

<p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ILLINOIS 3 EASTERN DIVISION 4 IFC CREDIT CORPORATION, an) 5 Illinois corporation,) 6) 7 Plaintiff,) 8) 9 -vs-) No. 07 C 4351 10) 11 TISSUE PRODUCTS TECHNOLOGY) 12 CORPORATION, a Wisconsin) 13 corporation; ECO-FIBRE, INC., a) 14 Wisconsin corporation; PARTNERS) 15 CONCEPTS DEVELOPMENT, INC., a) 16 Wisconsin Corporation; OCONTO) 17 FALLS TISSUE, INC., a Wisconsin) 18 corporation, RONALD H. VAN DEN) 19 HEUVEL, an individual; and) 20 SPIRIT CONSTRUCTION SERVICES,) 21 INC., a Delaware corporation,) 22) 23 Defendants.) 24 The deposition of STEVEN R. VAN DEN HEUVEL called for examination pursuant to Notice and the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Janice A. Prystalski, a notary public within and for the County of Cook and State of Illinois, at 203 North LaSalle Street, Suite 2500, Chicago, Illinois, on the 8th day of April, 2008, at the hour of 10:05 a.m. Reported By: Janice A. Prystalski, CSR</p> <p style="text-align: right;">1</p>	<p>1 I N D E X 2 WITNESS EXAMINATION 3 STEVEN R. VAN DEN HEUVEL 4 Direct Examination 5 By MR. UNDERHILL 6 6 7 8 9 E X H I B I T S 10 NUMBER MARKED FOR ID 11 Plaintiff's Exhibits 12 No. 1 19 13 No. 2 24 14 No. 3 50 15 No. 4 81 16 No. 5 80 17 No. 6 81 18 No. 7 106 19 No. 8 125 20 No. 9 126 21 No. 10 132 22 23 24</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES: 2 3 MASUDA, FUNAI, EIFERT & MITCHELL, LTD., by 4 MR. GERALD L. MOREL and 5 MR. EDWARD J. UNDERHILL 6 203 North LaSalle Street, Suite 2500 7 Chicago, Illinois 60601 8 (312) 245-7500 9 Representing the Plaintiff; 10 11 MICHAEL BEST & FRIEDRICH, LLP, by 12 MR. STEVEN E. CYRANOSKI 13 180 North Stetson Avenue, Suite 2000 14 Chicago, Illinois 60601 15 (312) 222-0800 16 Representing the Defendants. 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">2</p>	<p>1 (Witness sworn.) 2 MR. UNDERHILL: Good morning, Mr. Van 3 Den Heuvel. My name is Ed Underhill. I'm one 4 of the attorneys for the plaintiff in this case, 5 IFC Credit Corporation. 6 Have you ever heard of IFC Credit 7 Corporation? 8 THE WITNESS: Yes. 9 MR. UNDERHILL: Okay. I'll be taking 10 your deposition this morning. Have you ever had 11 your deposition taken? 12 THE WITNESS: No. 13 MR. UNDERHILL: Never? 14 THE WITNESS: No. 15 MR. UNDERHILL: Let me explain some of 16 the rules for you. It's as if you're in court. 17 You've been sworn to tell the truth and I'll be 18 asking you questions. You'll be answering those 19 questions for me. It's as if we're in a 20 courtroom. The only difference is we're in my 21 conference room of my law office. If I ask you 22 a question and you answer the question, I'll 23 assume that you understood the question, is that 24 fair?</p> <p style="text-align: right;">4</p>

<p>1 THE WITNESS: Yes.</p> <p>2 MR. UNDERHILL: And if I ask you a</p> <p>3 question and you don't understand, will you tell</p> <p>4 me you don't understand?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. UNDERHILL: Also, your attorney has</p> <p>7 the right to object to questions that I've put</p> <p>8 to you. So after I ask you a question, you</p> <p>9 might want to wait just a second to let your</p> <p>10 attorney object or whatever.</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. UNDERHILL: If you need to take a</p> <p>13 break at some point during this morning, that's</p> <p>14 fine. Just let me know that. Is that all</p> <p>15 right?</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. UNDERHILL: But my preference would</p> <p>18 be -- you have to follow the instructions of</p> <p>19 your attorney. My preference would be that if I</p> <p>20 ask you a question, you answer it before we take</p> <p>21 a break. It just makes it more easier.</p> <p>22 THE WITNESS: No problem.</p> <p>23</p> <p>24</p> <p style="text-align: right;">5</p>	<p>1 for honesty and veracity. It has nothing to do</p> <p>2 with this litigation that we're talking about</p> <p>3 right now.</p> <p>4 BY MR. UNDERHILL:</p> <p>5 Q. For example, have you ever been</p> <p>6 convicted of a felony?</p> <p>7 A. No.</p> <p>8 Q. Have you ever been a party in a lawsuit</p> <p>9 before? Have you ever been sued?</p> <p>10 A. No. Personally?</p> <p>11 Q. Yes.</p> <p>12 A. Personally, no.</p> <p>13 Q. I'm sorry. That was a poorly-worded</p> <p>14 question.</p> <p>15 So let me start by saying have you</p> <p>16 personally, Steve Van Den Heuvel, ever been</p> <p>17 sued?</p> <p>18 A. No.</p> <p>19 Q. And you are, I believe, the president</p> <p>20 of Spirit Construction?</p> <p>21 A. Yes.</p> <p>22 Q. And has Spirit Construction ever been a</p> <p>23 party to a lawsuit?</p> <p>24 A. Not to my knowledge.</p> <p style="text-align: right;">7</p>
<p>1 STEVEN R. VAN DEN HEUVEL,</p> <p>2 called as a witness herein, having been first</p> <p>3 duly sworn, was examined and testified as</p> <p>4 follows:</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. Could you please give me your personal</p> <p>8 residence address.</p> <p>9 A. 1584 Silver Maple Drive, De Pere, D-e</p> <p>10 P-e-r-e, Wisconsin 54105.</p> <p>11 MR. UNDERHILL: Thank you. I have the</p> <p>12 right to ask your Social Security number, but my</p> <p>13 personal preference is not to put people's</p> <p>14 Social Security numbers in public records. So</p> <p>15 I'm not going to ask, provided your attorney and</p> <p>16 I can agree if I need it at some point, he'll</p> <p>17 give it to me, is that fair?</p> <p>18 MR. CYRANOSKI: That's fine. If you</p> <p>19 want, you can get the last four digits.</p> <p>20 MR. UNDERHILL: Concerning the nature</p> <p>21 of this litigation, I don't think I need your</p> <p>22 Social Security number. I may have to ask you a</p> <p>23 few personal questions and it relates to our</p> <p>24 obligations to find out about your reputation</p> <p style="text-align: right;">6</p>	<p>1 Q. Are you an officer in any other</p> <p>2 corporation?</p> <p>3 A. Yes.</p> <p>4 Q. Would you tell me the other</p> <p>5 corporations that you're an officer in?</p> <p>6 A. Vos Electric.</p> <p>7 Q. Is that spelled V?</p> <p>8 A. V-o-s. One S.</p> <p>9 Q. Any other corporations that you're an</p> <p>10 officer in?</p> <p>11 A. No.</p> <p>12 Q. Are you the president of Vos?</p> <p>13 A. No.</p> <p>14 Q. Who is?</p> <p>15 A. Tim Van Den Heuvel.</p> <p>16 Q. Tim Van Den Heuvel?</p> <p>17 A. Yes.</p> <p>18 Q. And who is Tim in relation to you?</p> <p>19 A. My brother.</p> <p>20 Q. And what is your position as an officer</p> <p>21 in Vos?</p> <p>22 A. I'm vice president.</p> <p>23 Q. Are you also a shareholder in Vos, if</p> <p>24 you know?</p> <p style="text-align: right;">8</p>

<p>1 A. No -- well --</p> <p>2 MR. CYRANOSKI: Explain it as best you</p> <p>3 can.</p> <p>4 THE WITNESS: I am a shareholder in VHC</p> <p>5 who solely owns Vos.</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. So Vos is owned by a company called</p> <p>8 VHC?</p> <p>9 A. VHC.</p> <p>10 Q. It's a holding company?</p> <p>11 A. A holding company.</p> <p>12 Q. VHC Investments, is it the owner or</p> <p>13 shareholder of any other corporations besides</p> <p>14 Vos Electric?</p> <p>15 A. Spirit Construction.</p> <p>16 Q. Any others?</p> <p>17 A. Spirit Fabs.</p> <p>18 Q. Okay.</p> <p>19 Is Fabs short for --</p> <p>20 A. Fabrications.</p> <p>21 Q. Fabrications?</p> <p>22 A. Yes.</p> <p>23 Q. Any other companies owned by VHC?</p> <p>24 A. VDH Electric. Best Built, Inc.</p> <p style="text-align: right;">9</p>	<p>1 corporations other than this VHC Investments?</p> <p>2 A. No.</p> <p>3 Q. Are you a member of any LLC? Do you</p> <p>4 know what an LLC is?</p> <p>5 A. Yes, and no.</p> <p>6 Q. So you're not a member of any LLC?</p> <p>7 A. No.</p> <p>8 Q. By whom are you employed?</p> <p>9 A. Spirit Construction Services and Vos</p> <p>10 Electric. I do get two paychecks.</p> <p>11 Q. How long have you been employed by</p> <p>12 Spirit Construction?</p> <p>13 A. May of '95.</p> <p>14 Q. Did you start Spirit Construction?</p> <p>15 A. No.</p> <p>16 Q. How did you come to work for Spirit</p> <p>17 Construction?</p> <p>18 A. There was a merger between Spirit and</p> <p>19 another company that broke off. When that broke</p> <p>20 off, I became president at that time.</p> <p>21 Q. And as president, are you also the main</p> <p>22 operator of the company?</p> <p>23 A. Yes.</p> <p>24 Q. So you would be the person with the</p> <p style="text-align: right;">11</p>
<p>1 Q. Any others?</p> <p>2 A. No.</p> <p>3 Q. And who are the other shareholders in</p> <p>4 VHC Investments besides you and Tim?</p> <p>5 A. My three other brothers.</p> <p>6 Q. You have a big family?</p> <p>7 A. Yes, I have a big family. There's</p> <p>8 David, Ray, Jr., Ray, II, Ron. I have three</p> <p>9 brother-in-laws, Butch Piontek, P-i-o-n-t-e-k,</p> <p>10 Craig Kassner, K-a-s-s-n-e-r, and an ex-brother-</p> <p>11 in-law Bill Bain, B-a-i-n.</p> <p>12 Q. And the three brother-in-laws, Butch,</p> <p>13 Craig and Bill are all shareholders in VHC</p> <p>14 Investments as well?</p> <p>15 A. Correct. Now there's, I'm not sure, 38</p> <p>16 to 50 other that I hope I don't have to list</p> <p>17 them all because I don't know if I can list them</p> <p>18 all, but they all work for the company, one of</p> <p>19 the companies.</p> <p>20 Q. Now, how old are you?</p> <p>21 A. 48.</p> <p>22 Q. What's your date of birth?</p> <p>23 A. 8/15/59.</p> <p>24 Q. Are you a shareholder in any other</p> <p style="text-align: right;">10</p>	<p>1 most knowledge about the day-to-day activities</p> <p>2 of Spirit Construction?</p> <p>3 MR. CYRANOSKI: I'm going to object to</p> <p>4 that question that it lacks foundation, it's</p> <p>5 vague and ambiguous.</p> <p>6 MR. UNDERHILL: I'll tell you what.</p> <p>7 I'll withdraw it.</p> <p>8 BY MR. UNDERHILL:</p> <p>9 Q. Who would be the person at Spirit</p> <p>10 Construction who would have the most knowledge</p> <p>11 of the day-to-day activities of the business?</p> <p>12 MR. CYRANOSKI: I'm just going to</p> <p>13 object again. I don't want to make a habit of</p> <p>14 making a speaking objection, but when you say</p> <p>15 day-to-day, there are different types of day-to-</p> <p>16 day activities. So if there is something in</p> <p>17 particular, some type of day-to-day activities,</p> <p>18 there might be somebody on the job that knows</p> <p>19 the day-to-day activities of a construction</p> <p>20 project, there may be somebody who does the</p> <p>21 financing, there may be somebody in law. So I</p> <p>22 just want him to give an accurate answer.</p> <p>23 MR. UNDERHILL: It's possibly going to</p> <p>24 be more than one person.</p> <p style="text-align: right;">12</p>

