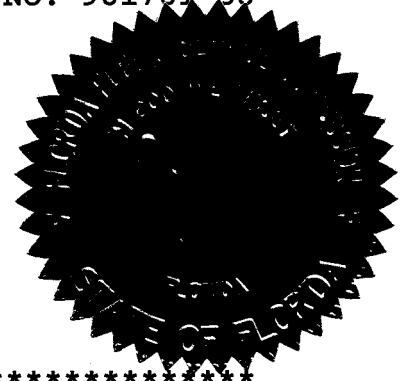


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DCA No. 1D00-951

In the Matter of : DOCKET NO. 981781-SU
:
Application for amendment of :
Certificate No. 247-S to :
extend service area by the :
transfer of Buccaneer :
Estates in Lee County to :
North Fort Myers Utility, :
Inc. :



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PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Wednesday, October 13, 1999

TIME: Commenced at 10:00 a.m.

PLACE: Buccaneer Estates Recreation Hall
2210 North Tamiami Trail
Ft. Myers, Florida

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
Official Commission Reporter

FILED
OCT 30 11:10
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DISTRICT

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FPSC-RECORDS/REPORTING

1
2
3
4
5
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1 **APPEARANCES:**

2 **MARTIN S. FRIEDMAN**, Rose, Sundstrom &
3 Bentley, 2548 Blairstone Pines Drive Tallahassee,
4 Florida 32301, appearing on behalf of **North Fort Myers**
5 **Utility, Inc.**

6 **JACK SHREVE**, Public Counsel and **STEVE**
7 **REILLY**, Associate Public Counsel, c/o, Office of
8 Public Counsel, c/o The Florida Legislature, 111 West
9 Madison Street, Room 812, Tallahassee, Florida
10 32399-1400, appearing on behalf of the **Citizens of the**
11 **State of Florida.**

12 **JOSEPH DEVINE**, 688 Brigantine Boulevard,
13 North Fort Myers, Florida 33917, appearing on behalf
14 of **Joseph Devine.**

15 **RONALD LUDINGTON**, 509 Avanti Way, North Fort
16 Myers, Florida 333917, appearing on behalf of **Ronald**
17 **Ludington.**

18 **JENNIFER BRUBAKER** and **SAMANTHA CIBULA**,
19 Florida Public Service Commission, Division of Legal
20 Services, 2540 Shumard Oak Boulevard, Tallahassee,
21 Florida 32399-0870, appearing on behalf of the
22 **Commission Staff.**

23
24 **ALSO PRESENT:**

25 **BILLIE MESSER**, FPSC Division of Water and Wastewater.

I N D E X

WITNESSES

	NAME	PAGE NO.
1		
2		
3		
4	TAD DUCIEWICZ	
5	Direct Statement	57
6	DAN READ	
7	Direct Statement	58
8	IRENE HINDERLITER	
9	Direct Statement	62
10	GEORGE CHAPMAN	
11	Direct Statement	62
12	RALPH ESPOSITO	
13	Direct Statement	64
14	SHIRLEY MILLIGAN	
15	Direct Statement	65
16	ANN ISHLER	
17	Direct Statement	67
18	PETER MARCUS	
19	Direct Statement	68
20	KENNETH WALKER	
21	Direct Statement	70
22	RICHARD BIRD	
23	Direct Statement	76
24	RUTH PROCTER	
25	Direct Statement	76
	RICHARD DEHOLLANDER	
	Direct Statement	86
	TOM GAYLORD	
	Direct Statement	88
	GERALD SMITH	
	Direct Statement	89

1	I N D E X (contd.)	
2	JACK HANDLEY	
	Direct Statement	93
3		
4	HELEN WARREN	
	Direct Statement	103
5		
6	JO DRUNGELLO	
	Direct Statement	109
7		
8	MARY DOUGHERTY	
	Direct Statement	109
9		
10	HAROLD VANZYL	
	Direct Statement	111
11		
12	EVELYN BROCKSCHMIDT	
	Direct Statement	114
13		
14	MIRIAM KAPSINOW	
	Direct Statement	115
15		
16	DAVE KELLOGG	
	Direct Statement	120
17		
18	JOAN WARD	
	Direct Statement	120
19		
20	Service Hearing ended at 12:50 p.m.	
21	Technical Hearing commenced at 2:00 p.m.	
22		
23	TONY REEVES	
24	Direct Examination By Mr. Friedman	124
	Prefiled Direct Testimony Inserted	125
25	Cross Examination By Mr. Devine	133
	Cross Examination By Mr. Ludington	135
	Recross Examination By Mr. Devine	161
	Cross Examination By Ms. Cibula	169
	Recross Examination By Mr. Ludington	181
	Redirect Examination By Mr. Friedman	184

EXHIBITS1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25**NUMBER****ID. ADMTD.**

Composite 1	Staff's List of Orders	27	27
Composite 2	Prefiled Exhibits	130	187
3	Settlement Agreement	187	187

CERTIFICATE OF REPORTER

207

1 **P R O C E E D I N G S**

2 (Hearing convened at 10:00 a.m.)

3 **COMMISSIONER DEASON:** Call this hearing to
4 order. This is a very sensitive microphone. Can
5 everyone hear me okay?

6 **AUDIENCE:** No.

7 **COMMISSIONER DEASON:** Is this better? Can
8 you hear me? Yes. Very well. We're going to call
9 the hearing to order. There are some preliminary
10 matters we're going to address initially and then I'll
11 take the opportunity to inform you how we're going to
12 proceed. If we can begin by having the Notice read,
13 please.

14 **MS. CIBULA:** Pursuant to Notice, this time
15 and place has been designated for a hearing in Docket
16 No. 981781-SU, Application for Amendment of
17 Certificate No. 247-S to extend service area by the
18 transfer of Buccaneer Estates in Lee County to North
19 Fort Myers Utility Incorporated.

20 **COMMISSIONER DEASON:** Thank you. Can we
21 take appearances please.

22 **MR. SHREVE:** Jack Shreve and Steve Reilly,
23 Office of the Public Counsel appearing on behalf of
24 the Citizens of the state of Florida in opposition to
25 the utility company.

1 **MR. FRIEDMAN:** Martin Friedman of the law
2 firm of Rose Sundstrom and Bentley representing North
3 Fort Myers Utility Inc.

4 **UNIDENTIFIED SPEAKER:** We can't hear.

5 **COMMISSIONER DEASON:** That was Mr. Martin
6 Friedman. Mr. Friedman, could you stand so people can
7 just tell where you're speaking from. Can you just
8 stand up. This is Mr. Friedman. He's representing
9 North Fort Myers Utility.

10 **MR. DEVINE:** Joseph Devine, resident of
11 Buccaneer opposing the utility sanctioning of this
12 territory.

13 **MR. LUDINGTON:** Ronald Ludington, resident
14 of Buccaneer in opposition to the advancement of North
15 Fort Myers Utility into Buccaneer Estates.

16 **MS. CIBULA:** Samantha Cibula and Jennifer
17 Brubaker on behalf of Commission Staff.

18 **COMMISSIONER DEASON:** Okay. Ladies and
19 gentlemen, my name is Terry Deason. I'm a member of
20 the Florida Public Service Commission. I'll be
21 chairing the hearing today. Seated to my left is
22 Commissioner Leon Jacobs and seated to my right is
23 Commissioner Susan Clark.

24 We're the panel of Commissioners which have
25 been assigned to this case. We will hear this case

1 and we will be the panel of Commissioners which will
2 be making a decision in this matter.

3 For those of you who may not have heard the
4 appearances or the introductions of the participants
5 earlier, just let me indicate that the table to my
6 left near me are members of the Staff of the Public
7 Service Commission. On that same table, away from me,
8 is Mr. Steve Reilly and Mr. Jack Shreve from the
9 Office of the Public Counsel.

10 The table directly in front of me to my
11 left, representatives of North Fort Myers Utility
12 Company.

13 To the table in front of me to my right are
14 residents who have intervened on their own behalf in
15 this matter, and those residents are Mr. Devine and
16 Mr. Ludington.

17 The table to my right is a court reporter
18 who is seated who will be transcribing all of the
19 evidence, all of the testimony that is taken here
20 today.

21 This is an official hearing of the Public
22 Service Commission. We are here to take evidence. In
23 a while we will be giving opportunity to members of
24 the public to present their testimony.

25 When that time comes, we will ask that you

1 come forward, be seated at the microphone at the table
2 where the court reporter is seated, and begin by
3 giving us your name and your address and then we'll
4 allow you to proceed with your statement.

5 While we don't have strict time limits on
6 your statements, I understand there are numerous
7 individuals who have signed up. Please be cognisant
8 of that fact. Please recognize that there are
9 numerous people waiting for their turn. So be direct,
10 be succinct, tell us what you want us to hear, but try
11 to be as brief as possible and still cover the
12 relevant subject matter.

13 We're going to have opening statements
14 today. I estimate those statements to be brief but
15 that will be at the discretion of the parties.

16 There are a number of motions that have been
17 filed in this case. We will address those motions as
18 well, and then we will proceed to customer testimony.

19 After customer testimony then we'll proceed
20 into the technical phase of this hearing where we will
21 receive evidence from experts. At the conclusion of
22 that, the Commission may take this matter under
23 advisement. We may get a recommendation from our
24 staff. I'm not exactly sure of the procedure we will
25 follow. It will depend in large part on what

1 transpires prior to that point; the evidence that we
2 receive or the comments and perhaps any actions on any
3 motions.

4 Let me bring your attention to the special
5 report that is printed on green paper. You should
6 have been provided a copy of this as you entered the
7 hearing room today. This contains some basic
8 information on the matter which is currently before
9 the Commission.

10 Also direct your attention to the last page
11 of this handout. This page is designed to be detached
12 and allows those member of the public who do not wish
13 to make a formal statement on the record to
14 nevertheless present your views on this matter. You
15 may write those comments on the -- in the space
16 provided, fold this, and mail it to the Public Service
17 Commission. We invite you to take advantage of that
18 if you so desire.

19 Ms. Brubaker, are there any other
20 introductory matters I need to address at this point
21 that you're aware of?

22 **MS. BRUBAKER:** Other than the pending
23 matters, such as motions, and there are several offers
24 of settlement, there are no -- except for the fact
25 that three letters were received from customers. Just

1 as a matter of clarification, is Mr. Leonard Steinke
2 present?

3 **MR. STEINKE:** Yes.

4 **MS. BRUBAKER:** Mr. Steinke, do you wish to
5 participate as a customer in this matter or do you
6 wish to formally petition for intervention?

7 **MR. STEINKE:** Customer.

8 **COMMISSIONER DEASON:** He is going to
9 participate as a customer.

10 **MS. BRUBAKER:** Thank you. Other than that,
11 other than the motions and offers of settlement, there
12 are no other pending matters.

13 **COMMISSIONER DEASON:** Very well. We are
14 going to give the intervened parties to this case an
15 opportunity to make brief opening statements. We
16 think that this will help provide information to the
17 public generally and certainly will be beneficial to
18 the Commissioners that are hearing this matter.

19 At the conclusion of those opening
20 statements we will address other preliminary matters
21 in the forms of motions that have been filed in this
22 proceeding. Is there any desire as to who should go
23 first, because I'm flexible.

24 **MR. DEVINE:** I will go first, Mr. Chairman.

25 **COMMISSIONER DEASON:** Very well. Please

1 identify yourself for the record and proceed with your
2 opening statement.

3 **MR. DEVINE:** Joseph Devine, Brigantine
4 Boulevard, Buccaneer Estates. I'm reading this
5 statement in conjunction with Mr. Donald Gill who's
6 away on a family emergency, and it will only take
7 about three minutes, so please bear with me.

8 NFMU's application is based on fraudulent
9 and deceptive business practices. And also it's
10 complete disregard of the laws of the state of
11 Florida. Therefore, under no circumstances should the
12 Public Service Commission grant NFMU's application.

13 Should the PSC grant NFMU's application, the
14 PSC would, in essence, be rewarding North Fort Myers
15 Utility for its fraudulent and deceptive business
16 practices and its complete disregard of the laws of
17 the state of Florida.

18 If the PSC grants NFMU's application in this
19 matter, the PSC would be setting the wrong precedent
20 that would be used by NFMU and other private utilities
21 to circumvent the law. Bad precedent those private
22 utilities will use in the future to wrongfully
23 transgress in mobile home parks and their private
24 package wastewater systems.

25 The PSC's consideration in North Fort Myers

1 Utility's application should not be about whether it
2 is a -- if a utility used the right or wrong procedure
3 to extend its territory, but rather if the PSC should
4 force 971 homeowners to finance and enhance the value
5 of North Fort Myers Utility's wastewater business; a
6 wastewater business that NFMU is currently negotiating
7 the sale of to Lee County.

8 If the PSC grants NFMU's application the PSC
9 will be asking the homeowners not only to finance the
10 enhancement of the value of North Fort Myers Utility
11 wastewater business, but also will the PSC be asking
12 the homeowners as taxpayers, be asked to help finance
13 Lee County's inflated purchase of the North Fort Myers
14 Utility system.

15 What the PSC should be considering is not or
16 whether or not it should grant North Fort Myers'
17 application, but if NFMU's wastewater charter should
18 be rescinded for its flagrant disregard for the law
19 and the terms of its charter.

20 The PSC will also consider NFMU's rates and
21 charges as they apply to the residents of Buccaneer
22 Estates. There are good and sufficient reasons to
23 believe that the matters of rates and charges is not
24 between the NFMU and the homeowners, but a matter
25 between NFMU and the park owner, Manufactured Home

1 Communities, Inc.

2 MHC has lease agreements with all the
3 homeowners that provides that MHC will furnish
4 wastewater services to the homeowners at a cost that
5 is included in the homeowner's rent. The leases do
6 not specify that MHC has to provide a wastewater
7 plant. The leases only provide that MHC will furnish
8 wastewater services at a cost included in the
9 homeowner's rent.

10 Without a governmental mandate ordering
11 Buccaneer Estates to hook up to NFMU in 1998, MHC
12 together with North Fort Myers Utility entered into a
13 questionable contract that provided for North Fort
14 Myers Utility to buy MHC's wastewater infrastructure,
15 and for North Fort Myers Utility to charge the
16 homeowners of Buccaneer Estates its wastewater
17 services.

18 At the expense of the residents, the
19 developer's contract between MHC and North Fort Myers
20 Utility was a scheme designed to be a mutual revenue
21 enhancing device for both MHC and North Fort Myers
22 Utility.

23 However, for their fraudulent and deceptive
24 business scheme to work MHC and North Fort Myers
25 Utility had to play their own part. MHC's part in the

1 scheme was to violate the terms of its lease
2 agreements with its residents and also MHC to ignore
3 Lee County Ordinance 91-01 and the Sections of Chapter
4 723 of the Florida Statutes.

5 In an effort to leave no alternative for the
6 residents but to hook up NFMU, MHC, without any
7 mandate, tore down its wastewater treatment plant.

8 NFMU's part in the scheme was to expand its
9 territory without authorization, and after the fact,
10 filed for an application to extend its territory with
11 the PSC.

12 The utility, having a history of dealing
13 with the PSC, MHC and NFMU had little or no reason to
14 doubt that their scheme would work. But what both MHC
15 and North Fort Myers utility did not count on was the
16 stiff opposition their scheme would generate from
17 three residents of Buccaneer Estates. I'm about to
18 conclude, Mr. Chairman.

19 Allowing for the fact that North Fort Myers
20 Utility was not authorized to service Buccaneer
21 Estates in violations of Chapter 723 and other
22 sections of the Florida Statutes, MHC's hookup to
23 North Fort Myers Utility was not in itself illegal or
24 improper had MHC not passed the cost the of such an
25 agreement onto the residents.

1 MHC's decision to go out on a limb and cut
2 it off behind it and possibly expose itself to be
3 liable to North Fort Myers Utility for the cost of
4 Buccaneer Estates wastewater service or to the cost of
5 restoring its wastewater plant to a proper working
6 condition is not a matter that should enter into the
7 PSC's consideration whether or not to grant NFMU's
8 application.

9 The only grounds in consideration for the
10 PSC's decision in regard to North Fort Myers Utility's
11 application for extension of area rate charges must
12 be; one, was North Fort Myers' take over of Buccaneer
13 Estates wastewater service done in good faith; two, at
14 all times was North Fort Myers Utility acting in a
15 proper and legal manner; three, should North Fort
16 Myers Utility be rewarded for illegal acts; four,
17 should the PSC require the residents of Buccaneer
18 Estates to bare the financial burden of MHC and North
19 Fort Myers fraudulent and deceptive business
20 practices; five, should NFMU's charter be rescinded at
21 this time.

22 Thank you, Mr. Commissioner. (Applause)

23 **COMMISSIONER DEASON:** Thank you.

24 Mr. Ludington.

25 **MR. LUDINGTON:** Thank you. My address will

1 take the form of a short synopsis as to how we got
2 into this situation. During the late winter and early
3 spring of 1998 we had a weather phenomenon known as
4 El Nino. I'm sure you're all familiar with that.

5 This caused a lot of problems throughout
6 North America and one here in Florida which was very
7 unusual. Very heavy rains fell time after time. The
8 ground became saturated. These same rains overloaded
9 the wastewater system here in Buccaneer on several
10 occasions and caused spillage and leakage. Florida
11 DEP, Department of Environmental Protection, saw this
12 and wanted timely corrections made. When the
13 corrections were not made the park owners were
14 threatened with a fine of \$10,000 in costs. This was
15 in April of 1998.

16 The park owners then took a quick look at
17 the costs of making these corrections to their plant
18 and decided to take another approach to solving this
19 dilemma.

20 Just who are these park owners? Are they
21 some small family business struggling to make ends
22 meet? Definitely not. They are really a
23 multi-million dollar corporation owning many, many
24 mobile home parks throughout this country. Their
25 assets are in the half billion dollar range. They

1 have a strange philosophy that says in so many words,
2 and I quote, "we maximize rents but minimize
3 maintenance to create maximum profits."

4 I know this because I am a shareholder in
5 that company and I have seen words to that effect
6 written in company's reports. These parks owners also
7 knew that North Fort Myers Utility was interested in
8 connecting to this park as North Fort Myers Utility
9 had made this known to them on several occasions in
10 the past, and would again even make this known after
11 the two parties had already met to discuss the matter.

12 It was not long before the two parties had
13 decided how they would go about this nasty business,
14 both of them being yielded to making lots of money
15 while doing it.

16 The developer's agreement they came up with
17 did just that. They would both come out of it like
18 bandits. The old geezers who lived in the park would
19 believe anything they were told and they would be told
20 that the park owners had to connect to meet a Lee
21 County ordinance that was forced on them and also to
22 meet some supposed DEP requirements, and because of
23 this, the homeowners were now on their own as far as
24 sewers went.

25 The trouble is the old geezers found out

1 that this was not a fact at all. No government entity
2 at any level ever ordered the park owners to shut down
3 and connect to North Fort Myers Utility, or even to
4 rush into a quick dismantlement of the old plant. And
5 then the old geezer homeowners even found out that
6 NFMU was not even allowed to be in this territory.
7 Wow. What to do.

8 The developer's agreement is technically
9 worthless and yet the PSC had deemed it as accepted,
10 which it would not have been done if it had known the
11 proper facts.

12 Now, we have North Fort Myers Utility caught
13 in the dilemma of its own making and looking for a way
14 out, but looking for a way out at the expense of the
15 homeowners while the park owners, who were party to
16 this matter, are no where to be seen. That is where
17 we stand today.

18 You are already familiar with the latest
19 chapter of this story. I hope this brings you
20 up-to-date in the first chapter which you may have
21 found missing from your information packets. Thank
22 you. (Applause)

23 **COMMISSIONER DEASON:** Mr. Friedman.

24 **MR. FRIEDMAN:** Thank you. I'm Marty
25 Friedman, the attorney for North Fort Myers Utility; a

1 brief opening statement.

2 Notwithstanding the rhetoric of the
3 interveners, the evidence -- the evidence that's going
4 to be presented here today is going to show that it is
5 in the public interest for North Fort Myers to provide
6 wastewater service to Buccaneer Estates in accordance
7 with the agreement that was entered into between the
8 Office of Public Counsel and North Fort Myers. Thank
9 you.

10 **COMMISSIONER DEASON:** Mr. Shreve.

11 **MR. SHREVE:** Thank you, Mr. Chairman. I'll
12 be very brief. Not to disagree with anything but to
13 add a couple of things. When North Fort Myers came in
14 and started trying to bill the customers and increase
15 rates, our office was contacted and that's when we got
16 involved.

17 We found out that they did not serve this
18 territory; it wasn't in their territory. That then,
19 once we raised that, stopped the increases temporarily
20 at that point. North Fort Myers then came in and
21 applied for the increase in their territory. That's a
22 part of where we are right now.

23 We also raised the fact that that plant was
24 torn down and we think it was torn down too soon and
25 probably took away some of the options of the

1 Commission, but we're having to deal with the facts as
2 they are.

3 We are in total agreement and have been on
4 many occasions throughout this state as to the lease
5 agreements and contract agreement. We do not feel
6 that the customer should pay one red cent more for
7 sewer charges than their lease agreements and contract
8 agreements have already called for or do call for.

9 That is being handled by Mr. Bob Burandt
10 representing you in the Circuit Court case as I
11 understand it. He may have some answers for you on
12 that case at a later time.

13 Our office is in total agreement. That has
14 been discussed many, many times before the Public
15 Service Commission and we do not feel that the
16 customers should have to pay any increase above what
17 has been called for in their agreements with the park
18 owner.

19 We feel the park owner was acting in bad
20 faith when he tore that plant down early. It did take
21 away some of the options. We feel that North Fort
22 Myers originally moved, whether by mistake or whatever
23 the reason was, into a territory that they did not
24 have the right to serve. We were the ones that raised
25 that point and that brings us up to this point now.

1 We've represented you before in rate cases.
2 Normally we're talking in terms of rate increases or
3 whatever, but we've been involved with you in the
4 past. I've been doing this for 21 years and our
5 office and I will continue to make what we feel in our
6 judgment is the best decision to benefit the customers
7 in this area and in the state of Florida. And that's
8 what we're going to be doing and will continue to do
9 that.

10 We try and work with the customers.
11 Unfortunately there doesn't appear to be any way in
12 this situation to make all the customers happy. There
13 seems to be a disagreement between the customers and
14 that's unfortunate because we don't normally run into
15 that situation because all of the customers in the
16 long run are going to be effected in the same way.
17 We've had disagreements between different systems out
18 there when one system was going to benefit at the
19 expense of another.

20 But all of the customers here should be in
21 the same boat moving in the same direction. And
22 that's what we'd like to see. Unfortunately, it
23 doesn't seem to be the situation here.

24 We're going to be happy to work with any
25 customers that we can to try and come out with the

1 best resolution of this. The Public Service
2 Commission has some tough decisions to make here.
3 They only have certain authority to make. They can't
4 solve all the problems.

5 As I've already said, whatever comes out of
6 the case before the Public Service Commission, you
7 have a Circuit Court case that will involve the park
8 owners and your -- his contract obligations to you and
9 Mr. Burandt is handling that. And perhaps he'll speak
10 to that a little bit later.

11 Mr. Chairman, I appreciate the opportunity
12 to make this statement and also I appreciate the
13 opportunity to represent you as we have in the past.
14 We'll continue to do the very best job we can for you
15 regardless of the outcome of this today. We will be
16 with you and we'll do whatever we can in the future.
17 Thank you very much. (Applause)

18 **COMMISSIONER DEASON:** Does Staff have an
19 opening statement?

20 **MS. BRUBAKER:** Staff has no opening
21 statement.

22 **COMMISSIONER DEASON:** Very well. Thank you.
23 That concludes the opening statements. We do have
24 some pending matters, as I understand, which need to
25 be addressed. Ms. Brubaker, can you introduce those

1 matters.

2 **MS. BRUBAKER:** Certainly, Commissioner.
3 There were several things filed in the last month or
4 so that are pending matters for this hearing. If
5 you'd like, I'll simply note them all and we can take
6 them in whatever order you feel is appropriate or
7 however you would like to approach it.

8 One is that Staff has a list of orders that
9 it would request the Commission take official
10 recognition of. We've distributed copies of both the
11 memorandum of request and the copies of orders to all
12 the parties, the panel, and to the court reporter.

13 There have been several proposed
14 stipulations or offers of settlement filed. On
15 September 2nd a proposed stipulation or offer of
16 settlement was filed between North Fort Myers and the
17 Office of Public Counsel.

18 On October 7th a proposed offer of
19 settlement was filed by Mr. Ludington.

20 On September 7th a motion for dismissal.
21 The settlement agreement between North Fort Myers
22 Utility and the Office of Public Counsel was filed by
23 Mr. Ludington. And on September 9th a motion to
24 strike that same settlement agreement was filed by
25 Mr. Gill.

1 On September 15th an emergency motion to
2 charge rates subject to refund and to expedite
3 rescheduling was filed by the utility.

4 On September 28th a response was filed to
5 NFMU's motion by Mr. Ludington, and also on
6 September 28th a response to that same motion was
7 jointly filed by Messrs. Gill and Devine. On
8 October 12th --

9 **COMMISSIONER DEASON:** Could you repeat those
10 last two?

11 **MS. BRUBAKER:** Certainly. Messrs. Gill and
12 Devine. On October 12th Messrs. Gill and Devine filed
13 a joint motion to remove Jack Shreve and Steve Reilly
14 as counsel of record. And also on October 12th a
15 document was filed captioned as Donald Gill's
16 testimony for the October 13, 1999 PSC hearing. It's
17 my understanding --

18 **COMMISSIONER DEASON:** That's already been
19 addressed.

20 **MS. BRUBAKER:** Yes, that that statement was
21 read as an opening statement.

22 **COMMISSIONER DEASON:** Could you review what
23 Messrs. Gill and Devine filed prior to their motion to
24 remove counsel? I didn't get that.

25 **MS. BRUBAKER:** Certainly. It was a response

1 to -- well, it was a response to the utility's motion
2 to charge rates subject to refund. Mr. Ludington
3 filed a response to that and also Mr. Gill and Devine
4 also filed a joint response.

5 **COMMISSIONER DEASON:** Very well. How do you
6 recommend we proceed at this point?

7 **MS. BRUBAKER:** We, I believe, should take
8 up -- well, the official recognition is perhaps the
9 easiest and first one to --

10 **COMMISSIONER DEASON:** Have all parties
11 received Staff's list of orders with the orders
12 attached that they're requesting official recognition
13 of?

14 **MR. FRIEDMAN:** Yes. North Fort Myers has no
15 objection.

16 **COMMISSIONER DEASON:** Mr. Ludington.

17 **MR. LUDINGTON:** We have no objection.

18 **COMMISSIONER DEASON:** Mr. Gill, no
19 objection? Mr. Shreve, no objection?

20 **MR. DEVINE:** Mr. Devine, Mr. Chairman.

21 **COMMISSIONER DEASON:** I'm sorry. Mr.
22 Devine.

23 **MR. DEVINE:** No objection.

24 **COMMISSIONER DEASON:** This will be
25 identified as Exhibit No. 1, and it will -- with no

1 objection it would be admitted into the record.

2 (Composite Exhibit 1 marked for
3 identification and received in evidence.)

4 **MS. BRUBAKER:** I suppose the next matter
5 would be to take up the joint motion to remove Jack
6 Shreve and Steve Reilly as counsel, since with regard
7 to the other pending matters, if those gentlemen are
8 to remain as counsel they would make statements as to
9 those matters.

10 **COMMISSIONER DEASON:** And that motion was
11 filed by whom?

12 **MS. BRUBAKER:** By Mr. Gill and Devine. It
13 was a joint motion.

14 **COMMISSIONER DEASON:** Okay. Mr. Devine, you
15 wish to argue that motion at this time?

16 **MR. DEVINE:** I will let the motion stand and
17 wait for a reply from Mr. -- the two attorneys.

18 **COMMISSIONER DEASON:** Very well.
19 Mr. Shreve.

20 **MR. SHREVE:** Mr. Chairman, this is a first
21 and I've never had this happen in 21 years.

22 Mr. Devine, Mr. Ludington and Mr. Gill feel -- now,
23 they have elected to represent themselves in this.

24 **MR. LUDINGTON:** Not Mr. Ludington. He's not
25 a part of this.

1 **MR. SHREVE:** Oh, he's not a part of this
2 motion. Okay. But, as far as representing
3 themselves -- and believe me, this is not a case that
4 any lawyer would really want to be in where there is a
5 split in the customer group.

6 Now, we were the only ones that filed
7 testimony in this case on your behalf. We were the
8 ones that raised the fact that the plant had been torn
9 down. We were the ones that raised the fact that it
10 was an extension of their territory and they were not
11 entitled to raise your rates.

12 Frankly, if the customers here don't want us
13 representing them, that is fine with me. I think
14 there is a group of customers here that do want us
15 representing them.

16 Now, where there's been a split like this --
17 and I don't know the numbers on either side. There is
18 no settlement. There is never a settlement unless all
19 parties to an agreement sign on. So there is no
20 settlement. That's what the Commission is going to
21 hear today from you all. If this goes forward, we
22 will continue to represent you as we have in the past
23 and do the very best we can.

24 Now, if it wraps up today, fine. If it
25 doesn't, we'll go to hearing and we'll put in the

1 evidence and put on the case for the people. I don't
2 have much else to say to you beyond that. Thank you.

3 **MR. DEVINE:** Mr. Chairman, may I respond?

4 (Applause)

5 **COMMISSIONER DEASON:** Yes, please. Briefly.

6 **MR. DEVINE:** If you read the motion -- I
7 appreciate Jack standing up. Mr. Gill and I were
8 offended at an incident that took place during one of
9 our teleconferencing meetings. And if you read that
10 motion we objected to coming back on the line and
11 hearing Mr. Shreve instructing other parties to this
12 matter on how to bring favorable people to a meeting
13 one evening. And that's what we objected to. We
14 thought Mr. Shreve and Mr. Reilly should be open and
15 play the game on both sides. And we were offended and
16 I did break into the conversation and I did identify
17 myself, and Mr. Shreve mentioned that it was himself,
18 and I told him then and there I was offended by what
19 he was doing by attempting to pack an audience for a
20 favorable vote.

21 That's what our motion is about. That's why
22 I was offended. I've spoken to Mr. Shreve since. I
23 think he understands why I was upset. I hope he
24 understands. But that's why we put that motion in.
25 Thank you, Mr. Chairman.

1 **COMMISSIONER DEASON:** Thank you. (Applause)
2 Mr. Shreve, briefly.

3 **MR. SHREVE:** I will. I think I have a right
4 to reply since really they should have gone first.

5 **COMMISSIONER DEASON:** Yep.

6 **MR. SHREVE:** That was a conversation that
7 was held where a call came in, I believe from
8 Mr. Durbin, to the Public Service Commission and they
9 turned it over and asked me to talk to them. I talked
10 to them. They were having a meeting. I said, bring
11 anyone you want to.

12 Now, I never said anything about packing a
13 meeting as he said originally; bring favorable people
14 to your side. And I would assume that's exactly what
15 both sides have done here today. I don't imagine any
16 of you said, "hey, you're on our side, stay at home."
17 That's exactly what everyone here should be doing is
18 express themselves and that's why both sides brought
19 everybody they can.

20 I don't apologize for anything that was said
21 in that conversation. I don't think -- Mr. Durbin,
22 did you feel I said anything that was inappropriate?

23 **MR. DURBIN:** No, sir.

24 **MR. SHREVE:** Bring your people in, just like
25 you've brought your people in here today from both

1 sides. We're here to hear from the public and that's
2 who we should be hearing from. (Applause)

3 **COMMISSIONER DEASON:** Thank you.

4 Commissioners, I'm prepared to rule on the motion. I
5 find no basis to grant the motion. There's been no
6 citation of law or precedent that would even give the
7 Commission authority to grant this motion, and I would
8 make the observation that Mr. Shreve's office is given
9 the authority to represent consumers by statute.
10 Clearly that is his prerogative. He chooses to
11 exercise prerogative in the manner that he says fit.
12 Sometimes he is placed in difficult positions when
13 there is not total harmony and agreement among
14 customer groups. And I think that he has an
15 obligation to try to represent customers the best he
16 can.

17 I feel like this motion should be denied and
18 that is my ruling at this point and Mr. Shreve can
19 continue to engage in his representation as he sees
20 fit.

21 Other pending matters.

22 **MS. BRUBAKER:** Commissioner, I would
23 recommend that the next pending matter to be
24 considered should be the proposed stipulation filed by
25 Mr. Ludington on October 7, 1999. To Staff's

1 knowledge no responses or commentary has been filed
2 with respect to that.

3 **COMMISSIONER DEASON:** No responses were
4 filed to that. Has the time run for responses to be
5 filed?

6 **MS. BRUBAKER:** Yes, it has.

7 **COMMISSIONER DEASON:** Okay. Mr. Ludington,
8 do you wish to pursue that at this time?

9 **MR. LUDINGTON:** Is everyone here cognisant
10 of what this was about or would you like me to read
11 it; the proposed settlement agreement?

12 **COMMISSIONER DEASON:** We have it here.

13 **MR. LUDINGTON:** I will read it out for those
14 in the audience that have not heard it before.

15 **COMMISSIONER DEASON:** Mr. Ludington, just
16 one second.

17 **MS. BRUBAKER:** I'm sorry. I misspoke
18 myself. It's seven days plus five for mailing. My
19 understanding is that the proposed stipulation was
20 mailed to the other parties, so the time for response
21 has not run.

22 **COMMISSIONER DEASON:** Okay. Mr. Friedman,
23 are you prepared to respond here today to this or do
24 you want this matter postponed?

25 **MR. FRIEDMAN:** I don't see any reason not to

1 respond to it. I've read the proposed stipulation and
2 North Fort Myers does not agree with it.

3 **COMMISSIONER DEASON:** Okay. Mr. Ludington,
4 I'm going to allow you to -- as I recall, that offer
5 of settlement is not very lengthy.

6 **MR. LUDINGTON:** No, it's not.

7 **COMMISSIONER DEASON:** So I'm going to allow
8 you to read that and then I will allow other parties
9 to make a response to that.

10 **MR. LUDINGTON:** This proposed settlement
11 agreement is made and entered into by Ronald
12 Ludington, Ludington on behalf of the homeowners of
13 Buccaneer Estates, and North Fort Myers Utility
14 Incorporated.

15 Whereas, North Fort Myers Utility
16 Incorporated has filed an application with the Florida
17 Public Service Commission to extend its wastewater
18 service area to include Buccaneer Estates,
19 Manufactured Home Communities, and whereas, Ludington
20 has filed an objection to application and whereas the
21 parties recognize the expense and uncertainty of this
22 procedure, the parties now desire to settle the
23 differences.

24 Now, therefore, it is agreed that in
25 exchange for Ludington dismissing his objections to

1 the application, and in fact now even supporting the
2 granting of the application, North Fort Myers Utility
3 grants the following conditions shall be established
4 between the parties.

5 No. 1, commencing with wastewater service
6 rendered on or about March 1st, 1999 to Ludington and
7 all other homeowners of Buccaneer, North Fort Myers
8 Utility agrees to send its invoices to this service to
9 the owners of Buccaneer instead of the homeowners of
10 Buccaneer using a billing schedule known as Approved
11 Rate Schedule GS.

12 And No. 2, North Fort Myers Utility agrees
13 to drop its right to collect now or in the future any
14 service availability fees or any monthly fees that it
15 mistakenly thought were to be collected through
16 clauses in a faulty developer's agreement that it
17 mistakenly signed with the park owners in 1998.

18 North Fort Myers Utility -- No. 3, North
19 Fort Myers Utility agrees that it has the right to
20 obtain water meter readings necessary for this
21 billing, and that Buccaneer Water Service, BWS, a PSC
22 regulated company, may be forced to supply these
23 readings by the Public Service Commission if Buccaneer
24 Water Service resist doing so.

25 No. 4, Ludington agrees that he will abide

1 by these conditions as long as the PSC renders the
2 adoption of them as being in the public interest and
3 that he will drop all other matters of objection he
4 now has before the Public Service Commission in
5 support of his rights.

6 No. 5, North Fort Myers Utility agrees now
7 or in the future not to affect the rights of Ludington
8 or any other homeowner of Buccaneer in his or their
9 pursuit of contract rights granted to them under
10 Chapter 723 Florida Statutes.

11 Ludington agrees that the order to show
12 cause proceeding against North Fort Myers Utility
13 should be dismissed without penalty.

14 No. 7, Ludington acknowledges that North
15 Fort Myers Utility is the sole owner of the wastewater
16 collection system in Buccaneer and will do nothing to
17 dispute this fact as long as this agreement is in
18 effect.

19 No. 8, this proposed settlement agreement
20 shall be submitted for its approval to the Public
21 Service Commission panel at a hearing to be held on
22 October the 13, 1999.

23 **COMMISSIONER DEASON:** Thank you.

24 **MR. LUDINGTON:** May I speak to that in
25 support of it?

1 **COMMISSIONER DEASON:** Yes, briefly.

2 **MR. LUDINGTON:** No. 1, in support of this
3 agreement it solves the question of just who will
4 provide wastewater service for Buccaneer Estates. One
5 of the questions you panel have to answer.

6 No. 2, it solves the question of when North
7 Fort Myers Utility will commence billing, which is the
8 first of the month following the February 1999 PSC
9 hearing at which the date for this very hearing was
10 ultimately established. It allows North Fort Myers
11 Utility to recuperate some of the funds they have not
12 been able to collect for this service up to now and it
13 uses a PSC approved rate for the billing.

14 No. 3, it directs the bills to the park
15 owner. One party responsible for the formulation of
16 the original developer's agreement, and one party
17 responsible for this fiasco, and the real party
18 responsible for the sewer costs according to legal lot
19 rental contracts.

20 No. 4 is places the onus to solve this
21 dilemma squarely on the shoulders of those parties who
22 are responsible and not on the shoulders of the
23 innocent homeowners of Buccaneer. It allows the two
24 parties to the developer's agreement an avenue to
25 follow towards solving this dilemma.

1 No. 5, it allows the Public Service
2 Commission the use of legislated powers to enforce its
3 rule -- rules in the manners of directing Buccaneer
4 Water Company to supply the necessary water meter
5 readings.

6 No. 6, it relieves the Buccaneer homeowners
7 of an undue, unjust and illegal financial burden
8 thrust upon them by a greedy landlord and an equally
9 greedy utility company.

10 No. 7, it finally allows for the park
11 owner's own facilities to be billed for wastewater.
12 As they were selectively omitted from any billing in
13 the original developer's agreement. Only the
14 homeowners were to pay for wastewater service in that
15 agreement, not the park. They never had to pay a
16 cent.

17 No. 8, it allows the Public Service -- PSC
18 to fulfill its mandate as it is written in Florida
19 Statute 367.011 Section 3 which states, "the
20 regulation of utilities is declared to be in the
21 public interest, and this law is an exercise of the
22 police powers for the state for the protection of
23 public health, safety, and welfare. The provisions of
24 this chapter shall be liberally construed for the
25 accomplishment of this purpose."

1 This Commission will be acting on behalf --
2 acting in the public interest in all three matters of
3 health, safety, and certainly welfare by moving to
4 accept this settlement. Thank you.

5 **COMMISSIONER DEASON:** Thank you. (Applause)
6 Mr. Friedman.

7 **MR. FRIEDMAN:** Thank you, Commissioners.
8 North Fort Myers' position is that the settlement
9 agreement as proposed by Mr. Ludington is
10 unacceptable. That the settlement agreement will not
11 be supported by the evidence that's going to be
12 presented in the record of this case, nor the legal
13 authorities which we propose to cite at the
14 appropriate time.

15 The proposed settlement agreement ignores
16 the provisions of Chapter 723 that allow a mobile home
17 park to transfer the obligation to provide certain
18 services to third parties under certain circumstances,
19 and as Mr. Shreve pointed out that is an issue that is
20 being litigated in Circuit Court by the Homeowners'
21 Association.

22 And we would suggest to you that obviously
23 the agreement has got to be supported by the record.
24 There certainly is nothing at this point that supports
25 it and I would suggest to you that there won't be

1 anything at the conclusion of the evidentiary part of
2 this hearing to support it. And we would suggest to
3 you that it would be inappropriate to accept this
4 settlement agreement.

5 **COMMISSIONER DEASON:** Mr. Shreve.

6 **MR. SHREVE:** I don't have any comment.

7 **COMMISSIONER DEASON:** Staff.

8 **MS. BRUBAKER:** I would simply concur that I
9 believe the stipulation provides for an intermingling
10 of the action that is currently pending in the Circuit
11 Court under Chapter 723 and the in-state proceedings
12 which is transfer of facilities under 367. I would
13 recommend denial or -- especially given the light that
14 the utility is not interested in entering the proposed
15 stipulation. I believe it fails.

16 **COMMISSIONER DEASON:** Commissioners, I'm
17 inclined simply to recognize that there has been a
18 proposal of settlement made by Mr. Ludington and just
19 take it under further consideration in due course.
20 There is no need to rule on that today. Is there
21 agreement on that?

22 **COMMISSIONER JACOBS:** I concur on that.

23 **COMMISSIONER CLARK:** Yes.

24 **COMMISSIONER DEASON:** Okay. Very well.

25 **COMMISSIONER JACOBS:** I would add one brief

1 point. I understand that the offer of settlement is
2 very validly taken under consideration and can be
3 considered by the Commission even if the other parties
4 don't agree.

5 **MR. DEVINE:** Thank you, Mr. Chairman. Thank
6 you, Mr. Commissioner.

7 **COMMISSIONER DEASON:** Thank you. Next
8 preliminary matter.

9 **MS. BRUBAKER:** I would recommend that the
10 next preliminary matter to be taken under advisement
11 is the proposed stipulation or offer of settlement
12 that was filed between North Fort Myers Utility and
13 the Office of Public Counsel on September 2nd. There
14 have been two responses filed with respect to that
15 item. One was responses filed on September 28th by
16 Mr. Ludington in opposition to that agreement. And
17 also on September 28th, a joint response by
18 Messrs. Gill and Devine were filed in opposition to
19 that agreement.

20 **COMMISSIONER DEASON:** Mr. Friedman, I
21 understand that you're going to have a witness -- at
22 least one witness that's going to go into greater
23 detail on the offer of settlement. Do you wish to
24 summarize that at this point?

25 **MR. FRIEDMAN:** Well, I think it would be

1 more appropriate if we deferred consideration of that
2 until you hear the evidentiary part of the hearing.

3 **COMMISSIONER DEASON:** Okay.

4 **MR. FRIEDMAN:** I think that would be the
5 more appropriate procedure at this point because I
6 assume that's going to be the subject of examination
7 and cross examination by these individuals, so instead
8 of allowing just oral argument I think it would be
9 more appropriate to hear the evidentiary part of the
10 hearing first.

11 **COMMISSIONER DEASON:** I agree that that's
12 the procedure we're going to follow. There's not
13 going to be a ruling on that at this point, but it may
14 be instructive to the persons that are in attendance
15 here today to at least understand the basis of that,
16 and certainly they are invited to continue for your
17 witness' testimony. But at least perhaps a brief
18 summary of what is contained therein so that at least
19 they understand what the nature of the proposal is.
20 If you can do that at this point, that'd be
21 appreciated.

22 **MR. FRIEDMAN:** We do have a witness that
23 will also discuss that in the technical part. But
24 basically, the settlement -- what we termed a
25 settlement agreement, that has at least been entered

1 into between two of the parties to this proceeding,
2 was the result of I would guess at least a month or so
3 of negotiation between the Office of Public Counsel
4 and North Fort Myers. It was not, as it has been
5 articulated, a proposal that North Fort Myers gave to
6 Public Counsel and they said, oh, yeah, great, we'll
7 do it. Believe me. And you all have dealt with the
8 Public Counsel and you know nothing comes easily
9 through the Public Counsel. And so this was a very
10 strenuously negotiated agreement with the Public
11 Counsel dealing with the homeowners in the interim.

12 And the solution that we came up with is,
13 the first part of it is that North Fort Myers is going
14 to waive any of the monthly charges from last
15 December -- I don't know why I get feedback on mine
16 and nobody else does. It's my Southern twang, I
17 guess.

18 North Fort Myers has agreed to waive the
19 monthly charges from November through the end of
20 August of 1999; about \$180,000 in revenue. It was our
21 position, and is our position, that if the settlement
22 agreement is not acceptable that we believe under the
23 precedence of the GTE case, which I'm sure you're
24 aware, that we would be entitled to a surcharge to
25 collect that. And this particular part of that

1 agreement gets rid of that issue having to be
2 addressed.

3 So the first part is North Fort Myers gives
4 up -- waives the rent for those months. That starting
5 September the 1st the residents would pay the tariff
6 rate that every other mobile park -- mobile home owner
7 pays for their utility service.

8 The second aspect of that is that North Fort
9 Myers, as you recall, had been assigned the right to
10 collect the pass-through charges. And the
11 pass-through charge is the charge that the park
12 asserts it's entitled to collect under Chapter 723 to
13 reimburse itself for the service availability charge
14 it pays to the utility.

15 North Fort Myers, as a part of this
16 negotiated settlement proposal, has agreed not to try
17 to collect those. We've agreed to waive trying to
18 collect that \$462 per customer which is approximately
19 \$440,000. That if this agreement is accepted by the
20 Commission that we're agreeing to waive the right to
21 collect that.

22 Further, as I'm sure that Public Counsel
23 would point out, this proposal does not -- does not
24 affect the ongoing Circuit Court litigation in any
25 way. And Mr. Burandt is over here, but my

1 understanding is, is that the language, as the Public
2 Counsel put it in here, was formulated with that in
3 mind and we're not -- this agreement was not intended
4 to have any adverse effect on the Circuit Court action
5 that these folks have against MHC.

6 The agreement also -- the parties agree that
7 North Fort Myers should not be further penalized for
8 serving Buccaneer prior to getting formal approval and
9 that the loss of revenues is sufficient penalty.
10 Thank you.

11 **COMMISSIONER DEASON:** Mr. Shreve, do you
12 wish to add anything to that summary or has it been
13 adequately summarized?

14 **MR. SHREVE:** I have nothing to add,
15 Commissioner.

16 **COMMISSIONER DEASON:** Okay. Mr. Devine,
17 Mr. Ludington, response?

18 **MR. LUDINGTON:** I object to the settlement
19 agreement as it stands. I'm not sure exactly whether
20 we're talking about the original settlement agreement
21 or the one that was altered through the PSC Staff.
22 Can we get clarification on that please, Jennifer?

23 **MS. BRUBAKER:** The only modifications that
24 were made were made pursuant to the prehearing
25 conference and a subsequent agenda conference to note

1 that the three customer objecting parties,
2 Messrs. Gill, Ludington and Devine, were not to be
3 signatory to that contract since they had basically
4 openly expressed that they were not in support of
5 that. Other than that, I believe the essential terms
6 all stand.

7 **MR. LUDINGTON:** This is --

8 **MS. BRUBAKER:** The modifications were made
9 to reflect that you were not in support of the
10 agreement.

11 **MR. LUDINGTON:** We are talking then about
12 the modified settlement agreement?

13 **MS. BRUBAKER:** Yes, that's correct.

14 **MR. LUDINGTON:** All right. I object to that
15 on the grounds that the Buccaneer Homeowners'
16 Association was created with certain objectives in
17 mind. Now, does this get -- listen to me.

18 These objectives are clearly stated in
19 bylaws made to control the Association's actions. One
20 of these bylaws states the objectives as, Section 4,
21 Article 3, objectives. Talking about the Buccaneer
22 Homeowners' Association now.

23 To institute litigation on behalf of the
24 corporation and to serve as a class representative for
25 any lawsuits filed by the Homeowners' Association or

1 against the Homeowners' Association.

2 Now, the matter before the Public Service
3 Commission is not litigation initiated by the
4 Buccaneer Homeowners' Association. If it was, they
5 would be a party of record. Nor is it a lawsuit filed
6 for or against the Buccaneer Homeowners' Association.
7 Thus, the BHA has no legal standing in this matter
8 before the Public Service Commission.

9 Now, secondly, as the BHA has no standing in
10 this matter, how can the BHA act as a class
11 representative and approve any settlement agreement by
12 acting as such? As the bylaw clearly states, they are
13 only allowed this privilege during a lawsuit and this
14 is not a lawsuit.

15 Therefore, we must conclude that the Office
16 of Public Counsel must be representing the homeowners
17 as a class and not the Homeowners' Association. And
18 that Office of Public Counsel must get approval of a
19 majority of these homeowners for this settlement
20 agreement.

