

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - CHANCERY DIVISION

5 MICHAEL S. CLARK, et al.,)
)
6 Plaintiffs,)
)
7 vs.) No. 2018 CH 15777
)
8 STEPHEN ALPERT, et al.,)
)
9 Defendants,)
)
10 and)
)
11 THE AMERICAN ACADEMY OF)
)
12 ACTUARIES,)
)
13 Nominal Defendant.)

14 REPORT OF PROCEEDINGS had at the hearing of the
15 above-entitled cause, before the Honorable MICHAEL T.
16 MULLEN, Judge of said court, via Zoom on Thursday, the 4th
17 day of March, 2021, at the hour of approximately
18 2:00 o'clock p.m.

19 PRESENT VIA ZOOM:

20 DINSMORE & SHOHL, LLP.,
21 BY: MR. ALEXANDER WRIGHT,
22 On behalf of the Plaintiffs;

23 NOVACK & MACEY, LLP.,
24 BY: MR. STEPHEN J. SIEGEL,
On behalf of the Defendants,



1 PRESENT VIA ZOOM: (Cont'd)

2 HOGAN LOVELS, US, LLP.,
3 BY: MR. WILLIAM MONTS,

4 On behalf of the nominal Defendant.

5 ALSO PRESENT VIA ZOOM:

6 Mary Downs, Executive Director of the
7 American Academy of Actuaries.

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Laurel E. Laudien, RMR, RPR, CSR #084-001871
Certified Shorthand Reporter



1 THE COURT: It appears that everybody is here.

2 And do we have a Court Reporter this afternoon?

3 If the Reporter would identify herself.

4 THE REPORTER: My name is Laurel Laudien.

5 I am a Court Reporter with Worldwide Litigation
6 Services.

7 THE COURT: Good afternoon, Miss Laudien.

8 So this matter clearly is proceeding via Zoom,
9 and sometimes there are logistical challenges like every
10 single day. So if you do not hear what I say, if you do
11 not hear what Counsel says, ask me, ask Counsel to repeat
12 themselves, and I will do that. I will make sure Counsel
13 does that.

14 It is our goal to have an accurate
15 transcription of our proceedings.

16 And you understand that, correct, Miss Laudien?

17 THE REPORTER: Yes.

18 THE COURT: All right. Thank you.

19 And I will not consider you rude for doing what
20 I'm telling you to do.

21 So this is Clark v. Albert. If everyone would
22 identify themselves as well as who they represent
23 starting with Plaintiffs' Counsel.

24 MR. WRIGHT: Good afternoon, your Honor.



1 Alexander Wright on behalf of the Plaintiffs.

2 THE COURT: Mr. Wright, good afternoon.

3 MR. SIEGEL: Well, hearing no other Counsel for the
4 Plaintiffs, I'll introduce myself.

5 I'm Stephen Siegel of Novack and Macey, one of
6 the Counsel for the Defendants.

7 THE COURT: Good afternoon, Mr. Siegel.

8 MR. SIEGEL: Good afternoon, your Honor.

9 THE COURT: So the matter is before me on
10 cross-motions for summary judgment.

11 Before we get to any argument on the motions, I
12 do have some housekeeping matters to attend to.

13 One of the Plaintiffs is Lawrence McCarthy, and
14 I believe based upon my reading, Mr. Wright, you are
15 seeking to dismiss him as one of your clients, is that
16 correct?

17 MR. WRIGHT: That is correct, your Honor.

18 THE COURT: All right. And, Mr. Siegel, you have no
19 objection to that?

20 MR. SIEGEL: We have no objection.

21 THE COURT: All right. Mr. McCarthy is no longer
22 part of the Plaintiffs' case.

23 At my request, I had been provided with a copy
24 of the bylaws of the American Academy of Actuaries with



1 the bylaws as they appeared prior to September 4th, 2018.
2 I have that, I requested that, and it's been provided to
3 me, as well as a redline version if you will --

4 THE REPORTER: I'm sorry, Judge. You're cutting in
5 and out.

6 THE COURT: Okay. Well, I'm sorry about that.

7 You're doing exactly what I told you to do, so
8 thank you for that.

9 The attorneys had provided me with a copy, a
10 redline copy of the bylaws as they are presently and as
11 they have been altered by the amendment which brings us
12 together on September 4th, 2018.

13 So, Mr. Wright, is there any objection to
14 having either the precursor of September 4th, 2018 of
15 record or the redline version of record?

16 MR. WRIGHT: No, Judge.

17 THE COURT: Okay. So there's no issue as to
18 authenticity. I just want to make that clear because I
19 have reviewed these things. I think they are important
20 to have a complete record, so they will be filed.

21 And, Mr. Siegel, if you could take care of that
22 as you provided them to me, and specifically, these were
23 Exhibits A and C. B was the current, which is already of
24 record. That was attached to one of the submissions, I



1 believe of the Plaintiff.

2 So I have reviewed the contents of the
3 Complaint, I have reviewed all of the submissions that
4 have been provided by the parties including the bylaws,
5 as well as all attachments, and I have reviewed all of
6 the cases that have been cited by the parties as well as
7 some cases that I will talk about during my ruling this
8 afternoon.

9 So, Mr. Wright, as Plaintiff, you may argue.

10 MR. WRIGHT: Thank you, Judge, and thank you for
11 taking the time to review the briefs and for allowing us
12 to present our positions today.

13 Although the record before you is somewhat
14 voluminous, I think the issues are reasonably straight
15 forward and I think both sides have done a good job at
16 putting the issues before the Court.

17 I shall try to be brief today.

18 THE COURT: We're not in a hurry. I recognize it's
19 a significant case for all parties involved, so you take
20 your time, highlight any arguments.

21 As I said, we have other places to be at the
22 end of the day.

23 MR. WRIGHT: Understood. I appreciate that, your
24 Honor.



1 The core of this case is the issue of whether
2 the Board of the Academy violated its bylaws that
3 controlled the conduct of the Board by unilaterally
4 amending the bylaws without a member vote to remove
5 members from the selection committee. The express
6 language of the bylaws permit the Board to make
7 administrative, editorial, and technical amendments to
8 the bylaws, but only if those amendments do not include
9 questions of policy or affect the substantive rights of
10 members.

11 In this case, by removing two fifths of the
12 selection committee based on concerns of competing
13 interests, the Board's actions were not merely
14 administrative, editorial, or technical, undoubtedly
15 concerned questions of policy; therefore, in accordance
16 with the duly-enacted bylaws, the Board was required to
17 submit the challenged amendment to a member vote. There
18 is no dispute that that did not happen.

19 Accordingly, the Plaintiffs seek a declaration
20 from this Court that in accordance with the duly-enacted
21 bylaws, changes to the selection committee composition
22 must be submitted to the members and that the challenged
23 amendment is void.

24 And just for the Court's clarification, I think



1 it's clear that when I say the challenged amendment, I'm
2 referring to the amendment as defined as the challenged
3 amendment in the briefing.

4 Substantively, there is little question that
5 the challenged amendment is outside of the Board's
6 authority to make unilateral amendments. The record
7 demonstrates the motion behind the challenged amendment
8 concerns, among other things, differing political and
9 policy goals between the CCA and the AAA and the COPA.
10 In fact, the Defendants admit the driver behind the
11 change was a concern about the independence and the
12 objectivity of the ASB and the ABCD.

13 Similarly, given its common understanding, the
14 amendment cannot be viewed as merely administrative. In
15 fact, in their Answer, the Defendants admit that the
16 change was necessary and/or essential to the functioning
17 of the selection committee, thus, indicating that the
18 amendment either did or was intended to change the very
19 function of the committee. That is not what an
20 administrative change would be.

21 In this case, rather than focusing on the
22 process, the Defendants have dedicated a majority of
23 their resources to attacking the Plaintiffs, the
24 Plaintiffs' motives, and the outcome of the challenged



1 amendment, essentially arguing that there has been no
2 harm, no foul. It's our position that those positions
3 fail.

4 First, there is no evidence we believe in the
5 record that would support a holding that the Plaintiffs
6 bringing this action, the motivations run contrary to the
7 interest of the Association. At best, the Defendants
8 argue that the litigation was funded by the CCA and the
9 Plaintiffs were upset about the course of action taken by
10 the Board.

11 Of course, this is the natural consequence of
12 the Board taking action outside of its own authority and
13 I argue would be consistent with an aggrieved party
14 concerned enough about an action to pursue a derivative
15 lawsuit in the first place.

16 As to the CCA funding, the issue is immaterial
17 to the resolution of this case in our opinion, in
18 contrast to the authority, specifically the Caufield case
19 provided by the Defendants. Even if we were to assume
20 the CCA were to derive a benefit from the requested
21 relief sought herein, if the Court were to grant that,
22 there is no indication that that would be a detriment of
23 the AAA.

24 I know the Court is concerned or has an



1 interest in hearing argument on the damages issue here,
2 and again, as we have reiterated, and iterated in our
3 prior arguments, it is Plaintiffs' position that there is
4 no burden to prove an injury in this action seeing as we
5 are seeking declaratory relief.

6 Thus far, there's been no cases provided that
7 by virtue of this action being a derivative action, the
8 declaratory, the law concerning declaratory relief would
9 be changed, but even if this Court were to find that
10 damages were required, the AAA was damaged by the Board's
11 failure to follow its own bylaws.

12 The bylaws -- excuse me, your Honor. I
13 apologize.

14 The bylaws of an association are the contract
15 that governs how the association works, and in this case
16 the actually enacted bylaws provided for a specific
17 composition of the selection committee, and by the action
18 taken by the Board without member approval, the selection
19 committee no longer functions as the representative body
20 that it was intended to function as.

21 We believe that the undisputed evidence shows
22 that the Board failed to follow its own bylaws in
23 enacting the challenged amendment without member approval
24 and the Defendants' attempt to attack the Plaintiffs and



1 their motivations simply don't overcome that.

2 So we request that the Court grant our relief
3 as requested in the Complaint and as requested in our
4 motion for summary judgment.

5 THE COURT: Thank you, Mr. Wright.

6 Mr. Siegel.

7 MR. SIEGEL: Thank you, your Honor.

8 And I want to, first of all, thank you for
9 hearing us today and for your attention to the papers.

10 I want to mention that I'll be arguing a couple
11 of the grounds today, and with me, joined with me will be
12 Mr. Tripp Monts, Lead Counsel with Hogan Lovells. He'll
13 be arguing the merits argument, and I also want to point
14 out that the Executive Director, Mary Downs, is with us
15 again for this hearing. She's the Executive Director of
16 the American Academy of Actuaries.

17 Obviously we represent the Defendants, and that
18 encompasses both the nominal Defendant, the Academy,
19 which is an Illinois not-for-profit corporation. It's a
20 membership organization that speaks for American
21 actuaries on professionalism issues, public policy
22 issues, and it sets standards for the profession.

23 In addition, of course, we represent 24
24 individuals who are current or former members of the



1 Academy Board.

2 Now prior to summary judgment, as you know and
3 can see from the extensive records, the parties took
4 extensive written discovery. They exchanged document
5 requests, produced documents, exchanged interrogatories,
6 answered those, exchanged requests to admit, answered
7 those; and at the Court's suggestion on the hearing on
8 the second motion to dismiss, the Motion to Dismiss the
9 Amended Derivative Complaint, the parties after that
10 agreed to proceed to summary judgment without
11 depositions, and they did so because the material facts
12 simply are not in dispute.

