

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.
1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC,
MII AVIATION SERVICES, LLC, and
HB HOLDINGS LLC,

Plaintiffs,

vs.

FLIGHTLEVEL NORWOOD, LLC, EAC
REALTY TRUST II, and PETER EICHLEAY,

Defendants.

DEPOSITION of NICHOLAS BURLINGHAM

Thursday, March 8, 2018 - 10:00 a.m.

Held at: Pierce & Mandell, P.C.

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Boston, Massachusetts 02108

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Page 2		Page 4	
1	APPEARANCES:	1	Exhibit 51 Self-Fueler Operations Agreement 82
2		2	Exhibit 52 E-mail from Mike DeLaria to Russ Maguire dated August 20, 2014 83
3	PIERCE & MANDELL, P.C.	3	
4	Michael C. Fee, Esquire	4	Exhibit 53 Map 85
5	11 Beacon Street, Suite 800	5	Exhibit 54 Letter from Peter Eichleay to Norwood Airport Commission dated September 24, 2013 89
6	Boston, Massachusetts 02108	6	
7	617-720-2444	7	Exhibit 55 Airport Commission Meeting, Regular Business Meeting, October 9, 2013 98
8	mfee@piercemandell.com	8	
9	On behalf of the Plaintiffs	9	Exhibit 56 1938 through 1942 101
10		10	Exhibit 57 Certificate of Organization ARR Aviation II, LLC 120
11	LECLAIR RYAN	11	Exhibit 58 Letter from Nick Burlingham to Joshua Fox dated December 5, 2013 130
12	A. Neil Hartzell, Esquire	12	
13	One International Place	13	Exhibit 59 E-mail chain 141
14	Eleventh Floor	14	Exhibit 60 Letter from Russ Maguire to Chris Donovan dated January 22, 2014 149
15	Boston, Massachusetts 02110	15	
16	617-502-8209	16	Exhibit 61 1872 through 1873 with attached photo 154
17	neil.hartzell@leclairryan.com	17	
18	On behalf of the Defendants	18	Exhibit 62 Letter with enclosure from Mike to Christopher Donovan dated July 30, 2014 167
19		19	
20	Also Present	20	Exhibit 63 Meeting Agenda dated July 30, 2014, 12 p.m., in the Norwood Airport Commission Meeting Room 169
21	Chris Donovan	21	
22		22	Exhibit 64 1880 through 1881 170
23		23	Exhibit 65 001409 through 1410 175
24		24	
Page 3		Page 5	
1	I N D E X	1	Exhibit 66 1999 180
2	Witness	2	Exhibit 67 2000 182
3	NICHOLAS BURLINGHAM	3	Exhibit 68 Letter from Peter Eichleay to Michael Lyons dated January 20, 2015 186
4	Examination by Mr. Fee	4	
5		5	Exhibit 69 Letter from Peter Eichleay to Norwood Airport Commission dated January 29, 2015 191
6	E X H I B I T S	6	
7		7	Exhibit 70 Letter from Nick Burlingham to Christopher Donovan dated February 6, 2015 210
8	No. Description Page	8	
9	Exhibit 39 Notice of Deposition 6	9	Exhibit 71 Statement of Verified Facts 212
10	Exhibit 40 Annual Report for FlightLevel Norwood, LLC for 2017 6	10	Exhibit 72 Airport Commission Meeting, Regular Business Meeting, February 11, 2015 220
11	Exhibit 41 Summary for ARR, LLC 6	11	
12	Exhibit 42 ARR Aviation, LLC, Business Entity Summary 6	12	Exhibit 73 NORW001375 through 1377 226
13	Exhibit 43 Business Entity Summary for ARR Aviation, II, LLC 6	13	
14	Exhibit 44 Norwood Memorial Airport FY 2018 Commercial Permit Application 6	14	(Exhibits retained by Mr. Fee.)
15		15	
16	Exhibit 45 Partial Site Layout - Map 33	16	
17	Exhibit 46 NORW004166 through 4171 56	17	
18	Exhibit 47 NORW004165 66	18	
19	Exhibit 48 Airport Commission Meeting, Regular Business Meeting, July 17, 2013 74	19	
20		20	
21	Exhibit 49 Letter from Russ Maguire to Chris Donovan dated July 19, 2013 76	21	
22		22	
23	Exhibit 50 Photograph 79	23	
24		24	

<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 (Exhibit Nos. 39 through 44 marked for</p> <p>3 identification.)</p> <p>4 NICHOLAS BURLINGHAM,</p> <p>5 first having been satisfactorily</p> <p>6 identified by personal recognition of counsel and</p> <p>7 duly sworn by the Notary Public, testified under</p> <p>8 oath as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. FEE:</p> <p>11 Q. Good morning, Mr. Burlingham. We've met</p> <p>12 many times. May I call you Nick?</p> <p>13 A. Yes.</p> <p>14 Q. All right.</p> <p>15 MR. FEE: Counsel, usual stipulations</p> <p>16 that we've been using in the other depositions</p> <p>17 okay with you?</p> <p>18 MR. HARTZELL: Yes. That's fine.</p> <p>19 BY MR. FEE:</p> <p>20 Q. Any questions before we begin?</p> <p>21 A. No.</p> <p>22 Q. Okay. I'm going to show you a document</p> <p>23 that's been marked as Exhibit 39. It appears to</p> <p>24 be a renote of deposition. Have you seen that</p>	<p style="text-align: right;">Page 8</p> <p>1 area of law?</p> <p>2 A. Yes.</p> <p>3 Q. Can you tell me what it is?</p> <p>4 A. Aviation.</p> <p>5 Q. Anything else?</p> <p>6 A. No.</p> <p>7 Q. After you graduated from Connecticut</p> <p>8 Law -- I'm sorry. You said Connecticut Law</p> <p>9 School?</p> <p>10 A. University of Connecticut.</p> <p>11 Q. I'm sorry. University of Connecticut.</p> <p>12 -- what did you do?</p> <p>13 A. I worked in a litigation practice.</p> <p>14 Q. Where?</p> <p>15 A. In New London, Connecticut.</p> <p>16 Q. At a firm?</p> <p>17 A. Yes.</p> <p>18 Q. What was the name of the firm?</p> <p>19 A. Faulkner & Boyce.</p> <p>20 Q. How long did you work there?</p> <p>21 A. One year.</p> <p>22 Q. What did you do after that?</p> <p>23 A. I started my own firm.</p> <p>24 Q. Well, what was the name of that firm?</p>
<p style="text-align: right;">Page 7</p> <p>1 before?</p> <p>2 A. Yes.</p> <p>3 Q. Are you here today in response to that?</p> <p>4 A. Yes.</p> <p>5 Q. Now, can you state your full name for the</p> <p>6 record, please.</p> <p>7 A. Nicholas Weir Burlingham. W-e-i-r.</p> <p>8 Q. Where do you live?</p> <p>9 A. 9 High Ridge Drive, three words,</p> <p>10 Pawcatuck, P-a-w-c-a-t-u-c-k, Connecticut.</p> <p>11 Q. How old are you?</p> <p>12 A. 55.</p> <p>13 Q. Can you describe for me your educational</p> <p>14 background?</p> <p>15 A. Yes.</p> <p>16 Q. Where did you go to college?</p> <p>17 A. I went to Connecticut College.</p> <p>18 Q. When did you graduate?</p> <p>19 A. I graduated in 1988.</p> <p>20 Q. Where did you go to law school?</p> <p>21 A. University of Connecticut.</p> <p>22 Q. Where are you admitted to practice law?</p> <p>23 A. Connecticut and Rhode Island.</p> <p>24 Q. Do you have any specific expertise in any</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Burlingham & Mercurio.</p> <p>2 Q. Mercurio?</p> <p>3 A. M-e-r-c-u-r-i-o.</p> <p>4 Q. Was that also in New London?</p> <p>5 A. Yes.</p> <p>6 Q. How long did Burlingham & Mercurio exist</p> <p>7 for?</p> <p>8 A. Seven years.</p> <p>9 Q. Were you also practicing litigation at</p> <p>10 that time?</p> <p>11 A. Yes.</p> <p>12 Q. Anything else?</p> <p>13 A. Other than litigation?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. What else were you practicing?</p> <p>17 A. Contracts, business law, aviation law.</p> <p>18 Q. Okay. At Burlingham & Mercurio, was that</p> <p>19 your first exposure to aviation law?</p> <p>20 A. No.</p> <p>21 Q. What was your first exposure to aviation</p> <p>22 law?</p> <p>23 A. UConn Law School.</p> <p>24 Q. You took a course?</p>

Page 10	Page 12
<p>1 A. I took many courses.</p> <p>2 Q. So in law school you had an idea that you</p> <p>3 wanted to focus on aviation law; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And at the firm that you first</p> <p>6 worked for, did you have any opportunities to</p> <p>7 work in aviation law?</p> <p>8 A. No.</p> <p>9 Q. And was starting your own firm a reason</p> <p>10 or one of the reasons -- was one of the reasons</p> <p>11 that you started your own firm that you wanted to</p> <p>12 work in aviation law?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. How long did you work at</p> <p>15 Burlingham & Mercurio?</p> <p>16 A. About seven years.</p> <p>17 Q. And when did you leave? What year?</p> <p>18 A. I left in 2000.</p> <p>19 Q. What did you do?</p> <p>20 A. I went to work for Columbia Air Services.</p> <p>21 Q. Where are they located?</p> <p>22 A. They have many locations.</p> <p>23 Q. What's their principal place of business?</p> <p>24 A. 175 Tower Avenue, Groton, Connecticut.</p>	<p>1 A. Yes.</p> <p>2 Q. And when did you first provide -- start</p> <p>3 providing legal services to FlightLevel?</p> <p>4 A. 2008.</p> <p>5 Q. At or about the same time that</p> <p>6 FlightLevel Norwood, LLC, was formed?</p> <p>7 A. No.</p> <p>8 Q. Prior to --</p> <p>9 A. Strike that.</p> <p>10 Ask that again, please.</p> <p>11 Q. You said that you started working for or</p> <p>12 with FlightLevel in or about 2008. And my</p> <p>13 question was: Was that at or about the same time</p> <p>14 that FlightLevel Norwood, LLC, was formed?</p> <p>15 A. I believe FlightLevel Norwood, LLC, was</p> <p>16 formed in 2007, if I can remember correctly.</p> <p>17 Q. Did you work on FlightLevel Norwood,</p> <p>18 LLC's, acquisition of assets at Norwood Airport?</p> <p>19 A. No.</p> <p>20 Q. Do you know which or if any legal</p> <p>21 representation was used by FlightLevel for that</p> <p>22 transaction?</p> <p>23 A. Yes.</p> <p>24 Q. Who was it or what was it?</p>
Page 11	Page 13
<p>1 Q. What is the business of Columbia Air</p> <p>2 Services?</p> <p>3 A. It is a chain of FBOs, and it also is a</p> <p>4 distributor for Socata aircraft and Piper</p> <p>5 aircraft.</p> <p>6 Q. How long did you work for Columbia?</p> <p>7 A. I worked for Columbia from 1996 while I</p> <p>8 was still in private practice until -- and I'm</p> <p>9 still working for Columbia.</p> <p>10 Q. Okay. At some point did you start</p> <p>11 working for FlightLevel?</p> <p>12 A. Yes.</p> <p>13 Q. When was that?</p> <p>14 A. Well, I worked for Columbia with</p> <p>15 FlightLevel first.</p> <p>16 Q. Okay.</p> <p>17 A. But I started working for FlightLevel in</p> <p>18 October of 2015 as a W-2.</p> <p>19 Q. Okay. And prior to that time, what was</p> <p>20 your involvement with FlightLevel?</p> <p>21 A. Columbia and FlightLevel did a joint</p> <p>22 venture.</p> <p>23 Q. Okay. And did you serve as counsel to</p> <p>24 that joint venture?</p>	<p>1 A. A firm called Hogan & Hartson.</p> <p>2 Q. Where are they?</p> <p>3 A. I believe they're located in Texas, but</p> <p>4 they likely have many offices in many states.</p> <p>5 Q. Okay. Now, we've been referring</p> <p>6 generically to the term FlightLevel, but I</p> <p>7 understand FlightLevel actually has a number of</p> <p>8 different business entities. Is that fair to</p> <p>9 say?</p> <p>10 A. There are a number of business entities</p> <p>11 that are branded under the FlightLevel name.</p> <p>12 Q. Okay. Good point. And the one that</p> <p>13 operates in Norwood is called FlightLevel</p> <p>14 Norwood, LLC. Correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And do you provide legal services --</p> <p>17 what's your title at FlightLevel Norwood, LLC?</p> <p>18 A. General counsel and vice president of</p> <p>19 administration.</p> <p>20 Q. And have you been that since October of</p> <p>21 2015?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Are you also general counsel to</p> <p>24 the other FlightLevel entities?</p>

Page 14	Page 16
<p>1 A. Yes.</p> <p>2 Q. Okay. So how many other FlightLevel</p> <p>3 entities are there?</p> <p>4 A. Five.</p> <p>5 Q. And can you just tell me where they</p> <p>6 operate?</p> <p>7 A. Lakeland, Florida; Cape May, New Jersey;</p> <p>8 Norwood, Massachusetts; Poughkeepsie, New York;</p> <p>9 and Brunswick, Maine.</p> <p>10 Q. Are all the FlightLevel entities that you</p> <p>11 just described LLCs?</p> <p>12 A. Yes.</p> <p>13 Q. Are they all owned by the same person or</p> <p>14 entity?</p> <p>15 A. No.</p> <p>16 Q. Okay. Who owns FlightLevel Norwood, LLC?</p> <p>17 A. AAR -- excuse me. ARR Aviation and ARR</p> <p>18 Aviation II. Both LLCs.</p> <p>19 Q. Does ARR Aviation or ARR Aviation II,</p> <p>20 LLC, own any beneficial or equity interest in any</p> <p>21 of the other FlightLevel entities?</p> <p>22 A. No.</p> <p>23 Q. Do you own any beneficial interest or</p> <p>24 equity interest in any of the FlightLevel</p>	<p>1 Brunswick, Poughkeepsie, Cape May and Lakeland.</p> <p>2 Is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. And he also owns a beneficial interest in</p> <p>5 Norwood; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And what is the amount or units of</p> <p>8 beneficial interest or equity that Mr. Eichleay</p> <p>9 owns in FlightLevel Norwood, LLC?</p> <p>10 A. I believe it's 20 percent.</p> <p>11 Q. Okay. And the remaining 20 percent is</p> <p>12 owned by ARR Aviation -- I'm sorry -- 80 percent</p> <p>13 is owned by ARR Aviation, LLC, and ARR II --</p> <p>14 Aviation II, LLC?</p> <p>15 A. Not exactly.</p> <p>16 Q. Okay. Who owns the remaining 80 percent</p> <p>17 of FlightLevel Norwood, LLC?</p> <p>18 A. ARR and ARR II own 100 percent of the</p> <p>19 equitable interest in FlightLevel Norwood, LLC.</p> <p>20 Q. Okay.</p> <p>21 A. Mr. Eichleay owns a beneficial interest</p> <p>22 equal to 20 percent.</p> <p>23 Q. And I'm not sure I understand how that</p> <p>24 works. 100 percent of the equitable interest is</p>
Page 15	Page 17
<p>1 entities?</p> <p>2 A. No.</p> <p>3 Q. Does Peter Eichleay own any beneficial</p> <p>4 interest or equity interest in any of the</p> <p>5 FlightLevel entities?</p> <p>6 A. Yes.</p> <p>7 Q. Which ones?</p> <p>8 A. FlightLevel Brunswick, FlightLevel</p> <p>9 Norwood -- excuse me -- I'm sure you'll come back</p> <p>10 to it. FlightLevel Cape May, and FlightLevel</p> <p>11 Dutchess, which is the Poughkeepsie, New York.</p> <p>12 Q. Okay. But --</p> <p>13 A. And FlightLevel Lakeland.</p> <p>14 Q. So Peter Eichleay owns an equity or</p> <p>15 ownership interest in -- I'm sorry.</p> <p>16 Peter Eichleay owns a beneficial or</p> <p>17 equity interest in all of the FlightLevel</p> <p>18 entities that you testified about with the</p> <p>19 exception of Norwood -- FlightLevel Norwood, LLC.</p> <p>20 Is that right?</p> <p>21 A. That's not right.</p> <p>22 Q. Okay. So I heard you testify that he</p> <p>23 owns -- and I'm talking Peter Eichleay. That he</p> <p>24 owns a beneficial or equitable interest in</p>	<p>1 owned by ARR Aviation in one of those two</p> <p>2 entities?</p> <p>3 A. Correct.</p> <p>4 Q. And the 20 percent that Mr. Eichleay owns</p> <p>5 is derived from what?</p> <p>6 A. A contract.</p> <p>7 Q. Does that contract allow Mr. Eichleay to</p> <p>8 participate in the benefits of ownership of ARR</p> <p>9 Aviation, LLC, or ARR II Aviation, LLC?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 BY MR. FEE:</p> <p>12 Q. I can restate.</p> <p>13 A. I don't believe I can answer that based</p> <p>14 on attorney-client privilege.</p> <p>15 Q. You're asserting attorney-client</p> <p>16 privilege with respect to that question?</p> <p>17 A. With respect to the substance of the</p> <p>18 contract between --</p> <p>19 Q. I didn't ask that.</p> <p>20 A. Well then reask, please.</p> <p>21 Q. I'm trying to figure out what Eichleay</p> <p>22 owns. Whether he owns an interest in FlightLevel</p> <p>23 Norwood, LLC, which would be in the form of a</p> <p>24 membership unit, or if he owns an interest in the</p>

Page 18	Page 20
<p>1 ARR entities, which you say own 100 percent of 2 FlightLevel Norwood, LLC. That's what I'm trying 3 to understand. 4 A. The ARR entities, by virtue of a 5 contract, provided Mr. Eichleay with a beneficial 6 interest of 20 percent -- 7 Q. In what entities? 8 A. -- whereas the ARR -- 9 In FlightLevel Norwood. 10 Q. Okay. I'm sorry if I'm being thick, but 11 I'm trying to understand your testimony. Because 12 you're telling me that the ARR entities own 13 100 percent of the membership units in 14 FlightLevel Norwood, LLC. 15 A. That's correct. 16 Q. And then some portion of that 100 percent 17 has been allocated to Mr. Eichleay pursuant to a 18 contract. Is that fair to say? 19 A. No. 20 Q. How does Mr. Eichleay derive his 20 21 percent interest in FlightLevel Norwood, LLC? 22 A. He has a contract with the owners of 23 FlightLevel Norwood pursuant to which he is 24 entitled to 20 percent of the -- of its benefits.</p>	<p>1 Q. Okay. 2 -- of FlightLevel Norwood, LLC, can you 3 take a look at Exhibit 40 and confirm that all of 4 the information contained in it is accurate? 5 A. No. 6 Q. What's inaccurate about it? 7 A. Warren Michael DeLaria is not a manager 8 of this LLC. 9 Q. Okay. Who are the -- who is the manager 10 or managers of this LLC? FlightLevel Norwood, 11 LLC. 12 A. ARR and ARR II. 13 Q. Are the managers? 14 A. Yes. 15 Q. Okay. Who are the members? Is that also 16 ARR and ARR II? 17 A. Certainly the members. 18 Q. Are there any additional members beyond 19 ARR Aviation, LLC, and ARR Aviation II, LLC? 20 A. I may have misstated, Counselor. 21 Q. Please restate whatever you want to 22 restate. 23 A. I believe that Peter Eichleay is the 24 manager of FlightLevel Norwood, LLC, and that ARR</p>
Page 19	Page 21
<p>1 Q. I understand. Okay. Thank you. 2 But technically he owns no beneficial 3 interest or membership interest in FlightLevel 4 Norwood, LLC. Correct? 5 A. He owns no equitable interest in 6 FlightLevel Norwood, LLC. 7 Q. Or legal interest. 8 A. Or legal interest. 9 Q. Okay. So showing you what's been marked 10 as Exhibit 40, it appears to be a screenshot of 11 the Secretary of State's website, latest annual 12 report for FlightLevel Norwood, LLC. 13 Do you prepare and file the annual 14 reports for FlightLevel Norwood, LLC? 15 A. Sometimes. 16 Q. Did you prepare and file FlightLevel 17 Norwood, LLC's, annual report in 2007 -- I'm 18 sorry -- 2017? 19 A. No. 20 Q. Okay. To the best of your knowledge, as 21 the vice president and general -- I'm sorry. You 22 said you were general counsel and vice 23 president -- 24 A. Of administration.</p>	<p>1 Aviation, LLC, and ARR Aviation II, LLC, are the 2 members of the LLC -- 3 Q. All right. Other than -- 4 A. -- of FlightLevel Norwood, LLC. 5 Q. I'm sorry. I didn't mean to talk over 6 you. Stop me if I do that. 7 A. ARR Aviation, LLC, and ARR Aviation II, 8 LLC, are the members of FlightLevel Norwood, LLC. 9 Q. So my follow-up question is: Are 10 there -- other than Mr. Eichleay, are there any 11 other managers of FlightLevel Norwood, LLC? 12 A. In the context of the administration of 13 the company? 14 Q. No. I'm talking about its legal 15 organization. I'm not talking about how its run 16 practically. I'm talking about how it's 17 organized as a legal entity. 18 A. No. 19 Q. And other than the ARR entities, are 20 there any other members of FlightLevel Norwood, 21 LLC? 22 A. No. 23 Q. Okay. Does FlightLevel Norwood, LLC, 24 have an operating agreement?</p>

Page 22	Page 24
<p>1 A. Yes.</p> <p>2 Q. Is it in writing?</p> <p>3 A. Yes.</p> <p>4 Q. And is FlightLevel Norwood, LLC, member</p> <p>5 managed or manager managed?</p> <p>6 A. Manager managed.</p> <p>7 Q. Okay. I'm showing you a document that's</p> <p>8 been marked Exhibit 41. It appears to be a</p> <p>9 Secretary of State screenshot for an entity known</p> <p>10 as ARR, LLC, and the screenshot includes the</p> <p>11 business entity summary, the certificate of</p> <p>12 organization, and the most recent annual report</p> <p>13 filed in 2017.</p> <p>14 Do you know anything about ARR, LLC?</p> <p>15 A. Yes.</p> <p>16 Q. Does it have any relation to ARR</p> <p>17 Aviation, LLC, and ARR Aviation II, LLC?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know if -- I'm sorry. Do you know</p> <p>20 who the members of ARR Aviation, LLC, are?</p> <p>21 A. Say it again.</p> <p>22 Q. Do you know who the members -- strike</p> <p>23 that.</p> <p>24 Do you know who the members of ARR, LLC,</p>	<p>1 Q. Who are they?</p> <p>2 A. It's a single-member entity and the</p> <p>3 member is Alan R. Radlo.</p> <p>4 Q. And is ARR Aviation, LLC, member managed</p> <p>5 or manager managed?</p> <p>6 A. I'm not sure --</p> <p>7 Q. Okay.</p> <p>8 A. -- as I sit here.</p> <p>9 Q. Are you -- strike that.</p> <p>10 Do you have any responsibility for filing</p> <p>11 the corporate paperwork with the Secretary of</p> <p>12 State on behalf of ARR Aviation, LLC?</p> <p>13 A. No.</p> <p>14 Q. Who does that?</p> <p>15 A. I don't know.</p> <p>16 Oh, I'm sorry. Did you say "aviation"</p> <p>17 or --</p> <p>18 Q. Aviation.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. All right.</p> <p>21 A. Would you like to ask that question</p> <p>22 again?</p> <p>23 Q. Sure.</p> <p>24 A. Please.</p>
Page 23	Page 25
<p>1 are?</p> <p>2 A. Only by virtue of looking at this Exhibit</p> <p>3 41 that you just showed me.</p> <p>4 Q. You said that you know something about</p> <p>5 ARR, LLC. What do you know?</p> <p>6 A. I know that it's one of Alan Radlo's</p> <p>7 entities.</p> <p>8 Q. Does ARR, LLC, have any interest in</p> <p>9 FlightLevel Norwood, LLC?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Okay. Let me show you a document that's</p> <p>12 been marked as Exhibit 42. It appears to be a</p> <p>13 Secretary of State's screenshot for ARR Aviation,</p> <p>14 LLC, as well -- and which includes the business</p> <p>15 entity summary as well as the most recent -- I'm</p> <p>16 sorry -- the certificate of organization for ARR</p> <p>17 Aviation, LLC.</p> <p>18 You mentioned earlier that ARR Aviation,</p> <p>19 LLC, is one of the members of FlightLevel</p> <p>20 Norwood, LLC. Is that fair to say?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know who the members of ARR</p> <p>23 Aviation, LLC, are?</p> <p>24 A. Yes.</p>	<p>1 Q. Do you have any responsibility for filing</p> <p>2 the cooperate paperwork for ARR Aviation, LLC?</p> <p>3 A. Yes.</p> <p>4 Q. What do you do?</p> <p>5 A. I would file the annual report.</p> <p>6 Q. And did you file the most recent annual</p> <p>7 report for 2017 for ARR Aviation, LLC?</p> <p>8 A. May I see it?</p> <p>9 Q. It's attached to document 42. I think</p> <p>10 it's the third page.</p> <p>11 MR. HARTZELL: I'm sorry. What was the</p> <p>12 question?</p> <p>13 BY MR. FEE:</p> <p>14 Q. Do you have any responsibility for filing</p> <p>15 with the secretary -- I'm sorry. The question</p> <p>16 was: Did you file the 2017 annual report for ARR</p> <p>17 Aviation, LLC, that's been marked as Exhibit 42?</p> <p>18 A. I believe so.</p> <p>19 MR. HARTZELL: Wait a minute. You said</p> <p>20 2017? What is it? I thought it was 2016.</p> <p>21 MR. FEE: Good point. The document</p> <p>22 that's been marked as Exhibit 42 includes the</p> <p>23 most recent annual report filed by ARR Aviation,</p> <p>24 LLC, and it appears to have been filed on</p>

Page 26	Page 28
<p>1 December 9, 2016. So thanks for catching that.</p> <p>2 BY MR. FEE:</p> <p>3 Q. Did you file this?</p> <p>4 A. I only see a certificate of organization.</p> <p>5 Am I missing something?</p> <p>6 Q. Let me see. Yes. I thought there was an</p> <p>7 annual report annexed to this. Sorry. My</p> <p>8 mistake.</p> <p>9 Let me circle back to that question. Is</p> <p>10 it your belief that you have filed annual reports</p> <p>11 on behalf of ARR Aviation, LLC?</p> <p>12 A. No.</p> <p>13 Q. Okay. How about ARR Aviation II, LLC?</p> <p>14 Have you filed annual reports on their behalf?</p> <p>15 A. I don't believe so.</p> <p>16 Q. I'm going to show you a document that's</p> <p>17 been marked as Exhibit 43. Have you seen that</p> <p>18 before?</p> <p>19 A. Yes.</p> <p>20 Q. And what is it?</p> <p>21 A. This is a business entity summary and a</p> <p>22 certificate of organization for ARR -- well, it's</p> <p>23 a business entity for ARR II.</p> <p>24 MR. HARTZELL: Hold on one second. Has</p>	<p>1 corner indicates that it was filed on or about</p> <p>2 June 1, 2017. Is that correct?</p> <p>3 A. It says "paid."</p> <p>4 Q. Okay. Do you have any reason to believe</p> <p>5 that this commercial permit application wasn't</p> <p>6 filed on or about June 1, 2017?</p> <p>7 A. I have no reason to believe it wasn't.</p> <p>8 Q. At that time ARR Aviation, LLC, and ARR</p> <p>9 Aviation II, LLC, had acquired an interest or</p> <p>10 controlling interest in FlightLevel Norwood.</p> <p>11 Correct?</p> <p>12 MR. HARTZELL: I'm sorry. As of what</p> <p>13 time?</p> <p>14 BY MR. FEE:</p> <p>15 Q. As of June 1, 2017, ARR Aviation, LLC,</p> <p>16 and ARR Aviation II, LLC, had acquired a</p> <p>17 controlling interest in FlightLevel Norwood, LLC.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And can you tell me why ARR</p> <p>21 Aviation entities are not listed as a person</p> <p>22 holding more than 10 percent interest in the</p> <p>23 company on the 2018 FlightLevel Norwood</p> <p>24 commercial permit application?</p>
Page 27	Page 29
<p>1 this been marked?</p> <p>2 MR. FEE: Yes, it has.</p> <p>3 MR. HARTZELL: It's 43?</p> <p>4 MR. FEE: 43.</p> <p>5 BY MR. FEE:</p> <p>6 Q. You know what? Let me come back to this.</p> <p>7 This is not right.</p> <p>8 Let me show you Exhibit 44. Have you</p> <p>9 seen that before?</p> <p>10 A. No. Not that I recall.</p> <p>11 Q. Okay. Exhibit 44 appears to be the</p> <p>12 Norwood -- I'm sorry -- the FlightLevel Norwood,</p> <p>13 LLC, fiscal year 2018 commercial permit</p> <p>14 application. Is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And you haven't seen this before?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Who's responsible for filing the</p> <p>19 commercial permit applications on behalf of</p> <p>20 FlightLevel Norwood, LLC?</p> <p>21 A. I'm not sure who's responsible for it.</p> <p>22 Q. Who does it?</p> <p>23 A. I believe Mike DeLaria does it.</p> <p>24 Q. And the stamp in the top right-hand</p>	<p>1 A. No.</p> <p>2 Q. Do you know if FlightLevel Norwood made</p> <p>3 any disclosure whatsoever to the Norwood Airport</p> <p>4 Commission regarding the acquisition of a</p> <p>5 controlling interest in it by the ARR entities?</p> <p>6 A. Yes.</p> <p>7 Q. And what did it do?</p> <p>8 A. Well, I reported it to the airport</p> <p>9 manager. And quiet frankly, the airport manager</p> <p>10 asked me to submit a response to this section,</p> <p>11 which I have not done.</p> <p>12 Q. When did the airport manager ask you to</p> <p>13 submit a response to that section of 44 that is</p> <p>14 incorrect?</p> <p>15 A. About six months ago.</p> <p>16 Q. And any reason why you've declined or</p> <p>17 failed to respond to that request?</p> <p>18 A. I didn't decline. I did fail, and the</p> <p>19 reason is without excuse. I should have done</p> <p>20 that.</p> <p>21 MR. FEE: Off the record.</p> <p>22 (Discussion off the record.)</p> <p>23 BY MR. FEE:</p> <p>24 Q. When you reported to the airport manager</p>

Page 30	Page 32
<p>1 that FlightLevel Norwood, LLC, had been acquired 2 by the ARR entities, did you do so in writing or 3 was that a verbal report at a meeting? 4 A. Well, technically speaking, the 5 membership interests in FlightLevel Norwood were 6 acquired. It was a membership interest transfer 7 and not an asset transfer, as a result of which 8 there was no duty to get prior consent for it. 9 And with that prelude, can you please 10 reask your question? 11 Q. Yes. How did you inform the airport 12 commission of this transfer of membership 13 interest? 14 A. I don't recall. 15 Q. Okay. And it's your position that the 16 consent of the Norwood Airport Commission was not 17 required? 18 A. That is -- calls for a legal conclusion. 19 And it's my recollection, having studied the 20 contracts at play, that that was the case. 21 Although, as I sit here today, I can't remember 22 exactly what I read. 23 Q. Were you involved in advising FlightLevel 24 Norwood, LLC, with respect to the acquisition of</p>	<p>1 A. That also calls for a legal conclusion. 2 And my recollection from the work that I did in 3 preparation for the transfer is that that is a 4 fair thing to say. 5 Q. Okay. I thought that we would talk a 6 little bit about the layout of the airport. 7 MR. FEE: Let's take a five-minute break. 8 (Recess taken at 10:27 a.m.) 9 (Deposition resumed at 10:29 a.m.) 10 BY MR. FEE: 11 Q. Back for a moment to the ARR membership 12 interest transfer. Do you know exactly when that 13 occurred? 14 A. You mean the FlightLevel Norwood, LLC, 15 membership interest transfer? 16 Q. Yes. That we were discussing previously. 17 A. Yes and no. 18 Q. A cryptic answer, Counselor. Do you 19 recall which documents were signed effectuating 20 the transfer of FlightLevel Norwood's membership 21 interest to the ARR entities? 22 A. Not without looking at them. 23 Q. Can you approximate? 24 A. Yes.</p>
Page 31	Page 33
<p>1 membership interest by the ARR entities? 2 A. Yes. 3 Q. Okay. And in connection with providing 4 that advice, did you review all of FlightLevel 5 Norwood, LLC's, leases and contracts to determine 6 whether there were any that required consent? 7 A. Yes. 8 Q. Okay. What is the basis for your belief 9 that consent of the Norwood Airport Commission 10 was not required to allow transfer of the 11 membership interest? 12 A. The basis for my opinion also calls for a 13 legal conclusion. And since the contracts 14 between the Norwood Airport Commission and 15 FlightLevel were unaffected by the membership 16 transfer and were otherwise unaltered in any way, 17 there was no requirement to go and ask for prior 18 consent. 19 Q. Okay. So as we sit here today, 20 FlightLevel Norwood's obligations and duties as a 21 lessor, lessee, sublessor, sublessee, vendor at 22 the Norwood Memorial Airport are unaffected in 23 any way by the transfer of membership interest to 24 the ARR entities. Is that fair to say?</p>	<p>1 Q. And what month or year was that in? 2 A. The intention was to complete the legal 3 transfer so that ARR Aviation and ARR Aviation 4 II, LLC, would be in place January 1, 2017. 5 Q. Okay. And did that happen? 6 A. I believe so. 7 Q. And so -- 8 A. With some luck. 9 Q. And so it's your understanding that the 10 effective date of the transaction was on or about 11 January 1, 2017? 12 A. Correct. 13 Q. Okay. So as you might imagine, we're 14 going to talk a little bit about the airport 15 today. And I want to show you a document that 16 I'm going to mark as the next exhibit. 17 (Exhibit No. 45 marked for identification.) 18 BY MR. FEE: 19 Q. Now, I'm going to show you a plan that my 20 client prepared, and it has markings regarding an 21 NFPA setback and a TOFA/OFA area. And I don't 22 want to hold you to any of those. I'm not asking 23 you to authenticate this plan in any way. 24 I just want to use it in our discussions</p>

Page 34	Page 36
<p>1 throughout the day because I think it's a fairly 2 accurate representation of the airport layout. 3 Would you agree with me on that? 4 A. Generally speaking, yes. 5 Q. And I'm asking, again, only that it 6 accurately represents the location of the lanes, 7 the location of the buildings, the location of 8 the gates in rough approximation to reality. Is 9 that fair to say? 10 A. What's fair to say is that I accept your 11 representation that it properly reflects the 12 layout. 13 Q. Okay. 14 A. I, however, have no way of confirming 15 that. 16 Q. Fair enough. I just want to have 17 something that we can look at and talk about. 18 So is it your understanding that 19 FlightLevel Norwood, LLC, is the sublessee and 20 controlling landlord of Lease Lot G? 21 A. Lease Lot G is subleased from the town of 22 Norwood to Boston Metropolitan Airport. It is 23 then subleased again to EAC Realty Trust II, of 24 which FlightLevel is the beneficiary.</p>	<p>1 A. No. 2 Q. Okay. Why isn't that correct? 3 A. It's my understanding that BEH contends 4 that it has the right to occupy units seven and 5 eight, and I have not done the legal analysis to 6 be able to prove that out in terms of chain of 7 title. 8 Q. Okay. Well, you are aware of the fact 9 that BEH occupies space within Lot G. Correct? 10 A. Correct. 11 Q. And BEH pays rent to EAC Realty Trust 12 II. Correct? 13 A. I'm not sure whether BEH pays rent to EAC 14 Realty Trust II or to FlightLevel proper who 15 records it to BAC Realty Trust II. 16 Q. But BEH pays rent for its right to occupy 17 the premises. Correct? 18 A. It pays rent and occupies the premises. 19 Q. And it pays -- let me get this straight. 20 BEH pays rent to either EAC Realty Trust 21 II or FlightLevel Norwood, LLC. Correct? 22 A. Correct. 23 Q. Okay. And as sub-sub-landlord, EAC 24 Realty Trust II provides certain services to its</p>
Page 35	Page 37
<p>1 Q. And Peter Eichleay is the trustee. 2 A. Correct. 3 Q. And Lease Lot F is subleased to BEH. 4 Correct? 5 A. From the town to BMA to BEH. 6 Q. Right. And the FlightLevel Norwood -- 7 I'm sorry -- EAC Realty leases space within Lot G 8 to MII Aviation Services which has, in turn, 9 authorized BEH to occupy certain condo hangars 10 within Lot G. Is that correct? 11 A. EAC Realty Trust II has subleased two 12 units in the T hangar building to companies 13 controlled by Moshe. One of them is MII. 14 And it may -- Moshe may have subleased 15 the other one to MII as well. And I believe that 16 Moshe has further authorized BEH to operate from 17 there. 18 Q. So what is your relation to EAC Realty 19 Trust II? 20 A. I'm its general counsel. 21 Q. Okay. And so it's your understanding as 22 general counsel that BEH has the right to occupy 23 space within the T hangar that is located on 24 Lot G. Correct?</p>	<p>1 tenants on Lot G. Correct? 2 A. No. 3 Q. It does not? 4 A. It does not. 5 Q. What, if any, obligations does EAC Realty 6 Trust II, as sub-sub-landlord on Lot G have to 7 its tenants? 8 MR. HARTZELL: Objection. 9 A. EAC Realty Trust II is a Massachusetts 10 nominee trust. Its only function is to hold 11 property for and on behalf of its beneficiary. 12 So to the extent the EAC Realty Trust II's name 13 appears on anything, it's solely to hold legal 14 title. 15 BY MR. FEE: 16 Q. Who fulfills -- is any entity with which 17 you are affiliated obligated to provide landlord 18 services to tenants on Lot G? 19 A. Yes. 20 Q. Which entity is that? 21 A. FlightLevel Norwood. 22 Q. Okay. And does FlightLevel Norwood, in 23 fact, provide or fulfill landlord's obligations 24 under its lease agreements with tenants on Lot G?</p>

Page 38	Page 40
<p>1 A. Yes.</p> <p>2 Q. What are some of those landlord</p> <p>3 obligations that FlightLevel Norwood performs?</p> <p>4 A. Can you be more specific?</p> <p>5 Q. Did it plow snow?</p> <p>6 A. Yes.</p> <p>7 Q. And, in fact, landlord -- I'm sorry.</p> <p>8 An entity with which you are affiliated</p> <p>9 plows snow for the entire area between Lot G and</p> <p>10 Lot F. Correct?</p> <p>11 A. No.</p> <p>12 Q. It doesn't?</p> <p>13 A. There is no area between Lot G and Lot F.</p> <p>14 Q. Well, there's a taxiway; is there not?</p> <p>15 A. Lot G and Lot F share a common boundary.</p> <p>16 There can't be any area between them.</p> <p>17 Q. Well, there's a place between Lot G and</p> <p>18 Lot F where there are no buildings. Correct?</p> <p>19 A. No.</p> <p>20 Q. Okay. There's pavement between the</p> <p>21 building on Lot G and the building on Lot F.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. Who plows that?</p>	<p>1 obligation to plow the area we just described?</p> <p>2 A. FlightLevel's obligation to plow the ramp</p> <p>3 area between the buildings on Lots F and G</p> <p>4 extended to the pavement on Lot G and the 15-foot</p> <p>5 strip, also known as the Lot F licensed area on</p> <p>6 Lot F.</p> <p>7 Q. Right. And you say -- and that was after</p> <p>8 the transfer of interest from Eastern Air Center</p> <p>9 to EAC Realty Trust II. Correct?</p> <p>10 A. FlightLevel's duty to plow, as I just</p> <p>11 said, arose when it acquired those assets.</p> <p>12 Q. Okay.</p> <p>13 A. And it has been continuous until the</p> <p>14 order of Judge Brown.</p> <p>15 Q. And the order of Judge Brown changed</p> <p>16 FlightLevel's plowing obligations in what way?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. FlightLevel was to plow the lot -- area</p> <p>19 on Lot G, and Boston Executive Helicopter was to</p> <p>20 plow the area on Lot F.</p> <p>21 BY MR. FEE:</p> <p>22 Q. Okay. So the ramp area on Lot G,</p> <p>23 contiguous to that portion of the T hangar</p> <p>24 occupied by BEH is the responsibility of</p>
Page 39	Page 41
<p>1 A. That is the -- according to the current</p> <p>2 order of Angel Kelley Brown, Her Honor,</p> <p>3 FlightLevel plows the ramp on Lot G and Boston</p> <p>4 Executive Helicopter plows the ramp on Lot F.</p> <p>5 Q. And it's your -- is that -- was it always</p> <p>6 that way?</p> <p>7 A. No.</p> <p>8 Q. Okay. Prior to the order that you</p> <p>9 referenced, was FlightLevel responsible for</p> <p>10 plowing the entire pavement that separates the</p> <p>11 buildings on Lot G and Lot F?</p> <p>12 A. No.</p> <p>13 Q. And at any time was FlightLevel</p> <p>14 responsible for plowing pavement that is on</p> <p>15 Lot F?</p> <p>16 A. Yes.</p> <p>17 Q. When was that?</p> <p>18 A. FlightLevel acquired the membership</p> <p>19 interest in EAC Realty -- in Eastern Air Center</p> <p>20 on -- in January of 2008. And prior to that,</p> <p>21 Eastern Air Center had the obligation to plow the</p> <p>22 area you just described.</p> <p>23 Q. Okay. And at no time after acquisition</p> <p>24 of that interest did FlightLevel have the</p>	<p>1 FlightLevel to plow; is it not?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. We're just going to keep this off</p> <p>4 to the side a bit.</p> <p>5 So you said that you became general</p> <p>6 counsel and VP of administration for FlightLevel</p> <p>7 Norwood, LLC, sometime in 2015. Correct?</p> <p>8 A. In October of 2015.</p> <p>9 Q. October 2015.</p> <p>10 And prior to that time you were providing</p> <p>11 some legal advice to FlightLevel Norwood, LLC,</p> <p>12 but not exclusively to FlightLevel Norwood, LLC.</p> <p>13 Is that correct?</p> <p>14 A. No.</p> <p>15 Q. At any point prior to your -- I thought</p> <p>16 we covered this, and maybe I misunderstood.</p> <p>17 At any time prior to your becoming</p> <p>18 general counsel in 2015, did you provide legal</p> <p>19 services to FlightLevel Norwood, LLC?</p> <p>20 A. No.</p> <p>21 Q. So your first involvement with</p> <p>22 FlightLevel Norwood, LLC, was when you were hired</p> <p>23 as general counsel in 2015?</p> <p>24 A. No.</p>

Page 42	Page 44
<p>1 Q. Okay. What was your first involvement 2 with FlightLevel Norwood, LLC? 3 A. As a consultant. 4 Q. So from when to when? 5 A. Prior to being hired. The work that I 6 did for FlightLevel was as a consultant. 7 Q. Okay. 8 A. FlightLevel Norwood. 9 Q. When did that begin? 10 A. When did what begin? 11 Q. When did that consultant work begin? 12 A. I believe in 2013. 13 Q. So prior to 2013, did you have any 14 involvement whatsoever with FlightLevel Norwood, 15 LLC? 16 A. I don't believe so. 17 Q. Did you have any involvement -- 18 MR. HARTZELL: I'm sorry to interrupt. 19 Prior to what year? 20 MR. FEE: 2013. 21 MR. HARTZELL: 2013. Okay. 22 BY MR. FEE: 23 Q. Prior to 2013, did you have any 24 involvement whatsoever with any of the</p>	<p>1 A. Yes. 2 Q. And is -- when did you first meet Peter 3 Eichleay? 4 A. I believe in 2008. 5 Q. Okay. When did Peter Eichleay first 6 become involved with the FlightLevel entities? 7 A. I don't know. 8 Q. Was it in or about 2008 or was it prior 9 to 2008? 10 A. I believe the FlightLevel entities were 11 Peter's creation. When the entity was created 12 versus when it was formed, I don't know. It 13 could have been a couple of years. 14 Q. When was the first FlightLevel entity 15 formed? Do you know? 16 A. Maybe. 17 Q. Approximately. 18 A. I'm not sure I know all the FlightLevel 19 entities. But FlightLevel Norwood was formed, I 20 believe, in 2007. 21 Q. Now, in your capacity as general counsel 22 to FlightLevel Lakeland, LLC, did you have 23 regular contact with Eichleay? 24 A. Yes.</p>
Page 43	Page 45
<p>1 FlightLevel entities? 2 A. Yes. 3 Q. In what capacity? 4 A. As general counsel. 5 Q. To which FlightLevel entities? 6 A. To FlightLevel Lakeland, LLC. 7 Q. Any others? 8 A. No. 9 Q. How long were you general counsel to 10 FlightLevel Lakeland, LLC? 11 A. From the closing of the merger of 12 businesses at Lakeland Airport in which 13 FlightLevel Lakeland, LLC, became a joint venture 14 with Columbia Air Services-LAL, LLC. 15 Q. LAL-LLC. And when was that? What year? 16 A. That was in 2008. 17 Q. So were you -- 18 A. Or early 2009. The closing. 19 Q. I'm not holding you to these exact dates. 20 I'm just trying to get a sense of how long you 21 were general counsel for FlightLevel Lakeland, 22 LLC. 23 A. I still am. 24 Q. Okay. So 2009 to the present?</p>	<p>1 Q. And did Eichleay discuss with you the 2 acquisition of and interest in Norwood Airport? 3 A. When? 4 MR. HARTZELL: Objection. 5 BY MR. FEE: 6 Q. Before FlightLevel Norwood, LLC, was 7 formed. 8 A. No. 9 Q. You said that you worked as a consultant 10 for FlightLevel Norwood from 2013 to 2015. 11 Correct? 12 A. Yes. 13 Q. And FlightLevel Norwood was formed in or 14 about 2007 or 2008. Correct? 15 A. To the best of my recollection. 16 Q. And between 2007 or 2008 and 2013 when 17 you became a consultant what, if any, advice or 18 services did you provide to FlightLevel Norwood, 19 LLC? 20 A. None. 21 MR. HARTZELL: Objection as to advice. 22 You can answer as to services. 23 MR. FEE: Well, I didn't say legal advice 24 so I'm sure we'll have a discussion at length</p>