21 That majority has not been obtained.
22 Indeed, Office of Public Counsel has not even asked
23 for it, except by asking the Buccaneer Homeowners'
24 Association to get it for them, and they did not do
25 that.

1 A vote of 300 or so persons out of a
2 possible 1,800 votes at a Buccaneer Homeowners'
3 Association meeting is not a majority of the
4 homeowners. The 300 votes probably only represented
5 150 to 200 homes maximum, maybe not even that. That
6 is probably 20% of the total number of homeowners.
7 How does OPC have at least a majority of the homeowner
8 votes in the class action? A judge just recently
9 cited this fact in the Buccaneer Homeowners'
10 Association on class action suits against the owners
11 of Buccaneer Estates.

12 If the Buccaneer Homeowners' Association
13 lawyer has to get 51% of the homeowners to sign on for
14 a class action suit, then the same rules must apply to
15 the Office of Public Counsel. To represent the
16 homeowners as a class and ask them to approve or sign
17 the settlement agreement, OPC needs to get at least
18 51% of the total number of owners and not 51% of the
19 people present in the meeting, which is just what they
20 really did.

21 The necessary votes counted has not been
22 obtained. In the settlement agreement that OPC and
23 North Fort Myers Utility proposes or even a modified
24 version of it, such as the PSC legal staff has
25 suggested, is not legal and cannot be presented at

1 this meeting. Thank you. (Applause)

2 **COMMISSIONER DEASON:** Mr. Devine.

3 **MR. DEVINE:** Mr. Chairman, that information
4 can be obtained. Buccaneer Homeowners' Association
5 Inc., Plaintiff, versus Snowbird Vistas, et cetera,
6 excerpt of transcript of proceedings Monday, May 3,
7 1999. And I have the court record, if you'd like to
8 copy it later on, sir.

9 **COMMISSIONER DEASON:** Thank you. As I
10 previously ruled on Mr. Ludington's offer of
11 settlement, the Commission will take the North Fort
12 Myers Utility and OPC offer of settlement under
13 advisement and we will be taking evidence on that
14 matter here today. And it would be premature at this
15 point to make a ruling on that. But I appreciate us
16 taking the time at least going over what is contained
17 therein. I think it's beneficial to the Commissioners
18 and certainly beneficial to those members of the
19 public who will be providing testimony later today.

20 The next preliminary matter.

21 **MS. BRUBAKER:** Commissioner, the only
22 remaining pending matter I have is with respect to the
23 emergency motion to charge rates subject to refund,
24 which was filed by the utility. Responses have been
25 filed by Mr. Ludington, and a joint response has also

1 been filed by Mr. Gill and Devine. It may be -- I'm
2 sorry.

3 **MR. FRIEDMAN:** Mr. Chairman, I would suggest
4 that would be one that would be properly deferred
5 until the conclusion of the hearing also.

6 **COMMISSIONER DEASON:** Any objection to
7 deferring this matter until the end of the hearing?

8 **MR. DEVINE:** May we speak a moment,
9 Mr. Chairman?

10 **COMMISSIONER DEASON:** Surely.

11 (Brief pause)

12 **MR. DEVINE:** We'll defer to later,
13 Mr. Chairman.

14 **COMMISSIONER DEASON:** Any objection
15 Mr. Shreve?

16 **MR. SHREVE:** None. No, sir.

17 **COMMISSIONER DEASON:** Very well. That's the
18 last of the preliminary matters?

19 **MS. BRUBAKER:** Staff is aware of no more
20 further pending matters.

21 **COMMISSIONER DEASON:** Let me ask the
22 parties. Are there any other pending preliminary
23 matters that we need to address before we proceed into
24 customer testimony? There's nothing.

25 **MR. LUDINGTON:** No.

1 **MR. DEVINE:** No, sir.

2 **COMMISSIONER DEASON:** Very well.

3 **MR. SHREVE:** Mr. Chairman, while we're
4 getting the customer testimony organized, would it be
5 possible to have a very short break?

6 **COMMISSIONER DEASON:** Yes. I think that --
7 we have been going for some time now. We have one
8 court reporter. I think we all need a break,
9 including the court reporter probably most of all.

10 We will take a ten minute recess and when we
11 come back on the record the first order of business
12 will be to explain how we take customer testimony and
13 then proceed with taking that testimony.

14 **MR. SHREVE:** Thank you.

15 (Brief recess.)

16 - - - - -

17 **COMMISSIONER DEASON:** Ladies and gentlemen,
18 let me have your attention please. I ask that you
19 take your places. I'll call the hearing back to
20 order. Please take your places.

21 During the break we've had a few comments
22 that some of the individuals in the rear of the
23 auditorium are having some difficulty hearing the
24 participants. So I would want to remind everyone to
25 please speak clearly into the microphone, and if need

1 be, get the microphone fairly close.

2 I also had a few inquiries during the break
3 concerning the procedure that we're going to follow.
4 Let me explain that. The inquiries really were
5 centered on the question of how many witnesses there
6 are going to be and how long it's going to take. Some
7 of the individuals at the end of the list were
8 concerned that it would be an inordinate amount of
9 time before they have their opportunity.

10 So, as I briefly explained earlier, we do
11 not have a strict time limit on customers presenting
12 testimony to the Commission. However, we do implore
13 you to be aware there are numerous individuals here
14 today who are patiently awaiting their turn to provide
15 their input. Please be aware of the persons that are
16 waiting. We want you to take full opportunity to
17 inform us of your position and any input you wish to
18 provide, but please be as brief as possible.

19 The procedure we will follow is -- who's
20 going to be calling out customer names?

21 **MR. SHREVE:** We will.

22 **COMMISSIONER DEASON:** Mr. Shreve.

23 Mr. Shreve has a list of individuals who have signed
24 up to provide testimony to the Commission.

25 When Mr. Shreve calls your name we ask that

1 you come forward, sit at the microphone that is at the
2 same table at which the court reporter is working.
3 Begin by giving us your name and your address, and if
4 you think it will be helpful to the court reporter you
5 may wish to spell your name so it will be accurate in
6 the record. Then proceed with your statement.

7 At the conclusion of your statement wait for
8 a moment because there may be some clarifying
9 questions. We do not encourage cross examination of
10 customers. However, from time to time there need to
11 be perhaps some clarifying questions, and I ask all
12 the participants at the table please be aware of that.

13 Before we can take customers' testimony it's
14 going to be necessary for all those members of the
15 public who wish to testify to stand and to raise your
16 right hand and to be sworn in. This is so that your
17 input can become part of the official record. So I
18 want to take care of that at this point.

19 I'm also going to ask if there are any other
20 witnesses who will be testifying in the technical
21 phase of the hearing to also stand and raise your
22 right hand. All persons who are going to be
23 presenting testimony to the Commission, please stand
24 at this time and raise your right hand.

25 (Witnesses collectively sworn.)

1 **COMMISSIONER DEASON:** Thank you.

2 Mr. Shreve, you may call your first witness.

3 **MR. SHREVE:** Mr. Chairman, if I may have
4 just one minute. We have some new developments that I
5 think we should make clear before the testimony
6 starts.

7 The Homeowners' Association originally asked
8 us to sign on this and agreed with the stipulation
9 with the settlement. Of course we have no settlement
10 because all of the participants have not signed on it,
11 so it would be your decision rather than a settlement.

12 Evidently, the Homeowners' Association has
13 changed their mind and wants us to withdraw our
14 support of the settlement. I have signed the
15 settlement. It has not been accepted, so it's not
16 final or anything and the decision is in your pocket
17 anyway. But I did want you to know that. I've been
18 instructed by the Homeowners' Association to that
19 fact. Although, all of the participants did not sign
20 on it so it never was a final settlement or we
21 wouldn't be here now. But that is the instructions
22 that I have at this point, although I have signed the
23 settlement.

24 **COMMISSIONER DEASON:** Okay. Thank you for
25 that clarification.

1 **MR. FRIEDMAN:** Could I comment on it?

2 **COMMISSIONER DEASON:** Mr. Friedman, briefly
3 because we do need to get to the customers.

4 **MR. FRIEDMAN:** I am. That settlement
5 agreement, since it wasn't signed by everybody, is
6 tantamount to a stipulation. And to be able to
7 withdraw from a stipulation you have to show more than
8 gee, I just changed my mind, and I don't think that
9 the Public Counsel has got the right to withdraw from
10 that stipulation.

11 I do want to raise one other question,
12 Mr. Deason. Are you saying that I don't have the
13 right to any cross examination of these witnesses that
14 I want?

15 **COMMISSIONER DEASON:** No. Not at all. You
16 know the procedure here. You will have every
17 opportunity to ask every relevant question. I guess
18 what I'm trying to make the point is, is that I did
19 not want customers to feel intimidated that they were
20 going to be subject to lengthy strict cross
21 examination. But I'm not trying to deny you any
22 right. And if you feel it necessary to protect your
23 client's interest, I'm going to afford you that
24 opportunity.

25 But you're a participant, a practitioner

1 before this Commission and you know that we try to put
2 customers at ease and encourage them to testify. The
3 questions that you will be asking at most times are
4 clarifying questions. But, from time to time, you may
5 need to engage in what is referred to as cross
6 examination and I will not deny you that opportunity
7 if you feel that it is necessary to do so.

8 **MR. FRIEDMAN:** I just wanted to clarify
9 that. Thank you.

10 **COMMISSIONER DEASON:** Yes, sir.

11 **MR. SHREVE:** Commissioner, Mr. Friedman is
12 correct. We signed the settlement agreement. Our
13 name is still on there. We are not changing anything
14 there. But I wanted to make you, Mr. Friedman, and
15 everyone else aware of the instructions or the change
16 in instructions that I have had from that customer
17 group. That's all I wanted to do.

18 **COMMISSIONER DEASON:** Thank you. You may
19 call your first witness.

20 **MR. SHREVE:** Caroline Bird.

21 **MR. DEVINE:** Mr. Chairman, Mr. Ludington and
22 I still have the right to also "cross examine"; is
23 that correct, or ask questions?

24 **COMMISSIONER DEASON:** Yes, you do have that
25 right.

1 **MR. DEVINE:** Thank you.

2 **COMMISSIONER DEASON:** But we're not trying
3 to intimidate witnesses. That's the point I'm trying
4 to make. We want everyone that wants to participate
5 to come forward. But there is the possibility of
6 questions. I want everyone to be aware that if you
7 come up and make a statement, there is the possibility
8 of questions. And I'm not going to deny any of these
9 participants their due process rights to engage in
10 questioning of witnesses.

11 **MR. LUDINGTON:** We understand that.

12 **MR. DEVINE:** Bad choice of words.

13 Questioning would have been better.

14 **COMMISSIONER DEASON:** Mr. Shreve, can you
15 repeat that name, please?

16 **MR. SHREVE:** Certainly. Caroline Bird. Let
17 me -- I'm sorry. This was not checked. If there is
18 anyone here that wishes to speak that did not check
19 this off, please let me know. It may have been a
20 little confusing. There may be some people here that
21 wanted to speak that didn't check it off.

22 Mr. Tad Duciewicz.

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TAD DUCIEWICZ

appeared as a witness and testified as follows:

DIRECT STATEMENT

WITNESS DUCIEWICZ: My objection is --

COMMISSIONER DEASON: Sir, we need procedure. If you can come forward to the microphone at the table where the court reporter is seated. And if you could begin by giving us your name and your address, and you may wish to spell that for the benefit of the court reporter.

WITNESS DUCIEWICZ: My name is Tad Duciewicz. I live at 158 Blue Beard Drive and I'm here for 17 years. The last ten years I'm single. My wife died. I don't do not do any cooking. I live on TV dinner. I take a shower a day, washroom. That's all I use. But I use a lot of water watering my grass because the park wants to lawn to be green. So my water goes in the ground, not in the sewer. So I'm going to be paying for what? So I use the sewer, but so little. But I use a lot of water for keeping the lawn green. That's my objection. How are they going to bill me? I'm going to pay twice. Keeping the lawn green.

Second, why should Fort Myers Utility be excluded from a penalty? If I break the law, I pay.

1 Is it a ticket? You park in the disabled, \$100. I
2 just paid.

3 So, that's all my objection. That's all I
4 got to say. Thank you for listening. (Applause)

5 **COMMISSIONER DEASON:** Thank you. Are there
6 any questions?

7 **COMMISSIONER JACOBS:** Did the court reporter
8 get his name? Are you okay?

9 **COURT REPORTER:** Yes.

10 **COMMISSIONER DEASON:** Thank you, sir.
11 Appreciate your participation.

12 **WITNESS DUCIEWICZ:** Thank you.

13 **MR. SHREVE:** Thank you, sir. Mr. Jack
14 Murphy. Mr. Jack Murphy. Mr. Dan Read.

15 - - - - -

16 **DAN READ**

17 appeared as a witness and testified as follows:

18 **DIRECT STATEMENT**

19 **WITNESS READ:** Mr. Commissioner, my name is
20 Dan Read. I was here at the full knowledge of my
21 mother who's a lifetime lease holder in Lot No. 1,
22 Parrot Place, which is right next door to the
23 clubhouse here.

24 First of all, I feel that Mobile Home
25 Communities, which owns this park, has entered into an

1 illegal contract with NFMU. I feel that by forcing
2 the tearing down of a perfectly good utilities plant
3 and sewage disposal plant in our own park here they
4 thought they could force the issue. And in my
5 opinion, it's a totally illegal situation that was
6 forced by Mobile Home Communities and entered into the
7 contract with NFMU so that Mobile Home Communities
8 could make more money. And basically, what that adds
9 up to is a rent increase for all of us, or increase of
10 cost of living.

11 They gave us 7% increase in the rent, I
12 believe it was, last year for the people that weren't
13 lifetime lease holders. The cost of living was about
14 2%. And the bottom line is, Mobile Home Communities
15 is absolutely unconcerned about the elderly people
16 that live in this park and they are doing everything
17 they can to make the corporate buck bigger.

18 To me, it's a situation that if they were
19 concerned about the people -- we were paying this
20 price of waste sewage in our rent. They said it was
21 \$6.02 or something, which we think it was more than
22 that, but they offered to give a six dollar and some
23 cents rebate on our rent. We think it cost more than
24 that to get rid of the wastewater. But by tearing
25 down this thing -- and as recently as the 17th of last

1 month, there were men on top of the plant back down
2 there tearing down more pipes and things so they'd
3 make sure it didn't work.

4 In my opinion, MHC should have to replace
5 that plant at their expense without the pass-throughs
6 which they give everybody here. And NFMU knew they
7 were not allowed by franchise to be in here. By
8 illegally entering into a contract with MHC to do
9 that, they should be penalized as well as MHC. They
10 should both be able to foot the bill for any
11 wastewater -- getting rid of the wastewater until such
12 same as MHC would be forced by court order or through
13 other means to rebuild that sewage plant. Thank you.

14 (Applause)

15 **COMMISSIONER DEASON:** Questions? Any
16 questions? No questions.

17 **MR. DEVINE:** I have a question,
18 Mr. Chairman.

19 **COMMISSIONER DEASON:** Oh, I'm sorry.

20 **MR. DEVINE:** Mr. Read, do you consider what
21 happened to the people of Buccaneer to be somewhat a
22 fraud and collusion on their part?

23 **WITNESS READ:** Absolutely.

24 **MR. FRIEDMAN:** I object to that question,
25 Your Honor. I think it's inflammatory and has

1 absolutely nothing to do with what's going on.

2 **MR. DEVINE:** I'm asking this gentleman his
3 opinion, Mr. Chairman.

4 **MR. FRIEDMAN:** And he doesn't have the right
5 to render an opinion about the question of whether
6 something is fraudulent or not.

7 **COMMISSIONER DEASON:** I'm --

8 **WITNESS READ:** I have the right to offer an
9 opinion about anything I like, thank you very much.

10 **COMMISSIONER DEASON:** Yes, sir, you do, and
11 you were afforded that right. You expressed your
12 opinion -- (applause) -- and we appreciate you doing
13 that.

14 But, Mr. Devine, that is kind of a leading
15 question. And obviously, if the witness wanted to get
16 into that matter in his statement he could have. But
17 your questions are limited in asking him what he
18 stated and not leading him into new areas or
19 suggesting answers to the question that you're asking.

20 **MR. DEVINE:** Thank you, Mr. Chairman.

21 **MR. SHREVE:** Irene Hinderliter.

22

23

24

25

IRENE HINDERLITER

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

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4 **WITNESS HINDERLITER:** Irene Hinderliter,
5 H-I-N-D-E-R-L-I-T-E-R. I've been in the park 15
6 years. And naturally I am against what MHC has done.
7 I did think that we had a good thing going here at the
8 park. I still believe that as far as our trying to
9 get this thing settled. That's about the only thing I
10 can say.

11 **COMMISSIONER DEASON:** Are there questions?

12 **MR. DEVINE:** I have a question. Would the
13 young lady state her reasons for the agreement being
14 settled at this time? I just don't --

15 **WITNESS HINDERLITER:** I would like to see
16 some peace in this park is what I'd like to see.
17 Thank you. (Applause)

18 **MR. SHREVE:** Thank you. Mr. George Chapman.

19 - - - - -

GEORGE CHAPMAN

20
21 appeared as a witness and testified as follows:

DIRECT STATEMENT

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23 **WITNESS CHAPMAN:** My name is George Chapman.
24 I reside at 943 Strong Box Lane. I am an elected
25 member of the Board of the Buccaneer Homeowners'

1 Association. In lieu of the situation that came up
2 during the intermission, I'm going to reserve any
3 comments that I have to make until we know what the
4 settlement is going to be. Thank you.

5 **MR. DEVINE:** Excuse me. I'd like to be
6 informed of what settlement took place or what
7 proposed settlement took place.

8 **COMMISSIONER DEASON:** Sir -- Mr. Chapman.

9 **MR. SHREVE:** I don't know of any settlement
10 discussions one way or the other.

11 **MR. DEVINE:** He just said it.

12 **MR. SHREVE:** I think he was talking about
13 whatever the Commission decides on the settlement.

14 **WITNESS CHAPMAN:** I'm going to wait until
15 the Commission makes a decision on the wastewater
16 treatment here.

17 **MR. LUDINGTON:** You referred to something
18 that took place during the intermission. I think
19 that's what Mr. Devine's question was. What was it
20 that changed your mind?

21 **WITNESS CHAPMAN:** They just said to -- that
22 the Commission was going to make the decision on the
23 problem that we've encountered; the wastewater problem
24 that we've all been going through since last December.

25 **MR. LUDINGTON:** I still don't grasp what

1 you're trying to tell us. Some decision was made.
2 Was this the decision for the Homeowners' Association
3 to withdraw the support of the settlement? Is that
4 what you're referring to?

5 **WITNESS CHAPMAN:** That's what I said.

6 **MR. LUDINGTON:** All right. Why didn't you
7 say that?

8 **WITNESS CHAPMAN:** Because you don't ask me.

9 **MR. LUDINGTON:** You brought it up.

10 (Applause)

11 **MR. SHREVE:** Mr. Ralph Esposito, please.

12 - - - - -

13 **RALPH ESPOSITO**

14 appeared as a witness and testified as follows:

15 **DIRECT STATEMENT**

16 **WITNESS ESPOSITO:** My name is Ralph
17 Esposito. You want me to spell that?
18 E-S-P-O-S-I-T-O. I live at 803 Pirates Rest Road.
19 And I'm an elected member of the Homeowners'
20 Association Board.

21 I want to express my concern on what has
22 gone on here with MHC and NFMU and I want what's best
23 for the residents. I know that North Fort Myers
24 Utility is here legally, and that our plant was not
25 condemned and yet it was torn down. I feel that we

1 should be compensated somehow if the Board decides
2 that we are going to be charged for sewage.

3 We were -- we, the Board, were going to
4 fight this in civil court if the Commission decides
5 that we will be billed for sewage. Our best
6 recommendation is that it goes back to MHC. That
7 would be the ideal thing.

8 But if for some reason you people decide
9 that that is not going to happen, we will pursue that
10 in civil court, but we still think that North Fort
11 Myers Utility should be penalized. If some agreement
12 to -- to get rid of our initial hookup charge and back
13 sewage is not agreed upon, then we feel that they
14 should be penalized for doing the illegal things that
15 they have done, both MHC and North Fort Myers Utility.

16 **COMMISSIONER DEASON:** Any questions?

17 **MR. DEVINE:** None.

18 **MR. SHREVE:** Thank you, sir. (Applause)

19 Shirley Milligan.

20

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21

SHIRLEY MILLIGAN

22 appeared as a witness and testified as follows:

23

DIRECT STATEMENT

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25

WITNESS MILLIGAN: Shirley Milligan. I live
at 300 Blue Beard. I've lived in the park for

1 approximately 12 years. I am an elected member of the
2 Board of the Homeowners' Association in this community
3 and as such we have tried to work for the good of all.

4 I have to go along with Mr. Esposito. We
5 feel that there was something illegal going on here.
6 When you don't have a license to do something,
7 gentlemen, you get the license before you hook up.

8 We've had this shoved down our throats and I
9 was all for going along with the settlement, no hookup
10 fee, nine months of free sewer. I don't feel I'm ever
11 going to be without paying a sewer bill again. I
12 think that's a fact of life nowadays.

13 However, I really think that the numbers
14 that were mentioned here today punches North Fort
15 Myers Utility in the belly hard enough.

16 But this community has been torn apart by
17 dissension in the last two weeks the likes I have
18 never seen before. I have stood before this body of
19 people. Many of you are the same ones that I stood
20 before and said, don't do this to yourselves. We came
21 here for a lifestyle. We came here to relax and
22 enjoy. I had to work the first 11 years I was here
23 and I still thought I was in heaven.

24 It's not like that anymore. My neighbors
25 don't look me in the face. You two gentlemen -- I'm

1 sorry -- have called me names. You have accused me of
2 things in the Blo Hard.

3 (Moans from audience.)

4 **WITNESS MILLIGAN:** Oh, yes.

5 **MR. DEVINE:** Mr. Chairman, stick to the
6 facts, please.

7 **WITNESS MILLIGAN:** We have really been
8 through the mill. Whatever you decide is the way
9 we're going to have to go with this.

10 I'm not going to resign from this Board
11 because I was elected to do it and I have tried to do
12 what was for the best of all. I think we're all
13 working to the same means, it's just that some of us
14 have different ways of going about it. Thank you.

15 (Applause)

16 **MR. SHREVE:** Thank you. Ann Ishler.

17 - - - - -

18 **ANN ISHLER**

19 appeared as a witness and testified as follows:

20 **DIRECT STATEMENT**

21 **WITNESS ISHLER:** Ann Ishler, I-S-H-L-E-R. I
22 live at 564 Plaza Del Sol and I really don't have
23 anything else to comment on after what the two before
24 me had to say. I believe that I feel that the way
25 they do and I hope this all can get resolved very

1 soon. Thank you. (Applause)

2 **MR. SHREVE:** Peter Marcus.

3 - - - - -

4 **PETER MARCUS**

5 appeared as a witness and testified as follows:

6 **DIRECT STATEMENT**

7 **WITNESS MARCUS:** I am Peter Marcus,

8 M-A-R-C-U-S. I live at 975 Avanti Way. I'd like to

9 read this brief memo that I put together last May.

10 To Florida Public Service Commission from
11 Peter Marcus, 21 year resident of Buccaneer Estates,
12 lifetime lease holder. Subject, Buccaneer Sewage
13 Disposal System.

14 Since extensive hearings on subject matter
15 were recently held in Tallahassee I assume you're
16 aware of the following facts. MHC purposely allowed
17 the sewage disposal system to deteriorate during 1998
18 so that it would not be in compliance with Florida DEP
19 regulations.

20 The purpose of this action was to force
21 hookup with NFMU, but MHC and NFMU knew NFMU had no
22 permit to connect to Buccaneer sewage disposal system.

23 MHC paid NFMU's \$462,000 hookup charge and
24 plotted to have this money collected by NFMU from
25 Buccaneer homeowners and paid back to MHC.

1 In addition, NFMU bought from MHC the
2 Buccaneer underground sewer system for approximately
3 \$140,000. In an attempt to cover their tracks, MHC
4 sent out a letter on 8-27 claiming that Lee County
5 Ordinance No. 9101 mandated this hookup.

6 MHC refused to allow Buccaneer Homeowners'
7 Association to hire an engineer to give an unbiased
8 opinion of the condition of the sewer plant.

9 MHC is in violation of FS 723.022(4) for not
10 maintaining utility connections in systems in proper
11 operating condition.

12 As a lifetime lease holder, I'm obligated to
13 pay increases in utility rates only for those
14 utilities provided by the lessor. There's nothing in
15 my lease that obligates me to pay a third party. My
16 lease predates Chapter 83 and since there is no
17 government mandate, CH 83 does not apply.

18 If PSC allows hookup to Buccaneer's sewage
19 disposal system to NFMU to continue, Florida Statute
20 723.031(3) should apply.

21 This states that no user fees should be
22 charged by the park owner to the mobile home owner for
23 any services which were previously provided by the
24 park owner and included in the lot rental amount
25 unless there is a corresponding decrease in the lot

1 rental amount. This means that all fees charged by
2 NFMU can be deducted from the lot rental. (Applause)

3 **COMMISSIONER DEASON:** Any questions? No
4 questions. Thank you, sir.

5 **MR. LUDINGTON:** Very well done, Peter.
6 (Applause)

7 **MR. SHREVE:** Mr. or Mrs. Kenneth Walker.

8

9 **KENNETH WALKER**

10 appeared as a witness and testified as follows:

11 **DIRECT STATEMENT**

12 **WITNESS WALKER:** I am Kenneth Walker. I've
13 live at 662 Brigantine Boulevard. I woke up this
14 morning at 4 o'clock, wrote two pages of this and went
15 back to bed. I hope I can still read it.

16 I have a question which I'd like to direct
17 to any PSC representative willing to address a legal
18 question.

19 First, I will quote from Florida Statutes
20 723 -- I'm a little bit hoarse, I hope you can hear
21 me -- which applies to mobile home owners.

22 Next I will give two examples of how this
23 statute may or may not apply. The first example I
24 believe does apply. The second example, I believe,
25 does not apply. I will ask the appropriate

1 representative if he or she agrees or disagrees.

2 Now the quote. Chapter 723, and it's
3 predecessor Chapter 83, contain provisions requiring
4 mobile home owners to pay any cost, including
5 increased cost for utilities, which are incurred due
6 to the actions of any state or local government. I
7 stress the word actions in this quote.

8 A legal interpretation of this statement is
9 very important since BHO has stated in a letter dated
10 November of '98 that this statement is the basis for
11 any legal authorization or authority they have to
12 require Buccaneer residents to pay any charges for
13 wastewater treatment by NFMU.

14 My first example is one I am familiar with
15 from working for 13 years at Firmy Lab (ph.) in
16 Chicago. A package type sewage treatment plant was
17 installed at this laboratory approximately 33 years
18 ago to take care of a population of approximately
19 2,000 people. The system worked fine and meet all EPA
20 effluent requirements for the first five years and
21 then the federal government and the State of Illinois
22 established new and more stringent requirements to
23 obtain better pollution control. This required
24 installation of a third filtering tank called tertiary
25 treatment. This met the new sewage treatment system

1 design requirements, or the discharge requirements.

2 If this system had been installed at
3 Buccaneer I believe Chapter 723 would have allowed MHC
4 to pass through the extra cost for the third tank to
5 all homeowners.

6 Now, for the second example. The package
7 plant at Buccaneer apparently was operating
8 satisfactorily for many years and meet all EPA
9 requirements. Then in more recent years, due to
10 faulty operations or otherwise, the plant no longer
11 met the EPA effluent requirements which had remained
12 unchanged. EPA naturally notified MHC to shape up or
13 be fined. MHC management looked at Chapter 723 and
14 decided it was in their best interest to deactivate
15 their package plant and hook up to North Fort Myers
16 Utility when MHC believed all costs for connecting to
17 the new system, as well as the cost of processing the
18 raw sewage, could be passed on to homeowners.

19 I believe this is an incorrect
20 interpretation of Chapter 723. Do you agree or
21 disagree, and if you don't agree why not? Thank you.

22 **COMMISSIONER DEASON:** Ms. Brubaker?

23 **MS. BRUBAKER:** Mr. Walker, I'm not sure
24 that -- I'm sorry. I'm Jennifer Brubaker. I'm lead
25 counsel on behalf of Staff with the PSC. I'm not sure

1 that my answer is going to be satisfactory to you
2 simply because it appears to me that the matters
3 you're discussing are relevant to Chapter 723 Florida
4 Statutes. I do not work with that chapter. I work
5 specifically with Chapter 367 in this case. That's
6 the chapter we're dealing with for the purposes of a
7 transfer application.

8 Having never worked with matters under 723 I
9 don't feel that I'm qualified to speak to how that
10 section should be interpreted. I know that there is a
11 Circuit Court proceeding currently that's under way
12 that is specifically dealt -- specifically designed to
13 interpret that section and how it shall be enforced.
14 I understand that the homeowners have retained private
15 counsel for that matter.

16 **WITNESS WALKER:** I just thought I'd get the
17 information on the record. Thank you.

18 **COMMISSIONER JACOBS:** That comes under the
19 Department of Business and --

20 **MS. BRUBAKER:** Yes, that's correct. It
21 would be the DBPR.

22 **COMMISSIONER DEASON:** Department of Business
23 and Professional Regulation.

24 **MS. BRUBAKER:** That is correct. That is the
25 agency that would handle those matters under that

1 chapter.

2 **MR. LUDINGTON:** Might I comment on that?

3 **COMMISSIONER DEASON:** You can ask a question
4 to the witness. You want to comment on the legal
5 matter?

6 **MR. LUDINGTON:** Just what he said. This has
7 been a problem with this case all along, is that we've
8 intermingled 723 with 367. Mr. Reilly and Mr. Shreve
9 over here have said all along in discussions I've had
10 with them that this is the problem. 723 is not part
11 of this case. You people are not concerned with 723.
12 And yet it has a big, big impact on what your
13 decisions are going to be.

14 I think it would be a very good factor if
15 the Commission went out of its way to look at some of
16 the areas of Section 723. You'd get a much bigger
17 picture of our side of the story. Thank you.

18 **WITNESS WALKER:** That was the basis for MHC
19 to even suggest going to --

20 **MR. LUDINGTON:** Right.

21 **MR. DEVINE:** Mr. Chairman, might I ask if
22 there is anyone in the audience that could answer this
23 gentleman's question with some legal background?

24 **COMMISSIONER DEASON:** I'm going to ask
25 Mr. Walker -- he may want to ask his question to

1 Mr. Burandt. Is that correct? He may can answer your
2 question for you.

3 But Ms. Brubaker is correct. This
4 Commission only has jurisdiction over matters which
5 the Legislature grants us. And there are a number of
6 chapters in which we do have exclusive jurisdiction.
7 However, Chapter 723 is not a chapter in which we have
8 jurisdiction.

9 Now, there may be some issues which
10 intermingle and overlap to some degree with some of
11 the things that we do have exclusive jurisdiction
12 over, but it would be only in a peripheral manner and
13 we have to be cognisant of the fact that we can only
14 exercise the jurisdiction to which we've been granted.

15 Chapter 723 is an area that we do not
16 normally engaged in. Our legal counsel has
17 acknowledged that. There are numerous issues which
18 arise and that there is a separate agency in state
19 government, the Department of Business and
20 Professional Regulation who does have primary
21 jurisdiction, as I understand it, for enforcement of
22 Chapter 723. And that's probably about as much help
23 as we can be with you -- give you today.

24 **WITNESS WALKER:** All right. Thank you.

25 **COMMISSIONER DEASON:** Thank you.

1 **MR. SHREVE:** Thank you, sir. (Applause)
2 Mr. Richard Bird.

3

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4

RICHARD BIRD

5 appeared as a witness and testified as follows:

6

DIRECT STATEMENT

7

8 **WITNESS BIRD:** My name is Richard Bird. I
9 live at 795 Pirates Rest Road. I also am a member of
10 the Board of Directors of the Homeowners' Association.
11 I can't add much more to what's already been
12 said by other Board members. But there is a concern
13 of the Board to keep this park as a congenial group.
14 Like Shirley Milligan said, this is a lifestyle and we
15 certainly don't want to spoil that. Thank you.

16 (Applause)

17 **MR. SHREVE:** Thank you, sir. Ruth Procter.

18

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19

RUTH PROCTER

20 appeared as a witness and testified as follows:

21

DIRECT STATEMENT

22

23 **WITNESS PROCTER:** My name is Ruth Procter.
24 I live at 104 Jose Gaspar Drive. We bought our home
25 in November of '77. I have been a full-time resident
of Buccaneer for over 20 years. The cost of my lot
rent has more than doubled in this amount of time,

1 which I know this is not in your category.

2 In all this time our sewage system has
3 worked very well. We have had very few problems until
4 MHC took it over and failed to take care of it. Our
5 former owners had got Buccaneer exempted from this
6 area when North Fort Myers Utility came into the
7 picture and wanted North Fort Myers' permission to
8 serve. We were excluded. To me, in their inclusion
9 of this without the proper permits, MHC was in cahoots
10 with them, and I just feel this is completely illegal.

11 Surely through the years the rent increases
12 I've had, which has always covered sewage service,
13 surely has -- cost has been absorbed in any rent
14 increases each month.

15 I don't like seeing all these illegal
16 activities. In reading the local newspapers -- well,
17 since I've been down here, North Fort Myers Utility
18 and their predecessor, Old Bridge Park Service, have
19 been in and out of the newspapers with lawsuits ever
20 since I've been down here. I don't feel they are a
21 reputable company and personally I do not like them
22 doing my sewage service. Thank you. (Applause)

23 **MR. SHREVE:** Thank you. Mr. Jack Colvin.

24 **MR. COLVIN:** I'm going to yield to Bob
25 Burandt when he gets up to speak.

1 **COMMISSIONER DEASON:** He yields his time to
2 another individual, Mr. Shreve.

3 **MR. DEVINE:** Do we have the right to object
4 or approve, Mr. Chairman?

5 **COMMISSIONER DEASON:** No, sir, you do not.

6 **MR. BURANDT:** Mr. Shreve, they would like me
7 to do it now.

8 **MR. SHREVE:** Beg your pardon?

9 **MR. BURANDT:** They want me to speak now.

10 **MR. SHREVE:** All right.

11 **MR. BURANDT:** Everybody's looking at their
12 watches. I'll be brief.

13 My name is Robert Burandt. I'm the attorney
14 representing the Homeowners' Association in 20th
15 Judicial Circuit Court in and for Lee County. I've
16 been asked to talk and present the Board's position at
17 this time on this matter.

18 Our position is, is that the Commission
19 needs to look at the facts. I've sat here and
20 listened to people say that the plant was in a
21 condition of deterioration. I've heard people say
22 that it was intentionally done.

23 I don't practice before the Public Service
24 Commission. I don't know what's already transpired in
25 this case, but I think that's a fact that needs to be

1 resolved: Was it in violation; was the violation
2 intentional; could the violation have been repaired;
3 and did they prematurely destroy and remove this
4 package plant without cause and without proper
5 investigation.

6 The second fact that we know is that it was
7 MHC or one of its affiliates that actually signed the
8 agreement with North Fort Myers Utility. I don't
9 practice before the Public Service Commission, as I've
10 said, but it seems to me that MHC is the customer here
11 and not these individual homeowners. (Applause)

12 If that's the case it seems to me that MHC
13 should be here or one of their affiliates and be
14 expressing their concerns with the rates, and
15 obviously they can't object to the tie-in because they
16 signed the contract.

17 The question that I've always had is whether
18 or not MHC can be determined to be the customer. If
19 MHC cannot be determined to be the customer and these
20 people are determined to be the customers, then our
21 position is that we still prefer MHC or North Fort
22 Myers Utility to absorb the cost of the monthly sewage
23 removal.

24 If that's not possible then the Board falls
25 back -- and I notice that you've termed these things

1 stipulations. I assume what they are is proposed
2 orders or proposed findings. And I know Mr. Ludington
3 has given a proposed finding. I know that the Office
4 of the Public Counsel has given a proposed finding.

5 Obviously, we would all rather see you agree
6 with us and go with Mr. Ludington's proposal
7 instructing North Fort Myers Utility to bill MHC or
8 its affiliates directly. That's obviously our first
9 choice.

10 If we can't have that, then we'll back up to
11 our second choice, which was the agreement that the
12 Public Service -- that the Office of the Public
13 Counsel signed with North Fort Myers Utility.

14 But it's always been our position and always
15 will be our position that the homeowners should not be
16 responsible as the ultimate consumer in this case to
17 pay the monthly sewer charge.

18 I realize that there's some conflict between
19 your jurisdiction and the jurisdiction of the Circuit
20 Court. We have filed litigation. We're in the
21 process of preparing our second amended complaint.
22 Because I'm going to tell you right as we sit here
23 today, and I know that there is maybe some people that
24 are writing this down, but even the courts aren't
25 clear about what jurisdiction -- who has what

1 jurisdiction.

2 Now, there is a couple of cases that guide
3 us with respect to the question about jurisdiction,
4 but that's not all that clear to me. And I'm sure
5 it's not all that clear to some of the judges in the
6 area.

7 You would make it very simple if you said,
8 and you came to the conclusion that MHC is the
9 customer and they should be the ones receiving the
10 bill. We will then drop our lawsuits. There'll be no
11 need to litigate the lawsuit. Ironically the lawsuit
12 will then become between North Fort Myers Utility and
13 MHC under the contract that the two of them signed.
14 And that seems to be the fairest thing to do. They
15 made the agreement with them. They ought to be the
16 ones paying them.

17 Now, that's not entirely without recourse --
18 (applause). That's not entirely without recourse
19 because the park owner always has the right to seek
20 rental increases pursuant to their prospectus, their
21 contracts, under 723 on an annual basis.

22 So it would my fear that they would somehow
23 try and recover -- if they had to pay North Fort Myers
24 Utility, they would somehow try to recover that cost
25 in a different direction.

1 So the simple logical thing is, I think the
2 first thing we need to determine is who is the
3 ultimate consumer here.

4 I know there might be some questions. If
5 the Commission has any questions about the lawsuit I'd
6 be happy to answer them if I can.

7 **COMMISSIONER DEASON:** Questions? I have a
8 question for my legal counsel. Are we aware of the
9 status of the Circuit Court case and are we kept
10 apprised of that or is that something we're not
11 concerned with?

12 **MS. BRUBAKER:** Honestly I've been kept
13 apprised from speaking with the customers and with
14 Public Counsel. They've been kind enough to relay
15 that information for me. I'm not getting direct
16 information from the court. My understanding is that
17 there was a complaint filed. It was dismissed on some
18 grounds and a second amended complaint is apparently
19 currently being filed. But to my knowledge, that's as
20 far as the Circuit Court action has gone.

21 **MR. BURANDT:** We're in the very, very infant
22 stages of the lawsuit.

23 **COMMISSIONER JACOBS:** If I'm not mistaken,
24 jurisdiction under 723 is statutory though, right?

25 **MR. BURANDT:** That's correct. Circuit Court

1 has jurisdiction under 723.

2 **COMMISSIONER JACOBS:** Okay.

3 **MR. LUDINGTON:** Question of Mr. Burandt.

4 Mr. Burandt, your lawsuit is a multifaceted lawsuit,
5 is of not? You're going after rent -- unjustified
6 rent increases and several other matters at the same
7 time; is that correct?

8 **MR. BURANDT:** That's correct. Well, you say
9 multifaceted. I think that are six counts to the
10 complaint, and if memory serves me correctly, one
11 count is for the rental increase; one count is
12 indicating that the reduction in rent, if this is
13 approved, was not sufficient; and the remainder of the
14 counts deal with the pass-through pass-on, and there
15 is one count brought strictly on behalf of the
16 lifetime lessees.

17 **COMMISSIONER JACOBS:** That has to do with
18 whether or not the pass-through was reasonably
19 incurred by the owner?

20 **MR. BURANDT:** Florida Statutes 723.004
21 defines a pass-through as a governmentally mandated
22 capital improvement. Under the statute this does not
23 comport to be a pass-through.

24 **COMMISSIONER JACOBS:** Right.

25 **MR. BURANDT:** So I don't think, even if you

1 approve this pass-through, I don't believe it's going
2 to ultimately be collected from the homeowners. I
3 believe it ultimately will be collected from MHC,
4 which is what I'm asking you to do right now and save
5 everybody a lot of time and trouble.

6 **COMMISSIONER JACOBS:** I understand.

7 **MR. FRIEDMAN:** Mr. Burandt, isn't the
8 question of whether or not it is a governmentally
9 mandate improvement one of the issues that a judge
10 will decide?

11 **MR. BURANDT:** That's correct.

12 **MR. FRIEDMAN:** That hasn't been decided yet?

13 **MR. BURANDT:** That's correct.

14 **COMMISSIONER DEASON:** Any further questions?

15 **MR. LUDINGTON:** Mr. Burandt, at this stage
16 of the game, has the park owners been able to come up
17 with any evidence that shows that it was a
18 governmentally mandated approval?

19 **MR. FRIEDMAN:** I object to that question
20 because it's wholly irrelevant as to what -- and it
21 asks for a hearsay response.

22 **MR. LUDINGTON:** No. I'm asking for a
23 response from Mr. Burandt.

24 **COMMISSIONER DEASON:** Sir, there's been an
25 objection made that the question is inappropriate,

1 that it is soliciting hearsay. Do you care to respond
2 to the objection?

3 **MR. LUDINGTON:** Certainly not hearsay. If
4 Mr. Burandt knows the answer to it, it's certainly not
5 hearsay.

6 **COMMISSIONER DEASON:** I'm going to allow the
7 witness to -- not to speculate as to what the Court
8 may do, but simply explain what the issue is and what
9 his pleading before the Court states as to his
10 position on that, realizing that it is an issue before
11 the Court and that he cannot speculate as to that.
12 You may answer to that extent.

13 **MR. BURANDT:** I see no evidence that this
14 was a governmentally mandated capital improvement.

15 **COMMISSIONER DEASON:** That's your argument
16 before the Court?

17 **MR. BURANDT:** That's the evidence, is
18 that -- he asked me if I've seen any evidence that
19 this was, in fact, a governmentally mandated capital
20 improvement. My response is, I have not seen any
21 evidence to indicate that it was governmentally
22 mandated.

23 **COMMISSIONER DEASON:** But the Court will
24 determine if there's going to be any evidence and
25 they'll make the interpretation of evidence if it does

1 or does not exist.

2 **MR. BURANDT:** That's correct. We are still
3 in the infancy stages. We've plead the complaint.
4 Until they file an answer, I don't even know what
5 their position is.

6 **COMMISSIONER DEASON:** Thank you, sir.
7 Appreciate your testimony. (Applause)

8 **MR. SHREVE:** Mr. Stanley Durbin.

9 **MR. DURBIN:** I defer to Bob Burandt. Thank
10 you.

11 **MR. SHREVE:** Mr. Richard DeHollander.

12

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13

RICHARD DEHOLLANDER

14 appeared as a witness and testified as follows:

15

DIRECT STATEMENT

16

WITNESS DEHOLLANDER: There's a lot of
17 mumbling. Richard DeHollander is my name. 433 Hidden
18 Cove Road. I believe the mumbling is because they
19 found out my real name. My nickname is Zeke. I think
20 I settled that.

21

And I can't believe what I've heard today
22 compared to what I've heard in the last few days. The
23 last few days I walk down the street or ride my
24 bicycle down the street and I see people and they look
25 the other way, and they say, there goes Zeke.

1 And I don't like it. I like people. I came
2 to this park and I've lived in this park because I
3 love people. I'm in tears. I've lost sleep because
4 people are not friendly with each other over some
5 ridiculous thing like this. I feel ashamed that if I
6 had any part in doing it, and I apologize. (Applause)

7 As far as the agreement to settle this, I am
8 on the committee and I signed this paper and I signed
9 it with my thoughts in mind that this was a
10 settlement. I would settle for anything. And I have
11 to be honest, the best settlement there can be is if
12 it doesn't come out of my pocket. (Applause)

13 The worst settlement that I can have is if I
14 have to walk down the street and hide; close the
15 drapes on my house and hide; go to coffee in the
16 morning and say one side sit on one side of the room,
17 one side sit on the other side of the room; come to a
18 homeowners meeting and see half of the room sitting
19 here, half of the room sitting there. I don't like
20 it.

21 And I guess as my question to you, because I
22 don't know all the laws, is if you can settle this in
23 any manner, I'll sign it. I'm sorry. Thank you.
24 (Applause)

25 **MR. SHREVE:** Thank you, sir. Tom Gaylord.

TOM GAYLORD

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 **WITNESS GAYLORD:** My name is Tom Gaylord,
5 G-A-Y-L-O-R-D. I live at 363 Jose Gaspar Drive.

6 Whoever thought three years ago when I moved
7 down here that I'd be like Lucky Pierre, right in the
8 middle. Last year when I was nominated president of
9 the Homeowners' Association and all this business
10 started, we had a committee to handle it for us. We
11 had an attorney that was handling it for us, and then
12 all of a sudden we didn't have a sewer plant. And now
13 we've got more problems. So we tried to handle that
14 through the Office of Public Counsel.

15 Ideas were given back and forth with North
16 Fort Myers Utility. I don't know if MHC was involved
17 in that or not. Probably not.

18 Offers were made. Offers were rejected.
19 And finally we came up with an agreement. It wasn't
20 going to cost the homeowners, residents of the park,
21 any money for a hookup charge; any money for all the
22 past due sewer charges; no money for credit checks, so
23 we brought it to the attention of the homeowners
24 through this proposal.

25 The homeowners, over 300, raised their hands

1 in agreement. We thought this is what they wanted.
2 We have since changed our minds because we find out
3 that the opposition is quite great.

4 This park is being torn apart and that's not
5 why I'm president and that's not why we have a Board.
6 Therefore, I am deferring this problem to the
7 Commissioners and I am asking our attorney, Bob
8 Burandt, to make the statement for me. Thank you.
9 (Applause)

10 **MR. SHREVE:** Thank you, sir. Elwood or
11 Claire Keating.

12 **MS. KEATING:** There is nothing really more
13 that I can say than what Bob Burandt has said. Thank
14 you.

15 **MR. SHREVE:** Thank you. Mr. Gerald Smith.
16 Mr. Gerald Smith. Mr. Edward Suren.

17 **COMMISSIONER DEASON:** I believe Mr. Smith is
18 coming.

19 **MR. SHREVE:** Oh, okay. Thank you,
20 Mr. Smith. Thank you, Mr. Chairman.

21

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22

GERALD SMITH

23 appeared as a witness and testified as follows:

24

DIRECT STATEMENT

25

WITNESS SMITH: My name is Gerald Smith. I

1 live at 96 Jose Gaspar. I'm a lifetime resident.
2 I've been here for 21 years.

3 **AUDIENCE:** Can't hear you.

4 **COMMISSIONER DEASON:** Mr. Smith, you need to
5 get a little closer to the microphone or move the
6 microphone to you.

7 **WITNESS SMITH:** I am a lifetime resident.
8 I've been here 21 years. We have a contract that says
9 we will not pay for water. We will not pay for
10 sewage. Now, all these are excluded in our contract.

11 So what I'm asking is, if they are allowed
12 to break their contract and charge us this \$10.97 and
13 \$3.50 for water, why can't we break the contract and
14 when they present us with a bill, refuse to pay it?

15 (Applause)

16 Tell them to stick that bill --

17 **MR. LUDINGTON:** Be nice now.

18 **WITNESS SMITH:** -- where it's good.

19 (Applause)

20 **MR. LUDINGTON:** I have a question for the
21 gentleman.

22 **COMMISSIONER DEASON:** Yes.

23 **MR. LUDINGTON:** Sir, I have a question for
24 you. You've been here for 21 years?

25 **WITNESS SMITH:** Right.

1 **MR. LUDINGTON:** And do you pay water charges
2 now?

3 **WITNESS SMITH:** They forced it upon us.
4 When they started to put the meter in, I went out and
5 I said, "Why are you putting the meter in?" I says,
6 "I'm not suppose to pay for water." And they said,
7 "Well, we have to get a reading from each and every
8 one of you that's what water you're using." I said,
9 "You can get that from the main meter up to the
10 clubhouse or whatever it's in here. You can get that
11 reading up there. You know how much it is and you can
12 pay for the water."

