of the question.</p> <p>8 I think you are misinterpreting the question.</p> <p>9 (Whereupon, the requested testimony was read back</p> <p>10 by the court reporter.)</p> <p>11 THE COURT: "Would this be consistent?" I'm going</p> <p>12 to allow that. This may result in some significant cross</p> <p>13 examination, of course, but that's the risk you are going to</p> <p>14 take, I suppose.</p> <p>15 So, yeah, I'll allow the question.</p> <p>16 MR. FIELDS: Just the witness's understanding is</p> <p>17 all I'm asking.</p> <p>18 A Yes, that is the concept I was trying to convey. And I</p> <p>19 would say -- yeah, that the hand -- yes. My answer is, yes.</p> <p>20 MR. FIELDS: All right. We could take that</p> <p>21 document off the screen.</p> <p>22 (Whereupon, the exhibit displayed on the screen was</p> <p>23 taken down.)</p> <p>24 Q Based on your experience in this field, Ms. Dillon, is</p> <p>25 it common for property owners to want to consider preliminary</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4137</p> <p>1 he is getting into specifics in the document. This witness</p> <p>2 is not an expert on appraisals. She can't discuss what</p> <p>3 might be considered and what might fall within the</p> <p>4 appraisals standards under USPAP.</p> <p>5 THE COURT: I think the question was, is this what</p> <p>6 you were referring to when you talked about hypothetical</p> <p>7 buyer and seller.</p> <p>8 MR. SOLOMON: That was my point. She said that</p> <p>9 I've been -- "it has been explained to me", was her words.</p> <p>10 So it wasn't what she was talking about. She was referring</p> <p>11 to what was explained to her. Whether this fits into what</p> <p>12 has been explained to her by professionals that are subject</p> <p>13 to USPAP, or Cushman &amp; Wakefield, or Newmark, or any other</p> <p>14 appraisal firm, is different than saying this falls into</p> <p>15 what they were referring to. For her to just say what she</p> <p>16 understood it to be is one thing. It's totally different</p> <p>17 for her to say whether this falls into that.</p> <p>18 THE COURT: Does this really matter?</p> <p>19 MR. FIELDS: No.</p> <p>20 THE COURT: I mean, that's bottom line for me. I</p> <p>21 don't know what we are -- the angel is on the pinhead and</p> <p>22 all.</p> <p>23 MR. SOLOMON: Your Honor, I do think the value on</p> <p>24 the appraisals matter with respect to providing notice.</p> <p>25 When we come in and we try and put in appraisals and the</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4139</p> <p>1 valuations of a piece of property they are considering placing a</p> <p>2 conservation easement over?</p> <p>3 A I'm not sure I understood your question. Can we try</p> <p>4 that again?</p> <p>5 Q Sure.</p> <p>6 So a property owner who is looking to place a</p> <p>7 conservation easement over their property, is it common, in your</p> <p>8 experience, that those property owners want to have an idea of</p> <p>9 what the value of that easement would be before they go forward</p> <p>10 with full throttle, placing the easement?</p> <p>11 A Yes.</p> <p>12 MR. SOLOMON: Objection. Leading.</p> <p>13 THE COURT: I think it also calls for an expert</p> <p>14 opinion somewhat. Is it common? I don't know what "common"</p> <p>15 means.</p> <p>16 Q Your Honor, in her experience, Ms. Dillon, the clients</p> <p>17 that you have guided through the conservation easement process,</p> <p>18 do they generally want to have an idea of what the value of that</p> <p>19 easement is going to be before they place the easement?</p> <p>20 A In my experience, every client that I've advised has</p> <p>21 sought a preliminary valuation before making a decision of</p> <p>22 whether to go forward when they are first exploring the</p> <p>23 possibility of donating a conservation easement.</p> <p>24 Q And so is it then common, also, for clients to start</p> <p>25 and stop the process along the way before determining to place</p>

<p style="text-align: right;">Page 4140</p> <p>1 the easement?</p> <p>2 A For a variety of reasons, clients frequently or</p> <p>3 commonly start and stop a process.</p> <p>4 Q And you said "for a variety of reasons." Could you</p> <p>5 just explain maybe one or two of the most often relied upon.</p> <p>6 A One, they have not decided what to restrict or what not</p> <p>7 to restrict, and they are finding that a big decision,</p> <p>8 particularly since it's in perpetuity.</p> <p>9 Two, they are evaluating their tax positions in</p> <p>10 deciding -- if they decided what they want to do, they need to</p> <p>11 decide whether this year is the year to do it, or to save it for</p> <p>12 some point in the future, depending on what their tax position</p> <p>13 is and how the year is going income wise. And those are the</p> <p>14 most common reasons.</p> <p>15 Q And as far as you are aware, is there anything in the</p> <p>16 Internal Revenue Code, Treasury Regulations, or other applicable</p> <p>17 laws, that require a land owner to finalize the easement process</p> <p>18 once the appraisal process has begun?</p> <p>19 A There is nothing that requires someone to donate --</p> <p>20 there's nothing I'm aware of that would require someone to</p> <p>21 complete a donation that they started, no. In those</p> <p>22 authorities, yeah.</p> <p>23 (Continued on the next page.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4142</p> <p>Dillon - by Defendant - Direct(Fields)</p> <p>1 other standards, and as well as standards accepted by the</p> <p>2 courts that they have to look at: Whether it is physically</p> <p>3 possible; financially feasible; legally permissible. And</p> <p>4 therefore determine what is the maximally productive value if</p> <p>5 the property is put to its highest and best use.</p> <p>6 Q All right. If we could pull up Plaintiff's 1412 that</p> <p>7 has been admitted into evidence.</p> <p>8 I am going to shift gears, Ms. Dillon, and talk to</p> <p>9 you for a minute about Trump Golf Club, Los Angeles.</p> <p>10 I'll give you a minute to review it.</p> <p>11 (Handing)</p> <p>12 THE COURT: Five minute warning.</p> <p>13 A Yes, I have taken a look at it.</p> <p>14 Q Okay. If you could go to the third page, please.</p> <p>15 Toward the bottom there is an e-mail from Allen</p> <p>16 Weisselberg to a Joshua Seidner on November 14, 2012. Can you</p> <p>17 see that?</p> <p>18 A Yes.</p> <p>19 Q And the subject line is TIGC LA. I think we had some</p> <p>20 testimony about that earlier in this trial. But do you</p> <p>21 generally understand that to be the Trump National Golf Club LA</p> <p>22 or Trump International Golf Club LA?</p> <p>23 A Yes, I understand it to be the golf course that is</p> <p>24 located near LA.</p> <p>25 Q Okay. And Mr. Weisselberg copied you and Mr. Bender</p>
<p style="text-align: right;">Page 4141</p> <p>Dillon - by Defendant - Direct(Fields)</p> <p>1 Q All right. Are you familiar, generally, with some of</p> <p>2 the term assumptions that can be made in some of these</p> <p>3 conservation easement appraisals?</p> <p>4 A I have seen assumptions made in conservation -- in</p> <p>5 appraisals of conservation easements, yes.</p> <p>6 Q Generally what are some of those assumptions?</p> <p>7 A There would be a variety of assumptions in trying to</p> <p>8 figure out what the highest and best use of the property is.</p> <p>9 There would be: Looking at things and trying to figure out</p> <p>10 what is financially feasible; you know, making assumptions</p> <p>11 about costs; making assumptions about the economy; making</p> <p>12 assumptions about inflation; making assumptions about</p> <p>13 demographics; making assumptions about if something is</p> <p>14 physically possible; making assumptions about certain features</p> <p>15 of the property, the real property; legally permissible; there</p> <p>16 will be assumptions about zoning; permitting how long things</p> <p>17 will take; things of that nature. A variety of assumptions are</p> <p>18 made in the appraiser's judgments.</p> <p>19 Q And you said "legally permissible," is that a</p> <p>20 standard that is applied?</p> <p>21 A Yes, under the guidance that is provided. The</p> <p>22 appraisers, they are doing a before-and-after methodology. And</p> <p>23 they are trying to determine the highest and best use of a</p> <p>24 property as if it were developed. What they have do is the</p> <p>25 highest and best use. It is laid out in use path, as well as</p>	<p style="text-align: right;">Page 4143</p> <p>Dillon - by Defendant - Direct(Fields)</p> <p>1 on this e-mail; is that right?</p> <p>2 A That's correct.</p> <p>3 Q And do you have an understanding of who Donald Bender</p> <p>4 is?</p> <p>5 A Yes.</p> <p>6 Q Who is he?</p> <p>7 A He was a part of the team from Mazars that did the</p> <p>8 financial auditing and prepared the tax returns and that sort</p> <p>9 of thing; outside accounting work for the Trump Organization.</p> <p>10 Q And it appears as if Mr. Weisselberg is communicating</p> <p>11 with Mr. Seidner and copying both of you regarding a</p> <p>12 conservation easement project at the golf course in Los</p> <p>13 Angeles; is that fair?</p> <p>14 A I am sorry, could you repeat that?</p> <p>15 Q Sure. I am just asking: It seems like</p> <p>16 Mr. Weisselberg is communicating with Mr. Seidner, while</p> <p>17 copying you and Mr. Bender, about a conservation easement</p> <p>18 project at the golf course in Los Angeles?</p> <p>19 A Yes. Yes, he is.</p> <p>20 Q If you could then go to the first page of this</p> <p>21 exhibit toward the bottom. This is now an e-mail on</p> <p>22 November 16, 2012, where you are writing to Mr. Seidner,</p> <p>23 Mr. Weisselberg and you have copied Mr. Trump Jr., Donald</p> <p>24 Bender, Andrew Weiss, Jill Martin and Bob Leonard; is that</p> <p>25 right?</p>

Dillon - by Defendant - Direct(Fields) Page 4144

1 A That's correct.

2 Q And if you could just look at the first full

3 paragraph below the number two it starts with: "As you note."

4 You wrote: "As you note, this is a hypothetical concept. It

5 does not need to be fully vetted and approved by a township

6 planning board or any entity of that sort. It simply needs to

7 be reasonably possible and within current legal and physical

8 constraints."

9 Is that consistent with the discussion we had a

10 moment ago about legal permissibility?

11 A Yes. That is going to -- we don't need to have an

12 actual permitted prepared plan. You know, it has been

13 recognized that going through all of that work would be using a

14 lot of resources, both of a land owner as well as a planning

15 board, city council, whoever it is in the particular geography

16 that has to do that sort of thing. You don't have to actually

17 get permits. What it is trying to figure out is, is something

18 reasonably possible, it doesn't have to be something that

19 already exists. It is a hypothetical concept. You are not

20 really going to go do it at that point in time, if you are

21 considering a conservation easement.

22 Q All right. If we can then --

23 MR. FIELDS: Your Honor, I guess I can go

24 another minute or two?

25 THE COURT: Another two minutes.

Dillon - by Defendant - Direct(Fields) Page 4145

1 MR. FIELDS: Another two minutes.

2 If we could pull up Defense 1017 that has not

3 yet been admitted?

4 (Handing)

5 Q Do you recognize this, Ms. Dillon?

6 A Yes, I recognize it as an e-mail. I am sure I sent

7 it, yes.

8 Q Does it appear to be an e-mail or at least an e-mail

9 chain where you sent e-mails to several folks involving Jill

10 Martin and Eric Trump, Donald Bender, Jason Greenblatt?

11 A Yes.

12 Q From January 5 of 2015?

13 A That is the -- well, it looks like both e-mails are

14 that same day, yes.

15 MR. FIELDS: Your Honor, move to admit

16 Defendant's 1017.

17 THE COURT: Granted, it is in.

18 (Whereupon, the document referred to was deemed

19 marked for evidence as Defendant's Exhibit 1017 by

20 the Court.)

21 Q If I could focus you toward the bottom, Ms. Dillon,

22 on January 5 of 2015, you wrote to Ms. Martin and Eric Trump

23 and you copied Allen Weisselberg, Jason Greenblatt, Donald

24 Bender and Samuel Guthrie. And you write: Please find attached

25 for your records an electronic closing binder of the documents

Dillon - by Defendant - Direct(Fields) Page 4146

1 executed in connection with conveying the conservation easement

2 to the Palos Verdes Peninsula Land Conservancy. This is still

3 referring to the golf course in Los Angeles; is that fair?

4 A Yes. The subject matter is TNGC LA conservation

5 easement closing binder.

6 Q What is an electronic closing binder?

7 A In this case it meant I was sending them documents

8 that normally the old fashioned way, before e-mail became so

9 prevalent, when you finished a transaction you would have a

10 closing binder that would physically be a binder, a bound set

11 of the transaction documents you would provide your client.

12 By 2015 it looks like we were in the mode of not

13 sending the physical hard copies but instead electronically

14 providing what would be a closing binder of the documents that

15 were executed in order -- so that they would have all of the

16 final closing, the executed closing documents in one place.

17 Q And final question before the break. Why would you

18 have been copying Mr. Bender on this e-mail with the electronic

19 closing binder?

20 A Well, Mr. Bender would have needed to have been aware

21 of the conservation easement throughout the process. And this

22 was just one more place in the process I would make Mr. Bender

23 aware that we had actually, in fact, completed the donation of

24 the easement.

25 THE COURT: Okay. All right. 14-minute break.

Dillon - by Defendant - Direct(Fields) Page 4147

1 See you all at five minutes to 4:00.

2 THE COURT: I direct the witness not to discuss

3 this case or testimony during the break.

4 (Pause in the proceedings.)

5 THE COURT: Witness. She is on her way.

6 COURT OFFICER: Witness entering.

7 (Whereupon, the witness resumed the stand.)

8 MR. FIELDS: May I proceed, Your Honor?

9 THE COURT: Yes, please.

10 MR. FIELDS: Thank you.

11 Q Ms. Dillon we are going to shift gears and discuss a

12 property known as Briarcliff. Did you have some involvement in

13 the consideration of a conservation easement at Trump

14 Briarcliff?

15 A Yes.

16 Q All right. We are going to ask to put document

17 Plaintiff's 3261 in front of you.

18 (Handing)

19 A Yes.

20 Q Okay. Does this appear to be an e-mail that you sent

21 to Eric Trump on June 11 of 2014?

22 A Yes, it is.

23 Q And the subject is Briarcliff?

24 A Yes, it is.

25 Q And in the -- there are two what I'll call, tables,

Dillon - by Defendant - Direct(Fields) Page 4148

1 or charts, one, the top one, totals 87 units and the bottom one  
2 totals 47 units. And on the bottom chart you will see there is  
3 a zero under the Highlander units; do you see that?  
4 A I do.  
5 Q Do you recall whether at this time that you sent this  
6 e-mail, whether your understanding was that the 40 Highlander  
7 units were unable to be developed?  
8 A What I understood was that they weren't in the  
9 offering plan; but that that didn't mean they weren't still  
10 entitled. I just wasn't sure what that meant when I wrote that  
11 e-mail.  
12 Q Okay. And do you recall that you were showed this  
13 document by Mr. Solomon when you testified here last?  
14 A Yes.  
15 Q So if I understand you correctly, did you understand  
16 that -- and forgive me I don't know the intricacies of what the  
17 offering plans are. Perhaps I should ask you, what is an  
18 offering plan?  
19 A Broadly an offering plan is the document that is  
20 filed laying out what the -- you know, what the condominium  
21 will be and what they plan on offering for sale; and what they  
22 actually plan on developing. And it is a document filed with  
23 the Attorney General's office that explains those sorts of  
24 things. And it said -- and that's what they are.  
25 MR. FIELDS: Okay. If we could show the witness

Dillon - by Defendant - Direct(Fields) Page 4149

1 what has not been admitted yet as Defense 1020.  
2 (Handing)  
3 Q Do you recognize this, Ms. Dillon?  
4 A Yes.  
5 Q What does it appear to be?  
6 A It is an e-mail from me to Dave McArdle talking again  
7 about the reduction in condominium size question and what that  
8 means, and what is the offering plan.  
9 Q And this is June 11 of 2014?  
10 A Yes, it is.  
11 Q And David McArdle, was that someone add Kushman &  
12 Wakefield that you worked with for conservation easement  
13 appraisals?  
14 A Yes. He was the person working on the Briarcliff  
15 appraisal that we were talking about.  
16 MR. FIELDS: Okay. Okay I move to admit Defense  
17 1020.  
18 THE COURT: Granted, it is in.  
19 (Whereupon, the document referred to was deemed  
20 marked for evidence as Defendant's Exhibit 1020 by  
21 the Court.)  
22 Q Ms. Dillon, you wrote to Mr. McArdle, I understand  
23 that while TBMC LLC -- let me stop you there.  
24 Did you understand that the LLC you are referring to  
25 here to be the entity that owned the Trump Briarcliff property?

Dillon - by Defendant - Direct(Fields) Page 4150

1 A It either owned it or managed it, but yes. It was  
2 either the owner or manager. I can't recall sitting here  
3 today.  
4 Q That's okay.  
5 And you continued: TBMC LLC determined not to create  
6 an 87-unit condominium initially and instead filed the  
7 condominium as a 47-unit condo. (16 townhomes and 31 units),  
8 that has nothing to do with the site being fully entitled and  
9 zoned to develop the 87 units. To develop the remaining 40  
10 units, it would simply be a matter of filing a new offering  
11 plan with the State of New York for a 40-unit condominium,  
12 which would be granted as a matter of right because the parcel  
13 was already zoned.  
14 Does this e-mail -- well first of all, let me ask  
15 you. Were you shown this e-mail by Mr. Solomon when he asked  
16 you questions last time you were here?  
17 A No.  
18 Q Does this e-mail refresh your recollection as to the  
19 number of units that could be developed at Trump Briarcliff?  
20 A It refreshes my recollection that they retained all  
21 of the entitlements, that they just changed the offering plan.  
22 Q So how many units could Trump Briarcliff develop if  
23 it wanted to?  
24 A It had the right to do 87.  
25 MR. SOLOMON: Objection. Calls for a legal

Dillon - by Defendant - Direct(Fields) Page 4151

1 conclusion.  
2 MR. FIELDS: Judge --  
3 THE COURT: Yes, go ahead.  
4 MR. FIELDS: As you may recall, Ms. Dillon was  
5 here a couple of weeks ago and Mr. Solomon ad nauseam was  
6 asking her about the number of units, the number of units.  
7 I have now showed the witness a document that better  
8 explains the number of units that ultimately went into the  
9 consideration of the appraisal. And the objection is it  
10 is a legal conclusion. It is disingenuous. She is a tax  
11 lawyer that worked on these appraisals, that worked on the  
12 consideration of the donation of the easement.  
13 MR. SOLOMON: It is not disingenuous. My  
14 questions went to what they had a right to do and what was  
15 said to the appraiser and the information that then  
16 resulted in the appraisal or draft appraisal, since it may  
17 or may not have been done.  
18 This point is different. He is asking for a  
19 legal conclusion as to what she can do under New York  
20 Condominium Law. Which, if I recall, the witness is  
21 admitted in DC and Georgia. She never said she was  
22 admitted in New York. I don't believe she has ever  
23 practiced, and she can tell me if I am wrong, before the  
24 New York Department of Law or the Attorney General's  
25 Office submitting offering plans or amendments or claiming

Dillon - by Defendant - Direct(Fields) Page 4152

1 that it is a matter of right to have an amendment or a new  
2 offering plan accepted for filing.  
3 That obviously will be a subject for cross  
4 examination. But the witness is now being asked for a  
5 legal conclusion in an area in which she doesn't practice.  
6 MR. FIELDS: I think her hourly rate is probably  
7 too high to practice in that area, but nevertheless be  
8 that as it may, I had --  
9 MR. WALLACE: Your Honor, he doesn't need to  
10 insult anyone.  
11 THE COURT: I didn't catch what he said.  
12 MR. SOLOMON: He said her hourly rate is too  
13 high to practice in that area, which is a sleight to many  
14 New York lawyers who do in fact practice before the New  
15 York Attorney General's office. Sorry I don't meet your  
16 standard for billable rates.  
17 MR. KISE: Are we defending everyone in the  
18 courtroom now?  
19 MR. SOLOMON: We are defending when there are  
20 sleights. Unnecessary.  
21 MR. KISE: Mr. Solomon is unusually exercised  
22 today. I am not sure why, Judge, but he is very upset.  
23 Can we just move on?  
24 THE COURT: Just give me a moment.  
25 Could you rephrase the question to be just what

Dillon - by Defendant - Direct(Fields) Page 4153

1 your understanding was? That I will allow.  
2 MR. FIELDS: Sure.  
3 Q Ms. Dillon, on the second sentence here, the third  
4 line from the bottom you wrote: To develop the remaining 40  
5 units, it would simply be a matter of filing a new offering  
6 plan with the State of New York for a 40-unit condominium,  
7 which would be granted as a matter of right because the parcel  
8 was already zoned.  
9 So is it -- is my understanding correct that the  
10 parcel was already zoned for 87 units?  
11 A Yes. It was zoned for 87 units, sixteen of which had  
12 already been built. And --  
13 THE COURT: Wait. You already answered the  
14 question.  
15 THE WITNESS: Okay.  
16 Q So 16 units had already been built. It was zoned for  
17 87 units. I believe that comes out to 71 remaining units that  
18 have not been sold; is that fair?  
19 A Yes.  
20 Q Okay. So the parcel would have been zoned then for  
21 the remaining 71 units at this time; is that fair?  
22 A That was my understanding, yes.  
23 MR. FIELDS: If we could then pull up  
24 Plaintiff's 3194? It has been admitted into evidence.  
25 And if we could go to page six.

Dillon - by Defendant - Direct(Fields) Page 4154

1 (Handing)  
2 A Yes, I am there.  
3 Q Okay. Do you understand this to be a draft appraisal  
4 for the Trump Briarcliff property?  
5 A Yes, I do.  
6 Q And on page six, the top paragraph, second sentence  
7 under the heading: General Description.  
8 The development site is entitled to allow the  
9 construction of 71 luxury housing units contained within two  
10 adjacent low rise structures.  
11 Is it your understanding that this 71 luxury housing  
12 units discussed in this draft appraisal, is the same 71 luxury  
13 housing units that we just discussed a few moments ago?  
14 A Yes, those would be the same 71 units.  
15 Q All right?  
16 MR. FIELDS: All right. If we can, please, pull  
17 up Defendant's 1015?  
18 (Handing)  
19 Q Do you recognize this?  
20 A Yes.  
21 Q Does it appear to be an e-mail chain where you sent a  
22 couple e-mails on this e-mail chain from approximately 2014?  
23 A Yes. It starts off as an e-mail from myself to  
24 Mr. McConney, copying Mr. Bender.  
25 MR. FIELDS: Move to admit Defense 1015.

Dillon - by Defendant - Direct(Fields) Page 4155

1 THE COURT: Granted. It is in.  
2 Q I would just like to direct your attention to the top  
3 of page one.  
4 (Whereupon, the document referred to was deemed  
5 marked for evidence as Defendant's Exhibit 1015 by  
6 the Court.)  
7 Q I would just like to direct your attention to the  
8 top of page one. Is this an e-mail from you to Mr. McConney  
9 copying Donald Bender on June 30 of 2014?  
10 A Yes.  
11 Q And the subject line says: Two quick Friday  
12 afternoon questions.  
13 A Yes.  
14 Q And there -- it seems to be there is something  
15 attached, Briarcliff engagement letter.PDF?  
16 A Yes.  
17 Q And if you return then just to the second and  
18 subsequent pages of this attachment, does that appear to be the  
19 Briarcliff engagement letter that you would have attached to  
20 this e-mail?  
21 A That's what it appears to be.  
22 Q Okay. Why would you have sent this engagement letter  
23 to Mr. McConney and copied Donald Bender?  
24 A I wanted to let them know that we were continuing the  
25 exploratory work on a conservation easement on Briarcliff. And

Dillon - by Defendant - Direct(Fields) Page 4156

1 Mr. McConney would need it because it looks like I wanted him  
2 to send payment out to Cushman & Wakefield.  
3 And Mr. Bender would need it so that he could be kept  
4 in the loop that we were pursuing a conservation easement.  
5 Q Why would it be important to keep Mr. Bender in the  
6 loop that you were still considering a conservation easement?  
7 A Mr. Bender was responsible for the tax returns,  
8 preparing the returns. And we would be, around this time,  
9 watching the revenues, expenses, and, you know, basically the  
10 overall income position in order to turn up -- predict the tax  
11 positions by the end of the year.  
12 We wouldn't -- one of the considerations, as we  
13 talked about earlier, is whether or not it is the right time to  
14 do a conservation easement, if one of your objectives was to  
15 receive a tax deduction for the conservation easement. And  
16 while you would still be able to receive the -- I guess,  
17 receive the deduction, whether you could make use of it or not  
18 would depend on where you were income wise in a particular  
19 year.  
20 And if you don't -- while you can carry forward a tax  
21 deduction for five years, you don't normally plan to take one  
22 or plan -- plan for a deduction in a year you are not going to  
23 be able to do it. So we needed Mr. Bender's input because he  
24 was the one most familiar with where the tax position stood,  
25 since he was doing the financial accounting and other work

Dillon - by Defendant - Direct(Fields) Page 4157

1 throughout the year. And worked with, you know, estimated tax  
2 payments and things throughout the year. So he would the  
3 person in the best position to know if it looked like there was  
4 going to be enough taxable income that you would be able to  
5 make use of the taxable deduction.  
6 So, just making sure that everyone was mindful to  
7 keep paying attention to that. So that if it ever looked like  
8 the income situation would not -- would not allow for any use  
9 of the tax deduction, we would know at least that would be part  
10 of the decision to postpone or continue.  
11 MR. FIELDS: All right. If we can show the  
12 witness what has already been admitted into evidence as  
13 Plaintiff's 3217.  
14 We are still on Trump Briarcliff.  
15 (Handing)  
16 Q I would like to focus you on page three, but take  
17 your time looking at it.  
18 A Okay.  
19 Q All right. On the middle of page three with the  
20 paragraph beginning: Trump Briarcliff Manor Development LLC?  
21 A Yes.  
22 Q And again, is this your understanding that this is a  
23 draft of an appraisal for Trump Briarcliff Manor Development  
24 LLC?  
25 A Yes, it is.

Dillon - by Defendant - Direct(Fields) Page 4158

1 Q That paragraph, the first sentence, states: Trump  
2 Briarcliff Manor Development LLC owns a parcel of land in  
3 Briarcliff Manor, New York. The parcel over which it has  
4 placed a conservation easement and donated it to (XXX). Is  
5 it -- do you have an understanding of why there would be a  
6 "XXX" at the end of that sentence?  
7 A Yes. It appears the sentence is contemplating the  
8 donation will occur, but it hasn't occurred yet or they would  
9 known who it went to. So a donation hadn't yet been made.  
10 Q And also there was some discussion with Mr. Solomon  
11 last time you were here about the past tense of this sentence.  
12 Is that generally because once the appraisal is final the  
13 easement has been placed by them?  
14 A Yes. Typically the appraisal comes after the do --  
15 the final appraisal comes after the donation has been made.  
16 And so it is in contemplation that that would be what you would  
17 want in the final appraisal.  
18 Q All right. Let's shift gears and talk about Seven  
19 Springs for a minute.  
20 MR. FIELDS: If we could show the witness  
21 Defense 1016?  
22 (Handing)  
23 A All right.  
24 Q All right. Does this appear to be an e-mail -- let  
25 me just ask you, what does this appear to be?

Dillon - by Defendant - Direct(Fields) Page 4159

1 A It appears to be, ultimately, an e-mail from me to  
2 Nick Zemil, copying Donald Bender, attaching the final  
3 appraisal for Seven Springs and asked -- me asking Nick to  
4 confirm if this is -- that I had the right appraisal to attach,  
5 that indeed I had the final appraisal.  
6 Q Okay.  
7 A So to attach -- to send to Mr. Bender.  
8 Q And does it appear that you attached an appraisal of  
9 Seven Springs dated as of December 1, 2015?  
10 A Yes.  
11 MR. FIELDS: Okay. I move to admit Defense 1016  
12 and the appraisal for notice, Your Honor.  
13 THE COURT: Granted, it is in.  
14 (Whereupon, the document referred to was deemed  
15 marked for evidence as Defendant's Exhibit 1016 by  
16 the Court.)  
17 Q All right. Ms. Bend -- I am sorry. Ms. Dillon, why  
18 does it appear or why did you copy Mr. Bender on this e-mail  
19 where you sent this appraisal of Seven Springs?  
20 A I was -- because Mr. Bender needed to attach the  
21 appraisal to the tax returns. So I needed to make -- I needed  
22 to make sure he had the right appraisal, you know, that I had  
23 grabbed the right one, since there were some stops and starts  
24 to these projects. I wanted to make sure I had the right  
25 document so that he would have the right information to, for



<p>Dillon - by Defendant - Direct(Fields) Page 4160</p> <p>1 one, extrapolate information to report on the tax return; and</p> <p>2 do his tax calculations. And then to attach the appraisal to</p> <p>3 the tax return.</p> <p>4 Q Ms. Dillon, did you work with Mr. Trump sporadically</p> <p>5 throughout the process of the consideration of the various</p> <p>6 conservation easements?</p> <p>7 THE COURT: Which Mr. Trump?</p> <p>8 MR. FIELDS: That's a great question, Your</p> <p>9 Honor.</p> <p>10 Q Mr. Eric Trump.</p> <p>11 A Yes, I worked with Mr. Trump from time to time.</p> <p>12 (The following proceedings were stenographically</p> <p>13 recorded by Senior Court Reporter Michael Ranita.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4162</p> <p>1 actions were similar.</p> <p>2 MR. FIELDS: May I have a moment, your Honor.</p> <p>3 THE COURT: Sure.</p> <p>4 (Whereupon, there is a brief pause in the</p> <p>5 testimony.)</p> <p>6 MR. FIELDS: I move to admit defense 1017 if it</p> <p>7 hasn't been moved.</p> <p>8 MR. SOLOMON: I'm sorry, I didn't hear which</p> <p>9 exhibit.</p> <p>10 MS. HABBA: It's 1017.</p> <p>11 MR. FIELDS: I don't think I showed 1017. One</p> <p>12 second.</p> <p>13 MR. SOLOMON: Sure. Of course.</p> <p>14 (Whereupon, there is a brief pause in the</p> <p>15 testimony.)</p> <p>16 MR. FIELDS: Move to admit defense 1017, your</p> <p>17 Honor.</p> <p>18 THE COURT: Which number?</p> <p>19 MR. FIELDS: I'm sorry --</p> <p>20 MS. HABBA: 1017.</p> <p>21 MR. FIELDS: -- 1017.</p> <p>22 THE COURT: Granted. It's in evidence.</p> <p>23 (Defendant's Exhibit 1017 was deemed marked and</p> <p>24 admitted in evidence.)</p> <p>25 MR. FIELDS: No further questions. Thank you</p>
<p>S. Dillon - Defense - Direct (Mr. Fields) Page 4161</p> <p>1 Q What was your practice in terms of when you needed to</p> <p>2 communicate something to Mr. Eric Trump, what was your practice?</p> <p>3 A To pick up the phone. To call him.</p> <p>4 Q Why is that?</p> <p>5 A Because similar to many of my other executive clients,</p> <p>6 while he was involved, he was not day-to-day involved, and he</p> <p>7 would be -- I just sent him an e-mail, it was sent to a</p> <p>8 collection of people. I didn't know if he would read it or not,</p> <p>9 but if I picked up the phone and talked to him, I would know</p> <p>10 that he -- we talked and that he knew what he needed to do. And</p> <p>11 if I needed an answer to something, I would get an answer.</p> <p>12 Q In terms of your actions, professional actions that you</p> <p>13 took as a lawyer with regard to your representation of</p> <p>14 Mr. Donald Trump and his businesses, did you take any actions</p> <p>15 with Mr. Trump or his businesses that you wouldn't have taken</p> <p>16 with any of your other clients?</p> <p>17 let me ask it a better way. Were your actions</p> <p>18 consistent, in terms of the way that you approached matters in</p> <p>19 these conservation easements and appraisals, that you would have</p> <p>20 done with other clients?</p> <p>21 A Everything I did in my -- what I did in my</p> <p>22 representation of Mr. Trump and the Trump entities was</p> <p>23 consistent with all of my other clients, other than once he</p> <p>24 became elected President, um, additional security measures were</p> <p>25 put around his safeguarding of his materials, but otherwise the</p>	<p>S. Dillon - Defense - Cross (Mr. Solomon) Page 4163</p> <p>1 Ms. Dillon.</p> <p>2 THE COURT: We have nine minutes or so. Okay,</p> <p>3 cross examination by Mr. Solomon.</p> <p>4 MR. SOLOMON: Can you hear me, your Honor? Is it</p> <p>5 coming through?</p> <p>6 THE COURT: I can hear, but talk loud.</p> <p>7 CROSS EXAMINATION</p> <p>8 BY MR. SOLOMON:</p> <p>9 Q Good afternoon, Ms. Dillon. I just have a few quick</p> <p>10 questions.</p> <p>11 Are you admitted to practice law in New York?</p> <p>12 A No, I'm not.</p> <p>13 Q Have you ever been admitted to practice law in</p> <p>14 New York?</p> <p>15 A No, I have not.</p> <p>16 Q Have you ever practiced before the New York Department</p> <p>17 of Law?</p> <p>18 A I'm not sure what you mean by that.</p> <p>19 Q Sure. The New York Bar of Law is a portion of the</p> <p>20 New York Attorney General's Office?</p> <p>21 A What do you mean by "practice before"?</p> <p>22 Q Have you ever submitted an offering plan or an</p> <p>23 amendment to the New York Attorney General's Office?</p> <p>24 A No, I have not.</p> <p>25 Q Are you familiar with the process of submitting</p>

S. Dillon - Defense - Cross (Mr. Solomon)	Page 4164	Proceedings	Page 4166
1 offering plans or amendments to the New York Attorney General's		1 MR. KISE: We will have someone -- just to short	
2 Office?		2 circuit. We will have someone Thursday or Friday if we get	
3 A At a very, very high level, but otherwise, no.		3 through these other witnesses.	
4 Q As you sit here today, do you know if a sponsor has a		4 MS. GREENFIELD: Okay. So tomorrow Witkoff then	
5 right to have an offering plan accepted for filing merely		5 Flemmons, then maybe Flemmons continues on Wednesday,	
6 because the planned development meets zoning requirements?		6 followed by Laposa, and you'll update for Thursday and	
7 A Could I have that read back, please.		7 Friday.	
8 THE COURT: Read it back, please.		8 MR. KISE: Correct.	
9 (Whereupon, the requested question was read back by		9 MR. WALLACE: Do defendants have names for who the	
10 the court reporter.)		10 people will be for the rest of this week, if we get past	
11 A No, I do not.		11 Laposa?	
12 MR. SOLOMON: Nothing further, your Honor.		12 MR. KISE: Just the same names that we have already	
13 THE COURT: Any redirect? No. All right. I guess		13 in the queue.	
14 the witness is excused. Thank you.		14 MS. GREENFIELD: So McConney will be --	
15 (Whereupon, the witness stepped down from the		15 MR. KISE: If that changes, we'll certainly let	
16 witness stand.)		16 them know immediately, but.	
17 THE COURT: And let's talk about scheduling. I'll		17 MS. GREENFIELD: Assuming McConney doesn't actually	
18 ask Ms. Greenfield to discuss it with Counsel.		18 take two days, that would mean we could do Hawthorn as	
19 MS. GREENFIELD: Okay. So since we've already gone		19 quickly as the 17th.	
20 through two of three -- two out of three of tomorrow's		20 MR. ROBERT: 17th is next Tuesday?	
21 proposed witnesses, I assume that we are going to start with		21 MS. GREENFIELD: That's Friday.	
22 Mr. Witkoff tomorrow, and then whose going -- and Flemmons		22 MR. KISE: We will not get to Mark Hawthorn by	
23 is ready to proceed tomorrow?		23 Friday, but perhaps by Monday, whatever day that is. By	
24 MR. ROBERT: Correct.		24 Monday, that's conceivable.	
25 MS. GREENFIELD: We will get to Laposa tomorrow as		25 MS. GREENFIELD: Thank you.	
Proceedings	Page 4165		Page 4167
1 well.		1 MS. HABBA: Just to correct the record, I didn't --	
2 MR. ROBERT: No?		2 there's two edits. I could tell you it's not McCarty, it's	
3 THE COURT: For sure?		3 McConney, and also I didn't say Witkoff is Wednesday,	
4 MR. KISE: Very.		4 Witkoff is tomorrow.	
5 THE COURT: So Laposa will now be on Wednesday?		5 THE COURT: Speaking of tomorrow, 10:00, see you	
6 MR. ROBERT: Hopefully.		6 all then.	
7 MR. KISE: Hopefully.		7 (Whereupon, the case on trial was adjourned to	
8 MS. GREENFIELD: And will Laposa be more than one		8 November 14, 2023 at 10:00 a.m.)	
9 day?		9	
10 MR. ROBERT: Probably.		10	
11 MR. KISE: Probably.		11	
12 MR. AMER: Can I just ask something. In terms of		12	
13 the comment that we won't get to Mr. Laposa, I just want to		13	
14 make sure that's based on your estimation of your own		14	
15 directs and not our crosses.		15	
16 MR. ROBERT: It is.		16	
17 MR. KISE: It is.		17	
18 MR. AMER: Okay.		18	
19 MS. GREENFIELD: Okay. So you believe that Laposa		19	
20 will be the only witness -- Flemmons and Laposa on		20	
21 Wednesday; is that correct?		21	
22 MR. KISE: Yes, on Wednesday.		22	
23 MR. AMER: We are getting to Flemmons tomorrow.		23	
24 MR. KISE: But Flemmons, we are going to --		24	
25 MS. HABBA: Witkoff is Wednesday.		25	

NYSCEF DOC. NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

	<b>above (2)</b> 4055:8;4064:20	<b>act (1)</b> 4052:9	4092:7;4167:7	4009:6;4010:5;4012:2;
<b>\$</b>	<b>abroad (1)</b> 3983:5	<b>action (1)</b> 4115:11	<b>Administration (1)</b> 4109:16	4013:18;4014:11;
<b>\$1.3 (1)</b> 4080:25	<b>absolutely (2)</b> 3974:5;4100:13	<b>actions (5)</b> 4161:12,12,14,17;	<b>administrative (1)</b> 4121:19	4015:1,18,25;4018:7,
<b>\$16 (1)</b> 4019:9	<b>abundantly (1)</b> 4135:22	4162:1	<b>admissibility (1)</b> 3999:13	13,17;4021:15;
<b>\$18 (2)</b> 4018:12,12	<b>academic (1)</b> 4005:11	<b>active (1)</b> 3984:13	<b>admissible (1)</b> 4000:2	4022:12,16;4023:9,12;
<b>\$25 (2)</b> 4125:19,22	<b>accept (3)</b> 4000:18,19,22	<b>acts (1)</b> 4006:24	<b>admission (1)</b> 3999:25	4024:14;4025:21;
<b>\$250 (1)</b> 4087:16	<b>accepted (4)</b> 4000:21;4142:1;	<b>actual (5)</b> 3987:25;4048:5;	<b>admit (7)</b> 4057:15;4145:15;	4026:21;4030:2,10,11,
<b>\$45 (1)</b> 4130:19	4152:2;4164:5	4056:8;4097:1;	4149:16;4154:25;	14,15;4034:18,24;
<b>\$50 (3)</b> 4020:11;4125:20,22	<b>accolades (1)</b> 4073:15	4144:12	4159:11;4162:6,16	4035:6;4036:9,10;
<b>\$8 (1)</b> 4017:24	<b>accommodate (1)</b> 4110:22	<b>actually (67)</b> 3978:25;3979:17;	<b>admitted (14)</b> 4086:3,20;4101:15;	4037:1,18,19;4040:22,
<b>\$80 (1)</b> 4029:18	<b>accomplished (1)</b> 4103:8	3986:9;3987:21;	4130:4;4142:7;4145:3;	24;4046:18;4047:3;
<b>A</b>	<b>according (2)</b> 3983:10;4116:1	3988:21;3990:23;	4149:1;4151:21,22;	4048:21;4050:12;
<b>abandoning (1)</b> 4118:20	<b>account (3)</b> 4129:8,9,17	3993:15;3994:11;	4153:24;4157:12;	4051:1;4053:19;
<b>abbreviated (1)</b> 3997:20	<b>accountant (1)</b> 3984:23	3997:20;4011:7;	4162:24;4163:11,13	4054:2;4056:11,19;
<b>Aberdeen (7)</b> 3981:9;4074:11;	<b>accounting (8)</b> 3985:7,8,17,20;	4012:1;4013:17;	<b>admission (1)</b> 4038:20	4064:12,15;4067:3,9;
4075:16;4076:2;	3987:15;4070:7;	4014:3;4018:14;	<b>Adrian (1)</b> 4062:9	4068:18;4069:10;
4091:22;4094:5;	4143:9;4156:25	4019:11,12;4020:7;	<b>adult (1)</b> 4058:15	4070:1,11;4073:10;
4095:25	<b>accuracy (1)</b> 4131:10	4026:18;4029:19;	<b>advance (1)</b> 3979:5	4079:20;4082:18;
<b>ability (7)</b> 4059:25;4064:1;	<b>accurate (2)</b> 4131:6,17	4031:6,9,11;4033:25;	<b>advantage (1)</b> 4066:11	4087:9;4088:11,25;
4068:5,6;4076:21;	<b>achieve (1)</b> 4126:5	4034:25;4036:1,6,23;	<b>advertising (1)</b> 4000:4	4090:20;4091:3;
4079:12;4107:19	<b>achieves (1)</b> 4035:17	4037:15;4040:4;	<b>advice (12)</b> 4120:20;4121:12;	4093:6,8,8;4096:4,24;
<b>able (76)</b> 3977:25;3978:3;	<b>acquiescence (1)</b> 4132:17	4041:16;4043:4;	4124:18;4132:2,8,9,15,	4098:13;4099:10;
3979:13;3980:21;	<b>acquire (1)</b> 4112:9	4045:22;4046:5;	21,25;4133:1;4134:5,	4102:17;4104:20,25;
3981:2;3982:6;	<b>acquired (10)</b> 4013:11;4017:8;	4047:4;4048:9;4049:1,	21	4108:15;4125:23;
3990:18,25;3991:1,6,9;	4055:19;4071:21;	13;4052:5,9;4053:6;	<b>advised (1)</b> 4139:20	4126:20;4133:15;
3992:10,10,15;3994:1,	4077:14;4087:13;	4055:1;4060:4,22;	<b>advising (1)</b> 4122:23	4135:18;4139:4;
19;4008:23;4009:1,4,	4094:8,10;4104:21;	4062:16;4064:8;	<b>affect (4)</b> 4122:3;4126:8;	4149:6;4157:22
20;4010:7;4012:5,6;	4105:4	4072:21;4074:18;	4127:14,22	<b>against (2)</b> 4006:8;4081:24
4014:2;4015:15;	<b>acquiring (1)</b> 4039:25	4079:4,8;4083:25;	<b>affirm (2)</b> 3975:3;4119:21	<b>age (1)</b> 3985:1
4016:14,15;4017:17,	<b>acquisition (5)</b> 3991:23;4039:13;	4088:14;4090:21;	<b>afford (1)</b> 4032:16	<b>agency (1)</b> 4121:21
22;4018:24,25;4019:1,	4074:17;4077:15,17	4095:9;4100:5;	<b>afraid (1)</b> 4001:4	<b>aggregate (3)</b> 3984:5;4045:11;
21;4028:16;4032:16;	<b>acre (2)</b> 4020:10,15	4102:21,22;4103:8;	<b>afternoon (7)</b> 4049:3;4113:3,4;	4105:22
4036:1,6;4040:15;	<b>acres (6)</b> 4020:13;4023:3,12;	4107:18,24;4109:10;	4120:15,16;4155:12;	<b>aggregated (1)</b> 4073:12
4042:19,22;4045:11,	4088:11,13,15	4110:5,19;4123:21;	4163:9	<b>aggressive (1)</b> 3998:13
12;4047:23;4048:6;	<b>across (6)</b> 4013:6;4031:9;	4144:16;4146:23;	<b>afterwards (1)</b> 4082:2	<b>ago (10)</b> 3987:19;3993:6;
4050:2;4051:8;4053:6,	4046:5;4094:19	4148:22;4166:17	<b>again (95)</b> 3984:10;3988:1,12,	4025:19;4051:7;
7,15;4059:16,17;			18;3989:1;3990:20;	4112:1;4127:13;
4060:23;4064:1;			3991:15,22,23;3992:1,	4136:14;4144:10;
4066:11;4068:6,18;			8,9,12,22;3993:9;	4151:5;4154:13
4069:4,4;4072:9;			3995:2;3998:4;4006:9;	<b>agree (4)</b> 4000:16;4085:24;
4073:8;4075:8;4093:7;				4123:5;4124:8
4097:5;4098:4,17;				<b>agreed (2)</b> 4039:3;4115:6
4107:1;4108:16;				<b>Agreeing (2)</b> 3999:22;4085:20
4109:17;4110:21,22,				<b>agreement (5)</b> 4036:24;4066:10;
23;4125:7;4138:4;				4118:2,5,16
4156:16,23;4157:4				<b>agrees (1)</b> 4086:12
				<b>ahead (10)</b> 3996:14;4008:4,5;
				4017:1;4020:18;
				4037:1;4060:22;
				4061:7;4114:23;

NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4151:3 <b>AI (1)</b> 4047:1 <b>air (7)</b> 4008:14,18,23; 4009:5;4045:11; 4075:8;4097:4 <b>airport (2)</b> 4039:22;4088:19 <b>Albemarle (1)</b> 4105:10 <b>alert (1)</b> 3987:9 <b>Alger (1)</b> 4002:12 <b>aligned (1)</b> 4067:6 <b>allegedly (1)</b> 4083:1 <b>Allen (5)</b> 3984:19,22,23; 4142:15;4145:23 <b>allow (12)</b> 3979:16;4031:22; 4049:1;4070:16; 4102:4;4107:18; 4115:19;4138:12,15; 4153:1;4154:8;4157:8 <b>allowable (1)</b> 4010:8 <b>allowed (21)</b> 3974:6;3991:2,6; 3993:10;4005:4; 4008:18;4011:25; 4012:2,3;4015:25; 4043:10;4046:7; 4051:18;4053:11,18; 4060:23;4061:8; 4084:3,4;4105:20; 4125:4 <b>allows (2)</b> 4024:5;4046:15 <b>almost (9)</b> 3983:11;3989:2; 3992:16;4039:19; 4040:12,19;4047:21; 4053:7;4096:16 <b>along (7)</b> 3995:2;4000:11; 4014:25;4097:3,3; 4122:1;4139:25 <b>Although (4)</b> 3976:7;4024:18; 4092:2;4106:20 <b>always (10)</b> 3993:24;4006:8; 4023:18;4038:23; 4077:20;4078:13; 4079:6;4099:2,3; 4122:6 <b>amalgamation (1)</b> 4046:20 <b>amass (3)</b>	3984:5;4008:23; 4089:13 <b>amassed (2)</b> 3985:21;4013:9 <b>amazing (8)</b> 4016:19,19;4023:14; 4024:25;4040:16; 4049:17;4079:7; 4094:17 <b>amazingly (1)</b> 4062:14 <b>ambit (1)</b> 4135:6 <b>ambitious (1)</b> 4050:13 <b>amendment (2)</b> 4152:1;4163:23 <b>amendments (2)</b> 4151:25;4164:1 <b>amenities (5)</b> 3993:3;4015:23; 4025:22;4034:18; 4068:12 <b>amenitize (1)</b> 3978:5 <b>amenity (10)</b> 4015:6,9;4031:17; 4032:1,8;4048:12; 4055:10;4071:2; 4103:11,13 <b>AMER (14)</b> 4003:13,22;4006:23; 4007:9;4083:6,8,11,15; 4084:10;4085:14; 4086:7;4165:12,18,23 <b>America (9)</b> 3977:16;4016:8,10, 25;4028:21;4072:24; 4075:2,3;4091:23 <b>American (1)</b> 4016:10 <b>America's (1)</b> 4031:10 <b>among (1)</b> 4119:15 <b>amortize (1)</b> 4034:19 <b>amount (3)</b> 4009:20;4110:20; 4125:3 <b>amounts (1)</b> 4035:25 <b>and/or (2)</b> 4004:9;4028:1 <b>Andrew (1)</b> 4143:24 <b>angel (1)</b> 4137:21 <b>Angeles (8)</b> 4057:6;4058:12; 4066:3;4113:13; 4142:9;4143:13,18; 4146:3	<b>angle (3)</b> 4018:16;4044:7; 4102:16 <b>annuals (1)</b> 4102:10 <b>annuity (1)</b> 4036:25 <b>answered (1)</b> 4153:13 <b>anymore (3)</b> 3983:14;4006:15; 4041:8 <b>apart (11)</b> 3980:19;4020:24; 4021:3;4022:15; 4023:6,8;4026:15; 4047:14;4049:11,15; 4078:2 <b>apartment (4)</b> 4009:24;4010:1; 4050:17;4061:1 <b>apartments (4)</b> 3977:4;3980:12; 4003:4;4013:21 <b>apologize (4)</b> 3998:8;4030:12; 4037:19;4133:15 <b>apparent (2)</b> 3983:16;4130:1 <b>Apparently (2)</b> 3987:1;4094:21 <b>appeals (1)</b> 4121:19 <b>appear (9)</b> 4145:8;4147:20; 4149:5;4154:21; 4155:18;4158:24,25; 4159:8,18 <b>appears (6)</b> 3996:3;4082:11; 4143:10;4155:21; 4158:7;4159:1 <b>appellate (1)</b> 4122:1 <b>applicable (2)</b> 4127:17;4140:16 <b>applied (1)</b> 4141:20 <b>apply (2)</b> 4127:18;4128:25 <b>appraisal (30)</b> 4127:11,11;4128:17, 24;4129:22;4130:20; 4136:20,21;4137:14; 4140:18;4149:15; 4151:9,16,16;4154:3, 12;4157:23;4158:12, 14,15,17;4159:3,4,5,8, 12,19,21,22;4160:2 <b>appraisals (13)</b> 4128:15,19,21; 4137:2,4,24,25;4138:1; 4141:3,5;4149:13;	4151:11;4161:19 <b>appraise (2)</b> 4130:24;4136:10 <b>appraiser (3)</b> 4127:9;4128:16; 4151:15 <b>appraisers (4)</b> 4127:6;4128:7,15; 4141:22 <b>appraiser's (1)</b> 4141:18 <b>appreciate (2)</b> 4119:1;4134:6 <b>approach (1)</b> 4064:5 <b>approached (1)</b> 4161:18 <b>appropriate (4)</b> 4007:9;4081:12; 4082:5;4083:21 <b>approved (1)</b> 4144:5 <b>approximately (6)</b> 4014:24;4019:9; 4020:11;4062:1; 4103:15;4154:22 <b>architects (3)</b> 4040:20;4103:21; 4127:4 <b>architectural (4)</b> 3986:19;3991:17; 4062:10;4064:8 <b>arduous (1)</b> 4059:19 <b>area (36)</b> 4009:19;4010:4,8, 12;4014:17;4019:23; 4037:17;4041:4; 4044:9;4045:18,20; 4046:22;4053:5; 4055:10;4065:8; 4076:4;4089:11,12,12, 13,24;4099:13; 4104:18,18;4106:3; 4108:15;4109:6,21; 4111:5;4124:3; 4127:14;4130:9; 4138:6;4152:5,7,13 <b>areas (6)</b> 4043:6;4071:1; 4088:6;4089:6; 4091:10;4111:4 <b>arguably (2)</b> 4062:18;4078:24 <b>argue (2)</b> 4008:1;4081:9 <b>arguing (1)</b> 4007:25 <b>around (21)</b> 3980:21;3981:6; 3991:2;3993:5,23; 3994:3;4002:22; 4003:5;4004:11,16;	4010:12;4024:9,24; 4060:24;4065:24; 4090:24;4091:22; 4099:23;4130:19; 4156:8;4161:25 <b>array (1)</b> 3977:3 <b>art (2)</b> 4023:20;4031:14 <b>Arthur (1)</b> 3974:2 <b>articulate (1)</b> 4128:8 <b>articulated (1)</b> 4129:2 <b>artist (3)</b> 4023:24;4046:24; 4064:15 <b>artistry (3)</b> 4040:22;4041:2; 4045:14 <b>artists (1)</b> 4024:9 <b>Ashley (1)</b> 4113:5 <b>aspect (5)</b> 3977:7;4010:9; 4076:6;4087:18; 4108:6 <b>aspects (5)</b> 3977:12;3985:8; 3992:19;4059:8; 4106:20 <b>Aspen (1)</b> 3976:8 <b>assemble (1)</b> 4097:11 <b>assembled (3)</b> 3985:21;4098:20; 4127:4 <b>asserted (4)</b> 4001:16,20;4080:22; 4085:8 <b>assertion (1)</b> 4135:14 <b>asset (18)</b> 3977:6;3983:22; 4022:14;4027:1; 4029:6;4059:21; 4096:4;4103:10; 4105:1;4107:15,16; 4109:18;4111:9; 4130:21,23,25;4136:8, 11 <b>assets (8)</b> 3980:16,17;3983:25; 3990:19;4024:3; 4111:21,23;4112:10 <b>assistance (1)</b> 4124:14 <b>associated (2)</b> 4111:14;4115:11 <b>Associates (2)</b>
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NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

3976:22;4012:19 <b>association (1)</b> 3988:16 <b>assume (6)</b> 3978:3;3982:11; 4102:25;4125:18; 4127:16;4164:21 <b>assumed (6)</b> 3981:1;3982:25; 3983:18;3987:16,17,23 <b>assuming (4)</b> 4125:4,23;4131:18; 4166:17 <b>assumptions (12)</b> 4141:2,4,6,7,10,11, 12,12,13,14,16,17 <b>assure (2)</b> 4007:11;4136:5 <b>Atlantic (1)</b> 4019:17 <b>atrium (4)</b> 4011:13;4018:6,12, 23 <b>attach (4)</b> 4159:4,7,20;4160:2 <b>attached (4)</b> 4145:24;4155:15,19; 4159:8 <b>attaching (1)</b> 4159:2 <b>attachment (1)</b> 4155:18 <b>attempt (1)</b> 4048:22 <b>attention (20)</b> 4039:9;4043:17,25; 4057:7;4061:22; 4074:17;4093:20; 4098:7;4104:23; 4105:9;4106:8; 4114:21;4115:24; 4117:8;4118:11; 4130:9;4136:7;4155:2, 7;4157:7 <b>Attorney (17)</b> 3987:6;3997:6,18; 4080:6;4081:9,13; 4085:9;4120:24; 4134:14,17;4135:23; 4148:23;4151:24; 4152:15;4163:20,23; 4164:1 <b>attorney-client (6)</b> 4121:3,5;4133:7; 4134:14,17;4135:25 <b>attorneys (1)</b> 4007:2 <b>attributed (1)</b> 3993:10 <b>ATVs (1)</b> 4023:17 <b>audit (1)</b> 4122:10	<b>auditing (1)</b> 4143:8 <b>aunt's (1)</b> 4020:8 <b>authenticate (1)</b> 4000:6 <b>authorities (1)</b> 4140:22 <b>automatically (1)</b> 4029:9 <b>autonomy (2)</b> 3982:15,18 <b>Avenue (28)</b> 3975:13;3977:7; 3978:21;4009:24; 4010:4,12;4046:9; 4049:5,8,8,9,12; 4050:10;4053:4; 4057:17;4062:3,21,25; 4064:23;4065:5; 4107:2,22;4108:15,20; 4109:1;4111:3,6; 4120:8 <b>average (3)</b> 4103:16,17,17 <b>avoid (1)</b> 4046:8 <b>aware (13)</b> 4010:11;4084:6; 4085:5,10,11;4086:21, 23;4114:11;4130:18; 4140:15,20;4146:20,23 <b>away (8)</b> 3988:18;4002:17; 4015:14;4016:16; 4126:6,7,23,23	4067:7,9 <b>bailiwick (1)</b> 3984:17 <b>balance (1)</b> 4098:17 <b>balconies (1)</b> 4009:5 <b>balcony (1)</b> 4055:9 <b>bald (1)</b> 4123:12 <b>ball (4)</b> 3977:11;3979:14; 4043:13;4108:18 <b>ballroom (8)</b> 4018:20;4019:3,11, 14;4044:9,14;4108:14; 4110:18 <b>ballrooms (9)</b> 4019:10;4087:17; 4089:15,24;4090:5,6, 15;4091:3;4108:21 <b>bane (1)</b> 4060:15 <b>bang (1)</b> 3974:8 <b>banging (1)</b> 3974:8 <b>bank (1)</b> 4059:18 <b>banking (1)</b> 4031:16 <b>banks (2)</b> 4051:1;4073:9 <b>banned (3)</b> 4030:8,9;4040:23 <b>banquet (3)</b> 4108:22;4110:20,23 <b>bar (7)</b> 4065:2;4089:11; 4104:18;4109:6,7,21; 4163:19 <b>bartender (1)</b> 3976:5 <b>base (6)</b> 3989:9;4011:16; 4047:23;4065:9,17; 4089:2 <b>based (4)</b> 3990:2;4133:17; 4138:24;4165:14 <b>baseline (2)</b> 3989:25;3997:15 <b>basement (2)</b> 4107:8;4109:13 <b>basic (4)</b> 3991:12;4000:25; 4087:15,18 <b>basically (14)</b> 3976:12;3980:1; 3997:7;3999:4; 4006:24;4011:17; 4017:18;4048:17;	4056:21;4072:15; 4098:9;4107:12; 4123:4;4156:9 <b>basis (4)</b> 3998:4;4082:13; 4083:16;4134:2 <b>battery (1)</b> 4052:18 <b>Beach (14)</b> 4017:4,13;4018:1; 4019:18,23;4020:7,15; 4039:14,17,18,21,23; 4041:7;4071:2 <b>beat (1)</b> 4061:7 <b>beautiful (3)</b> 4020:9;4042:24; 4073:10 <b>became (11)</b> 3976:25;4002:18,23; 4028:25;4039:16; 4045:2,19;4049:8; 4108:3;4146:8; 4161:24 <b>become (4)</b> 3980:4;3997:14; 4045:4;4048:12 <b>becomes (1)</b> 4078:16 <b>bed (3)</b> 4073:19,22;4105:23 <b>Bedminister (2)</b> 4055:16,22 <b>Bedminster (1)</b> 4041:18 <b>bedroom (3)</b> 4009:4;4091:16,16 <b>befitting (1)</b> 4045:24 <b>before-and-after (1)</b> 4141:22 <b>beforehand (1)</b> 4081:21 <b>beginning (5)</b> 4074:16;4100:24; 4107:7;4130:17; 4157:20 <b>begun (1)</b> 4140:18 <b>behalf (4)</b> 3975:8;4001:14; 4084:25;4119:25 <b>behind (6)</b> 3978:23;3979:1; 4050:21;4131:7; 4132:1;4135:12 <b>below (2)</b> 4055:4;4144:3 <b>bench (1)</b> 4119:15 <b>Bend (1)</b> 4159:17 <b>Bender (20)</b>	3985:18;4142:25; 4143:3,17,24;4145:10, 24;4146:18,20,22; 4154:24;4155:9,23; 4156:3,5,7;4159:2,7, 18,20 <b>Bender's (1)</b> 4156:23 <b>bends (1)</b> 4062:19 <b>beneficial (2)</b> 4104:6;4126:22 <b>benefit (5)</b> 4005:18;4084:18; 4125:6,19,22 <b>benefits (1)</b> 4067:14 <b>best (18)</b> 3987:3;3993:3; 4030:20;4043:9; 4060:6;4063:20; 4068:4;4071:12; 4073:6;4079:11; 4093:12;4098:3; 4109:18;4141:8,23,25; 4142:5;4157:3 <b>bet (1)</b> 4014:8 <b>better (19)</b> 3978:5;3980:20; 3982:10;3986:10,11; 3993:12;3995:2; 4002:5;4003:1;4043:9; 4051:10;4060:11; 4102:23;4108:19,21, 22;4127:2;4151:7; 4161:17 <b>beverage (2)</b> 4090:17;4110:22 <b>beyond (4)</b> 4044:15;4069:1; 4103:19;4104:6 <b>bid (3)</b> 4107:13,15,19 <b>big (20)</b> 3983:3,12;3988:2; 4001:25;4005:6; 4015:11;4016:17; 4024:23;4029:15; 4031:7;4062:21; 4066:3,8;4067:3; 4074:13;4090:24; 4104:15;4110:24; 4111:9;4140:7 <b>bigger (5)</b> 3984:17;4025:6; 4031:15;4040:21; 4090:15 <b>biggest (2)</b> 3992:13;4018:18 <b>billable (1)</b> 4152:16 <b>billion (5)</b>
	<b>B</b>			
	<b>back (45)</b> 3984:10,11;3987:4; 4002:16;4003:13,20, 20;4010:21;4021:13, 14,15;4025:5;4027:6; 4029:20;4030:23; 4038:18;4039:5; 4045:7;4055:20; 4066:21;4067:11; 4078:4;4086:4;4087:1, 3;4094:16;4095:5,21; 4096:17;4097:17; 4099:8,15;4100:4,4; 4106:5;4120:9;4131:4, 17;4135:9,12;4138:7, 9;4164:7,8,9 <b>background (5)</b> 3975:21;4007:21; 4021:1;4048:10; 4134:20 <b>backwards (1)</b> 4082:3 <b>bad (4)</b> 4027:15;4054:11;			

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4080:25;4081:17; 4084:7;4085:12; 4086:23 <b>billionaire (1)</b> 4072:24 <b>binder (7)</b> 4145:25;4146:5,6, 10,10,14,19 <b>bird's-eye (2)</b> 4044:12,12 <b>birth (2)</b> 4004:11,17 <b>bit (17)</b> 3981:23;3982:3,24; 3987:2;3992:23; 3993:22;4004:21; 4025:6;4027:5;4042:1; 4045:8;4047:12; 4056:22;4058:7,9; 4094:11;4110:14 <b>Black (2)</b> 4063:15;4135:16 <b>blanks (1)</b> 4098:19 <b>blend (1)</b> 4053:18 <b>block (1)</b> 4017:19 <b>blocks (1)</b> 4024:22 <b>Blue (2)</b> 4079:3,3 <b>board (4)</b> 4050:2,3;4144:6,15 <b>Bob (1)</b> 4143:24 <b>Bockius (1)</b> 4120:23 <b>bombers (1)</b> 4094:16 <b>bones (3)</b> 4027:20;4049:18; 4087:15 <b>book (1)</b> 4085:9 <b>boom (4)</b> 3977:20;4028:13; 4030:6;4036:15 <b>bootstrapping (1)</b> 4082:4 <b>border (1)</b> 4071:18 <b>both (9)</b> 4017:16;4055:10; 4066:10;4072:19; 4095:3;4134:13; 4143:11;4144:14; 4145:13 <b>bottom (9)</b> 4034:22,22;4137:20; 4142:15;4143:21; 4145:21;4148:1,2; 4153:4	<b>bought (11)</b> 3977:5;4017:11; 4023:9;4026:13,15; 4034:4;4072:6,12,19; 4073:5;4077:24 <b>Boulevard (2)</b> 4012:18;4014:10 <b>bound (1)</b> 4146:10 <b>boundaries (2)</b> 3991:1;3993:4 <b>box (1)</b> 4012:7 <b>boxes (3)</b> 4043:12;4053:8; 4102:11 <b>brainer (1)</b> 4036:7 <b>brand (16)</b> 3977:24;3980:21; 3986:8;3988:21; 3991:2,5,6;3993:10,19, 23;4060:3;4066:11; 4067:17;4069:4; 4118:17,20 <b>branding (1)</b> 4118:8 <b>brand-new (1)</b> 4087:19 <b>brands (4)</b> 3991:11;4068:19,22, 23 <b>break (15)</b> 3987:9;3988:12; 4033:20;4038:15,17, 25;4039:3;4040:3; 4089:12;4090:8; 4091:18;4093:19; 4146:17,25;4147:3 <b>breakfast (3)</b> 4073:19,22;4105:24 <b>breakout (1)</b> 4019:14 <b>Briarcliff (16)</b> 4147:12,14,23; 4149:14,25;4150:19, 22;4154:4;4155:15,19, 25;4157:14,20,23; 4158:2,3 <b>brick (1)</b> 4014:14 <b>Bridge (3)</b> 4032:21;4100:8; 4102:10 <b>brief (5)</b> 3974:12;3976:18; 4119:11;4162:4,14 <b>briefcase (1)</b> 4007:8 <b>briefly (2)</b> 3975:20;4120:17 <b>bring (11)</b> 3983:15;4027:1;	4043:10;4048:25; 4052:12;4066:6; 4076:23;4078:3; 4082:8;4108:17; 4109:18 <b>bringing (8)</b> 4051:15,15;4067:13, 17,18,19;4095:5; 4097:17 <b>brings (1)</b> 4077:9 <b>British (1)</b> 4094:3 <b>Broadly (1)</b> 4148:19 <b>brochure (1)</b> 4084:13 <b>brokers (1)</b> 4028:2 <b>Bronx (2)</b> 4099:21 <b>Brooklyn (3)</b> 4003:5;4004:9; 4032:21 <b>brother (8)</b> 3981:2,23;3982:25; 3983:17;3984:13; 3994:24;4022:20; 4058:22 <b>brought (8)</b> 3982:19;3990:14; 4014:16;4049:19; 4066:5;4074:19; 4094:12;4117:21 <b>bucket (8)</b> 3982:13;3986:2; 3988:13,14;3989:1; 3990:5,12;3995:1 <b>buckets (12)</b> 3976:20;3980:17; 3986:18;3988:5,7,7,10; 3989:8,9,25;3990:4,4 <b>bucks (1)</b> 4032:12 <b>build (40)</b> 3978:5;3980:12,14; 3981:6,10;3986:4; 3988:14;3989:6; 4002:25;4008:18; 4009:21;4013:3; 4015:13;4017:18; 4018:9,12;4019:8; 4024:10;4033:23; 4034:12,12;4045:12; 4046:20;4050:18; 4051:10;4053:22; 4057:1;4064:1,6,12; 4075:8;4076:21; 4088:15;4100:10; 4103:7;4107:1;4112:9; 4124:3,4,4 <b>building (135)</b> 3976:25;3977:3,8,	10,15,15;3986:4; 3991:17,18,18;3993:7, 15,21;4003:2;4008:11, 24;4009:2,6,8,22; 4011:13,16;4013:4,22, 23;4015:6,20;4018:22; 4024:8;4025:14; 4026:18,19,20; 4027:10,16,23,25; 4028:10,18;4029:3,8, 20;4031:8,17,20; 4032:14,21;4033:10, 14,23;4034:3,4,10,19, 22;4035:13,17,24; 4036:2;4037:22,23; 4038:1,5,9,12;4040:4; 4045:13,19,24; 4046:14,15,17,19,20; 4049:14;4050:18,21; 4051:2,5,13,15,17,19, 22;4053:8,11,12,18,22, 25;4054:14;4055:5,11; 4057:16,20;4059:9,15, 19;4061:13;4062:11, 12;4063:24;4064:13, 14,20,22;4065:5,6,19; 4066:17;4074:23,25; 4078:15;4103:23,23, 25;4107:9,20,20,21,25; 4108:9,13,16,23,24; 4110:14,15,21;4114:3; 4116:11;4117:1,6; 4123:8;4124:4 <b>buildings (21)</b> 3977:3,16;3986:1,8, 10;3988:16;4008:19, 21;4009:19;4010:14; 4013:19,20,20;4014:2, 7,14;4045:15;4049:23; 4064:10;4075:2,14 <b>built (38)</b> 3977:22;3978:25; 3988:17;3990:19; 3992:20;4003:24; 4010:9;4011:23; 4013:4,23;4014:12,13, 13;4016:23;4018:21; 4019:4,5,13;4024:22, 24;4025:19;4031:8; 4036:22;4049:14; 4055:3;4067:21; 4073:3;4075:13; 4091:22;4098:13,13; 4100:5,13;4103:9; 4107:23;4110:19; 4153:12,16 <b>built-in (1)</b> 3977:16 <b>bulk (1)</b> 4124:17 <b>bunch (1)</b> 4057:19 <b>burdened (1)</b>	4126:11 <b>business (22)</b> 3975:11;3978:18; 3980:1;3983:3,15,20; 3984:16;3985:14; 3986:17;3988:10; 3991:9;3997:8;4003:6; 4004:14;4036:4; 4041:11;4067:15; 4089:17;4108:8; 4110:23;4120:6,25 <b>businesses (2)</b> 4161:14,15 <b>buy (18)</b> 3984:2;3988:14; 4017:17,22;4019:21; 4022:9;4024:6;4037:7; 4061:1;4068:8,13; 4072:9;4073:8;4097:6, 25;4105:21;4107:15; 4129:1 <b>buyer (15)</b> 4034:25;4128:25; 4129:2,5,6,9,25; 4130:2;4131:1; 4136:11,13,17,17,24; 4137:7 <b>buyers (1)</b> 4128:22 <b>buyer's (1)</b> 4061:6 <b>buying (10)</b> 3984:1;3991:17,18; 4035:24;4067:1; 4068:10;4069:1; 4118:2,4,16 <b>buys (1)</b> 4126:11
<b>C</b>				
<b>caddies (1)</b> 4104:3 <b>caking (1)</b> 4009:8 <b>calculations (1)</b> 4160:2 <b>California (2)</b> 4058:11;4113:11 <b>call (34)</b> 3974:8,16;3978:17; 3983:22;3985:3; 3990:16;4002:11; 4016:24;4017:5; 4019:5;4023:20; 4027:16;4034:21; 4035:1;4038:11; 4043:4;4048:15; 4049:18;4050:20; 4056:22;4060:17; 4061:6;4063:18; 4064:18;4068:22; 4075:5;4082:7;				

NYSCEF DOC. NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

4096:19,21;4100:12, 19;4133:12;4147:25; 4161:3 <b>called (12)</b> 3975:7;3987:17; 4018:25;4022:20,24; 4028:17;4047:6; 4054:11,17;4064:10; 4097:8;4119:25 <b>calling (2)</b> 4101:6;4133:25 <b>calls (3)</b> 3974:17;4139:13; 4150:25 <b>camcorder (1)</b> 4101:21 <b>came (22)</b> 3982:4,5,5;3987:14; 3993:9;3997:9; 4002:16;4003:9; 4004:14;4024:22; 4045:8;4055:21; 4056:3;4063:2,11; 4066:3,9,12;4073:8; 4097:15;4098:16; 4106:25 <b>camera (1)</b> 4019:16 <b>Can (83)</b> 3987:12;3989:8,9; 3991:15;3993:7; 3995:25;3997:4; 4000:7,16,16,17; 4001:1;4002:23; 4006:2,12,23;4008:24; 4009:18,19;4010:1; 4013:9;4018:1; 4028:16;4032:14; 4034:25;4043:8; 4046:8;4048:16; 4050:11;4053:1; 4056:4,5;4058:4; 4060:12;4065:18; 4070:1,9;4071:20; 4080:5;4082:20; 4084:10;4085:14,23; 4086:3,8;4088:12; 4093:11,16;4094:7; 4096:3,12;4097:11; 4098:2,3,3,24;4099:10; 4100:24;4101:5; 4102:6;4107:15; 4112:11;4113:5,7; 4119:7;4123:8,13; 4125:23;4131:15; 4139:3;4141:2; 4142:16;4144:22,23; 4151:19,23;4152:23; 4154:16;4156:20; 4157:11;4163:4,6; 4165:12 <b>Canada (1)</b> 4002:16	<b>candlelight (1)</b> 4003:25 <b>canon (1)</b> 4003:18 <b>canvass (4)</b> 4023:20,22;4024:7; 4064:12 <b>capacity (1)</b> 3988:2 <b>capital (4)</b> 3992:14;3993:18; 3994:8;4076:3 <b>car (2)</b> 3976:13;4068:25 <b>cards (1)</b> 3980:1 <b>care (1)</b> 4061:8 <b>career (6)</b> 3979:14;3990:14; 4010:17;4016:1,17; 4052:8 <b>carefully (1)</b> 4126:14 <b>carry (2)</b> 3979:13;4156:20 <b>carrying (1)</b> 4036:8 <b>carved (1)</b> 4024:23 <b>case (23)</b> 3984:4;3999:18; 4000:1;4005:24; 4022:20;4026:8; 4027:13;4030:1; 4035:12;4036:14; 4038:23;4040:1; 4052:3;4077:10; 4084:24;4092:7; 4122:20,21;4129:20; 4132:7;4146:7;4147:3; 4167:7 <b>cases (5)</b> 3989:6;3991:3; 4024:2;4060:22; 4068:10 <b>cash (5)</b> 4028:4,6,24; 4044:15;4098:17 <b>Castle (3)</b> 4074:24;4076:16; 4091:21 <b>castles (1)</b> 4016:10 <b>Catalina (1)</b> 4058:8 <b>catch (2)</b> 4054:3;4152:11 <b>catering (1)</b> 4089:19 <b>caught (2)</b> 4037:20;4054:2 <b>ceiling (4)</b>	4018:25;4053:10; 4060:12;4108:21 <b>ceilings (1)</b> 4026:17 <b>cell (2)</b> 3974:3,3 <b>cent (1)</b> 4002:24 <b>center (1)</b> 4048:17 <b>Central (4)</b> 4008:21;4011:4; 4021:5;4038:1 <b>cents (1)</b> 3994:11 <b>century (1)</b> 4091:23 <b>ceremony (1)</b> 4085:19 <b>certain (13)</b> 3984:12;3994:23; 3995:3;4009:20; 4012:3;4027:14; 4028:12;4072:9,11; 4097:4;4123:18; 4130:20;4141:14 <b>Certainly (30)</b> 3978:19;3979:7; 3980:24;3981:23; 3982:17;3984:25; 3993:20;4005:9; 4007:14;4008:15; 4010:14,15;4016:8,8, 16;4034:6;4035:19; 4036:4;4046:16; 4054:21;4058:12; 4066:16;4069:8,8; 4123:10;4131:15,19, 23;4132:5;4166:15 <b>cetera (9)</b> 3977:5;3984:6,6; 3999:7;4032:22; 4092:3,4;4108:10,10 <b>CFO (3)</b> 3984:23;3987:17,20 <b>chain (3)</b> 4145:9;4154:21,22 <b>challenge (1)</b> 4132:17 <b>challenged (2)</b> 4122:8,9 <b>challenges (3)</b> 4047:16;4121:16,17 <b>challenging (2)</b> 4051:24;4122:4 <b>championship (3)</b> 4056:12,12;4094:3 <b>championships (1)</b> 4078:19 <b>chance (2)</b> 4097:10;4098:17 <b>change (9)</b> 3979:24;4003:11;	4004:22;4013:2; 4027:12;4028:6; 4040:21;4048:25; 4112:9 <b>changed (14)</b> 3980:25;3981:1,23; 3983:1,13,21;3986:14; 4008:9;4013:7,23; 4014:1;4049:21; 4051:6;4150:21 <b>changes (6)</b> 3991:19;4010:2; 4013:15;4027:15; 4122:23;4166:15 <b>changing (1)</b> 4122:21 <b>chapter (1)</b> 4085:9 <b>character (1)</b> 4051:19 <b>characteristics (3)</b> 4128:11;4129:8; 4130:1 <b>charge (2)</b> 3979:16;4027:23 <b>charitable (2)</b> 4128:1;4129:12 <b>Charlottesville (2)</b> 4071:25;4105:24 <b>chart (1)</b> 4148:2 <b>charts (1)</b> 4148:1 <b>cheaper (1)</b> 4003:1 <b>cheaply (1)</b> 4072:10 <b>check (1)</b> 4052:16 <b>checked (4)</b> 4029:3;4096:23; 4114:9;4116:7 <b>Chicago (19)</b> 3977:13,16;4036:16; 4057:17;4059:9,11; 4061:19,23;4062:6,8, 12,19;4063:16,19,20; 4064:7,15,23;4074:14 <b>chief (2)</b> 3987:16,22 <b>chiefs (1)</b> 3982:7 <b>child (2)</b> 4058:15;4077:19 <b>children's (1)</b> 4043:25 <b>chiller (1)</b> 4060:10 <b>chillers (1)</b> 4021:14 <b>chip (1)</b> 4052:4 <b>choose (1)</b>	4035:3 <b>chooses (1)</b> 3984:11 <b>chose (1)</b> 3983:7 <b>chronology (2)</b> 3995:10;3998:6 <b>chunk (1)</b> 4028:19 <b>circuit (1)</b> 4166:2 <b>circumstances (2)</b> 4039:24;4051:24 <b>City (35)</b> 3977:2;3981:22; 4003:8;4005:1,5,18,20; 4008:7;4010:8;4012:2; 4013:9;4020:23; 4021:2,6,8,12;4022:2, 11;4023:17;4035:3,4, 19;4043:8;4045:7; 4057:14;4063:4; 4064:8;4099:19; 4102:13,15;4103:11, 11,13;4105:1;4144:15 <b>claim (1)</b> 4125:11 <b>claiming (1)</b> 4151:25 <b>claims (1)</b> 4121:25 <b>Clare (1)</b> 4096:17 <b>clarification (1)</b> 4007:4 <b>class (2)</b> 3980:17;4076:8 <b>classic (1)</b> 4134:21 <b>clear (5)</b> 4081:25;4086:7; 4121:2;4134:11; 4135:22 <b>client (15)</b> 4080:20,25;4121:19; 4122:5,24;4125:25; 4126:2,4,19,19,25; 4127:10;4135:23; 4139:20;4146:11 <b>clients (10)</b> 4120:21;4124:15,18; 4139:16,24;4140:2; 4161:5,16,20,23 <b>clipping (1)</b> 3989:4 <b>clock (3)</b> 4045:1;4098:21,23 <b>clocks (1)</b> 4098:22 <b>close (3)</b> 3985:17;4067:6; 4087:16 <b>closer (1)</b>
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NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

3982:18 <b>closet (1)</b> 4035:3 <b>closing (11)</b> 4060:23;4061:3; 4068:3;4145:25; 4146:5,6,10,14,16,16, 19 <b>club (12)</b> 4016:18;4018:20; 4019:18;4020:7; 4039:17;4047:15; 4055:13,16;4057:1; 4142:9,21,22 <b>clubhouse (22)</b> 4041:24;4042:11; 4044:8,9;4048:2,15,18; 4056:17,25;4057:4; 4087:8,24;4088:5; 4089:7;4095:14; 4098:9,11;4099:1,8; 4102:15,17;4104:18 <b>clubs (2)</b> 3980:13;4041:5 <b>coast (1)</b> 4075:10 <b>coastal (3)</b> 4077:2;4096:17,24 <b>code (7)</b> 4057:14;4122:19; 4125:8,10;4127:17,24; 4140:16 <b>codes (1)</b> 4063:4 <b>coffee (1)</b> 4111:5 <b>Collection (2)</b> 3987:15;4161:8 <b>collectively (1)</b> 3982:13 <b>college (3)</b> 3975:21;3976:4; 4047:13 <b>Colorado (2)</b> 3976:5;4058:19 <b>Columbus (1)</b> 4092:1 <b>columns (1)</b> 4019:1 <b>combination (1)</b> 4078:13 <b>coming (15)</b> 3985:1;3991:17; 3993:18;3998:4; 4006:5;4027:11; 4028:19,19,22;4035:6; 4047:20;4062:2; 4119:8;4127:1;4163:5 <b>comment (2)</b> 4006:25;4165:13 <b>commented (1)</b> 4045:3 <b>commercial (16)</b>	3977:5;3980:11; 4015:10;4026:20; 4027:13;4028:9; 4032:9;4034:4,11,16; 4035:17;4063:23; 4064:20;4065:8,13,17 <b>commitment (1)</b> 4067:4 <b>common (7)</b> 4118:5;4138:25; 4139:7,14,14,24; 4140:14 <b>commonly (1)</b> 4140:3 <b>commonplace (2)</b> 3993:5;4015:18 <b>communicate (1)</b> 4161:2 <b>communicating (2)</b> 4143:10,16 <b>communication (4)</b> 4134:25;4135:7,24, 25 <b>communications (3)</b> 4082:10;4121:3,5 <b>companies (6)</b> 3978:4;3980:11,15; 3989:2;3992:14; 4107:23 <b>company (23)</b> 3984:8;3986:15; 3989:1;3995:23; 3997:9,17,25;4000:8; 4005:18;4013:13; 4036:4,6,23,25; 4039:11;4047:3; 4060:9;4069:5; 4080:23;4107:14; 4108:6;4115:9; 4118:17 <b>company's (1)</b> 4005:17 <b>comparable (1)</b> 4084:1 <b>competitors (2)</b> 4070:9,9 <b>complaining (2)</b> 4081:13,14 <b>complete (2)</b> 4001:6;4140:21 <b>completed (1)</b> 4146:23 <b>completely (1)</b> 4082:25 <b>completing (1)</b> 4097:22 <b>completion (2)</b> 4013:24;4098:14 <b>complied (2)</b> 3975:2;4119:20 <b>component (32)</b> 4010:5;4011:22; 4017:11,17;4018:1,2,	20;4019:19;4030:19; 4034:11,17,25; 4035:20,20;4038:1,9, 12;4043:3;4053:15; 4065:10,12,18;4072:6, 9,15,20;4075:1; 4079:5;4090:21; 4097:2;4105:7; 4106:17 <b>components (6)</b> 4051:14;4054:13; 4059:17;4075:4,13; 4076:15 <b>compulsion (1)</b> 4129:1 <b>conceivable (1)</b> 4166:24 <b>concept (7)</b> 4008:15;4128:22; 4136:13,18;4138:18; 4144:4,19 <b>concern (1)</b> 3996:7 <b>concerned (1)</b> 4133:3 <b>conclusion (4)</b> 4151:1,10,19;4152:5 <b>concrete (1)</b> 3993:15 <b>Condition (3)</b> 4081:3;4095:5; 4128:12 <b>conditional (2)</b> 4086:3,13 <b>conditionally (1)</b> 4086:17 <b>conditions (1)</b> 4096:3 <b>condo (4)</b> 4059:14;4066:4; 4068:8;4150:7 <b>condominium (31)</b> 3977:4;3985:23; 3988:16;3990:22; 4013:20;4033:17,17, 21,22;4038:11; 4045:21;4049:22,22, 25;4063:24,24; 4065:13,13;4066:1; 4079:20;4080:1; 4088:13,16;4097:1; 4148:20;4149:7; 4150:6,7,11;4151:20; 4153:6 <b>condominium-hotel (1)</b> 4097:2 <b>condominiums (4)</b> 3980:13;4009:13; 4045:17;4078:25 <b>conduct (1)</b> 4121:18 <b>confer (1)</b> 4132:11	<b>conference (1)</b> 4090:18 <b>conferences (2)</b> 4089:17;4090:16 <b>confirm (1)</b> 4159:4 <b>confirmation (1)</b> 4134:6 <b>confirming (2)</b> 4132:12,15 <b>Congress (5)</b> 4052:9;4107:18; 4124:19;4125:2,4 <b>connection (4)</b> 4086:4,6,13;4146:1 <b>Conrad (1)</b> 4063:15 <b>Conservancy (1)</b> 4146:2 <b>conservation (42)</b> 4123:1,3,4,7,10,16, 20,23;4124:16;4125:9; 4126:1;4127:8,15,18; 4128:2,3,5,19,21; 4139:2,7,17,23;4141:3, 4,5;4143:12,17; 4144:21;4146:1,4,21; 4147:13;4149:12; 4155:25;4156:4,6,14, 15;4158:4;4160:6; 4161:19 <b>conserve (1)</b> 4123:8 <b>consider (2)</b> 4128:21;4138:25 <b>consideration (4)</b> 4147:13;4151:9,12; 4160:5 <b>considerations (1)</b> 4156:12 <b>considered (5)</b> 3980:18;4045:22; 4129:14,16;4137:3 <b>considering (4)</b> 4129:22;4139:1; 4144:21;4156:6 <b>consistent (5)</b> 4136:16;4138:11; 4144:9;4161:18,23 <b>consistently (1)</b> 3976:15 <b>constitute (1)</b> 3988:10 <b>constitutes (1)</b> 4128:5 <b>constraints (1)</b> 4144:8 <b>constructed (1)</b> 4056:20 <b>construction (26)</b> 3977:4,9,9,14; 3981:18;3992:19; 4041:20;4051:21;	4053:14;4054:10; 4060:5,7,23;4061:8; 4063:1;4067:20; 4074:25;4100:7; 4102:20;4103:21,24; 4106:16,19,22; 4108:23;4154:9 <b>consult (1)</b> 4132:23 <b>consumers (1)</b> 4069:5 <b>contained (4)</b> 3999:20;4100:16; 4138:1;4154:9 <b>contemplating (1)</b> 4158:7 <b>contemplation (1)</b> 4158:16 <b>contemporary (1)</b> 4018:22 <b>context (2)</b> 4007:21;4127:19 <b>contiguous (2)</b> 4023:1;4105:15 <b>continue (12)</b> 3986:9;3989:7; 4039:7;4059:20; 4070:15;4083:11; 4093:13;4112:8; 4115:18;4130:19,22; 4157:10 <b>continued (7)</b> 3983:25;3985:22; 3996:15;4036:12; 4044:17;4140:23; 4150:5 <b>continues (3)</b> 4017:6;4058:7; 4166:5 <b>Continuing (2)</b> 4046:23;4155:24 <b>continuous (1)</b> 4122:10 <b>contract (3)</b> 3986:1;4036:5; 4061:2 <b>contractors (2)</b> 4104:2,3 <b>contributed (1)</b> 4128:12 <b>contribution (1)</b> 4128:1 <b>control (3)</b> 4018:4;4072:20; 4093:4 <b>controlled (3)</b> 3995:5;4050:16; 4073:9 <b>controller (1)</b> 3985:5 <b>controlling (3)</b> 4018:3;4019:20; 4072:11
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NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>controversies (1)</b> 4121:11	3986:14	4003:22;4005:21;	<b>create (29)</b> 3980:21;3990:25;	4144:7
<b>controversy (5)</b> 4121:9,15,16; 4122:2,6	<b>council (1)</b> 4144:15	4006:1,6,14;4007:22, 25;4008:3;4010:24;	3991:9,24,25;3994:19;	<b>currently (1)</b> 4079:14
<b>conversation (2)</b> 3976:7;4131:11	<b>Counsel (11)</b> 3995:8;4119:15;	4021:20;4030:8,11,13, 21;4037:4,7,20;	4004:23;4007:13;	<b>curve (1)</b> 4037:1
<b>conversations (2)</b> 4010:16;4132:1	4121:13;4132:8,16,22, 25;4133:1;4134:5,7;	4038:17,22;4039:2,5,7;	4010:10;4012:7;	<b>Cushman (2)</b> 4137:13;4156:2
<b>convey (5)</b> 4130:23;4131:2;	4164:18	4040:23;4052:19;	4015:23;4016:18;	<b>cut (1)</b> 4009:3
4133:13;4136:8;	<b>countless (1)</b> 4095:3	4054:17;4069:14;	4034:16,17;4040:15;	<b>cutting (1)</b> 4047:25
4138:18	<b>country (4)</b> 4054:22;4055:24;	4070:11,14,21;	4046:21;4048:7;	<b>cycle (3)</b> 4026:14;4054:8;
<b>conveyance (1)</b> 4123:23	4060:25;4064:8	4072:22;4078:8;	4069:5;4073:12;	4060:24
<b>conveying (1)</b> 4146:1	<b>County (3)</b> 4023:2,13;4096:17	4082:19,24;4083:7,10;	4075:15;4076:23;	<b>cyclical (2)</b> 4024:3;4028:14
<b>cool (2)</b> 4053:6;4106:3	<b>couple (8)</b> 3981:8;3991:19;	4084:16;4085:16;	4079:6,12;4108:17,20;	
<b>co-op (2)</b> 4050:2,2	4016:9;4066:13;	4086:3,12,17;4087:2;	4110:20,24;4112:10;	<b>D</b>
<b>co-ops (3)</b> 4014:15;4045:17;	4151:5;4154:22	4090:10,24;4091:19;	4150:5	
4049:23	<b>coupon (1)</b> 4116:1	4093:2,5,11,17;	<b>created (25)</b> 3979:5;3981:14;	<b>D-499 (2)</b> 4080:5,16
<b>coordinate (1)</b> 4119:8	<b>coupons (1)</b> 3989:4	4097:13;4099:4;	3991:2;3993:4;4003:3;	<b>dabbled (1)</b> 4034:7
<b>copied (5)</b> 4135:7;4142:25;	<b>course (75)</b> 3981:11;3997:11;	4100:23;4101:1,14,24;	4008:12;4011:6;	<b>dad (2)</b> 4004:14;4040:17
4143:23;4145:23;	4038:17;4040:10,18,	4102:4,23;4103:2;	4014:17;4015:2;	<b>dad's (1)</b> 4023:22
4155:23	20;4042:22;4043:16,	4105:10;4112:12,15,	4041:8;4042:17;	<b>date (2)</b> 4054:15;4134:6
<b>copies (1)</b> 4146:13	7,9,11,15;4048:2,13,	23;4114:23;4115:1,4,	4045:21,23;4048:6,11;	<b>dated (2)</b> 4014:15;4159:9
<b>copy (2)</b> 4069:11;4159:18	16,17,22;4056:7;	18,23;4116:16;	4049:22,25;4050:3;	<b>Dave (1)</b> 4149:6
<b>copying (6)</b> 4143:11,17;4146:18;	4057:5,6,8,16,21;	4118:24;4119:2,5,9,13,	4071:13;4075:12,13;	<b>David (3)</b> 4130:11;4131:2;
4154:24;4155:9;	4058:6;4071:7,11,13,	15,16,19,21;4120:3,5,	4095:9;4102:22;	4149:11
4159:2	19;4074:20;4075:9,13,	9,18;4121:21,22,23,23,	4108:15;4109:13	<b>day (13)</b> 3982:19;4035:17;
<b>corner (9)</b> 4009:4,9;4012:18;	15;4076:8,8,18;	24,24,25;4125:17;	<b>creates (2)</b> 4023:25;4024:7	4036:2;4051:5;
4014:24;4038:5;	4078:12,25;4079:3,5,	4129:20;4133:3;	<b>creating (12)</b> 3992:17;3993:20;	4059:20;4092:5;
4055:10;4064:18;	19;4084:23;4088:9;	4135:20;4136:3;	4008:19;4010:6,6;	4094:16;4122:4;
4065:7;4111:5	4094:5,8,13;4095:12,	4137:5,18,20;4138:5,7,	4015:17;4021:7;	4129:25,25;4145:14;
<b>corners (1)</b> 4053:17	24;4096:25;4097:18;	10,11;4139:13;	4029:6;4032:13,15;	4165:9;4166:23
<b>corporate (4)</b> 3980:22;3999:5;	4098:6;4099:8,11,12;	4142:12;4144:25;	4047:17;4073:6	<b>days (8)</b> 3976:13;3981:10;
4007:19,20	4100:10,14;4102:1,11;	4145:17,20;4146:25;	<b>creation (2)</b> 4040:18;4079:1	4008:17;4017:6;
<b>corporations (1)</b> 4122:9	4103:7,14;4111:25;	4147:2,5,6,9;4149:18,	<b>creative (2)</b> 4016:14;4024:7	4062:6,9;4076:14;
<b>correctly (3)</b> 4014:7;4021:11;	4113:10,13,16,19;	21;4151:3;4152:11,24;	<b>creativity (1)</b> 4035:15	4166:18
4148:15	4122:1;4138:13;	4153:13;4155:1,6;	<b>credit (1)</b> 3983:11	<b>day-to-day (3)</b> 3984:16;4089:18;
<b>corridor (1)</b> 4046:9	4142:23;4143:12,18;	4159:13,16;4160:7,13;	<b>crews (1)</b> 4103:22	4161:6
<b>corridors (2)</b> 4008:20;4109:25	4146:3;4162:13	4162:3,18,22;4163:2,6;	<b>crisis (2)</b> 4028:22;4096:19	<b>DC (8)</b> 4052:6;4071:7;
<b>cost (2)</b> 3994:16;4002:24	<b>courses (20)</b> 3988:15;4039:10;	4164:8,10,13,17;	<b>cross (5)</b> 4112:15;4138:12;	4107:4;4108:18,19;
<b>costs (3)</b> 4036:2;4117:2;	4040:4,8;4041:6;	4165:3,5;4167:5	4152:3;4163:3,7	4112:2;4120:8;
4141:11	4043:5,21;4045:3,4;	<b>courtroom (4)</b> 3974:6;3986:25;	<b>crosses (1)</b> 4165:15	4151:21
<b>co-trustees (1)</b>	4056:11,13;4078:23;	4030:9;4152:18	<b>CROSS-EXAMINATION (1)</b> 4113:1	<b>dead (2)</b> 4014:18;4015:1
	4079:4;4087:16;	<b>courts (3)</b> 4121:22;4122:1;	<b>crown (4)</b> 4017:3;4022:13,16;	<b>deal (38)</b> 3979:3,4,8;3981:18;
	4088:10,10,15;4094:2;	4142:2	4057:23	3982:9;3984:3,4,17;
	4095:3;4097:24	<b>Court's (1)</b> 4038:14	<b>cubes (2)</b> 4055:2,3	3986:5,7;3987:9;
	<b>COURT (166)</b> 3974:1,7,14,21,25;	<b>covenant (1)</b> 4123:5	<b>curious (1)</b> 3996:5	3988:19,21;3992:3,3,4,
	3975:3,10,14;3986:24;	<b>covenants (1)</b> 4124:6	<b>curling (2)</b> 4094:20,21	
	3987:4,10,12;3989:17,	<b>cover (1)</b> 4082:10	<b>currency (1)</b> 4031:10	
	20;3990:8;3992:2;	<b>covered (1)</b> 3991:22	<b>current (1)</b>	
	3995:8;3996:14;	<b>covers (1)</b> 4101:4		
	3997:8,11,15;3998:9,	<b>CPA (1)</b> 3988:1		
	12,17,23;4000:15,19,	<b>CPLR (1)</b> 4052:20		
	23,25;4001:2,13,18,23;	<b>crazy (3)</b> 4040:7;4050:15;		
		4100:5		

NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

5,6,10;3993:15; 3995:3;4001:7; 4002:15;4015:11; 4042:21;4050:23; 4051:24;4054:6; 4061:3;4062:4,5; 4065:25;4066:22; 4067:15;4069:6; 4110:24;4117:18; 4118:8 <b>dealing (14)</b> 3982:10;3983:6; 3986:6;3987:18; 4027:22;4047:19; 4048:5;4050:19; 4062:24;4076:15; 4077:1,16;4111:13; 4133:15 <b>deals (14)</b> 3977:21;3981:5; 3982:17;3983:23; 3986:19;3991:6; 3994:21;3995:5; 4066:8,21;4067:13; 4111:18,19,24 <b>dealt (1)</b> 4033:14 <b>dear (1)</b> 4023:19 <b>debt (2)</b> 4036:8,10 <b>decades (7)</b> 3991:23;3993:20; 4001:10;4012:23; 4013:10;4041:3; 4100:2 <b>December (1)</b> 4159:9 <b>decide (1)</b> 4140:11 <b>decided (6)</b> 3983:5;4021:12; 4064:4,5;4140:6,10 <b>decides (1)</b> 4127:1 <b>deciding (2)</b> 4124:15;4140:10 <b>decision (5)</b> 3982:14;4122:4; 4139:21;4140:7; 4157:10 <b>decisional (1)</b> 3987:25 <b>decisions (3)</b> 3986:20;4024:4; 4081:22 <b>deck (1)</b> 4064:21 <b>dedication (1)</b> 4062:22 <b>deduction (19)</b> 4124:20,25;4125:3, 5,6,11,14,21,22,23;	4126:21;4127:10,12; 4156:15,17,21,22; 4157:5,9 <b>deed (6)</b> 4123:21,21,22,23; 4124:23;4128:8 <b>deemed (9)</b> 4009:19;4010:8; 4012:1;4086:19; 4145:18;4149:19; 4155:4;4159:14; 4162:23 <b>deep (1)</b> 4109:12 <b>defend (1)</b> 4121:16 <b>Defendant (3)</b> 3975:8;3999:18; 4120:1 <b>defendants (2)</b> 4085:1;4166:9 <b>Defendant's (10)</b> 3999:14;4086:19; 4113:6;4145:16,19; 4149:20;4154:17; 4155:5;4159:15; 4162:23 <b>defending (2)</b> 4152:17,19 <b>defense (19)</b> 3974:14,16,17; 3995:9;4003:15; 4084:24;4100:19; 4119:6;4132:8,16; 4134:5;4145:2;4149:1, 16;4154:25;4158:21; 4159:11;4162:6,16 <b>defines (1)</b> 4128:3 <b>definitely (2)</b> 3984:15;4059:8 <b>degree (1)</b> 3975:24 <b>degrees (1)</b> 3979:16 <b>delapidated (4)</b> 4004:21;4020:24; 4063:3;4107:9 <b>deliver (5)</b> 3994:1;4056:8; 4067:2,7,20 <b>delivered (2)</b> 3979:17;3982:19 <b>delivering (2)</b> 4067:9;4076:6 <b>Delmonico (2)</b> 3977:6;4049:10 <b>DeLorean (1)</b> 4055:20 <b>DeLorean's (1)</b> 4056:25 <b>demographics (1)</b> 4141:13	<b>demonstrative (5)</b> 4000:13,17;4101:8, 16,20 <b>demonstratives (1)</b> 4007:5 <b>department (4)</b> 3985:7;4103:12; 4151:24;4163:16 <b>depend (1)</b> 4156:18 <b>depending (2)</b> 4036:10;4140:12 <b>depends (5)</b> 3988:21;3989:11; 4028:9;4112:5;4125:6 <b>depicted (1)</b> 4004:1 <b>deposit (1)</b> 4067:11 <b>Depression (1)</b> 4054:18 <b>depth (1)</b> 4124:13 <b>Derek (1)</b> 4045:19 <b>describe (12)</b> 3978:14;3980:8; 3981:25;3982:22; 3984:8;3985:10; 4043:18;4056:19; 4071:20;4094:7; 4110:8;4121:8 <b>described (1)</b> 3999:16 <b>description (2)</b> 4101:11;4154:7 <b>descriptions (3)</b> 3979:10;3999:10; 4000:7 <b>deserved (1)</b> 4077:24 <b>design (1)</b> 3978:5 <b>designed (2)</b> 4096:16,18 <b>designing (1)</b> 4062:11 <b>despite (1)</b> 4084:17 <b>detail (10)</b> 3978:9;3991:20; 3992:1;3999:9;4018:7; 4022:21;4043:17,25; 4082:17;4096:14 <b>detailed (1)</b> 3991:20 <b>details (2)</b> 4023:10;4068:17 <b>determine (2)</b> 4141:23;4142:4 <b>determined (2)</b> 3997:11;4150:5 <b>determining (2)</b>	4079:15;4139:25 <b>develop (4)</b> 4150:9,9,22;4153:4 <b>developed (6)</b> 4011:6;4042:12; 4097:17;4141:24; 4148:7;4150:19 <b>developer (10)</b> 3991:14,19,21; 3992:22;4002:13; 4005:16;4029:25; 4066:3;4098:15; 4105:19 <b>developers (14)</b> 3986:4;3988:17; 3989:14;3991:4; 3992:9;4008:13,16; 4010:17,23,25; 4015:12;4061:10; 4066:13;4097:20 <b>developer's (1)</b> 4051:23 <b>developing (8)</b> 3994:11;4002:14; 4012:20;4040:4; 4060:4,4;4068:3; 4148:22 <b>development (39)</b> 3980:18;3984:1; 3988:13;3989:6; 3990:4,20,22;3991:13, 16;3992:2,4,13,16; 3993:5;3994:10; 3995:23;4013:2; 4023:21,23;4056:3; 4059:9;4062:15; 4066:18;4067:1; 4088:12;4089:11; 4096:20;4097:16; 4104:1;4106:20; 4107:23;4111:7,13; 4112:3;4154:8; 4157:20,23;4158:2; 4164:6 <b>developments (5)</b> 4010:20;4013:9; 4049:20;4084:1,2 <b>device (1)</b> 4095:21 <b>diamond (4)</b> 4078:8,9,11;4094:12 <b>difference (5)</b> 3993:17;4040:13; 4069:2;4083:5; 4134:16 <b>different (34)</b> 3977:3,8,11; 3978:11,22;3988:20; 3989:25;3994:13; 4001:15,15;4002:20; 4013:15,15;4033:2,13; 4035:8;4045:19; 4047:18;4051:20;	4052:7;4066:9; 4071:20;4075:3; 4095:23,25;4096:6; 4098:23;4101:21; 4103:5;4123:14; 4130:21;4137:14,16; 4151:18 <b>differently (3)</b> 3990:15;4003:7; 4012:6 <b>difficult (1)</b> 3986:25 <b>dig (1)</b> 4055:25 <b>digital (1)</b> 4031:16 <b>dilapidated (2)</b> 4047:11;4077:23 <b>Dillon (21)</b> 4120:7,15;4125:18; 4129:16;4130:8; 4135:23,24;4138:24; 4139:16;4142:8; 4145:5,21;4147:11; 4149:3,22;4151:4; 4153:3;4159:17; 4160:4;4163:1,9 <b>dimensions (1)</b> 4053:9 <b>diminished (1)</b> 4105:20 <b>dining (3)</b> 4044:9;4088:6; 4104:18 <b>DIRECT (7)</b> 3975:16;4038:22; 4120:11,13;4147:2; 4155:2,7 <b>directs (1)</b> 4165:15 <b>dirt (2)</b> 4100:3;4102:19 <b>disagree (1)</b> 3998:18 <b>disappointed (1)</b> 4110:15 <b>disarray (1)</b> 4021:15 <b>disaster (5)</b> 4005:7;4026:14; 4028:13,20,22 <b>disclaimer (1)</b> 4092:6 <b>disclose (2)</b> 4135:23,24 <b>discovered (2)</b> 4075:3;4091:24 <b>discuss (5)</b> 4038:23;4137:2; 4147:2,11;4164:18 <b>discussed (4)</b> 3990:12;4053:5; 4154:12,13
---	--	--	---	--

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<p><b>discussing (4)</b>  3989:15;4091:21;  4094:5;4136:12</p> <p><b>discussion (9)</b>  3979:22;3990:7;  4106:9;4115:15;  4119:14;4134:15;  4136:14;4144:9;  4158:10</p> <p><b>disingenuous (3)</b>  3997:19;4151:10,13</p> <p><b>displaced (1)</b>  4026:19</p> <p><b>displayed (47)</b>  3995:13,19;4022:18;  4024:15;4025:1,7,11,  15,24;4026:5;4030:24;  4031:3,24;4032:3,17,  23;4033:4;4037:2,10;  4038:6;4041:21;  4042:8,13,25;4044:4;  4070:19;4071:4;  4073:24;4074:8;  4075:20;4077:7;  4080:8;4087:4,21;  4088:2,22;4089:9,21;  4090:2,13;4091:1,8,12;  4117:9;4118:12;  4130:5;4138:22</p> <p><b>dispute (2)</b>  4121:20;4132:14</p> <p><b>disrepair (4)</b>  4049:11,16;4094:11;  4097:19</p> <p><b>dissect (1)</b>  4066:20</p> <p><b>distinct (1)</b>  4095:10</p> <p><b>distinction (3)</b>  3992:2;3993:14;  4008:12</p> <p><b>District (3)</b>  4117:1;4121:23,24</p> <p><b>ditching (1)</b>  4118:7</p> <p><b>diversification (1)</b>  4013:21</p> <p><b>diversifying (1)</b>  4027:17</p> <p><b>division (1)</b>  4033:8</p> <p><b>divulge (3)</b>  4121:3,5;4134:1</p> <p><b>docs (1)</b>  4053:20</p> <p><b>document (41)</b>  3996:3,4,5;3998:4;  3999:20;4007:1,10;  4080:10,13;4082:12,  16,22,23;4083:8,13,19;  4084:11;4085:18,21,  24;4086:11,21;  4113:23;4114:17,25;</p>	<p>4118:11;4128:11;  4133:21;4135:3;  4137:1;4138:21;  4145:18;4147:16;  4148:13,19,22;  4149:19;4151:7;  4155:4;4159:14,25</p> <p><b>documents (8)</b>  4084:3;4116:2;  4122:14;4145:25;  4146:7,11,14,16</p> <p><b>Doe (2)</b>  4129:23,24</p> <p><b>dollar (2)</b>  3994:11;4073:9</p> <p><b>dollars (5)</b>  4084:20;4095:2,3;  4118:4,9</p> <p><b>domestic (1)</b>  3981:12</p> <p><b>dominated (1)</b>  4005:5</p> <p><b>Donald (12)</b>  3974:18;3975:12;  3985:18;4117:11;  4143:3,23;4145:10,23;  4155:9,23;4159:2;  4161:14</p> <p><b>donate (2)</b>  4125:9;4140:19</p> <p><b>donated (1)</b>  4158:4</p> <p><b>donating (2)</b>  4125:25;4139:23</p> <p><b>donation (7)</b>  4129:13;4140:21;  4146:23;4151:12;  4158:8,9,15</p> <p><b>done (31)</b>  3978:4;3979:13,14,  20;3983:4,6;3984:2;  3993:22;3994:22;  3998:6;4005:11;  4011:25;4015:21,21;  4017:22;4025:20;  4027:1;4033:18;  4036:16;4038:23;  4046:22;4049:16;  4052:13;4059:19;  4069:7;4079:8;4085:3,  17;4132:19;4151:17;  4161:20</p> <p><b>Doonbeg (1)</b>  4096:10</p> <p><b>door (5)</b>  4008:13;4020:7;  4025:10;4052:10,11</p> <p><b>doors (1)</b>  4031:11</p> <p><b>Doral (23)</b>  3978:8;4077:9;  4078:19;4080:3,12,24;  4081:17;4082:6;</p>	<p>4083:19;4084:7;  4085:12;4086:24;  4087:9,11,13;4088:20;  4090:7;4091:11,14;  4093:20;4094:10,25,25</p> <p><b>double-wide (1)</b>  4042:11</p> <p><b>doubt (1)</b>  4084:18</p> <p><b>down (26)</b>  3983:18;3987:2;  3988:13;3989:9;  4014:23;4020:2;  4029:7;4031:20;  4033:20;4036:2;  4052:7;4057:1;  4062:16;4079:23;  4082:20;4086:16;  4088:6;4093:6,7;  4107:3;4109:1;4110:3,  4,4126:3;4138:23;  4164:15</p> <p><b>downstairs (1)</b>  4110:7</p> <p><b>downtown (1)</b>  4029:5</p> <p><b>downturn (1)</b>  4054:7</p> <p><b>dozens (4)</b>  3992:20,20;4027:24;  4097:25</p> <p><b>draft (6)</b>  4084:13;4138:4;  4151:16;4154:3,12;  4157:23</p> <p><b>draw (10)</b>  3992:2;4039:9;  4057:6;4061:22;  4093:20;4105:9;  4106:8;4114:21;  4130:9;4136:7</p> <p><b>drawing (3)</b>  4098:7;4104:23;  4115:24</p> <p><b>drinks (1)</b>  4111:5</p> <p><b>drive (1)</b>  4058:12</p> <p><b>driving (1)</b>  3976:13</p> <p><b>dropped (1)</b>  4116:2</p> <p><b>dropping (2)</b>  4026:17;4116:6</p> <p><b>Dubai (2)</b>  3981:7;3993:1</p> <p><b>due (3)</b>  4027:14;4028:12,19</p> <p><b>duly (2)</b>  3975:8;4120:1</p> <p><b>dune (1)</b>  4099:11</p> <p><b>dunes (4)</b></p>	<p>4075:6,7,18;4076:22</p> <p><b>during (15)</b>  3978:10;3983:4,20;  3984:25;4002:14;  4013:14;4036:15;  4038:25;4057:5;  4096:19;4103:8,14;  4106:2,9;4147:3</p> <p><b>duties (1)</b>  3978:14</p> <p><b>dwelling (1)</b>  4109:13</p> <p><b>DX (1)</b>  4007:6</p> <p><b>DX-1019 (1)</b>  4113:7</p> <p><b>dynamic (2)</b>  3982:9;4048:25</p>	<p>4127:15;4141:5;  4160:6;4161:19</p> <p><b>easier (3)</b>  4024:8;4031:20;  4035:22</p> <p><b>east (3)</b>  4013:6;4024:11;  4046:16</p> <p><b>easy (1)</b>  4005:8</p> <p><b>economic (1)</b>  4123:6</p> <p><b>economics (1)</b>  3975:24</p> <p><b>economies (1)</b>  4097:24</p> <p><b>economy (1)</b>  4141:11</p> <p><b>edge (5)</b>  3990:20;4015:17,24;  4019:17;4035:14</p> <p><b>edits (1)</b>  4167:2</p> <p><b>education (1)</b>  3975:21</p> <p><b>educational (1)</b>  3975:21</p> <p><b>effectively (3)</b>  4036:13;4056:5;  4069:9</p> <p><b>efficient (2)</b>  4000:10;4024:11</p> <p><b>eight (4)</b>  4008:5;4011:11;  4012:14;4053:16</p> <p><b>Eighty-nine (1)</b>  4088:21</p> <p><b>Eighty-seven (1)</b>  4088:1</p> <p><b>either (8)</b>  4027:25;4046:6;  4070:9,12;4097:9;  4129:8;4150:1,2</p> <p><b>elected (1)</b>  4161:24</p> <p><b>Electric (3)</b>  4034:5,6;4051:1</p> <p><b>electronic (4)</b>  4082:12;4145:25;  4146:6,18</p> <p><b>electronically (1)</b>  4146:13</p> <p><b>element (1)</b>  4064:20</p> <p><b>elevator (1)</b>  4011:20</p> <p><b>eligibility (1)</b>  4125:5</p> <p><b>eliminate (1)</b>  4097:14</p> <p><b>elongate (1)</b>  4087:17</p> <p><b>eloquently (1)</b></p>
---	--	---	---	--

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4001:24 <b>else (19)</b> 3979:8;3980:25; 3983:10;4006:16; 4008:23;4023:10; 4028:2;4035:16; 4062:25;4066:25; 4069:10;4085:5; 4086:16;4087:19; 4091:15;4094:23; 4098:19;4107:17; 4112:16 <b>elsewhere (1)</b> 4047:25 <b>e-mail (32)</b> 4082:11;4130:10,15; 4131:5;4132:12,15; 4135:6,11;4142:15; 4143:1,21;4145:6,8,8; 4146:8,18;4147:20; 4148:6,11;4149:6; 4150:14,15,18; 4154:21,22,23;4155:8, 20;4158:24;4159:1,18; 4161:7 <b>e-mails (3)</b> 4145:9,13;4154:22 <b>emerge (1)</b> 4078:17 <b>emerging (2)</b> 3981:5;4009:11 <b>Empire (1)</b> 4026:19 <b>employ (1)</b> 4103:16 <b>employed (1)</b> 3976:15 <b>employee (1)</b> 3985:6 <b>employees (2)</b> 4103:20,25 <b>employment (1)</b> 4104:1 <b>emulate (3)</b> 4036:19;4068:20; 4069:11 <b>emulated (2)</b> 3991:10;3992:9 <b>enclosed (2)</b> 4110:1,3 <b>encompassing (1)</b> 3980:10 <b>end (15)</b> 3979:6;4006:22; 4018:2;4025:5;4030:6; 4036:3,23;4050:13; 4061:9;4066:10; 4073:7;4108:1; 4121:20;4156:11; 4158:6 <b>ended (3)</b> 4012:20;4013:17,17 <b>ends (1)</b>	4032:15 <b>enforce (4)</b> 4123:22;4124:5,6,12 <b>enforcement (1)</b> 4124:7 <b>engagement (3)</b> 4155:15,19,22 <b>engineering (1)</b> 3992:19 <b>engineers (2)</b> 4103:21;4127:4 <b>Engoron (1)</b> 3974:2 <b>enjoy (1)</b> 3976:6 <b>enough (13)</b> 4008:2;4050:7,13, 14;4051:9;4054:6; 4062:14;4066:9; 4070:13;4071:24; 4103:4;4104:16; 4157:4 <b>entail (1)</b> 3988:15 <b>entails (1)</b> 4108:7 <b>entered (1)</b> 3985:2 <b>entering (3)</b> 4109:9;4119:16; 4147:6 <b>entertained (2)</b> 4017:2;4018:17 <b>entertaining (1)</b> 4108:22 <b>entertainment (1)</b> 4065:1 <b>enthusiasm (1)</b> 4097:13 <b>entire (5)</b> 4034:19;4048:25; 4050:18;4090:16; 4094:25 <b>entirely (6)</b> 3977:11;4040:19; 4043:9;4083:18; 4087:16;4098:25 <b>entities (4)</b> 3983:7;4109:18; 4120:25;4161:22 <b>entitled (4)</b> 4125:11;4148:10; 4150:8;4154:8 <b>entitlement (4)</b> 4013:16;4040:11; 4076:14,19 <b>entitlements (3)</b> 3984:6;4054:9; 4150:21 <b>entity (2)</b> 4144:6;4149:25 <b>entrance (10)</b> 4025:5;4037:13,17;	4046:1,4,5;4108:13,14; 4109:8;4111:3 <b>enumerate (1)</b> 4123:18 <b>enumerates (2)</b> 4123:25;4124:1 <b>envelope (1)</b> 3990:16 <b>environment (3)</b> 4021:7;4042:18; 4099:12 <b>environmental (3)</b> 4076:15;4077:2; 4128:11 <b>envision (2)</b> 3990:18;4024:1 <b>envisioning (1)</b> 3991:16 <b>equal (1)</b> 4124:21 <b>equitable (2)</b> 3997:6;4081:18 <b>equity (3)</b> 3992:5,11;4066:9 <b>equivalent (1)</b> 4063:19 <b>era (2)</b> 4010:14;4046:20 <b>Eric (14)</b> 3982:1,5,12; 3984:15;4077:17; 4082:11;4095:2; 4099:25;4130:18; 4145:10,22;4147:21; 4160:10;4161:2 <b>Eric's (1)</b> 4071:9 <b>escaped (1)</b> 4106:2 <b>especially (2)</b> 4077:1;4081:18 <b>essentially (4)</b> 4029:20;4050:16; 4100:1;4105:17 <b>establish (3)</b> 3998:20;4085:23; 4092:3 <b>estate (90)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4016:15;4017:2; 4023:4,7,24;4024:9,19, 25;4025:22;4026:2,14, 16;4027:11,13; 4028:15,21;4029:25; 4030:2;4033:22; 4036:7,15,20;4045:23;	4049:21;4054:8,11; 4055:21;4056:2; 4059:16,25;4062:14; 4063:5,22;4064:2; 4066:12,16,25;4068:2, 4,10;4069:1,2,8; 4072:8,9,13,13,15,15, 16,21;4073:11; 4074:18;4075:1,15; 4078:24;4096:19; 4098:16;4105:10,13, 13,13;4106:2,5; 4126:10 <b>estates (7)</b> 4016:7,12;4019:12; 4057:2;4071:25; 4072:6;4074:2 <b>estimated (1)</b> 4157:1 <b>estimation (2)</b> 4103:22;4165:14 <b>et (9)</b> 3977:5;3984:6,6; 3999:7;4032:21; 4092:3,3;4108:9,10 <b>Europe (1)</b> 4016:11 <b>European (2)</b> 4076:3;4092:2 <b>evaluating (1)</b> 4140:9 <b>Eve (1)</b> 4012:15 <b>even (27)</b> 3981:12;3985:25; 3992:17;3996:6; 4001:3;4009:4;4015:3; 4024:8,18;4031:7,14; 4035:17;4042:10; 4050:17;4052:6; 4061:16;4068:2; 4075:10;4077:19; 4081:25;4086:12; 4089:14;4092:2; 4104:2;4110:14; 4131:18;4134:24 <b>evening (1)</b> 4062:8 <b>event (1)</b> 4134:19 <b>events (3)</b> 4006:21;4019:2; 4091:5 <b>eventually (7)</b> 4002:25;4015:16; 4051:9;4072:7; 4076:17;4085:25; 4107:6 <b>everyone (22)</b> 3980:25;3983:10; 4002:5;4008:22; 4009:9;4036:19,21; 4040:6;4045:3;	4049:13;4055:23; 4056:3,4,5,7;4067:6, 10;4079:22;4100:4; 4107:17;4152:17; 4157:6 <b>evidence (26)</b> 4000:14,15,17,25; 4001:1;4080:17; 4081:5;4083:9,13,17, 21;4084:4,12,14; 4086:20;4101:9,15; 4142:7;4145:19; 4149:20;4153:24; 4155:5;4157:12; 4159:15;4162:22,24 <b>evolution (2)</b> 3982:24;4013:7 <b>evolve (1)</b> 4078:17 <b>evolving (1)</b> 4122:21 <b>exact (11)</b> 4001:3;4020:6; 4021:18;4025:19; 4043:7;4053:9;4062:2; 4076:10;4091:4,24; 4095:1 <b>exactly (12)</b> 3979:1;3997:17,22; 4004:8;4024:11; 4027:21;4039:21; 4067:12,15;4097:16; 4101:24;4117:23 <b>EXAMINATION (11)</b> 3975:16;3996:12; 4112:15;4120:11,13; 4121:18,19;4138:13; 4152:4;4163:3,7 <b>examined (2)</b> 3975:9;4120:1 <b>example (8)</b> 3981:7;4024:21; 4028:6;4035:14; 4042:10;4074:3; 4109:14,17 <b>examples (2)</b> 4009:11;4036:11 <b>except (1)</b> 4037:24 <b>exclude (1)</b> 4084:22 <b>exclusive (1)</b> 4094:2 <b>exclusively (1)</b> 4047:21 <b>excuse (2)</b> 4061:3;4119:2 <b>excused (1)</b> 4164:14 <b>execute (1)</b> 4059:25 <b>executed (3)</b> 4146:1,15,16
---	--	--	--	--

NYSCEF DOC NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

<b>executive (6)</b> 3979:23;3980:4,8; 3997:24;3999:17; 4161:5 <b>exercise (1)</b> 4123:6 <b>exercised (1)</b> 4152:21 <b>Exhibit (32)</b> 3995:9,12,13,19; 3998:24;4007:6; 4037:2;4080:7,8; 4086:19;4087:4; 4090:2;4100:19; 4101:9,20;4113:6,7; 4117:9;4118:12; 4130:4,5,7,10,14; 4138:22;4143:21; 4145:19;4149:20; 4155:5;4159:15; 4162:9,23 <b>exhibits (1)</b> 3997:21 <b>exist (4)</b> 3993:3;4018:9; 4075:11,12 <b>existed (4)</b> 4047:16;4048:19; 4055:4;4085:10 <b>existence (2)</b> 4060:16;4086:21 <b>existing (8)</b> 3977:8;4029:16; 4051:14;4052:2; 4062:17;4097:21; 4108:16;4111:21 <b>exists (1)</b> 4144:19 <b>expense (1)</b> 4073:3 <b>expenses (1)</b> 4156:9 <b>expensive (2)</b> 4051:17;4052:13 <b>experience (8)</b> 3980:20;4035:9; 4063:6;4107:21; 4138:24;4139:8,16,20 <b>experiences (1)</b> 4005:14 <b>expert (15)</b> 4005:13,20,22; 4070:12;4083:12,16, 18;4084:3,4,8,11; 4136:20;4137:2; 4138:6;4139:13 <b>expertise (6)</b> 3991:5;4060:4; 4067:19,22;4068:14; 4117:21 <b>experts (5)</b> 4066:4;4081:7; 4082:2,16;4127:3	<b>expiration (2)</b> 4027:18;4028:4 <b>explain (9)</b> 3980:23;4009:18; 4034:2;4041:25; 4045:7;4096:12; 4105:10;4122:17; 4140:5 <b>explained (7)</b> 4001:25;4097:15; 4130:19;4136:23; 4137:9,11,12 <b>explaining (2)</b> 4126:20;4136:22 <b>explains (2)</b> 4148:23;4151:8 <b>explanation (1)</b> 4117:5 <b>explicitly (1)</b> 4121:6 <b>exploratory (1)</b> 4155:25 <b>exploring (2)</b> 4127:7;4139:22 <b>exposing (1)</b> 4097:23 <b>expression (2)</b> 3974:9;4078:7 <b>extending (1)</b> 4111:20 <b>extensive (1)</b> 3996:7 <b>extensively (1)</b> 4113:7 <b>extent (3)</b> 3989:13;4133:10,11 <b>extra (4)</b> 4053:12,25;4056:22; 4060:12 <b>extraordinarily (1)</b> 3997:5 <b>extrapolate (1)</b> 4160:1 <b>extras (1)</b> 3989:5 <b>eyes (2)</b> 4030:18;4067:19 <b>eyesore (3)</b> 4012:23;4021:4; 4062:17 <b>eyesores (1)</b> 4100:6	<b>facing (5)</b> 4046:6;4053:17,17; 4055:11;4099:8 <b>fact (12)</b> 3999:9;4001:1,2; 4070:14;4081:15,24; 4085:2;4092:1; 4134:12,18;4146:23; 4152:14 <b>FAHERTY (17)</b> 3995:25;3997:24; 4001:16,20;4007:6; 4038:20;4070:1; 4098:24;4101:23; 4112:16,19;4113:2,5, 22;4114:17;4118:22; 4119:1 <b>Fair (20)</b> 4008:2;4011:1; 4050:6;4062:23; 4070:13;4071:24; 4086:16;4101:10,25; 4103:4;4104:16; 4121:6;4122:25; 4124:13;4125:1; 4128:24;4143:13; 4146:3;4153:18,21 <b>fairly (2)</b> 3991:7;4091:14 <b>fairway (1)</b> 4041:24 <b>fairways (2)</b> 4094:14;4102:9 <b>fall (4)</b> 4022:15;4023:8; 4113:20;4137:3 <b>fallen (1)</b> 3994:25 <b>falling (6)</b> 4023:6;4026:15; 4047:14;4049:11,15; 4078:2 <b>falls (4)</b> 4135:5;4137:14,17; 4138:5 <b>familiar (24)</b> 4026:8;4039:13; 4047:7;4055:15; 4057:8;4059:5,7; 4065:22;4066:14; 4068:1;4071:24; 4074:11;4077:11; 4080:2;4088:17; 4093:21;4099:20; 4114:2;4122:25; 4127:16,16;4141:1; 4156:24;4163:25 <b>familiarity (1)</b> 4071:6 <b>families (1)</b> 4005:6 <b>family (11)</b> 3978:17;3986:17;	4004:14,23;4043:24; 4072:13,17,18; 4126:17;4130:23; 4136:9 <b>famous (3)</b> 4094:2;4095:12; 4129:11 <b>fancy (1)</b> 3979:16 <b>far (11)</b> 3988:12,18;3997:18; 4003:20,21;4009:17, 18;4010:7;4053:5; 4078:4;4140:15 <b>farm (1)</b> 4126:17 <b>farmland (2)</b> 4056:21,22 <b>fashioned (2)</b> 4052:24;4146:8 <b>fast (3)</b> 3987:1;4027:5; 4099:18 <b>faster (2)</b> 4003:2;4093:6 <b>father (59)</b> 3976:8,23;3977:18; 3979:14;3980:25; 3981:3;3983:5,14; 3984:10;3993:3; 4002:9,9;4003:5; 4004:21;4008:12,22; 4010:7,19;4012:5,24; 4015:16,19,21;4016:6, 6,14,17,18;4017:10; 4018:21;4019:20; 4020:25;4021:3,15; 4022:9;4023:5; 4026:13,20;4028:10; 4033:18;4034:4; 4035:14;4040:1; 4045:2,11;4053:20; 4056:9;4057:12; 4060:6;4063:17; 4064:7;4071:9; 4074:19,24;4077:20; 4078:17;4097:8; 4100:9;4107:6 <b>father's (4)</b> 3990:14;4004:10; 4023:20;4067:24 <b>faucet (1)</b> 3988:20 <b>feasible (2)</b> 4141:10;4142:3 <b>feat (1)</b> 4005:8 <b>features (1)</b> 4141:14 <b>February (8)</b> 4080:21,24;4081:16; 4085:23;4086:1,24; 4117:2,6	<b>Federal (4)</b> 4031:9,19;4121:23, 25 <b>feel (3)</b> 4002:5;4120:9; 4121:3 <b>feeling (1)</b> 3987:6 <b>feels (1)</b> 4100:2 <b>fees (2)</b> 3991:7,7 <b>feet (7)</b> 4009:7;4026:23; 4027:12;4031:11; 4063:9;4075:7; 4096:12 <b>fell (5)</b> 4020:24;4021:3,14; 4056:9;4074:22 <b>female (1)</b> 4016:25 <b>Ferry (3)</b> 4099:20;4104:18; 4111:25 <b>Festival (1)</b> 4073:14 <b>few (21)</b> 3980:15;3997:12; 3998:10;4008:17; 4009:22;4016:9,10; 4021:9;4034:13; 4036:17;4068:16; 4069:7;4089:11; 4090:7;4107:3; 4111:23;4127:13; 4128:18;4136:14; 4154:13;4163:9 <b>Field (2)</b> 4134:8;4138:24 <b>FIELDS (37)</b> 4120:12,14;4130:3; 4132:23;4133:12,22; 4135:17,21;4136:5; 4137:19;4138:16,20; 4144:23;4145:1,15; 4147:8,10;4148:25; 4149:16;4151:2,4; 4152:6;4153:2,23; 4154:16,25;4157:11; 4158:20;4159:11; 4160:8;4162:2,6,11,16, 19,21,25 <b>Fifth (5)</b> 3975:12;4009:24; 4010:4,12;4063:19 <b>fight (1)</b> 4000:6 <b>figure (7)</b> 4050:24;4052:11; 4053:23;4060:25; 4141:8,9;4144:17 <b>figured (6)</b>
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NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4002:23;4008:23; 4031:22;4036:21; 4048:11;4080:19 <b>figuring (5)</b> 3991:24;4060:19; 4063:9;4079:11; 4127:3 <b>filed (3)</b> 4148:20,22;4150:6 <b>files (3)</b> 4082:12;4122:13; 4132:13 <b>filing (4)</b> 4150:10;4152:2; 4153:5;4164:5 <b>fill (2)</b> 4028:2,11 <b>Filled (1)</b> 4109:12 <b>filling (1)</b> 4098:19 <b>final (9)</b> 4091:11;4111:2; 4146:16,17;4158:12, 15,17;4159:2,5 <b>finalize (1)</b> 4140:17 <b>finalized (1)</b> 4098:19 <b>Finally (3)</b> 4026:1;4032:25; 4038:8 <b>Finance (3)</b> 3975:25;3987:24; 4036:21 <b>financial (6)</b> 3985:16;3987:18; 4081:3;4117:1;4143:8; 4156:25 <b>financially (2)</b> 4141:10;4142:3 <b>financing (6)</b> 4035:11,22,24; 4054:9;4059:18; 4061:9 <b>find (7)</b> 3991:24;4002:2; 4006:10;4028:2,16; 4082:1;4145:24 <b>finding (2)</b> 3990:15;4140:7 <b>fine (8)</b> 4000:13,18;4006:16; 4007:1;4048:24; 4086:1,7;4115:17 <b>finest (11)</b> 3991:11;4016:7; 4019:2;4037:16; 4040:7,19;4041:5; 4056:10;4064:8; 4073:13;4108:2 <b>finish (5)</b> 4050:19;4090:8,10;	4095:4;4097:21 <b>finished (3)</b> 4060:22;4093:20; 4146:9 <b>finishing (1)</b> 4097:21 <b>firm (3)</b> 3980:10;4120:22; 4137:14 <b>firms (2)</b> 3985:17;4062:10 <b>first (49)</b> 3974:16;3975:8; 3981:7;3995:18; 4001:19;4004:18; 4005:6;4007:23; 4008:9;4009:10,22; 4012:9;4013:19,19; 4015:19;4016:24; 4022:1;4039:10; 4041:10;4046:9; 4050:25;4051:3; 4058:15;4062:23; 4065:15,18;4066:6,7; 4069:3;4071:21; 4072:24;4075:1; 4082:15;4083:23; 4092:2,3;4096:12; 4115:10;4117:8; 4120:1;4126:1,3; 4134:4;4135:14; 4139:22;4143:20; 4144:2;4150:14; 4158:1 <b>firsthand (1)</b> 4005:14 <b>fit (1)</b> 3984:18 <b>fits (1)</b> 4137:11 <b>five (15)</b> 3981:10;3984:3; 3989:4;4010:13; 4024:6;4029:14,18; 4030:4;4031:7; 4039:23;4078:23; 4119:7;4142:12; 4147:1;4156:21 <b>five-minute (3)</b> 4030:21;4037:4; 4087:2 <b>fix (3)</b> 4021:3;4026:25; 4087:17 <b>fixed (2)</b> 4021:15;4089:2 <b>fixing (1)</b> 4095:3 <b>fixture (1)</b> 4045:4 <b>flare (1)</b> 4003:6 <b>flat (2)</b>	4039:18;4042:2 <b>flatter (1)</b> 4046:7 <b>fleeting (1)</b> 3998:1 <b>Flemmons (6)</b> 4164:22;4165:20,23, 24;4166:5,5 <b>flexibility (1)</b> 3982:21 <b>flip (3)</b> 4042:5,6;4061:4 <b>floating (1)</b> 4043:13 <b>flood (1)</b> 4036:20 <b>Floor (6)</b> 4009:19,24;4010:2, 8;4037:25;4053:10 <b>floors (4)</b> 4009:23;4037:25; 4053:16;4055:4 <b>floor-to-ceiling (2)</b> 4053:16;4055:3 <b>Florida (8)</b> 4039:18;4040:12; 4041:5;4042:3,20; 4044:13;4077:10; 4079:23 <b>flow (2)</b> 4028:6;4044:15 <b>flows (2)</b> 4028:4,24 <b>flying (1)</b> 4076:13 <b>focus (4)</b> 4111:20;4130:11; 4145:21;4157:16 <b>folks (2)</b> 4127:6;4145:9 <b>followed (1)</b> 4166:6 <b>following (4)</b> 4021:19;4069:13; 4116:15;4160:12 <b>follows (2)</b> 3975:9;4120:2 <b>food (2)</b> 4090:17;4110:22 <b>foot (8)</b> 4010:10;4015:15; 4029:18;4032:12; 4035:18;4040:14; 4063:5;4066:16 <b>footage (4)</b> 4008:25;4009:21; 4035:13;4064:1 <b>foothold (1)</b> 4005:4 <b>force (1)</b> 4072:16 <b>forced (1)</b> 4034:11	<b>forefront (2)</b> 4032:8;4033:16 <b>foresee (1)</b> 4126:15 <b>foreseeable (1)</b> 4112:7 <b>forethought (1)</b> 4012:4 <b>forever (2)</b> 3988:20;4015:12 <b>forget (6)</b> 4020:6;4025:18; 4043:7;4062:2;4091:4; 4095:1 <b>forgive (2)</b> 4033:21;4148:16 <b>forgiving (1)</b> 4134:20 <b>forgo (1)</b> 3992:11 <b>formalized (1)</b> 3979:21 <b>formally (1)</b> 3977:6 <b>former (12)</b> 3984:23;4012:22; 4034:3;4049:10; 4062:11;4064:10; 4072:21;4078:4,5; 4108:17;4117:11; 4118:16 <b>forte (1)</b> 4034:7 <b>forth (5)</b> 3978:7;4082:18; 4100:4,4;4131:4 <b>forward (8)</b> 3983:8;4081:19; 4099:18;4111:22; 4127:1;4139:9,22; 4156:20 <b>forwarding (1)</b> 4027:6 <b>found (3)</b> 3977:11;4005:12; 4124:8 <b>foundation (5)</b> 3989:19,20;3990:3; 3991:13;4083:22 <b>four (16)</b> 3981:9;3988:16; 3989:4,9;4024:6; 4029:18;4031:6; 4052:7;4054:6; 4058:19;4065:11,15, 19;4076:14;4078:22; 4088:10 <b>fourth (1)</b> 4065:10 <b>foyer (1)</b> 4025:5 <b>Francisco (1)</b> 4073:14	<b>frankly (4)</b> 4028:21;4047:22; 4056:6;4078:4 <b>Fred (1)</b> 4004:2 <b>free (3)</b> 3994:17;4082:7; 4131:20 <b>frequently (2)</b> 4030:8;4140:2 <b>Friday (6)</b> 4118:14;4155:11; 4166:2,7,21,23 <b>friendly (1)</b> 4063:17 <b>front (15)</b> 3986:25;3995:16; 3998:2;4025:10; 4035:11;4045:5; 4048:8;4072:17; 4073:10;4105:17,18; 4110:6;4111:3; 4133:12;4147:17 <b>frontier (1)</b> 4003:8 <b>fruition (2)</b> 4040:10;4041:2 <b>full (8)</b> 3991:22;4025:9; 4059:14;4063:25; 4064:1;4066:8; 4139:10;4144:2 <b>fully (4)</b> 4018:14;4088:25; 4144:5;4150:8 <b>fun (3)</b> 4041:15;4058:25; 4064:14 <b>function (4)</b> 4027:21;4057:4; 4091:6;4098:5 <b>functional (1)</b> 4042:24 <b>functioning (1)</b> 3988:2 <b>functions (5)</b> 3987:15;3988:5; 3994:24;4034:23; 4105:23 <b>fund (1)</b> 4051:4 <b>funds (1)</b> 3993:12 <b>further (10)</b> 3979:6;3990:3; 3998:23;4010:19; 4042:4;4058:7; 4112:13;4118:22; 4162:25;4164:12 <b>future (6)</b> 4009:13;4055:21; 4112:3,7;4126:16; 4140:12
---	--	---	--	--

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

	<b>geomorphology (1)</b> 4075:7	4036:19;4042:21; 4046:24;4060:2; 4068:24;4069:11; 4090:8;4097:10; 4113:3,4;4117:21; 4120:15,16;4122:16; 4163:9	4117:24;4160:8	4124:8
<b>G</b>	<b>Georgia (1)</b> 4151:21		<b>greater (3)</b> 4043:11;4125:14,20	<b>Gulf (2)</b> 4034:3;4051:2
<b>gambles (1)</b> 4030:1	<b>gets (4)</b> 4033:24;4046:24; 4100:4,5		<b>greatest (1)</b> 4062:18	<b>Guthrie (1)</b> 4145:24
<b>game (4)</b> 3977:8,11;3978:1; 4024:1	<b>gilded (2)</b> 3981:20;4051:21	<b>government (4)</b> 4052:7;4107:3,12; 4109:16	<b>green (8)</b> 4042:17;4043:3,14, 22;4048:9,17;4088:6; 4098:10	<b>guy (14)</b> 3978:3;3979:3; 3984:17;3985:16,16, 20;3987:24;4015:19; 4019:16;4024:7; 4051:4;4060:8,9,9
<b>gamut (2)</b> 3991:22;4063:25	<b>gist (1)</b> 4124:11	<b>governmental (2)</b> 3983:7;4109:18	<b>Greenblatt (2)</b> 4145:10,23	<b>guys (4)</b> 3981:24;4031:12; 4060:10;4066:4
<b>garage (2)</b> 4003:1;4065:7	<b>given (5)</b> 4006:6;4059:15; 4080:5,13;4091:5	<b>grab (1)</b> 4005:4	<b>Greenfield (10)</b> 4164:18,19,25; 4165:8,19;4166:4,14, 17,21,25	<b>gym (3)</b> 3993:7;4015:20; 4034:18
<b>gas (1)</b> 4076:4	<b>gives (1)</b> 4129:12	<b>grabbed (1)</b> 4159:23	<b>greens (2)</b> 4043:12;4098:1	
<b>gave (8)</b> 3974:15;3979:18; 3983:2;4009:3;4018:3; 4072:17;4113:12; 4115:4	<b>giving (5)</b> 4009:8;4030:17,21; 4077:23;4084:17	<b>graduate (1)</b> 3976:1	<b>gregarious (1)</b> 3979:3	<b>H</b>
<b>gears (3)</b> 4142:8;4147:11; 4158:18	<b>glad (1)</b> 4081:14	<b>graduated (2)</b> 3975:24;3976:2	<b>grill (1)</b> 4065:2	<b>HABBA (5)</b> 3987:8;4162:10,20; 4165:25;4167:1
<b>general (15)</b> 3979:9;3987:6; 3997:7,18;4030:19; 4034:5,6,8;4051:1; 4080:6;4081:9,13; 4109:15;4125:7; 4154:7	<b>glass (4)</b> 4053:10,16;4055:3; 4110:2	<b>graduation (1)</b> 3976:3	<b>ground (9)</b> 3981:17,21,24; 4006:16;4060:8; 4062:24;4063:1; 4107:24;4111:16	<b>habitat (1)</b> 4123:17
<b>generalize (2)</b> 3988:13;3989:11	<b>global (1)</b> 4122:10	<b>Grand (1)</b> 4004:20	<b>grounds (4)</b> 3989:17,18;4091:22; 4131:8	<b>habitats (1)</b> 4123:11
<b>generalized (1)</b> 4054:12	<b>glory (3)</b> 4078:4,5;4108:17	<b>grandeur (1)</b> 4095:24	<b>ground-up (5)</b> 3977:4,9,14; 4041:20;4051:20	<b>hair (1)</b> 4004:10
<b>generally (26)</b> 3982:17,23;3985:10; 3988:9;3992:5; 3995:21;4022:23; 4028:7,9;4034:6; 4042:20;4070:21; 4079:17;4106:24; 4114:13;4122:2; 4123:3;4124:2; 4127:14,21,25; 4139:18;4141:1,6; 4142:21;4158:12	<b>goes (5)</b> 3995:11;4013:1; 4069:1;4085:2;4104:5	<b>grandfather (7)</b> 4002:10,11,13,16,17, 18;4004:2	<b>group (6)</b> 3988:25;3989:8; 4055:21;4056:3; 4096:20;4108:8	<b>half (3)</b> 4037:8,8;4109:6
<b>General's (8)</b> 4085:9;4107:5; 4148:23;4151:24; 4152:15;4163:20,23; 4164:1	<b>gold (3)</b> 4002:14;4031:10,19	<b>grandfather's (1)</b> 4004:9	<b>GSA (1)</b> 4107:12	<b>hallway (1)</b> 4110:5
<b>generate (3)</b> 4044:15;4079:12; 4129:18	<b>gold (82)</b> 3981:11;3988:15; 4039:10,14,16;4040:4, 7,10,19;4041:5,11,18; 4043:5,21;4044:10,10, 16;4045:4;4047:6,7,9; 4048:2,16,22;4055:13, 16;4056:3,7,10,13; 4057:6,8,16,21;4071:6, 8,11,13;4074:10,20,22; 4075:13,15;4076:8,17; 4077:22;4078:12,20, 23,25;4079:5,19; 4087:16;4088:10,14, 15;4090:18;4094:2,8; 4095:12;4096:10,24; 4097:18,23,24;4098:6; 4099:12,20;4100:10, 14;4103:7;4111:25; 4113:10,13,19;4142:9, 21,22,23;4143:12,18; 4146:3	<b>grandkids (1)</b> 4126:16	<b>Gucci (1)</b> 4011:15	<b>handbag (1)</b> 4068:24
<b>generated (2)</b> 3982:20;4055:9	<b>golfer (1)</b> 4040:3	<b>granting (1)</b> 4124:23	<b>guess (28)</b> 3987:10,16,23; 4012:15;4016:8; 4038:10;4042:4; 4045:20;4046:13; 4050:13;4054:5; 4057:17;4058:18; 4061:5;4062:18; 4071:17;4088:6; 4098:15;4099:7; 4105:15;4108:18; 4112:5;4115:10; 4118:21;4129:19; 4144:23;4156:16; 4164:13	<b>handed (3)</b> 3995:12;4080:7; 4130:7
<b>generating (2)</b> 4035:5;4104:4	<b>good (27)</b> 3974:14;3975:18,19; 3982:12;3987:5; 3988:23;3990:15; 4001:1;4021:5,6; 4024:8;4029:5;	<b>grass (2)</b> 4042:3;4076:25	<b>guidance (4)</b> 4124:14;4125:11; 4126:2;4141:21	<b>handing (10)</b> 3998:24;4114:20; 4142:11;4145:4; 4147:18;4149:2; 4154:1,18;4157:15; 4158:22
<b>genes (1)</b> 4037:8		<b>great (46)</b> 3978:4;3982:11,19; 3993:25;3994:6; 4002:13;4008:4; 4009:10;4010:4,17; 4011:15;4022:10; 4023:18;4027:19; 4028:5,12;4029:3,5; 4036:21,22,22; 4053:18;4054:18,18, 19;4057:2;4059:12,20; 4060:14;4062:10; 4063:10,22;4067:7,8; 4073:16;4077:21; 4095:4;4097:11; 4098:5;4103:12; 4109:14,14,17;4110:6;	<b>guide (1)</b> 3998:5	<b>handle (2)</b> 3994:13,14
<b>genius (2)</b> 4010:18;4012:5			<b>guided (1)</b> 4139:17	<b>handling (1)</b> 4076:6
<b>geography (2)</b> 4088:17;4144:15			<b>guilty (1)</b>	<b>hands (4)</b> 4130:23,25;4136:9, 11
				<b>happen (3)</b> 4053:24;4098:4; 4107:19
				<b>happened (10)</b> 3976:12;4013:13; 4016:4;4041:14;

NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4059:16;4070:6; 4072:2;4115:6,8; 4122:16 <b>happens (4)</b> 4025:9;4027:15; 4112:5;4123:5 <b>happy (7)</b> 3989:4;3996:13; 4006:22;4043:15; 4061:1,4;4134:4 <b>hard (5)</b> 3981:19;4039:19; 4097:9,9;4146:13 <b>harm (1)</b> 4099:4 <b>harvested (1)</b> 4094:21 <b>Hawaii (5)</b> 4066:14,19;4117:18; 4118:1,15 <b>Hawthorn (5)</b> 3987:13,14,20; 4166:18,22 <b>head (2)</b> 4063:16;4133:22 <b>headache (4)</b> 3983:24;3986:5; 3988:19;4050:24 <b>headaches (2)</b> 3988:22;4111:13 <b>heading (3)</b> 4096:6;4099:8; 4154:7 <b>hear (14)</b> 4001:6;4002:4; 4068:16;4070:15; 4081:6;4084:7,23; 4117:18;4134:4; 4136:4,5;4162:8; 4163:4,6 <b>heard (7)</b> 4022:19;4032:11; 4057:5;4113:16; 4114:6,24;4136:3 <b>hearsay (18)</b> 3996:3;3999:15,22, 23,24;4000:14; 4005:13;4007:10; 4010:22,24;4028:20; 4080:18;4083:17,22; 4084:5,11;4101:3,7 <b>heart (3)</b> 4023:19;4051:22; 4088:20 <b>heartbeat (1)</b> 4066:18 <b>heat (1)</b> 4042:21 <b>heavily (2)</b> 4106:20;4108:5 <b>heck (1)</b> 4050:6 <b>height (4)</b>	4008:10;4010:6; 4046:15;4060:13 <b>Heinz (3)</b> 4024:19,19;4026:2 <b>held (3)</b> 4056:11;4119:14; 4130:21 <b>helicopters (1)</b> 4076:5 <b>help (3)</b> 3993:12;4055:24; 4121:14 <b>helpful (1)</b> 4129:16 <b>helping (1)</b> 4124:15 <b>hey (5)</b> 4017:18;4043:8; 4076:24;4096:21; 4097:8 <b>hierarchy (1)</b> 3981:23 <b>high (7)</b> 3977:7;4038:1; 4055:7;4122:10; 4152:7,13;4164:3 <b>high-end (5)</b> 3981:6;4009:13,23; 4044:14;4069:8 <b>higher (5)</b> 4103:23;4125:13,22; 4130:25;4136:10 <b>highest (11)</b> 4035:18;4040:13; 4042:22;4049:20; 4066:15;4073:15; 4079:11;4141:8,23,25; 4142:5 <b>Highlander (2)</b> 4148:3,6 <b>highly (2)</b> 4083:20;4109:19 <b>Hilton (3)</b> 4108:19;4118:17,20 <b>himself (3)</b> 3977:23;3991:2; 4003:2 <b>historic (1)</b> 4123:8 <b>historical (2)</b> 4006:15,21 <b>historically (1)</b> 4107:20 <b>history (15)</b> 3995:21;3998:3; 3999:6;4000:8;4001:8; 4002:8;4005:17,20; 4016:21;4066:19; 4073:23;4077:21; 4078:20;4094:17; 4106:3 <b>hit (1)</b> 4043:13	<b>hitting (1)</b> 4048:9 <b>Hold (8)</b> 3986:24;4007:8; 4029:12;4066:15; 4108:18;4109:11; 4110:22;4112:6 <b>Holdings (1)</b> 4118:17 <b>holds (1)</b> 4090:15 <b>hole (7)</b> 4043:4;4048:4; 4057:15;4058:2; 4075:25;4076:1; 4113:19 <b>holes (13)</b> 4043:5,11,16,18; 4056:18;4087:7; 4088:9,11,25;4095:11, 23;4096:6;4099:7 <b>home (14)</b> 3975:11;3976:13; 4016:16,16;4023:4,13; 4024:21;4076:2; 4105:12,16,17,20,21; 4120:5 <b>homes (2)</b> 4026:3;4073:23 <b>honestly (7)</b> 3978:16;4004:6; 4024:2;4036:18; 4054:22;4100:1; 4111:12 <b>Honor (68)</b> 3974:17,24;3975:15; 3987:6,8;3990:10,11; 3995:7,25;3996:13; 3997:24;3998:8; 4001:21;4003:13; 4006:13,19;4011:1; 4038:13;4043:15; 4052:17,22;4054:3; 4070:1,17;4080:16; 4082:22;4083:6,23; 4091:17;4093:1,15; 4101:17,19;4103:4; 4112:11,14,19,20,22; 4113:22;4114:17,22; 4115:14;4118:22; 4119:4;4120:12; 4125:16;4131:3,15,22; 4132:6;4133:6; 4134:15;4135:3,9; 4136:19;4137:23; 4139:16;4144:23; 4145:15;4147:8; 4152:9;4159:12; 4160:9;4162:2,17; 4163:4;4164:12 <b>Honorable (1)</b> 3974:2 <b>Honor's (2)</b>	3990:2;4001:7 <b>hop (2)</b> 3981:8;4062:8 <b>hope (1)</b> 4097:10 <b>hopefully (3)</b> 4030:5;4165:6,7 <b>hoping (1)</b> 4067:2 <b>Horatio (1)</b> 4002:12 <b>horse (1)</b> 4055:24 <b>host (6)</b> 4018:21,25;4019:2; 4056:12;4090:16; 4091:5 <b>hosted (1)</b> 4094:3 <b>Hotel (93)</b> 3977:6;3987:14,14; 3988:25;3989:1,2,14; 4004:20,20;4011:4; 4022:6,8;4033:6,8,17; 4034:8,17,22,24; 4035:1,7,9,10,19,20; 4036:4,22,22,23,25; 4037:14,15,18,19; 4049:10,21;4050:15, 17;4052:6;4059:4,14, 15;4061:23;4063:24; 4064:20;4065:2,8,13, 18,21;4066:1,4,10,23, 24;4067:18;4068:8,11, 12;4071:2;4075:5; 4077:18;4079:5,19; 4087:15,17;4088:13; 4089:6,16,18;4090:19; 4091:16;4095:1,10,10, 14;4096:10;4097:1; 4106:17,17,22;4107:5, 14;4108:3,5,6;4110:1, 23;4111:1,4;4117:25; 4118:5,15,19 <b>hotel/condominium (1)</b> 4034:24 <b>hotels (17)</b> 3980:13,14;3988:15, 25;3990:4,23;3993:22; 4002:14,15;4033:10, 14,18;4034:1,7;4038:3, 4;4108:2 <b>hottest (2)</b> 4078:24;4079:22 <b>hourly (2)</b> 4152:6,12 <b>hours (2)</b> 4051:7;4068:16 <b>house (17)</b> 4002:19;4017:19; 4020:2,3,5,7,9; 4024:18,20,21;4057:1, 2;4072:12,18;4073:20;	4098:25;4124:4 <b>housing (5)</b> 4024:19;4057:20; 4154:9,11,13 <b>Hudson (8)</b> 3976:21;3978:19; 4012:19;4014:25; 4046:16;4047:22; 4048:18;4049:4 <b>Huge (2)</b> 4104:12;4110:23 <b>hundreds (3)</b> 4079:25;4089:15; 4103:24 <b>Huperts (1)</b> 3978:1 <b>HVAC (3)</b> 3994:12;4060:8,9 <b>Hyatt (3)</b> 4004:20,22;4034:7 <b>hypothetical (21)</b> 4128:22,22;4129:2, 3,5,5,6,6;4130:25; 4136:11,13,13,17,17, 17,24,24;4137:6; 4138:6;4144:4,19
<b>I</b>				
<b>ice (2)</b> 4021:14;4099:16 <b>iconic (5)</b> 4022:10;4077:25; 4078:1;4095:5,12 <b>idea (5)</b> 4060:14;4082:12; 4104:9;4139:8,18 <b>ideas (1)</b> 4013:15 <b>ill (1)</b> 4085:3 <b>image (3)</b> 3988:22;3990:25; 4113:9 <b>imagination (1)</b> 4110:14 <b>imagine (5)</b> 3976:9;4004:8; 4019:16;4100:18; 4107:14 <b>immediately (2)</b> 4029:9;4166:16 <b>immigrants (1)</b> 4002:12 <b>impact (1)</b> 4005:1 <b>important (6)</b> 3997:14;3998:19; 4028:25;4033:20; 4127:9;4156:5 <b>improper (1)</b> 4084:25 <b>improvements (2)</b>				



NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4029:17;4087:12 <b>impute (1)</b> 4115:9 <b>in-between (1)</b> 4010:5 <b>Inc (1)</b> 4118:17 <b>incentive (1)</b> 4125:8 <b>incentives (1)</b> 4124:19 <b>incentivized (1)</b> 4029:22 <b>inception (2)</b> 4013:24;4062:5 <b>inches (1)</b> 4060:12 <b>income (8)</b> 4035:5;4130:24; 4136:10;4140:13; 4156:10,18;4157:4,8 <b>incorporated (2)</b> 4055:5;4065:19 <b>incorporating (1)</b> 4099:12 <b>increased (1)</b> 4117:3 <b>incredible (53)</b> 3976:23;3977:6,22, 24;3981:10;3983:25; 3990:19;3994:2,15; 4002:11;4003:3; 4005:8;4010:18; 4017:14,15,23;4018:8; 4023:3;4024:12; 4035:25;4045:9; 4047:15;4048:7; 4049:11,18;4052:14; 4055:9;4057:13,14,14, 21;4059:19;4060:20; 4063:3;4064:7,21; 4066:1;4073:5;4075:6, 15;4077:21;4078:20; 4079:24;4088:14; 4095:24;4100:10,13; 4105:1;4107:2,7,9; 4110:3;4112:9 <b>incredibly (3)</b> 4004:24;4008:14; 4023:2 <b>incrementally (1)</b> 4080:20 <b>indeed (2)</b> 4082:5;4159:5 <b>independent (2)</b> 4081:16;4104:3 <b>indicated (2)</b> 4132:9;4138:2 <b>indigenous (1)</b> 4092:5 <b>individual (1)</b> 4085:1 <b>individuals (1)</b>	4035:21 <b>Indoor (2)</b> 4025:18,20 <b>induce (1)</b> 4134:5 <b>industrial (1)</b> 4063:3 <b>industrialists (1)</b> 4016:25 <b>industry (4)</b> 4017:2;4061:5; 4070:4;4090:16 <b>infant (1)</b> 4004:11 <b>inflation (1)</b> 4141:12 <b>information (8)</b> 4081:23;4086:9; 4131:7;4134:1;4138:1; 4151:15;4159:25; 4160:1 <b>inheritance (1)</b> 4126:10 <b>in-house (1)</b> 3985:16 <b>initial (4)</b> 3992:14;4061:25; 4067:4;4126:24 <b>initially (3)</b> 3976:21;4078:18; 4150:6 <b>inland (1)</b> 4042:4 <b>input (1)</b> 4156:23 <b>inside (6)</b> 4053:3;4089:6; 4091:10;4095:9; 4104:18;4110:3 <b>installing (2)</b> 4060:9;4098:2 <b>instances (1)</b> 4125:13 <b>instant (1)</b> 4079:2 <b>instead (3)</b> 4129:15;4146:13; 4150:6 <b>instruct (1)</b> 4134:12 <b>instructed (2)</b> 4007:12;4134:8 <b>instruction (3)</b> 4007:17;4070:2; 4134:10 <b>insult (1)</b> 4152:10 <b>intended (1)</b> 4111:16 <b>intent (7)</b> 3997:10,13;4081:7; 4084:24;4085:3,15; 4086:1	<b>intention (1)</b> 4133:16 <b>interaction (2)</b> 3985:13;3986:15 <b>intercoastal (2)</b> 4017:12,15 <b>interest (3)</b> 4019:21;4104:6; 4128:1 <b>interesting (9)</b> 3976:8;4006:10; 4017:10;4031:8; 4052:9;4062:13; 4072:4,25;4094:14 <b>interests (1)</b> 4039:25 <b>interior (1)</b> 4090:4 <b>interjection (1)</b> 3989:12 <b>internal (4)</b> 4011:24;4125:9; 4127:17;4140:16 <b>international (14)</b> 3981:12;3983:2; 4033:6;4037:13; 4039:16,22;4051:2; 4061:23;4065:21; 4067:18;4074:10; 4096:10;4118:14; 4142:22 <b>internship (1)</b> 4047:13 <b>intimate (5)</b> 4023:10;4051:19; 4075:5;4089:12,14 <b>intimately (3)</b> 3985:7,20;4071:10 <b>into (88)</b> 3974:19;3977:19; 3978:2;3981:14; 3988:6;3989:1,8; 3990:1,5;3991:21; 3992:1,6;3993:10; 4000:14,15,17; 4004:24;4005:8; 4009:6;4013:18; 4016:18;4021:15; 4029:4;4030:5; 4031:13,17;4032:15; 4033:2;4040:3,10; 4041:4,11,17;4042:12, 18;4043:9;4047:15; 4048:9;4049:19; 4050:10,19;4054:7,11; 4055:5;4056:10; 4057:3,23;4058:14; 4061:2,6,10;4063:3; 4065:19;4068:25; 4073:8;4075:8; 4080:16;4083:9; 4087:13;4088:6,13; 4094:11;4096:13;	4099:12;4100:12; 4101:9,15;4103:10; 4105:1,22;4107:5; 4108:2;4109:9;4110:1, 13;4113:20;4119:17; 4129:8,9,17;4137:1,11, 14,17;4142:7;4151:8; 4153:24;4157:12 <b>intricacies (1)</b> 4148:16 <b>intricate (1)</b> 4008:14 <b>intrinsically (1)</b> 3991:24 <b>introduce (2)</b> 4085:7;4101:9 <b>introducing (2)</b> 4084:5;4101:8 <b>invested (1)</b> 4077:24 <b>investment (3)</b> 4036:2;4068:9; 4080:12 <b>involved (47)</b> 3983:14,17;3984:2, 11,11,15;3985:2,8,25; 3986:18,19;4021:8; 4022:11,11;4027:9,10, 16;4043:21;4047:5,19; 4048:20;4057:16,18; 4059:8;4061:18; 4062:3;4071:8,10; 4077:4,15,17,18; 4096:9,15;4099:19,24; 4100:9;4103:19; 4106:21,24;4107:6,16; 4108:5;4111:8; 4122:17;4161:6,6 <b>involvement (18)</b> 3994:20;4022:7; 4027:5,8;4040:17; 4043:20;4057:11; 4061:25;4065:24; 4076:10,11;4077:13; 4096:13;4099:23; 4106:15,19;4108:3; 4147:12 <b>involving (2)</b> 4020:19;4145:9 <b>Ireland (3)</b> 3998:14;4096:10,18 <b>irrelevant (2)</b> 4082:25;4086:2 <b>irrigation (1)</b> 4042:23 <b>IRS (4)</b> 4121:17;4122:4; 4125:10;4130:20 <b>Island (7)</b> 4039:23;4041:7; 4043:3,13;4058:9; 4094:19,21 <b>issue (7)</b>	4052:18;4085:10; 4086:8;4122:3; 4132:25;4133:2,25 <b>issues (4)</b> 3994:5;3997:10; 4077:2;4133:15 <b>items (1)</b> 4062:21 <b>iterations (1)</b> 4012:25 <b>Ivanka (7)</b> 3982:1,4,11; 3983:18;3995:2; 4077:16;4107:6
<b>J</b>				
<b>Jack (1)</b> 4100:10 <b>January (2)</b> 4145:12,22 <b>Jason (2)</b> 4145:10,23 <b>jaw (1)</b> 4047:2 <b>jEAN-Georges (1)</b> 4037:15 <b>Jeff (2)</b> 3985:4,5 <b>Jefferson (1)</b> 4106:2 <b>Jersey (4)</b> 4055:22,23,24,25 <b>Jeter (1)</b> 4045:19 <b>jewel (7)</b> 4017:3;4022:13,16; 4057:23;4078:3,6; 4107:7 <b>Jill (2)</b> 4143:24;4145:9 <b>job (14)</b> 3979:10;3982:7; 3986:25;4002:22; 4012:9;4028:25; 4029:3,5;4049:17; 4060:8,15,17;4093:21; 4100:3 <b>jobs (2)</b> 4047:13;4050:9 <b>Joe (1)</b> 4035:6 <b>John (7)</b> 3975:12;4033:24; 4055:20;4056:25; 4072:23;4129:22,24 <b>join (2)</b> 4058:15,17 <b>joined (5)</b> 3976:10,14;4013:12; 4047:3;4058:22 <b>joining (1)</b> 4118:17				

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>joke (1)</b> 3974:22 <b>Joshua (1)</b> 4142:16 <b>Jr (3)</b> 3974:18;3975:12; 4143:23 <b>Judge (3)</b> 3974:2;4151:2; 4152:22 <b>judged (1)</b> 4009:14 <b>judgments (1)</b> 4141:18 <b>judicial (2)</b> 4091:19,25 <b>July (2)</b> 3998:16;4116:1 <b>jump (2)</b> 3978:2;4082:24 <b>jumped (1)</b> 4047:21 <b>junction (1)</b> 4062:19 <b>June (4)</b> 4116:3;4147:21; 4149:9;4155:9 <b>jungle (1)</b> 4042:17 <b>jungly (1)</b> 4042:3 <b>jury (2)</b> 4070:15;4083:3 <b>justice (2)</b> 4031:14;4064:24 <b>justify (1)</b> 4067:11	4052:9;4058:10; 4115:15;4126:14; 4131:21 <b>kinds (2)</b> 4107:25;4128:6 <b>Kise (38)</b> 4003:14,19;4006:7; 4007:16,22;4008:2; 4030:9,10,17;4114:22, 24;4115:3,6,17,21; 4119:4,7,10;4131:15, 24;4132:19,21;4133:6; 4134:23;4135:18; 4152:17,21;4165:4,7, 11,17,22,24;4166:1,8, 12,15,22 <b>kitchen (1)</b> 4035:4 <b>Kluge (4)</b> 4072:21,23,23; 4105:12 <b>K-L-U-G-E (1)</b> 4072:23 <b>knew (3)</b> 3993:24;4000:21; 4161:10 <b>knowing (4)</b> 3997:18;4050:6; 4122:8,11 <b>knowledge (5)</b> 4022:1,3;4047:23; 4116:13;4127:5 <b>known (4)</b> 4096:2;4105:10; 4147:12;4158:9 <b>Kushman (1)</b> 4149:11	4140:17;4144:14; 4146:2;4158:2 <b>landfill (3)</b> 4100:2;4103:6; 4104:25 <b>landing (1)</b> 4094:15 <b>landmark (2)</b> 4027:2;4107:21 <b>landscapers (1)</b> 4103:22 <b>language (1)</b> 4091:25 <b>Laposa (8)</b> 4164:25;4165:5,8, 13,19,20;4166:6,11 <b>Laptops (1)</b> 3974:3 <b>large (8)</b> 3978:17;3986:17; 4014:25;4028:19; 4089:11;4108:21; 4122:9;4126:15 <b>largely (2)</b> 3979:7;4026:23 <b>larger (2)</b> 4072:7;4090:5 <b>largest (9)</b> 3977:1,1,15; 4012:21;4013:9; 4022:25;4023:1; 4064:14;4108:18 <b>Las (6)</b> 3977:17;4036:16; 4059:4,14,21;4060:21 <b>last (11)</b> 3997:25;4008:17; 4013:10;4029:3; 4074:24;4111:23; 4114:9;4116:7; 4148:13;4150:16; 4158:11 <b>late (6)</b> 3981:8;4003:9; 4005:9;4036:14; 4060:16;4134:5 <b>later (13)</b> 3978:9;4015:10; 4022:4,21;4026:19; 4030:22;4036:11; 4057:18;4067:9; 4072:12;4073:7; 4081:6;4126:9 <b>law (11)</b> 4120:22;4122:20,21; 4127:15,22;4151:20, 24;4163:11,13,17,19 <b>lawn (1)</b> 4097:25 <b>laws (1)</b> 4140:17 <b>lawyer (10)</b> 4120:20;4121:8,9,	15,16;4122:3;4124:18; 4127:22;4151:11; 4161:13 <b>lawyers (2)</b> 4007:19;4152:14 <b>lay (3)</b> 3989:25;3991:12; 3992:14 <b>laying (1)</b> 4148:20 <b>layouts (1)</b> 4074:3 <b>lead (2)</b> 3979:7;4095:2 <b>leaders (1)</b> 4017:3 <b>leading (9)</b> 3990:20;3997:2; 4015:17,24;4017:4; 4035:14;4036:17; 4125:16;4139:12 <b>leaky (1)</b> 3988:20 <b>learn (3)</b> 3977:7;3978:5; 4050:14 <b>Learned (4)</b> 4002:22;4003:5; 4060:10;4063:1 <b>learning (1)</b> 3978:20 <b>lease (13)</b> 4027:22;4028:1,10; 4029:10,13,13,14; 4030:7,7;4032:11; 4040:2;4107:16; 4109:15 <b>leased (1)</b> 4029:4 <b>leases (3)</b> 4027:14;4028:4,12 <b>leasing (6)</b> 4027:9,10,16,23; 4029:15;4108:9 <b>least (7)</b> 3974:8;3978:10; 4017:20;4037:20; 4045:17;4145:8; 4157:9 <b>leave (3)</b> 4030:15;4034:16; 4092:4 <b>leaving (1)</b> 4079:22 <b>leeway (1)</b> 4070:16 <b>left (9)</b> 3976:8;3977:2; 3987:1;4014:18; 4015:1;4037:15; 4064:22;4093:14,19 <b>legal (10)</b> 4120:20;4124:18;	4126:20;4132:1; 4144:7,10;4150:25; 4151:10,19;4152:5 <b>legally (4)</b> 3983:6;4141:15,19; 4142:3 <b>lengthy (2)</b> 3996:12;4077:1 <b>Leonard (2)</b> 4135:7;4143:24 <b>less (4)</b> 4006:10,17;4121:12; 4125:21 <b>letter (2)</b> 4155:19,22 <b>letterPDF (1)</b> 4155:15 <b>level (12)</b> 3989:9;3992:25; 4011:16;4014:16; 4024:24;4042:2; 4045:24;4048:23; 4063:7;4089:3; 4097:22;4164:3 <b>levels (2)</b> 3991:20;4046:17 <b>leverage (2)</b> 4017:22;4019:21 <b>Lewis (1)</b> 4120:23 <b>library (1)</b> 4025:14 <b>license (6)</b> 3981:13;3992:7,10; 3995:4;4066:7,8 <b>licensing (16)</b> 3977:21;3983:2; 3986:19;3990:13; 3992:3;3993:14; 3994:21;4060:2,2; 4066:21,22;4067:13; 4111:18,24;4118:2,16 <b>licensor (1)</b> 3992:17 <b>life (1)</b> 4011:6 <b>lifting (1)</b> 4010:5 <b>lighthouse (5)</b> 4094:18;4095:8,9, 12;4096:7 <b>likes (1)</b> 4016:17 <b>limitations (3)</b> 3992:13;4003:15; 4081:10 <b>limited (2)</b> 4131:9;4134:2 <b>limiting (1)</b> 4131:4 <b>line (11)</b> 3978:25;3996:6,12; 4027:17;4075:10;
<b>K</b>	<b>L</b>			
<b>keep (10)</b> 3990:8;4006:17; 4028:24;4046:23; 4122:13,15,18,20; 4156:5;4157:7 <b>keeping (4)</b> 4013:22;4049:17; 4122:18,23 <b>kept (3)</b> 4035:16;4051:21; 4156:3 <b>ketchup (1)</b> 4024:20 <b>kick (2)</b> 3981:17;4082:20 <b>kidding (1)</b> 4001:12 <b>kids (3)</b> 4023:16,16;4126:16 <b>kind (11)</b> 3974:5;3977:9; 3978:22;4023:13; 4028:4;4047:16;	<b>LA (5)</b> 4142:19,21,22,24; 4146:4 <b>lack (1)</b> 4084:24 <b>laid (3)</b> 3990:3;4083:21; 4141:25 <b>lake (3)</b> 4017:12,15;4064:22 <b>land (37)</b> 3977:2;3984:5; 3991:17,23;4012:21, 24;4017:10;4019:19; 4023:1;4039:20,25; 4041:7;4045:11; 4056:6;4059:13; 4064:2;4067:1; 4071:21;4072:7,11; 4076:14;4077:21; 4100:1;4104:22; 4123:21;4124:1,2,4,6; 4126:8,9,10,11;	4140:17;4144:14; 4146:2;4158:2 <b>landfill (3)</b> 4100:2;4103:6; 4104:25 <b>landing (1)</b> 4094:15 <b>landmark (2)</b> 4027:2;4107:21 <b>landscapers (1)</b> 4103:22 <b>language (1)</b> 4091:25 <b>Laposa (8)</b> 4164:25;4165:5,8, 13,19,20;4166:6,11 <b>Laptops (1)</b> 3974:3 <b>large (8)</b> 3978:17;3986:17; 4014:25;4028:19; 4089:11;4108:21; 4122:9;4126:15 <b>largely (2)</b> 3979:7;4026:23 <b>larger (2)</b> 4072:7;4090:5 <b>largest (9)</b> 3977:1,1,15; 4012:21;4013:9; 4022:25;4023:1; 4064:14;4108:18 <b>Las (6)</b> 3977:17;4036:16; 4059:4,14,21;4060:21 <b>last (11)</b> 3997:25;4008:17; 4013:10;4029:3; 4074:24;4111:23; 4114:9;4116:7; 4148:13;4150:16; 4158:11 <b>late (6)</b> 3981:8;4003:9; 4005:9;4036:14; 4060:16;4134:5 <b>later (13)</b> 3978:9;4015:10; 4022:4,21;4026:19; 4030:22;4036:11; 4057:18;4067:9; 4072:12;4073:7; 4081:6;4126:9 <b>law (11)</b> 4120:22;4122:20,21; 4127:15,22;4151:20, 24;4163:11,13,17,19 <b>lawn (1)</b> 4097:25 <b>laws (1)</b> 4140:17 <b>lawyer (10)</b> 4120:20;4121:8,9,	15,16;4122:3;4124:18; 4127:22;4151:11; 4161:13 <b>lawyers (2)</b> 4007:19;4152:14 <b>lay (3)</b> 3989:25;3991:12; 3992:14 <b>laying (1)</b> 4148:20 <b>layouts (1)</b> 4074:3 <b>lead (2)</b> 3979:7;4095:2 <b>leaders (1)</b> 4017:3 <b>leading (9)</b> 3990:20;3997:2; 4015:17,24;4017:4; 4035:14;4036:17; 4125:16;4139:12 <b>leaky (1)</b> 3988:20 <b>learn (3)</b> 3977:7;3978:5; 4050:14 <b>Learned (4)</b> 4002:22;4003:5; 4060:10;4063:1 <b>learning (1)</b> 3978:20 <b>lease (13)</b> 4027:22;4028:1,10; 4029:10,13,13,14; 4030:7,7;4032:11; 4040:2;4107:16; 4109:15 <b>leased (1)</b> 4029:4 <b>leases (3)</b> 4027:14;4028:4,12 <b>leasing (6)</b> 4027:9,10,16,23; 4029:15;4108:9 <b>least (7)</b> 3974:8;3978:10; 4017:20;4037:20; 4045:17;4145:8; 4157:9 <b>leave (3)</b> 4030:15;4034:16; 4092:4 <b>leaving (1)</b> 4079:22 <b>leeway (1)</b> 4070:16 <b>left (9)</b> 3976:8;3977:2; 3987:1;4014:18; 4015:1;4037:15; 4064:22;4093:14,19 <b>legal (10)</b> 4120:20;4124:18;	4126:20;4132:1; 4144:7,10;4150:25; 4151:10,19;4152:5 <b>legally (4)</b> 3983:6;4141:15,19; 4142:3 <b>lengthy (2)</b> 3996:12;4077:1 <b>Leonard (2)</b> 4135:7;4143:24 <b>less (4)</b> 4006:10,17;4121:12; 4125:21 <b>letter (2)</b> 4155:19,22 <b>letterPDF (1)</b> 4155:15 <b>level (12)</b> 3989:9;3992:25; 4011:16;4014:16; 4024:24;4042:2; 4045:24;4048:23; 4063:7;4089:3; 4097:22;4164:3 <b>levels (2)</b> 3991:20;4046:17 <b>leverage (2)</b> 4017:22;4019:21 <b>Lewis (1)</b> 4120:23 <b>library (1)</b> 4025:14 <b>license (6)</b> 3981:13;3992:7,10; 3995:4;4066:7,8 <b>licensing (16)</b> 3977:21;3983:2; 3986:19;3990:13; 3992:3;3993:14; 3994:21;4060:2,2; 4066:21,22;4067:13; 4111:18,24;4118:2,16 <b>licensor (1)</b> 3992:17 <b>life (1)</b> 4011:6 <b>lifting (1)</b> 4010:5 <b>lighthouse (5)</b> 4094:18;4095:8,9, 12;4096:7 <b>likes (1)</b> 4016:17 <b>limitations (3)</b> 3992:13;4003:15; 4081:10 <b>limited (2)</b> 4131:9;4134:2 <b>limiting (1)</b> 4131:4 <b>line (11)</b> 3978:25;3996:6,12; 4027:17;4075:10;

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4132:22;4133:21; 4137:20;4142:19; 4153:4;4155:11 <b>lines (1)</b> 4112:9 <b>linked (1)</b> 4042:19 <b>Links (5)</b> 4074:10;4075:9; 4076:8;4096:10; 4099:20 <b>Links-type (1)</b> 4099:11 <b>List (3)</b> 4114:15;4117:2,6 <b>Listen (2)</b> 3980:10;4097:10 <b>literal (1)</b> 4052:9 <b>literally (21)</b> 3985:24;4002:15; 4014:22;4021:3; 4024:22;4034:13; 4039:18;4042:2; 4051:6;4055:4; 4057:14;4058:1,2; 4063:2;4074:21,25; 4087:18;4107:8; 4108:7;4109:25; 4113:19 <b>little (33)</b> 3981:23;3982:3; 3987:1,2;3988:20; 3992:22;3993:22; 3998:12;4002:20; 4004:21;4019:9; 4022:21;4027:5,20; 4042:1;4045:8;4046:7, 13;4047:12;4056:22; 4057:6;4058:7,9; 4073:16;4075:3; 4094:11;4096:3; 4105:3;4110:14; 4112:1,6;4114:4; 4122:22 <b>lived (1)</b> 4045:19 <b>living (3)</b> 4050:20;4068:11; 4092:1 <b>LLC (6)</b> 4149:23,24;4150:5; 4157:20,24;4158:2 <b>loan (7)</b> 4114:12,12;4115:11; 4116:2,3,5;4117:14 <b>lobbies (2)</b> 4014:6;4051:21 <b>lobby (14)</b> 4011:20;4014:10; 4018:23;4031:2; 4037:15,18,22; 4046:11;4051:13;	4061:13;4109:4,22; 4110:2,3 <b>local (1)</b> 3992:23 <b>local's (1)</b> 3978:1 <b>located (2)</b> 4123:24;4142:24 <b>location (7)</b> 4039:20;4049:12,17; 4062:18;4064:23; 4066:2;4108:20 <b>locations (1)</b> 4014:14 <b>lock (3)</b> 4035:3,23;4098:17 <b>logical (1)</b> 4091:18 <b>long (18)</b> 3985:7,9;3986:12; 3991:23;4014:18; 4015:1;4021:18; 4024:1;4036:8,25; 4037:4,6;4040:1; 4054:4;4077:4; 4102:20;4134:15; 4141:16 <b>longer (3)</b> 3984:24;3985:9; 4021:14 <b>long-term (2)</b> 4059:18;4072:5 <b>look (23)</b> 3998:10;3999:8; 4005:23;4008:24; 4009:2;4016:9; 4017:25;4023:24; 4046:7;4055:6; 4058:20;4074:1; 4096:16,21;4108:11; 4110:4;4122:3; 4126:22;4128:24; 4129:2;4142:2,13; 4144:2 <b>looked (13)</b> 4004:12;4010:17; 4038:9;4040:6; 4056:19;4077:20; 4078:18;4110:8; 4112:1;4114:4; 4122:12;4157:3,7 <b>looking (74)</b> 3974:14;3989:21; 4002:6;4011:2,11,14, 19;4012:16;4014:5; 4018:5,19;4019:15; 4021:4;4024:17; 4025:3;4031:1; 4032:19;4037:12; 4038:2;4041:23; 4042:15;4043:2; 4044:7;4045:25; 4046:10;4048:1,14,18;	4051:12;4053:2; 4054:23;4056:16,24; 4058:5;4061:2,12; 4064:17;4065:4; 4068:2,7;4070:25; 4071:16;4087:6,23; 4088:4,5,24;4089:23; 4095:6,8,13,22;4096:5; 4098:8;4099:6;4102:8, 9;4104:17,24;4106:4; 4108:11,25;4109:1,3, 20;4110:17;4122:7; 4123:16;4124:18; 4127:2;4133:20; 4139:6;4141:9; 4157:17 <b>looks (12)</b> 4011:9;4014:6; 4032:20;4038:3; 4071:20,22;4080:12; 4096:15;4102:1; 4145:13;4146:12; 4156:1 <b>loop (3)</b> 4134:25;4156:4,6 <b>lop (1)</b> 4034:13 <b>lopped (1)</b> 4035:16 <b>Los (8)</b> 4057:6;4058:12; 4066:3;4113:13; 4142:9;4143:12,18; 4146:3 <b>lose (1)</b> 4034:15 <b>lot (68)</b> 3977:18,20;3978:1, 4;3979:18;3980:6; 3982:18,20;3983:1,4, 18,21;3984:15; 3985:15;3991:3,15; 3992:5,9,11,13; 3993:17;4003:5; 4010:10;4013:15,15, 16;4018:22;4020:21; 4028:15;4029:2; 4040:11;4041:15; 4042:20,21,23;4050:6; 4051:16;4052:12,13, 13;4054:13;4058:3; 4059:3;4060:1,7; 4061:8,9,9;4064:9; 4067:4;4068:11; 4074:15;4077:24; 4079:22;4089:14; 4091:5;4094:16; 4097:23;4100:12; 4106:3;4107:23; 4108:8;4111:13; 4112:5;4122:10; 4123:14;4124:11; 4144:14	<b>loud (1)</b> 4163:6 <b>louder (1)</b> 4100:25 <b>lounge (1)</b> 4071:1 <b>Louvre (1)</b> 4053:7 <b>love (7)</b> 3981:4;3992:12; 3994:7;3998:17; 4056:9;4074:22; 4077:23 <b>loved (1)</b> 4023:15 <b>loves (1)</b> 4043:21 <b>low (4)</b> 4030:3;4050:13; 4084:9;4154:10 <b>lower (2)</b> 4009:5;4063:23 <b>lowest (1)</b> 4040:13 <b>luck (1)</b> 4028:15 <b>luckily (1)</b> 4059:15 <b>lucky (2)</b> 4059:23,24 <b>lucrative (1)</b> 3983:3 <b>lunch (2)</b> 4091:18;4093:19 <b>luncheon (1)</b> 4092:8 <b>luxurious (1)</b> 4023:2 <b>luxury (24)</b> 3991:11;3993:2,5; 4009:11,13,23; 4014:13,16;4015:3,18; 4017:4;4021:7; 4033:18;4042:22; 4063:7;4067:23; 4068:19,21,24;4073:2; 4105:23;4154:9,11,12	4024:18,21;4046:8; 4087:24;4088:5; 4108:13,14;4109:4,8, 21;4133:4 <b>maintain (11)</b> 4034:11;4042:22; 4051:18;4052:10,12; 4054:14;4059:18; 4079:19;4098:1; 4109:9;4122:13 <b>maintained (2)</b> 4054:6,14 <b>maintaining (1)</b> 4111:20 <b>maintenance (1)</b> 4103:21 <b>major (3)</b> 4008:6;4049:4,10 <b>majority (3)</b> 3989:2;3994:22; 4121:10 <b>makes (6)</b> 4002:5;4024:8,12; 4034:17;4046:18; 4085:15 <b>making (20)</b> 3991:18;4028:23; 4059:22;4068:24; 4081:22;4122:19; 4124:21,24;4126:5; 4128:10;4129:15; 4135:13;4139:21; 4141:10,11,11,12,13, 14;4157:6 <b>man (3)</b> 4002:19;4099:15; 4129:7 <b>manage (11)</b> 3980:13,13;3986:9; 3989:3,7;4034:23; 4035:1,6;4042:22; 4059:20;4112:9 <b>managed (5)</b> 3985:23,25;4021:9, 16;4150:1 <b>management (9)</b> 3985:25;3988:25; 4036:5,6,24;4066:10; 4068:15;4111:10; 4118:5 <b>manager (8)</b> 3978:12,15,19; 3983:22;4012:10; 4050:6,12;4150:2 <b>managing (1)</b> 3988:16 <b>Manhattan (10)</b> 4003:8;4004:14,19; 4005:5,9;4008:11; 4009:12;4013:5; 4023:3;4117:12 <b>manner (1)</b> 4103:5
<b>M</b>				
<b>machinery (1)</b> 4098:1 <b>machines (1)</b> 4109:11 <b>magic (2)</b> 4029:1;4079:13 <b>magical (1)</b> 4044:13 <b>maid (1)</b> 4068:12 <b>mail (1)</b> 4109:11 <b>main (11)</b>				

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>Manor (4)</b> 4157:20,23;4158:2,3	4051:21	<b>mean (40)</b> 3979:12;3980:2,24; 3983:6;3985:15,22; 3986:16;3988:8; 3989:23;3991:22; 3994:6;4001:2; 4023:22;4027:21; 4028:9;4030:1; 4036:17;4040:11; 4043:19;4048:21; 4050:6;4079:10,11; 4085:6;4087:14,14; 4094:14;4110:12; 4111:9;4115:3,8; 4129:2;4131:16; 4132:23;4135:4; 4137:20;4148:9; 4163:18,21;4166:18	<b>meritocracy (1)</b> 3979:11	4138:8
<b>mansion (1)</b> 4073:7	<b>Master (1)</b> 4107:4		<b>Merriweather (2)</b> 4016:24;4018:17	<b>missed (1)</b> 4135:19
<b>many (22)</b> 3979:2;3988:7; 3991:3;3994:3,7; 4000:9;4003:19; 4005:23;4008:13; 4024:2;4060:22,24; 4068:19;4079:25; 4082:6;4094:3; 4103:15,19;4122:9; 4150:22;4152:13; 4161:5	<b>materiality (1)</b> 4081:7		<b>methodologies (1)</b> 4053:14	<b>missing (2)</b> 4083:4;4084:21
<b>Mar (2)</b> 4017:20,20	<b>materials (2)</b> 4108:7;4161:25		<b>methodology (1)</b> 4141:22	<b>mistake (1)</b> 3983:9
<b>Mar-a-Lago (13)</b> 3998:14;4016:2,5, 22;4017:8,11,11,19; 4018:3,11;4020:12; 4056:15;4077:20	<b>matter (13)</b> 3982:12;3983:11; 4068:22;4080:22; 4085:7;4137:18,24; 4146:4;4150:10,12; 4152:1;4153:5,7		<b>Miami (8)</b> 4077:10,21;4078:23; 4079:20;4088:11,17, 18,19	<b>mitigation (1)</b> 3994:18
<b>Marjory (2)</b> 4016:23;4018:17	<b>matters (2)</b> 4120:21;4161:18		<b>Michael (4)</b> 4021:20;4069:14; 4116:16;4160:13	<b>mixed (3)</b> 4009:15,22;4063:25
<b>Mark (4)</b> 3987:13,14,20; 4166:22	<b>matures (1)</b> 4116:1		<b>Michigan (2)</b> 4064:23;4065:5	<b>mob (1)</b> 4100:3
<b>marked (7)</b> 4086:19;4114:18; 4145:19;4149:20; 4155:5;4159:15; 4162:23	<b>maximally (1)</b> 4142:4	<b>meandering (1)</b> 4096:3	<b>mid (2)</b> 4025:20;4029:4	<b>model (9)</b> 3990:13;3991:9; 3992:7;3994:6,7,16; 4066:7;4069:7;4089:2
<b>market (37)</b> 3978:2,5;3992:24; 3993:2;4014:1,3,17; 4015:4;4016:1; 4020:11;4026:14; 4027:11,15;4028:15; 4029:12;4030:5; 4036:10,20;4045:21, 23,24;4054:11; 4059:15;4066:14; 4067:2,7,8,8,9,23; 4068:4;4070:4; 4078:24;4079:24; 4098:16;4105:22; 4128:24	<b>maximize (10)</b> 4010:7,9;4014:3; 4015:14;4026:22,25; 4028:3;4034:11; 4063:25;4064:2	<b>meaning (1)</b> 4038:25	<b>Middle (10)</b> 4024:11;4037:15,18; 4038:16;4048:16; 4063:24;4098:21,22; 4115:24;4157:19	<b>modern (1)</b> 4108:17
<b>marketing (7)</b> 3992:18;4007:13; 4045:2;4068:5; 4084:13;4108:7; 4129:10	<b>maximizing (1)</b> 4035:12	<b>means (8)</b> 4101:18;4128:9; 4129:4,7,17;4138:3; 4139:15;4149:8	<b>mid-teens (1)</b> 4050:20	<b>mom (1)</b> 3978:18
<b>marketplace (1)</b> 4005:16	<b>may (35)</b> 3988:1;3992:24; 4009:20;4018:10; 4021:11;4029:18; 4030:4;4033:25; 4035:7;4038:14; 4048:24;4050:3; 4066:15;4067:11; 4068:23;4072:23; 4073:17;4076:1; 4086:15;4090:16; 4092:2;4093:1,15,16; 4104:3;4112:22; 4126:21,21;4138:12; 4147:8;4151:4,16,17; 4152:8;4162:2	<b>meant (2)</b> 4146:7;4148:10	<b>might (13)</b> 3989:14;4037:5; 4122:8;4123:6,7; 4129:18,24;4130:1,2, 21;4133:11;4137:3,3	<b>moment (11)</b> 3974:11;3988:3; 3992:1;4029:23; 4036:7;4112:11,20; 4125:18;4144:10; 4152:24;4162:2
<b>markets (5)</b> 3981:5;3994:3; 4013:23;4036:15; 4067:5	<b>maybe (20)</b> 3985:23;4014:22; 4015:20;4016:8,24; 4017:1;4029:12,15; 4030:14;4031:12; 4050:1,14;4052:18; 4056:7;4062:8; 4100:25;4116:8; 4135:18;4140:5; 4166:5	<b>measures (1)</b> 4161:24	<b>miles (1)</b> 4076:5	<b>momentarily (1)</b> 4133:11
<b>Martin (3)</b> 4143:24;4145:10,22	<b>Mazars (2)</b> 3985:18;4143:7	<b>meat (1)</b> 4027:20	<b>million (11)</b> 4017:24;4018:12,12; 4019:9;4020:11; 4026:22;4027:12; 4087:16;4125:19,20; 4130:19	<b>moments (3)</b> 4127:13;4128:19; 4154:13
<b>Maryland (1)</b> 4071:14	<b>McArdle (7)</b> 4130:11,15;4131:2; 4135:7;4149:6,11,22	<b>mechanical (1)</b> 4031:13	<b>mind (1)</b> 4122:23	<b>Monday (3)</b> 4062:7;4166:23,24
<b>massive (1)</b>	<b>McCarty (1)</b> 4167:2	<b>meet (3)</b> 4125:4;4132:11; 4152:15	<b>mindful (1)</b> 4157:6	<b>monetize (1)</b> 4066:9
	<b>McConney (9)</b> 3985:4,5;4154:24; 4155:8,23;4156:1; 4166:14,17;4167:3	<b>meets (1)</b> 4164:6	<b>millions (3)</b> 4104:14;4118:4,9	<b>money (14)</b> 3992:6,15;4018:22; 4019:7;4029:23; 4035:25;4067:5; 4077:25;4097:9,20; 4098:15;4100:12; 4104:9;4129:18
		<b>member (2)</b> 4072:17,18	<b>minimize (1)</b> 4072:14	<b>Monster (2)</b> 4079:3,3
		<b>members (2)</b> 3974:4;4043:10	<b>minute (10)</b> 4041:16;4049:3; 4130:8,12;4132:14; 4142:9,10,12;4144:24; 4158:19	<b>month (3)</b> 3981:9,10;4076:14
		<b>membership (4)</b> 4041:6;4043:8; 4097:21;4098:5	<b>minutes (12)</b> 4006:9;4038:16,18; 4039:23;4051:11; 4088:19;4119:7; 4136:14;4144:25; 4145:1;4147:1;4163:2	<b>months (4)</b> 3976:5;4004:17; 4021:9;4100:13
		<b>memberships (1)</b> 4056:5	<b>miracles (1)</b> 4003:23	<b>more (58)</b> 3974:15;3979:11,20; 3981:2;3982:18,20,21, 25;3983:18,21; 3984:13,14,15,17; 3992:23;3997:14,14, 20;4015:16;4022:21; 4023:10;4027:4,20; 4034:17;4043:7,10;
		<b>memory (1)</b> 3998:1	<b>misinterpreting (1)</b>	
		<b>mention (1)</b> 4084:10		
		<b>mentioned (12)</b> 3987:19;3988:15; 4015:5;4036:3; 4061:18;4075:18; 4102:19;4105:13; 4110:18;4117:17; 4127:13,14		
		<b>mentioning (1)</b> 4128:20		
		<b>merely (1)</b> 4164:5		

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4050:10;4051:23; 4052:12,13,13; 4068:20;4071:9; 4074:21;4075:17; 4077:17;4085:13; 4088:25;4089:14; 4090:5,7;4095:2; 4096:3,15;4099:7,7,25; 4104:8;4106:20,24; 4121:11;4129:18; 4130:18,24;4133:3; 4136:9;4146:22; 4165:8 <b>Morgan (1)</b> 4120:23 <b>morning (10)</b> 3975:18,19;3978:9; 4015:5;4022:5; 4038:15;4049:2,3; 4060:18;4099:14 <b>mortgage (2)</b> 4115:25;4117:11 <b>Most (31)</b> 3980:11;3984:12; 3986:4,24;3988:17; 3990:19,21;3992:12, 22;4008:18;4011:17; 4012:23;4015:3,12; 4016:1,12;4038:14; 4041:5;4049:23; 4053:19;4054:5; 4064:2;4066:18; 4094:1;4123:10; 4125:13;4131:22; 4132:5;4140:5,14; 4156:24 <b>mostly (2)</b> 3998:11;4023:19 <b>move (24)</b> 3995:18;3999:13; 4000:11;4008:5; 4016:2;4022:19; 4033:2;4038:13; 4043:22;4044:1; 4049:7;4055:13; 4059:2;4071:3;4074:6; 4080:16;4136:25; 4145:15;4149:16; 4152:23;4154:25; 4159:11;4162:6,16 <b>Moved (6)</b> 3976:5;3979:23; 4041:15;4100:3,4; 4162:7 <b>moving (9)</b> 3989:24;4019:25; 4020:18;4030:23; 4045:7;4059:4; 4071:24;4095:6,13 <b>mowers (1)</b> 4098:1 <b>much (24)</b> 3980:2,2;3982:25;	3983:21;3984:13,14; 3986:16;3988:21; 3989:11;3993:19; 3994:20;4009:25; 4019:7;4041:15; 4049:15;4058:25; 4073:1,11;4097:2; 4103:23;4104:9; 4107:14;4108:19; 4125:6 <b>multiple (3)</b> 3996:5;4088:9; 4089:15 <b>municipal (3)</b> 4047:11,15;4048:21 <b>must (2)</b> 3974:14;4057:15 <b>myself (8)</b> 3981:2,3,24; 3982:25;4004:11; 4055:24;4068:13; 4154:23  <b>N</b>  <b>nail (1)</b> 4002:24 <b>name (5)</b> 3975:11;3984:19; 4058:2;4118:7;4120:5 <b>names (2)</b> 4166:9,12 <b>narrative (1)</b> 3997:4 <b>narratives (1)</b> 3996:8 <b>Nate (20)</b> 4053:1;4054:16; 4055:14;4056:23; 4058:4,21;4061:11; 4064:16;4065:20; 4071:3,15;4074:7; 4077:6;4087:20; 4088:1,7,21;4089:4; 4091:7;4095:20 <b>National (7)</b> 4039:14;4047:6; 4055:16;4071:6; 4077:9;4113:13; 4142:21 <b>Nations (1)</b> 4045:10 <b>natural (3)</b> 4099:12;4123:11,17 <b>nature (18)</b> 3977:22;3983:2,20; 3986:7;3997:1; 3998:19;4013:1; 4018:14;4028:14,14; 4031:23;4044:11; 4051:19;4061:5; 4078:13;4121:13; 4123:9;4141:17	<b>nauseam (1)</b> 4151:5 <b>near (2)</b> 4023:19;4142:24 <b>nearly (1)</b> 4095:18 <b>necessarily (13)</b> 3978:2,25;3979:15; 4029:11,23;4030:3; 4031:16;4032:11; 4034:8;4068:25; 4073:2,3;4129:18 <b>necessary (1)</b> 4122:14 <b>need (19)</b> 3982:7;3997:10; 3998:2;4007:11; 4018:13;4031:16; 4042:20;4068:22; 4079:5;4115:18; 4117:4;4127:3,8; 4140:10;4144:5,11; 4152:9;4156:1,3 <b>needed (10)</b> 4050:18;4056:5; 4146:20;4156:23; 4159:20,21,21;4161:1, 10,11 <b>needs (5)</b> 3990:3;3997:8; 4128:8;4133:14; 4144:6 <b>negative (2)</b> 4115:11;4123:4 <b>negotiation (1)</b> 4008:14 <b>networks (1)</b> 4072:25 <b>nevertheless (1)</b> 4152:7 <b>New (99)</b> 3975:13,13;3977:2; 3978:2,6,23;3979:1; 3980:1;3981:22; 3983:23;4001:10; 4003:7,11;4005:1,12, 16,18,18,20;4008:7,15, 17;4012:15,22,24; 4013:9;4014:1,16; 4021:6,7;4022:10,14; 4023:17;4026:14,23; 4028:21;4029:22; 4030:5;4035:2,4,19; 4040:12;4043:4,10; 4045:7;4049:22,23; 4050:19,21;4051:4; 4053:19;4055:22,23, 24,25;4062:7;4063:4; 4079:23;4089:1,3; 4097:25;4099:21; 4100:2,11;4102:13,15; 4103:11,13,16,18,20; 4104:10;4105:1;	4108:15,17,20; 4111:13,15;4122:21, 22;4132:3;4150:10,11; 4151:19,22,24;4152:1, 14,14;4153:5,6; 4158:3;4163:11,14,16, 19,20,23;4164:1 <b>Newmark (11)</b> 4080:2,11,14,21,23; 4082:7;4084:7;4085:6, 11;4086:23;4137:13 <b>next (85)</b> 3982:5,5;3987:12; 3992:25;3996:15; 3997:12;4008:13; 4011:11;4013:20; 4020:7;4021:17; 4024:15;4025:1,7,11, 15,24;4026:5;4030:24; 4031:3,24;4032:3,17, 23;4033:3,4;4037:10; 4038:6;4041:21; 4042:6,8,13,25;4044:4, 17;4053:1;4054:16; 4055:14;4056:23; 4058:21;4059:2; 4061:21;4062:8,21; 4063:7;4064:16; 4065:3,20;4070:18,19; 4071:3,4,15,24; 4073:24;4074:1,6,8,13; 4075:20;4077:6,7; 4087:20,21;4088:2,22; 4089:4,8,9,20,21; 4090:1,12,13,23; 4091:1,8,12;4094:15; 4096:9;4097:22; 4098:18;4112:6; 4140:23;4166:20 <b>nice (5)</b> 4020:9;4023:8; 4045:15;4060:2; 4095:18 <b>nick (3)</b> 4052:4;4159:2,3 <b>Nicklaus (2)</b> 4100:10;4101:6 <b>nine (6)</b> 4011:19;4031:11; 4043:4,4,10;4163:2 <b>non-clarity (1)</b> 4097:5 <b>None (1)</b> 4048:21 <b>nonetheless (1)</b> 4081:15 <b>non-golfer (1)</b> 4043:24 <b>non-party (1)</b> 4084:19 <b>non-responsive (1)</b> 4098:25 <b>normal (1)</b>	3974:15 <b>normally (2)</b> 4146:8;4156:21 <b>north (12)</b> 4014:22,23;4053:17; 4055:11;4058:7; 4075:7;4076:1,2,3,7; 4096:1,2 <b>northeast (1)</b> 4038:5 <b>northern (2)</b> 4099:7,7 <b>northwest (2)</b> 4038:10;4120:8 <b>note (7)</b> 4010:21;4082:9; 4098:24;4101:2; 4115:3;4144:3,4 <b>noted (2)</b> 4014:11;4115:23 <b>notice (14)</b> 4045:16;4069:2; 4080:20,25,25; 4081:16,21;4085:10, 22;4091:19,25; 4098:21;4137:24; 4159:12 <b>noticed (1)</b> 4057:22 <b>notion (2)</b> 4015:5,22 <b>November (4)</b> 4112:6;4142:16; 4143:22;4167:8 <b>number (16)</b> 4009:7;4029:24; 4033:23,24;4036:7; 4043:11;4050:20; 4084:8;4091:4; 4104:15;4144:3; 4150:19;4151:6,6,8; 4162:18 <b>numbers (5)</b> 3985:16;3986:20; 3995:4;3997:14; 4104:12 <b>numerous (2)</b> 3989:10;4012:25  <b>O</b>  <b>oath (1)</b> 4058:24 <b>object (6)</b> 3989:16;4005:10; 4006:4;4086:10; 4131:3;4136:19 <b>objected (2)</b> 4131:8;4135:11 <b>objecting (1)</b> 4006:4 <b>objection (27)</b> 3989:12,15;3990:6;
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NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

3996:1;3999:15; 4001:13,15,16,17,21, 22;4006:22;4008:3; 4010:22;4080:18; 4085:19;4098:24; 4101:2;4102:24; 4115:22,23;4125:16; 4134:18;4135:16; 4139:12;4150:25; 4151:9 <b>objections (3)</b> 3996:10;4006:15; 4133:17 <b>objective (1)</b> 4126:4 <b>objectives (1)</b> 4156:14 <b>oblivion (1)</b> 4112:7 <b>obviously (20)</b> 3982:3,24;3983:14; 3984:19;3985:16; 3991:7;4023:2;4024:3; 4027:11;4040:11; 4045:9;4046:14; 4051:20;4076:15; 4091:15;4101:3; 4107:21;4111:9; 4115:19;4152:3 <b>occasionally (1)</b> 4085:17 <b>occasions (1)</b> 4094:4 <b>occupancy (3)</b> 4114:2;4116:2,6 <b>occupied (2)</b> 4027:24;4114:7 <b>occupies (1)</b> 4011:16 <b>occupy (1)</b> 4037:17 <b>occupying (1)</b> 4050:21 <b>occur (1)</b> 4158:8 <b>occurred (1)</b> 4158:8 <b>occurs (1)</b> 4085:22 <b>ocean (10)</b> 4017:11,14,17,21; 4019:18;4058:1,3,8; 4113:17,20 <b>October (1)</b> 4130:15 <b>off (23)</b> 3985:24;3990:21; 3995:23;4002:6,9; 4017:19;4034:13; 4035:6,16,21;4050:12; 4051:10;4054:13; 4059:13,17;4076:5; 4093:14;4109:22;	4111:3;4119:14; 4134:6;4138:21; 4154:23 <b>offer (1)</b> 4085:16 <b>offered (1)</b> 4021:3 <b>offering (15)</b> 4005:13;4148:9,17, 18,19,21;4149:8; 4150:10,21;4151:25; 4152:2;4153:5; 4163:22;4164:1,5 <b>Office (21)</b> 3978:8;3980:11; 3981:20;4010:4; 4011:8;4026:20,23; 4052:6;4062:7; 4106:10;4107:1,4,5; 4112:1;4124:4; 4148:23;4151:25; 4152:15;4163:20,23; 4164:2 <b>OFFICER (14)</b> 3974:1,25;3975:3, 10;3987:16,22; 4007:20;4039:5; 4119:16,19,21;4120:3, 5;4147:6 <b>offices (1)</b> 4062:9 <b>official (1)</b> 3987:21 <b>often (6)</b> 3977:25;3980:14; 3981:4;3982:7; 4123:10;4140:5 <b>oil (4)</b> 4076:2,3,4,4 <b>old (27)</b> 3977:10;3978:8; 4002:18;4052:4,5,11, 24;4053:18;4054:1; 4055:7;4075:2,3,14,14; 4091:23;4094:13,13; 4096:16;4100:2; 4106:10;4107:1,4,20; 4108:16;4109:11; 4112:1;4146:8 <b>older (3)</b> 4014:14;4016:11; 4058:19 <b>oldest (3)</b> 3982:4;4002:18; 4094:1 <b>Olympics (1)</b> 4094:20 <b>once (16)</b> 3982:5,5;3988:12, 16;4027:7;4052:8; 4055:7,25;4094:8; 4095:4;4106:17,17; 4108:3;4140:18;	4158:12;4161:23 <b>one (204)</b> 3976:7,8,24;3977:9, 16;3979:8;3980:15; 3981:3,16;3982:13; 3989:1;3990:3,4; 3994:13,13,14,25; 3996:2;3998:16; 4001:14;4004:8; 4009:10;4011:5,15; 4013:3,4,8,8,23; 4014:6,6;4015:2,21; 4016:7,9,9,12,24; 4017:4;4019:10,13; 4020:15;4021:1; 4022:10,25;4024:5,22; 4025:4,21;4026:2,17; 4027:24;4029:22,23; 4031:6,7,12,14,18; 4032:1,20,20;4033:24; 4036:2,7,18;4037:16; 4038:3,4;4040:7,14; 4041:3,4,5,15;4043:6, 12;4045:2,3,5;4046:6; 4047:11,17;4048:4; 4049:2,20;4051:14; 4052:22;4053:1,3; 4055:2;4056:10; 4057:2,22;4059:12,14; 4060:20;4062:10,15, 16,21;4063:4,13; 4064:8;4065:15,19,20; 4066:7,18,21;4068:16; 4069:3;4071:1,2,10; 4072:4,5,18,19; 4073:13;4074:13; 4075:4,13;4076:12,12; 4078:25;4079:3; 4082:15,24;4084:1,1; 4085:18;4087:7,20; 4088:5,6,9,11;4089:4, 6,11,12,24;4090:1,4,5, 5,15,19,21;4091:3,3, 10,16,16;4094:1; 4095:2,9,11;4096:8,15; 4097:6;4098:21; 4100:6;4102:9,10,10; 4103:24;4106:6; 4107:19;4108:2; 4109:25;4110:4,5; 4111:1,4;4112:16,19, 20;4120:24;4122:4,15; 4124:20;4126:13; 4129:18;4131:24; 4137:16;4140:5,6; 4146:16,22;4148:1,1,1; 4155:3,8;4156:12,14, 21,24;4159:23;4160:1; 4162:11;4165:8 <b>one-bedroom (1)</b> 4035:1 <b>ones (1)</b> 4031:15	<b>ongoing (4)</b> 3976:24;4068:15; 4106:16,22 <b>only (15)</b> 3974:4;3993:20,21, 23;4026:19;4034:13; 4037:8;4062:15; 4097:7,19;4101:17; 4115:12;4131:9; 4133:18;4165:20 <b>onto (2)</b> 4038:13;4111:21 <b>Open (8)</b> 4056:12;4086:9; 4094:3,3;4100:23; 4101:1;4123:11,16 <b>opened (1)</b> 4106:17 <b>open-ended (2)</b> 3997:1,3 <b>opening (1)</b> 4115:4 <b>operated (1)</b> 4022:12 <b>operates (2)</b> 3988:4;3997:17 <b>operating (6)</b> 3987:16,22;4073:18; 4098:6;4100:14; 4106:22 <b>operation (1)</b> 4077:18 <b>operational (2)</b> 3988:14;4108:4 <b>operations (6)</b> 3984:16;3989:16; 3990:7;4106:16,18; 4108:5 <b>operator (1)</b> 4029:25 <b>operators (1)</b> 3989:14 <b>opinion (6)</b> 4005:19;4015:19; 4070:10;4083:19,24; 4139:14 <b>opponent (2)</b> 4000:2,3 <b>opportunities (5)</b> 3977:21;3979:18,19; 3981:13;4080:12 <b>opportunity (9)</b> 3979:5;3981:5; 4022:9;4024:5;4050:3; 4057:13;4079:24; 4086:10;4102:24 <b>opposed (4)</b> 4033:14;4054:18; 4066:23;4070:3 <b>opposite (3)</b> 4013:5;4018:16; 4094:4 <b>optics (1)</b>	3983:8 <b>opulent (1)</b> 4091:15 <b>order (10)</b> 3974:6;4039:6; 4115:7,12,13;4123:15; 4124:12;4126:2; 4146:15;4156:10 <b>ordering (1)</b> 3980:1 <b>ordinarily (1)</b> 4084:12 <b>ordinary (1)</b> 4110:5 <b>Organization (96)</b> 3976:11,14,19; 3978:7;3979:9;3980:7, 7,9,23;3982:23; 3984:24;3986:3; 3987:18,20;3988:4,11; 3990:9;3995:11,22; 3997:7;3998:3,6,19; 3999:6;4001:8,10; 4002:3,8;4003:10; 4004:19;4007:14; 4008:4,7;4012:10,20; 4013:11;4014:16; 4015:9;4016:5;4017:8; 4020:20;4022:2,7,24; 4026:11;4027:7; 4028:8;4032:7;4033:8, 10,14;4036:12;4040:9; 4041:10;4047:5; 4048:20;4055:19; 4056:20;4058:15; 4063:12;4064:5; 4067:12,16;4068:6; 4070:8,22;4071:12,21; 4074:17;4077:14; 4079:14;4080:14,24; 4081:15,19;4084:6,25; 4085:5;4087:13; 4093:24;4094:7,24; 4095:17;4099:19; 4100:16,22;4102:18; 4103:16,25;4104:10, 21;4106:25;4111:8; 4112:4;4118:3;4143:9 <b>Organization's (10)</b> 3990:7;3993:13; 3994:4;3999:10,11; 4029:7;4039:25; 4057:10;4070:3; 4104:7 <b>organized (1)</b> 4112:20 <b>original (7)</b> 4019:11;4025:21; 4042:10;4043:5; 4051:17,19;4097:19 <b>originally (2)</b> 4011:23;4016:23 <b>originated (1)</b>
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**Attorney General v.  
Donald Trump, et. al.**

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**November 13, 2023  
November 13, 2023**

4116:4 <b>origins (1)</b> 4001:9 <b>others (13)</b> 3980:20;4003:2; 4010:16;4016:1; 4022:4;4023:14; 4024:6;4033:15; 4041:17;4070:4; 4104:8;4107:22; 4132:10 <b>otherwise (9)</b> 4003:17;4014:18; 4015:23;4023:17; 4030:15;4104:2; 4121:4;4161:25; 4164:3 <b>out (93)</b> 3977:11;3978:12; 3980:16;3981:14,22; 3982:6;3986:5; 3988:23;3991:24; 3992:14;3993:18,23; 3994:2;3997:8;4002:2, 23;4003:17;4007:7; 4008:23;4015:25; 4018:11;4027:1,11; 4028:17,19,22,23; 4029:20;4030:5,15; 4031:21,22;4035:3; 4036:3,21;4040:20; 4043:11;4045:16; 4046:14;4048:11; 4049:19;4050:24; 4051:15;4052:11,12; 4053:23;4060:16,19, 25,25;4061:3;4062:2; 4063:2,9;4066:3,17; 4068:7,22,23;4076:23; 4078:25;4079:11; 4081:8;4082:1; 4088:14;4094:12; 4096:23;4097:20; 4098:15;4103:9; 4105:14;4107:12; 4108:8,17;4109:18; 4111:5;4115:16; 4118:2,4,8,9,16; 4122:21;4127:3; 4133:10;4141:8,9,25; 4144:17;4148:20; 4153:17;4156:2; 4164:20 <b>outdoor (2)</b> 4055:9;4064:25 <b>outline (1)</b> 3998:2 <b>outside (8)</b> 3985:17,19;4011:7; 4012:6;4061:15; 4108:19;4110:13; 4143:9 <b>outsider (1)</b>	4005:4 <b>outstanding (1)</b> 4027:2 <b>over (48)</b> 3977:22;3978:2; 3992:21;3998:6; 4000:6;4008:10,21; 4013:2,8;4017:3; 4021:8,13,15;4022:12; 4023:5;4026:21,22; 4028:4,10;4034:19; 4036:3;4041:2,3; 4043:11,12;4065:7; 4072:20;4073:22; 4074:20;4076:5,13,14; 4085:17;4095:3,17; 4096:7;4097:24; 4100:12;4102:9,18,22, 25;4103:9;4106:1,21; 4139:2,7;4158:3 <b>overall (1)</b> 4156:10 <b>overhead (1)</b> 3994:9 <b>overlooking (12)</b> 4004:5;4032:21; 4038:1;4056:18; 4057:21;4064:21; 4071:1,13;4075:6; 4089:24;4094:18; 4095:12 <b>overruled (4)</b> 4001:14,24;4008:3; 4099:5 <b>overview (4)</b> 3994:10;4058:6; 4071:19;4074:2 <b>own (16)</b> 3982:13;3988:14; 3989:2,5,6,16;3991:4; 4001:11;4002:13; 4024:22;4035:1; 4076:9;4078:18; 4105:18;4111:10; 4165:14 <b>owned (10)</b> 3988:17;4004:23; 4035:8;4039:10; 4072:24;4074:19; 4105:17;4129:16; 4149:25;4150:1 <b>owner (9)</b> 3986:6,6;4063:16; 4117:25;4124:6; 4139:6;4140:17; 4144:14;4150:2 <b>owners (4)</b> 4049:16;4118:14; 4138:25;4139:8 <b>ownership (1)</b> 4105:14 <b>owning (2)</b> 4012:20;4060:4	<b>owns (6)</b> 4060:9;4066:25; 4123:5;4126:10; 4129:14;4158:2  <b>P</b>  <b>Pacific (6)</b> 4057:15,22;4058:1, 3,8;4113:17 <b>package (1)</b> 4097:22 <b>packages (1)</b> 4029:16 <b>packed (1)</b> 3976:13 <b>page (20)</b> 3996:5,15;4044:17; 4113:8;4114:21; 4115:25;4117:1,8; 4118:11;4130:10,14; 4140:23;4142:14; 4143:20;4153:25; 4154:6;4155:3,8; 4157:16,19 <b>pages (1)</b> 4155:18 <b>paid (4)</b> 4100:5;4102:22; 4104:1,10 <b>Palm (10)</b> 4017:4,13;4039:14, 17,18,21,23;4041:7; 4042:3;4047:17 <b>Palos (3)</b> 4057:13;4113:11; 4146:2 <b>paneling (1)</b> 4051:16 <b>pans (1)</b> 4081:8 <b>paper (1)</b> 3979:18 <b>par (2)</b> 4096:6;4099:8 <b>paragraph (5)</b> 4130:17;4144:3; 4154:6;4157:20; 4158:1 <b>paragraphs (1)</b> 4131:6 <b>parcel (9)</b> 3977:1;4045:11; 4105:15;4150:12; 4153:7,10,20;4158:2,3 <b>parcels (2)</b> 4023:1;4073:12 <b>Pardon (1)</b> 3974:9 <b>Park (19)</b> 3977:6;3978:21; 4008:21;4011:4; 4021:5;4038:1;4049:5,	7,8,8,12;4050:10; 4053:4;4057:17; 4062:3,21,25;4107:22; 4108:14 <b>parking (1)</b> 4065:7 <b>Parks (1)</b> 4103:11 <b>Part (28)</b> 3974:1;3983:3,12; 3984:12;3990:21; 4010:25;4011:17; 4019:12;4028:25; 4029:15;4030:2; 4034:8;4039:5;4054:5; 4058:6;4075:5; 4079:13;4100:17,22; 4102:2;4105:12; 4108:23;4124:14,23; 4126:9,10;4143:7; 4157:9 <b>partial (2)</b> 4044:8;4128:1 <b>particular (7)</b> 3996:9;4006:16; 4076:8;4122:8; 4130:22;4144:15; 4156:18 <b>particularly (1)</b> 4140:8 <b>parties (2)</b> 3997:13;4039:4 <b>partner (1)</b> 3995:3 <b>partners (2)</b> 3982:9;4069:6 <b>partnership (1)</b> 4109:15 <b>parts (1)</b> 4016:11 <b>party (5)</b> 3999:25,25;4000:2, 3,3 <b>passed (1)</b> 4002:17 <b>passing (3)</b> 3982:19;4003:4; 4059:22 <b>passion (4)</b> 4041:14;4043:20; 4071:9;4078:20 <b>passionate (2)</b> 4040:3;4073:1 <b>past (4)</b> 3993:22;4033:11; 4158:11;4166:10 <b>path (1)</b> 4141:25 <b>pattern (1)</b> 4081:11 <b>pause (6)</b> 3974:12;4052:23; 4119:11;4147:4;	4162:4,14 <b>pay (5)</b> 3993:11;4029:20; 4036:2;4124:2,7 <b>paying (2)</b> 4124:10;4157:7 <b>payment (1)</b> 4156:2 <b>payments (1)</b> 4157:2 <b>payroll (1)</b> 4104:7 <b>pejorative (1)</b> 4133:1 <b>Peninsula (1)</b> 4146:2 <b>pennies (1)</b> 4073:9 <b>Pennsylvania (7)</b> 3975:23;4107:2; 4108:20;4109:1; 4111:3,6;4120:7 <b>Pension (3)</b> 4034:5;4051:1,4 <b>penthouse (8)</b> 4053:3,8,11; 4054:24,25;4055:6,8,8 <b>penthouses (1)</b> 4055:7 <b>people (55)</b> 3977:19,24;3979:10, 15,18;3989:3;3990:17, 21;3993:11,23;3994:7; 4002:25;4004:23; 4008:18;4009:5; 4012:8,23;4015:24; 4018:18;4023:25; 4024:1,13;4026:15; 4030:5;4031:22; 4037:6;4042:12; 4044:3;4049:1; 4050:20;4060:24; 4066:13;4068:1,7; 4069:1,7;4070:22; 4072:16;4074:18; 4077:23;4078:1; 4079:8,22;4081:21; 4082:7;4084:17; 4090:16;4091:25; 4100:6;4102:20; 4103:6,15,19;4161:8; 4166:10 <b>people's (2)</b> 3991:6;4092:5 <b>per (4)</b> 4015:15;4035:18; 4063:5;4066:15 <b>percent (12)</b> 3989:4;3995:5; 3999:21;4029:4; 4064:25;4079:4; 4114:7;4116:1,3,3,6; 4121:11
---	---	--	--	--

<b>perform (2)</b> 3994:2;4015:25	<b>PGA (1)</b> 4056:12	11;4078:19;4090:8; 4091:18;4122:15; 4124:15;4139:6,19,25; 4146:16,22	4088:21;4089:4; 4093:2,6;4102:5; 4112:23;4119:19; 4120:3,5;4121:4; 4135:24;4142:14; 4145:24;4147:9; 4154:16;4164:7,8	<b>portrayed (1)</b> 4136:20
<b>performing (1)</b> 4114:7	<b>phase (1)</b> 3978:6		4112:23;4119:19; 4120:3,5;4121:4; 4135:24;4142:14; 4145:24;4147:9; 4154:16;4164:7,8	<b>position (7)</b> 4017:22;4051:8; 4117:18;4140:12; 4156:10,24;4157:3
<b>performs (1)</b> 4073:22	<b>philosophy (1)</b> 4029:7	<b>placed (6)</b> 4084:7;4085:3; 4086:23;4114:14; 4158:4,13		<b>positions (3)</b> 4127:6;4140:9; 4156:11
<b>perhaps (11)</b> 3992:22;4009:10; 4013:1;4018:10; 4025:21;4040:7; 4097:8;4107:17; 4121:4;4148:17; 4166:23	<b>phone (2)</b> 4161:3,9	<b>places (4)</b> 3993:1;4004:9; 4017:5;4068:8	<b>pleasure (1)</b> 4124:10	<b>positive (1)</b> 3985:12
<b>period (19)</b> 3982:2,23;3985:1,9; 3986:12,13;4013:14; 4021:13,18;4022:16; 4027:14;4036:9; 4054:12,17;4059:23; 4067:3;4081:13; 4085:24;4111:22	<b>phones (2)</b> 3974:3,4		<b>plenty (1)</b> 4068:23	<b>possibility (1)</b> 4139:23
<b>peripherally (1)</b> 4099:24	<b>photograph (1)</b> 4004:1	<b>placing (2)</b> 4139:1,10	<b>plus (8)</b> 3985:6;3989:4,4,4; 4028:10;4030:7; 4068:15;4079:3	<b>possible (6)</b> 4080:1;4138:5; 4141:14;4142:3; 4144:7,18
<b>perjury (1)</b> 3987:7	<b>photographer (1)</b> 4055:1	<b>plain (2)</b> 4129:25,25	<b>podium (1)</b> 4134:16	<b>possibly (1)</b> 4061:3
<b>permissibility (1)</b> 4144:10	<b>photographers (2)</b> 3974:10,13	<b>plaintiff (3)</b> 4005:23;4083:4; 4085:16	<b>point (35)</b> 3976:10;3979:22; 3980:3;3991:3; 3994:23;3995:4,11; 3997:10;4001:24; 4004:13;4005:11; 4007:3;4011:1;4013:3; 4026:17;4031:18; 4046:18;4065:25; 4081:20;4086:14; 4088:12;4091:18; 4092:1;4099:20; 4104:19;4111:25; 4117:17;4120:24; 4130:19;4132:18; 4133:4;4137:8; 4140:12;4144:20; 4151:18	<b>Post (9)</b> 3978:8;4016:24; 4018:17;4052:5; 4106:10;4107:1,4,4; 4112:1
<b>permissible (4)</b> 4085:25;4141:15,19; 4142:3	<b>photography (1)</b> 3974:5	<b>plaintiff's (7)</b> 3995:8;3998:18; 4130:4;4142:6; 4147:17;4153:24; 4157:13		<b>postpone (1)</b> 4157:10
<b>permission (1)</b> 4038:15	<b>photos (1)</b> 4102:1	<b>plan (17)</b> 3997:21;4144:12; 4148:9,18,19,21,22; 4149:8;4150:11,21; 4152:2;4153:6; 4156:21,22,22; 4163:22;4164:5		<b>potential (12)</b> 4012:25;4023:7,20; 4026:22;4027:1; 4029:12;4040:2; 4049:15,19;4078:12; 4090:22;4100:9
<b>permits (1)</b> 4144:17	<b>Photoshop (1)</b> 4059:3	<b>plane (3)</b> 3981:8;4062:8; 4096:23		<b>potentially (1)</b> 4122:4
<b>permitted (2)</b> 3974:4;4144:12	<b>physical (2)</b> 4144:7;4146:13	<b>planned (1)</b> 4164:6	<b>pole (1)</b> 4050:13	<b>Potomac (2)</b> 4071:13,17
<b>permitting (1)</b> 4141:16	<b>physically (3)</b> 4141:14;4142:2; 4146:10	<b>planning (6)</b> 4072:13;4101:5; 4105:14;4121:12; 4144:6,14	<b>polished (1)</b> 4077:25	<b>pouring (1)</b> 3993:15
<b>perpetuity (6)</b> 4043:25;4126:7,21; 4128:9,9;4140:8	<b>pick (1)</b> 4161:3	<b>plans (4)</b> 3978:23;4148:17; 4151:25;4164:1	<b>politics (1)</b> 3983:2	<b>Power (1)</b> 3995:11
<b>person (13)</b> 3986:24;3991:19; 3994:23;3995:4; 4065:25;4067:14; 4073:1;4092:3;4097:7; 4129:7;4130:22; 4149:14;4157:3	<b>picked (2)</b> 4098:16;4161:9	<b>play (7)</b> 4010:18;4016:17; 4023:17;4043:11; 4044:15;4073:8; 4089:18	<b>pool (3)</b> 4018:1;4025:18; 4068:14	<b>Practically (1)</b> 4110:12
<b>personal (3)</b> 3982:9;4055:21; 4057:1	<b>picture (14)</b> 3984:17;4002:1; 4004:3;4018:15; 4019:18;4025:9; 4032:25;4045:25; 4046:12,24,25; 4058:25;4064:24; 4075:24	<b>played (2)</b> 4100:23;4101:1	<b>pools (1)</b> 4025:20	<b>practice (12)</b> 4098:9;4118:5; 4124:14;4152:5,7,13, 14;4161:1,2;4163:11, 13,21
<b>personally (2)</b> 3994:20;4023:15	<b>piece (10)</b> 4012:21;4015:13; 4039:25;4072:7,17; 4077:21;4084:15; 4100:1;4129:13; 4139:1	<b>playground (1)</b> 4023:19	<b>poor (1)</b> 4049:17	<b>practiced (2)</b> 4151:23;4163:16
<b>perspective (16)</b> 3988:6;3993:13; 3994:4,17;4003:17; 4006:15,21;4011:21; 4019:15;4020:12; 4046:13;4058:14; 4074:23;4082:10; 4106:14;4122:6	<b>pieces (1)</b> 4059:13	<b>playing (2)</b> 4042:12;4090:18	<b>pop (1)</b> 3978:18	<b>predict (1)</b> 4156:10
<b>pertains (1)</b> 4082:1	<b>pied-à-terre (2)</b> 4035:2;4068:9	<b>plays (3)</b> 3991:23;4017:10; 4024:1	<b>popular (2)</b> 4045:17,19	<b>prefaced (2)</b> 4136:22,23
	<b>pile (1)</b> 4100:3	<b>Plaza (3)</b> 4011:4;4022:6,7	<b>portfolio (6)</b> 4003:3;4011:6; 4022:16;4027:2; 4034:9;4041:18	<b>prejudice (4)</b> 4083:4,6,10;4131:21
	<b>pinhead (1)</b> 4137:21	<b>Please (29)</b> 3975:10,14;4001:11, 17,22;4038:20;4039:6, 7;4061:21;4065:20; 4080:6;4087:20;	<b>portion (11)</b> 4009:5;4019:19; 4034:14;4035:24; 4048:19;4063:23; 4065:6;4072:11; 4116:11;4127:25; 4163:19	<b>prejudicial (2)</b> 4083:15,20
	<b>place (20)</b> 4014:8;4016:20; 4044:13;4045:20; 4064:3,9,11;4075:6,8,			<b>preliminary (2)</b> 4138:25;4139:21
				<b>prepared (8)</b> 4007:2,19;4080:2; 4081:4;4082:8; 4085:11;4143:8;



NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4144:12 <b>preparer (2)</b> 4082:21,22 <b>preparing (1)</b> 4156:8 <b>prerogative (1)</b> 4115:10 <b>present (2)</b> 3984:9;4111:17 <b>presentation (5)</b> 3997:21;4030:23; 4080:3,11;4087:3 <b>presented (1)</b> 3981:13 <b>preserve (6)</b> 3986:10;3988:22,22; 4052:3;4123:11,15 <b>Presidency (2)</b> 3981:1;4111:12 <b>president (9)</b> 3979:23,24;3980:4; 8;3997:25;3999:17; 4117:11;4120:25; 4161:24 <b>presidential (1)</b> 4108:14 <b>President's (1)</b> 4118:16 <b>presiding (1)</b> 3974:2 <b>press (1)</b> 3974:4 <b>presses (3)</b> 4062:12,17;4063:18 <b>prestigious (2)</b> 4009:25;4041:5 <b>pretty (12)</b> 3994:2,19;3997:19; 4017:9;4025:22; 4044:13;4053:6; 4074:20;4094:17; 4096:24;4107:14; 4135:3 <b>prevalent (1)</b> 4146:9 <b>previously (2)</b> 4094:12;4120:18 <b>prewar (6)</b> 3977:8;4049:14,22, 23;4051:15;4053:12 <b>prewar-like (1)</b> 4049:13 <b>price (4)</b> 4015:15;4017:23; 4035:18;4063:5 <b>price-per-square-foot (1)</b> 4049:20 <b>pride (1)</b> 3993:25 <b>primary (7)</b> 4018:6;4025:4,10; 4079:3;4095:14; 4106:18;4111:20	<b>prime (2)</b> 4064:23;4066:2 <b>printing (3)</b> 4062:12,17;4063:18 <b>prior (18)</b> 3984:14,14;3993:2; 3994:20;4004:10,17; 4033:18;4049:14,16; 4055:4,4;4061:2; 4063:9;4071:23; 4074:21;4077:20; 4079:8;4098:14 <b>private (2)</b> 4017:1;4047:15 <b>privilege (18)</b> 4131:8,24;4132:2,5; 4133:7,9,13,16,18,18; 4134:3,9,14,16,17,25; 4135:8,10 <b>privileged (1)</b> 4134:1 <b>probably (27)</b> 3979:19;3983:9,9; 3995:5;3996:11; 4004:10,10;4005:9; 4020:10;4027:9; 4031:20;4038:5; 4058:11,18;4060:7; 4063:20;4068:15; 4073:22;4076:13; 4077:17;4102:10,21; 4103:17;4112:6; 4152:6;4165:10,11 <b>problem (5)</b> 3979:4,4;3997:22; 4005:21;4034:10 <b>problematic (2)</b> 4036:9;4067:6 <b>proceed (9)</b> 3975:14;3987:12; 4093:15,16,16; 4112:22;4120:11; 4147:8;4164:23 <b>proceeding (1)</b> 4052:23 <b>proceedings (7)</b> 3974:13;4021:19; 4069:13;4116:15; 4119:12;4147:4; 4160:12 <b>process (19)</b> 3984:7;4010:10; 4059:10;4077:1,4; 4079:14,25;4121:20; 4124:15;4127:23; 4139:17,25;4140:3,17, 18;4146:21,22;4160:5; 4163:25 <b>procured (1)</b> 4057:11 <b>product (10)</b> 4007:17;4067:20; 4068:21;4134:14,17,	18,21,23;4135:6,8 <b>productive (1)</b> 4142:4 <b>products (1)</b> 4036:20 <b>professional (3)</b> 4029:25;4084:13; 4161:12 <b>professionals (2)</b> 4132:10;4137:12 <b>profitability (2)</b> 3994:5,16 <b>progression (1)</b> 3976:18 <b>project (74)</b> 3976:23;3978:12,14, 19,22;3979:6,7; 3984:3;3990:17; 3991:16,21;3994:10, 14;4004:18,18;4005:7; 4008:6;4009:3,12; 4010:15;4012:4,10,21; 4013:7,12,18,25; 4014:4,19,23;4020:19, 22,23;4022:2,13; 4023:11;4028:25; 4034:7,14;4043:20; 4048:20;4049:4; 4050:5,12,15,19; 4051:10;4052:10; 4054:1,4;4059:12; 4061:19;4062:20,23; 4063:10,11;4066:1,13; 4067:3;4072:6; 4073:16;4076:11; 4098:14;4099:19,25; 4102:18;4106:12,15, 22;4107:16;4117:24; 4124:24;4143:12,18 <b>projecting (1)</b> 3988:23 <b>projects (40)</b> 3977:3;3978:6; 3979:17;3982:16,20; 3983:25;3990:23; 3991:25;3992:20,20; 3993:11,12,25;3994:3, 14;3995:10;3999:7; 4007:12;4011:5; 4014:2,12,13;4015:3, 14,25;4021:2;4022:10; 4036:17;4047:4; 4060:1,21;4062:15; 4066:19;4074:13; 4096:9;4103:20; 4107:25;4111:7,15; 4159:24 <b>promise (6)</b> 4006:17;4051:10; 4093:9,10;4123:13,15 <b>promised (1)</b> 4123:25 <b>promises (1)</b>	4123:24 <b>proper (2)</b> 4039:23;4058:13 <b>properly (1)</b> 4077:3 <b>properties (2)</b> 3977:22;4111:10 <b>property (72)</b> 4013:12,14;4016:2; 4017:23;4018:4,14; 4019:22;4022:19,24; 4023:18;4024:14; 4026:3,7,9;4027:12; 4028:7;4035:11; 4038:14,16;4072:8,17; 4073:17;4074:4; 4077:11;4078:1; 4079:15;4080:21; 4081:23;4083:1; 4084:15,20;4090:20; 4094:4,10;4095:5,15, 17;4096:25;4097:11; 4101:11,12,22; 4104:21;4105:9; 4106:9;4107:2;4118:1, 15;4123:5,12,13,13,24; 4126:15;4127:2; 4128:1,12;4129:13,14; 4138:25;4139:1,6,7,8; 4141:8,15,15,24; 4142:5;4147:12; 4149:25;4154:4 <b>proposed (1)</b> 4164:21 <b>prospects (1)</b> 4112:4 <b>protected (1)</b> 3983:24 <b>protecting (1)</b> 4123:12 <b>prove (1)</b> 4085:7 <b>provide (5)</b> 4038:20;4070:2; 4120:20;4126:2; 4146:11 <b>provided (3)</b> 4080:23;4124:19; 4141:21 <b>provides (4)</b> 4007:20;4124:2; 4125:2;4127:25 <b>providing (3)</b> 4067:16;4137:24; 4146:14 <b>province (1)</b> 4082:13 <b>provincial (1)</b> 3992:23 <b>provisions (2)</b> 4127:17,22 <b>proximity (1)</b> 4041:7	<b>public (4)</b> 4012:1,2;4035:6; 4123:11 <b>public-private (1)</b> 4109:15 <b>pull (7)</b> 4007:7;4113:5; 4132:13;4142:6; 4145:2;4153:23; 4154:16 <b>pun (1)</b> 4111:16 <b>purchase (2)</b> 4009:1;4016:15 <b>purchased (3)</b> 4016:6;4020:8; 4094:1 <b>pure (4)</b> 3977:3;4053:10; 4101:3,6 <b>purpose (7)</b> 4042:24;4081:2,4; 4084:6;4123:16; 4128:5;4133:21 <b>purposes (8)</b> 4000:18;4072:15; 4101:16;4105:14,16; 4128:2,3;4130:20 <b>pursuing (1)</b> 4156:4 <b>push (1)</b> 3991:1 <b>pushed (1)</b> 3993:4 <b>pushing (2)</b> 3984:24;3990:16 <b>put (40)</b> 3985:21;3988:6; 3992:11;3993:7; 3995:25;3997:7; 3998:2;3999:2,4; 4000:3;4001:11,15; 4003:16;4005:23; 4007:10;4010:1; 4015:20;4017:21; 4024:25;4029:16; 4032:12;4045:2; 4068:13;4083:11; 4085:5,12;4087:13,15; 4095:11;4100:12; 4107:12,15;4112:6; 4122:15;4123:21; 4124:20;4137:25; 4142:5;4147:16; 4161:25 <b>putting (11)</b> 3992:5;3993:15; 3996:10;4026:16; 4027:20;4029:22; 4058:14;4066:24; 4080:21;4081:17; 4082:18 <b>PX-3380 (1)</b>
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NYSCEF DOC NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