Page 46	Page 48
<p>1 about the scope of attorney-client privilege at 2 some point but I -- let's not jump the gun. 3 BY MR. FEE: 4 Q. So fair to say from -- anything that 5 happened at FlightLevel Norwood, LLC, from 2008 6 to 2013 you had no involvement in. Is that fair 7 to say? 8 A. Yeah. Yes. 9 Q. Okay. Were you aware or did you discuss 10 at any time Mr. Eichleay's discussions with 11 Mr. Donovan regarding BEH's proposed acquisition 12 of FlightLevel Norwood? 13 A. Can you reask that question? 14 Q. Sure. You're aware of the fact that at 15 some point in time Peter Eichleay and Chris 16 Donovan discussed BEH's potential acquisition of 17 FlightLevel Norwood, LLC. Correct? 18 A. Correct. 19 Q. And is it your recollection that those 20 discussions took place between 2010 and 2013? 21 A. I had no personal knowledge of when those 22 discussions took place. 23 Q. And so is it fair to say that your 24 discussions with Mr. Eichleay regarding BEH's</p>	<p>1 that had happened in the past between him and 2 Chris regarding BEH's discussions regarding 3 acquisition of FlightLevel Norwood, LLC. Is that 4 fair to say? 5 MR. HARTZELL: Wait a minute. I think 6 now we're getting into privileged information. 7 If you want to ask him does he have personal 8 knowledge, was he present in any conversations 9 between Peter Eichleay and Chris Donovan, I think 10 that's fine. 11 If he only gained knowledge about those 12 in conversations with Mr. Eichleay, that's 13 privileged. 14 MR. FEE: Let's go off the record for a 15 second. 16 (Discussion off the record.) 17 MR. FEE: Back on the record. 18 BY MR. FEE: 19 Q. Is it fair to say your knowledge 20 regarding potential -- I'm sorry -- conversations 21 between Donovan and Eichleay regarding BEH's 22 interest in acquiring FlightLevel Norwood, LLC, 23 occurred after those conversations had ended? 24 A. I don't know.</p>
Page 47	Page 49
<p>1 discussions regarding acquisitions of FlightLevel 2 Norwood, LLC, happened after those discussions 3 were terminated? 4 A. I don't understand the question. 5 Q. Sure. You said that you had no knowledge 6 of those -- the discussions between BEH and 7 FlightLevel Norwood regarding BEH's interest in 8 acquiring FlightLevel Norwood, LLC, while they 9 were happening. Correct? 10 A. I had no personal knowledge. I didn't 11 observe any of those -- any of that transpire. 12 Q. Okay. So -- 13 A. I now have knowledge of it. 14 Q. I understand, and I'm trying to 15 understand whether or not you had any involvement 16 in discussions between BEH and FlightLevel 17 Norwood regarding BEH's interest in acquiring 18 FlightLevel Norwood between 2010 and 2013. 19 A. So ask the question. 20 Q. I just did. 21 A. In the form of a question, my answer is 22 no. 23 Q. Okay. And then after 2013, you had 24 discussions with Mr. Eichleay regarding things</p>	<p>1 Q. Okay. Do you know when conversations 2 between BEH and FlightLevel Norwood, LLC, 3 regarding BEH's interest in acquiring FlightLevel 4 Norwood, LLC, ended? 5 A. I'm not sure they have ended. But I know 6 from the record that I have read that there 7 were -- was an exchange of e-mails. And did I 8 know about those e-mails while they were being 9 written? No. 10 Q. Are you aware that in connection with 11 those discussions that we've been discussing that 12 a confidentiality agreement was executed between 13 BEH and FlightLevel Norwood, LLC? 14 A. I am aware. Yes. 15 Q. And do you know -- is that agreement in 16 writing? 17 A. I believe so. 18 Q. And have you seen it? 19 A. Yes. 20 Q. And it exists in FlightLevel Norwood's 21 records? 22 A. It exists in the production documents 23 that FlightLevel produced to Boston Executive 24 Helicopters.</p>

Page 50	Page 52
<p>1 Q. And do you know what documents, if any, 2 were produced in accordance with that 3 confidentiality agreement? 4 MR. HARTZELL: You mean documents -- 5 BY MR. FEE: 6 Q. Contemporaneously with -- during the term 7 of that confidentiality agreement, do you know 8 what documents were produced by FlightLevel? 9 MR. HARTZELL: Just to clarify the 10 record. You mean documents that were given by 11 FlightLevel to BEH pursuant to the 12 confidentiality agreement. 13 MR. FEE: Correct. That's what I mean. 14 A. I have some knowledge. 15 BY MR. FEE: 16 Q. And how do you know that? What do you 17 know? 18 A. I know that financials were produced. I 19 know that site maps were produced. 20 Q. Anything else? 21 A. I wouldn't be the one to answer that 22 question. 23 Q. What is the basis of your knowledge that 24 financials and site maps were produced?</p>	<p>1 BEH and FlightLevel; right? 2 A. Correct. 3 Q. And I'm wanting to know whether you know 4 the specific documents that you believe BEH was 5 provided with pursuant to the terms of the 6 confidentiality agreement. 7 A. I don't know the specific documents. I 8 know some documents. 9 Q. And you say financials and site maps; 10 right? 11 A. That's what I said. Yes. 12 Q. And do you know what -- the financials 13 for what year were produced? 14 A. No. 15 Q. Do you know what the site maps were of? 16 A. Yes. 17 Q. And what were they of? 18 A. The airfield at Norwood. 19 Q. And in what way were those site maps 20 confidential? 21 A. They were prepared by FlightLevel in 22 connection with the acquisition by FlightLevel of 23 its interest in Eastern Air Center. As a result, 24 they were subject to a confidentiality agreement</p>
Page 51	Page 53
<p>1 A. My own investigation. 2 Q. Okay. And were those documents in hard 3 copy or digital form? 4 A. I'm sure they were in both. 5 Q. You're sure or you know? 6 A. Well, I personally put them in digital 7 form, and they had to have been in paper form in 8 order to do that. 9 Q. I'm actually asking: Do you know the 10 method by which they were transmitted to BEH? 11 A. No. 12 Q. Is there a list, a definitive list, of 13 the documents -- specific documents that were 14 transmitted to BEH under the terms of that 15 confidentiality agreement? 16 A. I don't have an answer to that. It 17 wasn't my arrangement. 18 Q. All right. Well, you're familiar with 19 the claims and defenses asserted in the 20 litigation pending between BEH and FlightLevel. 21 Correct? 22 A. Yes. 23 Q. And one of the claims is that BEH 24 breached the confidentiality agreement between</p>	<p>1 relative to that. And also subject to the 2 confidentiality agreement between FlightLevel 3 Norwood and Boston Executive Helicopters. 4 Q. Did the site maps contain information 5 that was otherwise not publicly known? 6 A. The site maps contained engineering that 7 was paid for by FlightLevel. And to that extent, 8 it's intellectual property. 9 Q. In the litigation, FlightLevel contends 10 that BEH misused that information. Is that fair 11 to say? Strike that. 12 In the litigation, FlightLevel contends 13 that BEH breached the confidentiality agreement 14 by, in some fashion, mishandling the documents 15 that were provided pursuant to the 16 confidentiality agreement. Is that fair to say? 17 MR. HARTZELL: Objection. 18 A. Well, the complaint -- the allegations in 19 the complaint are going to speak for themselves. 20 But one basis for that is BEH's use of documents 21 garnered under the confidentiality agreement in 22 court against FlightLevel Norwood. 23 BY MR. FEE: 24 Q. And what documents did they use in court?</p>

Page 54	Page 56
<p>1 A. Engineered documents engineered by 2 FlightLevel in connection with its acquisition of 3 Eastern Air Center. 4 Q. How were they used in court? 5 A. To demonstrate that FlightLevel Norwood 6 was somehow responsible for whatever allegations 7 BEH had levied against them. 8 Q. I'm not sure I understand your answer. 9 A. I'm not sure I understand your question. 10 Q. Okay. Fair enough. 11 I'm trying to understand the way in which 12 FlightLevel contends it was harmed by BEH in 13 connection with BEH's alleged breach of the 14 confidentiality agreement. Can you explain that 15 to me? 16 A. Yes. 17 Q. Okay. How was FlightLevel harmed? 18 A. BEH sought a preliminary injunction 19 against FlightLevel for erecting barriers on 20 Lot G. And in the course of its presentation to 21 Judge Angel Kelley Brown, it used engineered 22 drawings created by FlightLevel, protected by the 23 confidentiality agreement, to demonstrate to the 24 court that the court should rule in its favor.</p>	<p>1 MR. HARTZELL: Objection. 2 A. She got it wrong. 3 BY MR. FEE: 4 Q. You didn't appeal it, though; right? 5 A. Not yet. 6 Q. Okay. 7 (Exhibit No. 46 marked for identification.) 8 BY MR. FEE: 9 Q. Nick, I'm showing you a document that's 10 been marked as Exhibit 46. It appears to be a 11 letter to the Norwood Airport Commission from 12 Mr. Eichleay dated June 20, 2013. Have you ever 13 seen this before? 14 A. Yes. 15 Q. Did you write it? 16 A. No. 17 Q. Did you contribute any consulting 18 services in connection with the drafting of this 19 document? 20 A. I don't recall. 21 Q. Did you confer with Mr. Eichleay 22 regarding the substance of this document prior to 23 its being transmitted to the Norwood Airport 24 Commission?</p>
Page 55	Page 57
<p>1 Q. Okay. And what did those engineered 2 drawings show? 3 A. The airport. 4 Q. It showed lot lines? 5 A. It showed lot lines, leaseholds, square 6 footage. 7 Q. And was that information otherwise not 8 publicly available? 9 A. That information -- that particular 10 exhibit was only available through FlightLevel. 11 Q. Okay. Do you contend that FlightLevel 12 was prejudiced in any way by virtue of use of 13 that information? 14 A. Yes. 15 Q. How? 16 A. Judge Kelley issued an order requiring 17 FlightLevel to take down the barriers. 18 Q. And do you think the reason that Judge 19 Kelley issued that order was because of the site 20 maps that BEH utilized in its presentation? 21 A. In part, yes. 22 Q. Okay. Is there any other reason that 23 Judge Angel Kelley Brown may have ruled against 24 FlightLevel?</p>	<p>1 A. I don't recall. 2 Q. Do you know what TOFA is? 3 A. You mean bean curd? 4 Q. I said TOFA. Not tofu. 5 A. I know what a taxiway or a taxi lane 6 object-free area is, an acronym of which is TOFA. 7 Q. Okay. How do you know that? 8 A. I'm an aviation lawyer. 9 Q. Okay. Are you a pilot? 10 A. Student pilot. 11 Q. Okay. 12 A. How about you? 13 Q. No. Scared to death of that stuff. 14 So in 2013, did you have a working 15 knowledge of how TOFAs function at airports? 16 A. I don't recall. 17 Q. Did you do any analysis prior to the 18 drafting of this letter regarding the application 19 of TOFA or OFA restrictions at the Norwood 20 Memorial Airport? 21 A. I don't recall. 22 Q. At any time have you done an analysis 23 regarding the TOFA and OFA restrictions at 24 Norwood Memorial Airport?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. Yes.</p> <p>2 Q. And when did you first start or undertake</p> <p>3 that inquiry?</p> <p>4 A. I'm not sure.</p> <p>5 Q. Sometime after this letter?</p> <p>6 A. Sometime approximate to the rise of the</p> <p>7 dispute between Boston Executive Helicopters and</p> <p>8 FlightLevel Norwood, LLC.</p> <p>9 Q. Do you know if prior to June of 2013 TOFA</p> <p>10 restrictions were enforced at Norwood Memorial</p> <p>11 Airport?</p> <p>12 A. No. I don't know.</p> <p>13 Q. Do you know if prior to June of 2013</p> <p>14 FlightLevel observed TOFA or OFA restrictions at</p> <p>15 the Norwood Memorial Airport?</p> <p>16 A. I know -- I don't have any knowledge of</p> <p>17 FlightLevel Norwood's operations prior to 2013 at</p> <p>18 Norwood.</p> <p>19 Q. Okay. When you started working as a</p> <p>20 consultant for FlightLevel in 2013, did you have</p> <p>21 a particular issue or project that you were</p> <p>22 working on for FlightLevel?</p> <p>23 A. Which FlightLevel?</p> <p>24 Q. Norwood. I'm talking about your</p>	<p style="text-align: right;">Page 60</p> <p>1 me -- did you work on that exclusively?</p> <p>2 A. No.</p> <p>3 Q. And is it fair to say that you spent a</p> <p>4 significant amount of time consulting to</p> <p>5 FlightLevel regarding its disputes with BEH</p> <p>6 between 2013 and 2015?</p> <p>7 A. Of the time that I spent consulting for</p> <p>8 FlightLevel between 2013 and 2015, which wasn't</p> <p>9 much, more of it was associated with this</p> <p>10 dispute, the dispute between FlightLevel Norwood</p> <p>11 and Boston Executive Helicopters, than the other</p> <p>12 matters which were ancillary little airport</p> <p>13 matters between other various people including</p> <p>14 FlightLevel tenants.</p> <p>15 Q. Okay. You've obviously seen this</p> <p>16 document before. It's been marked as Exhibit 46.</p> <p>17 Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And on page 2 Mr. Eichleay, in the fourth</p> <p>20 paragraph, talks about BEH's entry into the fuel</p> <p>21 business at Norwood and describes how it would</p> <p>22 severely undermine FlightLevel's own fuel</p> <p>23 business. Do you see that?</p> <p>24 A. Can you point it out to me?</p>
<p style="text-align: right;">Page 59</p> <p>1 consultancy to FlightLevel Norwood, which you've</p> <p>2 testified occurred between 2013 and 2015.</p> <p>3 My question to you is: When you started</p> <p>4 in 2013, did you have a particular issue or</p> <p>5 project that you were working on?</p> <p>6 A. Yes.</p> <p>7 Q. And what was that?</p> <p>8 A. Well, with respect to this case, it was</p> <p>9 the rise of the dispute between Boston Executive</p> <p>10 Helicopters and FlightLevel Norwood.</p> <p>11 With respect to FlightLevel Norwood's</p> <p>12 other matters having nothing to do with this</p> <p>13 case, I am going to invoke attorney-client</p> <p>14 privilege.</p> <p>15 Q. Right. I'm not really interested in any</p> <p>16 of the other matters that you worked on as a</p> <p>17 consultant between 2013 and 2015. Although, I</p> <p>18 question whether any of it is subject to the</p> <p>19 attorney-client privilege given the fact that you</p> <p>20 were a consultant during that time frame.</p> <p>21 A. Fair enough.</p> <p>22 Q. Let's just -- I'm wanting to know what</p> <p>23 projects you worked on between 2013 and 2015</p> <p>24 regarding the dispute with BEH. And can you tell</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Sure. (Indicating.) Fourth paragraph.</p> <p>2 "It goes without saying" --</p> <p>3 If you could just read the first couple</p> <p>4 of sentences. I want to ask you about that.</p> <p>5 A. "It also goes without saying that BEH's</p> <p>6 entry into the fuel business would severely</p> <p>7 undermine not only our own fuel business and</p> <p>8 planned capital improvement projects but also our</p> <p>9 airport maintenance and real estate businesses as</p> <p>10 well."</p> <p>11 Q. Okay. So did you consult with</p> <p>12 Mr. Eichleay in 2013 regarding the potential</p> <p>13 threat BEH posed if it were to become an FBO?</p> <p>14 MR. HARTZELL: Um --</p> <p>15 BY MR. FEE:</p> <p>16 Q. Consultant.</p> <p>17 A. No.</p> <p>18 Q. Okay. At any time between 2013 and 2015,</p> <p>19 did you discuss with Mr. Eichleay the potential</p> <p>20 threat posed by BEH if it were to become an FBO?</p> <p>21 MR. HARTZELL: I'm sorry. What's the</p> <p>22 time frame?</p> <p>23 MR. FEE: 2013 to 2015, during which time</p> <p>24 he was a consultant. Talking until October of</p>

Page 62	Page 64
<p>1 2015.</p> <p>2 MR. HARTZELL: Just so the record is</p> <p>3 clear. During this time that you were acting as</p> <p>4 a consultant, you were not providing legal</p> <p>5 advice?</p> <p>6 THE WITNESS: That's correct.</p> <p>7 MR. HARTZELL: All right.</p> <p>8 A. I'm sorry, Mike. Can you ask it again?</p> <p>9 BY MR. FEE:</p> <p>10 Q. That's okay. At any time between 2013</p> <p>11 and October 2015, did you discuss with</p> <p>12 Mr. Eichleay the threat posed by BEH if it were</p> <p>13 to become an FBO?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And is it fair to say that</p> <p>16 FlightLevel's position, consistent throughout</p> <p>17 that time period, was that a single FBO was</p> <p>18 appropriate for Norwood Memorial Airport?</p> <p>19 MR. HARTZELL: Objection.</p> <p>20 A. Its position was that the airport's</p> <p>21 business couldn't sustain two.</p> <p>22 BY MR. FEE:</p> <p>23 Q. Right. And therefore, FlightLevel needed</p> <p>24 to maintain its position as the sole FBO at the</p>	<p>1 efforts limited to writing letters?</p> <p>2 A. No.</p> <p>3 Q. What else did FlightLevel do in order to</p> <p>4 communicate its position regarding the fact that</p> <p>5 the airport could only sustain one FBO?</p> <p>6 A. It instructed its employees to abide by</p> <p>7 the rules, to make no mistakes, to be courteous</p> <p>8 and kind, and represent the airfield in the best</p> <p>9 manner possible and be the best FBO that it</p> <p>10 could.</p> <p>11 Q. Other than writing letters and being a</p> <p>12 good corporate citizen, did FlightLevel undertake</p> <p>13 any other efforts to communicate its position</p> <p>14 that the Norwood Memorial Airport could only</p> <p>15 sustain one FBO?</p> <p>16 MR. HARTZELL: I'm sorry. Could you read</p> <p>17 that back, please?</p> <p>18 (Whereupon the prior question was read</p> <p>19 back.)</p> <p>20 MR. HARTZELL: Can we take a two-minute</p> <p>21 break?</p> <p>22 MR. FEE: Yes. Absolutely.</p> <p>23 (Recess taken at 11:16 a.m.)</p> <p>24 (Deposition resumed at 11:20 a.m.)</p>
Page 63	Page 65
<p>1 Norwood Memorial Airport. Correct?</p> <p>2 A. FlightLevel wanted to maintain its</p> <p>3 position as the sole FBO at Norwood Memorial</p> <p>4 Airport.</p> <p>5 Q. And its intent was to take positions with</p> <p>6 the NAC that enhanced its ability to maintain its</p> <p>7 position as the sole FBO at Norwood. Correct?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. The Norwood Airport Commission is the</p> <p>10 sole authority on the airport capable of granting</p> <p>11 FBO rights. As a tenant and as an employer on</p> <p>12 the field, FlightLevel's sole avenue of recourse</p> <p>13 is to write letters advocating its position.</p> <p>14 And, yes, its position was that to the</p> <p>15 extent the Norwood Airport Commission would</p> <p>16 consider it and was capable of considering the</p> <p>17 request, that they read Peter's letters and be so</p> <p>18 informed.</p> <p>19 BY MR. FEE:</p> <p>20 Q. Okay. And again, I'm going to just refer</p> <p>21 to this time period as the "consultant period."</p> <p>22 A. Fair enough.</p> <p>23 Q. From 2013 to October of 2015.</p> <p>24 To your knowledge were FlightLevel's</p>	<p>1 BY MR. FEE:</p> <p>2 Q. You testified earlier that you weren't</p> <p>3 providing any services or advice or consulting --</p> <p>4 consulting advice or services to FlightLevel</p> <p>5 Norwood, LLC, at the time that it provided</p> <p>6 financial information to BEH. Is that fair to</p> <p>7 say?</p> <p>8 A. I don't recall when it provided -- I</p> <p>9 mean, I wasn't -- I didn't observe it providing</p> <p>10 financial information. I'm not sure when that</p> <p>11 occurred.</p> <p>12 Q. Is it your understanding that documents</p> <p>13 were physically transmitted to BEH, or was it</p> <p>14 rather that BEH's accountant was allowed to</p> <p>15 review documents in FlightLevel's offices? Do</p> <p>16 you know?</p> <p>17 A. I don't know.</p> <p>18 Q. The map that you talked about BEH</p> <p>19 disclosing at the hearing -- remember I asked you</p> <p>20 about that?</p> <p>21 A. Yes.</p> <p>22 Q. Is this the map?</p> <p>23 A. I don't know.</p> <p>24 Q. Is it something like this?</p>

Page 66	Page 68
<p>1 A. Something like that. Yes.</p> <p>2 Q. The letter that was marked as Exhibit 46,</p> <p>3 you said that you didn't really have any</p> <p>4 recollection of participating in the drafting of</p> <p>5 that document; is that right?</p> <p>6 A. That's correct.</p> <p>7 (Exhibit No. 47 marked for identification.)</p> <p>8 BY MR. FEE:</p> <p>9 Q. I'm showing you a document that's been</p> <p>10 marked as Exhibit 47. It appears to be an e-mail</p> <p>11 from Mr. Eichleay to Mr. Maguire with copies to</p> <p>12 Mr. Carroll, the town manager; Tony Greeley, the</p> <p>13 fire department chief. And it appears to enclose</p> <p>14 copies of the document that we were just looking</p> <p>15 at, which is Exhibit 46. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have any discussions with</p> <p>18 Mr. Eichleay regarding the reason or the strategy</p> <p>19 associated with transmitting this letter to the</p> <p>20 town manager, the town fire chief, as well as the</p> <p>21 members of the Norwood Airport Commission?</p> <p>22 A. I don't have any recollection of it. No.</p> <p>23 Q. Do you know if the town manager or the</p> <p>24 town fire chief has any authority or -- or have</p>	<p>1 managers. Is fair to say?</p> <p>2 A. The town manager doesn't even cast a</p> <p>3 vote. But as a trusted executive for the board</p> <p>4 of selectmen, he has persuasive authority. Only</p> <p>5 the board of selectmen have authority to appoint</p> <p>6 or remove commissioners from the airport</p> <p>7 commission.</p> <p>8 Q. I understand. My first question was</p> <p>9 whether you consulted with Mr. Eichleay regarding</p> <p>10 the strategy of sending this document to the town</p> <p>11 manager and the town fire chief. And you said</p> <p>12 that you had no recollection of doing that.</p> <p>13 Correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And at any point between -- during the</p> <p>16 consultancy period, did you discuss with</p> <p>17 Mr. Eichleay the strategy of involving the town</p> <p>18 manager or the board of selectmen in disputes</p> <p>19 between FlightLevel and BEH?</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall any discussions with</p> <p>22 Mr. Eichleay on that topic?</p> <p>23 A. I don't recall --</p> <p>24 MR. HARTZELL: I'm sorry. What time</p>
Page 67	Page 69
<p>1 any authority or jurisdiction regarding TOFA or</p> <p>2 OFA designations at the airport?</p> <p>3 A. Yes.</p> <p>4 Q. What? What authority do either of those</p> <p>5 gentlemen have?</p> <p>6 A. That wasn't your question.</p> <p>7 Q. No. I think my question -- maybe I</p> <p>8 misstated it. Let me try it again.</p> <p>9 Do you know if the town manager or the</p> <p>10 town fire chief have any authority to regulate</p> <p>11 TOFA or OFA designations at the airport?</p> <p>12 A. Yes, I know that.</p> <p>13 Q. Okay. Sorry. And what is your</p> <p>14 knowledge?</p> <p>15 A. I don't believe that the town manager has</p> <p>16 any direct authority. The town manager, however</p> <p>17 has persuasive authority with respect to the</p> <p>18 board of selectmen of the town of Norwood. So</p> <p>19 there may be some indirect link there.</p> <p>20 With respect to the fire department, I</p> <p>21 don't know whether they have any influence or not</p> <p>22 over TOFA.</p> <p>23 Q. And the town manager has influence over</p> <p>24 the board of selectmen who appoint the airport</p>	<p>1 period?</p> <p>2 BY MR. FEE:</p> <p>3 Q. The consultancy period, which we've</p> <p>4 defined as being between 2013 and October of</p> <p>5 2015.</p> <p>6 MR. HARTZELL: Okay.</p> <p>7 A. I don't recall whether or not I had any</p> <p>8 conversations or discussions narrowly pointed to</p> <p>9 getting FlightLevel's message to the town manager</p> <p>10 or the fire department.</p> <p>11 BY MR. FEE:</p> <p>12 Q. During that time did you have --</p> <p>13 A. During that period of time.</p> <p>14 Q. Right. And during that period of time</p> <p>15 did you have an opinion as to whether or not it</p> <p>16 was expedient to involve the town manager or the</p> <p>17 board of selectmen in disputes between</p> <p>18 FlightLevel and BEH?</p> <p>19 MR. HARTZELL: Objection.</p> <p>20 A. I had an opinion that it was in the</p> <p>21 interest of any airport tenant to get to know the</p> <p>22 people that make decisions about their airport.</p> <p>23 If there was any counseling that happened as a</p> <p>24 consultant, it would be by way of example at</p>

<p style="text-align: right;">Page 70</p> <p>1 other airports where I had much more experience. 2 BY MR. FEE: 3 Q. And at other airports is it considered 4 politically expedient to involve decision makers 5 who have appointment authority over an airport 6 commission? 7 MR. HARTZELL: Objection. 8 A. I'm sure there are circumstances where it 9 is and circumstance where it's not. 10 BY MR. FEE: 11 Q. And have you found that to be effective 12 in other airports where you have more experience? 13 MR. HARTZELL: Objection. 14 A. I found it to be effective to educate the 15 decision makers on the facts. They then make the 16 decisions irrespective of what the educator 17 wants. 18 BY MR. FEE: 19 Q. Okay. Now, do you know if Exhibit 46 was 20 discussed at any point by the airport commission? 21 I'm not talking about the substance of it. I'm 22 talking about the letter itself. 23 MR. HARTZELL: I'm sorry. You're asking 24 him if he knows that this Exhibit 46 was</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And generally, the airport manager is the 2 initial point of contact for correspondence and 3 he prepares an agenda that is -- or in 4 conjunction with the chairman, they prepare an 5 agenda that transmits information to the NAC 6 members. Is that consistent with your 7 understanding? 8 A. I'm not familiar with your pronunciation 9 of NAC. You're referring to Norwood Airport 10 Commission when you say -- 11 Q. Correct. 12 A. -- when you pronounce phonetically NAC? 13 Q. Should I pronounce it some other way 14 that will make it more comfortable for you or -- 15 how would you like me to refer to the Norwood 16 Airport Commission in short form? 17 A. I have three syllables, NAC. You have 18 one. NAC. 19 Q. Let's go with yours. NAC. Sure. 20 A. Can you ask the question again? 21 Q. I described a procedure, which is my 22 understanding, that the airport manager is the 23 point of contact for correspondence. 24 And he then, in conjunction with the</p>
<p style="text-align: right;">Page 71</p> <p>1 discussed by the members of the airport 2 commission among themselves or -- 3 MR. FEE: No. At a meeting. 4 They would never violate the open meeting 5 law, Neil. 6 BY MR. FEE: 7 Q. Do you know? 8 A. My knowledge of this letter is pretty 9 limited to the fact that it was written, that it 10 likely was submitted through Russ Maguire to the 11 Norwood Airport Commission at the -- in the 12 packet for each commissioner in or about the date 13 that the letter was written. 14 Q. Right. 15 A. And that in subsequent letters where this 16 letter has been attached as an exhibit, wherein I 17 have more personal knowledge, I do know that 18 there has been some discussion. Yes. 19 Q. And you're familiar with the procedures 20 of the Norwood Airport Commission in terms of its 21 receiving information and disseminating it from 22 the airport manager to the members of the 23 commission. Right? 24 A. I am familiar with that part of it. Yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 chairman, prepares an agenda and organizes 2 correspondence and then transmits that to airport 3 members for conversation at -- airport commission 4 members for conversation at public meetings. 5 Is that consistent with your 6 understanding of how that works? 7 A. My understanding is that the submittal to 8 the airport commission, through the airport 9 manager, would be presented to each of the 10 individual commissioners in a packet in advance 11 of the airport commission meeting. 12 Whether or not they discuss the contents 13 of the letter so submitted is entirely up to them 14 and in some cases, all they do is file it. 15 And you -- as somebody writing a letter 16 like this, you never know what's going to happen. 17 Q. Right. It is your understanding that 18 sometimes letters written by FlightLevel to the 19 airport commission are not given to the airport 20 commissioners? 21 A. That's not my understanding. 22 Q. Okay. Because generally they're included 23 in some form of agenda or manager's report or 24 packet that's given to the commissioners.</p>

<p style="text-align: right;">Page 74</p> <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 (Exhibit No. 48 marked for identification.)</p> <p>5 BY MR. FEE:</p> <p>6 Q. So I'm showing you a document that's been</p> <p>7 marked as Exhibit 48. It appears to be the</p> <p>8 minutes of the regular business meeting of the</p> <p>9 NAC on July 17, 2013. I didn't see this letter</p> <p>10 listed on those minutes. Do you know if your</p> <p>11 letter was discussed at the next meeting of the</p> <p>12 NAC?</p> <p>13 MR. HARTZELL: When you say "your</p> <p>14 letter," you mean --</p> <p>15 MR. FEE: 46.</p> <p>16 MR. HARTZELL: The letter that's been</p> <p>17 marked as Exhibit 46.</p> <p>18 A. No.</p> <p>19 BY MR. FEE:</p> <p>20 Q. You don't know?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you recall attending the July 17,</p> <p>23 2013, Norwood Airport Commission meeting?</p> <p>24 A. I may have.</p>	<p style="text-align: right;">Page 76</p> <p>1 was doing was I was trying to figure out if this</p> <p>2 June 19, 2013, date and this June 20, 2013, date</p> <p>3 on Exhibit 46 could tell us something to help us</p> <p>4 answer your question and it can't.</p> <p>5 So my answer is no. I don't know why it</p> <p>6 didn't appear on --</p> <p>7 Q. You said that it was generally your</p> <p>8 practice to attend these meetings. Do you recall</p> <p>9 at any time in or about this time frame -- let me</p> <p>10 rephrase that.</p> <p>11 Do you recall at any time in the summer</p> <p>12 of 2013 being present at an NAC meeting where</p> <p>13 Mr. Eichleay's concerns regarding BEH's</p> <p>14 compliance with TOFA and OFA restrictions, as</p> <p>15 memorialized in Exhibit 46, were discussed?</p> <p>16 A. I was in many meetings where this issue</p> <p>17 was discussed. I don't know if they were in</p> <p>18 2013. I can't remember.</p> <p>19 Q. Okay.</p> <p>20 (Exhibit No. 49 marked for identification.)</p> <p>21 BY MR. FEE:</p> <p>22 Q. Nick, I'm showing you something that's</p> <p>23 been marked as Exhibit 49. It appears to be a</p> <p>24 letter to BEH from Mr. Maguire dated July 19,</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. But you have no specific recollection of</p> <p>2 being there?</p> <p>3 A. It was my practice to attend these</p> <p>4 meetings, and I don't know whether I started in</p> <p>5 August of 2013 or a bit later.</p> <p>6 Q. Okay. Do you recall having any</p> <p>7 discussion with Mr. Eichleay as to why the NAC</p> <p>8 did not list his correspondence of June 20th,</p> <p>9 which has been marked as Exhibit 46, on its</p> <p>10 agenda for the next NAC meeting?</p> <p>11 A. Well, they're reviewing --</p> <p>12 Q. My question is about --</p> <p>13 A. -- records of the 19th. So this letter</p> <p>14 was dated the day after the -- no. Yes. The day</p> <p>15 after the -- Exhibit 48.</p> <p>16 So, no, I do not know why, in the</p> <p>17 correspondence section of these meeting minutes,</p> <p>18 it doesn't reference the June 20, 2013, letter</p> <p>19 that you asked me about.</p> <p>20 Q. I'm not sure what you were saying about</p> <p>21 the dates. Are you saying that the -- Exhibit 46</p> <p>22 did not precede the meeting that's memorialized</p> <p>23 in Exhibit 48?</p> <p>24 A. Yes -- no. What I was saying -- what I</p>	<p style="text-align: right;">Page 77</p> <p>1 2013. Have you seen this before?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it references a deliberation</p> <p>4 undertaken by the NAC at its July 17, 2013,</p> <p>5 meeting. Does it not?</p> <p>6 A. Yes, it does.</p> <p>7 Q. Okay. And it -- take your time and read</p> <p>8 it. I don't want to mischaracterize it at all.</p> <p>9 But it appears to communicate the NAC's</p> <p>10 conclusion that concerns regarding TOFA</p> <p>11 compliance by BEH have been met to the NAC's</p> <p>12 satisfaction. Is that fair to say?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. BEH's -- the situation of -- the citing</p> <p>15 of BEH's fuel farm relative to the Gate 3 TOFA</p> <p>16 has changed over time. It may have -- at one</p> <p>17 point it was moved to the east side of his</p> <p>18 hangar.</p> <p>19 If this letter is contemporaneous with</p> <p>20 that, then that would have addressed the TOFA</p> <p>21 issue with respect to the citing of this fuel</p> <p>22 farm.</p> <p>23 Can you ask your question again? Then I</p> <p>24 can see if I remember it.</p>

Page 78	Page 80
<p>1 BY MR. FEE: 2 Q. Well, I'm interested in what you just 3 said. When did BEH change the location of its 4 fuel farm? 5 A. I would have to look at the production 6 documents. 7 Q. Do you think it was before or after this 8 letter that's been marked as Exhibit 49? 9 A. It think it was in about that period of 10 time, but the production document record will be 11 the -- you know, that's the document to stand on. 12 Q. When you say "production document 13 record," what specifically are you referring to? 14 Do you know? 15 A. Plans delivered by BEH to the Norwood 16 Airport Commission showing the fueling of 17 aircraft and the siting of his farm so that it 18 complies with the TOFA at Gate 3. 19 Q. Okay. And it's your belief or memory 20 that at some point in time the citing of the fuel 21 farm on BEH's plans changed. Is that fair to -- 22 a fair characterization of your testimony? 23 A. That's fair. Yes. 24 Q. Okay. During this time period -- and I'm</p>	<p>1 A. Yes, I do. 2 Q. And people -- or I generally refer to 3 this as the self-fuel cabinet. Is that fair to 4 say? 5 A. It's a fueling cabinet. 6 Q. And that's located on Lot H? 7 A. That's located on something called the 8 tank farm parcel on Lot H. 9 Q. Going back to our map at 45, there is a 10 notation. When you say "tank farm on Lot H," do 11 you see where that's designated on 45? 12 A. Tank farm lease lot is what it's called 13 on Lot H. 14 Q. And does -- is this the vicinity in which 15 the self-fueling cabinet is located? 16 A. When you say "this vicinity," you're 17 pointing towards a red dot on Exhibit 45 in the 18 vicinity of the tank farm lease lot. 19 Q. I guess I'm looking at the entire area 20 designated as tank farm lease lot. And I'm 21 asking you: Is the self-fueling cabinet located 22 within that area? 23 A. Yes. 24 Q. Okay. And is the self-cabinet located on</p>
Page 79	Page 81
<p>1 talking about 2013 -- was FlightLevel utilizing 2 its self-fueling cabinet on -- at the end -- on 3 Lot H? 4 A. I don't know. 5 Q. Did you ever have any discussions with 6 Mr. Eichleay regarding FlightLevel's use of this 7 self-fueling cabinet on Lot H? 8 MR. HARTZELL: Before or after? 9 MR. FEE: I'm talking about the summer of 10 2013. 11 MR. HARTZELL: Okay. 12 A. No. 13 BY MR. FEE: 14 Q. Never? 15 A. No. I didn't say that. 16 Q. Okay. 17 (Exhibit No. 50 marked for identification.) 18 BY MR. FEE: 19 Q. I'm going to show you a document that's 20 been marked. Nick, I'm showing you a document 21 that's been marked as Exhibit 50. It appears to 22 be a picture of an apparatus described as a 23 "fueling aircraft by dispensing cabinet." Do you 24 see that sign?</p>	<p>1 the red dot that is located within the tank farm 2 lease lot designation on Exhibit 45? 3 A. I don't know. 4 Q. Is it in that general vicinity? 5 A. It is south of the condo hangar building 6 on Lot G. 7 Q. And how is the -- or how was the 8 self-fueling cabinet utilized? 9 A. Well, it's a fueling cabinet. And it was 10 originally installed, as I am to understand, by 11 the entity that constructed the hangar on Lot G 12 and occupied unit 7 and/or unit 7 and 8 and -- 13 dating back a number of years. 14 Q. Okay. 15 A. And it is currently out of service, but 16 all I have is historical word of mouth as to how 17 it was used. 18 Q. Because it preceded your involvement with 19 FlightLevel Norwood. 20 A. It did. 21 Q. Okay. But is it your understanding that 22 based on this historical knowledge that you have 23 that planes drove or moved down on the pavement 24 between Lot G and Lot F to access the fueling --</p>

Page 82	Page 84
<p>1 self-fueling cabinet?</p> <p>2 MR. HARTZELL: Objection.</p> <p>3 A. I don't know.</p> <p>4 BY MR. FEE:</p> <p>5 Q. You don't know how it was used?</p> <p>6 A. I know what I know, but it's not that.</p> <p>7 Q. What do you know?</p> <p>8 A. I know that the owner of the tank farm</p> <p>9 and the owner of the building used it for its own</p> <p>10 purposes.</p> <p>11 Q. Well, FlightLevel used it; right?</p> <p>12 A. I don't know that.</p> <p>13 Q. Okay.</p> <p>14 (Exhibit No. 51 marked for identification.)</p> <p>15 BY MR. FEE:</p> <p>16 Q. So I know that this precedes your</p> <p>17 consultancy with FlightLevel Norwood, but I'm</p> <p>18 going to show you a document that's been marked</p> <p>19 as Exhibit 51. It appears to be a self-fueler</p> <p>20 operations agreement between Boston Air Charter</p> <p>21 and FlightLevel Norwood.</p> <p>22 I'm going to ask if that refreshes your</p> <p>23 recollection as to whether or not FlightLevel</p> <p>24 Norwood utilized the self-fueling cabinet?</p>	<p>1 certainly ordered to not fuel on Lot G or H by</p> <p>2 the Honorable Angel Kelley Brown.</p> <p>3 BY MR. FEE:</p> <p>4 Q. You sound like a big fan.</p> <p>5 MR. HARTZELL: Don't say anything.</p> <p>6 BY MR. FEE:</p> <p>7 Q. I'm showing you a document that's been</p> <p>8 marked as Exhibit 52, and ask if that refreshes</p> <p>9 your recollection as to when FlightLevel elected</p> <p>10 to stop using the self-fuel cabinet?</p> <p>11 A. No.</p> <p>12 Q. Did you have any discussions with</p> <p>13 Mr. Eichleay -- again, this is during your</p> <p>14 consultancy period -- regarding the decision to</p> <p>15 stop using the self-fueling cabinet?</p> <p>16 A. No.</p> <p>17 Q. Do you have any knowledge or any facts</p> <p>18 regarding FlightLevel's decision to stop using</p> <p>19 the self-fueling cabinet?</p> <p>20 A. No.</p> <p>21 Q. Do you have an opinion as to whether</p> <p>22 FlightLevel's use of the self-fueling cabinet</p> <p>23 violated TOFA and OFA restrictions?</p> <p>24 A. Yes.</p>
Page 83	Page 85
<p>1 A. Let me take a minute.</p> <p>2 Q. Take your time.</p> <p>3 A. It refreshes my knowledge as to this</p> <p>4 document. Although, I have no personal knowledge</p> <p>5 of the operation of the fuel farm.</p> <p>6 Q. Okay. And it refreshes your recollection</p> <p>7 to the extent that you now recall that</p> <p>8 FlightLevel did utilize the self-fuel cabinet?</p> <p>9 MR. HARTZELL: Objection.</p> <p>10 A. It refreshes my recollection that I was</p> <p>11 informed that Boston Air Charter and sometimes, I</p> <p>12 believe, the Norwood Airport Police -- not</p> <p>13 airport police -- strike that.</p> <p>14 The Norwood Police Department would use</p> <p>15 the fuel farm, Boston Air Charter, having an</p> <p>16 organ transplant charter operation, and the</p> <p>17 police having an emergency services operation.</p> <p>18 BY MR. FEE:</p> <p>19 Q. At some point FlightLevel elected to stop</p> <p>20 utilizing the self-fueling cabinet. Do you know</p> <p>21 when that was?</p> <p>22 A. No, I don't.</p> <p>23 (Exhibit No. 52 marked for identification.)</p> <p>24 A. Although, I can tell you that it was</p>	<p>1 Q. It did; didn't it. Right?</p> <p>2 A. No.</p> <p>3 Q. You don't think so? You don't think that</p> <p>4 the use of the self-fueling cabinet violated</p> <p>5 TOFA?</p> <p>6 A. No.</p> <p>7 Q. Okay.</p> <p>8 (Exhibit No. 53 marked for identification.)</p> <p>9 BY MR. FEE:</p> <p>10 Q. I'm showing you a document that's been</p> <p>11 marked as Exhibit 53. Take a look at it, and let</p> <p>12 me know when you're ready for a question.</p> <p>13 MR. HARTZELL: Was this part of the</p> <p>14 production?</p> <p>15 MR. FEE: I don't think you've seen it</p> <p>16 before, Neil.</p> <p>17 A. I'm sorry, Mike. Can you ask your</p> <p>18 question again?</p> <p>19 BY MR. FEE:</p> <p>20 Q. No. I asked you to take a look at that,</p> <p>21 and let me know when you're ready for a question.</p> <p>22 A. I'm ready.</p> <p>23 Q. I've put before you a document that</p> <p>24 appears to be a description or a depiction of how</p>