13 **MR. LUDINGTON:** This was done under the
14 former owners, though, was it not? Not MHC, but you
15 the owners before that? DeAnza Corporation?

16 **WITNESS SMITH:** I don't know when it was
17 done. A couple of years ago.

18 **MR. LUDINGTON:** Yeah. More than a couple.

19 **WITNESS SMITH:** Yes.

20 **MR. LUDINGTON:** But you are now paying a
21 water bill now?

22 **WITNESS SMITH:** I was forced to. I was
23 forced to pay \$4.18 -- well, they raised it. It was
24 12 cents a thousand to begin with. And a short year
25 later, they raised it to 18 cents a thousand gallons.

1 **MR. LUDINGTON:** What's the name of the water
2 company that sends you the bill? Do you have a name
3 for the water company?

4 **WITNESS SMITH:** No.

5 **MR. LUDINGTON:** It's on your MHC bill?

6 **WITNESS SMITH:** Right.

7 **MR. LUDINGTON:** It's the Buccaneer Water
8 Company.

9 **WITNESS SMITH:** That's right.

10 **MR. LUDINGTON:** But you don't have a
11 contract with the Buccaneer Water Company? You have a
12 contract with the park owners?

13 **WITNESS SMITH:** I have a contract that says
14 the water is furnished free of charge.

15 **MR. LUDINGTON:** This is another one of the
16 things that's happened in this park over a period of
17 time. Thank you.

18 **MR. DEVINE:** Thank you, sir. (Applause)

19 **MR. SHREVE:** Thank you, Mr. Smith.

20 Mr. Edward Suren.

21 **UNIDENTIFIED SPEAKER:** He passed.

22 **MR. SHREVE:** Thank you, sir. Mr. Jack
23 Handley.

24

25

JACK HANDLEY

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 **WITNESS HANDLEY:** My name is Jack Handley.
5 I'm a new kid on the block. I've only been here two
6 years. Unlike most of you, I have to work for a
7 living and probably will until I die. So this high
8 cost is certainly hurting me, just like it does you.

9 I formulated my notes in the form of
10 questions. I have the same complaints everyone else
11 has. I'm not trying to view it as a complaint. I'm
12 trying to come up with a solution.

13 What I'd like to find out is ask the
14 question, can North Fort Myers Utility wastewater
15 process it without owning the collection system if it
16 was maintained by Manufactured Home Communities like
17 it always has, maybe put a meter or a hookup at the
18 property line or at the holding tank if one is
19 required. Can the existing system that's been
20 dismantled be used as a holding tank or holding
21 facility if it's required? Can North Fort Myers
22 Utility bill MHC directly? Fair prices. Whatever is
23 reasonable. They deserve a profit. They're in
24 business like other businesses.

25 On the other hand, I don't think that I

1 should be responsible to pay North Fort Myers Utility.
2 I have nothing against them. But my agreement is with
3 Manufactured Home Communities. And I think they
4 should pay North Fort Myers Utility. They should bill
5 me my fair share -- my reasonable fair share on the
6 cost of processing only. I think the cost of
7 accumulating it and transporting it still belongs to
8 Manufactured Home Communities.

9 I don't know whether the condemnation or
10 whatever, dismantlement of our existing system, was
11 legal, illegal. At this point I think it's almost a
12 moot point.

13 What I'd like to know is, can that, what
14 little is left of it, be used in conjunction with
15 letting North Fort Myers Utility process this, but let
16 MHC collect it. And there is no extra billing.
17 They've been billing us all along. It's included in
18 the rent. Seems like that would be the least
19 expensive way all the way around.

20 Then the last question that comes to you
21 fellows and ladies is, can North Fort Myers Utility
22 process our waste without our being in their
23 jurisdiction. It seems to me like they can if we get
24 it to their jurisdiction, right across the property
25 line. That's all.

1 **MR. LUDINGTON:** Might I comment on this or
2 ask a question of the gentleman?

3 **COMMISSIONER DEASON:** Let's do this. Let's
4 see if there are any of the parties or Staff who wish
5 to try to answer those questions, and then we'll
6 pursue additional questions after that. Ms. Brubaker.

7 **WITNESS HANDLEY:** While they're consulting,
8 I'd like to add one other thing. This whole thing
9 appears to be motivated by what I call money as
10 opposed to using a terrible word, greed. And I'm not
11 necessarily pointing toward North Fort Myers Utility.
12 I'm talking about our ownership of the park.

13 **MS. BRUBAKER:** If -- hello. There we go.
14 Just got to lean forward. As far as whether NFMU can
15 process the sewer without owning the lines, I think
16 that would be an option if they were to become -- if
17 the mobile home park was to become a bulk customer.

18 Can the dismantled system be used for
19 treatment or distribution or what have you; I don't
20 know that. I'm not an engineer. I don't know what
21 the specific condition of that system is at this time.

22 **WITNESS HANDLEY:** The intent of my question
23 was, does the utility company have to own the
24 collection system in order to dispose of the waste.
25 That was the intent of the question.

1 **MS. BRUBAKER:** My understand is no, they
2 don't, provided it's a bulk customer set up.

3 You're last question was -- if you could
4 restate it for me, please? Can they serve the
5 customers but not actually have their territory in
6 here? Is that kind of the timber?

7 **WITNESS HANDLEY:** Well, what I'm trying to
8 get to is, let the utility company process the stuff
9 but the mobile home community own the collection
10 system down to the discharge point to them and then
11 North Fort Myers Utility charge the mobile home
12 community for the cost of processing. Just
13 processing. Not collection. Not maintenance. Just
14 processing.

15 **MS. BRUBAKER:** That would be a bulk customer
16 arrangement.

17 **WITNESS HANDLEY:** That would be legal then?

18 **MS. BRUBAKER:** They could not serve the
19 customers directly unless their service territory was
20 amended, but my understanding is as a bulk customer,
21 yes, they could handle it as you've described.

22 **COMMISSIONER DEASON:** Sir, those type
23 arrangements exist in this state. It's something that
24 can be done if the proper agreements are entered into.

25 **WITNESS HANDLEY:** Okay.

1 **MR. LUDINGTON:** Might I comment on that?

2 **COMMISSIONER DEASON:** Can you ask the
3 witness a question? Really, we're at a point now
4 where you're questioning witnesses.

5 **MR. LUDINGTON:** The situation has changed
6 slightly because he answered something that was
7 brought up from Jennifer.

8 **COMMISSIONER DEASON:** I'm going to allow you
9 to amplify on that, and if there are any comments in
10 relation to that, I'll allow everyone else to make
11 comments as well because he was really in the form of
12 asking questions, and I'm going to give you some
13 latitude because of that.

14 **MR. LUDINGTON:** All right. Thank you very
15 much. This is one of the ideas that are -- or
16 scenarios that I approached to Steve Reilly with last
17 spring.

18 My idea was at the time that North Fort
19 Myers Utility had to run a lateral from the property
20 line down to the last pumping station at their
21 expense. What would be wrong with the park owners
22 still maintaining control of the pickup system in the
23 park, but buying that lateral down to the property
24 line? They would be taking the effluent from the park
25 and, in essence, not selling it, but paying North Fort

1 Myers Utility to process it for them under a bulk
2 arrangement.

3 That was one of the scenarios that I brought
4 up, but it didn't go very far. I don't know why. It
5 flew over everybody heads I think at the time. But it
6 was brought up before and never went anywhere. Thank
7 you.

8 **MR. DEVINE:** I would like to address a
9 question to the gentleman. He asked earlier if there
10 are any experts that could answer his question. Are
11 any of our expert witnesses here, such as Mr. Bidy or
12 anyone else who could answer his question about the
13 expertise of what's going on? Anyone?

14 **COMMISSIONER DEASON:** If there are any
15 witnesses present here, when they come forward to give
16 their testimony, if they want to address any of these
17 matters, their attorney can pursue that with those
18 witnesses at that time. I don't know specifically if
19 there are any witnesses -- if Mr. Bidy is here or
20 not. But if he is and he does take the stand, well,
21 then that will be something for his attorney to pursue
22 with him at that time.

23 Thank you, sir. We appreciate your input.

24 (Applause)

25 **MR. SHREVE:** H.R. Blanchette.

1 **MR. FRIEDMAN:** Commissioners, I'm going to
2 object to Mr. Blanchette's testimony. He is not --

3 (Moans from audience.)

4 **COMMISSIONER DEASON:** Excuse me. I need to
5 listen to the objection, please.

6 **MR. FRIEDMAN:** He is not a resident of
7 Buccaneer Estates. His participation in this
8 proceeding -- I believe he's run and been defeated
9 either once or twice by the current County
10 Commissioner in this district and I submit to you that
11 his participation in this proceeding is a soapbox and
12 a forum to further a political agenda that has
13 absolutely nothing to do with this case. He is not a
14 customer and doesn't have any --

15 (Audience boos.)

16 I don't think that any "Joe Blow" off the
17 street ought to be able to come in here and provide
18 testimony on this issue, and I think this is a "Joe
19 Blow" off the street. Thank you.

20 **MR. BLANCHETTE:** Thank you for the
21 compliment.

22 **COMMISSIONER DEASON:** Sir, your name is?

23 **MR. BLANCHETTE:** My name is H.R. Blanchette.
24 I'm a businessman and resident of North Fort Myers for
25 over 13 years.

1 **COMMISSIONER DEASON:** Are you a customer of
2 this utility?

3 **MR. BLANCHETTE:** I am not a customer of this
4 utility. I am in this utility franchise.

5 **COMMISSIONER DEASON:** Okay. You're not a
6 customer?

7 **MR. BLANCHETTE:** Not at this time. They
8 tried to force me into it in '92 and it didn't happen.

9 **COMMISSIONER DEASON:** Well, what's the
10 nature of your testimony? If you were allowed to
11 proceed -- why are you here if you're not a customer
12 of this utility?

13 **MR. BLANCHETTE:** I am here on behalf of
14 other people in North Fort Myers that are concerned
15 with the actions of North Fort Myers Utility. Back in
16 1992 --

17 **COMMISSIONER DEASON:** Wait. I've not yet
18 allowed you to give testimony.

19 **MR. BLANCHETTE:** Okay. I'm just trying to
20 establish credentials here to why I am not a "Joe
21 Blow" off the street. I have sat as --

22 **COMMISSIONER DEASON:** I'm sorry, sir. You
23 could be a Ph.D., economist or engineer. I'm trying
24 to understand why you have standing to address the
25 issues which are in front of us for this particular

1 utility company.

2 MR. BLANCHETTE: I have concerns with the
3 business practices of North Fort Myers Utility.

4 COMMISSIONER DEASON: And how does that
5 affect you?

6 MR. BLANCHETTE: It will in the long run
7 because I am in their franchise area.

8 COMMISSIONER DEASON: Let me ask my legal
9 counsel what the standing is for a witness of this
10 nature.

11 MS. BRUBAKER: Well, the purpose of having
12 customer testimony is to allow those persons who are
13 going to be substantially affected by any decision
14 evolving from this hearing to speak as to any concerns
15 they may have. As to whether an existing customer of
16 the North Fort Myers Utility franchise -- sir, do you
17 already receive service from North Fort Myers?

18 MR. BLANCHETTE: No, ma'am, I don't.

19 MS. BRUBAKER: Um, I'm at a loss as to how
20 his interests are going to be affected by this
21 proceeding.

22 MR. LUDINGTON: It is a possibility, though,
23 is it not?

24 MR. BLANCHETTE: I will be hopefully a
25 customer in the future if they stop disrupting mobile

1 home parks and --

2 **COMMISSIONER DEASON:** Excuse me, sir. I'm
3 going to exercise some discretion of the chair and I'm
4 going to defer to the former general counsel of the
5 Commission and let her give me some guidance in this.
6 I'm not trying to put you on the spot. You probably
7 have dealt with this before.

8 **COMMISSIONER CLARK:** I think that the
9 problem is that it's a matter of due process and it
10 seems to me that your substantial interests have to be
11 of an immediate nature that you will be effected by
12 the proceeding. And the fact that you may be a
13 customer later would not qualify you to make a
14 statement in this particular proceeding.

15 But let me give you some other avenue. You
16 can file a complaint with the Commission or get in
17 touch with our consumer affairs and let us know if
18 there are business practices you think that are being
19 undertaken that are inappropriate and we will
20 investigate it and pursue it in a separate docket.
21 But it's not appropriate for this docket. We are here
22 to hear from customers.

23 **MR. BLANCHETTE:** Do not my hundreds of hours
24 of service as Vice Chairman of the North Fort Myers
25 Sewer Advisory Committee have any bearing on this

1 hearing, back from 1992 on? There's a pattern that
2 has been developing here, and that's what I wanted to
3 address.

4 **COMMISSIONER DEASON:** Sir, we appreciate
5 that, but I'm going to ask that you acknowledge that
6 you're not a customer. We appreciate you coming out
7 here today. There are other customers who are waiting
8 and we need to get to those. (Applause)

9 **COMMISSIONER CLARK:** Mr. Blanchette, I would
10 encourage you to get in touch with our staff on the
11 nature of those things.

12 **MR. BLANCHETTE:** Thank you. (Applause)

13 **MR. SHREVE:** Helen and John Warren.

14 - - - - -

15 **HELEN WARREN**

16 appeared as a witness and testified as follows:

17 **DIRECT STATEMENT**

18 **WITNESS WARREN:** My name is Helen Warren. I
19 live at 488 Avanti Way. And this is for Mr. Shreve
20 because he and I had a nice conversation on the phone.

21 When you realized, Mr. Shreve, that we had
22 two disagreeing parties in the park and you represent
23 all the customers in Florida, why didn't you tell us
24 to get together as one group, seeing that both parties
25 had the same common goal, before you stepped in to try

1 to resolve what you are commissioned to do?

2 **COMMISSIONER DEASON:** This is a matter
3 between you and Mr. Shreve. I don't know that this is
4 something that needs to be pursued at this point.

5 **MR. SHREVE:** I don't mind answering, very
6 briefly. We had a very nice conversation. I think I
7 made you aware of some things in the settlement that
8 worked, and you were very nice to talk to you. We
9 were under the impression that we were working with
10 most of the customers when we were working with the
11 Board and with the Homeowners' Association.

12 We have no way to get out and double check
13 exactly what -- where everyone is. I guess there's
14 going to be disagreements all up and down the line.
15 We just thought that we were representing what -- the
16 majority of the people and that that group was
17 represented to us as being the ones that had been more
18 or less elected to handle the sewer situation.

19 **WITNESS WARREN:** Maybe this might be a good
20 example the next time you have problems.

21 **MR. SHREVE:** It might be, but this is the
22 first time I've ever had this problem. Because I've
23 never seen a group of customers with this type of
24 division, this type -- and I've had many, many
25 settlements and I've had a pretty good working

1 relationship with all of the customers, even the
2 customers here in the past. And we'll continue to try
3 to do the best we can. Sometimes it's not too easy,
4 particularly when you get some division in the
5 customer groups and you try and work through it.
6 We'll do the best we can with it.

7 **WITNESS WARREN:** Maybe next time you can ask
8 and then it'll be so much easier for everybody
9 concerned.

10 **MR. SHREVE:** Well, if we could ask everyone,
11 it would be nice. If we could contact every one. We
12 don't even have the names of everyone.

13 There was some other intervenors that I
14 think early on we were working with. We thought
15 everything was going to work out, but the customers
16 here are just in total disagreement with each other.
17 I hope it's over.

18 **WITNESS WARREN:** So do I.

19 **MR. SHREVE:** Because it's a bad situation
20 here.

21 **WITNESS WARREN:** Because we need to be one
22 family.

23 **MR. SHREVE:** You do. And I guess you do
24 realize, we had nothing to do with this division.

25 **WITNESS WARREN:** I know that.

1 **MR. SHREVE:** Okay.

2 **WITNESS WARREN:** Thank you.

3 **COMMISSIONER DEASON:** Ma'am? Ma'am?

4 **COMMISSIONER CLARK:** I guess, I had a
5 question not related to your testimony. I'm right
6 here.

7 **WITNESS WARREN:** Oh, I'm sorry.

8 **COMMISSIONER CLARK:** And I should have
9 asked, I guess, Mr. Smith. How long have you been a
10 resident here?

11 **WITNESS WARREN:** Going on 18 years.

12 **COMMISSIONER CLARK:** Tell me what happened
13 when they started charging for the water separate
14 from --

15 **WITNESS WARREN:** Well, we were the unlucky
16 ones. We don't have a lifetime lease. We had what
17 they called a 10 year lease.

18 **COMMISSIONER CLARK:** Uh-huh.

19 **WITNESS WARREN:** And we started paying for
20 water when we got here.

21 **COMMISSIONER CLARK:** And it said in your
22 lease that you would pay separately for water?

23 **WITNESS WARREN:** I believe so. I believe
24 so. We weren't one of the lucky ones, like I say.

25 **COMMISSIONER CLARK:** When you say, "lucky

1 ones", does that mean the lifetime --

2 **WITNESS WARREN:** The lifetime people weren't
3 paying for water. No. They got a lot more amenities
4 that they didn't pay for that we were paying for.
5 Okay.

6 **COMMISSIONER CLARK:** Okay. Thanks.

7 **MR. LUDINGTON:** Question for you. Do you
8 know if there's still people in this park that do not
9 pay for water?

10 **WITNESS WARREN:** Not that I'm aware of.
11 Okay.

12 **COMMISSIONER CLARK:** Okay.

13 **MR. DEVINE:** Thank you, Helen.

14 **WITNESS WARREN:** You're welcome. Have a
15 nice day.

16 **MR. SHREVE:** Thank you. (Applause)

17 **MR. DEVINE:** Mr. Chairman, may I ask a
18 question in reference to a gentleman three witnesses
19 ago? He asked to have some expertise. I understand
20 there is a public official in the room, J.W. French.
21 I wonder if he could address that question that the
22 gentleman brought up about expert testimony. Is there
23 such a public official here in the room?

24 **COMMISSIONER DEASON:** You're referring to
25 Mr. Handley's question?

1 **MR. DEVINE:** I believe so. Yes, sir.

2 **COMMISSIONER DEASON:** Yes, sir. He can
3 certainly ask those questions to that individual. Not
4 on the record. He can get his questions answered by
5 him personally one-on-one, but we need to hear from
6 customers of this utility company at this time.

7 **MR. DEVINE:** Mr. Handley was a customer.

8 **COMMISSIONER DEASON:** Yes, sir. He can ask
9 his questions to this individual. I don't know who he
10 is, but we're hearing from customers of the utility
11 now on the record to give testimony, and that's what
12 we're going to limit this to at this time.

13 Mr. Handley can ask his questions to the
14 individual. I don't know who he is, but we're not
15 going to do it on the record. I think that his
16 questions have been answered.

17 **MR. LUDINGTON:** For the information, J.W.
18 French is the Public Works Director for Lee County.

19 **COMMISSIONER DEASON:** Very well. And if
20 Mr. Handley knows this individual I would encourage
21 him to ask the question to him, but it's not going to
22 be on the record right here.

23 **MR. SHREVE:** Jo Drungelo.
24
25

JO DRUNGELO

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 **WITNESS DRUNGELO:** I'm Jo Drungelo. I've
5 lived at 771 Pirates Rest for 22 years. I came here
6 with my husband, my sister, my brother and many
7 friends. And we've loved living in this park.

8 There are so many problems and I'm so sad
9 that Mr. Sanders built such a beautiful park and we're
10 having so many problems. We didn't have a sewer
11 problem that I knew of all these years. And all of a
12 sudden we got a big sewer problem.

13 And money is a very important feature here
14 because we're all on fixed income so this is why we're
15 all here today and I hope that you can judge us well
16 and give us the right situation. We're all living in
17 this. We love living in this park. It has been
18 wonderful. And I hope it will continue. Thank you.

19 (Applause)

20 **MR. SHREVE:** Thank you. Mary Dougherty.

21 - - - - -

MARY DOUGHERTY

22
23 appeared as a witness and testified as follows:

DIRECT STATEMENT

24
25 **WITNESS DOUGHERTY:** My name is Mary

1 Dougherty. My husband and I live at 793 Pirates Rest
2 Road. Five years ago after coming to the park for two
3 or three years previous to this time -- we had rented
4 and finally bought in October of '95.

5 And the reason we bought in this park is
6 because of the people that we met at the pool, at
7 coffee breaks, at whatever event would be here. And
8 I've never met such a wonderful group of people, and I
9 mean this sincerely.

10 Now, the thing is I'm 72 years of age. My
11 husband is 73. And we love the park. We did get our
12 increases automatically that come with one thing after
13 another. But I have to say this. I have never gone
14 on a picket line in my life and at this age my husband
15 and I for the first time went out and stood on the
16 sidewalk out there with our signs because we resented
17 the fact that something illegal has occurred.

18 Now, the thing is that we -- we felt that at
19 some time in your life you've got to take a stand.
20 And our way of taking a stand was to show our
21 disapproval of what was going on. And as everyone
22 here has said previous to us, we hope sincerely that
23 this will be resolved, and that we will all get back
24 it being one happy family again. Thank you.

25 (Applause)

1 **MR. SHREVE:** Thank you. John and Florence
2 Chalpin. Mr. and Mrs. Chalpin, C-H-A-L-P-I-N. Harold
3 VanZyl.

4 **WITNESS VANZYL:** Is this where you want me?

5 **MR. SHREVE:** That will be fine, sir.

6

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7

HAROLD VANZYL

8 appeared as a witness and testified as follows:

9

DIRECT STATEMENT

10 **WITNESS VANZYL:** My name is Harold VanZyl
11 and I have been a resident of Buccaneer since June of
12 1984. I live at 467 Avanti Way Boulevard in
13 Buccaneer.

14 When we came my rental agreement specified
15 that sewer service would be included in the monthly
16 rent. If -- and I don't know personally this to be
17 true, but if for their own gain at the expense of
18 Buccaneer residents North Fort Myers Utility and
19 Manufactured Home Communities conspired to victimize
20 the residents of Buccaneer by having the Buccaneer
21 sewage treatment plant dismantled instead of
22 maintaining it in good repair resulting in a
23 substantial increase in living costs for the Florida
24 senior citizens living in Buccaneer, NFMU should be
25 denied access to this area.

1 The most reasonable solution would be for
2 the State of Florida to require MHC to reconstruct and
3 maintain in good order a Buccaneer treatment plant to
4 supply sewer service as Buccaneer promised to do when
5 I became a resident.

6 If the Public Service Commission believes
7 this to be impossible, the only other fair way to
8 protect the Florida senior citizens living in
9 Buccaneer is to have all sewer charges billed direct
10 to MHC at the bulk rate. This would allow MHC to
11 fulfill its obligations.

12 My rent charged by MHC has already been
13 increased in excess of 10% earlier this year. If NFMU
14 and MHC are allowed to perpetrate the scam they are
15 attempting, my cost per month will go up another 10%.
16 I guess that would be true for other residents as
17 well.

18 If the Buccaneer treatment plant cannot be
19 reconstructed and put back in service, I would support
20 the proposals presented by Mr. Ludington. We depend
21 on the Public Service Commission to determine a fair
22 and reasonable solution in line with the Florida
23 Statutes covering the mobile home communities for the
24 Florida citizens living in Buccaneer. Thank you for
25 listening. (Applause)

1 **COMMISSIONER DEASON:** Thank you, sir.

2 **MR. SHREVE:** Thank you, sir. Mr. Mike
3 Anstowicz. I believe it's as A-N-S-T-O-W-I-C-Z.
4 Mike. Evelyn Brockschmidt.

5 **COMMISSIONER DEASON:** Yes, sir?

6 **MR. LUDINGTON:** Mr. Chairman, could we call
7 for a recess shortly? We do have some folks in the --
8 in Buccaneer that are diabetics and what not and need
9 to get to a source of food and others that have other
10 problems. Would it be possible to call for a recess
11 after this lady speaks?

12 **COMMISSIONER DEASON:** What we try to do is,
13 if we can, some people may not want to come back and
14 may not want to have to do that, but if it gets to the
15 point to where it's a major inconvenience, we will
16 take a break. How many more witnesss do we have,
17 Mr. Shreve?

18 **MR. SHREVE:** We appear to have three more.

19 **COMMISSIONER DEASON:** You wish then to
20 proceed?

21 **MR. LUDINGTON:** Yeah, that sounds good.
22 Thank you.

23

24

25

EVELYN BROCKSCHMIDT

appeared as a witness and testified as follows:

DIRECT STATEMENT

WITNESS BROCKSCHMIDT: Good afternoon. My name is Evelyn Brockschmidt, and it's B-R-O-C-K-S-C-H-M-I-D-T, and I live at 59 Galleon.

I think it's a wonderful park we have here. It's just a shame that we have gotten so far apart in all the different things.

My thing was basically with MHC about the lot rent. There is a lot of ladies in here, and gentlemen, that have one income, not two. And there is a lot of them that get the raises of the market value which is, this time, \$16.50.

Now, if you're on an income that does not change and your rent changes, and it makes it harder for you to pay your bills, buy your prescriptions, do your food, do all the things that you would like to do because you moved here to be in a retirement area. It's a wonderful place. We have wonderful people that run it. It's a shame that they have taken advantage of us. I thank you very much.

MR. LUDINGTON: One question. You're saying then that if you have to pay your sewer bills that it will amount to \$18 to \$24 a month, it would be a

1 definite hardship?

2 **WITNESS BROCKSCHMIDT:** Oh, it would be a
3 hardship on me, but it would be a bigger hardship on
4 some of the other people that are in here. I know one
5 lady that just got the \$16.50 increase in her rent.
6 She says, I don't know how I'm going to do it. And
7 that's what they're doing. They are taking advantage
8 of the senior citizens. We worked all these years to
9 come down here to live, and so I hope you girls have
10 good retirement because you're sure as hell going to
11 need it. (Applause)

12 **MR. SHREVE:** Thank you. B.W. Doug Healy.

13 **MR. HEALY:** (Inaudible comments.)

14 (Laughter)

15 **MR. SHREVE:** Thank you, sir. Miriam
16 Kapsinow.

17 - - - - -

18 **MIRIAM KAPSINOW**

19 appeared as a witness and testified as follows:

20 **DIRECT STATEMENT**

21 **WITNESS KAPSINOW:** My name is Miriam
22 Kapsinow. I have owned a home in this park for 21
23 years at 963 Avanti Way. We just moved back here
24 after five years in Fort Myers because I was looking
25 for peace and tranquility. Apparently that's still to

1 come.

2 I think that here I may say that I'm a
3 member of the puzzled majority here. Like many people
4 in the park I'm just not quite sure who truly
5 represents my best interests, whose lawyers are
6 representing whom, and who is on my side. But I do
7 have a number of items that puzzle me and I'd like to
8 list them. Bear with me if I ask naive questions
9 because I'm truly puzzled.

10 One is, why is everyone so surprised that
11 this is happening. When MHC bought this park five
12 years ago, they bought a sewage plant that was already
13 20 years old. Surely they must have realized that
14 this would need to be replaced in the future. Now,
15 maybe they just made a bad business mistake and got a
16 bad deal. I doubt it.

17 Maybe they took that into consideration and
18 MHC and DeAnza said at that time, well, when the time
19 comes to replace the sewer plant, we'll find a way to
20 make the homeowners pay for it, which is more likely.
21 In any event, that's what's happening now and we
22 should have anticipated it quite some time ago.

23 I received a notice that this was happening
24 from three different corporations; Snowbirdland Vistas
25 Incorporated, MHC DeAnza Financing Limited

1 Partnership, and Manufactured Home Communities
2 Incorporated. I'm not sure who the first two are. I
3 do know that they listed that they were mandated to
4 make a capital improvement. I was under the
5 impression that a capital improvement is something
6 that they pay for and take as a tax write-off. I have
7 to ask the IRS about that because I'm puzzled.

8 I'm also puzzled as to what MH -- NFMU's
9 status is. Apparently their status here is,
10 possession is 9/10ths of the law. We're here, and
11 therefore, you have to negotiate with us. And I'm
12 puzzled as to why we're being told we have to
13 negotiate with them at all other than what they think
14 are their riparian rights.

15 I wondered too -- and again, because of all
16 that's happened and the devious behavior, you can
17 forgive me for being cynical. It isn't a question of
18 disagreeing with the Board of Directors' settlement.
19 It's just that based on the devious behavior that
20 we've encountered I couldn't help wondering if this
21 was truly an offer in good faith or if their strategy
22 was simply divide and conquer; that by dividing us
23 that they would step in. I'm not sure it was a good
24 faith offer. I'm still not sure of that.

25 Also, regardless of what you've heard on

1 both sides -- I'm not sure they're sides. I think
2 people in this park are pretty evenly divided about
3 whether to accept this settlement or whether to
4 continue on. Because no one wants to see people in
5 the park pitted against each other, and I'm not sure
6 that we are. I was very pleased to hear that the
7 Board of Directors has assumed a more conciliatory
8 tone because it's in everyone's best interest.

9 I've been disturbed, as everyone has, to see
10 the pressures that we've been subjected to. There's
11 much as much anger and bitterness over the dissension
12 as there is about the sewer agreement, and that's
13 distressing to all of them.

14 We've meanwhile -- and these are internal
15 affairs that you folks shouldn't have to deal with,
16 but unfortunately they're going to affect the way you
17 decide, so they have to be considered.

18 Buccaneer is getting a bad reputation which
19 isn't in MHC's interest. Property values have
20 decreased, and we're losing faith in the system. It
21 isn't that dissent shouldn't be tolerated. It's just
22 that dissent has to be resolved.

23 I hope that you folks as an unemotional and
24 objective group can help us to reach a settlement and
25 perhaps advise all the parties concerned to go back to

1 the drawing board, reach a settlement that all of us
2 can live with and go back to being in paradise. Thank
3 you. (Applause)

4 **MR. SHREVE:** Thank you very much. That's
5 the last witness that we have signed up, Mr. Chairman.

6 **COMMISSIONER DEASON:** Okay. Thank you.
7 Mr. Shreve has indicated that he has exhausted his
8 list of those witnesses who have signed up to testify.
9 Let me ask, is there anyone who did not sign up and
10 still wishes to make a statement at this time? This
11 is your opportunity.

12 There is a gentleman in the back, ma'am. He
13 raised his hand first. If you'll come forward, sir.
14 Yes, you. Please come on. Were you sworn earlier,
15 sir?

16 **WITNESS KELLOGG:** No, sir.

17 **COMMISSIONER DEASON:** If there are any other
18 members in the audience who wish to testify and were
19 not sworn, I'm going to ask you to please stand and
20 raise your right hand.

21 (Witnesses collectively sworn.)

22 **COMMISSIONER DEASON:** Please come forward
23 and give us your name and your address.

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DAVE KELLOGG

appeared as a witness and testified as follows:

DIRECT STATEMENT

WITNESS KELLOGG: Hi. My name is Dave Kellogg. I live at 195 Caviller Court. I've lived in this park since 1980. The sewage has always been free. My contract says that it's included in the rent. And I've never heard anybody in this park say that they thought they ought to really pay for sewage. That's all I got to say. I just wanted to go on the record.

COMMISSIONER CLARK: Can I ask you, are you a life --

WITNESS KELLOGG: No, I'm not.

COMMISSIONER CLARK: Okay. Thank you.

COMMISSIONER DEASON: Thank you, sir.

(Applause)

MR. SHREVE: Thank you, sir.

COMMISSIONER DEASON: There was a lady. Please come forward. Likewise, give us your name and address please.

JOAN WARD

appeared as a witness and testified as follows:

DIRECT STATEMENT

WITNESS WARD: My name is Joan Ward,

1 W-A-R-D. I live at 587 Plaza Del Sol. I've been a
2 resident for 12 years. I'm still working. I didn't
3 expect to get up and talk today, but after some things
4 I heard.

5 I'm also an elected official in the town of
6 Randolph, Massachusetts and I have sat in your
7 position many times and made decisions for others,
8 never thinking that the day would be coming when I
9 would ask in return for somebody to consider us and
10 our problems.

11 One thing has happened here today that I've
12 seen, and it's really upset me. We the little people
13 are fighting big business. That's a toughie right
14 there. (Applause)

15 We're doing the best we can. And yes, we
16 have had two different factors here, but both have had
17 a common interest at heart, and that is, they want the
18 very best for each one of us, the residents.

19 (Applause)

20 The other common factor is -- we have been
21 divided, but the common factor is we all came here to
22 live in peace and harmony in this park, with each
23 other, and in a lifestyle that is affordable to each
24 and every one of us. (Applause)

25 That lifestyle is being taken away from us

1 by "big business". It's very, very difficult when you
2 fight a utility company, or MHC, in this respect.
3 We've had to go out, do the best we can. And not me.
4 I haven't put the time in I'm sorry to say, because
5 like I said, I'm still working. Hopefully in the near
6 future I will be able to fight with my fellow citizens
7 here.

8 But we want what we believe in and they are
9 believing what is right. And it's been very, very
10 difficult and very tough. And I'm just asking you
11 people to please look and try to consider our feelings
12 because remember, we're a preview of your coming
13 attractions. (Applause)

14 And we welcome you to hopefully some day be
15 as fortunate as we all are to be able to live in this
16 lifestyle with peace and harmony. Thank very much.
17 (Applause)

18 **COMMISSIONER DEASON:** Thank you. Let me
19 take this opportunity to thank everyone who has come
20 and joined us today. For those who took the time to
21 testify and those who just listened, we appreciate
22 your input.

23 In just a moment we're going to recess for
24 lunch, but let me announce that we will reconvening
25 this afternoon in this same location and you are

1 certainly invited to come and rejoin us at that time.

2 Right now we're going to recess for lunch.
3 We will reconvene here at 2:00 to continue this
4 hearing.

5 (Whereupon, the service hearing ended at
6 12:50 p.m. and the technical hearing commenced at
7 2:00 p.m.)

8 **COMMISSIONER DEASON:** Ask you to take your
9 places. We'll call the hearing back to order. We're
10 now into what we refer to as the technical phase of
11 the hearing where we hear from those individuals who
12 are experts in the field and who have prefiled written
13 testimony.

14 It is our custom that for those witnesses
15 they set out their testimony in question and answer
16 format, have that typed up and submit it to the
17 Commission in written format, and that is provided to
18 all of the parties which have intervened in the case.

19 And at this point, Mr. Shreve, you have no
20 witnesses to appear today; is that correct?

21 **MR. SHREVE:** No, sir.

22 **COMMISSIONER DEASON:** Okay. Mr. Friedman,
23 you have one witness; is that correct?

24 **MR. FRIEDMAN:** Yes, Mr. Chairman, that's
25 correct.

1 **COMMISSIONER DEASON:** And the other
2 intervenors did not prefile testimony; correct? Very
3 well. Mr. Friedman, you may call your witness.

4 **MR. FRIEDMAN:** Yes. Thank you very much.
5 North Fort Myers Utility calls Tony Reeves.

6 **TONY REEVES**
7 was called as a witness on behalf of North Fort Myers
8 Utility and, having been duly sworn, testified as
9 follows:

10 **DIRECT EXAMINATION**

11 **BY MR. FRIEDMAN:**

12 **Q** Mr. Reeves, would you please state your
13 name.

14 **A** A.A. Reeves.

15 **Q** And Mr. Reeves, have you prefiled any
16 testimony in this proceeding?

17 **A** Yes.

18 **Q** Did you prefile testimony?

19 **A** Yes.

20 **Q** And that prefiled testimony is direct
21 testimony of A.A. Reeves, III, before the Florida
22 Public Service Commission on behalf of North Fort
23 Myers Utility Inc., Docket No. 981781-SU with exhibits
24 attached to it?

25 **A** Yes.

1 **Q** Thank you.

2 **MR. FRIEDMAN:** Commissioners, at this point
3 I would like to move Mr. Reeves direct testimony and
4 exhibit into evidence.

5 **COMMISSIONER DEASON:** We'll address the
6 testimony to begin with. Is there any objection to
7 the insertion of the testimony?

8 **MR. DEVINE:** No.

9 **COMMISSIONER DEASON:** Hearing no objection,
10 that testimony shall be inserted into the record.

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DIRECT TESTIMONY OF A.A. REEVES, III
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
NORTH FORT MYERS UTILITY, INC.
DOCKET NO. 981781-SU

1 Q. Please state your name and business address.

2 A. My name is A. A. Reeves, III, and my business address is 5660 Bayshore
3 Road, Suite 51, North Fort Myers, Florida.

4 Q. By whom are you employed?

5 A. I am Vice President and Utility Director of North Fort Myers Utility, Inc.

6 Q. What are your primary duties with North Fort Myers Utility, Inc.?

7 A. My primary duties are to handle requests from potential customers for
8 wastewater service, including negotiating Wastewater Agreements where
9 appropriate, assisting with financings and accounting projects, overseeing
10 construction projects, and directing Florida Public Service Commission
11 proceedings.

12 Q. Please tell us about your experience in the utility industry.

13 A. Exhibit ____ attached hereto is a summary of my experience in the utility
14 industry.

15 Q. Was the Application for Amendment to Certificate of Authorization prepared
16 by you or under your direction and control?

17 A. Yes, it was prepared under my direction and control, and is attached as Exhibit
18 ____ hereto. It should be noted that since filing the original Application on
19 December 1, 1998, North Fort Myers Utility, Inc. has filed supplements and
20 amendments. The attached is a consolidation of the original and subsequent
21 filings.

1 Q. Were you involved in the negotiation of the Wastewater Agreement with
2 Snowbirdland Vistas, Inc. and MHC-DeAnza Financial Limited Partnership,
3 dated August 24, 1998 for North Fort Myers Utility, Inc. to provide wastewater
4 service to Buccaneer Estates?

5 A. Yes. Along with our attorneys, I negotiated that Agreement, oversaw the
6 drafting and the Wastewater Agreement, and signed that Agreement on behalf
7 of North Fort Myers Utility, Inc.

8 Q. What is your understanding of why Buccaneer Estates needed to interconnect
9 with North Fort Myers Utility, Inc.

10 A. First, Lee County has adopted Ordinance 91-01 which requires mandatory
11 hook-up to central wastewater systems when they are available to property
12 previously served by an on-site disposal system. The Department of
13 Environmental Protection Operating Permit for the Buccaneer Estate
14 wastewater system expired in November, 1998. It was my understanding that
15 the wastewater treatment plant could not hydrologically or biologically handle
16 flows during months of peak occupancy and during peak rainfall months.

17 Q. Please summarize why the granting of this Application would be in the public
18 interest.

19 A. North Fort Myers Utility, Inc. operates a state of the art wastewater system
20 with reuse as its primary method of effluent disposal. Percolation ponds are
21 not favored in areas such as North Fort Myers where there is a high water

1 table. Since the adoption of Ordinance 91-01 by Lee County, North Fort
2 Myers Utility, Inc. has taken over providing wastewater service to 14 mobile
3 home parks in addition to Buccaneer Estates, two schools and a large
4 commercial business which were previously receiving service from on-site
5 package plants and the Public Service Commission has determined in six of
6 those cases that came within its jurisdiction that it was in the public interest for
7 North Fort Myers Utility, Inc. to provide wastewater service to those mobile
8 home parks. This case is no different.

9 Q. When did North Fort Myers Utility, Inc. interconnect with Buccaneer Estates?

10 R. In September, 1998.

11 Q. What is the value of the collection system which North Fort Myers Utility, Inc.
12 acquired from the park?

13 A. The original cost was \$365,299.20, with accumulated depreciation of
14 \$219,179.52, resulting in a current value of \$146,119.68.

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1 **COMMISSIONER DEASON:** Mr. Friedman, we will
2 identify the exhibits which are attached to the
3 prefiled testimony as a composite exhibit. Those
4 exhibits will be identified as Exhibit 2, and I will
5 allow you to move those exhibits at the conclusion of
6 cross examination.

7 (Composite Exhibit 2 marked for
8 identification.)

9 **MR. FRIEDMAN:** Thank you.

10 **COMMISSIONER DEASON:** Does Mr. Reeves have a
11 summary of his testimony?

12 **MR. FRIEDMAN:** Yeah. I have a couple more.
13 I was just making a note.

14 **Q** **(By Mr. Friedman)** Mr. Reeves, did North
15 Fort Myers Utility and Office of Public Counsel enter
16 into a stipulation which is entitled a settlement
17 agreement?

18 **A** Yes.

19 **Q** Mr. Reeves, I'm showing you a copy of a
20 document entitled, Settlement Agreement. Do you
21 recognize that document?

22 **A** Yes, I do.

23 **Q** And is that your signature as vice
24 president?

25 **A** Yes.

1 Q All right. And you executed that on behalf
2 of North Fort Myers Utility?

3 A That's correct.

4 Q And the original was provided to Staff
5 Counsel, is that your understanding?

6 A That's correct.

7 Q Mr. Reeves, do you recall what the
8 depreciated original cost of the portion of the system
9 acquired from MHC?

10 A I believe it was \$146,000.

11 Q Okay. \$146,119.68, would that be exact?

12 A That's exact.

13 Q Thank you. And do you recall how much North
14 Fort Myers Utility paid MHC for that system?

15 A \$139,000 approximately.

16 Q \$987 to be exact?

17 A That's correct.

18 Q Thank you. Are you familiar with the
19 Commission's show cause proceeding which is a part of
20 this overall proceeding?

21 A Yes, I am.

22 Q And do you believe that it would be
23 appropriate for the Commission to impose a penalty
24 against North Fort Myers Utility?

25 A No, I do not, because of our agreement to

1 give up nearly \$600,000 worth of revenues and capacity
2 fees.

3 Q And what comprises that approximately
4 \$600,000?

5 A About \$180,000 worth of revenues and
6 \$448,000 worth of capacity fees.

7 Q So it's your position that that's an
8 accurate penalty for this violation?

9 A Yes.

10 Q It looks, from a review of North Fort Myers'
11 annual reports, that from a financial standpoint North
12 Fort Myers is losing money; is that true?

13 A That's correct.

14 Q If that is true, can you explain, please,
15 how North Fort Myers has the financial ability to
16 serve Buccaneer Estates as well as the rest of its
17 certificated area?

18 A That financial statement shows a loss, but
19 not complete. For cash flow purposes we're doing
20 fairly well. And in conjunction with that, Old Bridge
21 Park is the parent company; if we should not have
22 enough cash, has always come up with the cash to keep
23 the utility on a sound financial basis.

24 Q Has North Fort Myers Utility been able to
25 meet the financial obligations as they arose?

1 **A** Yes.

2 **MR. FRIEDMAN:** That's all the questions that
3 I have.

4 **COMMISSIONER DEASON:** The witness is now
5 available for cross examination. Okay. Mr. Devine.

6 **MR. DEVINE:** I just have a couple of
7 questions for Mr. Reeves.

8 **CROSS EXAMINATION**

9 **BY MR. DEVINE:**

10 **Q** In 1995, Mr. Reeves, September 13th, North
11 Fort Myers Utility received a \$12.47 million Series A
12 bond. Short time later they received \$1.2 million in
13 a Series B bond. Can you explain what that money was
14 used for?

15 **A** To pay off the short-term debt and to
16 complete several construction projects.

17 **Q** What is your relationship with Mr. J.W.
18 French at this time?

19 **A** Mr. French --

20 **MR. FRIEDMAN:** I don't know what the
21 relevancy of that question is. I don't see where it's
22 got any relevance to this proceeding at all.

23 **COMMISSIONER DEASON:** That's an objection to
24 the question?

25 **MR. FRIEDMAN:** Yes, it is.

1 **COMMISSIONER DEASON:** There's been an
2 objection based upon relevancy, Mr. Devine. Can you
3 respond?

4 **MR. DEVINE:** Well, Mr. French is a public
5 official and I believe he is on a board that is also
6 occupied on the board by Mr. Reeves.

7 **MR. FRIEDMAN:** What does that got to do with
8 this proceeding?

9 **MR. DEVINE:** I think that is a conflict of
10 interest, sir.

11 **COMMISSIONER DEASON:** I'm going to allow the
12 question, but I want you to, when you pursue this
13 line, try to indicate quickly as you can the relevancy
14 to what is pending before the Commission. The witness
15 may answer the question.

16 **WITNESS REEVES:** I'm a utility consultant
17 and I have been retained by Mr. French to operate
18 another utility in the county on an interim basis
19 until the county takes it over, as well as manage
20 North Fort Myers Utility.

21 **Q** **(By Mr. Devine)** Mr. Reeves, has this plant
22 at Buccaneer ever been condemned by anyone?

23 **A** Not to my knowledge.

24 **Q** Thank you very much, Mr. Reeves.

25 **COMMISSIONER DEASON:** Mr. Ludington.

1 **MR. LUDINGTON:** Yes, I have several
2 questions for Mr. Reeves.

3 **CROSS EXAMINATION**

4 **BY MR. LUDINGTON:**

5 **Q** Mr. Reeves, do you recall a telephone
6 conversation I had with you about -- I have in the
7 notes here three weeks, but it's now about five weeks
8 ago? When I was in Canada we spoke on the phone?

9 **A** Yes.

10 **Q** All right. Do you recall on that occasion
11 that I told you I did not want to be a customer of
12 North Fort Myers Utility and I then asked you if there
13 was any way I could be exempted from your billing
14 list?

15 **A** Yes.

16 **Q** Do you recall that you said that was
17 impossible; that everybody who was hooked into your
18 system has to pay a charge and that I would not be
19 exempted under any circumstances?

20 **A** That's correct.

21 **Q** Now, let us turn now to the attention of the
22 developer's agreement of August 1998. Were you the
23 person that signed the developer's agreement with the
24 park owners on behalf of North Fort Myers Utility?

25 **A** That's correct.

1 Q Were you the person who did most of the
2 negotiations with the park owners during the making of
3 the developer's agreement?

4 A Not entirely.

5 Q Did you do most of the negotiations?

6 A No, that was done by the attorneys.

7 Q All right. Including Mr. Friedman by any
8 chance?

9 A Mr. Friedman?

10 Q Mr. Friedman, by any chance, was he one of
11 the negotiating attorneys?

12 A Yes.

13 Q Were any other agreements that in anyway
14 concerned servicing Buccaneer Estates negotiated with
15 the park owners other than this developer's agreement?

16 A None.

17 Q No other contracts? Was there any provision
18 made in the developer's agreement for the park owner
19 to pay connection charges or monthly fees for the
20 facilities other than homes that they themselves had
21 in Buccaneer?

22 A Not to my knowledge.

23 Q In other words, you're saying that the
24 981 -- 71 homeowners were the only ones that were
25 going to pay a connection charge?

1 A That's correct.

2 Q The park owners were not to be billed for
3 their facilities. Did you not tell me when I asked
4 for the same privilege that no one was exempted?

5 A You asked a question, were they going to be
6 billed for sewer service and I told you that they
7 would be billed for sewer service.

8 Q But up until this stage have they ever been
9 billed?

10 A Yes.

11 Q They have been? Starting when?

12 A At the same time that everybody else in the
13 parked was billed.

14 Q And where did you get the water meter
15 readings for this?

16 A From MHC.

17 Q You did receive water readings from MHC?

18 A Yes.

19 Q And you indicated in your computer system
20 that they were -- there was going to be bills for
21 them?

22 A Yes, and they were billed.

23 Q So you did intend to charge the park owners
24 for their facilities? They were not to get a free
25 ride then?

1 A That's correct.

2 Q Starting when?

3 A The same time everybody else.

4 Q In other words, they have not received any
5 bills to this date because the homeowners haven't
6 received any bills to this date?

7 A That's correct.

8 Q Thank you. Is this a legal procedure or do
9 you consider this a type of bribery or just good
10 business practice?

11 **MR. FRIEDMAN:** I object to that question. I
12 think it's inflammatory and offensive. I don't think
13 you accuse a witness of bribery unless you've got a
14 sufficient basis to do so. They have been
15 consistently making comments that, were they made
16 outside of this judicial process, would be slanderous,
17 and I think that we need to draw the line in allowing
18 them to attempt to intimidate witnesses by saying
19 they're attempting bribery.

20 **COMMISSIONER DEASON:** Mr. Ludington, I think
21 that you can solicit the answers that you're seeking
22 without using some of the terminology, and I will ask
23 you to rephrase the question.

24 Q **(By Mr. Ludington)** All right then. Do you
25 consider this a legal business practice exempting

1 someone from the developer's agreement? They're
2 exempted and you've just admitted to it.

3 **A** Yes. We've done it in other parks.

4 **Q** Did you first file this developer's
5 agreement with the Public Service Commission on
6 September the 4th, 1998?

7 **A** Yes.

