

1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 COUNTY DEPARTMENT - LAW DIVISION

3
4 PAUL R. DULBERG, Individually,)

5 and THE PAUL R. DULBERG)

6 REVOCABLE TRUST,)

7 Plaintiffs,)

8 vs.) No. 2022 L 010905

9 KELLY N. BAUDIN, et al.,)

10 Defendants.)

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14 VIDEOCONFERENCE COURT HEARING

15
16 MAY 25TH, 2023

17 COMMENCING AT 10:30 A.M.

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19 BEFORE: HONORABLE MICHAEL F. OTTO

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24 REPORTED BY: Linda S. Idrizi, CSR NO. 84-3704.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ALPHONSE TALARICO LAW OFFICES,</p> <p>4 (707 Skokie Boulevard, Suite 600,</p> <p>5 Northbrook, Illinois 60062), by:</p> <p>6 MR. ALPHONSE A. TALARICO,</p> <p>7 contact@lawofficeofalphonsetalarico.com,</p> <p>8 appeared on behalf of the Plaintiff;</p> <p>9</p> <p>10 LEWIS BRISBOIS BISGAARD & SMITH, LLP,</p> <p>11 (550 West Adams Street, Suite 300,</p> <p>12 Chicago, Illinois 60661), by:</p> <p>13 MR. JASON W. JOCHUM,</p> <p>14 jason.jochum@lewisbrisbois.com,</p> <p>15 appeared on behalf of Defendants;</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COURT: Good morning, everybody. This is</p> <p>2 Dulberg versus Baudin, 2022 L 10905. I'm Judge</p> <p>3 Michael Otto. We are up today for a hearing on a</p> <p>4 couple of different fully briefed motions to</p> <p>5 dismiss.</p> <p>6 And then I believe I also need to set</p> <p>7 a briefing schedule on other motions that have been</p> <p>8 filed, but we will do all of that -- we will go</p> <p>9 through all of that after everybody introduces</p> <p>10 themselves for the record, please, starting with</p> <p>11 Plaintiff's counsel.</p> <p>12 MR. TALARICO: Good morning, your Honor.</p> <p>13 Good morning, Counsel. My name is Alphonse</p> <p>14 Talarico. I represent the Plaintiff, Paul Dulberg.</p> <p>15 THE COURT: And also the Dulberg Revocable</p> <p>16 Trust; correct?</p> <p>17 MR. TALARICO: Correct, yes.</p> <p>18 THE COURT: Okay. Who is here for any of the</p> <p>19 movants on the fully briefed motions?</p> <p>20 MR. CHAPMAN: Good morning, your Honor.</p> <p>21 Robert Chapman on behalf of ADR Systems.</p> <p>22 MR. JOCHUM: And good morning, your Honor.</p> <p>23 Jason Jochum, J-O-C-H-U-M, on behalf of the</p> <p>24 Defendants Joseph Olsen, Raphael Yalden and Craig</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 CHAPMAN SPINGOLA, LLP,</p> <p>4 (190 South LaSalle Street, Suite 3850,</p> <p>5 Chicago, Illinois 60603), by:</p> <p>6 MR. ROBERT CHAPMAN,</p> <p>7 rchapman@chapmanspingola.com,</p> <p>8 appeared on behalf of the Defendants;</p> <p>9</p> <p>10 AMUNDSEN DAVIS,</p> <p>11 (150 North Michigan Avenue, Suite 3300,</p> <p>12 Chicago, Illinois 60601), by:</p> <p>13 MS. MICHELLE E. Tinajero,</p> <p>14 mtinajero@smithamundsen.com,</p> <p>15 appeared on behalf of the Defendants.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 Willette. And I am going to refer to them</p> <p>2 collectively as the Olsen Defendants, which we</p> <p>3 referred to them in our motions.</p> <p>4 THE COURT: Good morning to everyone so far.</p> <p>5 And Miss Tinajero.</p> <p>6 MS. TINAJERO: Good morning, Judge. Michelle</p> <p>7 Tinajero on behalf of Allstate.</p> <p>8 THE COURT: Okay. And no one here for the</p> <p>9 Baudin Defendants at this time?</p> <p>10 MR. TALARICO: Doesn't appear that way.</p> <p>11 THE COURT: All right. We will cross that</p> <p>12 bridge when we come to it. Why don't we go ahead</p> <p>13 with the motions to dismiss that are up today for</p> <p>14 hearing. Unless the parties have agreed otherwise,</p> <p>15 I am fine with starting with ADR and going in</p> <p>16 alphabetical order.</p> <p>17 I will say at the outset that as to</p> <p>18 both ADR's motion to dismiss and we are going to</p> <p>19 call it the Olsen Defendants, the Olsen Defendants'</p> <p>20 motion to dismiss, I have read all of the briefs,</p> <p>21 motion in response, reply, reviewed the exhibits</p> <p>22 that the parties have cited and considered the</p> <p>23 authority on which the parties have relied.</p> <p>24 So nobody should feel that they need</p>