4114:18	4024:2	4013:8,19;4014:15,16, 17;4015:2,3,24; 4016:24,25;4022:25; 4023:5,8;4025:4,5,18; 4026:16;4027:18; 4033:18;4035:18,20; 4039:22;4040:3; 4041:18;4045:16,21; 4046:22,24;4049:15; 4050:25;4051:21; 4055:7;4057:24; 4062:12;4065:10; 4066:18;4069:6; 4073:11;4077:25; 4078:8;4089:2; 4097:23;4108:18; 4110:4;4137:18; 4144:20	4134:11;4167:1	10,13,14;4140:16
<b>Q</b>	<b>rate (4)</b> 4116:2,6;4152:6,12	<b>realtime (1)</b> 3987:8	<b>recorded (5)</b> 4021:20;4069:14; 4116:16;4123:24; 4160:13	<b>reintroduce (1)</b> 4120:17
<b>qualified (8)</b> 4127:11;4128:5,15, 15,16,17,23;4138:6	<b>rated (1)</b> 4073:13	<b>realty (1)</b> 4024:3	<b>4116:16;4123:24; 4160:13</b>	<b>related (1)</b> 4038:24
<b>qualifier (1)</b> 4134:10	<b>rates (1)</b> 4152:16	<b>reason (5)</b> 4067:10;4068:18; 4115:6,8;4132:1	<b>recording (3)</b> 3974:5;4124:22,23	<b>relates (1)</b> 4097:5
<b>qualify (3)</b> 4083:17;4124:24; 4128:2	<b>rather (7)</b> 4017:23;4029:21; 4034:19;4038:15; 4057:1;4064:5; 4068:12	<b>reasons (4)</b> 4135:13;4140:2,4,14	<b>records (2)</b> 4122:16;4145:25	<b>relation (1)</b> 4086:4
<b>quality (4)</b> 4024:24;4045:24; 4048:24;4073:2	<b>ratio (2)</b> 4009:19;4010:8	<b>recall (12)</b> 4111:17;4131:4,16, 16;4133:20;4135:1; 4136:13;4148:5,12; 4150:2;4151:4,20	<b>redevelop (2)</b> 4034:6;4050:18	<b>relationship (1)</b> 3985:10
<b>quarry (1)</b> 4024:23	<b>raw (3)</b> 4041:3;4102:19; 4103:6	<b>recalls (1)</b> 4134:15	<b>redeveloped (1)</b> 3990:24	<b>relative (3)</b> 3987:10;3994:11; 4045:16
<b>quarter (2)</b> 4014:23;4038:19	<b>read (7)</b> 4074:24;4138:7,9; 4161:8;4164:7,8,9	<b>reality (1)</b> 4024:3	<b>redirect (2)</b> 4118:24;4164:13	<b>relatively (3)</b> 4008:15;4058:12; 4096:18
<b>Queens (4)</b> 4002:10,22;4003:5; 4004:9	<b>ready (2)</b> 4122:18;4164:23	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>redo (2)</b> 4051:16;4087:16	<b>relegated (2)</b> 4043:24;4053:13
<b>queue (1)</b> 4166:13	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>realtime (1)</b> 3987:8	<b>reduction (1)</b> 4149:7	<b>relevance (6)</b> 3989:17,19;4084:18; 4114:25;4115:2,5
<b>quick (2)</b> 4155:11;4163:9	<b>ready (2)</b> 4122:18;4164:23	<b>reason (5)</b> 4067:10;4068:18; 4115:6,8;4132:1	<b>reference (1)</b> 4054:21;4116:11	<b>relevant (6)</b> 3996:9;3997:5,14; 4001:25;4006:14; 4081:18
<b>quickly (5)</b> 3982:6;3983:16; 3999:8;4098:6; 4166:19	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>reasonably (3)</b> 4045:17;4144:7,18	<b>refer (2)</b> 4054:21;4116:11	<b>reliance (2)</b> 4083:18;4086:11
<b>quite (8)</b> 3979:1;4002:15; 4017:21;4021:10; 4025:5,19;4056:21; 4078:4	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>reasons (4)</b> 4135:13;4140:2,4,14	<b>reference (1)</b> 4059:22	<b>reliant (2)</b> 4084:12;4140:5
<b>R</b>	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recall (12)</b> 4111:17;4131:4,16, 16;4133:20;4135:1; 4136:13;4148:5,12; 4150:2;4151:4,20	<b>referred (5)</b> 4054:20;4145:18; 4149:19;4155:4; 4159:14	<b>relied (2)</b> 4084:12;4140:5
<b>rack (1)</b> 4036:24	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recalls (1)</b> 4134:15	<b>referring (10)</b> 4075:22;4076:19; 4093:4;4116:10; 4129:7;4137:6,10,15; 4146:3;4149:24	<b>relief (2)</b> 3997:6;4081:18
<b>railway (1)</b> 4012:22	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>receive (3)</b> 4156:15,16,17	<b>reflected (1)</b> 4118:19	<b>relies (1)</b> 4084:14
<b>rain (1)</b> 4042:20	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>received (2)</b> 4081:23,24	<b>reflection (1)</b> 4118:19	<b>rely (7)</b> 3986:21;4083:12,24; 4084:3,4,11;4086:8
<b>Raise (2)</b> 3975:1;4119:19	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recess (1)</b> 4092:8	<b>reframed (1)</b> 4133:14	<b>relying (5)</b> 4083:16,18;4132:8, 9,15
<b>raised (1)</b> 4023:17	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recently (2)</b> 4043:7;4096:18	<b>refresh (7)</b> 4000:7,9,12;4116:5; 4117:4,14;4150:18	<b>Remain (3)</b> 3975:1;4086:9; 4087:15
<b>ramifications (1)</b> 4126:20	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recess (1)</b> 4092:8	<b>refreshes (2)</b> 4117:5;4150:20	<b>remaining (4)</b> 4150:9;4153:4,17,21
<b>ran (4)</b> 3983:19;3986:1; 4022:12;4098:15	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>Recession (2)</b> 4054:18,19	<b>refurbished (2)</b> 4075:14;4088:25	<b>remember (20)</b> 3980:3;4005:25; 4007:22;4014:7; 4015:6;4020:19,25; 4021:11;4040:23; 4049:5;4053:9; 4063:13;4077:19; 4094:23;4099:15,16; 4105:4,7;4106:12; 4122:16
<b>Rancho (1)</b> 4113:10	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recognize (7)</b> 4020:3;4080:10; 4113:9;4145:5,6; 4149:3;4154:19	<b>refurbishing (2)</b> 4095:1;4111:21	<b>remorse (1)</b> 4061:6
<b>Ranchos (1)</b> 4057:13	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recognized (2)</b> 4053:20;4144:13	<b>regard (6)</b> 3993:14;4028:7; 4032:9;4050:9;4059:7; 4161:13	<b>remote (1)</b> 4093:4
<b>range (1)</b> 4114:10	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recollection (11)</b> 4000:8,9,13; 4017:18;4041:20; 4116:5;4117:4,5,14; 4150:18,20	<b>regarding (2)</b> 4120:21;4143:11	<b>remove (1)</b> 4031:20
<b>Ranita (4)</b> 4021:20;4069:14; 4116:16;4160:13	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>record (9)</b> 3975:11;3996:1; 4066:15,17;4107:25; 4119:15;4120:6;	<b>registered (1)</b> 3978:24	<b>rename (2)</b> 4118:1,15
<b>rarely (1)</b>	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>recommend (1)</b> 3998:15	<b>regular (4)</b> 4065:12;4089:17,18; 4110:21	
	<b>real (63)</b> 3977:19,20,25; 3978:4;3980:10,11,18; 3981:6,16;3982:8; 3984:1;3989:3,5; 3990:17;3991:6,25; 3992:3;3993:2;4005:6; 4009:11;4013:1,25; 4015:12,13,18; 4023:24;4024:9; 4026:14,16;4027:11, 13;4028:14,21; 4029:25;4030:2; 4033:22;4036:6,15,20; 4045:23;4049:21; 4054:7,11;4059:16,25; 4062:14;4063:5,22; 4064:2;4066:12,16,25; 4068:2,4,10,25;4069:2, 7;4072:14;4078:24; 4096:19;4098:16; 4141:15	<b>record (9)</b> 3975:11;3996:1; 4066:15,17;4107:25; 4119:15;4120:6;	<b>regulations (11)</b> 4122:20;4125:10; 4127:14,18;4128:4,6,7,	

NYSCEF DOC. NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

<b>renew (5)</b> 4028:1;4029:15,21; 4030:3,4	4087:17 <b>residence (3)</b> 4016:16;4020:8; 4024:20	24;4065:9,12,17 <b>retain (1)</b> 4127:9	4088:19;4094:18; 4103:2;4106:1;4111:5; 4113:14,17,25;4114:8, 12;4115:23;4116:13; 4117:22;4119:19; 4120:22;4123:22; 4124:5;4125:18; 4126:23;4128:18; 4133:23;4138:20; 4141:1;4142:6;4143:1, 25;4144:22;4146:25; 4147:16;4150:12,24; 4151:14;4152:1; 4153:7;4154:15,16; 4156:13;4157:11,19; 4158:18,23,24;4159:4, 17,22,23,24,25;4164:5, 13	4011:1;4037:6; 4038:13;4039:7,8; 4043:15;4052:16,21, 24;4054:2,16;4055:14; 4056:23;4058:4,21; 4061:11,21;4064:16; 4065:3,20;4070:7,13, 17,24;4071:3,15; 4074:6;4075:19; 4077:6;4080:5,16,19; 4081:6;4082:6,15,21; 4083:14,23;4084:10, 16,23;4086:6,12,15,18; 4087:20;4088:1,7,21; 4089:4,8,20;4090:1,7, 12,23;4091:7,11,17; 4093:1,3,8,15,18; 4095:20;4100:19,24; 4101:8,16,20,25; 4102:6;4103:4; 4112:11,13,18; 4113:14;4118:25; 4136:4;4164:24; 4165:2,6,10,16; 4166:20
<b>renewing (1)</b> 4028:23	<b>residences (2)</b> 4017:6;4034:20	<b>retained (1)</b> 4150:20	<b>rights (18)</b> 4008:15,18,23; 4009:6;4045:12; 4088:12;4123:7,18,18, 22;4124:1,1,2,23; 4126:6,8,8,14	<b>role (12)</b> 3981:1,15;3982:11, 25;3985:13;3987:17, 23;3992:17;4051:9; 4070:3;4097:16; 4111:10
<b>renovate (1)</b> 4107:1	<b>residential (25)</b> 3977:15;3993:21,22; 4008:11;4009:13,21; 4010:1,5;4013:5,18; 4015:10;4032:8; 4034:12,12,13,25; 4037:22,24,25;4038:4; 4045:13,15;4057:19; 4064:13;4078:16	<b>retrofit (2)</b> 4094:25;4108:23	<b>Rink (3)</b> 4020:19;4099:15; 4103:12	<b>roles (4)</b> 3981:25;3982:6; 3983:21;4027:17
<b>renovating (1)</b> 4035:25	<b>resolved (1)</b> 4121:21	<b>retrospect (1)</b> 3983:8	<b>rip (2)</b> 4052:7;4057:1	<b>rolling (2)</b> 3982:4;4103:17
<b>renovation (2)</b> 4062:25;4107:19	<b>resort (1)</b> 4024:10	<b>return (6)</b> 4121:18;4122:12; 4127:5;4155:17; 4160:1,3	<b>ripeness (1)</b> 4059:13	<b>roof (2)</b> 4054:24,25
<b>renovations (1)</b> 4110:9	<b>resource (1)</b> 3994:5	<b>returning (1)</b> 4029:19	<b>ripped (1)</b> 4062:16	<b>rooftop (1)</b> 4065:1
<b>rent (3)</b> 4027:17;4029:19; 4050:16	<b>resources (1)</b> 4144:14	<b>returns (6)</b> 3985:23;4127:4; 4143:8;4156:7,8; 4159:21	<b>rise (3)</b> 3974:1;4039:5; 4154:10	<b>room (7)</b> 4019:14;4037:18; 4038:3;4091:14,15; 4095:11;4108:18
<b>rental (4)</b> 3977:4;3980:12; 4003:4;4013:21	<b>respect (3)</b> 4131:5,10;4137:24	<b>reunion (2)</b> 4120:10,10	<b>risk (10)</b> 3993:14,17,19,24; 3994:18;4026:24; 4028:17;4067:1; 4085:17;4138:13	<b>rooms (6)</b> 4087:18;4089:16; 4090:24;4110:1,5; 4111:1
<b>rents (2)</b> 4028:11;4032:15	<b>respective (1)</b> 3982:15	<b>revamp (1)</b> 4095:4	<b>risking (1)</b> 4097:9	<b>rough (13)</b> 4026:14,21,24; 4027:11;4061:6; 4078:3,6,8,9,11; 4096:2;4098:15; 4110:12
<b>re-orienting (1)</b> 4087:9	<b>respond (1)</b> 4132:16	<b>revenue (6)</b> 3982:20;3994:17; 4104:4;4125:10; 4127:17;4140:16	<b>Riverside (2)</b> 4012:18;4014:10	<b>round (1)</b> 3995:4
<b>repeat (2)</b> 4030:13;4143:14	<b>responses (1)</b> 3998:5	<b>revenues (1)</b> 4156:9	<b>road (2)</b> 4082:20;4086:16	<b>route (1)</b> 4097:3
<b>rephrase (2)</b> 3989:23;4152:25	<b>responsibilities (3)</b> 3976:19;3982:1; 3987:25	<b>reversal (1)</b> 4085:17	<b>ROBERT (113)</b> 3974:17;3975:15,17; 3989:22,23;3990:10; 3995:7;3996:13; 3997:1;3998:10,22; 3999:13,17,24;4000:5, 16,21,24;4001:4,24; 4002:5;4003:16,24; 4005:15;4007:3,6,7,24;	<b>routinely (1)</b> 4122:9
<b>report (3)</b> 4082:8,14;4160:1	<b>responsibility (2)</b> 3983:18;4106:18	<b>review (3)</b> 4130:8,12;4142:10		<b>rule (4)</b> 4006:8;4007:23; 4083:18;4125:7
<b>Reporter (7)</b> 4021:20;4069:14; 4072:22;4116:16; 4138:10;4160:13; 4164:10	<b>responsible (2)</b> 3984:14;4156:7	<b>Revolutionary (1)</b> 4106:2		
<b>reporters (1)</b> 4093:7	<b>responsive (1)</b> 4099:5	<b>RFP (1)</b> 4108:1		
<b>represent (1)</b> 4121:18	<b>rest (8)</b> 4000:17;4017:23; 4018:4;4019:21; 4036:1;4097:11; 4105:22;4166:10	<b>rid (1)</b> 3974:23		
<b>representation (3)</b> 4101:25;4161:13,22	<b>restaurant (6)</b> 4037:17;4064:19,19; 4065:1;4108:9;4109:7	<b>ride (1)</b> 4023:17		
<b>representations (1)</b> 3999:19	<b>responsibility (2)</b> 3983:18;4106:18	<b>ridge (1)</b> 4106:1		
<b>representative (1)</b> 4007:20	<b>responsible (2)</b> 3984:14;4156:7	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>represented (1)</b> 4120:24	<b>rest (8)</b> 4000:17;4017:23; 4018:4;4019:21; 4036:1;4097:11; 4105:22;4166:10	<b>rid (1)</b> 3974:23		
<b>re-purposed (1)</b> 4057:3	<b>restaurant (6)</b> 4037:17;4064:19,19; 4065:1;4108:9;4109:7	<b>ride (1)</b> 4023:17		
<b>repurposing (1)</b> 4076:16	<b>restaurants (2)</b> 4037:16;4090:19	<b>ridge (1)</b> 4106:1		
<b>requested (2)</b> 4138:9;4164:9	<b>restrict (2)</b> 4140:6,7	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>require (2)</b> 4140:17,20	<b>result (2)</b> 4115:12;4138:12	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>required (2)</b> 4042:23;4128:23	<b>resulted (1)</b> 4151:16	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>requirements (2)</b> 4124:12;4164:6	<b>results (1)</b> 3979:17	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>requires (1)</b> 4140:19	<b>resumed (1)</b> 4147:7	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>Reserve (2)</b> 4031:9,19	<b>retail (10)</b> 3980:15;4009:23; 4010:3;4011:15,16,22,	<b>right (98)</b> 3974:7,15;3975:1; 3976:3;3978:1,7,23; 3991:4;3993:18; 3994:8;3996:11; 4001:18;4002:2,13; 4008:15;4017:10; 4019:10;4020:3; 4028:9;4033:17; 4037:14,21;4039:23; 4040:5;4043:13; 4045:9;4047:20; 4048:7,8,24;4052:13; 4055:1;4058:8; 4059:13;4060:1; 4061:5,16,19;4062:19; 4064:22;4067:17; 4071:18;4076:22; 4078:24;4079:7,24; 4084:22;4085:6;		
<b>reshape (1)</b>				

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>rules (2)</b> 4046:21;4050:17 <b>ruling (4)</b> 3990:2;4000:20,22; 4001:7 <b>run (7)</b> 3978:17;3986:11; 4020:23;4021:2; 4088:14;4097:20; 4126:8 <b>rundown (6)</b> 4004:24;4020:24; 4048:21;4077:22; 4107:9;4110:16 <b>running (4)</b> 4021:9,16;4076:17; 4098:4 <b>runways (2)</b> 4094:15,15 <b>rush (2)</b> 4002:14;4061:8	4073:14 <b>satisfy (3)</b> 4098:4;4124:22; 4125:9 <b>Saturday (1)</b> 4060:18 <b>save (2)</b> 4002:23;4140:11 <b>saw (33)</b> 3976:24;3977:18,24; 4002:25;4003:7; 4009:3;4012:24,25; 4015:2;4018:24; 4022:9,13;4023:7; 4024:13;4030:18; 4040:2,2;4044:11; 4048:11;4055:22; 4056:9;4057:12; 4063:17;4074:22; 4078:3;4085:23; 4096:23;4100:9; 4106:6;4107:7,17,17; 4110:13 <b>saying (7)</b> 4053:21;4068:21; 4131:17;4132:2; 4135:10,10;4137:14 <b>scale (3)</b> 4015:21;4066:8; 4097:24 <b>scaleability (1)</b> 3994:15 <b>scape (1)</b> 4110:6 <b>schedule (2)</b> 4060:22;4061:7 <b>scheduling (1)</b> 4164:17 <b>schematics (1)</b> 4079:18 <b>School (2)</b> 3975:24;4100:2 <b>scope (1)</b> 4020:13 <b>Scotland (11)</b> 3981:9;3998:13,15; 4075:16;4093:21,25; 4094:5,8,16,24;4095:1	4077:8;4080:9;4087:5, 22;4088:3,23;4089:10, 22;4090:3,14;4091:2,9, 13;4117:10;4118:13; 4130:6;4135:16; 4138:21,22 <b>screw (1)</b> 3994:12 <b>script (2)</b> 4006:24;4007:15 <b>sea (6)</b> 4017:12;4075:7; 4076:2,3,7;4096:2 <b>seamless (1)</b> 4035:9 <b>seamlessly (1)</b> 4091:6 <b>Sears (2)</b> 4064:10,11 <b>seat (2)</b> 3975:10;4120:3 <b>seated (2)</b> 3974:6;4039:6 <b>seating (1)</b> 4089:6 <b>second (22)</b> 4008:6;4009:24; 4027:6;4037:25; 4049:4;4052:22; 4062:3;4066:22; 4075:17;4079:9; 4105:6;4112:19; 4114:21;4115:24; 4130:10,14;4134:8; 4136:7;4153:3;4154:6; 4155:17;4162:12 <b>Secondarily (1)</b> 3997:5 <b>secondary (1)</b> 4024:19 <b>seconds (1)</b> 4090:11 <b>section (2)</b> 4127:24,25 <b>secure (2)</b> 4030:1;4098:18 <b>secured (1)</b> 4040:1 <b>securing (1)</b> 4036:23 <b>securitized (2)</b> 4114:12,12 <b>security (1)</b> 4161:24 <b>seeing (5)</b> 3981:5;3990:17; 4065:6;4075:24; 4101:11 <b>seeking (6)</b> 3997:7;4085:7,12; 4101:9,14;4127:10 <b>seemed (2)</b> 3998:1;4063:22	<b>seems (5)</b> 4012:18;4079:23; 4080:11;4143:15; 4155:14 <b>sees (4)</b> 4023:25;4044:2; 4079:7,22 <b>Seidner (4)</b> 4142:16;4143:11,16, 22 <b>self-evident (1)</b> 4073:17 <b>sell (17)</b> 3986:4;3988:19; 3993:8;4015:13,15; 4024:2,5;4033:22; 4036:1,6;4051:11; 4056:5;4059:17; 4064:2;4067:5; 4072:16;4129:1 <b>seller (13)</b> 4129:1,3,5,6,9,10,10, 25;4130:1;4136:13,17, 24;4137:7 <b>sellers (1)</b> 4128:22 <b>selling (6)</b> 4035:10;4036:1; 4054:10;4057:20; 4067:7,8 <b>send (2)</b> 4156:2;4159:7 <b>sending (2)</b> 4146:7,13 <b>Senior (4)</b> 4021:20;4069:14; 4116:16;4160:13 <b>sense (9)</b> 3983:24;4024:3,12; 4034:15,17;4038:14; 4085:15;4107:11; 4129:22 <b>sent (13)</b> 3997:20;4007:5; 4132:12,15;4145:6,9; 4147:20;4148:5; 4154:21;4155:22; 4159:19;4161:7,7 <b>sentence (8)</b> 4136:8,16;4153:3; 4154:6;4158:1,6,7,11 <b>sentences (1)</b> 4135:14 <b>separate (2)</b> 4091:5;4095:10 <b>separated (3)</b> 4037:14,22;4105:14 <b>series (5)</b> 4128:4,6,10,13,14 <b>seriously (1)</b> 3987:7 <b>service (2)</b> 4037:18;4068:12	<b>Servicer (3)</b> 4114:15;4117:13,15 <b>Services (1)</b> 4109:16 <b>session (2)</b> 3974:2;4039:6 <b>set (8)</b> 4001:6,10;4002:25; 4010:19;4049:24,25; 4089:12;4146:10 <b>sets (1)</b> 3980:19 <b>setting (2)</b> 4089:14;4133:1 <b>settlement (1)</b> 4092:3 <b>seven (7)</b> 4011:3;4022:20,24; 4158:18;4159:3,9,19 <b>several (2)</b> 4039:10;4145:9 <b>sexiness (1)</b> 3990:16 <b>sexy (2)</b> 4045:20,21 <b>shaking (1)</b> 4133:22 <b>shape (1)</b> 4076:24 <b>sharp (1)</b> 4038:19 <b>sheet (1)</b> 4098:17 <b>Sheri (2)</b> 4120:7;4129:16 <b>shield (4)</b> 4131:12;4133:19; 4134:21,24 <b>shift (3)</b> 4142:8;4147:11; 4158:18 <b>shooting (1)</b> 4074:18 <b>shore (1)</b> 4076:5 <b>short (3)</b> 4021:13;4058:12; 4166:1 <b>shortly (1)</b> 4059:10 <b>shot (3)</b> 4003:17;4018:16; 4109:1 <b>shoulders (1)</b> 4047:2 <b>show (11)</b> 4013:1;4027:4; 4081:10,12;4086:1; 4087:1,3;4130:3; 4148:25;4157:11; 4158:20 <b>showcasing (1)</b> 4095:23
<b>S</b>				
<b>safe (1)</b> 4031:6 <b>safeguard (1)</b> 4031:19 <b>safeguarding (1)</b> 4161:25 <b>safes (2)</b> 4031:11,21 <b>sake (1)</b> 3983:7 <b>sale (3)</b> 4057:19;4072:20; 4148:21 <b>saleable (4)</b> 4015:23;4035:13; 4066:12;4069:7 <b>sales (2)</b> 4066:16;4111:22 <b>salvage (2)</b> 4048:22;4060:12 <b>salvaged (1)</b> 4051:14 <b>Samantha (1)</b> 4033:25 <b>same (25)</b> 3978:22;4001:3; 4004:4;4011:13,20; 4016:11,19;4017:21; 4018:16;4029:16; 4032:5;4036:8; 4043:19;4055:12; 4082:3;4087:15; 4099:3;4106:5,6; 4130:25;4136:10; 4145:14;4154:12,14; 4166:12 <b>Samuel (1)</b> 4145:24 <b>San (1)</b>	<b>scratch (1)</b> 4110:19 <b>screen (53)</b> 3995:14,20;4002:6, 7;4006:24;4007:10; 4022:18;4024:16; 4025:2,8,12,16,25; 4026:6;4030:25; 4031:4,25;4032:4,18, 24;4033:5;4037:3,11; 4038:7;4041:22; 4042:9,14;4043:1; 4044:5;4070:20; 4071:5;4073:25; 4074:9;4075:21;	<b>seaming (1)</b> 4036:23 <b>securitized (2)</b> 4114:12,12 <b>security (1)</b> 4161:24 <b>seeing (5)</b> 3981:5;3990:17; 4065:6;4075:24; 4101:11 <b>seeking (6)</b> 3997:7;4085:7,12; 4101:9,14;4127:10 <b>seemed (2)</b> 3998:1;4063:22	<b>seems (5)</b> 4012:18;4079:23; 4080:11;4143:15; 4155:14 <b>sees (4)</b> 4023:25;4044:2; 4079:7,22 <b>Seidner (4)</b> 4142:16;4143:11,16, 22 <b>self-evident (1)</b> 4073:17 <b>sell (17)</b> 3986:4;3988:19; 3993:8;4015:13,15; 4024:2,5;4033:22; 4036:1,6;4051:11; 4056:5;4059:17; 4064:2;4067:5; 4072:16;4129:1 <b>seller (13)</b> 4129:1,3,5,6,9,10,10, 25;4130:1;4136:13,17, 24;4137:7 <b>sellers (1)</b> 4128:22 <b>selling (6)</b> 4035:10;4036:1; 4054:10;4057:20; 4067:7,8 <b>send (2)</b> 4156:2;4159:7 <b>sending (2)</b> 4146:7,13 <b>Senior (4)</b> 4021:20;4069:14; 4116:16;4160:13 <b>sense (9)</b> 3983:24;4024:3,12; 4034:15,17;4038:14; 4085:15;4107:11; 4129:22 <b>sent (13)</b> 3997:20;4007:5; 4132:12,15;4145:6,9; 4147:20;4148:5; 4154:21;4155:22; 4159:19;4161:7,7 <b>sentence (8)</b> 4136:8,16;4153:3; 4154:6;4158:1,6,7,11 <b>sentences (1)</b> 4135:14 <b>separate (2)</b> 4091:5;4095:10 <b>separated (3)</b> 4037:14,22;4105:14 <b>series (5)</b> 4128:4,6,10,13,14 <b>seriously (1)</b> 3987:7 <b>service (2)</b> 4037:18;4068:12	<b>Servicer (3)</b> 4114:15;4117:13,15 <b>Services (1)</b> 4109:16 <b>session (2)</b> 3974:2;4039:6 <b>set (8)</b> 4001:6,10;4002:25; 4010:19;4049:24,25; 4089:12;4146:10 <b>sets (1)</b> 3980:19 <b>setting (2)</b> 4089:14;4133:1 <b>settlement (1)</b> 4092:3 <b>seven (7)</b> 4011:3;4022:20,24; 4158:18;4159:3,9,19 <b>several (2)</b> 4039:10;4145:9 <b>sexiness (1)</b> 3990:16 <b>sexy (2)</b> 4045:20,21 <b>shaking (1)</b> 4133:22 <b>shape (1)</b> 4076:24 <b>sharp (1)</b> 4038:19 <b>sheet (1)</b> 4098:17 <b>Sheri (2)</b> 4120:7;4129:16 <b>shield (4)</b> 4131:12;4133:19; 4134:21,24 <b>shift (3)</b> 4142:8;4147:11; 4158:18 <b>shooting (1)</b> 4074:18 <b>shore (1)</b> 4076:5 <b>short (3)</b> 4021:13;4058:12; 4166:1 <b>shortly (1)</b> 4059:10 <b>shot (3)</b> 4003:17;4018:16; 4109:1 <b>shoulders (1)</b> 4047:2 <b>show (11)</b> 4013:1;4027:4; 4081:10,12;4086:1; 4087:1,3;4130:3; 4148:25;4157:11; 4158:20 <b>showcasing (1)</b> 4095:23

77 of 344

NYSCEF DOC. NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

<b>specific (6)</b> 3989:10;4005:5; 4006:4;4104:8; 4116:13;4131:5 <b>specifically (7)</b> 3980:5;3982:1; 4028:8;4094:23; 4104:14;4106:24; 4132:7 <b>specifics (1)</b> 4137:1 <b>spectacular (31)</b> 3994:19;4004:25; 4008:19;4013:18; 4016:12;4018:14; 4021:10;4023:13; 4024:21;4025:23; 4031:12;4044:11; 4056:2,9,13;4071:13, 22;4073:3,8,13; 4074:20;4090:5; 4094:4;4096:4,24; 4100:11;4103:10,10; 4105:18,24;4110:15 <b>speculating (2)</b> 4070:3,5 <b>speculation (1)</b> 3989:16 <b>speed (1)</b> 4097:14 <b>spend (5)</b> 3975:20;4029:17; 4062:8;4121:10,11 <b>spending (4)</b> 4029:23;4035:25; 4062:6;4067:4 <b>spends (1)</b> 4056:14 <b>spent (11)</b> 3981:9;3983:4; 3993:19;4013:16; 4018:22;4019:8; 4060:7,15;4074:15; 4076:13;4098:18 <b>spoke (4)</b> 4067:13;4099:14; 4105:3;4130:17 <b>spoken (1)</b> 4096:8 <b>sponsor (1)</b> 4164:4 <b>sporadically (1)</b> 4160:4 <b>spot (1)</b> 4040:13 <b>spread (4)</b> 3981:13;3982:6; 4028:17;4043:11 <b>spreading (2)</b> 3981:22;4028:23 <b>spreadsheet (1)</b> 4051:11 <b>Springs (6)</b>	4022:20,24;4158:19; 4159:3,9,19 <b>sprinkler (1)</b> 4098:2 <b>square (12)</b> 4008:25;4009:6,21; 4010:10;4015:15; 4026:22;4027:12; 4035:13,18;4063:5; 4064:1;4066:16 <b>squares (1)</b> 4053:16 <b>stabilize (4)</b> 4027:18;4028:4,24; 4029:14 <b>stabilized (1)</b> 4050:15 <b>stabilizing (1)</b> 4029:6 <b>stack (1)</b> 4009:6 <b>stage (4)</b> 4010:19;4011:6; 4094:16;4098:14 <b>stagger (1)</b> 4028:3 <b>stairs (1)</b> 4046:7 <b>stand (11)</b> 3974:18,20;3998:9; 3999:19;4083:12; 4085:19;4086:10; 4119:3,18;4147:7; 4164:16 <b>standard (7)</b> 4045:2;4067:22; 4091:14;4128:23; 4129:7;4141:20; 4152:16 <b>standards (9)</b> 4001:10;4042:23; 4061:16;4128:25; 4130:20;4136:21; 4137:4;4142:1,1 <b>standing (6)</b> 3975:1;3998:8; 4001:17,22,23;4055:1 <b>standout (1)</b> 4048:12 <b>standpoint (4)</b> 3994:15,16,18; 4051:23 <b>stands (2)</b> 4045:16;4046:14 <b>start (17)</b> 3981:5;3996:11; 4029:19;4037:24,25; 4050:19;4067:4,8; 4074:16;4095:4; 4100:24;4106:14; 4115:1;4127:7; 4139:24;4140:3; 4164:21	<b>Started (33)</b> 3976:21;3977:2; 3978:6,12;3981:22; 3990:21;3993:1,6; 3995:23;4001:9; 4002:9,14,21;4003:2, 10;4041:18;4042:10; 4047:3,12;4050:12; 4054:8,10;4059:10; 4060:1,21;4062:3; 4063:21;4071:8; 4073:6;4074:25; 4076:13;4089:1; 4140:21 <b>starting (3)</b> 3976:20;3981:6; 4063:8 <b>starts (3)</b> 4144:3;4154:23; 4159:23 <b>State (13)</b> 3975:10;4005:19; 4026:19;4040:12; 4049:11;4094:11; 4095:16;4097:19; 4120:5;4121:23; 4128:11;4150:11; 4153:6 <b>stated (2)</b> 4015:12;4103:6 <b>Statement (1)</b> 4081:3 <b>statements (1)</b> 3999:20 <b>States (3)</b> 3991:8;4115:25; 4158:1 <b>stature (1)</b> 4046:19 <b>status (1)</b> 4117:2 <b>statute (2)</b> 4003:14;4081:10 <b>stay (2)</b> 3986:9;4079:10 <b>stayed (4)</b> 3976:15;3985:25; 4035:7,9 <b>staying (2)</b> 4035:7;4090:19 <b>steel (2)</b> 4109:10,10 <b>stenographically (4)</b> 4021:19;4069:13; 4116:15;4160:12 <b>step (1)</b> 4115:16 <b>stepped (3)</b> 3974:19;4119:17; 4164:15 <b>steps (3)</b> 4126:1,3,24 <b>Steve (1)</b>	4082:16 <b>stick (1)</b> 4070:21 <b>sticker (1)</b> 4068:21 <b>still (25)</b> 3982:24;3983:10; 3984:13;3985:24; 3987:22;3991:19; 3992:16;3993:19,24, 25;3999:22;4012:1,13; 4038:24;4047:13; 4063:8;4066:15; 4079:4;4102:21; 4104:4;4146:2;4148:9; 4156:6,16;4157:14 <b>stock (2)</b> 3984:2,2 <b>stone (1)</b> 4048:6 <b>stones (1)</b> 4094:22 <b>stood (1)</b> 4156:24 <b>stop (5)</b> 4090:9;4091:18; 4139:25;4140:3; 4149:23 <b>stops (1)</b> 4159:23 <b>storage (1)</b> 4032:12 <b>store (2)</b> 4031:9,10 <b>stories (2)</b> 4018:11;4034:14 <b>story (5)</b> 3996:2;4002:12; 4073:1;4100:15,15 <b>storyboard (1)</b> 4001:5 <b>Street (12)</b> 4014:24;4026:8; 4031:2,7,10;4035:7; 4045:10;4113:25; 4114:11,14;4115:25; 4117:12 <b>stretch (1)</b> 4030:4 <b>stretched (1)</b> 4036:3 <b>stricken (1)</b> 4010:24 <b>strict (1)</b> 4070:11 <b>stricter (1)</b> 4050:17 <b>strip (1)</b> 4059:13 <b>stroking (1)</b> 4066:8 <b>structural (2)</b> 4053:15;4109:10	<b>structurally (1)</b> 4053:24 <b>structure (11)</b> 3979:21;3980:22; 3982:4,22;3984:8; 4002:21;4053:22; 4065:16;4087:19; 4109:9;4110:2 <b>structures (1)</b> 4154:10 <b>structuring (1)</b> 4121:12 <b>studies (1)</b> 4005:11 <b>stuff (12)</b> 3979:8;3992:23; 4006:9;4007:13; 4031:13;4044:2; 4052:3;4060:1; 4072:25;4089:15; 4097:6;4106:23 <b>stupid (3)</b> 4050:14;4085:18,20 <b>style (1)</b> 4033:17 <b>Subject (8)</b> 4086:6,13;4137:12; 4142:19;4146:4; 4147:23;4152:3; 4155:11 <b>subjects (1)</b> 4101:4 <b>submitted (1)</b> 4163:22 <b>submitting (2)</b> 4151:25;4163:25 <b>subsequent (1)</b> 4155:18 <b>substantially (2)</b> 4130:24;4136:9 <b>substantive (1)</b> 4115:15 <b>subtle (1)</b> 4061:15 <b>suburb (1)</b> 4023:2 <b>succeed (1)</b> 4049:1 <b>success (1)</b> 4059:21 <b>successful (6)</b> 3991:3;4049:1; 4066:18;4068:19; 4076:4;4108:1 <b>sudden (3)</b> 4044:2;4078:16; 4097:20 <b>sue (2)</b> 3987:7;4124:9 <b>sued (1)</b> 4112:7 <b>suggesting (1)</b> 4085:4
--	---	---	--	---

NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>suit (1)</b> 4014:2 <b>suite (2)</b> 4091:10;4107:5 <b>suited (1)</b> 3982:10 <b>suites (4)</b> 4053:4;4091:16; 4095:9;4110:4 <b>summer (1)</b> 4047:13 <b>summers (2)</b> 4047:12;4056:14 <b>Sun (3)</b> 4062:11,13;4063:16 <b>super (2)</b> 4044:14;4129:15 <b>support (1)</b> 4002:20 <b>supportable (1)</b> 4130:18 <b>suppose (1)</b> 4138:14 <b>supposed (1)</b> 4078:14 <b>supposedly (1)</b> 4103:7 <b>sure (44)</b> 3974:3;3981:7; 3989:10;3998:22; 4010:13;4022:14; 4028:3,23;4039:12; 4042:6;4068:16; 4081:4;4082:17; 4091:24;4112:12; 4114:16;4119:9; 4122:13,15,19,22; 4124:21,24;4125:24; 4126:5;4128:10; 4134:10;4135:3; 4139:3,5;4143:15; 4145:6;4148:10; 4152:22;4153:2; 4157:6;4159:22,24; 4162:3,13;4163:18,19; 4165:3,14 <b>surpassed (1)</b> 4078:4 <b>surprise (3)</b> 3978:23;3979:1; 4050:22 <b>surrounded (1)</b> 4045:15 <b>surrounding (1)</b> 4039:24 <b>survives (1)</b> 4090:20 <b>sustain (1)</b> 4085:19 <b>Sustained (2)</b> 4125:17;4134:19 <b>swamp (2)</b> 4039:18;4042:3	<b>swampland (5)</b> 4040:5;4041:3,9; 4043:8;4044:13 <b>swear (3)</b> 3974:25;3975:3; 4119:21 <b>Swift (4)</b> 4129:12,14,18,20 <b>sword (2)</b> 4131:13;4133:19 <b>sworn (2)</b> 3975:8;4120:1 <b>system (4)</b> 3994:13,19;4042:18; 4118:18 <b>systems (4)</b> 4002:21;4042:19; 4098:2;4099:11	3976:25;3977:16; 4008:11;4013:3,4; 4026:18;4045:13; 4064:12,14;4078:15 <b>tangentially (1)</b> 4099:5 <b>task (1)</b> 4111:11 <b>tax (51)</b> 3985:23;4072:15; 4105:16;4120:20,21; 4121:8,9,10,12,12,12, 12,15,16,17,22,24; 4122:2,12,19,20,21; 4124:18,20,24;4125:3, 5,8,8,11,14;4127:4,5,5, 10,22;4140:9,12; 4143:8;4151:10; 4156:7,10,15,20,24; 4157:1,9;4159:21; 4160:1,2,3 <b>taxable (2)</b> 4157:4,5 <b>taxes (1)</b> 4104:9 <b>taxpayer (4)</b> 4122:8;4125:15,20, 23 <b>taxpayers (1)</b> 4122:11 <b>Taylor (4)</b> 4129:12,14,17,20 <b>TBMC (2)</b> 4149:23;4150:5 <b>TCBY (1)</b> 4107:8 <b>team (7)</b> 3985:21;3986:11; 3994:10,13,14;4127:7; 4143:7 <b>teams (6)</b> 3981:18;3992:19; 4007:13;4067:20; 4068:1,5 <b>tee (2)</b> 4043:12;4102:11 <b>teeth (1)</b> 4047:25 <b>telling (1)</b> 4006:19 <b>tells (3)</b> 4127:11;4128:4,24 <b>ten (8)</b> 4011:21;4013:25; 4028:10;4029:13; 4030:4;4088:19; 4103:14;4104:10 <b>tenant (5)</b> 4029:9,16,17,21,21 <b>tenants (4)</b> 4011:15;4027:24; 4032:14;4050:16 <b>tend (2)</b>	4002:3;4070:11 <b>ten-minute (3)</b> 4030:18;4037:5; 4038:17 <b>Tens (1)</b> 4104:14 <b>tense (1)</b> 4158:11 <b>tenure (1)</b> 4007:13 <b>ten-year (2)</b> 4030:6,7 <b>term (3)</b> 4036:25;4040:1; 4141:2 <b>terminations (1)</b> 4027:22 <b>terms (24)</b> 3982:16;3986:15; 3990:16,22;3991:20; 3994:9;4001:25; 4019:20;4027:21; 4041:20;4049:21; 4063:4,7;4065:11,12; 4066:10;4077:18; 4090:21;4122:4; 4125:21;4161:1,12,18; 4165:12 <b>terrace (4)</b> 4064:18,25;4065:1; 4089:24 <b>terraces (1)</b> 4088:5 <b>territories (1)</b> 4002:16 <b>testified (10)</b> 3975:9;3987:19; 4004:13;4012:9; 4049:2;4050:5;4114:7; 4120:2,18;4148:13 <b>testifies (1)</b> 4082:18 <b>testify (5)</b> 3998:2;4022:21; 4082:19;4113:16; 4117:18 <b>testimony (20)</b> 3975:4;3976:18; 3978:10;3996:6; 3998:1;4005:13,22; 4006:5,20;4038:23; 4074:24;4077:10; 4113:12;4119:22; 4125:3;4138:9; 4142:20;4147:3; 4162:5,15 <b>therefore (5)</b> 4110:24;4130:24; 4132:17;4136:10; 4142:4 <b>thinking (3)</b> 4070:23;4122:7; 4125:25	<b>third (10)</b> 3990:5,12;4014:22; 4025:4;4034:22; 4064:14;4109:4; 4134:12;4142:14; 4153:3 <b>third-party (2)</b> 4081:17;4084:19 <b>though (2)</b> 4052:6;4081:2 <b>thought (6)</b> 3974:23;3992:17,24; 4012:8;4030:17; 4053:19 <b>thousands (3)</b> 4078:16;4088:15; 4090:15 <b>three (25)</b> 3976:13;3982:7; 3989:8;4013:19; 4024:6;4029:18; 4043:4;4052:7;4054:5; 4058:18;4061:2,4; 4062:6,9;4067:9; 4076:13;4081:17; 4088:15;4096:6; 4099:8;4118:11; 4157:16,19;4164:20,20 <b>thrilled (1)</b> 4073:14 <b>throttle (1)</b> 4139:10 <b>throughout (15)</b> 3979:14;3985:3; 3990:14;3991:8,8; 3997:12;4007:13; 4010:16;4016:1; 4052:8;4084:16; 4146:21;4157:1,2; 4160:5 <b>throw (2)</b> 4055:25;4076:24 <b>Thursday (2)</b> 4166:2,6 <b>TI (1)</b> 4029:16 <b>tiers (1)</b> 4032:21 <b>Tiffany's (2)</b> 4008:13;4009:1 <b>TIGC (1)</b> 4142:19 <b>timeframe (1)</b> 4013:23 <b>timeline (1)</b> 4058:14 <b>times (15)</b> 3977:25;3981:4,9; 3982:7;4003:19; 4028:16;4029:11; 4052:8;4054:11; 4059:19;4062:11,13; 4063:16;4082:7;
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NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4107:3 <b>timing (2)</b> 4021:18;4059:16 <b>tinker (1)</b> 4043:22 <b>tirelessly (1)</b> 3994:1 <b>tires (1)</b> 3981:17 <b>titans (1)</b> 4017:2 <b>title (5)</b> 3979:6,25;3987:21; 3988:2;4097:5 <b>titles (4)</b> 3978:11;3979:10,11; 4050:6 <b>TNGC (1)</b> 4146:4 <b>today (22)</b> 3974:15;3999:7; 4011:9,18;4015:3,18; 4017:6;4018:9,13; 4034:23;4057:4; 4061:18;4067:23; 4073:18;4079:10; 4112:4;4117:19; 4131:15,19;4150:3; 4152:22;4164:4 <b>together (6)</b> 3985:22;3999:3,4; 4024:25;4073:12; 4127:7 <b>told (7)</b> 4001:5;4010:22; 4083:1;4093:3; 4100:15;4124:3; 4132:11 <b>Tommy (1)</b> 3974:7 <b>tomorrow (9)</b> 4082:17;4084:8; 4164:22,23,25; 4165:23;4166:4; 4167:4,5 <b>tomorrow's (1)</b> 4164:20 <b>took (31)</b> 3977:11;3993:25; 4004:14;4005:7; 4009:3;4021:8,13,15; 4022:11;4023:5; 4026:21;4027:23; 4029:2;4041:3;4051:9; 4052:8;4057:2; 4078:25;4089:2,2; 4094:10;4095:17; 4098:16;4100:12; 4101:22;4102:18,22, 25;4103:9;4107:18; 4161:13 <b>top (13)</b> 4009:1;4042:16;	4053:10,22;4054:24; 4055:2;4065:14; 4106:1;4117:1;4148:1; 4154:6;4155:2,8 <b>topic (2)</b> 3989:24;4033:2 <b>topography (13)</b> 4040:13,15;4041:25; 4042:7,16;4048:5; 4055:22;4056:22; 4075:12;4076:7; 4095:24,25;4099:10 <b>torn (1)</b> 4107:3 <b>totally (3)</b> 4089:1;4107:10; 4137:16 <b>totals (2)</b> 4148:1,2 <b>totem (1)</b> 4050:13 <b>touch (1)</b> 4013:22 <b>Toward (3)</b> 4142:15;4143:21; 4145:21 <b>towards (2)</b> 4048:18;4087:7 <b>Tower (20)</b> 3977:12;4008:8; 4009:2;4011:13,23; 4013:6;4021:1;4033:1, 7;4037:14;4045:5,8; 4061:23;4063:20; 4064:10,11;4065:17; 4116:10,12;4117:12 <b>towers (1)</b> 4013:5 <b>tower's (2)</b> 4116:2,6 <b>town (1)</b> 4096:17 <b>townhomes (1)</b> 4150:7 <b>township (1)</b> 4144:5 <b>track (1)</b> 4107:25 <b>tract (2)</b> 4014:25;4039:19 <b>tractors (1)</b> 4098:1 <b>trades (1)</b> 4002:23 <b>traffic (2)</b> 4046:8;4089:18 <b>trailer (1)</b> 4042:11 <b>tranche (1)</b> 4037:23 <b>transaction (6)</b> 4097:6;4122:7,12, 14;4146:9,11	<b>transcript (1)</b> 4131:18 <b>transfer (1)</b> 4042:19 <b>transferred (2)</b> 4117:12,15 <b>transitioning (1)</b> 4106:21 <b>translate (1)</b> 4068:25 <b>translated (1)</b> 3993:9 <b>travel (1)</b> 3981:4 <b>traveling (1)</b> 3981:10 <b>Treasury (2)</b> 4127:18;4140:16 <b>tree (1)</b> 4043:22 <b>trial (11)</b> 3997:11;4022:22; 4057:5;4084:16; 4092:7;4106:10; 4115:12;4120:10; 4132:7;4142:20; 4167:7 <b>tried (3)</b> 4036:19;4056:3; 4068:19 <b>trouble (3)</b> 4006:7;4061:9; 4096:20 <b>true (8)</b> 3993:21;4042:7; 4049:14;4051:19; 4061:17;4114:14; 4117:25;4125:13 <b>truly (6)</b> 4009:9;4031:13; 4041:8;4051:14; 4058:10;4075:8 <b>Trump (246)</b> 3974:18;3975:12,18; 3976:11,14,19; 3977:12,17,24; 3978:10,21;3979:9; 3980:6,7,8,23;3982:22; 3986:2;3987:14,17,20, 24,24;3988:4,11; 3989:15;3990:7,8,12; 3993:13;3994:4; 3995:10,16,21;3996:2; 3997:7;3998:3,5,24; 3999:6,10,10,19; 4001:8,10;4002:2,8,8; 4003:12;4004:1,2,13, 19;4005:15;4007:3,14; 4008:4,6,8;4011:2,12, 13,22;4012:10;4013:6, 11;4015:9;4016:4; 4017:7;4020:20; 4021:1;4022:2,7,23;	4026:11;4027:7; 4028:8;4029:7;4032:7; 4033:6,8,8,10,14,21; 4035:7;4036:12,16; 4037:12,13;4039:9,13, 16,24;4040:9;4041:10, 23;4045:5,8;4046:10; 4047:5,6,9;4048:20; 4049:4,7,8,8;4050:10; 4051:2;4053:2,4; 4055:13,15,18; 4056:16,20,24;4057:6, 8,10;4058:5,15;4059:4, 10;4061:12,19,22; 4062:3,21,23,25; 4063:11,20;4064:4,17; 4065:15,17,21; 4066:20,23;4067:12, 15,17;4070:2,8,22; 4071:6,7,21,25; 4074:10,17;4075:22; 4077:9,13;4079:14; 4080:10,13,24; 4081:15,19;4084:5,6, 25;4085:4;4087:6,12, 23;4088:8;4089:5,23; 4091:21;4093:19,21, 24,25;4094:7,24; 4095:16,22;4096:9; 4098:8;4099:19,20; 4100:16,21,22;4101:3, 10;4102:8,17;4103:15, 25;4104:7,9,20; 4106:25;4107:1,22; 4108:12;4109:3; 4111:8,23;4112:4; 4113:3,9,10,12,24; 4114:21;4117:25; 4118:2,7,14,20; 4120:10,25;4130:23; 4136:9;4142:9,21,22; 4143:9,23;4145:10,22; 4147:13,21;4149:25; 4150:19,22;4154:4; 4157:14,20,23;4158:1; 4160:4,7,10,11;4161:2, 14,15,22,22 <b>Trumps (2)</b> 4083:1;4084:19 <b>Trump's (3)</b> 4006:21;4082:11; 4117:11 <b>trust (7)</b> 4023:6;4034:5; 4043:23;4051:1; 4123:22;4124:1,5 <b>trusts (1)</b> 4124:2 <b>truth (9)</b> 3975:4,5,5;4080:22; 4085:7;4119:22,23,23; 4131:10 <b>try (13)</b>	4028:2;4030:13; 4040:4;4046:21; 4051:11;4069:11; 4097:13;4107:15; 4115:9;4122:15,15; 4137:25;4139:3 <b>trying (19)</b> 3989:24;3996:4; 4000:10;4005:25; 4021:6;4027:18; 4043:13;4052:3; 4060:25;4103:7; 4126:5;4130:22; 4134:5;4136:8; 4138:18;4141:7,9,23; 4144:17 <b>Tuesday (1)</b> 4166:20 <b>tune (1)</b> 4029:4 <b>turn (6)</b> 4040:10;4063:22; 4088:12;4113:8; 4117:8;4156:10 <b>Turnberry (4)</b> 4093:21,25;4094:1,8 <b>turned (17)</b> 4004:24;4005:7; 4016:18;4031:15,17; 4041:4;4043:9; 4047:14;4049:19; 4056:10;4057:3,23; 4063:3;4103:10; 4105:1;4107:5;4108:2 <b>turning (4)</b> 4013:18;4026:7; 4052:15;4118:11 <b>TV (1)</b> 4072:24 <b>twice (1)</b> 4040:25 <b>twist (1)</b> 4122:22 <b>two (30)</b> 3976:12;3980:14; 3987:19;4013:10,19, 25;4032:11;4033:24; 4038:15;4053:7,16,17; 4062:6,9;4067:9; 4132:14;4135:14; 4140:5,9;4144:3,24,25; 4145:1;4147:25; 4154:9;4155:11; 4164:20,20;4166:18; 4167:2 <b>two18-hole (1)</b> 4056:13 <b>two-floor (1)</b> 4054:25 <b>two-week (1)</b> 4029:1 <b>type (5)</b> 3992:5;4022:2;
---	--	---	--	--



NYSCEF DOC NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4029:1;4084:12,14 <b>typical (1)</b> 3989:1 <b>Typically (1)</b> 4158:14	4071:12;4109:19 <b>undeveloped (7)</b> 3977:1,1;4012:21, 24;4023:1;4039:19; 4045:10 <b>unfocused (1)</b> 3996:8 <b>unforeseen (2)</b> 3979:2;4050:22 <b>unfortunate (1)</b> 4121:20 <b>unfortunately (1)</b> 4064:24 <b>unheard (4)</b> 3993:6;4008:20; 4017:16;4058:10 <b>uninitiated (1)</b> 4121:14 <b>uninvolved (1)</b> 3983:19 <b>unique (26)</b> 3991:10;3992:7; 4008:24;4010:15,18; 4011:24;4013:18; 4025:18,22;4035:10, 11,12;4045:18; 4046:21;4048:4; 4049:23,25;4050:3; 4051:13;4053:4; 4059:13;4063:5; 4069:6;4075:8,11; 4096:25 <b>unit (8)</b> 3986:6,6;4032:12; 4033:23,24;4034:24; 4035:8,9 <b>United (2)</b> 3991:8;4045:10 <b>units (32)</b> 3985:24;4033:23; 4053:8,11;4054:14; 4057:19;4078:16; 4080:1;4088:16; 4148:1,2,3,7;4150:7,9, 10,19,22;4151:6,6,8; 4153:5,10,11,16,17,17, 21;4154:9,12,13,14 <b>University (1)</b> 3975:23 <b>unless (2)</b> 4119:3;4134:9 <b>Unnecessary (1)</b> 4152:20 <b>unoccupied (1)</b> 4026:24 <b>unused (1)</b> 4053:5 <b>unusual (2)</b> 3980:19;4051:18 <b>unusually (1)</b> 4152:21 <b>up (75)</b> 3978:25;3982:2,3;	3983:2;3990:14; 3991:17;3993:1,15; 4008:21;4010:5,9; 4012:20;4013:17,17; 4016:14;4021:9,16; 4023:16;4027:1; 4028:11;4030:6; 4032:15;4035:11; 4036:23,24;4038:1; 4046:24;4049:17,24, 25;4061:9;4062:24; 4063:1;4066:9,24; 4067:6;4072:20; 4075:7;4076:17; 4077:25;4087:17; 4089:12;4090:9; 4095:3;4097:4;4098:4, 16,18;4100:19;4104:5; 4106:17,25;4107:24; 4109:11;4111:16; 4113:5;4114:18; 4119:13;4121:20; 4122:20;4123:12,17, 19;4126:14;4132:14; 4133:1,12,25;4142:6; 4145:2;4153:23; 4154:17;4156:10; 4161:3,9 <b>update (2)</b> 4051:11;4166:6 <b>up-front (3)</b> 3992:11;3993:18; 3994:8 <b>upon (4)</b> 4039:3;4084:12; 4086:4;4140:5 <b>upper (8)</b> 4018:2;4032:20; 4034:14;4037:23; 4038:9;4046:17; 4063:25;4116:11 <b>upset (3)</b> 4030:16;4062:16; 4152:22 <b>upswing (1)</b> 4061:1 <b>use (32)</b> 3997:21;4009:15,22; 4012:10;4019:14; 4035:2,4;4044:14; 4049:21;4063:20,25; 4066:11;4068:10; 4076:14;4078:9; 4079:11;4082:2; 4085:22,25;4089:18; 4094:22;4115:19; 4125:23;4131:12; 4141:8,23,25,25; 4142:5;4156:17; 4157:5,8 <b>used (18)</b> 3974:22;4020:21,25; 4031:9,18;4037:19;	4038:4;4064:10; 4078:7;4094:15; 4095:20;4107:3; 4109:11;4123:10,14; 4130:21;4134:21,24 <b>uses (2)</b> 4065:11;4126:15 <b>using (6)</b> 4007:10;4015:22; 4028:6;4030:8; 4133:18;4144:13 <b>USPAP (2)</b> 4137:4,13 <b>usually (2)</b> 4032:11;4122:22 <b>utilize (2)</b> 4031:22;4064:11 <b>utilized (2)</b> 4107:10;4108:16 <b>utilizing (1)</b> 4090:19	4085:2 <b>valuing (2)</b> 4081:22;4130:21 <b>vanilla (2)</b> 4129:25,25 <b>variety (4)</b> 4140:2,4;4141:7,17 <b>various (4)</b> 3982:16;4074:3; 4103:20;4160:5 <b>vary (1)</b> 3991:15 <b>vast (2)</b> 3989:2;3994:22 <b>vault (1)</b> 4031:11 <b>vaults (2)</b> 4031:7,15 <b>Vegas (8)</b> 3977:17;4036:16; 4059:4,14,21;4060:21; 4061:10,16 <b>Verdes (2)</b> 4057:14;4146:2 <b>vernacular (1)</b> 4030:19 <b>version (3)</b> 3997:20;4018:22; 4047:1 <b>vertical (1)</b> 4011:24 <b>vettid (1)</b> 4144:5 <b>viability (1)</b> 4127:7 <b>vice (6)</b> 3979:23,23;3980:4, 8;3997:25;3999:17 <b>video (10)</b> 4100:16,22,23; 4101:1,3,5,12,21,22; 4102:2 <b>view (36)</b> 3979:9;3997:16; 4008:19;4009:9; 4010:2;4011:4,7,7; 4014:19;4019:23; 4038:11;4041:24; 4042:5;4044:8,8,12,12; 4048:2,15;4053:3; 4056:17,25;4058:3,8,9; 4070:8,12;4071:17; 4087:7;4096:6; 4099:10;4102:9,13; 4104:25;4109:25; 4112:3 <b>viewed (2)</b> 4015:9;4078:1 <b>views (8)</b> 4010:6;4017:19,20; 4032:20;4044:11; 4046:16;4057:15; 4083:25
<b>U</b>			<b>V</b>	
<b>ultimate (2)</b> 4003:8;4055:6 <b>ultimately (11)</b> 3976:10,11;3977:14; 4003:11;4012:7; 4032:14;4036:23; 4081:8;4105:19; 4151:8;4159:1 <b>ultra (5)</b> 4009:11;4015:18; 4067:23;4068:21; 4105:23 <b>ultra-luxury (2)</b> 4037:24;4045:23 <b>Um (26)</b> 3977:2,9,11;3985:7; 3990:17;3991:5; 3995:23;4022:12; 4025:19,22;4026:13; 4027:11;4028:24; 4035:1;4036:7; 4040:11;4042:18; 4071:9;4072:8; 4076:15;4089:1; 4123:24;4127:2,4,6; 4161:24 <b>umbrage (1)</b> 4018:10 <b>umbrella (1)</b> 4111:11 <b>UN (3)</b> 4013:6;4046:6,15 <b>unable (1)</b> 4148:7 <b>under (16)</b> 3984:1;4020:10,13; 4033:17;4058:24; 4100:8;4105:21; 4111:11;4122:9; 4125:8;4129:1;4137:4; 4141:21;4148:3; 4151:19;4154:7 <b>underdeveloped (1)</b> 4043:6 <b>underperforming (1)</b> 4071:11 <b>understands (1)</b> 4024:12 <b>Understood (12)</b> 3990:10,10;4026:21, 25;4068:3;4070:24; 4073:2;4122:19; 4135:25;4137:16; 4139:3;4148:8 <b>underutilized (2)</b>			<b>vacancies (1)</b> 4117:3 <b>vacant (6)</b> 4026:24;4028:2,11; 4029:8;4100:1; 4104:22 <b>vacation (2)</b> 4017:5;4089:18 <b>valuable (1)</b> 4129:15 <b>valuation (3)</b> 4082:6;4084:15; 4139:21 <b>valuations (2)</b> 3997:13;4139:1 <b>value (56)</b> 3977:24;3986:8; 3990:15;3991:24,25; 3992:17,19;3993:10; 4009:25;4010:10; 4012:7;4014:3;4015:2, 17,23;4017:14,16; 4028:3;4029:6; 4032:13,15;4034:15; 4041:4;4064:2;4069:5; 4072:14;4079:1,1,6,12; 4080:21;4081:17,25; 4082:1;4083:19; 4084:7;4085:5,12; 4086:23;4105:20; 4110:24;4112:10; 4124:21;4125:1,2,5,14; 4127:12;4128:24; 4130:18,25;4136:10; 4137:23;4139:9,18; 4142:4 <b>valued (1)</b> 4080:24 <b>values (1)</b>	

NYSCEF DOC NO. 1657  
 Attorney General v.  
 Donald Trump, et. al.

RECEIVED NYSCEF: 01/04/2024  
 November 13, 2023  
 November 13, 2023

<b>vigorous (1)</b> 4077:3 <b>villas (1)</b> 4097:3 <b>Vineyard (8)</b> 4071:25;4072:6,8; 4073:19,19;4074:2; 4105:22,24 <b>vineyards (2)</b> 4073:5,13 <b>violate (1)</b> 4124:3 <b>violating (1)</b> 4124:9 <b>Virginia (2)</b> 4071:25;4105:25 <b>Virginia/Maryland (1)</b> 4071:18 <b>virtually (2)</b> 4017:16;4055:20 <b>vis-a-vis (1)</b> 4093:25 <b>vision (10)</b> 3976:23;3984:5; 4004:21;4012:5; 4023:9;4024:12; 4056:7;4063:17; 4067:24;4072:6 <b>visionary (1)</b> 3993:9 <b>visit (2)</b> 3998:12;4127:1 <b>void (1)</b> 4053:21 <b>vote (1)</b> 4107:18	<b>walking (1)</b> 4060:19 <b>wall (16)</b> 3978:23;3979:1; 4026:8;4027:5;4028:6; 4031:2,7;4032:25; 4048:6,10;4050:21; 4113:25;4114:11,14; 4115:25;4117:12 <b>WALLACE (22)</b> 3989:12,19;3990:6; 3999:15,22;4000:2,12; 4005:10,25;4006:2,12, 19;4010:21;4080:18; 4081:2,20;4085:20; 4101:2,18;4115:14; 4152:9;4166:9 <b>wand (1)</b> 4029:1 <b>wants (6)</b> 4043:21;4056:4; 4068:16;4081:9; 4101:4;4131:19 <b>war (3)</b> 4049:14;4106:3; 4110:10 <b>warning (5)</b> 4030:18,21;4037:4, 5;4142:12 <b>warping (1)</b> 4087:2 <b>Washington (8)</b> 3983:19;4052:6; 4071:7;4107:4; 4108:18,19;4112:2; 4120:8 <b>Watch (3)</b> 4114:15;4117:2,6 <b>watching (2)</b> 4113:6;4156:9 <b>water (8)</b> 4042:2,18,18,19; 4048:10;4057:25; 4075:11;4102:10 <b>waterfall (4)</b> 4044:11;4048:7,8,16 <b>Waterfront (10)</b> 3976:22;3978:19; 4012:19;4019:17; 4047:22;4057:12,12, 15;4058:10;4095:25 <b>waterway (1)</b> 4017:13 <b>wave (1)</b> 4029:1 <b>waving (1)</b> 4131:24 <b>way (59)</b> 3981:25;3984:1; 4001:15;4007:24; 4009:2,17;4013:21; 4014:22,23;4015:8; 4020:2;4028:14;	4031:21,22;4033:13; 4034:18,23;4035:10, 11,12;4036:4,8,21,22, 22;4042:4;4044:12,15; 4046:14;4049:24; 4051:17;4052:25; 4055:23;4059:19; 4060:12,25;4063:21, 22;4064:6,6;4066:9; 4076:25;4079:10; 4084:19;4085:2; 4088:10;4094:19; 4097:3;4102:20; 4107:10;4109:8; 4110:8;4122:3; 4123:20;4139:25; 4146:8;4147:5; 4161:17,18 <b>ways (3)</b> 4000:10;4012:7; 4016:15 <b>wealth (1)</b> 4122:10 <b>wealthier (1)</b> 4063:4 <b>wealthy (1)</b> 4072:13 <b>web (1)</b> 4001:6 <b>website (8)</b> 3999:5,10,11; 4000:4;4007:4,18; 4100:16,22 <b>wedding (1)</b> 4009:8 <b>weddings (4)</b> 4018:21;4019:1; 4044:14;4089:17 <b>Wednesday (6)</b> 4165:5,21,22,25; 4166:5;4167:3 <b>week (7)</b> 3978:10,10;3987:19; 3997:25;4062:6; 4074:25;4166:10 <b>weekends (3)</b> 4020:21;4023:16; 4040:20 <b>weeks (6)</b> 3997:12;4005:23; 4006:3,7,18;4151:5 <b>Weiss (1)</b> 4143:24 <b>Weisselberg (11)</b> 3984:19,22,23; 3985:11;3986:14; 4142:16,25;4143:10, 16,23;4145:23 <b>Welcome (2)</b> 3987:4;4120:9 <b>well-respected (1)</b> 4080:23 <b>weren't (9)</b>	3983:6,15,23; 4050:2;4062:24; 4068:2;4077:23; 4148:8,9 <b>West (15)</b> 3976:22;3984:4; 4012:11,22;4019:18; 4039:14,17,18,21; 4047:17;4053:17; 4055:10,12;4063:1; 4078:14 <b>Westchester (4)</b> 4023:1,12;4041:17; 4047:7 <b>Western (2)</b> 4034:3;4051:2 <b>Wharton (1)</b> 3975:24 <b>whatnot (1)</b> 4031:16 <b>what's (4)</b> 3978:25;4101:24; 4135:4,6 <b>whenever (1)</b> 4121:17 <b>Whereas (1)</b> 3997:25 <b>whereby (1)</b> 4034:24 <b>Whereupon (66)</b> 3974:12,19;3995:13, 19;4022:18;4024:15; 4025:1,7,11,15,24; 4026:5;4030:24; 4031:3,24;4032:3,17, 23;4033:4;4037:2,10; 4038:6;4039:3; 4041:21;4042:8,13,25; 4044:4;4070:19; 4071:4;4073:24; 4074:8;4075:20; 4077:7;4080:8;4087:4, 21;4088:2,22;4089:9, 21;4090:2,13;4091:1,8, 12;4092:7;4100:23; 4117:9;4118:12; 4119:11,14,17;4130:5; 4138:9,22;4145:18; 4147:7;4149:19; 4155:4;4159:14; 4162:4,14;4164:9,15; 4167:7 <b>wherever (1)</b> 4123:24 <b>white (1)</b> 4135:16 <b>whole (16)</b> 3975:4;3978:6; 3986:11,25;4005:19; 4012:4;4014:16; 4054:22;4089:3; 4115:4,8;4119:22; 4128:4,6,13,14	<b>who's (2)</b> 3974:21;4041:6 <b>whose (1)</b> 4164:22 <b>wide (1)</b> 4031:11 <b>wife (1)</b> 4073:1 <b>willing (5)</b> 3979:8;4050:23; 4126:14;4128:25; 4129:1 <b>wind (1)</b> 4075:11 <b>window (1)</b> 4009:4 <b>windows (1)</b> 4053:13 <b>wine (2)</b> 4073:1,14 <b>winery (1)</b> 4105:3 <b>wing (1)</b> 4018:25 <b>wise (2)</b> 4140:13;4156:18 <b>withdraw (2)</b> 4135:17,21 <b>withdrawn (2)</b> 4076:10;4135:20 <b>within (18)</b> 3976:12;3987:24; 3990:16;3994:25; 4011:25;4012:3; 4021:9,13;4027:15,25; 4050:17,20;4058:12; 4135:5;4137:3;4138:5; 4144:7;4154:9 <b>without (8)</b> 4007:10;4017:20,20; 4046:7;4051:25; 4068:4;4072:18; 4073:10 <b>Witkoff (12)</b> 4082:16,18,22; 4083:23;4086:8,9,15; 4164:22;4165:25; 4166:4;4167:3,4 <b>witness (88)</b> 3974:16,19,19,23; 3975:2,6,12;3987:3,5, 11;3995:8,9,12,15; 3996:5;3997:2,4,23; 3998:15;4006:17,25; 4007:11,16;4030:12; 4038:21,22,24;4039:1; 4041:1;4054:20; 4070:2,5,7;4080:6,7; 4081:1;4083:12; 4085:23;4090:25; 4092:5;4093:5,10; 4099:2;4101:13; 4102:3;4103:1;
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NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

4114:19;4115:16,20, 22;4119:2,3,8,16,17, 17,20,24;4120:4,7; 4130:3,7;4131:8,13,19, 25;4133:13;4134:1,8, 13;4136:20;4137:1; 4138:1;4147:2,5,6,7; 4148:25;4151:7,20; 4152:4;4153:15; 4157:12;4158:20; 4164:14,15,16;4165:20	4151:11,11;4157:1; 4160:11 <b>workers (2)</b> 4103:21,24 <b>working (18)</b> 3976:21;3977:2; 3987:8;3992:18; 4002:9,22;4021:14; 4041:15;4047:12; 4050:25;4051:3; 4052:2;4062:5;4098:3; 4121:10,12;4126:19; 4149:14 <b>works (5)</b> 4009:17;4028:15; 4036:4;4069:12; 4093:3 <b>world (46)</b> 3976:25;3978:2; 3980:17;3981:6; 3987:24;3988:23; 3990:19;3991:8,11; 3992:21;3993:5,24; 3994:3;4008:19; 4011:15;4013:4,6; 4016:8,12,13;4017:1,3; 4018:18;4019:2; 4024:10;4026:18; 4031:16;4035:18; 4037:16;4040:3,8,20; 4041:6;4045:8,13; 4056:11;4058:11; 4059:16;4062:11; 4064:13;4078:15,24; 4094:2;4097:25; 4108:2;4118:6 <b>world's (1)</b> 4017:4 <b>Worldwide (1)</b> 4118:17 <b>worry (1)</b> 4003:25 <b>worrying (1)</b> 3994:12 <b>worth (10)</b> 3983:15,17,23; 4006:20;4018:11; 4083:1;4084:20; 4090:21;4111:12; 4125:19 <b>worthless (2)</b> 4072:12,19 <b>wound (1)</b> 4106:25 <b>Wrigley (1)</b> 4064:22 <b>write (2)</b> 4136:8;4145:24 <b>writing (1)</b> 4143:22 <b>written (1)</b> 4001:2 <b>wrong (3)</b>	4084:11;4085:6; 4151:23 <b>wrote (8)</b> 3998:20;4130:15; 4131:6;4144:4; 4145:22;4148:10; 4149:22;4153:4 <b>WWII (1)</b> 4094:16 <b>X</b> <b>XXX (2)</b> 4158:4,6 <b>Y</b> <b>yard (5)</b> 4072:17;4073:10; 4105:17,18,20 <b>Yards (7)</b> 3976:22;3984:4; 4012:11,22;4049:4; 4063:2;4078:14 <b>year (20)</b> 3976:1,2;3985:20; 3998:16;4025:19; 4028:7,7;4043:7; 4054:6;4062:1,2; 4138:3;4140:11,11,13; 4156:11,19,22;4157:1, 2 <b>year-old (1)</b> 4053:22 <b>years (36)</b> 3977:10;3980:19,20; 3984:24;3985:24; 3993:6;3998:7; 4002:18;4008:5,17,22; 4013:8;4014:1; 4021:17;4028:10; 4029:13,18;4030:4; 4045:20;4052:4,11; 4058:18,19;4061:2,4; 4067:9;4094:13; 4096:17;4100:8; 4102:21;4103:8,9,14; 4104:10;4111:23; 4156:21 <b>Year's (1)</b> 4012:15 <b>Yep (1)</b> 4046:3 <b>yield (2)</b> 4130:24;4136:9 <b>Yogurt (1)</b> 4107:8 <b>York (62)</b> 3975:13,13;3977:2; 3981:22;4003:7,11; 4005:2,12,16,18,18,20; 4008:7,17;4012:22,24; 4013:9;4014:1;4021:6,	7;4022:10,14;4023:17; 4026:14,23;4028:21; 4035:2,4,19;4040:12; 4045:7;4049:24; 4062:7;4063:4; 4079:23;4099:21; 4100:2,11;4102:13,15; 4103:11,13,16,18,20; 4104:10;4105:2; 4150:11;4151:19,22, 24;4152:14,15;4153:6; 4158:3;4163:11,14,16, 19,20,23;4164:1 <b>Yorker (1)</b> 4055:25 <b>young (5)</b> 3979:3;4012:13; 4077:19,20;4099:15 <b>Yukon (2)</b> 4002:14,15 <b>Z</b> <b>Zemil (1)</b> 4159:2 <b>zero (1)</b> 4148:3 <b>zip (2)</b> 4057:14;4063:4 <b>zone (3)</b> 4079:20,25;4110:10 <b>zoned (7)</b> 4150:9,13;4153:8, 10,11,16,20 <b>zoning (10)</b> 4013:16;4023:10; 4034:10;4047:19; 4054:9;4076:14; 4079:2,18;4141:16; 4164:6 <b>0</b> <b>06 (1)</b> 3993:2 <b>07 (1)</b> 3993:2 <b>08 (2)</b> 4028:20,22 <b>09 (1)</b> 4054:12 <b>1</b> <b>1 (1)</b> 4159:9 <b>1,000 (1)</b> 4103:18 <b>1.3 (4)</b> 4084:7;4085:5,12; 4086:23 <b>10 (1)</b> 4028:20	<b>10:00 (2)</b> 4167:5,8 <b>100 (3)</b> 3999:21;4095:13; 4096:17 <b>10022 (1)</b> 3975:13 <b>101 (1)</b> 4095:19 <b>1015 (3)</b> 4154:17,25;4155:5 <b>1016 (3)</b> 4158:21;4159:11,15 <b>1017 (10)</b> 4145:2,16,19; 4162:6,10,11,16,20,21, 23 <b>1018 (1)</b> 4100:20 <b>1019 (3)</b> 3995:9;3998:24; 3999:14 <b>102 (1)</b> 4096:5 <b>1020 (3)</b> 4149:1,17,20 <b>104 (1)</b> 4098:7 <b>105 (1)</b> 4099:6 <b>106 (1)</b> 4099:9 <b>108 (1)</b> 4102:5 <b>109 (1)</b> 4102:12 <b>11 (2)</b> 4147:21;4149:9 <b>110 (1)</b> 4102:14 <b>111 (1)</b> 4104:17 <b>1111 (1)</b> 4120:7 <b>112 (1)</b> 4104:23 <b>114 (1)</b> 4106:4 <b>116 (1)</b> 4108:11 <b>117 (1)</b> 4108:25 <b>118 (1)</b> 4109:3 <b>119 (1)</b> 4109:5 <b>12 (3)</b> 4002:17;4014:5; 4038:19 <b>120 (2)</b> 4012:18;4109:20 <b>1200s (1)</b> 4075:2
---	---	--	---	---

NYSCEF DOC. NO. 1657  
**Attorney General v.  
Donald Trump, et. al.**

RECEIVED NYSCEF: 01/04/2024  
**November 13, 2023  
November 13, 2023**

<b>121 (1)</b> 4109:24	4018:18;4025:20	4105:4	4025:3;4053:9,9; 4090:11;4116:3;	4150:7
<b>122 (1)</b> 4110:17	<b>1920s (1)</b> 4053:14	<b>2012 (8)</b> 4027:10;4028:18; 4074:10;4077:9,14; 4087:13;4142:16; 4143:22	4155:9 <b>30,000 (1)</b> 4096:12	<b>49 (1)</b> 4043:2 <b>499 (1)</b> 4086:19
<b>123 (1)</b> 4110:25	<b>1976 (2)</b> 4004:16;4005:12	<b>2013 (1)</b> 4130:15	<b>30,000-foot (1)</b> 4106:14	<b>5</b>
<b>124 (1)</b> 4111:2	<b>1983 (1)</b> 4008:6	<b>2014 (5)</b> 4093:25;4147:21; 4149:9;4154:22; 4155:9	<b>301 (1)</b> 4035:8 <b>30-plus (1)</b> 3985:20	<b>5 (2)</b> 4145:12,22 <b>50 (1)</b> 3984:24
<b>12th (1)</b> 4091:22	<b>1984 (2)</b> 4012:13;4013:12	<b>2015 (10)</b> 4099:18,23;4102:18; 4105:9,11;4116:4; 4145:12,22;4146:12; 4159:9	<b>30s (1)</b> 3981:8 <b>31 (1)</b> 4150:7 <b>31-32 (1)</b> 4054:24	<b>500 (1)</b> 4033:23 <b>502 (1)</b> 4049:12 <b>50s (1)</b> 3977:7
<b>13 (2)</b> 4002:18;4014:9	<b>1985 (1)</b> 4016:4	<b>2016 (3)</b> 4106:21;4111:8,17	<b>3194 (1)</b> 4153:24	<b>57 (1)</b> 4048:1 <b>57th (1)</b> 4063:19
<b>13th (2)</b> 4048:4,17	<b>1994 (1)</b> 4022:24	<b>2017 (9)</b> 3976:20;3982:2,3, 18,23;3984:14; 3985:11;3986:13; 3994:20	<b>32 (1)</b> 4025:13 <b>3217 (1)</b> 4157:13 <b>3261 (1)</b> 4147:17	<b>58 (1)</b> 4048:3 <b>59 (1)</b> 4048:14 <b>59th (1)</b> 4014:24
<b>14 (2)</b> 4142:16;4167:8	<b>1995 (1)</b> 4026:12	<b>2021 (7)</b> 3982:23;3984:9; 3985:2,3;3986:13; 4103:15;4104:11	<b>33 (1)</b> 4025:17 <b>35-year (1)</b> 3985:6	<b>6</b>
<b>140 (1)</b> 4012:17	<b>1997 (1)</b> 4033:6	<b>2022 (18)</b> 4080:2,21,24; 4081:2,4,14,16;4082:6; 4083:2;4084:6;4085:4, 11,11,14,23,24;4086:2, 24	<b>36 (1)</b> 4031:1 <b>37 (3)</b> 3974:1;4031:5; 4039:5 <b>38 (1)</b> 4032:1 <b>39 (1)</b> 4032:5 <b>3A (1)</b> 4034:24	<b>6 (1)</b> 4060:12 <b>60 (1)</b> 4029:17 <b>600 (2)</b> 4088:11,13 <b>61 (1)</b> 4051:12 <b>62 (1)</b> 4052:15 <b>63 (1)</b> 4054:23
<b>1412 (1)</b> 4142:6	<b>1999 (2)</b> 4039:10,13	<b>2023 (1)</b> 4167:8 <b>2025 (1)</b> 4116:1 <b>20s (3)</b> 3981:8;4055:7; 4060:16 <b>20-year (1)</b> 3984:4	<b>4</b>	<b>65 (1)</b> 4056:16 <b>68 (2)</b> 4058:4;4113:8 <b>68th (1)</b> 4010:2
<b>1465 (1)</b> 4130:4	<b>2</b>	<b>21 (1)</b> 4019:15 <b>220 (1)</b> 4012:17 <b>23 (1)</b> 4019:25 <b>240 (2)</b> 4012:17;4014:10 <b>25 (5)</b> 3994:14;4013:8; 4014:1;4021:17; 4121:11 <b>29 (1)</b> 4024:17	<b>4:00 (1)</b> 4147:1 <b>40 (14)</b> 4026:8;4027:5; 4028:6;4031:2,7; 4032:25;4113:24; 4114:11,14;4115:25; 4117:12;4148:6; 4150:9;4153:4 <b>40-something (1)</b> 4008:22 <b>40-unit (2)</b> 4150:11;4153:6 <b>45 (1)</b> 4006:9 <b>46 (1)</b> 4042:15 <b>47 (2)</b> 4041:23;4148:2 <b>47-unit (1)</b>	<b>7</b>
<b>14-minute (1)</b> 4146:25	<b>2:15 (2)</b> 4092:4,8	<b>3</b>		<b>7 (2)</b> 4017:24;4060:17 <b>70 (2)</b> 4029:17;4053:22 <b>70s (2)</b> 4003:9;4005:9 <b>71 (7)</b> 4061:11;4153:17,21; 4154:9,11,12,14 <b>72 (1)</b> 4061:14
<b>14th (1)</b> 4076:1	<b>20 (4)</b> 3993:6;4020:13; 4064:25;4100:7	<b>3.67 (1)</b> 4116:1 <b>30 (6)</b>		
<b>15 (3)</b> 3984:4;4019:9; 4038:18	<b>200 (3)</b> 4012:17;4014:7; 4088:15			
<b>150 (3)</b> 4075:7;4076:5; 4094:13	<b>2000 (1)</b> 3976:2 <b>20004 (1)</b> 4120:8 <b>2000's (3)</b> 3977:20;4019:6; 4036:15 <b>2001 (6)</b> 3976:15,20;4013:13; 4045:7;4046:23; 4047:4 <b>2002 (1)</b> 4047:6 <b>2004 (1)</b> 4049:7 <b>2005 (1)</b> 4057:11 <b>2006 (1)</b> 4054:12 <b>2007 (1)</b> 4058:22 <b>2008 (3)</b> 4059:4,23;4096:19 <b>2009 (3)</b> 4062:4;4063:9; 4065:24 <b>200-acre (1)</b> 4126:17 <b>200-something (2)</b> 4023:3,12 <b>2011 (5)</b> 4027:9;4072:2; 4103:14;4104:10;			
<b>1503 (1)</b> 4035:9				
<b>15-minute (1)</b> 4039:3				
<b>16 (6)</b> 4017:25;4043:16; 4064:19;4143:22; 4150:7;4153:16				
<b>160 (1)</b> 4012:17				
<b>16th (1)</b> 4130:15				
<b>17 (1)</b> 4018:5				
<b>170 (2)</b> 4127:24,25				
<b>17th (3)</b> 4042:17;4166:19,20				
<b>18 (5)</b> 3976:5;4004:17; 4043:5;4088:11; 4100:13				
<b>180 (1)</b> 4012:17				
<b>18th (4)</b> 4041:24;4088:6; 4089:25;4113:19				
<b>19 (1)</b> 4018:19				
<b>1900s (4)</b> 4002:17;4003:14;				

Attorney General v.  
Donald Trump, et. al.

November 13, 2023  
November 13, 2023

**725 (1)**  
3975:12  
**72nd (1)**  
4014:25  
**75 (5)**  
3977:10;3995:5;  
4052:4,11;4065:3  
**77 (3)**  
4012:15;4116:3,6

**8**

**80 (2)**  
3977:10;4053:22  
**80s (2)**  
4003:10;4020:25  
**83 (1)**  
4075:19  
**85 (1)**  
4087:3  
**86 (1)**  
4087:25  
**87 (7)**  
4087:20;4148:1;  
4150:9,24;4153:10,11,  
17  
**87-unit (1)**  
4150:6  
**88 (1)**  
4088:7

**9**

**9/11 (1)**  
3976:12  
**90 (2)**  
4089:4;4114:7  
**90s (3)**  
4029:4;4036:14;  
4116:8  
**90-something (1)**  
4029:4  
**91 (1)**  
4089:8  
**92 (1)**  
4089:20  
**94 (1)**  
4090:12  
**95 (1)**  
4090:23  
**96 (1)**  
4091:7  
**97 (1)**  
4091:11  
**98 (1)**  
4116:3  
**99 (2)**  
4079:4;4095:6

**In The Matter Of:**  
*NYS Attorney General v.*  
*Donald J. Trump*

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*November 14, 2023*

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*Ny Supreme Court- Civil*

Original File November 14\_2023 NYS Attorney General v Donald J. Trump.txt

**Min-U-Script® with Word Index**

November 14, 2023

<p style="text-align: right;">Page 4168</p> <p>1 SUPREME COURT OF THE STATE OF NEW YORK 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37 3 -----X 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW 6 YORK, 7 Plaintiff, 8 - against - 9 INDEX # 10 452564/2022 11 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; 12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY 13 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; 14 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION 15 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING 16 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH 17 STREET, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL 18 STREET, LLC; and SEVEN SPRINGS, LLC, 19 Defendants. 20 -----X 21 Bench Trial 22 November 13, 2023 23 60 Centre Street 24 New York, New York 10007 25 B E F O R E: THE HONORABLE ARTHUR S. ENGORON, Justice of the Supreme Court  A P P E A R A N C E S:  OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES Attorneys for the Plaintiff 28 Liberty Street New York, NY 10005 By: KEVIN WALLACE, ESQ. COLLEEN K. FAHERTY, ESQ. ANDREW AMER, ESQ. ERIC HAREN, ESQ. LOUIS SOLOMON, ESQ.</p>	<p style="text-align: right;">Page 4170</p> <p>Witkoff - by Defendant - Direct(Robert)</p> <p>1 THE COURT: Defendants, would you like to call 2 your next witness? 3 MR. ROBERT: Good morning, Your Honor. 4 The Defendants call Steve Witkoff to the stand. 5 (Whereupon, the witness took the stand.) 6 COURT OFFICER: Please raise your right hand. 7 S T E V E N W I T K O F F , after having 8 first been duly sworn was examined and testified as 9 follows: 10 COURT OFFICER: Please have a seat. 11 Please state your name and either home or 12 business address for the record. 13 THE WITNESS: My name is Steven Witkoff and I 14 reside at 1400 West 28th Street, Miami Beach, Florida 15 33140. 16 THE COURT: Please commence. 17 DIRECT EXAMINATION 18 BY MR. ROBERT: 19 Q Good morning, Mr. Witkoff. 20 A Good morning. 21 Q I am going to ask you a series of questions this 22 morning. And to introduce you to the Court I am going to ask 23 you some background questions. 24 Where did you grow up, sir? 25 A I was originally born in the Bronx, spent my early</p>
<p>Proceedings</p> <p style="text-align: right;">Page 4169</p> <p>1 A P P E A R A N C E S: (Cont'd) 2 3 CONTINENTAL PLLC 4 Attorneys for Defendants 5 101 North Monroe Street, Suite 750 6 Tallahassee, FL 32302 7 By: CHRISTOPHER KISE, ESQ. 8 LAZARO FIELDS, ESQ. 9 JESUS SUAREZ, ESQ. 10 11 ROBERT &amp; ROBERT, PLLC 12 Attorneys for Defendants 13 526 RXR Plaza 14 Uniondale, NY 11556 15 By: CLIFFORD ROBERT, ESQ. 16 17 HABBA MADAIO &amp; ASSOCIATES, LLP 18 Attorneys for Defendants 19 1430 US Highway 296, Suite 240 20 Bedminster, NJ 07921 21 By: ALINA HABBA, ESQ. 22 23 MORIAN LAW, PLLC 24 Attorneys for Defendants 25 60 East 42nd Street, Suite 4600 New York, NY 10165 By: ARMEN MORIAN, ESQ.  THE TRUMP ORGANIZATION Attorneys for the Defendant 725 Fifth Avenue New York, NY 10022 By: ALAN GARTEN, ESQ. MICHELE PANTELOUKAS MICHAEL RANITA Senior Court Reporters</p>	<p style="text-align: right;">Page 4171</p> <p>Witkoff - by Defendant - Direct(Robert)</p> <p>1 years there. Moved to I Baldwin Harbor in the early '60s, and 2 then over to Old Westbury when I was, I think, 14 years old. 3 Q And what about your educational background, sir? 4 A I went to elementary school in Baldwin. 5 Went to the Wheatley School in -- 6 THE COURT: I have heard of it. 7 A I went to the Wheatley High School, and graduated 8 from high school there. 9 Went to Union College. 10 Then from Union College went to, graduated from 11 Hofstra University, where I also went to law school. 12 Q And what year did you graduate from Hofstra, sir? 13 A Law School? 14 Q Yes, sir? 15 A 1983. 16 Q Okay. I want to talk to you a little bit about the 17 earlier part of your career. What, if anything, did you do 18 when you got out of law school? 19 A I worked for a real estate law firm by the name of 20 Dreyer &amp; Traub. 21 Q And what did you do at Dreyer &amp; Traub other than, 22 obviously, be a lawyer? 23 A My first year and a half was litigation. And then I 24 was lucky enough to get into the real estate department there. 25 Q And what exactly did you do in the real estate</p>

November 14, 2023

<p>Witkoff - by Defendant - Direct(Robert) Page 4172</p> <p>1 department at that firm, sir?</p> <p>2 A I worked on closings, among them for the President.</p> <p>3 And then many other -- Dreyer &amp; Traub was probably the leading</p> <p>4 boutique real estate firm at the time.</p> <p>5 Q And for how long did you work there, sir?</p> <p>6 A Wow, I think around maybe three years.</p> <p>7 Q And your practice was primarily in the area of real</p> <p>8 estate litigation or real estate transactional work or</p> <p>9 something else?</p> <p>10 A First 18 months litigation; and last 18 months</p> <p>11 closings transactions.</p> <p>12 Q And you mentioned something about the President.</p> <p>13 When was it that you first met President Trump?</p> <p>14 A It had to have been in the 18 months when I was in</p> <p>15 the real estate transactions group.</p> <p>16 Q And then you came to know him again years later,</p> <p>17 correct?</p> <p>18 A I did.</p> <p>19 Q After that little bit?</p> <p>20 A I did.</p> <p>21 Q Okay. What did you do after you decided to --</p> <p>22 withdrawn.</p> <p>23 At some point you left that firm, correct?</p> <p>24 A Yes.</p> <p>25 Q And what did you decide to do at that point, sir?</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4174</p> <p>1 estate market.</p> <p>2 Q And where are the holdings of that company located?</p> <p>3 A New York City, some. We have a large presence in</p> <p>4 south Florida today. Los Angeles as well. We have two</p> <p>5 properties out in Los Angeles. We have done some transactions</p> <p>6 in Europe as well. That's, for the most part, where we are</p> <p>7 today.</p> <p>8 Q What, if any, associations are you a member of in the</p> <p>9 real estate world?</p> <p>10 A Well, you mean, when you say, "associations" you mean</p> <p>11 boards or things of that sort?</p> <p>12 Q Yes, sir.</p> <p>13 A So, I, we, are members of the real estate board. I</p> <p>14 used to sit on the executive committee of the real estate board</p> <p>15 in my 40s. I am a Trustee at Hofstra University. That's -- I</p> <p>16 think that's about it, but I get forgetful a little bit.</p> <p>17 Q Any association with the university of Miami, sir?</p> <p>18 A Yes. I have a pretty large involvement there.</p> <p>19 Q What is that?</p> <p>20 A I have two children that went there. One of my</p> <p>21 children passed away, as you know, Andrew. I talk about him,</p> <p>22 so I am good with that. And so because Andrew went there, and</p> <p>23 to the business school, and my youngest son Zack, I -- I am</p> <p>24 involved on certain boards with the business school and I do</p> <p>25 some other things with the school.</p>
<p>Witkoff - by Defendant - Direct(Robert) Page 4173</p> <p>1 A I spent a year at another law firm, and then left</p> <p>2 that -- and then left that law firm and began trying to grow a</p> <p>3 real estate business.</p> <p>4 Q And how did you go about trying to do that, sir?</p> <p>5 A I left with a partner who was from Dreyer &amp; Traub,</p> <p>6 his name is Larry Glock, and we started a business together</p> <p>7 called Stellar Management, S-T-E-L-L-A-R, which stood for Steve</p> <p>8 and Larry. And we began buying Freddie Mac walk-up buildings</p> <p>9 at the time; and then graduated into some other things in the</p> <p>10 Bronx and Washington Heights.</p> <p>11 Q And what, if anything, progressed with regard to that</p> <p>12 business, sir?</p> <p>13 A Well, we grew a portfolio, probably two or 3,000</p> <p>14 units. We were proud of it. Both of us were from, you know,</p> <p>15 relatively modest beginnings early on. And in 1997 we split</p> <p>16 up. We still remain friends to this day. He took the, mostly,</p> <p>17 the residential properties. We had since graduated into office</p> <p>18 buildings, and I moved more into the, to running the office</p> <p>19 building portion of the business.</p> <p>20 Q And did you continue with that firm once there was a</p> <p>21 split or did you start a new company?</p> <p>22 A No, in 1997 we started the Witkoff Group.</p> <p>23 Q And what exactly is the Witkoff Group, sir?</p> <p>24 A So it is a holding and management company that</p> <p>25 owns/develops real estate in all different sectors of the real</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4175</p> <p>1 Q And any involvement with the John F. Kennedy Center</p> <p>2 for the Performing Arts?</p> <p>3 A Yes. I am a Trustee at the Kennedy Center.</p> <p>4 Q If we were to describe what you do for a living,</p> <p>5 would it be fair to characterize that as a developer?</p> <p>6 A Yes.</p> <p>7 Q So what is a developer?</p> <p>8 A I think a developer is someone who looks at a</p> <p>9 property and gives some thought to what else it can be.</p> <p>10 Q And what exactly do you do as a developer, in general</p> <p>11 terms?</p> <p>12 A You are rezoning; re-entitling; thinking about what</p> <p>13 the possibilities are; what the changes are in a particular</p> <p>14 community; and what is needed and what is not needed.</p> <p>15 Q So what I want to do for a few moments here is take</p> <p>16 you through some of the projects you have been involved in so</p> <p>17 we can show the Court the experience you have in this field.</p> <p>18 Are you familiar with a project --</p> <p>19 MR. ROBERT: And no slide show today, Judge. We</p> <p>20 are going to do it the old-fashioned way.</p> <p>21 Q Are you familiar with a project at 150 Charles</p> <p>22 Street, sir?</p> <p>23 A Yes, a condominium in the West Village that I built.</p> <p>24 Q What, if any, involvement did the Witkoff Group have</p> <p>25 with that, sir; you personally?</p>



November 14, 2023

<p>Witkoff - by Defendant - Direct(Robert) Page 4176</p> <p>1 A We were the general partner and developer of that 2 project. 3 Q Can you describe for the Court what that project 4 entailed? 5 A It was a 500,000 square foot warehouse that we 6 converted into 250,000 sellable square feet of condominium. 7 Q And how long a project did that take; or how long did 8 that take? 9 A We bought the project with Lehman Brothers in, I want 10 to say, 2005. Had to get through the great financial crisis. 11 And they restarted it in 2013. And brought it to the market in 12 2015. 13 Q Any particular challenges along the way in 14 redeveloping that property? 15 A The financial crisis was one. There was a down 16 zoning in the West Village which was another that -- so lots of 17 things. It is very, very rare in a development cycle that you 18 don't have challenges. 19 Q What ultimately happened with this property at 150 20 Charles Street? 21 A We sold it out and it became a successful project. 22 And we got to do a lot of good things in the community as a 23 result. 24 Q Are you familiar with a project known as 10 Madison 25 Square West?</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4178</p> <p>1 Q Are you familiar with a project at 20 Exchange Place? 2 A Yes. 3 Q And what was that project, sir? 4 A That was the building next to -- it was an office 5 building. And we bought it in response to Mayor Guliani's 6 Downtown Revitalization Plan. 7 Q What was that plan, sir -- withdrawn. 8 What approximate year did that plan come into 9 existence, if you know? 10 A I think it was first promulgated in 1992, I want to 11 say. And we probably bought that building in '96. 12 Q And I cut you off before, you were explaining what 13 you did with the project, sir, why this plan from Mayor Guliani 14 worked for you. 15 A That downtown revitalization plan was looking to 16 incentivize and encourage the transformation of B and C office 17 buildings into residential projects, so that you would get a 18 24-hour, seven day a week, community-like environment in 19 downtown. 20 Q Are you familiar with a project at 1 Broadway, sir? 21 A Yes. 22 Q What was that project? 23 A That was an office building, beautiful office 24 building, right at the front of Broadway that we bought in, 25 again, in 1996. And that we actually converted into an office</p>
<p>Witkoff - by Defendant - Direct(Robert) Page 4177</p> <p>1 A Yes. 2 Q What is that project, sir? 3 A That's a deal, that transaction, that we bought that 4 sort of in a bankruptcy like situation. It was a 363 Sale that 5 we bid on against certain others. It is on Madison Square 6 Park. Originally slated to be an office building, we converted 7 it into a -- into a condominium. 8 Q And how long did that project take, sir? 9 A I would say approximately five or six years. 10 Q Okay. Are you familiar with a project known as 111 11 Murray Street in TriBeCa? 12 A Yes. That's a site that we built with the Fisher 13 Brothers. Began it in 2013, delivered it to the market in 2018 14 or '19, I want to say. 15 Q And what did that project entail, sir? 16 A Again, a residential condominium in downtown -- in 17 the financial district of downtown Manhattan. 18 Q And what, if anything, had been there before this 19 development that you -- 20 A That was a vacant site. 21 Q That was a vacant site? 22 A Yeah. 23 Q So your experience is in developing vacant sites as 24 well as reconstructing that which is already there, fair? 25 A Fair.</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4179</p> <p>1 property and leased it to a law firm. I don't know if they are 2 still in existence Kenyon and Kenyon. They were an 3 intellectual property law firm. 4 Q And anything else about the 1 Broadway project that 5 is remarkable to you? 6 A Yeah, what we paid for it back then. No one thought 7 it was, you know, people just didn't think the market existed 8 down there for office, and it did. 9 Q What brought you to the conclusion that there was a 10 good market to buy in? 11 A I don't know. Maybe we were just, you know, hopeful, 12 aspirational. So, but I always -- I always, my whole life was 13 guided by the fear of failure. So we always questioned our 14 beliefs. We just thought that New York City would always rise 15 and the market was just too cheap down there, not to take 16 advantage of it. 17 Q You used the words "hopeful" and "aspirational," how 18 do those two words work as a person who is a developer, in your 19 mindset? 20 A Well, I think you have to marry that with being 21 cautious. So we are cautious and prudent, but you have to 22 believe to be a developer. You have to believe in a 23 partnership between the business community and government. You 24 have to believe that financing markets exist. You have to 25 understand supply and demand dynamics and what -- where the</p>

November 14, 2023

<p>Witkoff - by Defendant - Direct(Robert) Page 4180</p> <p>1 possibilities are, where there is a derth of housing or where 2 there is a derth of office supply. It is all of those things. 3 Q Are you familiar with a project involving the 4 Woolworth building, sir? 5 A Yes, we own that today. 6 Q Let's talk about that. When was it you acquired the 7 Woolworth building? 8 A 1996 -- excuse me. 1998. 9 Q And what were the plans that the Witkoff Group had at 10 the time for that property? 11 A We were partners with a few others including, Ruby 12 Sloan, so not just us, but good, decent, smart guys. And our 13 plan was an office building conversion with the possibility of 14 converting the top of the building into residential, which of 15 course was allowed under the downtown revitalization plan. 16 Q And was that one of the reasons why you and your 17 group decided to buy the Woolworth building? 18 A Yes. 19 Q When you were evaluating, what you would do with the 20 Woolworth building, what were you considering? 21 A Both. To me it was always important if you were 22 buying real estate that you had multiple exit strategies on a 23 particular piece of property. And the Woolworth property 24 clearly allowed for that. You could -- you could put a hotel 25 there if you wanted to. You could put residential there. The</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4182</p> <p>1 condominiums. 2 Q When was that, sir? 3 A I want to say 2003, maybe. 2004. 4 Q Are you familiar with a job known as One High Line, 5 sir? 6 A Yes, that's -- that's a project that is in 7 construction today. 8 Q And what is that current construction going to be 9 for? 10 A So that's a project on the entire block spanning 11 17th and 18th Street. We bought -- it was a defaulted note 12 and mortgage coming out of COVID. And we bought that, us and a 13 family office. And we continued on with the development. We 14 are in the process of -- right now it comprises a half a 15 million square feet of condominium, a hotel that is going to 16 come to that marketplace, parking, and some retail. And we are 17 just finishing up construction on it. And we probably sold, I 18 guess, maybe in the 40 or 45 percent range of the condominiums 19 there. 20 Q Sir, we have gone through some of the developments 21 you have been involved in in New York. I want to draw your 22 attention to some in Florida for a few moments. 23 Are you familiar with a job which I'll call the Shore 24 Club job? 25 A Yes.</p>
<p>Witkoff - by Defendant - Direct(Robert) Page 4181</p> <p>1 whole thing could convert to residential. It didn't work 2 because of the depth of the bottom floors, but the top was 3 ultimately converted to residential, and it worked as an office 4 property as well. 5 Q And what is the current status of the Woolworth 6 building today? 7 A It is a condominium at the top of the building and in 8 its tower; and it is an office building down below. 9 Q Realizing there are always challenges being a 10 developer, was there anything significant after the acquisition 11 of the Woolworth building that was an unforeseen challenge to 12 you? 13 A I mean, the biggest challenge to us was in 1998 you 14 had the Russian bond collapse, and we were right in the middle 15 of closing it, and that was pretty hairy. So, but there was 16 probably plenty of other things along the way. I was -- I was 17 at the site when the planes -- when the planes hit the World 18 Trade Center, so I was there. I walked the American flag up to 19 the top of the Woolworth building the next day. I was on a 20 rescue rope line with two NYPD officers, who were friends of 21 mine, that day. And yet the Woolworth building survived. We 22 slept the 10th precinct cops there, the ESU guys were there. 23 So if it survived that, it would survive anything. 24 Q Are you familiar with a project, 55 Wall Street? 25 A Yes. That we converted into the Cipriani</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4183</p> <p>1 Q What is that, sir, and why is that located -- first 2 of all, where is that located? 3 A That's between 19th and 20th Streets on Collins 4 Avenue, also facing the beach. 5 Q That would be in Miami, correct? 6 A Correct. 7 Q Generally what is that job, sir? 8 A First of all, it is another property that came out of 9 the same distress situation that One High Line came out of. So 10 both of those properties we were acting as an adviser to the 11 senior credit company that had extended loans to this 12 particular development company. And in the course of advising 13 them on that, we went out and bought these two properties with 14 that senior credit company. 15 Q And what is that going to be eventually? 16 A It was fully a hotel. We were able to take it 17 successfully through a re-entitlement and rezoning in Miami 18 Beach. And now it is going to be, in part, a small boutique 19 hotel. And the larger portion of it will be a condominium done 20 by Bob Stern, who, interestingly enough, started Robert A. 21 Stern, who I think is the most important residential architect 22 out there, who started his career in Florida. 23 And it goes to what I talked about, which is the 24 changing of the neighborhood in South Beach. I think Florida 25 has come to a place where residential -- residential use is</p>

November 14, 2023

Witkoff - by Defendant - Direct(Robert) Page 4184

1 more important than hotel use. That whole spring break, sort  
2 of, mania that was going on became unacceptable down there. So  
3 our development plan became in response to those sorts of  
4 things.

5 Q And are you familiar with a project I'll refer to as  
6 the Shell Bay Golf Club, sir?

7 A Yes. It is S-H-E-L-L and new word B-A-Y.

8 So that's an -- it used to be the Old Diplomat Golf  
9 Club. It was part of the Diplomat Hotel. Sold off for  
10 development. Went through, probably, I would say, three  
11 iterations of development plans. And then we came to it and  
12 had a different notion of what would happen there. And we are  
13 right in the middle of building it today.

14 Q And sir, with regard to these one, two, three, four,  
15 five, six, seven, eight -- these ten or 11 jobs, have there  
16 been more over the years that you have been involved with as a  
17 developer?

18 A Oh, yeah.

19 Q Can you approximate how many?

20 A I mean, we probably -- in the entire course of our  
21 career, including Stellar Management?

22 Q Yes, sir.

23 A I could have been involved in 125 transactions.

24 Q And sir, during the course of those transactions,  
25 were you ever in a position to value the assets which you held?

Witkoff - by Defendant - Direct(Robert) Page 4185

1 A Sure.

2 Q And did you have a view as to how you would value  
3 those assets?

4 A Yes. It differed, right, from asset to asset. But  
5 yes.

6 Q And generally how does a developer value an asset of  
7 a piece of property?

8 MR. AMER: Can I just ask for what purpose?

9 This expert is not an appraiser.

10 MR. ROBERT: I am going to be clear. He is not  
11 an MII appraiser at all. In a moment I'll move him in as  
12 an expert to discuss how developers view value. He is not  
13 an appraiser at all.

14 MR. AMER: For what purpose though?

15 MR. ROBERT: It goes to the underlying issue of  
16 the intent.

17 MR. AMER: Value for what purpose? A tax  
18 donation, you know? You know I am just trying to  
19 understand what his testimony about valuing properties is  
20 in the context of. I think it is a fair point to  
21 understand.

22 THE COURT: Well, let me ask the witness.  
23 Can properties be valued for different purposes?  
24 THE WITNESS: Yes.  
25 THE COURT: All right. So let's go with that.

Witkoff - by Defendant - Direct(Robert) Page 4186

1 MR. ROBERT: Okay.

2 Q And sir, what are some of the examples of some of  
3 those different purposes?

4 A Well, I mean, I'll give you what I would consider to  
5 be a classic example. So in 1996 we bought 10 Hanover, which  
6 was owned by Leona Helmsley and was formerly the headquarters  
7 of Kidder Peabody.

8 So it was half a million square foot building. We  
9 paid \$10 million for that building, so \$50 a square foot. It  
10 is inconceivable, right, in this day and age that it would go  
11 for that price. But the game plan was either residential  
12 conversion or office deal. We did an office deal with Goldman  
13 Sachs that only had seven years of term attached to it. That  
14 would have a certain value. As -- and we were hoping that  
15 Goldman Sachs would extend that lease. They did not.

16 We then switched and converted it to an office -- to  
17 a residential property, and that would have a certain value.  
18 Depending on the then residential -- residential market and  
19 what you were going to get in rents; and it turned out to have  
20 a substantially higher value than what the Goldman Sachs --  
21 than what it would have been valued at if the Goldman Sachs  
22 lease had been extended.

23 So that's an example of different values.

24 Q When you are looking at it from the standpoint of a  
25 developer looking at a building that you bought, what are some

Witkoff - by Defendant - Direct(Robert) Page 4187

1 of the things that go into your mind when you are deciding how  
2 to value that for your purposes?

3 A Those different opportunities to develop in that way:  
4 That it could be used as an office building; it could be used  
5 as a residential building; it could be used as a hotel. So all  
6 of those different -- and then figuring out, pragmatically,  
7 which way to go. And so all of those you would assign, in  
8 theory, different values to it.

9 Q And throughout the course of your career, you have  
10 done this on countless occasions?

11 A I would say to you that we uniformly think exactly  
12 like that on every deal that we do.

13 MR. ROBERT: I am going to get into some more  
14 specific questions, Your Honor, but at this time I move  
15 Mr. Witkoff in as an expert in how developers view value.  
16 And I'll ask him specific questions.

17 MR. AMER: I think he can be qualified as an  
18 expert in the field of real estate development. But I  
19 don't think there is a field known as real estate  
20 developer valuation. Valuation is the provision of  
21 appraisers. So like I say, I think he can be qualified as  
22 an expert in the field of real estate development and  
23 that's it.

24 MR. KISE: Your Honor, this is precisely part of  
25 the issue in this case and the heart of the case.

November 14, 2023

Witkoff - by Defendant - Direct(Robert) Page 4188

1 Valuation is not exclusively the province of appraisers,  
2 and ASC 274 makes that very, very clear. So a real estate  
3 developer has a view as to value. It is not the same view  
4 as an appraiser, and this witness is not being called as  
5 an appraiser to express those opinions. But the idea that  
6 appraisers and only appraisers can talk about value is not  
7 one that is founded in the law or in the governing ASC  
8 274. So the witness is here to testify about real estate  
9 development. He is an expert in real estate development.  
10 And his perspective and that of real estate developers  
11 like him on value, the Court can weigh that evidence, and  
12 in conjunction with evidence from appraisers. But to be  
13 clear, he is not being called as an appraiser. And there  
14 is no requirement that only appraisers can testify about  
15 value.

16 THE COURT: Well, I don't think the question is  
17 whether only appraisers can testify as to value. The  
18 question is whether, as Mr. I think, Amer put it, is there  
19 such a field. And I think when you are -- when a Judge is  
20 qualifying an expert there has to be a pigeonhole. There  
21 has to be a category. I don't think there is such a thing  
22 as real estate value expert. There are development  
23 experts, appraisal experts.

24 MR. KISE: He certainly is -- maybe we are, to  
25 coin the phrase you used yesterday, dancing around the

Witkoff - by Defendant - Direct(Robert) Page 4189

1 head of a pin here a little bit. He is an expert in real  
2 estate development. As part of that expertise, he has an  
3 understanding of how real estate developers value  
4 property. That may be a better way to frame it.

5 THE COURT: All right. So how about -- I am  
6 trying to work this out.

7 MR. ROBERT: That's fine.

8 MR. AMER: We have no problem with him being  
9 qualified as an expert in the field of real estate  
10 development.

11 THE COURT: Okay.

12 MR. KISE: And he can express his opinion as to  
13 value based on that.

14 MR. ROBERT: Correct.

15 MR. AMER: Subject to relevance objections and  
16 other objections that we may have. That's separate.

17 THE COURT: I hereby deem you an expert in real  
18 estate development. And yes, you can talk about value,  
19 but we will have to see how -- what the context is, et  
20 cetera.

21 Q So congratulations on being an expert Mr. Witkoff.  
22 A Thank you. Thank you.

23 Q I want to go back to something you said earlier, you  
24 had originally met Mr. Trump when you had worked at your law  
25 firm, correct?

Witkoff - by Defendant - Direct(Robert) Page 4190

1 A Yes.

2 Q And at some point did you lose contact with him?

3 A Yes.

4 Q And at some point did you have new contact with him?

5 A Yes.

6 Q What were the circumstances surrounding that and when  
7 was it?

8 A Well, it was probably 1986. I was an associate  
9 working on a case. We were at 101 Park Avenue at the time. It  
10 had to be 3:00 in the morning, those were the days of those  
11 crazy hours. And he was -- I knew who he was. He didn't know  
12 who I was. And he didn't have any money with him and I was  
13 ordering from a local delicatessen for the people who were on  
14 my team. And he asked me if I would order him a ham and swiss  
15 sandwich. So that was the first time I met him.

16 Q And when was the next time you saw him after that?

17 A I might have seen him, you know, at the firm a couple  
18 of times after that before I left. But the next time was  
19 probably, I would say, six, seven or eight years later.

20 Q And what were the circumstances surrounding that,  
21 sir?

22 A I don't remember it exactly. I remember vaguely I  
23 was at a restaurant, walked up said hello, introduced myself.  
24 He actually remembered who I was, and remembered the sandwich  
25 incident. And we just, you know, had just developed a, you

Witkoff - by Defendant - Direct(Robert) Page 4191

1 know, a friendship as a result of it.

2 Q And how many years ago was that approximately?

3 A I would say that's 20 years ago.

4 Q And how would you describe your relationship with  
5 President Trump over the last 20 years?

6 A I would say that he has been a really good friend to  
7 me and my family, particularly after the death of my son. And  
8 so I try to -- I am a good friend of his right on back.

9 Q And sir, are you being compensated for your time to  
10 testify here as an expert today?

11 A No.

12 Q Okay. I am going to ask you a series of questions  
13 now, Mr. Witkoff, and I am going to ask that all of your  
14 opinions that you give, each one be within a reasonable degree  
15 of certainty as an expert as a real estate developer. Fair,  
16 sir?

17 A Yes.

18 Q Okay. So when you view real estate assets for value,  
19 what are you viewing them to be?

20 A I am sorry, can you --

21 Q Sure. When you are viewing real estate assets for  
22 what the value can be, what are the factors that are going into  
23 your mind when you are looking to do that?

24 A What the use is; how much money can be derived from  
25 that use; in other words, the return on investment. Those

November 14, 2023

<p>Witkoff - by Defendant - Direct(Robert) Page 4192</p> <p>1 are -- those are the -- those are the essential ingredients.  2 That's what undergirds an underwriting.  3 Q And are you looking at a value of something today or  4 are you looking as if -- as to what something can become?  5 A I think it is pretty difficult to buy correctly just  6 based on a value of how everybody else sees a particular piece  7 of property today. I think if you want to be buying something  8 with a value-added opportunity, it is my particular slant to it  9 you have to be keenly aware of a lot of different circumstances  10 that can influence value in different -- and different uses  11 that are possible on a particular piece of property. That's --  12 that's how I have learned the business.  13 Q So let's talk about what you mean by different uses  14 for the property. What do you mean by that?  15 A You know, an example would be we bought a parking lot  16 on 44th and Eighth Avenue. And people saw it as a parking  17 lot. We saw it as a hotel. It was technically a manufacturing  18 area, we had to take it through a re-entitlement before City  19 Planning. We had to get community board approval. We had to  20 get a ULURP.  21 COURT REPORTER: Ulurp?  22 THE WITNESS: Uniform land use review process.  23 I use it colloquially.  24 MR. ROBERT: I didn't know what it is either, so  25 don't worry.</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4194</p> <p>1 THE COURT: Hold on. My mind is still turning  2 about a question that I'm not sure you answered that we've  3 really explored.  4 Is there a difference between present value and  5 future value? For example, if a building has a certain use  6 in a certain community, and normally you would think well,  7 okay, it's worth a hundred million dollars, but you think  8 that the neighborhood is going to just bloom, rents are  9 going to go up, et cetera, so you think ten years from now  10 it will be generating a lot more money, but so, my question  11 is still, isn't this still present value? You are  12 predicting how much cash profit it will throw off in the  13 future, but all you could do is measure its value. Mind  14 you, there's no such thing as present value as opposed to  15 future value, but I would like you to educate me, if you  16 can.  17 THE WITNESS: So it sounds like you are a little  18 bit of a real estate person.  19 THE COURT: Well, I've gotten there.  20 THE WITNESS: No, but you're going through it and  21 it's interesting.  22 Let me start -- I'll give you an example, current  23 day example. We bought a piece of property in downtown  24 Miami right next to the train station. So mass  25 transportation in Florida is a huge deal, it's getting</p>
<p>Witkoff - by Defendant - Direct(Robert) Page 4193</p> <p>1 A So, we had to take it through all of those things.  2 And today sitting there is, you know, a big hotel.  3 Q And is that something that would have gone into the  4 thought process like when you acquired the Woolworth building  5 and other properties?  6 A Yes.  7 Q And sir, you have heard there was a little colloquy  8 with us and the Attorney General a moment ago about appraisals.  9 Are appraisals something that are a factor when you are  10 determining factor as a developer?  11 A I would say, yes.  12 Q In what fashion?  13 A I mean, they are a guide post. And often times  14 appraisers get it right, but often times they don't get it  15 right. I have plenty of examples of appraisers not getting it  16 right. But appraisers do what they do. They have certain  17 methodologies: Cash discounted, cash flow methodology;  18 replacement value methodology. So they have different  19 methodologies. But there are real life examples I have  20 encountered in my 37 years where they don't get it right. They  21 don't know the market well enough or what is trending in the  22 marketplace.  23 THE COURT: Hold on.  24 (The following proceedings were stenographically  25 recorded by Senior Court Reporter Michael Ranita.)</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4195</p> <p>1 congested on the highways down there, and this train going  2 from Miami up to Orlando is a really, really big deal, we  3 own those five acres there, and rents have moved since we  4 bought those -- that acreage two and a half years ago, by \$2  5 a square foot. We are detecting the same sort of seismic  6 rental moves in Miami as New York experienced in the mid  7 1990s.  8 We bought at \$18 million an acre. We are aware of  9 multiple trades in the marketplace at \$60 million an acre.  10 We are now looking for construction financing on the job  11 because we own a very good site in a strong rental market,  12 and we have an appraiser who came in and told us that the  13 site is worth \$20 million an acre, not the \$60 million an  14 acre that multiple sites -- multiple acres in the area have  15 traded for.  16 So there is an appraiser who doesn't understand the  17 rental market, doesn't understand the comparables of what  18 has occurred in that marketplace. That doesn't make him  19 completely wrong in his assessments. It just makes him  20 wrong in this particular -- in this particular example. And  21 it happens, it does happen. He is not from Florida. He  22 doesn't understand what is happening there. He doesn't  23 understand how much migration is coming into the  24 marketplace, and so it's hard for him to put the type of  25 value on it.</p>

November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4196</p> <p>1 Now, we went to two other appraisers who were much 2 larger than him and their values are substantially higher 3 than his. So appraisers do differ. 4 THE COURT: That didn't do the trick for me. Maybe 5 for other people. 6 MR. ROBERT: I was going to ask it again of the 7 witness. If you want to read back your original question, I 8 think it's a good question. 9 THE COURT: My question was a bit meandering 10 because it was not totally formed. 11 Let me ask this: Is it the case at that all real 12 estate people understand what estimated current value means? 13 THE WITNESS: Yes. 14 THE COURT: What other values do you, as an expert 15 developer, take into account? 16 THE WITNESS: I think we take into account where we 17 see a market going. I think we take into account where we 18 see rent growth going. 19 THE COURT: But then isn't that your version of 20 estimated current value? 21 THE WITNESS: Yes, in that particular example, yes. 22 THE COURT: Okay. Take it away. 23 MR. ROBERT: Thank you, your Honor. 24 Q And that's estimated current value to you as a 25 developer. You are not an accounting expert who could give us a</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4198</p> <p>1 terms of the value of that building? Are you looking at in 2 terms of the rent roll, or something else? 3 THE COURT: Okay. 4 MR. ROBERT: I'm sorry, I'll strike the last 5 portion of my question. Sorry. 6 A We are looking at that moment what the rent roll is, 7 what the cash flow is, and what we -- what the vacancy is in the 8 building, whether we think we can lease office space in that 9 building, in that vacant area, and at what price. 10 We are looking at what we think the taxes are going to 11 go up to so we can formulate a view on net cash flow. And then 12 we are looking at if we don't -- if we don't, um, have a healthy 13 office leasing market, what are the alternatives to be done 14 there. In that particular case it would have been hospitality 15 or residential conversion of some sort multi-family rental or 16 condominium. 17 Q When you testified earlier you used a phrase "exit 18 plan" or "exit strategy." What was the phrase you used? 19 A Yes. 20 Q Which one, exit plan or exit strategy, or does it not 21 matter? 22 A I said that we -- I said that we have -- well, I didn't 23 say this, but I'm going to say it. That we -- the best deals 24 are the ones that have multiple exit strategies. 25 Q And in your mind, is an exit strategy something that is</p>
<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4197</p> <p>1 definition of what estimated current value is under GAAP; is 2 that correct? 3 A That's correct. 4 Q Following up on the Judge's questioning, so when you 5 are looking at the value of something today, like you are 6 looking at the Woolworth Building today, are you looking at the 7 value of what necessarily just the rent rolls are generating 8 today, or what can I do with the property down the road? 9 MR. AMER: Objection. Leading. 10 I think he we should just ask the witness what is 11 he looking at. 12 THE COURT: All right. Stand on ceremony on that 13 one? 14 MR. AMER: It's not background, your Honor. We are 15 now into the meat of his examination. 16 THE COURT: You would have to ask him what he is 17 looking at. Do you look at -- 18 MR. ROBERT: I'll withdraw the question. 19 Q So when you are looking at a piece of property, for 20 example, we'll take -- actually we'll make it easier. We are 21 standing in the shoes of -- the Woolworth Building was when '97? 22 A '97. 23 Q So let's pretend we are back in 1997 and you and your 24 group are deciding to purchase the Woolworth Building for a 25 certain amount of money. What is it that you are looking at in</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4199</p> <p>1 only used in a bad case scenario or a good case scenario, or 2 something in between? 3 A Well, I think exit strategies can mitigate bad 4 outcomes, and so that doesn't always mean that you are going to 5 always have a good outcome. But exit strategies can mitigate 6 bad outcomes and enhance good outcomes because things change. I 7 mean it's just what goes on. You could wake up one day and have 8 an oversupply of hospitality in a New York City, and ten years 9 later you have no construction that sector and now you have an 10 opportunity to do a hospitality deal that may make sense in a 11 particular building. 12 Q One of the things you spoke -- you were asked to be an 13 expert about was a value associated with Doral, do you remember 14 that, sir. 15 A Yes. 16 Q And sir, what were the factors that you thought about 17 as to how Doral should be valued? 18 MR. AMER: Your Honor, I'm going to interject an 19 objection on relevance grounds. I don't understand how 20 Doral is relevant to this case. We didn't challenge the 21 Doral valuation in any of the Statements of Financial 22 Condition. And his view of valuing Doral today, as I 23 understand he is being asked about, can't possibly have any 24 relevance. 25 I think they are going to argue that somehow Doral</p>

November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4200</p> <p>1 was undervalued in the past, and that therefore I guess you</p> <p>2 can set off the amount that they undervalued Doral against</p> <p>3 inflated values for other assets like Seven Springs, or the</p> <p>4 cash; that's just not a nonsensical argument, your Honor. I</p> <p>5 don't see how Doral is in this case at all.</p> <p>6 THE COURT: Mr. Kise.</p> <p>7 MR. KISE: I'm just going to pause a second in case</p> <p>8 you plan on ruling in my favor and I don't have to say</p> <p>9 anything. So --</p> <p>10 THE COURT: Slim chance, but.</p> <p>11 MR. KISE: So, indeed.</p> <p>12 So Mr. Amer anticipated, in his usual fashion,</p> <p>13 precisely at least part of our point. So I think your Honor</p> <p>14 will recall, from at least the directed verdict discussion,</p> <p>15 the most recent discussion of this subject, but throughout</p> <p>16 the course of these proceedings, this whole concept, this</p> <p>17 word, this materiality word, and fairly presented words,</p> <p>18 these words that are not necessarily built into every</p> <p>19 statutory claim, but they are certainly built into the</p> <p>20 actual certifications and guaranties that were signed.</p> <p>21 Those words cannot be read out of those documents. "Fairly</p> <p>22 presented", "material." So the purpose of the guaranty is</p> <p>23 not to, and the purpose of the certifications, in our view,</p> <p>24 and I think -- not only I think, is it correct, I think it's</p> <p>25 supported by the documents themselves, it's not to say that</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4202</p> <p>1 The Court will weigh what it views of the full picture, but</p> <p>2 we certainly get to present what the full picture of Donald</p> <p>3 J. Trump's financial condition was during these various</p> <p>4 periods, and whether or not, as presented holistically,</p> <p>5 there was any material defect, or there was any failure to</p> <p>6 fairly present his financial position.</p> <p>7 So I think it's highly relevant, these different</p> <p>8 values. And this witness is just one small piece of the</p> <p>9 puzzle, but I don't see any basis that it doesn't come in on</p> <p>10 relevance, because they, by their filings, by -- as the</p> <p>11 paragraphs that I put up during the directed verdict where</p> <p>12 they got materiality, materiality, materiality. I mean,</p> <p>13 it's just over and over. It must be 50 mentions of it. By</p> <p>14 the very documents that are at issue that are claimed to be</p> <p>15 false. The certifications; that language is used. Fair</p> <p>16 presentation is used. All of that brings into full view of</p> <p>17 the Court for its analysis the overall financial picture,</p> <p>18 not just the pieces that they are challenging.</p> <p>19 So they don't get to say it's irrelevant because we</p> <p>20 didn't challenge it. No, everything about the Statement of</p> <p>21 Financial Condition is now on the table.</p> <p>22 THE COURT: So give me a second. It's your</p> <p>23 position, is it your position that if a Statement of</p> <p>24 Financial Condition lists two properties and turns out, or</p> <p>25 it's decided -- I decide that one is overvalued by \$300</p>
<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4201</p> <p>1 every single number is precise down to what the Attorney</p> <p>2 General thinks it should be, or what your Honor thinks it</p> <p>3 should be, or what anyone in this courtroom thinks it should</p> <p>4 be. It's that overall, the financial position of the</p> <p>5 guarantor is fairly presented.</p> <p>6 So, yes, it is highly -- it is extraordinarily</p> <p>7 relevant if there are assets that are undervalued,</p> <p>8 particularly substantially, on those same statements, well,</p> <p>9 then, okay, then that does go to offset values that are</p> <p>10 maybe overvalued in your opinion or their opinion. They</p> <p>11 can't look at this one sided. You can't take a Statement of</p> <p>12 Financial Condition and say I only want to look at the</p> <p>13 things I think are wrong with it. No, you have to look at</p> <p>14 the picture, financially, as a whole. That's exactly what</p> <p>15 the documents themselves say. And materiality is viewed in</p> <p>16 -- through that lens. And you are going to hear more and</p> <p>17 more testimony about that.</p> <p>18 So to the extent that some of this that we are</p> <p>19 talking about needs to be subject to connection, I can</p> <p>20 represent to you that that connection is going to be made,</p> <p>21 perhaps even with the next witness. But the idea that we</p> <p>22 just ignore things that they didn't challenge because they</p> <p>23 are somehow irrelevant, they don't get to pick cherry pick</p> <p>24 like they did in their complaint.</p> <p>25 We now get to present the Court the full picture.</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4203</p> <p>1 million and one is undervalued by \$300 million, that the --</p> <p>2 it balances out and therefore there's no misstatement,</p> <p>3 fraud, whatever you want to call it.</p> <p>4 MR. KISE: Okay. So let's separate, because I</p> <p>5 think this --</p> <p>6 THE COURT: That's a yes or no question.</p> <p>7 MR. KISE: Yes, the answer is yes, that our</p> <p>8 position is that. And if I can explain why.</p> <p>9 Let's separate out where we were and where we are,</p> <p>10 because I think this is an important distinction, because</p> <p>11 everyone is running around saying "Fraud, fraud, fraud,</p> <p>12 fraud. This is fraud." No, that has not been decided yet.</p> <p>13 What's been decided by this court is --</p> <p>14 THE COURT: Wait a minute.</p> <p>15 MR. KISE: Let me finish, and you'll understand</p> <p>16 what I'm saying, please.</p> <p>17 THE COURT: Sure.</p> <p>18 MR. KISE: What has been decided by the Court is a</p> <p>19 violation of 63(12), but as your Honor knows, and we</p> <p>20 disagree with one of these pieces, but I'll go through all</p> <p>21 four. As your Honor knows fraud, fraud, in the traditional</p> <p>22 sense, in the understanding of the law, requires intent,</p> <p>23 materiality, reliance and damages, all four. None of those</p> <p>24 four, including materiality, which we argued about, but you</p> <p>25 disagreed with, respectfully, none of those four have been</p>

November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4204</p> <p>1 decided. There hasn't been any decision that there's</p> <p>2 intent. There's no materiality determination, no reliance</p> <p>3 determination, no damage and no harm determination.</p> <p>4 THE COURT: You are leaving out one thing,</p> <p>5 traditional fraud. There was a fifth, scienter, that they</p> <p>6 knew the person.</p> <p>7 MR. KISE: Intent. I'm incorporating that in the</p> <p>8 concept of intent. Yes, your Honor, you are correct.</p> <p>9 Scienter, intent. I'm merging those concepts, and perhaps</p> <p>10 legally they should be segregated.</p> <p>11 But the point is that fraud hasn't been</p> <p>12 established. So a misstatement under 63(12) is not</p> <p>13 necessarily fraud, other than the colloquial expression of</p> <p>14 it the way it's framed under the statute, but there is a big</p> <p>15 separation in the law and a big material separation in the</p> <p>16 law, if I could use that word, between a 63(12) violation</p> <p>17 freestanding, and actual fraud, fraudulent intent. That's</p> <p>18 what these predicate statutes that they are relying on --</p> <p>19 THE COURT: I'm sorry. I'm going to have to cut</p> <p>20 you off.</p> <p>21 MR. KISE: All right.</p> <p>22 THE COURT: I'm not looking for a speech. And you</p> <p>23 said you were going to answer my question.</p> <p>24 MR. KISE: I did.</p> <p>25 THE COURT: You did. You said, "Yes", you think it</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4206</p> <p>1 intend to fraudulently inflate, say, Seven Springs by</p> <p>2 ignoring appraisals, or, you know, the cash value by</p> <p>3 including Vornado cash because he knew in his mind, seven</p> <p>4 years later in 2022, Doral was going to be worth</p> <p>5 1.3 billion, and therefore it all comes out in a wash. I</p> <p>6 don't know what that is. That's -- that makes no sense,</p> <p>7 your Honor.</p> <p>8 You can't take the 2022 value of Doral and somehow</p> <p>9 retroactively apply it years earlier to somehow wash</p> <p>10 everything away in terms of what your Honor has already</p> <p>11 found are fraudulently inflated values.</p> <p>12 And I should make a further point, that it's clear</p> <p>13 in the First Department, "You cannot use expert testimony to</p> <p>14 establish intent." This is a quote from People v. Davis, 90</p> <p>15 AD3d 461. It's a 2011 First Department case.</p> <p>16 The expert's proposed testimony had no genuine</p> <p>17 bearing on whether defendant acted intentionally within the</p> <p>18 meaning of Penal Law section --</p> <p>19 THE COURT: Mr. Amer, I'm going to cut you off,</p> <p>20 too. We are going very far afield here. I'll ask a</p> <p>21 different question, more related. Does anyone have</p> <p>22 authority for the proposition that his financial statement,</p> <p>23 any sort of Statement of Financial Condition, is not</p> <p>24 fraudulent if one property is valued way high and another</p> <p>25 property is valued way low.</p>
<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4205</p> <p>1 balances out, therefore it's okay.</p> <p>2 MR. KISE: In this context, yes. In this context</p> <p>3 it does.</p> <p>4 THE COURT: Let me ask the Attorney General side.</p> <p>5 Do you agree with my -- by the way, I keep thinking of the</p> <p>6 person that's standing on a stove with one foot, and a block</p> <p>7 of ice with the other, and says, "I feel fine. It balances</p> <p>8 out."</p> <p>9 Attorney General, do you think they balance out?</p> <p>10 MR. AMER: Of course not. Your Honor, that's</p> <p>11 nonsense. I mean, are they going to put Mr. McConney on the</p> <p>12 stand to say, "in 2015 I fraudulently inflated", you know,</p> <p>13 value X, but it was okay because --</p> <p>14 THE COURT: Hold on one second. I'm going to ask</p> <p>15 that the witness be excused again. There's a nice room back</p> <p>16 there for you. Try not to be --</p> <p>17 MR. KISE: We probably should have done that.</p> <p>18 THE COURT: There's no food or anything, but this</p> <p>19 isn't an office.</p> <p>20 Sorry to interrupt.</p> <p>21 MR. WALLACE: That's okay.</p> <p>22 THE COURT: Let's go back to "it's nonsense",</p> <p>23 whatever you call it.</p> <p>24 MR. AMER: This is nonsense, the idea that</p> <p>25 Mr. McConney is somehow going to testify that he didn't</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4207</p> <p>1 MR. AMER: No, your Honor --</p> <p>2 THE COURT: This seems ridiculous to me, but</p> <p>3 Mr. Kise, if you have authority, or even a logical</p> <p>4 argument --</p> <p>5 MR. KISE: The logical argument is exactly why we</p> <p>6 are here, for you to decide -- and I hope that your</p> <p>7 statements don't indicate you've already made up your mind</p> <p>8 on this, because that's exactly why we are here, is to talk</p> <p>9 about intent.</p> <p>10 Mr. Amer is presuming that intent exists; that</p> <p>11 hasn't been established.</p> <p>12 THE COURT: Wait. I cut him off because he was</p> <p>13 talking about intent. I'm not interested in intent here.</p> <p>14 I'm just interested --</p> <p>15 MR. KISE: It goes to your question, respectfully.</p> <p>16 It goes right to your question, that in order to --</p> <p>17 THE COURT: I'm the one asking the question. I</p> <p>18 should know what I mean by it.</p> <p>19 MR. KISE: So --</p> <p>20 THE COURT: Go ahead.</p> <p>21 MR. KISE: So, your Honor, the point is that in</p> <p>22 order to establish materiality and intent through the lens</p> <p>23 of the user, or the lens of the preparer of the statement,</p> <p>24 you have to consider all of these factors. And so it's not</p> <p>25 -- it's not a light switch. This is what the Attorney</p>



November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4208</p> <p>1 General wants you to believe, that there's one right answer, 2 and it's a light switch, and it's either on or off. And 3 respectfully, that's not what the accounting standards 4 provide; that's not what the law provides; that's not what 5 the analysis of materiality provides. So the cases, yes, 6 there's tons of cases on what is materiality and what's 7 material in a particular given context. 8 And so the total mix of information of available to 9 the reasonable viewer is exactly why we are here. And what 10 you are talking about goes to that, the balancing out of the 11 numbers. The bank, as you heard testimony, the bank is 12 interested in what? They are interested in, do I get paid 13 back? And, do I price this loan correctly? 14 Now remember, at the outset, when you make -- you 15 price a loan, they price it from the beginning. As the 16 collateral increases in value, there is no ongoing mark to 17 market activity. 18 Based on Attorney General's view, as the collateral 19 increases in value, the interest rate should drop. I mean, 20 you'll here testimony about this, so I'm going to stop 21 there, but the point is, you have to take all of this into 22 consideration. And so factors as relative to whether an 23 offset matters is at the core of the dispute. 24 He can argue, Mr. Amer is arguing very well, his 25 position that it doesn't matter, but that's an argument;</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4210</p> <p>1 MR. KISE: The Blackstone case is completely 2 inapposite for a whole host of reasons I'm not going to 3 spend time on. It's in a securities context, a totally 4 different context. I'm not going to belabor it, since 5 you've already sustained the objection without actually 6 hearing from all of the evidence that you are going to hear, 7 but nonetheless, the point is, we should be allowed to 8 establish what "materiality" means to the user. And you are 9 presuming, I think incorrectly, based on the evidence that's 10 already been brought into this courtroom, that your view of 11 what is and isn't material and whether it has to be exactly 12 accurate here, exactly accurate there, is incorrect; that's 13 not what the banks told you. 14 Their own analysis that I put up on the board, you 15 you've seen a hundred times, and no one wants to pay 16 attention to, says that they, in fact, did this analysis, 17 and they came up with their own values to show there are 18 vagaries. 19 The fact there are three different numbers in this 20 courtroom alone demonstrates our point. You got their 21 number, you got our number, and you got the banks number, 22 all about the same set of assets. That alone should tell 23 the Court that there are extraordinary variations, and no 24 one is absolutely correct, and so it's not possible to say 25 that mine is fraudulent and theirs isn't just because</p>
<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4209</p> <p>1 that's not evidence. And the Court should consider the 2 evidence. 3 MR. AMER: Your Honor, I do have a case for you. 4 It's Litwin versus Blackstone Group, LP. It's a Second 5 Circuit case 634 F3d 706. This is what it says at 713: 6 "Blackstone is not permitted, in assessing 7 materiality, to aggregate negative and positive effects on 8 its performance fees in order to avoid disclosure of a 9 particular material negative event." 10 I think that's exactly your Honor's point. 11 THE COURT: Yes, it is. And it does answer, unless 12 there is contrary authority. 13 And one way I would explain that to answer my own 14 question is the reader of the financial statement has a 15 right to know whether each particular number is accurate, 16 and doesn't have to say, well, this could be a little high; 17 this could be a little low. They are looking for accuracy. 18 But last word to Mr. Kise, and let's proceed. 19 MR. KISE: Your Honor, again. 20 THE COURT: And the objection is sustained, of 21 course. It doesn't even matter that it was a 2022 value of 22 Doral. Any value of Doral. That doesn't -- it's a false 23 valuation. I assume you agree. 24 MR. AMER: We do. 25 THE COURT: Go ahead.</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4211</p> <p>1 someone happens to think so. 2 THE COURT: Well, I think you are wrong for two 3 reasons. One, which I keep calling in the internal 4 inconsistency, is you look at how somebody got to a value, 5 and if they are ignoring restraints on the use of property; 6 that's fraud. 7 And you are wrong in another way, and I asked one 8 of the -- you are not on trial, of course, but still, I 9 asked one of the witnesses, "Well, you say valuation or 10 appraisals could differ." 11 "Yes." 12 "By what percent?" 13 "Well." 14 MR. KISE: Huge percents. You are going to hear 15 about it. 16 THE COURT: How huge? 17 MR. KISE: Huge percent. 18 THE COURT: How huge? 19 MR. KISE: The tax assessed value versus what a 20 broker thinks, hundreds of millions of dollars, potentially. 21 Exactly what your Honor put in your opinion. You are going 22 to see ASC-274 allows either one of them, either one. I 23 could take the tax appraised value for tax purposes and use 24 that for my standard, or I could take a broker opinion 25 value, or a sales comparable method. They could vary by</p>

November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4212</p> <p>1 hundreds of millions of dollars, exactly what we have in 2 this case. You have Mar-a-Lago that is assessed for 3 \$25 million, or \$30 million, whatever the number is, and 4 then you have an appraised value, you have a broker opinion 5 value, you have a sales comparable method of value, and, 6 yes, those vagaries can be extraordinary. And guess what? 7 They are all permissible under the exact letter of ASC-274. 8 I know the Attorney General doesn't want to hear 9 that. I know they want it say there is only one right 10 answer, and it must be their answer, but that's not correct. 11 That's just simply not the standard in accounting. It is 12 just not. 13 THE COURT: You are comparing apples and oranges, 14 you know tax assessor value versus real estate broker value. 15 Let's say we are talking just real estate brokers, 16 or just appraisers, how different can they be? Can we get a 17 percent? 18 MR. KISE: Again, ASC-274 doesn't say that you have 19 to pick one and stick with it. This is the whole point 20 that's being missed here. You have five or six different 21 ways to value property, any one of them is correct. Any one 22 of them is correct. It gets you to estimated current value. 23 And anyone of them can be used for any given property. Not 24 to use the same one for every property. 25 This is already -- you are going to hear about this</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4214</p> <p>1 the same appraisal on the same property, and everyone 2 agreed, it didn't all of a sudden go up by a quarter of a 3 billion dollars. There are different appraisals. And the 4 testimony was none of them were wrong. But there, itself, 5 appraisal to appraisal, you had a quarter of a billion 6 dollar delta over two years. 7 MR. AMER: That's wrong. Your Honor already ruled. 8 Can we move on. 9 THE COURT: Let's move on. 10 MR. ROBERT: I want to understand the ruling. What 11 am I not allowed to ask this witness about? 12 THE COURT: Doral. Doral is not in the complaint. 13 MR. ROBERT: So the Court -- 14 THE COURT: And the case, what was it that you just 15 cited? 16 MR. AMER: Litwin. 17 THE COURT: Says that it's not okay to overvalue 18 one property and undervalue another because they balance 19 out. 20 I'm not sure what else you are trying to do, other 21 than say that Doral was undervalued, so it's okay that they 22 overvalued other properties. 23 MR. ROBERT: So, your Honor -- 24 MR. KISE: Just to be clear. Just to be clear, we 25 are not allowed to ask questions, and you're citing to a</p>
<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4213</p> <p>1 today and tomorrow. This is point that they want you to 2 overlook, that their entire case overlooks; that they have 3 the absolute truth. Their opinion is there is only one 4 right answer, within a range that they define, but that's 5 just simply not true. It's just not. 6 THE COURT: I've said many times, I'm not here to 7 appraise or value properties. I'm here to look at the 8 statements and see whether they are fraudulent or not. 9 MR. KISE: But the only way to determine that is to 10 view them through the lanes of the applicable guide lines, 11 and you can't say something is fraudulent if it comports 12 with the actual guideline. It's not possible to say that. 13 MR. ROBERT: Your Honor -- 14 MR. KISE: That's their position. I mean, it's 15 lunacy to say that, okay, you have to use this value, and 16 that's the correct value, but you've got these five other 17 options and, you know, you are not allowed to use any of 18 those. They could argue all they want against the standard, 19 but it's there on the page. 20 MR. ROBERT: Your Honor, to answer your question 21 about the appraisal, you heard testimony there were three 22 Cushman &amp; Wakefield appraisals of 40 Wall Street. I think 23 it was 2011, 2012 and 2014, and there was a \$200 million 24 variation -- I think it was a quarter of a billion dollar 25 variation between 2012 and 2014. Cushman &amp; Wakefield did</p>	<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4215</p> <p>1 case that you clearly haven't even read yet. You haven't 2 read it. You are taking their word it. 3 THE COURT: It's common sense anyway. 4 MR. KISE: It's not common sense. Respectfully, 5 it's not. I want the record to be clear on that. 6 THE COURT: I'm waiting for the counter authority, 7 the reversal, the disagreement. 8 MR. KISE: I can't do it while I'm standing here. 9 And I've articulated at least three reasons why it's 10 inapposite. You haven't read it at all and you are making a 11 decision based on it. I want the record to be clear. 12 THE COURT: I think he quoted it; right? 13 MR. AMER: I did, your Honor. Plus, honestly, the 14 Doral argument was made in opposition to our summary 15 judgment motion. Your Honor implicitly rejected it then. 16 So it's not -- they've known about this point for months. 17 MR. KISE: Your Honor, the Doral -- 18 MR. AMER: Can we please not have never ending 19 motions for reconsideration when they lose an evidentiary 20 ruling. We've been at this for many, many minutes here. 21 MR. KISE: I'm very concerned about time, your 22 Honor. 23 The Doral loan is in the complaint. To not ask 24 about Doral valuations or the impact of that, it just makes 25 no sense at all. But, you know, it's --</p>

November 14, 2023

<p>S. Witkoff - by Defense - Direct (Mr. Robert) Page 4216</p> <p>1 MR. AMER: You Honor ruled.</p> <p>2 MR. WALLACE: That is the Doral loan for which</p> <p>3 Deutsche Bank obtained appraisals, so the idea -- if he's</p> <p>4 arguing that they should be allowed to prove that Doral was</p> <p>5 really worth 1.3 billion when Deutsche Bank had loans and</p> <p>6 appraisals at the much lower valuations, that doesn't make</p> <p>7 any sense either.</p> <p>8 We are -- I will sit down, because the application</p> <p>9 has been decided.</p> <p>10 THE COURT: The question was basically, how much is</p> <p>11 Doral worth now, or some version of that.</p> <p>12 MR. ROBERT: I don't even remember what the</p> <p>13 question was, your Honor, but I was getting into the way in</p> <p>14 which Doral would be valued by this person -- by this real</p> <p>15 estate developer, what he would look at when coming up with</p> <p>16 an value as to Doral.</p> <p>17 MR. AMER: The witness has two opinions, one for</p> <p>18 Doral and one on.</p> <p>19 MR. ROBERT: 40 Wall Street.</p> <p>20 MR. AMER: We objected to the Doral opinion on</p> <p>21 relevance. Your Honor sustained that objection, so I think</p> <p>22 the witness should not be asked any questions to elicit any</p> <p>23 opinions on Doral. It's pretty simple.</p> <p>24 THE COURT: Well, I could always change my mind,</p> <p>25 not that I'm inclined to. Let's either get a read back of</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4218</p> <p>1 THE COURT: You know what, let's see if we can</p> <p>2 all agree past, present doesn't matter. Though I think it</p> <p>3 is a misleading question. Can this witness be asked what</p> <p>4 are the factors you used to value Doral?</p> <p>5 Q As an expert real estate developer, what factors</p> <p>6 would you use to value Doral?</p> <p>7 THE COURT: Why is that relevant?</p> <p>8 MR. ROBERT: Because you will hear the factors</p> <p>9 he uses are different than an appraisal might be, and may</p> <p>10 be different than a value that the Attorney General</p> <p>11 places. And that all goes back to the issue of intent.</p> <p>12 Because, if the goal was to fraudulently inflate the</p> <p>13 values on the Statement of Financial Condition, every</p> <p>14 asset would have been inflated. Our client's had a view</p> <p>15 of how to put a value on it.</p> <p>16 You are going to hear from an expert that the</p> <p>17 view that we used is consistent with that which people who</p> <p>18 are real estate developers would use. And that dovetails</p> <p>19 with the expert testimony you are going to hear from the</p> <p>20 accounting people, that that would be appropriate under</p> <p>21 ASC 274. So this is one of those building blocks that</p> <p>22 ultimately leads into the accounting experts.</p> <p>23 THE COURT: Why can't you just ask him how --</p> <p>24 what factors he would use to value a property, that the</p> <p>25 value of which does matter at this point: Forty Wall,</p>
<p>Page 4217</p> <p>1 the question, if you could find it, or consider it withdrawn</p> <p>2 and just ask it however you want to ask it.</p> <p>3 MR. ROBERT: Let me see what the question was that</p> <p>4 drew all the objections.</p> <p>5 MR. KISE: One other point, your Honor. I mean, I</p> <p>6 just want to say that since the witness is a Wheatley grad,</p> <p>7 he probably should be allowed to testify as an expert on</p> <p>8 that basis.</p> <p>9 THE COURT: I knew I'd hear back about that.</p> <p>10 MR. ROBERT: If I could have the question read back</p> <p>11 your Honor.</p> <p>12 (Whereupon, the requested testimony was read back</p> <p>13 by the court reporter.)</p> <p>14 THE COURT: You have to ask for a specific time</p> <p>15 period.</p> <p>16 (Continued on the next page.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Witkoff - by Defendant - Direct(Robert) Page 4219</p> <p>1 Trump Tower?</p> <p>2 MR. ROBERT: Because they would object that</p> <p>3 during his expert deposition, all they questioned him</p> <p>4 about was Doral and 40 Wall. I am happy to ask him about</p> <p>5 what he put into Trump Tower.</p> <p>6 MR. AMER: Those were the only two opinions in</p> <p>7 his report. But Doral is not in the case, as Your Honor</p> <p>8 has already observed. So I don't know why we are</p> <p>9 eliciting an opinion or any factors about Doral. It is</p> <p>10 not in the case.</p> <p>11 THE COURT: Right. No more argument.</p> <p>12 Let's bring the witness back. The objection is</p> <p>13 sustained.</p> <p>14 You can go ahead, but I will probably sustain</p> <p>15 objections to any questions about the value of Doral. You</p> <p>16 have a lot of properties that you can ask him about since</p> <p>17 you are only asking generic questions at this point.</p> <p>18 Let's make it generic or about a property that matters.</p> <p>19 (Whereupon the witness resumed the stand.)</p> <p>20 MR. ROBERT: May I proceed, Your Honor?</p> <p>21 THE COURT: Please do.</p> <p>22 Q Mr. Witkoff, in your experience as a real estate</p> <p>23 developer, what are the factors that you would look at in</p> <p>24 valuing a golf course property for its potential use?</p> <p>25 A The cash flow of the property.</p>

November 14, 2023

Witkoff - by Defendant - Direct(Robert)	Page 4220	Witkoff - by Defendant - Direct(Robert)	Page 4222
1 MR. AMER: Excuse me. I am going to object		1 THE COURT: Plaintiff, do you object to a	
2 because this witness offers no opinion about golf courses,		2 generic question. I think he probably answered that.	
3 so I don't see how it is relevant.		3 MR. AMER: I was just going to say, that wasn't	
4 MR. ROBERT: He gives an opinion as to one		4 the question.	
5 specific golf course that I have been directed I can't ask		5 THE COURT: Objection sustained for the reasons	
6 about; so I am asking generally about golf courses. There		6 Mr. Amer said, without prejudice to general question,	
7 are golf courses at issue in the case. I am taking the		7 although that may be subject to an asked and answered	
8 Judge's advice.		8 objection.	
9 MR. AMER: But the witness has submitted a		9 Q Mr. Witkoff, generally, what are the factors that a	
10 report. It has two opinions: Doral, which the Judge,		10 developer looks at when determining the value of a piece of	
11 Your Honor, sustained objections to. And 40 Wall. So we		11 property?	
12 are left with 40 Wall. So I don't see how factors about		12 A Cash flow, and what can be done with that property.	
13 golf courses are relevant.		13 Q Cash flow is income and expenses, fair?	
14 THE COURT: I'll ask again. Are you sure you		14 A Correct.	
15 want to risk a reversal? Because I didn't allow this		15 Q What do you mean by what can be done with the	
16 question.		16 property?	
17 MR. AMER: So, Your Honor, we really have no		17 A What it can be redeveloped into.	
18 concern that for Your Honor to exercise your broad		18 Q And what are those potential options, generally?	
19 discretion to keep out expert testimony that is clearly		19 A We are talking about --	
20 irrelevant to this case on -- and quite frankly, you know,		20 Q I am instructed to ask you generally, sir. So the	
21 based on matters you have already decided in your summary		21 entire gamut.	
22 judgment motion, we have no concern about this. We need		22 A Anything within the real estate spectrum. It could	
23 to draw a line and apply the fundamental rules of evidence		23 believing multi-family rental buildings; condominium;	
24 and keep out things that are irrelevant. Particularly		24 hospitality; industrial; all the -- last mile retail for, you	
25 where it relates to expert witnesses where Your Honor's		25 know, for Internet-related businesses. It is all of those	
Witkoff - by Defendant - Direct(Robert)	Page 4221	Witkoff - by Defendant - Direct(Robert)	Page 4223
1 discretion is even broader, quite frankly.		1 different things.	
2 MR. KISE: So, once again, the Attorney General		2 Q Okay. Based on the Court's direction I am now going	
3 wants to collapse and conflate.		3 to move to 40 Wall Street, Mr. Witkoff. Okay?	
4 THE COURT: That's a bad word.		4 A Yes.	
5 MR. KISE: As I have said before, the Attorney		5 Q What are the factors that you, as a developer, would	
6 General wants to collapse and conflate the summary		6 like at in determining a value for 40 Wall Street?	
7 judgment with their responsibilities and their burden		7 A Again, cash flow, what vacant space can be leased for	
8 under these other statutory predicates.		8 and what other uses could be incorporated into the property.	
9 That's what they are doing. And they want to		9 Q How, if in any way, is location a factor with regard	
10 ignore all of that and say you have decided all of this,		10 to 40 Wall?	
11 you don't have to worry about this. We need to limit this		11 A I am sorry, location is a big factor in all of	
12 trial. It is over. It is done. And so I -- I don't		12 those -- in all of those decisions.	
13 think they expressed any valid basis for that limitation.		13 Q And anything in particular as to 40 Wall in that?	
14 With respect to this witness, he is -- you said		14 A Well, Wall Street is a -- is Main and Main for	
15 that he can answer questions generally about the subject		15 downtown. Downtown has -- because of the downtown	
16 matter that is at issue. And so now that's what we are		16 revitalization plan has become a 24-hour live/work environment.	
17 asking him just in general terms. Because for some reason		17 Housing has increased in price. I would say rental prices down	
18 even though the Doral loan is the center piece of their		18 there are probably the equivalent of almost anywhere in New	
19 complaint be and the Doral property is a big portion of		19 York today. And condominium prices are firm too. So 40 Wall	
20 the Statement of Financial Condition we are not allowed to		20 as a location for a potential conversion would be relevant.	
21 talk about it. So if we are not allowed to talk about		21 Q You have experience in converting office buildings to	
22 that, then we should be allowed to at least have this		22 condominiums?	
23 expert's opinion on generally what are the factors that		23 A We have done it often.	
24 developers consider when they are determining value in		24 Q And I think you talked about the Woolworth building	
25 their minds. That goes squarely to intent. Squarely.		25 being one of them?	

November 14, 2023

Witkoff - by Defendant - Direct(Robert)	Page 4224	Witkoff - by Defendant - Direct(Robert)	Page 4226
<p>1 A Yes.</p> <p>2 Q Any others in lower Manhattan?</p> <p>3 A Ten Hanover.</p> <p>4 Q Are you familiar with ground leases?</p> <p>5 A I am.</p> <p>6 Q A long term ground lease?</p> <p>7 A Yes.</p> <p>8 Q Generally speaking, what is a long term ground lease</p> <p>9 in this context?</p> <p>10 A I mean generally speaking, it is a form of ownership.</p> <p>11 But generally what you are finding with long term ground</p> <p>12 leases, very prevalent in London and in Europe and, sort of,</p> <p>13 not as prevalent in the United States, but you are seeing -- it</p> <p>14 is generally used to defray taxes, to -- I am talking about</p> <p>15 long term capital gains taxes -- to transfer money through</p> <p>16 skipping generation Trusts. And it is a form of ownership.</p> <p>17 And you generally see passive owners who own who are the ground</p> <p>18 lessors or who own the fee.</p> <p>19 Q I want you to assume for a moment, sir, there is</p> <p>20 testimony in this case that one of the provisions of the ground</p> <p>21 lease requires the Trump Organization to get the landlord's</p> <p>22 consent to convert any portion of the building to condo. I</p> <p>23 want you to assume that, okay?</p> <p>24 A Yes.</p> <p>25 Q Does that in any way affect your opinion that value</p>		<p>1 all.</p> <p>2 THE COURT: We will assume most.</p> <p>3 Q Mr. Witkoff, with regard to developing condominiums</p> <p>4 in lower Manhattan, what, if any, advantages or disadvantages</p> <p>5 are there to existing structures, like converting from office</p> <p>6 to condo, than starting from scratch?</p> <p>7 A Well, sometimes -- I mean, sometimes starting from</p> <p>8 scratch perhaps can be a little bit more efficient. But with</p> <p>9 regard -- I would say in any conversion you really need to</p> <p>10 understand the depth of the building. For instance, the</p> <p>11 Woolworth building, the tower was a perfect conversion because</p> <p>12 you didn't have a lot of depth. So from the elevator bank to</p> <p>13 the window wall you didn't have a lot of depth. So you are</p> <p>14 looking for a tower portion to be converted. You are looking</p> <p>15 for buildings that have towers and bases. Woolworth had a much</p> <p>16 larger base and a slimmer tower. I think 40 Wall Street is</p> <p>17 sort of that, but a bigger version of it.</p> <p>18 MR. ROBERT: Your Honor, this may be a good time</p> <p>19 to take the morning break, because in light of your ruling</p> <p>20 a few moments ago, we may be able to streamline things. I</p> <p>21 know we are ten minutes earlier than usual, but I think it</p> <p>22 will be more efficient long term.</p> <p>23 THE COURT: Let's reconvene at 11:30.</p> <p>24 MR. ROBERT: Thank you, sir.</p> <p>25 THE COURT: And I'll direct the witness, don't</p>	
Witkoff - by Defendant - Direct(Robert)	Page 4225	Witkoff - by Defendant - Cross(Amer)	Page 4227
<p>1 for 40 Wall could include the fact that there could be an</p> <p>2 ultimate conversion to condo?</p> <p>3 A I mean, it would be an obvious constraint. Anything</p> <p>4 that would require an additional approval would be a</p> <p>5 constraint. But certainly not something that couldn't be</p> <p>6 overcome, because of the fact that ground lessors are passive,</p> <p>7 and every decision they are going to make, which is generally</p> <p>8 going to be about what is the best use here, how much does that</p> <p>9 strengthen the financial cash flow of the property, which then</p> <p>10 strengthens what my ground lease is worth.</p> <p>11 MR. AMER: Your Honor, I am going to object and</p> <p>12 move to strike his answer as to what ground lessors -- the</p> <p>13 fact that they are all passive. I don't understand how</p> <p>14 this witness has the ability to opine on all ground</p> <p>15 lessors and whether they are passive or not.</p> <p>16 THE COURT: Is that part of your expertise, what</p> <p>17 most ground lessors would be concerned with?</p> <p>18 THE WITNESS: Yes --</p> <p>19 THE COURT: Yes or no, is that part of your</p> <p>20 expertise?</p> <p>21 THE WITNESS: I mean, I am generally familiar,</p> <p>22 Your Honor.</p> <p>23 THE COURT: Overruled.</p> <p>24 MR. AMER: He did say "all" not "most."</p> <p>25 MR. ROBERT: I'll adopt it to most instead of</p>		<p>1 talk about the case or your testimony or Wheatley during</p> <p>2 the break.</p> <p>3 (Pause in the proceeding.)</p> <p>4 COURT OFFICER: All rise. Part 37 is back in</p> <p>5 session.</p> <p>6 Please be seated and come to order.</p> <p>7 THE COURT: Before you resume, Mr. Robert, I</p> <p>8 have a quick question for the witness.</p> <p>9 Have you ever been qualified as an expert</p> <p>10 before? And if so, as what, where, when?</p> <p>11 THE WITNESS: I don't think so. My mother may</p> <p>12 think I am, but that's about it, Judge.</p> <p>13 THE COURT: I am sure she does.</p> <p>14 Okay, Mr. Robert.</p> <p>15 MR. ROBERT: I have no further questions at this</p> <p>16 time, Your Honor. Thank you.</p> <p>17 THE COURT: Will there be any cross examination?</p> <p>18 MR. AMER: There will, Your Honor.</p> <p>19 May I proceed, Your Honor?</p> <p>20 THE COURT: Please do so.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. AMER:</p> <p>23 Q Good morning, Mr. Witkoff. I hope you are enjoying</p> <p>24 your first experience as an expert witness. You may want to</p> <p>25 think your no compensation over perhaps.</p>	

November 14, 2023

Witkoff - by Defendant - Cross(Amer)	Page 4228	Witkoff - by Defendant - Cross(Amer)	Page 4230
1 A Good morning.		1 fourth modification of ground lease on 40 Wall Street. And it	
2 Q You are not an appraiser, correct?		2 says: This résumé presents a brief summary.	
3 A Correct.		3 Do you see that?	
4 Q And you are not equipped to appraise properties or		4 A Yes.	
5 offer any specific opinion of value, correct?		5 Q And the date of this is December 31, 2007. Do you	
6 A Correct.		6 see that?	
7 Q And in forming your opinions, did you review any of		7 A I do.	
8 Donald Trump's Statements of Financial Condition from 2011 to		8 Q And if you go to the next page you will see paragraph	
9 2021?		9 four. It says, paragraph four, under condominium conversion	
10 A Not specifically.		10 right it says: Paragraph four eliminates the tenant's	
11 Q Well, not at all, right?		11 condominium conversion rights which it had under section 27.09.	
12 A Well I was aware of them, so.		12 Do you see that?	
13 Q You didn't review any?		13 A I do.	
14 A No. No, I did not.		14 Q So in the negotiation in December 2007, this	
15 Q Correct?		15 particular ground lessor negotiated to eliminate Mr. Trump's	
16 A Right.		16 condominium conversion rights, correct?	
17 Q Okay. I'll ask you about 40 Wall Street.		17 A Yes.	
18 In forming your opinions about 40 Wall Street, did		18 Q And based on your --	
19 you review the ground lease for that property?		19 MR. AMER: We should just go to page nine of 89.	
20 A No.		20 Q You will see in paragraph four it says: Section	
21 Q When forming your opinions about 40 Wall Street, were		21 27.09 of the lease is hereby deleted in its entirety.	
22 you aware that the ground lease had been amended over time		22 That was the section that was just referenced as	
23 based on renegotiations between Mr. Trump and the landlord?		23 having a conversion right in it. Do you recall that?	
24 A No.		24 A Yes, I do.	
25 Q When forming your opinions about 40 Wall Street, were		25 Q And paragraph five says: In consideration of the	
Witkoff - by Defendant - Cross(Amer)	Page 4229	Witkoff - by Defendant - Cross(Amer)	Page 4231
1 you aware of whether there were any restrictions in the ground		1 elimination of section 27.09 of the lease, landlord and tenant	
2 lease on the ability of Mr. Trump to do a residential		2 agree that if the future tenant is of the opinion that the area	
3 conversion?		3 and times favor the construction of residential units, which	
4 A No.		4 may be condominium units, and tenant desiring to create a	
5 Q Does your opinion -- do your opinions on 40 Wall		5 residential condominium for the sale of units to the public,	
6 Street rely on any facts contained within the actual ground		6 tenant may propose revision of the lease to permit the	
7 lease documents for the property?		7 conversion to condominium ownership for the sale of such	
8 A No.		8 residential units; provided, however, that in no event shall	
9 Q You would agree though that those facts would be		9 landlord have any obligation to agree with or take any action	
10 relevant to the opinions you formed about 40 Wall Street,		10 to effectuate such condominium conversion, and landlord's	
11 correct?		11 determination to permit any such conversion shall be at	
12 A Yes.		12 landlord's sole and unfettered discretion. Do you see that?	
13 Q Did you ever ask to see any of the ground lease		13 A I do.	
14 documentation for 40 Wall Street when forming your opinions?		14 Q Based on your years of experience as a redeveloper,	
15 A No.		15 would you agree that any consent by the landlord to permit	
16 MR. AMER: If we could put up Plaintiff's		16 residential conversion under this paragraph would likely come	
17 Exhibit 635 in evidence?		17 at a cost to Mr. Trump?	
18 Q And this is an e-mail that attaches something known		18 A Yes.	
19 as the fourth loan modification.		19 Q And in forming your opinions on 40 Wall Street, you	
20 MR. AMER: If we could go to page three of 89?		20 have not done any analysis of what that cost would be, correct?	
21 And let me wait for you to get a copy.		21 A Correct.	
22 (Handing)		22 Q Let's look at Plaintiff's Exhibit 787 in evidence.	
23 Q You will see there are page numbers on the very		23 This is the 2011 Statement of Financial Condition. And I think	
24 bottom that say page X of 89. So let's go to page three of 89.		24 your testimony is you are aware this existed, but you didn't	
25 And you will see it says it is the résumé of the		25 review it in connection with forming your opinions, correct?	

November 14, 2023

Witkoff - by Defendant - Cross(Amer)	Page 4232	Witkoff - by Defendant - Cross(Amer)	Page 4234
1 A Correct.		1 MS. GREENFIELD: Next we have Mr. Flemmons,	
2 MR. AMER: And let's go to page nine of 22.		2 that's your next witness today, correct?	
3 Q You will see that the top note relates to the		3 MR. ROBERT: Correct.	
4 valuation of 40 Wall Street. Do you see that?		4 MS. GREENFIELD: How much direct do you believe	
5 A Yes, I see in the third paragraph.		5 you have?	
6 Q And prior to being shown this note at your		6 MR. ROBERT: Probably at least a full day, like	
7 deposition, you had never seen it before, correct?		7 the rest of the day and half day tomorrow probably.	
8 A Correct.		8 MS. GREENFIELD: Just on direct?	
9 Q And I am correct then that you did not consider this		9 MR. ROBERT: Mm-Hm.	
10 note in forming your opinions about 40 Wall Street, yes?		10 MS. GREENFIELD: Okay.	
11 A Correct.		11 Cross?	
12 Q And would you agree with me, looking at this note and		12 MR. WALLACE: Our expectation would be that it	
13 specifically the third paragraph that talks about the estimated		13 would still be short, but I guess we will hear what we	
14 current value, it discusses a cap rate applied to the result		14 hear over the next full day of direct examination. But I	
15 and cash flow to be derived from the building's operations,		15 do not expect that it will be anything approaching a full	
16 correct?		16 day.	
17 A Yes.		17 MS. GREENFIELD: Okay. So once we are done with	
18 Q Looking at this note now, would you agree that there		18 Mr. Flemmons it will be Mr. Collins. So he will be	
19 is nothing in the note indicating that Mr. Trump was valuing 40		19 available tomorrow just in case we finish Flemmons	
20 Wall Street based on a potential residential conversion?		20 tomorrow?	
21 A This paragraph doesn't indicate that.		21 MR. ROBERT: Correct.	
22 Q Instead, it says the value is based on cap rate and		22 THE COURT: And how long is your direct of Mr.	
23 cash flow from the building's operations, right?		23 Collins?	
24 A I see that, yes.		24 MR. ROBERT: That we can check during the next	
25 Q Okay.		25 break. I'll check with Ms. Hernandez, who is doing that	
Witkoff - by Defendant - Cross(Amer)	Page 4233	Witkoff - by Defendant - Cross(Amer)	Page 4235
1 MR. AMER: That's all I have, Your Honor.		1 direct.	
2 THE COURT: Okay.		2 MS. GREENFIELD: Why don't we revisit that at	
3 Any redirect?		3 the next break then.	
4 MR. ROBERT: No, Your Honor. Thank you.		4 MR. ROBERT: Okay. When you talk about	
5 THE COURT: Thank you. The witness is excused.		5 Flemmons; do you think a half day?	
6 (Whereupon the witness stepped down from the		6 MR. WALLACE: I would -- if I was just imagining	
7 stand.)		7 I would say maybe an hour. But if it is so extensive it	
8 THE COURT: Defense, would you like to call your		8 covers a full day, it could be a couple of hours,	
9 next witness?		9 somewhere in that range would be our expectation. We will	
10 MR. ROBERT: The defense will be calling Jason		10 hear what the witness has to say.	
11 Flemmons who is in the other room, Your Honor.		11 MR. ROBERT: Okay. We will let you know at the	
12 This is as good a time as any to talk of		12 next break for the next witness.	
13 scheduling issues, because when we gave the schedule for		13 THE COURT: Okay. Is the witness out there?	
14 the next few days we expected there to be more fulsome		14 COURT OFFICER: Yes. Are you ready for the	
15 cross examination. It is fine they don't want to do it,		15 witness, Your Honor?	
16 but we want to get a sense of what their anticipated		16 THE COURT: Yes.	
17 schedule is the next few days with the cross, because we		17 COURT OFFICER: Witness entering.	
18 emailed them last night, we will call Mr. Collins after		18 (Whereupon the witness took the stand.)	
19 Mr. Flemmons before Laposa. We want to understand time		19 COURT OFFICER: Please raise your right hand.	
20 they need, because Mr. Wallace made a comment when you		20 J A S O N F L E M M O N S, after having	
21 give us a schedule, don't include the time we use for		21 first been duly sworn was examined and testified as	
22 cross. We want a sense so we can have our experts lined		22 follows:	
23 up and not have any down time.		23 COURT OFFICER: Please have a seat. Please	
24 THE COURT: I'll turn the proceedings over to my		24 state your name and either home or business address for	
25 principal law clerk who is the master scheduler.		25 the record.	

November 14, 2023

Flemmons - by Defendant - Direct(Suarez)	Page 4236	Flemmons - by Defendant - Direct(Suarez)	Page 4238
<p>1 THE WITNESS: My name is Jason Flemmons.</p> <p>2 Home address, is that what you asked me?</p> <p>3 COURT OFFICER: Home or business.</p> <p>4 THE WITNESS: Home or business. Business is</p> <p>5 2000 K Street, Washington DC.</p> <p>6 THE COURT: We like to get a zip code in case we</p> <p>7 want to send you mail.</p> <p>8 THE WITNESS: I believe it is 20006.</p> <p>9 THE COURT: Okay. Mr. Suarez, please proceed.</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MR. SUAREZ:</p> <p>12 Q Mr. Flemmons, good morning.</p> <p>13 A Good morning.</p> <p>14 Q My name is Jesus Suarez. I represent certain of the</p> <p>15 defendants in this case.</p> <p>16 Mr. Flemmons, what is your area of expertise?</p> <p>17 A Well, broadly speaking, I am an accounting expert;</p> <p>18 also an expert with professional standards that are attached to</p> <p>19 accountants' professional responsibilities and practicing as</p> <p>20 accountants serving as auditors and the like.</p> <p>21 MR. WALLACE: Your Honor, I am going to note my</p> <p>22 failure to object to the description of Mr. Flemmons as an</p> <p>23 expert. I am keeping an open mind until we get his</p> <p>24 background and they can qualify him.</p> <p>25 THE COURT: I am assuming they are not asking to</p>		<p>1 Pricewaterhouse Coopers.</p> <p>2 Q Mr. Flemmons, at some point did you become a</p> <p>3 certified public accountant?</p> <p>4 A Yes, I did.</p> <p>5 Q When did you become a certified public accountant?</p> <p>6 A Approximately 1997.</p> <p>7 Q And in what jurisdictions are you licensed as a</p> <p>8 certified public accountant?</p> <p>9 A In Virginia.</p> <p>10 Q What did you have to do to become a certified public</p> <p>11 accountant in Virginia?</p> <p>12 A Well, I had to meet the requisite college credit</p> <p>13 hours, which I did at William and Mary. There was also, I</p> <p>14 believe, a two-year experience requirement. And also had to</p> <p>15 sit for the CPA exam and pass the exam. And was licensed</p> <p>16 shortly thereafter.</p> <p>17 Q Are you still licensed as a certified public</p> <p>18 accountant?</p> <p>19 A I am. And I have maintained my continuing</p> <p>20 professional education to maintain my license.</p> <p>21 Q When you joined Pricewaterhouse, what was your title?</p> <p>22 A Well, it was my first job out of college, so it was a</p> <p>23 staff accountant or staff auditor.</p> <p>24 Q What was your responsibility as a staff accountant or</p> <p>25 auditor?</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4237	Flemmons - by Defendant - Direct(Suarez)	Page 4239
<p>1 qualify him right now.</p> <p>2 Q Mr. Flemmons, where did you study in college?</p> <p>3 A I attended the college of William and Mary.</p> <p>4 Q What was your major?</p> <p>5 A I majored in accounting.</p> <p>6 Q And what course work did you do in accounting in</p> <p>7 college?</p> <p>8 A Well, I took many very intensive accounting courses;</p> <p>9 also auditing courses, business law. Those are the ones that</p> <p>10 come to mind at the moment.</p> <p>11 Q And what did you do after college?</p> <p>12 A So after I graduated I was highered by</p> <p>13 Pricewaterhouse; legacy Pricewaterhouse, before the merger with</p> <p>14 Coopers and Lybrand. Went into the audit practice at</p> <p>15 Pricewaterhouse performing financial statement audits for</p> <p>16 public and private companies. Had many many different kinds of</p> <p>17 audit clients that covered many, many industries. And that</p> <p>18 entailed performing audit work and working with broad audit</p> <p>19 staff and partners to ultimately sign off on the fairness of</p> <p>20 the presentation of the financial statements in issuing audit</p> <p>21 reports.</p> <p>22 I was also involved in performing compilations while</p> <p>23 I was at Pricewaterhouse.</p> <p>24 And shortly thereafter I did transfer into the</p> <p>25 forensic accounting practice at what became then</p>		<p>1 A That entailed, again, working on the detailed work on</p> <p>2 a variety of different audit engagements. I worked on many</p> <p>3 many different engagements, ranging from the Washington Post to</p> <p>4 the World Bank, many other financial institutions. I did spend</p> <p>5 time when I was at PW in Madrid, Spain; did a tour of duty</p> <p>6 there performing a lot of banking audits there for a lot of the</p> <p>7 subsidiary branches of major international financial</p> <p>8 institutions.</p> <p>9 But the detailed work itself involved performing the</p> <p>10 audit testing, coming up with the audit programs that we would</p> <p>11 develop in order to carry out the auditing procedures;</p> <p>12 obtaining the audit evidence; reporting up the chain our</p> <p>13 findings to ultimately the engagement partners, that enabled</p> <p>14 them to ultimately make a decision on whether to issue an audit</p> <p>15 opinion for those audit engagements.</p> <p>16 Q How long were you a staff accountant or staff auditor</p> <p>17 at Pricewaterhouse?</p> <p>18 A I don't remember. It was at least one or two years</p> <p>19 before becoming a senior auditor.</p> <p>20 Q And how did your responsibilities change when you</p> <p>21 became a senior auditor?</p> <p>22 A Took more responsibility in terms of oversight of</p> <p>23 staff on audit engagements. And more, you know, direct line</p> <p>24 reporting with the engagement partners.</p> <p>25 Q What type of matters did you handle as a senior</p>	



November 14, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4240</p> <p>1 auditor?</p> <p>2 A It was a lot of the same kinds of engagements I just</p> <p>3 described. I mean, it was a very wide landscape of industries</p> <p>4 that I worked in. Again, banking, media, manufacturing, so</p> <p>5 very broad range.</p> <p>6 Q And at some point were you promoted from the position</p> <p>7 of senior auditor?</p> <p>8 A Well, it was around that time that I ended up</p> <p>9 transferring into the forensic accounting practice at PWC, and</p> <p>10 ultimately became a manager within PWC's FAS practice,</p> <p>11 Financial Advisory Services.</p> <p>12 Q When you were in the audit group at Pricewaterhouse,</p> <p>13 what experience, if any, did you have with personal financial</p> <p>14 statements or Statements of Financial Condition?</p> <p>15 A So the experience where I would -- I came across</p> <p>16 personal financial statements was mainly in the context of</p> <p>17 performing the banking audits. A lot of that work entailed</p> <p>18 evaluating loan loss reserves, evaluating the quality of loans.</p> <p>19 And as part of our audit testing we would make selections and</p> <p>20 obtain loan files underlying the selected loans that we were</p> <p>21 making for purposes of our audit testing. And to the extent</p> <p>22 the loans were with individuals, I do remember there being</p> <p>23 consideration of personal financials in the course of that</p> <p>24 work.</p> <p>25 Q How did your practice change, if at all, when you</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4242</p> <p>1 different than as a senior level accountant?</p> <p>2 A I believe it was more oversight of more individuals</p> <p>3 on my teams. And again, increased interaction and</p> <p>4 responsibilities with the partners that I worked with.</p> <p>5 Q What type of matters did you handle while you were</p> <p>6 manager at the FAS group?</p> <p>7 A I performed a lot of internal investigation type</p> <p>8 work. One of the biggest matters that I worked on at that time</p> <p>9 was, there was a waste management case which was one of the</p> <p>10 first, you know, financial frauds that had come out. And we</p> <p>11 had been retained by counsel to assist with -- assist a special</p> <p>12 committee in performing that internal investigation. I also</p> <p>13 worked on auditor compliance, auditor malpractice matters where</p> <p>14 we would work with auditing firms to assess compliance with</p> <p>15 professional standards. I believe also performing accounting</p> <p>16 advisory -- technical accounting advisory support to companies</p> <p>17 that may not be involved in investigation, but looking for some</p> <p>18 assistance with regard to how they were conducting their</p> <p>19 financial reporting.</p> <p>20 Q And during this period of time, how would you use</p> <p>21 your knowledge of GAAP in your professional engagements?</p> <p>22 A Well, it was essential to use any knowledge of GAAP,</p> <p>23 because that's what they were hiring us to provide them.</p> <p>24 Q At a certain point in time, did you receive a job</p> <p>25 role change from being a manager at PWC?</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4241</p> <p>1 moved over to financial advisory service -- excuse me, Forensic</p> <p>2 Advisory Services?</p> <p>3 A So that was no longer performing audit services.</p> <p>4 That's performing internal investigations, working with,</p> <p>5 typically, lawyers that would retain us to help them perform</p> <p>6 the fact finding when there was potential for accounting</p> <p>7 issues. We would work with the lawyers to do a lot of the</p> <p>8 financial analysis; assess the compliance with GAAP; help</p> <p>9 quantify, to the extent there were errors, we would help do</p> <p>10 that; a lot of the accounting research and the technical --</p> <p>11 writing the technical memoranda that would go along with that.</p> <p>12 Q And during this period of time that you were at</p> <p>13 Pricewaterhouse and later Pricewaterhouse Cooper, did you</p> <p>14 receive additional training in the field of accounting?</p> <p>15 A While I was at PWC?</p> <p>16 Q Yes.</p> <p>17 A Well, yes. I had to maintain my continuing</p> <p>18 professional education, which is 120 hours every three years.</p> <p>19 And I received a lot of that training within Pricewaterhouse</p> <p>20 Coopers, but also from outside sources.</p> <p>21 Q When you moved over to FAS, the Forensic Advisory</p> <p>22 Services group, what was your title?</p> <p>23 A At the time I believe it was still a senior level,</p> <p>24 but within a short period of time I was promoted to manager.</p> <p>25 Q And as a manager, how were your responsibilities</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4243</p> <p>1 A I did, but not within PWC. I left the firm in 2000.</p> <p>2 Q Why did you leave the firm in 2000?</p> <p>3 A Well, I had seen that there was an opening in the</p> <p>4 Division of Enforcement at the Securities and Exchange</p> <p>5 Commission. It seemed very intriguing to me. Really enjoyed</p> <p>6 what I was doing at PWC, but thought this would be a great</p> <p>7 feather in my cap to go to enforcement and bring it back to PWC</p> <p>8 or another firm. So I went through the process and was hired</p> <p>9 as an accountant, entry level accountant in the division of</p> <p>10 enforcement.</p> <p>11 (The following proceedings were stenographically</p> <p>12 recorded by Senior Court Reporter Michael Ranita.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4244

1 Q What were your responsibilities as an entry-level  
2 accountant at the Division of Enforcement of the Securities and  
3 Exchange Commission?  
4 A Performing financial accounting investigations for a  
5 wide array of entities, ultimately determining whether there  
6 were accounting improprieties, all involved, you know, publicly  
7 traded companies, and also evaluating conduct of individuals at  
8 these companies, working very closely with enforcement attorneys  
9 throughout the country, collectively making a decision on  
10 whether or not enforcement action would be warranted to  
11 recommend to the Commission of the SEC. And we would do that  
12 very formally with writing very detailed memoranda, if we felt  
13 that that was necessary.  
14 It also involved taking investigative testimony of --  
15 of staff people at public companies all the way up to CEOs. So  
16 a very interesting job. And, um, and we had a lot of  
17 responsibility to -- in the front lines to make those decisions  
18 and decide whether or not something warranted bringing  
19 enforcement action.  
20 Q What type of engagements were you working with when you  
21 were an accountant at the Enforcement Division?  
22 A I probably touched every industry out there in terms of  
23 the types of companies and entities that we were -- that I was  
24 involved in investigating. You know, from, again, financial  
25 institutions, manufacturing, real estate, government

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4245

1 contractors. It really ran the gamut in terms of the types of  
2 entities that I was involved with. And with that came a very  
3 wide exposure to a very broad base of accounting issues that  
4 covered many, many different aspects of Generally Accepted  
5 Accounting Principles.  
6 Q Were you promoted from the position of accountant?  
7 A I was.  
8 Q What was your next role of the enforcement position at  
9 the Securities and Exchange Commission?  
10 A When I was hired at that time we were on a general  
11 scale, and the titles were very, I would say, demeaning. I went  
12 in as a staff accountant, despite having six or seven years of  
13 experience.  
14 Shortly after that they did change that title to be an  
15 assistant chief accountant. It made it sound a little nicer.  
16 And I was promoted, first, to an associate chief accountant.  
17 Later, to a senior associate chief accountant, and then  
18 ultimately, deputy chief accountant of the Division of  
19 Enforcement.  
20 Q How did your responsibilities change throughout your  
21 progression of -- at the Division of Enforcement?  
22 A I would say the move from assistant chief accountant to  
23 associate chief accountant, responsibilities didn't change a  
24 whole lot, but when I became senior associate chief accountant,  
25 I did have a group of enforcement accountants that reported to

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4246

1 me directly. I was based in the DC office of the SEC. And we  
2 had about 35 to 40 accountants in that group, and another 60 or  
3 so across the country, so approximately 100 enforcement  
4 accountants. And at that time I had about five or six  
5 accountants that reported directly to me.  
6 Q What exposure, if any, did you have to personal  
7 financial statements or Statements of Financial Condition during  
8 your time with the Securities and Exchange Commission?  
9 A There were a couple of different capacities. Like I  
10 mentioned earlier with my experience in the audit practice at  
11 PWC, I did work at the SEC on investigations of financial  
12 institutions. And there were times where we would receive, you  
13 know, detailed files as part of those investigations, um,  
14 because we would be evaluating the accounting for loan loss  
15 reserves. And there were times where personal financials might  
16 be part of that exercise.  
17 Secondly, when we brought enforcement actions  
18 against individuals, and often times that would include levying  
19 penalties or disgorgement against individuals for a variety of  
20 different things, individuals often times would seek to get some  
21 sort of waiver based on inability to pay and would be required  
22 to submit personal financial statements, you know, to us at the  
23 staff at the SEC to evaluate.  
24 Q What, if any, experience did you have at the SEC  
25 reviewing financial statements for evidence of fraud?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4247

1 A That's what I did every day. We were tasked with  
2 evaluating, first of all, whether or not accounting at public  
3 companies was proper. And if it wasn't proper, we were  
4 investigating why it wasn't proper; whether it was innocent  
5 error or whether there was maybe more to it in terms of  
6 potential malfeasance.  
7 Q And in what context did you carry out those  
8 responsibilities?  
9 A Well, in the context of working very closely with SEC  
10 enforcement lawyers, the SEC has subpoena power, is able to  
11 obtain mountains of data and documents that we would be  
12 reviewing for purposes of our investigations. Um, I mentioned  
13 before, also investigative testimony. We'd be very involved in  
14 performing fact finding through the testimony process, and then  
15 ultimately putting it all together in deciding whether or not to  
16 recommend enforcement action.  
17 Q What, if any, experience did you have analyzing the  
18 role of senior executives and working with outside accounting  
19 firms?  
20 A Very extensive responsibilities. One of the things we  
21 would be evaluating is whether or not information that was  
22 provided to outside accounting firms was accurate. Um, we would  
23 also be evaluating whether or not the outside accounting firms  
24 performed their responsibilities in compliance with professional  
25 standards.

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4248

1 The SEC has jurisdiction to bring enforcement actions  
2 against outside auditors for failure to comply with such  
3 standards, and that was a very big part of my responsibilities  
4 as well.

5 Q In what sectors did you discharge these  
6 responsibilities?

7 A I think I said before, a very wide array of sectors;  
8 real estate, government contracting, banks, many others.

9 Q During your time at the SEC, or prior, were you  
10 involved in professional organizations?

11 A Can you repeat that question again.

12 Q Were you involved in any professional organizations --

13 A While at the SEC?

14 Q Or prior.

15 A I don't recall the date, but I am a member, and was a  
16 member I believe at that time, of the American Institute of  
17 Certified Public Accountants. I also am a member of the  
18 Association of Certified Fraud Examiners. Those are the two  
19 that I think are the main ones.

20 Q When did you become -- withdrawn.

21 In fact, you are a certified fraud examiner; correct?

22 A I am.

23 Q What does one have to do to become a certified fraud  
24 examiner?

25 A It requires -- there's an exam, but there's also an

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4250

1 under Generally Accepted Accounting Principles. And I also  
2 served as an expert, starting at that time, in assessing  
3 compliance of auditors with professional standards, and both the  
4 accounting expert work and the auditing expert work required  
5 issuing and drafting expert reports, providing deposition  
6 testimony, and potentially testifying at trial. But not many of  
7 them went to trial.

8 Q What was your title FTI Consulting?

9 A I was a senior managing director, which is the  
10 equivalent of a partner, if you were in a partnership, but FTI  
11 is a corporation.

12 Q After FTI, where did you work next?

13 A I left FTI in approximately May of 2016. I had been  
14 there for four years. The prior CFO of FTI had left and decided  
15 to start up a new consulting firm that performed a variety of  
16 different consulting practices similar to what FTI had. And he  
17 plucked me out of my role at FTI to come in to Ankura and to  
18 start the forensic accounting practice there. Seemed like a  
19 very interesting opportunity, and I've been there ever since.

20 Q When you returned to the private sector, what  
21 involvement did you have with the AICPA?

22 A I had had a couple of different levels of involvement.  
23 So they have different committees that are organized within  
24 what's known as the forensic and valuation services section.  
25 One of the roles was serving on the fraud task force and that

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4249

1 experience requirement that goes along with it. And, of course,  
2 paying the annual fee.

3 Q And you are also credentialed by the AICPA as a  
4 certified -- as certified in financial forensics; is that  
5 correct?

6 A That's correct.

7 Q What is it -- what is required to obtain that  
8 certification?

9 A It was largely an experience requirement at the time  
10 that I became a CFF. I think they, since that time, added an  
11 exam element to it, but I met all the requirements, based on my  
12 experience, to be a CFF.

13 Q At one point time did you leave the Security and  
14 Exchange Commission?

15 A I did.

16 Q Where did you work next?

17 A I left the SEC in the late 2012. Um, I had been there  
18 for 12 years. I had a very successful climb and was looking to  
19 bring that experience to the private sector. Talked to a number  
20 of firms and ultimately decided to go with FTI Consulting, which  
21 is another type of consulting firm similar to my current firm.

22 Q What kind of work did you handle at FTI Consulting?

23 A Largely assisting lawyers who are representing  
24 companies and individuals as part of either performing internal  
25 investigations or serving as an expert on accounting issues

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4251

1 involved essentially preparing guidance for the industry,  
2 evaluating current guidance that was out there, and performing  
3 investigations or serving as an expert witness. And during my  
4 time on that committee, we did draft a guide that, that was very  
5 voluminous and very thorough that covered many, many aspects of  
6 serving as an expert.

7 I also served on the executive committee of the AICPA's  
8 forensic and violations services section. And that is the kind  
9 of highest level committee that one could be on at the AICPA  
10 within their field. During that time we, um, I was a principal  
11 author of the very first forensic standard that was issued by  
12 the AICPA. It did not exist before, and was heavily involved in  
13 that effort and it ultimately was issued.

14 Q Have you lectured on the field of accounting?

15 A I don't do lectures, per se, but I do a lot of public  
16 speaking involving accounting, SEC enforcement, auditing issues.  
17 I've been involved in being on panels, moderating panels, giving  
18 speeches for a long time. And I believe my CV that was  
19 submitted in this case captures all of that.

20 Q Have you written any articles concerning the field of  
21 accounting?

22 A I believe I've written a few articles. Sitting here  
23 right now I don't remember the topics of those articles. I'm  
24 not a prolific author. I do a lot of work in the space and  
25 don't have a lot of time to sit down and write.

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4252

1 Q Have you been offered as an expert before in the field  
2 of accounting?  
3 A Yes.  
4 Q How many times have you been offered in court as an  
5 expert in the field of accounting?  
6 A I believe two.  
7 Q And how many times have you been qualified as an expert  
8 in court on the field of accounting?  
9 A Both times.  
10 Q And have you ever been offered as an expert in the  
11 field of accounting and not been qualified?  
12 A No.  
13 MR. SUAREZ: Your Honor, we tender Mr. Flemmons as  
14 an expert witness in the field of accounting.  
15 THE COURT: Granted. I hereby deem you an expert  
16 in the field of accounting. You are three for three.  
17 Q Mr. Flemmons, I'll ask that the opinions you give today  
18 be given within a reasonable degree of accounting certainty.  
19 Can we agree on that?  
20 A Understood.  
21 Q What have you done to prepare for your testimony at  
22 trial in this case?  
23 A I had previously submitted a couple of reports in this  
24 case. One was my initial expert report. And I also submitted a  
25 rebuttal report to the government's expert. I -- so I reviewed

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4253

1 those two reports in preparation for this trial. I also  
2 reviewed some of the underlying materials that I cited as  
3 support for my opinions in those reports. I have also read a  
4 few of the transcripts associated with this trial. For example,  
5 the transcript of Mr. Bender. I believe there were a couple of  
6 others. And then, um, I met with you last night for a couple of  
7 hours. And that's it.  
8 Q What documents, generally, have you reviewed in  
9 connection with your preparation to testify at trial today?  
10 A Can you repeat that.  
11 Q Sure.  
12 What documents, generally, have you reviewed in  
13 connection with your preparation to testify at trial?  
14 A I don't recall all of them, but, again, many of the  
15 documents that were cited in my reports, the Statements of  
16 Financial Condition.  
17 Some of the supporting documents that were generated,  
18 um, to support the calculation of the values that were reported  
19 in those financial statements. I believe I've also gone back  
20 over some of the GAAP requirements associated with this case.  
21 That's what comes to mind.  
22 Q Is your testimony here governed today by professional  
23 standards?  
24 A Yes.  
25 Q Which standards?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4254

1 A It was the standard that I was involved in drafting for  
2 the AICPA. It's the statement on standards for forensic  
3 services, number one.  
4 Q What accounting standard governs the preparation of  
5 Statements of Financial Condition?  
6 A So currently the standard that applies is known as  
7 Accounting Standards Codification or ASC-274. That standard was  
8 built off of a very much older standard that was issued by the  
9 AICPA in approximately 1982. Um, so those are the standards  
10 that apply. But during this time period it would be ASC-274.  
11 Q What is the measure of value for an asset or liability  
12 under ASC-274?  
13 A It's referred to as estimated current value.  
14 MR. SUAREZ: All right. Can we please pull up  
15 ASC-274, Defendant's Exhibit 27.  
16 (Whereupon, the exhibit was displayed on the  
17 screen.)  
18 MR. SUAREZ: And turn to page six.  
19 (Whereupon, the exhibit was displayed on the  
20 screen.)  
21 Q I focus your attention on ASC-274-10-35-1. Does this  
22 set forth the requirement that assets be presented at estimated  
23 current value?  
24 A Yes, it does.  
25 Q What is the definition of "estimated current value"?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4255

1 A I won't recite it word for word, but the essence of  
2 estimated current value is that it's the amount that could be  
3 exchanged between a buyer and a seller for a particular asset.  
4 MR. SUAREZ: Can we please pull up Defendant's  
5 demonstrative one.  
6 (Whereupon, the demonstrative was displayed on the  
7 screen.)  
8 Q Do you see here a citation to ASC-274-10-20?  
9 A I do.  
10 Q Do you recognize that as the word-for-word definition  
11 of estimated current value?  
12 A It is.  
13 Q And what is "fair value"?  
14 A So "fair value" is a very different GAAP standard that  
15 is separate and apart from estimated current value. Fair value  
16 is a standard that didn't come into existence until around 2008,  
17 well after the 1982 statement that first established estimated  
18 current value.  
19 The fair value standard only applies to entities, um,  
20 it does not apply to personal financial statements. And the  
21 models that both of those standards are built on are very, very  
22 different. In fact, the ASCPA has made it clear that estimated  
23 current value is not the same as fair value under ASC-820.  
24 Q How is the model upon which estimated current value is  
25 built on different than the model for fair value?

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4256

1 A Well, there are a lot of differences, one of which is  
 2 -- you see in the definitions of estimated current value as  
 3 compared to fair value, fair value refers to market  
 4 participants. And that is a very important distinguishing trait  
 5 for ASC-820, because fair value standard is premised on, you  
 6 know, what would a market participant pay for this property?  
 7 How would they value this property?

8 On the other hand, estimated current value is premised  
 9 on more of a management or personal individual perspective of  
 10 what they deem the value to be.

11 So those are two very different paradigms. Again, one  
 12 is more of an internal. ECV is an internal determination. Fair  
 13 value is more of external market participant evaluation. I  
 14 would say, also, that under estimated current value there are  
 15 many methods that are laid out that are all appropriate methods  
 16 that could be used, and it contains a very wide array of options  
 17 that can be used to establish the ECV and be GAAP compliant.

18 Fair value also has methods, but they are more  
 19 streamlined. There is only a few of them. Fair value also  
 20 places a premium on "using observable inputs", which is a term  
 21 of art within the standard. And estimated current value doesn't  
 22 really talk about that at all. So there are a lot of  
 23 differences. But the methods and the kind of internal versus  
 24 external perspective are very key differences.

25 Q Is the preparation of a Statement of Financial

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4257

1 Condition for an individual the same as the preparation of a  
 2 financial statement for a corporate entity?

3 A No.

4 Q Why is that?

5 A Well, first of all, the preparation of a Statement of  
 6 Financial Condition involves just that, preparing a Statement of  
 7 Financial Condition, which is akin to a balance sheet.

8 Preparing financial statements for an entity under  
 9 Generally Accepted Accounting Principles would entail preparing  
 10 a balance sheet, an income statement, which would contain the  
 11 revenues, expenses and profits, preparing a statement of cash  
 12 flows, preparing statement of stockholders equity, and also  
 13 entail many, many, many more disclosure requirements that are  
 14 attached to all of the relevant standards for entities that are  
 15 not relevant to individuals under ASC-274.

16 Q What kind of latitude does a person preparing a  
 17 Statement of Financial Condition for an individual have to value  
 18 assets and liabilities as compared to someone preparing a fair  
 19 value estimate for a corporation?

20 A Well, I would say that under ASC-274, there are many  
 21 options available to a preparer of those financial statements,  
 22 as compared to under fair value, there are really more -- much  
 23 fewer methods that are described in standard. That said,  
 24 there's latitude under both standards, but the specificity  
 25 that's in ASC-274, with some of the methods that are available,

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4258

1 do not exist in the fair value standard.

2 MR. SUAREZ: If we could please pull up Defendant's  
 3 27 at page 13.

4 (Whereupon, the exhibit was displayed on the  
 5 screen.)

6 Q Mr. Flemmons, can you please identify this action of  
 7 ASC-274?

8 A Yes. So this is, as it says, the implementation  
 9 guidance and illustrations that provide some of the methods that  
 10 I was talking about before that are available to a preparer of  
 11 personal financial statements, and it covers, again, some of the  
 12 landscape of the different methods that can be used.

13 Q Please walk us through the different methods of the  
 14 estimation of current value?

15 A Sure. So starting with the first one under paragraph  
 16 55-1A, it says, "The capitalization of past or prospective  
 17 earnings." Again, this would be taking expected earnings of a  
 18 particular asset that are expected to be generated in the future  
 19 and applying a capitalization or a form of discount rate to  
 20 those earnings to establish value. But, again, it is using  
 21 future productivity of that asset. And I think that's a very  
 22 important concept, because when you are valuing any asset,  
 23 again, there is a wide range of options that are available to  
 24 you, and it does depend on the kind of asset that you are  
 25 valuing.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4259

1 If I'm seeking to value my home, my home is not a  
 2 revenue producing asset. So the value of that is going to be  
 3 pretty much, well, somebody would think that it's valued based  
 4 on other comparables in the area, and there's not -- there  
 5 aren't a lot of inputs to valuing that.

6 But when you are talking about valuing a revenue  
 7 producing asset, looking to the future to see what kind of  
 8 revenue could be generated on that asset is a big part of  
 9 determining a value of that asset. And that's what this goes  
 10 to. This is one of the options to look to the future on what  
 11 could be generated from that asset to determine what the value  
 12 is.

13 Q And the next category, the use of "liquidation values",  
 14 how does that -- how is the use of liquidation values a method  
 15 of reaching estimated current value?

16 A Well, it's very different than the first one. Again,  
 17 the first one we talked about, it's looking to the future on  
 18 what is expected to be generated and applying a discount to  
 19 that.

20 Liquidation values would be in the situation where  
 21 you're valuing assets under the assumption that they need to be  
 22 sold. For example, going out of business, or bankruptcy,  
 23 something to that effect. And you could imagine that under  
 24 those circumstances, you know, values of those assets would  
 25 likely be less than looking to a very productive asset that's

November 14, 2023

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4260</p> <p>1 going to generate revenue streams in the future.</p> <p>2 Q What is the next basis for reaching an estimated</p> <p>3 current value?</p> <p>4 A The next one is looking to the cost of the asset and</p> <p>5 potentially making adjustments to the cost based on either</p> <p>6 changes in the nature of the asset. The standard here talks</p> <p>7 about changes in a specific price index, such as a consumer</p> <p>8 price index. That's another option that's available.</p> <p>9 Q And how is that different from the next basis for</p> <p>10 reaching estimated current value?</p> <p>11 A So use of appraisals is another option. Again, not</p> <p>12 mandated -- none of these methods are mandated. This is the</p> <p>13 menu that is available to a preparer under ASC-274 to be able to</p> <p>14 prepare financial statements. Use of appraisals is one of them.</p> <p>15 It's also very vague, because appraisals can be</p> <p>16 prepared in many different ways. But, you know, use of</p> <p>17 appraisals would tend to be using a third party of some kind to</p> <p>18 either identify comparable sales or use some other valuation</p> <p>19 method to come up with a reported value.</p> <p>20 Q Is it the case that the use of appraisals is vague</p> <p>21 because there can be many different methods of appraising the</p> <p>22 same piece of real estate?</p> <p>23 MR. WALLACE: Objection. Leading.</p> <p>24 THE COURT: Sustained. Leading.</p> <p>25 Q Why is the use of appraisals a vague standard?</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4262</p> <p>1 Q Does the accounting standard provide further guidance</p> <p>2 on how to reach estimated current value for investments in a</p> <p>3 closely held business?</p> <p>4 A Yes, it does.</p> <p>5 MR. SUAREZ: Can we zoom in on that section,</p> <p>6 please?</p> <p>7 THE COURT: And just one question. The only</p> <p>8 difference I saw between A and E, or the main difference,</p> <p>9 was A talked about income and expenses, and E just talked</p> <p>10 about income. How can you value something just by the</p> <p>11 income without taking into account expenses?</p> <p>12 THE WITNESS: Can we go back to that, please?</p> <p>13 THE COURT: Or payments, expenses, in E, the</p> <p>14 last word, payments. What are payments? Expenses?</p> <p>15 THE WITNESS: Yeah, the standard doesn't really</p> <p>16 define that, but ordinarily one would factor in expenses</p> <p>17 associated with discounting rather than just taking the --</p> <p>18 THE COURT: Receipts.</p> <p>19 So what's the difference between A and E in a</p> <p>20 practical sense?</p> <p>21 THE WITNESS: It is more of the wording.</p> <p>22 THE COURT: Wording is not practical. That's</p> <p>23 why I am asking for practical sense.</p> <p>24 THE WITNESS: In a practical sense, again, A we</p> <p>25 are talking about anticipated earnings, which would</p>
<p>Page 4261</p> <p>1 A Well, because it really goes more into valuation</p> <p>2 approaches. The standard doesn't really get into a lot of</p> <p>3 detail on how a valuation professionals would develop an</p> <p>4 appraisal. But, again, there are many, many different ways to</p> <p>5 issue an appraisal and to prepare an appraisal. The standard</p> <p>6 doesn't get into the level of detail on what those are.</p> <p>7 Q Is it acceptable to use an appraisal that includes</p> <p>8 hypothetical conditions?</p> <p>9 A Yes. As a matter of fact, that's what a lot of these</p> <p>10 methods contemplate, particularly whether you are evaluating the</p> <p>11 future performance of an asset. And all of that is very</p> <p>12 hypothetical and it's impossible to be precise and exact.</p> <p>13 There's a wide range of potential outcomes that could ensue from</p> <p>14 an asset.</p> <p>15 Q What is the next standard that you could use for</p> <p>16 reaching estimated current value? The next method, I should</p> <p>17 say?</p> <p>18 A So letter E is similar to letter A, although letter E</p> <p>19 is talking about projecting cash receipts as opposed to</p> <p>20 projecting earnings, but also discounting those receipts back to</p> <p>21 current time.</p> <p>22 (Continued on the next page.)</p> <p>23</p> <p>24</p> <p>25</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4263</p> <p>1 potentially be revenues, less expenses. You know, E is</p> <p>2 talking about rather than earnings under a GAAP</p> <p>3 perspective, not revenues, but actually taking the hard</p> <p>4 cash that comes in the door, compared with the hard cash</p> <p>5 that maybe goes out the door. So we are revenues and</p> <p>6 expenses versus cash plus cash minus.</p> <p>7 THE COURT: Okay. Thank you.</p> <p>8 Q Will the different approaches to estimated current</p> <p>9 value necessarily yield the same result?</p> <p>10 A No. And in fact, depending on the method you choose,</p> <p>11 you could have widely different results from one method to</p> <p>12 another.</p> <p>13 Q And if the different methods for defining estimated</p> <p>14 current value yield wildly different results, how do you pick</p> <p>15 which method to use?</p> <p>16 A Well, it is a judgment call. And, you know, in my</p> <p>17 experience it often has results in or is determined, kind of,</p> <p>18 how you are going to be using that information. I mentioned</p> <p>19 earlier when I was at the SEC we would receive personal</p> <p>20 financial statements when evaluating a defendant's ability to</p> <p>21 pay. And in those situations you would expect the defendant to</p> <p>22 try to understate assets to demonstrate being destitute or not</p> <p>23 being able to pay the fines. In that situation, you know, the</p> <p>24 defendant could pick a method that results in the lowest asset</p> <p>25 values and disclose that as such.</p>

November 14, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4264</p> <p>1 There may be -- and there are other uses of personal</p> <p>2 financial statements that may also drive what method is chosen.</p> <p>3 But at the end of the day what is important is that the method</p> <p>4 be disclosed so that the user of the financials knows what</p> <p>5 method is being used and has an opportunity to agree or</p> <p>6 disagree or come up with an alternative approach.</p> <p>7 Q And is the selection of one method over another in</p> <p>8 the discretion of the person preparing the Statement of</p> <p>9 Financial Condition?</p> <p>10 A Absolutely.</p> <p>11 MR. SUAREZ: Can we go back to 55-4?</p> <p>12 Q Can you please explain the guidance 55-4 for</p> <p>13 investment in a closely held business? How is estimated</p> <p>14 current value interpreted for use in connection with an</p> <p>15 investment in a closely held business?</p> <p>16 A Well, the interpretation is really in the form of the</p> <p>17 methods that are laid out below. The standard does not define</p> <p>18 what constitutes a closely held business.</p> <p>19 But in practice, these methods do -- are very similar</p> <p>20 if not overlap directly with methods that are offered on the</p> <p>21 prior list that we saw. And also elsewhere in the standard</p> <p>22 that I suspect we will get into. But some of these that are</p> <p>23 listed on this page are identical to what we have already</p> <p>24 covered.</p> <p>25 Q And is it the case that the preparer chooses which it</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4266</p> <p>1 Q Or ask additional questions?</p> <p>2 A Correct.</p> <p>3 MR. SUAREZ: If we can turn to the following</p> <p>4 page?</p> <p>5 Q Can you please identify the standard that is listed</p> <p>6 here as ASC 274-10-55-6?</p> <p>7 A Yes. So paragraph 55-6 contains five additional</p> <p>8 methods that are available to a preparer of personal financial</p> <p>9 statements for real estate assets.</p> <p>10 Q Okay. Let's go through them one by one and talk</p> <p>11 about how they are different from each other.</p> <p>12 What does sales of similar property and similar</p> <p>13 circumstances require?</p> <p>14 A So that involves, again, looking to comparables in</p> <p>15 the market. We may have talked about that earlier. That's one</p> <p>16 method that is available. For real estate that is a common way</p> <p>17 to value property is to look at other assets that have been</p> <p>18 sold that have similar characteristics. But often times those</p> <p>19 are hard to find. You don't always have an apples to apples</p> <p>20 comparison, so this may not always be the most ideal method to</p> <p>21 use.</p> <p>22 Q What latitude is afforded to the preparer in</p> <p>23 determining what is a similar property under similar</p> <p>24 circumstances?</p> <p>25 A It is a judgment call based on the attributes of an</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4265</p> <p>1 would select?</p> <p>2 A Correct. These six methods that are listed here are</p> <p>3 also available to a preparer to prepare their personal</p> <p>4 financial statements under.</p> <p>5 Q Is any one method determinative?</p> <p>6 A When you say "determinative," what do you mean?</p> <p>7 Q Are you required to use one method over another?</p> <p>8 A No.</p> <p>9 Q Can the different methods for valuing an investment</p> <p>10 in a closely held business yield different results?</p> <p>11 A Like we said before, depending on which method that</p> <p>12 you pick among this list, you could have very different results</p> <p>13 in orders of magnitude.</p> <p>14 Q Would any of the different methods be more right or</p> <p>15 more wrong than the other?</p> <p>16 A No, the standard provides many options and there is</p> <p>17 no one right value. It is a matter of judgment. It is a</p> <p>18 matter of disclosing what that method is. A reasonable person</p> <p>19 may disagree, a user of the financial statements may disagree</p> <p>20 and say that that valuation method doesn't make sense, we are</p> <p>21 going to do our own calculation. So as long as it is out there</p> <p>22 and disclosed and clear to a user what the method is, what</p> <p>23 assets are being valued, you are giving the opportunity to a</p> <p>24 user to understand what the approach was and either agree or</p> <p>25 disagree with it.</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4267</p> <p>1 asset and whether or not a comparable that is identified is</p> <p>2 truly a comparable.</p> <p>3 Q What is the next possible method of obtaining</p> <p>4 estimated current value for real estate according to this</p> <p>5 standard?</p> <p>6 A This is largely a repeat of what we saw before, and</p> <p>7 the prior menu of methods. The only additional verbiage that I</p> <p>8 think is important here is the reference to basing projected</p> <p>9 cash receipts on planned courses of action. That is also</p> <p>10 something that is, you know, very unique to ASC 274, that you</p> <p>11 able to consider what is intended to be done to the property</p> <p>12 with the asset and including future income streams associated</p> <p>13 with those planned courses of action in your projected cash</p> <p>14 amounts.</p> <p>15 And that is also, by the way, very different from ASC</p> <p>16 A-20 which is the fair value standard where the intended use of</p> <p>17 the property is not considered in determining a value under</p> <p>18 A-20. But ASC 274 that's entirely appropriate.</p> <p>19 Q And how are planned courses of action used in the</p> <p>20 real world to ascribe an estimated current value to real</p> <p>21 estate?</p> <p>22 A Well, there are a variety of ways. It could be</p> <p>23 having a property that is not developed and including receipts</p> <p>24 from that property assuming that it was fully developed.</p> <p>25 That's one example.</p>

November 14, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4268</p> <p>1 Q What is required for the preparer of a Statement of</p> <p>2 Financial Condition to understand about a planned course of</p> <p>3 action in order to be able to figure that into the valuation?</p> <p>4 A Well, there are many different inputs and assumptions</p> <p>5 that go into these determinations. They depend on the type of</p> <p>6 asset, location, intended use, whether it is a hotel, whether</p> <p>7 it is an undeveloped piece of land. I think it would really</p> <p>8 depend, I'll say, I am not a valuation expert, I am here as an</p> <p>9 accounting expert, but I have a lot of experience reviewing</p> <p>10 valuation reports and having to understand assumptions and</p> <p>11 evaluate the reasonableness of those. But I have never</p> <p>12 prepared a valuation.</p> <p>13 Q And in considering planned courses of action, what</p> <p>14 latitude is afforded the preparer to incorporate the future</p> <p>15 value of that planned course of action in an estimated current</p> <p>16 value?</p> <p>17 A I think there is substantial latitude, because it all</p> <p>18 depends on the judgment of the preparer on what they plan to</p> <p>19 use the asset for.</p> <p>20 Q What do you mean what they plan to use the asset for?</p> <p>21 A Well, what I mean is that this phrase of "based on</p> <p>22 planned courses of action" allows a preparer to consider the</p> <p>23 value that is to come from the asset from either further</p> <p>24 developing it generating future revenues off of that piece of</p> <p>25 property and not just valuing it just based on what it is today</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4270</p> <p>1 section B that talks about the discounted amounts of projected</p> <p>2 cash receipts that that analysis could be performed internally</p> <p>3 without needing to obtain any assistance from an outside expert</p> <p>4 or valuation specialist.</p> <p>5 Q In section D, the standard permits the use of</p> <p>6 appraisals used to obtain financing, correct?</p> <p>7 A Yes.</p> <p>8 Q How is that different from the prior section that we</p> <p>9 just discussed?</p> <p>10 A So these could be appraisals that are obtained by</p> <p>11 lenders as part of making determination on whether to provide</p> <p>12 funding for the particular piece of asset. And, you know,</p> <p>13 using that appraisal as opposed to the person themselves</p> <p>14 retaining a specialist to go out and perform an appraisal on</p> <p>15 that property.</p> <p>16 Q What is the last standard that is set forth in this</p> <p>17 section?</p> <p>18 A So this one talks about assessed value for property</p> <p>19 taxes. Again, going back to my example of my home, which</p> <p>20 doesn't have any future revenue stream associated with it, that</p> <p>21 I have a tax value that I pay taxes on my property, but I also</p> <p>22 have a price that I could sell my property for, which would</p> <p>23 likely be higher. But this is an option that is available to a</p> <p>24 preparer is to use that tax assessed value if they choose. But</p> <p>25 I would say that would be expected to typically be on the lower</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4269</p> <p>1 if you were to try to sell it without any future revenue</p> <p>2 streams. This is a very important part of the standard to</p> <p>3 contemplate and include the future earnings of a property which</p> <p>4 makes intuitive sense as well. Because if you were to try to</p> <p>5 sell a property that has a lot of future value to it, you know,</p> <p>6 a buyer is likely going to consider the future revenue streams</p> <p>7 as well. Not just an undeveloped, you know, piece of land</p> <p>8 being an undeveloped piece of land. They are going to consider</p> <p>9 what they are going to do with it, which would increase the</p> <p>10 value in their minds on what that property is worth.</p> <p>11 Q And why is it that this concept of appears in ASC 274</p> <p>12 but doesn't appear in the preparation of financial statements</p> <p>13 for corporate entities, for example?</p> <p>14 A Well ASC 274 is really based on, as I said before, a</p> <p>15 management individual perspective. And what they intend to use</p> <p>16 the asset for ASC A-20, which applies to entities, applies a</p> <p>17 market participant perspective, not an insider management</p> <p>18 perspective, an outsider perspective, where the intended use of</p> <p>19 the property is not part of that valuation.</p> <p>20 Q And how is standard B different from standard C, the</p> <p>21 use of appraisals based on estimates of selling prices and</p> <p>22 selling costs obtained from independent real estate agents or</p> <p>23 brokers familiar with similar properties in similar locations?</p> <p>24 A I think the main difference is the fact that</p> <p>25 appraisals are obtained from external sources. Of whereas</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4271</p> <p>1 end of the spectrum. We have covered a lot of these different</p> <p>2 methods and they are, you know, some are inherently going to</p> <p>3 likely put you at the low end of an estimate; and others might</p> <p>4 put you at a high end. But very importantly, as long as you</p> <p>5 are using one of these and you disclose what you are doing, you</p> <p>6 can use any of them regardless of the value that results from</p> <p>7 it.</p> <p>8 Q In the real world, how are assessed value for</p> <p>9 property taxes different than, say, planned courses of action?</p> <p>10 MR. WALLACE: Objection, foundation. This is</p> <p>11 not an expert on tax.</p> <p>12 THE COURT: Overruled.</p> <p>13 A Can you repeat that, please?</p> <p>14 Q Sure. In the real world how is estimated current</p> <p>15 value different if you use it based on or you compute it based</p> <p>16 on assessed value for property taxes, as opposed to, for</p> <p>17 example, your planned courses of action?</p> <p>18 A I have not ever prepared a tax assessment. But my --</p> <p>19 but having been familiar with how my personal properties are</p> <p>20 valued from a tax assessment perspective, they -- that would be</p> <p>21 a much more myopic, you know, view of the value.</p> <p>22 Letter B, where it talks about planned courses of</p> <p>23 action, does take into account a much longer term income stream</p> <p>24 that could be attached to that property that could go into the</p> <p>25 value.</p>



November 14, 2023

Flemmons - by Defendant - Direct(Suarez)	Page 4272	Flemmons - by Defendant - Direct(Suarez)	Page 4274
<p>1 MR. WALLACE: Your Honor, I move to strike that</p> <p>2 answer. There is no basis for that to have any relevance</p> <p>3 in this case. Mr. Flemmons' personal residence and the</p> <p>4 manner in which it is taxed.</p> <p>5 THE COURT: I think he was just using that as an</p> <p>6 example. But I'll strike the answer and ask that the</p> <p>7 question be reframed to be very specific. We are not</p> <p>8 talking about your personal situation, which is how the</p> <p>9 world works, which is what Mr. Suarez asked.</p> <p>10 Q In a general sense, in the real world if you want to</p> <p>11 use an assessed value for property taxes, you can go on the tax</p> <p>12 appraisers website and look it up, right?</p> <p>13 A That's correct.</p> <p>14 Q And you could use that as basis for estimated current</p> <p>15 value, right?</p> <p>16 A That is an option.</p> <p>17 Q That is an option. Another option would be to</p> <p>18 consider the planned courses of action that you have for a</p> <p>19 property, correct?</p> <p>20 A That's correct.</p> <p>21 Q And those planned courses of action, I believe you</p> <p>22 described them as potentially being very forward looking,</p> <p>23 right?</p> <p>24 A Correct.</p> <p>25 Q And it is possible, for example, that an asset could</p>		<p>1 on a property based on planned courses of action, would it?</p> <p>2 A It wouldn't preclude that either.</p> <p>3 Q And that same property could have an assessed value</p> <p>4 for property taxes of 18 or \$20 million, and then I think you</p> <p>5 described it as a wildly different property, six, seven,</p> <p>6 \$800 million based on the other methods of -- other methods</p> <p>7 authorized to reach estimated current value for real estate,</p> <p>8 right?</p> <p>9 MR. WALLACE: Objection. At this point the</p> <p>10 leading is really out of control.</p> <p>11 THE COURT: Sustained.</p> <p>12 Let me ask a question about one of your answers.</p> <p>13 You were asked, basically, could something be assessed at</p> <p>14 18 million and be valued and have a value of 800 million</p> <p>15 or something. You said yes. Is that a theoretical answer</p> <p>16 or a real world practical answer based on your experience?</p> <p>17 THE WITNESS: Well, it is a real world answer</p> <p>18 from the standpoint that tax assessed values are typically</p> <p>19 on the lower end of the spectrum.</p> <p>20 THE COURT: How much lower?</p> <p>21 THE WITNESS: Well, it depends on the asset. It</p> <p>22 is hard to say in generality what that number would be.</p> <p>23 You would have to know what that property is. But I am</p> <p>24 saying that that taxed assessed value typically would not</p> <p>25 consider the future longer term revenues that would be</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4273	Flemmons - by Defendant - Direct(Suarez)	Page 4275
<p>1 have an assessed value for property taxes, so 18 to</p> <p>2 \$20 million, right? And that same property based on planned</p> <p>3 courses of action could have a value of four or \$500 million?</p> <p>4 MR. WALLACE: Objection to this -- this</p> <p>5 hypothetical is unmoored from any specific details about</p> <p>6 jurisdictions or anything else -- or how any of these</p> <p>7 properties were valued.</p> <p>8 THE COURT: Well, I'll ask that the witness.</p> <p>9 In your experience, are these universals or are</p> <p>10 we talking about a particular jurisdiction?</p> <p>11 THE WITNESS: Well, generally speaking, I would</p> <p>12 say that a property tax value would be expected to be</p> <p>13 lower than a value that you would use if considering the</p> <p>14 planned courses of action over a long period of time in</p> <p>15 the future. And that would inherently result, in my view,</p> <p>16 in, likely, very different -- wildly different values.</p> <p>17 THE COURT: Okay. That's his answer and it is</p> <p>18 fine.</p> <p>19 Q Let's say in the hypothetical property you have an</p> <p>20 assessed value for property taxes of \$18 million, that wouldn't</p> <p>21 preclude the sales comparable approach in subsection A from</p> <p>22 having a value of four or \$500 million, would it?</p> <p>23 A It would not preclude that.</p> <p>24 Q And that wouldn't preclude estimated current value</p> <p>25 being used to derive a value of seven or eight or \$900 million</p>		<p>1 generated from that asset, which would, by definition in</p> <p>2 my view, generate a much higher value than a tax assessed</p> <p>3 value.</p> <p>4 THE COURT: I am trying to get to the order of</p> <p>5 magnitude we are talking about here. Let's say the tax</p> <p>6 assessors say its assessed value is, let's make it</p> <p>7 \$20 million. In your real world experience what is the</p> <p>8 highest value you have ever seen legitimately placed on</p> <p>9 such a property?</p> <p>10 THE WITNESS: Well, you said legitimately.</p> <p>11 THE COURT: It is a loaded word, I know.</p> <p>12 THE WITNESS: Again, letter B, which talks about</p> <p>13 projecting cash receipts, there is a range of judgments</p> <p>14 that go into that.</p> <p>15 THE COURT: Nope. Nope. I am asking what you</p> <p>16 have observed in the real world. Assuming 20 million</p> <p>17 assessment, what is the highest you have ever seen? I</p> <p>18 will stick with legitimate appraisal, somewhat objective</p> <p>19 appraisal, what is the highest you think you have ever</p> <p>20 seen proportionally?</p> <p>21 THE WITNESS: Well, if you are saying 20 million</p> <p>22 is your example for assessed property tax, it would not be</p> <p>23 unusual to have a value in the hundreds of millions using</p> <p>24 projected cash receipts.</p> <p>25 THE COURT: What's the highest that you have</p>	

November 14, 2023

Flemmons - by Defendant - Direct(Suarez) Page 4276

1 seen?

2 THE WITNESS: I don't recall an exact number.

3 THE COURT: Okay.

4 Q You described it as an order of magnitude?

5 THE COURT: And five minute break.

6 A Yes.

7 Q Now that order of magnitude could be ten times?

8 A It could be.

9 Q It could be 20 times?

10 A Possibly.

11 Q It could be 100 times?

12 A Just depends on the asset.

13 Q And that wouldn't make one method of estimated

14 current value superior or inferior to another?

15 A None of the methods are superior or inferior to

16 another. They are all available to a preparer.

17 Q And they could each individually yield wildly

18 different values, correct?

19 A When comparing them to each other, yes.

20 Q And it wouldn't be wrong to select one value over

21 another, correct?

22 THE COURT: Asked and answered five times. But

23 he can answer it.

24 A There is no right or wrong answer. It is a judgment

25 call.

Flemmons - by Defendant - Direct(Suarez) Page 4277

1 Q So even though the values derived from the various

2 methods are very different or could be very different, would

3 using any one of these numbers comply with ASC 274?

4 A Yes.

5 Q And even though the values derived from the various

6 methods could be very different, would using any one of the

7 different numbers still comply with GAAP?

8 A That's correct ASC 274 is GAAP. So to the extent

9 that GAAP is the selected convention to prepare values for

10 personal financial statements, one would be complying with GAAP

11 if using one of these methods.

12 MR. SUAREZ: I think I am at a good stopping

13 point, Your Honor.

14 THE COURT: With this witness or for lunch?

15 MR. SUAREZ: For lunch.

16 THE COURT: That's fine. All right. We will

17 see you all at 2:15 as usual.

18 And I'll direct the witness, please don't

19 discuss the case or your testimony or anything related to

20 it during the lunch break.

21 (Whereupon, a luncheon recess was taken at this

22 time.)

23 (The following proceedings were stenographically

24 recorded by Senior Court Reporter Michael Ranita.)

25

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4278

1 \* \* \* \* \*

2 A F T E R N O O N S E S S I O N

3 \* \* \* \* \*

4 THE COURT OFFICER: All rise. Part 37 is back in

5 session. The Honorable Judge Arthur Engoron presiding.

6 Please be seated and come to order.

7 THE COURT: Can we get the same witness back up on

8 the stand, right?

9 (Whereupon, the witness stepped into the witness

10 stand.)

11 MR. SUAREZ: Yes, your Honor.

12 THE COURT: Everyone, sorry for the delay. Work

13 was being done.

14 Mr. Suarez, whenever you are ready.

15 MR. SUAREZ: Thank you.

16 Q Returning to page 14 of Defendant's Exhibit D-27.

17 (Whereupon, the exhibit was displayed on the

18 screen.)

19 Q Mr. Flemmons, with respect to planned courses of

20 action, what preconditions must exist in order for a planned

21 course of action to be appropriately assessed under estimated

22 current value?

23 A Well, the standard doesn't get into that level of

24 detail on preconditions. Um, to the extent this section, or

25 this method of ASC-274 is used, planned courses of action could

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4279

1 be a wide range of action that are anticipated by the preparer

2 of the financial statements.

3 Q Can you describe the range?

4 A Well, it's very open-ended. It could be anticipated

5 sale of property, it could be anticipated construction of

6 property, um, anticipated obtaining of permits. Um, it could be

7 a whole host of things.

8 Q Are hypothetical conditions allowed to be factored in

9 to a planned course of the action under this section of

10 estimated current value?

11 A Well, hypothetical actions that are planned and

12 intended, there is certainly a hypothetical aspect to the

13 standard that is embedded, but it does also relate to what needs

14 to be done in order to carry out the courses of action that are

15 intended by the preparer.

16 Q How is the concept of "current" in the term "estimated

17 current value" consistent with things that will happen in the

18 future?

19 A Well, it's because the things that happen in the future

20 may create value currently, depending on what those things in

21 the future are, depending on the nature of the asset. As I said

22 earlier, if we are talking about my home, my home doesn't really

23 have a lot of future value because it's not an income producing

24 asset, and would be based on the market conditions as of today.

25 However, an asset that is revenue generating, um, you

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4280

1 have to look to the future, or you can look to the future under  
2 this particular prong and use those estimates for future cash  
3 receipts or income to develop what the current value is now,  
4 because that current value is, in many ways, dependent on what  
5 happens in the future.  
6 Q How is estimated current value different than the  
7 concept of historical costs under GAAP?  
8 A Well, one of the methods that can be used under ASC-274  
9 is a cost-based method that can be adjusted depending on  
10 different factors. Um, business historical cost is used for the  
11 accounting for other types of assets, such as inventory would be  
12 a historical cost, and that is typically used for an entity  
13 financial statements under other aspects of GAAP, but there is a  
14 cost option for ASC-274 as well.  
15 Q How is estimated current value different than net  
16 realizable value?  
17 A Net realizable value is a method that is used for  
18 accounting for accounts receivable. And "accounts receivable"  
19 is, again, something that could be on the financials of  
20 personal financial statements, but you would still use estimated  
21 current value, not realizable value; that is relevant for the  
22 accounting for the receivables for an entity. And there is a  
23 separate set of GAAP requirements surrounding that.  
24 Q How is estimated current value different than amortized  
25 costs?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4281

1 A So "amortized costs" would be, for example, certain  
2 kinds of investments, that would be another kind of asset on  
3 entities, financial statements, such as a bond that might be  
4 reported, you know, based on amortizing the cost of that  
5 particular asset over the duration -- over the term of the  
6 investment. Um, that is very different than estimated current  
7 value, which does not contemplate amortized costs.  
8 Q Where else, if at all, in the accounting literature  
9 does the concept of estimated current value appear, besides the  
10 context of personal financial statements?  
11 A Nowhere. It's a very unique set of standards that  
12 applies only to the preparation of personal financial  
13 statements. There are hundreds of other standards that have  
14 been developed over the course of time, um, by various standard  
15 setters that have made their way into the Accounting Standards  
16 Codification. And there are dozens of other standards that  
17 pertain to the accounting for entities, but this is the only  
18 standard that pertains to personal financial statements.  
19 Q What professional standards apply to accountants  
20 performing a compilation engagement?  
21 A So the AICPA, many, many years ago, issued what is  
22 referred to as the Statement on Standards For Accounting and  
23 Review Services, also referred to as SSARS, S-S-A-R-S. And  
24 those are the standards that accountants are held to when  
25 performing compilation -- compilations. The AICPA re-codified

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4282

1 the SSARS into what is referred to as AR-80, which stands for  
2 Accounting and Review 80. And those were later clarified into  
3 what's known as AR-C80. The standards between -- comparing  
4 AR-80 to AR-80(sic), they are largely unchanged with regard to  
5 compilations. Um, and comparing AR-80 to the original SSARS 19,  
6 that was really a cut and paste from that old standard to AR-80.  
7 MR. SUAREZ: If we could pull up our demonstrative  
8 Exhibit 3.  
9 (Whereupon, the exhibit was displayed on the  
10 screen.)  
11 Q Mr. Flemmons, do you recognize this image?  
12 A Yes. This was a diagram that I included in one of my  
13 expert reports.  
14 Q And what does this diagram represent?  
15 A So this was to show an illustration of the range of  
16 services that an accountant can perform, ranging from  
17 bookkeeping services, at the very bottom of the screen, all the  
18 way to an audit. And there are varying responsibilities that  
19 are attached to an accountant's role for each of these items.  
20 And compilation, as we've been talking about, is in the middle  
21 there.  
22 Only two of them are referred to as "assurance  
23 engagements." That would be an audit and review. And for each  
24 of those, the standards would say that an auditor is providing  
25 some level of assurance for an auditor's providing reasonable

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4283

1 assurance that financial statements are fairly stated under a  
2 review. It's more limited, or negative assurance, which would  
3 be that an auditor or an accountant would be reporting as to  
4 whether or not material modifications exist within the financial  
5 statements under review.  
6 Um, and compilation and a preparation and bookkeeping  
7 services are not assurance engagements. And there are different  
8 standards and responsibilities that are attached to each of  
9 these types of engagements.  
10 Q What are the standards and responsibilities that are  
11 attached to a compilation engagement?  
12 A It's AR-80 for the 2016 and prior time frame, and it's  
13 AR-C80 from 2016 forward.  
14 Q What does it mean that a compilation engagement does  
15 not provide assurance services?  
16 A Well, it means that an auditor is not issuing an  
17 opinion as to whether the financials are fairly stated, or as I  
18 said with the review, whether there is a need or that there are,  
19 um, material modifications that are required for the financial  
20 statements. That said, as part of a compilation, there is a  
21 section in the standards that layout what a standard report  
22 would look like, because a report is included with compiled  
23 financial statements. It just does not contain a,  
24 quote/unquote, opinion.  
25 But despite not having an opinion, an accountant does

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4284

1 have responsibilities, as part of a compilation, to report any  
2 deviations in the accounting with the established, um,  
3 convention that is used for that compilation, whether it's GAAP  
4 or some other convention.

5 MR. SUAREZ: May we please hand the witness what's  
6 been pre-marked as Defendant's 25.  
7 (Whereupon, the exhibit was handed to the witness.)  
8 (Whereupon, the exhibit was displayed on the  
9 screen.)

10 Q Mr. Flemmons, do you recognize this document?  
11 A I do.  
12 Q Is this AR §80?  
13 A It is.  
14 Q What are the obligations of the accountant preparing a  
15 compilation report that are imposed by AR §80?  
16 A Well, the standard goes into quite a few things. The  
17 first page that we are showing here is to establish an  
18 understanding with the client, which would be entering into an  
19 engagement letter with the client to -- outlining the terms  
20 associated with that engagement to make it clear what  
21 management's responsibility is as opposed to the accountant's  
22 responsibility; that's step one.  
23 The standard then goes on through multiple pages with  
24 different categories and responsibilities that the accountant is  
25 responsible for.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4285

1 Q What obligation does the accountant have to understand  
2 the industry for which they are providing compilation services?  
3 A So that section shows up on page 80.09. Paragraph  
4 80.09, there is a section dedicated to that as well. There is a  
5 requirement for the accountant to understand the industry in  
6 which the client operates and to have the requisite level of  
7 knowledge in order to perform the engagement.  
8 Q What understanding does the accountant need to develop  
9 of the client?  
10 A Well, it's an understanding of the client's business,  
11 um, an understanding of the principles that are used in order to  
12 prepare the financial statements, and an understanding of the  
13 industry, itself, that the client operates in.  
14 Q What are the requirements imposed by AR §80 on the  
15 accountant preparing the compilation report? Stated  
16 differently, what must a compilation report include?  
17 A So there's another section in here, which I'll direct  
18 you to. It starts on paragraph 17 of AR-80, and outlines what  
19 the components of the standard report should look like.  
20 (Whereupon, the exhibit was displayed on the  
21 screen.)  
22 A And that includes how the report is titled to make it  
23 clear to a user that the work that the accountant did was a  
24 compilation, and actually entitling the report as a compilation  
25 report, which is very important, so the user can distinguish

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4286

1 that from the other levels of service that we talked about  
2 before, and differentiate a compilation from an audit or review,  
3 or something else.  
4 And there's also some standard language that's included  
5 in paragraph 17 that is required to be in the report, you know,  
6 outlining what the responsibility of the accountant is. Um, the  
7 accountant needs to sign and date the report, um, you know, all  
8 this is in this particular paragraph.  
9 Q What obligation does the accountant have to read and  
10 understand the supporting data for the compilation?  
11 A Well, an accountant performing compilation services is  
12 required to read the -- read the financial statements that are  
13 being compiled. Um, understand the methods that are being used  
14 to develop estimated current values as reported in the financial  
15 statements, and also to evaluate the appropriateness of those  
16 methods.  
17 And to the extent an accountant uncovers or discovers  
18 that there's a particular accounting treatment that is  
19 contradictory to the established convention, which in this  
20 particular case is GAAP, there's a requirement on the accountant  
21 to modify the standard report and include reference to those  
22 exceptions in the accountant's report.  
23 Q What obligation does the accountant have to ensure that  
24 the Statements of Financial Condition adequately describes the  
25 methods used to achieve estimated current value?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4287

1 A Well, the accountant is using their knowledge of GAAP.  
2 They are using their understanding of the methods that are being  
3 applied, um, for establishing estimated current value for the  
4 assets. Um, there's also a section in the standard that talks  
5 about considering, um, the broader range of involvement and  
6 experience that an accountant may have with that particular  
7 client, even outside of the compilation engagement, whether that  
8 be in situations where an accountant is performing audit  
9 services, um, or tax services, or other work for the client,  
10 that that can't be ignored, that that needs to be considered as  
11 part of evaluating the compliance of the accounting for purposes  
12 of the personal financial statements.  
13 Q What is the accountant's obligation to determine  
14 whether the Statements of Financial Condition are prepared in  
15 conformity with Generally Accepted Accounting Principles?  
16 A Again, the standard talks about the accountant needing  
17 to be -- to respond to any kind of obvious misstatements or  
18 differences between the accounting that is being provided to  
19 them and Generally Accepted Accounting Principles. Um, and in  
20 the course of gaining an understanding of estimated current  
21 value and evaluating the appropriateness of whether or not a  
22 particular method makes sense under the circumstances, that  
23 could lead an accountant to, um, conclude that there is a GAAP  
24 departure.  
25 Q What is required of an accountant if he concludes that

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4288

1 there is a GAAP departure in a Statement of Financial Condition?

2 A Well, there is a section of AR-80 that provides

3 guidance on this question, and it relates to the modification of

4 the standard accountant's report for compilation. Typically the

5 accountant would, as we laid out before, just identify for the

6 client what its responsibilities were, what management's

7 responsibilities were, that it performed a compilation, and

8 that's largely it.

9 If there are GAAP departures that are identified, the

10 accountant is required to modify the report, identify any

11 significant departures from GAAP, and if there are -- if the

12 departures are of such significance that warrants really putting

13 users on notice that there's -- there are, um, that the

14 reliability of the financials may be in question, there is

15 language within the standard that is suggested to accountants to

16 include in the accountant's report.

17 Q Can you please point us to the -- that language in the

18 standard?

19 A Sure.

20 (Whereupon, there is a brief pause in the

21 testimony.)

22 A Actually, I'm not seeing it in this particular

23 standard. It may be in the interpretive standard that relates

24 to AR-80.

25 MR. SUAREZ: Can we please pull up D-836.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4289

1 (Whereupon, the exhibit was displayed on the

2 screen.)

3 Q Do you recognize this document?

4 A I do.

5 Q What is this document?

6 A It's the interpretive guidance that I was just

7 referring to.

8 MR. SUAREZ: Can we zoom in on the paragraph there

9 in the middle -- right there.

10 (Whereupon, the exhibit displayed on the screen was

11 enlarged.)

12 MR. SUAREZ: Yes. That works.

13 Q You see where it says "because the significance."

14 A Yes.

15 Q "Because the significance and pervasiveness of the

16 matters previously discussed makes it difficult to assess their

17 impact on the financial statements as a whole, users of these

18 financial statements should recognize that they might reach

19 different conclusions about the company's financial position,

20 result of operations, and cash flows if they had access to

21 revised financial statements prepared in conformity with

22 accounting principles generally accepted in the United States of

23 America."

24 This refers to the company's financial position. Does

25 this warning also apply to compilation engagements for personal

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4290

1 financial statements?

2 A Yes.

3 Q What is the effect of placing this warning on a

4 compilation report?

5 A Well, it's a big deal. And it's the judgement of the

6 accountant that if they believe that the departures from GAAP

7 are of such significance that warrant including this paragraph

8 in the accountant's report, it really does serve as the highest

9 level warning that an accountant can communicate to a user of

10 the financial statements that have been compiled.

11 THE COURT: Hold on a second. We keep talking

12 about accountant, accountant, accountant. Accountant acting

13 in what capacity, because I think a lot of these people are

14 accountants. The clients internal accountants, and then the

15 compilation accountants, so who whose accountants are we

16 talking about?

17 THE WITNESS: In this case we are talking about the

18 outside accountants that are performing the compilation

19 service.

20 THE COURT: Right. I'm sort of confused here,

21 because -- it's more the questions than the answers.

22 The questions are, what are the obligations of the

23 accountant in -- to the compilation? Well, the accountant

24 is doing the compilation. Obviously the obligation is to do

25 it correctly. Am I missing something?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4291

1 THE WITNESS: So AR-80 is the authoritative

2 standard that pertains to an outside accountant performing

3 those compilation services. And yes, they need to do their

4 job and do it accurately.

5 THE COURT: Okay. I think we've had 20 questions

6 about what is their obligation. The obligation is to do it

7 accurately. Is there much more to say than obligation,

8 accurate, following GAAP, et cetera?

9 THE WITNESS: Let me distinguish then. So, a

10 compilation is very different from saying an audit.

11 THE COURT: Right. Understood.

12 THE WITNESS: And auditor needs to do it

13 accurately, too. Doing it accurately under an audit is

14 different then doing it accurately in a compilation. And

15 standards that pertain to audit services explain how an

16 accountant goes about doing it accurately, what they are

17 required to do and not do, which is a lot more in terms of

18 audit testing, vouching, inquiry, analytical procedures.

19 There's a lot more in the standards pertaining to an audit.

20 A compilation is less than that, um, but still has

21 certain requirements attached to it.

