

VOLUME: II  
PAGES: 1 - 134  
EXHIBITS: 6 - 17

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
C.A. NO. 08-04641-B

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JOHNSON GOLF MANAGEMENT, INC.,

Plaintiff

vs

TOWN OF DUXBURY, and NORTH HILL ADVISORY  
COMMITTEE, Consisting of MICHAEL DOOLIN,  
CHAIRMAN, SCOTT WHITCOMB, ROBERT M. MUSTARD,  
JR., MICHAEL MARLBOROUGH, ANTHONY FLOREANO,  
MICHAEL T. RUFO, THOMAS K. GARRITY, RICHARD  
MANNING, W. JAMES FORD, and GORDON CUSHING  
(EX OFFICIO) and CALM GOLF, INC., and  
CHARLES LANZETTA,

Defendants

-----X

CONTINUED DEPOSITION OF GORDON H.  
CUSHING, taken on behalf of the Plaintiff,  
pursuant to the applicable provisions of the  
Massachusetts Rules of Civil Procedure, before  
James A. Lyons, CSR No. 117993, a Registered  
Diplomate Reporter, Certified Realtime Reporter  
and Notary Public in and for the Commonwealth of  
Massachusetts, at the offices of Follansbee &  
McLeod, LLP, 536 Granite Street, 3rd Floor,  
Braintree, Massachusetts, on Tuesday, May 22,  
2012, commencing at 10:10 a.m.

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| <p>1 <u>APPEARANCES:</u></p> <p>2 Stephen R. Follansbee, Esq.</p> <p>3 Follansbee &amp; McLeod, LLP</p> <p>4 536 Granite Street, 3rd Floor</p> <p>5 Braintree, Massachusetts 02184</p> <p>6 - and -</p> <p>7 Gregory J. Aceto, Esq.</p> <p>8 Johnson, Aceto, Bonner &amp; Prager, LLP</p> <p>9 67 Batterymarch, Suite 400</p> <p>10 Boston, Massachusetts 02110</p> <p>11 Attorneys for the Plaintiff</p> <p>12 Leonard H. Kesten, Esq.</p> <p>13 Brody, Hardoon, Perkins &amp; Kesten, LLP</p> <p>14 One Exeter Plaza</p> <p>15 699 Boylston Street</p> <p>16 Boston, Massachusetts 02116</p> <p>17 Attorney for the Town of Duxbury, and</p> <p>18 North Hill Advisory Committee, Et Als.</p> <p>19 Arthur P. Kreiger, Esq.</p> <p>20 Anderson &amp; Kreiger, LLP</p> <p>21 One Canal Street, Suite 200</p> <p>22 Cambridge, Massachusetts 02141</p> <p>23 Special Counsel for the Town of Duxbury</p> <p>24 <u>ALSO PRESENT:</u></p> <p>Douglas Johnson</p> <p>Jason Laramie</p> <p>(For Johnson Golf Management, Inc.)</p> <p>Judge Paul Chernoff</p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p>2-5</p> <p>1 Mr. Jordan or Mr. Troy?</p> <p>2 <b>A. Not 100 percent sure, but I'd probably say a</b></p> <p>3 <b>month ago maybe, three weeks, somewhere in that</b></p> <p>4 <b>ballpark.</b></p> <p>5 <b>Q.</b> And what did you discuss with them then?</p> <p>6 MR. KREIGER: You mean the general</p> <p>7 topic?</p> <p>8 MR. FOLLANSBEE: Yes.</p> <p>9 THE WITNESS: It's okay to say executive</p> <p>10 session. Is that all right? That's what it</p> <p>11 was.</p> <p>12 MR. KREIGER: Just the general topic is</p> <p>13 all you're being asked.</p> <p>14 <b>A. In a meeting talking about the overall status of</b></p> <p>15 <b>the case.</b></p> <p>16 <b>Q.</b> And the "status of the case" meaning the status</p> <p>17 of the litigation that you're here to testify</p> <p>18 today?</p> <p>19 <b>A. Yes.</b></p> <p>20 <b>Q.</b> And that was at an executive session of the</p> <p>21 Board of Selectmen in Duxbury?</p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q.</b> Who else was there?</p> <p>24 <b>A. The three selectmen, the town manager. That</b></p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |
| <p>1 <u>I N D E X</u></p> <p>2 <u>Cont'd Deposition of:</u> <u>Page</u></p> <p>3 GORDON H. CUSHING</p> <p>4 Examination by Mr. Follansbee 5</p> <p>5 Examination by Mr. Kesten 127</p> <p>6 Examination by Mr. Kreiger 130</p> <p>7 <u>Exhibits</u> <u>Page</u></p> <p>8 No. 6 Enlarged copy of transcript 15</p> <p>9 from Town of Duxbury Board</p> <p>10 of Selectmen</p> <p>11 No. 7 E-mail dated Wednesday, 19</p> <p>12 October 13, 2010 with memo</p> <p>13 No. 8 Corrected e-mail dated 31</p> <p>14 Wednesday, October 13, 2010</p> <p>15 with memo</p> <p>16 No. 9 Packet of minutes of the North 39</p> <p>17 Hill Advisory Committee</p> <p>18 No. 10 Letter dated December 24, 2003 53</p> <p>19 No. 11 Letter to the Editor of The 56</p> <p>20 Duxbury Clipper from January</p> <p>21 2004</p> <p>22 No. 12 Letter dated January 10, 2004 59</p> <p>23 No. 13 Affidavit of Gordon H. Cushing 72</p> <p>24 No. 14 General Laws: Chapter 30B, 91</p> <p>Section 17</p> <p>25 No. 15 Affidavit of Gordon H. Cushing 95</p> <p>26 dated August 31, 2011</p> <p>27 No. 16 General Laws: Chapter 30B, 110</p> <p>28 Section 6</p> <p>29 No. 17 Letter dated May 14, 2012 117</p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p>2-6</p> <p>1 could have been it. I don't remember who</p> <p>2 else.</p> <p>3 <b>Q.</b> Well, was Attorney Kesten or Attorney Kreiger</p> <p>4 there?</p> <p>5 <b>A. No.</b></p> <p>6 <b>Q.</b> At your previous deposition --</p> <p>7 Well, do you recall testifying here,</p> <p>8 approximately, a year ago?</p> <p>9 <b>A. Yes.</b></p> <p>10 <b>Q.</b> And do you recall questions about a consultant</p> <p>11 who had input into the RFP process at North</p> <p>12 Hill?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q.</b> And do you recall answering the town had not</p> <p>15 used a consultant?</p> <p>16 <b>A. Yes. I believe, I remember a question something</b></p> <p>17 <b>about that, yes.</b></p> <p>18 <b>Q.</b> And you have memory today, as well as your</p> <p>19 memory a year ago, is that the town drafted the</p> <p>20 document itself and that the consultant didn't</p> <p>21 draft anything; correct?</p> <p>22 <b>A. I think that my memory is that the question was</b></p> <p>23 <b>asked, did the town hire a consultant to draft</b></p> <p>24 <b>the RFP? And my response was no.</b></p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |
| <p>2-4</p> <p>1 <u>P R O C E E D I N G S</u></p> <p>2</p> <p>3 MR. FOLLANSBEE: Just for the record,</p> <p>4 this is a continuation of the deposition of</p> <p>5 Mr. Cushing which began on May 11th of 2011.</p> <p>6</p> <p>7 GORDON H. CUSHING, a witness called on</p> <p>8 behalf of the Plaintiff, first having been</p> <p>9 satisfactorily identified by their Massachusetts</p> <p>10 driver's license, then duly sworn, on oath</p> <p>11 deposes and says as follows:</p> <p>12</p> <p>13 <u>EXAMINATION BY MR. FOLLANSBEE, Cont'd:</u></p> <p>14 <b>Q.</b> Mr. Cushing, in preparing for today's</p> <p>15 deposition, who did you discuss your proposed</p> <p>16 testimony with?</p> <p>17 <b>A. Attorney Kreiger and Attorney Kesten.</b></p> <p>18 <b>Q.</b> Did you have any discussions with Mr. MacDonald</p> <p>19 or anybody else in town hall?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> Had you discussed your testimony with Attorney</p> <p>22 Troy or Attorney Jordan?</p> <p>23 <b>A. No.</b></p> <p>24 <b>Q.</b> When was the last time you spoke to either</p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p>2-7</p> <p>1 <b>Q.</b> And they didn't hire a consultant to do anything</p> <p>2 with the RFP; did they?</p> <p>3 <b>A. The intention was to have the person review it,</b></p> <p>4 <b>not draft it. But now we know that clearly,</b></p> <p>5 <b>evidently, she never received it. It wasn't</b></p> <p>6 <b>reviewed by her.</b></p> <p>7 <b>Q.</b> And you never sent it to her; did you?</p> <p>8 <b>A. I did.</b></p> <p>9 <b>Q.</b> You did send it to her?</p> <p>10 <b>A. I believe, I did.</b></p> <p>11 <b>Q.</b> And do you have a cover letter?</p> <p>12 <b>A. No.</b></p> <p>13 <b>Q.</b> How did you send it to her?</p> <p>14 <b>A. I don't remember. I don't remember. It could</b></p> <p>15 <b>have been mail. I don't remember.</b></p> <p>16 <b>Q.</b> And did you send it to anyone else?</p> <p>17 <b>A. Meaning?</b></p> <p>18 <b>Q.</b> The RFP, the draft RFP.</p> <p>19 <b>A. It went out to lots of people.</b></p> <p>20 <b>Q.</b> The final product, did you send it to the</p> <p>21 Inspector General?</p> <p>22 <b>A. I don't believe so, not the final, no.</b></p> <p>23 <b>Q.</b> Did you send a draft of it to the Inspector</p> <p>24 General?</p> <p>CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |

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| <p style="text-align: center;">2-8</p> <p>1 <b>A. My memory is that we sent it to the Inspector General, yeah.</b></p> <p>2 <b>Q.</b> Well, I'm not asking you about "we." I'm asking you about you.</p> <p>3 Did you send it to the Inspector General?</p> <p>4 <b>A. I don't remember.</b></p> <p>5 <b>Q.</b> Well, you would have saved your cover letter had you sent it to the Inspector General; wouldn't you?</p> <p>6 <b>A. It depends on how it was sent. I mean, it could have been mail or it could have been a fax. It could have been e-mail. So a cover letter, if I faxed it, there would be, I guess, like, a cover letter, but I would not have saved it.</b></p> <p>7 <b>Q.</b> Well, you wouldn't have just taken it and put it in an envelope and mailed it to the Inspector General without any explanation; would you?</p> <p>8 <b>A. Well, it's possible, yeah. We would have talked to them, or I would have talked to them and then sent it to them.</b></p> <p>9 <b>Q.</b> Did you ever talk to anyone in the Inspector General's Office about this case?</p> <p style="text-align: center;">2-9</p> <p>1 <b>A. At some point in time, yes.</b></p> <p>2 <b>Q.</b> When did you do that?</p> <p>3 <b>A. I don't remember.</b></p> <p>4 <b>Q.</b> Before or after the RFP was issued?</p> <p>5 <b>A. During the process, somewhere along the line.</b></p> <p>6 <b>Q.</b> After the first RFP had been rejected?</p> <p>7 <b>A. I don't remember.</b></p> <p>8 <b>Q.</b> And was it on the telephone or an in-person meeting?</p> <p>9 <b>A. Well, we went to talk to them once in person as a group. There was a large group of us.</b></p> <p>10 <b>Q.</b> Who was in the group?</p> <p>11 <b>A. Myself, Attorney Troy, the town manager, Selectman Doolin. And then there was quite a few people from the office itself.</b></p> <p>12 <b>Q.</b> When you say "the office," you mean the Inspector General's Office?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q.</b> And where did that meeting take place?</p> <p>15 <b>A. In the office of the Inspector General, somewhere in their facility.</b></p> <p>16 <b>Q.</b> And do you know what year that was?</p> <p>17 <b>A. I don't. But if I guessed, I'd say it was 2010,</b></p> <p style="text-align: center;">2-10</p> <p>1 <b>but that's a guess.</b></p> <p>2 <b>Q.</b> But that would be well after the RFP process that we're talking about; correct?</p> <p>3 <b>A. Yes, yes.</b></p> <p>4 <b>Q.</b> Now, when you came to your last deposition, did you get any instructions from Attorney Troy and Attorney Jordan about what to say or not to say at the deposition?</p> <p>5 <b>A. Not from Attorney Troy; because he wasn't here, no.</b></p> <p>6 <b>Q.</b> How about Attorney Gordon (phonetic)? Did he give you any instructions?</p> <p>7 MR. KREIGER: Do you mean Jordan?</p> <p>8 MR. KESTEN: Do you mean Jordan?</p> <p>9 MR. FOLLANSBEE: Jordan. What did I say?</p> <p>10 MR. KREIGER: You said Gordon.</p> <p>11 <b>Q.</b> (BY MR. FOLLANSBEE) Attorney Jordan, did he give you any instructions?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> And what was his instruction?</p> <p>14 <b>A. During one of the breaks, he told me to make sure that I told them, if they asked that, Mr. Troy had nothing to do with writing the</b></p> <p style="text-align: center;">2-11</p> <p>1 <b>RFP.</b></p> <p>2 <b>Q.</b> And that's a lie; isn't it?</p> <p>3 <b>A. What do you mean?</b></p> <p>4 <b>Q.</b> Troy did have something to do with the RFP; didn't he?</p> <p>5 <b>A. Mr. Troy had something to do with writing the RFP.</b></p> <p>6 <b>Q.</b> So Attorney Jordan was asking you to lie under oath at your deposition; wasn't he?</p> <p>7 <b>A. I couldn't speculate on what he was doing. But my response was, whatever they asked me, I'll tell them the truth.</b></p> <p>8 <b>Q.</b> And was Attorney Jordan upset at that answer?</p> <p>9 <b>A. There was no reaction.</b></p> <p>10 <b>Q.</b> Did you get any reaction after your deposition when it became known that you had disclosed that Attorney Troy had participated in drafting the RFP?</p> <p>11 <b>A. Reaction from who?</b></p> <p>12 <b>Q.</b> Attorney Troy or Attorney Jordan, did they say anything to you after the deposition?</p> <p>13 <b>A. No.</b></p> <p>14 <b>Q.</b> They never discussed the fact that you had said that Attorney Troy participated in</p> <p style="text-align: center;">2-12</p> <p>1 drafting the RFP? You never discussed that with them again?</p> <p>2 <b>A. Yes. I believe there have been various discussions where, you know, things were said about what Bob might have put in or offered and what I said that he did; so I don't have a specific memory of where or when, but I would say, yes.</b></p> <p>3 <b>Q.</b> Well, what were the discussions about what he put in and what he didn't put in?</p> <p>4 <b>A. The most specific thing would be the term "comparable business enterprise" and that I have always maintained that that particular phrase came from Bob after we asked him for help on some language, and his memory was different than that.</b></p> <p>5 <b>Q.</b> You don't have any doubt about your memory, do you, being accurate?</p> <p>6 <b>A. I doubt my memory sometimes, yes.</b></p> <p>7 <b>Q.</b> But on that topic?</p> <p>8 <b>A. No.</b></p> <p>9 <b>Q.</b> So it continues to be your position that the expression "comparable business enterprise" came from Attorney Troy; correct?</p> <p style="text-align: center;">2-13</p> <p>1 <b>A. That's correct.</b></p> <p>2 MR. KREIGER: Steve, excuse me, I've been operating under the assumption that the usual stipulations are in effect?</p> <p>3 MR. FOLLANSBEE: Yes.</p> <p>4 MR. KREIGER: But I wasn't here last time; is that correct?</p> <p>5 MR. FOLLANSBEE: I could give them to you, if you want.</p> <p>6 MR. KREIGER: All objections except as to form are reserved until time of trial?</p> <p>7 MR. FOLLANSBEE: Yes. I have the deposition right here, if you need it.</p> <p>8 MR. KREIGER: No. I have the transcript as well. I just didn't review it, that part of it. Thank you.</p> <p>9 MR. FOLLANSBEE: Okay.</p> <p>10 <b>Q.</b> (BY MR. FOLLANSBEE) Now, do you remember the hearing before the Duxbury selectmen on October 4th of 2010?</p> <p>11 <b>A. I don't know dates.</b></p> <p>12 <b>Q.</b> Well, let me see if I can help you.</p> <p>13 Do you remember a hearing that the selectmen had in which you made a presentation</p> <p style="text-align: center;">2-14</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: center;">2-8</p> <p>1 <b>RFP.</b></p> <p>2 <b>Q.</b> And that's a lie; isn't it?</p> <p>3 <b>A. What do you mean?</b></p> <p>4 <b>Q.</b> Troy did have something to do with the RFP; didn't he?</p> <p>5 <b>A. Mr. Troy had something to do with writing the RFP.</b></p> <p>6 <b>Q.</b> So Attorney Jordan was asking you to lie under oath at your deposition; wasn't he?</p> <p>7 <b>A. I couldn't speculate on what he was doing. But my response was, whatever they asked me, I'll tell them the truth.</b></p> <p>8 <b>Q.</b> And was Attorney Jordan upset at that answer?</p> <p>9 <b>A. There was no reaction.</b></p> <p>10 <b>Q.</b> Did you get any reaction after your deposition when it became known that you had disclosed that Attorney Troy had participated in drafting the RFP?</p> <p>11 <b>A. Reaction from who?</b></p> <p>12 <b>Q.</b> Attorney Troy or Attorney Jordan, did they say anything to you after the deposition?</p> <p>13 <b>A. No.</b></p> <p>14 <b>Q.</b> They never discussed the fact that you had said that Attorney Troy participated in</p> <p style="text-align: center;">2-11</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: center;">2-9</p> <p>1 General's Office about this case?</p> <p>2 <b>A. At some point in time, yes.</b></p> <p>3 <b>Q.</b> When did you do that?</p> <p>4 <b>A. I don't remember.</b></p> <p>5 <b>Q.</b> Before or after the RFP was issued?</p> <p>6 <b>A. During the process, somewhere along the line.</b></p> <p>7 <b>Q.</b> After the first RFP had been rejected?</p> <p>8 <b>A. I don't remember.</b></p> <p>9 <b>Q.</b> And was it on the telephone or an in-person meeting?</p> <p>10 <b>A. Well, we went to talk to them once in person as a group. There was a large group of us.</b></p> <p>11 <b>Q.</b> Who was in the group?</p> <p>12 <b>A. Myself, Attorney Troy, the town manager, Selectman Doolin. And then there was quite a few people from the office itself.</b></p> <p>13 <b>Q.</b> When you say "the office," you mean the Inspector General's Office?</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> And where did that meeting take place?</p> <p>16 <b>A. In the office of the Inspector General, somewhere in their facility.</b></p> <p>17 <b>Q.</b> And do you know what year that was?</p> <p>18 <b>A. I don't. But if I guessed, I'd say it was 2010,</b></p> <p style="text-align: center;">2-10</p> <p>1 <b>but that's a guess.</b></p> <p>2 <b>Q.</b> But that would be well after the RFP process that we're talking about; correct?</p> <p>3 <b>A. Yes, yes.</b></p> <p>4 <b>Q.</b> Now, when you came to your last deposition, did you get any instructions from Attorney Troy and Attorney Jordan about what to say or not to say at the deposition?</p> <p>5 <b>A. Not from Attorney Troy; because he wasn't here, no.</b></p> <p>6 <b>Q.</b> How about Attorney Gordon (phonetic)? Did he give you any instructions?</p> <p>7 MR. KREIGER: Do you mean Jordan?</p> <p>8 MR. KESTEN: Do you mean Jordan?</p> <p>9 MR. FOLLANSBEE: Jordan. What did I say?</p> <p>10 MR. KREIGER: You said Gordon.</p> <p>11 <b>Q.</b> (BY MR. FOLLANSBEE) Attorney Jordan, did he give you any instructions?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> And what was his instruction?</p> <p>14 <b>A. During one of the breaks, he told me to make sure that I told them, if they asked that, Mr. Troy had nothing to do with writing the</b></p> <p style="text-align: center;">2-11</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: center;">2-12</p> <p>1 drafting the RFP? You never discussed that with them again?</p> <p>2 <b>A. Yes. I believe there have been various discussions where, you know, things were said about what Bob might have put in or offered and what I said that he did; so I don't have a specific memory of where or when, but I would say, yes.</b></p> <p>3 <b>Q.</b> Well, what were the discussions about what he put in and what he didn't put in?</p> <p>4 <b>A. The most specific thing would be the term "comparable business enterprise" and that I have always maintained that that particular phrase came from Bob after we asked him for help on some language, and his memory was different than that.</b></p> <p>5 <b>Q.</b> You don't have any doubt about your memory, do you, being accurate?</p> <p>6 <b>A. I doubt my memory sometimes, yes.</b></p> <p>7 <b>Q.</b> But on that topic?</p> <p>8 <b>A. No.</b></p> <p>9 <b>Q.</b> So it continues to be your position that the expression "comparable business enterprise" came from Attorney Troy; correct?</p> <p style="text-align: center;">2-13</p> <p>1 <b>A. That's correct.</b></p> <p>2 MR. KREIGER: Steve, excuse me, I've been operating under the assumption that the usual stipulations are in effect?</p> <p>3 MR. FOLLANSBEE: Yes.</p> <p>4 MR. KREIGER: But I wasn't here last time; is that correct?</p> <p>5 MR. FOLLANSBEE: I could give them to you, if you want.</p> <p>6 MR. KREIGER: All objections except as to form are reserved until time of trial?</p> <p>7 MR. FOLLANSBEE: Yes. I have the deposition right here, if you need it.</p> <p>8 MR. KREIGER: No. I have the transcript as well. I just didn't review it, that part of it. Thank you.</p> <p>9 MR. FOLLANSBEE: Okay.</p> <p>10 <b>Q.</b> (BY MR. FOLLANSBEE) Now, do you remember the hearing before the Duxbury selectmen on October 4th of 2010?</p> <p>11 <b>A. I don't know dates.</b></p> <p>12 <b>Q.</b> Well, let me see if I can help you.</p> <p>13 Do you remember a hearing that the selectmen had in which you made a presentation</p> <p style="text-align: center;">2-14</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: center;">2-10</p> <p>1 <b>but that's a guess.</b></p> <p>2 <b>Q.</b> But that would be well after the RFP process that we're talking about; correct?</p> <p>3 <b>A. Yes, yes.</b></p> <p>4 <b>Q.</b> Now, when you came to your last deposition, did you get any instructions from Attorney Troy and Attorney Jordan about what to say or not to say at the deposition?</p> <p>5 <b>A. Not from Attorney Troy; because he wasn't here, no.</b></p> <p>6 <b>Q.</b> How about Attorney Gordon (phonetic)? Did he give you any instructions?</p> <p>7 MR. KREIGER: Do you mean Jordan?</p> <p>8 MR. KESTEN: Do you mean Jordan?</p> <p>9 MR. FOLLANSBEE: Jordan. What did I say?</p> <p>10 MR. KREIGER: You said Gordon.</p> <p>11 <b>Q.</b> (BY MR. FOLLANSBEE) Attorney Jordan, did he give you any instructions?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> And what was his instruction?</p> <p>14 <b>A. During one of the breaks, he told me to make sure that I told them, if they asked that, Mr. Troy had nothing to do with writing the</b></p> <p style="text-align: center;">2-11</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: center;">2-13</p> <p>1 <b>A. That's correct.</b></p> <p>2 MR. KREIGER: Steve, excuse me, I've been operating under the assumption that the usual stipulations are in effect?</p> <p>3 MR. FOLLANSBEE: Yes.</p> <p>4 MR. KREIGER: But I wasn't here last time; is that correct?</p> <p>5 MR. FOLLANSBEE: I could give them to you, if you want.</p> <p>6 MR. KREIGER: All objections except as to form are reserved until time of trial?</p> <p>7 MR. FOLLANSBEE: Yes. I have the deposition right here, if you need it.</p> <p>8 MR. KREIGER: No. I have the transcript as well. I just didn't review it, that part of it. Thank you.</p> <p>9 MR. FOLLANSBEE: Okay.</p> <p>10 <b>Q.</b> (BY MR. FOLLANSBEE) Now, do you remember the hearing before the Duxbury selectmen on October 4th of 2010?</p> <p>11 <b>A. I don't know dates.</b></p> <p>12 <b>Q.</b> Well, let me see if I can help you.</p> <p>13 Do you remember a hearing that the selectmen had in which you made a presentation</p> <p style="text-align: center;">2-14</p> <p>1 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |

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| <p style="text-align: right;">2-14</p> <p>1 with Attorney Troy regarding alleged defaults by<br/>2 Johnson Golf Management?<br/>3 <b>A. Yes.</b><br/>4 <b>Q.</b> And if I suggest to you that that took place on<br/>5 October 4th of 2010, is that the approximate<br/>6 time that you think it happened?<br/>7 <b>A. I wouldn't argue. I'm sure it was.</b><br/>8 <b>Q.</b> And do you remember Attorney Donato asking<br/>9 Attorney Troy and yourself who drafted the RFP<br/>10 document?<br/>11 <b>A. He asked Attorney Troy, yes.</b><br/>12 <b>Q.</b> And do you remember what Attorney Troy's answer<br/>13 was?<br/>14 <b>A. I do now because I've seen it.</b><br/>15 <b>Q.</b> You've looked at the transcript?<br/>16 <b>A. I've seen a tape of the actual meeting, yes.</b><br/>17 <b>Q.</b> And I'm going to show you this. This is a<br/>18 transcript of the same meeting. And I'd ask<br/>19 you to start, the material is underlined on page<br/>20 64.<br/>21 (Document handed to the witness.)<br/>22 <b>Q.</b> If you just read page 64 and page 65 and the top<br/>23 of page 66 to yourself, and then I'll ask you<br/>24 some questions about it.<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-17</p> <p>1 procurement company, at that time?<br/>2 <b>A. Yes.</b><br/>3 <b>Q.</b> And why did you think that?<br/>4 <b>A. Because we had sent it to her. And there was</b><br/>5 <b>some e-mails back and forth, as the process went</b><br/>6 <b>forward, where I was referring to the person</b><br/>7 <b>that I was fully under the impression that we</b><br/>8 <b>had sent it to and saying, you know, we haven't</b><br/>9 <b>heard back from her.</b><br/>10 <b>So yes, I was under the impression</b><br/>11 <b>that, yes, there was -- whatever you want to</b><br/>12 <b>call it. I don't know what the term would be</b><br/>13 <b>but.</b><br/>14 <b>Q.</b> Now, you indicated at the end of this, the last<br/>15 thing that Mr. Donato asked, if somebody could<br/>16 provide the information to the board, and both<br/>17 Mr. Troy and you say "Sure."<br/>18 Did you endeavor to go find that<br/>19 information and give it to the board after the<br/>20 fact?<br/>21 <b>A. I just want to make sure that I have the right</b><br/>22 <b>information.</b><br/>23 MR. KREIGER: Objection.<br/>24 (Discussion off the record.)<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-15</p> <p>1 <b>A. About the underlined portions?</b><br/>2 <b>Q.</b> Pardon me?<br/>3 <b>A. The underlined portions?</b><br/>4 <b>Q.</b> Yes.<br/>5 MR. FOLLANSBEE: Mark that as Exhibit 6,<br/>6 please.<br/>7 (Exhibit No. 6, For Identification,<br/>8 marked.)<br/>9 <b>Q.</b> (BY MR. FOLLANSBEE) It's now been marked as<br/>10 Exhibit No. 6.<br/>11 And referring you to that document, at<br/>12 the time, you knew that everybody or that many<br/>13 town officials had participated in drafting the<br/>14 document, including yourself, Attorney Troy,<br/>15 Richard MacDonald, Mrs. Sullivan and Mr. Madden;<br/>16 correct?<br/>17 <b>A. Yes.</b><br/>18 <b>Q.</b> And so when Attorney Troy told you or when<br/>19 Attorney Troy said on page 65, "The honest<br/>20 answer is, the town hall had nothing to do with<br/>21 the entire procurement document," you knew that<br/>22 wasn't true; didn't you?<br/>23 <b>A. Yes.</b><br/>24 <b>Q.</b> And then he said, "It was sent out to a vendor<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-18</p> <p>1 <b>A. So can you just ask that question again? I</b><br/>2 <b>just want to make sure that I'm answering it</b><br/>3 <b>right.</b><br/>4 <b>Q.</b> Yes.<br/>5 At the very end, Mr. Donato asked, "Could<br/>6 somebody provide that to the board?" Did you<br/>7 understand what he was asking for?<br/>8 <b>A. I understood what he was asking for.</b><br/>9 <b>Q.</b> And what did you understand that he was asking<br/>10 for?<br/>11 <b>A. The process of how the RFP was created.</b><br/>12 <b>Q.</b> And so did you subsequently provide that to<br/>13 him?<br/>14 <b>A. I did.</b><br/>15 <b>Q.</b> I'd ask if you could take a look at this<br/>16 document.<br/>17 (Document handed to the witness.)<br/>18 <b>Q.</b> Do you recognize that as an e-mail that you sent<br/>19 to various officials in Duxbury regarding the<br/>20 RFP process?<br/>21 <b>A. Yes.</b><br/>22 <b>Q.</b> And with that --<br/>23 <b>A. There was an attachment, I guess.</b><br/>24 <b>Q.</b> Did you send a one-page memo that went with<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: right;">2-16</p> <p>1 who had expertise in the field of golf course<br/>2 procurement." He believes it was a woman. And<br/>3 he turns to you, and you indicated "uh-huh,"<br/>4 meaning yes.<br/>5 You thought it was a woman, too?<br/>6 <b>A. Yes.</b><br/>7 <b>Q.</b> And you knew that the actual document had been<br/>8 drafted by yourself, principally, with many<br/>9 others from town; correct?<br/>10 <b>A. Correct.</b><br/>11 <b>Q.</b> Why didn't you tell the truth then?<br/>12 <b>A. I did tell the truth.</b><br/>13 <b>Q.</b> Why didn't you tell the selectmen that -- the<br/>14 question went to you and/or Bob. I'm sorry, it<br/>15 went to Richard or Bob.<br/>16 Did you speak up and say, Wait a minute,<br/>17 a lot of people in town government had something<br/>18 to do with this?<br/>19 <b>A. No.</b><br/>20 <b>Q.</b> Back on page 64, Mr. Troy turned to you and<br/>21 asked you the name of the procurement company,<br/>22 and you said you didn't know it off the top of<br/>23 your head.<br/>24 Did you think that there was a<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-19</p> <p>1 that?<br/>2 <b>A. Yes.</b><br/>3 <b>(Document handed to the witness.)</b><br/>4 MR. FOLLANSBEE: I'd ask that the e-mail<br/>5 and the one-page memo be marked as the next<br/>6 exhibit.<br/>7 MR. KESTEN: Is that No. 7?<br/>8 MR. FOLLANSBEE: No. 7.<br/>9 (Exhibit No. 7, For Identification,<br/>10 marked.)<br/>11 <b>Q.</b> (BY MR. FOLLANSBEE) Now, I'm now showing you<br/>12 what's been marked as Exhibit 7. If you could<br/>13 turn to the second page of the exhibit.<br/>14 <b>A. Okay.</b><br/>15 <b>Q.</b> If we go down to item number 7, if you could<br/>16 read that to yourself, I'll have a few questions<br/>17 about that one.<br/>18 <b>A. Okay.</b><br/>19 <b>Q.</b> Now, you indicate in paragraph 7 that you sent<br/>20 it to the North Hill Advisory Committee members<br/>21 and town counsel.<br/>22 And that would be Robert Troy; correct?<br/>23 <b>A. Correct.</b><br/>24 <b>Q.</b> And then you indicate, it was sent to a fellow<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |

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| <p style="text-align: right;">2-20</p> <p>1 named Attorney Robert Garrity.<br/> 2 Who is he?<br/> 3 <b>A. He is an attorney that works for the town. And</b><br/> 4 <b>his primary area is, he helps the town with</b><br/> 5 <b>construction-related issues, school buildings,</b><br/> 6 <b>other things like that.</b><br/> 7 <b>Q.</b> Did you send this to Attorney Garrity?<br/> 8 <b>A. Yes.</b><br/> 9 <b>Q.</b> Do you know Attorney Garrity?<br/> 10 <b>A. I do.</b><br/> 11 <b>Q.</b> Where does he live?<br/> 12 <b>A. No idea.</b><br/> 13 <b>Q.</b> Where is his office?<br/> 14 <b>A. Don't know that either.</b><br/> 15 <b>Q.</b> Where did you send it to him?<br/> 16 <b>A. At his office.</b><br/> 17 <b>Q.</b> Just for your own information, Bob Garrity is a<br/> 18 good friend of mine; so I've talked to him.<br/> 19 <b>A. Nice guy.</b><br/> 20 <b>Q.</b> Very nice guy.<br/> 21 Have you met him?<br/> 22 <b>A. I have.</b><br/> 23 <b>Q.</b> What does he look like?<br/> 24 <b>A. A plain guy, not that tall, not that small. I</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p style="text-align: right;">2-23</p> <p>1 MR. FOLLANSBEE: Yes.<br/> 2 MR. KESTEN: Sorry.<br/> 3 MR. FOLLANSBEE: That's okay.<br/> 4 <b>A. Yes.</b><br/> 5 <b>One of the documents that I received was</b><br/> 6 <b>from chairman of the North Hill Committee,</b><br/> 7 <b>Mr. Doolin. I have a specific memory of it;</b><br/> 8 <b>because when I received it back, it had red</b><br/> 9 <b>writing in the columns where he had made</b><br/> 10 <b>suggestions on things.</b><br/> 11 <b>Q.</b> And what suggestions was he making?<br/> 12 <b>A. That -- there was a lot of them.</b><br/> 13 <b>Q.</b> Did you save that document?<br/> 14 <b>A. Yes. And I forwarded it to Attorney Troy on</b><br/> 15 <b>several occasions.</b><br/> 16 <b>Q.</b> Is that a document that counsel has reviewed,<br/> 17 and has it been provided to Attorney Kesten or<br/> 18 Attorney Kreiger?<br/> 19 <b>A. I wouldn't know that.</b><br/> 20 <b>Q.</b> Where is the original of that document?<br/> 21 <b>A. It was by e-mail; so wherever that e-mail is,</b><br/> 22 <b>maybe saved in a folder somewhere in my</b><br/> 23 <b>computer. But I don't have 100 percent memory</b><br/> 24 <b>on that. I've copied it various times and</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-21</p> <p>1 <b>don't really remember.</b><br/> 2 <b>Q.</b> You never sent this to Attorney Garrity; did<br/> 3 you?<br/> 4 <b>A. Yes.</b><br/> 5 <b>Q.</b> And so you have a cover letter showing that you<br/> 6 sent it to Attorney Garrity; correct?<br/> 7 <b>A. No. It would have been by e-mail or by mail.</b><br/> 8 <b>Q.</b> So you have an e-mail --<br/> 9 <b>A. Either one of the two.</b><br/> 10 <b>Q.</b> So you have an e-mail that you sent it to<br/> 11 Attorney Garrity?<br/> 12 <b>A. Or mail, yeah.</b><br/> 13 <b>Q.</b> And Attorney Garrity never provided any input;<br/> 14 did he?<br/> 15 <b>A. Attorney Garrity's involvement in the process</b><br/> 16 <b>was very short. The town manager decided that</b><br/> 17 <b>we were not going to pursue having Attorney</b><br/> 18 <b>Garrity involved past this first little step</b><br/> 19 <b>here that I described and that we were going to</b><br/> 20 <b>use Bob Troy.</b><br/> 21 <b>And I think, if I might add, I believe</b><br/> 22 <b>there is an e-mail from Attorney Garrity back</b><br/> 23 <b>to me that states, you know, would the town</b><br/> 24 <b>manager like to have him come to the evaluation</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-24</p> <p>1 <b>distributed it.</b><br/> 2 <b>Q.</b> Now, in the next paragraph, paragraph 8 --<br/> 3 Well, before I get to that, after the<br/> 4 meeting where Mr. Donato asked about who drafted<br/> 5 this document, did you have any conversation<br/> 6 that evening with Attorney Troy about the<br/> 7 accuracy of what he had just told the Board of<br/> 8 Selectmen?<br/> 9 <b>A. No.</b><br/> 10 <b>Q.</b> Subsequently, did you have any conversations<br/> 11 with Attorney Troy and say, Wait a minute, Bob,<br/> 12 that isn't how it happened?<br/> 13 <b>A. No.</b><br/> 14 <b>Q.</b> You've never addressed it with him ever?<br/> 15 <b>A. Yes.</b><br/> 16 <b>Q.</b> When did you address it with him?<br/> 17 <b>A. Very recently.</b><br/> 18 <b>Q.</b> And where was that?<br/> 19 <b>A. I don't know if I know exactly where it was.</b><br/> 20 <b>It's been a couple of times where I've said,</b><br/> 21 <b>"You are the one that wrote the or gave us the</b><br/> 22 <b>language 'comparable business enterprise.'"</b><br/> 23 <b>Q.</b> But did you address with Attorney Troy, Wait a<br/> 24 minute, Bob, you said no one in town hall had<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                               |
| <p style="text-align: right;">2-22</p> <p>1 <b>meetings. And I believe somewhere I responded,</b><br/> 2 <b>no, we're going to go in a different direction.</b><br/> 3 <b>But I know I've seen that e-mail recently.</b><br/> 4 MR. KESTEN: I believe I have, too.<br/> 5 MR. FOLLANSBEE: Just for the record, I<br/> 6 haven't seen any of those e-mails.<br/> 7 <b>Q.</b> Now, you indicate that comments -- this is again<br/> 8 in paragraph 7 -- "Comments received by all<br/> 9 parties were reviewed."<br/> 10 How did those comments come to you?<br/> 11 <b>A. Various ways. Phone call, people maybe could</b><br/> 12 <b>have come to my office, e-mail, things like</b><br/> 13 <b>that.</b><br/> 14 <b>Q.</b> And did you save any of those comments?<br/> 15 <b>A. Yes.</b><br/> 16 <b>Q.</b> Any specific memory of any comments other than<br/> 17 the one from Attorney Troy regarding comparable<br/> 18 business entity?<br/> 19 <b>A. Yes.</b><br/> 20 MR. KESTEN: Enterprise.<br/> 21 <b>A. Enterprise.</b><br/> 22 MR. FOLLANSBEE: Well, it says "entity"<br/> 23 here.<br/> 24 MR. KESTEN: Oh, it does?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-25</p> <p>1 anything to do with this. And there couldn't be<br/> 2 a conspiracy because nobody in town hall had<br/> 3 anything to do with the entire procurement<br/> 4 document.<br/> 5 Did you address that with him?<br/> 6 <b>A. No. I think my memo kind of spoke exactly to</b><br/> 7 <b>what happened.</b><br/> 8 <b>Q.</b> Let's go back to paragraph 8 of your memo.<br/> 9 <b>A. Okay.</b><br/> 10 <b>Q.</b> You say that the draft was reviewed by a woman<br/> 11 who worked for the Town of Plymouth?<br/> 12 <b>A. Uh-huh.</b><br/> 13 <b>Q.</b> Is that a yes?<br/> 14 <b>A. Yes.</b><br/> 15 <b>Q.</b> And you don't know that to be true; do you?<br/> 16 <b>A. Well, now I know that she claims she never got</b><br/> 17 <b>it. But at the time that I wrote this memo,</b><br/> 18 <b>yes, I fully believed that she had received it</b><br/> 19 <b>and reviewed it.</b><br/> 20 <b>Q.</b> But she made no changes or comments; did she?<br/> 21 <b>A. No. We never received anything back from her.</b><br/> 22 <b>Q.</b> Now, you say in paragraph 8 that it was reviewed<br/> 23 by a woman and that you sent it to her.<br/> 24 Did you send any instructions with it?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>             |