<p style="text-align: right;">Page 86</p> <p>1 airplanes might use the self-fueling cabinet. Do 2 you see that? 3 A. Yes. 4 Q. Does that, in your mind, fairly and 5 accurately depict how airplanes would use the 6 self-fueling cabinet? 7 MR. HARTZELL: Objection. 8 A. No. 9 BY MR. FEE: 10 Q. Why not? 11 A. Well, the self-fueling cabinet wasn't, as 12 I understand it, available to everybody on the 13 airport. 14 Q. Right. Well -- 15 A. And -- 16 Q. Just so we're clear. I've shown you a 17 document that Mr. Eichleay attested to Maguire 18 that FlightLevel stopped using the self-fueling 19 cabinet sometime in September of 2013. Right? 20 MR. HARTZELL: Objection. 21 BY MR. FEE: 22 Q. And I'm referring to Exhibit 52. 23 A. And I said that that did not refresh my 24 recollection.</p>	<p style="text-align: right;">Page 88</p> <p>1 constituted a TOFA or OFA violation, and you said 2 no. 3 A. That's correct. 4 Q. Now I'm showing you a document that 5 purports to describe a method in which planes 6 might access the self-fueling cabinet; right? 7 A. Fair enough. Yes. 8 Q. And so is it your testimony, based on 9 reviewing this document, that utilization of the 10 self-fueling cabinet would not violate TOFA or 11 OFA? 12 A. That's correct. 13 Q. How about NFPA restrictions? 14 A. In this configuration, if a wing tank 15 vent was positioned over the 25-foot setback for 16 NFPA, it could not be fueled. 17 However, if the aircraft was positioned 18 slightly differently so the wing vents were not 19 in the red patched area, it would not -- it would 20 comply with the NFPA setback. 21 Q. So it's your testimony that there is a 22 method by which planes could self-fuel utilizing 23 the self-fueling cabinet without violating NFPA 24 standards.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. I understand. I'm asking you to assume 2 that the authenticity of that document -- okay -- 3 that at some point FlightLevel utilized the 4 self-fueling cabinet. 5 MR. HARTZELL: Objection. 6 A. That document doesn't say that 7 FlightLevel was utilizing it. It says that 8 Eastern Air Center -- excuse me -- Eastern Air 9 Charter -- or Boston Air Charter is utilizing it. 10 I'm sorry. You're referring to 52 -- 11 BY MR. FEE: 12 Q. Yes, I am. 13 A. -- or 51? 14 Q. 52. 15 A. What's your question about 52? 16 Q. I'm asking to you tell me -- now, my 17 original question on that document was whether it 18 refreshed your recollection as to whether or not 19 at some point FlightLevel stopped using the 20 self-fueling cabinet. You said it didn't refresh 21 your recollection whatsoever. 22 A. Because I have no recollection. 23 Q. And then I asked you whether you thought 24 utilization of the self-fueling cabinet</p>	<p style="text-align: right;">Page 89</p> <p>1 A. That's correct. 2 MR. HARTZELL: Objection. 3 MR. FEE: Off the record. 4 (Discussion off the record.) 5 (Exhibit No. 54 marked for identification.) 6 BY MR. FEE: 7 Q. I'm showing you a document that's been 8 marked as Exhibit 54. It appears to be a letter 9 from Eichleay dated September 24, 2013. Have you 10 ever seen this before? 11 A. Yes. 12 Q. Okay. 13 A. Although, I don't know if this is the 14 final form of this letter. 15 Q. I give it to you only because it was 16 produced, and I'd like to ask you some questions 17 about it. 18 Do you know -- you say you've seen it 19 before. Have you seen it before in draft or 20 final form? 21 A. I've seen it in final form. 22 Q. Do you know if this letter or something 23 substantially similar was sent to the Norwood 24 Airport Commission by Mr. Eichleay in or about</p>

<p style="text-align: right;">Page 90</p> <p>1 September of 2013?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And in it he talks about a call to</p> <p>4 Mr. Vick at the FAA; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, did you communicate with</p> <p>7 Mr. Eichleay regarding his decision to discuss</p> <p>8 matters with the FAA?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you participate in the telephone call</p> <p>11 or meeting that took place -- strike that.</p> <p>12 Did you participate in the telephone call</p> <p>13 described in this letter with Mr. Vick of the</p> <p>14 FAA?</p> <p>15 A. No.</p> <p>16 Q. Well, it says, "Last week we called</p> <p>17 Thomas Vick." Right?</p> <p>18 That's what it says in the first</p> <p>19 sentence.</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who the "we" refers to?</p> <p>22 A. I have an idea.</p> <p>23 Q. Who's that?</p> <p>24 A. Mike DeLaria.</p>	<p style="text-align: right;">Page 92</p> <p>1 FlightLevel was asking the NAC to take a position</p> <p>2 on?</p> <p>3 A. BEH's overt infringement of FlightLevel's</p> <p>4 property rights.</p> <p>5 Q. And at this point in time, September 24,</p> <p>6 2013, what was BEH's overt infringement of</p> <p>7 FlightLevel's property rights?</p> <p>8 A. Boston Executive Helicopter's plan and</p> <p>9 intention to use Lot G in connection with its</p> <p>10 business on Lot F.</p> <p>11 Q. Okay. Let's focus on that.</p> <p>12 What is the basis for your -- or</p> <p>13 FlightLevel's belief at this time that BEH's plan</p> <p>14 and intention was to utilize Lot G for its</p> <p>15 business on Lot F.</p> <p>16 A. Boston Executive Helicopter submitted a</p> <p>17 plan for the construction of its hangar and</p> <p>18 office structure on Lot F that didn't leave room</p> <p>19 on Lot F for fueling operations.</p> <p>20 Q. In your opinion.</p> <p>21 A. Period.</p> <p>22 Q. Well, that's your opinion; right?</p> <p>23 A. Is that a question?</p> <p>24 Q. Well, you state it like it's an absolute</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay.</p> <p>2 MR. HARTZELL: I don't want you to guess</p> <p>3 or speculate.</p> <p>4 THE WITNESS: I'm not.</p> <p>5 BY MR. FEE:</p> <p>6 Q. In this letter, is it fair to say that</p> <p>7 FlightLevel is asking Norwood Airport Commission</p> <p>8 to take a position regarding its -- or to state</p> <p>9 its position regarding its consideration of</p> <p>10 FlightLevel's -- I'm sorry - BEH's efforts to</p> <p>11 become an FBO?</p> <p>12 A. No.</p> <p>13 Q. Is it fair to say that this letter is</p> <p>14 asking the NAC to take a position regarding BEH's</p> <p>15 alleged infringement of FlightLevel's property</p> <p>16 rights?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. No.</p> <p>19 BY MR. FEE:</p> <p>20 Q. What is -- it does say that FlightLevel</p> <p>21 is asking the NAC to take a position; right?</p> <p>22 That's the last sentence on the first page.</p> <p>23 A. Yes.</p> <p>24 Q. What is your understanding of what</p>	<p style="text-align: right;">Page 93</p> <p>1 fact, and I just want to make sure we're on the</p> <p>2 same page here. That in FlightLevel's opinion,</p> <p>3 Boston Executive Helicopter's design did not</p> <p>4 leave room to undertake fueling operations on</p> <p>5 Lot F.</p> <p>6 MR. HARTZELL: Objection.</p> <p>7 A. Yes. That's correct.</p> <p>8 BY MR. FEE:</p> <p>9 Q. That's your opinion.</p> <p>10 MR. HARTZELL: It's a fact.</p> <p>11 THE WITNESS: It is a fact.</p> <p>12 BY MR. FEE:</p> <p>13 Q. It's a fact?</p> <p>14 A. It's a fact.</p> <p>15 Q. Has that been adjudicated by anyone?</p> <p>16 A. It's being adjudicated right now,</p> <p>17 Counselor.</p> <p>18 Q. Okay. And the position that you're</p> <p>19 taking in that adjudicatory proceeding is that,</p> <p>20 in your opinion, Boston Executive Helicopter did</p> <p>21 not design a facility that would allow fueling on</p> <p>22 Lot F. Is that fair to say?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So were you aware that at this</p>

<p style="text-align: right;">Page 94</p> <p>1 time BEH had represented to the NAC that it did 2 not intend to conduct any fueling operations on 3 Lot G? 4 A. I have no knowledge of that 5 representation -- alleged representation. 6 Q. I'm going to show you Exhibit 49 again. 7 Page 2. And at the bottom of the page -- I'm 8 sorry -- halfway down where it says, "Per 9 Wednesday's meeting," can you read that aloud, 10 please. 11 A. "Per Wednesday's meeting, BEH has 12 furthermore agreed to an aircraft fueling 13 restriction east of its leasehold since this 14 involves abutting leaseholds, and this 15 restriction will remain in place until such time 16 that BEH can demonstrate to the airport 17 commission that the property rights of others 18 will not be violated." 19 Q. Okay. So is it fair to say that as of 20 the date of Exhibit 49 -- that's July of 2013 -- 21 BEH has agreed not to undertake any fueling 22 operations on your client's property? 23 MR. HARTZELL: Objection. 24 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 question. I showed you a document and I said, 2 "What was FlightLevel asking the NAC to take a 3 position on?" 4 And your response was BEH's overt 5 infringement of FlightLevel's property rights. 6 And then I asked you what did BEH do to 7 overtly infringe on the property rights. We 8 talked about fueling. And now I'm asking you if 9 there -- as you sit here today, is there anything 10 else? 11 A. Yes. 12 Q. What? 13 A. They constructed their facility on Lot F 14 in such a manner that it couldn't be used without 15 infringing on FlightLevel's property rights on 16 Lot G. 17 Q. Okay. I think we talked about that. 18 Anything else? 19 A. Plenty of things. 20 Q. Okay. Well, I'm not -- 21 A. It's a timeline, Mike. You'll get to it 22 eventually. 23 Q. I know, but I'm just asking you about 24 this letter.</p>
<p style="text-align: right;">Page 95</p> <p>1 BY MR. FEE: 2 Q. Okay. So back to the exhibit we were 3 talking about where you said that FlightLevel was 4 seeking to have the NAC take a position on BEH's 5 overt infringement of FlightLevel's property 6 rights. 7 A. That's what I said. Yes. 8 Q. Does looking at Exhibit 49 change that 9 answer in any way? 10 A. No. 11 Q. Okay. So other than this notion that BEH 12 intended to conduct fueling operations on your 13 client's property -- or on FlightLevel's 14 property, was there anything else that 15 constituted, in your mind, an overt infringement 16 of FlightLevel's property rights? And I'm 17 talking about in or about September of 2013. 18 A. I would have to consult the record. 19 Q. Okay. But nothing as you sit here today? 20 A. No. I didn't say that. 21 I said I have to consult the record. 22 There were many letters, many issues. To pin it 23 all on September 24, 2013, is not really fair. 24 Q. I'm not trying to ask you an unfair</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. HARTZELL: Hold on. Don't engage in 2 banter with opposing counsel. Simply answer his 3 questions, please. 4 BY MR. FEE: 5 Q. I'm asking you about this letter. And 6 you told me that you thought FlightLevel was 7 asking the commission to take a position, and 8 then I asked you what it was taking a position 9 on. And you said overt infringement of property 10 rights. 11 We've talked about a couple of examples 12 of that. And all I'm asking you is that as you 13 sit here today, are there any other examples that 14 were in FlightLevel's mind in 2013 when it wrote 15 this letter? It's not an unfair question. 16 A. I don't know the answer to that. 17 Q. Okay. So do you know if this was 18 discussed at -- if Exhibit 54, the letter of 19 September 24th, was discussed at the next NAC 20 meeting? 21 A. I don't recall. 22 Q. But you said it was your practice to 23 attend these meetings. Correct? 24 A. Yes.</p>

Page 98	Page 100
<p>1 (Exhibit No. 55 marked for identification.)</p> <p>2 BY MR. FEE:</p> <p>3 Q. So I'm showing you a document that's been</p> <p>4 marked as Exhibit 55. It appears to be the</p> <p>5 regular business meeting minutes for the</p> <p>6 October 9, 2013, NAC meeting.</p> <p>7 Have you seen these before?</p> <p>8 A. Probably.</p> <p>9 Q. Do you know if you attended the</p> <p>10 October 9, 2013, NAC meeting?</p> <p>11 A. No.</p> <p>12 Q. You don't know?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know if the -- do you know why</p> <p>15 Mr. Eichleay's September 24, 2013, letter was not</p> <p>16 listed on any of the materials to be discussed at</p> <p>17 the October 9, 2013, meeting?</p> <p>18 A. No. And Exhibit 54 appears to be a</p> <p>19 draft. I don't even know, as I sit here today,</p> <p>20 if September 24, 2013, was the proper final date</p> <p>21 that was assigned to that letter.</p> <p>22 Q. Fair enough. Do you know if, at any</p> <p>23 time, the NAC discussed a letter from</p> <p>24 Mr. Eichleay in which it was asked to take a</p>	<p>1 BEH?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you know -- and is the answer</p> <p>4 to the question also yes?</p> <p>5 A. Yes.</p> <p>6 Q. And during the time that you were a</p> <p>7 consultant -- and I mean 2013 to October of</p> <p>8 2015 -- did you talk to Mr. Eichleay about his</p> <p>9 conversations with the airport manager or members</p> <p>10 of the commission regarding FlightLevel's issues</p> <p>11 with BEH?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay. Was it Mr. Eichleay's practice to</p> <p>14 routinely have conversations with Mr. Maguire</p> <p>15 regarding FlightLevel's issues with BEH?</p> <p>16 A. No.</p> <p>17 Q. Was it Mr. Eichleay's practice to have</p> <p>18 private conversations with members of the</p> <p>19 commission regarding FlightLevel's issues with</p> <p>20 BEH?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. You'd have to ask him.</p> <p>23 BY MR. FEE:</p> <p>24 Q. How about you? Was it your practice to</p>
Page 99	Page 101
<p>1 position regarding BEH's infringement of</p> <p>2 FlightLevel's property rights?</p> <p>3 A. In what time frame?</p> <p>4 Q. I'm talking in or about the fall of 2013.</p> <p>5 Let me strike that.</p> <p>6 A. Ask it again, please.</p> <p>7 Q. We talked about Exhibit 54, and I</p> <p>8 acknowledge that it's not signed. But you seemed</p> <p>9 to testify and I recall your testimony is that</p> <p>10 there was a very -- a similar letter that you saw</p> <p>11 in final form that was sent in or about this time</p> <p>12 frame with this same substance of content.</p> <p>13 And so my question is: In or about fall</p> <p>14 of 2013, do you recall at any time the NAC</p> <p>15 discussing a letter from Mr. Eichleay where he</p> <p>16 asked them to take a position on BEH's</p> <p>17 infringement of FlightLevel's property rights?</p> <p>18 A. I don't recall them addressing the</p> <p>19 letter -- a letter like that in a public forum or</p> <p>20 a private forum.</p> <p>21 Q. Let's get to that. Do you know if</p> <p>22 Mr. Eichleay had private conversations with</p> <p>23 either the airport manager or members of the</p> <p>24 commission regarding FlightLevel's issues with</p>	<p>1 have private conversations with Mr. Maguire</p> <p>2 regarding FlightLevel's issues with BEH?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. No.</p> <p>5 BY MR. FEE:</p> <p>6 Q. Was it your practice to have private</p> <p>7 conversations with members of the commission</p> <p>8 regarding FlightLevel's issues with BEH?</p> <p>9 MR. HARTZELL: Objection.</p> <p>10 A. No.</p> <p>11 BY MR. FEE:</p> <p>12 Q. Was it your practice to have private</p> <p>13 conversations with town counsel regarding</p> <p>14 FlightLevel's issues with BEH?</p> <p>15 MR. HARTZELL: Objection.</p> <p>16 A. In the consultancy period?</p> <p>17 BY MR. FEE:</p> <p>18 Q. Yes.</p> <p>19 A. No.</p> <p>20 Q. Did you ever have conversations with town</p> <p>21 counsel regarding FlightLevel's issues with BEH</p> <p>22 during the consultancy period?</p> <p>23 A. No.</p> <p>24 (Exhibit No. 56 marked for identification.)</p>

<p style="text-align: right;">Page 102</p> <p>1 BY MR. FEE:</p> <p>2 Q. I'm showing you a document that's been</p> <p>3 marked as Exhibit 56. It appears to be a letter</p> <p>4 from Attorney Fox to Mr. DeLaria dated November</p> <p>5 19, 2013. Have you ever seen that before?</p> <p>6 A. Yes.</p> <p>7 Q. And this document references two</p> <p>8 documents and it appends two documents. One is</p> <p>9 called an agreement and one is called an</p> <p>10 acknowledgement of agreement. Do you see those?</p> <p>11 A. I do.</p> <p>12 Q. And I assume that you are familiar with</p> <p>13 this agreement and acknowledgement of agreement.</p> <p>14 Are you not?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And the agreement dated January of</p> <p>17 1996 appears to be between Swift Aviation and</p> <p>18 Boston Metropolitan Airport. Correct?</p> <p>19 A. No.</p> <p>20 Q. The agreement appears to be by and</p> <p>21 between EAC Realty Trust II, Swift Aviation,</p> <p>22 Inc., and Boston Metropolitan Airport, Inc. Is</p> <p>23 that correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 BY MR. FEE:</p> <p>3 Q. Now, EAC is -- or was at that time the</p> <p>4 sublessee of Lot G and is the predecessor in</p> <p>5 interest to EAC Realty Trust II, of which</p> <p>6 FlightLevel Norwood, LLC, is the beneficiary. Is</p> <p>7 that fair to say?</p> <p>8 A. I don't think you got that quite right,</p> <p>9 but I might be wrong. Can you -- do you want to</p> <p>10 say it again?</p> <p>11 Q. No, no. You know what I'm trying to get</p> <p>12 to. Can you state, in your words, what you</p> <p>13 think -- who you think EAC -- I'm sorry -- EAC,</p> <p>14 Inc., is?</p> <p>15 A. EAC Realty Trust II is the holder of</p> <p>16 legal title to Lot G. And Eastern Air Center was</p> <p>17 the trustee of EAC Realty Trust II at the time.</p> <p>18 Q. Right.</p> <p>19 A. And Anthony Previtte and Sid Fagelman, I</p> <p>20 believe, were the beneficiaries of EAC Realty</p> <p>21 Trust II at the time.</p> <p>22 Q. So just again -- and I'm trying to be as</p> <p>23 direct as possible without offending the legal</p> <p>24 entities involved. But it's an agreement between</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Okay. And Swift Aviation was the owner</p> <p>2 at the time of -- not the owner -- the lessee at</p> <p>3 the time of Lot F. Is that correct?</p> <p>4 A. Are you talking about January of 1996?</p> <p>5 Q. Correct.</p> <p>6 A. There were a number of Swifts. This is</p> <p>7 Swift Aviation, Inc. According to this agreement</p> <p>8 that's what it says. Yes.</p> <p>9 Q. Okay. Well, let me just state what I</p> <p>10 understand to be the parties to this agreement,</p> <p>11 and you can tell me if I'm incorrect. This is an</p> <p>12 agreement between the sublessee of Lot G and the</p> <p>13 sublessee of Lot F regarding the use of a certain</p> <p>14 15-foot strip. Is that a fair characterization?</p> <p>15 A. No.</p> <p>16 Q. What's incorrect about my</p> <p>17 characterization?</p> <p>18 A. It's also about the use of the westerly</p> <p>19 portion of Lot G.</p> <p>20 Q. Right. Okay.</p> <p>21 So with that addition, you would agree</p> <p>22 with my characterization of the content of the</p> <p>23 document?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 the owner of Lot G and the owner of Lot F. Is</p> <p>2 that fair to say?</p> <p>3 A. It's the agreement between the</p> <p>4 controlling interest on Lot G and the controlling</p> <p>5 interest on Lot F.</p> <p>6 Q. So in the first numbered paragraph on the</p> <p>7 agreement, it -- I'm sorry.</p> <p>8 The third paragraph talks about the grant</p> <p>9 of a nonexclusive right to use as a taxiway and</p> <p>10 for access and egress to and from Lot G, a</p> <p>11 certain strip of land 15 feet wide on existing</p> <p>12 Lease Lot F. Do you see that?</p> <p>13 A. That's not what it says.</p> <p>14 Q. Let me try it again.</p> <p>15 The third paragraph of the agreement</p> <p>16 states:</p> <p>17 "Swift hereby grants to EAC the</p> <p>18 nonexclusive right to use as a taxiway and for</p> <p>19 access to and egress from Lot G that certain</p> <p>20 strip of land 15 feet wide on existing Lease</p> <p>21 Lot F."</p> <p>22 Did I read that correctly?</p> <p>23 A. You did. And the prior correction was</p> <p>24 that you said in the first numbered -- the third</p>

<p style="text-align: right;">Page 106</p> <p>1 numbered paragraph the first time.</p> <p>2 Q. I thought I corrected myself, but I</p> <p>3 apologize if I was unclear.</p> <p>4 A. You may have.</p> <p>5 Q. So turning back to our Exhibit 45. Is it</p> <p>6 your understanding that the area that is being</p> <p>7 discussed in the sentence that I just read marked</p> <p>8 on Exhibit 45 --</p> <p>9 MR. HARTZELL: What are we talking about?</p> <p>10 A. I'm sorry. Is there a question mark</p> <p>11 somewhere?</p> <p>12 BY MR. FEE:</p> <p>13 Q. Yes. It is your understanding that the</p> <p>14 sentence that I just read, describing the 15-foot</p> <p>15 strip, is marked on Exhibit 45?</p> <p>16 A. The sentence is not marked. The 15-foot</p> <p>17 strip is.</p> <p>18 Q. Okay. Fair enough. I appreciate your</p> <p>19 dedication to clarity, and I'm not in any way</p> <p>20 trying to mischaracterize anything. And so</p> <p>21 please, if I do misspeak, just help me out.</p> <p>22 So the 15-foot strip is demarcated on 45.</p> <p>23 Correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. And according to paragraph two -- number</p> <p>2 two of the agreement, the controlling entity of</p> <p>3 Lot G agreed to indemnify the owner -- sorry --</p> <p>4 the controlling entity of the Lot F for damage --</p> <p>5 property damage and injuries. Is that correct?</p> <p>6 Associated with its use of the Lot F</p> <p>7 licensed area. Is that correct?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. Yes.</p> <p>10 BY MR. FEE:</p> <p>11 Q. Okay. So here's the good stuff.</p> <p>12 Paragraph 3. I'm going to read it, and</p> <p>13 we're going to talk about it. Okay?</p> <p>14 "In the event that Swift wishes to use</p> <p>15 the taxiway currently on the western portion of</p> <p>16 Lease Lot G abutting existing Lease Lot F, as a</p> <p>17 taxiway only in connection with its own business,</p> <p>18 it may do so for as long as EAC continues to</p> <p>19 utilize such portion of Lot G for that purpose or</p> <p>20 for the term of the sublease, whichever is</p> <p>21 greater.</p> <p>22 "Swift will hold EAC harmless and</p> <p>23 indemnified from liability for damage to property</p> <p>24 and injuries to persons arising out of its use of</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. Okay. And that is land or an area</p> <p>2 immediately contiguous to the building shown</p> <p>3 as -- shown on Lot F. Is that correct?</p> <p>4 A. No.</p> <p>5 Q. Okay. Adjacent to the building on Lot F.</p> <p>6 Is that fair to say?</p> <p>7 A. It is abutting the Lot F/Lot G property</p> <p>8 line on Lot F.</p> <p>9 Q. Okay. Thank you.</p> <p>10 Now, is it your understanding that the</p> <p>11 controlling entity of Lot F, pursuant to the</p> <p>12 terms of this agreement, was granting to the</p> <p>13 controlling entity of Lot G the nonexclusive</p> <p>14 right to use that area designated as the 15-foot</p> <p>15 wide strip?</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 A. Yes.</p> <p>18 BY MR. FEE:</p> <p>19 Q. Okay. And pursuant to the terms of this</p> <p>20 agreement, numbered paragraph 1, the controlling</p> <p>21 entity of Lot G agreed to be responsible for the</p> <p>22 repair and maintenance of that Lot F licensed</p> <p>23 area. Correct?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 109</p> <p>1 said Lot G taxiway."</p> <p>2 Did I read that correctly?</p> <p>3 A. You did.</p> <p>4 Q. Is it a fair interpretation of this</p> <p>5 language that the controlling entity of Lot G was</p> <p>6 granting certain rights to the controlling entity</p> <p>7 of Lot F?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. It was granting a permit to use the</p> <p>10 westerly portion of Lot G.</p> <p>11 BY MR. FEE:</p> <p>12 Q. I don't see the word "permit" in there.</p> <p>13 Are you describing it as something other than an</p> <p>14 access right?</p> <p>15 A. It's an access.</p> <p>16 Q. A right of --</p> <p>17 A. License.</p> <p>18 Q. Well, is it fair to call it a right of</p> <p>19 access?</p> <p>20 MR. HARTZELL: Objection. The document</p> <p>21 says what it says.</p> <p>22 MR. FEE: Okay. Well, I'm trying to get</p> <p>23 to what this means on the ground, Neil.</p> <p>24</p>

<p style="text-align: right;">Page 110</p> <p>1 BY MR. FEE: 2 Q. So is it fair to describe the rights that 3 are granted in the agreement as access rights? 4 A. Yes. 5 MR. HARTZELL: Objection. 6 BY MR. FEE: 7 Q. Now, there are certain caveats in this 8 photograph, are there not? 9 MR. HARTZELL: Objection. 10 A. It speaks for itself. 11 BY MR. FEE: 12 Q. Okay. So I want to understand what you 13 think it means when the controlling entity of Lot 14 G grants a right of access over a portion of its 15 property to the controlling entity of Lot F for 16 use as a taxiway only in connection with its own 17 business. 18 I'd like to focus on that language if we 19 could. 20 A. Sure. 21 Q. Now, is it your understanding that the 22 paved area that exists between the buildings on 23 Lot G and Lot F is a taxiway? 24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. You have to be more specific. 2 BY MR. FEE: 3 Q. Well, there's pavement abutting Lot G. 4 Correct? 5 A. Yes. 6 Q. And do you read paragraph 3 as granting 7 the controlling entity of Lot F the right to 8 access over that pavement? 9 MR. HARTZELL: Objection. 10 A. Not all of it. 11 BY MR. FEE: 12 Q. What part does it exclude? 13 MR. HARTZELL: Objection. 14 A. Well, it is my opinion that it refers 15 only to the pavement between the building on Lot 16 G and the building on Lot F and not the pavement 17 to the southeast or north of the building on 18 Lot G. 19 BY MR. FEE: 20 Q. Okay. Can you show me, by writing on 21 Exhibit 45, that area that you believe is the 22 subject of the access rights described in 23 paragraph 3 of the agreement? 24 A. Well, the question is defective because I</p>
<p style="text-align: right;">Page 111</p> <p>1 A. No. 2 BY MR. FEE: 3 Q. At the time that this agreement was 4 executed, was it a taxiway? 5 MR. HARTZELL: Objection. 6 A. No. 7 BY MR. FEE: 8 Q. Then in your opinion, what is the word 9 "taxiway" referring to in the agreement? 10 MR. HARTZELL: Objection. 11 A. You'd have to ask the authors of the 12 agreement. 13 BY MR. FEE: 14 Q. Well, I'm asking how you interpret it. 15 MR. HARTZELL: Objection. 16 A. I interpret it as an aircraft ramp across 17 which aircraft can conceivably move -- 18 BY MR. FEE: 19 Q. Okay. Do you -- 20 A. -- or be moved. 21 Q. Do you believe that the area described in 22 paragraph 3 refers to pavement adjacent to the 23 building on Lot G? 24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">Page 113</p> <p>1 don't know that Exhibit 45 is -- has been 2 properly prepared in terms of its accuracy and 3 attention to detail. I don't see an engineer's 4 signoff on it. We don't know who prepared it and 5 whether it is a properly scaled -- the area in 6 question. 7 Q. Utilizing Exhibit 46, which is prepared 8 by your client and attaches a plan, can you write 9 on that and show me what area you believe is the 10 subject of the rights granted in paragraph 3 of 11 the agreement? 12 MR. HARTZELL: Objection. 13 A. I can. 14 BY MR. FEE: 15 Q. Why not? 16 MR. HARTZELL: You can answer. 17 THE WITNESS: I did. 18 BY MR. FEE: 19 Q. And I said "why not"? 20 A. I didn't say I can't. I said I can. 21 Q. Oh, you can. 22 A. Yes. 23 Q. I'm sorry. I misheard. 24 MR. HARTZELL: I'm sorry. I misheard you</p>

<p style="text-align: right;">Page 114</p> <p>1 too.</p> <p>2 BY MR. FEE:</p> <p>3 Q. Can you write on this, and show me the</p> <p>4 area on the map that is appended to Exhibit 46</p> <p>5 which you believe is the subject of the access</p> <p>6 rights granted in paragraph 3 of the agreement</p> <p>7 that is annexed to Exhibit 56?</p> <p>8 A. Yes.</p> <p>9 Q. Thank you. Please do so.</p> <p>10 A. (Complies.)</p> <p>11 Q. Okay. And so I see that you have</p> <p>12 designated as the access area something less than</p> <p>13 the entirety of the pavement that is contiguous</p> <p>14 to the building on Lot G. Is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And why is that?</p> <p>17 A. Because in the numerous engineering</p> <p>18 drawings that have been produced in this case,</p> <p>19 the Lot F licensed area is accurately depicted on</p> <p>20 Lot F.</p> <p>21 And the contract that we are discussing</p> <p>22 right now, FlightLevel 1939, states that in the</p> <p>23 event that Swift wishes to use the taxiway</p> <p>24 currently on the westerly portion of the Lease</p>	<p style="text-align: right;">Page 116</p> <p>1 A. I do.</p> <p>2 Q. And is it your opinion that that language</p> <p>3 refers to -- is personal to Swift?</p> <p>4 MR. HARTZELL: Objection.</p> <p>5 BY MR. FEE:</p> <p>6 Q. Applies only to Swift?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 BY MR. FEE:</p> <p>9 Q. Can you answer my question or no?</p> <p>10 A. I'm thinking. Just stand by.</p> <p>11 I can't remember the first part of it.</p> <p>12 Can we read it back?</p> <p>13 BY MR. FEE:</p> <p>14 Q. Sure. I can restate it.</p> <p>15 A. It was pretty simple, but I got lost.</p> <p>16 Sorry.</p> <p>17 Q. No problem. Let me ask it a different</p> <p>18 way.</p> <p>19 Is it your position that the rights under</p> <p>20 this agreement can't be assigned --</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 BY MR. FEE:</p> <p>23 Q. -- by Swift?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 115</p> <p>1 Lot G abutting existing Lot F.</p> <p>2 Q. The westerly portion of Lease Lot G</p> <p>3 abutting existing Lease Lot F.</p> <p>4 A. Correct.</p> <p>5 Q. And you view that as words of limitation</p> <p>6 regarding the extent of the property on Lot F</p> <p>7 that is subject to this access right?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 BY MR. FEE:</p> <p>10 Q. Is that fair to say?</p> <p>11 MR. HARTZELL: Objection.</p> <p>12 A. You didn't say it quite right.</p> <p>13 BY MR. FEE:</p> <p>14 Q. Can you help me restate it, please.</p> <p>15 MR. HARTZELL: Objection.</p> <p>16 A. I do see these as words of limitation</p> <p>17 with respect to the property on Lot G that is</p> <p>18 subject to this assess grant.</p> <p>19 BY MR. FEE:</p> <p>20 Q. Right. Okay.</p> <p>21 The second part of the language that I</p> <p>22 read earlier says, for use as -- I'm sorry -- as</p> <p>23 a taxiway only in connection with its own</p> <p>24 business. Do you remember that language?</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. You believe that it cannot be assigned?</p> <p>2 A. I believe that it cannot be assigned.</p> <p>3 Q. What's the basis for that belief?</p> <p>4 A. There's no language permitting assignment</p> <p>5 of it.</p> <p>6 Q. There's no language preventing</p> <p>7 assignment. Correct?</p> <p>8 MR. HARTZELL: I'm sorry. Objection.</p> <p>9 A. If it was intended to be assigned, there</p> <p>10 would have been language enabling that. There</p> <p>11 certainly was for the other party.</p> <p>12 BY MR. FEE:</p> <p>13 Q. Right. And the language for the other</p> <p>14 party prohibited assignment without consent.</p> <p>15 Correct?</p> <p>16 A. I believe so. Yes.</p> <p>17 Q. And so your understanding is that Swift</p> <p>18 was not able to assign this document because</p> <p>19 there was no specific language in the agreement</p> <p>20 authorizing it to do so. Is that fair to say?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. That's correct.</p> <p>23 BY MR. FEE:</p> <p>24 Q. Okay. And is that based on any legal</p>

Page 118	Page 120
<p>1 analysis or precedence that you've studied?</p> <p>2 MR. HARTZELL: Objection.</p> <p>3 A. I think that I would reserve that to</p> <p>4 attorney work product privilege.</p> <p>5 BY MR. FEE:</p> <p>6 Q. Okay. Is there anything else in the</p> <p>7 language of the document upon which you rely for</p> <p>8 that proposition? That it's not assignable by</p> <p>9 Swift.</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 A. There is other language in this document</p> <p>12 that I rely on.</p> <p>13 BY MR. FEE:</p> <p>14 Q. What is that?</p> <p>15 A. But it has to do with the use of the</p> <p>16 property. And in connection with its use being</p> <p>17 limited, its assignment would be limited even if</p> <p>18 its assignment was authorized.</p> <p>19 Q. That's a different thing. You're talking</p> <p>20 about the own business language?</p> <p>21 A. Yes, I am.</p> <p>22 Q. Okay. And so you believe that the</p> <p>23 language that says "only in connection with its</p> <p>24 own business" lends credence to your</p>	<p>1 deposition you asked me what my expertise was,</p> <p>2 and I had testified that it was aviation law.</p> <p>3 That is true.</p> <p>4 There are, however, many subdisciplines</p> <p>5 that flow from that, including FBO law, and avi.</p> <p>6 trust law, and business law generally.</p> <p>7 If you want to inquire, feel free. I</p> <p>8 didn't expect that, but there you go.</p> <p>9 BY MR. FEE:</p> <p>10 Q. I may wish to consult with you on an</p> <p>11 anti-trust issue in a related matter, but we'll</p> <p>12 save that for another time.</p> <p>13 A. Very good.</p> <p>14 MR. FEE: I'm going to mark the next</p> <p>15 exhibit.</p> <p>16 (Exhibit No. 57 marked for identification.)</p> <p>17 BY MR. FEE:</p> <p>18 Q. We spoke earlier about ARR Aviation II,</p> <p>19 LLC, and I did a poor job of creating a document</p> <p>20 for your review. So I'm going to show you now</p> <p>21 something that has been marked as Exhibit 57, and</p> <p>22 ask if you recognize it.</p> <p>23 A. Yes.</p> <p>24 Q. And did you prepare and file this</p>
Page 119	Page 121
<p>1 interpretation that the document -- that the</p> <p>2 rights under the agreement aren't assignable by</p> <p>3 Swift. Is that a fair characterization of your</p> <p>4 testimony?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 A. Yes.</p> <p>7 BY MR. FEE:</p> <p>8 Q. Okay.</p> <p>9 MR. FEE: I note that it's after 12:30,</p> <p>10 and so I don't want to burn out our stenographer</p> <p>11 at all.</p> <p>12 Do you want to take a 45-minute break?</p> <p>13 MR. HARTZELL: Yes.</p> <p>14 (Recess taken at 12:32 p.m.)</p> <p>15 (Deposition resumed at 1:13 p.m.)</p> <p>16 MR. HARTZELL: Mr. Burlingham would like</p> <p>17 to amend one of his earlier answers about his</p> <p>18 expertise.</p> <p>19 MR. FEE: Okay.</p> <p>20 MR. HARTZELL: Go ahead. Say it.</p> <p>21 MR. FEE: Yes. Go ahead.</p> <p>22 MR. HARTZELL: You want to add to your</p> <p>23 expertise. Areas of expertise.</p> <p>24 A. Well, in the very beginning of the</p>	<p>1 document on behalf of ARR Aviation II, LLC?</p> <p>2 A. Yes.</p> <p>3 Q. And do you see the letter that's annexed</p> <p>4 to the certificate of organization?</p> <p>5 A. Yes.</p> <p>6 Q. Which identifies you as someone</p> <p>7 authorized to discuss with the Secretary of the</p> <p>8 Commonwealth matters involving ARR Aviation and</p> <p>9 ARR Aviation II, LLC. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Is that accurate?</p> <p>12 A. Yes, it is.</p> <p>13 Q. Back to the agreement that we were</p> <p>14 discussing, which has been marked as Exhibit 56.</p> <p>15 So I just want to understand -- we were talking</p> <p>16 about your belief that the document is not</p> <p>17 assignable by Swift.</p> <p>18 And I want to understand whether you</p> <p>19 think that -- do you know that it was assigned by</p> <p>20 Swift?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. Do I know that this document was assigned</p> <p>23 by Swift?</p> <p>24</p>

<p style="text-align: right;">Page 122</p> <p>1 BY MR. FEE:</p> <p>2 Q. Right. I can show you a document. Let's</p> <p>3 just -- I'll do it a different way. Don't worry.</p> <p>4 A. No, I don't.</p> <p>5 Q. I'm going to show you a document that was</p> <p>6 marked twice by Neil in prior depositions, the</p> <p>7 most recent in Mr. Donovan's deposition -- I'm</p> <p>8 sorry -- first in Mr. Donovan's deposition and</p> <p>9 then later in Mr. Silva's deposition.</p> <p>10 MR. FEE: Do you have a copy, Neil? Do</p> <p>11 you need one?</p> <p>12 MR. HARTZELL: If you have an extra one,</p> <p>13 I'll take one. I didn't bring one.</p> <p>14 BY MR. FEE:</p> <p>15 Q. So this is the first amended verified</p> <p>16 complaint of Boston Executive Helicopter in the</p> <p>17 Norfolk matter ending in 213. And I just direct</p> <p>18 your attention to Exhibits D and E, which purport</p> <p>19 to be an asset purchase agreement and then an</p> <p>20 assignment assumption and amendment of lease.</p> <p>21 Are you familiar with these documents?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know -- or would you agree</p> <p>24 with me that the agreement that we've discussed,</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Yes.</p> <p>2 Q. So would you agree with me then that</p> <p>3 these documents purport to assign the rights of</p> <p>4 Swift under this agreement to Boston Executive</p> <p>5 Helicopters?</p> <p>6 MR. HARTZELL: Objection.</p> <p>7 A. No.</p> <p>8 BY MR. FEE:</p> <p>9 Q. Okay. What do you -- how do you</p> <p>10 interpret that language in the asset purchase</p> <p>11 agreement and assignment?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. Give me a few minutes.</p> <p>14 BY MR. FEE:</p> <p>15 Q. Yes. And for the record, I'm not asking</p> <p>16 you whether you believe that this is an effective</p> <p>17 assignment. I'm just asking you whether you</p> <p>18 would agree with me that these documents purport</p> <p>19 to assign Swift's interest under the agreement</p> <p>20 that's been marked as Exhibit 56 to BEH.</p> <p>21 MR. HARTZELL: Same objection.</p> <p>22 A. I agree that the Swift agreement is</p> <p>23 incorporated into the definition of lease</p> <p>24 documents.</p>
<p style="text-align: right;">Page 123</p> <p>1 and which has been marked as Exhibit 56, is one</p> <p>2 of the identified documents in the asset purchase</p> <p>3 agreement and the assignment? Do you agree with</p> <p>4 that?</p> <p>5 MR. HARTZELL: Please take a minute and</p> <p>6 review.</p> <p>7 BY MR. FEE:</p> <p>8 Q. I can direct your attention to it if you</p> <p>9 want. Are you on D or E now?</p> <p>10 A. I'm on D. I think what you're referring</p> <p>11 to is on page 2 of D.</p> <p>12 Q. Yes. 70F of Exhibit D.</p> <p>13 A. And what's your question?</p> <p>14 Q. Would you agree with me that that refers</p> <p>15 to the document that we've been discussing as</p> <p>16 Exhibit 56?</p> <p>17 A. Yes.</p> <p>18 Q. Would you also agree with me that in the</p> <p>19 assignment and assumption that's been marked as</p> <p>20 Exhibit E to the first amended complaint, page 1,</p> <p>21 subparagraph A, Roman Numeral 6, also refers to</p> <p>22 that document, that agreement that we've been</p> <p>23 discussing as Exhibit 56? Would you agree with</p> <p>24 me?</p>	<p style="text-align: right;">Page 125</p> <p>1 MR. HARTZELL: In which exhibit?</p> <p>2 THE WITNESS: In Exhibit D.</p> <p>3 A. And it is also referenced in Exhibit E.</p> <p>4 Yes.</p> <p>5 BY MR. FEE:</p> <p>6 Q. Right. And so you would agree with me</p> <p>7 that the document we've been discussing in</p> <p>8 Exhibit 56 is identified in Exhibits D and E to</p> <p>9 the first amended verified complaint?</p> <p>10 A. Yes.</p> <p>11 Q. And those documents, D and E, are an</p> <p>12 asset purchase agreement and an assignment</p> <p>13 assumption amended lease agreement. Correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And do you doubt that these documents</p> <p>16 were executed?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 BY MR. FEE:</p> <p>19 Q. D and E.</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 A. I don't doubt that the documents, D and</p> <p>22 E, were executed.</p> <p>23 BY MR. FEE:</p> <p>24 Q. Do you doubt that Swift's rights under</p>

<p style="text-align: right;">Page 126</p> <p>1 the lease agreement or the sublease agreement for 2 Exhibit F were assigned to BEH? 3 MR. HARTZELL: Objection. 4 A. Just say that one more time, please. 5 BY MR. FEE: 6 Q. Do you have any reason to disbelieve that 7 Swift's rights under its sublease were assigned 8 pursuant to the terms of the documents we've 9 looked at as D and E to the first amended 10 verified complaint to BEH? 11 A. No. I have no reason to doubt that. 12 Q. So you would agree with me that at least 13 there is an effort in these documents to assign 14 the rights under the agreement that we've been 15 discussing as Exhibit 56. 16 I understand that you may not believe 17 that it was effective, but would you agree with 18 me there was an attempt to assign Swift's rights 19 under the agreement that's been marked as Exhibit 20 56 to BEH? 21 MR. HARTZELL: Objection. 22 A. I can't testify as to whether there was 23 an attempt or not. I can testify to what it 24 says.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. I believe that there's an argument to 2 that effect. 3 BY MR. FEE: 4 Q. Okay. Is that an argument that 5 FlightLevel is taking in this litigation? 6 MR. HARTZELL: Objection. I think that's 7 work product privilege whatever. 8 MR. FEE: Are you instructing him not to 9 answer? 10 MR. HARTZELL: I'm going to leave it up 11 to the witness. 12 A. Well, if FlightLevel hasn't asserted it, 13 it may very well now. 14 BY MR. FEE: 15 Q. All right. And so my follow-up question 16 to that is: If the Swift agreement is void as a 17 result of the purported assignment, does 18 FlightLevel have any rights under the agreement? 19 MR. HARTZELL: Objection. 20 A. FlightLevel is not a party to the 21 agreement that you showed me as Exhibit 56. 22 BY MR. FEE: 23 Q. Right. But Swift is, and Swift attempted 24 to assign its rights thereunder. Correct?</p>
<p style="text-align: right;">Page 127</p> <p>1 BY MR. FEE: 2 Q. And do you believe that that's what these 3 documents are attempting to do? 4 A. I believe that they're attempting to 5 include the Swift agreement -- 6 Q. Okay. 7 A. -- into the definition of lease, but it 8 is not part of the lease. 9 Q. Okay. And so you believe that any 10 attempted assignment of the -- Swift's rights 11 under the Swift agreement to BEH was ineffective. 12 A. Correct. 13 Q. And did that result in voiding the 14 agreement? 15 MR. HARTZELL: Objection. 16 A. That does call for legal conclusion. 17 BY MR. FEE: 18 Q. Okay. 19 A. And I believe there's an argument to that 20 effect. 21 Q. Do you believe that as a result of that 22 purported assignment that BEH has no rights under 23 the Swift agreement? 24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Correct. 2 Q. And you are -- and you asserted to me 3 that that voided the document; is that correct? 4 A. I have asserted to you that there's an 5 argument to that effect. 6 Q. So I want to know what FlightLevel's 7 position is with respect to its rights under the 8 Swift agreement after the purported assignment? 9 MR. HARTZELL: Objection. 10 A. At some point, the -- after the document 11 referenced in Exhibit 56 was entered into, there 12 was indeed an assignment and acknowledgement 13 relative to FlightLevel's continuing in the shoes 14 of Eastern Air Center. 15 BY MR. FEE: 16 Q. Understood. But after the purported 17 assignment by Swift of its rights under the 18 agreement to BEH, do you believe that FlightLevel 19 continues to have rights under the agreement 20 after BEH's rights have been voided? 21 MR. HARTZELL: Objection. 22 A. I believe that the agreement was limited 23 to Swift's own business, and that when Swift's 24 own business failed and folded, that the</p>