13 And I'm going to mention from the Travelers
14 Property Casualty Case that we cited to, it's Travelers
15 Properties Casualty Company versus ArcelorMittal, USA.
16 It's 2019 Illinois. App. First District case 180129, and
17 that case observed that, "When the parties file
18 cross-motions for summary judgment on the same issue,
19 they typically agree that only a question of law is
20 involved and invite the Court to decide the case based on
21 the record before it," and I think that's the case here.

22 Here we would say there are undisputed facts
23 that support three independent grounds for entering
24 summary judgment as a matter of law for the Defendants.



1 First, that the named Plaintiffs, because of
2 clear conflicts of interest, are not adequate derivative
3 representatives of the Academy and the Academy members
4 generally.

5 And second, there is no derivative cause of
6 action here. We're almost two and a half years after the
7 Board passed the challenged amendment. In fact, I
8 believe today would be two and a half years exactly from
9 the date of the challenged amendment; and there's no
10 evidence in the record of an actual injury to the Academy
11 from the manner of adopting the amendment by a Board vote
12 without a member vote, or even from the substance of the
13 amendment, and there's no evidence of threatened injury
14 either.

15 And then third, the third independent ground is
16 that on the merits, the challenged amendment is exactly
17 the kind of amendment that the Article 15 of the bylaws
18 which governs amendments expressly permits the Board to
19 make without a member vote. It's administrative, it does
20 not involve a question of policy, and it does not affect
21 substantive rights of members.

22 Now I'm going to be arguing that and explaining
23 briefly the legal standard that applies. I know your
24 Honor is familiar with it, but I did want to point out a



1 couple things about it, and then I will be discussing the
2 inadequate representative ground, and the no injury, no
3 derivative cause of action ground, and then leaving
4 Mr. Monts to discuss the merits, and, of course, taking
5 questions at any time that it's helpful.

6 Basically we have a legal dispute here. You
7 know, the disputed facts are not there. There's
8 certainly nothing that creates a genuine issue of
9 material fact. That's, you know, that's fairly clear.

10 The standard that applies in this circumstance
11 differs on the Plaintiffs' motion and on the Defendants'
12 motion. On the Plaintiffs' motion they have to prove up
13 their case and establish all the elements of their cause
14 of action.

15 On the Defendants' motion, we're entitled to
16 summary judgment if we show that any one element of the
17 Plaintiffs' claim either must be resolved in the
18 Defendant's favor or there's an absence of evidence to
19 support the Plaintiffs' claim on that essential element;
20 and here we would contend that on all three separate
21 grounds, all of them must be resolved in the Defendants'
22 favor, and in addition, there's an absence of evidence to
23 support the Plaintiffs' claim on the essential element of
24 injury to the Academy that would be needed to support a



1 derivative claim.

2 Now if we prevail with you on any one of those
3 grounds, then summary judgment needs to be entered for
4 the Defendant. On the other hand, the Plaintiffs have to
5 prevail on all three grounds in order to be entitled to
6 summary judgment.

7 On the first ground, you know, obviously we
8 have shown in the papers our position that the named
9 Plaintiffs do not constitute adequate representatives of
10 the Academy members generally. The undisputed evidence
11 we believe shows that the main Plaintiffs cannot
12 represent the Academy and its members because they are
13 suing as proxies for the Conference of Consulting
14 Actuaries, what's referred to as the CCA.

15 In fact, the named Plaintiffs' agreement to
16 bring suit to advance the CCA's interests simply runs
17 contrary to the fiduciary duty that they owe as
18 representative Plaintiffs to the Academy. Illinois law
19 says that named Plaintiffs must be "qualified to serve in
20 a fiduciary capacity as a representative of the
21 derivative Plaintiff whose interest is dependent on the
22 representative's adequate and fair prosecution of the
23 action." That's from Caufield versus Packerview.

24 Caufield goes on to say that derivative



1 plaintiffs cannot serve as corporate fiduciaries when,
2 "there is a conflict between their interests and the
3 interests of the parties they would represent."

4 Caufield identifies eight factors to consider
5 in analyzing whether there is a conflict and whether they
6 can be adequate representatives, and it says that a
7 combination can be a grounds to find inadequate
8 representation or a strong showing of even one is
9 sufficient if it shows a conflict of interest between the
10 named Plaintiffs and the entity.

11 And here, the seven remaining named Plaintiffs
12 we would say fail at least four factors of those eight
13 that are pertinent here and show that the conflict of
14 interest they have is fatal.

15 First, the factor, you know, the first factor
16 we would discuss is No. 3, and that is indications that
17 the named Plaintiffs are not the driving force behind the
18 litigation, and frankly, there are many of these.

19 I think the indications are that the CCA and
20 the named Plaintiffs' loyalty to the CCA is the driving
21 force behind the litigation, and I will just tick off
22 some of what the evidence shows.

23 First of all, all seven named Plaintiffs that
24 remain are current or former presidents of the CCA. They



1 are the leadership of the CCA, current and in the past.

2 At least six of those named Plaintiffs
3 contracted in writing with the CCA soon after the
4 challenged amendment was passed in litigation funding
5 agreements that are dated in October of 2018, one of them
6 I think in the beginning of November of 2018, before suit
7 was even brought, to bring suit "in pursuit of injunctive
8 relief to restore the CCA's position on the Academy's
9 selection committee."

10 And those funding agreements are in Defendants'
11 Exhibits 11A through F, and the quotes and the points I
12 have cited are from Paragraphs 1 and 2 of that.

13 This is not simply a question of motive. It's
14 evidence of actual contractual obligations. The CCA is,
15 in fact, paying the named Plaintiffs' costs and
16 attorney's fees. The evidence of that is cited in
17 Defendants' Exhibit 2, Item No. 30, Response to Request
18 to Admit.

19 In addition, the current president of the CCA,
20 Plaintiff, Marla Sarli, has called this suit "CCA's
21 action to force the Academy to abide by its bylaws and
22 put throwing CCA off the ASB," meaning the Actuarial
23 Standards Board, "throwing CCA off the ASB selection
24 committee to a member vote," and that's in Defendant's



1 Exhibit 1, the Amended Derivative Complaint, and it's in
2 their own Exhibit 6 thereto.

3 And then last of the items that I'll mention is
4 that the CCA's 990s which are, you know, filed with the
5 federal government under penalty of perjury, those 990s
6 for both the years 2018 and 2019 each say in Schedule O
7 that this lawsuit "was brought on behalf of the members
8 of the CCA against another professional association,
9 against the Academy," and that's in Defendants' Exhibits
10 12 and 13, Schedule O which is the last page of each of
11 those exhibits, you will see that, the words coming
12 straight from the CCA itself.

13 I think it's very clear that the CCA is the
14 driving force behind the case, and the contention that,
15 well, perhaps both the CCA and the Academy would benefit
16 solves this problem, it does not.

17 First of all, it just confirms that there is a
18 conflict. At best, the named Plaintiffs are trying to be
19 dual agents here, and they can't be, particularly where
20 their agency for the CCA is undertaken through an
21 expressed contractual commitment to achieve its goals
22 through derivative litigation purportedly brought on
23 behalf of the Academy.

24 So, you know, the Court here depends on an



1 adversarial system. We depend on the parties to bring
2 before you the legal arguments, the factual record, the
3 positions, the reasoning, to help you decide. You
4 obviously, you're going to do your own research, it
5 sounds like you have, but you depend on us to put the
6 issue before you factually and legally.

7 And here, because of conflicts, and this is no
8 aspersion on Counsel or anything, but because of
9 conflicts, the Court can't rely on reasoning Plaintiffs
10 to have developed positions that are for the best
11 interests of the academy because of their conflicts, and
12 their loyalties, and contractual obligations to CCA.

13 So the Plaintiffs have direct conflict. We
14 think that's based in contract. It's insoluble. We
15 think it's dispositive.

16 I'll briefly address three other factors.
17 Factor three, relative magnitude of the Plaintiffs'
18 personal interests compared to their interests in the
19 derivative litigation. Here, they have an express
20 contractual duty to the CCA based in contract, you know,
21 compared to the fact that they have membership in the
22 Academy. It seems that their contractual obligations to
23 the CCA could very readily and would outweigh simply
24 being members in the Academy.



1 Next factor, No. 8, the degree of support that
2 the Plaintiffs received from the entity or persons they
3 purport to represent. The Academy is a membership
4 organization, as I mentioned. It has nearly 20,000
5 members. This is not a closely-held company.

6 The cases that they cite where it said that,
7 hey, you can even have one, you know, minority
8 shareholder be a derivative Plaintiff, and of course
9 that's true, but those are all closely-held company cases
10 where there were like five, you know, five shareholders,
11 and one of them, you know, was opposing the others and
12 bringing a claim on behalf of the entity.

13 Here we have a membership organization, and the
14 Court should consider that besides the seven named
15 Plaintiffs, the record shows only seven other actuaries
16 who are members from almost the 20,000 who disapproved of
17 the challenged amendment. We acknowledged that, and it's
18 in our Defendants' Exhibit No. 16 at Page 2.

19 And then the last factor I will discuss is the
20 remedy sought in the derivative action, and this is a
21 significant one. The Plaintiffs contracted with the CCA
22 to seek a remedy for the CCA. I quoted that from
23 Defendants' Exhibit 11.

24 The Amended Complaint, and you can see in the



1 redline, it seeks to restore the bylaws to where they
2 stood on September 3rd, 2018, the day before the
3 challenged amendment, and under that reversal that they
4 seek, instead of listing the three organizations that
5 would have representation on the selection committee by
6 name as you can see in the redline, Articles 10 and 11,
7 Section 2B of the bylaws would be reverted, restored to
8 simply listing that the members who are on the selection
9 committee are the president and president elect of the
10 "participating organizations."

11 So the effect that they seek is to restore
12 bylaws that restore the CCA to having its president and
13 president elect back on the selection committee, so the
14 relief they seek is really relief for the CCA, on the
15 other hand, and really it's against the Academy. It's to
16 require the Academy to undo steps that it's taken. It
17 diminishes the Academy's goal on the selection committee.
18 It would revert it down from having a one-third vote
19 essentially through its president, president elect on the
20 selection committee back to a one-fifth vote, so it would
21 actually diminish the Academy's role, and there's really
22 no clear benefit to the Academy if the named Plaintiffs
23 prevail.

24 And certainly if your Honor were to enter



1 judgment for Plaintiff, for the named Plaintiffs, it
2 would be make it a lot harder to have the Board approve,
3 and pass, and adopt administrative amendments that it may
4 see and may view as necessary to the administration of
5 the organization.

6 So in sum on this point, you know, we kind of
7 go back to Caufield which cited Emerald Partners.
8 Emerald Partners was the Delaware case that Caufield
9 looked to, and Emerald Partners explains that the
10 touchstone of all this inquiry is whether the Defendants
11 show that it's very likely the derivative action was not
12 being maintained for the benefit of the shareholders, and
13 I think that's exactly the case here.

14 The Plaintiffs have at all times agreed under
15 contracts with the CCA to serve the CCA "against the
16 Academy" as the CCA put in its 990s. The case is brought
17 primarily for the benefit not of the Academy, but of the
18 CCA, and therefore, the named Plaintiffs can't be
19 fiduciaries of the Academy. They can't fairly and
20 adequately represent the Academy, and on this independent
21 ground, we say the summary judgment should be entered for
22 the Defendants.

