

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: TRIAL TERM PART 3  
3 - - - - - X

3 In the Matter of the Applicaiton of  
4 JOSEPH YAKUEL, AGENCY WITHIN LLC  
5 and GET THINGS DONE LLC,

5 Petitioners, INDEX NO.  
6 For Judgment Confirming an Appraisal Award 158184/19

7 - against -

8 ANDREW GLUCK,

9 Respondent.

10 - - - - - X

10 In the Matter of the Application of  
11 JOSEPH YAKUEL, AGENCY WTIHIN LLC and  
12 GET THINGS DONE LLC

13 Petitioners,

14 - against - INDEX NO.  
15 For Judgment Vacating an Arbitration Award 654245/20

16 ANDREW GLUCK,

17 Respondents.

17 - - - - - X

18 60 Centre Street  
19 New York, New York  
20 December 16, 2020

21 MICROSOFT TEAMS TELECONFERENCE

22 BEFORE:

23 HONORABLE JOEL M. COHEN,  
24 Justice

25 APPEARANCES:  
(Continued on next page)

Bonnie Piccirillo - Official Court Reporter

Appearances

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ROBINS KAPLAN LLP  
Attorneys for the Petitioners  
399 Park Avenue - Suite 3600  
New York, New York 10022  
BY: MICHAEL KOLCUN, ESQ.

COOLEY LLP  
Attorneys for the Respondent  
55 Hudson Yards  
New York, New York 10001  
BY: DAVID KUPFER, ESQ.  
RACHEL THORN, ESQ.  
JASON FILE, ESQ.

Bonnie Piccirillo  
Official Court Reporter

Bonnie Piccirillo - Official Court Reporter

Proceedings

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Why don't we go on the record.

Good afternoon, counsel. Let's begin with entry of the appearances, and if you can when you give your appearance let me know who will be the principal spokesperson for the argument.

All right, let's start with the plaintiff.

MR. KOLCUN: For the petitioners, this is Michael Kolcun, Robins Kaplan. I will be the only one arguing the motions before you today, and included also with this on the phone is Petitioner Joseph Yakuel, as well as Agency Within's inhouse counsel.

MR. KUPFER: Good afternoon, this is David Kupfer of Cooley LLP for Mr. Gluck, the Respondent. I'm accompanied today by my colleagues, Jason File and Rachel Thorn of Cooley LLP and also Mr. Gluck is on the line.

THE COURT: Okay, good afternoon. Thanks very much for your briefs which are extremely good and this has kind of an interesting legal thicket, and one thing I do think is that it was good to have both of these proceedings coordinate because it really is necessary to have both the entire dispute in front of me so that we don't end up with inconsistent results, which I think is important especially here since this is unusual, not unprecedented because some other cases have this, too, where you have -- there is a

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1           deference to arbitration and appraisal decisions, for sure.  
2           But then here you have two of them, and to some extent  
3           depending on how you read them, one overlaps with the other.  
4           So it raises some interesting questions about what my role  
5           is and what the arbitrators roles are.

6                        So, anyway, I'm sure it's of great interest to you  
7           to know that I find it interesting, but more important is to  
8           know what we do about it.

9                        So why don't -- I suppose everybody is moving for  
10          something, but petitioners are moving for confirmation of  
11          the Appraisal Award and partial vacatur of the Arbitration  
12          Award.

13                       Respondents are moving for confirmation of the  
14          Arbitration Award, and I guess in the alternative,  
15          potentially for the vacatur of the Appraisal Award. Is that  
16          about right?

17                       MR. KOLCUN: Roughly, yes, your Honor.

18                       MR. KUPFER: Yes, your Honor.

19                       THE COURT: So, why don't we start with the  
20          analyzing the this arbitration and Mr. Gluck is seeking to  
21          confirm that Award, yes?

22                       MR. KUPFER: Yes, that is correct.

23                       THE COURT: So why don't you start.

24                       MR. KUPFER: Sure, your Honor.

25                       So, as your Honor is aware, there was an  
                      Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 arbitration that took place before the AAA. It was  
2 commenced by petitioners a long time ago in October of 2018,  
3 and it proceeded all the way through this July, July of  
4 2020. It was a very contentious and active arbitration in,  
5 which we were litigating Mr. Gluck in addition to rescission  
6 claims, which have been denied. I'll put that aside for  
7 now. We were litigating primarily Mr. Gluck's state law  
8 breach of contract and fiduciary duty claims related to his  
9 exclusion from an appraisal that was conducted by PwC and  
10 related to improper information that was submitted to PwC by  
11 petitioners and this was really about petitioners' conduct  
12 in the appraisal and Mr. Gluck's state-law claims about the  
13 that conduct.

14 We had an arbitration hearing last February and we  
15 had an Arbitration Award that was issued, Final Award in  
16 July; and what the arbitrator held was he found in favor of  
17 Mr. Gluck on liability, on his breach-of-contract claim, for  
18 being excluded from the appraisal process. The arbitrator  
19 specifically found that Mr. Gluck had a right under the  
20 amendment to participate in that appraisal and that he was  
21 denied that right. And he found that the measure of damages  
22 was expectation damages, which was the delta between what he  
23 would have received had petitioners not breached and what he  
24 actually received. And petitioners here are moving to  
25 partially vacate the Final Award and really vacate the Award

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 on that issue.

2 And, as you know, it is their burden to establish  
3 that there's a ground for vacatur. The grounds for vacatur  
4 under the FAA are exclusive and they are narrow, and  
5 judicial review is extremely limited of an Arbitration  
6 Award.

7 Petitioners cite a number of grounds for vacatur,  
8 but really what their quarrel is boils down to this:  
9 Petitioners disagree with the way in which the arbitrator  
10 awarded money damages on a breach-of-contract claim that  
11 petitioners concede was properly before the arbitrator.

12 Petitioners try to shoehorn that argument into a  
13 number of theories of vacatur, but in their latest brief --  
14 I think their latest brief is really insightful and helps  
15 narrow the issues for the court. Because in their latest  
16 brief they very clearly concede or admit that the arbitrator  
17 had jurisdiction to hear Mr. Gluck's breach-of-contract  
18 claim. They say it on the first sentence of their brief.

19 Gluck argues that petitioners contest the  
20 arbitrator's jurisdiction to hear his claims. Petitioners  
21 do not.

22 So they admit that the arbitrator could hear the  
23 claims. They also admit that the arbitrator was empowered  
24 to award money damages. This is, again, in a preliminary  
25 statement on page 11.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1           They further concede that Gluck could seek money  
2 damages by and, I quote, "showing how he was injured by  
3 allegedly being excluded from the appraisal process."

4           And, finally, they admit that Gluck could have used  
5 expert testimony to show how adjustments based on his --  
6 Gluck's participation would have impacted the PwC appraisal.  
7 They concede all of that.

8           Their problem, though, is specifically what  
9 evidence the arbitrator relied on in awarding damages.

10           THE COURT: Well, that's not really -- I mean,  
11 look. This really just boils down to whether the award is  
12 inconsistent with the contract provision saying that  
13 valuation should be done by an appraiser. That's it, right?

14           In other words, everything else the arbitrator did  
15 in terms of finding liability and having everything, the  
16 only -- it seems to me the main question is was it within  
17 the arbitrator's permissible remit to essentially come up  
18 with a different value for the shares because that's the  
19 effect of it; right? I mean, you can describe it in  
20 different ways, but, Pricewaterhouse comes up with X-number;  
21 he takes valuation evidence, comes up with Y-number and  
22 orders the difference; but the end result of it -- I'll just  
23 put this as a devil's advocate question. The end result of  
24 it is that the appraisal has been completely eviscerated.

25           MR. KUPFER: Well, your Honor, let me take that in  
Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 two different ways. One, I don't think that what the  
2 arbitrator did is eviscerate the appraisal. The appraisal  
3 happened. It's done and that's separate.

4 What the arbitrator was dealing with was a claim  
5 that the petitioners agree was in front of him and he was  
6 awarding damages, and they admit that the arbitrator could  
7 award those damages. Their real quarrel is they go back to  
8 petitioner's -- to respondent's expert and they start  
9 quoting the expert. What they don't quote is the language  
10 of the Final Award.

11 In the Final Award in Paragraph 95 the arbitrator  
12 says, "The damages to which Mr. Gluck is entitled are the  
13 difference between the PwC valuation of his units and the  
14 amount he would have received had claimants not breached."

15 Again, in paragraph 108, the arbitrator finds that  
16 the evidence submitted to him was a sufficient proxy for  
17 those expectation damages --

18 THE COURT: We're following each other around in a  
19 circle. I mean, I understand the way it was described was,  
20 basically, but for the breach of contract; meaning but for  
21 the conduct then excluding Mr. Gluck and whatever  
22 information was provided, this is what a valuation would  
23 have shown. That is how this is basically constructed,  
24 right?

25 That this is the but for valuation that would have



## Proceedings

1 happened if Mr. Yakuel had done what he was supposed to do  
2 in connection with the valuation.

3 MR. KUPFER: Right, so I want to cite the case law  
4 here. I think the cases are extremely important.

5 THE COURT: I agree.

6 MR. KUPFER: So I think there's two groups of  
7 cases. The cases that they cite and I'll discuss them  
8 briefly and then the cases that we cite. So the cases that  
9 say cite are really for and in each and everyone of those  
10 cases the claims that were brought were about redetermining  
11 the appraiser's determination directly. It wasn't about  
12 conduct from the parties. It was about direct  
13 redetermination.

14 In Cendant v. Forbes, the parties sought  
15 redetermination of the same issues that had already been  
16 decided by the auditors.

17 In Whirlpool v. Phillips, they were trying to  
18 arbitrate the exact issue that was put in front of Arthur  
19 Anderson.

20 In Katz v. Feinberg, the party was challenging the  
21 accountant's determination of applicable accounting  
22 principles, like GAAP. In addition, also, the party was  
23 seeking to overrule the appraiser's determination.

24 Here, you have a state law claim which everyone  
25 agrees was properly before the arbitrator, and the

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 appropriate case to look at -- there's two, but the most  
2 important one I think is Blue Tee. Blue Tee is a case  
3 that's directly on point.

4 There was an appraisal that happened, and there was  
5 a legal question about contract interpretation that was left  
6 by the accountants left unresolved. A party sought  
7 resolution of that in a AAA Arbitration and they resolved  
8 that. And what was being challenged then was they said,  
9 Okay, the party that was challenging the AAA Arbitration was  
10 arguing, AAA you should decide the liability of the claim  
11 and then send it back to the accountants to determine the  
12 monetary relief; and what the Second Circuit said, and I  
13 quote, "Nothing in the language of the arbitration clause  
14 itself suggests that the AAA arbitrators have decided an  
15 issue within -- that once the arbitrators have decided an  
16 issue within their confidence, they are barred from  
17 quantifying the effects of their ruling. The broad language  
18 of the arbitration clause empowers the AAA arbitrators to  
19 render a final and binding award enforceable in a court of  
20 competent jurisdiction."

21 "When the dispute proceeded to arbitration before  
22 AAA, the AAA panel was fully empowered to interpret the  
23 agreement and the rights and obligations of the parties and  
24 to fashion appropriate relief."

25 Your Honor, their concession that the claim was

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 properly in front of the arbitrator is the ball game right  
2 here because the cases all say that there is broad  
3 discretion by the arbitrator once you have a claim properly  
4 before you to fashion appropriate relief --

5 THE COURT: Even if, even if the relief -- I mean,  
6 there's word play here, but, effectively, they made a new  
7 valuation.

8 MR. KUPFER: That's exactly what happened -- I'm  
9 sorry, that's exactly what happened in Blue Tee and that's  
10 exactly what happened in XL Capital v. Kronenberg as well.  
11 That case -- both of those cases were the courts readily  
12 said, We understand that this is going to affect the  
13 appraisal, but these claims are properly before arbitration  
14 and not before the accountants. And there the distinction  
15 really is is the party challenging and seeking a  
16 redetermination of the appraisal, or is the party seeking  
17 appropriate separate claims while they may have an impact on  
18 the appraisal, they're completely separate.

19 THE COURT: Blue Tee was a pretty complicated set  
20 of facts, even the Second Circuit said ordinarily -- I think  
21 they said, Ordinarily we wouldn't do this. But here you had  
22 this sort of complicated situation where there were multiple  
23 proceedings and the question of there was a legal question  
24 that the appraiser specifically deferred on saying, Well,  
25 we're not going to consider that. And, that's not kind of

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 what's going on here.

2 I guess here the appraisers knew they didn't hear  
3 from Gluck. And, look, I'll let you get back to it, but  
4 I've said this from the beginning in this case and made some  
5 rulings, I think they were rulings on it, that effectively  
6 the question here is, whether -- well, actually, I want to  
7 get to my point in a different way.

8 Why don't you continue and then I'll ask you the  
9 question that I have.

10 MR. KUPFER: Sure, your Honor. I think that the  
11 Second Circuit found very instructive that a party had  
12 conceded that the claim was properly before the arbitrator,  
13 which is identical to the situation we have here where the  
14 party concedes the claim is before the arbitrator and the  
15 real question --

16 THE COURT: Well, what the issue is before the  
17 arbitrator, they say, Well, we agree that the arbitrator  
18 could decide the breach of contract and can find damages  
19 rising from it, but just not the valuation.

20 So, they don't agree that the valuation issue is in  
21 front of the arbitrator.

22 MR. KUPFER: And the valuation issue wasn't  
23 litigated there as it wasn't here. The arbitrator here  
24 decided -- had this question multiple times, your Honor, and  
25 the cases of Blue Tee and Katz were argued multiple times.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 And if you look to the arbitrator's ruling, especially  
2 prehearing order 13, which is Exhibit E to our petition, and  
3 you look at the Final Award, the arbitrator really uses Blue  
4 Tee and Katz as the guideposts to what he can and cannot do.

5 He says, I cannot tinker with the appraisal. I  
6 cannot overrule the appraisal. That is for the Court. I  
7 can award damages; and that decision, your Honor, was really  
8 a decision which was delegated to the arbitrator by the  
9 parties, by the incorporation of the AAA rules and by  
10 litigating it and bringing it again and again and again to  
11 the arbitrator. This was the decision that was decided  
12 multiple times, and what they're seeking now is like a fifth  
13 bite at the apple under de novo review.

14 And I want to just draw a distinction between this  
15 case and Katz on the issue of delegation of jurisdiction.  
16 Right, in the Katz case, the court said, When we decide who  
17 decides the scope of jurisdiction, we look to the language  
18 of the contract and there, the contract -- the parties were  
19 silent on who decides jurisdiction and there's two clauses.

20 So, therefore, we find ambiguity and under the case  
21 law it says you need a clear and unmistakable delegation.  
22 We find there wasn't a clear and unmistakable delegation.

23 But here, there's a very different situation. We  
24 have -- in Katz, the AAA rules had not yet been amended to  
25 include rule 7A which says the arbitrator is delegated the

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 authority to cite his or own jurisdiction, and that was the  
2 Katz arbitration happened in '96 and '97; and the rules were  
3 amended in -- did we lose the judge?

4 MR. ROSEN: Counsel, this is Justice Cohen's  
5 assistant law clerk. Just wait everybody for a moment, as  
6 we wait for Justice Cohen to join back in. Justice Cohen's  
7 computer just froze up. He is restarting everything. He  
8 should be backup momentarily. Thanks for your patience.

9 (Brief pause)

10 THE COURT: All right, sorry about that. Why don't  
11 you go ahead, Mr. Kupfer. Sorry about that.

12 MR. KUPFER: No problem.

13 So, I was in the middle of drawing the distinction  
14 between Katz v. Feinberg and the situation we're presented  
15 here with regard to deference to the arbitrator's decisions  
16 on its own jurisdiction. And whereas in Katz, there was no  
17 incorporation of a rule by the parties that said that the  
18 arbitrator gets -- has the power to decide its own  
19 jurisdiction.

20 Here, the modern rules which are incorporated by  
21 the parties do expressly delegate that authority to the  
22 arbitrator. And every case which has dealt with the  
23 situation where you have incorporation of the rules has  
24 found that the party clearly and unmistakably delegated the  
25 power to the arbitrator.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 THE COURT: Well, let's assume there was no  
2 appraisal. Just you go straight into arbitration and just  
3 basically ignoring the whole appraisal process. And  
4 somebody came to me and said, I want you to stay the  
5 arbitration because appraisal is a question for an  
6 accountant under the contract.

7 Wouldn't the first question I'd be asked is whether  
8 there was an agreement to arbitrate and only then is the  
9 question of arbitrability up to the arbitrator?

