





1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	PETER K. STRIS, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	SOPAN JOSHI, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioners	21
9	ORAL ARGUMENT:	
10	JOSEPH R. PALMORE, ESQ.	
11	On behalf of the Respondents	34
12	REBUTTAL ARGUMENT OF:	
13	PETER K. STRIS, ESQ.	
14	On behalf of the Petitioners	69
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:09 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next this morning in Case 17-1712, Thole versus United States Bank.

Mr. Stris.

ORAL ARGUMENT OF PETER K. STRIS

ON BEHALF OF THE PETITIONERS

MR. STRIS: Thank you, Mr. Chief Justice, and may it please the Court:

My clients are beneficiaries of a pension trust. We allege that the trustees, through disloyalty and imprudence, caused the trust to lose \$750 million. The suit presents a justiciable case or controversy for three reasons:

First, my clients have an equitable interest in all assets of their pension trust. That is a property interest. And when \$750 million of that property was lost, my clients suffered a concrete injury.

Respondents are between a rock and a hard place. They can't argue that participants have an equitable interest in only some of the trust corpus, because the trust is unsegregated

1 and undivided. So they're forced to take the  
2 incredible position, to quote their brief, that  
3 defined-benefit plan participants have no  
4 interest in plan assets.

5 If Respondents were right, no one  
6 would have an equitable interest in any of the  
7 trust's assets. But a trust can't exist unless  
8 someone holds equitable title to its assets, and  
9 that someone here can only be the participants.

10 Second, and independently, my clients  
11 have a right to loyal stewardship of their  
12 retirement savings. When Respondents engaged in  
13 self-dealing, my clients suffered a concrete  
14 injury. Under the centuries-old "no further  
15 inquiry" rule, beneficiaries could sue even when  
16 there was no conceivable possibility of a  
17 financial loss. The breach itself gives rise to  
18 a case or controversy.

19 In any event, and third, my clients  
20 have representational standing to vindicate  
21 injury to their plan. Since before the  
22 founding, when a trustee was unwilling to sue,  
23 equity courts allowed beneficiaries to do so on  
24 behalf of the trust.

25 And so I'd like to begin with our

1 property injury. A defined-benefit plan under  
2 ERISA is a private exchange of services.  
3 Workers forgo wages in exchange for a promise of  
4 a future payment secured by trust property.  
5 This is critical because there is an  
6 unsegregated, undivided pool of assets, the  
7 trust, that pays the pension of all the  
8 beneficiaries. So plan participants, like my  
9 clients, have an equitable interest in those  
10 assets.

11 CHIEF JUSTICE ROBERTS: Does your  
12 argument depend upon a forward-looking theory of  
13 injury? In other words, it's -- if -- it's one  
14 thing to have a -- a conflict of interest or all  
15 the other things you allege that lead to a  
16 situation that causes you no direct financial  
17 harm, but is your theory that, well, because  
18 they did that in this situation, and even if  
19 that didn't hurt us, somebody like that is  
20 likely to do it again and that might hurt us?  
21 Or is it purely the fact of -- retrospective,  
22 this person did something that under common  
23 trust law would be regarded as a bad thing, and  
24 under the no inquiry rule, that's enough, so you  
25 shouldn't worry about the fact that it didn't

1 harm us at all?

2 MR. STRIS: So the answer to that  
3 question is we have multiple concrete injuries  
4 here. And the things that we're seeking flow  
5 from the particular injuries, right?

6 So what I'm talking about right now is  
7 our property injury. If we're right that we  
8 have an equitable interest in the assets, that  
9 theory depends on a diminution in the value of  
10 the trust assets. So I don't know -- I wouldn't  
11 call that prospective; I would say the trust  
12 lost \$750 million, and so --

13 CHIEF JUSTICE ROBERTS: But what did  
14 your clients lose? I mean, your friend on the  
15 other side says they get nothing. They're in  
16 the same position if you win or if you lose.

17 MR. STRIS: Well, so I mean I -- I  
18 couldn't disagree with that more. There's  
19 always risk. Pension plans fail. Businesses  
20 fail. In 2008, AIG had \$100 billion until they  
21 didn't. And so --

22 CHIEF JUSTICE ROBERTS: Well, those  
23 are other situations. They say in this case --  
24 well, just look at it abstractly. You know, say  
25 you need \$600 million in your fund so everybody

1 will feel comfortable your clients are going to  
2 get everyone's benefits, and, you know, there  
3 are \$8 million in the fund and there's some  
4 fraud that reduces it to -- 800 million to -- to  
5 700 million. Do you think you could sue on that  
6 -- that misconduct by the trustee?

7 MR. STRIS: Well, if -- if the assets  
8 of the trust are -- are lost and there's been a  
9 breach, yes. I don't think it's abstract at  
10 all. If I loan -- if I loan Bill Gates money  
11 and take -- and I take a security interest, and  
12 he destroys the secured property, he encumbers  
13 it, he burns it down, I can still sue him even  
14 if he makes every progress payment and happens  
15 to have \$100 million in assets because we  
16 recognize that having a security interest in  
17 something is concrete.

18 Our core position --

19 CHIEF JUSTICE ROBERTS: But I  
20 understood -- I meant my hypothetical to suppose  
21 that the -- your property is -- is secure, your  
22 -- your -- your client's property, the  
23 beneficiaries' property is completely secure.  
24 In the Gates hypothetical, I thought you were  
25 suggesting -- you seem to be suggesting the



1 security that -- that protected the -- the  
2 interest of your -- your loan was -- was  
3 destroyed.

4 MR. STRIS: Oh, but --

5 CHIEF JUSTICE ROBERTS: But in my  
6 hypothetical -- it may not be your case -- but  
7 -- but in the abstract, what's alleged to have  
8 been wrongfully done doesn't affect the  
9 financial security of your defined-benefit plan.  
10 You can still sue --

11 MR. STRIS: So --

12 CHIEF JUSTICE ROBERTS: -- because the  
13 person's a bad guy?

14 MR. STRIS: No. You can still sue,  
15 but not because the person is a bad guy, but  
16 because your property interest has been  
17 impaired. I want to be very clear about this.

18 To have an equitable interest -- this  
19 has been the case since the 15th century. To  
20 have an equitable interest in trust assets, a  
21 beneficiary has never had to show that she's  
22 likely to receive the trust assets. As long as  
23 she has the possibility of benefiting from the  
24 assets, she has a present property right to  
25 prevent others from damaging them. That's the

1 lesson from the contingent and discretionary --

2 JUSTICE KAVANAUGH: But would they --

3 CHIEF JUSTICE ROBERTS: But what's the

4 --

5 JUSTICE KAVANAUGH: -- say --

6 MR. STRIS: -- cases.

7 CHIEF JUSTICE ROBERTS: But what's the  
8 lesson from Article III? There has to be a  
9 tangible injury to the plaintiff. And under my  
10 hypothetical, if 600 million's enough to secure  
11 them against anything, and the trust corpus goes  
12 from 800 million to 700 million, how are they  
13 injured in the terms of Article III?

14 MR. STRIS: In the same way that if I  
15 own property and you come and you put your toe  
16 on it, even though I never saw you, you didn't  
17 step on my tulips, you didn't upset me in any  
18 way, you impaired my property right.

19 JUSTICE GORSUCH: What if -- what if,  
20 counsel -- I mean, just to put the Chief's point  
21 in a -- in a finer light even than he has, which  
22 I think he has done an admirable job of, let's  
23 say this were a defined benefits plan rather  
24 than a defined contribution plan. And let's say  
25 that -- sorry, this were a defined contribution

1 plan rather than a defined benefits plan. And  
2 -- and the menu of options is varied. Most of  
3 them are clean. But there is one option that's  
4 dirty. Okay? But your client didn't invest in  
5 that.

6 MR. STRIS: Sure.

7 JUSTICE GORSUCH: Would you -- could  
8 you still sue?

9 MR. STRIS: I don't think -- I don't  
10 think --

11 JUSTICE GORSUCH: I mean, even in the  
12 law of trusts way back to the 15th century,  
13 there was a remoteness limitation --

14 MR. STRIS: Well --

15 JUSTICE GORSUCH: -- on how far  
16 someone could sue, wasn't there?

17 MR. STRIS: Well, so, Justice Gorsuch,  
18 I think there wouldn't be standing but it would  
19 have nothing to do with -- with remoteness. And  
20 here's why: In a defined contribution plan, the  
21 assets are -- are unsegregated, just as in a  
22 defined benefit plan. That's true. But they're  
23 not undivided.

24 So the proper analogue there would be  
25 -- and this happened a lot -- you had a trust,

1 it held the deed to Whiteacre. It held the deed  
2 to Blackacre. We don't suggest that the person  
3 who had the beneficial interest in Blackacre  
4 could sue for a restoration of losses to  
5 Whiteacre. That's the case in a defined  
6 contribution plan.

7 JUSTICE GORSUCH: Okay. So there are  
8 Article III limits, then, on how far the  
9 standing -- whatever is provided for by the  
10 statute here.

11 MR. STRIS: Well, there are many  
12 limits, just to be clear about the modesty of  
13 our position. First of all, from a historical  
14 standpoint, this is probably -- this -- what  
15 we're describing here in terms of the property  
16 interests impairment has more of -- at least as  
17 much of a historical pedigree as qui tam suits  
18 in Vermont Agency. And this Court has said time  
19 and time again that if suits existed at the time  
20 of the founding, it fit the definition of case  
21 or controversy from a constitutional  
22 perspective.

23 JUSTICE BREYER: If we do that -- I  
24 don't remember the 15th century, surprisingly,  
25 but, nonetheless --

1 (Laughter.)

2 JUSTICE BREYER: We did look up some  
3 things. And my -- at least a quick research  
4 suggests that -- that there are different  
5 duties, fiduciary duties. One is the duty of  
6 loyalty. Another is the duty of prudence.

7 And in respect to loyalty, yes, what  
8 you say, I think, shows pretty accurate, people  
9 with an interest in trust, like beneficiary can  
10 sue the trustee for breach of the loyalty where  
11 he may be invested in a great investment for  
12 them, but he shouldn't have, because it helped  
13 him too.

14 But there was a duty of prudence,  
15 which seems what you're really interested in.  
16 And there you couldn't. That is to say, they  
17 said that a -- that a life beneficiary could sue  
18 for loss of income but if there is no risk of  
19 loss of income, he can't sue.

20 A remainderman could sue to injuries  
21 to the principal of the trust, but that's all he  
22 has an interest in. And as long as that's safe,  
23 he can't sue.

24 Now if that's the right analogy, I  
25 would draw from that, yeah, you can sue for

1 duties of breach of loyalty, but not for duties  
2 of a breach of prudence.

3 MR. STRIS: So a few responses,  
4 Justice Breyer.

5 So loyalty is our second injury. I  
6 haven't gotten to that yet. The property injury  
7 is prudence. That is what I'm talking about.

8 JUSTICE BREYER: And there the  
9 remainderman could not sue, it says.

10 MR. STRIS: We're -- absolutely.  
11 We're not a remainderman.

12 JUSTICE BREYER: Oh, you aren't? What  
13 is your interest in the money -- in the trust  
14 that is any greater since it's fully funded and  
15 everything and has many, many sources, that was  
16 greater than the remainderman's interest in the  
17 income that's being paid out of a body -- a  
18 corpus, which you will eventually get, which  
19 isn't hurt?

20 MR. STRIS: The answer is, we have an  
21 interest in a promise of future payments secured  
22 by the entirety of the trust corpus.

23 And let me tell you about history. So  
24 the rule for a present beneficiaries with a  
25 contingent interest has been settled since at

1 least 1808, according to the English Courts of  
2 Chancery. I would point your attention to Allen  
3 versus Allen. This is 33 English Reporter 704.  
4 Here's what the English Courts of Chancery said  
5 and it is followed through in every case that I  
6 have seen.

7 A present interest, the enjoinder of  
8 which may depend upon the most remote and  
9 improbable contingency, is nevertheless a  
10 present estate.

11 JUSTICE BREYER: Yes, that's -- you're  
12 talking about a contingent interest. A  
13 contingent interest is an interest in a certain  
14 set of -- a certain property, a certain body of  
15 money. A remainderman had no interest.

16 MR. STRIS: That's right. We had --

17 JUSTICE BREYER: But he would receive  
18 not a contingent interest. He had no interest  
19 in anything except the body of --

20 MR. STRIS: Where the --

21 JUSTICE BREYER: -- and -- and what --  
22 it's hard to see a difference between that  
23 remainderman and the interest of a beneficiary.

24 MR. STRIS: Here's the difference.

25 JUSTICE BREYER: Go ahead.

1 MR. STRIS: The difference comes both  
2 from the plan document in this case and ERISA.

3 Let's start with the plan document.  
4 It's pages 60 to 61 of the Joint Appendix.  
5 Here's what it says. And this is representative  
6 of every defined-benefit plan I've seen.

7 It says, "All of the plan assets," and  
8 that's not a contract, that's stocks, bonds,  
9 investments, "shall be held in a trust fund  
10 separate from the bank's assets." It says, "the  
11 trust assets can only be used to benefit the  
12 participants, except as permitted by ERISA and  
13 the tax code."

14 ERISA and the tax code are very clear,  
15 they prohibit taking or wasting any of the trust  
16 assets, including the surplus. So the point  
17 that's being made here to -- to -- to what I  
18 believe you were asking, Mr. Chief Justice,  
19 which is a fair point is, well, you may not need  
20 the surplus, so how do you have an interest?

21 And -- and our core submission is that  
22 since the 15th century, the way trust law has  
23 worked is, it has -- it has conferred a property  
24 interest in the corpus without any case-by-case  
25 assessment. But --



1 JUSTICE ALITO: But you -- you have  
2 some strong arguments. I -- I want to get this  
3 one question in before your time is up.

4 And you have arguments based on of  
5 Congress having granted a right to sue, and you  
6 have arguments based on the -- the -- the  
7 analogy between trust law and ERISA, but an  
8 ERISA plan is not a trust in the normal sense of  
9 the word. But put all of that aside. I want to  
10 hear about practicalities.

11 So let's say a beneficiary of a  
12 defined-benefit plan comes to you and says: I  
13 don't know anything about ERISA, I don't even  
14 know what it means, I don't know anything about  
15 trust law or the 15th century, anything like  
16 that.

17 What I want you to tell me is, what is  
18 the practical chance -- this is the beneficiary  
19 of this plan -- that I'm not going to get paid  
20 my benefits? What do you tell that person?

21 MR. STRIS: So that -- that's a --  
22 a -- a totally fair question, and let me answer  
23 it in the context of this case. And I mean this  
24 very seriously.

25 If you look at our complaint, Joint

1 Appendix page 90, paragraph 167, we pled,  
2 because we believe that there was a substantial  
3 increased risk of default here, there was \$750  
4 million less.

5 JUSTICE ALITO: But you pled --

6 MR. STRIS: In answering the --

7 JUSTICE ALITO: You pled that, but  
8 compliance with Article III has to be reassessed  
9 at different stages of the -- of the proceeding.  
10 Is there any -- is the risk greater than the  
11 risk of being hit by a meteorite?

12 MR. STRIS: This is my core point,  
13 Justice Alito. As -- I think the best example  
14 of this is the Pension Rights Center's brief.  
15 They explain, based up on their experience that  
16 the swings in funding and -- of -- of  
17 defined-benefit plans changes incredibly  
18 quickly. The Harley case out of the Eighth  
19 Circuit. In one year, there was a \$600 million  
20 contribution but the plan was 800 billion --  
21 \$800 billion dollars underfunded.

22 CHIEF JUSTICE ROBERTS: Well, that --

23 MR. STRIS: Because of --

24 CHIEF JUSTICE ROBERTS: I'm sorry, go  
25 ahead.

1           MR. STRIS: Because of that, the --  
2           the -- Congress exercised their judgment to say  
3           we are going to confer a property interest in  
4           the entirety of the trust corpus so we don't  
5           have to do a case-by-case assessment. The --

6           JUSTICE KAVANAUGH: But Congress made  
7           clear that not only the plan but the employer  
8           and then the PBGC, which you haven't mentioned  
9           at all, is in play here. And the combination of  
10          the plan, the employer, and the PBGC, doesn't  
11          that make the practical answer to Justice  
12          Alito's question --

13          MR. STRIS: Well, I don't think --  
14          that's a fair point. I don't think so at all.  
15          The PBGC, which has its own solvency issues --

16          JUSTICE KAVANAUGH: It does, but it's  
17          backed by the United States Government.

18          MR. STRIS: Not the full faith and  
19          credit of the government. It's -- what happens  
20          is there are premium payments so it doesn't  
21          function that way. But more importantly, the  
22          PBGC doesn't fund anything above a minimum set  
23          of benefits. The core -- here's the answer to  
24          the core practical question.

25          JUSTICE KAVANAUGH: But they exceed

1 the benefits of your clients in this case.

2 MR. STRIS: There -- there are two  
3 things going on here right now. I want to be  
4 very --

5 JUSTICE KAVANAUGH: Is that --

6 MR. STRIS -- clear --

7 JUSTICE KAVANAUGH: Is that yes?

8 MR. STRIS: Yes, my two clients, yes.  
9 But there's two things going on here, Justice  
10 Kavanaugh, and it's really important to separate  
11 them out: What matters for standing and what --  
12 why we care practically. I am answering the  
13 latter one.

14 And what I'm saying is, in any  
15 individual case, you don't know whether you're  
16 going to need the surplus until it's gone. I  
17 think if -- if the financial collapse in AIG and  
18 Lehman tells us anything, it's that.

19 So if I am right that Congress said,  
20 in exchange for a tax benefit, you have to put  
21 all of these assets in trust, you have to confer  
22 a property interest in the full -- the full  
23 trust, I have -- I'm right on standing and  
24 there's -- there's an Article III injury, you  
25 don't have to inquire into the risk, but I also

1 have a practical answer that doesn't matter for  
2 standing but, so that you don't have heartburn,  
3 you can see why a sensible policy-maker would  
4 make that decision. That's precisely what they  
5 did.

6 And that's precisely how many types of  
7 analogous trusts worked in an unbroken line of  
8 cases since the 15th century.

9 JUSTICE GINSBURG: Before you -- you  
10 finish, can you clarify the precise actions of  
11 the fiduciary that you are assailing in this  
12 case?

13 MR. STRIS: Yes.

14 JUSTICE GINSBURG: First the district  
15 court said that to challenge to the 100 percent  
16 equity investment is off the table because it's  
17 time-barred. So I think that that's out of the  
18 case.

19 MR. STRIS: I -- I don't agree.

20 JUSTICE GINSBURG: All right. Then  
21 tell -- tell me -- and then as far as the  
22 bank-affiliated funds, they say that they -- the  
23 bank says you long ago got rid of all of them.

24 MR. STRIS: So here's what happened,  
25 Justice Ginsburg, and this is critical of the

1 procedural posture.

2 May I answer, Your Honor?

3 CHIEF JUSTICE ROBERTS: Briefly.

4 MR. STRIS: I'll be -- I'll be brief.

5 The -- the first claim, the equities,  
6 was dismissed on statute of limitations grounds  
7 prior to this Court's decision in Tibble. We  
8 appealed. The court never -- the court of  
9 appeals never reached the question because it  
10 held that we have no standing.

11 So you don't assume in doing the  
12 standing analysis that that claim is gone. The  
13 only reason that it's gone is because we weren't  
14 able to appeal it. Based on this Court's  
15 decision in Tibble, it will clearly be reversed.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel.

18 Mr. Joshi.

19 ORAL ARGUMENT OF SOPAN JOSHI

20 FOR THE UNITED STATES, AS AMICUS CURIAE,  
21 SUPPORTING THE PETITIONERS

22 MR. JOSHI: Mr. Chief Justice and may  
23 it please the Court:

24 When a trustee breaches his fiduciary  
25 duties and causes losses to the trust, real

1 money losses, the beneficiary always has been  
2 able to sue the trustee for the breach of trust.  
3 It's been the law for hundreds of years of trust  
4 law and it's expressly in ERISA's text as well.  
5 And that rule makes really good sense.

6           The beneficiaries are the ones who are  
7 getting paid out of the trust. The  
8 beneficiaries are the ones, as this Court  
9 recognized in Russell, who have an interest in  
10 the financial integrity of the trust. And the  
11 beneficiaries are in the best position to  
12 monitor and police the trustee for breaches of  
13 trust.

14           And that's why the traditional rule,  
15 as my friend mentioned earlier, is that even  
16 contingent beneficiaries could sue a trustee.  
17 But the rule goes even further than that. If  
18 you read the treatises, even discretionary  
19 beneficiaries could sue a trustee for breach of  
20 trust. These are beneficiaries who have  
21 absolutely no entitlement to any trust assets,  
22 except those that the trustee in his own  
23 discretion will give to the beneficiary.  
24 Nevertheless, a breach of trust would allow the  
25 beneficiary to sue that very trustee.

1           That history, I think, decides this  
2 case. We --

3           JUSTICE GORSUCH: Let me propose a  
4 hypothetical then about the defined contribution  
5 plans. Let's say the trustee is left with  
6 discretion. After everybody is paid, if there's  
7 extra, you can throw it to somebody, even though  
8 it's not in their own contribution plan.

9           So I think you would say the result  
10 would be that every single beneficiary could  
11 sue, even if all of their investments are clean,  
12 for somebody else's defined contribution plan  
13 where the -- where the -- where the plan might  
14 be dirty; is that right? Does that follow?