<p style="text-align: right;">Page 6</p> <p>1 to read their brief to me, but if anybody has 2 anything they want to highlight, especially since 3 we do have a court reporter here, I would, of 4 course, give both sides a chance to be heard. 5 So, Mr. Chapman, you will have the 6 first and last word on your motion. Please go 7 ahead when you are ready. 8 MR. CHAPMAN: Thank you, your Honor. I will 9 be very brief in light of the fact that you have 10 reviewed everything. 11 From our perspective, your Honor, our 12 motion is very straightforward. I am going to 13 assume you know who ADR Systems is and that we are 14 in the mediation and arbitration business. 15 There was a bankruptcy by Mr. Dulberg. 16 The trustee assumed control of his personal injury 17 claim. There was a motion presented in the 18 bankruptcy court that approved a binding mediation 19 at ADR Systems. 20 As Mr. Talarico states in Exhibit 10 21 to his complaint is a binding mediation agreement 22 with ADR Systems, following which is executed by 23 the Baudin attorneys. 24 It is unclear to me if Mr. Talarico is</p>	<p style="text-align: right;">Page 8</p> <p>1 support any type of claim that ADR breached the 2 agreement. It's that straightforward. There are 3 no allegations of breach in the agreement. 4 THE COURT: Thank you, Mr. Chapman. 5 Mr. Talarico. 6 MR. TALARICO: A quick response, Judge. 7 There were two agreements, two different exhibits 8 attached to the complaint. 9 The breach that we are alleging is 10 that ADR as a third-party to the contract breached 11 their own terms. 12 The terms of which we are talking 13 about specifically -- I don't have them in front of 14 me, but what they require is that if a contract 15 which has been made and -- made and it's gotten 16 changed, it has to be -- the changes have to be 17 approved by the parties and ADR. 18 There was a change. The terms of the 19 contract are different. And there is no evidence 20 of approval by ADR. 21 THE COURT: Mr. Talarico, the first contract 22 was not executed. 23 MR. TALARICO: Correct. 24 THE COURT: So if I am understanding</p>
<p style="text-align: right;">Page 7</p> <p>1 disputing that Mr. Dulberg's signature is on the 2 document, but that's neither here nor there as the 3 bankruptcy court approved the mediation with a 4 high-low agreement. 5 The mediation occurred. Judge 6 Etchingham retired, oversaw the binding mediation. 7 He entered an award of \$560,000 in Mr. Dulberg's 8 favor. 9 There was a high-low agreement. The 10 bankruptcy court record, which the court can take 11 judicial notice of, the payment was made by 12 Allstate, I believe. The proceeds from the 13 mediation were then distributed, including \$117,000 14 to Mr. Dulberg. 15 In sum, we are in the mediation 16 business. There was a mediation agreement. Judge 17 Etchingham ruled consistent with the mediation 18 agreement and the parties performed in accordance 19 with that mediation agreement, which the bankruptcy 20 court had directed the trustee to enter into as he 21 saw necessary. 22 Under those circumstances, you Honor, 23 I don't think there is any allegation in the 24 complaint, as we state in our pleadings, that would</p>	<p style="text-align: right;">Page 9</p> <p>1 correctly, your theory is that ADR is bound by the 2 terms of the unexecuted contract and they breached 3 the unexecuted contract by ultimately performing 4 under the contract that the parties did execute. 5 MR. TALARICO: That's not exactly what I'm 6 trying to say. I will try again, Judge, and 7 forgive me if I am not being clear. 8 The unsigned one that was presented to 9 the bankruptcy judge has a term in it. And the 10 term -- one of the terms, which makes it very 11 interesting, it says that payments have to be made 12 on a scheduled basis. And one of the dates that's 13 included is November 21st, 2016. I think I 14 addressed that. 15 Now, the contract, we don't know yet 16 whether there was a signed contract at that point, 17 but the terms of the one that was presented to the 18 bankruptcy court, okay, required, again, by 19 November 21st, payments of somewhere around 2, 20 \$3,000 be made in advance. 21 I also believe that means under 22 discovery there was a signed contract prior to the 23 one that they -- that was presented on December 24 8th.</p>

<p style="text-align: right;">Page 10</p> <p>1 A contract was presented on December</p> <p>2 8th, the day of the hearing, but that also had the</p> <p>3 term you must pay -- I don't remember, 2 to \$3,000</p> <p>4 by November 21st.</p> <p>5 Judge, how could there not have been a</p> <p>6 first contract if the December 8th one that they</p> <p>7 filed has a term requiring a payment of November</p> <p>8 21st?</p> <p>9 THE COURT: So, again, I'm not sure that that</p> <p>10 addresses the concern that I suspect was evident</p> <p>11 from my question.</p> <p>12 You are seeking to hold them to an</p> <p>13 unsigned contract. Right now you are saying maybe</p> <p>14 there was a different signed contract and we just</p> <p>15 don't know, but you pled nothing about that.</p> <p>16 MR. TALARICO: What I am trying to say was</p> <p>17 the contract that was presented to the bankruptcy</p> <p>18 judge was a contract that was on ADR's stationary.</p> <p>19 It had terms. It had money that ADR was entitled</p> <p>20 to. It had fees on it. All of those things got</p> <p>21 changed on the second contract.</p> <p>22 THE COURT: I understand, but the first</p> <p>23 contract was never signed.</p> <p>24 MR. TALARICO: We don't know that, Judge. We</p>	<p style="text-align: right;">Page 12</p> <p>1 THE COURT: Okay. Anything else?</p> <p>2 MR. TALARICO: Yes. The one that was signed</p> <p>3 also had that same clause requiring payment by</p> <p>4 November 21st of that year where that contract,</p> <p>5 which is now a signed contract, took place on</p> <p>6 December 8th. I don't know how that can happen.</p> <p>7 And, Judge, just one last sentence,</p> <p>8 that's all, and then I will end it. The terms --</p> <p>9 it's not just the fact that it says November 21st,</p> <p>10 but that any changes to contracts have to be</p> <p>11 approved by ADR.</p> <p>12 And the December 8th contract was not</p> <p>13 approved by ADR. It was signed and there was a</p> <p>14 hearing. It doesn't -- I don't understand how it</p> <p>15 could possibly be both.</p> <p>16 THE COURT: How it could be both, what?</p> <p>17 MR. TALARICO: The only contract requiring a</p> <p>18 payment of dollars weeks or months in advance of</p> <p>19 the contract being signed.</p> <p>20 THE COURT: Okay. Thank you.</p> <p>21 Mr. Chapman, you have the last word,</p> <p>22 if you wish.</p> <p>23 MR. CHAPMAN: Your Honor, unless you have any</p> <p>24 questions, we will just rely on our briefs.</p>
<p style="text-align: right;">Page 11</p> <p>1 know that that was the contract that was submitted.</p> <p>2 THE COURT: Sure. So let me say it a</p> <p>3 different way. The only contract that you have</p> <p>4 presented as an exhibit to support your theory that</p> <p>5 there was a breach is an unsigned version?</p> <p>6 MR. TALARICO: We presented the December 8th</p> <p>7 contract, also, Judge, that was signed. And that</p> <p>8 had --</p> <p>9 THE COURT: Mr. Talarico, if you want to</p> <p>10 quibble --</p> <p>11 MR. TALARICO: No, I don't. Not at all.</p> <p>12 THE COURT: You understand the point that I</p> <p>13 am making, do you not?</p> <p>14 MR. TALARICO: I'm not sure, Judge.</p> <p>15 THE COURT: Wait a minute, Mr. Talarico. I</p> <p>16 will try to make it even more plain. You say that</p> <p>17 the contract that was presented to the bankruptcy</p> <p>18 court differed from the contract that was</p> <p>19 ultimately performed; correct?</p> <p>20 MR. TALARICO: Correct.</p> <p>21 THE COURT: But the bankruptcy court version</p> <p>22 of the contract, the version that was presented to</p> <p>23 the bankruptcy court, was unsigned; correct.</p> <p>24 MR. TALARICO: Correct.</p>	<p style="text-align: right;">Page 13</p> <p>1 THE COURT: That's fine. Thank you,</p> <p>2 Mr. Chapman.</p> <p>3 The motion is granted. I do not see</p> <p>4 any sufficient allegations of breach of any term of</p> <p>5 the contract against ADR in the complaint as pled.</p> <p>6 The notion that they are bound by a</p> <p>7 contract which was unsigned is untenable. And the</p> <p>8 complete speculation that there was a previous</p> <p>9 signed version of the contract is just that. Not</p> <p>10 only is it speculation, but it doesn't even appear</p> <p>11 in the complaint. The motion is granted.</p> <p>12 MR. CHAPMAN: Your Honor, thank you very</p> <p>13 much. I think I have stated both in my initial</p> <p>14 brief and my reply brief that we would like the</p> <p>15 dismissal to be with prejudice.</p> <p>16 I can't imagine any allegations that</p> <p>17 would allow this -- a claim to go forward. And we</p> <p>18 would like it to be with prejudice, to have the</p> <p>19 requisite Rule 304(A) language since there are</p> <p>20 other claims still pending.</p> <p>21 THE COURT: I am skeptical, as well, but I</p> <p>22 think it's fair to give the Plaintiffs an</p> <p>23 opportunity to replead, if they have grounds for</p> <p>24 asserting some of the theories or some of the facts</p>