10 So couldn't you say that there is no agreement to  
11 have somebody other than the appraiser do the appraisal?  
12 You don't even get to arbitrability. There's just no  
13 agreement.

14 MR. KUPFER: Your Honor, I think in that -- I'll  
15 say two things in regard to that hypothetical.

16 One is I don't think that that's the situation here  
17 at all because there in that hypothetical, the claim would  
18 have been can you evaluate how much should be paid to  
19 Mr. Gluck and that question is not what was put forth.

20 THE COURT: Sorry, go ahead.

21 MR. KUPFER: So, the question of how much to pay  
22 Mr. Gluck is not the question before the arbitrators. It's  
23 much was he injured by the conduct of the parties.

24 But separately from that, I think that's what you  
25 do, is you look at the contract and you say is there an

Proceedings

1 arbitration clause and is the arbitration appropriate?

2 Here, you have to remember petitioners commenced  
3 the arbitration. They commenced the arbitration citing in  
4 their motion to compel arbitration they specifically said,  
5 this is -- you talked about -- this talked about appraisal  
6 issues. That was what they told Justice Sherwood. They  
7 said every issue in Mr. Gluck's state law claim, which he  
8 had already asserted in court were properly before the  
9 arbitrator and that the arbitrator was delegated authority  
10 to cite his or her own jurisdiction.

11 So the hypothetical here is really incorrect  
12 because this was already started by petitioners and they  
13 said that it's appropriate.

14 So --

15 THE COURT: Well, let me hear from your opponent  
16 just on this point. I know you have more to say and I'll  
17 let you come back, but I'd like to hear the other side.

18 MR. KUPFER: Sure.

19 MR. KOLCUN: Sure, just on the specific question of  
20 arbitrability or the waiver argument that Mr. Gluck's  
21 asserting?

22 THE COURT: Yes, you're the one seeking to vacate  
23 so the burden is on you, so just take a full swing.

24 MR. KOLCUN: I'm sorry, again, just on that  
25 discrete question or --

Bonnie Piccirillo - Official Court Reporter



Proceedings

1 THE COURT: No, your whole argument on vacating.

2 MR. KOLCUN: Great. Thank you, your Honor.

3 When a contract calls for a final and binding  
4 valuation by an appraiser, it prohibits, quote, "Arbitration  
5 of the valuation or a remedy that alters it."

6 That is from the District Court's opinion in Katz.  
7 It vacated an arbitrator's findings on valuation issues and  
8 it refashioned a final and binding valuation and the Second  
9 Circuit affirmed it.

10 Katz is this case almost nearly factually and  
11 certainly with respect to every single one of the legal  
12 issues that is before the Court right now. And,  
13 particularly, the District Court's opinion in Katz is very,  
14 very informative on all of this.

15 And, in fact, a year ago last December when you  
16 denied Mr. Gluck's motion to compel the arbitration  
17 evaluation issues on motion three, you've already found that  
18 Katz is controlling on the questions over final and binding  
19 valuations.

20 And you also already decided the arbitrability,  
21 waiver and the similar jurisdiction argument that we're kind  
22 of relitigating here.

23 The arbitrator over our repeated objections  
24 considered and decided valuation issues that were beyond the  
25 scope of his authority and here's, essentially, what

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 happened.

2 Mr. Gluck did assert claims that he was being  
3 excluded from the appraisal. Those claims were arbitrable,  
4 and Mr. Gluck could have sought appropriate money damages  
5 under those claims. But instead of showing how he was  
6 damaged by not being included in PwC's appraisal, what he  
7 did was he hired his own appraiser and then he changed his  
8 claim to a challenge to PwC's valuation, including its  
9 professional valuation methods. And then he sought his own  
10 valuation as a remedy, things that had never happened before  
11 in the arbitration and that we had never agreed to.

12 And in our papers, we cited a number of those  
13 instances, both in the expert report of his own appraiser,  
14 Mr. Bruce Bingham, where he says, I'm contesting PwC's  
15 methods. I have my own independent calculation of fair  
16 market value. I find the fair market value is X.

17 That was not a damages calculation, and, in fact,  
18 the word "damages" isn't even anywhere in his report.

19 It was absolutely a challenge to each one of PwC's  
20 professional discretionary methods, and Mr. Bingham,  
21 Mr. Gluck's appraiser, at the arbitration hearing testified  
22 he didn't offer an opinion on what it would have been if  
23 Mr. Gluck was included in the actual appraisal. In other  
24 words, he didn't analyze what Mr. Gluck had actually pled.  
25 He just conducted his own valuation as of the exact same

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 date as PwC's final and binding valuation, contesting the  
2 methods and contesting a number of other issues with respect  
3 to PwC. Not with anything the petitioners did.

4 And then Mr. Gluck earlier had said that, Well, we  
5 hadn't really focused on the Arbitration award, but I'd like  
6 to do that just very briefly.

7 Paragraph 95 of the Award. The arbitrator found  
8 that Mr. Bingham provided a valuation that reflects an  
9 appraisal conducted in a manner consistent with the  
10 amendment. But, Mr. Bingham wasn't one of the enumerated  
11 appraisers in the amendment, and Mr. Bingham reached a  
12 valuation of Agency Within that usurps PwC's final and  
13 binding valuation.

14 Paragraph 101, the arbitrator found that  
15 Mr. Bingham's EDITDA multiple was better than PwC.

16 Paragraph 103, the arbitrator found that  
17 Mr. Bingham's WACC rate was, quote, more reliable than PwC's  
18 which added 14 million alone to the total valuation.

19 And then in Paragraph 108, he said that Bingham's  
20 valuation is a sufficiently accurate proxy for PwC.

21 And the actual damages -- well, it wasn't even  
22 damages, but what was actually awarded if you go to the end  
23 of that section at Paragraph 109 of the Arbitration Award,  
24 the arbitrator adopted Mr. Bingham's valuation wholesale of  
25 Mr. Gluck's 35 percent interest. And even, even beyond

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 that, he not only awarded him the new valuation, it wasn't  
2 just money damages. He said it's going to be paid pursuant  
3 to the terms of the promissory note in the amendment, which  
4 is the entire final and binding valuation that PwC had  
5 already done.

6 So what happened was, the arbitrator took PwC's  
7 valuation on the one hand and Mr. Bingham's on the other and  
8 compared them and made judgment calls over valuation methods  
9 and agreed with Mr. Bingham in every single respect where he  
10 challenged PwC and that's, obviously, a collateral attack on  
11 the PwC valuation. Because if Mr. Bingham can opine that  
12 Agency Within had a different value as of the exact same  
13 date as PwC, then PwC is not final and binding.

14 THE COURT: Well, it's a quirky set of facts. As I  
15 think I made clear to your colleague, I mean, it's hard to  
16 call this anything other than a reappraisal. That's  
17 effectively what you end up with, but there are a couple of  
18 arguments that the arbitrator makes in the -- he was  
19 obviously the very smart guy and he knows his stuff in a lot  
20 of areas.

21 First of all, he said Judge Sherwood when he told  
22 Mr. Gluck to pound sand, essentially, that you can't get  
23 involved; well, you can go get damages later, not saying  
24 exactly what damages meant, which is arguably somewhat  
25 analogous to some things that were going on in Blue Tee.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1                   And then he also said that there's a different  
2                   standard, right, and I've made this point before that what  
3                   Mr. Gluck is really talking about in the normal world is  
4                   basis for vacating the appraisal. One of the grounds for  
5                   vacating it is that he didn't have a chance to put your case  
6                   in front of the appraiser, which in fact is the basis for my  
7                   opinion a few months ago. Saying that if you can show what  
8                   it is Mr. Gluck is trying to show, then the remedy for that  
9                   is to vacate the appraisal and go back to either that  
10                  appraiser or maybe a different one and do it the right way.

11                  Interestingly, one of the fact findings in the  
12                  arbitration essentially finds the facts that I thought we  
13                  were going to have to litigate here, but I'm not sure we do  
14                  anymore.

15                  So, but, you know, his point was the burden of  
16                  proof on Mr. Gluck in the vacating the appraisal setting is  
17                  very high. You have to show, basically, a lack of due  
18                  process and it doesn't matter what your contract rights are;  
19                  whereas, the standard under the contract might be more  
20                  flexible.

21                  So, it does leave you with the question of well  
22                  what were they supposed to seek in the arbitration that  
23                  Judge Sherwood sort of directed them to, and you're saying  
24                  it is sort of out-of-pocket kind of damages and that doesn't  
25                  sound like what he was talking about. He was saying --

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 again, I don't know what he was doing was a holding. Things  
2 do you in the context of a preliminary injunction are one  
3 thing, and of course I later said that that Mr. Gluck does  
4 have the possibility of vacating the Award because he wasn't  
5 allowed to participate.

6 Anyway, I thought those arguments were not -- those  
7 were credible arguments as to why he has to do something,  
8 because there's nobody else to do it.

9 MR. KOLCUN: Sure, and Mr. Gluck could have sought  
10 appropriate money damages, which we thought that he was  
11 going to do until late 2019 when the claim for the first  
12 time was morphed to inject valuation issues that never were  
13 at issue before and never were at issue before Justice  
14 Sherwood, which is why last year you denied the waiver and  
15 arbitrability arguments.

16 And what Mr. Gluck could have done was he could  
17 have said, Well, it is excessive costs or it's out of pocket  
18 like you had just surmised; or for a long time what we had  
19 intimated Mr. Gluck was going to do was to say, Here's  
20 everything that I was going to tell and give to PwC that I  
21 allegedly didn't get a chance to. I have hired an expert to  
22 take these facts, like maybe I disagree with the expenses,  
23 or the salaries of company employees were too high, just the  
24 facts. And I will then take Mr. Gluck's opinions on those  
25 issues and insert them into PwC's valuation model. Not

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 change PwC's methods, not change its WACC rate, the  
2 guideline public companies. Any of the professional  
3 discretionary items that the parties had delegated to PwC,  
4 we would be in a very different situation had Mr. Gluck  
5 actually tried to quantify what he lost from allegedly being  
6 excluded from PwC's appraisal as opposed to just saying, I  
7 hired my own appraiser and here's what he thinks the  
8 valuation is.

9 THE COURT: That's kind of a fine distinction. So  
10 your point is he could have reached -- the arbitrator could  
11 have essentially topped up the Pricewaterhouse number and  
12 come up with a different number. He just had to defend it a  
13 different way? It had to be within -- in other words, he  
14 would have had to tie the changes to specific things that  
15 that Mr. Gluck raised. He couldn't argue for a de novo  
16 valuation.

17 MR. KOLCUN: He would not have even touched pure  
18 accounting and valuation issues, and he actually would have  
19 awarded true money damages instead of a brand new appraiser  
20 that was hand picked and paid for and paid by Mr. Gluck, an  
21 expert witness.

22 THE COURT: But Mr. Gluck's problems with  
23 Pricewaterhouse, are they that easily cabined? It seems  
24 like his being left out of the process, it was pretty  
25 broad-based. I mean, you could certainly argue that you

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 have to maybe not start from scratch, but he was saying he  
2 didn't have a chance to argue his case. And so being able  
3 to argue your case could include all of those things you  
4 just listed in terms of the WACC rate and whatever else.

5 MR. KOLCUN: Well, so here's the thing. Mr. Gluck  
6 had every single communication back and forth to PwC. What  
7 Mr. Gluck chose not to do for only he knows is argue that  
8 those things could have been considered and should have been  
9 considered by PwC in PwC's model. He could have sought  
10 nonmonetary damage, too.

11 Before the appraisal had finished he could have  
12 went to the arbitrator and said, I'd like to file a  
13 dispositive motion on my contract claim. I get to be  
14 involved, let me be involved.

15 THE COURT: Well, he could have made that motion  
16 with who?

17 MR. KOLCUN: With the arbitrator. He could have  
18 made a dispositive motion on his contract claim for  
19 exclusion to the arbitrator, and he didn't don't that.

20 THE COURT: Not the appraiser?

21 MR. KOLCUN: Correct, correct. And we're just  
22 talking about right now before the appraisal was done. And  
23 the timeline here is very important and I remembered from a  
24 year ago, we went off on a tour because of the odd facts  
25 that we have here.

Bonnie Piccirillo - Official Court Reporter



## Proceedings

1           The appraisal did not conclude until months after  
2           Justice Sherwood and months after the arbitration had  
3           already began. There was no dispute over the completed  
4           appraisal and the completed valuation.

5           There was only a dispute about Mr. Gluck's  
6           participation in the then ongoing pending appraisal. And so  
7           all of the expansive quotes that Mr. Gluck has in his papers  
8           from 2018 and early 2019 ignore that critical context, which  
9           you, your Honor, recognized last December when you denied  
10          his motion.

11          If I could, I'd like to touch on the legal issues  
12          that the standard of review and the arbitrability enter  
13          jurisdiction.

14          THE COURT: Sure.

15          MR. KOLCUN: Okay, we have a general arbitration  
16          clause and we have a specific accounting clause with filing  
17          and binding language. Katz, this is Katz. "Question of  
18          arbitrability is for the court to decide. The final and  
19          binding language in the specific valuation clause negates  
20          any inference that we agree to arbitrate."

21          And, again, that's what you had found last year,  
22          your Honor.

23          Kind of rearguing in issue, Mr. Gluck is now saying  
24          that the inclusion of the AAA rules allowing for it to  
25          determine its own jurisdiction in the general arbitration

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 clause is dispositive, but Mr. Gluck has not cited one case  
2 that overrules the holding in Katz where we have a parallel  
3 accounting clause with final and binding language in it.

4 His cases are WMT investors, Gol, and  
5 GAC International. Those were only broad arbitration  
6 clauses with routine carve-outs for equitable claims. Not  
7 one of them had a valuation clause with final and binding  
8 language --

9 THE COURT: What about Blue Tee? Did Blue Tee have  
10 anything like that?

11 MR. KOLCUN: Well, for Mr. Gluck's argument Blue  
12 Tee predated the AAA rule allowing -- the AAA incorporation  
13 argument.

14 THE COURT: So Katz did, too.

15 MR. KOLCUN: Katz did, too, but each one of the  
16 cases that Mr. Gluck cited did not have the valuation clause  
17 with final and binding language. And, in fact, the GAC  
18 International case that he cites, acknowledged the situation  
19 in Katz was much stronger because of the final and binding  
20 language in a separate valuation clause.

21 And what case did postdate the AAA rule that  
22 Mr. Gluck is now arguing about is XL Capital and that was  
23 decided several years after that AAA say rule; and there,  
24 that general arbitration clause also incorporated the AAA  
25 rules, but the District Court still found with a separate

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 accounting clause that AAA does not decide arbitrability.

2 So, we have de novo review based on Katz, and Katz  
3 is controlling on these facts and with this contract.

4 THE COURT: Well, the law is that if you pick the  
5 AAA rules, that there's 1st Department law -- and I just  
6 decided that in another case, I think it was the Gol case --  
7 that it does constitute sufficient evidence that the parties  
8 delegated arbitrability to the arbitrator, but I don't know  
9 that that's what this is.

10 This is whether -- at least I think you could argue  
11 -- this is whether the parties agreed to arbitrate this  
12 issue at all. And, so, I'm not aware of cases where these  
13 two things come into contact where you have a very specific  
14 agreement, I guess you could say, not to arbitrate the  
15 valuation. That's what makes this so different from all of  
16 those AAA cases in my opinion.

17 MR. KOLCUN: Well, it is very different from all of  
18 those AAA cases because none of those AAA cases, except for  
19 XL Capital, which has the rule that Mr. Gluck's relying  
20 upon, had a separate accounting clause. So there were no  
21 appraisals at issue.

22 Let me bring you, if I could, to the facts of Katz  
23 in the District Court's opinion.

24 The arbitrator in Katz found that it could assess  
25 whether procedural requirements were met with respect to a

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 valuation. Just like the arbitrator here found that it  
2 could address procedural requirements of the amendment,  
3 which was Mr. Gluck's inclusion.

4 In Katz, the arbitrator concluded it could fashion  
5 a remedy of a higher valuation despite, quote, final and  
6 binding valuation, and that's exactly what happened here  
7 because the arbitrator reviewed the valuation methods of  
8 PwC's, chose Mr. Bingham's instead and awarded the higher  
9 valuation as a remedy.

10 And that has to be vacated because under Katz,  
11 quote, "Arbitration of the methodology of the valuation and  
12 a remedy that alters it," end quote is prohibited and the  
13 arbitrator, quote, "exceeded its authority by reviewing and  
14 refashioning the valuation."

15 XL Capital had that case not concluded with a  
16 published opinion or had not settled or whatever the  
17 eventual outcome of it was. It's very similar to this case,  
18 too. There were contract and fraud claims about information  
19 that was being provided in a valuation.