23 According to the second of the three grounds,
24 and I will only discuss this briefly, Illinois law



1 provides that, you know, by filing a suit for declaratory
2 judgment, I'm quoting here from McDonald versus County
3 Board of Kendall County, a Second District case from
4 1986, 146 Illinois App. 3d, 1051, quoting from Page 1054,
5 it says, "By filing suit for a declaratory judgment, one
6 does not obviate the need for setting forth sufficient
7 facts as will establish a cause of action."

8 In the First District in Caufield, and also in
9 Davis v. Dyson, it further explained that a derivative
10 suit is "an action that a corporate shareholder brings on
11 behalf of a corporation to seek relief for injuries done
12 to that corporation," and this Court agreed with that on
13 the first motion to dismiss, for example, it dismissed
14 the complaint for failure to allege injury.

15 Now we're two and a half years past the
16 challenged amendment as I've said. There is evidence in
17 the record as we discussed already that the challenged
18 amendment benefits the Academy. It gives it a one-third
19 say on the selection committee, for example. That's a
20 concrete way in which it benefits the Academy.

21 There is no evidence in the record after all
22 the discovery that's been taken that the Academy is
23 harmed by the challenged amendment either by the manner
24 of passage, by the fact it was passed by the Board and



1 not also by the members, or by the substance of it, and
2 there's no evidence that there's even a threatened harm.

3 So for those reasons, we would say there is an
4 essential element on which we must prevail and on which
5 they cannot prevail, and there is no evidence to support
6 them in prevailing, and for that second reason, we would
7 ask for summary judgment to be entered.

8 At this point, I will turn it over to Mr. Monts
9 who is going to address the third and final ground and
10 not least the merits.

11 THE COURT: Thank you, Mr. Siegel.

12 Counsel, if you would identify yourself so we
13 have a clear record of your identity.

14 MR. MONTS: Yes, your Honor.

15 I'm William Monts. Mr. Siegel referred to me
16 as Tripp which is a nickname.

17 It's a pleasure to be before you today, your
18 Honor, and I am also appearing on behalf of the
19 Defendants and the Nominal Defendant, the American
20 Academy of Actuaries, and may it please the Court.

21 I would like to turn to the merits briefly, and
22 I'd like to start with a principle we referred to in our
23 briefing as the difference principle; and with that, I
24 would note that Article 15 of the Academy's bylaws divide



1 the types of amendments that can be adopted into two
2 broad categories. Those in Bucket A are the ones that
3 the Board may adopt without a member vote, and those in
4 Bucket B are those that require a member vote.

5 Now the threshold question we believe here,
6 your Honor, on this issue is who decides whether an
7 amendment falls into Bucket A or Bucket B, and the answer
8 to that question under the bylaws is clearly the Board.
9 Any other question forces every amendment to be submitted
10 to a member vote or to be brought to this Court.

11 And if every amendment must be submitted to a
12 member vote, then effectively the Board's power is bred
13 out of existence.

14 Now the Wigod case, Wigod versus Chicago
15 Mercantile Exchange holds that bylaws should be construed
16 just like other legal text in that no words should be
17 rendered superfluous. So if the Board is to actually
18 have any authority to adopt amendments, of course, it
19 must be the body and can be the only body that decides
20 whether something falls at the threshold in the Bucket A
21 or Bucket B.

22 Once that is conceded, it is appropriate then
23 for Plaintiffs only to bring in a case in which the Finn
24 case, the Lee case that we have cited in our briefs, and



1 the Vandaly case that we have cited in our briefs put
2 into one of seven exceptions. The claim must involve
3 fraud, mistake, collusion, or arbitrariness.

4 The Plaintiffs have alleged none of those, and
5 with respect to arbitrariness which we can understand to
6 mean irrationality, the Plaintiffs' argument on the
7 merits is not that the Board was irrational, but that it
8 was all too rational and too deliberate.

9 The other three exceptions are that there's a
10 substantial contract property or economic right
11 implicating due process, and the Plaintiffs have
12 identified again none of those. There's no Academy
13 contract with itself. There's no Academy property right
14 at stake. There's no Academy economic right at stake.

15 That's the Plaintiffs are suing on behalf of
16 the Academy, so they have to identify one of those. They
17 haven't identified any exception to the ordinary rule of
18 deference to which this case would fall.

19 And when we look at Article 15, we can
20 ascertain that it's the Board's decision to decide to
21 separate the sheep from the goats. The Board did that
22 here, there's no dispute about that, and we believe the
23 case can end right there, your Honor. This is just not a
24 case that needs to go any further.



1 But even if we went further, we think looking
2 at the very substance of the amendment, it fits easily
3 within the Board's power, and I'll focus on all three
4 prongs, but I'd like to take policy and administrative
5 together because the Plaintiffs' response on that I think
6 shows both the problems with their construction and why
7 we have a deference principle in the first place.

8 The Plaintiffs say there's a question of policy
9 here because there were policy reasons used to make the
10 judgment, but, of course, your Honor, every board has
11 reasons for making a decision and every decision could
12 probably go one way or the other. There has to be a
13 mechanism to make decisions, and if just because a
14 decision could go one way or another converted it into a
15 question of policy, well, there'd be no amendment the
16 Board could adopt because every amendment would involve a
17 question of policy.

18 Similarly with respect to administrative, the
19 Plaintiffs offer up a construction of minor housekeeping
20 amendments. Now that's an indeterminate standard, much
21 like the standard they offered for policy questions, and
22 it suffers from two problems besides that. One is that
23 it is basically a second-guessing of a question committed
24 to the Board; and secondly, it's indeterminate and would

1 lead the Board asea. A minor housekeeping amendment is
2 in the eye of the beholder.

3 The problem, there's one other problem with
4 this, and it's a technical-legal problem. The Plaintiffs
5 concede that the language of the bylaws is unambiguous,
6 and we concur in that, your Honor, but the minor
7 housekeeping argument comes entirely from extrinsic
8 evidence. It comes from an index, not a set of minutes,
9 but an index of Board minutes that the Plaintiffs cited
10 in their case.

11 We offer a construction of both prongs that we
12 think is fairly clear and easy to apply and would make
13 sense going forward and has a limiting principle. With
14 respect to questions of policy, if the amendment affects
15 a policy reflected in the bylaws, then perhaps it is --
16 it would be off limits to the Board. The Board's
17 amendment can't change a policy reflected in the bylaws.

18 Secondly, with respect to administration,
19 that's a management function, your Honor, and these
20 cases, I mean, this action here has got to be the
21 prototypical administrative function. It's nothing more
22 than deciding who sits on an appointments committee.
23 There's no change in standard as to the appointment of
24 persons on the ASB or the ABCD. The rules governing



1 those remain the same. There's no change in the function
2 of the ASB or ABCD. Again, those remain entirely the
3 same.

4 The only thing that's changed here is who sits
5 on a committee, and the appointment of persons to an
6 appointments committee has got to be the most
7 paradigmatic example that one can conjure of managing the
8 function of an organization, and that's all the Board has
9 done.

10 The final question is one of the amendment is
11 permissible so long as it doesn't affect the substantive
12 member rights of any of the Academy members, and here the
13 Plaintiffs don't tell us what member right is affected
14 other than the right to vote on bylaws amendments, but
15 that argument is circular, your Honor. No matter how one
16 reads it, the argument is that members have been
17 deprived -- must vote on this amendment because they
18 otherwise would be deprived of their right to vote on
19 amendments. That can't be the standard, otherwise, again
20 the Board's authority to make bylaws and amendments would
21 be read out of the Article 15, and Wigod makes that an
22 impermissible construction.

23 There are plenty of rights that are reflected
24 in the amendments -- excuse me -- in the bylaws. There



1 are the rights of members to attend Academy meetings, to
2 use the designation MAAA as their members. There are a
3 host of rights that are available to members should they
4 find themselves unfortunately within the disciplinary
5 process, including the right to appear, to make written
6 submissions, to have counsel present. So there are a
7 plethora of rights that are reflected in the bylaws, but
8 this one is not the right on which an amendment can turn
9 or otherwise the Board would have no authority to make
10 amendments, and again as we noted, that can't be the
11 proper construction.

12 So I'll sum up where we land on this, your
13 Honor, and we think quite clearly the motion, our motion
14 should be granted and the Plaintiffs' should be denied.

15 As Mr. Siegel pointed out, the Plaintiffs are
16 inadequate representatives. They have not alleged any
17 injury to the Academy, and quite squarely on the merits,
18 we believe that once this Court determines that the Board
19 is to decide the Bucket A-Bucket B question, that that's
20 the end of the case; but even if the Court were to go
21 further, the merits point clearly, the interpretation of
22 Article 15 points clearly our way, and there's really not
23 a close call on this one.

24 So respectfully, your Honor, we'd ask you to



1 grant the Defendants' motion and to deny the Plaintiffs',
2 and thank you very much.

3 THE COURT: Thank you, Counsel.

4 Mr. Wright, anything?

5 MR. WRIGHT: Just a couple of points to respond to,
6 your Honor.

7 First regarding the deference principle, you
8 know, essentially the argument there appears to be that
9 the Board gets to decide what's within its power and
10 what's not, but that would require us necessarily to
11 ignore Article 15 that limits what amendments can be made
12 by the Board. It effectively means that any changes can
13 be made and would render that provision meaningless.

14 Again to the policy issue as well, if I
15 understood the argument correctly, it's that, you know,
16 any decision could be a policy, and therefore, the Board
17 gets deference to decide what fits under that definition
18 or what not, and so that kind of goes back to the
19 deference issue of what is the point of Article 15 in the
20 bylaws if the Board simply gets to decide what's within
21 their power and what's not within their power. That
22 holds certain powers from the members, powers that are
23 reflected in the bylaws and saved for the members, and I
24 think that goes to the substantive right issue as well



1 because through the bylaws, the members had a right to
2 vote on the challenged amendment and they were deprived
3 of that right.

4 And I just want to make another quick response
5 regarding the conflict issue and what has been the
6 reference to the Caufield case. Again, when we go back
7 to the issues present there, we are looking at direct
8 conflicts between the interest of the plaintiffs and the
9 association that they are allegedly acting on behalf of.

10 In that case, we had individual lawsuits
11 brought by the shareholders against the corporations and
12 significant money judgments entered on behalf of those
13 individual plaintiffs against the corporation. That is
14 clearly a direct conflict between the interest of the
15 plaintiffs and the interest of the association they are
16 seeking to represent.

17 Here I've seen nothing to indicate that
18 restoring the bylaws to what they once were would be
19 damaging to the AAA, would confer a benefit on the CCA to
20 the detriment of the AAA. So that conflict that we see
21 in Caufield is simply not present here.

22 And again regarding the issue of support, it is
23 our position that there's no Illinois law that would
24 require a certain threshold of support prior to allowing



1 this action to proceed, and I don't believe the
2 Defendants have cited any.

3 Thank you, your Honor.

4 THE COURT: Thank you, Mr. Wright.

5 Mr. Siegel, anything else from you?

6 MR. SIEGEL: Well, I'll briefly, briefly reply on
7 the discussion of Caufield and attempt to distinguish it,
8 and just make two points.

9 First, of course, you are asked to apply, you
10 know, up to eight factors, a multifactor analysis, so
11 it's a fact-specific inquiry that's submitted to you. So
12 I don't think saying that one case is not exactly like
13 another really addresses, you know, the factors that we
14 discussed, four of which we think strongly indicate that
15 at bottom, the case is being brought on behalf of the
16 CCA.