<p style="text-align: right;">Page 14</p> <p>1 that were alluded to today, I will give leave to 2 replead it. At this time I am not going to dismiss 3 it with prejudice. I will give 21 days to replead. 4 MR. CHAPMAN: Thank you, your Honor. 5 THE COURT: All right. Thank you. 6 Let's move to the Olsen Defendants' 7 motion to dismiss. Let's see, Mr. Jochum, again, I 8 have read motions, response and reply, but I do 9 want to give both sides a chance to be heard. You 10 will have the first and last word. Please go ahead 11 when you are ready. 12 MR. JOCHUM: Thank you, your Honor. Similar 13 to Mr. Chapman, I will just have a few, brief 14 arguments, and then if your Honor has any 15 questions, I am glad to address them. 16 Plainly put, the Olsen Defendants were 17 appointed as a bankruptcy trustee of Mr. Dulberg's 18 bankruptcy in August of 2016. 19 There was an approval of the mediation 20 agreement October 31st, 2016, by the bankruptcy 21 court that Mr. Olsen presented. And the mediation 22 occurred on December 8th, 2016 with the award 23 entered on December 12th, 2016. 24 As we noted in our motion to dismiss,</p>	<p style="text-align: right;">Page 16</p> <p>1 Mr. Dulberg was disabled, he could not even bring 2 the present suit because he is legally disabled. 3 Mr. Dulberg also cites to Carlson, 4 that is not applicable to this case. There is no 5 question of fact that Mr. Dulberg's injury occurred 6 in 2016, that he knew it, and he failed to file 7 suit within two years. 8 Briefly on the statute of repose, the 9 only act or omission alleged by -- against the 10 Olsen Defendants occurred on October 31st, 2016, 11 and the complaint filed more than six years later 12 is not timely. 13 So unless your Honor has any 14 questions, we will stand on our briefs and the 15 arguments therein. 16 THE COURT: Do you want to address the Barton 17 Doctrine at all or just rest on the briefs for it? 18 MR. JOCHUM: Your Honor, I could bring it up, 19 but I think the statute of limitations and the 20 statute of repose arguments are fairly dispositive. 21 Barton, there is no -- we have done 22 extensive research on it. There actually is no 23 Illinois case we have found deciding whether the 24 Barton Doctrine applies or how an Illinois court</p>
<p style="text-align: right;">Page 15</p> <p>1 this claim is barred by the statute of limitations 2 and the statute of repose. There is no question of 3 fact that Mr. Dulberg knew of his injury and that 4 it was allegedly wrongfully caused when the award 5 was entered on December 12th of 2016. 6 In fact, he emailed the Baudin 7 Defendants' attorneys as noted in Paragraph 57 of 8 his complaint. "You guys did good. I just feel 9 like I gave these people \$261,000." I am 10 paraphrasing, but that's essentially what he 11 stated. 12 He knew of his injury. He knew he was 13 coerced into participating into this mediation. 14 His claim arose then. He didn't file suit within 15 two years. 16 I just want to briefly address two 17 points raised in the response brief. Mr. Dulberg 18 argues that disability should toll the statute of 19 limitations and the statute of repose. 20 That is just -- being deemed disabled 21 by the Social Security Administration is not 22 legally disabled as noted by a significant amount 23 of Illinois case law. 24 And I would just point out that if</p>	<p style="text-align: right;">Page 17</p> <p>1 has applied it; however, the 3rd, 4th and 7th 2 Circuits have held that the debtor must have 3 permission for the bankruptcy court to bring suit 4 against a trustee. 5 I know Mr. Talarico has cited to an 6 11th Circuit case that holds otherwise. We would 7 state that the Court should follow the holdings of 8 the 3rd, 4th and 7th Circuit which are more 9 dispositive on the issue, especially the 7th 10 Circuit as that is based here in Chicago. 11 THE COURT: Fair enough. Thank you, 12 Mr. Jochum. 13 Mr. Talarico? 14 MR. TALARICO: Thank you, Judge. As to the 15 Barton Doctrine, the purpose of the Barton Doctrine 16 as we have cited is to recognize the superiority of 17 the bankruptcy court in other related matters, but 18 once the bankruptcy court has finished its 19 business, it no longer has jurisdiction. 20 The Barton Doctrine cannot -- a person 21 cannot go ask a court that is not in existence for 22 permission. That's as simple as I can make it. 23 The jurisdiction is no longer there. 24 So the request to the bankruptcy court, which no</p>