20 The court held that even after AAA resolved those  
21 issues, pure accounting issues, like objections to  
22 worksheets or objections to valuation methods, had to be  
23 referred to the accountant and there could not be a back  
24 door allowing accountant issues to be brought in the  
25 arbitration.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1           Katz and XL Capital are this case. There were a  
2           lot of procedural oddities in the beginning with Justice  
3           Sherwood and before and all of that, but that is simply  
4           because the PwC appraisal was never completed at that time  
5           and because pure valuation issues had not yet been injected  
6           into the arbitration because no one contemplated whether  
7           there would be a dispute because PwC hadn't finished yet.

8           And Mr. Gluck's own operative arbitration demand  
9           that was final throughout the entire thing until the end,  
10          quote, at NYSCEF 39, Paragraph 123: "Gluck reserves all  
11          available rights and remedies to add additional claims or  
12          requests for relief related to the valuation opinion PwC  
13          made may issue in the future."

14          That's what happened here. There was not an  
15          inkling of a valuation dispute or a valuation issue in the  
16          arbitration until July 2019 when Mr. Gluck sought an  
17          accounting, which we immediately objected to and the  
18          arbitrator denied. And then in the fall of 2019 after we  
19          had commenced this 7601 proceeding where Mr. Gluck served  
20          his expert report, for the very first time challenged PwC's  
21          valuation and its methods and provided a new opinion of the  
22          fair market value and we objected at every single  
23          opportunity thereafter.

24                   THE COURT: Okay.

25                   MR. KUPFER: May I, your Honor?

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 THE COURT: Yes, please.

2 MR. KUPFER: Okay, there's a lot to get to so I  
3 think I'll start --

4 THE COURT: We don't have an unlimited amount of  
5 time, so fifteen minutes.

6 MR. KUPFER: I will try to keep it as brief as I  
7 can.

8 Your Honor, Mr. Kolcun just presented to you his  
9 rebuttal expert's arguments, his opening statement and the  
10 cross-examination at the arbitration hearing, and he also  
11 presented to you the arguments in the pre and post-hearing  
12 briefs.

13 All of the arguments that he presented to you about  
14 the specifics of Mr. Gluck's expert valuation, all of those  
15 are about weighing the evidence. I'll give you one example.

16 And, again, this Court is not really supposed to  
17 deal with matters of relitigating the merits, but let me  
18 give you one example. The multiple, they say that  
19 Mr. Bingham chose a different multiple. He chose a multiple  
20 of eight instead of a multiple of seven.

21 And we presented based on Mr. Bingham's information  
22 and we presented to the arbitrator the reason why that was  
23 so is because PwC had to downgrade the multiples because of  
24 the faulty projections that had been provided by Mr. Yakuel.  
25 And, therefore, Mr. Bingham said if not for those

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 projections that were provided by Mr. Yakuel, PwC would have  
2 selected this higher multiple.

3 All of these arguments about all of these inputs  
4 are their version of events that were all litigated on the  
5 merits. The WACC is exactly the same issue, your Honor.  
6 They say that the WACC was supposed to be 14 percent or  
7 12 percent -- I can't remember -- and we argued the other  
8 way. And the issue, the difference was whether there would  
9 be a change in the capital structure of the company to  
10 include debt.

11 At the arbitration hearing we argued that the  
12 amendment requires a change in the capital structure because  
13 Mr. Gluck's buyout would be based on debt, and we argued  
14 that that was an argument we would have presented to PwC had  
15 we been involved.

16 All of this metrics that they're talking about now  
17 is their version of the merits. Ultimately, they do not  
18 disagree that the arbitrator can award expectation damages  
19 on the breach-of-contract claim. That they readily agree.

20 What they're arguing is that we didn't present  
21 appropriate measure of expectation damages. That is a pure  
22 merits issue. That was thoroughly litigated again and again  
23 and again, and the arbitrator in all of those paragraphs  
24 goes their objections, based on their expert report and all  
25 of these issues, the WACC, the multiples and everything and

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 decides on the merits.

2 This is not a claim of exceeding the scope because  
3 they admit, unlike in Katz where in Katz there was an issue  
4 where the party was objecting, saying these claims are a  
5 re-litigation of the appraisal; you can't do that. This is  
6 nothing like Katz because here they admit the claims were in  
7 front of the arbitrator.

8 They just don't like that he ruled in our favor on  
9 the merits issues relating to the damages and against them,  
10 and it's very nice for Mr. Kolcun to stand up today and say  
11 -- make all these arguments again and to say this is a  
12 reevaluation of the appraisal, the arbitrator was very, very  
13 careful to decide each one of these objections and deal with  
14 them on the merits and that is not reviewable and it may  
15 only be reviewable with great, great deference.

16 Let me get back to some of the legal issues very  
17 quickly.

18 We do have a case that essentially deals with the  
19 Katz issue about delegation in the modern era. It is WMT  
20 Investors. There, there was a carveout of the arbitration  
21 clause for injunctive relief, and the Court was trying to  
22 deal with whether the particular claim had an ambiguity or  
23 there was clear and unmistakable delegation. And the court  
24 in that case said, The AAA rules and incorporation of AAA  
25 rules is this: If they incorporate rules and you have broad

Bonnie Piccirillo - Official Court Reporter



Proceedings

1 charging language in the arbitration clause, then that issue  
2 is delegated to the arbitrator. And here, the arbitrator's  
3 decisions are entitled to great deference.

4 I just want to point out one other thing, that they  
5 argue that we could have asked for, essentially, I think an  
6 injunction in the arbitration to get sent to PwC, and that  
7 fails really for a number of reasons. There are three:

8 One, PwC just sent us away because PwC said, We  
9 cannot do anything unless you modify the engagement letter.  
10 So, practically the arbitrator is saying if PwC did  
11 something about this it wouldn't have changed anything.

12 Two, injunctive relief was carved out from this  
13 arbitration clause so the arbitrator could not have ordered  
14 injunctive relief.

15 Three, the statement of claims were submitted here  
16 on March 12th. On March 11th we asked for an update on how  
17 the appraisal was going, and Mr. Kolcun responded to me in  
18 an e-mail saying, It's progressing. What he failed to tell  
19 me is that there had already been a number of drafts  
20 circulated and it was completed eight days later on the  
21 20th.

22 So, making an argument that the appraisal was  
23 completed months after the arbitration got under way, it was  
24 complete eight days after the detailed statement of claims  
25 were submitted, so that's really have a mischaracterization

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 of what could have happened in the arbitration.

2 Your Honor, one last point, if I may.

3 Again, I want to go back to page 11 of their final  
4 brief, and I think it's really, really critical. It says  
5 right in the middle of the page:

6 "Gluck could have attempted to prove the monetary  
7 consequences if any existed that is purported exclusion  
8 actually had on PwC's appraisal."

9 If you read Paragraphs 95 to 108, that is exactly  
10 what the arbitrator found we had proven. We had proven the  
11 monetary consequences of the exclusion.

12 The whole argument here is not about exceeding the  
13 powers or jurisdiction. It is they don't like the  
14 arbitrator's decision on the merits.

15 THE COURT: Let me ask you a sort of in the other  
16 issue about the Appraisal Award, and I know this is not your  
17 principal result you want. But, if I were to vacate the  
18 vacate the Appraisal Award, would you want Pricewaterhouse  
19 to do the reappraisal or would you want to have a new  
20 selection?

21 MR. KUPFER: I think we'd clearly want a new  
22 selection, your Honor, because due process and out of  
23 fairness is about not getting involved in a proceeding after  
24 somebody has a contract with one party and saying, Here,  
25 accept my information, too. You know, we should have a

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 brand new process and that's what due process would require.  
2 Just submitting some additional information is really  
3 there's going to be a lingering question about whether that  
4 can cure the issues.

5 THE COURT: Okay.

6 All right, I'm going to take five minutes and come  
7 back to you either with questions or if I can resolve the  
8 issue and I'm comfortable with that, I'll do that.

9 So, just give me until 3:40. So, nine minutes.

10 Don't hang up. Just go on mute and turn your  
11 pictures off or whatever you'd like.

12 MR. KOLCUN: Thank you, your Honor.

13 MR. KUPFER: Thank you.

14 THE COURT:

15 \* \* \* \* \*

16 (Whereupon, at this time a short recess was then  
17 taken.)

18 THE COURT: Let's go back on the record.

19 All right, counsel, thanks very much for your  
20 arguments. It's a very challenging case, but based on the  
21 arguments and the briefs, I'm prepared to give you a  
22 decision.

23 I'm going to start with the question of the  
24 confirmation of the Arbitration Award, and I'm focussing  
25 just on the part of the Award that has been challenged. I

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 think there are large parts of the Arbitration Award that  
2 are not challenged and as to those, the Award is confirmed.

3 The portion of the Award that is challenged is the  
4 remedy and which effectively was based on the expert report  
5 to come up with a different valuation of the shares and then  
6 award Mr. Gluck the delta between that valuation and what  
7 PwC gave, and my conclusion is that that was outside the  
8 scope of the arbitrator's authority and must be vacated and  
9 I'll give you my reasoning.

10 There is absolutely correct a high bar for the  
11 Court and the parties to cross to vacate an Arbitration  
12 Award. As I've said before and courts have said before,  
13 the court review on an Arbitration Award is tightly  
14 constrained and I take that very seriously. I think the  
15 strange and important factual scenario here is that you do  
16 have two different arbitrable awards and tribunals, and the  
17 contract that the parties operated under which drives all  
18 arbitration and appraisal judicial decisions because they  
19 are matters of contract, very clearly delegated different  
20 issues to different fora.

21 The question of the valuation of the shares was  
22 unequivocally and finally delegated to an appraisal, and all  
23 other general issues were delegated to potentially  
24 arbitration. And I think as the Katz court makes very, very  
25 clear when you have a specific delegation for certain

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 issues, that controls over a general delegation over other  
2 issues and I think this is exactly that case. And it's  
3 complicated in a lot of ways; but when you boil it all down,  
4 that's the way the parties assign responsibility.

5 So, getting back to the analysis.

6 Arbitration awards are generally vacated on  
7 specific grounds; one of which is when the arbitrators  
8 exceeded their powers or so imperfectly executed them that a  
9 mutual final and definite award upon the subject matter  
10 submitted was not made.

11 That's from the Federal Arbitration Act.

12 Now, I think where this comes down is that the  
13 arbitrator here lacked the jurisdiction to make a valuation  
14 determination when the parties specifically contracted for a  
15 final and binding appraisal by someone else incorporating  
16 very specific language about how that appraiser was to be  
17 chosen.

18 And as the Katz court said here, the agreement did  
19 not, quote, "allow for arbitration of the valuation or a  
20 remedy which alters it."

21 Here, the Award, which was that Mr. Gluck was,  
22 quote, entitled to the difference between the value PwC  
23 valuation of his units and the amount he would have received  
24 had petitioners not breached, in my view invades the  
25 province of what the contract delegated to an appraisal.

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1           Because however one might describe it, the end result is  
2           that Mr. Gluck got a new appraisal and that is not what the  
3           contract provided for.

4                       The arbitrator recognized that various points  
5           during the proceeding that he did not have authority to  
6           vacate PwC's valuation, but in truth that effectively is  
7           when he did. He concluded that, quote, "The damages to  
8           which Mr. Gluck is entitled are the difference between the  
9           PwC valuation of his units and the amount he would have  
10          received had claimants not breached close," closed quote, as  
11          I said above.

12                      That's Paragraph 95 of the Award.

13                      The record is clear to me that Mr. Bingham  
14          undertook a de-novo review of the valuation and the  
15          arbitrator awarded Gluck the result of that valuation and  
16          that is fundamentally at odds with the agreement.  
17          Inconsistent with earlier orders I made in this case which  
18          indicated that problems with the valuation itself and  
19          Mr. Gluck's e-mail exclusion are the subject of the motion  
20          to vacate that award and, also, inconsistent with Katz both  
21          at the District Court and the Court of Appeals.

22                      The parties' agreement, that is, the Amendment,  
23          simply do not allow for the arbitration of the valuation of  
24          the substance of the valuation, and the arbitrator exceeded  
25          the scope of his authority by reviewing and refashioning

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1           that valuation.

2                       The Amendment contained a specific valuation clause  
3 providing for a final and binding appraisal by one of five  
4 specified accounting firms, and that is the agreement that  
5 the parties reached as to how to value Mr. Gluck's shares.

6                       I will say that Mr. Yakuel's arguments here as to  
7 exactly what the arbitrator should have done are a little  
8 confusing to me. They would seem to have permitted the  
9 arbitrator to undertake an even more difficult and kind of  
10 gymnastic exercise of not doing a revaluation, but trying to  
11 take PwC's sort of skeleton of methodology and then just  
12 sort of make revisions around the edges to the extent they  
13 could be traced to specific elements of breaches by  
14 excluding Mr. Gluck.

15                      Putting aside whether something like that is even  
16 possible, I think you again end up with something that would  
17 approximate coming up with a new valuation.

18                      I don't think that's the way -- at least the way I  
19 read it, that I don't think that's what the arbitrator here  
20 did. I don't know how exactly one might do it because the  
21 claims that Mr. Gluck has raised about exclusion are not  
22 discrete small little things that one can say, Well, he  
23 complained that this number -- he was prevented from showing  
24 that this five should have been a ten; and, therefore, you'd  
25 have an easy fix by making a ten rather than five. And even

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 then, how would one know whether Pricewaterhouse would have  
2 accepted the ten rather than the five.

3 There's just -- it's a virtually impossible  
4 exercise.

5 So, I guess what I would say because it is, you  
6 know -- it's interesting that Mr. Yakuel seems to think that  
7 would have been acceptable. If the parties want to consent  
8 to have that kind of a process through arbitration, they  
9 obviously can. It is a matter of contract. I do not  
10 believe that is what their contract that's in front of me  
11 says, and I don't think it justifies confirming an award  
12 that I think is fundamentally inconsistent with the  
13 contract.

14 To me, what comes through very, very clearly is  
15 that the parties agreed to have the shares valued by an  
16 appraiser and that's what should happen.

17 The record is more muddled as to whether Mr. Yakuel  
18 was misled into thinking he did not have to provide  
19 valuation evidence, and thus was deprived of his ability to  
20 present its case.

21 On the one hand, the arbitrator's statements to the  
22 effect that he would not be second guessing PwC's valuation  
23 might have led Mr. Yakuel -- is it Yakuel?

24 MR. KOLCUN: Yakuel, yes, your Honor.

25 THE COURT: Into thinking the arbitrator wouldn't

Bonnie Piccirillo - Official Court Reporter



## Proceedings

1 reach an independent decision on the proper valuation.

2 On the other hand, the fact that the arbitrator  
3 agreed to hear the evidence, albeit over objection, at a  
4 minimum was a signal that Yakuel could have -- should have  
5 been prepared to meet Bingham's evidence with his own. On  
6 balance, though, if one assumes that the arbitrator was  
7 permitted to take his own valuation -- which, again, I found  
8 he was not -- then I think the Award would also be vacated  
9 because based on the record of the arbitration, I find that  
10 Mr. Yakuel was not given sufficient notice and opportunity  
11 to address the issue.

12 In the end, though, it doesn't matter because the  
13 issue shouldn't have been reached to begin with.

14 Again, I don't fault the arbitrator. It's a very  
15 thorough analysis and I think a very thoughtful analysis of  
16 this issue, and it may be in part the way it was framed; but  
17 in the end my conclusion is that while the rest of the  
18 Arbitration Award is confirmed, this last piece was beyond  
19 the scope because the specific remedy here awarded was by  
20 contract determined or reserved exclusively for the  
21 valuation process.

22 Accordingly, Mr. Yakuel's motion to vacate the  
23 Arbitration Award is granted in part, vacating Section D of  
24 the Arbitration Award concerning specifically the amount the  
25 arbitrator ordered petitioners to pay respondent and denied

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 as to the remainder of the Arbitration Award.

2 Actually, I'm not sure that the rest of it is even  
3 challenged, but the respondent's motion to confirm the  
4 Arbitration Award is denied in part only as to Section D and  
5 granted as to the remainder.

6 Now, I want to move on to the original Appraisal  
7 Award and figure out how that is affected by all.

8 In my May 7, 2020, decision denying Mr. Yakuel's  
9 motion to summarily confirm the PwC appraisal, I found that  
10 there was a factual dispute as to whether Mr. Gluck was  
11 denied a meaningful opportunity to present his case. I  
12 think I said a fair opportunity to the present his case.  
13 And at that point the record was not clear enough to permit  
14 a decision. That issue has now been fully litigated and  
15 determined by the arbitrator in the second case.