8 **Q** Why did you have to go back to the Public
9 Service Commission on December the 1st, 1998 to file
10 for an amendment to your authorized territory to now
11 include Buccaneer? Was it because you suddenly
12 discovered that Buccaneer was not in your territory?

13 **A** Yes. We made a mistake. (Applause)

14 **Q** How were you able to work up a developer's
15 agreement for territory that you were excluded from
16 having? Was it some sort of special precedent that
17 you found that allowed you to do this?

18 **A** No. Just a simple mistake, that's all.

19 **Q** All right then.

20 **MR. DEVINE:** A million dollar mistake.

21 **COMMISSIONER DEASON:** Ladies and gentlemen,
22 now, I understand that you are extremely interested in
23 this subject matter. But what you have to recall,
24 this is akin to a court of law and we're here with a
25 court reporter and the court reporter cannot record

1 your excitement, if that's the correct terminology, to
2 some of the answers. We need to hear the questions
3 and the answers and please refrain to the extent
4 possible from the extra comments and moans and groans
5 from the audience. Thank you.

6 Q (By Mr. Ludington) Mr. Reeves, did you
7 really not get the cart before the horse in that you
8 did not obtain the necessary authorization from PSC
9 before putting this developer's agreement into place?

10 MR. FRIEDMAN: Objection. Asked and
11 answered.

12 Q (By Mr. Ludington) Yes or no?

13 COMMISSIONER DEASON: The question has been
14 asked and answered by this witness. He has
15 acknowledged, I believe, that that is the situation.

16 Q (By Mr. Ludington) Mr. Reeves, do you
17 believe that this makes the developer's agreement just
18 a piece of paper with no legal standing whatsoever?

19 A No.

20 Q Did you know, Mr. Reeves, that most courts
21 regard an agreement as being null and void --

22 MR. FRIEDMAN: I object to this question.
23 The witness is testifying. He started out his
24 question, do you know that the courts of this state,
25 dah, dah, dah, dah. That's his articulation of what

1 he thinks the courts of this state is, and I don't
2 think that's an adequate predicate for a question.

3 **MR. LUDINGTON:** I asked Mr. Reeves, did you
4 know that most courts regard an agreement as being
5 null and void if any part of it is found to be
6 illegal. All he has to do is say yes or no.

7 **COMMISSIONER DEASON:** Mr. Ludington, you
8 need to rephrase that question and just ask this
9 witness what his knowledge is of any court decisions
10 which may pertain to this subject matter.

11 **MR. LUDINGTON:** All right. I'll accept
12 that.

13 **Q** (By Mr. Ludington) Do you know?

14 **A** No, I do not.

15 **Q** Let us turn now to Page 3 of your deposition
16 that you gave to the Public Service Commission in May
17 of this year. On Page 3 you make the statement, and I
18 quote, "percolation ponds are not favored in areas
19 such as North Fort Myers where there is a high water
20 table." End of quote. Mr. Reeves, is that an
21 established fact written into official plans of Lee
22 County or other legal documents, or is that just some
23 idea you've developed on your own? Page 3.

24 **A** It's my opinion from seeing all the
25 different plants in this area where they're not to the

1 day's standards, they're all in the ground water
2 aquifer and they are not working to the day's
3 standards.

4 Q Mr. Reeves, I asked you, is that an
5 established fact written into official plans and other
6 legal documents or is that just some idea you have
7 developed on your own?

8 A Not to my knowledge.

9 Q So is it some legal idea you've got in your
10 own or is it an official document?

11 A It's no official document.

12 Q All right. Does the Florida Department of
13 Environmental Protection turn down any and all
14 applications for this type of system in North Fort
15 Myers, and can you say with certainty that the
16 application that the park owners might have put
17 forward for their plant repairs in Buccaneer would
18 have been refused on the basis of your statement?

19 MR. FRIEDMAN: I object. There has not been
20 a proper predicate laid for him to respond to a
21 question about that. He's asking him engineering
22 questions that --

23 MR. LUDINGTON: He is an expert witness.

24 COMMISSIONER DEASON: Excuse me. I'm
25 going -- to the extent that the witness has any

1 knowledge on this subject matter, I'm going to allow
2 the question and he can acknowledge whether he does or
3 does not have knowledge of it.

4 **WITNESS REEVES:** That would be a DEP
5 decision, not mine.

6 **Q (By Mr. Ludington)** You go on in your
7 deposition to describe how many other facilities North
8 Fort Myers Utility has "taken over", and then you
9 state, "this case is no different." Do you still
10 believe that?

11 **A** Yes.

12 **Q** I suggest this case is different, sir.

13 **MR. FRIEDMAN:** I move -- I object and move
14 to strike that comment.

15 **COMMISSIONER DEASON:** Mr. Ludington --

16 **MR. LUDINGTON:** I will withdraw it.

17 **COMMISSIONER DEASON:** Okay. That's fine and
18 I appreciate that. Please just limit it to questions
19 at this point and do not engage in extracurricular
20 comments.

21 **Q (By Mr. Ludington)** Mr. Reeves, have you
22 ever been involved in a case before in which you moved
23 into unapproved territory?

24 **A** Not to my knowledge.

25 **Q** Do you continue to state this case is still

1 not different?

2 A It was a mistake.

3 Q In other words it is a different. Thank
4 you. Are you aware of the movement afoot throughout
5 this state in which counties and other government
6 entities are purchasing privately operated water
7 companies and wastewater companies?

8 A Yes.

9 Q Has North Fort Myers Utility been
10 entertaining the thoughts of selling out of late?

11 MR. FRIEDMAN: I object to that question. I
12 think it's wholly irrelevant what North Fort Myers is
13 thinking about doing in the future to buy and sell.
14 The question in this case is, is it in the public
15 interest for North Fort Myers to serve it. I don't
16 see any relevance at all to whether North Fort Myers
17 thinks it may eventually sell to some other entity.

18 COMMISSIONER DEASON: Mr. Ludington, there's
19 been an objection based upon relevancy.

20 MR. LUDINGTON: I'll withdraw that question.

21 Q (By Mr. Ludington) Mr. Reeves, are you
22 aware that an article in the local newspaper indicates
23 that a county employee said, and I quote, "we just
24 have an indication that the owner may be ready to
25 sell." He is referring to North Fort Myers Utility.

1 Are you aware of that article?

2 **MR. FRIEDMAN:** Again, I object on the
3 relevancy. I don't see the fact that there is a
4 newspaper article that -- it's double hearsay. I
5 mean, that somebody says something in a newspaper
6 article. Anything to do --

7 **MR. LUDINGTON:** I'm asking him if he is
8 aware of the article.

9 **COMMISSIONER DEASON:** Excuse me. Let
10 Mr. Friedman finish his objection and then you'll be
11 given ample opportunity to respond to the objection.

12 **MR. FRIEDMAN:** The whole subject matter of
13 whether or whether or not North Fort Myers Utility has
14 expressed an interest in selling its system is totally
15 irrelevant and immaterial to this proceeding.

16 **COMMISSIONER DEASON:** Okay. You may respond
17 to the objection.

18 **MR. LUDINGTON:** I respond to the objection,
19 I say it is relevant to this hearing. If Mr. Reeves
20 and his company is allowed to pick up another 971
21 homeowners in this park it will add almost 20% to
22 their capacity; 20% more to their customer base; 20%
23 or better more than what the asking price will be if
24 they decide to deal with Lee County and the purchase
25 of North Fort Myers Utility. So it is a relevant

1 fact.

2 **COMMISSIONER DEASON:** I'm going to overrule
3 the objection and I'm going to allow the question. I
4 think the ultimate standard here is one of what is in
5 the public interest, which is a fairly broad standard.
6 And Mr. Ludington, I'm going to give you some
7 flexibility in this area, but you do need to try to
8 show how this is relevant at some future time.

9 **Q** **(By Mr. Ludington)** Mr. Reeves, can you say
10 with certainty that the owners of North Fort Myers
11 Utility are not preparing to sell out in the future?

12 **A** It could be.

13 **Q** That's certainty is that it could be?

14 **A** It could be, yes.

15 **Q** Mr. Reeves, was the purchase price that
16 North Fort Myers Utility paid for the collection
17 system in Buccaneer Estates approximately \$140,000?

18 **A** Yes.

19 **Q** What was the cost, the approximate cost, of
20 adding the link between your trunk line and the last
21 pumping station? Is that included in the \$146,000
22 that you've been quoting?

23 **A** No.

24 **Q** That's a separate item. All right. Any
25 idea on what the amount was? Just for --

1 A \$75,000 to \$80,000.

2 Q Do you have any idea of just what North Fort
3 Myers Utility might ask for the sale of this system to
4 Lee County in two years; in five years? Could the
5 price be in the millions?

6 A Could be.

7 Q Did North Fort Myers Utility buy this
8 facility in Buccaneer with this same scenario in mind?

9 A No intention whatsoever.

10 Q What would it cost to replace this system in
11 Buccaneer, the ones inside the boundaries, if you had
12 to start from scratch?

13 A Don't have a clue.

14 Q It would certainly be much more than
15 \$140,000; would it not?

16 A Yes, it would.

17 Q Do you think twice that amount? Five times
18 that amount?

19 A Don't have a clue.

20 Q I thought you were the expert witness on
21 this.

22 **MR. FRIEDMAN:** I object to that. I think
23 that is being argumentative. He shouldn't be able to
24 sit there and make those kind of comments back to a
25 witness. Just because he is not a lawyer, and may not

1 have the same standards that the rest of us do,
2 doesn't mean that he can sit there and try to ask
3 questions that are intimidating and insulting.

4 **COMMISSIONER DEASON:** Mr. Ludington, I agree
5 with Mr. Friedman. If you want to question his
6 credentials as an engineer and expert, you can ask
7 questions which relate to that and try to establish
8 that in the record. But you do not have to be
9 offensive and derogatory in comments or questions to
10 make that.

11 **MR. LUDINGTON:** My only comment to that is
12 that he was introduced as an expert witness in it
13 before.

14 **COMMISSIONER DEASON:** You have an
15 obligation, sir, if you want to challenge his
16 expertise, to do that specifically with questions
17 related to his experience or his education or to show
18 that his opinions differ from those in some type of an
19 established engineering journal or engineering
20 textbook, things of that nature. That should be the
21 nature of your questions.

22 **Q** **(By Mr. Ludington)** Mr. Reeves, is it true
23 that you are now willing to let the Buccaneer
24 homeowners out of paying for a capacity charge of \$462
25 each which you claim is part of this developer's

1 agreement?

2 A Yes.

3 Q Are you now convinced that this charge was
4 not justified in the first place?

5 A No.

6 Q What right do you think you have to ask for
7 971 connection charges when you only had to make one
8 connection?

9 A It wouldn't have made any difference in the
10 fees anyway.

11 Q I don't understand your answer.

12 A Our fees are based on a per unit basis.
13 Whether it was a master meter or an individual meter,
14 the fees have been the same.

15 Q Mr. Reeves, how many connections did you
16 make to this park?

17 A 971.

18 Q Did you come to my home and make a
19 connection?

20 A No. It was already made.

21 COMMISSIONER CLARK: Mr. Reeves --

22 Q (By Mr. Ludington) How could you make 971
23 connections?

24 COMMISSIONER CLARK: Mr. Reeves, I think you
25 might be talking past each other. As I understood it,

1 the \$400 is what you're charging for capacity?

2 **WITNESS REEVES:** That's correct.

3 **COMMISSIONER CLARK:** Would you elaborate on
4 that?

5 **WITNESS REEVES:** Our tariff calls for \$462
6 per mobile home unit.

7 **COMMISSIONER CLARK:** And is that to pay for
8 the lines that go to the unit?

9 **WITNESS REEVES:** No, that's capacity fees to
10 the plant.

11 **COMMISSIONER CLARK:** So it's what you think
12 is necessary to pay for the actual treatment plant; is
13 that right?

14 **WITNESS REEVES:** That's correct.

15 **COMMISSIONER CLARK:** Okay.

16 **Q** (By Mr. Ludington) Mr. Reeves, I find it
17 very interesting that you're willing to drop the
18 charges for the first nine months of service also. Do
19 you recall telling me last spring that the Buccaneer
20 homeowners would pay for service going back to day one
21 of the billing and that no one would be excused and
22 you even re-enforcing that position in our
23 conversation of a few weeks back?

24 **A** That's correct.

25 **Q** What made you change your mind? Was it the

1 thought of losing this additional customer base?

2 A No.

3 Q Was it because you saw expert witnesses
4 offering testimony in their depositions earlier this
5 summer which showed the developer's agreement was
6 really a bogus arrangement?

7 A Certainly not.

8 Q Might I presume to ask you why you changed
9 your mind?

10 A Came to a monetary situation.

11 Q A monetary situation. Mr. Reeves, do you
12 recall that when you and I first met last fall I asked
13 to see the developer's agreement when you were here in
14 Buccaneer Estates collecting signatures for the
15 signing up process?

16 A Yes.

17 Q You went out to your car and got it for me
18 and brought it in?

19 A That's correct.

20 Q Then you had to leave because you got a
21 phone call and I spent an hour or so going through the
22 developer's agreement by myself. When I read through
23 the agreement did I see a paragraph containing a
24 clause informing the park owners that they would have
25 to return the "connection charges", the \$462 per home,

1 which they had assigned to North Fort Myers Utility
2 for collection if North Fort Myers Utility found it to
3 be uncollectable for some reason or another?

4 A Not to my knowledge. I don't recall that.

5 Q There is no clause in that agreement to hold
6 you harmless if you cannot collect the --

7 A Not to my knowledge.

8 Q Are you positive of that?

9 A No, I don't have it in front of me.

10 Q So in other words, you're going to be out
11 \$400 -- whatever the figure is. \$468,000 or whatever
12 it is. You're going to be out that amount of money if
13 you can't get it back from Manufactured Home
14 Communities?

15 A That's correct.

16 Q You're going to be -- you're sure there is
17 no agreement at all that covers that?

18 A I'm sure.

19 Q All right. Mr. Reeves, do you recall
20 telling me that this developer's agreement was a
21 pretty standard agreement that you used to get all
22 mobile home parks signed up to use your services?

23 A Yes.

24 Q Can you tell me just how many parks this
25 agreement, or ones very similar to it, have been used

1 for this purpose? Five? Ten? Fifteen? More than
2 that?

3 A Closer to 20.

4 Q Are you willing to supply me the names of
5 all those parks?

6 A Sure.

7 Q Do you have any idea of just what percentage
8 of your connections are made to mobile home parks? In
9 other words, of your 20 homes, what percentage would
10 that be of your customer base, excluding Buccaneer?

11 A Just a wild guess, probably 70%.

12 Q 70% of your connections are made to mobile
13 home parks or better?

14 A Could be.

15 Q The last figures I saw indicate that North
16 Fort Myers Utility has about 5,700 customers. Is this
17 near to the correct amount?

18 A Yes.

19 Q Does this include the homes in Buccaneer?

20 A No.

21 Q Why is it that you find mobile homes so
22 enticing? Would it possibly be the connection charges
23 are a wonderful source of revenue that you can obtain
24 with a stroke of a pen?

25 A No.

1 Q So they're not a big interesting item, the
2 \$462?

3 A Yes, they are.

4 MR. DEVINE: You bet.

5 Q (By Mr. Ludington) I beg your pardon?

6 A Yes, they are.

7 Q They are an enticing asset. Well,
8 Mr. Reeves, you have a way of financing this \$462
9 connection charge to homeowners that can't pay up
10 front?

11 A That's correct.

12 Q Would it be that having this money loaned
13 out at 10% interest is not a bad business practice
14 either in your opinion?

15 A Nope. I'd rather have the cash up front.

16 Q Rather have the cash up front, but 10% is
17 not bad?

18 A Not bad. I'm paying 9.5, so it's not that
19 big of a deal for me.

20 Q Mr. Reeves, how is it that you are able to
21 finance this connection charge this way? Is there
22 some legislation that allows for this?

23 A It's been approved by this Commission.

24 Q It's been approved by the Public Service
25 Commission?

1 **A** Yes.

2 **MR. LUDINGTON:** Is that a fact, gentlemen?

3 I could not find it anywhere in the documents.

4 **WITNESS REEVES:** It's in the tariff.

5 **COMMISSIONER DEASON:** All charges have to be
6 approved by the Commission and have to be in a tariff.

7 I assume that if it's been approved it would be in the
8 company's tariff and I would ask our Staff if that is
9 the situation.

10 **MS. BRUBAKER:** That is correct, yes.

11 **COMMISSIONER CLARK:** Now, Mr. Ludington, do
12 you mean with respect to this particular park or other
13 parks?

14 **MR. LUDINGTON:** No, every park. They must
15 have some. So there is a tariff that allows for them
16 to collect this \$462, which I understand is a standard
17 charge, over an 8 year period or something along this
18 line, and that is a Public Service Commission ruling?

19 **MS. BRUBAKER:** In order for a regulated
20 utility to charge anything, any hookup fee, any
21 monthly rate, it must first get approval from this
22 Commission. Once approval is granted, it is put in
23 their tariff which is kept on public record. Yes.

24 **MR. LUDINGTON:** I couldn't find it anywhere
25 in their tariff, so that's probably why I asked the

1 question about it. Because this same ruling is given
2 under Statute 723; in fact, 723.46. And this statute
3 refers to utility companies in its wording. This
4 statute does not refer to any utility companies in its
5 wording. It refers to municipalities, counties or
6 special districts in its wording.

7 And if Mr. Reeves is using any part of
8 Section 723, the mobile home act, to perpetrate this
9 \$462 charge, then he is not including --

10 **COMMISSIONER DEASON:** Mr. Ludington, you
11 need to direct that as a question to the witness.

12 **MR. LUDINGTON:** We'll drop that for now.
13 Thank you.

14 **MS. BRUBAKER:** May I clarify, Commissioner?
15 I'm looking at a copy of the utility's tariff. On the
16 fifth revised sheet, No. 30.0, the system capacity
17 charges are listed. I'm not sure whether you have a
18 copy of that.

19 **MR. LUDINGTON:** No, I don't.

20 **MS. BRUBAKER:** You may be looking at the
21 application. If you'd like a copy, I would be happy
22 to have one provided to you.

23 **MR. LUDINGTON:** Thank you.

24 **Q** (By Mr. Ludington) Mr. Reeves, do you
25 recall that your company sent out letters to

1 Manufactured Home Communities on more than one
2 occasion and under the heading of your legal counsel
3 telling MHC they were in default of certain Lee County
4 ordinances?

5 A Yes.

6 Q Do you recall just when you first started
7 sending these letters to Manufactured Home
8 Communities?

9 A I don't remember the exact date, no.

10 Q Do you recall how many letters were sent out
11 over a period of time?

12 A No.

13 Q Why do you continue to send out these
14 letters after MHC ignored them for so long?

15 A Don't give up.

16 Q Persistence, I guess it's called, isn't it?
17 Mr. Reeves, was there some sort of a trigger mechanism
18 in place to tell you when to send another remainder
19 letter out? How did you know when MHC was in default?

20 A I monitor what's happening down at DEP.

21 Q So you access the records at DEP and then
22 you find out whoever is in fault, and if they're in
23 your territory and you want a piece of the action, you
24 send them one of these letters?

25 A That's correct.

1 **Q** Right. Mr. Reeves, do these letters have a
2 threatening tone to them telling the park owners that
3 you intended to sue if they do not comply to the
4 letter's demands?

5 **A** I believe that's the way the attorneys write
6 it.

7 **MR. DEVINE:** You bet.

8 **MR. LUDINGTON:** Yes.

9 **Q** **(By Mr. Ludington)** Mr. Reeves, do you ever
10 recall telling me that you use this letter as a way to
11 obtain customers?

12 **A** Sure.

13 **Q** Do you recall that I said to you I thought
14 it was a form of intimidation and was akin to tactics
15 used by the Mafia?

16 **A** No, I don't recall.

17 **Q** Well, I mentioned that to you one time.

18 Mr. Reeves --

19 **COMMISSIONER DEASON:** Mr. Ludington, here
20 again, I'm going to ask you to refrain from the
21 comments. Strictly limit your cross examination to
22 questions to the witness.

23 **MR. LUDINGTON:** Thank you.

24 **Q** **(By Mr. Ludington)** Mr. Reeves, I take it
25 that you are fairly familiar with Florida Statute 723?

1 **A** No, I'm not.

2 **Q** You're not familiar with 723?

3 **A** No.

4 **Q** Are you familiar with the Section 723.031
5 that states, and I quote, "no user fees shall be
6 charged by the park owner to the mobile home owner for
7 any services which were previously provided by the
8 park owner and included in the lot rental amount
9 unless there is a corresponding decrease in the lot
10 rental amount." Have you seen that statement before?

11 **A** No.

12 **Q** You never have?

13 **A** No.

14 **Q** As an expert in the field of wastewater
15 management, is it your opinion that the \$6.07 rent
16 decrease offered by MHC to the homeowners of Buccaneer
17 is quote, "a corresponding decrease"? In your opinion
18 as an expert?

19 **A** That's subject to interpretation and I
20 really don't know because I don't have access to MHC's
21 records. I know what some of the other parks have
22 done. But I don't know for sure.

23 **Q** You don't have an opinion on it at all? You
24 don't think it's low? You don't think it's high?

25 **A** It's in the ballpark.

1 Q In the ballpark. Oh. What do you think a
2 corresponding decrease should be in this case now
3 before us? Do you have any opinions on that?

4 A No.

5 Q What do you think the cost of operating the
6 former Buccaneer wastewater plant was? Do you think
7 it was approximately \$72,000 per year as MHC has
8 stated, or do you think it was higher than that?

9 A Don't know.

10 Q You have no idea?

11 A Nope.

12 Q Now that park was servicing 981 homes.
13 Could you service 981 home for \$72,000 a year given
14 the same type of operation?

15 A I doubt it.

16 Q You doubt it. I think so. So, in other
17 words, this figure does not sound realistic to you?

18 A That depends.

19 Q Mr. Reeves, why are your costs so much
20 higher than the \$6.07 per month that MHC says they
21 operated at?

22 A A lot of reasons.

23 Q In other words, we're comparing apples to
24 oranges?

25 A That's correct.

1 **MR. LUDINGTON:** I have no more questions at
2 this time, but I do reserve the right to come back
3 with some more questions later on. Thank you.

4 **MR. DEVINE:** May I ask Mr. Reeves a couple
5 of questions?

6 **COMMISSIONER DEASON:** First of all,
7 Mr. Ludington, this is your opportunity to ask all
8 your questions, okay, unless during the course of this
9 proceeding this witness provides additional testimony
10 that you feel compelled to cross examine on. And I
11 would entertain a request at that time to make an
12 exception and have you ask additional questions if
13 additional testimony solicited.

14 **MR. LUDINGTON:** Thank you, Commissioner.

15 **COMMISSIONER DEASON:** Mr. Devine, I thought
16 you had already asked your questions.

17 **MR. DEVINE:** I was not aware it was a one
18 time only. I would hope that you'd allow me to ask
19 Mr. Reeves maybe three or four questions, and that's
20 all.

21 **COMMISSIONER DEASON:** Okay. Please proceed.

22 **RE-CROSS EXAMINATION**

23 **BY MR. DEVINE:**

24 **Q** Mr. Reeves, where is the North Fort Myers
25 plant located?

1 A North and east of here.

2 Q What is that community called?

3 A That's not a community. It's behind --
4 north of Sun Coast Estates.

5 Q It's commonly known as Sun Coast area;
6 wouldn't you agree?

7 A That's correct.

8 Q How many homes are in Sun Coast at this time
9 approximately?

10 A Don't have any idea.

11 Q If I told you 450 would you dispute that
12 figure?

13 A No.

14 Q Has North Fort Myers Utility ever at any
15 time gone to any one of those 450 homes in your own
16 community and asked to be hooked up to sewage, but
17 have gone beyond that community and come here and
18 hooked up to Buccaneer?

19 **MR. FRIEDMAN:** I object to the question on
20 the basis of relevancy. I don't see the relevancy of
21 whether North Fort Myers has or has not connected in
22 single family residences somewhere else. I just don't
23 see the relevancy to it.

24 **COMMISSIONER DEASON:** Mr. Devine, there's
25 been an objection based upon relevancy.

1 **MR. DEVINE:** It goes to the point that
2 mobile home parks are easy prey for these people and
3 they come in and hook up one pipe and all they have to
4 do then is start sending out the bills.

5 When they actually go to an individual's
6 home and have to provide the service and the money to
7 do all the work, they don't like that. They like to
8 come in, hook up, take advantage of people and then
9 move on to the next park. That's the relevancy behind
10 it.

11 **COMMISSIONER DEASON:** I'm going to allow the
12 question. Please proceed.

13 **MR. DEVINE:** Thank you, sir.

14 **WITNESS REEVES:** We have extended means.
15 We've just spent a million dollars going down into the
16 Cobana City area. There was a street down there that
17 asked to connect. These folks are paying \$3,000 each.
18 Do you think in your mind riding through Sun Coast
19 that you're going to get anybody to connect if the
20 mains were put in?

21 **MR. DEVINE:** I don't think I have to answer
22 that question, Mr. Reeves.

23 **WITNESS REEVES:** I can tell you that the
24 answer is no.

25 **Q** **(By Mr. Devine)** My question was, have you,

1 as North Fort Myers Utility, contacted any one of
2 those homes and hooked them up to North Fort Myers
3 Utility?

4 A No.

5 Q Thank you, sir. Do you know Mr. Ted Bidy.
6 Have you ever conferred with him?

7 A Not to my knowledge.

8 Q Another expert in the field. You don't know
9 Mr. Ted L. Bidy?

10 A No.

11 Q Well, if I told you that he was deposed by
12 counsel -- and I would just like to present one
13 statement of his and have you reply to it if that
14 would be all right, Mr. Commissioners.

15 MR. FRIEDMAN: Commissioners, I object to
16 that. This is a surreptitious way to try to introduce
17 into this case what they think is the testimony that
18 they couldn't get in the right way, and I don't think
19 they should be able to bring in testimony of somebody
20 who's not a party to the case.

21 COMMISSIONER DEASON: Mr. Devine, there's
22 been an objection. Can you respond?

23 MR. DEVINE: Well, this gentlemen was
24 deposed twice by the Public Service Commission and
25 it's on the record and I think that Mr. Bidy,

1 recognized as an expert in his field, already been
2 before the PSC twice, has not been summoned here. I
3 think the fact that one of his questions and replies,
4 for the sake of the people of this community, should
5 be read and answered.

6 **COMMISSIONER DEASON:** Mr. Devine, did
7 Mr. Bidy prefile testimony?

8 **MR. DEVINE:** Yes, sir.

9 **COMMISSIONER DEASON:** Wasn't that testimony
10 withdrawn by the sponsoring party? Is that correct?

11 **MR. FRIEDMAN:** That's correct.

12 **MR. SHREVE:** It was originally filed. It
13 has been withdrawn.

14 **COMMISSIONER DEASON:** And it's been
15 withdrawn and Mr. Bidy is not here.

16 **MR. LUDINGTON:** Were we notified that it was
17 being withdrawn?

18 **MR. DEVINE:** I wasn't.

19 **COMMISSIONER DEASON:** Excuse me. Only one
20 at a time. Right now we're dealing with a question
21 and an objection to that question. I'm going to
22 sustain the objection. This testimony was prefiled
23 but it was withdrawn. Therefore, I question the
24 relevancy of the deposition for purposes of this
25 hearing today. So I'm going to sustain the objection.

1 Now, Mr. Ludington, did you have an
2 objection or --

3 **MR. LUDINGTON:** I had a point of order. I
4 did not know this testimony had been withdrawn. I
5 knew that it was not going to be presented today, but
6 I had no indication that it was ever withdrawn and I'd
7 like to see where those words were said that it was
8 going to be withdrawn.

9 **COMMISSIONER DEASON:** A sponsoring party
10 that sponsors testimony is certainly within their
11 prerogative to withdraw that testimony. I'm going to
12 allow Mr. Devine to continue with your cross
13 examination.

14 **MR. SHREVE:** I was just going to say, it is
15 accurate. It was filed earlier. It was withdrawn
16 and, of course, we reserve the right to reintroduce it
17 at the proper time.

18 **MR. DEVINE:** Would this be the proper time,
19 sir?

20 **MR. SHREVE:** I don't think we can at this
21 point, but you have the testimony there.

22 **MR. DEVINE:** I have the testimony, yes, sir.
23 Well, if another -- may I continue?

24 **COMMISSIONER DEASON:** Yes. Please do.

25 **Q** **(By Mr. Devine)** Mr. Reeves, if another

1 expert in your field of wastewater treatment were to
2 call this -- what has happened to the people in
3 Buccaneer through North Fort Myers Utility a scheme
4 and a method to try to legalize an otherwise illegal
5 charge, how would you respond to that person?

6 **A** He has his own opinion.

7 **Q** You don't think this is an illegal scheme
8 then, do you?

9 **A** No.

10 **MR. DEVINE:** I was hoping, Mr. Chairman,
11 that I would be able to ask many more questions from
12 the depositions. I did not know the testimony had
13 been withdrawn, as did Mr. Ludington. I'm hoping at a
14 future date we'll have that opportunity.

15 **COMMISSIONER DEASON:** I don't know if that
16 opportunity will present itself, but if it does you'll
17 certainly be given latitude in that area. Does that
18 conclude your cross examination?

19 **MR. LUDINGTON:** I have one or two more
20 questions for Mr. Reeves.

21 **COMMISSIONER DEASON:** Now, Mr. Ludington,
22 I've already informed you that your cross examination
23 was completed unless there were -- testimony was
24 provided in addition to that that had all ready been
25 prefiled. I don't think there's been any new subject

1 matter that's been gone into at this point. So I'm
2 going to enforce that previous ruling.

3 **MR. LUDINGTON:** Thank you.

4 **COMMISSIONER DEASON:** Mr. Shreve, questions
5 of this witness?

6 **MR. SHREVE:** Would it be possible to yield
7 Mr. Ludington some of my -- him my time? Do you have
8 any objection to that?

9 **COMMISSIONER DEASON:** Yes, Mr. Shreve, I do.

10 **MR. SHREVE:** I have no questions then.

11 **MR. LUDINGTON:** I did not catch --

12 **COMMISSIONER DEASON:** He was trying to give
13 you his time for you to ask additional questions and I
14 told him that I would not permit that.

15 **MR. LUDINGTON:** Did you say the victim? Ask
16 the victim?

17 **COMMISSIONER DEASON:** No, I did not use the
18 term victim.

19 **MR. LUDINGTON:** I thought I heard you say --
20 I have a hearing problem, as you can probably
21 understand, but I thought you said victim. I thought
22 it was very appropriate.

23 **MR. SHREVE:** No questions.

24 **MR. LUDINGTON:** Mr. Reeves --

25 **COMMISSIONER DEASON:** No. No. Staff you

1 may ask questions.

2 **CROSS EXAMINATION**

3 **BY MS. CIBULA:**

4 **Q** Mr. Reeves, is it correct that on Page 2 of
5 the application, which was entered into the record as
6 Exhibit No. 2, second sentence on the page -- second
7 to the last sentence on the page it states, the
8 service availability charges paid by the park owner
9 are sufficient for North Fort Myers Utility to
10 construct the off-site facilities to serve the
11 property?

12 **A** Yes.

13 **Q** And isn't it also true that pursuant to the
14 terms of the wastewater agreement between North Fort
15 Myers and the owners of Buccaneer Estates, which is
16 included as an attachment to the application and can
17 be found in Exhibit No. 2, the park owners assigned to
18 North Fort Myers Utility the right to collect service
19 availability charges from the residents pursuant to an
20 assignment and assumption agreement?

21 **A** Yes.

22 **Q** However, pursuant to the purposed offer of
23 settlement North Fort Myers will not be collecting
24 these service availability charges from the residents
25 of the park, correct?

1 A Correct.

2 Q The application on Page 3, Item 10 states
3 that service to this property required the
4 construction of a main. The main connects the North
5 Fort Myers Utility's force main along US 41 Business
6 and costs approximately \$90,000. Is this information
7 still correct?

8 A No and yes. It's incorrect as far as the
9 need to capacity fees. It was correct at the time
10 because normally what you do is reinvest those
11 capacity fees. If we're giving up the capacity fees,
12 then it's not correct.

13 Q Okay.

14 **COMMISSIONER DEASON:** But the \$90,000 number
15 is approximately correct?

16 **WITNESS REEVES:** That's correct.

17 Q **(By Ms. Cibula)** Since under the settlement
18 agreement North Fort Myers is not collecting the
19 service availability charges from the customers as
20 originally stated in the wastewater agreement, how
21 will the utility recover the expenses all ready
22 incurred in proceeding service to the residents of
23 Buccaneer Estates?

24 A We'll have to take it out of our own jeans.

25 Q Okay. Does North Fort Myers Utility have

1 the financial ability to provide now and in the future
2 to the residents of Buccaneer Estates?

3 A Yes, and we are doing so.

4 Q On Page 3 of the application, Paragraph 11
5 states that North Fort Myers Utility currently
6 operates a 2.0 million gallons per day extended
7 aeration wastewater treatment facility with tertiary
8 filtration; isn't that correct?

9 A That's correct.

10 Q Is the system operating at 100% capacity?

11 A No.

12 Q Since North Fort Myers Utility has been
13 serving Buccaneer Estates since November of 1998, it
14 would have experienced a relatively peak period when
15 the park is near capacity; correct?

16 A Yes.

17 Q Do you have an idea or a range of what the
18 peak flows from Buccaneer Estates have been treated by
19 North Fort Myers; what they have been?

20 A No. I don't have that information
21 available.

22 Q Well, although you don't know the number, is
23 it fair to state that since North Fort Myers has been
24 providing wastewater treatment service to Buccaneer
25 Estates during both the peak and nonpeak times, and

1 there have been no DEP violations during that time,
2 that it has the capacity to provide service to the
3 residents of Buccaneer Estates both now and in the
4 future?

5 **A** Yes.

6 **COMMISSIONER JACOBS:** Mr. Reeves, what
7 assumption did you use in your revenue estimates for
8 average uses?

9 **WITNESS REEVES:** We used approximately
10 2,500 gallons per unit per month.

11 **COMMISSIONER JACOBS:** As I understand it,
12 you bill based on water, right?

13 **WITNESS REEVES:** That's correct.

14 **COMMISSIONER JACOBS:** Is the water usage
15 generally higher there?

16 **WITNESS REEVES:** Some. Some. Usually on an
17 average because a lot of the residents are not here
18 during the summertime. So I just made an assumption
19 on the average per month. And my experience with
20 other parks, that's approximately the average
21 consumption per unit from mobile home.

22 **COMMISSIONER JACOBS:** Okay.

23 **Q** (By Ms. Cibula) Mr. Reeves, are you aware
24 of any customer contributions to Buccaneer for
25 wastewater utility service?

1 **A** None.

2 **Q** Are you aware of whether or not Buccaneer
3 wrote the plant off to cost of goods sold on its tax
4 return?

5 **A** I do not know.

6 **Q** Do you have any additional information on
7 how the net book value was determined?

8 **A** No.

9 **Q** Any studies done by North Fort Myers in
10 advance of the purchase or records provided by the
11 park owners?

12 **A** None.

13 **MS. CIBULA:** That's all of our questions.

14 **COMMISSIONER DEASON:** Commissioners,
15 questions?

16 **COMMISSIONER CLARK:** Yes, I have some
17 questions. I don't think I understood the answer to
18 one of Mr. Ludington's questions with respect to
19 charging the park owners. You had indicated you are
20 not charging the park owner currently for Buccaneer
21 because you are not charging the residents; is that
22 correct?

23 **WITNESS REEVES:** That's correct.

24 **COMMISSIONER CLARK:** You also seem to
25 indicate there are other park owners that you are not

1 charging?

2 **WITNESS REEVES:** Let me clarify that. The
3 question was about the capacity fees. We've entered
4 into approximately 20 different service agreements
5 with various in sundry parks in the area. We've only
6 charged the capacity fees for the units, not the
7 clubhouses, et cetera, et cetera. But as far as
8 monthly service, everybody pays, including the park
9 owners.

10 **COMMISSIONER CLARK:** Why do you make a
11 distinction between the residents and, I guess, the
12 common facilities with respect to paying that capacity
13 charge?

14 **WITNESS REEVES:** It's just the way we've
15 done it.

16 **COMMISSIONER CLARK:** Okay. Let me ask
17 another question. Do you provide any bulk service to
18 any customer?

19 **WITNESS REEVES:** Yes.

20 **COMMISSIONER CLARK:** Who are those customers
21 that you provide bulk service to?

22 **WITNESS REEVES:** There is a couple of parks
23 where there is master meter with no meters behind the
24 park. For instance, Windmill is one. San Suzie is
25 another one.

1 **COMMISSIONER CLARK:** Is there a particular
2 reason you cannot offer bulk service to this park?

3 **WITNESS REEVES:** I suppose we could.

4 **COMMISSIONER CLARK:** Mr. Ludington also
5 mentioned some letters. That -- as I understood it
6 that the Buccaneer -- I mean, North Fort Myers sent to
7 mobile parks indicating that they may not be in
8 compliance with an ordinance?

9 **WITNESS REEVES:** Yes.

10 **COMMISSIONER CLARK:** That is under, I guess,
11 Mr. Friedman's letterhead; is that correct?

12 **WITNESS REEVES:** That's correct.

13 **COMMISSIONER CLARK:** I have not seen that.
14 Do you have a copy of those letters? Are they in the
15 record and I just don't have them?

16 **MR. LUDINGTON:** I have one here if you'd
17 like to read it.

18 **COMMISSIONER CLARK:** That would be nice, and
19 I have no other questions. Thanks.

20 **COMMISSIONER JACOBS:** I have a question. In
21 your calculation of your capacity charges for purposes
22 of this park, you simply carried over what your
23 standard capacity charge was?

24 **WITNESS REEVES:** It's approved in our filed
25 tariff.

1 **COMMISSIONER JACOBS:** Okay. In an instance
2 where basically you've come in and you tied into the
3 existing system, how do you -- first of all, let me go
4 back for a moment. Your tariffed amount; how was that
5 calculated? The 1098 in your tariff, how was that
6 calculated?

7 **WITNESS REEVES:** Based on 200 gallons per
8 day per unit in a public hearing we had with the
9 Florida Public Service Commission.

10 **COMMISSIONER JACOBS:** And when you come in
11 here and do a capacity charge for units where you've
12 estimated 2,500 to 3,000, is there any variation
13 adjustment that's done to that?

14 **WITNESS REEVES:** No.

15 **COMMISSIONER JACOBS:** If you do -- going now
16 to your gallonage charge. That \$3.98, again, is from
17 your tariffs, right?

18 **WITNESS REEVES:** That's correct.

19 **COMMISSIONER JACOBS:** How is that
20 calculated?

21 **WITNESS REEVES:** On the water consumption.

22 **COMMISSIONER JACOBS:** I mean as to recovery.
23 I guess, I'm speaking now as to recovery. What costs
24 are you recovering there with that charge?

25 **WITNESS REEVES:** All of our costs; debt,

1 operating expenses, rate of return, everything is in
2 those charges.

3 **COMMISSIONER JACOBS:** Is it related to a
4 particular plant or is it systemwide?

5 **WITNESS REEVES:** Systemwide.

6 **COMMISSIONER JACOBS:** Okay. Thank you.

7 **MR. LUDINGTON:** Mr. Chairman, may I ask a
8 question related to one of the questions that was
9 asked of him?

10 **COMMISSIONER DEASON:** Just a moment. I have
11 a question or two and then I'll take up your request.

12 Mr. Reeves, I'm looking at your application
13 which is part of your prefiled exhibit, and I'm
14 looking at Page 4, Paragraph 12. And I'll just read
15 it. It states, "the construction of the collection
16 system will be financed by service availability
17 charges collected from the mobile home park. There
18 will be no material impact on NFMU's capital
19 structure."

20 Now, under the terms of the offer of
21 settlement, you would forego the collection of those
22 availability charges. Will that -- will foregoing
23 that have a material impact on your capital structure?

24 **WITNESS REEVES:** Yes.

25 **COMMISSIONER DEASON:** Okay. What effect

1 will it have?

2 **WITNESS REEVES:** That much less cash flow
3 that I have.

4 **COMMISSIONER DEASON:** Will that impact the
5 existing customers of North Fort Myers Utility?

6 **WITNESS REEVES:** It will be one less
7 contribution on the books.

8 **COMMISSIONER DEASON:** So under your offer of
9 settlement, you're proposing to forego those
10 collections, but you're -- there will be no imputation
11 of those contributions as if you had collected them;
12 is that correct?

13 **WITNESS REEVES:** That's correct.

14 **COMMISSIONER DEASON:** Okay. So that would
15 have an effect on the other customers?

16 **WITNESS REEVES:** That's correct.

17 **COMMISSIONER DEASON:** What currently is the
18 status of billings to the residents of Buccaneer?

19 **WITNESS REEVES:** There's not any billings.
20 We mailed out two month's bills, then we stopped
21 billing.

22 **COMMISSIONER DEASON:** So currently
23 consistent with, I believe, a prior decision of the
24 Commission, you are not billing?

25 **WITNESS REEVES:** That's correct.

1 **COMMISSIONER DEASON:** You're recording --
2 are you getting usage data for a future billing?

3 **WITNESS REEVES:** Yes. We're doing the
4 billing, just not producing the bills.

5 **COMMISSIONER DEASON:** So you have that
6 information?

7 **WITNESS REEVES:** That's correct.

8 **COMMISSIONER DEASON:** And it's your position
9 that if you prevail in your arguments, either here at
10 the Commission or the court or both, that there would
11 be surcharges or retroactive billing, for lack of a
12 better term, sent to customers?

13 **WITNESS REEVES:** Yes.

14 **COMMISSIONER DEASON:** Has North Fort Myers
15 Utility attempted to collect money from MHC during
16 this interim period for the billings?

17 **WITNESS REEVES:** For the billing?

18 **COMMISSIONER DEASON:** Yes.

19 **WITNESS REEVES:** They were sent the bills
20 the first two months just like all the other
21 residents, and we're not sending them bills now just
22 like we are the rest of the residents.

23 **COMMISSIONER DEASON:** Is it your position
24 that MHC is not liable to North Fort Myers during this
25 interim period for the usage of the individual

1 residents?

2 **WITNESS REEVES:** I don't know.

3 **COMMISSIONER DEASON:** Do you have a standard
4 bulk tariff or are those tailored to each individual
5 situation?

6 **WITNESS REEVES:** We do not have a bulk
7 tariff. We have a meter-size tariff, of course, for
8 general service.

9 **COMMISSIONER CLARK:** I've looked at this
10 letter and evidently it was sent out, I guess, by
11 Mr. Sundstrom, but on behalf of your utility. I'm
12 trying to understand why you sent this letter. Are
13 you obligated to send this kind of letter when your
14 facilities pass a development that has a package
15 plant?

16 **WITNESS REEVES:** Yes.

17 **MR. LUDINGTON:** Obligated?

18 **COMMISSIONER CLARK:** Okay. Is it fair for
19 me to ask your attorneys to -- I guess, it's the
20 appropriate point to let us know what the law is with
21 respect to that notification and whatever. I want to
22 understand further what in the ordinance I understand
23 requires this letter to be sent out.

24 **MR. FRIEDMAN:** Well, there's two things.
25 One we filed -- I think you all have a copy of it. I

1 think it's 9101.

2 **COMMISSIONER CLARK:** So we have a copy of
3 that?

4 **MR. FRIEDMAN:** Sure. Plus there's a statute
5 and it's 383 something, something, something that says
6 that within 365 days of a line -- I don't remember the
7 exact statute number, but those are the two--

8 **COMMISSIONER CLARK:** But our Staff has it?

9 **MR. FRIEDMAN:** I'm sure they've got the
10 ordinance.

11 **COMMISSIONER CLARK:** Okay. Good. Thanks.

12 **COMMISSIONER DEASON:** Mr. Ludington, I'm
13 going to -- you have indicated that there's additional
14 line of cross you wish to pursue; is that correct?

15 **MR. LUDINGTON:** Yes. This relates to
16 questions that the PSC staff asked a few minutes ago
17 on their billing procedure. They brought the subject
18 up and Mr. Reeves replied to it.

19 **COMMISSIONER DEASON:** I'm going to give you
20 the flexibility, but you need to limit it specifically
21 to what was raised by Staff in their cross
22 examination.

23 **REXCROSS EXAMINATION**

24 **BY MR. LUDINGTON:**

25 **Q** All right. I believe Staff asked Mr. Reeves

1 if he had a system in place for billing, and he
2 replied that he did, and someone asked later on if
3 Manufactured Homes was receiving bills or whether they
4 had stopped receiving bills the same time as the
5 homeowners did. And I'm asking Mr. Reeves what
6 situation prompted him to quit sending them the bills?
7 They haven't protested, have they?

8 **A** No, the PSC ordered it.

9 **Q** The PSC ordered you to stop sending bills to
10 everybody?

11 **A** To everybody in the park.

12 **COMMISSIONER DEASON:** Mr. Devine, you
13 indicated you have an additional line of cross?

14 **MR. DEVINE:** No. I would just like to ask
15 Commissioner Clark a question. On the letter that you
16 just read, Ms. Clark, do you consider that a
17 threatening letter sent out?

18 **COMMISSIONER DEASON:** Commissioner Clark is
19 not a witness, but I'll let her answer that if she
20 wants.

21 **MR. FRIEDMAN:** Well, and also I haven't
22 objected to that informality of passing that letter
23 around, but obviously that letter is not a part of
24 what we are putting into evidence here, and frankly I
25 don't think it ought to be considered. I've given you

1 some -- you know, I'm going to allow some flexibility
2 on that, but frankly, I got some serious concerns
3 about looking at extra documents that aren't part of
4 the record.

5 **COMMISSIONER DEASON:** Are you chastising the
6 Commissioner?

7 **MR. FRIEDMAN:** I was trying to do that very
8 nicely and obviously I didn't do a very good job of
9 it, Commissioner Deason.

10 **MR. DEVINE:** I think as a Commissioner who
11 read that letter --

12 **COMMISSIONER DEASON:** I think Commissioner
13 Clark is going to respond.

14 **COMMISSIONER CLARK:** I'm still trying to
15 sort out what the law is and, you know, I can't say
16 whether it's threatening or not. You know, if a
17 letter sets out what the law requires, you know, there
18 may be some obligation to do that. So, you know, I'm
19 not prepared at this time to characterize it.

20 **MR. LUDINGTON:** Commissioner, may I speak on
21 that matter; the discussion of the letter? I had
22 asked Mr. Reeves earlier on that and it's been brought
23 back up again. I asked him if there was some kind of
24 a trigger mechanism he had to have this letter sent
25 out and he replied that he would go down to the DEP

1 offices and see who was in trouble down there and then
2 this would trigger the mechanism to send this letter
3 out.

4 Now, the letter out there, in my opinion,
5 seems to state the fact that they're taking over Lee
6 County's job by reminding customers that they are
7 in --

8 **COMMISSIONER DEASON:** Mr. Ludington, I think
9 the record is going to speak for itself; whatever has
10 been established in cross examination, and whatever
11 the law says, the law says.

12 **MR. DEVINE:** Good.

13 **COMMISSIONER DEASON:** Thank you, Mr. Reeves.
14 I believe you can be --

15 **MR. FRIEDMAN:** I do have a couple redirect
16 based upon questions. I'd just like --

17 **COMMISSIONER DEASON:** Mr. Friedman, it's
18 just been one of those days. I did not mean to
19 overlook you. Yes. Please conduct your redirect.

20 **MR. FRIEDMAN:** I just have a couple
21 questions.

22 **REDIRECT EXAMINATION**

23 **BY MR. FRIEDMAN:**

24 **Q** Mr. Reeves, Commissioner Clark asked you
25 about master metering mobile home parks and you

1 mentioned the Windmill and San Suzie parks; is that
2 correct?

3 A That's correct.

4 Q Are either of those parks individually
5 metered?

6 A Not to my knowledge.

7 Q So the individual lots don't have meters on
8 them?

9 A That's correct.

10 Q Is the procedure that North Fort Myers used
11 in its contract with MHC consistent with the ones in
12 Tamiami and some of the others that the Commission has
13 previously approved?

14 A That's correct. In addition to that we are
15 not responsible for the on-site collection system for
16 those two sites or master meter.

17 Q Are you concerned then that to create an
18 exception and master meter, this park would create a
19 precedence that would not be a good one to set?