<p style="text-align: right;">Page 18</p> <p>1 longer has jurisdiction, is a nonentity, something 2 that can't be done or shouldn't be done. 3 THE COURT: Bankruptcy cases are re-opened 4 all the time. 5 MR. TALARICO: But this one -- they may be, 6 Judge, but this one was not re-opened. Are you 7 saying -- well, whatever. Okay. Yes, sir. 8 THE COURT: Okay. Did you have anything else 9 you wanted to add, Mr. Talarico? 10 MR. TALARICO: Oh, the statute of limitations 11 argument. The statute of limitations when linked 12 with fraud by deception, including attorneys who 13 are doing fraud by deception, there is a five-year 14 statute from discovery. 15 The discovery was made on October 16 22nd, 2022 when ADR submitted to me by my request a 17 contract different than what was presented to the 18 bankruptcy court. The allegations are fraud and 19 fraud by deception. 20 THE COURT: The allegations against Olsen, 21 Willette and Yalden have what to do with the 22 purported contract switch -- 23 MR. TALARICO: That has to do with the 24 fact -- what I am arguing about with Olsen is that</p>	<p style="text-align: right;">Page 20</p> <p>1 estate, he had -- and they said they are relying on 2 what he wants to make a decision. 3 They say he wants to go to ADR. He 4 wants -- they are abandoning to a certain degree 5 the control of that case. And that's based on a 6 lie that was presented to the judge that this was 7 the individual, Dulberg's, desire. So I think 8 that's fraud. 9 THE COURT: First, it's not fraud against 10 Mr. Dulberg. At most, if true, it would be fraud 11 on the bankruptcy court. 12 Leaving that aside, all of that 13 occurred in October of 2016. So even if I agreed 14 with you that in theory that this complaint sounds 15 in fraud, you still blew the five-year statute of 16 limitations because 2016 is more than five years 17 before you filed the suit. 18 MR. TALARICO: Not five years from when he 19 knew about it, knew about the fraud. 20 THE COURT: He knew about everything that you 21 just said when it happened because it happened in 22 open court. 23 The production of a different ADR 24 contract didn't suddenly reveal to him everything</p>
<p style="text-align: right;">Page 19</p> <p>1 they claim that they had nothing -- the individual 2 Defendants, Yalden and Willette, had nothing to do 3 with the case, the bankruptcy case, yet the trustee 4 applied and asked for and was paid money for their 5 services. I don't see how they can be paid for 6 something they didn't do. 7 THE COURT: My question must have been 8 unclear. What of your allegations of wrongdoing 9 against Olsen, Willette and/or Yalden have anything 10 to do with the purportedly improper change in terms 11 of the ADR contract? 12 MR. TALARICO: The fact that they, Olsen 13 related to the bankruptcy judge that Mr. Dulberg 14 did not want to go forward with the case, the 15 trial, to a jury trial, and that he was -- he 16 acknowledged himself to be a poor witness such that 17 ADR was his choice to go forward. 18 The trustee also in the hearing when 19 he brought this motion said he didn't want to 20 micromanage. And the last fact is this was a 21 positive bankruptcy, a rarity, where, yes, the 22 estate -- the trustee had control of the estate and 23 the estate's action, but by relinquishing it and by 24 the fact that Dulberg also was a taker from that</p>	<p style="text-align: right;">Page 21</p> <p>1 that you just said was the wrongdoing that you are 2 claiming the Olsen Defendants committed. 3 That's why I tried to ask you very 4 specifically and clearly and more than once what, 5 if anything, does the changed -- purportedly 6 changed, purportedly improperly changed ADR 7 contract have to do with anything that any of these 8 Defendants are alleged to have done. 9 You didn't answer that, but you told 10 me everything that you claim they did wrong and all 11 of that happened in 2016. 12 And I don't see what possible 13 relevance the purported 2022 production of the 14 changed terms, quote/unquote, ADR contract had to 15 do with any of it. 16 MR. TALARICO: Your Honor, I have nothing 17 further to say. 18 THE COURT: Okay. Thank you, Mr. Talarico. 19 MR. TALARICO: You're welcome. 20 THE COURT: Mr. Jochum, you have the last 21 word, if you wish. 22 MR. JOCHUM: I would just like to point out 23 Adverston versus Riseburrow, all claims against an 24 attorney are subject to 735 ILCS 5/13-214.3.</p>

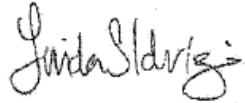
<p style="text-align: right;">Page 22</p> <p>1 Mr. Talarico's assertion of fraud and 2 how the statute of limitations applies is 3 incorrect. And I have nothing further, your Honor. 4 THE COURT: All right. Thank you both. 5 This motion is granted with prejudice. 6 First, I agree with Mr. Jochum that the relevant 7 statute of limitations is that for attorney's 8 conduct, the two year statute of limitations, six 9 year statute of repose. 10 By those measures, by both of those 11 measures, the complaint is untimely as to these 12 Defendants and is subject to dismissal. 13 The Plaintiffs have argued fraudulent 14 concealment, but I see nothing having been 15 fraudulently concealed as far as the wrongdoing 16 that these Defendants are alleged to have 17 committed. I see no basis for tolling the statute 18 of limitations. 19 And as to the argument in the 20 alternative set out in the brief that the 21 Plaintiff, Mr. Dulberg, individually is under a 22 legal disability that would toll the statute of 23 limitations, again, I agree with the movants, the 24 Defendants, that that is incorrect.</p>	<p style="text-align: right;">Page 24</p> <p>1 argument, which, again, I do not believe it does, 2 still the actions took place and the Defendant -- 3 pardon me, the Plaintiffs were aware of the harm 4 more than five years before the complaint was filed 5 and it would still be subject to dismissal on 6 limitations grounds. 7 In addition, as an alternate basis for 8 dismissal, the Barton Doctrine as applied by the 9 7th Circuit, among others, I believe is 10 appropriately invoked here. 11 Although, it may very well be true, 12 and it is true apparently, that the bankruptcy case 13 has been closed, it's routinely and possible to 14 re-open the bankruptcy case. That happens for a 15 host of reasons and the Plaintiff has presented no 16 argument or suggestion why if he wished to pursue a 17 cause of action against the movants, he could have 18 sought to reopen and sought leave for the 19 bankruptcy court to do so. 20 I think ordinarily the court then 21 appoints an official, whether it be a trustee in 22 this case or a receiver, ordinarily claims against 23 those individuals appointed by the court need to be 24 approved at a minimum by the court that appointed</p>
<p style="text-align: right;">Page 23</p> <p>1 The brief itself notes that Section 2 1.06 of the statute on statutes defines a person 3 under legal disability is a person who -- well, I 4 don't need to read the whole thing, but essentially 5 it refers to individuals who because of mental 6 deterioration or physical incapacity, mental 7 illness, are unable or at least not fully able to 8 manage their person or estates. 9 There is no suggestion whatsoever in 10 the complaint or any of the exhibits to it or the 11 exhibits to the response that that applies to 12 Mr. Dulberg. 13 As Mr. Jochum pointed out, if it did 14 apply to him, given the representation that he 15 remains disabled, there would be another reason to 16 dismiss the case because he would be incapable, 17 legally incapable of moving forward at the present 18 time. 19 So, again, I don't see any basis for 20 tolling the statute of limitations based on that 21 argument. 22 As to -- and as I discussed with 23 Mr. Talarico, even if the five year statute of 24 limitations were to apply, for purposes of</p>	<p style="text-align: right;">Page 25</p> <p>1 the individuals. And the Barton Doctrine is the 2 bankruptcy specific manifestation of that generally 3 accepted principle. 4 So this motion is granted with 5 prejudice. And I will provide 304(A) language in 6 the order. I do find that there is no just cause 7 for delay, enforcement or appeal of this order. 8 And so 304(A) language should be included in the 9 written order memorializing today's proceedings. 10 All right. So then let's move, 11 please, to the other Defendants for the moment. I 12 know that I do need to give a deadline for the 13 Plaintiff to replead against ADR Systems, if the 14 Plaintiffs choose to do so, but I do want to first 15 ask Miss Tinajero, I believe that you filed a 16 motion to dismiss on behalf of Allstate. Am I 17 correct about that? 18 MS. TINAJERO: So, Judge, we -- let me double 19 check really quick. We answered the complaint. We 20 have not filed a motion to dismiss. We may file a 21 dispositive motion in the future, but no. We have 22 nothing on file as of today. 23 THE COURT: Okay. And as we noted earlier, 24 there is not anyone here on behalf of Defendants</p>

