

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X
4 EAST END ERUV ASSOCIATION,
5 INC., et al.,

: CV 11-0213

6 Plaintiffs,

: United States Courthouse
Central Islip, New York

7 -against-

8 THE VILLAGE OF WESTHAMPTON
9 BEACH, et al.,

: June 27, 2011
9:30 a.m.

10 Defendants.
-----X

11 TRANSCRIPT OF HEARING
12 THE HONORABLE LEONARD D. WEXLER
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Plaintiffs:

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transcript produced by computer aided transcription

1 THE COURT: Joe, call the case.

2 (Case called.)

3 THE COURT: Be seated.

4 MS. LICCIONE: There are appearances which
5 previously have not been noted.

6 THE COURT: Who is that?

7 MS. LICCIONE: My partner, Robert Guido,
8 G-U-I-D-O, from Jaspan Schlessinger for the Town of
9 Southampton.

10 MR. SPELLMAN: If I may your Honor, Thomas J.
11 Spellman, Jr. My partner, Jeltje DeJong, was here the
12 other day.

13 MR. SOKOLOFF: Before we get started, I
14 understand there are nonparty witnesses in the courtroom.
15 I ask they be excluded. Nonparty witnesses.

16 MR. SUGARMAN: Your Honor, I don't think there
17 will be credibility issues between party witnesses and
18 nonparty witnesses. We did not do that the other day.
19 There were nonparty witnesses in the courtroom.

20 THE COURT: The other day, correct, though it
21 wasn't your case.

22 All witnesses are excluded.

23 MR. SUGARMAN: Nonparty witnesses.

24 THE COURT: Nonparty witnesses, of course.

25 Most of the people in the back are students and

1 have nothing to do with this case.

2 MR. SUGARMAN: I would like to introduce my
3 colleague, Yehudah Buchweitz.

4 Counsel have conferred, and we'll do Westhampton
5 Beach, with one exception. As Ms. Liccione's requested,
6 we'll call Supervisor Throne-Holst out of turn so she can
7 go back to her job.

8 And in addition, counsel agree when Mr. Tuchman
9 and Mr. Balcerski will testify -- and they'll be the first
10 two witnesses -- both Westhampton Beach lawyers and
11 Southampton lawyers will cross-examine them so they can go
12 on with their business, if that is okay with your Honor.

13 THE COURT: Fine.

14 MR. SUGARMAN: So, Mr. Tuchman, can you resume
15 the stand, please.

16 Your Honor, we've also prepared up-to-date
17 exhibit books which we're handing up to you right now.

18 THE COURT: Joe, swear the witness in.

19 THE CLERK: He's already sworn, Judge.

20

21 **M O R R I S T U C H M A N,**

22 having been previously affirmed, resumed the stand
23 and testified further as follows:

24 THE WITNESS: Morris Tuchman.

25

1 DIRECT EXAMINATION

2 BY MR. SUGARMAN:

3 Q Mr. Tuchman, you were in 2008, were and are today,
4 the president of Westhampton synagogue?

5 A Yes.

6 Q There was testimony, in 2008 Westhampton synagogue
7 submitted an application to the Village of Westhampton
8 Beach.

9 MR. SOKOLOFF: Objection.

10 THE COURT: What's the grounds?

11 MR. SOKOLOFF: I don't believe there is
12 testimony about any application. That is a term of art.

13 THE COURT: Overruled.

14 Go ahead.

15 BY MR. SUGARMAN:

16 Q When the Hamptons synagogue submitted its initial
17 application in 2008, did you discuss that with -- either
18 publicly or privately with Mayor Teller?

19 A Yes. Yes.

20 Q And would you give the Court the substance of those
21 discussions?

22 A There were numerous discussions, but I think most
23 significantly there was a public hearing or meeting where
24 Mayor Teller spoke about --

25 MR. SOKOLOFF: Objection.

1 The question was, if I may, the question was
2 about private or public conversations with Mayor Teller.
3 Now he's talking about a public hearing, things that the
4 mayor said in a public hearing.

5 MR. SUGARMAN: I said either public or private,
6 and so I will rephrase the question to satisfy
7 Mr. Sokoloff.

8 BY MR. SUGARMAN:

9 Q Did you either have private conversations or were you
10 present at public statements that Mayor Teller made?

11 A Yes, I was at a public hearing where Mayor Teller
12 discussed the application. And he stated that he had
13 spoken with the mayor of Tenafly; that there had been no
14 problems that they had encountered after the Tenafly
15 litigation; that he had no reason to oppose the granting
16 of any application; and that basically he was vetting this
17 application and that he was in favor of it being granted,
18 and there was nothing to block it from being granted.

19 Q Did Mayor Teller change his position with respect to
20 the eruvs?

21 A Yes. There was a firestorm of opposition --

22 MR. SOKOLOFF: Objection. Objection.
23 Objection.

24 THE COURT: I didn't hear the answer.

25 MR. SOKOLOFF: He said there was a firestorm, is

1 what he said.

2 MR. SUGARMAN: Of protests.

3 THE COURT: Let him finish his answer so I know
4 what he's saying.

5 Counsel, there is no jury. If there is a
6 problem, I can strike it out of my mind.

7 MR. SOKOLOFF: I understand.

8 THE COURT: It's overruled.

9 Go ahead. Finish your answer.

10 A Yes, there was a firestorm of opposition, and it was
11 quite clear that the mayor would not any longer support
12 the application or the granting of an eruv.

13 BY MR. SUGARMAN:

14 Q When you say it was quite clear, how did that
15 manifest itself?

16 A There were numerous articles. And in fact, in the
17 mayor's own campaign literature, he made clear he was not
18 in favor of the eruv; that it was dividing the community;
19 that it was reasonable -- that reasonable people could
20 assume there would become a Jewish enclave if an eruv was
21 granted. It was quite clear that he was no longer in
22 favor of it.

23 Q Did other trustees of the Village of Westhampton
24 Beach publicly indicate their position with respect to the
25 eruv?

1 A In campaign literature and interviews, it was
2 absolutely clear they weren't going to approve an eruv.

3 Q Did officials in the Town of Southampton take a
4 position with respect to the eruv?

5 A For a very, very long time, until literally the
6 eleventh hour, they said nothing to indicate that they had
7 an opposition to the eruv. In fact, there were folks
8 from -- spokesman saying it's up to Verizon and LIPA.

9 MS. LICCIONE: Objection.

10 THE COURT: Who said it?

11 THE WITNESS: A spokesperson from the Town of
12 Southampton.

13 THE COURT: What do you mean "a spokesperson"?

14 THE WITNESS: That is what the quote was in the
15 press.

16 THE COURT: Sustained.

17 MS. LICCIONE: I'll object to hearsay. We all
18 know --

19 THE COURT: I just ruled in your favor, Counsel.

20 MS. LICCIONE: I didn't hear your Honor.

21 MR. SUGARMAN: Mr. Tuchman -- withdrawn.

22 BY MR. SUGARMAN:

23 Q You testified last week that Verizon and LIPA had
24 agreements with the Eruv Association.

25 A Absolutely.

1 Q Let me finish.

2 What was the result with respect to -- the
3 opposition with respect to both Westhampton Beach and
4 Westhampton?

5 MS. LICCIONE: Objection. There has been no
6 testimony.

7 THE COURT: Let's hear what the testimony is.
8 Overruled.

9 A LIPA and Verizon both refused to issue licenses
10 pursuant to those contracts because of the opposition that
11 they had received from Southampton in writing --

12 THE COURT: How do you know this?

13 THE WITNESS: Because they were typing the
14 licenses. We were told they were typing the licenses.

15 THE COURT: Who told you?

16 THE WITNESS: LIPA and Verizon.

17 MS. LICCIONE: Objection.

18 THE WITNESS: You want the particular people?

19 THE COURT: Yes.

20 THE WITNESS: We heard from Braglia,
21 B-R-A-G-L-I-A, who was with LIPA, and -- I'm sorry, your
22 Honor, his name, for the moment, from Verizon escaped me.

23 MR. SUGARMAN: We'll bring that out with
24 Mr. Balcerski, with the next witness.

25 MS. LICCIONE: Your Honor, I have a continuing

1 objection --

2 THE COURT: You have a continuing objection.

3 MS. LICCIONE: -- as to the basis to lay a
4 foundation. There has been no admissible evidence that
5 there was opposition from the --

6 THE COURT: Overruled.

7 Go ahead.

8 BY MR. SUGARMAN:

9 Q Mr. Tuchman, would you describe in words, not having
10 reference to the map, what outlines the eruv?

11 A Well, the eruv is made --

12 Q No, the outlines. What is the outline of the eruv,
13 in words?

14 A In words, it's natural boundaries, structures and
15 existing overhead wires.

16 Q Do the lechis in any way outline?

17 A Yes. They don't play any role in the outlining of
18 the eruv. They are used for religious purposes.

19 MR. SUGARMAN: I think you've answered the
20 question.

21 Q What delineates the eruv?

22 A The eruv is delineated by a map that shows what the
23 eruv encompasses.

24 Q And what is that, in words?

25 A As I said, there will be actual boundaries, in this

1 case natural boundaries, existing structures and existing
2 overhead wires.

3 Q And do the lechis delineate the eruv?

4 A No. As I said before, they don't.

5 Q In your testimony last week, I asked you a question
6 and you gave an answer, and I want to ask you whether that
7 answer was appropriately and correctly recorded in the
8 record.

9 MR. SOKOLOFF: Objection.

10 MR. SUGARMAN: Your Honor, I'm just trying to
11 make the record accurate in terms of what this witness
12 said with respect to one question, and that will be my
13 last question.

14 MR. SOKOLOFF: My position is the court reporter
15 is the one who decides what the witness said.

16 THE COURT: Overruled.

17 Go ahead.

18 BY MR. SUGARMAN:

19 Q Mr. Tuchman, the question I asked you was: And did
20 this modification that you've just described necessitate
21 the designation of new poles on which to put the lechis?

22 And your answer was: Answer: Not a change in
23 number but a change in the actual poles we would be using,
24 because it is the same, north-south -- there are some
25 lechis required on some of the poles but actually not the

1 same, north-south. So it will be the same poles you will
2 be attaching lechis to.

3 Is that correct?

4 A No, that is impossible if you are moving lines.

5 Q "So it will be the same poles that you will be
6 attaching lechis to" is incorrect?

7 A The north-south -- if you moved it to north-south,
8 they would have to use different poles on the north-south
9 because you are not in the same place. So to the extent
10 you move the north-south boundary, you have to use
11 different north-south poles. You can't use the same poles
12 you used earlier.

13 MR. SUGARMAN: I have no further questions.

14 THE COURT: Go ahead, Counsel.

15

16 CROSS-EXAMINATION

17 BY MR. SOKOLOFF

18 Q To your right is Exhibit 1. Is that a map that
19 delineates the eruv that the EEEA is now seeking?

20 A Yes. That is an eruv that the EEEA is seeking.

21 Q That is not the eruv that the EEEA was seeking when
22 it filed this lawsuit; is that correct?

23 A That is correct.

24 Q Can you tell us, please, when it was that the eruv
25 that your organization was seeking changed?

1 A As I said, I think, on my direct testimony about --
2 well, now it would be four weeks or so ago as opposed to
3 three or four weeks ago.

4 MR. SOKOLOFF: Your Honor, may I approach the
5 map?

6 THE COURT: Sure. You don't have to ask.

7 BY MR. SOKOLOFF:

8 Q This area -- and I admit to being color-blind, but
9 this area is green or yellow?

10 THE COURT: Yellow.

11 MR. SOKOLOFF: Thank you.

12 BY MR. SOKOLOFF:

13 Q That yellow area on the map constitutes the boundary
14 of my client, the Village of Westhampton Beach; is that
15 correct?

16 A Yes.

17 Q And is it also correct that in Westhampton Beach, the
18 southern boundary of the eruv is the Atlantic Ocean?

19 A It's the structures that are in that area. There are
20 structures in that area. You can't use the Atlantic
21 Ocean, but there are structures on the south side of Dune
22 Road that would be used for the eruv.

23 Q So the south boundary of the eruv in the Village of
24 Westhampton Beach is not Dune Road, correct?

25 A It is on Dune Road. There are structures on Dune

1 Road that would be part of the eruv.

2 Q Is this boundary that you submitted as Exhibit 1 --
3 and you told Judge Wexler about it. Is that an accurate
4 depiction of the eruv as proposed?

5 A At present?

6 Q At present.

7 A Yes.

8 Q And the boundary, the southern boundary, is some
9 distance south of Dune Road, as depicted on that map,
10 correct?

11 A No. That is Dune Road. That piece that you are
12 looking at, that yellow piece, that is Dune Road. There
13 is only one road, and there are two sides to the road.

14 Q Can you please point out for Judge Wexler where Dune
15 Road is on that map?

16 A Yes.

17 THE COURT: Do you want a marker?

18 THE WITNESS: Well, your Honor, this is Dune
19 Road. You see it says "Dune Road."

20 Now, the actual asphalt of Dune Road is here,
21 and all the houses here will be called 75 Dune Road,
22 38 Dune Road.

23 So because there is only one asphalt piece
24 and -- then this entire area is Dune Road (indicating).

25 BY MR. SOKOLOFF:

1 Q This eruv map that you say is accurate depicts no
2 lechis on Dune Road; is that correct?

3 A I don't think that this map depicts lechis anywhere.
4 There are lechis that are used on Dune Road in the list,
5 but the map does not depict use of lechis.

6 As I told you, most of it is done by natural
7 boundaries or existing structures or even existing wires.

8 Q Do the lechis, as proposed or as described by you
9 now, do the lechis fall on the red outline, somewhere
10 along the red outline (indicating)?

11 A It is possible that two of them fall on the red
12 outline, but I'm not certain about that. I'm not certain
13 about that.

14 Q Didn't you say that it was -- the water was the
15 boundary line?

16 A I said that there are structures that are on the
17 south side of Dune Road that form the eruv.

18 I also said that the water cannot -- is not the
19 boundary of the eruv. You can't carry on the water.

20 Q Did you physically look at where the eruv would be
21 before you told Judge Wexler that this was an accurate
22 depiction of where it would be?

23 A Yes.

24 Q Can you tell us, please, what the structures are that
25 comprise the southern boundary of the eruv in my client,

1 the Village of Westhampton Beach?

2 MR. SUGARMAN: Your Honor, I object to this
3 because what it is going to is what makes the eruv proper
4 under Jewish law.

5 THE COURT: Overruled.

6 Go ahead.

7 THE WITNESS: I'm going to answer.

8 THE COURT: Yes.

9 THE WITNESS: Yes, there are houses and there
10 are fences that run on the south side of Dune Road and
11 Halakhah. Pursuant to Jewish law, there are circumstances
12 where houses so close to each other and with fences that
13 are there for the front yards can form part of the eruv.

14 BY MR. SOKOLOFF:

15 Q Does the EEEA intend, if there is to be an eruv,
16 intend to put any markers or delineations on those
17 structures that are already there on the southern boundary
18 of the eruv in the Village of Westhampton Beach?

19 A Absolutely not.

20 Q So am I correct that on the southern boundary, only
21 the southern boundary in Westhampton Beach, there is to be
22 nothing that the EEEA will put on anything? Correct?
23 Only the southern boundary?

24 A As I recall, that's correct.

25 Q Now, at the bottom left of the eruv map near the

1 number 89 on Dune Road, the eruv takes a northerly turn;
2 am I correct?

3 A Yes.

4 Q There are no -- withdrawn.

5 Can you tell us, please, what structures, if
6 any, denote the northerly turn of the eruv in the bottom
7 left corner?

8 A The bottom left corner. You mean in the left of the
9 peninsula, because when you say "bottom left corner," you
10 are talking to a different place than what you are
11 pointing at.

12 Q Do you see where I'm pointing?

13 A I see that.

14 Q And there is a red line that takes a northerly turn.

15 A Right.

16 Q What structures, if any, denote the northerly track
17 of the eruv at that point?

18 A What you would be using for the eruv are moorings
19 that are built in for ships to park, if you will, or dock,
20 and those moorings are high enough in that area on the
21 left part of the peninsula to be usable as a Halakhah eruv
22 pursuant to Jewish law.

23 Q Am I correct that the EEEA does not seek to affix
24 anything to those moorings?

25 A That is correct. Right.

1 Q Then the line heading north crosses a body of water;
2 is that correct? Is that correct?

3 A Yes, that is correct.

4 Q Is that Moriches Bay that it crosses?

5 A Perhaps. I mean, I have no reason to question the
6 maps.

7 Q The northerly direction of the eruv at this point is
8 parallel to a Jessup Lane that falls to the east?

9 A Yes.

10 Q It's not Jessup Lane; it's some imaginary line to the
11 west of Jessup Lane?

12 A No, it's Jessup Lane. To cross over from the
13 mainland to Dune Road, you have to use a bridge. You
14 can't use the water.

15 Q Do you see if this is Jessup Lane?

16 A Yes.

17 Q There is no eruv on Jessup Lane?

18 A What you are saying, there is no red line on Jessup
19 Lane. But Jessup Lane would be the cross point.

20 Q Then are you saying this map is inaccurate?

21 A What I'm saying is that the perimeter of the eruv is
22 correct. If you ask me if somebody was walking in the
23 water and trying to carry an object, they would not be
24 able to carry it in the water. But the perimeter is
25 correct. That's where the eruv would be around.

1 Q And there are no lechis at that point, correct?

2 A Where the moorings are?

3 Q Correct.

4 A Yes, that's right.

5 Q And then after we cross Moriches Bay, the red line
6 hugs a shoreline; is that correct?

7 A Yes.

8 Q Roughly at some point parallel to a street called
9 Reynolds Drive; is that correct?

10 It's labeled "Reynolds Drive."

11 THE WITNESS: (Perusing.)

12 Q Is that labeled "Reynolds Drive"?

13 A Yes, there's a street Reynolds Drive. And the red
14 line is curving left, and Reynolds Drive curves left.

15 Q What are, if any, the structures that outline the
16 eruv along that shoreline?

17 A As best I can recall, those are moorings. Mooring.

18 Q Does your organization intend to place any structures
19 along those moorings?

20 A No.

21 Q How long have you been president of the synagogue?

22 A Since early 2008.

23 Q There was never -- withdrawn.

24 The Village of Westhampton never officially took
25 any action at all -- withdrawn.

1 The synagogue, you testified earlier, had some
2 kind of submission to the village seeking an eruv; is that
3 correct?

4 A That's correct.

5 Q Can you show us where on Exhibit 1 that eruv was
6 proposed to be located, if it was even in outline form?

7 A It was actually on the village's web site for a long
8 period of time, and it was -- a one-mile-square outline of
9 an eruv, as I said, was on the website, much smaller than
10 this eruv.

11 Q Can you please walk over to that map and, with words,
12 outline where that eruv is supposed to be? Give us the
13 streets or other features and points so Judge Wexler and
14 everybody else can see where that eruv was supposed to be.

15 A I'm unable to tell you with words the streets that
16 were on the original application, but if you look at the
17 application, it says what streets there were, particular
18 street.

19 Q And you haven't seen that document this morning, have
20 you?

21 A No, I haven't seen that document.

22 Q Your lawyer didn't put that into evidence, did he?

23 A I have no idea. I didn't see anything come in,
24 certainly, this morning.

25 Q And is it your testimony that whatever was submitted

1 to the village at that point had a map?

2 A What was submitted to the village was an application
3 for a proclamation. I don't believe it had a map.

4 However, on the village's web site, there was a map that
5 outlined the eruv.

6 Q My question is, did the synagogue prepare a map of
7 what you say was an earlier version of the eruv? Yes or
8 no.

9 A I don't remember.

10 Q And you say that the village -- withdrawn.

11 You say that the synagogue asked the village for
12 a, quote, proclamation, closed quote?

13 A Yes, that's correct.

14 Q The synagogue had a lawyer at that time, correct?

15 A Yes.

16 Q And by the way, when do you say this application for
17 a proclamation was submitted?

18 A My memory is in February or March of 2008.

19 Q So that is more than three years ago?

20 A That is correct.

21 Q And who was on the village board at that time?

22 A As I recall, Mayor Teller, Toni-Jo Birk, Hank Tucker,
23 Joan Levan, and I don't remember Mr. Comecler's [phonetic]
24 first name, but a man whose last name was Mr. Comecler.

25 Q And the board, in 2008, no longer exists as that

1 board, correct?

2 A I don't understand the question.

3 Q There have been changes to the village board since
4 2008, correct?

5 A Yes, to the membership of the village trustees, yes.

6 Q What changes have there been to the compensation of
7 the board from 2008 to this minute?

8 A I'm aware that Joan Levan is no longer on the board.
9 Mr. Comecler is no longer on the board, and there was just
10 an election last week where Mr. Tucker was reelected and
11 another person named Ms. De Benedetto was elected.

12 So you have Mayor Teller, Ms. Birk, Mr. Tucker,
13 Ms. De Benedetto, and I'm not remembering the fifth name.

14 Q You've seen the EEEA complaint in this lawsuit,
15 correct?

16 A Yes.

17 Q And you reviewed it before it was filed to make sure
18 it was accurate, correct?

19 A As best as I could, yes.

20 Q And annexed to the complaint as an exhibit to the
21 complaint were several documents, correct?

22 A I imagine. Yes.

23 Q By the way, are you a lawyer?

24 A Yes.

25 Q One of the letters that was submitted as an exhibit

1 to the complaint was a letter from Robert Sugarman to the
2 village board, correct?

3 A Yes.

4 Q And that letter is dated -- it's Exhibit K to the
5 complaint. That is a letter from Mr. Sugarman to the
6 mayor and trustees of the Village of Westhampton Beach,
7 dated October 19th, 2008, correct?

8 A That's possible.

9 Q On page 3 of that letter -- I want you to listen
10 closely -- Mr. Sugarman writes the following, and then I'm
11 going to read it, and then I'm going to ask you questions
12 about it.

13 Quote: There are two requirements --

14 THE COURT: Wait a second. Wait until they get
15 their papers.

16 Tell me when you are ready.

17 MR. SUGARMAN: We're ready, your Honor. Thank
18 you.

19 THE COURT: All right.

20 BY MR. SOKOLOFF:

21 Q There are two requirements under Jewish law in order
22 for an eruv to be valid. First: There must be a
23 proclamation delineating and, quote, renting the area for
24 the use of an eruv from a public official whose
25 jurisdiction includes the area in which the eruv is to be

1 constructed. The public official could be, among others,
2 the mayor of the municipality in which the eruv is to be
3 located, the county executive of the county in which the
4 municipality is located, or the governor of the state.

5 Second: The physical construction of the eruv
6 must comply with the requirements of Jewish law. If
7 either of these requirements is not met, the eruv would
8 not be valid.

9 Now, let me stop right there and focus for a
10 minute on the first of what Mr. Sugarman says is a
11 requirement for a valid eruv.

12 Does the Eruv Association, the EEEA, have a
13 proclamation delineating and renting the area for use as
14 an eruv from a public official whose jurisdiction includes
15 the area where the eruv is to be constructed?

16 MR. SUGARMAN: Your Honor, I would renew my
17 objection, and I would like to read one sentence from a
18 decision of the Supreme Court of the United States.

19 In *Employment Division vs. Smith*, 494 U.S. 872
20 at 887, quote: It is not within the judicial canon to
21 question the centrality of particular beliefs or practices
22 to a faith or the validity of particular litigant's
23 interpretation of those creeds, unquote.

24 What Mr. Sokoloff is getting into is the
25 necessity or lack thereof of a proclamation under Jewish

1 law. It has nothing to do with local laws in Southampton
2 or in Westhampton Beach or in Quogue.

3 As the Supreme Court has made clear, this is not
4 an area within the canon of a federal court. And I
5 suggest to your Honor that the whole line of questioning
6 having to do with Jewish law has no relevance to this case
7 and should be blocked.

8 THE COURT: Overruled.

9 Continue.

10 BY MR. SOKOLOFF:

11 Q Okay. Can you please answer the question? If you
12 need it read back --

13 THE COURT: I think by now the lawyers should
14 have known that I'm allowing leeway upon both sides to
15 present the case, and I will make a determination. But,
16 obviously, neither side accepts that.

17 So go ahead.

18 A The question, in ten words or less: Is there, to an
19 extent, a proclamation similar to what Mr. Sugarman
20 stated?

21 BY MR. SOKOLOFF:

22 Q Yes.

23 A And the answer is no.

24 Q So according to what Mr. Sugarman wrote in his letter
25 to the village that is annexed to the complaint, the eruv

1 can't be valid until that happens, correct?

2 A I'm not going to speak to Mr. Sugarman's opinion, but
3 I can assure you that if the Court grants this injunction,
4 the eruv will be a valid eruv, and it will be put up, as
5 we said earlier, and it will be totally in line with
6 Halakhah.

7 Q Is that because Judge Wexler, in your view, in your
8 religious view, is the appropriate public official to
9 grant the proclamation?

10 THE COURT: Sustained.

11 A No -- thank you.

12 THE COURT: Judge Wexler hates to admit, but I
13 never heard some of these terminologies prior to this case
14 nor have any knowledge concerning it.

15 THE WITNESS: May I make clear for the record,
16 when I refer to Halakhah, I'm referring to Jewish
17 religious law.

18 THE COURT: I didn't know that either. And I
19 never heard of eruv or lechis.

20 THE WITNESS: Right.

21 THE COURT: Since this case. That is the first
22 time I ever heard of those expressions.

23 Go ahead.

24 BY MR. SOKOLOFF:

25 Q The northerly boundary of the eruv in the Village of

1 Westhampton Beach consists of what?

2 A Primarily, you are talking about the east-west when
3 you say "northern."

4 Q You're right. The northernmost east-west boundary in
5 Westhampton Beach.

6 A Yes. Primarily, it uses the Long Island Rail Road
7 fencing except for where the station is. Because the
8 station is opened. There's no fence.

9 Q Can you point out, please, on the map where the Long
10 Island Rail Road station is?

11 A (Indicating) It is slightly to the right -- I'm
12 sorry. Slightly to the right of the number 21. There's a
13 street called Depot Road, and that's where the station is.

14 Q Is the Long Island Rail Road -- sorry.

15 Is the Long Island Rail Road train station in
16 the Village of Westhampton Beach?

17 A As far as I know, yes.

18 Q And does your organization, the EEEA, intend to put
19 any fixtures or anything at all on the Long Island Rail
20 Road fence?

21 A No.

22 Q Do you intend to put anything up in the Long Island
23 Rail Road station?

24 A Not in the station, no.

25 Q So does that mean that you don't need permission from

1 the Long Island Rail Road to use the Long Island Rail Road
2 property as part of an imaginary eruv?

3 A I think you answered it. You are saying something
4 that is symbolic and imaginary. You are asking for
5 permission to use my imagination and use it. The answer
6 is no.

7 Q Do you recall testifying the last time that the
8 reason that the size of the lechis change from the size
9 that was listed in the complaint, that is, 40 inches, to
10 what you now say is the size of the lechi, 10 to
11 15 feet -- do you recall testifying about that change in
12 size?

13 A Yes.

14 Q And do you recall testifying that the reason in size
15 was because Verizon made that change?

16 A We required a longer lechi in order to, under Jewish
17 law, in order for the eruv to function because of the
18 state of the poles, the way these poles are.

19 When we approached Verizon to say we needed
20 longer lechis, they gave us the specifications for how we
21 do longer lechis on their poles, and that's the picture
22 that is, I believe, in evidence.

23 MR. SUGARMAN: Exhibit 2, your Honor.

24 THE WITNESS: Exhibit 2.

25 BY MR. SOKOLOFF:

1 Q So the 40-inch lechis are the ones that are mentioned
2 in the complaint; is that correct?

3 A Yes.

4 Q And the lechis were 40 inches when Mr. Sugarman twice
5 brought a piece of wood into this courtroom to show Judge
6 Wexler, to say, this is what the lechi looks like.
7 Correct?

8 A I wasn't here, so I don't know if he did that.

9 Q On what date did the required size of the lechi
10 change?

11 A I think it was about four weeks, three or four weeks
12 ago. I'm not certain, but something like that.

13 Q And did you not testify the first time around that
14 the size of the lechi changed because Verizon said it had
15 to be bigger?

16 A No, I don't believe I said that. I said that the
17 specifications for this larger lechi is pursuant to
18 Verizon. In other words, they didn't want wood; they
19 wanted a PVC, plastic, instead of the wood.

20 Q What caused the required size of the lechi to change
21 four weeks ago?

22 A Okay --

23 MR. SUGARMAN: Same objection, your Honor.

24 THE COURT: I'll allow it.

25 A There's a Halakhic concept known -- and I'll just

1 first say it in Hebrew, and it is called Gud Asik.

2 THE COURT: You have to translate it for me.

3 Go ahead.

4 THE WITNESS: And it means we can draw an
5 imaginary line up when there's a structure -- let's say
6 40 inches. We can draw an imaginary line up to imagine
7 that it connects to a wire. However, that has to be
8 straight.

9 So if the pole is leaning, or if the pole is a
10 wood pole and it warped and over time it changed, we're
11 not sure it will line up. Therefore, we have to have a
12 longer pole so it is closer to a connect point to make an
13 imaginary T.

14 BY MR. SOKOLOFF:

15 Q The synagogue itself decided to -- withdrawn.

16 In 2008, the synagogue notified the village that
17 it was withdrawing any application that it had submitted,
18 correct?

19 A Yes, it withdrew the application for proclamation.

20 Q And the synagogue notified the village that it was
21 withdrawing its application before the village took any
22 vote or did anything on that application; is that correct?

23 A Well, there was a vote. The mayor asked for the
24 matter -- it's not clear what exactly he asked.

25 We thought they were asking for it to be

1 approved, and it was voted down three to two.

2 The mayor then said he was only asking to put it
3 on the agenda, and it was voted down three to two.

4 I don't know. But that's what happened.

5 Q So you cannot sit here and tell Judge Wexler the
6 village rejected the -- the village denied an application;
7 is that correct?

8 A The village voted three to two to not either, as we
9 understood it at that time, approve the eruv or, as was
10 later stated, to put it on the agenda. That's what
11 happened the last time.

12 Q The village voted to not put the matter on an
13 agenda --

14 THE COURT: Sustained. He answered twice.

15 BY MR. SOKOLOFF:

16 Q Have you ever reviewed the village board minutes of
17 what happened?

18 A I have.

19 Q And the village board minutes show that the matter
20 was put over for a public information meeting on the
21 issue, correct?

22 A That was done before this vote.

23 The public information meeting was scheduled by
24 the village before this vote took place.

25 Q You never saw a resolution, a written resolution, of

1 the village denying an eruv, did you?

2 A I just described to you what we saw.

3 Q I'm asking you a different question.

4 A Okay.

5 Q Can you answer it?

6 A A resolution from the village denying the eruv?

7 Q Yes.

8 A I did not see such a resolution.

9 Q And the application simply sought a proclamation,
10 correct?

11 MR. SUGARMAN: Objection.

12 THE COURT: Overruled.

13 I'm sorry, sustained. He's answered that three
14 times.

15 MR. SOKOLOFF: Just one minute, your Honor?

16 THE COURT: Yes.

17 MR. SOKOLOFF: No further questions.

18 THE COURT: You are representing the town; is
19 that correct? You are representing the town.

20

21 CROSS-EXAMINATION

22 BY MS. LICCIONE:

23 Q Good morning, Mr. Tuchman.

24 A Good morning, ma'am.

25 Q I just have a quick few questions from the cross of

1 Mr. Sokoloff.

2 I think you testified part of the southwestern
3 delineation of the eruv would be moorings; is that
4 correct?

5 THE COURT: I wish we would not go over the same
6 questions that were asked.

7 Q That is correct, isn't it?

8 THE COURT: Sustained.

9 I just made a statement, and you are doing the
10 same thing over again.

11 Q Do you know if those moorings are publicly or
12 privately owned?

13 A I believe they are privately owned.

14 Q Do you have the permission of the owner?

15 A We're not doing anything. We're not touching the
16 property. We don't use their property. It's a religious
17 law symbolism that we're using. Nothing happened to their
18 property.

19 Q A mooring isn't permanent, is it?

20 A I imagine that nothing is permanent, but it is
21 sufficient for the purpose of making an eruv.

22 Q A mooring can be moved, can it?

23 A Absolutely.

24 MS. LICCIONE: Thank you.

25 Q Mr. Tuchman, you testified that you are an attorney?

1 A Yes.

2 Q And you've been practicing for approximately
3 35 years?

4 A Yes.

5 Q Now, have either the synagogue or the East End Eruv
6 Association ever made an application to the Town of
7 Southampton to establish an eruv?

8 A No.

9 Q Now, have you, as either president of the synagogue
10 or as a member of EEEA, ever communicated with any of the
11 town board members with respect to the eruv?

12 A No.

13 Q Who are the Southampton town board members?

14 A I'm sorry, I would not do justice in trying to recall
15 their names, so I don't want to do that. I don't want to
16 mispronounce anybody's name.

17 Q Can you point out any of them in the courtroom?

18 A No.

19 Q Now, as an attorney, I think you testified that you
20 reviewed the complaint before it was served; is that
21 correct?

22 MR. SUGARMAN: Objection.

23 THE COURT: Sustained.

24 BY MS. LICCIONE:

25 Q You are aware that you are suing the town board

1 members individually; is that correct?

2 A Yes, ma'am.

3 Q Has anyone from the East End Eruv Association ever
4 communicated with any of them, to your knowledge?

5 A Yes.

6 Q And who and when would that be?

7 A I know that Clint Greenbaum communicated with the
8 town supervisor, and I had a written response.

9 I know that Alan or Carol Schechter, another
10 plaintiff, also communicated with the town supervisor and
11 got a written response.

12 Q So no one ever communicated with any other town board
13 member, to your knowledge?

14 A To my knowledge, as I said, I don't know.

15 Q You are aware the other four town board members are
16 being sued in their individual capacities, aren't you,
17 sir?

18 A Yes, ma'am.

19 Q When you sue someone in their individual capacity,
20 that means they can be liable for any amount awarded;
21 isn't that correct, sir?

22 MR. SUGARMAN: Objection.

23 THE COURT: Sustained.

24 MS. LICCIONE: May I ask the basis for your
25 objection?

1 THE COURT: Overruled.

2 Go ahead, Counsel.

3 The fact is, the Court has some knowledge. It's
4 a nonjury; it's not a jury.

5 Do we need that question to advise the Court who
6 is held if they are suing individually? Do you think the
7 Court doesn't know?

8 MS. LICCIONE: Thank you, your Honor.

9 THE COURT: You're welcome.

10 BY MS. LICCIONE:

11 Q Suing somebody in their individual capacity, you know
12 the impact would be of a credit application?

13 THE COURT: Sustained. Move on.

14 BY MS. LICCIONE:

15 Q Mr. Tuchman, did you ever review the provisions of
16 the Southampton town code before ever initiating this
17 lawsuit?

18 A Yes. Not personally, but we did ask counsel for that
19 information and --

20 Q Thank you.

21 Did you ever review it personally with respect
22 to variances from the sign ordinance?

23 A With respect to variances?

24 Q From the sign ordinances.

25 A I don't think so. Not with respect to variances.

1 Q Now, this complaint that you reviewed, do you recall
2 that in paragraph 78 there was a reference to a Santa and
3 reindeer hung from the poles of the Town of Southampton?

4 A Yes.

5 Q But in fact, that was in the Village of Southampton;
6 isn't that correct, sir?

7 A I don't know.

8 Q And the Town of Southampton wouldn't have any
9 regulatory authority over signs in the Village of
10 Southampton, would it, sir?

11 MR. SUGARMAN: Objection.

12 THE COURT: If he knows.

13 A I don't know, your Honor.

14 BY MS. LICCIONE:

15 Q Now, I believe you testified when we were here the
16 last time that you've had some rabbinical training.

17 A Yes, that's correct.

18 Q And isn't it also your testimony that a certain
19 number of lechis are essential to the establishment of the
20 eruv you are proposing?

21 A That's correct.

22 Q Now, your counsel here and who submitted the
23 complaint is Mr. Sugarman, obviously?

24 A That's correct.

25 Q And Mr. Sugarman presumably was selected for his

1 knowledge in this area?

2 MR. SUGARMAN: Objection.

3 THE COURT: Sustained.

4 BY MS. LICCIONE:

5 Q Did Mr. Sugarman litigate the seminal case in this
6 area, the Tenafly case?

7 A I think that is correct.

8 Q And his expertise in this area is also derived from
9 the fact that he's either the president --

10 THE COURT: Sustained.

11 Q Is Mr. Sugarman either the president or the past
12 president of the Anti-Defamation League?

13 THE COURT: Sustained.

14 I hope you got the message by now.

15 MS. LICCIONE: Yes, I have, your Honor, loud and
16 clear. Thank you.

17 BY MS. LICCIONE:

18 Q Paragraph 34 of the complaint that you reviewed, it
19 defines an eruv as an unbroken demarcation; does it not?

20 A If that's what the complaint says, then that's what
21 it says.

22 Q And you agree with that definition; is that correct?

23 A Yes.

24 Q And when you reviewed the complaint, you saw that
25 language, correct?

1 A Yes.

2 Q Okay.

3 Now, that demarcation is created by wires, and
4 the lechis attached to poles. Isn't that right, sir?

5 A Well, the eruv is, as I said earlier -- I'm using
6 your term of demarcation -- is demarked, if you will --

7 MS. LICCIONE: Your Honor, if we can strike that
8 from the record. It's not my term; it's the term in the
9 complaint.

10 THE COURT: Go ahead.

11 A It's established by using, as I said earlier, natural
12 boundaries, existing structures and existing overhead
13 wires.

14 BY MS. LICCIONE:

15 Q Is it a fact that you can't have an eruv in this
16 particular instance without a certain number of lechis?
17 Is that correct, sir?

18 A That's correct.

19 Q Now, I believe that you testified a few minutes ago
20 with respect to a letter submitted by Mr. Sugarman to the
21 Village of Westhampton Beach that is attached to the
22 complaint that you reviewed.

23 A Yes.

24 Q At the time Mr. Sugarman submitted his letter, you
25 were president of the synagogue; is that correct, sir?

1 A Yes.

2 Q And in the first full paragraph on the second page,
3 Mr. Sugarman referred to --

4 MR. SUGARMAN: Objection, your Honor.

5 MS. LICCIONE: Can I finish the question?

6 THE COURT: Yes.

7 BY MS. LICCIONE:

8 Q He referred to the eruv as an unbroken delineation;
9 did he not, sir?

10 A It's possible. If you have the letter in front of
11 you. It's possible.

12 Q (Handing.)

13 Let's see if that refreshes your recollection.

14 THE COURT: Is that in evidence?

15 MS. LICCIONE: Yes. And I left with the court
16 reporter a binder of the Southampton exhibit, and I
17 believe that is Exhibit H.

18 THE COURT: In evidence.

19 That, you say, is?

20 MS. LICCIONE: I'm sorry. Exhibit I, your
21 Honor, and it's part of the complaint. And Mr. Sokoloff
22 referred to it in his examination.

23 THE COURT: I didn't ask you that. I asked if
24 it was in evidence.

25 MR. SUGARMAN: I don't believe it is yet in

1 evidence, your Honor.

2 THE COURT: Sustained.

3 BY MS. LICCIONE:

4 Q I show you what has been marked as Exhibit I for
5 identification. Are you familiar with that letter?

6 A Yes.

7 Q And you were president of the synagogue before, and
8 so that you reviewed it before it went out; is that
9 correct?

10 A I did see this letter. I don't remember if I
11 reviewed it before it went out, but I did see the letter.

12 Q And it's from your counsel, Mr. Sugarman?

13 A Yes, ma'am.

14 THE COURT: Why don't you move it in evidence.

15 MS. LICCIONE: I'd like to move it in evidence.

16 THE COURT: Any objection?

17 MR. SUGARMAN: No.

18 THE COURT: In evidence.

19 (Whereupon, Defendant's Exhibit I was received
20 in evidence.)

21 BY MS. LICCIONE:

22 Q In the first paragraph on the second page, it refers
23 to an eruv as an unbroken delineation; is that correct,
24 sir?

25 A Yes, ma'am.

1 Q Thank you, sir.

2 You are also familiar with the fact that in the
3 Tenafly case the Court referred to an eruv as an unbroken
4 demarcation; are you not, sir?

5 THE COURT: Sustained.

6 BY MS. LICCIONE:

7 Q Mr. Tuchman, did you renew the memorandum of law in
8 support of a preliminary injunction in this case?

9 A Yes.

10 Q That memorandum of law also referred to an eruv as an
11 unbroken demarcation; did it not?

12 A I don't know. I'm sorry, I don't recall if it said
13 that.

14 MR. SUGARMAN: Your Honor, I'll stipulate that
15 that's what it says.

16 MS. LICCIONE: Thank you, Mr. Sugarman.

17 BY MS. LICCIONE:

18 Q Now, Mr. Tuchman, do you recall having submitted a
19 declaration in support of the preliminary injunction?

20 A Yes.

21 Q And in that declaration, isn't it true you stated
22 that Jewish law has developed a concept called an eruv,
23 which, through the erection of symbolic markers, creates a
24 literal and symbolic boundary?

25 A Yes.

1 Q Isn't it a fact, then, that the lechis are part of
2 the symbolic marking?

3 A No, the lechis are just attached for religious
4 purposes. They don't delineate anything. The wiring is
5 there already. The wires are there. It's just what you
6 are attaching to a pole for a particularly Jewish legal
7 reason.

8 Q It's like you testified that the lechi are an
9 essential element of the eruv; are you not?

10 A Yes.

11 Q Now, this symbolic boundary, sir, with the symbolic
12 boundary in place, certain observant orthodox Jewish
13 believers may carry and push; is that correct, sir?

14 A Yes, that is correct.

15 Q So with that in place, there is certain knowledge
16 that an observant believer has, is that correct, sir, that
17 it is safe or permitted to carry and push?

18 A If there is an eruv, that is correct.

19 Q If an orthodox believer is told that an eruv exists,
20 he or she knows that they can conduct certain activities
21 within that eruv; is that correct?

22 A Yes.

23 Q So that eruv then becomes a symbol to those orthodox
24 believers; does it not, sir?

25 A I don't know what that means.

1 Q Well, it sends a message that they can conduct
2 certain activities in that area. Isn't that your
3 testimony?

4 A I don't know if it sends a message. They would know
5 that they can now carry and push in that area.

6 MS. LICCIONE: Thank you.

7 Q Now, I think you recall a few days ago you were
8 questioned by Jeltje DeJong, who was representing The
9 Village of Quogue.

10 A Yes.

11 Q I think she asked you whether or not you knew that
12 Estelle Rubinor is opposed to the eruv, and you testified
13 that you knew that; is that correct?

14 A Yes.

15 Q Now, Ms. Rubinor is a patron of the synagogue; is she
16 not, sir?

17 A She made a donation to the synagogue some 20 years
18 ago, and so in the sense that if you are asking if she is
19 a patron in that sense, the answer is yes.

20 Q Are you familiar with the Hampton synagogue, the
21 summer of 2011 brochure?

22 A Yes.

23 Q Because you are the president of the synagogue, as we
24 established?

25 A Yes.

1 Q I'd like you to take a look at what has been
2 identified as Plaintiff's Exhibit 0.

3 MS. LICCIONE: It's the very last one in your
4 Honor's binder. It doesn't have a side tab.

5 (Handing.)

6 BY MS. LICCIONE:

7 Q Sir, if you take a look at the second page in the
8 middle column, the third column, a little above the
9 middle, where Ms. Rubinor is indeed listed as a patron in
10 the 2011 brochure.

11 A Yes.

12 MS. LICCIONE: Excuse me, your Honor. I'd like
13 to move Southampton 0 into evidence.

14 MR. SUGARMAN: No objection.

15 THE COURT: In evidence.

16 (Whereupon, Defendant's Exhibit 0 was received
17 in evidence.)

18 BY MS. LICCIONE:

19 Q And she's listed in the third column -- I'm sorry,
20 the fourth column -- a little bit above the middle, a
21 founder of the synagogue; is that correct?

22 To move things along, I'll just show you my
23 copy, if you don't mind.

24 A Yes, that is correct.

25 MS. LICCIONE: Thank you, sir.

1 Q By the way, Mr. Tuchman, there is no mention of the
2 eruv anywhere in the 2011 synagogue brochure, is there?

3 A No.

4 Q Now, in 2008, the submission, if you will, to the
5 Village of Westhampton Beach for a proclamation was made
6 by the synagogue, correct?

7 A That's correct.

8 Q And now the effort for the eruv has been adopted by a
9 separate entity, the EEEA; is that correct, sir?

10 A That's correct.

11 Q Isn't that because there are members of the synagogue
12 who are opposed to the synagogue, sir?

13 A Not at all. Not at all.

14 Q How do you get to the synagogue on the Sabbath?

15 A Personally, you are asking me?

16 Q Yes, personally.

17 A Well, on Friday night I drive to the synagogue. I
18 leave the car in the synagogue's parking lot. The key is
19 on the rear left tire and -- (laughter) and I put my
20 driver's license inside.

21 Q It's a very simple question: Do you walk to the
22 synagogue on Saturday morning?

23 A When I return on Friday night, I walk back, and when
24 I come Saturday morning, I walk to the synagogue. When I
25 come home, I walk back to the synagogue. And I do that in

1 the afternoon as well, and then I drive the car home on
2 Saturday night.

3 Q So you don't have any disabilities that prevent you
4 from walking, obviously?

5 A No, I don't have any disabilities that prevent me
6 from walking.

7 Q Now, with respect to your prayer shawl that you
8 discussed in our last session, isn't it a common practice,
9 sir, for those who do not carry on Sabbath to leave their
10 prayer shawl at the premises?

11 A If you don't have an eruv, you have to leave the
12 prayer shawl at the premises. That's the law.

13 Q Do you recall Mr. Lean testifying and indicated that
14 he requested a dispensation from the Rabbi to drive to the
15 synagogue because of his disability?