15           MR. JOSHI: I -- I think that might  
16 follow, and I think it might -- I -- I -- I do  
17 think it might and I think that comes from not  
18 only our -- our -- you know, the positions we've  
19 laid out in the case in trust law and the  
20 undifferentiated assets but also from this  
21 Court's decision in LaRue.

22           In LaRue, of course, this Court held  
23 that the plaintiff, who was suing over harms to  
24 his own account, nevertheless could maintain a  
25 suit under 502(a)(2) for harm to the entire



1 trust because the trust included the account,  
2 the account was part of the trust.

3 So I think on that theory, then, if  
4 you just extend it, that would have to be the  
5 logic. My answer would have to be yes. But --  
6 I want to --

7 JUSTICE GORSUCH: Everybody could sue  
8 for everything.

9 MR. JOSHI: -- I want to hasten to add  
10 that, as a practical matter, these cases,  
11 especially in the posture you just mentioned,  
12 are -- are going to arise in the class context,  
13 and I think it would be perfectly reasonable for  
14 a court to look at that and --

15 JUSTICE GORSUCH: What about -- what  
16 about Justice Alito's meteor, the likelihood of  
17 getting a discretionary benefit from the trustee  
18 might be less than the chance of being hit by a  
19 meteor? Would Article III have something to say  
20 there? Or are you saying -- suggesting now,  
21 everybody can sue for everything anyway?

22 MR. JOSHI: So, historically, trust  
23 law has allowed the beneficiary to sue the  
24 trustee, a discretionary beneficiary to do so.  
25 And one might imagine when you sue the trustee,

1 he's probably not likely to exercise his  
2 discretion in your favor; but, nevertheless, you  
3 were allowed to sue.

4           What Article III has to say about  
5 it -- and -- and I know there's a lot of  
6 doctrine around Article III, but I think the key  
7 point, and -- and Spokeo reiterated it and 50  
8 years of case law has reiterated it, it comes  
9 from the words "cases and controversies" in the  
10 text of the Constitution. And the meaning of  
11 those words at a minimum includes the cases and  
12 controversies heard in the courts of Westminster  
13 and in the colonies at the --

14           JUSTICE KAVANAUGH: But isn't that --

15           MR. JOSHI: -- time of the founding.

16           JUSTICE KAVANAUGH: -- the -- I'm  
17 sorry. The tension in this case as I see it,  
18 and I think it's a close case, is the history is  
19 strong but the answer to the question -- it's  
20 99.99 percent certain that the benefits promised  
21 are going to be there. And how do we resolve  
22 what I see as that tension? Because it -- it  
23 would be odd for us to grant standing in a case  
24 where the -- the chances are so small.

25           On the other hand, you're right about

1 the history. I mean, you make a good point  
2 about the history.

3 MR. JOSHI: Yeah, I -- I -- I think  
4 the answer really is the history, but to the  
5 extent, you know, there's a chance, I guess I  
6 have two answers to that. One is this Court has  
7 and -- and certainly the "no further inquiry"  
8 cases made clear that even when the trust  
9 benefits from a particular breach of duty, you  
10 still have standing, if you will, to sue.

11 And, you know, one case out of many  
12 that we cited is Magruder against Drury. That's  
13 a decision of this Court in which the trustee  
14 was making loans on trust notes and allowing the  
15 trust to -- to acquire those notes, and it was  
16 on -- there was no question that it was on  
17 beneficial terms and there was no question that  
18 the trust benefited because it could make these  
19 reinvestments and save brokerage fees. That --  
20 those are in the facts of -- of the decision of  
21 this Court. Nevertheless, the Court said that,  
22 you know, not only did the beneficiaries have  
23 standing to sue -- it didn't discuss standing --  
24 but they -- they were entitled to recover. So  
25 that's one answer.

1           The other answer to your -- to your  
2           question is, no matter how low the risk might be  
3           as my friend mentioned -- PBGC tells me that  
4           plans that are highly overfunded the next year  
5           become underfunded. So as a practical matter,  
6           you don't know and, more importantly --

7           JUSTICE KAVANAUGH: What is -- what is  
8           the role -- I'm sorry to interrupt, but the  
9           PBGC, how should we think about that, if we get  
10          away from the history at all, its role and how  
11          it guarantees a back stop?

12          MR. JOSHI: I -- I don't think it  
13          matters at all. No one ever suggested that the  
14          mere fact that you might have insurance means  
15          you don't have standing to sue someone for the  
16          harms --

17          JUSTICE KAVANAUGH: It's the --

18          MR. JOSHI: -- they've caused.

19          JUSTICE KAVANAUGH: It's the  
20          combination of the plan plus the employer plus  
21          the PBGC would all have to --

22          MR. JOSHI: You -- the fact that there  
23          may be many layers of insurance, if you will,  
24          doesn't change the fact that when a trustee  
25          breaches his fiduciary duties, you can sue. And

1 then --

2 JUSTICE ALITO: And how -- how far  
3 with you push the analogy to trust law in this?  
4 Since -- it -- was there a trust where the  
5 settlor of the trust had an obligation to step  
6 in and increase the amount of money in the trust  
7 in order to -- to ensure that beneficiaries  
8 would be paid?

9 MR. JOSHI: Not -- not to my  
10 knowledge. And --

11 JUSTICE ALITO: I mean, that's the big  
12 difference between the situation here and trust  
13 law, right?

14 MR. JOSHI: I -- I don't think it's  
15 different. I don't think it's a distinction  
16 that -- that makes any practical difference, at  
17 least for Article III. It is an additional  
18 protection that the drafters of ERISA wanted to  
19 make, in addition to making the plan its own  
20 entity. Those are all additional protections  
21 for beneficiaries, precisely because in  
22 Congress's judgment, as this Court laid out in  
23 footnote 8 of Russell, trust law was not  
24 protective enough of beneficiaries.

25 And -- and here's is the point -- and

1 this is to finish my answer to -- to your  
2 question, Justice Kavanaugh -- to merely say  
3 it's highly likely you're going to get your  
4 money back is -- you might say that if, for  
5 example, to -- to pick up on my friend's  
6 analogy, you know, you were to loan money to  
7 Bill Gates. You're pretty sure he's going to be  
8 able to repay your money, but the difference  
9 between having the repayment or the -- the money  
10 you're entitled to come as a result of a  
11 contract and come as a result of a trust is very  
12 different.

13           You get a very meaningful benefit from  
14 having your money come from a trust. And that  
15 is it's managed by a fiduciary --

16           JUSTICE BREYER: All right. Can you  
17 just give me -- do you want to finish? Go  
18 ahead.

19           MR. JOSHI: Yeah. Sure.

20           JUSTICE BREYER: All right. Just  
21 don't spend more than 15 seconds. But what in  
22 the law -- see, the stock market goes up and  
23 down. And every time it goes down, it's  
24 underfunded. Every time it goes up, it's  
25 overfunded. Okay? Once it's overfunded,

1 everybody's just as well off as they were  
2 before.

3 Now, that happens probably quite a  
4 lot. Now, if we -- if you -- what in the law  
5 prevents a class action every time it goes down  
6 and then it goes back up and they're better off,  
7 and you say, well, now we're talking about  
8 yesterday? What prevents -- something should  
9 prevent that. Now, what is it that prevents  
10 that?

11 MR. JOSHI: Well, I -- I'm not certain  
12 what context you're talking about.

13 JUSTICE BREYER: I'm just saying the  
14 standing thing might be one of the things that  
15 prevents that because -- I mean, I -- and you  
16 can say, well, they have to have a good case,  
17 dah-dah-dah. All right, I understand that.  
18 But, what -- is there anything else in the law  
19 that, except this standing business, that can  
20 protect against that?

21 MR. JOSHI: If you have suffered an  
22 injury of a peppercorn, you have standing to  
23 sue. Now, you -- there might not be --

24 JUSTICE BREYER: But that's --

25 MR. JOSHI: But the other thing is

1 that --

2 JUSTICE BREYER: -- of course, I want  
3 to say, okay, your answer is nothing protects in  
4 the law.

5 MR. JOSHI: Well, again, it -- it's  
6 hard to answer that question in the abstract.  
7 What I do know is that, in this particular  
8 context, there are trust duties that are set  
9 forth in the law --

10 JUSTICE BREYER: I know --

11 MR. JOSHI: -- of trust --

12 JUSTICE BREYER: -- there's some, but  
13 this is a duty of prudence, which means you made  
14 a bad investment that -- and you do make bad  
15 investments and you say, well, the trustees say  
16 dah-dah-dah. Okay. But I wonder if there is  
17 anything that prevents against the roller  
18 coaster which would mean many, many suits, even  
19 though the beneficiaries are even better off  
20 sometimes after the stock market's finished its  
21 little roller coaster. So you're saying  
22 nothing? Okay. I got the answer.

23 MR. JOSHI: Well --

24 JUSTICE KAVANAUGH: Aren't you  
25 saying --



1 MR. JOSHI: What I'm --

2 JUSTICE KAVANAUGH: I'm sorry, aren't  
3 you saying the deference afforded to the plan  
4 administrators on the merits is --

5 MR. JOSHI: That -- that's --

6 JUSTICE BREYER: That's one.

7 JUSTICE KAVANAUGH: If properly  
8 applied?

9 JUSTICE BREYER: That's one.

10 MR. JOSHI: That's exactly right. And  
11 I think to -- to -- if you just look at it, you  
12 know, the -- the funding rules in 303 --

13 JUSTICE BREYER: Yeah.

14 MR. JOSHI: -- and the fiduciary rules  
15 in 404 and 406, Congress did not make these --

16 JUSTICE BREYER: Okay, all on the  
17 merits --

18 MR. JOSHI: -- to be exclusive.

19 They --

20 JUSTICE BREYER: I -- I -- I --

21 MR. JOSHI: -- they all apply at all  
22 times. It's --

23 JUSTICE BREYER: -- I see.

24 CHIEF JUSTICE ROBERTS: I'm not sure  
25 you're giving adequate weight to the -- when

1 you're looking at the history, the significance  
2 of Article III to our role in the separation of  
3 powers.

4 The requirement to decide an actual  
5 case or controversy is the only thing that gives  
6 us authority to do what we do. And so the fact,  
7 well, you say in history in, you know, 14  
8 whatever you didn't need to show that, well,  
9 that doesn't necessarily take into account how  
10 Article III works today under the Constitution.

11 MR. JOSHI: That may be right, but as  
12 I said, the Magruder case and many others that  
13 we've cited in the briefs do recognize this  
14 principle of trust law. And I'd also point out  
15 that nobody disputes that if the allegations are  
16 true, that the plan's loss of \$748 million -- if  
17 I may finish -- is a injury to the plan and the  
18 plan itself would have standing to sue. But, of  
19 course, the plan's not a human being. Someone  
20 has to sue on behalf of it.

21 And when the trustee's the one that  
22 caused that loss, the one person who's going to  
23 step into the shoes to sue for the plan's injury  
24 is the beneficiary.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Mr. Palmore.

3 ORAL ARGUMENT OF JOSEPH R. PALMORE

4 ON BEHALF OF THE RESPONDENTS

5 MR. PALMORE: Thank you, Mr. Chief

6 Justice, and may it please the Court:

7 There is no ERISA exception to Article  
8 III. Like all plaintiffs in federal court,  
9 those with ERISA claims must demonstrate injury.  
10 Neither Petitioner here can do that.

11 This month, Petitioner James Thole  
12 will receive a pension payment of \$2,198.38,  
13 just as he has every month since his retirement  
14 from U.S. Bank. And Petitioner Sherry Smith  
15 will receive the same \$42.26 payment she has  
16 received since her retirement.

17 If this Court affirms dismissal of all  
18 of their claims, it is undisputed that those  
19 payments will be exactly the same every month  
20 for the rest of their lives, not one penny less.

21 If, on the other hand, this Court were  
22 to reverse, this case were to be litigated to  
23 judgment in favor of plaintiffs and they were to  
24 receive every single form of relief they demand,  
25 those payments would also be exactly the same,

1 not one penny more.

2 Federal courts are not available to  
3 adjudicate claims like this that do not matter  
4 to the plaintiffs. Whether viewed as a matter  
5 of Article III or statutory standing, none of  
6 Petitioners' arguments solve that fundamental  
7 problem with their case.

8 First, at trust law, beneficiaries  
9 could sue to challenge fiduciary breaches only  
10 when they affected their interests, unharmed  
11 beneficiaries could not sue.

12 Second, Petitioners lack any property  
13 interest in the trust underlying this  
14 defined-benefit pension plan. That is because,  
15 as this Court explained in Hughes Aircraft,  
16 their level of benefits is unconnected with the  
17 value of the assets in the trust corpus.

18 U.S. Bank, not a participant, bears  
19 the risk of loss from poor performance and U.S.  
20 Bank, not a participant, benefits from plan  
21 overfunding.

22 Third, Petitioners cannot sue in a  
23 representational capacity on behalf of the plan  
24 unless they have their own injury. In fact, for  
25 the reasons just stated, they don't.

1           Mr. Stris started off by saying they  
2     have a property interest in the plan, but under  
3     the structure of ERISA and under Hughes  
4     Aircraft, they don't. The trustee owns legal  
5     title of the plan and owns -- and the equitable  
6     interest in the plan is -- is the plan itself  
7     holds the equitable interest in the plan.

8           The -- and this -- the fact that they  
9     have no right to sue over the fluctuations, the  
10    ups and downs in the value in the trust corpus  
11    is actually entirely consistent with the history  
12    at trust law. They don't have a contingent  
13    interest in the plan in the sense of if A  
14    happens, they may inherit all of the trust  
15    corpus or if B happens, their benefits may get  
16    up -- may -- may go up.

17           They have no such interest. And at  
18    trust law, a plaintiff or a beneficiary whose  
19    interest was completely unconnected to the value  
20    of the trust could not sue. And we've cited the  
21    -- Bogert, section 871 for that proposition, the  
22    restatement second on torts, section 214,  
23    comment B, all stand for that proposition.

24           That's -- it's a different situation  
25    if you have a contingent beneficiary situation

1 where there are two beneficiaries --

2 JUSTICE KAVANAUGH: Can you imagine a  
3 -- a situation in which a participant in a  
4 defined-benefit plan would have standing? And  
5 can you describe the particular line that would  
6 separate that from this case?

7 MR. PALMORE: Yes, Your Honor. I  
8 think a -- a participant in a defined-benefit  
9 plan would have standing consistent with normal  
10 black letter Article III principles if they  
11 could show that there was a risk to their  
12 benefits.

13 JUSTICE KAVANAUGH: And how would they  
14 show that? How would they show that?

15 MR. PALMORE: Well, they could show,  
16 A, I'm not getting paid what I was promised.

17 JUSTICE KAVANAUGH: Okay. Put aside  
18 the not getting paid. But if they're still  
19 getting paid --

20 MR. PALMORE: Right.

21 JUSTICE KAVANAUGH: -- how would they  
22 show what are the particulars that you think  
23 would be necessary?

24 MR. PALMORE: Well, I think -- you  
25 know, I don't think -- first of all, I would

1 just preface my remarks by saying I don't think  
2 this case calls for --

3 JUSTICE KAVANAUGH: I understand that.

4 MR. PALMORE: -- the Court to opine on  
5 that because they've said that there's no risk  
6 at all that's required.

7 But I think this Court -- I think it  
8 would be simple factual application of Clapper  
9 where the Court talked about imminent risk or a  
10 substantial risk.

11 JUSTICE KAVANAUGH: Right. I know the  
12 terms. I'm just trying to figure out how --

13 MR. PALMORE: Well, I think --

14 JUSTICE KAVANAUGH: -- to assess --

15 MR. PALMORE: -- and I think those  
16 terms are flexible enough to take into account  
17 the long-term time horizon of a pension plan.  
18 So I don't think you'd have to show that the  
19 plan was going to fail tomorrow, but I think  
20 it's not -- wouldn't be enough to show that the  
21 plan was simply underfunded. The Fifth Circuit  
22 --

23 JUSTICE KAVANAUGH: Well, let me pause  
24 there. What's the delta between you can take  
25 into account the long-term likelihood --

1           MR. PALMORE: Well, I think you have  
2 to look --

3           JUSTICE KAVANAUGH: -- and  
4 underfunded. It seems like pleading. I guess  
5 my point is pleading what you think is necessary  
6 won't be as big a hurdle as you're really  
7 implying, I don't think.

8           MR. PALMORE: Well, I think you would  
9 have to plead not only was the plan at risk but  
10 that the employer either could not or would not  
11 fulfill its legal obligation to make up any  
12 deficit in the plan.

13           So the Fifth Circuit's case in Lee  
14 versus Verizon is instructive here. That was  
15 post-Spokeo, that was a GVR case in which the --  
16 that -- the Verizon pension plan was actually  
17 only 66 percent funded. But what the Fifth  
18 Circuit said was that the plaintiffs there  
19 hadn't adequately alleged injury because they  
20 hadn't alleged that Verizon, one of the biggest  
21 companies in the country, would be unable to  
22 fulfill its legal obligations to make up that  
23 deficit and to --

24           CHIEF JUSTICE ROBERTS: Well, we've  
25 had --



1                   MR. PALMORE: -- make good on their  
2                   payments.

3                   CHIEF JUSTICE ROBERTS: In the not too  
4                   far off past, there have been situations where  
5                   people were surprised of some of the companies  
6                   that turned out not to have enough money to go  
7                   forward.

8                   And it -- let's say that the -- a  
9                   person running the trust or the, you know,  
10                  running the company loses \$100 million in the  
11                  first month and 100 in the second and 100 in the  
12                  third, and although there is no significant harm  
13                  to the beneficiaries in the terms that you've  
14                  discussed it, they look and say: Well, this guy  
15                  is going to continue to lose a lot of money and  
16                  can you -- can they bring a suit in that case?

17                  MR. PALMORE: If they could show he's  
18                  going to continue to lose a lot of money and it  
19                  will result in an impairment of their only  
20                  interest, which is the stream of payments from  
21                  the pension plan, then yes, they can bring a  
22                  suit and they can get an injunction to have him  
23                  removed.

24                  JUSTICE SOTOMAYOR: So, I've --

25                  MR. PALMORE: Here, they've --

1 JUSTICE SOTOMAYOR: I've --

2 MR. PALMORE: -- never -- they've  
3 never established that or claimed that here.

4 JUSTICE SOTOMAYOR: I'm sorry. I  
5 don't know why we need all that, meaning there  
6 is a simple -- two simple claims here. One, a  
7 breach of loyalty that they invested in -- in a  
8 vehicle that cost more money than was needed,  
9 and it was self-dealing, so trust law has always  
10 said, you can't self-deal. You can't make money  
11 off of the assets of the plan.

12 So whether or not they get something  
13 or don't, trust law has been clear forever that  
14 that belongs to the trust and the plan  
15 participants have trustees who are self-dealing,  
16 they're not going to sue for themselves, we can  
17 sue for that self-dealing.

18 Secondly, the plan lost 750-odd  
19 billion dollars or whatever the money was,  
20 millions, in imprudent investment. Now, whether  
21 we lose money or not, the plan lost money. It  
22 lost \$753 million or whatever the figure was.  
23 And, in fact, until you contributed 311 million  
24 of that 753, the plan was underfunded.

25 You then came along and said: Well,

1 we'll give that much, a part of that loss but  
2 not the whole. And so if the trustees are not  
3 going to give the whole amount because it's not  
4 in their best interests, but it's in the plan's  
5 best interests, what does it matter whether the  
6 participants get a piece of that or not? The  
7 plan gets it and they're representing the plan.

8 So I -- I guess what I'm having  
9 trouble with in this case is that they're right,  
10 whether they have a property interest or they  
11 have a representational interest, they still  
12 have standing.

13 MR. PALMORE: Your Honor, first of  
14 all, they don't have a property interest for the  
15 reasons I stated --

16 JUSTICE SOTOMAYOR: So, why?

17 MR. PALMORE: -- and as the reasons  
18 this Court stated in Hughes Aircraft, they don't  
19 have a property interest.

20 JUSTICE SOTOMAYOR: Let's remember the  
21 following in Hughes. They were seeking a  
22 distribution of a surplus that the court said  
23 they couldn't seek.

24 MR. PALMORE: And the reason --

25 JUSTICE SOTOMAYOR: But here --

1 MR. PALMORE: Yes.

2 JUSTICE SOTOMAYOR: -- they're not  
3 asking for a distribution to themselves of a  
4 surplus. They are asking for a payment to the  
5 plan.

6 MR. PALMORE: Right. But Hughes  
7 rejected that claim on the merits because of the  
8 structure of defined-benefits plan.

9 But if I can move to the  
10 representational standing question that you  
11 asked, a party can sue on behalf of another only  
12 if that party has their own injury. That's  
13 Perry versus Hollingsworth. That's -- there are  
14 many such cases.

15 So in a qui tam case, the relator will  
16 personally recover and get money. In a  
17 derivative action, that the plaintiff owns a  
18 share of the corporation so any benefit to the  
19 corporation will flow down and -- and they will  
20 get a minute part of it. And if they don't,  
21 this Court explained in Gollust versus Mendell,  
22 there's an Article III problem.

23 With respect to the first part of your  
24 question, which is the no further inquiry rule,  
25 I think it is critical to understand there are

1 two separate questions: How is harm  
2 established, and then who has the relevant  
3 injury to sue to remedy that harm.

4 The "no further inquiry" rule went  
5 only to that first question. It said that if  
6 the trust engaged in a transaction that was  
7 inconsistent with the duty of loyalty or was  
8 otherwise prohibited, there would be a  
9 presumption of harm to the trust and, therefore,  
10 that transaction could be rescinded.