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| <p style="text-align: right;">2-26</p> <p>1 <b>A. I don't remember.</b></p> <p>2 <b>Q.</b> Why did you think that a woman in Plymouth</p> <p>3 reviewed this?</p> <p>4 MR. KREIGER: Objection.</p> <p>5 Go ahead.</p> <p>6 <b>Q.</b> Go ahead. You can answer.</p> <p>7 <b>A. Okay.</b></p> <p>8 <b>The quote/unquote plan was to have a</b></p> <p>9 <b>draft RFP reviewed by this person -- and the</b></p> <p>10 <b>name escapes me right now -- in Plymouth. And</b></p> <p>11 <b>the person had done some work for the town</b></p> <p>12 <b>previously. Finance director John Madden had</b></p> <p>13 <b>worked with her in Plymouth.</b></p> <p>14 <b>So that's why, you know, we sent it to</b></p> <p>15 <b>her or I sent it to her and followed up with</b></p> <p>16 <b>several e-mails saying, "I haven't heard</b></p> <p>17 <b>anything back from you." "John, has this lady</b></p> <p>18 <b>got this?" "I assume no news is good news,"</b></p> <p>19 <b>things of that nature.</b></p> <p>20 <b>Q.</b> When you say that you followed up with e-mails,</p> <p>21 you never sent an e-mail to the woman in</p> <p>22 Plymouth.</p> <p>23 You sent the e-mails to people in</p> <p>24 Duxbury; correct?</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: right;">2-29</p> <p>1 <b>A. I think, basically, I guess I thought they were</b></p> <p>2 <b>asking Bob the questions, and it wasn't my place</b></p> <p>3 <b>to correct him at that stage of the game. I</b></p> <p>4 <b>guess I wish I did now, in hindsight, but I</b></p> <p>5 <b>didn't.</b></p> <p>6 <b>Q.</b> Well, you knew her name, at that point; didn't</p> <p>7 you?</p> <p>8 <b>A. I knew it, yeah. It wasn't something that was</b></p> <p>9 <b>on the tip of my tongue.</b></p> <p>10 <b>Q.</b> Well, I understand. Because your answer, when</p> <p>11 he asked if you knew the name, your answer at</p> <p>12 the bottom of page 64 is, "Not off the top of my</p> <p>13 head"?</p> <p>14 <b>A. Yeah.</b></p> <p>15 <b>Q.</b> But you actually did know the name Pam Hagler,</p> <p>16 at that point; didn't you?</p> <p>17 <b>A. I probably did. Just like I said there, I</b></p> <p>18 <b>didn't remember it. Just like I'm guessing that</b></p> <p>19 <b>that's her name now. I think it is but.</b></p> <p>20 <b>Q.</b> But you knew it wasn't a procurement company.</p> <p>21 You knew it was a woman from the Town of</p> <p>22 Plymouth; correct?</p> <p>23 <b>A. Well, my memory is that she works as that. Her</b></p> <p>24 <b>job is that. But she has a side business; so I</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-27</p> <p>1 <b>A. Correct.</b></p> <p>2 <b>Q.</b> So you never sent an e-mail to the woman in</p> <p>3 Plymouth in your life; did you?</p> <p>4 <b>A. Not after this, not after this area, no.</b></p> <p>5 <b>Q.</b> When you say "not after this area," from the</p> <p>6 time you began the RFP process until today,</p> <p>7 have you ever sent an e-mail -- you yourself --</p> <p>8 to the woman in Plymouth?</p> <p>9 <b>A. Not that I can find, no.</b></p> <p>10 <b>Q.</b> And you don't know her name; correct?</p> <p>11 <b>A. I'm going to say Pamela Hagler. But I don't</b></p> <p>12 <b>remember if that -- this is the first one.</b></p> <p>13 <b>There is a second one where I put her name in.</b></p> <p>14 <b>Q.</b> Did you know her name when you drafted this</p> <p>15 document?</p> <p>16 <b>A. I did.</b></p> <p>17 <b>Q.</b> Why didn't you use her name when you drafted</p> <p>18 this document?</p> <p>19 <b>A. Well, this was the first draft that I was</b></p> <p>20 <b>sending out of this, and I mistakenly actually</b></p> <p>21 <b>hit the "Send" button. But I was supposed to</b></p> <p>22 <b>just send it to Richard and say, Is there</b></p> <p>23 <b>anything that you want me to add, subtract? Is</b></p> <p>24 <b>this okay?</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>             | <p style="text-align: right;">2-30</p> <p>1 <b>interpreted that to mean, she's got a</b></p> <p>2 <b>procurement business.</b></p> <p>3 <b>Q.</b> Who told you that she had a side business?</p> <p>4 <b>A. I think, various discussions with the town</b></p> <p>5 <b>manager and the finance director; because they</b></p> <p>6 <b>have used her before on other, I think they</b></p> <p>7 <b>said, it was DPW-related procurements. So she</b></p> <p>8 <b>is getting paid. She must have a business.</b></p> <p>9 <b>Q.</b> Did anyone ever tell you that she had such a</p> <p>10 business?</p> <p>11 <b>A. No. I think I just assumed it.</b></p> <p>12 <b>Q.</b> And you've never spoken to the woman; right?</p> <p>13 <b>A. No.</b></p> <p>14 <b>Q.</b> And you don't have any correspondence. You</p> <p>15 just have a memory that you e-mailed her;</p> <p>16 correct?</p> <p>17 <b>A. Correct, or mailed it. I don't know which.</b></p> <p>18 <b>Q.</b> Now, isn't it true that the real reason that you</p> <p>19 didn't speak up is that you were going along</p> <p>20 with what Troy was saying to them and this story</p> <p>21 about no one in town government having anything</p> <p>22 to do with it?</p> <p>23 You were willing to go along with that</p> <p>24 story; correct?</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>                              |
| <p style="text-align: right;">2-28</p> <p>1 <b>And he actually responded back, You</b></p> <p>2 <b>should put the lady's name in the other letter.</b></p> <p>3 <b>And I think I might have even put in there,</b></p> <p>4 <b>Oops, sorry. Here is the second one. And then</b></p> <p>5 <b>I sent the second one out.</b></p> <p>6 <b>Q.</b> And then was it Richard who gave you the lady's</p> <p>7 name?</p> <p>8 <b>A. No. I knew the lady's name.</b></p> <p>9 <b>Q.</b> And how did you know the lady's name?</p> <p>10 <b>A. I believe, John Madden had given it to me or the</b></p> <p>11 <b>town manager. It could have been either. I</b></p> <p>12 <b>don't have a perfect memory of that.</b></p> <p>13 <b>Q.</b> When you were at the selectmen's meeting</p> <p>14 standing next to or sitting next to Attorney</p> <p>15 Troy on October 4, 2010, why didn't you respond</p> <p>16 and say, Nobody from the Town of Plymouth ever</p> <p>17 got back to us on this?</p> <p>18 <b>A. Can you ask that again?</b></p> <p>19 <b>Q.</b> Yes.</p> <p>20 You were sitting next to Attorney Troy on</p> <p>21 October 4, 2010. The question was asked by the</p> <p>22 selectmen about the RFP process. Why didn't you</p> <p>23 speak up and say, We never got anything back</p> <p>24 from the lady in Plymouth?</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-31</p> <p>1 MR. KREIGER: Objection.</p> <p>2 MR. KESTEN: Objection.</p> <p>3 <b>A. No.</b></p> <p>4 <b>Q.</b> But you knew that that was absolutely not true;</p> <p>5 didn't you?</p> <p>6 <b>A. I did.</b></p> <p>7 <b>Q.</b> I'm going to show you an e-mail and another memo</p> <p>8 also dated October 13th of 2010.</p> <p>9 (Document handed to the witness.)</p> <p>10 <b>Q.</b> Is this the correction, as you described it, to</p> <p>11 the memo to the various folks regarding the RFP</p> <p>12 process?</p> <p>13 MR. KESTEN: This is Exhibit 8?</p> <p>14 MR. FOLLANSBEE: This will be Exhibit 8,</p> <p>15 yes.</p> <p>16 If you can mark that, please, as Exhibit</p> <p>17 No. 8.</p> <p>18 (Exhibit No. 8, For Identification,</p> <p>19 marked.)</p> <p>20 <b>A. Can you ask that question again?</b></p> <p>21 <b>Q.</b> (BY MR. FOLLANSBEE) Yes. Is this the second --</p> <p>22 Actually, let me give you a clean copy.</p> <p>23 (Document handed to the witness.)</p> <p>24 <b>Q.</b> Is this the second memo that you sent to</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |

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| <p style="text-align: center;">2-32</p> <p>1 everybody about the RFP process? You said that<br/>2 you had hit the "Send" button too early, and<br/>3 then you sent a second one.<br/>4 <b>A. Yes.</b><br/>5 <b>Q.</b> Is this the second one?<br/>6 <b>A. It appears so, yes, yes.</b><br/>7 MR. KREIGER: Steve, there is some<br/>8 handwriting, at least, on the one that I have<br/>9 here.<br/>10 MR. FOLLANSBEE: All right. I'll give<br/>11 you a clean one also.<br/>12 MR. KREIGER: So you're not suggesting<br/>13 that the handwriting is his?<br/>14 MR. FOLLANSBEE: No.<br/>15 <b>Q.</b> (BY MR. FOLLANSBEE) Here is Exhibit No. 8 as<br/>16 marked.<br/>17 (Document handed to the witness.)<br/>18 <b>A. There is handwriting on this. That's not an</b><br/>19 <b>issue; right?</b><br/>20 <b>Q.</b> Well, you can ignore the handwriting. The<br/>21 handwriting is probably my own.<br/>22 <b>A. Okay.</b><br/>23 <b>Q.</b> But it's going to direct you to the right<br/>24 paragraph anyway.<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: center;">2-35</p> <p>1 the Inspector General's Office are logged in and<br/>2 monitored?<br/>3 MR. KREIGER: Objection.<br/>4 <b>A. I've heard that.</b><br/>5 <b>Q.</b> And it's your testimony, under oath, that you<br/>6 contacted and spoke to somebody at the Inspector<br/>7 General's Office about this RFP; is that<br/>8 correct?<br/>9 <b>A. Yes.</b><br/>10 <b>Q.</b> Now, you say that the draft was reviewed by<br/>11 Pamela Hagler.<br/>12 What information did you have on October<br/>13 13th of 2010 to make you believe that the draft<br/>14 had been reviewed by Pamela Hagler?<br/>15 <b>A. I believed that I had sent it to her. I had</b><br/>16 <b>given e-mails to various town officials advising</b><br/>17 <b>them of that and that I hadn't heard anything</b><br/>18 <b>back from her; and so I believe that she had</b><br/>19 <b>reviewed it, and there was evidently nothing</b><br/>20 <b>wrong with it or that she had no comments, and</b><br/>21 <b>we moved forward.</b><br/>22 (Discussion off the record.)<br/>23 <b>Q.</b> (BY MR. FOLLANSBEE) You're still a member of<br/>24 the North Hill Advisory Committee; correct?<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                                    |
| <p style="text-align: center;">2-33</p> <p>1 <b>A. Okay.</b><br/>2 MR. KESTEN: But the exhibit itself is<br/>3 clean; right?<br/>4 MR. FOLLANSBEE: The exhibit itself is<br/>5 clean.<br/>6 MR. KREIGER: Well, let's have the one<br/>7 with the sticker on it be the actual one.<br/>8 <b>Q.</b> (BY MR. FOLLANSBEE) That's the one with the<br/>9 sticker on it.<br/>10 <b>A. Okay.</b><br/>11 (Document handed to the witness.)<br/>12 <b>Q.</b> So again, this is your memorandum to Betsy<br/>13 Sullivan and the other members of the Board of<br/>14 Selectmen regarding the creation of the RFP<br/>15 process; correct?<br/>16 <b>A. Uh-huh.</b><br/>17 <b>Q.</b> Yes?<br/>18 <b>A. Yes.</b><br/>19 <b>Q.</b> And you sent a copy to MacDonald, Troy and<br/>20 Doolin; correct?<br/>21 <b>A. Yes.</b><br/>22 (Attorney Aceto entered the room.)<br/>23 <b>Q.</b> Now, again, when we get to paragraph 8, it says,<br/>24 "After gathering comments, the draft was<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                                     | <p style="text-align: center;">2-36</p> <p>1 <b>A. I am.</b><br/>2 <b>Q.</b> When was the last time that you had a meeting of<br/>3 the committee?<br/>4 <b>A. Boy, I don't remember.</b><br/>5 <b>Q.</b> Did you have any meetings in calendar year<br/>6 2012?<br/>7 <b>A. I just don't remember. If we did, it was, like,</b><br/>8 <b>one; but I don't remember, you know.</b><br/>9 <b>Q.</b> Is there something that causes you not to<br/>10 remember something about the North Hill Advisory<br/>11 Committee?<br/>12 <b>A. No.</b><br/>13 <b>Q.</b> Well, it's May 22nd. You meet once a month, the<br/>14 North Hill Advisory Committee; correct?<br/>15 <b>A. Yes.</b><br/>16 <b>I mean, I'm not trying to be evasive. I</b><br/>17 <b>just don't remember years and dates of 2011,</b><br/>18 <b>2012. I don't remember. There was one time</b><br/>19 <b>they tried to have a meeting and didn't have a</b><br/>20 <b>quorum, but other than that.</b><br/>21 <b>Q.</b> So from January 1st of this year, 2012, we're<br/>22 going back five months.<br/>23 <b>A. Yeah.</b><br/>24 <b>Q.</b> In those five months, you haven't had any<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: center;">2-34</p> <p>1 reviewed by Pamela Hagler."<br/>2 And now you've identified her as a<br/>3 procurement officer for the Town of Plymouth?<br/>4 MR. KREIGER: Steve, I'm not sure who the<br/>5 gentleman is.<br/>6 MR. FOLLANSBEE: That's Greg Aceto.<br/>7 MR. KREIGER: Okay.<br/>8 MR. FOLLANSBEE: For the record, Greg<br/>9 Aceto, A-C-E-T-O, has entered the deposition.<br/>10 (Discussion off the record.)<br/>11 <b>Q.</b> (BY MR. FOLLANSBEE) You indicate now in<br/>12 paragraph 8 that you discussed the RFP with a<br/>13 member of the staff at the Inspector General's<br/>14 Office?<br/>15 <b>A. Yes.</b><br/>16 <b>Q.</b> Did you do that?<br/>17 <b>A. Yes.</b><br/>18 <b>Q.</b> Who was that person?<br/>19 <b>A. I don't remember.</b><br/>20 <b>Q.</b> How did you contact the person?<br/>21 <b>A. I do not recall.</b><br/>22 <b>Q.</b> Did you meet with them?<br/>23 <b>A. No.</b><br/>24 <b>Q.</b> Do you understand that all telephone calls to<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>         | <p style="text-align: center;">2-37</p> <p>1 meetings that you remember?<br/>2 <b>A. I don't believe so.</b><br/>3 <b>Q.</b> In all of 2011, did you attend any meetings of<br/>4 the North Hill Advisory Committee?<br/>5 <b>A. I don't remember. I don't know. I could have.</b><br/>6 <b>I'm not sure.</b><br/>7 <b>Q.</b> Did you have any meetings in 2010?<br/>8 <b>A. I have no idea.</b><br/>9 <b>Q.</b> Did you have any meetings in 2009?<br/>10 <b>A. I don't know that. I believe so, at the</b><br/>11 <b>beginning of the year; because that was when,</b><br/>12 <b>you know, the RFP stuff was going on; so I think</b><br/>13 <b>in the beginning of 2009, but I don't have a</b><br/>14 <b>specific memory of that.</b><br/>15 <b>Q.</b> Well, let me help you with the specific memory.<br/>16 Do you remember Mr. Johnson, Mr. Laramée,<br/>17 Mr. Eckstrom and myself coming to a meeting on<br/>18 April 9, 2009 at the Girl Scout House in<br/>19 Duxbury for a North Hill Advisory Committee<br/>20 meeting?<br/>21 <b>A. It's very possible.</b><br/>22 <b>Q.</b> Do you remember us coming?<br/>23 <b>A. I don't remember it, no.</b><br/>24 <b>Q.</b> Do you remember us ever coming to a meeting,<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |

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| <p style="text-align: right;">2-38</p> <p>1 the four of us, and you calling Attorney Troy</p> <p>2 and asking us to leave because you wouldn't have</p> <p>3 the meeting if we were going to be present</p> <p>4 there?</p> <p>5 <b>A. No, I don't remember that.</b></p> <p>6 <b>Q.</b> That doesn't jog your memory at all?</p> <p>7 <b>A. No.</b></p> <p>8 <b>Q.</b> Who keeps the minutes of the North Hill Advisory</p> <p>9 Committee?</p> <p>10 <b>A. Whoever the clerk is.</b></p> <p>11 <b>Q.</b> And who is the clerk?</p> <p>12 <b>A. I have no idea.</b></p> <p>13 <b>Q.</b> When was the last time any minutes were created</p> <p>14 for a North Hill Advisory Committee meeting?</p> <p>15 <b>A. Whenever the last one was; but again, that could</b></p> <p>16 <b>have been years ago.</b></p> <p>17 <b>Q.</b> Do you ever prepare the minutes?</p> <p>18 <b>A. No.</b></p> <p>19 <b>Q.</b> Do you have custody of the minutes?</p> <p>20 <b>A. No.</b></p> <p>21 <b>Q.</b> Has anybody asked you to locate any minutes of</p> <p>22 the North Hill Advisory Committee?</p> <p>23 <b>A. Yes.</b></p> <p>24 <b>Q.</b> Who asked you to do that?</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p style="text-align: right;">2-41</p> <p>1 <b>places that we got them from; the clerk's</b></p> <p>2 <b>office, and then Mr. Doolin sent me a bunch.</b></p> <p>3 <b>Q.</b> Does the clerk's office keep a set of minutes</p> <p>4 for the North Hill Advisory Committee?</p> <p>5 <b>A. If the clerk goes in and files them, the clerk</b></p> <p>6 <b>of the North Hill Advisory Committee, they would</b></p> <p>7 <b>go file them there, and the town clerk would</b></p> <p>8 <b>keep them.</b></p> <p>9 <b>Q.</b> And isn't that what the clerk of the North</p> <p>10 Hill Advisory Committee is supposed to do with</p> <p>11 every set of minutes, give a copy to the town</p> <p>12 clerk?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q.</b> Now, with regard to these particular minutes,</p> <p>15 it indicates that you were present. And it</p> <p>16 lists a bunch of committee members who were</p> <p>17 present?</p> <p>18 MR. KESTEN: Are you talking about</p> <p>19 January 16th?</p> <p>20 MR. FOLLANSBEE: January 16th, the first</p> <p>21 page.</p> <p>22 MR. KESTEN: Okay.</p> <p>23 <b>Q.</b> (BY MR. FOLLANSBEE) Do you know who prepared</p> <p>24 these minutes?</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |
| <p style="text-align: right;">2-39</p> <p>1 <b>A. Attorney Troy.</b></p> <p>2 <b>Q.</b> When was that?</p> <p>3 <b>A. Months and months and months ago. I think it</b></p> <p>4 <b>was in a response to requests for documents from</b></p> <p>5 <b>your office actually. But I don't remember the</b></p> <p>6 <b>date.</b></p> <p>7 <b>Q.</b> And did you locate any minutes?</p> <p>8 <b>A. Yes.</b></p> <p>9 <b>Q.</b> Where did you locate them?</p> <p>10 <b>A. At the town clerk's office; and, I believe, also</b></p> <p>11 <b>Mr. Doolin forwarded me some as well.</b></p> <p>12 <b>Q.</b> Who did you contact at the town clerk's office</p> <p>13 to find minutes there?</p> <p>14 <b>A. I think it was the assistant clerk.</b></p> <p>15 <b>Q.</b> Do you know the name?</p> <p>16 <b>A. Yeah. I think it's Susan Kelly who has now</b></p> <p>17 <b>moved over to the town manager's office.</b></p> <p>18 MR. FOLLANSBEE: I'd ask that this be</p> <p>19 marked as the next exhibit, please.</p> <p>20 (Exhibit No. 9, For Identification,</p> <p>21 marked.)</p> <p>22 <b>Q.</b> (BY MR. FOLLANSBEE) And if you would take a</p> <p>23 moment to review these minutes or what purport</p> <p>24 to be minutes of the North Hill Advisory</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-42</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q.</b> Do you know the individuals who were on the</p> <p>3 North Hill Advisory Committee?</p> <p>4 <b>A. I do.</b></p> <p>5 <b>Q.</b> Do you know Mr. Doolin?</p> <p>6 <b>A. I do.</b></p> <p>7 <b>Q.</b> Do you know Mr. McGill?</p> <p>8 <b>A. I do.</b></p> <p>9 <b>Q.</b> Do you know Mr. Garrity?</p> <p>10 <b>A. I do.</b></p> <p>11 <b>Q.</b> What's Mr. Garrity's first name?</p> <p>12 <b>A. Oh, my God, you know what, I'm not sure. I just</b></p> <p>13 <b>always called him Bo.</b></p> <p>14 <b>Q.</b> Is his actual name Thomas Garrity?</p> <p>15 <b>A. Yes, that's right.</b></p> <p>16 <b>Q.</b> Now, it indicates in item number 2, second</p> <p>17 paragraph, it indicates that handwritten</p> <p>18 financial information for September and October</p> <p>19 of 2007 was presented.</p> <p>20 Was that the typical way financial</p> <p>21 information would be given to the board or to</p> <p>22 the committee, I'm sorry?</p> <p>23 <b>A. One of two ways:</b></p> <p>24 <b>We would get a handwritten fax from</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: right;">2-40</p> <p>1 Committee.</p> <p>2 <b>A. Do you want me to read all of them?</b></p> <p>3 <b>Q.</b> (BY MR. FOLLANSBEE) I just want to establish</p> <p>4 that these are the minutes that you found.</p> <p>5 <b>A. Oh, okay.</b></p> <p>6 <b>Q.</b> So maybe if you go by the dates, that will</p> <p>7 refresh your memory.</p> <p>8 <b>A. Okay.</b></p> <p>9 <b>Q.</b> Do you recognize these as the minutes that you</p> <p>10 found at the town clerk's office and received</p> <p>11 from Mr. Doolin?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> I'll give you the actual exhibit. That's</p> <p>14 Exhibit No. 9.</p> <p>15 (Document handed to the witness.)</p> <p>16 <b>Q.</b> Now, the first page of the exhibit purport to</p> <p>17 be minutes of a meeting held on January 16,</p> <p>18 2008.</p> <p>19 Is there any reason these minutes would</p> <p>20 not have been available at the end of 2008?</p> <p>21 <b>A. I don't understand your question.</b></p> <p>22 <b>Q.</b> Well, where did you physically obtain these</p> <p>23 minutes?</p> <p>24 <b>A. I don't remember. Like I said, there were two</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p style="text-align: right;">2-43</p> <p>1 <b>Johnson Golf; and if my department had time to</b></p> <p>2 <b>type them for them and put them in a</b></p> <p>3 <b>spreadsheet, then we would do that. If they</b></p> <p>4 <b>came late in the day -- which sometimes they</b></p> <p>5 <b>did, and my staff was gone -- then I oftentimes</b></p> <p>6 <b>took them out of the fax and made copies and</b></p> <p>7 <b>just distributed them like that.</b></p> <p>8 <b>Q.</b> But for the 14 years that Johnson Golf was</p> <p>9 there, they always provided to you the</p> <p>10 financial information on a handwritten form,</p> <p>11 and then your office would do the typing;</p> <p>12 correct?</p> <p>13 <b>A. More often than not, yes, definitely.</b></p> <p>14 <b>Q.</b> And that was actually on a form that had been</p> <p>15 provided to Johnson Golf from your office way</p> <p>16 back at the beginning of their term; correct?</p> <p>17 <b>A. It could have been. I don't remember that, but</b></p> <p>18 <b>it could have been.</b></p> <p>19 <b>Q.</b> But you certainly didn't have any problem with</p> <p>20 the way they gave you the financial information</p> <p>21 yourself; did you?</p> <p>22 <b>A. No, as long as it came on time. But there was</b></p> <p>23 <b>no big issue with that, no. Others did. I</b></p> <p>24 <b>didn't.</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |



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| <p style="text-align: right;">2-44</p> <p>1 Q. Who were the others that did have a problem with<br/>2 that?</p> <p>3 A. <b>Members of the committee. Jean Jackson<br/>4 commented, Marty Desmery, that they thought this<br/>5 was a little unprofessional to have it<br/>6 handwritten. But I didn't have any huge issue<br/>7 with it.</b></p> <p>8 Q. At the end of this meeting, on the third page,<br/>9 it indicates -- and this meeting was January<br/>10 16, 2008 -- it indicates that the next meeting<br/>11 will be held on March 12, 2008; is that<br/>12 correct?</p> <p>13 A. <b>That's what it says.</b></p> <p>14 Q. And was that common, that you'd have a meeting<br/>15 every two months rather than every month?</p> <p>16 A. <b>It depended. Sometimes they took summers off.<br/>17 Sometimes they said there was nothing to do; so<br/>18 they'd cancel it. I don't know why that was,<br/>19 but that was not out of the ordinary.</b></p> <p>20 Q. If you would turn to the next page, the next<br/>21 meeting is held on February 13th, not March<br/>22 12th, but February 13th of 2008.</p> <p>23 A. <b>Okay.</b></p> <p>24 Q. Did you attend that meeting?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-47</p> <p>1 <b>every month; so I don't remember every one that<br/>2 I go to. But it says that I was there; so I'm<br/>3 sure that I was.</b></p> <p>4 Q. And although you go to dozens of meetings every<br/>5 month, you can't remember the last time that you<br/>6 went to a North Hill Advisory Committee meeting;<br/>7 correct?</p> <p>8 A. <b>No. Like I said, I think the last one that I<br/>9 went to, they did not have a quorum; so it was<br/>10 cancelled.</b></p> <p>11 Q. Now, if you go forward to the minutes of June<br/>12 29, 2009, if you would just keep turning<br/>13 forward.</p> <p>14 A. <b>Okay.</b></p> <p>15 Q. It indicates that you were there for that<br/>16 meeting; correct?</p> <p>17 A. <b>Yes, it indicates that.</b></p> <p>18 Q. And it indicates that a motion was made to go<br/>19 into executive session under 2.0, Other<br/>20 Business?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. Do you know why the committee was going into<br/>23 executive session?</p> <p>24 A. <b>I don't have a memory of why, no. I could</b><br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |
| <p style="text-align: right;">2-45</p> <p>1 A. <b>It doesn't say that I was there. I have no<br/>2 memory if I was or not.</b></p> <p>3 Q. And at the end of that meeting, it says that<br/>4 the next meeting is going to be held on April<br/>5 9th of 2008.</p> <p>6 Is that unusual, that there would be a<br/>7 two-month gap in the spring of 2008?</p> <p>8 A. <b>No, not necessarily unusual.</b></p> <p>9 Q. On the same page where it says April 9th, it's<br/>10 the second page of the minutes, the top<br/>11 paragraph indicates that the committee's<br/>12 comments and a copy of the management agreement<br/>13 are going to be available. And the general<br/>14 comments and overview will be submitted to the<br/>15 town manager.</p> <p>16 Do you remember that happening at the<br/>17 following meeting?</p> <p>18 A. <b>I don't remember.</b></p> <p>19 Q. Do you remember receiving written comments and<br/>20 suggested changes?</p> <p>21 A. <b>Yeah. I've said that already today.</b></p> <p>22 Q. And did you keep those comments and changes?</p> <p>23 A. <b>As I said, the one that I received that I<br/>24 remember is the one from Mr. Doolin, and it was</b><br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>                   | <p style="text-align: right;">2-48</p> <p>1 <b>guess, but I don't have a memory.</b></p> <p>2 Q. How many times do you remember the, in your<br/>3 tenure, how many times do you remember the North<br/>4 Hill Advisory Committee going into executive<br/>5 session?</p> <p>6 A. <b>Six, seven. Again, it's a guess.</b></p> <p>7 Q. And what reasons do you remember that they ever<br/>8 went into executive session?</p> <p>9 A. <b>To discuss a contract, to discuss litigation.<br/>10 Those would be the, basically, the two<br/>11 reasons.</b><br/>(Discussion off the record.)</p> <p>12 Q. (BY MR. FOLLANSBEE) When you received these,<br/>13 this set of minutes that's been marked as<br/>14 Exhibit No. 9, what did you do with them?</p> <p>15 A. <b>I made copies of them and gave them to whoever<br/>16 asked for them, which, again, I believe was<br/>17 Attorney Troy.</b></p> <p>18 Q. Do you know when you did that?</p> <p>19 A. <b>No.</b></p> <p>20 Q. Do you know what year you did it?</p> <p>21 A. <b>It would have been, I'm pretty sure, it would<br/>22 have been sometime this year.</b></p> <p>23 Q. And did you discuss any of these minutes with<br/>24<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-46</p> <p>1 <b>done by e-mail. And I've distributed it various<br/>2 times, the written copies of it.</b></p> <p>3 Q. Now, if we look at the minutes, the ones for<br/>4 February say that the next meeting is going to<br/>5 be in April, on April 9th; correct?</p> <p>6 MR. KESTEN: We'll stipulate that's what<br/>7 it says.</p> <p>8 A. <b>That's correct.</b></p> <p>9 Q. And the meeting was actually March 12th, if you<br/>10 go to the next page.</p> <p>11 MR. KESTEN: That's what it says.</p> <p>12 A. <b>Sure, yes.</b></p> <p>13 Q. Did you attend that meeting?</p> <p>14 A. <b>It does not have me listed; so I guess, no.</b></p> <p>15 Q. And the following meeting, instead of being on<br/>16 April 9th was on May 14th.</p> <p>17 And you did attend that meeting;<br/>18 correct?</p> <p>19 A. <b>Yes. It says that I did.</b></p> <p>20 MR. KESTEN: Just let the record reflect<br/>21 that he is answering because he is looking at<br/>22 the minutes.</p> <p>23 A. <b>I don't have a memory of attending it. But I<br/>24 have, you know, I go to dozens of meetings</b><br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: right;">2-49</p> <p>1 with Mike Doolin when he gave them to you?</p> <p>2 A. <b>No.</b></p> <p>3 Q. How did you happen to get the minutes from<br/>4 Doolin without discussing them with him?</p> <p>5 A. <b>He e-mailed them to me.</b></p> <p>6 Q. Why did he e-mail them to you?</p> <p>7 A. <b>I believe, I put an e-mail out to anyone saying,<br/>8 We're looking for minutes. If there is anyone<br/>9 that has any out there that they haven't<br/>10 submitted or haven't filed, please, get them to<br/>11 me.</b></p> <p>12 Q. So you don't have any idea when these minutes<br/>13 were actually prepared or drafted; do you?</p> <p>14 A. <b>No, no.</b></p> <p>15 Q. Now, did you get a copy of the minutes at each<br/>16 meeting from the previous meeting?</p> <p>17 A. <b>Not always.</b></p> <p>18 Q. Well, if we look at the meeting for February 13,<br/>19 2008, which I think is the second set of minutes<br/>20 in Exhibit No. 9 --</p> <p>21 A. <b>Okay.</b></p> <p>22 Q. -- the meeting starts off with, The minutes of<br/>23 the last meeting were presented for review and<br/>24 were approved.<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |

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| <p style="text-align: center;">2-50</p> <p>1 Can you tell us how that process is</p> <p>2 done?</p> <p>3 <b>A. I mean, it appears I'm not at that meeting; so I</b></p> <p>4 <b>don't want to speak just to that.</b></p> <p>5 <b>But typically, they would pass the</b></p> <p>6 <b>minutes out. Everyone would read them. They</b></p> <p>7 <b>would approve them; or if there needed to be an</b></p> <p>8 <b>amended part, they would say approve as</b></p> <p>9 <b>amended.</b></p> <p>10 <b>Q.</b> So that everyone on the committee gets a copy</p> <p>11 of the minutes from the previous meeting;</p> <p>12 correct?</p> <p>13 <b>A. At that meeting, if they are available and</b></p> <p>14 <b>they're ready, then, yes, they would pass them</b></p> <p>15 <b>out.</b></p> <p>16 <b>Q.</b> Well, that's the way the process always worked,</p> <p>17 correct, that the minutes would be handed out;</p> <p>18 and that was the first order of business?</p> <p>19 <b>A. If they're available and they are there, yeah.</b></p> <p>20 <b>I mean, I'm sure there has been times</b></p> <p>21 <b>when wherever the clerk was or wasn't attending;</b></p> <p>22 <b>so they weren't there. You know, things like</b></p> <p>23 <b>that happened. But if they're there, they get</b></p> <p>24 <b>passed out and get voted on.</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: center;">2-53</p> <p>1 <b>Q.</b> And you got information over the years from Doug</p> <p>2 Johnson about them vandalizing the course;</p> <p>3 didn't you?</p> <p>4 <b>A. I don't remember that. Maybe.</b></p> <p>5 MR. FOLLANSBEE: I'd ask that that be</p> <p>6 marked as the next exhibit.</p> <p>7 (Exhibit No. 10, For Identification,</p> <p>8 marked.)</p> <p>9 <b>Q.</b> (BY MR. FOLLANSBEE) Sir, I'm going to show you</p> <p>10 what's now been marked as Exhibit No. 10. And</p> <p>11 it's a letter dated December 24, 2003. I'd ask</p> <p>12 you to read that to yourself, and then I'll have</p> <p>13 a few questions about it.</p> <p>14 (Document handed to the witness.)</p> <p>15 <b>A. Okay.</b></p> <p>16 <b>Q.</b> Does this refresh your memory as to an incident</p> <p>17 involving destruction to the course?</p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q.</b> Did you ever ask any of those people whether or</p> <p>20 not this happened? Did you make any</p> <p>21 investigation yourself?</p> <p>22 <b>A. No, I don't believe so.</b></p> <p>23 <b>Q.</b> Was it --</p> <p>24 <b>A. I don't believe so. I might have. But I don't</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |
| <p style="text-align: center;">2-51</p> <p>1 <b>Q.</b> Mr. Doolin was the chairman of the committee in</p> <p>2 2008; correct?</p> <p>3 <b>A. I believe so, yes.</b></p> <p>4 <b>Q.</b> Now, Mr. Doolin, I mean, you're familiar with</p> <p>5 Mr. Doolin as a golfer up at the North Hill</p> <p>6 Country Club; correct?</p> <p>7 <b>A. He plays there.</b></p> <p>8 <b>Q.</b> And he was, actually, one of the members up</p> <p>9 there who was most dissatisfied with Johnson</p> <p>10 Golf; correct?</p> <p>11 <b>A. I don't know that.</b></p> <p>12 <b>Q.</b> You don't know that?</p> <p>13 <b>A. No.</b></p> <p>14 <b>Q.</b> Did you ever receive a letter at the recreation</p> <p>15 department, did you ever receive a letter from</p> <p>16 Mr. Doolin saying that he was angry with the</p> <p>17 policies implemented by Johnson Golf at the golf</p> <p>18 course?</p> <p>19 <b>A. A policy, yeah.</b></p> <p>20 <b>Q.</b> And the policy was the tee time policy?</p> <p>21 <b>A. Yeah.</b></p> <p>22 <b>Q.</b> That gained a lot of notoriety in 2004;</p> <p>23 correct?</p> <p>24 <b>A. I don't know what you mean by "notoriety."</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p style="text-align: center;">2-54</p> <p>1 <b>remember. It's nine years ago. I don't</b></p> <p>2 <b>remember.</b></p> <p>3 <b>Q.</b> Well, your memory is actually pretty good for</p> <p>4 things; isn't it?</p> <p>5 <b>A. I think so, but nine years ago.</b></p> <p>6 <b>Q.</b> Well, nine years ago --</p> <p>7 <b>A. -- is a long time.</b></p> <p>8 <b>Q.</b> Well, at the last deposition, didn't you</p> <p>9 remember that, nine years ago, Johnson Golf had</p> <p>10 a different corporate name of Johnson Turf &amp;</p> <p>11 Golf?</p> <p>12 <b>A. It actually was a little longer than that. It</b></p> <p>13 <b>was actually when Doug first bid. It was a long</b></p> <p>14 <b>time. I mean, it's there. He gave it to me. I</b></p> <p>15 <b>just don't remember if I did an investigation.</b></p> <p>16 <b>I just don't remember.</b></p> <p>17 <b>Q.</b> You were also able to remember events having to</p> <p>18 do with Mr. Ash and Doug's father that happened</p> <p>19 in the 1990s; correct?</p> <p>20 <b>A. Yeah.</b></p> <p>21 MR. KREIGER: Objection. We'll stipulate</p> <p>22 that he remembers some things more than nine</p> <p>23 years ago in his life.</p> <p>24 MR. FOLLANSBEE: Thank you.</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |
| <p style="text-align: center;">2-52</p> <p>1 <b>Q.</b> Well, it was in the newspaper. You had hearings</p> <p>2 about it; didn't you?</p> <p>3 <b>A. Yeah. I think we went to a Board of Selectmen</b></p> <p>4 <b>meeting where it was discussed.</b></p> <p>5 <b>Q.</b> And do you know what happened at that Board of</p> <p>6 Selectmen meeting?</p> <p>7 <b>A. It was vague, so long ago. But I believe that</b></p> <p>8 <b>Attorney Troy, basically, said that the</b></p> <p>9 <b>management company had the right to make the</b></p> <p>10 <b>policy, and that was the end of that.</b></p> <p>11 <b>Q.</b> Well, it was the end of that until Mr. Doolin</p> <p>12 got appointed to the North Hill Advisory</p> <p>13 Committee; correct?</p> <p>14 <b>A. I don't know. I don't know when he was</b></p> <p>15 <b>appointed.</b></p> <p>16 <b>Q.</b> Well, are you familiar with the Thursday night</p> <p>17 league up at the golf course?</p> <p>18 <b>A. I've heard of it, yeah.</b></p> <p>19 <b>Q.</b> And you knew that there had been incidents with</p> <p>20 those folks being unhappy about the tee time</p> <p>21 policy; correct?</p> <p>22 <b>A. I mean, there were quite a few people that</b></p> <p>23 <b>didn't like it. I'm sure some of them played in</b></p> <p>24 <b>the Thursday night league.</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>        | <p style="text-align: center;">2-55</p> <p>1 THE WITNESS: Well, what am I supposed to</p> <p>2 say?</p> <p>3 MR. KREIGER: Nothing.</p> <p>4 <b>Q.</b> (BY MR. FOLLANSBEE) Now, you knew that</p> <p>5 Mr. Doolin and some other members of the North</p> <p>6 Hill Advisory Committee wanted to get rid of</p> <p>7 Johnson Golf; didn't you?</p> <p>8 <b>A. No.</b></p> <p>9 <b>Q.</b> You didn't have a belief that they were unhappy</p> <p>10 with his management policies?</p> <p>11 <b>A. I believe, there was some people that were</b></p> <p>12 <b>unhappy with their management policies, yes.</b></p> <p>13 <b>Q.</b> And those people would include Mr. Doolin and</p> <p>14 Mr. Marlborough; correct?</p> <p>15 <b>A. Those two individuals were unhappy with the tee</b></p> <p>16 <b>time policy, yes.</b></p> <p>17 <b>Q.</b> And as a result of their unhappiness, they</p> <p>18 wanted in the contract, for the new contract</p> <p>19 that would go into effect in 2009, a policy</p> <p>20 that would allow them to make 18 hole tee times</p> <p>21 on Saturdays, Sundays and holidays; correct?</p> <p>22 <b>A. I don't know if they were applied both to Mike,</b></p> <p>23 <b>both Doolin and Marlborough. I don't remember</b></p> <p>24 <b>that.</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |

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| <p style="text-align: right;">2-56</p> <p>1 <b>Q.</b> Let's take them one at a time.</p> <p>2 As far as Doolin, did he want that as</p> <p>3 part of the contract, that he and members would</p> <p>4 be able to make 18 hole tee times on Saturdays,</p> <p>5 Sundays and holidays?</p> <p>6 <b>A. I believe so.</b></p> <p>7 <b>Q.</b> And he was a member and chairman of the North</p> <p>8 Hill Advisory Committee, at the time; correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 <b>Q.</b> And he asked, specifically, to have that in the</p> <p>11 RFP and the contract; correct?</p> <p>12 <b>A. Yes, that's my memory, yeah.</b></p> <p>13 <b>(Discussion off the record.)</b></p> <p>14 <b>Q.</b> (BY MR. FOLLANSBEE) And you were familiar</p> <p>15 with the letter to the editor of the local</p> <p>16 newspaper, The Duxbury Clipper, complaining</p> <p>17 about that tee time policy in January of '04;</p> <p>18 correct?</p> <p>19 <b>A. I remember some of that, yeah.</b></p> <p>20 MR. FOLLANSBEE: I'd ask that this be</p> <p>21 marked as the next exhibit.</p> <p>22 (Exhibit No. 11, For Identification,</p> <p>23 marked.)</p> <p>24 (Document handed to the witness.)</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-59</p> <p>1 <b>town manager Rocco Longo; because he had</b></p> <p>2 <b>approached someone from Johnson Golf -- it</b></p> <p>3 <b>might have been Doug -- and asked if he could</b></p> <p>4 <b>have some kind of privileges that were,</b></p> <p>5 <b>basically, bordering on illegal.</b></p> <p>6 <b>I don't remember if it was a free</b></p> <p>7 <b>membership or a handicap or golf cart</b></p> <p>8 <b>privileges. It was something that wasn't</b></p> <p>9 <b>allowed; so Rocco said Resign or we're going to</b></p> <p>10 <b>pursue this. So he resigned.</b></p> <p>11 <b>Q.</b> Would you say that Rocco was kind of a</p> <p>12 no-nonsense guy in that regard?</p> <p>13 <b>A. In that case, yes.</b></p> <p>14 <b>Q.</b> Were there other cases where he wasn't?</p> <p>15 MR. KREIGER: Objection.</p> <p>16 <b>A. I don't remember.</b></p> <p>17 MR. FOLLANSBEE: I'd ask that this be</p> <p>18 marked as the next exhibit.</p> <p>19 (Exhibit No. 12, For Identification,</p> <p>20 marked.)</p> <p>21 <b>Q.</b> (BY MR. FOLLANSBEE) I'm showing you what's been</p> <p>22 marked as Exhibit No. 12.</p> <p>23 (Document handed to the witness.)</p> <p>24 <b>A. Do you want me to read it?</b></p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                 |
| <p style="text-align: right;">2-57</p> <p>1 <b>Q.</b> (BY MR. FOLLANSBEE) Showing you what's been</p> <p>2 marked as Exhibit No. 11. This is the copy of</p> <p>3 the letter to the editor of The Clipper.</p> <p>4 A copy was received by your office;</p> <p>5 correct?</p> <p>6 <b>A. I guess so; because it says stamped</b></p> <p>7 <b>"Recreation," yes.</b></p> <p>8 <b>Q.</b> And that would be your office; correct?</p> <p>9 <b>A. Yeah. I don't remember it but.</b></p> <p>10 <b>Q.</b> And you certainly, at least by January of 2004,</p> <p>11 were well-aware of the issue and the tee time</p> <p>12 policy; correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>Q.</b> And at the time, Mr. Doolin and Mr. Marlborough</p> <p>15 were members of the North Hill Country Club and</p> <p>16 signatories to the letter; correct?</p> <p>17 <b>A. I wouldn't know if they were members of the</b></p> <p>18 <b>club. They are on the letter. But unless I had</b></p> <p>19 <b>it in front of me, the membership list. Some</b></p> <p>20 <b>people just paid daily fees; so I don't know if</b></p> <p>21 <b>they were members. They might have been.</b></p> <p>22 <b>Q.</b> So they were either members or regular players.</p> <p>23 Is that fair to say?</p> <p>24 <b>A. Sure, yes.</b></p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-60</p> <p>1 <b>Q.</b> If you could read it to yourself, then I'll have</p> <p>2 a few questions about it.</p> <p>3 <b>A. Okay.</b></p> <p>4 <b>Q.</b> So do you remember receiving this response from</p> <p>5 Mr. Johnson to this controversy about the tee</p> <p>6 time policy?</p> <p>7 <b>A. I don't remember, but I'm sure I did.</b></p> <p>8 <b>Q.</b> And you indicated earlier that there had been a</p> <p>9 hearing airing out all of these issues before</p> <p>10 the selectmen; is that correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 <b>Q.</b> That's your memory?</p> <p>13 <b>A. At some point, yes.</b></p> <p>14 <b>Q.</b> And that the meeting took place in the selectmen</p> <p>15 meeting room?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> And everybody got a chance to voice their</p> <p>18 opinion; correct?</p> <p>19 <b>A. I'm sure, yes.</b></p> <p>20 <b>Q.</b> And the net result of it was that the tee time</p> <p>21 policy didn't change, and it stayed the way</p> <p>22 Mr. Johnson had implemented it?</p> <p>23 <b>A. Correct.</b></p> <p>24 <b>Q.</b> And the unhappy people continued to be unhappy</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: right;">2-58</p> <p>1 <b>Q.</b> And Mr. Marlborough is and was a member of the</p> <p>2 North Hill Advisory Committee; correct?</p> <p>3 <b>A. Yes, he is.</b></p> <p>4 <b>Q.</b> Was Mr. McGill a member of the North Hill</p> <p>5 Advisory Committee?</p> <p>6 <b>A. At one time, yes.</b></p> <p>7 <b>Q.</b> And Mr. Doolin, was he a member of the North</p> <p>8 Hill Advisory Committee?</p> <p>9 <b>A. Yes.</b></p> <p>10 <b>Q.</b> Was Mr. John Curtland (phonetic) a member of the</p> <p>11 North Hill Advisory Committee?</p> <p>12 <b>A. Yes. I thought it was a different name, to be</b></p> <p>13 <b>honest with you. My memory was Kirkland, but</b></p> <p>14 <b>it's probably the same guy.</b></p> <p>15 <b>Q.</b> And do you remember him leaving the committee?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> And do you know the circumstances why he left</p> <p>18 the committee?</p> <p>19 <b>A. I do.</b></p> <p>20 <b>Q.</b> What were the circumstances why he left the</p> <p>21 committee?</p> <p>22 <b>A. Now that I say I do, I've got to make sure I'm</b></p> <p>23 <b>being accurate.</b></p> <p>24 <b>He was asked to leave the committee by</b></p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-61</p> <p>1 about it; correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> To the point where, in 2008, when the new</p> <p>4 contract was being considered, specific language</p> <p>5 was put into the contract to make sure that</p> <p>6 these folks got their 18 hole tee times;</p> <p>7 correct?</p> <p>8 <b>A. No. I don't think it was because of that. But</b></p> <p>9 <b>we put in language to make it 18 holes you could</b></p> <p>10 <b>book, yes.</b></p> <p>11 <b>Q.</b> And do you recall why that provision was</p> <p>12 included in the contract when it never had been</p> <p>13 in there before?</p> <p>14 <b>A. To clarify what the tee time policy would be for</b></p> <p>15 <b>all bidders so that they had a level playing</b></p> <p>16 <b>field when they bid on the contract.</b></p> <p>17 <b>Q.</b> And did you think it was beneficial for the</p> <p>18 taxpayers of Duxbury to have a tee time policy</p> <p>19 that allowed these folks to get 18 holes on</p> <p>20 holidays and weekends?</p> <p>21 <b>A. Sure.</b></p> <p>22 <b>Q.</b> How did it benefit the taxpayers?</p> <p>23 <b>A. I think it's smooth running. It would be a</b></p> <p>24 <b>smooth-running facility. It's good for</b></p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |

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| <p style="text-align: right;">2-62</p> <p>1 <b>everybody.</b></p> <p>2 <b>Q.</b> And the net effect would be that the members</p> <p>3 could, essentially, get all of the tee times</p> <p>4 between 6:00 a.m. and 11:00 a.m.; isn't that</p> <p>5 correct?</p> <p>6 <b>A.</b> <b>No. That's not what the policy said that was in</b></p> <p>7 <b>the new contract.</b></p> <p>8 <b>Q.</b> What did the policy say?</p> <p>9 <b>A.</b> <b>My memory is that you could book, like, every</b></p> <p>10 <b>third that they had to keep open; so it was,</b></p> <p>11 <b>kind of, a compromise between what Johnson Golf</b></p> <p>12 <b>had instituted and what some other people</b></p> <p>13 <b>wanted. I believe that it was done so that,</b></p> <p>14 <b>you know, they couldn't just book every single</b></p> <p>15 <b>tee time. There were some openings in there.</b></p> <p>16 <b>Q.</b> Now, with regard to Mr. Doolin, did he ever</p> <p>17 voice to you, during the discussions about the</p> <p>18 new contract, that he absolutely wanted the 18</p> <p>19 hole tee time policy in place?</p> <p>20 <b>A.</b> <b>No.</b></p> <p>21 <b>Q.</b> What did he say? You indicated that he had a</p> <p>22 red line version with many changes.</p> <p>23 <b>A.</b> <b>Right.</b></p> <p>24 <b>Q.</b> What were the changes that he wanted?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>                  | <p style="text-align: right;">2-65</p> <p>1 <b>A.</b> <b>I'm going to say that it somewhat has been</b></p> <p>2 <b>refreshed from all of the conversations that</b></p> <p>3 <b>I've had and documents. And it may, in fact,</b></p> <p>4 <b>would have been November 24th. But I never</b></p> <p>5 <b>would have remembered that unless, you know --</b></p> <p>6 <b>Q.</b> Unless you reviewed documents?</p> <p>7 <b>A.</b> <b>Refreshed me, yes, in some way.</b></p> <p>8 <b>Q.</b> And who else was at that meeting?</p> <p>9 <b>A.</b> <b>Myself, the town manager, Barbara Mello, and I</b></p> <p>10 <b>believe, Mr. Studley as well.</b></p> <p>11 <b>Q.</b> And was Attorney Troy there?</p> <p>12 <b>A.</b> <b>No.</b></p> <p>13 <b>Q.</b> Do you remember Attorney Troy telling Judge</p> <p>14 Smith in Middlesex Superior Court that he was</p> <p>15 at the meeting when they opened the bid</p> <p>16 documents, the price proposals?</p> <p>17 <b>A.</b> <b>I do.</b></p> <p>18 <b>Q.</b> And you knew that was wrong; correct?</p> <p>19 <b>A.</b> <b>Yeah.</b></p> <p>20 <b>Q.</b> After that, did you speak to the town manager</p> <p>21 and say, Attorney Troy gave bad information</p> <p>22 there, but he wasn't at that meeting?</p> <p>23 <b>A.</b> <b>I don't know if I, specifically, said about</b></p> <p>24 <b>that comment. But there were times that I told</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-63</p> <p>1 <b>A.</b> <b>There was a lot, and I just don't remember all</b></p> <p>2 <b>of them. That was definitely one of them, that</b></p> <p>3 <b>he felt that the tee time policy should be</b></p> <p>4 <b>changed.</b></p> <p>5 <b>I don't remember if he, you know,</b></p> <p>6 <b>inserted language about how he wanted it</b></p> <p>7 <b>changed, specifically. But there were lots of</b></p> <p>8 <b>comments; the way that starters and rangers were</b></p> <p>9 <b>staffed, the pro situation, the audit. There</b></p> <p>10 <b>was a lot of things that he thought needed to be</b></p> <p>11 <b>corrected or added or deleted.</b></p> <p>12 <b>Q.</b> You had been involved in drafting the RFP back</p> <p>13 in 1999; correct?</p> <p>14 <b>A.</b> <b>Was it then? I thought it was -- whatever the</b></p> <p>15 <b>dates are -- '98, whatever. Yes, the last one,</b></p> <p>16 <b>yes.</b></p> <p>17 <b>Q.</b> The ten-year contract, you had been involved in</p> <p>18 that?</p> <p>19 <b>A.</b> <b>Yes, yes.</b></p> <p>20 <b>Q.</b> And you, kind of, used that as a boilerplate for</p> <p>21 the new one that you were going to do in 2008;</p> <p>22 didn't you?</p> <p>23 <b>A.</b> <b>I would say, that's fair to say, yes.</b></p> <p>24 <b>Q.</b> And the RFP from 1999 included the words "flat</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-66</p> <p>1 <b>the town manager that I thought some erroneous</b></p> <p>2 <b>misremembering statements were being said,</b></p> <p>3 <b>yes.</b></p> <p>4 <b>Q.</b> Misremembering? What are you watching, the</p> <p>5 Roger Clemens trial?</p> <p>6 <b>MR. KESTEN:</b> "Erroneous misremembering,"</p> <p>7 I like that. I only heard of accurate</p> <p>8 misremembering statements.</p> <p>9 <b>Q.</b> So you're 100 percent sure that Troy wasn't at</p> <p>10 that meeting; correct?</p> <p>11 <b>A.</b> <b>Which one?</b></p> <p>12 <b>Q.</b> The one where the price proposals were opened.</p> <p>13 <b>A.</b> <b>I'm 100 percent sure.</b></p> <p>14 <b>Q.</b> What do you remember from that meeting when the</p> <p>15 price proposals were opened?</p> <p>16 <b>A.</b> <b>I'm not sure I understand what you're asking.</b></p> <p>17 <b>Q.</b> Well, who opened the price proposals?</p> <p>18 <b>A.</b> <b>I believe, it was the town manager that actually</b></p> <p>19 <b>opened them, but it could have been me. I don't</b></p> <p>20 <b>really remember who actually, physically, opened</b></p> <p>21 <b>the envelopes.</b></p> <p>22 <b>Q.</b> And once all of the envelopes were opened, you</p> <p>23 knew what the price proposals were?</p> <p>24 <b>A.</b> <b>Yes, I did.</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |
| <p style="text-align: right;">2-64</p> <p>1 fee" for the price proposal; didn't it?</p> <p>2 <b>A.</b> <b>I don't remember.</b></p> <p>3 <b>Q.</b> But when you drafted the new RFP for 2008, the</p> <p>4 price proposal was supposed to be a flat fee;</p> <p>5 correct?</p> <p>6 <b>A.</b> <b>Yes.</b></p> <p>7 <b>Q.</b> Now, I think we covered this earlier in your</p> <p>8 deposition.</p> <p>9 You were one of the evaluators for the</p> <p>10 first round in 2008; correct?</p> <p>11 <b>A.</b> <b>Correct.</b></p> <p>12 <b>Q.</b> And you did your evaluations in private and</p> <p>13 then submitted them to the town manager;</p> <p>14 correct?</p> <p>15 <b>A.</b> <b>Yes.</b></p> <p>16 <b>Q.</b> And then you had a meeting at the town manager's</p> <p>17 office; correct?</p> <p>18 Well, did you attend a meeting at the</p> <p>19 town manager's office to open the price</p> <p>20 proposals?</p> <p>21 <b>A.</b> <b>The price proposals, yes.</b></p> <p>22 <b>Q.</b> When did that take place?</p> <p>23 <b>A.</b> <b>I don't remember the date.</b></p> <p>24 <b>Q.</b> Do you know the month?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p style="text-align: right;">2-67</p> <p>1 <b>Q.</b> And no one told you that you couldn't relay that</p> <p>2 information to anybody; did they?</p> <p>3 <b>A.</b> <b>I don't know if anyone told me. But it was just</b></p> <p>4 <b>known that you just don't say anything about</b></p> <p>5 <b>anything yet, yes.</b></p> <p>6 <b>Q.</b> So at that point, all of the evaluations had</p> <p>7 been done?</p> <p>8 <b>A.</b> <b>Yes.</b></p> <p>9 <b>Q.</b> And now the price proposals were opened?</p> <p>10 <b>A.</b> <b>Correct.</b></p> <p>11 <b>Q.</b> Did you think there was anything wrong with the</p> <p>12 proposals or the price proposals when they were</p> <p>13 all opened?</p> <p>14 <b>A.</b> <b>Not originally, no.</b></p> <p>15 <b>Q.</b> Did you notice that one of the price proposals</p> <p>16 was done incorrectly?</p> <p>17 <b>A.</b> <b>Yes.</b></p> <p>18 <b>Q.</b> And whose was that?</p> <p>19 <b>A.</b> <b>CALM Golf.</b></p> <p>20 <b>Q.</b> And what was wrong with that was, they had</p> <p>21 included a percentage of their gross income</p> <p>22 instead of a flat fee; correct?</p> <p>23 <b>A.</b> <b>Correct.</b></p> <p>24 <b>Q.</b> So as of November 24th, you didn't think there</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |

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| <p style="text-align: right;">2-68</p> <p>1 was anything wrong with the documents. And the</p> <p>2 price proposals had been all opened, and the</p> <p>3 evaluations had been all done; correct?</p> <p>4 <b>A. No.</b></p> <p>5 <b>Q.</b> They weren't all done?</p> <p>6 <b>A. Well, say the question again.</b></p> <p>7 <b>Q.</b> I'll break it down.</p> <p>8 As of November 24th, all of the</p> <p>9 evaluations were completed; correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 <b>Q.</b> All of the price proposals were opened;</p> <p>12 correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 <b>Q.</b> And you didn't notice anything wrong with any of</p> <p>15 the documents as of November 24th; did you?</p> <p>16 <b>A. That's not true.</b></p> <p>17 <b>Q.</b> What did you notice that was wrong?</p> <p>18 <b>A. After we had opened up the price, we were kind</b></p> <p>19 <b>of going back through everything; and we</b></p> <p>20 <b>realized that, in the nonprice evaluations, two</b></p> <p>21 <b>of the evaluators had not filled out the form</b></p> <p>22 <b>correctly, I guess, is the best way to phrase</b></p> <p>23 <b>it.</b></p> <p>24 <b>Q.</b> And when you say "we" noticed that, who noticed</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                  | <p style="text-align: right;">2-71</p> <p>1 <b>A. When we realized that there could be a problem,</b></p> <p>2 <b>we called the town counsel.</b></p> <p>3 <b>Q.</b> And what did town counsel tell you?</p> <p>4 <b>A. Well, I was not the one to make the phone call;</b></p> <p>5 <b>so I don't know.</b></p> <p>6 <b>Q.</b> Were you in the room when the call was made?</p> <p>7 <b>A. I was.</b></p> <p>8 <b>Q.</b> Were you able to hear what Mr. MacDonald was</p> <p>9 saying?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> What did Mr. MacDonald say?</p> <p>12 <b>A. Just one word answers, "Okay," "Yes," "All</b></p> <p>13 <b>right." That was about it.</b></p> <p>14 <b>Q.</b> And as a result of that conversation, did</p> <p>15 Mr. MacDonald tell you what was going to happen</p> <p>16 next?</p> <p>17 <b>A. He said that everything was on hold and that,</b></p> <p>18 <b>you know, Bob was going to address this. He</b></p> <p>19 <b>may or may not have talked about that Bob was</b></p> <p>20 <b>going to come up and look at things. I don't</b></p> <p>21 <b>remember if that occurred.</b></p> <p>22 <b>Q.</b> Did anyone say that they had contacted the</p> <p>23 Inspector General about this?</p> <p>24 <b>A. No.</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-69</p> <p>1 it?</p> <p>2 <b>A. Myself, the town manager.</b></p> <p>3 <b>Q.</b> How did you determine that they had not done it</p> <p>4 correctly?</p> <p>5 <b>A. One of them didn't, I think, put a composite</b></p> <p>6 <b>score, as required; and the other one, I think,</b></p> <p>7 <b>he did put a composite score, but it was</b></p> <p>8 <b>incorrect language.</b></p> <p>9 <b>Q.</b> How did you determine that the language was</p> <p>10 incorrect?</p> <p>11 <b>A. Well, the statute tells you what language that</b></p> <p>12 <b>you are supposed to use, and it was wrong.</b></p> <p>13 <b>Q.</b> Well, what does the statute say that you should</p> <p>14 use?</p> <p>15 <b>A. Things like unacceptable, not acceptable,</b></p> <p>16 <b>advantageous, highly advantageous, things of</b></p> <p>17 <b>that nature.</b></p> <p>18 <b>Q.</b> Those are for the individual criteria, but I'm</p> <p>19 talking about the composite score.</p> <p>20 Is it your testimony that the statute</p> <p>21 says that the composite score has to use those</p> <p>22 words?</p> <p>23 <b>A. My belief is that, yeah -- and I could be</b></p> <p>24 <b>wrong -- but my belief is that you have to use</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-72</p> <p>1 <b>Q.</b> Did anyone say that they were going to contact</p> <p>2 the Inspector General about this?</p> <p>3 MR. KESTEN: During this meeting?</p> <p>4 MR. FOLLANSBEE: This meeting.</p> <p>5 <b>A. During this meeting, no, to both of those</b></p> <p>6 <b>questions.</b></p> <p>7 MR. FOLLANSBEE: I would ask that this be</p> <p>8 marked as the next exhibit.</p> <p>9 (Exhibit No. 13, For Identification,</p> <p>10 marked.)</p> <p>11 <b>Q.</b> (BY MR. FOLLANSBEE) I'm going to show you</p> <p>12 what's been marked as Exhibit No. 13.</p> <p>13 (Document handed to the witness.)</p> <p>14 <b>A. Okay.</b></p> <p>15 <b>Q.</b> On the last page, is that your signature?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q.</b> And you signed that under the pains and</p> <p>18 penalties of perjury; correct?</p> <p>19 <b>A. I did.</b></p> <p>20 <b>Q.</b> And it was prepared by Attorney Troy?</p> <p>21 <b>A. It was.</b></p> <p>22 <b>Q.</b> And in paragraph 10, it indicates that, in your</p> <p>23 presence, the town manager requested town</p> <p>24 counsel to inquire of the Inspector General.</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: right;">2-70</p> <p>1 <b>certain language, and he didn't use the right</b></p> <p>2 <b>language.</b></p> <p>3 <b>Q.</b> And you knew that on November 24th when you were</p> <p>4 reviewing these things?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> And how did you come to that determination</p> <p>7 yourself?</p> <p>8 <b>A. Discussion with the town manager, that these two</b></p> <p>9 <b>appear to not have done their evaluation</b></p> <p>10 <b>correctly.</b></p> <p>11 <b>Q.</b> And had you reviewed Chapter 30B yourself in</p> <p>12 order to make that determination that the</p> <p>13 composite score had been done incorrectly?</p> <p>14 <b>A. No.</b></p> <p>15 <b>Q.</b> How did you come by the knowledge as to what</p> <p>16 Chapter 30B required?</p> <p>17 <b>A. It's just being involved with it for many</b></p> <p>18 <b>years.</b></p> <p>19 <b>Q.</b> Who was the first one to say it looks like they</p> <p>20 didn't do the composite score correctly, you or</p> <p>21 Mr. MacDonald?</p> <p>22 <b>A. I don't remember.</b></p> <p>23 <b>Q.</b> What did you do next with regard to the nonprice</p> <p>24 proposals?</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-73</p> <p>1 Did that happen?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> When did that happen?</p> <p>4 <b>A. On the 26th.</b></p> <p>5 <b>Q.</b> And that was the meeting where you opened the</p> <p>6 price proposals; correct?</p> <p>7 <b>A. Well, no.</b></p> <p>8 <b>And unfortunately, that's not accurate.</b></p> <p>9 <b>We opened the price proposals on the 24th. The</b></p> <p>10 <b>26th was the meeting where Mr. Troy came into</b></p> <p>11 <b>the office. And then we discussed, the town</b></p> <p>12 <b>manager said, We'll call the Inspector General</b></p> <p>13 <b>and talk to them.</b></p> <p>14 <b>Q.</b> So when you read this affidavit and were asked</p> <p>15 to sign it under the pains and penalties of</p> <p>16 perjury, in paragraph 6, it's not correct; is</p> <p>17 it?</p> <p>18 <b>A. No.</b></p> <p>19 <b>Q.</b> Did you tell Attorney Troy, I can't sign this.</p> <p>20 That's not true?</p> <p>21 <b>A. No.</b></p> <p>22 <b>Q.</b> Why didn't you?</p> <p>23 <b>A. I don't remember. I looked at the date wrong.</b></p> <p>24 <b>But I subsequently know that that isn't what</b></p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |

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| <p style="text-align: right;">2-74</p> <p>1 <b>happened.</b></p> <p>2 <b>Q.</b> Did you have other affidavits that Attorney Troy</p> <p>3 asked you to sign that you refused to sign</p> <p>4 because they weren't true?</p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q.</b> How many?</p> <p>7 <b>A. One.</b></p> <p>8 <b>Q.</b> When was it?</p> <p>9 <b>A. A couple of months ago.</b></p> <p>10 <b>Q.</b> And what did the affidavit say that wasn't</p> <p>11 true?</p> <p>12 <b>A. There was some language in the draft, and I</b></p> <p>13 <b>wanted to make sure --</b></p> <p>14 <b>It's a draft of the affidavit, and it</b></p> <p>15 <b>was talking about the language "comparable</b></p> <p>16 <b>business entity." And I actually think the</b></p> <p>17 <b>language that was in the draft wasn't even</b></p> <p>18 <b>that. It was "comparable business" something</b></p> <p>19 <b>else. I don't remember. But it wasn't anything</b></p> <p>20 <b>like I had ever seen. And it was talking about</b></p> <p>21 <b>how I was the one that had inserted that</b></p> <p>22 <b>language, and I said no.</b></p> <p>23 <b>And I also want to make sure, Attorney</b></p> <p>24 <b>Troy did not ask me. He was not there. I was</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>                 | <p style="text-align: right;">2-77</p> <p>1 <b>Q.</b> But do you know if the town counsel ever talked</p> <p>2 to the Inspector General?</p> <p>3 <b>A. I don't have any firsthand knowledge. But he</b></p> <p>4 <b>told us that he had spoken to someone in the</b></p> <p>5 <b>office, yes.</b></p> <p>6 <b>Q.</b> When did he say that?</p> <p>7 <b>A. That day, that day, the day of the 26th.</b></p> <p>8 <b>Q.</b> And have you subsequently found out or have you</p> <p>9 subsequently been informed that that didn't</p> <p>10 happen?</p> <p>11 <b>A. I have been told that, yes.</b></p> <p>12 <b>Q.</b> Who told you that?</p> <p>13 <b>A. Attorney Kesten.</b></p> <p>14 <b>Q.</b> And you were present in Superior Court in late</p> <p>15 December of 2008 at the first hearing on the</p> <p>16 injunction; weren't you?</p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q.</b> And you heard Attorney Troy tell the judge that</p> <p>19 day that the Inspector General had told the town</p> <p>20 to reject all of the bids; correct?</p> <p>21 <b>A. I don't know if he said Inspector General or</b></p> <p>22 <b>Inspector General's Office or staff member; but</b></p> <p>23 <b>something about that, yes.</b></p> <p>24 <b>Q.</b> And did he also tell you that that's what had</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-75</p> <p>1 <b>in a room with Attorney Jordan, and I don't</b></p> <p>2 <b>remember the other gentleman's name that's in</b></p> <p>3 <b>his law firm.</b></p> <p>4 <b>It was a draft up on a computer screen,</b></p> <p>5 <b>and we were going over the draft; and I said,</b></p> <p>6 <b>"That's not accurate. We gotta take that out."</b></p> <p>7 <b>So when I say Attorney Troy said to sign that</b></p> <p>8 <b>one, I want to make sure that he did not say</b></p> <p>9 <b>that.</b></p> <p>10 <b>Q.</b> It was Attorney Jordan and another attorney in</p> <p>11 Attorney Troy's office?</p> <p>12 <b>A. Yeah. It was a draft on a computer.</b></p> <p>13 <b>Q.</b> And you said, I'm not signing it?</p> <p>14 <b>A. I said, "You gotta take that out. That's not</b></p> <p>15 <b>right."</b></p> <p>16 <b>Q.</b> Had they actually printed out copies for you to</p> <p>17 sign?</p> <p>18 <b>A. Not with that comment, no.</b></p> <p>19 <b>Q.</b> Did you subsequently see a version of that</p> <p>20 affidavit with your signature affixed to it?</p> <p>21 <b>A. With that version?</b></p> <p>22 <b>Q.</b> Yes.</p> <p>23 <b>A. No.</b></p> <p>24 <b>Q.</b> Did you see another affidavit with your</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-78</p> <p>1 happened?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> And you were also present a month later, in late</p> <p>4 January of 2009, at the second hearing. And at</p> <p>5 that time, Attorney Troy told the judge that the</p> <p>6 word "comparable business enterprise" came from</p> <p>7 an outside consultant; correct?</p> <p>8 <b>A. I don't remember that.</b></p> <p>9 <b>Q.</b> Do you remember him telling the judge that day</p> <p>10 that he had been in touch on this very case with</p> <p>11 the Inspector General's Office more than 20</p> <p>12 times?</p> <p>13 <b>A. No. I don't remember the 20 times thing, no,</b></p> <p>14 <b>but that he had been in touch with them, yes.</b></p> <p>15 <b>Q.</b> Do you remember another -- and this is going</p> <p>16 forward a year or so -- do you remember a</p> <p>17 hearing in Judge Smith's session in Middlesex</p> <p>18 Superior Court where the question came up about</p> <p>19 how much money the members paid on a yearly</p> <p>20 basis?</p> <p>21 Do you recall that?</p> <p>22 <b>A. Yes, I do.</b></p> <p>23 <b>Q.</b> And do you recall the judge asking counsel to</p> <p>24 speak to their respective clients to get that</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |
| <p style="text-align: right;">2-76</p> <p>1 signature --</p> <p>2 Was there another affidavit that you did</p> <p>3 sign?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q.</b> And that was recently?</p> <p>6 <b>A. Yes.</b></p> <p>7 <b>Q.</b> What did that one say?</p> <p>8 <b>A. I mean, there was, like, 35 bullet points in</b></p> <p>9 <b>it. There was a lot.</b></p> <p>10 <b>Q.</b> What did it say about "comparable business</p> <p>11 enterprise"?</p> <p>12 <b>A. I don't think that it had anything in there to</b></p> <p>13 <b>do with that any more. And again, I could be</b></p> <p>14 <b>not remembering that correctly.</b></p> <p>15 <b>Q.</b> Now, looking at the affidavit that's in front of</p> <p>16 you, paragraph 10, you indicate that the town</p> <p>17 manager requested the town counsel to inquire</p> <p>18 of the Inspector General as to what should be</p> <p>19 done?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q.</b> Do you know if that ever happened?</p> <p>22 <b>A. According to -- well, do I know if the town</b></p> <p>23 <b>manager requested that? Yeah, he said it right</b></p> <p>24 <b>in front of me.</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: right;">2-79</p> <p>1 number for him?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> And Attorney Troy walked to the back of the</p> <p>4 courtroom and spoke to you directly and asked</p> <p>5 you how much are the annual permits?</p> <p>6 <b>A. Yes, he did.</b></p> <p>7 <b>Q.</b> And what did you tell him?</p> <p>8 <b>A. Whatever the annual cost was. I don't remember</b></p> <p>9 <b>the number.</b></p> <p>10 <b>Q.</b> Was it \$350,000?</p> <p>11 <b>A. That's not what I told him.</b></p> <p>12 <b>Q.</b> And what did he tell the judge you had just</p> <p>13 said?</p> <p>14 <b>A. A number that I don't know where he got it. I</b></p> <p>15 <b>don't remember the number, but maybe that was</b></p> <p>16 <b>it.</b></p> <p>17 <b>Q.</b> So if Attorney Troy told the judge 350,000, you</p> <p>18 had not given him that number; had you?</p> <p>19 <b>A. Absolutely not.</b></p> <p>20 <b>Q.</b> And you knew that the number that Attorney Troy</p> <p>21 gave the judge was wildly different than the</p> <p>22 number that you had given him, which was</p> <p>23 approximately \$100,000; correct?</p> <p>24 <b>A. Yes.</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |

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| <p style="text-align: right;">2-80</p> <p>1 Q. And did you bring that to the attention of<br/>2 anybody in town government?<br/>3 A. <b>Yes.</b><br/>4 Q. Who did you talk to; and what did you say?<br/>5 A. <b>Both Bob Troy and Richard MacDonald. I said,</b><br/>6 <b>"You didn't hear me right. That's not the</b><br/>7 <b>number."</b><br/>8 Q. And what did he say in response?<br/>9 A. <b>"Oh, really." That was it.</b><br/>10 MR. KESTEN: Who is "he"? You said two<br/>11 people. Who is the "he" you are referring to?<br/>12 Q. Well, that's what Troy said to you?<br/>13 A. <b>Yes.</b><br/>14 Q. And then what did MacDonald say to you, if<br/>15 anything?<br/>16 A. <b>I don't think he said anything to me about</b><br/>17 <b>that.</b><br/>18 Q. At some point shortly after the lawsuit began,<br/>19 did you have a conversation with Joe Eckstrom<br/>20 regarding all of the problems up there at North<br/>21 Hill and the bid problems?<br/>22 A. <b>I don't remember.</b><br/>23 Q. Do you ever remember saying to Joe Eckstrom,<br/>24 "Joe, if it was up to me, I would have given you<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-83</p> <p>1 Q. Well, if they hadn't named a superintendent,<br/>2 wouldn't that have been a fatal mistake?<br/>3 A. <b>I'd have to go back and look at it. I don't</b><br/>4 <b>remember.</b><br/>5 Q. Well, you drafted the or were the main author<br/>6 are of the RFP; correct?<br/>7 A. <b>I was the one that compiled it, yes.</b><br/>8 Q. And most of the evaluation criteria you had<br/>9 taken from the 1999 form; correct?<br/>10 A. <b>Yes.</b><br/>11 Q. And both the '99 form and the 2008 form required<br/>12 the vendor to identify who their superintendent<br/>13 would be; didn't they?<br/>14 A. <b>I don't remember; but if you say so, sure.</b><br/>15 MR. KESTEN: No. Don't agree with him<br/>16 just because he says so.<br/>17 MR. FOLLANSBEE: It would shorten<br/>18 everything if he just did it that way.<br/>19 MR. KESTEN: It would, but we wouldn't<br/>20 have to come here.<br/>21 Q. (BY MR. FOLLANSBEE) Now, the submission by CALM<br/>22 Golf in January of 2009, when they resubmitted<br/>23 their proposal, had you had any conversation<br/>24 between October of 2008 and January 9th of 2009<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-81</p> <p>1 guys the contract"?<br/>2 A. <b>I don't remember that, no.</b><br/>3 Q. Is it possible that you said that to him?<br/>4 A. <b>I don't remember.</b><br/>5 Q. Is that how you felt about it, at the time, in<br/>6 early 2009?<br/>7 A. <b>I had nothing against Johnson Golf Management.</b><br/>8 <b>If they won it, that would have been fine.</b><br/>9 Q. When all of the problems were going on with<br/>10 the tee time policy, did you have any<br/>11 conversations with Doug Johnson -- this is back<br/>12 in '04-'05 -- in which you said, "One of the<br/>13 problems is that Sullivan and Andre Martecchini<br/>14 listen to all of these characters"?<br/>15 A. <b>I don't remember that.</b><br/>16 Q. Do you remember saying, "Rocco Longo wouldn't<br/>17 have put up with this nonsense"?<br/>18 A. <b>I don't remember that, no.</b><br/>19 Q. Now, your affidavit, do you still have that in<br/>20 front of you?<br/>21 A. <b>Yes.</b><br/>22 MR. KESTEN: It's Exhibit 13?<br/>23 MR. FOLLANSBEE: Exhibit 13, yes.<br/>24 MR. KESTEN: Thank you.<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>        | <p style="text-align: right;">2-84</p> <p>1 with Mr. John Geary?<br/>2 A. <b>Can you ask that again?</b><br/>3 Q. Yes.<br/>4 From October 24th of 2008 up until<br/>5 January 9th of 2009, did you have any<br/>6 conversations with Mr. John Geary about the RFP<br/>7 process at North Hill?<br/>8 A. <b>I don't remember.</b><br/>9 Q. Is it possible that you did?<br/>10 MR. KREIGER: Objection.<br/>11 A. <b>I don't remember. I don't know.</b><br/>12 Q. Well, you know Mr. Geary.<br/>13 A. <b>I do.</b><br/>14 Q. He used to be on the North Hill Advisory<br/>15 Committee; correct?<br/>16 A. <b>I do.</b><br/>17 Q. Do you also coach his son in basketball?<br/>18 A. <b>I do, although not any more.</b><br/>19 Q. Was his son on your team in 2008?<br/>20 A. <b>No.</b><br/>21 Q. When was his son on your team?<br/>22 A. <b>The last two years; so 2011 and 2012. But he</b><br/>23 <b>is going to prep school. He was my best</b><br/>24 <b>player.</b><br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |
| <p style="text-align: right;">2-82</p> <p>1 Q. (BY MR. FOLLANSBEE) Did either Mr. Troy or<br/>2 Mr. MacDonald discuss giving the other two<br/>3 evaluators -- not you, the other two<br/>4 evaluators -- a chance to fix their<br/>5 evaluation?<br/>6 A. <b>No.</b><br/>7 Q. Was that ever explored with them?<br/>8 A. <b>Not that I'm aware of.</b><br/>9 Q. Wouldn't that have been the easiest solution to<br/>10 this problem?<br/>11 A. <b>I have no idea.</b><br/>12 Q. You had done your evaluation correctly?<br/>13 A. <b>I think so.</b><br/>14 Q. And you knew, at that point, that or by that<br/>15 point -- I'm talking about December of '08 --<br/>16 you knew that the first bid from CALM Golf was<br/>17 no good because of their price proposal being in<br/>18 the wrong format; correct?<br/>19 A. <b>Yes.</b><br/>20 Q. And you knew that they hadn't even named a<br/>21 superintendent which would have rendered them<br/>22 ineligible.<br/>23 Didn't you know that?<br/>24 A. <b>I don't remember that, but I don't know.</b><br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-85</p> <p>1 Q. Did you know Mr. Geary socially?<br/>2 A. <b>No.</b><br/>3 Q. Did you ever speak to Charles Lanzetta about the<br/>4 RFP process at North Hill?<br/>5 A. <b>No.</b><br/>6 Q. Did you ever speak with Mr. Tony Morosco?<br/>7 A. <b>No.</b><br/>8 Q. Did you ever have any conversation with Betsy<br/>9 Sullivan about the North Hill RFP process?<br/>10 A. <b>Yes.</b><br/>11 Q. How many conversations do you think that you<br/>12 had with Betsy Sullivan on the topic of the<br/>13 RFP?<br/>14 A. <b>One or two, maybe a couple of more, not very</b><br/>15 <b>many.</b><br/>16 Q. And do you remember what her interest in it<br/>17 was?<br/>18 A. <b>Just that we try to get the same level of</b><br/>19 <b>revenue from the previous contract to now so</b><br/>20 <b>that, you know, the budget could stay about</b><br/>21 <b>where it was, as far as revenue stream goes.</b><br/>22 Q. And did you?<br/>23 A. <b>I'm sorry, can I add?</b><br/>24 Q. Yes.<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |

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| <p style="text-align: center;">2-86</p> <p>1 <b>A. Maybe some discussions about the potential of a</b><br/> 2 <b>practice facility.</b><br/> 3 <b>Q.</b> By that, do you mean a driving range kind of<br/> 4 thing?<br/> 5 <b>A. Sure.</b><br/> 6 <b>Q.</b> And she thought that that might enhance the<br/> 7 revenue for the town?<br/> 8 <b>A. Yes.</b><br/> 9 <b>And she was talking about, kind of,</b><br/> 10 <b>similar, like we did with the former contract</b><br/> 11 <b>where we had the vendor build us a clubhouse</b><br/> 12 <b>and a septic system to our specifications.</b><br/> 13 <b>She was talking about, if we did that, you</b><br/> 14 <b>know, would it cost the vendor too much; and</b><br/> 15 <b>then our revenue stream would go down because</b><br/> 16 <b>his lease payment would go down, that kind of</b><br/> 17 <b>stuff.</b><br/> 18 <b>Q.</b> Now, Ms. Sullivan, when you say she wanted the<br/> 19 revenue stream to stay about the same, that was,<br/> 20 approximately, 100,000 a year; correct?<br/> 21 <b>A. Yes.</b><br/> 22 <b>Q.</b> So for a five year contract, that would mean<br/> 23 that she would want a number at about \$500,000;<br/> 24 correct?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                                     | <p style="text-align: center;">2-89</p> <p>1 <b>A. Yes.</b><br/> 2 <b>Q.</b> And you understand that to mean that the March<br/> 3 payment has to be made by April 1st; correct?<br/> 4 <b>A. Yes.</b><br/> 5 <b>Q.</b> And a controversy ensued in which it was alleged<br/> 6 that Johnson was always paying late; isn't that<br/> 7 correct?<br/> 8 <b>A. Yes.</b><br/> 9 <b>Q.</b> And they weren't paying late; were they?<br/> 10 <b>A. No. From time to time, a couple of days here</b><br/> 11 <b>and there, but that's negligible.</b><br/> 12 <b>Q.</b> But by and large, they were actually, on the<br/> 13 average, paying about 25 days early every month;<br/> 14 weren't they?<br/> 15 <b>A. I would agree with that.</b><br/> 16 <b>Q.</b> And yet Attorney Troy had you sign an affidavit<br/> 17 in which you said that they were late every<br/> 18 month; didn't he?<br/> 19 <b>A. Yeah. He read the contract to mean that they</b><br/> 20 <b>should have paid February, you know, the month</b><br/> 21 <b>before, not the month after. And that turned</b><br/> 22 <b>out not to be correct.</b><br/> 23 <b>Q.</b> And yet he made you or he drafted the affidavit<br/> 24 and had you sign it under the pains and<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: center;">2-87</p> <p>1 <b>A. Yes.</b><br/> 2 <b>Q.</b> Did you say to Betsy Sullivan, when she was<br/> 3 discussing that with you, that that probably<br/> 4 wasn't going to happen; because a lot of the<br/> 5 prime tee times were going to now go to the<br/> 6 members?<br/> 7 <b>A. No.</b><br/> 8 <b>Q.</b> Did that impact at all on what you thought the<br/> 9 revenue stream might be?<br/> 10 <b>A. No.</b><br/> 11 <b>Q.</b> Now, when Johnson was managing the course for<br/> 12 2009 and 2010, you were the main contact person<br/> 13 for them; correct?<br/> 14 <b>A. For the town?</b><br/> 15 <b>Q. Yes.</b><br/> 16 <b>A. Yes.</b><br/> 17 <b>Q.</b> And you knew what the payment obligations were;<br/> 18 correct?<br/> 19 <b>A. I did.</b><br/> 20 <b>Q.</b> And the payment obligations were that they would<br/> 21 pay \$10,000 a month, and the months would be<br/> 22 from March through December; correct?<br/> 23 <b>A. I'm not trying to be evasive, but it's because</b><br/> 24 <b>of that injunction became effective in March</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p style="text-align: center;">2-90</p> <p>1 penalties of perjury; correct?<br/> 2 <b>A. Yes.</b><br/> 3 <b>(Discussion off the record.)</b><br/> 4 <b>Q.</b> (BY MR. FOLLANSBEE) And did you ever say to<br/> 5 him, "This isn't true. I can't sign this"?<br/> 6 <b>A. No. I trusted his way he was reading the</b><br/> 7 <b>contract to be the accurate. He is the</b><br/> 8 <b>attorney. I'm not.</b><br/> 9 <b>Q.</b> Now, you indicated, because of your experience,<br/> 10 you were familiar with Chapter 30B and the rules<br/> 11 and regulations in Chapter 30B; correct?<br/> 12 <b>A. Somewhat, not an expert, but yes.</b><br/> 13 <b>Q.</b> Has anybody ever talked to you about the fact<br/> 14 that, under Chapter 30B, individuals who are<br/> 15 involved in a conspiracy to violate the bid laws<br/> 16 could be personally liable for double the<br/> 17 damages that the town suffered?<br/> 18 <b>A. No.</b><br/> 19 <b>Q.</b> That's never been brought to your attention?<br/> 20 <b>A. No.</b><br/> 21 <b>Q.</b> Have you ever read Chapter 30B?<br/> 22 <b>A. Yes.</b><br/> 23 MR. FOLLANSBEE: I'd ask that that be<br/> 24 marked as the next exhibit.<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: center;">2-88</p> <p>1 <b>that I think my memory is that the contract</b><br/> 2 <b>stipulated that there was \$101,000 average</b><br/> 3 <b>payment for the ten years; and so the town and I</b><br/> 4 <b>thought you agreed that they would take or come</b><br/> 5 <b>to an agreement of when that would be. Because</b><br/> 6 <b>it was in flux a little bit for a couple of</b><br/> 7 <b>months.</b><br/> 8 <b>Q.</b> And the eventual agreement that was worked out<br/> 9 for calendar years 2009 and 2010 was that<br/> 10 Johnson would pay \$10,000 a month from March<br/> 11 through December, and that would equal 100,000 a<br/> 12 year; correct?<br/> 13 <b>A. Yes. Because 10,000 a month at twelve months is</b><br/> 14 <b>120, and that's too much, yes.</b><br/> 15 <b>Q.</b> And so that's the way that the payments were<br/> 16 made, that you would get \$10,000 a month;<br/> 17 correct?<br/> 18 <b>A. Correct.</b><br/> 19 <b>Q.</b> And the contract, according to Judge Smith's<br/> 20 order, the contract would be the same contract<br/> 21 that had been in place prior years?<br/> 22 <b>A. Correct.</b><br/> 23 <b>Q.</b> So that the payments were made in arrears;<br/> 24 correct?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: center;">2-91</p> <p>1 (Exhibit No. 14, For Identification,<br/> 2 marked.)<br/> 3 <b>Q.</b> (BY MR. FOLLANSBEE) I'm showing you a copy of<br/> 4 Chapter 30B, Section 17.<br/> 5 (Document handed to the witness.)<br/> 6 <b>Q.</b> I'd direct your attention to the portion that's<br/> 7 underlined. And I would ask you to read that to<br/> 8 yourself, and then I'll ask you a few questions<br/> 9 about it.<br/> 10 <b>A. Okay.</b><br/> 11 <b>Q.</b> Until today, you were not familiar with this at<br/> 12 all?<br/> 13 <b>A. It doesn't ring a bell, no.</b><br/> 14 <b>Q.</b> Now, do you recall when the bids from the<br/> 15 October 2008 RFP process were rejected?<br/> 16 <b>A. I believe, it was sometime in December.</b><br/> 17 <b>Q.</b> And when did the new RFP go out?<br/> 18 <b>A. Shortly after that.</b><br/> 19 <b>Q.</b> Now, you had indicated in your original<br/> 20 deposition that, for the new RFP, you went<br/> 21 through the same process, and you e-mailed it to<br/> 22 everybody and got comments from everybody before<br/> 23 you put it together to go out.<br/> 24 Is that still your testimony?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |



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| <p style="text-align: right;">2-92</p> <p>1 <b>A. Yes.</b></p> <p>2 <b>Q.</b> Now, considering that the new RFP was issued on</p> <p>3 December 9th of 2008 and the rejection letter</p> <p>4 was dated December 3rd of 2008, do you know if</p> <p>5 you got any feedback from anybody about your new</p> <p>6 draft?</p> <p>7 <b>A. I don't recall.</b></p> <p>8 <b>Q.</b> Now, I think we addressed this in your</p> <p>9 deposition before, but I just want to be clear</p> <p>10 on it:</p> <p>11 The original RFP called for payment as a</p> <p>12 flat payment. Do you remember that?</p> <p>13 <b>A. I do.</b></p> <p>14 <b>Q.</b> And that word "flat" was deleted in the RFP that</p> <p>15 was bid on January 9th and drafted on December</p> <p>16 9th?</p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q.</b> With whom did you discuss the deletion of the</p> <p>19 word "flat"?</p> <p>20 <b>A. Nobody.</b></p> <p>21 <b>Q.</b> Why did you do it?</p> <p>22 <b>A. Why did I do what?</b></p> <p>23 <b>Q.</b> Why did you delete it?</p> <p>24 <b>A. In the first price proposal, there was a</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p style="text-align: right;">2-95</p> <p>1 then you decided to change the word "flat;" is</p> <p>2 that correct?</p> <p>3 <b>A. Yeah.</b></p> <p>4 <b>Q.</b> So it wasn't a couple of seconds. It took more</p> <p>5 time than that; didn't it?</p> <p>6 <b>A. Well, I think your question was about, you know,</b><br/> <b>what did I think about the percentage and</b><br/> <b>entering into it. Again, that wasn't an</b><br/> <b>issue.</b></p> <p>7 <b>It was just that a vendor had done a</b><br/> <b>submission incorrectly, and I was going to</b><br/> <b>clear that up; because we were going out to bid</b><br/> <b>again, and I wanted to make it a level playing</b><br/> <b>field; so I made the change.</b></p> <p>12 <b>Q.</b> Well, wasn't it a level playing field the first</p> <p>13 time?</p> <p>14 <b>A. Yeah.</b></p> <p>15 MR. FOLLANSBEE: I would ask that this be</p> <p>16 marked as the next exhibit.</p> <p>17 (Exhibit No. 15, For Identification,</p> <p>18 marked.)</p> <p>19 <b>Q.</b> (BY MR. FOLLANSBEE) Sir, I'm showing you</p> <p>20 what's been now marked as Exhibit No. 15. And</p> <p>21 that's your affidavit that was filed in court on</p> <p>22 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-93</p> <p>1 <b>proposal by CALM Golf that had a percentage in</b><br/> <b>it; so I thought, to stop any confusion,</b><br/> <b>everyone was on a level playing field, just take</b><br/> <b>it out and make sure it was exactly easily</b><br/> <b>understood by everybody.</b></p> <p>6 <b>Q.</b> What did you feel was not easily understood by</p> <p>7 the word "flat payment"?</p> <p>8 <b>A. Well, it was obvious that one of the bidders</b><br/> <b>couldn't figure it out; so I thought that I</b><br/> <b>would try to clear it up, as much as I could, so</b><br/> <b>I took it out.</b></p> <p>12 <b>Q.</b> And you thought taking it out would clear it</p> <p>13 up?</p> <p>14 <b>A. Yes.</b></p> <p>15 <b>Q.</b> You didn't take it out in order to make sure</p> <p>16 that CALM Golf would be qualified if they did it</p> <p>17 again?</p> <p>18 <b>A. No.</b></p> <p>19 <b>Q.</b> Now, in CALM Golf's first proposal, they</p> <p>20 offered the town \$280,000; correct?</p> <p>21 <b>A. I honestly don't remember that.</b></p> <p>22 <b>Q.</b> Do you remember a significant change between</p> <p>23 their first proposal and their second</p> <p>24 proposal?<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>                                  | <p style="text-align: right;">2-96</p> <p>1 August 31st of 2011.</p> <p>2 (Document handed to the witness.)</p> <p>3 <b>A. What do you want me to do with this, Steve?</b></p> <p>4 <b>Q.</b> Why don't you take a look at it -- it's a few</p> <p>5 pages -- and then I'll have a few questions</p> <p>6 about it.</p> <p>7 <b>A. Okay.</b></p> <p>8 <b>Q.</b> Now, with regard to the residence on the</p> <p>9 property, that was part of the contract from</p> <p>10 1999 to 2008; correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 <b>Q.</b> And Johnson Golf had individuals who worked for</p> <p>13 him or them living on the premises during that</p> <p>14 period of time; correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> And in the spring of 2007, the Town of Duxbury</p> <p>17 had that building demolished; correct?</p> <p>18 <b>A. I believe, it was the spring. It was 2007 for</b><br/> <b>sure.</b></p> <p>19 <b>Q.</b> And there was never any change to the contract</p> <p>20 signed by anybody regarding that issue; was</p> <p>21 there?</p> <p>22 <b>A. No signed change, no.</b></p> <p>23 <b>Q.</b> And your job was to monitor that contract on</p> <p>24 <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>         |
| <p style="text-align: right;">2-94</p> <p>1 <b>A. It was definitely a change. You know, one was</b><br/> <b>flat and one was a flat plus a percentage; so</b><br/> <b>there was a difference.</b></p> <p>4 <b>Q.</b> Well, one was 280,000 and the next one was</p> <p>5 512,000; correct?</p> <p>6 MR. KESTEN: Well, it's 280 with a</p> <p>7 percentage.</p> <p>8 MR. FOLLANSBEE: Okay. Why don't we talk</p> <p>9 about the percentage.</p> <p>10 <b>Q.</b> As you understood the percentage, what was the</p> <p>11 town going to get a percentage of?</p> <p>12 <b>A. I don't recall.</b></p> <p>13 <b>Because at that stage of the game, we</b><br/> <b>weren't going to even get into that because we</b><br/> <b>were rejecting the bids; so I don't know. I</b><br/> <b>didn't spend two seconds thinking about that</b><br/> <b>because we were moving forward.</b></p> <p>18 <b>Q.</b> Well, you spent more than two seconds thinking</p> <p>19 about it. Because you reviewed their price</p> <p>20 proposal carefully enough to know that they had</p> <p>21 screwed up and didn't follow the flat payment</p> <p>22 provision; correct?</p> <p>23 <b>A. Yeah, yeah.</b></p> <p>24 <b>Q.</b> So you knew that they had done it wrong, and<br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-97</p> <p>1 behalf of the Town of Duxbury; correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q.</b> And you knew that any changes to the terms of</p> <p>4 that contract had to be in writing, and they had</p> <p>5 to be signed by both the town and Johnson Golf;</p> <p>6 correct?</p> <p>7 <b>A. No.</b></p> <p>8 <b>Q.</b> You didn't know that?</p> <p>9 <b>A. No.</b></p> <p>10 MR. FOLLANSBEE: I'll have to get a copy</p> <p>11 of the contract. I think that that may be</p> <p>12 incomplete.</p> <p>13 <b>Q.</b> Let's go through your affidavit. You say that</p> <p>14 there was a meeting with Mr. Johnson, paragraph</p> <p>15 6.</p> <p>16 <b>A. Is there a question?</b></p> <p>17 <b>Q.</b> Yes.</p> <p>18 At that meeting, what did Mr. Johnson</p> <p>19 say?</p> <p>20 <b>A. My memory is that we were talking about the</b><br/> <b>building demolition and the fact that there was</b><br/> <b>a loss of a facility for him to use; and so it</b><br/> <b>was the town manager and Doug talking about how</b><br/> <b>they were going to solve that issue.</b><br/> <b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |

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| <p style="text-align: right;">2-98</p> <p>1 Q. And did Mr. Johnson say, "What kind of a credit<br/>2 are you going to give me on the rent?"</p> <p>3 A. <b>I don't necessarily remember that. But again,<br/>4 it was about what kind of arrangement was going<br/>5 to be made; because the house was now gone, and<br/>6 who was responsible for that, and what was going<br/>7 to be done? That kind of stuff.</b></p> <p>8 Q. And according to your affidavit, my client<br/>9 agreed that the town would build a fence instead<br/>10 of having a residence there?</p> <p>11 A. <b>It would be a fence around the golf carts, an<br/>12 enclosure.</b></p> <p>13 Q. And it's your testimony, and according to your<br/>14 affidavit, you're saying that that was the<br/>15 agreement that was made; that instead of having<br/>16 a residence that had three or four bedrooms<br/>17 available, my client would give that up and<br/>18 instead have a fence that goes around where the<br/>19 golf carts are?</p> <p>20 A. <b>Yeah.</b></p> <p>21 <b>And more than that, as you can see in</b><br/>22 <b>number 6, there was also a discussion about who</b><br/>23 <b>was going to be held liable for the building</b><br/>24 <b>getting frozen and stuff; and so it was worked</b><br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-101</p> <p>1 Q. The minutes.</p> <p>2 MR. KESTEN: Here we go. We've got<br/>3 them.</p> <p>4 Q. On the Cushing report, which is the second page<br/>5 of Exhibit No. 9, it indicates that late May is<br/>6 the target time to send out the new RFP. And it<br/>7 indicates that you reported that you were going<br/>8 to be meeting with the town-appointed RFP<br/>9 specialist.</p> <p>10 Did you indicate to the board or to the<br/>11 committee in January of 2008 that you were going<br/>12 to be meeting with the town-appointed RFP<br/>13 specialist?</p> <p>14 A. <b>I don't know if I said "meeting;" but clearly,<br/>15 I was going to be involved with that person,<br/>16 yes.</b></p> <p>17 Q. And did you know who that person was?</p> <p>18 A. <b>At that stage of the game, I don't know if I<br/>19 knew that it was the person from Plymouth. I<br/>20 don't know if I did know that then. That was<br/>21 earlier on so.</b></p> <p>22 Q. At that time, in January of '08, had you had a<br/>23 conversation with somebody in town saying that<br/>24 there was going to be an RFP specialist<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-99</p> <p>1 <b>out by both parties that the town wouldn't hold<br/>2 them liable and wouldn't pursue that.</b></p> <p>3 <b>And then the town would also -- and that<br/>4 was going to be fine -- and then that the town<br/>5 would build the enclosure around the golf<br/>6 carts.</b></p> <p>7 Q. Well, who hired the restoration company to go in<br/>8 the first time the pipes burst?</p> <p>9 A. <b>The town did.</b></p> <p>10 Q. And it was the restoration company that cut the<br/>11 thermostat wires; correct?</p> <p>12 A. <b>For the second time, yes.</b></p> <p>13 Q. That had nothing to do with Johnson Golf; did<br/>14 it?</p> <p>15 A. <b>The second time, no. There was two times.</b></p> <p>16 Q. I understand. I'm talking about the second<br/>17 time.</p> <p>18 A. <b>The second time had nothing to do with Johnson<br/>19 Golf. That was the restoration company.</b></p> <p>20 Q. And it was after the second time that the town<br/>21 decided to demolish the building; correct?</p> <p>22 A. <b>Yes, yes.</b></p> <p>23 Q. And there is no document in the Town of Duxbury<br/>24 that was signed by my client agreeing to the<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-102</p> <p>1 involved?</p> <p>2 A. <b>Yes, yes.</b></p> <p>3 Q. Who did you have a conversation with?</p> <p>4 A. <b>The town manager.</b></p> <p>5 Q. And what did he tell you about an RFP<br/>6 specialist?</p> <p>7 A. <b>Just that he thought that we should get someone<br/>8 on board to review the RFP.</b></p> <p>9 Q. Had there ever been a problem with the RFP in<br/>10 the past?</p> <p>11 A. <b>Not anything significant that I can remember,<br/>12 no.</b></p> <p>13 Q. Now, do you continue, in your role as<br/>14 recreation director, are you still the point<br/>15 contact person for the North Hill Advisory<br/>16 Committee?</p> <p>17 A. <b>I'm an ex officio member.</b></p> <p>18 Q. But are you the person who interacts with the<br/>19 vendor at the golf course, currently?</p> <p>20 A. <b>Oh, the vendor at the golf course?</b></p> <p>21 Q. Yes.</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. And what's the name of that vendor?</p> <p>24 A. <b>Pilgrim Golf.</b><br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p style="text-align: right;">2-100</p> <p>1 material that you have in paragraph 7;<br/>2 correct?</p> <p>3 A. <b>Any document, that would be something that the<br/>4 town manager and town counsel would do. I<br/>5 wouldn't have that. But I can just tell you<br/>6 what happened at that meeting. That's it.</b></p> <p>7 Q. But there was nothing signed; correct?</p> <p>8 A. <b>I don't know, one way or another, if that's true<br/>9 or not. I don't know.</b></p> <p>10 Q. Well, no one ever gave you anything that was<br/>11 signed?</p> <p>12 A. <b>No.</b></p> <p>13 Q. And it was your job to enforce the contract;<br/>14 correct?</p> <p>15 A. <b>No. I was saying, no, I never got anything;<br/>16 and no, it's not my job to enforce the<br/>17 contract, no.</b></p> <p>18 Q. Is it your job to supervise the contract?</p> <p>19 A. <b>Monitor it, not enforce it.</b></p> <p>20 MR. FOLLANSBEE: I would like to take a<br/>21 bathroom break, if we could.<br/>22 (Recess taken.)</p> <p>23 Q. (BY MR. FOLLANSBEE) Have you got Exhibit 9?</p> <p>24 A. <b>Exhibit 9?</b><br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-103</p> <p>1 Q. And as far as Pilgrim Golf is concerned, have<br/>2 they provided the town with audited financial<br/>3 statements?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. When did you receive those?</p> <p>6 A. <b>I don't remember.</b></p> <p>7 Q. Did they deliver them to you?</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. Do you know the company that did the audit?</p> <p>10 A. <b>No, not off the top of my head, no.</b></p> <p>11 Q. And was the company selected by the Town of<br/>12 Duxbury?</p> <p>13 A. <b>Approved by the Town of Duxbury, I believe,<br/>14 yes.</b></p> <p>15 Q. And do they also submit monthly financial<br/>16 reports?</p> <p>17 A. <b>They do.</b></p> <p>18 Q. And are they up to date on their monthly<br/>19 financial reports?</p> <p>20 A. <b>They are.</b></p> <p>21 Q. And do they attend the meetings of the North<br/>22 Hill Advisory Committee?</p> <p>23 A. <b>They do, if there is one.</b></p> <p>24 Q. Well, when was the last time that they<br/><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |

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| <p style="text-align: right;">2-104</p> <p>1 attended a meeting of the North Hill Advisory<br/>2 Committee?<br/>3 <b>A. There could have been one at the end of 2011</b><br/>4 <b>maybe, somewhere.</b><br/>5 <b>Q.</b> And are there minutes available for that<br/>6 meeting?<br/>7 <b>A. I'm sure there must be. If the clerk put them</b><br/>8 <b>in, I'm sure that there must be.</b><br/>9 <b>Q.</b> But you don't know who the clerk was; correct?<br/>10 <b>A. No, no.</b><br/>11 <b>Q.</b> And those minutes would be in the town clerk's<br/>12 office?<br/>13 <b>A. They should.</b><br/>14 <b>Q.</b> And have they provided a performance bond,<br/>15 meaning Pilgrim Golf?<br/>16 <b>A. I don't get involved with that. That's handled</b><br/>17 <b>by the town manager and finance director. I</b><br/>18 <b>don't get involved in that.</b><br/>19 <b>Q.</b> And I may have asked you this before: Who is<br/>20 the golf pro at North Hill, currently?<br/>21 <b>A. I believe his name -- I know it's Paul. I'm</b><br/>22 <b>going to say his last name wrong, but I think</b><br/>23 <b>it's like Coutoumas.</b><br/>24 <b>Q.</b> And that's not the person that they put in their<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-107</p> <p>1 <b>A. Not good for the town anyway, no. It was a</b><br/>2 <b>no-go.</b><br/>3 <b>Q.</b> Have you discussed the case with any of the<br/>4 current selectmen?<br/>5 <b>A. Yes.</b><br/>6 <b>Q.</b> Who?<br/>7 <b>A. Sean Dahlen, Ted Flynn, David Madigan.</b><br/>8 <b>Q.</b> And have you discussed it with them privately or<br/>9 in --<br/>10 <b>A. In executive session.</b><br/>11 <b>Q.</b> How many times?<br/>12 <b>A. At least, four.</b><br/>13 <b>Q.</b> When was the most recent one?<br/>14 <b>A. Last night.</b><br/>15 <b>Q.</b> Now, when Mrs. Sullivan was a member of the<br/>16 Board of Selectmen, did you discuss the case<br/>17 with her?<br/>18 <b>A. I don't have any memory of that, no, I don't</b><br/>19 <b>know.</b><br/>20 <b>Q.</b> Did you discuss the case with Emmett Sheehan<br/>21 before he created Pilgrim Golf?<br/>22 <b>A. No.</b><br/>23 <b>Q.</b> Are you friendly with Mr. Sheehan?<br/>24 <b>A. I know who he is, yeah.</b><br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |
| <p style="text-align: right;">2-105</p> <p>1 proposal; correct?<br/>2 <b>A. Correct.</b><br/>3 <b>Q.</b> And who is the superintendent?<br/>4 <b>A. Adam Hardy.</b><br/>5 <b>Q.</b> And that's not the person they put in their<br/>6 proposal either; is it?<br/>7 <b>A. Correct.</b><br/>8 <b>Q.</b> What happened to the people that they put in<br/>9 their proposal?<br/>10 <b>A. They informed the town that those people took</b><br/>11 <b>employment elsewhere because of the uncertainty</b><br/>12 <b>of the deal.</b><br/>13 <b>Q.</b> Were you involved in the process of creating an<br/>14 IFB for the 2011 golf season?<br/>15 <b>A. No.</b><br/>16 <b>Q.</b> Do you know who did that for the town?<br/>17 <b>A. Scott Lambiase.</b><br/>18 <b>Q.</b> And do you know anyone else in town government<br/>19 who had input into that process?<br/>20 <b>A. No.</b><br/>21 <b>Q.</b> Do you know if the town hired an outside<br/>22 consultant to help draft the IFB?<br/>23 <b>A. I don't know, but I do not believe so.</b><br/>24 <b>Q.</b> And were you present in court, in superior<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: right;">2-108</p> <p>1 <b>Q.</b> Aside from knowing who he is, are you friendly<br/>2 with him enough that you would ride to court<br/>3 together?<br/>4 <b>A. Yeah, yeah.</b><br/>5 <b>Q.</b> And some of those times that you went to<br/>6 Middlesex Superior Court, Emmett and you would<br/>7 drive together?<br/>8 <b>A. Yes.</b><br/>9 <b>Q.</b> Would anybody else be with you?<br/>10 <b>A. I think Attorney Galvin went with us once, but I</b><br/>11 <b>could be wrong there. But I think he came with</b><br/>12 <b>us one time.</b><br/>13 <b>Q.</b> And do you remember testifying in August of<br/>14 2010 -- no, in August of 2011 -- do you remember<br/>15 testifying in a contempt hearing in Middlesex<br/>16 Superior Court?<br/>17 <b>A. I remember testifying once. I don't remember</b><br/>18 <b>the date.</b><br/>19 <b>Q.</b> And in that proceeding, were you asked whether<br/>20 or not Johnson had made a \$10,000 rent payment?<br/>21 <b>A. Yes.</b><br/>22 <b>Q.</b> And they had made the payment; correct?<br/>23 <b>A. That's correct.</b><br/>24 <b>Q.</b> And you had a copy of the check; correct?<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-106</p> <p>1 court, in November of 2010 when Attorney Troy<br/>2 represented to Judge Smith that the town was<br/>3 about to embark on a new IFB, and they would<br/>4 hire a new outside consultant?<br/>5 <b>A. I don't remember that.</b><br/>6 <b>Q.</b> You don't remember that?<br/>7 <b>A. No.</b><br/>8 <b>Q.</b> Were you in court when the summary judgment<br/>9 decision was made on November 24th of 2010?<br/>10 <b>A. I don't know. That doesn't ring a bell. I</b><br/>11 <b>could have been. I've been 29 times, not that</b><br/>12 <b>I'm counting.</b><br/>13 <b>Q.</b> You've been to court 29 times?<br/>14 <b>A. Yes.</b><br/>15 <b>Q.</b> Gordon, I think you're going on days that I<br/>16 don't go. I don't think that I've been 29<br/>17 times.<br/>18 <b>A. Well, I've been to a couple of courthouses that</b><br/>19 <b>you haven't been on this matter.</b><br/>20 <b>Q.</b> What courthouses are those?<br/>21 <b>A. Plymouth.</b><br/>22 <b>Q.</b> And what were you doing in Plymouth?<br/>23 <b>A. They were asking to evict, an eviction.</b><br/>24 <b>Q.</b> How did that work out?<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: right;">2-109</p> <p>1 <b>A. I don't know about that but.</b><br/>2 <b>Q.</b> Let me say this: You were provided a copy of<br/>3 the check at the hearing.<br/>4 <b>A. Okay.</b><br/>5 MR. KESTEN: Well, don't say "okay." Do<br/>6 you remember it?<br/>7 THE WITNESS: No, no.<br/>8 MR. KESTEN: Say "okay" if you remember<br/>9 it.<br/>10 THE WITNESS: I don't remember it.<br/>11 MR. KESTEN: Don't say "okay" just<br/>12 because he said it.<br/>13 <b>Q.</b> (BY MR. FOLLANSBEE) Do you remember Attorney<br/>14 Troy representing to Judge Wrenn, W-R-E-N-N, at<br/>15 that hearing that Johnson had not made any rent<br/>16 payments for 2011?<br/>17 <b>A. No. That's not how he said it.</b><br/>18 <b>Q.</b> How did he say it, from your memory?<br/>19 <b>A. He was talking about one payment that hadn't</b><br/>20 <b>been made, and the payment had been made.</b><br/>21 <b>Q.</b> So Attorney Troy was saying they had not made a<br/>22 payment?<br/>23 <b>A. Yes.</b><br/>24 <b>Q.</b> But you had received a payment, and he knew that<br/>CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  |

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| <p>2-110</p> <p>1 you had received the payment; correct?</p> <p>2 <b>A. I don't know what he knew. I know the payment</b></p> <p>3 <b>was made.</b></p> <p>4 <b>Q.</b> And anyone who ever asked you if Johnson made a</p> <p>5 payment that year, you would have said, yes,</p> <p>6 they made one \$10,000 payment; correct?</p> <p>7 <b>A. Absolutely.</b></p> <p>8 MR. FOLLANSBEE: Excuse me, I'll be right</p> <p>9 back.</p> <p>10 (Recess taken.)</p> <p>11 MR. FOLLANSBEE: I would ask that this be</p> <p>12 marked as the next exhibit.</p> <p>13 (Exhibit No. 16, For Identification,</p> <p>14 marked.)</p> <p>15 <b>Q.</b> (BY MR. FOLLANSBEE) I've only got one copy of</p> <p>16 this, but I'm sure counsel is very familiar with</p> <p>17 Chapter 30B, Section 6. And that's what Exhibit</p> <p>18 16 is.</p> <p>19 (Document handed to the witness.)</p> <p>20 MR. FOLLANSBEE: Off the record.</p> <p>21 (Discussion off the record.)</p> <p>22 MR. KESTEN: What are you looking at?</p> <p>23 <b>Q.</b> (BY MR. FOLLANSBEE) You indicated that you</p> <p>24 were familiar with Chapter 30B and that the</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p>2-113</p> <p>1 lunch?</p> <p>2 MR. FOLLANSBEE: That's fine. Why don't</p> <p>3 we do that. Maybe 45 minutes.</p> <p>4 MR. KREIGER: So then we'll be back at</p> <p>5 1:30.</p> <p>6 MR. FOLLANSBEE: Sure.</p> <p>7 (Noon recess taken.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 <u><b>AFTERNOON SESSION</b></u></p> <p>13</p> <p>14 <b>Q.</b> (BY MR. FOLLANSBEE) We're back on the record,</p> <p>15 Mr. Cushing.</p> <p>16 <b>A. Okay.</b></p> <p>17 <b>Q.</b> Do you remember at the October 4, 2010 hearing</p> <p>18 before the Board of Selectmen filing an</p> <p>19 affidavit where you said Johnson Golf had been</p> <p>20 using a beer cart on the golf course in</p> <p>21 violation of its contract?</p> <p>22 <b>A. I don't remember an affidavit. But there was a</b></p> <p>23 <b>discussion at the hearing about a beer cart.</b></p> <p>24 <b>Q.</b> And if you signed an affidavit, you didn't have</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   |
| <p>2-111</p> <p>1 composite scoring required certain words; is</p> <p>2 that correct?</p> <p>3 <b>A. That's my understanding.</b></p> <p>4 <b>Q.</b> If we look at the second page, about halfway</p> <p>5 down where it says 2, it describes the composite</p> <p>6 rating.</p> <p>7 <b>A. Okay.</b></p> <p>8 <b>Q.</b> Does Chapter 30B require any particular words</p> <p>9 for the composite rating?</p> <p>10 <b>A. It just says a composite rating for each</b></p> <p>11 <b>proposal and the reasons for the rating.</b></p> <p>12 <b>Q.</b> So then your memory or your understanding of 30B</p> <p>13 was different than what 30B actually says;</p> <p>14 correct?</p> <p>15 <b>A. It appears here, yeah.</b></p> <p>16 <b>Q.</b> Do you remember a meeting in the summer of 2009</p> <p>17 at Attorney Troy's office down the Cape with</p> <p>18 yourself, Mr. Johnson and me?</p> <p>19 <b>A. I remember a meeting that took place there.</b></p> <p>20 <b>Q.</b> And do you remember the upshot of that was that</p> <p>21 Attorney Troy threw us out of his office?</p> <p>22 <b>A. I don't remember you guys getting thrown out.</b></p> <p>23 <b>It was heated.</b></p> <p>24 <b>Q.</b> Well, other than that meeting --</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p>2-114</p> <p>1 any personal knowledge of ever seeing a beer</p> <p>2 cart out there; did you?</p> <p>3 <b>A. No.</b></p> <p>4 <b>Q.</b> So if you signed an affidavit, that was based on</p> <p>5 somebody telling you that there had been a beer</p> <p>6 cart there?</p> <p>7 <b>A. Correct.</b></p> <p>8 <b>Q.</b> And shortly thereafter, having reviewed the</p> <p>9 liquor license, is it your understanding that</p> <p>10 the liquor license included the premises of the</p> <p>11 golf course and the clubhouse?</p> <p>12 <b>A. I don't really get involved in any of the liquor</b></p> <p>13 <b>license stuff. I don't even think I've ever</b></p> <p>14 <b>read the license. Actually, that would be</b></p> <p>15 <b>handled by Barbara Mello, and she is not there</b></p> <p>16 <b>any more.</b></p> <p>17 <b>Q.</b> And so just to be clear, you had no personal</p> <p>18 knowledge yourself that my client, Johnson Golf</p> <p>19 Management, had ever served any alcoholic</p> <p>20 beverages out of a cart on the golf course;</p> <p>21 correct?</p> <p>22 <b>A. No, not that I'm aware of personally, no.</b></p> <p>23 <b>Q.</b> Now, you indicated earlier today that you</p> <p>24 thought you had been in court 29 times on this</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p>2-112</p> <p>1 <b>A. Doug and him were getting along famously.</b></p> <p>2 <b>Q.</b> Well, do you remember any other meetings where</p> <p>3 Attorney Troy threw us out?</p> <p>4 MR. KREIGER: What was the date again?</p> <p>5 MR. FOLLANSBEE: The summer of 2009.</p> <p>6 MR. KESTEN: What was the date again?</p> <p>7 MR. LARAMEE: July 21st of 2009.</p> <p>8 MR. FOLLANSBEE: There you go.</p> <p>9 MR. KESTEN: He is looking at piece of</p> <p>10 paper that has somebody's schedule on it.</p> <p>11 MR. FOLLANSBEE: Off the record.</p> <p>12 (Discussion off the record.)</p> <p>13 <b>Q.</b> (BY MR. FOLLANSBEE) Do you remember a meeting</p> <p>14 in March of 2012 at the senior center in Duxbury</p> <p>15 where Attorney Troy threw Mr. Laramee, Mr.</p> <p>16 Johnson and myself out of the meeting?</p> <p>17 <b>A. I remember that.</b></p> <p>18 <b>Q.</b> And do you remember what transpired after we</p> <p>19 left?</p> <p>20 <b>A. Sure, yeah, mostly, yeah.</b></p> <p>21 <b>Q.</b> What happened after we left?</p> <p>22 MR. KESTEN: Can I talk to Arthur?</p> <p>23 MR. FOLLANSBEE: Sure.</p> <p>24 MR. KESTEN: Is this a good time to take</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>   | <p>2-115</p> <p>1 case.</p> <p>2 <b>A. No, no. I didn't say just this case, but around</b></p> <p>3 <b>there.</b></p> <p>4 <b>Q.</b> So that's all cases in Duxbury?</p> <p>5 <b>A. That's a whole bunch of stuff, yeah.</b></p> <p>6 MR. FOLLANSBEE: Well, that eliminates 28</p> <p>7 questions.</p> <p>8 MR. KESTEN: Great.</p> <p>9 <b>Q.</b> Did you ever have a problem with Johnson Golf</p> <p>10 Management during their tenure there having</p> <p>11 different rates for weekends and holidays as</p> <p>12 opposed to weekdays?</p> <p>13 <b>A. I don't understand the question.</b></p> <p>14 <b>Q.</b> Well, you understood that, throughout the term</p> <p>15 of the contract at North Hill, there was a</p> <p>16 certain greens fee charged for weekday rates and</p> <p>17 a different greens fee for weekends and</p> <p>18 holidays; correct?</p> <p>19 <b>A. That sounds right.</b></p> <p>20 <b>Q.</b> And you never had a problem with that; did</p> <p>21 you?</p> <p>22 <b>A. I think it's in the contract, what the rates are</b></p> <p>23 <b>and what categories there are.</b></p> <p>24 <b>Q.</b> And had you ever received any complaints from</p> <p><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |

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| <p style="text-align: center;">2-116</p> <p>1 anybody regarding the fact that Johnson Golf was</p> <p>2 charging the wrong rates?</p> <p>3 <b>A. There was a gentleman, Mr. Doyle, who used to</b></p> <p>4 <b>periodically say that Johnson was overcharging</b></p> <p>5 <b>for something, not offering coupon books when he</b></p> <p>6 <b>was supposed to or things of that nature.</b></p> <p>7 <b>Q.</b> And in fact, in one of the exhibits today,</p> <p>8 didn't Mr. Johnson address the coupon books and</p> <p>9 said it was just a different format?</p> <p>10 <b>A. Yeah. I read that.</b></p> <p>11 <b>Q.</b> And that satisfied you; didn't it?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> And Mr. Doyle, that's Mr. Doolin's</p> <p>14 father-in-law; correct?</p> <p>15 <b>A. I think you're right, yeah.</b></p> <p>16 <b>Q.</b> In the years that Johnson Golf was running the</p> <p>17 golf course, they also provided you audited</p> <p>18 financial statements; correct?</p> <p>19 <b>A. I don't remember them providing audited</b></p> <p>20 <b>financial statements. I believe that they</b></p> <p>21 <b>referred to it as, from time to time, a</b></p> <p>22 <b>compilation. I'm not an accountant; so I don't</b></p> <p>23 <b>know all of the ins and outs about that, but I</b></p> <p>24 <b>think it was a compilation.</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: center;">2-119</p> <p>1 Golf was awarded a contract.</p> <p>2 Did you attend that bid opening?</p> <p>3 <b>A. I believe so.</b></p> <p>4 <b>Q.</b> And were they the only bidder?</p> <p>5 <b>A. I believe so, yes.</b></p> <p>6 <b>Q.</b> Did you attend the bid opening in February of</p> <p>7 2011 where no bids were received?</p> <p>8 MR. KREIGER: Objection.</p> <p>9 <b>A. Yes.</b></p> <p>10 <b>Q.</b> And do you remember Mr. Dahlen being at that bid</p> <p>11 opening?</p> <p>12 <b>A. No.</b></p> <p>13 <b>Q.</b> What do you remember about that bid opening in</p> <p>14 February of 2011?</p> <p>15 <b>A. I was standing at the desk at the director of</b></p> <p>16 <b>inspectional services office. He said to his</b></p> <p>17 <b>clerk something, "Did we get any bids?" "No, we</b></p> <p>18 <b>didn't get any bids." I said, "Have a nice day"</b></p> <p>19 <b>and turned around and walked out.</b></p> <p>20 <b>Q.</b> Was there anybody else there?</p> <p>21 <b>A. Not where I was standing, no.</b></p> <p>22 <b>Q.</b> You didn't see Mr. Laramée there that day?</p> <p>23 <b>A. Not in my memory, no.</b></p> <p>24 <b>Q.</b> And you didn't see Mr. Eckstrom there that day?</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>        |
| <p style="text-align: center;">2-117</p> <p>1 <b>Q.</b> In the contract that you drafted for the 2008</p> <p>2 bid, that did require the bidders to provide</p> <p>3 audited financials; correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 <b>Q.</b> And the only company that responded to the bids</p> <p>6 either in 2008 or 2009 that actually provided</p> <p>7 audited financials was Johnson Golf Management;</p> <p>8 correct?</p> <p>9 <b>A. I believe that that is correct.</b></p> <p>10 <b>Q.</b> Now, you indicated that you had contacted the</p> <p>11 Inspector General's Office.</p> <p>12 MR. FOLLANSBEE: I'd ask that that be</p> <p>13 marked as the next exhibit.</p> <p>14 (Exhibit No. 17, For Identification,</p> <p>15 marked.)</p> <p>16 <b>Q.</b> (BY MR. FOLLANSBEE) I would ask you to take a</p> <p>17 look at that document.</p> <p>18 (Document handed to the witness.)</p> <p>19 <b>A. Okay.</b></p> <p>20 <b>Q.</b> Having reviewed this document, which is a</p> <p>21 letter dated May 14, 2012 from the Inspector</p> <p>22 General's Office to Attorney Kesten, is it</p> <p>23 still your testimony that you personally</p> <p>24 contacted the Inspector General about the RFP</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   | <p style="text-align: center;">2-120</p> <p>1 <b>A. Not that day. The day that we didn't get any</b></p> <p>2 <b>bids, it was quick, in and out for me, that I</b></p> <p>3 <b>remember.</b></p> <p>4 <b>Q.</b> Well, do you remember Mr. Sheehan being there</p> <p>5 that day?</p> <p>6 <b>A. No.</b></p> <p>7 <b>Q.</b> Other than you and Mr. Lambiase, is that who</p> <p>8 you're referring to?</p> <p>9 <b>A. Yeah.</b></p> <p>10 <b>The one that I remember is just standing</b></p> <p>11 <b>there saying, "Did we get any bids?" And</b></p> <p>12 <b>someone went downstairs to check if there were</b></p> <p>13 <b>bids downstairs. They sometimes get put in the</b></p> <p>14 <b>mail slot. And I said, "Did we get any? Did</b></p> <p>15 <b>they put them in the wrong office?" They said,</b></p> <p>16 <b>"No, we didn't get any bids." And I turned</b></p> <p>17 <b>around and left.</b></p> <p>18 <b>Q.</b> And when you say "inspectional services," is</p> <p>19 that Mr. Lambiase's office?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q.</b> And was it Mr. Lambiase that told you that they</p> <p>22 didn't get any bids?</p> <p>23 <b>A. Him or his clerk or secretary, whatever she</b></p> <p>24 <b>is.</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>          |
| <p style="text-align: center;">2-118</p> <p>1 process in 2008?</p> <p>2 <b>A. Yes. Not the Inspector General himself, but</b></p> <p>3 <b>somebody in the office and called them and said,</b></p> <p>4 <b>Did you get the document or something, something</b></p> <p>5 <b>to that nature.</b></p> <p>6 <b>Q.</b> And what did they say?</p> <p>7 <b>A. That they had received it.</b></p> <p>8 <b>Q.</b> But you don't have any correspondence indicating</p> <p>9 that that was done?</p> <p>10 <b>A. No.</b></p> <p>11 <b>Q.</b> And do you know, approximately, what month you</p> <p>12 would have done that?</p> <p>13 <b>A. That's a guess, October, September or October.</b></p> <p>14 <b>It's a guess though.</b></p> <p>15 <b>Q.</b> Did you attend the bid opening for the bid in</p> <p>16 March of 2011 for the North Hill Country Club?</p> <p>17 MR. KREIGER: Objection.</p> <p>18 <b>A. The bid opening in 2011?</b></p> <p>19 <b>Q.</b> Yes.</p> <p>20 <b>A. I guess, I would want my memory refreshed. Are</b></p> <p>21 <b>we talking about the IFB thing?</b></p> <p>22 <b>Q.</b> Yes, the bid as opposed to an IFB.</p> <p>23 <b>A. The IFB thing?</b></p> <p>24 <b>Q.</b> Yes. That would have been the bid where Pilgrim</p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p style="text-align: center;">2-121</p> <p>1 <b>Q.</b> And I don't remember whether we asked you this</p> <p>2 at your previous deposition. If I did, let me</p> <p>3 know.</p> <p>4 Did you receive information from</p> <p>5 Mr. Johnson after the original proposals were</p> <p>6 submitted in October of 2008 that Mr. Lanzetta's</p> <p>7 company that ran Rockland Golf Course was in</p> <p>8 bankruptcy?</p> <p>9 <b>A. I know Doug e-mailed me a couple of things. I</b></p> <p>10 <b>honestly don't remember everything that he</b></p> <p>11 <b>e-mailed me. But I do remember getting some</b></p> <p>12 <b>e-mails from Doug, yes.</b></p> <p>13 <b>Q.</b> And did you pass that on to Mr. MacDonald?</p> <p>14 <b>A. I did. Anything that he sent me by e-mail, I</b></p> <p>15 <b>would send -- I would advise Richard about.</b></p> <p>16 <b>Q.</b> Now, during the fall of 2008, do you recall</p> <p>17 when you performed the evaluation of the five</p> <p>18 bidders?</p> <p>19 <b>A. Can you say that again?</b></p> <p>20 <b>Q.</b> Yes.</p> <p>21 In the fall of 2008, when the first set</p> <p>22 of proposals came in, do you know when you did</p> <p>23 your evaluations?</p> <p>24 <b>A. Of the nonprice?</b></p> <p style="text-align: center;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |

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| <p style="text-align: right;">2-122</p> <p>1 Q. The nonprice.</p> <p>2 A. <b>No. I don't remember the date of it, but it</b></p> <p>3 <b>was sometime after we received the whole</b></p> <p>4 <b>package.</b></p> <p>5 Q. The bids were due on October 24th. How quickly</p> <p>6 did you receive the package to do the</p> <p>7 evaluation?</p> <p>8 A. <b>I don't know if I understand that.</b></p> <p>9 Q. Well, the deadline for submitting a proposal was</p> <p>10 October 24th.</p> <p>11 Within a couple of days of October 24th,</p> <p>12 had you received the proposals so that you could</p> <p>13 do your evaluations?</p> <p>14 A. <b>I believe, I received mine for sure, yes.</b></p> <p>15 MR. KESTEN: Are you saying received it</p> <p>16 that quickly? That's the question. He is just</p> <p>17 focusing on the date. We know you got it.</p> <p>18 MR. FOLLANSBEE: Yes.</p> <p>19 A. <b>I don't remember the date. I don't remember the</b></p> <p>20 <b>date that I got them, no.</b></p> <p>21 Q. Was it shortly after the day the proposals were</p> <p>22 due?</p> <p>23 A. <b>I don't know what you mean by "shortly."</b></p> <p>24 Q. Within a week?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p style="text-align: right;">2-125</p> <p>1 <b>happened, by the way, copies and everything.</b></p> <p>2 <b>And then we would proceed to go to the price.</b></p> <p>3 Q. And how long a period of time passed before --</p> <p>4 Well, you indicated that the prices were</p> <p>5 opened on 11/24?</p> <p>6 A. <b>That's right.</b></p> <p>7 Q. So that's a month after the nonprice proposals</p> <p>8 had been submitted; correct?</p> <p>9 A. <b>The whole package submitted, yes.</b></p> <p>10 Q. In that month, how long was it before the</p> <p>11 evaluations were done?</p> <p>12 A. <b>I don't remember.</b></p> <p>13 Q. Did you take any notes while you were doing your</p> <p>14 own evaluation?</p> <p>15 A. <b>I don't think so.</b></p> <p>16 Q. According to --</p> <p>17 Well, did you know what the deadline was</p> <p>18 for making an award of the contract?</p> <p>19 A. <b>No. That would be something handled by the town</b></p> <p>20 <b>manager.</b></p> <p>21 Q. Well, if I suggested to you that the October RFP</p> <p>22 indicated that the management agreement will be</p> <p>23 awarded no later than December 1st of 2008, does</p> <p>24 that sound familiar to you?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> |
| <p style="text-align: right;">2-123</p> <p>1 A. <b>I don't remember. I honestly don't.</b></p> <p>2 <b>And the reason I'm saying that -- again,</b></p> <p>3 <b>I'm not trying to be evasive -- is, I had this</b></p> <p>4 <b>thing sticking in my mind. I think one of the</b></p> <p>5 <b>evaluators -- I think I told Attorney Kesten</b></p> <p>6 <b>this -- was on vacation, and I can't confirm</b></p> <p>7 <b>that. I think that it was a while because</b></p> <p>8 <b>someone wasn't available.</b></p> <p>9 Q. But you didn't do them together; correct?</p> <p>10 A. <b>No.</b></p> <p>11 Q. You did them independently?</p> <p>12 A. <b>Correct.</b></p> <p>13 Q. So whether one was on vacation or not, that</p> <p>14 wouldn't interfere with you doing yours;</p> <p>15 correct?</p> <p>16 A. <b>But the copies might not have been made. They</b></p> <p>17 <b>could have been distributed all at the same</b></p> <p>18 <b>time; so I just don't remember when.</b></p> <p>19 MR. KESTEN: Steve, so you understand the</p> <p>20 process, you should ask him how this all</p> <p>21 happens.</p> <p>22 MR. FOLLANSBEE: Pardon me?</p> <p>23 MR. KESTEN: You should ask him how this</p> <p>24 all happens; so you understand the process.</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p> | <p style="text-align: right;">2-126</p> <p>1 A. <b>It doesn't sound familiar, but that's because it</b></p> <p>2 <b>was four years ago.</b></p> <p>3 <b>(Document handed to the witness.)</b></p> <p>4 A. <b>It is expected, yeah.</b></p> <p>5 MR. KESTEN: Well, wait. You're saying</p> <p>6 that's what it says.</p> <p>7 THE WITNESS: That's what it says, yes.</p> <p>8 MR. KESTEN: We haven't marked this.</p> <p>9 MR. FOLLANSBEE: That's been marked and</p> <p>10 remarked.</p> <p>11 MR. KESTEN: I know.</p> <p>12 MR. FOLLANSBEE: That's RFP number 1.</p> <p>13 MR. KESTEN: North Hill Country Club</p> <p>14 proposals, on page 9.</p> <p>15 A. <b>I don't know if it's a deadline. I would just</b></p> <p>16 <b>say that it's expected.</b></p> <p>17 <b>(Discussion off the record.)</b></p> <p>18 MR. FOLLANSBEE: I might be pretty close.</p> <p>19 If I can just have one minute, please.</p> <p>20 MR. KESTEN: Go ahead.</p> <p>21 (Recess taken.)</p> <p>22 MR. FOLLANSBEE: We're all done for</p> <p>23 today. And I appreciate you coming back.</p> <p>24 MR. KESTEN: We're concluded; right?</p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |
| <p style="text-align: right;">2-124</p> <p>1 Bids come in.</p> <p>2 What happens next?</p> <p>3 THE WITNESS: Do you want me to answer</p> <p>4 it?</p> <p>5 MR. FOLLANSBEE: Well, why don't I just</p> <p>6 turn it over to Lenny and let him ask my</p> <p>7 questions.</p> <p>8 Q. (BY MR. FOLLANSBEE) It's a valid suggestion,</p> <p>9 and why don't you explain that.</p> <p>10 MR. KREIGER: Can I object to Lenny's</p> <p>11 questions?</p> <p>12 MR. FOLLANSBEE: Absolutely. You can</p> <p>13 always object to Lenny's questions.</p> <p>14 MR. KREIGER: Okay.</p> <p>15 Q. (BY MR. FOLLANSBEE) After the RFP deadline</p> <p>16 passes, a certain number of proposals are</p> <p>17 submitted.</p> <p>18 What happens then or what happened then</p> <p>19 in this process?</p> <p>20 A. <b>We or I would make copies of the nonprice</b></p> <p>21 <b>evaluations and distribute them to the</b></p> <p>22 <b>evaluators who would then perform their</b></p> <p>23 <b>evaluations. Those evaluations would be</b></p> <p>24 <b>returned to town hall. That's where everything</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>  | <p style="text-align: right;">2-127</p> <p>1 MR. FOLLANSBEE: We're concluded for this</p> <p>2 deposition.</p> <p>3 MR. KREIGER: Do you have some</p> <p>4 questions?</p> <p>5 MR. KESTEN: I have a couple of</p> <p>6 questions.</p> <p>7 MR. FOLLANSBEE: Wonderful.</p> <p>8</p> <p>9 EXAMINATION BY MR. KESTEN:</p> <p>10 Q. You testified about dates where you say you</p> <p>11 recalled that the date of November 24th,</p> <p>12 November 26th.</p> <p>13 Is that a date -- or how did you come up</p> <p>14 with those dates?</p> <p>15 A. <b>I came up with those dates after having my</b></p> <p>16 <b>memory refreshed and speaking to you about</b></p> <p>17 <b>Barbara Mello's written notes, which I</b></p> <p>18 <b>remembered she was in the meeting. I never had</b></p> <p>19 <b>a perfect memory about the dates.</b></p> <p>20 Q. Well, my question is, do you actually remember</p> <p>21 those dates, or are you relying on Barbara,</p> <p>22 what you understand to be Barbara Mello's</p> <p>23 notes?</p> <p>24 A. <b>I'm relying on Barbara Mello's notes, yes. I</b></p> <p style="text-align: right;">CONTINUED DEPOSITION OF GORDON H. CUSHING</p>   |

|   |   |
|---|---|
| <p style="text-align: right;">2-128</p> <p>1     <b>don't remember dates.</b></p> <p>2     <b>Q.</b> But you testified that you recalled one meeting,</p> <p>3     the first time with Mr. MacDonald and Barbara,</p> <p>4     at that point, Robbins (phonetic); right?</p> <p>5     <b>A. Barbara Ripley.</b></p> <p>6     <b>Q.</b> Barbara Ripley, at that point?</p> <p>7     <b>A. Yes.</b></p> <p>8     <b>Q.</b> And you remember, you said, 100 percent that</p> <p>9     Mr. Troy was not there?</p> <p>10    <b>A. 100 percent.</b></p> <p>11    <b>Q.</b> And that Mr. MacDonald called Mr. Troy to inform</p> <p>12    him of an issue with the evaluations?</p> <p>13    <b>A. Correct.</b></p> <p>14    <b>Q.</b> Then you remembered a second meeting which</p> <p>15    you've placed on November 26th based on -- well</p> <p>16    you've placed on November 26th -- with Mr. Troy</p> <p>17    regarding this issue?</p> <p>18    <b>A. Yes.</b></p> <p>19    <b>Q.</b> Do you remember any more meetings with Mr. Troy</p> <p>20    prior to the cancellation of the bids?</p> <p>21        So I'm going to help you. November 26th</p> <p>22    was the Wednesday before Thanksgiving.</p> <p>23    <b>A. Yes.</b></p> <p>24    <b>Q.</b> December 1st is the Monday after, and December</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-131</p> <p>1     there was a draft shown to you on a computer</p> <p>2     screen?</p> <p>3     <b>A. Right.</b></p> <p>4     <b>Q.</b> So there was not a final that was presented to</p> <p>5     you to sign?</p> <p>6     <b>A. No.</b></p> <p>7     <b>Q.</b> It was a draft for your review?</p> <p>8     <b>A. I thought I said that at the end. It was just</b></p> <p>9     <b>on a computer screen.</b></p> <p>10    <b>Q.</b> So it was just a draft. So it's not, like,</p> <p>11    somebody presented you with a completed</p> <p>12    affidavit to sign?</p> <p>13    <b>A. No.</b></p> <p>14    <b>Q.</b> It was just a draft?</p> <p>15    <b>A. Correct.</b></p> <p>16    <b>Q.</b> And you said that you had made some</p> <p>17    corrections?</p> <p>18    <b>A. I did.</b></p> <p>19        MR. KREIGER: That's all.</p> <p>20        MR. FOLLANSBEE: That doesn't raise any</p> <p>21    questions for me.</p> <p>22        MR. KESTEN: And I have nothing further</p> <p>23    to ask.</p> <p>24        MR. KREIGER: Okay. Then this deposition</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> |
| <p style="text-align: right;">2-129</p> <p>1     3rd is the Wednesday.</p> <p>2        Do you remember any health issues by</p> <p>3     anyone?</p> <p>4     <b>A. Yeah. Richard had a kidney stone.</b></p> <p>5     <b>Q.</b> In what time --</p> <p>6     <b>A. I think that I actually put it in an e-mail to</b></p> <p>7     <b>someone, and it might have been even to Doug;</b></p> <p>8     <b>but maybe not the exact thing that he had, but</b></p> <p>9     <b>saying that he was in the hospital. Because I</b></p> <p>10    <b>remember town counsel writing me back and</b></p> <p>11    <b>saying, "You shouldn't be telling people</b></p> <p>12    <b>that."</b></p> <p>13    <b>Q.</b> Now, how certain are you that the conversation</p> <p>14    with Bob Troy reported that he had spoken to the</p> <p>15    Inspector General that that occurred before</p> <p>16    Thanksgiving or after Thanksgiving?</p> <p>17    <b>A. I'm not certain totally, no.</b></p> <p>18    <b>Q.</b> But you're certain that it occurred before the</p> <p>19    bid was cancelled?</p> <p>20    <b>A. Absolutely. Because the language that he used</b></p> <p>21    <b>still kind of rings in my ear, that if we</b></p> <p>22    <b>needed to do that because we would face a lot of</b></p> <p>23    <b>bid protests. I had never heard that term</b></p> <p>24    <b>before.</b></p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p> | <p style="text-align: right;">2-132</p> <p>1     is concluded.</p> <p>2        MR. FOLLANSBEE: Thank you. Yes, it</p> <p>3     is.</p> <p>4        Gordon, thank you for coming in again</p> <p>5     today.</p> <p>6        THE WITNESS: Okay.</p> <p>7        (Whereupon, the deposition was concluded</p> <p>8     at 2:44 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |
| <p style="text-align: right;">2-130</p> <p>1        MR. KESTEN: Okay.</p> <p>2        MR. KREIGER: I've got one or two</p> <p>3     things.</p> <p>4        MR. FOLLANSBEE: I have no objection to</p> <p>5     counsel asking questions, even though at</p> <p>6     trial, it would only be by permission of the</p> <p>7     court.</p> <p>8        MR. KESTEN: Your Honor?</p> <p>9        JUDGE CHERNOFF: You have permission.</p> <p>10    MR. FOLLANSBEE: This can be off the</p> <p>11    record.</p> <p>12    (Discussion off the record.)</p> <p>13</p> <p>14    <u>EXAMINATION BY MR. KREIGER:</u></p> <p>15    <b>Q.</b> Mr. Cushing, you were asked after you were shown</p> <p>16    Exhibit 13, which was an affidavit that you</p> <p>17    signed, you were asked whether there was another</p> <p>18    affidavit that Bob Troy tried to get you to sign</p> <p>19    that you wouldn't. That was more or less the</p> <p>20    phrasing of the question.</p> <p>21        Do you recall that question?</p> <p>22    <b>A. I do.</b></p> <p>23    <b>Q.</b> And you said it was a few months ago with Craig</p> <p>24    Jordan. And I think you then described that</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  | <p style="text-align: right;">2-133</p> <p style="text-align: center;"><u>CERTIFICATE</u></p> <p>1</p> <p>2</p> <p>3     I, GORDON H. CUSHING, do hereby certify</p> <p>4     that I have read the foregoing transcript of my</p> <p>5     testimony, and further certify that said</p> <p>6     transcript is a true and accurate record of said</p> <p>7     testimony.</p> <p>8     Dated at _____,</p> <p>9     this ____ day of _____,</p> <p>10    2012.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15     _____<br/>GORDON H. CUSHING<br/>SIGNED UNDER THE PENALTIES<br/>OF PERJURY</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;"><b>CONTINUED DEPOSITION OF GORDON H. CUSHING</b></p>  |

CERTIFICATE

Commonwealth of Massachusetts  
Middlesex, ss.

I, JAMES A. LYONS, Certified Shorthand  
Reporter, Registered Diplomat Reporter,  
Certified Realtime Reporter and Notary Public in  
and for the Commonwealth of Massachusetts, do  
hereby certify: that GORDON H. CUSHING, the  
witness whose deposition is hereinbefore set  
forth, was satisfactorily identified, then duly  
sworn by me, and that such deposition is a true  
record of the testimony given by the said  
witness.

I further certify that I am not a  
relative or employee or counsel or attorney for  
any of the parties, or a relative or employee of  
such counsel or attorney, nor am I financially  
or otherwise interested in the outcome of the  
action.

IN WITNESS WHEREOF, I have hereunto set  
my hand and notarial seal this 25th day of May,  
2012.

\_\_\_\_\_  
JAMES A. LYONS  
CSR No. 117993, RDR, CRR

My commission expires  
on April 29, 2016

**CONTINUED DEPOSITION OF GORDON H. CUSHING**



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| <b>\$</b> | <b>13</b> <sup>[9]</sup> - 3:10, 3:12, 3:19, 49:18, 72:9, 72:12, 81:22, 81:23, 130:16<br><b>130</b> <sup>[1]</sup> - 3:5<br><b>134</b> <sup>[1]</sup> - 1:1<br><b>13th</b> <sup>[4]</sup> - 31:8, 35:13, 44:21, 44:22<br><b>14</b> <sup>[5]</sup> - 3:20, 3:24, 43:8, 91:1, 117:21<br><b>14th</b> <sup>[1]</sup> - 46:16<br><b>15</b> <sup>[4]</sup> - 3:8, 3:21, 95:20, 95:23<br><b>16</b> <sup>[5]</sup> - 3:23, 40:17, 44:10, 110:13, 110:18<br><b>16th</b> <sup>[2]</sup> - 41:19, 41:20<br><b>17</b> <sup>[5]</sup> - 1:2, 3:20, 3:24, 91:4, 117:14<br><b>18</b> <sup>[6]</sup> - 55:20, 56:4, 61:6, 61:9, 61:19, 62:18<br><b>19</b> <sup>[1]</sup> - 3:10<br><b>1990s</b> <sup>[1]</sup> - 54:19<br><b>1999</b> <sup>[4]</sup> - 63:13, 63:24, 83:9, 96:10<br><b>1:30</b> <sup>[1]</sup> - 113:5<br><b>1st</b> <sup>[4]</sup> - 36:21, 89:3, 125:23, 128:24 | 84:5, 87:12, 88:9, 111:16, 112:5, 112:7, 117:6<br><b>2010</b> <sup>[16]</sup> - 3:10, 3:12, 9:24, 13:20, 14:5, 28:15, 28:21, 31:8, 35:13, 37:7, 87:12, 88:9, 106:1, 106:9, 108:14, 113:17<br><b>2011</b> <sup>[14]</sup> - 3:22, 4:5, 36:17, 37:3, 84:22, 96:1, 104:3, 105:14, 108:14, 109:16, 118:16, 118:18, 119:7, 119:14<br><b>2012</b> <sup>[10]</sup> - 1:20, 3:24, 36:6, 36:18, 36:21, 84:22, 112:14, 117:21, 133:10, 134:21<br><b>2016</b> <sup>[1]</sup> - 134:24<br><b>21st</b> <sup>[1]</sup> - 112:7<br><b>22</b> <sup>[1]</sup> - 1:20<br><b>22nd</b> <sup>[1]</sup> - 36:13<br><b>24</b> <sup>[2]</sup> - 3:15, 53:11<br><b>24th</b> <sup>[12]</sup> - 65:4, 67:24, 68:8, 68:15, 70:3, 73:9, 84:4, 106:9, 122:5, 122:10, 122:11, 127:11<br><b>25</b> <sup>[1]</sup> - 89:13<br><b>25th</b> <sup>[1]</sup> - 134:20<br><b>26th</b> <sup>[7]</sup> - 73:4, 73:10, 77:7, 127:12, 128:15, 128:16, 128:21<br><b>28</b> <sup>[1]</sup> - 115:6<br><b>280</b> <sup>[1]</sup> - 94:6<br><b>280,000</b> <sup>[1]</sup> - 94:4<br><b>29</b> <sup>[6]</sup> - 47:12, 106:11, 106:13, 106:16, 114:24, 134:24<br><b>2:44</b> <sup>[1]</sup> - 132:8 | <b>39</b> <sup>[1]</sup> - 3:13<br><b>3rd</b> <sup>[4]</sup> - 1:19, 2:3, 92:4, 129:1<br><b>4</b><br><b>4</b> <sup>[3]</sup> - 28:15, 28:21, 113:17<br><b>400</b> <sup>[1]</sup> - 2:7<br><b>45</b> <sup>[1]</sup> - 113:3<br><b>4th</b> <sup>[2]</sup> - 13:20, 14:5<br><b>5</b><br><b>5</b> <sup>[1]</sup> - 3:4<br><b>512,000</b> <sup>[1]</sup> - 94:5<br><b>53</b> <sup>[1]</sup> - 3:15<br><b>536</b> <sup>[2]</sup> - 1:19, 2:3<br><b>56</b> <sup>[1]</sup> - 3:16<br><b>59</b> <sup>[1]</sup> - 3:18<br><b>6</b><br><b>6</b> <sup>[10]</sup> - 1:2, 3:8, 3:23, 15:5, 15:7, 15:10, 73:16, 97:15, 98:22, 110:17<br><b>617.723.7321</b> <sup>[1]</sup> - 1:24<br><b>617.723.7322</b> <sup>[1]</sup> - 1:24<br><b>64</b> <sup>[4]</sup> - 14:20, 14:22, 16:20, 29:12<br><b>65</b> <sup>[2]</sup> - 14:22, 15:19<br><b>66</b> <sup>[1]</sup> - 14:23<br><b>67</b> <sup>[1]</sup> - 2:7<br><b>699</b> <sup>[1]</sup> - 2:11<br><b>6:00</b> <sup>[1]</sup> - 62:4<br><b>7</b><br><b>7</b> <sup>[9]</sup> - 3:10, 19:7, 19:8, 19:9, 19:12, 19:15, 19:19, 22:8, 100:1<br><b>72</b> <sup>[1]</sup> - 3:19<br><b>8</b><br><b>8</b> <sup>[11]</sup> - 3:11, 24:2, 25:8, 25:22, 31:13, 31:14, 31:17, 31:18, 32:15, 33:23, 34:12 | <b>9</b><br><b>9</b> <sup>[10]</sup> - 3:13, 37:18, 39:20, 40:14, 48:15, 49:20, 100:23, 100:24, 101:5, 126:14<br><b>91</b> <sup>[1]</sup> - 3:20<br><b>92</b> <sup>[1]</sup> - 1:23<br><b>95</b> <sup>[1]</sup> - 3:21<br><b>9th</b> <sup>[9]</sup> - 45:5, 45:9, 46:5, 46:16, 83:24, 84:5, 92:3, 92:15, 92:16<br><b>A</b><br><b>a.m</b> <sup>[3]</sup> - 1:20, 62:4<br><b>able</b> <sup>[3]</sup> - 54:17, 56:4, 71:8<br><b>absolutely</b> <sup>[6]</sup> - 31:4, 62:18, 79:19, 110:7, 124:12, 129:20<br><b>acceptable</b> <sup>[1]</sup> - 69:15<br><b>according</b> <sup>[5]</sup> - 76:22, 88:19, 98:8, 98:13, 125:16<br><b>accountant</b> <sup>[1]</sup> - 116:22<br><b>accuracy</b> <sup>[1]</sup> - 24:7<br><b>accurate</b> <sup>[7]</sup> - 12:18, 58:23, 66:7, 73:8, 75:6, 90:7, 133:6<br><b>ACETO</b> <sup>[1]</sup> - 34:9<br><b>Aceto</b> <sup>[5]</sup> - 2:6, 2:6, 33:22, 34:6, 34:9<br><b>action</b> <sup>[1]</sup> - 134:18<br><b>actual</b> <sup>[5]</sup> - 14:16, 16:7, 33:7, 40:13, 42:14<br><b>Adam</b> <sup>[1]</sup> - 105:4<br><b>add</b> <sup>[3]</sup> - 21:21, 27:23, 85:23<br><b>added</b> <sup>[1]</sup> - 63:11<br><b>address</b> <sup>[5]</sup> - 24:16, 24:23, 25:5, 71:18, 116:8<br><b>addressed</b> <sup>[2]</sup> - 24:14, 92:8<br><b>advantageous</b> <sup>[2]</sup> - 69:16<br><b>advise</b> <sup>[1]</sup> - 121:15<br><b>advising</b> <sup>[1]</sup> - 35:16<br><b>ADVISORY</b> <sup>[1]</sup> - 1:9<br><b>Advisory</b> <sup>[29]</sup> - 2:12, 3:14, 19:20, 35:24, |
| <b>'</b>  | <b>'04</b> <sup>[1]</sup> - 56:17<br><b>'04-'05</b> <sup>[1]</sup> - 81:12<br><b>'08</b> <sup>[2]</sup> - 82:15, 101:22<br><b>'98</b> <sup>[1]</sup> - 63:15<br><b>'99</b> <sup>[1]</sup> - 83:11<br><b>'comparable</b> <sup>[1]</sup> - 24:22  | <b>16th</b> <sup>[2]</sup> - 41:19, 41:20<br><b>17</b> <sup>[5]</sup> - 1:2, 3:20, 3:24, 91:4, 117:14<br><b>18</b> <sup>[6]</sup> - 55:20, 56:4, 61:6, 61:9, 61:19, 62:18<br><b>19</b> <sup>[1]</sup> - 3:10<br><b>1990s</b> <sup>[1]</sup> - 54:19<br><b>1999</b> <sup>[4]</sup> - 63:13, 63:24, 83:9, 96:10<br><b>1:30</b> <sup>[1]</sup> - 113:5<br><b>1st</b> <sup>[4]</sup> - 36:21, 89:3, 125:23, 128:24   | <b>2012</b> <sup>[10]</sup> - 1:20, 3:24, 36:6, 36:18, 36:21, 84:22, 112:14, 117:21, 133:10, 134:21<br><b>2016</b> <sup>[1]</sup> - 134:24<br><b>21st</b> <sup>[1]</sup> - 112:7<br><b>22</b> <sup>[1]</sup> - 1:20<br><b>22nd</b> <sup>[1]</sup> - 36:13<br><b>24</b> <sup>[2]</sup> - 3:15, 53:11<br><b>24th</b> <sup>[12]</sup> - 65:4, 67:24, 68:8, 68:15, 70:3, 73:9, 84:4, 106:9, 122:5, 122:10, 122:11, 127:11<br><b>25</b> <sup>[1]</sup> - 89:13<br><b>25th</b> <sup>[1]</sup> - 134:20<br><b>26th</b> <sup>[7]</sup> - 73:4, 73:10, 77:7, 127:12, 128:15, 128:16, 128:21<br><b>28</b> <sup>[1]</sup> - 115:6<br><b>280</b> <sup>[1]</sup> - 94:6<br><b>280,000</b> <sup>[1]</sup> - 94:4<br><b>29</b> <sup>[6]</sup> - 47:12, 106:11, 106:13, 106:16, 114:24, 134:24<br><b>2:44</b> <sup>[1]</sup> - 132:8   | <b>91</b> <sup>[1]</sup> - 3:20<br><b>92</b> <sup>[1]</sup> - 1:23<br><b>95</b> <sup>[1]</sup> - 3:21<br><b>9th</b> <sup>[9]</sup> - 45:5, 45:9, 46:5, 46:16, 83:24, 84:5, 92:3, 92:15, 92:16<br><b>A</b><br><b>a.m</b> <sup>[3]</sup> - 1:20, 62:4<br><b>able</b> <sup>[3]</sup> - 54:17, 56:4, 71:8<br><b>absolutely</b> <sup>[6]</sup> - 31:4, 62:18, 79:19, 110:7, 124:12, 129:20<br><b>acceptable</b> <sup>[1]</sup> - 69:15<br><b>according</b> <sup>[5]</sup> - 76:22, 88:19, 98:8, 98:13, 125:16<br><b>accountant</b> <sup>[1]</sup> - 116:22<br><b>accuracy</b> <sup>[1]</sup> - 24:7<br><b>accurate</b> <sup>[7]</sup> - 12:18, 58:23, 66:7, 73:8, 75:6, 90:7, 133:6<br><b>ACETO</b> <sup>[1]</sup> - 34:9<br><b>Aceto</b> <sup>[5]</sup> - 2:6, 2:6, 33:22, 34:6, 34:9<br><b>action</b> <sup>[1]</sup> - 134:18<br><b>actual</b> <sup>[5]</sup> - 14:16, 16:7, 33:7, 40:13, 42:14<br><b>Adam</b> <sup>[1]</sup> - 105:4<br><b>add</b> <sup>[3]</sup> - 21:21, 27:23, 85:23<br><b>added</b> <sup>[1]</sup> - 63:11<br><b>address</b> <sup>[5]</sup> - 24:16, 24:23, 25:5, 71:18, 116:8<br><b>addressed</b> <sup>[2]</sup> - 24:14, 92:8<br><b>advantageous</b> <sup>[2]</sup> - 69:16<br><b>advise</b> <sup>[1]</sup> - 121:15<br><b>advising</b> <sup>[1]</sup> - 35:16<br><b>ADVISORY</b> <sup>[1]</sup> - 1:9<br><b>Advisory</b> <sup>[29]</sup> - 2:12, 3:14, 19:20, 35:24,  |
| <b>0</b>  | <b>2</b><br><b>2</b> <sup>[2]</sup> - 42:16, 111:5<br><b>2.0</b> <sup>[1]</sup> - 47:19<br><b>20</b> <sup>[2]</sup> - 78:11, 78:13<br><b>200</b> <sup>[1]</sup> - 2:15<br><b>2003</b> <sup>[2]</sup> - 3:15, 53:11<br><b>2004</b> <sup>[4]</sup> - 3:17, 3:18, 51:22, 57:10<br><b>2007</b> <sup>[3]</sup> - 42:19, 96:16, 96:18<br><b>2008</b> <sup>[30]</sup> - 40:18, 40:20, 44:10, 44:11, 44:22, 45:5, 45:7, 49:19, 51:2, 61:3, 63:21, 64:3, 64:10, 77:15, 83:11, 83:24, 84:4, 84:19, 91:15, 92:3, 92:4, 96:10, 101:11, 117:1, 117:6, 118:1, 121:6, 121:16, 121:21, 125:23<br><b>2009</b> <sup>[16]</sup> - 37:9, 37:13, 37:18, 47:12, 55:19, 78:4, 81:6, 83:22, 83:24,  | <b>3</b><br><b>30B</b> <sup>[14]</sup> - 3:20, 3:23, 70:11, 70:16, 90:10, 90:11, 90:14, 90:21, 91:4, 110:17, 110:24, 111:8, 111:12, 111:13<br><b>31</b> <sup>[2]</sup> - 3:11, 3:22<br><b>31st</b> <sup>[1]</sup> - 96:1<br><b>35</b> <sup>[1]</sup> - 76:8<br><b>350,000</b> <sup>[1]</sup> - 79:17   | <b>7</b><br><b>7</b> <sup>[9]</sup> - 3:10, 19:7, 19:8, 19:9, 19:12, 19:15, 19:19, 22:8, 100:1<br><b>72</b> <sup>[1]</sup> - 3:19<br><b>8</b><br><b>8</b> <sup>[11]</sup> - 3:11, 24:2, 25:8, 25:22, 31:13, 31:14, 31:17, 31:18, 32:15, 33:23, 34:12   | <b>9</b><br><b>9</b> <sup>[10]</sup> - 3:13, 37:18, 39:20, 40:14, 48:15, 49:20, 100:23, 100:24, 101:5, 126:14<br><b>91</b> <sup>[1]</sup> - 3:20<br><b>92</b> <sup>[1]</sup> - 1:23<br><b>95</b> <sup>[1]</sup> - 3:21<br><b>9th</b> <sup>[9]</sup> - 45:5, 45:9, 46:5, 46:16, 83:24, 84:5, 92:3, 92:15, 92:16<br><b>A</b><br><b>a.m</b> <sup>[3]</sup> - 1:20, 62:4<br><b>able</b> <sup>[3]</sup> - 54:17, 56:4, 71:8<br><b>absolutely</b> <sup>[6]</sup> - 31:4, 62:18, 79:19, 110:7, 124:12, 129:20<br><b>acceptable</b> <sup>[1]</sup> - 69:15<br><b>according</b> <sup>[5]</sup> - 76:22, 88:19, 98:8, 98:13, 125:16<br><b>accountant</b> <sup>[1]</sup> - 116:22<br><b>accuracy</b> <sup>[1]</sup> - 24:7<br><b>accurate</b> <sup>[7]</sup> - 12:18, 58:23, 66:7, 73:8, 75:6, 90:7, 133:6<br><b>ACETO</b> <sup>[1]</sup> - 34:9<br><b>Aceto</b> <sup>[5]</sup> - 2:6, 2:6, 33:22, 34:6, 34:9<br><b>action</b> <sup>[1]</sup> - 134:18<br><b>actual</b> <sup>[5]</sup> - 14:16, 16:7, 33:7, 40:13, 42:14<br><b>Adam</b> <sup>[1]</sup> - 105:4<br><b>add</b> <sup>[3]</sup> - 21:21, 27:23, 85:23<br><b>added</b> <sup>[1]</sup> - 63:11<br><b>address</b> <sup>[5]</sup> - 24:16, 24:23, 25:5, 71:18, 116:8<br><b>addressed</b> <sup>[2]</sup> - 24:14, 92:8<br><b>advantageous</b> <sup>[2]</sup> - 69:16<br><b>advise</b> <sup>[1]</sup> - 121:15<br><b>advising</b> <sup>[1]</sup> - 35:16<br><b>ADVISORY</b> <sup>[1]</sup> - 1:9<br><b>Advisory</b> <sup>[29]</sup> - 2:12, 3:14, 19:20, 35:24, |
| <b>1</b>  | <b>2</b> <sup>[2]</sup> - 42:16, 111:5<br><b>2.0</b> <sup>[1]</sup> - 47:19<br><b>20</b> <sup>[2]</sup> - 78:11, 78:13<br><b>200</b> <sup>[1]</sup> - 2:15<br><b>2003</b> <sup>[2]</sup> - 3:15, 53:11<br><b>2004</b> <sup>[4]</sup> - 3:17, 3:18, 51:22, 57:10<br><b>2007</b> <sup>[3]</sup> - 42:19, 96:16, 96:18<br><b>2008</b> <sup>[30]</sup> - 40:18, 40:20, 44:10, 44:11, 44:22, 45:5, 45:7, 49:19, 51:2, 61:3, 63:21, 64:3, 64:10, 77:15, 83:11, 83:24, 84:4, 84:19, 91:15, 92:3, 92:4, 96:10, 101:11, 117:1, 117:6, 118:1, 121:6, 121:16, 121:21, 125:23<br><b>2009</b> <sup>[16]</sup> - 37:9, 37:13, 37:18, 47:12, 55:19, 78:4, 81:6, 83:22, 83:24,  | <b>3</b><br><b>30B</b> <sup>[14]</sup> - 3:20, 3:23, 70:11, 70:16, 90:10, 90:11, 90:14, 90:21, 91:4, 110:17, 110:24, 111:8, 111:12, 111:13<br><b>31</b> <sup>[2]</sup> - 3:11, 3:22<br><b>31st</b> <sup>[1]</sup> - 96:1<br><b>35</b> <sup>[1]</sup> - 76:8<br><b>350,000</b> <sup>[1]</sup> - 79:17   | <b>7</b><br><b>7</b> <sup>[9]</sup> - 3:10, 19:7, 19:8, 19:9, 19:12, 19:15, 19:19, 22:8, 100:1<br><b>72</b> <sup>[1]</sup> - 3:19<br><b>8</b><br><b>8</b> <sup>[11]</sup> - 3:11, 24:2, 25:8, 25:22, 31:13, 31:14, 31:17, 31:18, 32:15, 33:23, 34:12   | <b>9</b><br><b>9</b> <sup>[10]</sup> - 3:13, 37:18, 39:20, 40:14, 48:15, 49:20, 100:23, 100:24, 101:5, 126:14<br><b>91</b> <sup>[1]</sup> - 3:20<br><b>92</b> <sup>[1]</sup> - 1:23<br><b>95</b> <sup>[1]</sup> - 3:21<br><b>9th</b> <sup>[9]</sup> - 45:5, 45:9, 46:5, 46:16, 83:24, 84:5, 92:3, 92:15, 92:16<br><b>A</b><br><b>a.m</b> <sup>[3]</sup> - 1:20, 62:4<br><b>able</b> <sup>[3]</sup> - 54:17, 56:4, 71:8<br><b>absolutely</b> <sup>[6]</sup> - 31:4, 62:18, 79:19, 110:7, 124:12, 129:20<br><b>acceptable</b> <sup>[1]</sup> - 69:15<br><b>according</b> <sup>[5]</sup> - 76:22, 88:19, 98:8, 98:13, 125:16<br><b>accountant</b> <sup>[1]</sup> - 116:22<br><b>accuracy</b> <sup>[1]</sup> - 24:7<br><b>accurate</b> <sup>[7]</sup> - 12:18, 58:23, 66:7, 73:8, 75:6, 90:7, 133:6<br><b>ACETO</b> <sup>[1]</sup> - 34:9<br><b>Aceto</b> <sup>[5]</sup> - 2:6, 2:6, 33:22, 34:6, 34:9<br><b>action</b> <sup>[1]</sup> - 134:18<br><b>actual</b> <sup>[5]</sup> - 14:16, 16:7, 33:7, 40:13, 42:14<br><b>Adam</b> <sup>[1]</sup> - 105:4<br><b>add</b> <sup>[3]</sup> - 21:21, 27:23, 85:23<br><b>added</b> <sup>[1]</sup> - 63:11<br><b>address</b> <sup>[5]</sup> - 24:16, 24:23, 25:5, 71:18, 116:8<br><b>addressed</b> <sup>[2]</sup> - 24:14, 92:8<br><b>advantageous</b> <sup>[2]</sup> - 69:16<br><b>advise</b> <sup>[1]</sup> - 121:15<br><b>advising</b> <sup>[1]</sup> - 35:16<br><b>ADVISORY</b> <sup>[1]</sup> - 1:9<br><b>Advisory</b> <sup>[29]</sup> - 2:12, 3:14, 19:20, 35:24, |

|  |   |   |   |  |
|--|---|---|---|--|
| <p>36:10, 36:14, 37:4, 37:19, 38:8, 38:14, 38:22, 39:24, 41:4, 41:6, 41:10, 42:3, 47:6, 48:4, 52:12, 55:6, 56:8, 58:2, 58:5, 58:8, 58:11, 84:14, 102:15, 103:22, 104:1</p> <p><b>affidavit</b> [21] - 73:14, 74:10, 74:14, 75:20, 75:24, 76:2, 76:15, 81:19, 89:16, 89:23, 95:24, 97:13, 98:8, 98:14, 113:19, 113:22, 113:24, 114:4, 130:16, 130:18, 131:12</p> <p><b>Affidavit</b> [2] - 3:19, 3:21</p> <p><b>affidavits</b> [1] - 74:2</p> <p><b>affixed</b> [1] - 75:20</p> <p><b>AFTERNOON</b> [1] - 113:12</p> <p><b>ago</b> [14] - 5:3, 6:8, 6:19, 38:16, 39:3, 52:7, 54:1, 54:5, 54:6, 54:9, 54:23, 74:9, 126:2, 130:23</p> <p><b>agree</b> [2] - 83:15, 89:15</p> <p><b>agreed</b> [2] - 88:4, 98:9</p> <p><b>agreeing</b> [1] - 99:24</p> <p><b>agreement</b> [5] - 45:12, 88:5, 88:8, 98:15, 125:22</p> <p><b>ahead</b> [3] - 26:5, 26:6, 126:20</p> <p><b>airing</b> [1] - 60:9</p> <p><b>alcoholic</b> [1] - 114:19</p> <p><b>alleged</b> [2] - 14:1, 89:5</p> <p><b>allow</b> [1] - 55:20</p> <p><b>allowed</b> [2] - 59:9, 61:19</p> <p><b>Als</b> [1] - 2:12</p> <p><b>ALSO</b> [1] - 2:18</p> <p><b>amended</b> [2] - 50:8, 50:9</p> <p><b>Anderson</b> [1] - 2:14</p> <p><b>Andre</b> [1] - 81:13</p> <p><b>angry</b> [1] - 51:16</p> <p><b>annual</b> [2] - 79:5, 79:8</p> <p><b>answer</b> [7] - 11:13, 14:12, 15:20, 26:6, 29:10, 29:11, 124:3</p> <p><b>answering</b> [3] - 6:14,</p> | <p>18:2, 46:21</p> <p><b>answers</b> [1] - 71:12</p> <p><b>ANTHONY</b> [1] - 1:10</p> <p><b>anyway</b> [2] - 32:24, 107:1</p> <p><b>appear</b> [1] - 70:9</p> <p><b>APPEARANCES</b> [1] - 2:1</p> <p><b>applicable</b> [1] - 1:16</p> <p><b>applied</b> [1] - 55:22</p> <p><b>appointed</b> [4] - 52:12, 52:15, 101:8, 101:12</p> <p><b>appreciate</b> [1] - 126:23</p> <p><b>approached</b> [1] - 59:2</p> <p><b>approve</b> [2] - 50:7, 50:8</p> <p><b>approved</b> [2] - 49:24, 103:13</p> <p><b>approximate</b> [1] - 14:5</p> <p><b>April</b> [8] - 37:18, 45:4, 45:9, 46:5, 46:16, 89:3, 134:24</p> <p><b>area</b> [3] - 20:4, 27:4, 27:5</p> <p><b>argue</b> [1] - 14:7</p> <p><b>arrangement</b> [1] - 98:4</p> <p><b>arrears</b> [1] - 88:23</p> <p><b>Arthur</b> [2] - 2:14, 112:22</p> <p><b>ash</b> [1] - 54:18</p> <p><b>aside</b> [1] - 108:1</p> <p><b>assistant</b> [1] - 39:14</p> <p><b>assume</b> [1] - 26:18</p> <p><b>assumed</b> [1] - 30:11</p> <p><b>assumption</b> [1] - 13:3</p> <p><b>attachment</b> [1] - 18:23</p> <p><b>attend</b> [9] - 37:3, 44:24, 46:13, 46:17, 64:18, 103:21, 118:15, 119:2, 119:6</p> <p><b>attended</b> [1] - 104:1</p> <p><b>attending</b> [2] - 46:23, 50:21</p> <p><b>attention</b> [3] - 80:1, 90:19, 91:6</p> <p><b>attorney</b> [6] - 20:3, 21:15, 75:10, 90:8, 134:14, 134:16</p> <p><b>Attorney</b> [79] - 2:12, 4:17, 4:21, 4:22, 6:3, 9:14, 10:6, 10:7, 10:9, 10:11, 10:18, 11:8, 11:13,</p> | <p>11:17, 11:20, 11:24, 12:24, 14:1, 14:8, 14:9, 14:11, 14:12, 15:14, 15:18, 15:19, 20:1, 20:7, 20:9, 21:2, 21:6, 21:11, 21:13, 21:17, 21:22, 22:17, 23:14, 23:17, 23:18, 24:6, 24:11, 24:23, 28:14, 28:20, 33:22, 38:1, 39:1, 48:18, 52:8, 65:11, 65:13, 65:21, 72:20, 73:19, 74:2, 74:23, 75:1, 75:7, 75:10, 75:11, 77:13, 77:18, 78:5, 79:3, 79:17, 79:20, 89:16, 106:1, 108:10, 109:13, 109:21, 111:17, 111:21, 112:3, 112:15, 117:22, 123:5</p> <p><b>Attorneys</b> [1] - 2:8</p> <p><b>audit</b> [2] - 63:9, 103:9</p> <p><b>audited</b> [5] - 103:2, 116:17, 116:19, 117:3, 117:7</p> <p><b>August</b> [4] - 3:22, 96:1, 108:13, 108:14</p> <p><b>author</b> [1] - 83:5</p> <p><b>available</b> [7] - 40:20, 45:13, 50:13, 50:19, 98:17, 104:5, 123:8</p> <p><b>average</b> [2] - 88:2, 89:13</p> <p><b>award</b> [1] - 125:18</p> <p><b>awarded</b> [2] - 119:1, 125:23</p> <p><b>aware</b> [3] - 57:11, 82:8, 114:22</p> | <p><b>basis</b> [1] - 78:20</p> <p><b>basketball</b> [1] - 84:17</p> <p><b>bathroom</b> [1] - 100:21</p> <p><b>Batterymarch</b> [1] - 2:7</p> <p><b>became</b> [2] - 11:16, 87:24</p> <p><b>bedrooms</b> [1] - 98:16</p> <p><b>beer</b> [4] - 113:20, 113:23, 114:1, 114:5</p> <p><b>began</b> [3] - 4:5, 27:6, 80:18</p> <p><b>beginning</b> [3] - 37:11, 37:13, 43:16</p> <p><b>behalf</b> [3] - 1:16, 4:8, 97:1</p> <p><b>belief</b> [3] - 55:9, 69:23, 69:24</p> <p><b>believes</b> [1] - 16:2</p> <p><b>bell</b> [2] - 91:13, 106:10</p> <p><b>beneficial</b> [1] - 61:17</p> <p><b>benefit</b> [1] - 61:22</p> <p><b>best</b> [2] - 68:22, 84:23</p> <p><b>Betsy</b> [4] - 33:12, 85:8, 85:12, 87:2</p> <p><b>between</b> [4] - 62:4, 62:11, 83:24, 93:22</p> <p><b>beverages</b> [1] - 114:20</p> <p><b>bid</b> [20] - 54:13, 61:16, 65:15, 80:21, 82:16, 90:15, 92:15, 95:12, 117:2, 118:15, 118:18, 118:22, 118:24, 119:2, 119:6, 119:10, 119:13, 129:19, 129:23</p> <p><b>bidder</b> [1] - 119:4</p> <p><b>bidders</b> [4] - 61:15, 93:8, 117:2, 121:18</p> <p><b>bids</b> [15] - 77:20, 91:14, 94:15, 117:5, 119:7, 119:17, 119:18, 120:2, 120:11, 120:13, 120:16, 120:22, 122:5, 124:1, 128:20</p> <p><b>big</b> [1] - 43:23</p> <p><b>bit</b> [1] - 88:6</p> <p><b>Bo</b> [1] - 42:13</p> <p><b>board</b> [6] - 17:16, 17:19, 18:6, 42:21, 101:10, 102:8</p> | <p><b>Board</b> [8] - 3:8, 5:21, 24:7, 33:13, 52:3, 52:5, 107:16, 113:18</p> <p><b>Bob</b> [14] - 12:5, 12:14, 16:14, 16:15, 20:17, 21:20, 24:11, 24:24, 29:2, 71:18, 71:19, 80:5, 129:14, 130:18</p> <p><b>boilerplate</b> [1] - 63:20</p> <p><b>bond</b> [1] - 104:14</p> <p><b>Bonner</b> [1] - 2:6</p> <p><b>book</b> [3] - 61:10, 62:9, 62:14</p> <p><b>books</b> [2] - 116:5, 116:8</p> <p><b>bordering</b> [1] - 59:5</p> <p><b>BOSTON</b> [1] - 1:23</p> <p><b>Boston</b> [2] - 2:7, 2:11</p> <p><b>bottom</b> [1] - 29:12</p> <p><b>boy</b> [1] - 36:4</p> <p><b>Boylston</b> [1] - 2:11</p> <p><b>Braintree</b> [2] - 1:20, 2:4</p> <p><b>BRAMANTI</b> [1] - 1:22</p> <p><b>break</b> [2] - 68:7, 100:21</p> <p><b>breaks</b> [1] - 10:22</p> <p><b>bring</b> [1] - 80:1</p> <p><b>Brody</b> [1] - 2:10</p> <p><b>brought</b> [1] - 90:19</p> <p><b>budget</b> [1] - 85:20</p> <p><b>build</b> [3] - 86:11, 98:9, 99:5</p> <p><b>building</b> [4] - 96:17, 97:21, 98:23, 99:21</p> <p><b>buildings</b> [1] - 20:5</p> <p><b>bullet</b> [1] - 76:8</p> <p><b>bunch</b> [3] - 41:2, 41:16, 115:5</p> <p><b>burst</b> [1] - 99:8</p> <p><b>business</b> [14] - 12:12, 12:23, 22:18, 24:22, 29:24, 30:2, 30:3, 30:8, 30:10, 50:18, 74:16, 74:18, 76:10, 78:6</p> <p><b>Business</b> [1] - 47:20</p> <p><b>button</b> [2] - 27:21, 32:2</p> <p><b>BY</b> [36] - 4:13, 10:18, 13:18, 15:9, 19:11, 31:21, 32:15, 33:8, 34:11, 35:23, 39:22, 40:3, 41:23, 48:13, 53:9, 55:4, 56:14, 57:1, 59:21, 72:11, 82:1, 83:21,</p> |
|--|---|---|---|--|