16 MR. SUGARMAN: Objection. Mischaracterizing the
17 testimony. Significant.

18 THE COURT: What is that?

19 MR. SUGARMAN: She mischaracterized that
20 testimony, your Honor.

21 BY MS. LICCIONE:

22 Q Do you recall Mr. Lean saying he spoke to some rabbis
23 who permitted him to drive to the synagogue because of his
24 disability?

25 THE COURT: He can answer if he knows.

1 A I was not in the courtroom after he testified at that
2 first hearing. I was not in the courtroom.

3 Q Is your home in Flushing within an eruv, sir?

4 A Absolutely.

5 Q Do you also have a residence in Manhattan?

6 THE COURT: I'm sorry, I can't hear you.

7 Q Do you also have a residence in Manhattan?

8 A I did. I did. For certain periods, I did.

9 Q You reside in the Village of Westhampton Beach,
10 primarily, in the summer?

11 A Well, primarily I'm there from April to October, and
12 many weekends in the winter as well.

13 Q And in the summer, is that primarily on weekends?

14 A No. My wife, for instance, is always there. I go
15 into the office sometimes, but most of the time is spent
16 in Westhampton Beach.

17 Q And your office is in Manhattan?

18 A Yes.

19 Q And your home in Flushing, you pay real estate taxes
20 on that home?

21 A There are taxes that I pay on that home.

22 Q And you pay New York City income tax as a New York
23 City resident; is that correct, sir?

24 A I do. I do.

25 MS. LICCIONE: That's all I have for now.

1 THE COURT: Before redirect, why don't we take a
2 break.

3 MR. SUGARMAN: I have one question, your Honor,
4 if that will help.

5 THE COURT: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. SUGARMAN:

8 Q Mr. Tuchman, on Mr. Sokoloff's examination, you
9 testified whether the lechis were or were not on Dune
10 Road, and I just want to clarify that because I think
11 there might be a misunderstanding.

12 To do that, let me show you what has been --
13 what is in evidence as Plaintiff's Exhibit 3, which is the
14 attachment agreement with Verizon, and in particular,
15 Exhibit A (handing).

16 A Yes, I'm familiar with that.

17 Q Let me ask you a question.

18 Does the attachment to Exhibit 3 indicate
19 whether or not there are poles on Dune Road on which
20 lechis will be attached?

21 A Yes.

22 Q And what does it say?

23 A There are three poles that will be -- that will have
24 lechis attached to them on Dune Road, but the question was
25 the southern border --

1 Q Mr. Tuchman, you've answered the question. Thank you
2 very much.

3 MR. SUGARMAN: No further questions.

4 MR. SOKOLOFF: I now have recross. I don't know
5 if you want to take a break.

6 THE COURT: I'll take it now.

7 MR. SOKOLOFF: You say we'll take a break now?

8 THE COURT: No. It's only limited to what he
9 said.

10 RECCROSS-EXAMINATION

11 BY MR. SOKOLOFF:

12 Q Do you have Exhibit A in front of you?

13 A Yes.

14 Q And what is Exhibit A?

15 A The agreement with Verizon.

16 Is that what you are talking about?

17 Q I'm sorry, let's be more specific.

18 You have in front of you Plaintiff's Exhibit 3,
19 the pole attachment agreement?

20 A Yes.

21 Q And Exhibit A of Exhibit 3 is what I'm talking about.

22 A Correct.

23 Q What is that?

24 A That's a listing of the poles that we would be using
25 to put lechis -- the poles that we would be putting lechis

1 onto.

2 Q Who created that list?

3 A We obtained that from our rabbinic resources.

4 Q I'm sorry?

5 A From our rabbinic resources. He told us what poles
6 have to have lechis.

7 Q Did he give you a written list?

8 MR. SUGARMAN: Objection, your Honor.

9 THE COURT: Sustained.

10 BY MR. SOKOLOFF:

11 Q When did he give you this list?

12 MR. SUGARMAN: Objection.

13 THE COURT: Sustained.

14 BY MR. SOKOLOFF:

15 Q Can you go over to the map, please, and point out on
16 the map where these Dune Road poles are? You said there
17 are three of them?

18 A There are three on Dune Road.

19 Q Can you show us where the three on Dune Road are?

20 A There is likely going to be one here toward the end
21 of the red line (indicating), and there's two that are
22 listed at -- slightly to the left of the 8019, where the
23 red line goes north-south.

24 THE WITNESS: I'm sorry, did I block your Honor?

25 THE COURT: No, it's okay.

1 A It's here and here (indicating).

2 BY MR. SOKOLOFF:

3 Q What is the extension of the southerly boundary line
4 past the north-south --

5 MR. SUGARMAN: Objection.

6 THE COURT: Sustained. It's not proper recross.

7 Next question.

8 For the students, it's very limited to what the
9 last redirect was. There was only one question, and I'll
10 limit it to that.

11 BY MR. SOKOLOFF:

12 Q This Exhibit A that Mr. Sugarman asked you about on
13 redirect has a listing of other poles in Westhampton
14 Beach; is that correct?

15 MR. SUGARMAN: Objection.

16 THE COURT: Sustained.

17 MR. SOKOLOFF: I'm unclear why, your Honor.

18 THE COURT: Sustained.

19 I know you are frustrated, but sustained.

20 MR. SOKOLOFF: It's on the document that he
21 brought up on redirect. That's all I'm asking about:
22 this document.

23 THE COURT: Next question.

24 BY MR. SOKOLOFF:

25 Q Does Exhibit A of Exhibit 3 list other poles in

1 Westhampton Beach besides Dune Road?

2 MR. SUGARMAN: Objection.

3 THE COURT: Sustained.

4 MR. SOKOLOFF: Your Honor, I have more questions
5 of what was brought up on redirect. If the Court will not
6 allow me to ask them, I have no further questions.

7 THE COURT: You may step down.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: We'll take our break. Ten or
10 fifteen minutes.

11 Will the students come back?

12 (Whereupon, an unrelated matter was taken by the
13 Court.)

14 (Continued on the following page.)

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THE COURT: Call your next witness.

MR. BUCHWEITZ: Your Honor, Mr. Sugarman will be right back. And we will be calling Mr. Balcerski.

W I L L I A M B A L C E R S K I,
called as a witness, having been previously duly sworn, was examined and testified as follows:

THE COURT: Please restate your name.

THE WITNESS: William Balcerski,
B-A-L-C-E-R-S-K-I.

MR. SUGARMAN: Your Honor, this is a continuation of the direct, and he will be crossed by both Southampton and Westhampton Beach, and that will finish his testimony.

THE COURT: All right.

DIRECT EXAMINATION (cont'd)

BY MR. SUGARMAN:

Q Mr. Balcerski, I put before you Plaintiffs' Exhibit 10, which is in evidence. And I ask you if you can identify that.

A Yes.

1 It is a letter that I received from the
2 Incorporated Village of Westhampton Beach, dated May 18th,
3 2009.

4 MS. LICCIONE: I believe these exhibits were not
5 exchanged.

6 MR. SUGARMAN: They were sent. And it was after
7 the hearing the last time, and I will give you another
8 copy.

9 MS. LICCIONE: Thank you.

10 THE COURT: What exhibit are you referring to?

11 MR. SOKOLOFF: 10, your Honor.

12 I will offer it in evidence since Mr. Balcerski
13 just identified it.

14 THE COURT: In evidence.

15 (Whereupon, Plaintiffs' Exhibit 10 was received
16 in evidence.)

17 Q Mr. Balcerski, when you received this letter, did you
18 draw any conclusions from it regarding the position of
19 Westhampton Beach on the question of the eruv?

20 MR. SOKOLOFF: Objection.

21 The operation of this witness' mind is not
22 relevant on this particular question that is being asked.

23 MS. LICCIONE: If I may also state an objection,
24 your Honor.

25 I believe two of the signatories on this letter

1 are no longer board members.

2 MR. SUGARMAN: That is cross-examination, your
3 Honor. This man received it.

4 THE COURT: Wait a moment.

5 Let me read it.

6 MR. SUGARMAN: I'm sorry.

7 (Whereupon, at this time there was a pause in
8 the proceedings.)

9 THE COURT: I will allow it.

10 Go ahead.

11 A Yes. The impression I had from reading this letter
12 is that The Village of Westhampton Beach needed to approve
13 the application for an eruv by the Eruv Association.

14 Q Did there come a time that you communicated with any
15 official from the town of Southampton?

16 A Yes, I did.

17 Q And would you describe that communication.

18 A I sent a letter to the town and I also spoke to the
19 attorneys for the town.

20 Q What was the name of the attorney for the town with
21 whom you spoke?

22 A I believe his last name was spelled S-O-R-D-I. I'm
23 not sure how to pronounce it.

24 Q And what was the substance of the conversation that
25 you had with Mr. Sordi?

1 A Sordi, yes.

2 Basically Mr. Sordi told me that the Town of
3 Southampton had to approve any attachment of the lechis to
4 the utility poles, if Verizon would allow the attachments
5 to be made, Verizon could be subject to fines by the town.

6 MS. LICCIONE: Objection. Hearsay.

7 THE COURT: Overruled.

8 You are objecting first because the person was
9 no longer a town member or village member.

10 You mean every time there is a new board member,
11 whatever the previous board did doesn't count?

12 MS. LICCIONE: That was a letter with respect to
13 The Village of Westhampton Beach and not the Town of
14 Southampton.

15 MR. SUGARMAN: Your Honor, I moved on from that.
16 I'm talking about the conversation with Mr. Sordi.

17 THE COURT: All right.

18 That is hearsay, right?

19 Overruled.

20 Those students who have taken evidence will know
21 that it is not hearsay when a party speaks, or someone
22 authorized by the town, village or municipality speaks.

23 One of the major exceptions to the hearsay rule.

24 What was the conversation? We never heard that.

25 THE WITNESS: We had a telephone conversation in

1 which he indicated that the Town had an ordinance that
2 required the approval of the town for the attachment of
3 the lechis to the poles, and if Verizon would allow the
4 lechis to be attached, the town could come after Verizon
5 and seek to impose fines and other penalties.

6 (Handed to the witness.)

7 Q Mr. Balcerski, I put before you what is marked as
8 Plaintiffs' Exhibit 27 for Identification.

9 Can you identify that.

10 A Yes.

11 It is a letter dated November 16th, 2010,
12 addressed to me that I received from the -- Michael Sordi,
13 the attorney for the Town of Southampton.

14 MR. SUGARMAN: I offer it in evidence, your
15 Honor.

16 THE COURT: In evidence.

17 (Whereupon, Plaintiffs' Exhibit 27 was received
18 in evidence.)

19 Q What, if any, reference is there in Mr. Sordi's
20 letter with respect to Verizon and the placement of lechis
21 on the pole?

22 I point your attention to the second page, the
23 first full paragraph.

24 A On the second page it does say, based upon the
25 definition of our sign law, and based on the

1 specifications provided to us with your letter, I am
2 compelled to conclude that the lechis constitute a sign
3 within the meaning and intendment, I-N-T-E-N-D-M-E-N-T, of
4 our statute. Accordingly, the same are prohibited.

5 By the way, I would add in the next paragraph it
6 says that the law makes the owner of the pole legally
7 responsible, and provides for various penalties.

8 Q Now, what action, if any, did Verizon take as a
9 result of Plaintiffs' Exhibit 27 and other documents that
10 we have marked?

11 MS. LICCIONE: Objection.

12 THE COURT: As to the last part. But I will let
13 him answer the first part.

14 A I know he sent a letter to the Town of Southampton.
15 But I'm not sure if it was sent subsequent to the date of
16 this letter.

17 Q Did Exhibit 27 have any impact on Verizon's position
18 with respect to issuing licenses to East End Eruv
19 Association?

20 MS. LICCIONE: Objection.

21 THE COURT: Sustained.

22 What did Verizon do after that period?

23 THE WITNESS: Eventually Verizon decided to
24 bring its own lawsuit to get a ruling from the Court as to
25 whether or not we were permitted to allow these lechis to

1 be installed since we were being threatened with legal
2 action by the Town.

3 THE COURT: Where did they bring that action?

4 THE WITNESS: Verizon?

5 THE COURT: Yes.

6 THE WITNESS: They filed an action in federal
7 court on Long Island.

8 THE COURT: Okay.

9 Q Mr. Balcerski, I put before you what is marked as
10 Plaintiffs' Exhibit 25.

11 MR. SUGARMAN: Your Honor, I will represent that
12 Mr. Greenbaum in his testimony will identify this picture,
13 when it was taken and where it was taken.

14 THE COURT: All right.

15 Q My question to you, subject to that testimony, is
16 looking at the attachments to this pole, are these
17 attachments typical of Verizon's attachments to poles that
18 it owns throughout the region?

19 MR. SOKOLOFF: Objection.

20 THE COURT: I will take it subject to someone
21 testifying to it.

22 A The flag would not be an attachment that Verizon
23 would make to its poles, nor would the red reflector.

24 It appears to be a metal conduit that is
25 attached to the side of the pole, and metal conduits are

1 often used by Verizon and electrical companies to house
2 cables running down the side of the pole.

3 MR. SUGARMAN: I have no further questions.

4 THE COURT: We will take the criminal matter
5 now, we need about ten minutes. So we will take the
6 criminal matter now.

7 (A recess is taken while an unrelated matter is
8 taken up by the Court.)

9 MR. SUGARMAN: Your Honor, I realized during the
10 break I have a few more questions on the one document that
11 I would like to ask the witness.

12 THE COURT: All right.

13 Go ahead.

14 BY MR. SUGARMAN:

15 Q I have put before you Plaintiffs' Exhibit 13,
16 Mr. Balcerski.

17 There is some confusion as to whether it is in
18 evidence or not. And let me ask you to identify it if you
19 will.

20 (Handed to the witness.)

21 A Yes. It is a letter I wrote dated October 26th,
22 2010.

23 It says in there Mayor Peter Sartorius -- sent
24 to Mayor Peter Sartorius of The Village of Quogue.

25 Q Did you forward a copy of this letter to anyone in

1 the Town of Southampton?

2 A I don't recall if I did that or not. I may have, but
3 I'm not sure now.

4 Q If you look at the second paragraph, and this is
5 dated October 26th, 2010.

6 It says Verizon does not except to attaching the
7 lechis to Verizon poles, so long as the work is done
8 pursuant to an appropriate license agreement and with
9 appropriate protections to Verizon. Accordingly, to the
10 extent that Verizon's own permission is required, Verizon
11 intends to issue licenses to permit the association to
12 attach lechis to Verizon poles.

13 Mr. Balcerski, was that the position of Verizon
14 in October of 2010?

15 A Yes.

16 Q And is that the position of Verizon now, subject to
17 the order of the Court?

18 A Yes.

19 MR. SUGARMAN: Thank you, your Honor.

20 I have no further questions.

21

22 CROSS-EXAMINATION

23 BY MR. SOKOLOFF:

24 Q Mr. Balcerski, take a look at Plaintiffs' Exhibit 10.

25 That is the letter to you from The Village of

1 Westhampton Beach; is that correct?

2 A Yes.

3 Q This letter says nothing about what the position of
4 The Village of Westhampton Beach is regarding a proposed
5 eruv; isn't that true?

6 A Yes.

7 Q And other than receiving that letter which you now
8 say says nothing about the Village of Westhampton Beach's
9 position on the eruv, you yourself never spoke directly
10 with any one of the village officials; is that correct?

11 A Yes.

12 Q I mean The Village of Westhampton Beach.

13 A Correct.

14 Q And you also never spoke to the Westhampton Village
15 attorney; is that correct?

16 A Correct.

17 Q You don't even know that person's name; is that
18 correct?

19 A Correct.

20 Q I want to show you what is in evidence as
21 Plaintiffs' Exhibit 3.

22 (Handed to the witness.)

23 Q This is the pole attachment agreement between the
24 East End Eruv Association and Verizon; is that correct?

25 A Correct.

1 Q Who prepared this agreement?

2 A I believe it was prepared by our licensing group.

3 Q Did you have anything to do with preparing it?

4 A No.

5 Q Do you have any -- withdrawn.

6 When was this agreement executed by Verizon?

7 A June 13th, 2011.

8 Q Were you present when it was executed?

9 A No.

10 Q Paragraph 13.13 of this Verizon agreement says,
11 quote, licensee shall make written application utilizing
12 the form identified as Exhibit A.

13 Do you see that?

14 A I do.

15 Q Did the East End Eruv Association submit the
16 application to Verizon that this agreement requires?

17 THE COURT: What paragraph was that?

18 MR. SOKOLOFF: 13.13 of Plaintiffs' Exhibit 3,
19 your Honor.

20 THE COURT: All right.

21 A I don't know.

22 Q Does the agreement contemplate that before Verizon
23 takes a position on a proposed eruv, it would first have
24 to submit an application to Verizon?

25 MR. SUGARMAN: Objection, your Honor. The

1 document speaks for itself.

2 THE COURT: I will allow it.

3 A I think the normal procedure is an application is
4 filed with Verizon.

5 Q And is it your testimony as a Verizon witness
6 testifying in this hearing that as you sit here now, you
7 do not know whether the plaintiffs have even submitted an
8 application for an eruv to Verizon?

9 MR. SUGARMAN: Objection.

10 Asked and answered.

11 THE COURT: Overruled.

12 I will allow it.

13 A What I said before was, I believe, that I don't know
14 if they submitted an application in connection with this
15 particular agreement.

16 Q By the way, does Verizon make any money when somebody
17 puts up an eruv?

18 A I do not believe we charge an attachment fee for the
19 lechis.

20 Q Does Verizon take any money at all in connection with
21 an application to Verizon for an eruv?

22 A I believe we charge for the inspection of the poles
23 prior to allowing for the installation of the lechis.

24 Q Has Verizon collected any money at all in connection
25 with the agreement that is marked as

1 Plaintiffs' Exhibit 3?

2 A I believe we have.

3 Q When?

4 A I'm not sure.

5 Q How much money?

6 A I think it is less than a thousand dollars.

7 Q Now, take a look at page 10 of this agreement.

8 It has the signature of Matthews George; is that
9 correct?

10 A Yes, correct.

11 Q And look at the next page in this agreement.

12 Who prepared this page?

13 A I don't know.

14 Q Is it part of the agreement?

15 A I'm not sure.

16 Q Is there any writing on it that indicates to you as
17 the Verizon representative that this page is part of the
18 agreement?

19 A I'm not sure whether it is part of the agreement.

20 Q Now, look at the next page, which is handwritten at
21 the bottom, page 12; is that correct?

22 A Yes.

23 Q Do you know who wrote the number, "page 12"?

24 A I do not know.

25 Q Is this document part of the agreement?

1 A I'm not sure.

2 Q Is there any indication on this document that anybody
3 at Verizon signed it?

4 A I don't see any Verizon names on this page.

5 Q At the top it says Verizon New York, RCE FLR period
6 one, 501 North Ocean Avenue.

7 Do you see that?

8 A Yes.

9 Q What is that?

10 A I believe it is the address for the Verizon
11 engineering office in Patchogue.

12 Q Then it says walk/job project, and then number sign,
13 and then it is blank, right?

14 A Yes.

15 Q What does that refer to?

16 A I believe the internal number of the sign for any
17 time someone wants to attach to a pole.

18 Q So every new agreement gets a new walk/job number?

19 A I believe so.

20 Q And on this agreement as entered into evidence, that
21 number is blank; is that right?

22 A Correct.

23 Q And does that indicate to you that Verizon has not
24 even gotten to the point of giving this a walk/job project
25 number?

1 A I'm not sure what it means. I know the number is not
2 there.

3 Q Then it says in accordance with the terms and
4 conditions of the pole attachment agreement between us,
5 dated as of blank, comma, 20, blank, application is hereby
6 made for a license to make attachments to the following
7 poles, which are indicated to be Verizon ownership, joint
8 ownership, or unmarked.

9 Now, let me stop right there.

10 Do you know why the date of pole attachment
11 agreement on this page is blank?

12 A No.

13 Q And where it says the following poles which are
14 indicated to be Verizon ownership, joint ownership, or
15 unmarked.

16 Can you explain what Verizon ownership means?

17 A Verizon owns the poles.

18 Q And where it says joint ownership, can you explain
19 what that means?

20 A Those would be poles owned by Verizon and LIPA.

21 Q And where it says unmarked, can you explain what that
22 means?

23 A I'm not sure what that means.

24 Q And according to this document, there are supposed to
25 be a list of poles that are either Verizon owned, jointly

1 owned, or unmarked. Is that correct?

2 A That appears to be the case.

3 Q There is no list at all of poles that are delineated
4 as Verizon owned, joint owned, or unmarked, correct?

5 A Nothing on this page.

6 Q Nothing in the agreement anywhere; is that correct?

7 A I have to go through it.

8 Q Would you go through it, please.

9 A There is a list of the poles on the next page.

10 Q The list of the poles on the next page do not
11 delineate which are Verizon owned, joint owned or
12 unmarked; is that correct?

13 A Correct.

14 Q Now, take your time and tell us if there is a list
15 anywhere else in the agreement that shows that.

16 A I don't see that.

17 Q Then there is some handwriting that says, the
18 attached are poles owned, some by Verizon and some by
19 LIPA. But this contract only applies to poles owned by
20 Verizon.

21 Do you see that?

22 A I do.

23 Q Who wrote that?

24 A I'm not sure.

25 Q Do you know on the next page whether any of those

1 poles are owned by Verizon?

2 A I don't know.

3 Q Do you know if any of them are owned by LIPA?

4 A I don't know.

5 Q Do you know if any of the poles listed there are
6 owned by private parties?

7 A No.

8 Q No, you don't know?

9 A I don't know.

10 Q Does this agreement provide that before Verizon at
11 least carries out the agreement, there is supposed to be a
12 pole walk?

13 A I'm not sure that the agreement requires a pole walk.
14 But I believe that that is part of the application
15 process.

16 Q And as far as you know, as of the date of today, when
17 we are in the middle of a preliminary injunction hearing,
18 you don't know of any pole walk for this agreement yet; is
19 that correct?

20 A Correct.

21 MR. SUGARMAN: Objection.

22 THE COURT: I will allow it.

23 A Correct.

24 Q Are you familiar with a 2008 attempt by the synagogue
25 and The Village of Westhampton Beach to get an eruv?

1 A Yes. I read some of the newspaper articles about
2 that.

3 Q Well, other than reading some newspaper articles
4 about it, was there an agreement signed between the
5 synagogue and Verizon?

6 A I'm not sure if there was an agreement between the
7 synagogue and Verizon. There was another agreement that
8 Verizon had entered into. But I'm not sure it was with
9 the synagogue.

10 Q Well, in or about 2008 or 2009, are you aware of any
11 agreement between Verizon and a group of orthodox Jews in
12 The Village of Westhampton Beach to have an eruv?

13 A I know there was an agreement, but I'm not sure of
14 the timeframe.

15 Q You don't know --

16 THE COURT: Wait. I didn't hear the answer.

17 THE WITNESS: I said, I know there was an
18 agreement, but I'm not positive of the timeframe.

19 THE COURT: All right.

20 MR. SOKOLOFF: May I approach?

21 THE COURT: Sure.

22 Q Take a look at Plaintiffs' Exhibit 4. I believe it
23 is in evidence.

24 (Handed to the witness.)

25 Q That is the agreement you are talking about, correct?

1 The other agreement?

2 A Yes, I believe that is the case.

3 Q That is an agreement with the East End Eruv
4 Association; is that correct?

5 A Yes.

6 Q And the letter you make reference to with -- that was
7 sent to you by The Village of Westhampton Beach in May --
8 May 18th, 2009, that came about a year before that
9 agreement, Plaintiffs' Exhibit 4; is that correct?

10 A Correct.

11 Q So Plaintiffs' Exhibit 4 is an agreement with who?

12 A With the East End Eruv Association.

13 Q May I have the loose copy of Exhibit 4, and I will
14 ask you to look at this one in the book so we can both
15 look at it.

16 A The agreement starts out by saying it is between
17 Verizon and the East End Eruv Association.

18 Q And what is the date of that earlier agreement with
19 the Eruv Association?

20 A August 16th, 2010.

21 Q And that agreement was signed by the Eruv Association
22 on May 10th, 2010; is that correct?

23 A Correct.

24 Q And it was then signed by Verizon on August 16th,
25 2010; is that correct?

1 A Correct.

2 Q And you are not aware of any application by the East
3 End Eruv Association, with respect to Verizon, for the
4 approval of an eruv under the earlier agreement; is that
5 correct?

6 A Correct.

7 Q Now, after the signature page on the earlier
8 agreement, which is Plaintiffs' Exhibit 4, there is a page
9 that says Exhibit A.

10 Do you see that?

11 A I do.

12 Q And that lists specifications; is that correct?

13 A Yes.

14 Q And who prepared that?

15 A I believe that is a Verizon exhibit.

16 Q So when it says specifications one inch by two inch
17 by 40 inches long, smooth sanded wood staves painted with
18 wood preservative, it is your testimony that Verizon
19 provided the Eruv Association with the dimensions and look
20 of a lechi?

21 A I believe so.

22 Q Do you know where Verizon got those dimensions and
23 look from when it told the Eruv Association that the lechi
24 has to be this dimension and look like this?

25 A I do not know.

1 Q Does the agreement now in effect,
2 Plaintiffs' Exhibit 3, does that have a description of the
3 lechis?

4 A I don't see it coming through the body of the
5 agreement.

6 Q Did Verizon tell anybody in the East End Eruv
7 Association that the size, dimensions, color, or material
8 of the lechis has to change?

9 A No.

10 Q Did you -- withdrawn.

11 Did anybody in the Eruv Association ever tell
12 you or anyone in Verizon to your knowledge that the
13 dimensions and size and material of the lechi has to
14 change?

15 A I was told -- it is my understanding that the Eruv
16 Association told Verizon that it wanted to install longer
17 lechis.

18 Q Was that told to you?

19 A No.

20 Q So how do you know it happened?

21 A I spoke to the engineer of the group who was told
22 that.

23 Q What engineer?

24 A Well, I had been working with a couple of engineers
25 at Verizon.

1 Q Who was the engineer that told you that the East End
2 Eruv Association says that there has to be a different
3 size lechi?

4 A It was either Cathy Schwindt, S-C-H-W-I-N-D-T, or
5 Rich Peshkur, P-E-S-H-K-U-R.

6 Q And when did one of these two engineers tell you that
7 there has to be a different lechi than was in
8 Plaintiffs' Exhibit 4?

9 A Well, what they told me was --

10 Q No. When?

11 A Would you repeat that again?

12 Q When did one of those two engineers tell you that
13 someone at the East End Eruv Association says there has to
14 be a different kind of lechi?

15 MR. SUGARMAN: Objection.

16 THE COURT: I will allow it.

17 A Within the last couple of weeks.

18 Q After the preliminary injunction hearing already
19 started?

20 A I'm not sure when it started. Certainly before the
21 last court hearing.

22 Q How long before?

23 A I'm not sure exactly.

24 Q Was anything circulated in writing in Verizon on that
25 question?

1 A On the question --

2 Q On the question of the EEEA informing Verizon that
3 the lechis have to be different than agreed to in
4 Plaintiffs' Exhibit 4?

5 A There may have been some emails.

6 Q You remember getting emails about this?

7 A I don't recall. I received emails, and I don't
8 know -- I don't recall if I got one specifically on the
9 issue you are asking about.

10 Q Did you ever address anyone at the East End Eruv
11 Association or a representative of the East End Eruv
12 Association about the fact that about two weeks ago the
13 EEEA says there has to be a different kind of lechi? Did
14 you ever communicate with anybody about that?

15 A I have not spoken with the East End Eruv Association.

16 MR. SOKOLOFF: Just one moment, your Honor.

17 (Whereupon, at this time there was a pause in
18 the proceedings.)

19 MR. SOKOLOFF: No further questions.

20

21 CROSS-EXAMINATION

22 BY MS. LICCIONE:

23 Q That is my binder. Thank you.

24 Good afternoon, Mr. Balcerski.

25 I would like to refer you back to the letter

1 from Michael Sordi. And I think that is
2 Plaintiffs' Exhibit 27.

3 The letter from Mr. Balcerski, from you,
4 Plaintiffs' Exhibit 27, do you have that there?

5 A It is a letter -- I'm looking at the same documents
6 of Exhibit 27, the letter to me.

7 Q To you from Mr. Sordi; is that correct?

8 A Yes.

9 Q Now, does Mr. Sordi anywhere in that letter threaten
10 with a lawsuit?

11 A There is a threat of a fine .

12 Q Okay.

13 But no threat of litigation, correct?

14 A Correct.

15 Q Okay.

16 Now, in the -- toward the first page, the third
17 paragraph, Mr. Sordi asks you to confirm, did he not,
18 whether or not the eruv is in the plans going into the
19 Town of Southampton?

20 A Correct.

21 Q No one ever responded to that question, did they?

22 A I don't recall.

23 Q You never responded to that question, did you?

24 A I don't think so.

25 Q In fact, at that point you didn't know, did you?

1 A No, I did not know.

2 Q Now, I want to show you a copy of an email from
3 Marvin Tenzer to you.

4 I apologize to the Court, this is the only copy
5 I have with me.

6 I have marked this for identification as
7 Southampton P.

8 We did not exchange this, we didn't know it came
9 up. I will try to get copies during the break.

10 THE COURT: Show it to counsel now.

11 (Whereupon, at this time there was a pause in
12 the proceedings.)

13 Q I would like you to read for the record the first
14 full paragraph on the second page, starting at the second
15 sentence at the very least. And that is from Mr. Tenzer
16 to you.

17 Excuse me. I withdraw that.

18 Before you do that. You have received this
19 letter?

20 A Yes.

21 Q And you received it from Mr. Tenzer via an email?

22 A Yes.

23 MS. LICCIONE: I move it in evidence.

24 MR. SUGARMAN: No objection.

25 THE COURT: What number is it?

1 MS. LICCIONE: P, your Honor, it is not in your
2 binder, and I will try to get a copy during the break.

3 THE COURT: How come you don't have copies? You
4 were supposed to exchange them or have it available?

5 MS. LICCIONE: It came up as part of the direct
6 testimony.

7 THE COURT: That was last week. You had enough
8 time to get copies. It is the first thing you are to do.

9 I know, go ahead.

10 But in the future --

11 (Whereupon, Defendant Southampton Exhibit P was
12 received in evidence.)

13 Q I think you testified earlier that Verizon was
14 concerned that the town was going to sue; is that correct?

15 A Yes.

16 Q Did you have any concerns that the East End Eruv
17 Association --

18 A Yes.

19 Q Would you read for the record the second sentence on
20 the first full paragraph on the second page.

21 A At the very least, before you make any final decision
22 against us, we reiterate our previous request to you that
23 in order to protect Verizon subscribers from any damages
24 resulting from a court finding, that Verizon conspired
25 with others to violate the Civil Rights Act, Verizon

1 demands that Westhampton Beach, Quogue and anyone else
2 urging Verizon to not permit the attachment of the lechis,
3 to do what we had done, that is, furnish you with an
4 opinion of counsel, as well as an indemnity and hold
5 harmless provision similar to the one contained in our
6 proposed agreement with Verizon.

7 Q And could you read the last sentence of the next
8 paragraph, starting with the word "we."

9 THE COURT: It is in evidence. Why don't you
10 read it?

11 MS. LICCIONE: I would like the witness to do
12 that, your Honor.

13 THE COURT: Okay.

14 A We therefore strongly urge that Verizon, in order to
15 do the right thing and avoid a litigation which will
16 doubtlessly result in a multimillion dollar damage award
17 against it, reconsider its position stated in your
18 attached email and allow us without the need of litigation
19 the use of your poles for the attachment of the lechis.

20 Q Mr. Balcerski, are you appearing here today without a
21 subpoena?

22 A No.

23 Q Were you subpoenaed by the East End Eruv Association?

24 A I believe so.

25 Q Have you seen a copy of that subpoena?

1 A No.

2 Q Is the Devoise firm representing Verizon in its
3 action against the town and the village?

4 A Yes.

5 Q And how did it come to be that the Devoise firm came
6 to represent you?

7 MR. SUGARMAN: Objection, your Honor.

8 THE COURT: Sustained.

9 Q Is Devoise standard outside counsel for Verizon?

10 MR. SUGARMAN: Objection.

11 THE COURT: Sustained.

12 Q Is Verizon paying the Devoise firm?

13 MR. SUGARMAN: Objection.

14 THE COURT: Sustained.

15 Counselor, how many more questions do you know
16 that I will sustain that you intend to ask?

17 Maybe I ought to allow them to ask how you got
18 involved in the firm, and how much you are getting paid.

19 MS. LICCIONE: It is a matter of public record.

20 THE COURT: Then I will allow it, if you proceed
21 it is all right, they can ask those questions.

22 MS. LICCIONE: If I'm not allowed to ask this
23 witness --

24 THE COURT: Okay.

25 Q Now, going back to Plaintiffs' Exhibit 3, do you have

1 that in front of you?

2 A No.

3 (Handed to the witness.)

4 Q That is the standard Verizon agreement for this type
5 of lechi?

6 A For the long lechi.

7 Q Correct.

8 You have worked with this agreement before?

9 A Excuse me?

10 Q You have worked with this agreement before?

11 A I have seen it. Not this particular agreement, but I
12 have seen the form before.

13 Q The form.

14 And is it fair to say that the provisions of
15 this agreement were developed over the course of years to
16 address the legal issues with respect to placement of this
17 particular type of a lechi?

18 A I'm not sure the agreement was developed specifically
19 for lechis. It was developed over a period of years. It
20 is an agreement for miscellaneous attachments, and I
21 believe it covers more than just lechis.

22 Q But it had been used for lechis before; is that
23 correct?

24 A Yes.

25 Q Okay.

1 Would you to take a look at Section 9.1 of the
2 agreement.

3 That indicates that the licensee is responsible
4 for obtaining permission from a municipal entity; is that
5 correct?

6 A Correct.

7 Q And that is because the poles are a public
8 right-of-way; is that correct?

9 A It could be for any number of reasons.

10 Q Is that one of the reasons?

11 A It could be.

12 Q And a right-of-way is a -- is municipal property; is
13 that correct?

14 A I believe it is.

15 Q Isn't it a fact then that this standard agreement
16 that is used for an eruv contemplates the need for
17 government approval?

18 A What it contemplates is the government approval is
19 required then the applicant must get that approval.

20 Q Isn't it a fact that under New York law, there is no
21 such thing as a sublicense of government right-of-way
22 property?

23 MR. SUGARMAN: Objection.

24 THE COURT: Sustained.

25 Q Isn't it a fact that Verizon has no legal right to

1 grant a sublicense?

2 MR. SUGARMAN: Objection, your Honor.

3 MS. LICCIONE: This gentleman is counsel for 25
4 years --

5 THE COURT: I was going to allow it.
6 Go ahead.

7 MS. LICCIONE: Thank you, your Honor.

8 A I'm not sure what you mean by sublicense here.

9 If the question is, can we license the use of
10 our pole?

11 Q Well, you have a license to put that pole
12 right-of-way --

13 A We don't have a license.

14 Q You have a franchise?

15 A Correct.

16 Q Can you sub-franchise that pole?

17 A I believe so.

18 Q Mr. Balcerski, did you ever read the Southampton Town
19 Code with respect to its sign ordinance at any time with
20 respect to this eruv proposal?

21 A I looked at it in connection with this litigation,
22 yes.

23 Q Then you are familiar, are you not, that there are
24 variance procedures from the sign ordinance?

25 A Yes.

1 Q And you are familiar with the fact that an applicant
2 can challenge the determination of the town by going to
3 the Zoning Board of Appeals, are you not?

4 MR. SUGARMAN: Objection, your Honor.

5 THE COURT: I will allow it.

6 A I believe that is the case.

7 Q Much of what I was going into next Mr. Sokoloff asked
8 you about, so I just have a few more questions.

9 Taking a look again at Plaintiffs' Exhibit 3.

10 If you look at the first Exhibit A to
11 Plaintiffs' Exhibit 3, the one that is typed where it says
12 application for a pole license.

13 A Yes.

14 Q That is dated June 11th, sir?

15 A Yes.

16 Q Do you recall if that was a Saturday?

17 A I guess it was.

18 Q Let's do it this way:

19 I would like to show you what is marked as
20 Southampton Exhibit F.

21 (Handed to the witness.)

22 Q Do you recognize Southampton Exhibit F?

23 A Yes.

24 Q And that was an email that you were copied on?

25 A Yes.

1 Q And the date is Friday, June 10th; is that correct?

2 A Correct.

3 Q So does that refresh your recollection as to whether
4 June 11th was a Saturday?

5 A Yes.

6 Q Now, you were copied on this email which described
7 the agreement, the new agreement between Verizon and East
8 End Eruv Association; is that correct?

9 A I think the email was sending me a copy of -- I see
10 it here, yes.

11 I was copied on the email from our engineer
12 regarding the agreement that was sent to the East End Eruv
13 Association.

14 Q Now, attached to that email -- well, withdrawn.

15 So the agreement was sent on Friday, the 10th,
16 and there was a date on the exhibit as Saturday, the 11th,
17 and it bears Mr. Tenzer's signature; is that correct?

18 A I assume it is his signature, yes.

19 Q Can I see your copy, please?

20 (Whereupon, at this time there was a pause in
21 the proceedings.)

22 Q Take a look at the page prior to the typed
23 "Exhibit A."

24 Does that have a date on it on the bottom?

25 A There is a date of June 12th, 2011.

1 Q And that is one of the exhibits to the agreement?

2 A I'm not positive that this page was an exhibit to the
3 agreement.

4 Q But it is a part of Exhibit 3 that is in evidence; is
5 that correct?

6 A Correct.

7 Q So there is no application that you know of in this
8 agreement as Mr. Sokoloff --

9 A Yes.

10 MR. SUGARMAN: Objection, your Honor.

11 THE COURT: I will allow it.

12 Q So the agreement gets sent on the 10th, and signed by
13 someone on the 11th, and returned on the 12th; is that
14 correct, over the weekend?

15 THE COURT: You went over that already.

16 A I'm not sure when it was returned.

17 Q All of this was done over a weekend, over the course
18 of a three-day period; is that correct?

19 A I know the agreement was sent on a Friday. I'm not
20 sure what happened on Saturday.

21 Q That is pretty quick, would you say?

22 THE COURT: Sustained.

23 Q Is that the ordinary procedure, a new application and
24 an agreement, which is signed over the weekend?

25 MR. SUGARMAN: Objection.

1 THE COURT: Sustained.

2 Q I would ask you -- you don't have the agreement,
3 right?

4 (Handed to the witness.)

5 Q I would like you to look at paragraph 19.19 of
6 Exhibit 3.

7 And that agreement requires a pre-construction
8 survey, does it not?

9 Take your time and look at it.

10 A 19.19?

11 Q And that requires a pre-construction survey, does it
12 not?

13 A Yes.

14 Q And that was not done here yet, was it?

15 A I don't think it was done at this time.

16 Q And how about 25.25?

17 25.26, excuse me.

18 THE COURT: How much longer, counselor?

19 MS. LICCIONE: A couple of more questions. It
20 is almost finished.

21 THE COURT: Because it is 12:35.

22 MS. LICCIONE: I understand, your Honor.

23 Q That requires a pre-construction survey to be built
24 and paid for; is that correct?

25 A Yes.

1 Q And that hasn't happened here either; is that right?

2 A As far as I know.

3 Q Now, I would like you to take a look at the drawing
4 which is attached as an exhibit to Exhibit 3, and I would
5 like you to compare it to the attachment to the email on
6 which you were copied. And I believe that is
7 Southampton F.

8 MR. SUGARMAN: Also Plaintiffs' Exhibit 2.

9 A I have it. I have both of them.

10 Q And it is a lechi example.

11 And I would like you to look at item number 5.

12 Item number 5 permits a nylon rope of
13 contrasting color to black; is that correct?

14 A Correct.

15 Q So by way of this lechi example and specifications,
16 Verizon would allow East End Eruv Association in addition
17 to the lechi to attach and grow -- attach a contrasting
18 color to the pole; is that correct?

19 A Correct.

20 MS. LICCIONE: That's all I have, your Honor.

21 Thank you.

22 THE COURT: How long are you going to be?

23 MR. SUGARMAN: Five minutes.

24 THE COURT: Why don't we go to lunch.

25 MR. SUGARMAN: Or less.

1 I would like to get Mr. Balcerski out of here.

2 I think I can be quicker than that.

3 THE COURT: All right.

4 Go ahead.

5 MR. SUGARMAN: Thank you.

6

7 REDIRECT EXAMINATION

8 BY MR. SUGARMAN:

9 Q Exhibit 2 to your left, which is the big blowup in
10 the -- that one there.

11 That is a blowup of the exhibit to the emails
12 that you have been looking at; is that correct?

13 A Yes.

14 Q Okay.

15 Now, that is a Verizon document?

16 A Yes.

17 Q When the Eruv Association told Verizon that it wanted
18 to use longer lechis, did Verizon then say to the Eruv
19 Association, well, they need to be PVC and not wood?

20 MR. SOKOLOFF: Objection. Leading.

21 THE COURT: Yes.

22 Ask for the conversation on that.

23 Q After Verizon was advised by the Eruv Association
24 that the lechis had to be 15 feet long, did Verizon then
25 say anything to the Eruv Association with respect to the

1 material that needed to be used for the lechis?

2 A I believe the Eruv Association was told they had to
3 use PVC.

4 Q And that is what led to the new agreement -- is that
5 what led to the new agreement that has been marked as
6 Exhibit 3?

7 MR. SOKOLOFF: Objection.

8 THE COURT: Overruled.

9 A In order to attach the longer PVC pipe, the Eruv
10 Association needed to enter into Exhibit 3.

11 Q And Ms. Liccione pointed you to Exhibit 3, Section
12 19.19; and that has to do with pre-construction surveys?

13 A Yes.

14 Q It says, quote, a pre-construction survey will be
15 required for each pole for which attachment is requested
16 to determine the adequacy of the pole to accommodate
17 licensee's attachments; is that right?

18 A Yes.

19 Q Was there any necessity to do a construction survey
20 with respect to whether Verizon's poles could accommodate
21 a five-eighths inch PVC lechi?

22 A Well, it is my understanding there would need to be a
23 walk-through or walk-out, whatever it is called, of the
24 poles to make sure that the lechis will be attached in the
25 appropriate spot on the pole.

1 Q Right.

2 But my question is with respect to a
3 pre-construction survey, and let me put it another way.

4 Is the -- are the PVC lechis used in other
5 instances where Eruv Associations had wanted to attach
6 lechis to poles?

7 MR. SOKOLOFF: Objection.

8 THE COURT: Sustained.

9 Q Let me then ask you whether in your experience you
10 believe that a pre-construction survey will be required to
11 determine whether Verizon poles would be adequate to
12 accommodate the lechi that is described and depicted on
13 Plaintiffs' Exhibit 2, which is to your left?

14 A I'm not sure whether we engage in a pre-construction
15 survey prior to attachment of lechis.

16 Q But that Exhibit 2 is something that Verizon gave to
17 the Eruv Association to give it the specifications for the
18 lechis; is that correct?

19 MR. SOKOLOFF: Objection.

20 THE COURT: Sustained.

21 MR. SUGARMAN: I don't have anything further,
22 your Honor.

23 MR. SOKOLOFF: I do.

24 THE COURT: Go ahead.

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RE CROSS-EXAMINATION

BY MR. SOKOLOFF:

Q Is it your testimony that Verizon wanted Plaintiffs' Exhibit 3 to be signed, the later agreement?

A Yes.

MR. SUGARMAN: Objection, your Honor.

Q And is there anything --

MR. SUGARMAN: Your Honor, I object to that. It was not part of my redirect.

THE COURT: It is true.

I will let it stand because I allowed it. But it is not proper redirect -- recross, rather.

Q Plaintiffs' Exhibit 3 --

THE COURT: You are not getting any more questions about that.

MR. SOKOLOFF: He asked it.

I promise every question I'm about to ask flows from the redirect.

Can we take a lunch break?

MR. SUGARMAN: Your Honor, that is unfair to Mr. Balcerski. I asked him a question about one --

THE COURT: Go ahead and ask your question.

Q Is there anything at all in Plaintiffs' Exhibit 3, the new agreement, that you say was required because of

1 the larger lechi?

2 THE COURT: I will allow it.

3 Q Is there anything in that that says anything about a
4 lechi and the dimensions of it?

5 A No.

6 Q So how could it be -- withdrawn.

7 Is it your testimony that a new agreement was
8 required to accommodate a different lechi where the lechi
9 that is supposedly new is not described at all? Is that
10 your testimony?

11 A In order for the Eruv Association to attach the
12 longer lechi, they needed to execute this agreement.

13 Q Well, where in this agreement does it say they can
14 attach a longer lechi?

15 A It doesn't.

16 MR. SOKOLOFF: No further questions.

17 MS. LICCIONE: I have just one, your Honor.

18 THE COURT: It has to be a good one.

19 MS. LICCIONE: Yes, your Honor.

20

21 RECCROSS-EXAMINATION

22 BY MS. LICCIONE:

23 Q Mr. Balcerski, when Mr. Sugarman asked you questions
24 on redirect -- asked you a question on redirect, he asked
25 you whether or not a pre-construction survey would be

1 required.

2 A Correct.

3 Q Now, if a pre-construction survey were to determine
4 that a pole was unsuitable for the lechi, the lechi would
5 have to go on a different pole; is that correct?

6 THE COURT: Sustained.

7 Q A lechi can't go on poles that are determined to be
8 unsuitable?

9 MR. SUGARMAN: Objection.

10 THE COURT: Sustained.

11 MS. LICCIONE: That's all I have.

12 THE COURT: You may step down.

13 We will see you at a quarter of 2:00.

14 You are excused.

15 THE WITNESS: Thank you.

16 (Luncheon recess.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Be seated.