11 But there is always -- they don't need  
12 the presumption here. They have alleged harm to  
13 the trust. There's always a separate question  
14 of whose interest is implicated by harm to the  
15 trust.

16 JUSTICE GORSUCH: Counsel, on that,  
17 what if Congress had in its statute -- I know  
18 you would disagree that it did this -- what if  
19 it had said that every beneficiary has a  
20 property interest or a private right to a  
21 completely clean trustee. Would that suffice  
22 for standing in your view?

23 MR. PALMORE: I don't think so, Your  
24 Honor. Of course, I don't think you have to  
25 address that question. But as Spokeo explained,

1       there are limits on Congress's ability to  
2       provide causes of action and to identify  
3       injuries and make violation of them concrete.

4                 JUSTICE GORSUCH:  This isn't creating  
5       a cause of action.  I agree with you about all  
6       of that.  I understand your point.  But say you  
7       actually have a right, a legal right, creating a  
8       new -- and we know this is new, we admit it's  
9       new --

10                MR. PALMORE:  Yeah.

11                JUSTICE GORSUCH:  -- but we think it's  
12       important, because whatever -- whatever good  
13       policy reasons, some of which we have heard  
14       articulated here.

15                MR. PALMORE:  Well, I think this Court  
16       would look to the substance of it.  I think if  
17       they just labeled it a property interest, I  
18       don't think that would be good enough.  If they  
19       somehow tied the level of benefits to the value  
20       in the trust corpus, this would be a whole  
21       different ball game, and they clearly would have  
22       standing.

23                But like we talked earlier about the  
24       questions about the contingent beneficiaries, if  
25       you had two beneficiaries at common law, they

1 each had a 50 percent chance of getting the  
2 trust corpus, yes, they had standing at common  
3 law, because they did have an equitable interest  
4 in the trust corpus. They might get all of it.

5 Here we're not talking about  
6 50 percent. We're talking about zero percent.  
7 These Petitioners will never get any of this  
8 money.

9 JUSTICE KAGAN: Mr. Palmore,  
10 regardless of whether it's zero or 50, if I  
11 understand your argument, you are acknowledging  
12 that if they have an equitable interest, then  
13 they have standing; is that correct?

14 MR. PALMORE: If they had a property  
15 interest in --

16 JUSTICE KAGAN: An equitable interest  
17 --

18 MR. PALMORE: -- the trust corpus --

19 JUSTICE KAGAN: -- in the trust  
20 corpus.

21 MR. PALMORE: An equitable -- an  
22 equitable property interest, then, yes, a -- a  
23 loss of a dollar from the trust corpus is loss  
24 of a dollar to them, but they don't. That's the  
25 critical point.

1 JUSTICE KAGAN: So -- but that's what  
2 everything depends on in your view. I mean,  
3 your argument just falls apart if we look at  
4 ERISA and we say that's exactly what Congress  
5 did here, was to give all of the beneficiaries  
6 and participants an equitable interest in the  
7 integrity of the trust.

8 MR. PALMORE: And I don't want to  
9 quibble over terminology, but I would say an  
10 equitable property interest, if -- if they did  
11 --

12 JUSTICE KAGAN: That's what I --

13 MR. PALMORE: -- in the real. Yes --

14 JUSTICE KAGAN: We're not talking  
15 about --

16 MR. PALMORE: -- then perhaps, but  
17 they didn't. The plan is -- has the equitable  
18 interest and the fiduciary duties run to the  
19 plan. And, moreover --

20 JUSTICE KAGAN: And where do you --

21 MR. PALMORE: -- what they are  
22 entitled --

23 JUSTICE KAGAN: -- get that from?  
24 What does that mean, that the plan has the  
25 equitable interest? I mean, the plan is the



1 thing that there's an interest in, isn't there?

2 MR. PALMORE: No, Your Honor. This is  
3 -- the structure of an ERISA plan, you have a --  
4 legal title is owned by the trustee. And the  
5 trustee holds legal title for the benefit of the  
6 plan itself.

7 And this Court explained in Russell  
8 that the fiduciary duties run to -- for plan  
9 asset management, run to the plan, but even if  
10 you don't agree with that, I think the history  
11 here is still critical because at common law, a  
12 remainderman couldn't sue -- and this is Terry  
13 versus Allen, it's the -- it's the Connecticut  
14 Supreme Court case that we cite, Justice Breyer,  
15 the remainderman who had an interest in only the  
16 trust principal was a beneficiary but could not  
17 sue, didn't have standing to sue for  
18 mismanagement of that trust corpus because a  
19 bond protected his only interest, which was a  
20 certain payment.

21 Here U.S. Bank is the bond. We're  
22 talking about one of the best capitalized banks  
23 in the country. There is no risk that this plan  
24 was not going to be able to make good on the  
25 stream of payments to these plaintiffs and that

1 is their only legal interest. It's getting that  
2 check every month.

3 Now if they take --

4 JUSTICE ALITO: Do you think that -- I  
5 didn't quite understand your answer. Do you  
6 think that Article III is satisfied whenever  
7 Congress puts the label "property interest" or  
8 "equitable interest" on something?

9 MR. PALMORE: No, Your Honor, I didn't  
10 -- didn't mean to suggest that. I don't think  
11 the label would matter. I was trying to suggest  
12 that if it -- if it were substantively a  
13 property interest --

14 JUSTICE ALITO: What does that mean  
15 for it to be substantively a property interest?

16 MR. PALMORE: I think if their  
17 benefits were tried to the value of the trust  
18 corpus, then they would have standing. But if  
19 their benefits are fixed, as these benefits are,  
20 then -- and they can't show that any harm to the  
21 trust corpus actually jeopardized that stream of  
22 payments, then they don't have standing, just  
23 like the remainderman in Terry versus Allen --

24 JUSTICE KAVANAUGH: It's a little --

25 MR. PALMORE: -- didn't have standing.

1 JUSTICE KAVANAUGH: -- different  
2 though. I'm sorry to interrupt. It's a little  
3 different because we're talking about a  
4 predictive judgment, right? And the plaintiffs  
5 are going to say there's an increased risk of  
6 harm. And, of course, in regulatory cases that  
7 we've done, we've confronted that issue.

8 And how much of an increased risk of  
9 harm that they won't receive the payments is  
10 necessary, and isn't that just going to be a  
11 pleading exercise that prevents -- presents a  
12 whole new collateral set of cases trying to  
13 figure out have you pled exactly enough,  
14 increased risk of harm here?

15 And I guess the bottom line is is that  
16 worth the candle? I guess, summarizing, if we  
17 don't have clarity on the line, is it worth the  
18 candle of trying to draw a line rather than just  
19 going with the historical approach advocated by  
20 the other side?

21 MR. PALMORE: Well, Your Honor, first  
22 just to put a footnote on it, I disagree that  
23 the history is on their side.

24 JUSTICE KAVANAUGH: Right.

25 MR. PALMORE: But I think it is worth

1 the candle because Article III requires it,  
2 right? So Article III and Iqbal and Twombly  
3 would require proper pleadings. So here they  
4 said --

5 JUSTICE KAVANAUGH: I obviously agree  
6 with that --

7 MR. PALMORE: Yeah.

8 JUSTICE KAVANAUGH: -- but you've been  
9 referring to these old cases, which kind of said  
10 you're out. And you're not saying you're out if  
11 you're a participant in a defined-benefit plan.  
12 You're in, so long as you can allege a  
13 sufficiently increased risk of harm that my  
14 benefits won't be paid.

15 And then the question becomes: What  
16 do you have to allege to that? Well, it's  
17 underfunded and, therefore -- and the company  
18 may go belly up and, therefore, that's enough.

19 MR. PALMORE: Yeah, I think if it --  
20 if it was significantly underfunded and the  
21 company was struggling or was distressed and  
22 didn't have adequate assets --

23 JUSTICE KAVANAUGH: That's just going  
24 to be a whole mess, isn't it?

25 MR. PALMORE: But that's required in

1 order to show --

2 JUSTICE KAVANAUGH: Okay.

3 MR. PALMORE: -- that you have a  
4 injury. So I don't think it's a whole mess.  
5 There's a -- there's a ton of information  
6 available here.

7 So you look at the facts of Clapper,  
8 those plaintiffs had literally no ability to  
9 demonstrate that their calls were being --

10 JUSTICE KAVANAUGH: Right.

11 MR. PALMORE: -- surveilled.

12 Here pension plans file annual reports  
13 with the Department of Labor, that's the Form  
14 5500. There's ample public information about  
15 publicly-traded companies. There's a lot of  
16 information out there. And that information  
17 here showed that even at the time this plan was  
18 modestly underfunded, U.S. Bank had \$86 billion  
19 in liquid assets.

20 JUSTICE BREYER: But -- but --

21 CHIEF JUSTICE ROBERTS: There's a  
22 standard -- Article III, there's a lot of case  
23 law about what standard the injury has to  
24 satisfy. And if you're analyzing this under  
25 Article III, that's not an open issue.

1 Concrete, particularized, and so on and so forth  
2 that it has come -- developed through all sorts  
3 of cases where there's a challenge to the nature  
4 of the injury.

5 MR. PALMORE: No, that's absolutely  
6 right, so I think it really would be a  
7 fact-bound application of -- of -- of Clapper,  
8 of the imminent harm standard in Clapper or the  
9 substantial risk standard in Clapper, which --  
10 which the Court talked about, but what's --

11 JUSTICE KAVANAUGH: But, but -- sorry  
12 to prolong it, but it's bothering me. If you  
13 just allege that it's underfunded significantly,  
14 and therefore in the complaint it says and there  
15 is therefore a substantially increased risk of  
16 harm I won't receive my promised benefits, is  
17 that enough?

18 MR. PALMORE: That wouldn't be enough.

19 JUSTICE KAVANAUGH: Okay. What more  
20 is needed?

21 MR. PALMORE: I think -- and this,  
22 again, would be the Fifth Circuit's decision in  
23 Lee, which I would commend to the Court.

24 JUSTICE KAVANAUGH: So you agree with  
25 -- I just want to make sure, you agree with the

1 Fifth Circuit's formulation?

2 MR. PALMORE: We do. So underfunded  
3 isn't enough because of the way that ERISA is  
4 structured that the employer is always on the  
5 hook to make up any deficit in that plan. So  
6 you've got -- it would have to allege both  
7 underfunding and an employer who was unwilling  
8 or unable --

9 JUSTICE BREYER: That's -- that's --

10 MR. PALMORE: -- to remedy the  
11 problem.

12 JUSTICE BREYER: -- that's in a -- I  
13 agree with the Chief Justice that I've seen  
14 numerous cases. And whenever it's a question of  
15 standing and it's a money case, which this is,  
16 you have to have some injury to money. All  
17 right.

18 But we have two things: One, at least  
19 as to the duty of loyalty, the history seems to  
20 show that those were fairly typical trust cases  
21 brought, although there was no injury to the  
22 individual beneficiary or trustee beneficiary,  
23 who could have -- that's true of the duty of  
24 loyalty.

25 Under the -- that's -- we've looked at

1 the cites and they seem to say that.

2 MR. PALMORE: I respectfully disagree  
3 with that but let's --

4 JUSTICE BREYER: All right.

5 MR. PALMORE: -- continue.

6 JUSTICE BREYER: I want to know that.

7 MR. PALMORE: Okay.

8 JUSTICE BREYER: But the other is  
9 this: There are exceptions to this harm  
10 business quantitatively. The Sierra Club, I  
11 mean, their members can sue. And I agree that  
12 the members have to have once taken a, you know,  
13 a look around Yellowstone or something, but, I  
14 mean, it's pretty minimal.

15 And here Congress has tried to create  
16 an organization that involves pensions and, you  
17 know, the members that they list in the statute  
18 as being able to sue. So why isn't that good  
19 enough? Why isn't it good enough that -- that  
20 Congress has created something like an  
21 association, associational members do have the  
22 right to sue, even though there's nothing more  
23 than their belonging to an association that --  
24 that suffered? Shouldn't that be an analogy?  
25 Why not?



1 MR. PALMORE: No, Your Honor.

2 JUSTICE BREYER: So I am interested in  
3 both of those.

4 MR. PALMORE: Sure. First of all,  
5 under Rings v. Bird, the simple conferral of a  
6 cause of a cause of action is not enough to  
7 confer standing. And then what you were  
8 alluding to in 502(a)(2) and (a)(3), is simply a  
9 bare cause of action. That's not enough. There  
10 has to be an invasion of statutorily protected  
11 right and there has to be a concrete injury.

12 JUSTICE KAGAN: At the very least,  
13 though, Mr. Palmore, that suggests who Congress  
14 thought the fiduciary obligations ran to. In  
15 other words, this -- this goes back to this  
16 question of: Who really owns this thing  
17 equitably?

18 Is it the plan or is it the  
19 beneficiaries and participants? And in creating  
20 those causes of action, Congress essentially,  
21 you know, indicated that it thought that the  
22 obligations ran to the beneficiaries and the  
23 participants, meaning that it's the  
24 beneficiaries and the participants who have the  
25 equitable ownership stake in the financial

1 integrity of the fund.

2 MR. PALMORE: Your Honor, I -- I read  
3 this Court's decision in Russell to -- to be --  
4 say exactly the opposite. So 502(a)(2), which  
5 goes to claims for fiduciary breach involving  
6 plan asset management, which is what we have  
7 here, the Court was quite clear that those  
8 fiduciary duties run to the plan, not to  
9 individual --

10 JUSTICE KAGAN: But even Russell --

11 MR. PALMORE: -- beneficiaries.

12 JUSTICE KAGAN: -- said that  
13 beneficiaries have a stake in the financial  
14 integrity of the plan and then you have Harris  
15 Trust, which says that ERISA gives a fiduciary  
16 -- it makes clear that the fiduciary duty goes  
17 to the beneficiaries.

18 MR. PALMORE: Your Honor, what this  
19 Court said -- has -- has said in subsequent  
20 cases after Russell was that there are -- there  
21 are other kinds of fiduciary duties which may  
22 run directly to a beneficiary, so, for instance,  
23 the right to receive truthful information, but  
24 the Court reiterated in verity that the -- that  
25 the fiduciary duty with respect to plan asset

1 management runs to the trust.

2 But even if you don't --

3 JUSTICE KAGAN: I mean, isn't that a  
4 fairly odd thing to say the that fiduciary  
5 obligations runs to an abstract plan rather than  
6 the beneficiaries and the participants who are  
7 supposed to benefit from it?

8 MR. PALMORE: No, Your Honor, because  
9 ERISA was an innovation in that it created the  
10 plan as an actual legal entity with -- and a  
11 heavily regulated one, at trust -- at common  
12 law, the trust itself wasn't the legal entity.  
13 It was just a series of relationships between  
14 individuals.

15 So -- so ERISA was an innovation. But  
16 even if you don't agree with me on that, this  
17 question would still remain, even if the  
18 fiduciary duties flow to the individuals, can  
19 they sue if they are not harmed?

20 So at the contingent beneficiary  
21 analogy that we have been talking about, if you  
22 have two contingent beneficiaries, either of  
23 whom could receive 50 -- might have a 50 percent  
24 shot at getting the trust corpus, here it's a  
25 zero percent shot. None of these -- these

1 Petitioners is going to get that trust corpus.

2 And again, the -- Justice Breyer going  
3 back to your question, the no further inquiry  
4 rule involved only how you establish harm to the  
5 trust itself, to the trust corpus.

6 In not one of their cases do they cite  
7 an example of a beneficiary whose concrete  
8 financial interest were not tied to the value of  
9 assets in the trust corpus, in not one of their  
10 cases was that beneficiary able to --

11 JUSTICE BREYER: But if you don't --  
12 if you don't have to assess injury to the trust  
13 where there is no injury to the trust, how could  
14 there be any injury to a beneficiary of the  
15 trust?

16 MR. PALMORE: Because there was  
17 presumed under the no further inquiry rule,  
18 there was presumed injury to the trust.

19 JUSTICE BREYER: It means sometimes  
20 you presume that there is injury to the trust --

21 MR. PALMORE: Yes.

22 JUSTICE BREYER: -- when there isn't.  
23 All right, focus on those.

24 MR. PALMORE: Correct.

25 JUSTICE BREYER: In that set of cases,

1 there is no injury to the trust. And,  
2 therefore, a fortiori, there is no injury to the  
3 beneficiary.

4 MR. PALMORE: I would -- I would  
5 change your wording slightly. There is a  
6 presumed injury to the trust.

7 JUSTICE BREYER: Well -- I know --

8 MR. PALMORE: There is a conclusive --

9 JUSTICE BREYER: -- we're saying the  
10 same thing.

11 MR. PALMORE: -- presumption of harm  
12 --

13 JUSTICE BREYER: On the duty of --

14 MR. PALMORE: -- to the trust.

15 JUSTICE BREYER: On the duty of  
16 loyalty --

17 MR. PALMORE: Yes.

18 JUSTICE BREYER: -- there is a  
19 presumed injury to the beneficiary.

20 MR. PALMORE: To the -- to the trust.

21 JUSTICE BREYER: Oh, there's a --

22 MR. PALMORE: To the trust. And then  
23 any beneficiary with an interest in the trust  
24 could then sue. So if it was the remainderman  
25 who had only an interest in the principal, like

1 the plaintiff in Terry versus Allen --

2 JUSTICE BREYER: I see your point.

3 MR. PALMORE: -- and that that  
4 interest was fully protected, that plaintiff  
5 couldn't sue, right? So there -- it's critical  
6 to keep those two separate questions in mind,  
7 how is harm established, is it either proved or  
8 conclusively presumed under the "no further  
9 inquiry" rule but there was always the second  
10 question, and this is Bogert 871, restatement  
11 214, comment B, there was always a second  
12 question of who can sue to remedy that harm to  
13 the trust. And there the trust law is quite  
14 clear that that "who" is someone whose actual  
15 concrete interests were affected.

16 JUSTICE KAVANAUGH: Can I go back to  
17 the particulars of your theory of what would be  
18 sufficient?

19 MR. PALMORE: Yes.

20 JUSTICE KAVANAUGH: You said if the  
21 plan -- if you allege that the plan is  
22 underfunded and you allege that the employer is  
23 unwilling or unable to meet the obligations, I  
24 think you said.

25 MR. PALMORE: Yes.

1 JUSTICE KAVANAUGH: Let's put aside  
2 unwilling for a second. In alleging that an  
3 employer is unable to meet the obligations, how  
4 would you allege that? What do you think would  
5 be necessary?

6 MR. PALMORE: I think you would have  
7 to look at their -- you know, their publicly  
8 disclosed financial information and show that  
9 they -- that this was a seriously underfunded  
10 plan and that this was a distressed company and  
11 it was going to be unable to -- to put in  
12 adequate money or unable to comply with the  
13 minimum funding requirements that ERISA places  
14 --

15 JUSTICE KAVANAUGH: And if that's --

16 MR. PALMORE: -- on them.

17 JUSTICE KAVANAUGH: -- alleged, how  
18 can that be disputed at the pleadings stage or  
19 what do you envision -- what kind of process do  
20 you envision for disputing an allegation to that  
21 effect in a complaint?

22 MR. PALMORE: Well, I don't -- I mean,  
23 I think if it's -- if it's alleged with  
24 sufficient particularity, then -- then they've  
25 properly alleged standing and then there would

1 be a factual question --

2 JUSTICE ALITO: Yeah, but then you  
3 would --

4 MR. PALMORE: -- down the road.

5 JUSTICE ALITO: Then it's a question  
6 of subject matter jurisdiction under Article  
7 III. So it's not like Iqbal and Twombly where  
8 it's failure to -- a question of whether it  
9 stated a claim.

10 Wouldn't you immediately file a motion  
11 to dismiss for lack of subject matter  
12 jurisdiction? And that wouldn't be -- the  
13 determination of that would not be based solely  
14 on the pleadings.

15 MR. PALMORE: Exactly right, Your  
16 Honor. And that's actually what happened here.  
17 We dismissed under 12(b) -- we moved to dismiss  
18 under 12(b)(6). That was denied. I think that  
19 was incorrect but it was denied.

20 And then we made a motion under  
21 12(b)(1) and the district court actually engaged  
22 in fact finding and found as as a matter of fact  
23 that there were -- there was no risk to these --  
24 to the --

25 JUSTICE KAVANAUGH: That's what I was



1 getting at.

2 MR. PALMORE: Because the plan was  
3 actually overfunded, right?

4 JUSTICE KAVANAUGH: I think that's  
5 right. You have a separate factual proceeding  
6 on whether the allegation that the employer  
7 wouldn't be able to meet the obligations.

8 MR. PALMORE: Exactly. And that's  
9 actually what happened here. The plan then was  
10 overfunded and the overfunding line, that's the  
11 line that Congress has -- has drawn, it says if  
12 you meet that level of funding in the plan,  
13 there's enough there to pay all the future  
14 benefits, so this plan at the relevant time was  
15 overfunded. That was the basis for the  
16 dismissal here.

17 And I think that --

18 JUSTICE KAGAN: And Mr. Palmore --

19 MR. PALMORE: Yes?

20 JUSTICE KAGAN: -- what do you do  
21 about the fact that these plans can be  
22 underfunded in January and overfunded in  
23 February and underfunded in March again?

24 And what do you do about the fact that  
25 the health of even, you know, secure companies,

1 if you're in 2008, all of a sudden it turns out  
2 they're not so secure after all.

3 MR. PALMORE: Well, Your Honor, I  
4 think that's why the -- the -- I think if a plan  
5 is overfunded, I think that's sufficient to  
6 defeat standing. I don't think it's actually  
7 necessary.