20 A That's correct.

21 Q Let me ask you this. You answered a
22 question that Commissioner Deason asked about
23 imputation of CIAC if the stipulation were accepted.
24 Do you remember that?

25 A Yes.

1 **Q** Did you say that the revenue would not --
2 that's service availabilities charges that North Fort
3 Myers was not going to charge would not be imputed as
4 CIAC?

5 **A** That's correct.

6 **Q** And that's your understanding of the
7 stipulation?

8 **A** That's correct.

9 **MR. FRIEDMAN:** I have no further questions.

10 **COMMISSIONER DEASON:** Thank you.

11 **MR. DEVINE:** May I?

12 **COMMISSIONER DEASON:** No. We've already
13 concluded cross examination and redirect. And by
14 definition, redirect has to be limited to matters
15 which were raised on cross and if he went outside of
16 that you should have objected to that.

17 So, I mean, this is the procedure. You've
18 had your opportunity; all parties. We've even given
19 you flexibility in that regard and now redirect has
20 taken place and the witness may now be excused.

21 **MR. FRIEDMAN:** I would like to move the
22 exhibits that we identified, which I think you said
23 No. 2 or the Composite Exhibit for his application.
24 And I think No. 3 would be the stipulation which is
25 entitled settlement agreement.

1 **COMMISSIONER DEASON:** Okay. We will
2 identify the stipulation or the settlement agreement
3 as Exhibit 3. The Composite Exhibit 2, which consists
4 of the prefiled exhibits, without objection shall be
5 admitted. Likewise, without objection Exhibit 3 also
6 shall be admitted.

7 (Composite Exhibit 2 received in evidence.)

8 (Exhibit 3 marked for identification and
9 received in evidence.)

10 **COMMISSIONER DEASON:** We have no further
11 prefiled testimony to present at this time; is that
12 correct? Okay.

13 During the lunch recess I was approached by
14 at least one customer who wanted the opportunity to
15 briefly add something else to the record. I indicated
16 to that individual that when we concluded the
17 technical phase of the hearing, I would grant some
18 latitude and he promised that he would be extremely
19 brief. And it was one small subject matter that he
20 wanted to mention. So I'm going to afford that
21 opportunity of that individual to come forward at this
22 time.

23 Sir, you need to restate your name for the
24 record and you also acknowledge that you are still
25 under oath from this morning's session; correct?

1 **WITNESS ESPOSITO:** Yes.

2 **COMMISSIONER DEASON:** Please proceed.

3 **WITNESS ESPOSITO:** Okay. I'm Ralph
4 Esposito. 803 Pirates Rest Road. In my testimony
5 this morning I said that we, the Board -- I'm a Board
6 member also. We, the Board, had rescinded our
7 original agreement and I didn't want to shun the
8 Public Counsel. I just want to give my appreciation
9 to the Public Counsel for all of the hard work, the
10 digging, all of the work that you guys have done
11 because a lot of the stuff that's coming out -- and
12 I'm sure that Ron and Joe will agree -- that this is
13 things that you have found for us. We in no way are
14 shunning you guys. It was just, we want to stay as a
15 community together. And we feel that this is our best
16 chance to do that is to stay together.

17 So, I just want to express our appreciation
18 to you people. Thank you. (Applause)

19 **MR. SHREVE:** Mr. Chairman, if I may. We
20 appreciate that very much. And we understand. We
21 think that unity in a community is good and we just,
22 as always, try to do what the customers want. Thank
23 you. (Applause)

24 **COMMISSIONER DEASON:** Staff, is there
25 anything further to come before the Commissioner at

1 this time?

2 **MS. BRUBAKER:** Commissioner Deason, there
3 are some pending matters that we had discussed prior
4 to the customer testimony and the technical phase of
5 the hearing, which were tabled for further discussion
6 after evidence had been taken in the record.

7 Those matters are the stipulation or --
8 excuse me -- proposed offer of settlement which was
9 filed by Mr. Ludington. There is a proposed offer of
10 settlement filed originally by the utility and the
11 Office of Public Counsel, with the understanding that
12 support has been withdrawn by Public Counsel on that
13 stipulation; and a motion to place rates and
14 charges -- rates into effect subject to refund by the
15 utility.

16 **COMMISSIONER DEASON:** I'm going to --
17 Commissioners, I'm going to express a desire as to how
18 we proceed, and obviously, if there's an objection we
19 can discuss that.

20 We have two offers of settlement from
21 different parties and there's the emergency motion.

22 As to the offers of settlement, I think that
23 we need to take those under consideration. We need to
24 allow our Staff the opportunity to review the record
25 that's been produced here today and to come forward

1 with a recommendation which summarizes that testimony,
2 and for them to give us their opinion as to what
3 actions would be in the public interest. So I would
4 propose that.

5 The only question I have is concerning the
6 emergency motion and what status it has if we delay
7 consideration of the offers of settlement for a future
8 date; if there's some action we need to take at this
9 time in relation to that or if that can be considered
10 at a future time when we consider the two offers of
11 settlement.

12 **COMMISSIONER CLARK:** Let me ask a question.
13 Haven't we previously had an emergency motion for
14 rates? Or rates -- twice?

15 **MS. BRUBAKER:** Yes.

16 **COMMISSIONER CLARK:** I thought I had heard
17 this before. And we -- what? And we -- it was an
18 emergency motion and then it was a reconsideration of
19 that?

20 **MS. BRUBAKER:** That's correct. There was a
21 request -- yes.

22 **MR. FRIEDMAN:** Commissioner Clark, the
23 reason we raised this one, as you recall, this case
24 was originally scheduled to be heard a month ago, and
25 we thought that because it was the previous position

1 that we thought the panel would rule one way or the
2 other from the bench, that, you know, everything would
3 be done a month ago. And, of course, Hurricane Floyd
4 kind of ruined those plans, and so that was when we
5 filed the motion to expedite the hearing time and also
6 that we not have to forego not collecting this monthly
7 charge for I don't know how long.

8 And I don't know what the Commission's time
9 frame is when it mentions about having Staff write a
10 recommendation. I don't know what kind of time frame
11 we're talking about. I assume that is in lieu of the
12 normal post hearing procedure that we have.

13 **COMMISSIONER DEASON:** Well, that's something
14 else we need to discuss. I think there's been enough
15 matters raised here today that we have a fairly
16 voluminous record and I believe it needs some further
17 analysis by Staff. But obviously that can be done on
18 an expedited basis.

19 I do realize that time is of the essence
20 here and that this matter has been delayed, primarily
21 due to matters which are not under our control. But
22 still time is passing by and I understand that it is
23 critical.

24 Normally we allow a transcript to be
25 produced and briefs to be filed and things of that

1 nature, and obviously I'm open to input from the
2 parties as to the procedure we follow at this point,
3 realizing that we're -- I'm inclined not to make a
4 bench decision today.

5 **COMMISSIONER CLARK:** On the emergency?

6 **COMMISSIONER DEASON:** On anything that is
7 before us.

8 **COMMISSIONER CLARK:** I agree with that.

9 **COMMISSIONER DEASON:** So we're going to be
10 making a decision hopefully in short order, but it's
11 not going to be today. So I'm open to suggestions
12 from the parties and Staff as to procedurally, if we
13 do have briefs filed, or if we simply delay the
14 question of the offers of settlement and the emergency
15 motion to a future agenda, with the understanding that
16 it's just going to be a recommendation filed by our
17 Staff after the transcript is produced. Mr. Friedman.

18 **MR. FRIEDMAN:** Well, I was just going to
19 suggest an alternate procedure that I haven't seen
20 before, but I don't see any reason why it wouldn't
21 work, is that would maybe be to have the Staff make
22 its recommendation as they usually do, but to allow
23 the parties, since we're not filing briefs, an
24 opportunity to also address the Commission. Typically
25 they don't address the Commission at that point after

1 a hearing. But since we're kind of going into a
2 little different procedure, I would ask that we also
3 have an opportunity to present orally a --

4 **COMMISSIONER DEASON:** You want to be able to
5 make a presentation at the agenda conference when we
6 consider Staff's recommendation?

7 **MR. FRIEDMAN:** Right. I was prepared right
8 now, obviously, as you all might have surmised, to
9 make a motion to go ahead and rule from the bench, and
10 I've got argument and facts and all that to deal with
11 it. And I would -- I don't want to go through the
12 whole briefing process and the time that that's
13 involved, but I would like an opportunity to present
14 those facts as -- you know, my bent on what the
15 evidence shows along with my legal argument. Because
16 in this case, obviously when we have a case where we
17 have the intertwining of Chapter 723 with 367, the
18 legal issues are very important. And --

19 **COMMISSIONER DEASON:** Well, now I know that
20 Commissioner Clark specifically has raised at least
21 one legal issue and you may want to have the matter
22 briefed, if there is a desire to do that. My concern
23 is the time continues to run.

24 **MR. FRIEDMAN:** Well, that's why I was
25 suggesting we just go there. Let the Staff write the

1 recommendation. Let the rest of us go there and give
2 us five minutes a piece to argue.

3 **COMMISSIONER DEASON:** Mr. Shreve, do you
4 have any comments on that suggestion?

5 **MR. SHREVE:** Not on that specifically. I
6 would like to speak to the emergency motion that has
7 been heard before. I know the Staff is going to make
8 a recommendation on it.

9 I think our position is clear in the record
10 that we're opposed to the increase as we have been
11 before, and I don't think we need to go any further
12 with that. That's been argued twice already and we're
13 still opposed to the company being allowed to increase
14 those rates.

15 **COMMISSIONER DEASON:** Mr. Ludington.
16 Mr. Devine, any comments on the procedure we're going
17 to follow after today?

18 **MR. DEVINE:** Where would that hearing be
19 held?

20 **COMMISSIONER DEASON:** Well, normal procedure
21 would be -- as you recall a couple of months ago by
22 telephone, you participated in an agenda conference at
23 the Commission. That is when we decided to hold this
24 hearing down here in the service area and receive
25 input from customers.

1 It would be the same format. You would be
2 invited to come and participate in person at that
3 agenda conference. I feel certain that if you wanted
4 to do it by telephone, we could make the same
5 arrangements --

6 **MR. DEVINE:** And that would be in
7 Tallahassee?

8 **COMMISSIONER DEASON:** It would be in
9 Tallahassee.

10 **MS. BRUBAKER:** Commissioner, may I offer
11 comment?

12 **COMMISSIONER DEASON:** Yes.

13 **MS. BRUBAKER:** According to PSC Rule
14 25-22.0021, when a recommendation is presented and
15 considered in a proceeding where a hearing has been
16 held, no person other than Staff who did not testify
17 at the hearing and the Commissioners may participate
18 at the agenda conference is what the rule provides.

19 **COMMISSIONER DEASON:** Doesn't the Commission
20 have discretion to waive that?

21 **MS. BRUBAKER:** The only other portion of the
22 rule is oral or written presentation by any other
23 person, whether by way of objection, comment or
24 otherwise is not permitted unless the Commission is
25 considering new matters related to but not addressed

1 at the hearing. So I'm not sure whether the rule on
2 its face provides discretion to allow that.

3 **COMMISSIONER DEASON:** Commissioner Clark?

4 **COMMISSIONER CLARK:** You know, I have two
5 thoughts on that. Neither one are conclusive. The
6 first being that this was not really -- this was a
7 hearing on the settlement offer, which is sort of
8 different than a hearing where you take testimony and
9 evidence and you're going to be deciding the whole
10 case. You really just focus on the offer of
11 settlement.

12 The other thing is that -- if Mr. Friedman
13 is prepared to argue and Public Counsel and the
14 parties, we can hear the arguments now. And then
15 proceed with our recommendation.

16 **MR. LUDINGTON:** We're not prepared to argue
17 at this time.

18 **COMMISSIONER DEASON:** Mr. Friedman, it looks
19 like you're going to need to file a brief, allow a
20 briefing schedule, an expedited briefing schedule, or
21 if you feel confident that the Commission has
22 discretion under our rules to waive them and allow you
23 to orally argue at the agenda conference, I will
24 certainly -- we would certainly entertain a motion to
25 that effect.

1 I'm not willing to -- here today to make a
2 decision whether we can or cannot waive that rule.
3 That's premature at this point.

4 **MR. FRIEDMAN:** Well, I would certainly make
5 that motion that we be allowed to do that. Obviously,
6 our interest is just like all these folks; is to get a
7 decision, get it behind us and get on with our lives.
8 And so obviously an expedited procedure. Yet, as a
9 lawyer, I obviously think that I've got something
10 beneficial to say and I hate to give up, you know, the
11 right to do that.

12 **COMMISSIONER DEASON:** I would make the same
13 observation that Commissioner Clark made; that this is
14 a rather unique situation, not only factually, but
15 procedurally.

16 At this point what we are considering are
17 offers of settlement, at least two different offers of
18 settlement. And there is a broad public interest and
19 determination that has to be made. That may put it in
20 a little bit of a different category that perhaps this
21 rule did not envision. But nevertheless, I don't know
22 if that rises to the level or if the Commission has
23 any discretion whatsoever to deviate from that rule.

24 Mr. Friedman, I guess what I'm asking you
25 is, do you want time, an expedited briefing schedule

1 or do you want to just take your chances that there is
2 somehow that we can allow parties to orally
3 participate at the agenda conference?

4 **MR. FRIEDMAN:** I think we could. It depends
5 upon what you want to call it. You could call that
6 our argument on, you know, final argument or whatever.
7 And, in fact, rule from the bench as if we were here
8 today except you got a week or so to think about it.
9 I mean, there's no difference. It would just be an
10 oral argument -- closing oral arguments on motions to
11 enter a decision.

12 **COMMISSIONER DEASON:** Commissioner Clark
13 suggested that perhaps we can just continue this
14 hearing to an agenda conference date and then allow --
15 essentially allow closing arguments at that time,
16 realizing that Staff's recommendation would already be
17 filed. Staff would not have the benefit of the
18 closing arguments, but Commissioners would have the
19 benefit of the closing argument.

20 **MR. FRIEDMAN:** I understand. I think that's
21 an excellent suggestion.

22 **COMMISSIONER DEASON:** Any objection by the
23 parties to pursue that?

24 **MR. LUDINGTON:** Just for point of a
25 clarification now. We are going to have a conference

1 some time in the future, at a date to be decided, at
2 which time we are going to discuss two proposed
3 settlement agreements?

4 **COMMISSIONER DEASON:** The two offers of
5 settlement and we also would entertain the emergency
6 motion that has once again been filed. And you can
7 participate either by telephone, or if you like, in
8 person.

9 **MR. LUDINGTON:** The emergency motion, I
10 understand, is the one from Mr. Friedman several weeks
11 back which we have already responded to?

12 **COMMISSIONER DEASON:** That's correct. It's
13 been filed and it has -- the Commission has to make a
14 decision on it. We simply cannot ignore it.

15 **MR. FRIEDMAN:** As a practical matter,
16 though, if you all were going to "rule from the bench"
17 at this agenda conference, that motion is probably
18 going to be moot anyway.

19 **COMMISSIONER DEASON:** That's very observant,
20 Mr. Friedman.

21 **MR. FRIEDMAN:** Well, I just don't want to
22 sit here and argue about a motion that I think if you
23 rule from the bench one way or the other is going to
24 be moot.

25 **COMMISSIONER DEASON:** Sometimes that

1 happens.

2 **MR. FRIEDMAN:** If you're not willing to hear
3 it now, then I assume it's going to be moot by the
4 time --

5 **COMMISSIONER DEASON:** Well, I'm the one that
6 made the suggestion that we just defer all three of
7 these matters; the two offers of settlement as well as
8 the emergency motion. But if my colleagues are
9 willing to hear the emergency motion at this time I
10 certainly won't stand in the way of that.

11 **COMMISSIONER CLARK:** Mr. Friedman, if we
12 deny -- if we don't accept either offer of settlement,
13 I would assume at that time you still want the
14 emergency rates to be considered.

15 **MR. FRIEDMAN:** Depending upon what you do at
16 the agenda conference.

17 **COMMISSIONER CLARK:** If we reject both of
18 them, do you want to pursue your emergency rates?

19 **MR. FRIEDMAN:** Sure.

20 **COMMISSIONER CLARK:** So I don't think
21 they're moot.

22 **COMMISSIONER JACOBS:** Which rates would you
23 pursue? Are there interim rates here?

24 **MR. FRIEDMAN:** Just our tariff rates; what
25 we charge every other mobile home owner.

1 **COMMISSIONER JACOBS:** I would not want to do
2 that specifically because that is what is in the
3 settlement. It would be kind of an odd way of doing
4 that; we go ahead and approve interim, what's in the
5 settlement that we're supposed to discuss at agenda.
6 So, I wouldn't want to do that.

7 **MR. LUDINGTON:** Somebody said this case was
8 different.

9 **COMMISSIONER DEASON:** Well, anyway, I think
10 there is general consensus that we can simply continue
11 this hearing at a date certain, which I don't know if
12 Staff is prepared to announce that at this time?

13 **MS. BRUBAKER:** Looking at the calendar, if
14 you'll give me to permission to talk to my boss and
15 drop other matters and pursue this one with some
16 concentration. If we can get the transcript expedited
17 within a week, I think it would be very reasonable to
18 aim for filing the recommendation on November 4th in
19 time for the November 16th agenda conference. The
20 only agenda conference prior to that is October 19th
21 and frankly I don't think that will be sufficient
22 time.

23 **COMMISSIONER DEASON:** This is October the
24 13th.

25 **MS. BRUBAKER:** Correct.

1 **COMMISSIONER DEASON:** That's not workable.
2 That date again is November the what?

3 **MS. BRUBAKER:** That would be for the
4 November 16th agenda conference for a projected filing
5 date of the recommendation on November 4th. I would
6 hope that if an additional day or two is needed we
7 might be able to get a couple of days extension on
8 that.

9 **COMMISSIONER DEASON:** Is there any objection
10 to that?

11 **MR. LUDINGTON:** So be it.

12 **COMMISSIONER DEASON:** Very well. Just so
13 that everyone that is in attendance here understands,
14 we're not going to make a decision today. We're going
15 to continue this hearing to November the 16th which
16 coincides with the Commission's regularly scheduled
17 agenda conference where we meet and make decisions on
18 numerous cases. This will be one of those cases which
19 will be considered at that time.

20 We will continue the hearing for purposes of
21 hearing closing argument from the parties. And let me
22 emphasize that they should be brief closing arguments.
23 I would suggest five minutes per party.

24 Mr. Friedman, I realize that there are
25 numerous parties and I may give some latitude to you

1 considering that, obviously, Mr. Ludington would have
2 his own five minutes and Mr. Devine would have his own
3 five minutes and there may be some matters in there
4 that you need to respond to. So I'm going to grant
5 some flexibility. But try to limit your comments to
6 five minutes.

7 **MR. DEVINE:** Commissioner, would Mr. Gill be
8 afforded the same five minutes by telephone?

9 **COMMISSIONER DEASON:** Yes. He would be
10 afforded that.

11 **MR. DEVINE:** Thank you.

12 **COMMISSIONER DEASON:** But I would also
13 request that the parties, to the extent that you can
14 combine your comments so that we don't necessarily
15 repeat matters, because this is going to be on a
16 regularly scheduled agenda conference date. It's
17 conceivable we'll have 50 other cases to decide that
18 day so time is going to be critical.

19 **MR. LUDINGTON:** We may combine all three.

20 **COMMISSIONER DEASON:** That would be much
21 appreciated.

22 **MS. BRUBAKER:** Commissioner, may I have some
23 clarification?

24 **COMMISSIONER DEASON:** Yes.

25 **MS. BRUBAKER:** We will be holding this in

1 Tallahassee. The parties will be expected to attend
2 in person or will telephonic participation be allowed?

3 **COMMISSIONER DEASON:** If they choose to
4 participate by telephone, I'm certainly willing to
5 allow that accommodation. There's no objection. If
6 there's no objection by any of the parties? Very
7 well.

8 **MR. LUDINGTON:** Are you picking up the tab?
9 The ones from Canada almost broke me.

10 **COMMISSIONER JACOBS:** If I may --

11 **COMMISSIONER DEASON:** You will need to work
12 with our staff on that. We may have an 800 number
13 that you can call into and we can connect that to the
14 hearing room. But I'm just really -- I cannot assure
15 you that that can be done.

16 **MR. LUDINGTON:** I'm in jest. It worked last
17 time.

18 **COMMISSIONER DEASON:** Okay.

19 **COMMISSIONER JACOBS:** If I may add, if you
20 look on Page 3 of the green special report, for those
21 others who might be interested in listening in that
22 day and you are computer literate, there are
23 instructions there on how you can monitor our
24 proceedings over the Internet. You will not be able
25 to voice your opinions to the Commission, but you can

1 at least hear what is going on.

2 MR. LUDINGTON: Have you ever listened to
3 it?

4 COMMISSIONER JACOBS: No, I haven't.

5 MR. LUDINGTON: It's not very good.

6 COMMISSIONER JACOBS: Is that right? Well,
7 I'm glad to know that because now we'll pursue an
8 improvement.

9 MR. LUDINGTON: It does work, but it's
10 minimal. Man, if you're not paying close attention,
11 man it goes by so quickly.

12 COMMISSIONER DEASON: Well, that's the same
13 way when you're there in person.

14 MR. LUDINGTON: And telephonically, too.

15 COMMISSIONER DEASON: In jest, obviously.
16 So that's the procedure we're going to follow. Are
17 there any other matters to come before the Commission
18 at this time?

19 MS. BRUBAKER: Staff knows of none.

20 COMMISSIONER DEASON: Any of the parties
21 have any concluding matters?

22 Let me take this opportunity to thank every
23 one that has participated in this hearing. The
24 Commission wanted to come down to this area to hear
25 from the people involved. We certainly have

1 accomplished that. You're interest and participation
2 is appreciated. Thank you very much. Everyone have a
3 good day. This hearing is adjourned. (Applause)

4 (Thereupon, the hearing concluded at
5 3:45 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, KIMBERLY K. BERENS, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Hearing in Docket
7 No. 981781-SU was heard by the Florida Public Service
8 Commission at the time and place herein stated; it is
9 further

10 CERTIFIED that I stenographically reported
11 the said proceedings; that the same has been
12 transcribed by me; and that this transcript,
13 consisting of 206 pages, constitutes a true
14 transcription of my notes of said proceedings
15 and the insertion of the prescribed prefiled
16 testimony of the witness.

17 DATED this 20th day of October, 1999.

18

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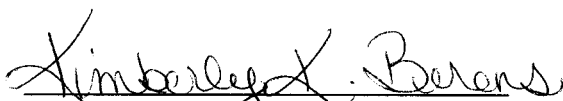
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KIMBERLY K. BERENS, CSR, RPR
Florida Public Service Commission
Official Commission Reporter

<p style="text-align: center;">\$</p> <p>\$1.2 133/12 \$10,000 17/14 \$10.97 90/12 \$100 58/1 \$12.47 133/11 \$39,000 131/15 \$140,000 69/3, 146/17, 147/15 \$146,000 131/10, 146/21 \$146,119.68 131/11 \$16.50, 114/14, 115/5 \$18 114/25 \$180,000 42/20, 132/5 \$24 114/25 \$3,000 163/17 \$3.50 90/13 \$3.98 176/16 \$4.18 91/23 \$400 150/1, 152/11 \$440,000 43/19 \$448,000 132/6 \$462 43/18, 148/24, 150/5, 151/25, 154/2, 154/8, 155/16, 156/9 \$462,000 68/23 \$468,000 152/11 \$6.02 59/21 \$6.07 159/15, 160/20 \$600,000 132/1, 132/4 \$72,000 160/7, 160/13 \$75,000 147/1 \$80,000 \$90,000 170/6, 170/14 \$987 131/16</p>	<p>187 5/4, 5/5 195 120/5 1980 120/6 1984 111/12 1992 100/16, 103/1 1995 133/10 1998 14/11, 17/3, 17/15, 34/17, 68/17, 135/22, 139/6, 139/9, 171/13 1999 1/17, 25/16, 31/25, 34/6, 35/22, 36/8, 42/20, 48/7 19th 201/20 1st 34/6, 43/5, 139/9</p>	<p>688 2/12</p> <p style="text-align: center;">7</p>
<p style="text-align: center;">&</p>	<p style="text-align: center;">2</p>	<p>7 31/25, 35/14, 37/10 7% 59/11 70 3/17 70% 153/11, 153/12 71 136/24 72 110/10 723 15/4, 15/21, 35/10, 38/16, 39/11, 43/12, 70/20, 71/2, 72/3, 72/13, 72/20, 73/3, 73/8, 74/8, 74/10, 74/11, 74/16, 75/7, 75/15, 75/22, 81/21, 82/24, 83/1, 156/2, 156/8, 158/25, 159/2, 193/17 723.004 83/20 723.022 69/9 723.031 69/20, 159/4 723.46 156/2 73 110/11 76 3/18, 3/20 771 109/5 793 110/1 795 76/8 7th 24/18, 24/20</p>
<p>& 2/2</p>	<p>2 5/4, 34/12, 36/6, 130/4, 130/7, 169/4, 169/6, 169/17, 186/23, 187/3, 187/7 2% 59/14 2,000 71/19 2,500 172/10, 176/12 2.0 171/6 20 76/24, 116/13, 153/3, 153/9, 174/4 20% 47/6, 145/21, 145/22 200 47/5, 176/7 206 207/8 207 5/9 20th 78/14 21 22/4, 27/21, 68/11, 90/2, 90/8, 90/24, 115/22 22 109/5 2210 1/20 247-S 1/5, 6/17 25-22.0021 195/14 2540 2/20 2548 2/3 27 5/3 28th 25/4, 25/6, 40/15, 40/17 2:00 4/16, 123/3, 123/7 2nd 24/15, 40/13</p>	<p style="text-align: center;">8</p> <p>8 35/19, 37/17, 155/17 8-27 69/4 800 204/12 803 64/18, 188/4 812 2/9 83 69/16, 69/17, 71/3 86 3/21 88 3/23 89 3/24</p>
<p style="text-align: center;">,</p>	<p style="text-align: center;">3</p>	<p style="text-align: center;">9</p> <p>9.5 154/18 9/10ths 117/10 91-01 15/3 9101 69/5, 181/1 93 4/2 943 62/24 96 90/1 963 115/23 971 13/4, 145/20, 149/7, 149/17, 149/22 975 68/8 981 136/24, 160/12, 160/13 981781-SU 1/4, 6/16, 124/23, 207/5 9th 24/23</p>
<p>• 1/10, 1/11, 1/12 ***** 1/9, 1/13</p>	<p>3 5/5, 34/18, 36/14, 37/19, 45/21, 48/6, 69/20, 141/15, 141/17, 141/23, 170/2, 171/4, 186/24, 187/3, 187/5, 187/8, 204/20 3,000 176/12 30.0 156/16 300 47/1, 47/4, 65/25, 88/25 32301 2/4 32399-0870 2/21 32399-1400 2/10 33 71/17 333917 2/16 33917 2/13 363 88/5 365 181/6 367 39/12, 73/5, 74/8, 193/17 367.011 37/19 383 181/5 3:45 206/5</p>	<p style="text-align: center;">A</p>
<p style="text-align: center;">1</p> <p>1 5/3, 26/25, 27/2, 34/5, 36/2, 58/21 1,800 47/2 10 106/17, 170/2 10% 112/13, 112/15, 154/13, 154/16 100% 171/10 103 4/4 104 76/22 109 4/5, 4/7 1098 176/5 10:00 1/18, 6/2 11 66/22, 171/4 111 2/8, 4/8 114 4/10 115 4/11 12 66/1, 91/24, 121/2, 177/14 120 4/13, 4/14 124 4/18 125 12:50 4/15, 123/6 12th 25/8, 25/12, 25/14 13 1/17, 25/16, 35/22, 71/15, 99/25 130 5/4 133 4/19 135 13th 133/10, 201/24 15 62/5 150 47/5 158 57/12 15th 45/1 161 4/20 169 16th 201/19, 202/4, 202/15 17 57/13 17th 59/25 18 91/25, 106/11 181 4/21 184</p>	<p style="text-align: center;">4</p> <p>4 34/25, 36/20, 45/20, 69/9, 70/14, 177/14 41 170/5 433 86/17 450 162/11, 162/15 467 111/12 488 103/19 4th 139/6, 201/18, 202/5</p>	<p>A-N-S-T-O-W-I-C-Z 113/3 A.A 124/14, 124/21 a.m 1/18, 6/2 abide 34/25 ability 132/15, 171/1 absorb 79/22 absorbed 77/13 accept 38/4, 39/3, 118/3, 141/11, 200/12 acceptable 42/22 accepted 19/9, 43/19, 53/15, 185/23 access 111/25, 157/21, 159/20 accommodation 204/5 accomplished 206/1 accomplishment 37/25 accumulating 94/7 accurate 52/5, 132/8, 166/15 accuse 138/13 accused 67/1 acquired 131/9 act 46/10, 156/8 acting 16/14, 21/19, 38/1, 38/2, 46/12 action 39/10, 44/4, 47/8, 47/10, 47/14, 68/20, 82/20, 157/23, 190/8 actions 10/2, 45/19, 71/6, 71/7, 100/15, 190/3 activities 77/16 acts 16/16 add 20/13, 39/25, 44/12, 44/14, 76/10, 95/8, 145/21, 187/15, 204/19 adding 146/20 address 6/10, 9/3, 9/17, 10/20, 11/20, 16/25, 49/23, 52/3, 57/9, 70/17, 98/8, 98/16, 100/24, 103/3, 107/21, 119/23, 120/21, 125/5, 192/24, 192/25 addressed 23/25, 25/19, 43/2, 195/25 adds 59/8 adequate 141/2 adjourned 206/3 adjustment 176/13</p>
	<p style="text-align: center;">5</p> <p>5 35/6, 37/1 5,700 153/16 50 203/17 509 2/15 51% 47/13, 47/18 564 67/22 57 3/5 58 3/6 587 121/1 59 114/6</p>	
	<p style="text-align: center;">6</p> <p>6 37/6 62 3/8, 3/9 64 3/11 65 3/12 662 70/13 67 3/14 68 3/15</p>	

admitted 27/1, 139/2, 187/5, 187/6
ADMTD 5/2
adoption 35/2
advance 173/10
advancement 7/14
advantage 10/17, 114/21, 115/7, 163/8
adverse 44/4
advise 118/25
advisement 9/23, 40/10, 48/13
Advisory 102/25
aeration 171/7
affairs 102/17, 118/15
affect 35/7, 43/24, 101/5, 118/16
affected 101/13, 101/20
affiliates 79/7, 79/13, 80/8
afford 54/23, 187/20
affordable 121/23
afforded 61/11, 203/8, 203/10
afternoon 114/4, 122/25
age 110/10, 110/14
agency 73/25, 75/18
agenda 44/25, 99/12, 192/15, 193/5, 194/22, 195/3, 195/18, 196/23, 198/3, 198/14, 199/17, 200/16, 201/5, 201/19, 201/20, 202/4, 202/17, 203/16
agree 33/2, 40/4, 41/11, 44/6, 72/20, 72/21, 80/5, 148/4, 162/6, 188/12, 192/8
agreed 33/24, 42/18, 43/16, 43/17, 53/8, 65/13
agreeing 43/20
Agreement 5/5, 15/25, 18/16, 19/8, 20/7, 21/3, 21/5, 21/13, 24/21, 24/24, 28/19, 31/13, 32/11, 33/11, 34/16, 35/17, 35/19, 36/3, 36/16, 36/24, 37/13, 37/15, 38/9, 38/10, 38/15, 38/23, 39/4, 39/21, 40/16, 40/19, 41/25, 42/10, 42/22, 43/1, 43/19, 44/3, 44/6, 44/19, 44/20, 45/10, 45/12, 46/11, 46/20, 47/17, 47/22, 54/5, 55/12, 62/13, 65/11, 79/8, 80/11, 81/15, 87/7, 88/19, 89/1, 94/2, 111/14, 118/12, 130/17, 130/20, 131/25, 135/22, 135/23, 136/3, 136/15, 136/18, 139/1, 139/5, 139/15, 140/9, 140/17, 140/21, 141/4, 149/1, 151/5, 151/13, 151/22, 151/23, 152/5, 152/17, 152/20, 152/21, 152/25, 169/14, 169/19, 170/18, 170/20, 186/25, 187/2, 188/7
agreements 14/2, 15/2, 21/5, 21/7, 21/8, 21/17, 96/24, 136/13, 174/4, 199/3
agrees 34/8, 34/12, 34/19, 34/25, 35/6, 35/11, 71/1
aim 201/18
allow 9/4, 33/4, 33/7, 33/8, 38/16, 69/6, 85/6, 97/8, 97/10, 101/12, 112/10, 130/5, 134/11, 143/1, 146/3, 161/18, 163/11, 166/12, 183/1, 189/24, 191/24, 192/22, 196/2, 196/19, 196/22, 198/2, 198/14, 198/15, 204/5
allowed 19/6, 46/13, 60/7, 68/16, 72/3, 90/11, 100/10, 100/18, 112/14, 139/17, 145/20, 194/13, 197/5, 204/2
Allowing 15/19, 41/8, 138/17
allows 10/12, 36/10, 36/23, 37/1, 37/10, 37/17, 69/18, 154/22, 155/15
altered 44/21
alternate 192/19
alternative 15/5
amended 80/21, 82/18, 96/20
amendment 1/5, 6/16, 139/10
amenities 107/3
America 17/6
amount 51/8, 69/24, 70/1, 76/25, 114/25, 146/25, 147/17, 147/18, 152/12, 153/17, 159/8, 159/10, 176/4
ample 145/11
amplify 97/9
analysis 191/17
anger 118/11
ANN 3/13, 67/16, 67/18, 67/21
announce 122/24, 201/12
annual 81/21, 132/11
Anstowicz 113/3
answer 36/5, 73/1, 74/22, 75/1, 82/6, 85/4, 85/12, 86/4, 95/5, 98/10, 98/12, 123/15, 134/15, 149/11, 163/21, 163/24, 173/17, 182/19
answered 97/6, 108/4, 108/16, 140/11, 140/14, 165/5, 185/21
answering 104/5
answers 21/11, 61/19, 138/21, 140/2, 140/3
anticipated 116/22
apologize 30/20, 87/6
APPEARANCES 2/1, 6/21, 8/4
Applause 16/22, 19/22, 23/17, 29/4, 30/1, 31/2, 38/5, 48/1, 58/4, 60/14, 61/12, 62/17, 64/10, 65/18, 67/15, 68/1, 70/2, 70/6, 76/1, 76/15, 77/22, 79/11, 81/18, 86/7, 87/6, 87/12, 87/24, 89/9, 90/15, 90/19, 92/18, 98/24, 103/8, 103/12, 107/16, 109/19, 110/25, 112/25, 115/11, 119/3, 120/17, 121/14, 121/19, 121/24, 122/13, 122/17, 139/13, 188/18, 188/23, 206/3
apples 160/23
Application 1/5, 6/16, 12/8, 12/12, 12/13, 12/18, 13/1, 13/8, 13/17, 15/10, 16/8, 16/11, 33/16, 33/20, 34/1, 34/2, 73/7, 142/16, 156/21, 169/5, 169/16, 170/2, 171/4, 177/12, 186/23

applications 142/14
applied 20/21
applies 70/21
apply 13/21, 47/14, 69/17, 69/20, 70/23, 70/24, 70/25
appreciate 23/11, 23/12, 29/7, 48/15, 58/11, 61/12, 86/7, 98/23, 103/4, 103/6, 122/21, 143/18, 188/20
appreciated 41/21, 203/21, 206/2
appreciation 188/8, 188/17
apprised 82/10, 82/13
approach 17/18, 24/7
approached 97/16, 187/13
appropriate 24/6, 38/14, 41/1, 41/5, 41/9, 70/25, 102/21, 131/23, 168/22, 180/20
approval 35/20, 44/8, 46/18, 84/18, 155/21, 155/22
approve 46/11, 47/16, 78/4, 84/1, 201/4
Approved 34/10, 36/13, 83/13, 154/23, 154/24, 155/6, 155/7, 175/24, 185/13
approximate 146/19
April 17/15
aquifer 142/2
area 1/6, 6/17, 16/11, 22/7, 33/18, 75/15, 77/6, 81/6, 101/7, 111/25, 114/19, 132/17, 141/25, 146/7, 162/5, 163/16, 167/17, 174/5, 194/24, 205/24
areas 61/18, 74/16, 141/18
argue 27/15, 194/2, 196/13, 196/16, 196/23, 199/22
argued 194/12
argument 41/8, 85/15, 193/10, 193/15, 198/6, 198/10, 198/19, 202/21
argumentative 147/23
arguments 179/9, 196/14, 198/10, 198/15, 198/18, 202/22
arise 75/18
arose 132/25
arrangement 96/16, 98/2, 151/6
arrangements 96/23, 195/5
Article 45/21, 144/22, 145/1, 145/4, 145/6, 145/8
articulated 42/5
articulation 140/25
ashamed 87/5
aspect 43/8
asserts 43/12
asset 154/7
assets 17/25
assigned 7/25, 43/9, 152/1, 169/17
assignment 169/20
Associate 2/7
Association 38/21, 45/16, 45/22, 45/25, 46/1, 46/4, 46/6, 46/17, 46/24, 47/3, 47/10, 47/12, 48/4, 53/7, 53/12, 53/18, 63/1, 64/2, 64/20, 66/2, 69/7, 76/9, 78/14, 88/9, 104/11
Association's 45/19
assumption 169/20, 172/7, 172/18
assure 204/14
attached 26/12, 124/24, 130/2
attachment 169/16
attempt 69/3, 138/18
attempted 179/15
attempting 29/19, 112/15, 138/19
attend 204/1
attendance 41/14, 202/13
attention 10/4, 10/10, 50/18, 88/23, 135/21, 205/10
attorney 19/25, 78/13, 88/11, 89/7, 98/17, 98/21
attorneys 27/17, 136/6, 136/11, 158/5, 180/19
attractions 122/13
AUDIENCE 6/6, 29/19, 32/14, 67/3, 74/22, 90/3, 99/3, 99/15, 119/18, 140/5
auditorium 50/23
August 42/20, 135/22
authorities 38/13
authority 23/3, 31/7, 31/9, 71/11
authorization 15/9, 71/11, 140/8
authorized 15/20, 139/10
automatically 110/12
availabilities 186/2
availability 34/14, 43/13, 169/8, 169/19, 169/24, 170/19, 177/16, 177/22
available 133/5, 171/21
Avanti 2/15, 68/8, 103/19, 111/12, 115/23
avenue 36/24, 102/15
average 172/8, 172/17, 172/19, 172/20
awaiting 51/14

B

B-R-O-C-K-S-C-H-M-I-D-T 114/6
B.W 115/12
background 74/23
Bad 12/21, 21/19, 56/12, 105/19, 116/15, 116/16, 118/18, 154/13, 154/17, 154/18
ballpark 159/25, 160/1
bandits 18/18
bare 16/18
base 145/22, 151/1, 153/10

based 12/8, 117/19, 134/2, 144/19, 149/12, 162/25, 172/12, 176/7, 184/16
basis 31/5, 41/15, 71/10, 74/18, 81/21, 132/23, 134/18, 138/14, 142/18, 149/12, 162/20, 191/18
bear 12/7, 116/8
Beard 57/12, 65/25
bearing 102/25
beautiful 109/9
bed 70/15
Beg 78/8, 154/5
behavior 117/16, 117/19
belly 66/15
bench 191/2, 192/4, 193/9, 198/7, 199/16, 199/23
beneficial 11/17, 48/17, 48/18, 197/10
benefit 22/6, 22/18, 57/10, 198/17, 198/19
bent 193/14
Bentley 2/3, 7/2
BERENS 1/21, 207/3
bet 154/4, 158/7
BHA 46/7, 46/9, 46/10
BHO 71/9
bicycle 86/24
Biddy 164/5, 164/9
big 74/12, 109/12, 121/13, 122/1, 154/1, 154/19
bigger 59/17, 74/16, 115/3
bill 20/14, 57/22, 60/10, 66/11, 80/7, 81/10, 90/14, 90/16, 91/21, 92/2, 92/5, 93/22, 94/4, 172/12
billed 37/11, 65/5, 112/9, 137/2, 137/6, 137/7, 137/9, 137/13, 137/22
BILLIE 2/25
billing 34/10, 34/21, 36/7, 36/13, 37/12, 94/16, 94/17, 135/13, 150/21, 178/21, 178/24, 179/2, 179/4, 179/11, 179/17, 181/17, 182/1
billings 178/18, 178/19, 179/16
billion 17/25
bills 36/14, 114/17, 114/24, 137/20, 138/5, 138/6, 163/4, 178/20, 179/4, 179/19, 179/21, 182/3, 182/4, 182/6, 182/9
BIRD 3/18, 55/20, 56/16, 76/2, 76/4, 76/7
bit 23/10, 70/20, 197/20
bitterness 118/11
Blairstone 2/3
Blanchette 98/25, 99/23
Blo 67/2
block 93/5
Blow 99/16, 99/19, 100/21
Blue 57/12, 65/25
Board 62/25, 64/20, 65/1, 65/3, 66/2, 67/10, 76/9, 76/11, 76/12, 79/24, 89/5, 104/11, 117/18, 118/7, 119/1, 134/5, 134/6, 188/5, 188/6
Board's 78/16
boat 22/21
Bob 77/24, 86/9, 89/7, 89/13
body 66/18
bogus 151/6
bond 133/12, 133/13
book 173/7
books 178/7
boos 99/15
boss 201/14
bottom 59/14
bought 69/1, 76/22, 110/4, 110/5, 116/11, 116/12
Boulevard 2/12, 2/20, 12/4, 70/13, 111/12
boundaries 147/11
Box 62/24
break 29/16, 50/5, 50/8, 50/21, 51/2, 57/25, 90/12, 90/13, 113/16
breaks 110/7
bribery 138/9, 138/13, 138/19
Bridge 77/18, 132/20
brief 9/11, 9/14, 11/15, 20/1, 20/12, 39/25, 41/17, 49/11, 50/15, 51/18, 68/9, 78/12, 187/19, 196/19, 202/22
briefed 193/22
briefing 193/12, 196/20, 197/25
briefs 191/25, 192/13, 192/23
Brigantine 2/12, 12/3, 70/13
bring 10/4, 29/12, 30/10, 30/13, 30/24, 164/19
brings 19/19, 21/25
broad 146/5, 197/18
BROCKSCHMIDT 4/9, 113/4, 114/1, 114/4, 114/5, 115/2
broke 204/9
brother 109/6
brought 30/18, 30/25, 64/9, 83/15, 88/23, 97/7, 98/3, 98/6, 107/22, 151/18, 181/17, 183/22
BRUBAKER 2/18, 7/17, 72/24
Buccaneer 1/6, 1/19, 6/18, 7/11, 7/14, 7/15, 12/4, 13/21, 14/11, 14/16, 15/17, 15/20, 16/4, 16/12, 16/17, 17/9, 20/6, 33/13, 33/18, 34/7, 34/9, 34/10, 34/21, 34/23, 35/8, 35/16, 36/4, 36/23, 37/3, 37/6, 44/8, 45/15, 45/21, 46/4, 46/6, 46/23, 47/2, 47/9, 47/11, 47/12, 48/4, 60/21, 62/25, 68/11, 68/12, 68/22, 68/25, 69/2, 69/6, 71/12, 72/3, 72/7, 76/24, 77/5, 92/7, 92/11,

99/7, 111/11, 111/13, 111/18, 111/20, 111/24, 112/3, 112/4, 112/9, 112/18, 112/24, 113/8, 118/18, 132/16, 134/22, 136/14, 136/21, 139/11, 139/12, 142/17, 146/17, 147/8, 147/11, 148/23, 150/19, 151/14, 153/10, 153/19, 159/16, 160/6, 162/18, 167/3, 169/15, 170/23, 171/2, 171/13, 171/18, 171/24, 172/3, 172/24, 173/2, 173/20, 175/6, 178/18
Buccaneer's 69/18
buck 59/17
built 109/9
bulk 95/17, 96/2, 96/15, 96/20, 98/1, 112/10, 174/17, 174/21, 175/2, 180/4, 180/6
Burandt 21/9, 77/25, 78/13, 86/9, 89/8, 89/13
burden 16/18, 37/7
business 12/9, 12/15, 13/5, 13/6, 13/11, 14/24, 16/19, 17/21, 18/13, 50/11, 73/19, 73/22, 75/19, 88/9, 93/24, 101/3, 102/18, 116/15, 121/13, 122/1, 138/10, 138/25, 154/13, 170/5
businesses 93/24
businessman 99/24
buy 14/14, 114/17, 144/13, 147/7
buying 97/23
BWS 34/21
bylaw 46/12
bylaws 45/19, 45/20