22 THE COURT: Right. And to hone in on this a bit,

23 you said -- or there was a question, what should the

24 accountant do if they see an error in the compilation? Well

25 the accountant is writing the compilation. You just said we

November 14, 2023

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4292</p> <p>1 are talking about the accountant that's doing the 2 compilation. What is their obligation if they see a mistake 3 in their own work? Presumably, fix it. Again, am I missing 4 something? 5 THE WITNESS: Well, to be clear, a compilation 6 entails obtaining the accounting information from a company. 7 THE COURT: Raw data sort of? 8 THE WITNESS: I'm sorry? 9 THE COURT: Can we call that raw data? The 10 compiler takes raw data from the client. 11 THE WITNESS: I would say it's refined data. 12 THE COURT: Okay, okay. Takes refined data and 13 puts it in a certain format, that, say banks could look at 14 and say, oh, yeah, this is one of those Statements of 15 Financial Condition. 16 MR. SUAREZ: That's precisely the point of the 17 questions, your Honor. It's not that we are putting it in 18 the right format. It's that the accounting firm has 19 obligations and rules that it must follow in order to 20 prepare a compilation report. It's not just a formatting 21 exercise. 22 What the witness is explaining for the benefit of 23 the Court and the record is the process by which the 24 compilation report is prepared based on the data that's 25 provided from the client. It's not simply a formatting</p>	<p>Page 4294</p> <p>1 statements are issued. And it's okay to issue financials that 2 are not compliant with GAAP under these standards. 3 (Continued on the next page.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4293</p> <p>1 exercise. 2 THE COURT: Oh, okay. Go ahead. 3 Q A Statement of Financial Condition that has departures 4 from GAAP is still in compliance with GAAP; correct? 5 A I wouldn't say that a Statement of Financial Condition 6 that is prepared under GAAP and has GAAP deviations is still in 7 compliance with GAAP. What I would say is that issuing those 8 financial statements and identifying those differences with 9 GAAP, either in the financial statements themselves or in the 10 accountant's report, um, would still be a set of financial 11 statements that would be issued to users. 12 The accounting system is set up such that you are 13 allowed and -- to issue financial statements whether or not they 14 contain GAAP departures, and there are different reporting 15 mechanisms in place to communicate to the users of the financial 16 statements when that happens. 17 If there are no discrepancies with GAAP, if it were an 18 audit, an accountant would issue what is known as unqualified 19 opinion saying these financial statements are fairly stated in 20 all material respects. 21 Alternatively, if an auditor determined that there were 22 departures from GAAP, an accountant could then issue a report 23 that is known as an adverse report that would say these 24 financials do not comport with GAAP. 25 Um, importantly, under both scenarios, the financial</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4295</p> <p>1 Q Why is it okay to issue financial statements that 2 aren't compliant with GAAP under these standards? 3 A Because the accounting system is set up that way. 4 And the accounting standards and these compilation standards we 5 have been talking about provide guidance on how to go about 6 doing that when financial statements are issued that contain 7 GAAP deviations. 8 Q Do the accounting standards provide another form of 9 disclaimer or disclosure that can be placed in a compilation 10 report if there are -- if there is a greater level of departure 11 from GAAP than this? 12 A No. This is the highest level language that the 13 standards would suggest be included in an accountant's report 14 when there are deviations from GAAP. 15 Q And if the departures or deviations from GAAP are so 16 significant that this language was insufficient to address 17 them, what responsibility would the accountant have? 18 A Well the responsibility would be for the accountant 19 to identify what those departures on in its accountant's report 20 that are attached to the financial statements and to also 21 include this language if they rose to such a pervasive level. 22 Q And there would be nothing wrong with issuing those 23 Statements of Financial Condition so long as the departures 24 were noted, correct? 25 A That's correct, that's the very reason why this</p>

November 14, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4296</p> <p>1 guidance exists, to allow for such financials to be 2 disseminated with this language. 3 Q If we pull up Defendant's Exhibit 26, can you please 4 identify this document? 5 A This is AR-C 80 which is the clarified standard that 6 applied to compilations that became effective around 2016. 7 Q And how did ARC section 80-A change the standard that 8 we were previously discussing AR section 80? 9 A There were very, very minor changes. It was largely 10 unchanged from AR-C 80. 11 Q What are the responsibilities of the person -- 12 withdrawn. 13 What are the responsibilities of the party preparing 14 the Statement of Financial Condition that is being compiled? 15 A If we are talking about the accountant, the outside 16 accountant that would be preparing the financials or compiling 17 the financials, that's -- we need to distinguish a compilation 18 from preparation, because those are two separate engagements. 19 A compilation and a preparation do have similarities in that 20 you are preparing the financials. But in a compilation you are 21 typically issuing a report, and we have talked about the 22 reporting standards. But in terms of the responsibilities, and 23 we have touched on some of this already, it would be obtaining 24 the refined data from the client that could take many forms. 25 It could be in the form of a spreadsheet that the clients put</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4298</p> <p>1 GAAP discrepancies and effectively saying, user beware. 2 Q And if there are significant -- so significant GAAP 3 departures that user must beware, why would the accounting firm 4 nonetheless issue the compilation report? 5 A Well, because they are allowed to. You don't have to 6 resolve the GAAP discrepancies and make them conform with GAAP 7 before issuing the financial statements. The accounting system 8 in the United States of America allows you to issue financials 9 that are not GAAP compliant, as long as the discrepancies or 10 the deviations are disclosed. And the accountant's report 11 contains the correct language to identify to the user that 12 those differences exist. 13 MR. SUAREZ: Please pull up D 950. This has 14 been premarked. 15 Q Mr. Flemmons, do you recognize this document? 16 A I do. 17 Q What is this document? 18 A This is an audit and accounting guide that was issued 19 by the AICPA, and it provides guidance to practitioners 20 performing services related to personal financial statements; 21 and assists accountants performing those services in applying 22 the relevant standards for those engagements. 23 Q Do you see at the top where it says American 24 Institute of Certified Public Accountants Historical 25 Collection?</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4297</p> <p>1 together. It could be, you know, various backup materials and 2 supporting worksheets and calculations that relate to that as 3 well. But all of that is going to the accountant who is going 4 to review it. And then there is a responsibility to then put 5 that into a financial statement format. But in doing so, as we 6 said before, the accountant needs to understand the methods 7 that are being used, assess the appropriateness of those 8 methods. Be on the lookout, you know, for any GAAP 9 discrepancies. And respond to those GAAP discrepancies by 10 raising them with the client, seeking additional information 11 where appropriate to try to resolve those discrepancies, or if 12 the discrepancies aren't resolved, report them in the 13 accountant's report and consider including the highly 14 cautionary language that we just referred to. 15 Q And the highly cautionary language that we just 16 referred to, under AR section 980.03. Was that language 17 present in a substantially similar form on the compilation 18 reports issued by Mazars for Donald J. Trump Statements of 19 Financial Condition from the year 2011 to the year 2020? 20 A Yes. 21 Q And what is the import of that disclaimer language 22 being present in the compilation reports for those Statements 23 of Financial Condition? 24 A Well, it is akin to an adverse opinion in an audit. 25 It is putting the user on notice that there are significant</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4299</p> <p>1 A I do. 2 Q And do you see that it says: Personal financial 3 statements guide with conforming changes as of May 1, 2008 4 audit and accounting guide? 5 A I do. 6 Q Now, this document predates the effectiveness of AR 7 section 80 and AR-C section 88, correct? 8 A Yes. 9 MR. SUAREZ: If we can turn to the following 10 page. 11 Q What is this document -- this guide? I am sorry. 12 A This looks to be the original version of this guide 13 prior to it being updated with the conforming changes that we 14 just saw in the title. 15 Q Is this guide still useful to accountants preparing 16 compilation reports? 17 A Yes, it still very applicable guidance that the AICPA 18 has issued and has made available to practitioners in the 19 space. There are, you know, standards that apply, you know, to 20 preparing or to performing either compilations or audits or 21 reviews of personal financial statements, and those reside 22 elsewhere. This guide was intended to provide interpretive 23 guidance to assist practitioners in applying those standards on 24 those kind of engagements. And you can see the thickness of 25 it, it provides a lot more detail than the standards</p>

November 14, 2023

Flemmons - by Defendant - Direct(Suarez)	Page 4300	Flemmons - by Defendant - Direct(Suarez)	Page 4302
<p>1 themselves.</p> <p>2 MR. SUAREZ: You can turn to page five of the</p> <p>3 guide. On page 17 of the exhibit.</p> <p>4 Q Do you see the section where it says use of estimated</p> <p>5 current values and amounts?</p> <p>6 A Mm-Hm yes.</p> <p>7 Q Could you please walk us through this section and</p> <p>8 explain why it is still valid illustrative guidance,</p> <p>9 notwithstanding the codification of the standards in 2009 and</p> <p>10 thereafter?</p> <p>11 MR. WALLACE: Objection to relevance. I don't</p> <p>12 know why we are trying to rehabilitate standards that are</p> <p>13 out of date. I know why they are doing it, because they</p> <p>14 spent a lot of time asking Mr. Bender about these points</p> <p>15 that are no longer active guidance at the time, the times</p> <p>16 at issue in this case. But at this point, I don't know we</p> <p>17 have asked more than maybe one question about the actual</p> <p>18 facts of the preparation of the Statements of Financial</p> <p>19 Condition. So can we get some showing of how this is</p> <p>20 relevant to anything that is to be decided in this case?</p> <p>21 MR. KISE: I mean I certainly think it is</p> <p>22 relevant to our overall presentation about what the</p> <p>23 accounting firm was responsible for and what we were</p> <p>24 responsible for; whether management reasonably relied on</p> <p>25 the accounting firm; what the standards were in</p>		<p>1 MR. SUAREZ: I believe the witness testified it</p> <p>2 is not out dated, and there is nothing to the contrary</p> <p>3 that it is.</p> <p>4 MR. WALLACE: He said it might be useful. This</p> <p>5 is not -- this was not current at the time. There should</p> <p>6 be some showing of how this is relevant to what we are --</p> <p>7 what actually happened between 2011 and 2021.</p> <p>8 THE COURT: When was this supplanted, replaced,</p> <p>9 updated?</p> <p>10 THE WITNESS: There were some changes that were</p> <p>11 made in 2008, about a year after that is when the</p> <p>12 codification came into effect for the accounting</p> <p>13 standards. But I want to make sure we are clear here,</p> <p>14 this did not go out of commission. This was still</p> <p>15 reference material that the AICPA has maintained for</p> <p>16 its --</p> <p>17 THE COURT: Let's save time. Overruled.</p> <p>18 Go ahead.</p> <p>19 Q If we could turn to 1.21.</p> <p>20 It says: In determining the estimated current values</p> <p>21 of some assets (for example: Works of art, jewelry, restricted</p> <p>22 securities, investments and closely held businesses and real</p> <p>23 estate) the accountant may need to consult a specialist.</p> <p>24 Examples of the types of matters that the practitioner may</p> <p>25 decide require him or her to consider using the work of a</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4301	Flemmons - by Defendant - Direct(Suarez)	Page 4303
<p>1 preparation. Mr. Bender --</p> <p>2 Do we want to do this without the witness,</p> <p>3 Judge? I'll be brief.</p> <p>4 MR. WALLACE: He is an expert witness, he should</p> <p>5 have looked at Mr. Bender's testimony anyway.</p> <p>6 MR. KISE: That's true. Fair point.</p> <p>7 Mr. Bender all but testified that all I had to</p> <p>8 do is take the data and plug it into the boxes and I am</p> <p>9 done. So we are pointing out that there is a more</p> <p>10 deliberative exercise associated with that. He had</p> <p>11 certain responsibilities. The client had certain</p> <p>12 responsibilities. And we are just exploring that because</p> <p>13 it is relevant to the Court's consideration, certainly of</p> <p>14 intent, if not materiality and some of the other issues.</p> <p>15 So we are going through it. I mean, we can perhaps move</p> <p>16 through it a little quicker, but it is -- it is just dense</p> <p>17 material. It is why after I got my accounting degree I</p> <p>18 decided to go to law school instead of take the CPA exam,</p> <p>19 because that's really hard what they do.</p> <p>20 THE COURT: Is the main point of the objection</p> <p>21 that it is outdated.</p> <p>22 MR. WALLACE: My objection is not to this line</p> <p>23 of questioning. My objection is the line of questioning</p> <p>24 being the out of date guidance that we are going through</p> <p>25 right now from 2008.</p>		<p>1 specialist include:</p> <p>2 The materiality of the item with respect to the</p> <p>3 individual's financial condition.</p> <p>4 The nature of the financial statement item.</p> <p>5 And the date of any previous estimate involving the</p> <p>6 use of a specialist, the extent of changes in the circumstances</p> <p>7 since that date, and the method of updating the estimate if</p> <p>8 appropriate.</p> <p>9 Now, I believe there has been testimony at trial, or</p> <p>10 a suggestion by the Attorney General, that the preparation of a</p> <p>11 Statement of Financial Condition compilation report is just an</p> <p>12 exercise in formatting. How is that consistent with the</p> <p>13 obligation of the accountant in determining estimated current</p> <p>14 value?</p> <p>15 MR. WALLACE: Objection, leading.</p> <p>16 THE COURT: Overruled.</p> <p>17 A Well, as this guidance suggests, there are</p> <p>18 circumstances in which an accountant performing any kind of</p> <p>19 service, whether it be an audit or review or compilation, you</p> <p>20 know, could retain a specialist to assist. And this is what</p> <p>21 this guidance is providing. It is more common to see that</p> <p>22 situation occur in an audit and less common to see it in a</p> <p>23 review or compilation. This particular section is more of the</p> <p>24 general overview of an accountant's responsibilities and</p> <p>25 considerations for all kinds of engagements related to personal</p>	



November 14, 2023

Flemmons - by Defendant - Direct(Suarez)	Page 4304	Flemmons - by Defendant - Direct(Suarez)	Page 4306
<p>1 financial statements. This is not specific to an audit review</p> <p>2 or compilation, but it is this overarching umbrella that does</p> <p>3 layout that there are times when an accountant may want to</p> <p>4 retain a specialist under certain circumstances to assist with</p> <p>5 the evaluation or the determination of estimated current value.</p> <p>6 THE COURT: Mr. Suarez, was a specialist ever</p> <p>7 used, to the extent that we know what went on here?</p> <p>8 MR. SUAREZ: We certainly have conflicting</p> <p>9 testimony from the Mr. Bender as to whether he actually</p> <p>10 consulted with an expert. But these would be the</p> <p>11 obligations of the accounting firm in determining what to</p> <p>12 do to assist its client in establishing the validity of a</p> <p>13 method for estimated current value.</p> <p>14 And I can move on.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. SUAREZ: I can move on to the specific</p> <p>17 sections on the compilation of personal financial</p> <p>18 statements which appear at page 21 of the PDF.</p> <p>19 THE COURT: Five minute warning.</p> <p>20 Q If I can focus your attention on the minimum</p> <p>21 understanding that the required -- that the accountant must an</p> <p>22 acquire at section 2.03, where it says: At a minimum, however,</p> <p>23 the accountant should obtain an understanding of the methods by</p> <p>24 which the individual determined the estimated current values of</p> <p>25 significant assets and the estimated current amounts of</p>		<p>1 underscores that point and also provides some examples of the</p> <p>2 type of deviations that may arise during that engagement.</p> <p>3 Q Would it be best guidance for -- withdrawn.</p> <p>4 What does this section -- what is the import of this</p> <p>5 section with respect to the last bullet point that says</p> <p>6 presentation of an asset or liability at an obviously</p> <p>7 inappropriate value or amount. What does that suggest to the</p> <p>8 accountant preparing a compilation of a personal financial</p> <p>9 statement?</p> <p>10 A Well, that bullet point is very consistent with the</p> <p>11 standard AR 80, which requires an accountant performing</p> <p>12 compilation services to respond to obvious misstatements from</p> <p>13 GAAP or the convention being used in that engagement. And this</p> <p>14 is taking that to another level saying that in this particular</p> <p>15 example the obvious misstatement would be an instance where the</p> <p>16 reported value is obviously inappropriate. And there are other</p> <p>17 examples as well.</p> <p>18 Q And what would be required of an accountant if he</p> <p>19 determined that an asset or liability was presented at an</p> <p>20 obviously inappropriate value or amount when preparing a</p> <p>21 compilation for a personal financial statement?</p> <p>22 A It would be based on their understanding of GAAP, it</p> <p>23 would be based on their understanding of the method used to</p> <p>24 value a particular asset or liability. And whether or not that</p> <p>25 method is appropriate under the circumstances for that asset or</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4305	Flemmons - by Defendant - Direct(Suarez)	Page 4307
<p>1 significant liabilities and consider whether those methods are</p> <p>2 appropriate in light of the nature of each asset or liability.</p> <p>3 Do you see that?</p> <p>4 A I do.</p> <p>5 Q Is that an exercise that Mazars would have been</p> <p>6 required to undertake when compiling the Statements of</p> <p>7 Financial Condition for President Trump?</p> <p>8 A They were certainly subject to this guidance that was</p> <p>9 provided to them. And this was -- this entire document is</p> <p>10 reflective of industry practice and best industry practice in</p> <p>11 performing services related to personal financial statements.</p> <p>12 Q And certainly the same would apply to Whitley Penn</p> <p>13 when they prepared the compilation, correct?</p> <p>14 A Correct.</p> <p>15 Q And if we can move on to 2.05 on the following page.</p> <p>16 I would like to draw your attention to the obligation</p> <p>17 of the accountant with respect to or that this guidance</p> <p>18 provides for determining misstatements that might occur</p> <p>19 personal financial statements prepared in conformity with GAAP.</p> <p>20 How would this guidance instruct an accountant in</p> <p>21 their compilation of a personal financial statement?</p> <p>22 A Well, this touches on the topic we have discussed</p> <p>23 before where an accountant performing a compilation service</p> <p>24 needs to respond to deviations from GAAP that are identified as</p> <p>25 part of performing that service. And this particular paragraph</p>		<p>1 liability.</p> <p>2 MR. SUAREZ: I am done with this exhibit. We</p> <p>3 can put it down.</p> <p>4 THE COURT: All right. So let's take a</p> <p>5 14-minute break. Be back here at a quarter to 4:00.</p> <p>6 (Pause in the proceeding.)</p> <p>7 COURT OFFICER: All rise.</p> <p>8 Part 37 is back in session.</p> <p>9 Please be seated and come to order.</p> <p>10 THE COURT: The witness back in the box.</p> <p>11 (The witness resumed the stand.)</p> <p>12 THE COURT: Let's resume. Next question.</p> <p>13 Please continue.</p> <p>14 MR. SUAREZ: Your Honor, I recognize some of</p> <p>15 this is dense and I appreciate the court bearing with me.</p> <p>16 THE COURT: I am sorry, we didn't hear that.</p> <p>17 MR. SUAREZ: I said, I recognize that some of</p> <p>18 this is dense and I appreciate Your Honor staying engaged</p> <p>19 with me throughout the questions.</p> <p>20 THE COURT: I took accounting 101 in law school,</p> <p>21 so I am able to follow.</p> <p>22 Q Mr. Flemmons, do you recognize the diagram up on the</p> <p>23 screen?</p> <p>24 A Yes, I do.</p> <p>25 Q We marked this as our second demonstrative exhibit.</p>	

November 14, 2023

Flemmons - by Defendant - Direct(Suarez) Page 4308

1 Did you prepare this diagram?

2 A Yes.

3 Q What does this diagram represent?

4 A I am actually kind of proud of this diagram, because

5 it captures a lot of what we talked about so far. It is,

6 speaking of dense, it does have a lot going on. But let me

7 explain what this is intended to communicate.

8 So, we have talked about earlier the different kinds

9 of reports that an accountant can issue, which are at the very

10 top of this chart. A report by an external accountant can be

11 an adverse report, which would be communicating to a user that

12 there are GAAP deviations, exceptions.

13 There is also what is known as a qualified report,

14 which would include, for example, this would be really relevant

15 to an audit where an auditor would say that the financial

16 statements comply with GAAP, except for certain things.

17 Not near as extreme as an adverse opinion where an

18 accountant would be saying these financials do not comport with

19 GAAP as a whole.

20 And then the far right, unqualified, is the situation

21 where in the case of an audit, an auditor would issue a clean

22 opinion saying that financials are GAAP compliant in all

23 material respects.

24 And obviously the closer you get to the right from an

25 adverse to an unqualified opinion, that gives a user higher

Flemmons - by Defendant - Direct(Suarez) Page 4309

1 confidence, which is denoted there in the top right corner of

2 the diagram.

3 On the left side I have laid out the three different

4 kinds of engagements that an accountant typically performs.

5 There are a couple of others that we have talked about that are

6 preparation and bookkeeping services, but for simplicity I have

7 included just the audit review and compilation services on this

8 diagram.

9 And by their very nature, an audit provides more

10 assurance, you know, to a user than a review. And a

11 compilation provides even less, because a compilation is not an

12 assurance engagement, as we have talked about before.

13 So, this is intended to show you that as you move

14 from the bottom left corner of the diagram to the top right

15 corner of the diagram, you are giving a user much more

16 assurance and much more confidence because of the fact that

17 there are fewer, if not none, GAAP exceptions.

18 And you have also, as you get to the top right

19 corner, are getting to the point of issuing an audit opinion,

20 which is inherently much more involved in terms of what an

21 accountant does and the types of testing procedures that an

22 accountant performs.

23 So, the checkmark here is to show that out of all of

24 these different iterations and the services that an accountant

25 could perform and the types of reports that could be issued

Flemmons - by Defendant - Direct(Suarez) Page 4310

1 relevant to this case, we are in the bottom left corner,

2 because we are in the land of compilations and we are in the

3 land of where the accountant has identified in its accountant's

4 report a number of pervasive deviations from GAAP and included

5 that "user beware" language that I discussed before.

6 MR. SUAREZ: If we can please pull up, already

7 in evidence, Plaintiff's Exhibit 785?

8 (Handing)

9 Q Mr. Flemmons, do you recognize Plaintiff's 785?

10 A Yes.

11 Q What is this document?

12 A This is the engagement letter that was entered into

13 between Mazars and Mr. Trump to perform the compilation

14 services on his personal financial statements.

15 Q And that says of the year ending June 30, 2011?

16 A Yes for the 2011 time period, correct.

17 Q Who drafts the engagement letter?

18 A The accountant in this case, Mazars, would typically

19 prepare this document.

20 Q And the document is addressed to Allen Weisselberg;

21 is that right?

22 A Correct.

23 Q Is Allen Weisselberg a certificated public

24 accountant?

25 A That's not my understanding. I don't believe he is.

Flemmons - by Defendant - Direct(Suarez) Page 4311

1 Q On the second page there are five enumerated

2 departures from generally accepted accounting principles. Do

3 you see that on the page?

4 A I do.

5 Q How would the accounting firm know to include these

6 five departures when it prepares its engagement letter?

7 A Well, they would identify these items during the

8 course of performing the compilation, reviewing supporting

9 materials that are feeding in to the preparation of the

10 personal financial statements, and during the course of

11 understanding the methods that are used for valuation or other

12 issues that extend beyond valuations. For example, one of the

13 items on here relates to tax provision, but it would be in the

14 course of performing those services that we have gone over

15 earlier today.

16 MR. WALLACE: Your Honor, I want to note an

17 objection. Can we get a clarification if the witness is

18 talking about what actually happened in the preparation of

19 this engagement letter or if he is talking about general

20 industry practice?

21 THE COURT: Well, basically sustained. I think

22 we need to know those things.

23 MR. SUAREZ: Sure.

24 Q Are you aware of how Mazars would have known -- let

25 me withdraw that.

November 14, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4312</p> <p>1 You have become familiar -- have you become familiar</p> <p>2 with the work that Mazars did on the compilation engagements</p> <p>3 for the Statement of Financial Condition for President Trump</p> <p>4 from 2011 to 2020?</p> <p>5 A I have based on reading Mr. Bender's deposition and</p> <p>6 in reading his trial testimony.</p> <p>7 Q Have you also reviewed the trial testimony of</p> <p>8 Mr. Kelly?</p> <p>9 A I have.</p> <p>10 Q Have you reviewed the supporting data to the</p> <p>11 Statement of Financial Condition?</p> <p>12 A I have.</p> <p>13 Q Have you reviewed each of the Statements of Financial</p> <p>14 Condition for the years 2011 to 2021?</p> <p>15 A Yes.</p> <p>16 Q And you would agree with me that the ones that were</p> <p>17 done between 2020 and -- I am sorry 2011 and 2020, those are</p> <p>18 compilation engagements by Mazars?</p> <p>19 A Correct.</p> <p>20 Q And those -- the one done in 2021 was done by Whitley</p> <p>21 Penn?</p> <p>22 A That's right.</p> <p>23 Q Now, in reviewing the record in this case, are you</p> <p>24 familiar with the work that Mazars performed for the Trump</p> <p>25 Organization?</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4314</p> <p>1 Q Does this disclaimer reflect a departure from Generally</p> <p>2 Accepted Accounting Principles?</p> <p>3 A Yes. So this is the disclaimer section, and this is</p> <p>4 the first of several that are in this letter. The first</p> <p>5 sentence is establishing that estimated current value should be</p> <p>6 used to report assets and liabilities.</p> <p>7 The next sentence indicates that -- that in instances</p> <p>8 that the way that the values are reported were not compliant</p> <p>9 with estimated current value.</p> <p>10 Q In what ways were the values that were reported not</p> <p>11 compliant with the definition of estimated current value?</p> <p>12 A Well, I would just be repeating what this says. It</p> <p>13 says that some of the values will be based on future interests</p> <p>14 and that in some instances are not for fixed or determinable</p> <p>15 amounts or based on performance of future services.</p> <p>16 Q That discloses a departure from what is required under</p> <p>17 GAAP; correct?</p> <p>18 A Mazars determined that these were deviations from GAAP.</p> <p>19 Q But Mazars was still able to issue a compilation report</p> <p>20 on that Statement of Financial Condition?</p> <p>21 A That's correct.</p> <p>22 Q The second departure, what does the second departure</p> <p>23 address?</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4313</p> <p>1 A I am familiar with the materials that they were</p> <p>2 provided to conduct their compilation. I have reviewed those</p> <p>3 materials. I cited many of them in my expert reports. And I</p> <p>4 have reviewed many of them in preparation for today's</p> <p>5 testimony.</p> <p>6 Q Are you aware of the nature of the engagement between</p> <p>7 Mazars and the Trump Organization, generally?</p> <p>8 A Yes, in that it was a compilation engagement.</p> <p>9 Q Are you aware of other engagements that Mazars</p> <p>10 performed for the Trump Organization?</p> <p>11 A Yes, I am aware that they performed audit and tax</p> <p>12 services in addition to performing these compilation services.</p> <p>13 Q And what knowledge do you have regarding the</p> <p>14 historical knowledge that Mazars had with the Trump</p> <p>15 Organization's books and records?</p> <p>16 A Only what I have read in transcripts.</p> <p>17 Q The first disclaimer that is placed here on this</p> <p>18 engagement letter, what is this disclaimer intended to cover?</p> <p>19 A Well, it is establishing from the outset that</p> <p>20 estimated current value is the measure that will be used to</p> <p>21 report the assets and liabilities on the Statement of Financial</p> <p>22 Condition.</p> <p>23 (The following proceedings were stenographically</p> <p>24 recorded by Senior Court Reporter Michael Ranita.)</p> <p>25</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4315</p> <p>1 A So this relates to disclosure of several different</p> <p>2 items -- I mean, it really does speak for itself in terms of the</p> <p>3 nature of the exceptions that Mazars had identified. But it</p> <p>4 relates to the disclosure of several different items.</p> <p>5 Q And these are departures that Mazars had identified</p> <p>6 from Generally Accepted Accounting Principles?</p> <p>7 MR. WALLACE: Objection. Leading.</p> <p>8 Q Who identified --</p> <p>9 THE COURT: Sustained.</p> <p>10 Q Who identified these departures on the Statement of</p> <p>11 Financial Condition from Generally Accepted Accounting</p> <p>12 Principles?</p> <p>13 A Well, it could've been either Mazars or management.</p> <p>14 But obviously this is appearing in Mazars's report. It -- it</p> <p>15 doesn't necessarily mean that Mazars was the one that identified</p> <p>16 it, but it's being disclosed in their report.</p> <p>17 Q The third category.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q Identified here, what does this departure address?</p> <p>21 A This is addressing the fact that there was a liability</p> <p>22 related to membership deposits that had been, um, incurred by</p> <p>23 the -- by Mr. Trump, but that liability was not being reported</p> <p>24 on the Statement of Financial Condition. And that would be</p> <p>25 inconsistent with GAAP, therefore, giving rise to this</p>

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4316

1 additional deviation.

2 Q And would there be anything wrong with issuing a

3 Statement of Financial Condition that had this deviation?

4 A Not at all.

5 Q With respect to the fourth.

6 (Whereupon, the exhibit was displayed on the

7 screen.)

8 Q Departure from GAAP, what is this departure from GAAP

9 intending to cover?

10 A This is what I was referring to earlier about under

11 GAAP. Financial statements are required to have a provision for

12 income taxes. Mr. Trump's Statement of Financial Condition did

13 not contain that line item, and therefore, that lead to this

14 disclosure by Mazars to flag that for the users.

15 Q And would there be anything wrong with issuing a

16 Statement of Financial Condition that had this departure from

17 GAAP?

18 A Not under the applicable standards, no.

19 Q Would the same be true of the first and second

20 departure?

21 A Correct.

22 Q The fifth departure?

23 (Whereupon, the exhibit was displayed on the

24 screen.)

25 Q What does this departure address?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4317

1 A This is identifying that there are additional assets

2 and liabilities that Mr. Trump owns or owes, however, those

3 items are not included in the Statement of Financial Condition.

4 Under GAAP, in order to present complete financial statements,

5 one would include all assets and liabilities, but these are

6 being excluded, and therefore, being disclosed to users that the

7 financial statements that are being provided do not include

8 these items.

9 Q Is it acceptable to issue a Statement of Financial

10 Condition that excludes these assets and liabilities identified

11 in this departure?

12 A Under the relevant professional standards in America,

13 yes.

14 Q Why is that?

15 A Well, we went through earlier the requirements and the

16 reporting aspects of the compilation standards, and there is a

17 whole section dedicated to the situation in which an accountant

18 identifies deviations from GAAP and reports those and includes

19 additional cautionary language if they are pervasive enough.

20 Q And on the next page.

21 (Whereupon, the exhibit was displayed on the

22 screen.)

23 Q I believe we see the cautionary language that we

24 discussed earlier; is that correct?

25 A Yes, the second or the first full paragraph, yes.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4318

1 Q Now, if we take a look at the management rep letter for

2 that same year and we pull it up side by side, Plaintiff's

3 Exhibit 786.

4 (Whereupon, the exhibit was displayed on the

5 screen.)

6 (The exhibit was handed to the witness.)

7 Q Would you agree with me that this is the management

8 representation letter for the June 30, 2011, statement?

9 A Yes.

10 Q Okay. Who prepares the management representation

11 letter?

12 MR. WALLACE: Objection. Again, are we asking

13 about who prepares this letter or who, in general practice,

14 prepares a letter.

15 Q Do you know who prepared this letter?

16 A Well, I could attempt to answer both scenarios.

17 Q Sure.

18 A The standard practice in the industry is that the

19 accountant performing the services will provide the management

20 representation letter to management. Management will then put

21 it on their own letterhead and sign and deliver it back to the

22 accounting firm; that's the general standard practice.

23 Specific to this case, I believe that standard practice

24 was followed based on Mr. Bender's testimony. I believe he

25 testified to that.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4319

1 Q Do you see in the fifth full paragraph where it says in

2 the first line, "The statement referred to above is fairly

3 presented in conformity with accounting principles generally

4 accepted in the United States of America"?

5 A Yes.

6 Q How is that statement that was drafted by Mazars and

7 given to its client to sign consistent with the departures in

8 the engagement letter that predate this letter?

9 A It's obviously not consistent.

10 Q And why is that?

11 A Well, this sentence that we highlighted on the

12 management representation letter indicates that the Statement of

13 Financial Condition is in conformity with GAAP, however, the

14 engagement letter that's on Mazars letterhead, um, identifies

15 multiple instances where the Statement of Financial Condition is

16 not in compliance with GAAP.

17 Q Would it be appropriate for Mazars to draft and provide

18 the Trump Organization a management representation letter that

19 they know is inaccurate?

20 A It doesn't seem appropriate in this case given that

21 there are clearly GAAP deviations that Mazars themselves have

22 reported to the users of the financials.

23 Q Would you expect an accounting firm that provides the

24 draft and management representation letter for its client to

25 sign, to confirm that it's accurate with their understanding of

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4320

1 what's actually being provided?

2 A I would expect that. I will just add one piece, that

3 the management rep letter that was sent is a pretty standard

4 letter in the industry. And again, I don't want to speculate,

5 but it appears to me that Mazars just did not update that

6 standard letter to include the exceptions that were listed in

7 the engagement letter.

8 Q Would it have been appropriate for Mazars to include

9 the exceptions that were in the engagement letter in this

10 management rep letter?

11 MR. WALLACE: Objection. Leading.

12 MR. SUAREZ: I'm trying to move it along.

13 THE COURT: Overruled. But just a read back the

14 question.

15 (Whereupon, the requested question was read back by

16 the court reporter.)

17 A Some sort of modification to the management

18 representation letter, I would have expected to see whether it

19 be by itemizing the exceptions that are listed in the engagement

20 letter, or having some qualified language in the representation

21 letter that says that the financial statements are not in

22 conformity with GAAP.

23 MR. SUAREZ: If we could pull up the engagement

24 letter appearing at Plaintiff's Exhibit 727.

25 (The exhibit was handed to the witness.)

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4321

1 (Whereupon, the exhibit was displayed on the

2 screen.)

3 Q Do you recognize this letter?

4 A I do.

5 Q Is this a standard form of engagement letter on a

6 compilation engagement?

7 A Yes. This appears to be the standard engagement letter

8 that was used by Mazars for 2015.

9 Q Do you see where it says "compilation objective"?

10 A Yes.

11 Q Do you see where it says, "The objective of a

12 compilation is to assist you in presenting financial information

13 in the form of financial statements"?

14 A Yes.

15 Q The person assisting is the accounting firm; correct?

16 A That's correct. That would be Mazars in this case.

17 Q And if we turn to the second page of this document,

18 there are now six departures that have been identified as

19 departures from general Generally Accepted Accounting

20 Principles; correct?

21 (Whereupon, the exhibit was displayed on the

22 screen.)

23 A Yes.

24 Q And is it the case that it was appropriate --

25 withdrawn.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4322

1 Was it appropriate for Mazars to issue a compilation on

2 Statement of Financial Condition that contain six departures

3 from Generally Accepted Accounting Principles?

4 A It was appropriate as long as their report identified

5 the departures in some form or fashion so that users of the

6 financial statements understood that there were such departures.

7 THE COURT: And I'll ask Mr. Suarez to talk a

8 little louder and the witness to be a little closer to the

9 mic, like I'm doing.

10 MR. SUAREZ: And then if we could pull up

11 Plaintiff's Exhibit 728 alongside this one.

12 (Whereupon, the exhibit was displayed on the

13 screen.)

14 (The exhibit was handed to the witness.)

15 MR. SUAREZ: I have a red light on my mic. I might

16 have exhausted the --

17 (Whereupon, there is a brief pause in the

18 testimony.)

19 MR. SUAREZ: And we are back.

20 THE COURT: Much better.

21 Q And in this instance, how is the -- I'm sorry,

22 Plaintiff's Exhibit 728, which is already in evidence, do you

23 recognize this document?

24 A Yes, it's the management representation letter for the

25 2015 Statement of Financial Condition compilation.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4323

1 Q And how, if at all, is this management rep letter

2 different than the one we saw for the year ending June 30, 2011?

3 A I would need to put them side by side to do a direct

4 comparison, but I believe it's very consistent, if not

5 identical.

6 Q In the instance of the 2015 letter, can you observe

7 here, it says -- it lists out the actual departures from GAAP in

8 the management rep letter.

9 A Yes. And I clarify my prior statement, because

10 obviously this letter contains and delineates the exceptions

11 that were identified by Mazars, whereas the prior letter we saw

12 for the prior time period did not do that.

13 Q This would indicate that Mazars corrected the

14 management rep letter?

15 A Yes. They updated the management rep letter to flag

16 the deviations from Generally Accepted Accounting Principles.

17 Q Would that have corrected the failure to include that

18 letter -- excuse me, would that have corrected the failure to

19 include those departures in 2011?

20 MR. WALLACE: Objection to the characterization of

21 the prior letter.

22 THE COURT: I'm not sure it means to correct it.

23 MR. SUAREZ: Withdrawn.

24 Q You would agree with me that those departures weren't

25 identified in the prior representation letters; correct?

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4324

1 A I agree.

2 Q And that in 2016, for the year ending June 30, 2015,

3 Mazars appears to have corrected the management rep letter that

4 it drafted --

5 MR. WALLACE: I'm objecting to the correction.

6 MR. SUAREZ: I haven't even finished.

7 MR. WALLACE: Fine.

8 THE COURT: Mr. Suarez, you are using the same

9 wording, "corrected." Something is incorrect and something

10 is corrected doesn't necessarily correct what's incorrect.

11 It just supplants it with something that is correct,

12 assuming it is.

13 MR. SUAREZ: I think I could use the word revised.

14 Q Revised the letter to include the departures?

15 THE COURT: Not revising it, unless it says this is

16 a revision of the earlier letter. It supplants or replaces.

17 Q Is the form used after, for 2015 and years after,

18 include the departures from GAAP, whereas prior to 2015 it did

19 not?

20 THE COURT: Asked and answered about three times.

21 It does. Okay, you know it does.

22 MR. SUAREZ: Okay. All right. Let's turn to page

23 two of Plaintiff's Exhibit 728?

24 (Whereupon, the exhibit was displayed on the

25 screen.)

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4325

1 Q Do you see here in paragraph two where it says "We have

2 made all financial records and related data available to you.

3 We have not knowingly withheld from you any financial records or

4 related data that in our judgment would be relevant to your

5 compilation"?

6 A Yes.

7 Q Would it be relevant to a compilation to provide the

8 account appraisals that were not used in arriving at the

9 estimated current value of an asset?

10 A There would be no obligation or expectation on the part

11 of Mazars, or any accountant performing compilation services, to

12 receive supporting information for amounts that are not

13 reflected on the Statement of Financial Condition.

14 Q If The Trump Organization had an appraisal that it

15 didn't use in determining the estimated current value of an

16 asset, would The Trump Organization have any obligation to

17 provide that to Mazars?

18 A No. There would be no expectation under professional

19 standards in the accounting and auditing industry that that

20 information be provided, um, if it's not something that's being

21 reported in the financial statements for the compilation.

22 Q Are you aware of testimony by Donald Bender that he

23 requested to know about appraisals, even if they weren't used in

24 reaching estimated current values?

25 A I read that in his transcript, yes.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4326

1 Q What is your reaction to that testimony?

2 MR. WALLACE: Objection. I'm not sure, the

3 witness's reaction to testimony?

4 THE COURT: I'll allow it. If it causes a

5 reaction, I want to hear what it is.

6 A Well, it's not something that's required by the

7 professional standards, and therefore, when I read that, my

8 reaction to it was that his testimony was not professionally

9 plausible. It doesn't make any sense that an accountant

10 performing a compilation service would seek information, whether

11 it be appraisals, or other supporting information, or other

12 information, that was not used to support the reported values in

13 the financial statements.

14 MR. WALLACE: I object to this. This is not a

15 proper basis for expert testimony, whether someone's stated

16 factual request is professionally plausible. Is he trying

17 to say the witness is lying?

18 THE COURT: Not to put too fine a point on it.

19 Um, all right. Let's -- Mr. Kise.

20 MR. KISE: Again, I'm not going to violate your

21 rule and say something if you are going to rule our way.

22 You've already told me that. So it took me a while to learn

23 that, but.

24 THE COURT: Better late than never.

25 MR. KISE: Indeed.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4327

1 THE COURT: Yeah, I'm not objecting to --

2 sustaining the objection to the question -- to the answer.

3 I'm not sure it means would not have expected -- can we get

4 a clarification, either another question.

5 MR. SUAREZ: May I ask the witness to explain his

6 answer.

7 THE COURT: Sure. Let's do that.

8 Q Can explain what you mean by "professionally

9 plausible"?

10 A Well, the standards would not require an accountant,

11 particularly performing a compilation, to seek information

12 outside of the population of information used to generate the

13 Statement of Financial Condition. Um, a compilation is, as

14 we've said before, not an assurance engagement. It's a much

15 lighter touch engagement.

16 Um accountants in the industry do not go seeking

17 records in support for things that are not within the four

18 corners of what's to be reported in the Statement of Financial

19 Condition, so that's why my reaction was, I believe that was

20 implausible, because it runs entirely inconsistent with the

21 requirements associated with the compilation.

22 THE COURT: So a compiler is not obligated to know

23 about or ask about any appraisals, but you don't think it's

24 plausible that one would ask, "Hey, do you have an

25 appraisal?"

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4328

1 Is that your professional testimony? It's

2 implausible that the compiler would ask the client if there

3 are any appraisals?

4 THE WITNESS: My testimony is that I think that

5 would be highly unusual, as part of a compilation, to make

6 that inquiry. A compilation does not entail an accountant

7 seeking multiple variations or scenarios for valuations in

8 assisting the client to pick the right one. That's already

9 been done by management. It's been given to the accountant.

10 The accountant then seeks to understand what that method is

11 and whether it comports with GAAP, and not to be part of a

12 selection process. That's not what a compilation entails.

13 THE COURT: Okay. Let's move on.

14 Q What information would you expect a client to provide

15 to the outside accountant in connection with the estimated

16 current value determination made for a particular asset?

17 A I would expect the client to provide the records and

18 support related to amounts to be reported in the Statement of

19 Financial Condition.

20 Q Would you expect the client to provide information that

21 it did not rely on?

22 A No.

23 Q Mr. Flemmons, is it the case that from year to year the

24 manner of -- withdrawn.

25 Mr. Flemmons, is it the case that from year to year the

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4329

1 method of determining estimated current value can change?

2 A Yes. ASC-274 states that changes can be made to the

3 methods used when deemed appropriate.

4 Q And in the case of President Trump's Statements of

5 Financial Condition, the ones that are at issue in this case, is

6 it the case that from year to year there were changes to the

7 manner in which estimated current value was determined?

8 A Yes. My recollection is for some assets there were

9 changes in the methodologies.

10 Q Are -- what is the obligation in the Statements of

11 Financial Condition to disclose the change in methodologies, if

12 any?

13 A Well, the obligation is to disclose the methodologies

14 used to determine estimated current value as reflected in the

15 financial statements.

16 Q Is there an obligation -- were President Trump's

17 Statements of Financial Condition comparative?

18 A They were not. And to be clear on what that means, the

19 Statements of Financial Condition only reported the financial

20 condition as of one year and not for multiple years. If they

21 were for multiple years, they would be comparative statements.

22 But these were only for single years.

23 Q And what are the obligations -- withdrawn.

24 How are the obligations for making disclosures

25 different in Statements of Financial Condition that only

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4330

1 disclose a single year as opposed to those that compare year to

2 year?

3 A Well, first of all --

4 THE COURT: Wait, wait. We didn't have any that

5 were multiple year; right?

6 MR. SUAREZ: No.

7 THE COURT: So then why are we talking about what

8 are the obligations if you do it, if they didn't do it.

9 MR. SUAREZ: I'm asking how it's different.

10 Q How is it different when you only have a single year?

11 THE COURT: Plaintiff, do you want to object to

12 that, or not? If you don't, fine, I'll let him answer it.

13 MR. WALLACE: I haven't objected to a lot of things

14 that I don't think are necessary. At this point, I'm happy

15 to let more unnecessary stuff go in.

16 MR. AMER: Why doesn't he ask what the obligations

17 are for the type of financial statements that are at issue

18 in this case?

19 THE COURT: Apparently he doesn't want to. He

20 wants to talk about other obligations.

21 MR. SUAREZ: I want to talk about how they are

22 different. I want to talk about how it's different when you

23 only have a single year as opposed to a Statement of

24 Financial Condition that compares years.

25 A So a couple of responses. One is that under ASC-274,

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4331

1 including multiple years, comparative years of financial

2 results, um, is optional. It's not required. But it is an

3 option that can be done for personal financial statements.

4 There is another section of ASC-274 that talks about

5 disclosure of changes in methodologies. That requirement is

6 only relevant for financial statements that show comparative

7 amounts for multiple years. So you let the user know that for

8 the multiple years that are presented, the methodologies are not

9 the same.

10 But compare that to this case where the Statements of

11 Financial Condition only reflect one year, there is no

12 requirement to disclose to the user that the methodologies used

13 in the one year Statement of Financial Condition was different

14 than the prior year. That can be easily determined by a user by

15 looking at both sets of financial statements and the related

16 disclosures to see that the methodologies were different.

17 THE COURT: Five-minute warning.

18 MR. SUAREZ: You Honor, I'm at a natural breaking

19 point in my outline.

20 THE COURT: How much more do you have to go?

21 MR. SUAREZ: I expect that I'll take the balance of

22 the morning.

23 THE COURT: Three hours?

24 MR. SUAREZ: However much time I get in the

25 morning, yes.

November 14, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4332

1 THE COURT: Counsel, let's do our scheduling. I'll  
2 turn the microphone over to the person sitting next to me --  
3 alongside me.  
4 MS. FAHERTY: Can you provide an admonition to the  
5 witness, your Honor.  
6 THE COURT: The witness, Mr. Clemmons -- you spell  
7 it different from Mark Twain?  
8 THE WITNESS: It's Flemmons, with an F.  
9 THE COURT: I had that wrong. I order you not to  
10 discuss this case, your testimony, or anything related to  
11 it, until you are excused tomorrow.  
12 THE WITNESS: Understood.  
13 THE COURT: Thank you.  
14 (Whereupon, the witness stepped down from the  
15 witness stand.)  
16 MS. GREENFIELD: So tomorrow, two to three hours  
17 more of direct?  
18 MR. SUAREZ: I think in the morning I could wrap it  
19 up.  
20 MS. GREENFIELD: Okay. So that's two, three hours.  
21 How much cross do we anticipate?  
22 MR. WALLACE: It's still an hour, maybe two.  
23 MS. GREENFIELD: Okay. So the next witness, then,  
24 after Mr. Flemmons will be Collins; is that correct?  
25 MR. SUAREZ: That's correct.

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4333

1 MS. GREENFIELD: How many hours do you anticipate?  
2 MR. ROBERT: My colleague says two, three hours  
3 direct, probably.  
4 MS. GREENFIELD: Cross on Collins?  
5 MR. WALLACE: I think it will be slim.  
6 MS. GREENFIELD: So we might have time for another  
7 witness tomorrow. Who is the next one going to be lined up?  
8 MR. ROBERT: The next one lined up is Laposa for  
9 Thursday, but because of travel issues and another case he  
10 is testifying in, he won't be available until Thursday  
11 morning.  
12 MS. GREENFIELD: There's no one else to do tomorrow  
13 afternoon?  
14 MR. ROBERT: There isn't. We were able to switch  
15 around Friday to put Mr. Giuletto in for Friday. I don't  
16 know what your plan is, how much time to cross Laposa.  
17 MS. GREENFIELD: How much direct do you have on  
18 Laposa.  
19 MR. ROBERT: What did he say, probably three, three  
20 and a half hours.  
21 MR. AMER: Well, that's all of Friday.  
22 MR. ROBERT: That's Thursday. Giuletto's direct  
23 is about an hour and a half, two hours, three hours.  
24 MS. GREENFIELD: So it looks like we'll have time  
25 for more than one witness on Thursday. So who is going to

Page 4334

1 be after Laposa on Thursday?  
2 MR. ROBERT: At this point we are trying to move  
3 things around. We don't have anybody yet because of the  
4 fact we expected their crosses to be longer. I can tell you  
5 we are trying make sure we have everything filled next week,  
6 Monday and Tuesday.  
7 MS. GREENFIELD: You'll work tonight on getting  
8 somebody else for Thursday and Friday.  
9 MR. ROBERT: We'll try, but I can't promise we'll  
10 be able to.  
11 MS. HABBA: I'm in contact with their attorney.  
12 It's somebody who is represented, and we are working with  
13 them. We are trying.  
14 MS. GREENFIELD: Okay. Hopefully we'll have an  
15 update tomorrow.  
16 MR. ROBERT: I'm sure we will.  
17 THE COURT: Speaking of tomorrow, 10:00?  
18 MR. ROBERT: Good.  
19 MR. WALLACE: See you then, your Honor.  
20 (The case on trial was adjourned to Wednesday,  
21 November 15, 2023 at 10:00 a.m.)  
22  
23  
24  
25



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NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

	4319:4;4321:19; 4322:3;4323:16	4280:11,18,22;4281:8, 15,17,22;4282:2; 4284:2;4286:18; 4287:11,15,18,19; 4289:22;4292:6,18; 4293:12;4295:3,4,8; 4298:3,7,18;4299:4; 4300:23,25;4301:17; 4302:12;4304:11; 4307:20;4311:2,5; 4314:2;4315:6,11; 4318:22;4319:3,23; 4321:15,19;4322:3; 4323:16;4325:19	<b>actually (12)</b> 4178:25;4190:24; 4197:20;4210:5; 4263:3;4285:24; 4288:22;4302:7; 4304:9;4308:4; 4311:18;4320:1	<b>afternoon (1)</b> 4333:13
<b>\$</b>	<b>access (1)</b> 4289:20	<b>accessing (1)</b> 4267:4	<b>AD3d (1)</b> 4206:15	<b>again (34)</b> 4172:16;4177:16; 4178:25;4196:6; 4205:15;4209:19; 4212:18;4220:14; 4221:2;4223:7;4239:1; 4240:4;4242:3; 4244:24;4248:11; 4253:14;4256:11; 4258:11,17,20,23; 4259:16;4260:11; 4261:4;4262:24; 4266:14;4270:19; 4275:12;4280:19; 4287:16;4292:3; 4318:12;4320:4; 4326:20
<b>\$10 (1)</b> 4186:9	<b>account (6)</b> 4196:15,16,17; 4262:11;4271:23; 4325:8	<b>accounts (2)</b> 4280:18,18	<b>add (1)</b> 4320:2	<b>against (6)</b> 4177:5;4200:2; 4213:18;4246:18,19; 4248:2
<b>\$18 (2)</b> 4195:8;4273:20	<b>accountant (99)</b> 4238:3,5,8,11,18,23, 24;4239:16;4242:1; 4243:9,9;4244:2,21; 4245:6,12,15,16,17,18, 22,23,24;4282:16; 4283:3,25;4284:14,24; 4285:1,5,8,15,23; 4286:6,7,9,11,17,20, 23;4287:1,6,8,16,23, 25;4288:5,10;4290:6,9, 12,12,12,12,23,23; 4291:2,16,24,25; 4292:1;4293:18,22; 4295:17,18;4296:15, 16;4297:3,6;4302:23; 4303:13,18;4304:3,21, 23;4305:17,20,23; 4306:8,11,18;4308:9, 10,18;4309:4,21,22,24; 4310:3,18,24;4317:17; 4318:19;4325:11; 4326:9;4327:10; 4328:6,9,10,15	<b>accuracy (1)</b> 4209:17	<b>added (1)</b> 4249:10	<b>age (1)</b> 4186:10
<b>\$2 (1)</b> 4195:4	<b>accountants (18)</b> 4236:20;4245:25; 4246:2,4,5;4248:17; 4281:19,24;4288:15; 4290:14,14,15,15,18; 4298:21,24;4299:15; 4327:16	<b>accurate (6)</b> 4209:15;4210:12,12; 4247:22;4291:8; 4319:25	<b>addition (1)</b> 4313:12	<b>agents (1)</b> 4269:22
<b>\$20 (4)</b> 4195:13;4273:2; 4274:4;4275:7	<b>accounting (88)</b> 4196:25;4208:3; 4212:11;4218:20,22; 4236:17;4237:5,6,8,25; 4240:9;4241:6,10,14; 4242:15,16;4244:4,6; 4245:3,5;4246:14; 4247:2,18,22,23; 4249:25;4250:1,4,18; 4251:14,16,21;4252:2, 5,8,11,14,16,18; 4254:4,7;4257:9; 4262:1;4268:9;	<b>acquire (1)</b> 4304:22	<b>additional (9)</b> 4225:4;4241:14; 4266:1,7;4267:7; 4297:10;4316:1; 4317:1,19	<b>aggregate (1)</b> 4209:7
<b>\$25 (1)</b> 4212:3		<b>acquisition (1)</b> 4181:10	<b>address (7)</b> 4170:12;4235:24; 4236:2;4295:16; 4314:23;4315:20; 4316:25	<b>ago (6)</b> 4191:2,3;4193:8; 4195:4;4226:20; 4281:21
<b>\$30 (1)</b> 4212:3		<b>acre (4)</b> 4195:8,9,13,14	<b>addressed (1)</b> 4310:20	<b>agree (16)</b> 4205:5;4209:23; 4218:2;4229:9;4231:2, 9,15;4232:12,18; 4252:19;4264:5; 4265:24;4312:16; 4318:7;4323:24; 4324:1
<b>\$300 (2)</b> 4202:25;4203:1		<b>acquired (2)</b> 4180:6;4193:4	<b>addressing (1)</b> 4315:21	<b>agreed (1)</b> 4214:2
<b>\$50 (1)</b> 4186:9		<b>acres (2)</b> 4195:3,14	<b>adequately (1)</b> 4286:24	<b>ahead (5)</b> 4207:20;4209:25; 4219:14;4293:2; 4302:18
<b>\$500 (2)</b> 4273:3,22		<b>across (2)</b> 4240:15;4246:3	<b>adjoined (1)</b> 4334:20	<b>AICPA (11)</b> 4249:3;4250:21; 4251:9,12;4254:2,9; 4281:21,25;4298:19; 4299:17;4302:15
<b>\$60 (2)</b> 4195:9,13		<b>acted (1)</b> 4206:17	<b>adjusted (1)</b> 4280:9	<b>AICPA's (1)</b> 4251:7
<b>\$800 (1)</b> 4274:6		<b>acting (2)</b> 4183:10;4290:12	<b>adjustments (1)</b> 4260:5	<b>akin (2)</b> 4257:7;4297:24
<b>\$900 (1)</b> 4273:25		<b>action (26)</b> 4231:9;4244:10,19; 4247:16;4258:6; 4267:9,13,19;4268:3, 13,15,22;4271:9,17,23; 4272:18,21;4273:3,14; 4274:1;4278:20,21,25; 4279:1,9,14	<b>admonition (1)</b> 4332:4	<b>ALLEN (3)</b> 4168:7;4310:20,23
<b>§</b>		<b>actions (3)</b> 4246:17;4248:1; 4279:11	<b>adopt (1)</b> 4225:25	<b>allow (3)</b> 4220:15;4296:1; 4326:4
<b>§80 (3)</b> 4284:12,15;4285:14		<b>active (1)</b> 4300:15	<b>advantage (1)</b> 4179:16	<b>allowed (14)</b> 4180:15,24;4210:7;
<b>A</b>		<b>activity (1)</b> 4208:17	<b>advantages (1)</b> 4226:4	
<b>A-20 (3)</b> 4267:16,18;4269:16		<b>actual (6)</b> 4200:20;4204:17; 4213:12;4229:6; 4300:17;4323:7	<b>adverse (5)</b> 4293:23;4297:24; 4308:11,17,25	
<b>ability (3)</b> 4225:14;4229:2; 4263:20			<b>advice (1)</b> 4220:8	
<b>able (11)</b> 4183:16;4226:20; 4247:10;4260:13; 4263:23;4267:11; 4268:3;4307:21; 4314:19;4333:14; 4334:10			<b>adviser (1)</b> 4183:10	
<b>above (1)</b> 4319:2			<b>advising (1)</b> 4183:12	
<b>absolute (1)</b> 4213:3			<b>Advisory (6)</b> 4240:11;4241:1,2, 21;4242:16,16	
<b>absolutely (2)</b> 4210:24;4264:10			<b>affect (1)</b> 4224:25	
<b>acceptable (2)</b> 4261:7;4317:9			<b>afforded (2)</b> 4266:22;4268:14	
<b>Accepted (14)</b> 4245:4;4250:1; 4257:9;4287:15,19; 4289:22;4311:2; 4314:2;4315:6,11;			<b>afield (1)</b> 4206:20	

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4213:17;4214:11,25; 4216:4;4217:7; 4221:20,21,22;4279:8; 4293:13;4298:5 <b>allows (3)</b> 4211:22;4268:22; 4298:8 <b>almost (1)</b> 4223:18 <b>alone (2)</b> 4210:20,22 <b>along (5)</b> 4176:13;4181:16; 4241:11;4249:1; 4320:12 <b>alongside (2)</b> 4322:11;4332:3 <b>alternative (1)</b> 4264:6 <b>Alternatively (1)</b> 4293:21 <b>alternatives (1)</b> 4198:13 <b>although (2)</b> 4222:7;4261:18 <b>always (11)</b> 4179:12,12,13,14; 4180:21;4181:9; 4199:4,5;4216:24; 4266:19,20 <b>amended (1)</b> 4228:22 <b>AMER (43)</b> 4185:8,14,17; 4187:17;4188:18; 4189:8,15;4197:9,14; 4199:18;4200:12; 4205:10,24;4206:19; 4207:1,10;4208:24; 4209:3,24;4214:7,16; 4215:13,18;4216:1,17, 20;4219:6;4220:1,9, 17;4222:3,6;4225:11, 24;4227:18,22; 4229:16,20;4230:19; 4232:2;4233:1; 4330:16;4333:21 <b>America (4)</b> 4289:23;4298:8; 4317:12;4319:4 <b>American (3)</b> 4181:18;4248:16; 4298:23 <b>among (2)</b> 4172:2;4265:12 <b>amortized (3)</b> 4280:24;4281:1,7 <b>amortizing (1)</b> 4281:4 <b>amount (5)</b> 4197:25;4200:2; 4255:2;4306:7,20 <b>amounts (8)</b>	4267:14;4270:1; 4300:5;4304:25; 4314:15;4325:12; 4328:18;4331:7 <b>analysis (7)</b> 4202:17;4208:5; 4210:14,16;4231:20; 4241:8;4270:2 <b>analytical (1)</b> 4291:18 <b>analyzing (1)</b> 4247:17 <b>Andrew (2)</b> 4174:21,22 <b>Angeles (2)</b> 4174:4,5 <b>Ankura (1)</b> 4250:17 <b>annual (1)</b> 4249:2 <b>answered (5)</b> 4194:2;4222:2,7; 4276:22;4324:20 <b>anticipate (2)</b> 4332:21;4333:1 <b>anticipated (7)</b> 4200:12;4233:16; 4262:25;4279:1,4,5,6 <b>apart (1)</b> 4255:15 <b>Apparently (1)</b> 4330:19 <b>appear (3)</b> 4269:12;4281:9; 4304:18 <b>appearing (2)</b> 4315:14;4320:24 <b>appears (4)</b> 4269:11;4320:5; 4321:7;4324:3 <b>apples (3)</b> 4212:13;4266:19,19 <b>applicable (3)</b> 4213:10;4299:17; 4316:18 <b>application (1)</b> 4216:8 <b>applied (3)</b> 4232:14;4287:3; 4296:6 <b>applies (5)</b> 4254:6;4255:19; 4269:16,16;4281:12 <b>apply (8)</b> 4206:9;4220:23; 4254:10;4255:20; 4281:19;4289:25; 4299:19;4305:12 <b>applying (4)</b> 4258:19;4259:18; 4298:21;4299:23 <b>appraisal (16)</b> 4188:23;4213:21;	4214:1,5,5;4218:9; 4261:4,5,5,7;4270:13, 14;4275:18,19; 4325:14;4327:25 <b>appraisals (23)</b> 4193:8,9;4206:2; 4211:10;4213:22; 4214:3;4216:3,6; 4260:11,14,15,17,20, 25;4269:21,25;4270:6, 10;4325:8,23;4326:11; 4327:23;4328:3 <b>appraise (2)</b> 4213:7;4228:4 <b>appraised (2)</b> 4211:23;4212:4 <b>appraiser (9)</b> 4185:9,11,13; 4188:4,5,13;4195:12, 16;4228:2 <b>appraisers (14)</b> 4187:21;4188:1,6,6, 12,14,17;4193:14,15, 16;4196:1,3;4212:16; 4272:12 <b>appraising (1)</b> 4260:21 <b>appreciate (2)</b> 4307:15,18 <b>approach (3)</b> 4264:6;4265:24; 4273:21 <b>approaches (2)</b> 4261:2;4263:8 <b>approaching (1)</b> 4234:15 <b>appropriate (14)</b> 4218:20;4256:15; 4267:18;4297:11; 4303:8;4305:2; 4306:25;4319:17,20; 4320:8;4321:24; 4322:1,4;4329:3 <b>appropriately (1)</b> 4278:21 <b>appropriateness (3)</b> 4286:15;4287:21; 4297:7 <b>approval (2)</b> 4192:19;4225:4 <b>approximate (2)</b> 4178:8;4184:19 <b>approximately (6)</b> 4177:9;4191:2; 4238:6;4246:3; 4250:13;4254:9 <b>AR (7)</b> 4284:12,15;4285:14; 4296:8;4297:16; 4299:6;4306:11 <b>AR-80 (9)</b> 4282:1,4,5,6; 4283:12;4285:18;	4288:2,24;4291:1 <b>AR-80sic (1)</b> 4282:4 <b>ARC (1)</b> 4296:7 <b>AR-C (3)</b> 4296:5,10;4299:7 <b>AR-C80 (2)</b> 4282:3;4283:13 <b>architect (1)</b> 4183:21 <b>area (7)</b> 4172:7;4192:18; 4195:14;4198:9; 4231:2;4236:16; 4259:4 <b>argue (3)</b> 4199:25;4208:24; 4213:18 <b>argued (1)</b> 4203:24 <b>arguing (2)</b> 4208:24;4216:4 <b>argument (6)</b> 4200:4;4207:4,5; 4208:25;4215:14; 4219:11 <b>arise (1)</b> 4306:2 <b>ARMEN (1)</b> 4169:19 <b>around (8)</b> 4172:6;4188:25; 4203:11;4240:8; 4255:16;4296:6; 4333:15;4334:3 <b>array (3)</b> 4244:5;4248:7; 4256:16 <b>arriving (1)</b> 4325:8 <b>art (2)</b> 4256:21;4302:21 <b>Arthur (1)</b> 4278:5 <b>articles (3)</b> 4251:20,22,23 <b>articulated (1)</b> 4215:9 <b>Arts (1)</b> 4175:2 <b>ASC (12)</b> 4188:2,7;4218:21; 4266:6;4267:10,15,18; 4269:11,14,16;4277:3, 8 <b>ASC-274 (18)</b> 4211:22;4212:7,18; 4254:7,10,12,15; 4257:15,20,25;4258:7; 4260:13;4278:25; 4280:8,14;4329:2; 4330:25;4331:4	<b>ASC-274-10-20 (1)</b> 4255:8 <b>ASC-274-10-35-1 (1)</b> 4254:21 <b>ASC-820 (2)</b> 4255:23;4256:5 <b>ASCPA (1)</b> 4255:22 <b>ascribe (1)</b> 4267:20 <b>aspect (1)</b> 4279:12 <b>aspects (4)</b> 4245:4;4251:5; 4280:13;4317:16 <b>aspirational (2)</b> 4179:12,17 <b>assess (4)</b> 4241:8;4242:14; 4289:16;4297:7 <b>assessed (17)</b> 4211:19;4212:2; 4270:18,24;4271:8,16; 4272:11;4273:1,20; 4274:3,13,18,24; 4275:2,6,22;4278:21 <b>assessing (2)</b> 4209:6;4250:2 <b>assessment (3)</b> 4271:18,20;4275:17 <b>assessments (1)</b> 4195:19 <b>assessor (1)</b> 4212:14 <b>assessors (1)</b> 4275:6 <b>asset (46)</b> 4185:4,4,6;4218:14; 4254:11;4255:3; 4258:18,21,22,24; 4259:2,7,8,9,11,25; 4260:4,6;4261:1,14; 4263:24;4267:1,12; 4268:6,19,20,23; 4269:16;4270:12; 4272:25;4274:21; 4275:1;4276:12; 4279:21,24,25;4281:2, 5;4305:2;4306:6,19,24, 25;4325:9,16;4328:16 <b>assets (25)</b> 4184:25;4185:3; 4191:18,21;4200:3; 4201:7;4210:22; 4254:22;4257:18; 4259:21,24;4263:22; 4265:23;4266:9,17; 4280:11;4287:4; 4302:21;4304:25; 4313:21;4314:6; 4317:1,5,10;4329:8 <b>assign (1)</b> 4187:7
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

assist (7) 4242:11,11;4299:23; 4303:20;4304:4,12; 4321:12	4244:8		4311:21	4326:24
assistance (2) 4242:18;4270:3	attributes (1) 4266:25	<b>B</b>	basing (1) 4267:8	beware (3) 4298:1,3;4310:5
assistant (2) 4245:15,22	audit (39) 4237:14,17,18,18,20; 4239:2,10,10,12,14,15, 23;4240:12,19,21; 4241:3;4246:10; 4282:18,23;4286:2; 4287:8;4291:10,13,15, 18,19;4293:18; 4297:24;4298:18; 4299:4;4303:19,22; 4304:1;4308:15,21; 4309:7,9,19;4313:11	back (30) 4179:6;4189:23; 4191:8;4196:7; 4197:23;4205:15,22; 4208:13;4216:25; 4217:9,10,12;4218:11; 4219:12;4227:4; 4243:7;4253:19; 4261:20;4262:12; 4264:11;4270:19; 4278:4,7;4307:5,8,10; 4318:21;4320:13,15; 4322:19	basis (8) 4202:9;4217:8; 4221:13;4260:2,9; 4272:2,14;4326:15	beyond (1) 4311:12
assisting (3) 4249:23;4321:15; 4328:8	auditing (6) 4237:9;4239:11; 4242:14;4250:4; 4251:16;4325:19	background (4) 4170:23;4171:3; 4197:14;4236:24	Bay (1) 4184:6	bid (1) 4177:5
assists (1) 4298:21	auditor (16) 4238:23,25;4239:16, 19,21;4240:1,7; 4242:13,13;4282:24; 4283:3,16;4291:12; 4293:21;4308:15,21	backup (1) 4297:1	B-A-Y (1) 4184:7	big (9) 4193:2;4195:2; 4204:14,15;4221:19; 4223:11;4248:3; 4259:8;4290:5
associate (5) 4190:8;4245:16,17, 23,24	auditors (3) 4236:20;4248:2; 4250:3	bad (4) 4199:1,3,6;4221:4	Beach (4) 4170:14;4183:4,18, 24	bigger (1) 4226:17
associated (9) 4199:13;4253:4,20; 4262:17;4267:12; 4270:20;4284:20; 4301:10;4327:21	auditor's (1) 4282:25	balance (5) 4205:9;4214:18; 4257:7,10;4331:21	bearing (2) 4206:17;4307:15	biggest (2) 4181:13;4242:8
association (2) 4174:17;4248:18	audits (4) 4237:15;4239:6; 4240:17;4299:20	balances (3) 4203:2;4205:1,7	beautiful (1) 4178:23	billion (5) 4206:5;4213:24; 4214:3,5;4216:5
associations (2) 4174:8,10	author (2) 4251:11,24	balancing (1) 4208:10	became (9) 4176:21;4184:2,3; 4237:25;4239:21; 4240:10;4245:24; 4249:10;4296:6	bit (8) 4171:16;4172:19; 4174:16;4189:1; 4194:18;4196:9; 4226:8;4291:22
assume (4) 4209:23;4224:19,23; 4226:2	authoritative (1) 4291:1	Baldwin (2) 4171:1,4	become (9) 4192:4;4223:16; 4238:2,5,10;4248:20, 23;4312:1,1	Blackstone (3) 4209:4,6;4210:1
assuming (4) 4236:25;4267:24; 4275:16;4324:12	authority (4) 4206:22;4207:3; 4209:12;4215:6	bank (6) 4208:11,11;4216:3, 5;4226:12;4239:4	becoming (1) 4239:19	block (2) 4182:10;4205:6
assumption (1) 4259:21	authorized (1) 4274:7	banking (3) 4239:6;4240:4,17	Bedminster (1) 4169:14	blocks (1) 4218:21
assumptions (2) 4268:4,10	available (16) 4208:8;4234:19; 4257:21,25;4258:10, 23;4260:8,13;4265:3; 4266:8,16;4270:23; 4276:16;4299:18; 4325:2;4333:10	bankruptcy (2) 4177:4;4259:22	began (3) 4173:2,8;4177:13	bloom (1) 4194:8
assurance (10) 4282:22,25;4283:1, 2,7,15;4309:10,12,16; 4327:14	Avenue (3) 4183:4;4190:9; 4192:16	banks (4) 4210:13,21;4248:8; 4292:13	beginning (1) 4208:15	board (4) 4174:13,14;4192:19; 4210:14
attached (9) 4186:13;4236:18; 4257:14;4271:24; 4282:19;4283:8,11; 4291:21;4295:20	avoid (1) 4209:8	base (2) 4226:16;4245:3	beginnings (1) 4173:15	boards (2) 4174:11,24
attaches (1) 4229:18	aware (11) 4192:9;4195:8; 4228:12,22;4229:1; 4231:24;4311:24; 4313:6,9,11;4325:22	based (37) 4189:13;4192:6; 4208:18;4210:9; 4215:11;4220:21; 4223:2;4228:23; 4230:18;4231:14; 4232:20,22;4246:1,21; 4249:11;4259:3; 4260:5;4266:25; 4268:21,25;4269:14, 21;4271:15,15;4273:2; 4274:1,6,16;4279:24; 4281:4;4292:24; 4306:22,23;4312:5; 4314:13,15;4318:24	belabor (1) 4210:4	Bob (1) 4183:20
attempt (1) 4318:16	away (3) 4174:21;4196:22; 4206:10	bases (1) 4226:15	beliefs (1) 4179:14	bond (2) 4181:14;4281:3
attended (1) 4237:3		basically (3) 4216:10;4274:13;	believing (1) 4222:23	bookkeeping (3) 4282:17;4283:6; 4309:6
attention (5) 4182:22;4210:16; 4254:21;4304:20; 4305:16			below (2) 4181:8;4264:17	books (1) 4313:15
ATTORNEY (14) 4168:3,20;4193:8; 4201:1;4205:4,9; 4207:25;4208:18; 4212:8;4218:10; 4221:2,5;4303:10; 4334:11			Bench (1) 4168:12	born (1) 4170:25
Attorneys (4) 4168:21;4169:13,22;			Bender (6) 4253:5;4300:14; 4301:1,7;4304:9; 4325:22	Both (10) 4173:14;4180:21; 4183:10;4250:3; 4252:9;4255:21; 4257:24;4293:25; 4318:16;4331:15
			Bender's (3) 4301:5;4312:5; 4318:24	bottom (5) 4181:2;4229:24; 4282:17;4309:14; 4310:1
			benefit (1) 4292:22	bought (14) 4176:9;4177:3; 4178:5,11,24;4182:11, 12;4183:13;4186:5,25; 4192:15;4194:23;
			besides (1) 4281:9	
			best (4) 4198:23;4225:8; 4305:10;4306:3	
			better (3) 4189:4;4322:20;	

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4195:4,8 <b>boutique (2)</b> 4172:4;4183:18 <b>box (1)</b> 4307:10 <b>boxes (1)</b> 4301:8 <b>branches (1)</b> 4239:7 <b>break (9)</b> 4184:1;4226:19; 4227:2;4234:25; 4235:3,12;4276:5; 4277:20;4307:5 <b>breaking (1)</b> 4331:18 <b>brief (4)</b> 4230:2;4288:20; 4301:3;4322:17 <b>bring (4)</b> 4219:12;4243:7; 4248:1;4249:19 <b>bringing (1)</b> 4244:18 <b>brings (1)</b> 4202:16 <b>broad (4)</b> 4220:18;4237:18; 4240:5;4245:3 <b>broader (2)</b> 4221:1;4287:5 <b>broadly (1)</b> 4236:17 <b>Broadway (3)</b> 4178:20,24;4179:4 <b>broker (4)</b> 4211:20,24;4212:4, 14 <b>brokers (2)</b> 4212:15;4269:23 <b>Bronx (2)</b> 4170:25;4173:10 <b>Brothers (2)</b> 4176:9;4177:13 <b>brought (4)</b> 4176:11;4179:9; 4210:10;4246:17 <b>building (39)</b> 4173:19;4177:6; 4178:4,5,11,23,24; 4180:4,7,13,14,17,20; 4181:6,7,8,11,19,21; 4184:13;4186:8,9,25; 4187:4,5;4193:4; 4194:5;4197:6,21,24; 4198:1,8,9;4199:11; 4218:21;4223:24; 4224:22;4226:10,11 <b>buildings (6)</b> 4173:8,18;4178:17; 4222:23;4223:21; 4226:15 <b>building's (2)</b>	4232:15,23 <b>built (7)</b> 4175:23;4177:12; 4200:18,19;4254:8; 4255:21,25 <b>bullet (2)</b> 4306:5,10 <b>burden (1)</b> 4221:7 <b>business (22)</b> 4170:12;4173:3,6, 12,19;4174:23,24; 4179:23;4192:12; 4235:24;4236:3,4,4; 4237:9;4259:22; 4262:3;4264:13,15,18; 4265:10;4280:10; 4285:10 <b>businesses (2)</b> 4222:25;4302:22 <b>buy (3)</b> 4179:10;4180:17; 4192:5 <b>buyer (2)</b> 4255:3;4269:6 <b>buying (3)</b> 4173:8;4180:22; 4192:7	4221:15;4222:12,15, 17;4223:7;4226:8; 4233:22;4234:24; 4236:24;4248:11; 4252:19;4253:10; 4254:14;4255:4; 4256:17;4258:6,12; 4260:15,21;4262:5,10, 12;4264:11,12;4265:9; 4266:3,5;4271:6,13; 4272:11;4276:23; 4278:7;4279:3;4280:1, 8,9;4282:16;4285:25; 4288:17,25;4289:8; 4290:9;4292:9;4295:9; 4296:3;4299:9,24; 4300:2,19;4301:15; 4304:14,16,20; 4305:15;4307:3; 4308:9,10;4310:6; 4311:17;4323:6; 4327:3,8;4329:1,2; 4331:3,14;4332:4; 4334:4 <b>cap (3)</b> 4232:14,22;4243:7 <b>capacities (1)</b> 4246:9 <b>capacity (1)</b> 4290:13 <b>capital (1)</b> 4224:15 <b>capitalization (2)</b> 4258:16,19 <b>captures (2)</b> 4251:19;4308:5 <b>career (4)</b> 4171:17;4183:22; 4184:21;4187:9 <b>carry (3)</b> 4239:11;4247:7; 4279:14 <b>case (58)</b> 4187:25,25;4190:9; 4196:11;4198:14; 4199:1,1,20;4200:5,7; 4206:15;4209:3,5; 4210:1;4212:2;4213:2; 4214:14;4215:1; 4219:7,10;4220:7,20; 4224:20;4227:1; 4234:19;4236:6,15; 4242:9;4251:19; 4252:22,24;4253:20; 4260:20;4264:25; 4272:3;4277:19; 4286:20;4290:17; 4300:16,20;4308:21; 4310:1,18;4312:23; 4318:23;4319:20; 4321:16,24;4328:23, 25;4329:4,5,6; 4330:18;4331:10;	4332:10;4333:9; 4334:20 <b>cases (2)</b> 4208:5,6 <b>Cash (28)</b> 4193:17,17;4194:12; 4198:7,11;4200:4; 4206:2,3;4219:25; 4222:12,13;4223:7; 4225:9;4232:15,23; 4257:11;4261:19; 4263:4,4,6,6;4267:9, 13;4270:2;4275:13,24; 4280:2;4289:20 <b>categories (1)</b> 4284:24 <b>category (3)</b> 4188:21;4259:13; 4315:17 <b>causes (1)</b> 4326:4 <b>cautionary (4)</b> 4297:14,15;4317:19, 23 <b>cautious (2)</b> 4179:21,21 <b>Center (4)</b> 4175:1,3;4181:18; 4221:18 <b>CEOs (1)</b> 4244:15 <b>ceremony (1)</b> 4197:12 <b>certain (17)</b> 4174:24;4177:5; 4186:14,17;4193:16; 4194:5,6;4197:25; 4236:14;4242:24; 4281:1;4291:21; 4292:13;4301:11,11; 4304:4;4308:16 <b>certainly (10)</b> 4188:24;4200:19; 4202:2;4225:5; 4279:12;4300:21; 4301:13;4304:8; 4305:8,12 <b>certainty (2)</b> 4191:15;4252:18 <b>certificated (1)</b> 4310:23 <b>certification (1)</b> 4249:8 <b>certifications (3)</b> 4200:20,23;4202:15 <b>certified (12)</b> 4238:3,5,8,10,17; 4248:17,18,21,23; 4249:4,4;4298:24 <b>cetera (3)</b> 4189:20;4194:9; 4291:8 <b>CFF (2)</b>	4249:10,12 <b>CFO (1)</b> 4250:14 <b>chain (1)</b> 4239:12 <b>challenge (5)</b> 4181:11,13;4199:20; 4201:22;4202:20 <b>challenges (3)</b> 4176:13,18;4181:9 <b>challenging (1)</b> 4202:18 <b>chance (1)</b> 4200:10 <b>change (11)</b> 4199:6;4216:24; 4239:20;4240:25; 4242:25;4245:14,20, 23;4296:7;4329:1,11 <b>changes (12)</b> 4175:13;4260:6,7; 4296:9;4299:3,13; 4302:10;4303:6; 4329:2,6,9;4331:5 <b>changing (1)</b> 4183:24 <b>characteristics (1)</b> 4266:18 <b>characterization (1)</b> 4323:20 <b>characterize (1)</b> 4175:5 <b>Charles (2)</b> 4175:21;4176:20 <b>chart (1)</b> 4308:10 <b>cheap (1)</b> 4179:15 <b>check (2)</b> 4234:24,25 <b>checkmark (1)</b> 4309:23 <b>cherry (1)</b> 4201:23 <b>chief (7)</b> 4245:15,16,17,18,22, 23,24 <b>children (2)</b> 4174:20,21 <b>choose (2)</b> 4263:10;4270:24 <b>chooses (1)</b> 4264:25 <b>chosen (1)</b> 4264:2 <b>CHRISTOPHER (1)</b> 4169:5 <b>Cipriani (1)</b> 4181:25 <b>Circuit (1)</b> 4209:5 <b>circumstances (11)</b> 4190:6,20;4192:9;
	<b>C</b>			
	<b>calculation (2)</b> 4253:18;4265:21 <b>calculations (1)</b> 4297:2 <b>call (11)</b> 4170:1,4;4182:23; 4203:3;4205:23; 4233:8,18;4263:16; 4266:25;4276:25; 4292:9 <b>called (3)</b> 4173:7;4188:4,13 <b>calling (2)</b> 4211:3;4233:10 <b>came (9)</b> 4172:16;4183:8,9; 4184:11;4195:12; 4210:17;4240:15; 4245:2;4302:12 <b>can (107)</b> 4175:9,17;4176:3; 4184:19;4185:8,23; 4187:17,21;4188:6,11, 14,17;4189:12,18; 4191:20,22,24;4192:4, 10;4194:16;4197:8; 4198:8,11;4199:3,5; 4200:2;4201:19; 4203:8;4208:24; 4212:6,16,16,23; 4214:8;4215:18; 4218:1,3;4219:14,16;			

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4259:24;4266:13,24; 4287:22;4303:6,18; 4304:4;4306:25 <b>citation (1)</b> 4255:8 <b>cited (4)</b> 4214:15;4253:2,15; 4313:3 <b>citing (1)</b> 4214:25 <b>City (4)</b> 4174:3;4179:14; 4192:18;4199:8 <b>claim (1)</b> 4200:19 <b>claimed (1)</b> 4202:14 <b>clarification (2)</b> 4311:17;4327:4 <b>clarified (2)</b> 4282:2;4296:5 <b>clarify (1)</b> 4323:9 <b>classic (1)</b> 4186:5 <b>clean (1)</b> 4308:21 <b>clear (15)</b> 4185:10;4188:2,13; 4206:12;4214:24,24; 4215:5,11;4255:22; 4265:22;4284:20; 4285:23;4292:5; 4302:13;4329:18 <b>clearly (4)</b> 4180:24;4215:1; 4220:19;4319:21 <b>Clemmons (1)</b> 4332:6 <b>clerk (1)</b> 4233:25 <b>client (21)</b> 4284:18,19;4285:6, 9,13;4287:7,9;4288:6; 4292:10,25;4296:24; 4297:10;4301:11; 4304:12;4319:7,24; 4328:2,8,14,17,20 <b>clients (3)</b> 4237:17;4290:14; 4296:25 <b>client's (2)</b> 4218:14;4285:10 <b>CLIFFORD (1)</b> 4169:10 <b>climb (1)</b> 4249:18 <b>closely (8)</b> 4244:8;4247:9; 4262:3;4264:13,15,18; 4265:10;4302:22 <b>closer (2)</b> 4308:24;4322:8	<b>closing (1)</b> 4181:15 <b>closings (2)</b> 4172:2,11 <b>Club (3)</b> 4182:24;4184:6,9 <b>code (1)</b> 4236:6 <b>Codification (4)</b> 4254:7;4281:16; 4300:9;4302:12 <b>coin (1)</b> 4188:25 <b>collapse (3)</b> 4181:14;4221:3,6 <b>collateral (2)</b> 4208:16,18 <b>colleague (1)</b> 4333:2 <b>Collection (1)</b> 4298:25 <b>collectively (1)</b> 4244:9 <b>COLLEEN (1)</b> 4168:23 <b>College (8)</b> 4171:9,10;4237:2,3, 7,11;4238:12,22 <b>Collins (6)</b> 4183:3;4233:18; 4234:18,23;4332:24; 4333:4 <b>colloquial (1)</b> 4204:13 <b>colloquially (1)</b> 4192:23 <b>colloquy (1)</b> 4193:7 <b>coming (4)</b> 4182:12;4195:23; 4216:15;4239:10 <b>commence (1)</b> 4170:16 <b>comment (1)</b> 4233:20 <b>Commission (7)</b> 4243:5;4244:3,11; 4245:9;4246:8; 4249:14;4302:14 <b>committee (5)</b> 4174:14;4242:12; 4251:4,7,9 <b>committees (1)</b> 4250:23 <b>common (5)</b> 4215:3,4;4266:16; 4303:21,22 <b>communicate (3)</b> 4290:9;4293:15; 4308:7 <b>communicating (1)</b> 4308:11 <b>community (5)</b>	4175:14;4176:22; 4179:23;4192:19; 4194:6 <b>community-like (1)</b> 4178:18 <b>companies (8)</b> 4237:16;4242:16; 4244:7,8,15,23;4247:3; 4249:24 <b>company (7)</b> 4173:21,24;4174:2; 4183:11,12,14;4292:6 <b>company's (2)</b> 4289:19,24 <b>comparable (6)</b> 4211:25;4212:5; 4260:18;4267:1,2; 4273:21 <b>comparables (3)</b> 4195:17;4259:4; 4266:14 <b>comparative (4)</b> 4329:17,21;4331:1,6 <b>compare (2)</b> 4330:1;4331:10 <b>compared (4)</b> 4256:3;4257:18,22; 4263:4 <b>compares (1)</b> 4330:24 <b>comparing (4)</b> 4212:13;4276:19; 4282:3,5 <b>comparison (2)</b> 4266:20;4323:4 <b>compensated (1)</b> 4191:9 <b>compensation (1)</b> 4227:25 <b>compilation (85)</b> 4281:20,25;4282:20; 4283:6,11,14,20; 4284:1,3,15;4285:2,15, 16,24,24;4286:2,10,11; 4287:7;4288:4,7; 4289:25;4290:4,15,18, 23,24;4291:3,10,14,20, 24,25;4292:2,5,20,24; 4295:4,9;4296:17,19, 20;4297:17,22;4298:4; 4299:16;4303:11,19, 23;4304:2,17;4305:13, 21,23;4306:8,12,21; 4309:7,11,11;4310:13; 4311:8;4312:2,18; 4313:2,8,12;4314:19; 4317:16;4321:6,9,12; 4322:1,25;4325:5,7,11, 21;4326:10;4327:11, 13,21;4328:5,6,12 <b>compilations (6)</b> 4237:22;4281:25; 4282:5;4296:6;	4299:20;4310:2 <b>compiled (4)</b> 4283:22;4286:13; 4290:10;4296:14 <b>compiler (3)</b> 4292:10;4327:22; 4328:2 <b>compiling (2)</b> 4296:16;4305:6 <b>complaint (4)</b> 4201:24;4214:12; 4215:23;4221:19 <b>complete (1)</b> 4317:4 <b>completely (2)</b> 4195:19;4210:1 <b>compliance (9)</b> 4241:8;4242:13,14; 4247:24;4250:3; 4287:11;4293:4,7; 4319:16 <b>compliant (7)</b> 4256:17;4294:2; 4295:2;4298:9; 4308:22;4314:8,11 <b>comply (4)</b> 4248:2;4277:3,7; 4308:16 <b>complying (1)</b> 4277:10 <b>components (1)</b> 4285:19 <b>comport (2)</b> 4293:24;4308:18 <b>comports (2)</b> 4213:11;4328:11 <b>comprises (1)</b> 4182:14 <b>compute (1)</b> 4271:15 <b>concept (7)</b> 4200:16;4204:8; 4258:22;4269:11; 4279:16;4280:7; 4281:9 <b>concepts (1)</b> 4204:9 <b>concern (2)</b> 4220:18,22 <b>concerned (2)</b> 4215:21;4225:17 <b>concerning (1)</b> 4251:20 <b>conclude (1)</b> 4287:23 <b>concludes (1)</b> 4287:25 <b>conclusion (1)</b> 4179:9 <b>conclusions (1)</b> 4289:19 <b>Condition (63)</b> 4199:22;4201:12;	4202:3,21,24;4206:23; 4218:13;4221:20; 4228:8;4231:23; 4240:14;4246:7; 4253:16;4254:5; 4257:1,6,7,17;4264:9; 4268:2;4286:24; 4287:14;4288:1; 4292:15;4293:3,5; 4295:23;4296:14; 4297:19,23;4300:19; 4303:3,11;4305:7; 4312:3,11,14;4313:22; 4314:20;4315:11,24; 4316:3,12,16;4317:3, 10;4319:13,15;4322:2, 25;4325:13;4327:13, 19;4328:19;4329:5,11, 17,19,20,25;4330:24; 4331:11,13 <b>conditions (3)</b> 4261:8;4279:8,24 <b>condo (3)</b> 4224:22;4225:2; 4226:6 <b>condominium (17)</b> 4175:23;4176:6; 4177:7,16;4181:7; 4182:15;4183:19; 4198:16;4222:23; 4223:19;4230:9,11,16; 4231:4,5,7,10 <b>condominiums (4)</b> 4182:1,18;4223:22; 4226:3 <b>conduct (2)</b> 4244:7;4313:2 <b>conducting (1)</b> 4242:18 <b>confidence (2)</b> 4309:1,16 <b>confirm (1)</b> 4319:25 <b>conflate (2)</b> 4221:3,6 <b>conflicting (1)</b> 4304:8 <b>conform (1)</b> 4298:6 <b>conforming (2)</b> 4299:3,13 <b>conformity (6)</b> 4287:15;4289:21; 4305:19;4319:3,13; 4320:22 <b>confused (1)</b> 4290:20 <b>congested (1)</b> 4195:1 <b>congratulations (1)</b> 4189:21 <b>conjunction (1)</b> 4188:12
--	--	---	--	--

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>connection (7)</b> 4201:19,20;4231:25; 4253:9,13;4264:14; 4328:15 <b>consent (2)</b> 4224:22;4231:15 <b>consider (15)</b> 4186:4;4207:24; 4209:1;4217:1; 4221:24;4232:9; 4267:11;4268:22; 4269:6,8;4272:18; 4274:25;4297:13; 4302:25;4305:1 <b>consideration (4)</b> 4208:22;4230:25; 4240:23;4301:13 <b>considerations (1)</b> 4303:25 <b>considered (2)</b> 4267:17;4287:10 <b>considering (4)</b> 4180:20;4268:13; 4273:13;4287:5 <b>consistent (7)</b> 4218:17;4279:17; 4303:12;4306:10; 4319:7,9;4323:4 <b>constitutes (1)</b> 4264:18 <b>constraint (2)</b> 4225:3,5 <b>construction (7)</b> 4182:7,8,17; 4195:10;4199:9; 4231:3;4279:5 <b>consult (1)</b> 4302:23 <b>consulted (1)</b> 4304:10 <b>Consulting (6)</b> 4249:20,21,22; 4250:8,15,16 <b>consumer (1)</b> 4260:7 <b>contact (3)</b> 4190:2,4;4334:11 <b>contain (6)</b> 4257:10;4283:23; 4293:14;4295:6; 4316:13;4322:2 <b>contained (1)</b> 4229:6 <b>contains (4)</b> 4256:16;4266:7; 4298:11;4323:10 <b>Cont'd (1)</b> 4169:1 <b>contemplate (3)</b> 4261:10;4269:3; 4281:7 <b>context (12)</b> 4185:20;4189:19;	4205:2,2;4208:7; 4210:3,4;4224:9; 4240:16;4247:7,9; 4281:10 <b>CONTINENTAL (1)</b> 4169:3 <b>continue (2)</b> 4173:20;4307:13 <b>continued (4)</b> 4182:13;4217:16; 4261:22;4294:3 <b>continuing (2)</b> 4238:19;4241:17 <b>contracting (1)</b> 4248:8 <b>contractors (1)</b> 4245:1 <b>contradictory (1)</b> 4286:19 <b>contrary (2)</b> 4209:12;4302:2 <b>control (1)</b> 4274:10 <b>convention (5)</b> 4277:9;4284:3,4; 4286:19;4306:13 <b>conversion (17)</b> 4180:13;4186:12; 4198:15;4223:20; 4225:2;4226:9,11; 4229:3;4230:9,11,16, 23;4231:7,10,11,16; 4232:20 <b>convert (2)</b> 4181:1;4224:22 <b>converted (7)</b> 4176:6;4177:6; 4178:25;4181:3,25; 4186:16;4226:14 <b>converting (3)</b> 4180:14;4223:21; 4226:5 <b>Cooper (1)</b> 4241:13 <b>Coopers (3)</b> 4237:14;4238:1; 4241:20 <b>cops (1)</b> 4181:22 <b>copy (1)</b> 4229:21 <b>core (1)</b> 4208:23 <b>corner (5)</b> 4309:1,14,15,19; 4310:1 <b>corners (1)</b> 4327:18 <b>corporate (2)</b> 4257:2;4269:13 <b>corporation (2)</b> 4250:11;4257:19 <b>corrected (6)</b>	4323:13,17,18; 4324:3,9,10 <b>correction (1)</b> 4324:5 <b>correctly (3)</b> 4192:5;4208:13; 4290:25 <b>cost (8)</b> 4231:17,20;4260:4, 5;4280:10,12,14; 4281:4 <b>cost-based (1)</b> 4280:9 <b>costs (5)</b> 4269:22;4280:7,25; 4281:1,7 <b>counsel (2)</b> 4242:11;4332:1 <b>counter (1)</b> 4215:6 <b>countless (1)</b> 4187:10 <b>country (2)</b> 4244:9;4246:3 <b>couple (9)</b> 4190:17;4235:8; 4246:9;4250:22; 4252:23;4253:5,6; 4309:5;4330:25 <b>course (23)</b> 4180:15;4183:12; 4184:20,24;4187:9; 4200:16;4205:10; 4209:21;4211:8; 4219:24;4220:5; 4237:6;4240:23; 4249:1;4268:2,15; 4278:21;4279:9; 4281:14;4287:20; 4311:8,10,14 <b>courses (22)</b> 4220:2,6,7,13; 4237:8,9;4267:9,13,19; 4268:13,22;4271:9,17, 22;4272:18,21;4273:3, 14;4274:1;4278:19,25; 4279:14 <b>COURT (196)</b> 4168:1,16;4169:25; 4170:1,6,10,16,22; 4171:6;4175:17; 4176:3;4185:22,25; 4188:11,16;4189:5,11, 17;4192:21;4193:23, 25;4194:1,19;4196:4,9, 14,19,22;4197:12,16; 4198:3;4200:6,10; 4201:25;4202:1,17,22; 4203:6,13,14,17,18; 4204:4,19,22,25; 4205:4,14,18,22; 4206:19;4207:2,12,17, 20;4209:1,11,20,25;	4210:23;4211:2,16,18; 4212:13;4213:6; 4214:9,12,13,14,17; 4215:3,6,12;4216:10, 24;4217:9,13,14; 4218:1,7,23;4219:11, 21;4220:14;4221:4; 4222:1,5;4225:16,19, 23;4226:2,23,25; 4227:4,7,13,17,20; 4233:2,5,8,24;4234:22; 4235:13,14,16,17,19, 23;4236:3,6,9,25; 4243:12;4252:4,8,15; 4260:24;4262:7,13,18, 22;4263:7;4271:12; 4272:5;4273:8,17; 4274:11,20;4275:4,11, 15,25;4276:3,5,22; 4277:14,16,24;4278:4, 7,12;4290:11,20; 4291:5,11,22;4292:7,9, 12,23;4293:2;4301:20; 4302:8,17;4303:16; 4304:6,15,19;4307:4,7, 10,12,15,16,20; 4311:21;4313:24; 4315:9;4320:13,16; 4322:7,20;4323:22; 4324:8,15,20;4326:4, 18,24;4327:1,7,22; 4328:13;4330:4,7,11, 19;4331:17,20,23; 4332:1,6,9,13;4334:17 <b>courtroom (3)</b> 4201:3;4210:10,20 <b>Court's (2)</b> 4223:2;4301:13 <b>cover (2)</b> 4313:18;4316:9 <b>covered (5)</b> 4237:17;4245:4; 4251:5;4264:24; 4271:1 <b>covers (2)</b> 4235:8;4258:11 <b>COVID (1)</b> 4182:12 <b>CPA (2)</b> 4238:15;4301:18 <b>crazy (1)</b> 4190:11 <b>create (2)</b> 4231:4;4279:20 <b>credentialed (1)</b> 4249:3 <b>credit (3)</b> 4183:11,14;4238:12 <b>crisis (2)</b> 4176:10,15 <b>cross (8)</b> 4227:17;4233:15,17, 22;4234:11;4332:21;	4333:4,16 <b>crosses (1)</b> 4334:4 <b>CROSS-EXAMINATION (1)</b> 4227:21 <b>current (77)</b> 4181:5;4182:8; 4194:22;4196:12,20, 24;4197:1;4212:22; 4232:14;4249:21; 4251:2;4254:13,23,25; 4255:2,11,15,18,23,24; 4256:2,8,14,21; 4258:14;4259:15; 4260:3,10;4261:16,21; 4262:2;4263:8,14; 4264:14;4267:4,20; 4268:15;4271:14; 4272:14;4273:24; 4274:7;4276:14; 4278:22;4279:10,16, 17;4280:3,4,6,15,21, 24;4281:6,9;4286:14, 25;4287:3,20;4300:5; 4302:5,20;4303:13; 4304:5,13,24,25; 4313:20;4314:5,9,11; 4325:9,15,24;4328:16; 4329:1,7,14 <b>currently (2)</b> 4254:6;4279:20 <b>Cushman (2)</b> 4213:22,25 <b>cut (5)</b> 4178:12;4204:19; 4206:19;4207:12; 4282:6 <b>CV (1)</b> 4251:18 <b>cycle (1)</b> 4176:17
<b>D</b>				
<b>D-27 (1)</b> 4278:16 <b>D-836 (1)</b> 4288:25 <b>damage (1)</b> 4204:3 <b>damages (1)</b> 4203:23 <b>dancing (1)</b> 4188:25 <b>data (13)</b> 4247:11;4286:10; 4292:7,9,10,11,12,24; 4296:24;4301:8; 4312:10;4325:2,4 <b>date (7)</b> 4230:5;4248:15; 4286:7;4300:13; 4301:24;4303:5,7				

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>dated (1)</b> 4302:2	4168:11;4169:13; 4170:1,4;4236:15	22;4315:20;4316:8,8, 16,20,22,25;4317:11	<b>detecting (1)</b> 4195:5	4316:1,3
<b>Davis (1)</b> 4206:14	<b>Defendant's (7)</b> 4254:15;4255:4; 4258:2;4263:20; 4278:16;4284:6; 4296:3	<b>departures (26)</b> 4288:9,11,12; 4290:6;4293:3,14,22; 4295:15,19,23;4298:3; 4311:2,6;4315:5,10; 4319:7;4321:18,19; 4322:2,5,6;4323:7,19, 24;4324:14,18	<b>determinable (1)</b> 4314:14	<b>deviations (14)</b> 4284:2;4293:6; 4295:7,14,15;4298:10; 4305:24;4306:2; 4308:12;4310:4; 4314:18;4317:18; 4319:21;4323:16
<b>day (16)</b> 4173:16;4178:18; 4181:19,21;4186:10; 4194:23;4199:7; 4234:6,7,7,14,16; 4235:5,8;4247:1; 4264:3	<b>Defense (2)</b> 4233:8,10		<b>determination (8)</b> 4204:2,3,3;4231:11; 4256:12;4270:11; 4304:5;4328:16	<b>diagram (10)</b> 4282:12,14;4307:22; 4308:1,3,4;4309:2,8, 14,15
<b>days (3)</b> 4190:10;4233:14,17	<b>define (3)</b> 4213:4;4262:16; 4264:17	<b>depend (3)</b> 4258:24;4268:5,8	<b>determinations (1)</b> 4268:5	
<b>DC (2)</b> 4236:5;4246:1	<b>defining (1)</b> 4263:13	<b>dependent (1)</b> 4280:4	<b>determinative (2)</b> 4265:5,6	<b>differ (2)</b> 4196:3;4211:10
<b>deal (8)</b> 4177:3;4186:12,12; 4187:12;4194:25; 4195:2;4199:10; 4290:5	<b>definition (5)</b> 4197:1;4254:25; 4255:10;4275:1; 4314:11	<b>Depending (6)</b> 4186:18;4263:10; 4265:11;4279:20,21; 4280:9	<b>determine (4)</b> 4213:9;4259:11; 4287:13;4329:14	<b>differed (1)</b> 4185:4
<b>deals (1)</b> 4198:23	<b>definitions (1)</b> 4256:2	<b>depends (3)</b> 4268:18;4274:21; 4276:12	<b>determined (7)</b> 4263:17;4293:21; 4304:24;4306:19; 4314:18;4329:7; 4331:14	<b>difference (5)</b> 4194:4;4262:8,8,19; 4269:24
<b>death (1)</b> 4191:7	<b>defray (1)</b> 4224:14	<b>deposition (4)</b> 4219:3;4232:7; 4250:5;4312:5	<b>determining (14)</b> 4193:10;4221:24; 4222:10;4223:6; 4244:5;4259:9; 4266:23;4267:17; 4302:20;4303:13; 4304:11;4305:18; 4325:15;4329:1	<b>differences (6)</b> 4256:1,23,24; 4287:18;4293:8; 4298:12
<b>December (2)</b> 4230:5,14	<b>degree (3)</b> 4191:14;4252:18; 4301:17	<b>deposits (1)</b> 4315:22		<b>different (93)</b> 4173:25;4184:12; 4185:23;4186:3,23; 4187:3,6,8;4192:9,10, 10,13;4193:18;4202:7; 4206:21;4210:4,19; 4212:16,20;4214:3; 4218:9,10;4223:1; 4237:16;4239:2,3; 4242:1;4245:4;4246:9, 20;4250:16,22,23; 4255:14,22,25; 4256:11;4258:12,13; 4259:16;4260:9,16,21; 4261:4;4263:8,11,13, 14;4265:9,10,12,14; 4266:11;4267:15; 4268:4;4269:20; 4270:8;4271:1,9,15; 4273:16,16;4274:5; 4276:18;4277:2,2,6,7; 4280:6,10,15,24; 4281:6;4283:7; 4284:24;4289:19; 4291:10,14;4293:14; 4308:8;4309:3,24; 4315:1,4;4323:2; 4329:25;4330:9,10,22, 22;4331:13,16;4332:7
<b>decent (1)</b> 4180:12	<b>delay (1)</b> 4278:12	<b>depth (4)</b> 4181:2;4226:10,12, 13	<b>Deutsche (2)</b> 4216:3,5	
<b>decide (5)</b> 4172:25;4202:25; 4207:6;4244:18; 4302:25	<b>deleted (1)</b> 4230:21	<b>deputy (1)</b> 4245:18	<b>develop (6)</b> 4187:3;4239:11; 4261:3;4280:3;4285:8; 4286:14	
<b>decided (14)</b> 4172:21;4180:17; 4202:25;4203:12,13, 18;4204:1;4216:9; 4220:21;4221:10; 4249:20;4250:14; 4300:20;4301:18	<b>deliberative (1)</b> 4301:10	<b>derive (1)</b> 4273:25	<b>developed (4)</b> 4190:25;4267:23,24; 4281:14	
<b>deciding (3)</b> 4187:1;4197:24; 4247:15	<b>delicatessen (1)</b> 4190:13	<b>derived (4)</b> 4191:24;4232:15; 4277:1,5	<b>developer (22)</b> 4175:5,7,8,10; 4176:1;4179:18,22; 4181:10;4184:17; 4185:6;4186:25; 4187:20;4188:3; 4191:15;4193:10; 4196:15,25;4216:15; 4218:5;4219:23; 4222:10;4223:5	
<b>decision (5)</b> 4204:1;4215:11; 4225:7;4239:14; 4244:9	<b>delineates (1)</b> 4323:10	<b>described (5)</b> 4240:3;4257:23; 4272:22;4274:5; 4276:4		
<b>decisions (2)</b> 4223:12;4244:17	<b>deliver (1)</b> 4318:21	<b>describes (1)</b> 4286:24	<b>developers (6)</b> 4185:12;4187:15; 4188:10;4189:3; 4218:18;4221:24	
<b>dedicated (2)</b> 4285:4;4317:17	<b>delivered (1)</b> 4177:13	<b>description (1)</b> 4236:22	<b>desiring (1)</b> 4231:4	
<b>deem (3)</b> 4189:17;4252:15; 4256:10	<b>delta (1)</b> 4214:6	<b>despite (2)</b> 4245:12;4283:25	<b>desist (1)</b> 4263:22	
<b>deemed (1)</b> 4329:3	<b>demand (1)</b> 4179:25	<b>destitute (1)</b> 4263:22	<b>development (15)</b> 4176:17;4177:19; 4182:13;4183:12; 4184:3,10,11;4187:18, 22;4188:9,9,22;4189:2, 10,18	
<b>defaulted (1)</b> 4182:11	<b>demeaning (1)</b> 4245:11	<b>desires (1)</b> 4231:4	<b>developments (1)</b> 4182:20	
<b>defect (1)</b> 4202:5	<b>demonstrate (1)</b> 4263:22	<b>details (1)</b> 4273:5	<b>deviation (2)</b>	
<b>Defendant (4)</b> 4169:22;4206:17; 4263:21,24	<b>demonstrates (1)</b> 4210:20			
<b>Defendants (5)</b>	<b>demonstrative (4)</b> 4255:5,6;4282:7; 4307:25			
	<b>denoted (1)</b> 4309:1			
	<b>dense (4)</b> 4301:16;4307:15,18; 4308:6			
	<b>department (4)</b> 4171:24;4172:1; 4206:13,15			
	<b>departure (15)</b> 4287:24;4288:1; 4295:10;4314:1,16,22,			

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4236:10;4239:23; 4277:18;4285:17; 4323:3;4332:17; 4333:3,17,22 <b>directed (3)</b> 4200:14;4202:11; 4220:5 <b>direction (1)</b> 4223:2 <b>directly (3)</b> 4246:1,5;4264:20 <b>director (1)</b> 4250:9 <b>disadvantages (1)</b> 4226:4 <b>disagree (5)</b> 4203:20;4264:6; 4265:19,19,25 <b>disagreed (1)</b> 4203:25 <b>disagreement (1)</b> 4215:7 <b>discharge (1)</b> 4248:5 <b>disclaimer (6)</b> 4295:9;4297:21; 4313:17,18;4314:1,3 <b>disclose (6)</b> 4263:25;4271:5; 4329:11,13;4330:1; 4331:12 <b>disclosed (5)</b> 4264:4;4265:22; 4298:10;4315:16; 4317:6 <b>discloses (1)</b> 4314:16 <b>disclosing (1)</b> 4265:18 <b>disclosure (7)</b> 4209:8;4257:13; 4295:9;4315:1,4; 4316:14;4331:5 <b>disclosures (2)</b> 4329:24;4331:16 <b>discount (2)</b> 4258:19;4259:18 <b>discounted (2)</b> 4193:17;4270:1 <b>discounting (2)</b> 4261:20;4262:17 <b>discovers (1)</b> 4286:17 <b>discrepancies (8)</b> 4293:17;4297:9,9, 11,12;4298:1,6,9 <b>discretion (4)</b> 4220:19;4221:1; 4231:12;4264:8 <b>discuss (3)</b> 4185:12;4277:19; 4332:10 <b>discussed (5)</b>	4270:9;4289:16; 4305:22;4310:5; 4317:24 <b>discusses (1)</b> 4232:14 <b>discussing (1)</b> 4296:8 <b>discussion (2)</b> 4200:14,15 <b>disgorgement (1)</b> 4246:19 <b>displayed (20)</b> 4254:16,19;4255:6; 4258:4;4278:17; 4282:9;4284:8; 4285:20;4289:1,10; 4314:24;4315:18; 4316:6,23;4317:21; 4318:4;4321:1,21; 4322:12;4324:24 <b>dispute (1)</b> 4208:23 <b>disseminated (1)</b> 4296:2 <b>distinction (1)</b> 4203:10 <b>distinguish (3)</b> 4285:25;4291:9; 4296:17 <b>distinguishing (1)</b> 4256:4 <b>distress (1)</b> 4183:9 <b>district (1)</b> 4177:17 <b>Division (6)</b> 4243:4,9;4244:2,21; 4245:18,21 <b>document (14)</b> 4284:10;4289:3,5; 4296:4;4298:15,17; 4299:6,11;4305:9; 4310:11,19,20; 4321:17;4322:23 <b>documentation (1)</b> 4229:14 <b>documents (10)</b> 4200:21,25;4201:15; 4202:14;4229:7; 4247:11;4253:8,12,15, 17 <b>dollar (2)</b> 4213:24;4214:6 <b>dollars (4)</b> 4194:7;4211:20; 4212:1;4214:3 <b>Donald (4)</b> 4202:2;4228:8; 4297:18;4325:22 <b>donation (1)</b> 4185:18 <b>done (22)</b> 4174:5;4183:19;	4187:10;4198:13; 4205:17;4221:12; 4222:12,15;4223:23; 4231:20;4234:17; 4252:21;4267:11; 4278:13;4279:14; 4301:9;4307:2; 4312:17,20,20;4328:9; 4331:3 <b>door (2)</b> 4263:4,5 <b>Doral (36)</b> 4199:13,17,20,21,22, 25;4200:2,5;4206:4,8; 4209:22,22;4214:12, 12,21;4215:14,17,23, 24;4216:2,4,11,14,16, 18,20,23;4218:4,6; 4219:4,7,9,15;4220:10; 4221:18,19 <b>dovetails (1)</b> 4218:18 <b>down (15)</b> 4176:15;4179:8,15; 4181:8;4184:2;4195:1; 4197:8;4201:1;4216:8; 4223:17;4233:6,23; 4251:25;4307:3; 4332:14 <b>downtown (10)</b> 4177:16,17;4178:6, 15,19;4180:15; 4194:23;4223:15,15,15 <b>dozens (1)</b> 4281:16 <b>draft (3)</b> 4251:4;4319:17,24 <b>drafted (2)</b> 4319:6;4324:4 <b>drafting (2)</b> 4250:5;4254:1 <b>drafts (1)</b> 4310:17 <b>draw (3)</b> 4182:21;4220:23; 4305:16 <b>drew (1)</b> 4217:4 <b>Dreyer (4)</b> 4171:20,21;4172:3; 4173:5 <b>drive (1)</b> 4264:2 <b>drop (1)</b> 4208:19 <b>duly (2)</b> 4170:8;4235:21 <b>duration (1)</b> 4281:5 <b>during (17)</b> 4184:24;4202:3,11; 4219:3;4227:1; 4234:24;4241:12;	4242:20;4246:7; 4248:9;4251:3,10; 4254:10;4277:20; 4306:2;4311:7,10 <b>duty (1)</b> 4239:5 <b>dynamics (1)</b> 4179:25 <b>E</b> <b>earlier (15)</b> 4171:17;4189:23; 4198:17;4206:9; 4226:21;4246:10; 4263:19;4266:15; 4279:22;4308:8; 4311:15;4316:10; 4317:15,24;4324:16 <b>early (3)</b> 4170:25;4171:1; 4173:15 <b>earnings (7)</b> 4258:17,17,20; 4261:20;4262:25; 4263:2;4269:3 <b>easier (1)</b> 4197:20 <b>easily (1)</b> 4331:14 <b>East (1)</b> 4169:18 <b>ECV (2)</b> 4256:12,17 <b>educate (1)</b> 4194:15 <b>education (2)</b> 4238:20;4241:18 <b>educational (1)</b> 4171:3 <b>effect (3)</b> 4259:23;4290:3; 4302:12 <b>effective (1)</b> 4296:6 <b>effectively (1)</b> 4298:1 <b>effectiveness (1)</b> 4299:6 <b>effects (1)</b> 4209:7 <b>effectuate (1)</b> 4231:10 <b>efficient (2)</b> 4226:8,22 <b>effort (1)</b> 4251:13 <b>eight (3)</b> 4184:15;4190:19; 4273:25 <b>Eighth (1)</b> 4192:16 <b>either (19)</b>	4170:11;4186:11; 4192:24;4208:2; 4211:22,22;4216:7,25; 4235:24;4249:24; 4260:5,18;4265:24; 4268:23;4274:2; 4293:9;4299:20; 4315:13;4327:4 <b>element (1)</b> 4249:11 <b>elementary (1)</b> 4171:4 <b>elevator (1)</b> 4226:12 <b>elicit (1)</b> 4216:22 <b>eliciting (1)</b> 4219:9 <b>eliminate (1)</b> 4230:15 <b>eliminates (1)</b> 4230:10 <b>elimination (1)</b> 4231:1 <b>else (11)</b> 4172:9;4175:9; 4179:4;4192:6;4198:2; 4214:20;4273:6; 4281:8;4286:3; 4333:12;4334:8 <b>elsewhere (2)</b> 4264:21;4299:22 <b>e-mail (1)</b> 4229:18 <b>emailed (1)</b> 4233:18 <b>embedded (1)</b> 4279:13 <b>enabled (1)</b> 4239:13 <b>encountered (1)</b> 4193:20 <b>encourage (1)</b> 4178:16 <b>end (5)</b> 4264:3;4271:1,3,4; 4274:19 <b>ENDEAVOR (1)</b> 4168:9 <b>ended (1)</b> 4240:8 <b>ending (4)</b> 4215:18;4310:15; 4323:2;4324:2 <b>Enforcement (18)</b> 4243:4,7,10;4244:2, 8,10,19,21;4245:8,19, 21,25;4246:3,17; 4247:10,16;4248:1; 4251:16 <b>engaged (1)</b> 4307:18 <b>engagement (30)</b>
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4239:13,24;4281:20; 4283:11,14;4284:19, 20;4285:7;4287:7; 4306:2,13;4309:12; 4310:12,17;4311:6,19; 4313:6,8,18;4319:8,14; 4320:7,9,19,23;4321:5, 6,7;4327:14,15 <b>engagements (19)</b> 4239:2,3,15,23; 4240:2;4242:21; 4244:20;4282:23; 4283:7,9;4289:25; 4296:18;4298:22; 4299:24;4303:25; 4309:4;4312:2,18; 4313:9 <b>Engoron (1)</b> 4278:5 <b>enhance (1)</b> 4199:6 <b>enjoyed (1)</b> 4243:5 <b>enjoying (1)</b> 4227:23 <b>enlarged (1)</b> 4289:11 <b>enough (4)</b> 4171:24;4183:20; 4193:21;4317:19 <b>ensue (1)</b> 4261:13 <b>ensure (1)</b> 4286:23 <b>entail (4)</b> 4177:15;4257:9,13; 4328:6 <b>entailed (4)</b> 4176:4;4237:18; 4239:1;4240:17 <b>entails (2)</b> 4292:6;4328:12 <b>entered (1)</b> 4310:12 <b>entering (2)</b> 4235:17;4284:18 <b>entire (5)</b> 4182:10;4184:20; 4213:2;4222:21; 4305:9 <b>entirely (2)</b> 4267:18;4327:20 <b>entirety (1)</b> 4230:21 <b>entities (9)</b> 4244:5,23;4245:2; 4255:19;4257:14; 4269:13,16;4281:3,17 <b>entitling (1)</b> 4285:24 <b>entity (4)</b> 4257:2,8;4280:12,22 <b>entry (1)</b>	4243:9 <b>entry-level (1)</b> 4244:1 <b>enumerated (1)</b> 4311:1 <b>environment (2)</b> 4178:18;4223:16 <b>equipped (1)</b> 4228:4 <b>equity (1)</b> 4257:12 <b>equivalent (2)</b> 4223:18;4250:10 <b>ERIC (1)</b> 4168:24 <b>error (2)</b> 4247:5;4291:24 <b>errors (1)</b> 4241:9 <b>ESQ (6)</b> 4168:23,24;4169:5, 6,10,19 <b>essence (1)</b> 4255:1 <b>essential (2)</b> 4192:1;4242:22 <b>essentially (1)</b> 4251:1 <b>establish (6)</b> 4206:14;4207:22; 4210:8;4256:17; 4258:20;4284:17 <b>established (5)</b> 4204:12;4207:11; 4255:17;4284:2; 4286:19 <b>establishing (4)</b> 4287:3;4304:12; 4313:19;4314:5 <b>estate (48)</b> 4171:19,24,25; 4172:4,8,8,15;4173:3, 25;4174:1,9,13,14; 4180:22;4187:18,19, 22;4188:2,8,9,10,22; 4189:2,3,9,18;4191:15, 18,21;4194:18; 4196:12;4212:14,15; 4216:15;4218:5,18; 4219:22;4222:22; 4244:25;4248:8; 4260:22;4266:9,16; 4267:4,21;4269:22; 4274:7;4302:23 <b>estimate (4)</b> 4257:19;4271:3; 4303:5,7 <b>estimated (66)</b> 4196:12,20,24; 4197:1;4212:22; 4232:13;4254:13,22, 25;4255:2,11,15,17,22, 24;4256:2,8,14,21;	4259:15;4260:2,10; 4261:16;4262:2; 4263:8,13;4264:13; 4267:4,20;4268:15; 4271:14;4272:14; 4273:24;4274:7; 4276:13;4278:21; 4279:10,16;4280:6,15, 20,24;4281:6,9; 4286:14,25;4287:3,20; 4300:4;4302:20; 4303:13;4304:5,13,24, 25;4313:20;4314:5,9, 11;4325:9,15,24; 4328:15;4329:1,7,14 <b>estimates (2)</b> 4269:21;4280:2 <b>estimation (1)</b> 4258:14 <b>ESU (1)</b> 4181:22 <b>et (3)</b> 4189:19;4194:9; 4291:8 <b>Europe (2)</b> 4174:6;4224:12 <b>evaluate (3)</b> 4246:23;4268:11; 4286:15 <b>evaluating (13)</b> 4180:19;4240:18,18; 4244:7;4246:14; 4247:2,21,23;4251:2; 4261:10;4263:20; 4287:11,21 <b>evaluation (2)</b> 4256:13;4304:5 <b>even (13)</b> 4201:21;4207:3; 4209:21;4215:1; 4216:12;4221:1,18; 4277:1,5;4287:7; 4309:11;4324:6; 4325:23 <b>event (2)</b> 4209:9;4231:8 <b>eventually (1)</b> 4183:15 <b>everybody (1)</b> 4192:6 <b>everyone (3)</b> 4203:11;4214:1; 4278:12 <b>evidence (13)</b> 4188:11,12;4209:1, 2;4210:6,9;4220:23; 4229:17;4231:22; 4239:12;4246:25; 4310:7;4322:22 <b>evidentiary (1)</b> 4215:19 <b>exact (3)</b> 4212:7;4261:12;	4276:2 <b>exactly (14)</b> 4171:25;4173:23; 4175:10;4187:11; 4190:22;4201:14; 4207:5,8;4208:9; 4209:10;4210:11,12; 4211:21;4212:1 <b>exam (5)</b> 4238:15,15;4248:25; 4249:11;4301:18 <b>EXAMINATION (6)</b> 4170:17;4197:15; 4227:17;4233:15; 4234:14;4236:10 <b>examined (2)</b> 4170:8;4235:21 <b>examiner (2)</b> 4248:21,24 <b>Examiners (1)</b> 4248:18 <b>example (23)</b> 4186:5,23;4192:15; 4194:5,22,23;4195:20; 4196:21;4197:20; 4253:4;4259:22; 4267:25;4269:13; 4270:19;4271:17; 4272:6,25;4275:22; 4281:1;4302:21; 4306:15;4308:14; 4311:12 <b>examples (6)</b> 4186:2;4193:15,19; 4302:24;4306:1,17 <b>except (1)</b> 4308:16 <b>exceptions (8)</b> 4286:22;4308:12; 4309:17;4315:3; 4320:6,9,19;4323:10 <b>Exchange (6)</b> 4178:1;4243:4; 4244:3;4245:9;4246:8; 4249:14 <b>exchanged (1)</b> 4255:3 <b>excluded (1)</b> 4317:6 <b>excludes (1)</b> 4317:10 <b>exclusively (1)</b> 4188:1 <b>excuse (4)</b> 4180:8;4220:1; 4241:1;4323:18 <b>excused (3)</b> 4205:15;4233:5; 4332:11 <b>executive (2)</b> 4174:14;4251:7 <b>executives (1)</b> 4247:18	<b>exercise (7)</b> 4220:18;4246:16; 4292:21;4293:1; 4301:10;4303:12; 4305:5 <b>exhausted (1)</b> 4322:16 <b>Exhibit (38)</b> 4229:17;4231:22; 4254:15,16,19;4258:4; 4278:16,17;4282:8,9; 4284:7,8;4285:20; 4289:1,10;4296:3; 4300:3;4307:2,25; 4310:7;4314:24; 4315:18;4316:6,23; 4317:21;4318:3,4,6; 4320:24,25;4321:1,21; 4322:11,12,14,22; 4324:23,24 <b>exist (6)</b> 4179:24;4251:12; 4258:1;4278:20; 4283:4;4298:12 <b>existed (2)</b> 4179:7;4231:24 <b>existence (3)</b> 4178:9;4179:2; 4255:16 <b>existing (1)</b> 4226:5 <b>exists (2)</b> 4207:10;4296:1 <b>exit (9)</b> 4180:22;4198:17,18, 20,20,24,25;4199:3,5 <b>expect (8)</b> 4234:15;4263:21; 4319:23;4320:2; 4328:14,17,20;4331:21 <b>expectation (4)</b> 4234:12;4235:9; 4325:10,18 <b>expected (9)</b> 4233:14;4258:17,18; 4259:18;4270:25; 4273:12;4320:18; 4327:3;4334:4 <b>expenses (9)</b> 4222:13;4257:11; 4262:9,11,13,14,16; 4263:1,6 <b>experience (23)</b> 4175:17;4177:23; 4219:22;4223:21; 4227:24;4231:14; 4238:14;4240:13,15; 4245:13;4246:10,24; 4247:17;4249:1,9,12, 19;4263:17;4268:9; 4273:9;4274:16; 4275:7;4287:6 <b>experienced (1)</b>
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4195:6 <b>expert (54)</b> 4185:9,12;4187:15, 18,22;4188:9,20,22; 4189:1,9,17,21; 4191:10,15;4196:14, 25;4199:13;4206:13; 4217:7;4218:5,16,19; 4219:3;4220:19,25; 4227:9,24;4236:17,18, 23;4249:25;4250:2,4,4, 5;4251:3,6;4252:1,5,7, 10,14,15,24,25;4268:8, 9;4270:3;4271:11; 4282:13;4301:4; 4304:10;4313:3; 4326:15 <b>expertise (4)</b> 4189:2;4225:16,20; 4236:16 <b>experts (4)</b> 4188:23,23;4218:22; 4233:22 <b>expert's (2)</b> 4206:16;4221:23 <b>explain (8)</b> 4203:8;4209:13; 4264:12;4291:15; 4300:8;4308:7;4327:5, 8 <b>explaining (2)</b> 4178:12;4292:22 <b>explored (1)</b> 4194:3 <b>exploring (1)</b> 4301:12 <b>exposure (2)</b> 4245:3;4246:6 <b>express (2)</b> 4188:5;4189:12 <b>expressed (1)</b> 4221:13 <b>expression (1)</b> 4204:13 <b>extend (2)</b> 4186:15;4311:12 <b>extended (2)</b> 4183:11;4186:22 <b>extensive (2)</b> 4235:7;4247:20 <b>extent (8)</b> 4201:18;4240:21; 4241:9;4277:8; 4278:24;4286:17; 4303:6;4304:7 <b>external (4)</b> 4256:13,24;4269:25; 4308:10 <b>extraordinarily (1)</b> 4201:6 <b>extraordinary (2)</b> 4210:23;4212:6 <b>extreme (1)</b>	4308:17  <b>F</b>  <b>F3d (1)</b> 4209:5 <b>facing (1)</b> 4183:4 <b>fact (15)</b> 4210:16,19;4225:1, 6,13;4241:6;4247:14; 4248:21;4255:22; 4261:9;4263:10; 4269:24;4309:16; 4315:21;4334:4 <b>factor (5)</b> 4193:9,10;4223:9, 11;4262:16 <b>factored (1)</b> 4279:8 <b>factors (15)</b> 4191:22;4199:16; 4207:24;4208:22; 4218:4,5,8,24;4219:9, 23;4220:12;4221:23; 4222:9;4223:5; 4280:10 <b>facts (3)</b> 4229:6,9;4300:18 <b>factual (1)</b> 4326:16 <b>FAHERTY (2)</b> 4168:23;4332:4 <b>failure (6)</b> 4179:13;4202:5; 4236:22;4248:2; 4323:17,18 <b>fair (24)</b> 4175:5;4177:24,25; 4185:20;4191:15; 4202:15;4222:13; 4255:13,14,15,19,23, 25;4256:3,3,5,12,18, 19;4257:18,22;4258:1; 4267:16;4301:6 <b>fairly (8)</b> 4200:17,21;4201:5; 4202:6;4283:1,17; 4293:19;4319:2 <b>fairness (1)</b> 4237:19 <b>false (2)</b> 4202:15;4209:22 <b>familiar (19)</b> 4175:18,21;4176:24; 4177:10;4178:1,20; 4180:3;4181:24; 4182:4,23;4184:5; 4224:4;4225:21; 4269:23;4271:19; 4312:1,1,24;4313:1 <b>family (2)</b> 4182:13;4191:7	<b>far (3)</b> 4206:20;4308:5,20 <b>FAS (3)</b> 4240:10;4241:21; 4242:6 <b>fashion (3)</b> 4193:12;4200:12; 4322:5 <b>favor (2)</b> 4200:8;4231:3 <b>fear (1)</b> 4179:13 <b>feather (1)</b> 4243:7 <b>fee (2)</b> 4224:18;4249:2 <b>feeding (1)</b> 4311:9 <b>feel (1)</b> 4205:7 <b>fees (1)</b> 4209:8 <b>feet (2)</b> 4176:6;4182:15 <b>felt (1)</b> 4244:12 <b>few (10)</b> 4175:15;4180:11; 4182:22;4226:20; 4233:14,17;4251:22; 4253:4;4256:19; 4284:16 <b>fewer (2)</b> 4257:23;4309:17 <b>field (16)</b> 4175:17;4187:18,19, 22;4188:19;4189:9; 4241:14;4251:10,14, 20;4252:1,5,8,11,14,16 <b>fifth (3)</b> 4204:5;4316:22; 4319:1 <b>figure (1)</b> 4268:3 <b>figuring (1)</b> 4187:6 <b>files (2)</b> 4240:20;4246:13 <b>filings (1)</b> 4202:10 <b>filled (1)</b> 4334:5 <b>financial (169)</b> 4176:10,15;4177:17; 4199:21;4201:4,12; 4202:3,6,17,21,24; 4206:22,23;4209:14; 4218:13;4221:20; 4225:9;4228:8; 4231:23;4237:15,20; 4239:4,7;4240:11,13, 14,16;4241:1,8; 4242:10,19;4244:4,24;	4246:7,7,11,22,25; 4249:4;4253:16,19; 4254:5;4255:20; 4256:25;4257:2,6,7,8, 17,21;4258:11; 4260:14;4263:20; 4264:2,9;4265:4,19; 4266:8;4268:2; 4269:12;4277:10; 4279:2;4280:13,20; 4281:3,10,12,18; 4283:1,4,19,23; 4285:12;4286:12,14, 24;4287:12,14;4288:1; 4289:17,18,19,21,24; 4290:1,10;4292:15; 4293:3,5,8,9,10,13,15, 19,25;4295:1,6,20,23; 4296:14;4297:5,19,23; 4298:7,20;4299:2,21; 4300:18;4303:3,4,11; 4304:1,17;4305:7,11, 19,21;4306:8,21; 4308:15;4310:14; 4311:10;4312:3,11,13; 4313:21;4314:20; 4315:11,24;4316:3,11, 12,16;4317:3,4,7,9; 4319:13,15;4320:21; 4321:12,13;4322:2,6, 25;4325:2,3,13,21; 4326:13;4327:13,18; 4328:19;4329:5,11,15, 17,19,19,25;4330:17, 24;4331:1,3,6,11,13,15 <b>financially (1)</b> 4201:14 <b>financials (16)</b> 4240:23;4246:15; 4264:4;4280:19; 4283:17;4288:14; 4293:24;4294:1; 4296:1,16,17,20; 4298:8;4308:18,22; 4319:22 <b>financing (3)</b> 4179:24;4195:10; 4270:6 <b>find (2)</b> 4217:1;4266:19 <b>finding (3)</b> 4224:11;4241:6; 4247:14 <b>findings (1)</b> 4239:13 <b>fine (8)</b> 4189:7;4205:7; 4233:15;4273:18; 4277:16;4324:7; 4326:18;4330:12 <b>finer (1)</b> 4263:23 <b>finish (2)</b>	4203:15;4234:19 <b>finished (1)</b> 4324:6 <b>finishing (1)</b> 4182:17 <b>firm (27)</b> 4171:19;4172:1,4, 23;4173:1,2,20;4179:1, 3;4189:25;4190:17; 4223:19;4243:1,2,8; 4249:21,21;4250:15; 4292:18;4298:3; 4300:23,25;4304:11; 4311:5;4318:22; 4319:23;4321:15 <b>firms (5)</b> 4242:14;4247:19,22, 23;4249:20 <b>first (30)</b> 4170:8;4171:23; 4172:10,13;4178:10; 4183:1,8;4190:15; 4206:13,15;4227:24; 4235:21;4238:22; 4242:10;4245:16; 4247:2;4251:11; 4255:17;4257:5; 4258:15;4259:16,17; 4284:17;4313:17; 4314:4,4;4316:19; 4317:25;4319:2; 4330:3 <b>Fisher (1)</b> 4177:12 <b>five (14)</b> 4177:9;4184:15; 4195:3;4212:20; 4213:16;4230:25; 4246:4;4266:7;4276:5, 22;4300:2;4304:19; 4311:1,6 <b>Five-minute (1)</b> 4331:17 <b>fix (1)</b> 4292:3 <b>fixed (1)</b> 4314:14 <b>flag (3)</b> 4181:18;4316:14; 4323:15 <b>Flemmons (25)</b> 4233:11,19;4234:1, 18,19;4235:5;4236:1, 12,16,22;4237:2; 4238:2;4252:13,17; 4258:6;4278:19; 4282:11;4284:10; 4298:15;4307:22; 4310:9;4328:23,25; 4332:8,24 <b>Flemmons' (1)</b> 4272:3 <b>floors (1)</b>
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4181:2 <b>Florida (7)</b> 4170:14;4174:4; 4182:22;4183:22,24; 4194:25;4195:21 <b>flow (10)</b> 4193:17;4198:7,11; 4219:25;4222:12,13; 4223:7;4225:9; 4232:15,23 <b>flows (2)</b> 4257:12;4289:20 <b>focus (2)</b> 4254:21;4304:20 <b>follow (2)</b> 4292:19;4307:21 <b>followed (1)</b> 4318:24 <b>following (9)</b> 4193:24;4197:4; 4243:11;4266:3; 4277:23;4291:8; 4299:9;4305:15; 4313:23 <b>follows (2)</b> 4170:9;4235:22 <b>food (1)</b> 4205:18 <b>foot (5)</b> 4176:5;4186:8,9; 4195:5;4205:6 <b>force (1)</b> 4250:25 <b>forensic (9)</b> 4237:25;4240:9; 4241:1,21;4250:18,24; 4251:8,11;4254:2 <b>forensics (1)</b> 4249:4 <b>forgetful (1)</b> 4174:16 <b>form (11)</b> 4224:10,16;4258:19; 4264:16;4295:8; 4296:25;4297:17; 4321:5,13;4322:5; 4324:17 <b>formally (1)</b> 4244:12 <b>format (3)</b> 4292:13,18;4297:5 <b>formatting (3)</b> 4292:20,25;4303:12 <b>formed (2)</b> 4196:10;4229:10 <b>formerly (1)</b> 4186:6 <b>forming (8)</b> 4228:7,18,21,25; 4229:14;4231:19,25; 4232:10 <b>forms (1)</b> 4296:24	<b>formulate (1)</b> 4198:11 <b>forth (2)</b> 4254:22;4270:16 <b>Forty (1)</b> 4218:25 <b>forward (2)</b> 4272:22;4283:13 <b>found (1)</b> 4206:11 <b>foundation (1)</b> 4271:10 <b>founded (1)</b> 4188:7 <b>four (13)</b> 4184:14;4203:21,23, 24,25;4230:9,9,10,20; 4250:14;4273:3,22; 4327:17 <b>fourth (3)</b> 4229:19;4230:1; 4316:5 <b>frame (2)</b> 4189:4;4283:12 <b>framed (1)</b> 4204:14 <b>frankly (2)</b> 4220:20;4221:1 <b>fraud (18)</b> 4203:3,11,11,11,12, 12,21,21;4204:5,11,13, 17;4211:6;4246:25; 4248:18,21,23;4250:25 <b>frauds (1)</b> 4242:10 <b>fraudulent (5)</b> 4204:17;4206:24; 4210:25;4213:8,11 <b>fraudulently (4)</b> 4205:12;4206:1,11; 4218:12 <b>Freddie (1)</b> 4173:8 <b>freestanding (1)</b> 4204:17 <b>Friday (4)</b> 4333:15,15,21; 4334:8 <b>friend (2)</b> 4191:6,8 <b>friends (2)</b> 4173:16;4181:20 <b>friendship (1)</b> 4191:1 <b>front (2)</b> 4178:24;4244:17 <b>FTI (9)</b> 4249:20,22;4250:8, 10,12,13,14,16,17 <b>full (10)</b> 4201:25;4202:1,2, 16;4234:6,14,15; 4235:8;4317:25;	4319:1 <b>fully (2)</b> 4183:16;4267:24 <b>fulsome (1)</b> 4233:14 <b>fundamental (1)</b> 4220:23 <b>funding (1)</b> 4270:12 <b>further (4)</b> 4206:12;4227:15; 4262:1;4268:23 <b>future (31)</b> 4194:5,13,15; 4231:2;4258:18,21; 4259:7,10,17;4260:1; 4261:11;4267:12; 4268:14,24;4269:1,3,5, 6;4270:20;4273:15; 4274:25;4279:18,19, 21,23;4280:1,1,2,5; 4314:13,15	<b>G</b> <b>GAAP (73)</b> 4197:1;4241:8; 4242:21,22;4253:20; 4255:14;4256:17; 4263:2;4277:7,8,9,10; 4280:7,13,23;4284:3; 4286:20;4287:1,23; 4288:1,9,11;4290:6; 4291:8;4293:4,4,6,6,7, 9,14,17,22,24;4294:2; 4295:2,7,11,14,15; 4297:8,9;4298:1,2,6,6, 9;4305:19,24;4306:13, 22;4308:12,16,19,22; 4309:17;4310:4; 4314:17,18;4315:25; 4316:8,8,11,17;4317:4, 18;4319:13,16,21; 4320:22;4323:7; 4324:18;4328:11 <b>gaining (1)</b> 4287:20 <b>gains (1)</b> 4224:15 <b>game (1)</b> 4186:11 <b>gamut (2)</b> 4222:21;4245:1 <b>gave (1)</b> 4233:13 <b>GENERAL (23)</b> 4168:3,20;4175:10; 4176:1;4193:8;4201:2; 4205:4,9;4208:1; 4212:8;4218:10; 4221:2,6,17;4222:6; 4245:10;4272:10; 4303:10,24;4311:19;	4318:13,22;4321:19 <b>generality (1)</b> 4274:22 <b>Generally (33)</b> 4183:7;4185:6; 4220:6;4221:15,23; 4222:9,18,20;4224:8, 10,11,14,17;4225:7,21; 4245:4;4250:1;4253:8, 12;4257:9;4273:11; 4287:15,19;4289:22; 4311:2;4313:7;4314:1; 4315:6,11;4319:3; 4321:19;4322:3; 4323:16 <b>General's (1)</b> 4208:18 <b>generate (3)</b> 4260:1;4275:2; 4327:12 <b>generated (6)</b> 4253:17;4258:18; 4259:8,11,18;4275:1 <b>generating (4)</b> 4194:10;4197:7; 4268:24;4279:25 <b>generation (1)</b> 4224:16 <b>generic (3)</b> 4219:17,18;4222:2 <b>genuine (1)</b> 4206:16 <b>gets (1)</b> 4212:22 <b>Giulietti (1)</b> 4333:15 <b>Giulietti's (1)</b> 4333:22 <b>given (6)</b> 4208:7;4212:23; 4252:18;4319:7,20; 4328:9 <b>gives (3)</b> 4175:9;4220:4; 4308:25 <b>giving (4)</b> 4251:17;4265:23; 4309:15;4315:25 <b>Glock (1)</b> 4173:6 <b>goal (1)</b> 4218:12 <b>goes (15)</b> 4183:23;4185:15; 4199:7;4207:15,16; 4208:10;4218:11; 4221:25;4249:1; 4259:9;4261:1;4263:5; 4284:16,23;4291:16 <b>Goldman (4)</b> 4186:12,15,20,21 <b>Golf (8)</b> 4184:6,8;4219:24;	4220:2,5,6,7,13 <b>Good (22)</b> 4170:3,19,20; 4174:22;4176:22; 4179:10;4180:12; 4191:6,8;4195:11; 4196:8;4199:1,5,6; 4226:18;4227:23; 4228:1;4233:12; 4236:12,13;4277:12; 4334:18 <b>governed (1)</b> 4253:22 <b>governing (1)</b> 4188:7 <b>government (3)</b> 4179:23;4244:25; 4248:8 <b>government's (1)</b> 4252:25 <b>governs (1)</b> 4254:4 <b>grad (1)</b> 4217:6 <b>graduate (1)</b> 4171:12 <b>graduated (5)</b> 4171:7,10;4173:9, 17;4237:12 <b>Granted (1)</b> 4252:15 <b>great (2)</b> 4176:10;4243:6 <b>greater (1)</b> 4295:10 <b>GREENFIELD (17)</b> 4234:1,4,8,10,17; 4235:2;4332:16,20,23; 4333:1,4,6,12,17,24; 4334:7,14 <b>grew (1)</b> 4173:13 <b>ground (18)</b> 4224:4,6,8,11,17,20; 4225:6,10,12,14,17; 4228:19,22;4229:1,6, 13;4230:1,15 <b>grounds (1)</b> 4199:19 <b>group (13)</b> 4172:15;4173:22,23; 4175:24;4180:9,17; 4197:24;4209:4; 4240:12;4241:22; 4242:6;4245:25; 4246:2 <b>grow (2)</b> 4170:24;4173:2 <b>growth (1)</b> 4196:18 <b>guaranties (1)</b> 4200:20 <b>guarantor (1)</b>
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4201:5 <b>guaranty (1)</b> 4200:22 <b>guess (4)</b> 4182:18;4200:1; 4212:6;4234:13 <b>guidance (21)</b> 4251:1,2;4258:9; 4262:1;4264:12; 4288:3;4289:6;4295:5; 4296:1;4298:19; 4299:17,23;4300:8,15; 4301:24;4303:17,21; 4305:8,17,20;4306:3 <b>guide (11)</b> 4193:13;4213:10; 4251:4;4298:18; 4299:3,4,11,12,15,22; 4300:3 <b>guided (1)</b> 4179:13 <b>guideline (1)</b> 4213:12 <b>Guliani (1)</b> 4178:13 <b>Guliani's (1)</b> 4178:5 <b>guys (2)</b> 4180:12;4181:22	<b>happens (4)</b> 4195:21;4211:1; 4280:5;4293:16 <b>happy (2)</b> 4219:4;4330:14 <b>Harbor (1)</b> 4171:1 <b>hard (6)</b> 4195:24;4263:3,4; 4266:19;4274:22; 4301:19 <b>HAREN (1)</b> 4168:24 <b>harm (1)</b> 4204:3 <b>head (1)</b> 4189:1 <b>headquarters (1)</b> 4186:6 <b>healthy (1)</b> 4198:12 <b>hear (14)</b> 4201:16;4210:6; 4211:14;4212:8,25; 4217:9;4218:8,16,19; 4234:13,14;4235:10; 4307:16;4326:5 <b>heard (4)</b> 4171:6;4193:7; 4208:11;4213:21 <b>hearing (1)</b> 4210:6 <b>heart (1)</b> 4187:25 <b>heavily (1)</b> 4251:12 <b>Heights (1)</b> 4173:10 <b>held (8)</b> 4184:25;4262:3; 4264:13,15,18; 4265:10;4281:24; 4302:22 <b>hello (1)</b> 4190:23 <b>Helmsley (1)</b> 4186:6 <b>help (3)</b> 4241:5,8,9 <b>hereby (3)</b> 4189:17;4230:21; 4252:15 <b>Hernandez (1)</b> 4234:25 <b>Hey (1)</b> 4327:24 <b>High (7)</b> 4171:7,8;4182:4; 4183:9;4206:24; 4209:16;4271:4 <b>higher (5)</b> 4186:20;4196:2; 4270:23;4275:2;	4308:25 <b>highered (1)</b> 4237:12 <b>highest (7)</b> 4251:9;4275:8,17, 19,25;4290:8;4295:12 <b>highlighted (1)</b> 4319:11 <b>highly (5)</b> 4201:6;4202:7; 4297:13,15;4328:5 <b>highways (1)</b> 4195:1 <b>hired (2)</b> 4243:8;4245:10 <b>hiring (1)</b> 4242:23 <b>historical (5)</b> 4280:7,10,12; 4298:24;4313:14 <b>hit (1)</b> 4181:17 <b>Hofstra (3)</b> 4171:11,12;4174:15 <b>Hold (4)</b> 4193:23;4194:1; 4205:14;4290:11 <b>holding (1)</b> 4173:24 <b>holdings (1)</b> 4174:2 <b>holistically (1)</b> 4202:4 <b>home (10)</b> 4170:11;4235:24; 4236:2,3,4;4259:1,1; 4270:19;4279:22,22 <b>hone (1)</b> 4291:22 <b>honestly (1)</b> 4215:13 <b>Honor (60)</b> 4170:3;4187:14,24; 4196:23;4197:14; 4199:18;4200:4,13; 4201:2;4203:19,21; 4204:8;4205:10; 4206:7,10;4207:1,21; 4209:3,19;4211:21; 4213:13,20;4214:7,23; 4215:13,15,17,22; 4216:1,13,21;4217:5, 11;4219:7,20;4220:11, 17,18;4225:11,22; 4226:18;4227:16,18, 19;4233:1,4,11; 4235:15;4236:21; 4252:13;4272:1; 4277:13;4278:11; 4292:17;4307:14,18; 4311:16;4331:18; 4332:5;4334:19 <b>Honorable (1)</b>	4278:5 <b>Honor's (2)</b> 4209:10;4220:25 <b>hope (2)</b> 4207:6;4227:23 <b>hopeful (2)</b> 4179:11,17 <b>Hopefully (1)</b> 4334:14 <b>hoping (1)</b> 4186:14 <b>hospitality (4)</b> 4198:14;4199:8,10; 4222:24 <b>host (2)</b> 4210:2;4279:7 <b>hotel (10)</b> 4180:24;4182:15; 4183:16,19;4184:1,9; 4187:5;4192:17; 4193:2;4268:6 <b>hour (3)</b> 4235:7;4332:22; 4333:23 <b>hours (13)</b> 4190:11;4235:8; 4238:13;4241:18; 4253:7;4331:23; 4332:16,20;4333:1,2, 20,23,23 <b>housing (2)</b> 4180:1;4223:17 <b>huge (5)</b> 4194:25;4211:14,16, 17,18 <b>hundred (2)</b> 4194:7;4210:15 <b>hundreds (4)</b> 4211:20;4212:1; 4275:23;4281:13 <b>hypothetical (7)</b> 4261:8,12;4273:5, 19;4279:8,11,12	<b>identify (9)</b> 4258:6;4260:18; 4266:5;4288:5,10; 4295:19;4296:4; 4298:11;4311:7 <b>identifying (2)</b> 4293:8;4317:1 <b>ignore (2)</b> 4201:22;4221:10 <b>ignored (1)</b> 4287:10 <b>ignoring (2)</b> 4206:2;4211:5 <b>illustration (1)</b> 4282:15 <b>illustrations (1)</b> 4258:9 <b>illustrative (1)</b> 4300:8 <b>image (1)</b> 4282:11 <b>imagine (1)</b> 4259:23 <b>imagining (1)</b> 4235:6 <b>impact (2)</b> 4215:24;4289:17 <b>implausible (2)</b> 4327:20;4328:2 <b>implementation (1)</b> 4258:8 <b>implicitly (1)</b> 4215:15 <b>import (2)</b> 4297:21;4306:4 <b>important (10)</b> 4180:21;4183:21; 4184:1;4203:10; 4256:4;4258:22; 4264:3;4267:8;4269:2; 4285:25 <b>importantly (2)</b> 4271:4;4293:25 <b>imposed (2)</b> 4284:15;4285:14 <b>impossible (1)</b> 4261:12 <b>improprieties (1)</b> 4244:6 <b>inability (1)</b> 4246:21 <b>inaccurate (1)</b> 4319:19 <b>inapposite (2)</b> 4210:2;4215:10 <b>inappropriate (3)</b> 4306:7,16,20 <b>INC (1)</b> 4168:8 <b>incentivize (1)</b> 4178:16 <b>incident (1)</b> 4190:25
<b>H</b>			<b>I</b>	
<b>HABBA (1)</b> 4334:11 <b>hairy (1)</b> 4181:15 <b>half (8)</b> 4171:23;4182:14; 4186:8;4195:4;4234:7; 4235:5;4333:20,23 <b>ham (1)</b> 4190:14 <b>hand (4)</b> 4170:6;4235:19; 4256:8;4284:5 <b>handed (4)</b> 4284:7;4318:6; 4320:25;4322:14 <b>Handing (2)</b> 4229:22;4310:8 <b>handle (3)</b> 4239:25;4242:5; 4249:22 <b>Hanover (2)</b> 4186:5;4224:3 <b>happen (4)</b> 4184:12;4195:21; 4279:17,19 <b>happened (3)</b> 4176:19;4302:7; 4311:18 <b>happening (1)</b> 4195:22			<b>ice (1)</b> 4205:7 <b>idea (4)</b> 4188:5;4201:21; 4205:24;4216:3 <b>ideal (1)</b> 4266:20 <b>identical (2)</b> 4264:23;4323:5 <b>identified (15)</b> 4267:1;4288:9; 4305:24;4310:3; 4315:3,5,8,10,15,20; 4317:10;4321:18; 4322:4;4323:11,25 <b>identifies (2)</b> 4317:18;4319:14	

November 14, 2023

<b>inclined (1)</b> 4216:25 <b>include (19)</b> 4225:1;4233:21; 4246:18;4269:3; 4285:16;4286:21; 4288:16;4295:21; 4303:1;4308:14; 4311:5;4317:5,7; 4320:6,8;4323:17,19; 4324:14,18 <b>included (7)</b> 4282:12;4283:22; 4286:4;4295:13; 4309:7;4310:4;4317:3 <b>includes (31)</b> 4261:7;4285:22; 4317:18 <b>including (9)</b> 4180:11;4184:21; 4203:24;4206:3; 4267:12,23;4290:7; 4297:13;4331:1 <b>income (10)</b> 4222:13;4257:10; 4262:9,10,11;4267:12; 4271:23;4279:23; 4280:3;4316:12 <b>inconceivable (1)</b> 4186:10 <b>inconsistency (1)</b> 4211:4 <b>inconsistent (2)</b> 4315:25;4327:20 <b>incorporate (1)</b> 4268:14 <b>incorporated (1)</b> 4223:8 <b>incorporating (1)</b> 4204:7 <b>incorrect (3)</b> 4210:12;4324:9,10 <b>incorrectly (1)</b> 4210:9 <b>increase (1)</b> 4269:9 <b>increased (2)</b> 4223:17;4242:3 <b>increases (2)</b> 4208:16,19 <b>incurred (1)</b> 4315:22 <b>indeed (2)</b> 4200:11;4326:25 <b>independent (1)</b> 4269:22 <b>index (2)</b> 4260:7,8 <b>indicate (3)</b> 4207:7;4232:21; 4323:13 <b>indicates (2)</b> 4314:7;4319:12	<b>indicating (1)</b> 4232:19 <b>individual (5)</b> 4256:9;4257:1,17; 4269:15;4304:24 <b>individually (1)</b> 4276:17 <b>individuals (8)</b> 4240:22;4242:2; 4244:7;4246:18,19,20; 4249:24;4257:15 <b>individual's (1)</b> 4303:3 <b>industrial (1)</b> 4222:24 <b>industries (2)</b> 4237:17;4240:3 <b>industry (12)</b> 4244:22;4251:1; 4285:2,5,13;4305:10, 10;4311:20;4318:18; 4320:4;4325:19; 4327:16 <b>inferior (2)</b> 4276:14,15 <b>inflate (2)</b> 4206:1;4218:12 <b>inflated (4)</b> 4200:3;4205:12; 4206:11;4218:14 <b>influence (1)</b> 4192:10 <b>information (15)</b> 4208:8;4247:21; 4263:18;4292:6; 4297:10;4321:12; 4325:12,20;4326:10, 11,12;4327:11,12; 4328:14,20 <b>ingredients (1)</b> 4192:1 <b>inherently (3)</b> 4271:2;4273:15; 4309:20 <b>initial (1)</b> 4252:24 <b>innocent (1)</b> 4247:4 <b>inputs (3)</b> 4256:20;4259:5; 4268:4 <b>inquiry (2)</b> 4291:18;4328:6 <b>insider (1)</b> 4269:17 <b>instance (4)</b> 4226:10;4306:15; 4322:21;4323:6 <b>instances (3)</b> 4314:7,14;4319:15 <b>instead (3)</b> 4225:25;4232:22; 4301:18	<b>Institute (2)</b> 4248:16;4298:24 <b>institutions (4)</b> 4239:4,8;4244:25; 4246:12 <b>instruct (1)</b> 4305:20 <b>instructed (1)</b> 4222:20 <b>insufficient (1)</b> 4295:16 <b>intellectual (1)</b> 4179:3 <b>intend (2)</b> 4206:1;4269:15 <b>intended (10)</b> 4267:11,16;4268:6; 4269:18;4279:12,15; 4299:22;4308:7; 4309:13;4313:18 <b>intending (1)</b> 4316:9 <b>intensive (1)</b> 4237:8 <b>intent (16)</b> 4185:16;4203:22; 4204:2,7,8,9,17; 4206:14;4207:9,10,13, 13,22;4218:11; 4221:25;4301:14 <b>intentionally (1)</b> 4206:17 <b>interaction (1)</b> 4242:3 <b>interest (1)</b> 4208:19 <b>interested (4)</b> 4207:13,14;4208:12, 12 <b>interesting (3)</b> 4194:21;4244:16; 4250:19 <b>interestingly (1)</b> 4183:20 <b>interests (1)</b> 4314:13 <b>interject (1)</b> 4199:18 <b>internal (9)</b> 4211:3;4241:4; 4242:7,12;4249:24; 4256:12,12,23;4290:14 <b>internally (1)</b> 4270:2 <b>international (1)</b> 4239:7 <b>Internet-related (1)</b> 4222:25 <b>interpretation (1)</b> 4264:16 <b>interpreted (1)</b> 4264:14 <b>interpretive (3)</b>	4288:23;4289:6; 4299:22 <b>interrupt (1)</b> 4205:20 <b>into (56)</b> 4171:24;4173:9,17, 18;4176:6;4177:7,7; 4178:8,17,25;4180:14; 4181:25;4187:1,13; 4191:22;4193:3; 4195:23;4196:15,16, 17;4197:15;4200:18, 19;4202:16;4208:21; 4210:10;4216:13; 4218:22;4219:5; 4222:17;4223:8; 4237:14,24;4240:9; 4255:16;4261:1,2,6; 4262:11;4264:22; 4268:3,5;4271:23,24; 4275:14;4278:9,23; 4281:15;4282:1,2; 4284:16,18;4297:5; 4301:8;4302:12; 4310:12 <b>intriguing (1)</b> 4243:5 <b>introduce (1)</b> 4170:22 <b>introduced (1)</b> 4190:23 <b>intuitive (1)</b> 4269:4 <b>inventory (1)</b> 4280:11 <b>investigating (2)</b> 4244:24;4247:4 <b>investigation (3)</b> 4242:7,12,17 <b>investigations (7)</b> 4241:4;4244:4; 4246:11,13;4247:12; 4249:25;4251:3 <b>investigative (2)</b> 4244:14;4247:13 <b>investment (5)</b> 4191:25;4264:13,15; 4265:9;4281:6 <b>investments (3)</b> 4262:2;4281:2; 4302:22 <b>involved (20)</b> 4174:24;4175:16; 4182:21;4184:16,23; 4237:22;4239:9; 4242:17;4244:6,14,24; 4245:2;4247:13; 4248:10,12;4251:1,12, 17;4254:1;4309:20 <b>involvement (6)</b> 4174:18;4175:1,24; 4250:21,22;4287:5 <b>involves (2)</b>	4257:6;4266:14 <b>involving (3)</b> 4180:3;4251:16; 4303:5 <b>irrelevant (4)</b> 4201:23;4202:19; 4220:20,24 <b>issue (23)</b> 4185:15;4187:25; 4202:14;4218:11; 4220:7;4221:16; 4239:14;4261:5; 4293:13,18,22;4294:1; 4295:1;4298:4,8; 4300:16;4308:9,21; 4314:19;4317:9; 4322:1;4329:5; 4330:17 <b>issued (11)</b> 4251:11,13;4254:8; 4281:21;4293:11; 4294:1;4295:6; 4297:18;4298:18; 4299:18;4309:25 <b>issues (8)</b> 4233:13;4241:7; 4245:3;4249:25; 4251:16;4301:14; 4311:12;4333:9 <b>issuing (10)</b> 4237:20;4250:5; 4283:16;4293:7; 4295:22;4296:21; 4298:7;4309:19; 4316:2,15 <b>item (3)</b> 4303:2,4;4316:13 <b>itemizing (1)</b> 4320:19 <b>items (7)</b> 4282:19;4311:7,13; 4315:2,4;4317:3,8 <b>iterations (2)</b> 4184:11;4
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4244:16;4291:4 <b>jobs (1)</b> 4184:15 <b>John (1)</b> 4175:1 <b>joined (1)</b> 4238:21 <b>Judge (6)</b> 4175:19;4188:19; 4220:10;4227:12; 4278:5;4301:3 <b>judgement (1)</b> 4290:5 <b>Judge's (2)</b> 4197:4;4220:8 <b>judgment (9)</b> 4215:15;4220:22; 4221:7;4263:16; 4265:17;4266:25; 4268:18;4276:24; 4325:4 <b>judgments (1)</b> 4275:13 <b>June (4)</b> 4310:15;4318:8; 4323:2;4324:2 <b>jurisdiction (2)</b> 4248:1;4273:10 <b>jurisdictions (2)</b> 4238:7;4273:6 <b>Justice (1)</b> 4168:16	4308:8;4309:4 <b>KISE (43)</b> 4169:5;4187:24; 4188:24;4189:12; 4200:6,7,11;4203:4,7, 15,18;4204:7,21,24; 4205:2,17;4207:3,5,15, 19,21;4209:18,19; 4210:1;4211:14,17,19; 4212:18;4213:9,14; 4214:24;4215:4,8,17, 21;4217:5;4221:2,5; 4300:21;4301:6; 4326:19,20,25 <b>knew (4)</b> 4190:11;4204:6; 4206:3;4217:9 <b>knowingly (1)</b> 4325:3 <b>knowledge (6)</b> 4242:21,22;4285:7; 4287:1;4313:13,14 <b>known (13)</b> 4176:24;4177:10; 4182:4;4187:19; 4215:16;4229:18; 4250:24;4254:6; 4282:3;4293:18,23; 4308:13;4311:24 <b>knows (3)</b> 4203:19,21;4264:4	<b>larger (3)</b> 4183:19;4196:2; 4226:16 <b>Larry (2)</b> 4173:6,8 <b>last (10)</b> 4172:10;4191:5; 4198:4;4209:18; 4222:24;4233:18; 4253:6;4262:14; 4270:16;4306:5 <b>late (2)</b> 4249:17;4326:24 <b>later (7)</b> 4172:16;4190:19; 4199:9;4206:4; 4241:13;4245:17; 4282:2 <b>latitude (5)</b> 4257:16,24;4266:22; 4268:14,17 <b>LAW (20)</b> 4169:17;4171:11,13, 18,19;4173:1,2;4179:1, 3;4188:7;4189:24; 4203:22;4204:15,16; 4206:18;4208:4; 4233:25;4237:9; 4301:18;4307:20 <b>lawyer (1)</b> 4171:22 <b>lawyers (4)</b> 4241:5,7;4247:10; 4249:23 <b>layout (2)</b> 4283:21;4304:3 <b>lead (2)</b> 4287:23;4316:13 <b>leading (8)</b> 4172:3;4197:9; 4260:23,24;4274:10; 4303:15;4315:7; 4320:11 <b>leads (1)</b> 4218:22 <b>learn (1)</b> 4326:22 <b>learned (1)</b> 4192:12 <b>lease (16)</b> 4186:15,22;4198:8; 4224:6,8,21;4225:10; 4228:19,22;4229:2,7, 13;4230:1,21;4231:1,6 <b>leased (2)</b> 4179:1;4223:7 <b>leases (2)</b> 4224:4,12 <b>leasing (1)</b> 4198:13 <b>least (6)</b> 4200:13,14;4215:9; 4221:22;4234:6;	4239:18 <b>leave (2)</b> 4243:2;4249:13 <b>leaving (1)</b> 4204:4 <b>lectured (1)</b> 4251:14 <b>lectures (1)</b> 4251:15 <b>left (13)</b> 4172:23;4173:1,2,5; 4190:18;4220:12; 4243:1;4249:17; 4250:13,14;4309:3,14; 4310:1 <b>legacy (1)</b> 4237:13 <b>legally (1)</b> 4204:10 <b>legitimate (1)</b> 4275:18 <b>legitimately (2)</b> 4275:8,10 <b>Lehman (1)</b> 4176:9 <b>lenders (1)</b> 4270:11 <b>lens (3)</b> 4201:16;4207:22,23 <b>Leona (1)</b> 4186:6 <b>less (5)</b> 4259:25;4263:1; 4291:20;4303:22; 4309:11 <b>lessor (1)</b> 4230:15 <b>lessors (5)</b> 4224:18;4225:6,12, 15,17 <b>letter (52)</b> 4212:7;4261:18,18, 18;4271:22;4275:12; 4284:19;4310:12,17; 4311:6,19;4313:18; 4314:4;4318:1,8,11,13, 14,15,20;4319:8,8,12, 14,18,24;4320:3,4,6,7, 9,10,18,20,21,24; 4321:3,5,7;4322:24; 4323:1,6,8,10,11,14,15, 18,21;4324:3,14,16 <b>letterhead (2)</b> 4318:21;4319:14 <b>letters (1)</b> 4323:25 <b>level (13)</b> 4241:23;4242:1; 4243:9;4251:9;4261:6; 4278:23;4282:25; 4285:6;4290:9; 4295:10,12,21;4306:14 <b>levels (2)</b>	4250:22;4286:1 <b>levying (1)</b> 4246:18 <b>liabilities (7)</b> 4257:18;4305:1; 4313:21;4314:6; 4317:2,5,10 <b>liability (8)</b> 4254:11;4305:2; 4306:6,19,24;4307:1; 4315:21,23 <b>license (1)</b> 4238:20 <b>licensed (3)</b> 4238:7,15,17 <b>life (2)</b> 4179:12;4193:19 <b>light (5)</b> 4207:25;4208:2; 4226:19;4305:2; 4322:15 <b>lighter (1)</b> 4327:15 <b>likely (6)</b> 4231:16;4259:25; 4269:6;4270:23; 4271:3;4273:16 <b>limit (1)</b> 4221:11 <b>limitation (1)</b> 4221:13 <b>limited (1)</b> 4283:2 <b>line (9)</b> 4181:20;4182:4; 4183:9;4220:23; 4239:23;4301:22,23; 4316:13;4319:2 <b>lined (3)</b> 4233:22;4333:7,8 <b>lines (2)</b> 4213:10;4244:17 <b>liquidation (3)</b> 4259:13,14,20 <b>list (2)</b> 4264:21;4265:12 <b>listed (5)</b> 4264:23;4265:2; 4266:5;4320:6,19 <b>lists (2)</b> 4202:24;4323:7 <b>literature (1)</b> 4281:8 <b>litigation (3)</b> 4171:23;4172:8,10 <b>little (13)</b> 4171:16;4172:19; 4174:16;4189:1; 4193:7;4194:17; 4209:16,17;4226:8; 4245:15;4301:16; 4322:8,8 <b>Litwin (2)</b>
<b>K</b>	<b>L</b>			
<b>keenly (1)</b> 4192:9 <b>keep (5)</b> 4205:5;4211:3; 4220:19,24;4290:11 <b>keeping (1)</b> 4236:23 <b>Kelly (1)</b> 4312:8 <b>Kennedy (2)</b> 4175:1,3 <b>Kenyon (2)</b> 4179:2,2 <b>key (1)</b> 4256:24 <b>Kidder (1)</b> 4186:7 <b>kind (13)</b> 4249:22;4251:8; 4256:23;4257:16; 4258:24;4259:7; 4260:17;4263:17; 4281:2;4287:17; 4299:24;4303:18; 4308:4 <b>kinds (6)</b> 4237:16;4240:2; 4281:2;4303:25;	<b>laid (4)</b> 4256:15;4264:17; 4288:5;4309:3 <b>land (6)</b> 4192:22;4268:7; 4269:7,8;4310:2,3 <b>landlord (4)</b> 4228:23;4231:1,9,15 <b>landlord's (3)</b> 4224:21;4231:10,12 <b>landscape (2)</b> 4240:3;4258:12 <b>lanes (1)</b> 4213:10 <b>language (17)</b> 4202:15;4286:4; 4288:15,17;4295:12, 16,21;4296:2;4297:14, 15,16,21;4298:11; 4310:5;4317:19,23; 4320:20 <b>Laposa (5)</b> 4233:19;4333:8,16, 18;4334:1 <b>large (2)</b> 4174:3,18 <b>largely (6)</b> 4249:9,23;4267:6; 4282:4;4288:8;4296:9			

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4209:4;4214:16 <b>live/work (1)</b> 4223:16 <b>living (1)</b> 4175:4 <b>LLC (3)</b> 4168:9,10,10 <b>loaded (1)</b> 4275:11 <b>loan (9)</b> 4208:13,15;4215:23; 4216:2;4221:18; 4229:19;4240:18,20; 4246:14 <b>loans (5)</b> 4183:11;4216:5; 4240:18,20,22 <b>local (1)</b> 4190:13 <b>located (3)</b> 4174:2;4183:1,2 <b>location (4)</b> 4223:9,11,20;4268:6 <b>locations (1)</b> 4269:23 <b>logical (2)</b> 4207:3,5 <b>London (1)</b> 4224:12 <b>long (18)</b> 4172:5;4176:7,7; 4177:8;4224:6,8,11,15; 4226:22;4234:22; 4239:16;4251:18; 4265:21;4271:4; 4273:14;4295:23; 4298:9;4322:4 <b>longer (5)</b> 4241:3;4271:23; 4274:25;4300:15; 4334:4 <b>look (18)</b> 4197:17;4201:11,12, 13;4211:4;4213:7; 4216:15;4219:23; 4231:22;4259:10; 4266:17;4272:12; 4280:1,1;4283:22; 4285:19;4292:13; 4318:1 <b>looked (1)</b> 4301:5 <b>looking (33)</b> 4178:15;4186:24,25; 4191:23;4192:3,4; 4195:10;4197:5,6,11, 17,19,25;4198:1,6,10, 12;4204:22;4209:17; 4226:14,14;4232:12, 18;4242:17;4249:18; 4259:7,17,25;4260:4; 4266:14;4272:22; 4331:15	<b>lookout (1)</b> 4297:8 <b>looks (4)</b> 4175:8;4222:10; 4299:12;4333:24 <b>Los (2)</b> 4174:4,5 <b>lose (2)</b> 4190:2;4215:19 <b>loss (2)</b> 4240:18;4246:14 <b>lot (38)</b> 4176:22;4192:9,15, 17;4194:10;4219:16; 4226:12,13;4239:6,6; 4240:2,17;4241:7,10, 19;4242:7;4244:16; 4245:24;4251:15,24, 25;4256:1,22;4259:5; 4261:2,9;4268:9; 4269:5;4271:1; 4279:23;4290:13; 4291:17,19;4299:25; 4300:14;4308:5,6; 4330:13 <b>lots (1)</b> 4176:16 <b>louder (1)</b> 4322:8 <b>low (3)</b> 4206:25;4209:17; 4271:3 <b>lower (7)</b> 4216:6;4224:2; 4226:4;4270:25; 4273:13;4274:19,20 <b>lowest (1)</b> 4263:24 <b>LP (1)</b> 4209:4 <b>lucky (1)</b> 4171:24 <b>lunacy (1)</b> 4213:15 <b>lunch (3)</b> 4277:14,15,20 <b>luncheon (1)</b> 4277:21 <b>Lybrand (1)</b> 4237:14 <b>lying (1)</b> 4326:17	4276:4,7 <b>mail (1)</b> 4236:7 <b>Main (6)</b> 4223:14,14;4248:19; 4262:8;4269:24; 4301:20 <b>mainly (1)</b> 4240:16 <b>maintain (2)</b> 4238:20;4241:17 <b>maintained (2)</b> 4238:19;4302:15 <b>major (2)</b> 4237:4;4239:7 <b>majored (1)</b> 4237:5 <b>makes (7)</b> 4188:2;4195:19; 4206:6;4215:24; 4269:4;4287:22; 4289:16 <b>making (6)</b> 4215:10;4240:21; 4244:9;4260:5; 4270:11;4329:24 <b>malfeasance (1)</b> 4247:6 <b>malpractice (1)</b> 4242:13 <b>Management (28)</b> 4173:7,24;4184:21; 4242:9;4256:9; 4269:15,17;4300:24; 4315:13;4318:1,7,10, 19,20,20;4319:12,18, 24;4320:3,10,17; 4322:24;4323:1,8,14, 15;4324:3;4328:9 <b>management's (2)</b> 4284:21;4288:6 <b>manager (5)</b> 4240:10;4241:24,25; 4242:6,25 <b>managing (1)</b> 4250:9 <b>mandated (2)</b> 4260:12,12 <b>Manhattan (3)</b> 4177:17;4224:2; 4226:4 <b>mania (1)</b> 4184:2 <b>manner (3)</b> 4272:4;4328:24; 4329:7 <b>manufacturing (3)</b> 4192:17;4240:4; 4244:25 <b>many (41)</b> 4172:3;4184:19; 4191:2;4213:6; 4215:20,20;4237:8,16,	16,17,17;4239:2,3,4; 4245:4,4;4248:8; 4250:6;4251:5,5; 4252:4,7;4253:14; 4256:15;4257:13,13, 13,20;4260:16,21; 4261:4,4;4265:16; 4268:4;4280:4; 4281:21,21;4296:24; 4313:3,4;4333:1 <b>Mar-a-Lago (1)</b> 4212:2 <b>mark (2)</b> 4208:16;4332:7 <b>marked (1)</b> 4307:25 <b>market (19)</b> 4174:1;4176:11; 4177:13;4179:7,10,15; 4186:18;4193:21; 4195:11,17;4196:17; 4198:13;4208:17; 4256:3,6,13;4266:15; 4269:17;4279:24 <b>marketplace (5)</b> 4182:16;4193:22; 4195:9,18,24 <b>markets (1)</b> 4179:24 <b>marry (1)</b> 4179:20 <b>Mary (2)</b> 4237:3;4238:13 <b>mass (1)</b> 4194:24 <b>master (1)</b> 4233:25 <b>material (12)</b> 4200:22;4202:5; 4204:15;4208:7; 4209:9;4210:11; 4283:4,19;4293:20; 4301:17;4302:15; 4308:23 <b>materiality (15)</b> 4200:17;4201:15; 4202:12,12,12; 4203:23,24;4204:2; 4207:22;4208:5,6; 4209:7;4210:8; 4301:14;4303:2 <b>materials (5)</b> 4253:2;4297:1; 4311:9;4313:1,3 <b>matter (9)</b> 4198:21;4208:25; 4209:21;4218:2,25; 4221:16;4261:9; 4265:17,18 <b>matters (9)</b> 4208:23;4219:18; 4220:21;4239:25; 4242:5,8,13;4289:16;	4302:24 <b>may (32)</b> 4189:4,16;4199:10; 4218:9;4219:20; 4222:7;4226:18,20; 4227:11,19,24;4231:4, 6;4242:17;4250:13; 4264:1,2;4265:19,19; 4266:15,20;4279:20; 4284:5;4287:6; 4288:14,23;4299:3; 4302:23,24;4304:3; 4306:2;4327:5 <b>maybe (12)</b> 4172:6;4179:11; 4182:3,18;4188:24; 4196:4;4201:10; 4235:7;4247:5;4263:5; 4300:17;4332:22 <b>Mayor (2)</b> 4178:5,13 <b>Mazars (32)</b> 4297:18;4305:5; 4310:13,18;4311:24; 4312:2,18,24;4313:7,9, 14;4314:18,19;4315:3, 5,13,15;4316:14; 4319:6,14,17,21; 4320:5,8;4321:8,16; 4322:1;4323:11,13; 4324:3;4325:11,17 <b>Mazars's (1)</b> 4315:14 <b>McConney (2)</b> 4205:11,25 <b>mean (31)</b> 4174:10,10;4181:13; 4184:20;4186:4; 4192:13,14;4193:13; 4199:4,7;4202:12; 4205:11;4207:18; 4208:19;4213:14; 4217:5;4222:15; 4224:10;4225:3,21; 4226:7;4240:3;4265:6; 4268:20,21;4283:14; 4300:21;4301:15; 4315:2,15;4327:8 <b>meandering (1)</b> 4196:9 <b>meaning (1)</b> 4206:18 <b>means (6)</b> 4196:12;4210:8; 4283:16;4323:22; 4327:3;4329:18 <b>measure (3)</b> 4194:13;4254:11; 4313:20 <b>meat (1)</b> 4197:15 <b>mechanisms (1)</b> 4293:15
	<b>M</b>			
	<b>Mac (1)</b> 4173:8 <b>Madison (2)</b> 4176:24;4177:5 <b>Madrid (1)</b> 4239:5 <b>magnitude (4)</b> 4265:13;4275:5;			

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>media (1)</b> 4240:4	4322:9,15	4290:25;4292:3	4330:15;4331:20; 4332:17;4333:25	4278:20;4285:16; 4292:19;4298:3; 4304:21
<b>meet (1)</b> 4238:12	4193:25;4243:12; 4277:24;4313:24	<b>misstatement (3)</b> 4203:2;4204:12; 4306:15	<b>MORIAN (2)</b> 4169:17,19	<b>myopic (1)</b> 4271:21
<b>MEMBER (5)</b> 4168:9;4174:8; 4248:15,16,17	<b>MICHELE (1)</b> 4169:24	<b>misstatements (3)</b> 4287:17;4305:18; 4306:12	<b>morning (14)</b> 4170:3,19,20,22; 4190:10;4226:19; 4227:23;4228:1; 4236:12,13;4331:22, 25;4332:18;4333:11	<b>myself (1)</b> 4190:23
<b>members (1)</b> 4174:13	<b>microphone (1)</b> 4332:2	<b>mistake (1)</b> 4292:2	<b>mortgage (1)</b> 4182:12	<b>N</b>
<b>membership (1)</b> 4315:22	<b>mid (1)</b> 4195:6	<b>mitigate (2)</b> 4199:3,5		
<b>memoranda (2)</b> 4241:11;4244:12	<b>middle (4)</b> 4181:14;4184:13; 4282:20;4289:9	<b>mix (1)</b> 4208:8	<b>most (8)</b> 4174:6;4183:21; 4200:15;4225:17,24, 25;4226:2;4266:20	<b>name (7)</b> 4170:11,13;4171:19; 4173:6;4235:24; 4236:1,14
<b>mentioned (4)</b> 4172:12;4246:10; 4247:12;4263:18	<b>might (10)</b> 4190:17;4218:9; 4246:15;4271:3; 4281:3;4289:18; 4302:4;4305:18; 4322:15;4333:6	<b>Mm-Hm (2)</b> 4234:9;4300:6	<b>mostly (1)</b> 4173:16	<b>natural (1)</b> 4331:18
<b>mentions (1)</b> 4202:13	<b>migration (1)</b> 4195:23	<b>model (2)</b> 4255:24,25	<b>mother (1)</b> 4227:11	<b>nature (7)</b> 4260:6;4279:21; 4303:4;4305:2;4309:9; 4313:6;4315:3
<b>menu (2)</b> 4260:13;4267:7		<b>models (1)</b> 4255:21	<b>motion (2)</b> 4215:15;4220:22	<b>near (1)</b> 4308:17
<b>merger (1)</b> 4237:13	<b>MII (1)</b> 4185:11	<b>moderating (1)</b> 4251:17	<b>motions (1)</b> 4215:19	<b>necessarily (6)</b> 4197:7;4200:18; 4204:13;4263:9; 4315:15;4324:10
<b>merging (1)</b> 4204:9	<b>mile (1)</b> 4222:24	<b>modification (4)</b> 4229:19;4230:1; 4288:3;4320:17	<b>mountains (1)</b> 4247:11	<b>necessary (2)</b> 4244:13;4330:14
<b>met (5)</b> 4172:13;4189:24; 4190:15;4249:11; 4253:6	<b>million (25)</b> 4182:15;4186:8,9; 4194:7;4195:8,9,13,13; 4203:1,1;4212:3,3; 4213:23;4273:2,3,20, 22,25;4274:4,6,14,14; 4275:7,16,21	<b>modifications (2)</b> 4283:4,19	<b>move (16)</b> 4185:11;4187:14; 4214:8,9;4223:3; 4225:12;4245:22; 4272:1;4301:15; 4304:14,16;4305:15; 4309:13;4320:12; 4328:13;4334:2	<b>need (12)</b> 4220:22;4221:11; 4226:9;4233:20; 4259:21;4283:18; 4285:8;4291:3; 4296:17;4302:23; 4311:22;4323:3
<b>method (33)</b> 4211:25;4212:5; 4259:14;4260:19; 4261:16;4263:10,11, 15,24;4264:2,3,5,7; 4265:5,7,11,18,20,22; 4266:16,20;4267:3; 4276:13;4278:25; 4280:9,17;4287:22; 4303:7;4304:13; 4306:23,25;4328:10; 4329:1	<b>millions (3)</b> 4211:20;4212:1; 4275:23	<b>modify (2)</b> 4286:21;4288:10	<b>Moved (5)</b> 4171:1;4173:18; 4195:3;4241:1,21	<b>needed (2)</b> 4175:14,14
<b>methodologies (9)</b> 4193:17,19;4329:9, 11,13;4331:5,8,12,16	<b>mind (11)</b> 4187:1;4191:23; 4194:1,13;4198:25; 4206:3;4207:7; 4216:24;4236:23; 4237:10;4253:21	<b>moments (3)</b> 4175:15;4182:22; 4226:20	<b>moves (1)</b> 4195:6	<b>needing (2)</b> 4270:3;4287:16
<b>methodology (2)</b> 4193:17,18	<b>minds (2)</b> 4221:25;4269:10	<b>Monday (1)</b> 4334:6	<b>much (27)</b> 4191:24;4194:12; 4195:23;4196:1; 4216:6,10;4225:8; 4226:15;4234:4; 4254:8;4257:22; 4259:3;4271:21,23; 4274:20;4275:2; 4291:7;4309:15,16,20; 4322:20;4327:14; 4331:20,24;4332:21; 4333:16,17	<b>needs (7)</b> 4201:19;4279:13; 4286:7;4287:10; 4291:12;4297:6; 4305:24
<b>methods (39)</b> 4256:15,15,18,23; 4257:23,25;4258:9,12, 13;4260:12,21; 4261:10;4263:13; 4264:17,19,20;4265:2, 9,14;4266:8;4267:7; 4271:2;4274:6,6; 4276:15;4277:2,6,11; 4280:8;4286:13,16,25; 4287:2;4297:6,8; 4304:23;4305:1; 4311:11;4329:3	<b>mindset (1)</b> 4179:19	<b>money (5)</b> 4190:12;4191:24; 4194:10;4197:25; 4224:15	<b>multi-family (2)</b> 4198:15;4222:23	<b>negative (3)</b> 4209:7,9;4283:2
<b>Miami (7)</b> 4170:14;4174:17; 4183:5,17;4194:24; 4195:2,6	<b>mine (2)</b> 4181:21;4210:25	<b>months (4)</b> 4172:10,10,14; 4215:16	<b>multiple (14)</b> 4180:22;4195:9,14, 14;4198:24;4284:23; 4319:15;4328:7; 4329:20,21;4330:5; 4331:1,7,8	<b>negotiated (1)</b> 4230:15
<b>mic (2)</b>	<b>minimum (2)</b> 4304:20,22	<b>more (46)</b> 4173:18;4184:1,16; 4187:13;4194:10; 4201:16,17;4206:21; 4219:11;4226:8,22; 4233:14;4239:22,23; 4242:2,2;4247:5; 4256:9,12,13,18; 4257:13,22;4261:1; 4262:21;4265:14,15; 4271:21;4283:2; 4290:21;4291:7,17,19; 4299:25;4300:17; 4301:9;4303:21,23; 4309:9,15,16,20;	<b>Murray (1)</b> 4177:11	<b>negotiation (1)</b> 4230:14
	<b>minor (1)</b> 4296:9		<b>must (7)</b> 4202:13;4212:10;	<b>neighborhood (2)</b> 4183:24;4194:8
	<b>minus (1)</b> 4263:6			<b>net (3)</b> 4198:11;4280:15,17
	<b>minute (3)</b> 4203:14;4276:5; 4304:19			<b>NEW (16)</b> 4168:1,3,14,14,22; 4169:23;4173:21; 4174:3;4179:14; 4182:21;4184:7; 4190:4;4195:6;4199:8; 4223:18;4250:15
	<b>minutes (2)</b> 4215:20;4226:21			<b>next (39)</b> 4170:2;4178:4;
	<b>misleading (1)</b> 4218:3			
	<b>missed (1)</b> 4212:20			
	<b>missing (2)</b>			



NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4181:19;4190:16,18; 4194:24;4201:21; 4217:16;4230:8; 4233:9,14,17;4234:1,2, 14,24;4235:3,12,12; 4245:8;4249:16; 4250:12;4259:13; 4260:2,4,9;4261:15,16, 22;4267:3;4294:3; 4307:12;4314:7; 4317:20;4332:2,23; 4333:7,8;4334:5	NY (2) 4168:22;4169:23 <b>NYPD (1)</b> 4181:20	4296:23 <b>obvious (4)</b> 4225:3;4287:17; 4306:12,15 <b>obviously (9)</b> 4171:22;4290:24; 4306:6,16,20;4308:24; 4315:14;4319:9; 4323:10 <b>occasions (1)</b> 4187:10 <b>occur (2)</b> 4303:22;4305:18 <b>occurred (1)</b> 4195:18 <b>off (11)</b> 4178:12;4184:9; 4194:12;4200:2; 4204:20;4206:19; 4207:12;4208:2; 4237:19;4254:8; 4268:24 <b>offer (1)</b> 4228:5 <b>offered (4)</b> 4252:1,4,10;4264:20 <b>offers (1)</b> 4220:2 <b>OFFICE (25)</b> 4168:20;4173:17,18; 4177:6;4178:4,16,23, 23,25;4179:8;4180:2, 13;4181:3,8;4182:13; 4186:12,12,16;4187:4; 4198:8,13;4205:19; 4223:21;4226:5; 4246:1 <b>OFFICER (10)</b> 4170:6,10;4227:4; 4235:14,17,19,23; 4236:3;4278:4;4307:7 <b>officers (1)</b> 4181:20 <b>offset (2)</b> 4201:9;4208:23 <b>often (7)</b> 4193:13,14;4223:23; 4246:18,20;4263:17; 4266:18 <b>old (4)</b> 4171:2,2;4184:8; 4282:6 <b>older (1)</b> 4254:8 <b>old-fashioned (1)</b> 4175:20 <b>once (3)</b> 4173:20;4221:2; 4234:17 <b>One (107)</b> 4174:20;4176:15; 4179:6;4180:16; 4182:4;4183:9;	4184:14;4188:7; 4191:14;4197:13; 4198:20;4199:7,12; 4201:11;4202:8,25; 4203:1,20;4204:4; 4205:6,14;4206:24; 4207:17;4208:1; 4209:13;4210:15,24; 4211:3,7,9,22,22; 4212:9,19,21,21,24; 4213:3;4214:18; 4216:17,18;4217:5; 4218:21;4220:4; 4223:25;4224:20; 4239:18;4242:8,9; 4247:20;4248:23; 4249:13;4250:25; 4251:9;4252:24; 4254:3;4255:5;4256:1, 11;4258:15;4259:10, 16,17;4260:4,14; 4262:7,16;4263:11; 4264:7;4265:5,7,17; 4266:10,10,15; 4267:25;4270:18; 4271:5;4274:12; 4276:13,20;4277:3,6, 10,11;4280:8;4282:12; 4284:22;4292:14; 4300:17;4311:12; 4312:20;4315:15; 4317:5;4320:2; 4322:11;4323:2; 4327:24;4328:8; 4329:20;4330:25; 4331:11,13;4333:7,8, 12,25 <b>ones (5)</b> 4198:24;4237:9; 4248:19;4312:16; 4329:5 <b>ongoing (1)</b> 4208:16 <b>only (27)</b> 4186:13;4188:6,14, 17;4199:1;4200:24; 4201:12;4212:9; 4213:3,9;4219:6,17; 4255:19;4256:19; 4262:7;4267:7; 4281:12,17;4282:22; 4313:16;4329:19,22, 25;4330:10,23;4331:6, 11 <b>open (1)</b> 4236:23 <b>open-ended (1)</b> 4279:4 <b>opening (1)</b> 4243:3 <b>operates (2)</b> 4285:6,13 <b>operations (3)</b>	4232:15,23;4289:20 <b>opine (1)</b> 4225:14 <b>opinion (26)</b> 4189:12;4201:10,10; 4211:21,24;4212:4; 4213:3;4216:20; 4219:9;4220:2,4; 4221:23;4224:25; 4228:5;4229:5;4231:2; 4239:15;4283:17,24, 25;4293:19;4297:24; 4308:17,22,25;4309:19 <b>opinions (18)</b> 4188:5;4191:14; 4216:17,23;4219:6; 4220:10;4228:7,18,21, 25;4229:5,10,14; 4231:19,25;4232:10; 4252:17;4253:3 <b>opportunities (1)</b> 4187:3 <b>opportunity (5)</b> 4192:8;4199:10; 4250:19;4264:5; 4265:23 <b>opposed (7)</b> 4194:14;4261:19; 4270:13;4271:16; 4284:21;4330:1,23 <b>opposition (1)</b> 4215:14 <b>option (8)</b> 4260:8,11;4270:23; 4272:16,17,17; 4280:14;4331:3 <b>optional (1)</b> 4331:2 <b>options (7)</b> 4213:17;4222:18; 4256:16;4257:21; 4258:23;4259:10; 4265:16 <b>oranges (1)</b> 4212:13 <b>order (19)</b> 4190:14;4207:16,22; 4209:8;4227:6; 4239:11;4268:3; 4275:4;4276:4,7; 4278:6,20;4279:14; 4285:7,11;4292:19; 4307:9;4317:4;4332:9 <b>ordering (1)</b> 4190:13 <b>orders (1)</b> 4265:13 <b>ordinarily (1)</b> 4262:16 <b>ORGANIZATION (9)</b> 4168:8,8;4224:21; 4312:25;4313:7,10; 4319:18;4325:14,16
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>organizations (2)</b> 4248:10,12 <b>Organization's (1)</b> 4313:15 <b>organized (1)</b> 4250:23 <b>original (3)</b> 4196:7;4282:5; 4299:12 <b>originally (3)</b> 4170:25;4177:6; 4189:24 <b>Orlando (1)</b> 4195:2 <b>others (7)</b> 4177:5;4180:11; 4224:2;4248:8;4253:6; 4271:3;4309:5 <b>out (49)</b> 4171:18;4174:5; 4176:21;4182:12; 4183:8,9,13,22; 4186:19;4187:6; 4189:6;4200:21; 4202:24;4203:2,9; 4204:4;4205:1,8,9; 4206:5;4208:10; 4214:19;4220:19,24; 4235:13;4238:22; 4239:11;4242:10; 4244:22;4247:7; 4250:17;4251:2; 4256:15;4259:22; 4263:5;4264:17; 4265:21;4270:14; 4274:10;4279:14; 4288:5;4300:13; 4301:9,24;4302:2,14; 4309:3,23;4323:7 <b>outcome (1)</b> 4199:5 <b>outcomes (4)</b> 4199:4,6,6;4261:13 <b>outdated (1)</b> 4301:21 <b>outline (1)</b> 4331:19 <b>outlines (1)</b> 4285:18 <b>outlining (2)</b> 4284:19;4286:6 <b>outset (2)</b> 4208:14;4313:19 <b>outside (12)</b> 4241:20;4247:18,22, 23;4248:2;4270:3; 4287:7;4290:18; 4291:2;4296:15; 4327:12;4328:15 <b>outsider (1)</b> 4269:18 <b>over (23)</b> 4171:2;4184:16;	4191:5;4202:13,13; 4214:6;4221:12; 4227:25;4228:22; 4233:24;4234:14; 4241:1,21;4253:20; 4264:7;4265:7; 4273:14;4276:20; 4281:5,5,14;4311:14; 4332:2 <b>overall (3)</b> 4201:4;4202:17; 4300:22 <b>overarching (1)</b> 4304:2 <b>overcome (1)</b> 4225:6 <b>overlap (1)</b> 4264:20 <b>overlook (1)</b> 4213:2 <b>overlooks (1)</b> 4213:2 <b>Overruled (5)</b> 4225:23;4271:12; 4302:17;4303:16; 4320:13 <b>oversight (2)</b> 4239:22;4242:2 <b>oversupply (1)</b> 4199:8 <b>overvalue (1)</b> 4214:17 <b>overvalued (3)</b> 4201:10;4202:25; 4214:22 <b>overview (1)</b> 4303:24 <b>owes (1)</b> 4317:2 <b>own (11)</b> 4180:5;4195:3,11; 4209:13;4210:14,17; 4224:17,18;4265:21; 4292:3;4318:21 <b>owned (1)</b> 4186:6 <b>owners (1)</b> 4224:17 <b>ownership (3)</b> 4224:10,16;4231:7 <b>owns (1)</b> 4317:2 <b>owns/develops (1)</b> 4173:25	4266:4;4278:16; 4284:17;4285:3; 4294:3;4299:10; 4300:2,3;4304:18; 4305:15;4311:1,3; 4317:20;4321:17; 4324:22 <b>pages (1)</b> 4284:23 <b>paid (3)</b> 4179:6;4186:9; 4208:12 <b>panels (2)</b> 4251:17,17 <b>PANTELOUKAS (1)</b> 4169:24 <b>paradigms (1)</b> 4256:11 <b>paragraph (21)</b> 4230:8,9,10,20,25; 4231:16;4232:5,13,21; 4258:15;4266:7; 4285:3,18;4286:5,8; 4289:8;4290:7; 4305:25;4317:25; 4319:1;4325:1 <b>paragraphs (1)</b> 4202:11 <b>Park (2)</b> 4177:6;4190:9 <b>parking (3)</b> 4182:16;4192:15,16 <b>part (28)</b> 4171:17;4174:6; 4183:18;4184:9; 4187:24;4189:2; 4200:13;4225:16,19; 4227:4;4240:19; 4246:13,16;4248:3; 4249:24;4259:8; 4269:2,19;4270:11; 4278:4;4283:20; 4284:1;4287:11; 4305:25;4307:8; 4325:10;4328:5,11 <b>participant (3)</b> 4256:6,13;4269:17 <b>participants (1)</b> 4256:4 <b>particular (34)</b> 4175:13;4176:13; 4180:23;4183:12; 4192:6,8,11;4195:20, 20;4196:21;4198:14; 4199:11;4208:7; 4209:9,15;4223:13; 4230:15;4255:3; 4258:18;4270:12; 4273:10;4280:2; 4281:5;4286:8,18,20; 4287:6,22;4288:22; 4303:23;4305:25; 4306:14,24;4328:16	<b>particularly (5)</b> 4191:7;4201:8; 4220:24;4261:10; 4327:11 <b>partner (3)</b> 4173:5;4176:1; 4250:10 <b>partners (5)</b> 4180:11;4237:19; 4239:13,24;4242:4 <b>partnership (2)</b> 4179:23;4250:10 <b>party (2)</b> 4260:17;4296:13 <b>pass (1)</b> 4238:15 <b>passed (1)</b> 4174:21 <b>passive (4)</b> 4224:17;4225:6,13, 15 <b>past (3)</b> 4200:1;4218:2; 4258:16 <b>paste (1)</b> 4282:6 <b>pause (5)</b> 4200:7;4227:3; 4288:20;4307:6; 4322:17 <b>pay (6)</b> 4210:15;4246:21; 4256:6;4263:21,23; 4270:21 <b>paying (1)</b> 4249:2 <b>payments (3)</b> 4262:13,14,14 <b>PDF (1)</b> 4304:18 <b>Peabody (1)</b> 4186:7 <b>Penal (1)</b> 4206:18 <b>penalties (1)</b> 4246:19 <b>Penn (2)</b> 4305:12;4312:21 <b>people (10)</b> 4179:7;4190:13; 4192:16;4196:5,12; 4206:14;4218:17,20; 4244:15;4290:13 <b>per (1)</b> 4251:15 <b>percent (4)</b> 4182:18;4211:12,17; 4212:17 <b>percents (1)</b> 4211:14 <b>perfect (1)</b> 4226:11 <b>perform (6)</b>	4241:5;4270:14; 4282:16;4285:7; 4309:25;4310:13 <b>performance (3)</b> 4209:8;4261:11; 4314:15 <b>performed (8)</b> 4242:7;4247:24; 4250:15;4270:2; 4288:7;4312:24; 4313:10,11 <b>Performing (36)</b> 4175:2;4237:15,18, 22;4239:6,9;4240:17; 4241:3,4;4242:12,15; 4244:4;4247:14; 4249:24;4251:2; 4281:20,25;4286:11; 4287:8;4290:18; 4291:2;4298:20,21; 4299:20;4303:18; 4305:11,23,25; 4306:11;4311:8,14; 4313:12;4318:19; 4325:11;4326:10; 4327:11 <b>performs (2)</b> 4309:4,22 <b>perhaps (5)</b> 4201:21;4204:9; 4226:8;4227:25; 4301:15 <b>period (8)</b> 4217:15;4241:12,24; 4242:20;4254:10; 4273:14;4310:16; 4323:12 <b>periods (1)</b> 4202:4 <b>permissible (1)</b> 4212:7 <b>permit (3)</b> 4231:6,11,15 <b>permits (2)</b> 4270:5;4279:6 <b>permitted (1)</b> 4209:6 <b>person (12)</b> 4179:18;4194:18; 4204:6;4205:6; 4216:14;4257:16; 4264:8;4265:18; 4270:13;4296:11; 4321:15;4332:2 <b>personal (36)</b> 4240:13,16,23; 4246:6,15,22;4255:20; 4256:9;4258:11; 4263:19;4264:1; 4265:3;4266:8; 4271:19;4272:3,8; 4277:10;4280:20; 4281:10,12,18;
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4287:12;4289:25; 4298:20;4299:2,21; 4303:25;4304:17; 4305:11,19,21;4306:8, 21;4310:14;4311:10; 4331:3 <b>personally (1)</b> 4175:25 <b>perspective (9)</b> 4188:10;4256:9,24; 4263:3;4269:15,17,18, 18;4271:20 <b>pertain (2)</b> 4281:17;4291:15 <b>pertaining (1)</b> 4291:19 <b>pertains (2)</b> 4281:18;4291:2 <b>pervasive (3)</b> 4295:21;4310:4; 4317:19 <b>pervasiveness (1)</b> 4289:15 <b>phrase (4)</b> 4188:25;4198:17,18; 4268:21 <b>pick (7)</b> 4201:23,23;4212:19; 4263:14,24;4265:12; 4328:8 <b>picture (5)</b> 4201:14,25;4202:1, 2,17 <b>piece (16)</b> 4180:23;4185:7; 4192:6,11;4194:23; 4197:19;4202:8; 4221:18;4222:10; 4260:22;4268:7,24; 4269:7,8;4270:12; 4320:2 <b>pieces (2)</b> 4202:18;4203:20 <b>pigeonhole (1)</b> 4188:20 <b>pin (1)</b> 4189:1 <b>Place (3)</b> 4178:1;4183:25; 4293:15 <b>placed (3)</b> 4275:8;4295:9; 4313:17 <b>places (2)</b> 4218:11;4256:20 <b>placing (1)</b> 4290:3 <b>Plaintiff (3)</b> 4168:21;4222:1; 4330:11 <b>Plaintiff's (9)</b> 4229:16;4231:22; 4310:7,9;4318:2;	4320:24;4322:11,22; 4324:23 <b>Plan (16)</b> 4178:6,7,8,13,15; 4180:13,15;4184:3; 4186:11;4198:18,20; 4200:8;4223:16; 4268:18,20;4333:16 <b>planes (2)</b> 4181:17,17 <b>planned (20)</b> 4267:9,13,19; 4268:2,13,15,22; 4271:9,17,22;4272:18, 21;4273:2,14;4274:1; 4278:19,20,25;4279:9, 11 <b>Planning (1)</b> 4192:19 <b>plans (2)</b> 4180:9;4184:11 <b>plausible (4)</b> 4326:9,16;4327:9,24 <b>Plaza (1)</b> 4169:9 <b>Please (34)</b> 4170:6,10,11,16; 4203:16;4215:18; 4219:21;4227:6,20; 4235:19,23,23;4236:9; 4254:14;4255:4; 4258:2,6,13;4262:6,12; 4264:12;4266:5; 4271:13;4277:18; 4278:6;4284:5; 4288:17,25;4296:3; 4298:13;4300:7; 4307:9,13;4310:6 <b>plenty (2)</b> 4181:16;4193:15 <b>PLLC (3)</b> 4169:3,8,17 <b>plucked (1)</b> 4250:17 <b>plug (1)</b> 4301:8 <b>Plus (2)</b> 4215:13;4263:6 <b>point (38)</b> 4172:23,25;4185:20; 4190:2,4;4200:13; 4204:11;4206:12; 4207:21;4208:21; 4209:10;4210:7,20; 4212:19;4213:1; 4215:16;4217:5; 4218:25;4219:17; 4238:2;4240:6; 4242:24;4249:13; 4274:9;4277:13; 4288:17;4292:16; 4300:16;4301:6,20; 4306:1,5,10;4309:19;	4326:18;4330:14; 4331:19;4334:2 <b>pointing (1)</b> 4301:9 <b>points (1)</b> 4300:14 <b>population (1)</b> 4327:12 <b>portfolio (1)</b> 4173:13 <b>portion (6)</b> 4173:19;4183:19; 4198:5;4221:19; 4224:22;4226:14 <b>position (13)</b> 4184:25;4201:4; 4202:6,23,23;4203:8; 4208:25;4213:14; 4240:6;4245:6,8; 4289:19,24 <b>positive (1)</b> 4209:7 <b>possibilities (2)</b> 4175:13;4180:1 <b>possibility (1)</b> 4180:13 <b>possible (5)</b> 4192:11;4210:24; 4213:12;4267:3; 4272:25 <b>possibly (2)</b> 4199:23;4276:10 <b>post (2)</b> 4193:13;4239:3 <b>potential (7)</b> 4219:24;4222:18; 4223:20;4232:20; 4241:6;4247:6; 4261:13 <b>potentially (5)</b> 4211:20;4250:6; 4260:5;4263:1; 4272:22 <b>power (1)</b> 4247:10 <b>practical (5)</b> 4262:20,22,23,24; 4274:16 <b>practice (16)</b> 4172:7;4237:14,25; 4240:9,10,25;4246:10; 4250:18;4264:19; 4305:10,10;4311:20; 4318:13,18,22,23 <b>practices (1)</b> 4250:16 <b>practicing (1)</b> 4236:19 <b>practitioner (1)</b> 4302:24 <b>practitioners (3)</b> 4298:19;4299:18,23 <b>pragmatically (1)</b>	4187:6 <b>precinct (1)</b> 4181:22 <b>precise (2)</b> 4201:1;4261:12 <b>precisely (3)</b> 4187:24;4200:13; 4292:16 <b>preclude (4)</b> 4273:21,23,24; 4274:2 <b>preconditions (2)</b> 4278:20,24 <b>predate (1)</b> 4319:8 <b>predates (1)</b> 4299:6 <b>predicate (1)</b> 4204:18 <b>predicates (1)</b> 4221:8 <b>predicting (1)</b> 4194:12 <b>prejudice (1)</b> 4222:6 <b>premarked (1)</b> 4298:14 <b>pre-marked (1)</b> 4284:6 <b>premised (2)</b> 4256:5,8 <b>premium (1)</b> 4256:20 <b>preparation (19)</b> 4253:1,9,13;4254:4; 4256:25;4257:1,5; 4269:12;4281:12; 4283:6;4296:18,19; 4300:18;4301:1; 4303:10;4309:6; 4311:9,18;4313:4 <b>prepare (9)</b> 4252:21;4260:14; 4261:5;4265:3;4277:9; 4285:12;4292:20; 4308:1;4310:19 <b>prepared (10)</b> 4260:16;4268:12; 4271:18;4287:14; 4289:21;4292:24; 4293:6;4305:13,19; 4318:15 <b>preparer (16)</b> 4207:23;4257:21; 4258:10;4260:13; 4264:25;4265:3; 4266:8,22;4268:1,14, 18,22;4270:24; 4276:16;4279:1,15 <b>prepares (4)</b> 4311:6;4318:10,13, 14 <b>preparing (18)</b>	4251:1;4257:6,8,9, 11,12,16,18;4264:8; 4284:14;4285:15; 4296:13,16,20; 4299:15,20;4306:8,20 <b>presence (1)</b> 4174:3 <b>present (10)</b> 4194:4,11,14; 4201:25;4202:2,6; 4218:2;4297:17,22; 4317:4 <b>presentation (4)</b> 4202:16;4237:20; 4300:22;4306:6 <b>presented (8)</b> 4200:17,22;4201:5; 4202:4;4254:22; 4306:19;4319:3; 4331:8 <b>presenting (1)</b> 4321:12 <b>presents (1)</b> 4230:2 <b>President (8)</b> 4172:2,12,13; 4191:5;4305:7;4312:3; 4329:4,16 <b>presiding (1)</b> 4278:5 <b>Presumably (1)</b> 4292:3 <b>presuming (2)</b> 4207:10;4210:9 <b>pretend (1)</b> 4197:23 <b>pretty (6)</b> 4174:18;4181:15; 4192:5;4216:23; 4259:3;4320:3 <b>prevalent (2)</b> 4224:12,13 <b>previous (1)</b> 4303:5 <b>previously (3)</b> 4252:23;4289:16; 4296:8 <b>price (9)</b> 4186:11;4198:9; 4208:13,15,15; 4223:17;4260:7,8; 4270:22 <b>prices (3)</b> 4223:17,19;4269:21 <b>Pricewaterhouse (11)</b> 4237:13,13,15,23; 4238:1,21;4239:17; 4240:12;4241:13,13,19 <b>primarily (1)</b> 4172:7 <b>principal (2)</b> 4233:25;4251:10 <b>Principles (15)</b>
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4245:5;4250:1; 4257:9;4285:11; 4287:15,19;4289:22; 4311:2;4314:2;4315:6, 12;4319:3;4321:20; 4322:3;4323:16 <b>prior (16)</b> 4232:6;4248:9,14; 4250:14;4264:21; 4267:7;4270:8; 4283:12;4299:13; 4323:9,11,12,21,25; 4324:18;4331:14 <b>private (3)</b> 4237:16;4249:19; 4250:20 <b>probably (19)</b> 4172:3;4173:13; 4178:11;4181:16; 4182:17;4184:10,20; 4190:8,19;4205:17; 4217:7;4219:14; 4222:2;4223:18; 4234:6,7;4244:22; 4333:3,19 <b>problem (1)</b> 4189:8 <b>procedures (3)</b> 4239:11;4291:18; 4309:21 <b>proceed (4)</b> 4209:18;4219:20; 4227:19;4236:9 <b>proceeding (2)</b> 4227:3;4307:6 <b>proceedings (6)</b> 4193:24;4200:16; 4233:24;4243:11; 4277:23;4313:23 <b>process (7)</b> 4182:14;4192:22; 4193:4;4243:8; 4247:14;4292:23; 4328:12 <b>producing (3)</b> 4259:2,7;4279:23 <b>productive (1)</b> 4259:25 <b>productivity (1)</b> 4258:21 <b>professional (16)</b> 4236:18,19;4238:20; 4241:18;4242:15,21; 4247:24;4248:10,12; 4250:3;4253:22; 4281:19;4317:12; 4325:18;4326:7; 4328:1 <b>professionally (3)</b> 4326:8,16;4327:8 <b>professionals (1)</b> 4261:3 <b>profit (1)</b>	4194:12 <b>profits (1)</b> 4257:11 <b>programs (1)</b> 4239:10 <b>progressed (1)</b> 4173:11 <b>progression (1)</b> 4245:21 <b>project (23)</b> 4175:18,21;4176:2, 3,7,9,21,24;4177:2,8, 10,15;4178:1,3,13,20, 22;4179:4;4180:3; 4181:24;4182:6,10; 4184:5 <b>projected (4)</b> 4267:8,13;4270:1; 4275:24 <b>projecting (3)</b> 4261:19,20;4275:13 <b>projects (2)</b> 4175:16;4178:17 <b>prolific (1)</b> 4251:24 <b>promise (1)</b> 4334:9 <b>promoted (4)</b> 4240:6;4241:24; 4245:6,16 <b>promulgated (1)</b> 4178:10 <b>prong (1)</b> 4280:2 <b>proper (4)</b> 4247:3,3,4;4326:15 <b>properties (15)</b> 4173:17;4174:5; 4183:10,13;4185:19, 23;4193:5;4202:24; 4213:7;4214:22; 4219:16;4228:4; 4269:23;4271:19; 4273:7 <b>property (76)</b> 4175:9;4176:14,19; 4179:1,3;4180:10,23, 23;4181:4;4183:8; 4185:7;4186:17; 4189:4;4192:7,11,14; 4194:23;4197:8,19; 4206:24,25;4211:5; 4212:21,23,24;4214:1, 18;4218:24;4219:18, 24,25;4221:19; 4222:11,12,16;4223:8; 4225:9;4228:19; 4229:7;4256:6,7; 4266:12,17,23; 4267:11,17,23,24; 4268:25;4269:3,5,10, 19;4270:15,18,21,22; 4271:9,16,24;4272:11,	19;4273:1,2,12,19,20; 4274:1,3,4,5,23; 4275:9,22;4279:5,6 <b>proportionally (1)</b> 4275:20 <b>propose (1)</b> 4231:6 <b>proposed (1)</b> 4206:16 <b>proposition (1)</b> 4206:22 <b>prospective (1)</b> 4258:16 <b>proud (2)</b> 4173:14;4308:4 <b>prove (1)</b> 4216:4 <b>provide (17)</b> 4208:4;4242:23; 4258:9;4262:1; 4270:11;4283:15; 4295:5,8;4299:22; 4318:19;4319:17; 4325:7,17;4328:14,17, 20;4332:4 <b>provided (9)</b> 4231:8;4247:22; 4287:18;4292:25; 4305:9;4313:2;4317:7; 4320:1;4325:20 <b>provides (11)</b> 4208:4,5;4265:16; 4288:2;4298:19; 4299:25;4305:18; 4306:1;4309:9,11; 4319:23 <b>providing (5)</b> 4250:5;4282:24,25; 4285:2;4303:21 <b>province (1)</b> 4188:1 <b>provision (3)</b> 4187:20;4311:13; 4316:11 <b>provisions (1)</b> 4224:20 <b>prudent (1)</b> 4179:21 <b>public (13)</b> 4231:5;4237:16; 4238:3,5,8,10,17; 4244:15;4247:2; 4248:17;4251:15; 4298:24;4310:23 <b>publicly (1)</b> 4244:6 <b>pull (11)</b> 4254:14;4255:4; 4258:2;4282:7; 4288:25;4296:3; 4298:13;4310:6; 4318:2;4320:23; 4322:10	<b>purchase (1)</b> 4197:24 <b>purpose (5)</b> 4185:8,14,17; 4200:22,23 <b>purposes (7)</b> 4185:23;4186:3; 4187:2;4211:23; 4240:21;4247:12; 4287:11 <b>put (20)</b> 4180:24,25;4188:18; 4195:24;4202:11; 4205:11;4210:14; 4211:21;4218:15; 4219:5;4229:16; 4271:3,4;4296:25; 4297:4;4307:3; 4318:20;4323:3; 4326:18;4333:15 <b>puts (1)</b> 4292:13 <b>putting (4)</b> 4247:15;4288:12; 4292:17;4297:25 <b>puzzle (1)</b> 4202:9 <b>PW (1)</b> 4239:5 <b>PWC (7)</b> 4240:9;4241:15; 4242:25;4243:1,6,7; 4246:11 <b>PWC's (1)</b> 4240:10	4283:24 <b>quoted (1)</b> 4215:12
<b>R</b>				
<b>raise (2)</b> 4170:6;4235:19 <b>raising (1)</b> 4297:10 <b>ran (1)</b> 4245:1 <b>range (11)</b> 4182:18;4213:4; 4235:9;4240:5; 4258:23;4261:13; 4275:13;4279:1,3; 4282:15;4287:5 <b>ranging (2)</b> 4239:3;4282:16 <b>Ranita (4)</b> 4193:25;4243:12; 4277:24;4313:24 <b>rare (1)</b> 4176:17 <b>rate (4)</b> 4208:19;4232:14,22; 4258:19 <b>rather (2)</b> 4262:17;4263:2 <b>Raw (3)</b> 4292:7,9,10 <b>reach (3)</b> 4262:2;4274:7; 4289:18 <b>reaching (5)</b> 4259:15;4260:2,10; 4261:16;4325:24 <b>reaction (5)</b> 4326:1,3,5,8; 4327:19 <b>read (17)</b> 4196:7;4200:21; 4215:1,2,10;4216:25; 4217:10,12;4253:3; 4286:9,12,12;4313:16; 4320:13,15;4325:25; 4326:7 <b>reader (1)</b> 4209:14 <b>reading (2)</b> 4312:5,6 <b>ready (2)</b> 4235:14;4278:14 <b>real (57)</b> 4171:19,24,25; 4172:4,7,8,15;4173:3, 25,25;4174:9,13,14; 4180:22;4187:18,19, 22;4188:2,8,9,10,22; 4189:1,3,9,17;4191:15, 18,21;4193:19; 4194:18;4196:11;				
<b>Q</b>				
<b>qualified (8)</b> 4187:17,21;4189:9; 4227:9;4252:7,11; 4308:13;4320:20 <b>qualify (2)</b> 4236:24;4237:1 <b>qualifying (1)</b> 4188:20 <b>quality (1)</b> 4240:18 <b>quantify (1)</b> 4241:9 <b>quarter (4)</b> 4213:24;4214:2,5; 4307:5 <b>quick (1)</b> 4227:8 <b>quicker (1)</b> 4301:16 <b>quite (3)</b> 4220:20;4221:1; 4284:16 <b>quote (1)</b> 4206:14 <b>quote/unquote (1)</b>				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4212:14,15;4216:14; 4218:5,18;4219:22; 4222:22;4244:25; 4248:8;4260:22; 4266:9,16;4267:4,20, 20;4269:22;4271:8,14; 4272:10;4274:7,16,17; 4275:7,16;4302:22 <b>realizable (3)</b> 4280:16,17,21 <b>Realizing (1)</b> 4181:9 <b>really (25)</b> 4191:6;4194:3; 4195:2,2;4216:5; 4220:17;4226:9; 4243:5;4245:1; 4256:22;4257:22; 4261:1,2;4262:15; 4264:16;4268:7; 4269:14;4274:10; 4279:22;4282:6; 4288:12;4290:8; 4301:19;4308:14; 4315:2 <b>reason (2)</b> 4221:17;4295:25 <b>reasonable (5)</b> 4191:14;4208:9; 4252:18;4265:18; 4282:25 <b>reasonableness (1)</b> 4268:11 <b>reasonably (1)</b> 4300:24 <b>reasons (5)</b> 4180:16;4210:2; 4211:3;4215:9;4222:5 <b>rebuttal (1)</b> 4252:25 <b>recall (5)</b> 4200:14;4230:23; 4248:15;4253:14; 4276:2 <b>receipts (9)</b> 4261:19,20;4262:18; 4267:9,23;4270:2; 4275:13,24;4280:3 <b>receivable (2)</b> 4280:18,18 <b>receivables (1)</b> 4280:22 <b>receive (5)</b> 4241:14;4242:24; 4246:12;4263:19; 4325:12 <b>received (1)</b> 4241:19 <b>recent (1)</b> 4200:15 <b>recess (1)</b> 4277:21 <b>recite (1)</b>	4255:1 <b>re-codified (1)</b> 4281:25 <b>recognize (12)</b> 4255:10;4282:11; 4284:10;4289:3,18; 4298:15;4307:14,17, 22;4310:9;4321:3; 4322:23 <b>recollection (1)</b> 4329:8 <b>recommend (2)</b> 4244:11;4247:16 <b>reconsideration (1)</b> 4215:19 <b>reconstructing (1)</b> 4177:24 <b>reconvene (1)</b> 4226:23 <b>record (6)</b> 4170:12;4215:5,11; 4235:25;4292:23; 4312:23 <b>recorded (4)</b> 4193:25;4243:12; 4277:24;4313:24 <b>records (5)</b> 4313:15;4325:2,3; 4327:17;4328:17 <b>red (1)</b> 4322:15 <b>redeveloped (1)</b> 4222:17 <b>redeveloper (1)</b> 4231:14 <b>redeveloping (1)</b> 4176:14 <b>redirect (1)</b> 4233:3 <b>re-entitlement (2)</b> 4183:17;4192:18 <b>re-entitling (1)</b> 4175:12 <b>refer (1)</b> 4184:5 <b>reference (3)</b> 4267:8;4286:21; 4302:15 <b>referenced (1)</b> 4230:22 <b>referred (8)</b> 4254:13;4281:22,23; 4282:1,22;4297:14,16; 4319:2 <b>referring (2)</b> 4289:7;4316:10 <b>refers (2)</b> 4256:3;4289:24 <b>refined (3)</b> 4292:11,12;4296:24 <b>reflect (2)</b> 4314:1;4331:11 <b>reflected (2)</b>	4325:13;4329:14 <b>reflective (1)</b> 4305:10 <b>reframed (1)</b> 4272:7 <b>regard (7)</b> 4173:11;4184:14; 4223:9;4226:3,9; 4242:18;4282:4 <b>regarding (1)</b> 4313:13 <b>regardless (1)</b> 4271:6 <b>rehabilitate (1)</b> 4300:12 <b>rejected (1)</b> 4215:15 <b>relate (2)</b> 4279:13;4297:2 <b>related (11)</b> 4206:21;4277:19; 4298:20;4303:25; 4305:11;4315:22; 4325:2,4;4328:18; 4331:15;4332:10 <b>relates (7)</b> 4220:25;4232:3; 4288:3,23;4311:13; 4315:1,4 <b>relationship (1)</b> 4191:4 <b>relative (1)</b> 4208:22 <b>relatively (1)</b> 4173:15 <b>relevance (7)</b> 4189:15;4199:19,24; 4202:10;4216:21; 4272:2;4300:11 <b>relevant (22)</b> 4199:20;4201:7; 4202:7;4218:7;4220:3, 13;4223:20;4229:10; 4257:14,15;4280:21; 4298:22;4300:20,22; 4301:13;4302:6; 4308:14;4310:1; 4317:12;4325:4,7; 4331:6 <b>reliability (1)</b> 4288:14 <b>reliance (2)</b> 4203:23;4204:2 <b>relied (1)</b> 4300:24 <b>rely (2)</b> 4229:6;4328:21 <b>relying (1)</b> 4204:18 <b>remain (1)</b> 4173:16 <b>remarkable (1)</b> 4179:5	<b>remember (8)</b> 4190:22,22;4199:13; 4208:14;4216:12; 4239:18;4240:22; 4251:23 <b>remembered (2)</b> 4190:24,24 <b>renegotiations (1)</b> 4228:23 <b>rent (4)</b> 4196:18;4197:7; 4198:2,6 <b>rental (6)</b> 4195:6,11,17; 4198:15;4222:23; 4223:17 <b>rents (3)</b> 4186:19;4194:8; 4195:3 <b>rep (8)</b> 4318:1;4320:3,10; 4323:1,8,14,15;4324:3 <b>repeat (4)</b> 4248:11;4253:10; 4267:6;4271:13 <b>repeating (1)</b> 4314:12 <b>replaced (1)</b> 4302:8 <b>replacement (1)</b> 4193:18 <b>replaces (1)</b> 4324:16 <b>report (47)</b> 4219:7;4220:10; 4252:24,25;4283:21, 22;4284:1,15;4285:15, 16,19,22,24,25;4286:5, 7,21,22;4288:4,10,16; 4290:4,8;4292:20,24; 4293:10,22,23; 4295:10,13,19; 4296:21;4297:12,13; 4298:4,10;4303:11; 4308:10,11,13;4310:4; 4313:21;4314:6,19; 4315:14,16;4322:4 <b>reported (16)</b> 4245:25;4246:5; 4253:18;4260:19; 4281:4;4286:14; 4306:16;4314:8,10; 4315:23;4319:22; 4325:21;4326:12; 4327:18;4328:18; 4329:19 <b>REPORTER (7)</b> 4192:21;4193:25; 4217:13;4243:12; 4277:24;4313:24; 4320:16 <b>Reporters (1)</b> 4169:25	<b>reporting (7)</b> 4239:12,24;4242:19; 4283:3;4293:14; 4296:22;4317:16 <b>reports (15)</b> 4237:21;4250:5; 4252:23;4253:1,3,15; 4268:10;4282:13; 4297:18,22;4299:16; 4308:9;4309:25; 4313:3;4317:18 <b>represent (4)</b> 4201:20;4236:14; 4282:14;4308:3 <b>representation (10)</b> 4318:8,10,20; 4319:12,18,24; 4320:18,20;4322:24; 4323:25 <b>represented (1)</b> 4334:12 <b>representing (1)</b> 4249:23 <b>request (1)</b> 4326:16 <b>requested (3)</b> 4217:12;4320:15; 4325:23 <b>require (4)</b> 4225:4;4266:13; 4302:25;4327:10 <b>required (18)</b> 4246:21;4249:7; 4250:4;4265:7;4268:1; 4283:19;4286:5,12; 4287:25;4288:10; 4291:17;4304:21; 4305:6;4306:18; 4314:16;4316:11; 4326:6;4331:2 <b>requirement (9)</b> 4188:14;4238:14; 4249:1,9;4254:22; 4285:5;4286:20; 4331:5,12 <b>requirements (8)</b> 4249:11;4253:20; 4257:13;4280:23; 4285:14;4291:21; 4317:15;4327:21 <b>requires (4)</b> 4203:22;4224:21; 4248:25;4306:11 <b>requisite (2)</b> 4238:12;4285:6 <b>rescue (1)</b> 4181:20 <b>research (1)</b> 4241:10 <b>reserves (2)</b> 4240:18;4246:15 <b>reside (2)</b> 4170:14;4299:21
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>residence (1)</b> 4272:3	<b>results (8)</b> 4263:11,14,17,24; 4265:10,12;4271:6; 4331:2	4223:16	4198:2,6	4306:14;4308:18,22
<b>residential (22)</b> 4173:17;4177:16; 4178:17;4180:14,25; 4181:1,3;4183:21,25, 25;4186:11,17,18,18; 4187:5;4198:15; 4229:2;4231:3,5,8,16; 4232:20	<b>resume (2)</b> 4227:7;4307:12	<b>rezoning (2)</b> 4175:12;4183:17	<b>rolls (1)</b> 4197:7	<b>scale (1)</b> 4245:11
<b>resolve (2)</b> 4297:11;4298:6	<b>résumé (2)</b> 4229:25;4230:2	<b>ridiculous (1)</b> 4207:2	<b>room (2)</b> 4205:15;4233:11	<b>scenario (2)</b> 4199:1,1
<b>resolved (1)</b> 4297:12	<b>resumed (2)</b> 4219:19;4307:11	<b>right (61)</b> 4170:6;4178:24; 4181:14;4182:14; 4184:13;4185:4,25; 4186:10;4189:5; 4191:8;4193:14,15,16, 20;4194:24;4197:12; 4204:21;4207:16; 4208:1;4209:15; 4212:9;4213:4; 4215:12;4219:11; 4228:11,16;4230:10, 23;4232:23;4235:19; 4237:1;4251:23; 4254:14;4265:14,17; 4272:12,15,23;4273:2; 4274:8;4276:24; 4277:16;4278:8; 4289:9;4290:20; 4291:11,22;4292:18; 4301:25;4307:4; 4308:20,24;4309:1,14, 18;4310:21;4312:22; 4324:22;4326:19; 4328:8;4330:5	<b>rope (1)</b> 4181:20	<b>scenarios (3)</b> 4293:25;4318:16; 4328:7
<b>respect (6)</b> 4221:14;4278:19; 4303:2;4305:17; 4306:5;4316:5	<b>retail (2)</b> 4182:16;4222:24		<b>rose (1)</b> 4295:21	<b>schedule (3)</b> 4233:13,17,21
<b>respectfully (4)</b> 4203:25;4207:15; 4208:3;4215:4	<b>retain (3)</b> 4241:5;4303:20; 4304:4		<b>Ruby (1)</b> 4180:11	<b>scheduler (1)</b> 4233:25
<b>respects (2)</b> 4293:20;4308:23	<b>retained (1)</b> 4242:11		<b>rule (2)</b> 4326:21,21	<b>scheduling (2)</b> 4233:13;4332:1
<b>respond (4)</b> 4287:17;4297:9; 4305:24;4306:12	<b>retaining (1)</b> 4270:14		<b>ruled (2)</b> 4214:7;4216:1	<b>school (12)</b> 4171:4,5,7,8,11,13, 18;4174:23,24,25; 4301:18;4307:20
<b>response (2)</b> 4178:5;4184:3	<b>retroactively (1)</b> 4206:9		<b>rules (2)</b> 4220:23;4292:19	<b>scienter (2)</b> 4204:5,9
<b>responses (1)</b> 4330:25	<b>return (1)</b> 4191:25		<b>ruling (4)</b> 4200:8;4214:10; 4215:20;4226:19	<b>scratch (2)</b> 4226:6,8
<b>responsibilities (26)</b> 4221:7;4236:19; 4239:20;4241:25; 4242:4;4244:1; 4245:20,23;4247:8,20, 24;4248:3,6;4282:18; 4283:8,10;4284:1,24; 4288:6,7;4296:11,13, 22;4301:11,12; 4303:24	<b>returned (1)</b> 4250:20		<b>running (2)</b> 4173:18;4203:11	<b>screen (22)</b> 4254:17,20;4255:7; 4258:5;4278:18; 4282:10,17;4284:9; 4285:21;4289:2,10; 4307:23;4314:25; 4315:19;4316:7,24; 4317:22;4318:5; 4321:2,22;4322:13; 4324:25
<b>responsibility (9)</b> 4238:24;4239:22; 4244:17;4284:21,22; 4286:6;4295:17,18; 4297:4	<b>Returning (1)</b> 4278:16	<b>rights (2)</b> 4230:11,16	<b>runs (1)</b> 4327:20	<b>se (1)</b> 4251:15
<b>responsible (3)</b> 4284:25;4300:23,24	<b>revenue (8)</b> 4259:2,6,8;4260:1; 4269:1,6;4270:20; 4279:25	<b>rise (5)</b> 4179:14;4227:4; 4278:4;4307:7; 4315:25	<b>Russian (1)</b> 4181:14	<b>seat (2)</b> 4170:10;4235:23
<b>rest (1)</b> 4234:7	<b>revenues (6)</b> 4257:11;4263:1,3,5; 4268:24;4274:25	<b>risk (1)</b> 4220:15	<b>RXR (1)</b> 4169:9	<b>seated (3)</b> 4227:6;4278:6; 4307:9
<b>restarted (1)</b> 4176:11	<b>reversal (2)</b> 4215:7;4220:15	<b>road (1)</b> 4197:8	<b>S</b>	<b>SEC (13)</b> 4244:11;4246:1,11, 23,24;4247:9,10; 4248:1,9,13;4249:17; 4251:16;4263:19
<b>restaurant (1)</b> 4190:23	<b>review (18)</b> 4192:22;4228:7,13, 19;4231:25;4281:23; 4282:2,23;4283:2,5,18; 4286:2;4297:4; 4303:19,23;4304:1; 4309:7,10	<b>ROBERT (55)</b> 4169:8,8,10;4170:3, 18;4175:19;4183:20; 4185:10,15;4186:1; 4187:13;4189:7,14; 4192:24;4196:6,23; 4197:18;4198:4; 4213:13,20;4214:10, 13,23;4216:12,19; 4217:3,10;4218:8; 4219:2,20;4220:4; 4225:25;4226:18,24; 4227:7,14,15;4233:4, 10;4234:3,6,9,21,24; 4235:4,11;4333:2,8,14, 19,22;4334:2,9,16,18	<b>same (21)</b> 4183:9;4188:3; 4195:5;4201:8; 4210:22;4212:24; 4214:1,1;4240:2; 4255:23;4257:1; 4260:22;4263:9; 4273:2;4274:3;4278:7; 4305:12;4316:19; 4318:2;4324:8;4331:9	<b>second (12)</b> 4200:7;4202:22; 4205:14;4209:4; 4290:11;4307:25; 4311:1;4314:22,22; 4316:19;4317:25; 4321:17
<b>restraints (1)</b> 4211:5	<b>reviewed (9)</b> 4252:25;4253:2,8, 12;4312:7,10,13; 4313:2,4		<b>sandwich (2)</b> 4190:15,24	<b>Secondarily (1)</b> 4246:17
<b>restricted (1)</b> 4302:21	<b>reviewing (5)</b> 4246:25;4247:12; 4268:9;4311:8; 4312:23		<b>save (1)</b> 4302:17	<b>section (34)</b> 4206:18;4230:11,20, 22;4231:1;4250:24; 4251:8;4262:5;4270:1, 5,8,17;4278:24; 4279:9;4283:21; 4285:3,4,17;4287:4; 4288:2;4296:7,8; 4297:16;4299:7,7; 4300:4,7;4303:23;
<b>restrictions (1)</b> 4229:1	<b>revised (3)</b> 4289:21;4324:13,14	<b>role (5)</b> 4242:25;4245:8; 4247:18;4250:17; 4282:19	<b>saw (9)</b> 4190:16;4192:16,17; 4262:8;4264:21; 4267:6;4299:14; 4323:2,11	
<b>result (6)</b> 4176:23;4191:1; 4232:14;4263:9; 4273:15;4289:20	<b>revising (1)</b> 4324:15	<b>roles (1)</b> 4250:25	<b>saying (10)</b> 4203:11,16;4274:24; 4275:21;4291:10; 4293:19;4298:1;	
	<b>revision (2)</b> 4231:6;4324:16	<b>roll (2)</b>		
	<b>revisit (1)</b> 4235:2			
	<b>Revitalization (4)</b> 4178:6,15;4180:15;			

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4304:22;4306:4,5; 4314:3;4317:17; 4331:4 <b>sections (1)</b> 4304:17 <b>sector (3)</b> 4199:9;4249:19; 4250:20 <b>sectors (3)</b> 4173:25;4248:5,7 <b>securities (6)</b> 4210:3;4243:4; 4244:2;4245:9;4246:8; 4302:22 <b>Security (1)</b> 4249:13 <b>seeing (2)</b> 4224:13;4288:22 <b>seek (3)</b> 4246:20;4326:10; 4327:11 <b>seeking (4)</b> 4259:1;4297:10; 4327:16;4328:7 <b>seeks (1)</b> 4328:10 <b>seem (1)</b> 4319:20 <b>seemed (2)</b> 4243:5;4250:18 <b>seems (1)</b> 4207:2 <b>sees (1)</b> 4192:6 <b>segregated (1)</b> 4204:10 <b>seismic (1)</b> 4195:5 <b>select (2)</b> 4265:1;4276:20 <b>selected (2)</b> 4240:20;4277:9 <b>selection (2)</b> 4264:7;4328:12 <b>selections (1)</b> 4240:19 <b>sell (3)</b> 4269:1,5;4270:22 <b>sellable (1)</b> 4176:6 <b>seller (1)</b> 4255:3 <b>selling (2)</b> 4269:21,22 <b>send (1)</b> 4236:7 <b>Senior (17)</b> 4169:25;4183:11,14; 4193:25;4239:19,21, 25;4240:7;4241:23; 4242:1;4243:12; 4245:17,24;4247:18; 4250:9;4277:24;	4313:24 <b>sense (17)</b> 4199:10;4203:22; 4206:6;4215:3,4,25; 4216:7;4233:16,22; 4262:20,23,24; 4265:20;4269:4; 4272:10;4287:22; 4326:9 <b>sent (1)</b> 4320:3 <b>sentence (3)</b> 4314:5,7;4319:11 <b>separate (6)</b> 4189:16;4203:4,9; 4255:15;4280:23; 4296:18 <b>separation (2)</b> 4204:15,15 <b>series (2)</b> 4170:21;4191:12 <b>serve (1)</b> 4290:8 <b>served (2)</b> 4250:2;4251:7 <b>service (7)</b> 4241:1;4286:1; 4290:19;4303:19; 4305:23,25;4326:10 <b>Services (32)</b> 4240:11;4241:2,3, 22;4250:24;4251:8; 4254:3;4281:23; 4282:16,17;4283:7,15; 4285:2;4286:11; 4287:9,9;4291:3,15; 4298:20,21;4305:11; 4306:12;4309:6,7,24; 4310:14;4311:14; 4313:12,12;4314:15; 4318:19;4325:11 <b>serving (5)</b> 4236:20;4249:25; 4250:25;4251:3,6 <b>session (3)</b> 4227:5;4278:5; 4307:8 <b>set (9)</b> 4200:2;4210:22; 4254:22;4270:16; 4280:23;4281:11; 4293:10,12;4295:3 <b>sets (1)</b> 4331:15 <b>setters (1)</b> 4281:15 <b>SEVEN (11)</b> 4168:10;4178:18; 4184:15;4186:13; 4190:19;4200:3; 4206:1,3;4245:12; 4273:25;4274:5 <b>several (3)</b>	4314:4;4315:1,4 <b>shall (2)</b> 4231:8,11 <b>sheet (2)</b> 4257:7,10 <b>Shell (1)</b> 4184:6 <b>S-H-E-L-L (1)</b> 4184:7 <b>shoes (1)</b> 4197:21 <b>Shore (1)</b> 4182:23 <b>short (2)</b> 4234:13;4241:24 <b>shortly (3)</b> 4237:24;4238:16; 4245:14 <b>show (7)</b> 4175:17,19;4210:17; 4282:15;4309:13,23; 4331:6 <b>showing (3)</b> 4284:17;4300:19; 4302:6 <b>shown (1)</b> 4232:6 <b>shows (1)</b> 4285:3 <b>side (6)</b> 4205:4;4309:3; 4318:2,2;4323:3,3 <b>sided (1)</b> 4201:11 <b>sign (5)</b> 4237:19;4286:7; 4318:21;4319:7,25 <b>signed (1)</b> 4200:20 <b>significance (4)</b> 4288:12;4289:13,15; 4290:7 <b>significant (8)</b> 4181:10;4288:11; 4295:16;4297:25; 4298:2,2;4304:25; 4305:1 <b>similar (12)</b> 4249:21;4250:16; 4261:18;4264:19; 4266:12,12,18,23,23; 4269:23,23;4297:17 <b>similarities (1)</b> 4296:19 <b>simple (1)</b> 4216:23 <b>simplicity (1)</b> 4309:6 <b>simply (3)</b> 4212:11;4213:5; 4292:25 <b>single (5)</b> 4201:1;4329:22;	4330:1,10,23 <b>sit (4)</b> 4174:14;4216:8; 4238:15;4251:25 <b>site (6)</b> 4177:12,20,21; 4181:17;4195:11,13 <b>sites (2)</b> 4177:23;4195:14 <b>sitting (3)</b> 4193:2;4251:22; 4332:2 <b>situation (8)</b> 4177:4;4183:9; 4259:20;4263:23; 4272:8;4303:22; 4308:20;4317:17 <b>situations (2)</b> 4263:21;4287:8 <b>six (11)</b> 4177:9;4184:15; 4190:19;4212:20; 4245:12;4246:4; 4254:18;4265:2; 4274:5;4321:18; 4322:2 <b>skipping (1)</b> 4224:16 <b>slant (1)</b> 4192:8 <b>slated (1)</b> 4177:6 <b>slept (1)</b> 4181:22 <b>slide (1)</b> 4175:19 <b>Slim (2)</b> 4200:10;4333:5 <b>slimmer (1)</b> 4226:16 <b>Sloan (1)</b> 4180:12 <b>small (2)</b> 4183:18;4202:8 <b>smart (1)</b> 4180:12 <b>sold (5)</b> 4176:21;4182:17; 4184:9;4259:22; 4266:18 <b>sole (1)</b> 4231:12 <b>somebody (4)</b> 4211:4;4259:3; 4334:8,12 <b>somehow (5)</b> 4199:25;4201:23; 4205:25;4206:8,9 <b>someone (3)</b> 4175:8;4211:1; 4257:18 <b>someone's (1)</b> 4326:15	<b>sometimes (2)</b> 4226:7,7 <b>somewhat (1)</b> 4275:18 <b>somewhere (1)</b> 4235:9 <b>son (2)</b> 4174:23;4191:7 <b>sorry (12)</b> 4191:20;4198:4,5; 4204:19;4205:20; 4223:11;4278:12; 4292:8;4299:11; 4307:16;4312:17; 4322:21 <b>sort (12)</b> 4174:11;4177:4; 4184:1;4195:5; 4198:15;4206:23; 4224:12;4226:17; 4246:21;4290:20; 4292:7;4320:17 <b>sorts (1)</b> 4184:3 <b>sound (1)</b> 4245:15 <b>sounds (1)</b> 4194:17 <b>sources (2)</b> 4241:20;4269:25 <b>south (2)</b> 4174:4;4183:24 <b>space (4)</b> 4198:8;4223:7; 4251:24;4299:19 <b>Spain (1)</b> 4239:5 <b>spanning (1)</b> 4182:10 <b>speak (1)</b> 4315:2 <b>speaking (7)</b> 4224:8,10;4236:17; 4251:16;4273:11; 4308:6;4334:17 <b>special (1)</b> 4242:11 <b>specialist (8)</b> 4270:4,14;4302:23; 4303:1,6,20;4304:4,6 <b>specific (11)</b> 4187:14,16;4217:14; 4220:5;4228:5;4260:7; 4272:7;4273:5;4304:1, 16;4318:23 <b>specifically (2)</b> 4228:10;4232:13 <b>specificity (1)</b> 4257:24 <b>spectrum (3)</b> 4222:22;4271:1; 4274:19 <b>speculate (1)</b>
---	--	--	---	--