|   |   |  |  |  |
|---|---|--|--|--|
| <p>90:4, 91:3, 95:22,<br/>100:23, 109:13,<br/>110:15, 110:23,<br/>112:13, 113:14,<br/>117:16, 124:8,<br/>124:15, 127:9,<br/>130:14</p> <p style="text-align: center;"><b>C</b></p> <p><b>C.A</b> [1] - 1:4<br/><b>calendar</b> [2] - 36:5,<br/>88:9<br/><b>CALM</b> [7] - 1:12,<br/>67:19, 82:16,<br/>83:21, 93:1, 93:16,<br/>93:19<br/><b>Cambridge</b> [1] - 2:15<br/><b>Canal</b> [1] - 2:15<br/><b>cancel</b> [1] - 44:18<br/><b>cancellation</b> [1] -<br/>128:20<br/><b>cancelled</b> [2] - 47:10,<br/>129:19<br/><b>Cape</b> [1] - 111:17<br/><b>carefully</b> [1] - 94:20<br/><b>cart</b> [6] - 59:7,<br/>113:20, 113:23,<br/>114:2, 114:6,<br/>114:20<br/><b>carts</b> [3] - 98:11,<br/>98:19, 99:6<br/><b>case</b> [10] - 5:15, 5:16,<br/>9:1, 59:13, 78:10,<br/>107:3, 107:16,<br/>107:20, 115:1,<br/>115:2<br/><b>cases</b> [2] - 59:14,<br/>115:4<br/><b>categories</b> [1] -<br/>115:23<br/><b>causes</b> [1] - 36:9<br/><b>center</b> [1] - 112:14<br/><b>certain</b> [7] - 70:1,<br/>111:1, 115:16,<br/>124:16, 129:13,<br/>129:17, 129:18<br/><b>certainly</b> [2] - 43:19,<br/>57:10<br/><b>CERTIFICATE</b> [2] -<br/>133:1, 134:1<br/><b>Certified</b> [3] - 1:18,<br/>134:3, 134:5<br/><b>certify</b> [4] - 133:3,<br/>133:5, 134:7,<br/>134:13<br/><b>chairman</b> [3] - 23:6,<br/>51:1, 56:7<br/><b>CHAIRMAN</b> [1] - 1:10</p> | <p><b>chance</b> [2] - 60:17,<br/>82:4<br/><b>change</b> [7] - 60:21,<br/>93:22, 94:1, 95:1,<br/>95:14, 96:20, 96:23<br/><b>changed</b> [2] - 63:4,<br/>63:7<br/><b>changes</b> [6] - 25:20,<br/>45:20, 45:22,<br/>62:22, 62:24, 97:3<br/><b>Chapter</b> [12] - 3:20,<br/>3:23, 70:11, 70:16,<br/>90:10, 90:11,<br/>90:14, 90:21, 91:4,<br/>110:17, 110:24,<br/>111:8<br/><b>characters</b> [1] - 81:14<br/><b>charged</b> [1] - 115:16<br/><b>charging</b> [1] - 116:2<br/><b>Charles</b> [1] - 85:3<br/><b>CHARLES</b> [1] - 1:12<br/><b>check</b> [3] - 108:24,<br/>109:3, 120:12<br/><b>CHERNOFF</b> [1] -<br/>130:9<br/><b>Chernoff</b> [1] - 2:21<br/><b>circumstances</b> [2] -<br/>58:17, 58:20<br/><b>Civil</b> [1] - 1:17<br/><b>claims</b> [1] - 25:16<br/><b>clarify</b> [1] - 61:14<br/><b>clean</b> [4] - 31:22,<br/>32:11, 33:3, 33:5<br/><b>clear</b> [5] - 92:9,<br/>93:10, 93:12,<br/>95:12, 114:17<br/><b>clearly</b> [2] - 7:4,<br/>101:14<br/><b>Clemens</b> [1] - 66:5<br/><b>clerk</b> [13] - 38:10,<br/>38:11, 39:14, 41:5,<br/>41:7, 41:9, 41:12,<br/>50:21, 104:7,<br/>104:9, 119:17,<br/>120:23<br/><b>clerk's</b> [6] - 39:10,<br/>39:12, 40:10, 41:1,<br/>41:3, 104:11<br/><b>client</b> [4] - 98:8,<br/>98:17, 99:24,<br/>114:18<br/><b>clients</b> [1] - 78:24<br/><b>Clipper</b> [3] - 3:16,<br/>56:16, 57:3<br/><b>close</b> [1] - 126:18<br/><b>club</b> [1] - 57:18<br/><b>Club</b> [4] - 51:6, 57:15,<br/>118:16, 126:13<br/><b>clubhouse</b> [2] -<br/>86:11, 114:11</p> | <p><b>coach</b> [1] - 84:17<br/><b>columns</b> [1] - 23:9<br/><b>coming</b> [5] - 37:17,<br/>37:22, 37:24,<br/>126:23, 132:4<br/><b>commencing</b> [1] -<br/>1:20<br/><b>comment</b> [2] - 65:24,<br/>75:18<br/><b>commented</b> [1] - 44:4<br/><b>comments</b> [13] -<br/>22:7, 22:10, 22:14,<br/>22:16, 25:20,<br/>33:24, 35:20,<br/>45:12, 45:14,<br/>45:19, 45:22, 63:8,<br/>91:22<br/><b>Comments</b> [1] - 22:8<br/><b>commission</b> [1] -<br/>134:24<br/><b>Committee</b> [30] -<br/>2:12, 3:14, 19:20,<br/>23:6, 35:24, 36:11,<br/>36:14, 37:4, 37:19,<br/>38:9, 38:14, 38:22,<br/>40:1, 41:4, 41:6,<br/>41:10, 42:3, 47:6,<br/>48:4, 52:13, 55:6,<br/>56:8, 58:2, 58:5,<br/>58:8, 58:11, 84:15,<br/>102:16, 103:22,<br/>104:2<br/><b>committee</b> [12] -<br/>36:3, 41:16, 42:22,<br/>44:3, 47:22, 50:10,<br/>51:1, 58:15, 58:18,<br/>58:21, 58:24,<br/>101:11<br/><b>COMMITTEE</b> [1] - 1:9<br/><b>committee's</b> [1] -<br/>45:11<br/><b>common</b> [1] - 44:14<br/><b>COMMONWEALTH</b><br/>[1] - 1:3<br/><b>Commonwealth</b> [3] -<br/>1:18, 134:2, 134:6<br/><b>company</b> [11] - 16:21,<br/>17:1, 29:20, 52:9,<br/>99:7, 99:10, 99:19,<br/>103:9, 103:11,<br/>117:5, 121:7<br/><b>comparable</b> [7] -<br/>12:12, 12:23,<br/>22:17, 74:15,<br/>74:18, 76:10, 78:6<br/><b>compilation</b> [2] -<br/>116:22, 116:24<br/><b>compiled</b> [1] - 83:7<br/><b>complaining</b> [1] -<br/>56:16</p> | <p><b>complaints</b> [1] -<br/>115:24<br/><b>completed</b> [2] - 68:9,<br/>131:11<br/><b>composite</b> [10] -<br/>69:5, 69:7, 69:19,<br/>69:21, 70:13,<br/>70:20, 111:1,<br/>111:5, 111:9,<br/>111:10<br/><b>compromise</b> [1] -<br/>62:11<br/><b>computer</b> [5] - 23:23,<br/>75:4, 75:12, 131:1,<br/>131:9<br/><b>concerned</b> [1] - 103:7<br/><b>concluded</b> [4] -<br/>126:24, 127:1,<br/>132:1, 132:7<br/><b>confirm</b> [1] - 123:6<br/><b>confusion</b> [1] - 93:2<br/><b>considered</b> [1] - 61:4<br/><b>considering</b> [1] -<br/>92:2<br/><b>Consisting</b> [1] - 1:9<br/><b>conspiracy</b> [2] - 25:2,<br/>90:15<br/><b>construction</b> [1] -<br/>20:5<br/><b>construction-<br/>related</b> [1] - 20:5<br/><b>consultant</b> [8] - 6:10,<br/>6:15, 6:20, 6:23,<br/>7:1, 78:7, 105:22,<br/>106:4<br/><b>Cont'd</b> [2] - 3:2, 4:13<br/><b>contact</b> [5] - 34:20,<br/>39:12, 72:1, 87:12,<br/>102:15<br/><b>contacted</b> [4] - 35:6,<br/>71:22, 117:10,<br/>117:24<br/><b>contempt</b> [1] - 108:15<br/><b>continuation</b> [1] - 4:4<br/><b>continue</b> [1] - 102:13<br/><b>continued</b> [1] - 60:24<br/><b>CONTINUED</b> [1] -<br/>1:15<br/><b>continues</b> [1] - 12:22<br/><b>contract</b> [36] - 48:9,<br/>55:18, 56:3, 56:11,<br/>61:4, 61:5, 61:12,<br/>61:16, 62:7, 62:18,<br/>63:17, 81:1, 85:19,<br/>86:10, 86:22, 88:1,<br/>88:19, 88:20,<br/>89:19, 90:7, 96:9,<br/>96:20, 96:24, 97:4,<br/>97:11, 100:13,<br/>100:17, 100:18,</p> | <p>113:21, 115:15,<br/>115:22, 117:1,<br/>119:1, 125:18<br/><b>controversy</b> [2] -<br/>60:5, 89:5<br/><b>conversation</b> [8] -<br/>24:5, 71:14, 80:19,<br/>83:23, 85:8,<br/>101:23, 102:3,<br/>129:13<br/><b>conversations</b> [5] -<br/>24:10, 65:2, 81:11,<br/>84:6, 85:11<br/><b>copied</b> [1] - 23:24<br/><b>copies</b> [7] - 43:6,<br/>46:2, 48:16, 75:16,<br/>123:16, 124:20,<br/>125:1<br/><b>copy</b> [14] - 3:8, 31:22,<br/>33:19, 41:11,<br/>45:12, 49:15,<br/>50:10, 57:2, 57:4,<br/>91:3, 97:10,<br/>108:24, 109:2,<br/>110:15<br/><b>corporate</b> [1] - 54:10<br/><b>correct</b> [138] - 6:21,<br/>10:3, 12:24, 13:1,<br/>13:7, 15:16, 16:9,<br/>16:10, 19:22,<br/>19:23, 21:6, 26:24,<br/>27:1, 27:10, 29:3,<br/>29:22, 30:16,<br/>30:17, 30:24,<br/>33:15, 33:20, 35:8,<br/>35:24, 36:14,<br/>43:12, 43:16,<br/>44:12, 46:5, 46:8,<br/>46:18, 47:7, 47:16,<br/>50:12, 50:17, 51:2,<br/>51:6, 51:10, 51:23,<br/>52:13, 52:21,<br/>54:19, 55:14,<br/>55:21, 56:8, 56:9,<br/>56:11, 56:18, 57:5,<br/>57:8, 57:12, 57:16,<br/>58:2, 60:10, 60:18,<br/>60:23, 61:1, 61:7,<br/>62:5, 63:13, 64:5,<br/>64:10, 64:11,<br/>64:14, 64:17,<br/>65:18, 66:10,<br/>67:10, 67:22,<br/>67:23, 68:3, 68:9,<br/>68:10, 68:12,<br/>68:13, 72:18, 73:6,<br/>73:16, 77:20, 78:7,<br/>79:23, 82:18, 83:6,<br/>83:9, 84:15, 86:20,<br/>86:24, 87:13,</p> |
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|  |  |  |   |  |  |
|--|--|--|---|--|--|
| <p>87:18, 87:22,<br/>88:12, 88:17,<br/>88:18, 88:22,<br/>88:24, 89:3, 89:7,<br/>89:22, 90:1, 90:11,<br/>93:20, 94:5, 94:22,<br/>95:2, 96:10, 96:14,<br/>96:17, 97:1, 97:6,<br/>99:11, 99:21,<br/>100:2, 100:7,<br/>100:14, 104:9,<br/>105:1, 105:2,<br/>105:7, 108:22,<br/>108:23, 108:24,<br/>110:1, 110:6,<br/>111:2, 111:14,<br/>114:7, 114:21,<br/>115:18, 116:14,<br/>116:18, 117:3,<br/>117:8, 117:9,<br/>123:9, 123:12,<br/>123:15, 125:8,<br/>128:13, 131:15</p> <p><b>Corrected</b> [1] - 3:11<br/><b>corrected</b> [1] - 63:11<br/><b>correction</b> [1] - 31:10<br/><b>corrections</b> [1] -<br/>131:17<br/><b>correctly</b> [6] - 68:22,<br/>69:4, 70:10, 70:20,<br/>76:14, 82:12<br/><b>correspondence</b> [2] -<br/>30:14, 118:8<br/><b>cost</b> [2] - 79:8, 86:14<br/><b>Counsel</b> [1] - 2:16<br/><b>counsel</b> [14] - 19:21,<br/>23:16, 71:2, 71:3,<br/>72:24, 76:17, 77:1,<br/>78:23, 100:4,<br/>110:16, 129:10,<br/>130:5, 134:14,<br/>134:16<br/><b>counting</b> [1] - 106:12<br/><b>Country</b> [4] - 51:6,<br/>57:15, 118:16,<br/>126:13<br/><b>couple</b> [10] - 24:20,<br/>74:9, 85:14, 88:6,<br/>89:10, 95:4,<br/>106:18, 121:9,<br/>122:11, 127:5<br/><b>coupon</b> [2] - 116:5,<br/>116:8<br/><b>course</b> [12] - 16:1,<br/>51:18, 52:17, 53:2,<br/>53:17, 87:11,<br/>102:19, 102:20,<br/>113:20, 114:11,<br/>114:20, 116:17<br/><b>Course</b> [1] - 121:7</p> | <p><b>COURT</b> [2] - 1:4, 1:22<br/><b>Court</b> [5] - 65:14,<br/>77:14, 78:18,<br/>108:6, 108:16<br/><b>court</b> [8] - 95:24,<br/>105:24, 106:1,<br/>106:8, 106:13,<br/>108:2, 114:24,<br/>130:7<br/><b>courthouses</b> [2] -<br/>106:18, 106:20<br/><b>courtroom</b> [1] - 79:4<br/><b>Coutoumas</b> [1] -<br/>104:23<br/><b>cover</b> [5] - 7:11, 8:8,<br/>8:13, 8:15, 21:5<br/><b>covered</b> [1] - 64:7<br/><b>Craig</b> [1] - 130:23<br/><b>created</b> [3] - 18:11,<br/>38:13, 107:21<br/><b>creating</b> [1] - 105:13<br/><b>creation</b> [1] - 33:14<br/><b>credit</b> [1] - 98:1<br/><b>criteria</b> [2] - 69:18,<br/>83:8<br/><b>CRR</b> [1] - 134:23<br/><b>CSR</b> [2] - 1:17,<br/>134:23<br/><b>current</b> [1] - 107:4<br/><b>Curtland</b> [1] - 58:10<br/><b>CUSHING</b> [7] - 1:11,<br/>1:16, 3:3, 4:7,<br/>133:3, 133:14,<br/>134:7<br/><b>Cushing</b> [7] - 3:19,<br/>3:21, 4:5, 4:14,<br/>101:4, 113:15,<br/>130:15<br/><b>custody</b> [1] - 38:19<br/><b>cut</b> [1] - 99:10</p> | <p><b>D</b></p> <p><b>Dahlen</b> [2] - 107:7,<br/>119:10<br/><b>daily</b> [1] - 57:20<br/><b>damages</b> [1] - 90:17<br/><b>date</b> [13] - 39:6,<br/>64:23, 73:23,<br/>103:18, 108:18,<br/>112:4, 112:6,<br/>122:2, 122:17,<br/>122:19, 122:20,<br/>127:11, 127:13<br/><b>Dated</b> [1] - 133:8<br/><b>dated</b> [10] - 3:10,<br/>3:11, 3:15, 3:18,<br/>3:22, 3:24, 31:8,<br/>53:11, 92:4, 117:21</p> | <p><b>dates</b> [10] - 13:21,<br/>36:17, 40:6, 63:15,<br/>127:10, 127:14,<br/>127:15, 127:19,<br/>127:21, 128:1<br/><b>David</b> [1] - 107:7<br/><b>days</b> [4] - 89:10,<br/>89:13, 106:15,<br/>122:11<br/><b>deadline</b> [4] - 122:9,<br/>124:15, 125:17,<br/>126:15<br/><b>deal</b> [1] - 105:12<br/><b>December</b> [13] - 3:15,<br/>53:11, 77:15,<br/>82:15, 87:22,<br/>88:11, 91:16, 92:3,<br/>92:4, 92:15,<br/>125:23, 128:24<br/><b>decided</b> [3] - 21:16,<br/>95:1, 99:21<br/><b>decision</b> [1] - 106:9<br/><b>defaults</b> [1] - 14:1<br/><b>Defendants</b> [1] - 1:13<br/><b>definitely</b> [3] - 43:13,<br/>63:2, 94:1<br/><b>delete</b> [1] - 92:23<br/><b>deleted</b> [2] - 63:11,<br/>92:14<br/><b>deletion</b> [1] - 92:18<br/><b>deliver</b> [1] - 103:7<br/><b>demolish</b> [1] - 99:21<br/><b>demolished</b> [1] -<br/>96:17<br/><b>demolition</b> [1] -<br/>97:21<br/><b>department</b> [2] -<br/>43:1, 51:15<br/><b>depended</b> [1] - 44:16<br/><b>deposes</b> [1] - 4:11<br/><b>DEPOSITION</b> [1] -<br/>1:15<br/><b>Deposition</b> [1] - 3:2<br/><b>deposition</b> [20] - 4:4,<br/>4:15, 6:6, 10:5,<br/>10:8, 11:9, 11:15,<br/>11:21, 13:13, 34:9,<br/>54:8, 64:8, 91:20,<br/>92:9, 121:2, 127:2,<br/>131:24, 132:7,<br/>134:8, 134:10<br/><b>described</b> [3] - 21:19,<br/>31:10, 130:24<br/><b>describes</b> [1] - 111:5<br/><b>desk</b> [1] - 119:15<br/><b>Desmery</b> [1] - 44:4<br/><b>destruction</b> [1] -<br/>53:17<br/><b>determination</b> [2] -<br/>70:6, 70:12</p> | <p><b>determine</b> [2] - 69:3,<br/>69:9<br/><b>difference</b> [1] - 94:3<br/><b>different</b> [9] - 12:15,<br/>22:2, 54:10, 58:12,<br/>79:21, 111:13,<br/>115:11, 115:17,<br/>116:9<br/><b>Diplomate</b> [2] - 1:18,<br/>134:4<br/><b>direct</b> [2] - 32:23,<br/>91:6<br/><b>direction</b> [1] - 22:2<br/><b>directly</b> [1] - 79:4<br/><b>director</b> [5] - 26:12,<br/>30:5, 102:14,<br/>104:17, 119:15<br/><b>disclosed</b> [1] - 11:16<br/><b>discuss</b> [9] - 4:15,<br/>5:5, 48:9, 48:24,<br/>82:2, 92:18,<br/>107:16, 107:20<br/><b>discussed</b> [8] - 4:21,<br/>11:23, 12:1, 34:12,<br/>52:4, 73:11, 107:3,<br/>107:8<br/><b>discussing</b> [2] - 49:4,<br/>87:3<br/><b>discussion</b> [13] -<br/>17:24, 34:10,<br/>35:22, 48:12,<br/>56:13, 70:8, 90:3,<br/>98:22, 110:21,<br/>112:12, 113:23,<br/>126:17, 130:12<br/><b>discussions</b> [6] -<br/>4:18, 12:4, 12:9,<br/>30:4, 62:17, 86:1<br/><b>dissatisfied</b> [1] - 51:9<br/><b>distribute</b> [1] -<br/>124:21<br/><b>distributed</b> [4] - 24:1,<br/>43:7, 46:1, 123:17<br/><b>document</b> [34] - 6:20,<br/>14:10, 14:21,<br/>15:11, 15:14,<br/>15:21, 16:7, 18:16,<br/>18:17, 19:3, 23:13,<br/>23:16, 23:20, 24:5,<br/>25:4, 27:15, 27:18,<br/>31:9, 32:17, 33:11,<br/>40:15, 53:14,<br/>56:24, 59:23,<br/>72:13, 96:2, 99:23,<br/>100:3, 110:19,<br/>117:17, 117:18,<br/>117:20, 118:4,<br/>126:3<br/><b>Document</b> [2] -<br/>31:23, 91:5</p> | <p><b>documents</b> [7] - 23:5,<br/>39:4, 65:3, 65:6,<br/>65:16, 68:1, 68:15<br/><b>Donato</b> [4] - 14:8,<br/>17:15, 18:5, 24:4<br/><b>done</b> [20] - 26:11,<br/>46:1, 50:2, 62:13,<br/>67:7, 67:16, 68:3,<br/>68:5, 69:3, 70:9,<br/>70:13, 76:19,<br/>82:12, 94:24,<br/>95:10, 98:7, 118:9,<br/>118:12, 125:11,<br/>126:22<br/><b>Doolin</b> [22] - 9:15,<br/>23:7, 33:20, 39:11,<br/>40:11, 41:2, 42:5,<br/>45:24, 49:1, 49:4,<br/>51:1, 51:4, 51:5,<br/>51:16, 52:11, 55:5,<br/>55:13, 55:23, 56:2,<br/>57:14, 58:7, 62:16<br/><b>DOOLIN</b> [1] - 1:9<br/><b>Doolin's</b> [1] - 116:13<br/><b>double</b> [1] - 90:16<br/><b>doubt</b> [2] - 12:17,<br/>12:19<br/><b>Doug</b> [9] - 53:1,<br/>54:13, 59:3, 81:11,<br/>97:23, 112:1,<br/>121:9, 121:12,<br/>129:7<br/><b>Doug's</b> [1] - 54:18<br/><b>Douglas</b> [1] - 2:19<br/><b>down</b> [6] - 19:15,<br/>68:7, 86:15, 86:16,<br/>111:5, 111:17<br/><b>downstairs</b> [2] -<br/>120:12, 120:13<br/><b>Doyle</b> [2] - 116:3,<br/>116:13<br/><b>dozens</b> [2] - 46:24,<br/>47:4<br/><b>DPW</b> [1] - 30:7<br/><b>DPW-related</b> [1] -<br/>30:7<br/><b>draft</b> [23] - 6:21, 6:23,<br/>7:4, 7:18, 7:23,<br/>25:10, 26:9, 27:19,<br/>33:24, 35:10,<br/>35:13, 74:12,<br/>74:14, 74:17, 75:4,<br/>75:5, 75:12, 92:6,<br/>105:22, 131:1,<br/>131:7, 131:10,<br/>131:14<br/><b>drafted</b> [12] - 6:19,<br/>14:9, 16:8, 24:4,<br/>27:14, 27:17,<br/>49:13, 64:3, 83:5,</p> |
|--|--|--|---|--|--|

|   |   |  |  |  |
|---|---|--|--|--|
| <p>89:23, 92:15, 117:1<br/> <b>drafting</b> [4] - 11:17,<br/> 12:1, 15:13, 63:12<br/> <b>drive</b> [1] - 108:7<br/> <b>driver's</b> [1] - 4:10<br/> <b>driving</b> [1] - 86:3<br/> <b>due</b> [2] - 122:5,<br/> 122:22<br/> <b>duly</b> [2] - 4:10, 134:9<br/> <b>during</b> [8] - 9:6,<br/> 10:22, 62:17, 72:3,<br/> 72:5, 96:13,<br/> 115:10, 121:16<br/> <b>Duxbury</b> [18] - 2:12,<br/> 2:16, 3:8, 3:16,<br/> 5:21, 13:19, 18:19,<br/> 26:24, 37:19,<br/> 56:16, 61:18,<br/> 96:16, 97:1, 99:23,<br/> 103:12, 103:13,<br/> 112:14, 115:4<br/> <b>DUXBURY</b> [1] - 1:9</p>   | <p><b>eliminates</b> [1] - 115:6<br/> <b>elsewhere</b> [1] -<br/> 105:11<br/> <b>embark</b> [1] - 106:3<br/> <b>Emmett</b> [2] - 107:20,<br/> 108:6<br/> <b>employee</b> [2] -<br/> 134:14, 134:15<br/> <b>employment</b> [1] -<br/> 105:11<br/> <b>enclosure</b> [2] - 98:12,<br/> 99:5<br/> <b>end</b> [9] - 17:14, 18:5,<br/> 40:20, 44:8, 45:3,<br/> 52:10, 52:11,<br/> 104:3, 131:8<br/> <b>endeavor</b> [1] - 17:18<br/> <b>enforce</b> [3] - 100:13,<br/> 100:16, 100:19<br/> <b>enhance</b> [1] - 86:6<br/> <b>Enlarged</b> [1] - 3:8<br/> <b>ensued</b> [1] - 89:5<br/> <b>entered</b> [2] - 33:22,<br/> 34:9<br/> <b>entering</b> [1] - 95:8<br/> <b>enterprise</b> [7] -<br/> 12:12, 12:23,<br/> 22:20, 22:21,<br/> 24:22, 76:11, 78:6<br/> <b>entire</b> [2] - 15:21,<br/> 25:3<br/> <b>entity</b> [3] - 22:18,<br/> 22:22, 74:16<br/> <b>envelope</b> [1] - 8:18<br/> <b>envelopes</b> [2] -<br/> 66:21, 66:22<br/> <b>equal</b> [1] - 88:11<br/> <b>erroneous</b> [2] - 66:1,<br/> 66:6<br/> <b>escapes</b> [1] - 26:10<br/> <b>Esq</b> [4] - 2:2, 2:6, 2:9,<br/> 2:14<br/> <b>essentially</b> [1] - 62:3<br/> <b>establish</b> [1] - 40:3<br/> <b>Et</b> [1] - 2:12<br/> <b>evaluation</b> [8] -<br/> 21:24, 70:9, 82:5,<br/> 82:12, 83:8,<br/> 121:17, 122:7,<br/> 125:14<br/> <b>evaluations</b> [12] -<br/> 64:12, 67:6, 68:3,<br/> 68:9, 68:20,<br/> 121:23, 122:13,<br/> 124:21, 124:23,<br/> 125:11, 128:12<br/> <b>evaluators</b> [6] - 64:9,<br/> 68:21, 82:3, 82:4,<br/> 123:5, 124:22<br/> <b>evasive</b> [3] - 36:16,</p> | <p>87:23, 123:3<br/> <b>evening</b> [1] - 24:6<br/> <b>events</b> [1] - 54:17<br/> <b>eventual</b> [1] - 88:8<br/> <b>evict</b> [1] - 106:23<br/> <b>eviction</b> [1] - 106:23<br/> <b>evidently</b> [2] - 7:5,<br/> 35:19<br/> <b>EX</b> [1] - 1:12<br/> <b>ex</b> [1] - 102:17<br/> <b>exact</b> [1] - 129:8<br/> <b>exactly</b> [3] - 24:19,<br/> 25:6, 93:4<br/> <b>Examination</b> [3] -<br/> 3:4, 3:4, 3:5<br/> <b>EXAMINATION</b> [3] -<br/> 4:13, 127:9, 130:14<br/> <b>except</b> [1] - 13:10<br/> <b>excuse</b> [2] - 13:2,<br/> 110:8<br/> <b>executive</b> [7] - 5:9,<br/> 5:20, 47:19, 47:23,<br/> 48:4, 48:8, 107:10<br/> <b>Exeter</b> [1] - 2:10<br/> <b>Exhibit</b> [34] - 15:5,<br/> 15:7, 15:10, 19:9,<br/> 19:12, 31:13,<br/> 31:14, 31:16,<br/> 31:18, 32:15,<br/> 39:20, 40:14,<br/> 48:15, 49:20, 53:7,<br/> 53:10, 56:22, 57:2,<br/> 59:19, 59:22, 72:9,<br/> 72:12, 81:22,<br/> 81:23, 91:1, 95:20,<br/> 95:23, 100:23,<br/> 100:24, 101:5,<br/> 110:13, 110:17,<br/> 117:14, 130:16<br/> <b>exhibit</b> [15] - 19:6,<br/> 19:13, 33:2, 33:4,<br/> 39:19, 40:13,<br/> 40:16, 53:6, 56:21,<br/> 59:18, 72:8, 90:24,<br/> 95:19, 110:12,<br/> 117:13<br/> <b>EXHIBITS</b> [1] - 1:2<br/> <b>Exhibits</b> [1] - 3:7<br/> <b>exhibits</b> [1] - 116:7<br/> <b>expected</b> [2] - 126:4,<br/> 126:16<br/> <b>experience</b> [1] - 90:9<br/> <b>expert</b> [1] - 90:12<br/> <b>expertise</b> [1] - 16:1<br/> <b>expires</b> [1] - 134:24<br/> <b>explain</b> [1] - 124:9<br/> <b>explanation</b> [1] - 8:19<br/> <b>explored</b> [1] - 82:7<br/> <b>expression</b> [1] -<br/> 12:23</p> | <p><b>F</b></p> <p><b>face</b> [1] - 129:22<br/> <b>facility</b> [4] - 9:22,<br/> 61:24, 86:2, 97:22<br/> <b>fact</b> [7] - 11:23,<br/> 17:20, 65:3, 90:13,<br/> 97:21, 116:1, 116:7<br/> <b>fair</b> [2] - 57:23, 63:23<br/> <b>fall</b> [2] - 121:16,<br/> 121:21<br/> <b>familiar</b> [9] - 51:4,<br/> 52:16, 56:14,<br/> 90:10, 91:11,<br/> 110:16, 110:24,<br/> 125:24, 126:1<br/> <b>famously</b> [1] - 112:1<br/> <b>far</b> [3] - 56:2, 85:21,<br/> 103:1<br/> <b>fatal</b> [1] - 83:2<br/> <b>father</b> [2] - 54:18,<br/> 116:14<br/> <b>father-in-law</b> [1] -<br/> 116:14<br/> <b>FAX</b> [1] - 1:24<br/> <b>fax</b> [3] - 8:13, 42:24,<br/> 43:6<br/> <b>faxed</b> [1] - 8:14<br/> <b>February</b> [7] - 44:21,<br/> 44:22, 46:4, 49:18,<br/> 89:20, 119:6,<br/> 119:14<br/> <b>fee</b> [5] - 64:1, 64:4,<br/> 67:22, 115:16,<br/> 115:17<br/> <b>feedback</b> [1] - 92:5<br/> <b>fees</b> [1] - 57:20<br/> <b>fellow</b> [1] - 19:24<br/> <b>felt</b> [2] - 63:3, 81:5<br/> <b>fence</b> [3] - 98:9,<br/> 98:11, 98:18<br/> <b>few</b> [9] - 9:16, 19:16,<br/> 52:22, 53:13, 60:2,<br/> 91:8, 96:4, 96:5,<br/> 130:23<br/> <b>field</b> [5] - 16:1, 61:16,<br/> 93:3, 95:14, 95:15<br/> <b>figure</b> [1] - 93:9<br/> <b>file</b> [1] - 41:7<br/> <b>filed</b> [2] - 49:10,<br/> 95:24<br/> <b>files</b> [1] - 41:5<br/> <b>filing</b> [1] - 113:18<br/> <b>filled</b> [1] - 68:21<br/> <b>final</b> [3] - 7:20, 7:22,<br/> 131:4<br/> <b>finance</b> [3] - 26:12,<br/> 30:5, 104:17<br/> <b>financial</b> [9] - 42:18,</p> | <p>42:20, 43:10,<br/> 43:20, 103:2,<br/> 103:15, 103:19,<br/> 116:18, 116:20<br/> <b>financially</b> [1] -<br/> 134:16<br/> <b>financials</b> [2] - 117:3,<br/> 117:7<br/> <b>fine</b> [3] - 81:8, 99:4,<br/> 113:2<br/> <b>firm</b> [1] - 75:3<br/> <b>first</b> [21] - 4:8, 9:7,<br/> 21:18, 27:12,<br/> 27:19, 40:16,<br/> 41:20, 42:11,<br/> 50:18, 54:13,<br/> 64:10, 70:19,<br/> 77:15, 82:16,<br/> 92:24, 93:19,<br/> 93:23, 95:15, 99:8,<br/> 121:21, 128:3<br/> <b>firsthand</b> [1] - 77:3<br/> <b>five</b> [4] - 36:22, 36:24,<br/> 86:22, 121:17<br/> <b>fix</b> [1] - 82:4<br/> <b>flat</b> [11] - 63:24, 64:4,<br/> 67:22, 92:12,<br/> 92:14, 92:19, 93:7,<br/> 94:2, 94:21, 95:1<br/> <b>Floor</b> [2] - 1:19, 2:3<br/> <b>FLOREANO</b> [1] - 1:10<br/> <b>flux</b> [1] - 88:6<br/> <b>Flynn</b> [1] - 107:7<br/> <b>focusing</b> [1] - 122:17<br/> <b>folder</b> [1] - 23:22<br/> <b>folks</b> [4] - 31:11,<br/> 52:20, 61:6, 61:19<br/> <b>Follansbee</b> [4] - 1:19,<br/> 2:2, 2:3, 3:4<br/> <b>FOLLANSBEE</b> [94] -<br/> 4:3, 4:13, 5:8,<br/> 10:15, 10:18, 13:5,<br/> 13:8, 13:12, 13:17,<br/> 13:18, 15:5, 15:9,<br/> 19:4, 19:8, 19:11,<br/> 22:5, 22:22, 23:1,<br/> 23:3, 31:14, 31:21,<br/> 32:10, 32:14,<br/> 32:15, 33:4, 33:8,<br/> 34:6, 34:8, 34:11,<br/> 35:23, 39:18,<br/> 39:22, 40:3, 41:20,<br/> 41:23, 48:13, 53:5,<br/> 53:9, 54:24, 55:4,<br/> 56:14, 56:20, 57:1,<br/> 59:17, 59:21, 72:4,<br/> 72:7, 72:11, 81:23,<br/> 82:1, 83:17, 83:21,<br/> 90:4, 90:23, 91:3,<br/> 94:8, 95:18, 95:22,</p> |
| <p><b>E</b></p> <p><b>e-mail</b> [21] - 3:11,<br/> 8:13, 18:18, 19:4,<br/> 21:7, 21:8, 21:10,<br/> 21:22, 22:3, 22:12,<br/> 23:21, 26:21, 27:2,<br/> 27:7, 31:7, 46:1,<br/> 49:6, 49:7, 121:14,<br/> 129:6<br/> <b>E-mail</b> [1] - 3:10<br/> <b>e-mailed</b> [5] - 30:15,<br/> 49:5, 91:21, 121:9,<br/> 121:11<br/> <b>e-mails</b> [7] - 17:5,<br/> 22:6, 26:16, 26:20,<br/> 26:23, 35:16,<br/> 121:12<br/> <b>ear</b> [1] - 129:21<br/> <b>early</b> [3] - 32:2, 81:6,<br/> 89:13<br/> <b>easiest</b> [1] - 82:9<br/> <b>easily</b> [2] - 93:4, 93:6<br/> <b>Eckstrom</b> [4] - 37:17,<br/> 80:19, 80:23,<br/> 119:24<br/> <b>editor</b> [2] - 56:15,<br/> 57:3<br/> <b>Editor</b> [1] - 3:16<br/> <b>effect</b> [3] - 13:4,<br/> 55:19, 62:2<br/> <b>effective</b> [1] - 87:24<br/> <b>either</b> [8] - 4:24,<br/> 20:14, 21:9, 28:11,<br/> 57:22, 82:1, 105:6,<br/> 117:6</p> |   |  |  |  |