C

C-H-A-L-P-I-N 111/2
c/o 2/7, 2/8
cahoots 77/9
calculated 176/5, 176/6, 176/20
calculation 175/21
calendar 201/13
Call 6/3, 6/8, 21/8, 30/7, 50/19, 53/2, 55/19, 95/9, 113/6, 113/10, 123/9, 124/3, 151/21, 167/2, 198/5, 204/13
calls 51/25, 124/5, 150/5
came 18/16, 20/13, 20/20, 30/7, 42/12, 63/1, 66/20, 66/21, 77/6, 81/8, 87/1, 88/19, 109/5, 111/14, 121/21, 132/22, 151/10
Canada 135/8, 204/9
capacity 132/1, 132/6, 145/22, 148/24, 150/1, 150/9, 156/16, 170/9, 170/11, 171/10, 171/15, 172/2, 174/3, 174/6, 174/12, 175/21, 175/23, 176/11
capital 83/22, 85/14, 85/19, 117/4, 117/5, 177/18, 177/23
captioned 25/15
car 151/17
care 52/18, 71/18, 77/4, 85/1
Caroline 55/20, 56/16
carried 175/22
cart 140/7
case 7/25, 9/17, 11/14, 21/10, 21/12, 23/6, 23/7, 28/3, 28/7, 29/1, 38/12, 42/23, 73/5, 74/7, 74/11, 78/25, 79/12, 80/16, 82/9, 99/13, 123/18, 143/9, 143/12, 143/22, 143/25, 144/14, 160/2, 164/17, 164/20, 190/23, 193/16, 196/10, 201/7
cases 22/1, 81/2, 202/18, 203/17
cash 132/19, 132/22, 154/15, 154/16, 178/2
catch 168/11
category 77/1, 197/20
caught 19/12
caused 17/5, 17/10
Caviller 120/5
cent 21/6, 37/16
centered 51/5
cents 59/23, 91/24, 91/25
certainty 142/15, 146/10, 146/13
Certificate 1/5, 5/9, 6/17, 207/1
certificated 132/17
CERTIFIED 207/7
CERTIFY 207/4
CH 69/17
chair 102/3
chairing 7/21
Chairman 102/24
challenge 148/15
Chalpin 111/2
chance 136/8, 136/10, 188/16
chances 198/1
change 55/15, 114/16, 150/25
changed 53/13, 54/8, 63/20, 89/2, 97/5, 151/8
changes 114/16
changing 55/13
CHAPMAN 3/9, 62/18, 62/20, 62/23, 63/14, 63/21, 64/5, 64/8
Chapter 15/3, 15/21, 19/19, 19/20, 35/10, 37/24, 38/16, 39/11, 43/12, 69/16, 71/2, 71/3, 72/3, 72/13, 72/20, 73/3, 73/4, 73/5, 73/6, 74/1, 75/7, 75/15, 75/22, 193/17
chapters 75/6
characterize 183/19

charge 14/15, 25/2, 26/2, 43/11, 43/13, 48/23, 65/12, 68/23, 80/17, 88/21, 90/12, 92/14, 96/11, 135/18, 136/25, 137/23, 148/24, 149/3, 154/9, 154/21, 155/17, 155/20, 156/9, 167/5, 174/13, 175/23, 176/11, 176/16, 176/24, 186/3, 191/7, 200/25
charged 65/2, 69/22, 70/1, 112/12, 159/6, 174/6
charges 13/21, 13/23, 16/11, 21/7, 42/14, 42/19, 43/10, 71/12, 88/22, 91/1, 112/9, 136/19, 149/7, 150/18, 151/25, 153/22, 155/5, 156/17, 169/8, 169/19, 169/24, 170/19, 175/21, 177/2, 177/17, 177/22, 186/2, 189/14
charging 106/13, 150/1, 173/19, 173/20, 173/21, 174/1
charter 13/17, 13/19, 16/20
chastising 183/5
check 56/18, 56/21, 104/12
checked 56/17
checks 88/22
Chicago 71/16
choice 56/12, 80/9, 80/11
choose 204/3
chooses 31/10
CIAC 185/23, 186/4
CIBULA 2/18, 7/16
Circuit 21/10, 23/7, 38/20, 39/10, 43/24, 44/4, 73/11, 78/15, 80/19, 82/9, 82/20, 82/25
circumstances 12/11, 38/18, 135/19
circumvent 12/21
citation 31/6
cite 38/13
cited 47/9
Citizens 2/10, 6/24, 111/24, 112/8, 112/24, 115/8, 122/6
City 163/16
civil 65/4, 65/10
claim 148/25
claiming 69/4
Claire 89/11
clarification 11/1, 44/22, 53/25, 198/25, 203/23
clarify 55/8, 156/14, 174/2
clarifying 52/8, 52/11, 55/4
CLARK 1/16, 7/23, 39/23, 102/8, 103/9, 106/4, 106/8, 106/12, 106/18, 106/21, 106/25, 107/6, 107/12, 120/12, 120/15, 149/21, 149/24, 150/3, 150/7, 150/11, 150/15, 155/11, 173/16, 173/24, 174/10, 174/16, 174/20, 175/1, 175/4, 175/10, 175/13, 175/18, 180/9, 180/18, 181/2, 181/8, 181/11, 182/15, 182/18, 183/13, 183/14, 184/24, 190/12, 190/16, 190/22, 192/5, 192/8, 193/20, 196/3, 196/4, 197/13, 198/12, 200/11, 200/17, 200/20
class 45/24, 46/10, 46/17, 47/8, 47/10, 47/14, 47/16
clause 151/24, 152/5
clauses 34/16
clear 53/5, 80/25, 81/4, 81/5, 194/9
Clearly 31/10, 45/18, 46/12, 50/25
client's 54/23
close 51/1, 87/14, 205/10
closer 90/5, 153/3
closing 198/10, 198/15, 198/18, 198/19, 202/21, 202/22
clubhouse 58/23, 91/10
clubhouses 174/7
clue 147/13, 147/19
Coast 162/4, 162/5, 162/8, 163/18
Cobana 163/16
coffee 87/15, 110/7
cognisant 9/7, 32/9, 75/13
coincides 202/16
colleagues 200/8
collect 34/13, 36/12, 42/25, 43/10, 43/12, 43/17, 43/18, 43/21, 94/16, 152/6, 155/16, 169/18, 179/15
collected 34/15, 68/24, 84/2, 84/3, 177/17, 178/11
collecting 151/14, 169/23, 170/18, 191/6
collection 35/16, 93/15, 95/24, 96/9, 96/13, 146/16, 152/2, 177/15, 177/21, 185/15
collections 178/10
collusion 60/22
Colvin 77/23
combine 203/14, 203/19
commence 36/7
Commenced 1/18, 4/16, 123/6
commencing 34/5
comment 39/6, 54/1, 67/23, 74/2, 74/4, 95/1, 97/1, 143/14, 148/11, 195/11, 195/23
commentary 32/1
comments 10/2, 10/15, 50/21, 63/3, 97/9, 97/11, 115/13, 138/15, 140/4, 143/20, 147/24, 148/9, 158/21, 194/4, 194/16, 203/5, 203/14
COMMISSION 1/1, 1/22, 2/19, 2/22, 7/17, 7/20, 8/7, 8/22, 9/22, 10/9, 10/17, 12/12, 21/1, 21/15, 23/2, 23/6, 24/9, 28/20, 30/8, 31/7, 33/17, 34/23, 35/4, 35/21, 37/2, 38/1, 40/3, 43/20, 46/3, 46/8, 48/11, 51/12, 51/24, 52/23, 55/1, 63/13, 63/15, 63/22, 65/4, 68/10, 74/15, 75/4, 78/18, 78/24, 79/9, 82/5, 102/5, 102/16, 112/6, 112/21, 123/17, 124/22, 131/23, 134/14,

139/5, 139/9, 141/16, 154/23, 154/25, 155/6, 155/18, 155/22, 164/24, 176/9, 178/24, 179/10, 185/12, 192/24, 192/25, 194/23, 195/19, 195/24, 196/21, 197/22, 199/13, 204/25, 205/17, 205/24, 207/3, 207/5
Commissioner's 131/19, 191/8, 202/16
commissioned 104/1
COMMISSIONER 1/15, 1/16, 6/3, 6/7, 6/20, 7/5, 7/18, 7/22, 7/23, 11/8, 11/13, 11/25, 16/23, 19/23, 20/10, 23/18, 23/22, 24/2, 25/9, 25/18, 25/22, 26/5, 26/10, 26/16, 26/18, 26/21, 26/24, 27/10, 27/14, 27/18, 29/5, 30/1, 30/5, 31/3, 31/22, 32/3, 32/7, 32/12, 32/15, 32/22, 33/3, 33/7, 35/23, 36/1, 38/5, 39/5, 39/7, 39/16, 39/22, 39/23, 39/24, 39/25, 40/7, 40/20, 41/3, 41/11, 44/11, 44/15, 44/16, 48/2, 48/9, 48/21, 49/6, 49/10, 49/14, 49/17, 49/21, 50/2, 50/6, 50/17, 51/22, 53/1, 53/24, 54/2, 54/15, 55/10, 55/11, 55/18, 55/24, 56/2, 56/14, 57/5, 58/5, 58/7, 58/10, 60/15, 60/19, 61/7, 61/10, 62/11, 63/8, 65/16, 70/3, 72/22, 73/18, 73/22, 74/3, 74/24, 75/25, 78/1, 78/5, 82/7, 82/23, 83/2, 83/17, 83/24, 84/6, 84/14, 84/24, 85/6, 85/15, 85/23, 86/6, 89/17, 90/4, 90/22, 95/3, 96/22, 97/2, 97/8, 98/14, 99/4, 99/10, 99/22, 100/1, 100/5, 100/9, 100/17, 100/22, 101/4, 101/8, 102/2, 102/8, 103/4, 103/9, 104/2, 106/3, 106/4, 106/8, 106/12, 106/18, 106/21, 106/25, 107/6, 107/12, 107/24, 108/2, 108/8, 108/19, 113/1, 113/5, 113/12, 113/19, 119/6, 119/17, 119/22, 120/12, 120/15, 120/16, 120/19, 122/18, 123/8, 123/22, 124/1, 125/5, 125/9, 130/1, 130/10, 133/4, 133/23, 134/1, 134/11, 134/25, 138/20, 139/21, 140/13, 141/7, 142/24, 143/15, 143/17, 144/18, 145/9, 145/16, 146/2, 148/4, 148/14, 149/21, 149/24, 150/3, 150/7, 150/11, 150/15, 155/5, 155/11, 156/10, 156/14, 158/19, 161/6, 161/14, 161/15, 161/21, 162/24, 163/11, 164/21, 165/6, 165/9, 165/14, 165/19, 166/9, 166/24, 167/15, 167/21, 168/4, 168/9, 168/12, 168/17, 168/25, 170/14, 172/6, 172/11, 172/14, 172/22, 173/14, 173/16, 173/24, 174/10, 174/16, 174/20, 175/1, 175/4, 175/10, 175/13, 175/18, 175/20, 176/1, 176/10, 176/15, 176/19, 176/22, 177/3, 177/6, 177/10, 177/25, 178/4, 178/8, 178/14, 178/17, 178/22, 179/1, 179/5, 179/8, 179/14, 179/18, 179/23, 180/3, 180/9, 180/18, 181/2, 181/8, 181/11, 181/12, 181/19, 182/12, 182/15, 182/18, 183/5, 183/6, 183/9, 183/10, 183/12, 183/14, 183/20, 184/8, 184/13, 184/17, 184/24, 185/22, 186/10, 186/12, 187/1, 187/10, 188/2, 188/24, 188/25, 189/2, 189/16, 190/12, 190/16, 190/22, 191/13, 192/5, 192/6, 192/8, 192/9, 193/4, 193/19, 193/20, 194/3, 194/15, 194/20, 195/8, 195/10, 195/12, 195/19, 196/3, 196/4, 196/18, 197/12, 197/13, 198/12, 198/22, 199/4, 199/12, 199/19, 199/25, 200/5, 200/11, 200/17, 200/20, 200/22, 201/1, 201/9, 201/23, 202/1, 202/9, 202/12, 203/7, 203/9, 203/12, 203/20, 203/22, 203/24, 204/3, 204/10, 204/11, 204/18, 204/19, 205/4, 205/6, 205/12, 205/15, 205/20
Commissioners 7/24, 8/1, 11/18, 31/4, 38/7, 39/16, 48/17, 89/7, 99/1, 125/2, 164/15, 173/14, 189/17, 195/17, 198/18
committee 87/8, 88/10, 102/25
common 103/25, 121/17, 121/20, 121/21, 174/12
Communities 14/1, 33/19, 58/25, 59/6, 59/7, 59/14, 93/16, 94/3, 94/8, 111/19, 112/23, 117/1, 152/14, 157/1, 157/8
community 66/2, 66/16, 96/9, 96/12, 162/2, 162/3, 162/16, 162/17, 165/4, 188/15, 188/21
companies 144/7, 156/3, 156/4
company 6/25, 8/12, 18/5, 34/22, 37/4, 37/9, 77/21, 92/2, 92/3, 92/8, 92/11, 95/23, 96/8, 101/1, 108/6, 122/2, 132/21, 145/20, 156/25, 194/13
company's 18/6, 155/8
compared 86/22
comparing 160/23
compelled 161/10
compensated 65/1
complaint 80/21, 82/17, 82/18, 83/10, 86/3, 93/11, 102/16
complaints 93/10
complete 12/10, 12/16, 132/19, 133/16
completed 167/23
compliance 68/18, 175/8
compliment 99/21
comply 158/3
comport 83/23
Composite 5/3, 5/4, 27/2, 130/3, 130/7, 186/23, 187/3, 187/7
comprises 132/3
computer 137/19, 204/22
conceivable 203/17
concentration 201/16
concern 64/21, 76/11, 193/22
concerned 51/8, 59/19, 74/11, 82/11, 100/14, 105/9, 118/25, 136/14, 185/17
concerns 79/14, 101/2, 101/14, 183/2
conciliatory 118/7
conclude 15/18, 46/15, 167/18

concluded 186/13, 187/16, 206/4
concludes 23/23
concluding 205/21
conclusion 9/21, 11/19, 39/1, 49/5, 52/7, 81/8, 130/5
conclusive 196/5
concur 39/8, 39/22
condemnation 94/9
condemned 64/25, 134/22
condition 16/6, 69/8, 69/11, 78/21, 95/21
conditions 34/3, 35/1
conduct 184/19
conference 44/25, 193/5, 194/22, 195/3, 195/18,
196/23, 198/3, 198/14, 198/25, 199/17, 200/16, 201/19,
201/20, 202/4, 202/17, 203/16
conferred 164/6
confident 196/21
conflict 80/18, 134/9
confusing 56/20
congenial 76/12
conjunction 12/5, 94/14, 132/20
connect 18/20, 19/3, 68/22, 163/17, 163/19, 204/13
connected 162/21
connecting 18/8, 72/16
connection 136/19, 136/25, 149/7, 149/8, 149/19,
151/25, 153/22, 154/9, 154/21
connections 69/10, 149/15, 149/23, 153/8, 153/12
connects 170/4
conquer 117/22
consensus 201/10
consideration 12/25, 16/7, 16/9, 39/19, 40/2, 41/1,
116/17, 189/23, 190/7
consistent 178/23, 185/11
consistently 138/15
conspired 111/19
constitutes 207/8
construct 169/10
construction 133/16, 170/4, 177/15
construed 37/24
consultant 134/16
consulting 95/7
consumer 80/16, 82/3, 102/17
consumers 31/9
consumption 172/21, 176/21
contact 105/11
contacted 20/15, 164/1
contain 71/3
contained 41/18, 48/16
containing 151/23
contains 10/7
contd 4/1
continue 22/5, 22/8, 23/14, 28/22, 31/19, 41/16,
69/19, 105/2, 109/18, 118/4, 123/3, 143/25, 157/13,
166/12, 166/23, 198/13, 201/10, 202/15, 202/20
continues 193/23
contract 14/13, 14/19, 21/5, 21/7, 23/8, 35/9, 45/3,
59/1, 59/7, 60/8, 79/16, 81/13, 90/8, 90/10, 90/12,
90/13, 92/11, 92/12, 92/13, 120/7, 185/11
contracts 36/19, 81/21, 136/17
contribution 178/7
contributions 172/24, 178/11
control 45/19, 71/23, 97/22, 191/21
convened 6/2
CONVENIENCE 1/11
conversation 29/16, 30/6, 30/21, 103/20, 104/6,
135/6, 150/23
convinced 149/3
cooking 57/14
copies 24/10, 24/11
COPY 1/11, 10/6, 48/8, 130/19, 156/15, 156/18,
156/21, 175/14, 180/25, 181/2
corporate 59/17
corporation 17/23, 45/24, 91/15
corporations 116/24
correct 45/13, 55/12, 55/23, 73/20, 73/24, 75/1, 75/3,
82/25, 83/7, 83/8, 84/11, 84/13, 86/2, 123/20, 123/23,
123/25, 124/2, 131/3, 131/6, 131/17, 132/13, 135/20,
135/25, 137/1, 138/1, 138/7, 140/1, 150/2, 150/14,
150/24, 151/19, 152/15, 153/17, 154/11, 155/10,
157/25, 160/25, 162/7, 165/10, 165/11, 169/4, 169/25,
170/1, 170/7, 170/9, 170/12, 170/15, 170/16, 171/8,
171/9, 171/15, 172/13, 173/22, 173/23, 175/11, 175/12,
176/18, 178/12, 178/13, 178/16, 178/25, 179/7, 181/14,
185/2, 185/3, 185/9, 185/14, 185/20, 186/5, 186/8,
187/12, 187/25, 190/20, 199/12, 201/25
corrections 17/12, 17/13, 17/17
correctly 83/10
corresponding 69/25, 159/9, 159/17, 160/2
cost 14/4, 14/8, 15/24, 16/3, 16/4, 59/10, 59/13,
59/23, 71/4, 71/5, 72/4, 72/17, 76/24, 77/13, 79/22,
81/24, 88/20, 93/8, 94/6, 96/12, 112/15, 131/8, 146/19,
147/10, 160/5, 173/3
costs 17/14, 17/17, 36/18, 72/16, 111/23, 160/19,
170/6, 176/23, 176/25

Counsel 2/6, 2/7, 2/8, 6/23, 8/9, 20/8, 24/17, 24/22,
25/14, 25/24, 27/6, 27/8, 40/13, 42/3, 42/6, 42/8, 42/9,
42/11, 43/22, 44/2, 46/16, 46/18, 46/22, 47/15, 54/9,
72/25, 73/15, 75/16, 80/4, 80/13, 82/8, 82/14, 88/14,
101/9, 102/4, 130/15, 131/5, 157/2, 164/12, 188/8,
188/9, 189/11, 189/12, 196/13
count 15/15, 83/11, 83/15
counted 47/21
counties 144/5, 156/5
country 17/24
counts 83/9, 83/14
County 1/7, 6/18, 13/7, 15/3, 18/21, 69/4, 78/15,
99/9, 108/18, 134/18, 134/19, 141/22, 144/23, 145/24,
147/4, 157/3, 207/2
County's 13/13, 184/6
couple 20/13, 81/2, 91/17, 91/18, 130/12, 133/6,
161/4, 174/22, 184/15, 184/20, 194/21, 202/7
course 39/19, 53/9, 161/8, 166/16, 180/7, 191/3
court 8/17, 9/2, 21/10, 23/7, 24/12, 38/20, 39/11,
43/24, 44/4, 48/7, 50/8, 50/9, 52/2, 52/4, 57/7, 57/10,
58/7, 58/9, 60/12, 65/4, 65/10, 73/11, 78/15, 80/20,
82/9, 82/16, 82/20, 82/25, 85/7, 85/9, 85/11, 85/16,
85/23, 120/5, 139/24, 139/25, 141/9, 179/10
courts 80/24, 140/20, 140/24, 141/1, 141/4
Cove 86/18
cover 9/11, 69/3
covered 77/12
covering 112/23
covers 152/17
create 18/3, 185/17, 185/18
created 45/16
credentials 100/20, 148/6
credit 88/22
critical 191/23, 203/18
Cross 4/19, 4/20, 41/7, 52/9, 54/13, 54/20, 55/5,
55/22, 130/6, 133/5, 133/8, 135/3, 158/21, 161/10,
166/12, 167/18, 167/22, 169/2, 181/14, 181/21, 182/13,
184/10, 186/13, 186/15
CSR 1/21, 207/3
currently 10/8, 13/6, 39/10, 73/11, 82/19, 171/5,
173/20, 178/17, 178/22
custom 123/14
customer 9/18, 9/19, 11/5, 11/7, 11/9, 21/6, 28/5,
31/14, 43/18, 45/1, 49/24, 50/4, 50/12, 51/20, 55/16,
79/10, 79/18, 79/19, 81/9, 95/17, 96/2, 96/15, 96/20,
99/14, 100/1, 100/3, 100/6, 100/11, 101/12, 101/15,
101/25, 102/13, 103/6, 105/5, 108/7, 135/11, 145/22,
151/1, 153/10, 172/24, 174/18, 187/14, 189/4
customers 10/25, 20/14, 21/16, 22/6, 22/10, 22/12,
22/13, 22/15, 22/20, 22/25, 28/12, 28/14, 31/15, 51/11,
52/10, 54/3, 54/19, 55/2, 79/20, 82/13, 96/5, 96/19,
102/22, 103/7, 103/23, 104/10, 104/23, 105/1, 105/2,
105/15, 108/6, 108/10, 153/16, 158/11, 170/19, 174/20,
178/5, 178/15, 179/12, 184/6, 188/22, 194/25
customers' 52/13
cut 16/1
cynical 117/17

D

dah 140/25
DAN 3/6, 58/16, 58/20
data 179/2
DATE 1/17, 36/9, 138/5, 138/6, 157/9, 167/14, 190/8,
198/14, 199/1, 201/11, 202/2, 202/5, 203/16
dated 71/9
DAVE 4/12, 120/1, 120/4
day 57/15, 107/15, 121/8, 122/14, 150/20, 171/6,
176/8, 202/6, 203/18, 204/22, 206/3
day's 142/1, 142/2
days 32/18, 86/22, 86/23, 181/6, 184/18, 202/7
DBPR 73/21
deactivate 72/14
deal 21/1, 83/14, 116/16, 118/15, 145/24, 154/19,
193/10
dealing 15/12, 42/11, 73/6, 165/20
dealt 42/7, 73/12, 102/7
DeAnza 91/15, 116/18, 116/25
DEASON 1/15, 6/3, 6/7, 6/20, 7/5, 7/18, 7/19, 11/8,
11/13, 11/25, 16/23, 19/23, 20/10, 23/18, 23/22, 25/9,
25/18, 25/22, 26/5, 26/10, 26/16, 26/18, 26/21, 26/24,
27/10, 27/14, 27/18, 29/5, 30/1, 30/5, 31/3, 32/3, 32/7,
32/12, 32/15, 32/22, 33/3, 33/7, 35/23, 36/1, 38/5,
39/5, 39/7, 39/16, 39/24, 40/7, 40/20, 41/3, 41/11,
44/11, 44/16, 48/2, 48/9, 49/6, 49/10, 49/14, 49/17,
49/21, 50/2, 50/6, 50/17, 51/22, 53/1, 53/24, 54/2,
54/15, 55/10, 55/18, 55/24, 56/2, 56/14, 57/5, 58/5,
58/10, 60/15, 60/19, 61/7, 61/10, 62/11, 63/8, 65/16,
70/3, 72/22, 73/22, 74/3, 74/24, 75/25, 78/1, 78/5,
82/7, 84/14, 84/24, 85/6, 85/15, 85/23, 86/6, 89/17,
90/4, 90/22, 95/3, 96/22, 97/2, 97/8, 98/14, 99/4,
99/22, 100/1, 100/5, 100/9, 100/17, 100/22, 101/4,
101/8, 102/2, 103/4, 104/2, 106/3, 107/24, 108/2,

108/8, 108/19, 113/1, 113/5, 113/12, 113/19, 119/6,
119/17, 119/22, 120/16, 120/19, 122/18, 123/8, 123/22,
124/1, 125/5, 125/9, 130/1, 130/10, 133/4, 133/23,
134/1, 134/11, 134/25, 138/20, 139/21, 140/13, 141/7,
142/24, 143/15, 143/17, 144/18, 145/9, 145/16, 146/2,
148/4, 148/14, 155/5, 156/10, 158/19, 161/6, 161/15,
161/21, 162/24, 163/11, 164/21, 165/6, 165/9, 165/14,
165/19, 166/9, 166/24, 167/15, 167/21, 168/4, 168/9,
168/12, 168/17, 168/25, 170/14, 173/14, 177/10,
177/25, 178/4, 178/8, 178/14, 178/17, 178/22, 179/1,
179/5, 179/8, 179/14, 179/18, 179/23, 180/3, 181/12,
181/19, 182/12, 182/18, 183/5, 183/9, 183/12, 184/8,
184/13, 184/17, 185/22, 186/10, 186/12, 187/1, 187/10,
188/2, 188/24, 189/2, 189/16, 191/13, 192/6, 192/9,
193/4, 193/19, 194/3, 194/15, 194/20, 195/8, 195/12,
195/19, 196/3, 196/18, 197/12, 198/12, 198/22, 199/4,
199/12, 199/19, 199/25, 200/5, 201/9, 201/23, 202/1,
202/9, 202/12, 203/9, 203/12, 203/20, 203/24, 204/3,
204/11, 204/18, 205/12, 205/15, 205/20
debt 133/15, 176/25
December 42/15, 63/24, 139/9
deceptive 12/9, 12/15, 14/23, 16/19
decide 65/8, 67/8, 84/10, 118/17, 145/24, 203/17
decided 17/18, 18/13, 72/14, 84/12, 194/23, 199/1
decides 63/13, 65/1, 65/4
deciding 196/9
decision 8/2, 16/1, 16/10, 22/6, 53/11, 53/16, 63/15,
63/22, 64/1, 64/2, 101/13, 143/5, 178/23, 192/4,
192/10, 197/2, 197/7, 198/11, 199/14, 202/14
decisions 23/2, 74/13, 121/7, 141/9, 202/17
declared 37/20
decrease 69/25, 159/9, 159/16, 159/17, 160/2
decreased 118/20
deducted 70/2
default 157/3, 157/19
defeated 99/8
defer 49/12, 86/9, 102/4, 200/6
deferred 41/1, 49/4
deferring 49/7, 89/6
defines 83/21
definition 186/14
degree 75/10
DEHOLLANDER 3/21, 86/11, 86/13, 86/16, 86/17
Del 67/22, 121/1
delay 190/6, 192/13
delayed 191/20
demands 158/4
denial 39/13
denied 31/17, 111/25
deny 54/21, 55/6, 56/8, 200/12
DEP 17/11, 18/22, 68/18, 143/4, 157/20, 157/21,
172/1, 183/25
Department 17/11, 73/19, 73/22, 75/19, 142/12
depend 9/25, 112/20
depends 160/18, 198/4
deposed 164/11, 164/24
deposition 141/15, 143/7, 165/24
depositions 151/4, 167/12
depreciated 131/8
derogatory 148/9
describe 143/7
described 96/21
deserve 93/23
design 72/1
designated 6/15
designed 10/11, 14/20, 73/12
desire 10/18, 11/22, 33/22, 189/17, 193/22
destroy 79/3
detached 10/11
detail 40/23
deteriorate 68/17
deterioration 78/21
determination 197/19
determine 82/2, 85/24, 112/21
determined 79/18, 79/19, 79/20, 173/7
developed 141/23, 142/7
developer's 14/19, 18/16, 19/8, 34/16, 36/16, 36/24,
37/13, 135/22, 135/23, 136/3, 136/15, 136/18, 139/1,
139/4, 139/14, 140/9, 140/17, 148/25, 151/5, 151/13,
151/22, 152/20
developing 103/2
development 180/14
developments 53/4
deviate 197/23
device 14/21
DEVINE 2/12, 2/14, 7/10, 12/3, 25/7, 25/12, 25/23,
26/3, 26/22, 27/12, 40/18, 45/2, 49/1
devious 117/16, 117/19
diabetics 113/8
die 93/7
died 57/14
differ 148/18
difference 149/9, 198/9

differences 33/23
difficult 31/12, 122/1, 122/10
difficulty 50/23
digging 188/10
dilemma 17/19, 19/13, 36/21, 36/25
dinner 57/15
Direct 3/5, 3/6, 3/8, 3/9, 3/11, 3/12, 3/14, 3/15, 3/17, 3/18, 3/20, 3/21, 3/23, 3/24, 4/2, 4/4, 4/5, 4/7, 4/8, 4/10, 4/11, 4/13, 4/14, 4/18, 9/9, 10/10, 57/3, 58/18, 62/3, 62/22, 64/15, 65/23, 67/20, 68/6, 70/11, 70/16, 76/6, 76/20, 82/15, 86/15, 88/3, 89/24, 93/3, 103/17, 109/3, 109/24, 111/9, 112/9, 114/3, 115/20, 120/3, 120/24, 124/10, 124/20, 125/3, 156/11
directing 37/3
direction 22/21, 81/25
Director 108/18
Directors 76/9, 118/7
Directors' 117/18
directs 36/14
disabled 58/1
disagree 20/12, 72/21
disagreeing 103/22, 117/18
disagreement 22/13, 105/16
disagreements 22/17, 104/14
disagrees 71/1
disapproval 110/21
discharge 72/1, 96/10
discovered 139/12
discretion 9/15, 102/3, 195/20, 196/2, 196/22, 197/23
discuss 18/11, 41/23, 189/19, 191/14, 199/2, 201/5
discussed 21/14, 189/3
discussing 73/3
discussion 183/21, 189/5
discussions 63/10, 74/9
dismantled 93/20, 95/18, 111/21
dismantlement 19/4, 94/10
dismissal 24/20
dismissed 35/13, 82/17
dismissing 33/25
disposal 59/3, 68/13, 68/17, 68/22, 69/19
dispose 95/24
dispute 35/17, 162/11
disregard 12/10, 12/16, 13/18
disrupting 101/25
dissension 66/17, 118/11
dissent 118/21, 118/22
distinction 174/11
distressing 118/13
distributed 24/10
distribution 95/19
district 99/10
districts 156/6
disturbed 118/9
divide 117/22
divided 118/2, 121/21
dividing 117/22
Division 2/19, 2/25, 104/24, 105/4, 105/24
DOCKET 1/4, 6/15, 102/20, 102/21, 124/23, 207/4
document 25/15, 130/20, 130/21, 142/10, 142/11
documents 141/22, 142/6, 155/3, 183/3
doesn't 22/11, 22/23, 28/25, 61/4, 87/12, 99/14, 148/2, 195/19
dollar 17/23, 17/25, 59/22, 139/20
dollars 163/15
Donald 25/15
door 58/22
double 104/12, 145/4
doubled 76/25
doubt 15/14, 116/16, 160/15, 160/16
Doug 115/12
DOUGHERTY 4/6, 109/20, 109/22, 109/25, 110/1
drapes 87/15
draw 138/17
drawing 119/1
Drive 2/3, 57/12, 76/22, 88/5
drop 34/13, 35/3, 81/10, 150/17, 156/12, 201/15
DRUNGELO 4/5, 108/23, 109/1, 109/4
DUCIEWICZ 3/4, 56/22, 57/1, 57/4, 57/11, 57/12, 58/12
Durbir 86/8
During 17/2, 29/8, 46/13, 50/21, 51/2, 63/2, 63/18, 68/17, 136/2, 161/8, 171/25, 172/1, 172/18, 179/15, 179/24, 187/13

E

E-S-P-O-S-I-T-O 64/18
case 55/2
easier 105/8
easiest 26/9
easily 42/8
east 162/1
easy 105/3, 163/2

economist 100/23
education 148/17
effect 18/5, 35/18, 44/4, 177/25, 178/15, 189/14, 196/25
effected 22/16, 102/11
effluent 71/20, 72/11, 97/24
effort 15/5
El 17/4
elaborate 150/3
elderly 59/15
elected 27/23, 62/24, 64/19, 66/1, 67/11, 104/18, 121/5
ELECTRONIC 1/10
Elwood 89/10
emergency 12/6, 25/1, 48/23, 189/21, 190/6, 190/13, 190/18, 192/5, 192/14, 194/6, 199/5, 199/9, 200/8, 200/9, 200/14, 200/18
emphasize 202/22
employee 144/23
encountered 63/23, 117/20
encourage 52/9, 55/2, 103/10, 108/20
end 42/19, 49/7, 51/7, 141/20
ended 4/15, 123/5
ends 17/21
enforce 37/2, 168/2
enforced 73/13
enforcement 75/21
engage 31/19, 55/5, 56/9, 143/19
engaged 75/16
engineer 69/7, 95/20, 100/23, 148/6
engineering 142/21, 148/19
enhance 13/4
enhancement 13/10
enhancing 14/21
enjoy 66/22
enter 16/6, 130/15, 198/11
entered 10/6, 14/12, 20/7, 33/11, 41/25, 58/25, 59/6, 96/24, 169/5, 174/3
entering 39/14, 60/8
entertain 161/11, 196/24, 199/5
entertaining 144/10
enticing 153/22, 154/7
entities 144/6
entitled 28/11, 42/24, 43/12, 130/16, 130/20, 186/25
entity 19/1, 144/17
Environmental 17/11, 142/13
envision 197/21
EPA 71/19, 72/8, 72/11, 72/12
equally 37/8
ESPOSITO 3/10, 64/11, 64/13, 64/16, 64/17, 188/1, 188/3, 188/4
essence 12/14, 97/25, 191/19
establish 100/20, 148/7
established 34/3, 36/10, 71/22, 141/21, 142/5, 148/19, 184/10
Estates 17, 1/19, 6/18, 7/15, 12/4, 13/22, 14/11, 14/16, 15/17, 15/21, 16/4, 16/13, 16/18, 20/6, 33/13, 33/18, 36/4, 47/11, 68/11, 99/7, 132/16, 136/14, 146/17, 151/14, 162/4, 169/15, 170/23, 171/2, 171/13, 171/18, 171/25, 172/3
estimate 9/14
estimated 176/12
estimates 172/7
EVELYN 4/9, 113/4, 114/1, 114/5
evening 29/13
event 110/7, 116/21
evidence 8/19, 8/22, 9/21, 10/1, 20/3, 27/3, 29/1, 38/11, 48/13, 84/17, 85/13, 85/17, 85/18, 85/21, 85/24, 85/25, 125/4, 182/24, 187/7, 187/9, 189/6, 193/15, 196/9
evidentiary 39/1, 41/2, 41/9
evolving 101/14
Examination 4/18, 4/19, 4/20, 4/21, 41/6, 41/7, 52/9, 54/13, 54/21, 55/6, 124/10, 130/6, 133/5, 133/8, 135/3, 158/21, 161/22, 166/13, 167/18, 167/22, 169/2, 181/22, 181/23, 184/10, 184/22, 186/13
examine 55/22, 161/10
exception 161/12, 185/18
excerpt 48/6
excess 112/13
exchange 33/25
excitement 140/1
excluded 57/25, 77/8, 90/10, 139/15
excluding 153/10
exclusive 75/6, 75/11
Excuse 63/5, 99/4, 102/2, 142/24, 145/9, 165/19, 189/8
excused 150/21, 186/20
executed 131/1
exempted 77/5, 135/13, 135/19, 137/4, 139/2
exempting 138/25
exercise 31/11, 37/21, 75/14, 102/3
exhausted 119/7
Exhibit 26/25, 27/2, 125/4, 130/3, 130/4, 130/7, 169/6, 169/17, 177/13, 186/23, 187/3, 187/5, 187/7,

187/8
EXHIBITS 5/1, 5/4, 124/23, 130/2, 130/4, 130/5, 186/22, 187/4
exist 86/1, 96/23
existing 93/19, 94/10, 101/15, 176/3, 178/5
expand 15/8
expect 121/3
expected 204/1
expedite 25/2, 191/5
expedited 191/18, 196/20, 197/8, 197/25, 201/16
expense 14/18, 19/14, 22/19, 33/21, 60/5, 97/21, 111/17
expenses 170/21, 177/1
expensive 94/19
experience 148/17, 172/19
experienced 171/14
expert 98/11, 107/22, 142/23, 147/20, 148/6, 148/12, 151/3, 159/14, 159/18, 164/8, 165/1, 167/1
expertise 98/13, 107/19, 148/16
experts 9/21, 98/10, 123/12
expose 16/2
express 30/18, 64/21, 188/17, 189/17
expressed 45/4, 61/11, 145/14
expressing 79/14
extend 1/6, 6/17, 13/3, 15/10, 33/17
extended 163/14, 171/6
extension 16/11, 28/10, 202/7
extracurricular 143/19

F

face 66/25, 196/2
facilities 37/11, 39/12, 136/20, 137/3, 137/24, 143/7, 169/10, 174/12, 180/14
facility 93/21, 147/8, 171/7
fact 9/8, 10/24, 15/9, 15/19, 19/1, 20/23, 28/8, 28/9, 34/1, 35/17, 47/9, 53/19, 66/12, 75/13, 78/25, 79/6, 85/19, 102/12, 110/17, 141/21, 142/5, 145/3, 146/1, 155/2, 156/2, 165/3, 184/5, 198/7
factor 74/14, 121/20, 121/21
factors 121/16
facts 19/11, 21/1, 67/6, 68/16, 78/19, 193/10, 193/14
factually 197/14
failed 77/4
fails 39/15
Fair 93/22, 94/5, 112/7, 112/21, 171/23, 180/18
fairest 81/14
faith 16/13, 21/20, 117/21, 117/24, 118/20
fall 151/12
falls 79/24
family 12/6, 17/21, 105/22, 110/24, 162/22
fault 157/22
faulty 34/16, 72/10
favorable 29/12, 29/20, 30/13
favored 141/18
fear 81/22
feature 109/13
February 36/8
federal 71/21
fee 66/10, 155/20
feedback 42/15
feelings 122/11
fees 34/14, 69/21, 70/1, 132/2, 132/6, 136/19, 149/10, 149/12, 149/14, 150/9, 159/5, 170/9, 170/11, 174/3, 174/6
fell 17/7
fellow 122/6
fellows 94/21
fiasco 36/17
field 123/12, 159/14, 164/8, 165/1, 167/1
Fifteen 153/1
fifth 156/16
fight 65/4, 122/2, 122/6
fighting 121/13
figure 152/11, 160/17, 162/12
figures 153/15
file 86/4, 102/16, 139/4, 139/9, 196/19
filed 9/17, 11/21, 15/10, 24/3, 24/14, 24/16, 24/19, 24/22, 24/24, 25/3, 25/4, 25/7, 25/12, 25/15, 25/23, 26/3, 26/4, 27/11, 28/6, 31/24, 32/1, 32/4, 32/5, 33/16, 33/20, 40/12, 40/14, 40/15, 40/18, 45/25, 46/5, 48/24, 48/25, 49/1, 80/20, 82/17, 82/19, 165/12, 166/15, 175/24, 180/25, 189/9, 189/10, 191/5, 191/25, 192/13, 192/16, 198/17, 199/6, 199/13
filing 192/23, 201/18, 202/4
filtering 71/24
filtration 171/8
finance 13/4, 13/9, 13/12, 154/21
financed 177/16
financial 16/18, 37/7, 132/11, 132/15, 132/18, 132/23, 132/25, 171/1
financing 116/25, 154/8
find 31/5, 89/2, 93/13, 116/19, 150/16, 153/21, 155/3,

155/24, 157/22
 finding 80/3, 80/4
 findings 80/2
 fine 17/14, 28/13, 28/24, 71/19, 111/5, 143/17
 fined 72/13
 finish 145/10
 firm 7/2
 Firmy 71/15
 fit 31/11, 31/20
 five 16/20, 32/18, 71/20, 110/2, 115/24, 116/11, 135/7, 147/4, 147/17, 153/1, 194/2, 202/23, 203/2, 203/3, 203/6, 203/8
 fixed 109/14
 flagrant 13/18
 flew 98/5
 flexibility 146/7, 181/20, 183/1, 186/19, 203/5
 flexible 11/23
 Florence 111/1
 FLORIDA 1/1, 1/20, 2/4, 2/8, 2/9, 2/11, 2/13, 2/16, 2/19, 2/21, 6/24, 7/20, 12/11, 12/17, 15/4, 15/22, 17/6, 17/10, 22/7, 33/16, 35/10, 37/18, 68/10, 68/18, 69/19, 70/19, 73/3, 83/20, 103/23, 111/23, 112/2, 112/8, 112/22, 112/24, 124/21, 142/12, 158/25, 176/9, 207/1, 207/5
 flow 132/19, 178/2
 flows 171/18
 Floyd 191/3
 focus 196/10
 fold 10/16
 folks 44/5, 113/7, 118/15, 118/23, 163/17, 197/6
 follow 9/25, 36/25, 41/12, 51/3, 51/19, 192/2, 194/17, 205/16
 follows 57/2, 58/17, 62/2, 62/21, 64/14, 65/22, 67/19, 68/5, 70/10, 76/5, 76/19, 86/14, 88/2, 89/23, 93/2, 103/16, 109/2, 109/23, 111/8, 114/2, 115/19, 120/2, 120/23, 124/9
 food 113/9, 114/18
 foot 60/10
 force 13/4, 59/4, 68/20, 100/8, 170/5
 forced 18/21, 34/22, 59/6, 60/12, 91/3, 91/22, 91/23
 forcing 59/1
 forego 177/21, 178/9, 191/6
 forgive 117/17
 form 17/1, 93/9, 97/11, 158/14
 formal 10/13, 44/8
 formally 11/6
 format 123/16, 123/17, 195/1
 forms 11/21
 formulated 44/2, 93/9
 formulation 36/15
 Fort 1/7, 2/4, 2/13, 2/15, 6/19, 7/3, 7/9, 7/15, 8/11, 12/14, 12/25, 13/5, 13/10, 13/13, 13/16, 14/12, 14/13, 14/15, 14/19, 14/21, 14/24, 15/15, 15/19, 15/23, 16/3, 16/10, 16/12, 16/14, 16/15, 16/19, 18/7, 18/8, 19/3, 19/12, 19/25, 20/5, 20/8, 20/13, 20/20, 21/21, 24/16, 24/21, 26/14, 33/2, 33/13, 33/15, 34/2, 34/7, 34/12, 34/18, 34/19, 35/6, 35/12, 35/15, 36/7, 36/10, 38/8, 40/12, 42/4, 42/5, 42/13, 42/18, 43/3, 43/8, 43/15, 44/7, 47/23, 48/11, 57/24, 64/23, 65/10, 65/15, 66/14, 72/15, 77/6, 77/7, 77/17, 79/8, 79/21, 80/7, 80/13, 81/12, 81/23, 88/16, 93/14, 93/21, 94/1, 94/4, 94/15, 94/21, 95/11, 96/11, 97/18, 97/25, 99/24, 100/14, 100/15, 101/3, 101/16, 101/17, 102/24, 111/18, 115/24, 124/5, 124/7, 124/22, 130/15, 131/2, 131/14, 131/24, 132/10, 132/12, 132/15, 132/24, 133/11, 134/20, 135/12, 135/24, 141/19, 142/14, 143/8, 144/9, 144/12, 144/15, 144/16, 144/25, 145/13, 145/25, 146/10, 146/16, 147/2, 147/7, 152/1, 152/2, 153/16, 161/24, 162/14, 162/21, 164/1, 164/2, 167/3, 169/9, 169/14, 169/18, 169/23, 170/5, 170/18, 170/25, 171/5, 171/12, 171/19, 171/23, 173/9, 175/6, 178/5, 179/14, 179/24, 185/10, 186/2
 fortunate 122/15
 forum 99/12
 found 18/25, 19/5, 19/21, 20/17, 86/19, 139/17, 141/5, 152/2, 169/17, 188/13
 four 16/16, 161/19
 FPSC 2/25
 frame 191/9, 191/10
 franchise 60/7, 100/4, 101/7, 101/16
 fraud 60/22
 fraudulent 12/8, 12/15, 14/23, 16/19, 61/6
 free 66/10, 92/14, 120/7, 137/24
 French 107/20, 108/18, 133/18
 FRIEDMAN 2/2, 7/1, 7/6, 19/25
 friendly 87/4
 friends 109/7
 front 8/10, 8/13, 100/25, 152/9, 154/10, 154/15, 154/16
 FS 69/9
 Ft 1/20
 fulfill 37/18, 112/11
 full-time 76/23

funds 36/11
 furnish 14/3, 14/7
 furnished 92/14
 future 12/22, 23/16, 34/13, 35/7, 101/25, 116/14, 122/6, 144/13, 146/8, 146/11, 167/14, 171/1, 172/4, 179/2, 190/7, 190/10, 192/15, 199/1

G

G-A-Y-L-O-R-D 88/5
 gain 111/17
 Galleon 114/6
 gallonage 176/16
 gallons 91/25, 171/6, 172/10, 176/7
 game 29/15, 84/16
 Gaspar 76/22, 88/5, 90/1
 GAYLORD 3/22, 87/25, 88/1, 88/4
 gee 54/8
 geezer 19/5
 geezers 18/18, 18/25
 generate 15/16
 gentleman 61/2, 90/21, 95/2, 98/9, 107/18, 107/22, 119/12
 gentleman's 74/23
 gentlemen 7/19, 27/7, 50/17, 66/7, 66/25, 114/12, 139/21, 155/2, 164/23
 GEORGE 3/9, 62/20, 62/23
 GERALD 3/24, 89/22, 89/25
 Gill 12/5, 25/7, 25/11, 25/12, 25/23, 40/18, 45/2
 Gill's 25/15
 girls 115/9
 glad 205/7
 goal 103/25
 goods 173/3
 government 19/1, 69/17, 71/6, 71/21, 75/19, 144/5
 governmental 14/10
 governmentally 83/21, 84/8, 84/18, 85/14, 85/19, 85/21
 grant 12/12, 12/13, 13/16, 16/7, 31/5, 31/7, 187/17, 203/4
 granted 35/9, 75/14, 155/22
 granting 34/2
 grants 12/18, 13/8, 34/3, 75/5
 grasp 63/25
 grass 57/16
 greater 40/22
 greed 95/10
 greedy 37/8, 37/9
 green 10/5, 57/17, 57/21, 57/23, 204/20
 groans 140/4
 ground 17/8, 57/18, 142/1
 grounds 16/9, 45/15, 82/18
 group 28/5, 28/14, 55/17, 76/12, 103/24, 104/16, 104/23, 110/8, 118/24
 groups 31/14, 105/5
 GS 34/11
 GTE 42/23
 guess 42/2, 42/17, 54/17, 87/21, 104/13, 105/23, 106/4, 106/9, 112/16, 153/11, 157/16, 174/11, 175/10, 176/23, 180/10, 180/19, 197/24
 guidance 102/5
 guide 81/2
 guys 188/10, 188/14

H

H-I-N-D-E-R-L-I-T-E-R 62/5
 H.R 98/25, 99/23
 half 17/25, 87/18, 87/19
 Hall 1/19
 hand 52/16, 52/22, 52/24, 93/25, 119/13, 119/20
 handle 73/25, 88/10, 88/13, 96/21, 104/18
 handled 21/9
 HANDLEY 4/2, 92/23, 93/1, 93/4, 95/7, 95/22, 96/7, 96/17, 96/25
 handling 23/9, 88/11
 handout 10/11
 hands 88/25
 happy 22/12, 22/24, 82/6, 110/24, 156/21
 hard 66/15, 67/2, 188/9
 harder 114/16
 hardship 115/1, 115/3
 harmless 152/6
 harmony 31/13, 121/22, 122/16
 HAROLD 4/8, 111/2, 111/7, 111/10
 hate 197/10
 heading 157/2
 heads 98/5
 health 37/23, 38/3
 Healy 115/12
 hearings 68/14
 hearsay 84/21, 85/1, 85/3, 85/5, 145/4

heart 121/17
 heaven 66/23
 heavy 17/7
 held 30/7, 35/21, 68/15, 194/19, 195/16
 HELEN 4/3, 103/13, 103/15, 103/18, 107/13
 hell 115/10
 hello 95/13
 help 11/16, 13/12, 75/22, 117/20, 118/24
 helpful 52/4
 Hi 120/4
 Hidden 86/17
 hide 87/14, 87/15
 high 93/7, 141/19, 159/24
 higher 160/8, 160/20, 172/15
 HINDERLITER 3/7, 61/21, 62/1, 62/4, 62/15
 hire 69/7
 history 15/12
 hoarse 70/20
 hold 152/5, 194/23
 holder 58/21, 68/12, 69/12
 holders 59/13
 holding 93/18, 93/20, 203/25
 home 12/23, 13/25, 17/24, 30/16, 33/19, 38/16, 43/6, 58/24, 59/6, 59/7, 59/14, 69/22, 70/21, 71/4, 76/22, 93/16, 94/3, 94/8, 95/17, 96/9, 96/11, 102/1, 111/19, 112/23, 115/22, 117/1, 149/18, 150/6, 151/25, 152/13, 152/22, 153/8, 153/13, 156/8, 157/1, 157/7, 159/6, 160/13, 163/2, 163/6, 172/21, 177/17, 184/25, 200/25
 homeowner 35/8, 47/7
 homeowner's 14/5, 14/9
 homeowners 13/4, 13/9, 13/12, 13/24, 14/3, 14/4, 14/16, 18/23, 19/5, 19/15, 33/12, 34/7, 34/9, 36/23, 37/6, 37/14, 42/11, 46/16, 46/19, 47/4, 47/6, 47/13, 47/16, 68/25, 72/5, 72/18, 73/14, 79/11, 80/15, 84/2, 87/18, 88/20, 88/23, 88/25, 116/20, 136/24, 138/5, 145/21, 148/24, 150/20, 154/9, 159/16, 182/5
 Homeowners' 38/20, 45/15, 45/22, 45/25, 46/1, 46/4, 46/6, 46/17, 46/23, 47/2, 47/9, 47/12, 48/4, 53/7, 53/12, 53/18, 62/25, 64/2, 64/19, 66/2, 69/6, 76/9, 78/14, 88/9, 104/11
 homes 47/5, 136/20, 153/9, 153/19, 153/21, 160/12, 162/8, 162/15, 164/2, 182/3
 honest 87/11
 Honestly 82/12
 Honor 60/25
 hook 14/11, 15/6, 66/7, 72/15, 163/3, 163/8
 hooked 135/17, 162/16, 162/18, 164/2
 hookup 15/22, 65/12, 66/9, 68/21, 68/23, 69/5, 69/18, 88/21, 93/17, 155/20
 hope 19/19, 29/23, 67/25, 70/15, 70/20, 105/17, 109/15, 109/18, 110/22, 115/9, 118/23, 161/18, 202/6
 hoping 167/10, 167/13
 horse 140/7
 hour 151/21
 hours 102/23
 house 87/15
 hundreds 102/23
 Hurricane 191/3
 hurting 93/8
 husband 109/6, 110/1, 110/11, 110/14