<p style="text-align: right;">Page 26</p> <p>1 Kelly Baudin, William Randal Baudin II or Kelran, 2 Incorporated, which surprises me, but is anyone 3 here able to represent whether those individuals 4 had filed a responsive pleading on the schedule set 5 by this Court's order of March 28th? 6 MR. TALARICO: They have filed a motion to 7 dismiss based on 2-619(1). 8 THE COURT: Okay. Thank you. Have we 9 already set a briefing schedule on that? I don't 10 believe so. 11 MR. TALARICO: Yes, we have, Judge. 12 THE COURT: Okay. On the Baudin motion to 13 dismiss? 14 MR. TALARICO: Yes. 15 THE COURT: Okay. Well, then that briefing 16 schedule will stand. I think it probably makes 17 sense, and I imagine this might be a little bit 18 frustrating for Mr. Chapman on behalf of ADR, but I 19 think it probably makes sense for me to hear that 20 final motion to dismiss before setting a deadline 21 for the Plaintiffs to file an amended complaint, if 22 they elect to do so, against ADR so Mr. Talarico 23 knows exactly what he has to replead and doesn't 24 have to replead more than once.</p>	<p style="text-align: right;">Page 28</p> <p>1 THE COURT: Yes. 2 MR. CHAPMAN: Okay. Thank you. 3 THE COURT: All right. Are there any other 4 outstanding matters that it would be helpful for us 5 to address this morning? Mr. Talarico, I will ask 6 you first? 7 MR. TALARICO: No, your Honor. 8 THE COURT: Anybody else? 9 MR. CHAPMAN: Your Honor, on housekeeping, is 10 it -- I would suggest that we have two separate 11 orders because of the 304(A) language. 12 THE COURT: Agree. 13 MR. CHAPMAN: So I will submit an order to 14 the court for ADR. 15 THE COURT: I think having two separate 16 orders makes abundant sense with 304(A) language on 17 one and not the other. 18 And they don't really need to say much 19 more since we do have a court reporter transcribing 20 the proceedings than that the motions are granted 21 respectively without and with prejudice for the 22 reasons stated on the record. 23 Thank you all and I will see you July 24 26th.</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. CHAPMAN: Your Honor, if you don't mind 2 me interrupting only because I am looking at the 3 May 18th order. And the Baudin Defendants' motion 4 is set for July 31, 2023. Do you want to just have 5 a status on that, on that date on the ADR, the 6 complaint as it is to ADR? 7 THE COURT: The July 31 date, can you tell me 8 the time? I don't have that order in front of me. 9 MR. CHAPMAN: Sure. 9:45 a.m. 10 THE COURT: So that's for status on 11 disposition? 12 MR. TALARICO: Yes, your Honor. 13 MR. CHAPMAN: Yes. 14 THE COURT: Yes, that will be for status, but 15 Mr. Talarico, just to be abundantly clear, I am not 16 requiring you to replead against ADR before that 17 July date. I think it's fairest to hear that last 18 motion to dismiss, as well, and then we can get one 19 amended complaint depending on the ruling on that 20 motion. 21 MR. CHAPMAN: I will just indicate that the 22 matter -- I am just looking at a draft order I have 23 been working one. I will say the matter as to ADR 24 is continued for status to July 31 at 9:45 a.m.</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. JOCHUM: Thank you, your Honor. 2 MR. CHAPMAN: Thank you. 3 MR. TALARICO: Thank you, Judge, and counsel. 4 MS. TINAJERO: Thank you. 5 THE COURT: Have a good day, everyone. Thank 6 you. 7 (WHICH WERE ALL THE PROCEEDINGS HAD 8 IN THE ABOVE-ENTITLED CAUSE ON 9 THIS DATE.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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I, LINDA S. IDRIZI, a Certified Shorthand
Reporter of the State of Illinois, CSR No. 84-3704,
do hereby certify that I reported in shorthand the
proceedings had in the aforesaid matter, and that
the foregoing is a true, complete and correct
transcript of the proceedings had as appears from
my stenographic notes so taken and transcribed
under my personal direction.

IN WITNESS WHEREOF, I do hereunto set my
hand this 21st day of May, 2022.



LINDA S. IDRIZI, CSR
CSR No. 84-3704.

&	261,000 15:9	8	28:5
& 2:10	26th 28:24	84-3704 1:24	addressed 9:14
0	28th 26:5	30:5,17	addresses
010905 1:8	3	8th 9:24 10:2,6	10:10
1	3,000 9:20 10:3	11:6 12:6,12	administration
1 26:7	300 2:11	14:22	15:21
1.06 23:2	304 13:19 25:5	9	adr 4:21 5:15
10 6:20	25:8 28:11,16	9:45 27:9,24	6:13,19,22 8:1
10905 4:2	31 27:4,7,24	a	8:10,17,20 9:1
10:30 1:17	31st 14:20	a.m. 1:17 27:9	10:19 12:11,13
117,000 7:13	16:10 30:13	27:24	13:5 18:16
11th 17:6	3300 3:11	abandoning	19:11,17 20:3
12th 14:23 15:5	3850 3:4	20:4	20:23 21:6,14
150 3:11	3rd 17:1,8	able 23:7 26:3	25:13 26:18,22
1746 30:15	4	above 29:8	27:5,6,16,23
18th 27:3	4th 17:1,8	abundant	28:14
190 3:4	5	28:16	adr's 5:18
2	5/13-214.3.	abundantly	10:18
2 9:19 10:3	21:24	27:15	advance 9:20
2-619 26:7	550 2:11	accepted 25:3	12:18
2016 9:13	560,000 7:7	accordance	adverston
14:18,20,22,23	57 15:7	7:18	21:23
15:5 16:6,10	6	acknowledged	aforesaid 30:7
20:13,16 21:11	600 2:4	19:16	agree 22:6,23
2022 1:8 4:2	60062 2:5	act 16:9	28:12
18:16 21:13	60601 3:12	action 19:23	agreed 5:14
2023 1:16 27:4	60603 3:5	24:17	20:13
30:13	60661 2:12	actions 24:2	agreement 6:21
21 14:3	7	actually 16:22	7:4,9,16,18,19
21st 9:13,19	707 2:4	adams 2:11	8:2,3 14:20
10:4,8 12:4,9	735 21:24	add 18:9	agreements 8:7
22nd 18:16	7th 17:1,8,9	addition 24:7	ahead 5:12 6:7
25th 1:16	24:9	address 14:15	14:10
		15:16 16:16	al 1:9