17 But even to speak specifically about the facts
18 of the case, I mean, it's somewhat analogous that the
19 named Plaintiffs are purporting to sue for the Academy,
20 but they are seeking what can fairly be described as a
21 selfish interest to promote the CCA's goals by negating a
22 decision of the Academy to remove the CCA from
23 representation on the selection committee.

24 The named Plaintiffs are leaders of the CCA.



1 They have contracts with the CCA requiring them to pursue
2 relief for the CCA, and those loyalty, and those
3 contractual duties conflict with their duty to the
4 Academy that they would owe as a fiduciary as derivative
5 Plaintiffs. It's really not that -- it's pretty
6 analogous I think to the facts in the Caufield case, so
7 we think that's pretty squarely within Illinois law.

8 I don't know if Mr. Monts had a response at all
9 on the question of merits and deference principle that
10 was raised, and I'm complete, and I appreciate your
11 hearing us.

12 THE COURT: Thank you, Mr. Siegel.

13 Mr. Monts, anything else from you?

14 MR. MONTS: Just one point, your Honor, on the
15 deference point. There are, in response to Mr. Wright's
16 point that the Board would be completely unconstrained,
17 that's incorrect. We identified the seven exceptions
18 that would apply to the deference principle, but none of
19 them are applicable here, and Plaintiffs don't argue to
20 the contrary.

21 Secondly, I would point out that in the Finn
22 case that we cited, there was an expressed provision in
23 the bylaws there that the Board had final authority to
24 determine for itself the meaning of the bylaws, and the



1 First District had thought nothing amiss of that.

2 And then third, just as a practical matter here
3 in the Academy's bylaws, there's a referendum provision
4 that allows the members to propose bylaws amendments by
5 following a petition procedure, and if they believed, if
6 the members believed that the Board had acted in excess
7 of its authority, it could always -- they could always
8 invoke that and repeal any amendment that they thought
9 was problematic.

10 So we think the deference principle is clearly
11 held here and the concerns that Mr. Wright mentioned are
12 just simply inapplicable as a matter of law and as a
13 matter of fact.

14 Thank you, your Honor.

15 THE COURT: Thank you all for your presentations.
16 Your submissions were excellent in terms of identifying
17 the specific issue -- issues, if you will, that you are
18 requesting me to decide, and the parties have been
19 well-represented by the three of you, and I don't think
20 there should be any dispute about that.

21 What brings us to our motions this afternoon,
22 let's talk a little bit about what summary judgment is
23 and whether it's appropriate or not for the Court to
24 determine a case based upon the presentations of summary



1 judgment motions such as are before me this afternoon.

2 Summary judgment is proper where the pleadings,
3 depositions, admissions, and affidavits on file reveal
4 that there is no genuine issue of material fact and the
5 moving party is entitled to a judgment as matter of law.
6 As in this case, the parties filed cross-motions for
7 summary judgment which create that only a question of law
8 is involved, and they invite and have invited this Court
9 to decide the issues based on the record.

10 However, as our Supreme Court made clear, the
11 filing of cross-motions for summary judgment does not
12 establish that there was no genuine issue of material
13 fact or obviate a Court to render summary judgment.

14 THE REPORTER: I'm sorry, Judge. You're cutting in
15 and out again.

16 THE COURT: I don't know why.

17 -- summary judgment, that case is Piolet v.
18 Piolet, P-I-E-L-E-T, the Public Domain cite, 2012, IL
19 112064. That's from Paragraph 28.

20 The Plaintiffs are proceeding on their Amended
21 Complaint. In the Amended Complaint, the Plaintiffs
22 provide a very detailed factual history of the American
23 Academy of Actuaries referred to by the parties and now
24 by this Court as AAA.

1 What needs to be emphasized is that the
2 material factual allegations are not in dispute. I will
3 not detail all the allegations as they are not in
4 dispute.

5 AAA is a nonprofit professional organization
6 that was incorporated in 1966 and at all times through
7 five distinct actuarial organizations. I will refer to
8 those by their acronyms as are contained within the
9 submissions and argued by the parties with the acronyms
10 in place. The organizations CCA, ASPPA, COPA --

11 THE REPORTER: I'm sorry, Judge. I'm not hearing
12 all of the -- what you're saying.

13 THE COURT: Sorry to hear that.

14 THE REPORTER: The organizations CCA?

15 THE COURT: CCA, ASPPA, ACOPA, SOA, CAS, and AAA, or
16 Tripple A.

17 In 1988, the five organizations came together
18 and created the Actuarial Standards Board which is known
19 by its acronym ASB.

20 In 1992, the five organizations again came
21 together and created the American Board for Counseling
22 and Discipline, again, an acronym, ABCD. It's agreed by
23 all five organizations that ASB and ABCD would be housed
24 within AAA, and that both ASB and ABCD would operate on



1 behalf of all five actuarial organizations.

2 Who determines who is appointed to ABCD and
3 ASB? Members of the selection committee. The selection
4 committee as of September 4th, 2018 was comprised of ten
5 members, two each from the five actuarial organizations,
6 president and president elect of each of these
7 organizations, five times two, that's ten.

8 On September 4th, 2018, AAA's Board voted to
9 alter the composition of the selection committee
10 following the recommendation of AAA's strategic planning
11 committee. The decision changed the composition of the
12 Board that it would include and -- not the board, but of
13 the selection committee, so that it would include only
14 the president and president elect of AAA, CAS, and SOA,
15 but not CCA and ACOPA. This decision that was made by
16 the Board was made as an amendment to AAA's bylaws.

17 The Defendants in this case maintain that the
18 Board was authorized to amend its bylaws pursuant to
19 Article 15 of the AAA bylaws which permits the Board to
20 amend the bylaws by a proper vote of the directors in
21 order to adopt administrative, editorial, and technical
22 amendments to the bylaws that do not involve questions of
23 policy or affect the substantive rights of the Academy's
24 members. That is directly from Article 15 of AAA's



1 bylaws.

2 The Defendants further assert that the changes
3 that were made were administrative and did not affect any
4 substantive rights of the AAA members and did not involve
5 questions of policy.

6 Plaintiffs maintain that quote-unquote serious
7 questions of policy were implicated by the amendment that
8 was made and that it was not an administrative amendment,
9 and that it also affected the substantive rights of AAA's
10 members, including the Plaintiffs. As such, any
11 alteration of the composition of the selection committee
12 was required to be voted on by all members of AAA which
13 the Plaintiffs maintain was required by Article 15 of the
14 bylaws.

15 Of some potential significance, the Board voted
16 on and adopted the strategic planning committee's
17 recommendation only after the Board concluded that it had
18 the authority to do so without a member vote.

19 So we need to break this down. Did this
20 involve a question or questions of policy? The
21 Plaintiffs have never identified what policy was
22 implicated by the change in the selection committee's
23 composition.

24 Plaintiffs do argue that the Academy had a



1 policy regarding the composition of the committee but
2 never identify where the policy can be found. It does
3 not exist. The Plaintiffs appear to conflate the
4 practice with the policy of the Academy.

5 It is also clear that the questioned amendment
6 was administrative in nature. The Academy had the
7 authority to make the decision that it did as changed the
8 membership of an appointments committee. The standards
9 governing how that appointment authority is exercised has
10 not changed.

11 Did it affect the substantive rights of the
12 Plaintiffs or the members of the Academy? The right the
13 Plaintiffs referred to is a right to vote on proposed
14 amendments to the bylaws, but the amendment does not
15 affect a substantive right of any member as it affected
16 only the composition of the selection committee.

17 I think what is also significant and what
18 should be noted is the Supreme Court's decision in Angle
19 versus Walsh. That case, although old, it appears at 258
20 Illinois 98. It is a 1913 decision, as well as it's
21 progeny, it cautions Courts from interfering with the
22 enforcement of bylaws of voluntary associations.

23 More recently, this issue has been addressed
24 through Appellate Court decisions, both of which are from



1 the First District, Finn versus Beverly Country Club case
2 which is at 298 Illinois Appellate 3d 565. It is a 1997
3 decision, and much more recently in Gilyana, that's
4 G-I-L-Y-A-N-A, versus Assyrian American Association of
5 Chicago. The Public Domain cite is 2015 Ill. App --
6 150460 --

7 MR. WRIGHT: Could you repeat that citation. You
8 cut off.

9 THE COURT: Gilyana is 2015, First, 150460.

10 In Gilyana, the Court noted that Angle's
11 bright-line rule has evolved and become less strict in
12 terms of weighing in on membership disputes of
13 voluntary --

14 THE REPORTER: I'm sorry. Voluntary what? You're
15 cutting off. I'm sorry.

16 THE COURT: I don't know why.

17 THE REPORTER: Voluntary what?

18 THE COURT: Is anybody else having a difficult time
19 hearing me?

20 MR. WRIGHT: Yes, Judge. You do keep cutting in and
21 out unfortunately.

22 THE COURT: That is a shocker.

23 Well, you're doing exactly what I told you to
24 do, so thank you for doing that, Ms. Laudien.



1 The Gylana cite, I will give it to you a third
2 time, 2015 Ill. App. 1st, 150460. In Gylana, the Court
3 noted that Angle's bright-line rule has evolved and
4 become less strict in terms of weighing in on membership
5 disputes of voluntarily organizations.

6 Three narrow exceptions have been identified
7 and were identified in the Finn case. It is clear that
8 the Plaintiff has not established any evidence that fits
9 any of the three very narrow exceptions.

10 It's also of some significance in Gylana that
11 the Court questioned whether any exceptions actually
12 exist, and that is for another day, but the exceptions
13 that were identified in Finn in discussing Gylana as well
14 as in the Angle case have not been established by the
15 Plaintiffs in this case.

16 So it is clear, the amendment to the bylaws
17 relative to the selection committee is clear and
18 unambiguous. It was within the authority of the Board to
19 make this amendment to the bylaws in the manner that it
20 did and without submitting the amendment to the Academy
21 members for the vote, and it was consistent with
22 Article 15 of the Academy's or AAA's bylaws.

23 Several other arguments have been advanced by
24 the parties relative to whether the Plaintiffs are proper

1 parties to represent the Academy in a derivative capacity
2 and whether the Academy was injured due to the amendment.
3 However, those arguments are now moot and I will not
4 weigh in on those as I am granting the Plaintiffs -- I'm
5 granting the Defendants' motion for summary judgment and
6 I'm denying the Plaintiffs' motion for summary judgment.

7 Are there any questions?

8 MR. SIEGEL: For the Plaintiffs -- I'm sorry. For
9 the Defendants, thank you, your Honor, for your
10 consideration.

11 I don't have further questions.

12 MR. MONTS: Nothing from me, your Honor, and thank
13 you very much.

14 THE COURT: Mr. Wright?

15 MR. WRIGHT: Thank you, Judge.

16 Nothing from me.

17 THE COURT: All right. Mr. Siegel, if you'd prepare
18 the order.

19 And I'm a little concerned about our transcript
20 because apparently I was cutting in and out, so it's up
21 to you how you want to prepare that.

22 It could be referencing the transcript, for the
23 reasons on the record, I am granting the Defendants'
24 motion and denying the Plaintiffs' motion.



1 MR. SIEGEL: That's how I'll put it.

2 THE COURT: All right. Prepare that in Word format,
3 circulate that, of course, to Mr. Wright. Send that on
4 in to Haley Comelia. Haley is my Law Clerk, and if you
5 don't have her email address, it will be on the standing
6 order.