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4320:4 <b>speech (1)</b> 4204:22 <b>speeches (1)</b> 4251:18 <b>spell (1)</b> 4332:6 <b>spend (2)</b> 4210:3;4239:4 <b>spent (3)</b> 4170:25;4173:1; 4300:14 <b>split (2)</b> 4173:15,21 <b>spoke (1)</b> 4199:12 <b>spreadsheet (1)</b> 4296:25 <b>spring (1)</b> 4184:1 <b>SPRINGS (3)</b> 4168:10;4200:3; 4206:1 <b>square (8)</b> 4176:5,6,25;4177:5; 4182:15;4186:8,9; 4195:5 <b>Squarely (2)</b> 4221:25,25 <b>SSARS (3)</b> 4281:23;4282:1,5 <b>S-S-A-R-S (1)</b> 4281:23 <b>staff (10)</b> 4237:19;4238:23,23, 24;4239:16,16,23; 4244:15;4245:12; 4246:23 <b>stand (11)</b> 4170:4,5;4197:12; 4205:12;4219:19; 4233:7;4235:18; 4278:8,10;4307:11; 4332:15 <b>standard (63)</b> 4211:24;4212:11; 4213:18;4251:11; 4254:1,4,6,7,8; 4255:14,16,19;4256:5, 21;4257:23;4258:1; 4260:6,25;4261:2,5,15; 4262:1,15;4264:17,21; 4265:16;4266:5; 4267:5,16;4269:2,20, 20;4270:5,16;4278:23; 4279:13;4281:14,18; 4282:6;4283:21; 4284:16,23;4285:19; 4286:4,21;4287:4,16; 4288:4,15,18,23,23; 4291:2;4296:5,7; 4306:11;4318:18,22, 23;4320:3,6;4321:5,7	<b>standards (49)</b> 4208:3;4236:18; 4242:15;4247:25; 4248:3;4250:3; 4253:23,25;4254:2,7,9; 4255:21;4257:14,24; 4281:11,13,15,16,19, 22,24;4282:3,24; 4283:8,10,21;4291:15, 19;4294:2;4295:2,4,4, 8,13;4296:22;4298:22; 4299:19,23,25;4300:9, 12,25;4302:13; 4316:18;4317:12,16; 4325:19;4326:7; 4327:10 <b>standing (3)</b> 4197:21;4205:6; 4215:8 <b>standpoint (2)</b> 4186:24;4274:18 <b>stands (1)</b> 4282:1 <b>start (4)</b> 4173:21;4194:22; 4250:15,18 <b>started (4)</b> 4173:6,22;4183:20, 22 <b>starting (4)</b> 4226:6,7;4250:2; 4258:15 <b>starts (1)</b> 4285:18 <b>STATE (4)</b> 4168:1,3;4170:11; 4235:24 <b>stated (5)</b> 4283:1,17;4285:15; 4293:19;4326:15 <b>Statement (59)</b> 4201:11;4202:20,23; 4206:22,23;4207:23; 4209:14;4218:13; 4221:20;4231:23; 4237:15;4254:2; 4255:17;4256:25; 4257:2,5,6,10,11,12, 17;4264:8;4268:1; 4281:22;4288:1; 4293:3,5;4296:14; 4297:5;4303:4,11; 4305:21;4306:9,21; 4312:3,11;4313:21; 4314:20;4315:10,24; 4316:3,12,16;4317:3,9; 4318:8;4319:2,6,12,15; 4322:2,25;4323:9; 4325:13;4327:13,18; 4328:18;4330:23; 4331:13 <b>Statements (98)</b> 4199:21;4201:8;	4207:7;4213:8;4228:8; 4237:20;4240:14,14, 16;4246:7,7,22,25; 4253:15,19;4254:5; 4255:20;4257:8,21; 4258:11;4260:14; 4263:20;4264:2; 4265:4,19;4266:9; 4269:12;4277:10; 4279:2;4280:13,20; 4281:3,10,13,18; 4283:1,5,20,23; 4285:12;4286:12,15, 24;4287:12,14; 4289:17,18,21;4290:1, 10;4292:14;4293:8,9, 11,13,16,19;4294:1; 4295:1,6,20,23; 4297:18,22;4298:7,20; 4299:3,21;4300:18; 4304:1,18;4305:6,11, 19;4308:16;4310:14; 4311:10;4312:13; 4316:11;4317:4,7; 4320:21;4321:13; 4322:6;4325:21; 4326:13;4329:4,10,15, 17,19,21,25;4330:17; 4331:3,6,10,15 <b>States (5)</b> 4224:13;4289:22; 4298:8;4319:4;4329:2 <b>station (1)</b> 4194:24 <b>status (1)</b> 4181:5 <b>statute (1)</b> 4204:14 <b>statutes (1)</b> 4204:18 <b>statutory (2)</b> 4200:19;4221:8 <b>staying (1)</b> 4307:18 <b>Stellar (2)</b> 4173:7;4184:21 <b>S-T-E-L-L-A-R (1)</b> 4173:7 <b>stenographically (4)</b> 4193:24;4243:11; 4277:23;4313:23 <b>step (1)</b> 4284:22 <b>stepped (3)</b> 4233:6;4278:9; 4332:14 <b>Stern (2)</b> 4183:20,21 <b>Steve (2)</b> 4170:4;4173:7 <b>Steven (1)</b> 4170:13 <b>stick (2)</b>	4212:19;4275:18 <b>still (21)</b> 4173:16;4179:2; 4194:1,11,11;4211:8; 4234:13;4238:17; 4241:23;4277:7; 4280:20;4291:20; 4293:4,6,10;4299:15, 17;4300:8;4302:14; 4314:19;4332:22 <b>stockholders (1)</b> 4257:12 <b>stood (1)</b> 4173:7 <b>stop (1)</b> 4208:20 <b>stopping (1)</b> 4277:12 <b>stove (1)</b> 4205:6 <b>strategies (4)</b> 4180:22;4198:24; 4199:3,5 <b>strategy (3)</b> 4198:18,20,25 <b>stream (2)</b> 4270:20;4271:23 <b>streamline (1)</b> 4226:20 <b>streamlined (1)</b> 4256:19 <b>streams (4)</b> 4260:1;4267:12; 4269:2,6 <b>STREET (28)</b> 4168:10;4169:4,18; 4170:14;4175:22; 4176:20;4177:11; 4181:24;4182:11; 4213:22;4216:19; 4223:3,6,14;4226:16; 4228:17,18,21,25; 4229:6,10,14;4230:1; 4231:19;4232:4,10,20; 4236:5 <b>Streets (1)</b> 4183:3 <b>strengthen (1)</b> 4225:9 <b>strengthens (1)</b> 4225:10 <b>strike (4)</b> 4198:4;4225:12; 4272:1,6 <b>strong (1)</b> 4195:11 <b>structures (1)</b> 4226:5 <b>study (1)</b> 4237:2 <b>stuff (1)</b> 4330:15 <b>SUAREZ (56)</b>	4169:6;4236:9,11, 14;4252:13;4254:14, 18;4255:4;4258:2; 4262:5;4264:11; 4266:3;4272:9; 4277:12,15;4278:11, 14,15;4282:7;4284:5; 4288:25;4289:8,12; 4292:16;4298:13; 4299:9;4300:2;4302:1; 4304:6,8,16;4307:2,14, 17;4310:6;4311:23; 4320:12,23;4322:7,10, 15,19;4323:23;4324:6, 8,13,22;4327:5;4330:6, 9,21;4331:18,21,24; 4332:18,25 <b>Subject (6)</b> 4189:15;4200:15; 4201:19;4221:15; 4222:7;4305:8 <b>submit (1)</b> 4246:22 <b>submitted (4)</b> 4220:9;4251:19; 4252:23,24 <b>subpoena (1)</b> 4247:10 <b>subsection (1)</b> 4273:21 <b>subsidiary (1)</b> 4239:7 <b>substantial (1)</b> 4268:17 <b>substantially (4)</b> 4186:20;4196:2; 4201:8;4297:17 <b>successful (2)</b> 4176:21;4249:18 <b>successfully (1)</b> 4183:17 <b>sudden (1)</b> 4214:2 <b>suggest (2)</b> 4295:13;4306:7 <b>suggested (1)</b> 4288:15 <b>suggestion (1)</b> 4303:10 <b>suggests (1)</b> 4303:17 <b>Suite (2)</b> 4169:4,18 <b>summary (4)</b> 4215:14;4220:21; 4221:6;4230:2 <b>superior (2)</b> 4276:14,15 <b>supplanted (1)</b> 4302:8 <b>supplants (2)</b> 4324:11,16 <b>supply (2)</b>
--	--	---	--	---



NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4179:25;4180:2 <b>support (6)</b> 4242:16;4253:3,18; 4326:12;4327:17; 4328:18 <b>supported (1)</b> 4200:25 <b>supporting (7)</b> 4253:17;4286:10; 4297:2;4311:8; 4312:10;4325:12; 4326:11 <b>SUPREME (2)</b> 4168:1,16 <b>Sure (20)</b> 4185:1;4191:21; 4194:2;4203:17; 4214:20;4220:14; 4227:13;4253:11; 4258:15;4271:14; 4288:19;4302:13; 4311:23;4318:17; 4323:22;4326:2; 4327:3,7;4334:5,16 <b>surrounding (3)</b> 4190:6,20;4280:23 <b>survive (1)</b> 4181:23 <b>survived (2)</b> 4181:21,23 <b>suspect (1)</b> 4264:22 <b>sustain (1)</b> 4219:14 <b>sustained (10)</b> 4209:20;4210:5; 4216:21;4219:13; 4220:11;4222:5; 4260:24;4274:11; 4311:21;4315:9 <b>sustaining (1)</b> 4327:2 <b>swiss (1)</b> 4190:14 <b>switch (3)</b> 4207:25;4208:2; 4333:14 <b>switched (1)</b> 4186:16 <b>sworn (2)</b> 4170:8;4235:21 <b>system (3)</b> 4293:12;4295:3; 4298:7	4207:8;4221:21,21; 4227:1;4233:12; 4235:4;4256:22; 4266:10;4322:7; 4330:20,21,22 <b>talked (13)</b> 4183:23;4223:24; 4249:19;4259:17; 4262:9,9;4266:15; 4286:1;4296:21; 4308:5,8;4309:5,12 <b>talking (25)</b> 4201:19;4207:13; 4208:10;4212:15; 4222:19;4224:14; 4258:10;4259:6; 4261:19;4262:25; 4263:2;4272:8; 4273:10;4275:5; 4279:22;4282:20; 4290:11,16,17;4292:1; 4295:5;4296:15; 4311:18,19;4330:7 <b>talks (9)</b> 4232:13;4260:6; 4270:1,18;4271:22; 4275:12;4287:4,16; 4331:4 <b>task (1)</b> 4250:25 <b>tasked (1)</b> 4247:1 <b>tax (19)</b> 4185:17;4211:19,23, 23;4212:14;4270:21, 24;4271:11,18,20; 4272:11;4273:12; 4274:18;4275:2,5,22; 4287:9;4311:13; 4313:11 <b>taxed (2)</b> 4272:4;4274:24 <b>taxes (12)</b> 4198:10;4224:14,15; 4270:19,21;4271:9,16; 4272:11;4273:1,20; 4274:4;4316:12 <b>team (1)</b> 4190:14 <b>teams (1)</b> 4242:3 <b>technical (3)</b> 4241:10,11;4242:16 <b>technically (1)</b> 4192:17 <b>ten (6)</b> 4184:15;4194:9; 4199:8;4224:3; 4226:21;4276:7 <b>tenant (4)</b> 4231:1,2,4,6 <b>tenant's (1)</b> 4230:10	<b>tend (1)</b> 4260:17 <b>tender (1)</b> 4252:13 <b>term (11)</b> 4186:13;4224:6,8, 11,15;4226:22; 4256:20;4271:23; 4274:25;4279:16; 4281:5 <b>terms (14)</b> 4175:11;4198:1,2; 4206:10;4221:17; 4239:22;4244:22; 4245:1;4247:5; 4284:19;4291:17; 4296:22;4309:20; 4315:2 <b>testified (6)</b> 4170:8;4198:17; 4235:21;4301:7; 4302:1;4318:25 <b>testify (8)</b> 4188:8,14,17; 4191:10;4205:25; 4217:7;4253:9,13 <b>testifying (2)</b> 4250:6;4333:10 <b>testimony (38)</b> 4185:19;4201:17; 4206:13,16;4208:11, 20;4213:21;4214:4; 4217:12;4218:19; 4220:19;4224:20; 4227:1;4231:24; 4244:14;4247:13,14; 4250:6;4252:21; 4253:22;4277:19; 4288:21;4301:5; 4303:9;4304:9;4312:6, 7;4313:5;4318:24; 4322:18;4325:22; 4326:1,3,8,15;4328:1, 4;4332:10 <b>testing (5)</b> 4239:10;4240:19,21; 4291:18;4309:21 <b>theirs (1)</b> 4210:25 <b>theoretical (1)</b> 4274:15 <b>theory (1)</b> 4187:8 <b>thereafter (3)</b> 4237:24;4238:16; 4300:10 <b>therefore (8)</b> 4200:1;4203:2; 4205:1;4206:5; 4315:25;4316:13; 4317:6;4326:7 <b>thickness (1)</b> 4299:24	<b>thinking (2)</b> 4175:12;4205:5 <b>third (4)</b> 4232:5,13;4260:17; 4315:17 <b>thorough (1)</b> 4251:5 <b>though (6)</b> 4185:14;4218:2; 4221:18;4229:9; 4277:1,5 <b>thought (6)</b> 4175:9;4179:6,14; 4193:4;4199:16; 4243:6 <b>three (20)</b> 4172:6;4184:10,14; 4210:19;4213:21; 4215:9;4229:20,24; 4241:18;4252:16,16; 4309:3;4324:20; 4331:23;4332:16,20; 4333:2,19,19,23 <b>throughout (5)</b> 4187:9;4200:15; 4244:9;4245:20; 4307:19 <b>throw (1)</b> 4194:12 <b>Thursday (6)</b> 4333:9,10,22,25; 4334:1,8 <b>times (21)</b> 4190:18;4193:13,14; 4210:15;4213:6; 4231:3;4246:12,15,18, 20;4252:4,7,9; 4266:18;4276:7,9,11, 22;4300:15;4304:3; 4324:20 <b>title (5)</b> 4238:21;4241:22; 4245:14;4250:8; 4299:14 <b>titled (1)</b> 4285:22 <b>titles (1)</b> 4245:11 <b>today (24)</b> 4174:4,7;4175:19; 4180:5;4181:6;4182:7; 4184:13;4191:10; 4192:3,7;4193:2; 4197:5,6,8;4199:22; 4213:1;4223:19; 4234:2;4252:17; 4253:9,22;4268:25; 4279:24;4311:15 <b>today's (1)</b> 4313:4 <b>together (3)</b> 4173:6;4247:15; 4297:1	<b>told (3)</b> 4195:12;4210:13; 4326:22 <b>tomorrow (10)</b> 4213:1;4234:7,19, 20;4332:11,16;4333:7, 12;4334:15,17 <b>tonight (1)</b> 4334:7 <b>tons (1)</b> 4208:6 <b>took (7)</b> 4170:5;4173:16; 4235:18;4237:8; 4239:22;4307:20; 4326:22 <b>top (10)</b> 4180:14;4181:2,7, 19;4232:3;4298:23; 4308:10;4309:1,14,18 <b>topic (1)</b> 4305:22 <b>topics (1)</b> 4251:23 <b>total (1)</b> 4208:8 <b>totally (2)</b> 4196:10;4210:3 <b>touch (1)</b> 4327:15 <b>touched (2)</b> 4244:22;4296:23 <b>touches (1)</b> 4305:22 <b>tour (1)</b> 4239:5 <b>tower (6)</b> 4181:8;4219:1,5; 4226:11,14,16 <b>towers (1)</b> 4226:15 <b>Trade (1)</b> 4181:18 <b>traded (2)</b> 4195:15;4244:7 <b>trades (1)</b> 4195:9 <b>traditional (2)</b> 4203:21;4204:5 <b>train (2)</b> 4194:24;4195:1 <b>training (2)</b> 4241:14,19 <b>trait (1)</b> 4256:4 <b>transaction (1)</b> 4177:3 <b>transactional (1)</b> 4172:8 <b>transactions (5)</b> 4172:11,15;4174:5; 4184:23,24 <b>transcript (2)</b>
<b>T</b>				
<b>table (1)</b> 4202:21 <b>talk (18)</b> 4171:16;4174:21; 4180:6;4188:6; 4189:18;4192:13;				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4253:5;4325:25 <b>transcripts (2)</b> 4253:4;4313:16 <b>transfer (2)</b> 4224:15;4237:24 <b>transferring (1)</b> 4240:9 <b>transformation (1)</b> 4178:16 <b>transportation (1)</b> 4194:25 <b>Traub (4)</b> 4171:20,21;4172:3; 4173:5 <b>travel (1)</b> 4333:9 <b>treatment (1)</b> 4286:18 <b>trending (1)</b> 4193:21 <b>Trial (14)</b> 4168:12;4211:8; 4221:12;4250:6,7; 4252:22;4253:1,4,9,13; 4303:9;4312:6,7; 4334:20 <b>TriBeCa (1)</b> 4177:11 <b>trick (1)</b> 4196:4 <b>true (3)</b> 4213:5;4301:6; 4316:19 <b>truly (1)</b> 4267:2 <b>TRUMP (27)</b> 4168:7,8,8,9; 4172:13;4189:24; 4191:5;4219:1,5; 4224:21;4228:23; 4229:2;4231:17; 4232:19;4297:18; 4305:7;4310:13; 4312:3,24;4313:7,10, 14;4315:23;4317:2; 4319:18;4325:14,16 <b>Trump's (6)</b> 4202:3;4228:8; 4230:15;4316:12; 4329:4,16 <b>Trustee (2)</b> 4174:15;4175:3 <b>Trusts (1)</b> 4224:16 <b>truth (1)</b> 4213:3 <b>try (7)</b> 4191:8;4205:16; 4263:22;4269:1,4; 4297:11;4334:9 <b>trying (12)</b> 4173:2,4;4185:18; 4189:6;4214:20;	4275:4;4300:12; 4320:12;4326:16; 4334:2,5,13 <b>Tuesday (1)</b> 4334:6 <b>turn (9)</b> 4233:24;4254:18; 4266:3;4299:9;4300:2; 4302:19;4321:17; 4324:22;4332:2 <b>turned (1)</b> 4186:19 <b>turning (1)</b> 4194:1 <b>turns (1)</b> 4202:24 <b>Twain (1)</b> 4332:7 <b>two (29)</b> 4173:13;4174:4,20; 4179:18;4181:20; 4183:13;4184:14; 4195:4;4196:1; 4202:24;4211:2; 4214:6;4216:17; 4219:6;4220:10; 4239:18;4248:18; 4252:6;4253:1; 4256:11;4282:22; 4296:18;4324:23; 4325:1;4332:16,20,22; 4333:2,23 <b>two-year (1)</b> 4238:14 <b>type (9)</b> 4195:24;4239:25; 4242:5,7;4244:20; 4249:21;4268:5; 4306:2;4330:17 <b>types (7)</b> 4244:23;4245:1; 4280:11;4283:9; 4302:24;4309:21,25 <b>typically (9)</b> 4241:5;4270:25; 4274:18,24;4280:12; 4288:4;4296:21; 4309:4;4310:18	4198:12;4244:16; 4246:13;4247:12,22; 4249:17;4251:10; 4253:6,18;4254:9; 4255:19;4278:24; 4279:6,6,25;4280:10; 4281:6,14;4282:5; 4283:6,19;4284:2; 4285:11;4286:6,7,13; 4287:3,4,5,9,19,23; 4288:13;4291:20; 4293:10,25;4315:22; 4319:14;4325:20; 4326:19;4327:13,16; 4331:2 <b>umbrella (1)</b> 4304:2 <b>unacceptable (1)</b> 4184:2 <b>unchanged (2)</b> 4282:4;4296:10 <b>uncovers (1)</b> 4286:17 <b>under (51)</b> 4180:15;4197:1; 4204:12,14;4212:7; 4218:20;4221:8; 4230:9,11;4231:16; 4250:1;4254:12; 4255:23;4256:14; 4257:8,15,20,22,24; 4258:15;4259:21,23; 4260:13;4263:2; 4265:4;4266:23; 4267:17;4278:21; 4279:9;4280:1,7,8,13; 4283:1,5;4287:22; 4291:13;4293:6,25; 4294:2;4295:2; 4297:16;4304:4; 4306:25;4314:16; 4316:10,18;4317:4,12; 4325:18;4330:25 <b>undergirds (1)</b> 4192:2 <b>underlying (3)</b> 4185:15;4240:20; 4253:2 <b>underscores (1)</b> 4306:1 <b>understate (1)</b> 4263:22 <b>Understood (4)</b> 4252:20;4291:11; 4322:6;4332:12 <b>undertake (1)</b> 4305:6 <b>undervalue (1)</b> 4214:18 <b>undervalued (5)</b> 4200:1,2;4201:7; 4203:1;4214:21 <b>underwriting (1)</b>	4192:2 <b>undeveloped (3)</b> 4268:7;4269:7,8 <b>unfettered (1)</b> 4231:12 <b>unforeseen (1)</b> 4181:11 <b>Uniform (1)</b> 4192:22 <b>uniformly (1)</b> 4187:11 <b>Union (2)</b> 4171:9,10 <b>unique (2)</b> 4267:10;4281:11 <b>United (4)</b> 4224:13;4289:22; 4298:8;4319:4 <b>units (5)</b> 4173:14;4231:3,4,5, 8 <b>universals (1)</b> 4273:9 <b>University (3)</b> 4171:11;4174:15,17 <b>unless (2)</b> 4209:11;4324:15 <b>unmoored (1)</b> 4273:5 <b>unnecessary (1)</b> 4330:15 <b>unqualified (3)</b> 4293:18;4308:20,25 <b>unusual (2)</b> 4275:23;4328:5 <b>up (45)</b> 4170:24;4173:16; 4181:18;4182:17; 4190:23;4194:9; 4195:2;4197:4; 4198:11;4199:7; 4202:11;4207:7; 4210:14,17;4214:2; 4216:15;4229:16; 4233:23;4239:10,12; 4240:8;4244:15; 4250:15;4254:14; 4255:4;4258:2; 4260:19;4264:6; 4272:12;4278:7; 4282:7;4285:3; 4288:25;4293:12; 4295:3;4296:3; 4298:13;4307:22; 4310:6;4318:2; 4320:23;4322:10; 4332:19;4333:7,8 <b>update (2)</b> 4320:5;4334:15 <b>updated (3)</b> 4299:13;4302:9; 4323:15 <b>updating (1)</b>	4303:7 <b>upon (1)</b> 4255:24 <b>use (56)</b> 4183:25;4184:1; 4191:24,25;4192:22, 23;4194:5;4204:16; 4206:13;4211:5,23; 4212:24;4213:15,17; 4218:6,18,24;4219:24; 4225:8;4233:21; 4242:20,22;4259:13, 14;4260:11,14,16,18, 20,25;4261:7,15; 4263:15;4264:14; 4265:7;4266:21; 4267:16;4268:6,19,20; 4269:15,18,21;4270:5, 24;4271:6,15;4272:11, 14;4273:13;4280:2,20; 4300:4;4303:6; 4324:13;4325:15 <b>used (48)</b> 4174:14;4179:17; 4184:8;4187:4,4,5; 4188:25;4198:17,18; 4199:1;4202:15,16; 4212:23;4218:4,17; 4224:14;4256:16,17; 4258:12;4264:5; 4267:19;4270:6; 4273:25;4278:25; 4280:8,10,12,17; 4284:3;4285:11; 4286:13,25;4297:7; 4304:7;4306:13,23; 4311:11;4313:20; 4314:6;4321:8; 4324:17;4325:8,23; 4326:12;4327:12; 4329:3,14;4331:12 <b>useful (2)</b> 4299:15;4302:4 <b>user (21)</b> 4207:23;4210:8; 4264:4;4265:19,22,24; 4285:23,25;4290:9; 4297:25;4298:1,3,11; 4308:11,25;4309:10, 15;4310:5;4331:7,12, 14 <b>users (8)</b> 4288:13;4289:17; 4293:11,15;4316:14; 4317:6;4319:22; 4322:5 <b>uses (5)</b> 4192:10,13;4218:9; 4223:8;4264:1 <b>using (15)</b> 4256:20;4258:20; 4260:17;4263:18; 4270:13;4271:5;
	<b>U</b>			
	<b>ultimate (1)</b> 4225:2 <b>ultimately (12)</b> 4176:19;4181:3; 4218:22;4237:19; 4239:13,14;4240:10; 4244:5;4245:18; 4247:15;4249:20; 4251:13 <b>ULURP (2)</b> 4192:20,21 <b>um (43)</b>			

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

4272:5;4275:23; 4277:3,6,11;4287:1,2; 4302:25;4324:8 <b>usual (3)</b> 4200:12;4226:21; 4277:17	4260:3,10,19;4261:16; 4262:2,10;4263:9,14; 4264:14;4265:17; 4266:17;4267:4,16,17, 20;4268:15,16,23; 4269:5,10;4270:18,21, 24;4271:6,8,15,16,21, 25;4272:11,15;4273:1, 3,12,13,20,22,24,25; 4274:3,7,14,24;4275:2, 3,6,8,23;4276:14,20; 4278:22;4279:10,17, 20,23;4280:3,4,6,15, 16,17,21,21,24;4281:7, 9;4286:25;4287:3,21; 4303:14;4304:5,13; 4306:7,16,20,24; 4313:20;4314:5,9,11; 4325:9,15;4328:16; 4329:1,7,14	4200:14;4202:11 <b>version (4)</b> 4196:19;4216:11; 4226:17;4299:12 <b>versus (5)</b> 4209:4;4211:19; 4212:14;4256:23; 4263:6 <b>view (18)</b> 4185:2,12;4187:15; 4188:3,3;4191:18; 4198:11;4199:22; 4200:23;4202:16; 4208:18;4210:10; 4213:10;4218:14,17; 4271:21;4273:15; 4275:2 <b>viewed (1)</b> 4201:15 <b>viewer (1)</b> 4208:9 <b>viewing (2)</b> 4191:19,21 <b>views (1)</b> 4202:1 <b>Village (2)</b> 4175:23;4176:16 <b>violate (1)</b> 4326:20 <b>violation (2)</b> 4203:19;4204:16 <b>violations (1)</b> 4251:8 <b>Virginia (2)</b> 4238:9,11 <b>voluminous (1)</b> 4251:5 <b>Vornado (1)</b> 4206:3 <b>vouching (1)</b> 4291:18	<b>Wall (28)</b> 4181:24;4213:22; 4216:19;4218:25; 4219:4;4220:11,12; 4223:3,6,10,13,14,19; 4225:1;4226:13,16; 4228:17,18,21,25; 4229:5,10,14;4230:1; 4231:19;4232:4,10,20 <b>WALLACE (29)</b> 4205:21;4216:2; 4233:20;4234:12; 4235:6;4236:21; 4260:23;4271:10; 4272:1;4273:4;4274:9; 4300:11;4301:4,22; 4302:4;4303:15; 4311:16;4315:7; 4318:12;4320:11; 4323:20;4324:5,7; 4326:2,14;4330:13; 4332:22;4333:5; 4334:19 <b>wants (5)</b> 4208:1;4210:15; 4221:3,6;4330:20 <b>warehouse (1)</b> 4176:5 <b>warning (5)</b> 4289:25;4290:3,9; 4304:19;4331:17 <b>warrant (1)</b> 4290:7 <b>warranted (2)</b> 4244:10,18 <b>warrants (1)</b> 4288:12 <b>wash (2)</b> 4206:5,9 <b>Washington (3)</b> 4173:10;4236:5; 4239:3 <b>waste (1)</b> 4242:9 <b>way (24)</b> 4175:20;4176:13; 4181:16;4187:3,7; 4189:4;4204:14; 4205:5;4206:24,25; 4209:13;4211:7; 4213:9;4216:13; 4223:9;4224:25; 4244:15;4266:16; 4267:15;4281:15; 4282:18;4295:3; 4314:8;4326:21 <b>ways (6)</b> 4212:21;4260:16; 4261:4;4267:22; 4280:4;4314:10 <b>website (1)</b> 4272:12 <b>Wednesday (1)</b>	4334:20 <b>week (2)</b> 4178:18;4334:5 <b>weigh (2)</b> 4188:11;4202:1 <b>WEISSELBERG (3)</b> 4168:7;4310:20,23 <b>weren't (2)</b> 4323:24;4325:23 <b>West (4)</b> 4170:14;4175:23; 4176:16,25 <b>Westbury (1)</b> 4171:2 <b>What's (10)</b> 4203:13;4208:6; 4250:24;4262:19; 4275:25;4282:3; 4284:5;4320:1; 4324:10;4327:18 <b>Wheatley (4)</b> 4171:5,7;4217:6; 4227:1 <b>whenever (1)</b> 4278:14 <b>whereas (3)</b> 4269:25;4323:11; 4324:18 <b>Whereupon (32)</b> 4170:5;4217:12; 4219:19;4233:6; 4235:18;4254:16,19; 4255:6;4258:4; 4277:21;4278:9,17; 4282:9;4284:7,8; 4285:20;4288:20; 4289:1,10;4314:24; 4315:18;4316:6,23; 4317:21;4318:4; 4320:15;4321:1,21; 4322:12,17;4324:24; 4332:14 <b>Whitley (2)</b> 4305:12;4312:20 <b>whole (12)</b> 4179:12;4181:1; 4184:1;4200:16; 4201:14;4210:2; 4212:19;4245:24; 4279:7;4289:17; 4308:19;4317:17 <b>whose (1)</b> 4290:15 <b>wide (8)</b> 4240:3;4244:5; 4245:3;4248:7; 4256:16;4258:23; 4261:13;4279:1 <b>widely (1)</b> 4263:11 <b>wildly (4)</b> 4263:14;4273:16; 4274:5;4276:17
<b>V</b>				
<b>vacancy (1)</b> 4198:7 <b>vacant (5)</b> 4177:20,21,23; 4198:9;4223:7 <b>vagaries (2)</b> 4210:18;4212:6 <b>vague (3)</b> 4260:15,20,25 <b>vaguely (1)</b> 4190:22 <b>valid (2)</b> 4221:13;4300:8 <b>validity (1)</b> 4304:12 <b>Valuation (19)</b> 4187:20,20;4188:1; 4199:21;4209:23; 4211:9;4232:4; 4250:24;4260:18; 4261:1,3;4265:20; 4268:3,8,10,12; 4269:19;4270:4; 4311:11 <b>valuations (4)</b> 4215:24;4216:6; 4311:12;4328:7 <b>value (201)</b> 4184:25;4185:2,6, 12,17;4186:14,17,20; 4187:2,15;4188:3,6,11, 15,17,22;4189:3,13,18; 4191:18,22;4192:3,6, 10;4193:18;4194:4,5, 11,13,14,15;4195:25; 4196:12,20,24;4197:1, 5,7;4198:1;4199:13; 4205:13;4206:2,8; 4208:16,19;4209:21, 22;4211:4,19,23,25; 4212:4,5,5,14,14,21, 22;4213:7,15,16; 4216:16;4218:4,6,10, 15,24,25;4219:15; 4221:24;4222:10; 4223:6;4224:25; 4228:5;4232:14,22; 4254:11,13,23,25; 4255:2,11,13,14,15,15, 18,19,23,23,24,25; 4256:2,3,3,5,7,8,10,13, 14,18,19,21;4257:17, 19,22;4258:1,14,20; 4259:1,2,9,11,15;	<b>value-added (1)</b> 4192:8 <b>valued (11)</b> 4185:23;4186:21; 4199:17;4206:24,25; 4216:14;4259:3; 4265:23;4271:20; 4273:7;4274:14 <b>values (31)</b> 4186:23;4187:8; 4196:2,14;4200:3; 4201:9;4202:8; 4206:11;4210:17; 4218:13;4253:18; 4259:13,14,20,24; 4263:25;4273:16; 4274:18;4276:18; 4277:1,5,9;4286:14; 4300:5;4302:20; 4304:24;4314:8,10,13; 4325:24;4326:12 <b>valuing (11)</b> 4185:19;4199:22; 4219:24;4232:19; 4258:22,25;4259:5,6, 21;4265:9;4268:25 <b>variation (2)</b> 4213:24,25 <b>variations (2)</b> 4210:23;4328:7 <b>variety (4)</b> 4239:2;4246:19; 4250:15;4267:22 <b>various (5)</b> 4202:3;4277:1,5; 4281:14;4297:1 <b>vary (1)</b> 4211:25 <b>varying (1)</b> 4282:18 <b>verbiage (1)</b> 4267:7 <b>verdict (2)</b>	<b>W</b> <b>WABASH (1)</b> 4168:9 <b>Wait (5)</b> 4203:14;4207:12; 4229:21;4330:4,4 <b>waiting (1)</b> 4215:6 <b>waiver (1)</b> 4246:21 <b>wake (1)</b> 4199:7 <b>Wakefield (2)</b> 4213:22,25 <b>walk (2)</b> 4258:13;4300:7 <b>walked (2)</b> 4181:18;4190:23 <b>walk-up (1)</b> 4173:8		

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump

RECEIVED NYSCEF: 01/04/2024

November 14, 2023

<b>William (2)</b> 4237:3;4238:13 <b>window (1)</b> 4226:13 <b>withdraw (2)</b> 4197:18;4311:25 <b>withdrawn (10)</b> 4172:22;4178:7; 4217:1;4248:20; 4296:12;4306:3; 4321:25;4323:23; 4328:24;4329:23 <b>withheld (1)</b> 4325:3 <b>within (16)</b> 4191:14;4206:17; 4213:4;4222:22; 4229:6;4240:10; 4241:19,24;4243:1; 4250:23;4251:10; 4252:18;4256:21; 4283:4;4288:15; 4327:17 <b>without (6)</b> 4210:5;4222:6; 4262:11;4269:1; 4270:3;4301:2 <b>Witkoff (15)</b> 4170:4,13,19; 4173:22,23;4175:24; 4180:9;4187:15; 4189:21;4191:13; 4219:22;4222:9; 4223:3;4226:3; 4227:23 <b>witness (100)</b> 4170:2,5,13; 4185:22,24;4188:4,8; 4192:22;4194:17,20; 4196:7,13,16,21; 4197:10;4201:21; 4202:8;4205:15; 4214:11;4216:17,22; 4217:6;4218:3; 4219:12,19;4220:2,9; 4221:14;4225:14,18, 21;4226:25;4227:8,11, 24;4233:5,6,9;4234:2; 4235:10,12,13,15,17, 18;4236:1,4,8;4251:3; 4252:14;4262:12,15, 21,24;4273:8,11; 4274:17,21;4275:10, 12,21;4276:2;4277:14, 18;4278:7,9,9;4284:5, 7;4290:17;4291:1,9, 12;4292:5,8,11,22; 4301:2,4;4302:1,10; 4307:10,11;4311:17; 4318:6;4320:25; 4322:8,14;4326:17; 4327:5;4328:4;4332:5, 6,8,12,14,15,23;	4333:7,25 <b>witnesses (2)</b> 4211:9;4220:25 <b>witness's (1)</b> 4326:3 <b>Woolworth (16)</b> 4180:4,7,17,20,23; 4181:5,11,19,21; 4193:4;4197:6,21,24; 4223:24;4226:11,15 <b>word (12)</b> 4184:7;4200:17,17; 4204:16;4209:18; 4215:2;4221:4;4255:1, 1;4262:14;4275:11; 4324:13 <b>word-for-word (1)</b> 4255:10 <b>wording (3)</b> 4262:21,22;4324:9 <b>words (6)</b> 4179:17,18;4191:25; 4200:17,18,21 <b>work (29)</b> 4172:5,8;4179:18; 4181:1;4189:6;4237:6, 18;4239:1,9;4240:17, 24;4241:7;4242:8,14; 4246:11;4249:16,22; 4250:4,4,12;4251:24; 4278:12;4285:23; 4287:9;4292:3; 4302:25;4312:2,24; 4334:7 <b>worked (10)</b> 4171:19;4172:2; 4178:14;4181:3; 4189:24;4239:2; 4240:4;4242:4,8,13 <b>working (9)</b> 4190:9;4237:18; 4239:1;4241:4;4244:8, 20;4247:9,18;4334:12 <b>works (3)</b> 4272:9;4289:12; 4302:21 <b>worksheets (1)</b> 4297:2 <b>world (12)</b> 4174:9;4181:17; 4239:4;4267:20; 4271:8,14;4272:9,10; 4274:16,17;4275:7,16 <b>worry (2)</b> 4192:25;4221:11 <b>worth (7)</b> 4194:7;4195:13; 4206:4;4216:5,11; 4225:10;4269:10 <b>Wow (1)</b> 4172:6 <b>wrap (1)</b> 4332:18	<b>write (1)</b> 4251:25 <b>writing (3)</b> 4241:11;4244:12; 4291:25 <b>written (2)</b> 4251:20,22 <b>wrong (14)</b> 4195:19,20;4201:13; 4211:2,7;4214:4,7; 4265:15;4276:20,24; 4295:22;4316:2,15; 4332:9	<b>0</b>	4273:1;4274:4,14 <b>18th (1)</b> 4182:11 <b>19 (2)</b> 4177:14;4282:5 <b>1982 (2)</b> 4254:9;4255:17 <b>1983 (1)</b> 4171:15 <b>1986 (1)</b> 4190:8 <b>1990s (1)</b> 4195:7 <b>1992 (1)</b> 4178:10 <b>1996 (3)</b> 4178:25;4180:8; 4186:5 <b>1997 (4)</b> 4173:15,22;4197:23; 4238:6 <b>1998 (2)</b> 4180:8;4181:13 <b>19th (1)</b> 4183:3
			<b>1</b>	<b>2</b>
			<b>Y</b>	
			<b>year (27)</b> 4171:12,23;4173:1; 4178:8;4297:19,19; 4302:11;4310:15; 4318:2;4323:2;4324:2; 4328:23,23,25,25; 4329:6,6,20;4330:1,1, 2,5,10,23;4331:11,13, 14 <b>years (35)</b> 4171:1,2;4172:6,16; 4177:9;4184:16; 4186:13;4190:19; 4191:2,3,5;4193:20; 4194:9;4195:4;4199:8; 4206:4,9;4214:6; 4231:14;4239:18; 4241:18;4245:12; 4249:18;4250:14; 4281:21;4312:14; 4324:17;4329:20,21, 22;4330:24;4331:1,1,7, 8 <b>yesterday (1)</b> 4188:25 <b>yield (4)</b> 4263:9,14;4265:10; 4276:17 <b>YORK (11)</b> 4168:1,14,14,22; 4169:23;4174:3; 4179:14;4182:21; 4195:6;4199:8; 4223:19 <b>youngest (1)</b> 4174:23	<b>1 (3)</b> 4178:20;4179:4; 4299:3 <b>1.21 (1)</b> 4302:19 <b>1.3 (2)</b> 4206:5;4216:5 <b>10 (2)</b> 4176:24;4186:5 <b>10:00 (2)</b> 4334:17,21 <b>100 (2)</b> 4246:3;4276:11 <b>10005 (1)</b> 4168:22 <b>10007 (1)</b> 4168:14 <b>10022 (1)</b> 4169:23 <b>101 (3)</b> 4169:4;4190:9; 4307:20 <b>10th (1)</b> 4181:22 <b>11 (1)</b> 4184:15 <b>11:30 (1)</b> 4226:23 <b>111 (1)</b> 4177:10 <b>12 (2)</b> 4168:9;4249:18 <b>120 (1)</b> 4241:18 <b>125 (1)</b> 4184:23 <b>13 (2)</b> 4168:13;4258:3 <b>14 (2)</b> 4171:2;4278:16 <b>1400 (1)</b> 4170:14 <b>14-minute (1)</b> 4307:5 <b>15 (1)</b> 4334:21 <b>150 (2)</b> 4175:21;4176:19 <b>17 (3)</b> 4285:18;4286:5; 4300:3 <b>17th (1)</b> 4182:11 <b>18 (6)</b> 4172:10,10,14;
<b>Z</b>				
<b>Zack (1)</b> 4174:23 <b>zip (1)</b> 4236:6 <b>zoning (1)</b> 4176:16 <b>zoom (2)</b> 4262:5;4289:8				

NYS Attorney General v.  
Donald J. Trump

November 14, 2023

<b>2013 (2)</b> 4176:11;4177:13 <b>2014 (2)</b> 4213:23,25 <b>2015 (8)</b> 4176:12;4205:12; 4321:8;4322:25; 4323:6;4324:2,17,18 <b>2016 (5)</b> 4250:13;4283:12,13; 4296:6;4324:2 <b>2018 (1)</b> 4177:13 <b>2020 (4)</b> 4297:19;4312:4,17, 17 <b>2021 (4)</b> 4228:9;4302:7; 4312:14,20 <b>2022 (3)</b> 4206:4,8;4209:21 <b>2023 (2)</b> 4168:13;4334:21 <b>20th (1)</b> 4183:3 <b>21 (1)</b> 4304:18 <b>22 (1)</b> 4232:2 <b>24-hour (2)</b> 4178:18;4223:16 <b>25 (1)</b> 4284:6 <b>250,000 (1)</b> 4176:6 <b>26 (1)</b> 4296:3 <b>27 (2)</b> 4254:15;4258:3 <b>27.09 (3)</b> 4230:11,21;4231:1 <b>274 (9)</b> 4188:2,8;4218:21; 4267:10,18;4269:11, 14;4277:3,8 <b>274-10-55-6 (1)</b> 4266:6 <b>28th (1)</b> 4170:14  <b>3</b>  <b>3 (1)</b> 4282:8 <b>3,000 (1)</b> 4173:13 <b>3:00 (1)</b> 4190:10 <b>30 (4)</b> 4310:15;4318:8; 4323:2;4324:2 <b>31 (1)</b> 4230:5	<b>33140 (1)</b> 4170:15 <b>35 (1)</b> 4246:2 <b>363 (1)</b> 4177:4 <b>37 (4)</b> 4193:20;4227:4; 4278:4;4307:8  <b>4</b>  <b>4:00 (1)</b> 4307:5 <b>40 (26)</b> 4182:18;4213:22; 4216:19;4219:4; 4220:11,12;4223:3,6, 10,13,19;4225:1; 4226:16;4228:17,18, 21,25;4229:5,10,14; 4230:1;4231:19; 4232:4,10,19;4246:2 <b>401 (1)</b> 4168:9 <b>40s (1)</b> 4174:15 <b>42nd (1)</b> 4169:18 <b>44th (1)</b> 4192:16 <b>45 (1)</b> 4182:18 <b>452564/2022 (1)</b> 4168:6 <b>4600 (1)</b> 4169:18 <b>461 (1)</b> 4206:15  <b>5</b>  <b>50 (1)</b> 4202:13 <b>500,000 (1)</b> 4176:5 <b>526 (1)</b> 4169:9 <b>55 (1)</b> 4181:24 <b>55-1A (1)</b> 4258:16 <b>55-4 (2)</b> 4264:11,12 <b>55-6 (1)</b> 4266:7  <b>6</b>  <b>60 (2)</b> 4169:18;4246:2 <b>60s (1)</b> 4171:1	<b>6312 (3)</b> 4203:19;4204:12,16 <b>634 (1)</b> 4209:5 <b>635 (1)</b> 4229:17  <b>7</b>  <b>706 (1)</b> 4209:5 <b>713 (1)</b> 4209:5 <b>727 (1)</b> 4320:24 <b>728 (3)</b> 4322:11,22;4324:23 <b>750 (1)</b> 4169:4 <b>785 (2)</b> 4310:7,9 <b>786 (1)</b> 4318:3 <b>787 (1)</b> 4231:22  <b>8</b>  <b>80 (6)</b> 4282:2;4296:5,8,10; 4299:7;4306:11 <b>80.09 (2)</b> 4285:3,4 <b>800 (1)</b> 4274:14 <b>80-A (1)</b> 4296:7 <b>88 (1)</b> 4299:7 <b>89 (4)</b> 4229:20,24,24; 4230:19  <b>9</b>  <b>90 (1)</b> 4206:14 <b>950 (1)</b> 4298:13 <b>96 (1)</b> 4178:11 <b>97 (2)</b> 4197:21,22 <b>980.03 (1)</b> 4297:16		
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**In The Matter Of:**  
*Attorney General of the State of NY v.*  
*Donald J. Trump, et. al.*

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*November 15, 2023*

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*Michael Ranita - Senior Court Reporter*

Original File November 15 2023Trump.txt

**Min-U-Script® with Word Index**

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

Page 4335	J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4337
<p>1 SUPREME COURT OF THE STATE OF NEW YORK</p> <p>2 COUNTY OF NEW YORK : CIVIL TERM : Part 37</p> <p>3 -----x</p> <p>4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,</p> <p>5 Index: 452564/2022</p> <p>6 Plaintiff,</p> <p>7 -against-</p> <p>8 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION, LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL STREET, LLC; AND SEVEN SPRINGS, LLC,</p> <p>12 Defendants.</p> <p>13 -----x</p> <p>14 60 Centre Street New York, New York 10007 November 15, 2023</p> <p>15 B E F O R E: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice</p> <p>16 A P P E A R A N C E S:</p> <p>17</p> <p>18 OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES attorneys for the Plaintiff 28 Liberty Street New York, New York 10005 21 BY: KEVIN WALLACE, ESQ. COLLEEN K. FAHERTY, ESQ. ANDREW AMER, ESQ. ERIC HAREN, ESQ. 22 MARK LADOV, ESQ. 23 SHERIEF GABER, ESQ.</p>	<p>1 THE COURT OFFICER: All rise. Part 37 is now in</p> <p>2 session. The Honorable Judge Arthur Engoron presiding.</p> <p>3 Make sure all cell phones are on silent. Laptops and cell</p> <p>4 phones will be permitted, but only to members of the press.</p> <p>5 There's absolutely no recording or photography of any kind</p> <p>6 allowed in the courtroom. Now be seated and come to order.</p> <p>7 THE COURT: Unless there's some housekeeping, and</p> <p>8 Mr. Suarez is standing at the podium, so I assume he wants</p> <p>9 to continue with the direct of Mr. Flemmons; correct?</p> <p>10 MR. SUAREZ: Good morning, your Honor.</p> <p>11 THE COURT: Good morning. Let's get the witness.</p> <p>12 (Whereupon, the witness stepped into the witness</p> <p>13 stand.)</p> <p>14 THE COURT: Okay. Please proceed.</p> <p>15 Q Good morning, Mr. Flemmons.</p> <p>16 A Good morning.</p> <p>17 Q From at least 2011 to 2021, how many GAAP departures</p> <p>18 were disclosed in the Statement of Financial Condition?</p> <p>19 A Well, there were many GAAP departures disclosed between</p> <p>20 the Statement of Financial Condition and the accountant's</p> <p>21 reports.</p> <p>22 Q Were the disclosures boilerplate?</p> <p>23 A No. There were -- it changed over time, but there were</p> <p>24 certainly very specific disclosures about very particular GAAP</p> <p>25 exceptions that resided in the Statement of Financial Condition,</p>
Page 4336	J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4338
<p>1 A P P E A R A N C E S: (Continued.)</p> <p>2</p> <p>3 CONTINENTAL, PLLC attorneys for the Defendants 101 North Monroe Street, Suite 750 Tallahassee, Florida 32302 5 BY: CHRISTOPHER M. KISE, ESQ. LAZARO P. FIELDS, ESQ. 6 JESUS M. SUAREZ, ESQ.</p> <p>7</p> <p>8 ROBERT &amp; ROBERT, PLLC attorneys for the Defendants 526 RXR Plaza 9 Uniondale, New York 11556 10 BY: CLIFFORD ROBERT, ESQ.</p> <p>11</p> <p>12 HABBA MADAIO &amp; ASSOCIATES, LLP attorneys for the Defendants 1430 US Highway 296, Suite 240 13 Bedminster, New Jersey 07921 14 BY: ALINA HABBA, ESQ.</p> <p>15</p> <p>16 MORIAN LAW, PLLC attorneys for the Defendants 60 East 42nd Street, Suite 4600 17 New York, New York 10165 18 BY: ARMEN MORIAN, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Michael Ranita Michele Panteloukas 25 Senior Court Reporters</p>	<p>1 and there were disclosures that occurred later in time that</p> <p>2 became a little more summarized, but covered a broad landscape</p> <p>3 of the assets reported in the Statement of Financial Condition.</p> <p>4 MR. SUAREZ: I would like to pull up Plaintiff's</p> <p>5 Exhibit 730.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 Q Do you recognize this document, Mr. Flemmons?</p> <p>9 A Yes. This is the Statement of Financial Condition for</p> <p>10 2014.</p> <p>11 Q And does this statement include an accountant's</p> <p>12 compilation report within it?</p> <p>13 MR. SUAREZ: If we could turn to the next page.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 A Yes, it does. And it's very standard for the</p> <p>17 compilation report to be attached to the financial statements.</p> <p>18 Q Must the compilation report and the financial statement</p> <p>19 be read together?</p> <p>20 A Absolutely. It's widely accepted and implicit in the</p> <p>21 accounting and reporting standards that the financial statements</p> <p>22 are not to be relied upon in a vacuum, but rather read in</p> <p>23 conjunction with any accountant's report, whether it be add</p> <p>24 audit, review or a compilation.</p> <p>25 The accountant's report is the only mechanism that an</p>

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4339</p> <p>1 accountant has to report to a user of the financial statements, 2 and to alert them to any potential issues with regard to the 3 presentation of the financials. 4 Q In the 2014 Statement of Financial Condition, how many 5 GAAP departures are identified in the compilation report? 6 A Well, there are quite a few. Um, I would start with 7 the fourth paragraph in the report. 8 (Whereupon, the exhibit was displayed on the 9 screen.) 10 Q What is this GAAP departure intended to cover? 11 A Well, this is basically saying that there are GAAP 12 exceptions with how estimated current value was determined for a 13 variety of different assets as discussed in notes 3, 4, 5 and 6. 14 And in totality, when considering which assets were encompassed 15 by those footnote disclosures, that covered 95 percent of the 16 assets for this particular period. 17 Q And what does it mean in a GAAP departure does -- 18 excuse me. In a gap disclosure, when it says that "Several of 19 the values have been based on future interests that in some 20 instances are not for fixed or determinable amounts, and in some 21 instances are based on performance of future services." 22 A Well, again, this is a fairly broad disclosure that 23 could cover a variety of different issues with regard to GAAP 24 accounting. I know that one of them, that this addresses -- and 25 this was also consistent with Mr. Bender's deposition testimony,</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4341</p> <p>1 preparer's obligations under GAAP? 2 A Yes. 3 Q Is the fact that this departure exists a reason not to 4 issue the financial statement? 5 A Absolutely not. As we've discussed yesterday, it's -- 6 the accounting and reporting regime in the United States is set 7 up such that financial statements can be issued even though they 8 contain GAAP departures, as long as the appropriate language is 9 contained in the accountant's report. 10 Q Moving onto the next disclosure. 11 (Whereupon, the exhibit was displayed on the 12 screen.) 13 Q I believe this is the fourth disclosure. What is this 14 disclosure intended to cover? 15 A This is another GAAP exception that relates to the 16 requirement under GAAP to include a provision for income tax, 17 and the Statement of Financial Condition did not contain such a 18 provision. And this language is intended to communicate that 19 excluded item from the Statement of Financial Condition. 20 Q Moving onto the fifth disclosure. 21 (Whereupon, the exhibit was displayed on the 22 screen.) 23 Q What is the fifth disclosure intended to cover? 24 A This is related to the requirement under US GAAP to 25 separately report cash and marketable securities. However, the</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4340</p> <p>1 related to certain assets that were not discounted, even though 2 the future cash flows was used as a basis for determining the 3 estimated current value. Um, but I think there are several 4 other items that would fall under this umbrella. 5 Q All right. Moving onto the next disclosure of a GAAP 6 departure on this compilation report. 7 (Whereupon, the exhibit was displayed on the 8 screen.) 9 Q What is this disclosure intended to cover? 10 A So this disclosure is basically saying that there are 11 certain disclosures that are required by GAAP with regard to 12 assets and liabilities that were not included within the 13 Statement of Financial Condition, and therefore, constituted a 14 GAAP exception. 15 Q Moving onto the third disclosure. 16 (Whereupon, the exhibit was displayed on the 17 screen.) 18 Q What does the third disclosure intend to cover? 19 A I believe we touched on this one yesterday. This 20 relates to the accounting for membership deposits that under US 21 GAAP would be reflected as a liability on a Statement of 22 Financial Condition. However, this disclosure indicates to the 23 users that such a liability was not reported and was excluded 24 from the Statement of Financial Condition. 25 Q And is disclosing this departure consistent with the</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4342</p> <p>1 Statement of Financial Condition had lumped the two together 2 into one line item, and this disclosure alerts the user to that 3 presentation. 4 Q Moving onto the sixth disclosure. 5 (Whereupon, the exhibit was displayed on the 6 screen.) 7 Q What is the sixth disclosure intended to cover? 8 A This is communicating to the users of the financial 9 statements that there are certain assets and liabilities for 10 certain properties that were not included in the Statement of 11 Financial Condition. 12 Q Is it appropriate to omit assets and liabilities from 13 the Statement of Financial Condition? 14 A In order for the financial -- the Statement of 15 Financial Condition to be comprehensive and reflect all of the 16 assets and liabilities of Mr. Trump, under GAAP, those items 17 would have been included in the Statement of Financial 18 Condition, but this disclosure is telling the -- the user that 19 those items are not included. 20 Q With the disclosure is it appropriate to issue the 21 Statement of Financial Condition? 22 A Yes. 23 Q All right. Moving onto the asset sheet. 24 (Whereupon, the exhibit was displayed on the 25 screen.)</p>



November 15, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4343

1 Q What do you mean when you say that 95 percent of the  
2 assets are covered by a GAAP disclosure?  
3 A So as we saw on the accountant's report, there is  
4 disclosure as to deviations from GAAP and how estimated current  
5 value was determined. And that it's in paragraph four of the  
6 accountant's report. And it references notes 3, 4, 5 and 6.  
7 And notes three -- or note three corresponds to real and  
8 operating properties, which is the third category on the asset  
9 statement.  
10 (Whereupon, the exhibit was displayed on the  
11 screen.)  
12 Q And that covers everything from Trump Tower through  
13 properties under development?  
14 A Correct. Note four covers partnerships and joint  
15 ventures, which is the next category on the Statement of  
16 Financial Condition. Note five covers real estate licensing  
17 developments. And note six covers other assets.  
18 So when you tally up all of the amounts reflected in  
19 the Statement of Financial Condition for those categories, that  
20 reflects 95 percent of the total assets.  
21 Q Now, in preparing the account and compilation report,  
22 would Mazars have to take into consideration knowledge that it  
23 obtains in other engagements for the same client?  
24 A Yes. The professional standards that relate to Mazars'  
25 compilation engagement do speak to an accountant needing to

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4344

1 considered the broader landscape of their involvement with a  
2 particular client when evaluating whether methods are  
3 appropriate under GAAP during a compilation.  
4 Q Should Mazars include disclaimer language that is  
5 required if it knows from the supporting data that the  
6 disclaimer language is appropriate?  
7 MR. WALLACE: Objection. Mazars includes -- I  
8 believe the report is -- I'm not sure at what point in the  
9 process he is describing this. This is the Trump financial  
10 statement, so I'm not sure what part of the process Mazars  
11 needs to include something.  
12 THE COURT: Read it back, please.  
13 (Whereupon, the requested testimony was read back  
14 by the court reporter.)  
15 THE COURT: Overruled.  
16 A Mazars was required to include language addressing GAAP  
17 exceptions to the extent they became aware of them in the course  
18 of their compilation.  
19 MR. SUAREZ: If we could please pull up, side by  
20 side, Plaintiff's Exhibit 719.  
21 (Whereupon, the exhibit was displayed on the  
22 screen.)  
23 MR. SUAREZ: Can we scroll this or zoom it out so  
24 that we could see the two columns.  
25 (Whereupon, the exhibit displayed on the screen was

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4345

1 zoomed out.)  
2 Q What do these red marks and blue marks mean on this  
3 document?  
4 A I believe those are what are referred to in accounting  
5 and auditing parlance as tick marks that would be referencing  
6 work paper numbers within Mazars' set of documents that were  
7 prepared for this compilation.  
8 Q Would that show that Mazars reviewed the document?  
9 A It certainly is indication that they reviewed this for  
10 sure.  
11 Q If we look at the real and operating property, Trump  
12 Tower, which is the first one that appears here in the  
13 supporting data, is the method used for determining estimated  
14 current value for Trump Tower consistent with the requirement of  
15 ASC-274?  
16 A Yes. It appears to me that the method that is being  
17 used here is one of the methods that we went over yesterday that  
18 is provided by ASC-274, which is capitalization of earnings.  
19 Q Now, in the bottom there is a cap rate that's indicated  
20 for the capitalization of earnings right under the Trump Tower  
21 spreadsheet, under the financials.  
22 Do you see that there?  
23 A Yes.  
24 Q Does this note indicate to Mazars the basis for  
25 selecting a cap rate?

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4346

1 A It does provide additional context on the cap rate,  
2 yes.  
3 Q Was the method for estimating current value for Trump  
4 Tower disclosed to Mazars in the supporting data?  
5 A Yes, this has very substantial detail on how the  
6 calculation of estimated current value for Trump Tower was  
7 developed.  
8 Q And then do the notes disclose the basis for reaching  
9 estimated current value for Trump Tower?  
10 A Yes.  
11 Q And would it have been Mazars' responsibility to make  
12 sure that the information that it reviewed in the supporting  
13 data was adequately disclosed in the notes?  
14 MR. WALLACE: Objection. Leading.  
15 THE COURT: Sustained.  
16 Q What responsibility did Mazars have to ensure that the  
17 information that it reviewed in the supporting data was  
18 adequately disclosed in the notes?  
19 A Well, the standards that apply to Mazars for  
20 compilations do require an evaluation of whether the disclosures  
21 contained within the Statement of Financial Condition are  
22 consistent with the underlying support.  
23 Q Moving on to Niketown. Is the method for determining  
24 estimated current value for Niketown consistent with the  
25 requirements imposed by ASC-274?

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4347</p> <p>1 A I haven't reviewed this in quite some time, but sitting 2 here right now it looks to be identical methodologies to what 3 was used for Trump Tower, um, at least with regard to the fact 4 it was the capitalization of earnings. 5 So to the extent there's not another nuance here that 6 I'm overlooking, it looks to be the same methodologies that's 7 provided by estimated current value under ASC-274. 8 Q And again, you see at the bottom of the section on 9 Trump Tower there's a discussion concerning the cap rates that 10 are used? 11 A Yes. 12 Q And should it have been apparent to Mazars that the cap 13 rate selected was selected by The Trump Organization and not 14 Cushman &amp; Wakefield? 15 MR. WALLACE: I guess objection to "should." 16 THE COURT: Sustained. 17 Q Is it apparent to you that the cap rate that was 18 selected in this section for Niketown was selected by the 19 preparer, The Trump Organization, and not Mazars -- Cushman &amp; 20 Wakefield, I'm sorry. 21 MR. WALLACE: Objection. Leading. 22 THE COURT: Sustained, but it was a good try. 23 MR. SUAREZ: Thank you. 24 THE COURT: You're getting closer. 25 Q From reading the cap rate section, who supplied the</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4349</p> <p>1 (Whereupon, the exhibit was displayed on the 2 screen.) 3 Q Is the method for selecting -- excuse me. On 40 Wall 4 Street, is the method for determining estimated current value 5 consistent with the requirement of ASC-274? 6 A Yes. It appears to follow the same methodology we 7 talked about for the prior two properties, and that it's a 8 capitalization of earnings, which is one of the methods provided 9 under ASC-274. 10 Q If there was an appraisal that had a different value 11 for 40 Wall Street, would that preclude management from using 12 this method of determining estimated current value? 13 A Absolutely not. ASC-274 allows for a wide range of 14 methods that can be used. One of those methods is the one that 15 is being used here, capitalization of earnings. 16 The use of appraisals is another alternative method 17 that may be used, but they are not mandated. So to the extent 18 this particular method aligns with ASC-274, which in my view it 19 does, it is absolutely permissible to use it. 20 MR. WALLACE: Your Honor, can I just ask for 21 clarification from this witness whether he is testifying as 22 to methodologies versus the actual conclusion that the 23 values stated here is, in fact, the estimated current value, 24 which I believe is also a requirement of ASC-274. 25 MR. SUAREZ: Your Honor --</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4348</p> <p>1 capitalization rate that was used in the calculation of value 2 for Niketown? 3 A Based on my reading of the note that provides more 4 context on how the cap rate was determined, it appears that it 5 was the -- it was management of The Trump Organization that 6 would have provided or ultimately determined what the cap rate 7 was to use. However, there is reference to Doug Larson of 8 Cushman &amp; Wakefield that provided some input that appears to 9 have influenced, to some extent, the ultimate conclusion on the 10 cap rate. 11 Q How does the note provide further detail on the 12 selection of the cap rate? 13 A Well, it says that Cushman &amp; Wakefield had indicated 14 that retail properties or cap rates for retail properties in 15 this particular area are usually 60 basis points lower. And 16 that was apparently used as additional information by The Trump 17 Organization to make an adjustment to the cap rate and lower it, 18 um, but they do reference not lowering it all the way down by 19 60 basis points, but being conservative and reducing it only by 20 50 basis points. 21 Q Was it disclosed to Mazars that the capitalization rate 22 was ultimately selected by The Trump Organization? 23 A Yes, I think that's very clear and implicit from this 24 work paper. 25 MR. SUAREZ: Moving onto 40 Wall Street.</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4350</p> <p>1 THE COURT: You could investigate that in cross 2 examination. I thought his testimony was clear. 3 MR. WALLACE: Fair enough, your Honor. 4 Q Moving onto the Trump International Hotel in Chicago. 5 You could see -- what value is assigned to the Trump 6 International Hotel and Tower in Chicago? 7 A Zero. 8 Q And why is that -- I'll withdraw the question. 9 Was it disclosed in the GAAP departures that the Trump 10 International Hotel and Tower wasn't included in the Statement 11 of Financial Condition? 12 A Yes. It's zero. And that's consistent with the 13 disclosure in the accountant's report that communicated to the 14 users that that property would be excluded from the Statement of 15 Financial Condition. 16 Q Okay. Moving onto Trump Park Avenue. 17 Is the method for determining estimated current value 18 for the Trump Park Avenue consistent with the requirements of 19 ASC-274? 20 A Yes. It appears to be using the same method of using a 21 cap rate -- a capitalization rate against estimated earnings. 22 Q And can I draw your attention to the top of the section 23 where it says "Valuation is based on the anticipated selling 24 price of unsold residential units and the selling price or the 25 rental income stream to be derived from the commercial space."</p>

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4351</p> <p>1 Is that an appropriate basis for valuing an asset under 2 ASC-274? 3 A Yes. As we have said before, when developing an 4 estimate of earnings, it is inherently prospective in looking 5 forward in time, and would include whatever anticipated actions 6 that the company was going to be undertaking with regard to 7 these properties. And those assumptions are embedded in the 8 earnings amounts that would be used to develop the estimated 9 current value. 10 Q Is there a temporal limit on the forward looking nature 11 of that assessment? 12 A No. 13 Q Moving onto the club facilities. 14 (Whereupon, the exhibit was displayed on the 15 screen.) 16 Q The first asset in club facilities is Mar-a-Lago. Do 17 you see that? 18 A Yes. 19 Q And for Mar-a-Lago, is the method for determining 20 estimated current value consistent with the requirement of 21 ASC-274? 22 A Yes. It appears to be consistent with one of the 23 methods under ASC-274 related to comparable sales. 24 Q Do you see at the top where it says "Value if sold to 25 an individual."</p>	<p>Page 4353</p> <p>1 A Can you repeat that, please. 2 Q Sure. 3 (Continued on the next page.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4352</p> <p>1 A Yes. 2 Q Is that a permitted or a permissive -- excuse me. 3 Withdrawn. 4 Is it appropriate to make an assumption that Mar-a-Lago 5 will be sold -- let me withdraw that and try again. 6 The assumption that Mar-a-Lago will be sold to an 7 individual is a basis for establishing estimated current value. 8 Is that permitted in the selection of methodology under ASC-274? 9 A Well, ASC-274 doesn't get into that level of detail, 10 um, but it does implicitly involve hypotheticals, but also 11 planned courses of action. 12 So to the extent The Trump Organization contemplated 13 potentially, you know, selling this to an individual, that would 14 be an appropriate basis for basing the estimated current value 15 on that basis. 16 Q Now, the selection of club facilities includes a number 17 of different assets that have been grouped together? 18 MR. SUAREZ: If we could turn back to the Statement 19 of Financial Condition at Plaintiff's Exhibit 730 on the 20 asset sheet. 21 (Whereupon, the exhibit was displayed on the 22 screen.) 23 Q Which appears at page four of the exhibit. 24 Mr. Flemmons, what do accounting standards require for 25 properties to be grouped together in the presentation of assets?</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4354</p> <p>1 Q What are there in the accounting standards to 2 instruct whether a group of properties can be placed together 3 as a single unit in these Statements of Financial Condition? 4 A There is not a lot of specificity in the standard. 5 It allows for a lot of judgment on the part of the preparer. 6 Q Who determines the method of grouping the assets on 7 the Statement of Financial Condition? 8 A Well, during a compilation it could either be, in 9 this case, Mazars or the Trump Organization, depending on how 10 the detail was provided. But Mazars as the outside accountant 11 in preparing this particular set of financial statements would 12 have had a hand in that determination. 13 Q Should Mazars have known what assets comprised each 14 category on the asset sheet in the Statements of Financial 15 Condition? 16 MR. WALLACE: Objection on the "should." 17 THE COURT: I think the context is clear. 18 Overruled. 19 A Mazars was provided with all of the detail that 20 supported the \$2 billion of club facilities, and in my view 21 would have been fully aware of the components. 22 Q Moving on in the supporting data to the Trump 23 International Golf Club in Florida. 24 On the supporting data which appears at Plaintiff's 25 179, what is the basis for valuing the Trump International Golf</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4355</p> <p>1 Club in Florida?</p> <p>2 A It appears from this it is a cost approach. It</p> <p>3 refers to value of fixed assets, which, fixed asset value is</p> <p>4 often synonymous with a cost basis.</p> <p>5 Q And is fixed asset value an appropriate method for</p> <p>6 determining estimated current value under ASC 274?</p> <p>7 A Yes, it is one of the methods that is provided under</p> <p>8 the standard.</p> <p>9 Q Moving on to the Trump International Golf Club in</p> <p>10 Briarcliff. Is the method used for determining the estimated</p> <p>11 current value of the Golf Club in Briarcliff consistent with</p> <p>12 the requirements of ASC 274?</p> <p>13 A It appears to be using the same cost basis as the</p> <p>14 prior property we just looked at; and that is an appropriate</p> <p>15 method under ASC 274.</p> <p>16 Q Was the basis -- withdrawn.</p> <p>17 Was the method for determining estimated current</p> <p>18 value disclosed to Mazars in the supporting data?</p> <p>19 A Yes, it is very clear from this document.</p> <p>20 Q Moving on to the Trump National Golf Club in</p> <p>21 Bedminster. Is the method for determining estimated current</p> <p>22 value for the Trump National Golf Club in Bedminster</p> <p>23 consistent with the requirements of ASC 274?</p> <p>24 A Yes, same as before, it is the same method that is</p> <p>25 provided by ASC 274.</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4357</p> <p>1 MR. WALLACE: Your Honor, if the valuation</p> <p>2 opinion -- or I should say, if the accounting opinion we</p> <p>3 are receiving now is a valuation that the brand premium is</p> <p>4 appropriate, we object to that testimony. That issue has</p> <p>5 will been decided on summary judgment. It was decided</p> <p>6 with explicit reference to the other accounting expert,</p> <p>7 that the defendants retained, Professor Bartov. That</p> <p>8 evidence was presented extensively in the briefing and in</p> <p>9 the evidence presented by the defendants. Your Honor</p> <p>10 directly addressed that opinion, which is the same that</p> <p>11 Mr. Bartov provided, the same opinion we are hearing now</p> <p>12 from Mr. Flemmons. And that's at page 28 of your summary</p> <p>13 judgment opinion, where you wrote: In opposition</p> <p>14 defendants submit the affidavit of Elie Bartov, an</p> <p>15 accounting professor at New York University, who</p> <p>16 distinguishes between overall brand value and brand value</p> <p>17 ascribed to individual golf courses. His point, ensconced</p> <p>18 in numerous lines of academic jargon, seems to be the</p> <p>19 defendants said they were eschewing the former and opting</p> <p>20 only for the latter. This is a red herring. It is</p> <p>21 actually incorrect. The SFC clearly stated that they do</p> <p>22 not include a brand value for any of the property included</p> <p>23 in the SFCs. Indeed, the SFC emphatically declare the</p> <p>24 good will attached to the brand name has significant</p> <p>25 financial value that has not been prepared in the</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4356</p> <p>1 Q Was the method for determining estimated current</p> <p>2 value for the Trump National Golf Club in Bedminster disclosed</p> <p>3 to Mazars in the supporting data?</p> <p>4 A Yes, this schedule was provided to Mazars and</p> <p>5 therefore contained the information to communicate to them how</p> <p>6 this property was being valued.</p> <p>7 MR. WALLACE: Your Honor, I would just like to</p> <p>8 note an objection. I think the questioning here is</p> <p>9 unclear as to whether the process he is opining on is the</p> <p>10 valuation of fixed assets or if he is including the</p> <p>11 premium that is added as well for these various golf</p> <p>12 clubs.</p> <p>13 THE COURT: Again, I'll let you cross.</p> <p>14 Obviously you can cross examine on this.</p> <p>15 MR. WALLACE: Your Honor, if he is offering an</p> <p>16 opinion about the total valuation, including the premium,</p> <p>17 we would renew our motion to preclude that testimony. And</p> <p>18 I would be happy to discuss that with the witness out of</p> <p>19 the room. I think whether or not he is referring to the</p> <p>20 total valuation, including the premium or just a use of</p> <p>21 fixed assets, is relevant to whether or not we want to</p> <p>22 reraise that objection.</p> <p>23 THE COURT: All right. We will excuse the</p> <p>24 witness.</p> <p>25 (Whereupon, the witness exited the courtroom.)</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4358</p> <p>1 preparation of this financial statement.</p> <p>2 So the same opinion from a different expert was</p> <p>3 expressly considered on summary judgment, and this would</p> <p>4 not be appropriate. And it would be irrelevant to now</p> <p>5 bring in their second accounting expert to try and enter</p> <p>6 the same opinion.</p> <p>7 THE COURT: There is no jury here and no</p> <p>8 prejudice. I am just going to allow them to present their</p> <p>9 defense and you can cross examine to your heart's consent.</p> <p>10 Overruled.</p> <p>11 Let's get the witness back.</p> <p>12 (Whereupon, the witness resumed the stand.)</p> <p>13 Q Mr. Flemmons, moving on to the Trump National Golf</p> <p>14 Club in Colts Neck. Is the method used for determining</p> <p>15 estimated current value for the Trump National Golf Club, Colts</p> <p>16 Neck, consistent with the requirements of ASC 274?</p> <p>17 A Yes, it appears that the method being used is the</p> <p>18 same as the prior properties, with the exception of their, you</p> <p>19 know, being an added premium related to the Trump brand of</p> <p>20 30 percent. And that is an appropriate way under GAAP for</p> <p>21 purposes of the Statement of Financial Condition to include</p> <p>22 that additional amount. ASC 274 would not preclude that.</p> <p>23 Q Was the method for determining the estimated current</p> <p>24 value disclosed to Mazars in the supporting data?</p> <p>25 A Yes, this is the supporting data, and it is very</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4359</p> <p>1 clear what the components of that valuation are.</p> <p>2 Q Moving on to the Trump National Golf Club in</p> <p>3 Washington DC. Is the method for determining estimated current</p> <p>4 value for the Trump National Golf Club in Washington DC</p> <p>5 consistent with the requirements of ASC 274?</p> <p>6 A Yes, for the same reasons as the prior property we</p> <p>7 just discussed.</p> <p>8 Q And was the method for determining estimated current</p> <p>9 value disclosed to Mazars in the supporting data?</p> <p>10 A Yes.</p> <p>11 Q Is the method for determining estimated current value</p> <p>12 using a premium for fully operational branded facility</p> <p>13 disclosed in the notes of the Statement of Financial Condition?</p> <p>14 A Yes, there is disclosure about brand premium being</p> <p>15 part of the property valuations.</p> <p>16 Q And would Mazars have had an obligation to ensure</p> <p>17 that the disclosures contained in the Statement of Financial</p> <p>18 Conditions be consistent with what was presented in the</p> <p>19 supporting data?</p> <p>20 A Yes.</p> <p>21 Q Now, in the Statement of Financial Condition, there</p> <p>22 is a note that I would like to draw your attention to at page</p> <p>23 23 of the exhibit, page 21 of the document.</p> <p>24 Can I please draw your attention to where it says:</p> <p>25 "As stated in Note 1, this financial statement does not reflect</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4361</p> <p>1 these documents. And this footnote adds a little more context.</p> <p>2 Q Moving on to the Trump National Golf Club in</p> <p>3 Philadelphia. Is the method for determining estimated current</p> <p>4 value consistent with the requirements of ASC 274 for the Trump</p> <p>5 National Golf Club in Philadelphia?</p> <p>6 A Yes, this appears to be an identical methodology as</p> <p>7 to what we just looked at.</p> <p>8 Q And was the method for determining estimated current</p> <p>9 value disclosed to Mazars in the supporting data?</p> <p>10 A Yes.</p> <p>11 Q I have the same question about the Trump National</p> <p>12 Golf Club in Hudson Valley. Is the method for determining</p> <p>13 estimated current value consistent with the requirement of ASC</p> <p>14 274?</p> <p>15 A Yes, for the same reasons as the prior two properties</p> <p>16 we just discussed.</p> <p>17 Q Was the method for determining estimated current</p> <p>18 value disclosed to Mazars in the supporting data?</p> <p>19 A Yes.</p> <p>20 Q Moving on to the Trump National Golf Club in Los</p> <p>21 Angeles. Is the method for determining estimated current value</p> <p>22 for the Trump National Golf Club Los Angeles consistent with</p> <p>23 the requirements of ASC 274?</p> <p>24 A It appears so. The reason I hesitate is it does have</p> <p>25 another section in the middle here that was a little different</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4360</p> <p>1 the value of Donald J. Trump's worldwide reputation, except to</p> <p>2 the extent it has become associated with properties either</p> <p>3 operative or under development."</p> <p>4 Is that statement in the Statement of Financial</p> <p>5 Condition consistent with the method for determining current</p> <p>6 estimated value for the Golf Club properties in the supporting</p> <p>7 data?</p> <p>8 A Yes. This specifically relates to what we are</p> <p>9 looking at here in the supporting schedule related to brand</p> <p>10 premium. And this disclosure is notifying users of the</p> <p>11 financials that, you know, brand premium is part of some of the</p> <p>12 properties valuations.</p> <p>13 Q Moving on to the supporting data under value. It has</p> <p>14 a note that I would like to draw your attention to the note.</p> <p>15 It says: "September 3, 2013. Per telephone conversation with</p> <p>16 Tom Bennis, Trump branded clubs are more valuable than most</p> <p>17 golf -- than most golf courses." Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Was the method -- withdrawn.</p> <p>20 Was the basis for the inclusion of the brand premium</p> <p>21 disclosed to Mazars in the supporting data?</p> <p>22 A Well, this note provided additional context on the</p> <p>23 rationale for including a premium. It is not clear how the</p> <p>24 30 percent was arrived at. But at the same time the rationale</p> <p>25 for including a brand premium at all is clearly disclosed in</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4362</p> <p>1 than the prior three properties that we looked at. And I am</p> <p>2 not sure I have looked at that part in quite some time. But</p> <p>3 probably want a little more time to think about that. But</p> <p>4 certainly sitting here right now, it appears that this does</p> <p>5 comply with ASC 274.</p> <p>6 Q And was the method for determining estimated current</p> <p>7 value disclosed to Mazars in the supporting data for the Trump</p> <p>8 National Golf Club Los Angeles?</p> <p>9 A Yes.</p> <p>10 Q Moving on to the Trump National Golf Club in</p> <p>11 Charlotte. Is the method for determining estimated current</p> <p>12 value consistent with the requirements of ASC 274?</p> <p>13 A Yes.</p> <p>14 Q Was the method for determining estimated current</p> <p>15 value for the Trump National Golf Club in Charlotte disclosed</p> <p>16 to Mazars in the supporting data?</p> <p>17 A Yes.</p> <p>18 Q Moving on to the Trump National Golf Club in Jupiter.</p> <p>19 Is the method for determining estimated current value</p> <p>20 consistent with the requirements of ASC 274?</p> <p>21 A Yes, this is the same methodology we have discussed</p> <p>22 for these adjacent properties.</p> <p>23 Q Which again, includes the premium for the fully</p> <p>24 operational branded facility, correct?</p> <p>25 A Correct.</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p>Flemmons - by Defendant - Direct(Suarez) Page 4363</p> <p>1 Q And was the method for determining estimated current 2 value disclosed to Mazars in the supporting data? 3 A Yes. 4 Q The following property, Trump Golf Links Ferry Point. 5 Is the method used for determining estimated current value 6 consistent with the requirement of ASC 274? 7 A I think I would need a little more detail on what the 8 reference to capital contributions since inception is. It 9 sounds like it might be a cost basis, in which case that would 10 be compliant with ASC 274. But if I was doing the compilation 11 I would ask a follow-up question. 12 Q And if you had asked follow-up -- withdrawn. 13 Should Mazars have asked follow-up questions 14 concerning that supporting data? 15 A I would think so, for the same reasons that I said 16 that I would have asked the question. 17 Q And is the fact that Mazars issued the compilation 18 report, indicative of the fact that, at least to Mazars 19 satisfaction, any questions were answered? 20 A Yes. Either they received satisfactory answers or 21 they believed that the languaging in their accountant's report 22 regarding GAAP deviations was adequate to address this 23 property. 24 Q Moving on to the Doral. Is the method for 25 determining estimated current value consistent with the</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4365</p> <p>1 expert on the methods that are permitted by ASC 274. So my 2 testimony is really limited to, again, its methods that are 3 clear from the documents that were being used, and not 4 necessarily to the numbers that were attached to them. 5 THE COURT: Right. And so if the statement says 6 we are using the capitalization rate method or the fixed 7 asset method, your answers are just meaning that, yes, 8 that's one of the methods you can use, correct? 9 THE WITNESS: That's correct. 10 THE COURT: Okay. After 30 questions of that I 11 wanted to make sure I understood what the answer 12 indicated. 13 MR. SUAREZ: Your Honor, my -- what I would like 14 to do is go through 2014 asset by asset, and then I'll 15 flip through the following years much more quickly. 16 THE COURT: Well, let's start it and see how it 17 goes. But I appreciate the desire to go more quickly. 18 MR. SUAREZ: I just want to make sure you 19 understood I am not I intending to do this for all. 20 THE COURT: Got you. 21 Q The Trump International Golf Club -- I am sorry. 22 Going back to Doonbeg. I almost skipped over Doonbeg. The 23 Trump International Golf Club in Doonbeg, Ireland. Is the 24 method for determining estimated current value consistent with 25 the requirements of ASC 274?</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4364</p> <p>1 requirements of ASC 274? 2 A Yes, it appears the method is also a cost basis, 3 which is an appropriate method. 4 Q Was the method for determining estimated current 5 value disclosed to Mazars in the supporting data? 6 A Yes. 7 Q Same question about the Trump Turnberry. 8 A Same answer as before. It appears to be a cost 9 basis, which is an acceptable method. 10 Q And was the method used to determine estimated -- 11 excuse me. Was the method used to determine estimated current 12 value disclosed to Mazars in the supporting data? 13 A Yes. 14 THE COURT: Let me just jump in with a question 15 to the witness. 16 You were asked 20 or 30 times, was the method 17 used for determining the estimated current value of the 18 project at issue consistent with the requirements of ASC 19 274. I think your answers were always yes. My question 20 is: Were you saying that the method listed on the 21 statement was one of the methods that ASC 274 allows? Or 22 were you saying that the actual computations using that 23 method were correct? 24 A Your Honor, I am not opining as to the ultimate 25 valuation itself. I am not a valuation expert. But I am an</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4366</p> <p>1 A Yes. This appears to be a cost approach. 2 Q And was the method for determining estimated current 3 value fairly disclosed to Mazars in the supporting data? 4 A Yes. 5 Q The Trump International Golf Club in Scotland, which 6 is the following asset, is the method for determining estimated 7 current value consistent with the requirement of ASC 274? 8 A Well, consistent with my testimony about the prior 9 property that had a reference to capital contributions, I 10 interpret that as likely meaning some sort of cost basis. But 11 I would have asked a follow-up question to confirm that. 12 Assuming that that's the case, it would comply with ASC 274. 13 Q Do you see that there is a 33 percent premium for 14 assembly of land parcels that is built into -- that is built in 15 the value? 16 A Yes. 17 Q Would you agree with me that -- withdrawn. 18 Was the inclusion of the brand premium disclosed to 19 Mazars in the supporting data? 20 A Yes, it is very clear in this data. 21 Q And if Mazars had an objection to the inclusion of 22 that brand premium in the -- excuse me, withdrawn. 23 If Mazars had a concern with the inclusion of the 24 premium for the assembly of land parcels, should Mazars have 25 raised that with management?</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4367</p> <p>1 A Yes. As part of a compilation Mazars is responsible 2 for evaluating the methods that are being used and evaluating 3 the appropriateness of the methods. So to the extent they 4 concluded that adding a 30 percent premium was inappropriate, 5 they would have been compelled to respond to that through 6 inquiries with management to perhaps have this amount adjusted; 7 or to include relevant disclosure in their accountant's report. 8 Q And if it was inappropriate to include that premium 9 for the assembly of land parcels, could management have 10 expected Mazars to identify that issue for them? 11 A Yes, because Mazars is compiling the financial 12 statements and using the supporting data to do that. So to the 13 extent that there are components of the valuations that are 14 inconsistent with GAAP and they become aware of it, they are 15 required under the standards to follow up on that. 16 Q Okay. Moving on to the Trump International -- 17 MR. SUAREZ: You can keep going. 18 Is this the next one? Keep going. 19 Q The Trump World Tower, again, I would like to direct 20 your attention towards, the valuation is based on the 21 anticipated selling price of unsold units and the rental income 22 to be derived from the commercial space. What do you 23 understand "anticipated selling price of unsold units" to mean? 24 A Well, I read this as being consistent with one of the 25 methods that is called for under ASC 274 with regard to</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4369</p> <p>1 A I do. 2 Q Is that consistent with a planned course of action 3 under ASC 274? 4 A Yes. 5 Q Is the method for determining estimated current value 6 consistent with the requirements of ASC 274 for the Trump Plaza 7 at Third Avenue? 8 A Yes. 9 Q Going on to the next asset, the Trump Palace, Trump 10 Park and Trump Park East. Is the method there for determining 11 estimated current value consistent with the requirement of ASC 12 274? 13 A Yes, it appears to be the same method as the prior 14 properties that we just discussed. 15 Q And was the method for determining estimated current 16 value disclosed to Mazars in the supporting data? 17 A Yes. 18 Q Moving on to the Trump International Hotel and Tower 19 in New York City. Is the method for determining estimated 20 current value consistent with the requirements of ASC 274? 21 A Yes, this appears to be referencing a different 22 valuation method that is accepted under ASC 274, and that is 23 use of appraisals. 24 Q Now, in this instance it appears that the use of an 25 appraisal was used, correct?</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4368</p> <p>1 utilizing future cash flows based on planned courses of action. 2 And I believe this wording is identical to that. 3 Q Does planned -- withdrawn. 4 Do planned courses of actions have an temporal 5 requirement? 6 A No. 7 Q Moving on to 100 Central Park South the Trump Park 8 East. Is the method for determining estimated current value 9 consistent with the requirements of ASC 274? 10 A Yes. This appears to be the same method as Trump 11 Tower. 12 Q And again, you see that the valuation is based on the 13 anticipated selling price, correct? 14 A Yes. 15 Q The anticipated selling price, is that consistent 16 with the method under ASC 274 that permits the use of planned 17 courses of action? 18 A Yes. 19 Q Was the method for determining the estimated current 20 value of the Trump Park East disclosed to Mazars? 21 A Yes. 22 Q Moving on to Trump Plaza at third Avenue, I would 23 like to, again, direct your attention to the valuation being 24 based on the rental income from the property plus the value of 25 the two unsold co-op units. Do you see where it says that?</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4370</p> <p>1 A Correct. 2 Q Now, would it have been appropriate to use another 3 basis for determining estimated current value when there was an 4 appraisal for the unit that was available to management? 5 A Yes, ASC 274 does not require use of appraisals. 6 There are many other methods that are available to a preparer 7 to serve as the basis for determining estimated current value. 8 Q And if another basis for estimated current value had 9 resulted in a wildly different value than that which was 10 reflected in the appraisal in management's possession, would 11 management have been required to use the lower value in the 12 appraisal? 13 A Not at all. 14 Q Why is that? 15 A As we discussed yesterday, given the wide range of 16 methods that are available under ASC 274 to value properties, 17 these methods can yield very different results and very 18 significant differences from one method to another. And the 19 standard does not require using the lower or the method that 20 yields the lowest result. 21 Q Moving to properties under development. 22 What is the first property that appears as a property 23 under development? 24 A It looks like it is Seven Springs in Westchester. 25 (Transcript continued on next page.)</p>

November 15, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4371

1 Q What is the value that's ascribed for Seven Springs in  
2 Westchester on the supporting data?  
3 A It looks like the total value is \$291 million.  
4 Q And what is the basis for determining the value of the  
5 Seven Springs property that's under development?  
6 A It looks like it's based on the anticipated selling  
7 price of certain mansion and it's broken out into two sections  
8 here. But the overall methodology relates to anticipated  
9 selling price.  
10 Q Is the use of an anticipated selling price consistent  
11 with a planned course of action?  
12 A Yes. And I should also add it's not just based on the  
13 selling price. There's clearly cost components that are  
14 offsetting the selling price to arrive at a profit number that  
15 is used as the basis for the valuation.  
16 Q The profit -- the anticipated profit is what's used as  
17 the basis for valuation?  
18 A Correct.  
19 Q And is it appropriate to use an anticipated profit as  
20 the basis for an planned course of action in determining  
21 estimated current value?  
22 A Yes.  
23 Q Now, with respect to Seven Springs here, was there  
24 discounting included for the future income that was anticipated?  
25 A It does not list any discounting separately in this

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4372

1 particular schedule. Um, it -- under ASC-274 when you are  
2 basing a valuation on, you know, future revenue streams or  
3 future cash flows, you would expect there to be a discounting  
4 component to this.  
5 It's unclear to me whether the selling price line item  
6 that's reflected in here already contemplates a discounting  
7 factor. It would be a question that I would follow up with the  
8 client and ask about.  
9 Q Was the lack of any additional discounting for future  
10 cash disclosed to Mazars?  
11 A Well, there certainly is a red flag from the standpoint  
12 that there is no mention of discounting. As I said, it could be  
13 implicit or embedded in -- in the selling prices that were used  
14 and in the overall profit number, but it would be a glaring  
15 question that would need to be asked.  
16 Q To the extent that the estimated current value method  
17 used for Seven Springs was not consistent with estimated current  
18 value, is it covered by a GAAP departure disclosed in the  
19 Statement of Financial Condition?  
20 A Yes. And as I said earlier I believe Mr. Bender also  
21 testified that the lack of discounting was covered by one of the  
22 exceptions that they included in their accountant's report.  
23 Q Moving onto the Trump Old Post Office.  
24 (Whereupon, the exhibit was displayed on the  
25 screen.)

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4373

1 Q Again, do you see that the basis for -- withdrawn.  
2 Is the method for determining estimated current value  
3 consistent with the requirements of ASC-274?  
4 A Like we saw with a couple of the other properties that  
5 reference capital contributions it's a little unclear to me what  
6 that means and how that fits, but it sounds to me like a cost  
7 approach, in which case it would be an ASC-274 compliant method.  
8 Q Was the method used for determining estimated current  
9 value disclosed to Mazars in the supporting data?  
10 A Yes.  
11 Q And to the extent that the estimated current value  
12 method was not consistent with the definition of ASC-274, should  
13 Mazars have identified the need to include additional  
14 disclosures?  
15 A Yes.  
16 Q Moving onto the partnerships and joint ventures.  
17 (Whereupon, the exhibit was displayed on the  
18 screen.)  
19 Q The first item listed here is a partnership with  
20 Vornado or Vornado. Is the method for determining estimated  
21 current value for the Vornado Partnership consistent with the  
22 requirements of ASC-274?  
23 A Yes. It appears that the way this valuation was  
24 performed was to take the ownership percentage interest that  
25 Mr. Trump had in the Vornado partnership, and multiply that

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4374

1 times the net operating income of the related properties to  
2 arrive at the overall valuation.  
3 Q When you say the "ownership interest of Mr. Trump", is  
4 that the 30 percent here that's disclosed at line 715, or row  
5 715 of the spreadsheet?  
6 A Yes, it is. And that is the multiplier against the net  
7 operating earnings of those entities less the related debt of  
8 those properties.  
9 Q What does the note to the Statement of Financial  
10 Condition disclose concerning Mr. Trump's interest in the  
11 Vornado partnerships?  
12 A Well, note four states clearly that Mr. Trump owns  
13 30 percent of these properties.  
14 Q And to the extent that any discounting for a lack of  
15 control was appropriate, would that have been apparent to  
16 Mazars?  
17 A Yes. It's very clear that 30 percent ownership is not  
18 a controlling interest.  
19 Q And of the lack of control would have impacted the  
20 estimated current value of Mr. Trump's interest in that  
21 property, should Mazars have been aware of that?  
22 A Yes. It's very clear from these documents.  
23 Q Moving onto the Trump International in Las Vegas.  
24 (Whereupon, the exhibit was displayed on the  
25 screen.)



J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4375

1 Q Is the method for determining estimated current value  
2 consistent with the requirements of ASC-274?  
3 A Well, similar to what we were saying before, this is  
4 using anticipated cash flows on this property. I don't see a  
5 discounting factor applied to it.  
6 Again, it could be implicit and embedded in the  
7 \$123 million value. I would want to know more to confirm that.  
8 But on its face, it doesn't look like there's any discounting.  
9 Q And should that have been apparent to Mazars that on  
10 its face it didn't appear to include any discounting?  
11 A I would think so.  
12 Q And to the extent that there was no discounting, for  
13 this asset, was the lack of discounting covered by a GAAP  
14 departure in the Statement of Financial Condition?  
15 A As I said before, Mr. Bender has testified that one of  
16 the disclosures in the accountant's report did cover that  
17 exception.  
18 Q Moving onto Miss Universe.  
19 (Whereupon, the exhibit was displayed on the  
20 screen.)  
21 Q Is the method for determining estimated current value  
22 consistent with the requirements of ASC-274?  
23 A It's unclear to me. There are apparently two different  
24 methods that are being used here, depending on the year.  
25 For 2013, there's a reference just to valuations based

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4376

1 on SEC filings done by the casinos. I'm not sure exactly what  
2 that means or how that valuation was derived. I would need to  
3 inquire further if I was performing this work.  
4 And for 2014, it's a little vague because there's  
5 reference to a Goodwill entity in applying a 50 percent  
6 ownership percentage against that Goodwill.  
7 I think for both of these I would need to ask more  
8 questions.  
9 Q Was the method used to determine the value disclosed to  
10 Mazars?  
11 A Well, these descriptions of the methods were disclosed,  
12 which I believe would have prompted additional questions.  
13 Q Should Mazars have inquired further as to the basis for  
14 those methods used for Miss Universe?  
15 A In my view, yes.  
16 Q And if the method selected was -- withdrawn.  
17 If the method selected by management was, in fact, not  
18 an appropriate measure under ASC-274, should management have  
19 expected that Mazars would have alerted them?  
20 A Yes. To the extent the methods used are inconsistent  
21 with the allowable methods under ASC-274, there's an obligation  
22 of an accountant performing a compilation to make inquiries and  
23 to perhaps include additional disclosure in the accountant's  
24 report.  
25 Q In your experience, is that something that happens in

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4377

1 the real world?  
2 A Yes, all the time.  
3 Q Management selects a method for estimating the current  
4 value of an asset that turns out to be inconsistent with  
5 ASC-274?  
6 A Yes. I see that all the time. And frankly, that's why  
7 you have external accountants involved in this process, given  
8 their expertise with GAAP and preparing financial statements.  
9 Q Is it fair for management to expect that the outside  
10 accountants will alert them if a method has been used that is  
11 not appropriate?  
12 A Yes, because of the professional standards that are  
13 applicable to Mazars, in this case, would require them to do  
14 just that.  
15 Q Moving onto other assets.  
16 (Whereupon, the exhibit was displayed on the  
17 screen.)  
18 Q The other assets here start with the Apprentice  
19 property -- excuse me, the Apprentice revenue stream. Do you  
20 see that?  
21 A Yes.  
22 Q And include the license to run the Wollman Rink, the  
23 Trump Model Management, family receivables, a vineyard property,  
24 Starrett City Associates, and then they continue further below  
25 to include aircrafts, a triplex, and homes in Palm Beach. Do

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4378

1 you see those?  
2 A Yes.  
3 Q And Beverly Hills, California. Is it appropriate under  
4 ASC-274 to group all of these assets into the category of other  
5 assets?  
6 A There was no restriction under ASC-274 on how to  
7 categorize these assets. To the extent there's significant  
8 aggregation, it might be helpful to have disclosure to inform a  
9 user what's comprising these amounts or this particular group of  
10 assets, but there's nothing inappropriate about grouping them  
11 under this caption.  
12 Q If we go to the Statement of Financial Condition and we  
13 look at the note associated with other assets.  
14 (Whereupon, the exhibit was displayed on the  
15 screen.)  
16 Q Let's go to the beginning of that note on page 21 of  
17 the document, page 23 of the exhibit.  
18 (Whereupon, the exhibit was displayed on the  
19 screen.)  
20 Q Would that note correlate to the grouping of assets  
21 under ASC -- excuse me. Would that note in the Statement of  
22 Financial Condition correlate with the grouping of assets under  
23 the supporting data for other assets?  
24 A I haven't done a one-for-one comparison. I will say  
25 that the notes to the financial statements do itemize different

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4379</p> <p>1 categories that are comprising the other assets caption. Upon 2 quick glance, there is certainly correlation. For example, the 3 Beverly Hills property, I would need to spend some time to do 4 the dot connecting, but it appears to correlate. 5 Q So in general terms, the Statement of Financial 6 Condition discloses that the other assets include -- 7 MR. SUAREZ: If we could go back to the first page. 8 (Whereupon, the exhibit was displayed on the 9 screen.) 10 Q It includes the triplex at Trump Tower, homes in Palm 11 Beach County. 12 MR. SUAREZ: Next page. 13 (Whereupon, the exhibit was displayed on the 14 screen.) 15 Q A home in Beverly Hills, a number of corporate 16 aircraft, and other, which goes on to include other entities 17 owned or controlled, and other assets as well, that include the 18 Celebrity Apprentice and Apprentice series, a 2000-acre vineyard 19 in Charlottesville, Virginia, licenses to operate and management 20 of Wollman and Lasker Rinks, an international talent/model 21 agency, a management company that supervises the operation of 22 condominium properties, loans to family members, limited 23 partnership investments in Starrett City and related entities, 24 and funds escrowed pursuant to the terms of contractual 25 commitments. Is it the case that there's no -- withdrawn.</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4381</p> <p>1 on that description, it sounds like it's based on comparable 2 sales of another property. So at a high level it sounds like 3 it's consistent with ASC-274. 4 THE COURT: Five-minute warning. 5 Q Is the reason you would need to ask more questions -- 6 withdrawn. 7 You would need to ask more questions; correct? 8 A I mean, certainly with regard to the 2013 value of 9 triplex. 10 Q Does the outside accounting firm have an obligation 11 greater. 12 Withdrawn. 13 Does the accounting firm have an obligation to 14 management that is greater than just copying and pasting the 15 numbers from the supporting data into the Statement of Financial 16 Condition? 17 MR. WALLACE: Objection. Leading. 18 THE COURT: Asked and answered many, many times 19 already, so sustained. 20 Q What obligation, if any, would the outside accounting 21 firm have to consider the method for using -- withdrawn. 22 What obligation, if any, would management have to -- 23 let me try the third time, and then I'll pull back. 24 What obligation would the accounting firm have in 25 placing an asset value on the Statement of Financial Condition</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4380</p> <p>1 What asset value is ascribed in the Statement of 2 Financial Condition to the individual assets that makeup other 3 assets? 4 A Well, the individual values comprising that section of 5 the financial statements are listed in the detail that was 6 provided to Mazars. The total value of all the assets was 7 \$338 million in the Statement of Financial Condition for 2014. 8 The composition of that was clear from this support. 9 Q If we focus on the triplex here in 2014, do you see the 10 method that's used to determine the asset value? 11 A It appears that there are two different notations 12 related to triplex, depending on the year. For, I believe, 2014 13 is the first column, is that correct, column G? 14 Q Yes. 15 A That just says "triplex per Kathy Kaye", with a date of 16 August 2013, with no further detail. It's unclear to me what 17 method is being used. 18 Q To be clear column G is 2013 and column H is 2014. 19 A Okay. So the first amount of \$200 million for 2013 has 20 a rather vague description. I can't, sitting here right now, 21 determine what valuation method is being used for that 22 particular year. I would need to ask more questions if I was 23 performing this work. 24 The value for 2014, which is also \$200 million, has a 25 different notation that states based on comps at One57. Based</p>	<p>Page 4382</p> <p>1 based on the information that's been provided in the supporting 2 data? 3 A Well, the accounting firm's obligation is to understand 4 the methods that are being used and consider the appropriateness 5 of those methods, you know, based on the assets that are being 6 valued, and ultimately determine whether they are a GAAP 7 compliant method. 8 And to the extent they are not, the standards require 9 them to perform follow-up inquiries, and perhaps include 10 language in their accountant's report if those amounts are 11 reported in a manner that is inconsistent with GAAP. 12 MR. SUAREZ: I'm at a good breaking point. 13 THE COURT: Breaking or ending? 14 MR. SUAREZ: No, breaking, breaking, breaking. 15 THE COURT: I always ask that. Call it a 16-minute 16 break, and we'll see you all at 11:45. 17 And I'll direct the witness, again, don't discuss 18 the case, your testimony, or anything related thereto. 19 (Whereupon, a 16-minute break was agreed upon and 20 taken by all parties.) 21 (Continued on the next page.) 22 23 24 25</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4383</p> <p>1 COURT OFFICER: All rise. Part 37 is back in 2 session. Please be seated and come to order. 3 THE COURT: This morning the defendants filed a 4 proposed order to show cause, correct. 5 MR. KISE: We did, sir. 6 THE COURT: Would the Attorney General like to 7 submit any papers on the threshold issue of whether I 8 should sign or decline to sign the proposed order to show 9 cause? 10 MR. WALLACE: I have been sitting here from the 11 time I received it, but I would ask if we could have until 12 tomorrow to put in -- determine if we want to put in 13 anything. I think that would be sufficient for us to get 14 through. 15 THE COURT: If you want until tomorrow to 16 decide, how long will it take you to submit something if 17 you decide? 18 MR. WALLACE: If the question is whether the 19 order to show cause should be signed, hence setting the 20 briefing schedule and whether we have a view on the 21 briefing schedule, we could put that in before the end of 22 the day tomorrow certainly. 23 THE COURT: Okay. 24 Okay. Let's get the witness back. 25 (Whereupon the witness resumed the stand.)</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4385</p> <p>1 cash on the list of assets in the Statement of Financial 2 Condition? 3 A Can I add a little more detail on the last answer? 4 Q Sure. 5 A So, you will notice when looking at the accountant's 6 letter for this year, for 2016, it is more summarized and more 7 concise than what we saw for the accountant's letter for the -- 8 for the 2014 time period. And one of the reasons for that is 9 under the standard AR-C 80 which was issued and effective in or 10 around 2016, one of the changes was to condense the 11 accountant's report. And so I believe that that would be the 12 cause for this taking on a slightly different form. I will say 13 the paragraph that references the GAAP deviations, which is the 14 paragraph on the screen here, second paragraph on the document, 15 do appear to be similar, if not identical, to those that were 16 broken out more separately in the 2014 accountant's report. 17 But they do consist of the same type of items. 18 And in the last paragraph of the accountant's report 19 is the "buyer beware" paragraph that I had talked about 20 yesterday that comes right out of the standard that 21 accountant's are encouraged to consider putting in the 22 accountant's report for compilations if they believe that the 23 significance of the GAAP deviations are of such a nature that 24 warrant inserting that in the accountant's report. 25 Q With respect to the GAAP departures that are</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4384</p> <p>1 THE COURT: Please proceed. 2 MR. SUAREZ: Thank you, Your Honor. 3 Q Mr. Flemmons I would like to draw your attention to 4 the 2016 Statement of Financial Condition which appears at 5 Plaintiff's 756; and the supporting data which appears at 6 Plaintiff's 742. 7 (Hanging) 8 MR. SUAREZ: If we could zoom out to make sure 9 we include these three columns here. (Indicating.) 10 Q Mr. Flemmons, do you recognize the Statement of 11 Financial Condition for the year end June 30, 2016 for Donald 12 Trump? 13 A Yes, I do. 14 Q Have you reviewed it prior to today? 15 A Yes. 16 Q Next to the statement is supporting data, which 17 appears as Plaintiff's 742. Have you reviewed the supporting 18 data prior to today? 19 A Yes. 20 Q I would like to turn your attention to the 21 accountant's compilation report and, again, ask whether the 22 accountant's compilation report includes disclosures for 23 departures from Generally Accepted Accounting Principles. 24 A Yes, it does. 25 Q Okay. Now I would like to draw your attention to the</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4386</p> <p>1 disclosed in this accountant's compilation report, which, if 2 any of them, address cash? 3 A Well there is a sentence in the middle of that 4 paragraph that addresses the presentation of cash and 5 marketable securities and hedge funds under GAAP. Those would 6 be separately reported as separate line items. But for 7 purposes of the financial condition statement, those were 8 included in one line item. 9 Q What is the effect of that disclosure? 10 A It is to communicate to a user that they are 11 collapsed into one line item as opposed to being broken out 12 separately. 13 Q And if we could go to page four of the Statement of 14 Financial Condition, which I believe is page six of the 15 exhibit. 16 MR. SUAREZ: And zoom in on cash. 17 Q What does the note for the cash on the Statement of 18 Financial Condition disclose? 19 A Would you like me to read it? 20 Q Please. 21 A It states: Cash, marketable securities and hedge 22 funds represents amounts held by Mr. Trump and amounts in 23 operating entities. Include -- included in this amount are 24 common stocks, mutual funds, hedge funds, corporate notes and 25 bonds and United States Treasury Securities. Marketable</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4387</p> <p>1 Securities are valued at quoted market prices or estimates of 2 current value provided by the hedge funds. 3 Q What does it mean that cash, marketable securities 4 and hedge funds represents amounts held by Mr. Trump and 5 amounts in operating entities? 6 A Well, it is communicating to the user that cash that 7 is held in operating entities and marketable securities and 8 hedge funds that are -- that reside within the various 9 operating entities of Mr. Trump, are included in the Statement 10 of Financial Condition within this line item. 11 Q Okay. And if we go to the supporting data, do you 12 see that there is a schedule for the cash and marketable 13 securities? 14 A Yes. 15 MR. SUAREZ: Can we please pull up Plaintiff's 16 Exhibit 2587? It has already been admitted into evidence. 17 Q Are you familiar with this schedule, Mr. Flemmons? 18 A Yes. 19 Q What does this schedule represent? 20 A It is the detailed schedule that breaks down all of 21 the components of the cash and short term investments as of 22 June 30, 2016 that, in total, rolls into the worksheet that we 23 just looked at that was provided to Mazars. This particular 24 more-detailed spreadsheet appears to have also been provided to 25 Mazars. There is a notation up at the top of the document that</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4389</p> <p>1 owned by Mr. Trump is disclosed to Mazars as the 30 percent of 2 the cash on the balance sheet, does that correlate? 3 A Yes, it appears that the 30 percent that is on the 4 supporting cash worksheet correspond to the 30 percent 5 ownership interest by Mr. Trump as disclosed in the financials. 6 Q And if we go through the same exercise for HWA 7 Waterfront Associates, which reflect 30 percent of cash on the 8 balance sheets, and we go back to the Statement of Financial 9 Condition, would Mazars have known what HWA -- withdrawn. 10 Should Mazars have known what HWA Associates was? 11 A Well, I would expect they should, given the detail 12 that was provided that specifically mentions those properties; 13 and also given their broader involvement with Mr. Trump and the 14 Trump Organization in a variety of different capacities, 15 including audit and tax work. 16 Q And again, that 30 percent of the balance sheet 17 reflect that correlates with the interest in the 555 California 18 Street. Do you see that? 19 A Yes. 20 Q Was the -- if we go back to the cash schedule, you 21 will see that the only entities that have that additional 22 notation, 30 percent of cash on balance sheet reflect the 23 entities in which Mr. Trump owned the 30 percent interest. Do 24 you see that? 25 A I do.</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4388</p> <p>1 says PBC, which in accounting and auditing parlance means 2 prepared by client. So this would have been prepared by 3 someone within the Trump Organization. And as we talked about 4 before, the blue numbers that are in column B correspond to 5 particular marks that would have been attached or noted by 6 Mazars. 7 Q Can I draw your attention to cell A 11? 8 Do you see that that reflects an account title for 9 1290 Avenue of the Americas? 10 A Yes. 11 Q And do you see that it has an open parentheses and it 12 says: 30 percent of cash on balance sheet? 13 A Yes. 14 Q If we pull up the Statement of Financial Condition, 15 which is Plaintiff's Exhibit 756, and turn to 1290 Avenue of 16 the Americas on page 18 of the document, which I believe is 17 page 20 of the exhibit, what does this note reflect concerning 18 President Trump's interest in 1290 Avenue of the Americas? 19 A Well, the note describes what the property is in the 20 second paragraph, where it starts, 1290 Avenue of the Americas 21 consists of an office tower, and goes on to give more detail. 22 The note also includes a reference to Mr. Trump owning 23 30 percent of those properties which would include the 1290 24 Avenue of the Americas. 25 Q And if we go to the cash schedule, the 30 percent</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4390</p> <p>1 Q What should Mazars have understood from the 2 disclosure that those entities represented 30 percent of the 3 cash on the balance sheet? 4 A Well, it is clear from this document, given that it 5 supports the cash and short term investment amounts that are 6 reported in the Statement of Financial Condition, that 7 30 percent of the cash that is held at these entities in which 8 Mr. Trump has a minority interest, are included in the 9 Statement of Financial Condition. 10 Q Was the inclusion of this cash from the entities that 11 reflect the 30 percent of the balance sheet on the cash 12 schedule, would have been one of the departures from GAAP on 13 the Statement of Financial Condition? 14 MR. WALLACE: Objection, foundation. Shouldn't 15 we establish if this is a departure from GAAP? 16 THE COURT: Okay. Sustained. 17 Q Is it a departure from GAAP to include cash in this 18 manner on the -- on the cash sheet? 19 A It is certainly a red flag to me. I don't know why 20 you would include 30 percent of cash from a joint venture on 21 your balance sheet. I would want to know more about the 22 rationale from management to understand that. 23 THE COURT: You know, "it is a red flag," is 24 it -- does it comply or does it not comply? Is it a 25 deviation, I think is the technical term. Departure.</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4391</p> <p>1 THE WITNESS: Again, there is not enough detail</p> <p>2 here to tell me what the rationale was under GAAP for</p> <p>3 including that. But based on my expertise in GAAP, I</p> <p>4 would -- I have a lot of questions about it because it</p> <p>5 appears to me that it is not GAAP compliant.</p> <p>6 THE COURT: So if you didn't ask questions and</p> <p>7 you didn't get answers and you didn't have any other</p> <p>8 information, is it a departure?</p> <p>9 THE WITNESS: It would appear to me that it is.</p> <p>10 THE COURT: Okay.</p> <p>11 Q Would Bender or Mazars have asked questions -- should</p> <p>12 Bender or Mazars have asked questions about the inclusion of</p> <p>13 this cash on the cash balance sheet?</p> <p>14 A Yes. As I have stated before, an accountant that is</p> <p>15 performing compilation services is required to follow-up on</p> <p>16 potential GAAP departures that they become aware of. And this,</p> <p>17 to me, falls in that category of something that should have</p> <p>18 been followed up on. I don't know if it was or not. And I</p> <p>19 don't know whether or not Mazars believes that this was</p> <p>20 captured by one of the disclosures in the accountant's report</p> <p>21 as to GAAP departures.</p> <p>22 Q If management had included this cash -- withdrawn.</p> <p>23 If management includes this cash and indicates that</p> <p>24 it is the 30 percent of the cash on the balance sheet on the --</p> <p>25 on the cash balance sheet, would it have been appropriate for</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4393</p> <p>1 answered.</p> <p>2 Q Should Mazars have observed that there was a change</p> <p>3 in the square footage of the triplex from 30,000 square feet to</p> <p>4 10,996 square feet from the year 2016 to the year 2017?</p> <p>5 A It certainly looks very obvious from this document</p> <p>6 that that change occurred between the two years. And as we</p> <p>7 have said before, the blue numbers that are listed in this</p> <p>8 document would certainly evidence that Mazars reviewed this</p> <p>9 document and these aspects of it. I am not sure what the red</p> <p>10 arrows mean, but the numbers certainly are indicative of Mazars</p> <p>11 review.</p> <p>12 Q And should Mazars have observed that in 2017 the</p> <p>13 value of the triplex changes from 327 million to 116,800,000?</p> <p>14 A Yes.</p> <p>15 Q And should Mazars have observed that that change was</p> <p>16 due to a reduction in the square footage of the triplex?</p> <p>17 MR. WALLACE: Objection.</p> <p>18 THE COURT: Is it about the word "should"?</p> <p>19 MR. WALLACE: No, it is about there was a change</p> <p>20 in the square footage. I think the question suggests</p> <p>21 there was a change in the square footage, as opposed to</p> <p>22 the reported square footage.</p> <p>23 THE COURT: Well, I'll sustain on that basis</p> <p>24 too. I'll point out the word "should" is sort of a vague</p> <p>25 term. Are we talking morally, legally, practically?</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4392</p> <p>1 management to rely on Mazars to advise them that there was a</p> <p>2 departure from GAAP?</p> <p>3 A The answer is yes, because this is a very glaring</p> <p>4 issue that I would want to know more about. To me it appears</p> <p>5 to be GAAP departure, which would lead a reasonable accountant</p> <p>6 to make those inquiries. And I believe it is also reasonable,</p> <p>7 you know, for the client in any engagement, whether it be in</p> <p>8 this particular case or others, to rely on their accountant to</p> <p>9 respond to obvious GAAP departures.</p> <p>10 Q Moving on to the Statement of Financial Condition for</p> <p>11 2017, at Plaintiff's Exhibit 755, and the supporting data at</p> <p>12 Plaintiff's Exhibit 758.</p> <p>13 (Handing)</p> <p>14 MR. SUAREZ: If we could turn to the triplex on</p> <p>15 the supporting data.</p> <p>16 Q Do you see here next to the triplex supporting data</p> <p>17 on cell D 971 it includes a red mark?</p> <p>18 A Yes.</p> <p>19 Q Would that red mark -- what does that red mark tend</p> <p>20 to indicate?</p> <p>21 A I am not sure.</p> <p>22 Q Would that red mark be evidence that this document</p> <p>23 was reviewed by Mazars?</p> <p>24 MR. WALLACE: Objection, leading.</p> <p>25 THE COURT: Leading and, sort of, asked and</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4394</p> <p>1 Q Should Mazars in performing a compilation under the</p> <p>2 professional standards, have observed a change in the square</p> <p>3 footage -- on the reported square footage of the triplex from</p> <p>4 30,000 square feet to 10,960 square feet?</p> <p>5 THE COURT: What do you mean by "should they</p> <p>6 have"? Again, would he have expected to? Is that</p> <p>7 required under GAAP? Is that required under the law,</p> <p>8 which would be a legal question.</p> <p>9 Mr. Kise, go ahead.</p> <p>10 MR. KISE: Yes, Your Honor. As the Court knows,</p> <p>11 this witness is a professional expert on the accounting</p> <p>12 standards that apply to accounting firms like Mazars. He</p> <p>13 spent a good portion of his career with the SEC overseeing</p> <p>14 and evaluating auditors and accountants. So the question,</p> <p>15 and perhaps Your Honor is correct maybe it needs to be</p> <p>16 formed more precisely, but the question is, in his opinion</p> <p>17 as an expert, do the AICP standards -- do the governing</p> <p>18 standards require, would they have required, should they</p> <p>19 have required Mazars to do that?</p> <p>20 THE COURT: Well that's a totally different</p> <p>21 question.</p> <p>22 MR. KISE: Well, I mean, it is, well, should --</p> <p>23 I mean, it is the same, would the standards have required</p> <p>24 or should they have known so. It is certainly within this</p> <p>25 expert's purview to opine whether, in his opinion, Mazars</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4395</p> <p>1 should have flagged this.</p> <p>2 THE COURT: No, because "should" is an ambiguous</p> <p>3 term. I think we agree. If the question is would the</p> <p>4 governing standards require them to.</p> <p>5 MR. KISE: Fair enough.</p> <p>6 MR. WALLACE: I would note that the witness</p> <p>7 during his time over at the SEC oversaw actions against</p> <p>8 issuers, not just accountants. So if you want to ask</p> <p>9 questions about how issuers view this.</p> <p>10 MR. KISE: I mean, to limit it I was using a</p> <p>11 specific example, because we are talking about</p> <p>12 accountants.</p> <p>13 THE COURT: Let me try my hand. I like to</p> <p>14 player lawyer occasionally.</p> <p>15 Would the governing standards require Mazars to</p> <p>16 notice the difference -- notice the discrepancy, I'll call</p> <p>17 it?</p> <p>18 THE WITNESS: The answer is yes, because under</p> <p>19 AR 80, which is the prevailing standard that applies to</p> <p>20 Mazars in performing the compilation service, they are</p> <p>21 required to understand the methodologies that are being</p> <p>22 used to value these properties. And these are significant</p> <p>23 values, the 327 million, the 116 million. And the</p> <p>24 methodology being used is largely based on the square</p> <p>25 footage, which was the only change -- only material change</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4397</p> <p>1 MR. WALLACE: I am going to object, that's</p> <p>2 leading.</p> <p>3 THE COURT: As opposed to what would the</p> <p>4 governing standards require? Sustained.</p> <p>5 Q What would the governing standards, if anything,</p> <p>6 require Mazars to advise management with respect to the</p> <p>7 reporting of that change?</p> <p>8 A Well, as I said before, they would need to understand</p> <p>9 the basis of the methodologies that are being used, and in</p> <p>10 seeing that change, you know, may inquire about the nature of</p> <p>11 that change. And it would be required of them to make a</p> <p>12 determination on whether that change necessitated additional</p> <p>13 disclosure in either the financial statements or the</p> <p>14 accountant's report, and to assess that with management.</p> <p>15 Q All right. We can move on to the Aberdeen supporting</p> <p>16 data.</p> <p>17 MR. SUAREZ: If you type in "Scotland" it will</p> <p>18 come out.</p> <p>19 Thank you.</p> <p>20 Q I would like to draw your attention to the method</p> <p>21 used for determining the estimated current value of the Trump</p> <p>22 International Golf Club in Scotland. You see all the way at</p> <p>23 the bottom it says: Value of residential parcel?</p> <p>24 A Yes.</p> <p>25 Q It is based on a purchase of land by Persimmons,</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4396</p> <p>1 from one year to the next. So in gaining the</p> <p>2 understanding of the methodology used, I would have</p> <p>3 expected them to understood that that square footage</p> <p>4 changed year over year.</p> <p>5 THE COURT: The question isn't whether you would</p> <p>6 expect them to question, it is whether they were required</p> <p>7 to. I think you said yes.</p> <p>8 THE WITNESS: I did say yes at the beginning of</p> <p>9 my answer. I am sorry if that didn't come across, but the</p> <p>10 answer is yes.</p> <p>11 THE COURT: Okay.</p> <p>12 THE WITNESS: And I should add, every question</p> <p>13 asked of me with "shoulds" and "woulds" my answers have</p> <p>14 all been in relation to the applicable professional</p> <p>15 standards that are applicable to Mazars, which is AR 80</p> <p>16 and AR-C 80.</p> <p>17 THE COURT: And just to be 100 percent clear, it</p> <p>18 is that -- it is not just in your experience what would</p> <p>19 likely happen, you are answering as to what was required</p> <p>20 under the governing standards?</p> <p>21 THE WITNESS: That's correct.</p> <p>22 THE COURT: Let's move on.</p> <p>23 Q Would the governing standards require Mazars to</p> <p>24 advise management as to what the appropriate disclosure was as</p> <p>25 a result of that change?</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4398</p> <p>1 Hopcroft, Bucksburn and value of land per home. Do you see</p> <p>2 that?</p> <p>3 A Yes.</p> <p>4 Q And it records a number of homes to be sold at 2,500.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Now, is that an appropriate measure of a planned</p> <p>8 course of action to determine estimated current value?</p> <p>9 MR. WALLACE: Objection to the extent he is</p> <p>10 asking something beyond whether it is appropriate from an</p> <p>11 accounting standard.</p> <p>12 MR. SUAREZ: I am only asking about the</p> <p>13 methodology.</p> <p>14 THE COURT: Overruled.</p> <p>15 A So this methodology appears to be based on a future</p> <p>16 expectation of sales and the revenue streams that are</p> <p>17 associated with those sales, which would be a method under ASC</p> <p>18 274 to the extent those were discounted.</p> <p>19 (The following proceedings were stenographically</p> <p>20 recorded by Senior Court Reporter Michael Ranita.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4399</p> <p>1 Q Now, ultimately, the number of homes to build was less</p> <p>2 than that that was planned for, the amount of land wouldn't</p> <p>3 change; correct?</p> <p>4 A I wouldn't expect the amount of land to change, no.</p> <p>5 Q Even if the planned course of action -- let me withdraw</p> <p>6 that.</p> <p>7 If the planned course of action turns out not to be</p> <p>8 feasible, would that necessarily preclude, at the time, the use</p> <p>9 of that planned course of action in determining estimated</p> <p>10 current value?</p> <p>11 A It would not preclude using that methodology under</p> <p>12 ASC-274. The amounts may change, but the methodology itself</p> <p>13 would not.</p> <p>14 Q Moving onto the 2011 Statement of Financial Condition</p> <p>15 at Plaintiff's Exhibit 787, and the supporting data at</p> <p>16 Plaintiff's Exhibit 1873.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 (Whereupon the exhibits were handed to the</p> <p>20 witness.)</p> <p>21 Q If we could turn to the valuation of 40 Wall on the</p> <p>22 supporting data.</p> <p>23 Is the method used for determining the estimated</p> <p>24 current value of 40 Wall in 2011 consistent with ASC-274?</p> <p>25 A Based on the description in this work paper, it appears</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4401</p> <p>1 pointing out that there is GAAP compliance, notice, et</p> <p>2 cetera, et cetera, I mean, the various things.</p> <p>3 So, yes, there would be some repetition, but we are</p> <p>4 not going through every statement -- every item in every</p> <p>5 year. We won't be doing that.</p> <p>6 THE COURT: We probably shouldn't have to go</p> <p>7 through more than one to ask the question, if there's an</p> <p>8 appraisal with a different value, can you still use one of</p> <p>9 the methods that GAAP approves. And the answer is, "Yes."</p> <p>10 MR. KISE: But the answer is not yes with respect</p> <p>11 to specific items that have been identified.</p> <p>12 For what clearly may be the Appellate record, we</p> <p>13 need to make sure that it's very clear in the record that</p> <p>14 the specific items have a specific, you know -- have been</p> <p>15 addressed specifically in the record. We can't -- we can't</p> <p>16 just assume, because if we get to the Appellate court, they</p> <p>17 are going to say, "Nobody asked him if this particular item</p> <p>18 in 2011 or 2015 or 2017 complied with GAAP or didn't comply</p> <p>19 with GAAP."</p> <p>20 Again, the government has taken the view that we</p> <p>21 could just look at one year and assume all else is the same;</p> <p>22 that's their prerogative. But I think we have to be allowed</p> <p>23 to at least make our individualized record.</p> <p>24 THE COURT: I think you are giving the Appellate</p> <p>25 Division less credit than they deserve.</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4400</p> <p>1 that the method being used is a capitalization of future</p> <p>2 earnings, which is an acceptable method under ASC-274.</p> <p>3 Q If management possessed an appraisal that had a wildly</p> <p>4 different value, would that preclude management from using this</p> <p>5 method in determining estimated current value?</p> <p>6 A No, it would not. Um, this method of using cap rate of</p> <p>7 perspective earnings is an acceptable method. The use of an</p> <p>8 appraisal as an alternative is an option, but it's not mandated</p> <p>9 by the standard.</p> <p>10 THE COURT: We've heard this exact testimony</p> <p>11 before. You could use one of the acceptable methods. You</p> <p>12 don't have to use another. You could use it even if there</p> <p>13 is an appraisal, even if the appraisal is wildly different.</p> <p>14 So I hope you don't have to hear it again.</p> <p>15 And obviously it was not directed at the witness,</p> <p>16 it was directed at someone else.</p> <p>17 MR. KISE: I think, Judge, all that we are doing</p> <p>18 now, in an effort to streamline this, you have identified,</p> <p>19 and the government has identified specific items in specific</p> <p>20 years, and so I think it's important for the record for us</p> <p>21 to establish, with respect to those items. Unlike the</p> <p>22 government, we don't believe that you could just assume</p> <p>23 everything is the same based on -- based on one year. So we</p> <p>24 -- all we are doing is, hopefully very efficiently going</p> <p>25 through the specific items that have been identified and</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4402</p> <p>1 Mr. Solomon.</p> <p>2 MR. SOLOMON: I was noting, your Honor, if Mr. Kise</p> <p>3 is going to describe what's going to be asked of the witness</p> <p>4 going forward and the like, the witness should probably be</p> <p>5 excused for the discussion.</p> <p>6 MR. KISE: That's fair.</p> <p>7 THE COURT: I don't think we need to.</p> <p>8 Mr. Suarez, you could ask the same questions again,</p> <p>9 but you really don't have to because it's the same thing</p> <p>10 whether it's one year or the other. And I won't repeat</p> <p>11 myself, but go ahead. I'm not stopping you from doing</p> <p>12 anything.</p> <p>13 MR. WALLACE: Your Honor, I'm going to raise a</p> <p>14 totally separate objection. I'm not sure the document up on</p> <p>15 the screen, Plaintiff's Exhibit 1873, is, in fact, the final</p> <p>16 Jeff's Supporting Data for 2011. So it's not clear to me</p> <p>17 whether or not the witness has reviewed this particular</p> <p>18 document in preparing his opinion.</p> <p>19 THE COURT: Mr. Suarez or Kise?</p> <p>20 MR. KISE: Is this the one that's already in</p> <p>21 evidence, 787? I don't remember the numbers, so I</p> <p>22 apologize. I'm going to rely on the folks that really know</p> <p>23 this.</p> <p>24 MR. AMER: We did put in some of the earlier drafts</p> <p>25 into evidence, so whether it's in evidence or not doesn't</p>

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4403</p> <p>1 determine the question.</p> <p>2 MR. WALLACE: I would note my records indicate that</p> <p>3 Plaintiff's Exhibit 788 is the version that Mr. Bender</p> <p>4 clarified was the final version of the supporting data.</p> <p>5 MR. KISE: It's a good catch. They are much more</p> <p>6 careful about these things than me. That's a good catch.</p> <p>7 Thank you.</p> <p>8 MR. SUAREZ: I will just say we were going there.</p> <p>9 Plaintiff's Exhibit 788. Let's pull that one up as well.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 MR. SUAREZ: To be sure, this is the one that has</p> <p>13 the red and blue tick marks.</p> <p>14 Q And here, again, we actually see a value of</p> <p>15 524,688,000. And if we turn to the statement of assets on the</p> <p>16 Statement of Financial Condition, for 40 Wall Street, we see</p> <p>17 524,700,000 is the asset value that's assigned.</p> <p>18 That appears to be -- is that consistent with the</p> <p>19 number that's in the support data?</p> <p>20 A Yes. And I believe the last version we just saw had a</p> <p>21 total of around 600 million, which is different than what's in</p> <p>22 the Statement of Financial Condition, but this supporting</p> <p>23 schedule appears to tie to the 2011 statement.</p> <p>24 Q It appears that it was rounded up by about \$12,000 when</p> <p>25 it was placed on the Statement of Financial Condition?</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4405</p> <p>1 Q On the left, is that the Statement of Financial</p> <p>2 Condition for President Trump in 2012?</p> <p>3 A Yes.</p> <p>4 Q And on the right you see the backup for that the Jeff's</p> <p>5 Supporting Data?</p> <p>6 A Yes.</p> <p>7 Q If we could move to 40 Wall again on this document.</p> <p>8 (Whereupon, the exhibit was displayed on the</p> <p>9 screen.)</p> <p>10 Q Is the method used for determining estimated current</p> <p>11 value for 40 Wall, in 2012, consistent with estimated current</p> <p>12 value definition in ASC-274?</p> <p>13 A Yes. It appears to be capitalization of earnings,</p> <p>14 which is a permitted method under ASC-274.</p> <p>15 Q And would it -- withdrawn.</p> <p>16 Would it be appropriate to use the income</p> <p>17 capitalization method if management had in its possession an</p> <p>18 appraisal that reflected a wildly different value?</p> <p>19 A Could you repeat the question, please.</p> <p>20 Q Yes.</p> <p>21 Would it be appropriate to use this method for</p> <p>22 determining estimated current value even if management had, in</p> <p>23 its possession, an appraisal that had a wildly lower value in</p> <p>24 its possession?</p> <p>25 A Yes. They could use either one.</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4404</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 What methodology is used here to determine the value of</p> <p>4 40 Wall Street?</p> <p>5 A The methodology appears to be similar, if not the same,</p> <p>6 as the last version we saw, albeit with different numbers, but</p> <p>7 the methodology is a capitalization of future earnings, which is</p> <p>8 an acceptable method under ASC-274.</p> <p>9 Q Just so that the record is clear, would it have been</p> <p>10 appropriate to use the methodology that was used in Plaintiff's</p> <p>11 Exhibit 788, even if management had, in its possession, an</p> <p>12 appraisal that showed a wildly different value?</p> <p>13 A Yes.</p> <p>14 Q Would that be for the same reason that you previously</p> <p>15 stated?</p> <p>16 A That's correct.</p> <p>17 Q And if we could move to the 2012 Statement of Financial</p> <p>18 Condition at Plaintiff's Exhibit 815.</p> <p>19 (Whereupon, the exhibit was displayed on the</p> <p>20 screen.)</p> <p>21 Q And the support data at Plaintiff's Exhibit 793.</p> <p>22 (Whereupon, the exhibit was displayed on the</p> <p>23 screen.)</p> <p>24 (Whereupon the exhibits were handed to the</p> <p>25 witness.)</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4406</p> <p>1 Q Moving onto the Trump Park Avenue in 2011 and 2012.</p> <p>2 You have the comparative values here at Plaintiff's Exhibit 793.</p> <p>3 Is this an appropriate method for estimating current</p> <p>4 value, according to ASC-274?</p> <p>5 A It appears so. It's -- it appears to be based on,</p> <p>6 again, using a cap rate against earnings. The only question I</p> <p>7 have is the cap rate line has a number ten in both column D and</p> <p>8 E. I assume that's ten percent, which is what I would expect</p> <p>9 for a cap rate to reflect, but beyond that, it looks like it</p> <p>10 comports.</p> <p>11 Q And that's for the commercial space. Above you see a</p> <p>12 line for the unsold units that says "valuation is based on the</p> <p>13 anticipated selling price of unsold residential units and the</p> <p>14 selling price or the rental income stream to be delivered from</p> <p>15 the commercial space."</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q With respect to the anticipated selling price of the</p> <p>19 unsold residential units, would that anticipated selling price</p> <p>20 have any limitation on the time horizon that management would</p> <p>21 need to consider in preparing that estimate?</p> <p>22 A No. And the only other component that I'm not seeing</p> <p>23 here that may be relevant would be potential discounting of</p> <p>24 these cash flows pertaining to the unsold units.</p> <p>25 I'm not sure exactly how the unsold units corresponds</p>



November 15, 2023

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4407

1 with the commercial space. I would need to spend a little more  
2 time with this. The cap rate would take care of discounting  
3 that looks to only be relevant for a portion of the asset being  
4 valued here.  
5 Q What obligation would Mazars have had to undertake the  
6 analysis that you just described?  
7 A Again, in order to comply with professional standards  
8 and seek to understand the methods being used, I would expect  
9 that they would ask the same questions that I'm raising now,  
10 given the requirements.  
11 Q Would you expect those questions -- withdrawn.  
12 Would you expect management to rely on its outside  
13 accountant for guidance on the appropriate method for  
14 determining estimated current value?  
15 MR. WALLACE: Objection. Leading.  
16 THE COURT: Sustained.  
17 Q Under the professional standards, what, if any,  
18 obligation would Mazars have to provide guidance to management  
19 on the determination of estimated current value?  
20 A Well, their obligation under the professional standards  
21 is to understand the methods being used and to identify or  
22 respond to any GAAP departures, and to followup on such  
23 departures with management, to make inquiries that could  
24 potentially lead to adjustments to the reported amounts in the  
25 Statement of Financial Condition, and/or lead to additional

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4408

1 disclosure in the accountant's report.  
2 Q And if management provided insufficient information to  
3 make a determination as to whether estimated current value was  
4 appropriately determined, what obligation would Mazars have to  
5 provide guidance to management?  
6 A Well, under the professional standards they would be  
7 required to cure not having received sufficient information by  
8 seeking and obtaining sufficient information. If they are  
9 unable to get sufficient information to resolve the issue, then  
10 as we've said many times, the accountants have the vehicle  
11 through the accountant's report to communicate those issues.  
12 Q Moving onto the 2018 Statement of Financial Condition  
13 at Plaintiff's Exhibit 773 and the supporting data at  
14 Plaintiff's Exhibit 774?  
15 (Whereupon, the exhibit was displayed on the  
16 screen.)  
17 (The exhibits were handed to the witness.)  
18 Q If we move to the supporting data for the Trump Park  
19 Avenue.  
20 (Whereupon, the exhibit was displayed on the  
21 screen.)  
22 Q You'll note again that the valuation is based on the  
23 anticipated selling price of unsold units.  
24 A Yes.  
25 Q And is that method consistent with the use of a planned

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4409

1 course of action for determining an estimated current value?  
2 A Yes.  
3 Q And further on down do you see for the Mar-a-Lago Club,  
4 again, it says "value if sold to an individual"?  
5 A I do.  
6 Q Is that consistent with the use of a planned course of  
7 action for determining an estimated current value?  
8 A Yes. It's based on the assumption of making future  
9 sales.  
10 Q And is that assumption made by management permitted to  
11 rely on hypothetical conditions?  
12 A Well, given that estimated current value is, by its  
13 very nature, an estimate, and many of the allowable methods to  
14 determine estimated current value look to the future based on  
15 prospective cash flows or earnings, those methods are inherently  
16 hypothetical.  
17 THE COURT: Wait, wait, wait. It sounded like you  
18 were saying because something is an estimate, you can use  
19 hypotheticals. Is that your -- is that implicit in your  
20 answer?  
21 THE WITNESS: Well, the estimate is based on the  
22 hypothetical of making sales in the future.  
23 THE COURT: Okay, but -- that doesn't answer -- I  
24 think the question was more, can you make a statement -- put  
25 a number down based on a hypothetical? Was that really the

J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4410

1 basis to the question?  
2 MR. SUAREZ: Yes.  
3 Q Can you put a number on it based on a hypothetical?  
4 A Yes, that's implicit in the standard.  
5 THE COURT: Okay. But it has nothing to do with  
6 estimations, particularly, although everything about the  
7 future is an estimate. But your answer is basically, yes,  
8 you can base a number on hypotheticals?  
9 THE WITNESS: That's correct.  
10 THE COURT: Okay. Good.  
11 Q To what extent does the definition of estimated current  
12 value under ASC-274 permit management to assume the existence of  
13 hypothetical conditions in the future?  
14 THE COURT: A five-minute warning.  
15 A Can you repeat that, please.  
16 Q Yes. To what extent does ASC-274 permit the use of  
17 assumptions in hypothetical conditions by management in  
18 considering planned courses of action?  
19 A Well, this goes back to my previous answer that ASC-274  
20 is inherently an estimate that is laden with assumptions and  
21 hypotheticals. Um, and there's a wide range of possibilities  
22 that management can use in order to form those estimates.  
23 So to the extent those are documented and disclosed and  
24 understood, um, by the accountant that's compiling these  
25 financial statements, then that has been adequately

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4411</p> <p>1 communicated.</p> <p>2 MR. WALLACE: I'm just going to note a relevance</p> <p>3 objection at this point. The witness has been on the stand</p> <p>4 almost a full day. If there is a specific hypothetical they</p> <p>5 want to ask the witness about, they should just ask about</p> <p>6 that hypothetical. These general questions of "Can we</p> <p>7 include hypotheticals?" "What are estimates?" We've</p> <p>8 covered that.</p> <p>9 So I guess my objection is either relevance or</p> <p>10 asked and answered, at this point.</p> <p>11 THE COURT: Well, overruled, especially because we</p> <p>12 are almost about to break.</p> <p>13 And you have, again, you could cross examine until</p> <p>14 your heart's content:</p> <p>15 A two-minute warning.</p> <p>16 Q What constraints, if any, are imposed on management by</p> <p>17 ASC-274 when considering hypothetical conditions?</p> <p>18 A Well, ASC-274 doesn't really get into constraints, but</p> <p>19 it does provide, as we've talked about, a lot of latitude, not</p> <p>20 just in terms of the methods that can be used, but how they can</p> <p>21 be applied. And it is essential to develop a base of</p> <p>22 assumptions in order to, you know, generate values using those</p> <p>23 methods. But it is silent to constraints.</p> <p>24 MR. SUAREZ: Your Honor, I'm at a good breaking</p> <p>25 point in my outline. I'm going to work in the lunch hour to</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4413</p> <p>1 COURT OFFICER: All rise. Part 37 is back in</p> <p>2 session. The Honorable Judge Arthur Engoron presiding.</p> <p>3 Please be seated and come to order.</p> <p>4 THE COURT: Okay. Let's get the witness back in</p> <p>5 the box.</p> <p>6 (Whereupon, the witness resumed the stand.)</p> <p>7 THE COURT: And I will remind you, as I remind</p> <p>8 them all, you are still under oath.</p> <p>9 And Mr. Suarez, please continue with the direct</p> <p>10 examination.</p> <p>11 MR. SUAREZ: Thank you, Your Honor.</p> <p>12 If we could put up Plaintiff's Exhibit 815 and</p> <p>13 793, the 2012 statements.</p> <p>14 And turn to the golf courses, the club</p> <p>15 facilities. Scroll down. A little further down. All</p> <p>16 right.</p> <p>17 Q Mr. Flemmons, please take a look at the Trump</p> <p>18 International Golf Club in Florida. Have you reviewed the</p> <p>19 method -- withdrawn.</p> <p>20 What method is used for establishing the value of the</p> <p>21 Trump International Golf Club in Florida in 2012?</p> <p>22 A It appears it is based on estimate of future cash</p> <p>23 flows in the form of future memberships.</p> <p>24 Q Is that method consistent with ASC 274 as a basis for</p> <p>25 determining estimated current value?</p>
<p>Page 4412</p> <p>1 bring this in for a landing quickly.</p> <p>2 THE COURT: How much longer do you expect the</p> <p>3 direct questioning to be?</p> <p>4 MR. SUAREZ: I have another two or three sections</p> <p>5 on my outline. I'm going to collapse those into one.</p> <p>6 THE COURT: All right. How long do you expect your</p> <p>7 questioning to be?</p> <p>8 MR. SUAREZ: About a half hour, 45 minutes.</p> <p>9 THE COURT: Okay. All right. Have a good lunch,</p> <p>10 everyone. See you at 2:15.</p> <p>11 (Whereupon, the case on trial was adjourned until</p> <p>12 2:15 for the luncheon recess.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4414</p> <p>1 A Using future cash flows is an acceptable method under</p> <p>2 the accounting standard. However, I would -- it also calls for</p> <p>3 those future cash flows to be discounted.</p> <p>4 Q Is discounting -- withdrawn.</p> <p>5 Does it appear from the supporting data that the</p> <p>6 future cash flows have been discounted?</p> <p>7 A Can you please scroll down a little on the screen? I</p> <p>8 don't see that any discounting is being applied, unless it is</p> <p>9 somehow already subsumed in the asking price amounts. But</p> <p>10 based on reading this, I would infer that it is not discounted.</p> <p>11 Q And was the apparent lack of discounting disclosed to</p> <p>12 Mazars in the supporting data?</p> <p>13 A Well, since this supporting data was provided to</p> <p>14 Mazars, you know, given the references to the tick marks, the</p> <p>15 lack of discounting or the apparent lack of discounting was</p> <p>16 disclosed to them.</p> <p>17 Q And if you keep scrolling down you would see that the</p> <p>18 same method is used for the Trump National Golf Club in</p> <p>19 Briarcliff; Bedminister --</p> <p>20 MR. SUAREZ: Keep scrolling.</p> <p>21 Q -- and Colts Neck; as well as Washington DC;</p> <p>22 Philadelphia; the Hudson Valley Club.</p> <p>23 MR. SUAREZ: And stop.</p> <p>24 Q For those Golf Clubs, was the method that we just</p> <p>25 discussed -- was the method for determining estimated current</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4415</p> <p>1 value, consistent with the requirements of ASC 274?</p> <p>2 A My answer is the same with regard to these properties</p> <p>3 as it was to the previous one. The construct of how</p> <p>4 evaluations were prepared are similar to the prior property.</p> <p>5 And I don't see from this work paper any references to</p> <p>6 discounting or use of a cap rate.</p> <p>7 Q Was the lack of apparent discounting disclosed by the</p> <p>8 supporting data to Mazars?</p> <p>9 A In my view, it is clear on the face of this document</p> <p>10 that there is no discounting. Again, with the very remote</p> <p>11 caveat that it is included in some of these values. But my</p> <p>12 conclusions from reviewing this document would be that there is</p> <p>13 no discounting applied.</p> <p>14 Q Would professional accounting standards require</p> <p>15 Mazars to provide guidance to management on the appropriate</p> <p>16 disclosure of this methodology?</p> <p>17 A Yes, under professional standards their obligation is</p> <p>18 to review the support for obvious GAAP departures. I believe</p> <p>19 Mr. Bender testified to that as well. And to me this</p> <p>20 constitutes an obvious GAAP departure that the accountants that</p> <p>21 are performing the compilation would then have duties under the</p> <p>22 professional standards to follow up on. I believe I referred</p> <p>23 earlier to the requirement to perform inquiries, resolve the</p> <p>24 discrepancies, either through the form of having adjustments</p> <p>25 made to apply the discounting in this case, or to include</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4417</p> <p>1 valuation question. It is a, would proposed courses of</p> <p>2 action require that those conditions limit the proposed</p> <p>3 courses of action.</p> <p>4 THE COURT: If you had waited a few moments I</p> <p>5 would have said overruled.</p> <p>6 MR. SUAREZ: Unlike Mr. Kise, I haven't learned</p> <p>7 that rule, yet.</p> <p>8 THE COURT: I am sorry, say that again.</p> <p>9 MR. SUAREZ: I haven't learned the rule to be</p> <p>10 quiet when --</p> <p>11 THE COURT: Oh, now you know.</p> <p>12 Anyway please answer the question. If you need</p> <p>13 a readback or a restatement, please let us know.</p> <p>14 THE WITNESS: Please read it back.</p> <p>15 THE COURT: Read it back, please.</p> <p>16 (Whereupon, the record was read back by the</p> <p>17 court reporter.)</p> <p>18 A Well, I'll speak to the accounting methodology and</p> <p>19 not get into the valuation in determining the actual numbers,</p> <p>20 which is a valuation topic.</p> <p>21 But from an accounting methodology standpoint, the</p> <p>22 planned course of action, as contemplated in ASC 274, would</p> <p>23 cover and contemplate the idea that if a company or if these</p> <p>24 properties do have rent control on them, but Mr. Trump intended</p> <p>25 to hold those properties for a long time until some future date</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4416</p> <p>1 disclosure in the accountant's report.</p> <p>2 I will say that we have seen other examples of lack</p> <p>3 of discounting. And Mr. Bender, as I have said before,</p> <p>4 testified that the absence of discounting, he believed, was</p> <p>5 subsumed in the disclosure in the accountant's report related</p> <p>6 to the lack of using ECV for a substantial part of the assets</p> <p>7 reported in the Statement of Financial Condition.</p> <p>8 MR. SUAREZ: If we scroll up to the Trump Park</p> <p>9 Avenue number.</p> <p>10 Q Previously we reviewed the methodology for the Trump</p> <p>11 Park Avenue number. You see up top it says: Valuation based</p> <p>12 on the anticipated selling price of unsold residential units</p> <p>13 and the selling price or the rental income stream to be derived</p> <p>14 from the commercial space?</p> <p>15 A Yes.</p> <p>16 Q If certain of those units had rent control</p> <p>17 restrictions on them, would determining estimated current value</p> <p>18 based on proposed courses of action require the value of those</p> <p>19 units be discounted?</p> <p>20 MR. WALLACE: Just an objection as to whether</p> <p>21 this is a valuation question or an accounting question.</p> <p>22 MR. SUAREZ: As with all of the questions I have</p> <p>23 asked this witness, I am asking about the relevant</p> <p>24 accounting standards and the professional obligations to</p> <p>25 achieve the estimated current value. It is not a</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4418</p> <p>1 when perhaps the rent control was lifted for whatever reason,</p> <p>2 and again it is a hypothetical, but if the intent and the</p> <p>3 intent of the holding these assets for that long and the belief</p> <p>4 that perhaps the rent would -- the rent control would lift at</p> <p>5 some point in the future, that could be an assumption that</p> <p>6 would be baked in to or could be baked into the determination</p> <p>7 of estimated current value from an accounting standpoint. How</p> <p>8 that, you know, translates into the numbers being applied, I</p> <p>9 would defer to a valuation specialist.</p> <p>10 THE COURT: Of course, but wouldn't you then</p> <p>11 have to apply a whole discount? I mean, you are saying</p> <p>12 basically, well, the owner could have held onto these</p> <p>13 units until they were uncontrolled. But then -- then</p> <p>14 that's money way in the future. So doesn't that money</p> <p>15 have to be discounted?</p> <p>16 THE WITNESS: Well, there is, I think, two</p> <p>17 concepts of discounting we are talking about here. I</p> <p>18 think one is just the basic idea that if you are basing an</p> <p>19 estimated current valuation on future cash flows, that you</p> <p>20 would apply a discount rate anyway under GAAP.</p> <p>21 I think the discount that we are talking about</p> <p>22 here is, would you discount, again, the revenue streams</p> <p>23 because of the rent control aspect associated with it.</p> <p>24 THE COURT: Yes, I totally agree so far.</p> <p>25 THE WITNESS: And I think that would likely get</p>

<p>Flemmons - by Defendant - Direct(Suarez) Page 4419</p> <p>1 more into a valuation question on how that would be worked 2 into the valuation, because of, there could be a risk 3 possibility waiting aspect or component to the valuation 4 to address that. 5 But in terms of just the methodology as an 6 accounting point, the methodology could be used under ASC 7 274. 8 THE COURT: Okay. Thank you. 9 Q And would that be true with respect to each year that 10 this methodology was used to determine estimated current value 11 from 2011 forward for the Trump Park Avenue? 12 A Yes, the accounting standard, ASC 274, did not change 13 during that time period. So it would apply equally to that 14 timeframe. 15 MR. SUAREZ: We can turn to Plaintiff's Exhibit 16 756 and Plaintiff's Exhibit 742 in the supporting data. 17 And move to the license deals. 18 Q Do you see where it says management company 19 valuation? 20 A I do. 21 MR. SUAREZ: Can we pull up Plaintiff's Exhibit 22 751? 23 (Handing) 24 Q Do you see this is the Trump Hotel Collection Company 25 valuation summary page?</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4421</p> <p>1 objection. I don't know that this document, the Hotel 2 Collection Company valuation, was included in the 3 materials considered by Mr. Flemmons. Could we get a 4 clarification whether this is a new opinion he is offering 5 or part of the opinions he disclosed prior to trial? 6 THE COURT: Mr. Suarez? 7 MR. SUAREZ: I think this is the subject of 8 cross. But I am happy to. 9 MR. WALLACE: I think offering an opinion that 10 wasn't disclosed before trial is not something I have to 11 deal with on cross. 12 THE COURT: Mr. Suarez, can you -- do you want 13 to respond to, answer, cure? I am confused. 14 MR. SUAREZ: Yes. So the related-party 15 transactions are addressed at page 30 of this witness's 16 rebuttal report, which addresses the disclosure of 17 related-party transactions. 18 Now, the government never put up a witness, so 19 we can't offer this in rebuttal, but certainly it was 20 disclosed in the rebuttal report that the real estate 21 licensing developments were disclosed in the rebuttal 22 report. 23 THE COURT: Mr. Wallace, do you still need me to 24 rule on an objection? 25 MR. WALLACE: Yes. I still believe that the</p>
<p>Flemmons - by Defendant - Direct(Suarez) Page 4420</p> <p>1 A Yes, I see it. 2 Q Do you see the red and blue tick marks and the 3 indication on top, the PBC indication? 4 A Yes. 5 Q Do you see how the number in H939 ties out to the 6 total value in C 24? 7 A Yes, on a rounded basis, I see that. 8 Q Do you see that three of the properties that are 9 indicated in the summary page include the Trump Doral; the 10 Trump Chicago; and the Trump OPO? 11 A I do. 12 Q Would you expect an accountant preparing a 13 compilation report to understand that those three companies 14 were owned by Mr. Trump -- those three properties? Excuse me. 15 A Well, that's not clear on the face of the document 16 other than the property does have the reference to Trump before 17 all of them. Whether that's an ownership relationship or some 18 other license relationship, that's unclear to me. 19 But to answer your question, given Mazars, you know, 20 very extensive involvement with the Trump Organization and 21 working with Mr. Trump on -- with his properties in a variety 22 of capacities, as I have said before, in both auditing and tax 23 context, I would expect them to have the understanding as to 24 which of these properties were owned or license arrangements. 25 MR. WALLACE: Your Honor, I am going to note an</p>	<p>Flemmons - by Defendant - Direct(Suarez) Page 4422</p> <p>1 testimony he just offered about the -- is a new opinion 2 that was not disclosed prior to trial. 3 THE COURT: Please repeat or rephrase the 4 objection. 5 MR. WALLACE: Your Honor, we object to -- the 6 request was, can the witness clarify whether the document 7 that had been up on the screen previously was something 8 that he had reviewed or whether this was a new opinion. 9 THE COURT: Oh. Okay. 10 What's the answer to the question, if you 11 understand it? 12 MR. SUAREZ: It is not a new opinion. I am 13 asking him also under the professional standards whether 14 this is something that the accountant should have 15 considered in doing the compilation report, whether it is 16 something they would have seen when doing the compilation 17 engagement. It is marked PBC. It ties out to the 18 document in the supporting data which reports over to the 19 Statement of Financial Condition, which is what we have 20 been talking about all day. 21 MR. WALLACE: I guess, Your Honor, I would just 22 rephrase then. We object to the opinion to the extent it 23 is rebuttal only and was not part of his initial report. 24 We would also object to it -- to the fact that it is based 25 off of a document that he did not review prior to trial</p>

Flemmons - by Defendant - Direct(Suarez)	Page 4423	Flemmons - by Defendant - Direct(Suarez)	Page 4425
<p>1 and was not disclosed to us as part of his report. And so</p> <p>2 this portion of the opinion was -- is inappropriate.</p> <p>3 THE COURT: Sustained.</p> <p>4 MR. KISE: Your Honor, may we be heard on that?</p> <p>5 THE COURT: Of course.</p> <p>6 MR. KISE: So it is certainly part of his</p> <p>7 opinions, because it is there up on the screen as part of</p> <p>8 his opinions.</p> <p>9 His opinions, like the other expert's opinions</p> <p>10 are, I mean, there may be information subsequent to the</p> <p>11 expert disclosure period that he has viewed, whether it be</p> <p>12 evidence in trial or otherwise, that he is entitled to</p> <p>13 rely on as long as it is consistent with his opinion. He</p> <p>14 is not testifying about anything that is inconsistent with</p> <p>15 his opinion. And it is an issue that has been raised at</p> <p>16 trial. So, it doesn't necessarily have to be a document</p> <p>17 that he saw before he rendered his opinion, as long as,</p> <p>18 number one, his opinion has got the caveat that he can</p> <p>19 review additional materials.</p> <p>20 As Mr. Suarez said, I think this is the subject</p> <p>21 of cross examination. They can cross examine him about</p> <p>22 it. But to say that he is not allowed to testify about</p> <p>23 something that is fully consistent with an opinion that</p> <p>24 was disclosed, information that is based on the very broad</p> <p>25 view of relevance in this case, I don't think there is a</p>		<p>1 MR. KISE: And the basis. But it is not</p> <p>2 inconsistent with his basis. He is allowed to look at</p> <p>3 other things just like their expert, McCarty, came in and</p> <p>4 looked at new information which you allowed.</p> <p>5 MR. WALLACE: I would say there is a difference</p> <p>6 between looking at Your Honor's summary judgment decision</p> <p>7 and considering a piece of evidence they could have shared</p> <p>8 with him in preparing his initial report and could have</p> <p>9 been disclosed to us as part of the basis for his opinion</p> <p>10 at that time.</p> <p>11 MR. KISE: Your Honor, they are both subsequent</p> <p>12 information.</p> <p>13 MR. WALLACE: I would note, to the extent that</p> <p>14 exhibit they were looking at is not in evidence, so it is</p> <p>15 not a piece of evidence that came in through another</p> <p>16 witness and he is now considering sitting here, I believe</p> <p>17 this is the first time the Plaintiff's Exhibit 751 has</p> <p>18 come up at trial.</p> <p>19 I have -- I stand by my objection that we have</p> <p>20 not had proper notice. And as a rebuttal opinion, which</p> <p>21 is not actually rebutting anything, it is not appropriate.</p> <p>22 THE COURT: Well, I am back to, does it really</p> <p>23 matter?</p> <p>24 MR. WALLACE: Whether this comes in?</p> <p>25 THE COURT: Yeah. Whether -- well, it is not a</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4424	Flemmons - by Defendant - Direct(Suarez)	Page 4426
<p>1 basis for that.</p> <p>2 THE COURT: Well, the whole point of this expert</p> <p>3 disclosure is so that there is no trial by ambush, so that</p> <p>4 the other side knows what to expect the witness to say.</p> <p>5 Isn't it? Is that sort of the bedrock point, Plaintiff?</p> <p>6 MR. WALLACE: Yes, Your Honor.</p> <p>7 MR. KISE: Your Honor, the point is to make sure</p> <p>8 there are no opinions that are disclosed. But not</p> <p>9 every -- it is not a gotcha, like, you never looked at</p> <p>10 this document so you are not allowed to talk about it.</p> <p>11 Experts are always allowed to talk about evidence that is</p> <p>12 out there, even if they didn't look at it before. If they</p> <p>13 want to cross examine him as to whether or not it is</p> <p>14 consistent with their opinion or not consistent, but what</p> <p>15 the experts are disclosing are opinions and the scope of</p> <p>16 the opinion. Certainly the government had every</p> <p>17 opportunity to ask about this document when they saw that</p> <p>18 this was his opinion.</p> <p>19 MR. WALLACE: This was not disclosed -- I am</p> <p>20 sorry.</p> <p>21 MR. KISE: They can't play a gotcha game with</p> <p>22 the documents and evidence. The disclosure is designed to</p> <p>23 disclose the nature and substance of his opinions.</p> <p>24 THE COURT: And the basis, right?</p> <p>25 MR. WALLACE: And the basis.</p>		<p>1 question of something coming in. It is a question of his</p> <p>2 testifying. That's the question. You are objecting to</p> <p>3 testimony. Not a document. Right?</p> <p>4 MR. WALLACE: I am objecting to the fact that we</p> <p>5 didn't get proper notice of this aspect of his opinion and</p> <p>6 we did not get, to the extent that this forms part of his</p> <p>7 opinions, it was not properly disclosed to us. And I will</p> <p>8 stand by the objection.</p> <p>9 THE COURT: All right. I am going to change my</p> <p>10 mind and overrule the objection on the ground that there</p> <p>11 is no jury, there is not going to be any prejudice here,</p> <p>12 and let's just move on. Overruled.</p> <p>13 Q Mr. Flemmons, going back to the management company</p> <p>14 valuation, should Mazars have identified the Trump Doral; Trump</p> <p>15 Chicago and Trump OPO formed part of the value for that</p> <p>16 valuation?</p> <p>17 THE COURT: It may be an issue again with</p> <p>18 "should they." Morally?</p> <p>19 Q What professional standards have obligated them to</p> <p>20 read and understand and identify the fact that those three</p> <p>21 entities were owned by Mr. Trump?</p> <p>22 A In complying with their responsibility under the</p> <p>23 professional standards to get an understanding of the basis for</p> <p>24 the valuation of the management company, it appears that this</p> <p>25 supporting schedule that itemizes each of these properties was</p>	

Flemmons - by Defendant - Direct(Suarez)	Page 4427	J. Flemmons - by Defendant - Direct (Mr. Suarez)	Page 4429
<p>1 provided to Mazars and formed the basis for that valuation.</p> <p>2 So, in the course of gaining an understanding of the components</p> <p>3 of that valuation, I would expect under the professional</p> <p>4 standards that they would understand that those three</p> <p>5 properties that you just mentioned were part of the valuation</p> <p>6 for the management company.</p> <p>7 MR. SUAREZ: And moving on. If we could go back</p> <p>8 and pull up the Statement of Financial Condition, put that</p> <p>9 on the left, PX-756. And then the supporting data on the</p> <p>10 right, PX-742.</p> <p>11 If we could turn to the property of Aberdeen.</p> <p>12 And pull up in the supporting data the Aberdeen property.</p> <p>13 There we go.</p> <p>14 Q Can I draw your attention in the supporting data to</p> <p>15 cell G 565. It indicates -- what does this cell indicate?</p> <p>16 A It appears to be an estimate about the number of</p> <p>17 homes that are expected to be built on this parcel.</p> <p>18 Q And if you take a look at the Trump International</p> <p>19 Golf Club in Scotland on page 15 of the Statement of Financial</p> <p>20 Condition, and you take a look at the note, is the note</p> <p>21 consistent with the supporting data as to the number of homes</p> <p>22 that are planned to be built in that property?</p> <p>23 A I don't see the number 2,500 in this disclosure.</p> <p>24 There are other numbers that are broken down into different</p> <p>25 parts, and I am not sure that those add up to the 2,500.</p>		<p>1 Q Would have expected Mazars, in discharging their</p> <p>2 professional standards, to ensure that there was consistency</p> <p>3 between the supporting data and the Statement of Financial</p> <p>4 Condition notes?</p> <p>5 MR. WALLACE: Objection.</p> <p>6 I believe this witness has testified that they are</p> <p>7 not ensuring anything. They are not offering any assurance.</p> <p>8 THE COURT: This would be just another example of</p> <p>9 that, so overruled.</p> <p>10 A Well, to be clear, and I've testified about this</p> <p>11 several times over the last couple of days, Mazars absolutely</p> <p>12 had an obligation under the relevant standards to review the</p> <p>13 financial statements, review the supporting documentation,</p> <p>14 understand the basis for violations, and evaluate whether the</p> <p>15 disclosures were consistent with the methods that were contained</p> <p>16 in the support; that's clear in the standards, and it's</p> <p>17 indisputable.</p> <p>18 So here we have an example where the number of homes to</p> <p>19 build of 2,500 in the support is different than what's in the</p> <p>20 disclosure. Um, in the process of compiling these financial</p> <p>21 statements and the notes to the financial statements, that would</p> <p>22 be something that an accountant performing a compilation would</p> <p>23 be expected to identify as part of its compilation procedures</p> <p>24 under professional standards.</p> <p>25 MR. SUAREZ: If we could move down to the</p>	
Flemmons - by Defendant - Direct(Suarez)	Page 4428	J. Flemmons - by Defendant - Direct (Mr. Suarez)	Page 4430
<p>1 Q If you add the 950 holiday homes to the 500</p> <p>2 single-family residences and the 36 golf villas, that number is</p> <p>3 1486. That's not the same as the 2,500. Correct?</p> <p>4 A Correct.</p> <p>5 (The following proceedings were stenographically</p> <p>6 recorded by Senior Court Reporter Michael Ranita.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 Mar-a-Lago property.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 MR. SUAREZ: Scroll up, up.</p> <p>5 (Whereupon, the exhibit displayed on the screen was</p> <p>6 scrolled through.)</p> <p>7 MR. SUAREZ: Up.</p> <p>8 (Whereupon, the exhibit displayed on the screen was</p> <p>9 scrolled through.)</p> <p>10 Q Here, with respect to Mar-a-Lago, in considering</p> <p>11 planned courses of action, what, if any, limitation would be</p> <p>12 imposed by certain alleged development restrictions on that</p> <p>13 property?</p> <p>14 A Well, ASC-274 doesn't really get into that level of</p> <p>15 detail. We talked earlier about constraints. I would put that</p> <p>16 in the same category; that said from an accounting perspective,</p> <p>17 if there were reasons why The Trump Organization believed that</p> <p>18 those restraints would be lifted in the future, that conformed</p> <p>19 the basis for including estimated revenues and those projected</p> <p>20 cash flows. Um, again, from a valuation perspective, whether</p> <p>21 you would need to include some sort of risk waiting or</p> <p>22 probability waiting, that's beyond my expertise.</p> <p>23 Q Would the standards that we've discussed yesterday and</p> <p>24 today, relative to Mazars' obligations and a compilation</p> <p>25 engagement, also apply to Whitley Penn in connection with the</p>	

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4431</p> <p>1 compilation engagement that they performed on the 2021 2 statements? 3 A Yes. Whitley Penn would have been subject to the 4 requirements of AR-C80 for the 2021 Statement of Financial 5 Condition compilation. 6 MR. SUAREZ: Can we pull up D-25 and D-26. 7 (Whereupon, the exhibit was displayed on the 8 screen.) 9 (The exhibits were handed to the witness.) 10 Q I know we touched on this yesterday, but I just want to 11 confirm that D-25 is the AR section that was in place after 12 2009, and D-26, ARC section 80A was the AR section that was in 13 place after December of 2015; correct? 14 A Yes, that's correct. 15 Q And these are the statements that would have governed 16 compilation engagements by Mazars and Whitley Penn at the 17 appropriate time? 18 A Yes. These are the authoritative standards that 19 applied to the compilation engagements by both Mazars and 20 Whitley Penn, say for ARC-80, was the only one that applied to 21 Whitley Penn. 22 There are -- there's also, I think, an interpretation 23 that we've seen, and we may have discussed that one yesterday, 24 that's also authoritative. And we also have talked about the 25 AICPA accounting and audit guide related to personal financial</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4433</p> <p>1 minute ago. 2 MR. SUAREZ: I believe we moved it into evidence 3 before, but just so that the record is clear, this is D-950, 4 and we move it into evidence. 5 THE COURT: One way or another it's in. 6 MR. SUAREZ: Can we pull up ASC-274, D-27. 7 (Whereupon, the exhibit was displayed on the 8 screen.) 9 MR. SUAREZ: I marked this for identification, but 10 I don't believe it's actually been moved into evidence, so I 11 move this into evidence. 12 THE COURT: Granted. It's in. 13 (Defendant's Exhibit D-27 was admitted in 14 evidence.) 15 MR. SUAREZ: And I would ask that we pull up D-452 16 and put it up side by side. 17 (Whereupon, the exhibit was displayed on the 18 screen.) 19 (The exhibit was handed to the witness.) 20 MR. SUAREZ: From a housekeeping perspective, your 21 Honor, D-27, if we move to the page that has the definition 22 on estimated current value. 23 (Whereupon, the exhibit was displayed on the 24 screen.) 25 MR. SUAREZ: This is a computer printout at D-27.</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4432</p> <p>1 statements that, as I said yesterday, represented industry 2 practice and best practices, and serves as, to this day, 3 guidance from the AICPA on how to carry out those engagements 4 and apply these standards. 5 MR. SUAREZ: Your Honor, we move into evidence D-25 6 and D-26. 7 THE COURT: Granted. They are in. 8 (Defendant's Exhibits D-25 and D-26 were admitted 9 in evidence.) 10 MR. SUAREZ: Can we pull up 836. 11 (Whereupon, the exhibit was displayed on the 12 screen.) 13 (The exhibit was handed to the witness.) 14 Q Is this the document that you just referred to a minute 15 ago with respect to the interpretation of Section 80? 16 A Yes. This is the interpretation I was referring to. 17 MR. SUAREZ: We move D-836 into evidence. 18 THE COURT: Granted. It's in. 19 (Defendant's Exhibit D-836 was admitted in 20 evidence.) 21 MR. SUAREZ: And D-950 is already in evidence, and 22 we'll pull that up and just have the witness confirm. 23 (Whereupon, the exhibit was displayed on the 24 screen.) 25 Q This is the practice guide that you just referenced a</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4434</p> <p>1 Can we scroll to the second, third page. 2 (Whereupon, the exhibit displayed on the screen was 3 scrolled through.) 4 MR. SUAREZ: Keep going. 5 (Whereupon, the exhibit displayed on the screen was 6 scrolled through.) 7 MR. SUAREZ: Here. Stop. The estimated current 8 value definition in D-27, at page four, is a mouse rollover, 9 so the printout doesn't capture it. So just for purposes of 10 completeness of the record, I would like to move in D-452, 11 which is ASC-274, but captures at Section 20 here -- 12 (Whereupon, the exhibit was displayed on the 13 screen.) 14 MR. SUAREZ: -- the definition of estimated current 15 value. 16 Q Which I'll ask the witness to confirm is the definition 17 of -- the definition that's provided in the glossary section of 18 ASC-274-10-20? 19 A Yes, it is. 20 MR. SUAREZ: With that, I move Defendant's 21 Exhibit 452 into evidence. 22 THE COURT: Granted. It's in. 23 (Defendant's Exhibit 452 was admitted in evidence.) 24 Q Mr. Flemmons, in connection with your review of the 25 Statements of Financial Condition and the supporting data for</p>

<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4435</p> <p>1 the period of 2011 to 2021, what if any GAAP departures did you 2 observe that was not covered by a disclosure contained in the 3 Statement of Financial Condition? 4 A I don't believe that I identified any GAAP departures 5 within the supporting materials that were not covered by 6 disclosures in the accountant's report, the notes to the 7 financial statements, um, between those two sources. 8 Um, we've talked about a lot of the departures and we 9 talked about a lot of the language that was in those places, and 10 I don't believe I have identified any additional or incremental 11 discrepancies with GAAP that were not covered by those 12 disclosures. 13 Q And with respect to the Statements of Financial 14 Condition, what, if any, GAAP departures did you observe that 15 were not readily apparent in the detail provided to Mazars for 16 the period 2011 to 2020? 17 A Apologies. Can you repeat that. 18 Q Sure. For the period 2011 to 2020, the Statements of 19 Financial Condition from 2011 to 2020, what, if any, GAAP 20 departure did you observe that was not readily apparent in the 21 detailed provided to Mazars? 22 A None. We've gone through a lot of the detail working 23 papers and support that was provided to Mazars to support the 24 valuations on the Statement of Financial Condition, and over the 25 course of walking through those, we've identified a number of</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4437</p> <p>1 that came from a -- I believe it was a valuation firm. There 2 were also instances in which appraisals were used as the basis 3 for valuing the properties, and those would have come from 4 outside professionals. 5 Q Was the use of appraisals accurately described in the 6 Statement of Financial Condition? 7 A I believe so. I don't believe there was anything that 8 contradicted the use of appraisals, but also the use of other 9 bases for valuing the properties. 10 Q Was the basis for valuation of the properties in the 11 Statement of Financial Condition accurately described? 12 A I believe so, yes. 13 Q Was the use of outside professionals in the Statement 14 of Financial Condition accurately described? 15 A Yes. There was disclosure in the Statement of 16 Financial Condition for each year that referenced the fact that 17 valuations were, at times, um, developed through the use of 18 outside professionals, but I did not interpret that to mean that 19 that meant those valuations for those properties were based on 20 appraisals. 21 There are other ways to use outside professionals to 22 assist with components of valuations without being an appraisal, 23 which would all be consistent with the various ways that 24 properties can be valued under ASC-274. 25 Q Is it appropriate to consult with brokers that are</p>
<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4436</p> <p>1 GAAP discrepancies that were in that support. I'm not aware of 2 other materials that identify additional GAAP deviations that 3 were not disclosed to Mazars. 4 (Whereupon, there is a brief pause in the 5 testimony.) 6 Q With respect to the support that was provided to Mazars 7 by management of The Trump Organization, did it accurately 8 describe the information provided by outside professionals and 9 how that information was incorporated into estimated current 10 value determinations? 11 MR. WALLACE: Can we get a clarification of what 12 description we are referring to. It's not clear to me from 13 the question which document he is referring to. 14 THE COURT: It was also a compound question, which 15 I don't always mind, but here I did. So can we get -- I'll 16 consider it withdrawn. 17 MR. SUAREZ: Okay, I'll withdraw it and try again. 18 Q What, if any, descriptions to the use of outside 19 professionals did you observe in the support provided to Mazars 20 by management for The Trump Organization? 21 A Well, there are a number of instances. I don't recall 22 the specific properties that those were linked to, but I do 23 recall in the support, um, for example, with Aberdeen, that was 24 one specific one I do recall where one of the inputs associated 25 with the valuation of that property, um, stemmed from a value</p>	<p>J. Flemmons - by Defendant - Direct (Mr. Suarez) Page 4438</p> <p>1 knowledgeable in the value of real estate in certain markets 2 when determining the use of comparable sales information? 3 MR. WALLACE: Objection. That's a valuation 4 question. 5 MR. SUAREZ: That's a methodology question. 6 THE COURT: Great minds think alike; that's a 7 valuation question. He's not a valuation expert. 8 MR. SUAREZ: It's a methodology question. I'm 9 asking of the ASC-274 contemplates conferring with experts 10 in the field, brokers in the field that are knowledgeable of 11 comparable sales, in order to achieve a determination of 12 estimated current value under ASC-274. 13 THE COURT: Let's ask the expert. 14 Is there something in any of the governing 15 literature that would address this issue? 16 MR. SUAREZ: We'll pull up ASC-274 on the screen? 17 THE COURT: Sure. 18 MR. SUAREZ: D-27. 19 (Whereupon, the exhibit was displayed on the 20 screen.) 21 MR. WALLACE: Your Honor, I'm going to -- 22 MR. SUAREZ: Pull up D-27. 23 MR. WALLACE: Never mind. 24 THE COURT: Withdrawn. 25 (Whereupon, the exhibit was displayed on the</p>



J. Flemmons - by Defendant - Direct (Mr. Suarez)	Page 4439	Flemmons - by Defendant - Cross(Wallace)	Page 4441
<p>1 screen.)</p> <p>2 MR. SUAREZ: We can turn to, I believe, subsection</p> <p>3 55.</p> <p>4 (Whereupon, the exhibit displayed on the screen was</p> <p>5 scrolled through.)</p> <p>6 MR. SUAREZ: Stop. 55-5.</p> <p>7 (Whereupon, the exhibit displayed on the screen was</p> <p>8 scrolled through.)</p> <p>9 MR. SUAREZ: Dash six. Keep going.</p> <p>10 (Whereupon, the exhibit displayed on the screen was</p> <p>11 scrolled through.)</p> <p>12 MR. SUAREZ: If go to C, "Appraisals based on</p> <p>13 estimates of selling price and selling costs obtained from</p> <p>14 independent real estate agents or brokers familiar with</p> <p>15 similar properties in similar locations."</p> <p>16 Q Do you see that?</p> <p>17 A Yes.</p> <p>18 Q What does that contemplate?</p> <p>19 A Well, it's one of the many methods that is accepted</p> <p>20 under ASC-274 for determining estimated current value for assets</p> <p>21 or liabilities. And this particular one references obtaining</p> <p>22 appraisals from real estate agents or brokers that are familiar</p> <p>23 with similar properties.</p> <p>24 So that is an answer to your first question that, yes,</p> <p>25 the standard does contemplate that.</p>		<p>1 COURT OFFICER: All rise. Part 37 is back in</p> <p>2 session. Please be seated and come to order.</p> <p>3 THE COURT: Let's get the witness back in the</p> <p>4 box.</p> <p>5 (Whereupon, the witness resumed the stand.)</p> <p>6 THE COURT: Mr. Wallace, please proceed.</p> <p>7 MR. WALLACE: Thank you, Your Honor.</p> <p>8 CROSS-EXAMINATION</p> <p>9 BY MR. WALLACE:</p> <p>10 Q Good afternoon, Mr. Flemmons.</p> <p>11 I would like to clarify a couple of the points you</p> <p>12 made just at the end of your exam. I believe in response to</p> <p>13 questions from Mr. Suarez you said that it was your opinion</p> <p>14 that there were no GAAP departures that were not disclosed in</p> <p>15 the Statements of Financial Condition. And when I say the</p> <p>16 Statements of Financial Condition, I am referring to the</p> <p>17 complete document, that includes the accountant's notes and the</p> <p>18 notes to the financial statement.</p> <p>19 So, with that preface, let me restate the question.</p> <p>20 Am I understanding correctly that it is your position that</p> <p>21 there were no GAAP departures in the supporting spreadsheets</p> <p>22 that were not disclosed in the Statement of Financial</p> <p>23 Condition?</p> <p>24 A I don't recall there being GAAP -- the GAAP</p> <p>25 discrepancies or differences that were not disclosed or covered</p>	
	Page 4440	Flemmons - by Defendant - Cross(Wallace)	Page 4442
<p>1 Q Does the term "appraisals" require the use of any</p> <p>2 specific format of appraisal?</p> <p>3 A No, it doesn't get into that level of detail.</p> <p>4 Q Does it require that it be an MAI appraisal, for</p> <p>5 example?</p> <p>6 A No.</p> <p>7 THE COURT: He already answered it didn't require a</p> <p>8 particular time, so you don't have to ask him if it requires</p> <p>9 a particular time.</p> <p>10 MR. SUAREZ: Understood. May I have a moment to</p> <p>11 speak with my colleagues, your Honor?</p> <p>12 THE COURT: Of course.</p> <p>13 MR. SUAREZ: Your Honor, I have no further</p> <p>14 questions on my direct exam.</p> <p>15 THE COURT: Anybody else from the defendants?</p> <p>16 MR. ROBERT: No thank you, your Honor.</p> <p>17 MS. HABBA: No thank you.</p> <p>18 THE COURT: Will there be any cross examination?</p> <p>19 MR. WALLACE: There will be, your Honor.</p> <p>20 THE COURT: Let's start that in 15 minutes. So see</p> <p>21 you all at 3:25.</p> <p>22 (Whereupon, a 15-minute break was agreed upon and</p> <p>23 taken by all parties.)</p> <p>24</p> <p>25</p>		<p>1 by the disclosures in either the accountant's report or the</p> <p>2 Statements of Financial Condition.</p> <p>3 Q Okay. And I also take it that your testimony was</p> <p>4 that there were no GAAP departures that were not readily</p> <p>5 apparent in the detailed supporting data that was provided to</p> <p>6 Mazars as well?</p> <p>7 A I don't recall seeing additional GAAP departures that</p> <p>8 were outside of the materials that were provided to Mazars.</p> <p>9 Q So I am just trying to make sure. Over the last two</p> <p>10 days we have heard a lot of testimony about the</p> <p>11 responsibilities that Mazars had for investigating issues, for</p> <p>12 clarifying any questions that may come up. But since your</p> <p>13 opinion is that there were no GAAP departures that were not</p> <p>14 properly disclosed in the Statement of Financial Condition, I</p> <p>15 take it it is also your position that there is no problem with</p> <p>16 the work that Mazars performed, that everything made it into</p> <p>17 the Statement of Financial Condition correctly. Is that your</p> <p>18 position?</p> <p>19 A Well, there were instances in the support that we</p> <p>20 went over that was provided to Mazars where there were some</p> <p>21 questions that I would have asked. Whether those would have</p> <p>22 resulted in actual departures from GAAP, I don't know. But</p> <p>23 again, the disclosures that were contained in the accountant's</p> <p>24 report and the Statement of Financial Condition were, you know,</p> <p>25 very specific at times and very broad at times, that covered a</p>	

<p>Flemmons - by Defendant - Cross(Wallace) Page 4443</p> <p>1 very wide landscape of the assets that were covered in the 2 financial statements.</p> <p>3 Q But sitting here today, you are not aware of any 4 departures from GAAP that Mazars should have included in the 5 Statements of Financial Condition?</p> <p>6 A Sitting here right now, I don't recall.</p> <p>7 Q Did you undertake any examination to determine if 8 Mazars in this engagement, did, in fact, comply with its 9 professional standards?</p> <p>10 A I don't believe I was privy to all of Mazars work 11 papers to be able to conduct that examination, so the answer is 12 no.</p> <p>13 Q Okay. If we could go back to a couple of areas you 14 discussed with Mr. Suarez. I would like to ask you about 15 related-party transactions.</p> <p>16 I thought I was left with the impression in your 17 report that, in fact, the failure to disclose the details of 18 certain related-party transactions was, in fact, a departure 19 from GAAP, and that it was not disclosed in the Statements of 20 Financial Condition; is that correct?</p> <p>21 A We have to look at my report. I don't recall that 22 being my opinion. I don't recall being able to establish 23 whether or not the alleged related parties were, in fact, 24 related parties that should have been disclosed.</p> <p>25 There is a specific standard within GAAP ASC 850 that</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4445</p> <p>1 related-party transactions. Was the departure from GAAP 2 disclosed in SOFC, no. And you said, any failing is limited to 3 the disclosure and does not impact the amounts reported in the 4 SOFC.</p> <p>5 So, the disclosure failure is itself a GAAP 6 disclosure, correct?</p> <p>7 A Can you repeat that?</p> <p>8 Q The disclosure failure is, itself, a GAAP -- I should 9 correct that. Is a departure from GAAP.</p> <p>10 MR. WALLACE: If I may withdraw the question, 11 Your Honor, and I'll rephrase.</p> <p>12 Q The failure to disclose the third-party transactions 13 is itself a departure from GAAP; is that correct?</p> <p>14 A If there were a failure to disclose and it was a 15 material issue, then yes, it would.</p> <p>16 This section of my report is Mr. Lewis identifying 17 GAAP departures, not me. I never agreed to the fact that these 18 were disclosable related parties or disclosable related-party 19 transactions.</p> <p>20 Q So you didn't go to -- so you made no determination 21 one way or the other about whether or not the failure to 22 disclose related-party transactions was a GAAP failure?</p> <p>23 A I didn't undertake to determine whether or not they 24 were related parties as defined in ASC 850 at all. So I did 25 not analyze whether or not there was a lack of disclosure of</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4444</p> <p>1 lays out the criteria and defines what a related party is. 2 That has multi parts to it. How the entities that were in 3 question fit or don't fit within that definition is not 4 something that I undertook to ascertain. So whether or not 5 there was a disclosure requirement is an open question.</p> <p>6 I think my expert report, the way I left it, was that 7 to the extent there is an undisclosed related party, that it 8 would be a disclosure issue, not necessarily an accounting 9 issue.</p> <p>10 Q What's the difference between -- well, what do you 11 mean when you say "a disclosure issue"?</p> <p>12 A Well, the title of ASC 850 is Related-party 13 Disclosures. And the standard revolves around the need to 14 disclose related parties and significant transactions with 15 those related parties. So it really does revolve around 16 disclosure.</p> <p>17 Q And failure to make that disclosure is a violation of 18 GAAP, correct?</p> <p>19 A If it is material.</p> <p>20 MR. WALLACE: Can we pull up Mr. Flemmons 21 rebuttal report? And if we could go to page 12.</p> <p>22 Q This is a table that you prepared in response to the 23 report of Mr. Lewis. And you say, I am going to direct your 24 attention to item G, that Mr. Lewis identified a departure 25 concerning the failure to disclose details of certain</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4446</p> <p>1 related-party transactions that should have been disclosed.</p> <p>2 Q So you have no opinion one way or the other as to 3 whether there was a failure to disclose related-party 4 transactions?</p> <p>5 A I do not. My only --</p> <p>6 Q Sir, that was the question.</p> <p>7 I believe you also discussed the reporting of cash 8 from certain Vornado entities with Mr. Suarez. Was that a 9 departure from GAAP?</p> <p>10 A So you are talking about the 30 percent of the cash 11 balance of the Vornado entities?</p> <p>12 Q Yes.</p> <p>13 A I believe I said earlier that based on my review of 14 the document, it appeared that that would be a GAAP departure.</p> <p>15 Q Okay. So that is a GAAP departure that wasn't 16 reported or disclosed in the Statements of Financial Condition 17 then?</p> <p>18 A I would have to look back at the disclosures that 19 were made to see if that was directly covered by one of the 20 disclosures.</p> <p>21 Q So then what was your basis for your statement 22 earlier to Mr. Suarez that there were no GAAP departures that 23 were not disclosed?</p> <p>24 A I believe I said sitting here on the stand without 25 all of the documents in front of me to pour through, I said I</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p>Flemmons - by Defendant - Cross(Wallace) Page 4447</p> <p>1 don't recall whether or not there were.</p> <p>2 Q So I am just trying to understand what weight should</p> <p>3 we give your recollection on this then?</p> <p>4 A Is that a question I need to answer?</p> <p>5 Q Yeah, it is. How much weight am I to give it that</p> <p>6 there are no GAAP departures that you don't recall were</p> <p>7 disclosed; and we just discussed the cash which you said should</p> <p>8 be disclosed?</p> <p>9 MR. KISE: Objection. It is for the Court to</p> <p>10 determine weight, not for the government. It is simply an</p> <p>11 argumentative question.</p> <p>12 THE COURT: I understand. Sustained.</p> <p>13 Q How much work would you have to do -- well, I'll</p> <p>14 confess I don't remember the --</p> <p>15 You were asked to state your answers to questions</p> <p>16 within a reasonable degree of professional certainty. How much</p> <p>17 professional certainty are you able to provide on your</p> <p>18 statement that there are no GAAP departures that were not</p> <p>19 disclosed in the Statements of Financial Condition?</p> <p>20 A I would say I have a reasonable certainty based on</p> <p>21 the volume of materials that we have gone through so far in my</p> <p>22 direct examination, where we saw numerous GAAP departures that</p> <p>23 I believe all of which, certainly most of which, were covered</p> <p>24 by the disclosures.</p> <p>25 I don't recall if the cash issue that you identified,</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4449</p> <p>1 Condition or the notes on the disclosure for cash and</p> <p>2 marketable securities piece?</p> <p>3 A Give me one moment, please.</p> <p>4 So if you go to page, yeah, four, okay. And the</p> <p>5 cash, marketable securities and hedge fund section, there is a</p> <p>6 disclosure that cash, marketable securities and hedge fund</p> <p>7 represent amounts held by Mr. Trump and amounts in operating</p> <p>8 entities.</p> <p>9 So we talked about that earlier which, you know,</p> <p>10 would cover the instance where cash that is held in a joint</p> <p>11 venture is being reported within the cash balance.</p> <p>12 Q And is it your position that cash held by the Vornado</p> <p>13 Partnership meets the FASB definition of cash for Donald Trump</p> <p>14 sufficiently for him to report it on his Statement of Financial</p> <p>15 Condition as his cash?</p> <p>16 A Can you repeat that, please?</p> <p>17 Q Sure.</p> <p>18 Is it your position that the cash held by the Vornado</p> <p>19 Partnership meets the FASB definition of cash for Donald Trump</p> <p>20 sufficiently for him to report it on his Statement of Financial</p> <p>21 Condition as his cash?</p> <p>22 A I don't take that position. But the disclosure here</p> <p>23 indicates that, and certainly covers the fact that that</p> <p>24 happens.</p> <p>25 The other aspect would be in order for it to be a</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4448</p> <p>1 if that was specifically covered or not. That would be one I</p> <p>2 would want to look back into. But that's the only one sitting</p> <p>3 here right now that is in question.</p> <p>4 Q We are at trial, there is not going to be another</p> <p>5 opportunity to look at it. Is there something you would like</p> <p>6 to look at now that would refresh your recollection on this</p> <p>7 issue?</p> <p>8 A We could look at the accountant's report.</p> <p>9 Q Okay. Which year would you like to look at? We can</p> <p>10 put it up here.</p> <p>11 A I would say whichever year was the year that we</p> <p>12 looked at the supporting schedule that contained the 30 percent</p> <p>13 attributions.</p> <p>14 Q I am sorry, did you want to look at the actual report</p> <p>15 or the supporting data?</p> <p>16 A The report.</p> <p>17 Q Okay. 2016 Statement of Financial Condition is</p> <p>18 Plaintiff's Exhibit -- I am sorry, we can pull up the 2014,</p> <p>19 that's Plaintiff's Exhibit 730.</p> <p>20 (Handing)</p> <p>21 MR. SUAREZ: In case you want to move it along,</p> <p>22 it was 2016 I showed him, not 2014.</p> <p>23 MR. WALLACE: We can do 16. Sixteen is</p> <p>24 Plaintiff's Exhibit 756.</p> <p>25 Q Are you looking for the actual Statement of Financial</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4450</p> <p>1 departure from GAAP, it would have to be a material departure.</p> <p>2 I have not undertaken to perform a materiality analysis, but</p> <p>3 that would need to be done to conclude whether there is a GAAP</p> <p>4 departure.</p> <p>5 Q Did you do materiality analyses for all of the GAAP</p> <p>6 departures that you discussed today?</p> <p>7 A I have not done a separate materiality analysis.</p> <p>8 However, the amounts that we have been talking about were nine</p> <p>9 figure dollar amounts. This issue with regard to the cash is a</p> <p>10 much smaller amount from my recollection.</p> <p>11 Q Do you know one way or the other whether readers of</p> <p>12 the report look at cash as a separate item for purposes of</p> <p>13 making loans or any other commercial use?</p> <p>14 A I don't know whether or not they look at cash</p> <p>15 separately. As we have talked about, cash was part of one line</p> <p>16 item in the financial statements that was combined with</p> <p>17 marketable securities and hedge funds. And that fact was</p> <p>18 disclosed in the financials. If a user of the financials</p> <p>19 wanted to have the cash amount broken out separately, that's</p> <p>20 something that could have been asked for.</p> <p>21 Q I am just asking what was actually presented. And so</p> <p>22 I am just trying to understand, is including the cash from --</p> <p>23 from the Vornado --</p> <p>24 MR. WALLACE: Let me withdraw that question, if</p> <p>25 I can.</p>

<p>Flemmons - by Defendant - Cross(Wallace) Page 4451</p> <p>1 Q So is it a departure from GAAP, putting aside --</p> <p>2 well, now you have made it a complicated issue, so I'll try to</p> <p>3 restart the question again.</p> <p>4 Setting aside the materiality analysis, is excluding</p> <p>5 the cash from the Vornado Partnerships a departure from GAAP?</p> <p>6 A I think the fundamental recording or reporting of</p> <p>7 partnership cash would not be consistent with GAAP.</p> <p>8 THE COURT: Let me jump in a second.</p> <p>9 To a certain extent I think this is law of the</p> <p>10 case. And my question for the witness is: Is it your</p> <p>11 position that number two, which is still highlighted,</p> <p>12 discloses this, I'll call it, issue? And if so, which</p> <p>13 sentence there discloses this?</p> <p>14 THE WITNESS: Well, the first sentence, Your</p> <p>15 Honor, is the one that I was referring to that informs</p> <p>16 users that cash is being reported on the Statement of</p> <p>17 Financial Condition that is from operating entities.</p> <p>18 THE COURT: And would a reader realize that they</p> <p>19 have -- a user of this, consider this 30 percent interest</p> <p>20 to be held by Mr. Trump in an operating entity as cash?</p> <p>21 THE WITNESS: Well it is unclear to me whether,</p> <p>22 you know, if a user would know that or not. Because</p> <p>23 again, this is an amalgamated line item with cash,</p> <p>24 marketable securities and hedge funds. Cash is not</p> <p>25 singled out, so if a user was interested in just the cash,</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4453</p> <p>1 MR. WALLACE: Okay. Can we take a look at that?</p> <p>2 And can we pull up Plaintiff's Exhibit 1609?</p> <p>3 And go to page nine of 21. And if we look at the bottom.</p> <p>4 It is the same as the other one, but this is the</p> <p>5 one we marked. But this is ASC 274, which we have looked</p> <p>6 at today. I'll represent it is identical and move it into</p> <p>7 evidence, if there is no objection.</p> <p>8 Your Honor, I am moving Plaintiff's Exhibit 1609</p> <p>9 into evidence.</p> <p>10 THE COURT: Granted. It is in evidence.</p> <p>11 (Whereupon, the document referred to was deemed</p> <p>12 marked for evidence as Plaintiff's Exhibit 1609 by</p> <p>13 the Court.)</p> <p>14 Q And if you look down at the bottom, it is item 4513,</p> <p>15 Adequate Disclosure. And it states: Personal financial</p> <p>16 statements shall include sufficient disclosures to make the</p> <p>17 statements adequately informative. The disclosures may be made</p> <p>18 in the body of the financial statements or in the notes of the</p> <p>19 financial statements.</p> <p>20 THE COURT: To financial statements.</p> <p>21 MR. WALLACE: Thank you, Your Honor.</p> <p>22 Q To financial statements. Is that the standard you</p> <p>23 were referring to?</p> <p>24 A Correct. And the caption there is adequate</p> <p>25 disclosure, which is what I referred to a minute ago.</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4452</p> <p>1 again, that would be something that would need to be</p> <p>2 requested.</p> <p>3 THE COURT: Let's move on.</p> <p>4 Q At the end of the examination by Mr. Suarez, you two</p> <p>5 were -- he was asking you a number of questions about whether</p> <p>6 certain -- certain properties were accurately described in the</p> <p>7 Statements of Financial Condition. Do you remember that</p> <p>8 testimony?</p> <p>9 A You will have to refresh my memory.</p> <p>10 Q Well, you had a series of questions and he asked you</p> <p>11 if, I believe for Seven Springs, whether the disclosures in the</p> <p>12 Statement of Financial Condition accurately described the</p> <p>13 calculation on the Statement of Financial Condition. Do you</p> <p>14 recall that?</p> <p>15 A Was that in regard to the number of homes to be built</p> <p>16 on that property?</p> <p>17 Q I believe it was just a general question at the end</p> <p>18 of his exam?</p> <p>19 A I don't remember.</p> <p>20 Q Let me ask a different question then.</p> <p>21 Is "accurately described" the standard that is</p> <p>22 applied in ASC 274 as to the accuracy of a statement that goes</p> <p>23 into a personal financial statement?</p> <p>24 A Well, the standard within ASC 274, I believe the word</p> <p>25 that is used is "adequate."</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4454</p> <p>1 Q Okay. And did you review all of the disclosures in</p> <p>2 the Statements of Financial Conditions for 2011 through 2021 to</p> <p>3 determine if they were adequately informative?</p> <p>4 A I don't believe I did that for all of the</p> <p>5 disclosures, no.</p> <p>6 Q Okay. Why don't we take a look at -- I think you</p> <p>7 covered this with Mr. Suarez. It is also in your report.</p> <p>8 MR. WALLACE: But if we could pull up</p> <p>9 Plaintiff's Exhibit 730, and go to page seven of 26.</p> <p>10 Q And this is the disclosure for Trump Tower. And if</p> <p>11 we scroll down to the third paragraph it states: "The</p> <p>12 estimated current value of 707 million is based on an</p> <p>13 evaluation by Mr. Trump in conjunction with his associates and</p> <p>14 outside professionals, applying a capitalization rate to the</p> <p>15 cash flow to be derived from the building operations."</p> <p>16 And did you make a determination one way or the other</p> <p>17 whether that disclosure was adequately informative?</p> <p>18 A I don't believe I did that as part of my reports.</p> <p>19 Q Does it require accounting expertise to know whether</p> <p>20 or not this disclosure is adequately informative?</p> <p>21 A Well, it is an accounting requirement. And it is a</p> <p>22 very subjective one. And in order to comply with that</p> <p>23 accounting requirement, and accountant's are one typically</p> <p>24 preparing the financial statements, and accountants like Mazars</p> <p>25 are also the ones who are, in this case, compiling the</p>

<p>Flemmons - by Defendant - Cross(Wallace) Page 4455</p> <p>1 financial statements, I would say that accountants, you know, 2 should exercise that judgment in order to determine whether or 3 not that provision of ASC 274 has been met. 4 Q But the person that is supposed to be adequately 5 informative to is the -- or I should say, is for the reader of 6 the report to be adequately informed as to the means of 7 calculation, correct? That's the audience? 8 A That is the audience. But an accountant that is 9 preparing the notes to the financial statements and preparing 10 the financials in general, does prepare that information with 11 an eye towards the user of the financials, and is exercising 12 judgment on whether or not the disclosures do meet this ASC 274 13 requirement based on that lens. 14 Q And presumably, I believe you testified to this, a 15 reader of the financial statement do form their own view as to 16 whether this disclosure is adequately informed; is that right? 17 A Any reader could form their own opinion. 18 Q I'll just ask you, I believe in your report you said 19 using this example the user could make their own determination 20 of the value of Trump Tower compared to the amount reported on 21 the SOFC. Does that sound -- do you agree with that statement? 22 I can show you the report, but does that sound like 23 something you would agree with? 24 A The Statement of Financial Condition contained a lot 25 of detail and itemized most of the properties individually in</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4457</p> <p>1 the SOFC, allowing any user to make their own determination of 2 value, like Trump Tower, which was listed as \$707 million. 3 Note 3 to the 2014 SOFC disclosed that the value of Trump Tower 4 was determined by "applying a capitalization rate to the cash 5 flow to be derived from the building operations," but no matter 6 which method was used to determine the estimated current value, 7 a user could make their own determination of the value of Trump 8 Tower compared to the amount reported on the SOFC. 9 So I'll restate my question. How does that 10 disclosure allow a user to make their own determination of the 11 value of Trump Tower? 12 A I believe what you just highlighted and read back 13 into the record is almost identical to what I just testified 14 to. That one could come up with their own value for Trump 15 Tower based on the face of the financial statements 16 irrespective of the disclosure. But that the disclosure also 17 does provide additional context as to how the \$707 million was 18 determined, specifically that it was a capitalization rate 19 applied to cash flows. 20 (The following proceedings were stenographically 21 recorded by Senior Court Reporter Michael Ranita.) 22 23 24 25</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4456</p> <p>1 and ascribed individual values to them, which would enable a 2 user, if they so chose, to form their own opinion on the values 3 of those properties. 4 Q So my question is specific to Trump Tower. Do you 5 have a view as to whether or not this disclosure would allow a 6 user of the financial statement to make their own determination 7 of the value of Trump Tower? 8 A Yes. 9 Q And how would they do that? 10 A Well, I don't think they would need necessarily this 11 disclosure to do that. They could do that based on the face of 12 the Statement of Financial Condition. You see the Trump Tower 13 is valued \$707 million, like other properties that have their 14 own values. And a user of the financials, whether it be a bank 15 or anyone else, would be able to do their own homework if they 16 so chose to come up with their own value and compare it to what 17 is on the Statement of Financial Condition. 18 MR. WALLACE: Okay. Why don't we pull up 19 Mr. Flemmons' expert report if we could? 20 (Handing) 21 MR. WALLACE: If we go to -- are we on page 13 22 paragraph 46? Yes. 23 Q So, this is your paragraph discussing Trump Tower. 24 Second sentence states: Using the 2014 SOFC as an example, 25 many of the assets are specific properties named on the face of</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4458</p> <p>1 Q The financial statement does not disclose the cap rate 2 that was used; is that correct? 3 A That's correct. 4 Q And the financial statement does not disclose the cash 5 flow to be derived from the building operations; is that 6 correct? 7 A I believe that's correct. 8 Q So someone reading this statement would not be able to 9 assess either the specific factors that Mr. Trump used to value 10 this property, the cap rate and the cash flow; is that correct? 11 A I believe that's correct, but what you are describing 12 here is the ability to recalculate how Mr. Trump calculated it, 13 not whether a user could come up with their own value. 14 Q And to your definition, someone calculating their own 15 value would just use the building name and the total valuation 16 listed here; there's no other information provided? 17 A Well, as I've testified over the course of two days, 18 there are many ways to determine value, particularly under 19 estimated current value of ASC-274. So they wouldn't 20 necessarily need to use a capitalization of earnings or cash 21 flows. 22 Q The issue of the financial statements could disclose 23 more information like the cap rate; is that correct? 24 A Sure. 25 Q And, in fact, the illustrative financial statements</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4459</p> <p>1 contained in ASC-274 include cap rates in the disclosure; is 2 that right?</p> <p>3 A There are illustrations in the appendices of ASC-274 4 that provide examples of disclosures, but they are, by no means, 5 intended to be script on what needs to be disclosed.</p> <p>6 Q The question was, do the illustrations in ASC-274 7 include cap rates?</p> <p>8 THE COURT: Do you mean all, or some?</p> <p>9 MR. WALLACE: Why don't we actually take a look at 10 it, your Honor, if that's easier.</p> <p>11 If we could pull back up Plaintiff's Exhibit 1609. 12 (Whereupon, the exhibit was displayed on the 13 screen.)</p> <p>14 MR. WALLACE: And if we could go to page 14 of 21. 15 (Whereupon, the exhibit was displayed on the 16 screen.)</p> <p>17 Q This is just to orient you, Mr. Flemmons. At the 18 bottom it says, "Illustrations" and it says, example one 19 "Illustrative financial statements. Item 55-8. This example 20 illustrates financial statements prepared following the guidance 21 in this subtopic."</p> <p>22 Statements of Financial Condition, and that's 55-9, 23 "Illustrative statements, financial conditions follow." 24 This isn't the best formatted document. I'm just 25 showing you that.</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4461</p> <p>1 A I do.</p> <p>2 Q And so if a reader knows the cap rate and the final 3 value, then they would be able to calculate the cash flow that 4 is being used to value the asset; is that correct?</p> <p>5 A Can you repeat that please.</p> <p>6 Q Sure.</p> <p>7 If a reader knows the cap rate and the final value, 8 they can calculate the cash flow that's being used; is that 9 correct?</p> <p>10 A Yes.</p> <p>11 Q So then a reader will be able to determine if they 12 think each of those numbers are reasonable; the cash rate, cash 13 flow and the final amount?</p> <p>14 A They would be able to perform a recalculation.</p> <p>15 Q Yeah, and determine whether the various inputs are 16 reasonable?</p> <p>17 A Yes.</p> <p>18 Q Okay.</p> <p>19 Are there any examples in the illustration where a cap 20 rate is used and not disclosed?</p> <p>21 A I would have to review the illustrations. Um, I don't 22 recall whether or not there's an example in ASC-274 where it 23 mentions that a cap rate is used beyond this one.</p> <p>24 Q And I take it it's your opinion that disclosing the cap 25 right is not required; is that correct?</p>
<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4460</p> <p>1 MR. WALLACE: We'll flip to the next page, which is 2 17, I want to show you, of 21.</p> <p>3 Q And here, we see there's an -- I want to direct your 4 attention to one of the items listed, which is Kenbruce 5 Associates. It's item listed, it refers to note four. I assume 6 that means there's a note that follows this disclosure of value 7 that would contain information about the Kenbruce Associates 8 valuation; is that correct?</p> <p>9 A I believe that's right.</p> <p>10 MR. WALLACE: If we could flip to the next page, 11 and find note four.</p> <p>12 (Whereupon, the exhibit was displayed on the 13 screen.)</p> <p>14 MR. WALLACE: I'm sorry, one more.</p> <p>15 (Whereupon, the exhibit was displayed on the 16 screen.)</p> <p>17 MR. WALLACE: If we could focus down on note four. 18 (Whereupon, the exhibit was displayed on the 19 screen.)</p> <p>20 Q It states, "The investment in Kenbruce Associates is an 21 eight percent interest in a real estate limited partnership. 22 The estimated current value is determined by the projected 23 annual cash receipts and payments capitalized at a 12 percent 24 rate."</p> <p>25 Do you see that section?</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4462</p> <p>1 A That's correct. This is merely an illustration to show 2 and example of a disclosure. And I'll also add that this note 3 four, which is an example, is one sentence long. The disclosure 4 related to Trump Tower is multi paragraphs.</p> <p>5 MR. WALLACE: Why don't we go back to that. That 6 is Plaintiff's Exhibit 730 on page seven.</p> <p>7 (Whereupon, the exhibit was displayed on the 8 screen.)</p> <p>9 Q "Mr. Trump is currently" -- this is the paragraph that 10 deals with the valuation. What valuation use is there to the 11 fact that "Until Trump World Tower United Nations Plaza was 12 constructed, Trump Tower was the tallest residential building 13 and concrete structure in Manhattan", how does that aid 14 valuation?</p> <p>15 A I'm not a valuation expert, but in my -- as an 16 accountant, and as a human being, I would suggest that that does 17 not have any bearing on valuation.</p> <p>18 Q So not everything that's being disclosed here is 19 necessarily relating to the valuation. And I'll note that the 20 estimated current value is a single sentence as well; correct?</p> <p>21 The sentence talking about the valuation and methods used to 22 calculate it. So just like the example, it's a single sentence.</p> <p>23 A And there were additional disclosures below that get 24 into amounts that are relevant to the property.</p> <p>25 Q Sure. And those are separately broken out. Those are</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4463</p> <p>1 debts. Those are liabilities that he has related to the 2 building?</p> <p>3 A Correct, but relevant to the property and reporting the 4 property in the Statement of Financial Condition.</p> <p>5 Q And what are some reasons an issuer would not include a 6 capitalization rate in their disclosure?</p> <p>7 A Not deeming it important to include that detail.</p> <p>8 Q And what would be a reason why it's not an important 9 detail to include?</p> <p>10 A Well, as we've seen over the course of today, and 11 yesterday, the supporting work papers that underlie these 12 valuations, there are numerous inputs, many assumptions, many 13 rates, many estimates, many cash flows. There are a lot of 14 moving parts within even one property, and you are singling out 15 cap rate.</p> <p>16 Um, again, I think it's a discretionary topic. There's 17 no requirement under ASC-274 to provide specific rates or cash 18 flow information in the disclosures. It's a very subjective 19 requirement that's up to the preparer.</p> <p>20 Q Not disclosing the cap rate, though, would obscure 21 whether or not a person making a financial report was using 22 inflated numbers for either the cash flow or the cap rate; is 23 that correct?</p> <p>24 A No.</p> <p>25 Q It would not hide that?</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4465</p> <p>1 someone intentionally trying to lower their stated net worth?</p> <p>2 A It may not be an intent to obscure. It could, you 3 know, be a lot of reasons of just not having put more details in 4 the information, and so it required additional follow-up. It 5 was easily curable with a phone call.</p> <p>6 Q Did you ever, in your time at the SEC, encounter times 7 where people intentionally tried to lower their net worth in 8 order to avoid the ability not to pay a particular fine or 9 penalty?</p> <p>10 A I don't recall coming across an instance where that was 11 deemed to be intentional. Sitting here right now, it's been a 12 while. But I do know that that process involved back and forth, 13 quite regularly, with the defendant.</p> <p>14 Q When you say "deemed to be intentional", what do you 15 mean by that?</p> <p>16 A I don't recall us endeavoring to try to understand 17 whether or not there was an intent to deceive the staff, or 18 feeling like there was, but, again, it's been quite some time.</p> <p>19 Q So I'm going to go back to my first question. 20 Is your position that not disclosing the cap rate would 21 not have the effect of obscuring inflation if either the cap 22 rate or the cash flow being used to value the property were, in 23 fact, inflated? It's your view that they would not actually 24 achieve that?</p> <p>25 A Well, as we said a minute ago, one would not be able to</p>
<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4464</p> <p>1 A No, because I think your question is premised on the 2 idea that preparing these financial statements and providing 3 them to users is the end of the conversation. A user who is 4 interested in getting those additional details, such as the 5 capitalization rate, can make those inquiries. And in my 6 experience, it's routine for users of financials to ask such 7 follow-up questions.</p> <p>8 Q What are some examples where that happened?</p> <p>9 A Well, in connection with my work in doing accounting 10 advisory work for public companies, um, and also for private 11 entities, you know, there are times when investors are making 12 follow-up inquiries of companies about disclosures. It's a 13 routine aspect of the accounting and reporting.</p> <p>14 Q Can you provide us with a specific example of an 15 instance where there was a follow-up inquiry on a personal 16 financial statement that had been compiled. I'm asking for 17 something similar to what we are looking at here.</p> <p>18 A Well, during my time at the SEC when we, and I, was 19 involved in reviewing personal financial statements for purposes 20 of evaluating ability to pay, we would often have to ask 21 follow-up questions of the defendant to get additional details 22 surrounding assumptions and details surrounding how their 23 financial information was prepared.</p> <p>24 Q That's because if they don't provide you enough detail 25 it could obscure, I guess in the case you are talking about,</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4466</p> <p>1 recalculate how the \$707 million was arrived, based on this 2 disclosure alone, but that's easily curable.</p> <p>3 Q My question, though, is, and I'll ask it again. If not 4 using the cap rate would allow someone to obscure the fact that 5 they are inflating either the cap rate or the cash flow that are 6 being used to reach the \$707 million valuation?</p> <p>7 MR. SUAREZ: Objection, your Honor. Compound.</p> <p>8 MR. KISE: And asked and answered.</p> <p>9 MR. WALLACE: It hasn't been answered.</p> <p>10 MR. KISE: It has. You just don't like the answer.</p> <p>11 THE COURT: Well, it's been responded to, so I 12 think we should just move on.</p> <p>13 MR. WALLACE: Fair enough, your Honor.</p> <p>14 Can we take a look -- are we in 730? Can we go to 15 page -- actually, no. Let's pull up Plaintiff's 16 Exhibit 787.</p> <p>17 (Whereupon, the exhibit was displayed on the 18 screen.)</p> <p>19 MR. WALLACE: This is the -- actually, I'll amend 20 it. Let's start with 788.</p> <p>21 (Whereupon, the exhibit was displayed on the 22 screen.)</p> <p>23 Q Let's start with the supporting spreadsheet, assume 24 Mr. Flemmons, you recognize this document. This is the 25 supporting data spreadsheet for the 2011 Statement of Financial</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4467

1 Condition?

2 A That appears to be the case.

3 Q Okay. If we could go to row 112, this should be the

4 entry for 40 Wall Street.

5 (Whereupon, the exhibit was displayed on the

6 screen.)

7 Q And if we look at the valuation method, it states,

8 "Average income for the five-year period 2013 to 2017", and has

9 added expenses for the five-year period 2013 to 2017.

10 I believe your testimony on this entry was that it was

11 appropriate under ASC-274, because it looked like the

12 capitalization of future earnings.

13 Does that sound about right? I'm happy to have you

14 restate it if you want to.

15 A I don't recall what my testimony was earlier.

16 Q Okay.

17 Is this an appropriate method of calculating the value

18 of 40 Wall Street under ASC-274?

19 A I would have to revisit the wording of ASC-274. I know

20 that one of the acceptable methods is capitalization of

21 earnings. And there's also another acceptable method, which is

22 discounted future cash flows. I would just need to revisit the

23 wording of the standard to be able to answer that question.

24 MR. WALLACE: Sure. Can we get the witness a copy

25 of Plaintiff's Exhibit 1609.

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4468

1 (Plaintiff's Exhibit 1609 was handed to the

2 witness.)

3 A Okay.

4 Q And so was the --

5 MR. WALLACE: You could put back up 788.

6 (Whereupon, the exhibit was displayed on the

7 screen.)

8 Q So the question pending that you wanted to do more

9 research on was whether this valuation method is appropriate

10 under ASC-274. Is that, in fact, the case?

11 A So ASC-274 does state that one acceptable method is the

12 capitalization of past or prospective earnings.

13 Q Could you just direct me to which section of ASC-274

14 you are referring to?

15 A Paragraph 55-1 on page 13 of the version you gave me.

16 Q Okay.

17 So this is appropriate as a capitalization of

18 prospective earnings; correct? That's what you testified to?

19 A That's what it appears to be.

20 Q Okay.

21 MR. WALLACE: If we could turn to Plaintiff's

22 Exhibit 787.

23 (Whereupon, the exhibit was displayed on the

24 screen.)

25 MR. WALLACE: If we could go to the page that has

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4469

1 40 Wall on it.

2 (Whereupon, the exhibit was displayed on the

3 screen.)

4 MR. WALLACE: Okay.

5 Q If we look at the paragraph that says "The estimated

6 current value of \$524,700,000 is based upon a successful

7 renegotiation of the ground lease and an evaluation made by

8 Mr. Trump in conjunction with his associates and outside

9 professionals of leases that have been signed or are currently

10 subject of negotiation, and a cap rate was applied to the

11 resultant cash flow to be derived from the building's

12 operations."

13 Is this an adequate informative of the method that was

14 used in the supporting data?

15 A It appears to be consistent with the method that we

16 just discussed in ASC-274, with one exception.

17 Q Which is what?

18 A I would have substituted the word "earnings" for cash

19 flow. But the concept is the same, is that it's based on some

20 sort of, um, estimated earnings and applying a cap rate to that

21 amount.

22 Q Well, this says it's "the subject of leases that have

23 been signed or are currently the subject of negotiation."

24 MR. WALLACE: Can we split screen this with the

25 supporting data?

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4470

1 THE TECHNICIAN: Sure.

2 (Whereupon, the exhibit was displayed on the

3 screen.)

4 Q This actually says that it's using an average of income

5 for the five-year period 2013 to 2017, so two years -- from two

6 years to six years out from the date of this financial

7 statement. So how is -- so they are not the same; correct?

8 A I'm sorry, what's not the same?

9 Q Well, "leases that have been signed or are currently

10 the subject of negotiation" are not the same as taking an

11 average of income for a five-year period, two years out. Those

12 aren't the same thing, are they?

13 A Well, I think you are overlooking the last part of the

14 highlighted paragraph where it says, "and a cap rate was applied

15 to the resultant cash flow to be derived from the building's

16 operations."

17 "To be derived" means future flows, which is exactly

18 what the supporting documentation reflects.

19 Q So to your reading, this adequately discloses that

20 "looking at leases that have been signed or are currently the

21 subject of negotiation", and that "there will be a resultant

22 cash flow from those leases", is the same as looking out for a

23 five-year period, two years in the future?

24 A It's not inconsistent with that disclosure.

25 Q Do you know, from a valuation perspective, if there's a



November 15, 2023

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4471

1 difference between using leases that have been signed or are  
2 currently the subject of negotiation, and an average of income  
3 and expenses from a five-year period starting two years in the  
4 future?  
5 MR. SUAREZ: Objection. The witness is not a  
6 valuation expert.  
7 MR. WALLACE: If the answer is, "no," the answer is  
8 no.  
9 THE COURT: I'm sorry, say that again.  
10 MR. WALLACE: If the answer is no, he doesn't know,  
11 then that's fine.  
12 THE COURT: Well, I think it's maybe more  
13 complicated than that. It's what is his expertise and how  
14 he's been qualified.  
15 Sustained.  
16 Q But based on your accounting experience, you think that  
17 those two are sufficiently close enough that this is adequately  
18 informative?  
19 A In my view, yes.  
20 MR. WALLACE: Can we pull up Plaintiff's  
21 Exhibit 783 -- 793, sorry.  
22 (Whereupon, the exhibit was displayed on the  
23 screen.)  
24 MR. WALLACE: Actually, the native.  
25 (Whereupon, the exhibit was displayed on the

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4472

1 screen.)  
2 Q Mr. Flemmons, I'll represent to you this is the  
3 supporting data spreadsheet for the 2012 Statement of Financial  
4 Condition. If we could go to row 110.  
5 (Whereupon, the exhibit was displayed on the  
6 screen.)  
7 Q This should be the 2012 entry for 40 Wall Street. The  
8 entry states, "Income based on stabilized rents; expenses based  
9 on 40 Wall Street, LLC, two thousand thirty one, eleven,  
10 financial statements increased by three percent for inflation."  
11 And it lists income rented space at 35 million, income vacant  
12 space at 8 million.  
13 Feel free to look at the rest of the valuation, but in  
14 your view, does this valuation technique conform to ASC-274?  
15 A Yes, it appears to fall under the same prong of ASC-274  
16 that we just discussed, which is the capitalization of past or  
17 prospective earnings.  
18 MR. WALLACE: If we could split screen this with  
19 Plaintiff's Exhibit 815, please.  
20 (Whereupon, the exhibit was displayed on the  
21 screen.)  
22 MR. WALLACE: If we could go to page ten of 24.  
23 (Whereupon, the exhibit was displayed on the  
24 screen.)  
25 Q So the valuation statement here says that "The

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4473

1 estimated current value of 527,200,000 is based upon a  
2 successful renegotiation of ground leases and an evaluation made  
3 by Mr. Trump in conjunction with his associates and outside  
4 professionals of leases that have been signed or are currently  
5 the subject of negotiation, and a cap rate was applied to the  
6 resultant cash flow to be derived from the building's  
7 operations."  
8 Is that disclosure adequately informative as to the  
9 method that was used to calculate the value of 40 Wall Street?  
10 A In my view, yes, for the same reasons that we discussed  
11 on the prior property.  
12 Q So the fact that this valuation includes income for  
13 vacant space, and vacant space is not mentioned in the Statement  
14 of Financial Condition, is not something that you would think  
15 should have been disclosed in this statement?  
16 A Well, I would say that the reference to income, vacant  
17 space on the supporting spreadsheet could very well be referring  
18 to the leases that are currently the subject of negotiation.  
19 Um, those two things correlate, potentially.  
20 Q Potentially, but you don't know for sure one way or the  
21 other?  
22 A I don't. But they are not inconsistent on their face.  
23 Q I believe you also had a discussion with Mr. Suarez  
24 about whether it was appropriate to use these valuation  
25 techniques in 2011 and 2012 if The Trump Organization was also

J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4474

1 in possession of an appraisal that had a lower value for the  
2 building.  
3 Do you remember that testimony?  
4 A I remember that testimony.  
5 THE COURT: There's no way he could forget it. It  
6 was said about 30 times.  
7 MR. WALLACE: I'm laying my foundation, your Honor.  
8 I'll try to keep it quick.  
9 Q I believe you said, in addition, that you did not  
10 believe management had an obligation to provide the accountants  
11 preparing the compilation report with copies of appraisals if  
12 they did not form the basis for the valuation in the Statement  
13 of Financial Condition; is that correct?  
14 A That's correct.  
15 MR. WALLACE: If we could pull up a copy of your  
16 expert report and go to paragraph 77.  
17 (Whereupon, the exhibit was displayed on the  
18 screen.)  
19 MR. WALLACE: Which I believe is on page 23 to 24.  
20 (Whereupon, the exhibit was displayed on the  
21 screen.)  
22 MR. WALLACE: If we could pull up the rest of this  
23 paragraph so we could see it together, please.  
24 (Whereupon, the exhibit was displayed on the  
25 screen.)