<p style="text-align: right;">Page 130</p> <p>1 agreement was extinguished as well. 2 BY MR. FEE: 3 Q. Okay. And that's based on the language 4 in paragraph 3 of Exhibit 56 that grants Swift 5 access rights to the taxiway for as -- only in 6 connection with its own business. Is that 7 what -- the language in the agreement that you're 8 relying on for that position? 9 MR. HARTZELL: Objection. 10 A. Yes. 11 BY MR. FEE: 12 Q. Okay. 13 (Exhibit No. 58 marked for identification.) 14 BY MR. FEE: 15 Q. Nick, I'm showing you what's been marked 16 as Exhibit 58. It appears to be a letter from 17 you to Mr. Fox dated December 5, 2013. Have you 18 seen this before? 19 A. Yes. 20 Q. And you drafted it, did you not? 21 A. I did. 22 Q. And you sent it to Mr. Fox on or about 23 December 5, 2013? 24 A. Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. So there's a missing -- there's missing 2 language in there? 3 A. There appears to be. 4 Q. It says that you examined other documents 5 in relation to the use and occupancy of Lots F 6 and G at the airport. Do you remember what they 7 were? 8 A. Yes. 9 Q. What were they? 10 A. The entire chain of title to both lots. 11 Q. Did you have a title search performed? 12 A. I did it myself. 13 Q. Do you do a lot of title searches? 14 A. When it's in the interest of my aviation 15 clients. Yes. 16 Q. Okay. In the third full paragraph you 17 say: 18 "In doing so, I have concluded first that 19 my client's representation to the Norwood Airport 20 Commission, which incidently was that Boston 21 Executive Helicopter has no legal right to use 22 the westerly portion of Lot G in connection with 23 the fueling of aircraft, both is and was 24 correct."</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. And this was in response to Mr. Fox's 2 letter of November 19 that was marked as 3 Exhibit 56. Is that fair to say? 4 A. Yes. 5 Q. In the second paragraph you say: 6 "I am intimately familiar with the 7 January 30, 1996, agreement between Swift 8 Aviation, Inc., and EAC Realty Trust II, the 9 January 8, 2008, acknowledgement of agreement 10 executed for the benefit of my client, Swift 11 Aviation, Inc., and the hangar storage space 12 agreements dated April 1, 1996." 13 Did I read that correctly? 14 A. You did. 15 Q. And you had studied all of those 16 documents prior to drafting this response to 17 Mr. Fox, had you not? 18 A. I had, but there appears to be an error 19 in the -- a typographical error. 20 Q. What's that? 21 A. The second sentence of the second 22 paragraph following the colon. The January 8, 23 2008, acknowledgement agreement executed by Swift 24 Aviation, Inc., for the benefits of my client.</p>	<p style="text-align: right;">Page 133</p> <p>1 Did I read that correctly? 2 A. You did. 3 Q. And so I understand your position that 4 BEH has no legal right to use the westerly 5 portion of Lot G. We discussed that earlier in 6 connection with Exhibit 56. But in this 7 language, you've underlined and italicized "in 8 connection with the fueling of aircraft." 9 Can you tell me what the significance of 10 that -- can you tell me the significance of your 11 drawing attention to that particular language? 12 A. Yes. I am correcting Attorney Fox's 13 understanding with respect to what was said and 14 advising Attorney Fox that the underlined portion 15 of that sentence was the correction. 16 Q. Okay. And so is it your position or was 17 it your position in December of 2013 that BEH had 18 no right to use any portion of Lot G for the 19 fueling of aircraft? 20 MR. HARTZELL: Objection. 21 A. Yes. 22 BY MR. FEE: 23 Q. And was it your position in December of 24 2013 that BEH had no rights whatsoever under the</p>

Page 134	Page 136
<p>1 Swift agreement?</p> <p>2 A. That is correct.</p> <p>3 Q. It doesn't say that, though; right? It</p> <p>4 just says that it doesn't have rights for the</p> <p>5 fueling of aircraft.</p> <p>6 A. No. It says that Mr. Fox was</p> <p>7 misinformed, and that what was said verbally is</p> <p>8 corrected by the underlined language there.</p> <p>9 Q. I understand. So in the next paragraph</p> <p>10 you say:</p> <p>11 "There are multiple supporting layers to</p> <p>12 this but in the interest of brevity, suffice it</p> <p>13 to say that the rights granted to Swift Aviation,</p> <p>14 Inc., by EAC Realty Trust II under the January</p> <p>15 30, 1996, agreement were expressly limited to</p> <p>16 Swift Aviation, Inc. 'own business.'</p> <p>17 "When Swift Aviation, Inc., ceased</p> <p>18 conducting its 'own business' on Lot F, its right</p> <p>19 of access over and across Lot G ceased as well."</p> <p>20 Did I read that correctly?</p> <p>21 A. You did.</p> <p>22 Q. And this -- in my reviewing the records,</p> <p>23 the first time that you have articulated a --</p> <p>24 the -- FlightLevel's position regarding the</p>	<p>1 interpreting a series of legal documents and</p> <p>2 rendering an opinion regarding their meaning to</p> <p>3 Mr. Fox. Is that fair to say? In Exhibit 58.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Now, at this time, BEH was</p> <p>6 occupying space in the condo hangar on Lot G.</p> <p>7 Correct?</p> <p>8 A. I believe so. Yes.</p> <p>9 Q. And as part of its use and occupancy of</p> <p>10 that condo hangar, did you believe that BEH had</p> <p>11 the right to egress from the condo hangar and</p> <p>12 utilize those portions of Lot G that were</p> <p>13 contiguous to its condo hangar?</p> <p>14 MR. HARTZELL: Objection.</p> <p>15 A. I believe that MII Aviation and Mr. Yanai</p> <p>16 had the rights set forth in the storage space use</p> <p>17 agreement.</p> <p>18 BY MR. FEE:</p> <p>19 Q. So if the storage space use agreement</p> <p>20 said that the tenant was allowed use of the</p> <p>21 common areas of Lot G, then you would agree that</p> <p>22 exiting from the condo hangar, both on foot and</p> <p>23 utilizing aircraft, were permissible under that</p> <p>24 agreement. Correct?</p>
Page 135	Page 137
<p>1 purported assignment of the rights under the</p> <p>2 Swift agreement. Is that correct?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. I can't recall.</p> <p>5 BY MR. FEE:</p> <p>6 Q. Did you have any conversations with</p> <p>7 Attorney Fox regarding your legal conclusions</p> <p>8 articulated in Exhibit 58?</p> <p>9 A. No.</p> <p>10 Q. Did you offer to explain the title exam</p> <p>11 or title conclusions that you had drawn from your</p> <p>12 research?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. I was unable to reach Attorney Fox either</p> <p>15 because he didn't answer my phone calls or</p> <p>16 because he had been instructed not to answer my</p> <p>17 phone calls.</p> <p>18 BY MR. FEE:</p> <p>19 Q. Okay. So you attempted to call Attorney</p> <p>20 Fox?</p> <p>21 A. Yes.</p> <p>22 Q. On how many occasions?</p> <p>23 A. Three or four.</p> <p>24 Q. And it's fair to say that you're</p>	<p>1 MR. HARTZELL: Objection.</p> <p>2 A. I would agree that the express language</p> <p>3 of that agreement would control.</p> <p>4 BY MR. FEE:</p> <p>5 Q. Okay. And in your mind, was it</p> <p>6 significant that BEH occupied space in Lot F, and</p> <p>7 by virtue of its purported assignment of the</p> <p>8 rights under the Swift agreement, voided its</p> <p>9 rights to access the taxiway on Lot G?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 BY MR. FEE:</p> <p>12 Q. I'm sorry. Strike that. That was a bad</p> <p>13 question.</p> <p>14 In your mind, did the cessation of BEH's</p> <p>15 rights under the Swift agreement also terminate</p> <p>16 its rights to utilize that portion of Lot G that</p> <p>17 were granted in the hangar lease?</p> <p>18 A. I don't believe that BEH ever had rights</p> <p>19 under the Swift agreement. So there was no</p> <p>20 cessation of them.</p> <p>21 Q. Okay. What about MII?</p> <p>22 A. MII never had any rights under the Swift</p> <p>23 agreement.</p> <p>24 Q. I'm sorry. I misunderstood you.</p>

Page 138	Page 140
<p>1 Do you believe that BEH had the right, as</p> <p>2 occupant of the condo hangar, to exit and take</p> <p>3 aircraft onto Lot G from the condo hangar?</p> <p>4 A. There's specific language in the hangar</p> <p>5 space use agreements that says exactly what the</p> <p>6 tenants of those units are allowed to do.</p> <p>7 Q. Understood. And just so I'm clear, in</p> <p>8 your mind is there any impact to those rights</p> <p>9 granted in the hangar lease by virtue of the</p> <p>10 purported assignment of the Swift -- the rights</p> <p>11 under the Swift agreement?</p> <p>12 A. Yes.</p> <p>13 Q. And how so?</p> <p>14 A. I think that it's a breach of the hangar</p> <p>15 space use agreement entitling my client to evict.</p> <p>16 Q. Why?</p> <p>17 A. For failing to abide by the express terms</p> <p>18 of the agreement.</p> <p>19 Q. There's a -- it says in the hangar</p> <p>20 agreement that it's a breach to do what?</p> <p>21 A. To operate bulk storage, for example, on</p> <p>22 Lot G.</p> <p>23 Q. So depending on the nature of what was</p> <p>24 being done in Lot G by BEH as its -- utilizing</p>	<p>1 constitute a breach by BEH of the hangar lease?</p> <p>2 A. I didn't say that.</p> <p>3 Q. Well, I'm asking you to give me an</p> <p>4 example of what BEH did to breach the hangar</p> <p>5 lease.</p> <p>6 A. Well, for example, presided over the</p> <p>7 tearing up of asphalt on Lot G without advising</p> <p>8 the landlord and the controlling sublessor of</p> <p>9 Lot G, getting its permission, or even providing</p> <p>10 any detail whatsoever about what was put back on</p> <p>11 Lot G underneath the asphalt that eventually</p> <p>12 appeared there.</p> <p>13 Q. Did that breach constitute a default --</p> <p>14 A. Yes.</p> <p>15 Q. -- of the lease?</p> <p>16 Did you send a default notice?</p> <p>17 A. No. We sued.</p> <p>18 Q. Right. But you didn't terminate the</p> <p>19 lease.</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 BY MR. FEE:</p> <p>22 Q. Correct?</p> <p>23 A. All in good time, my friend.</p> <p>24 MR. HARTZELL: Just answer the question,</p>
Page 139	Page 141
<p>1 rights granted to MII -- sorry.</p> <p>2 A. If you see my eyes cross, you'll probably</p> <p>3 know to stop.</p> <p>4 Q. What activities -- do you believe that</p> <p>5 BEH breached the hangar lease?</p> <p>6 A. I believe that MII and Moshe Yanai</p> <p>7 breached the hangar lease.</p> <p>8 Q. How did they breach the hangar lease?</p> <p>9 A. By permitting the space to be occupied by</p> <p>10 somebody that violated the requirements of the</p> <p>11 lease.</p> <p>12 Q. And you're referring to BEH?</p> <p>13 A. Yes.</p> <p>14 Q. And how did BEH violate the requirements</p> <p>15 of the lease?</p> <p>16 A. It's set forth in exquisite detail in our</p> <p>17 complaint.</p> <p>18 Q. Well, I'm asking you, as you sit here</p> <p>19 today, what's your recollection of that breach?</p> <p>20 A. My recollection is that the many</p> <p>21 enumerated breaches contained in our complaint is</p> <p>22 consistent with my recollection.</p> <p>23 Q. Okay. So as you sit here today, you</p> <p>24 can't think of anything specific that would</p>	<p>1 sir. Answer the question.</p> <p>2 A. No. We didn't terminate MII's or Moshe</p> <p>3 Yanai's lease.</p> <p>4 (Exhibit No. 59 marked for identification.)</p> <p>5 BY MR. FEE:</p> <p>6 Q. Nick, I'm showing you Exhibit 59. It</p> <p>7 appears to be a series of e-mails between</p> <p>8 Mr. Eichleay and Mr. Donovan.</p> <p>9 And I just want to direct your attention</p> <p>10 three-quarters of the way down the page on the</p> <p>11 first page. There's an e-mail dated Friday,</p> <p>12 January 24th at 5:10 p.m. from Christopher</p> <p>13 Donovan. It appears to be directed to</p> <p>14 Mr. Eichleay.</p> <p>15 It says, "Peter, Happy New Year."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. It goes on to state:</p> <p>19 "Consistent with our conversation, I</p> <p>20 would like to enter into a one- to two-page</p> <p>21 agreement stating that each of us can use the</p> <p>22 areas between the hangars on Lots F and G for</p> <p>23 uses including fueling, provided that we do not</p> <p>24 unreasonably interfere with one another, that I</p>

<p style="text-align: right;">Page 142</p> <p>1 do not unreasonably interfere with the rights of 2 the condominium hangar users." 3 Did I read that correctly? 4 A. You didn't read all of it. But what you 5 read, you read correctly. 6 Q. Above that is Mr. Eichleay's response 7 where he says: 8 "Hey, Chris. Because our GC has already 9 been brought into this matter, he's insisted that 10 he be consulted before any further correspondence 11 goes out." 12 Did I read that portion of the e-mail 13 correctly? 14 A. Yes. 15 Q. Does this refer to you? 16 A. Yes. 17 Q. So does this refresh your recollection as 18 to whether you had conversations with 19 Mr. Eichleay regarding BEH's discussions with 20 FlightLevel regarding -- strike that. 21 We talked earlier about BEH's interest in 22 acquiring FlightLevel; right? 23 A. Yes. 24 Q. Do you remember that?</p>	<p style="text-align: right;">Page 144</p> <p>1 counsel and vice president of administrative -- 2 of administration for FlightLevel. 3 So I'm relying on that. 4 A. Well, I'm correcting it. In this letter 5 here dated December 5, I signed it as general 6 counsel for FlightLevel Aviation. 7 Now, technically FlightLevel Aviation is 8 a number of different companies, but I am clearly 9 representing FlightLevel Norwood in that letter 10 as its attorney. 11 BY MR. FEE: 12 Q. And so you testified earlier and I asked 13 you a number of questions about the fact that you 14 were a consultant during that period. Did you 15 just have a sudden epiphany while at lunch? 16 MR. HARTZELL: Objection. 17 A. No. You showed me a letter that I signed 18 on December 5, 2013, as general counsel. It's 19 Exhibit 58 of this deposition. 20 BY MR. FEE: 21 Q. What was the basis of your testimony 22 earlier that you did not -- were not hired as 23 general counsel until October of 2015? 24 A. Because I was not hired as general</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Yes. 2 Q. And you didn't recall any discussions 3 with Mr. Eichleay regarding that endeavor. 4 Correct? 5 A. That's correct. 6 Q. And so does -- did you discuss with 7 Mr. Eichleay Mr. Donovan's attempt to talk about 8 perhaps an arrangement between you regarding the 9 use of Lots F and G? 10 A. Yes. 11 Q. Okay. And when did you discuss that with 12 Mr. Eichleay? 13 MR. HARTZELL: Are we in the consulting 14 period? 15 MR. FEE: We are. 16 A. Actually, we're not. We're past the 17 consulting period. 18 MR. FEE: I'm afraid not. 19 MR. HARTZELL: Wait a minute. It's your 20 memory that controls. 21 MR. FEE: Wait a minute. Wait a minute. 22 This whole deposition has been based on the 23 premise that he was a consultant from 2013 until 24 October of 2015 when he started as general</p>	<p style="text-align: right;">Page 145</p> <p>1 counsel until I was hired as general counsel. 2 Q. What does that mean? 3 A. What do you think it means? 4 Q. You testified earlier that you were hired 5 as general counsel in 2015. 6 A. I was hired in-house as general counsel 7 in 2015. 8 Q. And so now you're testifying that you 9 were acting as general counsel prior to October 10 2015? 11 A. Clearly. 12 Q. No, not clearly. It's very unclear. 13 When did you start acting as general 14 counsel for FlightLevel Norwood, LLC? 15 A. I was clearly acting as general counsel 16 when I authored this December 5, 2013, letter. 17 Exhibit 58 to this deposition. 18 Q. Exhibit 58 says that you're general 19 counsel, but it doesn't have any indication as to 20 the -- whether or not you were, in fact, employed 21 by FlightLevel at that time. 22 MR. HARTZELL: I think we're talking 23 about two different things here. Employed 24 meaning on the in-house payroll versus employed</p>

<p style="text-align: right;">Page 146</p> <p>1 meaning FlightLevel hires him as outside counsel; 2 right? 3 THE WITNESS: That's correct. 4 BY MR. FEE: 5 Q. Well, that makes a difference and if you 6 were -- okay. 7 When did you begin acting as general 8 counsel for FlightLevel? 9 A. When I started authoring letters as 10 general counsel. 11 Q. When is that? 12 A. This letter is dated December 5, 2013. 13 Q. Okay. So your testimony now is that from 14 December 5, 2013, you were general counsel? 15 A. I was acting as general counsel when I 16 authored that letter, or I wouldn't have signed 17 it that way or I wouldn't even have authored it. 18 MR. FEE: We're going to take a break. 19 (Recess taken at 1:53 p.m.) 20 (Deposition resumed at 1:56 p.m.) 21 MR. FEE: I am going to continue with the 22 deposition. I'm going to take the position that 23 you've waived the attorney-client privilege with 24 respect to anything leading up to October of</p>	<p style="text-align: right;">Page 148</p> <p>1 I ask that you instruct him not to answer that 2 involves advice given to FlightLevel prior to 3 October 2015, he's going to have to answer it. 4 So I don't want to argue with it, and we 5 have limited time together so let's proceed. 6 MR. HARTZELL: Just for the record, I 7 object to any waiver, but let's continue. 8 MR. FEE: Of course. 9 BY MR. FEE: 10 Q. So I asked you, regarding Exhibit 59, 11 whether or not you had discussions with 12 Mr. Eichleay regarding Mr. Donovan's overture to 13 enter into an agreement regarding the space 14 between Lot F and G. 15 MR. HARTZELL: What's the time frame 16 here? 17 MR. FEE: 2014. 18 MR. HARTZELL: Well, I'll -- I'm sorry. 19 Could you repeat the question? 20 BY MR. FEE: 21 Q. Sure. Did you have conversations with 22 Mr. Eichleay regarding Mr. Donovan's expressed 23 interest to enter into an agreement regarding use 24 of the areas between Lot F and G?</p>
<p style="text-align: right;">Page 147</p> <p>1 2015. 2 You can direct him not to answer as you 3 wish, and then we'll just do some motion practice 4 on it at a later date. 5 MR. HARTZELL: I'll just state for the 6 record that I think there was some confusion -- 7 by who I can't say -- earlier in the day between 8 going on the payroll for FlightLevel and becoming 9 vice president and any time previous to that, 10 when he was -- before he went on the payroll 11 where he was acting as outside counsel. 12 MR. FEE: And I appreciate your position. 13 However, I will note for the record that we spent 14 some time defining the consultancy period. We 15 all agreed that there was a consultancy period 16 that was being used as a framework for the 17 conversation. 18 And the questioning involves advice given 19 during the consultancy period. And 20 Mr. Burlingham testified at length regarding 21 matters that could otherwise have been shielded 22 by the attorney-client privilege. 23 So my position is he waived it. And I'm 24 going to take the position that any question that</p>	<p style="text-align: right;">Page 149</p> <p>1 MR. HARTZELL: Mr. Burlingham, were you 2 providing legal advice at that time? 3 THE WITNESS: Yes. 4 MR. HARTZELL: Okay. Then I -- 5 THE WITNESS: Of course. 6 MR. HARTZELL: I instruct him not to 7 answer. 8 BY MR. FEE: 9 Q. Okay. 10 MR. FEE: Please mark that. 11 (Exhibit No. 60 marked for identification.) 12 BY MR. FEE: 13 Q. I'll show you Exhibit 60. It appears to 14 be a letter to Mr. Donovan from Mr. Maguire dated 15 January 22, 2014. Have you ever seen this 16 before? 17 A. Let me take a minute. 18 Q. Sure. 19 A. I may have. 20 Q. You have no specific recollection of 21 seeing it before? 22 A. I don't have any recollection right now 23 of seeing this before. 24 Q. Fair enough.</p>

Page 150	Page 152
<p>1 Do you recall in April of -- or the</p> <p>2 beginning of 2015 FlightLevel asking the NAC to</p> <p>3 approve the extension of its leases on Lots A, B,</p> <p>4 and C, and 5, 6, and 7?</p> <p>5 A. Give me the time frame again.</p> <p>6 Q. It was the beginning -- the first quarter</p> <p>7 of 2014.</p> <p>8 A. And the question is whether I --</p> <p>9 Q. Do you recall --</p> <p>10 A. -- gave that information?</p> <p>11 Sorry. Say it again, please.</p> <p>12 BY MR. FEE:</p> <p>13 Q. Do you recall FlightLevel asking the NAC</p> <p>14 to extend its leases on Lots 5, 6, and 7, A, B,</p> <p>15 and C in Quarter 1 2014?</p> <p>16 A. I don't have any present recollection of</p> <p>17 when that was done. I did learn that that had</p> <p>18 happened at some point.</p> <p>19 Q. Okay. And at that point in time were you</p> <p>20 general counsel to the company?</p> <p>21 A. When I learned of it?</p> <p>22 Q. No. In January of 2014.</p> <p>23 A. I think that there were some areas in</p> <p>24 which I was acting as an attorney and others as a</p>	<p>1 provide advice to Eichleay or FlightLevel?</p> <p>2 A. No.</p> <p>3 Q. And as you sit here today, your only</p> <p>4 recollection of that request by FlightLevel is in</p> <p>5 hindsight. Is that fair to say?</p> <p>6 A. Yes.</p> <p>7 Q. You have no recollection of participating</p> <p>8 in that effort during Q1 2014; is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. Was FlightLevel involved in a project</p> <p>11 known as the "Cap Ramp Rejuvenation and Hangar</p> <p>12 Complex Construction Project" in Q1 2014? Does</p> <p>13 that ring a bell?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. So you don't recall giving any</p> <p>16 advice, either practical or legal, regarding the</p> <p>17 cap ramp rejuvenation and hangar complex</p> <p>18 construction project in 2014?</p> <p>19 A. In Q1 of 2014, I think you said.</p> <p>20 Q. Right.</p> <p>21 A. No. I don't have any recollection.</p> <p>22 Q. Do you have any recollection at all of</p> <p>23 advising FlightLevel, on any level, with respect</p> <p>24 to that particular project at any time?</p>
Page 151	Page 153
<p>1 friend.</p> <p>2 Q. As a friend?</p> <p>3 A. Um-hum.</p> <p>4 Q. To Mr. Eichleay?</p> <p>5 A. Yeah.</p> <p>6 Q. And how do you draw the line? How do you</p> <p>7 distinguish whether you're giving legal advice or</p> <p>8 acting as a friend?</p> <p>9 A. I think that if I'm asked to respond to a</p> <p>10 legal question, it's acting as a lawyer. And if</p> <p>11 I'm asked to go out and have a beer, it's acting</p> <p>12 as a friend.</p> <p>13 Q. So does -- okay. You're being a bit</p> <p>14 facetious, but is there some aspect of</p> <p>15 FlightLevel's business that you would consider</p> <p>16 business advice and consulting as opposed to</p> <p>17 providing legal advice?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And where is that line? Where do</p> <p>20 you draw that line in your mind?</p> <p>21 A. Well, it depends on the project.</p> <p>22 Q. And so with respect to FlightLevel's</p> <p>23 request to the NAC to extend its leases on Lots</p> <p>24 5, 6, and 7, and A, B, C in Q1 of 2014, did you</p>	<p>1 A. Yes.</p> <p>2 Q. When? When did you first advise</p> <p>3 FlightLevel regarding that project?</p> <p>4 A. I can't recall.</p> <p>5 Q. Was it in 2014?</p> <p>6 A. It may have been.</p> <p>7 Q. And what advice did you provide?</p> <p>8 MR. HARTZELL: If it's legal advice,</p> <p>9 instruct you to note the privilege.</p> <p>10 A. I'm going to correct that and say no. I</p> <p>11 didn't give any advice at all in 2014.</p> <p>12 BY MR. FEE:</p> <p>13 Q. How about in 2015?</p> <p>14 A. In 2015 I took the project over.</p> <p>15 Q. Okay. What year of 2015 -- I'm sorry.</p> <p>16 What month of 2015?</p> <p>17 A. I think after October, but I don't really</p> <p>18 recall.</p> <p>19 Q. October of 2015?</p> <p>20 A. I think it's after October. I don't</p> <p>21 think I took it over immediately upon joining</p> <p>22 FlightLevel as in-house counsel, but I do know</p> <p>23 that I received it as my -- one of my assignments</p> <p>24 after that point.</p>

Page 154	Page 156
<p>1 Q. Would you characterize your participation 2 in that project as providing business advice or 3 legal advice? 4 A. My participation in that project was 5 legal in the sense of contract drafting and 6 business operations in the context of seeing the 7 project to fruition. 8 (Exhibit No. 61 marked for identification.) 9 BY MR. FEE: 10 Q. I'm showing you a document that's been 11 marked as Exhibit 61. It appears to be a letter 12 from you to Mr. Fox dated July 29, 2014. Have 13 you seen this before? 14 A. Yes. 15 Q. And why did you write this letter? 16 A. Well, I think the letter speaks for 17 itself. But in this particular instance, I was 18 sought to intervene as an attorney following an 19 event that occurred with respect to FlightLevel's 20 Lot G. 21 Q. Okay. And the -- your answer in amended 22 verified complaint and counterclaim, in the 23 Norfolk civil action ending in 231, describes 24 this as the removal and blockading of defendant's</p>	<p>1 A. No. That's not what you asked me. You 2 asked me if I saw the area. 3 Q. Okay. 4 A. I've seen the area many, many times. 5 Q. Did you see the area at the time of the 6 events that you were complaining about in this 7 letter? 8 A. No. 9 MR. HARTZELL: I just want to note for 10 the record here. I don't -- this photograph is 11 not numbered, and I wonder if it was attached to 12 the letter. 13 MR. FEE: Is that an objection or what? 14 MR. HARTZELL: Clarification. I mean, 15 you're talking about this photograph attached to 16 the letter. I haven't seen it. I haven't gotten 17 to the letter yet. 18 MR. FEE: Let me examine further, Neil. 19 MR. HARTZELL: I just noted that the 20 photograph was not numbered, and I questioned 21 whether it was attached or not. 22 MR. FEE: Let me examine further, Neil. 23 BY MR. FEE: 24 Q. Do you see at the bottom of page 2 where</p>
Page 155	Page 157
<p>1 ramp. Is that the set of circumstances that you 2 were reacting to when you drafted this letter? 3 MR. HARTZELL: Objection. 4 A. Yes. 5 BY MR. FEE: 6 Q. And the picture that's attached to this 7 letter, does that fairly and accurately depict 8 the blockading of defendant's ramp referenced in 9 your counterclaim? 10 A. This was a photo that was provided by my 11 client to me in support of this letter. 12 Q. Did you not take this photo? 13 A. I did not take that photo. 14 Q. Did you see these areas? 15 A. Yes. 16 Q. Okay. So my question is: Does the photo 17 fairly and accurately depict the situation that 18 you're complaining about in the letter? 19 A. And as I said, the photo was provided by 20 my client. I trusted my client to provide me 21 with accurate imagery. 22 Q. Well, there's maybe a disconnect here 23 because I'm asking you if you saw the situation 24 on the ground, and you said yes. Correct?</p>	<p>1 it says "Enclosure. Photos"? 2 A. Yes. 3 Q. And is it your understanding that you 4 enclosed a photo with your letter to Mr. Fox on 5 July 29, 2014? 6 A. Yes. 7 Q. Okay. And does this look like the photo 8 that you attached? 9 A. It looks like a photo of the incident in 10 question in the letter. If it's not the exact 11 photo, then -- or if it's only one of several, 12 that may be the case. But I would connect that 13 photo with this incident. Yes. 14 Q. Okay. So to the best of your knowledge, 15 do you believe that this photograph that's 16 attached to this exhibit fairly and accurately 17 depicts the situation that you were complaining 18 about in the letter dated July 29? 19 A. Like I said, it's my client's 20 representation. So I think that they're the 21 better ones to ask. But if they provided me with 22 that and I wrote the letter and attached it, then 23 it's my position that my clients provided me with 24 a correct photo.</p>

Page 158	Page 160
<p>1 Q. And in this letter you describe the 2 offending structures as barriers; right? 3 Last sentence in the first paragraph. 4 "In addition, my client now informs me 5 that BEH has gone so far as to erect barriers on 6 my client's Lots G and H. And when requested to 7 remove the same by one of my client's employees, 8 BEH's representative stated only that BEH would 9 take it under advisement." 10 Did I read that correctly? 11 A. Yes. You did. 12 Q. So the barriers that you are referring to 13 in that sentence, do they -- are they depicted in 14 the photo that's annexed to this exhibit? 15 A. I believe so. 16 Q. Those are those orange plastic cones in 17 the exhibit? In the photo. 18 A. That's what they appear to be. Yes. 19 Q. And they're connected by tape; right? 20 A. Yes. 21 Q. I'm just trying to understand what you're 22 complaining about, Nick. So I'm sorry if that's 23 humorous to you. 24 A. I think the letter speaks for itself.</p>	<p>1 or unable to access the ramp by virtue of these 2 barriers? 3 A. You would have to ask the operations 4 guys. 5 Q. Okay. So you don't know? 6 A. I don't know. I don't have any knowledge 7 of that. 8 Q. Did FlightLevel suffer any loss of money 9 or property as a result of the erection of these 10 barriers? 11 MR. HARTZELL: Objection. 12 A. I think that FlightLevel suffered the 13 loss of claim to Lot G as a result of the asphalt 14 incident. 15 BY MR. FEE: 16 Q. And what do you mean by that? 17 A. Well, I mean that Boston Executive 18 Helicopters was apparently attempting to 19 establish control over Lot G by tearing up Lot G 20 and paving it. 21 Q. Okay. Well, some would say improving it. 22 A. Improving it for BEH, but not for 23 FlightLevel. 24 Q. Well, if it's part of Lot G, doesn't that</p>
Page 159	Page 161
<p>1 Q. Well, how long did this situation exist 2 on your client's property? 3 A. I don't know. 4 Q. Was it more than 24 hours? 5 A. I don't know -- yes. I do know that. 6 Yes. 7 Q. You do know that. 8 A. I know it was more than 24 hours. 9 Q. Was it longer than 48 hours? 10 A. It was likely 48 hours after the letter 11 was received by Mr. Fox and relayed to 12 Mr. Donovan. 13 Q. Do you know why those barriers were 14 erected? 15 A. No. 16 Q. And did those barriers materially 17 interfere with your ability to access portions of 18 your -- Lot G? 19 A. It interfered with the use of the ramp on 20 Lot G. Absolutely. 21 Q. How? 22 A. Because they're erected in an aviation 23 apron area where aircraft taxi and are towed. 24 Q. Okay. And were any aircraft misdirected</p>	<p>1 inure to FlightLevel's benefit? 2 A. Not if FlightLevel loses rights to it. 3 Q. How would FlightLevel lose rights to this 4 portion of Lot G? 5 A. Well, that is a legal question and it 6 calls for a legal answer. 7 Q. Are you referring to rights by adverse 8 possession? 9 A. I'm referring to that area of property 10 law that you just mentioned. 11 Q. Okay. Is it seriously your contention 12 that BEH was attempting to establish rights by 13 adverse possession to portions of Lot G by virtue 14 of repaving portions of Lot G? 15 A. It was part of -- it is my contention 16 that, whether by advice of counsel or otherwise, 17 BEH believed that it was going to obtain rights 18 in Lot G by acting in a way that openly, 19 notoriously, and hostilely occupied Lot G. 20 Q. Well, you know that adverse possession 21 requires a hostile, adverse, and notorious use of 22 land for more than 20 years; right? 23 A. Are you lecturing me on the law? 24 Q. I'm asking you if you understand adverse</p>

<p style="text-align: right;">Page 162</p> <p>1 possession to require a certain time period.</p> <p>2 A. I clearly understand it more than you do.</p> <p>3 MR. HARTZELL: Wait, wait, wait.</p> <p>4 Gentlemen, please.</p> <p>5 Just ask the question and just answer the</p> <p>6 question. Please refrain from any of this</p> <p>7 back-and-forth banter.</p> <p>8 A. I'm going to not answer that question on</p> <p>9 the grounds that it is work-product privilege,</p> <p>10 and I invite you to go and look at the relative</p> <p>11 body of law.</p> <p>12 MR. HARTZELL: Enough. Enough.</p> <p>13 BY MR. FEE:</p> <p>14 Q. Okay. What is the basis for your belief</p> <p>15 that BEH intended to assert rights by adverse</p> <p>16 possession as a result of the repaving incident</p> <p>17 described in your letter of July 29, 2014?</p> <p>18 A. First of all, I didn't say it was adverse</p> <p>19 possession. And secondly, they tore up -- BEH</p> <p>20 tore up and replaced about 5,000 square feet of</p> <p>21 ramp that's not on its property.</p> <p>22 Q. But you said that you believed it was</p> <p>23 BEH's intention to assert rights or dominion over</p> <p>24 Lot G by this act. Is that fair to say?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. A disclaimer of interest.</p> <p>2 A. -- a disclaimer of interest. And the</p> <p>3 failure to provide one indicates the desire of</p> <p>4 his client to take those rights.</p> <p>5 Q. Okay. So your position is that by virtue</p> <p>6 of BEH's counsel's failure to respond to your</p> <p>7 letter, that's indication of intent to exercise</p> <p>8 dominion over Lot G. Is that right?</p> <p>9 A. Yes, in part.</p> <p>10 Q. Okay. Do you have any other evidence</p> <p>11 regarding BEH's intent to acquire rights by</p> <p>12 adverse possession, prescription, or any other</p> <p>13 legal theory?</p> <p>14 A. Yes.</p> <p>15 Q. What?</p> <p>16 A. Fueling plans submitted by Boston</p> <p>17 Executive Helicopters to the Norwood Airport</p> <p>18 Commission showing the fueling operations of</p> <p>19 Boston Executive Helicopters originating on Lot F</p> <p>20 but being conducted on Lot G.</p> <p>21 Not only that, but an e-mail that you</p> <p>22 showed me that's an exhibit to this deposition in</p> <p>23 which Mr. Donovan specifically requested the</p> <p>24 right to fuel on Lot G.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Yes.</p> <p>2 Q. What is the basis for your belief that</p> <p>3 BEH intended to acquire rights by virtue of this</p> <p>4 act of dominion?</p> <p>5 A. BEH tore up 5,000 square feet of ramp and</p> <p>6 repaved it without any permission from its owner.</p> <p>7 Q. Do you have any evidence whatsoever</p> <p>8 regarding BEH's intention with respect to that</p> <p>9 act?</p> <p>10 A. Yes.</p> <p>11 Q. What evidence do you have?</p> <p>12 A. You're holding it.</p> <p>13 Q. The picture?</p> <p>14 A. The picture.</p> <p>15 Q. Okay. So other than the picture, do you</p> <p>16 have any other evidence that BEH intended to</p> <p>17 claim rights by prescription or adverse</p> <p>18 possession or otherwise under any legal theory to</p> <p>19 portions of Lot G?</p> <p>20 A. Yes.</p> <p>21 Q. What evidence do you have?</p> <p>22 A. My initial letter -- actually my --</p> <p>23 Exhibit 61, July 29, 2014, letter to Attorney Fox</p> <p>24 specifically requests --</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. And you are aware of another exhibit that</p> <p>2 I showed you where BEH agreed not to fuel on</p> <p>3 Lot G under any circumstances. Do you remember</p> <p>4 that?</p> <p>5 A. It's not what that exhibit said. It said</p> <p>6 that the -- that he had agreed not to fuel on</p> <p>7 Lot G until he could -- if I remember</p> <p>8 correctly -- demonstrate that the property rights</p> <p>9 of others were not impinged upon.</p> <p>10 Q. Okay. All right. And so -- but he</p> <p>11 agreed to a fueling restriction on Lot G; right?</p> <p>12 A. He agreed to a fueling -- to a</p> <p>13 restriction east of his leasehold as that</p> <p>14 includes the abutting rights of other abutting</p> <p>15 property owners.</p> <p>16 Q. Okay. With this repavement, did this</p> <p>17 occur at a time when construction was ongoing at</p> <p>18 BEH's hangar?</p> <p>19 A. I believe so.</p> <p>20 Q. In the second full -- first full</p> <p>21 paragraph on the second page, final sentence.</p> <p>22 You say:</p> <p>23 "As this is your first notice of this</p> <p>24 particular incident, BEH will have until 12 noon</p>

<p style="text-align: right;">Page 166</p> <p>1 on July 30 to remove the current barriers." 2 Do you see that? 3 A. Yes. 4 Q. And did it remove the barriers by that 5 time? 6 A. No. 7 Q. How do you know that? 8 A. The barriers were removed 24 hours later 9 than the deadline. 10 Q. How do you know that? 11 A. Because my client is paid to watch things 12 like that. 13 Q. But you didn't see it? 14 A. FlightLevel employees were closely 15 observing that area. 16 Q. I'm sure. But you didn't personally 17 observe it. Correct? 18 A. I did not personally observe the removal 19 of the barriers. No. 20 Q. So you have no percipient knowledge as to 21 when they were removed. Correct? 22 A. If you define "percipient" for me, I will 23 be able to answer that. 24 Q. Percipient means you saw it.</p>	<p style="text-align: right;">Page 168</p> <p>1 A. I'm familiar with the incident generally. 2 I didn't know if it was this letter or not. 3 Q. And did you have any role in directing 4 Mr. DeLaria to deliver a copy of your letter of 5 July 29? 6 A. No. 7 Q. Do you know who did? 8 A. No. 9 Q. Okay. Do you think it was Mr. Eichleay? 10 A. I don't know who it was. 11 Q. Okay. Now, when you wrote the letter of 12 July 29, did you also have conversations with the 13 airport manager regarding the events described in 14 the letter? 15 A. I don't recall having any discussions 16 with the airport manager in connection with the 17 July 29, 2014, letter. 18 Q. Do you know if Mr. Eichleay did? 19 A. No, I don't. 20 Q. Did you have any discussions with 21 Mr. Eichleay regarding his contacting the airport 22 manager regarding these events? 23 A. I don't recall. 24 Q. Okay.</p>
<p style="text-align: right;">Page 167</p> <p>1 A. I did not see it. 2 Thank you for the English lesson. 3 MR. FEE: Off the record. 4 (Recess taken at 2:21 p.m.) 5 (Deposition resumed at 2:28 p.m.) 6 (Exhibit No. 62 marked for 7 identification.) 8 BY MR. FEE: 9 Q. Nick, I'm showing you what's been marked 10 as Exhibit 62. It appears to be a copy of your 11 letter to Mr. Fox with a cover letter addressed 12 to Mr. Donovan dated July 30. Have you seen this 13 before? 14 A. I have not seen the cover letter. No. 15 MR. HARTZELL: I'm sorry. What exhibit? 16 62? 17 MR. FEE: 62. Correct. 18 BY MR. FEE: 19 Q. Do you know who delivered this letter? 20 A. No. 21 Q. Are you familiar with allegations in the 22 complaint and counterclaim that Mr. DeLaria 23 delivered this letter to Mr. Silva and had some 24 words to say to him when he did?</p>	<p style="text-align: right;">Page 169</p> <p>1 (Exhibit No. 63 marked for identification.) 2 BY MR. FEE: 3 Q. Showing you a document that's been marked 4 as Exhibit 63. And it appears to be the meeting 5 agenda and minutes for the regular business 6 meeting for the NAC for July 30, 2014. Do you 7 recall attending this meeting? 8 A. Yes. 9 Q. Did you attend? 10 A. Yes. 11 Q. And did you discuss or raise with the 12 commissioners the matters addressed in your 13 letter of July 29? 14 A. No. 15 Q. Why not? 16 A. Generally speaking, you have to be on the 17 agenda to be called upon in the meeting. But I 18 don't recall ever presenting the -- anything 19 about the issues in the July 29, 2014, letter to 20 the airport commission at all. 21 Q. Okay. So is it fair to say that the 22 airport commission didn't get involved in this 23 particular dispute that FlightLevel was having 24 with BEH?</p>

Page 170	Page 172
<p>1 A. I think it's fair to say that that became 2 their position. I'm not sure what happened as of 3 July 30, 2014. 4 Q. But at any time after that, did the issue 5 of repaving portions of Lots G by BEH become an 6 issue that was discussed or addressed by the NAC? 7 A. It became an issue that was addressed by 8 FlightLevel to the NAC. 9 Q. And when was that? 10 A. In various letters from and after the 11 date of the incident. 12 Q. Other than the incident described in 13 Exhibit 62, were there other incidents of 14 FlightLevel -- I'm sorry -- BEH repaving portions 15 of Lot G? 16 A. Not that affected FlightLevel, and not 17 that I'm aware of either. 18 Q. Okay. 19 (Exhibit No. 64 marked for identification.) 20 BY MR. FEE: 21 Q. I'm showing you a letter that's been 22 marked as Exhibit 64. It's from Mr. Eichleay to 23 Mr. Ryan in his capacity as chairman of the 24 airport commission. It's dated November 25,</p>	<p>1 Did I read that correctly? 2 A. Yes. 3 Q. And so it was FlightLevel's position in 4 November of 2014 that the NAC should deny BEH's 5 application for FBO status. Is that fair to say? 6 MR. HARTZELL: Objection. 7 A. No. 8 BY MR. FEE: 9 Q. No? 10 A. No. 11 Q. Well, would you agree with me that this 12 letter pretty clearly articulates a position that 13 only one FBO should exist at Norwood Memorial 14 Airport? 15 MR. HARTZELL: Objection. 16 A. No. 17 BY MR. FEE: 18 Q. Okay. Do you agree with me that this 19 letter states that the NAC should limit the 20 number of FBOs at Norwood Memorial Airport to 21 one? 22 MR. HARTZELL: Objection. 23 A. It states that before enfranchising a 24 second FBO, it should study the issue to confirm</p>
Page 171	Page 173
<p>1 2014. 2 Can you take a look at that, and let me 3 know if you've seen it before. 4 A. Yes. 5 Q. Did you write this? 6 A. Peter Eichleay and I wrote it together. 7 Q. And in it, the second sentence states: 8 "I am writing first to reiterate my 9 long-standing position that the airport cannot 10 support two FBOs, just as it couldn't more than a 11 decade ago when there were two FBOs. The 12 aviation marketplace was at its peak and aviation 13 fuels were less than half the price they are 14 today. 15 "And second, to refresh my request in 16 light of the fact there are few, if any, airports 17 of Norwood's size and scope, which is to say 18 airports with maximum runway lengths of only 19 4,000 feet, that operate with two fuel providers. 20 "That before acting to enfranchise BEH or 21 any additional FBO, an independent third-party 22 consultant be retained to study the issue and 23 advise the NAC on whether one or more additional 24 FBOs can viably coexist at the airport."</p>	<p>1 for itself whether it agrees with FlightLevel's 2 position that the airport can only sustain one 3 FBO viably. 4 BY MR. FEE: 5 Q. And the -- FlightLevel's position was 6 that it would pay for that independent 7 third-party study. Correct? 8 MR. HARTZELL: Objection. 9 A. FlightLevel's position was that to the 10 extent that the airport had no money, it was 11 important enough to FlightLevel to offer to fund 12 that. 13 BY MR. FEE: 14 Q. Okay. And if the independent third party 15 concluded that only one FBO should operate at 16 Norwood Memorial Airport, that would be 17 FlightLevel. Correct? 18 MR. HARTZELL: Objection. 19 A. That's not the purpose of the study. 20 BY MR. FEE: 21 Q. Okay. Did you share this letter or did 22 FlightLevel share this letter with BEH? 23 A. I don't know. Eventually in the 24 production of documents.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. Right. But at the time. In November of 2 2014. 3 A. I don't believe so. I don't really know, 4 though. 5 Q. Okay. 6 A. Except to say that every letter that is 7 received becomes a public record. So it was 8 certainly out there. 9 Q. Understood. And was it your position 10 that if BEH wanted to see its -- FlightLevel's 11 correspondence to the NAC regarding BEH, it 12 should make a public records request? 13 MR. HARTZELL: Objection. 14 A. If FlightLevel wanted BEH to see its 15 correspondence to the Norwood Airport Commission, 16 then it could make a public records request but 17 it -- this letter is advocating FlightLevel's 18 position. So it would be interested in 19 communicating that directly. 20 BY MR. FEE: 21 Q. Do you know if the airport commission 22 considered the letter that's been marked as 23 Exhibit 64? 24 A. I believe they did.</p>	<p style="text-align: right;">Page 176</p> <p>1 particular event or meeting? 2 A. Apparently. It seems to reflect, in the 3 first sentence, that there was a meeting that 4 day, January 14th. 5 Q. Right. And it expresses concern, does it 6 not? 7 Let me rephrase that. Second sentence in 8 photograph two says: 9 "What concerns me first and foremost is 10 what I perceive to be a softening of the NAC's 11 resolve to ensure that BEH provides a clear 12 justification of the viability of its business 13 model. 14 "As operator of multiple FBOs in the 15 Northeast, I am keenly aware of what it takes to 16 succeed and also the fragility of an FBO's 17 success on small airports such as ours." 18 Did I read that correctly? 19 A. Yes. 20 Q. So did you attend the meeting on 21 January 14? The NAC meeting on January 14. 22 A. I believe so. Yes. 23 Q. And was it your impression, following 24 that meeting, that the NAC was softening in its</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. Okay. When? 2 A. I don't recall. 3 (Exhibit No. 65 marked for 4 identification.) 5 BY MR. FEE: 6 Q. Do you recall at any time having any 7 discussion in a public meeting with the Norwood 8 Airport Commission regarding FlightLevel's 9 suggestion that an independent third party should 10 be engaged to study the issue of whether or not 11 two FBOs could coexist at the airport? 12 A. No. 13 Q. So was any such study ever undertaken? 14 A. Not to my knowledge. 15 Q. I'll show you a document that's been 16 marked as Exhibit 65. It appears to be a letter 17 dated January 14, 2015, to Mark Ryan in his 18 capacity as chairman of the airport commission 19 from Peter Eichleay. 20 Have you seen this one before? 21 A. Yes. 22 Q. And did you write this? 23 A. I think I wrote this with Peter Eichleay. 24 Q. And was this in response to any</p>	<p style="text-align: right;">Page 177</p> <p>1 approach toward BEH? 2 A. I have no specific recollection of that 3 meeting. However, this was a body of volunteers 4 convened once a month that, from month-to-month, 5 had a difficult time remembering where they left 6 off. 7 Q. And so -- but you -- Peter uses the words 8 "what I perceive to be a softening of the NAC's 9 resolve." Do you see that? 10 A. Yes. 11 Q. Was that your impression as well? That 12 the NAC was trending towards being more likely to 13 issue an FBO to BEH? 14 A. It was my belief that the Norwood Airport 15 Commission was losing sight of the restriction 16 with respect to the use of Lot G. And that by 17 summarily awarding an FBO permit, it would 18 somehow -- the Lot F/Lot G boundary issue would 19 fall off of the list of things to do. 20 Q. Well, take a minute to read this because 21 I don't see Lot F or G discussed anywhere in the 22 letter. This talks more about the viability of 23 two FBOs at the airport and repeats the call for 24 an independent third-party consultant.</p>