|   |  |  |   |  |
|---|--|--|---|--|
| <p>97:10, 100:20,<br/>100:23, 109:13,<br/>110:8, 110:11,<br/>110:15, 110:20,<br/>110:23, 112:5,<br/>112:8, 112:11,<br/>112:13, 112:23,<br/>113:2, 113:6,<br/>113:14, 115:6,<br/>117:12, 117:16,<br/>122:18, 123:22,<br/>124:5, 124:8,<br/>124:12, 124:15,<br/>126:9, 126:12,<br/>126:18, 126:22,<br/>127:1, 127:7,<br/>130:4, 130:10,<br/>131:20, 132:2</p> <p><b>follow</b> [1] - 94:21<br/><b>followed</b> [2] - 26:15,<br/>26:20<br/><b>following</b> [2] - 45:17,<br/>46:15<br/><b>follows</b> [1] - 4:11<br/><b>FORD</b> [1] - 1:11<br/><b>foregoing</b> [1] - 133:4<br/><b>form</b> [7] - 13:11,<br/>43:10, 43:14,<br/>68:21, 83:9, 83:11<br/><b>format</b> [2] - 82:18,<br/>116:9<br/><b>former</b> [1] - 86:10<br/><b>forth</b> [2] - 17:5, 134:9<br/><b>forward</b> [6] - 17:6,<br/>35:21, 47:11,<br/>47:13, 78:16, 94:17<br/><b>forwarded</b> [2] -<br/>23:14, 39:11<br/><b>four</b> [4] - 38:1, 98:16,<br/>107:12, 126:2<br/><b>free</b> [1] - 59:6<br/><b>friend</b> [1] - 20:18<br/><b>friendly</b> [2] - 107:23,<br/>108:1<br/><b>front</b> [4] - 57:19,<br/>76:15, 76:24, 81:20<br/><b>frozen</b> [1] - 98:24<br/><b>fully</b> [2] - 17:7, 25:18</p> | <p>21:13, 21:18,<br/>21:22, 42:9, 42:14<br/><b>GARRITY</b> [1] - 1:11<br/><b>Garrity's</b> [2] - 21:15,<br/>42:11<br/><b>gathering</b> [1] - 33:24<br/><b>Geary</b> [4] - 84:1, 84:6,<br/>84:12, 85:1<br/><b>General</b> [20] - 3:20,<br/>3:23, 7:21, 7:24,<br/>8:2, 8:6, 8:9, 8:19,<br/>9:21, 71:23, 72:2,<br/>72:24, 73:12,<br/>76:18, 77:2, 77:19,<br/>77:21, 117:24,<br/>118:2, 129:15<br/><b>general</b> [3] - 5:6,<br/>5:12, 45:13<br/><b>General's</b> [9] - 9:1,<br/>9:18, 34:13, 35:1,<br/>35:7, 77:22, 78:11,<br/>117:11, 117:22<br/><b>gentleman</b> [2] - 34:5,<br/>116:3<br/><b>gentleman's</b> [1] -<br/>75:2<br/><b>Girl</b> [1] - 37:18<br/><b>given</b> [7] - 28:10,<br/>35:16, 42:21,<br/>79:18, 79:22,<br/>80:24, 134:11<br/><b>God</b> [1] - 42:12<br/><b>golf</b> [15] - 16:1, 51:17,<br/>52:17, 59:7, 98:11,<br/>98:19, 99:5,<br/>102:19, 102:20,<br/>104:20, 105:14,<br/>113:20, 114:11,<br/>114:20, 116:17<br/><b>Golf</b> [34] - 2:20, 14:2,<br/>43:1, 43:8, 43:15,<br/>51:10, 51:17, 54:9,<br/>54:11, 55:7, 59:2,<br/>62:11, 67:19, 81:7,<br/>82:16, 83:22, 93:1,<br/>93:16, 96:12, 97:5,<br/>99:13, 99:19,<br/>102:24, 103:1,<br/>104:15, 107:21,<br/>113:19, 114:18,<br/>115:9, 116:1,<br/>116:16, 117:7,<br/>119:1, 121:7<br/><b>GOLF</b> [2] - 1:6, 1:12<br/><b>Golf's</b> [1] - 93:19<br/><b>golfer</b> [1] - 51:5<br/><b>GORDON</b> [7] - 1:11,<br/>1:15, 3:3, 4:7,<br/>133:3, 133:14,<br/>134:7</p> | <p><b>Gordon</b> [6] - 3:19,<br/>3:21, 10:11, 10:17,<br/>106:15, 132:4<br/><b>gotta</b> [2] - 75:6, 75:14<br/><b>government</b> [4] -<br/>16:17, 30:21, 80:2,<br/>105:18<br/><b>Granite</b> [2] - 1:19, 2:3<br/><b>great</b> [1] - 115:8<br/><b>greens</b> [2] - 115:16,<br/>115:17<br/><b>Greg</b> [2] - 34:6, 34:8<br/><b>Gregory</b> [1] - 2:6<br/><b>gross</b> [1] - 67:21<br/><b>group</b> [3] - 9:12, 9:13<br/><b>guess</b> [13] - 8:14,<br/>10:1, 18:23, 29:1,<br/>29:4, 46:14, 48:1,<br/>48:6, 57:6, 68:22,<br/>118:13, 118:14,<br/>118:20<br/><b>guessed</b> [1] - 9:24<br/><b>guessing</b> [1] - 29:18<br/><b>guy</b> [5] - 20:19,<br/>20:20, 20:24,<br/>58:14, 59:12<br/><b>guys</b> [2] - 81:1,<br/>111:22</p>                 | <p>29:13, 103:10<br/><b>health</b> [1] - 129:2<br/><b>hear</b> [2] - 71:8, 80:6<br/><b>heard</b> [8] - 17:9,<br/>26:16, 35:4, 35:17,<br/>52:18, 66:7, 77:18,<br/>129:23<br/><b>hearing</b> [11] - 13:19,<br/>13:23, 60:9, 77:15,<br/>78:4, 78:17,<br/>108:15, 109:3,<br/>109:15, 113:17,<br/>113:23<br/><b>hearings</b> [1] - 52:1<br/><b>heated</b> [1] - 111:23<br/><b>held</b> [5] - 40:17,<br/>44:11, 44:21, 45:4,<br/>98:23<br/><b>help</b> [5] - 12:14,<br/>13:22, 37:15,<br/>105:22, 128:21<br/><b>helps</b> [1] - 20:4<br/><b>hereby</b> [2] - 133:3,<br/>134:7<br/><b>hereinbefore</b> [1] -<br/>134:8<br/><b>hereunto</b> [1] - 134:19<br/><b>highly</b> [1] - 69:16<br/><b>Hill</b> [41] - 2:12, 3:14,<br/>6:12, 19:20, 23:6,<br/>35:24, 36:10,<br/>36:14, 37:4, 37:19,<br/>38:8, 38:14, 38:22,<br/>39:24, 41:4, 41:6,<br/>41:10, 42:3, 47:6,<br/>48:4, 51:5, 52:12,<br/>55:6, 56:8, 57:15,<br/>58:2, 58:4, 58:8,<br/>58:11, 80:21, 84:7,<br/>84:14, 85:4, 85:9,<br/>102:15, 103:22,<br/>104:1, 104:20,<br/>115:15, 118:16,<br/>126:13<br/><b>HILL</b> [1] - 1:9<br/><b>himself</b> [1] - 118:2<br/><b>hindsight</b> [1] - 29:4<br/><b>hire</b> [3] - 6:23, 7:1,<br/>106:4<br/><b>hired</b> [2] - 99:7,<br/>105:21<br/><b>hit</b> [2] - 27:21, 32:2<br/><b>hold</b> [2] - 71:17, 99:1<br/><b>hole</b> [4] - 55:20, 56:4,<br/>61:6, 62:19<br/><b>holes</b> [2] - 61:9,<br/>61:19<br/><b>holidays</b> [5] - 55:21,<br/>56:5, 61:20,<br/>115:11, 115:18</p> | <p><b>honest</b> [2] - 15:19,<br/>58:13<br/><b>honestly</b> [3] - 93:21,<br/>121:10, 123:1<br/><b>Honor</b> [1] - 130:8<br/><b>hospital</b> [1] - 129:9<br/><b>House</b> [1] - 37:18<br/><b>house</b> [1] - 98:5<br/><b>huge</b> [1] - 44:6</p> <p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [5] - 20:12, 37:8,<br/>38:12, 49:12, 82:11<br/><b>Identification</b> [12] -<br/>15:7, 19:9, 31:18,<br/>39:20, 53:7, 56:22,<br/>59:19, 72:9, 91:1,<br/>95:20, 110:13,<br/>117:14<br/><b>identified</b> [3] - 4:9,<br/>34:2, 134:9<br/><b>identify</b> [1] - 83:12<br/><b>IFB</b> [6] - 105:14,<br/>105:22, 106:3,<br/>118:21, 118:22,<br/>118:23<br/><b>ignore</b> [1] - 32:20<br/><b>II</b> [1] - 1:1<br/><b>illegal</b> [1] - 59:5<br/><b>impact</b> [1] - 87:8<br/><b>implemented</b> [2] -<br/>51:17, 60:22<br/><b>impression</b> [2] - 17:7,<br/>17:10<br/><b>IN</b> [1] - 134:19<br/><b>in-person</b> [1] - 9:9<br/><b>INC</b> [3] - 1:6, 1:12,<br/>1:22<br/><b>Inc</b> [1] - 2:20<br/><b>incident</b> [1] - 53:16<br/><b>incidents</b> [1] - 52:19<br/><b>include</b> [1] - 55:13<br/><b>included</b> [4] - 61:12,<br/>63:24, 67:21,<br/>114:10<br/><b>including</b> [1] - 15:14<br/><b>income</b> [1] - 67:21<br/><b>incomplete</b> [1] -<br/>97:12<br/><b>incorrect</b> [2] - 69:8,<br/>69:10<br/><b>incorrectly</b> [3] -<br/>67:16, 70:13, 95:11<br/><b>independently</b> [1] -<br/>123:11<br/><b>indicate</b> [6] - 19:19,<br/>19:24, 22:7, 34:11,<br/>76:16, 101:10</p> |
| <p style="text-align: center;"><b>G</b></p> <p><b>gained</b> [1] - 51:22<br/><b>Galvin</b> [1] - 108:10<br/><b>game</b> [3] - 29:3,<br/>94:13, 101:18<br/><b>gap</b> [1] - 45:7<br/><b>Garrity</b> [12] - 20:1,<br/>20:7, 20:9, 20:17,<br/>21:2, 21:6, 21:11,</p>   |  | <p style="text-align: center;"><b>H</b></p> <p><b>Hagler</b> [5] - 27:11,<br/>29:15, 34:1, 35:11,<br/>35:14<br/><b>halfway</b> [1] - 111:4<br/><b>hall</b> [5] - 4:19, 15:20,<br/>24:24, 25:2, 124:24<br/><b>hand</b> [1] - 134:20<br/><b>handed</b> [18] - 14:21,<br/>18:17, 19:3, 31:9,<br/>31:23, 32:17,<br/>33:11, 40:15,<br/>50:17, 53:14,<br/>56:24, 59:23,<br/>72:13, 91:5, 96:2,<br/>110:19, 117:18,<br/>126:3<br/><b>handicap</b> [1] - 59:7<br/><b>handled</b> [3] - 104:16,<br/>114:15, 125:19<br/><b>handwriting</b> [5] -<br/>32:8, 32:13, 32:18,<br/>32:20, 32:21<br/><b>handwritten</b> [4] -<br/>42:17, 42:24,<br/>43:10, 44:6<br/><b>Hardoon</b> [1] - 2:10<br/><b>Hardy</b> [1] - 105:4<br/><b>head</b> [3] - 16:23,</p> |   |  |

|  |   |   |  |   |
|--|---|---|--|---|
| <p><b>indicated</b> [11] - 16:3, 17:14, 60:8, 62:21, 90:9, 91:19, 110:23, 114:23, 117:10, 125:4, 125:22</p> <p><b>indicates</b> [12] - 41:15, 42:16, 42:17, 44:9, 44:10, 45:11, 47:15, 47:17, 47:18, 72:22, 101:5, 101:7</p> <p><b>indicating</b> [1] - 118:8</p> <p><b>individual</b> [1] - 69:18</p> <p><b>individuals</b> [4] - 42:2, 55:15, 90:14, 96:12</p> <p><b>ineligible</b> [1] - 82:22</p> <p><b>inform</b> [1] - 128:11</p> <p><b>information</b> [13] - 17:16, 17:19, 17:22, 20:17, 35:12, 42:18, 42:21, 43:10, 43:20, 53:1, 65:21, 67:2, 121:4</p> <p><b>informed</b> [2] - 77:9, 105:10</p> <p><b>injunction</b> [2] - 77:16, 87:24</p> <p><b>input</b> [3] - 6:11, 21:13, 105:19</p> <p><b>inquire</b> [2] - 72:24, 76:17</p> <p><b>inserted</b> [2] - 63:6, 74:21</p> <p><b>inspectional</b> [2] - 119:16, 120:18</p> <p><b>Inspector</b> [27] - 7:21, 7:23, 8:1, 8:5, 8:9, 8:19, 8:24, 9:18, 9:21, 34:13, 35:1, 35:6, 71:23, 72:2, 72:24, 73:12, 76:18, 77:2, 77:19, 77:21, 77:22, 78:11, 117:11, 117:21, 117:24, 118:2, 129:15</p> <p><b>instead</b> [5] - 46:15, 67:22, 98:9, 98:15, 98:18</p> <p><b>instituted</b> [1] - 62:12</p> <p><b>instruction</b> [1] - 10:21</p> <p><b>instructions</b> [4] - 10:6, 10:12, 10:19, 25:24</p> <p><b>intention</b> [1] - 7:3</p> <p><b>interacts</b> [1] - 102:18</p> <p><b>interest</b> [1] - 85:16</p> | <p><b>interested</b> [1] - 134:17</p> <p><b>interfere</b> [1] - 123:14</p> <p><b>interpreted</b> [1] - 30:1</p> <p><b>investigation</b> [2] - 53:21, 54:15</p> <p><b>involved</b> [11] - 21:18, 63:12, 63:17, 70:17, 90:15, 101:15, 102:1, 104:16, 104:18, 105:13, 114:12</p> <p><b>involvement</b> [1] - 21:15</p> <p><b>involving</b> [1] - 53:17</p> <p><b>issue</b> [9] - 32:19, 43:23, 44:6, 57:11, 95:9, 96:21, 97:24, 128:12, 128:17</p> <p><b>issued</b> [2] - 9:5, 92:2</p> <p><b>issues</b> [3] - 20:5, 60:9, 129:2</p> <p><b>item</b> [2] - 19:15, 42:16</p> <p><b>itself</b> [4] - 6:20, 9:16, 33:2, 33:4</p> | <p>88:10, 89:6, 96:12, 97:5, 97:14, 97:18, 98:1, 99:13, 99:18, 108:20, 109:15, 110:4, 111:18, 112:16, 113:19, 114:18, 115:9, 116:1, 116:4, 116:8, 116:16, 117:7, 121:5</p> <p><b>JOHNSON</b> [1] - 1:6</p> <p><b>Jordan</b> [13] - 4:22, 5:1, 10:7, 10:13, 10:14, 10:15, 10:18, 11:8, 11:13, 11:20, 75:1, 75:10, 130:24</p> <p><b>JR</b> [1] - 1:10</p> <p><b>JUDGE</b> [1] - 130:9</p> <p><b>judge</b> [7] - 77:18, 78:5, 78:9, 78:23, 79:12, 79:17, 79:21</p> <p><b>Judge</b> [6] - 2:21, 65:13, 78:17, 88:19, 106:2, 109:14</p> <p><b>judgment</b> [1] - 106:8</p> <p><b>July</b> [1] - 112:7</p> <p><b>June</b> [1] - 47:11</p> | <p>131:22</p> <p><b>kidney</b> [1] - 129:4</p> <p><b>kind</b> [13] - 25:6, 59:4, 59:11, 62:11, 63:20, 68:18, 86:3, 86:9, 86:16, 98:1, 98:4, 98:7, 129:21</p> <p><b>Kirkland</b> [1] - 58:13</p> <p><b>knowing</b> [1] - 108:1</p> <p><b>knowledge</b> [4] - 70:15, 77:3, 114:1, 114:18</p> <p><b>known</b> [2] - 11:16, 67:4</p> <p><b>KREIGER</b> [32] - 5:6, 5:12, 10:13, 10:17, 13:2, 13:6, 13:10, 13:14, 17:23, 26:4, 31:1, 32:7, 32:12, 33:6, 34:4, 34:7, 35:3, 54:21, 55:3, 59:15, 84:10, 112:4, 113:4, 118:17, 119:8, 124:10, 124:14, 127:3, 130:2, 130:14, 131:19, 131:24</p> <p><b>Kreiger</b> [6] - 2:14, 2:14, 3:5, 4:17, 6:3, 23:18</p>            | <p>38:13, 38:15, 47:5, 47:8, 49:23, 54:8, 63:15, 72:15, 84:22, 103:24, 104:22, 107:14</p> <p><b>late</b> [7] - 43:4, 77:14, 78:3, 89:6, 89:9, 89:17, 101:5</p> <p><b>law</b> [2] - 75:3, 116:14</p> <p><b>laws</b> [1] - 90:15</p> <p><b>Laws</b> [2] - 3:20, 3:23</p> <p><b>lawsuit</b> [1] - 80:18</p> <p><b>league</b> [2] - 52:17, 52:24</p> <p><b>lease</b> [1] - 86:16</p> <p><b>least</b> [3] - 32:8, 57:10, 107:12</p> <p><b>leave</b> [2] - 38:2, 58:24</p> <p><b>leaving</b> [1] - 58:15</p> <p><b>left</b> [5] - 58:17, 58:20, 112:19, 112:21, 120:17</p> <p><b>Lenny</b> [1] - 124:6</p> <p><b>Lenny's</b> [2] - 124:10, 124:13</p> <p><b>Leonard</b> [1] - 2:9</p> <p><b>less</b> [1] - 130:19</p> <p><b>letter</b> [15] - 7:11, 8:8, 8:14, 8:15, 21:5, 28:2, 51:14, 51:15, 53:11, 56:15, 57:3, 57:16, 57:18, 92:3, 117:21</p> <p><b>Letter</b> [4] - 3:15, 3:16, 3:18, 3:24</p> <p><b>level</b> [5] - 61:15, 85:18, 93:3, 95:13, 95:15</p> <p><b>liable</b> [3] - 90:16, 98:23, 99:2</p> <p><b>license</b> [5] - 4:10, 114:9, 114:10, 114:13, 114:14</p> <p><b>lie</b> [2] - 11:2, 11:8</p> <p><b>life</b> [2] - 27:3, 54:23</p> <p><b>line</b> [2] - 9:6, 62:22</p> <p><b>liquor</b> [3] - 114:9, 114:10, 114:12</p> <p><b>list</b> [1] - 57:19</p> <p><b>listed</b> [1] - 46:14</p> <p><b>listen</b> [1] - 81:14</p> <p><b>lists</b> [1] - 41:16</p> <p><b>litigation</b> [2] - 5:17, 48:9</p> <p><b>live</b> [1] - 20:11</p> <p><b>living</b> [1] - 96:13</p> <p><b>LLP</b> [5] - 1:19, 2:3, 2:6, 2:10, 2:14</p> <p><b>local</b> [1] - 56:15</p> <p><b>locate</b> [3] - 38:21,</p> |
| <p style="text-align: center;"><b>J</b></p> <p><b>Jackson</b> [1] - 44:3</p> <p><b>JAMES</b> [3] - 1:11, 134:3, 134:23</p> <p><b>James</b> [1] - 1:17</p> <p><b>January</b> [16] - 3:16, 3:18, 36:21, 40:17, 41:19, 41:20, 44:9, 56:17, 57:10, 78:4, 83:22, 83:24, 84:5, 92:15, 101:11, 101:22</p> <p><b>Jason</b> [1] - 2:19</p> <p><b>Jean</b> [1] - 44:3</p> <p><b>job</b> [5] - 29:24, 96:24, 100:13, 100:16, 100:18</p> <p><b>Joe</b> [3] - 80:19, 80:23, 80:24</p> <p><b>jog</b> [1] - 38:6</p> <p><b>John</b> [6] - 26:12, 26:17, 28:10, 58:10, 84:1, 84:6</p> <p><b>Johnson</b> [44] - 2:6, 2:19, 2:20, 14:2, 37:16, 43:1, 43:8, 43:15, 51:9, 51:17, 53:2, 54:9, 54:10, 55:7, 59:2, 60:5, 60:22, 62:11, 81:7, 81:11, 87:11,</p>  |   | <p style="text-align: center;"><b>K</b></p> <p><b>keep</b> [5] - 41:3, 41:8, 45:22, 47:12, 62:10</p> <p><b>keeps</b> [1] - 38:8</p> <p><b>Kelly</b> [1] - 39:16</p> <p><b>Kesten</b> [9] - 2:9, 2:10, 3:4, 4:17, 6:3, 23:17, 77:13, 117:22, 123:5</p> <p><b>KESTEN</b> [46] - 10:14, 19:7, 22:4, 22:20, 22:24, 23:2, 31:2, 31:13, 33:2, 41:18, 41:22, 46:6, 46:11, 46:20, 66:6, 72:3, 80:10, 81:22, 81:24, 83:15, 83:19, 94:6, 101:2, 109:5, 109:8, 109:11, 110:22, 112:6, 112:9, 112:22, 112:24, 115:8, 122:15, 123:19, 123:23, 126:5, 126:8, 126:11, 126:13, 126:20, 126:24, 127:5, 127:9, 130:1, 130:8,</p>                      | <p style="text-align: center;"><b>L</b></p> <p><b>lady</b> [2] - 26:17, 28:24</p> <p><b>lady's</b> [4] - 28:2, 28:6, 28:8, 28:9</p> <p><b>Lambiase</b> [3] - 105:17, 120:7, 120:21</p> <p><b>Lambiase's</b> [1] - 120:19</p> <p><b>language</b> [15] - 12:15, 24:22, 61:4, 61:9, 63:6, 69:8, 69:9, 69:11, 70:1, 70:2, 74:12, 74:15, 74:17, 74:22, 129:20</p> <p><b>Lanzetta</b> [1] - 85:3</p> <p><b>LANZETTA</b> [1] - 1:12</p> <p><b>Lanzetta's</b> [1] - 121:6</p> <p><b>Laramée</b> [4] - 2:19, 37:16, 112:15, 119:22</p> <p><b>LARAMÉE</b> [1] - 112:7</p> <p><b>large</b> [2] - 9:12, 89:12</p> <p><b>last</b> [17] - 4:24, 10:5, 13:6, 17:14, 36:2,</p> |   |

|   |   |  |  |   |
|---|---|--|--|---|
| <p>39:7, 39:9<br/> <b>logged</b> [1] - 35:1<br/> <b>Longo</b> [2] - 59:1, 81:16<br/> <b>look</b> [9] - 18:15, 20:23, 46:3, 49:18, 71:20, 83:3, 96:4, 111:4, 117:17<br/> <b>looked</b> [2] - 14:15, 73:23<br/> <b>looking</b> [5] - 46:21, 49:8, 76:15, 110:22, 112:9<br/> <b>looks</b> [1] - 70:19<br/> <b>loss</b> [1] - 97:22<br/> <b>lunch</b> [1] - 113:1<br/> <b>Lyons</b> [1] - 1:17<br/> <b>LYONS</b> [3] - 1:22, 134:3, 134:23<br/> <b>lyons.com</b> [1] - 1:24</p> | <p>117:7<br/> <b>MANAGEMENT</b> [1] - 1:6<br/> <b>manager</b> [24] - 5:24, 9:14, 21:16, 21:24, 28:11, 30:5, 45:15, 59:1, 64:13, 65:9, 65:20, 66:1, 66:18, 69:2, 70:8, 72:23, 73:12, 76:17, 76:23, 97:23, 100:4, 102:4, 104:17, 125:20<br/> <b>manager's</b> [3] - 39:17, 64:16, 64:19<br/> <b>managing</b> [1] - 87:11<br/> <b>MANNING</b> [1] - 1:11<br/> <b>March</b> [9] - 44:11, 44:21, 46:9, 87:22, 87:24, 88:10, 89:2, 112:14, 118:16<br/> <b>mark</b> [2] - 15:5, 31:16<br/> <b>marked</b> [33] - 15:8, 15:9, 19:5, 19:10, 19:12, 31:19, 32:16, 39:19, 39:21, 48:14, 53:6, 53:8, 53:10, 56:21, 56:23, 57:2, 59:18, 59:20, 59:22, 72:8, 72:10, 72:12, 90:24, 91:2, 95:19, 95:21, 95:23, 110:12, 110:14, 117:13, 117:15, 126:8, 126:9<br/> <b>MARLBOROUGH</b> [1] - 1:10<br/> <b>Marlborough</b> [4] - 55:14, 55:23, 57:14, 58:1<br/> <b>Martecchini</b> [1] - 81:13<br/> <b>Marty</b> [1] - 44:4<br/> <b>MASSACHUSETTS</b> [1] - 1:3<br/> <b>Massachusetts</b> [10] - 1:17, 1:19, 1:20, 2:4, 2:7, 2:11, 2:15, 4:9, 134:2, 134:6<br/> <b>material</b> [2] - 14:19, 100:1<br/> <b>matter</b> [1] - 106:19<br/> <b>McGill</b> [2] - 42:7, 58:4<br/> <b>McLeod</b> [2] - 1:19, 2:3<br/> <b>mean</b> [20] - 5:6, 8:11, 9:17, 10:13, 10:14, 11:3, 30:1, 36:16, 50:3, 50:20, 51:4,</p> | <p>51:24, 52:22, 54:14, 76:8, 86:3, 86:22, 89:2, 89:19, 122:23<br/> <b>meaning</b> [4] - 5:16, 7:17, 16:4, 104:15<br/> <b>meet</b> [2] - 34:22, 36:13<br/> <b>meeting</b> [71] - 5:14, 9:10, 9:20, 14:16, 14:18, 24:4, 28:13, 36:2, 36:19, 37:17, 37:20, 37:24, 38:3, 38:14, 40:17, 44:8, 44:9, 44:10, 44:14, 44:21, 44:24, 45:3, 45:4, 45:17, 46:4, 46:9, 46:13, 46:15, 46:17, 47:6, 47:16, 49:16, 49:18, 49:22, 49:23, 50:3, 50:11, 50:13, 52:4, 52:6, 60:14, 60:15, 64:16, 64:18, 65:8, 65:15, 65:22, 66:10, 66:14, 72:3, 72:4, 72:5, 73:5, 73:10, 97:14, 97:18, 100:6, 101:8, 101:12, 101:14, 104:1, 104:6, 111:16, 111:19, 111:24, 112:13, 112:16, 127:18, 128:2, 128:14<br/> <b>meetings</b> [11] - 22:1, 36:5, 37:1, 37:3, 37:7, 37:9, 46:24, 47:4, 103:21, 112:2, 128:19<br/> <b>Mello</b> [2] - 65:9, 114:15<br/> <b>Mello's</b> [3] - 127:17, 127:22, 127:24<br/> <b>member</b> [10] - 34:13, 35:23, 56:7, 58:1, 58:4, 58:7, 58:10, 77:22, 102:17, 107:15<br/> <b>members</b> [14] - 19:20, 33:13, 41:16, 44:3, 51:8, 55:5, 56:3, 57:15, 57:17, 57:21, 57:22, 62:2, 78:19, 87:6<br/> <b>membership</b> [2] - 57:19, 59:7<br/> <b>memo</b> [10] - 3:10,</p> | <p>3:12, 18:24, 19:5, 25:6, 25:8, 25:17, 31:7, 31:11, 31:24<br/> <b>memorandum</b> [1] - 33:12<br/> <b>memory</b> [37] - 6:18, 6:19, 6:22, 8:1, 12:7, 12:15, 12:17, 12:19, 22:16, 23:7, 23:23, 28:12, 29:23, 30:15, 37:14, 37:15, 38:6, 40:7, 45:2, 46:23, 47:24, 48:1, 53:16, 54:3, 56:12, 58:13, 60:12, 62:9, 88:1, 97:20, 107:18, 109:18, 111:12, 118:20, 119:23, 127:16, 127:19<br/> <b>met</b> [1] - 20:21<br/> <b>MICHAEL</b> [3] - 1:9, 1:10, 1:11<br/> <b>Middlesex</b> [5] - 65:14, 78:17, 108:6, 108:15, 134:2<br/> <b>MIDDLESEX</b> [1] - 1:4<br/> <b>might</b> [11] - 12:5, 21:21, 28:3, 53:24, 57:21, 59:3, 86:6, 87:9, 123:16, 126:18, 129:7<br/> <b>Mike</b> [2] - 49:1, 55:22<br/> <b>mind</b> [1] - 123:4<br/> <b>mine</b> [2] - 20:18, 122:14<br/> <b>minute</b> [4] - 16:16, 24:11, 24:24, 126:19<br/> <b>minutes</b> [38] - 3:13, 38:8, 38:13, 38:17, 38:19, 38:21, 39:7, 39:13, 39:23, 39:24, 40:4, 40:9, 40:17, 40:19, 40:23, 41:3, 41:11, 41:14, 41:24, 45:10, 46:3, 46:22, 47:11, 48:14, 48:24, 49:3, 49:8, 49:12, 49:15, 49:19, 49:22, 50:6, 50:11, 50:17, 101:1, 104:5, 104:11, 113:3<br/> <b>misremembering</b> [4] - 66:2, 66:4, 66:6, 66:8<br/> <b>mistake</b> [1] - 83:2</p> | <p><b>mistakenly</b> [1] - 27:20<br/> <b>moment</b> [1] - 39:23<br/> <b>Monday</b> [1] - 128:24<br/> <b>money</b> [1] - 78:19<br/> <b>monitor</b> [2] - 96:24, 100:19<br/> <b>monitored</b> [1] - 35:2<br/> <b>month</b> [19] - 5:3, 36:13, 44:15, 45:7, 47:1, 47:5, 64:24, 78:3, 87:21, 88:10, 88:13, 88:16, 89:13, 89:18, 89:20, 89:21, 118:11, 125:7, 125:10<br/> <b>monthly</b> [2] - 103:15, 103:18<br/> <b>months</b> [11] - 36:22, 36:24, 39:3, 44:15, 74:9, 87:21, 88:7, 88:13, 130:23<br/> <b>Morosco</b> [1] - 85:6<br/> <b>most</b> [4] - 12:11, 51:9, 83:8, 107:13<br/> <b>mostly</b> [1] - 112:20<br/> <b>motion</b> [1] - 47:18<br/> <b>moved</b> [2] - 35:21, 39:17<br/> <b>moving</b> [1] - 94:17<br/> <b>MR</b> [173] - 4:3, 4:13, 5:6, 5:8, 5:12, 10:13, 10:14, 10:15, 10:17, 10:18, 13:2, 13:5, 13:6, 13:8, 13:10, 13:12, 13:14, 13:17, 13:18, 15:5, 15:9, 17:23, 19:4, 19:7, 19:8, 19:11, 22:4, 22:5, 22:20, 22:22, 22:24, 23:1, 23:2, 23:3, 26:4, 31:1, 31:2, 31:13, 31:14, 31:21, 32:7, 32:10, 32:12, 32:14, 32:15, 33:2, 33:4, 33:6, 33:8, 34:4, 34:6, 34:7, 34:8, 34:11, 35:3, 35:23, 39:18, 39:22, 40:3, 41:18, 41:20, 41:22, 41:23, 46:6, 46:11, 46:20, 48:13, 53:5, 53:9, 54:21, 54:24, 55:3, 55:4, 56:14, 56:20, 57:1, 59:15, 59:17, 59:21, 66:6,</p> |
|---|---|--|--|---|



|  |  |   |  |  |
|--|--|---|--|--|
| <p>72:3, 72:4, 72:7,<br/>72:11, 80:10,<br/>81:22, 81:23,<br/>81:24, 82:1, 83:15,<br/>83:17, 83:19,<br/>83:21, 84:10, 90:4,<br/>90:23, 91:3, 94:6,<br/>94:8, 95:18, 95:22,<br/>100:23, 101:2,<br/>109:5, 109:8,<br/>109:11, 109:13,<br/>110:8, 110:11,<br/>110:15, 110:20,<br/>110:22, 110:23,<br/>112:4, 112:5,<br/>112:6, 112:7,<br/>112:8, 112:9,<br/>112:11, 112:13,<br/>112:22, 112:23,<br/>112:24, 113:2,<br/>113:4, 113:6,<br/>113:14, 115:6,<br/>115:8, 117:12,<br/>117:16, 118:17,<br/>119:8, 122:15,<br/>122:18, 123:19,<br/>123:22, 123:23,<br/>124:5, 124:8,<br/>124:10, 124:12,<br/>124:14, 124:15,<br/>126:5, 126:8,<br/>126:9, 126:11,<br/>126:12, 126:13,<br/>126:18, 126:20,<br/>126:22, 126:24,<br/>127:1, 127:3,<br/>127:5, 127:7,<br/>127:9, 130:1,<br/>130:2, 130:4,<br/>130:8, 130:10,<br/>130:14, 131:19,<br/>131:20, 131:22,<br/>131:24, 132:2</p> <p><b>must</b> [3] - 30:8,<br/>104:7, 104:8</p> <p><b>MUSTARD</b> [1] - 1:10</p> | <p>104:22</p> <p><b>named</b> [3] - 20:1,<br/>82:20, 83:1</p> <p><b>nature</b> [4] - 26:19,<br/>69:17, 116:6, 118:5</p> <p><b>necessarily</b> [2] -<br/>45:8, 98:3</p> <p><b>need</b> [1] - 13:13</p> <p><b>needed</b> [3] - 50:7,<br/>63:10, 129:22</p> <p><b>negligible</b> [1] - 89:11</p> <p><b>net</b> [2] - 60:20, 62:2</p> <p><b>never</b> [21] - 7:5, 7:7,<br/>11:23, 12:1, 21:2,<br/>21:13, 24:14,<br/>25:16, 25:21,<br/>26:21, 27:2, 28:23,<br/>30:12, 61:12, 65:4,<br/>90:19, 96:20,<br/>100:15, 115:20,<br/>127:18, 129:23</p> <p><b>new</b> [13] - 55:18,<br/>61:3, 62:7, 62:18,<br/>63:21, 64:3, 91:17,<br/>91:20, 92:2, 92:5,<br/>101:6, 106:3, 106:4</p> <p><b>news</b> [2] - 26:18</p> <p><b>newspaper</b> [2] - 52:1,<br/>56:16</p> <p><b>next</b> [24] - 19:5, 24:2,<br/>28:14, 28:20,<br/>39:19, 44:10,<br/>44:20, 45:4, 46:4,<br/>46:10, 53:6, 56:21,<br/>59:18, 70:23,<br/>71:16, 72:8, 90:24,<br/>94:4, 95:19,<br/>110:12, 117:13,<br/>124:2</p> <p><b>nice</b> [3] - 20:19,<br/>20:20, 119:18</p> <p><b>night</b> [3] - 52:16,<br/>52:24, 107:14</p> <p><b>nine</b> [5] - 54:1, 54:5,<br/>54:6, 54:9, 54:22</p> <p><b>NO</b> [1] - 1:4</p> <p><b>no-go</b> [1] - 107:2</p> <p><b>no-nonsense</b> [1] -<br/>59:12</p> <p><b>nobody</b> [2] - 25:2,<br/>92:20</p> <p><b>Nobody</b> [1] - 28:16</p> <p><b>nonprice</b> [6] - 68:20,<br/>70:23, 121:24,<br/>122:1, 124:20,<br/>125:7</p> <p><b>nonsense</b> [2] - 59:12,<br/>81:17</p> <p><b>noon</b> [1] - 113:7</p> <p><b>North</b> [41] - 2:12,</p> | <p>3:13, 6:11, 19:20,<br/>23:6, 35:24, 36:10,<br/>36:14, 37:4, 37:19,<br/>38:8, 38:14, 38:22,<br/>39:24, 41:4, 41:6,<br/>41:9, 42:3, 47:6,<br/>48:3, 51:5, 52:12,<br/>55:5, 56:7, 57:15,<br/>58:2, 58:4, 58:7,<br/>58:11, 80:20, 84:7,<br/>84:14, 85:4, 85:9,<br/>102:15, 103:21,<br/>104:1, 104:20,<br/>115:15, 118:16,<br/>126:13</p> <p><b>NORTH</b> [1] - 1:9</p> <p><b>notarial</b> [1] - 134:20</p> <p><b>Notary</b> [2] - 1:18,<br/>134:5</p> <p><b>notes</b> [4] - 125:13,<br/>127:17, 127:23,<br/>127:24</p> <p><b>nothing</b> [10] - 10:24,<br/>15:20, 35:19,<br/>44:17, 55:3, 81:7,<br/>99:13, 99:18,<br/>100:7, 131:22</p> <p><b>notice</b> [3] - 67:15,<br/>68:14, 68:17</p> <p><b>noticed</b> [2] - 68:24</p> <p><b>notoriety</b> [2] - 51:22,<br/>51:24</p> <p><b>November</b> [12] - 65:4,<br/>67:24, 68:8, 68:15,<br/>70:3, 106:1, 106:9,<br/>127:11, 127:12,<br/>128:15, 128:16,<br/>128:21</p> <p><b>number</b> [14] - 19:15,<br/>42:16, 79:1, 79:9,<br/>79:14, 79:15,<br/>79:18, 79:20,<br/>79:22, 80:7, 86:23,<br/>98:22, 124:16,<br/>126:12</p> | <p>87:17, 87:20</p> <p><b>obtain</b> [1] - 40:22</p> <p><b>obvious</b> [1] - 93:8</p> <p><b>occasions</b> [1] - 23:15</p> <p><b>occurred</b> [3] - 71:21,<br/>129:15, 129:18</p> <p><b>October</b> [20] - 3:10,<br/>3:12, 13:19, 14:5,<br/>28:15, 28:21, 31:8,<br/>35:12, 42:18,<br/>83:24, 84:4, 91:15,<br/>113:17, 118:13,<br/>121:6, 122:5,<br/>122:10, 122:11,<br/>125:21</p> <p><b>OF</b> [4] - 1:3, 1:9, 1:15,<br/>133:15</p> <p><b>offered</b> [2] - 12:5,<br/>93:20</p> <p><b>offering</b> [1] - 116:5</p> <p><b>Office</b> [9] - 9:1, 9:18,<br/>34:14, 35:1, 35:7,<br/>77:22, 78:11,<br/>117:11, 117:22</p> <p><b>office</b> [29] - 9:16,<br/>9:17, 9:21, 20:13,<br/>20:16, 22:12, 39:5,<br/>39:10, 39:12,<br/>39:17, 40:10, 41:2,<br/>41:3, 43:11, 43:15,<br/>57:4, 57:8, 64:17,<br/>64:19, 73:11,<br/>75:11, 77:5,<br/>104:12, 111:17,<br/>111:21, 118:3,<br/>119:16, 120:15,<br/>120:19</p> <p><b>officer</b> [1] - 34:3</p> <p><b>offices</b> [1] - 1:19</p> <p><b>officials</b> [3] - 15:13,<br/>18:19, 35:16</p> <p><b>officio</b> [1] - 102:17</p> <p><b>OFFICIO</b> [1] - 1:12</p> <p><b>often</b> [1] - 43:13</p> <p><b>oftentimes</b> [1] - 43:5</p> <p><b>once</b> [5] - 9:11,<br/>36:13, 66:22,<br/>108:10, 108:17</p> <p><b>One</b> [3] - 2:10, 2:15,<br/>81:12</p> <p><b>one</b> [72] - 10:22,<br/>18:24, 19:5, 19:17,<br/>21:9, 22:17, 23:5,<br/>24:21, 24:24,<br/>27:12, 27:13, 28:4,<br/>28:5, 30:21, 32:3,<br/>32:5, 32:8, 32:11,<br/>33:6, 33:7, 33:8,<br/>36:8, 36:18, 38:15,<br/>42:23, 45:23,</p> | <p>45:24, 47:1, 47:8,<br/>51:8, 56:1, 58:6,<br/>63:2, 63:15, 63:21,<br/>64:9, 66:11, 66:12,<br/>67:1, 67:15, 69:5,<br/>69:6, 70:19, 71:4,<br/>71:12, 74:7, 74:21,<br/>75:8, 76:7, 83:7,<br/>85:14, 93:8, 94:1,<br/>94:2, 94:4, 100:8,<br/>100:10, 103:23,<br/>104:3, 107:13,<br/>108:12, 109:19,<br/>110:6, 110:15,<br/>116:7, 120:10,<br/>123:4, 123:13,<br/>126:19, 128:2,<br/>130:2</p> <p><b>one-page</b> [2] - 18:24,<br/>19:5</p> <p><b>ones</b> [1] - 46:3</p> <p><b>Oops</b> [1] - 28:4</p> <p><b>open</b> [2] - 62:10,<br/>64:19</p> <p><b>opened</b> [15] - 65:15,<br/>66:12, 66:15,<br/>66:17, 66:19,<br/>66:20, 66:22, 67:9,<br/>67:13, 68:2, 68:11,<br/>68:18, 73:5, 73:9,<br/>125:5</p> <p><b>opening</b> [6] - 118:15,<br/>118:18, 119:2,<br/>119:6, 119:11,<br/>119:13</p> <p><b>openings</b> [1] - 62:15</p> <p><b>operating</b> [1] - 13:3</p> <p><b>opinion</b> [1] - 60:18</p> <p><b>opposed</b> [2] - 115:12,<br/>118:22</p> <p><b>order</b> [4] - 50:18,<br/>70:12, 88:20, 93:15</p> <p><b>ordinary</b> [1] - 44:19</p> <p><b>original</b> [4] - 23:20,<br/>91:19, 92:11, 121:5</p> <p><b>originally</b> [1] - 67:14</p> <p><b>otherwise</b> [1] -<br/>134:17</p> <p><b>outcome</b> [1] - 134:17</p> <p><b>outs</b> [1] - 116:23</p> <p><b>outside</b> [3] - 78:7,<br/>105:21, 106:4</p> <p><b>overall</b> [1] - 5:14</p> <p><b>overcharging</b> [1] -<br/>116:4</p> <p><b>overview</b> [1] - 45:14</p> <p><b>own</b> [3] - 20:17,<br/>32:21, 125:14</p> |
| <p><b>N</b></p>  | <p><b>name</b> [23] - 16:21,<br/>26:10, 27:10,<br/>27:13, 27:14,<br/>27:17, 28:2, 28:7,<br/>28:8, 28:9, 29:6,<br/>29:11, 29:15,<br/>29:19, 39:15,<br/>42:11, 42:14,<br/>54:10, 58:12, 75:2,<br/>102:23, 104:21,</p>  | <p><b>oath</b> [3] - 4:10, 11:9,<br/>35:5</p> <p><b>object</b> [2] - 124:10,<br/>124:13</p> <p><b>objection</b> [11] -<br/>17:23, 26:4, 31:1,<br/>31:2, 35:3, 54:21,<br/>59:15, 84:10,<br/>118:17, 119:8,<br/>130:4</p> <p><b>objections</b> [1] - 13:10</p> <p><b>obligations</b> [2] -</p>  | <p><b>O</b></p>  |  |