3 Next witness, please.

4 MR. SUGARMAN: Tim Laube.

5 THE COURT: How many witnesses do you have,
6 approximately?

7 MR. SUGARMAN: Five -- six.

8 THE COURT: I hope they are not duplicative.

9 MR. SUGARMAN: They are not.

10 THE COURT: Remain standing and raise your right
11 hand. Do you affirm or swear?

12 THE WITNESS: Swear.

13 **T I M O T H Y L A U B E ,**

14 called as a witness, having been first
15 duly sworn, was examined and testified
16 as follows:

17 THE COURT: Give us your last name.

18 THE WITNESS: Timothy Laube, L-A-U-B-E.

19 THE COURT: Talk into the mike so we can all
20 hear you.

21 DIRECT EXAMINATION

22 BY MR. SUGARMAN:

23 Q Mr. Laube, were you served with a subpoena to appear
24 here today?

25 A Yes.

1 Q Where do you currently live?

2 A Hampton Bays.

3 Q How long have you lived in Hampton Bays?

4 A In October it will be three years.

5 Q Where did you live before that?

6 A Westhampton Beach.

7 Q How long did you live in Westhampton Beach before you
8 moved to Hampton Bays?

9 A Several years, from '04 until then.

10 Q Where did you grow up?

11 A Westhampton, Westhampton Beach. I went to
12 Westhampton Beach High School.

13 Q Are you employed?

14 A Yes.

15 Q By whom?

16 A Suffolk County.

17 Q What is your position with Suffolk County?

18 A I'm the clerk of the Suffolk County legislature.

19 Q Did you at one point run as mayor for Westhampton
20 Beach?

21 A Yes.

22 Q When was that?

23 A 2008.

24 Q And when you were a candidate for mayor, did the
25 issue of the eruv come up in the campaign?

1 A It did.

2 Q Would you describe for the Court how that came up in
3 that campaign?

4 MR. SOKOLOFF: Objection.

5 What we'll now hear is what citizens told him.
6 This is hearsay and irrelevant.

7 THE COURT: If that's what it is, I will strike
8 it.

9 Go ahead.

10 MS. LICCIONE: Your Honor, I also have an
11 objection. In '08 there was a very different eruv --

12 THE COURT: Overruled. That's for
13 cross-examination.

14 Go ahead.

15 BY MR. SUGARMAN:

16 Q The question was, describe to the Court how the eruv
17 issue came up in the campaign.

18 A Well, the campaign started in April, and it wasn't an
19 issue. It wasn't one people were talking about
20 door-to-door in the village.

21 About eight days before the election, a
22 full-page ad appeared in the local newspaper.

23 MR. SOKOLOFF: Objection.

24 THE COURT: Let's hear. Then I'll rule.

25 A There was a local ad in the newspaper --

1 THE COURT: By whom?

2 THE WITNESS: There were two people who took out
3 the ad. I don't recall the name of the group. And the ad
4 specifically said -- implied a vote for Tim Laube would be
5 a vote for Westhampton Beach to turn it into an orthodox
6 community.

7 MR. SOKOLOFF: I move to strike.

8 THE COURT: I will give it such weight I believe
9 it deserves in the totality of the case.

10 Go ahead.

11 BY MR. SUGARMAN:

12 Q Step back for a minute, Mr. Laube, and tell the Court
13 what position you took with respect to the eruv in that
14 case.

15 MR. SOKOLOFF: Objection. Irrelevant.

16 THE COURT: Go ahead.

17 A I took a position to support the eruv.

18 BY MR. SUGARMAN:

19 Q And were there other candidates -- who were you
20 running against at that time?

21 A At the time, I was running against the current mayor,
22 Mr. Teller.

23 THE COURT: I can't hear you. I'm sorry.

24 THE WITNESS: I'm sorry. Against the current
25 mayor, Mr. Teller.

1 BY MR. SUGARMAN:

2 Q And what was Mr. Teller's position?

3 A I don't recall.

4 Q And as a result of your position, this ad appeared in
5 the press; is that right?

6 MR. SOKOLOFF: Objection.

7 THE COURT: Overruled.

8 BY MR. SUGARMAN:

9 Q You can answer that.

10 A I'm sorry. Can you repeat the question?

11 THE COURT: Did it appear in the local papers?

12 THE WITNESS: Yes, it did.

13 BY MR. SUGARMAN:

14 Q Plaintiff 8 for identification. Can you identify it?

15 A I believe that was the ad put in the newspaper.

16 MR. SUGARMAN: I offer it in evidence.

17 MR. SOKOLOFF: I object strongly. There is no
18 indication who wrote this. There is no connection to the
19 village. It ran in the newspaper. For all we know, the
20 plaintiffs could have put it in. No foundation.

21 MR. SUGARMAN: Your Honor, if I could --

22 THE COURT: Wait. Wait. Let me see the ad.

23 MR. SUGARMAN: It's Exhibit 18 in the binder.

24 THE COURT: 18 in the binder.

25 Do you have any further evidence, other than the

1 article itself?

2 MR. SUGARMAN: Other than the ad?

3 THE COURT: Yes.

4 MR. SUGARMAN: Mr. Laube will testify the impact
5 the ad had on his campaign.

6 THE COURT: I will leave it out.

7 Objection sustained.

8 BY MR. SUGARMAN:

9 Q As a result of your position on the eruv, was there
10 an impact on your election raised with Mayor Teller?

11 MR. SOKOLOFF: Objection.

12 THE COURT: Sustained.

13 BY MR. SUGARMAN:

14 Q You said you moved from Westhampton Beach three years
15 ago; is that correct?

16 A That's correct.

17 Q What prompted you to move from Westhampton Beach?

18 MR. SOKOLOFF: Objection. Irrelevant
19 completely.

20 MR. SUGARMAN: Your Honor, the relevance of this
21 is palpable.

22 THE COURT: That's a new exception. I haven't
23 read that in Rules of Evidence.

24 MR. SUGARMAN: The cases indicate that animus
25 against a particular religious group is probative of the

1 denial of First Amendment rights.

2 What this is meant to show is that in this
3 campaign there was significant anti-orthodox animus, and
4 it got carried through to this witness, who, as a result
5 of threats made to him, moved out of the area.

6 So I believe it is probative of one element of
7 one of the claims that --

8 THE COURT: Sustained.

9 BY MR. SUGARMAN:

10 Q Mr. Laube, when you were living in Westhampton Beach,
11 did you ever have any involvement with hanging any
12 attachments to utility poles in Westhampton Beach?

13 MR. SOKOLOFF: Objection.

14 THE COURT: Overruled.

15 A Yes.

16 BY MR. SUGARMAN:

17 Q And could you explain to the Court the circumstances
18 of that?

19 A During the campaign and the previous campaigns, I
20 would hang --

21 Q No. Not your own --

22 MR. SOKOLOFF: Well, wait a minute. The witness
23 was in the middle of an answer.

24 MR. SUGARMAN: I'm sorry to interpret you.

25 THE WITNESS: I would hang campaign signs on

1 telephone poles.

2 BY MR. SUGARMAN:

3 Q Did you have any involvement in planning the St.
4 Patrick's Day parade in Westhampton Beach?

5 A Yes. I was the president of the St. Patrick's Day
6 Westhampton Beach committee.

7 Q As president of the St. Patrick's Day Westhampton
8 Beach committee, did you have any involvement in hanging
9 any attachments to the poles in The Village of Westhampton
10 Beach?

11 MR. SOKOLOFF: Objection.

12 THE COURT: What's your objection, Counsel? You
13 keep objecting. I want to hear one good reason.

14 MR. SOKOLOFF: Relevance.

15 THE COURT: You feel it is not relevant?

16 MR. SOKOLOFF: I feel it is not relevant.

17 THE COURT: Good. Overruled.

18 So no matter how many signs are posted, it is
19 immaterial, and everybody knows about it.

20 MR. SOKOLOFF: Judge, you may be mistaking our
21 position in this case from that of the other
22 municipalities.

23 THE COURT: Okay. So, therefore, go ahead.

24 THE WITNESS: Annually, we hang a banner across
25 Main Street from one telephone pole to another announcing

1 the day of the parade and the grand marshal for that year.

2 BY MR. SUGARMAN:

3 Q For how long has that been going on?

4 A The parade?

5 Q No. The hanging.

6 A It predates my involvement with the committee. I've
7 been with them ten years.

8 MR. SUGARMAN: I have no further questions.

9 THE COURT: Does Westhampton Beach have an
10 ordinance on signs?

11 MR. SOKOLOFF: No, sir.

12 THE COURT: Or projections or anything on the
13 poles?

14 MR. SOKOLOFF: No, sir.

15 THE COURT: They allow everything?

16 MR. SOKOLOFF: There's no sign ordinance.

17 THE COURT: Do they allow you to put up a sign
18 if they have no sign ordinance?

19 MR. SOKOLOFF: I don't know what you mean by "do
20 they allow" it.

21 THE COURT: Do people put up a sign?

22 I want to put up a sign: Come to breakfast in
23 the morning.

24 Does Westhampton Beach allow that? Yes or no?

25 MR. SOKOLOFF: I stand corrected. There is a

1 sign ordinance. The village has taken the position in
2 this case that a lechi is not a sign.

3 THE COURT: And have you enforced the sign
4 regulations in the village?

5 MR. SOKOLOFF: Yes, we have.

6 THE COURT: Okay. Now cross-examine this
7 individual with respect to the signs.

8 CROSS-EXAMINATION

9 BY MR. SOKOLOFF:

10 Q How many times did you yourself run for office in The
11 Village of Westhampton Beach?

12 A Three times.

13 Q When?

14 A 2004, 2006 and 2008.

15 Q And in 2004, were you elected?

16 A Yes.

17 Q And you served for how long?

18 A Two years.

19 Q And after two years, you ran for reelection?

20 A Correct.

21 Q After two years, the voters were either not happy
22 with your performance or more happy with your opponent; is
23 that right?

24 THE COURT: Sustained. He didn't win.

25 BY MR. SOKOLOFF:

1 Q Did you win?

2 A No.

3 Q So from 2006 to 2008, you were out of office, right?

4 A That is correct.

5 Q And in 2008 you ran for office again?

6 A That's correct.

7 Q And you lost?

8 A Correct.

9 Q By how many votes?

10 THE COURT: Does it really matter?

11 Q How long after you lost to the second election in
12 Westhampton Beach did you move out?

13 A It was the end of September.

14 Q So how long after you lost?

15 A Three months.

16 Q The St. Patrick's Day banner that you put up, was
17 there a procedure that you had to go through in order to
18 get it put up?

19 A Yes.

20 Q What was the procedure?

21 A There was paperwork I had to file with Verizon and
22 LIPA, a permit.

23 Q So you got permission from Verizon and LIPA?

24 A That's correct.

25 Q And you never filed an application with the village?

1 A No. In fact, I was told by then village clerk Kathy
2 McGuinness that I did not have to.

3 Q So you didn't?

4 A Correct.

5 Q And the St. Patrick's banner goes up for how long?

6 A I'd say for about two to three weeks.

7 Q And after that it is taken down, and it's down for
8 the rest of the year?

9 A Correct.

10 Q The St. Patrick's Day parade group that you are the
11 president of doesn't have any permanent structures affixed
12 to any telephone poles that you are aware of?

13 A That's correct.

14 MR. SOKOLOFF: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. SUGARMAN:

17 Q Mr. Sokoloff made it a point to establish that you
18 moved out of Westhampton Beach three months after the
19 election. Why did you move out?

20 MR. SOKOLOFF: Objection.

21 MR. SUGARMAN: Your Honor, he opened the door.

22 THE COURT: I believe so. I was keeping it out.

23 Go ahead.

24 A I felt uncomfortable in the village.

25 MR. SOKOLOFF: Objection.

1 THE COURT: I'll take it. Go ahead.

2 A The date of the election, I received several phone
3 calls disparaging me in my position on the eruv. And in
4 the subsequent weeks, I received several pieces of mail in
5 a threatening nature.

6 MR. SOKOLOFF: Objection. There is no
7 connection between any of my clients or any village
8 officials and these phone calls or pieces of mail.

9 THE COURT: I agree, but I'll let it stand.

10 MR. SUGARMAN: No further questions, your Honor.

11 THE COURT: Any other signs go up around 2008
12 which you put up or you saw it in the village?

13 THE WITNESS: Recalling any individually, I
14 don't recall any. But there's yard sale signs. Political
15 candidates put up signs.

16 THE COURT: Do candidates put up signs?

17 THE WITNESS: I would say yes. I know of other
18 campaigns, county-related races, that used utility poles
19 to put up signs for their campaigns.

20 THE COURT: Okay. You may step down unless
21 somebody wants to question.

22 You may step down.

23 Next witness.

24 (Witness excused.)

25 MR. SUGARMAN: Plaintiffs call Anna

1 Throne-Holst, the supervisor of the Town of Southampton.

2 THE COURT: Remain standing. Raise your right
3 hand.

4 **A N N A T H R O N E - H O L S T,**

5 called as a witness, having been first
6 duly sworn, was examined and testified
7 as follows:

8 THE WITNESS: Anna, A-N-N-A, Throne-Holst,
9 T-H-R-O-N-E, hyphen, H-O-L-S-T.

10 THE COURT: And you are the supervisor --

11 THE WITNESS: -- of the Town of Southampton.

12 THE COURT: Town of Southampton.

13 Go ahead, Counsel.

14 DIRECT EXAMINATION

15 BY MR. SUGARMAN:

16 Q Ms. Throne-Holst, are you familiar with the East End
17 Eruv Association?

18 A Yes.

19 Q And are you now generally familiar with the concept
20 of an eruv?

21 A Yes.

22 Q Who is Michael Sordi?

23 A He's our former town attorney.

24 Q And you worked with Mr. Sordi while he was a town
25 attorney, correct?

1 A I did.

2 Q Let me show you --

3 THE COURT: What exhibits are you referring to?

4 MR. SUGARMAN: 27, your Honor.

5 BY MR. SUGARMAN:

6 Q Are you familiar with this letter, Ms. Throne-Holst?

7 A I am.

8 Q I'm sorry, did you answer?

9 A Yes.

10 Q The first full paragraph on the second page reads
11 quote: Based on the definitions of our sign law, and
12 based on the specification you provided us with your
13 letter, I am compelled to conclude that the lechis
14 constitute a, quote, sign, closed quote, within the
15 meaning and intent of our statute. Accordingly, same are
16 prohibited.

17 Is that correct?

18 A Yes.

19 Q Two paragraphs down it says: Since you have
20 indicated to me via telephone that your company was
21 preparing to issue license agreements to permit the
22 installation of lechis, I believe it is incumbent of our
23 office to advise you in advance, should it be installed in
24 the Town of Southampton and in the unincorporated
25 villages, it's our opinion the same would be in

1 contravention of our local laws, which we shall endeavor
2 to be enforce, lest they be meaningless.

3 That's what it says?

4 A Yes.

5 Q That's the position of the Town of Southampton at the
6 time this letter was written, correct?

7 A It was then and it was before and it remains today,
8 according to the ordinance that is represented in the
9 first paragraph.

10 Q Right. So it remains today the position of the Town
11 of Southampton as it is expressed in the letter, correct?

12 A Our ordinance is what dictates our position on this,
13 yes.

14 Q Now, you mentioned your ordinance.

15 I put before you Plaintiffs' Exhibit 30 for
16 identification and ask if that is the ordinance to which
17 you just referred.

18 A I believe so, yes (perusing).

19 Q Please turn to page 4 of that document, and at the
20 bottom there is a definition of "sign," correct?

21 A Yes.

22 THE COURT: Wait a while.

23 Where is that?

24 MR. SUGARMAN: It's on page 4 of Exhibit 30.

25 THE COURT: Okay.

1 BY MR. SUGARMAN:

2 Q Is it that definition which forms the basis of the
3 position of the Town of Southampton that the lechi in
4 this case would be a sign?

5 MS. LICCIONE: Objection.

6 The supervisor is neither the town attorney nor
7 the building inspector. She has been shown a letter from
8 the town attorney, not a letter of her own. So I object
9 to questioning this lay witness regarding --

10 THE COURT: Overruled.

11 A I would like the same response in that there are any
12 number of descriptions of signs, as you see as well. I'm
13 not sure entirely which one or ones of these you are
14 referring to, but I believe it includes that one you are
15 referring to. But it may refer to several others as well.

16 Q Let's deal with that one, and I'll ask you if there
17 are any others.

18 If you read the definition of "sign," would you
19 tell the Court in what way is a five-eighths-inch PVC
20 lechi covered by the definition of "sign," as you see it
21 in the Southampton --

22 MS. LICCIONE: Objection.

23 This witness merely adopted the position of the
24 town attorney. She did not come to a legal conclusion.

25 THE COURT: You never came to a conclusion what

1 a sign was?

2 THE WITNESS: I think that I know what a sign
3 is, but I think I'd also like to say there are many signs
4 and many different kind of signs.

5 So I think that is also why our ordinance is
6 written the way it is, with several definitions, as your
7 Honor can see. And I'm not sure that this particular type
8 of sign -- I cannot say I'm entirely sure which sign we're
9 referring to was referred to.

10 So it's a difficult question to answer in such
11 specificity, but I do feel that I know what a sign is.

12 THE COURT: Okay.

13 BY MR. SUGARMAN:

14 Q Ms. Throne-Holst, would you look at the big poster
15 board to your left. That's an exhibit that has been
16 identified as provided by Verizon, and it shows on the
17 pole a five-eighth-inch PVC round lechi. That is the
18 lechi I'm talking about right now. I realize it has been
19 described before, but that's what we're dealing with in
20 this litigation.

21 So with that in mind, would you point to the
22 provision of the definition of "sign" that you have in
23 front of you and tell the Court what in that definition --
24 and I'm not talking about other definitions now. We'll
25 get to that. What, if anything, in the definition of

1 "sign" on page 4 of Exhibit 30 would cover this
2 five-eighth-inch PVC lechi?

3 MS. LICCIONE: Same objection.

4 THE COURT: I'll see if she can answer it.

5 THE WITNESS: I'd like to answer it as follows:
6 Because the Town of Southampton has not received any
7 communication on this directly that speaks to the nature
8 or look of any of these signs, I really can't answer that.

9 BY MR. SUGARMAN:

10 Q In Exhibit 27 that I showed you --

11 THE COURT: Excuse me. Do you consider what is
12 before you on that exhibit as a sign?

13 MS. LICCIONE: Can you see it?

14 THE WITNESS: I can't really see it. I see a
15 utility pole, and I see --

16 THE COURT: Do you see a sign there?

17 THE WITNESS: Is this what we're talking about?

18 THE COURT: I'm asking you: Do you see a sign
19 there?

20 THE WITNESS: It's not something that I've ever
21 seen before, but if it's meant to signal something or
22 convey a message, I'm not familiar with it.

23 THE COURT: Okay. That's an answer. I'll
24 accept that answer.

25 So things on telephone poles you've never seen?

1 THE WITNESS: I've never seen ones that look
2 like this particular one, no.

3 THE COURT: Okay.

4 BY MR. SUGARMAN:

5 Q You've seen it now, Ms. Throne-Holst. And based on
6 your knowledge of the Southampton sign law -- and I'm not
7 limiting it to the definition I just pointed to you,
8 because you said there were other provisions -- was there
9 anything in the town sign law that would classify what is
10 on Exhibit 2, which the Judge just asked you about, as a
11 sign?

12 MS. LICCIONE: Objection. Asked and answered.

13 THE COURT: Overruled.

14 A I would have to review the ordinance in its entirety
15 in order to give you an appropriate answer.

16 As you can see, there is at least one, if not
17 several, pages that describe different types of signs.
18 And I do not know those by heart, and I'm not sure how and
19 where specifically this might fit in.

20 BY MR. SUGARMAN:

21 Q But as you sit there right now, nothing comes to mind
22 that would categorize this five-eighth-inch plastic PVC
23 strip as a sign; is that right?

24 MS. LICCIONE: Objection.

25 THE COURT: Overruled.

1 A Sir, in my capacity, we deal with all sorts of signs,
2 be they municipal signs or signs that announce businesses
3 or intentions to sell something. They come in any which
4 form or size and nature. This is not one I've ever seen
5 before, so I don't know exactly where it does fit into
6 any -- to one of these descriptions.

7 BY MR. SUGARMAN:

8 Q And isn't it fair to say you don't know whether it
9 fits into any of the descriptions elsewhere in the
10 Southampton sign law?

11 A I think the most fair to say is because the Town of
12 Southampton has never received any direct communication on
13 this or direct application on this, I am not familiar with
14 what exactly is in question.

15 THE COURT: Please turn that back. He's
16 questioning about that.

17 MS. LICCIONE: I apologize, your Honor.

18 THE COURT: You can sit anywhere you wish.
19 Don't move the exhibit away.

20 BY MR. SUGARMAN:

21 Q I believe you still have in front of you Exhibit 27,
22 which is Mr. Sordi's letter.

23 A Yes.

24 Q And I read parts of that into the record; I'll not do
25 it again.

1 At the time he wrote that letter, had there been
2 any application to the Town of Southampton by the eruv
3 association to put up a lechi?

4 A No.

5 Q So at the time he wrote that letter, he didn't know
6 what exactly the form of lechi would be; isn't that right?

7 MS. LICCIONE: Objection. She can't testify to
8 somebody else's knowledge.

9 THE COURT: I sustained it. Do you have to
10 continue speaking?

11 BY MR. SUGARMAN:

12 Q Mr. Sordi wrote that letter expressing his views.

13 Do you know whether at the time Mr. Sordi had
14 any knowledge of the particular size or composition of the
15 lechi?

16 MS. LICCIONE: Same objection.

17 THE COURT: If she knows.

18 A I don't believe so.

19 BY MR. SUGARMAN:

20 Q You don't believe he knew?

21 A I do not.

22 Q Turn to the first page of Exhibit 30, section
23 330-200. It says "purpose and intent," correct?

24 A Yes.

25 Q And A-1 says: One of the purposes is to preserve and

1 protect the public health, safety and welfare of the
2 citizens of the Town of Southampton.

3 As the supervisor, would you believe that the
4 placement of five-eighth-inch PVC lechis on poles in
5 Southampton would in any way endanger the public health,
6 safety and welfare of the citizens of the town?

7 A I believe it is my sworn duty to uphold the
8 ordinances of the law, the policies and procedures of the
9 Town of Southampton. This wasn't one of them.

10 THE COURT: That wasn't the question.

11 THE WITNESS: I'm sorry.

12 THE COURT: Ask the question again.

13 BY MR. SUGARMAN:

14 Q My question is: As the supervisor of the town, is it
15 your position that placing a five-eighth-inch round PVC
16 lechi on a pole would in any way adversely impact the
17 public health, safety and welfare of the citizens of the
18 Town of Southampton?

19 A It is my sworn duty to uphold the ordinances and the
20 laws of the town. This is a sign ordinance.

21 MR. SUGARMAN: Your Honor, again, I ask to
22 strike that and --

23 THE COURT: Yes. Ask it again.

24 Does this affect the public health, safety and
25 welfare of the citizens of the Town of Southampton? Yes,

1 no, or you don't know. Which one of the three?

2 THE WITNESS: If I may, your Honor -- and I'm
3 not trying to be difficult in any way.

4 THE COURT: Maybe you can't answer it.

5 THE WITNESS: We have an ordinance of this kind.
6 We have many in place because we concern ourselves with
7 the character, as is described in 330-200, to ensure all
8 signs within the Town of Southampton are comparable to be
9 --

10 THE COURT: Does it protect the public health?
11 Yes or no, or you can't answer that?

12 THE WITNESS: I can't answer that.

13 THE COURT: How about the safety and welfare of
14 the citizens of the Town of Southampton? Can you answer
15 that with a yes, no, or you can't answer that?

16 THE WITNESS: I would categorize it as a quality
17 of life, to characterize it.

18 BY MR. SUGARMAN:

19 Q You would characterize the placement of a five-eighth
20 PVC as a quality-of-life item?

21 A I would qualify a sign ordinance to ensure the
22 quality of life of the citizens and taxpayers of the Town
23 of Southampton.

24 Q My question is not generally about the town
25 ordinance. My question is, does this five-eights PVC

1 strip have any impact, as you see, upon that quality of
2 life?

3 MR. SOKOLOFF: Objection.

4 MR. SUGARMAN: And I understand why Mr. Sokoloff
5 is rising. This is with respect to the Town of
6 Southampton.

7 MR. SOKOLOFF: Because it is misleading to
8 describe it as a five-eighth-inch piece of whatever. That
9 is not the accurate dimension.

10 THE COURT: Overruled.

11 THE WITNESS: Your Honor, if I may --

12 THE COURT: Go ahead.

13 THE WITNESS: These are, in essence, are meant
14 to capture any number of what we might consider nuisances
15 or infringements on the quality of life within the town.
16 And so our position is that they capture, then, any one of
17 a, quote, sign.

18 And to say one sign or another, the point is
19 that we don't make exceptions. It is supposed to capture
20 any signs, because we consider them an infringement on the
21 quality of life.

22 THE COURT: There is testimony that signs had
23 been put up.

24 MS. LICCIONE: Objection, your Honor. Not
25 within the Town of Southampton. There has been no

1 testimony. That was Westhampton Beach and Quogue.

2 MR. SUGARMAN: I don't think that is right, your
3 Honor, but we'll get to that later.

4 THE COURT: All right.

5 MS. LICCIONE: Not the testimony, Mr. Sugarman.

6 MR. SUGARMAN: Well, declarations are not
7 testimony.

8 MS. LICCIONE: Correct. There has been no
9 testimony.

10 THE COURT: Stop. Stop. Both of you. Wait.
11 There is no cross-conversation between counsel.

12 Do you understand that, both of you?

13 MR. SUGARMAN: Yes, your Honor.

14 THE COURT: How about you, Miss?

15 MS. LICCIONE: Yes, sir.

16 BY MR. SUGARMAN:

17 Q Ms. Holst, would you look at subsection 5 of section
18 330-200? That says one of the purposes is to promote the
19 free flow of traffic and protect pedestrians and motorists
20 from injury and property damage resulting from cluttered,
21 distracting and/or illegible signage. Studies have shown
22 that outside distractions may lead to traffic accidents.

23 Is it your position that placing a
24 five-eighth-inch round lechi on a pole would inhibit the
25 free flow of traffic?

1 A My position is any sign may, in fact, do that, yes.

2 Q And it's also your position that attaching this lechi
3 might be a distraction to drivers?

4 A A concern would be with this or any sign, that's with
5 respect to the ordinance.

6 Q I'm not talking about any sign. I'm talking about
7 this lechi.

8 A Yes. But we have ordinances in the town, and we do
9 not make exceptions for social justice reasons. I mean,
10 that's why we have ordinances and laws, and they are to be
11 upheld by any applicant.

12 Q If the lechi was not a sign as defined by the
13 ordinance, then it wouldn't be covered by the sign law,
14 correct?

15 A I'm not certain.

16 Q Well, sign laws, your sign law, is enacted to
17 prohibit signs on the poles in the Town of Southampton,
18 correct?

19 A Yes.

20 Q And if it is determined that this lechi is not a
21 sign, then it would not be covered by the sign law,
22 correct?

23 MS. LICCIONE: Objection.

24 THE COURT: Overruled.

25 A Sign, banners, messages, lights, neon lights. I

1 think we've concluded here there are any number of
2 descriptions what might fall into a sign.

3 BY MR. SUGARMAN:

4 Q And if the lechis don't fall into any of those
5 descriptions, they would not be prohibited by the sign
6 law?

7 A I'm not certain.

8 Q Would you turn to page 6. Actually, it starts at the
9 bottom of page 5, and the heading is Exempt and Prohibited
10 Signs.

11 Do you see that?

12 A Yes.

13 Q And now go to page 6. There is an enumeration of
14 exempt signs, correct?

15 A Yes.

16 Q And one of them is a residential nameplate, under
17 subsection 1, not exceeding two square feet.

18 That is exempt, right?

19 A It appears so, yes.

20 Q And you would agree, would you not, that a
21 five-eighth-inch PVC lechi is not nearly as big as a
22 two-square foot residential name place?

23 MS. LICCIONE: Objection. We're talking about
24 signs on poles, not residences, so it is irrelevant.

25 THE COURT: Wait a second.

1 I'll sustain it.

2 Ms. Throne-Holst, if you look at 330-203 at the
3 bottom, it says: Exempt and Prohibited Signs.

4 The following signs, whether existing prior to
5 the effective date or thereafter installed or erected,
6 shall be exempt from the provisions of 330-208 A through C
7 related to permits and fees. Any other provisions of this
8 article; inconsistent with the respective area and height
9 allowances set forth below; and the amortization
10 requirements set forth in 330-202 B.

11 There's nothing in what I've just read that
12 defines whether the sign that is discussed here is on a
13 pole or on a residence or anywhere else, is there?

14 MS. LICCIONE: Objection, your Honor.

15 I think the question is misleading. If we
16 proceed to the next page, there is a discussion of
17 prohibited signs, and that includes any type of sign in
18 item number 10 on a telephone pole.

19 THE COURT: Item number 10? Read it to me.

20 MS. LICCIONE: He's reading from exempt sign.

21 THE COURT: All right. I said yes, I found it.

22 MS. LICCIONE: Thank you.

23 BY MR. SUGARMAN:

24 Q Ms. Throne-Holst, whether the sign is on a house or a
25 pole, you would agree with me, would you not, that looking

1 at subsection 2, a nonilluminated open/closed, vacancy/no
2 vacancy sign not exceeding four square feet would be more
3 of a distraction than a five-eighth-inch PVC lechi,
4 wouldn't you?

5 MS. LICCIONE: Same objection.

6 THE COURT: I'll allow it.

7 THE WITNESS: Your Honor, why I find it
8 difficult is because we've not been in receipt of an
9 application here. This is the first I see of any kind of
10 attempt to describe what it is we're supposed to be
11 taking -- maybe or maybe not taking any action on.

12 So I find myself, I think, in a fairly
13 impossible position without having actually seen in person
14 what it is we're supposed to be, you know, forming an
15 opinion on.

16 THE COURT: Do the best you can.

17 THE WITNESS: I'm saying I don't think it is
18 helpful to go through each one of these provisions without
19 the township having the opportunity to review anything
20 substantial or anything at all.

21 THE COURT: Didn't any of the attorneys go over
22 this with you?

23 THE WITNESS: This is the only communication
24 that the town --

25 THE COURT: No. Please listen to the question.

1 THE WITNESS: Yes, your Honor.

2 THE COURT: Did any of the attorneys go over the
3 issues with you?

4 THE WITNESS: Yes, but I find myself --

5 THE COURT: And didn't they show you what their
6 claim is and what provisions apply?

7 THE WITNESS: Well, I think --

8 THE COURT: Did they or didn't they?

9 You are claiming ignorance. I want to see if
10 anybody went over it with you or they didn't. If they
11 went over it with you, I can't see how you can't say that,
12 if they did, that is justifiable.

13 THE WITNESS: I think counsel agrees with my
14 position, because we're not in a --

15 THE COURT: All right. I'll withdraw my
16 comment.

17 Did the lawyers talk to you about the issues in
18 this case? Yes or no.

19 THE WITNESS: Of course they did, your Honor,
20 but --

21 THE COURT: Did they show you pictures of what
22 is involved?

23 THE WITNESS: Not this picture.

24 THE COURT: What pictures did they show you
25 then?

1 THE WITNESS: I have not seen a picture.

2 THE COURT: Oh.

3 Do you have any more questions of the witness?

4 MR. SUGARMAN: No, your Honor.

5 THE COURT: You may have cross-examination.

6 CROSS-EXAMINATION

7 BY MS. LICCIONE:

8 Q Good afternoon.

9 To get a little background, when were you
10 elected supervisor?

11 A November of 2009.

12 Q When did you take office?

13 A January 1, 2010.

14 Q Before you were elected supervisor, did you hold a
15 position on the town board?

16 A Yes. I held a position of councilwoman.

17 Q For how long were you councilwoman?

18 A Two years.

19 Q So that would be 2007 to 2009?

20 A 2008 and 2009. I was elected in 2007.

21 Q And you took office in January?

22 A Yes.

23 Q Prior to becoming a councilwoman, could you describe
24 to the Court your background?

25 A Well, I moved to the area in 1988, shortly after the

1 birth of my second son. I left a career in marketing and
2 advertising in New York City. Shortly after the birth of
3 my third son in 1993, I was part of founding an
4 educational institution.

5 Q And what was that educational institution?

6 A It was an elementary school. It is an elementary
7 school. In 1999 I took a position of the executive
8 director of the Bridgehampton Child Developmental Center.

9 Q What is that?

10 A It is a not-for-profit community service organization
11 that serves a minority community. And we brought Head
12 Starts and other educational support, and emotional and
13 mental health and developmental support programs to the
14 community.

15 Q Before that I believed was mentioned the Hayground
16 School.

17 What is that school?

18 A It's an elementary school that serves children,
19 again, mostly minority, underserved and learning-
20 challenged children. It's an alternative curriculum that
21 focuses on social justice and allowing teachers to teach
22 to the needs of individual children.

23 Q After the Bridgehampton center, what did you do?

24 A I pursued a master's degree in international affairs
25 and public administration at Columbia, and I served at the

1 department of peacekeeping, part of the United Nations.

2 And then I worked for a private not-for-profit that looked
3 to assist families that were victim of AIDS.

4 Q Thank you.

5 I think you testified that you were familiar
6 with Mr. Sordi's letter.

7 Did you go through the town code with him at
8 that time, the sign code?

9 A Yes.

10 Q Looking at 32 in front of you -- do you still have
11 that in front of you?

12 A I do.

13 Q Let's take a look at A-2 on the first page.

14 Is that one of the purposes of the sign
15 ordinance?

16 A Yes.

17 Q And it is to promote the use of signs which are
18 aesthetically pleasing; is that correct?

19 A Yes.

20 Q Looking at number 3, one of the purposes is to
21 enforce the historic and pedestrian character of the
22 hamlet and village centers.

23 Do you see that?

24 A Yes.

25 Q And looking further down, it's to avoid escalating

1 clutter; is that correct?

2 A Yes.

3 Q And looking at number 7, one of the purposes is to
4 enhance the appearance of the streetscape?

5 A Yes.

6 Q At some point in time after you took office, did you
7 become aware of a controversy surrounding a potential
8 eruv?

9 A There have been quite a bit of mention in the local
10 newspaper regarding this issue.

11 Q Did you ever get any e-mails?

12 A I get numerous e-mails.

13 Q How would you describe the e-mails? For? Against?

14 A A mixture of both.

15 Q When you received these e-mails, what did you
16 conclude, if anything?

17 A Well, I concluded prior to the e-mails, it certainly
18 reinforced it. It appeared to be an issue between two
19 different or several different factions of religious
20 institutions, and as such, I felt it wasn't under the
21 purview of government.

22 Q Why did you feel that way?

23 A Because of the separation of church and state and my
24 belief that my sworn duty is to uphold a secular position.

25 Q Now, did you respond to the e-mails?

1 A I did. I respond to all e-mails.

2 Q And did you respond to them individually or as a
3 group?

4 A When it became clear that this was -- in my position
5 we do receive numerous e-mails on any number of issues,
6 and on an issue such as this, I composed and forwarded
7 what became my standard reply.

8 Q So it's a standard reply.

9 You sent it to everyone for or against?

10 A Yes.

11 Q To your knowledge, has anyone run an application
12 before the Town of Southampton to establish an eruv?

13 A No.

14 Q For a lechi?

15 A No.

16 Q Had Mr. Tuchman ever communicated with you?

17 A No.

18 Q And to your knowledge, was any of the other town
19 board members?

20 A Not to my knowledge.

21 Q Has Mr. Sugarman ever communicated with you with
22 respect to the eruv?

23 A No, and on no other matter.

24 Q Excuse me?

25 A And on no other matter.

1 MS. LICCIONE: I think that's all that I have.

2 REDIRECT EXAMINATION

3 BY MR. SUGARMAN:

4 Q Ms. Throne-Holtz, when Mr. Sordi went over with you
5 the Southampton sign law, did he point to any particular
6 section of the sign law that he believed would be violated
7 by the placement of a lechi?

8 MS. LICCIONE: Objection. Beyond the scope.

9 THE COURT: Overruled.

10 Go ahead.

11 A We reviewed the ordinance as a whole, and it was his
12 position, I believe --

13 MS. LICCIONE: Objection. Privilege.

14 THE COURT: Overruled.

15 A I believe it was his position as town attorney that
16 the sign ordinance was appropriate in response to the
17 correspondence from Verizon.

18 BY MR. SUGARMAN:

19 Q Okay. But my question was whether he pointed to any
20 particular section of the sign law when he and you were
21 discussing whether the lechis were violated. Particular
22 position.

23 MS. LICCIONE: Objection. Discussion as
24 privileged.

25 THE COURT: Overruled.

1 BY MR. SUGARMAN:

2 Q You reviewed the entire --

3 A Yes.

4 Q So you don't recall whether it was this position or
5 that position. He reviewed the entire ordinance. Is that
6 what you are saying?

7 A We did.

8 MR. SUGARMAN: I have nothing further.

9 THE COURT: Anything further?

10 MS. LICCIONE: No, your Honor.

11 THE COURT: You may step down.

12 Next witness.

13 (Witness excused.)

14 MR. SUGARMAN: Plaintiffs call Mayor Conrad
15 Teller of Westhampton Beach.

16 THE COURT: Remain standing.

17 **C O N R A D T E L L E R,**

18 called as a witness, having been first
19 duly sworn, was examined and testified
20 as follows:

21 THE WITNESS: Conrad W. Teller, mayor of
22 Westhampton Beach.

23 DIRECT EXAMINATION

24 BY MR. SUGARMAN:

25 Q Good afternoon, Mayor Teller.

1 You presently serve as the mayor of Westhampton
2 Beach?

3 A Yes, I am.

4 Q For how long have you served in that position?

5 A Started my fourth year.

6 Q Fourth year.

7 Before that, were you -- did you hold any other
8 position in Westhampton Beach?

9 A I was trustee for one year, and I was chief of police
10 for ten.

11 Q And you were the mayor of Westhampton Beach in 2008
12 when the Hampton synagogue submitted an application for a
13 proclamation; is that correct?

14 MR. SOKOLOFF: Objection.

15 THE COURT: Overruled.

16 A They submitted an application for an eruv at a work
17 session.

18 BY MR. SUGARMAN:

19 Q An eruv?

20 A An eruv.

21 Q At a work session.

22 And it's true, is it not, at that time you did
23 not oppose the application, correct?

24 A The village did not oppose it. We didn't oppose it
25 at the time. It was a work session application. It was

1 more for information only at that time.

2 Q And you personally had no objection to the eruv at
3 that time, correct?

4 MR. SOKOLOFF: Objection.

5 Your Honor, there is a legislative testimonial
6 privilege that we are invoking here. He's not allowed
7 under that privilege to explore the mind of a legislator
8 and the operation of his mind.

9 If he wants to ask him what he said about it,
10 that's one thing, but the operation of his own mind is
11 privileged.

12 THE COURT: What case are you relying upon?

13 MR. SOKOLOFF: There is a case from your
14 Honor --

15 THE COURT: From me?

16 MR. SOKOLOFF: Yes, in part. Orange v. County
17 of Suffolk.

18 THE COURT: Mona Orange.

19 What is the citation?

20 MR. SOKOLOFF: 830, F.Supp. 704.

21 THE COURT: Hold on. We'll go take a look.

22 The Court will be in short recess while I'm
23 looking it up.

24 MR. SOKOLOFF: I'm not done.

25 THE COURT: I'm looking up your first case. Do

1 you mind?

2 MR. SOKOLOFF: I don't mind.

3 THE COURT: Do you have a Second Circuit
4 opinion? I'll take that too.

5 MR. SOKOLOFF: I don't have a Second Circuit
6 opinion.

7 THE COURT: That's all I'm interested in, my
8 case and a Second Circuit opinion.

9 Do you have any objection to me looking it up?

10 MR. SOKOLOFF: Of course not.

11 THE COURT: Okay. Thank you.

12 (Whereupon, a recess was taken.)

13 THE COURT: Witness, please take the stand.

14 Everybody be seated.

15 After reading my own decision of 1991 and 1993
16 on Orange versus the County of Suffolk, which are
17 different facts, but under my own decision, I do allow on
18 certain circumstances to go into the legislative intent.

19 Under my own decision, I find under these facts
20 it's not sufficient to go into the legislative intent.

21 Only if the legislator or mayor issued public statements
22 can you do it.

23 So I'm agreeing with the defendants.

24 Proceed.

25 MR. SUGARMAN: Thank you, your Honor.

1 BY MR. SUGARMAN:

2 Q Mayor Teller, you told -- you've met Morris Tuchman,
3 have you not?

4 A Yes, I have.

5 Q And didn't you tell Mr. Tuchman in 2008 that you had
6 talked to the mayor of Tenafly and that you had no
7 problems with the eruv? Did you tell him that?

8 A Did I probably convey at that time? Yes. I had no
9 problem with it. It was just a beginning, and the
10 majority of us didn't know what an eruv was.

11 Q But you did say that you talked to the mayor of
12 Tenafly, correct?

13 A I talked to the mayor of Tenafly.

14 Q In your discussion with the mayor of Tenafly, you had
15 a discussion with him about what an eruv was and whether
16 it had any impact on his borough, correct?

17 A No. I asked him more what he utilized -- he used the
18 sign ordinance and the eruv. I asked him about the eruv,
19 how he used the sign ordinance and how it was signed into
20 effect.

21 Q Mr. Mayor, in 2008 you made a motion, did you not, to
22 add to the agenda a resolution to approve the eruv? Is
23 that right?

24 A I made a motion to add a resolution to the agenda.
25 It was not to be voted on; it was to be added to it.

1 Q And that motion was defeated three to two, correct?

2 A They voted not to put it on the agenda.

3 Q Right.

4 And do you recall the three trustees who voted
5 not to put it on the agenda?

6 A Offhand, no.

7 Q Was Mr. Tucker one?

8 A I couldn't say with any certainty.

9 Q You ran for election in May of 2008, correct?

10 A Yes.

11 Q And in that election, you publicly opposed the
12 concept of an eruv in Westhampton Beach, correct?

13 A My personal opinion, yes.

14 Q And that was expressed as part of your campaign for
15 mayor, correct?

16 A Yes, it was.

17 Q And at that time, Mr. Tucker also expressed his
18 opposition to the eruv in that campaign, correct?

19 A I can't say that with any certainty. I objected to
20 it, as Mr. Tuchman said. There was a firestorm in the
21 village, and everybody, the majority of the people, were
22 against it.

23 Q So you changed your position based on the firestorm
24 of opposition that you detected in the village, correct?

25 A It was originally an innocuous presentation by the

1 synagogue. We asked for further information, and we again
2 asked for further information.

3 At another meeting, I believe shortly
4 thereafter, I tried to present a resolution to either go
5 forward with it or close it. And that's where it stood.
6 It was never brought up officially for a vote. It was
7 withdrawn by the synagogue.

8 Q But returning to this campaign in 2008 for mayor, it
9 was your position that you were opposed to the eruv, and
10 it was based on the firestorm of --

11 A It was based on public opinion.

12 MR. SOKOLOFF: Objection.

13 THE COURT: Sustained. Asked and answered.

14 MR. SUGARMAN: Thank you, your Honor. I'll move
15 on.

16 BY MR. SUGARMAN:

17 Q And it's fair to say that your position on the eruv,
18 your opposition to the eruv, continues to this day; is
19 that right?

20 MR. SOKOLOFF: Objection. For the same grounds:
21 legislative; deliberate thought practice, privilege;
22 legislative testimonial privilege --

23 THE COURT: I'll allow it. His thinking today
24 but not his thought process.

25 BY MR. SUGARMAN:

1 Q Forgetting the deliberations of the legislature, you
2 have publicly proclaimed that you continue to oppose the
3 eruv; isn't that correct?

4 A As I said, it was a personal opinion that I opposed
5 it. It has never been brought before the board on any
6 occasion for discussion, work with our attorneys on it or
7 anything else. It was strictly the personal opinion of
8 Conrad Teller, citizen of Westhampton Beach.

9 Q And mayor?

10 A I'm the mayor, but there has never been a decision by
11 the mayor. We've never voted on it. We never discussed
12 it. It was a preliminary brought before us. It was a
13 preliminary brought by the synagogue for an application.

14 Q Do you distinguish in your statements between Conrad
15 Teller, person, and Conrad Teller, mayor?

16 A I try to.

17 Q And is it your position that in your public
18 statements you were talking personally as opposed to as
19 the mayor of Westhampton Beach?

20 A At the time, yes. I was running for election.

21 Q Do you recall saying publicly that the board has
22 taken a position that the public has spoken, and our
23 understanding is that for an eruv, they need public
24 support, and we don't believe they have the support of the
25 public?

1 Did you say that?

2 A Yes, I think I did.

3 Q And that's your position as of today as well; is it
4 not?

5 MR. SOKOLOFF: Objection.

6 THE COURT: I'll allow it, his personal opinion
7 as of today.

8 BY MR. SUGARMAN:

9 Q You can answer the question.

10 That's your position?

11 A I believe they need public opinion or some public
12 support of the community to establish an eruv, yes.

13 Q And that you don't believe they have it, and
14 therefore you opposed it?

15 MR. SOKOLOFF: Objection.

16 THE COURT: Sustained. Asked and answered.

17 BY MR. SUGARMAN:

18 Q Mayor Teller, can you point to any provision of the
19 village's laws, ordinances, that you are aware of that
20 requires the Eruv Association to seek village approval of
21 the eruv that is presently --

22 MR. SUGARMAN: I'll withdraw that and start
23 again. I'm sorry, your Honor.

24 BY MR. SUGARMAN:

25 Q You are aware, are you not, Mayor Teller, that the

1 present application -- I'm sorry -- the present plan for
2 an eruv is to have one that is much larger than the
3 original proposal back in 2008? Are you aware of that?

4 A Yes, I am.

5 Q And that larger eruv, however, would cover The
6 Village of Westhampton Beach. Are you aware of that?

7 A I'm aware of that.

8 Q Can you point to any provision in Westhampton Beach's
9 laws, ordinances, rules, which requires the Eruv
10 Association to seek approval for the eruv that is
11 presently being contemplated?

12 MR. SOKOLOFF: Objection.

13 This is a fact witness. He's not an attorney.
14 The legal arguments and legal positions come through the
15 attorneys, and I think it is unfair to treat him as an
16 attorney by asking him a question of this nature.