8 And -- and I think for the reasons  
9 that you state, if something is toggling between  
10 overfunded and underfunded, there isn't going to  
11 be standing unless the critical second step of  
12 the inquiry can be alleged or factually  
13 determined at a -- at the 12(b)(1) stage that  
14 the employer won't be able to meet its legal  
15 obligations to make the minimum funding  
16 contributions to make sure there's enough money  
17 in that plan to insure the stream of benefits.

18 But just kind of speculation about AIG  
19 and maybe there will be another market meltdown,  
20 that's clearly not enough under -- under Article  
21 III. You -- and especially -- and if that's  
22 their theory, they picked the wrong defendant  
23 because there were, you know, \$86 billion in  
24 liquid assets at --

25 JUSTICE KAVANAUGH: Under your theory

1 ----

2 MR. PALMORE: -- the time.

3 JUSTICE KAVANAUGH: -- the PBGC  
4 doesn't matter, correct?

5 MR. PALMORE: I think the PBGC does --  
6 does -- does matter. It's --

7 JUSTICE KAVANAUGH: You did not -- you  
8 did not articulate that when you articulated --

9 MR. PALMORE: Yeah. Well, we  
10 articulated that in our brief and the courts of  
11 appeals cases that are all on our side do  
12 articulate that as well. That's the ultimate  
13 backstop. And that's funded through insurance  
14 premiums paid by the employer.

15 So it's not what -- what my friend on  
16 the other side said, that the beneficiaries  
17 somehow had their own insurance that would cover  
18 the loss.

19 This is part of the employer's  
20 obligation to pay these premiums so that there  
21 is an ultimate backstop.

22 JUSTICE KAVANAUGH: Wouldn't --  
23 wouldn't that theory, taken to its logical  
24 conclusion, mean that a participant could never  
25 sue, a defined-benefit participant or

1 beneficiary could never sue?

2 MR. PALMORE: No, Your Honor, because  
3 the PBGC guarantees benefits only up to a  
4 certain level.

5 JUSTICE KAVANAUGH: Anyone whose  
6 benefits are under that limit, they can never  
7 sue, is that your theory?

8 MR. PALMORE: That -- that -- it --  
9 that would be a theory, Your Honor. I don't  
10 think --

11 JUSTICE KAVANAUGH: Is it your theory?

12 MR. PALMORE: Yeah, it is my theory.  
13 I don't think you need to adopt that theory here  
14 because U.S. Bank by itself was fully  
15 sufficient. But to the extent, again, that  
16 there -- and to the extent that that's no  
17 employee or defined-benefit -- beneficiary whose  
18 benefits are at risk and there -- so therefore  
19 wouldn't have standing.

20 First of all, that's not a reason to  
21 find that they're standing because there are  
22 other enforcers -- the Department of Labor,  
23 co-fiduciaries -- but that's actually a good  
24 thing, not a bad thing.

25 It means that the employer stands

1 ready to make good on the pension payments just  
2 as --

3 JUSTICE GINSBURG: We're told --

4 MR. PALMORE: -- the rest of the --

5 JUSTICE GINSBURG: You went quickly --

6 JUSTICE SOTOMAYOR: I'm having a very  
7 --

8 JUSTICE GINSBURG: You went quickly  
9 over the Department of Labor, but we've heard  
10 from the Department of Labor, they can't do this  
11 job. It has to be someone who is able to sue.  
12 And it's not going to be the trustee because the  
13 trustee is the one who has alleged to engaged in  
14 imprudent or impermissible transactions.

15 So the only one possible is the plan  
16 participant. So the government itself is  
17 telling us Congress set this thing up knowing --  
18 depending on the participant's ability to sue,  
19 because the Department of Labor just doesn't  
20 have the resources to do the job.

21 MR. PALMORE: May I answer?

22 CHIEF JUSTICE ROBERTS: Yes.

23 MR. PALMORE: The Department of Labor  
24 has the legal authority to bring -- to bring an  
25 action. Co-fiduciaries have a -- a legal --

1 have a legal authority to bring an action.  
2 Trustees can bring an action. You have to look  
3 no further than this Court's own cases. Harris  
4 Trust. It's called Harris Trust because the  
5 plaintiff there was the trustee that was suing  
6 to rescind a transaction.

7 And in this very case, there was an  
8 early claim about a securities lending program  
9 that fell out because U.S. Bank had taken action  
10 against an employee who had committed misconduct  
11 and had recovered that money for the plan.

12 So there are plenty of other tools  
13 available, other than fiduciary lawsuits brought  
14 by uninjured parties.

15 CHIEF JUSTICE ROBERTS: Thank you,  
16 counsel.

17 Three minutes, Mr. Stris.

18 REBUTTAL ARGUMENT OF PETER K. STRIS

19 ON BEHALF OF THE PETITIONERS

20 MR. STRIS: Thank you. Three brief  
21 points. The first two have a lot to do, I  
22 think, with question begging.

23 So the first is we have a concrete  
24 property interest. If we lose that argument, we  
25 lose, but saying that we're uninjured doesn't do

1 the work.

2 Justice Alito, you, I think, asked a  
3 question that's very important. You said, well,  
4 can Congress put a property label on anything?  
5 And I think that goes to the heart of this case  
6 because they can't and they didn't.

7 Here's what happens in an ERISA plan:  
8 Private parties make a bargain with real private  
9 interests and real money. A worker gives up  
10 wages in exchange for a promise to be paid in  
11 the future with money put in a trust as  
12 security. That's all fact. No one can dispute  
13 that.

14 The question is do we have a -- an  
15 interest, my clients in the trust, and what is  
16 that interest? So let's sweep aside the  
17 question begging and get to the main issue.

18 Our point is it's always been the case  
19 since the 15th century that we have an interest.  
20 At first, my friend doesn't dispute this. Look  
21 at page 25 of their brief. He says in the 15th  
22 century, chancellors began to recognize the  
23 beneficiaries' interest as a form of ownership,  
24 protecting it much like the common law treated  
25 the legal interest in property.

1                   This is why he spends much of his  
2                   brief and he gets up here today and he says:  
3                   Ah, the participants, the beneficiaries, they're  
4                   not actually the beneficiaries. The plan is the  
5                   beneficiary.

6                   If he's right, we lose. But he's  
7                   obviously wrong, because the beneficiaries are  
8                   the beneficiaries. To your questions earlier,  
9                   Justice Kagan, you don't need to look any  
10                  further than the congressional statements of  
11                  purpose. Everything in ERISA says that to  
12                  protect the interest of these individuals, we're  
13                  putting the money in the trust.

14                 So that's the property interest.  
15                 There's nothing abstract about it. That's how  
16                 it's been for a while and for good reason.  
17                 Okay.

18                 I'm going to take my points out of  
19                 order. The second one is the practical  
20                 concerns. What is the good reason? Because I  
21                 think there's a reason why the United States  
22                 Government across a number of -- of  
23                 administrations have endorsed this position of  
24                 standing. It's because -- Justice Breyer, you  
25                 say imprudence cases. Well, maybe standing



1 should be a gatekeeper, because can people sue  
2 in every case, like when there's been a loss --  
3 I get it. That's a concern. I don't think it  
4 should inform the standing inquiry. Think of  
5 the flip side.

6 The flip side is if their rule is  
7 correct, you will have to have, to figure out if  
8 there's an injury, a battle of experts in every  
9 case about the level of risk and potentially  
10 throughout the case about the level of risk.  
11 Entirely unworkable. Again, this shouldn't  
12 drive standing, but if it's the elephant in the  
13 room. And in situations of catastrophe like AIG  
14 and Enron, there's no solution. We ask that you  
15 reverse.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel. The case is submitted.

18 (Whereupon, at 12:11 p.m., the case  
19 was submitted.)  
20  
21  
22  
23  
24  
25

## Official - Subject to Final Review

<b>\$</b>	<b>800</b> [3] 7:4 9:12 17:20	<b>allege</b> [9] 3:12 5:15 51:12,16 53:13 54:6 61:21,22 62:4	<b>associational</b> [1] 55:21
<b>\$100</b> [3] 6:20 7:15 40:10	<b>871</b> [2] 36:21 61:10	<b>alleged</b> [9] 8:7 39:19,20 44:12 62:17,23,25 65:12 68:13	<b>assume</b> [1] 21:11
<b>\$2,198.38</b> [1] 34:12	<b>9</b>	<b>alleging</b> [1] 62:2	<b>attention</b> [1] 14:2
<b>\$42.26</b> [1] 34:15	<b>90</b> [1] 17:1	<b>Allen</b> [5] 14:2,3 48:13 49:23 61:1	<b>authority</b> [3] 33:6 68:24 69:1
<b>\$600</b> [2] 6:25 17:19	<b>99.99</b> [1] 25:20	<b>allow</b> [1] 22:24	<b>available</b> [3] 35:2 52:6 69:13
<b>\$748</b> [1] 33:16	<b>A</b>	<b>allowed</b> [3] 4:23 24:23 25:3	<b>away</b> [1] 27:10
<b>\$750</b> [4] 3:14,19 6:12 17:3	<b>a</b> (3) [1] 56:8	<b>allowing</b> [1] 26:14	<b>B</b>
<b>\$753</b> [1] 41:22	<b>a.m</b> [2] 1:14 3:2	<b>alluding</b> [1] 56:8	<b>back</b> [7] 10:12 27:11 29:4 30:6 56:15 59:3 61:16
<b>\$8</b> [1] 7:3	<b>ability</b> [3] 45:1 52:8 68:18	<b>although</b> [2] 40:12 54:21	<b>backed</b> [1] 18:17
<b>\$800</b> [1] 17:21	<b>able</b> [9] 21:14 22:2 29:8 48:24 55:18 59:10 64:7 65:14 68:11	<b>amicus</b> [3] 1:21 2:7 21:20	<b>backstop</b> [2] 66:13,21
<b>\$86</b> [2] 52:18 65:23	<b>above</b> [1] 18:22	<b>amount</b> [2] 28:6 42:3	<b>bad</b> [6] 5:23 8:13,15 31:14,14 67:24
<b>1</b>	<b>above-entitled</b> [1] 1:12	<b>ample</b> [1] 52:14	<b>ball</b> [1] 45:21
<b>100</b> [3] 20:15 40:11,11	<b>absolutely</b> [3] 13:10 22:21 53:5	<b>analogous</b> [1] 20:7	<b>BANK</b> [10] 1:6 3:5 20:23 34:14 35:18,20 48:21 52:18 67:14 69:9
<b>11:09</b> [2] 1:14 3:2	<b>abstract</b> [5] 7:9 8:7 31:6 58:5 71:15	<b>analogue</b> [1] 10:24	<b>bank's</b> [1] 15:10
<b>12(b)</b> [1] 63:17	<b>abstractly</b> [1] 6:24	<b>analogy</b> [6] 12:24 16:7 28:3 29:6 55:24 58:21	<b>bank-affiliated</b> [1] 20:22
<b>12(b)(1)</b> [2] 63:21 65:13	<b>according</b> [1] 14:1	<b>analysis</b> [1] 21:12	<b>banks</b> [1] 48:22
<b>12(b)(6)</b> [1] 63:18	<b>account</b> [6] 23:24 24:1,2 33:9 38:16,25	<b>analyzing</b> [1] 52:24	<b>bare</b> [1] 56:9
<b>12:11</b> [1] 72:18	<b>accurate</b> [1] 12:8	<b>Angeles</b> [1] 1:17	<b>bargain</b> [1] 70:8
<b>13</b> [1] 1:10	<b>acknowledging</b> [1] 46:11	<b>annual</b> [1] 52:12	<b>based</b> [5] 16:4,6 17:15 21:14 63:13
<b>14</b> [1] 33:7	<b>acquire</b> [1] 26:15	<b>Another</b> [3] 12:6 43:11 65:19	<b>basis</b> [1] 64:15
<b>15</b> [1] 29:21	<b>across</b> [1] 71:22	<b>answer</b> [18] 6:2 13:20 16:22 18:11,23 20:1 21:2 24:5 25:19 26:4,25 27:1 29:1 31:3,6,22 49:5 68:21	<b>battle</b> [1] 72:8
<b>15th</b> [8] 8:19 10:12 11:24 15:22 16:15 20:8 70:19,21	<b>action</b> [1] 30:5 43:17 45:2,5 56:6,9,20 68:25 69:1,2,9	<b>answering</b> [2] 17:6 19:12	<b>bears</b> [1] 35:18
<b>167</b> [1] 17:1	<b>actions</b> [1] 20:10	<b>answers</b> [1] 26:6	<b>become</b> [1] 27:5
<b>17-1712</b> [1] 3:4	<b>actual</b> [3] 33:4 58:10 61:14	<b>anyway</b> [1] 24:21	<b>becomes</b> [1] 51:15
<b>1808</b> [1] 14:1	<b>actually</b> [11] 36:11 39:16 45:7 49:21 63:16,21 64:3,9 65:6 67:23 71:4	<b>apart</b> [1] 47:3	<b>began</b> [1] 70:22
<b>2</b>	<b>add</b> [1] 24:9	<b>appeal</b> [1] 21:14	<b>begging</b> [2] 69:22 70:17
<b>2008</b> [2] 6:20 65:1	<b>addition</b> [1] 28:19	<b>appealed</b> [1] 21:8	<b>begin</b> [1] 4:25
<b>2020</b> [1] 1:10	<b>additional</b> [2] 28:17,20	<b>appeals</b> [2] 21:9 66:11	<b>behalf</b> [12] 1:18,24 2:4,11,14 3:8 4:24 33:20 34:4 35:23 43:11 69:19
<b>21</b> [1] 2:8	<b>address</b> [1] 44:25	<b>APPEARANCES</b> [1] 1:16	<b>believe</b> [2] 15:18 17:2
<b>214</b> [2] 36:22 61:11	<b>adequate</b> [3] 32:25 51:22 62:12	<b>Appendix</b> [2] 15:4 17:1	<b>belly</b> [1] 51:18
<b>25</b> [1] 70:21	<b>adequately</b> [1] 39:19	<b>application</b> [2] 38:8 53:7	<b>belonging</b> [1] 55:23
<b>3</b>	<b>adjudicate</b> [1] 35:3	<b>applied</b> [1] 32:8	<b>belongs</b> [1] 41:14
<b>3</b> [1] 2:4	<b>administrations</b> [1] 71:23	<b>apply</b> [1] 32:21	<b>beneficial</b> [2] 11:3 26:17
<b>303</b> [1] 32:12	<b>administrators</b> [1] 32:4	<b>approach</b> [1] 50:19	<b>beneficiaries</b> [36] 3:11 4:15,23 5:8 13:24 22:6,8,11,16,19,20 26:22 28:7,21,24 31:19 35:8,11 37:1 40:13 45:24,25 47:5 56:19,22,24 57:11,13,17 58:6,22 66:16 71:3,4,7,8
<b>311</b> [1] 41:23	<b>admirable</b> [1] 9:22	<b>aren't</b> [3] 13:12 31:24 32:2	<b>beneficiaries'</b> [2] 7:23 70:23
<b>33</b> [1] 14:3	<b>admit</b> [1] 45:8	<b>argue</b> [1] 3:23	<b>beneficiary</b> [30] 8:21 12:9,17 14:23 16:11,18 22:1,23,25 23:10 24:23,24 33:24 36:18,25 44:19 48:16 54:22,22 57:22 58:20 59:7,10,14 60:3,19,23 67:1,17 71:5
<b>34</b> [1] 2:11	<b>adopt</b> [1] 67:13	<b>argument</b> [14] 1:13 2:2,5,9,12 3:4,7 5:12 21:19 34:3 46:11 47:3 69:18,24	<b>benefit</b> [8] 10:22 15:11 19:20 24:17 29:13 43:18 48:5 58:7
<b>4</b>	<b>advocated</b> [1] 50:19	<b>arguments</b> [4] 16:2,4,6 35:6	<b>benefited</b> [1] 26:18
<b>404</b> [1] 32:15	<b>affect</b> [1] 8:8	<b>arise</b> [1] 24:12	<b>benefiting</b> [1] 8:23
<b>406</b> [1] 32:15	<b>affected</b> [2] 35:10 61:15	<b>around</b> [2] 25:6 55:13	<b>benefits</b> [23] 7:2 9:23 10:1 16:20 18:23 19:1 25:20 26:9 35:16,20 36:15 37:12 45:19 49:17,19,19 51:14 53:16 64:14 65:17 67:3,6,18
<b>5</b>	<b>affirms</b> [1] 34:17	<b>Article</b> [22] 9:8,13 11:8 17:8 19:24 24:19 25:4,6 28:17 33:2,10 34:7 35:5 37:10 43:22 49:6 51:1,2 52:22,25 63:6 65:20	<b>best</b> [5] 17:13 22:11 42:4,5 48:22
<b>50</b> [6] 25:7 46:1,6,10 58:23,23	<b>afforded</b> [1] 32:3	<b>articulate</b> [2] 66:8,12	<b>better</b> [2] 30:6 31:19
<b>502(a)</b> (2) [3] 23:25 56:8 57:4	<b>Agency</b> [1] 11:18	<b>articulated</b> [3] 45:14 66:8,10	<b>between</b> [8] 3:22 14:22 16:7 28:12 29:9 38:24 58:13 65:9
<b>5500</b> [1] 52:14	<b>ago</b> [1] 20:23	<b>aside</b> [4] 16:9 37:17 62:1 70:16	<b>big</b> [2] 28:11 39:6
<b>6</b>	<b>agree</b> [9] 20:19 45:5 48:10 51:5 53:24,25 54:13 55:11 58:16	<b>assailing</b> [1] 20:11	<b>biggest</b> [1] 39:20
<b>60</b> [1] 15:4	<b>Ah</b> [1] 71:3	<b>assess</b> [2] 38:14 59:12	
<b>600</b> [1] 9:10	<b>ahead</b> [3] 14:25 17:25 29:18	<b>assessment</b> [2] 15:25 18:5	
<b>61</b> [1] 15:4	<b>AIG</b> [4] 6:20 19:17 65:18 72:13	<b>asset</b> [3] 48:9 57:6,25	
<b>66</b> [1] 39:17	<b>Aircraft</b> [3] 35:15 36:4 42:18	<b>assets</b> [27] 3:18 4:4,7,8 5:6,10 6:8,10 7:7,15 8:20,22,24 10:21 15:7,10,11,16 19:21 22:21 23:20 35:17 41:11 51:22 52:19 59:9 65:24	
<b>69</b> [1] 2:14	<b>AL</b> [2] 1:3,6	<b>Assistant</b> [1] 1:19	
<b>7</b>	<b>ALITO</b> [11] 16:1 17:5,7,13 28:2,11 49:4,14 63:2,5 70:2	<b>association</b> [2] 55:21,23	
<b>700</b> [2] 7:5 9:12	<b>Alito's</b> [2] 18:12 24:16		
<b>704</b> [1] 14:3	<b>allegation</b> [2] 62:20 64:6		
<b>750-odd</b> [1] 41:18	<b>allegations</b> [1] 33:15		
<b>753</b> [1] 41:24			
<b>8</b>			
<b>8</b> [1] 28:23			