Page 178	Page 180
<p>1 So if you could just take a look at it 2 and maybe if you want to revisit your last 3 answer. 4 A. Well, my last answer specifically related 5 to what my general recollection of the resolve of 6 the airport commission was, and it didn't 7 actually address the -- you know, the specific 8 language in here. 9 Q. Okay. 10 A. So if you would like me to take a look at 11 this and ask again, that would be fine. 12 Q. I'm just puzzled by your answer because 13 you stated that you were -- I asked you about the 14 softening of the NAC's resolve, and you stated 15 that you thought they were losing sight of the 16 F/G property dispute. And I just don't see F/G 17 discussed in the letter. 18 So if you want to take a look at the 19 letter and tell me how this relates to the Lot 20 F/G property dispute, I'd be happy to hear it. 21 MR. HARTZELL: Objection. 22 A. This letter does not actually 23 specifically refer to the Lot F/Lot G property 24 dispute. It merely addresses the common sense of</p>	<p>1 A. Common sense is a viable criteria of 2 determining the need. 3 BY MR. FEE: 4 Q. Okay. 5 A. Whether the NAC thereafter pays any 6 attention to it or not, was beyond my and my 7 client's ability to influence. 8 Q. Is it FlightLevel's position that an FBO 9 is required -- or an FBO seeking to be approved 10 is required to demonstrate a need for its 11 services? 12 A. No. That's not my testimony. 13 Q. I'm just wondering if that's your belief. 14 A. That's not my belief either. 15 Q. Okay. 16 (Exhibit No. 66 marked for 17 identification.) 18 BY MR. FEE: 19 Q. I'm showing you what's been marked as 20 Exhibit 66. It appears to be an e-mail from 21 Mr. Eichleay to Mr. Maguire with a cc to 22 Mr. Ryan, Mr. Kevin Shaughnessy, Mr. Michael 23 Sheehan, dated January 14, 2015. Do you see 24 that?</p>
Page 179	Page 181
<p>1 proceeding from an airport that has one FBO to an 2 airport that has multiple FBOs. And it also 3 provides the recipient of the letter with some 4 statutory backdrop to consider. 5 BY MR. FEE: 6 Q. Okay. Did you believe that pursuant to 7 the applicable rules and regulations, BEH was 8 obligated to provide -- and I quote from your 9 letter -- " a clear justification of the 10 viability of the its business model in order to 11 be awarded an FBO"? 12 MR. HARTZELL: Objection. 13 A. I don't recall a connection between that 14 and the rules and regulations. But it is up to 15 the licensing authority to rely not only on rules 16 and regulations but also common sense and the 17 protection of the public trust. 18 BY MR. FEE: 19 Q. Are you relying on any particular statute 20 or regulation for the notion that the common 21 sense of the NAC is a criteria? Or the common 22 sense conclusion of the NAC is a viable criteria 23 for determining FBO status? 24 MR. HARTZELL: Objection.</p>	<p>1 A. I do. 2 Q. And it attaches a letter dated 3 January 14, 2015. Do you see that? 4 A. I see where it says it attaches the 5 letter. Yes. 6 Q. Is it your understanding or belief that 7 the letter dated January 14, 2015, which has been 8 marked as Exhibit 65, was transmitted to -- from 9 Mr. Eichleay to Maguire, Ryan, Shaughnessy, and 10 Sheehan on January 14? 11 A. It appears that that is the case. Yes. 12 Q. And then Mr. Eichleay goes on to state 13 that he's writing to request a meeting with 14 selected members of the NAC and perhaps the town 15 manager or selectmen to discuss the letter. Do 16 you see that? 17 A. Yes, I do. 18 Q. And did such a meeting take place? 19 A. Yes. 20 Q. And when? 21 A. I don't recall. 22 Q. Did it happen sometime following 23 January 14? 24 A. Yes.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. Was it, like, within a week?</p> <p>2 A. I don't have that clear a recollection of</p> <p>3 the time span.</p> <p>4 Q. Let me refresh your recollection.</p> <p>5 (Exhibit No. 67 marked for</p> <p>6 identification.)</p> <p>7 BY MR. FEE:</p> <p>8 Q. Showing you what's been marked as Exhibit</p> <p>9 67, it appears to be an e-mail from Mr. Eichleay</p> <p>10 to you and Mr. DeLaria, and it forwards an e-mail</p> <p>11 exchange between Mr. Maguire and Mr. Eichleay</p> <p>12 where Mr. Eichleay talks about January 21st or</p> <p>13 22nd as a potential date for the meeting. Do you</p> <p>14 see that?</p> <p>15 A. I do.</p> <p>16 Q. Does that refresh your recollection as to</p> <p>17 when this meeting took place?</p> <p>18 A. It does.</p> <p>19 Q. And how does it refresh your</p> <p>20 recollection?</p> <p>21 A. Well, I'm not sure if there was a misfire</p> <p>22 of these dates, but certainly there was an effort</p> <p>23 to get the meeting done or scheduled on January</p> <p>24 21st or January 22nd.</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I did.</p> <p>2 BY MR. FEE:</p> <p>3 Q. And did you specifically argue that two</p> <p>4 FBOs at Norwood Memorial Airport were not viable</p> <p>5 economically?</p> <p>6 A. That was a portion of what I argued.</p> <p>7 Q. Did you also argue that an independent</p> <p>8 third-party consultant should be engaged to</p> <p>9 quantify that position?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 A. That was part of the suggestion.</p> <p>12 BY MR. FEE:</p> <p>13 Q. And did you also argue that statutory</p> <p>14 authority existed for the NAC to deny an FBO and</p> <p>15 keep a single FBO in place at the Norwood</p> <p>16 Memorial Airport?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. Specifically that there was statutory</p> <p>19 authority that a single FBO at an airfield was</p> <p>20 not a violation of a grant assurance, and that</p> <p>21 there was a safe harbor if the NAC wanted to</p> <p>22 invoke it.</p> <p>23 BY MR. FEE:</p> <p>24 Q. And did you discuss that legal nuance</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. Your recollection is the meeting took</p> <p>2 place. Correct?</p> <p>3 A. And the meeting ultimately did take</p> <p>4 place.</p> <p>5 Q. Who was present?</p> <p>6 A. The meeting, if I remember correctly, was</p> <p>7 Mark Ryan and Russ Maguire, and conceptually</p> <p>8 Brandon Moss, the town counsel at the time. And</p> <p>9 for FlightLevel, it was me and Peter Eichleay.</p> <p>10 Q. And where did it take place?</p> <p>11 A. If I have the correct meeting properly in</p> <p>12 my recollection, it took place in a conference</p> <p>13 room at town hall.</p> <p>14 Q. Was the town manager present?</p> <p>15 A. No.</p> <p>16 Q. Were any members of the board of</p> <p>17 selectmen present?</p> <p>18 A. No.</p> <p>19 Q. Okay. And at that meeting did you speak?</p> <p>20 A. I did.</p> <p>21 Q. And did you advocate some of the</p> <p>22 principles or propositions that were set forth in</p> <p>23 your letter of January 14?</p> <p>24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">Page 185</p> <p>1 with Mr. Moss during the hearing -- during the</p> <p>2 meeting?</p> <p>3 A. If I remember correctly, Mr. Ryan,</p> <p>4 Mr. Moss, and Mr. Maguire, literally, didn't</p> <p>5 speak in the meeting. It was a presentation to</p> <p>6 them and no -- or very little coming back.</p> <p>7 Q. Did Mr. Eichleay speak?</p> <p>8 A. Yes.</p> <p>9 Q. What did he say?</p> <p>10 A. He advocated the same principles that we</p> <p>11 just discussed.</p> <p>12 Q. Did anyone respond from the town side?</p> <p>13 A. I think they said, "Thank you very much."</p> <p>14 The implication being they'd take it under</p> <p>15 advisement.</p> <p>16 Q. And was there some reason that you felt</p> <p>17 it was necessary or appropriate to make this</p> <p>18 presentation to a portion of the NAC members?</p> <p>19 A. Yes.</p> <p>20 Q. And why is that?</p> <p>21 A. Well, it was in the best interest of my</p> <p>22 client.</p> <p>23 Q. And did you have any understanding of the</p> <p>24 open meeting law at that time?</p>

Page 186	Page 188
<p>1 A. Yes.</p> <p>2 Q. And did you believe that it was a</p> <p>3 violation of the open meeting law for three of</p> <p>4 these members to meet?</p> <p>5 A. It would have to be three members of the</p> <p>6 airport commission to have violated the open</p> <p>7 meeting law. There was only one member of the</p> <p>8 airport commission in attendance.</p> <p>9 Q. I'm sorry. I misheard you earlier. You</p> <p>10 said Mr. Ryan, Mr. Moss and Mr. --</p> <p>11 A. Maguire.</p> <p>12 Q. -- Maguire. Okay.</p> <p>13 Was there any reason that you felt it was</p> <p>14 important to make this presentation in private</p> <p>15 and not in a public hearing?</p> <p>16 A. Well, first of all, it was a public</p> <p>17 building. And secondly, it dealt with complex</p> <p>18 issues that don't lend themselves well to public</p> <p>19 meetings. And so those are two elements of the</p> <p>20 decision to do that.</p> <p>21 Q. Okay. So there was no -- okay.</p> <p>22 (Exhibit No. 68 marked for</p> <p>23 identification.)</p> <p>24</p>	<p>1 you, I will have solved that problem.</p> <p>2 But is it your recollection that on or</p> <p>3 about January 20th, 2015, a substantially similar</p> <p>4 correspondence was sent from FlightLevel to the</p> <p>5 boards of selectmen?</p> <p>6 A. Yes.</p> <p>7 Q. And was there any follow-up on</p> <p>8 FlightLevel's part to get a meeting with the</p> <p>9 board of selectmen to discuss these issues?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you ever, at any point, speak to any</p> <p>12 member of the board of selectmen regarding the</p> <p>13 issues raised in the letter that's been marked as</p> <p>14 Exhibit 68?</p> <p>15 A. No.</p> <p>16 Q. Did anything happen in response to</p> <p>17 Exhibit 68?</p> <p>18 A. Other than this lawsuit, you mean? Not</p> <p>19 that I can recall.</p> <p>20 Q. I'm focusing mainly on -- I mean, it's a</p> <p>21 letter to the selectmen, and I'm just wondering</p> <p>22 if there was any communication, dialogue,</p> <p>23 discussion, correspondence as a result of this</p> <p>24 exhibit.</p>
Page 187	Page 189
<p>1 BY MR. FEE:</p> <p>2 Q. I apologize. There's some markings on</p> <p>3 this that -- it's the only copy I have. So I</p> <p>4 apologize for the pencil markings on it.</p> <p>5 Nick, I'm showing you a document that's</p> <p>6 been marked as Exhibit 68. It appears to be a</p> <p>7 letter dated January 20, 2015, to Michael J.</p> <p>8 Lyons, chairman of the board of selectmen from</p> <p>9 Peter Eichleay.</p> <p>10 Have you seen this before?</p> <p>11 A. Yes.</p> <p>12 Q. Did you write this?</p> <p>13 A. Peter and I wrote this together.</p> <p>14 Q. Okay. And was it sent to Mr. Lyons on or</p> <p>15 about January 20, 2015?</p> <p>16 A. I can't be sure from looking at this,</p> <p>17 which appears to be an unsigned and marked-up</p> <p>18 copy, whether that date was the final date. I do</p> <p>19 note that it doesn't have any exhibits and it</p> <p>20 doesn't have the colored letterhead.</p> <p>21 So I have no reason to say that it</p> <p>22 didn't, but it's not the best copy.</p> <p>23 Q. I admit that, and perhaps by the time</p> <p>24 Mr. Eichleay gets here or the next time I see</p>	<p>1 A. I don't have any recollection of any</p> <p>2 follow-up correspondence -- strike that.</p> <p>3 I don't have any recollection of any</p> <p>4 follow-up meetings or any reply of any kind. I</p> <p>5 believe this letter probably got filed and that</p> <p>6 was about it.</p> <p>7 Q. Okay. And you didn't send a copy of this</p> <p>8 to BEH; right?</p> <p>9 A. I believe a copy of this went to the</p> <p>10 Norwood Airport Commission and became part of the</p> <p>11 public record.</p> <p>12 Q. But you didn't communicate these issues</p> <p>13 to BEH. Correct?</p> <p>14 A. I don't believe we sent a copy of this</p> <p>15 letter to BEH. No.</p> <p>16 Q. So in this letter you explicitly state</p> <p>17 that BEH's FBO application should be denied;</p> <p>18 right?</p> <p>19 MR. HARTZELL: Objection.</p> <p>20 A. Can you point me to that?</p> <p>21 BY MR. FEE:</p> <p>22 Q. Yes. It's page 13.</p> <p>23 A. I'm sorry. I don't seem to see it on</p> <p>24 page 13. I do see it on page 15 but --</p>

Page 190	Page 192
<p>1 Q. It's in all caps about --</p> <p>2 A. I wasn't looking at the capital letters.</p> <p>3 Q. Okay.</p> <p>4 A. Yes. The answer to your question is yes.</p> <p>5 Q. And so a slightly more strenuous position</p> <p>6 is taken by FlightLevel in this letter than in</p> <p>7 your prior letter of January 14 which advocates</p> <p>8 only for an independent third-party study.</p> <p>9 Now you're outright telling the board of</p> <p>10 selectmen that for a variety of different</p> <p>11 reasons -- not just the economics of the airport</p> <p>12 but BEH's bad behavior -- it's FBO application</p> <p>13 should be denied. Correct?</p> <p>14 A. Correct.</p> <p>15 Q. And did I ask you was there any</p> <p>16 correspondence or follow up to this letter? You</p> <p>17 said you thought it was just filed; is that</p> <p>18 right?</p> <p>19 A. When you say "follow up," are you talking</p> <p>20 about anything coming back from the board of</p> <p>21 selectmen?</p> <p>22 Q. Well, I'm just wondering if there were</p> <p>23 any discussions, meetings, correspondence, any</p> <p>24 reaction from the board or follow up from</p>	<p>1 there some other letter to the board of selectmen</p> <p>2 that followed Exhibit 68?</p> <p>3 A. This is the letter I was thinking of.</p> <p>4 Q. Okay. So Exhibit 68 -- is there anything</p> <p>5 in Exhibit 68 that you feel inaccurately portrays</p> <p>6 FlightLevel's position as of the date of that</p> <p>7 letter? Do you stand by it?</p> <p>8 A. You're talking about the January 20th</p> <p>9 letter?</p> <p>10 Q. Correct.</p> <p>11 A. The question is whether there's anything</p> <p>12 in this letter that inaccurately portrays</p> <p>13 FlightLevel's --</p> <p>14 Q. Position.</p> <p>15 A. -- position?</p> <p>16 Well, I would have to re-read it with</p> <p>17 that premise in mind --</p> <p>18 Q. Okay.</p> <p>19 A. -- because things change over time and</p> <p>20 this was written arguably three years ago so --</p> <p>21 Q. Right. But when you wrote it, it was an</p> <p>22 accurate presentation of FlightLevel's beliefs</p> <p>23 and arguments to the board of selectmen regarding</p> <p>24 how BEH should be treated. Is that fair to say?</p>
Page 191	Page 193
<p>1 FlightLevel to the board of selectmen regarding</p> <p>2 the substance of this letter?</p> <p>3 A. Yes. I think there was.</p> <p>4 Q. When was that?</p> <p>5 A. I think within a couple of weeks after</p> <p>6 that. There was another follow up, a supplement</p> <p>7 to this letter --</p> <p>8 Q. Okay.</p> <p>9 A. -- coming from FlightLevel to the powers</p> <p>10 that be at Norwood.</p> <p>11 Q. I think it was about nine days later,</p> <p>12 actually.</p> <p>13 A. Within a couple of weeks.</p> <p>14 (Exhibit No. 69 marked for</p> <p>15 identification.)</p> <p>16 BY MR. FEE:</p> <p>17 Q. So I'm showing you Exhibit 69, which</p> <p>18 appears to be a letter dated January 29 to</p> <p>19 Mr. Maguire from Mr. Eichleay. This is the next</p> <p>20 correspondence in the chain that I have from</p> <p>21 FlightLevel's production. I don't have a</p> <p>22 follow-up letter to the board of selectmen.</p> <p>23 So I'm wondering: Is this the</p> <p>24 communication that you're thinking about, or is</p>	<p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 A. This was the result of an exhaustive</p> <p>4 effort to get the facts absolutely correct, and</p> <p>5 it's more about how FlightLevel should be</p> <p>6 treated.</p> <p>7 Q. And how was FlightLevel mistreated?</p> <p>8 A. I didn't say that.</p> <p>9 Q. FlightLevel should be given preferential</p> <p>10 treatment based on its extensive monetary</p> <p>11 investment in the airport. That's one of the</p> <p>12 arguments; right?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. No.</p> <p>15 BY MR. FEE:</p> <p>16 Q. No?</p> <p>17 A. It doesn't anywhere in that letter say</p> <p>18 that FlightLevel should be given favorable</p> <p>19 treatment or more favorable treatment than</p> <p>20 anybody else.</p> <p>21 Q. Okay. Did you believe that FlightLevel's</p> <p>22 large investment in the airport entitled it to</p> <p>23 some consideration from the NAC?</p> <p>24 MR. HARTZELL: Objection.</p>

Page 194	Page 196
<p>1 A. I believe that FlightLevel's large 2 investment in the airport entitled it to have its 3 letter read by the NAC. 4 BY MR. FEE: 5 Q. 68 is to the board of selectmen; right? 6 A. Yes. Would you like me to reanswer? 7 Q. Sure. 8 A. I believe that FlightLevel's large 9 investment in the airport gave it the right to 10 have its January 20, 2015, letter read by someone 11 in the board of selectmen. 12 Q. But you were advocating that the board of 13 selectmen read it and then do something in 14 response; right? 15 A. Yes. 16 Q. That's why you wrote the letter. Because 17 you wanted them to take action. 18 A. Of course. 19 Q. What action did you want them to take? 20 A. Well, I wanted -- FlightLevel wanted them 21 to be aware of the chaos that was ongoing at the 22 board of -- at the airport commissions level. 23 And also to hear the other side of the 24 story, which at that point had not come out. The</p>	<p>1 A. Peter Eichleay and I wrote this letter 2 together. 3 Q. So in this letter in the first -- I'm 4 sorry -- the second full paragraph you reference 5 a massive snowbank blocking access to 6 FlightLevel's fueling system. Do you see that? 7 A. Yes. 8 Q. And are you referring to the plowing of 9 snow from Lot F and G onto Lot H? 10 A. G and H. 11 Q. G and H. Okay. 12 And at that point that -- was it your 13 position at the time that you wrote this letter 14 or FlightLevel's position that BEH had plowed all 15 of that snow that was forming this massive 16 snowbank that was preventing you from receiving 17 fuel deliveries? 18 A. It's our -- it was FlightLevel's position 19 that only FlightLevel should be allowed to plow 20 snow in the vicinity of its own fuel farm and on 21 its own leasehold. And that as a result of the 22 actions of Boston Executive Helicopters, its 23 fueling system was blockaded. 24 Q. And did it prevent fuel deliveries?</p>
Page 195	Page 197
<p>1 other side of the story being the other side of 2 an explanation as to why Boston Executive 3 Helicopters wasn't getting its operating rights. 4 Q. And that other side of the story had been 5 told by Mr. Donovan in some fashion? 6 A. BEH's side of the story had been told by 7 Mr. Donovan. 8 Q. Right. And in what form? 9 A. In the context of letters, e-mails, 10 meetings, press releases, Part 13 complaints and, 11 you know, whatever media was available. And 12 FlightLevel's position that a lot -- was that a 13 lot of that was misinformation, and FlightLevel 14 sought to set the record straight. 15 Q. Okay. 16 A. What happened as a result of 17 FlightLevel's letter has yet to be seen. We 18 think it just got filed. 19 Q. Okay. So the next correspondence is 20 Exhibit 69, I believe, which is the January 29th 21 letter of Mr. Eichleay to the Norwood Airport 22 Commission regarding recent developments at 23 Norwood Memorial Airport. Did you write this 24 letter?</p>	<p>1 A. Yes. 2 Q. But don't the fuel trucks come around the 3 other side of the condo hangar. They don't go 4 through Lot -- the space between Lot F and G to 5 get to the fuel farm, do they? 6 A. They go both ways. And there are two 7 kinds of fuel trucks -- transports and 8 refuelers -- that are on the airport. 9 Q. And how many fuel deliveries were blocked 10 as a result of the snow being piled there? 11 A. I don't know. 12 Q. And did FlightLevel suffer a loss of any 13 money as a result of the snow being piled as you 14 described in Exhibit 69? 15 A. Yes. 16 Q. And how much money did FlightLevel lose? 17 A. I don't have the exact number calculated 18 to a sum certain, but I do know that they had to 19 ration fuel on the airport and they had to hire a 20 third-party contractor to dig out the fuel farm. 21 Q. And that was as a result of BEH's 22 actions? 23 A. Yes. 24 Q. Now, you also argue -- or FlightLevel</p>

Page 198	Page 200
<p>1 also argues in this letter, on page 2, that the</p> <p>2 NAC should deny an FBO permit to BEH; is that</p> <p>3 correct?</p> <p>4 I'm looking at the last two paragraphs.</p> <p>5 A. The last two paragraphs say the presence</p> <p>6 of a single FBO on an airport is not a violation</p> <p>7 of the grant assurances and an airport may deny</p> <p>8 even a qualified FBO applicant if:</p> <p>9 "-- it would be unreasonably costly,</p> <p>10 burdensome or impractical for more than one</p> <p>11 fixed-based operator to provide the services, and</p> <p>12 allowing more than one fixed-based operator to</p> <p>13 provide the services would require reducing the</p> <p>14 space leased to an existing -- pardon me -- under</p> <p>15 an existing agreement between the one fixed-based</p> <p>16 operator and the airport owner or sponsor."</p> <p>17 Next paragraph goes on to say:</p> <p>18 "Both of these elements are satisfied</p> <p>19 here. The NAC needs to end this insanity once</p> <p>20 and for all by acting now to invoke its safe</p> <p>21 harbor, the single FBO exception."</p> <p>22 Q. And so you were advocating for the NAC to</p> <p>23 declare a single FBO exception under federal</p> <p>24 statute and deny an FBO to BEH. Correct?</p>	<p>1 A. I believe that's the same meeting. And</p> <p>2 you may recall that I mentioned that there might</p> <p>3 have been a misfire in the January 21 and 22 time</p> <p>4 area.</p> <p>5 Q. Right.</p> <p>6 A. Which would make sense. It would be</p> <p>7 kicked over to that time frame.</p> <p>8 Q. Right. And then as I recall your</p> <p>9 testimony earlier, you talked about the</p> <p>10 presentation that you made to Mr. Ryan and</p> <p>11 Mr. Maguire as being primarily focused on the</p> <p>12 issues of the single FBO exception; right?</p> <p>13 A. No. I said that those were some of the</p> <p>14 topics that we discussed.</p> <p>15 Q. Okay. I'm just wondering -- I mean,</p> <p>16 Mr. Eichleay described it slightly differently in</p> <p>17 his answers to interrogatories, and I'm wondering</p> <p>18 if that meeting had a little bit more of a</p> <p>19 broad-based subject matter than I originally</p> <p>20 uncovered when I questioned you about it earlier.</p> <p>21 Is that your recollection now?</p> <p>22 A. Well, it's my recollection both then and</p> <p>23 now that FlightLevel was appealing to its</p> <p>24 landlord to do something about enforcing its</p>
Page 199	Page 201
<p>1 A. I am advocating that it enact its safe</p> <p>2 harbor and deny a second FBO to anybody.</p> <p>3 Q. Well, was anybody else applying at that</p> <p>4 time?</p> <p>5 A. I wouldn't know.</p> <p>6 Q. You attended all the meetings, though;</p> <p>7 right?</p> <p>8 A. That was my custom.</p> <p>9 Q. So seriously, you don't know if there was</p> <p>10 another FBO applicant in or about January 29 of</p> <p>11 2015? Other than BEH.</p> <p>12 A. I suspect not, but I honestly don't know.</p> <p>13 Q. Okay. Now, on February 4, Mr. Eichleay</p> <p>14 described a meeting that he attended with Ryan,</p> <p>15 Maguire, and Moss to discuss what, if anything,</p> <p>16 the NAC intended to do about BEH's aggressive</p> <p>17 efforts to annex FlightLevel's Lot G for its</p> <p>18 business on Lot F.</p> <p>19 I'm reading from Mr. Eichleay's answers</p> <p>20 to interrogatories in the federal court case. Do</p> <p>21 you recall that meeting?</p> <p>22 A. Yes.</p> <p>23 Q. Is that the same meeting that you</p> <p>24 described earlier or is that a different meeting?</p>	<p>1 landlord side of its leasehold obligations and</p> <p>2 protecting the border between lot -- the border</p> <p>3 of Lot G.</p> <p>4 Q. Right.</p> <p>5 A. And that theme ran throughout both of</p> <p>6 those letters.</p> <p>7 Q. And --</p> <p>8 A. Excuse me. It probably wasn't mentioned</p> <p>9 in the first one, but it was the same theme that</p> <p>10 the meeting was about.</p> <p>11 Q. And at that point in time, what had</p> <p>12 actually occurred was that FlightLevel -- I'm</p> <p>13 sorry -- BEH had repaved an area of Lot G and put</p> <p>14 up some barriers for a temporary period of time</p> <p>15 and they came down. And was there anything else</p> <p>16 in that time frame that BEH had done to make</p> <p>17 FlightLevel feel that its -- the sanctity of its</p> <p>18 property rights were being violated?</p> <p>19 A. Well, it had built a building on Lot F</p> <p>20 with a fueling system that required, for its</p> <p>21 provision and for its operation, that Lot G land</p> <p>22 be used.</p> <p>23 Secondly, it was nonresponsive to the</p> <p>24 cease and desist letters that FlightLevel had</p>

Page 202	Page 204
<p>1 sent trying to resolve the issue.</p> <p>2 Third, it had submitted a fuel plan to</p> <p>3 the Norwood Airport Commission showing its</p> <p>4 intention to fuel aircraft west -- east -- excuse</p> <p>5 me -- of its hangar. In other words, on Lot G.</p> <p>6 And then fourth, it had torn up the</p> <p>7 asphalt.</p> <p>8 And fifth, it had plowed in the fuel</p> <p>9 farm. And there may also have been other</p> <p>10 incidents that are articulated in our amended</p> <p>11 complaint that I am not including right now.</p> <p>12 Q. Okay. So those five instances and</p> <p>13 whatever else is in the amended complaint are the</p> <p>14 reasons that FlightLevel felt that its landlord,</p> <p>15 the NAC, should intervene in this property</p> <p>16 dispute and assist FlightLevel in protecting its</p> <p>17 property rights. Is that fair to say?</p> <p>18 MR. HARTZELL: Objection.</p> <p>19 A. It's fair to say, yes.</p> <p>20 BY MR. FEE:</p> <p>21 Q. Okay. With respect to the first one, I</p> <p>22 just want to make sure I'm clearly understanding</p> <p>23 your position. You've said a couple of times</p> <p>24 that BEH built a building that had a fuel system</p>	<p>1 has done has convinced FlightLevel that it</p> <p>2 doesn't really matter what BEH says. If a</p> <p>3 transport is going to come and fuel and provision</p> <p>4 that tank and aircraft and refueling vehicles are</p> <p>5 going to use that fuel farm, that they will</p> <p>6 eventually be on Lot G in the course of it.</p> <p>7 Q. So your position is that it's inevitable</p> <p>8 that an FBO for BEH would impinge on</p> <p>9 FlightLevel's property rights?</p> <p>10 A. At this point in time it is because of</p> <p>11 the decisions that BEH made in siting its fuel</p> <p>12 system and its building. Yes.</p> <p>13 Q. Okay. There was a whole lot of snow in</p> <p>14 January and February of 2015, wasn't there? Do</p> <p>15 you recall?</p> <p>16 A. I recall.</p> <p>17 Q. Now, you testified earlier that you</p> <p>18 agreed with me that it was FlightLevel's</p> <p>19 responsibility to clear that area of Lot G of</p> <p>20 snow that was contiguous to the hangar that</p> <p>21 BEH/MII was occupying. Is that fair to say?</p> <p>22 A. On Lot G. Yes.</p> <p>23 Q. And so are you -- do you know if</p> <p>24 FlightLevel routinely and conscientiously</p>
Page 203	Page 205
<p>1 that could only function if G was used. Is that</p> <p>2 your belief then and now?</p> <p>3 A. Yes.</p> <p>4 Q. So if FlightLevel -- I'm sorry -- if BEH</p> <p>5 demonstrated an ability to conduct fueling</p> <p>6 operations without utilizing G, would that be</p> <p>7 satisfactory to FlightLevel? Would they withdraw</p> <p>8 their objection regarding that component of their</p> <p>9 property rights argument?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 A. BEH would have to prove out that its</p> <p>12 fueling system, as configured, could be operated</p> <p>13 compliantly without using somebody else's</p> <p>14 leasehold.</p> <p>15 BY MR. FEE:</p> <p>16 Q. Right. And you're aware, are you not, of</p> <p>17 BEH's statement that it does not intend in any</p> <p>18 way, shape, or form to utilize Lot G for fueling</p> <p>19 operations?</p> <p>20 A. I'm aware that it has made that</p> <p>21 statement, but it is unsatisfactory in and of</p> <p>22 itself.</p> <p>23 Q. Why?</p> <p>24 A. Because the engineering that FlightLevel</p>	<p>1 fulfilled that obligation in January and February</p> <p>2 of 2015?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. The question is whether I know?</p> <p>5 BY MR. FEE:</p> <p>6 Q. Yes.</p> <p>7 A. No, I don't know.</p> <p>8 Q. And who would know?</p> <p>9 A. The operations people.</p> <p>10 Q. And who would that be? Mr. DeLaria?</p> <p>11 Would he know?</p> <p>12 A. Mr. DeLaria would know. The operators of</p> <p>13 the fueling -- pardon me -- of the snow removal</p> <p>14 equipment would know. You know, any third-party</p> <p>15 vendors that were brought in would know.</p> <p>16 Q. And at that time, who -- how many people</p> <p>17 did FlightLevel employ to remove snow?</p> <p>18 A. I don't know.</p> <p>19 Q. Some were direct employees of FlightLevel</p> <p>20 and some were third-party vendors?</p> <p>21 A. That's my understanding. Yes.</p> <p>22 Q. Okay. And FlightLevel had an awful lot</p> <p>23 of ramp space to plow; is that correct?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 206</p> <p>1 Q. FlightLevel has almost 600,000 square 2 feet on the airport; is that right? 3 A. I've heard that number, but I've never 4 actually verified that. 5 Q. Do you know -- 6 A. No. 7 Q. How much? 8 So during this time frame, do you recall 9 how much snow fell in January and February of 10 2015? 11 A. No. 12 Q. It was a record -- an astronomical amount 13 in terms of relationship to prior years, though. 14 Is that correct? 15 A. It was a big winter. 16 Q. It was epic; right? So did FlightLevel 17 hire additional people to help clear snow? 18 A. I don't know. 19 Q. And DeLaria would know all of this? 20 MR. HARTZELL: Objection. 21 A. Either he or the people that he 22 supervised. 23 BY MR. FEE: 24 Q. And was it FlightLevel's practice to have</p>	<p style="text-align: right;">Page 208</p> <p>1 fair and accurate -- or a depiction of the 2 situation in February of 2015. 3 Do you recognize -- 4 MR. HARTZELL: Objection. Go ahead. 5 BY MR. FEE: 6 Q. Do you recognize that? 7 A. Yes. 8 Q. It that what it looked like on Lots F and 9 G in 2015? 10 A. No. 11 Q. It's not? 12 A. It's what it looked like on the day the 13 photograph was taken. 14 Q. Well, I'm just trying to get a sense of 15 perspective as to what you're complaining about. 16 And in your letter you describe it as a massive 17 15-foot high wall of snow that's blocking access 18 to your fuel farm; right? 19 A. Whatever I said in the letter. Yes. 20 Q. And you're saying that this doesn't 21 capture it? 22 A. No. That is a large pile of snow 23 blocking the fuel farm. 24 Q. And so do you -- is it BEH's -- I'm</p>
<p style="text-align: right;">Page 207</p> <p>1 employees of the company do a portion of the 2 plowing and then have a third-party vendor with 3 heavy equipment come in and remove the things 4 that couldn't be dealt with by pickup trucks and 5 small equipment? 6 A. I don't know the answer to that. 7 Q. Do you know if FlightLevel has a 8 contractual relationship with a third-party snow 9 vendor that it routinely utilizes? 10 A. No. I don't know that. 11 Q. Do you know who PJ Hayes is? 12 A. I've heard the name. 13 Q. Do you know if PJ Hayes is a contracted 14 third-party vendor to FlightLevel? 15 A. I don't know whether PJ Hayes is a 16 contracted third-party vendor to FlightLevel or 17 conceptually for the airport authority itself, 18 but I have heard the name and I do know that snow 19 removal is what they do. 20 Q. So not to spend a whole lot of time on 21 this, but I want to show you a picture that Neil 22 marked as Exhibit 31 to the Silva deposition. It 23 appears to show a pile of ice and snow on Lot G 24 and H. And Neil represented that this was the</p>	<p style="text-align: right;">Page 209</p> <p>1 sorry -- FlightLevel's contention that BEH put 2 all that snow there? 3 A. It's FlightLevel's contention that BEH 4 plowed the snow from Lots F and Lots G blockading 5 the fuel farm. 6 Q. And it's your contention that FlightLevel 7 did not participate in any way in the placement 8 of snow on Lots G and H in 2015? 9 MR. HARTZELL: Objection. 10 A. Yeah. It's not actually my contention. 11 It's the contention of the people that were there 12 on the site. And I'm not trying to be difficult. 13 It's -- I wasn't there. 14 Q. Right. 15 A. Nor was I there for the prior three weeks 16 to see what snow was piled up. 17 Q. That's fair enough. When I say "your," I 18 don't mean you personally. I mean FlightLevel. 19 Let me follow up on what you said. Is it 20 fair to say that you have no percipient knowledge 21 of the situation of snow piled up on Lots F and G 22 in January/February of 2015? 23 A. That's correct. Except for the 24 photographs and the testimony which, of course,</p>

Page 210	Page 212
<p>1 is not percipient knowledge.</p> <p>2 Q. Right. And your understanding of the</p> <p>3 situation, as it's alleged in your complaint and</p> <p>4 counterclaim, is based on information that's been</p> <p>5 provided to you by FlightLevel employees or</p> <p>6 contractors. Is that fair to say?</p> <p>7 A. Yes --</p> <p>8 Q. Okay.</p> <p>9 A. -- in part. And also video cameras and</p> <p>10 video footage and still photographs.</p> <p>11 Q. Okay. All of those have been produced?</p> <p>12 A. Yes.</p> <p>13 (Exhibit No. 70 marked for</p> <p>14 identification.)</p> <p>15 BY MR. FEE:</p> <p>16 Q. Nick, I'm showing you what's been marked</p> <p>17 as Exhibit 70. This appears to be a letter to</p> <p>18 Mr. Donovan from you dated February 6, 2015.</p> <p>19 Have you seen this before?</p> <p>20 A. Yes.</p> <p>21 Q. You drafted it?</p> <p>22 A. I did.</p> <p>23 Q. You sent it to Mr. Donovan on or about</p> <p>24 February 6, 2015?</p>	<p>1 Q. At any time?</p> <p>2 A. Yes.</p> <p>3 Q. When was that? It's part of the lawsuit?</p> <p>4 A. It's part of the lawsuit. Yes.</p> <p>5 Q. So those documents were annexed to the</p> <p>6 statement of verified facts?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 BY MR. FEE:</p> <p>9 Q. How were they provided as part of this</p> <p>10 lawsuit?</p> <p>11 A. In discovery production.</p> <p>12 Q. Okay.</p> <p>13 (Exhibit No. 71 marked for</p> <p>14 identification.)</p> <p>15 BY MR. FEE:</p> <p>16 Q. So I'm showing you a document that's been</p> <p>17 marked as Exhibit 71. It appears to be a</p> <p>18 pleading in the Norfolk case ending in 213. And</p> <p>19 it's a -- it's entitled "Statement of Verified</p> <p>20 Facts" dated March 2, 2015, signed by</p> <p>21 Nicholas Iannuzzi in his capacity as attorney for</p> <p>22 FlightLevel.</p> <p>23 Have you seen this before?</p> <p>24 A. Yes. Although it's incomplete.</p>
Page 211	Page 213
<p>1 A. Yes. And also to Attorney Joshua Fox and</p> <p>2 airport manager Russ Maguire.</p> <p>3 Q. Right. And the letter directs</p> <p>4 Mr. Donovan or BEH to refrain from placing</p> <p>5 further snow, barriers, obstacles, vehicles,</p> <p>6 equipment, etcetera on Lot G or H. Is that fair</p> <p>7 to say?</p> <p>8 A. Yes.</p> <p>9 Q. And so the -- as we discussed, this was</p> <p>10 based on reports made to you from FlightLevel's</p> <p>11 employees or agents or contractors; right?</p> <p>12 A. Reports, photographs, and video footage.</p> <p>13 Q. Did you actually review any of that</p> <p>14 information prior to writing this letter?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did you attach any proof or video</p> <p>17 representation or still photographs or anything</p> <p>18 to support your contention that Mr. Donovan and</p> <p>19 BEH were somehow responsible for this</p> <p>20 six-plus-feet-high, 15-plus-deep, 70-feet-long</p> <p>21 pile of snow?</p> <p>22 A. To this letter?</p> <p>23 Q. Yes.</p> <p>24 A. It does not appear so.</p>	<p>1 Q. What's missing?</p> <p>2 A. The rest of the pleadings that it</p> <p>3 supports.</p> <p>4 Q. You mean the affidavit of Mr. Eichleay?</p> <p>5 A. No. Stand by, please.</p> <p>6 Q. Sure.</p> <p>7 A. It's missing notice of appearance of</p> <p>8 Mr. Iannuzzi. It's missing FlightLevel's</p> <p>9 application for temporary restraining order and</p> <p>10 preliminary injunction.</p> <p>11 Q. What are you reading from?</p> <p>12 A. It's missing -- stand by one --</p> <p>13 Q. Sure.</p> <p>14 A. The defendant's opposition to the</p> <p>15 plaintiffs' --</p> <p>16 Q. Nick, show me what you're reading from,</p> <p>17 please.</p> <p>18 A. I'm reading from the two pages before the</p> <p>19 table of contents.</p> <p>20 Q. I don't have that in this either. The</p> <p>21 certificate of service?</p> <p>22 A. Yeah. Certificate of service.</p> <p>23 Q. Okay. So it's missing pleadings you</p> <p>24 said. The notice of appearance and the motion</p>

<p style="text-align: right;">Page 214</p> <p>1 for injunction -- or the opposition of motion for 2 injunction? 3 A. Yes. 4 Q. But with respect to the statement of 5 verified facts, have you seen that before? 6 A. Yes. 7 Q. Okay. Did you prepare it? 8 A. I believe I prepared this with 9 Mr. Iannuzzi. 10 Q. Okay. And the -- there's a document 11 entitled -- I'm sorry. 12 Exhibit 24, representative photo 13 showing -- I'm sorry. That's not it. Hang on. 14 Exhibit 22, representative photos taken 15 during unauthorized blockading of fuel farm. Do 16 you see that? 17 A. I don't see where you're reading from, 18 but I'm looking at Exhibit 22. Which would you 19 like to direct me to? 20 Q. I was looking at the table of exhibits 21 which I think is right after the table of 22 contents tab. 23 A. Yes. 24 Q. Exhibit 22. Photos taken during</p>	<p style="text-align: right;">Page 216</p> <p>1 Q. I'm trying to understand how you were 2 damaged by that. How were you damaged by that? 3 How was FlightLevel damaged by that? 4 A. By the snowplowing? 5 Q. Yes. 6 A. The fuel trucks couldn't come in to 7 supply the fuel farm and the refuelers couldn't 8 go in to refuel aircraft. 9 Q. And I asked you earlier how many and you 10 didn't know; right? 11 A. That's correct. Yes. 12 Q. And I asked you how much money you lost 13 as a result of that and you didn't know. 14 Correct? 15 A. We haven't done that -- we haven't 16 calculated that to a sum certain. 17 Q. As you sit here today, you have no idea 18 what monetary damages you suffered as a result of 19 this alleged blockading of your fuel farm? 20 MR. HARTZELL: Objection. 21 A. The blockading of the fuel farm was but 22 one incident in many regular and repeated 23 attempts to demonstrate hegemony over Lot G that 24 BEH engaged in. And the real damage to</p>
<p style="text-align: right;">Page 215</p> <p>1 unauthorized blockading of fuel farm. 2 A. Yes. 3 Q. And there's a couple of photos there. 4 A. Yes. 5 Q. And do they, to your estimation, 6 accurately reflect the unauthorized snow movement 7 that BEH allegedly did? 8 A. The stills are part of a video, and they 9 appear to reflect the state of affairs on the 10 date stamped on them and at the time stamped on 11 them. 12 Q. Okay. 13 A. And it is one of several days when this 14 occurred. 15 Q. Okay. And there are other documents that 16 you say you produced in discovery that purport to 17 depict this issue that you're complaining about? 18 That BEH plowed snow and blockaded your fuel 19 farm. 20 A. Just to be clear -- yes. The answer to 21 your question is yes. And just to be clear, 22 FlightLevel is complaining about the assault on 23 its property rights. That's the fundamental crux 24 of its complaint.</p>	<p style="text-align: right;">Page 217</p> <p>1 FlightLevel is the loss of its control over Lot 2 G, or the purported loss that that may have 3 engendered. And that is very valuable indeed to 4 FlightLevel. 5 BY MR. FEE: 6 Q. Now, in order for BEH to exercise 7 hegemony over Lot G, it would have to bring an 8 action to establish its prescriptive rights. 9 Would it not? 10 A. I'm going to respectfully say that I have 11 prepared my legal arguments on that, and I'm 12 going to reserve that as work product. 13 Q. Okay. But suffice to say, in all of your 14 correspondence you vigorously objected to any 15 attempt by BEH to exert any kind of control or 16 dominion over Lot G. Correct? 17 A. That is not entirely correct. In one of 18 the letters that was authored, an offer was made 19 to Attorney Fox that if Mr. Donovan wanted to 20 work something out, that a meeting could be set 21 up and they could sit down at the table and try 22 to figure something out. 23 Other than that, in the absence of an 24 agreement between the two parties, yes:</p>