17 THE COURT: I'll sustain it.

18 MR. SUGARMAN: Your Honor --

19 BY MR. SUGARMAN:

20 Q Mr. Teller, you are the mayor of Westhampton Beach?

21 A Yes, I am.

22 Q In that role, are you familiar with the ordinances
23 and statutes of your village?

24 MR. SOKOLOFF: Objection.

25 THE COURT: Sidebar.

1 (Whereupon, at this time the following took
2 place at the sidebar.)

3 THE COURT: Can I have it read back?

4 (Whereupon, the record was read back by the
5 reporter.)

6 THE COURT: What's the objection? He doesn't
7 understand it?

8 MR. SOKOLOFF: No, your Honor.

9 THE COURT: He couldn't know it?

10 MR. SOKOLOFF: Whether he personally knows or
11 does not know the ordinances, or thinks he knows or
12 doesn't think he knows the ordinance, has no relevance to
13 the legal issues in this case.

14 THE COURT: I'll allow that question. Limit it,
15 though. I'll not let you go far astray with it.

16 (End of sidebar discussion.)

17 MR. SUGARMAN: Would you read the question back
18 to the witness so he can answer it?

19 (Whereupon, the record was read back by the
20 reporter.)

21 A Yes, I am.

22 BY MR. SUGARMAN:

23 Q So could you point to any section in the village's
24 laws or ordinances that requires the Eruv Association to
25 seek approval from The Village of Westhampton Beach for

1 the eruv that is presently contemplated?

2 MR. SOKOLOFF: Objection.

3 This is the same question your Honor sustained
4 two minutes ago. Treating a lay witness as an attorney.
5 The village's position on what laws apply or don't are
6 made by counsel, not by a lay witness.

7 THE COURT: And people are supposed to
8 understand it. So I will accept it under the
9 circumstances that he's now giving his lay opinion
10 concerning it, and I'll give it such weight as I feel it
11 deserves.

12 Go ahead.

13 But I'll limit him on further questions on it.

14 MR. SUGARMAN: Would you read the question back?
15 (Whereupon, the record was read back by the
16 reporter.)

17 THE WITNESS: I don't know of any of our code or
18 laws that affect the eruv application to us.

19 THE COURT: I'm sorry, would you repeat that
20 again? Say it again?

21 THE WITNESS: I don't know of any laws, codes,
22 in our village compiled that affect the eruv,
23 nonapplication or an application.

24 THE COURT: Okay.

25 BY MR. SUGARMAN:

1 Q Mayor Teller, I put before you what has been marked
2 as Plaintiffs' Exhibit 19 for identification, and I direct
3 your attention to page 12 of that document.

4 Is that your signature under the words "Village
5 of Westhampton Beach, by Conrad W. Teller"?

6 A What number is it? 12?

7 Q Page 12, stamp number 000419 at the very bottom on
8 the right.

9 THE COURT: What exhibit are you talking about?

10 MR. SUGARMAN: Exhibit 19, your Honor.

11 THE COURT: What page?

12 MR. SUGARMAN: Page 12, stamped by Verizon as
13 419 on the bottom right-hand corner.

14 BY MR. SUGARMAN:

15 Q My question is, is that your signature?

16 A Yes, it is.

17 Q This agreement is one between The Village of
18 Westhampton Beach and Verizon, correct?

19 A Pole attachment agreement.

20 Q And it's between The Village of Westhampton Beach and
21 Verizon, correct?

22 A Yes.

23 Q And it's an agreement to permit The Village of
24 Westhampton Beach to place holiday banners on Verizon's
25 poles, correct?

1 A To put a banner.

2 Q A banner?

3 A On a potential of four poles.

4 Q Would you look at section 28, which is on page 10 of
5 the agreement?

6 And before I do that, that's your signature on
7 page 10, correct?

8 THE COURT: I don't see a signature on page 10.

9 MR. SUGARMAN: It's stamped 0000416 on the
10 bottom right-hand corner.

11 A That's my signature, yes.

12 BY MR. SUGARMAN:

13 Q Now, section 28, which is on the top of that page,
14 says: Nothing herein contained shall be construed as a
15 grant of any exclusive license, right or privilege to
16 licensee. Licensor shall have the right to grant, renew
17 and extend the rights and privileges to others not parties
18 to this agreement, by contract or otherwise, to use any
19 poles and/or anchors covered by this agreement.

20 Do you see that?

21 MR. SOKOLOFF: Objection.

22 THE COURT: Whether he sees that or not, I'll
23 let him answer that.

24 A I see it, yes.

25 BY MR. SUGARMAN:

1 Q And so you signed an agreement, did you not, that
2 acknowledged that Verizon had the right to license other
3 parties to put material on the Verizon poles? Correct?

4 MR. SOKOLOFF: Objection.

5 This is a contract -- this is an agreement for
6 something else. The mayor said that the sign ordinance in
7 the village -- he knows of no law in the village that
8 prevents it.

9 THE COURT: Overruled.

10 BY MR. SUGARMAN:

11 Q So this was an agreement that stated that Verizon had
12 the authority to grant to other third parties the rights
13 to put material on the Verizon poles, correct?

14 MR. SOKOLOFF: Objection.

15 THE COURT: Same question; same objection; same
16 ruling.

17 MR. SOKOLOFF: First he asked him if he could
18 read it. Now the next question is, he's asking him to
19 explain it.

20 MR. SUGARMAN: I thought I rephrased the
21 question.

22 THE COURT: Can you answer the question?

23 BY MR. SUGARMAN:

24 Q Can you answer the question?

25 THE COURT: There's an echo in the courtroom.

1 THE WITNESS: Paragraph 28, right?

2 MR. SUGARMAN: Yes.

3 THE WITNESS: I see it, yes.

4 BY MR. SUGARMAN:

5 Q I know you see it. But my question is, isn't that
6 paragraph an acknowledgment that Verizon has the power to
7 grant licenses to others besides Westhampton Beach to put
8 material on the Verizon poles?

9 MR. SOKOLOFF: Objection.

10 THE COURT: Overruled.

11 A It appears to be that, yes.

12 BY MR. SUGARMAN:

13 Q And is it your understanding as you sit here today
14 that the East End Eruv Association has received permission
15 from Verizon to put lechis on the Verizon poles?

16 A I don't know that for a fact.

17 MR. SUGARMAN: I have no further questions, your
18 Honor.

19 MR. SOKOLOFF: This will be considered part of
20 my case. I will not recall the mayor.

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. SOKOLOFF

24 Q Mayor Teller, how many individuals sit on the village
25 board in Westhampton Beach?

1 THE COURT: At this time concerning this issue?

2 MR. SOKOLOFF: Exactly.

3 BY MR. SOKOLOFF:

4 Q How many were on the board?

5 A Four members and the mayor.

6 Q Is the mayor part of the board?

7 A Five of us.

8 Q Does the mayor have any more than one vote on matters
9 that come before the village board?

10 A No, I don't.

11 Q Does the mayor have a veto power over resolutions,
12 laws or other matters that are passed by the majority of
13 the board?

14 A No, I do not.

15 Q When you were giving agency, you said, before your
16 own personal opinion about the eruv, were you speaking on
17 behalf of any other board members?

18 A Absolutely not.

19 Q Were you speaking on behalf of the village as a
20 whole?

21 A No, I was not.

22 Q Do you remember testifying before that before the
23 village board voted on an application for a proclamation,
24 the synagogue withdrew the application?

25 A They withdrew it.

1 Q How did you learn that the synagogue withdrew the
2 application?

3 A From their attorney.

4 Q And from that time when the synagogue, through its
5 attorney -- withdrawn.

6 Was the attorney who represented the synagogue
7 Mr. Sugarman, to your knowledge, or somebody else?

8 A No, it was our attorney.

9 Q You learned from your attorney that the synagogue had
10 withdrawn the application?

11 A Yes.

12 Q And from the moment that you learned from your
13 attorney that the synagogue withdrew the application, from
14 that moment until this very moment, has the East End Eruv
15 Association or anybody on behalf of it placed anything
16 before the village board on this issue?

17 A Absolutely not.

18 Q Did the village do anything at all on the proposal,
19 the now proposal by the East End Eruv Association, did the
20 village do anything about that before the plaintiffs
21 walked into the clerk's office downstairs here and filed a
22 lawsuit?

23 A No, we did not.

24 Q Has the village board, as currently constituted, met
25 to discuss the issues that are now raised by the plaintiff

1 in this lawsuit?

2 A No.

3 Q Take a look at the agreement that Mr. Sugarman
4 questioned you about, the Exhibit 19 agreement, the pole
5 attachment agreement.

6 Do you have that in front of you, or did he take
7 it back?

8 I see you have it. Okay.

9 Now, take a look at paragraph 28. That's the
10 provision above the signatures on page 10. So page 10,
11 paragraph 28. That's the paragraph that Mr. Sugarman just
12 questioned you about.

13 Do you see that?

14 A I got it.

15 Q Okay. Now, it says, quote: Nothing herein contained
16 shall be construed as a grant of any exclusive license,
17 right or privilege to licensee. Licensor shall have the
18 right to grant, renew and extend rights and privileges to
19 others not parties to this agreement, by contract or
20 otherwise, to use any poles and/or anchors covered by this
21 agreement, end quote.

22 I now want to focus on the last couple of words,
23 "to use any poles and/or anchors covered by this
24 agreement."

25 This was an attachment to poles sought by the

1 village.

2 If you look at page 11, do you see where it
3 says, attachment 1, holiday decorations?

4 A Yes.

5 Q Do you know in your own mind which poles these
6 holiday decorations were going to be placed on?

7 A I believe it was Dune Road, Mill Road and Oak Street.

8 Q So this provision where it says? To use any poles
9 and/or anchors covered by this agreement," you understood
10 those poles to not be anywhere near Dune Road, right?

11 MR. SUGARMAN: Objection, your Honor. Leading.

12 THE COURT: Sustained.

13 BY MR. SOKOLOFF:

14 Q The poles that are required there, "to use any poles
15 and/or anchors covered by this agreement" relating to the
16 holiday decorations, have you heard anything, sitting here
17 in this case, that any of those poles would have lechis on
18 them?

19 THE COURT: I'll allow it. Go ahead.

20 A No.

21 MR. SOKOLOFF: Just one minute, your Honor.

22 (Counsel confers.)

23 MR. SOKOLOFF: Nothing further.

24 THE COURT: Anything further by the defense?

25 MS. LICCIONE: No, your Honor.

1 THE COURT: By the plaintiff?

2 MR. SUGARMAN: No, your Honor.

3 THE COURT: I'm a little confused.

4 Did I hear you allow to put up Christmas
5 decorations?

6 THE WITNESS: These were banners that the
7 beautification committee --

8 THE COURT: Were they Christmas decorations?

9 THE WITNESS: No. They were winter snowflakes.

10 THE COURT: So you could put up winter
11 snowflakes.

12 And how long were they up before you took them
13 down?

14 THE WITNESS: They weren't up, I don't think,
15 more than three weeks. They wanted to charge us. I
16 wasn't going to pay the bill.

17 THE COURT: That's the reason you took them
18 down, though you did consent to put up winter decorations?

19 THE WITNESS: Winter decorations, holiday
20 season.

21 THE COURT: When you say "holiday season," what
22 holiday season was that?

23 THE WITNESS: It was coming on to Christmas, New
24 Year's.

25 THE COURT: Okay. Any other questions?

1 MR. SUGARMAN: No, your Honor.

2 MR. SOKOLOFF: None from me.

3 THE COURT: You may step down.

4 (Witness excused.)

5 THE COURT: How many more witnesses do you have,
6 Counselor?

7 MR. SUGARMAN: Two -- three.

8 THE COURT: How many do the defendants have?

9 MR. SUGARMAN: Westhampton Beach hasn't
10 designated, so Southampton has --

11 MS. LICCIONE: I believe we have four.

12 THE COURT: Okay. Call your witness.

13 MR. SOKOLOFF: It's not accurate to say we
14 haven't designated any witnesses. We have.

15 THE COURT: You have.

16 MR. SOKOLOFF: Sure. But I suspect our
17 testimony will be taken on cross to the plaintiffs' case.

18 THE COURT: Do you have any witnesses you intend
19 to call? Yes or no.

20 MR. SOKOLOFF: It depends on who they call.

21 THE COURT: Did you list anyone?

22 MR. SOKOLOFF: Yes, we did.

23 THE COURT: Because under my rules, if you
24 haven't listed them, you can't call them.

25 MR. SOKOLOFF: We listed the exact people that

1 the plaintiffs listed.

2 THE COURT: Okay. Go ahead.

3 MR. SUGARMAN: Plaintiffs call Hank Tucker,
4 H-A-N-K, T-U-C-K-E-R.

5 **H A N K T U C K E R,**

6 called as a witness, having been first
7 duly sworn, was examined and testified
8 as follows:

9 THE COURT: Have a seat.

10 Spell your last name, please.

11 THE WITNESS: Tucker, T-U-C-K-E-R. First name
12 Hank, H-A-N-K.

13 DIRECT EXAMINATION

14 BY MR. SUGARMAN:

15 Q Mr. Tucker, good afternoon.

16 Do you presently serve as a trustee of The
17 Village of Westhampton Beach?

18 A Yes.

19 Q For how long have you served in that capacity?

20 A I just finished -- I'm finishing four years right
21 now.

22 Q And you were just reelected for another how long?

23 A For two more years.

24 Q Let me show you what's been marked in evidence as
25 Plaintiffs' Exhibit 10.

1 Is that your signature at the very bottom of the
2 page?

3 A Yes, it is.

4 Q And can you identify the signatures of the others on
5 this letter?

6 A I won't speak to their signatures, but it appears
7 that they did sign it, the other three trustees, yes.

8 Q So the four trustees, yourself, Mr. Levan,
9 Mr. Kametler and Ms. Birk?

10 A Yes.

11 Q And they all signed the letter?

12 A Yes.

13 Q At the time you signed this letter in May of 2009,
14 you publicly declared that you were opposed to the eruv,
15 correct?

16 A Give me something specific when you say 2009.

17 Q Well, this is May of 2009.

18 A Okay.

19 Q And is it not correct that at that time you publicly
20 had stated your opposition to the eruv?

21 A I would say that that is not correct.

22 Personally or as a trustee of the village?

23 Q Well, you ran for election as a trustee in 2008,
24 correct?

25 A No, that is not correct.

1 Q 2009?

2 A Yes, 2009. The election was after this letter, yes.

3 Q And in connection with your election campaign --

4 A Okay, yes.

5 Q -- you did publicly state that you were opposed to
6 the eruv?

7 A Yes, but it was under a context that it was under.

8 Would you like me to --

9 Q Sure. Put it in context.

10 A Well, we had an application before us in 2008, and
11 the application was withdrawn. And at that point in time
12 we took it seriously. We consulted with counsel. We
13 consulted with the residents of the village. We consulted
14 with the applicants.

15 And at that point in time we were, you know,
16 under the impression -- not under the impression. We felt
17 it was not our responsibility as a government to establish
18 or create any religious boundaries.

19 And the applicants had told us that it was a
20 requirement for their application that a governing body
21 such as us -- I believe I heard testimony earlier today
22 that a governing body -- or I believe he said the governor
23 or the town supervisor -- I forgot the third one --
24 would -- that you need approval of that.

25 That's the application that was before us as

1 trustees and as a whole board of The Village of
2 Westhampton Beach.

3 Q But that was in 2008, correct?

4 A That's correct.

5 Q And this letter --

6 A And then it was withdrawn.

7 Q Yes. And then it was withdrawn, correct?

8 A Correct.

9 Q Let me ask you the questions, and then you can answer
10 them. Okay?

11 This letter is a year later, in May of 2009,
12 correct? May 18, 2009?

13 A That's correct.

14 Q So the initial application had already been
15 withdrawn, and now it is a year later. And this letter is
16 written, signed by each of the trustees to Verizon, saying
17 that it is the board's understanding that Verizon has
18 again been discussing with the Hampton synagogue an
19 agreement which would result in an attachment to the
20 utility poles.

21 So now I'm talking about 2009. And you are
22 running for election in 2009, correct?

23 MR. SOKOLOFF: Objection.

24 THE COURT: Overruled.

25 BY MR. SUGARMAN:

1 Q Right?

2 A I decided sometime after this to run for reelection,
3 yes.

4 Q When you ran for reelection in 2009, you took the
5 public's position, did you not, that you personally and as
6 a trustee would oppose the eruv? Correct?

7 MR. SOKOLOFF: Objection.

8 A Actually, at that point in time I would have to say
9 that I did not take that position. At that point in time
10 I took the position that I felt that the residents had a
11 right to oppose an eruv or feel the way they would like
12 to, and I was there to listen and make a proper judgment
13 based on everything we heard.

14 Q (Handing.)

15 A That's correct.

16 Q I have a question first. I put before you
17 Exhibit 21.

18 That is a campaign flier that you and Ms. Levan
19 circulated in connection with your election campaign in
20 2009; is that correct?

21 A That's correct.

22 Q On the left-hand side it says, "what we have done,"
23 and on the right-hand side is "what we will do."

24 On the left-hand side it says, we, you and
25 Ms. Levan, putting forth the right to ensure the residents

1 have a right to oppose the eruv.

2 Then on the right-hand side, what we will do, we
3 will vigorously oppose any effort to oppose an eruv
4 proclamation from any government official or entity
5 outside our village. We'll continue to make certain you
6 have an opportunity to express your views and defend your
7 right to oppose.

8 Does that refresh your recollection that in your
9 campaign you said you would vigorously oppose any effort
10 to obtain an eruv proclamation from any governmental
11 official or entity outside the village?

12 MR. SOKOLOFF: Objection.

13 THE COURT: Overruled.

14 A Well, in the context of what you are asking me, it's
15 how I answered you before.

16 First, I stated to you we fought to ensure that
17 the residents had a right to oppose the eruv. That's my
18 job as a public official, is to ensure that all our
19 residents' rights are heard. We look at something while
20 it is before us.

21 In terms of the other side, what we will do --
22 we didn't feel it was our responsibility as a governing
23 body to be asked to create a religious boundary. And
24 because of that point, we felt that we would vigorously
25 oppose any attempt to that.

1 There was an attempt by the synagogue. They
2 told us they needed our permission in order to have an
3 eruv. We sat there for many, many meetings, and we
4 listened to -- I didn't know what an eruv was. I never
5 heard of it in my life.

6 And they came in and they testified. The first
7 meeting was just to tell us there was an application.
8 There was a work session, like the mayor had said, that
9 there was an application, and that application was --

10 THE COURT: Wait. Wait.

11 Let me warn you. If you will get into what they
12 told us and what we thought and what we said, you will
13 open up the door to everything.

14 THE WITNESS: Okay. So the answer is --

15 THE COURT: If you just talk about what you said
16 and what you thought, that's okay. But if you open up for
17 others, it will open up the door.

18 THE WITNESS: We felt --

19 THE COURT: No. What you felt.

20 THE WITNESS: I felt it wasn't my responsibility
21 as a government official to have to be asked to create a
22 religious boundary. And I also felt that as a government
23 official, that our responsibility was to uphold our laws
24 and our codes of our village and to tell us -- or to tell
25 me that I had to, uhm, be responsible for putting the okay

1 of a religious boundary in our community, I didn't think
2 we should have to do that.

3 And to attempt to go outside our community and
4 ask other leaders to decide what is best for our
5 community, I felt that wasn't correct, and that's what I
6 put down there.

7 MR. SUGARMAN: I offer 21 in evidence, your
8 Honor.

9 THE COURT: In evidence.

10 (Whereupon, Plaintiff Exhibit 21 was received in
11 evidence.)

12 THE WITNESS: And I was running for campaign.

13 MR. SUGARMAN: I'm sorry?

14 THE WITNESS: I was running for office.

15 BY MR. SUGARMAN:

16 Q And you were trying to get votes from your
17 constituency, and you told all of them you were opposed to
18 the eruv. Right?

19 A It says what I said there, right.

20 Q And a year later you ran for mayor, correct?

21 A Yes.

22 Q At that time you told the voters of Westhampton Beach
23 that "the eruv will never happen on my watch."

24 Did you say that?

25 A Yes, I did.

1 MR. SUGARMAN: I have no further questions, your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. SOKOLOFF:

5 Q Mr. Tucker, I want you to take a look at what is
6 marked as Exhibit K to the complaint in this matter.
7 There was some testimony about it earlier today.

8 This is a letter dated October 19th, 2008, from
9 Robert Sugarman to Conrad Teller, Toni-Jo Birk, James
10 Kametler, K-A-M-E-T-L-E-R, Joan Levan and Hank Tucker.

11 Take a look at that.

12 Did you receive that letter from Mr. Sugarman?

13 Take a moment.

14 A Yes.

15 Q Now, on October 19th, 2008, Mr. Sugarman says, there
16 are two requirements under Jewish law in order for an eruv
17 to be valid. First, there must be a proclamation
18 delineating and renting the area for use as an eruv from a
19 public official whose jurisdiction includes the area in
20 which the eruv is to be constructed.

21 MR. SUGARMAN: Objection, your Honor.

22 MR. SOKOLOFF: I haven't asked a question.

23 THE COURT: He hasn't asked a question. It's a
24 long introduction, but go ahead.

25 BY MR. SOKOLOFF:

1 Q How did you feel as a trustee of a civilian
2 government giving a religious proclamation as described by
3 Mr. Sugarman?

4 MR. SUGARMAN: Objection, your Honor.

5 THE COURT: That's okay. Go ahead.

6 A I felt that there was no place -- and this was as we
7 discussed with counsel --

8 BY MR. SOKOLOFF:

9 Q Well, don't say what was discussed with counsel. I
10 just want to know what your thoughts were.

11 A My thoughts were simply that it was not proper for a
12 government to establish religious boundaries. And
13 according to their own laws, they were requesting us to
14 establish a religious boundary, and that they needed our
15 blessing and a proclamation from our village.

16 Q And it was -- the first time that you heard that the
17 plaintiffs said they don't need a proclamation from the
18 village, is the first time you ever heard that in this
19 courtroom?

20 A Yes. I was very surprised.

21 Q And when you were giving your public position on the
22 eruv, as you testified to in response to what Mr. Sugarman
23 asked you, and when you wrote the campaign literature, was
24 it in your mind that what they wanted was a proclamation
25 from the government?

1 A That was absolutely the whole basis of their
2 application and their request, yes.

3 Q And regardless of whether they want a proclamation or
4 don't want a proclamation, and whatever thoughts you said
5 publicly to this minute, has there been an application
6 made to The Village of Westhampton Beach for the eruv that
7 is depicted on the map to your right?

8 A No.

9 MR. SOKOLOFF: No further questions.

10 REDIRECT EXAMINATION

11 BY MR. SUGARMAN:

12 Q Mr. Tucker, you just acknowledged even though you
13 were surprised that the eruv doesn't need your blessing,
14 doesn't need the permission of the village, and despite
15 that -- and that was the basis on which you said you
16 didn't want to give a religious approval. Despite the
17 fact that the Eruv Association doesn't need your blessing,
18 doesn't need your permission, you are still today opposing
19 the eruv; is that correct?

20 MR. SOKOLOFF: Objection.

21 THE COURT: Overruled.

22 A If another application came before me as a trustee, I
23 would consult with counsel. And if things have changed as
24 you state they have now, I would consult counsel, and I
25 would consult the board. And we would discuss it, and we

1 would be as fair as we always have been.

2 BY MR. SUGARMAN:

3 Q That wasn't my question.

4 My question was: Now that you are aware --
5 surprised as you were -- that the Eruv Association is not
6 asking for your blessing and not asking for the village's
7 permission, you are still opposing the eruv, and it will
8 not happen on your watch?

9 MR. SOKOLOFF: Objection.

10 A I haven't testified --

11 THE COURT: Wait. Wait. Your lawyer made an
12 objection, and I have to rule.

13 I'm overruling.

14 Now go ahead.

15 THE WITNESS: Okay.

16 A You are asking me for a personal opinion right now?

17 Because I have no application before us. Since
18 that application was withdrawn, we in fact -- at that
19 point in time, we asked for an informative session for the
20 residents to hear and learn more about what it was about.

21 I mean, since then, if the only other thing that
22 occurred was a letter which came across our desk about
23 Verizon, which we just discussed, where all we did was
24 tell Verizon that if -- you know, we acknowledge the fact
25 that Verizon had stated that if there was -- well

1 (perusing), that Verizon acknowledges the fact that since
2 the time of the village had received no request for
3 approval of utility pole attachments, in the event such
4 request will be received, it will be received in
5 accordance. It will be received in accordance with
6 village regulations and procedures, and you will be
7 notified of the board's decision forthwith.

8 Q Mr. Tucker --

9 A And it also says: Please contact immediately if our
10 understanding of Verizon's position with respect to
11 utility pole attachments in paragraph 2 is not correct.

12 Q Mr. Tucker, your opposition, as you've explained it
13 here in court today, is based on your view that you didn't
14 think it appropriate for The Village of Westhampton Beach
15 to declare any part of the village a religious area. Is
16 that what you are saying?

17 A To create a religious boundary, that's what I said.

18 Q Religious boundary.

19 A Based on the application that was before us.

20 Q Well, and the reason you felt that way, you didn't
21 want The Village of Westhampton Beach to be creating a
22 religious boundary, correct?

23 A Yes.

24 Q Okay. So if The Village of Westhampton Beach is not
25 being asked to do anything, not being asked for a

1 proclamation, not being asked for approval, not being
2 asked for anything, then there wouldn't be any action by
3 Westhampton Beach to create a religious boundary, would
4 there?

5 MR. SOKOLOFF: Objection.

6 THE COURT: Overruled.

7 A Then why are we all here?

8 BY MR. SUGARMAN:

9 Q It's a very good question.

10 Why is Westhampton Beach here if you are taking
11 the position that the only opposition you have is to
12 creating a religious boundary when there is no provision
13 for the village to be asked, there is no provision for the
14 village to approve? And indeed, the Eruv Association made
15 it clear that the village is not going to be asked.

16 So why is it that you, having said that you are
17 only opposed to this because you don't want the village to
18 create a religious boundary, why is it that knowing all of
19 that, you still oppose the eruv?

20 MR. SOKOLOFF: Objection.

21 THE COURT: Overruled.

22 A Well, I mean, I don't think I've sat here and said
23 that right now that I oppose the eruv. That has not come
24 out of --

25 THE COURT: What has changed in the application,

1 if there was an application?

2 THE WITNESS: We don't have any other
3 application.

4 THE COURT: Well, you heard the testimony here.
5 It's a very minor change, aren't they?

6 MR. SOKOLOFF: No.

7 THE WITNESS: No.

8 THE COURT: Do you want to come under oath and
9 testify?

10 MR. SOKOLOFF: That's not accurate, Judge.

11 THE COURT: What were you going to say? I'll
12 let you ask it if you want to.

13 THE WITNESS: Kind of lost the question there.
14 It was long. I'm sorry.

15 THE COURT: All right.

16 THE WITNESS: I mean, I think you were asking
17 me, then, why am I opposed to it now.

18 First of all, I don't know until this point as
19 to why it has changed from requiring -- because that was
20 the whole thing that we were -- that we were introduced to
21 and educated on, was the fact you did need the blessings
22 of the community at large in order to have an eruv. And
23 when -- so that was really a major portion as to what you
24 had even stated in the document, in that letter to us. So
25 it never came before us.

1 And I know what you are saying, your Honor, that
2 today I'm hearing stuff. But as a village official, I
3 can't go based on something that I hear today has changed.

4 There is legal counsel that has to be discussed
5 with things. There are state laws and county and town
6 laws. We're a municipality within a town, within a
7 county, within a state.

8 So, you know, if you are going to ask me how I
9 feel now, I mean, show me an application, and then I would
10 comment on it.

11 MR. SUGARMAN: I have no further questions.

12 MR. SOKOLOFF: I have nothing.

13 THE COURT: You may step down.

14 MR. SOKOLOFF: Nothing further, I meant.

15 MR. SUGARMAN: Your Honor, as I mentioned the
16 last time, I have a flight this evening to Israel. My
17 colleagues, Mr. Mishkin and Mr. Buchweitz, will continue
18 for the rest of today and tomorrow.

19 THE COURT: We'll continue tomorrow.

20 MR. SOKOLOFF: Excuse me?

21 THE COURT: We'll continue tomorrow.

22 MR. SUGARMAN: Mr. Buchweitz and Ms. Mishkin
23 will do it tomorrow.

24 We have one more witness which will be short,
25 and Ms. Mishkin will conduct it.

1 THE COURT: Who is the witness?

2 MR. SUGARMAN: Debbie Pollack, Village of the
3 East End Eruv Association --

4 THE COURT: Why can't we do it tomorrow?

5 MR. SUGARMAN: She's here today. I assume she
6 cannot do it tomorrow. She has appointments.

7 THE COURT: Where is Debbie?

8 MS. POLLACK: I am here. Your Honor, I already
9 left and came back.

10 THE COURT: Take the stand.

11 MS. LICCIONE: Excuse me, your Honor. Is
12 Ms. Pollack the last witness today?

13 THE COURT: Yes.

14

15 **D E B O R A H P O L L A C K,**

16 called as a witness, having been first
17 duly sworn, was examined and testified
18 as follows:

19 THE COURT: Tell us your name and spell it.
20 Talk into the mike, and spell your name, please.

21 THE WITNESS: My name is Deborah, D-E-B-O-R-A-H.
22 Pollack, P-O-L-L-A-C-K.

23 **DIRECT EXAMINATION**

24 **BY MS. MISHKIN:**

25 **Q** Where do you currently reside?

1 A 85-32 Wicklow, W-I-C-K-L-O-W, Place, Jamaica Estates,
2 New York.

3 Q Do you have any other home addresses?

4 A Yes, I do. I have another home in Westhampton at
5 21 Bishop Avenue.

6 Q Is Westhampton part of any larger municipality?

7 A I believe it is part of Southampton, the Town of
8 Southampton.

9 Q Can you tell us just a little bit about your
10 educational background?

11 A I'm an attorney. I practiced law for a number of
12 years. I graduated from NYU school of law. I teach law
13 nowadays.

14 Q Where do you teach law?

15 A I teach law at St. John's University at the College
16 of Business.

17 Q What kind of law do you teach?

18 A Business law. Contract, business law.

19 Q How long have you had the house in Westhampton?

20 A As of the summer, it will be 14 years.

21 Q Who lives you with at the address in Westhampton?

22 A My family. My daughters and my husband. And my
23 mother comes to visit nowadays.

24 Q May I draw your attention to the map to your right
25 marked as Plaintiffs' Exhibit 1?

1 A Okay.

2 Q Can I ask you to identify your house on that map?

3 A Okay. My house is located right over here. I guess
4 the official name of the house is Wexelbaum.

5 THE COURT: Wexelbaum is it.

6 THE WITNESS: It's Westhampton. What I
7 understand is, the white part is Westhampton.

8 THE COURT: What is the name of that?

9 THE WITNESS: So -- or post office address is 21
10 Bishop Avenue, but apparently on the map it has a
11 different name.

12 THE COURT: Okay.

13 MS. LICCIONE: Your Honor, if I might clarify,
14 there's a Village of Westhampton Beach, and there's the
15 Westhampton hamlet which is unincorporated, which is in
16 the Town of Southampton.

17 THE COURT: I've only lived in Suffolk County
18 for 62 years, but go ahead. Thank you for that
19 information. I'd never know it on my own.

20 MS. MISHKIN: I'd ask Ms. Pollack to mark on the
21 map where her home is.

22 THE WITNESS: Putting an X on the chart
23 (indicating).

24 Is that okay?

25 BY MS. MISHKIN:

1 Q Ms. Pollack, are you a member of the East End Eruv
2 Association?

3 A Yes, I am.

4 Q When did you join the East End Eruv Association?

5 A Approximately one and a half to two months ago.

6 Q What caused you to join?

7 A I was having a conversation with Alan Schechter, who
8 is a member of it. I was asking him what is happening to
9 the eruv. He was talking about the Eruv Association. I
10 really wasn't aware there was one. So once I found out
11 there was an association, I asked if I could join it, and
12 I became a member.

13 Q Ms. Pollack, what is the importance of the eruv to
14 you?

15 A It is significant. We're Sabbath observers. We're
16 strict about our observance, and we do not carry outside
17 of our home on Sabbath without an eruv.

18 Q That --

19 A It has been significant for us over the years because
20 over time my mother, for example, who is very often with
21 us on weekends and has trouble walking --

22 THE COURT: Let's get to the issue, please. She
23 said she was a member and she does observe it. So let's
24 move on.

25 BY MS. MISHKIN:

1 Q How does the absence of the eruv impact on you?

2 MR. SOKOLOFF: Objection.

3 THE COURT: Sustained.

4 I think we've heard enough on the subject, and
5 she's a member and we accept that.

6 BY MS. MISHKIN:

7 Q At the time you purchased the house in Westhampton,
8 you knew there was no eruv?

9 A Correct.

10 Q Why do you require an eruv now when there hasn't been
11 one before?

12 MR. SOKOLOFF: Objection. This was just
13 sustained.

14 THE COURT: Repeat the question. I didn't hear
15 it.

16 BY MS. MISHKIN:

17 Q Why do you require an eruv now when there wasn't one
18 before?

19 THE COURT: We've heard it.

20 And does it apply to Southampton, Westhampton
21 Beach, too, so we don't have to listen? Do you concede
22 that?

23 MR. SOKOLOFF: Do I concede that?

24 THE COURT: Yes.

25 MS. LICCIONE: Do I concede what? I'm sorry.

1 THE COURT: If it has an effect upon this
2 person, and since there are three separate cases, it
3 affects them the same way.

4 MR. SOKOLOFF: No, I will not concede it.

5 MS. LICCIONE: Nor will I.

6 THE COURT: Good.

7 Ask the question.

8 BY MS. MISHKIN:

9 Q Ms. Pollack, why do you require the eruv now when you
10 lived without one before?

11 A We bought the house 14 years ago, and circumstances
12 have changed over the years. When we first bought the
13 house, we weren't sure how we would use it or enjoy it.
14 We spent a significant amount of time in it.

15 So what happened over the years, we've aged.
16 And most significantly, my mother aged. And she can't get
17 to the synagogue or even around the block without a cane
18 or a wheelchair. So, basically, she is landlocked within
19 our house for the weekend.

20 It presents a number of personal difficulties to
21 us both in walking to synagogue and what we can carry
22 there, and as well as walking to town for an afternoon
23 walk.

24 For example, when it is very hot outside, you
25 can't carry a bottle of water. I can't carry a tissue

1 with me. If they leave a newspaper and it lands outside
2 of our property, we can't pick it up. If a ball flies
3 outside of our yard, we can't get it.

4 It implicates us in minor and major ways, and
5 it's a nuisance that impacted us.

6 Q Has the absence of an eruv impacted any other members
7 of your family?

8 MR. SOKOLOFF: Objection.

9 MS. LICCIONE: Objection.

10 THE COURT: Overruled.

11 A So I was --

12 THE COURT: I was willing to cut it all out.

13 MR. SOKOLOFF: My objection is, she is talking
14 about somebody else.

15 THE COURT: Members of the family. I'll allow
16 it.

17 Go ahead.

18 You don't think she has knowledge of her own
19 family.

20 MR. SOKOLOFF: I don't know that the Federal
21 Rules of Evidence allow her to testify to it.

22 THE COURT: Yes, they do. I know the rules of
23 evidence.

24 Go ahead.

25 THE WITNESS: Well, I have now a daughter or

1 daughters who are no longer little children, and they want
2 their high heels in synagogue for vanity reasons. They
3 can't carry to synagogue. We're a mile away. So that is
4 quite a lengthy walk, especially when it is hot outside.

5 My husband, for example, who probably goes to
6 synagogue way more often than I do, can't carry a raincoat
7 if the weather is pressing. Sometimes at night he's
8 walking through the streets, and he wants to carry
9 something that he can be seen in the dark, and he can't
10 carry it. If he forgets his prayer shawl, he can't bring
11 it with him.

12 THE COURT: All right. Can we move ahead?

13 MS. MISHKIN: Thank you.

14 THE WITNESS: Thank you very much. I'm sorry.

15 CROSS-EXAMINATION

16 BY MR. SOKOLOFF:

17 Q How many members are there in the East End Eruv
18 Association?

19 MR. BUCHWEITZ: Your Honor, I object.

20 THE COURT: I'll allow it.

21 A I have no idea.

22 BY MR. SOKOLOFF:

23 Q At the time that you joined the East End Eruv
24 Association, were you aware of the dimensions of the
25 lechis that the organization claimed it needed?

1 A I really don't know the details of the lechis. I
2 never even heard about the concept. I know, obviously,
3 about the eruv, but I didn't know about the details that
4 went into it beforehand.

5 Q Well, when you joined, was there any kind of contract
6 between the organization that you joined and Verizon?

7 A I was told for years that we have permission to put
8 up the eruv, but I didn't know about the specifics of any
9 contract.

10 Q Somebody told you that for years you had permission
11 to put up the eruv?

12 A Well, I was in synagogue when Governor Patterson
13 appeared regarding permission to put up the eruv, so I
14 assumed we had permission.

15 Q When did that happen?

16 A About three years ago.

17 Q Did the governor do that in writing?

18 A No. He appeared before the audience and said, you
19 have permission to set up an eruv.

20 Q Did the governor say why he had the authority to say
21 that you had the authority from the governor?

22 A I don't remember.

23 Q This is the governor who appeared at the synagogue?

24 A Correct.

25 Q Which synagogue is that?

1 A The Westhampton synagogue.

2 Q Did anyone in the synagogue keep any records of any
3 discussion that was had with the governor when he appeared
4 in the synagogue?

5 A It was on the Sabbath. Nobody would have kept
6 records.

7 Q Did anybody make any records after Shabbos was over?

8 A I wouldn't know.

9 Q Do you have any -- withdrawn.

10 Do you have any personal understanding of what
11 constitutes a valid eruv?

12 A From what I understand, it uses boundaries, natural
13 boundaries and wires, to enclose a space. But I'm not an
14 expert in this area at all.

15 Q Well, to whom would you turn to find out that the
16 eruv that you want to carry things within is a valid eruv?
17 Who is your authority?

18 A If the eruv committee says the eruv is good or a
19 rabbi says the eruv is good, I would comply with that.

20 Q You said the eruv committee?

21 A Or a rabbi. If somebody authorized it for me.

22 Q Does the East End Eruv Association have a rabbinical
23 advisor?

24 A I would assume they would not put up an eruv without
25 a rabbinical advisor.

1 Q You don't know?

2 A Who the rabbinical advisor is?

3 Q Yes.

4 A I don't know the name offhand. I was told they were
5 using a rabbi to help plan the eruv, but I don't know his
6 name.

7 Q Well, did you ever meet with that rabbi?

8 A No.

9 Q Are you aware -- withdrawn.

10 At any time since you became a member of the
11 East End Eruv Association, has the dimensions or the
12 outline of the contemplated eruv changed?

13 MR. BUCHWEITZ: Objection. It has been on the
14 record again and again.

15 THE COURT: Sustained.

16 BY MR. SOKOLOFF:

17 Q In the past month, did the East End Eruv Association
18 sign a new contract with Verizon?

19 MR. BUCHWEITZ: Same objection.

20 THE COURT: I don't think she was called for
21 that purpose, and I don't think she knows.

22 If you want, go ahead, Counsel.

23 A Well, I heard things while in court today, you know,
24 sitting outside, but I have no idea.

25 MR. SOKOLOFF: I have no further questions.

1 MS. LICCIONE: I just have a few.

2 THE COURT: They have to be good ones.

3 MS. LICCIONE: I'll do my best.

4 THE COURT: Good dreams.

5 CROSS-EXAMINATION

6 BY MS. LICCIONE:

7 Q I believe you teach at the Tobin School of Business?

8 A Hilton College of Business.

9 Q That's the college, not the law school?

10 A Correct.

11 Q So you do not teach at the law school?

12 A I do not.

13 Q Have you attended any meetings of the East End Eruv
14 Association since you've been a member?

15 A No.

16 Q Have -- so you haven't enacted any resolutions or
17 anything?

18 A No.

19 Q Now, I think you -- well, withdrawn.

20 Are you able to walk to synagogue?

21 A Personally?

22 Q Yes, you personally.

23 A Generally, yes. Recently it has been more difficult,
24 but generally, yes.

25 Q Now, I think you testified that your husband goes to

1 synagogue more often than you?

2 A Correct.

3 Q So you don't go every Saturday?

4 A I go -- my husband goes Friday nights, and he also
5 goes later Saturday afternoon. Usually I go Saturday
6 morning.

7 Q Now, your primary residence is in Jamaica Estates; is
8 that correct?

9 A Yes.

10 Q Are there any eruvs there?

11 A Yes.

12 Q And you don't vote in Suffolk County, do you?

13 A No, I do not.

14 Q You vote in Jamaica Estates?

15 A Correct.

16 Q Now, help me understand this. You are prohibited
17 from doing certain things on the Sabbath?

18 A Correct.

19 THE COURT: Sustained.

20 Haven't we heard that from other witnesses?

21 BY MS. LICCIONE:

22 Q And that's a function of -- not of any law of the
23 Town of Southampton but of Jewish law --

24 THE COURT: Sustained.

25 Q Does the Town of Southampton prohibit your daughters

1 from carrying their shoes?

2 THE COURT: Sustained.

3 Q So help me understand this. With an eruv in place,
4 you are permitted to do things --

5 THE COURT: Sustained. I've already sustained
6 that. We've gone through it with all the other witnesses.
7 We don't have to go through it with her.

8 Q Did you purchase your home in Westhampton in 1997?

9 A Correct.

10 Q On what basis did you testify that your home is about
11 a mile from the synagogue?

12 A We measured it on numerous occasions. And we do walk
13 to synagogue, so the distance was relevant to us.

14 Q Can you tell the Court what route you take?

15 A Yes. We walk down Bay Crest to South Road, and we
16 make a left on Library Avenue. And we cross over by the
17 circle and walk straight to the synagogue, a short block.

18 MR. SOKOLOFF: Thank you.

19 MS. LICCIONE: Thank you.

20 BY MS. LICCIONE:

21 Q Are there sidewalks through that whole area?

22 THE COURT: Sustained.

23 MS. LICCIONE: It is relevant whether it can
24 be --

25 THE COURT: Whether it's a mile, a little less

1 than a mile, there is pavement, there is not --

2 MS. LICCIONE: With respect to the issue whether
3 anything can be pushed or not.

4 THE COURT: Sustained.

5 MS. LICCIONE: Thank you. Nothing further.

6 MR. BUCHWEITZ: Your Honor, I object to the
7 lawyer from Quogue questioning. The testimony was held
8 last week.

9 THE COURT: We tried the case last week with the
10 lawyer from your office who left. Now you want to ask
11 some questions?

12 MR. SPELLMAN: Of this witness.

13 THE COURT: All right.

14 MR. SPELLMAN: It will not be long.

15 THE COURT: I don't know.

16 MR. SPELLMAN: If I say it will not be long, it
17 will not be long, your Honor.

18 THE COURT: We'll see.

19 CROSS-EXAMINATION

20 BY MR. SPELLMAN:

21 Q Ms. Pollack, do you have familiarity with this lechi?

22 A No.

23 Q You don't know what they are?

24 A It was described to me recently, but I'm really not
25 familiar with it.

1 Q How recently, ma'am?

2 A It was after I joined the association. Very
3 recently. About a few weeks ago.

4 Q So do you have any opinion as to whether or not a
5 lechi communicates a concept to people who are familiar
6 with it or who see it?

7 MR. BUCHWEITZ: Objection.

8 THE COURT: Sustained.

9 MR. SPELLMAN: Thank you. Those are all the
10 questions I have, your Honor.

11 MR. BUCHWEITZ: No further questions.

12 MS. MISHKIN: No further questions.

13 THE COURT: You may step down.

14 See you tomorrow at 9:30.

15 (Witness excused.)

16 (Whereupon, the proceedings were adjourned until
17 Tuesday, June 28, 2011.)