## Official - Subject to Final Review

<p><b>Bill</b> [2] 7:10 29:7  <b>billion</b> [6] 6:20 17:20,21 41:19 52:18 65:23  <b>Bird</b> [1] 56:5  <b>black</b> [1] 37:10  <b>Blackacre</b> [2] 11:2,3  <b>body</b> [3] 13:17 14:14,19  <b>Bogert</b> [2] 36:21 61:10  <b>bond</b> [2] 48:19,21  <b>bonds</b> [1] 15:8  <b>both</b> [3] 15:1 54:6 56:3  <b>bothering</b> [1] 53:12  <b>bottom</b> [1] 50:15  <b>breach</b> [11] 4:17 7:9 12:10 13:1,2 22:2,19,24 26:9 41:7 57:5  <b>breaches</b> [4] 21:24 22:12 27:25 35:9  <b>BREYER</b> [43] 11:23 12:2 13:4,8,12 14:11,17,21,25 29:16,20 30:13,24 31:2,10,12 32:6,9,13,16,20,23 48:14 52:20 54:9,12 55:4,6,8 56:2 59:2,11,19,22,25 60:7,9,13,15,18,21 61:2 71:24  <b>brief</b> [7] 4:2 17:14 21:4 66:10 69:20 70:21 71:2  <b>Briefly</b> [1] 21:3  <b>briefs</b> [1] 33:13  <b>bring</b> [6] 40:16,21 68:24,24 69:1,2  <b>brokerage</b> [1] 26:19  <b>brought</b> [2] 54:21 69:13  <b>burns</b> [1] 7:13  <b>business</b> [2] 30:19 55:10  <b>Businesses</b> [1] 6:19</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>California</b> [1] 1:17  <b>call</b> [1] 6:11  <b>called</b> [1] 69:4  <b>calls</b> [2] 38:2 52:9  <b>came</b> [2] 1:12 41:25  <b>candle</b> [3] 50:16,18 51:1  <b>cannot</b> [1] 35:22  <b>capacity</b> [1] 35:23  <b>capitalized</b> [1] 48:22  <b>care</b> [1] 19:12  <b>Case</b> [46] 3:4,15 4:18 6:23 8:6,19 11:5,20 14:5 15:2 16:23 17:18 19:1,15 20:12,18 23:2,19 25:8,17,18, 23 26:11 30:16 33:5,12 34:22 35:7 37:6 38:2 39:13,15 40:16 42:9 43:15 48:14 52:22 54:15 69:7 70:5,18 72:2,9,10,17,18  <b>case-by-case</b> [2] 15:24 18:5  <b>cases</b> [20] 9:6 20:8 24:10 25:9,11 26:8 43:14 50:6,12 51:9 53:3 54:14,20 57:20 59:6,10,25 66:11 69:3 71:25  <b>catastrophe</b> [1] 72:13  <b>cause</b> [4] 45:5 56:6,9  <b>caused</b> [3] 3:13 27:18 33:22  <b>causes</b> [4] 5:16 21:25 45:2 56:20  <b>Center's</b> [1] 17:14  <b>centuries-old</b> [1] 4:14  <b>century</b> [8] 8:19 10:12 11:24 15:</p>	<p>22 16:15 20:8 70:19,22  <b>certain</b> [7] 14:13,14,14 25:20 30:11 48:20 67:4  <b>certainly</b> [1] 26:7  <b>challenge</b> [3] 20:15 35:9 53:3  <b>chance</b> [4] 16:18 24:18 26:5 46:1  <b>chancellors</b> [1] 70:22  <b>Chancery</b> [2] 14:2,4  <b>chances</b> [1] 25:24  <b>change</b> [2] 27:24 60:5  <b>changes</b> [1] 17:17  <b>check</b> [1] 49:2  <b>CHIEF</b> [26] 3:3,9 5:11 6:13,22 7:19 8:5,12 9:3,7 15:18 17:22,24 21:3, 16,22 32:24 33:25 34:5 39:24 40:3 52:21 54:13 68:22 69:15 72:16  <b>Chief's</b> [1] 9:20  <b>Circuit</b> [3] 17:19 38:21 39:18  <b>Circuit's</b> [3] 39:13 53:22 54:1  <b>cite</b> [2] 48:14 59:6  <b>cited</b> [3] 26:12 33:13 36:20  <b>cites</b> [1] 55:1  <b>claim</b> [5] 21:5,12 43:7 63:9 69:8  <b>claimed</b> [1] 41:3  <b>claims</b> [5] 34:9,18 35:3 41:6 57:5  <b>Clapper</b> [5] 38:8 52:7 53:7,8,9  <b>clarify</b> [1] 20:10  <b>clarity</b> [1] 50:17  <b>class</b> [2] 24:12 30:5  <b>clean</b> [3] 10:3 23:11 44:21  <b>clear</b> [10] 8:17 11:12 15:14 18:7 19:6 26:8 41:13 57:7,16 61:14  <b>clearly</b> [3] 21:15 45:21 65:20  <b>client</b> [1] 10:4  <b>client's</b> [1] 7:22  <b>clients</b> [12] 3:11,17,20 4:10,13,19 5:9 6:14 7:1 19:1,8 70:15  <b>close</b> [1] 25:18  <b>Club</b> [1] 55:10  <b>co-fiduciaries</b> [2] 67:23 68:25  <b>coaster</b> [2] 31:18,21  <b>code</b> [2] 15:13,14  <b>collapse</b> [1] 19:17  <b>collateral</b> [1] 50:12  <b>colonies</b> [1] 25:13  <b>combination</b> [2] 18:9 27:20  <b>come</b> [5] 9:15 29:10,11,14 53:2  <b>comes</b> [4] 15:1 16:12 23:17 25:8  <b>comfortable</b> [1] 7:1  <b>commend</b> [1] 53:23  <b>comment</b> [2] 36:23 61:11  <b>committed</b> [1] 69:10  <b>common</b> [6] 5:22 45:25 46:2 48:11 58:11 70:24  <b>companies</b> [4] 39:21 40:5 52:15 64:25  <b>company</b> [4] 40:10 51:17,21 62:10  <b>complaint</b> [3] 16:25 53:14 62:21  <b>completely</b> [3] 7:23 36:19 44:21  <b>compliance</b> [1] 17:8  <b>comply</b> [1] 62:12  <b>conceivable</b> [1] 4:16  <b>concern</b> [1] 72:3</p>	<p><b>concerns</b> [1] 71:20  <b>conclusion</b> [1] 66:24  <b>conclusive</b> [1] 60:8  <b>conclusively</b> [1] 61:8  <b>concrete</b> [10] 3:21 4:13 6:3 7:17 45:3 53:1 56:11 59:7 61:15 69:23  <b>confer</b> [3] 18:3 19:21 56:7  <b>conferral</b> [1] 56:5  <b>conferred</b> [1] 15:23  <b>conflict</b> [1] 5:14  <b>confronted</b> [1] 50:7  <b>Congress</b> [15] 16:5 18:2,6 19:19 32:15 44:17 47:4 49:7 55:15,20 56:13,20 64:11 68:17 70:4  <b>Congress's</b> [2] 28:22 45:1  <b>congressional</b> [1] 71:10  <b>Connecticut</b> [1] 48:13  <b>consistent</b> [2] 36:11 37:9  <b>Constitution</b> [2] 25:10 33:10  <b>constitutional</b> [1] 11:21  <b>context</b> [4] 16:23 24:12 30:12 31:8  <b>contingency</b> [1] 14:9  <b>contingent</b> [11] 9:1 13:25 14:12, 13,18 22:16 36:12,25 45:24 58:20, 22  <b>continue</b> [3] 40:15,18 55:5  <b>contract</b> [2] 15:8 29:11  <b>contributed</b> [1] 41:23  <b>contribution</b> [8] 9:24,25 10:20 11:6 17:20 23:4,8,12  <b>contributions</b> [1] 65:16  <b>controversies</b> [2] 25:9,12  <b>controversy</b> [4] 3:15 4:18 11:21 33:5  <b>core</b> [5] 7:18 15:21 17:12 18:23,24  <b>corporation</b> [2] 43:18,19  <b>corpus</b> [22] 3:25 9:11 13:18,22 15:24 18:4 35:17 36:10,15 45:20 46:2,4,18,20,23 48:18 49:18,21 58:24 59:1,5,9  <b>correct</b> [4] 46:13 59:24 66:4 72:7  <b>cost</b> [1] 41:8  <b>couldn't</b> [5] 6:18 12:16 42:23 48:12 61:5  <b>counsel</b> [6] 9:20 21:17 34:1 44:16 69:16 72:17  <b>country</b> [2] 39:21 48:23  <b>course</b> [5] 23:22 31:2 33:19 44:24 50:6  <b>COURT</b> [36] 1:1,13 3:10 11:18 20:15 21:8,8,23 22:8 23:22 24:14 26:6,13,21,21 28:22 34:6,8,17,21 35:15 38:4,7,9 42:18,22 43:21 45:15 48:7,14 53:10,23 57:7,19,24 63:21  <b>Court's</b> [5] 21:7,14 23:21 57:3 69:3  <b>courts</b> [6] 4:23 14:1,4 25:12 35:2 66:10  <b>cover</b> [1] 66:17  <b>create</b> [1] 55:15  <b>created</b> [2] 55:20 58:9  <b>creating</b> [3] 45:4,7 56:19</p>	<p><b>credit</b> [1] 18:19  <b>critical</b> [7] 5:5 20:25 43:25 46:25 48:11 61:5 65:11  <b>curiae</b> [3] 1:21 2:8 21:20</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> [3] 1:9,20,23  <b>dah-dah-dah</b> [2] 30:17 31:16  <b>damaging</b> [1] 8:25  <b>decide</b> [1] 33:4  <b>decides</b> [1] 23:1  <b>decision</b> [8] 20:4 21:7,15 23:21 26:13,20 53:22 57:3  <b>deed</b> [2] 11:1,1  <b>default</b> [1] 17:3  <b>defeat</b> [1] 65:6  <b>defendant</b> [1] 65:22  <b>deference</b> [1] 32:3  <b>deficit</b> [3] 39:12,23 54:5  <b>defined</b> [9] 9:23,24,25 10:1,20,22 11:5 23:4,12  <b>defined-benefit</b> [12] 4:3 5:1 8:9 15:6 16:12 17:17 35:14 37:4,8 51:11 66:25 67:17  <b>defined-benefits</b> [1] 43:8  <b>definition</b> [1] 11:20  <b>delta</b> [1] 38:24  <b>demand</b> [1] 34:24  <b>demonstrate</b> [2] 34:9 52:9  <b>denied</b> [2] 63:18,19  <b>Department</b> [7] 1:20 52:13 67:22 68:9,10,19,23  <b>depend</b> [2] 5:12 14:8  <b>depending</b> [1] 68:18  <b>depends</b> [2] 6:9 47:2  <b>derivative</b> [1] 43:17  <b>describe</b> [1] 37:5  <b>describing</b> [1] 11:15  <b>destroyed</b> [1] 8:3  <b>destroys</b> [1] 7:12  <b>determination</b> [1] 63:13  <b>determined</b> [1] 65:13  <b>developed</b> [1] 53:2  <b>difference</b> [6] 14:22,24 15:1 28:12, 16 29:8  <b>different</b> [8] 12:4 17:9 28:15 29:12 36:24 45:21 50:1,3  <b>diminution</b> [1] 6:9  <b>direct</b> [1] 5:16  <b>directly</b> [1] 57:22  <b>dirty</b> [2] 10:4 23:14  <b>disagree</b> [4] 6:18 44:18 50:22 55:2  <b>disclosed</b> [1] 62:8  <b>discretion</b> [3] 22:23 23:6 25:2  <b>discretionary</b> [4] 9:1 22:18 24:17, 24  <b>discuss</b> [1] 26:23  <b>discussed</b> [1] 40:14  <b>disloyalty</b> [1] 3:13  <b>dismiss</b> [2] 63:11,17  <b>dismissal</b> [2] 34:17 64:16  <b>dismissed</b> [2] 21:6 63:17  <b>dispute</b> [2] 70:12,20</p>
--	--	--	---

## Official - Subject to Final Review

<p><b>disputed</b> <sup>[1]</sup> 62:18  <b>disputes</b> <sup>[1]</sup> 33:15  <b>disputing</b> <sup>[1]</sup> 62:20  <b>distinction</b> <sup>[1]</sup> 28:15  <b>distressed</b> <sup>[2]</sup> 51:21 62:10  <b>distribution</b> <sup>[2]</sup> 42:22 43:3  <b>district</b> <sup>[2]</sup> 20:14 63:21  <b>doctrine</b> <sup>[1]</sup> 25:6  <b>document</b> <sup>[2]</sup> 15:2,3  <b>doing</b> <sup>[1]</sup> 21:11  <b>dollar</b> <sup>[2]</sup> 46:23,24  <b>dollars</b> <sup>[2]</sup> 17:21 41:19  <b>done</b> <sup>[3]</sup> 8:8 9:22 50:7  <b>down</b> <sup>[6]</sup> 7:13 29:23,23 30:5 43:19 63:4  <b>downs</b> <sup>[1]</sup> 36:10  <b>drafters</b> <sup>[1]</sup> 28:18  <b>draw</b> <sup>[2]</sup> 12:25 50:18  <b>drawn</b> <sup>[1]</sup> 64:11  <b>drive</b> <sup>[1]</sup> 72:12  <b>Drury</b> <sup>[1]</sup> 26:12  <b>duties</b> <sup>[12]</sup> 12:5,5 13:1,1 21:25 27:25 31:8 47:18 48:8 57:8,21 58:18  <b>duty</b> <sup>[12]</sup> 12:5,6,14 26:9 31:13 44:7 54:19,23 57:16,25 60:13,15</p>	<p><b>equities</b> <sup>[1]</sup> 21:5  <b>equity</b> <sup>[2]</sup> 4:23 20:16  <b>ERISA</b> <sup>[20]</sup> 5:2 15:2,12,14 16:7,8,13 28:18 34:7,9 36:3 47:4 48:3 54:3 57:15 58:9,15 62:13 70:7 71:11  <b>ERISA's</b> <sup>[1]</sup> 22:4  <b>especially</b> <sup>[2]</sup> 24:11 65:21  <b>ESQ</b> <sup>[4]</sup> 2:3,6,10,13  <b>essentially</b> <sup>[1]</sup> 56:20  <b>establish</b> <sup>[1]</sup> 59:4  <b>established</b> <sup>[3]</sup> 41:3 44:2 61:7  <b>estate</b> <sup>[1]</sup> 14:10  <b>ET</b> <sup>[2]</sup> 1:3,6  <b>even</b> <sup>[23]</sup> 4:15 5:18 7:13 9:16,21 10:11 16:13 22:15,17,18 23:7,11 26:8 31:18,19 48:9 52:17 55:22 57:10 58:2,16,17 64:25  <b>event</b> <sup>[1]</sup> 4:19  <b>eventually</b> <sup>[1]</sup> 13:18  <b>everybody</b> <sup>[4]</sup> 6:25 23:6 24:7,21  <b>everybody's</b> <sup>[1]</sup> 30:1  <b>everyone's</b> <sup>[1]</sup> 7:2  <b>everything</b> <sup>[5]</sup> 13:15 24:8,21 47:2 71:11  <b>exactly</b> <sup>[8]</sup> 32:10 34:19,25 47:4 50:13 57:4 63:15 64:8  <b>example</b> <sup>[3]</sup> 17:13 29:5 59:7  <b>exceed</b> <sup>[1]</sup> 18:25  <b>except</b> <sup>[4]</sup> 14:19 15:12 22:22 30:19  <b>exception</b> <sup>[1]</sup> 34:7  <b>exceptions</b> <sup>[1]</sup> 55:9  <b>exchange</b> <sup>[4]</sup> 5:2,3 19:20 70:10  <b>exclusive</b> <sup>[1]</sup> 32:18  <b>exercise</b> <sup>[2]</sup> 25:1 50:11  <b>exercised</b> <sup>[1]</sup> 18:2  <b>exist</b> <sup>[1]</sup> 4:7  <b>existed</b> <sup>[1]</sup> 11:19  <b>experience</b> <sup>[1]</sup> 17:15  <b>experts</b> <sup>[1]</sup> 72:8  <b>explain</b> <sup>[1]</sup> 17:15  <b>explained</b> <sup>[4]</sup> 35:15 43:21 44:25 48:7  <b>expressly</b> <sup>[1]</sup> 22:4  <b>extend</b> <sup>[1]</sup> 24:4  <b>extent</b> <sup>[3]</sup> 26:5 67:15,16  <b>extra</b> <sup>[1]</sup> 23:7</p>	<p><b>February</b> <sup>[1]</sup> 64:23  <b>federal</b> <sup>[2]</sup> 34:8 35:2  <b>feel</b> <sup>[1]</sup> 7:1  <b>fees</b> <sup>[1]</sup> 26:19  <b>fell</b> <sup>[1]</sup> 69:9  <b>few</b> <sup>[1]</sup> 13:3  <b>fiduciary</b> <sup>[19]</sup> 12:5 20:11 21:24 27:25 29:15 32:14 35:9 47:18 48:8 56:14 57:5,8,15,16,21,25 58:4,18 69:13  <b>Fifth</b> <sup>[5]</sup> 38:21 39:13,17 53:22 54:1  <b>figure</b> <sup>[4]</sup> 38:12 41:22 50:13 72:7  <b>file</b> <sup>[2]</sup> 52:12 63:10  <b>financial</b> <sup>[9]</sup> 4:17 5:16 8:9 19:17 22:10 56:25 57:13 59:8 62:8  <b>find</b> <sup>[1]</sup> 67:21  <b>finding</b> <sup>[1]</sup> 63:22  <b>finer</b> <sup>[1]</sup> 9:21  <b>finish</b> <sup>[4]</sup> 20:10 29:1,17 33:17  <b>finished</b> <sup>[1]</sup> 31:20  <b>First</b> <sup>[16]</sup> 3:17 11:13 20:14 21:5 35:8 37:25 40:11 42:13 43:23 44:5 50:21 56:4 67:20 69:21,23 70:20  <b>fit</b> <sup>[1]</sup> 11:20  <b>fixed</b> <sup>[1]</sup> 49:19  <b>flexible</b> <sup>[1]</sup> 38:16  <b>flip</b> <sup>[2]</sup> 72:5,6  <b>flow</b> <sup>[3]</sup> 6:4 43:19 58:18  <b>fluctuations</b> <sup>[1]</sup> 36:9  <b>focus</b> <sup>[1]</sup> 59:23  <b>follow</b> <sup>[2]</sup> 23:14,16  <b>followed</b> <sup>[1]</sup> 14:5  <b>following</b> <sup>[1]</sup> 42:21  <b>footnote</b> <sup>[2]</sup> 28:23 50:22  <b>forced</b> <sup>[1]</sup> 4:1  <b>forever</b> <sup>[1]</sup> 41:13  <b>forgo</b> <sup>[1]</sup> 5:3  <b>form</b> <sup>[3]</sup> 34:24 52:13 70:23  <b>formulation</b> <sup>[1]</sup> 54:1  <b>forth</b> <sup>[2]</sup> 31:9 53:1  <b>fortiori</b> <sup>[1]</sup> 60:2  <b>forward</b> <sup>[1]</sup> 40:7  <b>forward-looking</b> <sup>[1]</sup> 5:12  <b>found</b> <sup>[1]</sup> 63:22  <b>founding</b> <sup>[3]</sup> 4:22 11:20 25:15  <b>fraud</b> <sup>[1]</sup> 7:4  <b>friend</b> <sup>[5]</sup> 6:14 22:15 27:3 66:15 70:20  <b>friend's</b> <sup>[1]</sup> 29:5  <b>fulfill</b> <sup>[2]</sup> 39:11,22  <b>full</b> <sup>[3]</sup> 18:18 19:22,22  <b>fully</b> <sup>[3]</sup> 13:14 61:4 67:14  <b>function</b> <sup>[1]</sup> 18:21  <b>fund</b> <sup>[5]</sup> 6:25 7:3 15:9 18:22 57:1  <b>fundamental</b> <sup>[1]</sup> 35:6  <b>funded</b> <sup>[3]</sup> 13:14 39:17 66:13  <b>funding</b> <sup>[5]</sup> 17:16 32:12 62:13 64:12 65:15  <b>funds</b> <sup>[1]</sup> 20:22  <b>further</b> <sup>[10]</sup> 4:14 22:17 26:7 43:24 44:4 59:3,17 61:8 69:3 71:10  <b>future</b> <sup>[4]</sup> 5:4 13:21 64:13 70:11</p>	<p><b>game</b> <sup>[1]</sup> 45:21  <b>gatekeeper</b> <sup>[1]</sup> 72:1  <b>Gates</b> <sup>[3]</sup> 7:10,24 29:7  <b>General</b> <sup>[1]</sup> 1:19  <b>gets</b> <sup>[2]</sup> 42:7 71:2  <b>getting</b> <sup>[9]</sup> 22:7 24:17 37:16,18,19 46:1 49:1 58:24 64:1  <b>GINSBURG</b> <sup>[7]</sup> 20:9,14,20,25 68:3,5,8  <b>give</b> <sup>[5]</sup> 22:23 29:17 42:1,3 47:5  <b>gives</b> <sup>[4]</sup> 4:17 33:5 57:15 70:9  <b>giving</b> <sup>[1]</sup> 32:25  <b>Gollust</b> <sup>[1]</sup> 43:21  <b>GORSUCH</b> <sup>[12]</sup> 9:19 10:7,11,15,17 11:7 23:3 24:7,15 44:16 45:4,11  <b>got</b> <sup>[3]</sup> 20:23 31:22 54:6  <b>gotten</b> <sup>[1]</sup> 13:6  <b>Government</b> <sup>[4]</sup> 18:17,19 68:16 71:22  <b>grant</b> <sup>[1]</sup> 25:23  <b>granted</b> <sup>[1]</sup> 16:5  <b>great</b> <sup>[1]</sup> 12:11  <b>greater</b> <sup>[3]</sup> 13:14,16 17:10  <b>grounds</b> <sup>[1]</sup> 21:6  <b>guarantees</b> <sup>[2]</sup> 27:11 67:3  <b>guess</b> <sup>[5]</sup> 26:5 39:4 42:8 50:15,16  <b>guy</b> <sup>[3]</sup> 8:13,15 40:14  <b>GVR</b> <sup>[1]</sup> 39:15</p>
<b>E</b>			
<p><b>each</b> <sup>[1]</sup> 46:1  <b>earlier</b> <sup>[3]</sup> 22:15 45:23 71:8  <b>early</b> <sup>[1]</sup> 69:8  <b>effect</b> <sup>[1]</sup> 62:21  <b>Eighth</b> <sup>[1]</sup> 17:18  <b>either</b> <sup>[3]</sup> 39:10 58:22 61:7  <b>elephant</b> <sup>[1]</sup> 72:12  <b>else's</b> <sup>[1]</sup> 23:12  <b>employee</b> <sup>[2]</sup> 67:17 69:10  <b>employer</b> <sup>[12]</sup> 18:7,10 27:20 39:10 54:4,7 61:22 62:3 64:6 65:14 66:14 67:25  <b>employer's</b> <sup>[1]</sup> 66:19  <b>encumbers</b> <sup>[1]</sup> 7:12  <b>endorsed</b> <sup>[1]</sup> 71:23  <b>enforcers</b> <sup>[1]</sup> 67:22  <b>engaged</b> <sup>[4]</sup> 4:12 44:6 63:21 68:13  <b>English</b> <sup>[3]</sup> 14:1,3,4  <b>enjoinment</b> <sup>[1]</sup> 14:7  <b>enough</b> <sup>[19]</sup> 5:24 9:10 28:24 38:16,20 40:6 45:18 50:13 51:18 53:17,18 54:3 55:19,19 56:6,9 64:13 65:16,20  <b>Enron</b> <sup>[1]</sup> 72:14  <b>ensure</b> <sup>[1]</sup> 28:7  <b>entire</b> <sup>[1]</sup> 23:25  <b>entirely</b> <sup>[2]</sup> 36:11 72:11  <b>entirety</b> <sup>[2]</sup> 13:22 18:4  <b>entitled</b> <sup>[3]</sup> 26:24 29:10 47:22  <b>entitlement</b> <sup>[1]</sup> 22:21  <b>entity</b> <sup>[3]</sup> 28:20 58:10,12  <b>envision</b> <sup>[2]</sup> 62:19,20  <b>equitable</b> <sup>[21]</sup> 3:17,24 4:6,8 5:9 6:8 8:18,20 36:5,7 46:3,12,16,21,22 47:6,10,17,25 49:8 56:25  <b>equitably</b> <sup>[1]</sup> 56:17</p>	<p><b>fact</b> <sup>[14]</sup> 5:21,25 27:14,22,24 33:6 35:24 36:8 41:23 63:22,22 64:21,24 70:12  <b>fact-bound</b> <sup>[1]</sup> 53:7  <b>facts</b> <sup>[2]</sup> 26:20 52:7  <b>factual</b> <sup>[3]</sup> 38:8 63:1 64:5  <b>factually</b> <sup>[1]</sup> 65:12  <b>fail</b> <sup>[3]</sup> 6:19,20 38:19  <b>failure</b> <sup>[1]</sup> 63:8  <b>fair</b> <sup>[3]</sup> 15:19 16:22 18:14  <b>fairly</b> <sup>[2]</sup> 54:20 58:4  <b>faith</b> <sup>[1]</sup> 18:18  <b>falls</b> <sup>[1]</sup> 47:3  <b>far</b> <sup>[5]</sup> 10:15 11:8 20:21 28:2 40:4  <b>favor</b> <sup>[2]</sup> 25:2 34:23</p>	<p><b>F</b></p>	<p><b>H</b></p> <p><b>hand</b> <sup>[2]</sup> 25:25 34:21  <b>happened</b> <sup>[4]</sup> 10:25 20:24 63:16 64:9  <b>happens</b> <sup>[6]</sup> 7:14 18:19 30:3 36:14,15 70:7  <b>hard</b> <sup>[3]</sup> 3:23 14:22 31:6  <b>Harley</b> <sup>[1]</sup> 17:18  <b>harm</b> <sup>[21]</sup> 5:17 6:1 23:25 40:12 44:1,3,9,12,14 49:20 50:6,9,14 51:13 53:8,16 55:9 59:4 60:11 61:7,12  <b>harmed</b> <sup>[1]</sup> 58:19  <b>harms</b> <sup>[2]</sup> 23:23 27:16  <b>Harris</b> <sup>[3]</sup> 57:14 69:3,4  <b>hasten</b> <sup>[1]</sup> 24:9  <b>health</b> <sup>[1]</sup> 64:25  <b>hear</b> <sup>[2]</sup> 3:3 16:10  <b>heard</b> <sup>[3]</sup> 25:12 45:13 68:9  <b>heart</b> <sup>[1]</sup> 70:5  <b>heartburn</b> <sup>[1]</sup> 20:2  <b>heavily</b> <sup>[1]</sup> 58:11  <b>held</b> <sup>[5]</sup> 11:1,1 15:9 21:10 23:22  <b>helped</b> <sup>[1]</sup> 12:12  <b>highly</b> <sup>[2]</sup> 27:4 29:3  <b>historical</b> <sup>[3]</sup> 11:13,17 50:19  <b>historically</b> <sup>[1]</sup> 24:22  <b>history</b> <sup>[13]</sup> 13:23 23:1 25:18 26:1,2,4 27:10 33:1,7 36:11 48:10 50:23 54:19  <b>hit</b> <sup>[2]</sup> 17:11 24:18  <b>holds</b> <sup>[3]</sup> 4:8 36:7 48:5  <b>Hollingsworth</b> <sup>[1]</sup> 43:13  <b>Honor</b> <sup>[15]</sup> 21:2 37:7 42:13 44:24 48:2 49:9 50:21 56:1 57:2,18 58:8</p>
<b>G</b>			