Page 218	Page 220
<p>1 FlightLevel's position was that it vigorously 2 contested the use of Lot G by the business on 3 Lot F. 4 Q. So the activities of FlightLevel -- I'm 5 sorry -- BEH were not in any way exclusive; 6 right? 7 MR. HARTZELL: Objection. 8 A. I don't really know what you mean by 9 that. 10 BY MR. FEE: 11 Q. Okay. So Exhibit 70. Was there any 12 response to Exhibit 70? 13 A. No. There was no response to Exhibit 70. 14 MR. HARTZELL: Hold on. Was this giant 15 statement of facts document marked as an exhibit? 16 I see it was. 71. 17 BY MR. FEE: 18 Q. Do you recall a meeting of the NAC on 19 February 11, 2015? 20 A. Possibly, if it was the second Wednesday 21 of the month. 22 Q. Well, it's the meeting at which 23 FlightLevel's objections regarding the plowing of 24 snow were discussed at the NAC. Does that</p>	<p>1 A. No. 2 Q. Do you recall -- 3 A. Not at that meeting. 4 Q. Do you recall any member of the NAC 5 directing the parties to settle the matter in 6 superior court? 7 A. I don't have specific recollection of 8 that, but I do know that that's what ultimately 9 happened. 10 Q. I'm just -- I want to focus on whether or 11 not you recall being told by the NAC that they 12 couldn't adjudicate the property dispute, and if 13 there were issues that FlightLevel and BEH 14 couldn't work out cooperatively, that they should 15 go to court and have a judge decide. Do you 16 recall that? 17 A. Yes. 18 Q. And did you take that advice? 19 A. Yes. 20 MR. HARTZELL: Objection. 21 BY MR. FEE: 22 Q. Okay. 23 (Exhibit No. 72 marked for 24 identification.)</p>
Page 219	Page 221
<p>1 refresh your recollection? 2 A. Yes. If that's the date, sure. 3 Q. Okay. And you were there, were you not? 4 A. I was. 5 Q. And Mr. Eichleay was there as well? 6 A. Yes. 7 Q. And do you recall the substance of the 8 discussion between members of the audience and 9 the NAC at that time? 10 A. Well, the meeting covered many topics, 11 I'm sure. 12 Q. I'm focusing specifically on the issue of 13 the snow dispute. Do you recall the discussion 14 on that topic? 15 A. Yes. 16 Q. And do you recall that Mr. Donovan was 17 present? 18 A. Yes. 19 Q. And do you recall that Mr. Donovan 20 admitted to plowing snow onto Lot G and H? 21 A. Yes. 22 Q. Okay. And do you recall a discussion 23 regarding the various parties' arguments with 24 respect to their property rights on Lot G and H?</p>	<p>1 BY MR. FEE: 2 Q. I'm showing you what's been marked as 3 Exhibit 72. It appears to be the February 11, 4 2015, meeting minutes for the airport commission. 5 On the second page, there's a bullet point about 6 halfway down that's circled, and it says and I 7 quote: 8 "Discussed notice of trespass, cease and 9 desist about snowfall. Mr. Ryan asked that 10 Mr. Donovan and Mr. Eichleay" -- misspelled -- 11 "to come to an agreement together. This is a 12 dispute over lease of easement. Get settled in 13 superior court. Can't decide it here." 14 Did I read that correctly? 15 A. You did. 16 Q. And does that accurately reflect your 17 recollection of the direction that was given by 18 the NAC at its February 11, 2015, meeting 19 regarding the snow dispute between BEH and 20 FlightLevel? 21 A. It accurately summarizes the result of 22 the presentation of the issue and probably does 23 not quite accurately reflect the exact words. 24 Q. Okay.</p>

<p style="text-align: right;">Page 222</p> <p>1 A. But the end result was that the Norwood 2 Airport Commission wasn't going to do anything. 3 Q. Right. And so what actions did you take 4 after -- or FlightLevel take after the February 5 11th meeting? 6 A. Well, we took many actions. 7 Q. Yeah. 8 A. Which one would you like to start with? 9 Q. Let's start with the barriers. When did 10 you order them? 11 A. I didn't order them. And I'm not exactly 12 sure when that was, but I know that the 13 snowplowing of the fuel farm area was the 14 catalyst that brought us to actually have to take 15 some action. 16 Q. Had you ordered the barriers prior to the 17 February 11th meeting? And I said -- not you. 18 Had FlightLevel ordered the barriers prior to the 19 February 11th meeting? 20 A. I don't know, but I can tell you that 21 FlightLevel had the property line surveyed long 22 in advance of this meeting for the purposes of 23 defending its property rights. 24 Q. When was it surveyed?</p>	<p style="text-align: right;">Page 224</p> <p>1 border of -- at or about the border of Lot G and 2 F prohibit further snowplowing by BEH? 3 A. It delineated the boundary between the 4 two lots. 5 Q. Okay. And BEH still occupied the condo 6 hangar in Lot G; right? 7 A. It did. 8 Q. And BEH, as you said before, had a right 9 to egress from its condo hangar on Lot G. 10 Correct? 11 A. No. That's not what I said. I said that 12 the language in the hangar storage space 13 agreement dictated the rights. 14 Q. Assuming that the storage hangar 15 agreement says that -- and my recollection of it 16 is that each tenant has the right to use the 17 common areas of Lot G, including the taxiways. 18 Assume that that's correct. 19 Would you agree with me that a tenant in 20 a condo would have the right to egress onto 21 Lot G? 22 A. Assuming that summary of the specific 23 words, yes. 24 Q. And so if there was snow on the ground on</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I don't know and there's some -- I have a 2 question about whether it was in October of 2014 3 or in July of 2014 but somewhere prior to the 4 snow. 5 Q. Who did that survey? 6 A. That survey was done by Norwood 7 Engineering. 8 Q. Was that produced in this case? 9 A. Yes. 10 Q. Okay. Who at FlightLevel would have 11 ordered the barriers, if you know? 12 A. I don't know. 13 Q. When was the decision made to erect the 14 barriers? 15 A. Well, I believe it was made in 16 progressive, you know, conversations over a 17 number of months. 18 Q. Right. But was it made before or after 19 the February 11th meeting with the NAC? 20 A. I'm sure it was made before. I mean, 21 the -- protecting the boundary from numerous snow 22 incidents, plowing incidents was something that 23 couldn't continue. 24 Q. How did the erection of barriers on the</p>	<p style="text-align: right;">Page 225</p> <p>1 Lot G, and BEH wanted to move its helicopter out 2 to go flying and survey downed power lines and 3 the snow had not been removed, wouldn't you agree 4 with me that the reasonable thing to do would be 5 to move the snow? 6 A. I would say -- 7 MR. HARTZELL: Objection. 8 A. -- that the reasonable thing to do would 9 be to call FlightLevel. 10 BY MR. FEE: 11 Q. And if its calls to FlightLevel were 12 unanswered or unresponded to, what would be the 13 reasonable thing to do then? 14 MR. HARTZELL: Objection. 15 A. Whatever it needed to do to go survey the 16 power lines. 17 BY MR. FEE: 18 Q. Now, back to the barriers. How would the 19 erection of barriers serve as an impediment to 20 BEH plowing snow to clear the egress from its 21 condo hangar on Lot G? 22 A. It wouldn't. 23 Q. Now, did you -- were you in charge of the 24 barrier erection project?</p>

<p style="text-align: right;">Page 226</p> <p>1 A. From a legal standpoint, yes.</p> <p>2 Q. How about from a practical standpoint?</p> <p>3 A. No. I wasn't on-site.</p> <p>4 Q. The operations were handled by DeLaria?</p> <p>5 A. Yes.</p> <p>6 Q. And you handled the communications with</p> <p>7 the NAC and the police and others regarding what</p> <p>8 you were doing?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And so when did you alert the</p> <p>11 police that you intended to erect -- or</p> <p>12 FlightLevel intended to erect barriers on the</p> <p>13 property line?</p> <p>14 A. I can't recall specifically, but I'm sure</p> <p>15 you'll produce that document momentarily.</p> <p>16 Q. Let me refresh your recollection.</p> <p>17 A. Thank you.</p> <p>18 (Exhibit No. 73 marked for</p> <p>19 identification.)</p> <p>20 THE WITNESS: Can we take a quick break?</p> <p>21 (Recess taken at 3:50 p.m.)</p> <p>22 (Deposition resumed at 3:55 p.m.)</p> <p>23 BY MR. FEE:</p> <p>24 Q. So did I show you 73 yet?</p>	<p style="text-align: right;">Page 228</p> <p>1 Q. Please.</p> <p>2 A. K. Grasso's first name is Kevin. I don't</p> <p>3 know if he's a patrolman or higher ranking in the</p> <p>4 Norwood Police Department, but he was my primary</p> <p>5 contact.</p> <p>6 The two other recipients of this e-mail,</p> <p>7 on the "to" line, were stand-ins in the event</p> <p>8 that he was not able to be there at the Norwood</p> <p>9 Police Department when I called or when there was</p> <p>10 an issue associated with this matter.</p> <p>11 And I don't know their first names just</p> <p>12 looking at it, but they're easy to find out</p> <p>13 because they have a nice fancy website.</p> <p>14 Q. And you cc'd Brandon Moss.</p> <p>15 A. Yes.</p> <p>16 Q. And Russ Maguire. And OWDMEP. What's</p> <p>17 that?</p> <p>18 A. Michael Pendergast, the president of</p> <p>19 Boston Metropolitan Airport.</p> <p>20 Q. This is the day after the NAC meeting</p> <p>21 where the commissioners directed the parties to</p> <p>22 settle their differences in superior court.</p> <p>23 Correct?</p> <p>24 A. It appears to be the day after, but I</p>
<p style="text-align: right;">Page 227</p> <p>1 A. I don't believe so.</p> <p>2 MR. HARTZELL: 72?</p> <p>3 MR. FEE: 73.</p> <p>4 MR. HARTZELL: Is it this thing?</p> <p>5 MR. FEE: It says Exhibit 3 at the top.</p> <p>6 MR. HARTZELL: Mine does not say that.</p> <p>7 MR. FEE: Mine says Exhibit 3.</p> <p>8 MR. HARTZELL: Exhibit 73?</p> <p>9 MR. FEE: Exhibit 73.</p> <p>10 MR. HARTZELL: All right.</p> <p>11 BY MR. FEE:</p> <p>12 Q. Okay. So I asked you previously whether</p> <p>13 you were in charge of the communications</p> <p>14 associated with the erection of the barriers.</p> <p>15 And I've showed you Exhibit 73 which appears to</p> <p>16 be an e-mail from you to K. Grasso dated February</p> <p>17 2015. Have you seen this before?</p> <p>18 A. Yes.</p> <p>19 Q. And you wrote this?</p> <p>20 A. Yes.</p> <p>21 Q. And you sent it?</p> <p>22 A. I sent it.</p> <p>23 Q. Can you tell me who the recipients are?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 229</p> <p>1 don't recall them directing the parties to settle</p> <p>2 their dispute in superior court. What I do</p> <p>3 recall them saying is that it's not going to be</p> <p>4 settled here. We recommend you go to superior</p> <p>5 court or work it out yourselves.</p> <p>6 Q. Okay. So I'm not really sure how what I</p> <p>7 said was different from that, but I showed you</p> <p>8 the meeting minutes.</p> <p>9 A. Yes.</p> <p>10 Q. And we read from it together. And the</p> <p>11 meeting minutes said something to the effect of</p> <p>12 go get it settled in superior court; right?</p> <p>13 A. Yes. And my reply, not to split hairs</p> <p>14 here, was that this was a summary written by the</p> <p>15 stenographer or the record keeper that was there</p> <p>16 to take notes. It wasn't exactly what was said,</p> <p>17 but the gist was there. So I agree with that.</p> <p>18 Q. And I mean, I've got the video. We can</p> <p>19 watch it if you want, but all I need for you to</p> <p>20 acknowledge is that your understanding was that</p> <p>21 the commissioners expressed a -- not a binding</p> <p>22 directive but an advice that the parties go to</p> <p>23 court to settle their differences.</p> <p>24 A. That's fair. Yes.</p>

Page 230	Page 232
<p>1 Q. So the next day you are communicating 2 with the police and you're also communicating 3 with town counsel and Russ Maguire about your 4 intent to take some action for self-help; right? 5 MR. HARTZELL: Objection. 6 A. No. 7 BY MR. FEE: 8 Q. Okay. 9 A. "Self-help" is a legally operative term. 10 Q. Well -- 11 A. And that is not what I was doing. 12 Q. I'll restate it. 13 You're communicating with the police and 14 town counsel and the airport manager regarding 15 FlightLevel's intention to erect barriers along 16 the border of Lots F and G. Correct? 17 A. Yes. With the correction that the 18 barriers were to be located on Lot G. 19 Q. Right. Fair enough. 20 So this introduction of the e-mail says 21 that you left a voicemail message for Officer 22 Grasso back on January 21st. Is that correct? 23 A. Correct. 24 Q. And what did your voicemail message to</p>	<p>1 that fair to say? 2 MR. HARTZELL: Objection. 3 A. I acknowledge that the Swift agreement 4 says what it says. And that there was an attempt 5 for BEH to incorporate that into the lease, but 6 it was unsuccessful. 7 BY MR. FEE: 8 Q. But you were in receipt of a letter from 9 BEH's counsel advising that, in BEH's opinion, it 10 had certain rights to pass and repass over 11 portions of Lot G. Correct? 12 A. I did receive Joshua Fox's letter. Yes. 13 Q. You were aware at least that there was -- 14 that in BEH's mind there was a dispute as to 15 whether or not it had the right to pass and 16 repass over Lot G. Correct? 17 A. Yes. I believe that's what this case is 18 largely about. 19 Q. Fair enough. 20 MR. HARTZELL: Five minute warning. 21 MR. FEE: You're putting the heat on me, 22 Neil. 23 MR. HARTZELL: That's right. 24 MR. FEE: You know what? Why don't we</p>
Page 231	Page 233
<p>1 Officer Grasso say? 2 A. I don't recall. 3 Q. Okay. Did you in any way communicate 4 with Boston Executive Helicopters regarding your 5 intention to erect barriers on Lot G adjacent to 6 the border with Lot F? 7 A. Indirectly. 8 Q. How? 9 A. I sent them one or more cease and desist 10 letters that were not responded to. 11 Q. I was talking more specifically about 12 your intention to erect barriers. Did you 13 communicate that to BEH in any way prior to doing 14 it? 15 A. I did not. 16 Q. And why? 17 A. It wasn't up to them to have a say in 18 what FlightLevel does on its own property. 19 Q. Right. But -- 20 A. They're not even a leaseholder of the 21 condo unit. 22 Q. But you acknowledged earlier that there 23 were perhaps competing interpretations of the 24 rights granted under the Swift agreement. Is</p>	<p>1 stop now. That's fine. 2 MR. HARTZELL: We're agreeing that we're 3 suspending and that we will agree to have 4 Mr. Burlingham return at a mutually convenient 5 time and place. 6 MR. FEE: That's fine. 7 (Whereupon the deposition was adjourned 8 at 4:02 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

Page 234

1 COMMONWEALTH OF MASSACHUSETTS

2 PLYMOUTH, SS.

3

4 I, Kimberley J. Bouzan, Certified
5 Shorthand Reporter and Notary Public in and for
6 the Commonwealth of Massachusetts, do hereby
7 certify that NICHOLAS BURLINGHAM, the witness
8 whose deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition is a
10 true record, to the best of my ability, of the
11 testimony given by the witness.

12 I further certify that I am neither
13 related to nor employed by any of the parties in
14 or counsel to this action, nor am I financially
15 interested in the outcome of this action.

16 In witness whereof, I have hereunto
17 set my hand and seal this 20th day of March,
18 2018.

19

20

21

22 Notary Public

23 My commission expires:

24 August 27, 2021

Page 235

1 E R R A T A S H E E T

2 I, NICHOLAS BURLINGHAM, do hereby
3 certify that I have read the foregoing transcript
4 of my testimony, and further certify that said
5 transcript is a true and accurate record of my
6 testimony (with the exception of the following
7 corrections listed below):

8 Page Line Correction/Reason

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20 Signed under the pains and penalties
21 of perjury this day of , 2018.

22

23

24 NICHOLAS BURLINGHAM

1	1:13 119:15	174:2 223:2,3	2:21 167:4	4:02 233:8
1 28:2,6,15 33:4,11 107:20 123:20 131:12 150:15	1:53 146:19	2015 11:18 13:21 41:7,8,9,18,23 45:10 59:2,17,23 60:6,8 61:18,23 62:1,11 63:23 69:5 100:8 143:24 144:23 145:5,7,10 147:1 148:3 150:2 153:13,14,15,16, 19 175:17 180:23 181:3,7 187:7,15 188:3 194:10 199:11 204:14 205:2 206:10 208:2,9 209:8,22 210:18,24 212:20 218:19 221:4,18 227:17	2:28 167:5	5
10 28:22	2	2016 25:20 26:1	3	5 130:17,23 144:5, 18 145:16 146:12, 14 150:4,14 151:24
100 16:18,24 18:1, 13,16	2 60:19 94:7 123:11 156:24 198:1 212:20	2017 19:18 22:13 25:7,16,20 28:2,6, 15 33:4,11	3 77:15 78:18 108:12 111:22 112:6,23 113:10 114:6 130:4 227:5, 7	5 130:17,23 144:5, 18 145:16 146:12, 14 150:4,14 151:24
10:27 32:8	20 16:10,11,22 17:4 18:6,20,24 56:12 75:18 76:2 161:22 187:7,15 194:10	2018 27:13 28:23	30 131:7 134:15 166:1 167:12 169:6 170:3	5,000 162:20 163:5
10:29 32:9	2000 10:18	20th 75:8 188:3 192:8	31 207:22	50 79:17,21
11 218:19 221:3,18	2007 12:16 19:17 44:20 45:14,16	21 200:3	39 6:2,23	51 82:14,19 87:13
11:16 64:23	2008 12:4,12 39:20 43:16 44:4,8,9 45:14,16 46:5 131:9,23	213 122:17 212:18	3:50 226:21	52 83:23 84:8 86:22 87:10,14,15
11:20 64:24	2009 43:18,24	21st 182:12,24 230:22	3:55 226:22	53 85:8,11
11th 222:5,17,19 223:19	2010 46:20 47:18	22 149:15 200:3 214:14,18,24	4	54 89:5,8 97:18 98:18 99:7
12 165:24	2013 42:12,13,20, 21,23 45:10,16 46:6,20 47:18,23 56:12 57:14 58:9, 13,17,20 59:2,4, 17,23 60:6,8 61:12,18,23 62:10 63:23 69:4 74:9,23 75:5,18 76:2,12,18 77:1,4 79:1,10 86:19 89:9 90:1 92:6 94:20 95:17, 23 97:14 98:6,10, 15,17,20 99:4,14 100:7 102:5 130:17,23 133:17, 24 143:23 144:18 145:16 146:12,14	22nd 182:13,24	4 199:13	55 7:12 98:1,4
12:30 119:9	2014 148:17 149:15 150:7,15, 22 151:24 152:8, 12,18,19 153:5,11 154:12 157:5 162:17 163:23 168:17 169:6,19 170:3 171:1 172:4	23 154:12 157:5,18 162:17 163:23 168:5,12,17 169:13,19 191:18 199:10	4,000 171:19	56 101:24 102:3 114:7 121:14 123:1,16,23 124:20 125:8 126:15,20 128:21 129:11 130:4 131:3 133:6
12:32 119:14		24 89:9 92:5 95:23 98:15,20 159:4,8 166:8 214:12	40 19:10 20:3	57 120:16,21
13 189:22,24 195:10		24th 97:19 141:12	41 22:8 23:3	58 130:13,16 135:8 136:3 144:19 145:17,18
14 175:17 176:21 180:23 181:3,7,10, 23 183:23 190:7		25 170:24	42 23:12 25:9,17, 22	59 141:4,6 148:10
14th 176:4		25-foot 88:15	43 26:17 27:3,4	5:10 141:12
15 105:11,20 189:24		29 154:12 157:5,18 162:17 163:23 168:5,12,17 169:13,19 191:18 199:10	44 6:2 27:8,11 29:13	
15-foot 40:4 103:14 106:14,16, 22 107:14 208:17		29th 195:20	45 33:17 80:9,11, 17 81:2 106:5,8, 15,22 112:21 113:1	
15-plus-deep 211:20			45-minute 119:12	
17 74:9,22 77:4			46 56:7,10 60:16 66:2,15 70:19,24 74:15,17 75:9,21 76:3,15 113:7 114:4	6 123:21 150:4,14 151:24 210:18,24
175 10:24			47 66:7,10	60 149:11,13
19 76:2,24 102:5 131:2			48 74:4,7 75:15,23 159:9,10	600,000 206:1
1939 114:22			49 76:20,23 78:8 94:6,20 95:8	61 154:8,11 163:23
1988 7:19				62 167:6,10,16,17 170:13
1996 11:7 102:17 103:4 131:7,12 134:15				63 169:1,4
19th 75:13				64 170:19,22 174:23

65 175:3,16 181:8	absolute 92:24	acquisitions 47:1	advance 73:10 222:22	aggressive 199:16
66 180:16,20	absolutely 64:22 159:20 193:4	acronym 57:6	adverse 161:7,13, 20,21,24 162:15, 18 163:17 164:12	agree 34:3 103:21 122:23 123:3,14, 18,23 124:2,18,22 125:6 126:12,17 136:21 137:2 172:11,18 224:19 225:3 229:17 233:3
67 182:5,9	abutting 94:14 107:7 108:16 112:3 115:1,3 165:14	act 162:24 163:4,9	advice 31:4 41:11 45:17,21,23 62:5 65:3,4 147:18 148:2 149:2 151:7, 16,17 152:1,16 153:7,8,11 154:2,3 161:16 220:18 229:22	agreed 94:12,21 107:21 108:3 147:15 165:2,6,11, 12 204:18
68 186:22 187:6 188:14,17 192:2,4, 5 194:5	accept 34:10	acting 62:3 145:9, 13,15 146:7,15 147:11 150:24 151:8,10,11 161:18 171:20 198:20	advise 153:2 171:23	agreeing 233:2
69 191:14,17 195:20 197:14	access 81:24 88:6 105:10,19 109:14, 15,19 110:3,14 112:8,22 114:5,12 115:7 130:5 134:19 137:9 159:17 160:1 196:5 208:17	action 154:23 194:17,19 217:8 222:15 230:4	advisement 158:9 185:15	agreement 21:24 49:12,15 50:3,7,12 51:15,24 52:6,24 53:2,13,16,21 54:14,23 82:20 102:9,10,13,16,20 103:7,10,12 104:24 105:3,7,15 107:12,20 108:2 110:3 111:3,9,12 112:23 113:11 114:6 116:20 117:19 119:2 121:13 122:19,24 123:3,22 124:4,11, 19,22 125:12,13 126:1,14,19 127:5, 11,14,23 128:16, 18,21 129:8,18,19, 22 130:1,7 131:7, 9,23 134:1,15 135:2 136:17,19, 24 137:3,8,15,19, 23 138:11,15,18, 20 141:21 148:13, 23 198:15 217:24 221:11 224:13,15 231:24 232:3
<hr/> 7 <hr/>	accordance 50:2	actions 196:22 197:22 222:3,6	advising 30:23 133:14 140:7 152:23 232:9	
7 81:12 150:4,14 151:24	according 39:1 103:7 108:1	activities 139:4 218:4	advocate 183:21	
70 210:13,17 218:11,12,13	accountant 65:14	add 119:22	advocated 185:10	
70-feet-long 211:20	accuracy 113:2	addition 103:21 158:4	advocates 190:7	
70F 123:12	accurate 20:4 34:2 121:11 155:21 192:22 208:1	additional 20:18 171:21,23 206:17	advocating 63:13 174:17 194:12 198:22 199:1	
71 212:13,17 218:16	accurately 34:6 86:5 114:19 155:7, 17 157:16 215:6 221:16,21,23	address 178:7	affairs 215:9	
72 220:23 221:3 227:2	acknowledge 99:8 229:20 232:3	addressed 77:20 167:11 169:12 170:6,7	affected 170:16	
73 226:18,24 227:3,8,9,15	acknowledged 231:22	addresses 178:24	affidavit 213:4	
<hr/> 8 <hr/>	acknowledgeme nt 102:10,13 129:12 131:9,23	addressing 99:18	affiliated 37:17 38:8	
8 81:12 131:9,22	acquire 163:3 164:11	adjacent 107:5 111:22 231:5	afraid 143:18	
80 16:12,16	acquired 28:9,16 30:1,6 39:18 40:11	adjourned 233:7	after 8:7,22 39:23 40:7 47:2,23 48:23 58:5 75:14,15 78:7 79:8 119:9 129:8, 10,16,20 153:17, 20,24 159:10 170:4,10 191:5 214:21 222:4 223:18 228:20,24	
<hr/> 9 <hr/>	acquiring 47:8,17 48:22 49:3 142:22	adjudicate 220:12	agenda 72:3,5 73:1,23 75:10 169:5,17	
9 7:9 26:1 98:6,10, 17	acquisition 12:18 29:4 30:24 39:23 45:2 46:11,16 48:3 52:22 54:2	adjudicated 93:15,16	agents 211:11	
<hr/> A <hr/>		adjudicatory 93:19		
a.m. 32:8,9 64:23, 24		administration 13:19 19:24 21:12 41:6 144:2		agreements 37:24 131:12 138:5
AAR 14:17		administrative 144:1		agrees 173:1
abide 64:6 138:17		admit 187:23		ahead 119:20,21 208:4
ability 63:6 159:17 180:7 203:5		admitted 7:22 219:20		Air 10:20 11:1 39:19,21 40:8
absence 217:23				

43:14 52:23 54:3 82:20 83:11,15 87:8,9 104:16 129:14	18 176:17	187:2,4	approved 180:9	23 26:11,13,22,23 28:8,15,16,20 29:5 30:2 31:1,24 32:11,21 33:3 120:18 121:1,8,9
aircraft 11:4,5 78:17 79:23 88:17 94:12 111:16,17 132:23 133:8,19 134:5 136:23 138:3 159:23,24 202:4 204:4 216:8	Alan 23:6 24:3	apparatus 79:22	approximate 32:23 58:6	arrangement 51:17 143:8
airfield 52:18 64:8 184:19	alert 226:10	apparently 160:18 176:2	Approximately 44:17	articulated 134:23 135:8 202:10
airplanes 86:1,5	allegations 53:18 54:6 167:21	appeal 56:4	approximation 34:8	articulates 172:12
airport 12:18 29:3, 8,9,12,24 30:11,16 31:9,14,22 32:6 33:14 34:2,22 43:12 45:2 55:3 56:11,23 57:20,24 58:11,15 60:12 61:9 62:18 63:1,4, 9,10,15 64:5,14 66:21 67:2,11,24 68:6 69:21,22 70:5,20 71:1,11, 20,22 72:1,9,16,22 73:2,3,8,11,19 74:23 78:16 83:12, 13 86:13 89:24 91:7 94:16 99:23 100:9 102:18,22 132:6,19 164:17 168:13,16,21 169:20,22 170:24 171:9,24 172:14, 20 173:2,10,16 174:15,21 175:8, 11,18 177:14,23 178:6 179:1,2 184:4,16 186:6,8 189:10 190:11 193:11,22 194:2,9, 22 195:21,23 197:8,19 198:6,7, 16 202:3 206:2 207:17 211:2 221:4 222:2 228:19 230:14	alleged 54:13 91:15 94:5 210:3 216:19	appealing 200:23	April 131:12 150:1	aspect 151:14
airport's 62:20	allegedly 215:7	appeared 140:12	apron 159:23	assault 215:22
airports 57:15 70:1,3,12 171:16,	allocated 18:17	appears 6:23 19:10 22:8 23:12 25:24 27:11 37:13 56:10 66:10,13 74:7 76:23 77:9 79:21 82:19 85:24 89:8 98:4,18 102:3,17,20 130:16 131:18 132:3 141:7,13 149:13 154:11 167:10 169:4 175:16 180:20 181:11 182:9 187:6,17 191:18 207:23 210:17 212:17 221:3 227:15 228:24	area 8:1 33:21 38:9,13,16 39:22 40:1,3,5,18,20,22 57:6 80:19,22 88:19 106:6 107:1, 14,23 108:7 110:22 111:21 112:21 113:5,9 114:4,12,19 156:2, 4,5 159:23 161:9 166:15 200:4 201:13 204:19 222:13	assert 162:15,23
	allowed 65:14 136:20 138:6 196:19	appended 114:4	areas 119:23 136:21 141:22 148:24 150:23 155:14 224:17	asserted 51:19 128:12 129:2,4
	allowing 198:12	appends 102:8	arguably 192:20	asserting 17:15
	aloud 94:9	applicable 179:7	argue 148:4 184:3, 7,13 197:24	assess 115:18
	amend 119:17	applicant 198:8 199:10	argued 184:6	asset 30:7 122:19 123:2 124:10 125:12
	amended 122:15 123:20 125:9,13 126:9 154:21 202:10,13	application 27:14 28:5,24 57:18 172:5 189:17 190:12 213:9	argues 198:1	assets 12:18 40:11
	amendment 122:20	applications 27:19	argument 127:19 128:1,4 129:5 203:9	assign 117:18 124:3,19 126:13, 18 128:24
	amount 16:7 60:4 206:12	Applies 116:6	arguments 192:23 193:12 217:11 219:23	assignable 118:8 119:2 121:17
	analysis 36:5 57:17,22 118:1	applying 199:3	arising 108:24	assigned 98:21 116:20 117:1,2,9 121:19,22 126:2,7
	ancillary 60:12	appoint 67:24 68:5	arose 40:11	assignment 117:4,7,14 118:17, 18 122:20 123:3, 19 124:11,17 125:12 127:10,22 128:17 129:8,12, 17 135:1 137:7 138:10
	and/or 81:12	appointment 70:5	ARR 14:17,19 16:12,13,18 17:1, 8,9 18:1,4,8,12 20:12,16,19,24 21:1,7,19 22:10, 14,16,17,20,24 23:5,8,13,16,18,22 24:4,12 25:2,7,16,	assignments 153:23
	Angel 39:2 54:21 55:23 84:2	approach 177:1		assist 202:16
	annex 199:17	approve 150:3		
	annexed 26:7 114:7 121:3 158:14 212:5			
	annual 19:11,13, 17 22:12 25:5,6, 16,23 26:7,10,14			
	answers 119:17 199:19 200:17			
	Anthony 104:19			
	anti-trust 120:11			
	apologize 106:3			

associated 60:9 66:19 108:6 227:14 228:10	118:4 133:12,14 135:7,14,19 144:10 150:24 154:18 163:23 211:1 212:21 217:19	awarded 179:11	beer 151:11	129:20 137:14 142:19,21 158:8 162:23 163:8 164:6,11 165:18 172:4 189:17 190:12 195:6 197:21 199:16 203:17 208:24 232:9,14
assume 87:1 102:12 224:18		awarding 177:17	begin 6:20 42:9, 10,11 146:7	
Assuming 224:14,22	attorney-client 17:14,15 46:1 59:13,19 146:23 147:22	aware 36:8 46:9, 14 49:10,14 93:24 165:1 170:17 176:15 194:21 203:16,20 232:13	beginning 119:24 150:2,6	
assumption 122:20 123:19 125:13		awful 205:22	BEH 35:3,5,9,16, 22 36:3,9,11,13, 16,20 40:24 47:6, 16 49:2,13 50:11 51:10,14,20,23 52:1,4 53:10,13 54:7,12,18 55:20 59:24 60:5 61:13, 20 62:12 65:6,13, 18 68:19 69:18 76:24 77:11 78:3, 15 94:1,11,16,21 95:11 96:6 100:1, 11,15,20 101:2,8, 14,21 124:20 126:2,10,20 127:11,22 129:18 133:4,17,24 136:5, 10 137:6,18 138:1, 24 139:5,12,14 140:1,4 158:5,8 160:22 161:12,17 162:15,19 163:3,5, 16 165:2,24 169:24 170:5,14 171:20 173:22 174:10,11,14 176:11 177:1,13 179:7 189:8,13,15 192:24 196:14 198:2,24 199:11 201:13,16 202:24 203:4,11 204:2,8, 11 209:1,3 211:4, 19 215:7,18 216:24 217:6,15 218:5 220:13 221:19 224:2,5,8 225:1,20 231:13 232:5	
assurance 184:20	audience 219:8	<hr/> B <hr/>		BEH/MII 204:21
assurances 198:7	August 75:5	BAC 36:15		behalf 24:12 26:11,14 27:19 37:11 121:1
astronomical 206:12	authenticate 33:23	back 15:9 26:9 27:6 32:11 48:17 64:17,19 80:9 81:13 95:2 106:5 116:12 121:13 140:10 185:6 190:20 225:18 230:22		behavior 190:12
attach 211:16	authenticity 87:2	back-and-forth 162:7		belief 26:10 31:8 78:19 92:13 117:3 121:16 162:14 163:2 177:14 180:13,14 181:6 203:2
attached 25:9 71:16 155:6 156:11,15,21 157:8,16,22	authored 145:16 146:16,17 217:18	backdrop 179:4		beliefs 192:22
attaches 113:8 181:2,4	authoring 146:9	background 7:14		believe 12:15 13:3 16:10 17:13 20:23 23:10 25:18 26:15 27:23 28:4,7 33:6 35:15 42:12,16 44:4,10,20 49:17 52:4 67:15 83:12 104:20 111:21 112:21 113:9 114:5 117:1,2,16 118:22 124:16 126:16 127:2,4,9, 19,21 128:1 129:18,22 136:8, 10,15 137:18 138:1 139:4,6 157:15 158:15 165:19 174:3,24 176:22 179:6 186:2 189:5,9,14 193:21 194:1,8 195:20 200:1 214:8 223:15 227:1 232:17
attempt 126:18,23 143:7 217:15 232:4	authority 63:10 66:24 67:1,4,10, 16,17 68:4,5 70:5 179:15 184:14,19 207:17	bad 137:12 190:12		
attempted 127:10 128:23 135:19	authorized 35:9, 16 118:18 121:7	banter 97:2 162:7		
attempting 127:3, 4 160:18 161:12	authorizing 117:20	barrier 225:24		
attempts 216:23	authors 111:11	barriers 54:19 55:17 158:2,5,12 159:13,16 160:2, 10 166:1,4,8,19 201:14 211:5 222:9,16,18 223:11,14,24 225:18,19 226:12 227:14 230:15,18 231:5,12		
attend 75:3 76:8 97:23 169:9 176:20	avi 120:5	based 17:13 81:22 88:8 117:24 130:3 143:22 193:10 210:4 211:10	BEH's 46:11,16,24 47:7,17 48:2,21 49:3 53:20 54:13 60:20 61:5 65:14 76:13 77:14,15 78:21 91:10,14 92:3,6,13 95:4 96:4 99:1,16	
attendance 186:8	aviation 8:4 9:17, 19,21 10:3,7,12 14:17,18,19 16:12, 13,14 17:1,9 20:19 21:1,7 22:17,20 23:13,17,18,23 24:4,12,16,18 25:2,7,17,23 26:11,13 28:8,9, 15,16,21 33:3 35:8 57:8 102:17,21 103:1,7 120:2,18 121:1,8,9 131:8, 11,24 132:14 134:13,16,17 136:15 144:6,7 159:22 171:12	basis 31:8,12 50:23 53:20 92:12 117:3 144:21 162:14 163:2		believed 161:17 162:22
attended 98:9 199:6,14		bean 57:3		bell 152:13
attending 74:22 169:7				beneficial 14:20, 23 15:3,16,24
attention 113:3 122:18 123:8 133:11 141:9 180:6				
attested 86:17				
attorney 102:4				

16:4,8,21 18:5 19:2	231:4	bullet 221:5	can't 30:21 38:16 76:4,18 113:20 116:11,20 126:22 135:4 139:24 147:7 153:4 187:16 221:13 226:14	certainly 20:17 84:1 117:11 174:8 182:22
beneficiaries 104:20	bottom 94:7 156:24	burdensome 198:10		certificate 22:11 23:16 26:4,22 121:4 213:21,22
beneficiary 34:24 37:11 104:6	boundary 38:15 177:18 223:21 224:3	Burlingham 6:4, 11 7:7 9:1,6,18 10:15 119:16 147:20 149:1 233:4		cessation 137:14, 20
benefit 131:10 161:1	Boyce 8:19		cannot 117:1,2 171:9	chain 11:3 36:6 132:10 191:20
benefits 17:8 18:24 131:24	branded 13:11	burn 119:10	cap 152:11,17	chairman 72:4 73:1 170:23 175:18 187:8
big 84:4 206:15	Brandon 183:8 228:14	business 9:17 10:23 11:1 13:8,10 22:11 23:14 26:21, 23 60:21,23 61:6,7 62:21 74:8 92:10, 15 98:5 108:17 110:17 115:24 118:20,24 120:6 129:23,24 130:6 134:16,18 151:15, 16 154:2,6 169:5 176:12 179:10 199:18 218:2	capable 63:10,16	change 78:3 95:8 192:19
binding 229:21	breach 54:13 138:14,20 139:8, 19 140:1,4,13		capacity 43:3 44:21 170:23 175:18 212:21	changed 40:15 77:16 78:21
bit 32:6 33:14 41:4 75:5 151:13 200:18	breached 51:24 53:13 139:5,7		Cape 14:7 15:10 16:1	chaos 194:21
blockaded 196:23 215:18	breaches 139:21		capital 61:8 190:2	characterization 78:22 103:14,17, 22 119:3
blockading 154:24 155:8 209:4 214:15 215:1 216:19,21	break 32:7 64:21 119:12 146:18 226:20	businesses 43:12 61:9	caps 190:1	characterize 154:1
blocked 197:9	brevity 134:12		capture 208:21	charge 225:23 227:13
blocking 196:5 208:17,23	bring 122:13 217:7	<hr/> C <hr/>	Carroll 66:12	charter 82:20 83:11,15,16 87:9
BMA 35:5	broad-based 200:19		case 30:20 59:8,13 114:18 157:12 181:11 199:20 212:18 223:8 232:17	chief 66:13,20,24 67:10 68:11
board 67:18,24 68:3,5,18 69:17 183:16 187:8 188:9,12 190:9,20, 24 191:1,22 192:1, 23 194:5,11,12,22	brought 142:9 205:15 222:14	cabinet 79:2,7,23 80:3,5,15,21 81:8, 9 82:1,24 83:8,20 84:10,15,19,22 85:4 86:1,6,11,19 87:4,20,24 88:6, 10,23	cases 73:14	Chris 46:15 48:2,9 142:8
boards 188:5	Brown 39:2 40:14, 15 54:21 55:23 84:2	calculated 197:17 216:16	cast 68:2	Christopher 141:12
body 162:11 177:3	Brunswick 14:9 15:8 16:1	call 6:12 90:3,10, 12 109:18 127:16 135:19 177:23 225:9	catalyst 222:14	circle 26:9
border 201:2 224:1 230:16 231:6	building 35:12 38:21 81:5 82:9 107:2,5 111:23 112:15,16,17 114:14 186:17 201:19 202:24 204:12	called 13:1,13 80:7,12 90:16 102:9 169:17 228:9	catching 26:1	circled 221:6
Boston 34:22 39:3 40:19 49:23 53:3 58:7 59:9 60:11 82:20 83:11,15 87:9 92:8,16 93:3, 20 102:18,22 122:16 124:4 132:20 160:17 164:16,19 195:2 196:22 228:19	buildings 34:7 38:18 39:11 40:3 110:22	calls 30:18 31:12 32:1 135:15,17 161:6 225:11	caveats 110:7	circumstance 70:9
	built 201:19 202:24	cameras 210:9	cc'd 228:14	circumstances 70:8 155:1 165:3
	bulk 138:21		cease 201:24 221:8 231:9	citing 77:14,21 78:20
			ceased 134:17,19	citizen 64:12
			Center 39:19,21 40:8 52:23 54:3 87:8 104:16 129:14	civil 154:23
			certain 35:9 36:24 103:13 105:11,19 109:6 110:7 162:1 197:18 216:16 232:10	

claim 160:13 163:17	19 101:7 132:20 164:18 169:20,22 170:24 174:15,21 175:8,18 177:15 178:6 186:6,8 189:10 195:22 202:3 221:4 222:2	complaints 195:10	183:12	72:6 73:5 139:22 141:19
claims 51:19,23		complete 33:2	confidential 52:20	constitute 140:1, 13
Clarification 156:14		complex 152:12, 17 186:17	confidentiality 49:12 50:3,7,12 51:15,24 52:6,24 53:2,13,16,21 54:14,23	constituted 88:1 95:15
clarify 50:9		compliance 76:14 77:11		constructed 81:11 96:13
clarity 106:19	commissioner 71:12	compliantly 203:13	configuration 88:14	construction 92:17 152:12,18 165:17
clear 62:3 86:16 138:7 176:11 179:9 182:2 204:19 206:17 215:20,21 225:20	commissioners 68:6 73:10,20,24 169:12 228:21 229:21	complies 78:18 114:10	configured 203:12	consult 61:11 95:18,21 120:10
client 33:20 113:8 131:10,24 138:15 155:11,20 158:4 164:4 166:11 185:22	commissions 194:22	comply 88:20	confirm 20:3 172:24	consultancy 59:1 68:16 69:3 82:17 84:14 101:16,22 147:14,15,19
client's 94:22 95:13 132:19 157:19 158:6,7 159:2 180:7	common 38:15 136:21 178:24 179:16,20,21 180:1 224:17	conceivably 111:17	confirming 34:14	consultant 42:3, 6,11 45:9,17 58:20 59:17,20 61:16,24 62:4 63:21 69:24 100:7 143:23 144:14 171:22 177:24 184:8
clients 132:15 157:23	Commonwealth 121:8	conceptually 183:7 207:17	confusion 147:6	consulted 68:9 142:10
closely 166:14	communicate 64:4,13 77:9 90:6 189:12 231:3,13	concern 176:5	conjunction 72:4, 24	consulting 56:17 60:4,7 65:3,4 143:13,17 151:16
closing 43:11,18	communicating 174:19 230:1,2,13	concerns 76:13 77:10 176:9	connect 157:12	contact 44:23 72:2,23 228:5
coexist 171:24 175:11	communication 188:22 191:24	concluded 132:18 173:15	connected 158:19	contacting 168:21
college 7:16,17	communications 226:6 227:13	conclusion 30:18 31:13 32:1 77:10 127:16 179:22	Connecticut 7:10,17,21,23 8:7, 8,10,11,15 10:24	contain 53:4
colon 131:22	companies 35:12 144:8	conclusions 135:7,11	connection 31:3 49:10 52:22 54:2, 13 56:18 92:9 108:17 110:16 115:23 118:16,23 130:6 132:22 133:6,8 168:16 179:13	contained 20:4 53:6 139:21
colored 187:20	company 21:13 28:23 150:20 207:1	condo 35:9 81:5 136:6,10,11,13,22 138:2,3 197:3 224:5,9,20 225:21 231:21	consent 30:8,16 31:6,9,18 117:14	contemporaneou s 77:19
Columbia 10:20 11:1,6,7,9,14,21 43:14	competing 231:23	condominium 142:2	consider 63:16 151:15 179:4	Contemporaneou sly 50:6
comfortable 72:14	complaining 155:18 156:6 157:17 158:22 208:15 215:17,22	conduct 94:2 95:12 203:5	consideration 91:9 193:23	contend 55:11
commercial 27:13,19 28:5,24	complaint 53:18, 19 122:16 123:20 125:9 126:10 139:17,21 154:22 167:22 202:11,13 210:3 215:24	conducted 164:20	considered 70:3 174:22	contends 36:3 53:9,12 54:12
commission 29:4 30:12,16 31:9,14 56:11,24 63:9,15 66:21 68:7 70:6,20 71:2,11,20,23 72:10,16 73:3,8, 11,19 74:23 78:16 89:24 91:7 94:17 97:7 99:24 100:10,		conducting 134:18	considering 63:16	content 99:12 103:22
		cones 158:16	consistent 62:16	
		confer 56:21		
		conference		