<p>1 BY MR. UNDERHILL:</p> <p>2 Q. Who would be the person or persons most</p> <p>3 knowledgeable about the day-to-day activities at</p> <p>4 Spirit Construction?</p> <p>5 MR. CYRANOSKI: I'll make the same</p> <p>6 objection.</p> <p>7 BY MR. UNDERHILL:</p> <p>8 Q. Do you not understand my question?</p> <p>9 A. No, I don't understand.</p> <p>10 Q. That's fine. You just tell me that and</p> <p>11 then I can go back and rephrase it.</p> <p>12 Let me start off by asking, what is the</p> <p>13 business of Spirit Construction?</p> <p>14 A. Construction contractor.</p> <p>15 Q. And the nature of what kind of work?</p> <p>16 What kind of construction?</p> <p>17 A. Heavy industrial.</p> <p>18 Q. Can you give me some examples of the</p> <p>19 kind of projects you talk about when you say</p> <p>20 heavy industrial?</p> <p>21 A. Install paper machines, cement plants.</p> <p>22 Q. Anything else come to mind?</p> <p>23 A. 90 percent of our work is in the paper</p> <p>24 until about a year ago when we started getting</p> <p style="text-align: right;">13</p>	<p>1 Q. If you could, could you just tell me</p> <p>2 briefly what would you say your regular duties</p> <p>3 at the company involve?</p> <p>4 A. I do sales, watch money flow, make sure</p> <p>5 we have the right people in the right spots.</p> <p>6 Q. And I don't want to spend too much time</p> <p>7 on this, but you said until recently, maybe you</p> <p>8 can give me a date, 90 percent of the work of</p> <p>9 Spirit was in the paper installation area. Now</p> <p>10 it's moved into cement plants.</p> <p>11 What are you doing at cement plants?</p> <p>12 A. Construction from greenfield sites.</p> <p>13 Q. Are you familiar with a company called</p> <p>14 Tissue Products Technology Corporation?</p> <p>15 A. Yes.</p> <p>16 Q. And how do you know that company?</p> <p>17 A. I don't know the company. I know the</p> <p>18 company is there because Ron is an officer or</p> <p>19 started that company.</p> <p>20 Q. And Ron refers to your brother?</p> <p>21 A. My brother, yes.</p> <p>22 Q. So if I refer today to a company by the</p> <p>23 name of TPTC, will you know that to be Tissue</p> <p>24 Products Technology Corporation?</p> <p style="text-align: right;">15</p>
<p>1 into cement.</p> <p>2 Q. When you say 90 percent of your work is</p> <p>3 into paper, what do you mean?</p> <p>4 A. Tissue machines, converting equipment.</p> <p>5 Q. You mean installing paper machines?</p> <p>6 A. Rebuild, correct. Installing and</p> <p>7 rebuild.</p> <p>8 Q. Install and rebuild?</p> <p>9 A. Yes.</p> <p>10 Q. How many people work for Spirit</p> <p>11 Construction?</p> <p>12 A. The low 400s.</p> <p>13 Q. That's very helpful. Then I can see</p> <p>14 why you might not be the person who would know</p> <p>15 about the day-to-day activities of everything</p> <p>16 over at Spirit Construction.</p> <p>17 For example, who works under you? Are</p> <p>18 there several like project managers or how is it</p> <p>19 broken?</p> <p>20 A. Doug Barone is the --</p> <p>21 Q. And what is his title?</p> <p>22 A. That's what I was trying to think of</p> <p>23 what -- he's a corporate manager. Corporate</p> <p>24 manager would be he watches the work outside.</p> <p style="text-align: right;">14</p>	<p>1 A. Yes.</p> <p>2 Q. So I could use that shorthand</p> <p>3 abbreviation for Tissue Products Technology</p> <p>4 Corporation?</p> <p>5 A. I didn't know what the TPTC stands for.</p> <p>6 So, yes, if you used the initials, that would be</p> <p>7 good.</p> <p>8 Q. I'll try and say it slow so that you</p> <p>9 can follow it, but it's TPTC, and the other</p> <p>10 company that I think your brother owns or</p> <p>11 operates is a company called Partners Concepts</p> <p>12 Development, Inc.</p> <p>13 Are you familiar with that company?</p> <p>14 A. If that's PCDI, yes.</p> <p>15 Q. You know it as PCDI?</p> <p>16 A. Yes.</p> <p>17 Q. Those are the two initials we'll use</p> <p>18 for those two companies.</p> <p>19 Have you been aware at some point along</p> <p>20 the way that a lawsuit has been filed by IFC</p> <p>21 Credit Corporation against, among other</p> <p>22 companies, TPTC and PCDI?</p> <p>23 A. Yes.</p> <p>24 Q. And that's actually your company? When</p> <p style="text-align: right;">16</p>

<p>1 I call it your company, I mean Spirit 2 Construction.</p> <p>3 You understand that Spirit Construction 4 was also made a party to that lawsuit?</p> <p>5 A. Yes.</p> <p>6 Q. And at some point did you have an 7 opportunity to look at the complaint that was 8 filed against Spirit Construction in that 9 lawsuit?</p> <p>10 A. Yes.</p> <p>11 Q. And did you assist in preparing an 12 answer to that complaint?</p> <p>13 A. No.</p> <p>14 Q. Do you know who at Spirit Construction 15 assisted in the preparation of the answer to 16 that complaint?</p> <p>17 A. We left that to our counsel to answer 18 those.</p> <p>19 Q. To your lawyer?</p> <p>20 A. Yes.</p> <p>21 Q. Now, I'm not interested in 22 communications you've had with your lawyer. 23 They are protected by the attorney/client 24 privilege, but beyond that I'm simply just not</p> <p style="text-align: right;">17</p>	<p>1 Q. And those being an acknowledgment of a 2 pledge agreement, is that one of them?</p> <p>3 A. Yes.</p> <p>4 Q. And what was the other?</p> <p>5 A. There were two of them.</p> <p>6 Q. And did you have a chance to look at 7 the answer to the complaint that was filed by 8 Spirit Construction?</p> <p>9 A. No, I don't believe I did.</p> <p>10 MR. UNDERHILL: You can mark that as -- 11 how do you want to do this? Do you want to call 12 it Plaintiff's Exhibit 1 or just Exhibit 1?</p> <p>13 MR. CYRANOSKI: That's fine, 14 Plaintiff's Exhibit 1.</p> <p>15 (Whereupon, Plaintiff's 16 Exhibit No. 1 was marked for 17 identification.)</p> <p>18 BY MR. UNDERHILL: Steve, let me show 19 you what has been marked as Plaintiff's Exhibit 20 No. 1, which is titled for the record continuing 21 pledge agreement.</p> <p>22 Off the record for a minute. 23 (Discussion off the record.) 24</p> <p style="text-align: right;">19</p>
<p>1 interested in that.</p> <p>2 So I'm not trying to get into that, but 3 if somebody at -- was somebody at Spirit 4 Construction responsible then for having 5 conversations with the lawyer or otherwise 6 helping the lawyer prepare an answer to the 7 complaint?</p> <p>8 A. There were -- I was involved in some of 9 those.</p> <p>10 Q. So you were one of the people?</p> <p>11 A. Correct.</p> <p>12 Q. Was there anybody else?</p> <p>13 A. Not at Spirit.</p> <p>14 Q. Now, I apologize for all of these 15 preliminary questions, but it's very helpful for 16 everyone to understand what your level of 17 understanding is in the case. It makes it 18 easier in the long-run and faster in the 19 long-run.</p> <p>20 Steve, did you review any documents 21 before you came to your deposition today?</p> <p>22 A. Two.</p> <p>23 Q. What two documents did you look at?</p> <p>24 A. The documents that I signed.</p> <p style="text-align: right;">18</p>	<p>1 BY MR. UNDERHILL:</p> <p>2 Q. Steve, showing you what has been marked 3 as Plaintiff's Exhibit No. 1, it's a several- 4 page document and it was attached to the 5 complaint as an exhibit.</p> <p>6 In fact, if I let you look at the 7 exhibits to the complaint today, it will shorten 8 it, but it was attached to the complaint as 9 Exhibit C. And when I talk about the complaint, 10 I'm talking about the complaint filed by IFC 11 Credit Corporation against TPTC among others 12 including Spirit Construction.</p> <p>13 A. Yes.</p> <p>14 Q. If you go to this document, it actually 15 consists of several pages and after you get past 16 the first five or six pages, you'll see there is 17 a Schedule A and that consists of two pages and 18 then there is a Schedule B.</p> <p>19 A. Okay.</p> <p>20 Q. And that consists of one page and it is 21 titled acknowledgment of and consent to 22 assignment.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p style="text-align: right;">20</p>

1 Q. Are any of these documents that you're
2 looking at right now the documents that you
3 looked at before you came to your deposition?

4 MR. CYRANOSKI: Can I just clarify for
5 the record, and I think he's probably going to
6 answer it anyway, but just for the record, there
7 are two Schedule Cs that were attached to that
8 exhibit.

9 MR. UNDERHILL: You have two? They
10 actually added one to yours.

11 MR. CYRANOSKI: I think in the
12 complaint when you said both of them were
13 attached to the complaint as well.

14 MR. UNDERHILL: The one attached to the
15 complain has two.

16 MR. CYRANOSKI: And you said this
17 document is the same as the one --

18 MR. UNDERHILL: Yes. I'll let you
19 talk. I'm sorry. You finish.

20 MR. CYRANOSKI: Do you want me then to
21 remove the second Schedule B from this exhibit?

22 MR. UNDERHILL: Yes. It shouldn't have
23 been attached to your copy. It's not a big deal
24 one way or the other, but, yeah, that's just an

21

1 extra one. I don't think it's on the witness'
2 copy.

3 I want to make it clear that Counsel is
4 correct. Exhibit C attached to our complaint is
5 the same as this document, only it doesn't have
6 two copies of the Schedule B.

7 BY MR. UNDERHILL:

8 Q. So are any of the documents I'm showing
9 you today the documents that you looked at in
10 preparation for your deposition?

11 A. Yes.

12 Q. And which documents are those?

13 A. The Schedule B.

14 Q. And was it also the other Schedule B?

15 A. Yes.

16 Q. Those are the two you looked at?

17 A. Right.

18 MR. UNDERHILL: Very good. All right.
19 Thank you.

20 MR. CYRANOSKI: And they are both
21 attached.

22 MR. UNDERHILL: Yes, I agree. They
23 are.
24

22

1 BY MR. UNDERHILL:

2 Q. Directing your attention to the
3 Schedule B, acknowledgement of and consent to
4 assignment, is this a document that you signed?

5 A. Yes.

6 Q. Did you sign it on or about March 28th
7 of 2007?

8 A. Yes.

9 Q. And, Steve, before you read it -- and
10 you signed it in your capacity as president of
11 Spirit Construction?

12 A. Yes.

13 Q. Now, before you signed this contract --
14 excuse me.

15 Before you signed this document, did
16 you read it?

17 A. Yes.

18 Q. Who gave you this document to read and
19 sign?

20 A. My brother Ron.

21 Q. Now, at that time did Ron explain to
22 you why he was asking you to sign this document?

23 MR. CYRANOSKI: If I could just
24 interpose one note here. Just so we make clear,

23

1 there were two Exhibit Schedule Bs. The one
2 that is attached to this exhibit is the one --
3 the only difference that I can see is that there
4 is a figure of \$3,900 versus \$3,400. So we're
5 talking about the one that references a figure
6 of -- I'm sorry. \$3,900,000.

7 MR. UNDERHILL: Your point is well
8 made. Off the record for a second.

9 (Discussion off the record.)

10 MR. UNDERHILL: Mark this as Exhibit
11 No. 2.

12 (Whereupon, Plaintiff's
13 Exhibit No. 2 was marked for
14 identification.)

15 BY MR. UNDERHILL:

16 Q. Now I'll show you what has been marked
17 as Exhibit 2 and thanks for your patience and
18 thank you, Counsel, for pointing this out.

19 So I'm now showing you two documents
20 that are in front of you and they're the two
21 documents you looked at in advance of your
22 deposition today, right?