## Official - Subject to Final Review

<p>63:16 65:3 67:2,9  <b>hook</b> [1] 54:5  <b>horizon</b> [1] 38:17  <b>Hughes</b> [5] 35:15 36:3 42:18,21 43:6  <b>human</b> [1] 33:19  <b>hundreds</b> [1] 22:3  <b>hurdle</b> [1] 39:6  <b>hurt</b> [3] 5:19,20 13:19  <b>hypothetical</b> [5] 7:20,24 8:6 9:10 23:4</p> <hr/> <p><b>I</b></p> <p><b>identify</b> [1] 45:2  <b>Ill</b> [22] 9:8,13 11:8 17:8 19:24 24:19 25:4,6 28:17 33:2,10 34:8 35:5 37:10 43:22 49:6 51:1,2 52:22,25 63:7 65:21  <b>imagine</b> [2] 24:25 37:2  <b>immediately</b> [1] 63:10  <b>imminent</b> [2] 38:9 53:8  <b>impaired</b> [2] 8:17 9:18  <b>impairment</b> [2] 11:16 40:19  <b>impermissible</b> [1] 68:14  <b>implicated</b> [1] 44:14  <b>implying</b> [1] 39:7  <b>important</b> [3] 19:10 45:12 70:3  <b>importantly</b> [2] 18:21 27:6  <b>improbable</b> [1] 14:9  <b>imprudence</b> [2] 3:13 71:25  <b>imprudent</b> [2] 41:20 68:14  <b>included</b> [1] 24:1  <b>includes</b> [1] 25:11  <b>including</b> [1] 15:16  <b>income</b> [3] 12:18,19 13:17  <b>inconsistent</b> [1] 44:7  <b>incorrect</b> [1] 63:19  <b>increase</b> [1] 28:6  <b>increased</b> [6] 17:3 50:5,8,14 51:13 53:15  <b>incredible</b> [1] 4:2  <b>incredibly</b> [1] 17:17  <b>independently</b> [1] 4:10  <b>indicated</b> [1] 56:21  <b>individual</b> [3] 19:15 54:22 57:9  <b>individuals</b> [3] 58:14,18 71:12  <b>inform</b> [1] 72:4  <b>information</b> [6] 52:5,14,16,16 57:23 62:8  <b>inherit</b> [1] 36:14  <b>injunction</b> [1] 40:22  <b>injured</b> [1] 9:13  <b>injuries</b> [4] 6:3,5 12:20 45:3  <b>injury</b> [34] 3:21 4:14,21 5:1,13 6:7 9:9 13:5,6 19:24 30:22 33:17,23 34:9 35:24 39:19 43:12 44:3 52:4,23 53:4 54:16,21 56:11 59:12,13,14,18,20 60:1,2,6,19 72:8  <b>innovation</b> [2] 58:9,15  <b>inquire</b> [1] 19:25  <b>inquiry</b> [10] 4:15 5:24 26:7 43:24 44:4 59:3,17 61:9 65:12 72:4  <b>instance</b> [1] 57:22  <b>instructive</b> [1] 39:14</p>	<p><b>insurance</b> [4] 27:14,23 66:13,17  <b>insure</b> [1] 65:17  <b>integrity</b> [4] 22:10 47:7 57:1,14  <b>interest</b> [78] 3:18,19,24 4:4,6 5:9,14 6:8 7:11,16 8:2,16,18,20 11:3 12:9,22 13:13,16,21,25 14:7,12,13,13,15,18,18,23 15:20,24 18:3 19:22 22:9 35:13 36:2,6,7,13,17,19 40:20 42:10,11,14,19 44:14,20 45:17 46:3,12,15,16,22 47:6,10,18,25 48:1,15,19 49:1,7,8,13,15 59:8 60:23,25 61:4 69:24 70:15,16,19,23,25 71:12,14  <b>interested</b> [2] 12:15 56:2  <b>interests</b> [6] 11:16 35:10 42:4,5 61:15 70:9  <b>interrupt</b> [2] 27:8 50:2  <b>invasion</b> [1] 56:10  <b>invest</b> [1] 10:4  <b>invested</b> [2] 12:11 41:7  <b>investment</b> [4] 12:11 20:16 31:14 41:20  <b>investments</b> [3] 15:9 23:11 31:15  <b>involved</b> [1] 59:4  <b>involves</b> [1] 55:16  <b>involving</b> [1] 57:5  <b>lqbal</b> [2] 51:2 63:7  <b>isn't</b> [12] 13:19 25:14 45:4 48:1 50:10 51:24 54:3 55:18,19 58:3 59:22 65:10  <b>issue</b> [3] 50:7 52:25 70:17  <b>issues</b> [1] 18:15  <b>itself</b> [8] 4:17 33:18 36:6 48:6 58:12 59:5 67:14 68:16</p> <hr/> <p><b>J</b></p> <p><b>JAMES</b> [2] 1:3 34:11  <b>January</b> [2] 1:10 64:22  <b>jeopardized</b> [1] 49:21  <b>job</b> [3] 9:22 68:11,20  <b>Joint</b> [2] 15:4 16:25  <b>JOSEPH</b> [3] 1:23 2:10 34:3  <b>JOSHI</b> [29] 1:19 2:6 21:18,19,22 23:15 24:9,22 25:15 26:3 27:12,18,22 28:9,14 29:19 30:11,21,25 31:5,11,23 32:1,5,10,14,18,21 33:11  <b>judgment</b> [4] 18:2 28:22 34:23 50:4  <b>jurisdiction</b> [2] 63:6,12  <b>Justice</b> [175] 1:20 3:3,10 5:11 6:13,22 7:19 8:5,12 9:2,3,5,7,19 10:7,11,15,17 11:7,23 12:2 13:4,8,12 14:11,17,21,25 15:18 16:1 17:5,7,13,22,24 18:6,11,16,25 19:5,7,9 20:9,14,20,25 21:3,16,22 23:3 24:7,15,16 25:14,16 27:7,17,19 28:2,11 29:2,16,20 30:13,24 31:2,10,12,24 32:2,6,7,9,13,16,20,23,24 33:25 34:6 37:2,13,17,21 38:3,11,14,23 39:3,24 40:3,24 41:1,4 42:16,20,25 43:2 44:16 45:4,11 46:9,16,19 47:1,12,14,20,23 48:14 49:4,14,24 50:1,24 51:5,8,23 52:2,10,20,</p>	<p>21 53:11,19,24 54:9,12,13 55:4,6,8 56:2,12 57:10,12 58:3 59:2,11,19,22,25 60:7,9,13,15,18,21 61:2,16,20 62:1,15,17 63:2,5,25 64:4,18,20 65:25 66:3,7,22 67:5,11 68:3,5,6,8,22 69:15 70:2 71:9,24 72:16  <b>justiciable</b> [1] 3:15</p> <hr/> <p><b>K</b></p> <p><b>KAGAN</b> [15] 46:9,16,19 47:1,12,14,20,23 56:12 57:10,12 58:3 64:18,20 71:9  <b>KAVANAUGH</b> [50] 9:2,5 18:6,16,25 19:5,7,10 25:14,16 27:7,17,19 29:2 31:24 32:2,7 37:2,13,17,21 38:3,11,14,23 39:3 49:24 50:1,24 51:5,8,23 52:2,10 53:11,19,24 61:16,20 62:1,15,17 63:25 64:4 65:25 66:3,7,22 67:5,11  <b>keep</b> [1] 61:6  <b>key</b> [1] 25:6  <b>kind</b> [3] 51:9 62:19 65:18  <b>kinds</b> [1] 57:21  <b>knowing</b> [1] 68:17  <b>knowledge</b> [1] 28:10</p> <hr/> <p><b>L</b></p> <p><b>label</b> [3] 49:7,11 70:4  <b>labeled</b> [1] 45:17  <b>Labor</b> [6] 52:13 67:22 68:9,10,19,23  <b>lack</b> [2] 35:12 63:11  <b>laid</b> [2] 23:19 28:22  <b>LaRue</b> [2] 23:21,22  <b>latter</b> [1] 19:13  <b>Laughter</b> [1] 12:1  <b>law</b> [31] 5:23 10:12 15:22 16:7,15 22:3,4 23:19 24:23 25:8 28:3,13,23 29:22 30:4,18 31:4,9 33:14 35:8 36:12,18 41:9,13 45:25 46:3 48:11 52:23 58:12 61:13 70:24  <b>lawsuits</b> [1] 69:13  <b>layers</b> [1] 27:23  <b>lead</b> [1] 5:15  <b>least</b> [6] 11:16 12:3 14:1 28:17 54:18 56:12  <b>Lee</b> [2] 39:13 53:23  <b>left</b> [1] 23:5  <b>legal</b> [14] 36:4 39:11,22 45:7 48:4,5 49:1 58:10,12 65:14 68:24,25 69:1 70:25  <b>Lehman</b> [1] 19:18  <b>landing</b> [1] 69:8  <b>less</b> [3] 17:4 24:18 34:20  <b>lesson</b> [2] 9:1,8  <b>letter</b> [1] 37:10  <b>level</b> [6] 35:16 45:19 64:12 67:4 72:9,10  <b>life</b> [1] 12:17  <b>light</b> [1] 9:21  <b>likelihood</b> [2] 24:16 38:25  <b>likely</b> [4] 5:20 8:22 25:1 29:3  <b>limit</b> [1] 67:6</p>	<p><b>limitation</b> [1] 10:13  <b>limitations</b> [1] 21:6  <b>limits</b> [3] 11:8,12 45:1  <b>line</b> [7] 20:7 37:5 50:15,17,18 64:10,11  <b>liquid</b> [2] 52:19 65:24  <b>list</b> [1] 55:17  <b>literally</b> [1] 52:8  <b>litigated</b> [1] 34:22  <b>little</b> [3] 31:21 49:24 50:2  <b>lives</b> [1] 34:20  <b>loan</b> [4] 7:10,10 8:2 29:6  <b>loans</b> [1] 26:14  <b>logic</b> [1] 24:5  <b>logical</b> [1] 66:23  <b>long</b> [4] 8:22 12:22 20:23 51:12  <b>long-term</b> [2] 38:17,25  <b>look</b> [15] 6:24 12:2 16:25 24:14 32:11 39:2 40:14 45:16 47:3 52:7 55:13 62:7 69:2 70:20 71:9  <b>looked</b> [1] 54:25  <b>looking</b> [1] 33:1  <b>Los</b> [1] 1:17  <b>lose</b> [9] 3:14 6:14,16 40:15,18 41:21 69:24,25 71:6  <b>loses</b> [1] 40:10  <b>loss</b> [11] 4:17 12:18,19 33:16,22 35:19 42:1 46:23,23 66:18 72:2  <b>losses</b> [3] 11:4 21:25 22:1  <b>lost</b> [6] 3:20 6:12 7:8 41:18,21,22  <b>lot</b> [8] 10:25 25:5 30:4 40:15,18 52:15,22 69:21  <b>low</b> [1] 27:2  <b>loyal</b> [1] 4:11  <b>loyalty</b> [10] 12:6,7,10 13:1,5 41:7 44:7 54:19,24 60:16</p> <hr/> <p><b>M</b></p> <p><b>made</b> [5] 15:17 18:6 26:8 31:13 63:20  <b>Magruder</b> [2] 26:12 33:12  <b>main</b> [1] 70:17  <b>maintain</b> [1] 23:24  <b>managed</b> [1] 29:15  <b>management</b> [3] 48:9 57:6 58:1  <b>many</b> [10] 11:11 13:15,15 20:6 26:11 27:23 31:18,18 33:12 43:14  <b>March</b> [1] 64:23  <b>market</b> [2] 29:22 65:19  <b>market's</b> [1] 31:20  <b>matter</b> [14] 1:12 20:1 24:10 27:2,5 35:3,4 42:5 49:11 63:6,11,22 66:4,6  <b>matters</b> [2] 19:11 27:13  <b>mean</b> [19] 6:14,17 9:20 10:11 16:23 26:1 28:11 30:15 31:18 47:2,24,25 49:10,14 55:11,14 58:3 62:22 66:24  <b>meaning</b> [3] 25:10 41:5 56:23  <b>meaningful</b> [1] 29:13  <b>means</b> [5] 16:14 27:14 31:13 59:19 67:25  <b>meant</b> [1] 7:20  <b>meet</b> [5] 61:23 62:3 64:7,12 65:14</p>
---	--	---	--