16 In Paragraph 78 of his Award, which is part of a  
17 longer section where he goes through in detail the  
18 limitations upon Mr. Gluck's participation, he says, quote,  
19 "PwC did not consider the information provided by Mr. Gluck  
20 in any meaningful way, if at all. This was predictable  
21 given the language of the PwC engagement letter and  
22 confirmed by PwC's explanation that the engagement letter,  
23 as written, would not permit input from Mr. Gluck."

24 This is continuing on in the arbitrator's words.

25 Quote, "I further conclude that Mr. Yakuel, by  
Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 refusing to alter the engagement agreement, knowingly ensued  
2 that PwC would not consider information from Mr. Gluck. I  
3 find, though, that claimants breached the agreement, which  
4 requires that Mr. Gluck be permitted to provide information  
5 to the appraiser and more broadly an objective and fair  
6 valuation of Mr. Gluck's units that did not favor either  
7 party. Claimants also breached New York law, which requires  
8 that Mr. Gluck have an opportunity to submit information to  
9 the appraiser."

10 And there's much more detail than that. That  
11 finding was necessary to the arbitrator's decision as to  
12 whether Mr. Yakuel breached the agreement, which all parties  
13 agree was properly before the arbitrator.

14 And as the 1st Department noted in this Acevedo  
15 case, A-C-E-V-E-D-O, 239 AD2d 194, 1st Department (1997).

16 "Where there has been a final determination on the  
17 merits, an Arbitration Award, even one never confirmed, may  
18 serve as the basis for the defense of collateral estoppel in  
19 a subsequent action."

20 So the arbitrator's finding with respect to  
21 Mr. Gluck's exclusion from the process and its impact on  
22 Pricewaterhouse effectively answers the question that I left  
23 open in my May 7, 2020 decision.

24 In addition, the equitable principle of judicial  
25 estoppel prevents a party who has assumed a position in a

Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 legal proceeding and succeeded in maintaining that position,  
2 thereafter can't change their position just because its  
3 interests have changed.

4 The petitioners originally sought for the  
5 arbitrator to determine the question -- this is  
6 Mr. Yakuel -- originally sought for the arbitrator to  
7 determine the question of whether respondent was improperly  
8 excluded from participating in the PwC valuation.

9 I think that all got kind of mixed up with -- their  
10 discussions with Judge Sherwood as to why Mr. Gluck should  
11 be excluded to begin with and the existence of this  
12 arbitration out there was sort of a convenient way of  
13 making -- of persuading Judge Sherwood that Mr. Gluck would  
14 have a forum.

15 So, the arbitrator, once seized with jurisdiction,  
16 evaluated the evidence and made a determination that was not  
17 in plaintiff's favor. So, they can't come back now and  
18 question that.

19 So, upon the arbitrator's finding that the  
20 respondent was improper -- that Mr. Gluck was improperly  
21 excluded from participating in the appraisal and that this  
22 impacted PwC, the Court vacates the original PwC Appraisal  
23 Award and directs that the parties select a new appraiser --  
24 not PwC -- consistent with the terms of their agreement.

25 The Court does not question PwC's impartiality as a  
Bonnie Piccirillo - Official Court Reporter

## Proceedings

1 general matter or even specifically, but the fact remains  
2 that PwC would be asked to reconsider its own appraisal and  
3 it would be very difficult, if not impossible, to remove the  
4 taint of having been provided a partial record the first  
5 time.

6 So, if the parties decide to continue, then the  
7 question of valuation should be determined as per their  
8 contract by an arbitrator selected under the terms of their  
9 contract or as they otherwise agree; but unless Mr. Gluck  
10 agrees to proceed with Pricewaterhouse, which it sounds like  
11 he doesn't, then they need to pick somebody else.

12 Now, one sort of remaining question is having now  
13 changed the damages or the arbitrator's decision as to what  
14 the proper result or remedy for the breach is, whether the  
15 award of fees and costs were otherwise in the arbitrator's  
16 decision.

17 You know, we are now going to be entering another  
18 proceeding that would not have been required had Mr. Yakuel  
19 not breached the agreement to begin with.

20 So, I'm not here to reach a conclusion as to what  
21 other damages might have flowed or what the arbitrator might  
22 have awarded if he knew what my decision would be, but I  
23 would just note that this next process, which will follow,  
24 is one that would not have been required if the first  
25 process had been handled correctly.

Bonnie Piccirillo - Official Court Reporter

Proceedings

1 I guess I'll just leave it at that. I'm not in a  
2 position where I'm awarding damages. My only role is to  
3 vacate or confirm.

4 So, again, in sum, I vacate the appraisal and I  
5 vacate the Arbitration Award in part.

6 A written decision just summarizing that conclusion  
7 will follow, but it will refer for its substance to what  
8 I've just said on the record.

9 Are there any questions?

10 MR. KOLCUN: Not from petitioners, thank you, your  
11 Honor.

12 MR. KUPFER: No, your Honor.

13 THE COURT: Okay. So, please order the transcript  
14 to which my order will refer. That I think will resolve  
15 both proceedings. I don't think there's any open issues  
16 left.

17 So, again, I thank you. Excellent arguments,  
18 excellent brief and one that certainly made me scratch my  
19 head more than a little. And, again, I think it's an  
20 unusual, not unprecedented situation where you have great  
21 deference to two different sets of appraisals and  
22 arbitrators where there's no way to avoid the tension  
23 between the two. So I've tried my best to chart a course  
24 between them all.

25 Happy Holidays to everyone. I'm sure I'll see you  
Bonnie Piccirillo - Official Court Reporter

Proceedings

1 down the road.

2 MR. KOLCUN: You, too. Thank you, your Honor.

3 THE COURT: Thank you.

4 \* \* \* \* \*

5

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Bonnie Piccirillo - Official Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

INDEX NO. 158184/19 and 654245/20

---

THIS IS HEREBY CERTIFIED TO BE A  
TRUE AND CORRECT TRANSCRIPT.

*Bonnie Piccirillo*

BONNIE PICCIRILLO  
OFFICIAL COURT REPORTER



	<b>78</b> [1] - 42:16	32:6	<b>analyzing</b> [1] - 4:20	<b>arbitrate</b> [5] - 9:18,
	<b>7A</b> [1] - 13:25	<b>adopted</b> [1] - 19:24	<b>Anderson</b> [1] - 9:19	15:8, 25:20, 27:11,
<b>'96</b> [1] - 14:2		<b>advocate</b> [1] - 7:23	<b>ANDREW</b> [2] - 1:8,	27:14
<b>'97</b> [1] - 14:2		<b>affect</b> [1] - 11:12	1:15	<b>arbitration</b> [47] - 4:1,
	<b>9</b>	<b>affected</b> [1] - 42:7	<b>answers</b> [1] - 43:22	4:20, 5:1, 5:4, 5:14,
	<b>95</b> [4] - 8:11, 19:7,	<b>affirmed</b> [1] - 17:9	<b>anyway</b> [2] - 4:6, 22:6	10:13, 10:18, 10:21,
	34:9, 38:12	<b>afternoon</b> [3] - 3:3,	<b>Appeals</b> [1] - 38:21	11:13, 14:2, 15:2,
		3:13, 3:17	<b>appearance</b> [1] - 3:5	15:5, 16:1, 16:3,
	<b>A</b>	<b>AGENCY</b> [2] - 1:3,	<b>APPEARANCES</b> [1] -	16:4, 17:16, 18:11,
		1:11	1:24	18:21, 21:12, 21:22,
<b>10001</b> [1] - 2:8	<b>AAA</b> [24] - 5:1, 10:7,	<b>Agency</b> [3] - 3:11,	<b>appearances</b> [1] - 3:4	25:2, 25:15, 25:25,
<b>10022</b> [1] - 2:4	10:9, 10:10, 10:14,	19:12, 20:12	<b>apple</b> [1] - 13:13	26:5, 26:24, 28:25,
<b>101</b> [1] - 19:14	10:18, 10:22, 13:9,	<b>ago</b> [4] - 5:2, 17:15,	<b>applicable</b> [1] - 9:21	29:6, 29:8, 29:16,
<b>103</b> [1] - 19:16	13:24, 25:24, 26:12,	21:7, 24:24	<b>Applicaiton</b> [1] - 1:3	30:10, 31:11, 32:20,
<b>108</b> [3] - 8:15, 19:19,	26:21, 26:23, 26:24,	<b>agree</b> [8] - 8:5, 9:5,	<b>Application</b> [1] - 1:10	33:1, 33:6, 33:13,
34:9	27:1, 27:5, 27:16,	12:17, 12:20, 25:20,	<b>appraisal</b> [50] - 4:1,	33:23, 34:1, 36:18,
<b>109</b> [1] - 19:23	27:18, 28:20, 32:24	31:19, 43:13, 45:9	5:9, 5:12, 5:18, 5:20,	36:24, 37:6, 37:19,
<b>11</b> [2] - 6:25, 34:3	<b>ability</b> [1] - 40:19	<b>agreed</b> [5] - 18:11,	7:3, 7:6, 7:24, 8:2,	38:23, 40:8, 41:9,
<b>11th</b> [1] - 33:16	<b>able</b> [1] - 24:2	20:9, 27:11, 40:15,	10:4, 11:13, 11:16,	44:12
<b>12</b> [1] - 31:7	<b>absolutely</b> [2] - 18:19,	41:3	11:18, 13:5, 13:6,	<b>Arbitration</b> [23] - 1:14,
<b>123</b> [1] - 29:10	36:10	<b>agreement</b> [14] -	15:2, 15:3, 15:5,	4:11, 4:14, 5:15, 6:5,
<b>12th</b> [1] - 33:16	<b>accept</b> [1] - 34:25	10:23, 15:8, 15:10,	15:11, 16:5, 18:3,	10:7, 10:9, 17:4,
<b>13</b> [1] - 13:2	<b>acceptable</b> [1] - 40:7	15:13, 27:14, 37:18,	18:6, 18:23, 19:9,	19:5, 19:23, 28:11,
<b>14</b> [2] - 19:18, 31:6	<b>accepted</b> [1] - 40:2	38:16, 38:22, 39:4,	21:4, 21:9, 21:16,	35:24, 36:1, 36:11,
<b>158184/19</b> [1] - 1:5	<b>accompanied</b> [1] -	43:1, 43:3, 43:12,	23:6, 24:11, 24:22,	36:13, 37:11, 41:18,
<b>16</b> [1] - 1:18	3:15	44:24, 45:19	25:1, 25:4, 25:6,	41:23, 41:24, 42:1,
<b>194</b> [1] - 43:15	<b>accordingly</b> [1] -	<b>agrees</b> [2] - 9:25,	29:4, 32:5, 32:12,	42:4, 43:17, 46:5
<b>1997</b> [1] - 43:15	41:22	45:10	33:17, 33:22, 34:8,	<b>arbitrator</b> [79] - 5:16,
<b>1st</b> [3] - 27:5, 43:14,	<b>accountant</b> [3] - 15:6,	<b>ahead</b> [2] - 14:11,	36:18, 36:22, 37:15,	5:18, 6:9, 6:11, 6:16,
43:15	28:23, 28:24	15:20	37:25, 38:2, 39:3,	6:22, 6:23, 7:9, 7:14,
	<b>accountant's</b> [1] -	<b>albeit</b> [1] - 41:3	42:9, 44:21, 45:2,	8:2, 8:4, 8:6, 8:11,
	9:21	<b>allegedly</b> [3] - 7:3,	46:4	8:15, 9:25, 11:1,
	<b>accountants</b> [3] -	22:21, 23:5	<b>Appraisal</b> [7] - 1:6,	11:3, 12:12, 12:14,
	10:6, 10:11, 11:14	<b>allow</b> [2] - 37:19,	4:11, 4:15, 34:16,	12:17, 12:21, 12:23,
	<b>accounting</b> [9] - 9:21,	38:23	34:18, 42:6, 44:22	13:3, 13:8, 13:11,
	23:18, 25:16, 26:3,	<b>allowed</b> [1] - 22:5	<b>appraisals</b> [2] - 27:21,	13:25, 14:18, 14:22,
	27:1, 27:20, 28:21,	<b>allowing</b> [3] - 25:24,	46:21	14:25, 15:9, 16:9,
	29:17, 39:4	26:12, 28:24	<b>appraiser</b> [17] - 7:13,	17:23, 19:7, 19:14,
	<b>accurate</b> [1] - 19:20	<b>almost</b> [1] - 17:10	11:24, 15:11, 17:4,	19:16, 19:24, 20:6,
	<b>Acevedo</b> [1] - 43:14	<b>alone</b> [1] - 19:18	18:7, 18:13, 18:21,	20:18, 23:10, 24:12,
	<b>ACEVEDO</b> [1] - 43:15	<b>alter</b> [1] - 43:1	21:6, 21:10, 23:7,	24:17, 24:19, 27:8,
	<b>acknowledged</b> [1] -	<b>alternative</b> [1] - 4:14	23:19, 24:20, 37:16,	27:24, 28:1, 28:4,
	26:18	<b>alters</b> [3] - 17:5,	40:16, 43:5, 43:9,	28:7, 28:13, 29:18,
	<b>Act</b> [1] - 37:11	28:12, 37:20	44:23	30:22, 31:18, 31:23,
	<b>action</b> [1] - 43:19	<b>ambiguity</b> [2] - 13:20,	<b>appraiser's</b> [2] - 9:11,	32:7, 32:12, 33:2,
	<b>active</b> [1] - 5:4	32:22	9:23	33:10, 33:13, 34:10,
	<b>actual</b> [2] - 18:23,	<b>amended</b> [2] - 13:24,	<b>appraisers</b> [2] - 12:2,	37:13, 38:4, 38:15,
	19:21	14:3	19:11	38:24, 39:7, 39:9,
	<b>AD2d</b> [1] - 43:15	<b>Amendment</b> [2] -	<b>appropriate</b> [9] - 10:1,	39:19, 40:25, 41:2,
	<b>add</b> [1] - 29:11	38:22, 39:2	10:24, 11:4, 11:17,	41:6, 41:14, 41:25,
	<b>added</b> [1] - 19:18	<b>amendment</b> [6] - 5:20,	16:1, 16:13, 18:4,	42:15, 43:13, 44:5,
	<b>addition</b> [3] - 5:5,	19:10, 19:11, 20:3,	22:10, 31:21	44:6, 44:15, 45:8,
	9:22, 43:24	28:2, 31:12	<b>approximate</b> [1] -	45:21
	<b>additional</b> [2] - 29:11,	<b>amount</b> [5] - 8:14,	39:17	<b>arbitrator's</b> [15] - 6:20,
	35:2	30:4, 37:23, 38:9,	<b>arbitrability</b> [9] - 15:9,	7:17, 13:1, 14:15,
	<b>address</b> [2] - 28:2,	41:24	15:12, 16:20, 17:20,	17:7, 33:2, 34:14,
	41:11	<b>analogous</b> [1] - 20:25	22:15, 25:12, 25:18,	36:8, 40:21, 42:24,
	<b>adjustments</b> [1] - 7:5	<b>analysis</b> [3] - 37:5,	27:1, 27:8	43:11, 43:20, 44:19,
	<b>admit</b> [7] - 6:16, 6:22,	41:15	<b>arbitrable</b> [2] - 18:3,	45:13, 45:15
	6:23, 7:4, 8:6, 32:3,	<b>analyze</b> [1] - 18:24	36:16	<b>arbitrators</b> [7] - 4:5,
	<b>2</b>			
	<b>2018</b> [2] - 5:2, 25:8			
	<b>2019</b> [4] - 22:11, 25:8,			
	29:16, 29:18			
	<b>2020</b> [4] - 1:18, 5:4,			
	42:8, 43:23			
	<b>20th</b> [1] - 33:21			
	<b>239</b> [1] - 43:15			
	<b>3</b>			
	<b>3</b> [1] - 1:1			
	<b>35</b> [1] - 19:25			
	<b>3600</b> [1] - 2:3			
	<b>39</b> [1] - 29:10			
	<b>399</b> [1] - 2:3			
	<b>3:40</b> [1] - 35:9			
	<b>5</b>			
	<b>55</b> [1] - 2:8			
	<b>6</b>			
	<b>60</b> [1] - 1:17			
	<b>654245/20</b> [1] - 1:13			
	<b>7</b>			
	<b>7</b> [2] - 42:8, 43:23			
	<b>7601</b> [1] - 29:19			