23 A. Yes.

24 Q. Looking at Exhibit 2, can you tell me

24

<p>1 which of these Schedule Bs you saw first?</p> <p>2 A. To my belief, it was the 3.4 million.</p> <p>3 Q. I see.</p> <p>4 What you're referring to is Exhibit 2?</p> <p>5 A. Exhibit 2.</p> <p>6 Q. The one with the handwritten change</p> <p>7 that you signed off on, right?</p> <p>8 A. Yes.</p> <p>9 Q. And this was a document you said Ron</p> <p>10 gave you?</p> <p>11 A. Yes.</p> <p>12 Q. Did Ron tell you why he was giving this</p> <p>13 document to you and asking you to sign it?</p> <p>14 A. Yes.</p> <p>15 Q. What did he tell you?</p> <p>16 A. We were closing on the sale of the</p> <p>17 Oconto Falls mill and that there were still</p> <p>18 monies owed to IFC and that this was a</p> <p>19 promissory note from Spirit to IFC that they</p> <p>20 would get paid before we would pay any monies to</p> <p>21 PCDI.</p> <p>22 Q. When you say closing on the sale of</p> <p>23 Oconto Falls, did you say plant?</p> <p>24 A. Yes.</p> <p style="text-align: right;">25</p>	<p>1 A. Yes.</p> <p>2 Q. What was your ownership interest in</p> <p>3 PCDI at that time?</p> <p>4 A. I have very small, less than ten</p> <p>5 stocks, shares. I have turned them into that</p> <p>6 since then. So today I own no stock in PCDI.</p> <p>7 Q. When you say you turned them in, you</p> <p>8 turned them into whom?</p> <p>9 A. PCDI paid me a fraction of what I had</p> <p>10 put in.</p> <p>11 Q. And were you also a shareholder in</p> <p>12 TPTC?</p> <p>13 A. No.</p> <p>14 Q. And was PCDI, to your knowledge, the</p> <p>15 full owner of the Oconto Falls plant?</p> <p>16 A. To my knowledge, yes.</p> <p>17 Q. So it wasn't like they were a partial</p> <p>18 owner of it; they were the full owner of it?</p> <p>19 A. To my knowledge.</p> <p>20 Q. And ST Paper you say was the purchaser</p> <p>21 of the Oconto Falls plant; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Who or what owns ST Paper, do you know?</p> <p>24 A. I do not know the makeup of their</p> <p style="text-align: right;">27</p>
<p>1 Q. We all pretty much know what we're all</p> <p>2 talking about, but it's really important for the</p> <p>3 Court to understand what the background is as</p> <p>4 well.</p> <p>5 When you say the sale of the Oconto</p> <p>6 Falls plant, what are you referring to?</p> <p>7 A. ST Paper's purchase of a mill that Ron</p> <p>8 owned in Oconto Falls.</p> <p>9 Q. And when you say "Ron owned," did you</p> <p>10 understand it that Ron owned it personally?</p> <p>11 A. I believe PCDI.</p> <p>12 Q. PCDI?</p> <p>13 A. Yes.</p> <p>14 Q. Did you have any ownership interest in</p> <p>15 PCDI?</p> <p>16 A. Yes.</p> <p>17 Q. When you say a closing on the sale of</p> <p>18 the Oconto Falls plant, that occurred</p> <p>19 approximately when? March or April of 2007?</p> <p>20 A. Yes.</p> <p>21 Q. And did that sale actually go through?</p> <p>22 A. Yes.</p> <p>23 Q. So ST Paper purchased the Oconto Falls</p> <p>24 plant?</p> <p style="text-align: right;">26</p>	<p>1 ownership.</p> <p>2 Q. As far as you know, is anyone in the</p> <p>3 Van Den Heuvel family an owner of ST Paper or if</p> <p>4 it's a limited liability company, a member of ST</p> <p>5 Paper?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. And I'm not holding you to this. I'm</p> <p>8 trying to get a sense for it.</p> <p>9 To your knowledge, it's a completely</p> <p>10 separate entity than any -- strike that. I'll</p> <p>11 withdraw the question.</p> <p>12 Did you know who at ST Paper was</p> <p>13 involved in that transaction?</p> <p>14 A. Sharad Tak.</p> <p>15 Q. Can you spell his name?</p> <p>16 A. S-h-a-r-a-d, T-a-k.</p> <p>17 Q. And Sharad Tak was representing in some</p> <p>18 capacity ST Paper in connection with that</p> <p>19 purchase of the Oconto Falls plant, right?</p> <p>20 A. That is the only person we talked to,</p> <p>21 yes.</p> <p>22 Q. Did you yourself have any dealings with</p> <p>23 Sharad Tak in connection with the sales of the</p> <p>24 Oconto Falls plant?</p> <p style="text-align: right;">28</p>

<p>1 A. No.</p> <p>2 Q. In addition to -- leaving aside for a</p> <p>3 moment your signing off on this acknowledgment</p> <p>4 and consent to assignment note, is there any --</p> <p>5 did you have any other involvement in the sale</p> <p>6 of the Oconto Falls plant?</p> <p>7 A. No.</p> <p>8 Q. Either personally as a member of the</p> <p>9 Van Den Heuvel family or as the president of</p> <p>10 Spirit Construction?</p> <p>11 A. No.</p> <p>12 Q. So if this is unfairly characterizing</p> <p>13 your testimony, then tell me. I'm trying to</p> <p>14 move it along here, but I don't want to do it</p> <p>15 unfairly.</p> <p>16 So you're saying that essentially at</p> <p>17 some point in March of 2007, your brother Ron</p> <p>18 came to you and said please sign this</p> <p>19 acknowledgment and consent to assignment?</p> <p>20 A. Yes.</p> <p>21 Q. And the acknowledgment of and consent</p> <p>22 to assignment relates to some construction</p> <p>23 contracts, right?</p> <p>24 A. Yes.</p> <p style="text-align: right;">29</p>	<p>1 Q. And could you just briefly describe for</p> <p>2 me what those contracts were for, what</p> <p>3 construction projects were covered by those</p> <p>4 contracts?</p> <p>5 A. They would have been tissue and liner</p> <p>6 board facilities in De Pere, Wisconsin;</p> <p>7 Pennsylvania, I don't know the city; St. George,</p> <p>8 Utah. I don't know what the fourth one would be</p> <p>9 right now.</p> <p>10 Q. The first you said was De Pere?</p> <p>11 A. Yes.</p> <p>12 Q. So capital D-e space capital P-e-r-e?</p> <p>13 A. Yes.</p> <p>14 Q. That refers to a location in Wisconsin?</p> <p>15 A. A city.</p> <p>16 Q. And was there a tissue manufacturing</p> <p>17 facility in De Pere already?</p> <p>18 A. No.</p> <p>19 Q. So this was a contract -- the EPC</p> <p>20 contract related to De Pere was for the</p> <p>21 construction of a brand new tissue paper</p> <p>22 production facility?</p> <p>23 A. Yes.</p> <p>24 Q. And at that point, say early 2007, had</p> <p style="text-align: right;">31</p>
<p>1 Q. And the construction contracts are</p> <p>2 referred to as four fixed price engineering</p> <p>3 procurement and construction agreements with ST</p> <p>4 Paper, LLC; is that correct?</p> <p>5 A. Yes.</p> <p>6 MR. CYRANOSKI: Can I ask which exhibit</p> <p>7 you're referring to.</p> <p>8 MR. UNDERHILL: I can look at either</p> <p>9 one of them, Exhibit 1 or Exhibit 2, but to</p> <p>10 address your point, Steve, why don't you look at</p> <p>11 Exhibit 2 because that's the earlier of the two</p> <p>12 documents.</p> <p>13 BY MR. UNDERHILL:</p> <p>14 Q. So if I refer today to contracts</p> <p>15 referred to as EPC contracts, will you know that</p> <p>16 I'm referring to these four fixed price</p> <p>17 engineering procurement and construction</p> <p>18 agreements?</p> <p>19 A. Yes.</p> <p>20 Q. So you know them as the EPC contracts?</p> <p>21 A. That is correct.</p> <p>22 Q. And in March of 2007, you were then</p> <p>23 aware of the EPC contracts, correct?</p> <p>24 A. Yes.</p> <p style="text-align: right;">30</p>	<p>1 Spirit Construction been engaged to construct</p> <p>2 that facility?</p> <p>3 A. We have given pricing.</p> <p>4 Q. You had given pricing?</p> <p>5 A. Yes.</p> <p>6 Q. Who had you given pricing to?</p> <p>7 A. ST Paper.</p> <p>8 Q. So ST Paper already existed as an</p> <p>9 entity of some kind in early 2007?</p> <p>10 A. Yes.</p> <p>11 Q. And so then if I understand you</p> <p>12 correctly, what you're saying is that they -- ST</p> <p>13 Paper in early 2007 was intending on purchasing</p> <p>14 the Oconto Falls plant that was owned by PCDI</p> <p>15 and it was intending to construct at least one</p> <p>16 additional tissue production facility?</p> <p>17 MR. CYRANOSKI: I'm going to object to</p> <p>18 lack of foundation, but you can go ahead and</p> <p>19 answer, if you know.</p> <p>20 THE WITNESS: To the best of my</p> <p>21 knowledge, they were.</p> <p>22 BY MR. UNDERHILL:</p> <p>23 Q. And so your involvement in this</p> <p>24 transaction related to Spirit Construction being</p> <p style="text-align: right;">32</p>

<p>1 engaged by ST Paper to build this one facility</p> <p>2 and/or facilities or modify the facilities in</p> <p>3 Pennsylvania and Utah?</p> <p>4 A. They were all brand new mills.</p> <p>5 Q. All brand new mills?</p> <p>6 A. Yes.</p> <p>7 Q. And directing your attention to the</p> <p>8 second paragraph in Exhibit 2, do you see it</p> <p>9 starts out with the words we confirm?</p> <p>10 A. Yes.</p> <p>11 Q. Could you read Paragraph 2 for me out</p> <p>12 loud, if you don't mind?</p> <p>13 A. "We confirm that after the date hereof</p> <p>14 and until receipt by us of written notice to the</p> <p>15 contrary from you, we will pay all amounts due</p> <p>16 or to become due by us to TPTC or PCDI up to</p> <p>17 \$34,000 per month and in the aggregate amount of</p> <p>18 \$3.4 million under the EPC contracts to you by</p> <p>19 making payment to you at 8700 North Waukegan</p> <p>20 Road, Suite 100, Morton Grove, Illinois 60053 or</p> <p>21 pursuant to such wire transfer instructions as</p> <p>22 you may from time to time provide to us."</p> <p>23 Q. To your knowledge, has Spirit</p> <p>24 Construction Services paid any monies to IFC</p> <p style="text-align: right;">33</p>	<p>1 modified?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. And so it would be fair to say Spirit</p> <p>4 Construction Services has not obtained the</p> <p>5 written consent of IFC with respect to the</p> <p>6 change of any EPC contracts, has it?</p> <p>7 A. No.</p> <p>8 Q. And you said earlier that Ron, your</p> <p>9 brother Ron, asked you to sign this document in</p> <p>10 order to assist in the closing on the sale of</p> <p>11 the Oconto Falls plant; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. So you signed it and you gave it back</p> <p>14 to him?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether -- if you can</p> <p>17 recall, did you have a meeting with Ron? Did he</p> <p>18 mail this to you? How is it that he gave this</p> <p>19 to you to sign?</p> <p>20 A. We had a meeting.</p> <p>21 Q. And where did the meeting occur?</p> <p>22 A. In the conference room at Vos Electric.</p> <p>23 Q. And is there a reason why the meeting</p> <p>24 occurred there?</p> <p style="text-align: right;">35</p>
<p>1 Credit?</p> <p>2 A. No.</p> <p>3 Q. Look at the next paragraph. It also</p> <p>4 begins with the words we confirm that.</p> <p>5 Could you read that paragraph for me</p> <p>6 out loud.</p> <p>7 A. "We confirm that the terms of the EPC</p> <p>8 contracts remain in full force and effect and</p> <p>9 that Tissue Products Technology Corporation and</p> <p>10 Partners Concepts Development, Inc., are</p> <p>11 subcontractors there under and that neither we,</p> <p>12 nor TPTC or PCDI are presently in breach of the</p> <p>13 terms of the EPC contracts. We further confirm</p> <p>14 that the terms of this acknowledgment of and</p> <p>15 consent to assignment shall not be varied or</p> <p>16 modified without your prior written consent."</p> <p>17 Q. Thank you.</p> <p>18 You read both of those paragraphs when</p> <p>19 you signed this document?</p> <p>20 A. Yes.</p> <p>21 Q. And, to your knowledge today, as you</p> <p>22 sit here today, do you know whether Spirit</p> <p>23 Construction Services has provided any notice to</p> <p>24 IFC that the EPC contracts have been varied or</p> <p style="text-align: right;">34</p>	<p>1 A. Spirit Construction and Vos Electric</p> <p>2 shared the same building and the same conference</p> <p>3 room.</p> <p>4 Q. But I mean the reason it occurred there</p> <p>5 versus, say, your going to the offices of TPTC</p> <p>6 or PCDI or the lawyers' offices, if you know?</p> <p>7 A. We weren't happy to sign it.</p> <p>8 Q. Oh, you weren't?</p> <p>9 A. No.</p> <p>10 Q. Why weren't you happy to sign it?</p> <p>11 A. When we read it, we understood that it</p> <p>12 would go and we would pay this before we would</p> <p>13 pay anything to PCDI. We agreed to that.</p> <p>14 That's why we did sign it. You can sign things</p> <p>15 without being happy to sign them.</p> <p>16 Q. Was anyone else at the meeting besides</p> <p>17 you and Ron when he asked you to sign Exhibit 2?</p> <p>18 A. Yes.</p> <p>19 Q. Who else was there?</p> <p>20 A. I know my brother Dave was there.</p> <p>21 That's all for sure. There were other people</p> <p>22 there, but I don't know for sure who else was</p> <p>23 there.</p> <p>24 Q. Was the purpose of the meeting just to</p> <p style="text-align: right;">36</p>