|   |  |  |   |  |
|---|--|--|---|--|
| <p><b>P</b></p> <p><b>p.m</b> [1] - 132:8</p> <p><b>package</b> [3] - 122:4, 122:6, 125:9</p> <p><b>Packet</b> [1] - 3:13</p> <p><b>Page</b> [2] - 3:2, 3:7</p> <p><b>page</b> [21] - 14:19, 14:22, 14:23, 15:19, 16:20, 18:24, 19:5, 19:13, 29:12, 40:16, 41:21, 44:8, 44:20, 45:9, 45:10, 46:10, 72:15, 101:4, 111:4, 126:14</p> <p><b>PAGES</b> [1] - 1:1</p> <p><b>pages</b> [1] - 96:5</p> <p><b>paid</b> [4] - 30:8, 57:20, 78:19, 89:20</p> <p><b>pains</b> [3] - 72:17, 73:15, 89:24</p> <p><b>Pam</b> [1] - 29:15</p> <p><b>Pamela</b> [4] - 27:11, 34:1, 35:11, 35:14</p> <p><b>paper</b> [1] - 112:10</p> <p><b>paragraph</b> [16] - 19:19, 22:8, 24:2, 25:8, 25:22, 32:24, 33:23, 34:12, 42:17, 45:11, 72:22, 73:16, 76:16, 97:14, 100:1</p> <p><b>pardon</b> [2] - 15:2, 123:22</p> <p><b>part</b> [4] - 13:15, 50:8, 56:3, 96:9</p> <p><b>participated</b> [3] - 11:17, 11:24, 15:13</p> <p><b>particular</b> [3] - 12:13, 41:14, 111:8</p> <p><b>parties</b> [3] - 22:9, 99:1, 134:15</p> <p><b>pass</b> [3] - 50:5, 50:14, 121:13</p> <p><b>passed</b> [2] - 50:24, 125:3</p> <p><b>passes</b> [1] - 124:16</p> <p><b>past</b> [2] - 21:18, 102:10</p> <p><b>Paul</b> [2] - 2:21, 104:21</p> <p><b>pay</b> [2] - 87:21, 88:10</p> <p><b>paying</b> [3] - 89:6, 89:9, 89:13</p> <p><b>payment</b> [19] - 86:16, 87:17, 87:20, 88:3, 89:3, 92:11, 92:12, 93:7, 94:21,</p> | <p>108:20, 108:22, 109:19, 109:20, 109:22, 109:24, 110:1, 110:2, 110:5, 110:6</p> <p><b>payments</b> [3] - 88:15, 88:23, 109:16</p> <p><b>penalties</b> [3] - 72:18, 73:15, 90:1</p> <p><b>PENALTIES</b> [1] - 133:15</p> <p><b>people</b> [16] - 7:19, 9:16, 16:17, 22:11, 26:23, 52:22, 53:19, 55:11, 55:13, 57:20, 60:24, 62:12, 80:11, 105:8, 105:10, 129:11</p> <p><b>percent</b> [6] - 5:2, 23:23, 66:9, 66:13, 128:8, 128:10</p> <p><b>percentage</b> [8] - 67:21, 93:1, 94:2, 94:7, 94:9, 94:10, 94:11, 95:7</p> <p><b>perfect</b> [2] - 28:12, 127:19</p> <p><b>perform</b> [1] - 124:22</p> <p><b>performance</b> [1] - 104:14</p> <p><b>performed</b> [1] - 121:17</p> <p><b>period</b> [2] - 96:14, 125:3</p> <p><b>periodically</b> [1] - 116:4</p> <p><b>perjury</b> [3] - 72:18, 73:16, 90:1</p> <p><b>PERJURY</b> [1] - 133:15</p> <p><b>Perkins</b> [1] - 2:10</p> <p><b>permission</b> [2] - 130:6, 130:9</p> <p><b>permits</b> [1] - 79:5</p> <p><b>person</b> [16] - 7:3, 9:9, 9:11, 17:6, 26:9, 26:11, 34:18, 34:20, 87:12, 101:15, 101:17, 101:19, 102:15, 102:18, 104:24, 105:5</p> <p><b>personal</b> [2] - 114:1, 114:17</p> <p><b>personally</b> [3] - 90:16, 114:22, 117:23</p> <p><b>phone</b> [2] - 22:11, 71:4</p> | <p><b>phonetic</b> [3] - 10:11, 58:10, 128:4</p> <p><b>phrase</b> [2] - 12:14, 68:22</p> <p><b>phrasing</b> [1] - 130:20</p> <p><b>physically</b> [2] - 40:22, 66:20</p> <p><b>piece</b> [1] - 112:9</p> <p><b>Pilgrim</b> [5] - 102:24, 103:1, 104:15, 107:21, 118:24</p> <p><b>pipes</b> [1] - 99:8</p> <p><b>place</b> [8] - 9:20, 14:4, 29:2, 60:14, 62:19, 64:22, 88:21, 111:19</p> <p><b>placed</b> [2] - 128:15, 128:16</p> <p><b>places</b> [1] - 41:1</p> <p><b>plain</b> [1] - 20:24</p> <p><b>Plaintiff</b> [4] - 1:7, 1:16, 2:8, 4:8</p> <p><b>plan</b> [1] - 26:8</p> <p><b>played</b> [1] - 52:23</p> <p><b>player</b> [1] - 84:24</p> <p><b>players</b> [1] - 57:22</p> <p><b>playing</b> [4] - 61:15, 93:3, 95:13, 95:15</p> <p><b>plays</b> [1] - 51:7</p> <p><b>Plaza</b> [1] - 2:10</p> <p><b>plus</b> [1] - 94:2</p> <p><b>Plymouth</b> [14] - 25:11, 26:2, 26:10, 26:13, 26:22, 27:3, 27:8, 28:16, 28:24, 29:22, 34:3, 101:19, 106:21, 106:22</p> <p><b>point</b> [12] - 9:2, 29:6, 29:16, 60:13, 61:3, 67:6, 80:18, 82:14, 82:15, 102:14, 128:4, 128:6</p> <p><b>points</b> [1] - 76:8</p> <p><b>policies</b> [3] - 51:17, 55:10, 55:12</p> <p><b>policy</b> [18] - 51:19, 51:20, 52:10, 52:21, 55:16, 55:19, 56:17, 57:12, 60:6, 60:21, 61:14, 61:18, 62:6, 62:8, 62:19, 63:3, 81:10</p> <p><b>portion</b> [1] - 91:6</p> <p><b>portions</b> [2] - 15:1, 15:3</p> <p><b>position</b> [1] - 12:22</p> <p><b>possible</b> [4] - 8:21, 37:21, 81:3, 84:9</p> | <p><b>potential</b> [1] - 86:1</p> <p><b>practice</b> [1] - 86:2</p> <p><b>Prager</b> [1] - 2:6</p> <p><b>premises</b> [2] - 96:13, 114:10</p> <p><b>prep</b> [1] - 84:23</p> <p><b>prepare</b> [1] - 38:17</p> <p><b>prepared</b> [3] - 41:23, 49:13, 72:20</p> <p><b>preparing</b> [1] - 4:14</p> <p><b>presence</b> [1] - 72:23</p> <p><b>PRESENT</b> [1] - 2:18</p> <p><b>present</b> [6] - 38:3, 41:15, 41:17, 77:14, 78:3, 105:24</p> <p><b>presentation</b> [1] - 13:24</p> <p><b>presented</b> [4] - 42:19, 49:23, 131:4, 131:11</p> <p><b>pretty</b> [3] - 48:22, 54:3, 126:18</p> <p><b>previous</b> [5] - 6:6, 49:16, 50:11, 85:19, 121:2</p> <p><b>previously</b> [1] - 26:12</p> <p><b>price</b> [21] - 64:1, 64:4, 64:19, 64:21, 65:16, 66:12, 66:15, 66:17, 66:23, 67:9, 67:12, 67:15, 68:2, 68:11, 70:24, 73:6, 73:9, 121:5, 121:22, 122:12, 122:21, 124:16, 125:7, 126:14</p> <p><b>proposed</b> [1] - 4:15</p> <p><b>protests</b> [1] - 129:23</p> <p><b>provide</b> [4] - 17:16, 18:6, 18:12, 117:2</p> <p><b>provided</b> [9] - 21:13, 23:17, 43:9, 43:15, 103:2, 104:14, 109:2, 116:17, 117:6</p> <p><b>providing</b> [1] - 116:19</p> <p><b>provision</b> [2] - 61:11, 94:22</p> <p><b>provisions</b> [1] - 1:16</p> <p><b>Public</b> [2] - 1:18, 134:5</p> <p><b>purport</b> [2] - 39:23, 40:16</p> <p><b>pursuant</b> [1] - 1:16</p> <p><b>pursue</b> [3] - 21:17, 59:10, 99:2</p> <p><b>put</b> [22] - 8:17, 12:5, 12:10, 27:13, 28:2, 28:3, 43:2, 49:7, 61:5, 61:9, 69:5, 69:7, 81:17, 91:23,</p> | <p>50:1, 50:16, 84:7, 85:4, 85:9, 91:15, 91:21, 105:13, 105:19, 118:1, 123:20, 123:24, 124:19</p> <p><b>procurement</b> [8] - 15:21, 16:2, 16:21, 17:1, 25:3, 29:20, 30:2, 34:3</p> <p><b>procurements</b> [1] - 30:7</p> <p><b>product</b> [1] - 7:20</p> <p><b>PROFESSIONAL</b> [1] - 1:23</p> <p><b>property</b> [1] - 96:9</p> <p><b>proposal</b> [15] - 64:1, 64:4, 82:17, 83:23, 92:24, 93:1, 93:19, 93:23, 93:24, 94:20, 105:1, 105:6, 105:9, 111:11, 122:9</p> <p><b>proposals</b> [23] - 64:20, 64:21, 65:16, 66:12, 66:15, 66:17, 66:23, 67:9, 67:12, 67:15, 68:2, 68:11, 70:24, 73:6, 73:9, 121:5, 121:22, 122:12, 122:21, 124:16, 125:7, 126:14</p> <p><b>proposed</b> [1] - 4:15</p> <p><b>protests</b> [1] - 129:23</p> <p><b>provide</b> [4] - 17:16, 18:6, 18:12, 117:2</p> <p><b>provided</b> [9] - 21:13, 23:17, 43:9, 43:15, 103:2, 104:14, 109:2, 116:17, 117:6</p> <p><b>providing</b> [1] - 116:19</p> <p><b>provision</b> [2] - 61:11, 94:22</p> <p><b>provisions</b> [1] - 1:16</p> <p><b>Public</b> [2] - 1:18, 134:5</p> <p><b>purport</b> [2] - 39:23, 40:16</p> <p><b>pursuant</b> [1] - 1:16</p> <p><b>pursue</b> [3] - 21:17, 59:10, 99:2</p> <p><b>put</b> [22] - 8:17, 12:5, 12:10, 27:13, 28:2, 28:3, 43:2, 49:7, 61:5, 61:9, 69:5, 69:7, 81:17, 91:23,</p> |
|---|--|--|---|--|

|  |   |   |   |   |
|--|---|---|---|---|
| 104:7, 104:24,<br>105:5, 105:8,<br>120:13, 120:15,<br>129:6  | <b>reasons</b> [3] - 48:7,<br>48:11, 111:11<br><b>recalled</b> [2] - 127:11,<br>128:2<br><b>receive</b> [5] - 51:14,<br>51:15, 103:5,<br>121:4, 122:6<br><b>received</b> [19] - 7:5,<br>22:8, 23:5, 23:8,<br>25:18, 25:21,<br>40:10, 45:23,<br>48:13, 57:4,<br>109:24, 110:1,<br>115:24, 118:7,<br>119:7, 122:3,<br>122:12, 122:14,<br>122:15<br><b>receiving</b> [2] - 45:19,<br>60:4<br><b>recent</b> [1] - 107:13<br><b>recently</b> [3] - 22:3,<br>24:17, 76:5<br><b>recess</b> [4] - 100:22,<br>110:10, 113:7,<br>126:21<br><b>recognize</b> [2] - 18:18,<br>40:9<br><b>record</b> [20] - 4:3,<br>17:24, 22:5, 34:8,<br>34:10, 35:22,<br>46:20, 48:12,<br>56:13, 90:3,<br>110:20, 110:21,<br>112:11, 112:12,<br>113:14, 126:17,<br>130:11, 130:12,<br>133:6, 134:11<br><b>recreation</b> [2] -<br>51:14, 102:14<br><b>Recreation</b> [1] - 57:7<br><b>red</b> [2] - 23:8, 62:22<br><b>referred</b> [1] - 116:21<br><b>referring</b> [4] - 15:11,<br>17:6, 80:11, 120:8<br><b>reflect</b> [1] - 46:20<br><b>refresh</b> [2] - 40:7,<br>53:16<br><b>refreshed</b> [4] - 65:2,<br>65:7, 118:20,<br>127:16<br><b>refused</b> [1] - 74:3<br><b>regard</b> [5] - 41:14,<br>59:12, 62:16,<br>70:23, 96:8<br><b>regarding</b> [9] - 14:1,<br>18:19, 22:17,<br>31:11, 33:14,<br>80:20, 96:21,<br>116:1, 128:17<br><b>Registered</b> [2] - 1:17, | 134:4<br><b>REGISTERED</b> [1] -<br>1:23<br><b>regular</b> [1] - 57:22<br><b>regulations</b> [1] -<br>90:11<br><b>reject</b> [1] - 77:20<br><b>rejected</b> [2] - 9:7,<br>91:15<br><b>rejecting</b> [1] - 94:15<br><b>rejection</b> [1] - 92:3<br><b>related</b> [2] - 20:5,<br>30:7<br><b>relative</b> [2] - 134:14,<br>134:15<br><b>relay</b> [1] - 67:1<br><b>relying</b> [2] - 127:21,<br>127:24<br><b>remarked</b> [1] - 126:10<br><b>remember</b> [136] - 6:1,<br>6:16, 7:14, 7:15,<br>8:7, 9:4, 9:8, 13:18,<br>13:23, 14:8, 14:12,<br>21:1, 26:1, 27:12,<br>29:18, 34:19, 36:4,<br>36:7, 36:8, 36:10,<br>36:17, 36:18, 37:1,<br>37:5, 37:16, 37:22,<br>37:23, 37:24, 38:5,<br>39:5, 40:24, 43:17,<br>45:16, 45:18,<br>45:19, 45:24, 47:1,<br>47:5, 48:2, 48:3,<br>48:7, 53:4, 54:1,<br>54:2, 54:9, 54:15,<br>54:16, 54:17,<br>55:23, 56:19, 57:9,<br>58:15, 59:6, 59:16,<br>60:4, 60:7, 63:1,<br>63:5, 64:2, 64:23,<br>65:13, 66:14,<br>66:20, 70:22,<br>71:21, 73:23,<br>74:19, 75:2, 78:8,<br>78:9, 78:13, 78:15,<br>78:16, 79:8, 79:15,<br>80:22, 80:23, 81:2,<br>81:4, 81:15, 81:16,<br>81:18, 82:24, 83:4,<br>83:14, 84:8, 84:11,<br>85:16, 92:12,<br>93:21, 93:22, 98:3,<br>102:11, 103:6,<br>106:5, 106:6,<br>108:13, 108:14,<br>108:17, 109:6,<br>109:8, 109:10,<br>109:13, 111:16,<br>111:19, 111:20,<br>111:22, 112:2, | 112:13, 112:17,<br>112:18, 113:17,<br>113:22, 116:19,<br>119:10, 119:13,<br>120:3, 120:4,<br>120:10, 121:1,<br>121:10, 121:11,<br>122:2, 122:19,<br>123:1, 123:18,<br>125:12, 127:20,<br>128:1, 128:8,<br>128:19, 129:2,<br>129:10<br><b>remembered</b> [3] -<br>65:5, 127:18,<br>128:14<br><b>remembering</b> [1] -<br>76:14<br><b>remembers</b> [1] -<br>54:22<br><b>rendered</b> [1] - 82:21<br><b>rent</b> [3] - 98:2,<br>108:20, 109:15<br><b>report</b> [1] - 101:4<br><b>reported</b> [2] - 101:7,<br>129:14<br><b>Reporter</b> [5] - 1:18,<br>134:4, 134:5<br><b>REPORTERS</b> [1] -<br>1:23<br><b>REPORTING</b> [1] -<br>1:22<br><b>reports</b> [2] - 103:16,<br>103:19<br><b>represented</b> [1] -<br>106:2<br><b>representing</b> [1] -<br>109:14<br><b>requested</b> [3] - 72:23,<br>76:17, 76:23<br><b>requests</b> [1] - 39:4<br><b>require</b> [2] - 111:8,<br>117:2<br><b>required</b> [4] - 69:6,<br>70:16, 83:11, 111:1<br><b>reserved</b> [1] - 13:11<br><b>residence</b> [3] - 96:8,<br>98:10, 98:16<br><b>Resign</b> [1] - 59:9<br><b>resigned</b> [1] - 59:10<br><b>respective</b> [1] - 78:24<br><b>respond</b> [1] - 28:15<br><b>responded</b> [3] - 22:1,<br>28:1, 117:5<br><b>response</b> [5] - 6:24,<br>11:11, 39:4, 60:4,<br>80:8<br><b>responsible</b> [1] - 98:6<br><b>restoration</b> [3] - 99:7,<br>99:10, 99:19 | <b>resubmitted</b> [1] -<br>83:22<br><b>result</b> [3] - 55:17,<br>60:20, 71:14<br><b>returned</b> [1] - 124:24<br><b>revenue</b> [6] - 85:19,<br>85:21, 86:7, 86:15,<br>86:19, 87:9<br><b>review</b> [6] - 7:3,<br>13:15, 39:23,<br>49:23, 102:8, 131:7<br><b>reviewed</b> [17] - 7:6,<br>22:9, 23:16, 25:10,<br>25:19, 25:22, 26:3,<br>26:9, 34:1, 35:10,<br>35:14, 35:19, 65:6,<br>70:11, 94:19,<br>114:8, 117:20<br><b>reviewing</b> [1] - 70:4<br><b>RFP</b> [51] - 6:11, 6:24,<br>7:2, 7:18, 9:5, 9:7,<br>10:2, 11:1, 11:4,<br>11:7, 11:18, 12:1,<br>14:9, 18:11, 18:20,<br>26:9, 27:6, 28:22,<br>31:11, 32:1, 33:14,<br>34:12, 35:7, 37:12,<br>56:11, 63:12,<br>63:24, 64:3, 83:6,<br>84:6, 85:4, 85:9,<br>85:13, 91:15,<br>91:17, 91:20, 92:2,<br>92:11, 92:14,<br>101:6, 101:8,<br>101:12, 101:24,<br>102:5, 102:8,<br>102:9, 117:24,<br>124:15, 125:21,<br>126:12<br><b>RICHARD</b> [1] - 1:11<br><b>Richard</b> [7] - 15:15,<br>16:15, 27:22, 28:6,<br>80:5, 121:15, 129:4<br><b>rid</b> [1] - 55:6<br><b>ride</b> [1] - 108:2<br><b>ring</b> [2] - 91:13,<br>106:10<br><b>rings</b> [1] - 129:21<br><b>Ripley</b> [2] - 128:5,<br>128:6<br><b>Robbins</b> [1] - 128:4<br><b>ROBERT</b> [1] - 1:10<br><b>Robert</b> [2] - 19:22,<br>20:1<br><b>Rocco</b> [4] - 59:1,<br>59:9, 59:11, 81:16<br><b>Rockland</b> [1] - 121:7<br><b>Roger</b> [1] - 66:5<br><b>role</b> [1] - 102:13<br><b>room</b> [4] - 33:22, |
| <b>Q</b>   |   |   |   |   |
| <b>qualified</b> [1] - 93:16<br><b>questions</b> [17] - 6:10,<br>14:24, 19:16, 29:2,<br>53:13, 60:2, 72:6,<br>91:8, 96:5, 115:7,<br>124:7, 124:11,<br>124:13, 127:4,<br>127:6, 130:5,<br>131:21<br><b>quick</b> [1] - 120:2<br><b>quickly</b> [2] - 122:5,<br>122:16<br><b>quite</b> [2] - 9:15, 52:22<br><b>quorum</b> [2] - 36:20,<br>47:9<br><b>quote/unquote</b> [1] -<br>26:8   |   |   |   |   |
| <b>R</b>   |   |   |   |   |
| <b>raise</b> [1] - 131:20<br><b>ran</b> [1] - 121:7<br><b>range</b> [1] - 86:3<br><b>rangers</b> [1] - 63:8<br><b>rates</b> [4] - 115:11,<br>115:16, 115:22,<br>116:2<br><b>rather</b> [1] - 44:15<br><b>rating</b> [4] - 111:6,<br>111:9, 111:10,<br>111:11<br><b>RDR</b> [1] - 134:23<br><b>reaction</b> [3] - 11:14,<br>11:15, 11:19<br><b>read</b> [14] - 14:22,<br>19:16, 40:2, 50:6,<br>53:12, 59:24, 60:1,<br>73:14, 89:19,<br>90:21, 91:7,<br>114:14, 116:10,<br>133:4<br><b>reading</b> [1] - 90:6<br><b>ready</b> [1] - 50:14<br><b>real</b> [1] - 30:18<br><b>realized</b> [2] - 68:20,<br>71:1<br><b>really</b> [4] - 21:1,<br>66:20, 80:9, 114:12<br><b>Realtime</b> [2] - 1:18,<br>134:5<br><b>reason</b> [3] - 30:18,<br>40:19, 123:2 |   |   |   |   |

|  |  |   |  |   |
|--|--|---|--|---|
| <p>60:15, 71:6, 75:1<br/> <b>round</b> [1] - 64:10<br/> <b>RUFO</b> [1] - 1:11<br/> <b>rules</b> [1] - 90:10<br/> <b>Rules</b> [1] - 1:17<br/> <b>running</b> [3] - 61:23, 61:24, 116:16</p> | <p><b>Selectmen</b> [8] - 3:9, 5:21, 24:8, 33:14, 52:3, 52:6, 107:16, 113:18<br/> <b>selectmen's</b> [1] - 28:13<br/> <b>send</b> [13] - 7:9, 7:13, 7:16, 7:20, 7:23, 8:5, 18:24, 20:7, 20:15, 25:24, 27:22, 101:6, 121:15<br/> <b>Send</b> [2] - 27:21, 32:2<br/> <b>sending</b> [1] - 27:20<br/> <b>senior</b> [1] - 112:14<br/> <b>sent</b> [28] - 7:7, 8:1, 8:9, 8:11, 8:23, 15:24, 17:4, 17:8, 18:18, 19:19, 19:24, 21:2, 21:6, 21:10, 25:23, 26:14, 26:15, 26:21, 26:23, 27:2, 27:7, 28:5, 31:24, 32:3, 33:19, 35:15, 41:2, 121:14<br/> <b>September</b> [2] - 42:18, 118:13<br/> <b>septic</b> [1] - 86:12<br/> <b>served</b> [1] - 114:19<br/> <b>services</b> [2] - 119:16, 120:18<br/> <b>SESSION</b> [1] - 113:12<br/> <b>session</b> [8] - 5:10, 5:20, 47:19, 47:23, 48:5, 48:8, 78:17, 107:10<br/> <b>set</b> [7] - 41:3, 41:11, 48:14, 49:19, 121:21, 134:8, 134:19<br/> <b>seven</b> [1] - 48:6<br/> <b>several</b> [2] - 23:15, 26:16<br/> <b>Sheehan</b> [3] - 107:20, 107:23, 120:4<br/> <b>short</b> [1] - 21:16<br/> <b>shorten</b> [1] - 83:17<br/> <b>Shorthand</b> [1] - 134:3<br/> <b>shortly</b> [5] - 80:18, 91:18, 114:8, 122:21, 122:23<br/> <b>show</b> [4] - 14:17, 31:7, 53:9, 72:11<br/> <b>Showing</b> [1] - 57:1<br/> <b>showing</b> [5] - 19:11, 21:5, 59:21, 91:3, 95:22<br/> <b>shown</b> [2] - 130:15, 131:1</p> | <p><b>side</b> [2] - 29:24, 30:3<br/> <b>sign</b> [13] - 73:15, 73:19, 74:3, 75:7, 75:17, 76:3, 89:16, 89:24, 90:5, 130:18, 131:5, 131:12<br/> <b>signatories</b> [1] - 57:16<br/> <b>signature</b> [3] - 72:15, 75:20, 76:1<br/> <b>SIGNED</b> [1] - 133:15<br/> <b>signed</b> [10] - 72:17, 96:21, 96:23, 97:5, 99:24, 100:7, 100:11, 113:24, 114:4, 130:17<br/> <b>significant</b> [2] - 93:22, 102:11<br/> <b>signing</b> [1] - 75:13<br/> <b>similar</b> [1] - 86:10<br/> <b>single</b> [1] - 62:14<br/> <b>sitting</b> [2] - 28:14, 28:20<br/> <b>situation</b> [1] - 63:9<br/> <b>six</b> [1] - 48:6<br/> <b>slot</b> [1] - 120:14<br/> <b>small</b> [1] - 20:24<br/> <b>Smith</b> [2] - 65:14, 106:2<br/> <b>Smith's</b> [2] - 78:17, 88:19<br/> <b>smooth</b> [2] - 61:23, 61:24<br/> <b>smooth-running</b> [1] - 61:24<br/> <b>socially</b> [1] - 85:1<br/> <b>solution</b> [1] - 82:9<br/> <b>solve</b> [1] - 97:24<br/> <b>someone</b> [6] - 59:2, 77:4, 102:7, 120:12, 123:8, 129:7<br/> <b>sometime</b> [3] - 48:23, 91:16, 122:3<br/> <b>sometimes</b> [5] - 12:19, 43:4, 44:16, 44:17, 120:13<br/> <b>somewhat</b> [2] - 65:1, 90:12<br/> <b>somewhere</b> [6] - 5:3, 9:6, 9:22, 22:1, 23:22, 104:4<br/> <b>son</b> [3] - 84:17, 84:19, 84:21<br/> <b>sorry</b> [5] - 16:14, 23:2, 28:4, 42:22, 85:23<br/> <b>sound</b> [2] - 125:24, 126:1</p> | <p><b>sounds</b> [1] - 115:19<br/> <b>speaking</b> [1] - 127:16<br/> <b>Special</b> [1] - 2:16<br/> <b>specialist</b> [4] - 101:9, 101:13, 101:24, 102:6<br/> <b>specific</b> [7] - 12:7, 12:11, 22:16, 23:7, 37:14, 37:15, 61:4<br/> <b>specifically</b> [3] - 56:10, 63:7, 65:23<br/> <b>specifications</b> [1] - 86:12<br/> <b>speculate</b> [1] - 11:10<br/> <b>spend</b> [1] - 94:16<br/> <b>spent</b> [1] - 94:18<br/> <b>spoken</b> [3] - 30:12, 77:4, 129:14<br/> <b>spreadsheet</b> [1] - 43:3<br/> <b>spring</b> [3] - 45:7, 96:16, 96:18<br/> <b>ss</b> [2] - 1:4, 134:2<br/> <b>staff</b> [3] - 34:13, 43:5, 77:22<br/> <b>staffed</b> [1] - 63:9<br/> <b>stage</b> [3] - 29:3, 94:13, 101:18<br/> <b>stamped</b> [1] - 57:6<br/> <b>standing</b> [4] - 28:14, 119:15, 119:21, 120:10<br/> <b>start</b> [1] - 14:19<br/> <b>starters</b> [1] - 63:8<br/> <b>starts</b> [1] - 49:22<br/> <b>STATE</b> [1] - 1:23<br/> <b>statements</b> [5] - 66:2, 66:8, 103:3, 116:18, 116:20<br/> <b>states</b> [1] - 21:23<br/> <b>status</b> [3] - 5:14, 5:16<br/> <b>statute</b> [3] - 69:11, 69:13, 69:20<br/> <b>stay</b> [2] - 85:20, 86:19<br/> <b>stayed</b> [1] - 60:21<br/> <b>step</b> [1] - 21:18<br/> <b>Stephen</b> [1] - 2:2<br/> <b>Steve</b> [5] - 13:2, 32:7, 34:4, 96:3, 123:19<br/> <b>sticker</b> [2] - 33:7, 33:9<br/> <b>sticking</b> [1] - 123:4<br/> <b>still</b> [6] - 35:23, 81:19, 91:24, 102:14, 117:23, 129:21<br/> <b>stipulate</b> [2] - 46:6, 54:21<br/> <b>stipulated</b> [1] - 88:2<br/> <b>stipulations</b> [1] - 13:4</p> | <p><b>stone</b> [1] - 129:4<br/> <b>stop</b> [1] - 93:2<br/> <b>story</b> [2] - 30:20, 30:24<br/> <b>stream</b> [4] - 85:21, 86:15, 86:19, 87:9<br/> <b>Street</b> [4] - 1:19, 2:3, 2:11, 2:15<br/> <b>STREET</b> [1] - 1:23<br/> <b>Studley</b> [1] - 65:10<br/> <b>stuff</b> [6] - 37:12, 86:17, 98:7, 98:24, 114:13, 115:5<br/> <b>submission</b> [2] - 83:21, 95:11<br/> <b>submit</b> [1] - 103:15<br/> <b>submitted</b> [7] - 45:14, 49:10, 64:13, 121:6, 124:17, 125:8, 125:9<br/> <b>submitting</b> [1] - 122:9<br/> <b>subsequently</b> [6] - 18:12, 24:10, 73:24, 75:19, 77:8, 77:9<br/> <b>subtract</b> [1] - 27:23<br/> <b>suffered</b> [1] - 90:17<br/> <b>suggest</b> [1] - 14:4<br/> <b>suggested</b> [2] - 45:20, 125:21<br/> <b>suggesting</b> [1] - 32:12<br/> <b>suggestion</b> [1] - 124:8<br/> <b>suggestions</b> [2] - 23:10, 23:11<br/> <b>Suite</b> [2] - 2:7, 2:15<br/> <b>Sullivan</b> [8] - 15:15, 33:13, 81:13, 85:9, 85:12, 86:18, 87:2, 107:15<br/> <b>summary</b> [1] - 106:8<br/> <b>summer</b> [2] - 111:16, 112:5<br/> <b>summers</b> [1] - 44:16<br/> <b>Sundays</b> [2] - 55:21, 56:5<br/> <b>superintendent</b> [4] - 82:21, 83:1, 83:12, 105:3<br/> <b>Superior</b> [5] - 65:14, 77:14, 78:18, 108:6, 108:16<br/> <b>superior</b> [1] - 105:24<br/> <b>SUPERIOR</b> [1] - 1:4<br/> <b>supervise</b> [1] - 100:18<br/> <b>supposed</b> [6] - 27:21, 41:10, 55:1, 64:4,</p> |
|--|--|---|--|---|

|   |  |   |   |   |
|---|--|---|---|---|
| 69:12, 116:6<br><b>Susan</b> [1] - 39:16<br><b>sworn</b> [2] - 4:10, 134:10<br><b>system</b> [1] - 86:12  | <b>three</b> [3] - 5:3, 5:24, 98:16<br><b>threw</b> [3] - 111:21, 112:3, 112:15<br><b>throughout</b> [1] - 115:14<br><b>thrown</b> [1] - 111:22<br><b>Thursday</b> [2] - 52:16, 52:24<br><b>tip</b> [1] - 29:9<br><b>today</b> [9] - 5:18, 6:18, 27:6, 45:21, 91:11, 114:23, 116:7, 126:23, 132:5<br><b>today's</b> [1] - 4:14<br><b>together</b> [4] - 91:23, 108:3, 108:7, 123:9<br><b>tongue</b> [1] - 29:9<br><b>Tony</b> [1] - 85:6<br><b>took</b> [8] - 14:4, 43:6, 44:16, 60:14, 93:11, 95:4, 105:10, 111:19<br><b>top</b> [5] - 14:22, 16:22, 29:12, 45:10, 103:10<br><b>topic</b> [4] - 5:7, 5:12, 12:20, 85:12<br><b>totally</b> [1] - 129:17<br><b>touch</b> [2] - 78:10, 78:14<br><b>Town</b> [12] - 2:12, 2:16, 3:8, 25:11, 28:16, 29:21, 34:3, 96:16, 97:1, 99:23, 103:11, 103:13<br><b>TOWN</b> [1] - 1:9<br><b>town</b> [82] - 4:19, 5:24, 6:14, 6:19, 6:23, 9:14, 15:13, 15:20, 16:9, 16:17, 19:21, 20:3, 20:4, 21:16, 21:23, 24:24, 25:2, 26:11, 28:11, 30:4, 30:21, 35:16, 39:10, 39:12, 39:17, 40:10, 41:7, 41:11, 45:15, 59:1, 64:13, 64:16, 64:19, 65:9, 65:20, 66:1, 66:18, 69:2, 70:8, 71:2, 71:3, 72:23, 73:11, 76:16, 76:17, 76:22, 77:1, 77:19, 80:2, 86:7, 87:14, 88:3, 90:17, 93:20, 94:11, 97:5, 97:23, 98:9, 99:1, 99:3, 99:4, 99:9, 99:20, | 100:4, 101:8, 101:12, 101:23, 102:4, 103:2, 104:11, 104:17, 105:10, 105:16, 105:18, 105:21, 106:2, 107:1, 124:24, 125:19, 129:10<br><b>town-appointed</b> [2] - 101:8, 101:12<br><b>transcript</b> [6] - 3:8, 13:14, 14:15, 14:18, 133:4, 133:6<br><b>transpired</b> [1] - 112:18<br><b>trial</b> [3] - 13:11, 66:5, 130:6<br><b>tried</b> [2] - 36:19, 130:18<br><b>Troy</b> [66] - 4:22, 5:1, 9:14, 10:6, 10:9, 10:24, 11:4, 11:6, 11:17, 11:20, 11:24, 12:24, 14:1, 14:9, 14:11, 15:14, 15:18, 15:19, 16:20, 17:17, 19:22, 21:20, 22:17, 23:14, 24:6, 24:11, 24:23, 28:15, 28:20, 30:20, 33:19, 38:1, 39:1, 48:18, 52:8, 65:11, 65:13, 65:21, 66:9, 72:20, 73:10, 73:19, 74:2, 74:24, 75:7, 77:18, 78:5, 79:3, 79:17, 79:20, 80:5, 80:12, 82:1, 89:16, 106:1, 109:14, 109:21, 111:21, 112:3, 112:15, 128:9, 128:11, 128:16, 128:19, 129:14, 130:18<br><b>Troy's</b> [3] - 14:12, 75:11, 111:17<br><b>true</b> [12] - 15:22, 25:15, 30:18, 31:4, 68:16, 73:20, 74:4, 74:11, 90:5, 100:8, 133:6, 134:10<br><b>trusted</b> [1] - 90:6<br><b>truth</b> [3] - 11:12, 16:11, 16:12<br><b>try</b> [2] - 85:18, 93:10<br><b>trying</b> [3] - 36:16, 87:23, 123:3 | <b>Tuesday</b> [1] - 1:20<br><b>Turf</b> [1] - 54:10<br><b>turn</b> [3] - 19:13, 44:20, 124:6<br><b>turned</b> [4] - 16:20, 89:21, 119:19, 120:16<br><b>turning</b> [1] - 47:12<br><b>turns</b> [1] - 16:3<br><b>twelve</b> [1] - 88:13<br><b>two</b> [18] - 21:9, 40:24, 42:23, 44:15, 45:7, 48:10, 55:15, 68:20, 70:8, 80:10, 82:2, 82:3, 84:22, 85:14, 94:16, 94:18, 99:15, 130:2<br><b>two-month</b> [1] - 45:7<br><b>type</b> [1] - 43:2<br><b>typical</b> [1] - 42:20<br><b>typically</b> [1] - 50:5<br><b>typing</b> [1] - 43:11 | 81:17, 84:4, 93:10, 93:13, 94:21, 95:12, 98:17, 103:18, 127:13, 127:15<br><b>upset</b> [1] - 11:13<br><b>upshot</b> [1] - 111:20<br><b>usual</b> [1] - 13:3 |
| <b>T</b>  | <b>V</b>   |   |   |   |
| <b>tall</b> [1] - 20:24<br><b>tape</b> [1] - 14:16<br><b>target</b> [1] - 101:6<br><b>taxpayers</b> [2] - 61:18, 61:22<br><b>team</b> [2] - 84:19, 84:21<br><b>Ted</b> [1] - 107:7<br><b>tee</b> [18] - 51:20, 52:20, 55:15, 55:20, 56:4, 56:17, 57:11, 60:5, 60:20, 61:6, 61:14, 61:18, 62:3, 62:15, 62:19, 63:3, 81:10, 87:5<br><b>TEL</b> [1] - 1:24<br><b>telephone</b> [2] - 9:9, 34:24<br><b>ten</b> [2] - 63:17, 88:3<br><b>ten-year</b> [1] - 63:17<br><b>tenure</b> [2] - 48:3, 115:10<br><b>term</b> [5] - 12:11, 17:12, 43:16, 115:14, 129:23<br><b>terms</b> [1] - 97:3<br><b>testified</b> [2] - 127:10, 128:2<br><b>testify</b> [1] - 5:17<br><b>testifying</b> [4] - 6:7, 108:13, 108:15, 108:17<br><b>testimony</b> [10] - 4:16, 4:21, 35:5, 69:20, 91:24, 98:13, 117:23, 133:5, 133:7, 134:11<br><b>Thanksgiving</b> [3] - 128:22, 129:16<br><b>THE</b> [8] - 5:9, 55:1, 109:7, 109:10, 124:3, 126:7, 132:6, 133:15<br><b>thereafter</b> [1] - 114:8<br><b>thermostat</b> [1] - 99:11<br><b>thinking</b> [2] - 94:16, 94:18<br><b>third</b> [2] - 44:8, 62:10<br><b>Thomas</b> [1] - 42:14<br><b>THOMAS</b> [1] - 1:11 | <b>vacation</b> [2] - 123:6, 123:13<br><b>vague</b> [1] - 52:7<br><b>valid</b> [1] - 124:8<br><b>vandalizing</b> [1] - 53:2<br><b>various</b> [8] - 12:3, 18:19, 22:11, 23:24, 30:4, 31:11, 35:16, 46:1<br><b>vendor</b> [8] - 15:24, 83:12, 86:11, 86:14, 95:10, 102:19, 102:20, 102:23<br><b>version</b> [3] - 62:22, 75:19, 75:21<br><b>violate</b> [1] - 90:15<br><b>violation</b> [1] - 113:21<br><b>voice</b> [2] - 60:17, 62:17<br><b>VOLUME</b> [1] - 1:1<br><b>voted</b> [1] - 50:24<br><b>vs</b> [1] - 1:8   |   |   |   |
|   | <b>U</b>   |   |   |   |
|   | <b>unacceptable</b> [1] - 69:15<br><b>uncertainty</b> [1] - 105:11<br><b>UNDER</b> [1] - 133:15<br><b>under</b> [10] - 11:8, 13:3, 17:7, 17:10, 35:5, 47:19, 72:17, 73:15, 89:24, 90:14<br><b>underlined</b> [4] - 14:19, 15:1, 15:3, 91:7<br><b>understood</b> [5] - 18:8, 93:5, 93:6, 94:10, 115:14<br><b>unfortunately</b> [1] - 73:8<br><b>unhappiness</b> [1] - 55:17<br><b>unhappy</b> [6] - 52:20, 55:9, 55:12, 55:15, 60:24<br><b>unless</b> [3] - 57:18, 65:5, 65:6<br><b>unprofessional</b> [1] - 44:5<br><b>unusual</b> [2] - 45:6, 45:8<br><b>up</b> [24] - 16:16, 26:15, 26:20, 28:23, 30:19, 51:5, 51:8, 52:17, 68:18, 71:20, 75:4, 78:18, 80:20, 80:24,   |   |   |   |
|   | <b>W</b>   |   |   |   |
|   | <b>Wait</b> [3] - 16:16, 24:11, 24:23<br><b>wait</b> [1] - 126:5<br><b>walked</b> [2] - 79:3, 119:19<br><b>watching</b> [1] - 66:4<br><b>ways</b> [2] - 22:11, 42:23<br><b>Wednesday</b> [4] - 3:10, 3:12, 128:22, 129:1<br><b>week</b> [1] - 122:24<br><b>weekday</b> [1] - 115:16<br><b>weekdays</b> [1] - 115:12<br><b>weekends</b> [3] - 61:20, 115:11, 115:17<br><b>weeks</b> [1] - 5:3<br><b>well-aware</b> [1] - 57:11<br><b>WHEREOF</b> [1] - 134:19   |   |   |   |

**WHITCOMB** <sup>[1]</sup> - 1:10  
**whole** <sup>[3]</sup> - 115:5,  
 122:3, 125:9  
**wildly** <sup>[1]</sup> - 79:21  
**willing** <sup>[1]</sup> - 30:23  
**wires** <sup>[1]</sup> - 99:11  
**wish** <sup>[1]</sup> - 29:4  
**WITNESS** <sup>[8]</sup> - 5:9,  
 55:1, 109:7,  
 109:10, 124:3,  
 126:7, 132:6,  
 134:19  
**witness** <sup>[20]</sup> - 4:7,  
 14:21, 18:17, 19:3,  
 31:9, 31:23, 32:17,  
 33:11, 40:15,  
 53:14, 56:24,  
 59:23, 72:13, 91:5,  
 96:2, 110:19,  
 117:18, 126:3,  
 134:8, 134:12  
**woman** <sup>[10]</sup> - 16:2,  
 16:5, 25:10, 25:23,  
 26:2, 26:21, 27:2,  
 27:8, 29:21, 30:12  
**won** <sup>[1]</sup> - 81:8  
**wonderful** <sup>[1]</sup> - 127:7  
**word** <sup>[6]</sup> - 71:12,  
 78:6, 92:14, 92:19,  
 93:7, 95:1  
**words** <sup>[4]</sup> - 63:24,  
 69:22, 111:1, 111:8  
**works** <sup>[2]</sup> - 20:3,  
 29:23  
**Wrenn** <sup>[1]</sup> - 109:14  
**WRENN** <sup>[1]</sup> - 109:14  
**writing** <sup>[5]</sup> - 10:24,  
 11:6, 23:9, 97:4,  
 129:10  
**written** <sup>[3]</sup> - 45:19,  
 46:2, 127:17  
**wrote** <sup>[2]</sup> - 24:21,  
 25:17  
**www.bramanti** <sup>[1]</sup> -  
 1:24  
**www.bramanti-**  
**lyons.com** <sup>[1]</sup> - 1:24

---

## Y

**year** <sup>[14]</sup> - 6:8, 6:19,  
 9:23, 36:5, 36:21,  
 37:11, 48:21,  
 48:23, 63:17,  
 78:16, 86:20,  
 86:22, 88:12, 110:5  
**yearly** <sup>[1]</sup> - 78:19  
**years** <sup>[16]</sup> - 36:17,  
 38:16, 43:8, 53:1,