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23

24

25

I-N-D-E-XW-I-T-N-E-S-S-E-S

	139
M O R R I S T U C H M A N	
DIRECT EXAMINATION	139
BY MR. SUGARMAN	
CROSS-EXAMINATION	
BY MR. SOKOLOFF	
CROSS-EXAMINATION	167
BY MS. LICCIONE:	
REDIRECT EXAMINATION	184
BY MR. SUGARMAN	
RECROSS-EXAMINATION	185
BY MR. SOKOLOFF:	
W I L L I A M B A L C E R S K I	189
DIRECT EXAMINATION (cont'd)	189
BY MR. SUGARMAN	
CROSS-EXAMINATION	197
BY MR. SOKOLOFF	
CROSS-EXAMINATION	211
BY MS. LICCIONE	
REDIRECT EXAMINATION	225
BY MR. SUGARMAN	
RECROSS-EXAMINATION	228
BY MR. SOKOLOFF	
RECROSS-EXAMINATION	229
BY MS. LICCIONE	
T I M O T H Y L A U B E	231
DIRECT EXAMINATION	231
BY MR. SUGARMAN	
CROSS-EXAMINATION	240
BY MR. SOKOLOFF	
REDIRECT EXAMINATION	242
BY MR. SUGARMAN	
A N N A T H R O N E - H O L S T	244
DIRECT EXAMINATION	244
BY MR. SUGARMAN	
CROSS-EXAMINATION	262
BY MS. LICCIONE:	
REDIRECT EXAMINATION	267
BY MR. SUGARMAN	
C O N R A D T E L L E R	268
DIRECT EXAMINATION	268
BY MR. SUGARMAN	
CROSS-EXAMINATION	283
BY MR. SOKOLOFF	
H A N K T U C K E R	290

DIRECT EXAMINATION BY MR. SUGARMAN	290
CROSS-EXAMINATION BY MR. SOKOLOFF	298
REDIRECT EXAMINATION BY MR. SUGARMAN	300
D E B O R A H P O L L A C K DIRECT EXAMINATION	306
BY MS. MISHKIN: CROSS-EXAMINATION	313
BY MR. SOKOLOFF CROSS-EXAMINATION	317
BY MS. LICCIONE: CROSS-EXAMINATION	320
BY MR. SPELLMAN	

E-X-H-I-B-I-T-S

Plaintiffs' Exhibit 10 was received in evidence	190
Plaintiffs' Exhibit 27 was received in evidence	193
Plaintiff Exhibit 21 was received in evidence	297
Defendant's Exhibit I was received in evidence	176
Defendant's Exhibit O was received in evidence	180
Defendant Southampton Exhibit P was received in evidence	214

	286:4	244 [2] - 322:19	40-inch [1] - 164:1
'04 [1] - 232:9	19.19 [3] - 223:5, 10;	25 [2] - 195:10; 219:3	419 [1] - 280:13
'08 [1] - 233:11	226:12	25.25 [1] - 223:16	494 [1] - 159:19
0	190 [1] - 323:11	25.26 [1] - 223:17	5
0000416 [1] - 281:9	193 [1] - 323:12	262 [1] - 322:21	5 [4] - 224:11; 256:17;
000419 [1] - 280:7	197 [1] - 322:11	267 [1] - 322:22	258:9
1	1988 [1] - 262:25	268 [2] - 322:23	50 [1] - 136:19
1 [7] - 147:18; 149:2;	1991 [1] - 271:15	26th [2] - 196:21;	501 [1] - 202:6
155:5; 258:17; 262:13;	1993 [2] - 263:3;	197:5	6
287:3; 307:25	271:15	27 [12] - 136:8; 193:8,	6 [2] - 258:8, 13
10 [15] - 163:10;	1997 [1] - 319:8	17; 194:9, 17; 212:2,	62 [1] - 308:18
189:23; 190:11, 15;	1999 [1] - 263:7	4, 6; 245:4; 249:10;	631 [1] - 137:7
197:24; 201:7; 259:18;	19th [3] - 158:7;	251:21; 323:12	7
281:4, 7-8; 286:10;	298:8, 15	28 [6] - 281:4, 13;	7 [1] - 265:3
290:25; 323:11	2	283:1; 286:9, 11;	704 [1] - 270:20
100 [1] - 137:6	2 [9] - 163:23; 224:8;	321:17	712-6102 [1] - 137:7
10153 [1] - 136:15	225:9; 227:13, 16;	283 [1] - 322:24	75 [1] - 149:21
10th [4] - 207:22;	250:10; 260:1; 302:11	290 [2] - 322:25; 323:1	767 [1] - 136:14
221:1, 15; 222:12	20 [2] - 179:17; 203:5	297 [1] - 323:13	78 [1] - 172:2
11 [1] - 287:2	2004 [2] - 240:14	298 [1] - 323:2	8
11-0213 [1] - 136:4	2006 [2] - 240:14;	2:00 [1] - 230:13	8 [1] - 235:14
111 [1] - 136:19	241:3	3	8019 [1] - 186:22
11530 [1] - 137:2	2007 [2] - 262:19	3 [23] - 158:9; 184:13,	830 [1] - 270:20
11590 [1] - 136:24	2008 [30] - 140:3, 6,	18; 185:18, 21; 187:25;	85-32 [1] - 307:1
11722 [1] - 137:6	17; 154:22; 156:18, 25;	198:21; 199:18; 201:1;	872 [1] - 159:19
11787 [1] - 136:20	157:4, 7; 158:7;	209:2; 216:25; 220:9,	887 [1] - 159:20
1180 [1] - 137:6	165:16; 181:4; 205:24;	11; 222:4; 223:6;	89 [1] - 152:1
11th [4] - 220:14;	206:10; 232:23; 240:14;	224:4; 226:6, 10-11;	
221:4, 16; 222:13	241:3, 5; 243:11;	228:5, 14, 24; 264:20	
12 [6] - 201:21, 23;	262:20; 269:11; 272:5,	30 [4] - 246:15, 24;	
280:3, 6-7, 12	21; 273:9; 274:8;	249:1; 252:22	
12:35 [1] - 223:21	277:3; 291:23; 292:10;	300 [2] - 137:1; 323:3	
12th [2] - 221:25;	293:3; 298:8, 15	306 [2] - 323:4	
222:13	2009 [17] - 190:3;	313 [1] - 323:5	
13 [1] - 196:15	206:10; 207:8; 262:11,	317 [1] - 323:6	
13.13 [2] - 199:10, 18	19-20; 291:13, 16-17;	32 [1] - 264:10	
139 [2] - 322:3	292:1; 293:11, 21-22;	320 [1] - 323:7	
13th [1] - 199:7	294:4, 20	330-200 [3] - 252:23;	
14 [2] - 307:20; 311:11	2010 [8] - 193:11;	254:7; 256:18	
15 [2] - 163:11; 225:24	196:22; 197:5, 14;	330-202 [1] - 259:10	
167 [1] - 322:6	207:20, 22, 25; 262:13	330-203 [1] - 259:2	
16th [3] - 193:11;	2011 [7] - 136:8;	330-208 [1] - 259:6	
207:20, 24	179:21; 180:10; 181:2;	34 [1] - 173:18	
176 [1] - 323:15	199:7; 221:25; 321:17	35 [1] - 169:3	
18 [3] - 235:23; 293:12	21 [7] - 162:12;	355 [1] - 136:24	
180 [1] - 323:16	294:17; 297:7, 10;	38 [1] - 149:22	
184 [1] - 322:7	307:5; 308:9; 323:13		
185 [1] - 322:8	211 [1] - 322:12	4	
189 [2] - 322:9	214 [1] - 323:17	4 [10] - 206:22; 207:9,	
18th [2] - 190:2; 207:8	225 [1] - 322:13	11, 13; 208:8; 210:8;	
19 [3] - 280:2, 10;	228 [1] - 322:14	211:4; 246:19, 24;	
	229 [1] - 322:15	249:1	
	231 [2] - 322:16	40 [41] - 153:9; 164:4;	
	240 [1] - 322:17		
	242 [1] - 322:10		

accepts [1] - 160:16
accidents [1] - 256:22
accommodate [3] -
226:16; 227:12; 229:8
accommodates [1] -
226:20
accordance [3] -
203:3; 302:5
according [4] -
160:24; 203:24; 246:8;
299:13
accordingly [3] -
194:4; 197:9; 245:15
accurate [8] - 146:11;
149:3; 150:1, 21;
157:18; 255:9; 289:13;
304:10
acknowledge [1] -
301:24
acknowledged [2] -
282:2; 300:12
acknowledges [1] -
302:1
acknowledgment [1] -
283:6
Act [1] - 214:25
action [8] - 154:25;
194:8; 195:2, 6; 216:3;
260:11; 303:2
activities [2] -
178:20; 179:2
actual [3] - 145:25;
146:23; 149:20
ad [9] - 233:22, 25;
234:3; 235:4, 15, 22;
236:2, 5
add [3] - 194:5;
272:22, 24
added [1] - 272:25
addition [2] - 139:8;
224:16
address [5] - 202:10;
211:10; 217:16; 307:21;
308:9
addressed [1] - 193:12
addresses [1] - 307:3
adequacy [1] - 226:16
adequate [1] - 227:11
adjourned [1] - 321:16
administration [1] -
263:25
admissible [1] - 145:4
admit [2] - 148:8;
161:12
adopted [2] - 181:8;
247:23

advance [1] - 245:23
adversely [1] - 253:16
advertising [1] -
263:2
advise [2] - 171:5;
245:23
advised [1] - 225:23
advisor [3] - 315:23,
25; 316:2
aesthetically [1] -
264:18
affairs [1] - 263:24
affect [3] - 253:24;
279:18, 22
affects [1] - 311:3
affirm [1] - 231:11
affirmed [1] - 139:22
affix [1] - 152:23
affixed [1] - 242:11
afternoon [7] - 182:1;
211:24; 262:8; 268:25;
290:15; 311:22; 318:5
aged [2] - 311:15
agency [1] - 284:15
agenda [7] - 166:3, 10,
13; 272:22, 24; 273:2,
5
ago [15] - 148:2;
156:19; 164:12, 21;
174:19; 179:7, 18;
211:12; 236:15; 279:4;
309:5; 311:11; 314:16;
321:3
agree [5] - 139:8;
173:22; 243:9; 258:20;
259:25
agreed [1] - 211:3
agreeing [1] - 271:23
agreement [93] -
184:14; 185:15, 19;
197:8; 198:23; 199:1,
6, 10, 16, 22; 200:15,
25; 201:7, 11, 14,
18-19, 25; 202:18, 20;
203:4, 11; 204:6, 15;
205:10, 13, 18; 206:4,
6-7, 11, 13, 18, 25;
207:1, 3, 9, 11, 16,
18, 21; 208:4, 8;
209:1, 5; 215:6; 217:4,
8, 10-11, 15, 18, 20;
218:2, 15; 221:7, 12,
15; 222:1, 3, 8, 12,
19, 24; 223:2, 7;
226:4; 228:5, 25;
229:7, 12-13; 280:17,
19, 23; 281:5, 16, 16;

282:1, 5, 11; 286:3-5,
19, 21, 24; 287:9, 15;
293:19
agreements [2] -
143:24; 245:21
agrees [1] - 261:13
ahead [40] - 140:14;
142:9; 145:7; 146:17;
147:14; 151:6; 160:17;
161:23; 165:3; 171:2;
174:10; 184:5; 191:10;
196:13; 214:9; 219:6;
225:4; 227:24; 228:23;
233:9, 14; 234:10, 16;
238:23; 242:23; 243:1;
244:13; 255:12; 267:10;
279:12; 287:19; 290:2;
298:24; 299:5; 301:14;
308:18; 312:17, 24;
313:12; 316:22
aided [1] - 137:10
AIDS [1] - 264:3
al [2] - 136:4, 8
Alan [2] - 170:9; 309:7
allow [32] - 164:24;
188:6; 191:9; 192:4;
193:3; 194:25; 200:2,
12; 205:22; 210:16;
215:18; 216:17, 20;
219:5; 220:5; 222:11;
224:16; 229:2; 239:15,
17, 20, 24; 260:6;
271:17; 274:23; 276:6;
278:14; 287:19; 288:4;
312:15, 21; 313:20
allowances [1] - 259:9
allowed [3] - 216:22;
228:12; 270:6
allowing [3] - 160:14;
200:23; 263:21
almost [1] - 223:20
alternative [1] -
263:20
Amendment [1] - 237:1
amortization [1] -
259:9
amount [2] - 170:20;
311:14
anchors [5] - 281:19;
286:20, 23; 287:9, 15
animus [2] - 236:24;
237:3
ANNA [1] - 244:8
Anna [2] - 243:25;
244:8
annexed [2] - 157:20;
160:25

announcing [1] -
238:25
annually [1] - 238:24
answer [37] - 141:24; 2
142:3, 9; 146:6, 22;
151:7; 160:11, 23;
163:5; 167:5; 179:19;
182:25; 194:13; 206:16;
235:9; 237:23; 245:8;
248:10; 249:4, 8,
23-24; 250:15; 254:4,
11-12, 14-15; 276:9;
278:18; 281:23; 282:22,
24; 293:9; 296:14
Answer [1] - 146:22
answered [10] -
145:19; 163:3; 166:14;
167:13; 185:1; 200:10;
250:12; 274:13; 276:16;
295:15
Anti [1] - 173:12
anti [1] - 237:3
Anti-Defamation [1] -
173:12
anti-orthodox [1] -
237:3
apologize [2] - 213:4;
251:17
Appeals [1] - 220:3
appear [2] - 231:23;
235:11
appearance [1] - 265:4
APPEARANCES [1] -
136:13
appearances [1] -
138:4
appeared [7] - 233:22;
235:4; 265:18; 314:13,
18, 23; 315:3
appearing [1] - 215:20
applicant [3] -
218:19; 220:1; 257:11
applicants [2] -
292:14, 19
application [69] -
140:7, 12, 17; 141:12,
16-17; 142:12; 155:16;
156:2, 16; 165:17, 19,
21-22; 166:6; 167:9;
169:6; 171:12; 191:13;
199:11, 16, 24; 200:3,
8, 14, 21; 203:5;
205:14; 208:2; 220:12;
222:7, 23; 241:25;
251:13; 252:2; 260:9;
266:11; 269:12, 16, 23,
25; 275:13; 277:1;
279:18, 23; 284:23;

<p>285:2, 10, 13; 292:10, 20, 25; 293:14; 296:7, 9; 300:2, 5, 22; 301:17; 302:19; 303:25; 304:1, 3; 305:9</p> <p>applies [1] - 204:19</p> <p>apply [3] - 261:6; 279:5; 310:20</p> <p>appointments [1] - 306:6</p> <p>approach [2] - 148:4; 206:20</p> <p>approached [1] - 163:19</p> <p>appropriate [7] - 161:8; 197:8; 226:25; 250:15; 267:16; 302:14</p> <p>appropriately [1] - 146:7</p> <p>approval [12] - 193:2; 208:4; 218:17-19; 276:20; 277:10; 278:25; 292:24; 300:16; 302:3; 303:1</p> <p>approve [6] - 143:2; 166:9; 191:12; 192:3; 272:22; 303:14</p> <p>approved [1] - 166:1</p> <p>April [2] - 183:11; 233:18</p> <p>area [25] - 148:8, 13, 19-20; 149:24; 152:20; 158:23, 25; 159:13, 15; 160:4; 173:1, 6, 8; 179:2, 5; 237:5; 259:8; 262:25; 298:18; 302:15; 315:14; 319:21</p> <p>arguments [1] - 277:14</p> <p>art [1] - 140:12</p> <p>article [2] - 236:1; 259:8</p> <p>articles [3] - 142:16; 206:1, 3</p> <p>Asik [1] - 165:1</p> <p>asphalt [2] - 149:20, 23</p> <p>assist [1] - 264:3</p> <p>Association [57] - 143:24; 159:12; 169:6; 170:3; 191:13; 194:19; 198:24; 199:15; 207:4, 12, 17, 19, 21; 208:3, 19, 23; 209:7, 11, 16; 210:2, 13; 211:11, 15; 214:17; 215:23; 221:8, 13; 224:16; 225:17, 19, 23, 25; 226:2, 10; 227:17; 229:11; 244:17;</p>	<p>276:20; 277:10; 278:24; 283:14; 285:15, 19; 300:17; 301:5; 303:14; 306:3; 309:2, 4, 9; 313:18, 24; 315:22; 316:11, 17; 317:14</p> <p>association [4] - 197:11; 252:3; 309:11; 321:2</p> <p>Associations [1] - 227:5</p> <p>ASSOCIATION [1] - 136:3</p> <p>assume [4] - 142:20; 221:18; 306:5; 315:24</p> <p>assumed [1] - 314:14</p> <p>assure [1] - 161:3</p> <p>astray [1] - 278:15</p> <p>Atlantic [2] - 148:18, 20</p> <p>attach [8] - 197:12; 202:17; 224:17; 226:9; 227:5; 229:11, 14</p> <p>attached [12] - 174:4, 21; 178:3; 184:20, 24; 193:4; 195:25; 204:18; 215:18; 221:14; 224:4; 226:24</p> <p>attaching [5] - 147:2, 6; 178:6; 197:6; 257:2</p> <p>attachment [20] - 184:14, 18; 185:19; 192:3; 193:2; 195:22; 198:23; 200:18; 203:4, 10; 215:2, 19; 224:5; 226:15; 227:15; 280:19; 286:5, 25; 287:3; 293:19</p> <p>attachments [11] - 192:4; 195:16; 203:6; 217:20; 226:17; 237:12; 238:9; 302:3, 11</p> <p>attempt [5] - 205:24; 260:10; 295:25; 296:1; 297:3</p> <p>attended [1] - 317:13</p> <p>attention [3] - 193:22; 280:3; 307:24</p> <p>attorney [21] - 168:25; 169:19; 191:20; 193:13; 198:15; 244:23, 25; 247:6, 8, 24; 267:15; 277:13, 16; 279:4; 285:3, 5-6, 8-9, 13; 307:11</p> <p>attorneys [5] - 191:19; 260:21; 261:2; 275:6; 277:15</p>	<p>audience [1] - 314:18</p> <p>August [2] - 207:20, 24</p> <p>authority [5] - 172:9; 282:12; 314:20; 315:17</p> <p>authorized [2] - 192:22; 315:21</p> <p>available [1] - 214:4</p> <p>Avenue [6] - 136:14, 24; 202:6; 307:5; 308:10; 319:16</p> <p>avoid [2] - 215:15; 264:25</p> <p>award [1] - 215:16</p> <p>awarded [1] - 170:20</p> <p>aware [16] - 157:8; 169:25; 170:15; 206:10; 208:2; 242:12; 265:7; 276:19, 25; 277:3, 6-7; 301:4; 309:10; 313:24; 316:9</p>	<p style="text-align: center;">B</p> <p>B-A-L-C-E-R-S-K-I [1] - 189:13</p> <p>background [3] - 262:9, 24; 307:10</p> <p>Balcerski [18] - 139:9; 144:24; 189:4, 12, 22; 190:12, 17; 193:7; 196:16; 197:13, 24; 211:24; 212:3; 215:20; 219:18; 225:1; 228:22; 229:23</p> <p>balcerski [1] - 195:9</p> <p>ball [1] - 312:2</p> <p>banner [5] - 238:24; 241:16; 242:5; 281:1</p> <p>banners [3] - 257:25; 280:24; 288:6</p> <p>BARRETT [1] - 136:19</p> <p>based [12] - 193:24; 245:11; 250:5; 273:23; 274:10; 294:13; 302:13, 19; 305:3</p> <p>basis [6] - 145:3; 170:24; 247:2; 300:1, 15; 319:10</p> <p>bay [1] - 153:4</p> <p>Bay [2] - 154:5; 319:15</p> <p>Bays [3] - 232:2, 8</p> <p>Beach [83] - 139:5, 10; 140:8; 142:24; 144:3; 148:14, 17, 24; 151:1, 18, 21; 158:6; 160:2; 162:1, 5, 16; 174:21; 184:5, 18; 189:9, 16; 189:16;</p>	<p>190:2, 19; 191:12; 192:13; 198:1, 4, 12; 205:25; 206:12; 207:7; 215:1; 232:6, 11-12, 20; 234:5; 236:14, 17; 237:10, 12; 238:4, 6, 8, 10; 239:9, 24; 240:11; 241:12; 242:18; 256:1; 268:15, 22; 269:2, 8, 11; 273:12; 275:8, 19; 277:6, 20; 278:25; 280:5, 18, 20, 24; 283:7, 25; 289:9; 290:17; 293:2; 297:22; 300:6; 302:14, 21, 24; 303:3, 10; 308:14; 310:21</p> <p>BEACH [1] - 136:8</p> <p>Beach's [2] - 198:8; 277:8</p> <p>bears [1] - 221:17</p> <p>beautification [1] - 288:7</p> <p>became [4] - 266:4, 7; 309:12; 316:10</p> <p>become [2] - 142:20; 265:7</p> <p>becomes [1] - 178:23</p> <p>becoming [1] - 262:23</p> <p>beforehand [1] - 314:4</p> <p>beginning [1] - 272:9</p> <p>behalf [3] - 284:17, 19; 285:15</p> <p>belief [1] - 265:24</p> <p>beliefs [1] - 159:21</p> <p>believer [2] - 178:16, 19</p> <p>believers [2] - 178:13, 24</p> <p>below [1] - 259:9</p> <p>Benedetto [2] - 157:11, 13</p> <p>Benjamin [1] - 136:22</p> <p>best [5] - 154:17; 157:19; 260:16; 297:4; 317:3</p> <p>between [15] - 138:17; 198:23; 203:4; 206:4, 6, 11; 207:16; 221:7; 243:7; 256:11; 265:18; 275:14; 280:17, 20; 314:6</p> <p>beyond [1] - 267:8</p> <p>big [3] - 225:9; 248:14; 258:21</p> <p>bigger [1] - 164:15</p> <p>bill [1] - 288:16</p>
--	---	---	---	--

<p>binder [6] - 175:16; 180:4; 211:23; 214:2; 235:23</p> <p>Birk [4] - 156:22; 157:12; 291:9; 298:9</p> <p>birth [2] - 263:1</p> <p>Bishop [2] - 307:5; 308:10</p> <p>bit [3] - 180:20; 265:9; 307:9</p> <p>black [1] - 224:13</p> <p>blank [5] - 202:13, 21; 203:5, 11</p> <p> blessing [4] - 299:15; 300:13, 17; 301:6</p> <p> blessings [1] - 304:21</p> <p>blind [1] - 148:8</p> <p>block [4] - 141:18; 186:24; 311:17; 319:17</p> <p>blocked [1] - 160:7</p> <p>blowup [2] - 225:9, 11</p> <p>board [34] - 156:21, 25; 157:1, 3, 7-9; 158:2; 166:16, 19; 169:11, 13, 25; 170:12, 15; 191:1; 192:10; 248:15; 262:15; 266:19; 275:5, 21; 283:25; 284:4, 6, 9, 13, 17, 23; 285:16, 24; 293:1; 300:25</p> <p>Board [1] - 220:3</p> <p>board's [2] - 293:17; 302:7</p> <p>body [5] - 153:1; 209:4; 292:20, 22; 295:23</p> <p>book [1] - 207:14</p> <p>books [1] - 139:17</p> <p>border [1] - 184:25</p> <p>borough [1] - 272:16</p> <p>bottle [1] - 311:25</p> <p>bottom [13] - 151:25; 152:6, 8-9; 201:21; 221:24; 246:20; 258:9; 259:3; 280:7, 13; 281:10; 291:1</p> <p>bought [2] - 311:11</p> <p>boundaries [9] - 145:14, 25; 146:1; 150:7; 174:12; 292:18; 299:12; 315:12</p> <p>boundary [30] - 147:10; 148:13, 18, 23; 149:2, 8; 150:15, 19, 25; 151:17, 20-21, 23; 161:25; 162:4; 177:24;</p>	<p>178:11; 187:3; 295:23; 296:22; 297:1; 299:14; 302:17, 22; 303:3, 12, 18</p> <p>Braglia [1] - 144:20</p> <p>BRAGLIA [1] - 144:21</p> <p>break [8] - 184:2; 185:5, 7; 188:9; 196:10; 213:9; 214:2; 228:20</p> <p>breakfast [1] - 239:22</p> <p>BRIAN [1] - 136:25</p> <p>bridge [1] - 153:13</p> <p>Bridgehampton [2] - 263:8, 23</p> <p>bring [4] - 144:23; 194:24; 195:3; 313:10</p> <p>brochure [3] - 179:21; 180:10; 181:2</p> <p>brought [8] - 164:5; 187:21; 188:5; 263:11; 274:6; 275:5, 12</p> <p>buchweitz [1] - 305:22</p> <p>BUCHWEITZ [8] - 136:17; 189:3; 313:19; 316:13, 19; 320:6; 321:7, 11</p> <p>Buchweitz [2] - 139:3; 305:17</p> <p>building [1] - 247:7</p> <p>built [2] - 152:19; 223:23</p> <p>Business [3] - 307:16; 317:7</p> <p>business [3] - 139:12; 307:18</p> <p>businesses [1] - 251:2</p> <p>BY [154] - 140:2, 15; 141:8; 142:13; 143:22; 145:8; 146:18; 147:17; 148:7, 12; 149:25; 151:14; 158:20; 160:10, 21; 161:24; 163:25; 165:14; 166:15; 167:22; 169:24; 171:10, 14; 172:14; 173:4, 17; 174:14; 175:7; 176:3, 21; 177:6, 17; 180:6, 18; 182:21; 184:7; 185:11; 186:10, 14; 187:2, 11, 24; 189:21; 196:14; 197:23; 211:22; 225:8; 228:3; 229:22; 231:22; 233:15; 234:11, 18; 235:1, 8, 13; 236:8, 13; 237:9, 16; 238:2; 239:2; 240:9, 25; 242:16; 244</p>	<p>245:5; 247:1; 248:13; 249:9; 250:4, 20; 251:7, 20; 252:11, 19; 253:13; 254:18; 256:16; 258:3; 259:23; 262:7; 267:3, 18; 268:1, 24; 269:18; 272:1; 274:16, 25; 276:8, 17, 24; 277:19; 278:22; 279:25; 280:14; 281:12, 25; 282:10, 23; 283:4, 12, 23; 284:3; 287:13; 290:14; 293:25; 297:15; 298:4, 25; 299:8; 300:11; 301:2; 303:8; 306:24; 308:25; 309:25; 310:6, 16; 311:8; 313:16, 22; 316:16; 317:6; 318:21; 319:20; 320:20; 322:4, 7-15, 17-22, 24-25; 323:1-3, 5</p> <p style="text-align: center;">C</p> <p>cables [1] - 196:2</p> <p>campaign [19] - 142:17; 143:1; 232:25; 233:3, 17-18; 236:5; 237:3, 19, 25; 273:14, 18; 274:8; 292:3; 294:18; 295:9; 297:12; 299:23</p> <p>campaigns [3] - 237:19; 243:18</p> <p>candidate [1] - 232:24</p> <p>candidates [3] - 234:19; 243:15</p> <p>cane [1] - 311:17</p> <p>cannot [4] - 150:18; 166:5; 248:8; 306:6</p> <p>canon [2] - 159:20; 160:4</p> <p>capacities [1] - 170:16</p> <p>capacity [4] - 170:19; 171:11; 251:1; 290:19</p> <p>capture [3] - 255:14, 16, 19</p> <p>car [2] - 181:18; 182:1</p> <p>Cardozo [1] - 136:22</p> <p>career [1] - 263:1</p> <p>Carol [1] - 170:9</p> <p>carried [1] - 237:4</p> <p>carries [1] - 205:11</p> <p>carry [16] - 150:19; 153:23; 178:13, 17; 245</p>	<p>311:21, 25; 313:3, 6, 8, 10; 315:16</p> <p>carrying [1] - 319:1</p> <p>case [30] - 138:1, 21; 139:1; 146:1; 160:6, 15; 161:13, 21; 173:5; 177:3, 8; 204:2; 207:2; 220:6; 234:9, 14; 238:21; 240:2; 247:4; 261:18; 270:12, 25; 271:8; 278:13; 283:20; 287:17; 289:17; 320:9</p> <p>Case [1] - 138:2</p> <p>cases [2] - 236:24; 311:2</p> <p>categorize [2] - 250:22; 254:16</p> <p>Cathy [1] - 210:4</p> <p>caused [2] - 164:20; 309:6</p> <p>Center [1] - 263:8</p> <p>center [1] - 263:23</p> <p>centers [1] - 264:22</p> <p>Central [2] - 136:6; 137:6</p> <p>centrality [1] - 159:21</p> <p>certain [15] - 150:12; 164:12; 172:18; 174:16; 178:12, 15, 20; 179:2; 183:8; 257:15; 258:7; 271:18; 295:5; 318:17</p> <p>certainly [3] - 155:24; 210:20; 265:17</p> <p>certainty [2] - 273:8, 19</p> <p>challenge [1] - 220:2</p> <p>challenged [1] - 263:20</p> <p>change [11] - 141:19; 146:22; 163:8, 11, 15; 164:10, 20; 209:8, 14; 304:5</p> <p>changed [10] - 147:25; 164:14; 165:10; 273:23; 300:23; 303:25; 304:19; 305:3; 311:12; 316:12</p> <p>changes [2] - 157:3, 6</p> <p>character [2] - 254:7; 264:21</p> <p>characterize [2] - 254:17, 19</p> <p>charge [3] - 200:18, 22; 288:15</p> <p>chart [1] - 308:22</p> <p>chief [1] - 269:9</p> <p>Child [1] - 263:8</p>
---	---	---	--

children [4] - 263:18, 20, 22; 313:1
Christmas [3] - 288:4, 8, 23
CHRISTOPHER [1] - 136:16
church [1] - 265:23
circle [1] - 319:17
Circuit [3] - 271:3, 5, 8
circulated [2] - 210:24; 294:19
circumstances [5] - 151:11; 237:17; 271:18; 279:9; 311:11
citation [1] - 270:19
citizen [1] - 275:8
citizens [7] - 233:5; 253:2, 6, 17, 25; 254:14, 22
City [5] - 137:1; 183:22; 263:2
Civil [1] - 214:25
civilian [1] - 299:1
claim [1] - 261:6
claimed [1] - 313:25
claiming [1] - 261:9
claims [1] - 237:7
clarify [2] - 184:10; 308:13
classify [1] - 250:9
clear [11] - 142:11, 14, 17, 21; 143:2; 160:3; 161:15; 165:24; 173:16; 266:4; 303:15
CLERK [1] - 139:19
clerk [2] - 232:18; 242:1
clerk's [1] - 285:21
client [2] - 148:14; 150:25
clients [1] - 243:7
Clint [1] - 170:7
close [2] - 151:12; 274:5
closed [2] - 156:12; 245:14
closely [1] - 158:10
closer [1] - 165:12
clutter [1] - 265:1
cluttered [1] - 256:20
code [4] - 171:16; 264:7; 279:17
Code [1] - 219:19
codes [2] - 279:21; 296:24

colleague [1] - 139:3
colleagues [1] - 305:17
collected [1] - 200:24
college [1] - 317:9
College [2] - 307:15; 317:8
color [4] - 148:8; 209:7; 224:13, 18
color-blind [1] - 148:8
Columbia [1] - 263:25
column [4] - 180:8, 19
Comecler [2] - 156:24; 157:9
Comecler's [1] - 156:23
coming [2] - 209:4; 288:23
comma [1] - 203:5
comment [2] - 261:16; 305:10
committee [6] - 238:6, 8; 239:6; 288:7; 315:18, 20
common [1] - 182:8
communicate [1] - 211:14
communicated [8] - 169:10; 170:4, 7, 10, 12; 191:14; 266:16, 21
communicates [1] - 321:5
communication [4] - 191:17; 249:7; 251:12; 260:23
community [10] - 142:18; 234:6; 263:10, 14; 276:12; 297:1, 3, 5; 304:22
companies [1] - 196:1
company [1] - 245:20
comparable [1] - 254:8
compare [1] - 224:5
compelled [2] - 194:2; 245:13
compensation [1] - 157:6
compiled [1] - 279:22
complaint [18] - 157:14, 20-21; 158:1, 5; 160:25; 163:9; 164:2; 169:20; 172:1, 23; 173:18, 20, 24; 174:9, 22; 175:21; 298:6
completely [1] - 111

236:19
comply [2] - 159:6; 315:19
composed [1] - 266:6
composition [1] - 252:14
comprise [1] - 150:25
computer [1] - 137:10
concede [4] - 310:21, 23, 25; 311:4
concept [6] - 164:25; 177:22; 244:19; 273:12; 314:2; 321:5
concern [2] - 254:6; 257:4
concerned [1] - 214:14
concerning [3] - 161:14; 279:10; 284:1
concerns [1] - 214:16
conclude [3] - 194:2; 245:13; 265:16
concluded [2] - 258:1; 265:17
conclusion [2] - 247:24
conclusions [1] - 190:18
conditions [1] - 203:4
conduct [3] - 178:20; 179:1; 305:25
conduit [1] - 195:24
conduits [1] - 195:25
conferred [1] - 139:4
confers [1] - 287:22
confirm [1] - 212:17
confused [1] - 288:3
confusion [1] - 196:17
connect [1] - 165:12
connection [8] - 200:14, 20, 24; 219:21; 235:18; 243:7; 292:3; 294:19
connects [1] - 165:7
Conrad [7] - 268:14, 21; 275:8, 14-15; 280:5; 298:9
consent [1] - 288:18
consider [3] - 249:11; 255:14, 20
considered [1] - 283:19
consists [1] - 162:1
conspired [1] - 214:24
constituency [1] - 297:17

194:2; 245:14
constituted [1] - 285:24
constitutes [2] - 148:13; 315:11
constructed [3] - 159:1, 15; 298:20
construction [12] - 159:5; 223:7, 11, 23; 226:12, 14, 19; 227:3, 10, 14; 229:25; 230:3
construed [2] - 281:14; 286:16
consult [3] - 300:23
consulted [3] - 292:12
cont'd [2] - 189:20; 322:10
contact [1] - 302:9
contained [3] - 215:5; 281:14; 286:15
contemplate [1] - 199:22
contemplated [3] - 277:11; 279:1; 316:12
contemplates [2] - 218:16, 18
context [3] - 292:7, 9; 295:14
continuation [1] - 189:15
continue [7] - 160:9; 252:10; 275:2; 295:5; 305:17, 19, 21
Continued [1] - 188:14
continues [1] - 274:18
continuing [2] - 144:25; 145:2
contract [8] - 204:19; 281:18; 282:5; 286:19; 307:18; 314:5, 9; 316:18
contracts [1] - 144:10
contrasting [2] - 224:13, 17
contravention [1] - 246:1
controversy [1] - 265:7
conversation [7] - 191:24; 192:16, 24-25; 225:22; 256:11; 309:7
conversations [2] - 141:2, 9
convey [2] - 249:22; 272:8
copied [4] - 220:24; 221:6, 11; 224:6

copies [3] - 213:9;
214:3, 8
copy [10] - 180:23;
190:8; 196:25; 207:13;
213:2, 4; 214:2;
215:25; 221:9, 19
corner [5] - 152:7-9;
280:13; 281:10
correct [208] - 138:20;
147:3, 22-23; 148:15,
17, 24; 149:10; 150:2;
151:20, 22, 24; 152:2,
23, 25; 153:2, 22, 25;
154:1, 3, 6, 9; 155:3;
156:13, 20; 157:1, 4,
15, 18, 21; 158:2, 7;
161:1; 164:2, 7;
165:18, 22; 166:7, 21;
167:10, 19; 168:4, 7;
169:21; 170:1, 21;
172:6, 17, 21, 24;
173:7, 22, 25; 174:17,
25; 176:9, 23; 178:13,
16, 18, 21; 179:13;
180:21, 24; 181:6,
9-10; 183:23; 185:22;
187:14; 198:1, 10, 13,
15-16, 18-19, 24-25;
201:9, 21; 202:22;
204:1, 4, 6, 12-13;
205:19, 23; 206:25;
207:4, 9-10, 22-23, 25;
208:1, 5-6, 12; 212:7,
13-14, 20; 214:14;
217:7, 23; 218:5, 8,
13; 219:15; 221:1, 8,
17; 222:5, 14, 18;
223:24; 224:13, 18-19;
225:12; 227:18; 230:2,
5; 236:15; 240:20;
241:4, 6, 8, 24; 242:4,
9, 13; 244:25; 245:17;
246:6, 11, 20; 252:23;
256:8; 257:14, 18, 22;
258:14; 264:18; 265:1;
269:13, 23; 270:3;
272:12, 16; 273:1, 9,
12, 15, 18, 24; 275:3;
280:18, 21, 25; 281:7;
282:3, 13; 291:15, 19,
21, 24-25; 293:3, 7-8,
12-13, 22; 294:6, 15,
20-21; 297:5, 20;
300:19; 302:11, 22;
310:9; 314:24; 317:10;
318:2, 8, 15, 18; 319:9
corrected [1] - 239:25
correctly [1] - 146:7
correspondence [1] -
267:17

councilwoman [3] -
262:16, 23
Counsel [6] - 143:19;
147:14; 171:2; 238:12;
244:13; 316:22
counsel [20] - 139:4,
8; 142:5; 171:18;
172:22; 176:12; 213:10;
215:4; 216:9; 219:3;
256:11; 261:13; 279:6;
287:22; 292:12; 299:7,
9; 300:23; 305:4
counselor [2] -
216:15; 223:18
Counselor [1] - 289:6
count [1] - 192:11
county [5] - 159:3;
243:18; 305:5, 7
County [7] - 232:16-18;
270:16; 271:16; 308:17;
318:12
county-related [1] -
243:18
couple [4] - 209:24;
210:17; 223:19; 286:22
course [5] - 138:24;
217:15; 222:17; 261:19;
271:10
COURT [359] - 136:1,
11; 138:1, 3, 6, 20,
24; 139:13, 18; 140:10,
13; 141:24; 142:3, 8;
143:10, 13, 16, 19;
144:7, 12, 15, 19;
145:2, 6; 146:16;
147:14; 148:6, 10;
149:17; 151:5, 8;
158:14, 19; 160:8, 13;
161:10, 12, 18, 21;
164:24; 165:2; 166:14;
167:12, 16, 18; 168:5,
8; 169:23; 170:23;
171:1, 9, 13; 172:12;
173:3, 10, 13; 174:10;
175:6, 14, 18, 23;
176:2, 14, 16, 18;
177:5; 180:15; 182:18,
25; 183:6; 184:1, 5;
185:6, 8; 186:9, 13,
25; 187:6, 16, 18, 23;
188:3, 7, 9; 189:2, 11,
18; 190:10, 14; 191:4,
9; 192:7, 17; 193:16;
194:12, 21; 195:3, 5,
8, 14, 20; 196:4, 12;
199:17, 20; 200:2, 11;
205:22; 206:16, 19, 21;
210:16; 213:10, 25;
214:3, 7; 215:5

216:8, 11, 14, 20, 24;
218:24; 219:5; 220:5;
222:11, 15, 22; 223:1,
18, 21; 224:22, 24;
225:3, 21; 226:8;
227:8, 20, 24; 228:11,
15, 23; 229:2, 18;
230:6, 10, 12; 231:2,
5, 8, 10, 17, 19;
233:7, 12, 24; 234:1,
8, 16, 23; 235:7, 11,
22, 24; 236:3, 6, 12,
22; 237:8, 14; 238:12,
15, 17, 23; 239:9, 12,
15, 17, 21; 240:3, 6,
24; 241:10; 242:22;
243:1, 9, 11, 16, 20;
244:2, 10, 12; 245:3;
246:22, 25; 247:10, 25;
248:12; 249:4, 11, 16,
18, 23; 250:3, 13, 25;
251:15, 18; 252:9, 17;
253:10, 12, 23; 254:4,
10, 13; 255:10, 12, 22;
256:4, 10, 14; 257:24;
258:25; 259:19, 21;
260:6, 16, 21, 25;
261:2, 5, 8, 15, 21,
24; 262:2, 5; 267:9,
14, 25; 268:9, 11, 16;
269:15; 270:12, 15, 18,
21, 25; 271:3, 7, 11,
13; 274:13, 23; 276:6,
16; 277:17, 25; 278:3,
6, 9, 14; 279:7, 19,
24; 280:9, 11; 281:8,
22; 282:9, 15, 22, 25;
283:10, 21; 284:1;
287:12, 19, 24; 288:1,
3, 8, 10, 17, 21, 25;
289:3, 5, 8, 12, 15,
18, 21, 23; 290:2, 9;
293:24; 295:13; 296:10,
15, 19; 297:9; 298:23;
299:5; 300:21; 301:11;
303:6, 21, 25; 304:4,
8, 11, 15; 305:13, 19,
21; 306:1, 4, 7, 10,
13, 19; 308:5, 8, 12,
17; 309:22; 310:3, 14,
19, 24; 311:1, 6;
312:10, 12, 15, 22;
313:12, 20; 316:15, 20;
317:2, 4; 318:19, 24;
319:2, 5, 22, 25;
320:4, 9, 13, 15, 18;
321:8, 13
Court [24] - 137:5;
140:20; 159:18; 160:3;
177:3; 188:5, 13;
194:24; 196:8; 197:17;
213:4; 233:2, 16;
234:12; 237:17; 247:19;
248:23; 262:24; 270:22;
319:14
court [8] - 146:14;
160:4; 175:15; 195:7;
210:21; 214:24; 302:13;
316:23
Courthouse [1] - 136:6
courtroom [8] -
138:14, 19; 164:5;
169:17; 183:1; 282:25;
299:19
cover [2] - 249:1;
277:5
covered [8] - 247:20;
257:13, 21; 281:19;
286:20, 23; 287:9, 15
covers [1] - 217:21
create [6] - 292:18;
295:23; 296:21; 302:17;
303:3, 18
created [2] - 174:3;
186:2
creates [1] - 177:23
creating [2] - 302:21;
303:12
credibility [1] -
138:17
credit [1] - 171:12
creeds [1] - 159:23
Crest [1] - 319:15
criminal [2] - 196:4,
6
CROSS [22] - 147:16;
167:21; 197:22; 211:21;
240:8; 262:6; 283:22;
298:3; 313:15; 317:5;
320:19; 322:5, 11-12,
17, 21, 24; 323:2, 5
cross [12] - 139:11;
153:12, 19; 154:5;
167:25; 191:2; 233:13;
240:6; 256:11; 262:5;
289:17; 319:16
cross-conversation
[1] - 256:11
cross-examination [3]
- 191:2; 233:13; 262:5
CROSS-EXAMINATION
[22] - 147:16; 167:21;
197:22; 211:21; 240:8;
262:6; 283:22; 298:3;
313:15; 317:5; 320:19;
322:5, 11-12, 17, 21,
24; 323:2, 5