<p>1 sign this one document or were you there to sign</p> <p>2 other documents or to have other things</p> <p>3 explained to you in connection with the deal?</p> <p>4 A. I signed other documents earlier.</p> <p>5 Q. That day?</p> <p>6 A. That day. This was after.</p> <p>7 Q. I see.</p> <p>8 Did you know you were going to have to</p> <p>9 sign this document when you signed the earlier</p> <p>10 documents?</p> <p>11 A. No.</p> <p>12 Q. So when did Ron first tell you that you</p> <p>13 were going to have to sign this acknowledgment</p> <p>14 of and consent to assignment?</p> <p>15 MR. CYRANOSKI: I'm going to object</p> <p>16 that it mischaracterizes the testimony.</p> <p>17 THE WITNESS: I don't know the time.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. You don't know when he first asked you</p> <p>20 to sign this?</p> <p>21 A. Correct.</p> <p>22 Q. So at the meeting when you signed this,</p> <p>23 had you seen a draft of this document before?</p> <p>24 A. To my knowledge, no.</p> <p style="text-align: right;">37</p>	<p>1 A. Yes.</p> <p>2 Q. We will be expecting your bill, I</p> <p>3 guess, for that.</p> <p>4 And then you signed your name to</p> <p>5 indicate that you were acknowledging the change?</p> <p>6 A. Yes.</p> <p>7 Q. And then you gave it back to Ron?</p> <p>8 A. Correct.</p> <p>9 Q. So after that, at some point somebody</p> <p>10 came to you and asked you to sign the Schedule B</p> <p>11 that is part of Exhibit 1 and the numbers have</p> <p>12 changed in it somewhat. So now you can direct</p> <p>13 your attention to Schedule B.</p> <p>14 So now this new acknowledgment of</p> <p>15 consent to assignment document, you signed that</p> <p>16 document as well, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall when you signed it?</p> <p>19 A. Later in the day.</p> <p>20 Q. It was the same day?</p> <p>21 A. I believe it was the same day.</p> <p>22 Q. And who presented it to you for</p> <p>23 signing?</p> <p>24 A. Ron brought it over.</p> <p style="text-align: right;">39</p>
<p>1 Q. Had Ron or anybody discussed the</p> <p>2 concept or the idea that Spirit Construction</p> <p>3 would have to sign off on this note before the</p> <p>4 meeting?</p> <p>5 A. No.</p> <p>6 Q. So is it fair to say you were surprised</p> <p>7 that Ron was asking you to sign this document?</p> <p>8 A. Yes.</p> <p>9 Q. At the time he asked you to sign it --</p> <p>10 let me withdraw that question and rephrase it.</p> <p>11 Look at the middle of it where someone</p> <p>12 has circled the number 34,000 and replaced it</p> <p>13 with a sentence that says should be \$340,000.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Whose handwriting is that?</p> <p>17 A. Mine.</p> <p>18 Q. And who told you to change the \$34,000</p> <p>19 per month to \$340,000 per month?</p> <p>20 A. When we read the document, the first</p> <p>21 statement, the first paragraph says 340,000.</p> <p>22 Q. So we have you to thank for having to</p> <p>23 correct the typographical error in the second</p> <p>24 paragraph?</p> <p style="text-align: right;">38</p>	<p>1 Q. And did he explain to you why he was</p> <p>2 asking you to sign a new version of this</p> <p>3 agreement?</p> <p>4 A. No.</p> <p>5 Q. Did you ask him any questions -- I'm</p> <p>6 sorry.</p> <p>7 Did you have something else you wanted</p> <p>8 to add?</p> <p>9 A. He did say that there were other fees</p> <p>10 that the 3.4 didn't cover. That's all.</p> <p>11 Q. Did Ron say to you at some point during</p> <p>12 this time period that it turned out that PCDI or</p> <p>13 TPTC wasn't going to be receiving as much money</p> <p>14 out of the proceeds of the closing and,</p> <p>15 therefore, they needed to borrow more money from</p> <p>16 IFC?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. But did he explain to you in connection</p> <p>19 with either one of these two documents the</p> <p>20 reason why TPTC was going to continue to owe</p> <p>21 money to IFC?</p> <p>22 A. Yes.</p> <p>23 Q. What did he say was the reason?</p> <p>24 A. I was not in those conversations.</p> <p style="text-align: right;">40</p>

<p>1 Q. But he did explain -- my question was</p> <p>2 -- I don't want to cut you off.</p> <p>3 Did you have something else you wanted</p> <p>4 to add?</p> <p>5 MR. CYRANOSKI: He's asking you what</p> <p>6 Ron told you.</p> <p>7 THE WITNESS: Ron told me nothing.</p> <p>8 BY MR. UNDERHILL:</p> <p>9 Q. So Ron didn't tell you why it was that</p> <p>10 even after this closing where ST Paper was</p> <p>11 buying the Oconto Falls plant, TPTC and PCDI</p> <p>12 would still continue to owe \$3.4 million to IFC?</p> <p>13 A. He did not tell me personally. He told</p> <p>14 my brother Dave. My brother Dave and not me had</p> <p>15 conversations.</p> <p>16 Q. What did Dave tell you?</p> <p>17 A. Dave told me that they had to borrow</p> <p>18 money because, yes, they were short on closing</p> <p>19 for Oconto Falls.</p> <p>20 Q. When you say "short for closing," what</p> <p>21 does that mean?</p> <p>22 A. There was not enough money to cover</p> <p>23 some of the things for closing.</p> <p>24 Q. And so now later in the day Ron brought</p> <p style="text-align: right;">41</p>	<p>1 terms of the EPC contracts. We further confirm</p> <p>2 that the terms of this acknowledgment of and</p> <p>3 consent to assignment shall not be varied or</p> <p>4 modified without your prior written consent."</p> <p>5 Q. And did you understand that your</p> <p>6 brother Ron was going to give this</p> <p>7 acknowledgment and consent to assignment to IFC?</p> <p>8 A. Yes.</p> <p>9 Q. And that based on that, IFC was going</p> <p>10 to loan this \$3.9 million to IFC?</p> <p>11 MR. MOREL: I think you misspoke.</p> <p>12 MR. UNDERHILL: What did I say?</p> <p>13 MR. MOREL: You said loan to IFC.</p> <p>14 BY MR. UNDERHILL:</p> <p>15 Q. What did you understand?</p> <p>16 A. To PCDI.</p> <p>17 Q. To PCDI?</p> <p>18 A. Yes, that they were going to loan it.</p> <p>19 Q. So you understood that was the purpose</p> <p>20 of this document?</p> <p>21 A. Yes.</p> <p>22 Q. And you signed it?</p> <p>23 A. Yes.</p> <p>24 Q. At any point -- it may seem like I</p> <p style="text-align: right;">43</p>
<p>1 you the revised Schedule B titled acknowledgment</p> <p>2 of and consent to assignment.</p> <p>3 Now the number has changed from</p> <p>4 \$3.4 million to 3.9 -- approximately</p> <p>5 \$3.9 million; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. When you signed this, did you notice</p> <p>8 the change in the number?</p> <p>9 A. Yes.</p> <p>10 Q. And you saw that it had increased?</p> <p>11 A. Yes.</p> <p>12 Q. And again directing your attention to</p> <p>13 the third paragraph, it says we confirm that the</p> <p>14 terms of.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Could you read that out loud for me</p> <p>18 again?</p> <p>19 A. "We confirm that the terms of the EPC</p> <p>20 contracts remain in full force and effect and</p> <p>21 that Tissue Products Technology Corporation and</p> <p>22 Partners Concepts Development, Inc., are</p> <p>23 subcontractors there under and that neither we</p> <p>24 nor TPTC or PCDI are presently in breach of the</p> <p style="text-align: right;">42</p>	<p>1 asked you this because it related to the prior</p> <p>2 draft, but at any point did Spirit Construction</p> <p>3 Services obtain the written prior consent of IFC</p> <p>4 to change or modify the terms of the EPC</p> <p>5 contracts?</p> <p>6 A. No.</p> <p>7 Q. And as you're looking at this document</p> <p>8 today, does it appear to be a true and correct</p> <p>9 copy of the document that you signed back on or</p> <p>10 about March 28, 2007?</p> <p>11 A. Yes.</p> <p>12 Q. Now, turn to the front of the document.</p> <p>13 It's called continuing pledge agreement. In</p> <p>14 fact, I don't think there is any disagreement.</p> <p>15 The Schedule A and Schedule B that are</p> <p>16 part of this document are part of a document</p> <p>17 called continuing pledge agreement.</p> <p>18 Have you ever had the opportunity to</p> <p>19 review this continuing pledge agreement?</p> <p>20 A. No.</p> <p>21 Q. So when Ron gave you the acknowledgment</p> <p>22 and consent form to sign, he didn't give you the</p> <p>23 continuing pledge agreement?</p> <p>24 A. No.</p> <p style="text-align: right;">44</p>

<p>1 Q. When is the first time you saw the</p> <p>2 continuing pledge agreement?</p> <p>3 A. I don't know if I had seen it. I've</p> <p>4 never seen it in its entirety.</p> <p>5 Q. So your looking at it today is the</p> <p>6 first time you've ever seen it?</p> <p>7 A. I have seen it, but I have not gone</p> <p>8 through it.</p> <p>9 Q. I see. Okay. Maybe I better clarify</p> <p>10 my question.</p> <p>11 When Ron gave you the consent note to</p> <p>12 sign, did you at least have the opportunity to</p> <p>13 see the continuing pledge agreement that it was</p> <p>14 part of?</p> <p>15 A. No.</p> <p>16 Q. He just gave you the separate document?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ask to see the pledge</p> <p>19 agreement?</p> <p>20 A. No.</p> <p>21 Q. And again I'm not interested in</p> <p>22 conversations you had with your attorney, your</p> <p>23 attorney of record here.</p> <p>24 Did you have a chance to see -- when</p> <p style="text-align: right;">45</p>	<p>1 Construction Services and to your attention.</p> <p>2 Do you have any reason to doubt that</p> <p>3 this was delivered to Spirit Construction</p> <p>4 Services?</p> <p>5 A. None whatsoever.</p> <p>6 Q. You don't doubt it?</p> <p>7 A. I don't doubt it.</p> <p>8 Q. So we can assume at some point Spirit</p> <p>9 Construction Services received this notice of</p> <p>10 assignment?</p> <p>11 MR. CYRANOSKI: I'm going to object to</p> <p>12 the form of the question.</p> <p>13 Go ahead and answer it. It calls for</p> <p>14 speculation, but you can go ahead and answer it.</p> <p>15 MR. UNDERHILL: I'll withdraw the</p> <p>16 question. I don't want to make any assumptions.</p> <p>17 BY MR. UNDERHILL:</p> <p>18 Q. Let me ask you this: Do you have a</p> <p>19 file somewhere at Spirit Construction that</p> <p>20 contains the acknowledgment of and consent to</p> <p>21 assignment form?</p> <p>22 A. Yes.</p> <p>23 Q. And when I say you, I mean you</p> <p>24 personally?</p> <p style="text-align: right;">47</p>
<p>1 this lawsuit was filed against Spirit</p> <p>2 Construction, did anybody at that point show you</p> <p>3 the continuing pledge agreement or did you have</p> <p>4 a chance to review it to see what it said?</p> <p>5 A. That probably was the first time that I</p> <p>6 would have seen it, but we referred that back to</p> <p>7 our counsel.</p> <p>8 Q. Let me direct your attention to</p> <p>9 Schedule A, which is part of this same document.</p> <p>10 Maybe you can just take a moment to look at it.</p> <p>11 It's two pages and for the record, it's a</p> <p>12 document dated March 28, 2007, addressed to</p> <p>13 Spirit Construction Services to the attention of</p> <p>14 Steve Van Den Heuvel and it's signed by Ron Van</p> <p>15 Den Heuvel on behalf of Tissue Products</p> <p>16 Technology Corporation and Partners Concepts</p> <p>17 Development, Inc.</p> <p>18 Steve, just take a moment to look at</p> <p>19 the document and tell me when you've at least</p> <p>20 had a chance to eyeball it.</p> <p>21 A. Okay.</p> <p>22 Q. Have you seen this document before?</p> <p>23 A. No.</p> <p>24 Q. It says it's addressed to Spirit</p> <p style="text-align: right;">46</p>	<p>1 A. No.</p> <p>2 Q. But Spirit Construction has one?</p> <p>3 A. Yes.</p> <p>4 Q. And it has documents that relate to</p> <p>5 this transaction?</p> <p>6 A. Yes.</p> <p>7 Q. When I say this transaction, that's my</p> <p>8 rough -- I'm roughly describing the sale of the</p> <p>9 Oconto Falls plant to ST Paper.</p> <p>10 A. Yes.</p> <p>11 Q. And then the related transactions that</p> <p>12 flow out of that?</p> <p>13 A. With Spirit Construction, yes.</p> <p>14 Q. So Spirit Construction maintains a file</p> <p>15 of some kind on this?</p> <p>16 A. Yes.</p> <p>17 Q. And who is responsible for maintaining</p> <p>18 that file at the company?</p> <p>19 A. Doug Barone at that time would have had</p> <p>20 that file.</p> <p>21 Q. When you say "at that time," but what</p> <p>22 about now, presently?</p> <p>23 A. Shelly Rottier, our secretary,</p> <p>24 R-o-t-t-i-e-r.</p> <p style="text-align: right;">48</p>