allegation 7:23 allegations 8:3 13:4,16 18:18 18:20 19:8 alleged 16:9 21:8 22:16 allegedly 15:4 alleging 8:9 allow 13:17 allstate 5:7 7:12 25:16 alluded 14:1 alphabetical 5:16 alphonse 2:3,6 4:13 alternate 24:7 alternative 22:20 amended 26:21 27:19 amount 15:22 amundsen 3:10 answer 21:9 answered 25:19 anybody 6:1 28:8 apparently 24:12 appeal 25:7 appear 5:10 13:10 appearances 2:1 3:1	appeared 2:8 2:15 3:8,15 appears 30:9 applicable 16:4 applied 17:1 19:4 24:8 applies 16:24 22:2 23:11 apply 23:14,24 appointed 14:17 24:23,24 appoints 24:21 appropriately 24:10 approval 8:20 14:19 approved 6:18 7:3 8:17 12:11 12:13 24:24 arbitration 6:14 argued 22:13 argues 15:18 arguing 18:24 argument 18:11 22:19 23:21 24:1,16 arguments 14:14 16:15,20 arose 15:14 aside 20:12 asked 19:4 asserting 13:24 assertion 22:1	assume 6:13 assumed 6:16 attached 8:8 attorney 21:24 attorney's 22:7 attorneys 6:23 15:7 18:12 august 14:18 authority 5:23 avenue 3:11 award 7:7 14:22 15:4 aware 24:3	24:7 baudin 1:9 4:2 5:9 6:23 15:6 26:1,1,12 27:3 behalf 2:8,15 3:8,15 4:21,23 5:7 25:16,24 26:18 believe 4:6 7:12 9:21 24:1,9 25:15 26:10 binding 6:18 6:21 7:6 bisgaard 2:10 bit 26:17 blew 20:15 boulevard 2:4 bound 9:1 13:6 breach 8:3,9 11:5 13:4 breached 8:1 8:10 9:2 bridge 5:12 brief 6:1,9 13:14,14 14:13 15:17 22:20 23:1 briefed 4:4,19 briefing 4:7 26:9,15 briefly 15:16 16:8 briefs 5:20 12:24 16:14,17
		b	
		bankruptcy 6:15,18 7:3,10 7:19 9:9,18 10:17 11:17,21 11:23 14:17,18 14:20 17:3,17 17:18,24 18:3 18:18 19:3,13 19:21 20:11 24:12,14,19 25:2 barred 15:1 barton 16:16 16:21,24 17:15 17:15,20 24:8 25:1 based 17:10 20:5 23:20 26:7 basis 9:12 22:17 23:19	

bring 16:1,18 17:3 brisbois 2:10 brought 19:19 business 6:14 7:16 17:19	27:1,9,13,21 28:2,9,13 29:2 chapmanspin... 3:7 check 25:19 chicago 2:12 3:5,12 17:10 choice 19:17 choose 25:14 circuit 1:1 17:6 17:8,10 24:9 circuits 17:2 circumstances 7:22 cited 5:22 17:5 17:16 cites 16:3 claim 6:17 8:1 13:17 15:1,14 19:1 21:10 claiming 21:2 claims 13:20 21:23 24:22 clause 12:3 clear 9:7 27:15 clearly 21:4 closed 24:13 coerced 15:13 collectively 5:2 come 5:12 commencing 1:17 committed 21:2 22:17	complaint 6:21 7:24 8:8 13:5 13:11 15:8 16:11 20:14 22:11 23:10 24:4 25:19 26:21 27:6,19 complete 13:8 30:8 concealed 22:15 concealment 22:14 concern 10:10 conduct 22:8 considered 5:22 consistent 7:17 contact 2:7 continued 27:24 contract 8:10 8:14,19,21 9:2 9:3,4,15,16,22 10:1,6,13,14,17 10:18,21,23 11:1,3,7,17,18 11:22 12:4,5 12:12,17,19 13:5,7,9 18:17 18:22 19:11 20:24 21:7,14 contracts 12:10 control 6:16 19:22 20:5	cook 1:1 correct 4:16,17 8:23 11:19,20 11:23,24 25:17 30:8 correctly 9:1 counsel 4:11,13 29:3 county 1:1,2 couple 4:4 course 6:4 court 1:1,14 4:1,15,18 5:4,8 5:11 6:3,18 7:3 7:10,10,20 8:4 8:21,24 9:18 10:9,22 11:2,9 11:12,15,18,21 11:21,23 12:1 12:16,20 13:1 13:21 14:5,21 16:16,24 17:3 17:7,11,17,18 17:21,24 18:3 18:8,18,20 19:7 20:9,11 20:20,22 21:18 21:20 22:4 24:19,20,23,24 25:23 26:8,12 26:15 27:7,10 27:14 28:1,3,8 28:12,14,15,19 29:5
c			
c 4:23 call 5:19 carlson 16:3 case 15:23 16:4 16:23 17:6 19:3,3,14 20:5 23:16 24:12,14 24:22 cases 18:3 cause 24:17 25:6 29:8 caused 15:4 certain 20:4 certified 30:4 certify 30:6 chance 6:4 14:9 change 8:18 19:10 changed 8:16 10:21 21:5,6,6 21:14 changes 8:16 12:10 chapman 3:3,6 4:20,21 6:5,8 8:4 12:21,23 13:2,12 14:4 14:13 26:18			