## Official - Subject to Final Review

<p><b>meltdown</b> <sup>[1]</sup> 65:19</p> <p><b>members</b> <sup>[4]</sup> 55:11,12,17,21</p> <p><b>Mendell</b> <sup>[1]</sup> 43:21</p> <p><b>mentioned</b> <sup>[4]</sup> 18:8 22:15 24:11 27:3</p> <p><b>menu</b> <sup>[1]</sup> 10:2</p> <p><b>mere</b> <sup>[1]</sup> 27:14</p> <p><b>merely</b> <sup>[1]</sup> 29:2</p> <p><b>merits</b> <sup>[3]</sup> 32:4,17 43:7</p> <p><b>mess</b> <sup>[2]</sup> 51:24 52:4</p> <p><b>meteor</b> <sup>[2]</sup> 24:16,19</p> <p><b>meteorite</b> <sup>[1]</sup> 17:11</p> <p><b>might</b> <sup>[14]</sup> 5:20 23:13,15,16,17 24:18,25 27:2,14 29:4 30:14,23 46:4 58:23</p> <p><b>million</b> <sup>[16]</sup> 3:14,20 6:12,25 7:3,4,5,15 9:12,12 17:4,19 33:16 40:10 41:22,23</p> <p><b>million's</b> <sup>[1]</sup> 9:10</p> <p><b>millions</b> <sup>[1]</sup> 41:20</p> <p><b>mind</b> <sup>[1]</sup> 61:6</p> <p><b>minimal</b> <sup>[1]</sup> 55:14</p> <p><b>minimum</b> <sup>[4]</sup> 18:22 25:11 62:13 65:15</p> <p><b>minute</b> <sup>[1]</sup> 43:20</p> <p><b>minutes</b> <sup>[1]</sup> 69:17</p> <p><b>misconduct</b> <sup>[2]</sup> 7:6 69:10</p> <p><b>mismanagement</b> <sup>[1]</sup> 48:18</p> <p><b>modestly</b> <sup>[1]</sup> 52:18</p> <p><b>modesty</b> <sup>[1]</sup> 11:12</p> <p><b>Monday</b> <sup>[1]</sup> 1:10</p> <p><b>money</b> <sup>[28]</sup> 7:10 13:13 14:15 22:1 28:6 29:4,6,8,9,14 40:6,15,18 41:8,10,19,21,21 43:16 46:8 54:15,16 62:12 65:16 69:11 70:9,11 71:13</p> <p><b>monitor</b> <sup>[1]</sup> 22:12</p> <p><b>month</b> <sup>[5]</sup> 34:11,13,19 40:11 49:2</p> <p><b>moreover</b> <sup>[1]</sup> 47:19</p> <p><b>morning</b> <sup>[1]</sup> 3:4</p> <p><b>Most</b> <sup>[2]</sup> 10:2 14:8</p> <p><b>motion</b> <sup>[2]</sup> 63:10,20</p> <p><b>move</b> <sup>[1]</sup> 43:9</p> <p><b>moved</b> <sup>[1]</sup> 63:17</p> <p><b>much</b> <sup>[5]</sup> 11:17 42:1 50:8 70:24 71:1</p> <p><b>multiple</b> <sup>[1]</sup> 6:3</p> <p><b>must</b> <sup>[1]</sup> 34:9</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N.A</b> <sup>[1]</sup> 1:6</p> <p><b>nature</b> <sup>[1]</sup> 53:3</p> <p><b>necessarily</b> <sup>[1]</sup> 33:9</p> <p><b>necessary</b> <sup>[5]</sup> 37:23 39:5 50:10 62:5 65:7</p> <p><b>need</b> <sup>[8]</sup> 6:25 15:19 19:16 33:8 41:5 44:11 67:13 71:9</p> <p><b>needed</b> <sup>[2]</sup> 41:8 53:20</p> <p><b>Neither</b> <sup>[1]</sup> 34:10</p> <p><b>never</b> <sup>[10]</sup> 8:21 9:16 21:8,9 41:2,3 46:7 66:24 67:1,6</p> <p><b>nevertheless</b> <sup>[5]</sup> 14:9 22:24 23:24 25:2 26:21</p> <p><b>new</b> <sup>[4]</sup> 45:8,8,9 50:12</p> <p><b>next</b> <sup>[2]</sup> 3:4 27:4</p>	<p><b>nobody</b> <sup>[1]</sup> 33:15</p> <p><b>none</b> <sup>[2]</sup> 35:5 58:25</p> <p><b>nonetheless</b> <sup>[1]</sup> 11:25</p> <p><b>normal</b> <sup>[2]</sup> 16:8 37:9</p> <p><b>notes</b> <sup>[2]</sup> 26:14,15</p> <p><b>nothing</b> <sup>[6]</sup> 6:15 10:19 31:3,22 55:22 71:15</p> <p><b>number</b> <sup>[1]</sup> 71:22</p> <p><b>numerous</b> <sup>[1]</sup> 54:14</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>obligation</b> <sup>[3]</sup> 28:5 39:11 66:20</p> <p><b>obligations</b> <sup>[8]</sup> 39:22 56:14,22 58:5 61:23 62:3 64:7 65:15</p> <p><b>obviously</b> <sup>[2]</sup> 51:5 71:7</p> <p><b>odd</b> <sup>[2]</sup> 25:23 58:4</p> <p><b>Okay</b> <sup>[12]</sup> 10:4 11:7 29:25 31:3,16,22 32:16 37:17 52:2 53:19 55:7 71:17</p> <p><b>old</b> <sup>[1]</sup> 51:9</p> <p><b>Once</b> <sup>[2]</sup> 29:25 55:12</p> <p><b>one</b> <sup>[30]</sup> 4:5 5:13 10:3 12:5 16:3 17:19 19:13 24:25 26:6,11,25 27:13 30:14 32:6,9 33:21,22 34:20 35:1 39:20 41:6 48:22 54:18 58:11 59:6,9 68:13,15 70:12 71:19</p> <p><b>ones</b> <sup>[2]</sup> 22:6,8</p> <p><b>only</b> <sup>[21]</sup> 3:24 4:9 15:11 18:7 21:13 23:18 26:22 33:5 35:9 39:9,17 40:19 43:11 44:5 48:15,19 49:1 59:4 60:25 67:3 68:15</p> <p><b>open</b> <sup>[1]</sup> 52:25</p> <p><b>opine</b> <sup>[1]</sup> 38:4</p> <p><b>opposite</b> <sup>[1]</sup> 57:4</p> <p><b>option</b> <sup>[1]</sup> 10:3</p> <p><b>options</b> <sup>[1]</sup> 10:2</p> <p><b>oral</b> <sup>[7]</sup> 1:12 2:2,5,9 3:7 21:19 34:3</p> <p><b>order</b> <sup>[3]</sup> 28:7 52:1 71:19</p> <p><b>organization</b> <sup>[1]</sup> 55:16</p> <p><b>other</b> <sup>[16]</sup> 5:13,15 6:15,23 25:25 27:1 30:25 34:21 50:20 55:8 56:15 57:21 66:16 67:22 69:12,13</p> <p><b>others</b> <sup>[2]</sup> 8:25 33:12</p> <p><b>otherwise</b> <sup>[1]</sup> 44:8</p> <p><b>out</b> <sup>[19]</sup> 13:17 17:18 19:11 20:17 22:7 23:19 26:11 28:22 33:14 38:12 40:6 50:13 51:10,10 52:16 65:1 69:9 71:18 72:7</p> <p><b>over</b> <sup>[4]</sup> 23:23 36:9 47:9 68:9</p> <p><b>overfunded</b> <sup>[9]</sup> 27:4 29:25,25 64:3,10,15,22 65:5,10</p> <p><b>overfunding</b> <sup>[2]</sup> 35:21 64:10</p> <p><b>own</b> <sup>[10]</sup> 9:15 18:15 22:22 23:8,24 28:19 35:24 43:12 66:17 69:3</p> <p><b>owned</b> <sup>[1]</sup> 48:4</p> <p><b>ownership</b> <sup>[2]</sup> 56:25 70:23</p> <p><b>owns</b> <sup>[4]</sup> 36:4,5 43:17 56:16</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> <sup>[1]</sup> 72:18</p> <p><b>PAGE</b> <sup>[3]</sup> 2:2 17:1 70:21</p> <p><b>pages</b> <sup>[1]</sup> 15:4</p> <p><b>paid</b> <sup>[11]</sup> 13:17 16:19 22:7 23:6 28:8 37:16,18,19 51:14 66:14 70:10</p>	<p><b>PALMORE</b> <sup>[92]</sup> 1:23 2:10 34:2,3,5 37:7,15,20,24 38:4,13,15 39:1,8 40:1,17,25 41:2 42:13,17,24 43:1,6 44:23 45:10,15 46:9,14,18,21 47:8,13,16,21 48:2 49:9,16,25 50:21,25 51:7,19,25 52:3,11 53:5,18,21 54:2,10 55:2,5,7 56:1,4,13 57:2,11,18 58:8 59:16,21,24 60:4,8,11,14,17,20,22 61:3,19,25 62:6,16,22 63:4,15 64:2,8,18,19 65:3 66:2,5,9 67:2,8,12 68:4,21,23</p> <p><b>paragraph</b> <sup>[1]</sup> 17:1</p> <p><b>part</b> <sup>[5]</sup> 24:2 42:1 43:20,23 66:19</p> <p><b>participant</b> <sup>[8]</sup> 35:18,20 37:3,8 51:11 66:24,25 68:16</p> <p><b>participants</b> <sup>[1]</sup> 68:18</p> <p><b>participants</b> <sup>[13]</sup> 3:23 4:3,9 5:8 15:12 41:15 42:6 47:6 56:19,23,24 58:6 71:3</p> <p><b>particular</b> <sup>[4]</sup> 6:5 26:9 31:7 37:5</p> <p><b>particularity</b> <sup>[1]</sup> 62:24</p> <p><b>particularized</b> <sup>[1]</sup> 53:1</p> <p><b>particulars</b> <sup>[2]</sup> 37:22 61:17</p> <p><b>parties</b> <sup>[2]</sup> 69:14 70:8</p> <p><b>party</b> <sup>[2]</sup> 43:11,12</p> <p><b>past</b> <sup>[1]</sup> 40:4</p> <p><b>pause</b> <sup>[1]</sup> 38:23</p> <p><b>pay</b> <sup>[2]</sup> 64:13 66:20</p> <p><b>payment</b> <sup>[6]</sup> 5:4 7:14 34:12,15 43:4 48:20</p> <p><b>payments</b> <sup>[10]</sup> 13:21 18:20 34:19,25 40:2,20 48:25 49:22 50:9 68:1</p> <p><b>pays</b> <sup>[1]</sup> 5:7</p> <p><b>PBGC</b> <sup>[10]</sup> 18:8,10,15,22 27:3,9,21 66:3,5 67:3</p> <p><b>pedigree</b> <sup>[1]</sup> 11:17</p> <p><b>penny</b> <sup>[2]</sup> 34:20 35:1</p> <p><b>pension</b> <sup>[12]</sup> 3:12,18 5:7 6:19 17:14 34:12 35:14 38:17 39:16 40:21 52:12 68:1</p> <p><b>pensions</b> <sup>[1]</sup> 55:16</p> <p><b>people</b> <sup>[3]</sup> 12:8 40:5 72:1</p> <p><b>peppercorn</b> <sup>[1]</sup> 30:22</p> <p><b>percent</b> <sup>[8]</sup> 20:15 25:20 39:17 46:1,6,6 58:23,25</p> <p><b>perfectly</b> <sup>[1]</sup> 24:13</p> <p><b>performance</b> <sup>[1]</sup> 35:19</p> <p><b>perhaps</b> <sup>[1]</sup> 47:16</p> <p><b>permitted</b> <sup>[1]</sup> 15:12</p> <p><b>Perry</b> <sup>[1]</sup> 43:13</p> <p><b>person</b> <sup>[6]</sup> 5:22 8:15 11:2 16:20 33:22 40:9</p> <p><b>person's</b> <sup>[1]</sup> 8:13</p> <p><b>personally</b> <sup>[1]</sup> 43:16</p> <p><b>perspective</b> <sup>[1]</sup> 11:22</p> <p><b>PETER</b> <sup>[5]</sup> 1:17 2:3,13 3:7 69:18</p> <p><b>Petitioner</b> <sup>[3]</sup> 34:10,11,14</p> <p><b>Petitioners</b> <sup>[13]</sup> 1:4,18,22 2:4,8,14 3:8 21:21 35:12,22 46:7 59:1 69:19</p> <p><b>Petitioners'</b> <sup>[1]</sup> 35:6</p> <p><b>pick</b> <sup>[1]</sup> 29:5</p> <p><b>picked</b> <sup>[1]</sup> 65:22</p> <p><b>piece</b> <sup>[1]</sup> 42:6</p>	<p><b>place</b> <sup>[1]</sup> 3:23</p> <p><b>places</b> <sup>[1]</sup> 62:13</p> <p><b>plaintiff</b> <sup>[7]</sup> 9:9 23:23 36:18 43:17 61:1,4 69:5</p> <p><b>plaintiffs</b> <sup>[7]</sup> 34:8,23 35:4 39:18 48:25 50:4 52:8</p> <p><b>plan</b> <sup>[90]</sup> 4:3,4,21 5:1,8 8:9 9:23,24 10:1,1,20,22 11:6 15:2,3,6,7 16:8,12,19 17:20 18:7,10 23:8,12,13 27:20 28:19 32:3 33:17,18 35:14,20,23 36:2,5,6,6,7,13 37:4,9 38:17,19,21 39:9,12,16 40:21 41:11,14,18,21,24 42:7,7 43:5,8 47:17,19,24,25 48:3,6,8,9,23 51:11 52:17 54:5 56:18 57:6,8,14,25 58:5,10 61:21,21 62:10 64:2,9,12,14 65:4,17 68:15 69:11 70:7 71:4</p> <p><b>plan's</b> <sup>[4]</sup> 33:16,19,23 42:4</p> <p><b>plans</b> <sup>[6]</sup> 6:19 17:17 23:5 27:4 52:12 64:21</p> <p><b>play</b> <sup>[1]</sup> 18:9</p> <p><b>plead</b> <sup>[1]</sup> 39:9</p> <p><b>pleading</b> <sup>[3]</sup> 39:4,5 50:11</p> <p><b>pleadings</b> <sup>[3]</sup> 51:3 62:18 63:14</p> <p><b>please</b> <sup>[3]</sup> 3:10 21:23 34:6</p> <p><b>pled</b> <sup>[4]</sup> 17:1,5,7 50:13</p> <p><b>plenty</b> <sup>[1]</sup> 69:12</p> <p><b>plus</b> <sup>[2]</sup> 27:20,20</p> <p><b>point</b> <sup>[15]</sup> 9:20 14:2 15:16,19 17:12 18:14 25:7 26:1 28:25 33:14 39:5 45:6 46:25 61:2 70:18</p> <p><b>points</b> <sup>[2]</sup> 69:21 71:18</p> <p><b>police</b> <sup>[1]</sup> 22:12</p> <p><b>policy</b> <sup>[1]</sup> 45:13</p> <p><b>policy-maker</b> <sup>[1]</sup> 20:3</p> <p><b>pool</b> <sup>[1]</sup> 5:6</p> <p><b>poor</b> <sup>[1]</sup> 35:19</p> <p><b>position</b> <sup>[6]</sup> 4:2 6:16 7:18 11:13 22:11 71:23</p> <p><b>positions</b> <sup>[1]</sup> 23:18</p> <p><b>possibility</b> <sup>[2]</sup> 4:16 8:23</p> <p><b>possible</b> <sup>[1]</sup> 68:15</p> <p><b>post-Spokeo</b> <sup>[1]</sup> 39:15</p> <p><b>posture</b> <sup>[2]</sup> 21:1 24:11</p> <p><b>potentially</b> <sup>[1]</sup> 72:9</p> <p><b>powers</b> <sup>[1]</sup> 33:3</p> <p><b>practical</b> <sup>[8]</sup> 16:18 18:11,24 20:1 24:10 27:5 28:16 71:19</p> <p><b>practicalities</b> <sup>[1]</sup> 16:10</p> <p><b>practically</b> <sup>[1]</sup> 19:12</p> <p><b>precise</b> <sup>[1]</sup> 20:10</p> <p><b>precisely</b> <sup>[3]</sup> 20:4,6 28:21</p> <p><b>predictive</b> <sup>[1]</sup> 50:4</p> <p><b>preface</b> <sup>[1]</sup> 38:1</p> <p><b>premium</b> <sup>[1]</sup> 18:20</p> <p><b>premiums</b> <sup>[2]</sup> 66:14,20</p> <p><b>present</b> <sup>[4]</sup> 8:24 13:24 14:7,10</p> <p><b>presents</b> <sup>[2]</sup> 3:14 50:11</p> <p><b>presume</b> <sup>[1]</sup> 59:20</p> <p><b>presumed</b> <sup>[5]</sup> 59:17,18 60:6,19 61:8</p> <p><b>presumption</b> <sup>[3]</sup> 44:9,12 60:11</p> <p><b>pretty</b> <sup>[3]</sup> 12:8 29:7 55:14</p> <p><b>prevent</b> <sup>[2]</sup> 8:25 30:9</p>
---	---	---	--

## Official - Subject to Final Review

<p><b>prevents</b> <sup>[6]</sup> 30:5,8,9,15 31:17 50:11</p> <p><b>principal</b> <sup>[3]</sup> 12:21 48:16 60:25</p> <p><b>principle</b> <sup>[1]</sup> 33:14</p> <p><b>principles</b> <sup>[1]</sup> 37:10</p> <p><b>prior</b> <sup>[1]</sup> 21:7</p> <p><b>private</b> <sup>[4]</sup> 5:2 44:20 70:8,8</p> <p><b>probably</b> <sup>[3]</sup> 11:14 25:1 30:3</p> <p><b>problem</b> <sup>[3]</sup> 35:7 43:22 54:11</p> <p><b>procedural</b> <sup>[1]</sup> 21:1</p> <p><b>proceeding</b> <sup>[2]</sup> 17:9 64:5</p> <p><b>process</b> <sup>[1]</sup> 62:19</p> <p><b>program</b> <sup>[1]</sup> 69:8</p> <p><b>progress</b> <sup>[1]</sup> 7:14</p> <p><b>prohibit</b> <sup>[1]</sup> 15:15</p> <p><b>prohibited</b> <sup>[1]</sup> 44:8</p> <p><b>prolong</b> <sup>[1]</sup> 53:12</p> <p><b>promise</b> <sup>[3]</sup> 5:3 13:21 70:10</p> <p><b>promised</b> <sup>[3]</sup> 25:20 37:16 53:16</p> <p><b>proper</b> <sup>[2]</sup> 10:24 51:3</p> <p><b>properly</b> <sup>[2]</sup> 32:7 62:25</p> <p><b>property</b> <sup>[36]</sup> 3:19,20 5:1,4 6:7 7:12,21,22,23 8:16,24 9:15,18 11:15 13:6 14:14 15:23 18:3 19:22 35:12 36:2 42:10,14,19 44:20 45:17 46:14,22 47:10 49:7,13,15 69:24 70:4,25 71:14</p> <p><b>propose</b> <sup>[1]</sup> 23:3</p> <p><b>proposition</b> <sup>[2]</sup> 36:21,23</p> <p><b>prospective</b> <sup>[1]</sup> 6:11</p> <p><b>protect</b> <sup>[2]</sup> 30:20 71:12</p> <p><b>protected</b> <sup>[4]</sup> 8:1 48:19 56:10 61:4</p> <p><b>protecting</b> <sup>[1]</sup> 70:24</p> <p><b>protection</b> <sup>[1]</sup> 28:18</p> <p><b>protections</b> <sup>[1]</sup> 28:20</p> <p><b>protective</b> <sup>[1]</sup> 28:24</p> <p><b>protects</b> <sup>[1]</sup> 31:3</p> <p><b>proved</b> <sup>[1]</sup> 61:7</p> <p><b>provide</b> <sup>[1]</sup> 45:2</p> <p><b>provided</b> <sup>[1]</sup> 11:9</p> <p><b>prudence</b> <sup>[5]</sup> 12:6,14 13:2,7 31:13</p> <p><b>public</b> <sup>[1]</sup> 52:14</p> <p><b>publicly</b> <sup>[1]</sup> 62:7</p> <p><b>publicly-traded</b> <sup>[1]</sup> 52:15</p> <p><b>purely</b> <sup>[1]</sup> 5:21</p> <p><b>purpose</b> <sup>[1]</sup> 71:11</p> <p><b>push</b> <sup>[1]</sup> 28:3</p> <p><b>put</b> <sup>[10]</sup> 9:15,20 16:9 19:20 37:17 50:22 62:1,11 70:4,11</p> <p><b>puts</b> <sup>[1]</sup> 49:7</p> <p><b>putting</b> <sup>[1]</sup> 71:13</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>quantitatively</b> <sup>[1]</sup> 55:10</p> <p><b>question</b> <sup>[31]</sup> 6:3 16:3,22 18:12,24 21:9 25:19 26:16,17 27:2 29:2 31:6 43:10,24 44:5,13,25 51:15 54:14 56:16 58:17 59:3 61:10,12 63:1,5,8 69:22 70:3,14,17</p> <p><b>questions</b> <sup>[4]</sup> 44:1 45:24 61:6 71:8</p> <p><b>qui</b> <sup>[2]</sup> 11:17 43:15</p> <p><b>quibble</b> <sup>[1]</sup> 47:9</p>	<p><b>quick</b> <sup>[1]</sup> 12:3</p> <p><b>quickly</b> <sup>[3]</sup> 17:18 68:5,8</p> <p><b>quite</b> <sup>[4]</sup> 30:3 49:5 57:7 61:13</p> <p><b>quote</b> <sup>[1]</sup> 4:2</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>ran</b> <sup>[2]</sup> 56:14,22</p> <p><b>rather</b> <sup>[4]</sup> 9:23 10:1 50:18 58:5</p> <p><b>reached</b> <sup>[1]</sup> 21:9</p> <p><b>read</b> <sup>[2]</sup> 22:18 57:2</p> <p><b>ready</b> <sup>[1]</sup> 68:1</p> <p><b>real</b> <sup>[4]</sup> 21:25 47:13 70:8,9</p> <p><b>really</b> <sup>[7]</sup> 12:15 19:10 22:5 26:4 39:6 53:6 56:16</p> <p><b>reason</b> <sup>[6]</sup> 21:13 42:24 67:20 71:16,20,21</p> <p><b>reasonable</b> <sup>[1]</sup> 24:13</p> <p><b>reasons</b> <sup>[6]</sup> 3:16 35:25 42:15,17 45:13 65:8</p> <p><b>reassessed</b> <sup>[1]</sup> 17:8</p> <p><b>REBUTTAL</b> <sup>[2]</sup> 2:12 69:18</p> <p><b>receive</b> <sup>[9]</sup> 8:22 14:17 34:12,15,24 50:9 53:16 57:23 58:23</p> <p><b>received</b> <sup>[1]</sup> 34:16</p> <p><b>recognize</b> <sup>[3]</sup> 7:16 33:13 70:22</p> <p><b>recognized</b> <sup>[1]</sup> 22:9</p> <p><b>recover</b> <sup>[2]</sup> 26:24 43:16</p> <p><b>recovered</b> <sup>[1]</sup> 69:11</p> <p><b>reduces</b> <sup>[1]</sup> 7:4</p> <p><b>referring</b> <sup>[1]</sup> 51:9</p> <p><b>regarded</b> <sup>[1]</sup> 5:23</p> <p><b>regardless</b> <sup>[1]</sup> 46:10</p> <p><b>regulated</b> <sup>[1]</sup> 58:11</p> <p><b>regulatory</b> <sup>[1]</sup> 50:6</p> <p><b>reinvestments</b> <sup>[1]</sup> 26:19</p> <p><b>reiterated</b> <sup>[3]</sup> 25:7,8 57:24</p> <p><b>rejected</b> <sup>[1]</sup> 43:7</p> <p><b>relationships</b> <sup>[1]</sup> 58:13</p> <p><b>relator</b> <sup>[1]</sup> 43:15</p> <p><b>relevant</b> <sup>[2]</sup> 44:2 64:14</p> <p><b>relief</b> <sup>[1]</sup> 34:24</p> <p><b>remain</b> <sup>[1]</sup> 58:17</p> <p><b>remainderman</b> <sup>[9]</sup> 12:20 13:9,11 14:15,23 48:12,15 49:23 60:24</p> <p><b>remainderman's</b> <sup>[1]</sup> 13:16</p> <p><b>remarks</b> <sup>[1]</sup> 38:1</p> <p><b>remedy</b> <sup>[3]</sup> 44:3 54:10 61:12</p> <p><b>remember</b> <sup>[2]</sup> 11:24 42:20</p> <p><b>remote</b> <sup>[1]</sup> 14:8</p> <p><b>remoteness</b> <sup>[2]</sup> 10:13,19</p> <p><b>removed</b> <sup>[1]</sup> 40:23</p> <p><b>repay</b> <sup>[1]</sup> 29:8</p> <p><b>repayment</b> <sup>[1]</sup> 29:9</p> <p><b>Reporter</b> <sup>[1]</sup> 14:3</p> <p><b>reports</b> <sup>[1]</sup> 52:12</p> <p><b>representational</b> <sup>[4]</sup> 4:20 35:23 42:11 43:10</p> <p><b>representative</b> <sup>[1]</sup> 15:5</p> <p><b>representing</b> <sup>[1]</sup> 42:7</p> <p><b>require</b> <sup>[1]</sup> 51:3</p> <p><b>required</b> <sup>[2]</sup> 38:6 51:25</p> <p><b>requirement</b> <sup>[1]</sup> 33:4</p> <p><b>requirements</b> <sup>[1]</sup> 62:13</p> <p><b>requires</b> <sup>[1]</sup> 51:1</p>	<p><b>rescind</b> <sup>[1]</sup> 69:6</p> <p><b>rescinded</b> <sup>[1]</sup> 44:10</p> <p><b>research</b> <sup>[1]</sup> 12:3</p> <p><b>resolve</b> <sup>[1]</sup> 25:21</p> <p><b>resources</b> <sup>[1]</sup> 68:20</p> <p><b>respect</b> <sup>[3]</sup> 12:7 43:23 57:25</p> <p><b>respectfully</b> <sup>[1]</sup> 55:2</p> <p><b>Respondents</b> <sup>[7]</sup> 1:7,24 2:11 3:22 4:5,12 34:4</p> <p><b>responses</b> <sup>[1]</sup> 13:3</p> <p><b>rest</b> <sup>[2]</sup> 34:20 68:4</p> <p><b>restatement</b> <sup>[2]</sup> 36:22 61:10</p> <p><b>restoration</b> <sup>[1]</sup> 11:4</p> <p><b>result</b> <sup>[4]</sup> 23:9 29:10,11 40:19</p> <p><b>retirement</b> <sup>[3]</sup> 4:12 34:13,16</p> <p><b>retrospective</b> <sup>[1]</sup> 5:21</p> <p><b>reverse</b> <sup>[2]</sup> 34:22 72:15</p> <p><b>reversed</b> <sup>[1]</sup> 21:15</p> <p><b>rid</b> <sup>[1]</sup> 20:23</p> <p><b>Rights</b> <sup>[1]</sup> 17:14</p> <p><b>Rings</b> <sup>[1]</sup> 56:5</p> <p><b>rise</b> <sup>[1]</sup> 4:17</p> <p><b>risk</b> <sup>[24]</sup> 6:19 12:18 17:3,10,11 19:25 27:2 35:19 37:11 38:5,9,10 39:9 48:23 50:5,8,14 51:13 53:9,15 63:23 67:18 72:9,10</p> <p><b>road</b> <sup>[1]</sup> 63:4</p> <p><b>ROBERTS</b> <sup>[21]</sup> 3:3 5:11 6:13,22 7:19 8:5,12 9:3,7 17:22,24 21:3,16 32:24 33:25 39:24 40:3 52:21 68:22 69:15 72:16</p> <p><b>rock</b> <sup>[1]</sup> 3:22</p> <p><b>role</b> <sup>[3]</sup> 27:8,10 33:2</p> <p><b>roller</b> <sup>[2]</sup> 31:17,21</p> <p><b>room</b> <sup>[1]</sup> 72:13</p> <p><b>rule</b> <sup>[12]</sup> 4:15 5:24 13:24 22:5,14,17 43:24 44:4 59:4,17 61:9 72:6</p> <p><b>rules</b> <sup>[2]</sup> 32:12,14</p> <p><b>run</b> <sup>[5]</sup> 47:18 48:8,9 57:8,22</p> <p><b>running</b> <sup>[2]</sup> 40:9,10</p> <p><b>runs</b> <sup>[2]</sup> 58:1,5</p> <p><b>Russell</b> <sup>[6]</sup> 22:9 28:23 48:7 57:3,10,20</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> <sup>[1]</sup> 12:22</p> <p><b>same</b> <sup>[6]</sup> 6:16 9:14 34:15,19,25 60:10</p> <p><b>satisfied</b> <sup>[1]</sup> 49:6</p> <p><b>satisfy</b> <sup>[1]</sup> 52:24</p> <p><b>save</b> <sup>[1]</sup> 26:19</p> <p><b>savings</b> <sup>[1]</sup> 4:12</p> <p><b>saw</b> <sup>[1]</sup> 9:16</p> <p><b>saying</b> <sup>[11]</sup> 19:14 24:20 30:13 31:21,25 32:3 36:1 38:1 51:10 60:9 69:25</p> <p><b>says</b> <sup>[13]</sup> 6:15 13:9 15:5,7,10 16:12 20:23 53:14 57:15 64:11 70:21 71:2,11</p> <p><b>Second</b> <sup>[10]</sup> 4:10 13:5 35:12 36:22 40:11 61:9,11 62:2 65:11 71:19</p> <p><b>Secondly</b> <sup>[1]</sup> 41:18</p> <p><b>seconds</b> <sup>[1]</sup> 29:21</p> <p><b>section</b> <sup>[2]</sup> 36:21,22</p>	<p><b>secure</b> <sup>[5]</sup> 7:21,23 9:10 64:25 65:2</p> <p><b>secured</b> <sup>[3]</sup> 5:4 7:12 13:21</p> <p><b>securities</b> <sup>[1]</sup> 69:8</p> <p><b>security</b> <sup>[5]</sup> 7:11,16 8:1,9 70:12</p> <p><b>see</b> <sup>[7]</sup> 14:22 20:3 25:17,22 29:22 32:23 61:2</p> <p><b>seek</b> <sup>[1]</sup> 42:23</p> <p><b>seeking</b> <sup>[2]</sup> 6:4 42:21</p> <p><b>seem</b> <sup>[2]</sup> 7:25 55:1</p> <p><b>seems</b> <sup>[3]</sup> 12:15 39:4 54:19</p> <p><b>seen</b> <sup>[3]</sup> 14:6 15:6 54:13</p> <p><b>self-deal</b> <sup>[1]</sup> 41:10</p> <p><b>self-dealing</b> <sup>[4]</sup> 4:13 41:9,15,17</p> <p><b>sense</b> <sup>[3]</sup> 16:8 22:5 36:13</p> <p><b>sensible</b> <sup>[1]</sup> 20:3</p> <p><b>separate</b> <sup>[7]</sup> 15:10 19:10 37:6 44:1,13 61:6 64:5</p> <p><b>separation</b> <sup>[1]</sup> 33:2</p> <p><b>series</b> <sup>[1]</sup> 58:13</p> <p><b>seriously</b> <sup>[2]</sup> 16:24 62:9</p> <p><b>services</b> <sup>[1]</sup> 5:2</p> <p><b>set</b> <sup>[6]</sup> 14:14 18:22 31:8 50:12 59:25 68:17</p> <p><b>settled</b> <sup>[1]</sup> 13:25</p> <p><b>settlor</b> <sup>[1]</sup> 28:5</p> <p><b>shall</b> <sup>[1]</sup> 15:9</p> <p><b>share</b> <sup>[1]</sup> 43:18</p> <p><b>she's</b> <sup>[1]</sup> 8:21</p> <p><b>Sherry</b> <sup>[1]</sup> 34:14</p> <p><b>shoes</b> <sup>[1]</sup> 33:23</p> <p><b>shot</b> <sup>[2]</sup> 58:24,25</p> <p><b>shouldn't</b> <sup>[4]</sup> 5:25 12:12 55:24 72:11</p> <p><b>show</b> <sup>[14]</sup> 8:21 33:8 37:11,14,14,15,22 38:18,20 40:17 49:20 52:1 54:20 62:8</p> <p><b>showed</b> <sup>[1]</sup> 52:17</p> <p><b>shows</b> <sup>[1]</sup> 12:8</p> <p><b>side</b> <sup>[7]</sup> 6:15 50:20,23 66:11,16 72:5,6</p> <p><b>Sierra</b> <sup>[1]</sup> 55:10</p> <p><b>significance</b> <sup>[1]</sup> 33:1</p> <p><b>significant</b> <sup>[1]</sup> 40:12</p> <p><b>significantly</b> <sup>[2]</sup> 51:20 53:13</p> <p><b>simple</b> <sup>[4]</sup> 38:8 41:6,6 56:5</p> <p><b>simply</b> <sup>[2]</sup> 38:21 56:8</p> <p><b>Since</b> <sup>[10]</sup> 4:21 8:19 13:14,25 15:22 20:8 28:4 34:13,16 70:19</p> <p><b>single</b> <sup>[2]</sup> 23:10 34:24</p> <p><b>situation</b> <sup>[6]</sup> 5:16,18 28:12 36:24,25 37:3</p> <p><b>situations</b> <sup>[3]</sup> 6:23 40:4 72:13</p> <p><b>slightly</b> <sup>[1]</sup> 60:5</p> <p><b>small</b> <sup>[1]</sup> 25:24</p> <p><b>Smith</b> <sup>[1]</sup> 34:14</p> <p><b>solely</b> <sup>[1]</sup> 63:13</p> <p><b>Solicitor</b> <sup>[1]</sup> 1:19</p> <p><b>solution</b> <sup>[1]</sup> 72:14</p> <p><b>solve</b> <sup>[1]</sup> 35:6</p> <p><b>solvency</b> <sup>[1]</sup> 18:15</p> <p><b>somebody</b> <sup>[3]</sup> 5:19 23:7,12</p> <p><b>somehow</b> <sup>[2]</sup> 45:19 66:17</p> <p><b>someone</b> <sup>[7]</sup> 4:8,9 10:16 27:15 33:19 61:14 68:11</p>
---	--	---	--