7 Thank you all in your presentations. You did
8 an excellent job.

9 Good luck to you and your respective clients.

10 Thank you, Miss Laudien. I'm sorry to give you
11 such a difficult time this afternoon.

12 THE REPORTER: I'll do my best.

13 THE COURT: I know you will.

14 Have a good day.

15 MR. WRIGHT: Thank you, Judge.

16 (WHICH WERE ALL THE PROCEEDINGS
17 HAD IN THE AFOREMENTIONED CAUSE.)

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1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2 COUNTY DEPARTMENT - CHANCERY DIVISION

3
4
5 I, Laurel E. Laudien, a Certified Shorthand
6 Reporter for the Circuit Court of Cook County, County
7 Department - Chancery Division, do hereby certify that I
8 reported in shorthand the proceedings had at the hearing
9 in the above-entitled cause; that I thereafter caused the
10 foregoing to be transcribed into typewriting, which I
11 hereby certify to be a true and accurate transcript of the
12 proceedings had before the Honorable MICHAEL T. MULLEN,
13 Judge of said court.

14
15
16 

17
18 _____
19 Certified Shorthand Reporter
20 RMR, RPR, CSR #084.001871

21
22
23 Dated this 5th day
24 of March, 2021.



WORD INDEX

< 0 >

084.001871 45:18
084-001871 2:24

< 1 >

1 17:12 18:1
10 21:6
1051 23:4
1054 23:4
11 20:23 21:6
112064 36:19
11A 17:11
12 18:10
13 18:10
146 23:4
15 13:17 24:24
26:19 29:21 30:22
31:11, 19 38:19, 24
39:13 42:22
150460 41:6, 9 42:2
15777 1:7
16 20:18
180129 12:16
1913 40:20
1966 37:6
1986 23:4
1988 37:17
1992 37:20
1997 41:2
1st 42:2

< 2 >

2 17:12, 17 20:18
2:00 1:18
20,000 20:4, 16
2012 36:18
2015 41:5, 9 42:2
2018 1:7 5:1, 12,
14 17:5, 6 18:6
21:2 38:4, 8
2019 12:16 18:6
2021 1:17 45:24
24 11:23
258 40:19
28 36:19
298 41:2
2B 21:7

< 3 >

3 16:16
30 17:17
3d 23:4 41:2
3rd 21:2

< 4 >

4th 1:16 5:1, 12,
14 38:4, 8

< 5 >

565 41:2
5th 45:23

< 6 >

6 18:2

< 8 >

8 20:1

< 9 >

98 40:20
990s 18:4, 5 22:16

< A >

AAA 8:9 9:23
10:10 32:19, 20
36:24 37:5, 15, 24
38:14, 19 39:4, 12
AAA's 38:8, 10, 16,
24 39:9 42:22
ABCD 8:12 28:24
29:2 37:22, 23, 24
38:2
abide 17:21
above-entitled 1:15
45:9
absence 14:18, 22
A-Bucket 30:19
ACADEMY 1:11
2:6 4:24 7:2
11:16, 18 12:1
13:3, 10 14:24
15:10, 12, 18 17:21
18:9, 15, 23 19:11,
22, 24 20:3 21:15,
16, 22 22:16, 17, 19,
20 23:18, 20, 22
24:20 26:12, 13, 14,
16 29:12 30:1, 17
33:19, 22 34:4

36:23 39:24 40:4,
6, 12 42:20 43:1, 2
Academy's 17:8
21:17, 21 24:24
35:3 38:23 42:22
accurate 3:14
45:11
achieve 18:21
acknowledged 20:17
ACOPA 37:15
38:15
acronym 37:19, 22
acronyms 37:8, 9
acted 35:6
acting 32:9
action 9:6, 9, 12, 14
10:4, 7, 17 13:6
14:3, 14 15:23
17:21 20:20 22:11
23:7, 10 28:20 33:1
actions 7:13
actual 13:10 17:14
Actuarial 17:22
37:7, 18 38:1, 5
ACTUARIES 1:11
2:6 4:24 11:16, 21
15:14 20:15 24:20
36:23
addition 11:23
14:22 17:19
address 19:16 24:9
44:5
addressed 40:23
addresses 33:13
adequate 13:2
15:9, 22 16:6
adequately 22:20
administration 22:4
28:18
administrative 7:7,
14 8:14, 20 13:19
22:3 27:4, 18
28:21 38:21 39:3,
8 40:6
admissions 36:3
admit 8:10, 15
12:6 17:18
adopt 22:3 25:3,
18 27:16 38:21
adopted 25:1 39:16

adopting 13:11
advance 15:16
advanced 42:23
adversarial 19:1
affect 7:9 13:20
29:11 38:23 39:3
40:11, 15
affidavits 36:3
AFOREMENTIONE
D 44:17
afternoon 3:2, 7, 24
4:2, 7, 8 6:8 35:21
36:1 44:11
agency 18:20
agents 18:19
aggrieved 9:13
agree 12:19
agreed 12:10
22:14 23:12 37:22
agreement 15:15
agreements 17:5, 10
al 1:5, 8
Albert 3:21
ALEXANDER 1:20
4:1
allegations 37:2, 3
allege 23:14
alleged 26:4 30:16
allegedly 32:9
allowing 6:11
32:24
allows 35:4
ALPERT 1:8
alter 38:9
alteration 39:11
altered 5:11
amend 38:18, 20
Amended 12:9
18:1 20:24 36:20,
21
amending 7:4
amendment 5:11
7:17, 23 8:1, 2, 3, 5,
7, 14, 18 9:1 10:23
13:7, 9, 11, 13, 16,
17 17:4 20:17
21:3 23:16, 18, 23
25:7, 9, 11 27:2, 15,
16 28:1, 14, 17
29:10, 17 30:8
32:2 35:8 38:16

39:7, 8 40:5, 14
42:16, 19, 20 43:2
amendments 7:7, 8
8:6 13:18 22:3
25:1, 18 27:20
29:14, 19, 20, 24
30:10 31:11 35:4
38:22 40:14
AMERICAN 1:11
2:6 4:24 11:16, 20
24:19 36:22 37:21
41:4
amiss 35:1
analogous 33:18
34:6
analysis 33:10
analyzing 16:5
and/or 8:16
Angle 40:18 42:14
Angle's 41:10 42:3
Answer 8:15 25:7
answered 12:6
anybody 41:18
apologize 10:13
App 12:16 23:4
41:5 42:2
apparently 43:20
appear 30:5 40:3
appeared 5:1
appearing 24:18
appears 3:1 31:8
40:19
Appellate 40:24
41:2
applicable 34:19
applies 13:23 14:10
apply 28:12 33:9
34:18
appointed 38:2
appointment 28:23
29:5 40:9
appointments 28:22
29:6 40:8
appreciate 6:23
34:10
appropriate 25:22
35:23
approval 10:18, 23
approve 22:2
approximately 1:17

arbitrariness 26:3, 5
ArcelorMittal 12:15
argue 6:9 9:8, 13
34:19 39:24
argued 37:9
arguing 9:1 11:10,
13 13:22
argument 4:11
10:1 11:13 26:6
28:7 29:15, 16
31:8, 15
arguments 6:20
10:3 19:2 42:23
43:3
Article 13:17
24:24 26:19 29:21
30:22 31:11, 19
38:19, 24 39:13
42:22
Articles 21:6
ASB 8:12 17:22,
23 28:24 29:2
37:19, 23, 24 38:3
ascertain 26:20
asea 28:1
asked 33:9
aspersion 19:8
ASPPA 37:10, 15
assert 39:2
Association 9:7
10:14, 15 18:8
32:9, 15 41:4
associations 40:22
assume 9:19
Assyrian 41:4
attached 5:24
attachments 6:5
attack 10:24
attacking 8:23
attempt 10:24 33:7
attend 4:12 30:1
attention 11:9
attorneys 5:9
attorney's 17:16
authenticity 5:18
authority 8:6 9:12,
18 25:18 29:20
30:9 34:23 35:7
39:18 40:7, 9 42:18
authorized 38:18

available 30:3
< B >
back 21:13, 20
22:7 31:18 32:6
based 4:14 7:12
12:20 19:14, 20
35:24 36:9
Basically 14:6
27:23
beginning 17:6
behalf 1:20, 24 2:2
4:1 18:7, 23 20:12
23:11 24:18 26:15
32:9, 12 33:15 38:1
beholder 28:2
believe 4:14 6:1
9:4 10:21 13:8
15:11 25:5 26:22
30:18 33:1
believed 35:5, 6
benefit 9:20 18:15
21:22 22:12, 17
32:19
benefits 23:18, 20
best 9:7 18:18
19:10 44:12
Beverly 41:1
bit 35:22
Board 7:2, 3, 6, 16
9:10, 12 10:18, 22
12:1 13:7, 11, 18
17:23 22:2 23:3,
24 25:3, 8, 17 26:7,
21 27:10, 16, 24
28:1, 9, 16 29:8
30:9, 18 31:9, 12,
16, 20 34:16, 23
35:6 37:18, 21
38:8, 12, 16, 18, 19
39:15, 17 42:18
Board's 7:13 8:5
10:10 25:12 26:20
27:3 28:16 29:20
body 10:19 25:19
bottom 33:15
break 39:19
bred 25:12
brief 6:17
briefing 8:3 24:23

briefly 13:23 19:16
22:24 24:21 33:6
briefs 6:11 25:24
26:1
bright-line 41:11
42:3
bring 15:16 17:7
19:1 25:23
bringing 9:6 20:12
brings 5:11 23:10
35:21
broad 25:2
brought 17:7 18:7,
22 22:16 25:10
32:11 33:15
Bucket 25:2, 4, 7,
20, 21 30:19
burden 10:4
bylaws 4:24 5:1,
10 6:4 7:2, 4, 6, 8,
16, 21 10:11, 12, 14,
16, 22 13:17 17:21
21:1, 7, 12 24:24
25:8, 15 28:5, 15,
17 29:14, 20, 24
30:7 31:20, 23
32:1, 18 34:23, 24
35:3, 4 38:16, 18,
19, 20, 22 39:1, 14
40:14, 22 42:16, 19,
22
< C >
call 30:23
called 17:20
capacity 15:20 43:1
care 5:21
CAS 37:15 38:14
case 4:22 6:19 7:1,
11 8:21 9:17, 18
10:15 12:14, 16, 17,
20, 21 14:13 18:14
22:8, 13, 16 23:3
25:14, 23, 24 26:1,
18, 23, 24 28:10
30:20 32:6, 10
33:12, 15, 18 34:6,
22 35:24 36:6, 17
38:17 40:19 41:1
42:7, 14, 15

cases 6:6, 7 10:6
20:6, 9 28:20
Casualty 12:14, 15
categories 25:2
Caufield 9:18
15:23, 24 16:4
22:7, 8 23:8 32:6,
21 33:7 34:6
cause 1:15 13:5
14:3, 13 23:7
44:17 45:9
caused 45:9
cautions 40:21
CCA 8:9 9:8, 16,
20 15:14 16:19, 20,
24 17:1, 3, 14, 19,
22, 23 18:8, 12, 13,
15, 20 19:12, 20, 23
20:21, 22 21:12, 14
22:15, 16, 18 32:19
33:16, 22, 24 34:1,
2 37:10, 14, 15
38:15
CCA's 15:16 17:8,
20 18:4 33:21
certain 31:22 32:24
certainly 14:8
21:24
Certified 2:24 45:5,
17
certify 45:7, 11
CH 1:7
challenged 7:17, 22
8:1, 2, 5, 7, 24
10:23 13:7, 9, 16
17:4 20:17 21:3
23:16, 17, 23 32:2
challenges 3:9
CHANCERY 1:3
45:1, 7
change 8:11, 16, 18,
20 28:17, 23 29:1
39:22
changed 10:9 29:4
38:11 40:7, 10
changes 7:21
31:12 39:2
Chicago 25:14 41:5
CIRCUIT 1:3 45:1,
6