court's 26:5 craig 4:24 cross 5:11 csr 1:24 30:5 30:16,17	defines 23:2 degree 20:4 delay 25:7 department 1:2 depending 27:19 desire 20:7 deterioration 23:6 differed 11:18 different 4:4 8:7,19 10:14 11:3 18:17 20:23 directed 7:20 direction 30:11 disability 15:18 22:22 23:3 disabled 15:20 15:22 16:1,2 23:15 discovery 9:22 18:14,15 discussed 23:22 dismiss 4:5 5:13,18,20 14:2,7,24 23:16 25:16,20 26:7,13,20 27:18 dismissal 13:15 22:12 24:5,8 disposition 27:11	dispositive 16:20 17:9 25:21 disputing 7:1 distributed 7:13 division 1:2 doctrine 16:17 16:24 17:15,15 17:20 24:8 25:1 document 7:2 doing 18:13 dollars 12:18 double 25:18 draft 27:22 dulberg 1:4,5 4:2,14,15 6:15 7:14 15:3,17 16:1,3 19:13 19:24 20:10 22:21 23:12 dulberg's 7:1,7 14:17 16:5 20:7	entitled 10:19 29:8 especially 6:2 17:9 essentially 15:10 23:4 estate 19:22,22 20:1 estate's 19:23 estates 23:8 et 1:9 etchingham 7:6 7:17 everybody 4:1 4:9 evidence 8:19 evident 10:10 exactly 9:5 26:23 execute 9:4 executed 6:22 8:22 exhibit 6:20 11:4 exhibits 5:21 8:7 23:10,11 existence 17:21 extensive 16:22
d			
date 27:5,7,17 29:9 dates 9:12 davis 3:10 day 10:2 29:5 30:13 days 14:3 deadline 25:12 26:20 debtor 17:2 december 9:23 10:1,6 11:6 12:6,12 14:22 14:23 15:5 deception 18:12,13,19 deciding 16:23 decision 20:2 deemed 15:20 defendant 24:2 defendants 1:10 2:15 3:8 3:15 4:24 5:2,9 5:19,19 14:6 14:16 15:7 16:10 19:2 21:2,8 22:12 22:16,24 25:11 25:24 27:3			
		e	
		e 3:13 earlier 25:23 elect 26:22 emailed 15:6 enforcement 25:7 enter 7:20 entered 7:7 14:23 15:5	
			f
			f 1:19 fact 6:9 12:9 15:3,6 16:5 18:24 19:12,20 19:24

facts 13:24 failed 16:6 fair 13:22 17:11 fairest 27:17 fairly 16:20 far 5:4 22:15 favor 7:8 feel 5:24 15:8 fees 10:20 file 15:14 16:6 25:20,22 26:21 filed 4:8 10:7 16:11 20:17 24:4 25:15,20 26:4,6 final 26:20 find 25:6 fine 5:15 13:1 finished 17:18 first 6:6 8:21 10:6,22 14:10 20:9 22:6 25:14 28:6 five 18:13 20:15,16,18 23:23 24:4 follow 17:7 following 6:22 foregoing 30:8 forgive 9:7 forward 13:17 19:14,17 23:17 found 16:23	fraud 18:12,13 18:18,19 20:8 20:9,10,15,19 22:1 fraudulent 22:13 fraudulently 22:15 front 8:13 27:8 frustrating 26:18 fully 4:4,19 23:7 further 21:17 22:3 future 25:21 g generally 25:2 give 6:4 13:22 14:1,3,9 25:12 given 23:14 glad 14:15 go 4:8 5:12 6:6 13:17 14:10 17:21 19:14,17 20:3 going 5:1,15,18 6:12 14:2 good 4:1,12,13 4:20,22 5:4,6 15:8 29:5 gotten 8:15 granted 13:3 13:11 22:5 25:4 28:20	grounds 13:23 24:6 guys 15:8 h h 4:23 hand 30:13 happen 12:6 happened 20:21,21 21:11 happens 24:14 harm 24:3 hear 26:19 27:17 heard 6:4 14:9 hearing 1:14 4:3 5:14 10:2 12:14 19:18 held 17:2 helpful 28:4 hereunto 30:12 high 7:4,9 highlight 6:2 hold 10:12 holdings 17:7 holds 17:6 honor 4:12,20 4:22 6:8,11 7:22 12:23 13:12 14:4,12 14:14 16:13,18 21:16 22:3 27:1,12 28:7,9 29:1 honorable 1:19	host 24:15 housekeeping 28:9 i idrizi 1:24 30:4 30:16 ii 26:1 ilcs 21:24 illinois 1:1 2:5 2:12 3:5,12 15:23 16:23,24 30:5 illness 23:7 imagine 13:16 26:17 improper 19:10 improperly 21:6 incapable 23:16,17 incapacity 23:6 included 9:13 25:8 including 7:13 18:12 incorporated 26:2 incorrect 22:3 22:24 indicate 27:21 individual 19:1 20:7 individually 1:4 22:21
---	---	---	---

Veritext Legal Solutions

22:5 25:4,16 25:20,21 26:6 26:12,20 27:3 27:18,20 motions 4:4,7 4:19 5:3,13 14:8 28:20 movants 4:19 22:23 24:17 move 14:6 25:10 moving 23:17 mtinajero 3:14	o o 4:23 occurred 7:5 14:22 16:5,10 20:13 october 14:20 16:10 18:15 20:13 offices 2:3 official 24:21 oh 18:10 okay 4:18 5:8 9:18 12:1,20 18:7,8 21:18 25:23 26:8,12 26:15 28:2 olsen 4:24 5:2 5:19,19 14:6 14:16,21 16:10 18:20,24 19:9 19:12 21:2 omission 16:9 once 17:18 21:4 26:24 open 20:22 24:14 opened 18:3,6 opportunity 13:23 order 5:16 25:6 25:7,9 26:5 27:3,8,22 28:13 orders 28:11,16	ordinarily 24:20,22 otto 1:19 4:3 outset 5:17 outstanding 28:4 oversaw 7:6 own 8:11 p paid 19:4,5 paragraph 15:7 paraphrasing 15:10 pardon 24:3 participating 15:13 parties 5:14,22 5:23 7:18 8:17 9:4 party 8:10 paul 1:4,5 4:14 pay 10:3 payment 7:11 10:7 12:3,18 payments 9:11 9:19 pending 13:20 people 15:9 performed 7:18 11:19 performing 9:3 permission 17:3,22	person 17:20 23:2,3,8 personal 6:16 30:11 perspective 6:11 physical 23:6 place 12:5 24:2 plain 11:16 plainly 14:16 plaintiff 2:8 4:14 22:21 24:15 25:13 plaintiff's 4:11 plaintiffs 1:7 13:22 22:13 24:3 25:14 26:21 pleading 26:4 pleadings 7:24 please 4:10 6:6 14:10 25:11 pled 10:15 13:5 point 9:16 11:12 15:24 21:22 pointed 23:13 points 15:17 poor 19:16 positive 19:21 possible 21:12 24:13 possibly 12:15 prejudice 13:15,18 14:3
n n 1:9 name 4:13 necessary 7:21 need 4:6 5:24 23:4 24:23 25:12 28:18 neither 7:2 never 10:23 nonentity 18:1 north 3:11 northbrook 2:5 noted 14:24 15:7,22 25:23 notes 23:1 30:10 notice 7:11 notion 13:6 november 9:13 9:19 10:4,7 12:4,9			