I

I-S-H-L-E-R 67/21
 ID 5/2
 idea 97/18, 141/23, 142/6, 142/9, 146/25, 147/2, 153/7, 160/10, 162/10, 171/17
 ideal 65/7
 Ideas 88/15, 97/15
 identification 27/3, 130/8, 187/8
 identified 26/25, 130/4, 186/22
 identify 12/1, 29/16, 130/2, 187/2
 ignore 15/2, 199/14
 ignored 157/14
 ignores 38/15
 III 124/21
 illegal 15/23, 16/16, 37/7, 59/1, 59/5, 65/14, 66/5, 77/10, 77/15, 94/11, 110/17, 141/6, 167/4, 167/7
 illegally 60/8
 Illinois 71/21
 imagine 30/15
 immaterial 145/15
 immediate 102/11
 impact 74/12, 177/18, 177/23, 178/4
 implore 51/12
 impose 131/23
 impossible 112/7, 135/17
 impression 104/9, 117/5
 improper 15/24
 improvement 83/22, 84/9, 85/14, 85/20, 117/4, 117/5, 205/8
 imputation 178/10, 185/23
 imputed 186/3

in-state 39/11
 inappropriate 30/22, 39/3, 84/25, 102/19
 Inaudible 115/13
 incident 29/8
 inclined 39/17, 192/3
 inclusion 77/8
 income 109/14, 114/12, 114/15
 inconvenience 113/15
 Incorporated 6/19, 33/14, 33/16, 116/25, 117/2
 incorrect 72/19, 170/8
 increase 20/14, 20/21, 21/16, 59/9, 59/11, 83/11, 111/23, 115/5, 194/10, 194/13
 increased 71/5, 112/13
 increases 20/19, 22/2, 69/13, 77/11, 77/14, 81/20, 83/6, 110/12
 incurred 71/5, 83/19, 170/22
 indicate 8/5, 85/21, 134/13, 153/15, 173/25
 indicated 119/7, 137/19, 173/19, 181/13, 182/13, 187/15
 indicates 144/22
 indicating 83/12, 175/7
 indication 144/24, 166/6
 infancy 86/3
 infant 82/21
 inflammatory 60/25, 138/12
 inflated 13/13
 inform 6/11, 51/17
 informality 182/22
 information 10/8, 11/16, 19/21, 48/3, 73/17, 82/15, 82/16, 108/17, 170/6, 171/20, 173/6, 179/6
 informed 63/6, 167/22
 informing 151/24
 infrastructure 14/14
 initial 65/12
 initiated 46/3
 innocent 36/23
 inordinate 51/8
 input 51/15, 51/17, 52/17, 98/23, 122/22, 192/1, 194/25
 inquiries 51/2, 51/4
 Inserted 4/18, 125/10
 insertion 125/7, 207/9
 installation 71/24
 installed 71/17, 72/2
 institute 45/23
 instructed 53/18
 instructing 29/11, 80/7
 instructions 53/21, 55/15, 55/16, 204/23
 instructive 41/14
 insulting 148/3
 intent 95/22, 95/25
 intention 147/9
 intentional 79/2
 intentionally 78/22
 interest 20/5, 35/2, 37/21, 38/2, 54/23, 72/14, 118/8, 118/19, 121/17, 134/10, 144/15, 145/14, 146/5, 154/13, 190/3, 197/6, 197/18, 206/1
 interim 42/11, 134/18, 179/16, 179/25, 200/23, 201/4
 intermingle 75/10
 intermingled 74/8
 intermingling 39/9
 intermission 63/2, 63/18
 internal 118/14
 Internet 204/24
 interpret 73/13
 interpretation 71/8, 72/20, 85/25, 159/19
 interpreted 73/10
 intertwining 193/17
 intervened 8/14, 11/14, 123/18
 interveners 20/3
 intervenors 105/13, 124/2
 intervention 11/6
 intimidate 56/3, 138/18
 intimidated 54/19
 intimidating 148/3
 intimidation 158/14
 introduce 23/25, 164/16
 introduced 148/12
 introductions 8/4
 introductory 10/20
 investigate 102/20
 investigation 79/5
 invite 10/17
 invited 41/16, 123/1, 195/2
 invoices 34/8
 IRENE 3/7, 61/21, 62/1, 62/4
 Ironically 81/11
 irrelevant 84/20, 144/12, 145/15
 IRS 117/7
 ISHLER 3/13, 67/16, 67/18, 67/21
 issue 38/19, 43/1, 59/4, 85/8, 85/10, 99/18, 193/21
 issues 75/9, 75/17, 84/9, 100/25, 193/18
 item 40/15, 146/24, 154/1, 170/2

items 116/7

J

J.W 107/20, 108/17
 JACK 2/6, 4/2, 6/22, 25/13, 27/5, 29/7, 93/1, 93/4
 JACOBS 1/16, 7/22, 39/22, 39/25, 58/7, 73/18, 82/23, 83/2, 83/17, 83/24, 84/6, 172/6, 172/11, 172/14, 172/22, 175/20, 176/1, 176/10, 176/15, 176/19, 176/22, 177/3, 177/6, 200/22, 201/1, 204/10, 204/19, 205/4, 205/6
 jeans 170/24
 JENNIFER 2/18, 7/16, 44/22, 72/24, 97/7
 jest 204/16, 205/15
 JO 4/5, 108/23, 109/1, 109/4
 JOAN 4/14, 120/22, 120/25
 Job 23/14, 183/8, 184/6
 Joe 99/16, 99/18, 100/20, 188/12
 John 103/13, 111/1
 joined 122/20
 joint 25/13, 26/4, 27/5, 27/13, 40/17, 48/25
 jointly 25/7
 Jose 76/22, 88/5, 90/1
 JOSEPH 2/12, 2/14, 7/10, 12/3
 journal 148/19
 judge 47/8, 84/9, 109/15
 judges 81/5
 judgment 22/6
 Judicial 78/15, 138/16
 June 111/11
 jurisdiction 75/4, 75/6, 75/8, 75/11, 75/14, 75/21, 80/19, 80/25, 81/1, 81/3, 82/24, 83/1, 94/23, 94/24
 justified 149/4

K

KAPSINOW 4/11, 115/16, 115/18, 115/21, 115/22
 Keating 89/11
 KELLOGG 4/12, 119/16, 120/1, 120/4, 120/5, 120/14
 KENNETH 3/16, 70/9, 70/12
 kid 93/5
 KIMBERLY 1/21, 207/3
 knowledge 32/1, 58/20, 82/19, 134/23, 136/22, 141/9, 142/8, 143/1, 143/3, 143/24, 152/4, 152/7, 164/7, 185/6
 known 17/3, 18/9, 18/10, 19/10, 34/10, 162/5
 knows 85/4, 108/20, 205/19

L

Lab 71/15
 laboratory 71/17
 lack 179/11
 Ladies 7/18, 50/17, 94/21, 114/11, 139/21
 lady 62/13, 113/11, 115/5, 120/19
 laid 142/20
 landlord 37/8
 Lane 62/24
 language 44/1
 large 9/25
 later 21/12, 23/10, 48/8, 48/19, 49/12, 91/25, 102/13, 133/12, 161/3, 182/2
 lateral 97/19, 97/23
 latest 19/18
 latitude 97/13, 167/17, 187/18, 202/25
 Laughter 115/14
 law 7/1, 12/21, 13/18, 31/6, 37/21, 57/25, 117/10, 139/24, 180/20, 183/15, 183/17, 184/11
 lawn 57/17, 57/21, 57/22
 laws 12/10, 12/16, 87/22
 lawsuit 46/5, 46/13, 46/14, 81/11, 82/5, 82/22, 83/4
 lawsuits 45/25, 77/19, 81/10
 lawyer 28/4, 47/13, 147/25, 197/9
 lawyers 116/5
 lead 72/24
 leading 61/14, 61/18
 leakage 17/10
 lean 95/14
 lease 14/2, 15/1, 21/4, 21/7, 58/21, 59/13, 68/12, 69/12, 69/15, 69/16, 106/16, 106/17, 106/22
 leases 14/5, 14/7
 leave 15/5, 151/20
 Lee 1/7, 6/18, 13/7, 13/13, 15/3, 18/20, 69/4, 78/15, 108/18, 141/21, 145/24, 147/4, 157/3, 184/5
 left 7/21, 8/6, 8/11, 94/14
 Legal 2/19, 16/15, 36/18, 38/12, 46/7, 47/24, 47/25, 70/17, 71/8, 71/11, 74/4, 74/23, 75/16, 82/8, 94/11, 96/17, 101/8, 138/8, 138/25, 140/18, 141/22, 142/6, 142/9, 157/2, 193/15, 193/18, 193/21
 legalize 167/4
 legally 64/24
 legislated 37/2

legislation 154/22
 Legislature 2/8, 75/5
 lengthy 33/5, 54/20
 LEON 1/16, 7/22, 207/2
 lessees 83/16
 lessor 69/14
 letter 69/4, 71/9, 157/19, 158/10, 180/10, 180/12, 180/13, 180/23, 182/15, 182/17, 182/22, 182/23, 183/11, 183/17, 183/21, 183/24, 184/2, 184/4
 letter's 158/4
 letterhead 175/11
 letters 10/25, 156/25, 157/7, 157/10, 157/14, 157/24, 158/1, 175/5, 175/14
 level 19/2, 197/22
 liable 16/3, 179/24
 liberally 37/24
 license 66/6, 66/7
 life 66/12, 110/14, 110/19, 120/13
 lifestyle 66/21, 76/13, 121/23, 121/25, 122/16
 lifetime 58/21, 59/13, 68/12, 69/12, 83/16, 90/1, 90/7, 106/16, 107/1, 107/2
 light 39/13
 limb 16/1
 limit 51/11, 108/12, 143/18, 158/21, 181/20, 203/5
 limited 61/17, 116/25, 186/14
 limits 9/5
 line 29/10, 59/14, 93/18, 94/25, 97/20, 97/24, 104/14, 110/14, 112/22, 134/13, 138/17, 146/20, 155/18, 181/6, 181/14, 182/13
 lines 95/15, 150/8
 link 146/20
 List 5/3, 24/8, 26/11, 51/7, 51/23, 116/8, 119/8, 135/14
 listed 117/3, 156/17
 listen 45/17, 99/5
 listened 78/20, 122/21, 205/2
 listening 58/4, 112/25, 204/21
 literate 204/22
 litigate 81/11
 litigated 38/20
 litigation 43/24, 45/23, 46/3, 80/20
 little 15/13, 23/10, 56/20, 57/20, 70/20, 90/5, 94/14, 121/12, 193/2, 197/20
 live 57/12, 57/14, 59/16, 64/18, 65/24, 67/22, 68/8, 70/13, 76/8, 76/22, 88/5, 90/1, 103/19, 110/11, 111/12, 114/6, 115/9, 119/2, 120/5, 121/1, 121/22, 122/15
 lived 18/18, 65/25, 87/2, 109/5, 120/5
 lives 197/7
 living 59/10, 59/13, 93/7, 109/7, 109/16, 109/17, 111/23, 111/24, 112/8, 112/24
 loaned 154/12
 local 71/6, 77/16, 144/22
 located 161/25
 location 122/25
 logical 82/1
 losing 118/20, 132/12, 151/1
 loss 44/9, 101/19, 132/18
 lost 87/3
 love 109/17, 110/11
 loved 109/7
 low 159/24
 Lucky 88/7, 106/24, 106/25
 LUDINGTON 2/15, 2/17, 7/13, 33/12, 33/19, 33/25, 34/6, 34/25, 35/7, 35/11, 35/14, 45/2
 lunch 122/24, 123/2, 187/13

M

M-A-R-C-U-S 68/8
 Madison 2/9
 Mafia 158/15
 mail 10/16
 mailed 32/20, 178/20
 mailing 32/18
 main 91/9, 170/4, 170/5
 mains 163/20
 maintain 112/3
 maintained 93/16
 maintaining 69/10, 97/22, 111/22
 maintenance 18/3, 96/13
 major 113/15
 majority 46/19, 46/21, 47/3, 47/7, 104/16, 116/3
 Man 205/10, 205/11
 manage 134/19
 management 72/13, 159/15
 mandate 14/10, 15/7, 37/18, 69/17, 84/9
 mandated 69/5, 83/21, 84/18, 85/14, 85/19, 85/22, 117/3
 manner 16/15, 31/11, 75/12, 87/23
 manners 37/3
 Manufactured 13/25, 33/19, 93/16, 94/3, 94/8, 111/19, 117/1, 152/13, 157/1, 157/7, 182/3
 March 34/6

MARCUS 3/15, 68/2, 68/4, 68/7, 68/11
marked 27/2, 130/7, 187/8
market 114/13
MARTIN 2/2, 7/1
Marty 19/24
MARY 4/6, 109/20, 109/22, 109/25
Massachusetts 121/6
master 149/13, 174/23, 184/25, 185/16, 185/18
material 177/18, 177/23
Matter 1/4, 8/2, 8/15, 9/12, 9/22, 10/8, 10/14, 11/1,
11/5, 11/18, 12/19, 13/24, 16/6, 18/11, 19/16, 27/4,
29/12, 31/23, 32/24, 40/8, 40/10, 46/2, 46/7, 46/10,
48/14, 48/20, 48/22, 49/7, 61/16, 68/14, 73/15, 74/5,
78/17, 102/9, 104/2, 139/23, 141/10, 143/1, 145/12,
168/1, 183/21, 187/19, 191/20, 193/21, 199/15
matters 6/10, 10/20, 10/23, 11/12, 11/20, 13/23,
23/24, 24/1, 24/4, 27/7, 27/9, 31/21, 35/3, 38/2, 49/18,
49/20, 49/23, 73/2, 73/8, 73/25, 75/4, 83/6, 98/17,
186/14, 189/3, 189/7, 191/15, 191/21, 195/25, 200/7,
201/15, 203/3, 203/15, 205/17, 205/21
maximize 18/2
maximum 18/3, 47/5
mechanism 157/17, 183/24, 184/2
meet 17/22, 18/20, 18/22, 71/19, 72/8, 132/25, 202/17
meeting 29/12, 30/10, 30/13, 47/3, 47/19, 48/1, 87/18
meetings 29/9
member 7/19, 10/12, 62/25, 64/19, 66/1, 76/8, 116/3,
188/6
members 8/6, 8/23, 48/18, 52/14, 76/11, 119/18
memo 68/9
memorandum 24/11
memory 83/10
men 60/1
mention 187/20
mentioned 29/17, 66/14, 158/17, 175/5, 185/1
mentions 191/9
MESSER 2/25
met 18/11, 71/25, 72/11, 110/6, 110/8, 151/12
meter 34/20, 37/4, 91/4, 91/5, 91/9, 93/17, 137/14,
149/13, 174/23, 185/16, 185/18
meter-size 180/7
metered 185/5
metering 184/25
meters 174/23, 185/7
method 167/4
MH 117/8
MHC 14/2, 14/3, 14/6, 14/7, 14/11, 14/19, 14/21,
14/24, 15/2, 15/6, 15/13, 15/14, 15/24, 16/18, 44/5,
60/4, 60/8, 60/9, 60/12, 62/6, 64/22, 65/6, 65/15,
68/16, 68/21, 68/23, 68/25, 69/1, 69/3, 69/6, 69/9,
72/3, 72/12, 72/13, 72/16, 74/18, 77/4, 77/9, 79/7,
79/10, 79/12, 79/18, 79/19, 79/21, 80/7, 81/8, 81/13,
84/3, 88/16, 91/14, 92/5, 93/22, 94/16, 112/2, 112/10,
112/12, 112/14, 114/10, 116/11, 116/18, 116/25, 122/2,
131/9, 131/14, 137/16, 137/17, 157/3, 157/14, 157/19,
159/16, 160/7, 160/20, 179/15, 179/24, 185/11
MHC's 14/14, 14/25, 15/22, 16/1, 118/19, 159/20
microphone 6/4, 9/1, 50/25, 51/1, 52/1, 57/6, 90/5,
90/6
middle 88/8
Mike 113/4
mill 67/8
MILLIGAN 3/12, 65/19, 65/21, 65/24, 67/4, 67/7,
76/13
million 133/11, 133/12, 139/20, 163/15, 171/6
millions 147/5
mind 44/3, 45/17, 53/13, 54/8, 63/20, 87/9, 104/5,
147/8, 150/25, 151/9, 163/18
minds 89/2
minimal 205/10
minimize 18/2
minute 50/10, 53/4
minutes 12/7, 181/16, 194/2, 202/23, 203/2, 203/3,
203/6, 203/8
MIRIAM 4/11, 115/15, 115/18, 115/21
missing 19/21
misspoke 32/17
mistake 21/22, 116/15, 139/13, 139/18, 139/20, 144/2
mistaken 82/23
mistakenly 34/15, 34/17
Moans 67/3, 99/3, 140/4
mobile 12/23, 17/24, 38/16, 43/6, 58/24, 59/6, 59/7,
59/14, 69/22, 70/21, 71/4, 95/17, 96/9, 96/11, 101/25,
112/23, 150/6, 152/22, 153/8, 153/12, 153/21, 156/8,
163/2, 172/21, 175/7, 177/17, 184/25, 200/25
moble 159/6
modifications 44/23, 45/8
modified 45/12, 47/23
moment 49/8, 52/8, 122/23, 176/4, 177/10
Monday 48/6
money 18/14, 59/8, 68/24, 88/21, 88/22, 95/9,
109/13, 132/12, 133/13, 152/12, 154/12, 163/6, 179/15
monetary 151/10, 151/11

monitor 157/20, 204/23
month 24/3, 36/8, 42/2, 60/1, 77/14, 112/15, 114/25,
160/20, 172/10, 172/19, 190/24, 191/3
month's 178/20
monthly 34/14, 42/14, 42/19, 79/22, 80/17, 111/15,
136/19, 155/21, 174/8, 191/6
months 43/4, 66/10, 150/18, 179/20, 194/21
moot 94/12, 199/18, 199/24, 200/3, 200/21
morning 70/14, 87/16, 188/5
morning's 187/25
mother 58/21
motion 24/20, 24/23, 25/1, 25/5, 25/6, 25/13, 25/23,
26/1, 27/5, 27/10, 27/13, 27/15, 27/16, 28/2, 29/6,
29/10, 29/21, 29/24, 31/4, 31/5, 31/7, 31/17, 48/23,
189/13, 189/21, 190/6, 190/13, 190/18, 191/5, 192/15,
193/9, 194/6, 196/24, 197/5, 199/6, 199/9, 199/17,
199/22, 200/8, 200/9
motions 9/16, 9/17, 10/3, 10/23, 11/11, 11/21, 198/10
motivated 95/9
move 90/5, 125/3, 130/5, 143/13, 163/9, 186/21
moved 21/22, 88/6, 114/19, 115/23, 143/22
movement 144/4
moving 22/21, 38/3
Mr. 27/17
Mr. and 111/2
Mr. Biddy 98/11, 98/19, 164/25, 165/7, 165/15
MR. BLANCHETTE 99/20, 99/23, 100/3, 100/7,
100/13, 100/19, 101/2, 101/6, 101/18, 101/24, 102/23,
103/9, 103/12
Mr. Blanchette's 99/2
Mr. Bob 21/9
Mr. Burandt 23/9, 43/25, 75/1, 78/6, 78/9, 78/11,
82/21, 82/25, 83/3, 83/4, 83/8, 83/20, 83/25, 84/7,
84/11, 84/13, 84/15, 84/23, 85/4, 85/13, 85/17, 86/2
Mr. Chairman 11/24, 15/18, 20/11, 23/11, 26/20,
27/20, 29/3, 29/25, 40/5, 48/3, 49/3, 49/9, 49/13, 50/3,
53/3, 55/21, 60/18, 61/3, 61/20, 67/5, 74/21, 78/4,
89/20, 107/17, 113/6, 119/5, 123/24, 167/10, 177/7,
188/19
Mr. Chapman 63/8
MR. COLVIN 77/24
Mr. Commissioner 16/22, 40/6, 58/19
Mr. Commissioners 164/14
Mr. Dan 58/14
Mr. Deason 54/12
Mr. Devine 4/19, 4/20, 7/10, 8/15, 11/24, 12/3,
26/20, 26/23, 27/14, 27/16, 27/22, 29/3, 29/6, 40/5,
44/16, 48/2, 48/3, 49/8, 49/12, 50/1, 55/21, 56/1,
56/12, 60/17, 60/20, 61/2, 61/14, 61/20, 62/12, 63/5,
63/11, 65/17, 67/5, 74/21, 78/3, 92/18, 98/8, 107/13,
107/17, 108/1, 108/7, 125/8, 133/5, 133/6, 133/9,
134/2, 134/4, 134/9, 134/21, 139/20, 154/4, 158/7,
161/4, 161/15, 161/17, 161/23, 162/24, 163/1, 163/13,
163/21, 163/25, 164/21, 164/23, 165/6, 165/8, 165/18,
166/12, 166/18, 166/22, 166/25, 167/10, 182/12,
182/14, 183/10, 184/12, 186/11, 194/16, 194/18, 195/6,
203/2, 203/7, 203/11
Mr. Devine's 63/19
Mr. Donald 12/5
Mr. Durbin 30/8, 30/21, 30/23, 86/9
Mr. Edward 89/16, 92/20
Mr. Esposito 66/4
Mr. French 133/19, 134/4, 134/17
Mr. Friedman 4/18, 4/21, 7/1, 7/6, 7/8, 19/23,
19/24, 26/14, 32/22, 32/25, 38/6, 38/7, 40/20, 40/25,
41/4, 41/22, 49/3, 54/1, 54/2, 54/4, 55/8, 55/11, 55/14,
60/24, 61/4, 84/7, 84/12, 84/19, 99/1, 99/6, 123/22,
123/24, 124/3, 124/4, 124/11, 125/2, 130/1, 130/9,
130/12, 130/14, 133/2, 133/20, 133/25, 134/7, 136/7,
136/9, 136/10, 138/11, 140/10, 140/22, 142/19, 143/13,
144/11, 145/2, 145/10, 145/12, 147/22, 148/5, 162/19,
164/15, 165/11, 180/24, 181/4, 181/9, 182/21, 183/7,
184/15, 184/17, 184/20, 184/23, 186/9, 186/21, 190/22,
192/17, 192/18, 193/7, 193/24, 196/12, 196/18, 197/4,
197/24, 198/4, 198/20, 199/10, 199/15, 199/20, 199/21,
200/2, 200/11, 200/15, 200/19, 200/24, 202/24
Mr. Friedman's 175/11
Mr. George 62/18
Mr. Gerald 89/15, 89/16
Mr. Gill 24/25, 26/3, 26/18, 27/12, 27/22, 29/7,
49/1, 203/7
Mr. Handley 108/7, 108/13, 108/20
Mr. Handley's 107/25
MR. HEALY 115/13
Mr. J.W 133/17
Mr. Jack 8/8, 58/13, 58/14, 77/23, 92/22
Mr. Leonard 11/1
Mr. Ludington 4/19, 4/21, 7/13, 8/16, 16/24, 16/25,
24/19, 24/23, 25/5, 26/2, 26/16, 26/17, 27/22, 27/24,
31/25, 32/7, 32/9, 32/13, 32/15, 33/3, 33/6, 33/10,
35/24, 36/2, 38/9, 39/18, 40/16, 44/17, 44/18, 45/7,
45/11, 45/14, 48/25, 49/25, 55/21, 56/11, 63/17, 63/25,
64/6, 64/9, 70/5, 74/2, 74/6, 74/20, 80/2, 83/3, 84/15,

84/22, 85/3, 90/17, 90/20, 90/23, 91/1, 91/13, 91/18,
91/20, 92/1, 92/5, 92/7, 92/10, 92/15, 95/1, 97/1, 97/5,
97/14, 101/22, 107/7, 108/17, 112/20, 113/6, 113/21,
114/23, 134/25, 135/1, 135/4, 138/20, 138/24, 140/6,
140/12, 140/16, 141/3, 141/7, 141/11, 141/13, 142/23,
143/6, 143/15, 143/16, 143/21, 144/18, 144/20, 144/21,
145/7, 145/18, 146/6, 146/9, 148/4, 148/11, 148/22,
149/22, 150/16, 154/5, 155/2, 155/11, 155/14, 155/24,
156/10, 156/12, 156/19, 156/23, 156/24, 158/8, 158/9,
158/19, 158/23, 158/24, 161/1, 161/7, 161/14, 165/16,
166/1, 166/3, 167/13, 167/19, 167/21, 168/3, 168/7,
168/11, 168/15, 168/19, 168/24, 175/4, 175/16, 177/7,
180/17, 181/12, 181/15, 181/24, 183/20, 184/8, 189/9,
194/15, 196/16, 198/24, 199/9, 201/7, 202/11, 203/1,
203/19, 204/8, 204/16, 205/2, 205/5, 205/9, 205/14
Mr. Ludington's 48/10, 80/6, 173/18
Mr. Martin 7/5
Mr. Mike 113/2
Mr. or 70/7
Mr. Ralph 64/11
Mr. Read 60/20
Mr. Reeves 124/12, 124/15, 125/3, 130/10, 130/14,
130/19, 131/7, 133/7, 133/10, 134/6, 134/21, 134/24,
135/2, 135/5, 140/6, 140/16, 140/20, 141/3, 141/20,
142/4, 143/21, 144/21, 145/19, 146/9, 146/15, 148/22,
149/15, 149/21, 149/24, 150/16, 151/11, 152/19, 154/8,
154/20, 156/7, 156/24, 157/17, 158/1, 158/9, 158/18,
158/24, 160/19, 161/4, 161/19, 161/24, 163/22, 166/25,
167/20, 168/24, 169/4, 172/6, 172/23, 177/12, 181/18,
181/25, 182/5, 183/22, 184/13, 184/24
Mr. Reilly 29/14, 74/8
Mr. Richard 76/2, 86/11
Mr. Sanders 109/9
MR. SHREVE 6/22, 20/10, 20/11, 26/19, 27/19,
27/20, 28/1, 29/11, 29/14, 29/17, 29/22, 30/2, 30/3,
30/6, 30/24, 31/18, 38/19, 39/5, 39/6, 44/11, 44/14,
49/15, 49/16, 50/3, 50/14, 51/21, 51/22, 51/23, 51/25,
53/2, 53/3, 55/11, 55/20, 56/14, 56/16, 58/13, 61/21,
62/18, 63/9, 63/12, 64/11, 65/18, 67/16, 68/2, 70/7,
74/8, 76/1, 76/16, 77/23, 78/2, 78/6, 78/8, 78/10, 86/8,
86/11, 87/25, 89/10, 89/15, 89/19, 92/19, 92/22, 98/25,
103/13, 103/19, 103/21, 104/3, 104/5, 104/21, 105/10,
105/19, 105/23, 106/1, 107/16, 108/23, 109/20, 111/1,
111/5, 113/2, 113/17, 113/18, 115/12, 115/15, 119/4,
119/7, 120/18, 123/19, 123/21, 165/12, 166/14, 166/20,
168/4, 168/6, 168/9, 168/10, 168/23, 188/19, 194/3,
194/5
Mr. Shreve's 31/8
Mr. Smith 89/17, 89/20, 90/4, 92/19, 106/9
Mr. Stanley 86/8
MR. STEINKE 11/3, 11/4, 11/7
Mr. Steve 8/8
Mr. Sundstrom 180/11
Mr. Tad 56/22
Mr. Ted 164/5, 164/9
Mr. Walker 72/23, 74/25
Mrs. Chalpin 111/2
Mrs. Kenneth 70/7
Ms. Brubaker 10/19, 10/22, 11/4, 11/10, 23/20,
23/25, 24/2, 25/11, 25/20, 25/25, 26/7, 27/4, 27/12,
31/22, 32/6, 32/17, 39/8, 40/9, 44/23, 45/8, 45/13,
48/21, 49/19, 72/22, 72/23, 73/20, 73/24, 75/3, 82/12,
95/6, 95/13, 96/1, 96/15, 96/18, 101/11, 101/19,
155/10, 155/19, 156/14, 156/20, 189/2, 190/15, 190/20,
195/10, 195/13, 195/21, 201/13, 201/25, 202/3, 203/22,
203/25, 205/19
Ms. Cibula 4/20, 6/14, 7/16, 169/3, 170/17, 172/23,
173/13
Ms. Clark 182/16
MS. KEATING 89/12
multi-million 17/23
multifaceted 83/4, 83/9
mumbling 86/17, 86/18
municipalities 156/5
Murphy 58/14
mutual 14/20
Myers 1/7, 1/20, 2/4, 2/13, 2/16, 6/19, 7/3, 7/9, 7/15,
8/11, 12/14, 12/25, 13/5, 13/10, 13/13, 14/12, 14/14,
14/15, 14/19, 14/21, 14/24, 15/15, 15/19, 15/23, 16/3,
16/10, 16/14, 16/16, 16/19, 18/7, 18/8, 19/3, 19/12,
19/25, 20/5, 20/8, 20/13, 20/20, 21/22, 24/16, 24/21,
26/14, 33/2, 33/13, 33/15, 34/2, 34/7, 34/12, 34/18,
34/19, 35/6, 35/12, 35/15, 36/7, 36/10, 40/12, 42/4,
42/5, 42/13, 42/18, 43/3, 43/9, 43/15, 44/7, 47/23,
48/12, 57/24, 64/23, 65/11, 65/15, 66/15, 72/15, 77/6,
77/17, 79/8, 79/22, 80/7, 80/13, 81/12, 81/23, 88/16,
93/14, 93/21, 94/1, 94/4, 94/15, 94/21, 95/11, 96/11,
97/19, 98/1, 99/24, 100/14, 100/15, 101/3, 101/16,
101/17, 102/24, 111/18, 115/24, 124/5, 124/7, 124/23,
130/15, 131/2, 131/14, 131/24, 132/12, 132/15, 132/24,
133/11, 134/20, 135/12, 135/24, 141/19, 142/15, 143/8,
144/9, 144/12, 144/15, 144/16, 144/25, 145/13, 145/25,
146/10, 146/16, 147/3, 147/7, 152/1, 152/2, 153/16,

161/24, 162/14, 162/21, 164/1, 164/2, 167/3, 169/9, 169/15, 169/18, 169/23, 170/5, 170/18, 170/25, 171/5, 171/12, 171/19, 171/23, 173/9, 175/6, 178/5, 179/14, 179/24, 185/10, 186/3
Myers' 13/16, 16/12, 38/8, 77/7, 132/10

N

naive 116/8
NAME 3/3, 7/19, 9/3, 51/25, 52/3, 52/5, 55/13, 56/15, 57/8, 57/11, 58/8, 58/19, 62/23, 64/16, 76/7, 76/21, 78/13, 86/17, 86/19, 88/4, 89/25, 92/1, 92/2, 93/4, 99/22, 99/23, 103/18, 109/25, 111/10, 114/5, 115/21, 119/23, 120/4, 120/20, 120/25, 124/13, 187/23
names 51/20, 67/1, 105/12, 153/4
nasty 18/13
nature 41/19, 100/10, 101/10, 102/11, 103/11, 148/20, 148/21, 192/1
necessary 34/20, 37/4, 47/21, 52/14, 54/22, 55/7, 140/8, 150/12
need 10/20, 23/24, 39/20, 49/23, 50/8, 50/25, 52/10, 54/3, 55/5, 57/5, 81/11, 82/2, 90/4, 99/4, 103/8, 105/21, 108/5, 113/8, 115/11, 116/14, 138/17, 140/2, 141/8, 146/7, 156/11, 170/9, 181/20, 187/23, 189/23, 190/8, 191/14, 194/11, 196/19, 203/4, 204/11
needed 202/6
needs 47/17, 78/19, 78/25, 104/4, 191/16
negotiate 117/11, 117/13
negotiated 42/10, 43/16, 136/14
negotiating 13/6, 136/11
negotiation 42/3
negotiations 136/2, 136/5
neighbors 66/24
Neither 196/5
net 173/7
new 53/4, 61/18, 71/22, 71/25, 72/17, 93/5, 167/25, 195/25
newspaper 144/22, 145/4, 145/5
newspapers 77/16, 77/19
NFMU 12/20, 13/6, 13/24, 13/25, 14/11, 15/6, 15/13, 19/6, 59/1, 59/7, 60/6, 64/22, 68/21, 68/24, 69/1, 69/19, 70/2, 71/13, 95/14, 111/24, 112/13
NFMU's 12/8, 12/12, 12/13, 12/18, 13/8, 13/17, 13/20, 15/8, 16/7, 16/20, 25/5, 68/23, 117/8, 177/18
nice 90/17, 103/20, 104/6, 104/8, 105/11, 107/15, 175/18
nickname 86/19
nine 66/10, 150/18
Nino 17/4
nominated 88/8
nonpeak 171/25
normal 191/12, 194/20
Normally 22/2, 22/14, 75/16, 170/10, 191/24
North 1/7, 1/20, 2/4, 2/13, 2/15, 6/18, 7/2, 7/9, 7/14, 8/11, 12/14, 12/25, 13/5, 13/10, 13/13, 13/16, 14/12, 14/13, 14/15, 14/19, 14/21, 14/24, 15/15, 15/19, 15/23, 16/3, 16/10, 16/12, 16/14, 16/15, 16/18, 17/6, 18/7, 18/8, 19/3, 19/12, 19/25, 20/5, 20/8, 20/13, 20/20, 21/21, 24/16, 24/21, 26/14, 33/2, 33/13, 33/15, 34/2, 34/7, 34/12, 34/18, 35/6, 35/12, 35/14, 36/6, 36/10, 38/8, 40/12, 42/4, 42/5, 42/13, 42/18, 43/3, 43/8, 43/15, 44/7, 47/23, 48/11, 64/23, 65/10, 65/15, 66/14, 72/15, 77/6, 77/7, 77/17, 79/8, 79/21, 80/7, 80/13, 81/12, 81/23, 88/15, 93/14, 93/21, 94/1, 94/4, 94/15, 94/21, 95/11, 96/11, 97/18, 97/25, 99/24, 100/14, 100/15, 101/3, 101/16, 101/17, 102/24, 111/18, 124/5, 124/7, 124/22, 130/14, 131/2, 131/13, 131/24, 132/10, 132/11, 132/15, 132/24, 133/10, 134/20, 135/12, 135/24, 141/19, 142/14, 143/7, 144/9, 144/12, 144/15, 144/16, 144/25, 145/13, 145/25, 146/10, 146/16, 147/2, 147/7, 152/1, 152/2, 153/15, 161/24, 162/1, 162/4, 162/14, 162/21, 164/1, 164/2, 167/3, 169/9, 169/14, 169/18, 169/23, 170/4, 170/18, 170/25, 171/5, 171/12, 171/19, 171/23, 173/9, 175/6, 178/5, 179/14, 179/24, 185/10, 186/2
note 24/5, 44/25, 130/13
notes 93/9, 135/7, 207/9
Notice 6/12, 6/14, 79/25, 116/23
notification 180/21
notified 72/12, 165/16
November 42/19, 71/10, 76/23, 171/13, 201/18, 201/19, 202/2, 202/4, 202/5, 202/15
null 140/21, 141/5
NUMBER 5/2, 9/16, 47/6, 47/18, 75/5, 116/7, 170/14, 171/22, 181/7, 204/12
numbers 28/17, 66/13

O

Oak 2/20
oath 187/25
object 44/18, 45/14, 60/24, 78/3, 79/15, 84/19, 99/2,

138/11, 140/22, 142/19, 143/13, 144/11, 145/2, 147/22, 162/19, 164/15
objected 29/10, 29/13, 182/22, 186/16
objecting 45/1
objection 26/15, 26/17, 26/19, 26/23, 27/1, 33/20, 35/3, 49/6, 49/14, 57/4, 57/21, 58/3, 84/25, 85/2, 99/5, 125/6, 125/9, 133/23, 134/2, 140/10, 144/19, 145/10, 145/11, 145/17, 145/18, 146/3, 162/25, 164/22, 165/21, 165/22, 165/25, 166/2, 168/8, 187/4, 187/5, 189/18, 195/23, 198/22, 202/9, 204/5, 204/6
objections 33/25
objective 118/24
objectives 45/16, 45/18, 45/20, 45/21
obligated 69/12, 180/13, 180/17
obligates 69/15
obligation 31/15, 38/17, 148/15, 183/18
obligations 23/8, 112/11, 132/25
observant 199/19
observation 31/8, 197/13
obtain 34/20, 71/23, 140/8, 153/23, 158/11
obtained 46/21, 47/22, 48/4
occasion 135/10, 157/2
occasions 17/10, 18/9, 21/4
occupied 134/6
October 1/17, 24/18, 25/8, 25/12, 25/14, 25/16, 31/25, 35/22, 110/4, 201/20, 201/23
odd 201/3
off-site 169/10
offended 29/8, 29/15, 29/18, 29/22
offensive 138/12, 148/9
offer 24/15, 24/18, 33/4, 40/1, 40/11, 40/23, 48/10, 48/12, 61/8, 117/21, 117/24, 169/22, 175/2, 177/20, 178/8, 189/8, 189/9, 195/10, 196/7, 196/10, 200/12
offered 59/22, 159/16
offering 151/4
offers 10/23, 11/11, 24/14, 88/18, 189/20, 189/22, 190/7, 190/10, 192/14, 197/17, 199/4, 200/7
Office 2/7, 6/23, 8/9, 20/8, 20/15, 21/13, 22/5, 24/17, 24/22, 31/8, 40/13, 42/3, 46/15, 46/18, 46/22, 47/15, 80/3, 80/12, 88/14, 130/15, 189/11
offices 184/1
OFFICIAL 1/11, 1/22, 8/21, 24/9, 26/8, 26/12, 52/17, 107/20, 107/23, 121/5, 134/5, 141/21, 142/5, 142/10, 142/11, 207/3
old 18/18, 18/25, 19/4, 19/5, 77/18, 116/13, 132/20
omitted 37/12
on-site 185/15
one-on-one 108/5
onus 36/20
OPC 47/7, 47/17, 47/22, 48/12
open 29/14, 192/1, 192/11
opening 9/13, 11/15, 11/19, 12/2, 20/1, 23/19, 23/20, 23/23, 25/21
openly 45/4
operate 134/17
operated 144/6, 160/21
operates 171/6
operating 69/11, 72/7, 160/5, 171/10, 177/1
operation 160/14
operations 72/10
opinion 59/5, 60/4, 61/3, 61/5, 61/9, 61/12, 69/8, 141/24, 154/14, 159/15, 159/17, 159/23, 167/6, 184/4, 190/2
opinions 148/18, 160/3, 204/25
opportunity 6/11, 8/23, 11/15, 23/11, 23/13, 51/9, 51/16, 54/17, 54/24, 55/6, 119/11, 122/19, 145/11, 161/7, 167/14, 167/16, 186/18, 187/14, 187/21, 189/24, 192/24, 193/3, 193/13, 205/22
opposed 95/10, 194/10, 194/13
opposing 7/11
opposition 6/24, 7/14, 15/16, 40/16, 40/18, 89/3
option 95/16
options 20/25, 21/21
oral 41/8, 195/22, 198/10
orally 193/3, 196/23, 198/2
oranges 160/24
order 6/4, 6/9, 24/6, 35/11, 50/11, 50/20, 60/12, 95/24, 112/3, 123/9, 155/19, 166/3, 192/10
ordered 19/2, 182/8, 182/9
ordering 14/10
Orders 5/3, 24/8, 24/11, 26/11, 80/2
Ordinance 15/3, 18/21, 69/5, 175/8, 180/22, 181/10
ordinances 157/4
organized 50/4
original 36/16, 37/13, 44/20, 131/4, 131/8, 188/7
originally 21/22, 30/13, 53/7, 165/12, 170/20, 189/10, 190/24
outcome 23/15
overlap 75/10
overloaded 17/8
overlook 184/19
overrule 146/2
owned 115/22

owner 13/25, 21/18, 21/19, 35/15, 36/15, 43/6, 69/22, 69/24, 81/19, 83/19, 136/18, 144/24, 159/6, 159/8, 169/8, 173/20, 200/25
owner's 37/11
owners 17/13, 17/16, 17/20, 18/6, 18/20, 19/2, 19/15, 23/8, 34/9, 34/17, 47/10, 47/18, 70/21, 71/4, 77/5, 84/16, 91/14, 91/15, 92/12, 97/21, 135/24, 136/2, 136/15, 137/2, 137/23, 142/16, 146/10, 151/24, 158/2, 169/15, 169/17, 173/11, 173/19, 173/25, 174/9
ownership 95/12
owning 17/23, 93/15, 95/15
owns 58/25

P

p.m 4/15, 4/16, 123/6, 123/7, 206/5
pack 29/19
package 12/24, 71/16, 72/6, 72/15, 79/4, 180/14
packets 19/21
packing 30/12
pages 70/14, 207/8
paid 58/2, 68/23, 68/25, 131/14, 146/16, 169/8
panel 7/24, 8/1, 24/12, 35/21, 36/5, 191/1
paper 10/5, 87/8, 140/18
paradise 159/2
paragraph 151/23, 171/4, 177/14
pardon 78/8, 154/5
parent 132/21
park 13/25, 17/13, 17/16, 17/20, 18/8, 18/18, 18/20, 19/2, 19/15, 21/17, 21/19, 23/7, 34/17, 36/14, 37/10, 37/15, 38/17, 43/6, 43/11, 57/17, 58/1, 58/25, 59/3, 59/16, 62/5, 62/8, 62/16, 65/25, 69/22, 69/24, 76/12, 77/18, 81/19, 84/16, 87/2, 88/20, 89/4, 92/12, 92/16, 95/12, 95/17, 97/21, 97/23, 97/24, 103/22, 107/8, 109/7, 109/9, 109/17, 110/2, 110/5, 110/11, 114/7, 115/22, 116/4, 116/11, 118/2, 118/5, 120/6, 120/8, 121/22, 132/21, 135/24, 136/2, 136/15, 136/18, 137/2, 137/23, 142/16, 145/21, 149/16, 151/24, 155/12, 155/14, 158/2, 159/6, 159/8, 160/12, 163/9, 169/8, 169/17, 169/25, 171/15, 173/11, 173/19, 173/20, 173/25, 174/8, 174/24, 175/2, 175/22, 177/17, 182/11, 185/18
parked 137/13
parks 12/23, 17/24, 18/6, 102/1, 139/3, 152/22, 152/24, 153/5, 153/8, 153/13, 155/13, 159/21, 163/2, 172/20, 174/5, 174/22, 175/7, 184/25, 185/1, 185/4
Parrot 58/22
part 9/25, 14/25, 15/8, 20/22, 27/25, 28/1, 39/1, 41/2, 41/9, 41/23, 42/13, 42/25, 43/3, 43/15, 52/17, 60/22, 74/10, 87/6, 131/19, 141/5, 148/25, 156/7, 177/13, 182/23, 183/3
participant 54/25
participants 8/4, 50/24, 52/12, 53/10, 53/19, 56/9
participate 11/5, 11/9, 56/4, 195/2, 195/17, 198/3, 199/7, 204/4
participated 194/22, 205/23
participation 58/11, 99/7, 99/11, 204/2, 206/1
parties 9/15, 11/14, 18/11, 18/12, 24/12, 26/10, 28/19, 29/11, 32/20, 33/8, 33/21, 33/22, 34/4, 36/21, 36/24, 38/18, 40/3, 42/1, 44/6, 45/1, 49/22, 95/4, 103/22, 103/24, 118/25, 123/18, 186/18, 189/21, 192/2, 192/12, 192/23, 196/14, 198/2, 198/23, 202/21, 202/25, 203/13, 204/1, 204/6, 205/20
Partnership 117/1
party 19/15, 36/15, 36/16, 36/17, 46/5, 69/15, 164/20, 165/10, 166/9, 202/23
pass 72/4, 180/14
pass-on 83/14
pass-through 43/10, 43/11, 83/14, 83/18, 83/21, 83/23, 84/1
pass-throughs 60/5
passed 15/24, 72/18, 92/21
passing 182/22, 191/22
patiently 51/14
pattern 103/1
pause 49/11
pay 21/6, 21/16, 37/14, 37/15, 43/5, 57/22, 57/25, 69/13, 69/15, 71/4, 71/12, 80/17, 81/23, 90/9, 90/14, 91/1, 91/6, 91/12, 91/23, 94/1, 94/4, 106/22, 107/4, 107/9, 114/17, 114/24, 116/20, 117/6, 120/9, 133/15, 135/18, 136/19, 136/25, 150/7, 150/12, 150/20, 154/9
paying 57/19, 59/19, 66/11, 81/16, 91/20, 97/25, 106/19, 107/3, 107/4, 148/24, 154/18, 163/17, 174/12, 205/10
pays 43/7, 43/14, 174/8
peace 62/16, 115/25, 121/22, 122/16
peak 171/14, 171/18, 171/25
pen 153/24
penalized 44/7, 60/9, 65/11, 65/14
penalty 35/13, 44/9, 57/25, 131/23, 132/8
pending 10/22, 11/12, 23/24, 24/4, 27/7, 31/21, 31/23, 39/10, 48/22, 49/20, 49/22, 134/14, 189/3
percentage 153/7, 153/9

percolation 141/18
period 92/16, 155/17, 157/11, 171/14, 179/16, 179/25
peripheral 75/12
permission 77/7, 201/14
permit 68/22, 168/14
permits 77/9
permitted 195/24
perpetrate 112/14, 156/8
Persistence 157/16
personally 77/21, 108/5, 111/16
PETER 3/15, 68/2, 68/4, 68/7, 68/11, 70/5
petition 11/6
ph 71/15
Ph.D 100/23
phase 9/20, 52/21, 123/10, 187/17, 189/4
phenomenon 17/3
philosophy 18/1
phone 103/20, 135/8, 151/21
pick 145/20
picket 110/14
picking 204/8
pickup 97/22
picture 74/17, 77/7
piece 140/18, 157/23, 194/2
Pierre 88/7
Pines 2/3
pipe 163/3
pipes 60/2
Pirates 64/18, 76/8, 109/5, 110/1, 188/4
pitted 118/5
PLACE 1/19, 6/15, 29/8, 58/22, 63/6, 63/7, 63/18,
114/20, 140/9, 149/4, 157/18, 182/1, 186/20, 189/13,
207/5
placed 31/12
places 36/20, 50/19, 50/20, 123/9
Plaintiff 48/5
plans 141/21, 142/5, 191/4
plant 14/7, 15/7, 16/5, 17/17, 19/4, 20/23, 21/20,
28/8, 59/2, 59/3, 60/1, 60/5, 60/13, 64/24, 69/8, 71/16,
72/7, 72/10, 72/15, 78/20, 79/4, 88/12, 111/21, 112/3,
112/18, 116/12, 116/19, 134/21, 142/17, 150/10,
150/12, 160/6, 161/25, 173/3, 177/4, 180/15
plants 141/25
play 14/25, 29/15
Plaza 67/22, 121/1
plead 86/3
pleading 85/9
plotted 68/24
plus 32/18, 181/4
pocket 53/16, 87/12
point 10/1, 10/20, 20/20, 21/25, 26/6, 31/18, 38/24,
40/1, 40/24, 41/5, 41/13, 41/20, 43/23, 48/15, 52/18,
53/22, 54/18, 56/3, 94/11, 94/12, 96/10, 97/3, 104/4,
113/15, 123/19, 125/2, 143/19, 163/1, 166/3, 166/21,
168/1, 180/20, 192/2, 192/25, 197/3, 197/16, 198/24
pointed 38/19
pointing 95/11
police 37/22
political 99/12
pollution 71/23
ponds 141/18
pool 110/6
population 71/18
portion 131/8, 195/21
position 38/8, 42/21, 51/17, 78/16, 78/18, 79/21,
80/14, 80/15, 85/10, 86/5, 121/7, 132/7, 150/22, 179/8,
179/23, 190/25, 194/9
positions 31/12
positive 152/8
possession 117/10
possibility 56/5, 56/7, 101/22
possible 9/11, 47/2, 50/5, 51/18, 79/24, 113/10,
140/4, 168/6
post 191/12
postponed 32/24
powers 37/2, 37/22
practice 78/23, 79/9, 138/10, 138/25, 154/13
practices 12/9, 12/16, 16/20, 101/3, 102/18
practitioner 54/25
precedence 42/23, 185/19
precedent 12/19, 12/21, 31/6, 139/16
predates 69/16
predecessor 71/3, 77/18
predicate 141/2, 142/20
prefer 79/21
profile 124/2, 124/18, 165/7
PREFILED 1/12, 4/18, 5/4, 123/12, 124/15, 124/20,
130/3, 165/22, 167/25, 177/13, 187/4, 187/11, 207/9
prehearing 44/24
preliminary 6/9, 11/20, 40/8, 40/10, 48/20, 49/18,
49/22
premature 48/14, 197/3
prematurely 79/3

prepared 31/4, 32/23, 183/19, 193/7, 196/13, 196/16,
201/12
preparing 80/21, 146/11
prerogative 31/10, 31/11, 166/11
prescribed 207/9
prescriptions 114/17
presentation 193/5, 195/22
presented 20/4, 38/12, 47/25, 112/20, 166/5, 195/14
presenting 51/11, 52/23
president 88/8, 89/5, 130/24
pressures 118/10
pretty 104/25, 118/2, 152/21
prevail 179/9
preview 122/12
prey 163/2
price 59/20, 145/23, 146/15, 147/5
prices 93/22
primary 75/20
printed 10/5
private 12/20, 12/21, 12/23, 73/14
privately 144/6
privilege 46/13, 137/4
problem 63/23, 74/7, 74/10, 89/6, 102/9, 104/22,
109/11, 109/12, 168/20
problems 17/5, 23/4, 77/3, 88/13, 104/20, 109/8,
109/10, 113/10, 121/10
procedurally 192/12, 197/15
procedure 9/24, 13/2, 33/22, 41/5, 41/12, 51/3,
51/19, 54/16, 57/6, 138/8, 181/17, 185/10, 186/17,
191/12, 192/2, 192/19, 193/2, 194/16, 194/20, 197/8,
205/16
proceed 6/12, 9/4, 9/18, 9/19, 12/1, 26/6, 49/23,
50/13, 52/6, 100/11, 113/20, 161/21, 163/12, 188/2,
189/18, 196/15
proceeding 11/22, 35/12, 42/1, 73/11, 99/8, 99/11,
101/21, 102/12, 102/14, 124/16, 131/19, 131/20,
133/22, 134/8, 145/15, 161/9, 170/22, 195/15
PROCEEDINGS 1/14, 39/11, 48/6, 204/24, 207/7,
207/9
process 56/9, 80/21, 93/15, 94/15, 94/22, 95/15, 96/8,
98/1, 102/9, 138/16, 151/15, 193/12
processing 72/17, 94/6, 96/12, 96/13, 96/14
PROCTER 3/19, 76/16, 76/18, 76/21
produced 189/25, 191/25, 192/17
producing 179/4
Professional 73/23, 75/20
profit 93/23
profits 18/3
projected 202/4
projects 133/16
promised 112/4, 187/18
prompted 182/6
property 93/18, 94/24, 97/19, 97/23, 118/19, 169/11,
170/3
proposal 39/18, 41/19, 42/5, 43/16, 43/23, 80/6, 88/24
proposals 112/20
propose 38/13, 190/4
proposed 24/13, 24/15, 24/18, 31/24, 32/11, 32/19,
33/1, 33/10, 35/19, 38/9, 38/15, 39/14, 40/11, 63/7,
80/1, 80/2, 80/3, 80/4, 189/8, 189/9, 199/2
proposes 47/23
proposing 178/9
prospectus 81/20
protect 54/22, 112/8
Protection 17/11, 37/22, 142/13
protested 182/7
provide 11/16, 14/6, 14/7, 20/5, 36/4, 38/17, 51/14,
51/18, 51/24, 99/17, 163/6, 171/1, 172/2, 174/17, 174/21
provides 14/3, 39/9, 161/9, 195/18, 196/2
provision 136/17
provisions 37/23, 38/16, 71/3
PSC 12/13, 12/14, 12/18, 12/19, 13/3, 13/8, 13/11,
13/15, 13/20, 15/11, 15/13, 16/17, 19/9, 25/16, 34/21,
35/1, 36/8, 36/13, 37/17, 44/21, 47/24, 69/18, 70/17,
72/25, 140/8, 165/2, 181/16, 182/8, 182/9, 195/13
PSC's 12/25, 16/7, 16/10
PUBLIC 1/1, 2/6, 2/7, 2/8, 2/19, 6/23, 7/20, 8/6,
8/9, 8/21, 8/24, 10/12, 10/16, 11/17, 12/12, 20/5, 20/8,
21/14, 23/1, 23/6, 24/17, 24/22, 30/8, 31/1, 33/17,
34/23, 35/2, 35/4, 35/20, 37/1, 37/17, 37/21, 37/23,
38/2, 40/13, 42/3, 42/6, 42/8, 42/9, 42/10, 43/22, 44/1,
46/2, 46/8, 46/16, 46/18, 46/22, 47/15, 48/19, 52/15,
54/9, 68/10, 78/23, 79/9, 80/4, 80/12, 82/14, 88/14,
107/20, 107/23, 108/18, 112/6, 112/21, 124/22, 130/15,
134/4, 139/5, 139/8, 141/16, 144/14, 146/5, 154/24,
155/18, 155/23, 164/24, 176/8, 176/9, 188/8, 188/9,
189/11, 189/12, 190/3, 196/13, 197/18, 207/5
pumping 97/20, 146/21
punches 66/14
purchase 13/13, 145/24, 146/15, 173/10
purchasing 144/6
purpose 37/25, 68/20, 101/11, 153/1
purposed 169/22

purposely 68/16
purposes 73/6, 132/19, 165/24, 175/21, 202/20
pursue 32/8, 65/9, 95/6, 98/17, 98/21, 102/20,
134/12, 181/14, 198/23, 200/18, 200/23, 201/15, 205/7
pursued 104/4
pursuit 35/9
put 28/25, 29/1, 29/24, 44/2, 55/1, 68/9, 91/4, 93/17,
102/6, 112/19, 122/4, 142/16, 155/22, 163/20, 197/19
putting 91/5, 140/9, 182/24
puzzle 116/7
puzzled 116/3, 116/9, 117/7, 117/8, 117/12