10:14, 10:15, 10:18, 15:22, 37:7, 46:22  
**areas** [1] - 20:20  
**arguably** [1] - 20:24  
**argue** [7] - 23:15, 23:25, 24:2, 24:3, 24:7, 27:10, 33:5  
**argued** [4] - 12:25, 31:7, 31:11, 31:13  
**argues** [1] - 6:19  
**arguing** [4] - 3:9, 10:10, 26:22, 31:20  
**argument** [10] - 3:6, 6:12, 16:20, 17:1, 17:21, 26:11, 26:13, 31:14, 33:22, 34:12  
**arguments** [13] - 20:18, 22:6, 22:7, 22:15, 30:9, 30:11, 30:13, 31:3, 32:11, 35:20, 35:21, 39:6, 46:17  
**Arthur** [1] - 9:18  
**aside** [2] - 5:6, 39:15  
**assert** [1] - 18:2  
**asserted** [1] - 16:8  
**asserting** [1] - 16:21  
**assess** [1] - 27:24  
**assign** [1] - 37:4  
**assistant** [1] - 14:5  
**assume** [1] - 15:1  
**assumed** [1] - 43:25  
**assumes** [1] - 41:6  
**attack** [1] - 20:10  
**attempted** [1] - 34:6  
**Attorneys** [2] - 2:3, 2:7  
**auditors** [1] - 9:16  
**authority** [8] - 14:1, 14:21, 16:9, 17:25, 28:13, 36:8, 38:5, 38:25  
**available** [1] - 29:11  
**Avenue** [1] - 2:3  
**avoid** [1] - 46:22  
**award** [12] - 6:24, 7:11, 8:7, 10:19, 13:7, 19:5, 31:18, 36:6, 37:9, 38:20, 40:11, 45:15  
**Award** [40] - 1:6, 1:14, 4:11, 4:12, 4:14, 4:15, 4:21, 5:15, 5:25, 6:6, 8:10, 8:11, 13:3, 19:7, 19:23, 22:4, 34:16, 34:18, 35:24, 35:25, 36:1, 36:2, 36:3, 36:12, 36:13, 37:21, 38:12, 41:8, 41:18, 41:23,

41:24, 42:1, 42:4, 42:7, 42:16, 43:17, 44:23, 46:5  
**awarded** [8] - 6:10, 19:22, 20:1, 23:19, 28:8, 38:15, 41:19, 45:22  
**awarding** [3] - 7:9, 8:6, 46:2  
**awards** [2] - 36:16, 37:6  
**aware** [2] - 4:25, 27:12

---

## B

---

**backup** [1] - 14:8  
**balance** [1] - 41:6  
**ball** [1] - 11:1  
**bar** [1] - 36:10  
**barred** [1] - 10:16  
**based** [9] - 7:5, 23:25, 27:2, 30:21, 31:13, 31:24, 35:20, 36:4, 41:9  
**basis** [3] - 21:4, 21:6, 43:18  
**BEFORE** [1] - 1:21  
**began** [1] - 25:3  
**begin** [4] - 3:3, 41:13, 44:11, 45:19  
**beginning** [2] - 12:4, 29:2  
**best** [1] - 46:23  
**better** [1] - 19:15  
**between** [9] - 5:22, 8:13, 13:14, 14:14, 36:6, 37:22, 38:8, 46:23, 46:24  
**beyond** [3] - 17:24, 19:25, 41:18  
**binding** [17] - 10:19, 17:3, 17:8, 17:18, 19:1, 19:13, 20:4, 20:13, 25:17, 25:19, 26:3, 26:7, 26:17, 26:19, 28:6, 37:15, 39:3  
**Bingham** [10] - 18:14, 18:20, 19:8, 19:10, 19:11, 20:9, 20:11, 30:19, 30:25, 38:13  
**Bingham's** [8] - 19:15, 19:17, 19:19, 19:24, 20:7, 28:8, 30:21, 41:5  
**bite** [1] - 13:13  
**Blue** [10] - 10:2, 11:9, 11:19, 12:25, 13:3, 20:25, 26:9, 26:11  
**boil** [1] - 37:3

**boils** [2] - 6:8, 7:11  
**Bonnie** [1] - 2:23  
**brand** [2] - 23:19, 35:1  
**breach** [8] - 5:8, 5:17, 6:10, 6:17, 8:20, 12:18, 31:19, 45:14  
**breach-of-contract** [4] - 5:17, 6:10, 6:17, 31:19  
**breached** [8] - 5:23, 8:14, 37:24, 38:10, 43:3, 43:7, 43:12, 45:19  
**breaches** [1] - 39:13  
**Brief** [1] - 14:9  
**brief** [7] - 6:13, 6:14, 6:16, 6:18, 30:6, 34:4, 46:18  
**briefly** [2] - 9:8, 19:6  
**briefs** [3] - 3:18, 30:12, 35:21  
**bring** [1] - 27:22  
**bringing** [1] - 13:10  
**broad** [5] - 10:17, 11:2, 23:25, 26:5, 32:25  
**broad-based** [1] - 23:25  
**broadly** [1] - 43:5  
**brought** [2] - 9:10, 28:24  
**Bruce** [1] - 18:14  
**burden** [3] - 6:2, 16:23, 21:15  
**buyout** [1] - 31:13  
**BY** [2] - 2:4, 2:9

---

## C

---

**cabined** [1] - 23:23  
**calculation** [2] - 18:15, 18:17  
**cannot** [4] - 13:4, 13:5, 13:6, 33:9  
**capital** [2] - 31:9, 31:12  
**Capital** [5] - 11:10, 26:22, 27:19, 28:15, 29:1  
**careful** [1] - 32:13  
**carve** [1] - 26:6  
**carve-outs** [1] - 26:6  
**carved** [1] - 33:12  
**carveout** [1] - 32:20  
**case** [31] - 9:3, 10:1, 10:2, 11:11, 12:4, 13:15, 13:16, 13:20, 14:22, 17:10, 21:5, 24:2, 24:3, 26:1, 26:18, 26:21, 27:6,

28:15, 28:17, 29:1, 32:18, 32:24, 35:20, 37:2, 38:17, 40:20, 42:11, 42:12, 42:15, 43:15  
**cases** [16] - 3:25, 9:4, 9:7, 9:8, 9:10, 11:2, 11:11, 12:25, 26:4, 26:16, 27:12, 27:16, 27:18  
**Cendant** [1] - 9:14  
**Centre** [1] - 1:17  
**certain** [1] - 36:25  
**certainly** [3] - 17:11, 23:25, 46:18  
**challenge** [2] - 18:8, 18:19  
**challenged** [7] - 10:8, 20:10, 29:20, 35:25, 36:2, 36:3, 42:3  
**challenging** [4] - 9:20, 10:9, 11:15, 35:20  
**chance** [3] - 21:5, 22:21, 24:2  
**change** [5] - 23:1, 31:9, 31:12, 44:2  
**changed** [4] - 18:7, 33:11, 44:3, 45:13  
**changes** [1] - 23:14  
**charging** [1] - 33:1  
**chart** [1] - 46:23  
**chose** [4] - 24:7, 28:8, 30:19  
**chosen** [1] - 37:17  
**circle** [1] - 8:19  
**Circuit** [4] - 10:12, 11:20, 12:11, 17:9  
**circulated** [1] - 33:20  
**cite** [7] - 6:7, 9:3, 9:7, 9:8, 9:9, 14:1, 16:10  
**cited** [3] - 18:12, 26:1, 26:16  
**cites** [1] - 26:18  
**citing** [1] - 16:3  
**claim** [19] - 5:17, 6:10, 6:18, 8:4, 9:24, 10:10, 10:25, 11:3, 12:12, 12:14, 15:17, 16:7, 18:8, 22:11, 24:13, 24:18, 31:19, 32:2, 32:22  
**claimants** [4] - 8:14, 38:10, 43:3, 43:7  
**claims** [19] - 5:6, 5:8, 5:12, 6:20, 6:23, 9:10, 11:13, 11:17, 18:2, 18:3, 18:5, 26:6, 28:18, 29:11, 32:4, 32:6, 33:15, 33:24, 39:21

**clause** [18] - 10:13, 10:18, 16:1, 25:16, 25:19, 26:1, 26:3, 26:7, 26:16, 26:20, 26:24, 27:1, 27:20, 32:21, 33:1, 33:13, 39:2  
**clauses** [2] - 13:19, 26:6  
**clear** [7] - 13:21, 13:22, 20:15, 32:23, 36:25, 38:13, 42:13  
**clearly** [5] - 6:16, 14:24, 34:21, 36:19, 40:14  
**clerk** [1] - 14:5  
**close** [1] - 38:10  
**closed** [1] - 38:10  
**COHEN** [1] - 1:22  
**Cohen** [1] - 14:6  
**Cohen's** [2] - 14:4, 14:6  
**collateral** [2] - 20:10, 43:18  
**colleague** [1] - 20:15  
**colleagues** [1] - 3:15  
**comfortable** [1] - 35:8  
**coming** [1] - 39:17  
**commenced** [4] - 5:2, 16:2, 16:3, 29:19  
**communication** [1] - 24:6  
**companies** [1] - 23:2  
**company** [2] - 22:23, 31:9  
**compared** [1] - 20:8  
**compel** [2] - 16:4, 17:16  
**competent** [1] - 10:20  
**complained** [1] - 39:23  
**complete** [1] - 33:24  
**completed** [5] - 25:3, 25:4, 29:4, 33:20, 33:23  
**completely** [2] - 7:24, 11:18  
**complicated** [3] - 11:19, 11:22, 37:3  
**computer** [1] - 14:7  
**concede** [4] - 6:11, 6:16, 7:1, 7:7  
**conceded** [1] - 12:12  
**concedes** [1] - 12:14  
**concerning** [1] - 41:24  
**concession** [1] - 10:25  
**conclude** [2] - 25:1, 42:25  
**concluded** [3] - 28:4,

28:15, 38:7  
**conclusion** [4] - 36:7, 41:17, 45:20, 46:6  
**conduct** [5] - 5:11, 5:13, 8:21, 9:12, 15:23  
**conducted** [3] - 5:9, 18:25, 19:9  
**confidence** [1] - 10:16  
**confirm** [4] - 4:21, 42:3, 42:9, 46:3  
**confirmation** [3] - 4:10, 4:13, 35:24  
**confirmed** [4] - 36:2, 41:18, 42:22, 43:17  
**Confirming** [1] - 1:6  
**confirming** [1] - 40:11  
**confusing** [1] - 39:8  
**connection** [1] - 9:2  
**consent** [1] - 40:7  
**consequences** [2] - 34:7, 34:11  
**consider** [3] - 11:25, 42:19, 43:2  
**considered** [3] - 17:24, 24:8, 24:9  
**consistent** [2] - 19:9, 44:24  
**constitute** [1] - 27:7  
**constrained** [1] - 36:14  
**constructed** [1] - 8:23  
**contact** [1] - 27:13  
**contained** [1] - 39:2  
**contemplated** [1] - 29:6  
**contentious** [1] - 5:4  
**contest** [1] - 6:19  
**contesting** [3] - 18:14, 19:1, 19:2  
**context** [2] - 22:2, 25:8  
**continue** [2] - 12:8, 45:6  
**continued** [1] - 1:24  
**Continued** [1] - 47:6  
**continuing** [1] - 42:24  
**contract** [31] - 5:8, 5:17, 6:10, 6:17, 7:12, 8:20, 10:5, 12:18, 13:18, 15:6, 15:25, 17:3, 21:18, 21:19, 24:13, 24:18, 27:3, 28:18, 31:19, 34:24, 36:17, 36:19, 37:25, 38:3, 40:9, 40:10, 40:13, 41:20, 45:8, 45:9  
**contracted** [1] - 37:14  
**controlling** [2] -

17:18, 27:3  
**controls** [1] - 37:1  
**convenient** [1] - 44:12  
**COOLEY** [1] - 2:7  
**Cooley** [2] - 3:14, 3:16  
**coordinate** [1] - 3:21  
**correct** [4] - 4:22, 24:21, 36:10  
**correctly** [1] - 45:25  
**costs** [2] - 22:17, 45:15  
**counsel** [4] - 3:3, 3:12, 14:4, 35:19  
**COUNTY** [1] - 1:1  
**couple** [1] - 20:17  
**course** [2] - 22:3, 46:23  
**court** [10] - 6:15, 10:19, 13:16, 16:8, 25:18, 28:20, 32:23, 36:13, 36:24, 37:18  
**Court** [11] - 2:23, 13:6, 17:12, 26:25, 30:16, 32:21, 36:11, 38:21, 44:22, 44:25  
**COURT** [36] - 1:1, 3:2, 3:17, 4:19, 4:23, 7:10, 8:18, 9:5, 11:5, 11:19, 12:16, 14:10, 15:1, 15:20, 16:15, 16:22, 17:1, 20:14, 23:9, 23:22, 24:15, 24:20, 25:14, 26:9, 26:14, 27:4, 29:24, 30:1, 30:4, 34:15, 35:5, 35:14, 35:18, 40:25, 46:13, 47:3  
**Court's** [3] - 17:6, 17:13, 27:23  
**courts** [2] - 11:11, 36:12  
**credible** [1] - 22:7  
**critical** [2] - 25:8, 34:4  
**cross** [2] - 30:10, 36:11  
**cross-examination** [1] - 30:10  
**cure** [1] - 35:4

## D

**damage** [1] - 24:10  
**damaged** [1] - 18:6  
**damages** [30] - 5:21, 5:22, 6:10, 6:24, 7:2, 7:9, 8:6, 8:7, 8:12, 8:17, 12:18, 13:7, 18:4, 18:17, 18:18, 19:21, 19:22, 20:2, 20:23, 20:24, 21:24,

22:10, 23:19, 31:18, 31:21, 32:9, 38:7, 45:13, 45:21, 46:2  
**date** [2] - 19:1, 20:13  
**DAVID** [1] - 2:9  
**David** [1] - 3:13  
**days** [2] - 33:20, 33:24  
**de** [4] - 13:13, 23:15, 27:2, 38:14  
**de-novo** [1] - 38:14  
**deal** [3] - 30:17, 32:13, 32:22  
**dealing** [1] - 8:4  
**deals** [1] - 32:18  
**dealt** [1] - 14:22  
**debt** [2] - 31:10, 31:13  
**December** [3] - 1:18, 17:15, 25:9  
**decide** [8] - 10:10, 12:18, 13:16, 14:18, 25:18, 27:1, 32:13, 45:6  
**decided** [9] - 9:16, 10:14, 10:15, 12:24, 13:11, 17:20, 17:24, 26:23, 27:6  
**decides** [3] - 13:17, 13:19, 32:1  
**decision** [14] - 13:7, 13:8, 13:11, 34:14, 35:22, 41:1, 42:8, 42:14, 43:11, 43:23, 45:13, 45:16, 45:22, 46:6  
**decisions** [4] - 4:1, 14:15, 33:3, 36:18  
**defend** [1] - 23:12  
**defense** [1] - 43:18  
**deference** [5] - 4:1, 14:15, 32:15, 33:3, 46:21  
**deferred** [1] - 11:24  
**definite** [1] - 37:9  
**delegate** [1] - 14:21  
**delegated** [11] - 13:8, 13:25, 14:24, 16:9, 23:3, 27:8, 33:2, 36:19, 36:22, 36:23, 37:25  
**delegation** [7] - 13:15, 13:21, 13:22, 32:19, 32:23, 36:25, 37:1  
**delta** [2] - 5:22, 36:6  
**demand** [1] - 29:8  
**denied** [9] - 5:6, 5:21, 17:16, 22:14, 25:9, 29:18, 41:25, 42:4, 42:11  
**denying** [1] - 42:8  
**Department** [3] - 27:5,

43:14, 43:15  
**deprived** [1] - 40:19  
**describe** [2] - 7:19, 38:1  
**described** [1] - 8:19  
**despite** [1] - 28:5  
**detail** [2] - 42:17, 43:10  
**detailed** [1] - 33:24  
**determination** [6] - 9:11, 9:21, 9:23, 37:14, 43:16, 44:16  
**determine** [4] - 10:11, 25:25, 44:5, 44:7  
**determined** [3] - 41:20, 42:15, 45:7  
**devil's** [1] - 7:23  
**difference** [5] - 7:22, 8:13, 31:8, 37:22, 38:8  
**different** [19] - 7:18, 7:20, 8:1, 12:7, 13:23, 20:12, 21:1, 21:10, 23:4, 23:12, 23:13, 27:15, 27:17, 30:19, 36:5, 36:16, 36:19, 36:20, 46:21  
**difficult** [2] - 39:9, 45:3  
**direct** [1] - 9:12  
**directed** [1] - 21:23  
**directly** [2] - 9:11, 10:3  
**directs** [1] - 44:23  
**disagree** [3] - 6:9, 22:22, 31:18  
**discrete** [2] - 16:25, 39:22  
**discretion** [1] - 11:3  
**discretionary** [2] - 18:20, 23:3  
**discuss** [1] - 9:7  
**discussions** [1] - 44:10  
**dispositive** [3] - 24:13, 24:18, 26:1  
**dispute** [7] - 3:22, 10:21, 25:3, 25:5, 29:7, 29:15, 42:10  
**distinction** [4] - 11:14, 13:14, 14:13, 23:9  
**District** [5] - 17:6, 17:13, 26:25, 27:23, 38:21  
**done** [7] - 7:13, 8:3, 9:1, 20:5, 22:16, 24:22, 39:7  
**DONE** [2] - 1:4, 1:11  
**door** [1] - 28:24  
**down** [5] - 6:8, 7:11,