<p>1 Q. Now, where is Shelly located?</p> <p>2 A. In Green Bay, Wisconsin.</p> <p>3 Q. When you say she's our secretary, you</p> <p>4 mean she's yours and Doug's secretary?</p> <p>5 A. Yes.</p> <p>6 Q. So what does this file look like,</p> <p>7 approximately? Is it in a brown standing file</p> <p>8 like this?</p> <p>9 A. Yes.</p> <p>10 Q. And it contains, as best as you know,</p> <p>11 all of the documents that relate to the</p> <p>12 transaction that we've been talking about today?</p> <p>13 A. Yes.</p> <p>14 Q. At any point in this litigation, as far</p> <p>15 as you know, has somebody come and asked that</p> <p>16 that file be turned over to the lawyers or be</p> <p>17 photocopied for any reason in connection with</p> <p>18 the lawsuit?</p> <p>19 A. I don't understand your question.</p> <p>20 Q. Okay. Let me rephrase it then.</p> <p>21 Since this lawsuit was filed, has</p> <p>22 anyone come to you -- I'll just start with you</p> <p>23 for now.</p> <p>24 Has anyone come to you and said, Steve,</p> <p style="text-align: right;">49</p>	<p>1 BY MR. UNDERHILL:</p> <p>2 Q. Steve, I'm going to show you what has</p> <p>3 been marked as Plaintiff's Exhibit No. 3, which</p> <p>4 is a many-page document. It bears the title</p> <p>5 fixed price engineering procurement and</p> <p>6 construction agreement or EPC agreement between</p> <p>7 Spirit Construction Services and ST Paper and it</p> <p>8 makes reference to Oconto Falls and De Pere,</p> <p>9 Wisconsin.</p> <p>10 Going forward this morning, I'm just</p> <p>11 going to refer to this document as the De Pere</p> <p>12 EPC agreement. Obviously it's too long to ask</p> <p>13 you to study it.</p> <p>14 MR. MOREL: I think you can just call</p> <p>15 it as Exhibit 3 because there are two contracts.</p> <p>16 MR. UNDERHILL: There is another one?</p> <p>17 MR. MOREL: Yes.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. There's another agreement out that has</p> <p>20 a reference to De Pere, but we'll just call this</p> <p>21 one Exhibit 3.</p> <p>22 Have you ever seen this document</p> <p>23 before?</p> <p>24 A. I've gone through it. It is the</p> <p style="text-align: right;">51</p>
<p>1 we have to give the lawyers for IFC our file on</p> <p>2 this matter?</p> <p>3 A. When I got to come to this deposition,</p> <p>4 there was a paragraph in there asking for some</p> <p>5 of that.</p> <p>6 Q. And what did you do with the file?</p> <p>7 A. It's still there.</p> <p>8 Q. It's still there?</p> <p>9 A. Yes.</p> <p>10 Q. And as far as you know, the copy of</p> <p>11 this notice of assignment that was given to</p> <p>12 Spirit Construction is in that file?</p> <p>13 A. I would say yes.</p> <p>14 MR. CYRANOSKI: Are you guessing or do</p> <p>15 you know?</p> <p>16 THE WITNESS: I am guessing. To the</p> <p>17 best of my knowledge.</p> <p>18 MR. CYRANOSKI: Can we take a short</p> <p>19 break?</p> <p>20 MR. UNDERHILL: Of course.</p> <p>21 (Recess taken.)</p> <p>22 (Whereupon, Plaintiff's</p> <p>23 Exhibit No. 3 was marked for</p> <p>24 identification.)</p> <p style="text-align: right;">50</p>	<p>1 document, I believe, that I have signed this</p> <p>2 document. I don't know if all of the pages are</p> <p>3 exactly the same, but, yes, it appears to be the</p> <p>4 one that I did sign.</p> <p>5 Q. And when do you believe you signed this</p> <p>6 document?</p> <p>7 A. In 2007. I don't know which month.</p> <p>8 Q. And do you know whether Spirit</p> <p>9 Construction then performed the work that was</p> <p>10 required to be performed under this agreement?</p> <p>11 A. We are continuing to perform that work.</p> <p>12 Q. Has Spirit Construction been paid by ST</p> <p>13 Paper for any of the work it's done under this</p> <p>14 contract?</p> <p>15 A. Yes.</p> <p>16 Q. Just roughly speaking, can you</p> <p>17 approximate how much money has been paid to</p> <p>18 Spirit Construction by ST Paper pursuant to this</p> <p>19 agreement which is Plaintiff's Exhibit No. 3?</p> <p>20 A. 9 to 10 million.</p> <p>21 Q. Has ST Paper paid any money to PCDI or</p> <p>22 TPTC as a subcontractor under this agreement,</p> <p>23 Plaintiff's Exhibit 3?</p> <p>24 A. Not to my knowledge.</p> <p style="text-align: right;">52</p>

<p>1 Q. Under the agreement, was TPTC or PCDI</p> <p>2 identified as a subcontractor that would be</p> <p>3 engaged by ST Paper, if you know?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Steve, go to Page 44 of this document.</p> <p>6 That is a page titled Exhibit G, operating</p> <p>7 manuals.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see that it identifies TPTC</p> <p>11 as providing certain operating manuals?</p> <p>12 A. Yes.</p> <p>13 Q. Did TPTC provide those manuals, to your</p> <p>14 knowledge?</p> <p>15 MR. CYRANOSKI: Objection. Lack of</p> <p>16 foundation.</p> <p>17 THE WITNESS: Not to my knowledge.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. Is there a reason why they did not?</p> <p>20 MR. CYRANOSKI: Objection. Lack of</p> <p>21 foundation.</p> <p>22 THE WITNESS: Not to my knowledge.</p> <p>23 BY MR. UNDERHILL:</p> <p>24 Q. And then directing your attention to</p> <p style="text-align: right;">53</p>	<p>1 A. I understand.</p> <p>2 Q. So here, TPTC and PCDI is the same</p> <p>3 companies we've been talking about all along,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And did they provide this support?</p> <p>7 MR. CYRANOSKI: Objection. Lack of</p> <p>8 foundation.</p> <p>9 THE WITNESS: The project is not</p> <p>10 complete.</p> <p>11 BY MR. UNDERHILL:</p> <p>12 Q. So that's your answer.</p> <p>13 My question was then: Did they provide</p> <p>14 this support that's identified here?</p> <p>15 MR. CYRANOSKI: Objection. Lack of</p> <p>16 foundation.</p> <p>17 THE WITNESS: Not to my knowledge.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. Because the time for them doing that</p> <p>20 hasn't arisen yet is what you're saying?</p> <p>21 A. To my knowledge, yes.</p> <p>22 Q. Go back to Page 41, Exhibit D.</p> <p>23 A. Yes.</p> <p>24 Q. Exhibit D, could you read that first</p> <p style="text-align: right;">55</p>
<p>1 Exhibit H which is on Page 48, it's titled</p> <p>2 Exhibit H: Organizational structural matrix?</p> <p>3 A. Yes.</p> <p>4 Q. And can you see the first sentence.</p> <p>5 Could you read the first sentence for</p> <p>6 me?</p> <p>7 A. "The following table describes a matrix</p> <p>8 of organizational structure issues that will be</p> <p>9 supported by the contractor in the performance</p> <p>10 of work as well as other issues that will need</p> <p>11 to be addressed by owner."</p> <p>12 Q. And the owner in this document is</p> <p>13 referring to ST Paper, right?</p> <p>14 A. Yes.</p> <p>15 Q. And the contractor is identified as</p> <p>16 Spirit Construction, right?</p> <p>17 A. Yes.</p> <p>18 Q. Then below this there is a table that</p> <p>19 is showing this support that Spirit Construction</p> <p>20 is getting from these various entities</p> <p>21 identified.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Am I accurately describing it?</p> <p style="text-align: right;">54</p>	<p>1 paragraph for me? It begins the following is a</p> <p>2 list of.</p> <p>3 A. "The following is a list of</p> <p>4 subcontractors that the contractor expects to be</p> <p>5 performing work at the owner's site or</p> <p>6 performing work at another site that will be</p> <p>7 used at the owner's site. Also listed is a</p> <p>8 general description of the scope of work that</p> <p>9 the contractor and each subcontractor is</p> <p>10 expected to perform."</p> <p>11 Q. And then there's a little matrix</p> <p>12 showing who the contractor is and the</p> <p>13 subcontractors; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And is one of the subcontractors</p> <p>16 identified as Tissue Products Technology</p> <p>17 Company?</p> <p>18 A. Yes.</p> <p>19 Q. And there's a definition of what</p> <p>20 they're supposed to be doing under the scope of</p> <p>21 work, do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that an accurate description of what</p> <p>24 TPTC is expected to do under this contract?</p> <p style="text-align: right;">56</p>

<p>1 MR. CYRANOSKI: I'm going to object</p> <p>2 that it calls for a legal conclusion and that it</p> <p>3 lacks foundation.</p> <p>4 THE WITNESS: I don't know all of the</p> <p>5 things that they're doing, but they have not</p> <p>6 done anything till this point.</p> <p>7 BY MR. UNDERHILL:</p> <p>8 Q. Has Spirit Construction found another</p> <p>9 subcontractor to do this same work under this</p> <p>10 contract?</p> <p>11 A. We have self-performed it.</p> <p>12 Q. What does that mean?</p> <p>13 A. Spirit, they did it themselves.</p> <p>14 Q. So Spirit you're saying did the same</p> <p>15 work that Tissue Products Technology Company was</p> <p>16 supposed to do here?</p> <p>17 A. That could have done, yes.</p> <p>18 Q. For example, which of these items shown</p> <p>19 in the scope of work did Spirit Construction</p> <p>20 undertake?</p> <p>21 A. Purchase of equipment.</p> <p>22 Q. So Spirit Construction itself created</p> <p>23 the definition of the equipment that needed to</p> <p>24 be purchased and went out and purchased the</p> <p style="text-align: right;">57</p>	<p>1 A. That is not -- I don't know. To my</p> <p>2 knowledge, I do not know.</p> <p>3 Q. But has that been done yet on this</p> <p>4 project?</p> <p>5 A. I know on pieces there has been some</p> <p>6 start-up, but the main start-up has not.</p> <p>7 Q. What about operations and maintenance</p> <p>8 training and manuals? You had identified as</p> <p>9 TPTC was going to be doing that work. Who has</p> <p>10 done that work?</p> <p>11 A. There is an existing mill and I believe</p> <p>12 they're using the existing mill's operation and</p> <p>13 maintenance training manuals.</p> <p>14 Q. Who is the existing mill?</p> <p>15 A. Previously it was Oconto Fall's mill.</p> <p>16 Now it's ST Paper.</p> <p>17 Q. And just a minute ago we were looking</p> <p>18 at some manuals and some sections in this</p> <p>19 contract that talk about operating manuals,</p> <p>20 Exhibit G, that TPTC was supposed to provide.</p> <p>21 Are you saying that those manuals being</p> <p>22 provided by TPTC had instead been provided by ST</p> <p>23 Paper?</p> <p>24 MR. CYRANOSKI: Asked and answered and</p> <p style="text-align: right;">59</p>
<p>1 equipment?</p> <p>2 A. We had an engineer. Pine Ridge</p> <p>3 Engineering, that's how they're derived.</p> <p>4 Q. I couldn't quite hear what you said.</p> <p>5 Say it again.</p> <p>6 A. Pine Ridge Engineering.</p> <p>7 Q. You hired Pine Ridge Engineering.</p> <p>8 Where are they located?</p> <p>9 A. De Pere, Wisconsin.</p> <p>10 Q. Who owns or operates Pine Ridge</p> <p>11 Engineering?</p> <p>12 A. Dan Pitkowski.</p> <p>13 Q. Is he any relation to your family?</p> <p>14 A. No.</p> <p>15 Q. So at some point Spirit Construction</p> <p>16 went to Pine Ridge Engineering and asked Pine</p> <p>17 Ridge Engineering to do some of the work that</p> <p>18 was expected to be done by TPTC, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that included the engineering work</p> <p>21 shown here?</p> <p>22 A. Yes.</p> <p>23 Q. What about the operations and</p> <p>24 engineering check out, who did that?</p> <p style="text-align: right;">58</p>	<p>1 objection, lacks foundation.</p> <p>2 THE WITNESS: I have no knowledge.</p> <p>3 BY MR. UNDERHILL:</p> <p>4 Q. But when you say maintenance and</p> <p>5 training manuals have been produced by ST Paper,</p> <p>6 then what manuals are you referring to?</p> <p>7 A. Equipment manuals we purchased.</p> <p>8 Q. Say it again.</p> <p>9 A. We purchased the equipment.</p> <p>10 Q. And you purchased the equipment manuals</p> <p>11 from ST Paper?</p> <p>12 A. No.</p> <p>13 Q. From whom did you purchase it?</p> <p>14 A. The equipment manufacturer.</p> <p>15 Q. Who was that?</p> <p>16 A. There is an array of equipment that we</p> <p>17 bought.</p> <p>18 Q. How about just one?</p> <p>19 A. Voith Paper Tissue, V-o-i-t-h.</p> <p>20 Q. Do you know approximately how much</p> <p>21 money has been paid to Pine Ridge Engineering</p> <p>22 for the work that it's done in this project that</p> <p>23 was supposed to have been done by TPTC?</p> <p>24 A. We have paid over 250,000.</p> <p style="text-align: right;">60</p>