Q

qualified 73/9
qualify 102/13
question 36/3, 36/6, 51/5, 54/11, 54/17, 60/17, 60/24,
61/5, 61/15, 61/19, 62/12, 63/19, 70/16, 70/18, 74/3,
74/23, 74/25, 75/2, 79/17, 81/3, 82/8, 83/3, 84/8,
84/19, 84/25, 87/21, 90/20, 90/23, 93/14, 94/20, 95/2,
95/22, 95/25, 96/3, 97/3, 98/9, 98/10, 98/12, 106/5,
107/7, 107/18, 107/21, 107/25, 108/21, 114/23, 117/17,
123/15, 133/21, 133/24, 134/12, 134/15, 137/5, 138/11,
138/23, 140/13, 140/22, 140/24, 141/2, 141/8, 142/21,
143/2, 144/11, 144/14, 144/20, 146/3, 148/5, 156/1,
156/11, 162/19, 163/12, 163/22, 163/25, 165/20,
165/21, 165/23, 174/3, 174/17, 175/20, 177/8, 177/11,
182/15, 185/22, 190/5, 190/12, 192/14
questionable 14/13
questioning 56/10, 56/13, 97/4
questions 36/5, 52/9, 52/11, 55/3, 55/4, 55/23, 56/6,
56/8, 58/6, 60/15, 60/16, 61/17, 62/11, 65/16, 70/3,
70/4, 82/4, 82/5, 82/7, 84/14, 93/10, 95/5, 95/6, 97/12,
108/3, 108/4, 108/9, 108/13, 108/16, 116/8, 133/2,
133/7, 135/2, 140/2, 142/22, 143/18, 148/3, 148/7,
148/9, 148/16, 148/21, 158/22, 161/1, 161/3, 161/5,
161/8, 161/12, 161/16, 161/19, 165/3, 167/11, 167/20,
168/4, 168/10, 168/13, 168/23, 169/1, 173/13, 173/15,
173/17, 173/18, 175/19, 177/8, 181/16, 184/16, 184/21,
186/9
quick 17/16, 19/4
quit 182/6
quote 18/2, 70/19, 71/2, 71/7, 141/18, 141/20,
144/23, 159/5, 159/17
quoting 146/22

R

rains 17/7, 17/8
raise 28/11, 52/15, 52/21, 52/24, 54/11, 119/20
raised 20/19, 20/23, 21/24, 28/8, 28/9, 88/25, 91/23,
91/25, 119/13, 181/21, 186/15, 190/23, 191/15, 193/20
raises 114/13
RALPH 3/10, 64/13, 64/16, 188/3
Randolph 121/6
range 17/25, 171/17
rate 16/11, 22/1, 22/2, 34/11, 36/13, 43/6, 112/10,
155/21, 177/1
rates 13/20, 13/23, 20/15, 25/2, 26/2, 28/11, 48/23,
69/13, 79/14, 189/13, 189/14, 190/14, 194/14, 200/14,
200/18, 200/22, 200/23, 200/24
raw 72/18
re-enforcing 150/22
reach 118/24, 119/1
READ 3/6, 6/12, 25/21, 29/6, 29/9, 32/10, 32/13,
33/1, 33/8, 58/14, 58/16, 58/19, 58/20, 60/23, 61/8,
68/9, 70/15, 151/22, 165/5, 175/17, 177/14, 182/16,
183/11
reading 12/4, 77/16, 91/7, 91/11
readings 34/20, 34/23, 37/5, 137/15, 137/17
realistic 160/17
rear 50/22
reason 15/13, 21/23, 32/25, 65/8, 110/5, 152/3,
175/2, 190/23, 192/20
reasonable 93/23, 94/5, 112/1, 112/22, 201/17
reasons 13/22, 62/13, 160/22
rebate 59/23
rebuild 60/13
recall 33/4, 43/9, 131/7, 131/13, 135/5, 135/10,
135/16, 139/23, 150/19, 151/12, 152/4, 152/19, 156/25,
157/6, 157/10, 158/10, 158/13, 158/16, 190/23, 194/21
receive 9/21, 10/2, 101/17, 137/17, 194/24
received 10/25, 26/11, 27/3, 116/23, 133/11, 133/12,
138/4, 138/6, 187/7, 187/9
receiving 81/9, 182/3, 182/4
recess 50/10, 50/15, 113/7, 113/10, 122/23, 123/2,
187/13
recognition 24/10, 26/8, 26/12
recommend 26/6, 31/23, 39/13, 40/9
recommendation 9/23, 65/6, 190/1, 191/10, 192/16,
192/22, 193/6, 194/1, 194/8, 195/14, 196/15, 198/16,
201/18, 202/5

reconsideration 190/18
 reconstruct 112/2
 reconstructed 112/19
 reconvene 123/3
 reconvening 122/24
 record 10/13, 12/1, 25/14, 27/1, 38/12, 38/23, 46/5, 48/7, 50/11, 52/6, 52/17, 73/17, 108/4, 108/11, 108/15, 108/22, 120/11, 125/10, 139/25, 148/8, 155/23, 164/25, 169/5, 175/15, 183/4, 184/9, 187/15, 187/24, 189/6, 189/24, 191/16, 194/9
 recording 179/1
 records 157/21, 159/21, 173/10
 recourse 81/17, 81/18
 recover 81/23, 81/24, 170/21
 recovering 176/24
 recovery 176/22, 176/23
 Recreation 1/19
 Recross 4/20, 4/21, 161/22, 181/23
 recuperate 36/11
 red 21/6
 Redirect 4/21, 184/15, 184/19, 184/22, 186/13, 186/14, 186/19
 reduction 83/12
 REEVES 4/17, 124/5, 124/6, 124/14, 124/21, 134/16, 143/4, 150/2, 150/5, 150/9, 150/14, 155/4, 163/14, 163/23, 170/16, 172/9, 172/13, 172/16, 173/23, 174/2, 174/14, 174/19, 174/22, 175/3, 175/9, 175/12, 175/24, 176/7, 176/14, 176/18, 176/21, 176/25, 177/5, 177/24, 178/2, 178/6, 178/13, 178/16, 178/19, 178/25, 179/3, 179/7, 179/13, 179/17, 179/19, 180/2, 180/6, 180/16
 reference 107/18
 reflect 45/9
 refrain 140/3, 158/20
 refund 25/2, 26/2, 48/23, 189/14
 refuse 90/14
 refused 69/6, 142/18
 regulated 34/22, 155/19
 regulation 37/20, 73/23, 75/20
 regulations 68/19
 REILLY 2/7, 6/22, 8/8, 25/13, 27/6, 97/16
 reimburse 43/13
 reintroduce 166/16
 reinvest 170/10
 reject 200/17
 rejected 88/18
 rejoin 123/1
 relate 148/7
 related 106/5, 148/17, 177/3, 177/8, 195/25
 relates 181/15
 relation 97/10, 190/9
 relationship 105/1, 133/17
 relax 66/21
 relay 82/14
 relevance 133/22, 144/16
 relevancy 133/21, 134/2, 134/13, 144/19, 145/3, 162/20, 162/23, 162/25, 163/9, 165/24
 relieves 37/6
 remain 27/8
 remainder 83/13, 157/18
 remained 72/11
 remaining 48/22
 remember 122/12, 157/9, 181/6, 185/24
 remind 50/24
 reminding 184/6
 removal 79/23
 remove 25/13, 25/24, 27/5, 79/3
 render 61/5
 rendered 34/6
 renders 35/1
 rent 14/5, 14/9, 43/4, 59/9, 59/11, 59/20, 59/23, 76/25, 77/11, 77/13, 83/5, 83/6, 83/12, 94/18, 111/16, 112/12, 114/11, 114/16, 115/5, 120/8, 159/15
 rental 36/19, 69/24, 70/1, 70/2, 81/20, 83/11, 111/14, 159/8, 159/10
 rented 110/3
 rents 18/2
 repair 111/22
 repaired 79/2
 repairs 142/17
 repeat 25/9, 56/15, 203/15
 rephrase 138/23, 141/8
 replace 60/4, 116/19, 147/10
 replaced 116/14
 replied 181/18, 182/2, 183/25
 replies 165/3
 reply 27/17, 30/4, 164/13
 report 10/5, 204/20
 REPORTED 1/21, 207/7
 Reporter 1/22, 5/9, 8/17, 9/2, 24/12, 50/8, 50/9, 52/2, 52/4, 57/7, 57/10, 58/7, 58/9, 139/25, 207/1, 207/3
 reports 18/6, 132/11
 represent 23/13, 27/23, 28/22, 31/9, 31/15, 47/15, 103/22

representation 31/19
 representative 45/24, 46/11, 70/17, 71/1
 representatives 8/11
 represented 22/1, 47/4, 104/17
 representing 7/2, 7/8, 21/10, 28/2, 28/13, 28/15, 46/16, 78/14, 104/15, 116/6
 represents 116/5
 reputable 77/21
 reputation 118/18
 request 24/9, 24/11, 161/11, 177/11, 190/21, 203/13
 requesting 26/12
 require 16/17, 71/12, 112/2
 required 71/23, 93/19, 93/21, 170/3
 requirements 18/22, 71/20, 71/22, 72/1, 72/9, 72/11
 requires 180/23, 183/17
 requiring 71/3
 rescheduling 25/3
 rescinded 13/18, 16/20, 188/6
 resented 110/16
 reserve 63/2, 161/2, 166/16
 reside 62/24
 residences 162/22
 resident 7/10, 7/13, 68/11, 76/23, 90/1, 90/7, 99/6, 99/24, 106/10, 111/11, 112/5, 121/2
 residents 8/14, 8/15, 13/21, 14/18, 15/2, 15/6, 15/17, 15/25, 16/17, 43/5, 64/23, 71/12, 88/20, 111/18, 111/20, 112/16, 121/18, 169/19, 169/24, 170/22, 171/2, 172/3, 172/17, 173/21, 174/11, 178/18, 179/21, 179/22, 180/1
 resign 67/10
 resist 34/24
 resolution 23/1
 resolve 104/1
 resolved 67/25, 79/1, 110/23, 118/22
 respect 32/2, 40/14, 48/22, 81/3, 122/2, 155/12, 173/18, 174/12, 180/21
 respond 29/3, 32/23, 33/1, 85/1, 134/3, 142/20, 145/11, 145/16, 148/18, 164/22, 167/5, 183/13, 203/4
 responded 199/11
 response 25/4, 25/6, 25/25, 26/1, 26/3, 26/4, 32/20, 33/9, 40/17, 44/17, 48/25, 84/21, 84/23, 85/20
 responses 32/1, 32/3, 32/4, 40/14, 40/15, 48/24
 responsible 36/15, 36/17, 36/18, 36/22, 80/16, 94/1, 185/15
 Rest 64/18, 76/8, 109/5, 110/1, 132/16, 148/1, 179/22, 188/4, 194/1
 restate 96/4, 187/23
 restoring 16/5
 result 42/2
 retained 73/14, 134/17
 retirement 114/19, 115/10
 retroactive 179/11
 return 121/9, 151/25, 173/4, 177/1
 revenue 14/20, 42/20, 153/23, 172/7, 186/1
 revenues 44/9, 132/1, 132/5
 review 25/22, 132/10, 189/24
 revised 156/16
 rewarded 16/16
 rewarding 12/14
 rhetoric 20/2
 RICHARD 3/18, 3/21, 76/4, 76/7, 86/13, 86/17
 rid 43/1, 59/24, 60/11, 65/12
 ride 86/23, 137/25
 riding 163/18
 rights 35/5, 35/7, 35/9, 56/9, 117/14
 riparian
 rises 197/22
 Road 64/18, 76/8, 86/18, 110/2, 188/4
 Robert 78/13
 Ron 188/12
 RONALD 2/15, 2/16, 7/13, 33/11
 Room 2/9, 10/7, 87/16, 87/17, 87/18, 87/19, 107/20, 107/23, 204/14
 Rose 2/2, 7/2
 RPR 1/21, 207/3
 ruined 191/4
 rule 31/4, 37/3, 39/20, 191/1, 193/9, 195/13, 195/18, 195/22, 196/1, 197/2, 197/21, 197/23, 198/7, 199/16, 199/23
 ruled 48/10
 rules 37/3, 47/14, 196/22
 ruling 31/18, 41/13, 48/15, 155/18, 156/1, 168/2
 run 22/14, 22/16, 32/4, 32/21, 97/19, 99/8, 101/6, 114/21, 193/23
 rush 19/4
 RUTH 3/19, 76/16, 76/18, 76/21

S

sad 109/8
 safety 37/23, 38/3
 sale 13/7, 147/3
 SAMANTHA 2/18, 7/16

San 174/24, 185/1
 sanctioning 7/11
 sat 78/19, 100/21, 121/6
 satisfactorily 72/8
 satisfactory 73/1
 saturated 17/8
 save 84/4
 saw 17/11, 151/3, 153/15
 scam 112/14
 scenario 147/8
 scenarios 97/16, 98/3
 schedule 34/10, 34/11, 196/20, 197/25
 scheduled 190/24, 202/16, 203/16
 scheme 14/20, 14/24, 15/1, 15/8, 15/14, 15/16, 167/3, 167/7
 scratch 147/12
 Seated 7/21, 7/22, 8/18, 9/1, 9/2, 57/7
 second 32/16, 43/8, 57/24, 70/24, 72/6, 79/6, 80/11, 80/21, 82/18, 169/6
 Section 37/19, 45/20, 73/10, 73/13, 74/16, 156/8, 159/4
 Sections 15/3, 15/22
 seek 81/19
 seeking 138/21
 sell 144/13, 144/17, 144/25, 146/11
 selling 97/25, 144/10, 145/14
 send 34/8, 157/13, 157/18, 157/24, 180/13, 184/2
 sending 157/7, 163/4, 179/21, 182/6, 182/9
 sends 92/2
 senior 111/24, 112/8, 115/8
 sensitive 6/4
 sent 69/4, 156/25, 157/10, 175/6, 179/12, 179/19, 180/10, 180/12, 180/23, 182/17, 183/24
 sentence 169/6, 169/7
 separate 75/18, 102/20, 106/13, 146/24
 separately 106/22
 September 24/15, 24/20, 24/23, 25/1, 25/4, 25/6, 40/13, 40/15, 40/17, 43/5, 133/10, 139/6
 Series 133/11, 133/13
 serious 183/2
 serve 20/17, 21/24, 45/24, 77/8, 96/4, 96/18, 132/16, 144/15, 169/10
 serves 83/10
 SERVICE 1/1, 1/6, 2/19, 4/15, 6/17, 7/20, 8/7, 8/22, 10/16, 12/12, 15/20, 16/4, 16/13, 20/6, 21/15, 23/1, 23/6, 30/8, 33/17, 33/18, 34/5, 34/8, 34/14, 34/21, 34/23, 34/24, 35/4, 35/21, 36/4, 36/12, 37/1, 37/14, 37/17, 43/7, 43/13, 46/2, 46/8, 68/10, 77/12, 77/18, 77/22, 78/23, 79/9, 80/12, 96/19, 101/17, 102/24, 111/15, 112/4, 112/6, 112/19, 112/21, 123/5, 124/22, 137/6, 137/7, 139/5, 139/9, 141/16, 150/18, 150/20, 154/24, 155/18, 160/13, 163/6, 164/24, 169/8, 169/18, 169/24, 170/3, 170/19, 170/22, 171/24, 172/2, 172/25, 174/4, 174/8, 174/17, 174/21, 175/2, 176/9, 177/16, 180/8, 186/2, 194/24, 207/5
 Services 2/20, 14/4, 14/8, 14/17, 38/18, 69/23, 152/22, 159/7
 servicing 136/14, 160/12
 serving 44/8, 171/13
 session 187/25
 set 96/2, 123/15, 185/19
 sets 183/17
 setting 12/19
 settle 33/22, 87/7, 87/10, 87/22
 settled 62/9, 62/14, 86/20
 Settlement 5/5, 10/24, 11/11, 24/14, 24/16, 24/19, 24/21, 24/24, 28/18, 28/20, 32/11, 33/5, 33/10, 35/19, 38/4, 38/8, 38/10, 38/15, 39/4, 39/18, 40/1, 40/11, 40/23, 41/24, 41/25, 42/21, 43/16, 44/18, 44/20, 45/12, 46/11, 46/19, 47/17, 47/22, 48/11, 48/12, 53/9, 53/11, 53/14, 53/15, 53/20, 53/23, 54/4, 55/12, 63/4, 63/6, 63/7, 63/9, 63/13, 64/3, 66/9, 87/10, 87/11, 87/13, 104/7, 117/18, 118/3, 118/24, 119/1, 130/16, 130/20, 169/23, 170/17, 177/21, 178/9, 186/25, 187/2, 189/8, 189/10, 189/20, 189/22, 190/7, 190/11, 192/14, 196/7, 196/11, 197/17, 197/18, 199/3, 199/5, 200/7, 200/12, 201/3, 201/5
 settlements 104/25
 seven 32/18
 sewage 59/3, 59/20, 60/13, 65/2, 65/5, 65/13, 68/12, 68/17, 68/22, 69/18, 71/16, 71/25, 72/18, 77/2, 77/12, 77/22, 79/22, 90/10, 111/21, 116/12, 120/6, 120/9, 162/16
 sewer 21/7, 36/18, 57/18, 57/19, 66/10, 66/11, 69/2, 69/8, 80/17, 88/12, 88/22, 95/15, 102/25, 104/18, 109/10, 109/12, 111/15, 112/4, 112/9, 114/24, 116/19, 118/12, 137/6, 137/7
 sewers 18/24
 shame 114/8, 114/21
 shape 72/12
 share 94/5
 shareholder 18/4
 sheet 156/16

SHIRLEY 3/12, 65/19, 65/21, 65/24, 76/13
short 17/1, 50/5, 91/24, 133/12, 192/10
short-term 133/15
shoulders 36/21, 36/22
shoved 66/8
show 20/4, 35/11, 54/7, 110/20, 131/19, 146/8, 148/17
shower 57/15
shows 84/17, 132/18, 193/15
SHREVE 2/6, 6/22, 8/8, 25/13, 27/6
Shumard 2/20
shun 188/7
shunning 188/14
shut 19/2
side 28/17, 30/14, 30/16, 74/17, 87/16, 87/17, 116/6
sides 29/15, 30/15, 30/18, 31/1, 118/1
sidewalk 110/16
sign 28/19, 47/13, 47/16, 53/8, 53/19, 87/23, 119/9
signatory 45/3
signature 130/23
signatures 151/14
signed 9/7, 34/17, 51/23, 53/10, 53/14, 53/22, 54/5,
55/12, 79/7, 79/16, 80/13, 81/13, 87/8, 119/5, 119/8,
135/23, 152/22
signing 151/15
signs 110/16
simple 81/7, 82/1, 139/18
single 57/13, 162/22
sister 109/6
sit 52/1, 80/22, 87/16, 87/17, 147/24, 148/2, 199/22
sites 185/16
sitting 87/18, 87/19
situation 17/2, 22/12, 22/15, 22/23, 59/5, 59/18,
63/1, 97/5, 104/18, 105/19, 109/16, 140/15, 151/10,
151/11, 155/9, 180/5, 182/6, 197/14
six 59/22, 83/9
slanderous 138/16
sleep 87/3
small 17/21, 187/19
SMITH 3/24, 89/15, 89/16, 89/22, 89/25, 90/7,
90/18, 90/25, 91/3, 91/16, 91/19, 91/22, 92/4, 92/6,
92/9, 92/13
Snowbird 48/5
Snowbirdland 116/24
soapbox 99/11
Sol 67/22, 121/1
sold 173/3
sole 35/15
solicit 138/21
solicited 161/13
soliciting 85/1
solution 42/12, 93/12, 112/1, 112/22
solve 23/4, 36/20
solves 36/3, 36/6
solving 17/18, 36/25
sort 139/16, 157/17, 183/15, 196/7
sound 132/23, 160/17
sounds 113/21
source 113/9, 153/23
Southern 42/16
space 10/15
SPEAKER 7/4, 92/21
specified 111/14
specify 14/6
speculate 85/7, 85/11
spell 52/5, 57/9, 64/17
spent 151/21, 163/15
spillage 17/10
split 28/5, 28/16
spoil 76/14
sponsoring 165/10, 166/9
sponsors 166/10
spot 102/6
spring 17/3, 97/17, 150/19
squarely 36/21
Staff 2/22, 7/17, 8/6, 9/24, 23/18, 23/20, 24/8, 39/7,
44/21, 47/24, 49/19, 72/25, 95/4, 103/10, 131/4, 155/8,
168/25, 181/8, 181/16, 181/21, 181/25, 188/24, 189/24,
191/9, 191/17, 192/12, 192/17, 192/21, 193/25, 194/7,
195/16, 198/17, 201/12, 204/12, 205/19
Staff's 5/3, 26/11, 31/25, 193/6, 198/16
stage 84/15, 137/8
stages 82/22, 86/3
stand 7/6, 7/8, 19/17, 27/16, 45/6, 52/15, 52/21,
52/23, 98/20, 110/19, 110/20, 119/19, 200/10
standard 146/4, 146/5, 152/21, 155/16, 175/23, 180/3
standards 142/1, 142/3, 148/1
standing 29/7, 46/7, 46/9, 100/24, 101/9, 140/18
standpoint 132/11
stands 44/19
start 147/12, 163/4
started 20/14, 88/10, 91/4, 106/13, 106/19, 140/23,
157/6
starting 43/4, 137/11, 138/2

starts 53/6
State 2/11, 6/24, 12/10, 12/17, 21/4, 22/7, 37/22,
62/13, 71/6, 71/21, 75/18, 96/23, 112/2, 124/12,
140/24, 141/1, 143/9, 143/25, 144/5, 171/23, 184/5,
207/1
Statement 3/5, 3/6, 3/8, 3/9, 3/11, 3/12, 3/14, 3/15,
3/17, 3/18, 3/20, 3/21, 3/23, 3/24, 4/2, 4/4, 4/5, 4/7,
4/8, 4/10, 4/11, 4/13, 4/14, 9/4, 10/13, 12/2, 12/5,
20/1, 23/12, 23/19, 23/21, 25/20, 25/21, 52/6, 52/7,
56/7, 57/3, 58/18, 61/16, 62/3, 62/22, 64/15, 65/23,
67/20, 68/6, 70/11, 71/8, 71/10, 76/6, 76/20, 86/15,
88/3, 89/8, 89/24, 93/3, 102/14, 103/17, 109/3, 109/24,
111/9, 114/3, 115/20, 119/10, 120/3, 120/24, 132/18,
141/17, 142/18, 159/10, 164/13
statements 9/6, 9/13, 9/14, 11/15, 11/20, 23/23, 27/8
states 37/19, 45/20, 46/12, 69/21, 85/9, 159/5, 169/7,
170/2, 171/5, 177/15
station 97/20, 146/21
status 82/9, 117/9, 178/18, 190/6
statute 31/9, 37/19, 69/19, 70/23, 83/22, 156/2,
156/4, 158/25, 181/4, 181/7
Statutes 15/4, 15/22, 35/10, 70/19, 73/4, 83/20,
112/23
statutory 82/24
stay 30/16, 188/14, 188/16
Steinke 11/1
stenographically 207/7
step 117/23
stepped 103/25
STEVE 2/6, 6/22, 25/13, 27/6, 97/16
stick 87/5, 90/16
stiff 15/16
stipulation 24/15, 31/24, 32/19, 33/1, 39/9, 39/15,
40/11, 53/8, 54/6, 54/7, 54/10, 130/16, 185/23, 186/7,
186/24, 187/2, 189/7, 189/13
stipulations 24/14, 80/1
stood 66/18, 66/19, 110/15
stop 101/25, 182/9
stopped 20/19, 178/20, 182/4
story 19/19, 74/17
strange 18/1
strategy 117/21
Street 2/9, 86/23, 86/24, 87/14, 99/17, 99/19, 100/21,
163/16
strenuously 42/10
stress 71/7
strict 9/5, 51/11, 54/20
strike 24/24, 143/14
stringent 71/22
stroke 153/24
Strong 62/24
structure 177/19, 177/23
struggling 17/21
studies 173/9
stuff 96/8, 188/11
subject 9/12, 25/2, 26/2, 41/6, 48/23, 54/20, 68/12,
68/14, 139/23, 141/10, 143/1, 145/12, 159/19, 167/25,
181/17, 187/19, 189/14
subjected 118/10
submit 99/10, 123/16
submitted 35/20
succinct 9/10
sue 158/3
sufficient 13/22, 44/9, 83/13, 138/14, 169/9, 201/21
suggestion 194/4, 198/21, 200/6
suggestions 192/11
suit 47/14
suits 47/10
summarize 40/24
summarized 44/13
summarizes 190/1
summary 41/18, 44/12, 130/11
summer 151/5
summertime 172/18
summoned 165/2
Sun 162/4, 162/5, 162/8, 163/18
Sundstrom 2/2, 7/2
supply 34/22, 37/4, 112/4, 153/4
support 35/5, 35/25, 36/2, 39/2, 45/4, 45/9, 53/14,
64/3, 112/19, 189/12
supported 38/11, 38/23
supporting 34/1
supports 38/24
surcharge 42/24
surcharges 179/11
Suren 89/16, 92/20
surreptitious 164/16
SUSAN 1/16, 7/23
sustain 165/22, 165/25
Suzie 174/24, 185/1
sworn 52/16, 52/25, 119/14, 119/19, 119/21, 124/8
synopsis 17/1
system 13/14, 17/9, 22/18, 35/16, 68/13, 68/17,

68/22, 69/2, 69/19, 71/19, 71/25, 72/2, 72/17, 77/2,
93/15, 93/19, 94/10, 95/18, 95/21, 95/24, 96/10, 97/22,
118/20, 131/8, 131/14, 135/18, 137/19, 142/14, 145/14,
146/17, 147/3, 147/10, 156/16, 171/10, 176/3, 177/16,
182/1, 185/15
systems 12/24, 22/17, 69/10
systemwide 177/4, 177/5

T

tab 204/8
table 8/5, 8/7, 8/10, 8/13, 8/17, 9/1, 52/2, 52/12,
57/7, 141/20
tabled 189/5
tactics 158/14
TAD 3/4, 57/1, 57/11
tailored 180/4
talk 30/9, 78/16, 104/8, 121/3, 201/14
talked 30/9
talking 22/2, 44/20, 45/11, 45/21, 63/12, 95/12,
149/25, 191/11
Tallahassee 2/3, 2/9, 2/20, 68/15, 195/7, 195/9, 204/1
Tamiami 1/20, 185/12
tank 71/24, 72/4, 93/18, 93/20
tariff 43/5, 150/5, 155/4, 155/6, 155/8, 155/15,
155/23, 155/25, 156/15, 175/25, 176/5, 180/4, 180/7,
200/24
tariffed 176/4
tariffs 176/17
tax 117/6, 173/3
taxpayers 13/12
tearing 59/2, 59/24, 60/2
tears 87/3
Technical 4/16, 9/20, 41/23, 52/20, 123/6, 123/10,
187/17, 189/4
teleconferencing 29/9
telephone 135/5, 194/22, 195/4, 199/7, 203/8, 204/4
telephonic 204/2
telephonically 205/14
ten 50/10, 57/13, 153/1
term 168/18, 179/12
termed 41/24, 79/25
terminology 138/22, 140/1
terms 13/19, 15/1, 22/2, 45/5, 169/14, 177/20
terrible 95/10
territory 7/12, 13/3, 15/9, 15/10, 19/6, 20/18, 20/21,
21/23, 28/10, 96/5, 96/19, 139/10, 139/12, 139/15,
143/23, 157/23
TERRY 1/15, 7/19
tertiary 71/24, 171/7
testified 57/2, 58/17, 62/2, 62/21, 64/14, 65/22,
67/19, 68/5, 70/10, 76/5, 76/19, 86/14, 88/2, 89/23,
93/2, 103/16, 109/2, 109/23, 111/8, 114/2, 115/19,
120/2, 120/23, 124/8
testify 52/15, 55/2, 119/8, 119/18, 122/21, 195/16
testimony 52/20, 140/23
TESTIMONY 1/12, 4/18, 8/19, 8/24, 9/18, 9/19,
25/16, 28/7, 41/17, 48/19, 49/24, 50/4, 50/12, 50/13,
51/12, 51/24, 52/13, 52/23, 53/5, 86/7, 98/16, 99/2,
99/18, 100/10, 100/18, 101/12, 106/5, 107/22, 108/11,
123/13, 123/15, 124/2, 124/16, 124/18, 124/20, 124/21,
125/3, 125/6, 125/7, 125/10, 130/3, 130/11, 151/4,
161/9, 161/13, 164/17, 164/19, 165/7, 165/9, 165/22,
166/4, 166/10, 166/11, 166/21, 166/22, 167/12, 167/23,
187/11, 188/4, 189/4, 190/1, 196/8, 207/10
textbook 148/20
Thank 6/20, 11/10, 16/22, 16/23, 16/25, 19/21,
19/24, 20/8, 20/11, 23/17, 23/22, 29/2, 29/25, 30/1,
31/3, 35/23, 38/4, 38/5, 38/7, 40/5, 40/7, 44/10, 48/1,
48/9, 50/14, 53/1, 53/24, 55/9, 55/18, 56/1, 58/4, 58/5,
58/10, 58/12, 58/13, 60/13, 61/9, 61/20, 62/17, 62/18,
63/4, 65/18, 67/14, 67/16, 68/1, 70/4, 72/21, 73/17,
74/17, 75/24, 75/25, 76/1, 76/14, 76/16, 77/22, 77/23,
86/6, 86/9, 87/23, 87/25, 89/8, 89/10, 89/13, 89/15,
89/19, 89/20, 92/17, 92/18, 92/19, 92/22, 97/14, 98/6,
98/23, 99/19, 99/20, 103/12, 106/2, 107/13, 107/16,
109/18, 109/20, 110/24, 111/1, 112/24, 113/1, 113/2,
113/22, 114/22, 115/12, 115/15, 119/2, 119/4, 119/6,
120/15, 120/16, 120/18, 122/16, 122/18, 122/19, 124/4,
125/1, 130/9, 131/13, 131/18, 134/24, 138/8, 140/5,
144/3, 156/13, 156/23, 158/23, 161/3, 161/14, 163/13,
164/5, 168/3, 177/6, 184/13, 186/10, 188/18, 188/22,
203/11, 205/22, 206/2
Thanks 107/6, 175/19, 181/11
Thereupon 206/4
They've 82/14, 94/17, 181/9
third 38/18, 69/15, 71/24, 72/4
thousand 91/24, 91/25
threatened 17/14
threatening 158/2, 182/17, 183/16
three 10/25, 12/7, 15/17, 16/15, 38/2, 45/1, 88/6,
107/18, 110/3, 113/18, 116/24, 135/7, 161/19, 200/6,
203/19

throats 66/8
 thrust 37/8
 ticket 58/1
 tie-in 79/15
 tied 176/2
 timber 96/6
TIME 1/18, 6/14, 8/25, 9/5, 16/21, 17/7, 21/12, 27/15, 32/4, 32/8, 32/20, 38/14, 48/16, 50/7, 51/9, 51/11, 52/10, 52/24, 55/4, 62/14, 76/25, 77/2, 78/1, 78/17, 83/7, 84/5, 92/17, 95/21, 97/18, 98/5, 98/18, 98/22, 100/7, 104/20, 104/22, 105/7, 108/6, 108/12, 110/3, 110/15, 110/19, 114/14, 116/18, 116/22, 119/10, 122/4, 122/20, 123/1, 133/12, 133/18, 137/12, 138/3, 146/8, 157/11, 158/17, 161/2, 161/11, 161/18, 162/8, 162/15, 165/20, 166/17, 166/18, 168/7, 168/13, 170/9, 172/1, 182/4, 183/19, 187/11, 187/22, 189/1, 190/9, 190/10, 191/5, 191/8, 191/10, 191/19, 191/22, 193/12, 193/23, 196/17, 197/25, 198/15, 199/1, 199/2, 200/4, 200/9, 200/13, 201/12, 201/19, 201/22, 202/19, 203/18, 204/17, 205/18, 207/5
 timely 17/12
 times 16/14, 21/14, 55/3, 121/7, 147/17, 171/25
 tolerated 118/21
TOM 3/22, 87/25, 88/1, 88/4
 tone 118/8, 158/2
TONY 4/17, 124/5, 124/6
 top 60/1
 tore 15/7, 21/20
 torn 20/24, 28/8, 64/25, 66/16, 89/4
 touch 102/17, 103/10
 tough 23/2, 122/10
 toughie 121/13
 town 121/5
 tracks 69/3
 Trail 1/20
 tranquility 115/25
 transcribed 207/8
 transcribing 8/18
TRANSCRIPT 1/10, 1/11, 48/6, 191/24, 192/17, 201/16, 207/8
 transcription 207/9
 transfer 1/6, 6/18, 38/17, 39/12, 73/7
 transgress 12/23
 transpired 78/24
 transpires 10/1
 transporting 94/7
 treated 171/18
 treatment 15/7, 63/16, 71/13, 71/16, 71/25, 95/19, 111/21, 112/3, 112/18, 150/12, 167/1, 171/7, 171/24
 trigger 157/17, 183/24, 184/2
 trouble 18/25, 84/5, 184/1
 true 111/17, 112/16, 132/12, 132/14, 148/22, 169/13, 207/8
 trunk 146/20
 turn 9/9, 51/14, 135/21, 141/15, 142/13
 turned 30/9
 TV 57/15
 twang 42/16
 two 16/13, 18/11, 18/12, 25/10, 27/17, 36/23, 40/14, 42/1, 66/17, 66/23, 67/23, 70/14, 70/22, 81/13, 93/5, 103/22, 110/2, 114/12, 117/2, 121/16, 147/4, 167/19, 177/11, 178/20, 179/20, 180/24, 181/7, 185/16, 189/20, 190/10, 196/4, 197/17, 199/2, 199/4, 200/7, 202/6
 type 71/16, 96/22, 104/23, 104/24, 138/9, 142/14, 148/18, 160/14
 typed 123/16

U

Um 101/19
 unacceptable 38/10
 unapproved 143/23
 unbiased 69/7
 uncertainty 33/21
 unchanged 72/12
 uncollectable 152/3
 unconcerned 59/15
 underground 69/2
 undertaken 102/19
 unemotional 118/23
 unfortunate 22/14
UNIDENTIFIED 7/4, 92/21
 unit 149/12, 150/6, 150/8, 172/10, 172/21, 176/8
 units 174/6, 176/11
 unity 188/21
 unjust 37/7
 unjustified 83/5
 Unlike 93/6
 unlucky 106/15
 up-to-date 19/20
 upset 29/23, 121/12
 usage 172/14, 179/2, 179/25
 user 69/21, 159/5

utilities 12/20, 12/22, 37/20, 59/2, 69/14, 71/5
 Utility 1/7, 2/5, 6/19, 6/25, 7/3, 7/9, 7/11, 7/15, 8/11, 12/15, 13/2, 13/10, 13/14, 14/12, 14/14, 14/15, 14/20, 14/22, 14/25, 15/12, 15/15, 15/20, 15/23, 16/3, 16/14, 16/16, 18/7, 18/8, 19/3, 19/12, 19/25, 24/22, 25/3, 33/13, 33/15, 34/2, 34/8, 34/12, 34/18, 34/19, 35/6, 35/12, 35/15, 36/7, 36/11, 37/9, 39/14, 40/12, 43/7, 43/14, 47/23, 48/12, 48/24, 57/24, 64/24, 65/11, 65/15, 66/15, 69/10, 69/13, 72/16, 77/6, 77/17, 79/8, 79/22, 80/7, 80/13, 81/12, 81/24, 88/16, 93/14, 93/22, 94/1, 94/4, 94/15, 94/21, 95/11, 95/23, 96/8, 96/11, 97/19, 98/1, 100/2, 100/4, 100/12, 100/15, 101/1, 101/3, 101/16, 108/6, 108/10, 111/18, 122/2, 124/5, 124/8, 124/23, 130/15, 131/2, 131/14, 131/24, 132/23, 132/24, 133/11, 134/16, 134/18, 134/20, 135/12, 135/24, 143/8, 144/9, 144/25, 145/13, 145/25, 146/11, 146/16, 147/3, 147/7, 152/1, 152/2, 153/16, 155/20, 156/3, 156/4, 162/14, 164/1, 164/3, 167/3, 169/9, 169/18, 170/21, 170/25, 171/5, 171/12, 172/25, 178/5, 179/15, 180/11, 189/10, 189/15
 Utility's 13/1, 13/5, 16/10, 26/1, 156/15, 170/5

V

validly 40/2
 value 13/4, 13/10, 114/14, 173/7
 values 118/19
VANZYL 4/8, 111/3, 111/4, 111/7, 111/10
 variation 176/12
 version 47/24
VERSIONS 1/10
 Vice 102/24, 130/23
 victim 168/15, 168/16, 168/18, 168/21
 victimize 111/19
 view 93/11
 views 10/14
 violate 15/1
 violation 69/9, 79/1, 79/2, 132/8
 violations 15/21, 172/1
 Vistas 48/5, 116/24
 voice 204/25
 void 140/21, 141/5
 voluminous 191/16
 vote 29/20, 47/1
 votes 47/2, 47/4, 47/8, 47/21

W

W-A-R-D 121/1
 wait 27/17, 52/7, 63/14, 100/17
 waiting 9/9, 51/16, 103/7
 waive 42/14, 42/18, 43/17, 43/20, 195/20, 196/22, 197/2
 waives 43/4
 walk 86/23, 87/14
WALKER 3/16, 70/7, 70/9, 70/12, 73/16, 74/18, 75/24
WARD 4/14, 120/22, 120/25
WARREN 4/3, 103/13, 103/15, 103/18, 104/19, 105/7, 105/18, 105/21, 105/25, 106/2, 106/7, 106/11, 106/15, 106/19, 106/23, 107/2, 107/10, 107/14
 washroom 57/15
 waste 59/20, 94/22, 95/24
 Wastewater 2/25, 12/24, 13/5, 13/6, 13/11, 13/17, 14/4, 14/6, 14/8, 14/14, 14/16, 15/7, 16/4, 16/5, 16/13, 17/9, 20/6, 33/17, 34/5, 35/15, 36/4, 37/11, 37/14, 59/24, 60/11, 63/15, 63/23, 71/13, 93/14, 144/7, 159/14, 160/6, 167/1, 169/14, 170/20, 171/7, 171/24, 172/25
 watches 78/12
 Water 2/25, 34/20, 34/21, 34/24, 37/4, 57/16, 57/18, 57/20, 90/9, 90/13, 91/1, 91/6, 91/8, 91/12, 91/21, 92/1, 92/3, 92/7, 92/11, 92/14, 106/13, 106/20, 106/22, 107/3, 107/9, 137/14, 137/17, 141/19, 142/1, 144/6, 172/12, 172/14, 176/21
 watering 57/16
 weather 17/3
 Wednesday 1/17
 week 198/8, 201/17
 weeks 66/17, 135/7, 150/23, 199/10
 welcome 107/14, 122/14
 welfare 37/23, 38/3
 West 2/8
 wife 57/14
 wild 153/11
 willing 70/17, 148/23, 150/17, 153/4, 197/1, 200/2, 200/9, 204/4
 Windmill 174/24, 185/1
 winter 17/2
 wish 10/12, 11/4, 11/6, 27/15, 32/8, 40/23, 44/12, 51/17, 52/5, 52/15, 57/9, 95/4, 113/19, 119/18, 181/14
 wishes 56/18, 119/10

withdraw 53/13, 54/7, 54/9, 64/3, 143/16, 144/20, 166/11
 withdrawn 165/10, 165/13, 165/15, 165/17, 165/23, 166/4, 166/6, 166/8, 166/15, 167/13, 189/12
 witness 40/21, 40/22, 41/22, 53/2, 55/19, 57/2, 57/4, 57/11, 58/12, 58/17, 58/19, 60/23, 61/8, 61/15, 62/2, 62/4, 62/15, 62/21, 62/23, 63/14, 63/21, 64/5, 64/8, 64/14, 64/16, 65/22, 65/24, 67/4, 67/7, 67/19, 67/21, 68/5, 68/7, 70/10, 70/12, 73/16, 74/4, 74/18, 75/24, 76/5, 76/7, 76/19, 76/21, 85/7, 86/14, 86/16, 88/2, 88/4, 89/23, 89/25, 90/7, 90/18, 90/25, 91/3, 91/16, 91/19, 91/22, 92/4, 92/6, 92/9, 92/13, 93/2, 93/4, 95/7, 95/22, 96/7, 96/17, 96/25, 97/3, 101/9, 103/16, 103/18, 104/19, 105/7, 105/18, 105/21, 105/25, 106/2, 106/7, 106/11, 106/15, 106/19, 106/23, 107/2, 107/10, 107/14, 109/2, 109/4, 109/23, 109/25, 111/4, 111/8, 111/10, 114/2, 114/4, 115/2, 115/19, 115/21, 119/5, 119/16, 120/2, 120/4, 120/14, 120/23, 120/25, 123/23, 124/3, 124/7, 133/4, 134/14, 134/16, 138/13, 140/14, 140/23, 141/9, 142/23, 142/25, 143/4, 147/20, 147/25, 148/12, 150/2, 150/5, 150/9, 150/14, 155/4, 156/11, 158/22, 161/9, 163/14, 163/23, 168/5, 170/16, 172/9, 172/13, 172/16, 173/23, 174/2, 174/14, 174/19, 174/22, 175/3, 175/9, 175/12, 175/24, 176/7, 176/14, 176/18, 176/21, 176/25, 177/5, 177/24, 178/2, 178/6, 178/13, 178/16, 178/19, 178/25, 179/3, 179/7, 179/13, 179/17, 179/19, 180/2, 180/6, 180/16, 182/19, 186/20, 188/1, 188/3, 207/10
 witness' 41/17
WITNESSES 3/2, 51/5, 52/20, 52/25, 54/13, 56/3, 56/10, 97/4, 98/11, 98/15, 98/18, 98/19, 107/18, 119/8, 119/21, 123/14, 123/20, 138/18, 151/3
 witness 113/16
 woke 70/13
 wonder 107/21
 wondered 117/15
 wondering 117/20
 word 71/7, 95/10
 wording 156/3, 156/5, 156/6
 words 18/1, 18/5, 56/12, 136/23, 138/4, 144/3, 152/10, 153/9, 160/17, 160/23, 166/7
 work 14/24, 15/14, 22/10, 22/24, 60/3, 66/3, 66/22, 73/4, 93/6, 105/5, 105/15, 139/14, 163/7, 188/9, 188/10, 192/21, 204/11, 205/9
 workable 202/1
 worked 71/19, 73/8, 77/3, 104/8, 115/8, 204/16
 working 16/5, 52/2, 67/13, 71/15, 104/9, 104/10, 104/25, 105/14, 121/2, 122/5, 142/2
 Works 108/18
 worth 132/1, 132/5, 132/6
 worthless 19/9
 wraps 28/24
 write 10/15, 158/5, 191/9, 193/25
 write-off 117/6
 writing 80/24
 written 18/6, 37/18, 123/12, 123/17, 141/21, 142/5, 195/22
 wrong 12/19, 13/2, 97/21
 wrongfully 12/22
 wrote 70/14, 173/3

X

X 3/1, 4/1

Y

year 59/12, 68/11, 88/8, 91/24, 106/17, 112/13, 141/17, 155/17, 160/7, 160/13
 years 22/4, 27/21, 57/13, 62/6, 66/1, 66/22, 71/15, 71/17, 71/20, 72/8, 72/9, 76/24, 77/11, 88/6, 90/2, 90/8, 90/24, 91/17, 93/6, 99/25, 106/11, 109/5, 109/11, 110/2, 110/3, 110/10, 115/8, 115/23, 115/24, 116/12, 116/13, 121/2, 147/4
 yield 77/24, 168/6
 yielded 18/14
 yields 78/1
 young 62/13

Z

Zeke 86/19, 86/25