contention 73:3,4 141:19 161:11,15 209:1,3, 6,10,11 211:18	conversations 48:8,12,20,23 49:1 69:8 99:22 100:9, 14,18 101:1,7,13, 20 135:6 142:18 148:21 168:12 223:16	183:2,11 189:13 190:13,14 192:10 193:4 198:3,24 205:23 206:14 209:23 216:11,14 217:16,17 224:10, 18 228:23 230:16, 22,23 232:11,16	couple 44:13 61:3 97:11 191:5,13 202:23 215:3	154:12 157:18 167:12 170:24 175:17 180:23 181:2,7 187:7 191:18 210:18 212:20 227:16
contents 73:12 213:19 214:22			courses 10:1	
contested 218:2			court 53:22,24 54:4,24 199:20 220:6,15 221:13 228:22 229:2,5,12, 23	dates 43:19 75:21 182:22
context 21:12 154:6 195:9		corrected 106:2 134:8		dating 81:13
contiguous 40:23 107:2 114:13 136:13 204:20	convinced 204:1	correcting 133:12 144:4	courteous 64:7	day 34:1 75:14 147:7 176:4 208:12 228:20,24 230:1
continue 146:21 148:7 223:23	cooperate 25:2	correction 105:23 133:15 230:17	cover 167:11,14	
continues 108:18 129:19	cooperatively 220:14	correctly 12:16 105:22 109:2 131:13 133:1 134:20 142:3,5,13 158:10 165:8 172:1 176:18 183:6 185:3 221:14	covered 41:16 219:10	days 191:11 215:13
continuing 129:13	copies 66:11,14		created 44:11 54:22	deadline 166:9
continuous 40:13	copy 51:3 122:10 167:10 168:4 187:3,18,22 189:7, 9,14	correspondence 72:2,23 73:2 75:8, 17 142:10 174:11, 15 188:4,23 189:2 190:16,23 191:20 195:19 217:14	creating 120:19	dealt 186:17 207:4
contract 17:6,7,18 18:5,18,22 114:21 154:5	corner 28:1		creation 44:11	death 57:13
contracted 207:13,16	corporate 24:11 64:12		credence 118:24	decade 171:11
contractor 197:20	correct 10:3,4 13:14,15 16:2,3,5 17:3 18:15 19:4 28:2,11,18,19 33:12 35:2,4,10,24 36:2,9,10,12,17, 21,22 37:1 38:10, 18,22,23 40:9 41:7,13 45:11,14 46:17,18 47:9 50:13 51:21 52:2 60:17 62:6 63:1,7 66:6 68:13,14 72:11 74:1,2 88:3, 12 89:1 93:7 97:23 102:18,23,24 103:3,5 106:23 107:3,23,24 108:5, 7 112:4 114:14 115:4 117:7,15,22 121:9 125:13,14 127:12 128:24 129:1,3 132:24 134:2 135:2 136:7, 24 140:22 143:4,5 146:3 152:9 153:10 155:24 157:24 166:17,21 167:17 173:7,17	costly 198:9	criteria 179:21,22 180:1	December 26:1 130:17,23 133:17, 23 144:5,18 145:16 146:12,14
contractors 210:6 211:11		counsel 6:6,15 11:23 13:18,23 19:22 35:20,22 41:6,18,23 43:4,9, 21 44:21 97:2 101:13,21 144:1,6, 18,23 145:1,5,6,9, 14,15,19 146:1,8, 10,14,15 147:11 150:20 153:22 161:16 183:8 230:3,14 232:9	cross 139:2	decide 220:15 221:13
contracts 9:17 30:20 31:5,13		counsel's 164:6	crux 215:23	decision 70:4,15 84:14,18 90:7 186:20 223:13
contractual 207:8		counseling 69:23	cryptic 32:18	decisions 69:22 70:16 204:11
contribute 56:17		Counselor 20:20 32:18 93:17	curd 57:3	declare 198:23
control 137:3 160:19 217:1,15		counterclaim 154:22 155:9 167:22 210:4	current 39:1 166:1	decline 29:18
controlled 35:13			custom 199:8	declined 29:16
controlling 28:10, 17 29:5 34:20 105:4 107:11,13, 20 108:2,4 109:5,6 110:13,15 112:7 140:8			<hr/> D <hr/>	dedication 106:19
controls 143:20			damage 108:4,5, 23 216:24	default 140:13,16
convened 177:4			damaged 216:2,3	defective 112:24
convenient 233:4			damages 216:18	defendant's 154:24 155:8 213:14
conversation			date 33:10 71:12 76:2 94:20 98:20 147:4 170:11 182:13 187:18 192:6 215:10 219:2	defending 222:23
			dated 56:12 75:14 76:24 89:9 102:4, 16 130:17 131:12 141:11 144:5 146:12 149:14	defenses 51:19
				define 166:22

defined 69:4	32:9 64:24 119:15	115:12 120:8	215:16	26:16 33:15 56:9,
defining 147:14	120:1 122:7,8,9	122:13 135:15	discuss 45:1 46:9	19,22 60:16 66:5,
definition 124:23	143:22 144:19	140:2,18 141:2	61:19 62:11 68:16	9,14 68:10 74:6
127:7	145:17 146:20,22	142:4 143:2	73:12 90:7 121:7	78:10,11,12 79:19,
definitive 51:12	164:22 167:5	153:11 162:18	143:6,11 169:11	20 82:18 83:4 84:7
Delaria 20:7 27:23	207:22 226:22	166:13,16 168:2	181:15 184:24	85:10,23 86:17
90:24 102:4	233:7	169:22 178:6	188:9 199:15	87:2,6,17 88:4,9
167:22 168:4	depositions 6:16	185:4 187:22	discussed 46:16	89:7 96:1 98:3
182:10 205:10,12	122:6	189:7,12 193:8	70:20 71:1 74:11	102:2,7 103:23
206:19 226:4	derive 18:20	216:10,13 222:11	76:15,17 97:18,19	109:20 117:18
deliberation 77:3	derived 17:5	difference 146:5	98:16,23 106:7	118:7,11 119:1
delineated 224:3	describe 7:13	differences	122:24 133:5	120:19 121:1,16,
deliver 168:4	88:5 110:2 158:1	228:22 229:23	170:6 177:21	22 122:2,5 123:15,
delivered 78:15	208:16	different 13:8	178:17 185:11	22 125:7 129:3,10
167:19,23	describes 60:21	116:17 118:19	200:14 211:9	154:10 169:3
deliveries 196:17,	154:23	122:3 144:8	218:24 221:8	175:15 187:5
24 197:9	describing	145:23 190:10	discussing 32:16	212:16 214:10
demarcated	106:14 109:13	199:24 229:7	49:11 99:15	218:15 226:15
106:22	description 85:24	differently 88:18	114:21 121:14	documents 32:19
demonstrate	design 93:3,21	200:16	123:15,23 125:7	49:22 50:1,4,8,10
54:5,23 94:16	designated	difficult 177:5	126:15	51:2,13 52:4,7,8
165:8 180:10	80:11,20 107:14	209:12	discussion 29:22	53:14,20,24 54:1
216:23	114:12	dig 197:20	45:24 48:16 71:18	65:12,15 78:6
demonstrated	designation 81:2	digital 51:3,6	75:7 89:4 175:7	102:8 122:21
203:5	designations	direct 67:16	188:23 219:8,13,	123:2 124:3,18,24
denied 189:17	67:2,11	104:23 122:17	22	125:11,15,21
190:13	desire 164:3	123:8 141:9 147:2	discussions	126:8,13 127:3
deny 172:4 184:14	desist 201:24	205:19 214:19	33:24 46:10,20,22,	131:16 132:4
198:2,7,24 199:2	221:9 231:9	directed 141:13	24 47:1,2,6,16,24	136:1 173:24
department 66:13	detail 113:3	228:21	48:2 49:11 66:17	212:5 215:15
67:20 69:10 83:14	139:16 140:10	directing 168:3	68:21 69:8 79:5	dominion 162:23
228:4,9	determine 31:5	220:5 229:1	84:12 142:19	163:4 164:8
depending	determining	direction 221:17	143:2 148:11	217:16
138:23	179:23 180:2	directive 229:22	168:15,20 190:23	don't 17:13 22:18
depends 151:21	developments	directly 174:19	dispensing 79:23	23:10 24:15 26:15
depict 86:5 155:7,	195:22	directs 211:3	dispute 58:7 59:9,	30:14 33:21 42:16
17 215:17	dialogue 188:22	disbelieve 126:6	24 60:10 169:23	44:7,12 47:4 48:24
depicted 114:19	dictated 224:13	disclaimer 164:1,	178:16,20,24	51:16 52:7 56:20
158:13	didn't 17:19 21:5	2	202:16 219:13	57:1,16,21 58:12,
depiction 85:24	29:18 45:23 47:10	disclosing 65:19	220:12 221:12,19	16 65:8,17,23
208:1	56:4 65:9 66:3	disclosure 29:3	229:2 232:14	66:22 67:15,21
depicts 157:17	74:9 76:6 79:15	disconnect	disputes 60:5	68:20,21,23 69:7
deposition 6:24	85:1 87:20 92:18	155:22	68:18 69:17	74:20,21 75:4
	95:20 113:20	discovery 212:11	disseminating	76:5,17 77:8 79:4
			71:21	81:3 82:3,5,12
			distinguish 151:7	83:22 84:5 85:3,15
			distributor 11:4	89:13 90:9 91:2
			document 6:22	97:1,16,21 98:12,
			22:7 23:11 25:9,21	13,19 99:18
				100:12 104:8
				109:12 113:1,3,4
				119:10 122:3,4
				125:21 137:18

148:4 149:22 150:16 152:14,15, 21 153:17,20 156:10 159:3,5 160:5,6 168:10,15, 19,23 169:18 173:23 174:3 175:2 177:21 178:16 179:13 181:21 182:2 186:18 188:10 189:1,3,14,23 191:21 197:2,3,11, 17 199:9,12 205:7, 18 206:18 207:6, 10,15 209:18 211:15 213:20 214:17 218:8 220:7 222:20 223:1,12 227:1 228:2,11 229:1 231:2 232:24	drawings 54:22 55:2 114:18 drawn 135:11 Drive 7:9 drove 81:23 duly 6:7 Dutchess 15:11 duties 31:20 duty 30:8 40:10 <hr/> E <hr/>	economics 190:11 educate 70:14 educational 7:13 educator 70:16 effect 127:20 128:2 129:5 229:11 effective 33:10 70:11,14 124:16 126:17 effectuating 32:19 effort 126:13 152:8 182:22 193:4 efforts 64:1,13 91:10 199:17 egress 105:10,19 136:11 224:9,20 225:20 Eichleay 15:3,14, 16,23 16:8,21 17:4,7,21 18:5,17, 20 20:23 21:10 35:1 44:3,5,23 45:1 46:15,24 47:24 48:9,12,21 56:12,21 60:19 61:12,19 62:12 66:11,18 68:9,17, 22 75:7 79:6 84:13 86:17 89:9,24 90:7 98:24 99:15,22 100:8 141:8,14 142:19 143:3,7,12 148:12,22 151:4 152:1 168:9,18,21 170:22 171:6 175:19,23 180:21 181:9,12 182:9,11, 12 183:9 185:7 187:9,24 191:19 195:21 196:1 199:13 200:16 213:4 219:5 221:10 Eichleay's 46:10 76:13 98:15	100:13,17 142:6 199:19 eight 36:5 elected 83:19 84:9 elements 186:19 198:18 else's 203:13 emergency 83:17 employ 205:17 employed 145:20, 23,24 employees 64:6 158:7 166:14 205:19 207:1 210:5 211:11 employer 63:11 enabling 117:10 enact 199:1 enclose 66:13 enclosed 157:4 Enclosure 157:1 end 79:2 198:19 222:1 endeavor 143:3 ended 48:23 49:4, 5 ending 122:17 154:23 212:18 enforced 58:10 enforcing 200:24 enfranchise 171:20 enfranchising 172:23 engage 97:1 engaged 175:10 184:8 216:24 engendered 217:3 engineer's 113:3	engineered 54:1, 21 55:1 engineering 53:6 114:17 203:24 223:7 English 167:2 enhanced 63:6 ensure 176:11 enter 141:20 148:13,23 entered 129:11 entire 38:9 39:10 80:19 132:10 entirely 73:13 217:17 entirety 114:13 entities 13:8,10, 24 14:3,10,21 15:1,5,18 17:2 18:1,4,7,12 21:19 23:7 28:21 29:5 30:2 31:1,24 32:21 43:1,5 44:6,10,19 104:24 entitled 18:24 193:22 194:2 212:19 214:11 entitling 138:15 entity 14:14 21:17 22:9,11 23:15 24:2 26:21,23 37:16,20 38:8 44:11,14 81:11 107:11,13, 21 108:2,4 109:5,6 110:13,15 112:7 entry 60:20 61:6 enumerated 139:21 epic 206:16 epiphany 144:15 equal 16:22 equipment 205:14 207:3,5 211:6
---	--	--	--	---

equitable 15:24 16:19,24 19:5	example 69:24 138:21 140:4,6	4,18 99:7 101:24 102:3 106:5,8,15 112:21 113:1,7 114:4,7 120:15,16, 21 121:14 123:1, 12,16,20,23 124:20 125:1,2,3,8 126:2,15,19 128:21 129:11 130:4,13,16 131:3 133:6 135:8 136:3 141:4,6 144:19 145:17,18 148:10 149:11,13 154:8, 11 157:16 158:14, 17 163:23 164:22 165:1,5 167:6,10, 15 169:1,4 170:13, 19,22 174:23 175:3,16 180:16, 20 181:8 182:5,8 186:22 187:6 188:14,17,24 191:14,17 192:2,4, 5 195:20 197:14 207:22 210:13,17 212:13,17 214:12, 14,18,24 218:11, 12,13,15 220:23 221:3 226:18 227:5,7,8,9,15	expertise 7:24 119:18,23 120:1	facts 70:15 84:17 193:4 212:6,20 214:5 218:15
equity 14:20,24 15:4,14,17 16:8	examples 97:11, 13		explain 54:14 135:10	Fagelman 104:19
erect 158:5 223:13 226:11,12 230:15 231:5,12	Except 174:6 209:23		explanation 195:2	fail 29:18
erected 159:14,22	exception 15:19 198:21,23 200:12		explicitly 189:16	failed 29:17 129:24
erecting 54:19	exchange 49:7 182:11		exposure 9:19,21	failing 138:17
erection 160:9 223:24 225:19,24 227:14	exclude 112:12		express 137:2 138:17	failure 164:3,6
error 131:18,19	exclusive 218:5		expressed 148:22 229:21	fair 13:8 18:18 23:20 31:24 32:4 34:9,10,16 46:4,6, 23 48:4,19 53:10, 16 54:10 59:21 60:3 62:15 63:22 65:6 68:1 77:12 78:21,22,23 80:3 88:7 91:6,13 93:22 94:19 95:23 98:22 103:14 104:7 105:2 106:18 107:6 109:4,18 110:2 115:10 117:20 119:3 131:3 135:24 136:3 149:24 152:5 162:24 169:21 170:1 172:5 192:24 202:17,19 204:21 208:1 209:17,20 210:6 211:6 229:24 230:19 232:1,19
establish 160:19 161:12 217:8	exclusively 41:12 60:1		expresses 176:5	
estate 61:9	excuse 14:17 15:9 29:19 87:8 201:8 202:4		expressly 134:15	
estimation 215:5	executed 49:12 111:4 125:16,22 131:10,23		exquisite 139:16	
etcetera 211:6	executive 39:4 40:19 49:23 53:3 58:7 59:9 60:11 68:3 92:8,16 93:3, 20 122:16 124:4 132:21 160:17 164:17,19 195:2 196:22 231:4		extend 150:14 151:23	
event 108:14 114:23 154:19 176:1 228:7		exhibits 122:18 125:8 187:19 214:20	extended 40:4	
events 156:6 168:13,22		exist 9:6 159:1 172:13	extension 150:3	
eventually 96:22 140:11 173:23 204:6	exercise 164:7 217:6	existed 184:14	extensive 193:10	
everybody 86:12	exert 217:15	existing 105:11, 20 108:16 115:1,3 198:14,15	extent 37:12 53:7 63:15 83:7 115:6 173:10	
evict 138:15	exhaustive 193:3	exists 49:20,22 110:22	extinguished 130:1	
evidence 163:7, 11,16,21 164:10	exhibit 6:2,23 19:10 20:3 22:8 23:2,12 25:17,22 26:17 27:8,11 33:16,17 55:10 56:7,10 60:16 66:2,7,10,15 70:19,24 71:16 74:4,7,17 75:9,15, 21,23 76:3,15,20, 23 78:8 79:17,21 80:17 81:2 82:14, 19 83:23 84:8 85:8,11 86:22 89:5,8 94:6,20 95:2,8 97:18 98:1,	exit 138:2	extra 122:12	
exact 43:19 157:10 197:17 221:23		exit 138:2	eyes 139:2	
exactly 16:15 30:22 32:12 138:5 222:11 229:16		exiting 136:22		
exam 135:10		expect 120:8	F	
EXAMINATION 6:9		expedient 69:16 70:4	F/g 178:16,20	
examine 156:18, 22		experience 70:1, 12	F/lot 107:7 177:18 178:23	
examined 132:4			FAA 90:4,8,14	
			facetious 151:14	
			facility 93:21 96:13	
			fact 36:8 37:23 38:7 46:14 59:19 64:4 71:9 93:1,10, 11,13,14 144:13 145:20 171:16	
				fairly 34:1 86:4 155:7,17 157:16
				fall 99:4,13 177:19
				familiar 51:18 71:19,24 72:8 102:12 122:21 131:6 167:21 168:1
				fan 84:4
				fancy 228:13
				farm 77:15,22 78:4,17,21 80:8, 10,12,18,20 81:1 82:8 83:5,15 196:20 197:5,20

202:9 204:5	10,18 71:3,6 74:5,	feel 120:7 192:5	162:18 165:20,23	104:6 114:22
208:18,23 209:5	15,19 76:21 78:1	201:17	171:8 176:3,9	128:5,12,18,20
214:15 215:1,19	79:9,13,18 82:4,15	feet 105:11,20	186:16 196:3	129:18 142:20,22
216:7,19,21	83:18 84:3,6 85:9,	162:20 163:5	201:9 202:21	144:2,6,7,9
222:13	15,19 86:9,21	171:19 206:2	228:2,11	145:14,21 146:1,8
fashion 53:14	87:11 89:3,6 91:5,	fell 206:9	fiscal 27:13	147:8 148:2 150:2,
195:5	19 93:8,12 95:1	felt 185:16 186:13	five 14:4 202:12	13 152:1,4,10,23
Faulkner 8:19	97:4 98:2 100:23	202:14	232:20	153:3,22 160:8,12,
favor 54:24	101:5,11,17 102:1	field 63:12	five-minute 32:7	23 161:2,3 166:14
favorable 193:18,	104:2 106:12	fifth 202:8	fixed-based	169:23 170:8,14,
19	107:18 108:10	figure 17:21 76:1	198:11,12,15	16 173:11,17,22
FBO 61:13,20	109:11,22 110:1,6,	217:22	Flightlevel 11:11,	174:14 183:9
62:13,17,24 63:3,	11 111:2,7,13,18	file 19:13,16 25:5,	15,17,20,21 12:3,	188:4 190:6 191:1,
7,11 64:5,9,15	112:2,11,19	6,16 26:3 73:14	6,12,14,15,17,21	9 193:5,7,9,18
91:11 120:5	113:14,18 114:2	120:24	13:6,7,11,13,17,24	194:20 195:13
171:21 172:5,13,	115:9,13,19 116:5,	filed 22:13 25:23,	14:2,10,16,21,24	196:19 197:12,16,
24 173:3,15	8,13,22 117:12,23	24 26:10,14 28:1,6	15:5,8,10,13,17,19	24 200:23 201:12,
177:13,17 179:1,	118:5,13 119:7,9,	189:5 190:17	16:9,17,19 17:22	17,24 202:14,16
11,23 180:8,9	19,21 120:9,14,17	195:18	18:2,9,14,21,23	203:4,7,24 204:1,
184:14,15,19	122:1,10,14 123:7	filing 24:10 25:1,	19:3,6,12,14,16	24 205:17,19,22
189:17 190:12	124:8,14 125:5,18,	14 27:18	20:2,10,24 21:4,8,	206:1,16 207:7,14,
198:2,6,8,21,23,24	23 126:5 127:1,17	final 89:14,20,21	11,20,23 22:4	16 209:6,18 210:5
199:2,10 200:12	128:3,8,14,22	98:20 99:11	23:9,19 27:12,20	212:22 215:22
204:8	129:15 130:2,11,	165:21 187:18	28:10,17,23 29:2	216:3 217:1,4
FBO's 176:16	14 133:22 135:5,	financial 65:6,10	30:1,5,23 31:4,15,	218:4 220:13
FBOS 11:3	18 136:18 137:4,	financials 50:18,	20 32:14,20 34:19,	221:20 222:4,18,
171:10,11,24	11 140:21 141:5	24 52:9,12	24 35:6 36:14,21	21 223:10 225:9,
172:20 175:11	143:15,18,21	find 228:12	37:21,22 38:3	11 226:12 231:18
176:14 177:23	144:11,20 146:4,	fine 6:18 48:10	39:3,9,13,18,24	Flightlevel's
179:2 184:4	18,21 147:12	178:11 233:1,6	40:18 41:1,6,11,	40:2,10,16 60:22
February 199:13	148:8,9,17,20	fire 66:13,20,24	12,19,22 42:2,6,8,	62:16 63:12,24
204:14 205:1	149:8,10,12	67:10,20 68:11	14 43:1,5,6,10,13,	65:15 69:9 79:6
206:9 208:2	150:12 153:12	69:10	21 44:6,10,14,18,	84:18,22 91:10,15
210:18,24 218:19	154:9 155:5	firm 8:16,18,23,24	19,22 45:6,10,13,	92:3,7,13 93:2
221:3,18 222:4,17,	156:13,18,22,23	10:5,9,11 13:1	18 46:5,12,17	95:5,13,16 96:5,15
19 223:19 227:16	160:15 162:13	first 6:5 9:19,21	47:1,7,8,16,18	97:14 99:2,17,24
federal 198:23	167:3,8,17,18	10:5 11:15 12:2	48:3,22 49:2,3,13,	100:10,15,19
199:20	169:2 170:20	41:21 42:1 44:2,5,	20,23 50:8,11	101:2,8,14,21
FEE 6:10,15,19	172:8,17 173:4,13,	14 58:2 61:3 68:8	51:20 52:1,21,22	129:6,13 134:24
17:11 25:13,21	20 174:20 175:5	90:18 91:22 105:6,	53:2,7,9,12,22	151:15,22 154:19
26:2 27:2,4,5	179:5,18 180:3,18	24 106:1 116:11	54:2,5,12,17,19,22	161:1 172:3 173:1,
28:14 29:21,23	182:7 184:2,12,23	122:8,15 123:20	55:10,11,17,24	5,9 174:10,17
32:7,10 33:18	187:1 189:21	125:9 126:9	58:8,14,17,20,22,	175:8 180:8 188:8
37:15 40:21 42:20,	191:16 193:15	132:18 134:23	23 59:1,10,11	191:21 192:6,13,
22 45:5,23 46:3	194:4 202:20	141:11 150:6	60:5,8,10,14 62:23	22 193:21 194:1,8
48:14,17,18 50:5,	203:15 205:5	153:2 158:3	63:2 64:3,12 65:4	195:12,17 196:6,
13,15 53:23 56:3,8	206:23 208:5	feel 120:7 192:5	68:19 69:18 73:18	14,18 199:17
61:15,23 62:9,22	210:15 212:8,15	201:17	79:1 81:19 82:11,	204:9,18 206:24
63:19 64:22 65:1	217:5 218:10,17	feet 105:11,20	17,21,23 83:8,19	209:1,3 211:10
66:8 69:2,11 70:2,	220:21 221:1	162:20 163:5	84:9 86:18 87:3,7,	213:8 218:1,23
	225:10,17 226:23	171:19 206:2	19 91:7,20 92:1	230:15
	227:3,5,7,9,11	fell 206:9	95:3 96:2 97:6	Florida 14:7
	230:7 232:7,21,24	felt 185:16 186:13		flow 120:5
	233:6	202:14		
		field 63:12		
		fifth 202:8		
		figure 17:21 76:1		
		217:22		
		file 19:13,16 25:5,		
		6,16 26:3 73:14		
		120:24		
		filed 22:13 25:23,		
		24 26:10,14 28:1,6		
		189:5 190:17		
		195:18		
		filing 24:10 25:1,		
		14 27:18		
		final 89:14,20,21		
		98:20 99:11		
		165:21 187:18		
		financial 65:6,10		
		financials 50:18,		
		24 52:9,12		
		find 228:12		
		fine 6:18 48:10		
		178:11 233:1,6		
		fire 66:13,20,24		
		67:10,20 68:11		
		69:10		
		firm 8:16,18,23,24		
		10:5,9,11 13:1		
		first 6:5 9:19,21		
		10:5 11:15 12:2		
		41:21 42:1 44:2,5,		
		14 58:2 61:3 68:8		
		90:18 91:22 105:6,		
		24 106:1 116:11		
		122:8,15 123:20		
		125:9 126:9		
		132:18 134:23		
		141:11 150:6		
		153:2 158:3		

flying 225:2	Fox's 131:1 133:12 232:12	fund 173:11	115:18 184:20 198:7	14 225:21
focus 10:3 92:11 110:18 220:10	fragility 176:16	fundamental 215:23	granted 110:3 113:10 114:6 134:13 137:17 138:9 139:1 231:24	hangars 35:9 141:22
focused 200:11	frame 59:20 61:22 76:9 99:3,12 148:15 150:5 200:7 201:16 206:8	<hr/> G <hr/>	granting 63:10 107:12 109:6,9 112:6	happen 33:5 73:16 181:22 188:16
focusing 188:20 219:12	framework 147:16	gained 48:11	grants 105:17 110:14 130:4	happened 46:5 47:2 48:1 69:23 150:18 170:2 195:16 220:9
folded 129:24	frankly 29:9	garnered 53:21	Grasso 227:16 230:22 231:1	happening 47:9
follow 190:16,19, 24 191:6 209:19	free 120:7	Gate 77:15 78:18	Grasso's 228:2	happy 141:15 178:20
follow-up 21:9 128:15 188:7 189:2,4 191:22	Friday 141:11	gates 34:8	greater 108:21	harbor 184:21 198:21 199:2
following 131:22 154:18 176:23 181:22	friend 140:23 151:1,2,8,12	gave 150:10 194:9	Greeley 66:12	hard 51:2
follows 6:8	fruition 154:7	GC 142:8	Groton 10:24	harmed 54:12,17
foot 136:22	fuel 60:20,22 61:6, 7 77:15,21 78:4,20 83:5,15 84:1 164:24 165:2,6 171:19 196:17,20, 24 197:2,5,7,9,19, 20 202:2,4,8,24 204:3,5,11 208:18, 23 209:5 214:15 215:1,18 216:6,7, 19,21 222:13	general 13:18,23 19:21,22 35:20,22 41:5,18,23 43:4,9, 21 44:21 81:4 143:24 144:5,18, 23,24 145:1,5,6,9, 13,15,18 146:7,10, 14,15 150:20 178:5	ground 109:23 155:24 224:24	harmless 108:22
footage 55:6 210:10 211:12	fueled 88:16	generally 34:4 72:1 73:22 76:7 80:2 120:6 168:1 169:16	grounds 162:9	Hartson 13:1
foremost 176:9	fueling 78:16 79:23 80:5 81:9,24 92:19 93:4,21 94:2,12,21 95:12 96:8 132:23 133:8, 19 134:5 141:23 164:16,18 165:11, 12 196:6,23 201:20 203:5,12, 18 205:13	generically 13:6	guess 80:19 91:2	HARTZELL 6:18 17:10 25:11,19 26:24 27:3 28:12 37:8 40:17 42:18, 21 45:4,21 48:5 50:4,9 53:17 56:1 61:14,21 62:2,7,19 63:8 64:16,20 68:24 69:6,19 70:7,13,23 74:13, 16 77:13 79:8,11 82:2 83:9 84:5 85:13 86:7,20 87:5 89:2 91:2,17 93:6, 10 94:23 97:1 100:21 101:3,9,15 104:1 106:9 107:16 108:8 109:8,20 110:5,9, 24 111:5,10,15,24 112:9,13 113:12, 16,24 115:8,11,15 116:4,7,21 117:8, 21 118:2,10 119:5, 13,16,20,22 121:21 122:12 123:5 124:6,12,21 125:1,17,20 126:3, 21 127:15,24 128:6,10,19 129:9,
formed 12:6,14,16 44:12,15,19 45:7, 13	fuels 171:13	gentlemen 67:5 162:4	gun 46:2	
forming 196:15	fulfill 37:23	giant 218:14	guys 160:4	<hr/> H <hr/>
forth 136:16 139:16 183:22	fulfilled 205:1	gist 229:17	hairs 229:13	
forum 99:19,20	fulfills 37:16	give 89:15 124:13 140:3 150:5 153:11	half 171:13	
forwards 182:10	full 7:5 132:16 165:20 196:4	giving 151:7 152:15	halfway 94:8 221:6	
found 70:11,14	function 37:10 57:15 203:1	gone 158:5	hall 183:13	
four 135:23		good 6:11 13:12 25:21 64:12 108:11 120:13 140:23	handled 226:4,6	
fourth 60:19 61:1 202:6		graduate 7:18	Hang 214:13	
Fox 102:4 130:17, 22 131:17 133:14 134:6 135:7,14,20 136:3 154:12 157:4 159:11 163:23 167:11 211:1 217:19		graduated 7:19 8:7	hangar 35:12,23 40:23 77:18 81:5, 11 92:17 131:11 136:6,10,11,13,22 137:17 138:2,3,4, 9,14,19 139:5,7,8 140:1,4 142:2 152:11,17 165:18 197:3 202:5 204:20 224:6,9,12,	

21 130:9 133:20 135:3,13 136:14 137:1,10 140:20, 24 143:13,19 144:16 145:22 147:5 148:6,15,18 149:1,4,6 153:8 155:3 156:9,14,19 160:11 162:3,12 167:15 172:6,15, 22 173:8,18 174:13 178:21 179:12,24 183:24 184:10,17 189:19 193:13,24 202:18 203:10 205:3 206:20 208:4 209:9 212:7 216:20 218:7,14 220:20 225:7,14 227:2,4,6,8,10 230:5 232:2,20,23 233:2	231:4 Hey 142:8 high 7:9 208:17 higher 228:3 hindsight 152:5 hire 197:19 206:17 hired 41:22 42:5 144:22,24 145:1,4, 6 hires 146:1 historical 81:16, 22 Hogan 13:1 hold 26:24 33:22 37:10,13 97:1 108:22 218:14 holder 104:15 holding 28:22 43:19 163:12 honestly 199:12 Honor 39:2 Honorable 84:2 hostile 161:21 hostilely 161:19 hours 159:4,8,9, 10 166:8 humorous 158:23	170:19 175:4 180:17 182:6 186:23 191:15 210:14 212:14 220:24 226:19 identified 6:6 123:2 125:8 identifies 121:6 Il 14:18,19 16:13, 14,18 17:9 20:12, 16,19 21:1,7 22:17 26:13,23 28:9,16 33:4 34:23 35:11, 19 36:12,14,15,21, 24 37:6,9 40:9 102:21 104:5,15, 17,21 120:18 121:1,9 131:8 134:14 Il's 37:12 imagery 155:21 imagine 33:13 immediately 107:2 153:21 impact 138:8 impediment 225:19 impinge 204:8 impinged 165:9 implication 185:14 important 173:11 186:14 impractical 198:10 impression 176:23 177:11 improvement 61:8 improving 160:21,22 in-house 145:6,24 153:22 inaccurate 20:6	inaccurately 192:5,12 incident 157:9,13 160:14 162:16 165:24 168:1 170:11,12 216:22 incidentally 132:20 incidents 170:13 202:10 223:22 include 127:5 included 73:22 includes 22:10 23:14 25:22 165:14 including 60:13 120:5 141:23 202:11 224:17 incomplete 212:24 incorporate 232:5 incorporated 124:23 incorrect 29:14 103:11,16 indemnified 108:23 indemnify 108:3 independent 171:21 173:6,14 175:9 177:24 184:7 190:8 indicates 28:1 164:3 Indicating 61:1 indication 145:19 164:7 indirect 67:19 Indirectly 231:7 individual 73:10 ineffective 127:11 inevitable 204:7	influence 67:21, 23 180:7 inform 30:11 information 20:4 48:6 53:4,10 55:7, 9,13 65:6,10 71:21 72:5 150:10 210:4 211:14 informed 63:18 83:11 informs 158:4 infringe 96:7 infringement 91:15 92:3,6 95:5, 15 96:5 97:9 99:1, 17 infringing 96:15 initial 72:2 163:22 injunction 54:18 213:10 214:1,2 injuries 108:5,24 inquire 120:7 inquiry 58:3 insanity 198:19 insisted 142:9 installed 81:10 instance 154:17 instances 202:12 instruct 148:1 149:6 153:9 instructed 64:6 135:16 instructing 128:8 intellectual 53:8 intend 94:2 203:17 intended 95:12 117:9 162:15 163:3,16 199:16 226:11,12 intent 63:5 164:7, 11 230:4
hasn't 128:12 haven't 27:16 156:16 216:15 Hayes 207:11,13, 15 hear 178:20 194:23 heard 15:22 206:3 207:12,18 hearing 65:19 185:1 186:15 heat 232:21 heavy 207:3 hegemony 216:23 217:7 helicopter 39:4 40:19 92:16 93:20 122:16 132:21 225:1 Helicopter's 92:8 93:3 Helicopters 49:24 53:3 58:7 59:10 60:11 124:5 160:18 164:17,19 195:3 196:22	I Iannuzzi 212:21 213:8 214:9 ice 207:23 idea 10:2 90:22 216:17 identification 6:3 33:17 56:7 66:7 74:4 76:20 79:17 82:14 83:23 85:8 89:5 98:1 101:24 120:16 130:13 141:4 149:11 154:8 167:7 169:1			

intention 33:2 92:9,14 162:23 163:8 202:4 230:15 231:5,12	invite 162:10	194:10 195:20 199:10 200:3 204:14 205:1 206:9 230:22	46:21 47:5,10,13 48:8,11,19 50:14, 23 57:15 58:16 63:24 67:14 71:8, 17 81:22 83:3,4 84:17 94:4 157:14 160:6 166:20 175:14 209:20 210:1	120:2,5,6 161:10, 23 162:11 185:24 186:3,7
interest 14:20,23, 24 15:4,15,17,24 16:4,8,19,21,24 17:22,24 18:6,21 19:3,5,7,8 23:8 28:9,10,17,22 29:5 30:6,13 31:1,11,23 32:12,15,21 39:19, 24 40:8 45:2 47:7, 17 48:22 49:3 52:23 69:21 104:5 105:4,5 124:19 132:14 134:12 142:21 148:23 164:1,2 185:21	involve 69:16 70:4	January/february 209:22		lawsuit 188:18 212:3,4,10
interested 59:15 78:2 174:18	involved 30:23 44:6 104:24 152:10 169:22	Jersey 14:7		lawyer 57:8 151:10
interests 30:5	involvement 11:20 41:21 42:1, 14,17,24 46:6 47:15 81:18	job 120:19		layers 134:11
interfere 141:24 142:1 159:17	involves 94:14 147:18 148:2	joining 153:21	L	layout 32:6 34:2, 12
interfered 159:19	involving 68:17 121:8	joint 11:21,24 43:13	Lakeland 14:7 15:13 16:1 43:6, 10,12,13,21 44:22	leading 146:24
interpret 111:14, 16 124:10	irrespective 70:16	Joshua 211:1 232:12	LAL-LLC 43:15	learn 150:17
interpretation 109:4 119:1	Island 7:23	judge 40:14,15 54:21 55:16,18,23 220:15	land 105:11,20 107:1 161:22 201:21	learned 150:21
interpretations 231:23	issue 58:21 59:4 76:16 77:21 120:11 170:4,6,7 171:22 172:24 175:10 177:13,18 202:1 215:17 219:12 221:22 228:10	July 74:9,22 76:24 77:4 94:20 154:12 157:5,18 162:17 163:23 166:1 167:12 168:5,12, 17 169:6,13,19 170:3 223:3	landlord 34:20 37:17 38:2,7 140:8 200:24 201:1 202:14	lease 34:20,21 35:3 37:24 80:12, 18,20 81:2 105:12, 20 108:16 114:24 115:2,3 122:20 124:23 125:13 126:1 127:7,8 137:17 138:9 139:5,7,8,11,15 140:1,5,15,19 141:3 221:12 232:5
interpreting 136:1	issued 55:16,19	jump 46:2	landlord's 37:23	leased 198:14
interrogatories 199:20 200:17	issues 95:22 99:24 100:10,15, 19 101:2,8,14,21 169:19 186:18 188:9,13 189:12 200:12 220:13	June 28:2,6,15 56:12 58:9,13 75:8,18 76:2	lane 57:5	leasehold 94:13 165:13 196:21 201:1 203:14
interrupt 42:18	issued 55:16,19	jurisdiction 67:1	lanes 34:6	leaseholder 231:20
intervene 154:18 202:15	issues 95:22 99:24 100:10,15, 19 101:2,8,14,21 169:19 186:18 188:9,13 189:12 200:12 220:13	justification 176:12 179:9	language 109:5 110:18 115:21,24 116:2 117:4,6,10, 13,19 118:7,11,20, 23 124:10 130:3,7 132:2 133:7,11 134:8 137:2 138:4 178:8 224:12	leaseholds 55:5 94:14
intimately 131:6	issued 55:16,19	jurisdiction 67:1	large 193:22 194:1,8 208:22	leases 31:5 35:7 150:3,14 151:23
introduction 230:20	issues 95:22 99:24 100:10,15, 19 101:2,8,14,21 169:19 186:18 188:9,13 189:12 200:12 220:13	justification 176:12 179:9	largely 232:18	leave 10:17 92:18 93:4 128:10
inure 161:1	issued 55:16,19	jurisdiction 67:1	last 90:16 91:22 158:3 178:2,4 198:4,5	lecturing 161:23
investigation 51:1	issued 55:16,19	jurisdiction 67:1	later 75:5 122:9 147:4 166:8 191:11	left 10:18 177:5 230:21
investment 193:11,22 194:2,9	issued 55:16,19	jurisdiction 67:1	latest 19:11	legal 12:3,20 13:16 19:7,8 21:14,17 30:18 31:13 32:1 33:2 36:5 37:13 41:11, 18 45:23 62:4

104:16,23 117:24 127:16 132:21 133:4 135:7 136:1 149:2 151:7,10,17 152:16 153:8 154:3,5 161:5,6 163:18 164:13 184:24 217:11 226:1	192:1,3,7,9,12 193:17 194:3,10, 16 195:17,21,24 196:1,3,13 198:1 208:16,19 210:17 211:3,14,22 232:8, 12	15:19 16:9,13,14, 17,19 17:9,23 18:2,14,21 19:4,6, 12,14 20:2,8,10, 11,19,24 21:1,2,4, 7,8,11,21,23 22:4, 10,14,17,20,24 23:5,8,9,14,17,19, 20,23 24:4,12 25:2,7,17,24 26:11,13 27:13,20 28:8,9,15,16,17 30:1,24 32:14 33:4 34:19 36:21 41:7, 11,12,19,22 42:2, 15 43:6,10,13,14, 22 44:22 45:6,19 46:5,17 47:2,8 48:3,22 49:2,4,13 58:8 65:5 104:6 120:19 121:1,9 145:14	lost 116:15 216:12 lot 34:20,21 35:3,7, 10,24 36:9 37:1,6, 18,24 38:9,10,13, 15,17,18,21 39:3, 4,11,15 40:4,5,6, 18,19,20,22 54:20 55:4,5 79:3,7 80:6, 8,10,12,13,18,20 81:2,6,11,24 84:1 92:9,10,14,15,18, 19 93:5,22 94:3 96:13,16 103:3,12, 13,19 104:4,16 105:1,4,5,10,12, 19,21 107:3,5,7,8, 11,13,21,22 108:3, 4,6,16,19 109:1,5, 7,10 110:13,15,23 111:23 112:3,7,15, 16,18 114:14,19, 20 115:1,2,3,6,17 132:13,22 133:5, 18 134:18,19 136:6,12,21 137:6, 9,16 138:3,22,24 140:7,9,11 148:14, 24 154:20 159:18, 20 160:13,19,24 161:4,13,14,18,19 162:24 163:19 164:8,19,20,24 165:3,7,11 170:15 177:16,18,21 178:19,23 195:12, 13 196:9 197:4 199:17,18 201:2,3, 13,19,21 202:5 203:18 204:6,13, 19,22 205:22 207:20,23 211:6 216:23 217:1,7,16 218:2,3 219:20,24 224:1,6,9,17,21 225:1,21 230:18 231:5,6 232:11,16	lunch 144:15 Lyons 187:8,14
legally 230:9 lend 186:18 lends 118:24 length 45:24 147:20 lengths 171:18 lessee 31:21 103:2 lesson 167:2 lessor 31:21 letter 56:11 57:18 58:5 66:2,19 70:22 71:8,13,16 73:13, 15 74:9,11,14,16 75:13,18 76:24 77:19 78:8 89:8, 14,22 90:13 91:6, 13 96:24 97:5,15, 18 98:15,21,23 99:10,15,19 102:3 121:3 130:16 131:2 144:4,9,17 145:16 146:12,16 149:14 154:11,15, 16 155:2,7,11,18 156:7,12,16,17 157:4,10,18,22 158:1,24 159:10 162:17 163:22,23 164:7 167:11,14, 19,23 168:2,4,11, 14,17 169:13,19 170:21 172:12,19 173:21,22 174:6, 17,22 175:16 177:22 178:17,19, 22 179:3,9 181:2, 5,7,15 183:23 187:7 188:13,21 189:5,15,16 190:6, 7,16 191:2,7,18,22	letterhead 187:20 letters 63:13,17 64:1,11 71:15 73:18 95:22 146:9 170:10 190:2 195:9 201:6,24 217:18 231:10 level 152:23 194:22 levied 54:7 liability 108:23 License 109:17 licensed 40:5 107:22 108:7 114:19 licensing 179:15 light 171:16 limit 172:19 limitation 115:5, 16 limited 64:1 71:9 118:17 129:22 134:15 148:5 lines 55:4,5 225:2, 16 link 67:19 list 51:12 75:8 177:19 listed 28:21 74:10 98:16 literally 185:4 litigation 8:13 9:9, 13 51:20 53:9,12 128:5 live 7:8 LLC 12:6,14,15 13:14,17 14:16,20	LLC's 12:18 19:17 31:5 LLCS 14:11,18 located 10:21 13:3 35:23 80:6,7, 15,21,24 81:1 230:18 location 34:6,7 78:3 locations 10:22 London 8:15 9:4 long 8:20 9:6 10:14 11:6 43:9,20 108:18 159:1 222:21 long-standing 171:9 longer 159:9 looked 126:9 208:8,12 lose 161:3 197:16 loses 161:2 losing 177:15 178:15 loss 160:8,13 197:12 217:1,2	lots 40:3 132:5,10 141:22 143:9 150:3,14 151:23 158:6 170:5 208:8 209:4,8,21 224:4 230:16 luck 33:8	M M-E-R-C-U-R-I-O 9:3 made 29:2 200:10 203:20 204:11 211:10 217:18 223:13,15,18,20 Maguire 66:11 71:10 76:24 86:17 100:14 101:1 149:14 180:21 181:9 182:11 183:7 185:4 186:11,12 191:19 199:15 200:11 211:2 228:16 230:3 Maine 14:9 maintain 62:24 63:2,6 maintenance 61:9 107:22 make 64:7 69:22 70:15 72:14 93:1 174:12,16 185:17 186:14 200:6 201:16 202:22 makers 70:4,15 makes 146:5 managed 22:5,6 24:4,5 manager 20:7,9, 24 22:5,6 24:5 29:9,12,24 66:12, 20,23 67:9,15,16, 23 68:2,11,18 69:9,16 71:22 72:1,22 73:9 99:23 100:9 168:13,16, 22 181:15 183:14 211:2 230:14 manager's 73:23 managers 20:10,

13 21:11 68:1	materially 159:16	22 66:21 71:1,22	138:8 151:20	226:15
manner 64:9	materials 98:16	72:6 73:3,4 99:23	192:17 232:14	monetary 193:10
96:14		100:9,18 101:7		216:18
map 65:18,22 80:9	matter 120:11	181:14 183:16	Mine 227:6,7	money 160:8
114:4	122:17 142:9	185:18 186:4,5	minute 25:19 48:5	173:10 197:13,16
maps 50:19,24	200:19 204:2	219:8	83:1 123:5 143:19,	216:12
52:9,15,19 53:4,6	220:5 228:10	membership	21 149:17 177:20	month 33:1
55:20	matters 59:12,16	17:24 18:13 19:3	232:20	153:16 177:4
March 212:20	60:12,13 90:8	30:5,6,12 31:1,11,	minutes 74:8,10	218:21
mark 33:16 106:10	121:8 147:21	15,23 32:11,15,20	75:17 98:5 124:13	month-to-month
120:14 149:10	169:12	39:18	169:5 221:4 229:8,	177:4
175:17 183:7	maximum 171:18	Memorial 31:22	11	months 29:15
marked 6:2,23	meaning 136:2	57:20,24 58:10,15	mischaracterize	223:17
19:9 22:8 23:12	145:24 146:1	62:18 63:1,3 64:14	77:8 106:20	morning 6:11
25:17,22 26:17	means 109:23	172:13,20 173:16	misdirected	Moshe 35:13,14,
27:1 33:17 56:7,10	110:13 145:3	184:4,16 195:23	159:24	16 139:6 141:2
60:16 66:2,7,10	166:24	memorialized	misfire 182:21	Moss 183:8 185:1,
74:4,7,17 75:9	media 195:11	75:22 76:15	200:3	4 186:10 199:15
76:20,23 78:8	meet 44:2 186:4	memory 78:19	mishandling	228:14
79:17,20,21 82:14,	meeting 30:3	143:20	53:14	motion 147:3
18 83:23 84:8	71:3,4 73:11 74:8,	mentioned 23:18	misheard 113:23,	213:24 214:1
85:8,11 89:5,8	11,23 75:10,17,22	161:10 200:2	24 186:9	mouth 81:16
98:1,4 101:24	76:12 77:5 90:11	201:8	misinformation	move 111:17
102:3 106:7,15,16	94:9,11 97:20	Mercurio 9:2	195:13	225:1,5
120:16,21 121:14	98:5,6,10,17	Mercurio 9:1,6,18	misinformed	moved 77:17
122:6 123:1,19	169:4,6,7,17 175:7	10:15	134:7	81:23 111:20
124:20 126:19	176:1,3,20,21,24	merger 43:11	missing 26:5	movement 215:6
130:13,15 131:2	177:3 181:13,18	message 69:9	132:1 213:1,7,8,	multiple 134:11
141:4 149:11	182:13,17,23	230:21,24	12,23	176:14 179:2
154:8,11 167:6,9	183:1,3,6,11,19	met 6:11 77:11	misspeak 106:21	mutually 233:4
169:1,3 170:19,22	185:2,5,24 186:3,7	method 51:10	misspelled	
174:22 175:3,16	188:8 199:14,21,	88:5,22	221:10	N
180:16,19 181:8	23,24 200:1,18	Metropolitan	misstated 20:20	
182:5,8 186:22	201:10 217:20	34:22 102:18,22	67:8	
187:6 188:13	218:18,22 219:10	228:19	mistake 26:8	
191:14 207:22	220:3 221:4,18	Michael 20:7	mistakes 64:7	
210:13,16 212:13,	222:5,17,19,22	180:22 187:7	mistreated 193:7	
17 218:15 220:23	223:19 228:20	228:18	misunderstood	
221:2 226:18	229:8,11	MII 35:8,13,15	41:16 137:24	
marked-up	meetings 73:4	136:15 137:21,22	misused 53:10	
187:17	75:4 76:8,16 97:23	139:1,6	model 176:13	
marketplace	186:19 189:4	MII's 141:2	179:10	
171:12	190:23 195:10	Mike 27:23 62:8	moment 32:11	
markings 33:20	199:6	85:17 90:24 96:21	momentarily	
187:2,4	member 22:4	mind 86:4 95:15		
Massachusetts	24:3,4 186:7	97:14 137:5,14		
14:8 37:9	188:12 220:4			
massive 196:5,15	members 20:15,			
208:16	17,18 21:2,8,20			
	22:20,22,24 23:19,			