<p>cross-examine [2] - 139:11; 240:6</p> <p>crossed [1] - 189:15</p> <p>crosses [2] - 153:1, 4</p> <p>current [2] - 234:21, 24</p> <p>curriculum [1] - 263:20</p> <p>curves [1] - 154:14</p> <p>curving [1] - 154:14</p> <p>cut [1] - 312:12</p> <p>CV [1] - 136:4</p>	<p>287:3, 6, 16; 288:5, 8, 18</p> <p>Defamation [1] - 173:12</p> <p>defeated [1] - 273:1</p> <p>defend [1] - 295:6</p> <p>Defendant [2] - 214:11; 323:17</p> <p>Defendant's [4] - 176:19; 180:16; 323:15</p> <p>defendants [2] - 271:23; 289:8</p> <p>Defendants [2] - 136:9, 19</p>	<p>depiction [2] - 149:4; 150:22</p> <p>depicts [2] - 150:1, 3</p> <p>Depot [1] - 162:13</p> <p>derived [1] - 173:8</p> <p>describe [9] - 145:9; 191:17; 233:2, 16; 250:17; 255:8; 260:10; 262:23; 265:13</p> <p>described [10] - 146:20; 150:8; 167:2; 221:6; 227:12; 229:9; 248:19; 254:7; 299:2; 320:24</p> <p>description [1] - 209:2</p> <p>descriptions [5] - 247:12; 251:6, 9; 258:2, 5</p> <p>deserves [2] - 234:9; 279:11</p> <p>designated [2] - 289:10, 14</p> <p>designation [1] - 146:21</p> <p>desk [1] - 301:22</p> <p>despite [2] - 300:14, 16</p> <p>details [2] - 314:1, 3</p> <p>detected [1] - 273:24</p> <p>determination [2] - 160:15; 220:2</p> <p>determine [3] - 226:16; 227:11; 230:3</p> <p>determined [2] - 230:7; 257:20</p> <p>developed [4] - 177:22; 217:15, 18</p> <p>Developmental [1] - 263:8</p> <p>developmental [1] - 263:13</p> <p>DEVITT [1] - 136:19</p> <p>dictates [1] - 246:12</p> <p>different [18] - 147:8, 11; 152:10; 167:3; 210:2, 7, 14; 211:3, 13; 229:8; 230:5; 233:11; 248:4; 250:17; 265:19; 271:17; 308:11</p> <p>difficult [4] - 248:10; 254:3; 260:8; 317:23</p> <p>difficulties [1] - 311:20</p>	<p>208:24; 255:9</p> <p>dimensions [7] - 208:19, 22; 209:7, 13; 229:4; 313:24; 316:11</p> <p>DIRECT [14] - 140:1; 189:20; 231:21; 244:14; 268:23; 290:13; 306:23; 322:4, 10, 16, 20, 23; 323:1, 4</p> <p>direct [6] - 148:1; 189:15; 214:5; 251:12; 280:2</p> <p>direction [1] - 153:7</p> <p>directly [2] - 198:9; 249:7</p> <p>director [1] - 263:8</p> <p>disabilities [2] - 182:3, 5</p> <p>disability [2] - 182:15, 24</p> <p>discuss [3] - 140:17; 285:25; 300:25</p> <p>discussed [8] - 141:12; 182:8; 259:12; 275:11; 299:7, 9; 301:23; 305:4</p> <p>discussing [2] - 267:21; 293:18</p> <p>discussion [7] - 259:16; 267:23; 272:14; 275:6; 278:16; 315:3</p> <p>discussions [2] - 140:21</p> <p>disparaging [1] - 243:3</p> <p>dispensation [1] - 182:14</p> <p>distance [2] - 149:9; 319:13</p> <p>distinguish [1] - 275:14</p> <p>distracting [1] - 256:21</p> <p>distraction [2] - 257:3; 260:3</p> <p>distractions [1] - 256:22</p> <p>DISTRICT [3] - 136:1, 11</p> <p>dividing [1] - 142:18</p> <p>Division [1] - 159:19</p> <p>dock [1] - 152:19</p> <p>document [13] - 155:19, 21; 187:20, 22; 196:10; 200:1; 201:25; 202:2; 203:24; 225:15; 246:19; 280:3; 304:24</p>
D			
<p>D-E-B-O-R-A-H [1] - 306:21</p> <p>damage [2] - 215:16; 256:20</p> <p>damages [1] - 214:23</p> <p>dark [1] - 313:9</p> <p>date [12] - 139:16; 164:9; 194:15; 203:10; 205:16; 207:18; 221:1, 16, 24-25; 243:2; 259:5</p> <p>dated [9] - 158:4, 7; 190:2; 193:11; 196:21; 197:5; 203:5; 220:14; 298:8</p> <p>daughter [1] - 312:25</p> <p>daughters [3] - 307:22; 313:1; 318:25</p> <p>days [2] - 179:7; 233:21</p> <p>De [2] - 157:11, 13</p> <p>deal [2] - 247:16; 251:1</p> <p>dealing [1] - 248:19</p> <p>Debbie [2] - 306:2, 7</p> <p>Deborah [1] - 306:21</p> <p>Deboise [4] - 216:2, 5, 9, 12</p> <p>decide [1] - 297:4</p> <p>decided [3] - 165:15; 194:23; 294:2</p> <p>decides [1] - 146:15</p> <p>decision [7] - 159:18; 214:21; 271:15, 17, 19; 275:10; 302:7</p> <p>declaration [2] - 177:19, 21</p> <p>declarations [1] - 256:6</p> <p>declare [1] - 302:15</p> <p>declared [1] - 291:14</p> <p>decorations [7] -</p>	<p>287:3, 6, 16; 288:5, 8, 18</p> <p>Defamation [1] - 173:12</p> <p>defeated [1] - 273:1</p> <p>defend [1] - 295:6</p> <p>Defendant [2] - 214:11; 323:17</p> <p>Defendant's [4] - 176:19; 180:16; 323:15</p> <p>defendants [2] - 271:23; 289:8</p> <p>Defendants [2] - 136:9, 19</p> <p>defense [1] - 287:24</p> <p>defined [1] - 257:12</p> <p>defines [2] - 173:19; 259:12</p> <p>definition [10] - 173:22; 193:25; 246:20; 247:2, 18, 20; 248:22, 25; 250:7</p> <p>definitions [3] - 245:11; 248:6, 24</p> <p>degree [1] - 263:24</p> <p>DeJong [2] - 138:11; 179:8</p> <p>deliberate [1] - 274:21</p> <p>deliberations [1] - 275:1</p> <p>delineate [3] - 146:3; 178:4; 204:11</p> <p>delineated [2] - 145:22; 204:3</p> <p>delineates [2] - 145:21; 147:19</p> <p>delineating [3] - 158:23; 159:13; 298:18</p> <p>delineation [3] - 168:3; 175:8; 176:23</p> <p>delineations [1] - 151:16</p> <p>demands [1] - 215:1</p> <p>demarcation [5] - 173:19; 174:3, 6; 177:4, 11</p> <p>demarked [1] - 174:6</p> <p>denial [1] - 237:1</p> <p>denied [1] - 166:6</p> <p>denote [2] - 152:6, 16</p> <p>denying [2] - 167:1, 6</p> <p>department [1] - 264:1</p> <p>depict [1] - 150:5</p> <p>depicted [3] - 149:9; 227:12; 300:7</p>	<p>depiction [2] - 149:4; 150:22</p> <p>depicts [2] - 150:1, 3</p> <p>Depot [1] - 162:13</p> <p>derived [1] - 173:8</p> <p>describe [9] - 145:9; 191:17; 233:2, 16; 250:17; 255:8; 260:10; 262:23; 265:13</p> <p>described [10] - 146:20; 150:8; 167:2; 221:6; 227:12; 229:9; 248:19; 254:7; 299:2; 320:24</p> <p>description [1] - 209:2</p> <p>descriptions [5] - 247:12; 251:6, 9; 258:2, 5</p> <p>deserves [2] - 234:9; 279:11</p> <p>designated [2] - 289:10, 14</p> <p>designation [1] - 146:21</p> <p>desk [1] - 301:22</p> <p>despite [2] - 300:14, 16</p> <p>details [2] - 314:1, 3</p> <p>detected [1] - 273:24</p> <p>determination [2] - 160:15; 220:2</p> <p>determine [3] - 226:16; 227:11; 230:3</p> <p>determined [2] - 230:7; 257:20</p> <p>developed [4] - 177:22; 217:15, 18</p> <p>Developmental [1] - 263:8</p> <p>developmental [1] - 263:13</p> <p>DEVITT [1] - 136:19</p> <p>dictates [1] - 246:12</p> <p>different [18] - 147:8, 11; 152:10; 167:3; 210:2, 7, 14; 211:3, 13; 229:8; 230:5; 233:11; 248:4; 250:17; 265:19; 271:17; 308:11</p> <p>difficult [4] - 248:10; 254:3; 260:8; 317:23</p> <p>difficulties [1] - 311:20</p> <p>OWEN WICKER, RPR [2] -</p>	<p>208:24; 255:9</p> <p>dimensions [7] - 208:19, 22; 209:7, 13; 229:4; 313:24; 316:11</p> <p>DIRECT [14] - 140:1; 189:20; 231:21; 244:14; 268:23; 290:13; 306:23; 322:4, 10, 16, 20, 23; 323:1, 4</p> <p>direct [6] - 148:1; 189:15; 214:5; 251:12; 280:2</p> <p>direction [1] - 153:7</p> <p>directly [2] - 198:9; 249:7</p> <p>director [1] - 263:8</p> <p>disabilities [2] - 182:3, 5</p> <p>disability [2] - 182:15, 24</p> <p>discuss [3] - 140:17; 285:25; 300:25</p> <p>discussed [8] - 141:12; 182:8; 259:12; 275:11; 299:7, 9; 301:23; 305:4</p> <p>discussing [2] - 267:21; 293:18</p> <p>discussion [7] - 259:16; 267:23; 272:14; 275:6; 278:16; 315:3</p> <p>discussions [2] - 140:21</p> <p>disparaging [1] - 243:3</p> <p>dispensation [1] - 182:14</p> <p>distance [2] - 149:9; 319:13</p> <p>distinguish [1] - 275:14</p> <p>distracting [1] - 256:21</p> <p>distraction [2] - 257:3; 260:3</p> <p>distractions [1] - 256:22</p> <p>DISTRICT [3] - 136:1, 11</p> <p>dividing [1] - 142:18</p> <p>Division [1] - 159:19</p> <p>dock [1] - 152:19</p> <p>document [13] - 155:19, 21; 187:20, 22; 196:10; 200:1; 201:25; 202:2; 203:24; 225:15; 246:19; 280:3; 304:24</p>
OFFICIAL COURT REPORTER			

documents [3] - 157:21; 194:9; 212:5
dollar [1] - 215:16
dollars [1] - 201:6
donation [1] - 179:17
done [9] - 150:6; 166:22; 197:7; 215:3; 222:17; 223:14; 270:24; 294:22
door [5] - 233:20; 242:21; 296:13, 17
door-to-door [1] - 233:20
DORFMAN [1] - 136:25
doubtlessly [1] - 215:16
down [19] - 166:1, 3; 188:7; 196:2; 230:12; 242:7; 243:20, 22; 245:19; 264:25; 268:11; 288:13, 18; 289:3; 297:6; 305:13; 319:15; 321:13
downstairs [1] - 285:21
draw [4] - 165:4, 6; 190:18; 307:24
drawing [1] - 224:3
dreams [1] - 317:4
Drive [5] - 154:9, 12
drive [4] - 181:17; 182:1, 14, 23
driver's [1] - 181:20
drivers [1] - 257:3
duly [6] - 189:8; 231:15; 244:6; 268:19; 290:7; 306:17
Dune [29] - 148:21, 24-25; 149:9, 11-12, 14, 18-22, 24; 150:2, 4, 17; 151:10; 152:1; 153:13; 184:9, 19, 24; 186:16, 18-19; 188:1; 287:7, 10
duplicative [1] - 231:8
during [4] - 196:9; 213:9; 214:2; 237:19
duty [3] - 253:7, 19; 265:24

E

e-mails [8] - 265:11-13, 15, 17, 25; 266:1, 5
early [1] - 154:22

East [33] - 169:5; 170:3; 194:18; 198:24; 199:15; 207:3, 12, 17; 208:2; 209:6; 210:1, 13; 211:10, 15; 214:16; 215:23; 221:7, 12; 224:16; 244:16; 283:14; 285:14, 19; 306:3; 309:1, 4; 313:17, 23; 315:22; 316:11, 17; 317:13
EAST [1] - 136:3
east [3] - 153:8; 162:2, 4
east-west [2] - 162:2, 4
EASTERN [1] - 136:1
echo [1] - 282:25
educated [1] - 304:21
educational [4] - 263:4, 12; 307:10
EEEE [13] - 147:19-21; 151:15, 22; 152:23; 157:14; 159:12; 162:18; 169:10; 181:9; 211:2, 13
effect [3] - 209:1; 272:20; 311:1
effective [1] - 259:5
effort [3] - 181:8; 295:3, 9
eight [1] - 233:21
eighth [10] - 248:17; 249:2; 250:22; 253:4, 15; 254:19; 255:8; 256:24; 258:21; 260:3
eighths [2] - 226:21; 247:19
eights [1] - 254:25
either [15] - 140:17; 141:5, 9; 159:7; 161:18; 166:8; 169:5, 9; 173:9, 11; 203:25; 210:4; 224:1; 240:21; 274:4
elected [5] - 157:11; 240:15; 262:10, 14, 20
election [14] - 157:10; 233:21; 236:10; 241:11; 242:19; 243:2; 273:9, 11; 275:20; 291:23; 292:2; 293:22; 294:19
electrical [1] - 196:1
element [2] - 178:9; 237:6
elementary [3] - 263:6, 18

eleventh [1] - 143:6
elsewhere [1] - 251:9
email [9] - 213:2, 21; 215:18; 220:24; 221:6, 9, 11, 14; 224:5
emails [4] - 211:5-7; 225:11
emotional [1] - 263:12
employed [1] - 232:13
Employment [1] - 159:19
enacted [2] - 257:16; 317:16
enclave [1] - 142:20
enclose [1] - 315:13
encompasses [1] - 145:23
encountered [1] - 141:14
end [3] - 186:20; 241:13; 286:21
End [34] - 169:5; 170:3; 194:18; 198:24; 199:15; 207:3, 12, 17; 208:3; 209:6; 210:1, 13; 211:10, 15; 214:16; 215:23; 221:8, 12; 224:16; 244:16; 278:16; 283:14; 285:14, 19; 306:3; 309:1, 4; 313:17, 23; 315:22; 316:11, 17; 317:13
END [1] - 136:3
endanger [1] - 253:5
endeavor [1] - 246:1
enforce [2] - 246:2; 264:21
enforced [1] - 240:3
engage [1] - 227:14
engineer [4] - 209:21, 23; 210:1; 221:11
engineering [1] - 202:11
engineers [3] - 209:24; 210:6, 12
enhance [1] - 265:4
enjoy [1] - 311:13
ensure [5] - 254:7, 21; 294:25; 295:16, 18
enter [1] - 226:10
entered [2] - 202:20; 206:8
entire [3] - 149:24; 268:2, 5
entirely [2] - 247:13;

entirety [1] - 250:14
entity [4] - 181:9; 218:4; 295:4, 11
enumeration [1] - 258:13
erected [1] - 259:5
erection [1] - 177:23
eruv [195] - 142:12, 18, 20, 25; 143:2, 4, 7; 145:10-12, 18, 21-23; 146:3; 147:19-21, 24; 148:18, 22-23; 149:1, 4; 150:1, 17, 19-20, 25; 151:3, 13, 15, 18, 25; 152:1, 6, 17-18, 21; 153:7, 17, 21, 25; 154:16; 155:2, 5, 9-10, 12, 14; 156:5, 7; 158:22, 24-25; 159:2, 5, 7, 11, 14-15; 160:25; 161:4, 19, 25; 163:2, 17; 166:9; 167:1, 6; 168:3, 21; 169:7, 11; 172:20; 173:19; 174:5, 15; 175:8; 176:23; 177:3, 10, 22; 178:9, 18-19, 21, 23; 179:12; 181:2, 8; 182:11; 183:3; 190:19; 191:13; 198:5, 9; 199:23; 200:8, 17, 21; 205:25; 206:12; 208:4; 212:18; 218:16; 219:20; 232:25; 233:11, 16; 234:13, 17; 236:9; 243:3; 244:20; 252:2; 265:8; 266:12, 22; 269:16, 19-20; 270:2; 272:7, 10, 15, 18, 22; 273:12, 18; 274:9, 17-18; 275:3, 23; 276:12, 21; 277:2, 5, 10; 279:1, 18, 22; 284:16; 291:14, 20; 292:6; 294:6, 11; 295:1, 3, 10, 17; 296:3; 297:18, 23; 298:16, 18, 20; 299:22; 300:6, 13, 19; 301:7; 303:19, 23; 304:22; 309:9, 13, 17; 310:1, 8, 10, 17; 311:9; 312:6; 314:3, 8, 11, 13, 19; 315:11, 16, 18-20, 24; 316:5, 12; 319:3
ERUV [1] - 136:3
Eruv [58] - 143:24; 159:12; 169:5; 170:3;

<p>191:13; 194:18; 198:24; 199:15; 207:3, 12, 17, 19, 21; 208:3, 19, 23; 209:6, 11, 15; 210:2, 13; 211:10, 15; 214:16; 215:23; 221:8, 12; 224:16; 225:17, 23, 25; 226:2, 9; 227:5, 17; 229:11; 244:17; 276:20; 277:9; 278:24; 283:14; 285:14, 19; 300:17; 301:5; 303:14; 306:3; 309:1, 4, 9; 313:17, 23; 315:22; 316:11, 17; 317:13</p> <p>eruvs [2] - 141:20; 318:10</p> <p>escalating [1] - 264:25</p> <p>escaped [1] - 144:22</p> <p>especially [1] - 313:4</p> <p>ESQ [11] - 136:15-17, 20, 22, 25; 137:2</p> <p>essence [1] - 255:13</p> <p>essential [2] - 172:19; 178:9</p> <p>establish [7] - 169:7; 242:17; 266:12; 276:12; 292:17; 299:12, 14</p> <p>established [2] - 174:11; 179:24</p> <p>establishment [1] - 172:19</p> <p>estate [1] - 183:19</p> <p>Estates [3] - 307:1; 318:7, 14</p> <p>Estelle [1] - 179:12</p> <p>et [2] - 136:4, 8</p> <p>evening [1] - 305:16</p> <p>event [1] - 302:3</p> <p>eventually [1] - 194:23</p> <p>evidence [44] - 145:4; 155:22; 163:22; 175:14, 18, 24; 176:1, 14-15, 18, 20; 180:13, 15, 17; 184:13; 189:23; 190:12, 14, 16; 192:20; 193:14, 16, 18; 196:18; 198:20; 202:20; 206:23; 213:23; 214:12; 215:9; 222:4; 235:16, 25; 290:24; 297:7, 9, 11; 312:23; 323:12, 15</p> <p>Evidence [2] - 236:23; 312:21</p> <p>exact [1] - 289:25</p> <p>exactly [6] - 165:24;</p>	<p>210:23; 251:5, 14; 252:6; 284:2</p> <p>EXAMINATION [52] - 140:1; 147:16; 167:21; 184:6; 185:10; 189:20; 197:22; 211:21; 225:7; 228:2; 229:21; 231:21; 240:8; 242:15; 244:14; 262:6; 267:2; 268:23; 283:22; 290:13; 298:3; 300:10; 306:23; 313:15; 317:5; 320:19; 322:4-8, 10-18, 20-24; 323:1</p> <p>examination [5] - 175:22; 184:8; 191:2; 233:13; 262:5</p> <p>examine [2] - 139:11; 240:6</p> <p>examined [6] - 189:8; 231:15; 244:6; 268:19; 290:7; 306:17</p> <p>example [5] - 224:10, 15; 309:20; 311:24; 313:5</p> <p>exceeding [2] - 258:17; 260:2</p> <p>except [2] - 162:7; 197:6</p> <p>exception [2] - 139:5; 236:22</p> <p>exceptions [3] - 192:23; 255:19; 257:9</p> <p>exchange [2] - 213:8; 214:4</p> <p>exchanged [1] - 190:5</p> <p>excluded [2] - 138:15, 22</p> <p>exclusive [2] - 281:15; 286:16</p> <p>excuse [8] - 180:12; 213:17; 217:9; 223:17; 249:11; 266:24; 305:20; 306:11</p> <p>excused [5] - 230:14; 243:24; 268:13; 289:4; 321:15</p> <p>execute [1] - 229:12</p> <p>executed [2] - 199:6, 8</p> <p>executive [2] - 159:3; 263:7</p> <p>Exempt [2] - 258:9; 259:3</p> <p>exempt [4] - 258:14, 18; 259:6, 20</p> <p>Exhibit [91] - 147:18; 149:2; 155:5; 158:4; 163:23; 175:17</p>	<p>176:4, 19; 180:2, 16; 184:13, 15, 18; 185:12, 14, 18, 21; 187:12, 25; 189:23; 190:15; 193:8, 17; 194:9, 17; 195:10; 196:15; 197:24; 198:21; 199:12, 18; 201:1; 206:22; 207:9, 11, 13; 208:8; 209:2; 210:8; 211:4; 212:2, 4, 6; 214:11; 216:25; 220:9-11, 20, 22; 221:23; 222:4; 223:6; 224:4, 8; 225:9; 226:6, 10-11; 227:13, 16; 228:5, 14, 24; 235:23; 246:15, 24; 249:1, 10; 250:10; 251:21; 252:22; 280:2, 10; 286:4; 290:25; 294:17; 297:10; 298:6; 307:25; 323:11-13, 15</p> <p>exhibit [14] - 139:17; 157:20, 25; 175:16; 190:10; 208:15; 221:16; 222:2; 224:4; 225:11; 248:15; 249:12; 251:19; 280:9</p> <p>exhibits [3] - 190:4; 222:1; 245:3</p> <p>EXHIBITS [1] - 323:10</p> <p>existing [8] - 145:15; 146:1; 150:7; 174:12; 259:4</p> <p>exists [2] - 156:25; 178:19</p> <p>experience [1] - 227:9</p> <p>expert [1] - 315:14</p> <p>expertise [1] - 173:8</p> <p>explain [5] - 203:16, 18, 21; 237:17; 282:19</p> <p>explained [1] - 302:12</p> <p>explore [1] - 270:7</p> <p>express [1] - 295:6</p> <p>expressed [3] - 246:11; 273:14, 17</p> <p>expressing [1] - 252:12</p> <p>expressions [1] - 161:22</p> <p>extend [2] - 281:17; 286:18</p> <p>extension [1] - 187:3</p> <p>extent [3] - 147:9; 160:19; 197:10</p>	<p style="text-align: center;">F</p> <p>F. Supp [1] - 270:20</p> <p>fact [23] - 142:16; 143:7; 171:3; 172:5; 173:9; 174:15; 177:2; 178:1; 211:12; 212:25; 218:15, 20, 25; 220:1; 242:1; 257:1; 277:13; 283:16; 300:17; 301:18, 24; 302:1; 304:21</p> <p>factions [1] - 265:19</p> <p>facts [2] - 271:17, 19</p> <p>fair [5] - 217:14; 251:8, 11; 274:17; 301:1</p> <p>fairly [1] - 260:12</p> <p>faith [1] - 159:22</p> <p>fall [4] - 150:9, 11; 258:2, 4</p> <p>falls [1] - 153:8</p> <p>familiar [16] - 176:5; 177:2; 179:20; 184:16; 205:24; 219:23; 220:1; 244:16, 19; 245:6; 249:22; 251:13; 264:5; 277:22; 320:25; 321:5</p> <p>familiarity [1] - 320:21</p> <p>families [1] - 264:3</p> <p>family [4] - 307:22; 312:7, 15, 19</p> <p>far [4] - 162:17; 205:16; 224:2; 278:15</p> <p>favor [4] - 141:17; 142:18, 22; 143:19</p> <p>features [1] - 155:13</p> <p>February [1] - 156:18</p> <p>federal [2] - 160:4; 195:6</p> <p>Federal [2] - 137:6; 312:20</p> <p>fee [1] - 200:18</p> <p>fees [1] - 259:7</p> <p>feet [4] - 163:11; 225:24; 258:17; 260:2</p> <p>felt [12] - 242:24; 265:20; 292:16; 294:10; 295:24; 296:18-20, 22; 297:5; 299:6; 302:20</p> <p>fence [2] - 162:8, 20</p> <p>fences [2] - 151:10, 12</p> <p>fencing [1] - 162:7</p> <p>few [7] - 167:25; 174:19; 179:7; 196:10; 220:8; 317:1; 321:3</p> <p>fifteen [1] - 188:10</p>
<p>OWEN WICKER, RPR OFFICIAL COURT REPORTER</p>			

Fifth [1] - 136:14
fifth [1] - 157:13
file [1] - 241:21
filed [6] - 147:22;
157:17; 195:6; 200:4;
241:25; 285:21
final [1] - 214:21
fine [2] - 139:13;
212:11
finer [2] - 192:5;
193:5
finish [5] - 142:3, 9;
144:1; 175:5; 189:16
finished [2] - 223:20;
290:20
finishing [1] - 290:20
firestorm [6] -
141:21, 25; 142:10;
273:20, 23; 274:10
firm [4] - 216:2, 5,
12, 18
First [1] - 237:1
first [40] - 139:9;
156:24; 158:22; 159:10;
161:21; 164:13; 165:1;
175:2; 176:22; 183:2;
192:8; 193:23; 194:13;
199:23; 212:16; 213:13;
214:8, 20; 220:10;
231:14; 244:5; 245:10;
246:9; 252:22; 260:9;
264:13; 268:18; 270:25;
282:17; 290:6, 11;
294:16; 295:16; 296:6;
298:17; 299:16, 18;
304:18; 306:16; 311:12
fit [2] - 250:19; 251:5
fits [1] - 251:9
five [16] - 224:23;
226:21; 231:7; 247:19;
248:17; 249:2; 250:22;
253:4, 15; 254:19, 25;
255:8; 256:24; 258:21;
260:3; 284:7
five-eighth [1] -
254:19
five-eighth-inch [9]
- 248:17; 249:2;
250:22; 253:4, 15;
255:8; 256:24; 258:21;
260:3
five-eighths [1] -
226:21
five-eighths-inch [1]
- 247:19
five-eights [1] -
254:25

fixtures [1] - 162:19
flag [1] - 195:22
flier [1] - 294:18
flies [1] - 312:2
flight [1] - 305:16
flow [2] - 256:19, 25
flows [1] - 228:18
FLR [1] - 202:5
Flushing [2] - 183:3,
19
focus [2] - 159:9;
286:22
focuses [1] - 263:21
folks [1] - 143:7
following [6] -
158:10; 188:14; 203:6,
13; 259:4; 278:1
follows [8] - 139:23;
189:9; 231:16; 244:7;
249:5; 268:20; 290:8;
306:18
foot [1] - 258:22
forgets [1] - 313:10
forgetting [1] - 275:1
forgot [1] - 292:23
form [8] - 150:17;
151:13; 155:6; 199:12;
217:12; 251:4; 252:6
former [1] - 244:23
forming [1] - 260:14
forms [1] - 247:2
forth [3] - 259:9;
294:25
forthwith [1] - 302:7
forward [2] - 196:25;
274:5
forwarded [1] - 266:6
fought [1] - 295:16
foundation [2] -
145:4; 235:20
founder [1] - 180:21
founding [1] - 263:3
four [12] - 148:2;
164:11, 21; 170:15;
260:2; 281:3; 284:5;
289:11; 290:20; 291:8
fourth [3] - 180:20;
269:5
franchise [2] -
219:14, 16
free [2] - 256:19, 25
Friday [6] - 181:17,
23; 221:1, 15; 222:19;
318:4
front [10] - 151:13;
175:10; 185:12

217:1; 248:23; 251:21;
264:10; 286:6
frustrated [1] -
187:19
full [6] - 175:2;
193:23; 213:14; 214:20;
233:22; 245:10
full-page [1] - 233:22
function [2] - 163:17;
318:22
furnish [1] - 215:3
future [1] - 214:10

G

Garden [2] - 137:1
generally [4] -
244:19; 254:24; 317:23
gentleman [1] - 219:3
George [1] - 201:8
GOTSHAL [1] - 136:14
governing [3] -
292:20, 22; 295:22
government [11] -
218:17, 21; 265:21;
292:17; 295:4; 296:21;
299:2, 12, 25
governmental [1] -
295:10
governor [7] - 159:4;
292:22; 314:17, 20-21,
23; 315:3
Governor [1] - 314:12
graduated [1] - 307:12
grand [1] - 239:1
grant [8] - 161:9;
219:1; 281:15; 282:12;
283:7; 286:16, 18
granted [3] - 141:17;
142:21
granting [2] - 141:15;
142:12
grants [1] - 161:3
green [1] - 148:9
Greenbaum [2] - 170:7;
195:12
grounds [2] - 140:10;
274:20
group [7] - 199:2;
206:11; 209:21; 234:3;
236:25; 242:10; 266:3
grow [2] - 224:17;
232:10
Gud [1] - 165:1
guess [2] - 220:17;
308:3

GUIDO [2] - 137:3;
138:8

H 10

H-A-N-K [1] - 290:12
H-O-L-S-T [1] - 244:9
Halakhah [4] - 151:11;
152:21; 161:6, 16
Halakhic [1] - 164:25
half [1] - 309:5
HAMILTON [1] - 136:22
hamlet [2] - 264:22;
308:15
Hampton [6] - 179:20;
232:2, 8; 269:12;
293:18
Hamptons [1] - 140:16
hand [8] - 231:11;
244:3; 280:13; 281:10;
294:22-24; 295:2
Handed [7] - 193:6;
196:20; 198:22; 206:24;
217:3; 220:21; 223:4
handing [2] - 139:17;
180:5
Handing [2] - 175:12;
294:14
handing) [1] - 184:15
handwriting [1] -
204:17
handwritten [1] -
201:20
hang [3] - 237:20, 25;
238:24
hanging [3] - 237:11;
238:8; 239:5
HANK [1] - 290:4
Hank [4] - 156:22;
290:3, 12; 298:10
happy [2] - 240:21
harmless [1] - 215:5
hates [1] - 161:12
Hayground [1] - 263:15
Head [1] - 263:11
heading [2] - 153:1;
258:9
health [6] - 253:1, 5,
17, 24; 254:10; 263:13
hear [14] - 141:24;
143:20; 144:7; 183:6;
206:16; 231:20; 233:5,
24; 234:23; 238:13;
288:4; 301:20; 305:3;
310:14
heard [18] - 144:20;
161:13, 19, 22; 192:24;

287:16; 292:21; 294:13;
 295:19; 296:5; 299:16,
 18; 304:4; 310:4, 19;
 314:2; 316:23; 318:20
hearing [11] - 140:23;
 141:3, 11; 183:2;
 190:7; 200:6; 205:17;
 210:18, 21; 305:2
HEARING [1] - 136:10
hearsay [6] - 143:17;
 192:6, 18, 21, 23;
 233:6
heart [1] - 250:18
Hebrew [1] - 165:1
heels [1] - 313:2
height [1] - 259:8
held [3] - 171:6;
 262:16; 320:7
help [4] - 184:4;
 316:5; 318:16; 319:3
helpful [1] - 260:18
hereby [1] - 203:5
herein [2] - 281:14;
 286:15
high [2] - 152:20;
 313:2
High [1] - 232:12
Hilton [1] - 317:8
historic [1] - 264:21
hold [4] - 215:4;
 262:14; 269:7; 270:21
holiday [7] - 280:24;
 287:3, 6, 16; 288:19,
 21
Holst [10] - 139:6;
 244:1, 8, 16; 245:6;
 248:14; 250:5; 256:17;
 259:2, 24
Holtz [1] - 267:4
home [12] - 181:25;
 182:1; 183:3, 19-21;
 307:3; 308:21; 309:17;
 319:8, 10
Honor [109] - 138:10,
 16; 139:12, 16; 143:20;
 144:22, 25; 146:10;
 148:4; 149:18; 151:2;
 158:17; 159:16; 160:5;
 163:23; 164:23; 167:15;
 171:8; 172:13; 173:15;
 174:7; 175:4, 21;
 176:1; 177:14; 180:12;
 182:20; 184:3; 186:8,
 24; 187:17; 188:4, 8;
 189:3, 14; 190:11, 24;
 191:3; 192:15; 193:15;
 195:11; 196:9; 197:19;
 199:19, 25; 211:16;

214:1; 215:12; 216:7;
 219:2, 7; 220:4;
 222:10; 223:22; 224:20;
 227:22; 228:7, 9, 21;
 229:17, 19; 233:10;
 235:21; 236:20; 242:21;
 243:10; 245:4; 248:7;
 251:17; 253:21; 254:2;
 255:11, 24; 256:3, 13;
 259:14; 260:7; 261:1,
 19; 262:4; 268:10;
 270:5, 14; 271:25;
 274:14; 276:23; 277:18;
 278:8; 279:3; 280:10;
 283:18; 287:11, 21, 25;
 288:2; 289:1; 297:8;
 298:2, 21; 299:4;
 305:1, 15; 306:8, 11;
 308:13; 313:19; 320:6,
 17; 321:10
Honor's [1] - 180:4
HONORABLE [1] - 136:11
hope [2] - 173:14;
 231:8
hot [2] - 311:24; 313:4
hour [1] - 143:6
house [10] - 196:1;
 259:24; 307:19;
 308:2-4; 310:7; 311:11,
 13, 19
houses [3] - 149:21;
 151:9, 12
hugs [1] - 154:6
hung [1] - 172:3
husband [4] - 307:22;
 313:5; 317:25; 318:4
hyphen [1] - 244:9

I

idea [3] - 155:23;
 313:21; 316:24
identification [5] -
 176:5; 213:6; 235:14;
 246:16; 280:2
Identification [1] -
 193:8
identified [4] -
 180:2; 190:13; 199:12;
 248:16
identify [7] - 189:24;
 193:9; 195:12; 196:18;
 235:14; 291:4; 308:2
ignorance [1] - 261:9
illegible [1] - 256:21
imaginary [6] -
 153:10; 163:2, 4;
 165:5, 13

imagination [1] -
 163:5
imagine [3] - 157:22;
 165:6; 168:20
immaterial [1] -
 238:19
immediately [1] -
 302:9
impact [8] - 171:12;
 194:17; 236:4, 10;
 253:16; 255:1; 272:16;
 310:1
impacted [2] - 312:5
implicates [1] - 312:4
implied [1] - 234:4
importance [1] -
 309:13
impose [1] - 193:5
impossible [2] -
 147:4; 260:13
impression [3] -
 191:11; 292:16
inaccurate [1] -
 153:20
INC [1] - 136:4
inch [13] - 208:16;
 226:21; 247:19; 248:17;
 249:2; 250:22; 253:4,
 15; 255:8; 256:24;
 258:21; 260:3
inches [4] - 163:9;
 164:4; 165:6; 208:17
includes [5] - 158:25;
 159:14; 247:14; 259:17;
 298:19
income [1] - 183:22
inconsistent [1] -
 259:8
Incorporated [1] -
 190:2
incorrect [1] - 147:6
incumbent [1] - 245:22
indeed [2] - 180:9;
 303:14
indemnity [1] - 215:4
INDEX [1] - 322:1
indicate [5] - 142:24;
 143:6; 184:18; 202:23;
 236:24
indicated [5] -
 182:13; 193:1; 203:7,
 14; 245:20
indicates [2] -
 201:16; 218:3
indicating [2] -
 150:10; 186:21

162:11
indicating) [3] -
 149:24; 187:1; 308:23
indication [2] -
 202:2; 235:18
individual [5] -
 170:16, 19; 171:11;
 240:7; 263:22
individually [4] -
 170:1; 171:6; 243:13;
 266:2
individuals [1] -
 283:24
information [7] -
 166:20, 23; 171:19;
 270:1; 274:1; 308:19
informative [1] -
 301:19
informing [1] - 211:2
infringement [1] -
 255:20
infringements [1] -
 255:15
inhibit [1] - 256:24
initial [2] - 140:16;
 293:14
initiating [1] -
 171:16
injunction [5] -
 161:3; 177:8, 19;
 205:17; 210:18
injury [1] - 256:20
innocuous [1] - 273:25
inside [1] - 181:20
inspection [1] -
 200:22
inspector [1] - 247:7
install [1] - 209:16
installation [2] -
 200:23; 245:22
installed [3] - 195:1;
 245:23; 259:5
instance [2] - 174:16;
 183:14
instances [1] - 227:5
instead [1] - 164:19
institution [2] -
 263:4
institutions [1] -
 265:20
intend [7] - 151:15;
 154:18; 162:18, 22;
 216:16; 289:18
intendment [1] - 194:3
INTENDMENT [1] - 194:3
intends [1] - 197:11

<p>intent [4] - 245:15; 252:23; 271:18, 20</p> <p>intentions [1] - 251:3</p> <p>interested [1] - 271:7</p> <p>internal [1] - 202:16</p> <p>international [1] - 263:24</p> <p>interpret [1] - 237:24</p> <p>interpretation [1] - 159:23</p> <p>interviews [1] - 143:1</p> <p>introduce [1] - 139:2</p> <p>introduced [1] - 304:20</p> <p>introduction [1] - 298:24</p> <p>invoking [1] - 270:6</p> <p>involved [2] - 216:18; 261:22</p> <p>involvement [4] - 237:11; 238:3, 8; 239:6</p> <p>irrelevant [4] - 233:6; 234:15; 236:18; 258:24</p> <p>Island [9] - 162:6, 10, 14-15, 19, 22; 163:1; 195:7</p> <p>Islip [2] - 136:6; 137:6</p> <p>Israel [1] - 305:16</p> <p>issue [15] - 144:9; 166:21; 197:11; 211:9; 232:25; 233:17, 19; 245:21; 265:10, 18; 266:6; 284:1; 285:16; 309:22; 320:2</p> <p>issued [1] - 271:21</p> <p>issues [7] - 138:17; 217:16; 261:3, 17; 266:5; 278:13; 285:25</p> <p>issuing [1] - 194:18</p> <p>item [5] - 224:11; 254:20; 259:18</p> <p>itself [4] - 142:15; 165:15; 200:1; 236:1</p>	<p>JESSIE [1] - 136:16</p> <p>Jessup [8] - 153:8, 10-12, 15, 17</p> <p>Jewish [15] - 142:20; 151:4, 11; 152:22; 158:21; 159:6, 25; 160:6; 161:16; 163:16; 177:22; 178:6, 12; 298:16; 318:23</p> <p>Jews [1] - 206:11</p> <p>Jo [2] - 156:22; 298:9</p> <p>Joan [3] - 156:23; 157:8; 298:10</p> <p>job [2] - 139:7; 295:18</p> <p>Joe [2] - 138:1; 139:18</p> <p>john's [1] - 307:15</p> <p>join [3] - 309:4, 6, 11</p> <p>joined [4] - 313:23; 314:5; 321:2</p> <p>joint [5] - 203:7, 14, 18; 204:4, 11</p> <p>jointly [1] - 203:25</p> <p>JOSHUA [1] - 136:17</p> <p>Jr [1] - 138:11</p> <p>JR [1] - 136:20</p> <p>JUDGE [1] - 136:11</p> <p>Judge [12] - 139:19; 149:3, 14; 150:21; 155:13; 161:7, 12; 164:5; 166:5; 238:20; 250:10; 304:10</p> <p>judgment [1] - 294:12</p> <p>judicial [1] - 159:20</p> <p>June [7] - 136:8; 199:7; 220:14; 221:1, 4, 25; 321:17</p> <p>jurisdiction [3] - 158:25; 159:14; 298:19</p> <p>jury [2] - 142:5; 171:4</p> <p>justice [3] - 169:14; 257:9; 263:21</p> <p>justifiable [1] - 261:12</p>	<p>210:14; 211:13; 248:4; 254:5; 260:9; 304:13; 307:17; 314:5</p> <p>knowing [1] - 303:18</p> <p>knowledge [16] - 161:14; 170:4, 13-14; 171:3; 173:1; 178:15; 209:12; 250:6; 252:8, 14; 266:11, 18, 20; 285:7; 312:18</p> <p>known [2] - 160:14; 164:25</p> <p>knows [10] - 172:12; 178:20; 182:25; 238:19; 252:17; 278:10-12; 282:7; 316:21</p>	<p>Laws [16] - 160:1; 246:1; 253:20; 257:10, 16; 276:19; 277:9; 278:24; 279:5, 18, 21; 284:12; 296:23; 299:13; 305:5</p> <p>Lawsuit [7] - 147:22; 157:14; 171:17; 194:24; 212:10; 285:22; 286:1</p> <p>Lawyer [6] - 155:22; 156:14; 157:23; 301:11; 320:7, 10</p> <p>lawyers [4] - 139:10; 160:13; 261:17</p> <p>Lay [5] - 145:3; 247:9; 279:4, 6, 9</p> <p>Lead [1] - 256:22</p> <p>Leaders [1] - 297:4</p> <p>Leading [2] - 225:20; 287:11</p> <p>League [1] - 173:12</p> <p>lean [2] - 182:13, 22</p> <p>leaning [1] - 165:9</p> <p>Learn [2] - 285:1; 301:20</p> <p>learned [2] - 285:9, 12</p> <p>learning [1] - 263:19</p> <p>least [4] - 205:11; 213:15; 214:21; 250:16</p> <p>leave [5] - 181:18; 182:9, 11; 236:6; 312:1</p> <p>lechi [52] - 163:10, 16; 164:6, 9, 14, 17, 20; 178:8; 208:20, 23; 209:13; 210:3, 7, 14; 211:13; 217:5, 17; 224:10, 15, 17; 226:21; 227:12; 229:1, 4, 8, 12, 14; 230:4, 7; 240:2; 247:20; 248:17; 249:2; 252:3, 6, 15; 253:16; 256:24; 257:2, 7, 12, 20; 258:21; 260:3; 266:14; 267:7; 320:21; 321:5</p> <p>lechis [67] - 145:16; 146:3, 21, 25; 147:2, 6; 150:2-5, 8-9; 154:1; 161:19; 163:8, 20-21; 164:1, 4; 172:19; 174:4, 16; 178:1, 3; 184:9, 20, 24; 185:25; 186:6; 192:3; 193:3, 20; 194:2, 25; 197:7, 12; 200:19, 23; 209:3, 8, 17; 211:3; 215:2, 19; 217:19, 21-22; 225:18, 24; 226:1, 24;</p>
<p style="text-align: center;">J</p> <p>Jamaica [3] - 307:1; 318:7, 14</p> <p>James [1] - 298:9</p> <p>January [2] - 262:13, 21</p> <p>JASPAN [1] - 137:1</p> <p>Jaspan [1] - 138:8</p> <p>Jeltje [2] - 138:11; 179:8</p>	<p style="text-align: center;">K</p> <p>Kametler [2] - 291:9; 298:10</p> <p>KAMETLER [1] - 298:10</p> <p>Kathy [1] - 242:1</p> <p>keep [2] - 238:13; 315:2</p> <p>keeping [1] - 242:22</p> <p>kept [1] - 315:5</p> <p>key [1] - 181:18</p> <p>kind [9] - 155:10</p>	<p style="text-align: center;">L</p> <p>L-A-U-B-E [1] - 231:18</p> <p>labeled [2] - 154:10, 12</p> <p>Lack [1] - 159:25</p> <p>landlocked [1] - 311:18</p> <p>lands [1] - 312:1</p> <p>Lane [8] - 153:8, 10-12, 15, 17, 19</p> <p>language [1] - 173:25</p> <p>large [1] - 304:22</p> <p>larger [5] - 164:17; 229:1; 277:2, 5; 307:6</p> <p>last [25] - 143:23; 146:5, 13; 156:24; 157:10; 163:7; 166:11; 172:16; 180:3; 182:8; 187:9; 190:7; 191:22; 194:12; 210:17, 21; 214:7; 215:7; 231:17; 286:22; 290:10; 305:16; 306:12; 320:8</p> <p>Laube [7] - 231:4, 18, 23; 234:4, 12; 236:4; 237:10</p> <p>laughter [1] - 181:19</p> <p>Law [1] - 136:22</p> <p>law [43] - 151:4, 11; 152:22; 158:21; 159:6; 160:1, 6; 161:17; 163:17; 168:17; 177:7, 10, 22; 182:12; 193:25; 194:6; 218:20; 245:11; 250:6, 9; 251:10; 253:8; 257:13, 16, 21; 258:6; 267:5, 20; 282:7; 298:16; 307:11, 14-15, 17-18; 317:9;</p>	
<p><i>OWEN WICKER, RPR</i> OFFICIAL COURT REPORTER</p>			

227:4, 6, 15, 18;
 245:13, 22; 247:3;
 253:4; 258:4; 267:21;
 283:15; 287:17; 313:25;
 314:1
led [2] - 226:4
leeway [1] - 160:14
left [20] - 151:25;
 152:7-9, 21; 154:14;
 175:15; 181:19; 186:22;
 225:9; 227:13; 248:15;
 263:1; 294:22, 24;
 306:9; 319:16; 320:10
left-hand [2] -
 294:22, 24
legal [9] - 178:6;
 195:1; 217:16; 218:25;
 247:24; 277:14; 278:13;
 305:4
legally [1] - 194:6
legislative [5] -
 270:5; 271:18, 20;
 274:21
legislator [2] -
 270:7; 271:21
legislature [2] -
 232:18; 275:1
lengthy [1] - 313:4
LEO [1] - 136:25
LEONARD [1] - 136:11
less [4] - 160:18;
 201:6; 224:25; 319:25
lest [1] - 246:2
letter [56] - 158:1,
 4-5, 9; 160:24; 174:20,
 24; 175:10; 176:5,
 10-11; 190:1, 17, 25;
 191:11, 18; 192:12;
 193:11, 20; 194:1, 14,
 16; 196:21, 25; 197:25;
 198:3, 7; 207:6;
 211:25; 212:3, 5-6, 9;
 213:19; 245:6, 13;
 246:6, 11; 247:7;
 251:22; 252:1, 5, 12;
 264:6; 291:5, 11, 13;
 292:2; 293:5, 11, 15;
 298:8, 12; 301:22;
 304:24
letters [1] - 157:25
Levan [6] - 156:23;
 157:8; 291:8; 294:18,
 25; 298:10
liable [1] - 170:20
Library [1] - 319:16
Liccione [1] - 226:11
LICCIONE [111] -
 137:2; 138:4, 7; 143:9,

17, 20; 144:5, 17, 25;
 145:3; 167:22; 168:24;
 169:24; 170:24; 171:8,
 10, 14; 172:14; 173:4,
 15, 17; 174:7, 14;
 175:5, 7, 15, 20;
 176:3, 15, 21; 177:6,
 16-17; 179:6; 180:3, 6,
 12, 18, 25; 182:21;
 183:25; 190:4, 9, 23;
 192:6, 12; 194:11, 20;
 211:22; 213:23; 214:1,
 5; 215:11; 216:19, 22;
 219:3, 7; 223:19, 22;
 224:20; 229:17, 19, 22;
 230:11; 233:10; 247:5,
 22; 249:3, 13; 250:12,
 24; 251:17; 252:7, 16;
 255:24; 256:5, 8, 15;
 257:23; 258:23; 259:14,
 20, 22; 260:5; 262:7;
 267:1, 8, 13, 23;
 268:10; 287:25; 289:11;
 306:11; 308:13; 310:25;
 311:5; 312:9; 317:1, 3,
 6; 318:21; 319:19, 23;
 320:2, 5; 322:7, 12,
 15, 21; 323:7
Liccione's [1] - 139:5
license [11] - 181:20;
 197:8; 203:6; 219:9,
 11, 13; 220:12; 245:21;
 281:15; 282:2; 286:16
licensee [4] - 199:11;
 218:3; 281:16; 286:17
licensee's [1] -
 226:17
licenses [6] - 144:9,
 14; 194:18; 197:11;
 283:7
licensing [1] - 199:2
licensor [2] - 281:16;
 286:17
life [7] - 254:17, 20,
 22; 255:2, 15, 21;
 296:5
lights [2] - 257:25
likely [1] - 186:20
limit [3] - 187:10;
 278:14; 279:13
limited [2] - 185:8;
 187:8
limiting [1] - 250:7
line [15] - 150:15;
 152:14; 153:1, 10, 18;
 154:5, 14; 160:5;
 161:5; 165:5, 11;
 186:21, 23; 187:3
lines [1]

LIPA [10] - 143:8, 23;
 144:9, 16, 21; 203:20;
 204:19; 205:3; 241:22
list [11] - 150:4;
 186:2, 7, 11; 187:25;
 203:25; 204:3, 9-10,
 14; 289:21
listed [8] - 163:9;
 180:9, 19; 186:22;
 205:5; 289:24; 290:1
listen [4] - 158:9;
 260:25; 294:12; 310:21
listened [1] - 296:4
listing [2] - 185:24;
 187:13
lists [1] - 208:12
literal [1] - 177:24
literally [1] - 143:5
literature [3] -
 142:17; 143:1; 299:23
litigant's [1] -
 159:22
litigate [1] - 173:5
litigation [6] -
 141:15; 212:13; 215:15,
 18; 219:21; 248:20
live [3] - 232:1, 5, 7
lived [3] - 232:3;
 308:17; 311:10
lives [1] - 307:21
living [1] - 237:10
LLP [4] - 136:14, 19,
 23; 137:1
local [6] - 160:1;
 233:22, 25; 235:11;
 246:1; 265:9
located [4] - 155:6;
 159:3; 308:3
look [37] - 150:20;
 155:16; 180:1, 7;
 197:4, 24; 201:7, 11,
 20; 206:22; 207:14;
 208:19, 23-24; 218:1;
 220:9; 221:22; 223:5,
 9; 224:3, 11; 248:14;
 249:8; 250:1; 256:17;
 259:2; 264:13; 270:21;
 281:4; 286:3, 9; 287:2;
 295:19; 298:5, 11
looked [2] - 219:21;
 264:2
looking [12] - 149:12;
 195:16; 212:5; 225:12;
 259:25; 264:10, 20, 25;
 265:3; 270:23, 25;
 271:9
 OWEN WICKER, RPR - 164:6
lines [1]

loose [1] - 207:13
lost [4] - 241:7, 11,
 14; 304:13
Loud [1] - 173:15
LUISE [1] - 136:16
lunch [2] - 224:24;
 228:20
Luncheon [1] - 230:16

M
ma'am [6] - 167:24;
 170:2, 18; 176:13, 25;
 321:1
mail [2] - 243:4, 8
mails [8] - 265:11-13,
 15, 17, 25; 266:1, 5
Main [1] - 238:25
mainland [1] - 153:13
major [3] - 192:23;
 304:23; 312:4
majority [3] - 272:10;
 273:21; 284:12
man [2] - 156:24; 191:3
MANGES [1] - 136:14
Manhattan [3] - 183:5,
 7, 17
manifest [1] - 142:15
map [25] - 145:10, 22;
 147:18; 148:5, 13;
 149:9, 15; 150:1, 3, 5;
 151:25; 153:20; 155:11;
 156:1, 3-4, 6; 162:9;
 186:15; 300:7; 307:24;
 308:2, 10, 21
maps [1] - 153:6
March [1] - 156:18
MARCI [1] - 136:22
mark [1] - 308:20
marked [12] - 176:4;
 193:7; 194:10; 195:9;
 200:25; 213:6; 220:19;
 226:5; 280:1; 290:24;
 298:6; 307:25
marker [1] - 149:17
markers [2] - 151:16;
 177:23
marketing [1] - 263:1
marking [1] - 178:2
marshal [1] - 239:1
Marvin [1] - 213:3
master's [1] - 263:24
material [6] - 209:7,
 13; 226:1; 282:3, 13;
 283:8
matter [13] - 165:24;
 166:12, 19; 188:12;