circular 29:15
circulate 44:3
circumstance 14:10
citation 41:7
cite 20:6 36:18
41:5 42:1
cited 6:6 12:14
17:12, 16 22:7
25:24 26:1 28:9
33:2 34:22
claim 14:17, 19, 23
15:1 20:12 26:2
clarification 7:24
CLARK 1:5 3:21
clear 5:18 8:1
13:2 14:9 18:13
21:22 24:13 28:12
36:10 40:5 42:7,
16, 17
clearly 3:8 25:8
30:13, 21, 22 32:14
35:10
Clerk 44:4
clients 4:15 44:9
close 30:23
closely-held 20:5, 9
Club 41:1
collusion 26:3
combination 16:7
Comelia 44:4
comes 28:7, 8
coming 18:11
commitment 18:21
committed 27:23
committee 7:5, 12,
21 8:17, 19 10:17,
19 17:9, 24 21:5, 9,
13, 17, 20 23:19
28:22 29:5, 6
33:23 38:3, 4, 9, 11,
13 39:11 40:1, 8,
16 42:17
committee's 39:16,
22
common 8:13
Company 12:15
20:5, 9
compared 19:18, 21
competing 7:12

Complaint 6:3
11:3 12:9 18:1
20:24 23:14 36:21
complete 5:20
34:10
completely 34:16
composition 7:21
10:17 38:9, 11
39:11, 23 40:1, 16
comprised 38:4
concede 28:5
conceded 25:22
concern 8:11
concerned 7:15
9:14, 24 43:19
concerning 10:8
concerns 7:12 8:8
35:11
concluded 39:17
concrete 23:20
concur 28:6
conduct 7:3
confer 32:19
Conference 15:13
confirms 18:17
conflate 40:3
conflict 16:2, 5, 9,
13 18:18 19:13
32:5, 14, 20 34:3
conflicts 13:2 19:7,
9, 11 32:8
conjure 29:7
consequence 9:11
consider 3:19 16:4
20:14
consideration 43:10
consistent 9:13
42:21
constitute 15:9
construction 27:6,
19 28:11 29:22
30:11
construed 25:15
Consulting 15:13
contained 37:8
Cont'd 2:1
contend 14:20
contention 18:14
contents 6:2
contract 10:14
19:14, 20 26:10, 13

contracted 17:3
20:21
contracts 22:15
34:1
contractual 17:14
18:21 19:12, 20, 22
34:3
contrary 9:6 15:17
34:20
contrast 9:18
controlled 7:3
converted 27:14
COOK 1:3 45:1, 6
COPA 8:9 37:10
copy 4:23 5:9, 10
core 7:1
corporate 16:1
23:10
corporation 11:19
23:11, 12 32:13
corporations 32:11
correct 3:16 4:16,
17
correctly 31:15
costs 17:15
Counsel 3:11, 12,
23 4:3, 6 11:12
19:8 24:12 30:6
31:3
Counseling 37:21
Country 41:1
COUNTY 1:2, 3
23:2, 3 45:1, 6
couple 11:10 14:1
31:5
course 9:9, 11
11:23 14:4 20:8
25:18 27:10 33:9
44:3
COURT 1:3, 16
3:1, 2, 5, 7, 18 4:2,
7, 9, 18, 21 5:6, 17
6:16, 18 7:20 9:21,
24 10:9 11:2, 5
12:20 18:24 19:9
20:14 23:12 24:11,
20 25:10 30:18, 20
31:3 33:4 34:12
35:15, 23 36:8, 10,
13, 16, 24 37:13, 15
40:24 41:9, 10, 16,

18, 22 42:2, 11
43:14, 17 44:2, 13
45:1, 6, 13
Courts 40:21
Court's 7:24 12:7
40:18
create 36:7
created 37:18, 21
creates 14:8
cross-motions 4:10
12:18 36:6, 11
CSR 2:24 45:18
current 5:23 11:24
16:24 17:1, 19
cut 41:8
cutting 5:4 36:14
41:15, 20 43:20

< D >
damaged 10:10
damages 10:1, 10
damaging 32:19
date 13:9
dated 17:5 45:23
Davis 23:9
day 1:17 3:10
6:22 21:2 42:12
44:14 45:23
decide 12:20 19:3
26:20 30:19 31:9,
17, 20 35:18 36:9
decides 25:6, 19
deciding 28:22
decision 26:20
27:11, 14 31:16
33:22 38:11, 15
40:7, 18, 20 41:3
decisions 27:13
40:24
declaration 7:19
declaratory 10:5, 8
23:1, 5
dedicated 8:22
Defendant 1:12
2:2 11:18 15:4
24:19
Defendants 1:9, 24
4:6 8:10, 15, 22
9:7, 19 10:24
11:17 12:24 14:11,
15, 21 17:10, 17

18:9 20:18, 23
22:10, 22 24:19
31:1 33:2 38:17
39:2 43:5, 9, 23
Defendant's 14:18
17:24
deference 26:18
27:7 31:7, 17, 19
34:9, 15, 18 35:10
defined 8:2
definition 31:17
degree 20:1
Delaware 22:8
deliberate 26:8
demonstrates 8:7
denied 30:14
deny 31:1
denying 43:6, 24
DEPARTMENT
1:3 45:1, 7
depend 19:1, 5
dependent 15:21
depends 18:24
depositions 12:11
36:3
deprived 29:17, 18
32:2
derivative 9:14
10:7 12:9 13:2, 5
14:3 15:1, 21, 24
18:1, 22 19:19
20:8, 20 22:11
23:9 34:4 43:1
derive 9:20
described 33:20
designation 30:2
detail 37:3
detailed 36:22
determine 34:24
35:24
determines 30:18
38:2
detriment 9:22
32:20
developed 19:10
difference 24:23
differing 8:8
differs 14:11
difficult 41:18
44:11

diminish 21:21
diminishes 21:17
DINSMORE 1:20
direct 19:13 32:7,
14
directly 38:24
Director 2:5 11:14,
15
directors 38:20
disapproved 20:16
disciplinary 30:4
Discipline 37:22
discovery 12:4
23:22
discuss 14:4 16:16
20:19 22:24
discussed 23:17
33:14
discussing 14:1
42:13
discussion 33:7
dismiss 4:15 12:8
23:13
dismissed 23:13
dispositive 19:15
dispute 7:18 12:12
14:6 26:22 35:20
37:2, 4
disputed 14:7
disputes 41:12 42:5
distinct 37:7
District 12:16 23:3,
8 35:1 41:1
divide 24:24
DIVISION 1:3
45:1, 7
document 12:4
documents 12:5
doing 3:19 5:7
41:23, 24
Domain 36:18 41:5
Downs 2:5 11:14
driver 8:10
driving 16:17, 20
18:14
dual 18:19
due 26:11 43:2
duly-enacted 7:16,
20
duties 34:3

duty 15:17 19:20
34:3
Dyson 23:9

< E >
easily 27:2
easy 28:12
economic 26:10, 14
editorial 7:7, 14
38:21
effect 21:11
effectively 25:12
31:12
eight 16:4, 12
33:10
either 5:14 8:18
13:14 14:17 23:23
elect 21:9, 13, 19
38:6, 14
element 14:16, 19,
23 24:4
elements 14:13
email 44:5
Emerald 22:7, 8, 9
emphasized 37:1
enacted 10:16
enacting 10:23
encompasses 11:18
enforcement 40:22
enter 21:24
entered 15:3 22:21
24:7 32:12
entering 12:23
entirely 28:7 29:2
entitled 14:15 15:5
36:5
entity 16:10 20:2,
12
essential 8:16
14:19, 23 24:4
essentially 9:1
21:19 31:8
establish 14:13
23:7 36:12
established 42:8, 14
et 1:5, 8
everybody 3:1
evidence 9:4 10:21
13:10, 13 14:18, 22
15:10 16:22 17:14,

16 23:16, 21 24:2,
5 28:8 42:8
evolved 41:11 42:3
exactly 5:7 13:8,
16 22:13 33:12
41:23
example 23:13, 19
29:7
excellent 35:16
44:8
exception 26:17
exceptions 26:2, 9
34:17 42:6, 9, 11, 12
excess 35:6
Exchange 25:15
exchanged 12:4, 5, 6
excuse 10:12 29:24
Executive 2:5
11:14, 15
exercised 40:9
Exhibit 17:17 18:1,
2 20:18, 23
Exhibits 5:23
17:11 18:9, 11
exist 40:3 42:12
existence 25:13
explained 23:9
explaining 13:22
explains 22:9
express 7:5 19:19
expressed 18:21
34:22
expressly 13:18
extensive 12:3, 4
extrinsic 28:7
eye 28:2

< F >

fact 8:10, 15 13:7
14:9 15:15 17:15
19:21 23:24 35:13
36:4, 13
factor 16:15 19:17
20:1, 19
factors 16:4, 12
19:16 33:10, 13
facts 12:11, 22
14:7 23:7 33:17
34:6
fact-specific 33:11

factual 19:2 36:22
37:2
factually 19:6
fail 9:3 16:12
failed 10:22
failure 10:11 23:14
fair 15:22
fairly 14:9 22:19
28:12 33:20
fall 26:18
falls 25:7, 20
familiar 13:24
far 10:6
fatal 16:14
favor 14:18, 22
federal 18:5
fees 17:16
fiduciaries 16:1
22:19
fiduciary 15:17, 20
34:4
fifths 7:11
file 12:17 36:3
filed 5:20 18:4
36:6
filing 23:1, 5 36:11
final 24:9 29:10
34:23
find 10:9 16:7
30:4
Finn 25:23 34:21
41:1 42:7, 13
First 9:4, 15 11:8
12:16 13:1 15:7
16:15, 23 18:17
23:8, 13 27:7 31:7
33:9 35:1 41:1, 9
fits 27:2 31:17
42:8
five 20:10 37:7, 17,
20, 23 38:1, 5, 7
focus 27:3
focusing 8:21
follow 10:11, 22
following 35:5
38:10
force 16:17, 21
17:21 18:14
forces 25:9
foregoing 45:10

format 44:2
former 11:24 16:24
forth 23:6
forward 6:15 28:13
foul 9:2
found 40:2
four 16:12 33:14
frankly 16:18
fraud 26:3
function 8:19
10:20 28:19, 21
29:1, 8
functioning 8:16
functions 10:19
funded 9:8
funding 9:16 17:4,
10
further 23:9 26:24
27:1 30:21 39:2
43:11