<p style="text-align: right;">Page 4475</p> <p>1 Q I'm going to focus your attention to the last statement</p> <p>2 -- well, I'll read from the middle of your statement, which says</p> <p>3 that, "However, there is simply no expectation or requirement</p> <p>4 that is part of the compilation engagement that a client</p> <p>5 assemble and provide all documents that have any bearing on the</p> <p>6 reported asset. Instead, an accountant performing a compilation</p> <p>7 only expects to be provided with the details supporting the</p> <p>8 amounts to be reported in the financial statements, including</p> <p>9 the back-up documentation and responses to the accountant's</p> <p>10 inquiries. If appraisals were not used as the basis to report</p> <p>11 asset values, an accountant would not expect such appraisals to</p> <p>12 be provided by the client."</p> <p>13 I see that you don't cite any specific accounting</p> <p>14 standard in those opinions; is that correct?</p> <p>15 A I don't see any citations here, no.</p> <p>16 (Continued on the next page.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4477</p> <p>Flemmons - by Defendant - Cross(Wallace)</p> <p>1 under the engagement letters between Mazars and the Trump</p> <p>2 Organization for the Trump Organization to provide appraisals</p> <p>3 if wasn't the specific thing that was being used to value the</p> <p>4 property; is that fair?</p> <p>5 A I would have to look back at the wording of the</p> <p>6 engagement letters. I know one of the terms indicated that</p> <p>7 information would be made available to the accountant, but it</p> <p>8 did not say that all information would be provided to the</p> <p>9 accountant.</p> <p>10 Q Okay.</p> <p>11 A Particularly information that had no bearing or</p> <p>12 reflection in the Statement of Financial Condition.</p> <p>13 Q So you get me there. How do you come to the</p> <p>14 conclusion that an appraisal for the property that is being</p> <p>15 valued in the Statement of Financial Condition would have no</p> <p>16 bearing on the statement that is being reported in the</p> <p>17 Statement of Financial Condition?</p> <p>18 A Because it has no bearing on the reported value being</p> <p>19 used to report that property on the Statement of Financial</p> <p>20 Condition.</p> <p>21 At some level where do you draw the line? If a</p> <p>22 company or an individual performs valuation calculations using</p> <p>23 every single method that is available under 274, which could</p> <p>24 yield 12 different scenarios, there is no obligation on the</p> <p>25 part of that individual to provide all of them to an</p>
<p style="text-align: right;">Page 4476</p> <p>Flemmons - by Defendant - Cross(Wallace)</p> <p>1 Q And so this is based on your experience and practice;</p> <p>2 is that correct?</p> <p>3 A It is based on my experience and understanding of</p> <p>4 industry practice.</p> <p>5 Q And you have never actually prepared a personal</p> <p>6 Statement of Financial Condition pursuant to ASC 274; is that</p> <p>7 correct?</p> <p>8 A I have performed compilations, but I have not</p> <p>9 performed a compilation of a personal financial statement.</p> <p>10 Q Over the course of your entire career, I believe you</p> <p>11 testified that you worked on less than five compilation</p> <p>12 engagements; is that correct?</p> <p>13 A That sounds right.</p> <p>14 Q Okay. And the last time you would have worked on any</p> <p>15 compilation report would have been before the year 2000; is</p> <p>16 that correct?</p> <p>17 A That sounds right.</p> <p>18 Q And so is that the scope of -- well, let me ask it</p> <p>19 differently.</p> <p>20 You then also said that you did not find it</p> <p>21 professionally plausible, is that the right term, that</p> <p>22 Mr. Bender would have asked for appraisals? Is that correct?</p> <p>23 A We can look back at the testimony, that sounds like</p> <p>24 the gist of what I was saying.</p> <p>25 Q Okay. And you don't view their being any obligation</p>	<p style="text-align: right;">Page 4478</p> <p>Flemmons - by Defendant - Cross(Wallace)</p> <p>1 accountant. They are only going to pick one of them, put that</p> <p>2 on the Statement of Financial Condition, give the accountant</p> <p>3 the support for it, they can agree or disagree, but they are</p> <p>4 going to be evaluating whether or not that is an appropriate</p> <p>5 valuation in accordance with GAAP. There is no need to provide</p> <p>6 the other 11 to the accountant.</p> <p>7 THE COURT: Five minute warning.</p> <p>8 MR. WALLACE: Thank you, Your Honor.</p> <p>9 Q So in your view it is appropriate for a client to</p> <p>10 potentially conduct 12 different valuations, pick the one that</p> <p>11 is the highest, share with its accountants the exact basis for</p> <p>12 that one calculation, and not tell them anything else about all</p> <p>13 of the other valuations that they ran?</p> <p>14 A That's correct.</p> <p>15 Q Okay. Now over the course of the day though, you</p> <p>16 have told us many times that you saw things in the supporting</p> <p>17 data that raised red flags or would have caused you to ask for</p> <p>18 more information. Do you recall that testimony?</p> <p>19 A It sounds familiar.</p> <p>20 Q So do you still think that it would be implausible</p> <p>21 that Mr. Bender would have asked Mr. McConney for any</p> <p>22 appraisals if he had them on the properties that were being</p> <p>23 valued in the Statement of Financial Condition?</p> <p>24 A I do find it implausible.</p> <p>25 Q So does that mean you don't believe Mr. Bender?</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

Flemmons - by Defendant - Cross(Wallace)	Page 4479	Flemmons - by Defendant - Cross(Wallace)	Page 4481
1 A I indicated yesterday the reason for believing that		1 Condition is consistent with GAAP, and one of the accepted	
2 it was implausible, and it is based on the professional		2 methods of ASC 274, and the accountant will be evaluating the	
3 standards and the requirements that existed at the time --		3 appropriateness of that method based on that method alone.	
4 Q I am asking for the implication of what you have told		4 MR. WALLACE: I think I am just about up. This	
5 us now. So does that mean you don't believe Mr. Bender?		5 is a good time.	
6 MR. KISE: Objection is he asking the witness if		6 THE COURT: Will you be continuing with cross?	
7 he thinks Mr. Bender is a liar?		7 MR. WALLACE: I will be continuing with cross.	
8 MR. WALLACE: He is saying it. I want to know		8 THE COURT: Any idea how long, roughly?	
9 if he is.		9 MR. WALLACE: I would hope not more than half an	
10 MR. KISE: No, you are saying it.		10 hour in the morning.	
11 THE COURT: Objection sustained.		11 THE COURT: All right.	
12 All he can say is that he find it is		12 I hereby order the witness not to discuss this	
13 implausible.		13 case or his testimony with anybody related to it while he	
14 Q So you discredit Mr. Bender's testimony on that		14 is still a witness.	
15 account; is that fair?		15 I will ask Ms. Greenfield to go over the	
16 MR. WALLACE: He has prepared an opinion.		16 schedule.	
17 THE COURT: It is clever, you know.		17 MS. GREENFIELD: So we are going to finish with	
18 MR. KISE: Asked and answered.		18 Mr. Flemmons tomorrow, but that should be at most an hour.	
19 MR. WALLACE: I believe I have not asked this.		19 Correct?	
20 Q Are you discrediting Mr. Bender's testimony in that		20 MR. SUAREZ: We will have some redirect.	
21 regard?		21 THE COURT: How much redirect?	
22 A His testimony is inconsistent with the standards		22 MR. SUAREZ: Based on the cross, but I estimate	
23 applicable in compilations.		23 about a half hour.	
24 Q If an auditor learned of this process that you		24 MS. GREENFIELD: A half hour.	
25 described where the issuer of an estimate went through and		25 Who is after Flemmons tomorrow?	
Flemmons - by Defendant - Cross(Wallace)	Page 4480	Flemmons - by Defendant - Cross(Wallace)	Page 4482
1 conducted 11 different valuations and came up with the one that		1 MR. ROBERT: We have Mr. Collins tomorrow after	
2 is the highest; under the professional standards, would they		2 Mr. Flemmons.	
3 have an obligation to ask for that additional information?		3 MS. GREENFIELD: Who is after Collins?	
4 MR. KISE: Objection. Is he talking about under		4 MR. ROBERT: Mr. Laposa. Hopefully we will get	
5 the audit standards; is he talking about under the		5 him done Thursday, if not Friday morning.	
6 compilation standards? He said auditor, so that implies		6 And then Mr. Giuliette Friday morning.	
7 that there is -- it is time to go.		7 MS. GREENFIELD: Who was that?	
8 MR. WALLACE: Someone is suggesting we are done		8 MR. ROBERT: Gary Giulietti.	
9 for the day.		9 MS. GREENFIELD: How much direct do you have of	
10 THE COURT: I have seen this in weddings.		10 Mr. Giuliette?	
11 MR. KISE: Which standard?		11 MR. ROBERT: If we can get him early enough	
12 THE COURT: Which standard?		12 Friday, hopefully done on Friday. Monday morning we have	
13 Q If the accountants were to have learned that the		13 another expert followed by Mr. McConney.	
14 client followed this procedure that you described of doing 11		14 MS. GREENFIELD: I had only McConney on Monday.	
15 different valuations and selecting the one that had the highest		15 Who is coming before?	
16 value, under the professional standards, would the accountants		16 MR. ROBERT: David Miller is starting. And then	
17 have an obligation to ask the client for that information?		17 we are going to go to Mr. McConney Monday afternoon and	
18 A No. As long as --		18 all day Tuesday.	
19 MR. KISE: Objection, for what information?		19 MS. GREENFIELD: Okay.	
20 THE COURT: For the fact that there were 11		20 MR. ROBERT: Thank you.	
21 methods of valuation and only one was given. Overruled.		21 (Whereupon the trial stood adjourned to Thursday	
22 MR. KISE: Okay. I see the question.		22 November 16, 2023, at 10:00 a.m.)	
23 Withdrawn.		23	
24 A My answer is no, because as long as the valuation		24	
25 that is selected and reported in the Statement of Financial		25	

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

\$				
\$12,000 (1)				
4403:24				
\$123 (1)				
4375:7				
\$2 (1)				
4354:20				
\$200 (2)				
4380:19,24				
\$291 (1)				
4371:3				
\$338 (1)				
4380:7				
\$524,700,000 (1)				
4469:6				
\$707 (5)				
4456:13;4457:2,17;				
4466:1,6				
A				
Aberdeen (4)				
4397:15;4427:11,12;				
4436:23				
ability (3)				
4458:12;4464:20;				
4465:8				
able (10)				
4443:11,22;4447:17;				
4456:15;4458:8;				
4461:3,11,14;4465:25;				
4467:23				
Above (1)				
4406:11				
absence (1)				
4416:4				
absolutely (6)				
4337:5;4338:20;				
4341:5;4349:13,19;				
4429:11				
academic (1)				
4357:18				
acceptable (9)				
4364:9;4400:2,7,11;				
4404:8;4414:1;				
4467:20,21;4468:11				
accepted (5)				
4338:20;4369:22;				
4384:23;4439:19;				
4481:1				
accordance (1)				
4478:5				
according (1)				
4406:4				
account (3)				
4343:21;4388:8;				
4479:15				
accountant (22)				
4339:1;4343:25;				
4354:10;4376:22;				
4391:14;4392:5,8;				
	4407:13;4410:24;	4417:19;4442:22;	admitted (5)	albeit (1)
	4420:12;4422:14;	4448:14,25	4387:16;4432:8,19;	4404:6
	4429:22;4455:8;	actually (12)	4433:13;4434:23	alert (2)
	4462:16;4475:6,11;	4357:21;4403:14;	advise (3)	4339:2;4377:10
	4477:7,9;4478:1,2,6;	4425:21;4433:10;	4392:1;4396:24;	alerted (1)
	4481:2	4450:21;4459:9;	4397:6	4376:19
	accountants (13)	4465:23;4466:15,19;	advisory (1)	alerts (1)
	4377:7,10;4394:14;	4470:4;4471:24;	4464:10	4342:2
	4395:8,12;4408:10;	4476:5	affidavit (1)	aligns (1)
	4415:20;4454:24;	add (7)	4357:14	4349:18
	4455:1;4474:10;	4338:23;4371:12;	afternoon (2)	alike (1)
	4478:11;4480:13,16	4385:3;4396:12;	4441:10;4482:17	4438:6
	accountant's (38)	4427:25;4428:1;	again (41)	alleged (2)
	4337:20;4338:11,23,	4462:2	4339:22;4347:8;	4430:12;4443:23
	25;4341:9;4343:3,6;	added (3)	4352:5;4356:13;	allow (4)
	4350:13;4363:21;	4356:11;4358:19;	4362:23;4365:2;	4358:8;4456:5;
	4367:7;4372:22;	4467:9	4367:19;4368:12,23;	4457:10;4466:4
	4375:16;4376:23;	adding (1)	4373:1;4375:6;	allowable (2)
	4382:10;4384:21,22;	4367:4	4382:17;4384:21;	4376:21;4409:13
	4385:5,7,11,16,18,21,	addition (1)	4389:16;4391:1;	allowed (7)
	22,24;4386:1;4391:20;	4474:9	4394:6;4400:14;	4337:6;4401:22;
	4397:14;4408:1,11;	additional (21)	4401:20;4402:8;	4423:22;4424:10,11;
	4416:1,5;4435:6;	4346:1;4348:16;	4403:14;4405:7;	4425:2,4
	4441:17;4442:1,23;	4358:22;4360:22;	4406:6;4407:7;	allowing (1)
	4448:8;4454:23;	4372:9;4373:13;	4408:22;4409:4;	4457:1
	4475:9	4376:12,23;4389:21;	4411:13;4415:10;	allows (3)
	accounting (40)	4397:12;4407:25;	4417:8;4418:2,22;	4349:13;4354:5;
	4338:21;4339:24;	4423:19;4435:10;	4426:17;4430:20;	4364:21
	4340:20;4341:6;	4436:2;4442:7;	4436:17;4442:23;	almost (4)
	4345:4;4352:24;	4457:17;4462:23;	4451:3,23;4452:1;	4365:22;4411:4,12;
	4354:1;4357:2,6,15;	4464:4,21;4465:4;	4463:16;4465:18;	4457:13
	4358:5;4381:10,13,20,	4480:3	4466:3;4471:9	alone (2)
	24;4382:3;4384:23;	address (4)	against (5)	4466:2;4481:3
	4388:1;4394:11,12;	4363:22;4386:2;	4350:21;4374:6;	along (1)
	4398:11;4414:2;	4419:4;4438:15	4376:6;4395:7;4406:6	4448:21
	4415:14;4416:21,24;	addressed (3)	agency (1)	alternative (2)
	4417:18,21;4418:7;	4357:10;4401:15;	4379:21	4349:16;4400:8
	4419:6,12;4430:16;	4421:15	agents (2)	although (1)
	4431:25;4444:8;	addresses (3)	4439:14,22	4410:6
	4454:19,21,23;4464:9,	4339:24;4386:4;	aggregation (1)	always (4)
	13;4471:16;4475:13	4421:16	4378:8	4364:19;4382:15;
	accuracy (1)	addressing (1)	ago (4)	4424:11;4436:15
	4452:22	4344:16	4432:15;4433:1;	amalgamated (1)
	accurately (7)	adds (1)	4453:25;4465:25	4451:23
	4436:7;4437:5,11,	4361:1	agree (6)	ambiguous (1)
	14;4452:6,12,21	adequate (5)	4366:17;4395:3;	4395:2
	achieve (3)	4363:22;4452:25;	4418:24;4455:21,23;	ambush (1)
	4416:25;4438:11;	4453:15,24;4469:13	4478:3	4424:3
	4465:24	adequately (13)	agreed (3)	amend (1)
	across (2)	4346:13,18;4410:25;	4382:19;4440:22;	4466:19
	4396:9;4465:10	4453:17;4454:3,17,20;	4445:17	AMER (1)
	action (18)	4455:4,6,16;4470:19;	ahead (2)	4402:24
	4352:11;4368:1,17;	4471:17;4473:8	4394:9;4402:11	Americas (5)
	4369:2;4371:11,20;	adjacent (1)	AICP (1)	4388:9,16,18,20,24
	4398:8;4399:5,7,9;	4362:22	4394:17	amount (12)
	4409:1,7;4410:18;	adjourned (2)	AICPA (2)	4358:22;4367:6;
	4416:18;4417:2,3,22;	4412:11;4482:21	4431:25;4432:3	4380:19;4386:23;
	4430:11	adjusted (1)	aid (1)	4399:2,4;4450:10,19;
	actions (3)	4367:6	4462:13	4455:20;4457:8;
	4351:5;4368:4;	adjustment (1)	aircraft (1)	4461:13;4469:21
	4395:7	4348:17	4379:16	amounts (20)
	actual (6)	adjustments (2)	aircrafts (1)	4339:20;4343:18;
	4349:22;4364:22;	4407:24;4415:24	4377:25	4351:8;4378:9;

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4382:10;4386:22,22; 4387:4,5;4390:5; 4399:12;4407:24; 4414:9;4445:3;4449:7; 7;4450:8,9;4462:24; 4475:8 <b>analyses (1)</b> 4450:5 <b>analysis (4)</b> 4407:6;4450:2,7; 4451:4 <b>analyze (1)</b> 4445:25 <b>and/or (1)</b> 4407:25 <b>Angeles (3)</b> 4361:21,22;4362:8 <b>annual (1)</b> 4460:23 <b>answered (8)</b> 4363:19;4381:18; 4393:1;4411:10; 4440:7;4466:8,9; 4479:18 <b>anticipated (18)</b> 4350:23;4351:5; 4367:21,23;4368:13, 15;4371:6,8,10,16,19, 24;4375:4;4406:13,18, 19;4408:23;4416:12 <b>Apologies (1)</b> 4435:17 <b>apologize (1)</b> 4402:22 <b>apparent (10)</b> 4347:12,17;4374:15; 4375:9;4414:11,15; 4415:7;4435:15,20; 4442:5 <b>apparently (2)</b> 4348:16;4375:23 <b>appear (4)</b> 4375:10;4385:15; 4391:9;4414:5 <b>appeared (1)</b> 4446:14 <b>appears (49)</b> 4345:12,16;4348:4, 8;4349:6;4350:20; 4351:22;4352:23; 4354:24;4355:2,13; 4358:17;4361:6,24; 4362:4;4364:2,8; 4366:1;4368:10; 4369:13,21,24; 4370:22;4373:23; 4379:4;4380:11; 4384:4,5,17;4387:24; 4389:3;4391:5;4392:4; 4398:15;4399:25; 4403:18,23,24;4404:5; 4405:13;4406:5,5; 4413:22;4426:24;	4427:16;4467:2; 4468:19;4469:15; 4472:15 <b>Appellate (3)</b> 4401:12,16,24 <b>appendices (1)</b> 4459:3 <b>applicable (4)</b> 4377:13;4396:14,15; 4479:23 <b>applied (12)</b> 4375:5;4411:21; 4414:8;4415:13; 4418:8;4431:19,20; 4452:22;4457:19; 4469:10;4470:14; 4473:5 <b>applies (1)</b> 4395:19 <b>apply (8)</b> 4346:19;4394:12; 4415:25;4418:11,20; 4419:13;4430:25; 4432:4 <b>applying (4)</b> 4376:5;4454:14; 4457:4;4469:20 <b>appraisal (18)</b> 4349:10;4369:25; 4370:4,10,12;4400:3,8, 13,13;4401:8;4404:12; 4405:18,23;4437:22; 4440:2,4;4474:1; 4477:14 <b>appraisals (16)</b> 4349:16;4369:23; 4370:5;4437:2,5,8,20; 4439:12,22;4440:1; 4474:11;4475:10,11; 4476:22;4477:2; 4478:22 <b>appreciate (1)</b> 4365:17 <b>Apprentice (4)</b> 4377:18,19;4379:18, 18 <b>approach (3)</b> 4355:2;4366:1; 4373:7 <b>appropriate (40)</b> 4341:8;4342:12,20; 4344:3,6;4351:1; 4352:4,14;4355:5,14; 4357:4;4358:4,20; 4364:3;4370:2; 4371:19;4374:15; 4376:18;4377:11; 4378:3;4391:25; 4396:24;4398:7,10; 4404:10;4405:16,21; 4406:3;4407:13; 4415:15;4425:21; 4431:17;4437:25;	4467:11,17;4468:9,17; 4473:24;4478:4,9 <b>appropriately (1)</b> 4408:4 <b>appropriateness (3)</b> 4367:3;4382:4; 4481:3 <b>approves (1)</b> 4401:9 <b>AR (4)</b> 4395:19;4396:15; 4431:11,12 <b>ARC (1)</b> 4431:12 <b>AR-C (2)</b> 4385:9;4396:16 <b>ARC-80 (1)</b> 4431:20 <b>AR-C80 (1)</b> 4431:4 <b>area (1)</b> 4348:15 <b>areas (1)</b> 4443:13 <b>argumentative (1)</b> 4447:11 <b>around (4)</b> 4385:10;4403:21; 4444:13,15 <b>arrangements (1)</b> 4420:24 <b>arrive (2)</b> 4371:14;4374:2 <b>arrived (2)</b> 4360:24;4466:1 <b>arrows (1)</b> 4393:10 <b>Arthur (2)</b> 4337:2;4413:2 <b>ASC (50)</b> 4355:6,12,15,23,25; 4358:16,22;4359:5; 4361:4,13,23;4362:5, 12,20;4363:6,10; 4364:1,18,21;4365:1, 25;4366:7,12;4367:25; 4368:9,16;4369:3,6,11, 20,22;4370:5,16; 4378:21;4398:17; 4413:24;4415:1; 4417:22;4419:6,12; 4443:25;4444:12; 4445:24;4452:22,24; 4453:5;4455:3,12; 4476:6;4481:2 <b>ASC-274 (63)</b> 4345:15,18;4346:25; 4347:7;4349:5,9,13,18, 24;4350:19;4351:2,21, 23;4352:8,9;4372:1; 4373:3,7,12,22;4375:2, 22;4376:18,21;4377:5; 4378:4,6;4381:3;	4399:12,24;4400:2; 4404:8;4405:12,14; 4406:4;4410:12,16,19; 4411:17,18;4430:14; 4433:6;4434:11; 4437:24;4438:9,12,16; 4439:20;4458:19; 4459:1,3,6;4461:22; 4463:17;4467:11,18, 19;4468:10,11,13; 4469:16;4472:14,15 <b>ASC-274-10-20 (1)</b> 4434:18 <b>ascertain (1)</b> 4444:4 <b>ascribed (4)</b> 4357:17;4371:1; 4380:1;4456:1 <b>aside (2)</b> 4451:1,4 <b>aspect (5)</b> 4418:23;4419:3; 4426:5;4449:25; 4464:13 <b>aspects (1)</b> 4393:9 <b>assemble (1)</b> 4475:5 <b>assembly (3)</b> 4366:14,24;4367:9 <b>assess (2)</b> 4397:14;4458:9 <b>assessment (1)</b> 4351:11 <b>asset (23)</b> 4342:23;4343:8; 4351:1,16;4352:20; 4354:14;4355:3,5; 4365:7,14,14;4366:6; 4369:9;4375:13; 4377:4;4380:1,10; 4381:25;4403:17; 4407:3;4461:4;4475:6, 11 <b>assets (43)</b> 4338:3;4339:13,14, 16;4340:1,12;4342:9, 12,16;4343:2,17,20; 4352:17,25;4354:6,13; 4355:3;4356:10,21; 4377:15,18;4378:4,5,7, 10,13,20,22,23;4379:1, 6,17;4380:2,3,6; 4382:5;4385:1; 4403:15;4416:6; 4418:3;4439:20; 4443:1;4456:25 <b>assigned (2)</b> 4350:5;4403:17 <b>assist (1)</b> 4437:22 <b>associated (5)</b> 4360:2;4378:13;	4398:17;4418:23; 4436:24 <b>Associates (9)</b> 4377:24;4389:7,10; 4454:13;4460:5,7,20; 4469:8;4473:3 <b>assume (8)</b> 4337:8;4400:22; 4401:16,21;4406:8; 4410:12;4460:5; 4466:23 <b>Assuming (1)</b> 4366:12 <b>assumption (5)</b> 4352:4,6;4409:8,10; 4418:5 <b>assumptions (6)</b> 4351:7;4410:17,20; 4411:22;4463:12; 4464:22 <b>assurance (1)</b> 4429:7 <b>attached (4)</b> 4338:17;4357:24; 4365:4;4388:5 <b>attention (15)</b> 4350:22;4359:22,24; 4360:14;4367:20; 4368:23;4384:3,20,25; 4388:7;4397:20; 4427:14;4444:24; 4460:4;4475:1 <b>Attorney (1)</b> 4383:6 <b>attributions (1)</b> 4448:13 <b>audience (2)</b> 4455:7,8 <b>audit (4)</b> 4338:24;4389:15; 4431:25;4480:5 <b>auditing (3)</b> 4345:5;4388:1; 4420:22 <b>auditor (2)</b> 4479:24;4480:6 <b>auditors (1)</b> 4394:14 <b>August (1)</b> 4380:16 <b>authoritative (2)</b> 4431:18,24 <b>available (5)</b> 4370:4,6,16;4477:7, 23 <b>Avenue (14)</b> 4350:16,18;4368:22; 4369:7;4388:9,15,18, 20,24;4406:1;4408:19; 4416:9,11;4419:11 <b>Average (4)</b> 4467:8;4470:4,11; 4471:2
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Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>avoid (1)</b> 4465:8	<b>bases (1)</b> 4437:9	4432:2;4459:24	<b>brokers (4)</b> 4437:25;4438:10; 4439:14,22	4435:17;4436:11,15; 4437:24;4439:2; 4444:20;4445:7;
<b>aware (7)</b> 4344:17;4354:21; 4367:14;4374:21; 4391:16;4436:1; 4443:3	<b>basic (1)</b> 4418:18	<b>Beverly (3)</b> 4378:3;4379:3,15	<b>Bucksburn (1)</b> 4398:1	4448:9,18,23;4449:16; 4450:25;4453:1,2; 4455:22;4461:5,8; 4464:5,14;4466:14,14; 4467:24;4469:24; 4471:20;4476:23; 4478:3;4479:12; 4482:11
<b>B</b>	<b>basically (4)</b> 4339:11;4340:10; 4410:7;4418:12	<b>beware (1)</b> 4385:19	<b>build (2)</b> 4399:1;4429:19	<b>cap (41)</b> 4345:19,25;4346:1; 4347:9,12,17,25; 4348:4,6,10,12,14,17; 4350:21;4400:6; 4406:6,7,9;4407:2; 4415:6;4458:1,10,23; 4459:1,7;4461:2,7,19, 23,24;4463:15,20,22; 4465:20,21;4466:4,5; 4469:10,20;4470:14; 4473:5
	<b>basing (3)</b> 4352:14;4372:2; 4418:18	<b>beyond (4)</b> 4398:10;4406:9; 4430:22;4461:23	<b>building (7)</b> 4454:15;4457:5; 4458:5,15;4462:12; 4463:2;4474:2	<b>capacities (2)</b> 4389:14;4420:22
	<b>basis (49)</b> 4340:2;4345:24; 4346:8;4348:15,19,20; 4351:1;4352:7,14,15; 4354:25;4355:4,13,16; 4360:20;4363:9; 4364:2,9;4366:10; 4370:3,7,8;4371:4,15, 17,20;4373:1;4376:13; 4393:23;4397:9; 4410:1;4413:24; 4420:7;4424:1,24,25; 4425:1,2,9;4426:23; 4427:1;4429:14; 4430:19;4437:2,10; 4446:21;4474:12; 4475:10;4478:11	<b>billion (1)</b> 4354:20	<b>building's (3)</b> 4469:11;4470:15; 4473:6	<b>capital (3)</b> 4363:8;4366:9; 4373:5
<b>back (33)</b> 4344:12,13;4352:18; 4358:11;4365:22; 4379:7;4381:23; 4383:1,24;4389:8,20; 4410:19;4413:1,4; 4417:14,15,16; 4425:22;4426:13; 4427:7;4441:1,3; 4443:13;4446:18; 4448:2;4457:12; 4459:11;4462:5; 4465:12,19;4468:5; 4476:23;4477:5	<b>Beach (2)</b> 4377:25;4379:11	<b>blue (5)</b> 4345:2;4388:4; 4393:7;4403:13; 4420:2	<b>built (5)</b> 4366:14,14;4427:17, 22;4452:15	<b>capitalization (24)</b> 4345:18,20;4347:4; 4348:1,21;4349:8,15; 4350:21;4365:6; 4400:1;4404:7; 4405:13,17;4454:14; 4457:4,18;4458:20; 4463:6;4464:5; 4467:12,20;4468:12, 17;4472:16
<b>backup (1)</b> 4405:4	<b>bearing (5)</b> 4462:17;4475:5; 4477:11,16,18	<b>body (1)</b> 4453:18	<b>buyer (1)</b> 4385:19	<b>capitalized (1)</b> 4460:23
<b>back-up (1)</b> 4475:9	<b>became (2)</b> 4338:2;4344:17	<b>boilerplate (1)</b> 4337:22	<b>C</b>	<b>caption (3)</b> 4378:11;4379:1; 4453:24
<b>baked (2)</b> 4418:6,6	<b>become (3)</b> 4360:2;4367:14; 4391:16	<b>bonds (1)</b> 4386:25	<b>calculate (4)</b> 4461:3,8;4462:22; 4473:9	<b>capture (1)</b> 4434:9
<b>balance (13)</b> 4388:12;4389:2,8, 16,22;4390:3,11,21; 4391:13,24,25; 4446:11;4449:11	<b>Bedminister (4)</b> 4355:21,22;4356:2; 4414:19	<b>both (5)</b> 4376:7;4406:7; 4420:22;4425:11; 4431:19	<b>calculated (1)</b> 4458:12	<b>captured (1)</b> 4391:20
<b>bank (1)</b> 4456:14	<b>bedrock (1)</b> 4424:5	<b>bottom (6)</b> 4345:19;4347:8; 4397:23;4453:3,14; 4459:18	<b>calculating (2)</b> 4458:14;4467:17	<b>captures (1)</b> 4434:11
<b>Bartov (3)</b> 4357:7,11,14	<b>beginning (2)</b> 4378:16;4396:8	<b>box (2)</b> 4413:5;4441:4	<b>calculation (5)</b> 4346:6;4348:1; 4452:13;4455:7; 4478:12	<b>care (1)</b> 4407:2
<b>base (2)</b> 4410:8;4411:21	<b>belief (1)</b> 4418:3	<b>brand (13)</b> 4357:3,16,16,22,24; 4358:19;4359:14; 4360:9,11,20,25; 4366:18,22	<b>calculations (1)</b> 4477:22	<b>career (2)</b> 4394:13;4476:10
<b>based (57)</b> 4339:19,21;4348:3; 4350:23;4367:20; 4368:1,12,24;4371:6, 12;4375:25;4380:25, 25;4381:1;4382:1,5; 4391:3;4395:24; 4397:25;4398:15; 4399:25;4400:23,23; 4406:5,12;4408:22; 4409:8,14,21,25; 4410:3;4413:22; 4414:10;4416:11,18; 4422:24;4423:24; 4437:19;4439:12; 4446:13;4447:20; 4454:12;4455:13; 4456:11;4457:15; 4466:1;4469:6,19; 4471:16;4472:8,8; 4473:1;4476:1,3; 4479:2;4481:3,22	<b>believes (1)</b> 4391:19	<b>branded (3)</b> 4359:12;4360:16; 4362:24	<b>California (2)</b> 4378:3;4389:17	<b>careful (1)</b> 4403:6
	<b>believing (1)</b> 4479:1	<b>break (4)</b> 4382:16,19;4411:12; 4440:22	<b>Call (4)</b> 4382:15;4395:16; 4451:12;4465:5	<b>carry (1)</b> 4432:3
	<b>below (2)</b> 4377:24;4462:23	<b>breaking (6)</b> 4382:12,13,14,14,14; 4411:24	<b>called (1)</b> 4367:25	<b>case (18)</b> 4354:9;4363:9; 4366:12;4373:7; 4377:13;4379:25; 4382:18;4392:8; 4412:11;4415:25;
	<b>Bender (12)</b> 4372:20;4375:15; 4391:11,12;4403:3; 4415:19;4416:3; 4476:22;4478:21,25; 4479:5,7	<b>breaks (1)</b> 4387:20	<b>calls (1)</b> 4414:2	
	<b>Bender's (3)</b> 4339:25;4479:14,20	<b>Briarcliff (3)</b> 4355:10,11;4414:19	<b>came (4)</b> 4425:3,15;4437:1; 4480:1	
	<b>Bennison (1)</b> 4360:16	<b>brief (1)</b> 4436:4	<b>can (67)</b> 4341:7;4344:23; 4349:14,20;4350:22; 4353:1;4354:2; 4356:14;4358:9; 4359:24;4365:8; 4367:17;4370:17; 4385:3;4387:15; 4388:7;4397:15; 4401:8;4409:18,24; 4410:3,8,15,22;4411:6, 20,20;4414:7;4419:15, 21;4421:12;4422:6; 4423:18,21;4427:14; 4431:6;4432:10; 4433:6;4434:1;	
	<b>best (2)</b>	<b>briefing (3)</b> 4357:8;4383:20,21		
		<b>bring (2)</b> 4358:5;4412:1		
		<b>broad (4)</b> 4338:2;4339:22; 4423:24;4442:25		
		<b>broader (2)</b> 4344:1;4389:13		
		<b>broken (6)</b> 4371:7;4385:16; 4386:11;4427:24; 4450:19;4462:25		

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4423:25;4448:21; 4451:10;4454:25; 4464:25;4467:2; 4468:10;4481:13 <b>cash (95)</b> 4340:2;4341:25; 4368:1;4372:3,10; 4375:4;4385:1;4386:2, 4,16,17,21;4387:3,6, 12,21;4388:12,25; 4389:2,4,7,20,22; 4390:3,5,7,10,11,17,18, 20;4391:13,13,22,23, 24,25;4406:24; 4409:15;4413:22; 4414:1,3,6;4418:19; 4430:20;4446:7,10; 4447:7,25;4449:1,5,6, 10,11,12,13,15,18,19, 21;4450:9,12,14,15,19, 22;4451:5,7,16,20,23, 24,25;4454:15;4457:4, 19;4458:4,10,20; 4460:23;4461:3,8,12, 12;4463:13,17,22; 4465:22;4466:5; 4467:22;4469:11,18; 4470:15,22;4473:6 <b>casinos (1)</b> 4376:1 <b>catch (2)</b> 4403:5,6 <b>categories (2)</b> 4343:19;4379:1 <b>categorize (1)</b> 4378:7 <b>category (6)</b> 4343:8,15;4354:14; 4378:4;4391:17; 4430:16 <b>cause (4)</b> 4383:4,9,19;4385:12 <b>caused (1)</b> 4478:17 <b>caveat (2)</b> 4415:11;4423:18 <b>Celebrity (1)</b> 4379:18 <b>cell (6)</b> 4337:3,3;4388:7; 4392:17;4427:15,15 <b>Central (1)</b> 4368:7 <b>certain (14)</b> 4340:1,11;4342:9, 10;4371:7;4416:16; 4430:12;4438:1; 4443:18;4444:25; 4446:8;4451:9;4452:6, 6 <b>certainly (17)</b> 4337:24;4345:9; 4362:4;4372:11;	4379:2;4381:8; 4383:22;4390:19; 4393:5,8,10;4394:24; 4421:19;4423:6; 4424:16;4447:23; 4449:23 <b>certainty (3)</b> 4447:16,17,20 <b>cetera (2)</b> 4401:2,2 <b>change (18)</b> 4393:2,6,15,19,21; 4394:2;4395:25,25; 4396:25;4397:7,10,11, 12;4399:3,4,12; 4419:12;4426:9 <b>changed (2)</b> 4337:23;4396:4 <b>changes (2)</b> 4385:10;4393:13 <b>Charlotte (2)</b> 4362:11,15 <b>Charlottesville (1)</b> 4379:19 <b>Chicago (4)</b> 4350:4,6;4420:10; 4426:15 <b>chose (2)</b> 4456:2,16 <b>citations (1)</b> 4475:15 <b>cite (1)</b> 4475:13 <b>City (3)</b> 4369:19;4377:24; 4379:23 <b>clarification (3)</b> 4349:21;4421:4; 4436:11 <b>clarified (1)</b> 4403:4 <b>clarify (2)</b> 4422:6;4441:11 <b>clarifying (1)</b> 4442:12 <b>clear (23)</b> 4348:23;4350:2; 4354:17;4355:19; 4359:1;4360:23; 4365:3;4366:20; 4374:17,22;4380:8,18; 4390:4;4396:17; 4401:13;4402:16; 4404:9;4415:9; 4420:15;4429:10,16; 4433:3;4436:12 <b>clearly (5)</b> 4357:21;4360:25; 4371:13;4374:12; 4401:12 <b>clever (1)</b> 4479:17 <b>client (10)</b>	4343:23;4344:2; 4372:8;4388:2;4392:7; 4475:4,12;4478:9; 4480:14,17 <b>close (1)</b> 4471:17 <b>closer (1)</b> 4347:24 <b>club (36)</b> 4351:13,16;4352:16; 4354:20,23;4355:1,9, 11,20,22;4356:2; 4358:14,15;4359:2,4; 4360:6;4361:2,5,12,20, 22;4362:8,10,15,18; 4365:21,23;4366:5; 4397:22;4409:3; 4413:14,18,21; 4414:18,22;4427:19 <b>clubs (3)</b> 4356:12;4360:16; 4414:24 <b>collapse (1)</b> 4412:5 <b>collapsed (1)</b> 4386:11 <b>colleagues (1)</b> 4440:11 <b>Collection (2)</b> 4419:24;4421:2 <b>Collins (2)</b> 4482:1,3 <b>Colts (3)</b> 4358:14,15;4414:21 <b>column (6)</b> 4380:13,13,18,18; 4388:4;4406:7 <b>columns (2)</b> 4344:24;4384:9 <b>combined (1)</b> 4450:16 <b>coming (3)</b> 4426:1;4465:10; 4482:15 <b>commercial (7)</b> 4350:25;4367:22; 4406:11,15;4407:1; 4416:14;4450:13 <b>commitments (1)</b> 4379:25 <b>common (1)</b> 4386:24 <b>communicate (4)</b> 4341:18;4356:5; 4386:10;4408:11 <b>communicated (2)</b> 4350:13;4411:1 <b>communicating (2)</b> 4342:8;4387:6 <b>companies (3)</b> 4420:13;4464:10,12 <b>company (10)</b> 4351:6;4379:21;	4417:23;4419:18,24; 4421:2;4426:13,24; 4427:6;4477:22 <b>comparable (4)</b> 4351:23;4381:1; 4438:2,11 <b>comparative (1)</b> 4406:2 <b>compare (1)</b> 4456:16 <b>compared (2)</b> 4455:20;4457:8 <b>comparison (1)</b> 4378:24 <b>compelled (1)</b> 4367:5 <b>compilation (40)</b> 4338:12,17,18,24; 4339:5;4340:6; 4343:21,25;4344:3,18; 4345:7;4354:8; 4363:10,17;4367:1; 4376:22;4384:21,22; 4386:1;4391:15; 4394:1;4395:20; 4415:21;4420:13; 4422:15,16;4429:22, 23;4430:24;4431:1,5, 16,19;4474:11;4475:4, 6;4476:9,11,15;4480:6 <b>compilations (4)</b> 4346:20;4385:22; 4476:8;4479:23 <b>compiled (1)</b> 4464:16 <b>compiling (4)</b> 4367:11;4410:24; 4429:20;4454:25 <b>complete (1)</b> 4441:17 <b>completeness (1)</b> 4434:10 <b>compliance (1)</b> 4401:1 <b>compliant (4)</b> 4363:10;4373:7; 4382:7;4391:5 <b>complicated (2)</b> 4451:2;4471:13 <b>complied (1)</b> 4401:18 <b>comply (8)</b> 4362:5;4366:12; 4390:24,24;4401:18; 4407:7;4443:8; 4454:22 <b>complying (1)</b> 4426:22 <b>component (3)</b> 4372:4;4406:22; 4419:3 <b>components (7)</b> 4354:21;4359:1;	4367:13;4371:13; 4387:21;4427:2; 4437:22 <b>comports (1)</b> 4406:10 <b>composition (1)</b> 4380:8 <b>compound (2)</b> 4436:14;4466:7 <b>comprehensive (1)</b> 4342:15 <b>comprised (1)</b> 4354:13 <b>comprising (3)</b> 4378:9;4379:1; 4380:4 <b>comps (1)</b> 4380:25 <b>computations (1)</b> 4364:22 <b>computer (1)</b> 4433:25 <b>concept (1)</b> 4469:19 <b>concepts (1)</b> 4418:17 <b>concern (1)</b> 4366:23 <b>concerning (5)</b> 4347:9;4363:14; 4374:10;4388:17; 4444:25 <b>concise (1)</b> 4385:7 <b>conclude (1)</b> 4450:3 <b>concluded (1)</b> 4367:4 <b>conclusion (3)</b> 4348:9;4349:22; 4477:14 <b>conclusions (1)</b> 4415:12 <b>concrete (1)</b> 4462:13 <b>condense (1)</b> 4385:10 <b>Condition (112)</b> 4337:18,20,25; 4338:3,9;4339:4; 4340:13,22,24; 4341:17,19;4342:1,11, 13,15,18,21;4343:16, 19;4346:21;4350:11, 15;4352:19;4354:3,7, 15;4358:21;4359:13, 21;4360:5;4372:19; 4374:10;4375:14; 4378:12,22;4379:6; 4380:2,7;4381:16,25; 4384:4,11;4385:2; 4386:7,14,18;4387:10; 4388:14;4389:9;
---	--	--	--	---

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4390:6,9,13;4392:10; 4399:14;4403:16,22, 25;4404:18;4405:2; 4407:25;4408:12; 4416:7;4422:19; 4427:8,20;4429:4; 4431:5;4434:25; 4435:3,14,19,24; 4437:6,11,14,16; 4441:15,16,23;4442:2, 14,17,24;4443:5,20; 4446:16;4447:19; 4448:17;4449:1,15,21; 4451:17;4452:7,12,13; 4455:24;4456:12,17; 4459:22;4463:4; 4467:1;4472:4; 4473:14;4474:13; 4476:6;4477:12,15,17, 20;4478:2,23;4481:1	<b>considered (4)</b> 4344:1;4358:3; 4421:3;4422:15 <b>considering (6)</b> 4339:14;4410:18; 4411:17;4425:7,16; 4430:10 <b>consist (1)</b> 4385:17 <b>consistency (1)</b> 4429:2 <b>consistent (59)</b> 4339:25;4340:25; 4345:14;4346:22,24; 4349:5;4350:12,18; 4351:20,22;4355:11, 23;4358:16;4359:5,18; 4360:5;4361:4,13,22; 4362:12,20;4363:6,25; 4364:18;4365:24; 4366:7,8;4367:24; 4368:9,15;4369:2,6,11, 20;4371:10;4372:17; 4373:3,12,21;4375:2, 22;4381:3;4399:24; 4403:18;4405:11; 4408:25;4409:6; 4413:24;4415:1; 4423:13,23;4424:14, 14;4427:21;4429:15; 4437:23;4451:7; 4469:15;4481:1 <b>consists (1)</b> 4388:21 <b>constituted (1)</b> 4340:13 <b>constitutes (1)</b> 4415:20 <b>constraints (4)</b> 4411:16,18,23; 4430:15 <b>construct (1)</b> 4415:3 <b>constructed (1)</b> 4462:12 <b>consult (1)</b> 4437:25 <b>contain (3)</b> 4341:8,17;4460:7 <b>contained (10)</b> 4341:9;4346:21; 4356:5;4359:17; 4429:15;4435:2; 4442:23;4448:12; 4455:24;4459:1 <b>contemplate (3)</b> 4417:23;4439:18,25 <b>contemplated (2)</b> 4352:12;4417:22 <b>contemplates (2)</b> 4372:6;4438:9 <b>content (1)</b> 4411:14	<b>context (7)</b> 4346:1;4348:4; 4354:17;4360:22; 4361:1;4420:23; 4457:17 <b>continue (3)</b> 4337:9;4377:24; 4413:9 <b>Continued (4)</b> 4353:3;4370:25; 4382:21;4475:16 <b>continuing (2)</b> 4481:6,7 <b>contractual (1)</b> 4379:24 <b>contradicted (1)</b> 4437:8 <b>contributions (3)</b> 4363:8;4366:9; 4373:5 <b>control (7)</b> 4374:15,19;4416:16; 4417:24;4418:1,4,23 <b>controlled (1)</b> 4379:17 <b>controlling (1)</b> 4374:18 <b>conversation (2)</b> 4360:15;4464:3 <b>co-op (1)</b> 4368:25 <b>copies (1)</b> 4474:11 <b>copy (2)</b> 4467:24;4474:15 <b>copying (1)</b> 4381:14 <b>corporate (2)</b> 4379:15;4386:24 <b>correctly (2)</b> 4441:20;4442:17 <b>correlate (5)</b> 4378:20,22;4379:4; 4389:2;4473:19 <b>correlates (1)</b> 4389:17 <b>correlation (1)</b> 4379:2 <b>correspond (2)</b> 4388:4;4389:4 <b>corresponds (2)</b> 4343:7;4406:25 <b>cost (10)</b> 4355:2,4,13;4363:9; 4364:2,8;4366:1,10; 4371:13;4373:6 <b>costs (1)</b> 4439:13 <b>County (1)</b> 4379:11 <b>couple (4)</b> 4373:4;4429:11; 4441:11;4443:13	<b>course (20)</b> 4344:17;4369:2; 4371:11,20;4398:8; 4399:5,7,9;4409:1,6; 4417:22;4418:10; 4423:5;4427:2; 4435:25;4440:12; 4458:17;4463:10; 4476:10;4478:15 <b>courses (12)</b> 4352:11;4357:17; 4360:17;4368:1,4,17; 4410:18;4413:14; 4416:18;4417:1,3; 4430:11 <b>COURT (134)</b> 4337:1,7,11,14; 4344:12,14,15; 4346:15;4347:16,22, 24;4350:1;4354:17; 4356:13,23;4358:7; 4364:14;4365:5,10,16, 20;4381:4,18;4382:13, 15;4383:1,3,6,15,23; 4384:1;4390:16,23; 4391:6,10;4392:25; 4393:18,23;4394:5,10, 20;4395:2,13;4396:5, 11,17,22;4397:3; 4398:14,20;4400:10; 4401:6,16,24;4402:7, 19;4407:16;4409:17, 23;4410:5,10,14; 4411:11;4412:2,6,9; 4413:1,4,7;4417:4,8, 11,15,17;4418:10,24; 4419:8;4421:6,12,23; 4422:3,9;4423:3,5; 4424:2,24;4425:22,25; 4426:9,17;4428:6; 4429:8;4432:7,18; 4433:5,12;4434:22; 4436:14;4438:6,13,17, 24;4440:7,12,15,18,20; 4441:1,3,6;4447:9,12; 4451:8,18;4452:3; 4453:10,13,20; 4457:21;4459:8; 4466:11;4471:9,12; 4474:5;4478:7; 4479:11,17;4480:10, 12,20;4481:6,8,11,21 <b>courtroom (2)</b> 4337:6;4356:25 <b>cover (10)</b> 4339:10,23;4340:9, 18;4341:14,23;4342:7; 4375:16;4417:23; 4449:10 <b>covered (17)</b> 4338:2;4339:15; 4343:2;4372:18,21; 4375:13;4411:8;	4435:2,5,11;4441:25; 4442:25;4443:1; 4446:19;4447:23; 4448:1;4454:7 <b>covers (5)</b> 4343:12,14,16,17; 4449:23 <b>credit (1)</b> 4401:25 <b>criteria (1)</b> 4444:1 <b>cross (14)</b> 4350:1;4356:13,14; 4358:9;4411:13; 4421:8,11;4423:21,21; 4424:13;4440:18; 4481:6,7,22 <b>CROSS-EXAMINATION (1)</b> 4441:8 <b>curable (2)</b> 4465:5;4466:2 <b>cure (2)</b> 4408:7;4421:13 <b>current (104)</b> 4339:12;4340:3; 4343:4;4345:14; 4346:3,6,9,24;4347:7; 4349:4,12,23;4350:17; 4351:9,20;4352:7,14; 4355:6,11,17,21; 4356:1;4358:15,23; 4359:3,8,11;4360:5; 4361:3,8,13,17,21; 4362:6,11,14,19; 4363:1,5,25;4364:4,11, 17;4365:24;4366:2,7; 4368:8,19;4369:5,11, 15,20;4370:3,7,8; 4371:21;4372:16,17; 4373:2,8,11,21; 4374:20;4375:1,21; 4377:3;4387:2; 4397:21;4398:8; 4399:10,24;4400:5; 4405:10,11,22;4406:3; 4407:14,19;4408:3; 4409:1,7,12,14; 4410:11;4413:25; 4414:25;4416:17,25; 4418:7,19;4419:10; 4433:22;4434:7,14; 4436:9;4438:12; 4439:20;4445:12; 4457:6;4458:19; 4460:22;4462:20; 4469:6;4473:1 <b>currently (8)</b> 4462:9;4469:9,23; 4470:9,20;4471:2; 4473:4,18 <b>Cushman (4)</b> 4347:14,19;4348:8, 13
--	--	---	---	--



Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

D	debts (1) 4463:1	13,22;4443:4;4445:17; 4446:22;4447:6,18,22; 4450:6	4436:10	4370:9,17;4375:23; 4378:25;4380:11,25; 4385:12;4389:14; 4394:20;4400:4,13; 4401:8;4403:21; 4404:6,12;4405:18; 4427:24;4429:19; 4452:20;4477:24; 4478:10;4480:1,15
D-25 (4) 4431:6,11;4432:5,8	deceive (1) 4465:17	depending (3) 4354:9;4375:24; 4380:12	determine (21) 4364:10,11;4376:9; 4380:10,21;4382:6; 4383:12;4398:8; 4403:1;4404:3; 4409:14;4419:10; 4443:7;4445:23; 4447:10;4454:3; 4455:2;4457:6; 4458:18;4461:11,15	differently (1) 4476:19
D-26 (4) 4431:6,12;4432:6,8	December (1) 4431:13	deposition (1) 4339:25	determined (8) 4339:12;4343:5; 4348:4,6;4408:4; 4457:4,18;4460:22	direct (12) 4337:9;4367:19; 4368:23;4382:17; 4412:3;4413:9; 4440:14;4444:23; 4447:22;4460:3; 4468:13;4482:9
D-27 (7) 4433:6,13,21,25; 4434:8;4438:18,22	decide (2) 4383:16,17	deposits (1) 4340:20	determines (1) 4354:6	directed (2) 4400:15,16
D-452 (2) 4433:15;4434:10	decided (2) 4357:5,5	derived (11) 4350:25;4367:22; 4376:2;4416:13; 4454:15;4457:5; 4458:5;4469:11; 4470:15,17;4473:6	determining (65) 4340:2;4345:13; 4346:23;4349:4,12; 4350:17;4351:19; 4355:6,10,17,21; 4356:1;4358:14,23; 4359:3,8,11;4360:5; 4361:3,8,12,17,21; 4362:6,11,14,19; 4363:1,5,25;4364:4,17; 4365:24;4366:2,6; 4368:8,19;4369:5,10, 15,19;4370:3,7;4371:4, 20;4373:2,8,20;4375:1, 21;4397:21;4399:9,23; 4400:5;4405:10,22; 4407:14;4409:1,7; 4413:25;4414:25; 4416:17;4417:19; 4438:2;4439:20	disagree (1) 4478:3
D-836 (2) 4432:17,19	decision (1) 4425:6	describe (2) 4402:3;4436:8	desire (1) 4365:17	discharging (1) 4429:1
D-950 (2) 4432:21;4433:3	declare (1) 4357:23	described (9) 4407:6;4437:5,11, 14;4452:6,12,21; 4479:25;4480:14	desire (1) 4365:17	disclaimer (2) 4344:4,6
Dash (1) 4439:9	decline (1) 4383:8	describes (1) 4388:19	desire (1) 4365:17	disclosable (2) 4445:18,18
data (70) 4344:5;4345:13; 4346:4,13,17;4354:22, 24;4355:18;4356:3; 4358:24,25;4359:9,19; 4360:7,13,21;4361:9, 18;4362:7,16;4363:2, 14;4364:5,12;4366:3, 19,20;4367:12; 4369:16;4371:2; 4373:9;4378:23; 4381:15;4382:2; 4384:5,16,18;4387:11; 4392:11,15,16; 4397:16;4399:15,22; 4402:16;4403:4,19; 4404:21;4405:5; 4408:13,18;4414:5,12, 13;4415:8;4419:16; 4422:18;4427:9,12,14, 21;4429:3;4434:25; 4442:5;4448:15; 4466:25;4469:14,25; 4472:3;4478:17	deemed (3) 4453:11;4465:11,14	describing (2) 4344:9;4458:11	desire (1) 4365:17	disclose (14) 4346:8;4374:10; 4386:18;4424:23; 4443:17;4444:14,25; 4445:12,14,22;4446:3; 4458:1,4,22
	deeming (1) 4463:7	description (4) 4380:20;4381:1; 4399:25;4436:12	desire (1) 4365:17	disclosed (69) 4337:18,19;4346:4, 13,18;4348:21;4350:9; 4355:18;4356:2; 4358:24;4359:9,13; 4360:21,25;4361:9,18; 4362:7,15;4363:2; 4364:5,12;4366:3,18; 4368:20;4369:16; 4372:10,18;4373:9; 4374:4;4376:9,11; 4386:1;4389:1,5; 4410:23;4414:11,16; 4415:7;4421:5,10,20, 21;4422:2;4423:1,24; 4424:8,19;4425:9; 4426:7;4436:3; 4441:14,22,25; 4442:14;4443:19,24; 4445:2;4446:1,16,23; 4447:7,8,19;4450:18; 4457:3;4459:5; 4461:20;4462:18; 4473:15
	defendant (2) 4464:21;4465:13	descriptions (2) 4376:11;4436:18	desire (1) 4365:17	discloses (4) 4379:6;4451:12,13; 4470:19
	defendants (6) 4357:7,9,14,19; 4383:3;4440:15	deserve (1) 4401:25	desire (1) 4365:17	
	Defendant's (5) 4432:8,19;4433:13; 4434:20,23	designed (1) 4424:22	desire (1) 4365:17	
	defense (1) 4358:9	desire (1) 4365:17	desire (1) 4365:17	
	defer (1) 4418:9	desire (1) 4365:17	desire (1) 4365:17	
	defined (1) 4445:24	desire (1) 4365:17	desire (1) 4365:17	
	defines (1) 4444:1	desire (1) 4365:17	desire (1) 4365:17	
	definition (12) 4373:12;4405:12; 4410:11;4433:21; 4434:8,14,16,17; 4444:3;4449:13,19; 4458:14	desire (1) 4365:17	desire (1) 4365:17	
	degree (1) 4447:16	desire (1) 4365:17	desire (1) 4365:17	
	delivered (1) 4406:14	desire (1) 4365:17	desire (1) 4365:17	
	departure (28) 4339:10,17;4340:6, 25;4341:3;4372:18; 4375:14;4390:15,17, 25;4391:8;4392:2,5; 4415:20;4435:20; 4443:18;4444:24; 4445:1,9,13;4446:9,14, 15;4450:1,1,4;4451:1,5	desire (1) 4365:17	desire (1) 4365:17	
	departures (31) 4337:17,19;4339:5; 4341:8;4350:9; 4384:23;4385:25; 4390:12;4391:16,21; 4392:9;4407:22,23; 4415:18;4435:1,4,8,14; 4441:14,21;4442:4,7,	desire (1) 4365:17	desire (1) 4365:17	
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		desire (1) 4365:17	desire (1) 4365:17	
		desire (1) 4365:17	desire (1) 4365:17	

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>disclosing (5)</b> 4340:25;4424:15; 4461:24;4463:20; 4465:20	4395:16	<b>documentation (3)</b> 4429:13;4470:18; 4475:9	4400:2,7;4404:7; 4405:13;4406:6; 4409:15;4458:20; 4467:12,21;4468:12, 18;4469:18,20; 4472:17	4431:1;4443:8;4475:4; 4477:1,6
<b>disclosure (74)</b> 4339:18,22;4340:5, 9,10,15,18,22;4341:10, 13,14,20,23;4342:2,4, 7,18,20;4343:2,4; 4350:13;4359:14; 4360:10;4367:7; 4376:23;4378:8; 4386:9;4390:2; 4396:24;4397:13; 4408:1;4415:16; 4416:1,5;4421:16; 4423:11;4424:3,22; 4427:23;4429:20; 4435:2;4437:15; 4444:5,8,11,16,17; 4445:3,5,6,8,25; 4449:1,6,22;4453:15, 25;4454:10,17,20; 4455:16;4456:5,11; 4457:10,16,16;4459:1; 4460:6;4462:2,3; 4463:6;4466:2; 4470:24;4473:8	<b>discretionary (1)</b> 4463:16	<b>documented (1)</b> 4410:23	<b>easier (1)</b> 4459:10	<b>engagements (5)</b> 4343:23;4431:16,19; 4432:3;4476:12
<b>disclosures (30)</b> 4337:22,24;4338:1; 4339:15;4340:11; 4346:20;4359:17; 4373:14;4375:16; 4384:22;4391:20; 4429:15;4435:6,12; 4442:1,23;4444:13; 4446:18,20;4447:24; 4452:11;4453:16,17; 4454:1,5;4455:12; 4459:4;4462:23; 4463:18;4464:12	<b>discuss (3)</b> 4356:18;4382:17; 4481:12	<b>documents (7)</b> 4345:6;4361:1; 4365:3;4374:22; 4424:22;4446:25; 4475:5	<b>East (3)</b> 4368:8,20;4369:10	<b>Engoron (2)</b> 4337:2;4413:2
<b>discount (4)</b> 4418:11,20,21,22	<b>discussed (17)</b> 4339:13;4341:5; 4359:7;4361:16; 4362:21;4369:14; 4370:15;4414:25; 4430:23;4431:23; 4443:14;4446:7; 4447:7;4450:6; 4469:16;4472:16; 4473:10	<b>dollar (1)</b> 4450:9	<b>effect (2)</b> 4386:9;4465:21	<b>enough (7)</b> 4350:3;4391:1; 4395:5;4464:24; 4466:13;4471:17; 4482:11
<b>discounted (8)</b> 4340:1;4398:18; 4414:3,6,10;4416:19; 4418:15;4467:22	<b>discussing (1)</b> 4456:23	<b>Donald (4)</b> 4360:1;4384:11; 4449:13,19	<b>effective (1)</b> 4385:9	<b>ensconced (1)</b> 4357:17
<b>discounting (28)</b> 4371:24,25;4372:3, 6,9,12,21;4374:14; 4375:5,8,10,12,13; 4406:23;4407:2; 4414:4,8,11,15,15; 4415:6,7,10,13,25; 4416:3,4;4418:17	<b>discussion (3)</b> 4347:9;4402:5; 4473:23	<b>done (7)</b> 4376:1;4378:24; 4450:3,7;4480:8; 4482:5,12	<b>efficiently (1)</b> 4400:24	<b>ensure (3)</b> 4346:16;4359:16; 4429:2
<b>discredit (1)</b> 4479:14	<b>displayed (69)</b> 4338:6,14;4339:8; 4340:7,16;4341:11,21; 4342:5,24;4343:10; 4344:21,25;4349:1; 4351:14;4352:21; 4372:24;4373:17; 4374:24;4375:19; 4377:16;4378:14,18; 4379:8,13;4399:17; 4403:10;4404:19,22; 4405:8;4408:15,20; 4430:2,5,8;4431:7; 4432:11,23;4433:7,17, 23;4434:2,5,12; 4438:19,25;4439:4,7, 10;4459:12,15; 4460:12,15,18;4462:7; 4466:17,21;4467:5; 4468:6,23;4469:2; 4470:2;4471:22,25; 4472:5,20,23;4474:17, 20,24	<b>Doonbeg (3)</b> 4365:22,22,23	<b>effort (1)</b> 4400:18	<b>ensuring (1)</b> 4429:7
<b>discrediting (1)</b> 4479:20	<b>drafts (1)</b> 4402:24	<b>Doral (3)</b> 4363:24;4420:9; 4426:14	<b>eight (1)</b> 4460:21	<b>enter (1)</b> 4358:5
<b>discrepancies (4)</b> 4415:24;4435:11; 4436:1;4441:25	<b>drawing (1)</b> 4402:24	<b>draw (10)</b> 4350:22;4359:22,24; 4360:14;4384:3,25; 4388:7;4397:20; 4427:14;4477:21	<b>either (12)</b> 4354:8;4360:2; 4363:20;4397:13; 4405:25;4411:9; 4415:24;4442:1; 4458:9;4463:22; 4465:21;4466:5	<b>entire (1)</b> 4476:10
<b>discrepancy (1)</b>	<b>Division (1)</b> 4401:25	<b>due (1)</b> 4393:16	<b>Elie (1)</b> 4357:14	<b>entities (19)</b> 4374:7;4379:16,23; 4386:23;4387:5,7,9; 4389:21,23;4390:2,7, 10;4426:21;4444:2; 4446:8,11;4449:8; 4451:17;4464:11
	<b>document (35)</b> 4338:8;4345:3,8; 4355:19;4359:23; 4378:17;4385:14; 4387:25;4388:16; 4390:4;4392:22; 4393:5,8,9;4402:14,18; 4405:7;4415:9,12; 4420:15;4421:1; 4422:6,18,25;4423:16; 4424:10,17;4426:3; 4432:14;4436:13; 4441:17;4446:14; 4453:11;4459:24; 4466:24	<b>duties (1)</b> 4415:21	<b>else (5)</b> 4400:16;4401:21; 4440:15;4456:15; 4478:12	<b>entitled (1)</b> 4423:12
		<b>earlier (8)</b> 4372:20;4402:24; 4415:23;4430:15; 4446:13,22;4449:9; 4467:15	<b>embedded (3)</b> 4351:7;4372:13; 4375:6	<b>entity (2)</b> 4376:5;4451:20
		<b>early (1)</b> 4482:11	<b>emphatically (1)</b> 4357:23	<b>entry (4)</b> 4467:4,10;4472:7,8
		<b>earnings (23)</b> 4345:18,20;4347:4; 4349:8,15;4350:21; 4351:4,8;4374:7;	<b>enable (1)</b> 4456:1	<b>equally (1)</b> 4419:13
			<b>encompassed (1)</b> 4339:14	<b>eschewing (1)</b> 4357:19
			<b>encounter (1)</b> 4465:6	<b>escrowed (1)</b> 4379:24
			<b>encouraged (1)</b> 4385:21	<b>especially (1)</b> 4411:11
			<b>end (6)</b> 4383:21;4384:11; 4441:12;4452:4,17; 4464:3	<b>essential (1)</b> 4411:21
			<b>endeavoring (1)</b> 4465:16	<b>establish (3)</b> 4390:15;4400:21; 4443:22
			<b>ending (1)</b> 4382:13	<b>establishing (2)</b> 4352:7;4413:20
			<b>engagement (9)</b> 4343:25;4392:7; 4422:17;4430:25;	<b>estate (6)</b> 4343:16;4421:20; 4438:1;4439:14,22; 4460:21
				<b>estimate (11)</b> 4351:4;4406:21; 4409:13,18,21;4410:7, 20;4413:22;4427:16; 4479:25;4481:22
				<b>estimated (104)</b> 4339:12;4340:3; 4343:4;4345:13;

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4346:6,9,24;4347:7; 4349:4,12,23;4350:17, 21;4351:8,20;4352:7, 14;4355:6,10,17,21; 4356:1;4358:15,23; 4359:3,8,11;4360:6; 4361:3,8,13,17,21; 4362:6,11,14,19; 4363:1,5,25;4364:4,10, 11,17;4365:24;4366:2, 6;4368:8,19;4369:5,11, 15,19;4370:3,7,8; 4371:21;4372:16,17; 4373:2,8,11,20; 4374:20;4375:1,21; 4397:21;4398:8; 4399:9,23;4400:5; 4405:10,11,22; 4407:14,19;4408:3; 4409:1,7,12,14; 4410:11;4413:25; 4414:25;4416:17,25; 4418:7,19;4419:10; 4430:19;4433:22; 4434:7,14;4436:9; 4438:12;4439:20; 4454:12;4457:6; 4458:19;4460:22; 4462:20;4469:5,20; 4473:1	4423:12;4424:11,22; 4425:7,14,15;4432:5,9, 17,20,21;4433:2,4,10, 11,14;4434:21,23; 4453:7,9,10,12 <b>exact (2)</b> 4400:10;4478:11 <b>exactly (3)</b> 4376:1;4406:25; 4470:17 <b>exam (3)</b> 4440:14;4441:12; 4452:18 <b>examination (8)</b> 4350:2;4413:10; 4423:21;4440:18; 4443:7,11;4447:22; 4452:4 <b>examine (5)</b> 4356:14;4358:9; 4411:13;4423:21; 4424:13 <b>example (15)</b> 4379:2;4395:11; 4429:8,18;4436:23; 4440:5;4455:19; 4456:24;4459:18,19; 4461:22;4462:2,3,22; 4464:14 <b>examples (4)</b> 4416:2;4459:4; 4461:19;4464:8 <b>except (1)</b> 4360:1 <b>exception (5)</b> 4340:14;4341:15; 4358:18;4375:17; 4469:16 <b>exceptions (4)</b> 4337:25;4339:12; 4344:17;4372:22 <b>excluded (3)</b> 4340:23;4341:19; 4350:14 <b>excluding (1)</b> 4451:4 <b>excuse (9)</b> 4339:18;4349:3; 4352:2;4356:23; 4364:11;4366:22; 4377:19;4378:21; 4420:14 <b>excused (1)</b> 4402:5 <b>exercise (2)</b> 4389:6;4455:2 <b>exercising (1)</b> 4455:11 <b>Exhibit (119)</b> 4338:5,6,14;4339:8; 4340:7,16;4341:11,21; 4342:5,24;4343:10; 4344:20,21,25;4349:1;	4351:14;4352:19,21, 23;4359:23;4372:24; 4373:17;4374:24; 4375:19;4377:16; 4378:14,17,18;4379:8, 13;4386:15;4387:16; 4388:15,17;4392:11, 12;4399:15,16,17; 4402:15;4403:3,9,10; 4404:11,18,19,21,22; 4405:8;4406:2; 4408:13,14,15,20; 4413:12;4419:15,16, 21;4425:14,17;4430:2, 5,8;4431:7;4432:11,13, 19,23;4433:7,13,17,19, 23;4434:2,5,12,21,23; 4438:19,25;4439:4,7, 10;4448:18,19,24; 4453:2,8,12;4454:9; 4459:11,12,15; 4460:12,15,18;4462:6, 7;4466:16,17,21; 4467:5,25;4468:1,6,22, 23;4469:2;4470:2; 4471:21,22,25;4472:5, 19,20,23;4474:17,20, 24 <b>exhibits (5)</b> 4399:19;4404:24; 4408:17;4431:9; 4432:8 <b>existed (1)</b> 4479:3 <b>existence (1)</b> 4410:12 <b>exists (1)</b> 4341:3 <b>exited (1)</b> 4356:25 <b>expect (16)</b> 4372:3;4377:9; 4389:11;4396:6; 4399:4;4406:8;4407:8, 11,12;4412:2,6; 4420:12,23;4424:4; 4427:3;4475:11 <b>expectation (2)</b> 4398:16;4475:3 <b>expected (7)</b> 4367:10;4376:19; 4394:6;4396:3; 4427:17;4429:1,23 <b>expects (1)</b> 4475:7 <b>expenses (3)</b> 4467:9;4471:3; 4472:8 <b>experience (6)</b> 4376:25;4396:18; 4464:6;4471:16; 4476:1,3 <b>expert (18)</b>	4357:6;4358:2,5; 4364:25;4365:1; 4394:11,17;4423:11; 4424:2;4425:3;4438:7, 13;4444:6;4456:19; 4462:15;4471:6; 4474:16;4482:13 <b>expertise (5)</b> 4377:8;4391:3; 4430:22;4454:19; 4471:13 <b>Experts (3)</b> 4424:11,15;4438:9 <b>expert's (2)</b> 4394:25;4423:9 <b>explicit (1)</b> 4357:6 <b>expressly (1)</b> 4358:3 <b>extensive (1)</b> 4420:20 <b>extensively (1)</b> 4357:8 <b>extent (25)</b> 4344:17;4347:5; 4348:9;4349:17; 4352:12;4360:2; 4367:3,13;4372:16; 4373:11;4374:14; 4375:12;4376:20; 4378:7;4382:8;4398:9, 18;4410:11,16,23; 4422:22;4425:13; 4426:6;4444:7;4451:9 <b>external (1)</b> 4377:7 <b>eye (1)</b> 4455:11	<b>factors (1)</b> 4458:9 <b>failing (1)</b> 4445:2 <b>failure (10)</b> 4443:17;4444:17,25; 4445:5,8,12,14,21,22; 4446:3 <b>Fair (7)</b> 4350:3;4377:9; 4395:5;4402:6; 4466:13;4477:4; 4479:15 <b>fairly (2)</b> 4339:22;4366:3 <b>fall (2)</b> 4340:4;4472:15 <b>falls (1)</b> 4391:17 <b>familiar (4)</b> 4387:17;4439:14,22; 4478:19 <b>family (2)</b> 4377:23;4379:22 <b>far (2)</b> 4418:24;4447:21 <b>FASB (2)</b> 4449:13,19 <b>feasible (1)</b> 4399:8 <b>Feel (1)</b> 4472:13 <b>feeling (1)</b> 4465:18 <b>feet (4)</b> 4393:3,4;4394:4,4 <b>Ferry (1)</b> 4363:4 <b>few (2)</b> 4339:6;4417:4 <b>field (2)</b> 4438:10,10 <b>fifth (2)</b> 4341:20,23 <b>figure (1)</b> 4450:9 <b>filed (1)</b> 4383:3 <b>filings (1)</b> 4376:1 <b>final (5)</b> 4402:15;4403:4; 4461:2,7,13 <b>Financial (169)</b> 4337:18,20,25; 4338:3,9,17,18,21; 4339:1,4;4340:13,22, 24;4341:4,7,17,19; 4342:1,8,11,13,14,15, 17,21;4343:16,19; 4344:9;4346:21; 4350:11,15;4352:19; 4354:3,7,11,14;
		<b>F</b>		
		<b>face (8)</b> 4375:8,10;4415:9; 4420:15;4456:11,25; 4457:15;4473:22 <b>facilities (5)</b> 4351:13,16;4352:16; 4354:20;4413:15 <b>facility (2)</b> 4359:12;4362:24 <b>fact (25)</b> 4341:3;4347:3; 4349:23;4363:17,18; 4376:17;4402:15; 4422:24;4426:4,20; 4437:16;4443:8,17,18, 23;4445:17;4449:23; 4450:17;4458:25; 4462:11;4465:23; 4466:4;4468:10; 4473:12;4480:20 <b>factor (2)</b> 4372:7;4375:5		

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4357:25;4358:1,21; 4359:13,17,21,25; 4360:4;4367:11; 4372:19;4374:9; 4375:14;4377:8; 4378:12,22,25;4379:5; 4380:2,5,7;4381:15,25; 4384:4,11;4385:1; 4386:7,14,18;4387:10; 4388:14;4389:8; 4390:6,9,13;4392:10; 4397:13;4399:14; 4403:16,22,25; 4404:17;4405:1; 4407:25;4408:12; 4410:25;4416:7; 4422:19;4427:8,19; 4429:3,13,20,21; 4431:4,25;4434:25; 4435:3,7,13,19,24; 4437:6,11,14,16; 4441:15,16,18,22; 4442:2,14,17,24; 4443:2,5,20;4446:16; 4447:19;4448:17,25; 4449:14,20;4450:16; 4451:17;4452:7,12,13, 23;4453:15,18,19,20, 22;4454:2,24;4455:1,9, 15,24;4456:6,12,17; 4457:15;4458:1,4,22, 25;4459:19,20,22,23; 4463:4,21;4464:2,16, 19,23;4466:25;4470:6; 4472:3,10;4473:14; 4474:13;4475:8; 4476:6,9;4477:12,15, 17,19;4478:2,23; 4480:25	4451:14;4465:19 <b>fit (2)</b> 4444:3,3 <b>fits (1)</b> 4373:6 <b>five (3)</b> 4343:16;4476:11; 4478:7 <b>Five-minute (2)</b> 4381:4;4410:14 <b>five-year (6)</b> 4467:8,9;4470:5,11, 23;4471:3 <b>fixed (7)</b> 4339:20;4355:3,3,5; 4356:10,21;4365:6 <b>flag (3)</b> 4372:11;4390:19,23 <b>flagged (1)</b> 4395:1 <b>flags (1)</b> 4478:17 <b>Flemmons (21)</b> 4337:9,15;4338:8; 4352:24;4357:12; 4358:13;4384:3,10; 4387:17;4413:17; 4421:3;4426:13; 4434:24;4441:10; 4444:20;4459:17; 4466:24;4472:2; 4481:18,25;4482:2 <b>Flemmons' (1)</b> 4456:19 <b>flip (3)</b> 4365:15;4460:1,10 <b>Florida (4)</b> 4354:23;4355:1; 4413:18,21 <b>flow (16)</b> 4454:15;4457:5; 4458:5,10;4461:3,8,13; 4463:18,22;4465:22; 4466:5;4469:11,19; 4470:15,22;4473:6 <b>flows (17)</b> 4340:2;4368:1; 4372:3;4375:4; 4406:24;4409:15; 4413:23;4414:1,3,6; 4418:19;4430:20; 4457:19;4458:21; 4463:13;4467:22; 4470:17 <b>focus (3)</b> 4380:9;4460:17; 4475:1 <b>folks (1)</b> 4402:22 <b>follow (5)</b> 4349:6;4367:15; 4372:7;4415:22; 4459:23	<b>followed (3)</b> 4391:18;4480:14; 4482:13 <b>following (7)</b> 4363:4;4365:15; 4366:6;4398:19; 4428:5;4457:20; 4459:20 <b>follows (1)</b> 4460:6 <b>followup (1)</b> 4407:22 <b>follow-up (11)</b> 4363:11,12,13; 4366:11;4382:9; 4391:15;4464:7,12,15, 21;4465:4 <b>footage (9)</b> 4393:3,16,20,21,22; 4394:3,3;4395:25; 4396:3 <b>footnote (2)</b> 4339:15;4361:1 <b>forget (1)</b> 4474:5 <b>form (8)</b> 4385:12;4410:22; 4413:23;4415:24; 4455:15,17;4456:2; 4474:12 <b>format (1)</b> 4440:2 <b>formatted (1)</b> 4459:24 <b>formed (3)</b> 4394:16;4426:15; 4427:1 <b>former (1)</b> 4357:19 <b>forms (1)</b> 4426:6 <b>forth (1)</b> 4465:12 <b>forward (4)</b> 4351:5,10;4402:4; 4419:11 <b>foundation (2)</b> 4390:14;4474:7 <b>four (11)</b> 4343:5,14;4352:23; 4374:12;4386:13; 4434:8;4449:4;4460:5, 11,17;4462:3 <b>fourth (2)</b> 4339:7;4341:13 <b>frankly (1)</b> 4377:6 <b>free (1)</b> 4472:13 <b>Friday (4)</b> 4482:5,6,12,12 <b>front (1)</b> 4446:25	<b>full (1)</b> 4411:4 <b>fully (4)</b> 4354:21;4359:12; 4362:23;4423:23 <b>fund (2)</b> 4449:5,6 <b>fundamental (1)</b> 4451:6 <b>funds (10)</b> 4379:24;4386:5,22, 24,24;4387:2,4,8; 4450:17;4451:24 <b>further (8)</b> 4348:11;4376:3,13; 4377:24;4380:16; 4409:3;4413:15; 4440:13 <b>future (31)</b> 4339:19,21;4340:2; 4368:1;4371:24; 4372:2,3,9;4398:15; 4400:1;4404:7;4409:8, 14,22;4410:7,13; 4413:22,23;4414:1,3,6; 4417:25;4418:5,14,19; 4430:18;4467:12,22; 4470:17,23;4471:4	4482:8 <b>gave (1)</b> 4468:15 <b>general (5)</b> 4379:5;4383:6; 4411:6;4452:17; 4455:10 <b>Generally (1)</b> 4384:23 <b>generate (1)</b> 4411:22 <b>gist (1)</b> 4476:24 <b>Giuliette (2)</b> 4482:6,10 <b>Giulietti (1)</b> 4482:8 <b>given (10)</b> 4370:15;4377:7; 4389:11,13;4390:4; 4407:10;4409:12; 4414:14;4420:19; 4480:21 <b>giving (1)</b> 4401:24 <b>glance (1)</b> 4379:2 <b>glaring (2)</b> 4372:14;4392:3 <b>glossary (1)</b> 4434:17 <b>goes (5)</b> 4365:17;4379:16; 4388:21;4410:19; 4452:22 <b>Golf (37)</b> 4354:23,25;4355:9, 11,20,22;4356:2,11; 4357:17;4358:13,15; 4359:2,4;4360:6,17,17; 4361:2,5,12,20,22; 4362:8,10,15,18; 4363:4;4365:21,23; 4366:5;4397:22; 4413:14,18,21; 4414:18,24;4427:19; 4428:2 <b>Good (15)</b> 4337:10,11,15,16; 4347:22;4357:24; 4382:12;4394:13; 4403:5,6;4410:10; 4411:24;4412:9; 4441:10;4481:5 <b>Goodwill (2)</b> 4376:5,6 <b>gotcha (2)</b> 4424:9,21 <b>governed (1)</b> 4431:15 <b>governing (8)</b> 4394:17;4395:4,15; 4396:20,23;4397:4,5;
		<b>G</b>		
		<b>GAAP (96)</b> 4337:17,19,24; 4339:5,10,11,17,23; 4340:5,11,14,21; 4341:1,8,15,16,24; 4342:16;4343:2,4; 4344:3,16;4350:9; 4358:20;4363:22; 4367:14;4372:18; 4375:13;4377:8; 4382:6,11;4385:13,23, 25;4386:5;4390:12,15, 17;4391:2,3,5,16,21; 4392:2,5,9;4394:7; 4401:1,9,18,19; 4407:22;4415:18,20; 4418:20;4435:1,4,11, 14,19;4436:1,2; 4441:14,21,24,24; 4442:4,7,13,22;4443:4, 19,25;4444:18;4445:1, 5,8,9,13,17,22;4446:9, 14,15,22;4447:6,18,22; 4450:1,3,5;4451:1,5,7; 4478:5;4481:1 <b>gaining (2)</b> 4396:1;4427:2 <b>game (1)</b> 4424:21 <b>gap (1)</b> 4339:18 <b>Gary (1)</b>		

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4438:14 <b>government (6)</b> 4400:19,22;4401:20; 4421:18;4424:16; 4447:10 <b>Granted (5)</b> 4432:7,18;4433:12; 4434:22;4453:10 <b>Great (1)</b> 4438:6 <b>greater (2)</b> 4381:11,14 <b>Greenfield (8)</b> 4481:15,17,24; 4482:3,7,9,14,19 <b>ground (3)</b> 4426:10;4469:7; 4473:2 <b>group (3)</b> 4354:2;4378:4,9 <b>grouped (2)</b> 4352:17,25 <b>grouping (4)</b> 4354:6;4378:10,20, 22 <b>guess (4)</b> 4347:15;4411:9; 4422:21;4464:25 <b>guidance (6)</b> 4407:13,18;4408:5; 4415:15;4432:3; 4459:20 <b>guide (2)</b> 4431:25;4432:25	<b>hear (1)</b> 4400:14 <b>heard (3)</b> 4400:10;4423:4; 4442:10 <b>hearing (1)</b> 4357:11 <b>heart's (2)</b> 4358:9;4411:14 <b>hedge (10)</b> 4386:5,21,24; 4387:2,4,8;4449:5,6; 4450:17;4451:24 <b>held (10)</b> 4386:22;4387:4,7; 4390:7;4418:12; 4449:7,10,12,18; 4451:20 <b>helpful (1)</b> 4378:8 <b>hence (1)</b> 4383:19 <b>hereby (1)</b> 4481:12 <b>herring (1)</b> 4357:20 <b>hesitate (1)</b> 4361:24 <b>hide (1)</b> 4463:25 <b>high (1)</b> 4381:2 <b>highest (3)</b> 4478:11;4480:2,15 <b>highlighted (3)</b> 4451:11;4457:12; 4470:14 <b>Hills (3)</b> 4378:3;4379:3,15 <b>hold (1)</b> 4417:25 <b>holding (1)</b> 4418:3 <b>holiday (1)</b> 4428:1 <b>home (2)</b> 4379:15;4398:1 <b>homes (9)</b> 4377:25;4379:10; 4398:4;4399:1; 4427:17,21;4428:1; 4429:18;4452:15 <b>homework (1)</b> 4456:15 <b>Honor (41)</b> 4337:10;4349:20,25; 4350:3;4356:7,15; 4357:1,9;4364:24; 4365:13;4384:2; 4394:10,15;4402:2,13; 4411:24;4413:11; 4420:25;4422:5,21; 4423:4;4424:6,7;	4425:11;4432:5; 4433:21;4438:21; 4440:11,13,16,19; 4441:7;4445:11; 4451:15;4453:8,21; 4459:10;4466:7,13; 4474:7;4478:8 <b>Honorable (2)</b> 4337:2;4413:2 <b>Honor's (1)</b> 4425:6 <b>hope (2)</b> 4400:14;4481:9 <b>Hopecroft (1)</b> 4398:1 <b>hopefully (3)</b> 4400:24;4482:4,12 <b>horizon (1)</b> 4406:20 <b>Hotel (6)</b> 4350:4,6,10; 4369:18;4419:24; 4421:1 <b>hour (6)</b> 4411:25;4412:8; 4481:10,18,23,24 <b>housekeeping (2)</b> 4337:7;4433:20 <b>Hudson (2)</b> 4361:12;4414:22 <b>human (1)</b> 4462:16 <b>HWA (3)</b> 4389:6,9,10 <b>hypothetical (11)</b> 4409:11,16,22,25; 4410:3,13,17;4411:4,6, 17;4418:2 <b>hypotheticals (5)</b> 4352:10;4409:19; 4410:8,21;4411:7	<b>identifying (1)</b> 4445:16 <b>illustrates (1)</b> 4459:20 <b>illustration (2)</b> 4461:19;4462:1 <b>illustrations (4)</b> 4459:3,6,18;4461:21 <b>illustrative (3)</b> 4458:25;4459:19,23 <b>impact (1)</b> 4445:3 <b>impacted (1)</b> 4374:19 <b>implausible (4)</b> 4478:20,24;4479:2, 13 <b>implication (1)</b> 4479:4 <b>implicit (6)</b> 4338:20;4348:23; 4372:13;4375:6; 4409:19;4410:4 <b>implicitly (1)</b> 4352:10 <b>implies (1)</b> 4480:6 <b>important (3)</b> 4400:20;4463:7,8 <b>imposed (3)</b> 4346:25;4411:16; 4430:12 <b>impression (1)</b> 4443:16 <b>inappropriate (4)</b> 4367:4,8;4378:10; 4423:2 <b>inception (1)</b> 4363:8 <b>include (34)</b> 4338:11;4341:16; 4344:4,11,16;4351:5; 4357:22;4358:21; 4367:7,8;4373:13; 4375:10;4376:23; 4377:22,25;4379:6,16, 17;4382:9;4384:9; 4386:23;4388:23; 4390:17,20;4411:7; 4415:25;4420:9; 4430:21;4453:16; 4459:1,7;4463:5,7,9 <b>included (16)</b> 4340:12;4342:10,17, 19;4350:10;4357:22; 4371:24;4372:22; 4386:8,23;4387:9; 4390:8;4391:22; 4415:11;4421:2; 4443:4 <b>includes (10)</b> 4344:7;4352:16; 4362:23;4379:10;	4384:22;4388:22; 4391:23;4392:17; 4441:17;4473:12 <b>including (10)</b> 4356:10,16,20; 4360:23,25;4389:15; 4391:3;4430:19; 4450:22;4475:8 <b>inclusion (6)</b> 4360:20;4366:18,21, 23;4390:10;4391:12 <b>income (18)</b> 4341:16;4350:25; 4367:21;4368:24; 4371:24;4374:1; 4405:16;4406:14; 4416:13;4467:8; 4470:4,11;4471:2; 4472:8,11,11;4473:12, 16 <b>inconsistent (9)</b> 4367:14;4376:20; 4377:4;4382:11; 4423:14;4425:2; 4470:24;4473:22; 4479:22 <b>incorporated (1)</b> 4436:9 <b>incorrect (1)</b> 4357:21 <b>increased (1)</b> 4472:10 <b>incremental (1)</b> 4435:10 <b>Indeed (1)</b> 4357:23 <b>independent (1)</b> 4439:14 <b>indicate (4)</b> 4345:24;4392:20; 4403:2;4427:15 <b>indicated (6)</b> 4345:19;4348:13; 4365:12;4420:9; 4477:6;4479:1 <b>indicates (4)</b> 4340:22;4391:23; 4427:15;4449:23 <b>Indicating (1)</b> 4384:9 <b>indication (3)</b> 4345:9;4420:3,3 <b>indicative (2)</b> 4363:18;4393:10 <b>indisputable (1)</b> 4429:17 <b>individual (10)</b> 4351:25;4352:7,13; 4357:17;4380:2,4; 4409:4;4456:1; 4477:22,25 <b>individualized (1)</b> 4401:23
<b>H</b>				
<b>H939 (1)</b> 4420:5 <b>HABBA (1)</b> 4440:17 <b>half (4)</b> 4412:8;4481:9,23,24 <b>hand (2)</b> 4354:12;4395:13 <b>handed (7)</b> 4399:19;4404:24; 4408:17;4431:9; 4432:13;4433:19; 4468:1 <b>Handing (5)</b> 4384:7;4392:13; 4419:23;4448:20; 4456:20 <b>happen (1)</b> 4396:19 <b>happened (1)</b> 4464:8 <b>happens (2)</b> 4376:25;4449:24 <b>happy (3)</b> 4356:18;4421:8; 4467:13	<b>Hills (3)</b> 4378:3;4379:3,15 <b>hold (1)</b> 4417:25 <b>holding (1)</b> 4418:3 <b>holiday (1)</b> 4428:1 <b>home (2)</b> 4379:15;4398:1 <b>homes (9)</b> 4377:25;4379:10; 4398:4;4399:1; 4427:17,21;4428:1; 4429:18;4452:15 <b>homework (1)</b> 4456:15 <b>Honor (41)</b> 4337:10;4349:20,25; 4350:3;4356:7,15; 4357:1,9;4364:24; 4365:13;4384:2; 4394:10,15;4402:2,13; 4411:24;4413:11; 4420:25;4422:5,21; 4423:4;4424:6,7;	<b>idea (4)</b> 4417:23;4418:18; 4464:2;4481:8 <b>identical (6)</b> 4347:2;4361:6; 4368:2;4385:15; 4453:6;4457:13 <b>identification (1)</b> 4433:9 <b>identified (12)</b> 4339:5;4373:13; 4400:18,19,25; 4401:11;4426:14; 4435:4,10,25;4444:24; 4447:25 <b>identify (5)</b> 4367:10;4407:21; 4426:20;4429:23; 4436:2		
		<b>I</b>		

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>individually (1)</b> 4455:25	<b>Instead (1)</b> 4475:6	<b>investments (2)</b> 4379:23;4387:21	4402:16;4405:4	<b>land (7)</b> 4366:14,24;4367:9;
<b>industry (2)</b> 4432:1;4476:4	<b>instruct (1)</b> 4354:2	<b>investors (1)</b> 4464:11	<b>joint (4)</b> 4343:14;4373:16; 4390:20;4449:10	4397:25;4398:1; 4399:2,4
<b>infer (1)</b> 4414:10	<b>insufficient (1)</b> 4408:2	<b>involve (1)</b> 4352:10	<b>Judge (3)</b> 4337:2;4400:17; 4413:2	<b>landing (1)</b> 4412:1
<b>inflated (2)</b> 4463:22;4465:23	<b>intend (1)</b> 4340:18	<b>involved (3)</b> 4377:7;4464:19; 4465:12	<b>judgment (7)</b> 4354:5;4357:5,13; 4358:3;4425:6;4455:2, 12	<b>landscape (3)</b> 4338:2;4344:1; 4443:1
<b>inflating (1)</b> 4466:5	<b>intended (8)</b> 4339:10;4340:9; 4341:14,18,23;4342:7; 4417:24;4459:5	<b>involvement (3)</b> 4344:1;4389:13; 4420:20	<b>jump (2)</b> 4364:14;4451:8	<b>language (7)</b> 4341:8,18;4344:4,6, 16;4382:10;4435:9
<b>inflation (2)</b> 4465:21;4472:10	<b>intending (1)</b> 4365:19	<b>Ireland (1)</b> 4365:23	<b>June (2)</b> 4384:11;4387:22	<b>linguaging (1)</b> 4363:21
<b>influenced (1)</b> 4348:9	<b>intent (4)</b> 4418:2,3;4465:2,17	<b>irrelevant (1)</b> 4358:4	<b>Jupiter (1)</b> 4362:18	<b>Laposa (1)</b> 4482:4
<b>inform (1)</b> 4378:8	<b>intentional (2)</b> 4465:11,14	<b>irrespective (1)</b> 4457:16	<b>jury (2)</b> 4358:7;4426:11	<b>Laptops (1)</b> 4337:3
<b>information (31)</b> 4346:12,17;4348:16; 4356:5;4382:1;4391:8; 4408:2,7,8,9;4423:10, 24;4425:4,12;4436:8, 9;4438:2;4455:10; 4458:16,23;4460:7; 4463:18;4464:23; 4465:4;4477:7,8,11; 4478:18;4480:3,17,19	<b>intentionally (2)</b> 4465:1,7	<b>issue (21)</b> 4341:4;4342:20; 4357:4;4364:18; 4367:10;4383:7; 4392:4;4408:9; 4423:15;4426:17; 4438:15;4444:8,9,11; 4445:15;4447:25; 4448:7;4450:9;4451:2, 12;4458:22	<b>K</b>	<b>largely (1)</b> 4395:24
<b>informative (8)</b> 4453:17;4454:3,17, 20;4455:5;4469:13; 4471:18;4473:8	<b>interest (12)</b> 4373:24;4374:3,10, 18,20;4388:18;4389:5, 17,23;4390:8;4451:19; 4460:21	<b>issued (3)</b> 4341:7;4363:17; 4385:9	<b>Kathy (1)</b> 4380:15	<b>Larson (1)</b> 4348:7
<b>informed (2)</b> 4455:6,16	<b>interested (2)</b> 4451:25;4464:4	<b>issuer (2)</b> 4463:5;4479:25	<b>Kaye (1)</b> 4380:15	<b>Las (1)</b> 4374:23
<b>informs (1)</b> 4451:15	<b>interests (1)</b> 4339:19	<b>issuers (2)</b> 4395:8,9	<b>keep (7)</b> 4367:17,18;4414:17, 20;4434:4;4439:9; 4474:8	<b>Lasker (1)</b> 4379:20
<b>inherently (3)</b> 4351:4;4409:15; 4410:20	<b>International (17)</b> 4350:4,6,10; 4354:23,25;4355:9; 4365:21,23;4366:5; 4367:16;4369:18; 4374:23;4379:20; 4397:22;4413:18,21; 4427:18	<b>issues (4)</b> 4339:2,23;4408:11; 4442:11	<b>Kenbruce (3)</b> 4460:4,7,20	<b>last (9)</b> 4385:3,18;4403:20; 4404:6;4429:11; 4442:9;4470:13; 4475:1;4476:14
<b>initial (2)</b> 4422:23;4425:8	<b>interpret (2)</b> 4366:10;4437:18	<b>item (16)</b> 4341:19;4342:2; 4372:5;4373:19; 4386:8,11;4387:10; 4401:4,17;4444:24; 4450:12,16;4451:23; 4453:14;4459:19; 4460:5	<b>kind (1)</b> 4337:5	<b>later (1)</b> 4338:1
<b>input (1)</b> 4348:8	<b>interpretation (3)</b> 4431:22;4432:15,16	<b>itemize (1)</b> 4378:25	<b>KISE (30)</b> 4383:5;4394:9,10, 22;4395:5,10;4400:17; 4401:10;4402:2,6,19, 20;4403:5;4417:6; 4423:4,6;4424:7,21; 4425:1,11;4447:9; 4466:8,10;4479:6,10, 18;4480:4,11,19,22	<b>latitude (1)</b> 4411:19
<b>inputs (3)</b> 4436:24;4461:15; 4463:12	<b>into (37)</b> 4337:12;4342:2; 4343:22;4352:9; 4366:14;4371:7; 4378:4;4381:15; 4386:11;4387:16,22; 4402:25;4411:18; 4412:5;4417:19; 4418:6,8;4419:1,2; 4427:24;4430:14; 4432:5,17;4433:2,4,10, 11;4434:21;4436:9; 4440:3;4442:16; 4448:2;4452:23; 4453:6,9;4457:13; 4462:24	<b>issues (4)</b> 4339:2,23;4408:11; 4442:11	<b>knowledge (1)</b> 4343:22	<b>latter (1)</b> 4357:20
<b>inquire (2)</b> 4376:3;4397:10	<b>interpretation (3)</b> 4431:22;4432:15,16	<b>itemized (1)</b> 4455:25	<b>knowledgeable (2)</b> 4438:1,10	<b>law (2)</b> 4394:7;4451:9
<b>inquired (1)</b> 4376:13	<b>into (37)</b> 4337:12;4342:2; 4343:22;4352:9; 4366:14;4371:7; 4378:4;4381:15; 4386:11;4387:16,22; 4402:25;4411:18; 4412:5;4417:19; 4418:6,8;4419:1,2; 4427:24;4430:14; 4432:5,17;4433:2,4,10, 11;4434:21;4436:9; 4440:3;4442:16; 4448:2;4452:23; 4453:6,9;4457:13; 4462:24	<b>itemizes (1)</b> 4426:25	<b>known (4)</b> 4354:13;4389:9,10; 4394:24	<b>lawyer (1)</b> 4395:14
<b>inquiries (9)</b> 4367:6;4376:22; 4382:9;4392:6; 4407:23;4415:23; 4464:5,12;4475:10	<b>investigate (1)</b> 4350:1	<b>items (11)</b> 4340:4;4342:16,19; 4385:17;4386:6; 4400:19,21,25; 4401:11,14;4460:4	<b>knows (5)</b> 4344:5;4394:10; 4424:4;4461:2,7	<b>laying (1)</b> 4474:7
<b>inquiry (1)</b> 4464:15	<b>investigating (1)</b> 4442:11	<b>J</b>	<b>L</b>	<b>lays (1)</b> 4444:1
<b>inserting (1)</b> 4385:24	<b>investment (2)</b> 4390:5;4460:20	<b>jargon (1)</b> 4357:18	<b>lack (12)</b> 4372:9,21;4374:14, 19;4375:13;4414:11, 15,15;4415:7;4416:2, 6;4445:25	<b>lead (3)</b> 4392:5;4407:24,25
<b>instance (4)</b> 4369:24;4449:10; 4464:15;4465:10		<b>Jeff's (2)</b>	<b>laden (1)</b> 4410:20	<b>Leading (7)</b> 4346:14;4347:21; 4381:17;4392:24,25; 4397:2;4407:15
<b>instances (5)</b> 4339:20,21;4436:21; 4437:2;4442:19				<b>learned (4)</b> 4417:6,9;4479:24; 4480:13
				<b>lease (1)</b> 4469:7
				<b>leases (9)</b> 4469:9,22;4470:9, 20,22;4471:1;4473:2,4, 18
				<b>least (4)</b> 4337:17;4347:3; 4363:18;4401:23

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>left (4)</b> 4405:1;4427:9; 4443:16;4444:6	<b>list (2)</b> 4371:25;4385:1	4463:13;4465:3	4392:17,19,19,22	4429:1,11;4431:16,19; 4435:15,21,23;4436:3, 6,19;4442:6,8,11,16, 20;4443:4,8,10; 4454:24;4477:1
<b>legal (1)</b> 4394:8	<b>listed (8)</b> 4364:20;4373:19; 4380:5;4393:7;4457:2; 4458:16;4460:4,5	<b>lower (8)</b> 4348:15,17;4370:11, 19;4405:23;4465:1,7; 4474:1	<b>marked (4)</b> 4422:17;4433:9; 4453:5,12	<b>Mazars' (4)</b> 4343:24;4345:6; 4346:11;4430:24
<b>legally (1)</b> 4393:25	<b>lists (1)</b> 4472:11	<b>lowering (1)</b> 4348:18	<b>market (1)</b> 4387:1	<b>McCarty (1)</b> 4425:3
<b>lens (1)</b> 4455:13	<b>literature (1)</b> 4438:15	<b>lowest (1)</b> 4370:20	<b>marketable (12)</b> 4341:25;4386:5,21, 25;4387:3,7,12;4449:2, 5,6;4450:17;4451:24	<b>McConney (4)</b> 4478:21;4482:13,14, 17
<b>less (4)</b> 4374:7;4399:1; 4401:25;4476:11	<b>little (11)</b> 4338:2;4361:1,25; 4362:3;4363:7;4373:5; 4376:4;4385:3;4407:1; 4413:15;4414:7	<b>lumped (1)</b> 4342:1	<b>markets (1)</b> 4438:1	<b>mean (20)</b> 4339:17;4343:1; 4345:2;4367:23; 4381:8;4387:3; 4393:10;4394:5,22,23; 4395:10;4401:2; 4418:11;4423:10; 4437:18;4444:11; 4459:8;4465:15; 4478:25;4479:5
<b>letter (2)</b> 4385:6,7	<b>LLC (1)</b> 4472:9	<b>lunch (2)</b> 4411:25;4412:9	<b>marks (7)</b> 4345:2,2,5;4388:5; 4403:13;4414:14; 4420:2	<b>meaning (2)</b> 4365:7;4366:10
<b>letters (2)</b> 4477:1,6	<b>loans (2)</b> 4379:22;4450:13	<b>luncheon (1)</b> 4412:12	<b>material (4)</b> 4395:25;4444:19; 4445:15;4450:1	<b>means (7)</b> 4373:6;4376:2; 4388:1;4455:6;4459:4; 4460:6;4470:17
<b>level (5)</b> 4352:9;4381:2; 4430:14;4440:3; 4477:21	<b>locations (1)</b> 4439:15	<b>M</b>	<b>materiality (4)</b> 4450:2,5,7;4451:4	<b>meant (1)</b> 4437:19
<b>Lewis (3)</b> 4444:23,24;4445:16	<b>long (11)</b> 4341:8;4383:16; 4412:6;4417:25; 4418:3;4423:13,17; 4462:3;4480:18,24; 4481:8	<b>MAI (1)</b> 4440:4	<b>materials (6)</b> 4421:3;4423:19; 4435:5;4436:2;4442:8; 4447:21	<b>measure (2)</b> 4376:18;4398:7
<b>liabilities (6)</b> 4340:12;4342:9,12, 16;4439:21;4463:1	<b>longer (1)</b> 4412:2	<b>making (5)</b> 4409:8,22;4450:13; 4463:21;4464:11	<b>matter (2)</b> 4425:23;4457:5	<b>mechanism (1)</b> 4338:25
<b>liability (2)</b> 4340:21,23	<b>look (31)</b> 4345:11;4375:8; 4378:13;4401:21; 4409:14;4413:17; 4424:12;4425:2; 4427:18,20;4443:21; 4446:18;4448:2,5,6,8, 9,14;4450:12,14; 4453:1,3,14;4454:6; 4459:9;4466:14; 4467:7;4469:5; 4472:13;4476:23; 4477:5	<b>management (47)</b> 4348:5;4349:11; 4366:25;4367:6,9; 4370:4,11;4376:17,18; 4377:3,9,23;4379:19, 21;4381:14,22; 4390:22;4391:22,23; 4392:1;4396:24; 4397:6,14;4400:3,4; 4404:11;4405:17,22; 4406:20;4407:12,18, 23;4408:2,5;4409:10; 4410:12,17,22; 4411:16;4415:15; 4419:18;4426:13,24; 4427:6;4436:7,20; 4474:10	<b>may (14)</b> 4349:17;4397:10; 4399:12;4401:12; 4406:23;4423:4,10; 4426:17;4431:23; 4440:10;4442:12; 4445:10;4453:17; 4465:2	<b>meet (1)</b> 4455:12
<b>liar (1)</b> 4479:7	<b>looked (10)</b> 4355:14;4361:7; 4362:1,2;4387:23; 4424:9;4425:4; 4448:12;4453:5; 4467:11	<b>management's (1)</b> 4370:10	<b>maybe (2)</b> 4394:15;4471:12	<b>meets (2)</b> 4449:13,19
<b>license (4)</b> 4377:22;4419:17; 4420:18,24	<b>looking (10)</b> 4351:4,10;4360:9; 4385:5;4425:6,14; 4448:25;4464:17; 4470:20,22	<b>mandated (2)</b> 4349:17;4400:8	<b>Mazars (111)</b> 4343:22;4344:4,7, 10,16;4345:8,24; 4346:4,16,19;4347:12, 19;4348:21;4354:9,10, 13,19;4355:18;4356:3, 4;4358:24;4359:9,16; 4360:21;4361:9,18; 4362:7,16;4363:2,13, 17,18;4364:5,12; 4366:3,19,21,23,24; 4367:1,10,11;4368:20; 4369:16;4372:10; 4373:9,13;4374:16,21; 4375:9;4376:10,13,19; 4377:13;4380:6; 4387:23,25;4388:6; 4389:1,9,10;4390:1; 4391:11,12,19;4392:1, 23;4393:2,8,10,12,15; 4394:1,12,19,25; 4395:15,20;4396:15, 23;4397:6;4407:5,18; 4408:4;4414:12,14; 4415:8,15;4420:19; 4426:14;4427:1;	<b>memory (1)</b> 4452:9
<b>licenses (1)</b> 4379:19	<b>looks (8)</b> 4347:2,6;4370:24; 4371:3,6;4393:5; 4406:9;4407:3	<b>Manhattan (1)</b> 4462:13	<b>maybe (2)</b> 4394:15;4471:12	<b>mention (1)</b> 4372:12
<b>licensing (2)</b> 4343:16;4421:21	<b>Los (3)</b> 4361:20,22;4362:8	<b>manner (2)</b> 4382:11;4390:18	<b>marked (4)</b> 4422:17;4433:9; 4453:5,12	<b>mentioned (2)</b> 4427:5;4473:13
<b>lift (1)</b> 4418:4	<b>lot (11)</b> 4354:4,5;4391:4; 4411:19;4435:8,9,22; 4442:10;4455:24;	<b>mansion (1)</b> 4371:7	<b>market (1)</b> 4387:1	<b>mentions (2)</b> 4389:12;4461:23
<b>lifted (2)</b> 4418:1;4430:18		<b>many (16)</b> 4337:17,19;4339:4; 4370:6;4381:18,18; 4408:10;4409:13; 4439:19;4456:25; 4458:18;4463:12,12, 13,13;4478:16	<b>marks (7)</b> 4345:2,2,5;4388:5; 4403:13;4414:14; 4420:2	<b>merely (1)</b> 4462:1
<b>likely (3)</b> 4366:10;4396:19; 4418:25		<b>Mar-a-Lago (7)</b> 4351:16,19;4352:4, 6;4409:3;4430:1,10	<b>material (4)</b> 4395:25;4444:19; 4445:15;4450:1	<b>met (1)</b> 4455:3
<b>limit (3)</b> 4351:10;4395:10; 4417:2		<b>mark (4)</b>	<b>materiality (4)</b> 4450:2,5,7;4451:4	<b>method (119)</b> 4345:13,16;4346:3, 23;4349:3,4,12,16,18; 4350:17,20;4351:19; 4354:6;4355:5,10,15, 17,21,24;4356:1;
<b>limitation (2)</b> 4406:20;4430:11			<b>materials (6)</b> 4421:3;4423:19; 4435:5;4436:2;4442:8; 4447:21	
<b>limited (4)</b> 4365:2;4379:22; 4445:2;4460:21			<b>matter (2)</b> 4425:23;4457:5	
<b>line (12)</b> 4342:2;4372:5; 4374:4;4386:6,8,11; 4387:10;4406:7,12; 4450:15;4451:23; 4477:21			<b>may (14)</b> 4349:17;4397:10; 4399:12;4401:12; 4406:23;4423:4,10; 4426:17;4431:23; 4440:10;4442:12; 4445:10;4453:17; 4465:2	
<b>lines (1)</b> 4357:18			<b>maybe (2)</b> 4394:15;4471:12	
<b>linked (1)</b> 4436:22			<b>Mazars (111)</b> 4343:22;4344:4,7, 10,16;4345:8,24; 4346:4,16,19;4347:12, 19;4348:21;4354:9,10, 13,19;4355:18;4356:3, 4;4358:24;4359:9,16; 4360:21;4361:9,18; 4362:7,16;4363:2,13, 17,18;4364:5,12; 4366:3,19,21,23,24; 4367:1,10,11;4368:20; 4369:16;4372:10; 4373:9,13;4374:16,21; 4375:9;4376:10,13,19; 4377:13;4380:6; 4387:23,25;4388:6; 4389:1,9,10;4390:1; 4391:11,12,19;4392:1, 23;4393:2,8,10,12,15; 4394:1,12,19,25; 4395:15,20;4396:15, 23;4397:6;4407:5,18; 4408:4;4414:12,14; 4415:8,15;4420:19; 4426:14;4427:1;	
<b>Links (1)</b> 4363:4			<b>marked (4)</b> 4422:17;4433:9; 4453:5,12	

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4358:14,17,23;4359:3,8,11;4360:5,19;4361:3,8,12,17,21;4362:6,11,14,19;4363:1,5,24;4364:2,3,4,9,10,11,16,20,23;4365:6,7,24;4366:2,6;4368:8,10,16,19;4369:5,10,13,15,19,22;4370:18,19;4372:16;4373:2,7,8,12,20;4375:1,21;4376:9,16,17;4377:3,10;4380:10,17,21;4381:21;4382:7;4397:20;4398:17;4399:23;4400:1,2,5,6,7;4404:8;4405:10,14,17,21;4406:3;4407:13;4408:25;4413:19,20,24;4414:1,18,24,25;4457:6;4467:7,17,21;4468:9,11;4469:13,15;4473:9;4477:23;4481:3,3	4395:23,23;4403:21;4454:12;4456:13;4457:2,17;4466:1,6;4472:11,12	4426:12;4429:25;4432:5,17;4433:4,11,21;4434:10,20;4448:21;4452:3;4453:6;4466:12	4365:4;4399:8;4423:16;4444:8;4456:10;4458:20;4462:19	4386:17;4388:17,19,22;4395:6;4403:2;4408:22;4411:2;4420:25;4425:13;4427:20,20;4457:3;4460:5,6,11,17;4462:2,19
<b>mind (3)</b> 4426:10;4436:15;4438:23	<b>mind (3)</b> 4426:10;4436:15;4438:23	<b>moved (2)</b> 4433:2,10	<b>necessitated (1)</b> 4397:12	<b>noted (1)</b> 4388:5
<b>minds (1)</b> 4438:6	<b>minds (1)</b> 4438:6	<b>Moving (39)</b> 4340:5,15;4341:10,20;4342:4,23;4346:23;4348:25;4350:4,16;4351:13;4354:22;4355:9,20;4358:13;4359:2;4360:13;4361:2,20;4362:10,18;4363:24;4367:16;4368:7,22;4369:18;4370:21;4372:23;4373:16;4374:23;4375:18;4377:15;4392:10;4399:14;4406:1;4408:12;4427:7;4453:8;4463:14	<b>Neck (3)</b> 4358:14,16;4414:21	<b>notes (17)</b> 4339:13;4343:6,7;4346:8,13,18;4359:13;4378:25;4386:24;4429:4,21;4435:6;4441:17,18;4449:1;4453:18;4455:9
<b>minority (1)</b> 4390:8	<b>minority (1)</b> 4390:8		<b>need (25)</b> 4363:7;4372:15;4373:13;4376:2,7;4379:3;4380:22;4381:5,7;4397:8;4401:13;4402:7;4406:21;4407:1;4417:12;4421:23;4430:21;4444:13;4447:4;4450:3;4452:1;4456:10;4458:20;4467:22;4478:5	<b>notice (6)</b> 4385:5;4395:16,16;4401:1;4425:20;4426:5
<b>minute (5)</b> 4432:14;4433:1;4453:25;4465:25;4478:7	<b>minute (5)</b> 4432:14;4433:1;4453:25;4465:25;4478:7		<b>needing (1)</b> 4343:25	<b>notifying (1)</b> 4360:10
<b>minutes (2)</b> 4412:8;4440:20	<b>minutes (2)</b> 4412:8;4440:20		<b>needs (3)</b> 4344:11;4394:15;4459:5	<b>noting (1)</b> 4402:2
<b>Miss (2)</b> 4375:18;4376:14	<b>Miss (2)</b> 4375:18;4376:14		<b>negotiation (7)</b> 4469:10,23;4470:10,21;4471:2;4473:5,18	<b>November (1)</b> 4482:22
<b>Model (1)</b> 4377:23	<b>Model (1)</b> 4377:23		<b>net (4)</b> 4374:1,6;4465:1,7	<b>nuance (1)</b> 4347:5
<b>moment (2)</b> 4440:10;4449:3	<b>moment (2)</b> 4440:10;4449:3		<b>New (7)</b> 4357:15;4369:19;4421:4;4422:1,8,12;4425:4	<b>number (25)</b> 4352:16;4371:14;4372:14;4379:15;4398:4;4399:1;4403:19;4406:7;4409:25;4410:3,8;4416:9,11;4420:5;4423:18;4427:16,21,23;4428:2;4429:18;4435:25;4436:21;4451:11;4452:5,15
<b>moments (1)</b> 4417:4	<b>moments (1)</b> 4417:4	<b>much (9)</b> 4365:15;4403:5;4412:2;4447:5,13,16;4450:10;4481:21;4482:9	<b>next (16)</b> 4338:13;4340:5;4341:10;4343:15;4353:3;4367:18;4369:9;4370:25;4379:12;4382:21;4384:16;4392:16;4396:1;4460:1,10;4475:16	<b>numbers (13)</b> 4345:6;4365:4;4381:15;4388:4;4393:7,10;4402:21;4404:6;4417:19;4418:8;4427:24;4461:12;4463:22
<b>Monday (3)</b> 4482:12,14,17	<b>Monday (3)</b> 4482:12,14,17	<b>multi (2)</b> 4444:2;4462:4	<b>Niketown (4)</b> 4346:23,24;4347:18;4348:2	<b>numerous (3)</b> 4357:18;4447:22;4463:12
<b>money (2)</b> 4418:14,14	<b>money (2)</b> 4418:14,14	<b>multiplier (1)</b> 4374:6	<b>nine (2)</b> 4450:8;4453:3	
<b>morally (2)</b> 4393:25;4426:18	<b>morally (2)</b> 4393:25;4426:18	<b>multiply (1)</b> 4373:25	<b>Nobody (1)</b> 4401:17	<b>O</b>
<b>more (33)</b> 4338:2;4348:3;4360:16;4361:1;4362:3;4363:7;4365:15,17;4375:7;4376:7;4380:22;4381:5,7;4385:3,6,6,16;4388:21;4390:21;4392:4;4394:16;4401:7;4403:5;4407:1;4409:24;4419:1;4458:23;4460:14;4465:3;4468:8;4471:12;4478:18;4481:9	<b>more (33)</b> 4338:2;4348:3;4360:16;4361:1;4362:3;4363:7;4365:15,17;4375:7;4376:7;4380:22;4381:5,7;4385:3,6,6,16;4388:21;4390:21;4392:4;4394:16;4401:7;4403:5;4407:1;4409:24;4419:1;4458:23;4460:14;4465:3;4468:8;4471:12;4478:18;4481:9	<b>Must (1)</b> 4338:18	<b>None (1)</b> 4435:22	<b>O</b>
<b>more-detailed (1)</b> 4387:24	<b>more-detailed (1)</b> 4387:24	<b>mutual (1)</b> 4386:24	<b>notation (3)</b> 4380:25;4387:25;4389:22	<b>oath (1)</b> 4413:8
<b>morning (9)</b> 4337:10,11,15,16;4383:3;4481:10;4482:5,6,12	<b>morning (9)</b> 4337:10,11,15,16;4383:3;4481:10;4482:5,6,12	<b>myself (1)</b> 4402:11	<b>notations (1)</b> 4380:11	<b>object (5)</b> 4357:4;4397:1;4422:5,22,24
<b>most (5)</b> 4360:16,17;4447:23;4455:25;4481:18	<b>most (5)</b> 4360:16,17;4447:23;4455:25;4481:18		<b>note (38)</b> 4343:7,14,16,17;4345:24;4348:3,11;4356:8;4359:22,25;4360:14,14,22;4374:9,12;4378:13,16,20,21;	<b>objecting (2)</b> 4426:2,4
<b>motion (1)</b> 4356:17	<b>motion (1)</b> 4356:17	<b>Nations (1)</b> 4462:11		<b>Objection (34)</b> 4344:7;4346:14;4347:15,21;4354:16;4356:8,22;4366:21;
<b>mouse (1)</b> 4434:8	<b>mouse (1)</b> 4434:8	<b>native (1)</b> 4471:24		
<b>move (19)</b> 4396:22;4397:15;4404:17;4405:7;4408:18;4419:17;	<b>move (19)</b> 4396:22;4397:15;4404:17;4405:7;4408:18;4419:17;	<b>nature (5)</b> 4351:10;4385:23;4397:10;4409:13;4424:23		
		<b>necessarily (7)</b>		



Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4381:17;4390:14; 4392:24;4393:17; 4398:9;4402:14; 4407:15;4411:3,9; 4416:20;4421:1,24; 4422:4;4425:19; 4426:8,10;4429:5; 4438:3;4447:9;4453:7; 4466:7;4471:5;4479:6, 11;4480:4,19 <b>obligated (1)</b> 4426:19 <b>obligation (19)</b> 4359:16;4376:21; 4381:10,13,20,22,24; 4382:3;4407:5,18,20; 4408:4;4415:17; 4429:12;4474:10; 4476:25;4477:24; 4480:3,17 <b>obligations (3)</b> 4341:1;4416:24; 4430:24 <b>obscure (4)</b> 4463:20;4464:25; 4465:2;4466:4 <b>obscuring (1)</b> 4465:21 <b>observe (4)</b> 4435:2,14,20; 4436:19 <b>observed (4)</b> 4393:2,12,15;4394:2 <b>obtained (1)</b> 4439:13 <b>obtaining (2)</b> 4408:8;4439:21 <b>obtains (1)</b> 4343:23 <b>obvious (4)</b> 4392:9;4393:5; 4415:18,20 <b>Obviously (2)</b> 4356:14;4400:15 <b>occasionally (1)</b> 4395:14 <b>occurred (2)</b> 4338:1;4393:6 <b>off (1)</b> 4422:25 <b>offer (1)</b> 4421:19 <b>offered (1)</b> 4422:1 <b>offering (4)</b> 4356:15;4421:4,9; 4429:7 <b>Office (2)</b> 4372:23;4388:21 <b>OFFICER (4)</b> 4337:1;4383:1; 4413:1;4441:1 <b>offsetting (1)</b>	4371:14 <b>often (2)</b> 4355:4;4464:20 <b>Old (1)</b> 4372:23 <b>omit (1)</b> 4342:12 <b>one (81)</b> 4339:24;4340:19; 4342:2;4345:12,17; 4349:8,14,14;4351:22; 4355:7;4364:21; 4365:8;4367:18,24; 4370:18;4372:21; 4375:15;4385:8,10; 4386:8,11;4390:12; 4391:20;4396:1; 4400:11,23;4401:7,8, 21;4402:10,20;4403:9, 12;4405:25;4412:5; 4415:3;4418:18; 4423:18;4431:20,23; 4433:5;4436:24,24,24; 4439:19,21;4445:21; 4446:2,19;4448:1,2; 4449:3;4450:11,15; 4451:15;4453:4,5; 4454:16,22,23; 4457:14;4459:18; 4460:4,14;4461:23; 4462:3;4463:14; 4465:25;4467:20; 4468:11;4469:16; 4472:9;4473:20; 4477:6;4478:1,10,12; 4480:1,15,21;4481:1 <b>One57 (1)</b> 4380:25 <b>one-for-one (1)</b> 4378:24 <b>ones (1)</b> 4454:25 <b>only (19)</b> 4337:4;4338:25; 4348:19;4357:20; 4389:21;4395:25,25; 4398:12;4406:6,22; 4407:3;4422:23; 4431:20;4446:5; 4448:2;4475:7;4478:1; 4480:21;4482:14 <b>onto (19)</b> 4340:5,15;4341:10, 20;4342:4,23;4348:25; 4350:4,16;4351:13; 4372:23;4373:16; 4374:23;4375:18; 4377:15;4399:14; 4406:1;4408:12; 4418:12 <b>open (2)</b> 4388:11;4444:5 <b>operate (1)</b>	4379:19 <b>operating (11)</b> 4343:8;4345:11; 4374:1,7;4386:23; 4387:5,7,9;4449:7; 4451:17,20 <b>operation (1)</b> 4379:21 <b>operational (2)</b> 4359:12;4362:24 <b>operations (6)</b> 4454:15;4457:5; 4458:5;4469:12; 4470:16;4473:7 <b>operative (1)</b> 4360:3 <b>opine (1)</b> 4394:25 <b>opining (2)</b> 4356:9;4364:24 <b>opinion (37)</b> 4356:16;4357:2,2, 10,11,13;4358:2,6; 4394:16,25;4402:18; 4421:4,9;4422:1,8,12, 22;4423:2,13,15,17,18, 23;4424:14,16,18; 4425:9,20;4426:5; 4441:13;4442:13; 4443:22;4446:2; 4455:17;4456:2; 4461:24;4479:16 <b>opinions (10)</b> 4421:5;4423:7,8,9,9; 4424:8,15,23;4426:7; 4475:14 <b>OPO (2)</b> 4420:10;4426:15 <b>opportunity (2)</b> 4424:17;4448:5 <b>opposed (3)</b> 4386:11;4393:21; 4397:3 <b>opposition (1)</b> 4357:13 <b>opting (1)</b> 4357:19 <b>option (1)</b> 4400:8 <b>order (17)</b> 4337:6;4342:14; 4383:2,4,8,19;4407:7; 4410:22;4411:22; 4413:3;4438:11; 4441:2;4449:25; 4454:22;4455:2; 4465:8;4481:12 <b>Organization (16)</b> 4347:13,19;4348:5, 17,22;4352:12;4354:9; 4388:3;4389:14; 4420:20;4430:17; 4436:7,20;4473:25;	4477:2,2 <b>orient (1)</b> 4459:17 <b>others (1)</b> 4392:8 <b>otherwise (1)</b> 4423:12 <b>out (25)</b> 4344:23;4345:1; 4356:18;4371:7; 4377:4;4384:8; 4385:16,20;4386:11; 4393:24;4397:18; 4399:7;4401:1;4420:5; 4422:17;4424:12; 4432:3;4444:1; 4450:19;4451:25; 4462:25;4463:14; 4470:6,11,22 <b>outline (2)</b> 4411:25;4412:5 <b>outside (15)</b> 4354:10;4377:9; 4381:10,20;4407:12; 4436:8,18;4437:4,13, 18,21;4442:8;4454:14; 4469:8;4473:3 <b>over (15)</b> 4337:23;4345:17; 4365:22;4395:7; 4396:4;4422:18; 4429:11;4435:24; 4442:9,20;4458:17; 4463:10;4476:10; 4478:15;4481:15 <b>overall (4)</b> 4357:16;4371:8; 4372:14;4374:2 <b>overlooking (2)</b> 4347:6;4470:13 <b>overrule (1)</b> 4426:10 <b>Overruled (9)</b> 4344:15;4354:18; 4358:10;4398:14; 4411:11;4417:5; 4426:12;4429:9; 4480:21 <b>oversaw (1)</b> 4395:7 <b>overseeing (1)</b> 4394:13 <b>own (14)</b> 4455:15,17,19; 4456:2,6,14,15,16; 4457:1,7,10,14; 4458:13,14 <b>owned (6)</b> 4379:17;4389:1,23; 4420:14,24;4426:21 <b>owner (1)</b> 4418:12 <b>ownership (6)</b>	4373:24;4374:3,17; 4376:6;4389:5; 4420:17 <b>owning (1)</b> 4388:22 <b>owns (1)</b> 4374:12  <b>P</b>  <b>page (38)</b> 4338:13;4352:23; 4353:3;4357:12; 4359:22,23;4370:25; 4378:16,17;4379:7,12; 4382:21;4386:13,14; 4388:16,17;4419:25; 4420:9;4421:15; 4427:19;4433:21; 4434:1,8;4444:21; 4449:4;4453:3;4454:9; 4456:21;4459:14; 4460:1,10;4462:6; 4466:15;4468:15,25; 4472:22;4474:19; 4475:16 <b>Palace (1)</b> 4369:9 <b>Palm (2)</b> 4377:25;4379:10 <b>paper (4)</b> 4345:6;4348:24; 4399:25;4415:5 <b>papers (4)</b> 4383:7;4435:23; 4443:11;4463:11 <b>paragraph (18)</b> 4339:7;4343:5; 4385:13,14,14,18,19; 4386:4;4388:20; 4454:11;4456:22,23; 4462:9;4468:15; 4469:5;4470:14; 4474:16,23 <b>paragraphs (1)</b> 4462:4 <b>parcel (2)</b> 4397:23;4427:17 <b>parcels (3)</b> 4366:14,24;4367:9 <b>parentheses (1)</b> 4388:11 <b>Park (12)</b> 4350:16,18;4368:7, 7,20;4369:10,10; 4406:1;4408:18; 4416:8,11;4419:11 <b>parlance (2)</b> 4345:5;4388:1 <b>Part (26)</b> 4337:1;4344:10; 4354:5;4359:15; 4360:11;4362:2;
---	--	--	--	--

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4367:1;4383:1;4413:1; 4416:6;4421:5; 4422:23;4423:1,6,7; 4425:9;4426:6,15; 4427:5;4429:23; 4441:1;4450:15; 4454:18;4470:13; 4475:4;4477:25 <b>particular (18)</b> 4337:24;4339:16; 4344:2;4348:15; 4349:18;4354:11; 4372:1;4378:9; 4380:22;4387:23; 4388:5;4392:8; 4401:17;4402:17; 4439:21;4440:8,9; 4465:8 <b>particularly (3)</b> 4410:6;4458:18; 4477:11 <b>parties (8)</b> 4382:20;4440:23; 4443:23,24;4444:14, 15;4445:18,24 <b>partnership (8)</b> 4373:19,21,25; 4379:23;4449:13,19; 4451:7;4460:21 <b>partnerships (4)</b> 4343:14;4373:16; 4374:11;4451:5 <b>parts (3)</b> 4427:25;4444:2; 4463:14 <b>party (2)</b> 4444:1,7 <b>past (2)</b> 4468:12;4472:16 <b>pasting (1)</b> 4381:14 <b>pause (1)</b> 4436:4 <b>pay (2)</b> 4464:20;4465:8 <b>payments (1)</b> 4460:23 <b>PBC (3)</b> 4388:1;4420:3; 4422:17 <b>penalty (1)</b> 4465:9 <b>pending (1)</b> 4468:8 <b>Penn (5)</b> 4430:25;4431:3,16, 20,21 <b>people (1)</b> 4465:7 <b>Per (3)</b> 4360:15;4380:15; 4398:1 <b>percent (34)</b>	4339:15;4343:1,20; 4358:20;4360:24; 4366:13;4367:4; 4374:4,13,17;4376:5; 4388:12,23,25;4389:1, 3,4,7,16,22,23;4390:2, 7,11,20;4391:24; 4396:17;4406:8; 4446:10;4448:12; 4451:19;4460:21,23; 4472:10 <b>percentage (2)</b> 4373:24;4376:6 <b>perform (4)</b> 4382:9;4415:23; 4450:2;4461:14 <b>performance (1)</b> 4339:21 <b>performed (5)</b> 4373:24;4431:1; 4442:16;4476:8,9 <b>performing (9)</b> 4376:3,22;4380:23; 4391:15;4394:1; 4395:20;4415:21; 4429:22;4475:6 <b>performs (1)</b> 4477:22 <b>perhaps (6)</b> 4367:6;4376:23; 4382:9;4394:15; 4418:1,4 <b>period (13)</b> 4339:16;4385:8; 4419:13;4423:11; 4435:1,16,18;4467:8,9; 4470:5,11,23;4471:3 <b>permissible (1)</b> 4349:19 <b>permissive (1)</b> 4352:2 <b>permit (2)</b> 4410:12,16 <b>permits (1)</b> 4368:16 <b>permitted (6)</b> 4337:4;4352:2,8; 4365:1;4405:14; 4409:10 <b>Persimmons (1)</b> 4397:25 <b>person (2)</b> 4455:4;4463:21 <b>personal (7)</b> 4431:25;4452:23; 4453:15;4464:15,19; 4476:5,9 <b>perspective (5)</b> 4400:7;4430:16,20; 4433:20;4470:25 <b>pertaining (1)</b> 4406:24 <b>Philadelphia (3)</b>	4361:3,5;4414:22 <b>phone (1)</b> 4465:5 <b>phones (2)</b> 4337:3,4 <b>photography (1)</b> 4337:5 <b>pick (2)</b> 4478:1,10 <b>piece (3)</b> 4425:7,15;4449:2 <b>place (2)</b> 4431:11,13 <b>placed (2)</b> 4354:2;4403:25 <b>places (1)</b> 4435:9 <b>placing (1)</b> 4381:25 <b>Plaintiff (1)</b> 4424:5 <b>Plaintiff's (42)</b> 4338:4;4344:20; 4352:19;4354:24; 4384:5,6,17;4387:15; 4388:15;4392:11,12; 4399:15,16;4402:15; 4403:3,9;4404:10,18, 21;4406:2;4408:13,14; 4413:12;4419:15,16, 21;4425:17;4448:18, 19,24;4453:2,8,12; 4454:9;4459:11; 4462:6;4466:15; 4467:25;4468:1,21; 4471:20;4472:19 <b>planned (19)</b> 4352:11;4368:1,3,4, 16;4369:2;4371:11,20; 4398:7;4399:2,5,7,9; 4408:25;4409:6; 4410:18;4417:22; 4427:22;4430:11 <b>plausible (1)</b> 4476:21 <b>play (1)</b> 4424:21 <b>player (1)</b> 4395:14 <b>Plaza (3)</b> 4368:22;4369:6; 4462:11 <b>Please (27)</b> 4337:14;4344:12,19; 4353:1;4359:24; 4383:2;4384:1; 4386:20;4387:15; 4405:19;4410:15; 4413:3,9,17;4414:7; 4417:12,13,14,15; 4422:3;4441:2,6; 4449:3,16;4461:5; 4472:19;4474:23	<b>plus (1)</b> 4368:24 <b>podium (1)</b> 4337:8 <b>point (13)</b> 4344:8;4357:17; 4363:4;4382:12; 4393:24;4411:3,10,25; 4418:5;4419:6;4424:2, 5,7 <b>pointing (1)</b> 4401:1 <b>points (4)</b> 4348:15,19,20; 4441:11 <b>portion (3)</b> 4394:13;4407:3; 4423:2 <b>position (8)</b> 4441:20;4442:15,18; 4449:12,18,22; 4451:11;4465:20 <b>possessed (1)</b> 4400:3 <b>possession (6)</b> 4370:10;4404:11; 4405:17,23,24;4474:1 <b>possibilities (1)</b> 4410:21 <b>possibility (1)</b> 4419:3 <b>Post (1)</b> 4372:23 <b>potential (3)</b> 4339:2;4391:16; 4406:23 <b>potentially (5)</b> 4352:13;4407:24; 4473:19,20;4478:10 <b>pour (1)</b> 4446:25 <b>practically (1)</b> 4393:25 <b>practice (4)</b> 4432:2,25;4476:1,4 <b>practices (1)</b> 4432:2 <b>precisely (1)</b> 4394:16 <b>preclude (6)</b> 4349:11;4356:17; 4358:22;4399:8,11; 4400:4 <b>preface (1)</b> 4441:19 <b>prejudice (2)</b> 4358:8;4426:11 <b>premised (1)</b> 4464:1 <b>premium (19)</b> 4356:11,16,20; 4357:3;4358:19; 4359:12,14;4360:10,	11,20,23,25;4362:23; 4366:13,18,22,24; 4367:4,8 <b>preparation (1)</b> 4358:1 <b>prepare (1)</b> 4455:10 <b>prepared (10)</b> 4345:7;4357:25; 4388:2,2;4415:4; 4444:22;4459:20; 4464:23;4476:5; 4479:16 <b>preparer (4)</b> 4347:19;4354:5; 4370:6;4463:19 <b>preparer's (1)</b> 4341:1 <b>preparing (12)</b> 4343:21;4354:11; 4377:8;4402:18; 4406:21;4420:12; 4425:8;4454:24; 4455:9,9;4464:2; 4474:11 <b>prerogative (1)</b> 4401:22 <b>present (1)</b> 4358:8 <b>presentation (4)</b> 4339:3;4342:3; 4352:25;4386:4 <b>presented (4)</b> 4357:8,9;4359:18; 4450:21 <b>President (2)</b> 4388:18;4405:2 <b>presiding (2)</b> 4337:2;4413:2 <b>press (1)</b> 4337:4 <b>presumably (1)</b> 4455:14 <b>prevailing (1)</b> 4395:19 <b>previous (2)</b> 4410:19;4415:3 <b>previously (3)</b> 4404:14;4416:10; 4422:7 <b>price (21)</b> 4350:24,24;4367:21, 23;4368:13,15;4371:7, 9,10,13,14;4372:5; 4406:13,14,18,19; 4408:23;4414:9; 4416:12,13;4439:13 <b>prices (2)</b> 4372:13;4387:1 <b>Principles (1)</b> 4384:23 <b>printout (2)</b> 4433:25;4434:9
--	--	--	---	--

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<p><b>prior (15)</b> 4349:7;4355:14; 4358:18;4359:6; 4361:15;4362:1; 4366:8;4369:13; 4384:14,18;4415:4; 4421:5;4422:2,25; 4473:11</p> <p><b>private (1)</b> 4464:10</p> <p><b>privy (1)</b> 4443:10</p> <p><b>probability (1)</b> 4430:22</p> <p><b>probably (3)</b> 4362:3;4401:6; 4402:4</p> <p><b>problem (1)</b> 4442:15</p> <p><b>procedure (1)</b> 4480:14</p> <p><b>procedures (1)</b> 4429:23</p> <p><b>proceed (3)</b> 4337:14;4384:1; 4441:6</p> <p><b>proceedings (3)</b> 4398:19;4428:5; 4457:20</p> <p><b>process (7)</b> 4344:9,10;4356:9; 4377:7;4429:20; 4465:12;4479:24</p> <p><b>professional (25)</b> 4343:24;4377:12; 4394:2,11;4396:14; 4407:7,17,20;4408:6; 4415:14,17,22; 4416:24;4422:13; 4426:19,23;4427:3; 4429:2,24;4443:9; 4447:16,17;4479:2; 4480:2,16</p> <p><b>professionally (1)</b> 4476:21</p> <p><b>professionals (9)</b> 4436:8,19;4437:4, 13,18,21;4454:14; 4469:9;4473:4</p> <p><b>Professor (2)</b> 4357:7,15</p> <p><b>profit (5)</b> 4371:14,16,16,19; 4372:14</p> <p><b>project (1)</b> 4364:18</p> <p><b>projected (2)</b> 4430:19;4460:22</p> <p><b>prompted (1)</b> 4376:12</p> <p><b>prong (1)</b> 4472:15</p> <p><b>proper (2)</b></p>	<p>4425:20;4426:5</p> <p><b>properly (2)</b> 4426:7;4442:14</p> <p><b>properties (50)</b> 4342:10;4343:8,13; 4348:14,14;4349:7; 4351:7;4352:25; 4354:2;4358:18; 4360:2,6,12;4361:15; 4362:1,22;4369:14; 4370:16,21;4373:4; 4374:1,8,13;4379:22; 4388:23;4389:12; 4395:22;4415:2; 4417:24,25;4420:8,14, 21,24;4426:25;4427:5; 4436:22;4437:3,9,10, 19,24;4439:15,23; 4452:6;4455:25; 4456:3,13,25;4478:22</p> <p><b>property (40)</b> 4345:11;4350:14; 4355:14;4356:6; 4357:22;4359:6,15; 4363:4,23;4366:9; 4368:24;4370:22,22; 4371:5;4374:21; 4375:4;4377:19,23; 4379:3;4381:2; 4388:19;4415:4; 4420:16;4427:11,12, 22;4430:1,13;4436:25; 4452:16;4458:10; 4462:24;4463:3,4,14; 4465:22;4473:11; 4477:4,14,19</p> <p><b>proposed (5)</b> 4383:4,8;4416:18; 4417:1,2</p> <p><b>prospective (5)</b> 4351:4;4409:15; 4468:12,18;4472:17</p> <p><b>provide (17)</b> 4346:1;4348:11; 4407:18;4408:5; 4411:19;4415:15; 4447:17;4457:17; 4459:4;4463:17; 4464:14,24;4474:10; 4475:5;4477:2,25; 4478:5</p> <p><b>provided (35)</b> 4345:18;4347:7; 4348:6,8;4349:8; 4354:10,19;4355:7,25; 4356:4;4357:11; 4360:22;4380:6; 4382:1;4387:2,23,24; 4389:12;4408:2; 4414:13;4427:1; 4434:17;4435:15,21, 23;4436:6,8,19;4442:5, 8,20;4458:16;4475:7,</p>	<p>12;4477:8</p> <p><b>provides (1)</b> 4348:3</p> <p><b>providing (1)</b> 4464:2</p> <p><b>provision (3)</b> 4341:16,18;4455:3</p> <p><b>public (1)</b> 4464:10</p> <p><b>pull (26)</b> 4338:4;4344:19; 4381:23;4387:15; 4388:14;4403:9; 4419:21;4427:8,12; 4431:6;4432:10,22; 4433:6,15;4438:16,22; 4444:20;4448:18; 4453:2;4454:8; 4456:18;4459:11; 4466:15;4471:20; 4474:15,22</p> <p><b>purchase (1)</b> 4397:25</p> <p><b>purposes (5)</b> 4358:21;4386:7; 4434:9;4450:12; 4464:19</p> <p><b>pursuant (2)</b> 4379:24;4476:6</p> <p><b>purview (1)</b> 4394:25</p> <p><b>put (15)</b> 4383:12,12,21; 4402:24;4409:24; 4410:3;4413:12; 4421:18;4427:8; 4430:15;4433:16; 4448:10;4465:3; 4468:5;4478:1</p> <p><b>putting (2)</b> 4385:21;4451:1</p> <p><b>PX-742 (1)</b> 4427:10</p> <p><b>PX-756 (1)</b> 4427:9</p>	<p><b>R</b></p> <p><b>raise (1)</b> 4402:13</p> <p><b>raised (3)</b> 4366:25;4423:15; 4478:17</p> <p><b>raising (1)</b> 4407:9</p> <p><b>ran (1)</b> 4478:13</p> <p><b>range (3)</b> 4349:13;4370:15; 4410:21</p> <p><b>Ranita (3)</b> 4398:20;4428:6; 4457:21</p> <p><b>rate (48)</b> 4345:19,25;4346:1; 4347:13,17,25;4348:1, 4,6,10,12,17,21; 4350:21,21;4365:6; 4400:6;4406:6,7,9; 4407:2;4415:6; 4418:20;4454:14; 4457:4,18;4458:1,10, 23;4460:24;4461:2,7, 12,20,23;4463:6,15,20, 22;4464:5;4465:20,22; 4466:4,5;4469:10,20; 4470:14;4473:5</p> <p><b>rates (6)</b> 4347:9;4348:14; 4459:1,7;4463:13,17</p> <p><b>rather (2)</b> 4338:22;4380:20</p> <p><b>rationale (4)</b> 4360:23,24;4390:22; 4391:2</p> <p><b>reach (1)</b> 4466:6</p> <p><b>reaching (1)</b> 4346:8</p> <p><b>read (12)</b> 4338:19,22;4344:12, 13;4367:24;4386:19; 4417:14,15,16; 4426:20;4457:12; 4475:2</p> <p><b>readback (1)</b> 4417:13</p> <p><b>reader (7)</b> 4451:18;4455:5,15, 17;4461:2,7,11</p> <p><b>readers (1)</b> 4450:11</p> <p><b>readily (3)</b> 4435:15,20;4442:4</p> <p><b>reading (5)</b> 4347:25;4348:3; 4414:10;4458:8; 4470:19</p>	<p><b>real (9)</b> 4343:7,16;4345:11; 4377:1;4421:20; 4438:1;4439:14,22; 4460:21</p> <p><b>realize (1)</b> 4451:18</p> <p><b>really (8)</b> 4365:2;4402:9,22; 4409:25;4411:18; 4425:22;4430:14; 4444:15</p> <p><b>reason (7)</b> 4341:3;4361:24; 4381:5;4404:14; 4418:1;4463:8;4479:1</p> <p><b>reasonable (6)</b> 4392:5,6;4447:16, 20;4461:12,16</p> <p><b>reasons (8)</b> 4359:6;4361:15; 4363:15;4385:8; 4430:17;4463:5; 4465:3;4473:10</p> <p><b>rebuttal (7)</b> 4421:16,19,20,21; 4422:23;4425:20; 4444:21</p> <p><b>rebutting (1)</b> 4425:21</p> <p><b>recalculate (2)</b> 4458:12;4466:1</p> <p><b>recalculation (1)</b> 4461:14</p> <p><b>recall (17)</b> 4436:21,23,24; 4441:24;4442:7; 4443:6,21,22;4447:1,6, 25;4452:14;4461:22; 4465:10,16;4467:15; 4478:18</p> <p><b>receipts (1)</b> 4460:23</p> <p><b>receivables (1)</b> 4377:23</p> <p><b>received (3)</b> 4363:20;4383:11; 4408:7</p> <p><b>receiving (1)</b> 4357:3</p> <p><b>recess (1)</b> 4412:12</p> <p><b>recognize (3)</b> 4338:8;4384:10; 4466:24</p> <p><b>recollection (3)</b> 4447:3;4448:6; 4450:10</p> <p><b>record (10)</b> 4400:20;4401:12,13, 15,23;4404:9;4417:16; 4433:3;4434:10; 4457:13</p>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>recorded (3)</b> 4398:20;4428:6; 4457:21	4452:15;4479:21	<b>rental (5)</b> 4350:25;4367:21; 4368:24;4406:14; 4416:13	4387:19;4449:7; 4453:6;4472:2	<b>respect (11)</b> 4371:23;4385:25; 4397:6;4400:21; 4401:10;4406:18; 4419:9;4430:10; 4432:15;4435:13; 4436:6
<b>recording (2)</b> 4337:5;4451:6	<b>regarding (1)</b> 4363:22	<b>regime (1)</b> 4341:6	<b>represented (2)</b> 4390:2;4432:1	<b>respond (4)</b> 4367:5;4392:9; 4407:22;4421:13
<b>records (2)</b> 4398:4;4403:2	<b>regularly (1)</b> 4465:13	<b>rented (1)</b> 4472:11	<b>represents (2)</b> 4386:22;4387:4	<b>responded (1)</b> 4466:11
<b>red (13)</b> 4345:2;4357:20; 4372:11;4390:19,23; 4392:17,19,19,22; 4393:9;4403:13; 4420:2;4478:17	<b>relate (1)</b> 4343:24	<b>rents (1)</b> 4472:8	<b>reputation (1)</b> 4360:1	<b>response (2)</b> 4441:12;4444:22
<b>redirect (2)</b> 4481:20,21	<b>related (23)</b> 4340:1;4341:24; 4351:23;4358:19; 4360:9;4374:1,7; 4379:23;4380:12; 4382:18;4416:5; 4431:25;4443:23,24; 4444:1,7,14,15; 4445:18,24;4462:4; 4463:1;4481:13	<b>repeat (9)</b> 4353:1;4402:10; 4405:19;4410:15; 4422:3;4435:17; 4445:7;4449:16; 4461:5	<b>request (1)</b> 4422:6	<b>responses (1)</b> 4475:9
<b>reducing (1)</b> 4348:19	<b>relates (4)</b> 4340:20;4341:15; 4360:8;4371:8	<b>repetition (1)</b> 4401:3	<b>required (2)</b> 4344:13;4452:2	<b>responsibilities (1)</b> 4442:11
<b>reduction (1)</b> 4393:16	<b>relating (1)</b> 4462:19	<b>rephrase (3)</b> 4422:3,22;4445:11	<b>require (19)</b> 4346:20;4352:24; 4370:5,19;4377:13; 4382:8;4394:18; 4395:4,15;4396:23; 4397:4,6;4415:14; 4416:18;4417:2; 4440:1,4,7;4454:19	<b>responsibility (3)</b> 4346:11,16;4426:22
<b>reference (11)</b> 4348:7,18;4357:6; 4363:8;4366:9;4373:5; 4375:25;4376:5; 4388:22;4420:16; 4473:16	<b>related-party (10)</b> 4421:14,17;4443:15, 18;4444:12;4445:1,18, 22;4446:1,3	<b>report (71)</b> 4338:12,17,18,23,25; 4339:1,5,7;4340:6; 4341:9,25;4343:3,6,21; 4344:8;4350:13; 4363:18,21;4367:7; 4372:22;4375:16; 4376:24;4382:10; 4384:21,22;4385:11, 16,18,22,24;4386:1; 4391:20;4397:14; 4408:1,11;4416:1,5; 4420:13;4421:16,20, 22;4422:15,23;4423:1; 4425:8;4435:6;4442:1, 24;4443:17,21;4444:6, 21,23;4445:16;4448:8, 14,16;4449:14,20; 4450:12;4454:7; 4455:6,18,22;4456:19; 4463:21;4474:11,16; 4475:10;4476:15; 4477:19	<b>required (18)</b> 4340:11;4344:5,16; 4367:15;4370:11; 4391:15;4394:7,7,18, 19,23;4395:21;4396:6, 19;4397:11;4408:7; 4461:25;4465:4	<b>responsible (1)</b> 4367:1
<b>referenced (2)</b> 4432:25;4437:16	<b>relation (1)</b> 4396:14	<b>rephrase (3)</b> 4422:3,22;4445:11	<b>requirement (19)</b> 4341:16,24;4345:14; 4349:5,24;4351:20; 4361:13;4363:6; 4366:7;4368:5; 4369:11;4415:23; 4444:5;4454:21,23; 4455:13;4463:17,19; 4475:3	<b>rest (2)</b> 4472:13;4474:22
<b>references (5)</b> 4343:6;4385:13; 4414:14;4415:5; 4439:21	<b>relationship (2)</b> 4420:17,18	<b>report (71)</b> 4338:12,17,18,23,25; 4339:1,5,7;4340:6; 4341:9,25;4343:3,6,21; 4344:8;4350:13; 4363:18,21;4367:7; 4372:22;4375:16; 4376:24;4382:10; 4384:21,22;4385:11, 16,18,22,24;4386:1; 4391:20;4397:14; 4408:1,11;4416:1,5; 4420:13;4421:16,20, 22;4422:15,23;4423:1; 4425:8;4435:6;4442:1, 24;4443:17,21;4444:6, 21,23;4445:16;4448:8, 14,16;4449:14,20; 4450:12;4454:7; 4455:6,18,22;4456:19; 4463:21;4474:11,16; 4475:10;4476:15; 4477:19	<b>requirements (24)</b> 4346:25;4350:18; 4355:12,23;4358:16; 4359:5;4361:4,23; 4362:12,20;4364:1,18; 4365:25;4368:9; 4369:6,20;4373:3,22; 4375:2,22;4407:10; 4415:1;4431:4;4479:3	<b>restart (1)</b> 4451:3
<b>referencing (2)</b> 4345:5;4369:21	<b>relative (1)</b> 4430:24	<b>reported (20)</b> 4338:3;4340:23; 4382:11;4386:6; 4390:6;4393:22; 4394:3;4407:24; 4416:7;4445:3; 4446:16;4449:11; 4451:16;4455:20; 4457:8;4475:6,8; 4477:16,18;4480:25	<b>requires (1)</b> 4440:8	<b>restate (3)</b> 4441:19;4457:9; 4467:14
<b>referred (5)</b> 4345:4;4415:22; 4432:14;4453:11,25	<b>relevance (3)</b> 4411:2,9;4423:25	<b>rely (6)</b> 4392:1,8;4402:22; 4407:12;4409:11; 4423:13	<b>reside (1)</b> 4387:8	<b>restatement (1)</b> 4417:13
<b>referring (9)</b> 4356:19;4432:16; 4436:12,13;4441:16; 4451:15;4453:23; 4468:14;4473:17	<b>relevant (8)</b> 4356:21;4367:7; 4406:23;4407:3; 4416:23;4429:12; 4462:24;4463:3	<b>reliance (1)</b> 4338:22	<b>resided (1)</b> 4337:25	<b>restraints (1)</b> 4430:18
<b>refers (2)</b> 4355:3;4460:5	<b>remember (6)</b> 4402:21;4447:14; 4452:7,19;4474:3,4	<b>relied (20)</b> 4338:3;4340:23; 4382:11;4386:6; 4390:6;4393:22; 4394:3;4407:24; 4416:7;4445:3; 4446:16;4449:11; 4451:16;4455:20; 4457:8;4475:6,8; 4477:16,18;4480:25	<b>residences (1)</b> 4428:2	<b>restriction (1)</b> 4378:6
<b>reflect (8)</b> 4342:15;4359:25; 4388:17;4389:7,17,22; 4390:11;4406:9	<b>remind (2)</b> 4413:7,7	<b>reports (3)</b> 4337:21;4422:18; 4454:18	<b>residential (6)</b> 4350:24;4397:23; 4406:13,19;4416:12; 4462:12	<b>restrictions (2)</b> 4416:17;4430:12
<b>reflected (5)</b> 4340:21;4343:18; 4370:10;4372:6; 4405:18	<b>remote (1)</b> 4415:10	<b>represent (4)</b> 4337:21;4422:18; 4454:18	<b>resolve (2)</b> 4408:9;4415:23	<b>result (2)</b> 4370:20;4396:25
<b>reflection (1)</b> 4477:12	<b>rendered (1)</b> 4423:17	<b>represent (4)</b> 4337:21;4422:18; 4454:18		<b>resultant (4)</b> 4469:11;4470:15,21; 4473:6
<b>reflects (3)</b> 4343:20;4388:8; 4470:18	<b>renegotiation (2)</b> 4469:7;4473:2			<b>resulted (2)</b> 4370:9;4442:22
<b>refresh (2)</b> 4448:6;4452:9	<b>renew (1)</b> 4356:17			<b>results (1)</b> 4370:17
<b>regard (11)</b> 4339:2,23;4340:11; 4347:3;4351:6; 4367:25;4381:8; 4415:2;4450:9;	<b>rent (6)</b> 4416:16;4417:24; 4418:1,4,4,23			<b>resumed (4)</b> 4358:12;4383:25; 4413:6;4441:5

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4454:1;4461:21 <b>reviewed (13)</b> 4345:8,9;4346:12, 17;4347:1;4384:14,17; 4392:23;4393:8; 4402:17;4413:18; 4416:10;4422:8 <b>reviewing (2)</b> 4415:12;4464:19 <b>revisit (2)</b> 4467:19,22 <b>revolve (1)</b> 4444:15 <b>revolves (1)</b> 4444:13 <b>right (30)</b> 4340:5;4342:23; 4345:20;4347:2; 4356:23;4362:4; 4365:5;4380:20; 4385:20;4397:15; 4405:4;4412:6,9; 4413:16;4424:24; 4426:3,9;4427:10; 4443:6;4448:3; 4455:16;4459:2; 4460:9;4461:25; 4465:11;4467:13; 4476:13,17,21;4481:11 <b>Rink (1)</b> 4377:22 <b>Rinks (1)</b> 4379:20 <b>rise (4)</b> 4337:1;4383:1; 4413:1;4441:1 <b>risk (2)</b> 4419:2;4430:21 <b>ROBERT (7)</b> 4440:16;4482:1,4,8, 11,16,20 <b>rollover (1)</b> 4434:8 <b>rolls (1)</b> 4387:22 <b>room (1)</b> 4356:19 <b>roughly (1)</b> 4481:8 <b>rounded (2)</b> 4403:24;4420:7 <b>routine (2)</b> 4464:6,13 <b>row (3)</b> 4374:4;4467:3; 4472:4 <b>rule (3)</b> 4417:7,9;4421:24 <b>run (1)</b> 4377:22	<b>sales (8)</b> 4351:23;4381:2; 4398:16,17;4409:9,22; 4438:2,11 <b>same (45)</b> 4343:23;4347:6; 4349:6;4350:20; 4355:13,24,24; 4357:10,11;4358:2,6, 18;4359:6;4360:24; 4361:11,15;4362:21; 4363:15;4364:7,8; 4368:10;4369:13; 4385:17;4389:6; 4394:23;4400:23; 4401:21;4402:8,9; 4404:5,14;4407:9; 4414:18;4415:2; 4428:3;4430:16; 4453:4;4469:19; 4470:7,8,10,12,22; 4472:15;4473:10 <b>satisfaction (1)</b> 4363:19 <b>satisfactory (1)</b> 4363:20 <b>saw (9)</b> 4343:3;4373:4; 4385:7;4403:20; 4404:6;4423:17; 4424:17;4447:22; 4478:16 <b>saying (10)</b> 4339:11;4340:10; 4364:20,22;4375:3; 4409:18;4418:11; 4476:24;4479:8,10 <b>scenarios (1)</b> 4477:24 <b>schedule (16)</b> 4356:4;4360:9; 4372:1;4383:20,21; 4387:12,17,19,20; 4388:25;4389:20; 4390:12;4403:23; 4426:25;4448:12; 4481:16 <b>scope (2)</b> 4424:15;4476:18 <b>Scotland (4)</b> 4366:5;4397:17,22; 4427:19 <b>screen (77)</b> 4338:7,15;4339:9; 4340:8,17;4341:12,22; 4342:6,25;4343:11; 4344:22,25;4349:2; 4351:15;4352:22; 4372:25;4373:18; 4374:25;4375:20; 4377:17;4378:15,19; 4379:9,14;4385:14; 4399:18;4402:15;	4403:11;4404:20,23; 4405:9;4408:16,21; 4414:7;4422:7;4423:7; 4430:3,5,8;4431:8; 4432:12,24;4433:8,18, 24;4434:2,5,13; 4438:16,20;4439:1,4,7, 10;4459:13,16; 4460:13,16,19;4462:8; 4466:18,22;4467:6; 4468:7,24;4469:3,24; 4470:3;4471:23; 4472:1,6,18,21,24; 4474:18,21,25 <b>script (1)</b> 4459:5 <b>scroll (7)</b> 4344:23;4413:15; 4414:7;4416:8;4430:4; 4434:1;4454:11 <b>scrolled (7)</b> 4430:6,9;4434:3,6; 4439:5,8,11 <b>scrolling (2)</b> 4414:17,20 <b>seated (4)</b> 4337:6;4383:2; 4413:3;4441:2 <b>SEC (5)</b> 4376:1;4394:13; 4395:7;4464:18; 4465:6 <b>second (6)</b> 4358:5;4385:14; 4388:20;4434:1; 4451:8;4456:24 <b>section (16)</b> 4347:8,18,25; 4350:22;4361:25; 4380:4;4431:11,12,12; 4432:15;4434:11,17; 4445:16;4449:5; 4460:25;4468:13 <b>sections (2)</b> 4371:7;4412:4 <b>securities (13)</b> 4341:25;4386:5,21, 25;4387:1,3,7,13; 4449:2,5,6;4450:17; 4451:24 <b>seeing (3)</b> 4397:10;4406:22; 4442:7 <b>seek (1)</b> 4407:8 <b>seeking (1)</b> 4408:8 <b>seems (1)</b> 4357:18 <b>selected (8)</b> 4347:13,13,18,18; 4348:22;4376:16,17; 4480:25	<b>selecting (3)</b> 4345:25;4349:3; 4480:15 <b>selection (3)</b> 4348:12;4352:8,16 <b>selects (1)</b> 4377:3 <b>selling (23)</b> 4350:23,24;4352:13; 4367:21,23;4368:13, 15;4371:6,9,10,13,14; 4372:5,13;4406:13,14, 18,19;4408:23; 4416:12,13;4439:13,13 <b>Senior (3)</b> 4398:20;4428:6; 4457:21 <b>sentence (8)</b> 4386:3;4451:13,14; 4456:24;4462:3,20,21, 22 <b>separate (4)</b> 4386:6;4402:14; 4450:7,12 <b>separately (8)</b> 4341:25;4371:25; 4385:16;4386:6,12; 4450:15,19;4462:25 <b>September (1)</b> 4360:15 <b>series (2)</b> 4379:18;4452:10 <b>serve (1)</b> 4370:7 <b>serves (1)</b> 4432:2 <b>service (1)</b> 4395:20 <b>services (2)</b> 4339:21;4391:15 <b>session (4)</b> 4337:2;4383:2; 4413:2;4441:2 <b>set (3)</b> 4341:6;4345:6; 4354:11 <b>setting (2)</b> 4383:19;4451:4 <b>Seven (8)</b> 4370:24;4371:1,5, 23;4372:17;4452:11; 4454:9;4462:6 <b>Several (3)</b> 4339:18;4340:3; 4429:11 <b>SFC (2)</b> 4357:21,23 <b>SFCs (1)</b> 4357:23 <b>shall (1)</b> 4453:16 <b>share (1)</b> 4478:11	<b>shared (1)</b> 4425:7 <b>sheet (14)</b> 4342:23;4352:20; 4354:14;4388:12; 4389:2,16,22;4390:3, 11,18,21;4391:13,24, 25 <b>sheets (1)</b> 4389:8 <b>short (2)</b> 4387:21;4390:5 <b>shoulds (1)</b> 4396:13 <b>show (7)</b> 4345:8;4383:4,8,19; 4455:22;4460:2; 4462:1 <b>showed (2)</b> 4404:12;4448:22 <b>showing (1)</b> 4459:25 <b>side (5)</b> 4344:19,20;4424:4; 4433:16,16 <b>sign (2)</b> 4383:8,8 <b>signed (7)</b> 4383:19;4469:9,23; 4470:9,20;4471:1; 4473:4 <b>significance (1)</b> 4385:23 <b>significant (5)</b> 4357:24;4370:18; 4378:7;4395:22; 4444:14 <b>silent (2)</b> 4337:3;4411:23 <b>similar (8)</b> 4375:3;4385:15; 4404:5;4415:4; 4439:15,15,23;4464:17 <b>simply (2)</b> 4447:10;4475:3 <b>single (4)</b> 4354:3;4462:20,22; 4477:23 <b>singled (1)</b> 4451:25 <b>single-family (1)</b> 4428:2 <b>singling (1)</b> 4463:14 <b>sitting (10)</b> 4347:1;4362:4; 4380:20;4383:10; 4425:16;4443:3,6; 4446:24;4448:2; 4465:11 <b>six (4)</b> 4343:17;4386:14; 4439:9;4470:6
<b>S</b>				

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

<b>Sixteen (1)</b> 4448:23	4463:17;4464:14; 4475:13;4477:3	<b>standing (1)</b> 4337:8	4338:17,21;4339:1; 4341:7;4342:9;4354:3, 11,14;4367:12;4377:8;	4365:13,18;4367:17; 4379:7,12;4382:12,14;
<b>sixth (2)</b> 4342:4,7	<b>specifically (5)</b> 4360:8;4389:12; 4401:15;4448:1; 4457:18	<b>standpoint (3)</b> 4372:11;4417:21; 4418:7	4378:25;4380:5; 4397:13;4410:25;	4384:2,8;4386:16; 4387:15;4392:14;
<b>skipped (1)</b> 4365:22	<b>specificity (1)</b> 4354:4	<b>Starrett (2)</b> 4377:24;4379:23	4413:13;4429:13,21, 21;4431:2,15;4432:1; 4434:25;4435:7,13,18;	4397:17;4398:12; 4402:8,19;4403:8,12;
<b>slightly (1)</b> 4385:12	<b>spend (2)</b> 4379:3;4407:1	<b>start (6)</b> 4339:6;4365:16; 4377:18;4440:20; 4466:20,23	4441:15,16;4442:2; 4443:2,5,19;4446:16; 4447:19;4450:16;	4410:2;4411:24; 4412:4,8;4413:9,11;
<b>smaller (1)</b> 4450:10	<b>spent (1)</b> 4394:13	<b>starting (2)</b> 4471:3;4482:16	4452:7;4453:16,17,18, 19,20,22;4454:2,24;	4414:20,23;4416:8,22;
<b>SOFC (7)</b> 4445:2,4;4455:21; 4456:24;4457:1,3,8	<b>split (2)</b> 4469:24;4472:18	<b>starts (1)</b> 4388:20	4455:1,9;4457:15; 4458:22,25;4459:19, 20,22,23;4464:2,19;	4417:6,9;4419:15,21; 4421:6,7,12,14;
<b>sold (5)</b> 4351:24;4352:5,6; 4398:4;4409:4	<b>spreadsheet (7)</b> 4345:21;4374:5; 4387:24;4466:23,25; 4472:3;4473:17	<b>state (2)</b> 4447:15;4468:11	4472:10;4475:8	4422:12;4423:20; 4427:7;4429:25;
<b>Solomon (2)</b> 4402:1,2	<b>spreadsheets (1)</b> 4441:21	<b>stated (6)</b> 4349:23;4357:21; 4359:25;4391:14; 4404:15;4465:1	<b>States (11)</b> 4341:6;4374:12; 4380:25;4386:21,25; 4453:15;4454:11; 4456:24;4460:20; 4467:7;4472:8	4430:4,7;4431:6; 4432:5,10,17,21; 4433:2,6,9,15,20,25; 4434:4,7,14,20;
<b>somehow (1)</b> 4414:9	<b>Springs (6)</b> 4370:24;4371:1,5, 23;4372:17;4452:11	<b>Statement (133)</b> 4337:18,20,25; 4338:3,9,11,18;4339:4; 4340:13,21,24;4341:4, 17,19;4342:1,10,13,14, 17,21;4343:9,15,19; 4344:10;4346:21; 4350:10,14;4352:18; 4354:7;4358:1,21; 4359:13,17,21,25; 4360:4,4;4364:21; 4365:5;4372:19; 4374:9;4375:14; 4378:12,21;4379:5; 4380:1,7;4381:15,25; 4384:4,10,16;4385:1; 4386:7,13,17;4387:9; 4388:14;4389:8; 4390:6,9,13;4392:10; 4399:14;4401:4; 4403:15,16,22,23,25; 4404:17;4405:1; 4407:25;4408:12; 4409:24;4416:7; 4422:19;4427:8,19; 4429:3;4431:4;4435:3, 24;4437:6,11,13,15; 4441:18,22;4442:14, 17,24;4446:21; 4447:18;4448:17,25; 4449:14,20;4451:16; 4452:12,13,22,23; 4455:15,21,24;4456:6, 12,17;4458:1,4,8; 4463:4;4464:16; 4466:25;4470:7; 4472:3,25;4473:13,15; 4474:12;4475:1,2; 4476:6,9;4477:12,15, 16,17,19;4478:2,23; 4480:25	4436:17;4438:5,8,16, 18,22;4439:2,6,9,12; 4440:10,13;4441:13; 4443:14;4446:8,22; 4448:21;4452:4; 4454:7;4466:7;4471:5; 4473:23;4481:20,22	
<b>someone (7)</b> 4388:3;4400:16; 4458:8,14;4465:1; 4466:4;4480:8	<b>square (13)</b> 4393:3,3,4,16,20,21, 22;4394:2,3,4,4; 4395:24;4396:3	<b>statements (56)</b>	<b>stemmed (1)</b> 4436:25	<b>subject (11)</b> 4421:7;4423:20; 4431:3;4469:10,22,23; 4470:10,21;4471:2; 4473:5,18
<b>sorry (11)</b> 4347:20;4365:21; 4396:9;4417:8; 4424:20;4448:14,18; 4460:14;4470:8; 4471:9,21	<b>stabilized (1)</b> 4472:8		<b>stenographically (3)</b> 4398:19;4428:5; 4457:20	<b>subjective (2)</b> 4454:22;4463:18
<b>sort (6)</b> 4366:10;4392:25; 4393:24;4424:5; 4430:21;4469:20	<b>staff (1)</b> 4465:17		<b>stepped (1)</b> 4337:12	<b>submit (3)</b> 4357:14;4383:7,16
<b>sound (3)</b> 4455:21,22;4467:13	<b>stand (9)</b> 4337:13;4358:12; 4383:25;4411:3; 4413:6;4425:19; 4426:8;4441:5; 4446:24		<b>still (7)</b> 4401:8;4413:8; 4421:23,25;4451:11; 4478:20;4481:14	<b>subsection (1)</b> 4439:2
<b>sounded (1)</b> 4409:17	<b>standard (22)</b> 4338:16;4354:4; 4355:8;4370:19; 4385:9,20;4395:19; 4398:11;4400:9; 4410:4;4414:2; 4419:12;4439:25; 4443:25;4444:13; 4452:21,24;4453:22; 4467:23;4475:14; 4480:11,12		<b>stocks (1)</b> 4386:24	<b>subsequent (2)</b> 4423:10;4425:11
<b>sounds (8)</b> 4363:9;4373:6; 4381:1,2;4476:13,17, 23;4478:19	<b>standards (46)</b> 4338:21;4343:24; 4346:19;4352:24; 4354:1;4367:15; 4377:12;4382:8; 4394:2,12,17,18,23; 4395:4,15;4396:15,20, 23;4397:4,5;4407:7,17, 20;4408:6;4415:14,17, 22;4416:24;4422:13; 4426:19,23;4427:4; 4429:2,12,16,24; 4430:23;4431:18; 4432:4;4443:9;4479:3, 22;4480:2,5,6,16		<b>stood (1)</b> 4482:21	<b>substance (1)</b> 4424:23
<b>sources (1)</b> 4435:7			<b>stop (3)</b> 4414:23;4434:7; 4439:6	<b>substantial (2)</b> 4346:5;4416:6
<b>South (1)</b> 4368:7			<b>stopping (1)</b> 4402:11	<b>substituted (1)</b> 4469:18
<b>space (11)</b> 4350:25;4367:22; 4406:11,15;4407:1; 4416:14;4472:11,12; 4473:13,13,17			<b>stream (4)</b> 4350:25;4377:19; 4406:14;4416:13	<b>subsumed (2)</b> 4414:9;4416:5
<b>speak (3)</b> 4343:25;4417:18; 4440:11			<b>streamline (1)</b> 4400:18	<b>subtopic (1)</b> 4459:21
<b>specialist (1)</b> 4418:9			<b>streams (3)</b> 4372:2;4398:16; 4418:22	<b>successful (2)</b> 4469:6;4473:2
<b>specific (21)</b> 4337:24;4395:11; 4400:19,19,25; 4401:11,14,14;4411:4; 4436:22,24;4440:2; 4442:25;4443:25; 4456:4,25;4458:9;			<b>Street (11)</b> 4348:25;4349:4,11; 4389:18;4403:16; 4404:4;4467:4,18; 4472:7,9;4473:9	<b>sufficient (5)</b> 4383:13;4408:7,8,9; 4453:16
			<b>structure (1)</b> 4462:13	<b>sufficiently (3)</b> 4449:14,20;4471:17
			<b>Suarez (91)</b> 4337:8,10;4338:4, 13;4344:19,23; 4347:23;4348:25; 4349:25;4352:18;	<b>suggest (1)</b> 4462:16
				<b>suggesting (1)</b> 4480:8
				<b>suggests (1)</b> 4393:20
				<b>summarized (2)</b> 4338:2;4385:6
				<b>summary (6)</b>

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4357:5,12;4358:3; 4419:25;4420:9; 4425:6 <b>supervises (1)</b> 4379:21 <b>supplied (1)</b> 4347:25 <b>support (15)</b> 4346:22;4380:8; 4403:19;4404:21; 4415:18;4429:16,19; 4435:23,23;4436:1,6, 19,23;4442:19;4478:3 <b>supported (1)</b> 4354:20 <b>supporting (80)</b> 4344:5;4345:13; 4346:4,12,17;4354:22, 24;4355:18;4356:3; 4358:24,25;4359:9,19; 4360:6,9,13,21;4361:9, 18;4362:7,16;4363:2, 14;4364:5,12;4366:3, 19;4367:12;4369:16; 4371:2;4373:9; 4378:23;4381:15; 4382:1;4384:5,16,17; 4387:11;4389:4; 4392:11,15,16; 4397:15;4399:15,22; 4402:16;4403:4,22; 4405:5;4408:13,18; 4414:5,12,13;4415:8; 4419:16;4422:18; 4426:25;4427:9,12,14, 21;4429:3,13;4434:25; 4435:5;4441:21; 4442:5;4448:12,15; 4463:11;4466:23,25; 4469:14,25;4470:18; 4472:3;4473:17; 4475:7;4478:16 <b>supports (1)</b> 4390:5 <b>supposed (1)</b> 4455:4 <b>sure (30)</b> 4337:3;4344:8,10; 4345:10;4346:12; 4353:2;4362:2; 4365:11,18;4376:1; 4384:8;4385:4; 4392:21;4393:9; 4401:13;4402:14; 4403:12;4406:25; 4424:7;4427:25; 4435:18;4438:17; 4442:9;4449:17; 4458:24;4461:6; 4462:25;4467:24; 4470:1;4473:20 <b>surrounding (2)</b> 4464:22,22	<b>sustain (1)</b> 4393:23 <b>Sustained (11)</b> 4346:15;4347:16,22; 4381:19;4390:16; 4397:4;4407:16; 4423:3;4447:12; 4471:15;4479:11 <b>synonymous (1)</b> 4355:4  <b>T</b>  <b>table (1)</b> 4444:22 <b>talent/model (1)</b> 4379:20 <b>talk (2)</b> 4424:10,11 <b>talked (10)</b> 4349:7;4385:19; 4388:3;4411:19; 4430:15;4431:24; 4435:8,9;4449:9; 4450:15 <b>talking (11)</b> 4393:25;4395:11; 4418:17,21;4422:20; 4446:10;4450:8; 4462:21;4464:25; 4480:4,5 <b>tallest (1)</b> 4462:12 <b>tally (1)</b> 4343:18 <b>tax (3)</b> 4341:16;4389:15; 4420:22 <b>technical (1)</b> 4390:25 <b>TECHNICIAN (1)</b> 4470:1 <b>technique (1)</b> 4472:14 <b>techniques (1)</b> 4473:25 <b>telephone (1)</b> 4360:15 <b>telling (1)</b> 4342:18 <b>temporal (2)</b> 4351:10;4368:4 <b>ten (3)</b> 4406:7,8;4472:22 <b>tend (1)</b> 4392:19 <b>term (7)</b> 4387:21;4390:5,25; 4393:25;4395:3; 4440:1;4476:21 <b>terms (5)</b> 4379:5,24;4411:20; 4419:5;4477:6	<b>testified (11)</b> 4372:21;4375:15; 4415:19;4416:4; 4429:6,10;4455:14; 4457:13;4458:17; 4468:18;4476:11 <b>testify (1)</b> 4423:22 <b>testifying (3)</b> 4349:21;4423:14; 4426:2 <b>testimony (25)</b> 4339:25;4344:13; 4350:2;4356:17; 4357:4;4365:2;4366:8; 4382:18;4400:10; 4422:1;4426:3;4436:5; 4442:3,10;4452:8; 4467:10,15;4474:3,4; 4476:23;4478:18; 4479:14,20,22;4481:13 <b>therefore (2)</b> 4340:13;4356:5 <b>thereto (1)</b> 4382:18 <b>third (8)</b> 4340:15,18;4343:8; 4368:22;4369:7; 4381:23;4434:1; 4454:11 <b>third-party (1)</b> 4445:12 <b>thirty (1)</b> 4472:9 <b>though (5)</b> 4340:1;4341:7; 4463:20;4466:3; 4478:15 <b>thought (2)</b> 4350:2;4443:16 <b>thousand (1)</b> 4472:9 <b>three (11)</b> 4343:7,7;4362:1; 4384:9;4412:4;4420:8, 13,14;4426:20;4427:4; 4472:10 <b>threshold (1)</b> 4383:7 <b>Thursday (2)</b> 4482:5,21 <b>tick (4)</b> 4345:5;4403:13; 4414:14;4420:2 <b>tie (1)</b> 4403:23 <b>ties (2)</b> 4420:5;4422:17 <b>timeframe (1)</b> 4419:14 <b>times (12)</b> 4364:16;4374:1; 4381:18;4408:10;	4429:11;4437:17; 4442:25,25;4464:11; 4465:6;4474:6; 4478:16 <b>title (2)</b> 4388:8;4444:12 <b>today (7)</b> 4384:14,18;4430:24; 4443:3;4450:6;4453:6; 4463:10 <b>together (6)</b> 4338:19;4342:1; 4352:17,25;4354:2; 4474:23 <b>told (2)</b> 4478:16;4479:4 <b>Tom (1)</b> 4360:16 <b>tomorrow (6)</b> 4383:12,15,22; 4481:18,25;4482:1 <b>top (5)</b> 4350:22;4351:24; 4387:25;4416:11; 4420:3 <b>topic (2)</b> 4417:20;4463:16 <b>total (9)</b> 4343:20;4356:16,20; 4371:3;4380:6; 4387:22;4403:21; 4420:6;4458:15 <b>totality (1)</b> 4339:14 <b>totally (3)</b> 4394:20;4402:14; 4418:24 <b>touched (2)</b> 4340:19;4431:10 <b>towards (2)</b> 4367:20;4455:11 <b>Tower (30)</b> 4343:12;4345:12,14, 20;4346:4,6,9;4347:3, 9;4350:6,10;4367:19; 4368:11;4369:18; 4379:10;4388:21; 4454:10;4455:20; 4456:4,7,12,23;4457:2, 3,8,11,15;4462:4,11,12 <b>transactions (11)</b> 4421:15,17;4443:15, 18;4444:14;4445:1,12, 19,22;4446:1,4 <b>Transcript (1)</b> 4370:25 <b>translates (1)</b> 4418:8 <b>Treasury (1)</b> 4386:25 <b>trial (11)</b> 4412:11;4421:5,10; 4422:2,25;4423:12,16;	4424:3;4425:18; 4448:4;4482:21 <b>tried (1)</b> 4465:7 <b>triplex (12)</b> 4377:25;4379:10; 4380:9,12,15;4381:9; 4392:14,16;4393:3,13, 16;4394:3 <b>true (1)</b> 4419:9 <b>Trump (133)</b> 4342:16;4343:12; 4344:9;4345:11,14,20; 4346:3,6,9;4347:3,9, 13,19;4348:5,16,22; 4350:4,5,9,16,18; 4352:12;4354:9,22,25; 4355:9,20,22;4356:2; 4358:13,15,19;4359:2, 4;4360:16;4361:2,4,11, 20,22;4362:7,10,15,18; 4363:4;4364:7; 4365:21,23;4366:5; 4367:16,19;4368:7,10, 20,22;4369:6,9,9,10, 18;4372:23;4373:25; 4374:3,12,23;4377:23; 4379:10;4384:12; 4386:22;4387:4,9; 4388:3,22;4389:1,5,13, 14,23;4390:8;4397:21; 4405:2;4406:1; 4408:18;4413:17,21; 4414:18;4416:8,10; 4417:24;4419:11,24; 4420:9,10,10,14,16,20, 21;4426:14,14,15,21; 4427:18;4430:17; 4436:7,20;4449:7,13, 19;4451:20;4454:10, 13;4455:20;4456:4,7, 12,23;4457:2,3,7,11, 14;4458:9,12;4462:4,9, 11,12;4469:8;4473:3, 25;4477:1,2 <b>Trump's (4)</b> 4360:1;4374:10,20; 4388:18 <b>try (9)</b> 4347:22;4352:5; 4358:5;4381:23; 4395:13;4436:17; 4451:2;4465:16; 4474:8 <b>trying (4)</b> 4442:9;4447:2; 4450:22;4465:1 <b>Tuesday (1)</b> 4482:18 <b>turn (12)</b> 4338:13;4352:18; 4384:20;4388:15;
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Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4392:14;4399:21; 4403:15;4413:14; 4419:15;4427:11; 4439:2;4468:21 <b>Turnberry (1)</b> 4364:7 <b>turns (2)</b> 4377:4;4399:7 <b>two (24)</b> 4342:1;4344:24; 4349:7;4361:15; 4368:25;4371:7; 4375:23;4380:11; 4393:6;4412:4; 4418:16;4435:7; 4442:9;4451:11; 4452:4;4458:17; 4470:5,5,11,23;4471:3, 17;4472:9;4473:19 <b>two-minute (1)</b> 4411:15 <b>type (2)</b> 4385:17;4397:17 <b>typically (1)</b> 4454:23	4369:3,22;4370:16,21, 23;4371:5;4372:1; 4376:18,21;4378:3,6, 11,21,22;4385:9; 4386:5;4391:2;4394:1, 7,7;4395:18;4396:20; 4398:17;4399:11; 4400:2;4404:8; 4405:14;4407:17,20; 4408:6;4410:12; 4413:8;4414:1; 4415:17,21;4418:20; 4419:6;4422:13; 4426:22;4427:3; 4429:12,24;4437:24; 4438:12;4439:20; 4458:18;4463:17; 4467:11,18;4468:10; 4472:15;4477:1,23; 4480:2,4,5,16 <b>underlie (1)</b> 4463:11 <b>underlying (1)</b> 4346:22 <b>understood (6)</b> 4365:11,19;4390:1; 4396:3;4410:24; 4440:10 <b>undertake (3)</b> 4407:5;4443:7; 4445:23 <b>undertaken (1)</b> 4450:2 <b>undertaking (1)</b> 4351:6 <b>undertook (1)</b> 4444:4 <b>undisclosed (1)</b> 4444:7 <b>unit (2)</b> 4354:3;4370:4 <b>United (3)</b> 4341:6;4386:25; 4462:11 <b>units (14)</b> 4350:24;4367:21,23; 4368:25;4406:12,13, 19,24,25;4408:23; 4416:12,16,19;4418:13 <b>Universe (2)</b> 4375:18;4376:14 <b>University (1)</b> 4357:15 <b>Unless (2)</b> 4337:7;4414:8 <b>Unlike (2)</b> 4400:21;4417:6 <b>unsold (11)</b> 4350:24;4367:21,23; 4368:25;4406:12,13, 19,24,25;4408:23; 4416:12 <b>up (55)</b>	4338:4;4341:7; 4343:18;4344:19; 4367:15;4372:7; 4387:15,25;4388:14; 4391:18;4402:14; 4403:9,24;4413:12; 4415:22;4416:8,11; 4419:21;4421:18; 4422:7;4423:7; 4425:18;4427:8,12,25; 4430:4,4,7;4431:6; 4432:10,22;4433:6,15, 16;4438:16,22; 4442:12;4444:20; 4448:10,18;4453:2; 4454:8;4456:16,18; 4457:14;4458:13; 4459:11;4463:19; 4466:15;4468:5; 4471:20;4474:15,22; 4480:1;4481:4 <b>upon (6)</b> 4338:22;4379:1; 4382:19;4440:22; 4469:6;4473:1 <b>use (43)</b> 4348:7;4349:16,19; 4356:20;4365:8; 4368:16;4369:23,24; 4370:2,5,11;4371:10, 19;4399:8;4400:7,11, 12,12;4401:8;4404:10; 4405:16,21,25; 4408:25;4409:6,18; 4410:16,22;4415:6; 4436:18;4437:5,8,8,13, 17,21;4438:2;4440:1; 4450:13;4458:15,20; 4462:10;4473:24 <b>used (69)</b> 4340:2;4345:13,17; 4347:3,10;4348:1,16; 4349:14,15,17;4351:8; 4355:10;4358:14,17; 4363:5;4364:10,11,17; 4365:3;4367:2; 4369:25;4371:15,16; 4372:13,17;4373:8; 4375:24;4376:9,14,20; 4377:10;4380:10,17, 21;4382:4;4395:22,24; 4396:2;4397:9,21; 4399:23;4400:1; 4404:3,10;4405:10; 4407:8,21;4411:20; 4413:20;4414:18; 4419:6,10;4437:2; 4452:25;4457:6; 4458:2,9;4461:4,8,20, 23;4462:21;4465:22; 4466:6;4469:14; 4473:9;4475:10; 4477:3,19	<b>user (20)</b> 4339:1;4342:2,18; 4378:9;4386:10; 4387:6;4450:18; 4451:19,22,25; 4455:11,19;4456:2,6, 14;4457:1,7,10; 4458:13;4464:3 <b>users (7)</b> 4340:23;4342:8; 4350:14;4360:10; 4451:16;4464:3,6 <b>using (26)</b> 4349:11;4350:20,20; 4355:13;4359:12; 4364:22;4365:6; 4367:12;4370:19; 4375:4;4381:21; 4395:10;4399:11; 4400:4,6;4406:6; 4411:22;4414:1; 4416:6;4455:19; 4456:24;4463:21; 4466:4;4470:4;4471:1; 4477:22 <b>usually (1)</b> 4348:15 <b>utilizing (1)</b> 4368:1	4470:25;4471:6; 4472:13,14,25; 4473:12,24;4474:12; 4477:22;4478:5; 4480:21,24 <b>valuations (13)</b> 4359:15;4360:12; 4367:13;4375:25; 4435:24;4437:17,19, 22;4463:12;4478:10, 13;4480:1,15 <b>value (174)</b> 4339:12;4340:3; 4343:5;4345:14; 4346:3,6,9,24;4347:7; 4348:1;4349:4,10,12, 23;4350:5,17;4351:9, 20,24;4352:7,14; 4355:3,3,5,6,11,18,22; 4356:2;4357:16,16,22, 25;4358:15,24;4359:4, 9,11;4360:1,6,13; 4361:4,9,13,18,21; 4362:7,12,15,19; 4363:2,5,25;4364:5,12, 17;4365:24;4366:3,7, 15;4368:8,20,24; 4369:5,11,16,20; 4370:3,7,8,9,11,16; 4371:1,3,4,21;4372:16, 18;4373:2,9,11,21; 4374:20;4375:1,7,21; 4376:9;4377:4;4380:1, 6,10,24;4381:8,25; 4387:2;4393:13; 4395:22;4397:21,23; 4398:1,8;4399:10,24; 4400:4,5;4401:8; 4403:14,17;4404:3,12; 4405:11,12,18,22,23; 4406:4;4407:14,19; 4408:3;4409:1,4,7,12, 14;4410:12;4413:20, 25;4415:1;4416:17,18, 25;4418:7;4419:10; 4420:6;4426:15; 4433:22;4434:8,15; 4436:10,25;4438:1,12; 4439:20;4454:12; 4455:20;4456:7,16; 4457:2,3,6,7,11,14; 4458:9,13,15,18,19; 4460:6,22;4461:3,4,7; 4462:20;4465:22; 4467:17;4469:6; 4473:1,9;4474:1; 4477:3,18;4480:16 <b>valued (8)</b> 4356:6;4382:6; 4387:1;4407:4; 4437:24;4456:13; 4477:15;4478:23 <b>values (11)</b>
<b>U</b>			<b>V</b>	
<b>ultimate (2)</b> 4348:9;4364:24 <b>ultimately (4)</b> 4348:6,22;4382:6; 4399:1 <b>Um (21)</b> 4339:6;4340:3; 4347:3;4348:18; 4352:10;4372:1; 4400:6;4410:21,24; 4429:20;4430:20; 4435:7,8;4436:23,25; 4437:17;4461:21; 4463:16;4464:10; 4469:20;4473:19 <b>umbrella (1)</b> 4340:4 <b>unable (1)</b> 4408:9 <b>unclear (7)</b> 4356:9;4372:5; 4373:5;4375:23; 4380:16;4420:18; 4451:21 <b>uncontrolled (1)</b> 4418:13 <b>under (81)</b> 4340:4,20;4341:1, 16,24;4342:16; 4343:13;4344:3; 4345:20,21;4347:7; 4349:9;4351:1,23; 4352:8;4355:6,7,15; 4358:20;4360:3,13; 4367:15,25;4368:16;			<b>vacant (4)</b> 4472:11;4473:13,13, 16 <b>vacuum (1)</b> 4338:22 <b>vague (3)</b> 4376:4;4380:20; 4393:24 <b>Valley (2)</b> 4361:12;4414:22 <b>valuable (1)</b> 4360:16 <b>Valuation (73)</b> 4350:23;4356:10,16, 20;4357:1,3;4359:1; 4364:25,25;4367:20; 4368:12,23;4369:22; 4371:15,17;4372:2; 4373:23;4374:2; 4376:2;4380:21; 4399:21;4406:12; 4408:22;4416:11,21; 4417:1,19,20;4418:9, 19;4419:1,2,3,19,25; 4421:2;4426:14,16,24; 4427:1,3,5;4430:20; 4436:25;4437:1,10; 4438:3,7,7;4458:15; 4460:8;4462:10,10,14, 15,17,19,21;4466:6; 4467:7;4468:9;	



Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

4339:19;4349:23; 4380:4;4395:23; 4406:2;4411:22; 4415:11;4456:1,2,14; 4475:11 <b>valuing (4)</b> 4351:1;4354:25; 4437:3,9 <b>variety (4)</b> 4339:13,23;4389:14; 4420:21 <b>various (5)</b> 4356:11;4387:8; 4401:2;4437:23; 4461:15 <b>Vegas (1)</b> 4374:23 <b>vehicle (1)</b> 4408:10 <b>venture (2)</b> 4390:20;4449:11 <b>ventures (2)</b> 4343:15;4373:16 <b>version (5)</b> 4403:3,4,20;4404:6; 4468:15 <b>versus (1)</b> 4349:22 <b>view (16)</b> 4349:18;4354:20; 4376:15;4383:20; 4395:9;4401:20; 4415:9;4423:25; 4455:15;4456:5; 4465:23;4471:19; 4472:14;4473:10; 4476:25;4478:9 <b>viewed (1)</b> 4423:11 <b>villas (1)</b> 4428:2 <b>vineyard (2)</b> 4377:23;4379:18 <b>violation (1)</b> 4444:17 <b>violations (1)</b> 4429:14 <b>Virginia (1)</b> 4379:19 <b>volume (1)</b> 4447:21 <b>Vornado (11)</b> 4373:20,20,21,25; 4374:11;4446:8,11; 4449:12,18;4450:23; 4451:5	<b>waiting (3)</b> 4419:3;4430:21,22 <b>Wakefield (4)</b> 4347:14,20;4348:8, 13 <b>walking (1)</b> 4435:25 <b>Wall (15)</b> 4348:25;4349:3,11; 4399:21,24;4403:16; 4404:4;4405:7,11; 4467:4,18;4469:1; 4472:7,9;4473:9 <b>WALLACE (90)</b> 4344:7;4346:14; 4347:15,21;4349:20; 4350:3;4354:16; 4356:7,15;4357:1; 4381:17;4383:10,18; 4390:14;4392:24; 4393:17,19;4395:6; 4397:1;4398:9; 4402:13;4403:2; 4407:15;4411:2; 4416:20;4420:25; 4421:9,23,25;4422:5, 21;4424:6,19,25; 4425:5,13,24;4426:4; 4429:5;4436:11; 4438:3,21,23;4440:19; 4441:6,7,9;4444:20; 4445:10;4448:23; 4450:24;4453:1,21; 4454:8;4456:18,21; 4459:9,14;4460:1,10, 14,17;4462:5;4466:9, 13,19;4467:24;4468:5, 21,25;4469:4,24; 4471:7,10,20,24; 4472:18,22;4474:7,15, 19,22;4478:8;4479:8, 16,19;4480:8;4481:4,7, 9 <b>wants (1)</b> 4337:8 <b>warning (4)</b> 4381:4;4410:14; 4411:15;4478:7 <b>warrant (1)</b> 4385:24 <b>Washington (3)</b> 4359:3,4;4414:21 <b>Waterfront (1)</b> 4389:7 <b>way (13)</b> 4348:18;4358:20; 4373:23;4397:22; 4418:14;4433:5; 4444:6;4445:21; 4446:2;4450:11; 4454:16;4473:20; 4474:5 <b>ways (3)</b>	4437:21,23;4458:18 <b>weddings (1)</b> 4480:10 <b>weight (3)</b> 4447:2,5,10 <b>Westchester (2)</b> 4370:24;4371:2 <b>what's (8)</b> 4371:16;4378:9; 4402:3;4403:21; 4422:10;4429:19; 4444:10;4470:8 <b>Whereupon (85)</b> 4337:12;4338:6,14; 4339:8;4340:7,16; 4341:11,21;4342:5,24; 4343:10;4344:13,21, 25;4349:1;4351:14; 4352:21;4356:25; 4358:12;4372:24; 4373:17;4374:24; 4375:19;4377:16; 4378:14,18;4379:8,13; 4382:19;4383:25; 4399:17,19;4403:10; 4404:19,22,24;4405:8; 4408:15,20;4412:11; 4413:6;4417:16; 4430:2,5,8;4431:7; 4432:11,23;4433:7,17, 23;4434:2,5,12; 4436:4;4438:19,25; 4439:4,7,10;4440:22; 4441:5;4453:11; 4459:12,15;4460:12, 15,18;4462:7;4466:17, 21;4467:5;4468:6,23; 4469:2;4470:2; 4471:22,25;4472:5,20, 23;4474:17,20,24; 4482:21 <b>whichever (1)</b> 4448:11 <b>Whitley (5)</b> 4430:25;4431:3,16, 20,21 <b>whole (2)</b> 4418:11;4424:2 <b>wide (4)</b> 4349:13;4370:15; 4410:21;4443:1 <b>widely (1)</b> 4338:20 <b>wildly (6)</b> 4370:9;4400:3,13; 4404:12;4405:18,23 <b>withdraw (6)</b> 4350:8;4352:5; 4399:5;4436:17; 4445:10;4450:24 <b>Withdrawn (22)</b> 4352:3;4355:16; 4360:19;4363:12;	4366:17,22;4368:3; 4373:1;4376:16; 4379:25;4381:6,12,21; 4389:9;4391:22; 4405:15;4407:11; 4413:19;4414:4; 4436:16;4438:24; 4480:23 <b>within (15)</b> 4338:12;4340:12; 4345:6;4346:21; 4387:8,10;4388:3; 4394:24;4435:5; 4443:25;4444:3; 4447:16;4449:11; 4452:24;4463:14 <b>without (2)</b> 4437:22;4446:24 <b>witness (60)</b> 4337:11,12,12; 4349:21;4356:18,24, 25;4358:11,12; 4364:15;4365:9; 4382:17;4383:24,25; 4391:1,9;4394:11; 4395:6,18;4396:8,12, 21;4399:20;4400:15; 4402:3,4,17;4404:25; 4408:17;4409:21; 4410:9;4411:3,5; 4413:4,6;4416:23; 4417:14;4418:16,25; 4421:18;4422:6; 4424:4;4425:16; 4429:6;4431:9; 4432:13,22;4433:19; 4434:16;4441:3,5; 4451:10,14,21; 4467:24;4468:2; 4471:5;4479:6; 4481:12,14 <b>witness's (1)</b> 4421:15 <b>Wollman (2)</b> 4377:22;4379:20 <b>word (4)</b> 4393:18,24;4452:24; 4469:18 <b>wording (4)</b> 4368:2;4467:19,23; 4477:5 <b>work (14)</b> 4345:6;4348:24; 4376:3;4380:23; 4389:15;4399:25; 4411:25;4415:5; 4442:16;4443:10; 4447:13;4463:11; 4464:9,10 <b>worked (3)</b> 4419:1;4476:11,14 <b>working (2)</b> 4420:21;4435:22	<b>worksheet (2)</b> 4387:22;4389:4 <b>World (3)</b> 4367:19;4377:1; 4462:11 <b>worldwide (1)</b> 4360:1 <b>worth (2)</b> 4465:1,7 <b>woulds (1)</b> 4396:13 <b>wrote (1)</b> 4357:13
<b>Y</b>				
<b>year (20)</b> 4375:24;4380:12,22; 4384:11;4385:6; 4393:4,4;4396:1,4,4; 4400:23;4401:5,21; 4402:10;4419:9; 4437:16;4448:9,11,11; 4476:15 <b>years (9)</b> 4365:15;4393:6; 4400:20;4470:5,6,6,11, 23;4471:3 <b>yesterday (11)</b> 4340:19;4341:5; 4345:17;4370:15; 4385:20;4430:23; 4431:10,23;4432:1; 4463:11;4479:1 <b>yield (2)</b> 4370:17;4477:24 <b>yields (1)</b> 4370:20 <b>York (2)</b> 4357:15;4369:19				
<b>Z</b>				
<b>Zero (2)</b> 4350:7,12 <b>zoom (3)</b> 4344:23;4384:8; 4386:16 <b>zoomed (1)</b> 4345:1				
<b>1</b>				
<b>1 (1)</b> 4359:25 <b>10,960 (1)</b> 4394:4 <b>10,996 (1)</b> 4393:4 <b>10:00 (1)</b> 4482:22 <b>100 (2)</b> 4368:7;4396:17				
<b>W</b>				
<b>wait (3)</b> 4409:17,17,17 <b>waited (1)</b> 4417:4				

Attorney General of the State of NY v.  
Donald J. Trump, et. al.

November 15, 2023

11 (5) 4388:7;4478:6; 4480:1,14,20 11:45 (1) 4382:16 110 (1) 4472:4 112 (1) 4467:3 116 (1) 4395:23 116,800,000 (1) 4393:13 12 (4) 4444:21;4460:23; 4477:24;4478:10 1290 (5) 4388:9,15,18,20,23 13 (2) 4456:21;4468:15 14 (1) 4459:14 1486 (1) 4428:3 15 (2) 4427:19;4440:20 15-minute (1) 4440:22 16 (2) 4448:23;4482:22 1609 (6) 4453:2,8,12; 4459:11;4467:25; 4468:1 16-minute (2) 4382:15,19 17 (1) 4460:2 179 (1) 4354:25 18 (1) 4388:16 1873 (2) 4399:16;4402:15	4401:18;4402:16; 4403:23;4406:1; 4419:11;4435:1,16,18, 19;4454:2;4466:25; 4473:25 2012 (9) 4404:17;4405:2,11; 4406:1;4413:13,21; 4472:3,7;4473:25 2013 (9) 4360:15;4375:25; 4380:16,18,19;4381:8; 4467:8,9;4470:5 2014 (15) 4338:10;4339:4; 4365:14;4376:4; 4380:7,9,12,18,24; 4385:8,16;4448:18,22; 4456:24;4457:3 2015 (2) 4401:18;4431:13 2016 (8) 4384:4,11;4385:6, 10;4387:22;4393:4; 4448:17,22 2017 (7) 4392:11;4393:4,12; 4401:18;4467:8,9; 4470:5 2018 (1) 4408:12 2020 (3) 4435:16,18,19 2021 (5) 4337:17;4431:1,4; 4435:1;4454:2 2023 (1) 4482:22 21 (5) 4359:23;4378:16; 4453:3;4459:14; 4460:2 23 (3) 4359:23;4378:17; 4474:19 24 (3) 4420:6;4472:22; 4474:19 2587 (1) 4387:16 26 (1) 4454:9 274 (47) 4355:6,12,15,23,25; 4358:16,22;4359:5; 4361:4,14,23;4362:5, 12,20;4363:6,10; 4364:1,19,21;4365:1, 25;4366:7,12;4367:25; 4368:9,16;4369:3,6,12, 20,22;4370:5,16; 4398:18;4413:24; 4415:1;4417:22;	4419:7,12;4452:22,24; 4453:5;4455:3,12; 4476:6;4477:23; 4481:2 28 (1) 4357:12 3 3 (4) 4339:13;4343:6; 4360:15;4457:3 3:25 (1) 4440:21 30 (30) 4358:20;4360:24; 4364:16;4365:10; 4367:4;4374:4,13,17; 4384:11;4387:22; 4388:12,23,25;4389:1, 3,4,7,16,22,23;4390:2, 7,11,20;4391:24; 4421:15;4446:10; 4448:12;4451:19; 4474:6 30,000 (2) 4393:3;4394:4 327 (2) 4393:13;4395:23 33 (1) 4366:13 35 (1) 4472:11 36 (1) 4428:2 37 (4) 4337:1;4383:1; 4413:1;4441:1 4 4 (2) 4339:13;4343:6 40 (15) 4348:25;4349:3,11; 4399:21,24;4403:16; 4404:4;4405:7,11; 4467:4,18;4469:1; 4472:7,9;4473:9 45 (1) 4412:8 4513 (1) 4453:14 452 (2) 4434:21,23 46 (1) 4456:22 5 5 (2) 4339:13;4343:6 50 (2)	4348:20;4376:5 500 (1) 4428:1 524,688,000 (1) 4403:15 524,700,000 (1) 4403:17 527,200,000 (1) 4473:1 55 (1) 4439:3 55-1 (1) 4468:15 555 (1) 4389:17 55-5 (1) 4439:6 55-8 (1) 4459:19 55-9 (1) 4459:22 565 (1) 4427:15 6 6 (2) 4339:13;4343:6 60 (2) 4348:15,19 600 (1) 4403:21 7 707 (1) 4454:12 715 (2) 4374:4,5 719 (1) 4344:20 730 (6) 4338:5;4352:19; 4448:19;4454:9; 4462:6;4466:14 742 (3) 4384:6,17;4419:16 751 (2) 4419:22;4425:17 755 (1) 4392:11 756 (4) 4384:5;4388:15; 4419:16;4448:24 758 (1) 4392:12 77 (1) 4474:16 773 (1) 4408:13 774 (1) 4408:14 783 (1)	4471:21 787 (4) 4399:15;4402:21; 4466:16;4468:22 788 (5) 4403:3,9;4404:11; 4466:20;4468:5 793 (4) 4404:21;4406:2; 4413:13;4471:21 8 8 (1) 4472:12 80 (5) 4385:9;4395:19; 4396:15,16;4432:15 80A (1) 4431:12 815 (3) 4404:18;4413:12; 4472:19 836 (1) 4432:10 850 (3) 4443:25;4444:12; 4445:24 9 95 (3) 4339:15;4343:1,20 950 (1) 4428:1 971 (1) 4392:17
2 2,500 (5) 4398:4;4427:23,25; 4428:3;4429:19 2:15 (2) 4412:10,12 20 (3) 4364:16;4388:17; 4434:11 2000 (1) 4476:15 2000-acre (1) 4379:18 2009 (1) 4431:12 2011 (15) 4337:17;4399:14,24;				

**In The Matter Of:**  
*NYS Attorney General v.*  
*Donald J. Trump et al*

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*November 16, 2023*

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*Ny Supreme Court- Civil*

Original File NYS Attorney General v Donald Trump.txt

**Min-U-Script® with Word Index**

November 16, 2023

<p style="text-align: right;">Page 4483</p> <p>1 SUPREME COURT OF THE STATE OF NEW YORK  2 COUNTY OF NEW YORK: CIVIL TERM: PART 37  3 -----X  4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  6 YORK,  7 Plaintiff,  8 - against -  9 INDEX #  10 452564/2022  11 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP;  12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY  13 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;  14 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION  15 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING  16 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH  17 STREET, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL  18 STREET, LLC; and SEVEN SPRINGS, LLC,  19 Defendants.  20 -----X  21 Bench Trial  22 November 16, 2023  23 60 Centre Street  24 New York, New York 10007  25 B E F O R E: THE HONORABLE ARTHUR S. ENGORON,  Justice of the Supreme Court  A P P E A R A N C E S:  OFFICE OF THE ATTORNEY GENERAL  OF THE STATE OF NEW YORK - LETITIA JAMES  Attorneys for the Plaintiff  28 Liberty Street  New York, NY 10005  By: KEVIN WALLACE, ESQ.  COLLEEN K. FAHERTY, ESQ.  ANDREW AMER, ESQ.  ERIC HAREN, ESQ.  LOUIS SOLOMON, ESQ.</p>	<p style="text-align: right;">Page 4485</p> <p>Flemmons - by Defendant - Cross(Wallace)</p> <p>1 COURT OFFICER: All rise. Part 37 is now in  2 session. The Honorable Judge Arthur Engoron presiding.  3 Make sure all cell phones are on silent. Laptops and cell  4 phones will be permitted, but only to members of the  5 press. There is absolutely no recording or photography of  6 any kind allowed in the courtroom.  7 Now be seated and come to order.  8 THE COURT: I always wonder what happens if you  9 are not seated and coming to order. But you don't want to  10 mess with Tommy.  11 Okay. It is exactly 10:00. Shall we continue  12 with the cross examination of the witness?  13 MR. WALLACE: Absolutely, Your Honor. The  14 People are going to continue their cross examination of  15 Mr. Flemmons.  16 (Whereupon, the witness resumed the stand.)  17 THE COURT: I'll remind the witness that he is  18 still under oath.  19 And Mr. Wallace, please proceed.  20 MR. WALLACE: Thank you, Your Honor.  21 CROSS-EXAMINATION  22 BY MR. WALLACE:  23 Q Good morning, Mr. Flemmons.  24 A Good morning.  25 Q If we could put up Plaintiff's Exhibit 1609, and go</p>
<p>Proceedings</p> <p style="text-align: right;">Page 4484</p> <p>1 A P P E A R A N C E S: (Cont'd)  2  3 CONTINENTAL PLLC  4 Attorneys for Defendants  5 101 North Monroe Street, Suite 750  6 Tallahassee, FL 32302  7 By: CHRISTOPHER KISE, ESQ.  8 LAZARO FIELDS, ESQ.  9 JESUS SUAREZ, ESQ.  10  11 ROBERT &amp; ROBERT, PLLC  12 Attorneys for Defendants  13 526 RXR Plaza  14 Uniondale, NY 11556  15 By: CLIFFORD ROBERT, ESQ.  16  17 HABBA MADAIO &amp; ASSOCIATES, LLP  18 Attorneys for Defendants  19 1430 US Highway 296, Suite 240  20 Bedminster, NJ 07921  21 By: ALINA HABBA, ESQ.  22  23 MORIAN LAW, PLLC  24 Attorneys for Defendants  25 60 East 42nd Street, Suite 4600  New York, NY 10165  By: ARMEN MORIAN, ESQ.  THE TRUMP ORGANIZATION  Attorneys for the Defendant  725 Fifth Avenue  New York, NY 10022  By: ALAN GARTEN, ESQ.  MICHELE PANTELOUKAS  MICHAEL RANITA  Senior Court Reporters</p>	<p>Flemmons - by Defendant - Cross(Wallace)</p> <p style="text-align: right;">Page 4486</p> <p>1 to page 13.  2 Mr. Flemmons, do you recall discussing this guidance  3 with Mr. Suarez during your direct testimony?  4 (Handing)  5 A Yes, I do.  6 Q And if I could direct your attention -- well, when  7 you were testifying with Mr. Suarez I believe you and he  8 covered the points A through E here under 55-1; is that right?  9 A I believe so, yes.  10 Q I just wanted to focus on the paragraph above that in  11 section 55-1. It states in the second sentence: Recent  12 transactions involving similar assets and rights in similar  13 circumstances ordinarily provide a satisfactory basis for  14 determining the estimated current value of an asset and the  15 estimated current value of a liability. If recent sales  16 information is unavailable, other methods that may be used  17 include any of the following.  18 It then lists items A through E. So just to clarify,  19 the guidance here is that points A through E should be used --  20 may be used if recent sales information is not available; is  21 that correct?  22 A That's what it says.  23 Q And if you are going to use one of the items listed  24 in one of the methods listed in A through E, you would need to  25 use accurate information; is that correct?</p>

November 16, 2023

<p>Flemmons - by Defendant - Cross(Wallace) Page 4487</p> <p>1 A Well, insofar as these methods that are provided in 2 this section of ASC 274 are inherently estimates, and estimates 3 are not always accurate. But I think estimates should endeavor 4 to, you know, seek to be as accurate as possible, but they are 5 not intended to be perfect. 6 Q Well, for example, if you are using capitalization of 7 past earnings, the past earnings number should be accurate; is 8 that fair? 9 MR. KISE: Your Honor, one point of 10 clarification. We don't have a hard copy. Is this the 11 real estate section or -- 12 MR. WALLACE: Your Honor. 13 MR. KISE: I can't see it. I can't see it on 14 the screen. 15 THE COURT: I thought that myself. 16 MR. KISE: Yeah. 17 MR. WALLACE: It is not, it is not the real 18 estate section. There is a separate real estate section. 19 MR. KISE: I guess Mr. Wallace had a trick up 20 his sleeve. 21 MR. WALLACE: I don't have a trick up my sleeve. 22 I am being interrupted. 23 MR. KISE: I just can't see the thing on the 24 screen. I need the clarification so we know where we are 25 looking.</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4489</p> <p>1 would need to determine the cap rate in good faith; is that 2 correct? 3 A That's fair. 4 Q Okay. And looking down at the historical cost 5 adjustment method, if you are adjusting historical costs, that 6 historical cost number would need to be accurate; is that 7 right? 8 A That's correct. 9 Q And if you are using the appraisal method, you would 10 need to actually use the amount that was reported in the 11 appraisal; is that correct? 12 A Well, unless there were good reasons to deviate from 13 the information in the appraisals, there could be assumptions 14 that were used in the appraisals that management disagreed 15 with, in which case those could be adjusted and disclosed as 16 such. 17 Q And disclosed. So if you are going to make an 18 adjustment to the appraisal, you should disclose that you 19 adjusted the appraisal by using whatever adjustments the 20 preparer of the financial statement may deem appropriate; is 21 that fair? 22 A I think it depends on the circumstances and the 23 significance of the deviations. 24 Q If you are using the item E to discount amounts of 25 projected cash receipts, you would need to determine the amount</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4488</p> <p>1 THE COURT: What is the context of what we are 2 looking at? 3 MR. WALLACE: Section 55-1, Implementation 4 Guidance, estimated current value that he covered with 5 Mr. Suarez. 6 THE COURT: Section 55-1 of what? 7 MR. WALLACE: He has already answered a number 8 of questions about this. Is there a question whether I 9 can follow-up on this? Or am I allowed to proceed? 10 THE COURT: I would like to know of what. 11 MR. WALLACE: The what? What is the question, 12 Your Honor? 13 THE COURT: This is section 55-1, of what? 14 MR. WALLACE: Of ASC 274. 15 THE COURT: Okay. Thank you. 16 MR. WALLACE: Sorry. 17 Q So I believe the question was, if you were 18 capitalizing past earnings, the past earnings number should be 19 accurate; is that fair? 20 A That's fair. 21 Q And if you are using perspective earnings, the 22 estimate of perspective earnings would need to be made in good 23 faith; is that fair? 24 A That's fair. 25 Q Okay. And if you are capitalizing those amounts, you</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4490</p> <p>1 of expected receipts in good faith; is that fair? 2 A Yeah, I think you would need to estimate the 3 projected receipts in good faith. 4 Q And you would need to determine which discount rate 5 to use in good faith; is that right? 6 A Yes. 7 Q And ASC 274 would require the financial statement to 8 accurately disclose the valuation technique selected, correct? 9 A As we talked about yesterday, the requirement is to 10 provide adequate disclosure about the techniques. 11 Q Adequately informative is, I think, the language we 12 saw in 274; is that fair? 13 A That sounds right. 14 Q So the disclosure would need to be adequately 15 informative to the reader of the report, correct? 16 A That's correct. 17 Q And just to confirm, your work in this case did not 18 include reviewing the accuracy of any of the information that 19 went into the calculations in the Statement of Financial 20 Condition; is that correct? 21 A I am not a valuation expert, so I did not endeavor to 22 evaluate the appropriateness of the amounts. I did, however in 23 many cases, evaluate the appropriateness of the methods used 24 vis-a-vis ASC 274. 25 Q And I am asking about the factual information. So</p>

November 16, 2023

Flemmons - by Defendant - Cross(Wallace) Page 4491

1 that was not part of your analysis whether the information that  
2 was comprising the valuations, whether that was accurate? That  
3 isn't something you did; you looked at methods?  
4 MR. KISE: Objection. I think that  
5 mischaracterizes his testimony.  
6 THE COURT: I think he is just seeking  
7 clarification. He is allowed to phrase it in his own  
8 words. Overruled.  
9 Do you need a readback?  
10 THE WITNESS: Please.  
11 (Whereupon, the record was read back by the  
12 court reporter.)  
13 A I looked at methods, but I did also look at the  
14 detail support for the calculations, and to see what was  
15 provided to the outside accountants, Mazars; and see how that  
16 flowed into the Statement of Financial Condition, both in terms  
17 of the amounts and the disclosures.  
18 Q So, but you didn't do any analysis to determine if  
19 those amounts that were being shown in the back up, whether  
20 those were accurate?  
21 A I am struggling with the word "accurate." Accurate  
22 against what standard?  
23 Q Well, the standards we were just discussing. If you  
24 are using past earnings, you need to have accurate earnings.  
25 Did you do any analysis -- well, in any context, did you do

Flemmons - by Defendant - Cross(Wallace) Page 4492

1 anything to determine whether any of the numbers in the backup  
2 support were being accurately reported by the Trump  
3 Organization?  
4 A If you are asking me, for example, did I seek to  
5 validate whether the historical earnings numbers that were used  
6 for the calculations, in which cases that method was used, did  
7 I go and validate whether the correct past earnings figure was  
8 included? I did not do that.  
9 Q And did you do any analysis to determine whether any  
10 of the estimates contained in the Statement of Financial  
11 Condition were prepared in good faith?  
12 MR. KISE: Objection to "good faith."  
13 THE COURT: Read back, please.  
14 (Whereupon, the record was read back by the  
15 court reporter.)  
16 THE COURT: Sustained. He wouldn't know whether  
17 they were done in good faith or not. He might know other  
18 things.  
19 MR. WALLACE: I am asking if he did any work to  
20 determine if they were made in good faith.  
21 MR. KISE: What would --  
22 THE COURT: How would he do that?  
23 MR. KISE: What does good faith mean, indicia of  
24 fraud?  
25 MR. WALLACE: He could find out how the

Flemmons - by Defendant - Cross(Wallace) Page 4493

1 directors came to the cap rates it was using; how it came  
2 to the discount rates.  
3 THE COURT: Then he would be trying to determine  
4 the accuracy. But good faith is in the mind of the person  
5 that is putting the number together.  
6 MR. KISE: He could opine --  
7 THE COURT: Rule number one.  
8 MR. KISE: All right. Fair enough.  
9 MR. WALLACE: Your Honor, the witness testified  
10 these numbers had to be prepared in good faith, and I am  
11 asking if he has done any work to determine if they met  
12 that standard that he is testifying to.  
13 THE COURT: Well, now the cat is sort of out of  
14 the bag, but let's hear an answer to the question.  
15 A I didn't specifically seek to develop an opinion on  
16 the question you are asking. However, there are many instances  
17 where I saw components of the calculations that tied to, for  
18 example, information provided by third-party, you know, brokers  
19 or agents; or appraisal information that had some correlation  
20 to that. So based on that, one could say that that was  
21 supported and was in good faith. But I did not specifically  
22 seek to -- I didn't structure my work in that fashion.  
23 Q And so the information that you are seeing, you are  
24 talking about the information that you would see in that  
25 supporting worksheet that would feed into the Statement of

Flemmons - by Defendant - Cross(Wallace) Page 4494

1 Financial Condition; is that the information you are referring  
2 to?  
3 A That's correct. There were many instances where I  
4 did see support for the numbers, which certainly showed indicia  
5 of good faith. But I did not seek to do that for every single  
6 calculation.  
7 Q But you didn't do any additional work to go back and  
8 see if those numbers that were reported, the information that  
9 was contained in the supporting worksheets, you didn't do any  
10 work to determine if that was, in fact, accurate or an accurate  
11 reflection of the supporting material, did you?  
12 A I think I said in some cases I did see that  
13 correlation. But I did not seek to undertake that effort for  
14 all of the calculations.  
15 Q Did you review all of the work papers for the  
16 Statement of Financial Condition for each year from 2011 to  
17 2021?  
18 A I don't recall.  
19 Q I'll see if we can try to remember this, but when you  
20 were testifying with Mr. Suarez and looked at one of the  
21 supporting data spreadsheets, you said there were blue numbers  
22 that would tie out to the support. Did you go through and look  
23 at the documents that tied out to the blue numbers in the  
24 supporting data spreadsheet?  
25 A I don't recall.

November 16, 2023

<p>Flemmons - by Defendant - Cross(Wallace) Page 4495</p> <p>1 Q If you did, would it have been reflected in your 2 reports? 3 A Yes. 4 Q Now, if you are going to use one of those techniques 5 that we were discussing, ASC 274 would still require that 6 number reflect the amount at which an item could be exchanged 7 between a buyer and a seller, each of whom is well informed and 8 willing, and neither of whom is compelled to buy or sell; is 9 that correct? 10 A That is the definition of estimated current value, so 11 yes. 12 Q And so if the issue of a Statement of Financial 13 Condition uses one of the techniques listed in ASC 274, but 14 comes to the conclusion that the price reached by using that 15 technique is not one where a transaction would actually occur, 16 then it is not estimated current value; is that correct? 17 A Well, I am not sure how that would happen, if a 18 preparer is using one of the methods that is contained in ASC 19 274 to develop and establish estimated current value, how that 20 would then lead to a conclusion that it is not estimated 21 current value. 22 Q Well, what if someone were to use, say, historical 23 cost. They come up with a value based on historical cost, that 24 they have an independent opinion that there is no way anyone 25 would pay the historical cost amount for that asset. By</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4497</p> <p>1 the stand? 2 MR. KISE: I had to read that for a second just 3 to make sure I heard you correctly. 4 But the point is, you are asking this witness, 5 who is an accounting expert and a, you know, with his 6 background, to make a subjective value determination as to 7 whether or not an individual owner or an individual buyer, 8 as the case may be, would engage in a specific 9 transaction, hypothetical or otherwise. 10 THE COURT: Well, let me try to simplify it. 11 How about if I ask the question: If the compiler uses one 12 of the methods and reaches a result that would not be the 13 price at which a willing seller would sell to a willing 14 buyer, what are you supposed to do? 15 MR. WALLACE: Your Honor, I am actually asking a 16 slightly different question. 17 THE COURT: Okay. 18 MR. WALLACE: Because I am interested in this 19 from the perspective of the issuer. 20 Q The compiler would be the accounting firm; is that 21 fair, Mr. Flemmons, if we use these terms? 22 A That's correct. 23 Q And the issuer is the person issuing the statement. 24 In the examples we are looking at that's Donald J. Trump? 25 A That's fair.</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4496</p> <p>1 definition, that person does not believe that the historical 2 cost has developed an estimated current value; is that fair? 3 MR. KISE: Objection. That's an improper 4 hypothetical. He is getting into valuations and 5 subjectivity of valuations, what someone would pay for 6 something or not pay. Who are we even talking about, the 7 seller or the buyer? The seller might not pay something, 8 but the buyer might not sell it. So we are getting into 9 value judgments. 10 THE COURT: I think we are talking about the 11 owner who would be the seller. 12 MR. WALLACE: We are talking about the person 13 issuing the statement and whether or not they used a 14 technique, but they form a belief that that technique has 15 created value that does not reflect where a transaction 16 occurred. 17 MR. KISE: It is an improper -- 18 MR. WALLACE: It is a hypothetical. 19 MR. KISE: This is not an expert on valuation. 20 You certainly could contend that an owner might not sell 21 under any of the scenarios. Under six it is highly 22 subjective. I am sure if you put President Trump on the 23 stand he would say no matter how high the number is, it 24 needs to be higher. It is just a fact. 25 THE COURT: Would I ever put President Trump on</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4498</p> <p>1 Q So my question is, you said that there is, I think, 2 essentially, a presumption if someone uses one of the 3 techniques in ASC 274 that in fact reflects estimated current 4 value. My question is, is it still estimated current value if 5 a person uses the technique but has a subjective belief that 6 the value is not correct, that no transaction would take place 7 at that price? 8 THE COURT: And what's -- 9 MR. KISE: Objection, Your Honor. I think it is 10 an improper question. 11 THE COURT: Overruled. But what is the specific 12 question there? 13 MR. WALLACE: The question is -- 14 THE COURT: I understand the situation, the 15 hypothetical. What is the question? 16 Q Is it possible to use a technique and still not 17 arrive at estimated current value? 18 THE COURT: Okay. Thanks. 19 A From an accounting perspective, using any of the 20 methods that are called for in ASC 274 are ones that can 21 establish estimated current value. So I am not sure I 22 understand your question on how it would not establish 23 estimated current value. 24 Q Would it still, if a person were to reach a 25 conclusion that it was an obviously inappropriate value, would</p>

Flemmons - by Defendant - Cross(Wallace) Page 4499

1 that still equate to estimated current value?

2 MR. KISE: Objection. "Obviously inappropriate

3 value"?

4 MR. WALLACE: All right. Can we pull up --

5 MR. KISE: In whose mind?

6 MR. WALLACE: Why don't we pull up Defendant's

7 950. And if we can go to page 22.

8 Q This is the 2008 --

9 MR. WALLACE: I am maintaining my objection to

10 the out-of-date guidance.

11 Q But I believe this is the 2008 guide that you said

12 was still -- could be useful reference material for someone

13 doing a compilation report. I can show you the cover if it

14 would help refresh your recollection.

15 A That's not necessary.

16 Q You remember the document?

17 A Yes.

18 MR. WALLACE: If we go to page 22. Go down to

19 the fourth bullet under 2.05.

20 Q And these are the things that I believe are ways a

21 misstatement might occur. One of the bullet points was the

22 presentation of an asset or liability at an obviously

23 inappropriate value or amount. And so I am asking, is there a

24 tension between using one of the techniques that comes to an

25 obviously inappropriate value or amount?

Flemmons - by Defendant - Cross(Wallace) Page 4500

1 A I don't think this speaks to the questions you were

2 asking me before about selection of a method that is allowed

3 under ASC 274 to establish estimated current value. I think

4 what this is talking about is with the method selected, how is

5 that applied. Are you using a discount rate of 30 percent?

6 That would be an obviously inappropriate value or amount.

7 Q Well, no. It says the presentation of an asset. So

8 this isn't going to the calculation, this is saying how is the

9 asset -- I think this is saying that if you look at the asset,

10 it is on the books at an obviously inappropriate value, that's

11 something you should be looking out for as a GAAP departure.

12 So I will ask a question.

13 Since I have just directed you to this.

14 A Mm-Hm.

15 Q Is it still appropriate to use one of these

16 techniques if it comes to an obviously inappropriate value or

17 amount?

18 A I think you are conflating two different concepts,

19 and that's not correct. As I said before, the presentation of

20 the asset is based on the calculations using methods that are

21 under ASC 274. So this is speaking to appropriately using that

22 method and not using inputs that are obviously inappropriate.

23 Q So there is -- I take it your answer is there is no

24 way if you use one of the techniques in ASC 274 you would reach

25 an obviously inappropriate value?

Flemmons - by Defendant - Cross(Wallace) Page 4501

1 A If the method is appropriately applied, you have

2 complied with ASC 274.

3 Q So it would therefore not reflect an obviously

4 inappropriate value or amount? I am trying to understand your

5 view. Is it if you use the techniques in the ASC 274 you will

6 not violate this provision right here?

7 A That's my view.

8 Q Okay.

9 THE COURT: I sort of liked my question better.

10 But what happens if you use the appraisal method

11 and the appraiser had a typographical error and added a

12 zero or subtracted a zero, and you just look at it and you

13 know that can't be right. Can you still say, well, I am

14 using the method. That's the appraisal. And it said

15 \$100 million and I know it is worth \$100 billion or

16 \$10 million. What do you do if the -- I know I am asking

17 another question, but it is the same question. What are

18 you supposed to do in your role if you see an appraisal

19 using one of the methods, using as a hypothetical

20 appraisal, and it is obviously wrong? Can you still use

21 it? Can you say, all right, so what it is wrong, but I am

22 using the method.

23 THE WITNESS: That goes to my prior testimony a

24 few minutes ago that the method needs to be applied

25 correctly in accordance with how it is laid out in ASC

Flemmons - by Defendant - Cross(Wallace) Page 4502

1 274. For example, using the capitalization of perspective

2 earnings, you probably shouldn't use a zero percent cap

3 rate. That would be obviously inappropriate. And to your

4 example, if there is a clear error with an appraisal, you

5 know, that would be another reason that would need to be

6 revisited. But my testimony is that the -- that ASC 274,

7 to the extent those methods are being applied as described

8 in the standard, and appropriately, you will arrive at an

9 estimated current value that is usable for your financial

10 statements.

11 THE COURT: All right. Thank you.

12 Q I believe you also testified that using these

13 different methods -- the different methods listed in ASC 274

14 could yield values that varied, differed by an order of

15 magnitude. Is that fair?

16 A They certainly can.

17 Q So how are you able to have values that differ by an

18 order of magnitude that both reflect the price at which a

19 willing buyer and willing seller would exchange? If one

20 valuation technique comes to \$1 million and another comes to

21 \$100 million, isn't there some objective standard? I guess I

22 am trying to understand, is it your position that a willing

23 buyer and willing seller would agree to both prices?

24 A Well, first of all, estimated current value is not an

25 exact science. There is not one single correct value that



November 16, 2023

<p>Flemmons - by Defendant - Cross(Wallace) Page 4503</p> <p>1 comes out of this exercise. The standard allows for a range of</p> <p>2 different methods that can yield a range of results to</p> <p>3 ultimately lead to a range of values that could be reported.</p> <p>4 No one of which is the right or wrong answer, it is an</p> <p>5 estimate. And as long as you have selected one method within</p> <p>6 ASC 274, disclosing in your financials which one you are using,</p> <p>7 a user is in a position to agree or disagree or come up with an</p> <p>8 alternative method.</p> <p>9 Q I guess I am asking the difference between difference</p> <p>10 of degree and difference by orders of magnitude. It would seem</p> <p>11 that there cannot be two prices that are orders of magnitude</p> <p>12 different in which a transaction would both take place.</p> <p>13 So let me ask, maybe, a question that will clarify</p> <p>14 this. Does the ind -- do the independent requirements of</p> <p>15 estimated current value, which requires that it needs to be the</p> <p>16 willing buyer and willing seller, neither of whom is compelled</p> <p>17 to buy or sell, does that impose any independent restriction on</p> <p>18 the values that would come out of the techniques described in</p> <p>19 the ASC 274?</p> <p>20 A I don't understand your question.</p> <p>21 Q My question is, using the techniques in ASC 274, they</p> <p>22 are supposed to reach this definition of estimated current</p> <p>23 value. Does that definition impose any additional restrictions</p> <p>24 on whether or not it is appropriate to use one of the</p> <p>25 particular values -- one of the particular methods in ASC 274?</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4505</p> <p>1 driving at, is it wrong to pick the wrong one.</p> <p>2 Overruled.</p> <p>3 MR. WALLACE: Can we get the question read back</p> <p>4 please, Your Honor?</p> <p>5 THE COURT: Read back.</p> <p>6 (Whereupon, the record was read back by the</p> <p>7 court reporter.)</p> <p>8 A I am not sure what that means in the context of</p> <p>9 selecting a method. Because as I said multiple times, any</p> <p>10 method can be selected to establish estimated current value as</p> <p>11 provided in the standard.</p> <p>12 Q Well, you have also said the methods could lead to</p> <p>13 numbers that are orders of magnitude different. Doesn't the</p> <p>14 person need to exhibit good faith in picking, therefore, which</p> <p>15 of those methods they use and what number they eventually</p> <p>16 obtain?</p> <p>17 MR. KISE: Same objection.</p> <p>18 THE COURT: Same ruling.</p> <p>19 A A preparer of the financial statements is afforded</p> <p>20 very broad latitude to pick whatever method they want, whether</p> <p>21 it is a high value, low value, depending on the intended</p> <p>22 purpose of the financial statements. The important thing is</p> <p>23 that that method is disclosed. So, if one is preparing</p> <p>24 financial statements that would prefer to have higher values</p> <p>25 and there is a method provided under the standard that enables</p>
<p>Flemmons - by Defendant - Cross(Wallace) Page 4504</p> <p>1 A I don't believe there are any such restrictions in</p> <p>2 the standard.</p> <p>3 Q We talked a little bit about good faith. I just want</p> <p>4 to know, would someone picking which of the methods to use in</p> <p>5 ASC 274, would they also need to use good faith in selecting</p> <p>6 which method they used to value an asset?</p> <p>7 MR. KISE: Objection to "good faith" again.</p> <p>8 THE COURT: I don't think I am actually</p> <p>9 overruling myself -- overruled. I think, you know, it is</p> <p>10 a common expression, "good faith." How about "best</p> <p>11 effort," would that be better?</p> <p>12 MR. KISE: Well, the standard itself presumes if</p> <p>13 you use one of the six methods you are okay he testified</p> <p>14 today repeatedly, so there is no good faith component if</p> <p>15 you pick one of the six. What the Attorney General has</p> <p>16 been driving at from the beginning is that you have to</p> <p>17 pick the right one. And this witness has testified</p> <p>18 repeatedly there isn't a right one. If you pick any of</p> <p>19 the six you are okay. So there is no -- good faith is an</p> <p>20 ambiguous concept and a highly subjective one in the</p> <p>21 concept of this regulation. And I think the witness has</p> <p>22 testified to that. So I just think the question is an</p> <p>23 improper question.</p> <p>24 THE COURT: I don't think the AG is driving at</p> <p>25 you have to pick the right one. I think they are maybe</p>	<p>Flemmons - by Defendant - Cross(Wallace) Page 4506</p> <p>1 that to happen, there is nothing wrong with that under GAAP, as</p> <p>2 long as it is disclosed.</p> <p>3 And the other end of the spectrum, there are reasons</p> <p>4 why a set of financial statements might be preferred to present</p> <p>5 a lower value on the range of acceptable outcomes. And as long</p> <p>6 as that is selected and disclosed, there is nothing wrong with</p> <p>7 that either.</p> <p>8 The point is that you are communicating that to a</p> <p>9 user and allowing that user to then be in a position to agree</p> <p>10 or disagree or come up with an alternative approach.</p> <p>11 Q I believe that you have testified that choosing one</p> <p>12 of the techniques from ASC 274 is a matter of judgment; is that</p> <p>13 fair?</p> <p>14 A That's fair.</p> <p>15 Q Okay. And in exercising that judgment, does an</p> <p>16 individual need to use good faith?</p> <p>17 MR. KISE: Objection.</p> <p>18 MR. WALLACE: Why don't I --</p> <p>19 Q Mr. Flemmons, have you taken the position that</p> <p>20 reliable accounting judgments are most dependent on good faith?</p> <p>21 A I don't recall.</p> <p>22 (The following proceedings were stenographically</p> <p>23 recorded by Senior Court Reporter Michael Ranita.)</p> <p>24</p> <p>25</p>

November 16, 2023

<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4507</p> <p>1 Q Do you agree with that statement that reliable</p> <p>2 accounting judgments are most dependent on good faith?</p> <p>3 MR. KISE: Objection.</p> <p>4 THE COURT: Overruled. Interesting question.</p> <p>5 A I don't disagree with that.</p> <p>6 Q Okay.</p> <p>7 So I'm asking now, if on this judgment about which</p> <p>8 technique to use, does the preparer of the financial statement</p> <p>9 need to use good faith?</p> <p>10 A Well, I don't understand how bad faith would be</p> <p>11 exercised by using any of the allowable methods under ASC-274.</p> <p>12 THE COURT: I'll take that to be, no.</p> <p>13 So the basic position is if you use these any of</p> <p>14 these methods, that's okay. You don't need to use good</p> <p>15 faith in picking which one, because they were all, you know,</p> <p>16 doable, reasonable. I can't remember the word.</p> <p>17 THE WITNESS: I think my answer might be a little</p> <p>18 different, is that --</p> <p>19 THE COURT: Okay.</p> <p>20 THE WITNESS: -- one is inherently using good faith</p> <p>21 if they select one of these methods and disclose it to the</p> <p>22 user.</p> <p>23 THE COURT: Okay. I think we are saying the same</p> <p>24 thing. Thanks.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4509</p> <p>1 brand premium. And this disclosure is notifying users of</p> <p>2 the financials that, you know, brand premium is part of some</p> <p>3 of the properties and valuations."</p> <p>4 Do you remember that testimony from yesterday?</p> <p>5 A Yes.</p> <p>6 Q Okay.</p> <p>7 MR. WALLACE: If we could pull up Plaintiff's</p> <p>8 Exhibit 730 and go to page 23.</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 Q This is the document you were discussing with</p> <p>12 Mr. Suarez. And if we go to page 23, the language that's being</p> <p>13 quoted is the first paragraph. It starts, "As stated in note</p> <p>14 one, this financial statement does not reflect the value of</p> <p>15 Donald J. Trump's worldwide reputation." I won't read the full</p> <p>16 thing in.</p> <p>17 I want to direct your attention, because Mr. Suarez</p> <p>18 didn't ask you about it. This is the start of section five,</p> <p>19 real estate licensing developments.</p> <p>20 The golf courses are not included in that category of</p> <p>21 the Statement of Financial Condition are they?</p> <p>22 A I don't believe so.</p> <p>23 Q So this language that Mr. Suarez read to you yesterday</p> <p>24 about Donald Trump's worldwide reputation, it's not addressing</p> <p>25 the valuation of his golf club properties, is it?</p>
<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4508</p> <p>1 screen.)</p> <p>2 Q I won't play a memory game with you on some of your</p> <p>3 testimony from yesterday, Mr. Flemmons, we've put up here a</p> <p>4 transcript from yesterday.</p> <p>5 I would like to direct your attention to the question</p> <p>6 that begins at line 21 of page 4359.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 Q The question is:</p> <p>10 "Now" -- I'm sorry, this is an exchange between you and</p> <p>11 Mr. Suarez:</p> <p>12 "Now, in the Statement of Financial Condition there is</p> <p>13 a note that I would like to draw your attention to at page 23 of</p> <p>14 the exhibit, page 21 of the document.</p> <p>15 Can I please draw your attention to where it says:</p> <p>16 'As stated in note one, this financial statement does not</p> <p>17 reflect the value of Donald J. Trump's worldwide reputation,</p> <p>18 except to the extent it has become associated with properties,</p> <p>19 either operative or under development.'</p> <p>20 The question is, is that statement in the Statement of</p> <p>21 Financial Condition consistent with the method for determining</p> <p>22 the current estimated value for the golf club properties in the</p> <p>23 support date?</p> <p>24 "ANSWER: Yes. This specifically relates to what</p> <p>25 we are looking at here in the supporting schedule related to</p>	<p>J. Flemmons - by Defendant - Cross (Mr. Wallace) Page 4510</p> <p>1 A Can you repeat the question, please.</p> <p>2 MR. WALLACE: Read back, please.</p> <p>3 THE COURT: Read back, please.</p> <p>4 (Whereupon, the requested question was read back by</p> <p>5 the court reporter.)</p> <p>6 A I think given the geography of where this is appearing</p> <p>7 in the disclosures, I would agree with you that it does not</p> <p>8 appear to relate to the golf properties. However, note one,</p> <p>9 which is referenced in this paragraph, makes reference to the</p> <p>10 brand value enhancing the reported values in the Statement of</p> <p>11 Financial Condition, and that's under the basis of presentation</p> <p>12 footnote of the Statement of Financial Condition, which is more</p> <p>13 of an umbrella section that applies to the entirety of the</p> <p>14 financial statements.</p> <p>15 Q Is there any specific reference within the section on</p> <p>16 the golf courses to Mr. Trump's brand value? If you want, it</p> <p>17 begins on -- page ten is the club facilities and related real</p> <p>18 estate.</p> <p>19 MR. WALLACE: If we could flip to that.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 A I would have to read through these five or six or more</p> <p>23 pages. I don't recall that disclosure being specifically</p> <p>24 included, but again, it does appear within a couple of places</p> <p>25 within the notes, more broadly.</p>

November 16, 2023

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4511

1 Q But the section that you read yesterday doesn't apply  
2 to the golf courses in this particular --  
3 A The one that you just read falls under a different  
4 section.  
5 Q Mr. Flemmons, at your deposition I asked you if you had  
6 ever reviewed an expert report prepared by Professor Eli Bartov  
7 of NYU. And you said you had not.  
8 Since your deposition, have you reviewed any expert  
9 report prepared by Professor Bartov?  
10 A I don't believe so.  
11 Q Since your deposition, have you spoken with Professor  
12 Bartov?  
13 A No.  
14 MR. WALLACE: Nothing further, your Honor.  
15 THE COURT: Mr. Suarez, you promised us some  
16 redirect.  
17 MR. SUAREZ: I did.  
18 THE COURT: Now is the time.  
19 REDIRECT EXAMINATION  
20 BY MR. SUAREZ:  
21 Q Good morning, Mr. Flemmons.  
22 A Good morning.  
23 MR. SUAREZ: If we could please pull up Plaintiff's  
24 Exhibit 1609.  
25 (Whereupon, the exhibit was displayed on the

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4512

1 screen.)  
2 MR. SUAREZ: And turn to page 13 of the exhibit.  
3 (Whereupon, the exhibit was displayed on the  
4 screen.)  
5 Q Mr. Flemmons, Mr. Wallace just showed you and walked  
6 you through the definition of estimated current value as it  
7 appears in 274-10-55-1; is that correct?  
8 A Yes.  
9 Q Now, would you agree with me that we spent most of our  
10 time yesterday talking about the definition of estimated current  
11 value that appears at ASC-55 -- excuse me, ASC-274-10-55-6,  
12 relating to real estate?  
13 A Yes, we walked through that.  
14 Q And these are the methods -- withdrawn.  
15 Are these the methods that would apply to the  
16 determination of estimated current value as it relates to real  
17 estate assets?  
18 A These are methods that may be used for real estate  
19 assets. Um, the other methods that are listed prior to this are  
20 also methods that could be used. There is an overlap between  
21 those and the methods that are listed here.  
22 Q Are most of the assets that we discussed yesterday real  
23 estate assets?  
24 A I believe so.  
25 MR. SUAREZ: If we could please turn to the

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4513

1 illustrative guidance that you reviewed with Mr. Wallace  
2 yesterday.  
3 (Whereupon, the exhibit was displayed on the  
4 screen.)  
5 Q At note four there was a discussion concerning Kenbruce  
6 Associates, and we can draw your attention to that. It's on  
7 page 17 of the exhibit.  
8 A I see it.  
9 Q Okay.  
10 MR. SUAREZ: If we could also pull up, now,  
11 side-by-side, the 2014 Statement of Financial Condition that  
12 appears at Plaintiff's Exhibit 730.  
13 (Whereupon, the exhibit was displayed on the  
14 screen.)  
15 Q If we could pull up and show the accountant's  
16 compilation report.  
17 (Whereupon, the exhibit was displayed on the  
18 screen.)  
19 Q Does the illustrative guidance identify the significant  
20 GAAP departures that are present in the compilation report of  
21 President Trump's Statement of Financial Condition?  
22 A I don't believe within the illustrative guidance there  
23 is any example of disclosure of a deviation from GAAP.  
24 MR. SUAREZ: If we could turn to the next page of  
25 the Statement of Financial Condition.

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4514

1 (Whereupon, the exhibit was displayed on the  
2 screen.)  
3 MR. SUAREZ: And if we could highlight the  
4 paragraph that starts with "Because."  
5 (Whereupon, the exhibit was displayed on the  
6 screen.)  
7 Q Does the illustrative guidance contain the disclaimer  
8 language that appears in the Statement of Financial Condition?  
9 A No.  
10 Q Does the illustrative guidance -- withdrawn.  
11 What is the effect of this disclaimer language intended  
12 to be on the user of the Statement of Financial Condition?  
13 A Well, as I've testified before, this is language that  
14 is suggested by AICPA professional guidance for accountant's  
15 performing a compilation, that when deviations from GAAP are of  
16 such significance, the guidance suggests that the accountant  
17 include this language in the accountant's report. And as I've  
18 said before, this serves as the highest level warning to a user  
19 as to the reliability of the -- the financial information.  
20 MR. SUAREZ: If we could move onto the note on the  
21 2014 Statement of Financial Condition concerning Trump Tower  
22 that you reviewed yesterday with Mr. Wallace.  
23 (Whereupon, the exhibit was displayed on the  
24 screen.)  
25 Q Was the cap rate selected by management available to

November 16, 2023

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4515

1 Mazars on the supporting data?

2 A Yes. The capitalization rate that was used was clear

3 within that support.

4 Q What obligation did Mazars have to understand the basis

5 for the selection of that capitalization rate, if any?

6 A Well, their responsibilities under professional

7 standards were to review the methods that were being used and

8 how they were being applied, and to the extent there were

9 obvious errors -- we touched on obvious errors earlier -- they

10 would be required to initiate further inquiries and to resolve

11 those issues.

12 Q Yesterday --

13 MR. SUAREZ: If we could turn on ASC-273 at 1609

14 that we have up here, if we could pull up 45-13, which

15 appears on page nine of that exhibit.

16 (Whereupon, the exhibit was displayed on the

17 screen.)

18 MR. SUAREZ: And blow up the "Adequacy of

19 disclosures."

20 (Whereupon, the exhibit was displayed on the

21 screen.)

22 Q I think yesterday in Mr. Wallace's examination you

23 discussed with him the adequacy of disclosure section of

24 ASC-274. Do you recall that?

25 A Yes.

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4516

1 Q What professional obligation did Mazars have to

2 management concerning the adequacy of disclosures in the

3 Statement of Financial Condition, if any?

4 A Well, the professional standards that were applicable

5 to Mazars during the compilation do specify that the accountant

6 is required to read the disclosures and to evaluate whether

7 those disclosures are consistent with the methods that are being

8 used.

9 Q And if Mazars, the accounting firm, was not satisfied

10 with the sufficiency of the disclosures in the Statement of

11 Financial Condition, what obligation would they have under the

12 professional standards, if any?

13 A They would be required to follow up with, um, in this

14 case, Mr. Trump, or The Trump Organization, and to seek to have

15 the disclosure modified.

16 Q And if the disclosure was not modified, what obligation

17 would Mazars have under the professional standards, if any?

18 A Well, I suppose there are a couple of options in that

19 case. In the absence of the disclosure, or absence of the

20 correction was deemed to be significant, and the cautionary

21 language that we just referred to a minute ago was not deemed to

22 be sufficient, as with any kind of GAAP departure, including a

23 disclosure issue, the accountant should seriously consider

24 withdrawing from the engagement.

25 Q What is the purpose of making sure -- withdrawn.

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4517

1 What is the purpose of disclosing in the notes the

2 method of valuation used in selecting estimated current value?

3 A So that a user can understand the method that's being

4 used and have the opportunity to agree or disagree and

5 potentially develop a different valuation using a different

6 method.

7 Q And if the user requires additional information, what

8 can the user do if it's not contained in the Statement of

9 Financial Condition?

10 A Can you repeat that, please.

11 Q Sure. If the Statement of Financial Condition doesn't

12 contain information that the user needs to reach their own

13 judgment, what are they able to do, if anything?

14 A The user will still be able to come up with their own

15 values to the extent the property is identified within the

16 Statement of Financial Condition.

17 Q If we could turn back to the Statement of Financial

18 Condition, to page two, and focus in, again --

19 (Whereupon, the exhibit was displayed on the

20 screen.)

21 MR. SUAREZ: I'm sorry, that's page three of the

22 exhibit, page two of the Statement of Financial Condition?

23 (Whereupon, the exhibit was displayed on the

24 screen.)

25 MR. SUAREZ: Focus on the paragraph that starts

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4518

1 "because."

2 Q And do you see where it says, "Because of the

3 significance and pervasiveness of the matters discussed above

4 make it difficult to assess their impact on the Statement of

5 Financial Condition, users of this financial statement should

6 recognize that they might reach different conclusions about the

7 financial condition of Donald Trump if they had access to a

8 revised Statement of Financial Condition prepared in conformity

9 with accounting principles generally accepted in the United

10 States of America."

11 Do you see that?

12 A I do.

13 Q And what does that statement tell the user about the

14 judgments reached in achieving values for assets on the

15 Statement of Financial Condition?

16 A Well, again, this is language that comes straight out

17 of AICPA professional guidance -- professional standards, and is

18 communicating to the user that the information contained in the

19 Statement of Financial Condition does not comport with GAAP. So

20 user beware.

21 MR. SUAREZ: And if we could turn to page four of

22 the exhibit on the Statement of Financial Condition,

23 Plaintiff's Exhibit 730, page four of the exhibit?

24 (Whereupon, the exhibit was displayed on the

25 screen.)

November 16, 2023

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4519

1 Q Do you see where it says "Escrow reserved deposits and  
2 prepaid expenses"?

3 A Yes.

4 Q Do you see above it it says "Cash and marketable  
5 securities"?

6 A Yes.

7 Q Yesterday you had some discussion with Mr. Wallace  
8 concerning the Vornado cash and the disclosures contained in the  
9 Statement of Financial Condition. I would like to draw your  
10 attention to paragraph two of the notes on page six of the  
11 exhibit?

12 (Whereupon, the exhibit was displayed on the  
13 screen.)

14 MR. SUAREZ: Page seven of the exhibit.

15 Q At the top it says "Cash and marketable securities  
16 represents amounts held by Donald J. Trump, personally, and  
17 amounts in operating entities. Included in this amount are  
18 common stock, mutual funds, hedge funds, corporate notes and  
19 bonds, and United States Treasury Securities, as well as  
20 in-transit state tax refund issued prior to June 30, 2014 in the  
21 amount of \$3.9 million. Marketable securities are valued at  
22 quoted market prices or estimates of current value by hedge  
23 funds."

24 What does this tell the user about the inclusion of the  
25 Vornado cash in Mr. Trump's Statement of Financial Condition?

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4520

1 A Well, the inclusion of the Vornado cash in the  
2 Statement of Financial Condition, um, would be covered by the  
3 first sentence in this particular disclosure.

4 Q How is that?

5 A Because it states that cash among other things, are --  
6 are reported on the Statement of Financial Condition that  
7 include amounts in operating entities.

8 MR. SUAREZ: And, in fact, if we turn to page two  
9 of the exhibit.

10 (Whereupon, the exhibit was displayed on the  
11 screen.)

12 MR. SUAREZ: And we pull up the bottom paragraph.  
13 (Whereupon, the exhibit was displayed on the  
14 screen.)

15 Q If you could read the last sentence into the record,  
16 please.

17 A "The accompanying Statement of Financial Condition does  
18 not include the required summarized disclosures, and reports  
19 some closely held business entities in a manner that separately  
20 states gross assets and liabilities and states certain cash  
21 positions separately from their related operating entity."

22 Q How, if at all, does that disclosure by Mazars in the  
23 compilation report address the Vornado cash?

24 A I think this is another disclosure that's very similar  
25 to what we saw before that indicates that reported cash on the

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4521

1 Statement of Financial Condition includes cash from operating  
2 entities.

3 Q What professional obligation, if any, did Mazars have  
4 to provide management of The Trump Organization's direction  
5 concerning the disclosure of Vornado cash on the Statement of  
6 Financial Condition?

7 A Well, like the responsibilities with all disclosures,  
8 to the extent the notes were inconsistent with the support or  
9 not adequate, Mazars would be responsible for following up on  
10 that.

11 Q And if management didn't address Mazars' inquiries to  
12 Mazars' satisfaction, what obligation would Mazars' have?

13 A Similar to what I said before, that it could lead to  
14 additional language in the accountant's report to notify users  
15 as to the insufficiency or inadequacy of the disclosures, or if  
16 it rose to a significant -- was deemed to be a significant  
17 issue, it could lead to a withdrawal by Mazars from the  
18 compilation engagement.

19 Q Who professional -- withdrawn.

20 Yesterday you also discussed with Mr. Wallace, on  
21 cross, the disclosure of related party transactions. What  
22 professional obligation did Mazars have to advise Trump  
23 Organization management concerning the adequacy of disclosures  
24 with respect to related party transactions, if any?

25 MR. WALLACE: Objection. I think this was covered

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4522

1 in direct.

2 MR. SUAREZ: I'm addressing the piece that was  
3 covered on cross regarding the related party transactions.

4 THE COURT: To me it's always an issue if there's  
5 direct, there's cross; can we go back? Overruled.

6 MR. SUAREZ: I won't belabor it.

7 A Well, to the extent Mazars was aware that there were  
8 transactions with related parties as defined in ASC-850, they  
9 would be required to ensure that disclosure of those related  
10 parties and those transactions, to the extent they were  
11 material, were included in the Statement of Financial Condition.

12 Q And if Mazars was not satisfied with inquiries that  
13 they received from management with the response to inquiries  
14 they received from management, what would their obligation be?

15 A Identical to what I testified about before.

16 Q Yesterday, Mr. Wallace asked you about a number of  
17 potential red flags that you had identified throughout the day  
18 in your testimony. Do you recall that?

19 A Yes.

20 Q Would those potential red flags have been visible to  
21 Mazars as well?

22 A Yes. They were visible to me as I was reviewing the  
23 supporting calculations, and those were the same working papers  
24 that were provided to and included in Mazars' files.

25 Q And to be sure, when we discussed Mazars' obligations

November 16, 2023

J. Flemmons - by Defendant - Redirect (Mr. Suarez) Page 4523

1 in the period of 2011 to 2020, that would also apply to Whitley  
 2 Penn in 2021; correct?  
 3 A Correct.  
 4 Q Now, Mr. Wallace asked you yesterday, and again today,  
 5 um, in some manner, if 11 different valuations resulted in 11  
 6 different values under the definition of estimated current  
 7 value. Would the accountant's -- I'm sorry. Let me try that  
 8 again.  
 9 Mr. Wallace asked you yesterday if 11 different  
 10 valuations resulted from the application of the different  
 11 methods of estimated current value, if there would be something  
 12 wrong with selecting the highest one? Would there be something  
 13 wrong with selecting the highest one?  
 14 A No. As long as it was a method that was provided under  
 15 ASC-274, and that method was disclosed.  
 16 Q Would it be an indicia of fraud to select the highest  
 17 method that estimated current value yielded the highest value?  
 18 A Well, without offering a legal conclusion, because I'm  
 19 not a lawyer, but I am a certified fraud examiner, I'm very  
 20 familiar with fraud framework, and the elements of fraud, and  
 21 the various capacities. One of those would be -- require some  
 22 form of misstatement, and that misstatement be material, but I  
 23 -- in looking at the support associated with the determinations  
 24 of ECV, combined with the disclosures, selecting the highest  
 25 method, and the methods being used were included in the

Page 4524

1 Statement of Financial Condition, so I don't see that there was  
 2 a misstatement. So therefore I would not be aware of there  
 3 being an indicia of fraud on that basis.  
 4 Q As a certified fraud examiner, would you consider it an  
 5 indicia of fraud if the preparer of a financial statement made a  
 6 mistake?  
 7 A I assume from your question you are saying made an  
 8 honest mistake and it was not intentional.  
 9 Q Correct.  
 10 A Under the fraud framework, intent is a component. If  
 11 it was not intentional, it would not be an indicia of fraud.  
 12 Q And as a certified fraud examiner, is it an indicia of  
 13 fraud when the preparer of a financial statement has an  
 14 optimistic view as to the value of their assets?  
 15 A No.  
 16 MR. SUAREZ: If I may have a moment to confer with  
 17 my colleagues.  
 18 THE COURT: Sure.  
 19 (Continued on the next page.)  
 20  
 21  
 22  
 23  
 24  
 25

Flemmons - by Defendant - Redirect(Suarez) Page 4525

1 MR. SUAREZ: Pull back up D 950 that you  
 2 reviewed with Mr. Wallace a moment ago.  
 3 And turn to the section on the compilation  
 4 report concerning a not obviously inappropriate value or  
 5 amount. The compilation section.  
 6 Q Mr. Flemmons, Mr. Wallace asked you concerning the  
 7 obligation of the accountant preparing the compilation report,  
 8 the outside accountant, to determine that a value not be  
 9 presented and an asset -- that an asset or liability not be  
 10 presented at an obviously inappropriate value or amount. Do  
 11 you recall that?  
 12 A Yes.  
 13 Q Mazars would have seen --  
 14 MR. WALLACE: Your Honor, I want to note my  
 15 objection to the last question. I wasn't asking about the  
 16 accountant, my question was about the issuer.  
 17 Q Mr. Wallace asked you about this question, correct?  
 18 He showed it to you a moment ago?  
 19 A Yes.  
 20 Q What is the obligation of the accountant preparing a  
 21 compilation to make sure that an estimated current value amount  
 22 is not present at an obviously inappropriate value or amount?  
 23 A As we discussed earlier, I mean, the obligation would  
 24 be to evaluate the appropriateness of the method that was used  
 25 and that it was properly applied.

Flemmons - by Defendant - Redirect(Suarez) Page 4526

1 Q Mazars would have had access to the supporting data  
 2 to the Statements of Financial Condition, correct?  
 3 A Correct.  
 4 Q If Mazars issued the compilation reports, would that  
 5 indicate that they agreed that values were not presented at an  
 6 obviously inappropriate value or amount?  
 7 A Yes. Unless there were modifications in the  
 8 accountant's report that included disclosures indicating that  
 9 they believe that there were amounts that were obviously  
 10 inappropriate.  
 11 Q Do the compilation reports identify any disclosure  
 12 from Mazars that there were any values that they believed were  
 13 obviously inappropriate?  
 14 A No.  
 15 MR. WALLACE: Objection to the extent that the  
 16 compilation reports cite from Mazars.  
 17 MR. SUAREZ: Compilation reports are issued by  
 18 Mazars.  
 19 THE COURT: I don't understand your point,  
 20 Mr. Wallace.  
 21 MR. WALLACE: Who is reporting, the Trump  
 22 Organization versus Mazars.  
 23 THE COURT: I think it was Mazars.  
 24 MR. SUAREZ: Right, yeah, they issue the  
 25 compilation reports.