37:3, 37:12, 47:1  
**downgrade** [1] - 30:23  
**drafts** [1] - 33:19  
**draw** [1] - 13:14  
**drawing** [1] - 14:13  
**drives** [1] - 36:17  
**due** [3] - 21:17, 34:22, 35:1  
**during** [1] - 38:5  
**duty** [1] - 5:8

## E

**e-mail** [2] - 33:18, 38:19  
**early** [1] - 25:8  
**easily** [1] - 23:23  
**easy** [1] - 39:25  
**edges** [1] - 39:12  
**EDITDA** [1] - 19:15  
**effect** [2] - 7:19, 40:22  
**effectively** [6] - 11:6, 12:5, 20:17, 36:4, 38:6, 43:22  
**effects** [1] - 10:17  
**eight** [3] - 30:20, 33:20, 33:24  
**either** [3] - 21:9, 35:7, 43:6  
**elements** [1] - 39:13  
**employees** [1] - 22:23  
**empowered** [2] - 6:23, 10:22  
**empowers** [1] - 10:18  
**end** [11] - 3:22, 7:22, 7:23, 19:22, 20:17, 28:12, 29:9, 38:1, 39:16, 41:12, 41:17  
**enforceable** [1] - 10:19  
**engagement** [4] - 33:9, 42:21, 42:22, 43:1  
**ensued** [1] - 43:1  
**enter** [1] - 25:12  
**entering** [1] - 45:17  
**entire** [3] - 3:22, 20:4, 29:9  
**entitled** [4] - 8:12, 33:3, 37:22, 38:8  
**entry** [1] - 3:3  
**enumerated** [1] - 19:10  
**equitable** [2] - 26:6, 43:24  
**era** [1] - 32:19  
**especially** [2] - 3:23, 13:1  
**ESQ** [3] - 2:4, 2:5, 2:9  
**essentially** [7] - 7:17,

17:25, 20:22, 21:12, 23:11, 32:18, 33:5  
**establish** [1] - 6:2  
**estoppel** [2] - 43:18, 43:25  
**evaluate** [1] - 15:18  
**evaluated** [1] - 44:16  
**evaluation** [1] - 17:17  
**events** [1] - 31:4  
**eventual** [1] - 28:17  
**evidence** [9] - 7:9, 7:21, 8:16, 27:7, 30:15, 40:19, 41:3, 41:5, 44:16  
**eviscerate** [1] - 8:2  
**eviscerated** [1] - 7:24  
**exact** [3] - 9:18, 18:25, 20:12  
**exactly** [10] - 11:8, 11:9, 11:10, 20:24, 28:6, 31:5, 34:9, 37:2, 39:7, 39:20  
**examination** [1] - 30:10  
**example** [2] - 30:15, 30:18  
**exceeded** [3] - 28:13, 37:8, 38:24  
**exceeding** [2] - 32:2, 34:12  
**excellent** [2] - 46:17, 46:18  
**except** [1] - 27:18  
**excessive** [1] - 22:17  
**excluded** [7] - 5:18, 7:3, 18:3, 23:6, 44:8, 44:11, 44:21  
**excluding** [2] - 8:21, 39:14  
**exclusion** [7] - 5:9, 24:19, 34:7, 34:11, 38:19, 39:21, 43:21  
**exclusive** [1] - 6:4  
**exclusively** [1] - 41:20  
**executed** [1] - 37:8  
**exercise** [2] - 39:10, 40:4  
**Exhibit** [1] - 13:2  
**existed** [1] - 34:7  
**existence** [1] - 44:11  
**expansive** [1] - 25:7  
**expectation** [4] - 5:22, 8:17, 31:18, 31:21  
**expenses** [1] - 22:22  
**expert** [10] - 7:5, 8:8, 8:9, 18:13, 22:21, 23:21, 29:20, 30:14, 31:24, 36:4  
**expert's** [1] - 30:9  
**explanation** [1] -

42:22  
**expressly** [1] - 14:21  
**extent** [2] - 4:2, 39:12  
**extremely** [3] - 3:18, 6:5, 9:4

---

## F

---

**FAA** [1] - 6:4  
**fact** [7] - 17:15, 18:17, 21:6, 21:11, 26:17, 41:2, 45:1  
**facts** [8] - 11:20, 20:14, 21:12, 22:22, 22:24, 24:24, 27:3, 27:22  
**factual** [2] - 36:15, 42:10  
**factually** [1] - 17:10  
**failed** [1] - 33:18  
**fails** [1] - 33:7  
**fair** [5] - 18:16, 29:22, 42:12, 43:5  
**fair-market** [3] - 18:16, 29:22  
**fairness** [1] - 34:23  
**fall** [1] - 29:18  
**fashion** [3] - 10:24, 11:4, 28:4  
**fault** [1] - 41:14  
**faulty** [1] - 30:24  
**favor** [4] - 5:16, 32:8, 43:6, 44:17  
**February** [1] - 5:14  
**Federal** [1] - 37:11  
**fees** [1] - 45:15  
**Feinberg** [2] - 9:20, 14:14  
**few** [1] - 21:7  
**fiduciary** [1] - 5:8  
**fifteen** [1] - 30:5  
**fifth** [1] - 13:12  
**figure** [1] - 42:7  
**file** [2] - 3:15, 24:12  
**filing** [1] - 25:16  
**final** [20] - 10:19, 17:3, 17:8, 17:18, 19:1, 19:12, 20:4, 20:13, 25:18, 26:3, 26:7, 26:17, 26:19, 28:5, 29:9, 34:3, 37:9, 37:15, 39:3, 43:16  
**Final** [5] - 5:15, 5:25, 8:10, 8:11, 13:3  
**finally** [2] - 7:4, 36:22  
**findings** [2] - 17:7, 21:11  
**fine** [1] - 23:9  
**finished** [2] - 24:11, 29:7

**firms** [1] - 39:4  
**first** [7] - 6:18, 15:7, 20:21, 22:11, 29:20, 45:4, 45:24  
**five** [5] - 35:6, 39:3, 39:24, 39:25, 40:2  
**fix** [1] - 39:25  
**flexible** [1] - 21:20  
**flowed** [1] - 45:21  
**focused** [1] - 19:5  
**focussing** [1] - 35:24  
**follow** [2] - 45:23, 46:7  
**following** [1] - 8:18  
**fora** [1] - 36:20  
**Forbes** [1] - 9:14  
**forth** [2] - 15:19, 24:6  
**forum** [1] - 44:14  
**framed** [1] - 41:16  
**fraud** [1] - 28:18  
**front** [8] - 3:22, 8:5, 9:18, 11:1, 12:21, 21:6, 32:7, 40:10  
**froze** [1] - 14:7  
**full** [1] - 16:23  
**fully** [2] - 10:22, 42:14  
**fundamentally** [2] - 38:16, 40:12  
**future** [1] - 29:13

---

## G

---

**GAAP** [1] - 9:22  
**GAC** [2] - 26:5, 26:17  
**game** [1] - 11:1  
**general** [6] - 25:15, 25:25, 26:24, 36:23, 37:1, 45:1  
**generally** [1] - 37:6  
**GET** [2] - 1:4, 1:11  
**given** [2] - 41:10, 42:21  
**Gluck** [58] - 3:14, 3:16, 4:20, 5:5, 5:17, 5:19, 6:19, 7:1, 7:4, 8:12, 8:21, 12:3, 15:19, 15:22, 18:2, 18:4, 18:23, 18:24, 19:4, 20:22, 21:3, 21:8, 21:16, 22:3, 22:9, 22:16, 22:19, 23:4, 23:15, 23:20, 24:5, 24:7, 25:7, 25:23, 26:1, 26:16, 26:22, 29:10, 29:16, 29:19, 34:6, 36:6, 37:21, 38:2, 38:8, 38:15, 39:14, 39:21, 42:10, 42:19, 42:23, 43:2, 43:4, 43:8, 44:10, 44:13, 44:20, 45:9

**GLUCK** [2] - 1:8, 1:15  
**Gluck's** [23] - 5:7, 5:12, 6:17, 7:6, 16:7, 16:20, 17:16, 18:21, 19:25, 22:24, 23:22, 25:5, 26:11, 27:19, 28:3, 29:8, 30:14, 31:13, 38:19, 39:5, 42:18, 43:6, 43:21  
**Gol** [2] - 26:4, 27:6  
**granted** [2] - 41:23, 42:5  
**great** [6] - 4:6, 17:2, 32:15, 33:3, 46:20  
**ground** [1] - 6:3  
**grounds** [4] - 6:3, 6:7, 21:4, 37:7  
**groups** [1] - 9:6  
**guess** [5] - 4:14, 12:2, 27:14, 40:5, 46:1  
**guessing** [1] - 40:22  
**guideline** [1] - 23:2  
**guideposts** [1] - 13:4  
**guy** [1] - 20:19  
**gymnastic** [1] - 39:10

---

## H

---

**hand** [4] - 20:7, 23:20, 40:21, 41:2  
**handled** [1] - 45:25  
**hang** [1] - 35:10  
**happy** [1] - 46:25  
**hard** [1] - 20:15  
**head** [1] - 46:19  
**hear** [7] - 6:17, 6:20, 6:22, 12:2, 16:15, 16:17, 41:3  
**hearing** [5] - 5:14, 18:21, 30:10, 30:11, 31:11  
**held** [2] - 5:16, 28:20  
**helps** [1] - 6:14  
**high** [3] - 21:17, 22:23, 36:10  
**higher** [3] - 28:5, 28:8, 31:2  
**hired** [3] - 18:7, 22:21, 23:7  
**holding** [2] - 22:1, 26:2  
**Holidays** [1] - 46:25  
**Honor** [23] - 4:17, 4:18, 4:24, 4:25, 7:25, 10:25, 12:10, 12:24, 13:7, 15:14, 17:2, 25:9, 25:22, 29:25, 30:8, 31:5, 34:2, 34:22, 35:12, 40:24, 46:11, 46:12,

47:2  
**HONORABLE** [1] - 1:22  
**Hudson** [1] - 2:8  
**hypothetical** [3] - 15:15, 15:17, 16:11

---

## I

---

**identical** [1] - 12:13  
**ignore** [1] - 25:8  
**ignoring** [1] - 15:3  
**immediately** [1] - 29:17  
**impact** [2] - 11:17, 43:21  
**impacted** [2] - 7:6, 44:22  
**impartiality** [1] - 44:25  
**imperfectly** [1] - 37:8  
**important** [6] - 3:23, 4:7, 9:4, 10:2, 24:23, 36:15  
**impossible** [2] - 40:3, 45:3  
**improper** [2] - 5:10, 44:20  
**improperly** [2] - 44:7, 44:20  
**include** [3] - 13:25, 24:3, 31:10  
**included** [3] - 3:10, 18:6, 18:23  
**including** [1] - 18:8  
**inclusion** [2] - 25:24, 28:3  
**inconsistent** [5] - 3:23, 7:12, 38:17, 38:20, 40:12  
**incorporate** [1] - 32:25  
**incorporated** [2] - 14:20, 26:24  
**incorporating** [1] - 37:15  
**incorporation** [5] - 13:9, 14:17, 14:23, 26:12, 32:24  
**incorrect** [1] - 16:11  
**independent** [2] - 18:15, 41:1  
**INDEX** [2] - 1:5, 1:13  
**indicated** [1] - 38:18  
**inference** [1] - 25:20  
**information** [10] - 5:10, 8:22, 28:18, 30:21, 34:25, 35:2, 42:19, 43:2, 43:4, 43:8  
**informative** [1] - 17:14

**inhouse** [1] - 3:12  
**inject** [1] - 22:12  
**injected** [1] - 29:5  
**injunction** [2] - 22:2, 33:6  
**injunctive** [3] - 32:21, 33:12, 33:14  
**injured** [2] - 7:2, 15:23  
**inkling** [1] - 29:15  
**input** [1] - 42:23  
**inputs** [1] - 31:3  
**insert** [1] - 22:25  
**insightful** [1] - 6:14  
**instances** [1] - 18:13  
**instead** [4] - 18:5, 23:19, 28:8, 30:20  
**instructive** [1] - 12:11  
**interest** [2] - 4:6, 19:25  
**interesting** [4] - 3:19, 4:4, 4:7, 40:6  
**interestingly** [1] - 21:11  
**interests** [1] - 44:3  
**International** [2] - 26:5, 26:18  
**interpret** [1] - 10:22  
**interpretation** [1] - 10:5  
**intimated** [1] - 22:19  
**invades** [1] - 37:24  
**investors** [1] - 26:4  
**Investors** [1] - 32:20  
**involved** [5] - 20:23, 24:14, 31:15, 34:23  
**issue** [28] - 6:1, 9:18, 10:15, 10:16, 12:16, 12:20, 12:22, 13:15, 16:7, 22:13, 25:23, 27:12, 27:21, 29:13, 29:15, 31:5, 31:8, 31:22, 32:3, 32:19, 33:1, 34:16, 35:8, 41:11, 41:13, 41:16, 42:14  
**issued** [1] - 5:15  
**issues** [25] - 6:15, 9:15, 16:6, 17:7, 17:12, 17:17, 17:24, 19:2, 22:12, 22:25, 23:18, 25:11, 28:21, 28:24, 29:5, 31:25, 32:9, 32:16, 35:4, 36:20, 36:23, 37:1, 37:2, 46:15  
**items** [1] - 23:3  
**itself** [2] - 10:14, 38:18

**J**

**Jason** [1] - 3:15  
**JOEL** [1] - 1:22  
**join** [1] - 14:6  
**Joseph** [1] - 3:11  
**JOSEPH** [2] - 1:3, 1:11  
**Judge** [4] - 20:21, 21:23, 44:10, 44:13  
**judge** [1] - 14:3  
**Judgment** [2] - 1:6, 1:14  
**judgment** [1] - 20:8  
**judicial** [3] - 6:5, 36:18, 43:24  
**July** [4] - 5:3, 5:16, 29:16  
**jurisdiction** [16] - 6:17, 6:20, 10:20, 13:15, 13:17, 13:19, 14:1, 14:16, 14:19, 16:10, 17:21, 25:13, 25:25, 34:13, 37:13, 44:15  
**justice** [1] - 14:6  
**Justice** [7] - 1:22, 14:4, 14:6, 16:6, 22:13, 25:2, 29:2  
**justifies** [1] - 40:11

**K**

**Kaplan** [1] - 3:9  
**KAPLAN** [1] - 2:2  
**Katz** [33] - 9:20, 12:25, 13:4, 13:15, 13:16, 13:24, 14:2, 14:14, 14:16, 17:6, 17:10, 17:13, 17:18, 25:17, 26:2, 26:14, 26:15, 26:19, 27:2, 27:22, 27:24, 28:4, 28:10, 29:1, 32:3, 32:6, 32:19, 36:24, 37:18, 38:20  
**keep** [1] - 30:6  
**kind** [9] - 3:18, 11:25, 17:21, 21:24, 23:9, 25:23, 39:9, 40:8, 44:9  
**knowingly** [1] - 43:1  
**knows** [2] - 20:19, 24:7  
**KOLCUN** [19] - 2:4, 3:8, 4:17, 16:19, 16:24, 17:2, 22:9, 23:17, 24:5, 24:17, 24:21, 25:15, 26:11, 26:15, 27:17, 35:12,

40:24, 46:10, 47:2  
**Kolcun** [4] - 3:9, 30:8, 32:10, 33:17  
**Kronenberg** [1] - 11:10  
**KUPFER** [21] - 2:9, 3:13, 4:18, 4:22, 4:24, 7:25, 9:3, 9:6, 11:8, 12:10, 12:22, 14:12, 15:14, 15:21, 16:18, 29:25, 30:2, 30:6, 34:21, 35:13, 46:12  
**Kupfer** [2] - 3:13, 14:11