< G >

generally 13:4
15:10
genuine 14:8 36:4,
12
Gilyana 41:3, 9, 10
G-I-L-Y-A-N-A
41:4
give 42:1 44:10
given 8:13
gives 23:18
go 22:7 26:24
27:12, 14 30:20
32:6
goal 3:14 21:17
goals 8:9 18:21
33:21
goats 26:21
goes 15:24 31:18,
24
going 12:13 13:22
19:4 24:9 28:13
Good 3:7, 24 4:2, 7,
8 6:15 44:9, 14
governing 28:24
40:9
government 18:5
governs 10:15
13:18

grant 9:21 11:2
31:1
granted 30:14
granting 43:4, 5, 23
ground 13:15 14:2,
3 15:7 22:21 24:9
grounds 11:11
12:23 14:21 15:3,
5 16:7 22:23
Gylana 42:1, 2, 10,
13

< H >

Haley 44:4
half 13:6, 8 23:15
hand 15:4 21:15
happen 7:18
harder 22:2
harm 9:2 24:2
harmed 23:23
hear 3:10, 11 37:13
hearing 1:14 4:3
10:1 11:9, 15 12:7
34:11 37:11 41:19
45:8
held 35:11
He'll 11:12
help 19:3
helpful 14:5
hey 20:7
highlight 6:20
history 36:22
HOGAN 2:2 11:12
holding 9:5
holds 25:15 31:22
Honor 3:24 4:8, 17
6:24 10:12 11:7
13:24 21:24 24:14,
18 25:6 26:23
27:10 28:6, 19
29:15 30:13, 24
31:6 33:3 34:14
35:14 43:9, 12
Honorable 1:15
45:12
host 30:3
hour 1:17
housed 37:23
housekeeping 4:12
27:19 28:1, 7

hurry 6:18

< I >

identified 26:12, 17
34:17 39:21 42:6,
7, 13

identifies 16:4

identify 3:3, 22
24:12 26:16 40:2

identifying 35:16

identity 24:13

ignore 31:11

IL 36:18

Ill 41:5 42:2

ILLINOIS 1:1, 3
11:19 12:16 15:18
22:24 23:4 32:23
34:7 40:20 41:2
45:1

immaterial 9:16

impermissible 29:22

implicated 39:7, 22

implicating 26:11

important 5:19

inadequate 14:2
16:7 30:16

inapplicable 35:12

include 7:8 38:12,
13

including 6:4 30:5
39:10

incorporated 37:6

incorrect 34:17

independence 8:11

independent 12:23
13:15 22:20

indeterminate
27:20, 24

index 28:8, 9

indicate 32:17
33:14

indicating 8:17

indication 9:22

indications 16:16,
19

individual 32:10, 13

individuals 11:24

injunctive 17:7

injured 43:2

injuries 23:11

injury 10:4 13:10,
13 14:2, 24 23:14
30:17

inquiry 22:10
33:11

insoluble 19:14

intended 8:18
10:20

interest 9:7 10:1
13:2 15:21 16:9,
14 32:8, 14, 15
33:21

interests 7:13
15:16 16:2, 3
19:11, 18

interfering 40:21

interpretation 30:21

interrogatories 12:5

introduce 4:4

invite 12:20 36:8

invited 36:8

invoke 35:8

involve 13:20 26:2
27:16 38:22 39:4,
20

involved 6:19
12:20 36:8

irrational 26:7

irrationality 26:6

issue 5:17 7:1
9:16 10:1 12:18
14:8 19:6 25:6
31:14, 19, 24 32:5,
22 35:17 36:4, 12
40:23

issues 6:14, 16
11:21, 22 32:7
35:17 36:9

Item 17:17

items 18:3

iterated 10:2

its 7:2 8:13 9:12
10:11, 22 15:12
17:21 18:21 21:12,
19 22:16 31:9
35:7 37:19 38:18

< J >

job 6:15 44:8

joined 11:11

Judge 1:16 5:4, 16
6:10 36:14 37:11
41:20 43:15 44:15
45:13

judgment 4:10
11:4 12:2, 10, 18,
24 14:16 15:3, 6
22:1, 21 23:2, 5
24:7 27:10 35:22
36:1, 2, 5, 7, 11, 13,
17 43:5, 6

judgments 32:12

< K >

keep 41:20

Kendall 23:3

kind 13:17 22:6
31:18

know 9:24 12:2
13:23 14:7, 9 15:7
16:15 18:4, 24
19:20 20:7, 10, 11
22:6 23:1 31:8, 15
33:10, 13 34:8
36:16 41:16 44:13

known 37:18

< L >

land 30:12

language 7:6 28:5
Laudien 2:24 3:4,
7, 16 41:24 44:10
45:5

Laurel 2:24 3:4
45:5

law 10:8 12:19, 24
15:18 22:24 32:23
34:7 35:12 36:5, 7
44:4

Lawrence 4:13

lawsuit 9:15 18:7

lawsuits 32:10

Lead 11:12 28:1

leaders 33:24

leadership 17:1

leaving 14:3

Lee 25:24
legal 13:23 14:6
19:2 25:16

legally 19:6

limiting 28:13

limits 28:16 31:11

listing 21:4, 8

Litigation 3:5 9:8
16:18, 21 17:4
18:22 19:19

little 8:4 35:22
43:19

LLP 1:20 2:2

logistical 3:9

long 29:11

longer 4:21 10:19

look 26:19

looked 22:9

looking 27:1 32:7

lot 22:2

Lovells 11:12

LOVELS 2:2

loyalties 19:12

loyalty 16:20 34:2

luck 44:9

< M >

MAAA 30:2

MACEY 1:20 4:5

magnitude 19:17

main 15:11

maintain 38:17
39:6, 13

maintained 22:12

majority 8:22

making 27:11

management 28:19

managing 29:7

manner 13:11

23:23 42:19

March 1:17 45:24

Marla 17:20

Mary 2:5 11:14

material 12:11

14:9 36:4, 12 37:2

matter 3:8 4:9

12:24 29:15 35:2,
12, 13 36:5

matters 4:12

McCarthy 4:13, 21

McDonald 23:2

mean 26:6 28:20
33:18

meaning 17:22

34:24
meaningless 31:13
means 31:12
mechanism 27:13
meetings 30:1
member 7:4, 17
10:18, 23 13:12, 19
17:24 25:3, 4, 10,
12 29:12, 13 39:18
40:15
members 7:5, 10,
22 11:24 13:3, 21
15:10, 12 18:7
19:24 20:5, 16
21:8 24:1 29:12,
16 30:1, 2, 3 31:22,
23 32:1 35:4, 6
38:3, 5, 24 39:4, 10,
12 40:12 42:21
membership 11:20
19:21 20:3, 13
40:8 41:12 42:4
mention 11:10
12:13 18:3
mentioned 20:4
35:11
Mercantile 25:15
merely 7:13 8:14
merits 11:13 13:16
14:4 24:10, 21
26:7 30:17, 21 34:9
MICHAEL 1:5, 15
45:12
minor 27:19 28:1,
6
minority 20:7
minutes 28:8, 9
mistake 26:3
money 32:12
MONTS 2:2 11:12
14:4 24:8, 14, 15
34:8, 13, 14 43:12
moot 43:3
motion 8:7 11:4
12:8 14:11, 12, 15
23:13 30:13 31:1
43:5, 6, 24
motions 4:11
35:21 36:1
motivations 9:6

11:1
motive 17:13
motives 8:24
moving 36:5
MULLEN 1:16
45:12
multifactor 33:10

< N >
name 3:4 21:6
named 13:1 15:8,
15, 19 16:10, 11, 17,
20, 23 17:2, 15
18:18 20:14 21:22
22:1, 18 33:19, 24
narrow 42:6, 9
natural 9:11
nature 40:6
nearly 20:4
necessarily 31:10
necessary 8:16 22:4
need 23:6 39:19
needed 14:24
needs 15:3 26:24
37:1
negating 33:21
never 39:21 40:2
nickname 24:16
Nominal 1:12 2:2
11:18 24:19
nonprofit 37:5
note 24:24
noted 30:10 40:18
41:10 42:3
not-for-profit 11:19
NOVACK 1:20 4:5
November 17:6

< O >
objection 4:19, 20
5:13
objectivity 8:12
obligations 17:14
19:12, 22
observed 12:17
obviate 23:6 36:13
Obviously 11:17
15:7 19:4
o'clock 1:18
October 17:5

offer 27:19 28:11
offered 27:21
Okay 5:6, 17
old 40:19
Once 25:22 30:18
32:18
one-fifth 21:20
ones 25:2
one-third 21:18
23:18
operate 37:24
opinion 9:17
opposing 20:11
order 15:5 38:21
43:18 44:6
ordinary 26:17
organization 11:20
20:4, 13 22:5 29:8
37:5
organizations 21:4,
10 37:7, 10, 14, 17,
20, 23 38:1, 5, 7
42:5
outcome 8:24
outside 8:5 9:12
outweigh 19:23
overcome 11:1
owe 15:17 34:4

< P >
p.m 1:18
Packerview 15:23
page 18:10 20:18
23:4
papers 11:9 15:8
paradigmatic 29:7
Paragraph 36:19
Paragraphs 17:12
part 4:22
participating 21:10
particularly 18:19
parties 6:4, 6, 19
12:3, 9, 17 16:3
19:1 35:18 36:6,
23 37:9 42:24 43:1
Partners 22:7, 8, 9
party 9:13 36:5
pass 22:3
passage 23:24
passed 13:7 17:4

23:24
paying 17:15
penalty 18:5
perjury 18:5
permissible 29:11
permit 7:6
permits 13:18
38:19
personal 19:18
persons 20:2 28:24
29:5
pertinent 16:13
petition 35:5
Pielet 36:17, 18
P-I-E-L-E-T 36:18
place 9:15 27:7
37:10
places 6:21
Plaintiff 6:1, 9
15:21 17:20 20:8
22:1 42:8
Plaintiffs 1:6, 20
3:23 4:1, 4, 13, 22
7:19 8:23, 24 9:5,
9 10:3, 24 13:1
14:11, 12, 17, 19, 23
15:4, 9, 11, 15, 18,
19 16:1, 10, 11, 17,
20, 23 17:2, 15
18:18 19:9, 13, 17
20:2, 15, 21 21:22
22:1, 14, 18 25:23
26:4, 6, 11, 15 27:5,
8, 19 28:4, 9 29:13
30:14, 15 31:1
32:8, 13, 15 33:19,
24 34:5, 19 36:20,
21 39:6, 10, 13, 21,
24 40:3, 12, 13
42:15, 24 43:4, 6, 8,
24
planning 38:10
39:16
pleadings 36:2
please 24:20
pleasure 24:17
plenty 29:23
plethora 30:7
point 11:13 13:24
22:6 24:8 30:21