185:18 193:23	Northeast 176:15	notes 229:16	124:6,12,21	occupying 136:6
194:3 198:2,19,22	Norwood 12:6,14,	notice 140:16	125:17,20 126:3,	204:21
199:16 202:15	15,17,18 13:13,14,	165:23 213:7,24	21 127:15,24	occur 165:17
218:18,24 219:9	17 14:8,16 15:9,19	221:8	128:6,19 129:9,21	occurred 32:13
220:4,11 221:18	16:5,9,17,19 17:23	notion 95:11	130:9 133:20	48:23 59:2 65:11
223:19 226:7	18:2,9,14,21,23	179:20	135:3,13 136:14	154:19 201:12
228:20	19:4,6,12,14,17	notorious 161:21	137:1,10 140:20	215:14
NAC's 77:9,11	20:2,10,24 21:4,8,	notoriously	144:16 155:3	October 11:18
176:10 177:8	11,20,23 22:4	161:19	156:13 160:11	13:20 41:8,9 61:24
178:14	23:9,20 27:12,20	November 102:4	172:6,15,22 173:8,	62:11 63:23 69:4
name 7:5 8:18,24	28:10,17,23 29:2,3	131:2 170:24	18 174:13 178:21	98:6,10,17 100:7
13:11 37:12	30:1,5,16,24 31:5,	172:4 174:1	179:12,24 183:24	143:24 144:23
207:12,18 228:2	9,14,22 32:14	nuance 184:24	184:10,17 189:19	145:9 146:24
names 228:11	34:19,22 35:6	number 13:7,10	193:13,24 202:18	148:3 153:17,19,
narrowly 69:8	36:21 37:21,22	81:13 103:6 108:1	203:8,10 205:3	20 223:2
nature 138:23	38:3 41:7,11,12,	144:8,13 172:20	206:20 208:4	OFA 57:19,23
needed 62:23	19,22 42:2,8,14	197:17 206:3	209:9 212:7	58:14 67:2,11
225:15	44:19 45:2,6,10,	223:17	216:20 218:7	76:14 84:23 88:1,
Neil 71:5 85:16	13,18 46:5,12,17	numbered 105:6,	220:20 225:7,14	11
109:23 122:6,10	47:2,7,8,17,18	24 106:1 107:20	230:5 232:2	offending 104:23
156:18,22 207:21,	48:3,22 49:2,4,13	156:11,20	objections	158:2
24 232:22	52:18 53:3,22 54:5	Numeral 123:21	218:23	offer 135:10
NFPA 33:21 88:13,	56:11,23 57:19,24	numerous 114:17	obligated 37:17	173:11 217:18
16,20,23	58:8,10,15,18,24	223:21	179:8	office 92:18
nice 228:13	59:1,10 60:10,21	o	obligation 39:21	Officer 230:21
Nicholas 6:4 7:7	62:18 63:1,3,7,9,		40:1,2 205:1	231:1
212:21	15 64:14 65:5	oath 6:8	obligations 31:20	offices 13:4 65:15
Nick 6:12 56:9	66:21 67:18 71:11,	object 148:7	37:5,23 38:3 40:16	on-site 226:3
76:22 79:20	70 72:9,15 74:23	object-free 57:6	201:1	once 177:4 198:19
130:15 141:6	78:15 81:19 82:17,	objected 217:14	observe 47:11	one 8:21 10:10
158:22 167:9	21,24 83:12,14	objection 17:10	65:9 166:17,18	13:12 17:1 23:6,19
187:5 210:16	89:23 91:7 104:6	37:8 40:17 45:4,21	observed 58:14	26:24 35:13,15
213:16	132:19 144:9	53:17 56:1 62:19	observing 166:15	50:21 51:23 53:20
nine 191:11	145:14 164:17	63:8 69:19 70:7,13	obstacles 211:5	64:5,15 72:18
nominee 37:10	172:13,20 173:16	77:13 82:2 83:9	obtain 161:17	77:16 102:8,9
None 45:20	174:15 175:7	86:7,20 87:5 89:2	obviously 60:15	119:17 122:11,12,
nonexclusive	177:14 184:4,15	91:17 93:6 94:23	occasions 135:22	13 123:1 126:4
105:9,18 107:13	189:10 191:10	100:21 101:3,9,15	occupancy 132:5	141:24 153:23
nonresponsive	195:21,23 202:3	104:1 107:16	136:9	157:11 158:7
201:23	222:1 223:6 228:4,	108:8 109:8,20	occupant 138:2	164:3 171:23
noon 165:24	8	110:5,9,24 111:5,	occupied 40:24	172:13,21 173:2,
Norfolk 122:17	Norwood's 31:20	10,15,24 112:9,13	81:12 137:6 139:9	15 175:20 179:1
154:23 212:18	32:20 49:20 58:17	113:12 115:8,11,	161:19 224:5	186:7 193:11
north 112:17	59:11 171:17	15 116:4,7,21	occupies 36:9,18	198:10,12,15
	Nos 6:2	117:8,21 118:2,10	occupy 35:9,22	201:9 202:21
	Notary 6:7	119:5 121:21	36:4,16	213:12 215:13
	notation 80:10			216:22 217:17
	note 119:9 147:13			222:8 231:9
	153:9 156:9			
	187:19			
	noted 156:19			

one- 141:20	organ 83:16	paid 28:3 53:7 166:11	paved 110:22	permit 27:13,19 28:5,24 109:9,12 177:17 198:2
ongoing 165:17 194:21	organization 21:15 22:12 23:16 26:4,22 121:4	paper 51:7	pavement 38:20 39:10,14 40:4 81:23 111:22 112:3,8,15,16 114:13	permitting 117:4 139:9
open 71:4 185:24 186:3,6	organized 21:17	paperwork 24:11 25:2	paving 160:20	person 14:13 28:21
openly 161:18	organizes 73:1	paragraph 60:20 61:1 105:6,8,15 106:1 107:20 108:1,12 111:22 112:6,23 113:10 114:6 130:4 131:5, 22 132:16 134:9 158:3 165:21 196:4 198:17	Pawcatuck 7:10	personal 6:6 46:21 47:10 48:7 71:17 83:4 116:3
operate 14:6 35:16 138:21 171:19 173:15	original 87:17		pay 173:6	personally 51:6 166:16,18 209:18
operated 203:12	originally 81:10 200:19		payroll 145:24 147:8,10	persons 108:24
operates 13:13	originating 164:19		pays 36:11,13,16, 18,19,20 180:5	perspective 208:15
operating 21:24 195:3	outright 190:9	paragraphs 198:4,5	peak 171:12	persuasive 67:17 68:4
operation 83:5, 16,17 201:21	overt 92:3,6 95:5, 15 96:4 97:9	parcel 80:8	pencil 187:4	Peter 15:3,14,16, 23 20:23 35:1 44:2,5 46:15 48:9 141:15 171:6 175:19,23 177:7 183:9 187:9,13 196:1
operations 58:17 82:20 92:19 93:4 94:2,22 95:12 154:6 160:3 164:18 203:6,19 205:9 226:4	overtly 96:7	pardon 198:14 205:13	Pendergast 228:18	Peter's 44:11 63:17
operative 230:9	overture 148:12	part 55:21 71:24 85:13 112:12 115:21 116:11 127:8 136:9 160:24 161:15 164:9 184:11 188:8 189:10 195:10 210:9 212:3,4,9 215:8	pending 51:20	phone 135:15,17
operator 176:14 198:11,12,16	OWDMEP 228:16	participate 17:8 90:10,12 209:7	people 60:13 69:22 80:2 205:9, 16 206:17,21 209:11	phonetically 72:12
operators 205:12	owned 14:13 16:12,13 17:1	participating 66:4 152:7	perceive 176:10 177:8	photo 155:10,12, 13,16,19 157:4,7, 9,11,13,24 158:14, 17 214:12
opinion 31:12 69:15,20 84:21 92:20,22 93:2,9,20 111:8 112:14 116:2 136:2 232:9	owner 82:8,9 103:1,2 105:1 108:3 163:6 198:16	participation 154:1,4	percent 16:10,11, 12,16,18,22,24 17:4 18:1,6,13,16, 21,24 28:22	photograph 110:8 156:10,15, 20 157:15 176:8 208:13
opportunities 10:6	owners 18:22 165:15	parties 103:10 217:24 220:5 228:21 229:1,22	percipient 166:20,22,24 209:20 210:1	photographs 209:24 210:10 211:12,17
opposed 151:16	ownership 15:15 17:8	parties' 219:23	performed 132:11	photos 157:1 214:14,24 215:3
opposing 97:2	owns 14:16 15:14, 16,23,24 16:4,9, 16,21 17:4,22,24 19:2,5	party 117:11,14 128:20 173:14 175:9	performs 38:3	physically 65:13
opposition 213:14 214:1	owners 18:22 165:15	pass 232:10,15	period 62:17 63:21 68:16 69:1, 3,13,14 78:9,24 84:14 92:21 101:16,22 143:14, 17 144:14 147:14, 15,19 162:1 201:14	pickup 207:4
orange 158:16	owns 14:16 15:14, 16,23,24 16:4,9, 16,21 17:4,22,24 19:2,5	past 48:1 143:16	permissible 136:23	picture 79:22 155:6 163:13,14,
order 39:2,8 40:14,15 51:8 55:16,19 64:3 179:10 213:9 217:6 222:10,11	owns 14:16 15:14, 16,23,24 16:4,9, 16,21 17:4,22,24 19:2,5	patched 88:19	permission 140:9 163:6	
ordered 84:1 222:16,18 223:11	owns 14:16 15:14, 16,23,24 16:4,9, 16,21 17:4,22,24 19:2,5	patrolman 228:3		
	packet 71:12 73:10,24			
	pages 213:18			
	P			
	P-A-W-C-A-T-U-C-K 7:10			
	p.m. 119:14,15 141:12 146:19,20 167:4,5 226:21,22 233:8			

15 207:21	plows 38:9,24 39:3,4	174:9,18 180:8 184:9 190:5 192:6, 14,15 195:12 196:13,14,18 202:23 204:7 218:1	192:17	primarily 200:11
pile 207:23 208:22 211:21	point 11:10 13:12 25:21 41:15 46:2, 15 60:24 68:15 70:20 72:2,23 77:17 78:20 83:19 87:3,19 92:5 129:10 150:18,19 153:24 188:11 189:20 194:24 196:12 201:11 204:10 221:5	positioned 88:15, 17	premises 36:17, 18	primary 228:4
piled 197:10,13 209:16,21	pointing 80:17	positions 63:5	preparation 32:3	principal 10:23
pilot 57:9,10	police 83:12,13, 14,17 226:7,11 228:4,9 230:2,13	possession 161:8,13,20 162:1, 16,19 163:18 164:12	prepare 19:13,16 72:4 120:24 214:7	principles 183:22 185:10
pin 95:22	politically 70:4	Possibly 218:20	prepared 33:20 52:21 113:2,4,7 214:8 217:11	prior 11:19 12:8 30:8 31:17 39:8,20 41:10,15,17 42:5, 13,19,23 44:8 56:22 57:17 58:9, 13,17 64:18 105:23 122:6 131:16 145:9 148:2 190:7 206:13 209:15 211:14 222:16,18 223:3 231:13
Piper 11:4	poor 120:19	Poughkeepsie 14:8 15:11 16:1	prepares 72:3 73:1	private 11:8 99:20,22 100:18 101:1,6,12 186:14
PJ 207:11,13,15	portion 18:16 40:23 103:19 108:15,19 109:10 110:14 114:24 115:2 132:22 133:5,14,18 137:16 142:12 161:4 184:6 185:18 207:1	power 225:2,16	prescription 163:17 164:12	privilege 17:14,16 46:1 59:14,19 118:4 128:7 146:23 147:22 153:9 162:9
place 10:23 33:4 38:17 46:20,22 90:11 94:15 181:18 182:17 183:2,4,10,12 184:15 233:5	portions 136:12 159:17 161:13,14 163:19 170:5,14 232:11	powers 191:9	prescriptive 217:8	privileged 48:6,13
placement 209:7	posed 61:13,20 62:12	practical 152:16 226:2	presence 198:5	probably 98:8 139:2 189:5 201:8 221:22
placing 211:4	position 30:15 62:16,20,24 63:3, 7,13,14 64:4,13 91:8,9,14,21 92:1 93:18 95:4 96:3 97:7,8 99:1,16 116:19 129:7 130:8 133:3,16,17, 23 134:24 146:22 147:12,23,24 157:23 164:5 170:2 171:9 172:3, 12 173:2,5,9	practically 21:16	present 43:24 48:8 76:12 150:16 183:5,14,17 219:17	problem 116:17 188:1
plaintiffs' 213:15	portrays 192:5,12	practice 7:22 8:13 11:8 75:3 76:8 97:22 100:13,17, 24 101:6,12 147:3 206:24	presentation 54:20 55:20 185:5, 18 186:14 192:22 200:10 221:22	procedure 72:21
plan 33:19,23 92:8,13,17 113:8 202:2	ported 61:13,20 62:12	practicing 9:9,16	presented 73:9	procedures 71:19
planes 81:23 88:5, 22	precedes 82:16	precede 75:22	presenting 169:18	proceed 148:5
planned 61:8	predecessor 104:4	preceded 81:18	presided 140:6	proceeding 93:19 179:1
plans 78:15,21 164:16	preferential 193:9	precedence 118:1	president 13:18 19:21,23 144:1 147:9 228:18	produce 226:15
plastic 158:16	prejudiced 55:12	precedes 82:16	press 195:10	produced 49:23 50:2,8,18,19,24 52:13 89:16 114:18 210:11 215:16 223:8
play 30:20	preliminary 54:18 213:10	predecessor 104:4	pretty 71:8 116:15 172:12	product 118:4 128:7 217:12
pleading 212:18	prelude 30:9	preference 193:9	prevent 196:24	production 49:22 78:5,10,12 85:14
pleadings 213:2, 23	premise 143:23	prejudice 55:12	preventing 117:6 196:16	
Plenty 96:19		preliminary 54:18 213:10	previous 147:9	
plow 38:5 39:21 40:1,2,10,18,20 41:1 196:19 205:23		prelude 30:9	previously 32:16 227:12	
plowed 196:14 202:8 209:4 215:18		premise 143:23	Previtte 104:19	
plowing 39:10,14 40:16 196:8 207:2 218:23 219:20 223:22 225:20			price 171:13	

173:24 191:21 212:11	provide 12:2 13:16 37:17,23 41:18 45:18 152:1 153:7 155:20 164:3 179:8 198:11,13	puzzled 178:12	raised 188:13	reasonable 225:4,8,13
progressive 223:16		<hr/> Q <hr/>	ramp 39:3,4 40:2, 22 111:16 152:11, 17 155:1,8 159:19 160:1 162:21 163:5 205:23	reasons 10:10 190:11 202:14
prohibit 224:2		Q1 151:24 152:8, 12,19	ran 201:5	recall 27:10,17 30:14 32:19 56:20 57:1,16,21 65:8 68:20,21,23 69:7 74:22 75:6 76:8,11 83:7 90:9 97:21 99:9,14,18 100:12 135:4 143:2 150:1, 9,13 152:14,15 153:4,18 168:15, 23 169:7,18 175:2, 6 179:13 181:21 188:10,19 199:21 200:2,8 204:15,16 206:8 211:15 218:18 219:7,13, 16,19,22 220:2,4, 11,16 226:14 229:1,3 231:2
prohibited 117:14	provided 18:5 52:5 53:15 65:5,8 141:23 155:10,19 157:21,23 210:5 212:9	qualified 198:8	ranking 228:3	
project 58:21 59:5 151:21 152:10,12, 18,24 153:3,14 154:2,4,7 225:24		quantify 184:9	ration 197:19	
projects 59:23 61:8	providers 171:19	quarter 150:6,15	re-read 192:16	
pronounce 72:12, 13	providing 12:3 31:3 41:10 62:4 65:3,9 140:9 149:2 151:17 154:2	question 12:13 17:16 21:9 24:21 25:12,15 26:9 30:10 46:13 47:4, 19,21 50:22 54:9 59:3,18 64:18 67:6,7 68:8 72:20 75:12 76:4 77:23 85:12,18,21 87:15, 17 92:23 96:1 97:15 99:13 100:4 106:10 112:24 113:6 116:9 123:13 128:15 137:13 140:24 141:1 147:24 148:19 150:8 151:10 155:16 157:10 161:5 162:5,6,8 190:4 192:11 205:4 215:21 223:2	reach 135:14	
pronunciation 72:8	provision 201:21 204:3		reacting 155:2	
proof 211:16	public 6:7 73:4 99:19 174:7,12,16 175:7 179:17 186:15,16,18 189:11		reaction 190:24	
proper 36:14 98:20	publicly 53:5 55:8		read 30:22 49:6 61:3 63:17 64:16, 18 77:7 94:9 105:22 106:7,14 108:12 109:2 112:6 115:22 116:12 131:13 133:1 134:20 142:3,4,5,12 158:10 172:1 176:18 177:20 194:3,10,13 221:14 229:10	
properly 34:11 113:2,5 183:11	purchase 122:19 123:2 124:10 125:12		reading 199:19 213:11,16,18 214:17	receipt 232:8
property 37:11 53:8 91:15 92:4,7 94:17,22 95:5,13, 14,16 96:5,7,15 97:9 99:2,17 107:7 108:5,23 110:15 115:6,17 118:16 159:2 160:9 161:9 162:21 165:8,15 178:16,20,23 201:18 202:15,17 203:9 204:9 215:23 219:24 220:12 222:21,23 226:13 231:18	purport 122:18 124:3,18 215:16	questioned 156:20 200:20		received 153:23 159:11 174:7
proposed 46:11	purported 127:22 128:17 129:8,16 135:1 137:7 138:10 217:2	questioning 147:18	ready 85:12,21,22	receiving 71:21 196:16
proposition 118:8	purports 88:5	questions 6:20 89:16 97:3 144:13	real 61:9 216:24	recent 22:12 23:15 25:6,23 122:7 195:22
propositions 183:22	purpose 108:19 173:19	quick 226:20	reality 34:8	recess 32:8 64:23 119:14 146:19 167:4 226:21
protected 54:22	purposes 82:10 222:22	quiet 29:9	Realty 34:23 35:7, 11,18 36:11,14,15, 20,24 37:5,9,12 39:19 40:9 102:21 104:5,15,17,20 131:8 134:14	recipient 179:3
protecting 201:2 202:16 223:21	pursuant 18:17, 23 50:11 52:5 53:15 107:11,19 126:8 179:6	quote 179:8 221:7	reanswer 194:6	recipients 227:23 228:6
protection 179:17		<hr/> R <hr/>	reask 17:20 30:10 46:13	recognition 6:6
prove 36:6 203:11	put 51:6 85:23 140:10 201:13 209:1	Radlo 24:3	reason 10:9 28:4, 7 29:16,19 55:18, 22 66:18 126:6,11 185:16 186:13 187:21	recognize 120:22 208:3,6
	putting 232:21	Radlo's 23:6		recollection 30:19 32:2 45:15 46:19 66:4,22 68:12 75:1 82:23 83:6,10 84:9 86:24 87:18,21,22 139:19,20,22
		raise 169:11		

142:17 149:20,22 150:16 152:4,7,21, 22 177:2 178:5 182:2,4,16,20 183:1,12 188:2 189:1,3 200:21,22 219:1 220:7 221:17 224:15 226:16	215:6,9 221:16,23	reiterate 171:8	repass 232:10,16	required 30:17 31:6,10 180:9,10 201:20
recommend 229:4	reflects 34:11	rejuvenation 152:11,17	repaved 163:6 201:13	requirement 31:17
record 7:6 29:21, 22 48:14,16,17 49:6 50:10 62:2 78:10,13 89:3,4 95:18,21 124:15 147:6,13 148:6 156:10 167:3 174:7 189:11 195:14 206:12 229:15	refrain 162:6 211:4	related 120:11 178:4	repavement 165:16	requirements 139:10,14
records 36:15 49:21 75:13 134:22 174:12,16	refresh 86:23 87:20 142:17 171:15 182:4,16, 19 219:1 226:16	relates 178:19	repaving 161:14 162:16 170:5,14	requires 161:21
recourse 63:12	refreshed 87:18	relation 22:16 35:18 132:5	repeat 148:19	requiring 55:16
red 80:17 81:1 88:19	refreshes 82:22 83:3,6,10 84:8	relationship 206:13 207:8	repeated 216:22	research 135:12
reducing 198:13	refuel 216:8	relative 53:1 77:15 129:13 162:10	rephrase 76:10 176:7	reserve 118:3 217:12
refer 63:20 72:15 80:2 142:15 178:23	refuelers 197:8 216:7	relayed 159:11	replaced 162:20	resolve 176:11 177:9 178:5,14 202:1
reference 75:18 196:4	refueling 204:4	releases 195:10	reply 189:4 229:13	respect 17:16,17 30:24 59:8,11 67:17,20 77:21 115:17 129:7 133:13 146:24 151:22 152:23 154:19 163:8 177:16 202:21 214:4 219:24
referenced 39:9 125:3 129:11 155:8	regarding 29:4 33:20 46:11,24 47:1,7,17,24 48:2, 20,21 49:3 56:22 57:18,23 59:24 60:5 61:12 64:4 66:18 67:1 68:9 76:13 77:10 79:6 84:14,18 90:7 91:8,9,14 99:1,24 100:10,15,19 101:2,8,13,21 103:13 115:6 134:24 135:7 136:2 142:19,20 143:3,8 147:20 148:10,12,13,22, 23 152:16 153:3 163:8 164:11 168:13,21,22 174:11 175:8 188:12 191:1 192:23 195:22 203:8 218:23 219:23 221:19 226:7 230:14 231:4	rely 118:7,12 179:15	report 19:12,17 22:12 25:5,7,16,23 26:7 30:3 73:23	respectfully 217:10
references 77:3 102:7	regular 44:23 74:8 98:5 169:5 216:22	relying 130:8 144:3 179:19	reported 29:8,24	respond 29:17 151:9 164:6 185:12
referring 13:5 72:9 78:13 86:22 87:10 111:9 123:10 139:12 158:12 161:7,9 196:8	regulate 67:10	remain 94:15	reports 19:14 26:10,14 211:10, 12	responded 231:10
refers 90:21 111:22 112:14 116:3 123:14,21	regulation 179:20	remaining 16:11, 16	represent 64:8	response 7:3 29:10,13 96:4 131:1,16 142:6 175:24 188:16 194:14 218:12,13
reflect 176:2	regulations 179:7,14,16	remember 12:16 30:21 65:19 76:18 77:24 115:24 116:11 132:6 142:24 165:3,7 183:6 185:3	representative 158:8 214:12,14	responsibility 24:10 25:1,14 40:24 204:19
		remembering 177:5	represented 94:1 207:24	responsible 27:18,21 39:9,14 54:6 107:21 211:19
		removal 154:24 166:18 205:13 207:19	representing 144:9	rest 213:2
		remove 68:6 158:7 166:1,4 205:17 207:3	represents 34:6	restate 17:12 20:21,22 115:14 116:14 230:12
		removed 166:8,21 225:3	request 29:17 63:17 151:23 152:4 171:15 174:12,16 181:13	
		rendering 136:2	requested 158:6 164:23	
		renotice 6:24	requests 163:24	
		rent 36:11,13,16, 18,20	require 162:1 198:13	
		repair 107:22		

restraining 213:9	11 165:8,14 195:3	scaled 113:5	sending 68:10	share 38:15
restriction 94:13, 15 165:11,13 177:15	201:18 202:17 203:9 204:9 215:23 217:8 219:24 222:23 224:13 231:24 232:10	Scared 57:13	sense 43:20 154:5 178:24 179:16,21, 22 180:1 200:6 208:14	173:21,22
restrictions 57:19,23 58:10,14 76:14 84:23 88:13		scheduled 182:23		Shaughnessy 180:22 181:9
result 30:7 52:23 127:13,21 128:17 160:9,13 162:16 188:23 193:3 195:16 196:21 197:10,13,21 216:13,18 221:21 222:1	ring 152:13	school 7:20 8:9 9:23 10:2	sentence 90:19 91:22 106:7,14,16 131:21 133:15 158:3,13 165:21 171:7 176:3,7	Sheehan 180:23 181:10
resumed 32:9 64:24 119:15 146:20 167:5 226:22	rise 58:6 59:9	scope 46:1 171:17	sentences 61:4	shielded 147:21
retained 171:22	role 168:3	screenshot 19:10 22:9,10 23:13	separates 39:10	shoes 129:13
return 233:4	Roman 123:21	search 132:11	September 86:19 89:9 90:1 92:5 95:17,23 97:19 98:15,20	short 72:16
review 31:4 65:15 120:20 123:6 211:13	room 92:18 93:4 183:13	searches 132:13	series 136:1 141:7	show 6:22 23:11 26:16 27:8 33:15, 19 55:2 79:19 82:18 94:6 112:20 113:9 114:3 120:20 122:2,5 149:13 175:15 207:21,23 213:16 226:24
reviewing 75:11 88:9 134:22	rough 34:8	second 26:24 48:15 115:21 131:5,21 165:20, 21 171:7,15 172:24 176:7 196:4 199:2 218:20 221:5	seriously 161:11 199:9	showed 23:3 55:4, 5 96:1 128:21 144:17 164:22 165:2 227:15 229:7
revisit 178:2	routinely 100:14 204:24 207:9	secretary 19:11 22:9 23:13 24:11 25:15 121:7	serve 11:23 225:19	showing 19:9 22:7 56:9 66:9 74:6 76:22 78:16 79:20 84:7 85:10 88:4 89:7 98:3 102:2 130:15 141:6 154:10 164:18 167:9 169:3 170:21 180:19 182:8 187:5 191:17 202:3 210:16 212:16 214:13 221:2
Rhode 7:23	rule 54:24	section 29:10,13 75:17	service 81:15 213:21,22	shown 86:16 107:2,3
Ridge 7:9	ruled 55:23	seeking 95:4 180:9	services 10:20 11:2 12:3 13:16 35:8 36:24 37:18 41:19 45:18,22 56:18 65:3,4 83:17 180:11 198:11,13	Sid 104:19
right-hand 27:24	rules 64:7 179:7, 14,15	selected 181:14	Services-lal 43:14	side 41:4 77:17 185:12 194:23 195:1,4,6 197:3 201:1
rights 63:11 91:16 92:4,7 94:17 95:6, 16 96:5,7,15 97:10 99:2,17 109:6 110:2,3 112:22 113:10 114:6 116:19 119:2 124:3 125:24 126:7,14,18 127:10,22 128:18, 24 129:7,17,19,20 130:5 133:24 134:4,13 135:1 136:16 137:8,9,15, 16,18,22 138:8,10 139:1 142:1 161:2, 3,7,12,17 162:15, 23 163:3,17 164:4,	run 21:15	selectmen 67:18, 24 68:4,5,18 69:17 181:15 183:17 187:8 188:5,9,12, 21 190:10,21 191:1,22 192:1,23 194:5,11,13	set 136:16 139:16 155:1 183:22 195:14 217:20	sight 177:15 178:15
	runway 171:18	self-cabinet 80:24	setback 33:21 88:15,20	sign 79:24
	Russ 71:10 183:7 211:2 228:16 230:3	self-fuel 80:3 83:8 84:10 88:22	settle 220:5 228:22 229:1,23	
	Ryan 170:23 175:17 180:22 181:9 183:7 185:3 186:10 199:14 200:10 221:9	self-fueler 82:19	settled 221:12 229:4,12	
	<hr/> S <hr/>	self-fueling 79:2, 7 80:15,21 81:8 82:1,24 83:20 84:15,19,22 85:4 86:1,6,11,18 87:4, 20,24 88:6,10,23	seven 9:8 10:16 36:4	
	safe 184:21 198:20 199:1	self-help 230:4,9	severely 60:22 61:6	
	sanctity 201:17	send 140:16 189:7	shape 203:18	
	satisfaction 77:12			
	satisfactorily 6:5			
	satisfactory 203:7			
	satisfied 198:18			
	save 120:12			

signed 32:19 99:8 144:5,17 146:16 212:20	snow 38:5,9 196:9,15,20 197:10,13 204:13, 20 205:13,17 206:9,17 207:8,18, 23 208:17,22 209:2,4,8,16,21 211:5,21 215:6,18 218:24 219:13,20 221:19 223:4,21 224:24 225:3,5,20	138:4 139:24 149:20 177:2 178:7 220:7 224:22	stated 158:8 178:13,14	Student 57:10
significance 133:9,10	significant 60:4 137:6	specifically 78:13 163:24 164:23 178:4,23 184:3,18 219:12 226:14 231:11	statement 203:17, 21 212:6,19 214:4 218:15	studied 30:19 118:1 131:15
signoff 113:4	Silva 167:23 207:22	speculate 91:3	states 13:4 105:16 114:22 171:7 172:19,23	study 171:22 172:24 173:7,19 175:10,13 190:8
Silva's 122:9	snowbank 196:5, 16	spend 207:20	stating 141:21	stuff 57:13 108:11
similar 89:23 99:10 188:3	snowfall 221:9	spent 60:3,7 147:13	status 172:5 179:23	sub-sub-landlord 36:23 37:6
simple 116:15	snowplowing 216:4 222:13 224:2	split 229:13	statute 179:19 198:24	subdisciplines 120:4
Simply 97:2	Socata 11:4	spoke 120:18	statutory 179:4 184:13,18	subject 52:24 53:1 59:18 112:22 113:10 114:5 115:7,18 200:19
single 62:17 184:15,19 198:6, 21,23 200:12	softening 176:10, 24 177:8 178:14	sponsor 198:16	stenographer 119:10 229:15	sublease 108:20 126:1,7
single-member 24:2	sole 62:24 63:3,7, 10,12	stamp 27:24	stills 215:8	subleased 34:21, 23 35:3,11,14
sir 141:1	solely 37:13	stamped 215:10	stipulations 6:15	sublessee 31:21 34:19 103:12,13 104:4
sit 24:8 30:21 31:19 95:19 96:9 97:13 98:19 139:18,23 152:3 216:17 217:21	solved 188:1	stand 78:11 116:10 192:7 213:5,12	stop 21:6 83:19 84:10,15,18 139:3 233:1	sublessor 31:21 140:8
site 50:19,24 52:9, 15,19 53:4,6 55:19 209:12	sought 54:18 154:18 195:14	stand-ins 228:7	stopped 86:18 87:19	submit 29:10,13
siting 78:17 204:11	sound 84:4	standards 88:24	storage 131:11 136:16,19 138:21 224:12,14	submittal 73:7
situation 77:14 155:17,23 157:17 159:1 208:2 209:21 210:3	south 81:5	standpoint 226:1, 2	story 194:24 195:1,4,6	submitted 71:10 73:13 92:16 164:16 202:2
six 29:15	southeast 112:17	start 11:10 12:2 58:2 145:13 222:8, 9	straight 36:19 195:14	subparagraph 123:21
six-plus-feet-high 211:20	space 35:7,23 36:9 131:11 136:6, 16,19 137:6 138:5, 15 139:9 148:13 197:4 198:14 205:23 224:12	started 8:23 10:11 11:17 12:11 58:19 59:3 75:4 143:24 146:9	strategy 66:18 68:10,17	subsequent 71:15
size 171:17	span 182:3	starting 10:9	strenuous 190:5	substance 17:17 56:22 70:21 99:12 191:2 219:7
slightly 88:18 190:5 200:16	speak 53:19 183:19 185:5,7 188:11	state 7:5 22:9 24:12 91:8 92:24 103:9 104:12 141:18 147:5 181:12 189:16 215:9	strike 12:9 22:22 24:9 53:11 83:13 90:11 99:5 137:12 142:20 189:2	substantially 89:23 188:3
small 176:17 207:5	speaking 30:4 34:4 169:16	State's 19:11 23:13	strip 40:5 103:14 105:11,20 106:15, 17,22 107:15	succeed 176:16
	speaks 110:10 154:16 158:24		structure 92:18	success 176:17
	specific 7:24 38:4 51:13 52:4,7 75:1 112:1 117:19		structures 158:2	sudden 144:15
				sued 140:17
				suffer 160:8

197:12	118:9 119:3	18,20 81:1 82:8	200:9 209:24	78:10,20,24 83:2
suffered 160:12	121:17,20,23	88:14 204:4	Texas 13:3	92:5,13 94:1,15
216:18	124:4,22 127:5,11,	tape 158:19	theme 201:5,9	98:23 99:3,11,14
suffice 134:12	23 128:16,23	taxi 57:5 159:23	theory 163:18	100:6 103:2,3
217:13	129:8,17 130:4	taxiway 38:14	164:13	104:3,17,21 106:1
suggestion 175:9	131:7,10,23 134:1,	57:5 105:9,18	thereunder	111:3 120:12
184:11	13,16,17 135:2	108:15,17 109:1	128:24	126:4 134:23
sum 197:18	137:8,15,19,22	110:16,23 111:4,9	thick 18:10	136:5 140:23
216:16	138:10,11 231:24	114:23 115:23	thing 32:4 118:19	145:21 147:9,14
summarily	232:3	130:5 137:9	225:4,8,13 227:4	148:5,15 149:2
177:17	Swift's 124:19	taxiways 224:17	things 47:24	150:5,19 152:24
summarizes	125:24 126:7,18	tearing 140:7	96:19 145:23	156:5 162:1
221:21	127:10 129:23	160:19	166:11 177:19	165:17 166:5
summary 22:11	Swifts 103:6	technically 19:2	192:19 207:3	170:4 174:1 175:6
23:15 26:21	sworn 6:7	30:4 144:7	thinking 116:10	177:5 182:3 183:8
224:22 229:14	syllables 72:17	telephone 90:10,	191:24 192:3	185:24 187:23,24
summer 76:11	system 196:6,23	12	third 25:10 105:8,	192:19 196:13
79:9	201:20 202:24	telling 18:12 190:9	173:14 175:9	199:4 200:3,7
superior 220:6	203:12 204:12	temporary 201:14	202:2	201:11,14,16
221:13 228:22	<hr/>	213:9	third-party	204:10 205:16
229:2,4,12	T	tenant 63:11	171:21 173:7	206:8 207:20
supervised	tab 214:22	69:21 136:20	177:24 184:8	212:1 215:10
206:22	table 213:19	224:16,19	190:8 197:20	219:9 233:5
supplement	214:20,21 217:21	tenants 37:1,7,18,	205:14,20 207:2,8,	timeline 96:21
191:6	takes 176:15	24 60:14 138:6	14,16	times 6:12 156:4
supply 216:7	taking 93:19 97:8	term 13:6 50:6	Thomas 90:17	202:23
support 155:11	128:5	108:20 230:9	thought 25:20	title 13:17 36:7
171:10 211:18	talk 21:5 32:5	terminate 137:15	26:6 32:5 41:15	37:14 104:16
supporting	33:14 34:17 100:8	140:18 141:2	87:23 97:6 106:2	132:10,11,13
134:11	108:13 143:7	terminated 47:3	178:15 190:17	135:10,11
supports 213:3	talked 65:18 96:8,	terms 36:6 51:14	threat 61:13,20	today 7:3 30:21
survey 223:5,6	17 97:11 99:7	52:5 71:20 107:12,	62:12	31:19 33:15 95:19
225:2,15	142:21 200:9	19 113:2 126:8	three 7:9 72:17	96:9 97:13 98:19
surveyed 222:21,	talking 15:23	138:17 206:13	135:23 186:3,5	139:19,23 152:3
24	21:14,15,16 58:24	testified 6:7 15:18	192:20 209:15	171:14 216:17
suspect 199:12	61:24 70:21,22	59:2 65:2 120:2	three-quarters	TOFA 57:2,4,6,19,
suspending	79:1,9 95:3,17	144:12 145:4	141:10	23 58:9,14 67:1,
233:3	99:4 103:4 106:9	147:20 204:17	time 9:10 11:19	11,22 76:14 77:10,
sustain 62:21	118:19 121:15	testify 15:22 99:9	12:5,13 28:8,13	15,20 78:18 84:23
64:5,15 173:2	145:22 156:15	126:22,23	39:13,23 41:10,17	85:5 88:1,10
Swift 102:17,21	190:19 192:8	testifying 145:8	46:10,15 57:22	TOFA/OFA 33:21
103:1,7 105:17	231:11	testimony 18:11	59:20 60:4,7	TOFAS 57:15
108:14,22 114:23	talks 60:20 90:3	78:22 88:8,21 99:9	61:18,22,23 62:3,	tofu 57:4
116:3,6,23 117:17	105:8 177:22	119:4 144:21	10,17 63:21 65:5	told 97:6 195:5,6
	182:12	146:13 180:12	68:24 69:12,13,14	220:11
	tank 80:8,10,12,		76:9,11 77:7,16	Tony 66:12
				top 27:24 227:5
				topic 68:22 219:14

topics 200:14 219:10	15,17,21 120:6 131:8 134:14 179:17	underlined 133:7, 14 134:8	unsigned 187:17 180:1 184:4
tore 162:19,20 163:5	trusted 68:3 155:20	undermine 60:22 61:7	unsuccessful 232:6
torn 202:6	trustee 35:1 104:17	underneath 140:11	users 142:2
towed 159:23	turn 35:8	understand 13:7 16:23 18:3,11 19:1 47:4,14,15 54:8,9, 11 68:8 81:10 86:12 87:1 103:10 110:12 121:15,18 126:16 133:3 134:9 158:21 161:24 162:2 216:1	usual 6:15
Tower 10:24	turning 106:5	understanding 33:9 34:18 35:21 36:3 65:12 72:7,22 73:6,7,17,21 81:21 91:24 106:6,13 107:10 110:21 117:17 133:13 157:3 181:6 185:23 202:22 205:21 210:2 229:20	utilization 87:24 88:9
town 34:21 35:5 66:12,20,23,24 67:9,10,15,16,18, 23 68:2,10,11,17 69:9,16 101:13,20 181:14 183:8,13, 14 185:12 230:3, 14	twice 122:6	Understood 129:16 138:7 174:9	utilize 83:8 92:14 108:19 136:12 137:16 203:18
transaction 12:22 33:10	two 17:1 35:11 62:21 102:7,8 108:1,2 145:23 171:10,11,19 175:11 176:8 177:23 184:3 186:19 197:6 198:4,5 213:18 217:24 224:4 228:6	undertake 58:2 64:12 93:4 94:21	utilized 55:20 81:8 82:24 87:3
transfer 30:6,7,12 31:10,16,23 32:3, 12,15,20 33:3 40:8	two-minute 64:20	undertaken 77:4 175:13	utilizes 207:9
transmits 72:5 73:2	two-page 141:20	unfair 95:24 97:15	utilizing 79:1 83:20 87:7,9 88:22 113:7 136:23 138:24 203:6
transmitted 51:10,14 56:23 65:13 181:8	typographical 131:19	unit 17:24 81:12 231:21	<hr/> V <hr/>
transmitting 66:19	<hr/> U <hr/>	units 16:7 18:13 35:12 36:4 138:6	valuable 217:3
transpire 47:11	UConn 9:23	University 7:21 8:10,11	variety 190:10
transplant 83:16	ultimately 183:3 220:8	unreasonably 141:24 142:1 198:9	vehicles 204:4 211:5
transport 204:3	Um-hum 151:3	unresponded 225:12	vendor 31:21 207:2,9,14,16
transports 197:7	unable 135:14 160:1	unsatisfactory 203:21	vendors 205:15, 20
treated 192:24 193:6	unaffected 31:15, 22		vent 88:15
treatment 193:10, 19	unaltered 31:16		vents 88:18
trending 177:12	unanswered 225:12		venture 11:22,24 43:13
trespass 221:8	unauthorized 214:15 215:1,6		verbal 30:3
trucks 197:2,7 207:4 216:6	unclear 106:3 145:12		verbally 134:7
true 120:3	uncovered 200:20		verified 122:15 125:9 126:10 154:22 206:4 212:6,19 214:5
trust 34:23 35:11, 19 36:11,14,15,20, 24 37:6,9,10,12 40:9 102:21 104:5,			versus 44:12 145:24
			viability 176:12 177:22 179:10
			viable 179:22
			<hr/> W <hr/>
			viably 171:24 173:3
			vice 13:18 19:21, 22 144:1 147:9
			vicinity 80:14,16, 18 81:4 196:20
			Vick 90:4,13,17
			video 210:9,10 211:12,16 215:8 229:18
			view 115:5
			vigorously 217:14 218:1
			violate 71:4 88:10 139:14
			violated 84:23 85:4 94:18 139:10 186:6 201:18
			violating 88:23
			violation 88:1 184:20 186:3 198:6
			virtue 18:4 23:2 55:12 137:7 138:9 160:1 161:13 163:3 164:5
			voicemail 230:21, 24
			void 128:16
			voided 129:3,20 137:8
			voiding 127:13
			volunteers 177:3
			vote 68:3
			VP 41:6
			<hr/> W <hr/>
			W-2 11:18
			W-E-I-R 7:7
			wait 25:19 48:5 143:19,21 162:3

waived 146:23 147:23	withdraw 203:7	187:13 192:21 194:16 196:1,13 227:19
waiver 148:7	wondering 180:13 188:21 190:22 191:23 200:15,17	
wall 208:17		<hr/> Y <hr/>
wanted 10:3,11 63:2 174:10,14 184:21 194:17,20 217:19 225:1	word 81:16 109:12 111:8	Yanai 136:15 139:6
wanting 52:3 59:22	words 7:9 104:12 115:5,16 167:24 177:7 202:5 221:23 224:23	Yanai's 141:3
warning 232:20	work 8:20 10:7,12, 14,20 11:6 12:17 32:2 42:5,11 60:1 118:4 128:7 217:12,20 220:14 229:5	year 8:21 10:17 27:13 33:1 42:19 43:15 52:13 141:15 153:15
Warren 20:7		years 9:8 10:16 44:13 81:13 161:22 192:20 206:13
watch 166:11 229:19	work-product 162:9	York 14:8 15:11
ways 197:6		
website 19:11 228:13	worked 8:13 10:6 11:7,14 45:9 59:16,23	
Wednesday 218:20	working 11:9,11, 17 12:11 57:14 58:19,22 59:5	
Wednesday's 94:9,11	works 16:24 73:6	
week 90:16 182:1	worry 122:3	
weeks 191:5,13 209:15	wouldn't 50:21 146:16,17 199:5 225:3,22	
Weir 7:7	write 56:15 63:13 113:8 114:3 154:15 171:5 175:22 187:12 195:23	
west 202:4	writing 22:2 30:2 49:16 64:1,11 73:15 112:20 171:8 181:13 211:14	
westerly 103:18 109:10 114:24 115:2 132:22 133:4	written 49:9 71:9, 13 73:18 192:20 229:14	
western 108:15	wrong 56:2 104:9	
whatsoever 29:3 42:14,24 87:21 133:24 140:10 163:7	wrote 97:14 157:22 168:11 171:6 175:23	
whichever 108:20		
wide 105:11,20 107:15		
wing 88:14,18		
winter 206:15		
wishes 108:14 114:23		