**L**

**lack** [1] - 21:17  
**lacked** [1] - 37:13  
**language** [13] - 8:9, 10:13, 10:17, 13:17, 25:17, 25:19, 26:3, 26:8, 26:17, 26:20, 33:1, 37:16, 42:21  
**large** [1] - 36:1  
**last** [7] - 5:14, 17:15, 22:14, 25:9, 25:21, 34:2, 41:18  
**late** [1] - 22:11  
**latest** [3] - 6:13, 6:14, 6:15  
**law** [10] - 5:7, 5:12, 9:3, 9:24, 13:21, 14:5, 16:7, 27:4, 27:5, 43:7  
**least** [2] - 27:10, 39:18  
**leave** [2] - 21:21, 46:1  
**led** [1] - 40:23  
**left** [5] - 10:5, 10:6, 23:24, 43:22, 46:16  
**legal** [7] - 3:19, 10:5, 11:23, 17:11, 25:11, 32:16, 44:1  
**letter** [3] - 33:9, 42:21, 42:22  
**liability** [3] - 5:17, 7:15, 10:10  
**limitations** [1] - 42:18  
**limited** [1] - 6:5  
**line** [1] - 3:16  
**lingering** [1] - 35:3  
**listed** [1] - 24:4  
**litigate** [1] - 21:13  
**litigated** [4] - 12:23, 31:4, 31:22, 42:14  
**litigating** [3] - 5:5, 5:7, 13:10  
**litigation** [1] - 32:5  
**LLC** [4] - 1:3, 1:4,

1:11, 1:11  
**LLP** [4] - 2:2, 2:7, 3:14, 3:16  
**look** [7] - 7:11, 10:1, 12:3, 13:1, 13:3, 13:17, 15:25  
**lose** [1] - 14:3  
**lost** [1] - 23:5

**M**

**mail** [2] - 33:18, 38:19  
**main** [1] - 7:16  
**maintaining** [1] - 44:1  
**manner** [1] - 19:9  
**March** [2] - 33:16  
**market** [3] - 18:16, 29:22  
**matter** [5] - 21:18, 37:9, 40:9, 41:12, 45:1  
**Matter** [2] - 1:3, 1:10  
**matters** [2] - 30:17, 36:19  
**mean** [6] - 7:10, 7:19, 8:19, 11:5, 20:15, 23:25  
**meaning** [1] - 8:20  
**meaningful** [2] - 42:11, 42:20  
**meant** [1] - 20:24  
**measure** [2] - 5:21, 31:21  
**meet** [1] - 41:5  
**merits** [9] - 30:17, 31:5, 31:17, 31:22, 32:1, 32:9, 32:14, 34:14, 43:17  
**met** [1] - 27:25  
**methodology** [2] - 28:11, 39:11  
**methods** [9] - 18:9, 18:15, 18:20, 19:2, 20:8, 23:1, 28:7, 28:22, 29:21  
**metrics** [1] - 31:16  
**MICHAEL** [1] - 2:4  
**Michael** [1] - 3:8  
**MICROSOFT** [1] - 1:19  
**middle** [2] - 14:13, 34:5  
**might** [6] - 21:19, 38:1, 39:20, 40:23, 45:21  
**million** [1] - 19:18  
**minimum** [1] - 41:4  
**minutes** [3] - 30:5, 35:6, 35:9  
**mischaracterization**

[1] - 33:25  
**misled** [1] - 40:18  
**mixed** [1] - 44:9  
**model** [2] - 22:25, 24:9  
**modern** [2] - 14:20, 32:19  
**modify** [1] - 33:9  
**moment** [1] - 14:5  
**momentarily** [1] - 14:8  
**monetary** [3] - 10:12, 34:6, 34:11  
**money** [7] - 6:10, 6:24, 7:1, 18:4, 20:2, 22:10, 23:19  
**months** [4] - 21:7, 25:1, 25:2, 33:23  
**morphed** [1] - 22:12  
**most** [1] - 10:1  
**motion** [11] - 16:4, 17:16, 17:17, 24:13, 24:15, 24:18, 25:10, 38:19, 41:22, 42:3, 42:9  
**motions** [1] - 3:10  
**move** [1] - 42:6  
**moving** [4] - 4:9, 4:10, 4:13, 5:24  
**MR** [39] - 3:8, 3:13, 4:17, 4:18, 4:22, 4:24, 7:25, 9:3, 9:6, 11:8, 12:10, 12:22, 14:4, 14:12, 15:14, 15:21, 16:18, 16:19, 16:24, 17:2, 22:9, 23:17, 24:5, 24:17, 24:21, 25:15, 26:11, 26:15, 27:17, 29:25, 30:2, 30:6, 34:21, 35:12, 35:13, 40:24, 46:10, 46:12, 47:2  
**muddled** [1] - 40:17  
**multiple** [10] - 11:22, 12:24, 12:25, 13:12, 19:15, 30:18, 30:19, 30:20, 31:2  
**multiples** [2] - 30:23, 31:25  
**must** [1] - 36:8  
**mute** [1] - 35:10  
**mutual** [1] - 37:9

**N**

**narrow** [2] - 6:4, 6:15  
**nearly** [1] - 17:10  
**necessary** [2] - 3:21, 43:11  
**need** [2] - 13:21, 45:11  
**negates** [1] - 25:19

**never** [6] - 18:10, 18:11, 22:12, 22:13, 29:4, 43:17  
**NEW** [2] - 1:1, 1:1  
**new** [10] - 11:6, 20:1, 23:19, 29:21, 34:19, 34:21, 35:1, 38:2, 39:17, 44:23  
**New** [7] - 1:18, 2:4, 2:8, 43:7  
**next** [3] - 1:24, 45:23, 47:6  
**nice** [1] - 32:10  
**nine** [1] - 35:9  
**NO** [2] - 1:5, 1:13  
**nobody** [1] - 22:8  
**none** [1] - 27:18  
**nonmonetary** [1] - 24:10  
**normal** [1] - 21:3  
**note** [2] - 20:3, 45:23  
**noted** [1] - 43:14  
**nothing** [1] - 32:6  
**Nothing** [1] - 10:13  
**notice** [1] - 41:10  
**novo** [4] - 13:13, 23:15, 27:2, 38:14  
**number** [11] - 6:7, 6:13, 7:20, 7:21, 18:12, 19:2, 23:11, 23:12, 33:7, 33:19, 39:23  
**NYSCEF** [1] - 29:10

---

**O**

---

**objected** [2] - 29:17, 29:22  
**objecting** [1] - 32:4  
**objection** [1] - 41:3  
**objections** [5] - 17:23, 28:21, 28:22, 31:24, 32:13  
**obligative** [1] - 43:5  
**obligations** [1] - 10:23  
**obviously** [3] - 20:10, 20:19, 40:9  
**October** [1] - 5:2  
**odd** [1] - 24:24  
**oddities** [1] - 29:2  
**odds** [1] - 38:16  
**OF** [3] - 1:1, 1:1  
**offer** [1] - 18:22  
**Official** [1] - 2:23  
**once** [3] - 10:15, 11:3, 44:15  
**one** [38] - 3:9, 3:19, 4:3, 8:1, 10:2, 15:16, 16:22, 17:11, 18:19, 19:10, 20:7, 21:4, 21:10, 21:11, 22:2, 26:1, 26:7, 26:15, 29:6, 30:15, 30:18, 32:13, 33:4, 33:8, 34:2, 34:24, 37:7, 38:1, 39:3, 39:20, 39:22, 40:1, 40:21, 41:6, 43:17, 45:12, 45:24, 46:18  
**ongoing** [1] - 25:6  
**open** [2] - 43:23, 46:15  
**opening** [1] - 30:9  
**operated** [1] - 36:17  
**operative** [1] - 29:8  
**opine** [1] - 20:11  
**opinion** [9] - 17:6, 17:13, 18:22, 21:7, 27:16, 27:23, 28:16, 29:12, 29:21  
**opinions** [1] - 22:24  
**opponent** [1] - 16:15  
**opportunity** [5] - 29:23, 41:10, 42:11, 42:12, 43:8  
**opposed** [1] - 23:6  
**order** [3] - 13:2, 46:13, 46:14  
**ordered** [2] - 33:13, 41:25  
**orders** [2] - 7:22, 38:17  
**ordinarily** [1] - 11:20  
**Ordinarily** [1] - 11:21  
**original** [2] - 42:6, 44:22  
**originally** [2] - 44:4, 44:6  
**otherwise** [2] - 45:9, 45:15  
**out-of-pocket** [1] - 21:24  
**outcome** [1] - 28:17  
**outs** [1] - 26:6  
**outside** [1] - 36:7  
**overlaps** [1] - 4:3  
**overrule** [2] - 9:23, 13:6  
**overrules** [1] - 26:2  
**own** [15] - 14:1, 14:16, 14:18, 16:10, 18:7, 18:9, 18:13, 18:15, 18:25, 23:7, 25:25, 29:8, 41:5, 41:7, 45:2

---

**P**

---

**page** [5] - 1:24, 6:25, 34:3, 34:5, 47:6  
**paid** [4] - 15:18, 20:2, 23:20  
**panel** [1] - 10:22  
**papers** [2] - 18:12, 25:7  
**Paragraph** [7] - 8:11, 19:16, 19:19, 19:23, 29:10, 38:12, 42:16  
**paragraph** [3] - 8:15, 19:7, 19:14  
**Paragraphs** [1] - 34:9  
**paragraphs** [1] - 31:23  
**parallel** [1] - 26:2  
**Park** [1] - 2:3  
**PART** [1] - 1:1  
**part** [6] - 35:25, 41:16, 41:23, 42:4, 42:16, 46:5  
**partial** [2] - 4:11, 45:4  
**partially** [1] - 5:25  
**participate** [2] - 5:20, 22:5  
**participating** [2] - 44:8, 44:21  
**participation** [3] - 7:6, 25:6, 42:18  
**particular** [1] - 32:22  
**particularly** [1] - 17:13  
**parties** [21] - 9:12, 9:14, 10:23, 13:9, 13:18, 14:17, 14:21, 15:23, 23:3, 27:7, 27:11, 36:11, 36:17, 37:4, 37:14, 39:5, 40:7, 40:15, 43:12, 44:23, 45:6  
**parties'** [1] - 38:22  
**parts** [1] - 36:1  
**party** [13] - 9:20, 9:22, 10:6, 10:9, 11:15, 11:16, 12:11, 12:14, 14:24, 32:4, 34:24, 43:7, 43:25  
**patience** [1] - 14:8  
**pause** [1] - 14:9  
**pay** [2] - 15:21, 41:25  
**pending** [1] - 25:6  
**per** [1] - 45:7  
**percent** [3] - 19:25, 31:6, 31:7  
**permissible** [1] - 7:17  
**permit** [2] - 42:13, 42:23  
**permitted** [3] - 39:8, 41:7, 43:4  
**persuading** [1] - 44:13  
**petition** [1] - 13:2  
**Petitioner** [1] - 3:11  
**petitioner's** [1] - 8:8  
**petitioners** [20] - 3:8, 4:10, 5:2, 5:11, 5:23, 5:24, 6:7, 6:9, 6:11, 6:12, 6:19, 6:20, 8:5, 16:2, 16:12, 19:3, 37:24, 41:25, 44:4, 46:10  
**Petitioners** [3] - 1:5, 1:12, 2:3  
**petitioners'** [1] - 5:11  
**Phillips** [1] - 9:17  
**phone** [1] - 3:11  
**Piccirillo** [1] - 2:23  
**pick** [2] - 27:4, 45:11  
**picked** [1] - 23:20  
**pictures** [1] - 35:11  
**piece** [1] - 41:18  
**place** [1] - 5:1  
**plaintiff** [1] - 3:7  
**plaintiff's** [1] - 44:17  
**play** [1] - 11:6  
**pled** [1] - 18:24  
**pocket** [2] - 21:24, 22:17  
**point** [9] - 10:3, 12:7, 16:16, 21:2, 21:15, 23:10, 33:4, 34:2, 42:13  
**points** [1] - 38:4  
**portion** [1] - 36:3  
**position** [4] - 43:25, 44:1, 44:2, 46:2  
**possibility** [1] - 22:4  
**possible** [1] - 39:16  
**post** [1] - 30:11  
**post-hearing** [1] - 30:11  
**postdate** [1] - 26:21  
**potentially** [2] - 4:15, 36:23  
**pound** [1] - 20:22  
**power** [2] - 14:18, 14:25  
**powers** [2] - 34:13, 37:8  
**practically** [1] - 33:10  
**pre** [1] - 30:11  
**predated** [1] - 26:12  
**predictable** [1] - 42:20  
**prehearing** [1] - 13:2  
**preliminary** [2] - 6:24, 22:2  
**prepared** [2] - 35:21, 41:5  
**present** [4] - 31:20, 40:20, 42:11, 42:12  
**presented** [7] - 14:14, 30:8, 30:11, 30:13, 30:21, 30:22, 31:14  
**pretty** [2] - 11:19, 23:24  
**prevented** [1] - 39:23  
**prevents** [1] - 43:25  
**Pricewaterhouse** [7] - 7:20, 23:11, 23:23, 34:18, 40:1, 43:22, 45:10  
**primarily** [1] - 5:7  
**principal** [2] - 3:5, 34:17  
**principle** [1] - 43:24  
**principles** [1] - 9:22  
**problem** [2] - 7:8, 14:12  
**problems** [2] - 23:22, 38:18  
**procedural** [3] - 27:25, 28:2, 29:2  
**proceed** [1] - 45:10  
**proceeded** [2] - 5:3, 10:21  
**proceeding** [5] - 29:19, 34:23, 38:5, 44:1, 45:18  
**proceedings** [3] - 3:20, 11:23, 46:15  
**process** [13] - 5:18, 7:3, 15:3, 21:18, 23:24, 34:22, 35:1, 40:8, 41:21, 43:21, 45:23, 45:25  
**professional** [3] - 18:9, 18:20, 23:2  
**progressing** [1] - 33:18  
**prohibited** [1] - 28:12  
**prohibits** [1] - 17:4  
**projections** [2] - 30:24, 31:1  
**promissory** [1] - 20:3  
**proof** [1] - 21:16  
**proper** [2] - 41:1, 45:14  
**properly** [8] - 6:11, 9:25, 11:1, 11:3, 11:13, 12:12, 16:8, 43:13  
**prove** [1] - 34:6  
**proven** [2] - 34:10  
**provide** [2] - 40:18, 43:4  
**provided** [9] - 8:22, 19:8, 28:19, 29:21, 30:24, 31:1, 38:3, 42:19, 45:4  
**providing** [1] - 39:3  
**province** [1] - 37:25  
**provision** [1] - 7:12  
**proxy** [2] - 8:16, 19:20  
**public** [1] - 23:2  
**published** [1] - 28:16

**pure** [4] - 23:17, 28:21, 29:5, 31:21  
**purported** [1] - 34:7  
**pursuant** [1] - 20:2  
**put** [5] - 5:6, 7:23, 9:18, 15:19, 21:5  
**putting** [1] - 39:15  
**PwC** [38] - 5:9, 5:10, 7:6, 8:13, 19:3, 19:15, 19:20, 20:4, 20:10, 20:11, 20:13, 22:20, 23:3, 24:6, 24:9, 29:4, 29:7, 29:12, 30:23, 31:1, 31:14, 33:6, 33:8, 33:10, 36:7, 37:22, 38:9, 42:9, 42:19, 42:21, 43:2, 44:8, 44:22, 44:24, 45:2  
**PwC's** [20] - 18:6, 18:8, 18:14, 18:19, 19:1, 19:12, 19:17, 20:6, 22:25, 23:1, 23:6, 24:9, 28:8, 29:20, 34:8, 38:6, 39:11, 40:22, 42:22, 44:25

---

## Q

---

**quantify** [1] - 23:5  
**quantifying** [1] - 10:17  
**quarrel** [2] - 6:8, 8:7  
**questions** [4] - 4:4, 17:18, 35:7, 46:9  
**quickly** [1] - 32:17  
**quirky** [1] - 20:14  
**quote** [16] - 7:2, 8:9, 10:13, 17:4, 19:17, 28:5, 28:11, 28:12, 28:13, 29:10, 37:19, 37:22, 38:7, 38:10, 42:18, 42:25  
**quotes** [1] - 25:7  
**quoting** [1] - 8:9

---

## R

---

**RACHEL** [1] - 2:5  
**Rachel** [1] - 3:15  
**raised** [2] - 23:15, 39:21  
**raises** [1] - 4:4  
**rate** [3] - 19:17, 23:1, 24:4  
**rather** [2] - 39:25, 40:2  
**re** [1] - 32:5  
**re-litigation** [1] - 32:5  
**reach** [2] - 41:1, 45:20  
**reached** [4] - 19:11,