November 16, 2023

<p>Flemmons - by Defendant - Redirect(Suarez) Page 4527</p> <p>1 MR. WALLACE: No, but it is -- no, it is the 2 financial report of Donald J. Trump. 3 MS. HABBA: Issued by Mazars. 4 MR. KISE: Mazars issued the compilation. 5 THE COURT: We know what they are talking about. 6 We are talking about Mazars. 7 MR. SUAREZ: Correct. 8 Q Going back to the red flags that we discussed just a 9 moment ago. I believe your testimony was that Mazars would 10 have seen the same potential red flags that you noted, correct? 11 A Yes, they were within their work papers. 12 Q If Mazars complied with its obligations, would they 13 have asked questions? 14 A Yes, the standard does require an accountant 15 performing a compilation, to the extent there are potential 16 GAAP departures, to ask questions and to seek to resolve those 17 issues. 18 Q What can you conclude, if anything, from the fact 19 that Mazars found the disclosures acceptable and signed off on 20 the statements? 21 A Well, that they were comfortable with the disclosures 22 that were contained in the notes to the financial statements, 23 and they were comfortable issuing a report with the many 24 different disclosures as to the GAAP deviations, and believed 25 that the way the package was put together between the</p>	<p>Flemmons - by Defendant - Court Inquiry Page 4529</p> <p>1 THE WITNESS: I am sorry? 2 THE COURT: You can estimate. 3 THE WITNESS: It is hard to say, because as 4 you -- as Your Honor may know, we at my firm have a couple 5 of other experts who are working on this matter, and the 6 way that we have billed our work is on a combined basis. 7 So it is hard for me to really know exactly how much 8 really applies to my work. 9 THE COURT: So let's get the combined basis 10 then. 11 THE WITNESS: It is hard for me to say because I 12 have not been involved in the billing process or the 13 collection process. I have an associate of mine who has 14 been handling that. I would be -- I am unable to really 15 give you a meaningful estimate. 16 THE COURT: Okay. Anybody else have any 17 follow-up questions? Anything? 18 MR. WALLACE: Mr. Flemmons, your billable rate 19 for this engagement is \$950 an hour; is that correct. 20 THE WITNESS: I believe it is 925. But again, 21 that is the rate that my firm charges, not me 22 individually. 23 MR. WALLACE: I am asking about the billing of 24 your time. And do you have a sense of how many hours you 25 have spent on this engagement since its inception?</p>
<p>Flemmons - by Defendant - Court Inquiry Page 4528</p> <p>1 accountant's report and the Statement of Financial Condition, 2 that those were appropriate to still issue. 3 MR. SUAREZ: Your Honor, I have no further 4 questions on redirect. 5 THE COURT: Any recross? 6 MR. WALLACE: I guess just one question, Your 7 Honor. 8 RECROSS EXAMINATION 9 BY MR. WALLACE: 10 Q Mr. Flemmons, when you were at the Securities and 11 Exchange Commission, did you ever encounter issuers who were 12 facing allegations of fraud who tried to throw their 13 accountants under the bus? 14 MR. KISE: Objection, Your Honor. What bus are 15 we talking about? 16 MR. WALLACE: Withdrawn. 17 THE COURT: All right. I have a series of 18 related questions. 19 I'll start with: Are you being paid for your 20 testimony and your general work on this case? 21 THE WITNESS: My firm is being paid. 22 THE COURT: Okay. How much have you billed 23 that's been paid; how much have you billed that has not 24 been paid; and how much will you be billing for beyond 25 what you have already billed? You can estimate.</p>	<p>Proceedings Page 4530</p> <p>1 THE WITNESS: I don't. 2 THE COURT: Okay. Anything else? 3 The witness is excused. Thank you. 4 THE WITNESS: Thank you, Your Honor. 5 (Whereupon, the witness stepped down from the 6 stand.) 7 THE COURT: Are you ready to call your next 8 witness? 9 MR. KISE: We are, Your Honor. Should we take a 10 break now? 11 THE COURT: In another few minutes. 12 MR. KISE: That's fine. 13 THE COURT: Let's get the witness. 14 COURT OFFICER: Witness entering. 15 (Whereupon the witness took the stand. 16 COURT OFFICER: Please raise your right hand. 17 S T E V E N C O L L I N S, after having 18 first been duly sworn was examined and testified as 19 follows: 20 COURT OFFICER: Please have a seat. 21 Please state your name and either home or 22 business address for the record. 23 THE WITNESS: My name is Steven Collins. My 24 home address is 38 Turkey Hill Road, West Newberry, 25 Massachusetts.</p>

November 16, 2023

Collins - by Defendant - Direct(Hernandez)	Page 4531	Collins - by Defendant - Direct(Hernandez)	Page 4533
<p>1 THE COURT: The zip code? In case we want to</p> <p>2 write you.</p> <p>3 THE WITNESS: 01985.</p> <p>4 THE COURT: All right. If the microphones are</p> <p>5 all set up. Let's start.</p> <p>6 MS. HERNANDEZ: All right. We are on?</p> <p>7 THE COURT: We are on.</p> <p>8 MS. HERNANDEZ: Great. May it please the Court?</p> <p>9 THE COURT: Yep.</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MS. HERNANDEZ:</p> <p>12 Q Mr. Collins, welcome.</p> <p>13 So we are just going to work through some of your</p> <p>14 qualifications here. Where did you go to college?</p> <p>15 A Northeastern University in Boston, Massachusetts.</p> <p>16 Q What did you study?</p> <p>17 A Civil engineering.</p> <p>18 Q What degree did you obtain?</p> <p>19 A Bachelor of Science in Civil Engineering.</p> <p>20 Q And after college, where were you employed?</p> <p>21 A A number of places. The first employer was Dugan &amp;</p> <p>22 Meyers Construction for a project in Boston.</p> <p>23 Q What were your responsibilities there?</p> <p>24 A On that project I was a field engineer and then a</p> <p>25 construction superintendent.</p>		<p>1 the liability for that variance.</p> <p>2 Q Okay. And then where did you work after that?</p> <p>3 A Peterson was acquired by the Metzler Group, so I</p> <p>4 worked for the Metzler Group.</p> <p>5 Q Could you spell that for the court reporter?</p> <p>6 A M-E-T-Z-L-E-R.</p> <p>7 Q And what were your responsibilities at Metzler?</p> <p>8 A Similar to Peterson, I was a claims analyst in the</p> <p>9 construction practice.</p> <p>10 Q So similar responsibilities?</p> <p>11 A Similar work, yes.</p> <p>12 Q And where did you work after Metzler?</p> <p>13 A Metzler was acquired or morphed into Navigant</p> <p>14 Consulting.</p> <p>15 Q And what were your responsibilities at Navigant?</p> <p>16 A I was, again, in the construction practice and doing</p> <p>17 claims work; as well as, to draw a distinction, project</p> <p>18 advisory work, meaning not everything is a dispute, other</p> <p>19 projects are contemporaneously being executed and clients would</p> <p>20 need assistance executing a project without a claim being</p> <p>21 involved.</p> <p>22 Q And what was your next job after that?</p> <p>23 A Navigant sold our disputes and advisory division to</p> <p>24 Ankura Consulting.</p> <p>25 Q Do you currently work at Ankura consulting?</p>	
Collins - by Defendant - Direct(Hernandez)	Page 4532	Collins - by Defendant - Direct(Hernandez)	Page 4534
<p>1 Q And where did you work after that?</p> <p>2 A I worked for Carlson Corporation.</p> <p>3 Q Carson?</p> <p>4 A Carlson, C-A-R-L-S-O-N.</p> <p>5 Q And what were your responsibilities at Carlson?</p> <p>6 A I was a construction superintendent there as well.</p> <p>7 Q And where did you work after Carlson?</p> <p>8 A I worked for AARK Construction A-A-R-K, down in New</p> <p>9 York.</p> <p>10 Q And what were your responsibilities at AARK?</p> <p>11 A Superintendent and a project manager.</p> <p>12 Q And where did you work after AARK?</p> <p>13 A I worked for Crown Construction in Massachusetts.</p> <p>14 Q And what were your responsibilities at Crown?</p> <p>15 A Project manager and superintendent.</p> <p>16 Q And where did you work after that?</p> <p>17 A I then changed careers into consulting and worked for</p> <p>18 Peterson Consulting in Boston.</p> <p>19 Q So what were your responsibilities at Peterson?</p> <p>20 A I was primarily a construction claims analyst.</p> <p>21 Q And what does that mean?</p> <p>22 A A project would have a plan for execution. During</p> <p>23 execution something would vary during execution, whether it was</p> <p>24 time or cost or other things. I would analyze that variance.</p> <p>25 Typically I would quantify that variance, and then determine</p>		<p>1 A Yes, I do.</p> <p>2 Q What is your role?</p> <p>3 A My title is a Senior Managing Director.</p> <p>4 Q What responsibilities do you have at Ankura?</p> <p>5 A I execute assignments. I manage the teams. And I am</p> <p>6 also responsible for generating the work that we do.</p> <p>7 Q Okay. And in those roles, what responsibilities did</p> <p>8 you have relating to the procurement of government contracts?</p> <p>9 A With respect to government contracts, I mean,</p> <p>10 foundationally during my construction days, one of those was a</p> <p>11 public project. As a project manager procurement is involved.</p> <p>12 Prequalification of subcontractors to perform work to make sure</p> <p>13 they are capable of the work. Developing scopes of work for</p> <p>14 them to perform. Making sure they had the resource capability</p> <p>15 to perform the work, whether it was financial or whether it was</p> <p>16 manpower, technical capability. And issuing subcontracts,</p> <p>17 issuing modifications to subcontracts, and overall procurement</p> <p>18 of that, including changes.</p> <p>19 As it relates specifically to government contracts,</p> <p>20 federal contracts, my first -- my exposure dates back</p> <p>21 approximately 20 years with the reconstruction of the</p> <p>22 electrical infrastructure in southern Iraq.</p> <p>23 Q Can you describe that reconstruction experience?</p> <p>24 A Yes. The work for -- of that particular nature is</p> <p>25 unlike -- it is traditionally uncommon in basic construction</p>	



November 16, 2023

Collins - by Defendant - Direct(Hernandez)	Page 4535	Collins - by Defendant - Direct(Hernandez)	Page 4537
<p>1 work. By that I mean, if we were to build this courthouse,</p> <p>2 typically we would have a complete design, complete</p> <p>3 specifications and put it out to the marketplace for</p> <p>4 construction bidders to bid on the work. And they would offer</p> <p>5 a firm fixed price.</p> <p>6 For the work in a war zone, the government doesn't</p> <p>7 know specifically how much work they are going to be</p> <p>8 performing. Therefore, rather than have a firm fixed price,</p> <p>9 they often will issue the work on a cost reimbursable basis for</p> <p>10 which the contractor gets a fee.</p> <p>11 When that work is involved, controlling cost is</p> <p>12 important. If you are getting fee on cost, the more something</p> <p>13 costs the more fee there is. The government can't allow</p> <p>14 something to just cost a large amount and allow fee. They have</p> <p>15 to have some degree of assurance the contractors in that</p> <p>16 environment are working with a set of protocols or procedures</p> <p>17 to help ensure proper procurement in accordance with federal</p> <p>18 guidelines. My work there first involved development of</p> <p>19 policies and procedures for procurement for cost reimbursable</p> <p>20 work for that project in Iraq, which was in the hundreds of</p> <p>21 millions of dollars.</p> <p>22 Q So what does that look like, the development of the</p> <p>23 policies and procedures?</p> <p>24 A To be -- these procedures had to be submitted to the</p> <p>25 government for approval. In this case the defense contract</p>		<p>1 federal government projects.</p> <p>2 Q And very broadly what are those government contracts?</p> <p>3 A One involves a federal highway project in the</p> <p>4 southwest. Another involves a Veteran's Administration project</p> <p>5 in California. And there are two projects involving the</p> <p>6 Department of Navy.</p> <p>7 Q Have you prepared any request for proposal during</p> <p>8 your career?</p> <p>9 A Yes, I have.</p> <p>10 Q Could you please describe that?</p> <p>11 A As part of -- well, in my pre-consulting days as a</p> <p>12 project manager, I would create scopes of work, identify</p> <p>13 qualified subcontractors, in that instance as a contractor,</p> <p>14 draft the request for proposals in terms of scope, schedule,</p> <p>15 contract provisions for execution. I would issue the request</p> <p>16 for proposal and then take them back for evaluation, ultimately</p> <p>17 leading to award.</p> <p>18 Q And what are the components that you typically see in</p> <p>19 the request for proposal?</p> <p>20 A Well, as far as preparing the proposal, one of the</p> <p>21 first steps is, in a government proposal that I worked on for</p> <p>22 instance, in Iraq, there are protocols to prequalify those</p> <p>23 recipients of the proposal. There will be ethical</p> <p>24 requirements: The anti-lobbying; anti-gratuity; various</p> <p>25 ethical requirements; confirmation subcontractors haven't been</p>	
Collins - by Defendant - Direct(Hernandez)	Page 4536	Collins - by Defendant - Direct(Hernandez)	Page 4538
<p>1 management agency, the defense contract audit agency had to</p> <p>2 evaluate these procedures. Therefore, they had to apply --</p> <p>3 comply with the federal acquisition regulations which</p> <p>4 government control or govern a lot of federal procurement.</p> <p>5 THE COURT: I'll just ask the witness to speak a</p> <p>6 little louder or a lot louder actually, right into the</p> <p>7 microphone.</p> <p>8 THE WITNESS: Yes, Your Honor.</p> <p>9 A So, they needed to comply with the government's</p> <p>10 protocols, so those policies and procedures had to be</p> <p>11 constructed in accordance with the federal acquisition</p> <p>12 regulations.</p> <p>13 Q And what is the federal acquisition regulations?</p> <p>14 A The federal acquisition regulations are a part of or</p> <p>15 Title 48 under the Code of Federal Regulations. The Code of</p> <p>16 Federal Regulations is a codification of regulations</p> <p>17 promulgated by the government in a number of subject areas.</p> <p>18 Q And it governs procurement?</p> <p>19 A Title 48 includes the federal acquisition</p> <p>20 regulations, which include acquisition and procurement.</p> <p>21 Q And so aside from this matter, are you currently</p> <p>22 working on any other government contract work?</p> <p>23 A Yes.</p> <p>24 Q Could you describe it, please?</p> <p>25 A I am working currently on four -- at least four other</p>		<p>1 debarred from federal work; or in the timing of that.</p> <p>2 Thereafter, the prequalification to issue an RFP</p> <p>3 would involve confirmation of safety; their relevance of</p> <p>4 experience; recency of experience. Things of that nature.</p> <p>5 Thereafter, through the prequalification process</p> <p>6 there would be a review of their financial capacity, whether it</p> <p>7 is their bonding capacity, if bonding is required.</p> <p>8 Confirmation of their typical project size; their annual</p> <p>9 revenues; you know, all helping to understand what their</p> <p>10 capabilities are beyond execution, but financially as well.</p> <p>11 Then the RFP would be developed, distributed,</p> <p>12 evaluation criteria established for reviewing the responses,</p> <p>13 and then the review would take place with the RFP.</p> <p>14 Q And we will talk more in detail about that in a bit.</p> <p>15 But have you prepared any presentations relating to the</p> <p>16 procurement of government contracts?</p> <p>17 A Yes.</p> <p>18 Q And could you describe the nature of that a little</p> <p>19 bit?</p> <p>20 A Some of them are client specific training programs,</p> <p>21 and others are in the public space. For instance, one of them</p> <p>22 involves the Christian Doctrine, which is a doctrine important</p> <p>23 to the contracting community, whereby under that doctrine, if</p> <p>24 there are certain federal acts in place, whether or not</p> <p>25 provisions of those acts are in contracts in written form, a</p>	

November 16, 2023

Collins - by Defendant - Direct(Hernandez)	Page 4539	Collins - by Defendant - Direct(Hernandez)	Page 4541
<p>1 contractor could be obligated to be aware of that. That it</p> <p>2 would be in full effect on the contractor, even if not</p> <p>3 expressly included in the contract. So I had a presentation on</p> <p>4 that subject and I have provided training programs on federal</p> <p>5 procurement to clients as well.</p> <p>6 Q And what are the training programs on federal</p> <p>7 procurement typically like?</p> <p>8 MS. FAHERTY: Can you speak up?</p> <p>9 Q What are the training programs on federal procurement</p> <p>10 usually like?</p> <p>11 A A number of subject matters from prequalification</p> <p>12 through solicitation evaluation. There is lots of federal</p> <p>13 acquisition regulations that govern execution. I have provided</p> <p>14 training programs on what was the Truth in Negotiation Act and</p> <p>15 now is the, Truthful Cost or Pricing Act, for instance.</p> <p>16 THE COURT: I am glad we got started, but five</p> <p>17 minutes warning.</p> <p>18 MS. HERNANDEZ: Okay.</p> <p>19 Q Have you ever testified as an expert witness before?</p> <p>20 A Yes.</p> <p>21 Q How many times have you been qualified as an expert</p> <p>22 at trial?</p> <p>23 A At trial? Six or seven times.</p> <p>24 Q And how many times have you testified as an expert</p> <p>25 witness in a deposition or arbitration?</p>		<p>1 What is the relevance of this testimony?</p> <p>2 MS. HERNANDEZ: Your Honor, they brought up of</p> <p>3 the GSA's proposal with various witnesses already, and so</p> <p>4 this is contextualizing that. They have brought up the</p> <p>5 fact that the Statements of Financial Condition were</p> <p>6 submitted in connection with this proposal. And he is</p> <p>7 going to contextualize what that process looked liked</p> <p>8 like, what other factors are considered and how the</p> <p>9 statements would have played a role in that.</p> <p>10 MR. KISE: I am not going to say anything if you</p> <p>11 are -- I am going to wait and see if you want me to say</p> <p>12 anything.</p> <p>13 THE COURT: Those times that you have been</p> <p>14 qualified as an expert, if you remember, were some or all</p> <p>15 of them as a government contract procurement expert?</p> <p>16 THE WITNESS: Excuse me, Your Honor?</p> <p>17 THE COURT: The times that you were qualified as</p> <p>18 an expert, if you can remember, were those all as</p> <p>19 government contract procurement expert?</p> <p>20 THE WITNESS: The testimonies did not involve</p> <p>21 government contract procurement. Procurement, yes, not</p> <p>22 government. They were not government contract matters.</p> <p>23 THE COURT: Well, I think it is a close call.</p> <p>24 But out of an abundance of caution I hereby deem you a</p> <p>25 government contract -- maybe we should just make it a</p>	
Collins - by Defendant - Direct(Hernandez)	Page 4540	Collins - by Defendant - Direct(Hernandez)	Page 4542
<p>1 A A total of approximately 20. Twenty times</p> <p>2 thereabouts.</p> <p>3 Q And has there ever been an instance where you were</p> <p>4 not qualified as an expert?</p> <p>5 A No.</p> <p>6 Q And in your work as an expert witness, what</p> <p>7 percentage of the work has been in the field of government</p> <p>8 contract procurement?</p> <p>9 A It fluctuates year to year. But generally about</p> <p>10 20 percent of my work is government contracts oriented, maybe</p> <p>11 more, again it depends on the year.</p> <p>12 MS. HERNANDEZ: Your Honor, the defendants</p> <p>13 tender Mr. Collins as an expert witness in the field of</p> <p>14 government contract procurement.</p> <p>15 MS. FAHERTY: Your Honor, the plaintiffs object</p> <p>16 to this qualification. Also, the specific category of</p> <p>17 government contract procurement, there will be cross, I</p> <p>18 suppose, I have already discussed at length with</p> <p>19 Mr. Collins his background broadly on government contract</p> <p>20 procurement. I don't think we have sufficient detail as</p> <p>21 to the tenets of that government contract procurement.</p> <p>22 And then just generally I am going to assert an</p> <p>23 objection as to the relevance of this testimony.</p> <p>24 THE COURT: Well, let's start with the last</p> <p>25 question or point.</p>		<p>1 contract procurement expert.</p> <p>2 MS. HERNANDEZ: That's fine.</p> <p>3 THE COURT: Let's do it like that.</p> <p>4 MS. HERNANDEZ: Contract procurement expert.</p> <p>5 And we can take our break then.</p> <p>6 THE COURT: Great. See you all in 15 minutes.</p> <p>7 (Pause in the proceeding.)</p> <p>8 (Whereupon, the following proceedings were</p> <p>9 stenographically recorded by Senior Court Reporter Michael</p> <p>10 Ranita.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

November 16, 2023

Collins - by Defense - Direct (Ms. Hernandez)	Page 4543	Collins - by Defense - Direct (Ms. Hernandez)	Page 4545
<p>1 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>2 session. Please be seated and come to order.</p> <p>3 THE COURT: Let's get the witness back on the</p> <p>4 witness stand.</p> <p>5 (Whereupon, the witness stepped into the witness</p> <p>6 stand.)</p> <p>7 THE COURT: And Ms. Hernandez, please continue.</p> <p>8 MS. HERNANDEZ: Thank you, your Honor.</p> <p>9 Q All right. Mr. Collins, what was the scope of your</p> <p>10 engagement in this case?</p> <p>11 A To determine whether the GSA procurement process was</p> <p>12 fully employed as set forth in the criteria within the RFP</p> <p>13 through the valuation process and the ultimate award of a lease.</p> <p>14 Q What documents or -- did you review in reaching your</p> <p>15 opinion?</p> <p>16 A The RFP itself, the response, the Trump response to the</p> <p>17 RFP, exchanges of information after that, including responses in</p> <p>18 September of '11, I believe, written responses, as well as</p> <p>19 presentations made for which hard copies were made available to</p> <p>20 me in December of 2011.</p> <p>21 Q And did you form your opinions to a reasonable degree</p> <p>22 of certainty in the field of contract procurement?</p> <p>23 A Yes.</p> <p>24 Q And are you being compensated for the work you have</p> <p>25 done as an expert?</p>		<p>1 A No.</p> <p>2 Q So moving to the specifics of the General Services</p> <p>3 Administration's request for proposal process for the Old Post</p> <p>4 Office property, could you please generally describe the process</p> <p>5 that took place?</p> <p>6 A The GSA generally was seeking market expertise that was</p> <p>7 qualified in the area of repurposing historical buildings that</p> <p>8 demonstrated the experience from an execution standpoint for,</p> <p>9 um, the development, the design, the preservation of the</p> <p>10 historical nature of the building, the efficiency of the</p> <p>11 building, or sustainability from an energy usage and</p> <p>12 conservation standpoint, um, maintenance of the open spaces, um,</p> <p>13 operation of the facility thereafter, and ultimately to obtain</p> <p>14 the financial benefit for the government through payment from</p> <p>15 the developer.</p> <p>16 Q And the ultimate award here would be what?</p> <p>17 A The award of the lease.</p> <p>18 Q And if I say throughout today GSA, would you understand</p> <p>19 that to mean the General Services Administration?</p> <p>20 A Yes.</p> <p>21 Q That will save a little bit of time.</p> <p>22 MS. HERNANDEZ: So if we could pull up what was</p> <p>23 pre-marked as Defendant's Exhibit 619.</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>	
Collins - by Defense - Direct (Ms. Hernandez)	Page 4544	Collins - by Defense - Direct (Ms. Hernandez)	Page 4546
<p>1 A I receive a salary, yes.</p> <p>2 Q And you receive a salary from what?</p> <p>3 A Ankura Consulting.</p> <p>4 Q What rate is Ankura being compensated for your work</p> <p>5 here?</p> <p>6 A I believe it is \$925 an hour.</p> <p>7 Q And approximately how many hours have you spent on this</p> <p>8 engagement, to date?</p> <p>9 A It is approximate, but 40 to 60, the range, inclusive</p> <p>10 of preparation for today.</p> <p>11 Q Which is still ongoing?</p> <p>12 A Yes.</p> <p>13 Q We'll see how many hours we are here.</p> <p>14 Has anyone asked you to testify in a particular matter</p> <p>15 in this case?</p> <p>16 A No.</p> <p>17 MS. FAHERTY: Objection.</p> <p>18 THE COURT: Has anyone asked you to testify in a</p> <p>19 particular matter in this case?</p> <p>20 MS. FAHERTY: Right.</p> <p>21 THE COURT: You understand, right?</p> <p>22 MS. HERNANDEZ: Manner.</p> <p>23 THE COURT: Like, has anybody coached you.</p> <p>24 Q Is your compensation conditioned on any particular</p> <p>25 opinion in this case?</p>		<p>1 (The exhibit was handed to the witness.)</p> <p>2 Q Mr. Collins, have you seen this document before?</p> <p>3 A Yes, I have.</p> <p>4 Q And what is it?</p> <p>5 A This is the request for proposal for the redevelopment</p> <p>6 of the Old Post Office.</p> <p>7 Q Did you review this request for proposal in rendering</p> <p>8 your opinion?</p> <p>9 A Yes.</p> <p>10 MS. HERNANDEZ: Your Honor, I would like to move</p> <p>11 Exhibit D-619 into evidence.</p> <p>12 THE COURT: Granted it's in.</p> <p>13 (Defendant's Exhibit D-619 was admitted in</p> <p>14 evidence.)</p> <p>15 MS. HERNANDEZ: So if we could go page 13 of this</p> <p>16 exhibit.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q Do you see where it says, the third bullet point, "For</p> <p>20 purposes of responsibility, GSA intends to follow the standards</p> <p>21 set forth in 48 CFR, 9.104-1?</p> <p>22 A Yes.</p> <p>23 Q Can you describe what responsibility means in this</p> <p>24 context?</p> <p>25 A Within 48 CFR 9.104-1, there are criteria set forth in</p>	

November 16, 2023

Collins - by Defense - Direct (Ms. Hernandez) Page 4547	Collins - by Defense - Direct (Ms. Hernandez) Page 4549
<p>1 that provision that determine whether or not a respondent to the</p> <p>2 RFP in this case would be responsible.</p> <p>3 Q And maybe I should have asked you this first. Are you</p> <p>4 familiar with 48 CFR 9.104-1?</p> <p>5 A Yes.</p> <p>6 Q What is the CFR?</p> <p>7 A The -- well, I touched on this earlier, but the Code of</p> <p>8 Federal Regulations is a codification of federal regulations for</p> <p>9 a multitude of areas for which regulations exist. Within that</p> <p>10 code it's broken down into 50 Titles, capital T, Titles, of</p> <p>11 which Title 48 is one of them. That is the Federal Acquisition</p> <p>12 Regulations.</p> <p>13 Q And how does this section apply to the procurement</p> <p>14 process?</p> <p>15 A Well, the criteria for the solicitation and evaluation</p> <p>16 of the RFP respondents is set forth in the RFP, but there is a</p> <p>17 statement within the GSA's RFP that they intended to follow this</p> <p>18 particular CFR for determination of responsibility of the</p> <p>19 respondents.</p> <p>20 MS. HERNANDEZ: So if we could blow up the section</p> <p>21 D right under this.</p> <p>22 (Whereupon, the exhibit was displayed on the</p> <p>23 screen.)</p> <p>24 Q Were these the evaluation factors you were just</p> <p>25 referencing?</p>	<p>1 (Whereupon, the exhibit was displayed on the</p> <p>2 screen.)</p> <p>3 MS. HERNANDEZ: And we'll blow up the second top of</p> <p>4 the page, please, Nate.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q So is this the first factor, we looked at, "The</p> <p>8 experience and past performance of developer and developer's key</p> <p>9 personnel"?</p> <p>10 A Yes.</p> <p>11 Q And so broad level, what does this first factor entail?</p> <p>12 A Generally speaking, without reading it verbatim, the</p> <p>13 GSA is looking for the respondent to demonstrate its experience,</p> <p>14 and the experience of each of its team members, over a period of</p> <p>15 time in work relevant to this -- a project of this nature;</p> <p>16 historical renovation, repurposing and ultimate use.</p> <p>17 MS. HERNANDEZ: And then moving to page 17.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q This is the second factor we saw; correct?</p> <p>21 A Yes.</p> <p>22 Q And so this is the developer's site plan and design</p> <p>23 concept?</p> <p>24 A Yes.</p> <p>25 Q And what does this factor entail?</p>
Collins - by Defense - Direct (Ms. Hernandez) Page 4548	Collins - by Defense - Direct (Ms. Hernandez) Page 4550
<p>1 A Within 9.104-1, the majority of the contents of 9.104-1</p> <p>2 is subsumed within these criteria.</p> <p>3 Q So how does the GSA utilize these evaluation factors in</p> <p>4 analyzing the proposals they were given?</p> <p>5 A Within the -- each of these criteria there's expanded</p> <p>6 narrative content that describes the requirements for the -- the</p> <p>7 respondent to address in each of these categories. Each of</p> <p>8 these categories are weighted, as you could see, by percentages</p> <p>9 on the screen, totalling 100 percent, based on the factors</p> <p>10 you'll see to the right of each one of these.</p> <p>11 So the GSA uses their expertise in that of those</p> <p>12 assisting them to score, if you will, the respondent in each of</p> <p>13 these factors.</p> <p>14 Q And what does it mean that the developer's financial</p> <p>15 capacity and capability is at 15 percent in this factored list?</p> <p>16 A That of the total of 100 percent scoring for each of</p> <p>17 the categories, this particular factor is worth a maximum of</p> <p>18 15 percent.</p> <p>19 Q And how does that compare to the other factors?</p> <p>20 A One other factor is also at 15 percent, which is factor</p> <p>21 number one. And the other two are of greater importance, or</p> <p>22 weighted at 35 percent each.</p> <p>23 Q And so we are going to move into the detailed</p> <p>24 description of the factors in the RFP, which is on page 15 of</p> <p>25 the document.</p>	<p>1 A Again, without reading --</p> <p>2 Q Right.</p> <p>3 A -- the script here, so to speak, of what it states, the</p> <p>4 GSA is seeking for the developer to provide both a narrative</p> <p>5 plan and illustrations of its intended use for the project,</p> <p>6 including open space usage, um, elevations of the building,</p> <p>7 access, egress, how they'll incorporate the historical factors</p> <p>8 of the building for its intended use.</p> <p>9 Q In looking at paragraph three, is the GSA looking for a</p> <p>10 developer with a particular vision?</p> <p>11 MS. FAHERTY: Your Honor, I'm going to ask if we</p> <p>12 could do a little less leading here.</p> <p>13 THE COURT: That was clearly leading.</p> <p>14 MS. HERNANDEZ: I wasn't sure that was an objection</p> <p>15 or a request. I'll react, though.</p> <p>16 Q What else was the GSA looking for in factor two?</p> <p>17 A Well they were looking for the conceptual narrative,</p> <p>18 written dialogue on how the project would be developed, um,</p> <p>19 capturing the structure, preservation of it, the design intent</p> <p>20 for incorporation in Pennsylvania Avenue efficiency of the</p> <p>21 construction of the project, and then the illustrations.</p> <p>22 Q Okay. Moving to factor three, which is on page 18.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q What does the developer's financial capacity and</p>

November 16, 2023

<p>Collins - by Defense - Direct (Ms. Hernandez) Page 4551</p> <p>1 capability criteria entail?</p> <p>2 A In this area, they -- again, paraphrasing what is</p> <p>3 written here, the GSA is looking for the developer/respondent to</p> <p>4 provide its financials for a certain period of time in terms of</p> <p>5 scale of project type of project, overall capacity. They are</p> <p>6 also looking for the same information or similar information</p> <p>7 from the respondent or developer's financiers to the extent that</p> <p>8 it has any.</p> <p>9 Q Were they seeking any financial statements under factor</p> <p>10 three?</p> <p>11 A Yes.</p> <p>12 Q What kind of financial statements?</p> <p>13 A They were seeking financial statements in this</p> <p>14 particular section.</p> <p>15 Q Do you recall what kind of financial statements?</p> <p>16 A There was criteria for them that they would be</p> <p>17 auditable, or having been audited, or they would be GAAP</p> <p>18 compliant.</p> <p>19 Q GAAP compliant.</p> <p>20 So moving -- and one more question about factor three.</p> <p>21 Do you recall what weight this was given in the evaluation</p> <p>22 criteria?</p> <p>23 A This was 15 percent.</p> <p>24 MS. HERNANDEZ: So moving to page 19.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>Collins - by Defense - Direct (Ms. Hernandez) Page 4553</p> <p>1 submitted?</p> <p>2 A This is within the -- the prior page is limitations.</p> <p>3 The GSA is setting forth the limitations of its rights as it</p> <p>4 relates to the evaluation process.</p> <p>5 Within this specific section, paragraph three, they are</p> <p>6 stating that they have acts to -- have the right to act in their</p> <p>7 sole discretion, in many respects, as it relates to the</p> <p>8 evaluation and award process.</p> <p>9 MS. HERNANDEZ: And looking to paragraph six, a</p> <p>10 little bit further down the page.</p> <p>11 (Whereupon, the exhibit was displayed on the</p> <p>12 screen.)</p> <p>13 Q What does this -- is this paragraph indicating?</p> <p>14 A Once again, they are stating, or the GSA is stating</p> <p>15 that they have their full discretion to interpret the</p> <p>16 information and apply the selection criteria as they see fit.</p> <p>17 Q Okay.</p> <p>18 MS. HERNANDEZ: And so we are going to pull up,</p> <p>19 now, a different document. Plaintiff's Exhibit 1164. I</p> <p>20 think it's already in evidence.</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 Q Do you recognize this document, Mr. Collins?</p> <p>24 A Yes.</p> <p>25 Q Did you review this document as part of reaching your</p>
<p>Collins - by Defense - Direct (Ms. Hernandez) Page 4552</p> <p>1 screen.)</p> <p>2 Q "The developer's financial offer and supporting</p> <p>3 financial information", what does this factor entail?</p> <p>4 A This, again, paraphrasing, the government is looking</p> <p>5 for the financial offer from the respondent for the project in</p> <p>6 terms of -- I think they were looking for the net present value</p> <p>7 outcome. And then there was various financial, um, models that</p> <p>8 they were going to present to the government for the ultimate</p> <p>9 offer to the government for return of revenue.</p> <p>10 Q Just so we are clear, how does that differ from factor</p> <p>11 three?</p> <p>12 A Well, one is an actual payment. For simplification,</p> <p>13 section four is what amount will the government ultimately be</p> <p>14 paid under this lease, whereas under section three, the factor</p> <p>15 there is to determine the developer's capability to finance the</p> <p>16 project, because the government is not funding the construction</p> <p>17 and the design, and all those elements; the developer is. So</p> <p>18 they are checking his capacity to self-fund during the</p> <p>19 development of the project.</p> <p>20 MS. HERNANDEZ: And moving to page 21, and looking</p> <p>21 at paragraph three.</p> <p>22 (Whereupon, the exhibit was displayed on the</p> <p>23 screen.)</p> <p>24 Q What does this paragraph indicate with respect to</p> <p>25 nonconformity that the GSA may have received in proposals</p>	<p>Collins - by Defense - Direct (Ms. Hernandez) Page 4554</p> <p>1 opinions in this case?</p> <p>2 A Yes, I did.</p> <p>3 Q And what is this document?</p> <p>4 A This is The Trump Organization's response to the RFP of</p> <p>5 July of 2011.</p> <p>6 MS. HERNANDEZ: So we are going to move to page 153</p> <p>7 of the document. This a lengthy document.</p> <p>8 (Whereupon, the exhibit was displayed on the</p> <p>9 screen.)</p> <p>10 Q Is this the type of document, form and substance, that</p> <p>11 you would expect to be submitted in response to the requests for</p> <p>12 proposal?</p> <p>13 A Each RFP is unique. This one was fairly prescriptive.</p> <p>14 By "prescriptive", I mean it states for certain portions of the</p> <p>15 response what size paper to use, the font size to be used, so.</p> <p>16 For past experience use X number of pages, you must include a</p> <p>17 photograph. It was fairly prescriptive. And that's not</p> <p>18 uncommon to have documents of this size. With what was required</p> <p>19 under this RFP wouldn't be unusual to me.</p> <p>20 Q Okay. Would not be unusual; right?</p> <p>21 A Would not be unusual.</p> <p>22 Q I heard you right.</p> <p>23 So looking at page 153, what does this section about</p> <p>24 financial statements indicate?</p> <p>25 A Within this section, again, paraphrasing, if I may,</p>

November 16, 2023

Collins - by Defense - Direct (Ms. Hernandez)	Page 4555	Collins - by Defense - Direct (Ms. Hernandez)	Page 4557
<p>1 there are qualifications being made by The Trump Organization's</p> <p>2 response here regarding the contents of their financial</p> <p>3 condition, and that -- um, I think this is the section where</p> <p>4 they state that they've demonstrated adequate strength. The</p> <p>5 financial condition would be submitted in a separate envelope,</p> <p>6 and that there were gaps from the -- well, gaps from GAAP, or</p> <p>7 departures from GAAP.</p> <p>8 THE COURT: I knew we would hear that eventually,</p> <p>9 "gaps from GAAP."</p> <p>10 MS. HERNANDEZ: It was only a matter of time.</p> <p>11 So we are going to now move to Plaintiff's 1431,</p> <p>12 which is also in evidence.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 MS. HERNANDEZ: I'm going to go to the second page.</p> <p>16 (Whereupon, the exhibit was displayed on the</p> <p>17 screen.)</p> <p>18 Q Did you review this document in reaching your opinions?</p> <p>19 A Yes.</p> <p>20 Q And what is this document?</p> <p>21 (The witness was handed the exhibit.)</p> <p>22 A This is the December package, if you will, developed in</p> <p>23 response to GSA's questions that had been submitted, I believe,</p> <p>24 in September. So the respondents were given, I think,</p> <p>25 approximately an hour and a half each. They were all given the</p>		<p>1 would be the response from The Trump Organization in response to</p> <p>2 the GSA's questions.</p> <p>3 Q So what question did the GSA have here?</p> <p>4 A Within 3B, there's questions that the financial</p> <p>5 statements have departures from GAAP. And those are addressed</p> <p>6 down below.</p> <p>7 Q And so did The Trump Organization respond to this</p> <p>8 question?</p> <p>9 A Yes.</p> <p>10 Q And was the GSA satisfied with this response?</p> <p>11 MS. FAHERTY: Objection.</p> <p>12 THE COURT: Please explain.</p> <p>13 MS. FAHERTY: I believe her question, "Was the GSA</p> <p>14 satisfied with this response?"</p> <p>15 What I've heard so far is just factual testimony</p> <p>16 about the factual occurrences of the OPO. I'm wondering</p> <p>17 when we are getting to the expertise.</p> <p>18 MS. HERNANDEZ: We are laying a factual foundation.</p> <p>19 And he has been sprinkling in throughout his expertise and</p> <p>20 relating it to what he seen in the process.</p> <p>21 THE COURT: Was the question, "Was the GSA</p> <p>22 satisfied with these responses?" Right?</p> <p>23 MS. FAHERTY: The question was, "Was the GSA</p> <p>24 satisfied with this response?" Also, I don't understand the</p> <p>25 word "satisfied." There's a lot that I find wrong with the</p>	
Collins - by Defense - Direct (Ms. Hernandez)	Page 4556	Collins - by Defense - Direct (Ms. Hernandez)	Page 4558
<p>1 the opportunity to meet with the GSA to discuss the proposals,</p> <p>2 address questions, et cetera. And this was a response developed</p> <p>3 that was presented to the GSA, as I understand it, in December</p> <p>4 of '11, to address a number of their questions.</p> <p>5 Q Can you describe, is this question and answer process</p> <p>6 typical in the procurement process?</p> <p>7 A Yes.</p> <p>8 MS. HERNANDEZ: Can we please move to page nine in</p> <p>9 the presentation.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 Q Is this responding to questions relating to factor</p> <p>13 three of the RFP?</p> <p>14 A Yes.</p> <p>15 Q And can you remind us what factor three was?</p> <p>16 A Factor three was the requirement for the respondent to</p> <p>17 demonstrate its financial capacity to execute the project.</p> <p>18 MS. HERNANDEZ: And we are going to go to the next</p> <p>19 page.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 Q What is being presented to the GSA here?</p> <p>23 A This is also with respect to factor three. And as I</p> <p>24 understand it, the bold text is a restatement by The Trump</p> <p>25 Organization of questions that the GSA had, and then below that</p>		<p>1 question, your Honor.</p> <p>2 THE COURT: Can we ask if they accepted this</p> <p>3 response?</p> <p>4 MS. HERNANDEZ: Sure.</p> <p>5 MS. FAHERTY: If he has a basis to know. I don't</p> <p>6 know that I've heard the foundation that he has the basis to</p> <p>7 know.</p> <p>8 THE COURT: These basis questions, "Do you know</p> <p>9 if...", "Yes." "What's the answer?" Um, if he doesn't</p> <p>10 know, he'll say he doesn't know.</p> <p>11 So I'll allow it. Overruled.</p> <p>12 Does the GSA accept the -- talking about the whole</p> <p>13 proposal?</p> <p>14 MS. HERNANDEZ: Just focused on this response.</p> <p>15 THE COURT: Just factor three.</p> <p>16 MS. HERNANDEZ: Just factor three.</p> <p>17 THE COURT: If you know, did the GSA accept the</p> <p>18 Trump response to factor three?</p> <p>19 THE WITNESS: The GSA does make reference to it in</p> <p>20 its evaluation board recommendation for award to Trump, so</p> <p>21 they do make reference to these responses.</p> <p>22 THE COURT: You could cross examine him what the</p> <p>23 response was.</p> <p>24 MS. HERNANDEZ: That takes us to our next exhibit.</p> <p>25 So if we could pull up Exhibit D-431.</p>	

November 16, 2023

Collins - by Defense - Direct (Ms. Hernandez) Page 4559

1 (Whereupon, the exhibit was displayed on the  
2 screen.)  
3 (The witness was handed the exhibit.)  
4 Q Mr. Collins, have you reviewed this document before?  
5 A Yes.  
6 Q And what is this document?  
7 A This is the Source Selection Board of the GSA's report  
8 and recommendation.  
9 Q And when did you review this document?  
10 A During the course of my evaluation and report  
11 preparation.  
12 Q Did you rely on it in connection with rendering your  
13 opinions in this case?  
14 A Yes.  
15 MS. HERNANDEZ: Your Honor, I would like to move  
16 Defendant's Exhibit 431 into evidence.  
17 MS. FAHERTY: Your Honor, I'll note my objection  
18 that this document was previously attempted to be submitted.  
19 There's a number of hearsay issues contained within this  
20 document, so I'm just going to note my objection.  
21 THE COURT: Overruled. It's in.  
22 (Defendant's Exhibit 431 was admitted in evidence.)  
23 MS. HERNANDEZ: Thank you, your Honor.  
24 Q So you briefly testified as to the process earlier, but  
25 can you explain, specifically, what the Source Selection

Collins - by Defense - Direct (Ms. Hernandez) Page 4560

1 Evaluation Board is?  
2 A In this particular case, the GSA's awarding authority,  
3 I believe, is the contracting officer. And that's to whom this  
4 is addressed. I believe the contracting officer slash the  
5 approving official. For the purposes of this evaluation, the  
6 GSA assembled a board, and the board was comprised of four  
7 members. The Selection Evaluation Board had four members. I  
8 believe three were from the GSA and one was from the FDIC, and  
9 then there they were assisted by a seven member Technical  
10 Evaluation Team. So their input into the evaluation process is  
11 captured within this document.  
12 Q And --  
13 THE COURT: Wait, wait. One second. Let me just  
14 clarify or modify my last ruling.  
15 D431, it's in evidence, but not for the truth of  
16 its contents. Page 15 may have said, you know, this is a  
17 wonderful proposal. It's only in for the sequence of  
18 events, basically. This is what the response was. I'm not  
19 going to assume it's true or false, just this was their  
20 response.  
21 MS. FAHERTY: Thank you, your Honor.  
22 MS. HERNANDEZ: I'm assuming that means  
23 Mr. Collins' observations and opinions based on this  
24 document, since he is an expert. He can obviously consider  
25 hearsay.

Collins - by Defense - Direct (Ms. Hernandez) Page 4561

1 THE COURT: I think I would have to hear a  
2 particular question. I didn't have any problem with the  
3 prior ones.  
4 MS. HERNANDEZ: Great. We'll go through it.  
5 Could we go to page three.  
6 (Whereupon, the exhibit was displayed on the  
7 screen.)  
8 MS. HERNANDEZ: And blow up the bottom there where  
9 it says "The members of the SEB were."  
10 (Whereupon, the exhibit was displayed on the  
11 screen.)  
12 Q So this is -- is this what you were describing EARLIER  
13 about the SEB and tet members?  
14 A Yes.  
15 Q So you were getting to it, but what is the, role  
16 specifically. How does the Technical Evaluation Team support  
17 the SEB team?  
18 A Well, in this specific instance, there's not enough  
19 information to understand specifically what they did, but a  
20 technical evaluation team typically is comprised of members who  
21 have specialized expertise beyond that which may be possessed by  
22 the actual SEB members themselves.  
23 Here, I believe they were focused on factor two,  
24 primarily, maybe only factor two. But within factor two, there  
25 are those issues we discussed before in my summary that factor

Collins - by Defense - Direct (Ms. Hernandez) Page 4562

1 two had to deal with the conceptual design, access, egress,  
2 historical preservation, the sustainability of the building and  
3 other factors.  
4 So using that as an example, that might be a case where  
5 the SEB members would rely on special expertise of TET members  
6 in those area.  
7 Q This is to review the proposals that they've received;  
8 right?  
9 A Yes.  
10 MS. HERNANDEZ: We are going to move to page nine  
11 of the document. Can you blow up the recommendation  
12 section.  
13 (Whereupon, the exhibit was displayed on the  
14 screen.)  
15 Q So what is this section -- does this section entail  
16 Mr. Collins?  
17 A This is, rather, a summarization as it relates to the  
18 Trump proposal provided by the SEB.  
19 Q And typically, this would explain why the government  
20 contract -- or the government is -- let me withdraw that  
21 question.  
22 This would explain why the SEB is recommending that a  
23 certain developer be selected as the preferred selected  
24 developer; correct?  
25 A Yes. With a summarization of main considerations they

November 16, 2023

Collins - by Defense - Direct (Ms. Hernandez) Page 4563

1 made.

2 Q And in general, what does the SEB point to in this

3 recommendation?

4 A It -- they address the past experience of the Trump

5 team as being qualified developers, particularly in the

6 hospitality space. They speak to the scale of the projects with

7 which they've performed, which is large complex hotels. They

8 speak to the Trump team, not just The Trump Organization itself,

9 its experience with historical renovations and rehabilitations,

10 and they speak to the strong financial offer to the government,

11 among other elements.

12 Q And do they mention the financial capability of the

13 developer?

14 A Um, not in this specific paragraph.

15 Q Okay.

16 MS. HERNANDEZ: So we are going to go to page ten,

17 the next page.

18 (Whereupon, the exhibit was displayed on the

19 screen.)

20 MS. HERNANDEZ: Can you blow up that first chart

21 there.

22 (Whereupon, the exhibit was displayed on the

23 screen.)

24 Q What is the summary of evaluation here, Mr. Collins?

25 A This summary of evaluation is the composite scoring

Page 4564

1 from each of the SEB members of the Trump proposal as a

2 percentage of 100 percent, where they scored on each of the

3 criteria.

4 Q What does it reflect each of the SEB members, how they

5 scored Trump in comparison so the other developers?

6 A SEB 1, 2, 3, 4 runs top to bottom. I've concluded that

7 from another piece of information in this response where those

8 numbers come from.

9 But SEB one scored the Trump contingent at 84 out of

10 100; two, 92 out of hundred; three, 91 out of hundred, and

11 number four, at 97 out of a hundred. Then there is color coding

12 at the bottom that speaks to SEB number one, because it's shaded

13 blue. I'm corresponding that that was SEB number one's number

14 one pick. And that applies to two -- SEB two and four, who are

15 also shaded in blue. And SEB three had the Trump proposal

16 ranked as number two.

17 (Continued on the next page.)

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Collins - by Defendant - Direct (Hernandez) Page 4565

1 Q We are going to move to page 12 of the document now.

2 MS. HERNANDEZ: And so let's blow up Factor one.

3 Q So is this the same factor we looked at for Factor

4 one in the request for proposal?

5 A Yes.

6 Q And generally, could you explain what the

7 considerations the SEB took -- let me withdraw that.

8 Could you generally explain what the SEB considered

9 in looking at Trump's proposal as to Factor one?

10 A Again, Factor one involved the experience of the

11 Trump contingent, including team members; and what experience

12 they had relevant to historical redevelopment of buildings such

13 as the Old Post Office. Then they noted strengths, weaknesses

14 and deficiencies.

15 Q And in this section, were there any weaknesses?

16 A No, quote, "notable weaknesses."

17 Q And looking to Factor two.

18 MS. HERNANDEZ: We can blow that up.

19 Q Generally, what did the SEB consider in ranking

20 Trump's proposal as to Factor two, the developer site plan and

21 design concept?

22 A The SEB, in here they were specific, in conjunction

23 with the input of their technical evaluation team, they

24 evaluated the site plan and design concept. This is the

25 narrative plan, the drawings and renderings in what was

Collins - by Defendant - Direct (Hernandez) Page 4566

1 anticipated to comply with the RFP to capture the GSA's vision.

2 So that is captured in here within the strengths. They

3 summarize what they consider to be the strengths of the Trump

4 proposal.

5 Q Did they note weaknesses?

6 A Yes, they did.

7 Q And looking to Factor three: The Developers'

8 Financial Capacity and Capability.

9 What did the GSA -- or excuse me let me withdraw

10 that.

11 Could you explain what the Selection Valuation

12 Board's considerations for this factor for the Trump proposal

13 were?

14 A There were considerations expressed by the GSA prior

15 to this document that there were departures from GAAP; lack of

16 audited financial statements; and I think they were looking for

17 the background and experience of Old Colony, one of the

18 financial partners of the -- or members of the Trump

19 contingent.

20 This section here addresses the strengths; and then

21 within notable weaknesses, it captures the response of the

22 Trump contingent to the questions concerning those issues I

23 just raised.

24 Q And then we will move to the last factor.

25 MS. HERNANDEZ: Factor four on the next page.



November 16, 2023

Collins - by Defendant - Direct (Hernandez)	Page 4567	Collins - by Defendant - Direct (Hernandez)	Page 4569
<p>1 Q So what did the SEB consider in reviewing the Trump's</p> <p>2 proposal with respect to Factor four: Developers' Financial</p> <p>3 Offer and Supporting Financial Information?</p> <p>4 A Again, summarizing if there were -- if there were</p> <p>5 questions that they -- the GSA had about the initial response</p> <p>6 for the offer. And from memory, there were questions about the</p> <p>7 average hotel room rate and occupancy rates, things of that</p> <p>8 nature, which were addressed by the Trump contingent. Then</p> <p>9 they ultimately stated that it offered a strong financial offer</p> <p>10 that was tiered, with a minimum based on a percentage of annual</p> <p>11 revenue; and a potential upside based on a percentage of gross</p> <p>12 profit or gross operating revenues or some function beyond just</p> <p>13 annual rental rate.</p> <p>14 MS. HERNANDEZ: We can take this down now.</p> <p>15 Q So, in reviewing all of these documents, Mr. Collins,</p> <p>16 what is your opinion on the GSA's process in reviewing the</p> <p>17 Trump proposal and selecting a bidder for the Old Post Office</p> <p>18 property?</p> <p>19 A My opinion is that it is twofold: One, the GSA set</p> <p>20 forth criteria. They, for the objective for the project, the</p> <p>21 evaluation criteria for the respondents, and then how those</p> <p>22 would be evaluated to result in an award. They adhered to the</p> <p>23 guidance of 48 CFR 109.9104-1.</p> <p>24 And also for a comparative basis, since 48 CFR 9 is</p> <p>25 part of the FAR, there is also a FAR provision regarding source</p>		<p>1 MS. FAHERTY: She is asking, did a particular</p> <p>2 factor result in the award.</p> <p>3 THE COURT: That's not the question.</p> <p>4 MS. FAHERTY: Determinative is a very subjective</p> <p>5 word. She is trying to get to his opinion. She can ask</p> <p>6 him what opinion he formed. This is an opinion he formed.</p> <p>7 THE COURT: Overruled.</p> <p>8 Q You can answer.</p> <p>9 A No.</p> <p>10 MS. HERNANDEZ: One second, Your Honor.</p> <p>11 (Pause in the proceeding)</p> <p>12 MS. HERNANDEZ: No further questions on direct.</p> <p>13 MS. FAHERTY: Can I take two seconds, Your</p> <p>14 Honor, just to review my materials to determine if cross</p> <p>15 is even necessary with this witness?</p> <p>16 THE COURT: You are through?</p> <p>17 MS. HERNANDEZ: I am done.</p> <p>18 THE COURT: Sure, of course.</p> <p>19 MS. FAHERTY: Thank you, Your Honor.</p> <p>20 (Pause in the proceeding.)</p> <p>21 MS. FAHERTY: Nice to see you again,</p> <p>22 Mr. Collins. I have no questions for you.</p> <p>23 Thank you Your Honor.</p> <p>24 THE COURT: Okay. Then the witness is excused.</p> <p>25 Thank you.</p>	
Collins - by Defendant - Direct (Hernandez)	Page 4568	Proceedings	Page 4570
<p>1 selection. So for a comparative purpose I evaluated while they</p> <p>2 were sticking with 48 CFR 9104, source selection, I compared it</p> <p>3 to see if it generally aligned with those criteria, just on a</p> <p>4 comparative basis, and determined that they do, that it did.</p> <p>5 Q And why did you make that comparative analysis</p> <p>6 against the Federal Acquisition Regulation?</p> <p>7 A The GSA didn't state that they were specifically</p> <p>8 adhering to the wherewithal of the FAR, which is expansive.</p> <p>9 But they did cite one provision that was identifying</p> <p>10 responsibility. So, with respect to relationship to a sound,</p> <p>11 recognized procurement method, which is within FAR, I related</p> <p>12 it to that for a comparative basis to see whether it addressed</p> <p>13 the components for a typical acquisition of this type, were it</p> <p>14 under FAR.</p> <p>15 Q And based on your experience and review of this</p> <p>16 process, were any one of the evaluation factors determinative</p> <p>17 in Trump Old Post Office LLC being selected as a preferred</p> <p>18 selected developer?</p> <p>19 MS. FAHERTY: Objection.</p> <p>20 THE COURT: What's the ground of the objection?</p> <p>21 MS. FAHERTY: It is a very leading question.</p> <p>22 Leading.</p> <p>23 THE COURT: Was any one factor determinative?</p> <p>24 MS. FAHERTY: Determinative, Your Honor?</p> <p>25 THE COURT: What's --</p>		<p>1 (Whereupon, the witness stepped down from the</p> <p>2 stand.)</p> <p>3 THE COURT: Defendants, next witness.</p> <p>4 MS. HABBA: I'll take the gap to just do a</p> <p>5 housekeeping matter, Your Honor. We have an unopposed</p> <p>6 motion for pro hac vice for my associate, Peter Gabra. I</p> <p>7 was hoping Your Honor could address it.</p> <p>8 THE COURT: No objection, I grant it.</p> <p>9 What state is Peter from?</p> <p>10 MS. HABBA: New Jersey.</p> <p>11 THE COURT: Your state.</p> <p>12 MS. HABBA: Well, both are my states, and</p> <p>13 Connecticut, but yes, thank you.</p> <p>14 THE COURT: When was it filed by the way?</p> <p>15 MS. HABBA: It was filed, I believe, at the</p> <p>16 beginning of last week.</p> <p>17 MS. GREENFIELD: It was already processed. Did</p> <p>18 you check the document?</p> <p>19 MS. HABBA: We did and we didn't see it.</p> <p>20 Perhaps my assistant missed something. But if it is</p> <p>21 processed, fantastic. Thank you.</p> <p>22 MS. GREENFIELD: We will take a look.</p> <p>23 MS. HABBA: Thank you.</p> <p>24 THE COURT: Defendants, next witness.</p> <p>25 COURT REPORTER: Who will be questioning?</p>	

November 16, 2023

Proceedings	Page 4571	Laposa - by Defendant - Direct.	Page 4573
1 MR. ROBERT: Mr. Fields.		1 A I did.	
2 THE COURT: Mr. Kise, how come you don't get the		2 Q What was the title of your dissertation?	
3 pleasure to question people? You get to a certain stage		3 A It was on property development investments in	
4 in life where you are better off -- I haven't cut off my		4 transitional economies.	
5 sleeves -- but you are better off like Bill Belichick, on		5 Q Why did you choose that topic for your dissertation?	
6 the sidelines. This is a young person's game. And by the		6 A Why did I do that?	
7 way, be careful what you wish for because there is still		7 Q Why did you choose that topic for your dissertation?	
8 time left.		8 A Goes to a personal aspect of my life. I grew up as a	
9 MR. AMER: Calling it a young person's game, I		9 son of an immigrant from Yugoslavia who came through Ellis	
10 take that as a compliment.		10 Island, my grandfather, my family. I grew up with many people	
11 MR. KISE: You should.		11 in Central Europe and Eastern Europe. And I was in Russia in	
12 COURT OFFICER: Judge, are you ready for the		12 August of 1991 when the Soviet Union became the former Soviet	
13 witness?		13 Union. And I just saw this breakout of capital flows going	
14 THE COURT: Yes.		14 into transitional economies. So I spent time with the topic of	
15 COURT OFFICER: Witness entering.		15 just transitional economies, because that was in my background.	
16 (Whereupon, the witness took the stand.)		16 Q Have you ever authored any peer-reviewed articles?	
17 THE COURT: Chris, you are comparing yourself to		17 A I have authored numerous peer-reviewed articles.	
18 Coach Belichick?		18 Q And generally what are some of the subject matters of	
19 MR. KISE: I could probably think of a few other		19 those articles?	
20 coaches that are more popular in this state.		20 A Real estate economics; real estate valuation trends;	
21 COURT OFFICER: Please raise your right hand.		21 real estate capital markets. I have done other one on	
22 S T E V E N L A P O S A, after having		22 corporate real estate, but generally it is real estate.	
23 first been duly sworn was examined and testified as		23 Q Have those articles ever been published?	
24 follows:		24 A They have been published.	
25 COURT OFFICER: Please have a seat.		25 Q And what are some of the journals where your articles	
Laposa - by Defendant - Direct.	Page 4572	Laposa - by Defendant - Direct.	Page 4574
1 MR. KISE: Your Honor, right now I think I would		1 have been published?	
2 like to be Jimbo Fisher, fired from my job and collecting		2 A Several have been published in top tier journals such	
3 \$77 million. That's what I would like.		3 as the Journal of Real Estate Research and the Journal of	
4 THE COURT: I'll see if I can arrange it.		4 Property Investment and Finance.	
5 COURT OFFICER: Please state your name and		5 Q What is the process like of having to get your	
6 either home or business address for the record.		6 article published?	
7 THE WITNESS: My name is Steven Laposa. The		7 A The process is you typically, in my 30 plus years of	
8 address is 909 Fannin Street, Suite 2450, Houston, Texas		8 doing this, you present a paper at an academic conference; get	
9 77010.		9 feedback; go back with your authors or coauthors, if they	
10 THE COURT: Mr. Fields, please proceed.		10 exist, continue to improve the quality of the article. Submit	
11 MR. FIELDS: Thank you, Your Honor.		11 it to the editor of a journal, who then turns it to blind	
12 DIRECT EXAMINATION		12 reviewers who review it. They give it back to you. The editor	
13 BY MR. FIELDS:		13 submits it back to the author, in this case myself, and we	
14 Q And good morning, Dr. Laposa?		14 either, you know, correct or improve what they have asked us to	
15 A Good day.		15 do. And so that's what -- then eventually you get it	
16 Q Good afternoon it seems.		16 published. It takes a while to do it.	
17 I would like to briefly discuss your educational		17 Q Have you ever published on the valuations of hotels	
18 background. Could you please identify any relevant degrees or		18 apartments and senior housing?	
19 educational achievements after your undergraduate degree?		19 A Yes. Back in the late '90s I did quite a bit of	
20 A Yes. I completed an MBA in real estate and		20 research in those areas, especially in senior housing. And	
21 construction management at the University of Denver in 1989.		21 published quite a few papers, as in peer-reviewed articles as	
22 And I also completed a Ph.D. at the university of Reading in		22 well.	
23 England in 2006.		23 Q Have you ever been on the editorial board for a	
24 Q Did you complete a dissertation as part of your Ph.D.		24 journal?	
25 program?		25 A Yes. Over my career I have been on the editorial	

November 16, 2023

<p>Laposa - by Defendant - Direct. Page 4575</p> <p>1 board of six journals. And as such, when papers come in, just 2 to follow-up the previous response, when someone submits a 3 paper to that journal, they may give it to me to blind review 4 it, to read it, to review it, to see if it actually extends the 5 body of knowledge that is the purpose of doing publications. 6 So, yes. 7 Q Have you ever done any research regarding real estate 8 markets? 9 A I have over 30 years. That's a consistent theme of 10 what I have been able to do in the various companies I have 11 worked for. And so, yes, that's the real estate economics; 12 real estate capital markets; real estate cycles, is what I 13 consider, kind of, the main components of that real estate 14 analysis. 15 Q When you say, "real estate cycles," what do you mean 16 when you say that? 17 A Um, in general terms real estate goes through cycles, 18 and I am talking about commercial as well as residential. 19 There are four cycles, it is typically it is like a sine wave 20 if you can see it. So a sine wave would have recession, 21 recovery, expansion and contraction. Each one has their own 22 decision rules as to identify where you put a market at a 23 particular time. 24 MR. FIELDS: Your Honor, is there usually real 25 time on this screen?</p>	<p>Laposa - by Defendant - Direct. Page 4577</p> <p>1 as employment growth, GDP growth, income growth, things of this 2 nature, how they relate to real estate demand and markets. 3 And then real estate capital markets is where it is 4 more the pricing of the real estate assets. In other words, 5 what is the trends with cap rates and discount rates. And who 6 is investing in the market, who is selling, who is buying. 7 Q Have you ever won any awards for your research? 8 A I have. 9 Q And do you recall when and what award that you won? 10 A In 2014 I was awarded the Inaugural Scholar 11 Practitioner Award by the American Real Estate Society for 12 Research, that was used, respected, as the plaque says, 13 respected by the academics as well as used in the industry. So 14 I was the first one in 2014. I won other awards dealing with 15 retail research and senior housing, but I consider that one of 16 my best. 17 Q What is the American Real Estate Society? 18 A The American Real Estate Society is about 35 years 19 old. It is a worldwide association of primarily 50 percent 20 industry professionals and 50 percent academics, so. 21 Q Have you ever authored or coauthored any books? 22 A I have. I have been published in a book on -- a 23 chapter called "Mass Appraisal and Lifestyle Segmentation 24 Profiles and the use of GIS or Geographic Information Systems 25 in the Valuation of a Mass Appraisal for Residential</p>
<p>Laposa - by Defendant - Direct. Page 4576</p> <p>1 MS. FAHERTY: No. 2 MR. FIELDS: Thank you. It has been a while 3 since I have been up here. 4 Q Does your real estate cycle research include 5 forecasting? 6 A Yes. Beginning when I was with a company in 7 Baltimore, Alex Brown Kleinwort Benson. This was in 1992, 8 right after the RTC days or the Resolution Trust Corporation 9 days. 10 We had a debacle after the late -- in the late 1980s, 11 went through a recession in '91. And the pension fund and 12 institutional investors were surveyed and said what is the 13 number one thing they want from the research community. 14 Myself. And they said, we want to know more about cycles. So, 15 I started producing, with my director, who is a Ph.D., cycles 16 on quality basis, 50 different -- 50 to 60 different markets 17 and five different property tax, where we looked at historical 18 trends and provided three to five year forecast. 19 Q Real estate economics and real estate capital 20 markets, can you briefly describe what that is? 21 A Real estate economics has to do more with the 22 understanding of how real estate markets works. It could be 23 urban economics, as far as how to -- how things -- how 24 companies move, how they grow, how they -- et cetera. It could 25 be just your macro economics, micro regional economics as far</p>	<p>Laposa - by Defendant - Direct. Page 4578</p> <p>1 Properties." 2 Q You use the term "mass appraisal," could you define 3 what you mean by that term? 4 A Yes. It is -- done numerous of these. And it is 5 just where you get a collection of properties, whether it could 6 be a city that has -- well, this one had like four to 5,000 7 homes that we had to value in a mass appraisal sense. There 8 are times where I have worked with the appraisers in 9 Pricewaterhouse or others who I have been a part of, where it 10 could be five, you know, 2000 convenience stores around the 11 United States. So that's -- it is taking a look at being able 12 to efficiently develop portfolio estimates on a portfolio of 13 various residential or commercial properties. 14 Q All right. You mentioned Pricewaterhouse, I would 15 like to move into a little bit of your professional background 16 now. Where did you work after you finished your MBA? 17 A After completing my MBA I started my own company that 18 provided project management and construction management 19 services to clients that were inbound to both industrial and 20 commercial property tax. Due to my work I lived and worked in 21 the Middle East for four years in the early '80s and I did 22 massive projects with industrial gas plants, oil facilities, 23 gold mines, et cetera. As well as, during with that company, 24 JPM Associates, we helped with retail location analysis for a 25 variety of clients.</p>

November 16, 2023

Laposa - by Defendant - Direct. Page 4579

1 Q And approximately how long were you with JPM and  
2 Associates, which was your business?  
3 A I was with them for three years. This was through  
4 '92. And if you remember previously, I talked about there was  
5 a recession in '91, so I had the opportunity to join a research  
6 group with my former professor at the University of Denver at a  
7 company called Alex Brown Kleinwort Benson or we called it  
8 ABKB.  
9 Q And so after you stopped working with JPM and  
10 Associates or closed your business, did you then move to the  
11 ABKB firm?  
12 A I did. And I helped start a research group that  
13 supported the real estate advisory company, ABKB, who advised  
14 and did asset management for a number of companies.  
15 I'll slow down. I am sorry about that. I get  
16 excited.  
17 So, yes. So we did asset management acquisitions,  
18 dispositions on behalf of pension funds. And I, there again, I  
19 was with a research group working with the valuation group  
20 within ABKB, as well as the asset managers and investment  
21 advisors.  
22 Q And just generally, what were some of your  
23 responsibilities at ABKB?  
24 A That is the -- 1992 is when we started to produce  
25 quarterly forecasts, analysis real estate cycles for internal

Laposa - by Defendant - Direct. Page 4580

1 use as well as external to our clients. And so that we would  
2 be able to provide inputs into the asset management and  
3 evaluation and appraisal practices that we did internally on  
4 behalf of our clients.  
5 Q So if I understood you correctly your work was used  
6 to support the appraisal group; is that a fair representation?  
7 A They were one of the groups that used our research  
8 and our analytics, yes, as well as the people that were  
9 involved with investments and buying properties and selling  
10 properties. We would advise them pretty much on a Monday  
11 morning, get on a plane, go where in the United States.  
12 Q And how would the appraisal group or other groups use  
13 or rely on the information that you provided to them?  
14 A We provided general -- at that time, market  
15 information as far as forecasts of demand, supply, vacancy,  
16 rents, cap rates, valuations. So and again, five property tax  
17 and 50 to 60 different markets.  
18 Q Did you leave ABKB in approximately 1995?  
19 A I did. ABKB merged with Lasalle Partners and Lasalle  
20 Investment Advisors in '94. And then in '95 I moved with my --  
21 the research director to Pricewaterhouse. And once again we  
22 were involved with the real estate valuation group doing --  
23 providing similar services to the appraisers that worked within  
24 our group who did work, again, on behalf of, at that time,  
25 clients for PWC, as well as individual clients that we

Laposa - by Defendant - Direct. Page 4581

1 contracted with.  
2 Q Do you recall the day that you started with  
3 Pricewaterhouse?  
4 A Yeah, July 1, 1995.  
5 Q Why is that memorable for you?  
6 A My birthday was the next day. And the second day of  
7 that -- when I started at Pricewaterhouse, I was told get on a  
8 train from Baltimore and come up to New York, because we were  
9 working on the Rockefeller Center bankruptcy.  
10 Q Rockefeller Center bankruptcy?  
11 A Correct. That was back in the mid -- well, it was  
12 1995. The research group that I was part with, again, we  
13 prepared the market analysis section of the volume appraisal  
14 that we did for -- on behalf of our client.  
15 Q And specifically what was your involvement with  
16 regard to the Rockefeller Center bankruptcy?  
17 A Two things. One, because my construction management  
18 background I went through all of the empty spaces that were in  
19 Rock Center, the 13 million square feet, to identify what the  
20 TI cost, Tenant Improvement costs. And so I went through that  
21 and identified the empty spaces what it would cost to build --  
22 to do the tenant finish. But more importantly, the main focus  
23 what I did is to take a look at the market analysis section.  
24 We wrote that, beginning with a kind of a funnel, what was  
25 going on in the economy, what was going on in New York City as

Laposa - by Defendant - Direct. Page 4582

1 a metropolitan area. Then getting down to a submarket.  
2 Because in 1995 we start to expand our real estate cycle  
3 analysis to not only do a market, but then we started doing  
4 submarkets, because we found in the Rockefeller Center  
5 bankruptcy that Rock Center submarket, just the area around it,  
6 only had about 7 percent of the overall stock in New York City.  
7 But it captured approximately 20 percent of all new absorption.  
8 So what happened is, that can't theoretically continue. So,  
9 what we started doing is looking at how to do forecasts, not  
10 only for the market but individual submarkets within cities.  
11 THE COURT: Five minute warning.  
12 Q You mentioned that you looked at the submarket, the  
13 area around Rock Center, and also the market New York City as a  
14 whole; is that a fair representation of your testimony?  
15 A Yeah, considered a funnel, you look at national, then  
16 what is going on in the metropolitan area, a submarket,  
17 eventually you get to an peer group, until you get to the  
18 individual property.  
19 Q Was there an international aspect to the Rock Center  
20 market analysis?  
21 A Yeah, very much so. Because one thing that we looked  
22 at is who was active in the market. Not only in New York City  
23 but other markets that had property similar to Rock Center.  
24 And who was buying and selling in those markets and, you know,  
25 the preponderance of the foreign investors and private

November 16, 2023

<p>Laposa - by Defendant - Direct. Page 4583</p> <p>1 institutional investors were active in the market.  2 (The following proceedings were stenographically  3 recorded by Senior Court Reporter Michael Ranita.)  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4585</p> <p>1 focused on -- I only had to teach one course a semester. So  2 primarily it was real estate market analysis every semester. I  3 periodically would teach a real estate development class, and at  4 the end I was a director of the research center there. So I did  5 a lot of public speaking. And Colorado State is a land grant  6 university, so we did a lot of research that gave back to the  7 State of Colorado.  8 Q Do you recall when you left Colorado State?  9 A Yeah. Once again, when I left, in 2012, I was  10 immediately hired by Alvarez &amp; Marsal. And once again, when I  11 began with that company, of course Lehman Brothers' bankruptcy  12 was still on going. And the first thing that they asked me to  13 do is to look at a portfolio of apartment complexes and units  14 they had nationally, and using my real estate psychoanalysis, to  15 determine, to present to the investment committee, should we  16 buy, should we sell them? What should we do with them? What  17 was the timing? So this was in 2012, and if I remember right, I  18 recommended holding at least to 2014. And I'm sure if they held  19 it further, they would have made more money, but they were  20 thinking of just doing a fire sale. And I recommended not to do  21 that based on my real estate psycho and forecast.  22 THE COURT: Let's talk about 2014 at 2:15.  23 Lunchtime. See you all at 2:15.  24 And I'll direct the witness not to discuss this  25 case, his testimony, or anything related to it during the</p>
<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4584</p> <p>1 Q Now, at some point did Price Waterhouse merge?  2 A Correct, yeah. A few years later, Price Waterhouse  3 merged with Coopers &amp; Lybrand, so the new company was called  4 PWC, for short. But we call it Price Waterhouse Coopers, but  5 eventually everybody knew it in the marketplace as PWC.  6 Q Did your responsibilities change after the merger?  7 A After the merger, my responsibilities became more -- I  8 was, at that time, the National Director of Real Estate Research  9 for PW, and once we merged with Coopers &amp; Lybrand, my  10 responsibilities became more global in nature, and so I became  11 the director of the global -- I was one of the two directors in  12 the Global Real Estate Strategy and Research Group.  13 Q After PWC, did you move into a more educational or  14 teaching role?  15 A Yes. I mean, during my time with PWC I completed my  16 Ph.D. in England, and then -- so in 2006, after flying around  17 the world for 150,000 miles a year, my -- I got an offer to kind  18 of just stay in one place, and so I accepted an offer as an  19 endowed chair in real estate in Colorado State University, and  20 in Fort Collins, Colorado. So I became the chair teaching real  21 estate market analysis for the five years I was there, as well  22 as real estate development courses.  23 Q What were some of the courses that you taught at  24 Colorado State?  25 A I focused on -- because I had an endowed chair, I</p>	<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4586</p> <p>1 break.  2 Thank you.  3 (Whereupon, the case on trial was adjourned until  4 2:15 for the luncheon recess.)  5 * * * * *  6 A F T E R N O O N S E S S I O N  7 * * * * *  8 THE COURT OFFICER: All rise. Part 37 is back in  9 session. Please be seated and come to order.  10 THE COURT: Let's get the witness back on the  11 witness stand.  12 (Whereupon, the witness stepped into the witness  13 stand.)  14 THE COURT: Before we resume the questioning, let  15 me ask defendants, are all defendants represented here at  16 this point?  17 MR. FARINA: Good afternoon, your Honor. Michael  18 Farina for the defendants. All defendants are now  19 represented. We have Mr. Gabra in the back, admitted pro  20 hac vice. I understand he is representing some of the  21 defendants that Ms. Habba represents.  22 THE COURT: You don't have to go person by person,  23 but they are all represented. Great.  24 Let's continue with the direct examination.  25 MR. FIELDS: Thank you, your Honor.</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4587	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4589
<p>1 THE COURT: I'll remind the witness that he is</p> <p>2 still under oath.</p> <p>3 Q Dr. Laposa, before the lunch break we were discussing</p> <p>4 your employment with Alvarez &amp; Marsal?</p> <p>5 A Yes.</p> <p>6 Q And Marsal is M-A-R-S-A-L.</p> <p>7 A Correct.</p> <p>8 Q When did you leave Alvarez &amp; Marsal?</p> <p>9 A October 2019.</p> <p>10 Q Where did you go next?</p> <p>11 A I started my own LLC consulting firm and.</p> <p>12 Q What's the name of that firm?</p> <p>13 A Laposa Realty Advisors, LLC.</p> <p>14 Q And what kind of work do you do now with Laposa Realty</p> <p>15 Advisors, LLC?</p> <p>16 A I provide general consulting on real estate economics</p> <p>17 investment strategies, as well as consulting with a variety of</p> <p>18 clients for expert witness work.</p> <p>19 Q Is the work that you are doing now with your company</p> <p>20 consistent with the work that you've done and you've described</p> <p>21 over the past approximately 30 or so years?</p> <p>22 A Yes, it consistently deals with primarily with real</p> <p>23 estate analytics and valuation issues.</p> <p>24 Q And are you also affiliated with the Ankura,</p> <p>25 A-N-K-U-R-A, firm?</p>	<p>1 real estate analytics and valuation arena?</p> <p>2 A Since -- I mean, formally, I would say since 1992.</p> <p>3 Q Would that be, give or take, about 31 years?</p> <p>4 A That would -- yes, about 31 years.</p> <p>5 Q I went to law school because I'm terrible at math, so</p> <p>6 that's why I asked you to confirm that.</p> <p>7 A Okay.</p> <p>8 Q And you mentioned this a little bit, but has the work</p> <p>9 that you've done in this arena spanned the globe?</p> <p>10 A Yes. Um, especially after PW merged with Coopers &amp;</p> <p>11 Lybrand. As I said previously today, my work expanded, so I</p> <p>12 began working in Europe, the Middle East, Latin and Asia, and</p> <p>13 again, being PWC works with the Urban Land Institute to produce</p> <p>14 annual publications on emerging trends, both in North America</p> <p>15 and Europe and Asia Pacific, and I helped do quite a bit of</p> <p>16 research for those publications, as well as write several of</p> <p>17 them.</p> <p>18 Q And in what countries have you assisted with market</p> <p>19 analyses for valuation purposes?</p> <p>20 A Um, after the currency crisis in the Asia, I've worked</p> <p>21 with -- in Seoul, I worked in Tokyo, Hong Kong, Singapore, and</p> <p>22 then I've also worked in -- across the, um, Europe, in multiple</p> <p>23 capitals there. And I also provided that type of analysis in</p> <p>24 the Middle East, and Dubai, and Riyadh, and other places.</p> <p>25 Q Have you ever held any professional designations?</p>
Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4588	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4590
<p>1 A Yes. I am an independent senior advisor to Ankura.</p> <p>2 Q What does Ankura do?</p> <p>3 A They are a management consulting firm. I work</p> <p>4 primarily with their Real Estate Advisory and Valuation Group.</p> <p>5 Q How do you support the Real Estate Advisory and</p> <p>6 Valuation Group?</p> <p>7 A Pardon?</p> <p>8 Q How do you support that group, the Real Estate Advisory</p> <p>9 and Valuation Group?</p> <p>10 A Sometimes it's through engagements, sometimes -- I</p> <p>11 mean, it's with presentations, proposals, in quite a few cases</p> <p>12 it's with helping provide them the market analysis research and</p> <p>13 tools, including my specialty in GIS special analysis to real</p> <p>14 estate markets.</p> <p>15 Q And you discussed GIS before the lunch break, but could</p> <p>16 you give us a little explanation on what GIS is?</p> <p>17 A Sure. It's taking a lot of data that is two</p> <p>18 dimensional and making it three dimensional. Um, if you use</p> <p>19 Google Earth or Google Maps, you probably have seen just some</p> <p>20 basic maps, um, and aerial photographs.</p> <p>21 What GIS does is integrate economic demographic data</p> <p>22 at, you know, thousands of variables, whether it's economics,</p> <p>23 demographics, history, forecast, by, you know, states, counties,</p> <p>24 census track, block groups, zip codes, et cetera.</p> <p>25 Q Approximately, how long have you been involved in the</p>	<p>1 A Um, for numerous years I held the -- what's called the,</p> <p>2 um, I was invited to submit my qualifications to be considered</p> <p>3 as a fellow in the Royal Institute of Chartered Surveyors.</p> <p>4 The Royal Institute of Chartered Surveyors is a global</p> <p>5 industry association group primarily similar to the Appraisal</p> <p>6 Institute here in the United States, to be designated as a</p> <p>7 fellow.</p> <p>8 You had to submit your qualifications, your career, get</p> <p>9 interviewed, and I was a fellow in -- with the Royal Institute</p> <p>10 of Chartered Surveyors until October 2019.</p> <p>11 Q And just to be clear, you said you were invited, but</p> <p>12 you were admitted into -- as a fellow in the Royal Institute of</p> <p>13 Chartered Surveyors?</p> <p>14 A Correct.</p> <p>15 Q Is there -- withdrawn.</p> <p>16 Would it be fair to say that licensed appraisers have</p> <p>17 relied on information that you provide them, generally</p> <p>18 throughout your career, to support their conclusions in their</p> <p>19 appraisals?</p> <p>20 A That would be very fair to say.</p> <p>21 Q Are you currently a member of the American Real Estate</p> <p>22 Society?</p> <p>23 A I am currently a member of the American Real Estate</p> <p>24 Society, yes.</p> <p>25 Q Generally, briefly, what is the Society? What is the</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4591	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4593
<p>1 American Real Estate Society?</p> <p>2 A I believe I mentioned this earlier today. It's an</p> <p>3 international association of industry and academics in primarily</p> <p>4 with the focus on real estate research and publications and --</p> <p>5 it's a great group.</p> <p>6 Q Did you ever hold any positions with the Society?</p> <p>7 A In the early 2000's I was on their board of directors</p> <p>8 for quite a few years. And I believe in 2008 I was elected to</p> <p>9 program chair for an annual conference, which eventually I</p> <p>10 became the vice president and the president of the American Real</p> <p>11 Estate Society.</p> <p>12 Q Are you familiar with the Urban Land Institute?</p> <p>13 A I'm also a member of the Urban Land Institute, ULI.</p> <p>14 Q What do they do?</p> <p>15 A ULI, Urban Land Institute. The ULI is probably one of</p> <p>16 the world's largest industry associations encompassing the built</p> <p>17 environment.</p> <p>18 Q Have you written publications for the ULI?</p> <p>19 A Yes, for a number of years, I think I just said I</p> <p>20 helped write the -- provide research. I would go into the North</p> <p>21 American Real Estate -- the emerging trends publications. I</p> <p>22 wrote the first couple of years, in the European publication, as</p> <p>23 well as the Asia Pacific. I wrote the first two years in that,</p> <p>24 as well as the -- they have a book on various market analysis</p> <p>25 that I helped write a chapter on for the R and D flex property</p>	<p>1 Q Have you ever taught courses for the Appraisal</p> <p>2 Institute?</p> <p>3 A Yes, I have. Myself and another co-presenter, we</p> <p>4 developed the first ever real estate cycle course, a two-day</p> <p>5 course, primarily. We went around to numerous cities in the</p> <p>6 United States and taught a course on how to use real estate</p> <p>7 cycles with appraisals.</p> <p>8 Q Have you ever been qualified as an expert witness in</p> <p>9 any court?</p> <p>10 A Yes.</p> <p>11 Q Approximately how many times?</p> <p>12 A About five or six.</p> <p>13 Q And what was the subject matter, generally, of your</p> <p>14 testimony in those five or six cases?</p> <p>15 A Um, real estate capital markets. Um, I was designated</p> <p>16 as a real estate capital markets expert in a case. Another is</p> <p>17 just, again, going back to a common theme, real estate analytics</p> <p>18 as they apply to appraisals, especially when testifying in</p> <p>19 property tax appeal courts I've been involved with. So, um, I</p> <p>20 can't think of too many others.</p> <p>21 Q And have you testified as an expert witness at</p> <p>22 depositions where you ultimately were never qualified as an</p> <p>23 expert later in court?</p> <p>24 A Can I ask a clarification on the question? In</p> <p>25 depositions that the case eventually settled?</p>
Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4592	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4594
<p>1 tax.</p> <p>2 Q Does the ULI survey some of it's members with some</p> <p>3 frequency?</p> <p>4 A Yes, twice a year a select group of us, and I'm</p> <p>5 included in one of the 40 -- 35, 40 individuals. They ask us to</p> <p>6 provide our forecast for various macroeconomic parameters, such</p> <p>7 as GDP, unemployment, economic GROWTH, et cetera, as well as</p> <p>8 provide information and forecast as to -- for the next three</p> <p>9 years on each one of the property types, including the real</p> <p>10 estate capital markets. It's primarily a real estate capital</p> <p>11 market semiannual forecast that I'm privileged to participate</p> <p>12 in.</p> <p>13 Q You said approximately 35 or 40 of your surveys out of</p> <p>14 how many members, give or take?</p> <p>15 A I don't know the exact number of how many industry, but</p> <p>16 I think the last I heard was at least 35,000.</p> <p>17 Q Are you familiar with the Appraisal Institute?</p> <p>18 A I'm familiar with the Appraisal Institute, yes.</p> <p>19 Q What is the Appraisal Institute?</p> <p>20 A The Appraisal Institute is the national body. It's</p> <p>21 again, an industry association that sets standards for</p> <p>22 appraisals. They produce quite a bit of publications,</p> <p>23 continuing Ed. courses, and they do the certifications for</p> <p>24 members to become licensed. Certified members of the Appraisal</p> <p>25 Institute are MAI's.</p>	<p>1 Q Let me ask it -- I'll withdraw and ask a simpler</p> <p>2 question. How many times have you testified as an expert</p> <p>3 witness outside of court?</p> <p>4 A Testified via depositions?</p> <p>5 Q Yes, sir.</p> <p>6 A Oh, that's about 12 to 15 over my course of my career,</p> <p>7 yes.</p> <p>8 Q Would those 12 or 15 include some of your trial</p> <p>9 testimony, or is that separate and apart from your trial</p> <p>10 testimony?</p> <p>11 A That would be separate and apart.</p> <p>12 Q Okay.</p> <p>13 A I'm going back to 1992 on this. Okay?</p> <p>14 Q Fair enough.</p> <p>15 Were you retained by the defendants in this case to</p> <p>16 provide an opinion regarding real estate analytics and</p> <p>17 valuation?</p> <p>18 A Yes.</p> <p>19 Q Did you have the opportunity to acquaint yourself with</p> <p>20 the allegations and the Attorney General's complaint in this</p> <p>21 case?</p> <p>22 A Yes.</p> <p>23 Q And what did you do to acquaint yourself with the</p> <p>24 allegations?</p> <p>25 A I reviewed the complaint, um, and I, again, focused on</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4595	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4597
<p>1 areas that they asked me to provide my opinions and analysis on.</p> <p>2 And that had to do with a lot of just the -- the, um,</p> <p>3 allegations of the disparity between what was appraised values</p> <p>4 versus what was on the Statement of Financial Condition.</p> <p>5 Q Did you review the complaint and also the accompanying</p> <p>6 exhibits that were a part of the complaint?</p> <p>7 A Well, I reviewed the complaint. And by the time I got</p> <p>8 to Exhibits 1 and 2 accompanying that, I noticed that it, you</p> <p>9 know, my area of expertise became less and less. And by the</p> <p>10 time I got to Exhibits 3, which are the actual exhibits, I</p> <p>11 skimmed over them fairly quickly.</p> <p>12 Q So would it be fair to say, then, that you focused your</p> <p>13 time and analysis on the allegations in the complaint as they</p> <p>14 related to valuation disparities?</p> <p>15 A Correct.</p> <p>16 Q And after reviewing the allegations in the complaint,</p> <p>17 did you ultimately form opinions to a reasonable degree of</p> <p>18 certainty in the field of real estate analytics and valuation</p> <p>19 regarding the theories of valuation alleged in the complaint?</p> <p>20 MR. SOLOMON: Your Honor, I think we are going to</p> <p>21 object. It's the cart before the horse. The witness has</p> <p>22 not been qualified as an expert yet.</p> <p>23 MR. FIELDS: I was going to do that now.</p> <p>24 THE COURT: Sustained.</p> <p>25 Q Let me ask you, first, Dr. Laposa, are you being</p>		<p>1 valuations.</p> <p>2 MR. SOLOMON: I would just -- your Honor, we have</p> <p>3 no objection with respect to real estate analytics, but when</p> <p>4 they say "and valuation." We would ask for some clarity as</p> <p>5 to what that term means, especially in light of the issues</p> <p>6 in this case relate to go valuations.</p> <p>7 THE COURT: For my own benefit, can we distinguish</p> <p>8 between analytics and valuations. Simply put, what are</p> <p>9 analytics and what are valuations; so we have a better sense</p> <p>10 of the latter.</p> <p>11 MR. FIELDS: The analytics portion, your Honor, is</p> <p>12 the analysis --</p> <p>13 THE COURT: Let me ask the witness.</p> <p>14 MR. FIELDS: I apologize.</p> <p>15 THE COURT: What are real estate analytics, simply</p> <p>16 put?</p> <p>17 THE WITNESS: Simply put, it's the analysis of the</p> <p>18 data and the methodologies processes that go into an</p> <p>19 appraisal, especially the market analysis section, which I</p> <p>20 have quite a bit of experience in.</p> <p>21 THE COURT: And, I mean, I've heard all of your</p> <p>22 experience. Just, again, simply put, how does this make you</p> <p>23 an expert in valuation -- real estate valuations. That was</p> <p>24 the other half of it; right?</p> <p>25 MR. SOLOMON: It is, your Honor, but I'm not sure</p>	
Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4596	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4598
<p>1 compensated for the work that you are doing for the defendants</p> <p>2 in this case?</p> <p>3 A Yes.</p> <p>4 Q And what -- are you retained as an expert through the</p> <p>5 Ankura firm?</p> <p>6 A Yes.</p> <p>7 Q Do you know what the hourly rate is that you are</p> <p>8 charging Ankura?</p> <p>9 A Yes.</p> <p>10 Q What is that?</p> <p>11 A Four hundred an hour.</p> <p>12 Q And are you familiar with the hourly rate that Ankura</p> <p>13 is charging for your work in this case?</p> <p>14 A Yes.</p> <p>15 Q What is that?</p> <p>16 A Eight hundred fifty.</p> <p>17 Q Could you guesstimate approximately how many hours</p> <p>18 you've spent on this engagement to date?</p> <p>19 A I would need to confer with my records, but</p> <p>20 approximately 325.</p> <p>21 Q And is your compensation in this case conditioned on</p> <p>22 any opinion that you provide?</p> <p>23 A No.</p> <p>24 MR. FIELDS: At this time, your Honor, I tender</p> <p>25 Dr. Laposa as an expert relating to reality analytics and</p>		<p>1 that the witness can separate the two. I think those two go</p> <p>2 together. I don't know.</p> <p>3 THE COURT: Oh.</p> <p>4 MR. SOLOMON: Your Honor, if we could ask a few</p> <p>5 questions, but in terms of valuations, I don't think you can</p> <p>6 divorce that from the analytics, the market analysis the</p> <p>7 witness has testified to as being his experience.</p> <p>8 THE COURT: Let me ask the witness. What are you</p> <p>9 an expert in, simply put? I'm looking for like three, four,</p> <p>10 five words here that would help us -- everybody understand</p> <p>11 this case.</p> <p>12 You are an expert in real estate, what?</p> <p>13 THE WITNESS: I do consider myself an expert in</p> <p>14 real estate --</p> <p>15 THE COURT: Just give me three or four words.</p> <p>16 THE WITNESS: Okay.</p> <p>17 THE COURT: You consider yourself an expert in real</p> <p>18 estate blank. What is the blank?</p> <p>19 THE WITNESS: Real estate research, the processes,</p> <p>20 and economics.</p> <p>21 THE COURT: Is that satisfactory to defendants?</p> <p>22 MR. FIELDS: Sure, your Honor. Perhaps if I ask a</p> <p>23 question, it may be able to clear up some of this.</p> <p>24 THE COURT: You don't have to clear it up, I don't</p> <p>25 think.</p>	



November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4599	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4601
<p>1 The plaintiffs, are you okay with that?</p> <p>2 MR. SOLOMON: With that limitation, yes, your</p> <p>3 Honor, we are.</p> <p>4 THE COURT: I hereby declare you an expert, without</p> <p>5 prejudice to trying to expand it in exactly what you just</p> <p>6 said, economics, et cetera, et cetera.</p> <p>7 Defendants, is that sufficient as an area of</p> <p>8 expertise that I'm qualifying him in.</p> <p>9 MR. FIELDS: Certainly, your Honor.</p> <p>10 THE COURT: Great. Let's move on.</p> <p>11 MR. SOLOMON: Thank you, your Honor.</p> <p>12 MR. FIELDS: Can I confer with Mr. Solomon for a</p> <p>13 second?</p> <p>14 THE COURT: Of course.</p> <p>15 (Counsel, conferred off the record.)</p> <p>16 MR. FIELDS: Thank you, your Honor.</p> <p>17 THE COURT: Sure.</p> <p>18 Q All right. Dr. Laposa, I'm going to ask that you give</p> <p>19 any opinions you provided to a reasonable degree of certainty in</p> <p>20 the areas of -- that the Judge just qualified you as an expert</p> <p>21 in; is that fair?</p> <p>22 A That's fair.</p> <p>23 Q Okay.</p> <p>24 Let me just ask you at the outset, you said you</p> <p>25 reviewed the complaint in this case?</p>		<p>1 Professional Appraisal Practice, or USPAP.</p> <p>2 Q Have you ever heard the phrase that appraisals are more</p> <p>3 of an art than a science?</p> <p>4 A Yes.</p> <p>5 Q What do you understand that to mean?</p> <p>6 A That there is a lot of art, there's a lot of</p> <p>7 subjectivity that go into assumptions and into the methods,</p> <p>8 process of collecting all the data that is necessary to</p> <p>9 eventually determine an estimate appraised value. So that's</p> <p>10 when I hear it, I think of all the subjectivities that are just</p> <p>11 outside the raw collection of data.</p> <p>12 Q We'll get into the subjectivities in a moment. What is</p> <p>13 a valuation?</p> <p>14 A A "valuation", when I hear that, it's -- does not</p> <p>15 necessarily have to be conducted or performed or created by a</p> <p>16 licensed appraiser. This could be -- like I was with, my early</p> <p>17 days, with ABKB or LaSalle. We had, at that time, 3 billion to</p> <p>18 5 billion commercial real estate property that we -- and did</p> <p>19 asset management on behalf of our pension funds and</p> <p>20 institutional clients. And on a quality basis I've worked with</p> <p>21 our appraisers to help them determine internal valuations. Not</p> <p>22 everybody that did that was a licensed appraiser; some were,</p> <p>23 some weren't. But when I hear "valuations" that doesn't</p> <p>24 necessarily imply that it's done by a licensed MAI.</p> <p>25 Q So would it be fair, then, to say that a valuation is</p>	
Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4600		Page 4602
<p>1 A Yes.</p> <p>2 Q Did you have -- what was your general understanding of</p> <p>3 the allegations in the complaint as they related to valuations?</p> <p>4 A The way that I understand the complaint is that the,</p> <p>5 especially when it comes to the 40 Wall Street table that I</p> <p>6 looked at, there were, um, valuations based on appraisals versus</p> <p>7 the values that were in the Statements of Financial Condition.</p> <p>8 So that, to me, was the crux of my expertise, is to be able to</p> <p>9 understand that.</p> <p>10 Q Now, do you have any opinion whether plaintiff's or</p> <p>11 defendant's valuations or appraisals cited in the complaint are</p> <p>12 true, accurate, inaccurate, right or wrong?</p> <p>13 A I have no opinion.</p> <p>14 Q Are you familiar, generally, with the terms "valuation"</p> <p>15 and "appraisal"?</p> <p>16 A I'm familiar with the two separate terms, yes.</p> <p>17 Q What is an appraisal?</p> <p>18 A When I hear the word "appraisal", it is -- condones in</p> <p>19 my mind, my bias in working with MAI's and licensed appraisers</p> <p>20 for 30 plus years, it's an appraisal of a property or properties</p> <p>21 by a licensed or certified appraiser.</p> <p>22 Q Are there certain standards that an appraiser has to</p> <p>23 follow when appraising a property?</p> <p>24 A Yes. They are primarily set forth in -- by the</p> <p>25 Appraisal Institute -- what's called the Uniform Standards of</p>		<p>1 not always an appraisal?</p> <p>2 A Yes.</p> <p>3 (Continued on the next page.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4603</p> <p>1 Q I am going to ask you a series of questions. And if</p> <p>2 I use the term "appraisal" I also refer -- I am referring to</p> <p>3 evaluation as well. Okay? And if there is a confusion to or</p> <p>4 you want some follow-up, feel free to ask. But for purposes of</p> <p>5 making this flow a little better, if I use the term "appraisal"</p> <p>6 I am also referring to evaluations. Is that okay?</p> <p>7 A Let's go for it.</p> <p>8 Q Okay.</p> <p>9 Now, are there generally three different methods to</p> <p>10 appraise property?</p> <p>11 A Yes.</p> <p>12 Q What are those methods?</p> <p>13 A There is the income approach, the sales comparable</p> <p>14 approach, and the cost approach.</p> <p>15 Q Are the -- withdrawn.</p> <p>16 Are there approaches that are more often used than</p> <p>17 others?</p> <p>18 A It depends.</p> <p>19 MR. SOLOMON: Objection. Are we asking this</p> <p>20 witness specific information in his career? Is this the</p> <p>21 market generally? Can we just have some clarification on</p> <p>22 that?</p> <p>23 THE COURT: I think he meant generally.</p> <p>24 MR. FIELDS: I did, Your Honor.</p> <p>25 THE COURT: Okay.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4605</p> <p>1 data from the marketplace as far as rents and comparable leases</p> <p>2 that can be applied. But it is taking a look initially at</p> <p>3 the -- the cash flows -- the cash flows of the particular</p> <p>4 subject property, identifying to spread out the leases. The</p> <p>5 main point is, you are eventually trying to estimate a net</p> <p>6 operating income, or NOI, for that property, going out maybe</p> <p>7 five, ten years. It is a forecast period that eventually you</p> <p>8 discount when you use the NOI to build up a value of the</p> <p>9 property.</p> <p>10 Q You mentioned an NOI or net operating income, can you</p> <p>11 mention just a few brief examples of what kind of data would go</p> <p>12 into calculating a net operating income?</p> <p>13 A Yeah. It goes two big components: The revenue and</p> <p>14 also expenses. So the revenue can be what is in the leases; it</p> <p>15 could be extra revenue that is -- that comes into the</p> <p>16 particular property.</p> <p>17 And then the expenses is, it really depends on the</p> <p>18 property type, what are the expenses. So it could be</p> <p>19 everything from janitorial services to tenant improvements. It</p> <p>20 could be quite a few things. So there is a whole list of</p> <p>21 variables that go in.</p> <p>22 And eventually it is revenues minus expenses equal</p> <p>23 net operating income.</p> <p>24 Q Have you heard the term "capitalization rate" before?</p> <p>25 A Yes, I have heard the word "capitalization rate."</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4604</p> <p>1 Can you answer the question as is? Do you need</p> <p>2 a readback?</p> <p>3 MR. FIELDS: I'll narrow it a little.</p> <p>4 Q In the commercial real estate industry in your</p> <p>5 experience what approaches are most often --</p> <p>6 A Most often it is the income and sales approach.</p> <p>7 Q And what does the sales approach require?</p> <p>8 A Sales approach requires an analysis and initially a</p> <p>9 collection of data of other comparable sales to a subject</p> <p>10 property in the marketplace, that eventually are filtered as to</p> <p>11 the most relevant to the subject property that would be used in</p> <p>12 the estimate of valuation for that property.</p> <p>13 Q Have you ever heard the term a "comp"?</p> <p>14 A Yeah.</p> <p>15 Q Is that generally the sales approach when someone</p> <p>16 refers to the term a "comp"?</p> <p>17 A Yes. But I didn't want to say that. I wanted to</p> <p>18 forsake the whole big word comparables. If you want to use</p> <p>19 comp, that's fine for me.</p> <p>20 Q For the laypeople, I want them to understand better.</p> <p>21 A Okay.</p> <p>22 Q Terms that are used.</p> <p>23 So how about the income approach? What is the income</p> <p>24 approach?</p> <p>25 A The income approach still requires a collection of</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4606</p> <p>1 And you can also say "cap rate."</p> <p>2 Q Perhaps you have heard it too much. But what is</p> <p>3 generally a cap rate?</p> <p>4 A A cap rate is, I am going to use an expression that I</p> <p>5 used to use as an academic; and you always need to know who</p> <p>6 Uncle Irv is. Uncle Irv is I over R equals V. And Irv is</p> <p>7 income, over cap rate, equals value; or I over R equals V.</p> <p>8 Q What goes into calculating a capitalization rate?</p> <p>9 A What goes into it is various aspects of what is going</p> <p>10 on in the capital markets. But then in my experience</p> <p>11 appraisers or valuation professionals will go out to the</p> <p>12 marketplace, identify properties that they have identified that</p> <p>13 have sold. They particularly will sometimes call the investor</p> <p>14 or the entity that bought the property and confirm the NOI on</p> <p>15 the property. And if they know the NOI and they know the</p> <p>16 value, then they can calculate the cap rate.</p> <p>17 Q So in a way is the sales comp approach used on</p> <p>18 occasion to calculate a capitalization rate?</p> <p>19 A Ask that question again.</p> <p>20 Q Are some of the processes or procedures that go into</p> <p>21 determining comparables used in order to determine a</p> <p>22 capitalization rate?</p> <p>23 A I would flip that the other way around. You get the</p> <p>24 comps first and then determine what the cap rate is. And you</p> <p>25 will probably have a series of sales that have cap rates that</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4607</p> <p>1 you verified that you can then apply to your particular</p> <p>2 engagement.</p> <p>3 Q And when calculating a cap rate, is there a</p> <p>4 subjective analysis that is employed on behalf of the appraiser</p> <p>5 to determine a capitalization rate when trying to come up with</p> <p>6 the income or the value of property under the income approach?</p> <p>7 A Well, theoretically it is a straight mathematical</p> <p>8 formula. You have the income. You have the value. It is the</p> <p>9 income divided by the value, and you have a cap rate. Now,</p> <p>10 what you do with it after that, and how you apply a specific</p> <p>11 cap rate to your subject property is the next step in process,</p> <p>12 in my experience, in how valuations are done, the estimates of</p> <p>13 valuation for a subject property.</p> <p>14 Q What is the cost approach?</p> <p>15 A The cost approach is pretty much what it sounds like.</p> <p>16 You go to a company like historically Marshall &amp; Swift, which</p> <p>17 has various price per square foot components for various</p> <p>18 property types, and you get their cost approach for a</p> <p>19 particular property. You can talk to -- you might be able to</p> <p>20 get the building permit where you actually have the cost. You</p> <p>21 might be able to interview various general contractors. It is</p> <p>22 basically just a cost to build the property.</p> <p>23 Q I'll fast forward here for a moment. But did you</p> <p>24 ultimately review appraisals for 40 Wall Street for 2011, 2012</p> <p>25 and 2015?</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4609</p> <p>1 So, that question was specifically dealing with</p> <p>2 appraisers, now can non-appraisers similarly experienced,</p> <p>3 valuing the same property at the same moment in time, can they</p> <p>4 disagree about the value of that property?</p> <p>5 A Yes.</p> <p>6 Q And would it be for the same reasons that you just</p> <p>7 described with regard to appraisers?</p> <p>8 A Yes.</p> <p>9 Q Does the disagreement between the appraisers or the</p> <p>10 non-appraisers indicate that one of the valuations is</p> <p>11 inaccurate?</p> <p>12 A No.</p> <p>13 MR. SOLOMON: Your Honor, we are just going to</p> <p>14 object to this line. We talked about this witness being</p> <p>15 qualified as an expert on real estate market trends. But</p> <p>16 now it seems that the questions are going into valuations</p> <p>17 done by appraisers and non-appraisers and whether or not</p> <p>18 one might be right or not be right or neither or both. I</p> <p>19 think it is a field for this witness's qualification as an</p> <p>20 expert.</p> <p>21 THE COURT: Let's ask the witness. Do you feel</p> <p>22 that you are qualified to be give expert opinions on</p> <p>23 different valuation methods and discrepancies?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE COURT: You have to talk into the mic.</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4608</p> <p>1 A I did.</p> <p>2 Q And did those appraisals employ both the income and</p> <p>3 sales comparable approach?</p> <p>4 A I believe they did.</p> <p>5 Q Okay. So for purposes of our discussion regarding</p> <p>6 those appraisals, the cost approach is not applicable; is that</p> <p>7 a fair representation?</p> <p>8 A That would be a fair admission in my opinion.</p> <p>9 Q Can similarly experienced appraisers disagree about</p> <p>10 the value of the same property at the same moment in time?</p> <p>11 A Yes.</p> <p>12 Q Why so?</p> <p>13 A There are so many dependent variables on their</p> <p>14 number.</p> <p>15 One, you preface the section when you say appraisals,</p> <p>16 it could be a licensed appraiser, someone that is not licensed;</p> <p>17 it could be, again, their training, their education, their</p> <p>18 bias, do they know the market; what is the purpose of the</p> <p>19 appraisal or the valuation estimate goes into why they might be</p> <p>20 different. And it could be a multitude of variables and</p> <p>21 factors such as their outlook on the market. I mean, there is</p> <p>22 just -- just selection of their sales comps. I don't know</p> <p>23 where you want me to stop.</p> <p>24 I think you just nodded to me to stop, so.</p> <p>25 Q I'll move it along.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4610</p> <p>1 I'll allow it. There is no jury. I see no</p> <p>2 harm. But I hope we will move along faster, because, you</p> <p>3 know, this is déjà vu all over again, can experts reach</p> <p>4 different conclusions. We all know that.</p> <p>5 MR. FIELDS: I certainly will move it along.</p> <p>6 Your Honor, there is going to be a lot of subjectivities</p> <p>7 we will discuss in a few moments that ultimately lead up</p> <p>8 to this conclusion. But I'll move it along.</p> <p>9 Q Could -- all right. We have established that</p> <p>10 similarly situated folks can disagree with the same property at</p> <p>11 the same moment in time. My question now is, could the purpose</p> <p>12 of doing the valuation or the appraisal be one of the reasons</p> <p>13 for those parties to disagree?</p> <p>14 A Yes.</p> <p>15 Q Why?</p> <p>16 A In my experience working with eminent domain cases</p> <p>17 and environmental damage cases and bankruptcy and divorce, big</p> <p>18 divorce settlements, I have seen very -- and whether it is a</p> <p>19 property -- whether an appraisal done for a property tax</p> <p>20 assessment, I have worked on all of those with the firms I have</p> <p>21 been a part of. And I have definitely seen they can come to</p> <p>22 different conclusions, so, even on the same property.</p> <p>23 Q Are you familiar with lender ordered appraisals?</p> <p>24 A Yes.</p> <p>25 Q And what generally are lender ordered appraisals?</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4611</p> <p>1 A Well, as I stated, they are ordered by the lender.  2 And being a student of the federal reserves they have a flow of  3 funds. I mean, ever since '92 I have monitored the federal  4 reserve flow of funds. And one of the flow of funds, I believe  5 it is 210, is the level of commercial mortgages across the  6 United States over time. And you can see at certain times when  7 commercial real estate is blamed for debacles in the economy.  8 And so after '86, after '91, after 2001, especially after the  9 great recession, you can see how banks and the commercial  10 mortgage flows significantly declined.  11 And as going back to my comments about real estate  12 cycles, there are two-points in a cycle that cause most  13 confusion, when are you at the bottom, when are you at the top,  14 but finally, are you in a recovery, especially with banks. I  15 have worked with banks, especially after a great recession, it  16 is -- the conservative nature of bank appraisals to me, shows  17 up very clearly. I mean the Dodd Frank Law in 2010, there was  18 a huge publication by the Federal Reserve, the OCC, the FDIC in  19 2010 that impacted a lot of residential appraisals and that  20 flowed indirectly to how banks viewed commercial real estate  21 appraisals to being, let's really be conservative, so we  22 understand the risk assessments. That was huge in my  23 experience back in those days. And, you know, because you want  24 to know two things: What is the loan-to-value and what is the  25 debt service coverage ratio. So, those are -- so banks to me</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4613</p> <p>1 the primary ones.  2 Q Are you familiar with the term the discount cash flow  3 model?  4 A Yes.  5 Q And what is that?  6 A The discount cash flow model is where you are  7 forecasting a series of NOIs for a particular property. And  8 simply put, it is -- it is you are discounting those future  9 cash flows at a certain rate to come to a present value, which  10 you can then cap to become -- to estimate then, the value.  11 Q In your approximately 31 years of experience, how  12 common have you found disagreement between appraisers to be  13 regarding the value of real property?  14 MR. SOLOMON: I am going to object and ask for a  15 clarification now, when counsel is using the term  16 "appraisers" is he talking about professional appraisers,  17 because he said earlier appraisers and people doing  18 valuations. So if we could have a clear record on this I  19 think it would be preferable for everyone.  20 THE COURT: Withdrawn. And rephrase it.  21 MR. FIELDS: Yes, Your Honor, certainly.  22 Withdrawn.  23 Q In your 30 years of experience, give or take, how  24 common is it for appraisers, and I am using that term  25 specifically, appraisers, to disagree about the value of real</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4612</p> <p>1 are more conservative, especially during times after a  2 recession.  3 Q What do you mean by "more conservative"?  4 A The, you know, the rent growth estimates that may be  5 used in an appraisal may be, you know, very low number, may be  6 0 percent may be 2 percent, may be even 1 percent if they are  7 really out there on the limb. But you don't see, when you take  8 a look at historical annual growth rates of rents, they are not  9 stabilized. They are -- they go up, they come down based upon,  10 again, those real estate factors I mentioned earlier today. So  11 to just come into a stabilized, you know, 3 percent or 2.5  12 percent, you know, they are just more conservative when the  13 market is probably saying, hey, demand is picking up, vacancies  14 are coming down, occupancies are going up, NOI is going up, cap  15 rates are going down. Even though they may see hints of that,  16 they will still be on the conservative side.  17 Q What is your understanding of why lenders prefer a  18 more conservative approach to an appraisal?  19 A They are always looking on the down side. You know,  20 if the property appreciates, that's good news for the, you  21 know, their client. But they want to make sure they are going  22 to get their mortgage paid off and with principal and interest.  23 So they are being conservative. They are definitely going to  24 look more at the risk assessments surrounding the  25 loan-to-value, as well as the debt service coverage ratios to</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4614</p> <p>1 property?  2 A Very common.  3 Q All right. Now in your over 30 years of experience  4 how common is it for non-appraisers to disagree about the value  5 of real property?  6 A Very common too.  7 Q And you understand my question to mean the same real  8 property, right?  9 A Correct.  10 Q We have talked a little bit about lender-ordered  11 appraisals. Are there any other types of appraisals that come  12 to mind that you are familiar with based on your experience?  13 A Having been involved in property tax appeals, I am  14 definitely very well acquainted with that. I have also seen  15 on, especially on environmental litigations, I have seen that.  16 As well as sometimes just what you call an event study. And I  17 published on this as well. It is sometimes you look, and this  18 goes with environmental, publish a paper on a wind farm  19 announcement, you know, what did that do to values before and  20 after. So that's more what you would call an event study,  21 where you are looking at the -- that's more residential. So,  22 not so much commercial.  23 I'll be quiet.  24 Q You talked about Rockefeller Center's bankruptcy,  25 also one of the areas for which appraisals arise?</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4615</p> <p>1 A Yeah, I have worked on probably 25, 30 retail 2 bankruptcies for sure. And where at the end you are trying to 3 say, okay, what are all of the Sears stores worth, or what are 4 all of the Toys-R-Us, I worked on theirs as well. You say what 5 is this empty store valued at. 6 Q How will qualifications of the appraiser or the 7 non-appraiser affect a value conclusion? 8 A I take the qualifications to be that there is a -- 9 what I hear from that is the depth of the qualifications. Have 10 you been qualified for only a year as an appraiser? Have you 11 been qualified for 30 years? Have you kept up with your 12 continuing ed courses? Are you well known -- even though you 13 are qualified as an MAI, maybe your specialty is in office, and 14 now you are doing appraisals on funeral homes. I don't -- you 15 know, you just have to take a look at the -- I would have to 16 look at the individual qualifications that you are asking 17 about. But, yes, they are very, very key points to determine 18 what is the result. 19 Q And now sticking specifically with non-appraisers, 20 have you found in your experience that non-appraisers that 21 value property, that their qualifications could similarly 22 affect the ultimate value of real property? 23 A Correct. Throughout my years with the valuation 24 groups, I have had the privilege of working at PWC and others. 25 I mean, within the valuation groups you do have MAIs, but you</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4617</p> <p>1 at the bottom or the peek, have we turned, have we reached 2 equilibrium? What are the metrics that you identify? And I 3 have been studying this for 30 years and it is still exciting. 4 Q Specific to the income approach, do market conditions 5 factor into the net operating income, the capitalization rate, 6 or both? 7 A They factor into everything. And again, going back 8 to -- I hate to keep going back to real estate cycles, but when 9 we taught that for the Appraisal Institute, it was very 10 gratifying across the cities we went, to have appraisers going 11 thank you for even teaching us about this. And the one thing 12 we tried to teach them is what were those signals. So if you 13 don't understand where you are in the real estate cycle, and 14 you come up with -- in all of these discounted cash flow 15 analysis, even sales comps, you have to understand the cycle 16 and where you are, because, I have published on this, the 17 relationship of real estate cycles and the investor composition 18 in the market. Who is buying, who is selling. 19 I mean, I hope I am not going on too far but you know 20 when you saw the private equity companies buying, it was 21 typically the pension funds that were selling. And as the 22 market, you know, started to recover, you would see the private 23 equity firms selling to the pension funds. And it was 24 fascinating for me to see who is buying and selling, because it 25 is not, you know, it is not equal across time and across</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4616</p> <p>1 have MBAs who are really smart in finance and economics, and 2 they can prepare valuations internally for our clients as well, 3 so. 4 Q I would like to talk to you a little bit about market 5 conditions. You discussed or testified earlier about market 6 conditions already. But how, generally, do market 7 conditions -- how can they affect an appraised value of real 8 property or a non-appraised value of real property? 9 A Market conditions, and by that what comes to mind 10 again is my background in real estate cycles and forecasting 11 and analysis, can affect, quite a bit, I mean very significant. 12 Because what you are trying to say is here is a value as of a 13 certain date. It is one thing to have a 100 percent leased 14 industrial property that has got a ten-year lease, Fed Ex. 15 That's one thing. If you have a multi-tenant building of 16 500,000 square feet or a regional mall with 2 million square 17 feet, and all of these tenants, and some leases are coming and 18 some are not, you are trying to determine what is the 19 likelihood of lease renewals. Leased people, you know, they 20 are just saying rents are too high we are leaving. There are 21 so many factors that go into determining the valuation based, 22 again, to the market trends. And as an appraiser or a 23 valuation professional, how do they understand the market? How 24 do they understand the history? How do they understand the 25 signals that are out there already that says, again, especially</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4618</p> <p>1 markets and across property tax. Again it is a dynamic field 2 of study. 3 Q Are you familiar with how developers and appraisers 4 look at market conditions differently or the same? 5 A Yes. 6 Q And how do they differ? 7 A Part of what I did with the ULI on putting together 8 the emerging trends. We used to do personal surveys sometimes 9 of 200 firms, and 200 individuals. Some would be CEOs of 10 property owners, developers, some would be even architects, 11 appraisers. 12 And generally overtime the, it is my experience, that 13 the owners, investors, developers are much more optimistic, 14 especially when the market is in a recession recovery phase, 15 than appraisers. And appraisers may be limited by what they 16 are asked to do. You know, as far as how -- how they interpret 17 the data, I will say it that way. But they may just want to 18 say, what is the worst case scenario for this property, so they 19 can't be optimistic in rent growth, et cetera, that the market 20 would actually provide, so. 21 Q You said that appraiser -- I think I heard you say, 22 correct me if I am wrong, but that appraisers may be limited by 23 what they are asked to do. How would those limitations come 24 about? 25 A Well, in my experience, working again with the firms</p>

November 16, 2023

Laposa - by Defendant - Direct (Fields) Page 4619

1 I have identified today, sometimes they want to -- I mean our  
2 clients will say, okay, we just had the 2001 recession, you  
3 know. There was -- there was a national tragedy, there was, I  
4 mean the World Trade Center, I mean what would happen to  
5 downtown office buildings? So we had to put together white  
6 paper top leadership on what was going on with downtown office  
7 buildings.

8 And coincidentally, I have been asked to take a look  
9 at those again with the great themes of work-from-home and what  
10 will happen to office buildings. So sometimes you just trying  
11 to get a valuation based upon worse case scenarios.

12 Q All right. We have discussed the term  
13 subjectivities. Dr. Laposa, when I mention the term  
14 subjectivities, what do you generally understand that to mean?

15 A I think in my initial report, I can't remember the  
16 exact paragraph, but I list quite a few that are in my initial  
17 report. And if you want I can ad lib right now. But --

18 Q I won't ask you to ad lib. Would it help refresh  
19 your recollection to take a look at your report to determine  
20 some of the subjectivities that you identified?

21 A Sure. But I can probably name quite a few of them.

22 Q Okay.

23 A But if you have the report, I'll take a look at the  
24 report.

25 Q Certainly.

Laposa - by Defendant - Direct (Fields) Page 4620

1 MR. FIELDS: If we could pull up Dr. Laposa's  
2 report just to refresh his recollection. Paragraph 35.  
3 That probably doesn't help you, you need a page number,  
4 huh?

5 Q Dr. Laposa, perhaps name a few off the top of your  
6 head.

7 A Well there you go, right there.  
8 (Hanging)

9 THE WITNESS: Thank you, sir.

10 Q Yeah, here is some I listed. Just let's say you are  
11 in a marketplace and doing an appraisal of an office building.  
12 What if there is 50 sales comps within six months or some time  
13 period. Out of the 650 or so, what criteria do you use to  
14 filter them? Is it just strictly the, you know, how do you  
15 determine which ones are those from the population you are  
16 going to use. And then once you get that down and filtered,  
17 what adjustments are you going to make to whether the size or  
18 the age of the property, the location of the property, all of  
19 those are, you know, subjectivities.

20 Then a lot of appraisers, in valuation in my  
21 experience that I have worked with, will use companies like  
22 CoStar or REIS, they will buy the third-party and sell market  
23 history and forecast supply. Will they use those datas or not?  
24 And then how do they select and adjust the relevant cap rates  
25 they will use.

Laposa - by Defendant - Direct (Fields) Page 4621

1 Like I said before, empirical evidence shows the  
2 composition of investors is not, you know, equal across time.  
3 So if you are in the marketplace and all of a sudden you notice  
4 a lot of private equity companies are buying things, maybe the  
5 cap rates are different than what a REIT may buy, which is  
6 going to use leverage or pension funds which sometimes are all  
7 cash buyers.

8 If you keep going down -- can I?

9 MR. FIELDS: Can I stop you right there?

10 Q Are you -- if I mention the word bias in terms of an  
11 appraiser or a non-appraiser, what does that mean to you in  
12 your profession?

13 A Well, that bias doesn't necessarily imply it is good  
14 or bad. Sometimes they have biases based on a lot of  
15 experience. If they -- I have worked with some appraisers that  
16 are really good in regional malls or power centers. They have  
17 a bias there, they know that marketplace very well.

18 If you have a bias that you always say, well, here is  
19 where I go get information, here is how I always adjust, it is  
20 always the same, maybe those are times where you need to be  
21 challenged by somebody outside. But that's what I, when you  
22 say bias, that's what I hear in my brain.

23 Q Would it be fair to say that appraisers and  
24 non-appraisers are exercising judgment when trying to come up  
25 with a value of property?

Laposa - by Defendant - Direct (Fields) Page 4622

1 A Yes, I mean, you don't need to go to Exhibit 1, but  
2 Exhibit 1 of mine has actual word/phrases from the  
3 15th Edition of the Appraisal Real Estate published by the  
4 Appraisal Institute. And they use that word, "judgment," quite  
5 a bit, and "transparency" quite a bit in that exhibit. So,  
6 yes.

7 Q All right. Let's switch gears Dr. Laposa, to discuss  
8 the terms "market value" and "investment value." Are you  
9 familiar with both of those terms?

10 A I am familiar with both of those terms.

11 Q What is market value?

12 A Market value, when I hear that and for the sake of  
13 this afternoon, when I hear that I am going to think a licensed  
14 appraiser. Is that fair to say?

15 Q Fair. So have you heard "willing buyer" and "willing  
16 seller"?

17 A I have heard those phrases for sure.

18 Estimated market value, as prepared by a licensed  
19 appraiser, an MAI, is an estimate of market value that assumes  
20 a willing seller and a willing buyer.

21 Q So would it be the price that a property is most  
22 likely to sell for today, assuming there was a willing buyer  
23 and a willing seller?

24 A Yes. And I would also concur that most likely there  
25 is a key phrase, because they will put a single point in their

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4623</p> <p>1 appraisal, but normally they will go through the mechanisms to</p> <p>2 have ranges that may -- that this probability, this</p> <p>3 distribution of potential values is coming from. I mean, that</p> <p>4 comes from both the income and the sales approach. And then</p> <p>5 the appraiser will actually then blend them and say here is one</p> <p>6 that I am going to rely on more, give more weight to, as far as</p> <p>7 the estimate of the value.</p> <p>8 Q Now, in contrast, what is an investment value?</p> <p>9 A Investment value has to find specifically, by not</p> <p>10 only the Appraisal Institute but is in the literature, which I</p> <p>11 have included numerous examples in my initial report,</p> <p>12 investment value is a value for a specific investor with a</p> <p>13 relationship with a property. And that's how they use it in</p> <p>14 the appraisals, so I don't know what that means. But it is</p> <p>15 specific to an investor. It may not -- you know, you go to an</p> <p>16 investor and they say, here is how I want my property to be</p> <p>17 appraised, either internally or with a licensed appraiser. But</p> <p>18 it is -- it is only, it may be typical of the market, chances</p> <p>19 are it is atypical of the market. So it is specific to an</p> <p>20 investor.</p> <p>21 (The following proceedings were stenographically</p> <p>22 recorded by Senior Court Reporter Michael Ranita.)</p> <p>23</p> <p>24</p> <p>25</p>	<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4625</p> <p>1 A Yes, but I would also -- those, um, the parameters that</p> <p>2 go into the valuation, yes, they can definitely be different.</p> <p>3 I've seen that.</p> <p>4 Q So, for example, you mentioned rent growth rate</p> <p>5 earlier. Is that rent growth rate one of the factors that will</p> <p>6 ultimately result in a net operating income under the income</p> <p>7 approach?</p> <p>8 A Yes.</p> <p>9 Q And if the market is dictating a seven percent rent</p> <p>10 growth rate, but an investor, developer chooses to use a ten</p> <p>11 percent rent growth rate, is that an example where the market</p> <p>12 value and the investment value will differ because of that</p> <p>13 subjectivity?</p> <p>14 A Holding all else constant.</p> <p>15 Q And let's talk now about the denominator from IRV, the</p> <p>16 cap rate -- I-R-V, IRV. If the market is dictating a four</p> <p>17 percent cap rate, but an investor or developer chooses to use a</p> <p>18 six percent, or two percent cap rate, one way or the other,</p> <p>19 usually -- let me withdraw that.</p> <p>20 For the capitalization rates, if the market is</p> <p>21 dictating a four percent cap rate, but an investor or developer</p> <p>22 chooses to use a two percent cap rate, is that also an example</p> <p>23 where the market and investment value would differ, assuming</p> <p>24 everything else is held constant?</p> <p>25 A Yes.</p>
<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4624</p> <p>1 Q And you said "investor." Can that term be used</p> <p>2 synonymously with a developer?</p> <p>3 A It could be a developer and owner of a property, yes.</p> <p>4 Q How is investment value different from market value,</p> <p>5 and how can they be the same, if at all?</p> <p>6 A Well, let's first of all figure out how can they be the</p> <p>7 same. If the investor's parameters for the appraisal equal,</p> <p>8 mimic the market value, then they are going to be the same.</p> <p>9 Then the invested value can theoretically be the same as the</p> <p>10 market.</p> <p>11 If the investor says, "I want to use a six percent cap</p> <p>12 rate" on this because that's what I heard the market is, great.</p> <p>13 Then it's probably going to be the same, just one of the</p> <p>14 parameters.</p> <p>15 But if the investment value is based upon a distinct,</p> <p>16 unique, non-inclusive parameters, that may be atypical from the</p> <p>17 market -- most chances they are -- then the value that is</p> <p>18 estimated is that that invested value is going to be different</p> <p>19 from the market value.</p> <p>20 Q So we've discussed subjectivities. And I want to ask</p> <p>21 you, now, in the context of investment value. Could -- let me</p> <p>22 withdraw that.</p> <p>23 In the context of investment value, could an investor</p> <p>24 or developer rely on different subjectivities than what the</p> <p>25 market, at the time, is dictating?</p>	<p>Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4626</p> <p>1 Q And sticking to that same example of two percent for</p> <p>2 the developer and four percent for the market, if for some</p> <p>3 reason the developer chooses to use a four percent cap rate,</p> <p>4 because that's their belief of the market, could that be the</p> <p>5 situation where the market value and the investment value would</p> <p>6 be the same if everything else is held constant?</p> <p>7 A Yes.</p> <p>8 Q Are you familiar with whether there are such things as</p> <p>9 market value and investment value appraisals?</p> <p>10 A Yes.</p> <p>11 THE COURT: Let's -- five-minute break.</p> <p>12 Q How, if at all, would one know whether an appraisal is</p> <p>13 appraising market or investment value?</p> <p>14 A Again, going to the definition, if there's an</p> <p>15 investment appraised valuation, it would be done by a licensed</p> <p>16 appraiser, in my mind, as well as the appraiser will be giving</p> <p>17 -- will be given parameters that -- from the client, or the</p> <p>18 investor to use in the, um, in the appraisal.</p> <p>19 Q If an appraisal is an investment value appraisal, will</p> <p>20 it specify it is, in fact, an investment value appraisal?</p> <p>21 A I believe the USPAP requires them to limit their</p> <p>22 appraisal value, yes.</p> <p>23 Q In contrast, if an appraisal is a market value</p> <p>24 appraisal, will it specify that it is indeed a market value</p> <p>25 appraisal?</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4627	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4629
<p>1 A Yes. There are certainly limitations I've seen in all.</p> <p>2 Once you get an appraisal back from an appraiser there is all</p> <p>3 conditions, limitations and -- so, yes, I've seen that.</p> <p>4 Q And we'll fast forward again for a moment and come back</p> <p>5 to this, but for the 2011, 2012, and 2015 40 Wall Street</p> <p>6 appraisals that you've reviewed, were those market value or</p> <p>7 investment value appraisals?</p> <p>8 A Those were market values.</p> <p>9 Q So in the context of appraisals and non-appraisal</p> <p>10 valuation, can the concepts of market value and investment value</p> <p>11 be used similarly, regardless of whether it's being done for an</p> <p>12 appraisal or a valuation?</p> <p>13 MR. SOLOMON: We are going to continue our</p> <p>14 objection to this line. Real estate -- his expertise was in</p> <p>15 market trends and the like. I'm not trying to quote what</p> <p>16 your Honor had said earlier with respect to his expertise,</p> <p>17 but we are in valuations.</p> <p>18 We've let it go for a while. They are talking</p> <p>19 about would an appraisal be X? Would an appraisal be Y?</p> <p>20 Would USPAP require disclosure that it's an investment value</p> <p>21 versus a market value?</p> <p>22 He is asking this witness to testify about</p> <p>23 appraisals and USPAP requirements, I believe we've heard.</p> <p>24 And this witness is not an expert in USPAP or appraisals.</p> <p>25 MR. FIELDS: Your Honor, the purpose of this</p>		<p>1 experience, 30 years plus, and doing all those different</p> <p>2 real estate things, I want to hear what he has to say about</p> <p>3 valuation. So let's proceed. Let's get the witness.</p> <p>4 Thanks, Mike.</p> <p>5 Mr. Solomon, thanks for being gracious in defeat.</p> <p>6 MR. SOLOMON: Thank you, your Honor, or you're</p> <p>7 welcome, your Honor.</p> <p>8 THE COURT: Any idea how much longer on the direct?</p> <p>9 MR. FIELDS: Your Honor, I expect it will probably</p> <p>10 go the balance of the afternoon.</p> <p>11 THE COURT: Do you think you'll at least finish --</p> <p>12 do you expect to finish by 4:30.</p> <p>13 MR. FIELDS: I would say it's probably very</p> <p>14 unlikely.</p> <p>15 THE COURT: Very?</p> <p>16 MR. FIELDS: Unlikely.</p> <p>17 THE COURT: Well, but try.</p> <p>18 MR. FIELDS: I will certainly do my best.</p> <p>19 (Whereupon, the witness stepped into the witness</p> <p>20 stand.)</p> <p>21 THE COURT: Okay. Let's proceed.</p> <p>22 Q Dr. Laposa, before we broke I had asked you whether the</p> <p>23 -- in the context of appraisals or non-appraisals, whether the</p> <p>24 concepts of market value and investment value generally applied</p> <p>25 the same way?</p>	
Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4628	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4630
<p>1 witness's testimony, in large part, is, as he's testified --</p> <p>2 THE COURT: Be careful, because he's still here.</p> <p>3 MR. FIELDS: Just what he's testified to. That he</p> <p>4 reviewed the appraisals, particularly the appraisals for 40</p> <p>5 Wall Street, and the complaint, and --</p> <p>6 MR. SOLOMON: I'm waiting for you to see if we</p> <p>7 should excuse the witness before going forward with this</p> <p>8 conversation, your Honor. Or, if your Honor gives the</p> <p>9 five-minute break, take our break, and then continue this.</p> <p>10 I don't mean to impinge upon the Court's discretion --</p> <p>11 THE COURT: That's fine. Let's take the 15-minute</p> <p>12 break. I'll make it simple. And then when we come back we</p> <p>13 can address this with fresh minds.</p> <p>14 MR. SOLOMON: I apologize, your Honor. I didn't</p> <p>15 mean to suggest what we should do.</p> <p>16 THE COURT: No apology necessary. So 15-minute</p> <p>17 break.</p> <p>18 And I'll direct the witness not to discuss the case</p> <p>19 or his testimony.</p> <p>20 (Whereupon, a 15-minute break was agreed upon and</p> <p>21 taken by all parties.)</p> <p>22 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>23 session. Please be seated and come to order.</p> <p>24 THE COURT: To me it's not even close. Objection</p> <p>25 overruled. There's no jury. And given this guy's</p>		<p>1 A The methodologies in each one?</p> <p>2 Q Yes. Are the methodologies applied the same way</p> <p>3 whether you are doing an appraisal or whether you are just doing</p> <p>4 a valuation but not an appraisal?</p> <p>5 A Generally, I would say, yes.</p> <p>6 Q From your review of the complaint in this action, were</p> <p>7 you able to determine whether the complaint draws a distinction</p> <p>8 between market value and investment value?</p> <p>9 A Yes.</p> <p>10 Q And what was -- what did you find?</p> <p>11 A That the complaint uses market values.</p> <p>12 Q Did you find, from your review of the complaint, that</p> <p>13 it considered whether an investment value appraisal or valuation</p> <p>14 could result in a higher value than a market value appraisal?</p> <p>15 A I found the complaint silent on that matter.</p> <p>16 Q Were you able to form an opinion as to what the</p> <p>17 Attorney General's overall theory is relating to the defendant's</p> <p>18 property valuations?</p> <p>19 A Yes.</p> <p>20 Q What is that opinion?</p> <p>21 A That they allege that the appraisal values are true</p> <p>22 values.</p> <p>23 THE COURT: I'm sorry just read back the last</p> <p>24 answer.</p> <p>25 (Whereupon, the requested testimony was read back</p>	



November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4631	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4633
<p>1 by the court reporter.)</p> <p>2 THE COURT: Mr. Solomon, do you want to -- I didn't</p> <p>3 hear the last few words of the answer.</p> <p>4 MR. SOLOMON: Your Honor, I think the answer was,</p> <p>5 if I'm reading the screen correctly, but --</p> <p>6 THE COURT: You have to talk into the microphone.</p> <p>7 MR. SOLOMON: "That they allege that the appraisal</p> <p>8 values are the true values."</p> <p>9 THE COURT: Thank you.</p> <p>10 Q Is that what you said, Dr. Laposa?</p> <p>11 A Yes. I would clarify that as the benchmark values.</p> <p>12 Q Who do you mean by the "benchmark values"?</p> <p>13 A The allegations of inflated values have to be compared</p> <p>14 against some values. So in my analysis and opinions and review</p> <p>15 of the complaint, they are using the appraised values for 2011,</p> <p>16 2012 and 2015 as the benchmark values.</p> <p>17 Q In your view, how does the lack of consideration of</p> <p>18 investment value in the complaint affect what you understand to</p> <p>19 be the Attorney General's theory?</p> <p>20 MR. SOLOMON: Objection, your Honor. Relevance.</p> <p>21 THE COURT: Overruled.</p> <p>22 THE WITNESS: Can I answer?</p> <p>23 THE COURT: "Overruled" means you can answer.</p> <p>24 I thought you were going to say leading, but you</p> <p>25 didn't. So let's -- do you need a read back of the</p>	<p>1 to say "yes" or "no."</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. FIELDS: So I'll re-ask it, your Honor.</p> <p>4 Q I want to focus, for a moment, on the allegations that</p> <p>5 you reviewed with regard to the defendant's valuations in the</p> <p>6 complaint?</p> <p>7 A Okay.</p> <p>8 Q So my question is, do you have an opinion, one way or</p> <p>9 the other, whether the defendant's valuations are accurate,</p> <p>10 inaccurate, true, false, inflated or not inflated?</p> <p>11 MR. SOLOMON: Objection. Asked and answered.</p> <p>12 THE COURT: Overruled.</p> <p>13 A I have no opinion.</p> <p>14 Q Do you know what methods the defendants used to value</p> <p>15 their properties?</p> <p>16 A No.</p> <p>17 Q So as far as you are concerned, Dr. Laposa, the</p> <p>18 defendants' valuations could have been investment values or they</p> <p>19 could have been market values?</p> <p>20 MR. SOLOMON: Objection. Leading.</p> <p>21 THE COURT: You have to ask him --</p> <p>22 MR. SOLOMON: Also, your Honor, the objection is</p> <p>23 lack of foundation since witness has testified he didn't do</p> <p>24 anything to analyze or opine upon the defendants'</p> <p>25 valuations.</p>
Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4632	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4634
<p>1 question.</p> <p>2 THE WITNESS: Please.</p> <p>3 THE COURT: Read back, please.</p> <p>4 (Whereupon, the requested question was read back by</p> <p>5 the court reporter.)</p> <p>6 A In my opinion, it's flawed.</p> <p>7 Q What is flawed?</p> <p>8 A The allegations that they are inflated. If you don't</p> <p>9 consider the investment value, it's a possibility, then, you are</p> <p>10 focusing only on market values.</p> <p>11 Q All right. I would like to focus, now, on what you did</p> <p>12 to identify or conform -- confirm, or not, whether the</p> <p>13 defendant's valuations were true, accurate, not accurate.</p> <p>14 So other than what you read in the complaint, did you</p> <p>15 review any documents that identified how the defendants elected</p> <p>16 to value their properties during the years that the Attorney</p> <p>17 General alleges the values were inflated?</p> <p>18 A Yes.</p> <p>19 Q You did review other documents other than --</p> <p>20 A Oh, no. I only reviewed the 2011, '12 and '15</p> <p>21 appraisals.</p> <p>22 Q But I want to focus specifically on the allegations in</p> <p>23 the complaint relating to the defendants valuation figures.</p> <p>24 Okay? So do you have an opinion one way --</p> <p>25 THE COURT: You can't just nod your head. You have</p>	<p>1 THE COURT: That may be a valid objection point,</p> <p>2 also.</p> <p>3 Let's call it withdrawn. And you heard the</p> <p>4 objection; see what you could do with it.</p> <p>5 Q Do you have anyway to know what types of valuations,</p> <p>6 whether market or investment, the defendants used to value their</p> <p>7 properties as alleged in the complaint?</p> <p>8 A No.</p> <p>9 Q I would like to focus your attention, Dr. Laposa, on</p> <p>10 some examples that you've encountered in your experience of</p> <p>11 different values.</p> <p>12 Are you familiar with the Palisades Mall in Rockland</p> <p>13 County?</p> <p>14 A Yes, very much.</p> <p>15 Q And were you involved in a valuation dispute regarding</p> <p>16 that mall?</p> <p>17 A Yes.</p> <p>18 Q What were the facts underlying the dispute, for the</p> <p>19 benefit of the Court?</p> <p>20 A Back in 2012, I was engaged by the owner of the</p> <p>21 Palisades Mall to help on a property tax appeal where the town</p> <p>22 hired an MAI to develop their, um, opinion of that, of market</p> <p>23 value. And the client, um, Pyramid, also hired an MAI to</p> <p>24 estimate a value as of a certain date.</p> <p>25 Q Do you recall what the two appraised values were?</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4635	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4637
<p>1 A Generally, yes.</p> <p>2 Q What were they?</p> <p>3 A The town valued the property at 900 million and the</p> <p>4 owner valued it at approximately 500 million.</p> <p>5 Q And were the two appraisals conducted by two licensed</p> <p>6 appraisers?</p> <p>7 A Yes.</p> <p>8 Q So there was a \$400 million difference in this instance</p> <p>9 at the Palisades Mall in Rockland County between two licensed</p> <p>10 appraisers?</p> <p>11 A Correct.</p> <p>12 Q Were those both market value appraisals?</p> <p>13 A Yes.</p> <p>14 Q And would you describe that as a variance between those</p> <p>15 figures, or even an extreme variance?</p> <p>16 MR. SOLOMON: Objection. Leading.</p> <p>17 THE COURT: Granted.</p> <p>18 You could ask him how he would describe it, but not</p> <p>19 is it --</p> <p>20 Q How would you describe the difference or the variance</p> <p>21 between the two figures?</p> <p>22 A Obviously there is a difference between 900 and 500</p> <p>23 million.</p> <p>24 Q What was your reaction when you analyzed both of</p> <p>25 those market value appraisals?</p>		<p>1 Q -- this afternoon?</p> <p>2 A All of those that go into that. You know, you start</p> <p>3 with a macroeconomics. What was retail sales? What was online</p> <p>4 sales, online retail? What was going on with Rockland County</p> <p>5 economy, employment? There is so much detail that goes below</p> <p>6 that. So yes, it's all of those that eventually factor into the</p> <p>7 market analysis section of an appraisal that eventually leads to</p> <p>8 the -- to how the forecasts are done and the DCF, et cetera.</p> <p>9 So, yes.</p> <p>10 Q Are the terms "market value" and "investment value"</p> <p>11 discussed in literature that you included as part of your</p> <p>12 report?</p> <p>13 A Yes. I have a whole opinion with citations throughout</p> <p>14 my report.</p> <p>15 Q And what do you consider to be the gold standard for</p> <p>16 your field, as it relates to the literature.</p> <p>17 A Well, for one, you always have to go to the Appraisal</p> <p>18 Institute, Exhibit 1 in my report. I specifically include some</p> <p>19 texts from the Appraisal Institute, 15th Edition, that talks</p> <p>20 about invested value and how it differs from market value. But</p> <p>21 subsequent, because of my training and experience and expertise</p> <p>22 in academics, I also went to the literature to look at what was</p> <p>23 peer-reviewed and published. One of my former chairman on my</p> <p>24 Ph.D. program is, you know, just retired as the real estate</p> <p>25 professor at Oxford University wrote a whole book on this topic.</p>	
Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4636		Page 4638
<p>1 A Well, my initial reaction, in typical, is, especially</p> <p>2 with property tax appeal work that I've conducted, or have been</p> <p>3 engaged as an expert, is to, once again, my expertise in the</p> <p>4 market section of an appraisal.</p> <p>5 So when I look at that particular chapter in an</p> <p>6 appraisal, I consider myself extremely experienced in analyzing</p> <p>7 the methods that are used, and how they use, how they collected</p> <p>8 the data, what they did.</p> <p>9 So the fact that there's a variance, that doesn't</p> <p>10 surprise me. You know, it's now you get into -- you have to go</p> <p>11 below that. What did they use? What were the cap rates? The</p> <p>12 Town's appraiser used a cap rate that I found quite amazing,</p> <p>13 because during this time it was, I believe, right after the</p> <p>14 great recession. The entire commercial transaction volume for,</p> <p>15 um, reaching malls at that time was \$1 billion that year.</p> <p>16 So, basically, he's assuming a sale comp. on that</p> <p>17 total, you know, he's saying it's 900 million. So, again, not</p> <p>18 to get into weeds, but we just have to go through what was his</p> <p>19 cap rate? What was our -- what was the owner's cap rates? How</p> <p>20 did they adjust, you know, leasing and et cetera? So once you</p> <p>21 get below that, then you could explain the difference. So</p> <p>22 that's what we -- that was what they asked me to do, so.</p> <p>23 Q When you say "go below that", are you referring to the</p> <p>24 subjectivities that we discussed --</p> <p>25 A Yes.</p>		<p>1 So I looked at what he wrote. And so, again, it's my</p> <p>2 experience, the gold standard of the Appraisal Institute's 15th</p> <p>3 Edition, the academic literature that's been peer-reviewed and</p> <p>4 out there in the marketplace. So that collective body of</p> <p>5 knowledge is what I used.</p> <p>6 Q And are the terms market value and investment value</p> <p>7 discussed in the Appraisal Institute's 15th Edition that you</p> <p>8 just mentioned?</p> <p>9 A Yes.</p> <p>10 THE COURT: Quick interruption. I need a front</p> <p>11 bar. Mr. Fields, and anybody from the plaintiff's table, or</p> <p>12 chairs.</p> <p>13 (There was a side bar at the bench among the Court</p> <p>14 and Counsel.)</p> <p>15 (Continued on the next page.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4639</p> <p>1 THE COURT: Sorry for the interruption, but I</p> <p>2 think you were collecting your thoughts anyway.</p> <p>3 MR. FIELDS: I was, Your Honor. I appreciate</p> <p>4 the extra few minutes.</p> <p>5 Q Dr. Laposa, I am -- you testified earlier that you</p> <p>6 had an opportunity to review the 2011, 2012 and 2015 40 Wall</p> <p>7 Street appraisals?</p> <p>8 A Correct.</p> <p>9 Q Okay. I would like to show you a few pages, select</p> <p>10 pages from some of these appraisals. And I'll ask you a couple</p> <p>11 of questions regarding them.</p> <p>12 MR. FIELDS: Can we please pull up Plaintiff's</p> <p>13 3208 that's been admitted? And we will go to page 130.</p> <p>14 (Handing)</p> <p>15 THE WITNESS: Thank you, sir.</p> <p>16 Q Are you there, Dr. Laposa?</p> <p>17 A I am.</p> <p>18 Q All right. Before I ask you a couple of questions</p> <p>19 regarding this, but just to be on the same page here, you</p> <p>20 understand this to be the appraisal report prepared for Capital</p> <p>21 One Bank for 40 Wall Street as of November 1, 2012?</p> <p>22 A I believe so.</p> <p>23 Q On the fourth page of the exhibit you will see a</p> <p>24 coversheet.</p> <p>25 A Okay.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4641</p> <p>1 there is some space that is empty that they think they can</p> <p>2 lease. So what is today's rent they are going to grow to</p> <p>3 3 percent or 0 percent in 2012 and then just 3 percent after</p> <p>4 2012. Yes.</p> <p>5 Q In your 30 plus years of experience could you</p> <p>6 estimate approximately how many appraisals you have reviewed or</p> <p>7 analyzed?</p> <p>8 A Thousands.</p> <p>9 Q And do you have a particular reaction to this</p> <p>10 3 percent rent growth rate?</p> <p>11 A Well, I mean, I have to respect the fact that they</p> <p>12 are using their own real estate brokerage -- brokers. It seems</p> <p>13 to be a recent survey. I don't know how many they surveyed, if</p> <p>14 it was three or four, is it 20? I don't know how many they</p> <p>15 did. But to me I think when I saw the 3 percent, I am going,</p> <p>16 well, I don't think that's going to be what happens -- is going</p> <p>17 to happen.</p> <p>18 Based on my experience, especially in forecasting,</p> <p>19 like I said, beginning 1992, rental rates, you know, for</p> <p>20 multiple markets and multiple property tax, you don't see a</p> <p>21 flat 3 percent in my -- you just don't see it.</p> <p>22 Q Can you recall seeing a flat 3 percent rent growth</p> <p>23 rate in your experience?</p> <p>24 A Yeah, when I taught real estate market analysis for</p> <p>25 the sake of the students I said use a 3 percent growth rate in</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4640</p> <p>1 Q All right. So on page 130 in the middle of the page</p> <p>2 there is a subheading titled: Office Market Rental Growth</p> <p>3 Rate. And it says: "Based on our recent survey buyers'</p> <p>4 expectations in the downtown Manhattan real estate market</p> <p>5 anticipate rents to increase at CPI."</p> <p>6 Is that CPI the Consumer Price Index?</p> <p>7 A That's true.</p> <p>8 Q "These changes in market conditions result in C&amp;W's</p> <p>9 leasing" --</p> <p>10 Do you understand C&amp;W to be Cushman &amp; Wakefield?</p> <p>11 A Yes.</p> <p>12 Q "Brokerage group in downtown Manhattan to forecast</p> <p>13 the following rent growths."</p> <p>14 And it says: 2012, 0 percent. Thereafter,</p> <p>15 3 percent. So what is this 3 percent market rental growth rate</p> <p>16 that is used here in this appraisal? What does it represent?</p> <p>17 A The rent growth they are going to use for new leases,</p> <p>18 maybe lease renewals that occur over the -- I don't know what</p> <p>19 time period this is, but they are just using that in their DCF</p> <p>20 to forecast rents and then eventually the NOI.</p> <p>21 Q So is this rate being used to forecast future income</p> <p>22 ultimately?</p> <p>23 A Yes, I mean, that's -- I meant to say, I mean to</p> <p>24 imply, that for sure they are using it. Maybe there is a lease</p> <p>25 that is going for ten years that is already set. But maybe</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4642</p> <p>1 your rents and 4 percent, you know, for something else.</p> <p>2 That's, you know, just to get them in the habit of doing</p> <p>3 something. But no, I have never seen that.</p> <p>4 When I saw that I thought, okay, well that's -- you</p> <p>5 see that just tells me what they did, okay, to come up with</p> <p>6 eventually their values. But in my experience and based on the</p> <p>7 empirical evidence that I have, you know, taught and I have</p> <p>8 researched and prepared, no, it is rare.</p> <p>9 Q How, if at all, does the fact that this is a</p> <p>10 lender-ordered appraisal potentially affect the 3 percent</p> <p>11 rental growth rate?</p> <p>12 A Well, this is 2011, right?</p> <p>13 Q 2012.</p> <p>14 A This is 2012?</p> <p>15 Q Yes, sir.</p> <p>16 A You know, 2012 is still not that far removed from the</p> <p>17 great recession and what we saw. So to me, was it reasonable</p> <p>18 for a lender to say, you know -- I can't speak for them, I can</p> <p>19 just, based on my experience and working with bankers at that</p> <p>20 time, you know, they want to be conservative. And a 0 percent</p> <p>21 and a 3 percent, that's highly conservative.</p> <p>22 MR. FIELDS: If we could move forward to page</p> <p>23 175 of this exhibit?</p> <p>24 Q And Dr. Laposa, if it is easier for you, on the</p> <p>25 screen in front of you should be what --</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4643</p> <p>1 A I would rather look --</p> <p>2 Q Yes, sir.</p> <p>3 A -- at this.</p> <p>4 Q Would you prefer the paper or the screen?</p> <p>5 A The screen.</p> <p>6 Q Okay. Well the screen --</p> <p>7 A That's really good too.</p> <p>8 Q Okay. So at the top it says: Direct Capitalization</p> <p>9 Valuation Method (Upon achieving stabilized occupancy as of</p> <p>10 November 1, 2015)</p> <p>11 What is stabilized occupancy?</p> <p>12 A It is used in appraisals as I have seen. But it</p> <p>13 is -- if you have a property that is 65 percent, 75 percent</p> <p>14 occupied, eventually you are going to build up your model to a</p> <p>15 stabilized occupancy. And at that rate, that's what the</p> <p>16 stabilized occupancy means. You're just ramping it up in the</p> <p>17 forecast period to someplace where you think, okay, we are</p> <p>18 stabilized.</p> <p>19 You can't go above 100 percent occupancy, right? So</p> <p>20 maybe you go to 93 or 95 is what is typically used in the -- in</p> <p>21 appraisals. But that's what it means to me.</p> <p>22 Q You said 93 or 95 in that general vicinity, is that</p> <p>23 generally where you find a stabilized occupancy?</p> <p>24 A My mind is just like, well, that depends if there is</p> <p>25 another property coming online, you know. So I would say it is</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4645</p> <p>1 A Well, I am not really sure. They say: Building</p> <p>2 Sales Overall Rate Summary. So, if this was performed in 2012</p> <p>3 are these the cap rates from those properties, those eight</p> <p>4 properties that sold in 2012, that then they are going to try</p> <p>5 to use for stabilized rate in 2015 or whenever? Whenever that</p> <p>6 stabilized occupancy gets to? I am not sure. There is not</p> <p>7 enough information for me to draw a conclusion.</p> <p>8 Q Fair enough.</p> <p>9 More generally, do you understand that these are</p> <p>10 eight properties that was chosen as comparables for the</p> <p>11 capitalization rate purposes --</p> <p>12 A Right.</p> <p>13 Q -- for this analysis?</p> <p>14 A Again, they are -- when I say there might have been a</p> <p>15 pool of 20, but here is the eight they decided to use.</p> <p>16 MR. FIELDS: All right. If we could scroll down</p> <p>17 to the last paragraph on this page.</p> <p>18 Q Can you see where it says, first sentence: In the</p> <p>19 context of a direct capitalization method, a going-in rate of</p> <p>20 7 percent is considered reasonable, compensating the typical</p> <p>21 buyer for the risk inherent in investing in this building?</p> <p>22 A I do.</p> <p>23 Q So is it your understanding that this appraisal chose</p> <p>24 a 7 percent capitalization rate for the direct capitalization</p> <p>25 valuation method on this page?</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4644</p> <p>1 yes, yeah.</p> <p>2 Q Generally speaking?</p> <p>3 A Generally speaking. I would never do it, but that's</p> <p>4 generally what is done.</p> <p>5 Q And the direct capitalization valuation method, which</p> <p>6 method is that based on the ones that we have discussed here</p> <p>7 today?</p> <p>8 A That's going to be, I mean, you are going to use the</p> <p>9 cap rates in both the sales comp as well as the income</p> <p>10 approach. You have to collect them. But typically it is going</p> <p>11 to be in the sales comparable. But you are going to use the</p> <p>12 cap rates and income approach too, so.</p> <p>13 Q All right. And you see in the middle of the page</p> <p>14 there is a chart that has eight properties listed and eight</p> <p>15 capitalization rates that correspond to the properties?</p> <p>16 A Right.</p> <p>17 Q And below that chart there is an another chart that</p> <p>18 identifies low, high, median and average and those -- is it</p> <p>19 your understanding that those percentages are a reflection of</p> <p>20 what is above them?</p> <p>21 A That's what it implies to me, yes.</p> <p>22 Q So in this case the average --</p> <p>23 MR. FIELDS: Well, let me withdraw that.</p> <p>24 Q The eight properties that you see there, what do you</p> <p>25 understand these eight properties to be or why are they there?</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4646</p> <p>1 MR. SOLOMON: Objection, leading.</p> <p>2 A Well, I see --</p> <p>3 THE COURT: Wait. Wait.</p> <p>4 THE WITNESS: I am sorry.</p> <p>5 THE COURT: Sustained.</p> <p>6 Q What is your understanding of what this 7 percent --</p> <p>7 A That is the --</p> <p>8 Q -- represents?</p> <p>9 A -- the cap rate they are going to use for investment</p> <p>10 in this particular building, so.</p> <p>11 MR. FIELDS: And if we could just scroll up a</p> <p>12 little bit so that the statistics chart is -- there we go.</p> <p>13 Q What do you understand to be the highest</p> <p>14 capitalization rate that this appraisal chose to use as a</p> <p>15 comparable?</p> <p>16 A Can you just scroll up again? I want to confirm that</p> <p>17 6.7. Yeah, 6.7 is the highest cap right there, so.</p> <p>18 Q So did the appraisal rely -- withdrawn.</p> <p>19 Was the appraisal selected capitalization rate higher</p> <p>20 than the capitalization rates -- than the highest of the</p> <p>21 capitalization rates used as comparables as reflected on page</p> <p>22 175?</p> <p>23 A Yes.</p> <p>24 Q And how would you describe that in terms of</p> <p>25 aggressiveness or non-aggressiveness?</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4647</p> <p>1 A Well, that confirms to me that they are producing an</p> <p>2 appraisal that is conservative in nature and conservative</p> <p>3 attributes. I mean, if they put this in their report and yet</p> <p>4 they use something above it, maybe they had their reasons for</p> <p>5 selecting it, I don't know.</p> <p>6 MR. FIELDS: All right. If we could go to the</p> <p>7 next page which is page 176 of the same exhibit. And if</p> <p>8 we could enlarge. Thank you.</p> <p>9 Q Do you see the table at the top of page 176 that has</p> <p>10 a heading of Direct Capitalization Method, and underneath that</p> <p>11 it says: Net operating income?</p> <p>12 A I do.</p> <p>13 Q And what is the net operating income figure?</p> <p>14 A Eight-point -- 18.3 million, or 334,523.</p> <p>15 MR. FIELDS: And if we could go to the next</p> <p>16 page, page 177.</p> <p>17 Q Dr. Laposa, the market value as is, at the bottom, as</p> <p>18 of November 1, 2012?</p> <p>19 A Yes.</p> <p>20 Q What is it?</p> <p>21 A 220 million.</p> <p>22 Q Is your understanding that this is the market value</p> <p>23 of 40 Wall Street as of November 1, 2012 pursuant to this</p> <p>24 appraisal?</p> <p>25 A Yes.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4649</p> <p>1 (Handing)</p> <p>2 THE WITNESS: Thank you, sir.</p> <p>3 MR. FIELDS: And if we could go to page eight,</p> <p>4 please.</p> <p>5 Q All right. Dr. Laposa, first of all, do you see that</p> <p>6 this is an appraisal report as of June 1, 2015 prepared for</p> <p>7 Ladder Capital Finance LLC for 40 Wall Street?</p> <p>8 A I do.</p> <p>9 Q And is this one of the reports that -- appraisal</p> <p>10 reports that you reviewed as part of your engagement in this</p> <p>11 case?</p> <p>12 A Yes.</p> <p>13 MR. FIELDS: If we could go please to page ten.</p> <p>14 At the bottom.</p> <p>15 Q Do you see the subheading: Value Conclusions in this</p> <p>16 chart?</p> <p>17 A I do.</p> <p>18 Q And what is the market value as is, as of June 1,</p> <p>19 2015 for 40 Wall Street?</p> <p>20 A The value conclusion states 540 million.</p> <p>21 Q A moment ago we discussed the projected value in 2012</p> <p>22 for 2015; do you recall that?</p> <p>23 A I do.</p> <p>24 Q And do you generally recall that the projected value</p> <p>25 as of November 1, 2015 was \$260 million?</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4648</p> <p>1 MR. FIELDS: And then if we could flip to the</p> <p>2 next page, please page 178.</p> <p>3 Q At the top, Prospective Market Value, what do you</p> <p>4 understand the \$260 million figure to represent?</p> <p>5 A That is their estimate of the property value as of</p> <p>6 November 1, 2015.</p> <p>7 Q So would it be fair to say that the appraisal is</p> <p>8 estimating an approximately \$40 million increase in value --</p> <p>9 market value from November 1, 2012 to November 1, 2015?</p> <p>10 A Yes.</p> <p>11 THE COURT: Let me just ask, am I correct that</p> <p>12 does not take into account any money spent on improving</p> <p>13 the building?</p> <p>14 THE WITNESS: What was the question, sir, Your</p> <p>15 Honor?</p> <p>16 THE COURT: Does the increase of the \$40 million</p> <p>17 take into account monies spent -- any monies spent on</p> <p>18 improving the building, or just if the building stays the</p> <p>19 same due to market conditions it will be worth \$40 million</p> <p>20 more?</p> <p>21 THE WITNESS: Based on what I have seen right</p> <p>22 here, it would just be based on the improving in the NOI.</p> <p>23 THE COURT: Okay. Thanks.</p> <p>24 MR. FIELDS: If we could pull up now what has</p> <p>25 been admitted as Plaintiff's 118.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4650</p> <p>1 A Yes.</p> <p>2 Q And now this is an appraisal as of June 1, 2015 that</p> <p>3 is valuing 40 Wall Street at \$540 million?</p> <p>4 A Yes.</p> <p>5 Q When you reviewed these two appraisals, what reaction</p> <p>6 did you have to that value conclusion differential between 2012</p> <p>7 projected for 2015, and the ultimate 2015 appraisal?</p> <p>8 A My initial reaction was inquisitive.</p> <p>9 Q And did you inquire?</p> <p>10 A Huh?</p> <p>11 Q Did you inquire?</p> <p>12 A Yes, I did. I just wanted to look at it. How did</p> <p>13 you go from 260 to 540? Again, my initial reaction is not,</p> <p>14 well yes, I am inquisitive but not surprised. It is just, let</p> <p>15 me go through what did they do, especially in my area of</p> <p>16 expertise in the market analysis section.</p> <p>17 MR. FIELDS: Okay. If we could go please to</p> <p>18 page 170 of this document?</p> <p>19 Q Dr. Laposa, can you see this is the Direct</p> <p>20 Capitalization Valuation Method heading?</p> <p>21 A I do.</p> <p>22 Q And in the chart in the middle of the page, what is</p> <p>23 your understanding of what these 12 properties represent?</p> <p>24 A Well, they are -- as the heading states, these are</p> <p>25 office building sales. And the overall capitalization rate for</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4651</p> <p>1 each one of them.</p> <p>2 MR. FIELDS: And if we scroll a little lower.</p> <p>3 Q The statistics section, the low is 2.68 percent; the</p> <p>4 high is 7.68 percent; and the median is 4.28 percent; the</p> <p>5 average is 4.62 percent?</p> <p>6 A Correct.</p> <p>7 MR. FIELDS: And if we can scroll a little lower</p> <p>8 to the last paragraph.</p> <p>9 Q In the context of the direct capitalization method, a</p> <p>10 going-in rate of 4.25 percent is considered reasonable</p> <p>11 compensating the typical buyer for the risk inherent in</p> <p>12 investing in this building, with consideration to the below</p> <p>13 market leases.</p> <p>14 What did you understand this four and quarter percent</p> <p>15 to represent in terms of the ultimate value in how they arrived</p> <p>16 at it?</p> <p>17 A Well, they use add 4.25 percent in their calculations</p> <p>18 to estimate market value.</p> <p>19 Q And this four and a quarter percent was slightly</p> <p>20 lower than the average of 4.62 percent; is that fair?</p> <p>21 A That's fair.</p> <p>22 Q In contrast to the -- well, let me just ask this</p> <p>23 first. Withdrawn.</p> <p>24 Do you recall in the appraisal we just looked at from</p> <p>25 2012 that the capitalization rate employed for projected 2015</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4653</p> <p>1 MR. FIELDS: Could we please pull up side by</p> <p>2 side Plaintiff's 3208 with -- on page 176.</p> <p>3 Q Dr. Laposa, a moment ago, and I'll represent to you</p> <p>4 that on the right of your screen you are looking at the 2012</p> <p>5 appraisal projecting November 1, 2015 value upon reaching</p> <p>6 stabilization. Okay?</p> <p>7 A Yes.</p> <p>8 Q And on the left you have the actual 2015 appraised</p> <p>9 market value.</p> <p>10 I'll represent to you -- well, let me withdraw that</p> <p>11 question.</p> <p>12 On the right in 2012 projecting as of November 1,</p> <p>13 2015, the appraisal concluded that the net operating income</p> <p>14 would be approximately 18.3 million as of November 1 of 2015.</p> <p>15 A Yes.</p> <p>16 Q Now, as of June 1, 2015 on the left of your screen,</p> <p>17 what did the appraisal conclude was the actual net operating</p> <p>18 income, plus year one free rent?</p> <p>19 A 23.2 million.</p> <p>20 Q I'll represent to you that the difference there is</p> <p>21 approximately \$4.8 million. Will you accept my representation?</p> <p>22 A I will accept it.</p> <p>23 Q So would it be fair to say -- let me withdraw that.</p> <p>24 That difference of \$4.8 million, in your view, does</p> <p>25 that represent an under value of the net operating income or</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4652</p> <p>1 was higher than the highest one of the sales comparables that</p> <p>2 were being looked at?</p> <p>3 A I do.</p> <p>4 Q And here you have a capitalization rate that is a</p> <p>5 little lower than the average in 2015. What was your reaction</p> <p>6 when you saw those two distinctions?</p> <p>7 A When I saw those distinctions, the one thing, going</p> <p>8 back to my real estate cycle background, by 2015 it was very</p> <p>9 well known in the marketplace that the economy had turned</p> <p>10 around, real estate had turned around. I have a graph, I</p> <p>11 believe, in my initial report that shows real estate capital</p> <p>12 flows starting to increase from 2011 on. So that does not</p> <p>13 surprise me that they actually used a 4.25 percent. So, you</p> <p>14 know, versus what they thought in 2012, which would be seven.</p> <p>15 So at first I was, like, okay that makes sense. Why</p> <p>16 they did not use the same methodology as what they did in 2012</p> <p>17 compared to here, I don't know why they didn't use something</p> <p>18 that was even higher, like they did in 2012. It is just what</p> <p>19 they did.</p> <p>20 MR. FIELDS: If we go to the next page, page</p> <p>21 171.</p> <p>22 Q Do you see at the top there is the Direct</p> <p>23 Capitalization Method and NOI plus year one free rent. What is</p> <p>24 the figure for the NOI?</p> <p>25 A 23.2 million.</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4654</p> <p>1 over valuing when you compare 2012 to 2015?</p> <p>2 A Well, they obviously, as of 2012 they thought the</p> <p>3 value of the operating would be 18.3, when in actuality it was</p> <p>4 much higher at 23.2 million.</p> <p>5 Q And for 2015 the capitalization rate that the</p> <p>6 appraiser relied on was four and quarter percent. Do you</p> <p>7 recall that from the prior page?</p> <p>8 A Correct.</p> <p>9 Q Will you accept my representation that if you divide</p> <p>10 4,869,396, which is the difference between the two net</p> <p>11 operating incomes, divided by the capitalization rate of four</p> <p>12 and a quarter percent, that that represents approximately</p> <p>13 \$114,574,024? Will you accept my representation that it is</p> <p>14 approximately 114.5 million?</p> <p>15 A Yes.</p> <p>16 Q Okay. That 114.5 million, what does that represent</p> <p>17 in terms of the appraiser in 2012 under valuing or over valuing</p> <p>18 40 Wall Street when you compare it to the actual figures in</p> <p>19 2015?</p> <p>20 A Again, I would have to go through a lot more of the</p> <p>21 methodologies that came up to how they came up to that 18.3</p> <p>22 versus the actual 23.2. But I am fairly confident that it had</p> <p>23 to do with their rent growths. It had to do with their</p> <p>24 occupancies. It had to do with a lot of the variables that go</p> <p>25 into some kind of a DCF model.</p>

November 16, 2023

<p>Laposa - by Defendant - Direct (Fields) Page 4655</p> <p>1 THE COURT: Five minute warning.</p> <p>2 MR. FIELDS: Thank you, Your Honor.</p> <p>3 Q Again, I am going to go back to that 114.5 million</p> <p>4 figure. Does that figure represent that the appraiser in 2012,</p> <p>5 when projecting 2015, under valued 40 Wall Street by</p> <p>6 approximately \$114.5 million; if my math is correct?</p> <p>7 A Yes.</p> <p>8 MR. SOLOMON: Objection. It is</p> <p>9 mischaracterizing. It was a projection of the value. He</p> <p>10 didn't under value, the projection is what is being</p> <p>11 discussed here, not the actual valuation.</p> <p>12 THE COURT: Can we agree on under projected --</p> <p>13 under value of the projection in some manner? I think we</p> <p>14 all understand.</p> <p>15 MR. SOLOMON: As long as the record is clear,</p> <p>16 Your Honor.</p> <p>17 THE COURT: Move to?</p> <p>18 MR. SOLOMON: I said as long as the record is</p> <p>19 clear that it is relating to the projection, not the</p> <p>20 actual valuation.</p> <p>21 THE COURT: Even more important than the record</p> <p>22 is in my mind. Yes, it is clear.</p> <p>23 Q So Dr. Laposa, would it be fair to say that the</p> <p>24 appraiser under projected the value of 40 Wall Street from 2012</p> <p>25 to 2015 by approximately \$114.5 million based on these two</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4657</p> <p>1 approximately \$539.5 million?</p> <p>2 A I do.</p> <p>3 Q And what do you understand that value to represent?</p> <p>4 A That's the -- of all of the matrix and all of the</p> <p>5 opportunities that they, you know, calculated, I assume these</p> <p>6 calculations are correct, I am sure they are, that they</p> <p>7 decided, okay, here is the matrix and basically we are going to</p> <p>8 pick the one in the middle.</p> <p>9 This, to me, shows subjectivity. Trying to explain</p> <p>10 why they didn't use the four and a quarter, you know, this is</p> <p>11 the judgment of the appraiser in looking at all of the</p> <p>12 opportunities, that whole distribution of values, and going</p> <p>13 from 441 million all the way up to 686. Again, if I saw those</p> <p>14 two values you would go -- you would dig down deep and say,</p> <p>15 okay, what is different between them. This is pure example of</p> <p>16 subjectivity for me.</p> <p>17 THE COURT: One minute more if you want it, then</p> <p>18 we have some scheduling to do.</p> <p>19 MR. FIELDS: Sure.</p> <p>20 Q Dr. Laposa, on the left, the IRR, the discount rate,</p> <p>21 how does the discount rate generally affect the value of the</p> <p>22 property when it goes up or down?</p> <p>23 A Well, as your discount rate goes up even holding just</p> <p>24 four and a quarter, you can see as the discount rate goes up,</p> <p>25 the values go down. As the discount rate goes down, the values</p>
<p>Laposa - by Defendant - Direct (Fields) Page 4656</p> <p>1 documents in front of you?</p> <p>2 A Yes.</p> <p>3 MR. FIELDS: All right. If we could please go</p> <p>4 back to page 162 of Plaintiff's 118?</p> <p>5 Q And there is a chart on the bottom left titled</p> <p>6 Pricing Matrix. And to the right of it --</p> <p>7 MR. FIELDS: Well, that's okay. That's perfect.</p> <p>8 Thank you.</p> <p>9 Q Dr. Laposa, I'll represent to you that this is a</p> <p>10 chart included on page 162 of the 2015, 40 Wall Street</p> <p>11 appraisal. Okay?</p> <p>12 A 2015?</p> <p>13 Q Yes, sir.</p> <p>14 A Yes.</p> <p>15 Q And do you see the terminal capitalization rate at</p> <p>16 the top?</p> <p>17 A Correct.</p> <p>18 Q Is that -- what is that term? Is that the</p> <p>19 capitalization rates we have been discussing this afternoon?</p> <p>20 A Yes. But it is more at the end of the cash flows. I</p> <p>21 mean, it is at the end of the discounted cash flow model.</p> <p>22 Q Okay. And the IRR on the left is -- what is that?</p> <p>23 A Discount rate.</p> <p>24 Q Do you see in the middle of the screen that there is</p> <p>25 a cell, for lack of a better term, highlighted that's</p>	<p>Laposa - by Defendant - Direct (Fields) Page 4658</p> <p>1 go up, holding just that terminal cap rate.</p> <p>2 (The following proceedings were stenographically</p> <p>3 recorded by Senior Court Reporter Michael Ranita.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

November 16, 2023

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4659

1 Q So when the discount rate, for example, five and a half  
2 percent at a cap rate of four and a quarter, the value is  
3 approximately \$686.4 million?

4 A Correct.

5 Q And if you go all the way to the bottom there, if you  
6 apply the same cap rate, but a discount rate of 7.5 percent, the  
7 value changes to \$523.6 million?

8 A Correct.

9 MR. FIELDS: Your Honor.

10 THE COURT: Okay. I'll direct the witness not to  
11 discuss his testimony, or this case overnight. And we'll  
12 see you tomorrow morning at 10:00.

13 Okay, and let's discuss scheduling. I'll turn over  
14 the microphone to the person sitting alongside me.

15 MS. GREENFIELD: Okay. Mr. Fields, how much more  
16 direct do you have?

17 MR. FIELDS: If I had my best estimate, it would  
18 probably be 45 minutes or less.

19 MS. GREENFIELD: How much cross is anticipated?

20 MR. SOLOMON: Two to three hours. I will try to  
21 make it less, to the lower end of the range.

22 MS. GREENFIELD: Okay. We are going to have Mr.  
23 Giulietti available.

24 MR. SUAREZ: Mr. Giulietti will be available in the  
25 morning.

Page 4660

1 MS. GREENFIELD: Since it looks like Giulietti was  
2 scheduled later in the month, are we getting an updated  
3 witness list?

4 MR. SUAREZ: Yes. We are working with the holiday  
5 schedules and Counsel availability for number of the  
6 witnesses. We've made great progress this week through our  
7 experts, so I expect that by next week we'll have some more  
8 updated dates in our schedule.

9 MR. AMER: Can I ask, are we still anticipating  
10 Mr. Miller follows Mr. Giulietti, and then Mr. McConney  
11 follows Mr. Miller?

12 MR. SUAREZ: That's correct.

13 MR. AMER: And that's next week?

14 MR. SUAREZ: That's next week.

15 MR. FIELDS: May I inquire, if there's two or  
16 three hours of cross examination, is tomorrow Friday or have  
17 I lost track of my days?

18 MS. GREENFIELD: He said it's possible he'll finish  
19 early, so in the event that we are able to have another  
20 witness, we'll have another witness.

21 MR. FIELDS: Okay.

22 THE COURT: Okay. Have a good evening.  
23 (The case on trial was adjourned to Friday,  
24 November 17th, 2023, at 10:00 a.m.)  
25



NYS Attorney General v.  
Donald J. Trump et al

November 16, 2023

	<b>abundance (1)</b> 4541:24	4568:6,13	4586:3;4660:23	4597:22;4606:19;
<b>\$</b>	<b>academic (3)</b> 4574:8;4606:5;	<b>acquisitions (1)</b> 4579:17	<b>adjust (3)</b> 4620:24;4621:19;	4608:17;4610:3;
<b>\$1 (2)</b> 4502:20;4636:15	4638:3	<b>across (7)</b> 4589:22;4611:5;	4636:20	4612:10;4616:10,22,
<b>\$10 (1)</b> 4501:16	<b>academics (4)</b> 4577:13,20;4591:3;	4617:10,25,25;4618:1;	<b>adjusted (2)</b> 4489:15,19	25;4617:7;4618:1,25;
<b>\$100 (3)</b> 4501:15,15;4502:21	4637:22	4621:2	<b>adjusting (1)</b> 4489:5	4619:9;4626:14;
<b>\$114,574,024 (1)</b> 4654:13	<b>accept (6)</b> 4558:12,17;4653:21,	<b>Act (3)</b> 4539:14,15;4553:6	<b>adjustment (2)</b> 4489:5,18	4627:4;4636:3,17;
<b>\$114.5 (2)</b> 4655:6,25	22;4654:9,13	<b>action (1)</b> 4630:6	<b>adjustments (2)</b> 4489:19;4620:17	4638:1;4645:14;
<b>\$260 (2)</b> 4648:4;4649:25	<b>acceptable (2)</b> 4506:5;4527:19	<b>active (2)</b> 4582:22;4583:1	<b>Administration (2)</b> 4537:4;4545:19	4646:16;4650:13;
<b>\$3.9 (1)</b> 4519:21	<b>accepted (3)</b> 4518:9;4558:2;	<b>acts (3)</b> 4538:24,25;4553:6	<b>Administration's (1)</b> 4545:3	4654:20;4655:3;
<b>\$4.8 (2)</b> 4653:21,24	4584:18	<b>actual (10)</b> 4552:12;4561:22;	<b>admission (1)</b> 4608:8	4657:13
<b>\$40 (3)</b> 4648:8,16,19	<b>access (4)</b> 4518:7;4526:1;	4595:10;4622:2;	<b>admitted (6)</b> 4546:13;4559:22;	<b>against (3)</b> 4491:22;4568:6;
<b>\$400 (1)</b> 4635:8	<b>accompanying (3)</b> 4520:17;4595:5,8	4653:8,17;4654:18,22;	4586:19;4590:12;	4631:14
<b>\$523.6 (1)</b> 4659:7	<b>accordance (3)</b> 4501:25;4535:17;	4655:11,20	4639:13;4648:25	<b>age (1)</b> 4620:18
<b>\$539.5 (1)</b> 4657:1	4536:11	<b>actuality (1)</b> 4654:3	<b>advise (2)</b> 4521:22;4580:10	<b>agency (2)</b> 4536:1,1
<b>\$540 (1)</b> 4650:3	<b>account (2)</b> 4648:12,17	<b>actually (10)</b> 4489:10;4495:15;	<b>advised (1)</b> 4579:13	<b>agents (1)</b> 4493:19
<b>\$686.4 (1)</b> 4659:3	<b>accountant (8)</b> 4514:16;4516:5,23;	4497:15;4504:8;	<b>advisor (1)</b> 4588:1	<b>aggressiveness (1)</b> 4646:25
<b>\$77 (1)</b> 4572:3	4525:7,8,16,20;	4607:20;4618:20;	<b>advisors (4)</b> 4579:21;4580:20;	<b>ago (7)</b> 4501:24;4516:21;
<b>\$925 (1)</b> 4544:6	4527:14	4623:5;4652:13	4587:13,15	4525:2,18;4527:9;
<b>\$950 (1)</b> 4529:19	<b>accountants (2)</b> 4491:15;4528:13	<b>ad (2)</b> 4619:17,18	<b>advisory (6)</b> 4533:18,23;4579:13;	4649:21;4653:3
	<b>accountant's (7)</b> 4513:15;4514:14,17;	<b>add (1)</b> 4651:17	4588:4,5,8	<b>agree (8)</b> 4502:23;4503:7;
	4521:14;4523:7;	<b>added (1)</b> 4501:11	<b>aerial (1)</b> 4588:20	4506:9;4507:1;4510:7;
	4526:8;4528:1	<b>additional (4)</b> 4494:7;4503:23;	<b>affect (7)</b> 4615:7,22;4616:7,	4512:9;4517:4;
	<b>accounting (7)</b> 4497:5,20;4498:19;	4517:7;4521:14	11;4631:18;4642:10;	4655:12
	4506:20;4507:2;	<b>address (12)</b> 4520:23;4521:11;	4657:21	<b>agreed (2)</b> 4526:5;4628:20
	4516:9;4518:9	4530:22,24;4548:7;	<b>affiliated (1)</b> 4587:24	<b>AICPA (2)</b> 4514:14;4518:17
	<b>accuracy (2)</b> 4490:18;4493:4	4556:2,4;4563:4;	<b>afforded (1)</b> 4505:19	<b>Alex (2)</b> 4576:7;4579:7
	<b>accurate (17)</b> 4486:25;4487:3,4,7;	4570:7;4572:6,8;	<b>afternoon (6)</b> 4572:16;4586:17;	<b>aligned (1)</b> 4568:3
	4488:19;4489:6;	4628:13	4622:13;4629:10;	<b>allegations (11)</b> 4528:12;4594:20,24;
	4491:2,20,21,21,24;	<b>addressed (4)</b> 4557:5;4560:4;	4637:1;4656:19	4595:3,13,16;4600:3;
	4494:10,10;4600:12;	4567:8;4568:12	<b>AG (1)</b> 4504:24	4631:13;4632:8,22;
	4632:13,13;4633:9	<b>addresses (1)</b> 4566:20	<b>again (51)</b> 4504:7;4510:24;	4633:4
	<b>accurately (2)</b> 4490:8;4492:2	<b>addressing (2)</b> 4509:24;4522:2	4517:18;4518:16;	<b>allege (2)</b> 4630:21;4631:7
	<b>achievements (1)</b> 4572:19	<b>Adequacy (4)</b> 4515:18,23;4516:2;	4523:4,8;4529:20;	<b>alleged (2)</b> 4595:19;4634:7
	<b>achieving (2)</b> 4518:14;4643:9	4521:23	4533:16;4540:11;	<b>alleges (1)</b> 4632:17
	<b>acquaint (2)</b> 4594:19,23	<b>adequate (3)</b> 4490:10;4521:9;	4550:1;4551:2;4552:4;	<b>ALLEN (1)</b> 4483:7
	<b>acquainted (1)</b> 4614:14	4555:4	4553:14;4554:25;	<b>allow (4)</b> 4535:13,14;4558:11;
	<b>acquired (2)</b> 4533:3,13	<b>Adequately (2)</b> 4490:11,14	4565:10;4567:4;	4610:1
	<b>acquisition (10)</b> 4536:3,11,13,14,19,	<b>adhered (1)</b> 4567:22	4569:21;4579:18;	<b>allowable (1)</b> 4507:11
	20;4539:13;4547:11;	<b>adhering (1)</b> 4568:8	4580:16,21,24;	<b>allowed (4)</b> 4485:6;4488:9;
		<b>adjourned (2)</b>	4581:12;4585:9,10;	4491:7;4500:2
			4589:13;4592:21;	<b>allowing (1)</b> 4506:9
			4593:17;4594:25;	<b>allows (1)</b> 4503:1

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>along (4)</b> 4608:25;4610:2,5,8	15;4598:6	4510:13;4529:8; 4564:14	<b>appraisers (28)</b> 4578:8;4580:23; 4590:16;4600:19; 4601:21;4606:11; 4608:9;4609:2,7,9,17; 4613:12,16,16,17,24, 25;4617:10;4618:3,11, 15,15,22;4620:20; 4621:15,23;4635:6,10	4599:20;4614:25
<b>alongside (1)</b> 4659:14	<b>analyze (2)</b> 4532:24;4633:24	<b>apply (10)</b> 4511:1;4512:15; 4523:1;4536:2; 4547:13;4553:16; 4593:18;4607:1,10; 4659:6	<b>appraising (2)</b> 4600:23;4626:13	<b>arena (2)</b> 4589:1,9
<b>alternative (2)</b> 4503:8;4506:10	<b>analyzed (2)</b> 4635:24;4641:7		<b>appreciate (1)</b> 4639:3	<b>arise (1)</b> 4614:25
<b>Alvarez (3)</b> 4585:10;4587:4,8	<b>analyzing (2)</b> 4548:4;4636:6		<b>appreciates (1)</b> 4612:20	<b>ARMEN (1)</b> 4484:19
<b>always (10)</b> 4485:8;4487:3; 4522:4;4602:1;4606:5; 4612:19;4621:18,19, 20;4637:17	<b>Ankura (11)</b> 4533:24,25;4534:4; 4544:3,4;4587:24; 4588:1,2;4596:5,8,12	<b>appraisal (92)</b> 4489:9,11,18,19; 4493:19;4501:10,14, 18,20;4502:4;4577:23, 25;4578:2,7;4580:3,6, 12;4581:13;4590:5; 4592:17,18,19,20,24; 4593:1;4597:19; 4600:15,17,18,20,25; 4601:1;4602:1;4603:2, 5;4608:19;4610:12,19; 4612:5,18;4617:9; 4620:11;4622:3,4; 4623:1,10;4624:7; 4626:12,18,19,19,20, 22,23,24,25;4627:2,12, 19,19;4630:3,4,13,14, 21;4631:7;4636:4,6; 4637:7,17,19;4638:2,7; 4639:20;4640:16; 4642:10;4645:23; 4646:14,18,19;4647:2, 24;4648:7;4649:6,9; 4650:2,7;4651:24; 4653:5,13,17;4656:11	<b>approach (24)</b> 4506:10;4603:13,14, 14;4604:6,7,8,15,23, 24,25;4606:17;4607:6, 14,15,18;4608:3,6; 4612:18;4617:4; 4623:4;4625:7; 4644:10,12	<b>around (8)</b> 4578:10;4582:5,13; 4584:16;4593:5; 4606:23;4652:10,10
<b>amazing (1)</b> 4636:12	<b>A-N-K-U-R-A (1)</b> 4587:25		<b>approaches (2)</b> 4603:16;4604:5	<b>arrange (1)</b> 4572:4
<b>ambiguous (1)</b> 4504:20	<b>announcement (1)</b> 4614:19		<b>appropriate (4)</b> 4489:20;4500:15; 4503:24;4528:2	<b>arrive (2)</b> 4498:17;4502:8
<b>AMER (3)</b> 4571:9;4660:9,13	<b>annual (6)</b> 4538:8;4567:10,13; 4589:14;4591:9; 4612:8		<b>appropriately (3)</b> 4500:21;4501:1; 4502:8	<b>arrived (1)</b> 4651:15
<b>America (2)</b> 4518:10;4589:14	<b>answered (2)</b> 4488:7;4633:11		<b>appropriateness (3)</b> 4490:22,23;4525:24	<b>art (2)</b> 4601:3,6
<b>American (8)</b> 4577:11,17,18; 4590:21,23;4591:1,10, 21	<b>anticipate (1)</b> 4640:5		<b>approval (1)</b> 4535:25	<b>Arthur (1)</b> 4485:2
<b>among (3)</b> 4520:5;4563:11; 4638:13	<b>anticipated (2)</b> 4566:1;4659:19		<b>approving (1)</b> 4560:5	<b>article (2)</b> 4574:6,10
<b>amount (18)</b> 4489:10,25;4495:6, 25;4499:23,25;4500:6, 17;4501:4;4519:17,21; 4525:5,10,21,22; 4526:6;4535:14; 4552:13	<b>anticipating (1)</b> 4660:9		<b>approximate (1)</b> 4544:9	<b>articles (6)</b> 4573:16,17,19,23,25; 4574:21
<b>amounts (9)</b> 4488:25;4489:24; 4490:22;4491:17,19; 4519:16,17;4520:7; 4526:9	<b>anti-gratuity (1)</b> 4537:24		<b>approximately (25)</b> 4534:21;4540:1; 4544:7;4555:25; 4579:1;4580:18; 4582:7;4587:21; 4588:25;4592:13; 4593:11;4596:17,20; 4613:11;4635:4; 4641:6;4648:8; 4653:14,21;4654:12, 14;4655:6,25;4657:1; 4659:3	<b>ASC (23)</b> 4487:2;4488:14; 4490:7,24;4495:5,13, 18;4498:3,20;4500:3, 21,24;4501:2,5,25; 4502:6,13;4503:6,19, 21,25;4504:5;4506:12
<b>analyses (1)</b> 4589:19	<b>anti-lobbying (1)</b> 4537:24		<b>arbitration (1)</b> 4539:25	<b>ASC-273 (1)</b> 4515:13
<b>analysis (33)</b> 4491:1,18,25; 4492:9;4568:5; 4575:14;4578:24; 4579:25;4581:13,23; 4582:3,20;4584:21; 4585:2;4588:12,13; 4589:23;4591:24; 4595:1,13;4597:12,17, 19;4598:6;4604:8; 4607:4;4616:11; 4617:15;4631:14; 4637:7;4641:24; 4645:13;4650:16	<b>apart (2)</b> 4594:9,11	<b>appraisals (42)</b> 4489:13,14;4590:19; 4592:22;4593:7,18; 4600:6,11;4601:2; 4607:24;4608:2,6,15; 4610:23,25;4611:16, 19,21;4614:11,11,25; 4615:14;4623:14; 4626:9;4627:6,7,9,23, 24;4628:4,4;4629:23; 4632:21;4635:5,12,25; 4639:7,10;4641:6; 4643:12,21;4650:5	<b>ASC-274 (3)</b> 4507:11;4515:24; 4523:15	<b>ASC-274-10-55-6 (1)</b> 4512:11
<b>analyst (2)</b> 4532:20;4533:8	<b>apartment (1)</b> 4585:13		<b>architects (1)</b> 4618:10	<b>ASC-55 (1)</b> 4512:11
<b>analytics (13)</b> 4580:8;4587:23; 4589:1;4593:17; 4594:16;4595:18; 4596:25;4597:3,8,9,11,	<b>apartments (1)</b> 4574:18	<b>appraise (1)</b> 4603:10	<b>area (10)</b> 4545:7;4551:2; 4562:6;4582:1,5,13,16; 4595:9;4599:7; 4650:15	<b>ASC-850 (1)</b> 4522:8
	<b>apologize (2)</b> 4597:14;4628:14	<b>appraised (8)</b> 4595:3;4601:9; 4616:7;4623:17; 4626:15;4631:15; 4634:25;4653:8	<b>areas (6)</b> 4536:17;4547:9; 4574:20;4595:1;	<b>Asia (4)</b> 4589:12,15,20; 4591:23
	<b>apology (1)</b> 4628:16			<b>aside (1)</b> 4536:21
	<b>appeal (3)</b> 4593:19;4634:21; 4636:2			<b>aspect (2)</b> 4573:8;4582:19
	<b>appeals (1)</b> 4614:13			<b>aspects (1)</b> 4606:9
	<b>appear (2)</b> 4510:8,24			<b>assembled (1)</b> 4560:6
	<b>appearing (1)</b> 4510:6			<b>assert (1)</b> 4540:22
	<b>appears (5)</b> 4512:7,11;4513:12; 4514:8;4515:15			<b>assess (1)</b> 4518:4
	<b>applicable (2)</b> 4516:4;4608:6	<b>appraiser (25)</b> 4501:11;4600:21,22; 4601:16,22;4607:4; 4608:16;4615:6,10; 4616:22;4618:21; 4621:11;4622:14,19; 4623:5,17;4626:16,16; 4627:2;4636:12; 4654:6,17;4655:4,24; 4657:11		<b>assessment (1)</b> 4610:20
	<b>application (1)</b> 4523:10			<b>assessments (2)</b> 4611:22;4612:24
	<b>applied (9)</b> 4500:5;4501:1,24; 4502:7;4515:8; 4525:25;4605:2; 4629:24;4630:2			
	<b>apples (3)</b>			

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>asset (15)</b> 4486:14;4495:25; 4499:22;4500:7,9,9,20; 4504:6;4525:9,9; 4579:14,17,20;4580:2; 4601:19	<b>auditable (1)</b> 4551:17	4652:8	4576:6;4581:24; 4641:19	4528:24;4529:12,23
<b>assets (9)</b> 4486:12;4512:17,19, 22,23;4518:14; 4520:20;4524:14; 4577:4	<b>audited (2)</b> 4551:17;4566:16	<b>backup (1)</b> 4492:1	<b>begins (2)</b> 4508:6;4510:17	<b>billion (4)</b> 4501:15;4601:17,18; 4636:15
<b>assignments (1)</b> 4534:5	<b>August (1)</b> 4573:12	<b>bad (2)</b> 4507:10;4621:14	<b>behalf (6)</b> 4579:18;4580:4,24; 4581:14;4601:19; 4607:4	<b>birthday (1)</b> 4581:6
<b>assistance (1)</b> 4533:20	<b>author (1)</b> 4574:13	<b>bag (1)</b> 4493:14	<b>belabor (1)</b> 4522:6	<b>bit (16)</b> 4504:3;4538:14,19; 4545:21;4553:10; 4574:19;4578:15; 4589:8,15;4592:22; 4597:20;4616:4,11; 4622:5,5;4646:12
<b>assistant (1)</b> 4570:20	<b>authored (3)</b> 4573:16,17;4577:21	<b>balance (1)</b> 4629:10	<b>Belichick (2)</b> 4571:5,18	<b>blamed (1)</b> 4611:7
<b>assisted (2)</b> 4560:9;4589:18	<b>authority (1)</b> 4560:2	<b>Baltimore (2)</b> 4576:7;4581:8	<b>belief (3)</b> 4496:14;4498:5; 4626:4	<b>blank (2)</b> 4598:18,18
<b>assisting (1)</b> 4548:12	<b>authors (1)</b> 4574:9	<b>bank (2)</b> 4611:16;4639:21	<b>below (8)</b> 4556:25;4557:6; 4636:11,21,23;4637:5; 4644:17;4651:12	<b>blend (1)</b> 4623:5
<b>associate (2)</b> 4529:13;4570:6	<b>availability (1)</b> 4660:5	<b>bankruptcies (1)</b> 4615:2	<b>Bench (2)</b> 4483:12;4638:13	<b>blind (2)</b> 4574:11;4575:3
<b>associated (2)</b> 4508:18;4523:23	<b>available (5)</b> 4486:20;4514:25; 4543:19;4659:23,24	<b>bankruptcy (7)</b> 4581:9,10,16; 4582:5;4585:11; 4610:17;4614:24	<b>benchmark (3)</b> 4631:11,12,16	<b>block (1)</b> 4588:24
<b>Associates (4)</b> 4513:6;4578:24; 4579:2,10	<b>Avenue (1)</b> 4550:20	<b>banks (5)</b> 4611:9,14,15,20,25	<b>benefit (3)</b> 4545:14;4597:7; 4634:19	<b>blow (8)</b> 4515:18;4547:20; 4549:3;4561:8; 4562:11;4563:20; 4565:2,18
<b>association (4)</b> 4577:19;4590:5; 4591:3;4592:21	<b>average (6)</b> 4567:7;4644:18,22; 4651:5,20;4652:5	<b>bar (2)</b> 4638:11,13	<b>Benson (2)</b> 4576:7;4579:7	<b>blue (4)</b> 4494:21,23;4564:13, 15
<b>associations (1)</b> 4591:16	<b>awarded (1)</b> 4577:10	<b>Bartov (3)</b> 4511:6,9,12	<b>best (4)</b> 4504:10;4577:16; 4629:18;4659:17	<b>board (9)</b> 4558:20;4559:7; 4560:1,6,6,7;4574:23; 4575:1;4591:7
<b>assume (3)</b> 4524:7;4560:19; 4657:5	<b>awarding (1)</b> 4560:2	<b>based (24)</b> 4493:20;4495:23; 4500:20;4548:9; 4560:23;4567:10,11; 4568:15;4585:21; 4600:6;4612:9; 4614:12;4616:21; 4619:11;4621:14; 4624:15;4640:3; 4641:18;4642:6,19; 4644:6;4648:21,22; 4655:25	<b>better (8)</b> 4501:9;4504:11; 4571:4,5;4597:9; 4603:5;4604:20; 4656:25	<b>Board's (1)</b> 4566:12
<b>assumes (1)</b> 4622:19	<b>awards (2)</b> 4577:7,14	<b>basic (3)</b> 4507:13;4534:25; 4588:20	<b>beware (1)</b> 4518:20	<b>body (3)</b> 4575:5;4592:20; 4638:4
<b>assuming (4)</b> 4560:22;4622:22; 4625:23;4636:16	<b>aware (3)</b> 4522:7;4524:2; 4539:1	<b>basically (4)</b> 4560:18;4607:22; 4636:16;4657:7	<b>beyond (4)</b> 4528:24;4538:10; 4561:21;4567:12	<b>bold (1)</b> 4556:24
<b>assumptions (2)</b> 4489:13;4601:7	<b>B</b>	<b>basis (15)</b> 4486:13;4510:11; 4515:4;4524:3;4529:6, 9;4535:9;4558:5,6,8; 4567:24;4568:4,12; 4576:16;4601:20	<b>bias (7)</b> 4600:19;4608:18; 4621:10,13,17,18,22	<b>bonding (2)</b> 4538:7,7
<b>assurance (1)</b> 4535:15	<b>Bachelor (1)</b> 4531:19	<b>became (7)</b> 4573:12;4584:7,10, 10,20;4591:10;4595:9	<b>biases (1)</b> 4621:14	<b>bonds (1)</b> 4519:19
<b>attempted (1)</b> 4559:18	<b>back (47)</b> 4491:11,19;4492:13, 14;4494:7;4505:3,5,6; 4510:2,3,4;4517:17; 4522:5;4525:1;4527:8; 4534:20;4537:16; 4543:1,3;4574:9,12,13, 19;4581:11;4585:6; 4586:8,10,19;4593:17; 4594:13;4611:11,23; 4617:7,8;4627:2,4; 4628:12,22;4630:23, 25;4631:25;4632:3,4; 4634:20;4652:8; 4655:3;4656:4	<b>began (2)</b> 4585:11;4589:12	<b>bid (1)</b> 4535:4	<b>book (3)</b> 4577:22;4591:24; 4637:25
<b>attention (8)</b> 4486:6;4508:5,13, 15;4509:17;4513:6; 4519:10;4634:9	<b>background (9)</b> 4497:6;4540:19; 4566:17;4572:18; 4573:15;4578:15; 4581:18;4616:10;	<b>Bedminster (1)</b> 4484:14	<b>bidder (1)</b> 4567:17	<b>books (2)</b> 4500:10;4577:21
<b>ATTORNEY (7)</b> 4483:3,20;4504:15; 4594:20;4630:17; 4631:19;4632:16		<b>beginning (5)</b> 4504:16;4570:16;	<b>bidders (1)</b> 4535:4	<b>Boston (3)</b> 4531:15,22;4532:18
<b>Attorneys (3)</b> 4483:21;4484:13,22			<b>big (3)</b> 4604:18;4605:13; 4610:17	<b>both (17)</b> 4491:16;4502:18,23; 4503:12;4550:4; 4570:12;4578:19; 4589:14;4608:2; 4609:18;4617:6; 4622:9,10;4623:4; 4635:12,24;4644:9
<b>attributes (1)</b> 4647:3			<b>Bill (2)</b> 4571:5;4614:10	<b>bottom (10)</b> 4520:12;4561:8;
<b>atypical (2)</b> 4623:19;4624:16			<b>billable (1)</b> 4529:18	
<b>audit (1)</b> 4536:1			<b>billed (4)</b> 4528:22,23,25; 4529:6	
			<b>billing (3)</b>	

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4564:6,12;4611:13; 4617:1;4647:17; 4649:14;4656:5; 4659:5 <b>bought (1)</b> 4606:14 <b>brain (1)</b> 4621:22 <b>brand (4)</b> 4509:1,2;4510:10,16 <b>break (11)</b> 4530:10;4542:5; 4586:1;4587:3; 4588:15;4626:11; 4628:9,9,12,17,20 <b>breakout (1)</b> 4573:13 <b>brief (1)</b> 4605:11 <b>briefly (4)</b> 4559:24;4572:17; 4576:20;4590:25 <b>broad (2)</b> 4505:20;4549:11 <b>broadly (3)</b> 4510:25;4537:2; 4540:19 <b>broke (1)</b> 4629:22 <b>broken (1)</b> 4547:10 <b>Brokerage (2)</b> 4640:12;4641:12 <b>brokers (2)</b> 4493:18;4641:12 <b>Brothers' (1)</b> 4585:11 <b>brought (2)</b> 4541:2,4 <b>Brown (2)</b> 4576:7;4579:7 <b>build (5)</b> 4535:1;4581:21; 4605:8;4607:22; 4643:14 <b>building (16)</b> 4545:10,11;4550:6, 8;4562:2;4607:20; 4616:15;4620:11; 4645:1,21;4646:10; 4648:13,18,18; 4650:25;4651:12 <b>buildings (5)</b> 4545:7;4565:12; 4619:5,7,10 <b>built (1)</b> 4591:16 <b>bullet (3)</b> 4499:19,21;4546:19 <b>bus (2)</b> 4528:13,14 <b>business (5)</b> 4520:19;4530:22;	4572:6;4579:2,10 <b>buy (5)</b> 4495:8;4503:17; 4585:16;4620:22; 4621:5 <b>buyer (13)</b> 4495:7;4496:7,8; 4497:7,14;4502:19,23; 4503:16;4622:15,20, 22;4645:21;4651:11 <b>buyers (1)</b> 4621:7 <b>buyers' (1)</b> 4640:3 <b>buying (7)</b> 4577:6;4580:9; 4582:24;4617:18,20, 24;4621:4  <b>C</b>  <b>C&amp;W (1)</b> 4640:10 <b>C&amp;W's (1)</b> 4640:8 <b>calculate (2)</b> 4606:16,18 <b>calculated (1)</b> 4657:5 <b>calculating (3)</b> 4605:12;4606:8; 4607:3 <b>calculation (2)</b> 4494:6;4500:8 <b>calculations (9)</b> 4490:19;4491:14; 4492:6;4493:17; 4494:14;4500:20; 4522:23;4651:17; 4657:6 <b>California (1)</b> 4537:5 <b>call (7)</b> 4530:7;4541:23; 4584:4;4606:13; 4614:16,20;4634:3 <b>called (7)</b> 4498:20;4577:23; 4579:7,7;4584:3; 4590:1;4600:25 <b>Calling (1)</b> 4571:9 <b>came (5)</b> 4493:1,1;4573:9; 4654:21,21 <b>can (94)</b> 4488:9;4494:19; 4498:20;4499:4,7,13; 4501:13,20,21; 4502:16;4503:2; 4505:3,10;4508:15; 4510:1;4513:6;4517:3, 8,10;4522:5;4527:18;	4528:25;4529:2; 4534:23;4539:8; 4541:18;4542:5; 4546:23;4556:5,8,15; 4558:2;4559:25; 4560:24;4562:11; 4563:20;4565:18; 4567:14;4569:5,8,13; 4572:4;4575:20; 4576:20;4593:24; 4597:7;4598:1,5; 4599:12;4603:21; 4604:1;4605:2,10,14; 4606:1,16;4607:1,19; 4608:9;4609:2,3; 4610:3,10,21;4611:6,9; 4613:10;4616:2,7,11; 4619:17,21;4621:8,9; 4624:1,5,6,9;4625:2; 4627:10;4628:13; 4631:22,23;4639:12; 4641:1,22;4642:18; 4645:18;4646:16; 4650:19;4651:7; 4655:12;4657:24; 4660:9 <b>cap (39)</b> 4489:1;4493:1; 4502:2;4514:25; 4577:5;4580:16; 4606:1,3,4,7,16,24,25; 4607:3,9,11;4612:14; 4613:10;4620:24; 4621:5;4624:11; 4625:16,17,18,21,22; 4626:3;4636:11,12,19, 19;4644:9,12;4645:3; 4646:9,17;4658:1; 4659:2,6 <b>capabilities (1)</b> 4538:10 <b>capability (7)</b> 4534:14,16;4548:15; 4551:1;4552:15; 4563:12;4566:8 <b>capable (1)</b> 4534:13 <b>capacities (1)</b> 4523:21 <b>capacity (8)</b> 4538:6,7;4548:15; 4550:25;4551:5; 4552:18;4556:17; 4566:8 <b>capital (14)</b> 4547:10;4573:13,21; 4575:12;4576:19; 4577:3;4592:10,10; 4593:15,16;4606:10; 4639:20;4649:7; 4652:11 <b>capitalization (34)</b> 4487:6;4502:1;	4515:2,5;4605:24,25; 4606:8,18,22;4607:5; 4617:5;4625:20; 4643:8;4644:5,15; 4645:11,19,24,24; 4646:14,19,20,21; 4647:10;4650:20,25; 4651:9,25;4652:4,23; 4654:5,11;4656:15,19 <b>capitalizing (2)</b> 4488:18,25 <b>capitals (1)</b> 4589:23 <b>capture (1)</b> 4566:1 <b>captured (3)</b> 4560:11;4566:2; 4582:7 <b>captures (1)</b> 4566:21 <b>capturing (1)</b> 4550:19 <b>career (6)</b> 4537:8;4574:25; 4590:8,18;4594:6; 4603:20 <b>careers (1)</b> 4532:17 <b>careful (2)</b> 4571:7;4628:2 <b>Carlson (4)</b> 4532:2,4,5,7 <b>C-A-R-L-S-O-N (1)</b> 4532:4 <b>Carson (1)</b> 4532:3 <b>cart (1)</b> 4595:21 <b>case (37)</b> 4489:15;4490:17; 4497:8;4516:14,19; 4528:20;4531:1; 4535:25;4543:10; 4544:15,19,25;4547:2; 4554:1;4559:13; 4560:2;4562:4; 4574:13;4585:25; 4586:3;4593:16,25; 4594:15,21;4596:2,13, 21;4597:6;4598:11; 4599:25;4618:18; 4619:11;4628:18; 4644:22;4649:11; 4659:11;4660:23 <b>cases (7)</b> 4490:23;4492:6; 4494:12;4588:11; 4593:14;4610:16,17 <b>cash (21)</b> 4489:25;4519:4,8, 15,25;4520:1,5,20,23, 25;4521:1,5;4605:3,3; 4613:2,6,9;4617:14;	4621:7;4656:20,21 <b>cat (1)</b> 4493:13 <b>categories (3)</b> 4548:7,8,17 <b>category (2)</b> 4509:20;4540:16 <b>cause (1)</b> 4611:12 <b>caution (1)</b> 4541:24 <b>cautionary (1)</b> 4516:20 <b>cell (3)</b> 4485:3,3;4656:25 <b>census (1)</b> 4588:24 <b>Center (11)</b> 4581:9,10,16,19; 4582:4,5,13,19,23; 4585:4;4619:4 <b>centers (1)</b> 4621:16 <b>Center's (1)</b> 4614:24 <b>Central (1)</b> 4573:11 <b>CEOs (1)</b> 4618:9 <b>certain (11)</b> 4520:20;4538:24; 4551:4;4554:14; 4562:23;4571:3; 4600:22;4611:6; 4613:9;4616:13; 4634:24 <b>certainly (9)</b> 4494:4;4496:20; 4502:16;4599:9; 4610:5;4613:21; 4619:25;4627:1; 4629:18 <b>certainty (3)</b> 4543:22;4595:18; 4599:19 <b>certifications (1)</b> 4592:23 <b>certified (5)</b> 4523:19;4524:4,12; 4592:24;4600:21 <b>cetera (10)</b> 4556:2;4576:24; 4578:23;4588:24; 4592:7;4599:6,6; 4618:19;4636:20; 4637:8 <b>CFR (8)</b> 4546:21,25;4547:4, 6,18;4567:23,24; 4568:2 <b>chair (4)</b> 4584:19,20,25; 4591:9
---	---	---	--	---

November 16, 2023

<b>chairman (1)</b> 4637:23	<b>Civil (2)</b> 4531:17,19	4564:11	4538:23;4576:13	4578:17
<b>chairs (1)</b> 4638:12	<b>claim (1)</b> 4533:20	<b>coincidentally (1)</b> 4619:8	<b>comp (6)</b> 4604:13,16,19; 4606:17;4636:16; 4644:9	<b>complex (1)</b> 4563:7
<b>challenged (1)</b> 4621:21	<b>claims (3)</b> 4532:20;4533:8,17	<b>colleagues (1)</b> 4524:17	<b>companies (6)</b> 4575:10;4576:24; 4579:14;4617:20; 4620:21;4621:4	<b>complexes (1)</b> 4585:13
<b>chances (2)</b> 4623:18;4624:17	<b>clarification (6)</b> 4487:10,24;4491:7; 4593:24;4603:21; 4613:15	<b>collect (1)</b> 4644:10	<b>company (9)</b> 4576:6;4578:17,23; 4579:7,13;4584:3; 4585:11;4587:19; 4607:16	<b>compliant (2)</b> 4551:18,19
<b>change (1)</b> 4584:6	<b>clarify (4)</b> 4486:18;4503:13; 4560:14;4631:11	<b>collected (1)</b> 4636:7	<b>comparable (6)</b> 4603:13;4604:9; 4605:1;4608:3; 4644:11;4646:15	<b>complied (2)</b> 4501:2;4527:12
<b>changed (1)</b> 4532:17	<b>clarity (1)</b> 4597:4	<b>collecting (3)</b> 4572:2;4601:8; 4639:2	<b>comparables (5)</b> 4604:18;4606:21; 4645:10;4646:21; 4652:1	<b>compliment (1)</b> 4571:10
<b>changes (3)</b> 4534:18;4640:8; 4659:7	<b>class (1)</b> 4585:3	<b>collection (5)</b> 4529:13;4578:5; 4601:11;4604:9,25	<b>compared (3)</b> 4568:2;4631:13; 4652:17	<b>comply (3)</b> 4536:3,9;4566:1
<b>chapter (3)</b> 4577:23;4591:25; 4636:5	<b>clear (10)</b> 4502:4;4515:2; 4552:10;4590:11; 4598:23,24;4613:18; 4655:15,19,22	<b>collective (1)</b> 4638:4	<b>comparing (1)</b> 4571:17	<b>component (2)</b> 4504:14;4524:10
<b>charges (1)</b> 4529:21	<b>client (5)</b> 4538:20;4581:14; 4612:21;4626:17; 4634:23	<b>COLLEEN (1)</b> 4483:23	<b>comparison (1)</b> 4564:5	<b>components (6)</b> 4493:17;4537:18; 4568:13;4575:13; 4605:13;4607:17
<b>charging (2)</b> 4596:8,13	<b>clearly (2)</b> 4550:13;4611:17	<b>college (2)</b> 4531:14,20	<b>compelled (2)</b> 4495:8;4503:16	<b>comport (1)</b> 4518:19
<b>chart (9)</b> 4563:20;4644:14,17, 17;4646:12;4649:16; 4650:22;4656:5,10	<b>clients (12)</b> 4533:19;4539:5; 4578:19,25;4580:1,4, 25,25;4587:18; 4601:20;4616:2; 4619:2	<b>Collins (13)</b> 4530:23;4531:12; 4540:13,19;4543:9; 4546:2;4553:23; 4559:4;4562:16; 4563:24;4567:15; 4569:22;4584:20	<b>compensated (3)</b> 4543:24;4544:4; 4596:1	<b>composite (1)</b> 4563:25
<b>Chartered (4)</b> 4590:3,4,10,13	<b>CLIFFORD (1)</b> 4484:10	<b>Collins' (1)</b> 4560:23	<b>compensating (2)</b> 4645:20;4651:11	<b>composition (2)</b> 4617:17;4621:2
<b>check (1)</b> 4570:18	<b>close (2)</b> 4541:23;4628:24	<b>Colony (1)</b> 4566:17	<b>compensation (2)</b> 4544:24;4596:21	<b>comprised (2)</b> 4560:6;4561:20
<b>checking (1)</b> 4552:18	<b>closed (1)</b> 4579:10	<b>color (1)</b> 4564:11	<b>compilation (18)</b> 4499:13;4513:16,20; 4514:15;4516:5; 4520:23;4521:18; 4525:3,5,7,21;4526:4, 11,16,17,25;4527:4,15	<b>comprising (1)</b> 4491:2
<b>choose (2)</b> 4573:5,7	<b>closely (1)</b> 4520:19	<b>Colorado (6)</b> 4584:19,20,24; 4585:5,7,8	<b>compiler (2)</b> 4497:11,20	<b>comps (4)</b> 4606:24;4608:22; 4617:15;4620:12
<b>chooses (4)</b> 4625:10,17,22; 4626:3	<b>club (3)</b> 4508:22;4509:25; 4510:17	<b>combined (3)</b> 4523:24;4529:6,9	<b>complaint (24)</b> 4594:20,25;4595:5, 6,7,13,16,19;4599:25; 4600:3,4,11;4628:5; 4630:6,7,11,12,15; 4631:15,18;4632:14, 23;4633:6;4634:7	<b>concept (5)</b> 4504:20,21;4549:23; 4565:21,24
<b>choosing (1)</b> 4506:11	<b>Coach (1)</b> 4571:18	<b>comfortable (2)</b> 4527:21,23	<b>common (8)</b> 4504:10;4519:18; 4593:17;4613:12,24; 4614:2,4,6	<b>concepts (3)</b> 4500:18;4627:10; 4629:24
<b>chose (2)</b> 4645:23;4646:14	<b>coached (1)</b> 4544:23	<b>coming (5)</b> 4485:9;4612:14; 4616:17;4623:3; 4643:25	<b>communicating (2)</b> 4506:8;4518:18	<b>conceptual (2)</b> 4550:17;4562:1
<b>chosen (1)</b> 4645:10	<b>coaches (1)</b> 4571:20	<b>comments (1)</b> 4611:11	<b>community (2)</b>	<b>concerned (1)</b> 4633:17
<b>Chris (1)</b> 4571:17	<b>coauthored (1)</b> 4577:21	<b>commercial (11)</b> 4575:18;4578:13,20; 4601:18;4604:4; 4611:5,7,9,20;4614:22; 4636:14		<b>concerning (9)</b> 4513:5;4514:21; 4516:2;4519:8;4521:5, 23;4525:4,6;4566:22
<b>Christian (1)</b> 4538:22	<b>coauthors (1)</b> 4574:9	<b>Commission (1)</b> 4528:11		<b>conclude (2)</b> 4527:18;4653:17
<b>CHRISTOPHER (1)</b> 4484:5	<b>code (5)</b> 4531:1;4536:15,15; 4547:7,10	<b>committee (1)</b> 4585:15		<b>concluded (2)</b> 4564:6;4653:13
<b>circumstances (2)</b> 4486:13;4489:22	<b>codes (1)</b> 4588:24	<b>common (8)</b> 4504:10;4519:18; 4593:17;4613:12,24; 4614:2,4,6		<b>conclusion (9)</b> 4495:14,20;4498:25; 4523:18;4610:8; 4615:7;4645:7; 4649:20;4650:6
<b>citations (1)</b> 4637:13	<b>codification (2)</b> 4536:16;4547:8	<b>communicating (2)</b> 4506:8;4518:18		<b>conclusions (5)</b> 4518:6;4590:18; 4610:4,22;4649:15
<b>cite (2)</b> 4526:16;4568:9	<b>coding (1)</b>			<b>concur (1)</b> 4622:24
<b>cited (1)</b> 4600:11				<b>Condition (46)</b> 4490:20;4491:16; 4492:11;4494:1,16;
<b>cities (3)</b> 4582:10;4593:5; 4617:10				
<b>city (5)</b> 4578:6;4581:25; 4582:6,13,22				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4495:13;4508:12,21; 4509:21;4510:11,12; 4513:11,21,25;4514:8, 12,21;4516:3,11; 4517:9,11,16,18,22; 4518:5,7,8,15,19,22; 4519:9,25;4520:2,6,17; 4521:1,6;4522:11; 4524:1;4526:2;4528:1; 4541:5;4555:3,5; 4595:4;4600:7 <b>conditioned (2)</b> 4544:24;4596:21 <b>conditions (9)</b> 4616:5,6,7,9;4617:4; 4618:4;4627:3;4640:8; 4648:19 <b>condones (1)</b> 4600:18 <b>conducted (3)</b> 4601:15;4635:5; 4636:2 <b>confer (3)</b> 4524:16;4596:19; 4599:12 <b>conference (2)</b> 4574:8;4591:9 <b>conferred (1)</b> 4599:15 <b>confident (1)</b> 4654:22 <b>confirm (5)</b> 4490:17;4589:6; 4606:14;4632:12; 4646:16 <b>confirmation (3)</b> 4537:25;4538:3,8 <b>confirms (1)</b> 4647:1 <b>conflating (1)</b> 4500:18 <b>conform (1)</b> 4632:12 <b>conformity (1)</b> 4518:8 <b>confusion (2)</b> 4603:3;4611:13 <b>conjunction (1)</b> 4565:22 <b>Connecticut (1)</b> 4570:13 <b>connection (2)</b> 4541:6;4559:12 <b>conservation (1)</b> 4545:12 <b>conservative (12)</b> 4611:16,21;4612:1, 3,12,16,18,23;4642:20, 21;4647:2,2 <b>consider (13)</b> 4516:23;4524:4; 4560:24;4565:19; 4566:3;4567:1;	4575:13;4577:15; 4598:13,17;4632:9; 4636:6;4637:15 <b>consideration (2)</b> 4631:17;4651:12 <b>considerations (4)</b> 4562:25;4565:7; 4566:12,14 <b>considered (7)</b> 4541:8;4565:8; 4582:15;4590:2; 4630:13;4645:20; 4651:10 <b>consistent (4)</b> 4508:21;4516:7; 4575:9;4587:20 <b>consistently (1)</b> 4587:22 <b>constant (3)</b> 4625:14,24;4626:6 <b>constructed (1)</b> 4536:11 <b>Construction (16)</b> 4531:22,25;4532:6, 8,13,20;4533:9,16; 4534:10,25;4535:4; 4550:21;4552:16; 4572:21;4578:18; 4581:17 <b>consulting (10)</b> 4532:17,18;4533:14, 24,25;4544:3;4587:11, 16,17;4588:3 <b>Consumer (1)</b> 4640:6 <b>contain (2)</b> 4514:7;4517:12 <b>contained (8)</b> 4492:10;4494:9; 4495:18;4517:8; 4518:18;4519:8; 4527:22;4559:19 <b>Cont'd (1)</b> 4484:1 <b>contemporaneously (1)</b> 4533:19 <b>contend (1)</b> 4496:20 <b>content (1)</b> 4548:6 <b>contents (3)</b> 4548:1;4555:2; 4560:16 <b>context (10)</b> 4488:1;4491:25; 4505:8;4546:24; 4624:21,23;4627:9; 4629:23;4645:19; 4651:9 <b>contextualize (1)</b> 4541:7 <b>contextualizing (1)</b> 4541:4	<b>CONTINENTAL (1)</b> 4484:3 <b>contingent (5)</b> 4564:9;4565:11; 4566:19,22;4567:8 <b>continue (8)</b> 4485:11,14;4543:7; 4574:10;4582:8; 4586:24;4627:13; 4628:9 <b>Continued (4)</b> 4524:19;4564:17; 4602:3;4638:15 <b>continuing (2)</b> 4592:23;4615:12 <b>contract (19)</b> 4535:25;4536:1,22; 4537:15;4539:3; 4540:8,14,17,19,21; 4541:15,19,21,22,25; 4542:1,4;4543:22; 4562:20 <b>contracted (1)</b> 4581:1 <b>contracting (3)</b> 4538:23;4560:3,4 <b>contraction (1)</b> 4575:21 <b>contractor (4)</b> 4535:10;4537:13; 4539:1,2 <b>contractors (2)</b> 4535:15;4607:21 <b>contracts (8)</b> 4534:8,9,19,20; 4537:2;4538:16,25; 4540:10 <b>contrast (3)</b> 4623:8;4626:23; 4651:22 <b>control (1)</b> 4536:4 <b>controlling (1)</b> 4535:11 <b>convenience (1)</b> 4578:10 <b>conversation (1)</b> 4628:8 <b>Coopers (4)</b> 4584:3,4,9;4589:10 <b>copies (1)</b> 4543:19 <b>co-presenter (1)</b> 4593:3 <b>copy (1)</b> 4487:10 <b>corporate (2)</b> 4519:18;4573:22 <b>Corporation (2)</b> 4532:2;4576:8 <b>correction (1)</b> 4516:20 <b>correctly (4)</b>	4497:3;4501:25; 4580:5;4631:5 <b>correlation (2)</b> 4493:19;4494:13 <b>correspond (1)</b> 4644:15 <b>corresponding (1)</b> 4564:13 <b>cost (22)</b> 4489:4,6;4495:23, 23,25;4496:2;4532:24; 4535:9,11,12,14,19; 4539:15;4581:20,21; 4603:14;4607:14,15, 18,20,22;4608:6 <b>CoStar (1)</b> 4620:22 <b>costs (3)</b> 4489:5;4535:13; 4581:20 <b>Counsel (4)</b> 4599:15;4613:15; 4638:14;4660:5 <b>counties (1)</b> 4588:23 <b>countries (1)</b> 4589:18 <b>County (3)</b> 4634:13;4635:9; 4637:4 <b>couple (6)</b> 4510:24;4516:18; 4529:4;4591:22; 4639:10,18 <b>course (9)</b> 4559:10;4569:18; 4585:1,11;4593:4,5,6; 4594:6;4599:14 <b>courses (8)</b> 4509:20;4510:16; 4511:2;4584:22,23; 4592:23;4593:1; 4615:12 <b>COURT (195)</b> 4483:1,16;4484:25; 4485:1,8,17;4487:15; 4488:1,6,10,13,15; 4491:6,12;4492:13,15, 16,22;4493:3,7,13; 4496:10,25;4497:10, 17;4498:8,11,14,18; 4501:9;4502:11; 4504:8,24;4505:5,7,18; 4506:23;4507:4,12,19, 23;4510:3,5;4511:15, 18;4522:4;4524:18; 4526:19,23;4527:5; 4528:5,17,22;4529:2,9, 16;4530:2,7,11,13,14, 16,20;4531:1,4,7,8,9; 4533:5;4536:5; 4539:16;4540:24; 4541:13,17,23;4542:3,	6,9;4543:1,3,7; 4544:18,21,23; 4546:12;4550:13; 4555:8;4557:12,21; 4558:2,8,15,17,22; 4559:21;4560:13; 4561:1;4568:20,23,25; 4569:3,7,16,18,24; 4570:3,8,11,14,24,25; 4571:2,12,14,15,17,21, 25;4572:4,5,10; 4582:11;4583:3; 4585:22;4586:8,10,14, 22;4587:1;4593:9,23; 4594:3;4595:24; 4597:7,13,15,21; 4598:3,8,15,17,21,24; 4599:4,10,14,17; 4603:23,25;4609:21, 25;4613:20;4623:22; 4626:11;4628:2,11,16, 22,24;4629:8,11,15,17, 21;4630:23;4631:1,2,6, 9,21,23;4632:3,5,25; 4633:12,21;4634:1,19; 4635:17;4638:10,13; 4639:1;4646:3,5; 4648:11,16,23;4655:1, 12,17,21;4657:17; 4658:3;4659:10; 4660:22 <b>courthouse (1)</b> 4535:1 <b>courtroom (1)</b> 4485:6 <b>courts (1)</b> 4593:19 <b>Court's (1)</b> 4628:10 <b>cover (1)</b> 4499:13 <b>coverage (2)</b> 4611:25;4612:25 <b>covered (5)</b> 4486:8;4488:4; 4520:2;4521:25; 4522:3 <b>coversheet (1)</b> 4639:24 <b>CPI (2)</b> 4640:5,6 <b>create (1)</b> 4537:12 <b>created (2)</b> 4496:15;4601:15 <b>crisis (1)</b> 4589:20 <b>criteria (15)</b> 4538:12;4543:12; 4546:25;4547:15; 4548:2,5;4551:1,16,22; 4553:16;4564:3; 4567:20,21;4568:3;
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4620:13 <b>cross (10)</b> 4485:12,14;4521:21; 4522:3,5;4540:17; 4558:22;4569:14; 4659:19;4660:16 <b>CROSS-EXAMINATION (1)</b> 4485:21 <b>Crown (2)</b> 4532:13,14 <b>crux (1)</b> 4600:8 <b>currency (1)</b> 4589:20 <b>current (30)</b> 4486:14,15;4488:4; 4495:10,16,19,21; 4496:2;4498:3,4,17,21, 23;4499:1;4500:3; 4502:9,24;4503:15,22; 4505:10;4508:22; 4512:6,10,16;4517:2; 4519:22;4523:6,11,17; 4525:21 <b>currently (5)</b> 4533:25;4536:21,25; 4590:21,23 <b>Cushman (1)</b> 4640:10 <b>cut (1)</b> 4571:4 <b>cycle (7)</b> 4576:4;4582:2; 4593:4;4611:12; 4617:13,15;4652:8 <b>cycles (12)</b> 4575:12,15,17,19; 4576:14,15;4579:25; 4593:7;4611:12; 4616:10;4617:8,17	<b>dates (2)</b> 4534:20;4660:8 <b>day (5)</b> 4522:17;4572:15; 4581:2,6,6 <b>days (7)</b> 4534:10;4537:11; 4576:8,9;4601:17; 4611:23;4660:17 <b>DCF (3)</b> 4637:8;4640:19; 4654:25 <b>deal (1)</b> 4562:1 <b>dealing (2)</b> 4577:14;4609:1 <b>deals (1)</b> 4587:22 <b>debacle (1)</b> 4576:10 <b>debacles (1)</b> 4611:7 <b>debarred (1)</b> 4538:1 <b>debt (2)</b> 4611:25;4612:25 <b>December (3)</b> 4543:20;4555:22; 4556:3 <b>decided (2)</b> 4645:15;4657:7 <b>decision (1)</b> 4575:22 <b>declare (1)</b> 4599:4 <b>declined (1)</b> 4611:10 <b>deem (2)</b> 4489:20;4541:24 <b>deemed (3)</b> 4516:20,21;4521:16 <b>deep (1)</b> 4657:14 <b>defeat (1)</b> 4629:5 <b>Defendant (1)</b> 4484:22 <b>Defendants (18)</b> 4483:11;4484:13; 4540:12;4570:3,24; 4586:15,15,18,18,21; 4594:15;4596:1; 4598:21;4599:7; 4632:15,23;4633:14; 4634:6 <b>defendants' (2)</b> 4633:18,24 <b>Defendant's (10)</b> 4499:6;4545:23; 4546:13;4559:16,22; 4600:11;4630:17; 4632:13;4633:5,9 <b>defense (2)</b>	4535:25;4536:1 <b>deficiencies (1)</b> 4565:14 <b>define (1)</b> 4578:2 <b>defined (1)</b> 4522:8 <b>definitely (4)</b> 4610:21;4612:23; 4614:14;4625:2 <b>definition (8)</b> 4495:10;4496:1; 4503:22,23;4512:6,10; 4523:6;4626:14 <b>degree (7)</b> 4503:10;4531:18; 4535:15;4543:21; 4572:19;4595:17; 4599:19 <b>degrees (1)</b> 4572:18 <b>déjà (1)</b> 4610:3 <b>demand (3)</b> 4577:2;4580:15; 4612:13 <b>demographic (1)</b> 4588:21 <b>demographics (1)</b> 4588:23 <b>demonstrate (2)</b> 4549:13;4556:17 <b>demonstrated (2)</b> 4545:8;4555:4 <b>denominator (1)</b> 4625:15 <b>Denver (2)</b> 4572:21;4579:6 <b>Department (1)</b> 4537:6 <b>departure (2)</b> 4500:11;4516:22 <b>departures (5)</b> 4513:20;4527:16; 4555:7;4557:5; 4566:15 <b>dependent (3)</b> 4506:20;4507:2; 4608:13 <b>depending (1)</b> 4505:21 <b>depends (5)</b> 4489:22;4540:11; 4603:18;4605:17; 4643:24 <b>deposition (4)</b> 4511:5,8,11;4539:25 <b>depositions (3)</b> 4593:22,25;4594:4 <b>deposits (1)</b> 4519:1 <b>depth (1)</b> 4615:9	<b>describe (12)</b> 4534:23;4536:24; 4537:10;4538:18; 4545:4;4546:23; 4556:5;4576:20; 4635:14,18,20;4646:24 <b>described (4)</b> 4502:7;4503:18; 4587:20;4609:7 <b>describes (1)</b> 4548:6 <b>describing (1)</b> 4561:12 <b>description (1)</b> 4548:24 <b>design (8)</b> 4535:2;4545:9; 4549:22;4550:19; 4552:17;4562:1; 4565:21,24 <b>designated (2)</b> 4590:6;4593:15 <b>designations (1)</b> 4589:25 <b>detail (4)</b> 4491:14;4538:14; 4540:20;4637:5 <b>detailed (1)</b> 4548:23 <b>determination (3)</b> 4497:6;4512:16; 4547:18 <b>determinations (1)</b> 4523:23 <b>determinative (4)</b> 4568:16,23,24; 4569:4 <b>determine (27)</b> 4489:1,25;4490:4; 4491:18;4492:1,9,20; 4493:3,11;4494:10; 4525:8;4532:25; 4543:11;4547:1; 4552:15;4569:14; 4585:15;4601:9,21; 4606:21,24;4607:5; 4615:17;4616:18; 4619:19;4620:15; 4630:7 <b>determined (1)</b> 4568:4 <b>determining (4)</b> 4486:14;4508:21; 4606:21;4616:21 <b>develop (5)</b> 4493:15;4495:19; 4517:5;4578:12; 4634:22 <b>developed (6)</b> 4496:2;4538:11; 4550:18;4555:22; 4556:2;4593:4 <b>developer (18)</b>	4545:15;4549:8; 4550:4,10;4552:17; 4562:23,24;4563:13; 4565:20;4568:18; 4624:2,3,24;4625:10, 17,21;4626:2,3 <b>developer/respondent (1)</b> 4551:3 <b>developers (5)</b> 4563:5;4564:5; 4618:3,10,13 <b>Developers' (2)</b> 4566:7;4567:2 <b>developer's (7)</b> 4548:14;4549:8,22; 4550:25;4551:7; 4552:2,15 <b>Developing (1)</b> 4534:13 <b>development (7)</b> 4535:18,22;4545:9; 4552:19;4573:3; 4584:22;4585:3 <b>development' (1)</b> 4508:19 <b>developments (1)</b> 4509:19 <b>deviate (1)</b> 4489:12 <b>deviation (1)</b> 4513:23 <b>deviations (3)</b> 4489:23;4514:15; 4527:24 <b>dialogue (1)</b> 4550:18 <b>dictating (4)</b> 4624:25;4625:9,16, 21 <b>differ (5)</b> 4502:17;4552:10; 4618:6;4625:12,23 <b>differed (1)</b> 4502:14 <b>difference (10)</b> 4503:9,9,10;4635:8, 20,22;4636:21; 4653:20,24;4654:10 <b>different (35)</b> 4497:16;4500:18; 4502:13,13;4503:2,12; 4505:13;4507:18; 4511:3;4517:5,5; 4518:6;4523:5,6,9,10; 4527:24;4553:19; 4576:16,16,17; 4580:17;4603:9; 4608:20;4609:23; 4610:4,22;4621:5; 4624:4,18,24;4625:2; 4629:1;4634:11; 4657:15 <b>differential (1)</b>
<b>D</b>				
<b>D431 (1)</b> 4560:15 <b>D-431 (1)</b> 4558:25 <b>D-619 (2)</b> 4546:11,13 <b>damage (1)</b> 4610:17 <b>data (14)</b> 4494:21,24;4515:1; 4526:1;4588:17,21; 4597:18;4601:8,11; 4604:9;4605:1,11; 4618:17;4636:8 <b>datas (1)</b> 4620:23 <b>date (5)</b> 4508:23;4544:8; 4596:18;4616:13; 4634:24				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4650:6 <b>differently (1)</b> 4618:4 <b>differs (1)</b> 4637:20 <b>difficult (1)</b> 4518:4 <b>dig (1)</b> 4657:14 <b>dimensional (2)</b> 4588:18,18 <b>direct (23)</b> 4486:3,6;4508:5; 4509:17;4522:1,5; 4531:10;4569:12; 4572:12;4585:24; 4586:24;4628:18; 4629:8;4643:8;4644:5; 4645:19,24;4647:10; 4650:19;4651:9; 4652:22;4659:10,16 <b>directed (1)</b> 4500:13 <b>direction (1)</b> 4521:4 <b>Director (6)</b> 4534:3;4576:15; 4580:21;4584:8,11; 4585:4 <b>directors (3)</b> 4493:1;4584:11; 4591:7 <b>disagree (10)</b> 4503:7;4506:10; 4507:5;4517:4;4608:9; 4609:4;4610:10,13; 4613:25;4614:4 <b>disagreed (1)</b> 4489:14 <b>disagreement (2)</b> 4609:9;4613:12 <b>disclaimer (2)</b> 4514:7,11 <b>disclose (3)</b> 4489:18;4490:8; 4507:21 <b>disclosed (6)</b> 4489:15,17;4505:23; 4506:2,6;4523:15 <b>disclosing (2)</b> 4503:6;4517:1 <b>disclosure (18)</b> 4490:10,14;4509:1; 4510:23;4513:23; 4515:23;4516:15,16, 19,23;4520:3,22,24; 4521:5,21;4522:9; 4526:11;4627:20 <b>disclosures (17)</b> 4491:17;4510:7; 4515:19;4516:2,6,7,10; 4519:8;4520:18; 4521:7,15,23;4523:24;	4526:8;4527:19,21,24 <b>discount (16)</b> 4489:24;4490:4; 4493:2;4500:5;4577:5; 4605:8;4613:2,6; 4656:23;4657:20,21, 23,24,25;4659:1,6 <b>discounted (2)</b> 4617:14;4656:21 <b>discounting (1)</b> 4613:8 <b>discrepancies (1)</b> 4609:23 <b>discretion (3)</b> 4553:7,15;4628:10 <b>discuss (8)</b> 4556:1;4572:17; 4585:24;4610:7; 4622:7;4628:18; 4659:11,13 <b>discussed (19)</b> 4512:22;4515:23; 4518:3;4521:20; 4522:25;4525:23; 4527:8;4540:18; 4561:25;4588:15; 4616:5;4619:12; 4624:20;4636:24; 4637:11;4638:7; 4644:6;4649:21; 4655:11 <b>discussing (6)</b> 4486:2;4491:23; 4495:5;4509:11; 4587:3;4656:19 <b>discussion (3)</b> 4513:5;4519:7; 4608:5 <b>disparities (1)</b> 4595:14 <b>disparity (1)</b> 4595:3 <b>displayed (42)</b> 4507:25;4508:7; 4509:9;4510:20; 4511:25;4512:3; 4513:3,13,17;4514:1,5, 23;4515:16,20; 4517:19,23;4518:24; 4519:12;4520:10,13; 4545:24;4546:17; 4547:22;4549:1,5,18; 4550:23;4551:25; 4552:22;4553:11,21; 4554:8;4555:13,16; 4556:10,20;4559:1; 4561:6,10;4562:13; 4563:18,22 <b>dispositions (1)</b> 4579:18 <b>dispute (3)</b> 4533:18;4634:15,18 <b>disputes (1)</b>	4533:23 <b>dissertation (4)</b> 4572:24;4573:2,5,7 <b>distinct (1)</b> 4624:15 <b>distinction (2)</b> 4533:17;4630:7 <b>distinctions (2)</b> 4652:6,7 <b>distinguish (1)</b> 4597:7 <b>distributed (1)</b> 4538:11 <b>distribution (2)</b> 4623:3;4657:12 <b>divide (1)</b> 4654:9 <b>divided (2)</b> 4607:9;4654:11 <b>division (1)</b> 4533:23 <b>divorce (3)</b> 4598:6;4610:17,18 <b>doable (1)</b> 4507:16 <b>doctrine (3)</b> 4538:22,22,23 <b>document (26)</b> 4499:16;4508:14; 4509:11;4546:2; 4548:25;4553:19,23, 25;4554:3,7,7,10; 4555:18,20;4559:4,6,9, 18,20;4560:11,24; 4562:11;4565:1; 4566:15;4570:18; 4650:18 <b>documents (7)</b> 4494:23;4543:14; 4554:18;4567:15; 4632:15,19;4656:1 <b>Dodd (1)</b> 4611:17 <b>dollars (1)</b> 4535:21 <b>domain (1)</b> 4610:16 <b>Donald (7)</b> 4497:24;4508:17; 4509:15,24;4518:7; 4519:16;4527:2 <b>done (17)</b> 4492:17;4493:11; 4543:25;4569:17; 4573:21;4575:7; 4578:4;4587:20; 4589:9;4601:24; 4607:12;4609:17; 4610:19;4626:15; 4627:11;4637:8; 4644:4 <b>down (22)</b> 4489:4;4499:18;	4530:5;4532:8; 4547:10;4553:10; 4557:6;4567:14; 4570:1;4579:15; 4582:1;4612:9,14,15, 19;4620:16;4621:8; 4645:16;4657:14,22, 25,25 <b>downtown (4)</b> 4619:5,6;4640:4,12 <b>Dr (23)</b> 4572:14;4587:3; 4595:25;4596:25; 4599:18;4619:13; 4620:1,5;4622:7; 4629:22;4631:10; 4633:17;4634:9; 4639:5,16;4642:24; 4647:17;4649:5; 4650:19;4653:3; 4655:23;4656:9; 4657:20 <b>draft (1)</b> 4537:14 <b>draw (6)</b> 4508:13,15;4513:6; 4519:9;4533:17; 4645:7 <b>drawings (1)</b> 4565:25 <b>draws (1)</b> 4630:7 <b>driving (3)</b> 4504:16,24;4505:1 <b>Dubai (1)</b> 4589:24 <b>Due (2)</b> 4578:20;4648:19 <b>Dugan (1)</b> 4531:21 <b>duly (2)</b> 4530:18;4571:23 <b>during (14)</b> 4486:3;4516:5; 4532:22,23;4534:10; 4537:7;4552:18; 4559:10;4578:23; 4584:15;4585:25; 4612:1;4632:16; 4636:13 <b>dynamic (1)</b> 4618:1	4578:21;4591:7; 4601:16;4660:19 <b>earnings (11)</b> 4487:7,7;4488:18, 18,21,22;4491:24,24; 4492:5,7;4502:2 <b>Earth (1)</b> 4588:19 <b>easier (1)</b> 4642:24 <b>East (4)</b> 4484:18;4578:21; 4589:12,24 <b>Eastern (1)</b> 4573:11 <b>economic (2)</b> 4588:21;4592:7 <b>economics (12)</b> 4573:20;4575:11; 4576:19,21,23,25,25; 4587:16;4588:22; 4598:20;4599:6; 4616:1 <b>economies (3)</b> 4573:4,14,15 <b>economy (4)</b> 4581:25;4611:7; 4637:5;4652:9 <b>ECV (1)</b> 4523:24 <b>Ed (2)</b> 4592:23;4615:12 <b>Edition (4)</b> 4622:3;4637:19; 4638:3,7 <b>editor (2)</b> 4574:11,12 <b>editorial (2)</b> 4574:23,25 <b>education (1)</b> 4608:17 <b>educational (3)</b> 4572:17,19;4584:13 <b>effect (2)</b> 4514:11;4539:2 <b>efficiency (2)</b> 4545:10;4550:20 <b>efficiently (1)</b> 4578:12 <b>effort (2)</b> 4494:13;4504:11 <b>egress (2)</b> 4550:7;4562:1 <b>Eight (9)</b> 4596:16;4644:14,14, 24,25;4645:3,10,15; 4649:3 <b>Eight-point (1)</b> 4647:14 <b>either (6)</b> 4506:7;4508:19; 4530:21;4572:6; 4574:14;4623:17
				<b>E</b>
			<b>earlier (12)</b> 4515:9;4525:23; 4547:7;4559:24; 4561:12;4591:2; 4612:10;4613:17; 4616:5;4625:5; 4627:16;4639:5 <b>early (4)</b>	



NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>elected (2)</b> 4591:8;4632:15	4544:8;4596:18; 4607:2;4649:10	4600:5;4611:8,14,15; 4612:1;4614:15; 4616:25;4618:14; 4636:1;4641:18; 4650:15	4487:2,2,3;4492:10; 4519:22;4578:12; 4607:12;4612:4	<b>evidence (9)</b> 4546:11,14;4553:20; 4555:12;4559:16,22; 4560:15;4621:1; 4642:7
<b>electrical (1)</b> 4534:22	<b>engagements (1)</b> 4588:10		<b>estimating (1)</b> 4648:8	<b>Ex (1)</b> 4616:14
<b>elements (3)</b> 4523:20;4552:17; 4563:11	<b>engineer (1)</b> 4531:24	<b>ESQ (6)</b> 4483:23,24;4484:5, 6,10,19	<b>et (10)</b> 4556:2;4576:24; 4578:23;4588:24; 4592:7;4599:6,6; 4618:19;4636:20; 4637:8	<b>exact (3)</b> 4502:25;4592:15; 4619:16
<b>elevations (1)</b> 4550:6	<b>engineering (2)</b> 4531:17,19	<b>essentially (1)</b> 4498:2	<b>Europe (5)</b> 4573:11,11;4589:12, 15,22	<b>exactly (3)</b> 4485:11;4529:7; 4599:5
<b>Eli (1)</b> 4511:6	<b>England (2)</b> 4572:23;4584:16	<b>establish (5)</b> 4495:19;4498:21,22; 4500:3;4505:10	<b>European (1)</b> 4591:22	<b>examination (9)</b> 4485:12,14;4511:19; 4515:22;4528:8; 4531:10;4572:12; 4586:24;4660:16
<b>Ellis (1)</b> 4573:9	<b>Engoron (1)</b> 4485:2	<b>established (2)</b> 4538:12;4610:9	<b>evaluate (5)</b> 4490:22,23;4516:6; 4525:24;4536:2	<b>examine (1)</b> 4558:22
<b>else (7)</b> 4529:16;4530:2; 4550:16;4625:14,24; 4626:6;4642:1	<b>enhancing (1)</b> 4510:10	<b>estate (97)</b> 4487:11,18,18; 4509:19;4510:18; 4512:12,17,18,23; 4572:20;4573:20,20, 21,22,22;4574:3; 4575:7,11,12,12,13,15, 17;4576:4,19,19,21,22; 4577:2,3,4,11,17,18; 4579:13,25;4580:22; 4582:2;4584:8,12,19, 21,22;4585:2,3,14,21; 4587:16,23;4588:4,5,8, 14;4589:1;4590:21,23; 4591:1,4,11,21; 4592:10,10;4593:4,6, 15,16,17;4594:16; 4595:18;4597:3,15,23; 4598:12,14,18,19; 4601:18;4604:4; 4609:15;4611:7,11,20; 4612:10;4616:10; 4617:8,13,17;4622:3; 4627:14;4629:2; 4637:24;4640:4; 4641:12,24;4652:8,10, 11	<b>ethical (2)</b> 4537:23,25	<b>examined (2)</b> 4530:18;4571:23
<b>emerging (3)</b> 4589:14;4591:21; 4618:8	<b>enlarge (1)</b> 4647:8		<b>evaluation (25)</b> 4537:16;4538:12; 4539:12;4547:15,24; 4548:3;4551:21; 4553:4,8;4558:20; 4559:10;4560:1,5,7,10, 10;4561:16,20; 4563:24,25;4565:23; 4567:21;4568:16; 4580:3;4603:3	<b>examples (4)</b> 4497:24;4605:11; 4623:11;4634:10
<b>eminent (1)</b> 4610:16	<b>enough (5)</b> 4493:8;4561:18; 4594:14;4645:7,8		<b>evaluated (3)</b> 4565:24;4567:22; 4568:1	<b>except (1)</b> 4508:18
<b>empirical (2)</b> 4621:1;4642:7	<b>ensure (2)</b> 4522:9;4535:17		<b>even (15)</b> 4496:6;4539:2; 4569:15;4610:22; 4612:6,15;4615:12; 4617:11,15;4618:10; 4628:24;4635:15; 4652:18;4655:21; 4657:23	<b>exchange (3)</b> 4502:19;4508:10; 4528:11
<b>employ (1)</b> 4608:2	<b>entail (5)</b> 4549:11,25;4551:1; 4552:3;4562:15		<b>evaluations (1)</b> 4603:6	<b>exchanged (1)</b> 4495:6
<b>employed (4)</b> 4531:20;4543:12; 4607:4;4651:25	<b>entering (2)</b> 4530:14;4571:15		<b>event (3)</b> 4614:16,20;4660:19	<b>exchanges (1)</b> 4543:17
<b>employer (1)</b> 4531:21	<b>entire (1)</b> 4636:14		<b>events (1)</b> 4560:18	<b>excited (1)</b> 4579:16
<b>employment (3)</b> 4577:1;4587:4; 4637:5	<b>entirety (1)</b> 4510:13		<b>eventually (17)</b> 4505:15;4555:8; 4574:15;4582:17; 4584:5;4591:9; 4593:25;4601:9; 4604:10;4605:5,7,22; 4637:6,7;4640:20; 4642:6;4643:14	<b>excuse (4)</b> 4512:11;4541:16; 4566:9;4628:7
<b>empty (4)</b> 4581:18,21;4615:5; 4641:1	<b>entities (4)</b> 4519:17;4520:7,19; 4521:2		<b>everybody (3)</b> 4584:5;4598:10; 4601:22	<b>excused (2)</b> 4530:3;4569:24
<b>enables (1)</b> 4505:25	<b>entity (2)</b> 4520:21;4606:14		<b>everyone (1)</b> 4613:19	<b>execute (2)</b> 4534:5;4556:17
<b>encompassing (1)</b> 4591:16	<b>envelope (1)</b> 4555:5			<b>executed (1)</b> 4533:19
<b>encounter (1)</b> 4528:11	<b>environment (2)</b> 4535:16;4591:17			<b>executing (1)</b> 4533:20
<b>encountered (1)</b> 4634:10	<b>environmental (3)</b> 4610:17;4614:15,18			<b>execution (7)</b> 4532:22,23,23; 4537:15;4538:10; 4539:13;4545:8
<b>end (6)</b> 4506:3;4585:4; 4615:2;4656:20,21; 4659:21	<b>equal (4)</b> 4605:22;4617:25; 4621:2;4624:7	<b>estimate (18)</b> 4488:22;4490:2; 4503:5;4528:25; 4529:2,15;4601:9; 4604:12;4605:5; 4608:19;4613:10; 4622:19;4623:7; 4634:24;4641:6; 4648:5;4651:18; 4659:17		<b>exercise (1)</b> 4503:1
<b>ENDEAVOR (3)</b> 4483:9;4487:3; 4490:21	<b>equate (1)</b> 4499:1			
<b>endowed (2)</b> 4584:19,25	<b>equilibrium (1)</b> 4617:2			
<b>energy (1)</b> 4545:11	<b>equity (3)</b> 4617:20,23;4621:4			
<b>engage (1)</b> 4497:8	<b>ERIC (1)</b> 4483:24			
<b>engaged (2)</b> 4634:20;4636:3	<b>error (2)</b> 4501:11;4502:4			
<b>engagement (9)</b> 4516:24;4521:18; 4529:19,25;4543:10;	<b>errors (2)</b> 4515:9,9			
	<b>Escrow (1)</b> 4519:1			
	<b>especially (16)</b> 4574:20;4589:10; 4593:18;4597:5,19;			
		<b>estimates (8)</b>		

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>exercised (1)</b> 4507:11	4641:5,18,23;4642:6,19	4510:17;4578:22	4488:23;4489:1;	4603:4;4609:21
<b>exercising (2)</b> 4506:15;4621:24	<b>experienced (3)</b> 4608:9;4609:2;	<b>facility (1)</b> 4545:13	4490:1,3,5;4492:11,12,17,20,23;4493:4,10,21;	<b>feet (3)</b> 4581:19;4616:16,17
<b>Exhibit (77)</b> 4485:25;4505:14;	4636:6	<b>facing (1)</b> 4528:12	4494:5;4504:3,5,7,10,14,19;4505:14;	<b>fellow (4)</b> 4590:3,7,9,12
4507:25;4508:7,14;	<b>expert (40)</b> 4490:21;4496:19;	<b>fact (10)</b> 4494:10;4496:24;	4506:16,20;4507:2,9,10,15,20	<b>few (17)</b> 4501:24;4530:11;
4509:8,9;4510:20;	4497:5;4511:6,8;	4498:3;4520:8;	<b>falls (1)</b> 4511:3	4571:19;4574:21;
4511:24,25;4512:2,3;	4539:19,21,24;4540:4,6,13;4541:14,15,18,19;	4527:18;4541:5;	<b>false (2)</b> 4560:19;4633:10	4584:2;4588:11;
4513:3,7,12,13,17;	4542:1,4;4543:25;	4626:20;4636:9;	<b>familiar (16)</b> 4523:20;4547:4;	4591:8;4598:4;
4514:1,5,23;4515:15,	4560:24;4587:18;	4641:11;4642:9	4591:12;4592:17,18;	4605:11,20;4610:7;
16,20;4517:19,22,23;	4593:8,16,21,23;	<b>factor (42)</b> 4548:17,20,20;	4596:12;4600:14,16;	4619:16,21;4620:5;
4518:22,23,23,24;	4594:2;4595:22;	4549:7,11,20,25;	4610:23;4613:2;	4631:3;4639:4,9
4519:11,12,14;4520:9,	4596:4,25;4597:23;	4550:16,22;4551:9,20;	4614:12;4618:3;	<b>field (8)</b> 4531:24;4540:7,13;
10,13;4545:23,24;	4598:9,12,13,17;	4552:3,10,14;4556:12,	4622:9,10;4626:8;	4543:22;4595:18;
4546:1,11,13,16,17;	4599:4,20;4609:15,20,	15,16,23;4558:15,16,	4634:12	4609:19;4618:1;
4547:22;4549:1,5,18;	22;4627:24;4636:3	18;4561:23,24,24,25;	<b>family (1)</b> 4573:10	4637:16
4550:23;4551:25;	<b>expertise (14)</b> 4545:6;4548:11;	4565:2,3,3,9,10,17,20;	<b>Fannin (1)</b> 4572:8	<b>Fields (55)</b> 4571:1;4572:10,11,
4552:22;4553:11,19,	4557:17,19;4561:21;	4566:7,12,24,25;	<b>fantastic (1)</b> 4570:21	13;4575:24;4576:2;
21;4554:8;4555:13,16,	4562:5;4595:9;4599:8;	4567:2;4568:23;	<b>far (16)</b> 4537:20;4557:15;	4586:25;4595:23;
21;4556:10,20;	4600:8;4627:14,16;	4569:2;4617:5,7;	4567:25,25;4568:8,11,	4596:24;4597:11,14;
4558:24,25;4559:1,3,	4636:3;4637:21;	4637:6	14;4576:23,25;	4598:22;4599:9,12,16;
16,22;4561:6,10;	4650:16	<b>factored (1)</b> 4548:15	4580:15;4605:1;	4603:24;4604:3;
4562:13;4563:18,22;	<b>experts (3)</b> 4529:5;4610:3;	<b>factors (14)</b> 4541:8;4547:24;	4617:19;4618:16;	4610:5;4613:21;
4622:1,2,5;4637:18;	4660:7	4548:3,9,13,19,24;	4623:6;4633:17;	4620:1;4621:9;
4639:23;4642:23;	<b>explain (9)</b> 4557:12;4559:25;	4550:7;4562:3;	4642:16	4627:25;4628:3;
4647:7	4562:19,22;4565:6,8;	4568:16;4608:21;	<b>FARINA (2)</b> 4586:17,18	4629:9,13,16,18;
<b>exhibits (4)</b> 4595:6,8,10,10	4566:11;4636:21;	4612:10;4616:21;	<b>farm (1)</b> 4614:18	4633:3;4638:11;
<b>exist (2)</b> 4547:9;4574:10	4657:9	4625:5	<b>fascinating (1)</b> 4617:24	4639:3,12;4642:22;
<b>expand (2)</b> 4582:2;4599:5	<b>explanation (1)</b> 4588:16	<b>facts (1)</b> 4634:18	<b>fashion (1)</b> 4493:22	4644:23;4645:16;
<b>expanded (2)</b> 4548:5;4589:11	<b>exposure (1)</b> 4534:20	<b>factual (4)</b> 4490:25;4557:15,16,18	<b>fast (2)</b> 4607:23;4627:4	4646:11;4647:6,15;
<b>expansion (1)</b> 4575:21	<b>expressed (1)</b> 4566:14	<b>FAHERTY (21)</b> 4483:23;4539:8;	<b>fast (2)</b> 4607:23;4627:4	4648:1,24;4649:3,13;
<b>expansive (1)</b> 4568:8	<b>expression (2)</b> 4504:10;4606:4	4540:15;4544:17,20;	<b>farm (1)</b> 4614:18	4650:17;4651:2,7;
<b>expect (4)</b> 4554:11;4629:9,12;	<b>expressly (1)</b> 4539:3	4550:11;4557:11,13,	<b>fascinating (1)</b> 4617:24	4652:20;4653:1;
4660:7	<b>extends (1)</b> 4575:4	23;4558:5;4559:17;	<b>fast (2)</b> 4607:23;4627:4	4655:2;4656:3,7;
<b>expectations (1)</b> 4640:4	<b>extent (10)</b> 4502:7;4508:18;	4560:21;4568:19,21,	<b>faster (1)</b> 4610:2	4657:19;4659:9,15,17;
<b>expected (1)</b> 4490:1	4526:15;4527:15;	24;4569:1,4,13,19,21;	<b>FDIC (2)</b> 4560:8;4611:18	4660:15,21
<b>expenses (5)</b> 4519:2;4605:14,17,	4551:7	4576:1	<b>Fed (1)</b> 4616:14	<b>fifty (1)</b> 4596:16
18,22	<b>external (1)</b> 4580:1	<b>fair (36)</b> 4487:8;4488:19,20,	<b>federal (25)</b> 4534:20;4535:17;	<b>figure (7)</b> 4492:7;4624:6;
<b>experience (40)</b> 4534:23;4538:4,4;	<b>extra (2)</b> 4605:15;4639:4	23,24;4489:3,21;	4536:3,4,11,13,14,15,	4647:13;4648:4;
4545:8;4549:8,13,14;	<b>extreme (1)</b> 4635:15	4496:2;4497:21,25;	16,19;4537:1,3;4538:1,	4652:24;4655:4,4
4554:16;4563:4,9;	<b>extremely (1)</b> 4636:6	4502:15;4506:13,14;	24;4539:4,6,9,12;	<b>figures (4)</b> 4632:23;4635:15,21;
4565:10,11;4566:17;		4580:6;4582:14;	4547:8,8,11;4568:6;	4654:18
4568:15;4597:20,22;		4590:16,20;4594:14;	4611:2,3,18	<b>filed (2)</b> 4570:14,15
4598:7;4604:5;		4595:12;4599:21,22;	<b>fee (4)</b> 4535:10,12,13,14	<b>files (1)</b> 4522:24
4606:10;4607:12;		4601:25;4608:7,8;	<b>feed (1)</b> 4493:25	<b>filter (1)</b> 4620:14
4610:16;4611:23;		4621:23;4622:14,15;	<b>feedback (1)</b> 4574:9	<b>filtered (2)</b> 4604:10;4620:16
4613:11,23;4614:3,12;		4645:8;4648:7;	<b>feel (2)</b>	<b>finally (1)</b> 4611:14
4615:20;4618:12,25;		4651:20,21;4653:23;		<b>finance (4)</b> 4552:15;4574:4;
4620:21;4621:15;		4655:23		4616:1;4649:7
4629:1;4634:10;		<b>fairly (4)</b> 4554:13,17;4595:11;		<b>financial (87)</b> 4489:20;4490:7,19;
4637:21;4638:2;		4654:22		
	<b>F</b>	<b>faith (28)</b>		
	<b>facilities (2)</b>			

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4491:16;4492:10; 4494:1,16;4495:12; 4502:9;4505:19,22,24; 4506:4;4507:8; 4508:12,16,21; 4509:14,21;4510:11, 12,14;4513:11,21,25; 4514:8,12,19,21; 4516:3,11;4517:9,11, 16,17,22;4518:5,5,7,8, 15,19,22;4519:9,25; 4520:2,6,17;4521:1,6; 4522:11;4524:1,5,13; 4526:2;4527:2,22; 4528:1;4534:15; 4538:6;4541:5; 4545:14;4548:14; 4550:25;4551:9,12,13, 15;4552:2,3,5,7; 4554:24;4555:2,5; 4556:17;4557:4; 4563:10,12;4566:8,16, 18;4567:2,3,9;4595:4; 4600:7 <b>financially (1)</b> 4538:10 <b>financials (3)</b> 4503:6;4509:2; 4551:4 <b>financiers (1)</b> 4551:7 <b>find (6)</b> 4492:25;4557:25; 4623:9;4630:10,12; 4643:23 <b>fine (4)</b> 4530:12;4542:2; 4604:19;4628:11 <b>finish (4)</b> 4581:22;4629:11,12; 4660:18 <b>finished (1)</b> 4578:16 <b>fire (1)</b> 4585:20 <b>fired (1)</b> 4572:2 <b>firm (13)</b> 4497:20;4516:9; 4528:21;4529:4,21; 4535:5,8;4579:11; 4587:11,12,25;4588:3; 4596:5 <b>firms (4)</b> 4610:20;4617:23; 4618:9,25 <b>first (25)</b> 4502:24;4509:13; 4520:3;4530:18; 4531:21;4534:20; 4535:18;4537:21; 4547:3;4549:7,11; 4563:20;4571:23;	4577:14;4585:12; 4591:22,23;4593:4; 4595:25;4606:24; 4624:6;4645:18; 4649:5;4651:23; 4652:15 <b>Fisher (1)</b> 4572:2 <b>fit (1)</b> 4553:16 <b>five (15)</b> 4509:18;4510:22; 4539:16;4576:17,18; 4578:10;4580:16; 4582:11;4584:21; 4593:12,14;4598:10; 4605:7;4655:1;4659:1 <b>five-minute (2)</b> 4626:11;4628:9 <b>fixed (2)</b> 4535:5,8 <b>flags (4)</b> 4522:17,20;4527:8, 10 <b>flat (2)</b> 4641:21,22 <b>flawed (2)</b> 4632:6,7 <b>Flemmons (12)</b> 4485:15,23;4486:2; 4497:21;4506:19; 4508:3;4511:5,21; 4512:5;4525:6; 4528:10;4529:18 <b>flex (1)</b> 4591:25 <b>flip (3)</b> 4510:19;4606:23; 4648:1 <b>flow (8)</b> 4603:5;4611:2,4,4; 4613:2,6;4617:14; 4656:21 <b>flowed (2)</b> 4491:16;4611:20 <b>flows (7)</b> 4573:13;4605:3,3; 4611:10;4613:9; 4652:12;4656:20 <b>fluctuates (1)</b> 4540:9 <b>flying (1)</b> 4584:16 <b>focus (9)</b> 4486:10;4517:18,25; 4581:22;4591:4; 4632:11,22;4633:4; 4634:9 <b>focused (6)</b> 4558:14;4561:23; 4584:25;4585:1; 4594:25;4595:12 <b>focusing (1)</b>	4632:10 <b>folks (1)</b> 4610:10 <b>follow (4)</b> 4516:13;4546:20; 4547:17;4600:23 <b>following (8)</b> 4486:17;4506:22; 4521:9;4542:8;4583:2; 4623:21;4640:13; 4658:2 <b>follows (4)</b> 4530:19;4571:24; 4660:10,11 <b>follow-up (4)</b> 4488:9;4529:17; 4575:2;4603:4 <b>font (1)</b> 4554:15 <b>foot (1)</b> 4607:17 <b>footnote (1)</b> 4510:12 <b>forecast (12)</b> 4576:18;4585:21; 4588:23;4592:6,8,11; 4605:7;4620:23; 4640:12,20,21;4643:17 <b>forecasting (4)</b> 4576:5;4613:7; 4616:10;4641:18 <b>forecasts (4)</b> 4579:25;4580:15; 4582:9;4637:8 <b>foreign (1)</b> 4582:25 <b>form (7)</b> 4496:14;4523:22; 4538:25;4543:21; 4554:10;4595:17; 4630:16 <b>formally (1)</b> 4589:2 <b>formed (2)</b> 4569:6,6 <b>former (3)</b> 4573:12;4579:6; 4637:23 <b>formula (1)</b> 4607:8 <b>forsake (1)</b> 4604:18 <b>Fort (1)</b> 4584:20 <b>forth (7)</b> 4543:12;4546:21,25; 4547:16;4553:3; 4567:20;4600:24 <b>forward (4)</b> 4607:23;4627:4; 4628:7;4642:22 <b>found (6)</b> 4527:19;4582:4;	4613:12;4615:20; 4630:15;4636:12 <b>foundation (3)</b> 4557:18;4558:6; 4633:23 <b>foundationally (1)</b> 4534:10 <b>four (30)</b> 4513:5;4518:21,23; 4536:25,25;4552:13; 4560:6,7;4564:11,14; 4566:25;4567:2; 4575:19;4578:6,21; 4596:11;4598:9,15; 4625:16,21;4626:2,3; 4641:14;4651:14,19; 4654:6,11;4657:10,24; 4659:2 <b>fourth (2)</b> 4499:19;4639:23 <b>framework (2)</b> 4523:20;4524:10 <b>Frank (1)</b> 4611:17 <b>fraud (13)</b> 4492:24;4523:16,19, 20,20;4524:3,4,5,10, 11,12,13;4528:12 <b>free (3)</b> 4603:4;4652:23; 4653:18 <b>frequency (1)</b> 4592:3 <b>fresh (1)</b> 4628:13 <b>Friday (2)</b> 4660:16,23 <b>front (3)</b> 4638:10;4642:25; 4656:1 <b>full (3)</b> 4509:15;4539:2; 4553:15 <b>fully (1)</b> 4543:12 <b>function (1)</b> 4567:12 <b>fund (1)</b> 4576:11 <b>funding (1)</b> 4552:16 <b>funds (11)</b> 4519:18,18,23; 4579:18;4601:19; 4611:3,4,4;4617:21,23; 4621:6 <b>funeral (1)</b> 4615:14 <b>funnel (2)</b> 4581:24;4582:15 <b>further (6)</b> 4511:14;4515:10; 4528:3;4553:10;	4569:12;4585:19 <b>future (2)</b> 4613:8;4640:21 <hr/> <b>G</b> <hr/> <b>GAAP (16)</b> 4500:11;4506:1; 4513:20,23;4514:15; 4516:22;4518:19; 4527:16,24;4551:17, 19;4555:6,7,9;4557:5; 4566:15 <b>Gabra (2)</b> 4570:6;4586:19 <b>game (3)</b> 4508:2;4571:6,9 <b>gap (1)</b> 4570:4 <b>gaps (3)</b> 4555:6,6,9 <b>gas (1)</b> 4578:22 <b>gave (1)</b> 4585:6 <b>GDP (2)</b> 4577:1;4592:7 <b>gears (1)</b> 4622:7 <b>GENERAL (14)</b> 4483:3,20;4504:15; 4528:20;4545:2,19; 4563:2;4575:17; 4580:14;4587:16; 4600:2;4607:21; 4632:17;4643:22 <b>generally (36)</b> 4518:9;4540:9,22; 4545:4,6;4549:12; 4565:6,8,19;4568:3; 4573:18,22;4579:22; 4590:17,25;4593:13; 4600:14;4603:9,21,23; 4604:15;4606:3; 4610:25;4616:6; 4618:12;4619:14; 4629:24;4630:5; 4635:1;4643:23; 4644:2,3,4;4645:9; 4649:24;4657:21 <b>General's (3)</b> 4594:20;4630:17; 4631:19 <b>generating (1)</b> 4534:6 <b>Geographic (1)</b> 4577:24 <b>geography (1)</b> 4510:6 <b>gets (2)</b> 4535:10;4645:6 <b>GIS (5)</b> 4577:24;4588:13,15,
---	--	---	---	--

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

16,21 <b>Giulietti (4)</b> 4659:23,24;4660:1, 10 <b>given (7)</b> 4510:6;4548:4; 4551:21;4555:24,25; 4626:17;4628:25 <b>gives (1)</b> 4628:8 <b>giving (1)</b> 4626:16 <b>glad (1)</b> 4539:16 <b>global (4)</b> 4584:10,11,12; 4590:4 <b>globe (1)</b> 4589:9 <b>goes (13)</b> 4501:23;4573:8; 4575:17;4605:13; 4606:8,9;4608:19; 4614:18;4637:5; 4657:22,23,24,25 <b>going-in (2)</b> 4645:19;4651:10 <b>gold (3)</b> 4578:23;4637:15; 4638:2 <b>golf (6)</b> 4508:22;4509:20,25; 4510:8,16;4511:2 <b>Good (41)</b> 4485:23,24;4488:22; 4489:1,12;4490:1,3,5; 4492:11,12,17,20,23; 4493:4,10,21;4494:5; 4504:3,5,7,10,14,19; 4505:14;4506:16,20; 4507:2,9,14,20; 4511:21,22;4572:14, 15,16;4586:17; 4612:20;4621:13,16; 4643:7;4660:22 <b>Google (2)</b> 4588:19,19 <b>govern (2)</b> 4536:4;4539:13 <b>government (34)</b> 4534:8,9,19;4535:6, 13,25;4536:4,17,22; 4537:1,2,21;4538:16; 4540:7,10,14,17,19,21; 4541:15,19,21,22,22, 25;4545:14;4552:4,8,9, 13,16;4562:19,20; 4563:10 <b>government's (1)</b> 4536:9 <b>governs (1)</b> 4536:18 <b>gracious (1)</b>	4629:5 <b>grandfather (1)</b> 4573:10 <b>grant (2)</b> 4570:8;4585:5 <b>Granted (2)</b> 4546:12;4635:17 <b>graph (1)</b> 4652:10 <b>gratifying (1)</b> 4617:10 <b>Great (13)</b> 4531:8;4542:6; 4561:4;4586:23; 4591:5;4599:10; 4611:9,15;4619:9; 4624:12;4636:14; 4642:17;4660:6 <b>greater (1)</b> 4548:21 <b>GREENFIELD (7)</b> 4570:17,22;4659:15, 19,22;4660:1,18 <b>grew (2)</b> 4573:8,10 <b>gross (3)</b> 4520:20;4567:11,12 <b>ground (1)</b> 4568:20 <b>Group (21)</b> 4533:3,4;4579:6,12, 19,19;4580:6,12,22,24; 4581:12;4582:17; 4584:12;4588:4,6,8,9; 4590:5;4591:5;4592:4; 4640:12 <b>groups (5)</b> 4580:7,12;4588:24; 4615:24,25 <b>grow (2)</b> 4576:24;4641:2 <b>growth (18)</b> 4577:1,1,1;4592:7; 4612:4,8;4618:19; 4625:4,5,10,11;4640:2, 15,17;4641:10,22,25; 4642:11 <b>growths (2)</b> 4640:13;4654:23 <b>GSA (33)</b> 4543:11;4545:6,18; 4546:20;4548:3,11; 4549:13;4550:4,9,16; 4551:3;4552:25; 4553:3,14;4556:1,3,22, 25;4557:3,10,13,21,23; 4558:12,17,19;4560:6, 8;4566:9,14;4567:5, 19;4568:7 <b>GSA's (8)</b> 4541:3;4547:17; 4555:23;4557:2; 4559:7;4560:2;4566:1;	4567:16 <b>guess (4)</b> 4487:19;4502:21; 4503:9;4528:6 <b>guesstimate (1)</b> 4596:17 <b>guidance (13)</b> 4486:2,19;4488:4; 4499:10;4513:1,19,22; 4514:7,10,14,16; 4518:17;4567:23 <b>guide (1)</b> 4499:11 <b>guidelines (1)</b> 4535:18 <b>guy's (1)</b> 4628:25 <b>H</b> <b>HABBA (8)</b> 4527:3;4570:4,10, 12,15,19,23;4586:21 <b>habit (1)</b> 4642:2 <b>hac (2)</b> 4570:6;4586:20 <b>half (3)</b> 4555:25;4597:24; 4659:1 <b>hand (2)</b> 4530:16;4571:21 <b>handed (3)</b> 4546:1;4555:21; 4559:3 <b>Handing (4)</b> 4486:4;4620:8; 4639:14;4649:1 <b>handling (1)</b> 4529:14 <b>happen (5)</b> 4495:17;4506:1; 4619:4,10;4641:17 <b>happened (1)</b> 4582:8 <b>happens (3)</b> 4485:8;4501:10; 4641:16 <b>hard (5)</b> 4487:10;4529:3,7, 11;4543:19 <b>HAREN (1)</b> 4483:24 <b>harm (1)</b> 4610:2 <b>hate (1)</b> 4617:8 <b>head (2)</b> 4620:6;4632:25 <b>heading (3)</b> 4647:10;4650:20,24 <b>hear (13)</b> 4493:14;4555:8;	4561:1;4600:18; 4601:10,14,23;4615:9; 4621:22;4622:12,13; 4629:2;4631:3 <b>heard (17)</b> 4497:3;4554:22; 4557:15;4558:6; 4592:16;4597:21; 4601:2;4604:13; 4605:24,25;4606:2; 4618:21;4622:15,17; 4624:12;4627:23; 4634:3 <b>hearsay (2)</b> 4559:19;4560:25 <b>hedge (2)</b> 4519:18,22 <b>held (7)</b> 4519:16;4520:19; 4585:18;4589:25; 4590:1;4625:24; 4626:6 <b>help (7)</b> 4499:14;4535:17; 4598:10;4601:21; 4619:18;4620:3; 4634:21 <b>helped (5)</b> 4578:24;4579:12; 4589:15;4591:20,25 <b>helping (2)</b> 4538:9;4588:12 <b>hereby (2)</b> 4541:24;4599:4 <b>HERNANDEZ (47)</b> 4531:6,8,11; 4539:18;4540:12; 4541:2;4542:2,4; 4543:7,8;4544:22; 4545:22;4546:10,15; 4547:20;4549:3,17; 4550:14;4551:24; 4552:20;4553:9,18; 4554:6;4555:10,15; 4556:8,18;4557:18; 4558:4,14,16,24; 4559:15,23;4560:22; 4561:4,8;4562:10; 4563:16,20;4565:2,18; 4566:25;4567:14; 4569:10,12,17 <b>hey (1)</b> 4612:13 <b>high (5)</b> 4496:23;4505:21; 4616:20;4644:18; 4651:4 <b>higher (7)</b> 4496:24;4505:24; 4630:14;4646:19; 4652:1,18;4654:4 <b>highest (10)</b> 4514:18;4523:12,13,	16,17,24;4646:13,17, 20;4652:1 <b>highlight (1)</b> 4514:3 <b>highlighted (1)</b> 4656:25 <b>highly (3)</b> 4496:21;4504:20; 4642:21 <b>highway (1)</b> 4537:3 <b>Hill (1)</b> 4530:24 <b>hints (1)</b> 4612:15 <b>hired (3)</b> 4585:10;4634:22,23 <b>historical (17)</b> 4489:4,5,6;4492:5; 4495:22,23,25;4496:1; 4545:7,10;4549:16; 4550:7;4562:2;4563:9; 4565:12;4576:17; 4612:8 <b>historically (1)</b> 4607:16 <b>history (3)</b> 4588:23;4616:24; 4620:23 <b>hold (1)</b> 4591:6 <b>holding (4)</b> 4585:18;4625:14; 4657:23;4658:1 <b>holiday (1)</b> 4660:4 <b>home (3)</b> 4530:21,24;4572:6 <b>homes (2)</b> 4578:7;4615:14 <b>honest (1)</b> 4524:8 <b>Hong (1)</b> 4589:21 <b>Honor (74)</b> 4485:13,20;4487:9, 12;4488:12;4493:9; 4497:15;4498:9; 4505:4;4511:14; 4525:14;4528:3,7,14; 4529:4;4530:4,9; 4536:8;4540:12,15; 4541:2,16;4543:8; 4546:10;4550:11; 4558:1;4559:15,17,23; 4560:21;4568:24; 4569:10,14,19,23; 4570:5,7;4572:1,11; 4575:24;4586:17,25; 4595:20;4596:24; 4597:2,11,25;4598:4, 22;4599:3,9,11,16; 4603:24;4609:13;
---	--	--	---	--

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4610:6;4613:21; 4627:16,25;4628:8,8, 14;4629:6,7,9;4631:4, 20;4633:3,22;4639:3; 4648:15;4655:2,16; 4659:9	4575:22;4581:19; 4606:12;4617:2; 4632:12	<b>inception (1)</b> 4529:25	<b>indicia (7)</b> 4492:23;4494:4; 4523:16;4524:3,5,11, 12	<b>inquisitive (2)</b> 4650:8,14
<b>Honorable (1)</b> 4485:2	<b>identifying (2)</b> 4568:9;4605:4	<b>include (10)</b> 4486:17;4490:18; 4514:17;4520:7,18; 4536:20;4554:16; 4576:4;4594:8; 4637:18	<b>indirectly (1)</b> 4611:20	<b>insofar (1)</b> 4487:1
<b>hope (2)</b> 4610:2;4617:19	<b>illustrations (2)</b> 4550:5,21	<b>included (13)</b> 4492:8;4509:20; 4510:24;4519:17; 4522:11,24;4523:25; 4526:8;4539:3;4592:5; 4623:11;4637:11; 4656:10	<b>individual (7)</b> 4497:7,7;4506:16; 4580:25;4582:10,18; 4615:16	<b>instance (7)</b> 4537:13,22;4538:21; 4539:15;4540:3; 4561:18;4635:8
<b>hoping (1)</b> 4570:7	<b>illustrative (5)</b> 4513:1,19,22; 4514:7,10	<b>includes (2)</b> 4521:1;4536:19	<b>individually (1)</b> 4529:22	<b>instances (2)</b> 4493:16;4494:3
<b>horse (1)</b> 4595:21	<b>immediately (1)</b> 4585:10	<b>including (7)</b> 4516:22;4534:18; 4543:17;4550:6; 4565:11;4588:13; 4592:9	<b>individuals (2)</b> 4592:5;4618:9	<b>Institute (21)</b> 4589:13;4590:3,4,6, 9,12;4591:12,13,15; 4592:17,18,19,20,25; 4593:2;4600:25; 4617:9;4622:4; 4623:10;4637:18,19
<b>hospitality (1)</b> 4563:6	<b>immigrant (1)</b> 4573:9	<b>inclusion (2)</b> 4519:24;4520:1	<b>industrial (3)</b> 4578:19,22;4616:14	<b>Institute's (2)</b> 4638:2,7
<b>hotel (1)</b> 4567:7	<b>impacted (1)</b> 4611:19	<b>inclusive (1)</b> 4544:9	<b>industry (8)</b> 4577:13,20;4590:5; 4591:3,16;4592:15,21; 4604:4	<b>institutional (3)</b> 4576:12;4583:1; 4601:20
<b>hotels (2)</b> 4563:7;4574:17	<b>impinge (1)</b> 4628:10	<b>income (29)</b> 4577:1;4603:13; 4604:6,23,23,25; 4605:6,10,12,23; 4606:7;4607:6,6,8,9; 4608:2;4617:4,5; 4623:4;4625:6,6; 4640:21;4644:9,12; 4647:11,13;4653:13, 18,25	<b>inflated (5)</b> 4631:13;4632:8,17; 4633:10,10	<b>intends (1)</b> 4546:20
<b>hour (4)</b> 4529:19;4544:6; 4555:25;4596:11	<b>Implemmentation (1)</b> 4488:3	<b>incomes (1)</b> 4654:11	<b>information (33)</b> 4486:16,20,25; 4489:13;4490:18,25; 4491:1;4493:18,19,23, 24;4494:1,8;4514:19; 4517:7,12;4518:18; 4543:17;4551:6,6; 4552:3;4553:16; 4561:19;4564:7; 4567:3;4577:24; 4580:13,15;4590:17; 4592:8;4603:20; 4621:19;4645:7	<b>insufficiency (1)</b> 4521:15
<b>hourly (2)</b> 4596:7,12	<b>implies (1)</b> 4644:21	<b>inconsistent (1)</b> 4521:8	<b>informative (2)</b> 4490:11,15	<b>integrate (1)</b> 4588:21
<b>hours (6)</b> 4529:24;4544:7,13; 4596:17;4659:20; 4660:16	<b>imply (3)</b> 4601:24;4621:13; 4640:24	<b>incorporate (1)</b> 4550:7	<b>informed (1)</b> 4495:7	<b>intended (6)</b> 4487:5;4505:21; 4514:11;4547:17; 4550:5,8
<b>housekeeping (1)</b> 4570:5	<b>importance (1)</b> 4548:21	<b>incorporation (1)</b> 4550:20	<b>infrastructure (1)</b> 4534:22	<b>intends (1)</b> 4546:20
<b>housing (3)</b> 4574:18,20;4577:15	<b>important (4)</b> 4505:22;4535:12; 4538:22;4655:21	<b>indeed (1)</b> 4626:24	<b>inherent (2)</b> 4645:21;4651:11	<b>intent (2)</b> 4524:10;4550:19
<b>Houston (1)</b> 4572:8	<b>importantly (1)</b> 4581:22	<b>independent (4)</b> 4495:24;4503:14,17; 4588:1	<b>inherently (2)</b> 4487:2;4507:20	<b>intentional (2)</b> 4524:8,11
<b>huge (2)</b> 4611:18,22	<b>impose (2)</b> 4503:17,23	<b>index (1)</b> 4640:6	<b>initial (8)</b> 4567:5;4619:15,16; 4623:11;4636:1; 4650:8,13;4652:11	<b>interest (1)</b> 4612:22
<b>huh (2)</b> 4620:4;4650:10	<b>improper (4)</b> 4496:3,17;4498:10; 4504:23	<b>indicate (4)</b> 4526:5;4552:24; 4554:24;4609:10	<b>informative (2)</b> 4490:11,15	<b>interested (1)</b> 4497:18
<b>hundred (5)</b> 4564:10,10,11; 4596:11,16	<b>improve (2)</b> 4574:10,14	<b>indicates (1)</b> 4520:25	<b>informed (1)</b> 4495:7	<b>Interesting (1)</b> 4507:4
<b>hundreds (1)</b> 4535:20	<b>Improvement (1)</b> 4581:20	<b>indicating (2)</b> 4526:8;4553:13	<b>infrastructure (1)</b> 4534:22	<b>internal (2)</b> 4579:25;4601:21
<b>hypothetical (5)</b> 4496:4,18;4497:9; 4498:15;4501:19	<b>improvements (1)</b> 4605:19		<b>inherent (2)</b> 4487:2;4507:20	<b>internally (3)</b> 4580:3;4616:2; 4623:17
<b>I</b>	<b>improving (3)</b> 4648:12,18,22		<b>initial (8)</b> 4567:5;4619:15,16; 4623:11;4636:1; 4650:8,13;4652:11	<b>international (2)</b> 4582:19;4591:3
<b>idea (1)</b> 4629:8	<b>inaccurate (3)</b> 4600:12;4609:11; 4633:10		<b>initially (2)</b> 4604:8;4605:2	<b>interpret (2)</b> 4553:15;4618:16
<b>Identical (1)</b> 4522:15	<b>inadequacy (1)</b> 4521:15		<b>initiate (1)</b> 4515:10	<b>interrupted (1)</b> 4487:22
<b>identified (7)</b> 4517:15;4522:17; 4581:21;4606:12; 4619:1,20;4632:15	<b>inappropriate (17)</b> 4498:25;4499:2,23, 25;4500:6,10,16,22,25; 4501:4;4502:3;4525:4, 10,22;4526:6,10,13		<b>input (2)</b> 4560:10;4565:23	<b>interruption (2)</b> 4638:10;4639:1
<b>identifies (1)</b> 4644:18	<b>Inaugural (1)</b> 4577:10		<b>inputs (2)</b> 4500:22;4580:2	<b>interview (1)</b> 4607:21
<b>identify (9)</b> 4513:19;4526:11; 4537:12;4572:18;	<b>inbound (1)</b> 4578:19		<b>inquire (3)</b> 4650:9,11;4660:15	<b>interviewed (1)</b> 4590:9
	<b>INC (1)</b> 4483:8		<b>inquiries (4)</b> 4515:10;4521:11; 4522:12,13	<b>into (48)</b> 4490:19;4491:16; 4493:25;4496:4,8; 4520:15;4532:17;

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4533:13;4536:6; 4543:5;4546:11; 4547:10;4548:23; 4559:16;4560:10; 4573:14;4578:15; 4580:2;4584:13; 4586:12;4590:12; 4591:20;4597:18; 4601:7,7,12;4605:12, 15;4606:8,9,20; 4608:19;4609:16,25; 4612:11;4616:21; 4617:5,7;4625:2; 4629:19;4631:6; 4636:10,18;4637:2,6; 4648:12,17;4654:25 <b>in-transit (1)</b> 4519:20 <b>invested (3)</b> 4624:9,18;4637:20 <b>investing (3)</b> 4577:6;4645:21; 4651:12 <b>Investment (34)</b> 4574:4;4579:20; 4580:20;4585:15; 4587:17;4622:8; 4623:8,9,12;4624:4,15, 21,23;4625:12,23; 4626:5,9,13,15,19,20; 4627:7,10,20;4629:24; 4630:8,13;4631:18; 4632:9;4633:18; 4634:6;4637:10; 4638:6;4646:9 <b>investments (2)</b> 4573:3;4580:9 <b>investor (13)</b> 4606:13;4617:17; 4623:12,15,16,20; 4624:1,11,23;4625:10, 17,21;4626:18 <b>investors (5)</b> 4576:12;4582:25; 4583:1;4618:13; 4621:2 <b>investor's (1)</b> 4624:7 <b>invited (2)</b> 4590:2,11 <b>involve (2)</b> 4538:3;4541:20 <b>involved (12)</b> 4529:12;4533:21; 4534:11;4535:11,18; 4565:10;4580:9,22; 4588:25;4593:19; 4614:13;4634:15 <b>involvement (1)</b> 4581:15 <b>involves (3)</b> 4537:3,4;4538:22 <b>involving (2)</b>	4486:12;4537:5 <b>Iraq (3)</b> 4534:22;4535:20; 4537:22 <b>IRR (2)</b> 4656:22;4657:20 <b>Irv (5)</b> 4606:6,6,6;4625:15, 16 <b>I-R-V (1)</b> 4625:16 <b>Island (1)</b> 4573:10 <b>issue (9)</b> 4495:12;4516:23; 4521:17;4522:4; 4526:24;4528:2; 4535:9;4537:15; 4538:2 <b>issued (5)</b> 4519:20;4526:4,17; 4527:3,4 <b>issuer (3)</b> 4497:19,23;4525:16 <b>issuers (1)</b> 4528:11 <b>issues (7)</b> 4515:11;4527:17; 4559:19;4561:25; 4566:22;4587:23; 4597:5 <b>issuing (5)</b> 4496:13;4497:23; 4527:23;4534:16,17 <b>item (2)</b> 4489:24;4495:6 <b>items (2)</b> 4486:18,23 <b>IVANKA (1)</b> 4483:7 <b>J</b>	4573:25;4574:2; 4575:1 <b>JPM (3)</b> 4578:24;4579:1,9 <b>Judge (3)</b> 4485:2;4571:12; 4599:20 <b>judgment (7)</b> 4506:12,15;4507:7; 4517:13;4621:24; 4622:4;4657:11 <b>judgments (4)</b> 4496:9;4506:20; 4507:2;4518:14 <b>July (2)</b> 4554:5;4581:4 <b>June (5)</b> 4519:20;4649:6,18; 4650:2;4653:16 <b>jury (2)</b> 4610:1;4628:25 <b>Justice (1)</b> 4483:16 <b>K</b>	<b>L</b> <b>lack (4)</b> 4566:15;4631:17; 4633:23;4656:25 <b>Ladder (1)</b> 4649:7 <b>laid (1)</b> 4501:25 <b>land (5)</b> 4585:5;4589:13; 4591:12,13,15 <b>language (10)</b> 4490:11;4509:12,23; 4514:8,11,13,17; 4516:21;4518:16; 4521:14 <b>Laposa (25)</b> 4572:7,14;4587:3, 13,14;4595:25; 4596:25;4599:18; 4619:13;4620:5; 4622:7;4629:22; 4631:10;4633:17; 4634:9;4639:5,16; 4642:24;4647:17; 4649:5;4650:19; 4653:3;4655:23; 4656:9;4657:20 <b>Laposa's (1)</b> 4620:1 <b>Laptops (1)</b> 4485:3 <b>large (3)</b> 4535:14;4563:7; 4628:1 <b>largest (1)</b> 4591:16 <b>Lasalle (3)</b> 4580:19,19;4601:17 <b>last (11)</b> 4520:15;4525:15; 4540:24;4560:14; 4566:24;4570:16; 4592:16;4630:23; 4631:3;4645:17; 4651:8 <b>late (3)</b> 4574:19;4576:10,10 <b>later (3)</b> 4584:2;4593:23; 4660:2 <b>Latin (1)</b> 4589:12 <b>latitude (1)</b> 4505:20 <b>latter (1)</b> 4597:10 <b>LAW (3)</b> 4484:17;4589:5; 4611:17 <b>lawyer (1)</b>	4523:19 <b>laying (1)</b> 4557:18 <b>laypeople (1)</b> 4604:20 <b>lead (6)</b> 4495:20;4503:3; 4505:12;4521:13,17; 4610:7 <b>leadership (1)</b> 4619:6 <b>leading (9)</b> 4537:17;4550:12,13; 4568:21,22;4631:24; 4633:20;4635:16; 4646:1 <b>leads (1)</b> 4637:7 <b>lease (8)</b> 4543:13;4545:17; 4552:14;4616:14,19; 4640:18,24;4641:2 <b>leased (2)</b> 4616:13,19 <b>leases (6)</b> 4605:1,4,14; 4616:17;4640:17; 4651:13 <b>leasing (2)</b> 4636:20;4640:9 <b>least (4)</b> 4536:25;4585:18; 4592:16;4629:11 <b>leave (2)</b> 4580:18;4587:8 <b>leaving (1)</b> 4616:20 <b>left (8)</b> 4571:8;4585:8,9; 4653:8,16;4656:5,22; 4657:20 <b>legal (1)</b> 4523:18 <b>Lehman (1)</b> 4585:11 <b>lender (4)</b> 4610:23,25;4611:1; 4642:18 <b>lender-ordered (2)</b> 4614:10;4642:10 <b>lenders (1)</b> 4612:17 <b>length (1)</b> 4540:18 <b>lengthy (1)</b> 4554:7 <b>less (5)</b> 4550:12;4595:9,9; 4659:18,21 <b>level (3)</b> 4514:18;4549:11; 4611:5 <b>leverage (1)</b>
---	--	--	--	--

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4621:6 <b>liabilities (1)</b> 4520:20 <b>liability (4)</b> 4486:15;4499:22; 4525:9;4533:1 <b>lib (2)</b> 4619:17,18 <b>licensed (15)</b> 4590:16;4592:24; 4600:19,21;4601:16, 22,24;4608:16,16; 4622:13,18;4623:17; 4626:15;4635:5,9 <b>licensing (1)</b> 4509:19 <b>life (2)</b> 4571:4;4573:8 <b>Lifestyle (1)</b> 4577:23 <b>light (1)</b> 4597:5 <b>liked (2)</b> 4501:9;4541:7 <b>likelihood (1)</b> 4616:19 <b>likely (2)</b> 4622:22,24 <b>limb (1)</b> 4612:7 <b>limit (1)</b> 4626:21 <b>limitation (1)</b> 4599:2 <b>limitations (5)</b> 4553:2,3;4618:23; 4627:1,3 <b>limited (2)</b> 4618:15,22 <b>line (3)</b> 4508:6;4609:14; 4627:14 <b>list (4)</b> 4548:15;4605:20; 4619:16;4660:3 <b>listed (8)</b> 4486:23,24;4495:13; 4502:13;4512:19,21; 4620:10;4644:14 <b>lists (1)</b> 4486:18 <b>literature (5)</b> 4623:10;4637:11,16, 22;4638:3 <b>litigations (1)</b> 4614:15 <b>little (18)</b> 4504:3;4507:17; 4536:6;4538:18; 4545:21;4550:12; 4553:10;4578:15; 4588:16;4589:8; 4603:5;4604:3;	4614:10;4616:4; 4646:12;4651:2,7; 4652:5 <b>lived (1)</b> 4578:20 <b>LLC (8)</b> 4483:9,10,10; 4568:17;4587:11,13, 15;4649:7 <b>loan-to-value (2)</b> 4611:24;4612:25 <b>location (2)</b> 4578:24;4620:18 <b>long (8)</b> 4503:5;4506:2,5; 4523:14;4579:1; 4588:25;4655:15,18 <b>longer (1)</b> 4629:8 <b>look (24)</b> 4491:13;4494:22; 4500:9;4501:12; 4535:22;4570:22; 4578:11;4581:23; 4582:15;4585:13; 4605:2;4612:8,24; 4614:17;4615:15,16; 4618:4;4619:8,19,23; 4636:5;4637:22; 4643:1;4650:12 <b>looked (13)</b> 4491:3,13;4494:20; 4541:7;4549:7;4565:3; 4576:17;4582:12,21; 4600:6;4638:1; 4651:24;4652:2 <b>looking (29)</b> 4487:25;4488:2; 4489:4;4497:24; 4500:11;4508:25; 4523:23;4549:13; 4550:9,9,16,17;4551:3, 6;4552:4,6,20;4553:9; 4554:23;4565:9,17; 4566:7,16;4582:9; 4598:9;4612:19; 4614:21;4653:4; 4657:11 <b>looks (1)</b> 4660:1 <b>lost (1)</b> 4660:17 <b>lot (16)</b> 4536:4,6;4557:25; 4585:5,6;4588:17; 4595:2;4601:6,6; 4610:6;4611:19; 4620:20;4621:4,14; 4654:20,24 <b>lots (1)</b> 4539:12 <b>louder (2)</b> 4536:6,6	<b>low (4)</b> 4505:21;4612:5; 4644:18;4651:3 <b>lower (6)</b> 4506:5;4651:2,7,20; 4652:5;4659:21 <b>lunch (2)</b> 4587:3;4588:15 <b>luncheon (1)</b> 4586:4 <b>Lunchtime (1)</b> 4585:23 <b>Lybrand (3)</b> 4584:3,9;4589:11  <b>M</b>  <b>macro (1)</b> 4576:25 <b>macroeconomic (1)</b> 4592:6 <b>macroeconomics (1)</b> 4637:3 <b>magnitude (5)</b> 4502:15,18;4503:10, 11;4505:13 <b>MAI (5)</b> 4601:24;4615:13; 4622:19;4634:22,23 <b>main (4)</b> 4562:25;4575:13; 4581:22;4605:5 <b>maintaining (1)</b> 4499:9 <b>maintenance (1)</b> 4545:12 <b>MAIs (1)</b> 4615:25 <b>MAI's (2)</b> 4592:25;4600:19 <b>majority (1)</b> 4548:1 <b>makes (2)</b> 4510:9;4652:15 <b>making (4)</b> 4516:25;4534:14; 4588:18;4603:5 <b>mall (5)</b> 4616:16;4634:12,16, 21;4635:9 <b>malls (2)</b> 4621:16;4636:15 <b>manage (1)</b> 4534:5 <b>management (18)</b> 4489:14;4514:25; 4516:2;4521:4,11,23; 4522:13,14;4536:1; 4572:21;4578:18,18; 4579:14,17;4580:2; 4581:17;4588:3; 4601:19 <b>manager (4)</b>	4532:11,15;4534:11; 4537:12 <b>managers (1)</b> 4579:20 <b>Managing (1)</b> 4534:3 <b>Manhattan (2)</b> 4640:4,12 <b>manner (4)</b> 4520:19;4523:5; 4544:22;4655:13 <b>manpower (1)</b> 4534:16 <b>many (22)</b> 4490:23;4493:16; 4494:3;4527:23; 4529:24;4539:21,24; 4544:7,13;4553:7; 4573:10;4592:14,15; 4593:11,20;4594:2; 4596:17;4608:13; 4616:21;4641:6,13,14 <b>Maps (2)</b> 4588:19,20 <b>market (100)</b> 4519:22;4545:6; 4575:22;4577:6; 4580:14;4581:13,23; 4582:3,10,13,20,22; 4583:1;4584:21; 4585:2;4588:12; 4589:18;4591:24; 4592:11;4597:19; 4598:6;4603:21; 4608:18,21;4609:15; 4612:13;4616:4,5,6,9, 22,23;4617:4,18,22; 4618:4,14,19;4620:22; 4622:8,11,12,18,19; 4623:18,19;4624:4,8, 10,12,17,19,25;4625:9, 11,16,20,23;4626:2,4, 5,9,13,23,24;4627:6,8, 10,15,21;4629:24; 4630:8,11,14;4632:10; 4633:19;4634:6,22; 4635:12,25;4636:4; 4637:7,10,20;4638:6; 4640:2,4,8,15;4641:24; 4647:17,22;4648:3,9, 19;4649:18;4650:16; 4651:13,18;4653:9 <b>marketable (3)</b> 4519:4,15,21 <b>marketplace (10)</b> 4535:3;4584:5; 4604:10;4605:1; 4606:12;4620:11; 4621:3,17;4638:4; 4652:9 <b>markets (18)</b> 4573:21;4575:8,12; 4576:16,20,22;4577:2,	3;4580:17;4582:23,24; 4588:14;4592:10; 4593:15,16;4606:10; 4618:1;4641:20 <b>Marsal (4)</b> 4585:10;4587:4,6,8 <b>M-A-R-S-A-L (1)</b> 4587:6 <b>Marshall (1)</b> 4607:16 <b>Mass (4)</b> 4577:23,25;4578:2,7 <b>Massachusetts (3)</b> 4530:25;4531:15; 4532:13 <b>massive (1)</b> 4578:22 <b>material (4)</b> 4494:11;4499:12; 4522:11;4523:22 <b>materials (1)</b> 4569:14 <b>math (2)</b> 4589:5;4655:6 <b>mathematical (1)</b> 4607:7 <b>Matrix (3)</b> 4656:6;4657:4,7 <b>matter (10)</b> 4496:23;4506:12; 4529:5;4536:21; 4544:14,19;4555:10; 4570:5;4593:13; 4630:15 <b>matters (4)</b> 4518:3;4539:11; 4541:22;4573:18 <b>maximum (1)</b> 4548:17 <b>may (30)</b> 4486:16,20;4489:20; 4497:8;4512:18; 4524:16;4529:4; 4531:8;4552:25; 4554:25;4560:16; 4561:21;4575:3; 4598:23;4612:4,5,5,6, 6,15;4618:15,17,22; 4621:5;4623:2,15,18; 4624:16;4634:1; 4660:15 <b>maybe (15)</b> 4503:13;4504:25; 4540:10;4541:25; 4547:3;4561:24; 4605:6;4615:13; 4621:4,20;4640:18,24, 25;4643:20;4647:4 <b>Mazars (29)</b> 4491:15;4515:1,4; 4516:1,5,9,17;4520:22; 4521:3,9,17,22;4522:7, 12,21;4525:13;4526:1,
---	---	--	--	---

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4,12,16,18,22,23; 4527:3,4,6,9,12,19 <b>Mazars' (5)</b> 4521:11,12,12; 4522:24,25 <b>MBA (3)</b> 4572:20;4578:16,17 <b>MBAs (1)</b> 4616:1 <b>McConney (1)</b> 4660:10 <b>mean (39)</b> 4492:23;4525:23; 4532:21;4534:9; 4535:1;4545:19; 4548:14;4554:14; 4575:15;4578:3; 4584:15;4588:11; 4589:2;4597:21; 4601:5;4608:21; 4611:3,17;4612:3; 4614:7;4615:25; 4616:11;4617:19; 4619:1,4,4,14;4621:11; 4622:1;4623:3; 4628:10,15;4631:12; 4640:23,23;4641:11; 4644:8;4647:3; 4656:21 <b>meaning (1)</b> 4533:18 <b>meaningful (1)</b> 4529:15 <b>means (8)</b> 4505:8;4546:23; 4560:22;4597:5; 4623:14;4631:23; 4643:16,21 <b>meant (2)</b> 4603:23;4640:23 <b>mechanisms (1)</b> 4623:1 <b>median (2)</b> 4644:18;4651:4 <b>meet (1)</b> 4556:1 <b>MEMBER (5)</b> 4483:9;4560:9; 4590:21,23;4591:13 <b>members (18)</b> 4485:4;4549:14; 4560:7,7;4561:9,13,20, 22;4562:5,5;4564:1,4; 4565:11;4566:18; 4592:2,14,24,24 <b>memorable (1)</b> 4581:5 <b>memory (2)</b> 4508:2;4567:6 <b>mention (4)</b> 4563:12;4605:11; 4619:13;4621:10 <b>mentioned (8)</b>	4578:14;4582:12; 4589:8;4591:2; 4605:10;4612:10; 4625:4;4638:8 <b>merge (1)</b> 4584:1 <b>merged (4)</b> 4580:19;4584:3,9; 4589:10 <b>merger (2)</b> 4584:6,7 <b>mess (1)</b> 4485:10 <b>met (1)</b> 4493:11 <b>method (38)</b> 4489:5,9;4492:6; 4500:2,4,22;4501:1,10, 14,22,24;4503:5,8; 4504:6;4505:9,10,20, 23,25;4508:21;4517:2, 3,6;4523:14,15,17,25; 4525:24;4568:11; 4643:9;4644:5,6; 4645:19,25;4647:10; 4650:20;4651:9; 4652:23 <b>methodologies (4)</b> 4597:18;4630:1,2; 4654:21 <b>methodology (1)</b> 4652:16 <b>methods (39)</b> 4486:16,24;4487:1; 4490:23;4491:3,13; 4495:18;4497:12; 4498:20;4500:20; 4501:19;4502:7,13,13; 4503:2,25;4504:4,13; 4505:12,15;4507:11, 14,21;4512:14,15,18, 19,20,21;4515:7; 4516:7;4523:11,25; 4601:7;4603:9,12; 4609:23;4633:14; 4636:7 <b>metrics (1)</b> 4617:2 <b>metropolitan (2)</b> 4582:1,16 <b>Metzler (5)</b> 4533:3,4,7,12,13 <b>M-E-T-Z-L-E-R (1)</b> 4533:6 <b>Meyers (1)</b> 4531:22 <b>mic (1)</b> 4609:25 <b>Michael (6)</b> 4506:23;4542:9; 4583:3;4586:17; 4623:22;4658:3 <b>MICHELE (1)</b>	4484:24 <b>micro (1)</b> 4576:25 <b>microphone (3)</b> 4536:7;4631:6; 4659:14 <b>microphones (1)</b> 4531:4 <b>mid (1)</b> 4581:11 <b>Middle (8)</b> 4578:21;4589:12,24; 4640:1;4644:13; 4650:22;4656:24; 4657:8 <b>might (14)</b> 4492:17;4496:7,8, 20;4499:21;4506:4; 4507:17;4518:6; 4562:4;4607:19,21; 4608:19;4609:18; 4645:14 <b>Mike (1)</b> 4629:4 <b>miles (1)</b> 4584:17 <b>Miller (2)</b> 4660:10,11 <b>million (37)</b> 4501:15,16;4502:20, 21;4519:21;4572:3; 4581:19;4616:16; 4635:3,4,8,23;4636:17; 4647:14,21;4648:4,8, 16,19;4649:20,25; 4650:3;4652:25; 4653:14,19,21,24; 4654:4,14,16;4655:3,6, 25;4657:1,13;4659:3,7 <b>millions (1)</b> 4535:21 <b>mimic (1)</b> 4624:8 <b>mind (8)</b> 4493:4;4499:5; 4600:19;4614:12; 4616:9;4626:16; 4643:24;4655:22 <b>minds (1)</b> 4628:13 <b>mine (2)</b> 4529:13;4622:2 <b>mines (1)</b> 4578:23 <b>minimum (1)</b> 4567:10 <b>minus (1)</b> 4605:22 <b>minute (4)</b> 4516:21;4582:11; 4655:1;4657:17 <b>minutes (6)</b> 4501:24;4530:11;	4539:17;4542:6; 4639:4;4659:18 <b>mischaracterizes (1)</b> 4491:5 <b>mischaracterizing (1)</b> 4655:9 <b>missed (1)</b> 4570:20 <b>misstatement (4)</b> 4499:21;4523:22,22; 4524:2 <b>mistake (2)</b> 4524:6,8 <b>Mm-Hm (1)</b> 4500:14 <b>model (5)</b> 4613:3,6;4643:14; 4654:25;4656:21 <b>models (1)</b> 4552:7 <b>modifications (2)</b> 4526:7;4534:17 <b>modified (2)</b> 4516:15,16 <b>modify (1)</b> 4560:14 <b>moment (13)</b> 4524:16;4525:2,18; 4527:9;4601:12; 4607:23;4608:10; 4609:3;4610:11; 4627:4;4633:4; 4649:21;4653:3 <b>moments (1)</b> 4610:7 <b>Monday (1)</b> 4580:10 <b>money (2)</b> 4585:19;4648:12 <b>monies (2)</b> 4648:17,17 <b>monitored (1)</b> 4611:3 <b>Monroe (1)</b> 4484:4 <b>month (1)</b> 4660:2 <b>months (1)</b> 4620:12 <b>more (37)</b> 4510:12,22,25; 4535:12,13;4538:14; 4540:11;4551:20; 4571:20;4576:14,21; 4577:4;4581:22; 4584:7,10,13;4585:19; 4601:2;4603:16; 4612:1,3,12,18,24; 4614:20,21;4618:13; 4623:6,6;4645:9; 4648:20;4654:20; 4655:21;4656:20; 4657:17;4659:15;	4660:7 <b>MORIAN (2)</b> 4484:17,19 <b>morning (8)</b> 4485:23,24;4511:21, 22;4572:14;4580:11; 4659:12,25 <b>morphed (1)</b> 4533:13 <b>mortgage (2)</b> 4611:10;4612:22 <b>mortgages (1)</b> 4611:5 <b>most (11)</b> 4506:20;4507:2; 4512:9,22;4604:5,6,11; 4611:12;4622:21,24; 4624:17 <b>motion (1)</b> 4570:6 <b>move (21)</b> 4514:20;4546:10; 4548:23;4554:6; 4555:11;4556:8; 4559:15;4562:10; 4565:1;4566:24; 4576:24;4578:15; 4579:10;4584:13; 4599:10;4608:25; 4610:2,5,8;4642:22; 4655:17 <b>moved (1)</b> 4580:20 <b>moving (6)</b> 4545:2;4549:17; 4550:22;4551:20,24; 4552:20 <b>much (17)</b> 4528:22,23,24; 4529:7;4535:7; 4580:10;4582:21; 4606:2;4607:15; 4614:22;4618:13; 4629:8;4634:14; 4637:5;4654:4; 4659:15,19 <b>multiple (4)</b> 4505:9;4589:22; 4641:20,20 <b>multi-tenant (1)</b> 4616:15 <b>multitude (2)</b> 4547:9;4608:20 <b>must (1)</b> 4554:16 <b>mutual (1)</b> 4519:18 <b>myself (7)</b> 4487:15;4504:9; 4574:13;4576:14; 4593:3;4598:13; 4636:6
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

	4570:10;4581:8,25; 4582:6,7,13,22;4584:3; 4640:17	<b>note (10)</b> 4508:13,16;4509:13; 4510:8;4513:5; 4514:20;4525:14; 4559:17,20;4566:5	4526:15;4528:14; 4540:23;4544:17; 4550:14;4557:11; 4559:17,20;4568:19, 20;4570:8;4597:3; 4603:19;4627:14; 4628:24;4631:20; 4633:11,20,22;4634:1, 4;4635:16;4646:1; 4655:8	4567:9 <b>offering (1)</b> 4523:18 <b>OFFICE (13)</b> 4483:20;4545:4; 4546:6;4565:13; 4567:17;4568:17; 4615:13;4619:5,6,10; 4620:11;4640:2; 4650:25
<b>N</b>				
<b>name (7)</b> 4530:21,23;4572:5, 7;4587:12;4619:21; 4620:5	<b>Newberry (1)</b> 4530:24	<b>noted (2)</b> 4527:10;4565:13	<b>objective (2)</b> 4502:21;4567:20	<b>OFFICER (14)</b> 4485:1;4530:14,16, 20;4543:1;4560:3,4; 4571:12,15,21,25; 4572:5;4586:8; 4628:22
<b>narrative (4)</b> 4548:6;4550:4,17; 4565:25	<b>news (1)</b> 4612:20	<b>notes (6)</b> 4510:25;4517:1; 4519:10,18;4521:8; 4527:22	<b>obligated (1)</b> 4539:1	<b>official (1)</b> 4560:5
<b>narrow (1)</b> 4604:3	<b>next (24)</b> 4513:24;4524:19; 4530:7;4533:22; 4556:18;4558:24; 4563:17;4564:17; 4566:25;4570:3,24; 4581:6;4587:10; 4592:8;4602:3; 4607:11;4638:15; 4647:7,15;4648:2; 4652:20;4660:7,13,14	<b>noticed (1)</b> 4595:8	<b>obligation (11)</b> 4515:4;4516:1,11, 16;4521:3,12,22; 4522:14;4525:7,20,23	<b>often (4)</b> 4535:9;4603:16; 4604:5,6
<b>Nate (1)</b> 4549:4	<b>Nice (1)</b> 4569:21	<b>notify (1)</b> 4521:14	<b>obligations (2)</b> 4522:25;4527:12	<b>oil (1)</b> 4578:22
<b>national (4)</b> 4582:15;4584:8; 4592:20;4619:3	<b>nine (3)</b> 4515:15;4556:8; 4562:10	<b>notifying (1)</b> 4509:1	<b>observations (1)</b> 4560:23	<b>Old (7)</b> 4545:3;4546:6; 4565:13;4566:17; 4567:17;4568:17; 4577:19
<b>nationally (1)</b> 4585:14	<b>NJ (1)</b> 4484:14	<b>November (13)</b> 4483:13;4639:21; 4643:10;4647:18,23; 4648:6,9,9;4649:25; 4653:5,12,14;4660:24	<b>obtain (3)</b> 4505:16;4531:18; 4545:13	<b>Once (9)</b> 4553:14;4580:21; 4584:9;4585:9,10; 4620:16;4627:2; 4636:3,20
<b>nature (10)</b> 4534:24;4538:4,18; 4545:10;4549:15; 4567:8;4577:2; 4584:10;4611:16; 4647:2	<b>nod (1)</b> 4632:25	<b>number (30)</b> 4487:7;4488:7,18; 4489:6;4493:5,7; 4495:6;4496:23; 4505:15;4522:16; 4531:21;4536:17; 4539:11;4548:21; 4554:16;4556:4; 4559:19;4564:11,12, 13,13,16;4576:13; 4579:14;4591:19; 4592:15;4608:14; 4612:5;4620:3;4660:5	<b>obvious (2)</b> 4515:9,9	<b>one (113)</b> 4486:23,24;4487:9; 4493:7,20;4494:20; 4495:4,13,15,18; 4497:11;4498:2; 4499:21,24;4500:15, 24;4501:19;4502:19, 25;4503:4,5,6,24,25; 4504:13,15,17,18,20, 25;4505:1,23;4506:11; 4507:15,20,21; 4508:16;4509:14; 4510:8;4511:3; 4523:12,13,21;4528:6; 4534:10;4537:3,20; 4538:21;4547:11; 4548:10,20,21; 4551:20;4552:12; 4554:13;4560:8,13; 4564:9,12,14;4565:2,4, 9,10;4566:17;4567:19; 4568:9,16,23;4569:10; 4573:21;4575:21; 4576:13;4577:14,15; 4578:6;4580:7; 4581:17;4582:21; 4584:11,18;4585:1; 4591:15;4592:5,9; 4608:15;4609:10,18; 4610:12;4611:4;
<b>Navigant (3)</b> 4533:13,15,23	<b>nodded (1)</b> 4608:24	4487:7;4488:7,18; 4489:6;4493:5,7; 4495:6;4496:23; 4505:15;4522:16; 4531:21;4536:17; 4539:11;4548:21; 4554:16;4556:4; 4559:19;4564:11,12, 13,13,16;4576:13; 4579:14;4591:19; 4592:15;4608:14; 4612:5;4620:3;4660:5	<b>obviously (21)</b> 4498:25;4499:2,22, 25;4500:6,10,16,22,25; 4501:3,20;4502:3; 4525:4,10,22;4526:6,9, 13;4560:24;4635:22; 4654:2	
<b>Navy (1)</b> 4537:6	<b>NOI (10)</b> 4605:6,8,10; 4606:14,15;4612:14; 4640:20;4648:22; 4652:23,24	<b>numbers (9)</b> 4492:1,5;4493:10; 4494:4,8,21,23; 4505:13;4564:8	<b>OCC (1)</b> 4611:18	
<b>necessarily (3)</b> 4601:15,24;4621:13	<b>NOIs (1)</b> 4613:7	<b>numerous (5)</b> 4573:17;4578:4; 4590:1;4593:5; 4623:11	<b>occasion (1)</b> 4606:18	
<b>necessary (4)</b> 4499:15;4569:15; 4601:8;4628:16	<b>non-aggressiveness (1)</b> 4646:25	<b>NY (2)</b> 4483:22;4484:23	<b>occupancies (2)</b> 4612:14;4654:24	
<b>need (27)</b> 4486:24;4487:24; 4488:22;4489:1,6,10, 25;4490:2,4,14;4491:9, 24;4502:5;4504:5; 4505:14;4506:16; 4507:9,14;4533:20; 4596:19;4604:1; 4606:5;4620:3; 4621:20;4622:1; 4631:25;4638:10	<b>non-appraisal (1)</b> 4627:9	<b>NYU (1)</b> 4511:7	<b>occupancy (8)</b> 4567:7;4643:9,11, 15,16,19,23;4645:6	
<b>needed (1)</b> 4536:9	<b>non-appraisals (1)</b> 4629:23		<b>occupied (1)</b> 4643:14	
<b>needs (4)</b> 4496:24;4501:24; 4503:15;4517:12	<b>non-appraised (1)</b> 4616:8		<b>occur (3)</b> 4495:15;4499:21; 4640:18	
<b>Negotiation (1)</b> 4539:14	<b>non-appraiser (2)</b> 4615:7;4621:11		<b>occurred (1)</b> 4496:16	
<b>neither (3)</b> 4495:8;4503:16; 4609:18	<b>non-appraisers (7)</b> 4609:2,10,17; 4614:4;4615:19,20; 4621:24	<b>O</b>	<b>occurrences (1)</b> 4557:16	
<b>net (13)</b> 4552:6;4605:5,10, 12,23;4617:5;4625:6; 4647:11,13;4653:13, 17,25;4654:10	<b>nonconformity (1)</b> 4552:25	<b>oath (2)</b> 4485:18;4587:2	<b>October (2)</b> 4587:9;4590:10	
<b>NEW (16)</b> 4483:1,3,14,14,22; 4484:23;4532:8;	<b>non-inclusive (1)</b> 4624:16	<b>object (4)</b> 4540:15;4595:21; 4609:14;4613:14	<b>off (7)</b> 4527:19;4571:4,4,5; 4599:15;4612:22; 4620:5	
	<b>normally (1)</b> 4623:1	<b>Objection (36)</b> 4491:4;4492:12; 4496:3;4498:9;4499:2, 9;4504:7;4505:17; 4506:17;4507:3; 4521:25;4525:15;	<b>offer (10)</b> 4535:4;4552:2,5,9; 4563:10;4567:3,6,9; 4584:17,18	
	<b>NORTH (4)</b> 4483:9;4484:4; 4589:14;4591:20		<b>offered (1)</b>	
	<b>Northeastern (1)</b> 4531:15			
	<b>notable (2)</b> 4565:16;4566:21			

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4614:25;4616:13,15; 4617:11;4623:5; 4624:13;4625:5,18; 4626:12;4630:1; 4632:24;4633:8; 4637:17,23;4639:21; 4649:9;4651:1;4652:1, 7,23;4653:18;4657:8, 17 <b>ones (5)</b> 4498:20;4561:3; 4613:1;4620:15; 4644:6 <b>one's (1)</b> 4564:13 <b>ongoing (1)</b> 4544:11 <b>online (3)</b> 4637:3,4;4643:25 <b>only (14)</b> 4485:4;4555:10; 4560:17;4561:24; 4582:3,6,10,22;4585:1; 4615:10;4623:10,18; 4632:10,20 <b>onto (1)</b> 4514:20 <b>open (2)</b> 4545:12;4550:6 <b>operating (18)</b> 4519:17;4520:7,21; 4521:1;4567:12; 4605:6,10,12,23; 4617:5;4625:6; 4647:11,13;4653:13, 17,25;4654:3,11 <b>operation (1)</b> 4545:13 <b>operative (1)</b> 4508:19 <b>opine (2)</b> 4493:6;4633:24 <b>opinion (23)</b> 4493:15;4495:24; 4543:15;4544:25; 4546:8;4567:16,19; 4569:5,6,6;4594:16; 4596:22;4600:10,13; 4608:8;4630:16,20; 4632:6,24;4633:8,13; 4634:22;4637:13 <b>opinions (10)</b> 4543:21;4554:1; 4555:18;4559:13; 4560:23;4595:1,17; 4599:19;4609:22; 4631:14 <b>OPO (1)</b> 4557:16 <b>opportunities (2)</b> 4657:5,12 <b>opportunity (5)</b> 4517:4;4556:1;	4579:5;4594:19; 4639:6 <b>optimistic (3)</b> 4524:14;4618:13,19 <b>options (1)</b> 4516:18 <b>order (8)</b> 4485:7,9;4502:14, 18;4543:2;4586:9; 4606:21;4628:23 <b>ordered (3)</b> 4610:23,25;4611:1 <b>orders (3)</b> 4503:10,11;4505:13 <b>ordinarily (1)</b> 4486:13 <b>ORGANIZATION (10)</b> 4483:8,8;4492:3; 4516:14;4521:23; 4526:22;4556:25; 4557:1,7;4563:8 <b>Organization's (3)</b> 4521:4;4554:4; 4555:1 <b>oriented (1)</b> 4540:10 <b>others (5)</b> 4538:21;4578:9; 4593:20;4603:17; 4615:24 <b>otherwise (1)</b> 4497:9 <b>out (24)</b> 4492:25;4493:13; 4494:22,23;4500:11; 4501:25;4503:1,18; 4518:16;4535:3; 4541:24;4564:9,10,10, 11;4592:13;4605:4,6; 4606:11;4612:7; 4616:25;4620:13; 4624:6;4638:4 <b>outcome (1)</b> 4552:7 <b>outcomes (1)</b> 4506:5 <b>outlook (1)</b> 4608:21 <b>out-of-date (1)</b> 4499:10 <b>outset (1)</b> 4599:24 <b>outside (5)</b> 4491:15;4525:8; 4594:3;4601:11; 4621:21 <b>over (16)</b> 4549:14;4574:25; 4575:9;4587:21; 4594:6;4595:11; 4606:6,7,7;4610:3; 4611:6;4614:3; 4640:18;4654:1,17;	4659:13 <b>overall (6)</b> 4534:17;4551:5; 4582:6;4630:17; 4645:2;4650:25 <b>overlap (1)</b> 4512:20 <b>overnight (1)</b> 4659:11 <b>Overruled (13)</b> 4491:8;4498:11; 4504:9;4505:2;4507:4; 4522:5;4558:11; 4559:21;4569:7; 4628:25;4631:21,23; 4633:12 <b>overruling (1)</b> 4504:9 <b>overtime (1)</b> 4618:12 <b>own (8)</b> 4491:7;4517:12,14; 4575:21;4578:17; 4587:11;4597:7; 4641:12 <b>owner (6)</b> 4496:11,20;4497:7; 4624:3;4634:20; 4635:4 <b>owners (2)</b> 4618:10,13 <b>owner's (1)</b> 4636:19 <b>Oxford (1)</b> 4637:25	4647:7,7,9,16,16; 4648:2,2;4649:3,13; 4650:18,22;4652:20, 20;4653:2;4654:7; 4656:4,10 <b>pages (4)</b> 4510:23;4554:16; 4639:9,10 <b>paid (6)</b> 4528:19,21,23,24; 4552:14;4612:22 <b>Palisades (3)</b> 4634:12,21;4635:9 <b>PANTELOUKAS (1)</b> 4484:24 <b>paper (6)</b> 4554:15;4574:8; 4575:3;4614:18; 4619:6;4643:4 <b>papers (5)</b> 4494:15;4522:23; 4527:11;4574:21; 4575:1 <b>paragraph (18)</b> 4486:10;4509:13; 4510:9;4514:4; 4517:25;4519:10; 4520:12;4550:9; 4552:21,24;4553:5,9, 13;4563:14;4619:16; 4620:2;4645:17; 4651:8 <b>parameters (6)</b> 4592:6;4624:7,14, 16;4625:1;4626:17 <b>paraphrasing (3)</b> 4551:2;4552:4; 4554:25 <b>Pardon (1)</b> 4588:7 <b>Part (19)</b> 4485:1;4491:1; 4509:2;4536:14; 4537:11;4543:1; 4553:25;4567:25; 4572:24;4578:9; 4581:12;4586:8; 4595:6;4610:21; 4618:7;4628:1,22; 4637:11;4649:10 <b>participate (1)</b> 4592:11 <b>particular (24)</b> 4503:25,25;4511:2; 4520:3;4534:24; 4544:14,19,24; 4547:18;4548:17; 4550:10;4551:14; 4560:2;4561:2;4569:1; 4575:23;4605:3,16; 4607:1,19;4613:7; 4636:5;4641:9; 4646:10	<b>particularly (3)</b> 4563:5;4606:13; 4628:4 <b>parties (4)</b> 4522:8,10;4610:13; 4628:21 <b>partners (2)</b> 4566:18;4580:19 <b>party (3)</b> 4521:21,24;4522:3 <b>past (10)</b> 4487:7,7;4488:18, 18;4491:24;4492:7; 4549:8;4554:16; 4563:4;4587:21 <b>Pause (3)</b> 4542:7;4569:11,20 <b>pay (4)</b> 4495:25;4496:5,6,7 <b>payment (2)</b> 4545:14;4552:12 <b>peek (1)</b> 4617:1 <b>peer (1)</b> 4582:17 <b>peer-reviewed (5)</b> 4573:16,17;4574:21; 4637:23;4638:3 <b>Penn (1)</b> 4523:2 <b>Pennsylvania (1)</b> 4550:20 <b>pension (6)</b> 4576:11;4579:18; 4601:19;4617:21,23; 4621:6 <b>People (6)</b> 4485:14;4571:3; 4573:10;4580:8; 4613:17;4616:19 <b>per (1)</b> 4607:17 <b>percent (67)</b> 4500:5;4502:2; 4540:10;4548:9,15,16, 18,20,22;4551:23; 4564:2;4577:19,20; 4582:6,7;4612:6,6,6, 11,12;4616:13; 4624:11;4625:9,11,17, 18,18,21,22;4626:1,2, 3;4640:14,15,15; 4641:3,3,3,10,15,21,22, 25;4642:1,10,20,21; 4643:13,13,19; 4645:20,24;4646:6; 4651:3,4,4,5,10,14,17, 19,20;4652:13;4654:6, 12;4659:2,6 <b>percentage (4)</b> 4540:7;4564:2; 4567:10,11 <b>percentages (2)</b>
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4548:8;4644:19 <b>perfect (2)</b> 4487:5;4656:7 <b>perform (3)</b> 4534:12,14,15 <b>performance (1)</b> 4549:8 <b>performed (3)</b> 4563:7;4601:15; 4645:2 <b>performing (3)</b> 4514:15;4527:15; 4535:8 <b>Perhaps (4)</b> 4570:20;4598:22; 4606:2;4620:5 <b>period (7)</b> 4523:1;4549:14; 4551:4;4605:7; 4620:13;4640:19; 4643:17 <b>periodically (1)</b> 4585:3 <b>permit (1)</b> 4607:20 <b>permitted (1)</b> 4485:4 <b>person (10)</b> 4493:4;4496:1,12; 4497:23;4498:5,24; 4505:14;4586:22,22; 4659:14 <b>personal (2)</b> 4573:8;4618:8 <b>personally (1)</b> 4519:16 <b>personnel (1)</b> 4549:9 <b>person's (2)</b> 4571:6,9 <b>perspective (5)</b> 4488:21,22;4497:19; 4498:19;4502:1 <b>pervasiveness (1)</b> 4518:3 <b>Peter (2)</b> 4570:6,9 <b>Peterson (4)</b> 4532:18,19;4533:3,8 <b>phase (1)</b> 4618:14 <b>PhD (5)</b> 4572:22,24;4576:15; 4584:16;4637:24 <b>phones (2)</b> 4485:3,4 <b>photograph (1)</b> 4554:17 <b>photographs (1)</b> 4588:20 <b>photography (1)</b> 4485:5 <b>phrase (3)</b>	4491:7;4601:2; 4622:25 <b>phrases (1)</b> 4622:17 <b>pick (8)</b> 4504:15,17,18,25; 4505:1,20;4564:14; 4657:8 <b>picking (4)</b> 4504:4;4505:14; 4507:15;4612:13 <b>piece (2)</b> 4522:2;4564:7 <b>place (6)</b> 4498:6;4503:12; 4538:13,24;4545:5; 4584:18 <b>places (3)</b> 4510:24;4531:21; 4589:24 <b>Plaintiff (1)</b> 4483:21 <b>plaintiffs (2)</b> 4540:15;4599:1 <b>Plaintiff's (13)</b> 4485:25;4509:7; 4511:23;4513:12; 4518:23;4553:19; 4555:11;4600:10; 4638:11;4639:12; 4648:25;4653:2; 4656:4 <b>plan (6)</b> 4532:22;4549:22; 4550:5;4565:20,24,25 <b>plane (1)</b> 4580:11 <b>plants (1)</b> 4578:22 <b>plaque (1)</b> 4577:12 <b>play (1)</b> 4508:2 <b>played (1)</b> 4541:9 <b>Plaza (1)</b> 4484:9 <b>please (40)</b> 4485:19;4491:10; 4492:13;4505:4; 4508:15;4510:1,2,3; 4511:23;4512:25; 4517:10;4520:16; 4530:16,20,21;4531:8; 4536:24;4537:10; 4543:2,7;4545:4; 4549:4;4556:8; 4557:12;4571:21,25; 4572:5,10,18;4586:9; 4628:23;4632:2,3; 4639:12;4648:2; 4649:4,13;4650:17; 4653:1;4656:3	<b>pleasure (1)</b> 4571:3 <b>PLLC (3)</b> 4484:3,8,17 <b>plus (6)</b> 4574:7;4600:20; 4629:1;4641:5; 4652:23;4653:18 <b>point (12)</b> 4487:9;4497:4; 4506:8;4526:19; 4540:25;4546:19; 4563:2;4584:1; 4586:16;4605:5; 4622:25;4634:1 <b>points (4)</b> 4486:8,19;4499:21; 4615:17 <b>policies (3)</b> 4535:19,23;4536:10 <b>pool (1)</b> 4645:15 <b>popular (1)</b> 4571:20 <b>population (1)</b> 4620:15 <b>portfolio (3)</b> 4578:12,12;4585:13 <b>portion (1)</b> 4597:11 <b>portions (1)</b> 4554:14 <b>position (5)</b> 4502:22;4503:7; 4506:9,19;4507:13 <b>positions (2)</b> 4520:21;4591:6 <b>possessed (1)</b> 4561:21 <b>possibility (1)</b> 4632:9 <b>possible (3)</b> 4487:4;4498:16; 4660:18 <b>Post (5)</b> 4545:3;4546:6; 4565:13;4567:17; 4568:17 <b>potential (6)</b> 4522:17,20;4527:10, 15;4567:11;4623:3 <b>potentially (2)</b> 4517:5;4642:10 <b>power (1)</b> 4621:16 <b>practice (3)</b> 4533:9,16;4601:1 <b>practices (1)</b> 4580:3 <b>Practitioner (1)</b> 4577:11 <b>pre-consulting (1)</b> 4537:11	<b>preface (1)</b> 4608:15 <b>prefer (3)</b> 4505:24;4612:17; 4643:4 <b>preferable (1)</b> 4613:19 <b>preferred (3)</b> 4506:4;4562:23; 4568:17 <b>prejudice (1)</b> 4599:5 <b>pre-marked (1)</b> 4545:23 <b>premium (2)</b> 4509:1,2 <b>prepaid (1)</b> 4519:2 <b>preparation (2)</b> 4544:10;4559:11 <b>prepare (1)</b> 4616:2 <b>prepared (12)</b> 4492:11;4493:10; 4511:6,9;4518:8; 4537:7;4538:15; 4581:13;4622:18; 4639:20;4642:8; 4649:6 <b>preparer (6)</b> 4489:20;4495:18; 4505:19;4507:8; 4524:5,13 <b>preparing (4)</b> 4505:23;4525:7,20; 4537:20 <b>preponderance (1)</b> 4582:25 <b>Prequalification (4)</b> 4534:12;4538:2,5; 4539:11 <b>prequalify (1)</b> 4537:22 <b>prescriptive (3)</b> 4554:13,14,17 <b>present (8)</b> 4506:4;4513:20; 4525:22;4552:6,8; 4574:8;4585:15; 4613:9 <b>presentation (6)</b> 4499:22;4500:7,19; 4510:11;4539:3; 4556:9 <b>presentations (3)</b> 4538:15;4543:19; 4588:11 <b>presented (5)</b> 4525:9,10;4526:5; 4556:3,22 <b>preservation (3)</b> 4545:9;4550:19; 4562:2	<b>President (5)</b> 4496:22,25;4513:21; 4591:10,10 <b>presiding (1)</b> 4485:2 <b>press (1)</b> 4485:5 <b>presumes (1)</b> 4504:12 <b>presumption (1)</b> 4498:2 <b>pretty (2)</b> 4580:10;4607:15 <b>previous (1)</b> 4575:2 <b>previously (3)</b> 4559:18;4579:4; 4589:11 <b>price (12)</b> 4495:14;4497:13; 4498:7;4502:18; 4535:5,8;4584:1,2,4; 4607:17;4622:21; 4640:6 <b>prices (3)</b> 4502:23;4503:11; 4519:22 <b>Pricewaterhouse (5)</b> 4578:9,14;4580:21; 4581:3,7 <b>Pricing (3)</b> 4539:15;4577:4; 4656:6 <b>primarily (11)</b> 4532:20;4561:24; 4577:19;4585:2; 4587:22;4588:4; 4590:5;4591:3; 4592:10;4593:5; 4600:24 <b>primary (1)</b> 4613:1 <b>principal (1)</b> 4612:22 <b>principles (1)</b> 4518:9 <b>prior (7)</b> 4501:23;4512:19; 4519:20;4553:2; 4561:3;4566:14; 4654:7 <b>private (4)</b> 4582:25;4617:20,22; 4621:4 <b>privilege (1)</b> 4615:24 <b>privileged (1)</b> 4592:11 <b>pro (2)</b> 4570:6;4586:19 <b>probability (1)</b> 4623:2 <b>probably (13)</b>
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4502:2;4571:19; 4588:19;4591:15; 4606:25;4612:13; 4615:1;4619:21; 4620:3;4624:13; 4629:9,13;4659:18 <b>problem (1)</b> 4561:2 <b>procedures (7)</b> 4535:16,19,23,24; 4536:2,10;4606:20 <b>proceed (5)</b> 4485:19;4488:9; 4572:10;4629:3,21 <b>proceeding (3)</b> 4542:7;4569:11,20 <b>proceedings (5)</b> 4506:22;4542:8; 4583:2;4623:21; 4658:2 <b>process (22)</b> 4529:12,13;4538:5; 4541:7;4543:11,13; 4545:3,4;4547:14; 4553:4,8;4556:5,6; 4557:20;4559:24; 4560:10;4567:16; 4568:16;4574:5,7; 4601:8;4607:11 <b>processed (2)</b> 4570:17,21 <b>processes (3)</b> 4597:18;4598:19; 4606:20 <b>procurement (28)</b> 4534:8,11,17; 4535:17,19;4536:4,18, 20;4538:16;4539:5,7, 9;4540:8,14,17,20,21; 4541:15,19,21,21; 4542:1,4;4543:11,22; 4547:13;4556:6; 4568:11 <b>produce (3)</b> 4579:24;4589:13; 4592:22 <b>producing (2)</b> 4576:15;4647:1 <b>profession (1)</b> 4621:12 <b>professional (16)</b> 4514:14;4515:6; 4516:1,4,12,17; 4518:17,17;4521:3,19, 22;4578:15;4589:25; 4601:1;4613:16; 4616:23 <b>professionals (2)</b> 4577:20;4606:11 <b>Professor (5)</b> 4511:6,9,11;4579:6; 4637:25 <b>Profiles (1)</b>	4577:24 <b>profit (1)</b> 4567:12 <b>program (3)</b> 4572:25;4591:9; 4637:24 <b>programs (5)</b> 4538:20;4539:4,6,9, 14 <b>progress (1)</b> 4660:6 <b>project (26)</b> 4531:22,24;4532:11, 15,22;4533:17,20; 4534:11,11;4535:20; 4537:3,4,12;4538:8; 4549:15;4550:5,18,21; 4551:5,5;4552:5,16,19; 4556:17;4567:20; 4578:18 <b>projected (8)</b> 4489:25;4490:3; 4649:21,24;4650:7; 4651:25;4655:12,24 <b>projecting (3)</b> 4653:5,12;4655:5 <b>projection (4)</b> 4655:9,10,13,19 <b>projects (5)</b> 4533:19;4537:1,5; 4563:6;4578:22 <b>promised (1)</b> 4511:15 <b>promulgated (1)</b> 4536:17 <b>proper (1)</b> 4535:17 <b>properly (1)</b> 4525:25 <b>properties (23)</b> 4508:18,22;4509:3, 25;4510:8;4578:1,5, 13;4580:9,10;4600:20; 4606:12;4632:16; 4633:15;4634:7; 4644:14,15,24,25; 4645:3,4,10;4650:23 <b>property (71)</b> 4517:15;4545:4; 4567:18;4573:3; 4574:4;4576:17; 4578:20;4580:16; 4582:18,23;4591:25; 4592:9;4593:19; 4600:20,23;4601:18; 4603:10;4604:10,11, 12;4605:4,6,9,16,18; 4606:14,15;4607:6,11, 13,18,19,22;4608:10; 4609:3,4;4610:10,19, 19,22;4612:20;4613:7, 13;4614:1,5,8,13; 4615:21,22;4616:8,8,	14;4618:1,10,18; 4620:18,18;4621:25; 4622:21;4623:13,16; 4624:3;4630:18; 4634:21;4635:3; 4636:2;4641:20; 4643:13,25;4648:5; 4657:22 <b>proposal (24)</b> 4537:7,16,19,20,21, 23;4541:3,6;4545:3; 4546:5,7;4554:12; 4558:13;4560:17; 4562:18;4564:1,15; 4565:4,9,20;4566:4,12; 4567:2,17 <b>proposals (6)</b> 4537:14;4548:4; 4552:25;4556:1; 4562:7;4588:11 <b>Prospective (1)</b> 4648:3 <b>protocols (3)</b> 4535:16;4536:10; 4537:22 <b>provide (16)</b> 4486:13;4490:10; 4521:4;4550:4;4551:4; 4580:2;4587:16; 4588:12;4590:17; 4591:20;4592:6,8; 4594:16;4595:1; 4596:22;4618:20 <b>provided (16)</b> 4487:1;4491:15; 4493:18;4505:11,25; 4522:24;4523:14; 4539:4,13;4562:18; 4576:18;4578:18; 4580:13,14;4589:23; 4599:19 <b>providing (1)</b> 4580:23 <b>provision (4)</b> 4501:6;4547:1; 4567:25;4568:9 <b>provisions (2)</b> 4537:15;4538:25 <b>psycho (1)</b> 4585:21 <b>psychoanalysis (1)</b> 4585:14 <b>public (3)</b> 4534:11;4538:21; 4585:5 <b>publication (2)</b> 4591:22;4611:18 <b>publications (7)</b> 4575:5;4589:14,16; 4591:4,18,21;4592:22 <b>publish (1)</b> 4614:18 <b>published (13)</b>	4573:23,24;4574:1, 2,6,16,17,21;4577:22; 4614:17;4617:16; 4622:3;4637:23 <b>pull (16)</b> 4499:4,6;4509:7; 4511:23;4513:10,15; 4515:14;4520:12; 4525:1;4545:22; 4553:18;4558:25; 4620:1;4639:12; 4648:24;4653:1 <b>pure (1)</b> 4657:15 <b>purpose (8)</b> 4505:22;4516:25; 4517:1;4568:1;4575:5; 4608:18;4610:11; 4627:25 <b>purposes (6)</b> 4546:20;4560:5; 4589:19;4603:4; 4608:5;4645:11 <b>pursuant (1)</b> 4647:23 <b>put (16)</b> 4485:25;4496:22,25; 4508:3;4527:25; 4535:3;4575:22; 4597:8,16,17,22; 4598:9;4613:8;4619:5; 4622:25;4647:3 <b>putting (2)</b> 4493:5;4618:7 <b>PW (2)</b> 4584:9;4589:10 <b>PWC (7)</b> 4580:25;4584:4,5, 13,15;4589:13; 4615:24 <b>Pyramid (1)</b> 4634:23	<b>quantify (1)</b> 4532:25 <b>quarter (7)</b> 4651:14,19;4654:6, 12;4657:10,24;4659:2 <b>quarterly (1)</b> 4579:25 <b>Quick (1)</b> 4638:10 <b>quickly (1)</b> 4595:11 <b>quiet (1)</b> 4614:23 <b>quite (14)</b> 4574:19,21;4588:11; 4589:15;4591:8; 4592:22;4597:20; 4605:20;4616:11; 4619:16,21;4622:4,5; 4636:12 <b>quote (2)</b> 4565:16;4627:15 <b>quoted (2)</b> 4509:13;4519:22
<b>R</b>				
<b>raise (2)</b> 4530:16;4571:21 <b>raised (1)</b> 4566:23 <b>ramping (1)</b> 4643:16 <b>range (6)</b> 4503:1,2,3;4506:5; 4544:9;4659:21 <b>ranges (1)</b> 4623:2 <b>Ranita (5)</b> 4506:23;4542:10; 4583:3;4623:22; 4658:3 <b>ranked (1)</b> 4564:16 <b>ranking (1)</b> 4565:19 <b>rare (1)</b> 4642:8 <b>rate (78)</b> 4489:1;4490:4; 4500:5;4502:3; 4514:25;4515:2,5; 4529:18,21;4544:4; 4567:7,13;4596:7,12; 4605:24,25;4606:1,3,4, 7,8,16,18,22,24; 4607:3,5,9,11;4613:9; 4617:5;4624:12; 4625:4,5,10,11,16,17, 18,21,22;4626:3; 4636:12,19;4640:3,15, 21;4641:10,23,25; 4642:11;4643:15;				
<b>Q</b>				
<b>qualification (2)</b> 4540:16;4609:19 <b>qualifications (9)</b> 4531:14;4555:1; 4590:2,8;4615:6,8,9, 16,21 <b>qualified (16)</b> 4537:13;4539:21; 4540:4;4541:14,17; 4545:7;4563:5;4593:8, 22;4595:22;4599:20; 4609:15,22;4615:10, 11,13 <b>qualifying (1)</b> 4599:8 <b>quality (3)</b> 4574:10;4576:16; 4601:20				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4645:2,5,11,19,24; 4646:9,14,19;4650:25; 4651:10,25;4652:4; 4654:5,11;4656:15,23; 4657:20,21,23,24,25; 4658:1;4659:1,2,6,6 <b>rates (22)</b> 4493:1,2;4567:7; 4577:5,5;4580:16; 4606:25;4612:8,15; 4620:24;4621:5; 4625:20;4636:11,19; 4641:19;4644:9,12,15; 4645:3;4646:20,21; 4656:19 <b>rather (3)</b> 4535:8;4562:17; 4643:1 <b>ratio (1)</b> 4611:25 <b>ratios (1)</b> 4612:25 <b>raw (1)</b> 4601:11 <b>reach (6)</b> 4498:24;4500:24; 4503:22;4517:12; 4518:6;4610:3 <b>reached (3)</b> 4495:14;4518:14; 4617:1 <b>reaches (1)</b> 4497:12 <b>reaching (5)</b> 4543:14;4553:25; 4555:18;4636:15; 4653:5 <b>react (1)</b> 4550:15 <b>reaction (7)</b> 4635:24;4636:1; 4641:9;4650:5,8,13; 4652:5 <b>read (24)</b> 4491:11;4492:13,14; 4497:2;4505:3,5,6; 4509:15,23;4510:2,3,4, 22;4511:1,3;4516:6; 4520:15;4575:4; 4630:23,25;4631:25; 4632:3,4,14 <b>readback (2)</b> 4491:9;4604:2 <b>reader (1)</b> 4490:15 <b>reading (4)</b> 4549:12;4550:1; 4572:22;4631:5 <b>ready (2)</b> 4530:7;4571:12 <b>real (105)</b> 4487:11,17,18; 4509:19;4510:17;	4512:12,16,18,22; 4572:20;4573:20,20, 21,22,22;4574:3; 4575:7,11,12,12,13,15, 17,24;4576:4,19,19,21, 22;4577:2,3,4,11,17, 18;4579:13,25; 4580:22;4582:2; 4584:8,12,19,20,22; 4585:2,3,14,21; 4587:16,22;4588:4,5,8, 13;4589:1;4590:21,23; 4591:1,4,10,21;4592:9, 10;4593:4,6,15,16,17; 4594:16;4595:18; 4597:3,15,23;4598:12, 14,17,19;4601:18; 4604:4;4609:15; 4611:7,11,20;4612:10; 4613:13,25;4614:5,7; 4615:22;4616:7,8,10; 4617:8,13,17;4622:3; 4627:14;4629:2; 4637:24;4640:4; 4641:12,24;4652:8,10, 11 <b>reality (1)</b> 4596:25 <b>really (10)</b> 4529:7,8,14; 4605:17;4611:21; 4612:7;4616:1; 4621:16;4643:7; 4645:1 <b>Realty (2)</b> 4587:13,14 <b>re-ask (1)</b> 4633:3 <b>reason (2)</b> 4502:5;4626:3 <b>reasonable (7)</b> 4507:16;4543:21; 4595:17;4599:19; 4642:17;4645:20; 4651:10 <b>reasons (5)</b> 4489:12;4506:3; 4609:6;4610:12; 4647:4 <b>recall (19)</b> 4486:2;4494:18,25; 4506:21;4510:23; 4515:24;4522:18; 4525:11;4551:15,21; 4577:9;4581:2;4585:8; 4634:25;4641:22; 4649:22,24;4651:24; 4654:7 <b>receipts (3)</b> 4489:25;4490:1,3 <b>receive (2)</b> 4544:1,2 <b>received (4)</b>	4522:13,14;4552:25; 4562:7 <b>recency (1)</b> 4538:4 <b>Recent (5)</b> 4486:11,15,20; 4640:3;4641:13 <b>recess (1)</b> 4586:4 <b>recession (10)</b> 4575:20;4576:11; 4579:5;4611:9,15; 4612:2;4618:14; 4619:2;4636:14; 4642:17 <b>recipients (1)</b> 4537:23 <b>recognize (2)</b> 4518:6;4553:23 <b>recognized (1)</b> 4568:11 <b>recollection (3)</b> 4499:14;4619:19; 4620:2 <b>recommendation (4)</b> 4558:20;4559:8; 4562:11;4563:3 <b>recommended (2)</b> 4585:18,20 <b>recommending (1)</b> 4562:22 <b>reconstruction (2)</b> 4534:21,23 <b>record (11)</b> 4491:11;4492:14; 4505:6;4520:15; 4530:22;4572:6; 4599:15;4613:18; 4655:15,18,21 <b>recorded (5)</b> 4506:23;4542:9; 4583:3;4623:22; 4658:3 <b>recording (1)</b> 4485:5 <b>records (1)</b> 4596:19 <b>recover (1)</b> 4617:22 <b>recovery (3)</b> 4575:21;4611:14; 4618:14 <b>recross (2)</b> 4528:5,8 <b>red (4)</b> 4522:17,20;4527:8, 10 <b>redevelopment (2)</b> 4546:5;4565:12 <b>redirect (3)</b> 4511:16,19;4528:4 <b>refer (1)</b> 4603:2	<b>reference (5)</b> 4499:12;4510:9,15; 4558:19,21 <b>referenced (1)</b> 4510:9 <b>referencing (1)</b> 4547:25 <b>referred (1)</b> 4516:21 <b>referring (4)</b> 4494:1;4603:2,6; 4636:23 <b>refers (1)</b> 4604:16 <b>reflect (7)</b> 4495:6;4496:15; 4501:3;4502:18; 4508:17;4509:14; 4564:4 <b>reflected (2)</b> 4495:1;4646:21 <b>reflection (2)</b> 4494:11;4644:19 <b>reflects (1)</b> 4498:3 <b>refresh (3)</b> 4499:14;4619:18; 4620:2 <b>refund (1)</b> 4519:20 <b>regard (3)</b> 4581:16;4609:7; 4633:5 <b>regarding (11)</b> 4522:3;4555:2; 4567:25;4575:7; 4594:16;4595:19; 4608:5;4613:13; 4634:15;4639:11,19 <b>regardless (1)</b> 4627:11 <b>regional (3)</b> 4576:25;4616:16; 4621:16 <b>regulation (2)</b> 4504:21;4568:6 <b>regulations (13)</b> 4536:3,12,13,14,15, 16,16,20;4539:13; 4547:8,8,9,12 <b>rehabilitations (1)</b> 4563:9 <b>reimbursable (2)</b> 4535:9,19 <b>REIS (1)</b> 4620:22 <b>REIT (1)</b> 4621:5 <b>relate (3)</b> 4510:8;4577:2; 4597:6 <b>related (13)</b> 4508:25;4510:17;	4520:21;4521:21,24; 4522:3,8,9;4528:18; 4568:11;4585:25; 4595:14;4600:3 <b>relates (7)</b> 4508:24;4512:16; 4534:19;4553:4,7; 4562:17;4637:16 <b>relating (9)</b> 4512:12;4534:8; 4538:15;4556:12; 4557:20;4596:25; 4630:17;4632:23; 4655:19 <b>relationship (3)</b> 4568:10;4617:17; 4623:13 <b>relevance (4)</b> 4538:3;4540:23; 4541:1;4631:20 <b>relevant (5)</b> 4549:15;4565:12; 4572:18;4604:11; 4620:24 <b>reliability (1)</b> 4514:19 <b>reliable (2)</b> 4506:20;4507:1 <b>relied (2)</b> 4590:17;4654:6 <b>rely (6)</b> 4559:12;4562:5; 4580:13;4623:6; 4624:24;4646:18 <b>remember (9)</b> 4494:19;4499:16; 4507:16;4509:4; 4541:14,18;4579:4; 4585:17;4619:15 <b>remind (3)</b> 4485:17;4556:15; 4587:1 <b>removed (1)</b> 4642:16 <b>rendering (2)</b> 4546:7;4559:12 <b>renderings (1)</b> 4565:25 <b>renewals (2)</b> 4616:19;4640:18 <b>renovation (1)</b> 4549:16 <b>renovations (1)</b> 4563:9 <b>rent (14)</b> 4612:4;4618:19; 4625:4,5,9,11;4640:13, 17;4641:2,10,22; 4652:23;4653:18; 4654:23 <b>rental (5)</b> 4567:13;4640:2,15; 4641:19;4642:11
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>rents (7)</b> 4580:16;4605:1; 4612:8;4616:20; 4640:5,20;4642:1 <b>repeat (2)</b> 4510:1;4517:10 <b>repeatedly (2)</b> 4504:14,18 <b>rephrase (1)</b> 4613:20 <b>report (31)</b> 4490:15;4499:13; 4511:6,9;4513:16,20; 4514:17;4520:23; 4521:14;4525:4,7; 4526:8;4527:2,23; 4528:1;4559:7,10; 4619:15,17,19,23,24; 4620:2;4623:11; 4637:12,14,18; 4639:20;4647:3; 4649:6;4652:11 <b>reported (7)</b> 4489:10;4492:2; 4494:8;4503:3; 4510:10;4520:6,25 <b>reporter (13)</b> 4491:12;4492:15; 4505:7;4506:23; 4510:5;4533:5;4542:9; 4570:25;4583:3; 4623:22;4631:1; 4632:5;4658:3 <b>Reporters (1)</b> 4484:25 <b>reporting (1)</b> 4526:21 <b>reports (9)</b> 4495:2;4520:18; 4526:4,11,16,17,25; 4649:9,10 <b>represent (12)</b> 4640:16;4648:4; 4650:23;4651:15; 4653:3,10,20,25; 4654:16;4655:4; 4656:9;4657:3 <b>representation (6)</b> 4580:6;4582:14; 4608:7;4653:21; 4654:9,13 <b>represented (3)</b> 4586:15,19,23 <b>representing (1)</b> 4586:20 <b>represents (4)</b> 4519:16;4586:21; 4646:8;4654:12 <b>repurposing (2)</b> 4545:7;4549:16 <b>reputation (3)</b> 4508:17;4509:15,24 <b>request (9)</b>	4537:7,14,15,19; 4545:3;4546:5,7; 4550:15;4565:4 <b>requested (3)</b> 4510:4;4630:25; 4632:4 <b>requests (1)</b> 4554:11 <b>require (6)</b> 4490:7;4495:5; 4523:21;4527:14; 4604:7;4627:20 <b>required (7)</b> 4515:10;4516:6,13; 4520:18;4522:9; 4538:7;4554:18 <b>requirement (2)</b> 4490:9;4556:16 <b>requirements (5)</b> 4503:14;4537:24,25; 4548:6;4627:23 <b>requires (5)</b> 4503:15;4517:7; 4604:8,25;4626:21 <b>Research (23)</b> 4574:3,20;4575:7; 4576:4,13;4577:7,12, 15;4579:5,12,19; 4580:7,21;4581:12; 4584:8,12;4585:4,6; 4588:12;4589:16; 4591:4,20;4598:19 <b>researched (1)</b> 4642:8 <b>reserve (2)</b> 4611:4,18 <b>reserved (1)</b> 4519:1 <b>reserves (1)</b> 4611:2 <b>residential (5)</b> 4575:18;4577:25; 4578:13;4611:19; 4614:21 <b>Resolution (1)</b> 4576:8 <b>resolve (2)</b> 4515:10;4527:16 <b>resource (1)</b> 4534:14 <b>respect (9)</b> 4521:24;4534:9; 4552:24;4556:23; 4567:2;4568:10; 4597:3;4627:16; 4641:11 <b>respected (2)</b> 4577:12,13 <b>respects (1)</b> 4553:7 <b>respond (1)</b> 4557:7 <b>respondent (7)</b>	4547:1;4548:7,12; 4549:13;4551:7; 4552:5;4556:16 <b>respondents (4)</b> 4547:16,19;4555:24; 4567:21 <b>responding (1)</b> 4556:12 <b>response (24)</b> 4522:13;4543:16,16; 4554:4,11,15;4555:2, 23;4556:2;4557:1,1,10, 14,24;4558:3,14,18,23; 4560:18,20;4564:7; 4566:21;4567:5; 4575:2 <b>responses (5)</b> 4538:12;4543:17,18; 4557:22;4558:21 <b>responsibilities (16)</b> 4515:6;4521:7; 4531:23;4532:5,10,14, 19;4533:7,10,15; 4534:4,7;4579:23; 4584:6,7,10 <b>responsibility (4)</b> 4546:20,23;4547:18; 4568:10 <b>responsible (3)</b> 4521:9;4534:6; 4547:2 <b>restatement (1)</b> 4556:24 <b>restriction (1)</b> 4503:17 <b>restrictions (2)</b> 4503:23;4504:1 <b>result (7)</b> 4497:12;4567:22; 4569:2;4615:18; 4625:6;4630:14; 4640:8 <b>resulted (2)</b> 4523:5,10 <b>results (1)</b> 4503:2 <b>resume (1)</b> 4586:14 <b>resumed (1)</b> 4485:16 <b>retail (5)</b> 4577:15;4578:24; 4615:1;4637:3,4 <b>retained (2)</b> 4594:15;4596:4 <b>retired (1)</b> 4637:24 <b>return (1)</b> 4552:9 <b>revenue (5)</b> 4552:9;4567:11; 4605:13,14,15 <b>revenues (3)</b>	4538:9;4567:12; 4605:22 <b>review (23)</b> 4494:15;4515:7; 4538:6,13;4543:14; 4546:7;4553:25; 4555:18;4559:9; 4562:7;4568:15; 4569:14;4574:12; 4575:3,4;4595:5; 4607:24;4630:6,12; 4631:14;4632:15,19; 4639:6 <b>reviewed (16)</b> 4511:6,8;4513:1; 4514:22;4525:2; 4559:4;4594:25; 4595:7;4599:25; 4627:6;4628:4; 4632:20;4633:5; 4641:6;4649:10; 4650:5 <b>reviewers (1)</b> 4574:12 <b>reviewing (7)</b> 4490:18;4522:22; 4538:12;4567:1,15,16; 4595:16 <b>revised (1)</b> 4518:8 <b>revisited (1)</b> 4502:6 <b>RFP (16)</b> 4538:2,11,13; 4543:12,16,17;4547:2, 16,16,17;4548:24; 4554:4,13,19;4556:13; 4566:1 <b>right (67)</b> 4486:8;4489:7; 4490:5,13;4493:8; 4499:4;4501:6,13,21; 4502:11;4503:4; 4504:17,18,25; 4526:24;4528:17; 4530:16;4531:4,6; 4536:6;4543:9; 4544:20,21;4547:21; 4548:10;4550:2; 4553:6;4554:20,22; 4557:22;4562:8; 4571:21;4572:1; 4576:8;4578:14; 4585:17;4597:24; 4599:18;4600:12; 4609:18,18;4610:9; 4614:3,8;4619:12,17; 4620:7;4621:9;4622:7; 4632:11;4636:13; 4639:18;4640:1; 4642:12;4643:19; 4644:13,16;4645:12, 16;4646:17;4647:6; 	4648:21;4649:5; 4653:4,12;4656:3,6 <b>rights (2)</b> 4486:12;4553:3 <b>rise (4)</b> 4485:1;4543:1; 4586:8;4628:22 <b>risk (4)</b> 4611:22;4612:24; 4645:21;4651:11 <b>Riyadh (1)</b> 4589:24 <b>Road (1)</b> 4530:24 <b>ROBERT (4)</b> 4484:8,8,10;4571:1 <b>Rock (5)</b> 4581:19;4582:5,13, 19,23 <b>Rockefeller (5)</b> 4581:9,10,16; 4582:4;4614:24 <b>Rockland (3)</b> 4634:12;4635:9; 4637:4 <b>role (5)</b> 4501:18;4534:2; 4541:9;4561:15; 4584:14 <b>roles (1)</b> 4534:7 <b>room (1)</b> 4567:7 <b>rose (1)</b> 4521:16 <b>Royal (4)</b> 4590:3,4,9,12 <b>RTC (1)</b> 4576:8 <b>Rule (1)</b> 4493:7 <b>rules (1)</b> 4575:22 <b>ruling (2)</b> 4505:18;4560:14 <b>runs (1)</b> 4564:6 <b>Russia (1)</b> 4573:11 <b>RXR (1)</b> 4484:9 
				<b>S</b>
				<b>safety (1)</b> 4538:3 <b>sake (2)</b> 4622:12;4641:25 <b>salary (2)</b> 4544:1,2 <b>sale (2)</b> 4585:20;4636:16 <b>sales (22)</b>

NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4486:15,20;4603:13; 4604:6,7,8,9,15; 4606:17,25;4608:3,22; 4617:15;4620:12; 4623:4;4637:3,4; 4644:9,11;4645:2; 4650:25;4652:1 <b>same (33)</b> 4501:17;4505:17,18; 4507:23;4522:23; 4527:10;4551:6; 4565:3;4608:10,10; 4609:3,3,6;4610:10,11, 22;4614:7;4618:4; 4621:20;4624:5,7,8,9, 13;4626:1,6;4629:25; 4630:2;4639:19; 4647:7;4648:19; 4652:16;4659:6 <b>satisfaction (1)</b> 4521:12 <b>satisfactory (2)</b> 4486:13;4598:21 <b>satisfied (7)</b> 4516:9;4522:12; 4557:10,14,22,24,25 <b>save (1)</b> 4545:21 <b>saw (12)</b> 4490:12;4493:17; 4520:25;4549:20; 4573:13;4617:20; 4641:15;4642:4,17; 4652:6,7;4657:13 <b>saying (7)</b> 4500:8,9;4507:23; 4524:7;4612:13; 4616:20;4636:17 <b>scale (2)</b> 4551:5;4563:6 <b>scenario (1)</b> 4618:18 <b>scenarios (2)</b> 4496:21;4619:11 <b>schedule (3)</b> 4508:25;4537:14; 4660:8 <b>scheduled (1)</b> 4660:2 <b>schedules (1)</b> 4660:5 <b>scheduling (2)</b> 4657:18;4659:13 <b>Scholar (1)</b> 4577:10 <b>school (1)</b> 4589:5 <b>science (3)</b> 4502:25;4531:19; 4601:3 <b>scope (2)</b> 4537:14;4543:9 <b>scopes (2)</b>	4534:13;4537:12 <b>score (1)</b> 4548:12 <b>scored (3)</b> 4564:2,5,9 <b>scoring (2)</b> 4548:16;4563:25 <b>screen (54)</b> 4487:14,24;4508:1, 8;4509:10;4510:21; 4512:1,4;4513:4,14,18; 4514:2,6,24;4515:17, 21;4517:20,24; 4518:25;4519:13; 4520:11,14;4545:25; 4546:18;4547:23; 4548:9;4549:2,6,19; 4550:24;4552:1,23; 4553:12,22;4554:9; 4555:14,17;4556:11, 21;4559:2;4561:7,11; 4562:14;4563:19,23; 4575:25;4631:5; 4642:25;4643:4,5,6; 4653:4,16;4656:24 <b>script (1)</b> 4550:3 <b>scroll (5)</b> 4645:16;4646:11,16; 4651:2,7 <b>Sears (1)</b> 4615:3 <b>seat (2)</b> 4530:20;4571:25 <b>seated (5)</b> 4485:7,9;4543:2; 4586:9;4628:23 <b>SEB (21)</b> 4561:9,13,17,22; 4562:5,18,22;4563:2; 4564:1,4,6,9,12,13,14, 15;4565:7,8,19,22; 4567:1 <b>second (9)</b> 4486:11;4497:2; 4549:3,20;4555:15; 4560:13;4569:10; 4581:6;4599:13 <b>seconds (1)</b> 4569:13 <b>section (38)</b> 4486:11;4487:2,11, 18,18;4488:3,6,13; 4509:18;4510:13,15; 4511:1,4;4515:23; 4525:3,5;4547:13,20; 4551:14;4552:13,14; 4553:5;4554:23,25; 4555:3;4562:12,15,15; 4565:15;4566:20; 4581:13,23;4597:19; 4608:15;4636:4; 4637:7;4650:16;	4651:3 <b>securities (5)</b> 4519:5,15,19,21; 4528:10 <b>seeing (2)</b> 4493:23;4641:22 <b>seek (8)</b> 4487:4;4492:4; 4493:15,22;4494:5,13; 4516:14;4527:16 <b>seeking (5)</b> 4491:6;4545:6; 4550:4;4551:9,13 <b>seem (1)</b> 4503:10 <b>seems (3)</b> 4572:16;4609:16; 4641:12 <b>Segmentation (1)</b> 4577:23 <b>select (5)</b> 4507:21;4523:16; 4592:4;4620:24; 4639:9 <b>selected (11)</b> 4490:8;4500:4; 4503:5;4505:10; 4506:6;4514:25; 4562:23,23;4568:17, 18;4646:19 <b>selecting (8)</b> 4504:5;4505:9; 4517:2;4523:12,13,24; 4567:17;4647:5 <b>selection (10)</b> 4500:2;4515:5; 4553:16;4559:7,25; 4560:7;4566:11; 4568:1,2;4608:22 <b>self-fund (1)</b> 4552:18 <b>sell (8)</b> 4495:8;4496:8,20; 4497:13;4503:17; 4585:16;4620:22; 4622:22 <b>seller (11)</b> 4495:7;4496:7,7,11; 4497:13;4502:19,23; 4503:16;4622:16,20,23 <b>selling (7)</b> 4577:6;4580:9; 4582:24;4617:18,21, 23,24 <b>semester (2)</b> 4585:1,2 <b>semiannual (1)</b> 4592:11 <b>Senior (11)</b> 4484:25;4506:23; 4534:3;4542:9; 4574:18,20;4577:15; 4583:3;4588:1;	4623:22;4658:3 <b>sense (4)</b> 4529:24;4578:7; 4597:9;4652:15 <b>sentence (4)</b> 4486:11;4520:3,15; 4645:18 <b>Seoul (1)</b> 4589:21 <b>separate (6)</b> 4487:18;4555:5; 4594:9,11;4598:1; 4600:16 <b>separately (2)</b> 4520:19,21 <b>September (2)</b> 4543:18;4555:24 <b>sequence (1)</b> 4560:17 <b>series (4)</b> 4528:17;4603:1; 4606:25;4613:7 <b>seriously (1)</b> 4516:23 <b>serves (1)</b> 4514:18 <b>service (2)</b> 4611:25;4612:25 <b>Services (5)</b> 4545:2,19;4578:19; 4580:23;4605:19 <b>session (4)</b> 4485:2;4543:2; 4586:9;4628:23 <b>set (10)</b> 4506:4;4531:5; 4535:16;4543:12; 4546:21,25;4547:16; 4567:19;4600:24; 4640:25 <b>sets (1)</b> 4592:21 <b>setting (1)</b> 4553:3 <b>settled (1)</b> 4593:25 <b>settlements (1)</b> 4610:18 <b>SEVEN (6)</b> 4483:10;4519:14; 4539:23;4560:9; 4625:9;4652:14 <b>Several (2)</b> 4574:2;4589:16 <b>shaded (2)</b> 4564:12,15 <b>Shall (1)</b> 4485:11 <b>short (1)</b> 4584:4 <b>show (3)</b> 4499:13;4513:15; 4639:9	<b>showed (3)</b> 4494:4;4512:5; 4525:18 <b>shown (1)</b> 4491:19 <b>shows (4)</b> 4611:16;4621:1; 4652:11;4657:9 <b>side (5)</b> 4612:16,19;4638:13; 4653:1,2 <b>side-by-side (1)</b> 4513:11 <b>sidelines (1)</b> 4571:6 <b>signals (2)</b> 4616:25;4617:12 <b>signed (1)</b> 4527:19 <b>significance (3)</b> 4489:23;4514:16; 4518:3 <b>significant (5)</b> 4513:19;4516:20; 4521:16,16;4616:11 <b>significantly (1)</b> 4611:10 <b>silent (2)</b> 4485:3;4630:15 <b>similar (11)</b> 4486:12,12;4520:24; 4521:13;4533:8,10,11; 4551:6;4580:23; 4582:23;4590:5 <b>similarly (5)</b> 4608:9;4609:2; 4610:10;4615:21; 4627:11 <b>simple (1)</b> 4628:12 <b>simpler (1)</b> 4594:1 <b>simplification (1)</b> 4552:12 <b>simplify (1)</b> 4497:10 <b>Simply (6)</b> 4597:8,15,17,22; 4598:9;4613:8 <b>sine (2)</b> 4575:19,20 <b>Singapore (1)</b> 4589:21 <b>single (3)</b> 4494:5;4502:25; 4622:25 <b>site (3)</b> 4549:22;4565:20,24 <b>sitting (1)</b> 4659:14 <b>situated (1)</b> 4610:10 <b>situation (2)</b>
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4498:14;4626:5 <b>six (14)</b> 4496:21;4504:13,15, 19;4510:22;4519:10; 4539:23;4553:9; 4575:1;4593:12,14; 4620:12;4624:11; 4625:18 <b>size (5)</b> 4538:8;4554:15,15, 18;4620:17 <b>skimmed (1)</b> 4595:11 <b>slash (1)</b> 4560:4 <b>sleeve (2)</b> 4487:20,21 <b>sleeves (1)</b> 4571:5 <b>slightly (2)</b> 4497:16;4651:19 <b>slow (1)</b> 4579:15 <b>smart (1)</b> 4616:1 <b>Society (9)</b> 4577:11,17,18; 4590:22,24,25;4591:1, 6,11 <b>sold (3)</b> 4533:23;4606:13; 4645:4 <b>sole (1)</b> 4553:7 <b>solicitation (2)</b> 4539:12;4547:15 <b>SOLOMON (28)</b> 4595:20;4597:2,25; 4598:4;4599:2,11,12; 4603:19;4609:13; 4613:14;4627:13; 4628:6,14;4629:5,6; 4631:2,4,7,20;4633:11, 20,22;4635:16;4646:1; 4655:8,15,18;4659:20 <b>somebody (1)</b> 4621:21 <b>someone (8)</b> 4495:22;4496:5; 4498:2;4499:12; 4504:4;4575:2; 4604:15;4608:16 <b>someplace (1)</b> 4643:17 <b>sometimes (10)</b> 4588:10,10;4606:13; 4614:16,17;4618:8; 4619:1,10;4621:6,14 <b>son (1)</b> 4573:9 <b>Sorry (9)</b> 4488:16;4508:10; 4517:21;4523:7;	4529:1;4579:15; 4630:23;4639:1; 4646:4 <b>sort (2)</b> 4493:13;4501:9 <b>sound (1)</b> 4568:10 <b>sounds (2)</b> 4490:13;4607:15 <b>Source (4)</b> 4559:7,25;4567:25; 4568:2 <b>southern (1)</b> 4534:22 <b>southwest (1)</b> 4537:4 <b>Soviet (2)</b> 4573:12,12 <b>space (4)</b> 4538:21;4550:6; 4563:6;4641:1 <b>spaces (3)</b> 4545:12;4581:18,21 <b>spanned (1)</b> 4589:9 <b>speak (7)</b> 4536:5;4539:8; 4550:3;4563:6,8,10; 4642:18 <b>speaking (5)</b> 4500:21;4549:12; 4585:5;4644:2,3 <b>speaks (2)</b> 4500:1;4564:12 <b>special (2)</b> 4562:5;4588:13 <b>specialized (1)</b> 4561:21 <b>specialty (2)</b> 4588:13;4615:13 <b>specific (15)</b> 4497:8;4498:11; 4510:15;4538:20; 4540:16;4553:5; 4561:18;4563:14; 4565:22;4603:20; 4607:10;4617:4; 4623:12,15,19 <b>specifically (17)</b> 4493:15,21;4508:24; 4510:23;4534:19; 4535:7;4559:25; 4561:16,19;4568:7; 4581:15;4609:1; 4613:25;4615:19; 4623:9;4632:22; 4637:18 <b>specifications (1)</b> 4535:3 <b>specifics (1)</b> 4545:2 <b>specify (3)</b> 4516:5;4626:20,24	<b>spectrum (1)</b> 4506:3 <b>spell (1)</b> 4533:5 <b>spent (8)</b> 4512:9;4529:25; 4544:7;4573:14; 4596:18;4648:12,17,17 <b>spoken (1)</b> 4511:11 <b>spread (1)</b> 4605:4 <b>spreadsheet (1)</b> 4494:24 <b>spreadsheets (1)</b> 4494:21 <b>SPRINGS (1)</b> 4483:10 <b>sprinkling (1)</b> 4557:19 <b>square (4)</b> 4581:19;4607:17; 4616:16,16 <b>stabilization (1)</b> 4653:6 <b>stabilized (10)</b> 4612:9,11;4643:9, 11,15,16,18,23;4645:5, 6 <b>stage (1)</b> 4571:3 <b>stand (12)</b> 4485:16;4496:23; 4497:1;4530:6,15; 4543:4,6;4570:2; 4571:16;4586:11,13; 4629:20 <b>standard (12)</b> 4491:22;4493:12; 4502:8,21;4503:1; 4504:2,12;4505:11,25; 4527:14;4637:15; 4638:2 <b>standards (10)</b> 4491:23;4515:7; 4516:4,12,17;4518:17; 4546:20;4592:21; 4600:22,25 <b>standpoint (2)</b> 4545:8,12 <b>start (7)</b> 4509:18;4528:19; 4531:5;4540:24; 4579:12;4582:2; 4637:2 <b>started (10)</b> 4539:16;4576:15; 4578:17;4579:24; 4581:2,7;4582:3,9; 4587:11;4617:22 <b>starting (1)</b> 4652:12 <b>starts (3)</b>	4509:13;4514:4; 4517:25 <b>STATE (15)</b> 4483:1,3;4519:20; 4530:21;4555:4; 4568:7;4570:9,11; 4571:20;4572:5; 4584:19,24;4585:5,7,8 <b>stated (4)</b> 4508:16;4509:13; 4567:9;4611:1 <b>statement (54)</b> 4489:20;4490:7,19; 4491:16;4492:10; 4493:25;4494:16; 4495:12;4496:13; 4497:23;4507:1,8; 4508:12,16,20,20; 4509:14,21;4510:10, 12;4513:11,21,25; 4514:8,12,21;4516:3, 10;4517:8,11,16,17,22; 4518:4,5,8,13,15,19, 22;4519:9,25;4520:2,6, 17;4521:1,5;4522:11; 4524:1,5,13;4528:1; 4547:17;4595:4 <b>statements (19)</b> 4502:10;4505:19,22, 24;4506:4;4510:14; 4526:2;4527:20,22; 4541:5,9;4551:9,12,13, 15;4554:24;4557:5; 4566:16;4600:7 <b>states (17)</b> 4486:11;4518:10; 4519:19;4520:5,20,20; 4550:3;4554:14; 4570:12;4578:11; 4580:11;4588:23; 4590:6;4593:6;4611:6; 4649:20;4650:24 <b>stating (3)</b> 4553:6,14,14 <b>statistics (2)</b> 4646:12;4651:3 <b>stay (1)</b> 4584:18 <b>stays (1)</b> 4648:18 <b>stenographically (5)</b> 4506:22;4542:9; 4583:2;4623:21; 4658:2 <b>step (1)</b> 4607:11 <b>stepped (5)</b> 4530:5;4543:5; 4570:1;4586:12; 4629:19 <b>steps (1)</b> 4537:21 <b>Steven (2)</b>	4530:23;4572:7 <b>sticking (3)</b> 4568:2;4615:19; 4626:1 <b>still (22)</b> 4485:18;4495:5; 4498:4,16,24;4499:1, 12;4500:15;4501:13, 20;4517:14;4528:2; 4544:11;4571:7; 4585:12;4587:2; 4604:25;4612:16; 4617:3;4628:2; 4642:16;4660:9 <b>stock (2)</b> 4519:18;4582:6 <b>stop (3)</b> 4608:23,24;4621:9 <b>stopped (1)</b> 4579:9 <b>store (1)</b> 4615:5 <b>stores (2)</b> 4578:10;4615:3 <b>straight (2)</b> 4518:16;4607:7 <b>strategies (1)</b> 4587:17 <b>Strategy (1)</b> 4584:12 <b>STREET (18)</b> 4483:10;4484:4,18; 4572:8;4600:5; 4607:24;4627:5; 4628:5;4639:7,21; 4647:23;4649:7,19; 4650:3;4654:18; 4655:5,24;4656:10 <b>strength (1)</b> 4555:4 <b>strengths (4)</b> 4565:13;4566:2,3,20 <b>strictly (1)</b> 4620:14 <b>strong (2)</b> 4563:10;4567:9 <b>structure (2)</b> 4493:22;4550:19 <b>struggling (1)</b> 4491:21 <b>student (1)</b> 4611:2 <b>students (1)</b> 4641:25 <b>study (4)</b> 4531:16;4614:16,20; 4618:2 <b>studying (1)</b> 4617:3 <b>SUAREZ (39)</b> 4484:6;4486:3,7; 4488:5;4494:20; 4508:11;4509:12,17,
--	---	--	--	---



NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

23;4511:15,17,20,23; 4512:2,25;4513:10,24; 4514:3,20;4515:13,18; 4517:21,25;4518:21; 4519:14;4520:8,12; 4522:2,6;4524:16; 4525:1;4526:17,24; 4527:7;4528:3; 4659:24;4660:4,12,14 <b>subcontractors (3)</b> 4534:12;4537:13,25 <b>subcontracts (2)</b> 4534:16,17 <b>subheading (2)</b> 4640:2;4649:15 <b>subject (10)</b> 4536:17;4539:4,11; 4573:18;4593:13; 4604:9,11;4605:4; 4607:11,13 <b>subjective (6)</b> 4496:22;4497:6; 4498:5;4504:20; 4569:4;4607:4 <b>subjectivities (10)</b> 4601:10,12;4610:6; 4619:13,14,20; 4620:19;4624:20,24; 4636:24 <b>subjectivity (5)</b> 4496:5;4601:7; 4625:13;4657:9,16 <b>submarket (4)</b> 4582:1,5,12,16 <b>submarkets (2)</b> 4582:4,10 <b>Submit (3)</b> 4574:10;4590:2,8 <b>submits (2)</b> 4574:13;4575:2 <b>submitted (7)</b> 4535:24;4541:6; 4553:1;4554:11; 4555:5,23;4559:18 <b>subsequent (1)</b> 4637:21 <b>substance (1)</b> 4554:10 <b>subsumed (1)</b> 4548:2 <b>subtracted (1)</b> 4501:12 <b>sudden (1)</b> 4621:3 <b>sufficiency (1)</b> 4516:10 <b>sufficient (3)</b> 4516:22;4540:20; 4599:7 <b>suggest (1)</b> 4628:15 <b>suggested (1)</b> 4514:14	<b>suggests (1)</b> 4514:16 <b>Suite (3)</b> 4484:4,18;4572:8 <b>summarization (2)</b> 4562:17,25 <b>summarize (1)</b> 4566:3 <b>summarized (1)</b> 4520:18 <b>summarizing (1)</b> 4567:4 <b>summary (4)</b> 4561:25;4563:24,25; 4645:2 <b>superintendent (4)</b> 4531:25;4532:6,11, 15 <b>supply (2)</b> 4580:15;4620:23 <b>support (13)</b> 4491:14;4492:2; 4494:4,22;4508:23; 4515:3;4521:8; 4523:23;4561:16; 4580:6;4588:5,8; 4590:18 <b>supported (2)</b> 4493:21;4579:13 <b>supporting (11)</b> 4493:25;4494:9,11, 21,24;4508:25;4515:1; 4522:23;4526:1; 4552:2;4567:3 <b>suppose (2)</b> 4516:18;4540:18 <b>supposed (3)</b> 4497:14;4501:18; 4503:22 <b>SUPREME (2)</b> 4483:1,16 <b>sure (30)</b> 4485:3;4495:17; 4496:22;4497:3; 4498:21;4505:8; 4516:25;4517:11; 4522:25;4524:18; 4525:21;4534:12,14; 4550:14;4558:4; 4569:18;4585:18; 4588:17;4597:25; 4598:22;4599:17; 4612:21;4615:2; 4619:21;4622:17; 4640:24;4645:1,6; 4657:6,19 <b>surprise (2)</b> 4636:10;4652:13 <b>surprised (1)</b> 4650:14 <b>surrounding (1)</b> 4612:24 <b>survey (3)</b>	4592:2;4640:3; 4641:13 <b>surveyed (2)</b> 4576:12;4641:13 <b>Surveyors (4)</b> 4590:3,4,10,13 <b>surveys (2)</b> 4592:13;4618:8 <b>sustainability (2)</b> 4545:11;4562:2 <b>Sustained (3)</b> 4492:16;4595:24; 4646:5 <b>Swift (1)</b> 4607:16 <b>switch (1)</b> 4622:7 <b>sworn (2)</b> 4530:18;4571:23 <b>synonymously (1)</b> 4624:2 <b>Systems (1)</b> 4577:24  <b>T</b>  <b>table (3)</b> 4600:5;4638:11; 4647:9 <b>talk (7)</b> 4538:14;4585:22; 4607:19;4609:25; 4616:4;4625:15; 4631:6 <b>talked (6)</b> 4490:9;4504:3; 4579:4;4609:14; 4614:10,24 <b>talking (13)</b> 4493:24;4496:6,10, 12;4500:4;4512:10; 4527:5,6;4528:15; 4558:12;4575:18; 4613:16;4627:18 <b>talks (1)</b> 4637:19 <b>taught (6)</b> 4584:23;4593:1,6; 4617:9;4641:24; 4642:7 <b>tax (12)</b> 4519:20;4576:17; 4578:20;4580:16; 4592:1;4593:19; 4610:19;4614:13; 4618:1;4634:21; 4636:2;4641:20 <b>teach (3)</b> 4585:1,3;4617:12 <b>teaching (3)</b> 4584:14,20;4617:11 <b>team (9)</b> 4549:14;4560:10;	4561:16,17,20;4563:5, 8;4565:11,23 <b>teams (1)</b> 4534:5 <b>technical (5)</b> 4534:16;4560:9; 4561:16,20;4565:23 <b>technique (8)</b> 4490:8;4495:15; 4496:14,14;4498:5,16; 4502:20;4507:8 <b>techniques (11)</b> 4490:10;4495:4,13; 4498:3;4499:24; 4500:16,24;4501:5; 4503:18,21;4506:12 <b>tells (1)</b> 4642:5 <b>ten (6)</b> 4510:17;4563:16; 4605:7;4625:10; 4640:25;4649:13 <b>Tenant (3)</b> 4581:20,22;4605:19 <b>tenants (1)</b> 4616:17 <b>tender (2)</b> 4540:13;4596:24 <b>tenets (1)</b> 4540:21 <b>tension (1)</b> 4499:24 <b>ten-year (1)</b> 4616:14 <b>term (16)</b> 4578:2,3;4597:5; 4603:2,5;4604:13,16; 4605:24;4613:2,15,24; 4619:12,13;4624:1; 4656:18,25 <b>terminal (2)</b> 4656:15;4658:1 <b>terms (19)</b> 4491:16;4497:21; 4537:14;4551:4; 4552:6;4575:17; 4598:5;4600:14,16; 4604:22;4621:10; 4622:8,9,10;4637:10; 4638:6;4646:24; 4651:15;4654:17 <b>terrible (1)</b> 4589:5 <b>testified (22)</b> 4493:9;4502:12; 4504:13,17,22; 4506:11;4514:13; 4522:15;4530:18; 4539:19,24;4559:24; 4571:23;4593:21; 4594:2,4;4598:7; 4616:5;4628:1,3; 4633:23;4639:5	<b>testify (3)</b> 4544:14,18;4627:22 <b>testifying (4)</b> 4486:7;4493:12; 4494:20;4593:18 <b>testimonies (1)</b> 4541:20 <b>testimony (21)</b> 4486:3;4491:5; 4501:23;4502:6; 4508:3;4509:4; 4522:18;4527:9; 4528:20;4540:23; 4541:1;4557:15; 4582:14;4585:25; 4593:14;4594:9,10; 4628:1,19;4630:25; 4659:11 <b>tet (2)</b> 4561:13;4562:5 <b>Texas (1)</b> 4572:8 <b>texts (1)</b> 4637:19 <b>Thanks (5)</b> 4498:18;4507:24; 4629:4,5;4648:23 <b>theirs (1)</b> 4615:4 <b>theme (2)</b> 4575:9;4593:17 <b>themes (1)</b> 4619:9 <b>theoretically (3)</b> 4582:8;4607:7; 4624:9 <b>theories (1)</b> 4595:19 <b>theory (2)</b> 4630:17;4631:19 <b>thereabouts (1)</b> 4540:2 <b>Thereafter (4)</b> 4538:2,5;4545:13; 4640:14 <b>therefore (5)</b> 4501:3;4505:14; 4524:2;4535:8;4536:2 <b>thinking (1)</b> 4585:20 <b>third (1)</b> 4546:19 <b>third-party (2)</b> 4493:18;4620:22 <b>though (3)</b> 4550:15;4612:15; 4615:12 <b>thought (5)</b> 4487:15;4631:24; 4642:4;4652:14; 4654:2 <b>thoughts (1)</b> 4639:2
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NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<p><b>thousands (2)</b> 4588:22;4641:8</p> <p><b>three (31)</b> 4517:21;4550:9,22; 4551:10,20;4552:11, 14,21;4553:5;4556:13, 15,16,23;4558:15,16, 18;4560:8;4561:5; 4564:10,15;4566:7; 4576:18;4579:3; 4588:18;4592:8; 4598:9,15;4603:9; 4641:14;4659:20; 4660:16</p> <p><b>throughout (6)</b> 4522:17;4545:18; 4557:19;4590:18; 4615:23;4637:13</p> <p><b>throw (1)</b> 4528:12</p> <p><b>TI (1)</b> 4581:20</p> <p><b>tie (1)</b> 4494:22</p> <p><b>tied (2)</b> 4493:17;4494:23</p> <p><b>tier (1)</b> 4574:2</p> <p><b>tiered (1)</b> 4567:10</p> <p><b>times (13)</b> 4505:9;4539:21,23, 24;4540:1;4541:13,17; 4578:8;4593:11; 4594:2;4611:6;4612:1; 4621:20</p> <p><b>timing (2)</b> 4538:1;4585:17</p> <p><b>title (5)</b> 4534:3;4536:15,19; 4547:11;4573:2</p> <p><b>titled (2)</b> 4640:2;4656:5</p> <p><b>Titles (2)</b> 4547:10,10</p> <p><b>today (10)</b> 4504:14;4523:4; 4544:10;4545:18; 4589:11;4591:2; 4612:10;4619:1; 4622:22;4644:7</p> <p><b>today's (1)</b> 4641:2</p> <p><b>together (5)</b> 4493:5;4527:25; 4598:2;4618:7;4619:5</p> <p><b>Tokyo (1)</b> 4589:21</p> <p><b>told (1)</b> 4581:7</p> <p><b>Tommy (1)</b> 4485:10</p> <p><b>tomorrow (2)</b></p>	<p>4659:12;4660:16</p> <p><b>took (4)</b> 4530:15;4545:5; 4565:7;4571:16</p> <p><b>tools (1)</b> 4588:13</p> <p><b>top (12)</b> 4519:15;4549:3; 4564:6;4574:2; 4611:13;4619:6; 4620:5;4643:8;4647:9; 4648:3;4652:22; 4656:16</p> <p><b>topic (4)</b> 4573:5,7,14;4637:25</p> <p><b>total (3)</b> 4540:1;4548:16; 4636:17</p> <p><b>totalling (1)</b> 4548:9</p> <p><b>touched (2)</b> 4515:9;4547:7</p> <p><b>Tower (1)</b> 4514:21</p> <p><b>town (2)</b> 4634:21;4635:3</p> <p><b>Town's (1)</b> 4636:12</p> <p><b>Toys-R-Us (1)</b> 4615:4</p> <p><b>track (2)</b> 4588:24;4660:17</p> <p><b>Trade (1)</b> 4619:4</p> <p><b>traditionally (1)</b> 4534:25</p> <p><b>tragedy (1)</b> 4619:3</p> <p><b>train (1)</b> 4581:8</p> <p><b>training (7)</b> 4538:20;4539:4,6,9, 14;4608:17;4637:21</p> <p><b>transaction (6)</b> 4495:15;4496:15; 4497:9;4498:6; 4503:12;4636:14</p> <p><b>transactions (6)</b> 4486:12;4521:21,24; 4522:3,8,10</p> <p><b>transcript (1)</b> 4508:4</p> <p><b>transitional (3)</b> 4573:4,14,15</p> <p><b>transparency (1)</b> 4622:5</p> <p><b>Treasury (1)</b> 4519:19</p> <p><b>trends (9)</b> 4573:20;4576:18; 4577:5;4589:14; 4591:21;4609:15; 4616:22;4618:8;</p>	<p>4627:15</p> <p><b>Trial (7)</b> 4483:12;4539:22,23; 4586:3;4594:8,9; 4660:23</p> <p><b>trick (2)</b> 4487:19,21</p> <p><b>tried (2)</b> 4528:12;4617:12</p> <p><b>true (7)</b> 4560:19;4600:12; 4630:21;4631:8; 4632:13;4633:10; 4640:7</p> <p><b>TRUMP (41)</b> 4483:7,8,8,9;4492:2; 4496:22,25;4497:24; 4514:21;4516:14,14; 4518:7;4519:16; 4521:4,22;4526:21; 4527:2;4543:16; 4554:4;4555:1; 4556:24;4557:1,7; 4558:18,20;4562:18; 4563:4,8,8;4564:1,5,9, 15;4565:11;4566:3,12, 18,22;4567:8,17; 4568:17</p> <p><b>Trump's (9)</b> 4508:17;4509:15,24; 4510:16;4513:21; 4519:25;4565:9,20; 4567:1</p> <p><b>Trust (1)</b> 4576:8</p> <p><b>Truth (2)</b> 4539:14;4560:15</p> <p><b>Truthful (1)</b> 4539:15</p> <p><b>try (6)</b> 4494:19;4497:10; 4523:7;4629:17; 4645:4;4659:20</p> <p><b>trying (14)</b> 4493:3;4501:4; 4502:22;4569:5; 4599:5;4605:5;4607:5; 4615:2;4616:12,18; 4619:10;4621:24; 4627:15;4657:9</p> <p><b>Turkey (1)</b> 4530:24</p> <p><b>turn (9)</b> 4512:2,25;4513:24; 4515:13;4517:17; 4518:21;4520:8; 4525:3;4659:13</p> <p><b>turned (3)</b> 4617:1;4652:9,10</p> <p><b>turns (1)</b> 4574:11</p> <p><b>Twenty (1)</b> 4540:1</p>	<p><b>twice (1)</b> 4592:4</p> <p><b>two (44)</b> 4500:18;4503:11; 4517:18,22;4519:10; 4520:8;4537:5; 4548:21;4550:16; 4561:23,24,24;4562:1; 4564:10,14,14,16; 4565:17,20;4569:13; 4581:17;4584:11; 4588:17;4591:23; 4598:1,1;4600:16; 4605:13;4611:24; 4625:18,22;4626:1; 4634:25;4635:5,5,9,21; 4650:5;4652:6; 4654:10;4655:25; 4657:14;4659:20; 4660:15</p> <p><b>two-day (1)</b> 4593:4</p> <p><b>twofold (1)</b> 4567:19</p> <p><b>two-points (1)</b> 4611:12</p> <p><b>type (5)</b> 4551:5;4554:10; 4568:13;4589:23; 4605:18</p> <p><b>types (4)</b> 4592:9;4607:18; 4614:11;4634:5</p> <p><b>typical (7)</b> 4538:8;4556:6; 4568:13;4623:18; 4636:1;4645:20; 4651:11</p> <p><b>Typically (11)</b> 4532:25;4535:2; 4537:18;4539:7; 4561:20;4562:19; 4574:7;4575:19; 4617:21;4643:20; 4644:10</p> <p><b>typographical (1)</b> 4501:11</p>	<p>4610:7;4625:6; 4640:22</p> <p><b>Um (32)</b> 4512:19;4516:13; 4520:2;4523:5;4545:9, 12,12;4550:6,18; 4552:7;4555:3;4558:9; 4563:14;4575:17; 4588:18,20;4589:10, 20,22;4590:1,2; 4593:15,15,19; 4594:25;4595:2; 4600:6;4625:1; 4626:18;4634:22,23; 4636:15</p> <p><b>umbrella (1)</b> 4510:13</p> <p><b>unable (1)</b> 4529:14</p> <p><b>unavailable (1)</b> 4486:16</p> <p><b>Uncle (2)</b> 4606:6,6</p> <p><b>uncommon (2)</b> 4534:25;4554:18</p> <p><b>under (38)</b> 4485:18;4486:8; 4496:21,21;4499:19; 4500:3,21;4505:25; 4506:1;4507:11; 4508:19;4510:11; 4511:3;4515:6; 4516:11,17;4523:6,14; 4524:10;4528:13; 4536:15;4538:23; 4547:21;4551:9; 4552:14,14;4554:19; 4568:14;4587:2; 4607:6;4625:6; 4653:25;4654:17; 4655:5,10,12,13,24</p> <p><b>undergraduate (1)</b> 4572:19</p> <p><b>underlying (1)</b> 4634:18</p> <p><b>underneath (1)</b> 4647:10</p> <p><b>understood (1)</b> 4580:5</p> <p><b>undertake (1)</b> 4494:13</p> <p><b>unemployment (1)</b> 4592:7</p> <p><b>Uniform (1)</b> 4600:25</p> <p><b>Union (2)</b> 4573:12,13</p> <p><b>unique (2)</b> 4554:13;4624:16</p> <p><b>United (7)</b> 4518:9;4519:19; 4578:11;4580:11; 4590:6;4593:6;4611:6</p>
<b>U</b>				
<p><b>ULI (6)</b> 4591:13,15,15,18; 4592:2;4618:7</p> <p><b>ultimate (7)</b> 4543:13;4545:16; 4549:16;4552:8; 4615:22;4650:7; 4651:15</p> <p><b>ultimately (11)</b> 4503:3;4537:16; 4545:13;4552:13; 4567:9;4593:22; 4595:17;4607:24;</p>				

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

<b>units (1)</b> 4585:13 <b>University (7)</b> 4531:15;4572:21,22; 4579:6;4584:19; 4585:6;4637:25 <b>unless (2)</b> 4489:12;4526:7 <b>unlike (1)</b> 4534:25 <b>unlikely (2)</b> 4629:14,16 <b>unopposed (1)</b> 4570:5 <b>unusual (3)</b> 4554:19,20,21 <b>up (69)</b> 4485:25;4487:19,21; 4491:19;4495:23; 4499:4,6;4503:7; 4506:10;4508:3; 4509:7;4511:23; 4513:10,15;4515:14, 14,18;4516:13; 4517:14;4520:12; 4521:9;4525:1;4531:5; 4539:8;4541:2,4; 4545:22;4547:20; 4549:3;4553:18; 4558:25;4561:8; 4562:11;4563:20; 4565:2,18;4573:8,10; 4576:3;4581:8; 4598:23,24;4605:8; 4607:5;4610:7; 4611:17;4612:9,13,14, 14;4615:11;4617:14; 4620:1;4621:24; 4639:12;4642:5; 4643:14,16;4646:11, 16;4648:24;4653:1; 4654:21,21;4657:13, 22,23,24;4658:1 <b>updated (2)</b> 4660:2,8 <b>upon (8)</b> 4612:9;4619:11; 4624:15;4628:10,20; 4633:24;4643:9; 4653:5 <b>upside (1)</b> 4567:11 <b>urban (5)</b> 4576:23;4589:13; 4591:12,13,15 <b>usable (1)</b> 4502:9 <b>usage (2)</b> 4545:11;4550:6 <b>use (70)</b> 4486:23,25;4489:10; 4490:5;4495:4,22; 4497:21;4498:16; 4500:15,24;4501:5,10, 20;4502:2;4503:24; 4504:4,5,13;4505:15; 4506:16;4507:8,9,13, 14;4549:16;4550:5,8; 4554:15,16;4577:24; 4578:2;4580:1,12; 4588:18;4593:6; 4603:2,5;4604:18; 4605:8;4606:4,5; 4620:13,16,21,23,25; 4621:6;4622:4; 4623:13;4624:11; 4625:10,17,22;4626:3, 18;4636:7,11;4640:17; 4641:25;4644:8,11; 4645:5,15;4646:9,14; 4647:4;4651:17; 4652:16,17;4657:10 <b>used (44)</b> 4486:16,19,20; 4489:14;4490:23; 4492:5,6;4496:13; 4504:6;4512:18,20; 4515:2,7;4516:8; 4517:2,4;4523:25; 4525:24;4554:15; 4577:12,13;4580:5,7; 4603:16;4604:11,22; 4606:5,17,21;4612:5; 4618:8;4624:1; 4627:11;4633:14; 4634:6;4636:7,12; 4638:5;4640:16,21; 4643:12,20;4646:21; 4652:13 <b>useful (1)</b> 4499:12 <b>user (15)</b> 4503:7;4506:9,9; 4507:22;4514:12,18; 4517:3,7,8,12,14; 4518:13,18,20;4519:24 <b>users (3)</b> 4509:1;4518:5; 4521:14 <b>uses (6)</b> 4495:13;4497:11; 4498:2,5;4548:11; 4630:11 <b>using (34)</b> 4487:6;4488:21; 4489:9,19,24;4491:24; 4493:1;4495:14,18; 4498:19;4499:24; 4500:5,20,21,22; 4501:14,19,19,22; 4502:1,12;4503:6,21; 4507:11,20;4517:5; 4562:4;4585:14; 4613:15,24;4631:15; 4640:19,24;4641:12 <b>USPAP (5)</b>	4601:1;4626:21; 4627:20,23,24 <b>usually (3)</b> 4539:10;4575:24; 4625:19 <b>utilize (1)</b> 4548:3  <b>V</b>  <b>vacancies (1)</b> 4612:13 <b>vacancy (1)</b> 4580:15 <b>valid (1)</b> 4634:1 <b>validate (2)</b> 4492:5,7 <b>valuation (56)</b> 4490:8,21;4496:19; 4502:20;4509:25; 4517:2,5;4543:13; 4566:11;4573:20; 4577:25;4579:19; 4580:22;4587:23; 4588:4,6,9;4589:1,19; 4594:17;4595:14,18, 19;4597:4,23;4600:14; 4601:13,14,25; 4604:12;4606:11; 4607:13;4608:19; 4609:23;4610:12; 4615:23,25;4616:21, 23;4619:11;4620:20; 4625:2;4626:15; 4627:10,12;4629:3; 4630:4,13;4632:23; 4634:15;4643:9; 4644:5;4645:25; 4650:20;4655:11,20 <b>valuations (32)</b> 4491:2;4496:4,5; 4509:3;4523:5,10; 4574:17;4580:16; 4597:1,6,8,9,23; 4598:5;4600:3,6,11; 4601:21,23;4607:12; 4609:10,16;4613:18; 4616:2;4627:17; 4630:18;4632:13; 4633:5,9,18,25;4634:5 <b>value (171)</b> 4486:14,15;4488:4; 4495:10,16,19,21,23; 4496:2,9,15;4497:6; 4498:4,4,6,17,21,23, 25;4499:1,3,23,25; 4500:3,6,10,16,25; 4501:4;4502:9,24,25; 4503:15,23;4504:6; 4505:10,21,21;4506:5; 4508:17,22;4509:14; 4510:10,16;4512:6,11, 16;4517:2;4519:22; 4523:7,11,17,17; 4524:14;4525:4,8,10, 21,22;4526:6;4552:6; 4578:7;4601:9;4605:8; 4606:7,16;4607:6,8,9; 4608:10;4609:4; 4613:9,10,13,25; 4614:4;4615:7,21,22; 4616:7,8,12;4621:25; 4622:8,8,11,12,18,19; 4623:7,8,9,12,12; 4624:4,4,8,9,15,17,18, 19,21,23;4625:12,12, 23;4626:5,5,9,9,13,19, 20,22,23,24;4627:6,7, 10,10,20,21;4629:24, 24;4630:8,8,13,14,14; 4631:18;4632:9,16; 4633:14;4634:6,23,24; 4635:12,25;4637:10, 10,20,20;4638:6,6; 4647:17,22;4648:3,5,8, 9;4649:15,18,20,21,24; 4650:6;4651:15,18; 4653:5,9,25;4654:3; 4655:9,10,13,24; 4657:3,21;4659:2,7 <b>valued (5)</b> 4519:21;4615:5; 4635:3,4;4655:5 <b>values (39)</b> 4502:14,17;4503:3, 18,25;4505:24; 4510:10;4517:15; 4518:14;4523:6; 4526:5,12;4595:3; 4600:7;4614:19; 4623:3;4627:8; 4630:11,21,22;4631:8, 8,11,12,13,14,15,16; 4632:10,17;4633:18, 19;4634:11,25;4642:6; 4657:12,14,25,25 <b>valuing (5)</b> 4609:3;4650:3; 4654:1,17,17 <b>variables (5)</b> 4588:22;4605:21; 4608:13,20;4654:24 <b>variance (7)</b> 4532:24,25;4533:1; 4635:14,15,20;4636:9 <b>varied (1)</b> 4502:14 <b>variety (2)</b> 4578:25;4587:17 <b>various (12)</b> 4523:21;4537:24; 4541:3;4552:7; 4575:10;4578:13; 4591:24;4592:6; 4606:9;4607:17,17,21	<b>vary (1)</b> 4532:23 <b>verbatim (1)</b> 4549:12 <b>verified (1)</b> 4607:1 <b>versus (6)</b> 4526:22;4595:4; 4600:6;4627:21; 4652:14;4654:22 <b>Veteran's (1)</b> 4537:4 <b>via (1)</b> 4594:4 <b>vice (3)</b> 4570:6;4586:20; 4591:10 <b>vicinity (1)</b> 4643:22 <b>view (5)</b> 4501:5,7;4524:14; 4631:17;4653:24 <b>viewed (1)</b> 4611:20 <b>violate (1)</b> 4501:6 <b>vis-a-vis (1)</b> 4490:24 <b>visible (2)</b> 4522:20,22 <b>vision (2)</b> 4550:10;4566:1 <b>volume (2)</b> 4581:13;4636:14 <b>Vornado (5)</b> 4519:8,25;4520:1, 23;4521:5 <b>vu (1)</b> 4610:3  <b>W</b>  <b>WABASH (1)</b> 4483:9 <b>wait (5)</b> 4541:11;4560:13,13; 4646:3,3 <b>waiting (1)</b> 4628:6 <b>waive (1)</b> 4575:20 <b>Wakefield (1)</b> 4640:10 <b>walked (2)</b> 4512:5,13 <b>Wall (14)</b> 4600:5;4607:24; 4627:5;4628:5;4639:6, 21;4647:23;4649:7,19; 4650:3;4654:18; 4655:5,24;4656:10 <b>WALLACE (53)</b> 4485:13,19,20,22; 4485:13,19,20,22;
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November 16, 2023

4487:12,17,19,21; 4488:3,7,11,14,16; 4492:19,25;4493:9; 4496:12,18;4497:15, 18;4498:13;4499:4,6,9, 18;4505:3;4506:18; 4509:7;4510:2,19; 4511:14;4512:5; 4513:1;4514:22; 4519:7;4521:20,25; 4522:16;4523:4,9; 4525:2,6,14,17; 4526:15,20,21;4527:1; 4528:6,9,16;4529:18, 23 <b>Wallace's (1)</b> 4515:22 <b>war (1)</b> 4535:6 <b>warning (4)</b> 4514:18;4539:17; 4582:11;4655:1 <b>Waterhouse (3)</b> 4584:1,2,4 <b>wave (1)</b> 4575:19 <b>way (17)</b> 4495:24;4500:24; 4527:25;4529:6; 4570:14;4571:7; 4600:4;4606:17,23; 4618:17;4625:18; 4629:25;4630:2; 4632:24;4633:8; 4657:13;4659:5 <b>ways (1)</b> 4499:20 <b>weaknesses (5)</b> 4565:13,15,16; 4566:5,21 <b>weeds (1)</b> 4636:18 <b>week (5)</b> 4570:16;4660:6,7, 13,14 <b>weight (2)</b> 4551:21;4623:6 <b>weighted (2)</b> 4548:8,22 <b>WEISSELBERG (1)</b> 4483:7 <b>welcome (2)</b> 4531:12;4629:7 <b>weren't (1)</b> 4601:23 <b>West (1)</b> 4530:24 <b>what's (7)</b> 4498:8;4558:9; 4568:20,25;4587:12; 4590:1;4600:25 <b>Whenever (2)</b> 4645:5,5	<b>whereas (1)</b> 4552:14 <b>whereby (1)</b> 4538:23 <b>Whereupon (59)</b> 4485:16;4491:11; 4492:14;4505:6; 4507:25;4508:7; 4509:9;4510:4,20; 4511:25;4512:3; 4513:3,13,17;4514:1,5, 23;4515:16,20; 4517:19,23;4518:24; 4519:12;4520:10,13; 4530:5,15;4542:8; 4543:5;4545:24; 4546:17;4547:22; 4549:1,5,18;4550:23; 4551:25;4552:22; 4553:11,21;4554:8; 4555:13,16;4556:10, 20;4559:1;4561:6,10; 4562:13;4563:18,22; 4570:1;4571:16; 4586:3,12;4628:20; 4629:19;4630:25; 4632:4 <b>wherewithal (1)</b> 4568:8 <b>white (1)</b> 4619:5 <b>Whitley (1)</b> 4523:1 <b>whole (7)</b> 4558:12;4582:14; 4604:18;4605:20; 4637:13,25;4657:12 <b>whose (1)</b> 4499:5 <b>willing (15)</b> 4495:8;4497:13,13; 4502:19,19,22,23; 4503:16,16;4622:15, 15,20,20,22,23 <b>wind (1)</b> 4614:18 <b>wish (1)</b> 4571:7 <b>withdraw (9)</b> 4562:20;4565:7; 4566:9;4594:1; 4624:22;4625:19; 4644:23;4653:10,23 <b>withdrawal (1)</b> 4521:17 <b>withdrawing (1)</b> 4516:24 <b>withdrawn (12)</b> 4512:14;4514:10; 4516:25;4521:19; 4528:16;4590:15; 4603:15;4613:20,22; 4634:3;4646:18;	4651:23 <b>within (30)</b> 4503:5;4510:15,24, 25;4513:22;4515:3; 4517:15;4527:11; 4543:12;4546:25; 4547:9,17;4548:1,2,5; 4553:2,5;4554:25; 4557:4;4559:19; 4560:11;4561:24; 4566:2,21;4568:11; 4579:20;4580:23; 4582:10;4615:25; 4620:12 <b>without (5)</b> 4523:18;4533:20; 4549:12;4550:1; 4599:4 <b>witness (95)</b> 4485:12,16,17; 4491:10;4493:9; 4497:4;4501:23; 4504:17,21;4507:17, 20;4528:21;4529:1,3, 11,20;4530:1,3,4,5,8, 13,14,15,23;4531:3; 4536:5,8;4539:19,25; 4540:6,13;4541:16,20; 4543:3,4,5,5;4546:1; 4555:21;4558:19; 4559:3;4569:15,24; 4570:1,3,24;4571:13, 15,16;4572:7;4585:24; 4586:10,11,12,12; 4587:1,18;4593:8,21; 4594:3;4595:21; 4597:13,17;4598:1,7,8, 13,16,19;4603:20; 4609:14,21,24;4620:9; 4627:22,24;4628:7,18; 4629:3,19,19;4631:22; 4632:2;4633:2,23; 4639:15;4646:4; 4648:14,21;4649:2; 4659:10;4660:3,20,20 <b>witnesses (2)</b> 4541:3;4660:6 <b>witness's (2)</b> 4609:19;4628:1 <b>won (3)</b> 4577:7,9,14 <b>wonder (1)</b> 4485:8 <b>wonderful (1)</b> 4560:17 <b>wondering (1)</b> 4557:16 <b>word (9)</b> 4491:21;4507:16; 4557:25;4569:5; 4600:18;4604:18; 4605:25;4621:10; 4622:4	<b>word/phrases (1)</b> 4622:2 <b>words (5)</b> 4491:8;4577:4; 4598:10,15;4631:3 <b>work (59)</b> 4490:17;4492:19; 4493:11,22;4494:7,10, 15;4527:11;4528:20; 4529:6,8;4531:13; 4532:1,7,12,16;4533:2, 11,12,17,18,25;4534:6, 12,13,13,15,24;4535:1, 4,6,7,9,11,18,20; 4536:22;4537:12; 4538:1;4540:6,7,10; 4543:24;4544:4; 4549:15;4578:16,20; 4580:5,24;4587:14,18, 19,20;4588:3;4589:8, 11;4596:1,13;4636:2 <b>worked (20)</b> 4532:2,8,13,17; 4533:4;4537:21; 4575:11;4578:8,20; 4580:23;4589:20,21, 22;4601:20;4610:20; 4611:15;4615:1,4; 4620:21;4621:15 <b>work-from-home (1)</b> 4619:9 <b>working (15)</b> 4522:23;4529:5; 4535:16;4536:22,25; 4579:9,19;4581:9; 4589:12;4600:19; 4610:16;4615:24; 4618:25;4642:19; 4660:4 <b>works (2)</b> 4576:22;4589:13 <b>worksheet (1)</b> 4493:25 <b>worksheets (1)</b> 4494:9 <b>world (2)</b> 4584:17;4619:4 <b>world's (1)</b> 4591:16 <b>worldwide (4)</b> 4508:17;4509:15,24; 4577:19 <b>worse (1)</b> 4619:11 <b>worst (1)</b> 4618:18 <b>worth (4)</b> 4501:15;4548:17; 4615:3;4648:19 <b>write (4)</b> 4531:2;4589:16; 4591:20,25 <b>written (5)</b>	4538:25;4543:18; 4550:18;4551:3; 4591:18 <b>wrong (12)</b> 4501:20,21;4503:4; 4505:1,1;4506:1,6; 4523:12,13;4557:25; 4600:12;4618:22 <b>wrote (5)</b> 4581:24;4591:22,23; 4637:25;4638:1 <hr/> <b>Y</b> <hr/> <b>year (11)</b> 4494:16;4540:9,9, 11;4576:18;4584:17; 4592:4;4615:10; 4636:15;4652:23; 4653:18 <b>years (29)</b> 4534:21;4574:7; 4575:9;4577:18; 4578:21;4579:3; 4584:2,21;4587:21; 4589:3,4;4590:1; 4591:8,19,22,23; 4592:9;4600:20; 4605:7;4613:11,23; 4614:3;4615:11,23; 4617:3;4629:1; 4632:16;4640:25; 4641:5 <b>Yep (1)</b> 4531:9 <b>yesterday (17)</b> 4490:9;4508:3,4; 4509:4,23;4511:1; 4512:10,22;4513:2; 4514:22;4515:12,22; 4519:7;4521:20; 4522:16;4523:4,9 <b>yield (2)</b> 4502:14;4503:2 <b>yielded (1)</b> 4523:17 <b>YORK (11)</b> 4483:1,14,14,22; 4484:23;4532:9; 4581:8,25;4582:6,13, 22 <b>young (2)</b> 4571:6,9 <b>Yugoslavia (1)</b> 4573:9 <hr/> <b>Z</b> <hr/> <b>zero (3)</b> 4501:12,12;4502:2 <b>zip (2)</b> 4531:1;4588:24 <b>zone (1)</b>
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

4535:6	<b>150,000 (1)</b> 4584:17	4651:3	<b>210 (1)</b> 4611:5	
<b>0</b>	<b>153 (2)</b> 4554:6,23	<b>2:15 (3)</b> 4585:22,23;4586:4	<b>22 (2)</b> 4499:7,18	<b>4</b>
<b>0 (4)</b> 4612:6;4640:14; 4641:3;4642:20	<b>15-minute (3)</b> 4628:11,16,20	<b>20 (6)</b> 4534:21;4540:1,10; 4582:7;4641:14; 4645:15	<b>220 (1)</b> 4647:21	<b>4 (2)</b> 4564:6;4642:1
<b>01985 (1)</b> 4531:3	<b>15th (4)</b> 4622:3;4637:19; 4638:2,7	<b>200 (2)</b> 4618:9,9	<b>23 (3)</b> 4508:13;4509:8,12	<b>4,869,396 (1)</b> 4654:10
<b>07921 (1)</b> 4484:14	<b>16 (1)</b> 4483:13	<b>2000 (1)</b> 4578:10	<b>23.2 (4)</b> 4652:25;4653:19; 4654:4,22	<b>4.25 (3)</b> 4651:10,17;4652:13
<b>1</b>	<b>1609 (3)</b> 4485:25;4511:24; 4515:13	<b>2000's (1)</b> 4591:7	<b>2450 (1)</b> 4572:8	<b>4.28 (1)</b> 4651:4
<b>1 (22)</b> 4564:6;4581:4; 4595:8;4612:6;4622:1, 2;4637:18;4639:21; 4643:10;4647:18,23; 4648:6,9,9;4649:6,18, 25;4650:2;4653:5,12, 14,16	<b>162 (2)</b> 4656:4,10	<b>2001 (2)</b> 4611:8;4619:2	<b>25 (1)</b> 4615:1	<b>4.62 (2)</b> 4651:5,20
<b>10:00 (3)</b> 4485:11;4659:12; 4660:24	<b>17 (2)</b> 4513:7;4549:17	<b>2006 (2)</b> 4572:23;4584:16	<b>260 (1)</b> 4650:13	<b>4:30 (1)</b> 4629:12
<b>100 (6)</b> 4548:9,16;4564:2, 10;4616:13;4643:19	<b>170 (1)</b> 4650:18	<b>2008 (3)</b> 4499:8,11;4591:8	<b>274 (24)</b> 4487:2;4488:14; 4490:7,12,24;4495:5, 13,19;4498:3,20; 4500:3,21,24;4501:2,5; 4502:1,6,13;4503:6,19, 21,25;4504:5;4506:12	<b>40 (18)</b> 4544:9;4592:5,5,13; 4600:5;4607:24; 4627:5;4628:4;4639:6, 21;4647:23;4649:7,19; 4650:3;4654:18; 4655:5,24;4656:10
<b>10005 (1)</b> 4483:22	<b>171 (1)</b> 4652:21	<b>2010 (2)</b> 4611:17,19	<b>274-10-55-1 (1)</b> 4512:7	<b>401 (1)</b> 4483:9
<b>10007 (1)</b> 4483:14	<b>175 (2)</b> 4642:23;4646:22	<b>2011 (11)</b> 4494:16;4523:1; 4543:20;4554:5; 4607:24;4627:5; 4631:15;4632:20; 4639:6;4642:12; 4652:12	<b>3</b>	<b>42nd (1)</b> 4484:18
<b>10022 (1)</b> 4484:23	<b>176 (3)</b> 4647:7,9;4653:2	<b>2012 (32)</b> 4585:9,17;4607:24; 4627:5;4631:16; 4634:20;4639:6,21; 4640:14;4641:3,4; 4642:13,14,16;4645:2, 4;4647:18,23;4648:9; 4649:21;4650:6; 4651:25;4652:14,16, 18;4653:4,12;4654:1,2, 17;4655:4,24	<b>3 (15)</b> 4564:6;4595:10; 4601:17;4612:11; 4640:15,15;4641:3,3, 10,15,21,22,25; 4642:10,21	<b>431 (2)</b> 4559:16,22
<b>101 (1)</b> 4484:4	<b>177 (1)</b> 4647:16	<b>2014 (7)</b> 4513:11;4514:21; 4519:20;4577:10,14; 4585:18,22	<b>30 (13)</b> 4500:5;4519:20; 4574:7;4575:9; 4587:21;4600:20; 4613:23;4614:3; 4615:1,11;4617:3; 4629:1;4641:5	<b>4359 (1)</b> 4508:6
<b>109.9104-1 (1)</b> 4567:23	<b>178 (1)</b> 4648:2	<b>2015 (30)</b> 4607:25;4627:5; 4631:16;4639:6; 4643:10;4645:5; 4648:6,9;4649:6,19,22, 25;4650:2,7,7; 4651:25;4652:5,8; 4653:5,8,13,14,16; 4654:1,5,19;4655:5,25; 4656:10,12	<b>31 (3)</b> 4589:3,4;4613:11	<b>441 (1)</b> 4657:13
<b>11 (5)</b> 4523:5,5,9;4543:18; 4556:4	<b>17th (1)</b> 4660:24	<b>2019 (2)</b> 4587:9;4590:10	<b>3208 (2)</b> 4639:13;4653:2	<b>45 (1)</b> 4659:18
<b>114.5 (3)</b> 4654:14,16;4655:3	<b>18 (1)</b> 4550:22	<b>2020 (1)</b> 4523:1	<b>325 (1)</b> 4596:20	<b>45-13 (1)</b> 4515:14
<b>1164 (1)</b> 4553:19	<b>18.3 (4)</b> 4647:14;4653:14; 4654:3,21	<b>2021 (2)</b> 4494:17;4523:2	<b>334,523 (1)</b> 4647:14	<b>452564/2022 (1)</b> 4483:6
<b>118 (2)</b> 4648:25;4656:4	<b>19 (1)</b> 4551:24	<b>2023 (2)</b> 4483:13;4660:24	<b>35 (5)</b> 4548:22;4577:18; 4592:5,13;4620:2	<b>4600 (1)</b> 4484:18
<b>12 (6)</b> 4483:9;4565:1; 4594:6,8;4632:20; 4650:23	<b>1980s (1)</b> 4576:10	<b>21 (3)</b> 4508:6,14;4552:20	<b>35,000 (1)</b> 4592:16	<b>48 (9)</b> 4536:15,19;4546:21, 25;4547:4,11;4567:23, 24;4568:2
<b>13 (4)</b> 4486:1;4512:2; 4546:15;4581:19	<b>1989 (1)</b> 4572:21		<b>37 (4)</b> 4485:1;4543:1; 4586:8;4628:22	<b>5</b>
<b>130 (2)</b> 4639:13;4640:1	<b>1991 (1)</b> 4573:12		<b>38 (1)</b> 4530:24	<b>5 (1)</b> 4601:18
<b>1431 (1)</b> 4555:11	<b>1992 (5)</b> 4576:7;4579:24; 4589:2;4594:13; 4641:19		<b>3B (1)</b> 4557:4	<b>5,000 (1)</b> 4578:6
<b>15 (10)</b> 4542:6;4548:15,18, 20,24;4551:23; 4560:16;4594:6,8; 4632:20	<b>1995 (4)</b> 4580:18;4581:4,12; 4582:2			<b>50 (7)</b> 4547:10;4576:16,16; 4577:19,20;4580:17; 4620:12
	<b>2</b>			<b>500 (2)</b> 4635:4,22
	<b>2 (4)</b> 4564:6;4595:8; 4612:6;4616:16			<b>500,000 (1)</b> 4616:16
	<b>2.05 (1)</b> 4499:19			<b>526 (1)</b> 4484:9
	<b>2.5 (1)</b> 4612:11			<b>540 (2)</b> 4649:20;4650:13
	<b>2.68 (1)</b>			

NYSCEF DOC. NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

November 16, 2023

55-1 (5) 4486:8,11;4488:3,6, 13	4579:5;4611:8 9104 (1) 4568:2 92 (3) 4564:10;4579:4; 4611:3 925 (1) 4529:20 93 (2) 4643:20,22 94 (1) 4580:20 95 (3) 4580:20;4643:20,22 950 (2) 4499:7;4525:1 97 (1) 4564:11			
6				
6.7 (2) 4646:17,17 60 (4) 4484:18;4544:9; 4576:16;4580:17 619 (1) 4545:23 65 (1) 4643:13 650 (1) 4620:13 686 (1) 4657:13				
7				
7 (4) 4582:6;4645:20,24; 4646:6 7.5 (1) 4659:6 7.68 (1) 4651:4 730 (3) 4509:8;4513:12; 4518:23 75 (1) 4643:13 750 (1) 4484:4 77010 (1) 4572:9				
8				
80s (1) 4578:21 84 (1) 4564:9 86 (1) 4611:8				
9				
9 (1) 4567:24 9.104-1 (5) 4546:21,25;4547:4; 4548:1,1 900 (3) 4635:3,22;4636:17 909 (1) 4572:8 90s (1) 4574:19 91 (4) 4564:10;4576:11;				

**In The Matter Of:**  
*NYS Attorney General v.*  
*Donald J. Trump, et. al*

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*November 17, 2023*  
*November 17, 2023*

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*Michael Ranita - Senior Court Reporter*

Original File November 17 2023Trump.txt

**Min-U-Script® with Word Index**

Page 4661

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK : CIVIL TERM : Part 37  
3 -----x  
4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  
6 YORK,  
7 Index: 452564/2022  
8 Plaintiff,  
9  
10 -against-  
11  
12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;  
13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY  
14 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;  
15 THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,  
16 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING  
17 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH  
18 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL  
19 STREET, LLC; AND SEVEN SPRINGS, LLC,  
20  
21 Defendants.  
22  
23 -----x  
24 60 Centre Street  
25 New York, New York 10007  
November 17, 2023  
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Page 4662

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Dr. Laposa - by Defense - Direct (Mr. Fields)

Page 4663

1 THE COURT: Good morning, everyone. I'll ask the  
2 witness to resume his place on the witness stand, and I'll  
3 remind him, as I always do, he's still under oath.  
4 Please proceed, Counselor.  
5 MR. FIELDS: Thank you, your Honor. And good  
6 morning.  
7 THE COURT: Good morning.  
8 DIRECT EXAMINATION  
9 BY MR. FIELDS: (Continued.)  
10 Q Good morning, Dr. Laposa.  
11 A Good morning.  
12 MR. FIELDS: If we could please pull up Plaintiff's  
13 118, page 162.  
14 (Whereupon, the exhibit displayed on the screen was  
15 taken down.)  
16 MR. FIELDS: If we could blow up -- that's probably  
17 a poor term, but enlarge the pricing matrix.  
18 (Whereupon, the exhibit displayed on the screen was  
19 taken down.)  
20 Q Thank you. Dr. Laposa, when we broke yesterday for the  
21 evening, do you recall that we were discussing this pricing  
22 matrix in the 2015 40 Wall Street appraisal?  
23 A I do.  
24 Q And the top of the chart reflects "terminal  
25 capitalization rates"?

Dr. Laposa - by Defense - Direct (Mr. Fields)

Page 4664

1 A Correct.  
2 Q And the left side of the chart reflects "discount  
3 rates"?  
4 A Correct.  
5 Q And your testimony was that the figure that's grayed  
6 out in the middle of this chart, what is your testimony? What  
7 is this value that is grayed out?  
8 A The matrix is typical, as I've seen in appraisals and  
9 what appraisers do, and they look at this, and like I said  
10 yesterday, to create an estimate of market value is a point, and  
11 it includes a distributions.  
12 And so this chart actually is a great chart that  
13 illustrates the distribution of potential values that the  
14 appraiser would actually consider before finalizing what his  
15 value would be.  
16 Q Okay.  
17 Are the discount rate and the terminal capitalization  
18 rate two of the many subjectivities that you testified about  
19 yesterday?  
20 A Yes, very much so.  
21 Q On the low end of this chart where the terminal  
22 capitalization rate is six and a quarter percent and the  
23 discount rate is seven and a half percent on the bottom right,  
24 what is the figure in that box?  
25 A Approximately 441 million.



Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4665

1 Q Okay. And then if we go to the high end of the chart  
2 at four and a quarter percent, terminal capitalization rate;  
3 five and a half percent discount rate, what is the figure there?  
4 A The value is approximately 686 million.  
5 Q All right.  
6 Now, if you added a half a percent to four and three  
7 quarters for the cap rate and added half a percent for the  
8 discount rate to six, do you see where the figure is  
9 approximately \$604.9 million?  
10 A I do.  
11 Q So does that \$604.9 million, approximately, represent  
12 adding a half a percent to both of these subjectivities?  
13 A Yeah, 50 basis points, correct.  
14 Q And when you add those 50 basis points, the result is  
15 approximately an 80 or so million dollar difference; is that a  
16 fair statement?  
17 A Yeah. Yes, approximately 686 minus 604.  
18 MR. FIELDS: Okay. We could pull that down, thank  
19 you.  
20 (Whereupon, the exhibit displayed on the screen was  
21 taken down.)  
22 Q I would like to shift gears Dr. Laposa, and talk to you  
23 a moment about the term trophy property?  
24 A I'm familiar with that term.  
25 Q What is a "trophy property"?

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4666

1 A I would consider a "trophy property" as iconic, not  
2 reproducible, very unique in the marketplace. It could be a  
3 historic building. It could be -- it's -- I've seen it in the  
4 literature. I've seen it in appraisals. They say this property  
5 is a trophy property, and so, yes, I've seen it.  
6 Q We talked about the Rockefeller Center and the  
7 bankruptcy that you were involved in as a result on that  
8 property.  
9 Is the Rockefeller Center an example of a property you  
10 would consider a trophy property?  
11 A Very much so.  
12 Q What kinds of investors do trophy properties typically  
13 attract?  
14 A The pool of investors that I've seen in my experience  
15 is, especially working around the world on properties that I  
16 would also consider trophy properties, is that the pool of  
17 investors is much more limited to who would want to -- who can  
18 afford to buy it, and sometimes they buy this -- buy a property  
19 for 50 years, you know, expectation. I've worked with Dutch  
20 investors. When they buy a property, especially if it's a  
21 trophy. They are going to keep it in their portfolio for  
22 50 years.  
23 So it's a very limited, um, it could be high net worth.  
24 It could be family office, real estate offices that's -- it  
25 could be a group of foreign investors. So it's a real limited,

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4667

1 in my experience, the pool of investors, it's not, you know,  
2 it's just not, um, you don't see it that many, um, typical local  
3 and regional real estate investors.  
4 Q How, if at all, does the appraisal or valuation process  
5 for trophy properties vary from the appraisal or valuation  
6 process for non-trophy properties?  
7 MR. SOLOMON: Objection, your Honor. The witness  
8 has been qualified for market research and market trends and  
9 the like expert. He's not been qualified specifically it  
10 was excluded about anything having to do with appraisals.  
11 MR. FIELDS: I don't recall that, your Honor. I  
12 believe, your Honor, when we came back from that break said  
13 he's been doing this four 30 years. He is qualified to  
14 testify about information that goes into the appraisal that  
15 he spent 30 or so years valuating and understanding the  
16 market data; that's what my question was geared toward.  
17 THE COURT: Read back, please.  
18 (Whereupon, the requested testimony was read back  
19 by the court reporter.)  
20 THE COURT: Well, this is very specific to  
21 appraisals. Objection sustained.  
22 MR. FIELDS: Your Honor, I also asked about  
23 non-appraisals. The question was, how does it vary for  
24 appraisals or non-appraisals, and we've been discussing with  
25 Dr. Laposa appraisals and non-appraisals since the beginning

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4668

1 of the testimony.  
2 MR. SOLOMON: And we had a continuing objection to  
3 that line, your Honor.  
4 THE COURT: I'll let it in. There's no jury. I  
5 don't see the prejudice, so overruled without prejudice to  
6 -- Mr. Solomon, you are dismayed. Let's have it out is  
7 this. Is it because it will waste time or because of some  
8 prejudice to your case?  
9 MR. SOLOMON: We don't anything is a prejudice to  
10 our case, your Honor. Let's be clear on that. That I've  
11 learned how to answer.  
12 But I do think it's a weight of time. If the  
13 witness wants to testify in the area of market research,  
14 market analysis relating to trophy properties, that's one  
15 thing.  
16 To have him sit up there and talk about how an  
17 appraisal is different for a trophy property versus a  
18 non-trophy property, or even a valuation between the two,  
19 this witness is not qualified.  
20 I believe there were people who were appraisers up  
21 on the stand at various point in time. The questions could  
22 have been asked of those people whether they were or  
23 weren't, and that was the decision that was made. But it's  
24 not proper for this witness.  
25 MR. FIELDS: I don't think Mr. Larson -- I asked

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4669

1 about the process. Respectfully, that was question.  
2 THE COURT: Mr. Solomon, if you are still trying to  
3 save time, you are not.  
4 MR. SOLOMON: But, your Honor, if they do this,  
5 that may also require us to call a rebuttal expert with  
6 respect to appraisals and the like, so it will, in fact,  
7 extend the time.  
8 THE COURT: That's true. I have a more broad view  
9 of what an expert -- what deeming someone expert to be is.  
10 I'm -- I know I don't remember the exact words, but I  
11 remember there was a specific wording I used when I deemed  
12 him an expert. If you want to find that, but even if this  
13 goes to a little bit outside of that, objection overruled.  
14 Let's just move on.  
15 Do you need a read back of the question again or do  
16 you want to ask it again. It will take longer to --  
17 A Can you ask that question.  
18 THE COURT: Ask it again. Withdrawn. Ask again.  
19 Q How, if at all, does the process differ for appraisals  
20 or non-appraisal valuations with regard to trophy properties  
21 compared to non-trophy properties?  
22 A I could describe the work that I worked on for the  
23 Rockefeller Center bankruptcy, where myself and this other  
24 director of research, we did only the market analysis for that  
25 appraisal. So I could restrict what we did.

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4670

1 When we looked at the -- you go through the same  
2 process. Again, it's a funnel approach. What was going on in  
3 the United States office, what was going on in New York, what  
4 was going on in the Rockefeller submarket and we charted out  
5 that data. We produced and forecast, but then when we had to  
6 assist the appraisers, the MAI's on this appraisal, we -- they  
7 asked us to, because it was a trophy property, we looked at the  
8 sales comps in the area for New York, but additionally, because  
9 it was a special type of property, we also investigated what  
10 were the sales in London, in Paris and other major cities around  
11 the world, to similar properties as Rock Center. So that's the  
12 biggest difference in the market analysis section that I worked  
13 on. And I can attest to that.  
14 THE COURT: Not to mention, you could cross examine  
15 him endlessly.  
16 Q So then -- your testimony was you looked at comparables  
17 around the world to use to compare to the Rockefeller Center?  
18 A Correct.  
19 Q Do you recall some of the comparables around the world  
20 that you looked at?  
21 A It's been too long.  
22 Q Fair enough.  
23 MR. FIELDS: If we could pull up Dr. Laposa's  
24 report.  
25 Q I would like to shift gears now, Dr. Laposa, and talk

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4671

1 to you for a moment about your report on page 29. And we'll put  
2 it up here to refresh your recollection, if that will be easier  
3 for you.  
4 (Whereupon, the exhibit was displayed on the  
5 screen.)  
6 A Okay.  
7 MR. FIELDS: All right. If we can enlarge footnote  
8 21.  
9 (Whereupon, the exhibit displayed on the screen was  
10 enlarged.)  
11 Q Do you recall including in your report footnote 21 that  
12 discussed the concept of investment value appearing similar to  
13 estimated current value for personal financial statements per  
14 ASC-274?  
15 A Yes, I remember including that footnote.  
16 Q When you drafted -- well let me ask you this: Do you  
17 have an accounting background?  
18 A No.  
19 Q Are you providing an accounting opinion here in court?  
20 A No.  
21 Q Do you have a very rudimentary understanding of  
22 ASC-274?  
23 A I wouldn't even consider it rudimentary.  
24 Q Fair enough.  
25 All right. Do you recall that your deposition was

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4672

1 taken by the Attorney General's Office earlier this year on or  
2 about July 9th, 2023?  
3 A I do.  
4 Q And I'm not going to play a memory game with you.  
5 MR. FIELDS: So I'm going to ask that we pull up,  
6 to refresh the witness's recollection, page 90.  
7 (Whereupon, the exhibit was displayed on the  
8 screen.)  
9 MR. SOLOMON: Your Honor, I don't know that the  
10 witness indicated he needed his recollection refreshed.  
11 THE COURT: Sustained. You can't refresh a  
12 recollection --  
13 Q Dr. Laposa, do you remember every question that  
14 Mr. Solomon asked you at your deposition earlier this year?  
15 A No.  
16 Q Okay.  
17 Would it refresh your recollection to review your  
18 deposition to help you remember some of those questions?  
19 THE COURT: Is there an objection, or no?  
20 MR. SOLOMON: Your Honor, he just asked if seeing  
21 every question would refresh his recollection; that's not  
22 objectionable. But when he gets, now, into specifics in an  
23 area, he needs to identify an area where the witness needs  
24 his recollection refreshed before he could go further, so  
25 that question, in and of itself, is not objectionable, but

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4673	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4675
<p>1 I'm waiting for the next one.</p> <p>2 THE COURT: Well, I think it is objectionable,</p> <p>3 because he would have to review the whole transcript.</p> <p>4 MR. SOLOMON: The first rule, your Honor.</p> <p>5 Q Do you remember the questions specifically that were</p> <p>6 asked to you, in terms of the wording that was used by</p> <p>7 Mr. Solomon at your deposition, relating to estimated current</p> <p>8 value and ASC-274?</p> <p>9 A We had a series of questions, if I remember right, when</p> <p>10 that phrase was introduced into the deposition. I remember</p> <p>11 that.</p> <p>12 Q And would it aid your memory to be able to review those</p> <p>13 questions now to know the specific phrasing that Mr. Solomon</p> <p>14 used when asking you those questions?</p> <p>15 MR. SOLOMON: Objection. He hasn't --</p> <p>16 THE COURT: You can't do that.</p> <p>17 MR. FIELDS: Okay. No problem. We'll play a</p> <p>18 memory game.</p> <p>19 Q Dr. Laposa, do you recall that Mr. Solomon, at your</p> <p>20 deposition, showed you a definition for estimated current value?</p> <p>21 A I do remember that.</p> <p>22 Q Do you remember the wording exactly of the definition</p> <p>23 that Mr. Solomon showed you?</p> <p>24 A Do I remember the exact wording of that?</p> <p>25 Q Yes, sir.</p>	<p>1 research and valuations, generally?</p> <p>2 A Well, considering I've opined on the difference between</p> <p>3 a market value and investment value, when I saw this definition,</p> <p>4 it, um, it, um, informed me that it was much more the market</p> <p>5 value because there was the terminology exchanged between a</p> <p>6 buyer and seller. And then again, each of whom is well informed</p> <p>7 and willing, and neither of whom is compelled. So that implies,</p> <p>8 in my world of, of, of understanding market value, is there</p> <p>9 needs to be a buyer and a seller. And, again, each with the</p> <p>10 conditions; informed, willing, non-compelling, buy or sell that</p> <p>11 asset.</p> <p>12 Q So when what I understood your testimony to be is, that</p> <p>13 when you read this, what first came to mind for you was market</p> <p>14 value?</p> <p>15 A Correct.</p> <p>16 MR. SOLOMON: Objection. Leading.</p> <p>17 THE COURT: Sustained.</p> <p>18 Q What first came to mind in terms of your -- the key</p> <p>19 terms we've discussed over the past two days with regard to</p> <p>20 value, what term came to mind to you?</p> <p>21 A Market value.</p> <p>22 Q And when Mr. Solomon asked you -- withdrawn.</p> <p>23 Did Mr. Solomon ask you, at your deposition, to apply</p> <p>24 this definition when he was asking you questions about estimated</p> <p>25 current value and market value?</p>
Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4674	Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4676
<p>1 A No.</p> <p>2 Q Would it help refresh your recollection to see the</p> <p>3 definition of estimated current value that Mr. Solomon showed</p> <p>4 you at your deposition?</p> <p>5 A It would help.</p> <p>6 MR. FIELDS: If we could please pull up, to refresh</p> <p>7 the witness's recollection, D-452.</p> <p>8 (Whereupon, the exhibit was displayed on the</p> <p>9 screen.)</p> <p>10 (The exhibit was handed to the witness.)</p> <p>11 MR. FIELDS: Page two, in the middle of the page</p> <p>12 under glossary, estimated current value.</p> <p>13 Q Dr. Laposa, just take a look at this and let me know if</p> <p>14 you recall whether this was the definition of estimated current</p> <p>15 value that Mr. Solomon showed you at your deposition?</p> <p>16 A I'm sure it was.</p> <p>17 Q Are there any key terms in this definition that stand</p> <p>18 out to you in your memory that you recall being asked about?</p> <p>19 A Um, specifically what I was asked about this is -- I</p> <p>20 mean, there were various questions, but I do remember seeing</p> <p>21 this, and I do remember seeing keywords in there that, um, you</p> <p>22 know that were new to -- not new to me, that I saw that -- that</p> <p>23 I -- I understand this definition.</p> <p>24 Q What are some of the key terms in this definition that</p> <p>25 were -- stood out to you as it relates to your role in market</p>	<p>1 A I don't recall that specific relationship.</p> <p>2 Q You don't recall the specific relationship between the</p> <p>3 question that was asked at your deposition?</p> <p>4 A Well, we went through a series of questions, probably</p> <p>5 frustrating for the both of us going through this question and</p> <p>6 what it meant, and how it was applied, so. A lot of assumption</p> <p>7 based, you know, assume this, now does that -- I mean there was,</p> <p>8 um, if I remember my deposition, and I reviewed it here</p> <p>9 recently, um, this was a good back and forth, I would say,</p> <p>10 between the two of us.</p> <p>11 Q But my question is, do you recall if this was the</p> <p>12 definition that Mr. Solomon asked you to apply when he was</p> <p>13 asking you questions about estimated current value?</p> <p>14 A Yes, that's the definition he asked me to apply.</p> <p>15 Q Okay.</p> <p>16 So when Mr. Solomon asked you if estimated current</p> <p>17 value and market value were the same, do you recall what your</p> <p>18 answer was?</p> <p>19 A Can -- I -- I would have to refresh my memory, but when</p> <p>20 I saw this definition, in my mind, it implied to me market</p> <p>21 value, because a willing -- the buyer -- the terminology was</p> <p>22 buyer and seller, well informed, neither are compelled to buy or</p> <p>23 sell. So it implied a transaction.</p> <p>24 Q Would it refresh your recollection to look at your</p> <p>25 deposition to know exactly what your answer was when you were</p>

Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4677	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4679
<p>1 asked that question?</p> <p>2 A Most likely, yes.</p> <p>3 Q Okay.</p> <p>4 MR. FIELDS: Could we please pull up page 90 of</p> <p>5 Dr. Laposa's deposition.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 Q Beginning at line -- we'll start at line 22.</p> <p>9 The question, "Estimated current value and market value</p> <p>10 are, in your opinion, the same? And then Mr. Solomon followed</p> <p>11 up with, "Is that correct?"</p> <p>12 MR. FIELDS: If we could then move to the next</p> <p>13 page.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 Q And do you recall that your answer was, "Based on this</p> <p>17 limited definition, yes"?</p> <p>18 A I do now, yes.</p> <p>19 Q And Mr. Solomon followed up:</p> <p>20 "Okay. Yes, I'm only asking you based on the</p> <p>21 definition I have put in front of you from FASB on estimated</p> <p>22 current value."</p> <p>23 Do you generally recall that?</p> <p>24 A Yes.</p> <p>25 Q As we just asks discussed, the definition that</p>		<p>1 Q Okay.</p> <p>2 MR. FIELDS: If we could put on the screen, please,</p> <p>3 defense 452.</p> <p>4 (Whereupon, the exhibit was displayed on the</p> <p>5 screen.)</p> <p>6 MR. FIELDS: Page ten -- sorry, page nine.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 MR. FIELDS: All the way at the bottom.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 MR. FIELDS: Defense 452, page nine. Oh, I see it.</p> <p>13 Thank you.</p> <p>14 Q Do you see at the top, Dr. Laposa, it says</p> <p>15 "Information" -- withdrawn. All the way at the top. It says,</p> <p>16 "Real estate, including leaseholds."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. And I'll represent to you this is part of</p> <p>20 ASC-274.</p> <p>21 Do you see information that may be used in determining</p> <p>22 the estimated current values of investments in real estate,</p> <p>23 including leaseholds that include any of the following."</p> <p>24 A Do I recall seeing this, or do I see it?</p> <p>25 Q Do you see that on the screen?</p>	
Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4678	Dr. Laposa - by Defense - Direct (Mr. Fields)	Page 4680
<p>1 Mr. Solomon is referring to, is that the definition that was</p> <p>2 just up on the screen --</p> <p>3 A Yes.</p> <p>4 Q -- a moment ago?</p> <p>5 A Yes.</p> <p>6 THE COURT: Let me just suggest, if you want to ask</p> <p>7 the witness, and you have at great length, questions about</p> <p>8 market value versus investment value, you've done it</p> <p>9 already. You could still do it, I guess, but it sounds like</p> <p>10 what you are trying to do is foreshadow what Mr. Solomon's</p> <p>11 cross examination is going to be.</p> <p>12 Why don't we just wait until there's the cross</p> <p>13 examination, and then you can, you know, redirect him, or</p> <p>14 attempt to rehabilitate anything -- any damage that you</p> <p>15 think is going to be inflicted. We spent 15 minutes on his</p> <p>16 definition of market value versus investor value, which we</p> <p>17 spent a half hour on yesterday, and you've done with other</p> <p>18 witnesses.</p> <p>19 MR. FIELDS: I'm getting to the point, your Honor,</p> <p>20 and I could assure the Court there is a point to it.</p> <p>21 THE COURT: Okay.</p> <p>22 Q Did you ultimately, when asked by Mr. Solomon, suggest</p> <p>23 or agree to withdraw your footnote 21 based on the definition he</p> <p>24 showed you at your deposition?</p> <p>25 A I do remember that.</p>		<p>1 A I see that.</p> <p>2 Q Okay. Subheading B, do you see where it begins, "The</p> <p>3 discounted amounts of projected cash receipts and payments</p> <p>4 relating to the property, or the net realizable value of the</p> <p>5 property based on planned courses of action, including</p> <p>6 leaseholds whose current rental value exceeds the rent in the</p> <p>7 lease."</p> <p>8 Do you see that?</p> <p>9 A I see that.</p> <p>10 Q I would like to focus your attention on what comes</p> <p>11 after the word "or" in the first line.</p> <p>12 So it says "the net realizable value of the property</p> <p>13 based on planned courses of action."</p> <p>14 Do you see that?</p> <p>15 A I do.</p> <p>16 Q And in your world of real estate economics and</p> <p>17 valuations, generally, what do you understand that to mean?</p> <p>18 A That there's -- the option that -- I assume this is</p> <p>19 still 274?</p> <p>20 Q Yes, sir.</p> <p>21 A That the estimated current value, according to 274,</p> <p>22 this part (b), could include the net realizable value of the</p> <p>23 property based on planned course of action. And when I see</p> <p>24 "planned course of action", what comes to mind for me is the</p> <p>25 owner, the investor, the developer of that specific property and</p>	

Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4681

1 what his plans are for the future, his or her plans are to  
2 further develop that property, or just knowledge they have about  
3 that property. And again, planned courses of action.  
4 Q So would that be investment value?  
5 A To me, that's investment value.  
6 MR. SOLOMON: Objection. Leading.  
7 THE COURT: Two things. One completely leading,  
8 overruled. Two --  
9 MS. FAHERTY: Overruled?  
10 THE COURT: Sustained, right.  
11 MR. SOLOMON: Sustained.  
12 THE COURT: The other thing I can't say.  
13 MR. SOLOMON: Also, I would note this witness has  
14 said he doesn't know 274.  
15 MR. FIELDS: Then why did you show it to him at his  
16 deposition and not show him this definition?  
17 MR. SOLOMON: The expert report you drafted for him  
18 you put in footnote 21 which mentions 274.  
19 MR. FIELDS: When you were examining --  
20 THE COURT REPORTER: I'm sorry, I couldn't hear you  
21 both.  
22 THE COURT: Sustained. It was leading.  
23 MR. FIELDS: I'll ask him.  
24 THE COURT: I don't know if you could ask him.  
25 Q You mentioned planned courses of action. In your

Page 4683

1 recall. I think he has, but I don't want to be on the  
2 record as saying something I don't have a high degree of  
3 certainty.  
4 THE COURT: Then either I'll allow it or -- all  
5 right. I'm sorry, sorry for interruption.  
6 MR. FIELDS: That's okay.  
7 THE COURT: Restate it. You know the question.  
8 MR. FIELDS: Yes, sir.  
9 Q Do you recall if you were shown this specific  
10 definition that's on the screen that's ASC-274-10-55-6 at your  
11 deposition?  
12 A I have a high certainty that I did not see this  
13 definition during my deposition.  
14 (Continued on the next page.)  
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Dr. Laposa - by Defense - Direct (Mr. Fields) Page 4682

1 world, what key term does that bring to mind?  
2 THE COURT: Objection sustained. He gave the  
3 answer. If you are going to try to ask him the same  
4 question with different wording, it's asked and answered.  
5 I know what you are trying to do. Mr. Solomon  
6 knows what you are trying to do. I don't know if the  
7 witness does or doesn't know, probably at this point does,  
8 but I'm not going to let you do it.  
9 Q Dr. Laposa, were you shown this definition that was on  
10 the screen here ASC-274-10-55-6 at your deposition?  
11 THE COURT: Asked and answered.  
12 MR. FIELDS: Your Honor, he has not answered that  
13 question whether he saw it at his deposition.  
14 THE COURT: I could be wrong about that.  
15 Plaintiff, was he shown this at his deposition. You took  
16 it?  
17 The question, I should be asking, did you ask him  
18 -- did the defendant ask him whether you showed it to him at  
19 his deposition? That's three people.  
20 MR. SOLOMON: I'm sorry, your Honor. I did not  
21 follow that question. Did the defendant --  
22 THE COURT: Did the defendant ask the witness  
23 whether you showed this to him at his deposition? Did he  
24 ask him today, now?  
25 MR. SOLOMON: To be candid, your Honor, I don't

Laposa - by Defendant - Cross(Solomon) Page 4684

1 Q And now that you have seen this deposition, do you  
2 stand by your footnote 21, that you had previously told  
3 Mr. Solomon that you would withdraw based on the limited  
4 definition he showed you?  
5 A Now that I have seen this Part B, I would leave it  
6 in.  
7 MR. FIELDS: No further questions, Your Honor.  
8 Thank you.  
9 THE COURT: Okay. Will there be any cross?  
10 MR. SOLOMON: Yes, Your Honor.  
11 THE COURT: Can you proceed with that now?  
12 Can you proceed with that now?  
13 MR. SOLOMON: Yes. Sorry, Your Honor, technical  
14 issues.  
15 May I proceed, Your Honor?  
16 THE COURT: Please do so.  
17 CROSS-EXAMINATION  
18 BY MR. SOLOMON:  
19 Q Good morning, Dr. Laposa.  
20 A Good morning.  
21 Q You have testified yesterday and this morning about  
22 your background in real estate. I would like to be a little  
23 more specific. Prior to this assignment, did you have any  
24 professional experience preparing or reviewing personal  
25 financial statements?

<p>Laposa - by Defendant - Cross(Solomon) Page 4685</p> <p>1 A None.</p> <p>2 Q Prior to this assignment, did you have any</p> <p>3 professional experience in valuing real estate for inclusion in</p> <p>4 personal financial statements?</p> <p>5 A No.</p> <p>6 Q Okay. We talked a few minutes ago about ASC 274. Do</p> <p>7 you know if ASC 274 provides guidance for standards for valuing</p> <p>8 real estate for personal financial statements?</p> <p>9 A Outside of what I have seen today, no.</p> <p>10 Q Are you familiar with the Financial Accounting</p> <p>11 Standards Board, otherwise known as FASB?</p> <p>12 A Yes, I am familiar with the terminology, yes.</p> <p>13 Q What is it?</p> <p>14 A It is a Financial Accounting Standards Board. I am</p> <p>15 not an accountant, I don't follow whatever they do. So, it</p> <p>16 is -- I know the abbreviation.</p> <p>17 Q Okay. Are you an MAI certified appraiser?</p> <p>18 A No.</p> <p>19 Q Were you ever an MAI certified appraiser?</p> <p>20 A No.</p> <p>21 Q Have you ever signed an appraisal for a commercial</p> <p>22 property?</p> <p>23 A No.</p> <p>24 Q Have you ever signed an appraisal for a residential</p> <p>25 property?</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4687</p> <p>1 Q Okay. If you take a look at the first entry under</p> <p>2 investment value: "As used in appraisal assignments,</p> <p>3 investment value is the value of a property to particular</p> <p>4 investor based on that person's (entities') investment</p> <p>5 requirements rather than market norms." Do you see that?</p> <p>6 A I do.</p> <p>7 Q Is that how you used the term "investment value"</p> <p>8 during your testimony here?</p> <p>9 A Yes.</p> <p>10 Q The exhibit goes on to state, if you look at the</p> <p>11 rectangle on the left side for investment value, it reads:</p> <p>12 "The value of a property to a particular investor or class of</p> <p>13 investors based on the investor's specific requirements; may be</p> <p>14 different from market value because it depends on a set of</p> <p>15 investment criteria that are not necessarily typical of the</p> <p>16 market."</p> <p>17 Do you see at that?</p> <p>18 A I do.</p> <p>19 Q Do you agree that investment value may be different</p> <p>20 than market value?</p> <p>21 A It may be.</p> <p>22 Q Let's go back into the text. Under investment value,</p> <p>23 the third paragraph. "To render an opinion," do you see that</p> <p>24 sir?</p> <p>25 A I do.</p>
<p>Laposa - by Defendant - Cross(Solomon) Page 4686</p> <p>1 A No.</p> <p>2 Q Let's go back to some of the definitions that we were</p> <p>3 talking about this morning and that you and I discussed at your</p> <p>4 deposition.</p> <p>5 MR. SOLOMON: If we could please mark PX-2665</p> <p>6 for identification.</p> <p>7 (Handing)</p> <p>8 A Okay.</p> <p>9 Q And Dr. Laposa, you will see the sticker at the</p> <p>10 bottom which was added, Laposa 3. That was marked at your</p> <p>11 deposition; do you recall that?</p> <p>12 A I believe so.</p> <p>13 Q Okay. It is page 54 of the appraisal of real estate;</p> <p>14 is that correct?</p> <p>15 A This is 15th Edition?</p> <p>16 Q Yes.</p> <p>17 A Okay.</p> <p>18 Q So you have seen this before today, correct?</p> <p>19 A Do I see what?</p> <p>20 Q You have seen this page before today, correct?</p> <p>21 A Correct.</p> <p>22 Q And you have referred in your report and elsewhere</p> <p>23 as, this publication, the appraisal of real estate being the</p> <p>24 gold standard, correct?</p> <p>25 A Correct.</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4688</p> <p>1 Q "To render an opinion of investment value an</p> <p>2 appraiser must research the specific investment criteria of the</p> <p>3 party in question." Do you see that?</p> <p>4 A I do.</p> <p>5 Q Did you do anything to research the specific</p> <p>6 investment criteria of any person or entity with respect to 40</p> <p>7 Wall Street?</p> <p>8 A No.</p> <p>9 Q Did you do anything to research the specific</p> <p>10 investment criteria of any person or entity for any asset</p> <p>11 listed on any of Donald Trump's financial statements?</p> <p>12 A No.</p> <p>13 MR. SOLOMON: Your Honor, we offer 2665 in</p> <p>14 evidence.</p> <p>15 THE COURT: Sus -- Granted. It is in.</p> <p>16 (Whereupon, the document referred to was deemed</p> <p>17 marked for evidence as Plaintiff's Exhibit 2665 by</p> <p>18 the Court.)</p> <p>19 THE COURT: You get caught up in patterns.</p> <p>20 MR. SOLOMON: Your Honor, we would ask to mark</p> <p>21 PX-1715 for identification.</p> <p>22 (Handing)</p> <p>23 Q Sir, if you look at the second page, it is a</p> <p>24 definition of estimated current value, correct?</p> <p>25 A Correct.</p>

<p>Laposa - by Defendant - Cross(Solomon) Page 4689</p> <p>1 Q When you were testifying earlier about estimated 2 current value, was that the definition you were using? 3 A What is the source of this? 4 Q If you look across the top, FASB Authoritative; do 5 you see that? 6 A Okay. 7 THE COURT: It doesn't really matter where it is 8 from. The question was whether that was the definition 9 you were using. Wherever. It could have been in the 10 Bible. So is that the definition you were using -- 11 You do it. 12 Witness, is that the definition that you were 13 using of current estimated value -- estimated current 14 value when you were testifying today and yesterday? 15 THE WITNESS: Give me a moment to read. 16 THE COURT: Sure. 17 THE WITNESS: I believe that's the same 18 definition we just previously saw. 19 Q Yes I understand that. 20 A That's how I understand estimated current value. 21 Q Okay. That was the definition we were using earlier 22 we understand. Is that the definition you were using during 23 your testimony yesterday and today? 24 A Regarding? 25 Q Estimated current value.</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4691</p> <p>1 what I understand to be market value could overlap and be the 2 same. 3 Q You recall when we were talking about your 4 deposition, I took your testimony in July of this year? 5 A Yes. 6 Q Do you recall that I asked you, is estimated current 7 value the same as market value? Do you recall that I asked you 8 that? 9 A Several times, I am sure. 10 Q Do you recall your answer? 11 A No. If you want to show me, that would be great. 12 MR. SOLOMON: Could we play the clip, page 90 13 line five through page 90 line 16. 14 (Whereupon the video was played in open court.) 15 Q Do you remember being asked those questions and 16 giving those answers? 17 A Yes, sir. 18 Q That refreshes your recollection? 19 A That helps, yes. Thank you, sir. 20 Q Let's turn to what you did and what you did not do 21 prior to issuing your report. I believe you testified on 22 direct examination that you reviewed the complaint in this 23 action. Do you recall that? 24 A I do. 25 Q And you had testified about the exhibits, I would</p>
<p>Laposa - by Defendant - Cross(Solomon) Page 4690</p> <p>1 A Can -- did I even talk about estimated current value 2 yesterday? 3 Q I think you may have. I am certain you talked about 4 it earlier today. Do you recall that? 5 A Yes. Okay. 6 Q Was this the definition you were using when you 7 testified about estimated current value? 8 A Just momentarily ago, yes. 9 Q Okay. 10 THE COURT: Throughout your testimony today. 11 Q If you did use the term estimated current value at 12 any point yesterday, was this the definition you were using? 13 A If I even used it yesterday, you are saying would I 14 have used this definition? 15 Q Yes. 16 A I would have to confirm that, but I would say most 17 likely. 18 Q Okay. Have you ever used a different definition for 19 estimated current value than the one up on the screen? 20 A No. 21 Q Okay. Based on this definition, is estimated current 22 value the same as market value? 23 A I believe even on our deposition we went around on 24 that, but if it could be -- I can't really -- well, let me 25 further respond to that. It could be. This definition and</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4692</p> <p>1 like a little more clarity. I think you had indicated, and if 2 I am not remembering your testimony correctly, please correct 3 me. You had looked at some of the exhibits, but not all? 4 A I believe I can recall what I said yesterday when I 5 initially read the complaint. I started at page one, went 6 through it, and by the time I got to Exhibit 1, Exhibit 2, 7 there is a lot of companies and entities. And then when I got 8 to Exhibit 3, which were the Statements of Financial Conditions 9 I said, okay, that's -- that's beyond my expertise. So I 10 stopped. 11 Q I think you had indicated, please correct me if I am 12 wrong, you skimmed Exhibit 3? 13 A Correct. 14 Q Okay. But you read the entirety of the complaint? 15 A I did read the complaint. 16 Q And based upon your review of the complaint, are you 17 aware that certain valuations in Donald Trump's Statements of 18 Financial Condition are at issue in this action? 19 A Yes. 20 Q Other than skimming the first of the Statements of 21 Financial Condition, did you skim any of the others? 22 A Like I just previously said, I got to Exhibit 1 and 23 2, went through them pretty fast. When I got to Exhibit 3, I 24 stopped. I mean, when I saw the first one and noticed it 25 seemed like the remaining pages were all financial statements,</p>

Laposa - by Defendant - Cross(Solomon) Page 4693

1 and my expertise is not even close to that.

2 Q Did you review how any of the purported values on --

3 withdrawn.

4 Did you review how any of the purported values for

5 any asset on any of the Statement of Financial Condition were

6 calculated?

7 A No.

8 Q Did you review appraisals for any asset in connection

9 with this case other than 40 Wall Street?

10 A No.

11 Q Then let's focus on the 40 Wall Street appraisals. I

12 believe you testified you looked at the one from November 2011?

13 A Correct.

14 Q 2012?

15 A Yes.

16 Q And 2015; is that right?

17 A Yes.

18 Q And are you aware that the Cushman appraisals -- can

19 I refer to the three as the Cushman appraisals?

20 A Yes.

21 Q Are you aware that the Cushman appraisals for 40 Wall

22 Street reflect a different valuation for the property than the

23 valuations on the Statements of Financial Condition?

24 A Am I aware that the values that are in there are

25 different from the financial statements? Is that what you are

Laposa - by Defendant - Cross(Solomon) Page 4694

1 asking?

2 Q Yes.

3 A According to the tables in the complaint, that's what

4 it states. I did not go back to the Exhibit 3 to check.

5 Q Other than looking at the tables in the complaint,

6 you have no independent knowledge?

7 A No.

8 MR. SOLOMON: I am sorry. Your Honor, I

9 violated one of your rules.

10 Q Other than looking at the tables in the complaint, do

11 you have any independent knowledge as to whether the amounts on

12 the appraisals are different than the amounts in the Statements

13 of Financial Condition?

14 A I have no knowledge.

15 Q Did you perform an appraisal review of the Cushman

16 appraisals?

17 A No.

18 Q Are you qualified to perform an appraisal review of

19 the Cushman appraisals?

20 A No.

21 Q Did you review any trial testimony relating to the

22 appraisals of 40 Wall Street?

23 A Recently?

24 Q Trial testimony, so from October 2 to present.

25 A I briefly read the trial transcripts of a Mr. Larson.

Laposa - by Defendant - Cross(Solomon) Page 4695

1 Q We will come back to that.

2 A Can I clarify? When you said appraisal review, to me

3 that means you have to be a licensed appraiser. I did not

4 review the appraisal as an appraiser review. I reviewed the

5 market analysis sections and the tables that I believe I have

6 been qualified and have experience in doing for 30 plus years.

7 Q Yes, I appreciate the clarification.

8 Are you aware that under USPAP there is something

9 known as an appraisal review?

10 A Yes.

11 Q Using that term for appraisal review, did you conduct

12 an appraisal review of any of the appraisals for 40 Wall

13 Street?

14 A No.

15 Q Thank you for that clarification.

16 So, you observed that there were different valuations

17 between the Statement of Financial Condition and the appraisals

18 for 40 Wall Street, correct?

19 A According to the tables within the complaint, yes.

20 Q Okay. When there are disparate valuations, is it

21 prudent and common practice to examine the underlying

22 assumptions, methodologies, models and the purpose of an

23 appraisal to identify potential sources of the disparate

24 results?

25 A That's -- I would agree with that.

Laposa - by Defendant - Cross(Solomon) Page 4696

1 Q Did you examine the underlying assumptions,

2 methodologies, models and purpose of Donald Trump's valuations

3 for 40 Wall Street on his Statements of Financial Condition?

4 A No.

5 Q When I asked you earlier about whether it was prudent

6 or common practice, did that sound familiar to you, sir?

7 A What was that question, again?

8 Q Sure. I had asked you a moment ago when there are

9 disparate valuations, is it prudent and common practice to

10 examine... and then I listed a number of factors. Do you

11 recall that?

12 A Yes.

13 Q Did that sound familiar to you?

14 A That sounds familiar to me.

15 MR. SOLOMON: Can we pull up paragraph 32 of

16 Dr. Laposa's report? Second sentence.

17 Q That's what you put in your expert report should be

18 done when there are disparate valuations, correct?

19 A That's correct.

20 Q But you didn't do that for any of the valuations on

21 Donald Trump's financial statements, correct?

22 A Correct.

23 Q Let's look at the actual appraisals for 40 Wall

24 Street.

25 MR. SOLOMON: Could we put up on the screen side



Laposa - by Defendant - Cross(Solomon) Page 4697

1 by side the tables showing the direct capitalization of  
2 NOI, method of valuation from 2012 and 2015. That would  
3 be PX-3208 at page 176; and PX-118 at page 171.  
4 THE COURT: Court reporter this is Mr. Solomon  
5 not Mr. Wallace. I believe there is an error in the  
6 transcript.  
7 At least I think you are Mr. Solomon, not  
8 Mr. Wallace.  
9 Q Sir, do you see those two charts?  
10 A I see them.  
11 Q I think yesterday those two tables were put up side  
12 by side and asked you if the 2012 appraisal under projected the  
13 NOI for 2015. Do you remember that?  
14 A Yeah. Just clarify that this table on the left is  
15 from the 2012 estimating the value in 2015; is that correct?  
16 Q Yes.  
17 A They were nodding their heads yes behind you.  
18 Q As I said before, we have a deep bench.  
19 A Yes, I see those.  
20 Q Do you remember you stated it under projected the NOI  
21 for 2015?  
22 A Yes.  
23 Q And you said you would want to do more work to  
24 understand how they came up with the, on the one side, the  
25 \$18,334,523 number compared to the 23,203,919 number. Do you

Laposa - by Defendant - Cross(Solomon) Page 4698

1 recall that?  
2 A Yes.  
3 Q But you indicated you were fairly confident it had to  
4 do with their rent growth. Does that sound right?  
5 A That was one of the aspects I would -- I infer just  
6 by the fact that the NOI went up or they were projected to go  
7 up. So that's a combination of the rent increase as well as  
8 the occupancy. And theoretically that's -- that's one cause of  
9 that.  
10 Q And occupancy, is one of the factors that you use in  
11 determining the net operating income for the building because  
12 the more tenants you have the greater the income, correct?  
13 A Correct. Well, depending upon if -- I mean, you  
14 could buy occupancy sometimes by just dropping your rents,  
15 which we found in Rock Center in '95 they did.  
16 Q Assuming we don't have a situation like '95 or 2008  
17 coming out of there, the greater the occupancy, as a general  
18 matter, the greater the net operating income once you take out  
19 expenses that are associated with the greater occupancy rate,  
20 correct?  
21 A Yeah. Again, going back to my real estate cycle  
22 yesterday, you know, most likely in the recovery and maybe even  
23 in early expansion phase, this is reasonable for sure.  
24 Q And 2012 was the early expansion phase after what is  
25 known as the financial crisis, great recession, whatever

Laposa - by Defendant - Cross(Solomon) Page 4699

1 terminology. Is that right?  
2 A I would consider 2012 based on my knowledge and what  
3 I put in my report is still in recovery phase.  
4 Q In a recovery phase. Okay. Are the \$18 million  
5 number and \$23 million number measuring the same thing?  
6 A Well, they are measuring the same NOI for the same  
7 building, you know, but the one on the left, the 18.3 million  
8 is an estimate of 2015.  
9 Q Right. And the 2015 is NOI (plus year one free  
10 rent,) right?  
11 A It says that, yes.  
12 Q So that \$23 million number has roughly \$7.7 million  
13 in free rent added back in, doesn't it?  
14 A I don't see that exact number, but --  
15 Q If you look on the chart on the right?  
16 A I see it now, okay.  
17 Q Under indicated value less one year free rent  
18 \$7,776,980. Do you see that?  
19 A I do.  
20 Q So the NOI under the direct capitalization method,  
21 the chart on the right for 2015 of 23.2 million, actually  
22 includes money that is not collected, doesn't it?  
23 A Yes.  
24 Q Yes or no, sir?  
25 A Yes.

Laposa - by Defendant - Cross(Solomon) Page 4700

1 Q And if you back out that \$7,776,000 number, the  
2 actual amount of NOI would be less than \$16 million, wouldn't  
3 it?  
4 A Yes.  
5 Q Let's take a look at another section from the 2012  
6 and 2015 reports, if we can.  
7 MR. SOLOMON: Can we pull up PX-118, page 161,  
8 and PX-3208, page 155.  
9 Q I am having the same trouble you are, Dr. Laposa?  
10 A My eyes aren't that great.  
11 Q It is on the screen in front of you, if that helps.  
12 But I think this is larger.  
13 If you can direct your attention to the projection in  
14 each table from 2016. On the one on the left that's the first  
15 column, year one FY 2016. FY is fiscal year?  
16 A Yes.  
17 Q And the one on the right it would be year four. Do  
18 you see that?  
19 A Okay.  
20 Q The 2012 appraisal, if you go down 2016 to the bottom  
21 the net operating income is 15,426,000 -- I am sorry -- that's  
22 '15. Excuse me.  
23 If you look at the '12, that's the one on the right.  
24 A Okay.  
25 Q Sorry. The projected income -- withdrawn.

<p>Laposa - by Defendant - Cross(Solomon) Page 4701</p> <p>1 If you look at the one on the right, what is the</p> <p>2 projected not yet operating income for fiscal year 2016?</p> <p>3 A The 18.3 million.</p> <p>4 Q Okay. And now let's compare that to the projection</p> <p>5 from the 2012 -- excuse me, the 2015. I have them reversed.</p> <p>6 The 2015. The net operating income for fiscal year 2016 is</p> <p>7 what?</p> <p>8 A 15.4 million.</p> <p>9 Q So actually the 2012 appraisal is more optimistic</p> <p>10 about 2016 than the 2015 appraisal, isn't it?</p> <p>11 A Based on what?</p> <p>12 Q Based upon the numbers here on the two charts in</p> <p>13 front of you that come from the appraisals.</p> <p>14 A The one on the left it is 15.4, and on the 2012 it</p> <p>15 is --</p> <p>16 Q It is 18.3, roughly \$3 million more?</p> <p>17 A Correct.</p> <p>18 Q So back in 2012 they were predicting a net operating</p> <p>19 income of approximately \$3 million more than they did on the</p> <p>20 2015 appraisal, right?</p> <p>21 A Right.</p> <p>22 MR. SOLOMON: You can take this down.</p> <p>23 Q Do you recall testifying yesterday that you believed</p> <p>24 the 2012 appraisal, I think the term you used was under</p> <p>25 projected?</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4703</p> <p>1 present?</p> <p>2 A 2015 and?</p> <p>3 Q Present. Present.</p> <p>4 A Present. 2023 or 20 -- no.</p> <p>5 Q Any of the years between, not just 2023, sir.</p> <p>6 A No.</p> <p>7 Q Okay. Are you aware of the current occupancy rate of</p> <p>8 40 Wall Street?</p> <p>9 A Am I aware of what?</p> <p>10 Q Of the current occupancy rate of 40 Wall Street?</p> <p>11 A No.</p> <p>12 MR. SOLOMON: I would like to mark PX-3380. It</p> <p>13 has previously been marked for identification, Your Honor.</p> <p>14 MR. FIELDS: We will object to relevance to the</p> <p>15 current occupancy rate for 40 Wall Street. It is not at</p> <p>16 issue in this case.</p> <p>17 THE COURT: If there are projections of what it</p> <p>18 was, I think it is relevant, so overruled.</p> <p>19 MR. ROBERT: Your Honor, if I may?</p> <p>20 The issue we had a big disagreement about</p> <p>21 earlier in the week with the Doral, and what the value is</p> <p>22 today and using that as a look-back, all of that should</p> <p>23 come in. Because if we are looking at whether a</p> <p>24 projection was accurate, the goose/gander rule I think is</p> <p>25 the legal phrase, would apply to that as well, Your Honor.</p>
<p>Laposa - by Defendant - Cross(Solomon) Page 4702</p> <p>1 A I would have to confirm that but it sounds most</p> <p>2 likely, yes.</p> <p>3 Q Okay. Are you aware whether 40 Wall Street ever</p> <p>4 achieved even the initial net operating income figure from the</p> <p>5 2015 appraisal?</p> <p>6 A I am not aware.</p> <p>7 Q Those are documents that would be in defendants'</p> <p>8 possession in your experience, right?</p> <p>9 A I am sorry, what?</p> <p>10 Q The documents reflecting the NOI for 40 Wall Street</p> <p>11 between 2015 and today, based on your experience, would be in</p> <p>12 the possession of the owner of the building, right?</p> <p>13 A I can't confirm that.</p> <p>14 Q Okay. Did the defendants ever show you documents</p> <p>15 sufficient to determine the net operating income for 40 Wall</p> <p>16 Street between 2015 and present?</p> <p>17 A They showed me the Cushman &amp; Wakefield prices.</p> <p>18 Q That wasn't my question, sir. And maybe my question</p> <p>19 wasn't clear.</p> <p>20 Between 2015 and present we have actual results for</p> <p>21 net operating income for 40 Wall Street, right?</p> <p>22 A Right.</p> <p>23 Q Okay. Did the defendants ever show you documents</p> <p>24 sufficient for you to learn, know, understand or calculate the</p> <p>25 net operating income for 40 Wall Street between 2015 and</p>	<p>Laposa - by Defendant - Cross(Solomon) Page 4704</p> <p>1 I am happy to revisit that with another witness.</p> <p>2 THE COURT: I specifically asked if there was a</p> <p>3 projection of this. I don't know whether there was a</p> <p>4 projection of Doral.</p> <p>5 But Mr. Solomon, you want to --</p> <p>6 MR. SOLOMON: That's exactly the point, Your</p> <p>7 Honor. And I would just add that here we are looking at a</p> <p>8 projection in the first appraisal that Dr. Laposa was</p> <p>9 asked about from 2012 going forward and comparing it to</p> <p>10 2015. There are then projections in 2015 going forward.</p> <p>11 And this witness testified yesterday that 2012 under</p> <p>12 projected. So in light of that, it is appropriate to look</p> <p>13 at what the projections were in the 2015 appraisal. And I</p> <p>14 am not using this to show what the value is of 40 Wall</p> <p>15 Street as we stand here today.</p> <p>16 MR. AMER: Your Honor, I just want to remind the</p> <p>17 Court that the ruling on Doral was on a different basis.</p> <p>18 THE COURT: It was various reasons.</p> <p>19 MR. AMER: That you can't use Doral to, you</p> <p>20 know, wash away inflated amounts of other properties.</p> <p>21 That was the basis for the Court's ruling that Doral was</p> <p>22 irrelevant.</p> <p>23 MR. ROBERT: But we are hearing testimony that</p> <p>24 the valuations on the SOFC are based on projections and</p> <p>25 planned courses of action. So of course it is appropriate</p>

<p>Laposa - by Defendant - Cross(Solomon) Page 4705</p> <p>1 to look back at Doral and how the progression of Doral 2 worked. In addition, I am not sure how you will talk 3 about current rent roll from a hearsay article from 4 Bloomberg from a few days ago. 5 THE COURT: There is a lot to unpack. 6 Overruled. I have been fairly liberal with what 7 went in on the direct, and I will be liberal here. Which 8 I don't have to be liberal to let it in. I think it is 9 totally relevant. 10 MR. SOLOMON: We agree, Your Honor. I only have 11 a few questions. And this witness is an expert, so I can 12 ask him a hypothetical or to assume certain facts. 13 (The follow proceedings were stenographically 14 recorded by Senior Court Reporter Michael Ranita.) 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4707</p> <p>1 lease in 2033? 2 A No. 3 Q Are you aware that one of the factors to be considered 4 in resetting the ground lease is the price of the land, if 5 vacant, with the right to build a 900,000 square foot office 6 building on the site? 7 A No. I didn't know if you were finished. 8 Q Thank for the courtesy, Doctor. 9 MR. SOLOMON: Could we pull up PX-3208 page 76. 10 (Whereupon, the exhibit was displayed on the 11 screen.) 12 Q Paragraph beginning "The ground lease payments 13 currently total 1,500,000 with subsequent set increases through 14 2032." 15 Do you see that paragraph? 16 A I do. 17 Q And then it says "In 2033 the lease payments are 18 revalued to the greater of either; (a) six percent the then 19 value of the land considered as vacant and unimproved but with 20 the right to construct a 900-square foot office building; or -- 21 THE COURT: 900,000. 22 MR. SOLOMON: What did I say? 23 Q 900,000 square -- 24 MR. ROBERT: If we could know which appraisal he is 25 reading from. I don't know.</p>
<p>Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4706</p> <p>1 Q Dr. Laposa, you see on page two of three, fourth 2 paragraph from the bottom, it indicates that "The towers 3 occupancy rate dropped to 77 percent, as of June 30th, from 4 98 percent when the loan originated in 2015." 5 Do you see that? 6 A I see that. 7 Q Okay. 8 Do you recall that the appraisal from 2015 was obtained 9 in connection with the loan? 10 A I believe it was. 11 Q Yes. Okay. 12 If the current occupancy rated of 40 Wall Street is 13 less than 80 percent, and with all other factors remaining 14 constant, would you agree that the 2015 appraisal over projected 15 the performance of 40 Wall Street? 16 A Yes, with qualifications. 17 Q Dr. Laposa, are you aware that Mr. Trump, or The Trump 18 Organization's ownership in 40 Wall Street consists of a ground 19 lease for the property? 20 A I believe it does, but -- yes. 21 Q And are you also aware that each of the appraisals that 22 we looked at for the building had to calculate the increases in 23 the rent payable under the ground lease? 24 A I believe so. 25 Q Were you aware that there is a reset of that ground</p>	<p>Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4708</p> <p>1 MR. SOLOMON: PX-3208. 2 MR. ROBERT: But which year is it? I don't have 3 the chart of what PX-3208 is. 4 MS. FAHERTY: 2012. 5 Q I think I was then reading (b) before I misspoke about 6 the square foot. "It's 900,000 square foot office building; or 7 (b) 85 percent of the then lease payments." 8 Do you see that? 9 A I do. 10 Q Did you review any analysis in either of the appraisals 11 with respect to the lease reset? 12 A No. 13 MR. SOLOMON: Could we pull up the 2012 appraisal 14 at page 85, and the 2015 appraisal at page 98, side by side. 15 (Whereupon, the exhibit was displayed on the 16 screen.) 17 Q You'll see the one on the left has the maximum FAR of 18 900,000 that we were just reading in the earlier paragraph; 19 right? 20 A I do. 21 Q Yet, the 2015 appraisal uses a maximum FAR of only 22 810,000 square feet? 23 A Yes. 24 Q Were you aware of that before today? 25 A No.</p>

Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4709

1 Q Is it fair to say, then, you did not conduct any  
2 analysis or any review to determine why there's a difference of  
3 roughly ten percent in the size of the FAR?  
4 A I did not.  
5 Q Yesterday you testified, and we confirmed today, that  
6 you reviewed the complaint. Do you recall that?  
7 A I do.  
8 Q And is it also your testimony that based upon your  
9 review of the complaint, you believe the complaint uses market  
10 values for the various assets?  
11 A Yes.  
12 Q Did you also testify that you have no way to know what  
13 types of valuations the defendants used to value their  
14 properties?  
15 A I have no knowledge of how they valued.  
16 Q Okay. Let's talk about the Statements of Financial  
17 Condition.  
18 Do you know if the values for the assets identified on  
19 the Statements of Financial Condition are market values,  
20 estimated current values, investment values or some other  
21 valuation?  
22 A Based on my experience and working with owners and  
23 investors and developers, I would believe it was their invested  
24 values.  
25 MR. SOLOMON: Can we pull up PX-729, which is

Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4710

1 already in evidence.  
2 (Whereupon, the exhibit was displayed on the  
3 screen.)  
4 Q Please take a moment to look at this exhibit,  
5 Dr. Laposa.  
6 (The witness was handed the exhibit.)  
7 Q You can look at whatever you need to answer my  
8 questions, but I would direct your attention to page four,  
9 "Basis of presentation."  
10 A Okay.  
11 (Whereupon, the exhibit was displayed on the  
12 screen.)  
13 Q The very first paragraph of the notes of the financial  
14 statement. "The accompanying Statement of Financial Condition  
15 consists of the assets and liabilities of Donald J. Trump.  
16 Assets are stated at their estimated current value and  
17 liabilities at their estimated current amounts using various  
18 valuation methods."  
19 Do you see that?  
20 A I do.  
21 Q Now that you see that, do you understand that the  
22 assets are purportedly stated at their estimated current value  
23 in the Statements of Financial Condition?  
24 A Well, yes, but there's also the qualification used in  
25 various valuation methods.

Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4711

1 Q Well, those are methods. Is there a difference in your  
2 mind between the valuation definition and the method used under  
3 that definition?  
4 A Well, I'm going by what I've -- this is the first time  
5 I seen this. They stated that they are estimated current value.  
6 That's what we talked about.  
7 Q This is the first time you've seen this, Dr. Laposa,  
8 but you wrote a report where you accused the Attorney General of  
9 bias by using market values in the complaint; is that right?  
10 MR. FIELDS: Objection, to the extent he is  
11 accusing the Attorney General of bias; that's not the  
12 testimony, and it mischaracterizes the testimony.  
13 MR. SOLOMON: At a break I could pull it up in the  
14 report, but let me rephrase it, your Honor.  
15 THE COURT: Okay.  
16 Q Did you accuse the Attorney General of using market  
17 values in the complaint in this action?  
18 A What I stated, I believe in my report, is if you are  
19 using the Cushman & Wakefield appraisal values, those are, in  
20 my -- my world, the market values. They are not investment  
21 values.  
22 Q So you are saying that we used -- excuse me, the  
23 Attorney General, in the complaint, used the Cushman & Wakefield  
24 values; right?  
25 A As the benchmark of truth compared to what was in the

Dr. Laposa - by Defense - Cross (Mr. Solomon) Page 4712

1 financial statements.  
2 Q And that those appraisals reflected market value;  
3 right?  
4 A Yes, they were --  
5 Q Based on the transitive property, if A equals B, and B  
6 equals C, you accused the Attorney General of using market  
7 values in the complaint; correct?  
8 MR. FIELDS: Objection to the characterization of  
9 "accusing" anybody, your Honor.  
10 THE COURT: Sustained. I don't think "accused" is  
11 appropriate.  
12 Q Sure. You, in your report, in your expert professional  
13 opinion, stated that the Attorney General was using market  
14 values in the complaint; is that correct?  
15 A Correct.  
16 Q Okay.  
17 And we've now seen that the Statements of Financial  
18 Condition used estimated current values; right?  
19 A That's what it says.  
20 Q And as we saw earlier when we put your deposition  
21 testimony up on the screen, you agreed that estimated current  
22 value is the same as market value.  
23 Do you recall that?  
24 A Yes.  
25 THE COURT: I normally break at 11:30, if I can get

Dr. Laposa - by Defense - Cross (Mr. Solomon)	Page 4713	Dr. Laposa - by Defense - Cross (Mr. Solomon)	Page 4715
1 there.		1 THE COURT: Is it your birthday?	
2 MR. SOLOMON: Okay. Thank you, your Honor. I		2 MS. FAHERTY: It's my birthday!	
3 wanted to know how much we had left.		3 THE COURT: Happy birthday!	
4 (Whereupon, the exhibit displayed on the screen was		4 THE WITNESS: I do, too, your Honor.	
5 taken down.)		5 THE COURT: Your birthday?	
6 MR. SOLOMON: From his report can we pull up		6 THE WITNESS: No, today is my wedding anniversary.	
7 footnote 21, please.		7 THE COURT: Double celebration. You too should get	
8 (Whereupon, the exhibit was displayed on the		8 to know each other.	
9 screen.)		9 MR. ROBERT: And I'm sure your wife is thrilled you	
10 MR. SOLOMON: Your Honor, may I have a moment?		10 are with us here today.	
11 THE COURT: Yes.		11 THE WITNESS: I sent flowers.	
12 (Whereupon, there is a brief pause in the		12 THE COURT: I didn't think of that.	
13 testimony.)		13 Let's get back to business.	
14 THE COURT: Change of plans. How about we break		14 MR. SOLOMON: We wanted to thank you for the early	
15 now and we'll come back at 11:30, and then we'll have an		15 early morning break. It enabled us to condense what we were	
16 hour and 20 minutes.		16 doing, and we have no further cross examination of this	
17 MR. SOLOMON: Your Honor, I would appreciate that.		17 witness at this time.	
18 We may be able to streamline the rest of the witness's cross		18 THE COURT: Oh, okay. Any redirect?	
19 in order to save the Court and the parties time.		19 MR. FIELDS: No, your Honor.	
20 THE COURT: That's music to my ears.		20 THE COURT: Okay. The witness is excused. And	
21 MR. ROBERT: Your Honor, do you have any idea,		21 thank you very much.	
22 because we have Mr. Giulietti. Otherwise I'll send him		22 (Whereupon, the witness stepped down from the	
23 home.		23 witness stand.)	
24 MR. SOLOMON: Off the record or on the record? I'm		24 (Whereupon, the witness stepped into the witness	
25 hoping to be done within either five to 20 minutes.		25 stand.)	
Dr. Laposa - by Defense - Cross (Mr. Solomon)	Page 4714	G. Giulietti - by Defense - Direct (Mr. Fields)	Page 4716
1 MR. ROBERT: Fine. Thank you.		1 THE COURT OFFICER: Raise your right hand.	
2 THE COURT OFFICER: All rise.		2 (The witness complied.)	
3 (Whereupon, the witness stepped down from the		3 THE COURT OFFICER: Do you swear or affirm to tell	
4 witness stand.)		4 the truth, the whole truth and nothing but the truth?	
5 (Whereupon, a 15-minute break was agreed upon and		5 THE WITNESS: Yes.	
6 taken by all parties.)		6 GARY GIULIETTI, called by and on behalf of the	
7 THE COURT OFFICER: All rise Part 37 is back in		7 Defendant, having been first duly sworn, was examined and	
8 session. Please be seated.		8 testified as follows:	
9 THE COURT: Before the witness -- he can obviously		9 THE COURT OFFICER: Be seated. Name and address or	
10 sit in the witness box, but before we continue, I just want		10 name and business address.	
11 to note for the crowd here a few important things that		11 THE WITNESS: Business address?	
12 happened in history on this day.		12 THE COURT: You have to speak very close to the	
13 In 1558, Elizabeth the first became Queen of		13 mic, loudly, right into it.	
14 England. In 1968, was the famous "Heidi" game where the		14 THE WITNESS: Is that good? How is that, good?	
15 Jets/Raiders football game ended spectacularly, was cut off		15 I'm sorry. You want my name and address?	
16 because they showed the Heidi movie.		16 THE COURT: Yes.	
17 And the Watergate scandal in 1973, Richard Nixon		17 THE WITNESS: Gary Giulietti. My address is 43	
18 famously said, "I am not a crook."		18 Saint Thomas Drive, Palm Beach.	
19 In 2003, Arnold Schwarzenegger became governor of		19 THE COURT: That's Florida. And zip code?	
20 California. A couple of birthdays, Martin Scorsese and		20 THE WITNESS: 33418.	
21 Danny DeVito.		21 THE COURT: Let's begin the direct examination.	
22 Anyone else know anything important that happened		22 MR. FIELDS: Thank you, your Honor.	
23 this day?		23 DIRECT EXAMINATION	
24 (Whereupon, there is a brief pause in the		24 BY MR. FIELDS:	
25 proceedings.)		25 Q For the benefit of the court reporter, spell your last	

<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4717</p> <p>1 name please, Mr. Giulietti.</p> <p>2 A G, like George, I-U-L-I-E-T-I.</p> <p>3 Q Good morning.</p> <p>4 A Good morning.</p> <p>5 Q Could you just explain your educational background from</p> <p>6 college on?</p> <p>7 A Well, I -- I have an undergrad degree from Saint</p> <p>8 Michael's College, and I have a number of executive business</p> <p>9 educational, I don't know if you call them degrees, but I've</p> <p>10 been to the Harvard Business School, things like that, in my</p> <p>11 career.</p> <p>12 Q What did you study at Saint Michael's College?</p> <p>13 A Business.</p> <p>14 Q And where did you first work after attending college?</p> <p>15 A A company called American Mutual. It was the founding</p> <p>16 company of Liberty Mutual.</p> <p>17 Q What did you do there?</p> <p>18 A Insurance, direct writer, worked directly for the</p> <p>19 insurer.</p> <p>20 Q How long were you with American Mutual?</p> <p>21 A Two and a half years.</p> <p>22 Q Where did you go next?</p> <p>23 A A series of small brokers until 1980. In the</p> <p>24 Connecticut area.</p> <p>25 Q What did you do when you worked for the series of small</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4719</p> <p>1 Q You mentioned the word "broker", and I think most</p> <p>2 understand what the term broker means. In your own words, what</p> <p>3 does a broker does?</p> <p>4 A It's an agent and/or broker. It's an intermediary</p> <p>5 between insurance buyer and insurance seller.</p> <p>6 Q What is your current position at Lockton?</p> <p>7 A I'm a founding partner, member. A lot of titles, but I</p> <p>8 continue to make deals for the company and on behalf of our</p> <p>9 clients.</p> <p>10 Q Could you estimate about how many clients Lockton has?</p> <p>11 A Oh, my God. Four point something billion of revenue,</p> <p>12 tens of thousands.</p> <p>13 Q What, if any, exposure have you had at Lockton with</p> <p>14 regard to surety bonds?</p> <p>15 A At different times in my career I was the largest</p> <p>16 individual broker in the country, and therefore the world, cause</p> <p>17 surety is somewhat unique product to America, albeit it's around</p> <p>18 the world now, but not like the US, which -- surety itself was</p> <p>19 founded, um, something called the Miller Act in the '30s,</p> <p>20 guaranteeing public funds going to third parties and making sure</p> <p>21 the government was going to get the result from the construction</p> <p>22 and/or performance -- any kind of contract, really.</p> <p>23 Q Is that why you mentioned surety is a unique product in</p> <p>24 America?</p> <p>25 A Because people mix up surety with insurance. And it's</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4718</p> <p>1 brokers?</p> <p>2 A Insurance sales and underwriting.</p> <p>3 Q What kind of insurance?</p> <p>4 A Originally construction. So surety and insurance for</p> <p>5 contractors. My dad was a contractor, so I called on his</p> <p>6 friends.</p> <p>7 Q And you said until about 1980?</p> <p>8 A Yes.</p> <p>9 Q Where did you go in about 1980?</p> <p>10 A 1980 I joined a company called Willis. I was there for</p> <p>11 20 years. The last nine years was vice chairman of real estate</p> <p>12 and construction for them.</p> <p>13 Q And what did your work entail, generally speaking,</p> <p>14 while you were at Willis?</p> <p>15 A I was sort of a deal guy my whole life, so it became</p> <p>16 more sophisticated sized deals, and worked on securing clients</p> <p>17 and retaining clients.</p> <p>18 Q This is still in the world of insurance?</p> <p>19 A Yes, insurance, surety.</p> <p>20 Q So after you left Willis, where did you land?</p> <p>21 A At Lockton, where I am today. Been here since then.</p> <p>22 Q What is Lockton?</p> <p>23 A Lockton is the largest privately held insurance broker</p> <p>24 in the world. We have offices throughout the world. Founded in</p> <p>25 Kansas City by a family named Lockton. A great American story.</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4720</p> <p>1 really not. Surety is a credit vehicle. It is not insurance.</p> <p>2 It's a third-party guarantee in the banking world that would be</p> <p>3 more like a letter of credit.</p> <p>4 Q Okay.</p> <p>5 A So people confuse the underwriting and they confuse the</p> <p>6 way it's done, and I'm just -- that's why I distinguish it.</p> <p>7 Q Can insurance companies occasionally be sureties?</p> <p>8 A Yes. Over time individuals can be sureties to the</p> <p>9 federal government, oddly, um, but it's kind of morphed to where</p> <p>10 the insurance industry is really the predominant underwriter.</p> <p>11 Q Do you have an idea or a sense for what percentage of</p> <p>12 your practice is the surety practice?</p> <p>13 A My personal practice?</p> <p>14 Q Sure.</p> <p>15 A My practice is rather large, so I would still be one of</p> <p>16 the larger brokers.</p> <p>17 Q Surety brokers?</p> <p>18 A Yes.</p> <p>19 Q What interactions do you have, generally, with surety</p> <p>20 underwriters as a broker, surety broker?</p> <p>21 A I would say we are rather unique, and why we have such</p> <p>22 prowess is the fact that we understand the underwriting</p> <p>23 standards. Surety, sureties, build their own models off of both</p> <p>24 financial statements -- surety has three components of</p> <p>25 underwriting. One is character, integrity, if you will. They</p>

G. Giulietti - by Defense - Direct (Mr. Fields) Page 4721

1 call it the three Cs; capability, or ability to perform whatever  
2 it is you are being asked to guaranty as a surety. And the  
3 thing that a lot of people spend a lot of time on, which, to me,  
4 isn't really the most important thing, but it's financial  
5 underwriting.  
6 Q If you could describe the relationship between a surety  
7 underwriter, a surety broker and the client, can you just  
8 explain the, really, the day-to-day and how the relationship  
9 gets formed?  
10 A Sure.  
11 Q And how that affects the ultimate product?  
12 A What we do somewhat is unique. There are only a few  
13 brokers going to this extent they usually rely on the carriers  
14 to underwrite, but we actually do the underwriting ourselves.  
15 We build our on models. We do our own analytics around all  
16 three Cs. We determine, based on who we are going to -- who the  
17 client is, where we think the philosophy of the client best fits  
18 the credit provider for the surety, and we try to marry the  
19 result of the analytics that we create.  
20 We have our own analytic forums. We have our own  
21 analytic views. We have our own results that are unique, we  
22 think, coming at it from more of a capital foundation  
23 standpoint. And so we use our own results to try to influence  
24 and guide the potential surety provider.  
25 Q How, if at all, do the analytics that you compile or

G. Giulietti - by Defense - Direct (Mr. Fields) Page 4722

1 prepare ultimately affect or get shared with the surety  
2 underwriter?  
3 A Well, we -- many times we just show them our results  
4 versus where we know they are going to end up. And it differs  
5 tremendously from accounting GAAP, for example. So we are -- we  
6 know what each surety is going to focus on, and for the need  
7 that we are asking for, within a range.  
8 Q In terms of the sharing of financial information  
9 between you as the surety broker and the surety underwriter,  
10 would it be fair to say there is an open line of communication  
11 going back and forth between both of you?  
12 MR. AMER: Objection. Leading.  
13 THE COURT: Sustained.  
14 Q In terms of the communications that you have with the  
15 underwriter, the surety underwriter and you as a surety broker,  
16 how often do you share information, generally, with regard to  
17 the client's finances?  
18 A Each financial statement, those standards are generally  
19 established and are flexible between sureties as to the surety  
20 need and the reporting period. So if you are a big user of  
21 surety, you might be required to report quarterly. Some would  
22 be required semiannually, annually. It doesn't -- and then we  
23 would -- we would do all the analytics around the financial  
24 piece and/or any other piece that we need; capability, maybe.  
25 And we would -- we would not share anything with sureties before

G. Giulietti - by Defense - Direct (Mr. Fields) Page 4723

1 we did all those analytics.  
2 Q And how long have you been in the surety business,  
3 generally?  
4 A Fifty years this year.  
5 Q Do you know Donald Trump?  
6 A Yes.  
7 Q How do you know him?  
8 A Golf.  
9 Q You met him on the golf course?  
10 A Yes, sir.  
11 Q Do you have a relationship with Donald Trump still?  
12 A Yes.  
13 Q Personal and professional?  
14 A Yes.  
15 Q As personally, what do you consider him?  
16 A Play golf with him occasionally; have lunch with him  
17 occasionally. Belong to a bunch his clubs, so.  
18 Q How about professionally?  
19 A So that was new. Um, not that I didn't want to have  
20 one earlier. There's always competitive pressures in  
21 relationships, so it took a while, somewhere around '17, '18,  
22 because of some things that occurred in D and O for him, I was  
23 asked to intervene, I did solve that. And then -- and '21,  
24 around February, March we were appointed broker and took over  
25 from another competitor.

G. Giulietti - by Defense - Direct (Mr. Fields) Page 4724

1 Q So are you currently The Trump Organization's broker  
2 for insurance?  
3 A Yes.  
4 Q How long have you known Donald Trump?  
5 A Late '90s.  
6 Q Could you describe what kind of insurance your company  
7 places or assists in getting placed for the The Trump  
8 Organization?  
9 A Sure. So we have placed all the property cover and all  
10 of the casualty cover, general liability, Workers' Compensation,  
11 automobile, umbrella liability, it's quite a large diverse  
12 amazing organization, so it requires a lot of effort. And we do  
13 all the engineering, we do all of the claims handling,  
14 monitoring, pay -- arranging carrier payments, and thankfully he  
15 doesn't have very many claims, so.  
16 (Continued on the next page.)  
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23  
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25

Giulietti - by Defendant - Direct (Fields)	Page 4725	Giulietti - by Defendant - Direct (Fields)	Page 4727
1 Q Have you also done any surety work for the Trump		1 Q And are you generally familiar with the surety bond	
2 Organization?		2 program that is described in the complaint with regard to	
3 A Yes. We took that over at roughly the same time.		3 Zurich Insurance?	
4 Q Is the property market or the property liability the		4 A Yes.	
5 largest subset of a type of insurance that you assist in		5 Q Have you had the opportunity to review documents,	
6 getting placed for the Trump Organization?		6 Zurich documents, related to the surety program for the Trump	
7 A I am not sure I understand your question.		7 Organization?	
8 Q Sure. About how big is the property line of work --		8 A Yes.	
9 of insurance?		9 Q And I won't ask you your opinions, I am just going to	
10 A Meaning premium size?		10 ask you if you have formed opinions with regard to the surety	
11 Q Yes.		11 program that Zurich underwrote for the Trump Organization?	
12 A Round numbers, 6 million.		12 MR. AMER: Your Honor, if we are going to now	
13 MR. AMER: Can I get a clarification? Is that		13 start down the road of eliciting opinions, can we	
14 casualty property.		14 understand what his area of expertise for purposes of his	
15 A Just fire, wind, storm, direct damage to properties		15 qualification is going to be?	
16 and/or the business interruption aspect of that would be		16 THE COURT: Well, just speaking generally, if we	
17 considered property.		17 are going to have expert opinions someone has to be deemed	
18 Q What size -- withdrawn.		18 an expert. The witness has to be deemed an expert.	
19 When compared to your personal book or business,		19 MR. FIELDS: That was my next question, Your	
20 where does the Trump Organization and President Trump's		20 Honor. That was going to be my next question with regard	
21 business fall in terms of scale and size?		21 to insurance brokerage and underwriting. When I say	
22 A Against my personal book?		22 "insurance" I mean suretyship, brokerage and underwriting.	
23 Q Your personal book and business.		23 THE COURT: Why don't we start here on a clean	
24 A Somewhere between 9th and 12th largest, probably		24 slate. Ask your question.	
25 somewhere there.		25 MR. FIELDS: Well, the question at this point	
Giulietti - by Defendant - Direct (Fields)	Page 4726	Giulietti - by Defendant - Direct (Fields)	Page 4728
1 Q And then do you have a sense for -- with regard to		1 was not to provide what his opinion was, if he has formed	
2 the company's book of business where the Trump Organization		2 one, but has he formed an opinion with regard to the	
3 falls?		3 surety underwriting program that Zurich underwrote for the	
4 A No. I -- we have \$4 billion of revenue. It is a		4 Trump Organization.	
5 reasonably sizable account, and generates income for us over a		5 THE COURT: Doesn't he have to be deemed an	
6 million, roughly, plus or minus. And it wouldn't be small, but		6 expert first before you ask him an expert opinion	
7 it is not large. And it has very few claims because of the		7 question.	
8 quality of the products he puts out, and therefore it is quite		8 MR. FIELDS: That was my -- I was not going to	
9 profitable from that regard.		9 ask him what his opinion was until I say, Your Honor, I	
10 Q All right. Are you being compensated for being here		10 tender the witness as an expert in surety underwriting and	
11 today or for any opinions or testimony that you will give in		11 brokerage. But we can do it however Your Honor would	
12 this case?		12 like.	
13 A No.		13 THE COURT: That's not a personal preference.	
14 Q Not directly compensated by the defendants or by the		14 It is just how I think things work.	
15 Trump Organization for your testimony, but your company		15 MR. FIELDS: Understood.	
16 receives money to place insurance; is that fair?		16 THE COURT: Okay.	
17 A Yes. Properly said, this would be included in our		17 MR. FIELDS: So I tender the witness as an	
18 overall relationship year over year.		18 expert in surety underwriting and brokerage.	
19 Q But has anybody in any way promised you more business		19 MR. AMER: I think brokerage is fine, Your	
20 for anything you are doing here today?		20 Honor. I think in terms of underwriting, this witness	
21 A No.		21 hasn't indicated experience that would qualify him as an	
22 Q Are you generally familiar with some of the		22 insurance underwriter or asurety underwriter. He has	
23 allegations in the Attorney General's complaint with regard to		23 worked almost all of his entire career for a brokerage	
24 surety?		24 firm.	
25 A Generally.		25 MR. FIELDS: If the Court would like to ask him,	



Giulietti - by Defendant - Direct (Fields) Page 4729	Giulietti - by Defendant - Voir Dire (Amer) Page 4731
<p>1 I am happy to ask about his.</p> <p>2 THE COURT: I'll ask the witness to respond to</p> <p>3 Mr. Amer's concerns. But speak right into the mic.</p> <p>4 THE WITNESS: You are asking my expertise?</p> <p>5 MR. AMER: No. I just said based on your work</p> <p>6 experience, other than I think it was two years at the</p> <p>7 very beginning of your career, you have been a broker,</p> <p>8 not -- you haven't worked for an insurance company either</p> <p>9 underwriting or handling claims, as far as I can tell.</p> <p>10 THE WITNESS: So my answer would be that a lot</p> <p>11 of the -- our compensation, is based on our results. And</p> <p>12 carriers look to us and our reputation to stand with the</p> <p>13 client and their reputations. I underwrite the financial</p> <p>14 side of the clients along with our in-house underwriters,</p> <p>15 long before we give it to the sureties. We know what they</p> <p>16 want. I have probably done six, \$800 billion of</p> <p>17 underwriting. There is very few people like me in the</p> <p>18 country. I -- the Big Dig in Boston, the large projects</p> <p>19 in New York City. I have underwrote all of those. I have</p> <p>20 arranged the financial analysis. I have worked with the</p> <p>21 banks of the clients, and prepared it for the surety to</p> <p>22 have an easy time subscribing to their need. I don't</p> <p>23 think there are four people in America that have my</p> <p>24 qualifications to do what I do.</p> <p>25 THE COURT: Well --</p>	<p>1 underwriter, correct?</p> <p>2 A No, I am not.</p> <p>3 Q And you don't have any designation as an underwriter</p> <p>4 in the insurance industry, correct?</p> <p>5 A Well, I think the six or eight biggest CEOs of</p> <p>6 insurers would disagree with you.</p> <p>7 Q I don't think that was my question. My question</p> <p>8 was --</p> <p>9 A You are sort of insulting me. Aren't you?</p> <p>10 Q No, I --</p> <p>11 A I think so. Because there are very few people like</p> <p>12 me in the industry.</p> <p>13 MR. AMER: Your Honor, my objection to the</p> <p>14 breadth of his qualification stands. This witness is not</p> <p>15 an insurance underwriter and he hasn't spent his career</p> <p>16 working for an insurance company.</p> <p>17 THE WITNESS: Shouldn't I know the underwriting</p> <p>18 criteria of each of the carriers I do business with and</p> <p>19 try to influence that thought?</p> <p>20 THE COURT: Let me --</p> <p>21 MR. AMER: Your Honor, I ask you not to have the</p> <p>22 witness comment --</p> <p>23 THE COURT: I am sorry.</p> <p>24 MR. AMER: -- when I am addressing the court.</p> <p>25 THE COURT: It may not be a fair process, but</p>
Giulietti - by Defendant - Voir Dire (Amer) Page 4730	Giulietti - by Defendant - Voir Dire (Amer) Page 4732
<p>1 MR. AMER: Can I have a couple of voir dire</p> <p>2 questions?</p> <p>3 THE COURT: Of course you can ask some</p> <p>4 questions.</p> <p>5 VOIR DIRE EXAMINATION</p> <p>6 BY MR. AMER:</p> <p>7 Q Lockton and Willis where you worked, those companies</p> <p>8 are licensed to be brokers in New York by the Department of</p> <p>9 Financial Services, correct?</p> <p>10 A Correct.</p> <p>11 Q They are not licensed to be insurance companies,</p> <p>12 correct?</p> <p>13 A That's true.</p> <p>14 Q They don't have paper that they issue insurance</p> <p>15 policies on, correct?</p> <p>16 A That's not true.</p> <p>17 Q Well, they are not licensed to issue paper in New</p> <p>18 York; is that true?</p> <p>19 A So Willis owns carriers and are licensed to place</p> <p>20 business.</p> <p>21 Q That wasn't my question. You worked for Willis, the</p> <p>22 brokerage house, right?</p> <p>23 A Yes, but I also had licensing with the carriers and</p> <p>24 influenced the carriers.</p> <p>25 Q And you are not a CPCU or certified property casualty</p>	<p>1 the rule is you don't ask questions, you answer questions.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 THE COURT: Mr. Robert?</p> <p>4 MR. ROBERT: I'll hold off.</p> <p>5 THE COURT: I don't understand something.</p> <p>6 Witness, I won't try to mispronounce your name,</p> <p>7 you said that you underwrite insurance. How can you</p> <p>8 underwrite insurance if you are not an insurance company?</p> <p>9 Aren't insurance companies the only companies that can</p> <p>10 underwrite insurance?</p> <p>11 THE WITNESS: Well, good brokers do the</p> <p>12 underwriting as if they were carriers and present the case</p> <p>13 after we have qualified the risk. In the world I live in,</p> <p>14 you have to do that to have any reasonable result for your</p> <p>15 client, so you need to know the process. Most every</p> <p>16 technical person that works for us, or me directly on my</p> <p>17 deal teams, have been with carriers. And we tee up the</p> <p>18 result so it is easily acceptable to the carrier in a</p> <p>19 manner that they can digest it and/or puts the client --</p> <p>20 the potential client, in the best light. So we are doing</p> <p>21 the underwriting, they end up taking the risk.</p> <p>22 THE COURT: Well, there is another interesting</p> <p>23 question of language.</p> <p>24 I think I understand all of that. You sort of</p> <p>25 put together the deal and say, hey, insurance company,</p>

Giulietti - by Defendant - Voir Dire (Amer)	Page 4733	Giulietti - by Defendant - Direct (Fields)	Page 4735
<p>1 this is what we think you should do; and they either</p> <p>2 accept it or they don't. That's your role as a broker.</p> <p>3 Did I get that right?</p> <p>4 THE WITNESS: Yes, sir. Sometimes, about</p> <p>5 30 percent of the times I would argue, maybe more, we are</p> <p>6 agents for the carrier and therefore are the carrier in</p> <p>7 those moments. So, in essence, when I am an agent for a</p> <p>8 carrier and some big ones like Chubb or Zurich or some</p> <p>9 others, we are actually acting as agent. And as agent, I</p> <p>10 could theoretically bind the property cover on a burning</p> <p>11 building. I don't, but I could.</p> <p>12 THE COURT: And Mr. Fields, I am sorry to ask</p> <p>13 you to repeat. What are the areas that you would like me</p> <p>14 to deem him an expert in?</p> <p>15 MR. FIELDS: Surety underwriting and surety</p> <p>16 brokerage.</p> <p>17 MR. AMER: So, insurance, as I am sure Your</p> <p>18 Honor understands, is one of the most heavily regulated</p> <p>19 industries in the country. The Department of Financial</p> <p>20 Services licenses companies to do specific things. They</p> <p>21 license brokers, they license insurance companies. And so</p> <p>22 I -- I don't think it is appropriate to qualify this</p> <p>23 witness as a surety underwriter if he is not -- if he</p> <p>24 doesn't have any work experience working for the companies</p> <p>25 that the Department of Financial Services authorizes and</p>		<p>1 THE COURT: Only through this case, he wouldn't</p> <p>2 want to insult anybody.</p> <p>3 Q What is a surety bond?</p> <p>4 A Very broad question. It could be a number of things.</p> <p>5 It could act as anything from a letter of credit guaranteeing</p> <p>6 a -- the performance of a contract.</p> <p>7 Q And generally are there three parties to a bond,</p> <p>8 surety bond?</p> <p>9 A Usually two.</p> <p>10 Q Well, who are the parties?</p> <p>11 A The parties are the obligee, obligor. So one would</p> <p>12 be the -- let's say you work for the State of New York, the DOT</p> <p>13 or something. The DOT would be -- would hold the risk -- the</p> <p>14 surety bond. And it would be provided by some contractor or</p> <p>15 depending on what type of work is being done.</p> <p>16 Q Are you familiar with the term, "guarantor"?</p> <p>17 A Yes.</p> <p>18 Q And what is a guarantor?</p> <p>19 A That would be who the at-risk capital and/or</p> <p>20 signatory to the bond.</p> <p>21 Q So is it somebody who guaranties the bond?</p> <p>22 A Yes. And the surety language for that would be an</p> <p>23 indemnitor.</p> <p>24 Q An indemnitor.</p> <p>25 In your experience are indemnitors companies</p>	
Giulietti - by Defendant - Direct (Fields)	Page 4734	Giulietti - by Defendant - Direct (Fields)	Page 4736
<p>1 licenses and regulates with respect to underwriting. So I</p> <p>2 think the appropriate field is to qualify him as a surety</p> <p>3 broker, and if he wants to explain how, in that capacity,</p> <p>4 he puts together material that insurance companies then</p> <p>5 use, I don't have any problem with that. But we are</p> <p>6 talking about a very heavily regulated industry where</p> <p>7 specific licenses are issued and specific companies are</p> <p>8 regulated for what they do.</p> <p>9 THE COURT: I don't think you need a license to</p> <p>10 be an expert. I hereby deem him an expert in surety</p> <p>11 underwriting and surety brokering.</p> <p>12 Is that what you asked?</p> <p>13 MR. FIELDS: Yes, Your Honor. Thank you.</p> <p>14 THE COURT: All right. I have deemed you an</p> <p>15 expert in both of those fields. So you don't have to be</p> <p>16 insulted.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 CONTINUED DIRECT EXAMINATION</p> <p>19 BY MR. FIELDS:</p> <p>20 Q What is a surety?</p> <p>21 MR. AMER: Again, I really wasn't trying to</p> <p>22 insult the witness, to make it clear.</p> <p>23 THE WITNESS: It is okay.</p> <p>24 THE COURT: I have known him for a long time.</p> <p>25 THE WITNESS: After 50 years, you know.</p>		<p>1 individuals or both?</p> <p>2 A Both.</p> <p>3 Q More frequent for them to be individuals or</p> <p>4 companies?</p> <p>5 A Depends on the type of business. So since we are</p> <p>6 focused on real estate, a real estate generally is somewhat</p> <p>7 arm's length. I would say generally you don't have too many</p> <p>8 personal signatures at all, just some corporate level entity.</p> <p>9 Q All right. Are you familiar with some of the,</p> <p>10 generally, the bonds that Zurich underwrote for the Trump</p> <p>11 Organization?</p> <p>12 A Sure.</p> <p>13 Q So just generally speaking, who is the surety for --</p> <p>14 in these transactions?</p> <p>15 A Well, in that case Zurich would be the surety.</p> <p>16 Q And who is the principal?</p> <p>17 A The guarantor was Trump.</p> <p>18 Q Okay. But the guarantor/indemnitor was Trump, was</p> <p>19 there a principal, as in one of the entities, that obtained the</p> <p>20 bond Trump Organization entity?</p> <p>21 A Sure. But as I recall the overriding relationship</p> <p>22 was quite unusual for someone this size. He guaranteed it</p> <p>23 personally, which I find quite amazing.</p> <p>24 Q Why do you say it was unusual?</p> <p>25 A It is unusual. It just doesn't happen that much.</p>	

Giulietti - by Defendant - Direct (Fields) Page 4737

1 Q What doesn't happen that much?

2 A Personal signatures on a real estate firm with lots

3 of entities. People would prefer to have the guaranties be the

4 buildings or entities themselves, to limit liability to the

5 individual.

6 Q So is it your understanding that Donald Trump

7 personally guaranteed the surety bonds that Zurich underwrote?

8 A I saw some of the indemnity agreements and the

9 information you shared with me, and yes, he underwrote it

10 personally in many cases. I don't know -- I don't recall all

11 years. I don't think I saw the indemnity for all years.

12 Q Generally speaking, what is the process like from

13 beginning to end of the underwriting a surety bond?

14 A There is too many, could you more specific?

15 Q Sure. So when a client comes to you and says, I need

16 a surety bond, what is the first thing you are going to do?

17 MR. AMER: I am going to object on foundation

18 grounds. He said there are too many to comment on. So I

19 am not really sure what he is asking.

20 THE COURT: Overruled. If the witness can

21 answer, he can answer.

22 THE WITNESS: I am sorry?

23 THE COURT: I said, if you can answer the

24 question I'll allow you to answer it.

25 A I think in this case you would like to focus on real

Giulietti - by Defendant - Direct (Fields) Page 4738

1 estate?

2 Q Sure.

3 A Because there is all kinds of industries. And there

4 is all kinds of, therefore, guarantees and relationships. In

5 real estate you would be -- real estate underwriting you would

6 have to get by, does the man have character and integrity. You

7 would have to get by, capability, can he build and develop

8 and/or manage property. And then finally, you would look at

9 the financial analysis. And the financial analysis you would

10 look at operating results and liquidity over anything.

11 Q Do surety underwriters generally require some sort of

12 financial information before underwriting a bond?

13 A Yes.

14 Q And in what forms is that financial information

15 generally provided?

16 A Generally financial presentation by their accounting

17 firm.

18 Q And are you familiar with the accounting standards of

19 review?

20 A Sure. So, any significant surety would require a

21 full audit, and an exception to that would be an accommodation.

22 Q In this case do you know, from your review of the

23 documents, whether the Trump Organization provided audited

24 financial statements to Zurich Insurance?

25 A I did not see audited financial statements anywhere.

Giulietti - by Defendant - Direct (Fields) Page 4739

1 Q What did you see?

2 A Compilation.

3 Q And in your experience, is it usual or unusual for

4 the surety underwriter to rely on compilation financial

5 statements?

6 A Any surety, including Zurich, would give no credence

7 to compilation.

8 MR. AMER: I am going to object, Your Honor, and

9 move to strike as to what Zurich did or didn't do.

10 MR. FIELDS: Well, he is an expert and we can

11 ask how he knows that.

12 MR. AMER: He can't know specifically what

13 Zurich did or didn't do. He can speak generally.

14 MR. FIELDS: I think that's what the comment was

15 intended.

16 MR. AMER: He said, and I am quoting: "Any

17 surety, including Zurich, would give no credence to

18 compilation." I don't know how he has the ability to

19 opine on what was in Zurich's mind.

20 MR. FIELDS: I think --

21 THE COURT: Overruled.

22 I think he answered the question, right?

23 MR. AMER: I don't think so. I don't think he

24 did.

25 THE COURT: I think he did.

Giulietti - by Defendant - Direct (Fields) Page 4740

1 Q Do you understand what the term "liquidity" means,

2 Mr. Giuliette?

3 A Yes.

4 Q How does liquidity factor into the surety

5 underwriting business?

6 A Heavily. The standards in surety are different than

7 GAAP. So, you have working capital analytics. You have two

8 determinations on the balance sheet: You have the balance

9 sheet equity; and the balance sheet liquidity. Liquidity as

10 defined by an accounting firm would be working capital, current

11 assets minus current liabilities. Sureties don't look at that.

12 Sureties, it is a starting point. And so what sureties do is

13 they look at liquidity available in 12 months to cover any and

14 all obligations that might be outstanding to the sureties. And

15 so working capital differs from GAAP by a number of standards.

16 And without boring the Court I'll give one example of

17 what that standard could be. Life insurance cash value, which

18 everyone I think here probably understands, would be something

19 available to an insured, life insurance, in a short period of

20 time, week, ten days at the most. And therefore it is carried

21 below the line in GAAP, but it is as a long-term asset. But in

22 surety underwriting they move it above the line and make it

23 part of working capital.

24 And then there is the reverse. There is a reverse in

25 that bank debt could be carried above and below the line,

Giulietti - by Defendant - Direct (Fields)	Page 4741	Giulietti - by Defendant - Direct (Fields)	Page 4743
<p>1 without getting too complicated around that issue. It</p> <p>2 exchanges the liquidity tremendously.</p> <p>3 Q Does overall net worth factor into the surety</p> <p>4 underwriting process?</p> <p>5 A Sure. You would want to have balance sheet equity</p> <p>6 that is adequate enough to carry the operating company's risks,</p> <p>7 including debt, and debt vehicles.</p> <p>8 Q How about asset structure?</p> <p>9 A Well, specific to real estate, surety wouldn't spend</p> <p>10 a lot of time on assets at all, because they do not generate</p> <p>11 liquidity. In this particular instance the outstanding surety</p> <p>12 plus or minus 14, 15 million most of the time in that period of</p> <p>13 time. So there is very little requirement liquidity-wise even</p> <p>14 for that. Right?</p> <p>15 So but you would have to look at any negative</p> <p>16 potential draws. An extreme example would be a real estate</p> <p>17 company that is in financial trouble. And what is the</p> <p>18 outstanding debt obligation over a 12 to 24-month period</p> <p>19 because of that trouble. And just because you have cash</p> <p>20 doesn't mean you have liquidity. You could owe on a payable in</p> <p>21 the next six to 12 months way more money than you have on a</p> <p>22 cash basis at that moment in time.</p> <p>23 Q And I should have mentioned something earlier. I</p> <p>24 haven't asked for any opinions yet, but to the extent you do</p> <p>25 give any opinions today, Mr. Giuliette, I ask you give them to</p>		<p>1 want all of the operating company's statements; you want to</p> <p>2 analyze all of the operating company's statements; you want to</p> <p>3 confirm what debts are going to be owed over the next 12 to 24</p> <p>4 months; what income you anticipate; what is the projections of</p> <p>5 profitability; debt-to-worth ratios; debt-to-debt covenant</p> <p>6 ratios. All of the -- and the financial footnotes around that</p> <p>7 so you can make a determination as to what is at risk versus</p> <p>8 what is coming into the door, liquidity wise.</p> <p>9 Q And in your experience, when a surety underwriter</p> <p>10 underwrites a bond, do they generally go through those ratios</p> <p>11 that you just described?</p> <p>12 A If, yeah, 100 percent of the time we -- sorry.</p> <p>13 Q Are you familiar with the term an accommodation?</p> <p>14 A Yes.</p> <p>15 Q What does that mean?</p> <p>16 A It means either for the client or the broker an</p> <p>17 insurer, surety company, will make an accommodation, grant</p> <p>18 something that is outside of the ordinary.</p> <p>19 Q And what is the purpose of the accommodation</p> <p>20 generally?</p> <p>21 A Provide a product with minimal, no underwriting.</p> <p>22 Q Is there hopefully a benefit to the surety for</p> <p>23 providing an accommodation, in the general sense?</p> <p>24 A Yes, or a relationship, or the broker -- many</p> <p>25 reasons.</p>	
Giulietti - by Defendant - Direct (Fields)	Page 4742	Giulietti - by Defendant - Direct (Fields)	Page 4744
<p>1 a reasonable degree of professional certainty. Okay?</p> <p>2 A Yes, sir.</p> <p>3 Q How does the leverage on assets for a real estate</p> <p>4 company factor into the surety underwriting process?</p> <p>5 A Well let's leave Zurich off the table for a minute.</p> <p>6 But the entire industry struggles with debt. It is not good at</p> <p>7 understanding debt. It is not -- it struggles to understand</p> <p>8 real estate and debt. So they tend to ignore that and</p> <p>9 completely focus on liquidity.</p> <p>10 Q Is there, generally, some form of an analysis or a</p> <p>11 financial profile ratio that an underwriter comes up with</p> <p>12 before underwriting a surety bond?</p> <p>13 A Sure.</p> <p>14 MR. AMER: Objection, leading.</p> <p>15 THE COURT: I'll call it foundational.</p> <p>16 Overruled.</p> <p>17 A So a conservative deal would be that you could get</p> <p>18 \$10 of surety credit for every dollar of liquidity. That's a</p> <p>19 conservative deal. There are some that are much more 30, 40,</p> <p>20 50 times that. But a real estate deal like this probably one</p> <p>21 in ten.</p> <p>22 Q But generally speaking, what metrics or what</p> <p>23 financial analysis does the surety do before agreeing to</p> <p>24 underwrite the bond?</p> <p>25 A If it was doing the complete financial analysis you</p>		<p>1 Q Business development?</p> <p>2 A Business, all commercial benefits.</p> <p>3 Q How common is an accommodation in the surety bond</p> <p>4 industry?</p> <p>5 A Rare.</p> <p>6 Q How does the -- withdrawn.</p> <p>7 How does an accommodation tend to affect the</p> <p>8 underwriting process?</p> <p>9 A Well, it would mean that it would be minimal, at</p> <p>10 best. I mean, you are accommodating somebody's need.</p> <p>11 Q I am going to use a loose term, but would an</p> <p>12 accommodation be akin to, like, a favor in a way?</p> <p>13 MR. AMER: Leading, Your Honor.</p> <p>14 A An accommodation is a favor.</p> <p>15 THE COURT: Overruled.</p> <p>16 Was there an answer?</p> <p>17 MR. FIELDS: Yes, there was.</p> <p>18 THE COURT: The answer was yes?</p> <p>19 MR. FIELDS: The answer was: An accommodation</p> <p>20 is a favor.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. AMER: He adopted the question.</p> <p>23 THE COURT: Which I know is why we don't like</p> <p>24 leading questions, but, come on.</p> <p>25 MR. AMER: I think we are beyond background,</p>	

Giulietti - by Defendant - Direct (Fields)	Page 4745	G. Giulietti - by Defense - Direct (Mr. Fields)	Page 4747
<p>1 Your Honor, but I understand. That's fine.</p> <p>2 MR. FIELDS: All right.</p> <p>3 Q Do you have a sense for when the surety business</p> <p>4 between the Trump Organization and Zurich Insurance began?</p> <p>5 A Yeah. I think it was '11-- it might have been before</p> <p>6 the historical record I reviewed according to some of the</p> <p>7 management at Zurich. I believe it began in the '05, '06, '07,</p> <p>8 '08, '09 era.</p> <p>9 Q Prior to that, did Zurich Insurance write any</p> <p>10 insurance for the Trump Organization?</p> <p>11 A My understanding is, yes.</p> <p>12 Q At some point did the Zurich insurance program cease</p> <p>13 and a surety program continue with the Trump Organization?</p> <p>14 A Yes.</p> <p>15 Q And I think you said that was approximately 2011?</p> <p>16 A No, I think that was a little later maybe '14, '15?</p> <p>17 I could be wrong.</p> <p>18 Q We will put some documents up.</p> <p>19 And did -- was there an indemnity agreement with</p> <p>20 Zurich Insurance where somebody indemnified bonds?</p> <p>21 A It was always an indemnity agreement.</p> <p>22 Q Who was the indemnitor?</p> <p>23 A Donald Trump.</p> <p>24 Q Did you have an opportunity to review the indemnity</p> <p>25 agreement?</p>		<p>1 Q Is it customary in the industry for sureties to want to</p> <p>2 review financial information in the underwriting process?</p> <p>3 A If he wants bonds, yes.</p> <p>4 Q All right. Mr. Giulietti, I'm going to just ask you</p> <p>5 for your ultimate opinion, and then we'll walk through some</p> <p>6 documents to help explain to the court what your opinion is.</p> <p>7 But as it relates to the relationship between Zurich</p> <p>8 and The Trump Organization, do you have an opinion as to why</p> <p>9 Zurich was engaged in doing underwriting surety bonds for Trump?</p> <p>10 A Yes.</p> <p>11 Q What is that opinion?</p> <p>12 A They were accommodating -- going backwards, not</p> <p>13 currently. Currently we are the broker, and we place bonds for</p> <p>14 Zurich, for Trump.</p> <p>15 In the past, it seems they were just accommodating the</p> <p>16 broker and/or Trump. No way to know for sure who.</p> <p>17 MR. FIELDS: Okay. Can we pull up defense 43.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q Mr. Giulietti, I'm going to show you a series of</p> <p>21 documents, I believe you reviewed some of these as part of your</p> <p>22 expert report that you wrote; is that fair?</p> <p>23 A That's fair.</p> <p>24 (The witness was handed the exhibit.)</p> <p>25 Q All right. Do you recognize Defense 43 that's in front</p>	
Giulietti - by Defendant - Direct (Fields)	Page 4746	G. Giulietti - by Defense - Direct (Mr. Fields)	Page 4748
<p>1 A Yes.</p> <p>2 Q And is it common for indemnity agreements to require</p> <p>3 some sort of financial disclosure from the indemnitor?</p> <p>4 A The indemnity agreement itself does not generally.</p> <p>5 Sometimes rarely does it specifically say that you had to do</p> <p>6 certain things because of the program and the size of the</p> <p>7 program, but generally, no.</p> <p>8 Q And in this case did the indemnity agreement require</p> <p>9 financial disclosure of President Trump to Zurich?</p> <p>10 A The indemnity agreement did not.</p> <p>11 (The following proceedings were stenographically</p> <p>12 recorded by Senior Court Reporter Michael Ranita.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 of you on the screen or in your hand?</p> <p>2 A Yes.</p> <p>3 Q What is does this appear to be?</p> <p>4 MR. AMER: Your Honor, hang on a second. I'm going</p> <p>5 to object to any testimony about underwriting that took</p> <p>6 place before the 2019 renewal.</p> <p>7 Our insurance fraud claim is based on the renewal</p> <p>8 in 2019 and in 2020 by Claude yeah Mouradian, so I don't</p> <p>9 understand the relevance of reviewing the underwriting of</p> <p>10 this risk by a different underwriter, Ms. Caulfield, in</p> <p>11 earlier years. It's got nothing to do with our insurance</p> <p>12 claim.</p> <p>13 MR. FIELDS: Your Honor, it's important for the</p> <p>14 Court to understand how this all came about and why Zurich</p> <p>15 Insurance was ultimately writing these bonds. So that's the</p> <p>16 whole purpose, is to provide a brief foundation for the</p> <p>17 Court to just understand where this all came from.</p> <p>18 MR. AMER: We are going back to 2009.</p> <p>19 MR. FIELDS: Frankly, we went back to 2009 with</p> <p>20 other lending documents, too, and I'm not understanding why</p> <p>21 we are now limiting ourselves to a moment in time.</p> <p>22 THE COURT: Overruled. But I hope we could move</p> <p>23 through this fast, because we have a lot of years to cover.</p> <p>24 MR. FIELDS: Certainly. I don't intend to go year</p> <p>25 by year, your Honor, absolutely not.</p>	

<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4749</p> <p>1 Q So Mr. Giulietti, do you recognize what this is?</p> <p>2 A Yes.</p> <p>3 Q What is this?</p> <p>4 A Underwriting review standard for Zurich.</p> <p>5 Q This is for 2009?</p> <p>6 A Yes, sir, it's what it says.</p> <p>7 Q And what's -- did anything strike you as interesting</p> <p>8 when you first looked at this document?</p> <p>9 MR. AMER: Objection. Relevance.</p> <p>10 THE COURT: Overruled.</p> <p>11 A Well, they did know financial analysis. And as I</p> <p>12 recall, in all years the result was the same, so everything I</p> <p>13 discussed around liquidity is missing. There's no testing of</p> <p>14 the balance sheet or the P and L against the risk. So you</p> <p>15 should have -- under net worth it should give you the tangible</p> <p>16 net worth as stated. Even in a compilation they are going to</p> <p>17 have tangible net worth. No revenue, no profit, no debt. Net</p> <p>18 quick would be the working capital analytics around what the</p> <p>19 surety companies would think.</p> <p>20 Gross profit at each of operating companies, none of</p> <p>21 that is on any page of any information I ever saw. And I can --</p> <p>22 Zurich never does this, hardly. This is purely an accommodation</p> <p>23 for whatever reasons they chose to do it.</p> <p>24 MR. AMER: I will object and move to strike that</p> <p>25 Zurich never does this. I don't know how this witness can</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4751</p> <p>1 screen.)</p> <p>2 Q Is the financial review and summary section, does it</p> <p>3 look similar to the 2009 one?</p> <p>4 A It's identical, really. I mean, I didn't read all the</p> <p>5 comments on the last one, so, I'm sorry, I didn't -- there's</p> <p>6 more comments here.</p> <p>7 Q Does it appear to you that Zurich did any financial</p> <p>8 analysis in 2010 in this financial review and summary section?</p> <p>9 MR. AMER: Just note my continuing objection on</p> <p>10 relevance grounds, your Honor.</p> <p>11 THE COURT: Duly noted. By the way, how much</p> <p>12 longer on your direct?</p> <p>13 MR. FIELDS: I could probably do it in another</p> <p>14 15 minutes.</p> <p>15 THE COURT: How much cross do we think there will</p> <p>16 be, if any?</p> <p>17 MR. AMER: I would think I would -- at this point I</p> <p>18 think I could probably come close to 1:00.</p> <p>19 THE COURT: Let's move fast on both sides and we'll</p> <p>20 see if we could.</p> <p>21 THE WITNESS: Thank you, your Honor.</p> <p>22 THE COURT: You mean, you don't want to come back</p> <p>23 Monday?</p> <p>24 MR. FIELDS: All right. If we could then zoom back</p> <p>25 out here.</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4750</p> <p>1 say that.</p> <p>2 A Okay. That's correct. I'm sorry.</p> <p>3 THE COURT: Okay. Sustained by the witness.</p> <p>4 A That's too general. I get it.</p> <p>5 Q Do you still assist in underwriting surety bonds for</p> <p>6 Zurich?</p> <p>7 A For Trump? Yes.</p> <p>8 Q Or any client.</p> <p>9 A We just recently issued seven bonds for Trump through</p> <p>10 Zurich.</p> <p>11 Q Zurich Insurance just wrote seven bonds for The Trump</p> <p>12 Organization?</p> <p>13 A Yes.</p> <p>14 Q When was that?</p> <p>15 A August.</p> <p>16 Q Of what year?</p> <p>17 A This year.</p> <p>18 Q Do you understand from the Attorney General's complaint</p> <p>19 that they allege that The Trump Organization defrauded Zurich</p> <p>20 Insurance, generally?</p> <p>21 A I -- not really.</p> <p>22 Q Fair enough.</p> <p>23 MR. FIELDS: All right. If we could then move to</p> <p>24 Defense 44. This is 2010.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4752</p> <p>1 (Whereupon, the exhibit was displayed on the</p> <p>2 screen.)</p> <p>3 MR. FIELDS: Under the personal financial analysis</p> <p>4 section.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q The third bullet point, or, I'm sorry, the second</p> <p>8 bullet point, did you understand that in approximately May of</p> <p>9 2011, whoever the underwriter was on this account did an on site</p> <p>10 review of personal financial statements for Trump Organization</p> <p>11 or for Donald Trump?</p> <p>12 A That's certainly what she said, yes.</p> <p>13 Q And below that it notes that the financial statements</p> <p>14 were in compilation presentation?</p> <p>15 A Yes.</p> <p>16 MR. FIELDS: If we could go to page two, please.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 MR. FIELDS: Under the reference heading at the</p> <p>20 bottom.</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 Q The rate here is \$20 per thousand. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Annual premium, \$14,000?</p>

<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4753</p> <p>1 A Yes.</p> <p>2 Q What is -- can you just briefly explain what the rate</p> <p>3 is?</p> <p>4 A So it's just basically what it says. It charges -- the</p> <p>5 surety is charging \$20 for every thousand of risk.</p> <p>6 Q Is that rate standard in the industry, or not standard?</p> <p>7 A It's a little high.</p> <p>8 MR. FIELDS: All right. And then the last page,</p> <p>9 page four?</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 Q At this moment in time, do you see under "SDA history",</p> <p>13 there's bond limits?</p> <p>14 A Yes.</p> <p>15 Q And the single bond limit is 500,000. The program</p> <p>16 limit is 2 million?</p> <p>17 A That's what it says. Yes, sir.</p> <p>18 Q Generally speaking, what are those limits? What do</p> <p>19 they represent?</p> <p>20 A So Zurich is saying in that -- is that they will</p> <p>21 consider bonds up to 500,000, a total amount of bonds up to 2</p> <p>22 million, all bonds. Outstanding liability. It's all bonds.</p> <p>23 MR. FIELDS: Defense 45, please.</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4755</p> <p>1 to last bullet point. "Also, the accountants failure to provide</p> <p>2 updated underwriting information prohibits us from taking on any</p> <p>3 new liability."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Below that it says, "Bonds already written may continue</p> <p>7 to renew as an accommodation to Aon New York?"</p> <p>8 A Yes.</p> <p>9 Q Does that term "accommodation", is it your</p> <p>10 understanding that's the same term you've been using here today,</p> <p>11 an accommodation?</p> <p>12 A Yes.</p> <p>13 MR. FIELDS: And on the last page, page four.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 Q Does it appear that at this moment in time the program</p> <p>17 limit aggregate is \$1 million?</p> <p>18 A Yes.</p> <p>19 MR. FIELDS: If we could pull up Defense 48.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 (The exhibit was handed to the witness.)</p> <p>23 THE WITNESS: Thank you.</p> <p>24 Q Under the personal financial analysis section, the</p> <p>25 third bullet beginning with the "Press release", do you see that</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4754</p> <p>1 MR. FIELDS: Under the personal financial analysis</p> <p>2 section.</p> <p>3 (The exhibit was handed to the witness.)</p> <p>4 MR. FIELDS: The last bullet point.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 A According to Forbes?</p> <p>8 Q Yes. Do you see that it says "According to Forbes,</p> <p>9 Donald J. Trump's personal net worth is estimated a 3.2 billion.</p> <p>10 He is number 128 on the Forbes 400 list of wealthiest</p> <p>11 individuals."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q In your experience, have you encountered underwriters</p> <p>15 that rely on media publications to support underwriting</p> <p>16 decisions?</p> <p>17 A This is the first one I ever saw.</p> <p>18 MR. FIELDS: If we could zoom back out in -- under</p> <p>19 the surety program heading, the last two bullets.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 A The same document?</p> <p>23 Q It will be on the screen here for you if it's easier.</p> <p>24 A Okay.</p> <p>25 Q The last sentence beginning with "Also" in the second</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4756</p> <p>1 it references USA Today?</p> <p>2 A Yes.</p> <p>3 Q And it goes on to describe detailed reports regarding</p> <p>4 ownership positions. Again, is this citation to a media</p> <p>5 publication consistent or inconsistent, in your experience, for</p> <p>6 surety underwriting?</p> <p>7 A Inconsistent.</p> <p>8 Q If we could just -- the second bullet right above it.</p> <p>9 Do you see where it says, "When Zurich lost the insurance</p> <p>10 program in May of 2011, I performed an on-site review of Trump's</p> <p>11 personal financial statements. This option was represented as</p> <p>12 an option in June of this year due to the increased bond needs,</p> <p>13 but has yet to be scheduled."</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 MR. FIELDS: If we could flip to page four.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q Do you see at the bottom that the aggregate program</p> <p>20 limit is now \$3 million?</p> <p>21 A Yes.</p> <p>22 Q Did it appear to you that the program was expanding,</p> <p>23 meaning that Zurich was writing more bonds without reviewing</p> <p>24 updated financial information?</p> <p>25 A It's what it seems.</p>

<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4757</p> <p>1 MR. FIELDS: All right. If we could pull up</p> <p>2 Defense 51. And I'm just going to ask one question from one</p> <p>3 page, so I'm happy to --</p> <p>4 (Whereupon, the exhibit was displayed on the</p> <p>5 screen.)</p> <p>6 (The witness was handed the exhibit.)</p> <p>7 THE WITNESS: Thank you.</p> <p>8 MR. FIELDS: If we could go to page two at the</p> <p>9 bottom under rates, 5/23/2016.</p> <p>10 Q Do you see there is an indication that the rate charged</p> <p>11 is \$10 per thousand?</p> <p>12 A Yes.</p> <p>13 Q So does it appear to you, now, that in 2015, Zurich has</p> <p>14 decreased the rate?</p> <p>15 A Yes.</p> <p>16 Q Why do sureties decrease the rates they charge?</p> <p>17 A Generally, commercial pressure.</p> <p>18 Q What do you mean by that?</p> <p>19 A Client wants a lower rate.</p> <p>20 Q Could it also be another surety is trying to take the</p> <p>21 business?</p> <p>22 A Well, that time I was trying to get the business.</p> <p>23 MR. FIELDS: All right. If we could then go to</p> <p>24 page four.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4759</p> <p>1 MR. FIELDS: Nothing further, your Honor. Thank</p> <p>2 you.</p> <p>3 THE COURT: Great. You get an extra two and a half</p> <p>4 minutes, Mr. Amer.</p> <p>5 MR. ROBERT: We didn't agree to that.</p> <p>6 THE WITNESS: By the way, I would like to apologize</p> <p>7 to the Counsel. It's not my style. Fifty years shows up</p> <p>8 once in a while, you know.</p> <p>9 MR. AMER: No worries. I appreciate it.</p> <p>10 CROSS EXAMINATION</p> <p>11 BY MR. AMER:</p> <p>12 MR. AMER: Can we put up Plaintiff's Exhibit 1985.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 Q Mr. Giulietti, this document is a roster showing the</p> <p>16 people who lead The Trump Organization service team at Lockton</p> <p>17 Northeast; correct?</p> <p>18 A Correct.</p> <p>19 Q And this document was prepared by Lockton; correct?</p> <p>20 A I believe so, yes.</p> <p>21 MR. AMER: Your Honor, I move to admit this</p> <p>22 document.</p> <p>23 THE COURT: Granted. It's in.</p> <p>24 (Plaintiff's Exhibit 1985 was admitted in</p> <p>25 evidence.)</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4758</p> <p>1 screen.)</p> <p>2 Q Under SDA history, and the bullet right above it, if</p> <p>3 you don't mind, 8/8/2016, Joanne Caulfield. As of -- it states</p> <p>4 on this document, as of August 8th of 2016, does it appear that,</p> <p>5 now, the program has increased to \$10 million?</p> <p>6 A Yes.</p> <p>7 Q Is it your understanding that as of this time, Zurich</p> <p>8 had not reviewed updated financials for Donald Trump or The</p> <p>9 Trump Organization?</p> <p>10 A It appears for a couple of years, yes, that's true.</p> <p>11 THE COURT: Mr. Amer, how long will you need?</p> <p>12 MR. AMER: I would hope 20 minutes I could get</p> <p>13 through my cross.</p> <p>14 THE COURT: Can we finish in five on this?</p> <p>15 MR. FIELDS: Yes, your Honor.</p> <p>16 THE COURT: Perfect.</p> <p>17 MR. FIELDS: May I have a moment to confer with</p> <p>18 Mr. Robert?</p> <p>19 THE COURT: Say it again.</p> <p>20 MR. FIELDS: May I have a moment to confer with</p> <p>21 Mr. Robert?</p> <p>22 THE COURT: Sure, but that's part of your five</p> <p>23 minutes.</p> <p>24 MR. FIELDS: Certainly.</p> <p>25 MR. ROBERT: I think it will be less than five.</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4760</p> <p>1 Q And the service team at Lockton for The Trump</p> <p>2 Organization Worldwide consists of about 100 people; is that</p> <p>3 right?</p> <p>4 A Yes, plus or minus.</p> <p>5 Q And you are one of the two account directors for the</p> <p>6 Trump Organization account, along with your son, David</p> <p>7 Giulietti; right?</p> <p>8 A Correct.</p> <p>9 Q And in that role, you could lead the account with your</p> <p>10 son; correct?</p> <p>11 A Yes.</p> <p>12 Q And you are the person with the primary responsibility</p> <p>13 for Lockton's business relationship with The Trump Organization;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q And as a partner in Lockton, you have an equity share</p> <p>17 in the business; right?</p> <p>18 A Correct.</p> <p>19 Q And your compensation, based on your equity share in</p> <p>20 the company, is directly proportional to the properties earned</p> <p>21 by the company; right?</p> <p>22 A Correct.</p> <p>23 Q And in addition to your equity share, you also receive</p> <p>24 a percentage of the business that you do based on the clients</p> <p>25 you are responsible for; correct?</p>



<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4761</p> <p>1 A Largely.</p> <p>2 Q And one of the clients you are responsible for is the</p> <p>3 Trump Organization; right?</p> <p>4 A Correct.</p> <p>5 Q And Lockton is currently the broker of record for The</p> <p>6 Trump Organization for all property and casualty lines of</p> <p>7 insurance worldwide, which encompasses quite a large number of</p> <p>8 policies; right?</p> <p>9 A Absolutely, yes.</p> <p>10 Q And when Lockton places an insurance policy for The</p> <p>11 Trump Organization as broker of record, Lockton earns a</p> <p>12 commission that is between 10 to 20 percent of the net premium</p> <p>13 due on the policy; is that right?</p> <p>14 A Less, but largely. Ten to 15 percent would be fair.</p> <p>15 Q For 2022, Lockton earned approximately 1.2 million in</p> <p>16 commissions on The Trump Organization account; right?</p> <p>17 A Roughly, yeah.</p> <p>18 Q And just to confirm what I think you testified to on</p> <p>19 direct, you are not submitting any invoice for your time spent</p> <p>20 as an expert witness in this case; correct?</p> <p>21 A Correct.</p> <p>22 Q And that's because you consider your service as an</p> <p>23 expert witness in this case to be included in the business</p> <p>24 relationship that you and Lockton have with The Trump</p> <p>25 Organization; correct?</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4763</p> <p>1 Q But in terms of when you formed your opinions in this</p> <p>2 case for purposes of the report that you submitted, you had not</p> <p>3 reviewed any of her testimony?</p> <p>4 A That's correct.</p> <p>5 Q Okay.</p> <p>6 And so you gave no consideration to Ms. Caulfield's</p> <p>7 sworn testimony when you formed your opinions for the report in</p> <p>8 this case; correct?</p> <p>9 A Yes.</p> <p>10 Q And I'll represent to you that Ms. Mouradian was</p> <p>11 interviewed by our office in 2021, under oath, and was also</p> <p>12 deposed in this case in June of 2023.</p> <p>13 And I'm correct that you did not receive or review any</p> <p>14 of her sworn testimony from either the 2021 interview or the</p> <p>15 2023 deposition in connection with forming your opinions in this</p> <p>16 case that are in your report; right?</p> <p>17 A Correct.</p> <p>18 Q And are you aware that Ms. Mouradian, Ms. Caulfield</p> <p>19 reported to a woman named Chandar Potter while at Zurich?</p> <p>20 A Sure. I do business with her.</p> <p>21 Q And I'll represent to you that Ms. Potter was deposed</p> <p>22 in this action in May of 2023. I'm correct you did not receive</p> <p>23 or review her deposition testimony in forming your opinions in</p> <p>24 this case?</p> <p>25 A I have never seen that one.</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4762</p> <p>1 A True.</p> <p>2 Q And it's not wrong to say that your work as an expert</p> <p>3 witness is wrapped up in the compensation that Lockton receives</p> <p>4 from The Trump Organization through its business relationship;</p> <p>5 correct?</p> <p>6 A I think -- yes.</p> <p>7 Q You are aware that Joanne Caulfield was the Zurich</p> <p>8 underwriter who handled the account from at least 2011 through</p> <p>9 2017 when she left Zurich; right?</p> <p>10 A That's what the documents say.</p> <p>11 Q And all of the underwriting reviews that you were shown</p> <p>12 on your direct predate 2017 when Claudia Markarian, now known as</p> <p>13 Claudia Mouradian, took over the account; right?</p> <p>14 A My understanding, yes.</p> <p>15 Q So you are aware that Ms. Mouradian was the underwriter</p> <p>16 on the account from mid 2017 until about 2020; right?</p> <p>17 A Yes.</p> <p>18 Q And I'll represent to you that Ms. Caulfield was</p> <p>19 interviewed by our office in 2021 and gave answers under oath,</p> <p>20 and then she was deposed in the case in April 2023.</p> <p>21 I'm correct that you did not receive or review any of</p> <p>22 her sworn testimony from either the 2021 interview or the 2023</p> <p>23 deposition in forming your opinions in this case; correct?</p> <p>24 A At the time of the deposition, that's true. I since</p> <p>25 have read it.</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4764</p> <p>1 Q So you gave no consideration to Ms. Potter's sworn</p> <p>2 testimony in forming your opinions; correct?</p> <p>3 A Correct.</p> <p>4 Q And it's your view that the sworn testimony of</p> <p>5 Ms. Caulfield, Ms. Mouradian and Ms. Potter is not relevant to</p> <p>6 your assessment of how Zurich underwrote The Trump Organization</p> <p>7 surety program; right?</p> <p>8 A I'm sorry, I didn't understand or I didn't hear, maybe.</p> <p>9 Q Sure. It's your view that the sworn testimony of</p> <p>10 Ms. Caulfield, Ms. Mouradian and Ms. Potter is not relevant to</p> <p>11 your assessment of how Zurich underwrote The Trump Organization</p> <p>12 surety program; right?</p> <p>13 A Prior to my expert report and my expert report, that</p> <p>14 would be true. Now I've read Ms. Caulfield's and I have a</p> <p>15 different opinion, but okay.</p> <p>16 MR. AMER: Well, let's go ahead and put up your</p> <p>17 deposition testimony at page 89, line 25, to page 94.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q Where I say in there sworn testimony is a reference to</p> <p>21 those three individuals. The question was:</p> <p>22 "QUESTION: And their sworn testimony, in your</p> <p>23 view, would not have been relevant to your assessment?</p> <p>24 "ANSWER: Correct."</p> <p>25 So at the time of your deposition --</p>

<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4765</p> <p>1 A Yes, sir.</p> <p>2 Q -- your view was --</p> <p>3 A I'm sorry, I --</p> <p>4 Q -- it's not relevant to your assessment?</p> <p>5 A I agree. I agree.</p> <p>6 Q Okay.</p> <p>7 To the extent that Ms. Caulfield described what her</p> <p>8 thought process was in reviewing the financial information she</p> <p>9 was provided with by The Trump Organization during her interview</p> <p>10 and deposition, that's not something that you took into account</p> <p>11 in preparing your expert report; correct?</p> <p>12 A Correct.</p> <p>13 Q And to the extent Ms. Mouradian described in her</p> <p>14 interview and deposition her thought process during the</p> <p>15 underwriting, that's not anything you read or took into account</p> <p>16 in preparing your report; correct?</p> <p>17 A Correct.</p> <p>18 MR. AMER: Let's put up Exhibit 773, which is in</p> <p>19 evidence.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 Q This is the 2018 Statement of Financial Condition. You</p> <p>23 reviewed and relied on this document in forming your opinions;</p> <p>24 correct?</p> <p>25 A I looked at all those years, yes.</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4767</p> <p>1 underwriter's ability to confirm that the property valuations in</p> <p>2 the statements -- let me withdraw that. I'll start again.</p> <p>3 In terms of Zurich's ability to confirm the property</p> <p>4 valuations in the statements on their own, other than asking The</p> <p>5 Trump Organization to provide additional information, the Zurich</p> <p>6 underwriter would have no access to any publicly available</p> <p>7 sources that are reliable that would have enabled Zurich to do</p> <p>8 that; correct?</p> <p>9 A They could've. They had to choose to.</p> <p>10 MR. AMER: Let's look at your deposition testimony</p> <p>11 on page 128, line six, if we could.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q "QUESTION: In terms of Zurich's ability to confirm</p> <p>15 these property valuations on their own, other than asking The</p> <p>16 Trump Organization to provide additional information, including</p> <p>17 possibly appraisals" --</p> <p>18 A Did you say "additional information" before when you</p> <p>19 asked my question -- prior question.</p> <p>20 Q I did.</p> <p>21 A Well, then, I amend my answer, yes. They could ask for</p> <p>22 additional information.</p> <p>23 Q But that's not the whole question.</p> <p>24 A Okay.</p> <p>25 Q So let me read the question.</p>
<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4766</p> <p>1 Q And is it -- am I correct that it's your opinion that</p> <p>2 at no point during the surety program did Zurich do any real</p> <p>3 financial analysis, but rather this was all based on, to use</p> <p>4 your phrase at the deposition, "air balls and witchcraft"?</p> <p>5 A Yeah, true.</p> <p>6 Q As part of the financial analysis, it's your view that</p> <p>7 Zurich could have requested appraisals be done on every</p> <p>8 property; is that right?</p> <p>9 A They could've asked for whatever they'd like to write</p> <p>10 the program. Sure, anybody could.</p> <p>11 Q Including appraisals on every property?</p> <p>12 A Yeah, if they want, of course.</p> <p>13 Q And as part of a financial analysis, it's your view</p> <p>14 that Zurich could've insisted the type of tests that an auditor</p> <p>15 would conduct on a financial statement; is that right?</p> <p>16 A Could you repeat that.</p> <p>17 Q Sure. As part of a financial analysis, it's your view</p> <p>18 that Zurich could have insisted on performing the type of tests</p> <p>19 that an auditor would conduct on a financial statement?</p> <p>20 A Yes.</p> <p>21 Q Now, you understand that the Trump Organization is a</p> <p>22 privately held company that has no obligation to publicly file</p> <p>23 financial disclosures; right?</p> <p>24 A Correct.</p> <p>25 Q In terms of Zurich's -- in terms of the Zurich's</p>	<p>G. Giulietti - by Defense - Direct (Mr. Fields) Page 4768</p> <p>1 THE COURT: Let him read the whole question.</p> <p>2 Q "QUESTION: In terms of Zurich's ability to confirm</p> <p>3 these property valuations on their own, other than asking The</p> <p>4 Trump Organization to provide additional information, including</p> <p>5 possibly appraisals, Zurich would have no access to any publicly</p> <p>6 available sources that are reliable that would enable them to do</p> <p>7 it; correct?"</p> <p>8 Your answer, "I agree with that."</p> <p>9 So you stand by that testimony; correct?</p> <p>10 A Yeah. They should have asked if they wanted it.</p> <p>11 Q And you are agreeing that there's no publicly available</p> <p>12 information beyond what they might get through nonpublic</p> <p>13 sources, which is Trump Organization?</p> <p>14 A Well, it's a private company, right, so there's no</p> <p>15 public sources.</p> <p>16 Q You know, we discussed that in your opinion you agreed</p> <p>17 that Zurich's underwriting account was based on "air balls and</p> <p>18 witchcraft." Again that's your terminology.</p> <p>19 I'm just asking --</p> <p>20 A They did seven bonds for me with nothing. I mean, it's</p> <p>21 just consistently nothing.</p> <p>22 Q Well, I'm not asking about what they are doing now.</p> <p>23 I'm just asking about your opinion of what they did in the past.</p> <p>24 A Well, I think what they do -- isn't what they do today</p> <p>25 consistent with what they did in the past? Isn't that germane?</p>

<p style="text-align: right;">Page 4769</p> <p>1 MR. AMER: Your Honor, can I be allowed to ask the</p> <p>2 questions.</p> <p>3 THE COURT: Witness, I appreciate the possible</p> <p>4 frustrations.</p> <p>5 THE WITNESS: Sorry.</p> <p>6 THE COURT: But if you don't want to come back</p> <p>7 Monday.</p> <p>8 THE WITNESS: Sorry.</p> <p>9 THE COURT: Go ahead and ask the question,</p> <p>10 Mr. Amer.</p> <p>11 (Continued on the next page.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4771</p> <p>1 "Zurich made a competent business decision to</p> <p>2 underwrite the Trump Organization's business as an exception to</p> <p>3 their normal guidelines based on reasonable risk factors, such</p> <p>4 as the sufficient -- such as the sufficient liquidity of the</p> <p>5 Trump Organization to indemnify Zurich should a loss take</p> <p>6 place."</p> <p>7 Do you agree or disagree with that opinion, sir?</p> <p>8 A Hm, um, I -- I -- I don't know anything about</p> <p>9 Mr. Miller. I don't know if he has ever placed --</p> <p>10 Q I didn't ask you --</p> <p>11 THE COURT: You don't need to know about</p> <p>12 Mr. Miller.</p> <p>13 Q Do you agree with this opinion?</p> <p>14 A No, I disagree.</p> <p>15 Q Yes or no?</p> <p>16 A I disagree.</p> <p>17 Q Thank you.</p> <p>18 MR. AMER: Now, let's put up Plaintiff's Exhibit</p> <p>19 1552 in evidence.</p> <p>20 (Handing)</p> <p>21 MR. AMER: Let's go to page one of six.</p> <p>22 Q By the way, this is a document you have seen before,</p> <p>23 correct?</p> <p>24 A Yes.</p> <p>25 Q And let's go to the fourth bullet on the first page.</p>
<p style="text-align: right;">Page 4770</p> <p>1 MR. AMER: That has to be the best incentive I</p> <p>2 have ever heard to get the witness to wait for the</p> <p>3 question to be asked.</p> <p>4 Q So, my question, again, is simply to confirm, it is</p> <p>5 your opinion that Zurich's underwriting of the account in the</p> <p>6 past was, as you said, based on "airballs and witchcraft"</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q Are you aware that defendants have designated another</p> <p>10 insurance expert in addition to you, a gentleman named David</p> <p>11 Miller?</p> <p>12 A I heard they have another expert. I don't know his</p> <p>13 name.</p> <p>14 Q I want to ask you a question about something that is</p> <p>15 in his report, it is -- we will put it up on the screen. I can</p> <p>16 share a copy with you.</p> <p>17 MR. AMER: It is available, Your Honor, at</p> <p>18 NYSCEF 1434.</p> <p>19 (Handing)</p> <p>20 THE WITNESS: Thank you.</p> <p>21 Q I am just going to ask you about paragraph 13, which</p> <p>22 is on page four. I am going to put it up on screen. It is</p> <p>23 under the section that is labeled Opinions 1 and 2. And I am</p> <p>24 just going to read you the sentence and ask you for your</p> <p>25 comment on it, about whether you agree or disagree with it.</p>	<p style="text-align: right;">Page 4772</p> <p>1 And the paragraph that starts Total Assets. I am just going to</p> <p>2 read to you the second sentence. It says: "The fair value of</p> <p>3 the properties is determined by professional firms (such as</p> <p>4 Cushman &amp; Wakefield) using cap rates and net operating income</p> <p>5 as factors."</p> <p>6 For purposes of forming your opinions, you did not</p> <p>7 take into account Ms. Mouradian's note that she had been</p> <p>8 advised during the on-site review about how the fair value of</p> <p>9 the properties was determined, correct?</p> <p>10 A Yes.</p> <p>11 Q Last series of questions, sir.</p> <p>12 Am I correct that it is your expert opinion that</p> <p>13 surety is not insurance?</p> <p>14 A Yes. It is a guaranty. It is not necessarily an</p> <p>15 indemnity-based contract, except for the guarantor.</p> <p>16 Q Is it your opinion that surety is not insurance; yes</p> <p>17 or no?</p> <p>18 A It is not a yes or no answer.</p> <p>19 Q Is it your opinion that surety bonds issued by Zurich</p> <p>20 for the benefit of the Trump Organization under the Zurich</p> <p>21 Surety Program, were not insurance?</p> <p>22 A Well, the guaranties issued by an insurance company,</p> <p>23 which is really a credit facility, so anything an insurer</p> <p>24 issues is technically insurance, but it is underwritten like</p> <p>25 credit. The point is that the underwriting process is a credit</p>

Giulietti - by Defendant - Cross (Amer)	Page 4773	Giulietti - by Defendant - Cross (Amer)	Page 4775
<p>1 underwriting, versus the property Zurich insures, the property</p> <p>2 of Mr. Trump, first 400 million. And their underwriting would</p> <p>3 be completely different, non-commercial, non-financial. Except</p> <p>4 for the fact that you want to make sure they are in reasonable</p> <p>5 financial condition.</p> <p>6 Q Simple question, because I thought I heard you say</p> <p>7 surety is not insurance. Is it your expert opinion --</p> <p>8 A Well, a guaranty crosses over --</p> <p>9 Q I need to finish my question, sir.</p> <p>10 A There is no yes or no answer. You are asking me a</p> <p>11 question that can't be answered. So, I can't answer the</p> <p>12 question.</p> <p>13 Q Okay. You are aware, certainly, that the business of</p> <p>14 insurance in the State of New York is governed by the New York</p> <p>15 Insurance Code, right?</p> <p>16 A Yes.</p> <p>17 Q You are not suggesting, are you, that as far as the</p> <p>18 New York Insurance Code is concerned, surety bonds are not</p> <p>19 insurance policies, are you?</p> <p>20 A Honestly don't know who governs it. It probably</p> <p>21 comes under the insurance licensing, I assume. I don't know,</p> <p>22 to be honest.</p> <p>23 Q Well, let's put up a decision in the case of In re:</p> <p>24 Frontier Insurance Company.</p> <p>25 MR. AMER: This will be my last series of</p>		<p>1 THE COURT: Overruled. He can show him anything</p> <p>2 he wants. He is not asking for a legal opinion. He is</p> <p>3 asking --</p> <p>4 MR. FIELDS: Your Honor, respectfully he is</p> <p>5 asking if he disputes it, which is calling for a legal</p> <p>6 conclusion from somebody who said he can't answer the</p> <p>7 question yes or no.</p> <p>8 THE COURT: If you want to object to asked and</p> <p>9 answered, overruled. And overruled, he is not asking for</p> <p>10 a legal opinion. You can take that statement out of</p> <p>11 context and just say, do you agree or disagree.</p> <p>12 MR. AMER: But I would like the Court to take</p> <p>13 judicial notice of the case.</p> <p>14 THE COURT: I'll take judicial notice of the</p> <p>15 opinion.</p> <p>16 MR. AMER: I would like the witness's answer.</p> <p>17 THE COURT: Ask the question more time.</p> <p>18 Q Do you agree or disagree with the statement that</p> <p>19 there is no question that a surety bond is a contract of</p> <p>20 insurance under New York Law; yes or no?</p> <p>21 A It appears it is a legal definition. Yes.</p> <p>22 MR. AMER: And one more document, Your Honor,</p> <p>23 PX-603.</p> <p>24 (Handing)</p> <p>25 Q I think you testified that the Trump Organization has</p>	
Giulietti - by Defendant - Cross (Amer)	Page 4774	Giulietti - by Defendant - Cross (Amer)	Page 4776
<p>1 questions. So I'll be well within the time limit, Your</p> <p>2 Honor.</p> <p>3 MR. FIELDS: Your Honor, I object to relevance</p> <p>4 and lack of foundation. And it is going to call for a</p> <p>5 legal conclusion from someone who is not an attorney.</p> <p>6 MR. AMER: He is offering an opinion about</p> <p>7 whether a surety is insurance or not. This is fair game,</p> <p>8 Your Honor.</p> <p>9 THE COURT: And his answer is, it can't be</p> <p>10 answered yes or no.</p> <p>11 MR. AMER: That's his opinion. I am going to</p> <p>12 show him something.</p> <p>13 THE COURT: I'll let you show him something. It</p> <p>14 is a Judicial opinion?</p> <p>15 MR. AMER: It is something I am going to ask the</p> <p>16 Court to take judicial notice of. It is a Judicial</p> <p>17 opinion.</p> <p>18 We can go right to the last line. Let's just</p> <p>19 put it up on the screen. If we can go to page six.</p> <p>20 Q The top full paragraph. The fourth line from the</p> <p>21 bottom -- sorry, the fifth line from the bottom.</p> <p>22 See it says: "And there is no question that a surety</p> <p>23 bond is a contract of insurance under New York Law."</p> <p>24 You don't dispute that, do you?</p> <p>25 MR. FIELDS: Objection, renewed objection.</p>		<p>1 submitted very few claims; is that right?</p> <p>2 A Yes.</p> <p>3 Q And you were speaking overall, over all of the lines</p> <p>4 of business, correct?</p> <p>5 A I am speaking property, casualty.</p> <p>6 Q Okay.</p> <p>7 A I know for a fact what the last ten years are in</p> <p>8 those areas, yes.</p> <p>9 Q Okay. You will see that this is a letter from Clyde</p> <p>10 &amp; Co. to Alan Garten at the Revocable Trust. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And you will see that they are, in the second</p> <p>13 sentence, writing in response to the broker's letter of</p> <p>14 February 8, 2019, which purported to provide notice of claims</p> <p>15 and/or circumstances which may reasonably be expected to give</p> <p>16 rise to a claim. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q This would have been when AON was the broker,</p> <p>19 correct?</p> <p>20 A Timeframe, yes.</p> <p>21 Q And you see in the bullets it lists: 18 letters from</p> <p>22 Congressional members as being the subject of the claim notice?</p> <p>23 A Yes.</p> <p>24 Q And the second bullet is: 18 letters from</p> <p>25 Congressional members is another set of claims being tendered;</p>	

Giulietti - by Defendant - Cross (Amer)	Page 4777	Giulietti - by Defendant - Redirect ( Fields)	Page 4779
<p>1 do you see that?</p> <p>2 MR. FIELDS: I object to outside of the scope,</p> <p>3 Your Honor. This is no longer about the surety programs.</p> <p>4 It is not about Directors and Officers insurance; and it</p> <p>5 is also hearsay, so I object.</p> <p>6 MR. AMER: The witness's testimony was about</p> <p>7 very few claims under the?</p> <p>8 THE COURT: The witness said "overall," so</p> <p>9 overruled.</p> <p>10 Q And you see the other bullets on the next page lists</p> <p>11 other claims that have been submitted, including a letter from</p> <p>12 a member of Congress; two letters from Congressional members;</p> <p>13 an investigation by the U.S. Attorney's Office; investigation</p> <p>14 by Special Counsel Robert S. Mueller III; an investigation by</p> <p>15 the U.S. Attorney's Office; possible investigations by multiple</p> <p>16 jurisdictions and investigative authorities; and possible</p> <p>17 investigations by multiple investigative authorities, including</p> <p>18 the IRS. Do you see all of those?</p> <p>19 A Yes.</p> <p>20 Q And so these are all claims that were tendered?</p> <p>21 A They are not. They are not insurable.</p> <p>22 Q My question wasn't whether they were insurable or</p> <p>23 not. This is a broker tendering claims that the lawyer is</p> <p>24 responding to; isn't that what this letter says?</p> <p>25 A Well, because you decide to tender a claim to an</p>		<p>1 only.</p> <p>2 MR. AMER: Thank you, Your Honor.</p> <p>3 MR. FIELDS: For what, Your Honor, respectfully?</p> <p>4 THE COURT: I am sorry?</p> <p>5 MR. FIELDS: Notice to whom and for what?</p> <p>6 THE COURT: To the insurer and insurance</p> <p>7 brokers -- Garten, sorry. And the Donald J. Trump Trust.</p> <p>8 Is that who you want?</p> <p>9 MR. AMER: Yes.</p> <p>10 That's all I have for the witness.</p> <p>11 MR. FIELDS: One question, if I may?</p> <p>12 THE COURT: Great. I'll hold you to that.</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MR. FIELDS:</p> <p>15 Q Did anything that you read in the transcripts after</p> <p>16 you wrote your expert report change your opinion in this case</p> <p>17 at all?</p> <p>18 A It confirmed suspicions that it was -- the lack of</p> <p>19 underwriting was more significant than I knew.</p> <p>20 MR. FIELDS: Thank you.</p> <p>21 THE COURT: One scheduling question and then we</p> <p>22 have to run.</p> <p>23 Allison.</p> <p>24 The witness is excused. Thank you very much.</p> <p>25 (The witness stepped down from the stand.)</p>	
Giulietti - by Defendant - Cross (Amer)	Page 4778	Giulietti - by Defendant - Redirect ( Fields)	Page 4780
<p>1 insurer doesn't necessarily mean there is an engagement of</p> <p>2 insurance coverage. There was none.</p> <p>3 Q Okay. That wasn't my question. These are claims --</p> <p>4 A That was --</p> <p>5 Q These are claims being tendered for coverage,</p> <p>6 correct?</p> <p>7 A Well, you could tender anything you want for</p> <p>8 coverage. If there is no coverage, there is no coverage. And</p> <p>9 there was no coverage for this.</p> <p>10 THE COURT: Okay. But there is still a claim.</p> <p>11 Q The claims are --</p> <p>12 THE WITNESS: No, Your Honor. It wouldn't be a</p> <p>13 claim because they wouldn't post this on the claim unless</p> <p>14 there was a viable claim. It doesn't exist as far as</p> <p>15 other insurers or them are concerned. It is not the</p> <p>16 practice.</p> <p>17 Q Is this notice of claims being tendered by the Trump</p> <p>18 Organization to --</p> <p>19 A Trump Organization was attempting to engage coverage.</p> <p>20 Q By tendering notices of claim, correct?</p> <p>21 A Correct.</p> <p>22 MR. AMER: Your Honor, I offer this into</p> <p>23 evidence for notice purposes.</p> <p>24 MR. FIELDS: Hearsay and irrelevant.</p> <p>25 THE COURT: Relevant. And for notice purposes</p>		<p>1 MS. GREENFIELD: I want to confirm we are</p> <p>2 starting Monday with Miller, followed by McConney.</p> <p>3 McConney may go over into Tuesday. And so who is going to</p> <p>4 be, just in case, who is after McConney on Tuesday?</p> <p>5 MR. ROBERT: Because of witness scheduling and</p> <p>6 counsel's schedule, we don't have anyone other than</p> <p>7 McConney on Tuesday. But we hope to finish McConney on</p> <p>8 Tuesday. I can't promise we will finish him.</p> <p>9 MS. GREENFIELD: Are you doing read-ins? Can we</p> <p>10 fill Tuesday with that?</p> <p>11 MR. ROBERT: We hoped to the have a Deutsche</p> <p>12 Bank read-in, but the Attorney General objected, so we</p> <p>13 will have them live. And they are available on the</p> <p>14 28th and 29th. But I think we will go most if not the</p> <p>15 whole day on Tuesday anyway.</p> <p>16 MS. GREENFIELD: And when can we expect the</p> <p>17 updated schedule for?</p> <p>18 MR. ROBERT: We will let you know on Monday.</p> <p>19 THE COURT: Have a good weekend everyone.</p> <p>20 (Whereupon, the trial stood adjourned to Monday</p> <p>21 November 20 at 10:00 a.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

	4710:14	4716:9,10,11,15,17	<b>air (2)</b>	4708:10;4709:2;
<b>\$</b>	<b>according (6)</b>	<b>addressing (1)</b>	4766:4;4768:17	4729:20;4738:9,9;
	4680:21;4694:3;	4731:24	<b>airballs (1)</b>	4742:10,23,25;
<b>\$1 (1)</b>	4695:19;4745:6;	<b>adequate (1)</b>	4770:6	4749:11;4751:8;
4755:17	4754:7,8	4741:6	<b>akin (1)</b>	4752:3;4754:1;
<b>\$10 (3)</b>	<b>account (14)</b>	<b>adjourned (1)</b>	4744:12	4755:24;4766:3,6,13,
4742:18;4757:11;	4726:5;4752:9;	4780:20	<b>Alan (1)</b>	17
4758:5	4760:5,6,9;4761:16;	<b>admit (1)</b>	4776:10	<b>analytic (2)</b>
<b>\$14,000 (1)</b>	4762:8,13,16;4765:10,	4759:21	<b>albeit (1)</b>	4721:20,21
4752:25	15;4768:17;4770:5;	<b>admitted (1)</b>	4719:17	<b>analytics (7)</b>
<b>\$16 (1)</b>	4772:7	4759:24	<b>allegations (1)</b>	4721:15,19,25;
4700:2	<b>accountant (1)</b>	<b>adopted (1)</b>	4726:23	4722:23;4723:1;
<b>\$18 (1)</b>	4685:15	4744:22	<b>allege (1)</b>	4740:7;4749:18
4699:4	<b>accountants (1)</b>	<b>advised (1)</b>	4750:19	<b>analyze (1)</b>
<b>\$18,334,523 (1)</b>	4755:1	4772:8	<b>Allison (1)</b>	4743:2
4697:25	<b>accounting (8)</b>	<b>affect (2)</b>	4779:23	<b>and/or (9)</b>
<b>\$20 (2)</b>	4671:17,19;4685:10,	4722:1;4744:7	<b>allow (2)</b>	4719:4,22;4722:24;
4752:23;4753:5	14;4722:5;4738:16,18;	<b>affects (1)</b>	4683:4;4737:24	4725:16;4732:19;
<b>\$23 (2)</b>	4740:10	4721:11	<b>allowed (1)</b>	4735:19;4738:8;
4699:5,12	<b>accurate (1)</b>	<b>affirm (1)</b>	4769:1	4747:16;4776:15
<b>\$3 (3)</b>	4703:24	4716:3	<b>almost (1)</b>	<b>anniversary (1)</b>
4701:16,19;4756:20	<b>accuse (1)</b>	<b>afford (1)</b>	4728:23	4715:6
<b>\$4 (1)</b>	4711:16	4666:18	<b>along (2)</b>	<b>Annual (1)</b>
4726:4	<b>accused (3)</b>	<b>again (16)</b>	4729:14;4760:6	4752:25
<b>\$604.9 (2)</b>	4711:8;4712:6,10	4669:15,16,18,18;	<b>always (3)</b>	<b>annually (1)</b>
4665:9,11	<b>accusing (2)</b>	4670:2;4675:6,9;	4663:3;4723:20;	4722:22
<b>\$7,776,000 (1)</b>	4711:11;4712:9	4681:3;4696:7;	4745:21	<b>answered (7)</b>
4700:1	<b>achieved (1)</b>	4698:21;4734:21;	<b>amazing (2)</b>	4682:4,11,12;
<b>\$7,776,980 (1)</b>	4702:4	4756:4;4758:19;	4724:12;4736:23	4739:22;4773:11;
4699:18	<b>across (1)</b>	4767:2;4768:18;	<b>amend (1)</b>	4774:10;4775:9
<b>\$7.7 (1)</b>	4689:4	4770:4	4767:21	<b>anticipate (1)</b>
4699:12	<b>Act (2)</b>	<b>Against (2)</b>	<b>AMER (56)</b>	4743:4
<b>\$800 (1)</b>	4719:19;4735:5	4725:22;4749:14	4704:16,19;4722:12;	<b>Aon (2)</b>
4729:16	<b>acting (1)</b>	<b>agent (4)</b>	4725:13;4727:12;	4755:7;4776:18
	4733:9	4719:4;4733:7,9,9	4728:19;4729:5;	<b>apologize (1)</b>
<b>A</b>	<b>action (11)</b>	<b>agents (1)</b>	4730:1,6;4731:13,21,	4759:6
<b>abbreviation (1)</b>	4680:5,13,23,24;	4733:6	24;4733:17;4734:21;	<b>appear (6)</b>
4685:16	4681:3,25;4691:23;	<b>aggregate (2)</b>	4737:17;4739:8,12,16,	4748:3;4751:7;
<b>ability (6)</b>	4692:18;4704:25;	4755:17;4756:19	23;4742:14;4744:13,	4755:16;4756:22;
4721:1;4739:18;	4711:17;4763:22	<b>ago (5)</b>	22,25;4748:4,18;	4757:13;4758:4
4767:1,3,14;4768:2	<b>actual (3)</b>	4678:4;4685:6;	4749:9,24;4751:9,17;	<b>appearing (1)</b>
<b>able (2)</b>	4696:23;4700:2;	4690:8;4696:8;4705:4	4758:11,12;4759:4,9,	4671:12
4673:12;4713:18	4702:20	<b>agree (14)</b>	11,12,21;4764:16;	<b>appears (2)</b>
<b>above (4)</b>	<b>actually (6)</b>	4678:23;4687:19;	4765:18;4767:10;	4758:10;4775:21
4740:22,25;4756:8;	4664:12,14;4699:21;	4695:25;4705:10;	4769:1,10;4770:1,17;	<b>applied (1)</b>
4758:2	4701:9;4721:14;	4706:14;4759:5;	4771:18,21;4773:25;	4676:6
<b>absolutely (2)</b>	4733:9	4765:5,5;4768:8;	4774:6,11,15;4775:12,	<b>apply (4)</b>
4748:25;4761:9	<b>add (2)</b>	4770:25;4771:7,13;	16,22;4777:6;4778:22;	4675:23;4676:12,14;
<b>accept (1)</b>	4665:14;4704:7	4775:11,18	4779:2,9	4703:25
4733:2	<b>added (4)</b>	<b>agreed (3)</b>	<b>America (3)</b>	<b>appointed (1)</b>
<b>acceptable (1)</b>	4665:6,7;4686:10;	4712:21;4714:5;	4719:17,24;4729:23	4723:24
4732:18	4699:13	4768:16	<b>American (3)</b>	<b>appraisal (36)</b>
<b>access (2)</b>	<b>adding (1)</b>	<b>agreeing (2)</b>	4717:15,20;4718:25	4663:22;4667:4,5,
4767:6;4768:5	4665:12	4742:23;4768:11	<b>Amer's (1)</b>	14;4668:17;4669:25;
<b>accommodating (3)</b>	<b>addition (3)</b>	<b>agreement (6)</b>	4729:3	4670:6;4685:21,24;
4744:10;4747:12,15	4705:2;4760:23;	4745:19,21,25;	<b>amount (2)</b>	4686:13,23;4687:2;
<b>accommodation (14)</b>	4770:10	4746:4,8,10	4700:2;4753:21	4694:15,18;4695:2,4,9,
4738:21;4743:13,17,	<b>additional (5)</b>	<b>agreements (2)</b>	<b>amounts (5)</b>	11,12,23;4697:12;
19,23;4744:3,7,12,14,	4767:5,16,18,22;	4737:8;4746:2	4680:3;4694:11,12;	4700:20;4701:9,10,20,
19;4749:22;4755:7,9,	4768:4	<b>ahead (2)</b>	4704:20;4710:17	24;4702:5;4704:8,13;
11	<b>additionally (1)</b>	4764:16;4769:9	<b>analysis (21)</b>	4706:8,14;4707:24;
<b>accompanying (1)</b>	4670:8	<b>aid (1)</b>	4668:14;4669:24;	4708:13,14,21;4711:19
	<b>address (5)</b>	4673:12	4670:12;4695:5;	<b>appraisals (28)</b>

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 November 17, 2023  
 November 17, 2023

4664:8;4666:4; 4667:10,21,24,25; 4669:6,19;4693:8,11, 18,19,21;4694:12,16, 19,22;4695:12,17; 4696:23;4701:13; 4706:21;4708:10; 4712:2;4766:7,11; 4767:17;4768:5 <b>appraiser (6)</b> 4664:14;4685:17,19; 4688:2;4695:3,4 <b>appraisers (3)</b> 4664:9;4668:20; 4670:6 <b>appreciate (4)</b> 4695:7;4713:17; 4759:9;4769:3 <b>approach (1)</b> 4670:2 <b>appropriate (5)</b> 4704:12,25;4712:11; 4733:22;4734:2 <b>Approximately (10)</b> 4664:25;4665:4,9, 11,15,17;4701:19; 4745:15;4752:8; 4761:15 <b>April (1)</b> 4762:20 <b>area (6)</b> 4668:13;4670:8; 4672:23,23;4717:24; 4727:14 <b>areas (2)</b> 4733:13;4776:8 <b>argue (1)</b> 4733:5 <b>arm's (1)</b> 4736:7 <b>Arnold (1)</b> 4714:19 <b>around (14)</b> 4666:15;4670:10,17, 19;4690:23;4719:17; 4721:15;4722:23; 4723:21,24;4741:1; 4743:6;4749:13,18 <b>arranged (1)</b> 4729:20 <b>arranging (1)</b> 4724:14 <b>article (1)</b> 4705:3 <b>ASC (2)</b> 4685:6,7 <b>ASC-274 (4)</b> 4671:14,22;4673:8; 4679:20 <b>ASC-274-10-55-6 (2)</b> 4682:10;4683:10 <b>aspect (1)</b> 4725:16	<b>aspects (1)</b> 4698:5 <b>assessment (4)</b> 4764:6,11,23;4765:4 <b>asset (6)</b> 4675:11;4688:10; 4693:5,8;4740:21; 4741:8 <b>assets (9)</b> 4709:10,18;4710:15, 16,22;4740:11; 4741:10;4742:3; 4772:1 <b>assignment (2)</b> 4684:23;4685:2 <b>assignments (1)</b> 4687:2 <b>assist (3)</b> 4670:6;4725:5; 4750:5 <b>assists (1)</b> 4724:7 <b>associated (1)</b> 4698:19 <b>assume (4)</b> 4676:7;4680:18; 4705:12;4773:21 <b>Assuming (1)</b> 4698:16 <b>assumption (1)</b> 4676:6 <b>assumptions (2)</b> 4695:22;4696:1 <b>assure (1)</b> 4678:20 <b>asurety (1)</b> 4728:22 <b>at-risk (1)</b> 4735:19 <b>attempt (1)</b> 4678:14 <b>attempting (1)</b> 4778:19 <b>attending (1)</b> 4717:14 <b>attention (3)</b> 4680:10;4700:13; 4710:8 <b>attest (1)</b> 4670:13 <b>Attorney (11)</b> 4672:1;4711:8,11, 16,23;4712:6,13; 4726:23;4750:18; 4774:5;4780:12 <b>Attorney's (2)</b> 4777:13,15 <b>attract (1)</b> 4666:13 <b>audit (1)</b> 4738:21 <b>audited (2)</b> 4738:23,25	<b>auditor (2)</b> 4766:14,19 <b>August (2)</b> 4750:15;4758:4 <b>Authoritative (1)</b> 4689:4 <b>authorities (2)</b> 4777:16,17 <b>authorizes (1)</b> 4733:25 <b>automobile (1)</b> 4724:11 <b>available (7)</b> 4740:13,19;4767:6; 4768:6,11;4770:17; 4780:13 <b>aware (19)</b> 4692:17;4693:18,21, 24;4695:8;4702:3,6; 4703:7,9;4706:17,21, 25;4707:3;4708:24; 4762:7,15;4763:18; 4770:9;4773:13 <b>away (1)</b> 4704:20	<b>back (24)</b> 4667:12,17,18; 4669:15;4676:9; 4686:2;4687:22; 4694:4;4695:1; 4698:21;4699:13; 4700:1;4701:18; 4705:1;4713:15; 4714:7;4715:13; 4722:11;4748:18,19; 4751:22,24;4754:18; 4769:6 <b>background (4)</b> 4671:17;4684:22; 4717:5;4744:25 <b>backwards (1)</b> 4747:12 <b>balance (5)</b> 4740:8,8,9;4741:5; 4749:14 <b>balls (2)</b> 4766:4;4768:17 <b>bank (2)</b> 4740:25;4780:12 <b>banking (1)</b> 4720:2 <b>bankruptcy (2)</b> 4666:7;4669:23 <b>banks (1)</b> 4729:21 <b>based (30)</b> 4676:7;4677:16,20; 4678:23;4680:5,13,23; 4684:3;4687:4,13; 4690:21;4692:16;	4699:2;4701:11,12; 4702:11;4704:24; 4709:8,22;4712:5; 4721:16;4729:5,11; 4748:7;4760:19,24; 4766:3;4768:17; 4770:6;4771:3 <b>basically (1)</b> 4753:4 <b>basis (6)</b> 4665:13,14;4704:17, 21;4710:9;4741:22 <b>Beach (1)</b> 4716:18 <b>became (3)</b> 4714:13,19;4718:15 <b>began (2)</b> 4745:4,7 <b>begin (1)</b> 4716:21 <b>beginning (7)</b> 4667:25;4677:8; 4707:12;4729:7; 4737:13;4754:25; 4755:25 <b>begins (1)</b> 4680:2 <b>behalf (2)</b> 4716:6;4719:8 <b>behind (1)</b> 4697:17 <b>Belong (1)</b> 4723:17 <b>below (4)</b> 4740:21,25;4752:13; 4755:6 <b>bench (1)</b> 4697:18 <b>benchmark (1)</b> 4711:25 <b>benefit (3)</b> 4716:25;4743:22; 4772:20 <b>benefits (1)</b> 4744:2 <b>best (4)</b> 4721:17;4732:20; 4744:10;4770:1 <b>beyond (3)</b> 4692:9;4744:25; 4768:12 <b>bias (2)</b> 4711:9,11 <b>Bible (1)</b> 4689:10 <b>big (5)</b> 4703:20;4722:20; 4725:8;4729:18; 4733:8 <b>biggest (2)</b> 4670:12;4731:5 <b>billion (4)</b> 4719:11;4726:4;	4729:16;4754:9 <b>bind (1)</b> 4733:10 <b>birthday (2)</b> 4715:1,5 <b>birthday! (2)</b> 4715:2,3 <b>birthdays (1)</b> 4714:20 <b>bit (1)</b> 4669:13 <b>Bloomberg (1)</b> 4705:4 <b>blow (1)</b> 4663:16 <b>Board (2)</b> 4685:11,14 <b>bond (20)</b> 4727:1;4735:3,7,8, 14,20,21;4736:20; 4737:13,16;4738:12; 4742:12,24;4743:10; 4744:3;4753:13,15; 4756:12;4774:23; 4775:19 <b>bonds (20)</b> 4719:14;4736:10; 4737:7;4745:20; 4747:3,9,13;4748:15; 4750:5,9,11;4753:21, 21,22,22;4755:6; 4756:23;4768:20; 4772:19;4773:18 <b>book (4)</b> 4725:19,22,23; 4726:2 <b>boring (1)</b> 4740:16 <b>Boston (1)</b> 4729:18 <b>both (9)</b> 4665:12;4676:5; 4681:21;4720:23; 4722:11;4734:15; 4736:1,2;4751:19 <b>bottom (10)</b> 4664:23;4679:9; 4686:10;4700:20; 4706:2;4752:20; 4756:19;4757:9; 4774:21,21 <b>box (2)</b> 4664:24;4714:10 <b>breadth (1)</b> 4731:14 <b>break (6)</b> 4667:12;4711:13; 4712:25;4713:14; 4714:5;4715:15 <b>brief (3)</b> 4713:12;4714:24; 4748:16 <b>briefly (2)</b>
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NYSCEF DOC. NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4694:25;4753:2 <b>bring (1)</b> 4682:1 <b>broad (2)</b> 4669:8;4735:4 <b>broke (1)</b> 4663:20 <b>broker (24)</b> 4718:23;4719:1,2,3, 4,16;4720:20,20; 4721:7;4722:9,15; 4723:24;4724:1; 4729:7;4733:2;4734:3; 4743:16,24;4747:13, 16;4761:5,11;4776:18; 4777:23 <b>brokerage (8)</b> 4727:21,22;4728:11, 18,19,23;4730:22; 4733:16 <b>brokering (1)</b> 4734:11 <b>brokers (9)</b> 4717:23;4718:1; 4720:16,17;4721:13; 4730:8;4732:11; 4733:21;4779:7 <b>broker's (1)</b> 4776:13 <b>build (4)</b> 4707:5;4720:23; 4721:15;4738:7 <b>building (9)</b> 4666:3;4698:11; 4699:7;4702:12; 4706:22;4707:6,20; 4708:6;4733:11 <b>buildings (1)</b> 4737:4 <b>bullet (9)</b> 4752:7,8;4754:4; 4755:1,25;4756:8; 4758:2;4771:25; 4776:24 <b>bullets (3)</b> 4754:19;4776:21; 4777:10 <b>bunch (1)</b> 4723:17 <b>burning (1)</b> 4733:10 <b>business (32)</b> 4715:13;4716:10,11; 4717:8,10,13;4723:2; 4725:16,19,21,23; 4726:2,19;4730:20; 4731:18;4736:5; 4740:5;4744:1,2; 4745:3;4757:21,22; 4760:13,17,24; 4761:23;4762:4; 4763:20;4771:1,2; 4773:13;4776:4	<b>buy (7)</b> 4666:18,18,18,20; 4675:10;4676:22; 4698:14 <b>buyer (5)</b> 4675:6,9;4676:21, 22;4719:5  <b>C</b>  <b>calculate (2)</b> 4702:24;4706:22 <b>calculated (1)</b> 4693:6 <b>California (1)</b> 4714:20 <b>call (5)</b> 4669:5;4717:9; 4721:1;4742:15; 4774:4 <b>called (5)</b> 4716:6;4717:15; 4718:5,10;4719:19 <b>calling (1)</b> 4775:5 <b>came (7)</b> 4667:12;4675:13,18, 20;4697:24;4748:14, 17 <b>can (56)</b> 4666:17;4669:17; 4670:13;4671:7; 4676:19;4678:13; 4684:11,12;4690:1; 4692:4;4693:18; 4695:2;4696:15; 4700:6,7,13;4701:22; 4705:11;4709:25; 4710:7;4712:25; 4713:6;4714:9;4720:7, 8;4721:7;4725:13; 4727:13;4728:11; 4729:9;4730:1,3; 4732:7,9,19;4737:20, 21,23;4738:7;4739:10, 13;4743:7;4747:17; 4749:21,25;4753:2; 4758:14;4759:12; 4769:1;4770:15; 4774:18,19;4775:1,10; 4780:9,16 <b>candid (1)</b> 4682:25 <b>cap (2)</b> 4665:7;4772:4 <b>capability (3)</b> 4721:1;4722:24; 4738:7 <b>capacity (1)</b> 4734:3 <b>capital (7)</b> 4721:22;4735:19; 4740:7,10,15,23;	4749:18 <b>capitalization (6)</b> 4663:25;4664:17,22; 4665:2;4697:1; 4699:20 <b>career (5)</b> 4717:11;4719:15; 4728:23;4729:7; 4731:15 <b>carried (2)</b> 4740:20,25 <b>carrier (5)</b> 4724:14;4732:18; 4733:6,6,8 <b>carriers (8)</b> 4721:13;4729:12; 4730:19,23,24; 4731:18;4732:12,17 <b>carry (1)</b> 4741:6 <b>case (24)</b> 4668:8,10;4693:9; 4703:16;4726:12; 4732:12;4735:1; 4736:15;4737:25; 4738:22;4746:8; 4761:20,23;4762:20, 23;4763:2,8,12,16,24; 4773:23;4775:13; 4779:16;4780:4 <b>cases (1)</b> 4737:10 <b>cash (4)</b> 4680:3;4740:17; 4741:19,22 <b>casualty (5)</b> 4724:10;4725:14; 4730:25;4761:6; 4776:5 <b>caught (1)</b> 4688:19 <b>Caulfield (8)</b> 4748:10;4758:3; 4762:7,18;4763:18; 4764:5,10;4765:7 <b>Caulfield's (2)</b> 4763:6;4764:14 <b>cause (2)</b> 4698:8;4719:16 <b>cease (1)</b> 4745:12 <b>celebration (1)</b> 4715:7 <b>Center (6)</b> 4666:6,9;4669:23; 4670:11,17;4698:15 <b>CEOs (1)</b> 4731:5 <b>certain (4)</b> 4690:3;4692:17; 4705:12;4746:6 <b>Certainly (4)</b> 4748:24;4752:12;	4758:24;4773:13 <b>certainty (3)</b> 4683:3,12;4742:1 <b>certified (3)</b> 4685:17,19;4730:25 <b>chairman (1)</b> 4718:11 <b>Chandar (1)</b> 4763:19 <b>Change (2)</b> 4713:14;4779:16 <b>character (2)</b> 4720:25;4738:6 <b>characterization (1)</b> 4712:8 <b>charge (1)</b> 4757:16 <b>charged (1)</b> 4757:10 <b>charges (1)</b> 4753:4 <b>charging (1)</b> 4753:5 <b>chart (10)</b> 4663:24;4664:2,6, 12,12,21;4665:1; 4699:15,21;4708:3 <b>charted (1)</b> 4670:4 <b>charts (2)</b> 4697:9;4701:12 <b>check (1)</b> 4694:4 <b>choose (1)</b> 4767:9 <b>chose (1)</b> 4749:23 <b>Chubb (1)</b> 4733:8 <b>circumstances (1)</b> 4776:15 <b>citation (1)</b> 4756:4 <b>cities (1)</b> 4670:10 <b>City (2)</b> 4718:25;4729:19 <b>claim (10)</b> 4748:7,12;4776:16, 22;4777:25;4778:10, 13,13,14,20 <b>claims (15)</b> 4724:13,15;4726:7; 4729:9;4776:1,14,25; 4777:7,11,20,23; 4778:3,5,11,17 <b>clarification (3)</b> 4695:7,15;4725:13 <b>clarify (2)</b> 4695:2;4697:14 <b>clarity (1)</b> 4692:1 <b>class (1)</b>	4687:12 <b>Claude (1)</b> 4748:8 <b>Claudia (2)</b> 4762:12,13 <b>clean (1)</b> 4727:23 <b>clear (3)</b> 4668:10;4702:19; 4734:22 <b>client (11)</b> 4721:7,17,17; 4729:13;4732:15,19, 20;4737:15;4743:16; 4750:8;4757:19 <b>clients (8)</b> 4718:16,17;4719:9, 10;4729:14,21; 4760:24;4761:2 <b>client's (1)</b> 4722:17 <b>clip (1)</b> 4691:12 <b>close (3)</b> 4693:1;4716:12; 4751:18 <b>clubs (1)</b> 4723:17 <b>Clyde (1)</b> 4776:9 <b>Co (1)</b> 4776:10 <b>code (3)</b> 4716:19;4773:15,18 <b>collected (1)</b> 4699:22 <b>college (4)</b> 4717:6,8,12,14 <b>column (1)</b> 4700:15 <b>combination (1)</b> 4698:7 <b>coming (3)</b> 4698:17;4721:22; 4743:8 <b>comment (4)</b> 4731:22;4737:18; 4739:14;4770:25 <b>comments (2)</b> 4751:5,6 <b>commercial (3)</b> 4685:21;4744:2; 4757:17 <b>commission (1)</b> 4761:12 <b>commissions (1)</b> 4761:16 <b>common (5)</b> 4695:21;4696:6,9; 4744:3;4746:2 <b>communication (1)</b> 4722:10 <b>communications (1)</b>
--	---	--	---	--



NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4722:14 <b>companies (15)</b> 4692:7;4720:7; 4730:7,11;4732:9,9; 4733:20,21,24;4734:4, 7;4735:25;4736:4; 4749:19,20 <b>company (19)</b> 4717:15,16;4718:10; 4719:8;4724:6; 4726:15;4729:8; 4731:16;4732:8,25; 4741:17;4742:4; 4743:17;4760:20,21; 4766:22;4768:14; 4772:22;4773:24 <b>company's (4)</b> 4726:2;4741:6; 4743:1,2 <b>comparables (2)</b> 4670:16,19 <b>compare (2)</b> 4670:17;4701:4 <b>compared (4)</b> 4669:21;4697:25; 4711:25;4725:19 <b>comparing (1)</b> 4704:9 <b>compelled (2)</b> 4675:7;4676:22 <b>compensated (2)</b> 4726:10,14 <b>Compensation (4)</b> 4724:10;4729:11; 4760:19;4762:3 <b>competent (1)</b> 4771:1 <b>competitive (1)</b> 4723:20 <b>competitor (1)</b> 4723:25 <b>Compilation (6)</b> 4739:2,4,7,18; 4749:16;4752:14 <b>compile (1)</b> 4721:25 <b>complaint (20)</b> 4691:22;4692:5,14, 15,16;4694:3,5,10; 4695:19;4709:6,9,9; 4711:9,17,23;4712:7, 14;4726:23;4727:2; 4750:18 <b>complete (1)</b> 4742:25 <b>completely (3)</b> 4681:7;4742:9; 4773:3 <b>complicated (1)</b> 4741:1 <b>complied (1)</b> 4716:2 <b>components (1)</b>	4720:24 <b>comps (1)</b> 4670:8 <b>concept (1)</b> 4671:12 <b>concerned (2)</b> 4773:18;4778:15 <b>concerns (1)</b> 4729:3 <b>conclusion (2)</b> 4774:5;4775:6 <b>condense (1)</b> 4715:15 <b>Condition (14)</b> 4692:18,21;4693:5, 23;4694:13;4695:17; 4696:3;4709:17,19; 4710:14,23;4712:18; 4765:22;4773:5 <b>conditions (2)</b> 4675:10;4692:8 <b>conduct (4)</b> 4695:11;4709:1; 4766:15,19 <b>confer (2)</b> 4758:17,20 <b>confident (1)</b> 4698:3 <b>confirm (11)</b> 4690:16;4702:1,13; 4743:3;4761:18; 4767:1,3,14;4768:2; 4770:4;4780:1 <b>confirmed (2)</b> 4709:5;4779:18 <b>confuse (2)</b> 4720:5,5 <b>Congress (1)</b> 4777:12 <b>Congressional (3)</b> 4776:22,25;4777:12 <b>Connecticut (1)</b> 4717:24 <b>connection (3)</b> 4693:8;4706:9; 4763:15 <b>conservative (2)</b> 4742:17,19 <b>consider (9)</b> 4664:14;4666:1,10, 16;4671:23;4699:2; 4723:15;4753:21; 4761:22 <b>consideration (2)</b> 4763:6;4764:1 <b>considered (3)</b> 4707:3,19;4725:17 <b>considering (1)</b> 4675:2 <b>consistent (2)</b> 4756:5;4768:25 <b>consistently (1)</b> 4768:21	<b>consists (3)</b> 4706:18;4710:15; 4760:2 <b>constant (1)</b> 4706:14 <b>construct (1)</b> 4707:20 <b>construction (3)</b> 4718:4,12;4719:21 <b>context (1)</b> 4775:11 <b>continue (4)</b> 4714:10;4719:8; 4745:13;4755:6 <b>Continued (5)</b> 4663:9;4683:14; 4724:16;4734:18; 4769:11 <b>continuing (2)</b> 4668:2;4751:9 <b>contract (5)</b> 4719:22;4735:6; 4772:15;4774:23; 4775:19 <b>contractor (2)</b> 4718:5;4735:14 <b>contractors (1)</b> 4718:5 <b>copy (1)</b> 4770:16 <b>corporate (1)</b> 4736:8 <b>correctly (1)</b> 4692:2 <b>Counsel (2)</b> 4759:7;4777:14 <b>Counselor (1)</b> 4663:4 <b>counsel's (1)</b> 4780:6 <b>country (3)</b> 4719:16;4729:18; 4733:19 <b>couple (3)</b> 4714:20;4730:1; 4758:10 <b>course (6)</b> 4680:23,24;4704:25; 4723:9;4730:3; 4766:12 <b>courses (5)</b> 4680:5,13;4681:3, 25;4704:25 <b>COURT (146)</b> 4663:1,7;4667:17, 19,20;4668:4;4669:2,8, 18;4670:14;4671:19; 4672:11,19;4673:2,16; 4675:17;4678:6,20,21; 4681:7,10,12,20,22,24; 4682:2,11,14,22; 4683:4,7;4684:9,11,16; 4688:15,18,19;4689:7,	16;4690:10;4691:14; 4697:4,4;4703:17; 4704:2,17,18;4705:5, 14;4707:21;4711:15; 4712:10,25;4713:11, 14,19,20;4714:2,7,9; 4715:1,3,5,7,12,18,20; 4716:1,3,9,12,16,19,21, 25;4722:13;4727:16, 23;4728:5,13,16,25; 4729:2,25;4730:3; 4731:20,23,24,25; 4732:3,5,22;4733:12; 4734:9,14,24;4735:1; 4737:20,23;4739:21, 25;4740:16;4742:15; 4744:15,18,21,23; 4746:12;4747:6; 4748:14,17,22; 4749:10;4750:3; 4751:11,15,19,22; 4758:11,14,16,19,22; 4759:3,23;4768:1; 4769:3,6,9;4771:11; 4774:9,13,16;4775:1,8, 12,14,17;4777:8; 4778:10,25;4779:4,6, 12,21;4780:19 <b>courtesy (1)</b> 4707:8 <b>Court's (1)</b> 4704:21 <b>covenant (1)</b> 4743:5 <b>cover (5)</b> 4724:9,10;4733:10; 4740:13;4748:23 <b>coverage (7)</b> 4778:2,5,8,8,8,9,19 <b>CPCU (1)</b> 4730:25 <b>create (2)</b> 4664:10;4721:19 <b>credence (2)</b> 4739:6,17 <b>credit (8)</b> 4720:1,3;4721:18; 4735:5;4742:18; 4772:23,25,25 <b>crisis (1)</b> 4698:25 <b>criteria (5)</b> 4687:15;4688:2,6, 10;4731:18 <b>crook (1)</b> 4714:18 <b>cross (9)</b> 4670:14;4678:11,12; 4684:9;4713:18; 4715:16;4751:15; 4758:13;4759:10 <b>crosses (1)</b> 4773:8	<b>CROSS-EXAMINATION (1)</b> 4684:17 <b>crowd (1)</b> 4714:11 <b>Cs (2)</b> 4721:1,16 <b>current (41)</b> 4671:13;4673:7,20; 4674:3,12,14;4675:25; 4676:13,16;4677:9,22; 4679:22;4680:6,21; 4688:24;4689:2,13,13, 20,25;4690:1,7,11,19, 21;4691:6;4703:7,10, 15;4705:3;4706:12; 4709:20;4710:16,17, 22;4711:5;4712:18,21; 4719:6;4740:10,11 <b>currently (5)</b> 4707:13;4724:1; 4747:13,13;4761:5 <b>Cushman (9)</b> 4693:18,19,21; 4694:15,19;4702:17; 4711:19,23;4772:4 <b>customary (1)</b> 4747:1 <b>cut (1)</b> 4714:15 <b>cycle (1)</b> 4698:21
<b>D</b>				
<b>D-452 (1)</b> 4674:7 <b>dad (1)</b> 4718:5 <b>damage (2)</b> 4678:14;4725:15 <b>Danny (1)</b> 4714:21 <b>data (2)</b> 4667:16;4670:5 <b>David (2)</b> 4760:6;4770:10 <b>day (3)</b> 4714:12,23;4780:15 <b>days (3)</b> 4675:19;4705:4; 4740:20 <b>day-to-day (1)</b> 4721:8 <b>deal (6)</b> 4718:15;4732:17,25; 4742:17,19,20 <b>deals (2)</b> 4718:16;4719:8 <b>debt (8)</b> 4740:25;4741:7,7, 18;4742:6,7,8;4749:17 <b>debts (1)</b> 4743:3				

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

<b>debt-to-debt (1)</b> 4743:5	<b>depends (2)</b> 4687:14;4736:5	4748:10;4764:15; 4773:3	4765:20;4767:12	4704:8;4706:1,17; 4710:5;4711:7
<b>debt-to-worth (1)</b> 4743:5	<b>deposed (3)</b> 4762:20;4763:12,21	<b>differs (2)</b> 4722:4;4740:15	<b>dispute (1)</b> 4774:24	<b>drafted (2)</b> 4671:16;4681:17
<b>decide (1)</b> 4777:25	<b>deposition (38)</b> 4671:25;4672:14,18; 4673:7,10,20;4674:4, 15;4675:23;4676:3,8, 25;4677:5;4678:24; 4681:16;4682:10,13, 15,19,23;4683:11,13; 4684:1;4686:4,11; 4690:23;4691:4; 4712:20;4762:23,24; 4763:15,23;4764:17, 25;4765:10,14;4766:4; 4767:10	<b>Dig (1)</b> 4729:18	<b>disputes (1)</b> 4775:5	<b>draws (1)</b> 4741:16
<b>decision (3)</b> 4668:23;4771:1; 4773:23		<b>digest (1)</b> 4732:19	<b>distinguish (1)</b> 4720:6	<b>Drive (1)</b> 4716:18
<b>decisions (1)</b> 4754:16		<b>dire (2)</b> 4730:1,5	<b>distribution (1)</b> 4664:13	<b>dropped (1)</b> 4706:3
<b>decrease (1)</b> 4757:16		<b>DIRECT (15)</b> 4663:8;4691:22; 4697:1;4699:20; 4700:13;4705:7; 4710:8;4716:21,23; 4717:18;4725:15; 4734:18;4751:12; 4761:19;4762:12	<b>distributions (1)</b> 4664:11	<b>dropping (1)</b> 4698:14
<b>decreased (1)</b> 4757:14		<b>directly (4)</b> 4717:18;4726:14; 4732:16;4760:20	<b>diverse (1)</b> 4724:11	<b>due (2)</b> 4756:12;4761:13
<b>deem (2)</b> 4733:14;4734:10	<b>describe (4)</b> 4669:22;4721:6; 4724:6;4756:3	<b>director (1)</b> 4669:24	<b>Doctor (1)</b> 4707:8	<b>duly (2)</b> 4716:7;4751:11
<b>deemed (6)</b> 4669:11;4688:16; 4727:17,18;4728:5; 4734:14	<b>described (4)</b> 4727:2;4743:11; 4765:7,13	<b>directors (2)</b> 4760:5;4777:4	<b>document (10)</b> 4688:16;4749:8; 4754:22;4758:4; 4759:15,19,22; 4765:23;4771:22; 4775:22	<b>during (7)</b> 4683:13;4687:8; 4689:22;4765:9,14; 4766:2;4772:8
<b>deeming (1)</b> 4669:9	<b>designated (1)</b> 4770:9	<b>disagree (7)</b> 4731:6;4770:25; 4771:7,14,16;4775:11, 18	<b>documents (12)</b> 4702:7,10,14,23; 4727:5,6;4738:23; 4745:18;4747:6,21; 4748:20;4762:10	<b>Dutch (1)</b> 4666:19
<b>deep (1)</b> 4697:18	<b>designation (1)</b> 4731:3	<b>disagreement (1)</b> 4703:20	<b>dollar (2)</b> 4665:15;4742:18	<b>E</b>
<b>defendant (4)</b> 4682:18,21,22; 4716:7	<b>detailed (1)</b> 4756:3	<b>disclosure (2)</b> 4746:3,9	<b>Donald (14)</b> 4688:11;4692:17; 4696:2,21;4710:15; 4723:5,11;4724:4; 4737:6;4745:23; 4752:11;4754:9; 4758:8;4779:7	<b>earlier (12)</b> 4672:1,14;4689:1, 21;4690:4;4696:5; 4703:21;4708:18; 4712:20;4723:20; 4741:23;4748:11
<b>defendants (5)</b> 4702:14,23;4709:13; 4726:14;4770:9	<b>determination (1)</b> 4743:7	<b>disclosures (1)</b> 4766:23	<b>done (9)</b> 4678:8,17;4696:18; 4713:25;4720:6; 4725:1;4729:16; 4735:15;4766:7	<b>early (4)</b> 4698:23,24;4715:14, 15
<b>defendants' (1)</b> 4702:7	<b>determinations (1)</b> 4740:8	<b>discount (5)</b> 4664:2,17,23; 4665:3,8	<b>done (9)</b> 4678:8,17;4696:18; 4713:25;4720:6; 4725:1;4729:16; 4735:15;4766:7	<b>earned (2)</b> 4760:20;4761:15
<b>defense (8)</b> 4679:3,12;4747:17, 25;4750:24;4753:23; 4755:19;4757:2	<b>determine (3)</b> 4702:15;4709:2; 4721:16	<b>discounted (1)</b> 4680:3	<b>door (1)</b> 4743:8	<b>earns (1)</b> 4761:11
<b>defined (1)</b> 4740:10	<b>determined (2)</b> 4772:3,9	<b>discussed (6)</b> 4671:12;4675:19; 4677:25;4686:3; 4749:13;4768:16	<b>DOT (2)</b> 4735:12,13	<b>ears (1)</b> 4713:20
<b>definition (40)</b> 4673:20,22;4674:3, 14,17,23,24;4675:3,24; 4676:12,14,20; 4677:17,21,25;4678:1, 16,23;4681:16;4682:9; 4683:10,13;4684:4; 4688:24;4689:2,8,10, 12,18,21,22;4690:6,12, 14,18,21,25;4711:2,3; 4775:21	<b>determining (2)</b> 4679:21;4698:11	<b>dismayed (1)</b> 4668:6	<b>Double (1)</b> 4715:7	<b>easier (2)</b> 4671:2;4754:23
<b>definitions (1)</b> 4686:2	<b>Deutsche (1)</b> 4780:11	<b>disparate (4)</b> 4695:20,23;4696:9, 18	<b>down (11)</b> 4663:15,19;4665:18, 21;4700:20;4701:22; 4713:5;4714:3; 4715:22;4727:13; 4779:25	<b>easily (1)</b> 4732:18
<b>defrauded (1)</b> 4750:19	<b>develop (2)</b> 4681:2;4738:7	<b>discussing (2)</b> 4663:21;4667:24	<b>Dr (21)</b> 4663:10,20;4665:22; 4667:25;4670:23,25; 4672:13;4673:19; 4674:13;4677:5; 4679:14;4682:9; 4684:19;4686:9; 4696:16;4700:9;	<b>easy (1)</b> 4729:22
<b>degree (3)</b> 4683:2;4717:7; 4742:1	<b>developer (1)</b> 4680:25	<b>displayed (37)</b> 4663:14,18;4665:20; 4671:4,9;4672:7; 4674:8;4677:6,14; 4679:4,7,10;4707:10; 4708:15;4710:2,11; 4713:4,8;4747:18; 4750:25;4752:1,5,17, 21;4753:10,24;4754:5, 20;4755:14,20; 4756:17;4757:4,25; 4759:13;4764:18;		<b>economics (1)</b> 4680:16
<b>degrees (1)</b> 4717:9	<b>developers (1)</b> 4709:23			<b>Edition (1)</b> 4686:15
<b>Department (3)</b> 4730:8;4733:19,25	<b>development (1)</b> 4744:1			<b>educational (2)</b> 4717:5,9
<b>depending (2)</b> 4698:13;4735:15	<b>DeVito (1)</b> 4714:21			<b>effort (1)</b> 4724:12
	<b>differ (1)</b> 4669:19			<b>eight (1)</b> 4731:5
	<b>difference (5)</b> 4665:15;4670:12; 4675:2;4709:2;4711:1			<b>either (9)</b> 4683:4;4707:18; 4708:10;4713:25; 4729:8;4733:1; 4743:16;4762:22; 4763:14
	<b>different (15)</b> 4668:17;4682:4; 4687:14,19;4690:18; 4693:22,25;4694:12; 4695:16;4704:17; 4719:15;4740:6;			<b>eliciting (1)</b>

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4727:13 <b>Elizabeth (1)</b> 4714:13 <b>else (1)</b> 4714:22 <b>elsewhere (1)</b> 4686:22 <b>enable (1)</b> 4768:6 <b>enabled (2)</b> 4715:15;4767:7 <b>encompasses (1)</b> 4761:7 <b>encountered (1)</b> 4754:14 <b>end (5)</b> 4664:21;4665:1; 4722:4;4732:21; 4737:13 <b>ended (1)</b> 4714:15 <b>endlessly (1)</b> 4670:15 <b>engage (1)</b> 4778:19 <b>engaged (1)</b> 4747:9 <b>engagement (1)</b> 4778:1 <b>engineering (1)</b> 4724:13 <b>England (1)</b> 4714:14 <b>enlarge (2)</b> 4663:17;4671:7 <b>enlarged (1)</b> 4671:10 <b>enough (4)</b> 4670:22;4671:24; 4741:6;4750:22 <b>entail (1)</b> 4718:13 <b>entire (2)</b> 4728:23;4742:6 <b>entirety (1)</b> 4692:14 <b>entities (4)</b> 4692:7;4736:19; 4737:3,4 <b>entities' (1)</b> 4687:4 <b>entity (4)</b> 4688:6,10;4736:8,20 <b>entry (1)</b> 4687:1 <b>equals (2)</b> 4712:5,6 <b>equity (5)</b> 4740:9;4741:5; 4760:16,19,23 <b>era (1)</b> 4745:8 <b>error (1)</b>	4697:5 <b>especially (2)</b> 4666:15,20 <b>essence (1)</b> 4733:7 <b>established (1)</b> 4722:19 <b>estate (23)</b> 4666:24;4667:3; 4679:16,22;4680:16; 4684:22;4685:3,8; 4686:13,23;4698:21; 4718:11;4736:6,6; 4737:2;4738:1,5,5; 4741:9,16;4742:3,8,20 <b>estimate (3)</b> 4664:10;4699:8; 4719:10 <b>estimated (33)</b> 4671:13;4673:7,20; 4674:3,12,14;4675:24; 4676:13,16;4677:9,21; 4679:22;4680:21; 4688:24;4689:1,13,13, 20,25;4690:1,7,11,19, 21;4691:6;4709:20; 4710:16,17,22;4711:5; 4712:18,21;4754:9 <b>estimating (1)</b> 4697:15 <b>even (11)</b> 4668:18;4669:12; 4671:23;4690:1,13,23; 4693:1;4698:22; 4702:4;4741:13; 4749:16 <b>evening (1)</b> 4663:21 <b>everyone (3)</b> 4663:1;4740:18; 4780:19 <b>evidence (7)</b> 4688:14,17;4710:1; 4759:25;4765:19; 4771:19;4778:23 <b>exact (3)</b> 4669:10;4673:24; 4699:14 <b>exactly (3)</b> 4673:22;4676:25; 4704:6 <b>EXAMINATION (11)</b> 4663:8;4678:11,13; 4691:22;4715:16; 4716:21,23;4730:5; 4734:18;4759:10; 4779:13 <b>examine (4)</b> 4670:14;4695:21; 4696:1,10 <b>examined (1)</b> 4716:7 <b>examining (1)</b>	4681:19 <b>example (4)</b> 4666:9;4722:5; 4740:16;4741:16 <b>exceeds (1)</b> 4680:6 <b>except (2)</b> 4772:15;4773:3 <b>exception (2)</b> 4738:21;4771:2 <b>exchanged (1)</b> 4675:5 <b>exchanges (1)</b> 4741:2 <b>excluded (1)</b> 4667:10 <b>Excuse (3)</b> 4700:22;4701:5; 4711:22 <b>excused (2)</b> 4715:20;4779:24 <b>executive (1)</b> 4717:8 <b>exhibit (57)</b> 4663:14,18;4665:20; 4671:4,9;4672:7; 4674:8,10;4677:6,14; 4679:4,7,10;4687:10; 4688:17;4692:6,6,8,12, 22,23;4694:4;4707:10; 4708:15;4710:2,4,6,11; 4713:4,8;4747:18,24; 4750:25;4752:1,5,17, 21;4753:10,24;4754:3, 5,20;4755:14,20,22; 4756:17;4757:4,6,25; 4759:12,13,24; 4764:18;4765:18,20; 4767:12;4771:18 <b>exhibits (2)</b> 4691:25;4692:3 <b>exist (1)</b> 4778:14 <b>expanding (1)</b> 4756:22 <b>expansion (2)</b> 4698:23,24 <b>expect (1)</b> 4780:16 <b>expectation (1)</b> 4666:19 <b>expected (1)</b> 4776:15 <b>expenses (1)</b> 4698:19 <b>experience (16)</b> 4666:14;4667:1; 4684:24;4685:3; 4695:6;4702:8,11; 4709:22;4728:21; 4729:6;4733:24; 4735:25;4739:3; 4743:9;4754:14;	4756:5 <b>expert (33)</b> 4667:9;4669:5,9,9, 12;4681:17;4696:17; 4705:11;4712:12; 4727:17,18,18;4728:6, 6,10,18;4733:14; 4734:10,10,15; 4739:10;4747:22; 4761:20,23;4762:2; 4764:13,13;4765:11; 4770:10,12;4772:12; 4773:7;4779:16 <b>expertise (4)</b> 4692:9;4693:1; 4727:14;4729:4 <b>explain (5)</b> 4717:5;4721:8; 4734:3;4747:6;4753:2 <b>exposure (1)</b> 4719:13 <b>extend (1)</b> 4669:7 <b>extent (5)</b> 4711:10;4721:13; 4741:24;4765:7,13 <b>extra (1)</b> 4759:3 <b>extreme (1)</b> 4741:16 <b>eyes (1)</b> 4700:10	4698:3;4705:6 <b>fall (1)</b> 4725:21 <b>falls (1)</b> 4726:3 <b>familiar (12)</b> 4665:24;4685:10,12; 4696:6,13,14;4726:22; 4727:1;4735:16; 4736:9;4738:18; 4743:13 <b>family (2)</b> 4666:24;4718:25 <b>famous (1)</b> 4714:14 <b>famously (1)</b> 4714:18 <b>FAR (6)</b> 4708:17,21;4709:3; 4729:9;4773:17; 4778:14 <b>FASB (3)</b> 4677:21;4685:11; 4689:4 <b>fast (3)</b> 4692:23;4748:23; 4751:19 <b>favor (3)</b> 4744:12,14,20 <b>February (2)</b> 4723:24;4776:14 <b>federal (1)</b> 4720:9 <b>feet (1)</b> 4708:22 <b>few (10)</b> 4685:6;4705:4,11; 4714:11;4721:12; 4726:7;4729:17; 4731:11;4776:1; 4777:7 <b>field (1)</b> 4734:2 <b>FIELDS (87)</b> 4663:5,9,12,16; 4665:18;4667:11,22; 4668:25;4670:23; 4671:7;4672:5; 4673:17;4674:6,11; 4677:4,12;4678:19; 4679:2,6,9,12;4681:15, 19,23;4682:12;4683:6, 8;4684:7;4703:14; 4711:10;4712:8; 4715:19;4716:22,24; 4727:19,25;4728:8,15, 17,25;4733:12,15; 4734:13,15,19; 4739:10,14,20; 4744:17,19;4745:2; 4747:17;4748:13,19, 24;4750:23;4751:13, 24;4752:3,16,19;
<b>F</b>				
<b>facility (1)</b> 4772:23 <b>fact (5)</b> 4669:6;4698:6; 4720:22;4773:4; 4776:7 <b>factor (3)</b> 4740:4;4741:3; 4742:4 <b>factors (6)</b> 4696:10;4698:10; 4706:13;4707:3; 4771:3;4772:5 <b>facts (1)</b> 4705:12 <b>FAHERTY (3)</b> 4681:9;4708:4; 4715:2 <b>failure (1)</b> 4755:1 <b>fair (14)</b> 4665:16;4670:22; 4671:24;4709:1; 4722:10;4726:16; 4731:25;4747:22,23; 4750:22;4761:14; 4772:2,8;4774:7 <b>fairly (2)</b>				

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4753:8,23;4754:1,4,18; 4755:13,19;4756:16; 4757:1,8,23;4758:15, 17,20,24;4759:1; 4774:3,25;4775:4; 4777:2;4778:24; 4779:3,5,11,14,20 <b>fifth (1)</b> 4774:21 <b>Fifty (2)</b> 4723:4;4759:7 <b>figure (5)</b> 4664:5,24;4665:3,8; 4702:4 <b>file (1)</b> 4766:22 <b>fill (1)</b> 4780:10 <b>finalizing (1)</b> 4664:14 <b>finally (1)</b> 4738:8 <b>finances (1)</b> 4722:17 <b>financial (73)</b> 4671:13;4684:25; 4685:4,8,10,14; 4688:11;4692:8,18,21, 25;4693:5,23,25; 4694:13;4695:17; 4696:3,21;4698:25; 4709:16,19;4710:13, 14,23;4712:1,17; 4720:24;4721:4; 4722:8,18,23;4729:13, 20;4730:9;4733:19,25; 4738:9,9,12,14,16,24, 25;4739:4;4741:17; 4742:11,23,25;4743:6; 4746:3,9;4747:2; 4749:11;4751:2,7,8; 4752:3,10,13;4754:1; 4755:24;4756:11,24; 4765:8,22;4766:3,6,13, 15,17,19,23;4773:5 <b>financials (1)</b> 4758:8 <b>find (2)</b> 4669:12;4736:23 <b>Fine (3)</b> 4714:1;4728:19; 4745:1 <b>finish (4)</b> 4758:14;4773:9; 4780:7,8 <b>finished (1)</b> 4707:7 <b>fire (1)</b> 4725:15 <b>firm (4)</b> 4728:24;4737:2; 4738:17;4740:10 <b>firms (1)</b>	4772:3 <b>first (21)</b> 4673:4;4675:13,18; 4680:11;4687:1; 4692:20,24;4700:14; 4704:8;4710:13; 4711:4,7;4714:13; 4716:7;4717:14; 4728:6;4737:16; 4749:8;4754:17; 4771:25;4773:2 <b>fiscal (3)</b> 4700:15;4701:2,6 <b>fits (1)</b> 4721:17 <b>five (6)</b> 4665:3;4691:13; 4713:25;4758:14,22,25 <b>flexible (1)</b> 4722:19 <b>flip (1)</b> 4756:16 <b>Florida (1)</b> 4716:19 <b>flowers (1)</b> 4715:11 <b>focus (5)</b> 4680:10;4693:11; 4722:6;4737:25; 4742:9 <b>focused (1)</b> 4736:6 <b>follow (3)</b> 4682:21;4685:15; 4705:13 <b>followed (3)</b> 4677:10,19;4780:2 <b>following (2)</b> 4679:23;4746:11 <b>follows (1)</b> 4716:8 <b>foot (4)</b> 4707:5,20;4708:6,6 <b>football (1)</b> 4714:15 <b>footnote (7)</b> 4671:7,11,15; 4678:23;4681:18; 4684:2;4713:7 <b>footnotes (1)</b> 4743:6 <b>Forbes (3)</b> 4754:7,8,10 <b>forecast (1)</b> 4670:5 <b>foreign (1)</b> 4666:25 <b>foreshadow (1)</b> 4678:10 <b>form (1)</b> 4742:10 <b>formed (6)</b> 4721:9;4727:10;	4728:1,2;4763:1,7 <b>forming (6)</b> 4762:23;4763:15,23; 4764:2;4765:23; 4772:6 <b>forms (1)</b> 4738:14 <b>forth (2)</b> 4676:9;4722:11 <b>forums (1)</b> 4721:20 <b>forward (2)</b> 4704:9,10 <b>found (1)</b> 4698:15 <b>foundation (4)</b> 4721:22;4737:17; 4748:16;4774:4 <b>foundational (1)</b> 4742:15 <b>Founded (2)</b> 4718:24;4719:19 <b>founding (2)</b> 4717:15;4719:7 <b>four (12)</b> 4665:2,6;4667:13; 4700:17;4710:8; 4719:11;4729:23; 4753:9;4755:13; 4756:16;4757:24; 4770:22 <b>fourth (3)</b> 4706:1;4771:25; 4774:20 <b>Frankly (1)</b> 4748:19 <b>fraud (1)</b> 4748:7 <b>free (3)</b> 4699:9,13,17 <b>frequent (1)</b> 4736:3 <b>friends (1)</b> 4718:6 <b>front (4)</b> 4677:21;4700:11; 4701:13;4747:25 <b>Frontier (1)</b> 4773:24 <b>frustrating (1)</b> 4676:5 <b>frustrations (1)</b> 4769:4 <b>full (2)</b> 4738:21;4774:20 <b>funds (1)</b> 4719:20 <b>funnel (1)</b> 4670:2 <b>further (6)</b> 4672:24;4681:2; 4684:7;4690:25; 4715:16;4759:1	<b>future (1)</b> 4681:1 <b>FY (2)</b> 4700:15,15  <b>G</b>  <b>GAAP (4)</b> 4722:5;4740:7,15,21 <b>game (5)</b> 4672:4;4673:18; 4714:14,15;4774:7 <b>Garten (2)</b> 4776:10;4779:7 <b>Gary (1)</b> 4716:17 <b>gave (4)</b> 4682:2;4762:19; 4763:6;4764:1 <b>geared (1)</b> 4667:16 <b>gears (2)</b> 4665:22;4670:25 <b>general (11)</b> 4698:17;4711:8,11, 16,23;4712:6,13; 4724:10;4743:23; 4750:4;4780:12 <b>generally (31)</b> 4675:1;4677:23; 4680:17;4718:13; 4720:19;4722:16,18; 4723:3;4726:22,25; 4727:1,16;4735:7; 4736:6,7,10,13; 4737:12;4738:11,15, 16;4739:13;4742:10, 22;4743:10,20;4746:4, 7;4750:20;4753:18; 4757:17 <b>General's (3)</b> 4672:1;4726:23; 4750:18 <b>generate (1)</b> 4741:10 <b>generates (1)</b> 4726:5 <b>gentleman (1)</b> 4770:10 <b>George (1)</b> 4717:2 <b>germane (1)</b> 4768:25 <b>gets (2)</b> 4672:22;4721:9 <b>Giuliette (2)</b> 4740:2;4741:25 <b>Giulietti (8)</b> 4713:22;4716:17; 4717:1;4747:4,20; 4749:1;4759:15; 4760:7 <b>giving (1)</b>	4691:16 <b>glossary (1)</b> 4674:12 <b>God (1)</b> 4719:11 <b>goes (4)</b> 4667:14;4669:13; 4687:10;4756:3 <b>gold (1)</b> 4686:24 <b>Golf (3)</b> 4723:8,9,16 <b>Good (15)</b> 4663:1,5,7,10,11; 4676:9;4684:19,20; 4716:14,14;4717:3,4; 4732:11;4742:6; 4780:19 <b>goose/gander (1)</b> 4703:24 <b>governed (1)</b> 4773:14 <b>government (2)</b> 4719:21;4720:9 <b>governor (1)</b> 4714:19 <b>governs (1)</b> 4773:20 <b>grant (1)</b> 4743:17 <b>Granted (2)</b> 4688:15;4759:23 <b>grayed (2)</b> 4664:5,7 <b>great (8)</b> 4664:12;4678:7; 4691:11;4698:25; 4700:10;4718:25; 4759:3;4779:12 <b>greater (5)</b> 4698:12,17,18,19; 4707:18 <b>GREENFIELD (3)</b> 4780:1,9,16 <b>Gross (1)</b> 4749:20 <b>ground (5)</b> 4706:18,23,25; 4707:4,12 <b>grounds (2)</b> 4737:18;4751:10 <b>group (1)</b> 4666:25 <b>growth (1)</b> 4698:4 <b>guarantee (1)</b> 4720:2 <b>guaranteed (2)</b> 4736:22;4737:7 <b>guaranteeing (2)</b> 4719:20;4735:5 <b>guarantees (1)</b> 4738:4
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NYSCEF DOC. NO. 1657  
NYS Attorney General v.  
Donald J. Trump, et. alRECEIVED NYSCEF: 01/04/2024  
November 17, 2023  
November 17, 2023

<b>guaranties (3)</b> 4735:21;4737:3; 4772:22	<b>hearing (1)</b> 4704:23	4778:12,22;4779:2,3	4700:21,25;4701:2,6, 19;4702:4,15,21,25; 4726:5;4743:4;4772:4	4768:4,12
<b>guarantor (4)</b> 4735:16,18;4736:17; 4772:15	<b>hearsay (3)</b> 4705:3;4777:5; 4778:24	<b>hope (3)</b> 4748:22;4758:12; 4780:7	<b>inconsistent (2)</b> 4756:5,7	<b>informed (4)</b> 4675:4,6,10;4676:22
<b>guarantor/indemnitor (1)</b> 4736:18	<b>heavily (3)</b> 4733:18;4734:6; 4740:6	<b>hoped (1)</b> 4780:11	<b>increase (1)</b> 4698:7	<b>in-house (1)</b> 4729:14
<b>guaranty (3)</b> 4721:2;4772:14; 4773:8	<b>Heidi (2)</b> 4714:14,16	<b>hopefully (1)</b> 4743:22	<b>increased (2)</b> 4756:12;4758:5	<b>initial (1)</b> 4702:4
<b>guess (1)</b> 4678:9	<b>held (2)</b> 4718:23;4766:22	<b>hoping (1)</b> 4713:25	<b>increases (2)</b> 4706:22;4707:13	<b>initially (1)</b> 4692:5
<b>guidance (1)</b> 4685:7	<b>help (4)</b> 4672:18;4674:2,5; 4747:6	<b>hour (2)</b> 4678:17;4713:16	<b>indemnified (1)</b> 4745:20	<b>insisted (2)</b> 4766:14,18
<b>guide (1)</b> 4721:24	<b>helps (2)</b> 4691:19;4700:11	<b>house (1)</b> 4730:22	<b>indemnify (1)</b> 4771:5	<b>instance (1)</b> 4741:11
<b>guidelines (1)</b> 4771:3	<b>hereby (1)</b> 4734:10	<b>hypothetical (1)</b> 4705:12	<b>indemnitor (4)</b> 4735:23,24;4745:22; 4746:3	<b>insult (2)</b> 4734:22;4735:2
<b>guy (1)</b> 4718:15	<b>hey (1)</b> 4732:25		<b>indemnitors (1)</b> 4735:25	<b>insulted (1)</b> 4734:16
<b>H</b>	<b>high (5)</b> 4665:1;4666:23; 4683:2,12;4753:7	<b>I</b>	<b>indemnity (9)</b> 4737:8,11;4745:19, 21,24;4746:2,4,8,10	<b>insulting (1)</b> 4731:9
<b>half (8)</b> 4664:23;4665:3,6,7, 12;4678:17;4717:21; 4759:3	<b>historic (1)</b> 4666:3	<b>iconic (1)</b> 4666:1	<b>indemnity-based (1)</b> 4772:15	<b>insurable (2)</b> 4777:21,22
<b>hand (2)</b> 4716:1;4748:1	<b>historical (1)</b> 4745:6	<b>idea (2)</b> 4713:21;4720:11	<b>independent (2)</b> 4694:6,11	<b>Insurance (72)</b> 4717:18;4718:2,3,4, 18,19,23;4719:5,5,25; 4720:1,7,10;4724:2,6; 4725:5,9;4726:16; 4727:3,21,22;4728:22; 4729:8;4730:11,14; 4731:4,15,16;4732:7,8, 8,9,10,25;4733:17,21; 4734:4;4738:24; 4740:17,19;4745:4,9, 10,12,20;4748:7,11,15; 4750:11,20;4756:9; 4761:7,10;4770:10; 4772:13,16,21,22,24; 4773:7,14,15,18,19,21, 24;4774:7,23;4775:20; 4777:4;4778:2;4779:6
<b>handed (6)</b> 4674:10;4710:6; 4747:24;4754:3; 4755:22;4757:6	<b>history (3)</b> 4714:12;4753:12; 4758:2	<b>identification (3)</b> 4686:6;4688:21; 4703:13	<b>indicated (6)</b> 4672:10;4692:1,11; 4698:3;4699:17; 4728:21	<b>insured (1)</b> 4740:19
<b>Handing (5)</b> 4686:7;4688:22; 4770:19;4771:20; 4775:24	<b>Hm (1)</b> 4771:8	<b>identified (1)</b> 4709:18	<b>indicates (1)</b> 4706:2	<b>insurer (5)</b> 4717:19;4743:17; 4772:23;4778:1; 4779:6
<b>handled (1)</b> 4762:8	<b>hold (3)</b> 4732:4;4735:13; 4779:12	<b>identify (2)</b> 4672:23;4695:23	<b>indication (1)</b> 4757:10	<b>insurers (2)</b> 4731:6;4778:15
<b>handling (2)</b> 4724:13;4729:9	<b>home (1)</b> 4713:23	<b>ignore (1)</b> 4742:8	<b>individual (2)</b> 4719:16;4737:5	<b>insures (1)</b> 4773:1
<b>hang (1)</b> 4748:4	<b>honest (1)</b> 4773:22	<b>III (1)</b> 4777:14	<b>individuals (5)</b> 4720:8;4736:1,3; 4754:11;4764:21	<b>integrity (2)</b> 4720:25;4738:6
<b>happen (2)</b> 4736:25;4737:1	<b>Honestly (1)</b> 4773:20	<b>illustrates (1)</b> 4664:13	<b>industries (2)</b> 4733:19;4738:3	<b>intend (1)</b> 4748:24
<b>happened (2)</b> 4714:12,22	<b>Honor (69)</b> 4663:5;4667:7,11, 12,22;4668:3,10; 4669:4;4672:9,20; 4673:4;4678:19; 4682:12,20,25;4684:7, 10,13,15;4688:13,20; 4694:8;4703:13,19,25; 4704:7,16;4705:10; 4711:14;4712:9; 4713:2,10,17,21; 4715:4,19;4716:22; 4727:12,20;4728:9,11, 20;4731:13,21; 4733:18;4734:13; 4739:8;4744:13; 4745:1;4748:4,13,25; 4751:10,21;4758:15; 4759:1,21;4769:1; 4770:17;4774:2,3,8; 4775:4,22;4777:3;	<b>implied (2)</b> 4676:20,23	<b>industry (8)</b> 4720:10;4731:4,12; 4734:6;4742:6;4744:4; 4747:1;4753:6	<b>intended (1)</b> 4739:15
<b>happy (4)</b> 4704:1;4715:3; 4729:1;4757:3		<b>implies (1)</b> 4675:7	<b>infer (1)</b> 4698:5	<b>interactions (1)</b> 4720:19
<b>hardly (1)</b> 4749:22		<b>important (4)</b> 4714:11,22;4721:4; 4748:13	<b>inflated (1)</b> 4704:20	<b>interesting (2)</b> 4732:22;4749:7
<b>Harvard (1)</b> 4717:10		<b>incentive (1)</b> 4770:1	<b>inflicted (1)</b> 4678:15	<b>intermediary (1)</b> 4719:4
<b>heading (2)</b> 4752:19;4754:19		<b>include (2)</b> 4679:23;4680:22	<b>influence (2)</b> 4721:23;4731:19	<b>interruption (2)</b> 4683:5;4725:16
<b>heads (1)</b> 4697:17		<b>included (2)</b> 4726:17;4761:23	<b>influenced (1)</b> 4730:24	
<b>hear (2)</b> 4681:20;4764:8		<b>includes (2)</b> 4664:11;4699:22	<b>information (19)</b> 4667:14;4679:15,21; 4722:8,16;4737:9; 4738:12,14;4747:2; 4749:21;4755:2; 4756:24;4765:8; 4767:5,16,18,22;	
<b>heard (3)</b> 4770:2,12;4773:6		<b>including (13)</b> 4671:11,15;4679:16, 23;4680:5;4739:6,17; 4741:7;4766:11; 4767:16;4768:4; 4777:11,17		
		<b>inclusion (1)</b> 4685:3		
		<b>income (15)</b> 4698:11,12,18;		

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

<b>intervene (1)</b> 4723:23	4717:2	4667:25;4670:25; 4672:13;4673:19; 4674:13;4679:14; 4682:9;4684:19; 4686:9,10;4700:9; 4704:8;4706:1,17; 4710:5;4711:7	<b>legal (6)</b> 4703:25;4774:5; 4775:2,5,10,21	4774:18,20,21
<b>interview (4)</b> 4762:22;4763:14; 4765:9,14	<b>J</b>		<b>lending (1)</b> 4748:20	<b>lines (2)</b> 4761:6;4776:3
<b>interviewed (2)</b> 4762:19;4763:11	<b>Jets/Raiders (1)</b> 4714:15		<b>length (2)</b> 4678:7;4736:7	<b>liquidity (14)</b> 4738:10;4740:1,4,9, 9,13;4741:2,11,20; 4742:9,18;4743:8; 4749:13;4771:4
<b>into (16)</b> 4667:14;4672:22; 4673:10;4687:22; 4715:24;4716:13; 4729:3;4740:4;4741:3; 4742:4;4743:8; 4765:10,15;4772:7; 4778:22;4780:3	<b>Joanne (2)</b> 4758:3;4762:7	<b>Laposa's (3)</b> 4670:23;4677:5; 4696:16	<b>less (5)</b> 4699:17;4700:2; 4706:13;4758:25; 4761:14	<b>liquidity-wise (1)</b> 4741:13
<b>introduced (1)</b> 4673:10	<b>joined (1)</b> 4718:10	<b>large (5)</b> 4720:15;4724:11; 4726:7;4729:18; 4761:7	<b>letter (6)</b> 4720:3;4735:5; 4776:9,13;4777:11,24	<b>list (1)</b> 4754:10
<b>invested (1)</b> 4709:23	<b>Judicial (5)</b> 4774:14,16,16; 4775:13,14	<b>Largely (2)</b> 4761:1,14	<b>letters (3)</b> 4776:21,24;4777:12	<b>listed (2)</b> 4688:11;4696:10
<b>investigated (1)</b> 4670:9	<b>July (2)</b> 4672:2;4691:4	<b>larger (2)</b> 4700:12;4720:16	<b>level (1)</b> 4736:8	<b>lists (2)</b> 4776:21;4777:10
<b>investigation (3)</b> 4777:13,13,14	<b>June (3)</b> 4706:3;4756:12; 4763:12	<b>largest (4)</b> 4718:23;4719:15; 4725:5,24	<b>leverage (1)</b> 4742:3	<b>literature (1)</b> 4666:4
<b>investigations (2)</b> 4777:15,17	<b>jurisdictions (1)</b> 4777:16	<b>Larson (2)</b> 4668:25;4694:25	<b>liabilities (3)</b> 4710:15,17;4740:11	<b>little (6)</b> 4669:13;4684:22; 4692:1;4741:13; 4745:16;4753:7
<b>investigative (2)</b> 4777:16,17	<b>jury (1)</b> 4668:4	<b>last (13)</b> 4716:25;4718:11; 4751:5;4753:8;4754:4, 19,25;4755:1,13; 4772:11;4773:25; 4774:18;4776:7	<b>liability (6)</b> 4724:10,11;4725:4; 4737:4;4753:22; 4755:3	<b>live (2)</b> 4732:13;4780:13
<b>investment (19)</b> 4671:12;4675:3; 4678:8;4681:4,5; 4687:2,3,4,7,11,15,19, 22;4688:1,2,6,10; 4709:20;4711:20	<b>K</b>	<b>Late (1)</b> 4724:5	<b>liberal (3)</b> 4705:6,7,8	<b>loan (2)</b> 4706:4,9
<b>investments (1)</b> 4679:22	<b>Kansas (1)</b> 4718:25	<b>later (1)</b> 4745:16	<b>Liberty (1)</b> 4717:16	<b>local (1)</b> 4667:2
<b>investor (4)</b> 4678:16;4680:25; 4687:4,12	<b>keep (1)</b> 4666:21	<b>Law (2)</b> 4774:23;4775:20	<b>license (3)</b> 4733:21,21;4734:9	<b>Lockton (18)</b> 4718:21,22,23,25; 4719:6,10,13;4730:7; 4759:16,19;4760:1,16; 4761:5,10,11,15,24; 4762:3
<b>investors (9)</b> 4666:12,14,17,20,25; 4667:1,3;4687:13; 4709:23	<b>key (4)</b> 4674:17,24;4675:18; 4682:1	<b>lawyer (1)</b> 4777:23	<b>licensed (5)</b> 4695:3;4730:8,11, 17,19	<b>Lockton's (1)</b> 4760:13
<b>investor's (1)</b> 4687:13	<b>keywords (1)</b> 4674:21	<b>lead (2)</b> 4759:16;4760:9	<b>licenses (3)</b> 4733:20;4734:1,7	<b>London (1)</b> 4670:10
<b>invoice (1)</b> 4761:19	<b>kind (4)</b> 4718:3;4719:22; 4720:9;4724:6	<b>Leading (8)</b> 4675:16;4681:6,7, 22;4722:12;4742:14; 4744:13,24	<b>licensing (2)</b> 4730:23;4773:21	<b>long (7)</b> 4670:21;4717:20; 4723:2;4724:4; 4729:15;4734:24; 4758:11
<b>involved (1)</b> 4666:7	<b>kinds (3)</b> 4666:12;4738:3,4	<b>learn (1)</b> 4702:24	<b>life (3)</b> 4718:15;4740:17,19	<b>longer (3)</b> 4669:16;4751:12; 4777:3
<b>irrelevant (2)</b> 4704:22;4778:24	<b>knew (1)</b> 4779:19	<b>learned (1)</b> 4668:11	<b>light (2)</b> 4704:12;4732:20	<b>long-term (1)</b> 4740:21
<b>IRS (1)</b> 4777:18	<b>knowledge (6)</b> 4681:2;4694:6,11, 14;4699:2;4709:15	<b>lease (9)</b> 4680:7;4706:19,23; 4707:1,4,12,17;4708:7, 11	<b>likely (4)</b> 4677:2;4690:17; 4698:22;4702:2	<b>look (24)</b> 4664:9;4674:13; 4676:24;4687:1,10; 4688:23;4689:4; 4696:23;4699:15; 4700:5,23;4701:1; 4704:12;4705:1; 4710:4,7;4729:12; 4738:8,10;4740:11,13; 4741:15;4751:3; 4767:10
<b>issue (6)</b> 4692:18;4703:16,20; 4730:14,17;4741:1	<b>known (6)</b> 4685:11;4695:9; 4698:25;4724:4; 4734:24;4762:12	<b>leaseholds (3)</b> 4679:16,23;4680:6	<b>limit (6)</b> 4737:4;4753:15,16; 4755:17;4756:20; 4774:1	<b>look-back (1)</b> 4703:22
<b>issued (4)</b> 4734:7;4750:9; 4772:19,22	<b>knows (2)</b> 4682:6;4739:11	<b>least (2)</b> 4697:7;4762:8	<b>limited (5)</b> 4666:17,23,25; 4677:17;4684:3	<b>looked (9)</b> 4670:1,7,16,20;
<b>issues (2)</b> 4684:14;4772:24	<b>L</b>	<b>leave (2)</b> 4684:5;4742:5	<b>limiting (1)</b> 4748:21	
<b>issuing (1)</b> 4691:21	<b>labeled (1)</b> 4770:23	<b>left (10)</b> 4664:2;4687:11; 4697:14;4699:7; 4700:14;4701:14; 4708:17;4713:3; 4718:20;4762:9	<b>limits (2)</b> 4753:13,18	
<b>I-U-L-I-E-T-T-I (1)</b>	<b>land (3)</b> 4707:4,19;4718:20		<b>line (16)</b> 4668:3;4677:8,8; 4680:11;4691:13,13; 4722:10;4725:8; 4740:21,22,25; 4764:17;4767:11;	
	<b>language (2)</b> 4732:23;4735:22			
	<b>Laposa (19)</b> 4663:10,20;4665:22;			

NYS Attorney General v.  
Donald J. Trump, et. al

November 17, 2023  
November 17, 2023

4692:3;4693:12; 4706:22;4749:8; 4765:25 <b>looking (4)</b> 4694:5,10;4703:23; 4704:7 <b>loose (1)</b> 4744:11 <b>loss (1)</b> 4771:5 <b>lost (1)</b> 4756:9 <b>lot (10)</b> 4676:6;4692:7; 4705:5;4719:7;4721:3, 3;4724:12;4729:10; 4741:10;4748:23 <b>lots (1)</b> 4737:2 <b>loudly (1)</b> 4716:13 <b>low (1)</b> 4664:21 <b>lower (1)</b> 4757:19 <b>lunch (1)</b> 4723:16	16;4668:13,14; 4669:24;4670:12; 4674:25;4675:3,4,8,13, 21,25;4676:17,20; 4677:9;4678:8,16; 4687:5,14,16,20; 4690:22;4691:1,7; 4695:5;4709:9,19; 4711:9,16,20;4712:2,6, 13,22;4725:4 <b>marketplace (1)</b> 4666:2 <b>marry (1)</b> 4721:18 <b>Martin (1)</b> 4714:20 <b>material (1)</b> 4734:4 <b>matrix (3)</b> 4663:17,22;4664:8 <b>matter (2)</b> 4689:7;4698:18 <b>maximum (2)</b> 4708:17,21 <b>may (20)</b> 4669:5;4679:21; 4684:15;4687:13,19, 21;4690:3;4703:19; 4713:10,18;4731:25; 4752:8;4755:6; 4756:10;4758:17,20; 4763:22;4776:15; 4779:11;4780:3 <b>maybe (6)</b> 4698:22;4702:18; 4722:24;4733:5; 4745:16;4764:8 <b>McConney (5)</b> 4780:2,3,4,7,7 <b>mean (15)</b> 4674:20;4676:7; 4680:17;4692:24; 4698:13;4727:22; 4741:20;4743:15; 4744:9,10;4751:4,22; 4757:18;4768:20; 4778:1 <b>Meaning (2)</b> 4725:10;4756:23 <b>means (4)</b> 4695:3;4719:2; 4740:1;4743:16 <b>meant (1)</b> 4676:6 <b>measuring (2)</b> 4699:5,6 <b>media (2)</b> 4754:15;4756:4 <b>member (2)</b> 4719:7;4777:12 <b>members (3)</b> 4776:22,25;4777:12 <b>memory (5)</b>	4672:4;4673:12,18; 4674:18;4676:19 <b>mention (1)</b> 4670:14 <b>mentioned (4)</b> 4681:25;4719:1,23; 4741:23 <b>mentions (1)</b> 4681:18 <b>met (1)</b> 4723:9 <b>method (3)</b> 4697:2;4699:20; 4711:2 <b>methodologies (2)</b> 4695:22;4696:2 <b>methods (3)</b> 4710:18,25;4711:1 <b>metrics (1)</b> 4742:22 <b>mic (2)</b> 4716:13;4729:3 <b>Michael (2)</b> 4705:14;4746:12 <b>Michael's (2)</b> 4717:8,12 <b>mid (1)</b> 4762:16 <b>middle (2)</b> 4664:6;4674:11 <b>might (4)</b> 4722:21;4740:14; 4745:5;4768:12 <b>Miller (5)</b> 4719:19;4770:11; 4771:9,12;4780:2 <b>million (26)</b> 4664:25;4665:4,9, 11,15;4699:4,5,7,12, 12,21;4700:2;4701:3,8, 16,19;4725:12;4726:6; 4741:12;4753:16,22; 4755:17;4756:20; 4758:5;4761:15; 4773:2 <b>mind (9)</b> 4675:13,18,20; 4676:20;4680:24; 4682:1;4711:2; 4739:19;4758:3 <b>minimal (2)</b> 4743:21;4744:9 <b>minus (5)</b> 4665:17;4726:6; 4740:11;4741:12; 4760:4 <b>minute (1)</b> 4742:5 <b>minutes (8)</b> 4678:15;4685:6; 4713:16,25;4751:14; 4758:12,23;4759:4 <b>mischaracterizes (1)</b>	4711:12 <b>mispronounce (1)</b> 4732:6 <b>missing (1)</b> 4749:13 <b>misspoke (1)</b> 4708:5 <b>mix (1)</b> 4719:25 <b>models (4)</b> 4695:22;4696:2; 4720:23;4721:15 <b>moment (13)</b> 4665:23;4671:1; 4678:4;4689:15; 4696:8;4710:4; 4713:10;4741:22; 4748:21;4753:12; 4755:16;4758:17,20 <b>momentarily (1)</b> 4690:8 <b>moments (1)</b> 4733:7 <b>Monday (5)</b> 4751:23;4769:7; 4780:2,18,20 <b>money (3)</b> 4699:22;4726:16; 4741:21 <b>monitoring (1)</b> 4724:14 <b>months (3)</b> 4740:13;4741:21; 4743:4 <b>more (24)</b> 4666:17;4669:8; 4675:4;4684:23; 4692:1;4697:23; 4698:12;4701:9,16,19; 4718:16;4720:3; 4721:22;4726:19; 4733:5;4736:3; 4737:14;4741:21; 4742:19;4751:6; 4756:23;4775:17,22; 4779:19 <b>morning (12)</b> 4663:1,6,7,10,11; 4684:19,20,21;4686:3; 4715:15;4717:3,4 <b>morphed (1)</b> 4720:9 <b>Most (11)</b> 4677:2;4690:16; 4698:22;4702:1; 4719:1;4721:4; 4732:15;4733:18; 4740:20;4741:12; 4780:14 <b>Mouradian (8)</b> 4748:8;4762:13,15; 4763:10,18;4764:5,10; 4765:13	<b>Mouradian's (1)</b> 4772:7 <b>move (9)</b> 4669:14;4677:12; 4739:9;4740:22; 4748:22;4749:24; 4750:23;4751:19; 4759:21 <b>movie (1)</b> 4714:16 <b>much (12)</b> 4664:20;4666:11,17; 4675:4;4713:3; 4715:21;4736:25; 4737:1;4742:19; 4751:11,15;4779:24 <b>Mueller (1)</b> 4777:14 <b>multiple (2)</b> 4777:15,17 <b>music (1)</b> 4713:20 <b>must (1)</b> 4688:2 <b>Mutual (3)</b> 4717:15,16,20 <b>myself (1)</b> 4669:23
<b>M</b>				<b>N</b>
<b>MAI (2)</b> 4685:17,19 <b>MAI's (1)</b> 4670:6 <b>major (1)</b> 4670:10 <b>making (1)</b> 4719:20 <b>man (1)</b> 4738:6 <b>manage (1)</b> 4738:8 <b>management (1)</b> 4745:7 <b>manner (1)</b> 4732:19 <b>many (10)</b> 4664:18;4667:2; 4719:10;4722:3; 4724:15;4736:7; 4737:10,14,18;4743:24 <b>March (1)</b> 4723:24 <b>mark (3)</b> 4686:5;4688:20; 4703:12 <b>Markarian (1)</b> 4762:12 <b>marked (3)</b> 4686:10;4688:17; 4703:13 <b>market (38)</b> 4664:10;4667:8,8,				<b>Name (6)</b> 4716:9,10,15; 4717:1;4732:6; 4770:13 <b>named (3)</b> 4718:25;4763:19; 4770:10 <b>necessarily (3)</b> 4687:15;4772:14; 4778:1 <b>need (13)</b> 4669:15;4710:7; 4722:6,20,24;4729:22; 4732:15;4734:9; 4737:15;4744:10; 4758:11;4771:11; 4773:9 <b>needed (1)</b> 4672:10 <b>needs (4)</b> 4672:23,23;4675:9; 4756:12 <b>negative (1)</b> 4741:15 <b>neither (2)</b> 4675:7;4676:22 <b>net (21)</b> 4666:23;4680:4,12, 22;4698:11,18; 4700:21;4701:6,18; 4702:4,15,21,25; 4741:3;4749:15,16,17,

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

17;4754:9;4761:12; 4772:4 <b>New (16)</b> 4670:3,8;4674:22, 22;4723:19;4729:19; 4730:8,17;4735:12; 4755:3,7;4773:14,14, 18;4774:23;4775:20 <b>next (11)</b> 4673:1;4677:12; 4683:14;4717:22; 4724:16;4727:19,20; 4741:21;4743:3; 4769:11;4777:10 <b>nine (3)</b> 4679:6,12;4718:11 <b>Nixon (1)</b> 4714:17 <b>nodding (1)</b> 4697:17 <b>NOI (9)</b> 4697:2,13,20; 4698:6;4699:6,9,20; 4700:2;4702:10 <b>non-appraisal (1)</b> 4669:20 <b>non-appraisals (3)</b> 4667:23,24,25 <b>non-commercial (1)</b> 4773:3 <b>non-compelling (1)</b> 4675:10 <b>None (3)</b> 4685:1;4749:20; 4778:2 <b>non-financial (1)</b> 4773:3 <b>nonpublic (1)</b> 4768:12 <b>non-trophy (3)</b> 4667:6;4668:18; 4669:21 <b>normal (1)</b> 4771:3 <b>normally (1)</b> 4712:25 <b>norms (1)</b> 4687:5 <b>Northeast (1)</b> 4759:17 <b>note (4)</b> 4681:13;4714:11; 4751:9;4772:7 <b>noted (1)</b> 4751:11 <b>notes (2)</b> 4710:13;4752:13 <b>notice (9)</b> 4774:16;4775:13,14; 4776:14,22;4778:17, 23,25;4779:5 <b>noticed (1)</b> 4692:24	<b>notices (1)</b> 4778:20 <b>November (2)</b> 4693:12;4780:21 <b>number (13)</b> 4696:10;4697:25,25; 4699:5,5,12,14;4700:1; 4717:8;4735:4; 4740:15;4754:10; 4761:7 <b>numbers (2)</b> 4701:12;4725:12 <b>NYSCEF (1)</b> 4770:18 <b>O</b> <b>oath (3)</b> 4663:3;4762:19; 4763:11 <b>object (9)</b> 4703:14;4737:17; 4739:8;4748:5; 4749:24;4774:3; 4775:8;4777:2,5 <b>objected (1)</b> 4780:12 <b>Objection (18)</b> 4667:7,21;4668:2; 4669:13;4672:19; 4673:15;4675:16; 4681:6;4682:2; 4711:10;4712:8; 4722:12;4731:13; 4742:14;4749:9; 4751:9;4774:25,25 <b>objectionable (3)</b> 4672:22,25;4673:2 <b>obligation (2)</b> 4741:18;4766:22 <b>obligations (1)</b> 4740:14 <b>obligee (1)</b> 4735:11 <b>obligor (1)</b> 4735:11 <b>observed (1)</b> 4695:16 <b>obtained (2)</b> 4706:8;4736:19 <b>obviously (1)</b> 4714:9 <b>occasionally (3)</b> 4720:7;4723:16,17 <b>occupancy (10)</b> 4698:8,10,14,17,19; 4703:7,10,15;4706:3, 12 <b>occurred (1)</b> 4723:22 <b>October (1)</b> 4694:24 <b>oddy (1)</b>	4720:9 <b>Off (5)</b> 4713:24;4714:15; 4720:23;4732:4; 4742:5 <b>offer (2)</b> 4688:13;4778:22 <b>offering (1)</b> 4774:6 <b>office (10)</b> 4666:24;4670:3; 4672:1;4707:5,20; 4708:6;4762:19; 4763:11;4777:13,15 <b>OFFICER (5)</b> 4714:2,7;4716:1,3,9 <b>Officers (1)</b> 4777:4 <b>offices (2)</b> 4666:24;4718:24 <b>often (1)</b> 4722:16 <b>once (2)</b> 4698:18;4759:8 <b>one (44)</b> 4668:14;4673:1; 4681:7;4690:19; 4692:5,24;4693:12; 4694:9;4697:24; 4698:5,8,10;4699:7,9, 17;4700:14,15,17,23; 4701:1,14;4707:3; 4708:17;4720:15,25; 4723:20;4728:2; 4733:18;4735:11; 4736:19;4740:16; 4742:20;4751:3,5; 4754:17;4757:2,2; 4760:5;4761:2; 4763:25;4771:21; 4775:22;4779:11,21 <b>ones (1)</b> 4733:8 <b>only (8)</b> 4669:24;4677:20; 4705:10;4708:21; 4721:12;4732:9; 4735:1;4779:1 <b>on-site (2)</b> 4756:10;4772:8 <b>open (2)</b> 4691:14;4722:10 <b>operating (16)</b> 4698:11,18;4700:21; 4701:2,6,18;4702:4,15, 21,25;4738:10;4741:6; 4743:1,2;4749:20; 4772:4 <b>opine (1)</b> 4739:19 <b>opined (1)</b> 4675:2 <b>opinion (32)</b>	4671:19;4677:10; 4687:23;4688:1; 4712:13;4728:1,2,6,9; 4747:5,6,8,11;4764:15; 4766:1;4768:16,23; 4770:5;4771:7,13; 4772:12,16,19;4773:7; 4774:6,11,14,17; 4775:2,10,15;4779:16 <b>opinions (16)</b> 4726:11;4727:9,10, 13,17;4741:24,25; 4762:23;4763:1,7,15, 23;4764:2;4765:23; 4770:23;4772:6 <b>opportunity (2)</b> 4727:5;4745:24 <b>optimistic (1)</b> 4701:9 <b>option (3)</b> 4680:18;4756:11,12 <b>order (1)</b> 4713:19 <b>ordinary (1)</b> 4743:18 <b>Organization (44)</b> 4724:8,12;4725:2,6, 20;4726:2,15;4727:7, 11;4728:4;4736:11,20; 4738:23;4745:4,10,13; 4747:8;4750:12,19; 4752:10;4758:9; 4759:16;4760:2,6,13; 4761:3,6,11,16,25; 4762:4;4764:6,11; 4765:9;4766:21; 4767:5,16;4768:4,13; 4771:5;4772:20; 4775:25;4778:18,19 <b>Organization's (3)</b> 4706:18;4724:1; 4771:2 <b>Originally (1)</b> 4718:4 <b>originated (1)</b> 4706:4 <b>others (2)</b> 4692:21;4733:9 <b>otherwise (2)</b> 4685:11;4713:22 <b>ourselves (2)</b> 4721:14;4748:21 <b>out (13)</b> 4664:6,7;4668:6; 4670:4;4674:18,25; 4698:17,18;4700:1; 4726:8;4751:25; 4754:18;4775:10 <b>outside (4)</b> 4669:13;4685:9; 4743:18;4777:2 <b>outstanding (4)</b> 4740:14;4741:11,18;	4753:22 <b>over (14)</b> 4675:19;4706:14; 4720:8;4723:24; 4725:3;4726:5,18; 4738:10;4741:18; 4743:3;4762:13; 4773:8;4776:3;4780:3 <b>overall (4)</b> 4726:18;4741:3; 4776:3;4777:8 <b>overlap (1)</b> 4691:1 <b>overriding (1)</b> 4736:21 <b>overruled (16)</b> 4668:5;4669:13; 4681:8,9;4703:18; 4705:6;4737:20; 4739:21;4742:16; 4744:15;4748:22; 4749:10;4775:1,9,9; 4777:9 <b>owe (1)</b> 4741:20 <b>owed (1)</b> 4743:3 <b>own (10)</b> 4719:2;4720:23; 4721:15,20,20,21,23; 4767:4,15;4768:3 <b>owner (2)</b> 4680:25;4702:12 <b>owners (1)</b> 4709:22 <b>ownership (2)</b> 4706:18;4756:4 <b>owns (1)</b> 4730:19 <b>P</b> <b>page (46)</b> 4663:13;4671:1; 4672:6;4674:11,11; 4677:4,13;4679:6,6,12; 4683:14;4686:13,20; 4688:23;4691:12,13; 4692:5;4697:3,3; 4700:7,8;4706:1; 4707:9;4708:14,14; 4710:8;4724:16; 4749:21;4752:16; 4753:8,9;4755:13,13; 4756:16;4757:3,8,24; 4764:17,17;4767:11; 4769:11;4770:22; 4771:21,25;4774:19; 4777:10 <b>pages (1)</b> 4692:25 <b>Palm (1)</b> 4716:18
---	---	--	---	--



NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

<b>paper (2)</b> 4730:14,17	4756:10	4752:16;4753:23	4668:5,5,8,9	4670:2;4731:25;
<b>paragraph (10)</b> 4687:23;4696:15; 4706:2;4707:12,15; 4708:18;4710:13; 4770:21;4772:1; 4774:20	<b>performing (1)</b> 4766:18	<b>plus (5)</b> 4695:6;4699:9; 4726:6;4741:12; 4760:4	<b>premium (3)</b> 4725:10;4752:25; 4761:12	4732:15;4737:12; 4741:4;4742:4;4744:8; 4747:2;4765:8,14; 4772:25
<b>Paris (1)</b> 4670:10	<b>period (4)</b> 4722:20;4740:19; 4741:12,18	<b>point (18)</b> 4664:10;4668:21; 4678:19,20;4682:7; 4690:12;4704:6; 4719:11;4727:25; 4740:12;4745:12; 4751:17;4752:7,8; 4754:4;4755:1;4766:2; 4772:25	<b>prepare (1)</b> 4722:1	<b>produced (1)</b> 4670:5
<b>part (10)</b> 4679:19;4680:22; 4684:5;4714:7; 4740:23;4747:21; 4758:22;4766:6,13,17	<b>person (4)</b> 4688:6,10;4732:16; 4760:12	<b>points (2)</b> 4665:13,14	<b>prepared (2)</b> 4729:21;4759:19	<b>product (4)</b> 4719:17,23;4721:11; 4743:21
<b>parties (6)</b> 4713:19;4714:6; 4719:20;4735:7,10,11	<b>personal (18)</b> 4671:13;4684:24; 4685:4,8;4720:13; 4723:13;4725:19,22, 23;4728:13;4736:8; 4737:2;4752:3,10; 4754:1,9;4755:24; 4756:11	<b>policies (3)</b> 4730:15;4761:8; 4773:19	<b>preparing (3)</b> 4684:24;4765:11,16	<b>products (1)</b> 4726:8
<b>partner (2)</b> 4719:7;4760:16	<b>personally (4)</b> 4723:15;4736:23; 4737:7,10	<b>policy (2)</b> 4761:10,13	<b>present (8)</b> 4694:24;4702:16,20; 4703:1,3,3,4;4732:12	<b>professional (6)</b> 4684:24;4685:3; 4712:12;4723:13; 4742:1;4772:3
<b>party (1)</b> 4688:3	<b>person's (1)</b> 4687:4	<b>pool (3)</b> 4666:14,16;4667:1	<b>presentation (3)</b> 4710:9;4738:16; 4752:14	<b>professionally (1)</b> 4723:18
<b>past (5)</b> 4675:19;4747:15; 4768:23,25;4770:6	<b>phase (4)</b> 4698:23,24;4699:3,4	<b>poor (1)</b> 4663:17	<b>President (2)</b> 4725:20;4746:9	<b>profile (1)</b> 4742:11
<b>patterns (1)</b> 4688:19	<b>philosophy (1)</b> 4721:17	<b>portfolio (1)</b> 4666:21	<b>Press (1)</b> 4755:25	<b>profit (2)</b> 4749:17,20
<b>pause (2)</b> 4713:12;4714:24	<b>phrase (3)</b> 4673:10;4703:25; 4766:4	<b>position (1)</b> 4719:6	<b>pressure (1)</b> 4757:17	<b>profitability (1)</b> 4743:5
<b>pay (1)</b> 4724:14	<b>phrasing (1)</b> 4673:13	<b>positions (1)</b> 4756:4	<b>pressures (1)</b> 4723:20	<b>profitable (1)</b> 4726:9
<b>payable (2)</b> 4706:23;4741:20	<b>piece (2)</b> 4722:24,24	<b>possession (2)</b> 4702:8,12	<b>pretty (1)</b> 4692:23	<b>program (20)</b> 4727:2,6,11;4728:3; 4745:12,13;4746:6,7; 4753:15;4754:19; 4755:16;4756:10,19, 22;4758:5;4764:7,12; 4766:2,10;4772:21
<b>payments (5)</b> 4680:3;4707:12,17; 4708:7;4724:14	<b>place (6)</b> 4663:2;4726:16; 4730:19;4747:13; 4748:6;4771:6	<b>possible (3)</b> 4769:3;4777:15,16	<b>pricing (2)</b> 4663:17,21	<b>programs (1)</b> 4777:3
<b>people (12)</b> 4668:20,22;4682:19; 4719:25;4720:5; 4721:3;4729:17,23; 4731:11;4737:3; 4759:16;4760:2	<b>placed (4)</b> 4724:7,9;4725:6; 4771:9	<b>possibly (2)</b> 4767:17;4768:5	<b>primary (1)</b> 4760:12	<b>progression (1)</b> 4705:1
<b>per (3)</b> 4671:13;4752:23; 4757:11	<b>places (2)</b> 4724:7;4761:10	<b>post (1)</b> 4778:13	<b>principal (2)</b> 4736:16,19	<b>prohibits (1)</b> 4755:2
<b>percent (17)</b> 4664:22,23;4665:2, 3,6,7,12;4706:3,4,13; 4707:18;4708:7; 4709:3;4733:5; 4743:12;4761:12,14	<b>Plaintiff (1)</b> 4682:15	<b>potential (5)</b> 4664:13;4695:23; 4721:24;4732:20; 4741:16	<b>Prior (6)</b> 4684:23;4685:2; 4691:21;4745:9; 4764:13;4767:19	<b>projected (9)</b> 4680:3;4697:12,20; 4698:6;4700:25; 4701:2,25;4704:12; 4706:14
<b>percentage (2)</b> 4720:11;4760:24	<b>Plaintiff's (5)</b> 4663:12;4688:17; 4759:12,24;4771:18	<b>Potter (4)</b> 4763:19,21;4764:5, 10	<b>private (1)</b> 4768:14	<b>projection (6)</b> 4700:13;4701:4; 4703:24;4704:3,4,8
<b>Perfect (1)</b> 4758:16	<b>planned (7)</b> 4680:5,13,23,24; 4681:3,25;4704:25	<b>Potter's (1)</b> 4764:1	<b>privately (2)</b> 4718:23;4766:22	<b>projections (5)</b> 4703:17;4704:10,13, 24;4743:4
<b>perform (3)</b> 4694:15,18;4721:1	<b>plans (3)</b> 4681:1,1;4713:14	<b>practice (8)</b> 4695:21;4696:6,9; 4720:12,12,13,15; 4778:16	<b>probably (10)</b> 4663:16;4676:4; 4682:7;4725:24; 4729:16;4740:18; 4742:20;4751:13,18; 4773:20	<b>projects (1)</b> 4729:18
<b>performance (3)</b> 4706:15;4719:22; 4735:6	<b>play (4)</b> 4672:4;4673:17; 4691:12;4723:16	<b>predate (1)</b> 4762:12	<b>problem (2)</b> 4673:17;4734:5	<b>promise (1)</b> 4780:8
<b>performed (1)</b>	<b>played (1)</b> 4691:14	<b>predicting (1)</b> 4701:18	<b>proceed (4)</b> 4663:4;4684:11,12, 15	<b>promised (1)</b> 4726:19
	<b>Please (16)</b> 4663:4,12;4667:17; 4674:6;4677:4;4679:2; 4684:16;4686:5; 4692:2,11;4710:4; 4713:7;4714:8;4717:1;	<b>predominant (1)</b> 4720:10	<b>proceedings (3)</b> 4705:13;4714:25; 4746:11	<b>proper (1)</b> 4668:24
		<b>prefer (1)</b> 4737:3	<b>process (15)</b> 4667:4,6;4669:1,19;	<b>Properly (1)</b> 4726:17
		<b>preference (1)</b> 4728:13		<b>properties (15)</b> 4666:12,15,16; 4667:5,6;4668:14;
		<b>prejudice (4)</b>		

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4669:20,21;4670:11; 4704:20;4709:14; 4725:15;4760:20; 4772:3,9 <b>property (47)</b> 4665:23,25;4666:1, 4,5,8,9,10,18,20; 4668:17,18;4670:7,9; 4680:4,5,12,23,25; 4681:2,3;4685:22,25; 4687:3,12;4693:22; 4706:19;4712:5; 4724:9;4725:4,4,8,14, 17;4730:25;4733:10; 4738:8;4761:6;4766:8, 11;4767:1,3,15; 4768:3;4773:1,1; 4776:5 <b>proportional (1)</b> 4760:20 <b>provide (8)</b> 4728:1;4743:21; 4748:16;4755:1; 4767:5,16;4768:4; 4776:14 <b>provided (4)</b> 4735:14;4738:15,23; 4765:9 <b>provider (2)</b> 4721:18,24 <b>provides (1)</b> 4685:7 <b>providing (2)</b> 4671:19;4743:23 <b>prowess (1)</b> 4720:22 <b>prudent (3)</b> 4695:21;4696:5,9 <b>public (2)</b> 4719:20;4768:15 <b>publication (2)</b> 4686:23;4756:5 <b>publications (1)</b> 4754:15 <b>publicly (4)</b> 4766:22;4767:6; 4768:5,11 <b>pull (16)</b> 4663:12;4665:18; 4670:23;4672:5; 4674:6;4677:4; 4696:15;4700:7; 4707:9;4708:13; 4709:25;4711:13; 4713:6;4747:17; 4755:19;4757:1 <b>purely (1)</b> 4749:22 <b>purported (3)</b> 4693:2,4;4776:14 <b>purportedly (1)</b> 4710:22 <b>purpose (4)</b>	4695:22;4696:2; 4743:19;4748:16 <b>purposes (5)</b> 4727:14;4763:2; 4772:6;4778:23,25 <b>put (19)</b> 4671:1;4677:21; 4679:2;4681:18; 4696:17,25;4697:11; 4699:3;4712:20; 4732:25;4745:18; 4759:12;4764:16; 4765:18;4770:15,22; 4771:18;4773:23; 4774:19 <b>puts (3)</b> 4726:8;4732:19; 4734:4 <b>PX-118 (2)</b> 4697:3;4700:7 <b>PX-1715 (1)</b> 4688:21 <b>PX-2665 (1)</b> 4686:5 <b>PX-3208 (5)</b> 4697:3;4700:8; 4707:9;4708:1,3 <b>PX-3380 (1)</b> 4703:12 <b>PX-603 (1)</b> 4775:23 <b>PX-729 (1)</b> 4709:25 <b>Q</b> <b>qualification (3)</b> 4710:24;4727:15; 4731:14 <b>qualifications (2)</b> 4706:16;4729:24 <b>qualified (7)</b> 4667:8,9,13; 4668:19;4694:18; 4695:6;4732:13 <b>qualify (3)</b> 4728:21;4733:22; 4734:2 <b>quality (1)</b> 4726:8 <b>quarter (2)</b> 4664:22;4665:2 <b>quarterly (1)</b> 4722:21 <b>quarters (1)</b> 4665:7 <b>Queen (1)</b> 4714:13 <b>quick (1)</b> 4749:18 <b>quite (5)</b> 4724:11;4726:8; 4736:22,23;4761:7	<b>quoting (1)</b> 4739:16 <b>R</b> <b>Raise (1)</b> 4716:1 <b>range (1)</b> 4722:7 <b>Ranita (2)</b> 4705:14;4746:12 <b>Rare (1)</b> 4744:5 <b>rarely (1)</b> 4746:5 <b>rate (19)</b> 4664:17,18,22,23; 4665:2,3,7,8;4698:19; 4703:7,10,15;4706:3; 4752:23;4753:2,6; 4757:10,14,19 <b>rated (1)</b> 4706:12 <b>rates (5)</b> 4663:25;4664:3; 4757:9,16;4772:4 <b>rather (4)</b> 4687:5;4720:15,21; 4766:3 <b>ratio (1)</b> 4742:11 <b>ratios (3)</b> 4743:5,6,10 <b>re (1)</b> 4773:23 <b>Read (17)</b> 4667:17,18;4669:15; 4675:13;4689:15; 4692:5,14,15;4694:25; 4762:25;4764:14; 4765:15;4767:25; 4768:1;4770:24; 4772:2;4779:15 <b>read-in (1)</b> 4780:12 <b>reading (3)</b> 4707:25;4708:5,18 <b>read-ins (1)</b> 4780:9 <b>reads (1)</b> 4687:11 <b>real (26)</b> 4666:24,25;4667:3; 4679:16,22;4680:16; 4684:22;4685:3,8; 4686:13,23;4698:21; 4718:11;4736:6,6; 4737:2,25;4738:5,5; 4741:9,16;4742:3,8,20; 4751:4;4766:2 <b>realizable (3)</b> 4680:4,12,22 <b>really (12)</b>	4689:7;4690:24; 4719:22;4720:1,10; 4721:4,8;4734:21; 4737:19;4750:21; 4751:4;4772:23 <b>reasonable (5)</b> 4698:23;4732:14; 4742:1;4771:3;4773:4 <b>reasonably (2)</b> 4726:5;4776:15 <b>reasons (3)</b> 4704:18;4743:25; 4749:23 <b>rebuttal (1)</b> 4669:5 <b>recall (34)</b> 4663:21;4667:11; 4670:19;4671:11,25; 4673:19;4674:14,18; 4676:1,2,11,17; 4677:16,23;4679:24; 4683:1,9;4686:11; 4690:4;4691:3,6,7,10, 23;4692:4;4696:11; 4698:1;4701:23; 4706:8;4709:6; 4712:23;4736:21; 4737:10;4749:12 <b>receipts (1)</b> 4680:3 <b>receive (4)</b> 4760:23;4762:21; 4763:13,22 <b>receives (2)</b> 4726:16;4762:3 <b>recently (3)</b> 4676:9;4694:23; 4750:9 <b>recession (1)</b> 4698:25 <b>recognize (2)</b> 4747:25;4749:1 <b>recollection (11)</b> 4671:2;4672:6,10, 12,17,21,24;4674:2,7; 4676:24;4691:18 <b>record (6)</b> 4683:2;4713:24,24; 4745:6;4761:5,11 <b>recorded (2)</b> 4705:14;4746:12 <b>recovery (3)</b> 4698:22;4699:3,4 <b>rectangle (1)</b> 4687:11 <b>redirect (3)</b> 4678:13;4715:18; 4779:13 <b>refer (1)</b> 4693:19 <b>reference (2)</b> 4752:19;4764:20 <b>references (1)</b>	4756:1 <b>referred (2)</b> 4686:22;4688:16 <b>referring (1)</b> 4678:1 <b>reflect (1)</b> 4693:22 <b>reflected (1)</b> 4712:2 <b>reflecting (1)</b> 4702:10 <b>reflects (2)</b> 4663:24;4664:2 <b>refresh (9)</b> 4671:2;4672:6,11, 17,21;4674:2,6; 4676:19,24 <b>refreshed (2)</b> 4672:10,24 <b>refreshes (1)</b> 4691:18 <b>regard (11)</b> 4669:20;4675:19; 4719:14;4722:16; 4726:1,9,23;4727:2,10, 20;4728:2 <b>Regarding (2)</b> 4689:24;4756:3 <b>regional (1)</b> 4667:3 <b>regulated (3)</b> 4733:18;4734:6,8 <b>regulates (1)</b> 4734:1 <b>rehabilitate (1)</b> 4678:14 <b>related (1)</b> 4727:6 <b>relates (2)</b> 4674:25;4747:7 <b>relating (4)</b> 4668:14;4673:7; 4680:4;4694:21 <b>relationship (12)</b> 4676:1,2;4721:6,8; 4723:11;4726:18; 4736:21;4743:24; 4747:7;4760:13; 4761:24;4762:4 <b>relationships (2)</b> 4723:21;4738:4 <b>release (1)</b> 4755:25 <b>relevance (5)</b> 4703:14;4748:9; 4749:9;4751:10; 4774:3 <b>relevant (7)</b> 4703:18;4705:9; 4764:5,10,23;4765:4; 4778:25 <b>reliable (2)</b> 4767:7;4768:6
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NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

<b>relied (1)</b> 4765:23	<b>reproducible (1)</b> 4666:2	<b>revalued (1)</b> 4707:18	4732:13,21;4735:13; 4743:7;4748:10; 4749:14;4753:5; 4771:3	4676:20;4682:13; 4689:18;4692:24; 4712:20;4737:8,11; 4749:21;4754:17
<b>rely (3)</b> 4721:13;4739:4; 4754:15	<b>reputation (1)</b> 4729:12	<b>revenue (3)</b> 4719:11;4726:4; 4749:17	<b>risks (1)</b> 4741:6	<b>saying (4)</b> 4683:2;4690:13; 4711:22;4753:20
<b>remaining (2)</b> 4692:25;4706:13	<b>reputations (1)</b> 4729:13	<b>reverse (2)</b> 4740:24,24	<b>road (1)</b> 4727:13	<b>scale (1)</b> 4725:21
<b>remember (18)</b> 4669:10,11;4671:15; 4672:13,18;4673:5,9, 10,21,22,24;4674:20, 21;4676:8;4678:25; 4691:15;4697:13,20	<b>requested (2)</b> 4667:18;4766:7	<b>reversed (1)</b> 4701:5	<b>ROBERT (17)</b> 4703:19;4704:23; 4707:24;4708:2; 4713:21;4714:1; 4715:9;4732:3,4; 4758:18,21,25;4759:5; 4777:14;4780:5,11,18	<b>scandal (1)</b> 4714:17
<b>remembering (1)</b> 4692:2	<b>require (5)</b> 4669:5;4738:11,20; 4746:2,8	<b>review (33)</b> 4672:17;4673:3,12; 4692:16;4693:2,4,8; 4694:15,18,21;4695:2, 4,4,9,11,12;4708:10; 4709:2,9;4727:5; 4738:19,22;4745:24; 4747:2;4749:4;4751:2, 8;4752:10;4756:10; 4762:21;4763:13,23; 4772:8	<b>Rock (2)</b> 4670:11;4698:15	<b>schedule (2)</b> 4780:6,17
<b>remind (2)</b> 4663:3;4704:16	<b>required (2)</b> 4722:21,22	<b>requirements (2)</b> 4741:13	<b>Rockefeller (5)</b> 4666:6,9;4669:23; 4670:4,17	<b>scheduled (1)</b> 4756:13
<b>render (2)</b> 4687:23;4688:1	<b>requirement (1)</b> 4741:13	<b>requirements (2)</b> 4687:5,13	<b>role (3)</b> 4674:25;4733:2; 4760:9	<b>scheduling (2)</b> 4779:21;4780:5
<b>renew (1)</b> 4755:7	<b>requires (1)</b> 4724:12	<b>research (7)</b> 4667:8;4668:13; 4669:24;4675:1; 4688:2,5,9	<b>Roll (1)</b> 4705:3	<b>School (1)</b> 4717:10
<b>renewal (2)</b> 4748:6,7	<b>reset (2)</b> 4706:25;4708:11	<b>reviewed (9)</b> 4676:8;4691:22; 4695:4;4709:6;4745:6; 4747:21;4758:8; 4763:3;4765:23	<b>roughly (6)</b> 4699:12;4701:16; 4709:3;4725:3;4726:6; 4761:17	<b>Schwarzenegger (1)</b> 4714:19
<b>renewed (1)</b> 4774:25	<b>resetting (1)</b> 4707:4	<b>reviewing (4)</b> 4684:24;4748:9; 4756:23;4765:8	<b>roll (1)</b> 4705:3	<b>scope (1)</b> 4777:2
<b>rent (8)</b> 4680:6;4698:4,7; 4699:10,13,17;4705:3; 4706:23	<b>residential (1)</b> 4685:24	<b>reviews (1)</b> 4762:11	<b>roster (1)</b> 4759:15	<b>Scorsese (1)</b> 4714:20
<b>rental (1)</b> 4680:6	<b>respect (4)</b> 4669:6;4688:6; 4708:11;4734:1	<b>revisit (1)</b> 4704:1	<b>roughly (6)</b> 4699:12;4701:16; 4709:3;4725:3;4726:6; 4761:17	<b>screen (51)</b> 4663:14,18;4665:20; 4671:5,9;4672:8; 4674:9;4677:7,15; 4678:2;4679:2,5,8,11, 25;4682:10;4683:10; 4690:19;4696:25; 4700:11;4707:11; 4708:16;4710:3,12; 4712:21;4713:4,9; 4747:19;4748:1; 4751:1;4752:2,6,18,22; 4753:11,25;4754:6,21, 23;4755:15,21; 4756:18;4757:5; 4758:1;4759:14; 4764:19;4765:21; 4767:13;4770:15,22; 4774:19
<b>rents (1)</b> 4698:14	<b>Respectfully (3)</b> 4669:1;4775:4; 4779:3	<b>Revocable (1)</b> 4776:10	<b>Round (1)</b> 4725:12	<b>SDA (2)</b> 4753:12;4758:2
<b>repeat (2)</b> 4733:13;4766:16	<b>respond (2)</b> 4690:25;4729:2	<b>Richard (1)</b> 4714:17	<b>rudimentary (2)</b> 4671:21,23	<b>seated (2)</b> 4714:8;4716:9
<b>rephrase (1)</b> 4711:14	<b>responding (1)</b> 4777:24	<b>right (71)</b> 4664:23;4665:5; 4671:7,25;4673:9; 4681:10;4683:5; 4693:16;4698:4; 4699:1,9,10,15,21; 4700:17,23;4701:1,20, 21;4702:8,12,21,22; 4707:5,20;4708:19; 4711:9,24;4712:3,18; 4716:1,13;4726:10; 4729:3;4730:22; 4733:3;4734:14; 4736:9;4739:22; 4741:14;4745:2; 4747:4,25;4750:23; 4751:24;4753:8; 4756:8;4757:1,23; 4758:2;4760:3,7,17,21; 4761:3,8,13,16;4762:9, 13,16;4763:16;4764:7, 12;4766:8,15,23; 4768:14;4773:15; 4774:18;4776:1	<b>rule (3)</b> 4673:4;4703:24; 4732:1	<b>second (9)</b> 4688:23;4696:16; 4748:4;4752:7; 4754:25;4756:8; 4772:2;4776:12,24
<b>report (25)</b> 4670:24;4671:1,11; 4681:17;4686:22; 4691:21;4696:16,17; 4699:3;4711:8,14,18; 4712:12;4713:6; 4722:21;4747:22; 4763:2,7,16;4764:13, 13;4765:11,16; 4770:15;4779:16	<b>response (1)</b> 4776:13	<b>risk (8)</b> 4714:2,7;4776:16	<b>rules (1)</b> 4694:9	<b>section (8)</b> 4670:12;4700:5; 4751:2,8;4752:4; 4754:2;4755:24; 4770:23
<b>reporting (1)</b> 4722:20	<b>responsibility (1)</b> 4760:12		<b>ruling (2)</b> 4704:17,21	<b>sections (1)</b> 4695:5
<b>reports (2)</b> 4700:6;4756:3	<b>responsible (2)</b> 4760:25;4761:2		<b>run (1)</b> 4779:22	<b>securing (1)</b> 4718:16
<b>represent (6)</b> 4665:11;4679:19; 4753:19;4762:18; 4763:10,21	<b>rest (1)</b> 4713:18		<b>S</b>	<b>seeing (4)</b>
<b>represented (1)</b> 4756:11	<b>Restate (1)</b> 4683:7		<b>Saint (3)</b> 4716:18;4717:7,12	
	<b>restrict (1)</b> 4669:25		<b>sales (3)</b> 4670:8,10;4718:2	
	<b>result (7)</b> 4665:14;4666:7; 4719:21;4721:19; 4732:14,18;4749:12		<b>same (17)</b> 4670:1;4676:17; 4677:10;4682:3; 4689:17;4690:22; 4691:2,7;4699:5,6,6; 4700:9;4712:22; 4725:3;4749:12; 4754:22;4755:10	
	<b>results (7)</b> 4695:24;4702:20; 4721:21,23;4722:3; 4729:11;4738:10		<b>save (2)</b> 4669:3;4713:19	
	<b>resume (1)</b> 4663:2		<b>saw (11)</b> 4674:22;4675:3;	
	<b>retaining (1)</b> 4718:17			

NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4672:20;4674:20,21; 4679:24 <b>seemed (1)</b> 4692:25 <b>seems (2)</b> 4747:15;4756:25 <b>sell (2)</b> 4675:10;4676:23 <b>seller (4)</b> 4675:6,9;4676:22; 4719:5 <b>semiannually (1)</b> 4722:22 <b>send (1)</b> 4713:22 <b>Senior (2)</b> 4705:14;4746:12 <b>sense (4)</b> 4720:11;4726:1; 4743:23;4745:3 <b>sent (1)</b> 4715:11 <b>sentence (5)</b> 4696:16;4754:25; 4770:24;4772:2; 4776:13 <b>series (7)</b> 4673:9;4676:4; 4717:23,25;4747:20; 4772:11;4773:25 <b>service (3)</b> 4759:16;4760:1; 4761:22 <b>Services (3)</b> 4730:9;4733:20,25 <b>session (1)</b> 4714:8 <b>set (3)</b> 4687:14;4707:13; 4776:25 <b>seven (4)</b> 4664:23;4750:9,11; 4768:20 <b>Several (1)</b> 4691:9 <b>share (6)</b> 4722:16,25;4760:16, 19,23;4770:16 <b>shared (2)</b> 4722:1;4737:9 <b>sharing (1)</b> 4722:8 <b>sheet (5)</b> 4740:8,9,9;4741:5; 4749:14 <b>shift (2)</b> 4665:22;4670:25 <b>short (1)</b> 4740:19 <b>show (11)</b> 4681:15,16;4691:11; 4702:14,23;4704:14; 4722:3;4747:20;	4774:12,13;4775:1 <b>showed (10)</b> 4673:20,23;4674:3, 15;4678:24;4682:18, 23;4684:4;4702:17; 4714:16 <b>showing (2)</b> 4697:1;4759:15 <b>shown (4)</b> 4682:9,15;4683:9; 4762:11 <b>shows (1)</b> 4759:7 <b>side (10)</b> 4664:2;4687:11; 4696:25;4697:1,11,12, 24;4708:14,14; 4729:14 <b>sides (1)</b> 4751:19 <b>signatory (1)</b> 4735:20 <b>signatures (2)</b> 4736:8;4737:2 <b>signed (2)</b> 4685:21,24 <b>significant (2)</b> 4738:20;4779:19 <b>similar (3)</b> 4670:11;4671:12; 4751:3 <b>Simple (1)</b> 4773:6 <b>simply (1)</b> 4770:4 <b>single (1)</b> 4753:15 <b>sit (2)</b> 4668:16;4714:10 <b>site (2)</b> 4707:6;4752:9 <b>situation (1)</b> 4698:16 <b>six (9)</b> 4664:22;4665:8; 4707:18;4729:16; 4731:5;4741:21; 4767:11;4771:21; 4774:19 <b>sizable (1)</b> 4726:5 <b>size (6)</b> 4709:3;4725:10,18, 21;4736:22;4746:6 <b>sized (1)</b> 4718:16 <b>skim (1)</b> 4692:21 <b>skimmed (1)</b> 4692:12 <b>skimming (1)</b> 4692:20 <b>slate (1)</b>	4727:24 <b>small (3)</b> 4717:23,25;4726:6 <b>SOFC (1)</b> 4704:24 <b>SOLOMON (64)</b> 4667:7;4668:2,6,9; 4669:2,4;4672:9,14,20; 4673:4,7,13,15,19,23; 4674:3,15;4675:16,22, 23;4676:12,16; 4677:10,19;4678:1,22; 4681:6,11,13,17; 4682:5,20,25;4684:3, 10,13,18;4686:5; 4688:13,20;4691:12; 4694:8;4696:15,25; 4697:4,7;4700:7; 4701:22;4703:12; 4704:5,6;4705:10; 4707:9,22;4708:1,13; 4709:25;4711:13; 4713:2,6,10,17,24; 4715:14 <b>Solomon's (1)</b> 4678:10 <b>solve (1)</b> 4723:23 <b>somebody (3)</b> 4735:21;4745:20; 4775:6 <b>somebody's (1)</b> 4744:10 <b>someone (4)</b> 4669:9;4727:17; 4736:22;4774:5 <b>sometimes (4)</b> 4666:18;4698:14; 4733:4;4746:5 <b>somewhat (3)</b> 4719:17;4721:12; 4736:6 <b>somewhere (3)</b> 4723:21;4725:24,25 <b>son (2)</b> 4760:6,10 <b>sophisticated (1)</b> 4718:16 <b>sorry (26)</b> 4679:6;4681:20; 4682:20;4683:5,5; 4684:13;4694:8; 4700:21,25;4702:9; 4716:15;4731:23; 4732:2;4733:12; 4737:22;4743:12; 4750:2;4751:5;4752:7; 4764:8;4765:3;4769:5, 8;4774:21;4779:4,7 <b>sort (5)</b> 4718:15;4731:9; 4732:24;4738:11; 4746:3	<b>sound (3)</b> 4696:6,13;4698:4 <b>sounds (3)</b> 4678:9;4696:14; 4702:1 <b>source (1)</b> 4689:3 <b>sources (5)</b> 4695:23;4767:7; 4768:6,13,15 <b>speak (3)</b> 4716:12;4729:3; 4739:13 <b>speaking (8)</b> 4718:13;4727:16; 4736:13;4737:12; 4742:22;4753:18; 4776:3,5 <b>special (2)</b> 4670:9;4777:14 <b>specific (17)</b> 4667:20;4669:11; 4673:13;4676:1,2; 4680:25;4683:9; 4684:23;4687:13; 4688:2,5,9;4733:20; 4734:7,7;4737:14; 4741:9 <b>specifically (6)</b> 4667:9;4673:5; 4674:19;4704:2; 4739:12;4746:5 <b>specifics (1)</b> 4672:22 <b>spectacularly (1)</b> 4714:15 <b>spell (1)</b> 4716:25 <b>spend (2)</b> 4721:3;4741:9 <b>spent (5)</b> 4667:15;4678:15,17; 4731:15;4761:19 <b>square (5)</b> 4707:5,23;4708:6,6, 22 <b>stand (11)</b> 4663:2;4668:21; 4674:17;4684:2; 4704:15;4714:4; 4715:23,25;4729:12; 4768:9;4779:25 <b>standard (5)</b> 4686:24;4740:17; 4749:4;4753:6,6 <b>standards (8)</b> 4685:7,11,14; 4720:23;4722:18; 4738:18;4740:6,15 <b>standpoint (1)</b> 4721:23 <b>stands (14)</b> 4731:14	<b>start (4)</b> 4677:8;4727:13,23; 4767:2 <b>started (1)</b> 4692:5 <b>starting (2)</b> 4740:12;4780:2 <b>starts (1)</b> 4772:1 <b>state (3)</b> 4687:10;4735:12; 4773:14 <b>stated (7)</b> 4697:20;4710:16,22; 4711:5,18;4712:13; 4749:16 <b>statement (11)</b> 4665:16;4693:5; 4695:17;4710:14,14; 4722:18;4765:22; 4766:15,19;4775:10,18 <b>statements (30)</b> 4671:13;4684:25; 4685:4,8;4688:11; 4692:8,17,20,25; 4693:23,25;4694:12; 4696:3,21;4709:16,19; 4710:23;4712:1,17; 4720:24;4738:24,25; 4739:5;4743:1,2; 4752:10,13;4756:11; 4767:2,4 <b>States (3)</b> 4670:3;4694:4; 4758:3 <b>stenographically (2)</b> 4705:13;4746:11 <b>stepped (4)</b> 4714:3;4715:22,24; 4779:25 <b>sticker (1)</b> 4686:9 <b>still (10)</b> 4663:3;4669:2; 4678:9;4680:19; 4699:3;4718:18; 4720:15;4723:11; 4750:5;4778:10 <b>stood (2)</b> 4674:25;4780:20 <b>stopped (2)</b> 4692:10,24 <b>storm (1)</b> 4725:15 <b>story (1)</b> 4718:25 <b>streamline (1)</b> 4713:18 <b>Street (22)</b> 4663:22;4688:7; 4693:9,11,22;4694:22; 4695:13,18;4696:3,24; 4702:3,10,16,21,25;
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NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4703:8,10,15;4704:15; 4706:12,15,18 <b>strike (3)</b> 4739:9;4749:7,24 <b>structure (1)</b> 4741:8 <b>struggles (2)</b> 4742:6,7 <b>study (1)</b> 4717:12 <b>style (1)</b> 4759:7 <b>Subheading (1)</b> 4680:2 <b>subject (1)</b> 4776:22 <b>subjectivities (2)</b> 4664:18;4665:12 <b>submarket (1)</b> 4670:4 <b>submitted (3)</b> 4763:2;4776:1; 4777:11 <b>submitting (1)</b> 4761:19 <b>subscribing (1)</b> 4729:22 <b>subsequent (1)</b> 4707:13 <b>subset (1)</b> 4725:5 <b>sufficient (4)</b> 4702:15,24;4771:4,4 <b>suggest (2)</b> 4678:6,22 <b>suggesting (1)</b> 4773:17 <b>summary (2)</b> 4751:2,8 <b>support (1)</b> 4754:15 <b>sure (30)</b> 4674:16;4689:16; 4691:9;4696:8; 4698:23;4705:2; 4712:12;4715:9; 4719:20;4720:14; 4721:10;4724:9; 4725:7,8;4733:17; 4736:12,21;4737:15, 19;4738:2,20;4741:5; 4742:13;4747:16; 4758:22;4763:20; 4764:9;4766:10,17; 4773:4 <b>sureties (12)</b> 4720:7,8,23; 4722:19,25;4729:15; 4740:11,12,12,14; 4747:1;4757:16 <b>surety (94)</b> 4718:4,19;4719:14, 17,18,23,25;4720:1,12,	17,19,20,23,24;4721:2, 6,7,18,24;4722:1,6,9,9, 15,15,19,21;4723:2; 4725:1;4726:24; 4727:1,6,10;4728:3,10, 18;4729:21;4733:15, 15,23;4734:2,10,11,20; 4735:3,8,14,22; 4736:13,15;4737:7,13, 16;4738:11,20;4739:4, 6,17;4740:4,6,22; 4741:3,9,11;4742:4,12, 18,23;4743:9,17,22; 4744:3;4745:3,13; 4747:9;4749:19; 4750:5;4753:5; 4754:19;4756:6; 4757:20;4764:7,12; 4766:2;4772:13,16,19, 21;4773:7,18;4774:7, 22;4775:19;4777:3 <b>suretyship (1)</b> 4727:22 <b>Sus (1)</b> 4688:15 <b>suspensions (1)</b> 4779:18 <b>sustained (10)</b> 4667:21;4672:11; 4675:17;4681:10,11, 22;4682:2;4712:10; 4722:13;4750:3 <b>swear (1)</b> 4716:3 <b>sworn (9)</b> 4716:7;4762:22; 4763:7,14;4764:1,4,9, 20,22	<b>technical (2)</b> 4684:13;4732:16 <b>technically (1)</b> 4772:24 <b>tee (1)</b> 4732:17 <b>ten (6)</b> 4679:6;4709:3; 4740:20;4742:21; 4761:14;4776:7 <b>tenants (1)</b> 4698:12 <b>tend (2)</b> 4742:8;4744:7 <b>tender (4)</b> 4728:10,17;4777:25; 4778:7 <b>tendered (4)</b> 4776:25;4777:20; 4778:5,17 <b>tendering (2)</b> 4777:23;4778:20 <b>tens (1)</b> 4719:12 <b>term (16)</b> 4663:17;4665:23,24; 4675:20;4682:1; 4687:7;4690:11; 4695:11;4701:24; 4719:2;4735:16; 4740:1;4743:13; 4744:11;4755:9,10 <b>terminal (4)</b> 4663:24;4664:17,21; 4665:2 <b>terminology (5)</b> 4675:5;4676:21; 4685:12;4699:1; 4768:18 <b>terms (15)</b> 4673:6;4674:17,24; 4675:18,19;4722:8,14; 4725:21;4728:20; 4763:1;4766:25,25; 4767:3,14;4768:2 <b>testified (11)</b> 4664:18;4684:21; 4690:7;4691:21,25; 4693:12;4704:11; 4709:5;4716:8; 4761:18;4775:25 <b>testify (3)</b> 4667:14;4668:13; 4709:12 <b>testifying (3)</b> 4689:1,14;4701:23 <b>testimony (36)</b> 4664:5,6;4667:18; 4668:1;4670:16; 4675:12;4687:8; 4689:23;4690:10; 4691:4;4692:2; 4694:21,24;4704:23;	4709:8;4711:12,12; 4712:21;4713:13; 4726:11,15;4748:5; 4762:22;4763:3,7,14, 23;4764:2,4,9,17,20, 22;4767:10;4768:9; 4777:6 <b>testing (1)</b> 4749:13 <b>tests (2)</b> 4766:14,18 <b>thankfully (1)</b> 4724:14 <b>theoretically (2)</b> 4698:8;4733:10 <b>therefore (5)</b> 4719:16;4726:8; 4733:6;4738:4; 4740:20 <b>third (4)</b> 4687:23;4719:20; 4752:7;4755:25 <b>third-party (1)</b> 4720:2 <b>Thomas (1)</b> 4716:18 <b>thought (4)</b> 4731:19;4765:8,14; 4773:6 <b>thousand (3)</b> 4752:23;4753:5; 4757:11 <b>thousands (1)</b> 4719:12 <b>three (9)</b> 4665:6;4682:19; 4693:19;4706:1; 4720:24;4721:1,16; 4735:7;4764:21 <b>thrilled (1)</b> 4715:9 <b>Throughout (2)</b> 4690:10;4718:24 <b>Timeframe (1)</b> 4776:20 <b>times (5)</b> 4691:9;4719:15; 4722:3;4733:5; 4742:20 <b>titles (1)</b> 4719:7 <b>today (22)</b> 4682:24;4685:9; 4686:18,20;4689:14, 23;4690:4,10;4702:11; 4703:22;4704:15; 4708:24;4709:5; 4715:6,10;4718:21; 4726:11,20;4741:25; 4755:10;4756:1; 4768:24 <b>together (2)</b> 4732:25;4734:4	<b>told (1)</b> 4684:2 <b>took (9)</b> 4682:15;4691:4; 4723:21,24;4725:3; 4748:5;4762:13; 4765:10,15 <b>top (5)</b> 4663:24;4679:14,15; 4689:4;4774:20 <b>total (3)</b> 4707:13;4753:21; 4772:1 <b>totally (1)</b> 4705:9 <b>toward (1)</b> 4667:16 <b>towers (1)</b> 4706:2 <b>transaction (1)</b> 4676:23 <b>transactions (1)</b> 4736:14 <b>transcript (2)</b> 4673:3;4697:6 <b>transcripts (2)</b> 4694:25;4779:15 <b>transitive (1)</b> 4712:5 <b>tremendously (2)</b> 4722:5;4741:2 <b>trends (1)</b> 4667:8 <b>trial (4)</b> 4694:21,24,25; 4780:20 <b>trophy (13)</b> 4665:23,25;4666:1, 5,10,12,16,21;4667:5; 4668:14,17;4669:20; 4670:7 <b>trouble (3)</b> 4700:9;4741:17,19 <b>true (9)</b> 4669:8;4730:13,16, 18;4758:10;4762:1,24; 4764:14;4766:5 <b>Trump (65)</b> 4706:17,17;4710:15; 4723:5,11;4724:1,4,7; 4725:1,6,20;4726:2,15; 4727:6,11;4728:4; 4736:10,17,18,20; 4737:6;4738:23; 4745:4,10,13,23; 4746:9;4747:8,9,14,16; 4750:7,9,11,19; 4752:10,11;4758:8,9; 4759:16;4760:1,6,13; 4761:3,6,11,16,24; 4762:4;4764:6,11; 4765:9;4766:21; 4767:5,16;4768:4,13;
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NYSCEF DOC NO. 1657  
 NYS Attorney General v.  
 Donald J. Trump, et. al

RECEIVED NYSCEF: 01/04/2024  
 November 17, 2023  
 November 17, 2023

4771:2,5;4772:20; 4773:2;4775:25; 4778:17,19;4779:7 <b>Trump's (7)</b> 4688:11;4692:17; 4696:2,21;4725:20; 4754:9;4756:10 <b>Trust (2)</b> 4776:10;4779:7 <b>truth (4)</b> 4711:25;4716:4,4,4 <b>try (5)</b> 4682:3;4721:18,23; 4731:19;4732:6 <b>trying (7)</b> 4669:2;4678:10; 4682:5,6;4734:21; 4757:20,22 <b>Tuesday (6)</b> 4780:3,4,7,8,10,15 <b>turn (1)</b> 4691:20 <b>two (21)</b> 4664:18;4668:18; 4674:11;4675:19; 4676:10;4681:7,8; 4697:9,11;4701:12; 4706:1;4717:21; 4729:6;4735:9;4740:7; 4752:16;4754:19; 4757:8;4759:3;4760:5; 4777:12 <b>type (6)</b> 4670:9;4725:5; 4735:15;4736:5; 4766:14,18 <b>types (1)</b> 4709:13 <b>typical (3)</b> 4664:8;4667:2; 4687:15 <b>typically (1)</b> 4666:12	20;4701:24;4704:11; 4706:23;4711:2; 4749:15;4752:3,19; 4753:12;4754:1,18; 4755:24;4757:9; 4758:2;4762:19; 4763:11;4770:23; 4772:20;4773:21; 4774:23;4775:20; 4777:7 <b>undergrad (1)</b> 4717:7 <b>underlying (2)</b> 4695:21;4696:1 <b>understands (2)</b> 4733:18;4740:18 <b>understood (2)</b> 4675:12;4728:15 <b>underwrite (7)</b> 4721:14;4729:13; 4732:7,8,10;4742:24; 4771:2 <b>underwriter (20)</b> 4720:10;4721:7; 4722:2,9,15,15; 4728:22,22;4731:1,3, 15;4733:23;4739:4; 4742:11;4743:9; 4748:10;4752:9; 4762:8,15;4767:6 <b>underwriters (4)</b> 4720:20;4729:14; 4738:11;4754:14 <b>underwriter's (1)</b> 4767:1 <b>underwrites (1)</b> 4743:10 <b>underwriting (47)</b> 4718:2;4720:5,22, 25;4721:5,14;4727:21, 22;4728:3,10,18,20; 4729:9,17;4731:17; 4732:12,21;4733:15; 4734:1,11;4737:13; 4738:5,12;4740:5,22; 4741:4;4742:4,12; 4743:21;4744:8; 4747:2,9;4748:5,9; 4749:4;4750:5; 4754:15;4755:2; 4756:6;4762:11; 4765:15;4768:17; 4770:5;4772:25; 4773:1,2;4779:19 <b>underwritten (1)</b> 4772:24 <b>underwrote (8)</b> 4727:11;4728:3; 4729:19;4736:10; 4737:7,9;4764:6,11 <b>unimproved (1)</b> 4707:19 <b>unique (6)</b>	4666:2;4719:17,23; 4720:21;4721:12,21 <b>United (1)</b> 4670:3 <b>unless (1)</b> 4778:13 <b>unpack (1)</b> 4705:5 <b>unusual (4)</b> 4736:22,24,25; 4739:3 <b>up (48)</b> 4663:12,16;4668:16, 20;4670:23;4671:2; 4672:5;4674:6;4677:4, 11,19;4678:2;4688:19; 4690:19;4696:15,25; 4697:11,24;4698:6,7; 4700:7;4707:9; 4708:13;4709:25; 4711:13;4712:21; 4713:6;4719:25; 4722:4;4732:17,21; 4742:11;4745:18; 4747:17;4753:21,21; 4755:19;4757:1; 4759:7,12;4762:3; 4764:16;4765:18; 4770:15,22;4771:18; 4773:23;4774:19 <b>updated (4)</b> 4755:2;4756:24; 4758:8;4780:17 <b>upon (5)</b> 4692:16;4698:13; 4701:12;4709:8; 4714:5 <b>USA (1)</b> 4756:1 <b>use (8)</b> 4670:17;4690:11; 4698:10;4704:19; 4721:23;4734:5; 4744:11;4766:3 <b>used (16)</b> 4669:11;4673:6,14; 4679:21;4687:2,7; 4690:13,14,18; 4701:24;4709:13; 4710:24;4711:2,22,23; 4712:18 <b>user (1)</b> 4722:20 <b>uses (2)</b> 4708:21;4709:9 <b>using (19)</b> 4689:2,9,10,13,21, 22;4690:6,12;4695:11; 4703:22;4704:14; 4710:17;4711:9,16,19; 4712:6,13;4755:10; 4772:4 <b>USPAP (1)</b>	4695:8 <b>usual (1)</b> 4739:3 <b>usually (2)</b> 4721:13;4735:9 <b>V</b> <b>vacant (2)</b> 4707:5,19 <b>valuating (1)</b> 4667:15 <b>valuation (9)</b> 4667:4,5;4668:18; 4693:22;4697:2; 4709:21;4710:18,25; 4711:2 <b>valuations (17)</b> 4669:20;4675:1; 4680:17;4692:17; 4693:23;4695:16,20; 4696:2,9,18,20; 4704:24;4709:13; 4767:1,4,15;4768:3 <b>value (79)</b> 4664:7,10,15; 4665:4;4671:12,13; 4673:8,20;4674:3,12, 15;4675:3,3,5,8,14,20, 21,25,25;4676:13,17, 17,21;4677:9,9,22; 4678:8,8,16,16;4680:4, 6,12,21,22;4681:4,5; 4687:2,3,3,7,11,12,14, 19,20,22;4688:1,24; 4689:2,13,14,20,25; 4690:1,7,11,19,22,22; 4691:1,7,7;4697:15; 4699:17;4703:21; 4704:14;4707:19; 4709:13;4710:16,22; 4711:5;4712:2,22,22; 4740:17;4772:2,8 <b>valued (1)</b> 4709:15 <b>values (20)</b> 4664:13;4679:22; 4693:2,4,24;4709:10, 18,19,20,20,24;4711:9, 17,19,20,21,24;4712:7, 14,18 <b>valuing (2)</b> 4685:3,7 <b>various (6)</b> 4668:21;4674:20; 4704:18;4709:10; 4710:17,25 <b>vary (2)</b> 4667:5,23 <b>vehicle (1)</b> 4720:1 <b>vehicles (1)</b> 4741:7	<b>versus (6)</b> 4668:17;4678:8,16; 4722:4;4743:7;4773:1 <b>viable (1)</b> 4778:14 <b>vice (1)</b> 4718:11 <b>video (1)</b> 4691:14 <b>view (8)</b> 4669:8;4764:4,9,23; 4765:2;4766:6,13,17 <b>views (1)</b> 4721:21 <b>violated (1)</b> 4694:9 <b>voir (2)</b> 4730:1,5 <b>W</b> <b>wait (2)</b> 4678:12;4770:2 <b>waiting (1)</b> 4673:1 <b>Wakefield (4)</b> 4702:17;4711:19,23; 4772:4 <b>walk (1)</b> 4747:5 <b>Wall (22)</b> 4663:22;4688:7; 4693:9,11,21;4694:22; 4695:12,18;4696:3,23; 4702:3,10,15,21,25; 4703:8,10,15;4704:14; 4706:12,15,18 <b>Wallace (2)</b> 4697:5,8 <b>wants (5)</b> 4668:13;4734:3; 4747:3;4757:19; 4775:2 <b>wash (1)</b> 4704:20 <b>waste (1)</b> 4668:7 <b>Watergate (1)</b> 4714:17 <b>way (11)</b> 4679:9,15;4709:12; 4720:6;4726:19; 4741:21;4744:12; 4747:16;4751:11; 4759:6;4771:22 <b>wealthiest (1)</b> 4754:10 <b>wedding (1)</b> 4715:6 <b>week (2)</b> 4703:21;4740:20 <b>weekend (1)</b> 4780:19
---	---	---	--	---

NYSCEF DOC NO. 1657  
NYS Attorney General v.  
Donald J. Trump, et. alRECEIVED NYSCEF: 01/04/2024  
November 17, 2023  
November 17, 2023

<b>weight (1)</b> 4668:12 <b>weren't (1)</b> 4668:23 <b>what's (1)</b> 4749:7 <b>Whereupon (47)</b> 4663:14,18;4665:20; 4667:18;4671:4,9; 4672:7;4674:8;4677:6, 14;4679:4,7,10; 4688:16;4691:14; 4707:10;4708:15; 4710:2,11;4713:4,8,12; 4714:3,5,24;4715:22, 24;4747:18;4750:25; 4752:1,5,17,21; 4753:10,24;4754:5,20; 4755:14,20;4756:17; 4757:4,25;4759:13; 4764:18;4765:20; 4767:12;4780:20 <b>Wherever (1)</b> 4689:9 <b>whole (7)</b> 4673:3;4716:4; 4718:15;4748:16; 4767:23;4768:1; 4780:15 <b>whose (1)</b> 4680:6 <b>wife (1)</b> 4715:9 <b>willing (3)</b> 4675:7,10;4676:21 <b>Willis (6)</b> 4718:10,14,20; 4730:7,19,21 <b>wind (1)</b> 4725:15 <b>wise (1)</b> 4743:8 <b>witchcraft (3)</b> 4766:4;4768:18; 4770:6 <b>withdraw (3)</b> 4678:23;4684:3; 4767:2 <b>Withdrawn (7)</b> 4669:18;4675:22; 4679:15;4693:3; 4700:25;4725:18; 4744:6 <b>within (4)</b> 4695:19;4713:25; 4722:7;4774:1 <b>without (4)</b> 4668:5;4740:16; 4741:1;4756:23 <b>witness (84)</b> 4663:2,2;4667:7; 4668:13,19,24; 4672:10,23;4674:10;	4678:7;4681:13; 4682:7,22;4689:12,15, 17;4704:1,11;4705:11; 4710:6;4714:3,4,9,10; 4715:4,6,11,17,20,22, 23,24,24;4716:2,5,11, 14,17,20;4727:18; 4728:10,17,20;4729:2, 4,10;4731:14,17,22; 4732:2,6,11;4733:4,23; 4734:17,22,23,25; 4737:20,22;4747:24; 4749:25;4750:3; 4751:21;4754:3; 4755:22,23;4757:6,7; 4759:6;4761:20,23; 4762:3;4769:3,5,8; 4770:2,20;4777:8; 4778:12;4779:10,24, 25;4780:5 <b>witnesses (1)</b> 4678:18 <b>witness's (5)</b> 4672:6;4674:7; 4713:18;4775:16; 4777:6 <b>woman (1)</b> 4763:19 <b>word (2)</b> 4680:11;4719:1 <b>wording (5)</b> 4669:11;4673:6,22, 24;4682:4 <b>words (2)</b> 4669:10;4719:2 <b>work (12)</b> 4669:22;4697:23; 4717:14;4718:13; 4725:1,8;4728:14; 4729:5;4733:24; 4735:12,15;4762:2 <b>worked (12)</b> 4666:19;4669:22; 4670:12;4705:2; 4717:18,25;4718:16; 4728:23;4729:8,20; 4730:7,21 <b>Workers' (1)</b> 4724:10 <b>working (9)</b> 4666:15;4709:22; 4731:16;4733:24; 4740:7,10,15,23; 4749:18 <b>works (1)</b> 4732:16 <b>world (15)</b> 4666:15;4670:11,17, 19;4675:8;4680:16; 4682:1;4711:20; 4718:18,24,24; 4719:16,18;4720:2; 4732:13	<b>Worldwide (2)</b> 4760:2;4761:7 <b>worries (1)</b> 4759:9 <b>worth (6)</b> 4666:23;4741:3; 4749:15,16,17;4754:9 <b>wrapped (1)</b> 4762:3 <b>write (2)</b> 4745:9;4766:9 <b>writer (1)</b> 4717:18 <b>writing (3)</b> 4748:15;4756:23; 4776:13 <b>written (1)</b> 4755:6 <b>wrong (4)</b> 4682:14;4692:12; 4745:17;4762:2 <b>wrote (4)</b> 4711:8;4747:22; 4750:11;4779:16 <b>Y</b> <b>year (19)</b> 4672:1,14;4691:4; 4699:9,17;4700:15,15, 17;4701:2,6;4708:2; 4723:4;4726:18,18; 4748:24,25;4750:16, 17;4756:12 <b>years (21)</b> 4666:19,22;4667:13, 15;4695:6;4703:5; 4717:21;4718:11,11; 4723:4;4729:6; 4734:25;4737:11,11; 4748:11,23;4749:12; 4758:10;4759:7; 4765:25;4776:7 <b>yesterday (16)</b> 4663:20;4664:10,19; 4678:17;4684:21; 4689:14,23;4690:2,12, 13;4692:4;4697:11; 4698:22;4701:23; 4704:11;4709:5 <b>York (12)</b> 4670:3,8;4729:19; 4730:8,18;4735:12; 4755:7;4773:14,14,18; 4774:23;4775:20 <b>Z</b> <b>zip (1)</b> 4716:19 <b>zoom (2)</b> 4751:24;4754:18 <b>Zurich (54)</b>	4727:3,6,11;4728:3; 4733:8;4736:10,15; 4737:7;4738:24; 4739:6,9,13,17;4742:5; 4745:4,7,9,12,20; 4746:9;4747:7,9,14; 4748:14;4749:4,22,25; 4750:6,10,11,19; 4751:7;4753:20; 4756:9,23;4757:13; 4758:7;4762:7,9; 4763:19;4764:6,11; 4766:2,7,14,18;4767:5, 7;4768:5;4771:1,5; 4772:19,20;4773:1 <b>Zurich's (8)</b> 4739:19;4766:25,25; 4767:3,14;4768:2,17; 4770:5 <b>0</b> <b>05 (1)</b> 4745:7 <b>06 (1)</b> 4745:7 <b>07 (1)</b> 4745:7 <b>08 (1)</b> 4745:8 <b>09 (1)</b> 4745:8 <b>1</b> <b>1 (3)</b> 4692:6,22;4770:23 <b>1,500,000 (1)</b> 4707:13 <b>1.2 (1)</b> 4761:15 <b>1:00 (1)</b> 4751:18 <b>10 (1)</b> 4761:12 <b>10:00 (1)</b> 4780:21 <b>100 (2)</b> 4743:12;4760:2 <b>11- (1)</b> 4745:5 <b>11:30 (2)</b> 4712:25;4713:15 <b>118 (1)</b> 4663:13 <b>12 (5)</b> 4700:23;4740:13; 4741:18,21;4743:3 <b>128 (2)</b> 4754:10;4767:11 <b>12th (1)</b> 4725:24 <b>13 (1)</b>	4770:21 <b>14 (2)</b> 4741:12;4745:16 <b>1434 (1)</b> 4770:18 <b>15 (6)</b> 4678:15;4700:22; 4741:12;4745:16; 4751:14;4761:14 <b>15,426,000 (1)</b> 4700:21 <b>15.4 (2)</b> 4701:8,14 <b>155 (1)</b> 4700:8 <b>1552 (1)</b> 4771:19 <b>1558 (1)</b> 4714:13 <b>15-minute (1)</b> 4714:5 <b>15th (1)</b> 4686:15 <b>16 (1)</b> 4691:13 <b>161 (1)</b> 4700:7 <b>162 (1)</b> 4663:13 <b>17 (1)</b> 4723:21 <b>171 (1)</b> 4697:3 <b>176 (1)</b> 4697:3 <b>18 (3)</b> 4723:21;4776:21,24 <b>18.3 (3)</b> 4699:7;4701:3,16 <b>1968 (1)</b> 4714:14 <b>1973 (1)</b> 4714:17 <b>1980 (4)</b> 4717:23;4718:7,9,10 <b>1985 (2)</b> 4759:12,24 <b>2</b> <b>2 (6)</b> 4692:6,23;4694:24; 4753:16,21;4770:23 <b>20 (7)</b> 4703:4;4713:16,25; 4718:11;4758:12; 4761:12;4780:21 <b>2003 (1)</b> 4714:19 <b>2008 (1)</b> 4698:16 <b>2009 (4)</b> 4748:18,19;4749:5;
---	--	--	--	--

NYS Attorney General v.  
Donald J. Trump, et. al

November 17, 2023  
November 17, 2023

4751:3 <b>2010 (2)</b> 4750:24;4751:8 <b>2011 (5)</b> 4693:12;4745:15; 4752:9;4756:10; 4762:8 <b>2012 (17)</b> 4693:14;4697:2,12, 15;4698:24;4699:2; 4700:5,20;4701:5,9,14, 18,24;4704:9,11; 4708:4,13 <b>2015 (29)</b> 4663:22;4693:16; 4697:2,13,15,21; 4699:8,9,21;4700:6; 4701:5,6,10,20;4702:5, 11,16,20,25;4703:2; 4704:10,10,13;4706:4, 8,14;4708:14,21; 4757:13 <b>2016 (7)</b> 4700:14,15,20; 4701:2,6,10;4758:4 <b>2017 (3)</b> 4762:9,12,16 <b>2018 (1)</b> 4765:22 <b>2019 (3)</b> 4748:6,8;4776:14 <b>2020 (2)</b> 4748:8;4762:16 <b>2021 (4)</b> 4762:19,22;4763:11, 14 <b>2022 (1)</b> 4761:15 <b>2023 (8)</b> 4672:2;4703:4,5; 4762:20,22;4763:12, 15,22 <b>2032 (1)</b> 4707:14 <b>2033 (2)</b> 4707:1,17 <b>21 (7)</b> 4671:8,11;4678:23; 4681:18;4684:2; 4713:7;4723:23 <b>22 (1)</b> 4677:8 <b>23,203,919 (1)</b> 4697:25 <b>23.2 (1)</b> 4699:21 <b>24 (1)</b> 4743:3 <b>24-month (1)</b> 4741:18 <b>25 (1)</b> 4764:17 <b>2665 (2)</b>	4688:13,17 <b>274 (6)</b> 4680:19,21;4681:14, 18;4685:6,7 <b>28th (1)</b> 4780:14 <b>29 (1)</b> 4671:1 <b>29th (1)</b> 4780:14  <b>3</b>  <b>3 (5)</b> 4686:10;4692:8,12, 23;4694:4 <b>3.2 (1)</b> 4754:9 <b>30 (5)</b> 4667:13,15;4695:6; 4733:5;4742:19 <b>30s (1)</b> 4719:19 <b>30th (1)</b> 4706:3 <b>32 (1)</b> 4696:15 <b>33418 (1)</b> 4716:20 <b>37 (1)</b> 4714:7  <b>4</b>  <b>40 (23)</b> 4663:22;4688:6; 4693:9,11,21;4694:22; 4695:12,18;4696:3,23; 4702:3,10,15,21,25; 4703:8,10,15;4704:14; 4706:12,15,18;4742:19 <b>400 (2)</b> 4754:10;4773:2 <b>43 (3)</b> 4716:17;4747:17,25 <b>44 (1)</b> 4750:24 <b>441 (1)</b> 4664:25 <b>45 (1)</b> 4753:23 <b>452 (2)</b> 4679:3,12 <b>48 (1)</b> 4755:19  <b>5</b>  <b>5/23/2016 (1)</b> 4757:9 <b>50 (6)</b> 4665:13,14;4666:19, 22;4734:25;4742:20	<b>500,000 (2)</b> 4753:15,21 <b>51 (1)</b> 4757:2 <b>54 (1)</b> 4686:13  <b>6</b>  <b>6 (1)</b> 4725:12 <b>604 (1)</b> 4665:17 <b>686 (2)</b> 4665:4,17  <b>7</b>  <b>76 (1)</b> 4707:9 <b>77 (1)</b> 4706:3 <b>773 (1)</b> 4765:18  <b>8</b>  <b>8 (1)</b> 4776:14 <b>8/8/2016 (1)</b> 4758:3 <b>80 (2)</b> 4665:15;4706:13 <b>810,000 (1)</b> 4708:22 <b>85 (2)</b> 4708:7,14 <b>89 (1)</b> 4764:17 <b>8th (1)</b> 4758:4  <b>9</b>  <b>90 (4)</b> 4672:6;4677:4; 4691:12,13 <b>900,000 (5)</b> 4707:5,21,23; 4708:6,18 <b>900-square (1)</b> 4707:20 <b>90s (1)</b> 4724:5 <b>94 (1)</b> 4764:17 <b>95 (2)</b> 4698:15,16 <b>98 (2)</b> 4706:4;4708:14 <b>9th (2)</b> 4672:2;4725:24		
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