31:19 34:14, 15, 16, 21
pointed 30:15
points 17:11 30:22 31:5 33:8
policy 7:9, 15 8:9 11:21 13:20 27:4, 8, 9, 15, 17, 21 28:14, 15, 17 31:14, 16 38:23 39:5, 7, 20, 21 40:1, 2, 4
political 8:8
position 9:2 10:3 15:8 17:8 32:23
positions 6:12 9:2 19:3, 10
potential 39:15
power 25:12 27:3 31:9, 21
powers 31:22
practical 35:2
practice 40:4
precursor 5:14
prepare 43:17, 21 44:2
PRESENT 1:19 2:1, 5 6:12 30:6 32:7, 21
presentations 35:15, 24 44:7
presently 5:10
president 17:19 21:9, 12, 13, 19 38:6, 14
presidents 16:24
pretty 34:5, 7
prevail 15:2, 5 21:23 24:4, 5
prevailing 24:6
primarily 22:17
principle 24:22, 23 27:7 28:13 31:7 34:9, 18 35:10
prior 5:1 10:3 12:2 32:24
probably 27:12
problem 18:16 28:3, 4
problematic 35:9
problems 27:6, 22

procedure 35:5
proceed 12:10 33:1
proceeding 3:8 36:20
PROCEEDINGS 1:14 3:15 44:16 45:8, 12
process 8:22 26:11 30:5
produced 12:5
profession 11:22
professional 18:8 37:5
professionalism 11:21
progeny 40:21
promote 33:21
prongs 27:4 28:11
proper 30:11 36:2 38:20 42:24
Properties 12:15
Property 12:14 26:10, 13
propose 35:4
proposed 40:13
prosecution 15:22
prototypical 28:21
prove 10:4 14:12
provide 36:22
provided 4:23 5:2, 9, 22 6:4 9:19 10:6, 16
provides 23:1
provision 31:13 34:22 35:3
proxies 15:13
public 11:21 36:18 41:5
purport 20:3
purportedly 18:22
purporting 33:19
pursuant 38:18
pursue 9:14 34:1
pursuit 17:7
put 17:22 19:5 22:16 26:1 44:1
putting 6:16

< Q >
qualified 15:19

question 8:4 12:19 13:20 17:13 25:5, 8, 9 27:8, 15, 17, 23 29:10 30:19 34:9 36:7 39:20
questioned 40:5 42:11
questions 7:9, 15 14:5 27:21 28:14 38:22 39:5, 7, 20 43:7, 11
quick 32:4
quite 30:13, 17
quoted 20:22
quotes 17:11
quote-unquote 39:6
quoting 23:2, 4

< R >
raised 34:10
rational 26:8
read 29:21
readily 19:23
reading 4:14
reads 29:16
really 21:14, 15, 21 30:22 33:13 34:5
reason 24:6
reasonably 6:14
reasoning 19:3, 9
reasons 24:3 27:9, 11 43:23
received 20:2
recognize 6:18
recommendation 38:10 39:17
record 5:15, 20, 24 6:13 8:6 9:5 12:21 13:10 19:2 20:15 23:17, 21 24:13 36:9 43:23
records 12:3
redline 5:3, 10, 15 21:1, 6
refer 37:7
reference 32:6
referencing 43:22
referendum 35:3
referred 15:14 24:15, 22 36:23

40:13
referring 8:2
reflected 28:15, 17 29:23 30:7 31:23
regarding 31:7 32:5, 22 40:1
reiterated 10:2
relative 19:17 42:17, 24
relief 9:21 10:5, 8 11:2 17:8 21:14 23:11 34:2
rely 19:9
remain 16:24 29:1, 2
remaining 16:11
remedy 20:20, 22
remove 7:4 33:22
removing 7:11
render 31:13 36:13
rendered 25:17
repeal 35:8
repeat 3:11 41:7
reply 33:6
REPORT 1:14
reported 45:8
Reporter 2:24 3:2, 3, 4, 5, 17 5:4 36:14 37:11, 14 41:14, 17 44:12 45:6, 17
represent 3:22 11:17, 23 15:12 16:3 20:3 22:20 32:16 43:1
representation 16:8 21:5 33:23
representative 10:19 14:2 15:18, 20
representatives 13:3 15:9 16:6 30:16
representative's 15:22
request 4:23 11:2 17:17
requested 5:2 9:20 11:3
requesting 35:18
requests 12:5, 6

require 21:16 25:4
31:10 32:24
required 7:16
10:10 39:12, 13
requiring 34:1
research 19:4
resolution 9:17
resolved 14:17, 21
resources 8:23
respect 26:5 27:18
28:14, 18
respectfully 30:24
respective 44:9
respond 31:5
Response 17:17
27:5 32:4 34:8, 15
restore 17:8 21:1,
11, 12
restored 21:7
restoring 32:18
reveal 36:3
reversal 21:3
revert 21:18
reverted 21:7
review 6:11
reviewed 5:19 6:2,
3, 5
right 3:18 4:18, 21
26:10, 13, 14, 23
29:13, 14, 18 30:5,
8 31:24 32:1, 3
40:12, 13, 15 43:17
44:2
rights 7:9 13:21
29:12, 23 30:1, 3, 7
38:23 39:4, 9 40:11
RMR 2:24 45:18
role 21:21
RPR 2:24 45:18
rude 3:19
rule 26:17 41:11
42:3
rules 28:24
ruling 6:7
run 9:6
runs 15:16

< S >
Sarli 17:20
saved 31:23
saying 33:12 37:12

says 3:11 15:19
16:6 23:5
Schedule 18:6, 10
second 12:8 13:5
22:23 23:3 24:6
second-guessing
27:23
secondly 27:24
28:18 34:21
Section 21:7
see 12:3 18:11
20:24 21:6 22:4
32:20
seeing 10:4
seek 7:19 20:22
21:4, 11, 14 23:11
seeking 4:15 10:5
32:16 33:20
seeks 21:1
seen 32:17
selection 7:5, 12, 21
8:17 10:17, 18
17:9, 23 21:5, 8, 13,
17, 20 23:19 33:23
38:3, 9, 13 39:11,
22 40:16 42:17
selfish 33:21
Send 44:3
sense 28:13
separate 14:20
26:21
September 5:1, 12,
14 21:2 38:4, 8
serious 39:6
serve 15:19 16:1
22:15
Services 3:6
set 28:8
sets 11:22
setting 23:6
seven 16:11, 23
20:14, 15 26:2
34:17
shareholder 20:8
23:10
shareholders 20:10
22:12 32:11
sheep 26:21
shocker 41:22
SHOHL 1:20

Shorthand 2:24
45:5, 8, 17
show 14:16 16:13
22:11
showing 16:8
shown 15:8
shows 10:21 15:11
16:9, 22 20:15 27:6
sides 6:15
SIEGEL 1:23 4:3,
5, 7, 8, 18, 20 5:21
11:6, 7 24:11, 15
30:15 33:5, 6
34:12 43:8, 17 44:1
significance 39:15
42:10
significant 6:19
20:21 32:12 40:17
Similarly 8:13
27:18
simply 11:1 12:12
15:16 17:13 19:23
21:8 31:20 32:21
35:12
single 3:10
sits 28:22 29:4
six 17:2
SOA 37:15 38:14
solves 18:16
somewhat 6:13
33:18
soon 17:3
sorry 5:4, 6 36:14
37:11, 13 41:14, 15
43:8 44:10
sought 9:21 20:20
sounds 19:5
speak 33:17
speaks 11:20
specific 10:16
35:17
specifically 5:22
9:18 33:17
squarely 30:17
34:7
SS 1:1
stake 26:14
standard 13:23
14:10 27:20, 21
28:23 29:19

standards 11:22
17:23 37:18 40:8
standing 44:5
start 24:22
starting 3:23
STATE 1:1
STEPHEN 1:8, 23
4:5
steps 21:16
stood 21:2
straight 6:14 18:12
strategic 38:10
39:16
strict 41:11 42:4
strong 16:8
strongly 33:14
submissions 5:24
6:3 30:6 35:16
37:9
submit 7:17
submitted 7:22
25:9, 11 33:11
submitting 42:20
substance 13:12
24:1 27:2
substantial 26:10
substantive 7:9
13:21 29:11 31:24
38:23 39:4, 9
40:11, 15
Substantively 8:4
sue 33:19
suffers 27:22
sufficient 16:9 23:6
suggestion 12:7
suing 15:13 26:15
suit 15:16 17:6, 7,
20 23:1, 5, 10
sum 22:6 30:12
summary 4:10
11:4 12:2, 10, 18,
24 14:16 15:3, 6
22:21 24:7 35:22,
24 36:2, 7, 11, 13,
17 43:5, 6
superfluous 25:17
support 9:5 12:23
14:19, 23, 24 20:1
24:5 32:22, 24
Supreme 36:10

40:18
sure 3:12
system 19:1

< T >

take 5:21 6:19
27:4
taken 9:9 10:18
21:16 23:22
talk 6:7 35:22
technical 7:7, 14
38:21
technical-legal 28:4
tell 29:13
telling 3:20
ten 38:4, 7
terms 35:16 41:12
42:4
text 25:16
Thank 3:18 5:8
6:10 11:5, 7, 8
24:11 31:2, 3 33:3,
4 34:12 35:14, 15
41:24 43:9, 12, 15
44:7, 10, 15
thereto 18:2
thing 29:4
things 5:19 8:8
14:1
think 5:19 6:14, 15
7:24 12:21 16:19
17:6 18:13 19:14,
15 22:13 27:1, 5
28:12 30:13 31:24
33:12, 14 34:6, 7
35:10, 19 40:17
third 13:15 24:9
35:2 42:1
thought 35:1, 8
threatened 13:13
24:2
three 12:23 14:20
15:5 19:16, 17
21:4 22:23 26:9
27:3 35:19 42:6, 9
threshold 25:5, 20
32:24
throwing 17:22, 23
Thursday 1:16
tick 16:21

time 6:11, 20 14:5
41:18 42:2 44:11
times 22:14 37:6
38:7
today 6:12, 17
11:9, 11 13:8 24:17
told 5:7 41:23
touchstone 22:10
transcribed 45:10
transcript 43:19, 22
45:11
transcription 3:15
Travelers 12:13, 14
Tripp 11:12 24:16
Tripple 37:16
true 20:9 45:11
try 6:17
trying 18:18
turn 24:8, 21 30:8
two 7:11 13:6, 8
23:15 25:1 27:22
33:8 38:5, 7
types 25:1
typewriting 45:10
typically 12:19

< U >

unambiguous 28:5
42:18
unconstrained 34:16
understand 3:16
26:5
understanding 8:13
Understood 6:23
31:15
undertaken 18:20
undisputed 10:21
12:22 15:10
undo 21:16
undoubtedly 7:14
unfortunately 30:4
41:21
unilateral 8:6
unilaterally 7:3
upset 9:9
USA 12:15
use 30:2

< V >
Vandal 26:1
version 5:3, 15

versus 12:15 15:23
23:2 25:14 40:19
41:1, 4
view 22:4
viewed 8:14
violated 7:2
virtue 10:7
void 7:23
voluminous 6:14
voluntarily 42:5
voluntary 40:22
41:13, 14, 17
vote 7:4, 17 13:11,
12, 19 17:24 21:18,
20 25:3, 4, 10, 12
29:14, 17, 18 32:2
38:20 39:18 40:13
42:21
voted 38:8 39:12,
15
vs 1:7

< W >

Walsh 40:19
want 5:18 11:8, 10,
13 13:24 32:4
43:21
way 23:20 27:12,
14 30:22
weigh 43:4
weighing 41:12
42:4
well 3:22 4:3 5:3,
6 6:5, 6 18:15
27:15 31:14, 24
33:6 40:20 41:23
42:13
well-represented
35:19
went 27:1
We're 6:18 13:6
14:15 23:15
Wigod 25:14 29:21
WILLIAM 2:2
24:15
Word 44:2
words 18:11 25:16
works 10:15
Worldwide 3:5
WRIGHT 1:20
3:24 4:1, 2, 14, 17

5:13, 16 6:9, 10, 23
11:5 31:4, 5 33:4
35:11 41:7, 20
43:14, 15 44:3, 15
Wright's 34:15
writing 17:3
written 12:4 30:5

< Y >

years 13:6, 8 18:6
23:15

< Z >

Zoom 1:16, 19 2:1,
5 3:8