23:10, 39:5, 41:13  
**read** [3] - 4:3, 34:9, 39:19  
**readily** [2] - 11:11, 31:19  
**real** [2] - 8:7, 12:15  
**really** [20] - 3:21, 5:11, 5:25, 6:8, 6:14, 7:10, 7:11, 9:9, 11:15, 13:3, 13:7, 16:11, 19:5, 21:3, 30:16, 33:7, 33:25, 34:4, 35:2  
**reappraisal** [2] - 20:16, 34:19  
**rearguing** [1] - 25:23  
**reason** [1] - 30:22  
**reasoning** [1] - 36:9  
**reasons** [1] - 33:7  
**rebuttal** [1] - 30:9  
**received** [5] - 5:23, 5:24, 8:14, 37:23, 38:10  
**recess** [1] - 35:16  
**recognized** [2] - 25:9, 38:4  
**reconsider** [1] - 45:2  
**record** [8] - 3:2, 35:18, 38:13, 40:17, 41:9, 42:13, 45:4, 46:8  
**redetermination** [3] - 9:13, 9:15, 11:16  
**redetermining** [1] - 9:10  
**reevaluation** [1] - 32:12  
**refashioned** [1] - 17:8  
**refashioning** [2] - 28:14, 38:25  
**refer** [2] - 46:7, 46:14  
**referred** [1] - 28:23  
**reflects** [1] - 19:8  
**refusing** [1] - 43:1  
**regard** [2] - 14:15, 15:15  
**related** [3] - 5:8, 5:10, 29:12  
**relating** [1] - 32:9  
**reliable** [1] - 19:17  
**relied** [1] - 7:9  
**relief** [8] - 10:12, 10:24, 11:4, 11:5, 29:12, 32:21, 33:12, 33:14  
**relitigating** [2] - 17:22, 30:17  
**relying** [1] - 27:19  
**remainder** [2] - 42:1, 42:5  
**remaining** [1] - 45:12

**remains** [1] - 45:1  
**remedies** [1] - 29:11  
**remedy** [10] - 17:5, 18:10, 21:8, 28:5, 28:9, 28:12, 36:4, 37:20, 41:19, 45:14  
**remember** [2] - 16:2, 31:7  
**remembered** [1] - 24:23  
**remit** [1] - 7:17  
**remove** [1] - 45:3  
**render** [1] - 10:19  
**repeated** [1] - 17:23  
**report** [5] - 18:13, 18:18, 29:20, 31:24, 36:4  
**Reporter** [1] - 2:23  
**requests** [1] - 29:12  
**require** [1] - 35:1  
**required** [2] - 45:18, 45:24  
**requirements** [2] - 27:25, 28:2  
**requires** [3] - 31:12, 43:4, 43:7  
**rescission** [1] - 5:5  
**reserved** [1] - 41:20  
**reserves** [1] - 29:10  
**resolution** [1] - 10:7  
**resolve** [2] - 35:7, 46:14  
**resolved** [2] - 10:7, 28:20  
**respect** [5] - 17:11, 19:2, 20:9, 27:25, 43:20  
**responded** [1] - 33:17  
**Respondent** [3] - 1:9, 2:7, 3:14  
**respondent** [3] - 41:25, 44:7, 44:20  
**respondent's** [2] - 8:8, 42:3  
**respondents** [1] - 4:13  
**Respondents** [1] - 1:16  
**responsibility** [1] - 37:4  
**rest** [2] - 41:17, 42:2  
**restarting** [1] - 14:7  
**result** [6] - 7:22, 7:23, 34:17, 38:1, 38:15, 45:14  
**results** [1] - 3:23  
**reevaluation** [1] - 39:10  
**review** [6] - 6:5, 13:13, 25:12, 27:2, 36:13, 38:14

**reviewable** [2] - 32:14, 32:15  
**reviewed** [1] - 28:7  
**reviewing** [2] - 28:13, 38:25  
**revisions** [1] - 39:12  
**rights** [3] - 10:23, 21:18, 29:11  
**rising** [1] - 12:19  
**road** [1] - 47:1  
**Robins** [1] - 3:9  
**ROBINS** [1] - 2:2  
**role** [2] - 4:4, 46:2  
**roles** [1] - 4:5  
**ROSEN** [1] - 14:4  
**roughly** [1] - 4:17  
**routine** [1] - 26:6  
**rule** [6] - 13:25, 14:17, 26:12, 26:21, 26:23, 27:19  
**ruled** [1] - 32:8  
**rules** [11] - 13:9, 13:24, 14:2, 14:20, 14:23, 25:24, 26:25, 27:5, 32:24, 32:25  
**ruling** [2] - 10:17, 13:1  
**rulings** [2] - 12:5

---

## S

---

**salaries** [1] - 22:23  
**sand** [1] - 20:22  
**scenario** [1] - 36:15  
**scope** [6] - 13:17, 17:25, 32:2, 36:8, 38:25, 41:19  
**scratch** [2] - 24:1, 46:18  
**second** [2] - 40:22, 42:15  
**Second** [4] - 10:12, 11:20, 12:11, 17:8  
**section** [2] - 19:23, 42:17  
**Section** [2] - 41:23, 42:4  
**see** [1] - 46:25  
**seek** [2] - 7:1, 21:22  
**seeking** [6] - 4:20, 9:23, 11:15, 11:16, 13:12, 16:22  
**seem** [1] - 39:8  
**seized** [1] - 44:15  
**select** [1] - 44:23  
**selected** [2] - 31:2, 45:8  
**selection** [2] - 34:20, 34:22  
**send** [1] - 10:11  
**sent** [2] - 33:6, 33:8

**sentence** [1] - 6:18  
**separate** [6] - 8:3, 11:17, 11:18, 26:20, 26:25, 27:20  
**separately** [1] - 15:24  
**seriously** [1] - 36:14  
**serve** [1] - 43:18  
**served** [1] - 29:19  
**set** [2] - 11:19, 20:14  
**sets** [1] - 46:21  
**setting** [1] - 21:16  
**settled** [1] - 28:16  
**seven** [1] - 30:20  
**several** [1] - 26:23  
**shares** [5] - 7:18, 36:5, 36:21, 39:5, 40:15  
**Sherwood** [8] - 16:6, 20:21, 21:23, 22:14, 25:2, 29:3, 44:10, 44:13  
**shoehorn** [1] - 6:12  
**short** [1] - 35:16  
**show** [4] - 7:5, 21:7, 21:8, 21:17  
**showing** [3] - 7:2, 18:5, 39:23  
**shown** [1] - 8:23  
**side** [1] - 16:17  
**signal** [1] - 41:4  
**silent** [1] - 13:19  
**similar** [2] - 17:21, 28:17  
**simply** [2] - 29:3, 38:23  
**single** [4] - 17:11, 20:9, 24:6, 29:22  
**situation** [9] - 11:22, 12:13, 13:23, 14:14, 14:23, 15:16, 23:4, 26:18, 46:20  
**skeleton** [1] - 39:11  
**small** [1] - 39:22  
**smart** [1] - 20:19  
**someone** [1] - 37:15  
**somewhat** [1] - 20:24  
**sorry** [5] - 11:9, 14:10, 14:11, 15:20, 16:24  
**sort** [8] - 11:22, 21:23, 21:24, 34:15, 39:11, 39:12, 44:12, 45:12  
**sought** [9] - 9:14, 10:6, 18:4, 18:9, 22:9, 24:9, 29:16, 44:4, 44:6  
**sound** [1] - 21:25  
**sounds** [1] - 45:10  
**specific** [1] - 16:19, 23:14, 25:16, 25:19, 27:13, 36:25, 37:7,

37:16, 39:2, 39:13, 41:19  
**specifically** [7] - 5:19, 7:8, 11:24, 16:4, 37:14, 41:24, 45:1  
**specifics** [1] - 30:14  
**specified** [1] - 39:4  
**spokesperson** [1] - 3:6  
**stand** [1] - 32:10  
**standard** [3] - 21:2, 21:19, 25:12  
**start** [7] - 3:7, 4:19, 4:23, 8:8, 24:1, 30:3, 35:23  
**started** [1] - 16:12  
**STATE** [1] - 1:1  
**state** [4] - 5:7, 5:12, 9:24, 16:7  
**state-law** [1] - 5:12  
**statement** [4] - 6:25, 30:9, 33:15, 33:24  
**statements** [1] - 40:21  
**stay** [1] - 15:4  
**still** [1] - 26:25  
**straight** [1] - 15:2  
**strange** [1] - 36:15  
**Street** [1] - 1:17  
**stronger** [1] - 26:19  
**structure** [2] - 31:9, 31:12  
**stuff** [1] - 20:19  
**subject** [2] - 37:9, 38:19  
**submit** [1] - 43:8  
**submitted** [5] - 5:10, 8:16, 33:15, 33:25, 37:10  
**submitting** [1] - 35:2  
**subsequent** [1] - 43:19  
**substance** [2] - 38:24, 46:7  
**succeeded** [1] - 44:1  
**sufficient** [3] - 8:16, 27:7, 41:10  
**sufficiently** [1] - 19:20  
**suggests** [1] - 10:14  
**Suite** [1] - 2:3  
**sum** [1] - 46:4  
**summarily** [1] - 42:9  
**summarizing** [1] - 46:6  
**suppose** [1] - 4:9  
**supposed** [4] - 9:1, 21:22, 30:16, 31:6  
**SUPREME** [1] - 1:1  
**surmised** [1] - 22:18  
**swing** [1] - 16:23

---

**T**


---

**taint** [1] - 45:4  
**TEAMS** [1] - 1:19  
**Tee** [10] - 10:2, 11:9, 11:19, 12:25, 13:4, 20:25, 26:9, 26:12  
**TELECONFERENCE** [1] - 1:19  
**ten** [3] - 39:24, 39:25, 40:2  
**tension** [1] - 46:22  
**TERM** [1] - 1:1  
**terms** [5] - 7:15, 20:3, 24:4, 44:24, 45:8  
**testified** [1] - 18:21  
**testimony** [1] - 7:5  
**THE** [36] - 1:1, 3:2, 3:17, 4:19, 4:23, 7:10, 8:18, 9:5, 11:5, 11:19, 12:16, 14:10, 15:1, 15:20, 16:15, 16:22, 17:1, 20:14, 23:9, 23:22, 24:15, 24:20, 25:14, 26:9, 26:14, 27:4, 29:24, 30:1, 30:4, 34:15, 35:5, 35:14, 35:18, 40:25, 46:13, 47:3  
**theories** [1] - 6:13  
**thereafter** [2] - 29:23, 44:2  
**therefore** [3] - 13:20, 30:25, 39:24  
**thicket** [1] - 3:19  
**THINGS** [2] - 1:4, 1:11  
**thinking** [2] - 40:18, 40:25  
**thinks** [1] - 23:7  
**THORN** [1] - 2:5  
**Thorn** [1] - 3:16  
**thorough** [1] - 41:15  
**thoroughly** [1] - 31:22  
**thoughtful** [1] - 41:15  
**three** [3] - 17:17, 33:7, 33:15  
**throughout** [1] - 29:9  
**tie** [1] - 23:14  
**tightly** [1] - 36:13  
**timeline** [1] - 24:23  
**tinker** [1] - 13:5  
**today** [3] - 3:10, 3:15, 32:10  
**took** [2] - 5:1, 20:6  
**topped** [1] - 23:11  
**total** [1] - 19:18  
**touch** [1] - 25:11  
**touched** [1] - 23:17  
**tour** [1] - 24:24  
**traced** [1] - 39:13

**transcript** [1] - 46:13  
**TRIAL** [1] - 1:1  
**tribunals** [1] - 36:16  
**tried** [2] - 23:5, 46:23  
**true** [1] - 23:19  
**truth** [1] - 38:6  
**try** [2] - 6:12, 30:6  
**trying** [4] - 9:17, 21:8, 32:21, 39:10  
**turn** [1] - 35:10  
**two** [11] - 4:2, 8:1, 9:6, 10:1, 13:19, 15:15, 27:13, 33:12, 36:16, 46:21, 46:23

---

**U**


---

**ultimately** [1] - 31:17  
**under** [11] - 5:19, 6:4, 13:13, 13:20, 15:6, 18:5, 21:19, 28:10, 33:23, 36:17, 45:8  
**undertake** [1] - 39:9  
**undertook** [1] - 38:14  
**unequivocally** [1] - 36:22  
**units** [4] - 8:13, 37:23, 38:9, 43:6  
**unless** [2] - 33:9, 45:9  
**unlike** [1] - 32:3  
**unlimited** [1] - 30:4  
**unmistakable** [3] - 13:21, 13:22, 32:23  
**unmistakably** [1] - 14:24  
**unprecedented** [2] - 3:24, 46:20  
**unresolved** [1] - 10:6  
**unusual** [2] - 3:24, 46:20  
**up** [15] - 3:22, 7:17, 7:20, 7:21, 14:7, 15:9, 20:17, 23:11, 23:12, 32:10, 35:10, 36:5, 39:16, 39:17, 44:9  
**update** [1] - 33:16  
**uses** [1] - 13:3  
**usurps** [1] - 19:12

---

**V**


---

**vacate** [13] - 5:25, 16:22, 21:9, 34:17, 34:18, 36:11, 38:6, 38:20, 41:22, 46:3, 46:4, 46:5  
**vacated** [5] - 17:7, 28:10, 36:8, 37:6, 41:8  
**vacates** [1] - 44:22  
**Vacating** [1] - 1:14  
**vacating** [6] - 17:1, 21:4, 21:5, 21:16, 22:4, 41:23  
**vacatur** [6] - 4:11, 4:15, 6:3, 6:7, 6:13  
**valuation** [8] - 7:13, 7:21, 8:13, 8:22, 8:25, 9:2, 11:7, 12:19, 12:20, 12:22, 17:4, 17:5, 17:7, 17:8, 17:24, 18:8, 18:9, 18:10, 18:25, 19:1, 19:8, 19:12, 19:13, 19:18, 19:20, 19:24, 20:1, 20:4, 20:7, 20:8, 20:11, 22:12, 22:25, 23:8, 23:16, 23:18, 25:4, 25:19, 26:7, 26:16, 26:20, 27:15, 28:1, 28:5, 28:6, 28:7, 28:9, 28:11, 28:14, 28:19, 28:22, 29:5, 29:12, 29:15, 29:21, 30:14, 36:5, 36:6, 36:21, 37:13, 37:19, 37:23, 38:6, 38:9, 38:14, 38:15, 38:18, 38:23, 38:24, 39:1, 39:2, 39:17, 40:19, 40:22, 41:1, 41:7, 41:21, 43:6, 44:8, 45:7  
**valuations** [1] - 17:19  
**value** [7] - 7:18, 18:16, 20:12, 29:22, 37:22, 39:5  
**valued** [1] - 40:15  
**various** [1] - 38:4  
**version** [2] - 31:4, 31:17  
**view** [1] - 37:24  
**virtually** [1] - 40:3

---

**W**


---

**WACC** [6] - 19:17, 23:1, 24:4, 31:5, 31:6, 31:25  
**wait** [2] - 14:5, 14:6  
**waiver** [3] - 16:20, 17:21, 22:14  
**ways** [3] - 7:20, 8:1, 37:3  
**weighing** [1] - 30:15  
**whereas** [2] - 14:16, 21:19  
**Whirlpool** [1] - 9:17

**whole** [3] - 15:3, 17:1, 34:12  
**wholesale** [1] - 19:24  
**WITHIN** [1] - 1:3  
**Within's** [1] - 3:12  
**witness** [1] - 23:21  
**WMT** [2] - 26:4, 32:19  
**word** [2] - 11:6, 18:18  
**words** [4] - 7:14, 18:24, 23:13, 42:24  
**worksheets** [1] - 28:22  
**world** [1] - 21:3  
**written** [2] - 42:23, 46:6  
**WTIHIN** [1] - 1:11

---

**X**


---

**X-number** [1] - 7:20  
**XL** [5] - 11:10, 26:22, 27:19, 28:15, 29:1

---

**Y**


---

**Y-number** [1] - 7:21  
**Yakuel** [15] - 3:11, 9:1, 30:24, 31:1, 40:6, 40:17, 40:23, 40:24, 41:4, 41:10, 42:25, 43:12, 44:6, 45:18  
**YAKUEL** [2] - 1:3, 1:11  
**Yakuel's** [3] - 39:6, 41:22, 42:8  
**Yards** [1] - 2:8  
**year** [4] - 17:15, 22:14, 24:24, 25:21  
**years** [1] - 26:23  
**YORK** [2] - 1:1, 1:1  
**York** [7] - 1:18, 2:4, 2:8, 43:7