<p>196:4, 6-7; 216:19; 238:18; 241:10; 266:23, 25; 298:6</p> <p>matters [2] - 284:8, 12</p> <p>Matthews [1] - 201:8</p> <p>MAUREEN [1] - 137:2</p> <p>Mayor [14] - 140:18, 24; 141:2, 10-11, 19; 156:22; 157:12; 196:23; 236:10; 268:14, 25; 276:25</p> <p>mayor [40] - 141:4, 13; 142:11; 158:6; 159:2; 165:23; 166:2; 232:19, 24; 234:21, 25; 268:21; 269:1, 11; 271:21; 272:2, 6, 11, 13-14, 21; 273:15; 274:8; 275:9-11, 15, 19; 276:18; 277:20; 280:1; 282:6; 283:20, 24; 284:5, 8, 11; 296:8; 297:20</p> <p>mayor's [1] - 142:17</p> <p>McGuinness [1] - 242:2</p> <p>mean [13] - 143:13; 152:8; 153:5; 162:25; 192:10; 198:12; 219:8; 239:19; 257:9; 301:21; 303:22; 304:16; 305:9</p> <p>meaning [2] - 194:3; 245:15</p> <p>meaningless [1] - 246:2</p> <p>means [8] - 165:4; 170:20; 178:25; 203:1, 16, 19, 22</p> <p>meant [4] - 237:2; 249:21; 255:13; 305:14</p> <p>measured [1] - 319:12</p> <p>mechanical [1] - 137:9</p> <p>meet [1] - 316:7</p> <p>meeting [5] - 140:23; 166:20, 23; 274:3; 296:7</p> <p>meetings [2] - 296:3; 317:13</p> <p>member [12] - 169:10; 170:13; 192:9; 309:1, 8, 12, 23; 310:5; 316:10; 317:14</p> <p>members [12] - 169:11, 13; 170:1, 15; 181:11; 191:1; 266:19; 284:5, 17; 312:6, 15; 313:17</p> <p>membership [1] - 157:5</p> <p>memorandum [2] - 177:7, 10</p>	<p>memory [1] - 156:18</p> <p>mental [1] - 263:13</p> <p>mention [2] - 181:1; 265:9</p> <p>mentioned [4] - 164:1; 246:14; 263:15; 305:15</p> <p>merely [1] - 247:23</p> <p>message [4] - 173:14; 179:1, 4; 249:22</p> <p>messages [1] - 257:25</p> <p>met [3] - 159:7; 272:2; 285:24</p> <p>metal [2] - 195:24</p> <p>Michael [3] - 193:12; 212:1; 244:22</p> <p>middle [5] - 180:8, 20; 205:17; 237:23</p> <p>might [6] - 184:11; 250:19; 255:14; 257:3; 258:2; 308:13</p> <p>mike [2] - 231:19; 306:20</p> <p>mile [5] - 155:8; 313:3; 319:11, 25; 320:1</p> <p>Mill [1] - 287:7</p> <p>mind [12] - 142:6; 180:23; 190:21; 248:21; 250:21; 270:7, 10; 271:1; 287:5; 299:24</p> <p>minor [2] - 304:5; 312:4</p> <p>minority [2] - 263:11, 19</p> <p>minute [7] - 157:7; 159:10; 167:15; 234:12; 237:22; 287:21; 300:5</p> <p>minutes [7] - 166:16, 19; 174:19; 188:10; 196:5; 224:23; 279:4</p> <p>miscellaneous [1] - 217:20</p> <p>mischaracterized [1] - 182:19</p> <p>mischaracterizing [1] - 182:16</p> <p>MISHKIN [11] - 136:16; 306:24; 308:20, 25; 309:25; 310:6, 16; 311:8; 313:13; 321:12; 323:5</p> <p>Mishkin [3] - 305:17, 22, 25</p> <p>misleading [2] - 255:7; 259:15</p> <p>mispronounce [1] - 169:16</p>	<p>Miss [1] - 256:14</p> <p>mistaking [1] - 238:20</p> <p>misunderstanding [1] - 184:11</p> <p>mixture [1] - 265:14</p> <p>modification [1] - 146:20</p> <p>moment [7] - 144:22; 191:4; 211:16; 285:12, 14; 298:13</p> <p>Mona [1] - 270:18</p> <p>money [4] - 200:16, 20, 24; 201:5</p> <p>month [1] - 316:17</p> <p>months [3] - 241:15; 242:18; 309:5</p> <p>mooring [3] - 154:17; 168:19, 22</p> <p>moorings [8] - 152:18, 20, 24; 154:2, 17, 19; 168:3, 11</p> <p>Moriches [2] - 153:4; 154:5</p> <p>morning [8] - 155:19, 24; 167:23; 181:22, 24; 239:23; 318:6</p> <p>Morris [2] - 139:24; 272:2</p> <p>most [6] - 138:25; 140:22; 150:6; 183:15; 251:11; 311:16</p> <p>mostly [1] - 263:19</p> <p>mother [3] - 307:23; 309:20; 311:16</p> <p>motion [3] - 272:21, 24; 273:1</p> <p>motorists [1] - 256:19</p> <p>move [15] - 147:10; 171:13; 176:14; 180:13, 22; 213:23; 234:7; 236:17; 241:12; 242:19; 251:19; 274:14; 309:24; 313:12</p> <p>moved [8] - 147:7; 168:22; 192:15; 232:8; 236:14; 237:5; 242:18; 262:25</p> <p>moving [1] - 147:4</p> <p>MR [366] - 138:10, 13, 16, 23; 139:2, 14; 140:2, 9, 11, 15, 25; 141:5, 8, 22, 25; 142:2, 7, 13; 143:21; 144:23; 145:8, 19; 146:9, 14, 18; 147:13, 17; 148:4, 7, 11-12; 151:2, 14;</p>	<p>158:17, 20; 159:16; 160:10, 21; 161:24; 163:23, 25; 164:23; 165:14; 166:15; 167:11, 14, 15, 17; 169:22; 170:22; 172:11; 173:2; 175:4, 25; 176:17; 177:14; 180:14; 182:16, 19; 184:3, 7; 185:3, 7, 11; 186:8, 10, 12, 14; 187:2, 5, 11, 15, 17, 20, 24; 188:2, 4; 189:3, 14, 21; 190:6, 11, 20; 191:2, 6; 192:15; 193:14; 195:11, 19; 196:3, 9, 14; 197:19, 23; 199:18, 25; 200:9; 205:21; 206:20; 210:15; 211:16, 19; 213:24; 216:7, 10, 13; 218:23; 219:2; 220:4; 222:10, 25; 224:8, 23, 25; 225:5, 8, 20; 226:7; 227:7, 19, 21, 23; 228:3, 7, 9, 17, 21; 229:16; 230:9; 231:4, 7, 9, 22; 233:4, 15, 23; 234:7, 11, 15, 18; 235:1, 6, 8, 13, 16-17, 21, 23; 236:2, 4, 8, 11, 13, 18, 20, 24; 237:9, 13, 16, 22, 24; 238:2, 11, 14, 16, 20; 239:2, 8, 11, 14, 16, 19, 25; 240:5, 9, 25; 242:14, 16, 20-21, 25; 243:6, 10, 25; 244:15; 245:4; 246:24; 247:1; 248:13; 249:9; 250:4, 20; 251:7, 20; 252:11, 19; 253:13, 21; 254:18; 255:3, 7; 256:2, 6, 13, 16; 258:3; 259:23; 262:4; 267:3, 18; 268:1, 8, 14, 24; 269:14, 18; 270:4, 13, 16, 20, 24; 271:2, 5, 10, 25; 272:1; 274:12, 14, 16, 20, 25; 276:5, 8, 15, 17, 22, 24; 277:12, 18-19, 24; 278:8, 10, 17, 22; 279:2, 14, 25; 280:10, 12, 14; 281:9, 12, 21, 25; 282:4, 10, 14, 17, 20, 23; 283:2, 4, 9, 12, 17, 19, 23; 284:2; 287:11, 13, 21, 23; 288:2; 289:1, 7, 9, 13, 16, 20, 22, 25;</p>
---	---	--	---

<p>290:3, 14; 293:23, 25; 294:7; 295:12; 297:7, 13, 15; 298:1, 4, 21-22, 25; 299:4, 8; 300:9, 11, 20; 301:2, 9; 303:5, 8, 20; 304:6, 10; 305:11, 14-15, 20, 22; 306:2, 5; 310:2, 12, 23; 311:4; 312:8, 13, 20; 313:16, 19, 22; 316:13, 16, 19, 25; 319:18; 320:6, 12, 14, 16, 20; 321:7, 9, 11; 322:4, 8-11, 13-14, 17-20, 22, 24-25; 323:1-3, 6, 8</p> <p>MS [121] - 138:4, 7; 143:9, 17, 20; 144:5, 17, 25; 145:3; 167:22; 168:24; 169:24; 170:24; 171:8, 10, 14; 172:14; 173:4, 15, 17; 174:7, 14; 175:5, 7, 15, 20; 176:3, 15, 21; 177:6, 16-17; 179:6; 180:3, 6, 12, 18, 25; 182:21; 183:25; 190:4, 9, 23; 192:6, 12; 194:11, 20; 211:22; 213:23; 214:1, 5; 215:11; 216:19, 22; 219:3, 7; 223:19, 22; 224:20; 229:17, 19, 22; 230:11; 233:10; 247:5, 22; 249:3, 13; 250:12, 24; 251:17; 252:7, 16; 255:24; 256:5, 8, 15; 257:23; 258:23; 259:14, 20, 22; 260:5; 262:7; 267:1, 8, 13, 23; 268:10; 287:25; 289:11; 306:8, 11, 24; 308:13, 20, 25; 309:25; 310:6, 16, 25; 311:5, 8; 312:9; 313:13; 317:1, 3, 6; 318:21; 319:19, 23; 320:2, 5; 321:12; 322:7, 12, 15, 21; 323:5, 7</p> <p>multimillion [1] - 215:16</p> <p>municipal [3] - 218:4, 12; 251:2</p> <p>municipalities [1] - 238:22</p> <p>municipality [5] - 159:2, 4; 192:22; 305:6; 307:6</p> <p>must [4] - 158:22; 159:6; 218:19; 298:17</p>	<p style="text-align: center;">N</p> <p>name [22] - 144:22; 156:24; 157:13; 169:16; 189:11; 191:20, 22; 198:17; 231:17; 234:3; 258:22; 290:10; 306:19-21; 308:4, 8, 11; 316:4, 6</p> <p>named [1] - 157:11</p> <p>nameplate [1] - 258:16</p> <p>names [2] - 169:15; 202:4</p> <p>Nations [1] - 264:1</p> <p>natural [5] - 145:14; 146:1; 150:6; 174:11; 315:12</p> <p>nature [4] - 243:5; 249:7; 251:4; 277:16</p> <p>near [2] - 151:25; 287:10</p> <p>nearly [1] - 258:21</p> <p>necessitate [1] - 146:20</p> <p>necessity [2] - 159:25; 226:19</p> <p>need [17] - 160:12; 162:25; 171:5; 196:5; 215:18; 218:16; 225:19; 226:22; 275:23; 276:11; 292:24; 299:17; 300:13, 17-18; 304:21</p> <p>needed [8] - 163:19; 191:12; 226:1, 10; 229:12; 296:2; 299:14; 313:25</p> <p>needs [1] - 263:22</p> <p>neon [1] - 257:25</p> <p>never [24] - 154:23; 161:13, 19; 166:25; 192:24; 198:9, 14; 212:23; 241:25; 247:25; 249:25; 250:1; 251:12; 274:6; 275:5, 10-11; 296:4; 297:23; 304:25; 308:19; 314:2</p> <p>new [13] - 146:21; 192:10; 202:18; 221:7; 222:23; 226:4; 228:25; 229:7, 9; 236:22; 316:18</p> <p>NEW [1] - 136:1</p> <p>New [10] - 136:6, 15; 137:6; 183:22; 202:5; 218:20; 263:2; 288:23; 307:2</p> <p>newspaper [8] - 206:1, 3; 233:22, 25;</p>	<p>19; 265:10; 312:1</p> <p>next [17] - 144:24; 187:7, 23; 189:2; 194:5; 201:11, 20; 204:9, 25; 215:7; 220:7; 231:3; 243:23; 259:16; 268:12; 282:18</p> <p>night [4] - 181:17, 23; 182:2; 313:7</p> <p>nights [1] - 318:4</p> <p>nobody [1] - 315:5</p> <p>nonapplication [1] - 279:23</p> <p>none [1] - 289:2</p> <p>nonilluminated [1] - 260:1</p> <p>nonjury [1] - 171:4</p> <p>nonparty [6] - 138:14, 18-19, 23</p> <p>normal [1] - 200:3</p> <p>North [1] - 202:6</p> <p>north [10] - 146:24; 147:1, 7-8, 10-11; 153:1; 186:23; 187:4</p> <p>north-south [9] - 146:24; 147:1, 7-8, 10-11; 186:23; 187:4</p> <p>northerly [6] - 152:1, 6, 14, 16; 153:7; 161:25</p> <p>northern [1] - 162:3</p> <p>northernmost [1] - 162:4</p> <p>not-for-profit [2] - 263:10; 264:2</p> <p>noted [1] - 138:5</p> <p>nothing [20] - 139:1; 141:18; 143:6; 151:22; 160:1; 168:17, 20; 198:3, 8; 204:5; 250:21; 259:11; 268:8; 281:14; 286:15; 287:23; 305:12, 14; 320:5</p> <p>notified [3] - 165:16, 20; 302:7</p> <p>November [2] - 193:11; 262:11</p> <p>nowadays [2] - 307:13, 23</p> <p>nuisance [1] - 312:5</p> <p>nuisances [1] - 255:14</p> <p>number [28] - 146:23; 152:1; 162:12; 172:19; 174:16; 201:23; 202:12, 16, 18, 21, 25; 203:1; 213:25; 218:9; 224:11;</p>	<p>259:18; 264:20; 265:3; 266:5; 280:6; 307:11; 311:20</p> <p>numerous [5] - 140:22; 142:16; 265:12; 266:5; 319:12</p> <p>NY [4] - 136:15, 20, 24; 137:2</p> <p>nylon [1] - 224:12</p> <p>NYU [1] - 307:12</p> <hr/> <p style="text-align: center;">O</p> <p>Oak [1] - 287:7</p> <p>oath [1] - 304:8</p> <p>object [8] - 143:17; 151:2; 153:23; 228:9; 235:17; 247:8; 313:19; 320:6</p> <p>objected [1] - 273:19</p> <p>objecting [2] - 192:8; 238:13</p> <p>objection [119] - 140:9, 25; 141:22; 143:9; 144:5, 17; 145:1; 146:9; 159:17; 164:23; 167:11; 169:22; 170:22, 25; 172:11; 173:2; 175:4; 176:16; 180:14; 182:16; 186:8, 12; 187:5, 15; 188:2; 190:20, 23; 192:6; 194:11, 20; 195:19; 199:25; 200:9; 205:21; 210:15; 213:24; 216:7, 10, 13; 218:23; 219:2; 220:4; 222:10, 25; 225:20; 226:7; 227:7, 19; 228:7; 230:9; 233:4, 11, 23; 234:15; 235:6; 236:7, 11, 18; 237:13; 238:11; 242:20, 25; 243:6; 247:5, 22; 249:3; 250:12, 24; 252:7, 16; 255:3, 24; 257:23; 258:23; 259:14; 260:5; 267:8, 13, 23; 269:14; 270:2, 4; 271:9; 274:12, 20; 276:5, 15; 277:12, 24; 278:6; 279:2; 281:21; 282:4, 14-15; 283:9; 287:11; 293:23; 294:7; 295:12; 298:21; 299:4; 300:20; 301:9, 12; 303:5, 20; 310:2, 12; 312:8, 13; 316:13, 19; 321:7</p> <p>observance [1] -</p>
--	---	--	--

309:16
observant [2] - 178:12, 16
observe [1] - 309:23
observers [1] - 309:15
obtain [1] - 295:10
obtained [1] - 186:3
obtaining [1] - 218:4
obviously [4] - 160:16; 172:23; 182:4; 314:2
occasion [1] - 275:6
occasions [1] - 319:12
occurred [1] - 301:22
Ocean [3] - 148:18, 21; 202:6
October [8] - 158:7; 183:11; 196:21; 197:5, 14; 232:4; 298:8, 15
OF [3] - 136:1, 7, 10
offer [4] - 190:12; 193:14; 235:16; 297:7
offhand [2] - 273:6; 316:4
office [14] - 183:15, 17; 202:11; 240:10; 241:3, 5; 245:23; 262:12, 21; 265:6; 285:21; 297:14; 308:9; 320:10
official [13] - 158:24; 159:1, 14; 161:8; 191:15; 295:4, 11, 18; 296:21, 23; 298:19; 305:2; 308:4
officially [2] - 154:24; 274:6
officials [3] - 143:3; 198:10; 243:8
often [4] - 196:1; 309:20; 313:6; 318:1
once [1] - 309:10
one [71] - 139:5; 146:12, 15; 149:13, 23; 155:8; 157:25; 159:17; 167:15; 170:12; 180:3; 184:3; 186:20; 187:9; 192:23; 196:10; 198:10; 202:6; 207:14; 208:16; 210:6, 12; 211:8, 16; 212:21; 215:5; 218:10; 220:11; 222:1; 225:10; 228:22; 229:17; 232:19; 233:19; 237:6; 238:13, 25; 247:13, 16; 250:2, 16; 251:4, 6; 252:25; 253:9; 254:1; 255:16, 18; 256:18; 258:16;

260:18; 264:14, 20; 265:3; 269:9; 270:10; 273:7; 277:2; 280:17; 284:8; 287:21; 292:23; 305:24; 309:5, 10; 310:11, 17; 311:10
one-mile-square [1] - 155:8
ones [4] - 164:1; 247:13; 250:1; 317:2
open [3] - 296:13, 16
open/closed [1] - 260:1
opened [2] - 162:8; 242:21
operation [3] - 190:21; 270:8, 10
opinion [17] - 161:2; 215:4; 245:25; 260:15; 271:4, 6, 8; 273:13; 274:11; 275:4, 7; 276:6, 11; 279:9; 284:16; 301:16; 321:4
opponent [1] - 240:22
opportunity [2] - 260:19; 295:6
oppose [16] - 141:15; 269:23; 275:2; 294:6, 11; 295:1, 3, 7, 9, 17, 25; 303:19, 23
opposed [13] - 148:2; 179:12; 181:12; 273:11; 274:9; 275:4, 18; 276:14; 291:14; 292:5; 297:17; 303:17; 304:17
opposing [2] - 300:18; 301:7
opposition [12] - 141:21; 142:10; 143:7; 144:3, 10; 145:5; 273:18, 24; 274:18; 291:20; 302:12; 303:11
orange [1] - 270:16
Orange [2] - 270:18; 271:16
order [13] - 158:21; 163:16; 197:17; 214:23; 215:14; 226:9; 229:11; 241:17; 250:15; 296:2; 298:16; 304:22
ordinance [28] - 171:22; 193:1; 219:19, 24; 239:10, 16, 18; 240:1; 246:8, 12, 14, 16; 248:5; 250:14; 253:20; 254:5, 21, 25; 257:5, 13; 264:15; 267:11, 16; 268:14;

272:18; 278:12; 282:6
ordinances [10] - 171:24; 253:8, 19; 257:8, 10; 276:19; 277:9, 22; 278:11, 24
ordinary [1] - 222:23
organization [6] - 147:25; 154:18; 162:18; 263:10; 313:25; 314:6
original [2] - 155:16; 277:3
originally [1] - 273:25
orthodox [6] - 178:12, 19, 23; 206:11; 234:5; 237:3
otherwise [2] - 281:18; 286:20
ought [1] - 216:17
ourselves [1] - 254:6
outline [10] - 145:12, 16; 150:9, 12; 154:15; 155:6, 8, 12; 316:12
outlined [1] - 156:5
outlines [2] - 145:10, 12
outlining [1] - 145:17
outside [11] - 216:9; 256:22; 295:5, 11; 297:3; 309:16; 311:24; 312:1, 3; 313:4; 316:24
overhead [3] - 145:15; 146:2; 174:12
overruled [34] - 140:13; 142:8; 144:8; 145:6; 146:16; 151:5; 160:8; 167:12; 171:1; 192:7, 19; 200:11; 226:8; 233:12; 235:7; 237:14; 238:17; 247:10; 250:13, 25; 255:10; 257:24; 267:9, 14, 25; 269:15; 282:9; 283:10; 293:24; 295:13; 300:21; 303:6, 21; 312:10
overruling [1] - 301:13
OWEN [1] - 137:5
own [14] - 142:17; 194:24; 197:10; 237:21; 247:8; 270:10; 271:15, 17, 19; 284:16; 287:5; 299:13; 308:19; 312:18
owned [14] - 168:12; 203:20, 25; 204:1, 4, 11, 18-19; 205:1, 3, 6
owner [2] - 168:14;

ownership [6] - 203:7, 14, 16, 18
owns [2] - 195:18; 203:17
P
P-E-S-H-K-U-R [1] - 210:5
P-O-L-L-A-C-K [1] - 306:22
page [50] - 158:9; 175:2; 176:22; 180:7; 188:14; 193:22, 24; 201:7, 11-12, 17, 20-21, 23; 202:4; 203:11; 204:5, 9-10, 25; 208:7; 212:16; 213:14; 214:20; 221:22; 222:2; 233:22; 245:10; 246:19, 24; 249:1; 252:22; 258:8, 13; 259:16; 264:13; 280:3, 7, 11-12; 281:4, 7-8, 13; 286:10; 287:2; 291:2
pages [1] - 250:17
paid [2] - 216:18; 223:24
painted [1] - 208:17
palpable [1] - 236:21
papers [2] - 158:15; 235:11
paperwork [1] - 241:21
parade [4] - 238:4; 239:1, 4; 242:10
paragraph [22] - 172:2; 173:18; 175:2; 176:22; 193:23; 194:5; 197:4; 199:10, 17; 212:17; 213:14; 214:20; 215:8; 223:5; 245:10; 246:9; 283:1, 6; 286:9, 11; 302:11
paragraphs [1] - 245:19
parallel [2] - 153:8; 154:8
park [1] - 152:19
parking [1] - 181:18
part [27] - 149:1; 151:13; 152:21; 163:2; 168:2; 175:21; 178:1; 194:12; 201:14, 17, 19, 25; 205:14; 214:5; 222:4; 228:10; 263:3; 264:1; 270:16; 273:14; 283:19; 284:6; 302:15;

307:6; 308:7 particular [17] - 144:18; 155:17; 159:21; 174:16; 184:14; 190:22; 200:15; 217:11, 17; 236:25; 248:7; 250:2; 252:14; 267:5, 20 particularly [1] - 178:6 parties [5] - 205:6; 281:17; 282:3, 12; 286:19 partner [2] - 138:7, 11 parts [1] - 251:24 party [2] - 138:17; 192:21 passed [1] - 284:12 past [3] - 173:11; 187:4; 316:17 Patchogue [1] - 202:11 Patrick's [6] - 238:4, 7; 241:16; 242:5, 10 patron [3] - 179:15, 19; 180:9 Patterson [1] - 314:12 pause [4] - 191:7; 211:17; 213:11; 221:20 pavement [1] - 320:1 pay [4] - 183:19, 21-22; 288:16 paying [1] - 216:12 peacekeeping [1] - 264:1 pedestrian [1] - 264:21 pedestrians [1] - 256:19 penalties [2] - 193:5; 194:7 peninsula [2] - 152:9, 21 people [10] - 138:25; 142:19; 144:18; 233:19; 234:2; 239:21; 273:21; 279:7; 289:25; 321:5 performance [1] - 240:22 perhaps [1] - 153:5 perimeter [2] - 153:21, 24 period [5] - 155:8; 194:22; 202:5; 217:19; 222:18 periods [1] - 183:8 permanent [3] - 168:19; 242:11 permission [16] -	162:25; 163:5; 168:14; 197:10; 218:4; 241:23; 283:14; 296:2; 300:14, 18; 301:7; 314:7, 10, 13-14, 19 permit [5] - 197:11; 215:2; 241:22; 245:21; 280:23 permits [2] - 224:12; 259:7 permitted [4] - 178:17; 182:23; 194:25; 319:4 person [5] - 157:11; 192:8; 260:13; 275:15; 311:2 person's [1] - 198:17 personal [8] - 273:13; 275:4, 7; 276:6; 284:16; 301:16; 311:20; 315:10 personally [11] - 171:18, 21; 181:15; 270:2; 275:18; 278:10; 291:22; 294:5; 317:21 perusing [2] - 154:11; 302:1 perusing) [1] - 246:18 Peshkur [1] - 210:5 Peter [2] - 196:23 phone [2] - 243:2, 8 phonetic [1] - 156:23 physical [1] - 159:5 physically [1] - 150:20 pick [1] - 312:2 picture [4] - 163:21; 195:12; 261:23; 262:1 pictures [2] - 261:21, 24 piece [5] - 149:11, 23; 164:5; 255:8 pieces [2] - 243:4, 8 pipe [1] - 226:9 place [12] - 147:9; 152:10; 154:18; 166:24; 178:12, 15; 254:6; 258:22; 278:2; 280:24; 299:6; 319:3 Place [1] - 307:1 placed [2] - 285:15; 287:6 placement [5] - 193:20; 217:16; 253:4; 254:19; 267:7 placing [2] - 253:15; 256:23	plaintiff [4] - 170:10; 235:14; 285:25; 288:1 Plaintiff [2] - 297:10; 323:13 Plaintiff's [3] - 180:2; 184:13; 185:18 Plaintiffs [2] - 136:5, 14 plaintiffs [8] - 200:7; 235:20; 243:25; 268:14; 285:20; 290:1, 3; 299:17 plaintiffs' [1] - 289:17 Plaintiffs' [34] - 189:23; 190:15; 193:8, 17; 194:9; 195:10; 196:15; 197:24; 198:21; 199:18; 201:1; 206:22; 207:9, 11; 208:8; 209:2; 210:8; 211:4; 212:2, 4; 216:25; 220:9, 11; 224:8; 227:13; 228:5, 14, 24; 246:15; 280:2; 290:25; 307:25; 323:11 plan [2] - 277:1; 316:5 planning [1] - 238:3 plans [1] - 212:18 plastic [2] - 164:19; 250:22 play [1] - 145:17 Plaza [2] - 137:1, 6 pleasing [1] - 264:18 point [30] - 149:14; 152:17; 153:7, 19; 154:1, 8; 156:1; 162:9; 165:12; 169:17; 186:15; 193:22; 202:24; 212:25; 232:19; 242:17; 248:21; 255:18; 265:6; 267:5; 276:18; 277:8; 278:23; 292:11, 15; 294:8; 295:24; 301:19; 304:18 pointed [3] - 226:11; 250:7; 267:19 pointing [2] - 152:11 points [1] - 155:13 pole [40] - 165:9, 12; 178:6; 185:19; 193:21; 194:6; 195:16, 25; 196:2; 198:23; 202:17; 203:4, 10; 205:12, 18; 219:10, 16; 220:12; 224:18; 226:15, 25; 230:4; 238:25; 248:17; 256:24;	259:13, 18, 25; 280:19; 286:4; 302:3, 11 poles [74] - 146:21, 23, 25; 147:1, 5, 8, 17 11; 163:18, 21; 172:3; 174:4; 184:19, 23; 185:24; 186:5, 16; 187:13, 25; 192:4; 193:3; 195:17, 23; 197:7, 12; 200:22; 203:7, 13, 17, 20, 25; 204:3, 9-10, 18-19; 205:1, 5; 215:19; 218:7; 226:20, 24; 227:6, 11; 230:7; 237:12; 238:1, 9; 239:13; 242:12; 243:18; 249:25; 253:4; 257:17; 258:24; 280:25; 281:3, 19; 282:3, 13; 283:8, 15; 286:20, 23, 25; 287:5, 8, 10, 14, 17; 293:20 police [1] - 269:9 policies [1] - 253:8 political [1] - 243:14 Pollack [8] - 306:2, 12, 22; 308:20; 309:1, 13; 311:9; 320:21 POLLACK [1] - 306:8 portion [1] - 304:23 position [59] - 141:19; 142:24; 143:4; 146:14; 190:18; 194:17; 197:13, 16; 198:3, 9; 199:23; 215:17; 232:17; 234:13, 17; 235:2, 4; 236:9; 238:21; 240:1; 243:3; 246:5, 10, 12; 247:3, 23; 253:15; 255:16; 256:23; 257:1; 260:13; 261:14; 262:15; 263:7; 265:24; 266:4; 267:12, 15, 22; 268:4; 269:4, 8; 273:23; 274:9, 17; 275:17, 22; 276:3, 10; 279:5; 294:5, 9-10; 299:21; 302:10; 303:11 positions [1] - 277:14 positive [2] - 206:18; 222:2 possible [4] - 150:11; 158:8; 175:10 Post [1] - 136:24 post [1] - 308:9 posted [1] - 238:18 poster [1] - 248:14
--	--	--	---

<p>potential [2] - 265:7; 281:3</p> <p>power [2] - 283:6; 284:11</p> <p>practice [2] - 182:8; 274:21</p> <p>practiced [1] - 307:11</p> <p>practices [1] - 159:21</p> <p>practicing [1] - 169:2</p> <p>prayer [4] - 182:7, 10, 12; 313:10</p> <p>pre [10] - 223:7, 11, 23; 226:12, 14; 227:3, 10, 14; 229:25; 230:3</p> <p>pre-construction [10] - 223:7, 11, 23; 226:12, 14; 227:3, 10, 14; 229:25; 230:3</p> <p>predates [1] - 239:6</p> <p>preliminary [6] - 177:8, 19; 205:17; 210:18; 275:12</p> <p>premises [2] - 182:10, 12</p> <p>prepare [1] - 156:6</p> <p>prepared [5] - 139:16; 199:1; 201:12; 208:14</p> <p>preparing [2] - 199:3; 245:21</p> <p>present [8] - 141:10; 149:5; 160:15; 199:8; 274:4; 277:1</p> <p>presentation [1] - 273:25</p> <p>presently [5] - 269:1; 276:21; 277:11; 279:1; 290:16</p> <p>presents [1] - 311:20</p> <p>preservative [1] - 208:18</p> <p>preserve [1] - 252:25</p> <p>president [12] - 140:4; 154:21; 169:9; 173:9, 11-12; 174:25; 176:7; 179:23; 238:5, 7; 242:11</p> <p>press [2] - 143:15; 235:5</p> <p>pressing [1] - 313:7</p> <p>presumably [1] - 172:25</p> <p>pretty [1] - 222:21</p> <p>prevent [2] - 182:3, 5</p> <p>prevents [1] - 282:8</p> <p>previous [3] - 192:11; 214:22; 237:19</p> <p>previously [3] -</p>	<p>138:5; 139:22; 189:7</p> <p>primarily [5] - 162:2, 6; 183:10, 13</p> <p>primary [1] - 318:7</p> <p>private [5] - 141:2, 5, 9; 205:6; 264:2</p> <p>privately [3] - 140:18; 168:12</p> <p>privilege [7] - 267:13; 270:6; 274:21; 281:15; 286:17</p> <p>privileged [2] - 267:24; 270:11</p> <p>privileges [2] - 281:17; 286:18</p> <p>probative [2] - 236:25; 237:6</p> <p>problem [2] - 142:6; 272:9</p> <p>problems [2] - 141:14; 272:7</p> <p>procedure [4] - 200:3; 222:23; 241:17, 20</p> <p>procedures [3] - 219:24; 253:8; 302:6</p> <p>proceed [3] - 216:20; 259:16; 271:24</p> <p>proceedings [5] - 191:8; 211:18; 213:12; 221:21; 321:16</p> <p>Proceedings [1] - 137:9</p> <p>process [2] - 205:15; 274:24</p> <p>proclaimed [1] - 275:2</p> <p>proclamation [23] - 156:3, 12, 17; 158:23; 159:13, 25; 160:19; 161:9; 165:19; 167:9; 181:5; 269:13; 284:23; 295:4, 10; 298:17; 299:2, 15, 17, 24; 300:3; 303:1</p> <p>produced [1] - 137:10</p> <p>profit [2] - 263:10; 264:2</p> <p>programs [1] - 263:13</p> <p>prohibit [2] - 257:17; 318:25</p> <p>prohibited [5] - 194:4; 245:16; 258:5; 259:17; 318:16</p> <p>Prohibited [2] - 258:9; 259:3</p> <p>project [2] - 202:12, 24</p> <p>projections [10] <i>WEN WICKER, RPR</i>: 22; 164:17;</p>	<p>239:12</p> <p>promise [1] - 228:18</p> <p>promote [2] - 256:18; 264:17</p> <p>prompted [1] - 236:17</p> <p>pronounce [1] - 191:23</p> <p>proper [5] - 151:3; 187:6; 228:13; 294:12; 299:11</p> <p>property [8] - 163:2; 168:16, 18; 218:12, 22; 256:20; 312:2</p> <p>proposal [4] - 219:20; 277:3; 285:18</p> <p>proposed [6] - 149:4; 150:8; 155:6; 198:4; 199:23; 215:6</p> <p>proposing [1] - 172:20</p> <p>protect [4] - 214:23; 253:1; 254:10; 256:19</p> <p>protections [1] - 197:9</p> <p>protests [1] - 142:2</p> <p>provide [1] - 205:10</p> <p>provided [4] - 194:1; 208:19; 245:12; 248:16</p> <p>provides [1] - 194:7</p> <p>provision [8] - 215:5; 248:22; 276:18; 277:8; 286:10; 287:8; 303:12</p> <p>provisions [7] - 171:15; 217:14; 250:8; 259:6; 260:18; 261:6</p> <p>public [32] - 140:23; 141:2-5, 10-11; 158:24; 159:1, 14; 161:8; 166:20, 23; 216:19; 218:7; 253:1, 5, 17, 24; 254:10; 263:25; 271:21; 274:11; 275:17, 22-23, 25; 276:11; 295:18; 298:19; 299:21</p> <p>public's [1] - 294:5</p> <p>publicly [10] - 140:18; 142:24; 168:11; 273:11; 275:2, 21; 291:14, 19; 292:5; 300:5</p> <p>purchase [1] - 319:8</p> <p>purchased [1] - 310:7</p> <p>purpose [3] - 168:21; 252:23; 316:21</p> <p>purposes [7] - 145:18; 178:4; 252:25; 256:18; 264:14, 20; 265:3</p> <p>pursuant [5] - 144:10;</p>	<p>197:8</p> <p>pursued [1] - 263:24</p> <p>purview [1] - 265:21</p> <p>push [3] - 178:13, 17; 18 179:5</p> <p>pushed [1] - 320:3</p> <p>put [51] - 146:21; 151:16, 22; 155:22; 161:4; 162:18, 22; 166:2, 10, 12, 20; 181:19; 185:25; 189:22; 193:7; 195:9; 196:15; 219:11; 227:3; 235:15, 20; 239:17, 21-22; 241:16, 18; 243:12, 15-16, 19; 246:15; 252:3; 255:23; 273:2, 5; 280:1; 281:1; 282:3, 13; 283:7, 15; 288:4, 10, 18; 292:9; 294:16; 297:6; 314:7, 11, 13; 315:24</p> <p>puts [1] - 200:17</p> <p>putting [4] - 185:25; 294:25; 296:25; 308:22</p> <p>PVC [16] - 164:19; 225:19; 226:3, 9, 21; 227:4; 247:19; 248:17; 249:2; 250:22; 253:4, 15; 254:20, 25; 258:21; 260:3</p>
Q			
			<p>qualify [1] - 254:21</p> <p>quality [6] - 254:16, 20, 22; 255:1, 15, 21</p> <p>quality-of-life [1] - 254:20</p> <p>quarter [1] - 230:13</p> <p>questioned [3] - 179:8; 286:4, 12</p> <p>questioning [4] - 160:5; 247:9; 251:16; 320:7</p> <p>questions [35] - 147:13; 158:11; 167:17, 25; 168:6; 185:3; 188:4, 6; 196:3, 10; 197:20; 211:19; 216:15, 21; 220:8; 223:19; 228:16; 229:16, 23; 239:8; 242:14; 243:10; 262:3; 279:13; 283:17; 288:25; 293:9; 298:1; 300:9; 305:11; 316:25; 320:11; 321:10</p> <p>quick [2] - 167:25; 222:21</p>

<p>quicker [1] - 225:2 quite [5] - 142:11, 14, 21; 265:9; 313:4 Quogue [7] - 136:21; 160:2; 179:9; 196:24; 215:1; 256:1; 320:7 quote [14] - 143:14; 156:12; 158:13, 23; 159:20; 199:11; 226:14; 245:11, 14; 255:17; 286:15, 21</p>	<p>302:20 reasonable [2] - 142:19 reasons [4] - 218:9; 257:9; 313:2 recalling [1] - 243:13 receipt [1] - 260:8 receive [2] - 266:5; 298:12 received [30] - 144:11; 176:19; 180:16; 190:1, 15, 17; 191:3; 193:12, 17; 211:7; 213:18, 21; 214:12; 243:2, 4; 249:6; 251:12; 265:15; 283:14; 297:10; 302:2, 4-5; 323:11-13, 15 receiving [1] - 198:7 recently [4] - 317:23; 320:24; 321:1, 3 recess [4] - 196:7; 230:16; 270:22; 271:12 recognize [1] - 220:22 recollection [3] - 175:13; 221:3; 295:8 reconsider [1] - 215:17 record [12] - 146:8, 11; 161:15; 174:8; 213:13; 214:19; 216:19; 251:24; 278:4, 19; 279:15; 316:14 recorded [2] - 137:9; 146:7 records [3] - 315:2, 6 recross [3] - 185:4; 187:6; 228:13 RECROSS [6] - 185:10; 228:2; 229:21; 322:8, 14 RECROSS-EXAMINATION [6] - 185:10; 228:2; 229:21; 322:8, 14 red [10] - 150:9-11; 152:14; 153:18; 154:5, 13; 186:21, 23; 195:23 redirect [10] - 184:1; 187:9, 13, 21; 188:5; 228:10, 13, 19; 229:24 REDIRECT [10] - 184:6; 225:7; 242:15; 267:2; 300:10; 322:7, 13, 18, 22; 323:3 reelected [2] - 157:10; 290:22 reelection [3]</p>	<p>240:19; 294:2, 4 refer [4] - 161:16; 202:15; 211:25; 247:15 reference [4] - 145:10; 172:2; 193:19; 207:6 referred [7] - 175:3, 8, 22; 177:3, 10; 246:17; 248:9 referring [6] - 161:16; 190:10; 245:3; 247:14; 248:9 refers [1] - 176:22 reflector [1] - 195:23 refresh [2] - 221:3; 295:8 refreshes [1] - 175:13 refused [1] - 144:9 regarding [6] - 190:18; 198:4; 221:12; 247:9; 265:10; 314:13 regardless [1] - 300:3 region [1] - 195:18 regulations [2] - 240:4; 302:6 regulatory [1] - 172:9 reindeer [1] - 172:3 reinforced [1] - 265:18 reiterate [1] - 214:22 rejected [1] - 166:6 related [2] - 243:18; 259:7 relating [1] - 287:15 relevance [4] - 160:6; 236:20; 238:14; 278:12 relevant [5] - 190:22; 238:15; 319:13, 23 religious [22] - 145:18; 161:8, 17; 168:16; 178:3; 236:25; 265:19; 292:18; 295:23; 296:22; 297:1; 299:2, 12, 14; 300:16; 302:15, 17-18, 22; 303:3, 12, 18 relying [1] - 270:12 remain [3] - 231:10; 244:2; 268:16 remains [2] - 246:7, 10 remember [6] - 156:9, 23; 176:10; 211:6; 284:22; 314:22 remembering [1] - 157:13 renew [4] - 159:16; 286:18</p>	<p>renting [3] - 158:23; 159:13; 298:18 repeat [4] - 210:11; 235:10; 279:19; 310:14 rephrase [1] - 141:6 rephrased [1] - 282:20 reply [2] - 266:7 reporter [5] - 146:14; 175:16; 278:5, 20; 279:16 Reporter [1] - 137:5 represent [2] - 195:11; 216:6 representative [2] - 201:17; 211:11 represented [2] - 246:8; 285:6 representing [4] - 167:18; 179:8; 216:2 request [4] - 214:22; 300:2; 302:2, 4 requested [3] - 139:5; 182:14; 226:15 requesting [1] - 299:13 require [3] - 310:10, 17; 311:9 required [13] - 146:25; 163:16; 164:9, 20; 193:2; 197:10; 218:19; 226:15; 227:10; 228:25; 229:8; 230:1; 287:14 requirement [2] - 159:11; 292:20 requirements [6] - 158:13, 21; 159:6; 259:10; 298:16 requires [8] - 199:16; 205:13; 223:7, 11, 23; 276:20; 277:9; 278:24 requiring [1] - 304:19 reside [2] - 183:9; 306:25 residence [4] - 183:5, 7; 259:13; 318:7 residences [1] - 258:24 resident [1] - 183:23 residential [2] - 258:16, 22 residents [5] - 292:13; 294:10, 25; 295:17; 301:20 residents' [1] - 295:19 resolution [7] -</p>
R			
<p>Rabbi [1] - 182:14 rabbi [4] - 315:19, 21; 316:5, 7 rabbinic [2] - 186:3, 5 rabbinical [4] - 172:16; 315:22, 25; 316:2 rabbis [1] - 182:22 races [1] - 243:18 Rail [8] - 162:6, 10, 14-15, 19, 23; 163:1 raincoat [1] - 313:6 raise [2] - 231:10; 244:2 raised [2] - 236:10; 285:25 ran [7] - 235:19; 240:19; 241:5; 273:9; 291:23; 294:4; 297:20 rather [1] - 228:13 RCE [1] - 202:5 read [22] - 158:11; 159:17; 160:12; 191:5; 206:1; 213:13; 214:19; 215:7, 10; 219:18; 236:23; 247:18; 251:24; 259:11, 19; 278:3, 17, 19; 279:14; 282:18 reading [4] - 191:11; 206:3; 259:20; 271:15 reads [1] - 245:10 ready [2] - 158:16 real [1] - 183:19 realize [1] - 248:18 realized [1] - 196:9 really [7] - 241:10; 249:8, 14; 304:23; 309:10; 314:1; 320:24 rear [1] - 181:19 reason [8] - 141:15; 153:5; 163:8, 14; 178:7; 238:13; 288:17;</p>	<p>302:20 reasonable [2] - 142:19 reasons [4] - 218:9; 257:9; 313:2 recalling [1] - 243:13 receipt [1] - 260:8 receive [2] - 266:5; 298:12 received [30] - 144:11; 176:19; 180:16; 190:1, 15, 17; 191:3; 193:12, 17; 211:7; 213:18, 21; 214:12; 243:2, 4; 249:6; 251:12; 265:15; 283:14; 297:10; 302:2, 4-5; 323:11-13, 15 receiving [1] - 198:7 recently [4] - 317:23; 320:24; 321:1, 3 recess [4] - 196:7; 230:16; 270:22; 271:12 recognize [1] - 220:22 recollection [3] - 175:13; 221:3; 295:8 reconsider [1] - 215:17 record [12] - 146:8, 11; 161:15; 174:8; 213:13; 214:19; 216:19; 251:24; 278:4, 19; 279:15; 316:14 recorded [2] - 137:9; 146:7 records [3] - 315:2, 6 recross [3] - 185:4; 187:6; 228:13 RECROSS [6] - 185:10; 228:2; 229:21; 322:8, 14 RECROSS-EXAMINATION [6] - 185:10; 228:2; 229:21; 322:8, 14 red [10] - 150:9-11; 152:14; 153:18; 154:5, 13; 186:21, 23; 195:23 redirect [10] - 184:1; 187:9, 13, 21; 188:5; 228:10, 13, 19; 229:24 REDIRECT [10] - 184:6; 225:7; 242:15; 267:2; 300:10; 322:7, 13, 18, 22; 323:3 reelected [2] - 157:10; 290:22 reelection [3]</p>	<p>240:19; 294:2, 4 refer [4] - 161:16; 202:15; 211:25; 247:15 reference [4] - 145:10; 172:2; 193:19; 207:6 referred [7] - 175:3, 8, 22; 177:3, 10; 246:17; 248:9 referring [6] - 161:16; 190:10; 245:3; 247:14; 248:9 refers [1] - 176:22 reflector [1] - 195:23 refresh [2] - 221:3; 295:8 refreshes [1] - 175:13 refused [1] - 144:9 regarding [6] - 190:18; 198:4; 221:12; 247:9; 265:10; 314:13 regardless [1] - 300:3 region [1] - 195:18 regulations [2] - 240:4; 302:6 regulatory [1] - 172:9 reindeer [1] - 172:3 reinforced [1] - 265:18 reiterate [1] - 214:22 rejected [1] - 166:6 related [2] - 243:18; 259:7 relating [1] - 287:15 relevance [4] - 160:6; 236:20; 238:14; 278:12 relevant [5] - 190:22; 238:15; 319:13, 23 religious [22] - 145:18; 161:8, 17; 168:16; 178:3; 236:25; 265:19; 292:18; 295:23; 296:22; 297:1; 299:2, 12, 14; 300:16; 302:15, 17-18, 22; 303:3, 12, 18 relying [1] - 270:12 remain [3] - 231:10; 244:2; 268:16 remains [2] - 246:7, 10 remember [6] - 156:9, 23; 176:10; 211:6; 284:22; 314:22 remembering [1] - 157:13 renew [4] - 159:16; 286:18</p>	<p>renting [3] - 158:23; 159:13; 298:18 repeat [4] - 210:11; 235:10; 279:19; 310:14 rephrase [1] - 141:6 rephrased [1] - 282:20 reply [2] - 266:7 reporter [5] - 146:14; 175:16; 278:5, 20; 279:16 Reporter [1] - 137:5 represent [2] - 195:11; 216:6 representative [2] - 201:17; 211:11 represented [2] - 246:8; 285:6 representing [4] - 167:18; 179:8; 216:2 request [4] - 214:22; 300:2; 302:2, 4 requested [3] - 139:5; 182:14; 226:15 requesting [1] - 299:13 require [3] - 310:10, 17; 311:9 required [13] - 146:25; 163:16; 164:9, 20; 193:2; 197:10; 218:19; 226:15; 227:10; 228:25; 229:8; 230:1; 287:14 requirement [2] - 159:11; 292:20 requirements [6] - 158:13, 21; 159:6; 259:10; 298:16 requires [8] - 199:16; 205:13; 223:7, 11, 23; 276:20; 277:9; 278:24 requiring [1] - 304:19 reside [2] - 183:9; 306:25 residence [4] - 183:5, 7; 259:13; 318:7 residences [1] - 258:24 resident [1] - 183:23 residential [2] - 258:16, 22 residents [5] - 292:13; 294:10, 25; 295:17; 301:20 residents' [1] - 295:19 resolution [7] -</p>
<p style="text-align: right;">OWEN WICKER, RPR OFFICIAL COURT REPORTER</p>			