<p>1 Q. Is there a written contract with Pine 2 Ridge Engineering? 3 A. Yes. 4 Q. As you sit here today, are there any 5 other subcontractors that you can think of 6 besides Pine Ridge Engineering that Spirit 7 Construction has engaged to do the work that was 8 supposed to have been done by TPTC under this 9 Exhibit D? 10 A. No. 11 Q. Is there a reason that Spirit 12 Construction turned to Pine Ridge Engineering to 13 do this work instead of TPTC? 14 A. We always used Pine Ridge. 15 Q. I'm sorry? 16 A. Pine Ridge Engineering is listed as a 17 subcontractor. 18 Q. I understand that, but we're talking 19 now about the scope of work that's shown for 20 TPTC. 21 Do you see that? 22 A. Yes. 23 Q. And you've told me that some of that 24 work has been done by Pine Ridge Engineering?</p> <p style="text-align: right;">61</p>	<p>1 this is one of the EPC contracts that we were 2 talking about in terms of the acknowledgment of 3 the consent to assignment, right? 4 A. Yes. 5 Q. So when you signed off on this 6 acknowledgment and consent to assignment, you 7 understood that this, Plaintiff's Exhibit 3, was 8 one of the EPC contracts that was going to be 9 affected by the consent to assignment? 10 A. Yes. 11 Q. And you knew that IFC, for example, had 12 been given a copy of this EPC contract? 13 MR. CYRANOSKI: I'll object. Lack of 14 foundation. 15 MR. UNDERHILL: Well, I'll rephrase it. 16 BY MR. UNDERHILL: 17 Q. Did Ron Van Den Heuvel, your brother, 18 tell you that this EPC contract had been given 19 to IFC? 20 A. No. 21 Q. But you knew this was one of the EPC 22 contracts that's referenced in Exhibit 1 and 23 Exhibit 2? 24 A. Yes.</p> <p style="text-align: right;">63</p>
<p>1 A. And Spirit Construction. 2 Q. And Spirit Construction. 3 Is there a reason why Spirit 4 Construction has used Pine Ridge Engineering to 5 do some of that work that was supposed to be 6 done by TPTC? 7 A. They had more knowledge. 8 Q. And when did Spirit Construction 9 determine that Pine Ridge had more knowledge? 10 A. TPTC is not an engineering firm. 11 Q. Did you know that when you signed this 12 contract? 13 A. Yes. 14 Q. Then why is it you showed TPTC as a 15 subcontractor for this work? 16 MR. CYRANOSKI: I object that it calls 17 for a legal conclusion and it lacks foundation. 18 THE WITNESS: It's a general 19 description. 20 BY MR. UNDERHILL: 21 Q. I'm not sure that answers my question. 22 So I'll ask it again. Maybe I'll ask it a 23 slightly different way. 24 First of all, do you understand that</p> <p style="text-align: right;">62</p>	<p>1 Q. So my question before was, and I'm not 2 sure I got the answer was, when did you 3 determine that TPTC would not be performing the 4 work that is shown on Exhibit D? 5 A. We are making judgments as we go along 6 with the contract and their expertise did not 7 fit any of our things we need to finish. 8 Q. And did you tell -- did you communicate 9 that information to TPTC somehow? 10 A. Not to my knowledge. 11 Q. You mean you didn't tell TPTC that you 12 weren't going to use them to do the work that's 13 shown here under scope of work? 14 A. Not to my knowledge. 15 Q. At this point has Spirit Construction 16 made a determination that it's not going to use 17 TPTC for any of the work that is set forth in 18 this scope of work under Exhibit D? 19 A. We don't know that at this time. We 20 may still use them. 21 Q. If you use them, what will you use them 22 for? 23 MR. CYRANOSKI: Objection. It calls 24 for speculation.</p> <p style="text-align: right;">64</p>

<p>1 MR. UNDERHILL: I don't think it does,</p> <p>2 but I'll withdraw it because I'm going to ask a</p> <p>3 different question.</p> <p>4 BY MR. UNDERHILL:</p> <p>5 Q. As you sit here today, you definitely</p> <p>6 decided that TPTC is out as a subcontractor in</p> <p>7 terms of the engineering project shown under</p> <p>8 this scope of work, right?</p> <p>9 A. Yes.</p> <p>10 Q. So that might leave them for the</p> <p>11 manuals?</p> <p>12 A. Yes.</p> <p>13 Q. Anything else?</p> <p>14 A. No.</p> <p>15 Q. And you've engaged Pine Ridge</p> <p>16 Engineering and to date you paid them more than</p> <p>17 a quarter of a million dollars for the work that</p> <p>18 they've done that should have been done by TPTC.</p> <p>19 Do you have an idea of how much more</p> <p>20 work you expect Pine Ridge to do that TPTC was</p> <p>21 expected to do under this Exhibit D?</p> <p>22 MR. CYRANOSKI: I'm going to object to</p> <p>23 the question that it's vague and ambiguous. I'm</p> <p>24 also going to object that it calls for a legal</p> <p style="text-align: right;">65</p>	<p>1 they were supposed to do under the contract.</p> <p>2 THE WITNESS: I didn't believe they</p> <p>3 were going to do any engineering under this</p> <p>4 contract.</p> <p>5 BY MR. UNDERHILL:</p> <p>6 Q. You didn't believe --</p> <p>7 A. General description.</p> <p>8 Q. I guess I am confused.</p> <p>9 So you thought that TPTC was not going</p> <p>10 to be doing any engineering work under this</p> <p>11 contract, is that what you're saying?</p> <p>12 A. That is correct.</p> <p>13 Q. But that's what it says in the scope of</p> <p>14 work, doesn't it?</p> <p>15 A. If we would have needed them, we could</p> <p>16 have used them then, yes.</p> <p>17 MR. CYRANOSKI: When you get a chance,</p> <p>18 I want to take a quick break only because I'm</p> <p>19 confused about something and I want to ask</p> <p>20 something of the client.</p> <p>21 MR. UNDERHILL: Sure.</p> <p>22 BY MR. UNDERHILL:</p> <p>23 Q. Let me ask you this question and then</p> <p>24 we'll take a break.</p> <p style="text-align: right;">67</p>
<p>1 conclusion and I'm also going to object that it</p> <p>2 lacks foundation.</p> <p>3 If you can answer that, go ahead.</p> <p>4 THE WITNESS: I'm sorry. Can you</p> <p>5 repeat the question?</p> <p>6 MR. UNDERHILL: Yes.</p> <p>7 BY MR. UNDERHILL:</p> <p>8 Q. You have already testified that Spirit</p> <p>9 Construction has engaged Pine Ridge Engineering</p> <p>10 to do some of the work that TPTC was supposed to</p> <p>11 do under this contract?</p> <p>12 MR. CYRANOSKI: I'm going to object.</p> <p>13 That mischaracterizes his testimony.</p> <p>14 BY MR. UNDERHILL:</p> <p>15 Q. Right?</p> <p>16 A. Not to my knowledge, no.</p> <p>17 Q. You haven't engaged Pine Ridge</p> <p>18 Engineering?</p> <p>19 A. We have engaged Pine Ridge Engineering,</p> <p>20 absolutely.</p> <p>21 Q. To do some of the work that TPTC was</p> <p>22 supposed to do under this contract?</p> <p>23 MR. CYRANOSKI: I'm going to object.</p> <p>24 That calls for a legal conclusion as to what</p> <p style="text-align: right;">66</p>	<p>1 What is the purpose of Exhibit D?</p> <p>2 MR. CYRANOSKI: I'm going to object to</p> <p>3 lack of foundation. Can we establish who</p> <p>4 prepared this contract?</p> <p>5 MR. UNDERHILL: Well, I can ask him.</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. Do you know who prepared the contract?</p> <p>8 A. ST Paper.</p> <p>9 Q. And did you review it?</p> <p>10 A. Yes.</p> <p>11 Q. Before you signed it?</p> <p>12 A. Yes.</p> <p>13 Q. By the way, is there a signed copy in</p> <p>14 this agreement in your files? Is there a signed</p> <p>15 copy of this agreement in your files?</p> <p>16 A. We have a signed contract in our</p> <p>17 office, yes.</p> <p>18 Q. Look at Page 35.</p> <p>19 A. Yes.</p> <p>20 Q. Is that your signature?</p> <p>21 A. Yes.</p> <p>22 Q. And did you sign this contract on or</p> <p>23 about the date that is shown, 12/11/06?</p> <p>24 A. Yes.</p> <p style="text-align: right;">68</p>

<p>1 MR. UNDERHILL: If you want to take a</p> <p>2 quick break, go ahead.</p> <p>3 MR. CYRANOSKI: Yes.</p> <p>4 (Recess taken.)</p> <p>5 MR. UNDERHILL: Returning to Exhibit D</p> <p>6 on Exhibit 3.</p> <p>7 MR. CYRANOSKI: I was going to say you</p> <p>8 can do this any way you want. We took a break.</p> <p>9 I was confused because I'm not sure that we</p> <p>10 produced all four of these contracts that you're</p> <p>11 looking at.</p> <p>12 I think we produced -- at some point we</p> <p>13 produced these two. You probably got them bound</p> <p>14 like this and so you're referring to four</p> <p>15 contracts. I'm looking at two contracts. Now</p> <p>16 I'm seeing some of these EPC's that I was trying</p> <p>17 to match them up and some of them look similar.</p> <p>18 So that was my question.</p> <p>19 I don't want to divulge attorney/client</p> <p>20 communications, but I wanted to ask him about</p> <p>21 that and in the course of that he realized</p> <p>22 something that he thinks he needs to clarify to</p> <p>23 make the record more clear. If you want to</p> <p>24 allow him that opportunity, that's fine. If</p> <p style="text-align: right;">69</p>	<p>1 subcontractors?</p> <p>2 A. Yes.</p> <p>3 Q. Who provided ST Paper with the names of</p> <p>4 the subcontractors, do you know?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. In other words, you're saying you</p> <p>7 didn't give them that information?</p> <p>8 A. No.</p> <p>9 Q. And did you give the names of any of</p> <p>10 the subcontractors?</p> <p>11 A. No.</p> <p>12 Q. When you got this document, were you</p> <p>13 surprised to see the names of the subcontractors</p> <p>14 who were shown?</p> <p>15 MR. CYRANOSKI: I'm going to object to</p> <p>16 the form of the question, the word surprised.</p> <p>17 THE WITNESS: This looks like a</p> <p>18 standard subcontractor form on most EPC's.</p> <p>19 BY MR. UNDERHILL:</p> <p>20 Q. Well, I mean, were you surprised that,</p> <p>21 for example, Tissue Products Technology Company</p> <p>22 was shown as providing engineering work?</p> <p>23 MR. CYRANOSKI: I'll make the same</p> <p>24 objection.</p> <p style="text-align: right;">71</p>
<p>1 not, that's fine, but this particular</p> <p>2 contract --</p> <p>3 MR. UNDERHILL: How about this: How</p> <p>4 about we go back to my question?</p> <p>5 MR. CYRANOSKI: That's fine.</p> <p>6 MR. UNDERHILL: And then if you want to</p> <p>7 ask him any questions, you can clarify it.</p> <p>8 MR. CYRANOSKI: I don't want to ask him</p> <p>9 any questions. I'm not going to ask him any</p> <p>10 questions about it, but I just wanted to point</p> <p>11 out to you that the witness, if you would allow</p> <p>12 him, feels he could clarify some of that. If</p> <p>13 you don't want to allow him that opportunity,</p> <p>14 that's fine. I'm not going to be asking him any</p> <p>15 questions.</p> <p>16 BY MR. UNDERHILL:</p> <p>17 Q. Directing your attention to Exhibit D</p> <p>18 on that same document -- and before we took a</p> <p>19 break, Counsel objected to one of my questions</p> <p>20 because he wanted to know who prepared this</p> <p>21 document and you said in answer to that that ST</p> <p>22 Paper prepared it; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Looking at Exhibit D, there's a list of</p> <p style="text-align: right;">70</p>	<p>1 THE WITNESS: No, it didn't make any</p> <p>2 difference to me. This is just a list of</p> <p>3 subcontractors that I could use.</p> <p>4 BY MR. UNDERHILL:</p> <p>5 Q. That you could use?</p> <p>6 A. This is an EPC contractor. I could</p> <p>7 have done it all by myself as Spirit</p> <p>8 Construction.</p> <p>9 Q. Why is it showing then, if you know,</p> <p>10 the subcontractors?</p> <p>11 MR. CYRANOSKI: Objection. Lack of</p> <p>12 foundation.</p> <p>13 MR. UNDERHILL: It's not a lack of</p> <p>14 foundation.</p> <p>15 BY MR. UNDERHILL:</p> <p>16 Q. I asked you a question earlier on</p> <p>17 and --</p> <p>18 A. It's typical exhibits that's in most</p> <p>19 EPCs.</p> <p>20 Q. I asked you a question earlier on and</p> <p>21 one of the questions was I asked you to read the</p> <p>22 first paragraph and the first paragraph says the</p> <p>23 following is a list of subcontractors that the</p> <p>24 contractor expects.</p> <p style="text-align: right;">72</p>