22:5 25:5 28:21 present 16:2 23:17 presented 6:17 9:8,17,23 10:1 10:17 11:4,6 11:17,22 14:21 18:17 20:6 24:15 previous 13:8 principle 25:3 prior 9:22 probably 26:16 26:19 proceedings 25:9 28:20 29:7 30:7,9 proceeds 7:12 production 20:23 21:13 provide 25:5 purported 18:22 21:13 purportedly 19:10 21:5,6 purpose 17:15 purposes 23:24 pursue 24:16 put 14:16	quibble 11:10 quick 8:6 25:19 quote 21:14 r r 1:4,5 raised 15:17 randal 26:1 raphael 4:24 rarity 19:21 rchapman 3:7 read 5:20 6:1 14:8 23:4 ready 6:7 14:11 really 25:19 28:18 reason 23:15 reasons 24:15 28:22 receiver 24:22 recognize 17:16 record 4:10 7:10 28:22 refer 5:1 referred 5:3 refers 23:5 related 17:17 19:13 relevance 21:13 relevant 22:6 relied 5:23 relinquishing 19:23	rely 12:24 relying 20:1 remains 23:15 remember 10:3 reopen 24:18 replead 13:23 14:2,3 25:13 26:23,24 27:16 reply 5:21 13:14 14:8 reported 1:24 30:6 reporter 6:3 28:19 30:5 repose 15:2,19 16:8,20 22:9 represent 4:14 26:3 representation 23:14 request 17:24 18:16 require 8:14 required 9:18 requiring 10:7 12:3,17 27:16 requisite 13:19 research 16:22 respectively 28:21 response 5:21 8:6 14:8 15:17 23:11 responsive 26:4	rest 16:17 retired 7:6 reveal 20:24 reviewed 5:21 6:10 revocable 1:6 4:15 right 5:11 10:13 14:5 22:4 25:10 28:3 riseburrow 21:23 robert 3:6 4:21 routinely 24:13 rule 13:19 ruled 7:17 ruling 27:19 s s 1:24 30:4,16 saw 7:21 saying 10:13 18:7 says 9:11 12:9 schedule 4:7 26:4,9,16 scheduled 9:12 second 10:21 section 23:1 security 15:21 see 13:3 14:7 19:5 21:12 22:14,17 23:19 28:23
---	---	---	---

seeking 10:12 sense 26:17,19 28:16 sentence 12:7 separate 28:10 28:15 services 19:5 set 4:6 22:20 26:4,9 27:4 30:12 setting 26:20 shorthand 30:4 30:6 sides 6:4 14:9 signature 7:1 30:15 signed 9:16,22 10:14,23 11:7 12:2,5,13,19 13:9 significant 15:22 similar 14:12 simple 17:22 sir 18:7 six 16:11 22:8 skeptical 13:21 skokie 2:4 smith 2:10 smithamunds... 3:14 social 15:21 sought 24:18 24:18	sounds 20:14 south 3:4 specific 25:2 specifically 8:13 21:4 speculation 13:8,10 spingola 3:3 stand 16:14 26:16 starting 4:10 5:15 state 7:24 17:7 30:5 stated 13:13 15:11 28:22 states 6:20 stationary 10:18 status 27:5,10 27:14,24 statute 15:1,2 15:18,19 16:8 16:19,20 18:10 18:11,14 20:15 22:2,7,8,9,17 22:22 23:2,20 23:23 statutes 23:2 stenographic 30:10 straightforward 6:12 8:2 street 2:11 3:4	subject 21:24 22:12 24:5 submit 28:13 submitted 11:1 18:16 suddenly 20:24 sufficient 13:4 suggest 28:10 suggestion 23:9 24:16 suit 15:14 16:2 16:7 17:3 20:17 suite 2:4,11 3:4 3:11 sum 7:15 superiority 17:16 support 8:1 11:4 sure 10:9 11:2 11:14 27:9 surprises 26:2 suspect 10:10 switch 18:22 systems 4:21 6:13,19,22 25:13	8:5,6,21,23 9:5 10:16,24 11:6 11:9,11,14,15 11:20,24 12:2 12:17 17:5,13 17:14 18:5,9 18:10,23 19:12 20:18 21:16,18 21:19 23:23 26:6,11,14,22 27:12,15 28:5 28:7 29:3 talarico's 22:1 talking 8:12 tell 27:7 term 9:9,10 10:3,7 13:4 terms 8:11,12 8:18 9:2,10,17 10:19 12:8 19:10 21:14 thank 6:8 8:4 12:20 13:1,12 14:4,5,12 17:11,14 21:18 22:4 26:8 28:2 28:23 29:1,2,3 29:4,5 theories 13:24 theory 9:1 11:4 20:14 thing 23:4 things 10:20 think 7:23 9:13 13:13,22 16:19
		t	
		take 7:10 taken 30:10 taker 19:24 talarico 2:3,6 4:12,14,17 5:10 6:20,24	

20:7 24:20 26:16,19 27:17 28:15 third 8:10 time 5:9 14:2 18:4 23:18 27:8 timely 16:12 tinajero 3:13 5:5,6,7 25:15 25:18 29:4 today 4:3 5:13 14:1 25:22 today's 25:9 told 21:9 toll 15:18 22:22 tolling 22:17 23:20 took 12:5 24:2 transcribed 30:10 transcribing 28:19 transcript 30:9 trial 19:15,15 tried 21:3 true 20:10 24:11,12 30:8 trust 1:6 4:16 trustee 6:16 7:20 14:17 17:4 19:3,18 19:22 24:21 try 9:6 11:16	trying 9:6 10:16 two 8:7,7 15:15 15:16 16:7 22:8 28:10,15 type 8:1	videoconfere... 1:14 vs 1:8	wrongfully 15:4
	u	w	y
	u 4:23 ultimately 9:3 11:19 unable 23:7 unclear 6:24 19:8 under 7:22 9:4 9:21 22:21 23:3 30:11 understand 10:22 11:12 12:14 understanding 8:24 unexecuted 9:2 9:3 unquote 21:14 unsigned 9:8 10:13 11:5,23 13:7 untenable 13:7 untimely 22:11	w 2:13 wait 11:15 want 6:2 11:9 14:9 15:16 16:16 19:14,19 25:14 27:4 wanted 18:9 wants 20:2,3,4 way 5:10 11:3 weeks 12:18 welcome 21:19 west 2:11 whatsoever 23:9 whereof 30:12 willette 5:1 18:21 19:2,9 william 26:1 wish 12:22 21:21 wished 24:16 witness 19:16 30:12 word 6:6 12:21 14:10 21:21 working 27:23 written 25:9 wrong 21:10 wrongdoing 19:8 21:1 22:15	yalden 4:24 18:21 19:2,9 year 12:4 18:13 20:15 22:8,9 23:23 years 15:15 16:7,11 20:16 20:18 24:4
	v		
	version 11:5,21 11:22 13:9 versus 4:2 21:23		