## Official - Subject to Final Review

<p><b>sometimes</b> [2] 31:20 59:19  <b>SOPAN</b> [3] 1:19 2:6 21:19  <b>sorry</b> [8] 9:25 17:24 25:17 27:8 32:2 41:4 50:2 53:11  <b>sorts</b> [1] 53:2  <b>SOTOMAYOR</b> [8] 40:24 41:1,4 42:16,20,25 43:2 68:6  <b>sources</b> [1] 13:15  <b>speculation</b> [1] 65:18  <b>spend</b> [1] 29:21  <b>spends</b> [1] 71:1  <b>Spokeo</b> [2] 25:7 44:25  <b>stage</b> [2] 62:18 65:13  <b>stages</b> [1] 17:9  <b>stake</b> [2] 56:25 57:13  <b>stand</b> [1] 13:23  <b>standard</b> [4] 52:22,23 53:8,9  <b>standing</b> [4] 4:20 10:18 11:9 19:11,23 20:2 21:10,12 25:23 26:10,23,23 27:15 30:14,19,22 33:18 35:5 37:4,9 42:12 43:10 44:22 45:22 46:2,13 48:17 49:18,22,25 54:15 56:7 62:25 65:6,11 67:19,21 71:24,25 72:4,12  <b>standpoint</b> [1] 11:14  <b>stands</b> [1] 67:25  <b>start</b> [1] 15:3  <b>started</b> [1] 36:1  <b>state</b> [1] 65:9  <b>stated</b> [4] 35:25 42:15,18 63:9  <b>statements</b> [1] 71:10  <b>STATES</b> [8] 1:1,14,21 2:7 3:5 18:17 21:20 71:21  <b>statute</b> [4] 11:10 21:6 44:17 55:17  <b>statutorily</b> [1] 56:10  <b>statutory</b> [1] 35:5  <b>step</b> [4] 9:17 28:5 33:23 65:11  <b>stewardship</b> [1] 4:11  <b>still</b> [9] 7:13 8:10,14 10:8 26:10 37:18 42:11 48:11 58:17  <b>stock</b> [2] 29:22 31:20  <b>stocks</b> [1] 15:8  <b>stop</b> [1] 27:11  <b>stream</b> [4] 40:20 48:25 49:21 65:17  <b>STRIS</b> [44] 1:17 2:3,13 3:6,7,9 6:2,17 7:7 8:4,11,14 9:6,14 10:6,9,14,17 11:11 13:3,10,20 14:16,20,24 15:1 16:21 17:6,12,23 18:1,13,18 19:2,6,8 20:13,19,24 21:4 36:1 69:17,18,20  <b>strong</b> [2] 16:2 25:19  <b>structure</b> [3] 36:3 43:8 48:3  <b>structured</b> [1] 54:4  <b>struggling</b> [1] 51:21  <b>subject</b> [2] 63:6,11  <b>submission</b> [1] 15:21  <b>submitted</b> [2] 72:17,19  <b>subsequent</b> [1] 57:19  <b>substance</b> [1] 45:16  <b>substantial</b> [3] 17:2 38:10 53:9  <b>substantially</b> [1] 53:15  <b>substantively</b> [2] 49:12,15  <b>sudden</b> [1] 65:1</p>	<p><b>sue</b> [60] 4:15,22 7:5,13 8:10,14 10:8,16 11:4 12:10,17,19,20,23,25 13:9 16:5 22:2,16,19,25 23:11 24:7,21,23,25 25:3 26:10,23 27:15,25 30:23 33:18,20,23 35:9,11,22 36:9,20 41:16,17 43:11 44:3 48:12,17,17 55:11,18,22 58:19 60:24 61:5,12 66:25 67:1,7 68:11,18 72:1  <b>suffered</b> [4] 3:21 4:13 30:21 55:24  <b>suffice</b> [1] 44:21  <b>sufficient</b> [4] 61:18 62:24 65:5 67:15  <b>sufficiently</b> [1] 51:13  <b>suggest</b> [3] 11:2 49:10,11  <b>suggested</b> [1] 27:13  <b>suggesting</b> [3] 7:25,25 24:20  <b>suggests</b> [2] 12:4 56:13  <b>suing</b> [2] 23:23 69:5  <b>suit</b> [4] 3:14 23:25 40:16,22  <b>suits</b> [3] 11:17,19 31:18  <b>summarizing</b> [1] 50:16  <b>supporting</b> [3] 1:22 2:8 21:21  <b>suppose</b> [1] 7:20  <b>supposed</b> [1] 58:7  <b>SUPREME</b> [3] 1:1,13 48:14  <b>surplus</b> [5] 15:16,20 19:16 42:22 43:4  <b>surprised</b> [1] 40:5  <b>surprisingly</b> [1] 11:24  <b>surveilled</b> [1] 52:11  <b>sweep</b> [1] 70:16  <b>swings</b> [1] 17:16</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>table</b> [1] 20:16  <b>talked</b> [3] 38:9 45:23 53:10  <b>tam</b> [2] 11:17 43:15  <b>tangible</b> [1] 9:9  <b>tax</b> [3] 15:13,14 19:20  <b>tells</b> [2] 19:18 27:3  <b>tension</b> [2] 25:17,22  <b>terminology</b> [1] 47:9  <b>terms</b> [6] 9:13 11:15 26:17 38:12,16 40:13  <b>Terry</b> [3] 48:12 49:23 61:1  <b>text</b> [2] 22:4 25:10  <b>themselves</b> [2] 41:16 43:3  <b>theory</b> [13] 5:12,17 6:9 24:3 61:17 65:22,25 66:23 67:7,9,11,12,13  <b>There's</b> [3] 6:18 7:3,8 19:9,24,24 23:6 25:5 26:5 31:12 38:5 43:22 44:13 48:1 50:5 52:5,5,14,15,21,22 53:3 55:22 60:21 64:13 65:16 71:15,21 72:2,8,14  <b>therefore</b> [7] 44:9 51:17,18 53:14,15 60:2 67:18  <b>they've</b> [5] 27:18 38:5 40:25 41:2 62:24  <b>third</b> [3] 4:19 35:22 40:12  <b>THOLE</b> [3] 1:3 3:5 34:11  <b>though</b> [6] 9:16 23:7 31:19 50:2 55:22 56:13  <b>three</b> [3] 3:15 69:17,20  <b>throughout</b> [1] 72:10</p>	<p><b>throw</b> [1] 23:7  <b>Tibble</b> [2] 21:7,15  <b>tied</b> [2] 45:19 59:8  <b>time-barred</b> [1] 20:17  <b>title</b> [4] 4:8 36:5 48:4,5  <b>today</b> [2] 33:10 71:2  <b>toe</b> [1] 9:15  <b>toggleing</b> [1] 65:9  <b>tomorrow</b> [1] 38:19  <b>ton</b> [1] 52:5  <b>tools</b> [1] 69:12  <b>torts</b> [1] 36:22  <b>totally</b> [1] 16:22  <b>traditional</b> [1] 22:14  <b>transaction</b> [3] 44:6,10 69:6  <b>transactions</b> [1] 68:14  <b>treated</b> [1] 70:24  <b>treatises</b> [1] 22:18  <b>tried</b> [2] 49:17 55:15  <b>trouble</b> [1] 42:9  <b>true</b> [3] 10:22 33:16 54:23  <b>trust</b> [115] 3:12,14,18,25,25 4:7,24 5:4,7,23 6:10,11 7:8 8:20,22 9:11 10:25 12:9,21 13:13,22 15:9,11,15,22 16:7,8,15 18:4 19:21,23 21:25 22:2,3,7,10,13,20,21,24 23:19 24:1,1,2,22 26:8,14,15,18 28:3,4,5,6,12,23 29:11,14 31:8,11 33:14 35:8,13,17 36:10,12,14,18,20 40:9 41:9,13,14 44:6,9,13,15 45:20 46:2,4,18,19,23 47:7 48:16,18 49:17,21 54:20 57:15 58:1,11,12,24 59:1,5,5,9,12,13,15,18,20 60:1,6,14,20,22,23 61:13,13 69:4,4 70:11,15 71:13  <b>trust's</b> [1] 4:7  <b>trustee</b> [24] 4:22 7:6 12:10 21:24 22:2,12,16,19,22,25 23:5 24:17,24,25 26:13 27:24 36:4 44:21 48:4,5 54:22 68:12,13 69:5  <b>trustee's</b> [1] 33:21  <b>trustees</b> [5] 3:12 31:15 41:15 42:2 69:2  <b>trusts</b> [2] 10:12 20:7  <b>truthful</b> [1] 57:23  <b>trying</b> [4] 38:12 49:11 50:12,18  <b>tulips</b> [1] 9:17  <b>turned</b> [1] 40:6  <b>turns</b> [1] 65:1  <b>two</b> [12] 19:2,8,9 26:6 37:1 41:6 44:1 45:25 54:18 58:22 61:6 69:21  <b>Twombly</b> [2] 51:2 63:7  <b>types</b> [1] 20:6  <b>typical</b> [1] 54:20</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>U.S.</b> [8] 1:6 34:14 35:18,19 48:21 52:18 67:14 69:9  <b>ultimate</b> [2] 66:12,21  <b>unable</b> [6] 39:21 54:8 61:23 62:3,11,12  <b>unbroken</b> [1] 20:7  <b>unconnected</b> [2] 35:16 36:19  <b>Under</b> [22] 4:14 5:1,22,24 9:9 23:</p>	<p>25 33:10 36:2,3 52:24 54:25 56:5 59:17 61:8 63:6,17,18,20 65:20,20,25 67:6  <b>underfunded</b> [16] 17:21 27:5 29:24 38:21 39:4 41:24 51:17,20 52:18 53:13 54:2 61:22 62:9 64:22,23 65:10  <b>underfunding</b> [1] 54:7  <b>underlying</b> [1] 35:13  <b>understand</b> [6] 30:17 38:3 43:25 45:6 46:11 49:5  <b>understood</b> [1] 7:20  <b>undifferentiated</b> [1] 23:20  <b>undisputed</b> [1] 34:18  <b>undivided</b> [3] 4:1 5:6 10:23  <b>unharmful</b> [1] 35:10  <b>uninjured</b> [2] 69:14,25  <b>UNITED</b> [8] 1:1,13,21 2:7 3:5 18:17 21:20 71:21  <b>unless</b> [3] 4:7 35:24 65:11  <b>unsegregated</b> [3] 3:25 5:6 10:21  <b>until</b> [3] 6:20 19:16 41:23  <b>unwilling</b> [4] 4:22 54:7 61:23 62:2  <b>unworkable</b> [1] 72:11  <b>up</b> [17] 12:2 16:3 17:15 29:5,22,24 30:6 36:16,16 39:11,22 51:18 54:5 67:3 68:17 70:9 71:2  <b>ups</b> [1] 36:10  <b>upset</b> [1] 9:17</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>value</b> [7] 6:9 35:17 36:10,19 45:19 49:17 59:8  <b>varied</b> [1] 10:2  <b>vehicle</b> [1] 41:8  <b>verity</b> [1] 57:24  <b>Verizon</b> [3] 39:14,16,20  <b>Vermont</b> [1] 11:18  <b>versus</b> [8] 3:5 14:3 39:14 43:13,21 48:13 49:23 61:1  <b>view</b> [2] 44:22 47:2  <b>viewed</b> [1] 35:4  <b>vindicate</b> [1] 4:20  <b>violation</b> [1] 45:3</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>wages</b> [2] 5:3 70:10  <b>wanted</b> [1] 28:18  <b>Washington</b> [3] 1:9,20,23  <b>wasting</b> [1] 15:15  <b>way</b> [6] 9:14,18 10:12 15:22 18:21 54:3  <b>weight</b> [1] 32:25  <b>Westminster</b> [1] 25:12  <b>whatever</b> [6] 11:9 33:8 41:19,22 45:12,12  <b>whenever</b> [2] 49:6 54:14  <b>Whereupon</b> [1] 72:18  <b>whether</b> [9] 19:15 35:4 41:12,20 42:5,10 46:10 63:8 64:6  <b>Whiteacre</b> [2] 11:1,5  <b>who's</b> [1] 33:22  <b>whole</b> [6] 42:2,3 45:20 50:12 51:24 52:4</p>
--	---	---	--



## Official - Subject to Final Review

**whom** <sup>[1]</sup> 58:23  
**will** <sup>[16]</sup> 7:1 13:18 21:15 22:23 26:  
 10 27:23 34:12,15,19 40:19 43:15,  
 19,19 46:7 65:19 72:7  
**win** <sup>[1]</sup> 6:16  
**without** <sup>[1]</sup> 15:24  
**wonder** <sup>[1]</sup> 31:16  
**word** <sup>[1]</sup> 16:9  
**wording** <sup>[1]</sup> 60:5  
**words** <sup>[4]</sup> 5:13 25:9,11 56:15  
**work** <sup>[1]</sup> 70:1  
**worked** <sup>[2]</sup> 15:23 20:7  
**worker** <sup>[1]</sup> 70:9  
**Workers** <sup>[1]</sup> 5:3  
**works** <sup>[1]</sup> 33:10  
**worry** <sup>[1]</sup> 5:25  
**worth** <sup>[3]</sup> 50:16,17,25  
**wrongfully** <sup>[1]</sup> 8:8

---

**Y**

---

**year** <sup>[2]</sup> 17:19 27:4  
**years** <sup>[2]</sup> 22:3 25:8  
**Yellowstone** <sup>[1]</sup> 55:13  
**yesterday** <sup>[1]</sup> 30:8

---

**Z**

---

**zero** <sup>[3]</sup> 46:6,10 58:25