<p>1 So are you telling me now that when you</p> <p>2 signed this, you didn't expect that you would be</p> <p>3 using those subcontractors?</p> <p>4 A. It's a list of subcontractors that we</p> <p>5 could have used.</p> <p>6 Q. But did you expect you were going to</p> <p>7 use those subcontractors for those purposes when</p> <p>8 you signed this contract?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. So let's go back for just a moment to</p> <p>11 the continuing pledge agreement. Look at the</p> <p>12 one that's a part of the bigger document. It's</p> <p>13 the one that -- the revised one.</p> <p>14 If you direct your attention to the</p> <p>15 third paragraph, the one that begins we confirm</p> <p>16 that the terms of the EPC contracts, remember I</p> <p>17 had you read that earlier today?</p> <p>18 A. Yes.</p> <p>19 Q. It says: We confirm that the terms of</p> <p>20 the EPC contracts remain in full force and</p> <p>21 effect.</p> <p>22 This contract that we're just looking</p> <p>23 at right now, this Exhibit 3, that's one of the</p> <p>24 four EPC contracts that you were referring to in</p> <p style="text-align: right;">73</p>	<p>1 contract that we are working under up at Oconto</p> <p>2 Falls right now. The one we are working under</p> <p>3 in Oconto Falls is the one that you are</p> <p>4 referring to here.</p> <p>5 MR. UNDERHILL: I'll have the court</p> <p>6 reporter read back his answer.</p> <p>7 (Whereupon, the record was read.)</p> <p>8 BY MR. UNDERHILL:</p> <p>9 Q. When you say that I'm referring to</p> <p>10 here, what are you talking about?</p> <p>11 A. In Exhibit B.</p> <p>12 MR. CYRANOSKI: It's Exhibit 1,</p> <p>13 Schedule B.</p> <p>14 THE WITNESS: I'm sorry.</p> <p>15 BY MR. UNDERHILL:</p> <p>16 Q. Sir, this isn't that complicated. I'm</p> <p>17 asking you to look at the acknowledgment and</p> <p>18 consent document and it says we confirm that the</p> <p>19 terms of the EPC contracts remain in full force</p> <p>20 and effect.</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes.</p> <p>23 Q. What EPC contracts were you referring</p> <p>24 to when you signed this document?</p> <p style="text-align: right;">75</p>
<p>1 this consent to assignment, right?</p> <p>2 A. This is not the contract we're working</p> <p>3 off of to do this project that we are under.</p> <p>4 Q. Let me see if I understand you. I want</p> <p>5 you to answer my question.</p> <p>6 A. Uh-huh.</p> <p>7 Q. If the answer to my question is no,</p> <p>8 then you say no or if it's yes, say yes or say I</p> <p>9 don't understand your question.</p> <p>10 You said in this consent to assignment</p> <p>11 we confirm that the terms of the EPC contract</p> <p>12 remain in full force and effect.</p> <p>13 Is the contract that we're looking at</p> <p>14 this morning, this Exhibit 3, one of those</p> <p>15 contracts?</p> <p>16 A. No.</p> <p>17 Q. Where are the four EPC contracts that</p> <p>18 you told IFC were in full force and effect back</p> <p>19 in March of 2007?</p> <p>20 A. This one that you handed me as</p> <p>21 Exhibit 3 confused me because it says Oconto</p> <p>22 Falls and De Pere. The contract that I'm doing</p> <p>23 has nothing to do with De Pere. It is Oconto</p> <p>24 Falls. We looked through this. This is not the</p> <p style="text-align: right;">74</p>	<p>1 A. We were referring to Oconto Falls</p> <p>2 Tissue. That was the fourth one that I left out</p> <p>3 earlier when I said there were four. One in</p> <p>4 Oconto Falls, one in De Pere, one in Utah and</p> <p>5 one in Pennsylvania. Those are the four.</p> <p>6 MR. CYRANOSKI: Could you read that</p> <p>7 back, please.</p> <p>8 (Whereupon, the record was read.)</p> <p>9 BY MR. UNDERHILL:</p> <p>10 Q. And of those four contracts, none of</p> <p>11 them is Exhibit 3?</p> <p>12 A. Exhibit 3 is the contract I signed so</p> <p>13 that they could go out and get funding for the</p> <p>14 purchase of Oconto Falls.</p> <p>15 Q. Who is they?</p> <p>16 A. I believe ST Paper or Goldman Sachs.</p> <p>17 Q. And that was the sole purpose for that</p> <p>18 document?</p> <p>19 A. Yes.</p> <p>20 Q. So it wasn't really a genuine contract</p> <p>21 by which you would perform work?</p> <p>22 A. No.</p> <p>23 Q. It was done merely to allow ST Paper or</p> <p>24 Barclays or whomever to try and find funding for</p> <p style="text-align: right;">76</p>

<p>1 that project?</p> <p>2 A. Yes.</p> <p>3 Q. And if that contract, Exhibit 3, for</p> <p>4 example, was given to IFC with the understanding</p> <p>5 that it was a genuine contract for which TPTC</p> <p>6 would be receiving money, then that was done</p> <p>7 falsely?</p> <p>8 MR. CYRANOSKI: I'm going to object to</p> <p>9 the form of the question. It mischaracterizes</p> <p>10 his testimony and lacks foundation.</p> <p>11 THE WITNESS: Not to my knowledge.</p> <p>12 BY MR. UNDERHILL:</p> <p>13 Q. It was not done falsely?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Looking at the document you signed, you</p> <p>16 represented to IFC that the terms of the EPC</p> <p>17 contracts remain in full force and effect.</p> <p>18 What EPC contracts were you referring</p> <p>19 to then if it did not include that contract?</p> <p>20 MR. CYRANOSKI: Objection. Asked and</p> <p>21 answered and I had it read back.</p> <p>22 You can go ahead and answer again.</p> <p>23 THE WITNESS: Can you repeat the</p> <p>24 question?</p> <p style="text-align: right;">77</p>	<p>1 language?</p> <p>2 A. Under some of them, yes.</p> <p>3 Q. Under some of what?</p> <p>4 A. They will perform work under one of the</p> <p>5 four contracts, yes.</p> <p>6 Q. If somebody can clarify this, even if</p> <p>7 it's your Counsel, I'm happy to do so. So let</p> <p>8 me just take a step back and I'm trying to put</p> <p>9 it like every-day people language, okay?</p> <p>10 A. Okay.</p> <p>11 Q. You represented to IFC there are four</p> <p>12 EPC contracts.</p> <p>13 I'm just asking you today right now</p> <p>14 where are those four?</p> <p>15 A. One is in effect for Oconto Falls</p> <p>16 Tissue. That is the one we are working under</p> <p>17 right now.</p> <p>18 Q. And it's a real contract?</p> <p>19 A. It's a real contract that we are</p> <p>20 getting paid for.</p> <p>21 Q. When did you sign that?</p> <p>22 A. February of '07. Early '07.</p> <p>23 Q. Who is the other party to that contract</p> <p>24 besides Spirit Construction?</p> <p style="text-align: right;">79</p>
<p>1 MR. UNDERHILL: Yes. I have asked it</p> <p>2 several times and I've never gotten an answer to</p> <p>3 it.</p> <p>4 MR. CYRANOSKI: You did get an answer</p> <p>5 to it.</p> <p>6 MR. UNDERHILL: Are you done?</p> <p>7 MR. CYRANOSKI: I'm objecting that it</p> <p>8 has been asked and answered because it has been</p> <p>9 answered.</p> <p>10 MR. UNDERHILL: I don't believe it has</p> <p>11 been.</p> <p>12 BY MR. UNDERHILL:</p> <p>13 Q. I'm going to take a few steps back.</p> <p>14 You've testified that you gave this</p> <p>15 note to IFC knowing that IFC was going to be</p> <p>16 lending money to PCDI, right?</p> <p>17 A. That is what I was told.</p> <p>18 Q. And in this note you say to IFC we</p> <p>19 confirm that the terms of the EPC contracts</p> <p>20 remain in full force and effect, right?</p> <p>21 A. Yes.</p> <p>22 Q. And then you even go on to say and</p> <p>23 represent that TPTC and PCDI are subcontractors</p> <p>24 under those contracts, right? Isn't that the</p> <p style="text-align: right;">78</p>	<p>1 A. ST Paper.</p> <p>2 MR. UNDERHILL: Mark this as Exhibit 5.</p> <p>3 (Whereupon, Plaintiff's</p> <p>4 Exhibit No. 5 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. Let me show you what has been marked as</p> <p>8 Exhibit 5.</p> <p>9 Is that a copy of the contract?</p> <p>10 A. No. Can I go over it?</p> <p>11 Q. Yes, because I don't want to spend a</p> <p>12 whole hour again going through a document it</p> <p>13 turns out not to be the document you thought it</p> <p>14 was.</p> <p>15 A. I've never seen this document.</p> <p>16 Q. You've never seen Exhibit 5 before?</p> <p>17 A. No.</p> <p>18 Q. How can you be so sure?</p> <p>19 A. Because it says 179 million and the one</p> <p>20 that I signed was 239 million.</p> <p>21 MR. UNDERHILL: Just so the record is</p> <p>22 clear, look at Exhibits 4 and 6 and tell me if</p> <p>23 you've ever seen those documents before.</p> <p>24</p> <p style="text-align: right;">80</p>

<p>1 (Whereupon, Plaintiff's</p> <p>2 Exhibits Nos. 4 and 6 were</p> <p>3 marked for identification.)</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. UNDERHILL:</p> <p>6 Q. How do you know that?</p> <p>7 A. Because right now we're just pricing</p> <p>8 up. We're not nowhere near the contract phase</p> <p>9 of either one of those projects. I will say Ron</p> <p>10 did bring me a contract over for St. George and</p> <p>11 I put it on the shelf, put it away.</p> <p>12 Q. Why?</p> <p>13 A. Because it's nowhere near ready to go</p> <p>14 out for me to even look at. I'm not going to</p> <p>15 waste my time. We have priced it.</p> <p>16 Q. So you have given a price, whatever</p> <p>17 that might be, a quote to ST Paper on possibly</p> <p>18 doing the work at St. George Youth Hall?</p> <p>19 A. They don't know what kind of tissue</p> <p>20 machines they're going to put in. They've</p> <p>21 changed them a couple of times. I believe the</p> <p>22 179, if you looked through it, would be for</p> <p>23 200-inch, 100-inch liner board, 100-inch tissue</p> <p>24 machine. What we signed for is a 200-inch liner</p> <p style="text-align: right;">81</p>	<p>1 you represented to IFC that there were four EPC</p> <p>2 contracts in full force and effect.</p> <p>3 Are you testifying today under oath</p> <p>4 that that statement is false?</p> <p>5 MR. CYRANOSKI: Can you please read</p> <p>6 back that question.</p> <p>7 (Whereupon, the record was read.)</p> <p>8 MR. CYRANOSKI: I'm going to object</p> <p>9 that the terms of this exhibit speak for itself,</p> <p>10 that the question and the document are vague and</p> <p>11 confusing.</p> <p>12 You can answer if you can.</p> <p>13 THE WITNESS: To my knowledge, that it</p> <p>14 was -- I do understand what words they said, but</p> <p>15 that was not what was represented to Spirit at</p> <p>16 that time.</p> <p>17 BY MR. UNDERHILL:</p> <p>18 Q. No, but my question is -- you're not</p> <p>19 answering the question.</p> <p>20 My question is: Is the statement that</p> <p>21 you made on March 28th that the terms of the EPC</p> <p>22 contracts remain in full force and effect, that</p> <p>23 statement is false?</p> <p>24 MR. CYRANOSKI: That mischaracterizes</p> <p style="text-align: right;">83</p>
<p>1 board and 100-inch tissue machine.</p> <p>2 Q. So when you signed this acknowledgment</p> <p>3 and consent to assignment on March 28, 2007,</p> <p>4 your testimony today is that there was only one</p> <p>5 EPC contract signed by you?</p> <p>6 A. At that point, yes.</p> <p>7 Q. Why then did you tell IFC that there</p> <p>8 were four contracts signed?</p> <p>9 A. Because we have given -- I'm sorry. Is</p> <p>10 that what -- I was misrepresented then if that</p> <p>11 is the case. There are those four out there</p> <p>12 that we've given pricing to, but I don't read in</p> <p>13 here that we have --</p> <p>14 Q. Sir, I'm going to ask you to read the</p> <p>15 first sentence of the third paragraph out loud.</p> <p>16 A. We confirm that the terms of the EPC</p> <p>17 contracts remain in full force and effect and</p> <p>18 that Tissue Products Technology Corporation and</p> <p>19 Partners Concepts Development, Inc., are</p> <p>20 subcontractors there under and that neither we</p> <p>21 nor TPTC or PCDI are presently in breach of the</p> <p>22 terms of the EPC contracts. We are not in</p> <p>23 breach.</p> <p>24 Q. In March of 2007 when you signed this,</p> <p style="text-align: right;">82</p>	<p>1 his testimony.</p> <p>2 THE WITNESS: No, it's not false.</p> <p>3 BY MR. UNDERHILL:</p> <p>4 Q. It's true?</p> <p>5 A. What I signed here is true.</p> <p>6 Q. There were four EPC contracts in March</p> <p>7 of 2007 that were in full force and effect?</p> <p>8 MR. CYRANOSKI: It doesn't say the four</p> <p>9 were in full force and effect.</p> <p>10 MR. UNDERHILL: Counsel, I'm not</p> <p>11 interested in your arguments and I'm going to</p> <p>12 tell you something. This witness has come very</p> <p>13 close to perjuring himself. Now, all I want is</p> <p>14 a simple answer to a simple question.</p> <p>15 He has made a representation that he</p> <p>16 has signed this document. He answered a</p> <p>17 complaint that says he signed this document.</p> <p>18 Nobody -- no reasonable person could argue that</p> <p>19 this document does not say there are four EPC</p> <p>20 contracts in full force and effect.</p> <p>21 BY MR. UNDERHILL:</p> <p>22 Q. So what I'm asking him today is when</p> <p>23 you made that statement to IFC, was that</p> <p>24 statement true or false?</p> <p style="text-align: right;">84</p>