166:25; 167:6, 8;
272:22, 24; 274:4
resolutions [2] -
284:11; 317:16
resources [2] - 186:3,
5
respect [29] - 141:19;
142:24; 143:4; 144:2;
146:12; 169:11; 171:21,
23, 25; 174:20; 182:7;
192:12; 193:20; 194:18;
208:3; 217:16; 219:19;
225:25; 226:20; 227:2;
234:13; 240:7; 255:5;
257:5; 266:22; 302:10;
320:2
respective [1] - 259:8
respond [3] - 265:25;
266:1
responded [2] -
212:21, 23
response [5] - 170:8,
11; 247:11; 267:16;
299:22
responsibility [4] -
292:17; 295:22; 296:20,
23
responsible [3] -
194:7; 218:3; 296:25
rest [2] - 242:8;
305:18
restate [1] - 189:11
result [7] - 144:2;
194:9; 215:16; 235:4;
236:9; 237:4; 293:19
resulting [2] -
214:24; 256:20
resume [1] - 139:14
resumed [1] - 139:22
return [1] - 181:23
returned [2] - 222:13,
16
returning [1] - 274:8
review [4] - 171:15,
21; 250:14; 260:19
reviewed [12] -
157:17; 166:16; 169:20;
172:1; 173:18, 24;
174:22; 176:8, 11;
267:11; 268:2, 5
Reynolds [5] - 154:9,
12
Rich [1] - 210:5
right-hand [4] -
280:13; 281:10; 294:23;
295:2
right-of-way [4] -

218:8, 12, 21; 219:12
Rights [1] - 214:25
rights [5] - 237:1;
281:17; 282:12; 286:18;
295:19
rising [1] - 255:5
Road [40] - 148:22,
24-25; 149:1, 9, 11-12,
15, 19-22, 24; 150:2,
4, 17; 151:10; 152:1;
153:13; 162:6, 10,
13-15, 20, 23; 163:1;
184:10, 19, 24; 186:16,
18-19; 188:1; 287:7,
10; 319:15
road [2] - 149:13
ROBERT [2] - 136:15;
137:3
Robert [3] - 138:7;
158:1; 298:9
role [2] - 145:17;
277:22
rope [1] - 224:12
roughly [1] - 154:8
round [3] - 248:17;
253:15; 256:24
route [1] - 319:14
Route [1] - 136:19
RPR [1] - 137:5
Rubinor [3] - 179:12,
15; 180:9
rule [3] - 192:23;
233:24; 301:12
ruled [1] - 143:19
Rules [2] - 236:23;
312:21
rules [3] - 277:9;
289:23; 312:22
ruling [2] - 194:24;
282:16
run [5] - 151:10;
232:19; 240:10; 266:11;
294:2
running [7] - 196:2;
234:20; 275:20; 293:22;
297:12, 14

S

S-O-R-D-I [1] - 191:22
Sabbath [6] - 181:14;
182:9; 309:15, 17;
315:5; 318:17
safe [1] - 178:17
safety [5] - 253:1, 6,
17, 24; 254:13
sale [1] - 243:OWEN WICKER, RPR 24; 283:3,

sanded [1] - 208:17
Santa [1] - 172:2
Sartorius [2] - 196:23
sat [2] - 296:3; 303:22
satisfy [1] - 141:6
Saturday [10] -
181:22, 24; 182:2;
220:16; 221:4, 16;
222:20; 318:3, 5
saw [4] - 166:25;
167:2; 173:24; 243:12
Schechter [2] - 170:9;
309:7
scheduled [1] - 166:23
SCHLENGER [1] - 136:17
SCHLESINGER [1] -
137:1
Schlessinger [1] -
138:8
school [7] - 263:6,
17-18; 307:12; 317:9,
11
School [4] - 136:22;
232:12; 263:16; 317:7
Schwindt [1] - 210:4
SCHWINDT [1] - 210:4
scope [1] - 267:8
season [3] - 288:20
seat [1] - 290:9
seated [3] - 138:3;
231:2; 271:14
second [16] - 158:14;
159:5; 175:2; 176:22;
180:7; 193:22, 24;
197:4; 213:14; 214:19;
241:11; 245:10; 258:25;
263:1
Second [3] - 271:3, 5,
8
section [7] - 252:22;
256:17; 267:6, 20;
278:23; 281:4, 13
Section [2] - 218:1;
226:11
secular [1] - 265:24
see [49] - 149:19;
152:12; 153:15; 155:14,
23; 167:8; 175:13;
176:10; 199:13; 202:4,
7; 204:16, 21; 208:10;
209:4; 221:9, 19;
230:13; 235:22; 247:12,
20; 248:7; 249:4,
13-16, 18; 250:16;
255:1; 258:11; 260:9;
261:9, 11; 264:23;

5; 286:8, 13; 287:2;
320:18; 321:6, 14
seek [5] - 152:23;
193:5; 276:20; 277:10; 20
278:25
seeking [5] -
147:19-21, 25; 155:2
sees [1] - 281:22
selected [1] - 172:25
sell [1] - 251:3
seminal [1] - 173:5
sending [1] - 221:9
sends [2] - 179:1, 4
sense [2] - 179:18
sent [11] - 190:6;
191:18; 194:14; 196:23;
207:7; 221:12, 15;
222:12, 19; 266:9
sentence [4] - 159:17;
213:15; 214:19; 215:7
separate [2] - 181:9;
311:2
separation [1] -
265:23
September [1] - 241:13
seriously [1] - 292:12
serve [2] - 269:1;
290:16
served [6] - 169:20;
231:23; 240:17; 263:25;
269:4; 290:19
serves [2] - 263:11, 18
service [1] - 263:10
session [6] - 182:8;
269:17, 21, 25; 296:8;
301:19
set [3] - 259:9; 314:19
several [8] - 157:21;
232:9; 243:2, 4;
247:15; 248:6; 250:17;
265:19
Shabbos [1] - 315:7
shall [7] - 199:11;
246:1; 259:6; 281:14,
16; 286:16
shawl [4] - 182:7, 10,
12; 313:10
ships [1] - 152:19
shoes [1] - 319:1
shoreline [2] - 154:6,
16
short [3] - 270:22;
305:24; 319:17
shortly [3] - 262:25;
263:2; 274:3
show [18] - 155:5;

164:5; 166:19; 176:4;
180:22; 184:12; 186:19;
198:20; 213:2, 10;
220:19; 237:2; 245:2;
261:5, 21, 24; 290:24;
305:9
showed [1] - 249:10
shown [2] - 247:7;
256:21
shows [3] - 145:22;
204:15; 248:16
side [12] - 148:21;
150:17; 151:10; 160:16;
180:4; 195:25; 196:2;
294:22-24; 295:2, 21
sidebar [3] - 277:25;
278:2, 16
sides [2] - 149:13;
160:14
sidewalks [1] - 319:21
sign [69] - 171:22, 24;
193:25; 194:2; 202:12,
16; 219:19, 24;
239:16-18, 21-22;
240:1-3; 245:11, 14;
246:20; 247:4, 18, 20;
248:1, 8, 11, 22;
249:1, 12, 16, 18;
250:6, 9, 11, 23;
251:10; 253:20; 254:21;
255:17; 257:1, 4, 6,
12-13, 16, 21, 25;
258:2, 5; 259:12, 17,
20, 24; 260:2; 264:8,
14; 267:5, 16, 20;
272:18; 282:6; 291:7;
316:18
signage [1] - 256:21
signal [1] - 249:21
signatories [1] -
190:25
signature [10] -
201:8; 208:7; 221:17;
280:4, 15; 281:6, 8,
11; 291:1
signatures [3] -
286:10; 291:4, 6
signed [12] - 202:3;
206:4; 207:21, 24;
222:12, 24; 228:5;
272:19; 282:1; 291:11,
13; 293:16
significant [5] -
182:17; 237:3; 309:15,
19; 311:14
significantly [2] -
140:23; 311:16
Signs [2] - 258:10;
259:3
signs [27] - 172:9;
237:25; 238:18; 239:10;
240:7; 243:11, 14-16,
19; 247:12; 248:3;
249:8; 250:17; 251:1;
254:8; 255:20, 22;
257:17; 258:14, 24;
259:4, 17; 264:17
similar [2] - 160:19;
215:5
simple [1] - 181:21
simply [2] - 167:9;
299:11
sit [6] - 166:5; 200:6;
250:21; 251:18; 283:13,
24
site [2] - 155:7; 156:4
sitting [2] - 287:16;
316:24
six [1] - 231:7
size [13] - 163:8, 10,
12, 14; 164:9, 14, 20;
209:7, 13; 210:3;
251:4; 252:14
slightly [3] - 162:11;
186:22
smaller [1] - 155:9
Smith [1] - 159:19
Smithtown [1] - 136:20
smooth [1] - 208:17
snowflakes [2] -
288:9, 11
social [2] - 257:9;
263:21
Sokoloff [8] - 141:7;
159:24; 168:1; 175:21;
220:7; 222:8; 242:17;
255:4
SOKOLOFF [155] -
136:23, 25; 138:13;
140:9, 11, 25; 141:22,
25; 142:7; 146:9, 14;
147:17; 148:4, 7,
11-12; 149:25; 151:14;
158:20; 160:10, 21;
161:24; 163:25; 165:14;
166:15; 167:15, 17;
185:4, 7, 11; 186:10,
14; 187:2, 11, 17, 20,
24; 188:4; 190:11, 20;
195:19; 197:23; 199:18;
206:20; 211:16, 19;
225:20; 226:7; 227:7,
19, 23; 228:3, 17;
229:16; 233:4, 23;
234:7, 15; 235:6, 17;
236:11, 18; 237:11; 143:3,
138:9, 139:11; 143:3,
160:1;
OWEN WICKER, RPR
Southampton [63] -
128:9, 129:11; 143:3,
144:1, 145:1, 146:1;
147:1, 7-8, 10-11;
148:21, 23; 149:9;
150:17; 151:10; 186:23;
187:4
South [1] - 319:15
south [14] - 146:24;
147:1, 7-8, 10-11;
148:21, 23; 149:9;
150:17; 151:10; 186:23;
187:4
Sokoloff's [1] - 184:8
someone [6] - 170:19;
192:21; 195:20; 202:17;
210:13; 222:13
sometime [1] - 294:2
sometimes [2] -
183:15; 313:7
somewhere [1] - 150:9
son [2] - 263:1, 3
Sordi [14] - 191:25;
192:1, 16; 193:12;
212:1, 7, 9, 17;
244:22, 24; 252:12;
267:4
Sordi's [3] - 193:19;
251:22; 264:6
sorry [26] - 144:21;
162:12, 14; 167:13;
169:14; 175:20; 177:12;
180:19; 183:6; 185:17;
186:4, 24; 191:6;
234:23; 235:10; 237:24;
245:8; 253:11; 276:23;
277:1; 279:19; 297:13;
304:14; 310:25; 313:14
sorts [1] - 251:1
sought [2] - 167:9;
286:25
South [1] - 319:15
south [14] - 146:24;
147:1, 7-8, 10-11;
148:21, 23; 149:9;
150:17; 151:10; 186:23;
187:4
Southampton [63] -
128:9, 129:11; 143:3,
144:1, 145:1, 146:1;
147:1, 7-8, 10-11;
148:21, 23; 149:9;
150:17; 151:10; 186:23;
187:4
169:7, 13; 171:16;
172:3, 5, 8, 10;
175:16; 180:13; 189:16;
191:15; 192:3, 14;
193:13; 194:14; 197:1;
212:19; 213:7; 214:11;
219:18; 220:20, 22;
224:7; 244:1, 11-12;
245:24; 246:5, 11;
247:3, 21; 249:6;
250:6; 251:10, 12;
252:2; 253:2, 5, 9, 18,
25; 254:8, 14, 23;
255:6, 25; 257:17;
266:12; 267:5; 289:10;
307:7; 308:16; 310:20;
318:23, 25; 323:17
southerly [1] - 187:3
southern [8] - 148:18;
149:8; 150:25; 151:17,
20-21, 23; 184:25
southwestern [1] -
168:2
space [1] - 315:13
speaking [3] - 252:10;
284:16, 19
speaks [4] - 192:21;
200:1; 249:7
specific [2] - 185:17;
291:16
specifically [4] -
211:8; 217:18; 234:4;
250:19
specification [1] -
245:12
specifications [7] -
163:20; 164:17; 194:1;
208:12, 16; 224:15;
227:17
specificity [1] -
248:11
specifics [1] - 314:8
spell [3] - 290:10;
306:19
spelled [1] - 191:22
Spellman [1] - 138:11
SPELLMAN [9] - 136:19;
138:10; 320:12, 14, 16,
20; 321:9; 323:8
spent [2] - 183:15;
311:14
spoken [3] - 141:13;
211:15; 275:22
spokesman [1] - 143:8
spokesperson [2] -
143:11, 13
spot [1] - 226:25
square [4] - 155:8;

<p>258:17, 22; 260:2 St [7] - 238:3, 5, 7; 241:16; 242:5, 10; 307:15 stamp [1] - 280:7 stamped [2] - 280:12; 281:9 stand [7] - 139:15, 22; 228:12; 239:25; 243:9; 271:13; 306:10 standard [5] - 216:9; 217:4; 218:15; 266:7 standing [3] - 231:10; 244:2; 268:16 start [1] - 276:22 started [5] - 138:13; 210:19; 233:18; 269:5 starting [2] - 213:14; 215:8 starts [2] - 207:16; 258:8 Starts [1] - 263:12 state [8] - 159:4; 163:18; 190:23; 265:23; 292:5; 300:24; 305:5, 7 statement [1] - 168:9 statements [4] - 141:10; 271:21; 275:14, 18 STATES [2] - 136:1, 11 States [2] - 136:6; 159:18 station [7] - 162:7, 10, 13, 15, 23 statute [2] - 194:4; 245:15 statutes [1] - 277:23 staves [1] - 208:17 stenography [1] - 137:9 step [9] - 188:7; 230:12; 234:12; 243:20, 22; 268:11; 289:3; 305:13; 321:13 STERN [1] - 136:23 still [5] - 251:21; 264:10; 300:18; 301:7; 303:19 stipulate [1] - 177:14 stood [1] - 274:5 stop [4] - 159:9; 203:9; 256:10 straight [2] - 165:8; 319:17 Street [2] - 238:25; 287:7 street [4] - 154:8, 13;</p>	<p>155:18; 162:13 streets [4] - 155:13, 15, 17; 313:8 streetscape [1] - 265:4 strict [1] - 309:16 strictly [1] - 275:7 strike [5] - 142:6; 174:7; 233:7; 234:7; 253:22 strip [2] - 250:23; 255:1 strongly [2] - 215:14; 235:17 structure [1] - 165:5 structures [16] - 145:14; 146:1; 148:19-21, 25; 150:7, 16, 24; 151:17; 152:5, 16; 154:15, 18; 174:12; 242:11 students [4] - 138:25; 187:8; 188:11; 192:20 studies [1] - 256:21 stuff [1] - 305:2 sub [1] - 219:16 sub-franchise [1] - 219:16 subject [5] - 192:5; 195:15, 20; 197:16; 310:4 sublicense [3] - 218:21; 219:1, 8 submission [2] - 155:2; 181:4 submit [2] - 199:15, 24 submitted [16] - 140:7, 16; 149:2; 155:25; 156:2, 17; 157:25; 165:17; 172:22; 174:20, 24; 177:18; 200:7, 14; 269:12, 16 subpoena [3] - 215:21, 25; 231:23 subpoenaed [1] - 215:23 subscribers [1] - 214:23 subsection [3] - 256:17; 258:17; 260:1 subsequent [2] - 194:15; 243:4 substance [2] - 140:20; 191:24 substantial [1] - 260:20 sue [2] - 170:10</p>	<p>214:14 sued [1] - 170:16 sufficient [2] - 168:21; 271:20 Suffolk [7] - 232:16-18; 270:17; 271:16; 308:17; 318:12 SUGARMAN [200] - 136:15; 138:16, 23; 139:2, 14; 140:2, 15; 141:5, 8; 142:2, 13; 143:21; 144:23; 145:8, 19; 146:10, 18; 147:13; 151:2; 158:17; 159:16; 163:23; 164:23; 167:11; 169:22; 170:22; 172:11; 173:2; 175:4, 25; 176:17; 177:14; 180:14; 182:16, 19; 184:3, 7; 185:3; 186:8, 12; 187:5, 15; 188:2; 189:14, 21; 190:6; 191:2, 6; 192:15; 193:14; 195:11; 196:3, 9, 14; 197:19; 199:25; 200:9; 205:21; 210:15; 213:24; 216:7, 10, 13; 218:23; 219:2; 220:4; 222:10, 25; 224:8, 23, 25; 225:5, 8; 227:21; 228:7, 9, 21; 230:9; 231:4, 7, 9, 22; 233:15; 234:11, 18; 235:1, 8, 13, 16, 21, 23; 236:2, 4, 8, 13, 20, 24; 237:9, 16, 24; 238:2; 239:2, 8; 242:16, 21; 243:10, 25; 244:15; 245:4; 246:24; 247:1; 248:13; 249:9; 250:4, 20; 251:7, 20; 252:11, 19; 253:13, 21; 254:18; 255:4; 256:2, 6, 13, 16; 258:3; 259:23; 262:4; 267:3, 18; 268:1, 8, 14, 24; 269:18; 271:25; 272:1; 274:14, 16, 25; 276:8, 17, 22, 24; 277:18; 278:17, 22; 279:14, 25; 280:10, 12, 14; 281:9, 12, 25; 282:10, 20, 23; 283:2, 4, 12, 17; 287:11; 288:2; 289:1, 7, 9; 290:3, 14; 293:25; 297:7, 13, 15; 298:1, 21; 299:4; 300:11; 301:2; 303:8; 305:11, 15, 22; 306:2,</p>	<p>17, 19-20, 22, 24; 323:1, 3 Sugarman [29] - 158:1, 5, 10; 159:10; 160:19, 22 24; 164:4; 172:23, 25; 173:5, 11; 174:20, 24; 175:3; 176:12; 177:16; 187:12; 189:3; 229:23; 256:5; 266:21; 285:7; 286:3, 11; 298:9, 12, 15; 299:3, 22 Sugarman's [1] - 161:2 suggest [1] - 160:5 suing [3] - 169:25; 171:6, 11 Suite [1] - 137:6 summer [4] - 179:21; 183:10, 13; 307:20 Supervisor [1] - 139:6 supervisor [10] - 170:8, 10; 244:1, 10; 247:6; 253:3, 14; 262:10, 14; 292:23 support [9] - 142:11; 177:8, 19; 234:17; 263:12; 275:24; 276:12 supposed [9] - 155:12, 14; 203:24; 205:11; 214:4; 255:19; 260:10, 14; 279:7 supposedly [1] - 229:9 Supreme [2] - 159:18; 160:3 surprised [3] - 299:20; 300:13; 301:5 surrounding [1] - 265:7 survey [10] - 223:8, 11, 23; 226:14, 19; 227:3, 10, 15; 229:25; 230:3 surveys [1] - 226:12 suspect [1] - 289:16 sustain [3] - 216:16; 259:1; 277:17 Sustained [11] - 194:21; 216:8, 11, 14; 218:24; 222:22; 223:1; 227:8, 20; 230:6, 10 sustained [40] - 143:16; 161:10; 166:14; 167:13; 168:8; 169:23; 170:23; 171:13; 173:3, 10, 13; 176:2; 177:5; 186:9, 13; 187:6, 16, 18-19; 188:3; 236:7, 12; 237:8; 240:24; 252:9; 274:13; 276:16;</p>
--	---	---	---

<p>279:3; 287:12; 310:3, 13; 316:15; 318:19, 24; 319:2, 5, 22; 320:4; 321:8 swear [3] - 139:18; 231:11 sworn [10] - 139:19; 189:8; 231:15; 244:6; 253:7, 19; 265:24; 268:19; 290:7; 306:17 symbol [1] - 178:23 symbolic [6] - 163:4; 177:23; 178:2, 11 symbolism [1] - 168:17 synagogue [63] - 140:4, 6, 16; 154:21; 155:1; 156:6, 11, 14; 165:15, 20; 169:5, 9; 174:25; 176:7; 179:15, 17, 20, 23; 180:21; 181:2, 6, 11-12, 14, 17, 22, 24-25; 182:15, 23; 205:24; 206:5, 7, 9; 269:12; 274:1, 7; 275:13; 284:24; 285:1, 4, 6, 9, 13; 293:18; 296:1; 311:17, 21; 313:2, 6; 314:12, 23, 25; 315:1, 4; 317:20; 318:1; 319:11, 13, 17 synagogue's [1] - 181:18</p>	<p>188:9; 196:5; 239:7; 269:10 Tenafly [8] - 141:13; 173:6; 177:3; 272:6, 12 Tenzer [3] - 213:3, 15, 21 Tenzer's [1] - 221:17 term [4] - 140:12; 174:6, 8 terminologies [1] - 161:13 terms [3] - 146:11; 203:3; 295:21 testified [24] - 139:23; 143:23; 155:1; 168:2, 25; 169:19; 172:15; 174:19; 178:8; 179:12; 183:1; 184:9; 189:8; 214:13; 231:15; 244:6; 264:5; 268:19; 290:7; 296:6; 299:22; 301:10; 306:17; 317:25 testify [7] - 139:9; 164:13; 236:4; 252:7; 304:9; 312:21; 319:10 testifying [7] - 163:7, 11, 14; 182:13; 195:21; 200:6; 284:22 testimonial [2] - 270:5; 274:22 testimony [30] - 140:6, 12; 144:6; 146:5; 148:1; 155:25; 172:18; 179:3; 182:17, 20; 189:17; 195:12, 15; 200:5; 208:18; 214:6; 228:4; 229:7, 10; 255:22; 256:1, 5, 7, 9; 289:17; 292:21; 298:7; 304:4; 320:7 THE [445] - 136:7, 11; 138:1, 3, 6, 20, 24; 139:13, 18-19, 24; 140:10, 13; 141:24; 142:3, 8; 143:10, 13-14, 16, 19; 144:7, 12-13, 15-16, 18-20; 145:2, 6; 146:16; 147:14; 148:6, 10; 149:17; 151:5, 7-9; 154:11; 158:14, 19; 160:8, 13; 161:10, 12, 15, 18, 20-21; 163:24; 164:24; 165:2, 4; 166:14; 167:12, 16, 18; 168:5, 8; 169:23; 170:23; 171:1, 9, 13; 172:12; 173:3, 10, 13; 174:10; 175:6,</p>	<p>23; 176:2, 14, 16, 18; 177:5; 180:15; 182:18, 25; 183:6; 184:1, 5; 185:6, 8; 186:9, 13, 24-25; 187:6, 16, 18, 23; 188:3, 7-9; 189:2, 11-12, 18; 190:10, 14; 191:4, 9; 192:7, 17, 25; 193:16; 194:12, 21, 23; 195:3-6, 8, 14, 20; 196:4, 12; 199:17, 20; 200:2, 11; 205:22; 206:16, 19, 21; 210:16; 213:10, 25; 214:3, 7; 215:9, 13; 216:8, 11, 14, 20, 24; 218:24; 219:5; 220:5; 222:11, 15, 22; 223:1, 18, 21; 224:22, 24; 225:3, 21; 226:8; 227:8, 20, 24; 228:11, 15, 23; 229:2, 18; 230:6, 10, 12, 15; 231:2, 5, 8, 10, 12, 17-19; 233:7, 12, 24; 234:1, 8, 16, 23-24; 235:7, 11-12, 22, 24; 236:3, 6, 12, 22; 237:8, 14, 25; 238:12, 15, 17, 23-24; 239:9, 12, 15, 17, 21; 240:3, 6, 24; 241:10; 242:22; 243:1, 9, 11, 13, 16-17, 20; 244:2, 8, 10-12; 245:3; 246:22, 25; 247:10, 25; 248:2, 12; 249:4, 11, 14, 16-18, 20, 23; 250:1, 3, 13, 25; 251:15, 18; 252:9, 17; 253:10-12, 23; 254:2, 4-5, 10, 12-13, 16; 255:10-13, 22; 256:4, 10, 14; 257:24; 258:25; 259:19, 21; 260:6, 16-17, 21, 23, 25; 261:1, 4-5, 7-8, 13, 15, 19, 21, 23-24; 262:1, 5; 267:9, 14, 25; 268:9, 11, 16, 21; 269:15; 270:12, 15, 18, 21, 25; 271:3, 7, 11, 13; 274:13, 23; 276:6, 16; 277:17, 25; 278:3, 6, 9, 14; 279:7, 17, 19, 21, 24; 280:9, 11; 281:8, 22; 282:9, 15, 22, 25; 283:1, 3, 10, 21; 284:1; 287:12, 19, 24; 288:1, 3, 6, 8-10, 14, 17, 19, 21,</p>	<p>12, 15, 18, 21, 23; 290:2, 9, 11; 293:24; 295:13; 296:10, 14-15, 18-20; 297:9, 12, 14; 298:23; 299:5; 300:21; 301:11, 15; 303:6, 21, 25; 304:2, 4, 7-8, 11, 13, 15-16; 305:13, 19, 21; 306:1, 4, 7, 10, 13, 19, 21; 308:5, 8-9, 12, 17, 22; 309:22; 310:3, 14, 19, 24; 311:1, 6; 312:10, 12, 15, 22, 25; 313:12, 14, 20; 316:15, 20; 317:2, 4; 318:19, 24; 319:2, 5, 22, 25; 320:4, 9, 13, 15, 18; 321:8, 13 thereafter [2] - 259:5; 274:4 therefore [4] - 165:11; 215:14; 238:23; 276:14 thereof [1] - 159:25 thinking [1] - 274:23 thinks [1] - 278:11 third [6] - 180:8, 19; 212:16; 263:3; 282:12; 292:23 Thomas [1] - 138:10 THOMAS [1] - 136:20 thoughts [3] - 299:10; 300:4 thousand [1] - 201:6 threat [2] - 212:11, 13 threaten [1] - 212:9 threatened [1] - 195:1 threatening [1] - 243:5 threats [1] - 237:5 three [26] - 148:3; 156:19; 164:11; 166:1, 3, 8; 167:13; 184:23; 186:17-19; 222:18; 232:4; 236:14; 240:12; 241:15; 242:6, 18; 254:1; 273:1, 4; 288:15; 289:7; 291:7; 311:2; 314:16 three-day [1] - 222:18 Throne [10] - 139:6; 244:1, 8, 16; 245:6; 248:14; 250:5; 259:2, 24; 267:4 THRONE [1] - 244:9 Throne-Holst [9] - 139:6; 244:1, 8, 16; 245:6; 248:14; 250:5;</p>
<p style="text-align: center;">T</p> <p>T-U-C-K-E-R [2] - 290:4, 11 tab [1] - 180:4 tax [1] - 183:22 taxes [2] - 183:19, 21 taxpayers [1] - 254:22 teach [7] - 263:21; 307:12, 14-15, 17; 317:7, 11 teachers [1] - 263:21 telephone [7] - 192:25; 238:1, 25; 242:12; 245:20; 249:25; 259:18 Teller [25] - 140:18, 24; 141:2, 10-11, 19; 156:22; 157:12; 234:22, 25; 236:10; 268:15, 21, 25; 272:2; 275:8, 15; 276:18, 25; 277:20; 280:1, 5; 283:24; 298:9 Teller's [1] - 235:2 ten [5] - 160:18;</p>	<p>175:6, OWEN WICKER, RPR OFFICIAL COURT REPORTER</p>		

<p>259:2, 24 Throne-Holtz [1] - 267:4 throughout [1] - 195:18 Tim [2] - 231:4; 234:4 timeframe [2] - 206:14, 18 Timothy [1] - 231:18 tire [1] - 181:19 tissue [1] - 311:25 Tobin [1] - 317:7 today [20] - 140:3; 205:16; 215:20; 231:24; 246:7, 10; 274:23; 276:3, 7; 283:13; 292:21; 298:7; 300:18; 302:13; 305:2, 18; 306:5, 12; 316:23 tomorrow [7] - 305:18, 21, 23; 306:4, 6; 321:14 Toni [2] - 156:22; 298:9 Toni-Jo [2] - 156:22; 298:9 took [15] - 154:24; 165:21; 166:24; 234:2, 13, 17; 262:21; 263:7; 265:6; 278:1; 288:12, 17; 292:12; 294:4, 10 top [2] - 202:5; 281:13 totality [1] - 234:9 totally [1] - 161:5 touching [1] - 168:15 toward [2] - 186:20; 212:16 Town [40] - 138:8; 143:3, 11; 169:6; 172:3, 8; 192:2, 13; 193:1, 13; 194:14; 195:2; 197:1; 212:19; 219:18; 244:1, 11-12; 245:24; 246:5, 10; 247:3; 249:6; 251:11; 252:2; 253:2, 9, 18, 25; 254:8, 14, 22; 255:5, 25; 257:17; 266:12; 307:7; 308:16; 318:23, 25 town [43] - 167:18; 169:11, 13, 25; 170:8, 10, 12, 15; 171:16; 191:15, 18-20; 192:5, 9, 22; 193:2, 4; 214:14; 216:3; 220:2; 244:23; 247:6, 8, 24; 250:9; 253:6, 14, 20;</p>	<p>254:24; 255:15; 257:8; 260:24; 262:15; 264:7; 266:18; 267:15; 292:23; 305:5; 311:22 township [1] - 260:19 track [1] - 152:16 traffic [3] - 256:19, 22, 25 train [1] - 162:15 training [1] - 172:16 TRANSCRIPT [1] - 136:10 transcript [1] - 137:10 transcription [1] - 137:10 translate [1] - 165:2 treat [1] - 277:15 treating [1] - 279:4 tried [2] - 274:4; 320:9 trouble [1] - 309:21 true [4] - 177:21; 198:5; 228:11; 269:22 trustee [7] - 269:9; 290:16; 291:22; 294:6; 299:1; 300:22 trustees [8] - 142:23; 157:5; 158:6; 273:4; 291:7; 293:1, 16 try [3] - 213:9; 214:2; 275:16 trying [5] - 146:10; 153:23; 169:14; 254:3; 297:16 tuchman [1] - 273:20 Tuchman [18] - 139:8, 14, 24; 140:3; 143:21; 145:9; 146:19; 167:23; 168:25; 171:15; 177:7, 18; 181:1; 184:8; 185:1; 266:16; 272:2, 5 Tucker [4] - 156:22; 290:3, 11; 298:10 tucker [9] - 157:10, 12; 273:7, 17; 290:15; 298:5; 300:12; 302:8, 12 Tuesday [1] - 321:17 turn [10] - 139:6; 152:1, 6, 14; 234:5; 246:19; 251:15; 252:22; 258:8; 315:15 twice [2] - 164:4; 166:14 two [30] - 139:10; 149:13; 150:11; OWEN WICKER, RPR</p>	<p>21; 166:1, 3, 8; 186:21; 190:25; 208:16; 210:6, 12; 211:12; 234:2; 240:18, 21; 242:6; 245:19; 258:17, 22; 262:18; 265:18; 273:1; 279:4; 289:7; 290:23; 298:16; 309:5 two-square [1] - 258:22 type [4] - 217:4, 17; 248:7; 259:17 typed [2] - 220:11; 221:22 types [1] - 250:17 typical [1] - 195:17 typing [2] - 144:13</p>	<p style="text-align: center;">U</p> <p>U.S [1] - 159:19 unable [1] - 155:15 unbroken [5] - 173:19; 175:8; 176:23; 177:3, 11 unclear [1] - 187:17 uncomfortable [1] - 242:24 under [21] - 151:4; 158:21; 159:25; 163:16; 208:4; 218:20; 258:16; 265:20; 270:7; 271:17, 19; 279:8; 280:4; 289:23; 292:7, 16; 298:16; 304:8 underserved [1] - 263:19 understood [2] - 166:9; 287:9 unfair [2] - 228:21; 277:15 unincorporated [2] - 245:24; 308:15 UNITED [2] - 136:1, 11 United [3] - 136:6; 159:18; 264:1 University [1] - 307:15 unless [1] - 243:20 unmarked [6] - 203:8, 15, 21; 204:1, 4, 12 unquote [1] - 159:23 unrelated [2] - 188:12; 196:7 unsuitable [2] - 230:4, 8</p>	<p style="text-align: center;">V</p> <p>vacancy [1] - 260:2 vacancy/no [1] - 260:1 valid [8] - 158:22; 159:8, 11; 161:1, 4; 298:17; 315:11, 16 validity [1] - 159:22 vanity [1] - 313:2 variance [1] - 219:24 variances [3] - 171:22, 25 various [1] - 194:7 Verizon [121] - 143:8, 23; 144:9, 16, 22; 163:15, 19; 164:14, 18; 184:14; 185:15; 192:4; 193:3, 20; 194:8, 22-23; 195:4, 22; 196:1; 197:6, 9-10, 12-13, 16; 198:24; 199:6, 10, 16, 22, 24; 200:4, 8, 16, 20-21, 24; 201:17; 202:3-5, 10, 23; 203:7, 14, 16-17, 20, 25; 204:4, 11, 18, 20; 205:1, 10; 206:5, 7-8, 11; 207:17, 24; 208:3, 15, 18, 22;</p>	<p>143:8; 161:4; 162:22; 165:5, 11; 187:21; 188:5; 196:8; 200:17; 213:9; 214:5; 232:10, 25; 233:2, 17; 239:17, 21-22; 241:16, 18; 242:5; 243:11, 15-16, 19; 252:3; 255:23; 270:23, 25; 271:9; 274:6; 288:4, 10, 12, 14, 18; 296:13, 16-17; 312:2; 314:8, 11, 13, 19; 315:24 up-to-date [1] - 139:16 upheld [1] - 257:11 uphold [4] - 253:7, 19; 265:24; 296:23 urge [1] - 215:14 urging [1] - 215:2 usable [1] - 152:21 uses [2] - 162:6; 315:12 utility [7] - 192:4; 237:12; 243:18; 249:15; 293:20; 302:3, 11 utilized [1] - 272:17 utilizing [1] - 199:11</p>
--	---	--	---	--	--

<p>209:6, 12, 16, 25; 210:24; 211:2; 214:13, 23-25; 215:2, 6, 14; 216:2, 9, 12; 217:4; 218:25; 221:7; 224:16; 225:15, 17-18, 23-24; 227:11, 16; 228:4; 241:21, 23; 248:16; 267:17; 280:12, 18, 21; 282:2, 11, 13; 283:6, 8, 15; 293:16; 301:23-25; 302:1; 314:6; 316:18</p> <p>Verizon's [6] - 194:17; 195:17; 197:10; 226:20; 280:24; 302:10</p> <p>version [1] - 156:7</p> <p>versus [1] - 271:16</p> <p>veto [1] - 284:11</p> <p>vetting [1] - 141:16</p> <p>via [2] - 213:21; 245:20</p> <p>victim [1] - 264:3</p> <p>view [3] - 161:7; 302:13</p> <p>views [2] - 252:12; 295:6</p>	<p>240:11; 277:6; 278:25; 280:4, 17, 20, 23; 290:17; 293:1; 300:6; 302:14, 21, 24; 306:2; 308:14</p> <p>village's [6] - 155:7; 156:4; 276:19; 278:23; 279:5; 301:6</p> <p>villages [1] - 245:25</p> <p>violate [1] - 214:25</p> <p>violated [2] - 267:6, 21</p> <p>visit [1] - 307:23</p> <p>vote [10] - 165:22; 166:22, 24; 234:4; 274:6; 284:8; 318:12, 14</p> <p>voted [9] - 166:1, 3, 8, 12; 272:25; 273:2, 4; 275:11; 284:23</p> <p>voters [2] - 240:21; 297:22</p> <p>votes [2] - 241:9; 297:16</p> <p>vs [1] - 159:19</p>	<p>web [2] - 155:7; 156:4</p> <p>website [1] - 155:9</p> <p>week [6] - 143:23; 146:5; 157:10; 214:7; 320:8</p> <p>weekend [4] - 222:14, 17, 24; 311:19</p> <p>weekends [3] - 183:12; 309:21</p> <p>weeks [11] - 148:2; 164:11, 21; 210:17; 211:12; 242:6; 243:4; 288:15; 321:3</p> <p>weight [2] - 234:8; 279:10</p> <p>WEIL [1] - 136:14</p> <p>welcome [1] - 171:9</p> <p>welfare [5] - 253:1, 6, 17, 25; 254:13</p> <p>west [3] - 153:11; 162:2, 4</p> <p>Westbury [1] - 136:24</p> <p>WESTHAMPTON [1] - 136:7</p> <p>Westhampton [101] - 139:4, 10; 140:4, 6-7; 142:23; 144:3; 148:14, 17, 24; 151:1, 18, 21; 154:24; 158:6; 160:2; 162:1, 5, 16; 174:21; 181:5; 183:9, 16; 187:13; 188:1; 189:16; 190:2, 19; 191:12; 192:13; 198:1, 4, 8, 12, 14; 205:25; 206:12; 207:7; 215:1; 232:6, 11-12, 19; 234:5; 236:14, 17; 237:10, 12; 238:4, 6-7, 9; 239:9, 24; 240:11; 241:12; 242:18; 256:1; 268:15, 22; 269:1, 8, 11; 273:12; 275:8, 19; 277:6, 8, 20; 278:25; 280:5, 18, 20, 24; 283:7, 25; 289:9; 290:17; 293:2; 297:22; 300:6; 302:14, 21, 24; 303:3, 10; 307:4, 6, 19, 21; 308:6, 14-15; 310:7, 20; 315:1; 319:8</p>	<p>white [1] - 308:7</p> <p>whole [7] - 160:5; 267:11; 284:20; 293:1; 300:1; 304:20; 319:21</p> <p>WICKER [1] - 137:5</p> <p>Wicklow [1] - 307:1</p> <p>WICKLOW [1] - 307:1</p> <p>wife [1] - 183:14</p> <p>William [1] - 189:12</p> <p>willing [1] - 312:12</p> <p>win [2] - 240:24; 241:1</p> <p>winter [5] - 183:12; 288:9, 18</p> <p>wire [1] - 165:7</p> <p>wires [7] - 145:15; 146:2; 150:7; 174:3, 13; 178:5; 315:13</p> <p>wiring [1] - 178:4</p> <p>wish [2] - 168:5; 251:18</p> <p>withdraw [3] - 213:17; 261:15; 276:22</p> <p>withdrawing [2] - 165:17, 21</p> <p>withdrawn [21] - 143:21; 152:4; 154:23, 25; 156:10; 165:15; 199:5; 209:10; 221:14; 229:6; 274:7; 285:5, 10; 292:11; 293:6, 15; 301:18; 315:9; 316:9; 317:19</p> <p>withdrew [5] - 165:19; 284:24; 285:1, 13</p> <p>witness [43] - 139:18; 144:24; 146:11, 15; 189:2, 7; 193:6; 196:11, 20; 198:22; 200:5; 206:24; 215:11; 216:23; 217:3; 220:21; 223:4; 231:3, 14; 237:4, 22; 243:23; 244:5; 247:9, 23; 262:3; 268:12, 18; 271:13; 277:13; 278:18; 279:4, 6; 289:12; 290:6; 305:24; 306:1, 12, 16; 320:12; 321:15</p>
<p>vigorously [3] - 295:3, 9, 24</p> <p>VILLAGE [1] - 136:7</p> <p>village [69] - 155:2; 156:1, 10-11, 21; 157:3, 5; 158:2; 160:25; 165:16, 20-21; 166:6, 8, 12, 16, 19, 24; 167:1, 6; 192:9, 22; 198:10; 216:3; 233:20; 235:19; 240:1, 4; 241:25; 242:1, 24; 243:7, 12; 264:22; 269:24; 273:21, 24; 276:20; 277:23; 279:22; 282:7; 283:24; 284:9, 19, 23; 285:16, 18, 20, 24; 287:1; 291:22; 292:13; 295:5, 11; 296:24; 299:15, 18; 300:14; 302:2, 6, 15; 303:13-15, 17; 305:2</p> <p>Village [45] - 136:21; 140:7; 142:23; 148:14, 23; 151:1, 18; 154:24; 158:6; 161:25; 162:16; 172:5, 9; 174:21; 179:9; 181:5; 183:9; 190:2; 191:12; 192:13; 196:24; 197:25; 198:4, 8, 12, 14; 205:25; 206:12; 207:7; 238:9;</p>	<p style="text-align: center;">W</p> <p>wait [14] - 158:14; 191:4; 206:16; 235:22; 237:22; 246:22; 256:10; 258:25; 296:10; 301:11</p> <p>walk [16] - 155:11; 181:21, 23-25; 205:12, 18; 226:23; 311:23; 313:4; 317:20; 319:12, 15, 17</p> <p>walk-out [1] - 226:23</p> <p>walk-through [1] - 226:23</p> <p>walk/job [3] - 202:12, 18, 24</p> <p>walked [1] - 285:21</p> <p>walking [7] - 153:22; 182:4, 6; 309:21; 311:21; 313:8</p> <p>wants [4] - 202:17; 243:21; 270:9; 313:8</p> <p>warn [1] - 296:11</p> <p>warped [1] - 165:10</p> <p>watch [2] - 297:23; 301:8</p> <p>water [8] - 150:14, 18-19; 153:1, 14, 23-24; 311:25</p> <p>ways [1] - 312:4</p> <p>weather [1] - 212:7</p>	<p>WEXELBAUM [2] - 308:4</p> <p>Wexler [8] - 149:3, 14; 150:21; 155:13; 161:7, 12; 164:6; 166:5</p> <p>WEXLER [1] - 136:11</p> <p>wheelchair [1] -</p>	<p>Witness [1] - 289:4</p> <p>WITNESS [85] - 139:24; 143:11, 14; 144:13, 16, 18, 20; 149:18; 151:7, 9; 154:11; 161:15, 20; 163:24; 165:4; 186:24; 188:8; 189:12; 192:25; 194:23; 195:4, 6; 206:17; 230:15; 231:12, 18; 234:2, 24; 235:12;</p>

<p>237:25; 238:24; 243:13, 17; 244:8, 11; 248:2; 249:5, 14, 17, 20; 250:1; 253:11; 254:2, 5, 12, 16; 255:11, 13; 260:7, 17, 23; 261:1, 4, 7, 13, 19, 23; 262:1; 268:21; 279:17, 21; 283:1, 3; 288:6, 9, 14, 19, 23; 290:11; 296:14, 18, 20; 297:12, 14; 301:15; 304:2, 7, 13, 16; 306:21; 308:6, 9, 22; 312:25; 313:14</p> <p>witness' [1] - 190:21</p> <p>witnesses [15] - 138:14, 17-19, 22-24; 139:10; 231:5; 289:5, 14, 18; 318:20; 319:6</p> <p>WITNESSES [1] - 322:2</p> <p>wood [7] - 164:5, 18-19; 165:10; 208:17; 225:19</p> <p>word [1] - 215:8</p> <p>words [10] - 145:9, 13-14, 24; 155:11, 15; 160:18; 164:18; 280:4; 286:22</p> <p>writes [1] - 158:10</p> <p>writing [4] - 144:11; 201:16; 210:24; 314:17</p> <p>written [8] - 166:25; 170:8, 11; 186:7; 199:11; 246:6; 248:6; 293:16</p> <p>wrote [9] - 160:24; 196:21; 201:23; 204:23; 235:18; 252:1, 5, 12; 299:23</p>	<p>YEHUDAH [1] - 136:17</p> <p>yellow [4] - 148:9, 13; 149:12</p> <p>YORK [1] - 136:1</p> <p>York [9] - 136:6, 15; 137:6; 183:22; 202:5; 218:20; 263:2; 307:2</p> <p>yourself [3] - 198:9; 240:10; 291:8</p>
<p>Y</p>	<p>Z</p> <p>Zoning [1] - 220:3</p>
<p>yard [2] - 243:14; 312:3</p> <p>yards [1] - 151:13</p> <p>year [9] - 207:8; 239:1; 242:8; 269:5, 9; 293:11, 15; 297:20</p> <p>Year's [1] - 288:24</p> <p>years [26] - 156:19; 169:3; 179:17; 217:15, 19; 219:4; 232:4, 9; 236:14; 239:7; 240:18, 21; 262:18; 290:20, 23; 307:12, 20; 308:18; 309:19; 311:11, 15; 314:7, 10, 16</p> <p>Yehudah [1] - 139:3</p>	<p><i>OWEN WICKER, RPR</i> <i>OFFICIAL COURT REPORTER</i></p>