<p>1 A. It was true.</p> <p>2 MR. CYRANOSKI: We're going to take a</p> <p>3 break now.</p> <p>4 BY MR. UNDERHILL:</p> <p>5 Q. How is it true?</p> <p>6 MR. CYRANOSKI: We're going to take a</p> <p>7 break now. Stop answering. You're badgering</p> <p>8 the witness by threatening him with perjury and</p> <p>9 we're going to take a break to at least have</p> <p>10 things settle down here. I don't appreciate</p> <p>11 that characterization of his testimony.</p> <p>12 MR. UNDERHILL: Take a break, but now</p> <p>13 he just said it's true. I'm wondering if you</p> <p>14 will allow me to ask one follow-up question.</p> <p>15 MR. CYRANOSKI: I will not.</p> <p>16 MR. UNDERHILL: Okay. Then you can</p> <p>17 take a break.</p> <p>18 (Recess taken.)</p> <p>19 BY MR. UNDERHILL:</p> <p>20 Q. Again, directing your attention to</p> <p>21 Exhibit 2, you understood that IFC was lending</p> <p>22 money to TPTC and PCDI, right?</p> <p>23 A. Yes.</p> <p>24 Q. And you understood that at the time</p> <p style="text-align: right;">85</p>	<p>1 You understood based on what Ron had told you</p> <p>2 that IFC was -- as part of the collateral given</p> <p>3 to IFC, it included TPTC's and PCDI's rights as</p> <p>4 subcontractors under four EPC contracts?</p> <p>5 A. Yes.</p> <p>6 Q. And then you were being asked to sign</p> <p>7 off on this note to consent and to confirm that</p> <p>8 Spirit Construction would not pay any money to</p> <p>9 PCDI or TPTC under those contracts until IFC had</p> <p>10 been fully repaid its \$3.9 million, right?</p> <p>11 A. Yes.</p> <p>12 Q. As part of that representation to IFC</p> <p>13 that you made -- not that TPTC or PCDI made.</p> <p>14 I'm talking about the representation that you</p> <p>15 made in this Exhibit 2, in Exhibit 1, you state</p> <p>16 to IFC that the EPC contracts remain in full</p> <p>17 force and effect.</p> <p>18 So my question to you is: Is that</p> <p>19 statement that you made to IFC that there were</p> <p>20 four EPC contracts in full force and effect back</p> <p>21 in March of 2007, is that statement true?</p> <p>22 A. Yes.</p> <p>23 Q. Now, you're telling me there were four</p> <p>24 EPC contracts signed with Spirit Construction</p> <p style="text-align: right;">87</p>
<p>1 that Exhibit 1 came along, it was for</p> <p>2 approximately \$3.9 million?</p> <p>3 A. Yes.</p> <p>4 Q. And you understood that as part of the</p> <p>5 collateral, that's what this whole document is,</p> <p>6 it talks about the whole collateral that TPTC</p> <p>7 and PCDI would be extending to IFC in order for</p> <p>8 IFC to make the loan, you understood that,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And you understood part of the</p> <p>12 collateral was that TPTC and PCDI were</p> <p>13 representing to IFC that they were</p> <p>14 subcontractors under four EPC contracts?</p> <p>15 MR. CYRANOSKI: I'm going to object to</p> <p>16 lack of foundation as to what those companies</p> <p>17 told IFC.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. You understood that, right?</p> <p>20 A. There were four contracts that were</p> <p>21 signed as part of this. What I know is they're</p> <p>22 not -- to my knowledge, these are not the four</p> <p>23 that were signed that were part of this.</p> <p>24 Q. My question to you, though, Steve, is:</p> <p style="text-align: right;">86</p>	<p>1 and let's just say ST Paper, correct?</p> <p>2 A. Yes.</p> <p>3 MR. CYRANOSKI: I'm going to object to</p> <p>4 the form of the question if you're just saying</p> <p>5 it's ST Paper.</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. I'll take it back then.</p> <p>8 I think it was ST Paper, right?</p> <p>9 A. To the best of my knowledge.</p> <p>10 Q. Because we haven't gotten those</p> <p>11 contracts.</p> <p>12 So what you're also telling me is I've</p> <p>13 shown you this morning four EPC contracts and</p> <p>14 they're Exhibits 3, 4, 5 and 6 and you're</p> <p>15 telling me that these four EPC contracts, none</p> <p>16 of these four EPC contracts I've shown are the</p> <p>17 four EPC contracts that were in effect back in</p> <p>18 March of 2007?</p> <p>19 A. Can I clarify my position? I don't</p> <p>20 know. At that time they were going out to</p> <p>21 market, I signed four contracts. They were</p> <p>22 fully in force. That it is.</p> <p>23 I can't tell you without having both of</p> <p>24 them there whether these are exactly the ones</p> <p style="text-align: right;">88</p>

<p>1 that were in that that I signed.</p> <p>2 Q. But they could be?</p> <p>3 A. They could be.</p> <p>4 Q. But you just don't know?</p> <p>5 A. I don't know.</p> <p>6 Q. And so did TPTC and PCDI remain the</p> <p>7 subcontractors under those four contracts?</p> <p>8 MR. CYRANOSKI: Under which four</p> <p>9 contracts?</p> <p>10 MR. UNDERHILL: The four contracts that</p> <p>11 he's representing to us in this acknowledgment.</p> <p>12 THE WITNESS: I'm sure that Exhibit D</p> <p>13 was in each one. Not to my knowledge, though.</p> <p>14 BY MR. UNDERHILL:</p> <p>15 Q. I'm confused. Unfortunately the</p> <p>16 problem that we have here is that nobody has</p> <p>17 produced to date the four contracts that you're</p> <p>18 saying were in effect back in March of 2007 and</p> <p>19 certainly I haven't shown them to you.</p> <p>20 So, in other words, I haven't shown you</p> <p>21 anything today that resembles to your certain</p> <p>22 knowledge the four contracts that you say were</p> <p>23 in full force and effect back in March of 2007;</p> <p>24 is that correct?</p> <p style="text-align: right;">89</p>	<p>1 You make it sound like these contracts,</p> <p>2 Exhibits 4 and 5 and 6, were really used by ST</p> <p>3 Paper to obtain funding?</p> <p>4 A. Correct.</p> <p>5 Q. The contract you're talking about, the</p> <p>6 \$20 million contract, is a different contract?</p> <p>7 It's like a real contract?</p> <p>8 A. At that time in March, yes, it was a</p> <p>9 real contract.</p> <p>10 Q. And you expected to be getting</p> <p>11 construction on a project based on funding?</p> <p>12 A. Yes.</p> <p>13 Q. Had the funding come through yet?</p> <p>14 A. I'm sorry. Closing. The funding had</p> <p>15 come through. We signed it and upon closing we</p> <p>16 were expected to and it did happen.</p> <p>17 Q. What did happen? The closing occurred?</p> <p>18 A. That closing occurred and we are under</p> <p>19 that.</p> <p>20 Q. And Spirit Construction began work?</p> <p>21 A. Correct.</p> <p>22 Q. Did Spirit Construction engage either</p> <p>23 TPTC or PCDI to do work as subcontractors under</p> <p>24 that contract?</p> <p style="text-align: right;">91</p>
<p>1 A. Exhibit 3 is in full force -- was</p> <p>2 signed in February of '07.</p> <p>3 Q. So it is one of the four?</p> <p>4 A. It is one of the four that was totally</p> <p>5 executed.</p> <p>6 Q. I'm not sure I'm following this. So</p> <p>7 you're correcting your testimony.</p> <p>8 Exhibit 3 is one of the four contracts</p> <p>9 that you were referring to when you signed off</p> <p>10 on the consent to assignment?</p> <p>11 A. There is another document that I</p> <p>12 totally signed and executed in February of '07</p> <p>13 that was definitely one of the four.</p> <p>14 Q. And you signed it on behalf of Spirit</p> <p>15 Construction?</p> <p>16 A. And I signed it on behalf of Spirit</p> <p>17 Construction and it did not have De Pere,</p> <p>18 Wisconsin in there.</p> <p>19 Q. What did it have in there?</p> <p>20 A. Oconto Falls Tissue.</p> <p>21 Q. And how much was that contract for?</p> <p>22 A. \$20 million.</p> <p>23 Q. And you've testified -- again, I don't</p> <p>24 want to mischaracterize it.</p> <p style="text-align: right;">90</p>	<p>1 A. No, we did not.</p> <p>2 Q. Did that contract show PCDI and/or TPTC</p> <p>3 as subcontractors?</p> <p>4 A. Potential subcontractors.</p> <p>5 Q. But as it turned out, you're saying</p> <p>6 Spirit Construction didn't engage in the</p> <p>7 subcontractors?</p> <p>8 A. Not at this time.</p> <p>9 Q. Did Spirit Construction at any time</p> <p>10 contact IFC and tell IFC that Spirit</p> <p>11 Construction would not be engaging TPTC or PCDI</p> <p>12 as subcontractors under that \$20 million</p> <p>13 contract?</p> <p>14 A. No, we did not.</p> <p>15 Q. When you said early somebody</p> <p>16 misrepresented to you what these contracts were,</p> <p>17 who were you referring to?</p> <p>18 MR. CYRANOSKI: I'm going to object.</p> <p>19 That mischaracterizes his testimony.</p> <p>20 If you understand the question, you can</p> <p>21 answer it.</p> <p>22 THE WITNESS: I would want to hear the</p> <p>23 question that I answered that to.</p> <p>24</p> <p style="text-align: right;">92</p>

<p>1 BY MR. UNDERHILL:</p> <p>2 Q. Well, let me rephrase it or let me put</p> <p>3 it this way: You're saying the three contracts</p> <p>4 -- strike that. Let me go back.</p> <p>5 Plaintiff's Exhibit 3, you're saying is</p> <p>6 what I'll characterize as a real genuine</p> <p>7 construction contract, right?</p> <p>8 A. Yes.</p> <p>9 Q. And you're saying that it was one of</p> <p>10 the four contracts that was in effect that when</p> <p>11 you signed off on the acknowledgment and consent</p> <p>12 to assignment, right?</p> <p>13 A. Other than De Pere was not part of the</p> <p>14 contract.</p> <p>15 MR. CYRANOSKI: So then this isn't?</p> <p>16 THE WITNESS: This is not the contract.</p> <p>17 BY MR. UNDERHILL:</p> <p>18 Q. Okay.</p> <p>19 So this is not one of the four</p> <p>20 contracts?</p> <p>21 A. No, it's not one of the four contracts.</p> <p>22 Q. So then all four of these contracts are</p> <p>23 not genuine construction contracts?</p> <p>24 MR. CYRANOSKI: I guess I'll object to</p> <p style="text-align: right;">93</p>	<p>1 Q. And then somebody prepares those.</p> <p>2 Let's just say the owner prepares those</p> <p>3 drafts and they need to be signed by the</p> <p>4 contractor and the owner in order to be able to</p> <p>5 obtain funding?</p> <p>6 A. Correct.</p> <p>7 Q. So let's call those funding</p> <p>8 construction contracts and then you're saying at</p> <p>9 some point when the funding is obtained, a</p> <p>10 second contract is signed that might be a</p> <p>11 variation of the funding construction contract</p> <p>12 or it might be totally different. We don't</p> <p>13 know. I'm not getting to that, but we'll call</p> <p>14 that the actual construction contract.</p> <p>15 Would you agree with my use of that</p> <p>16 term?</p> <p>17 A. Fine, yes, I understand.</p> <p>18 Q. And would you agree that I've at least</p> <p>19 roughly properly characterized the two kinds of</p> <p>20 contracts we're talking about?</p> <p>21 A. Yes.</p> <p>22 MR. CYRANOSKI: Are there different</p> <p>23 terms that you use other than the ones that he</p> <p>24 does?</p> <p style="text-align: right;">95</p>
<p>1 the form of the question when you say genuine.</p> <p>2 MR. UNDERHILL: Well, I understand your</p> <p>3 objection, but the problem is that I think the</p> <p>4 witness has gone back and forth several times</p> <p>5 and I'm willing to acknowledge it could be my</p> <p>6 own inarticulate questions, but I can't figure</p> <p>7 out from this witness whether these contracts</p> <p>8 are genuine or not and that's why I was using</p> <p>9 that word.</p> <p>10 THE WITNESS: That is a genuine</p> <p>11 contract to go out for funding. When funding</p> <p>12 was established, we signed a contract.</p> <p>13 MR. CYRANOSKI: There is no question</p> <p>14 pending.</p> <p>15 THE WITNESS: I'm sorry.</p> <p>16 BY MR. UNDERHILL:</p> <p>17 Q. So maybe what I would like to -- maybe</p> <p>18 Counsel's point is well taken. Maybe I should</p> <p>19 better clarify or define what I'm talking about.</p> <p>20 You seem to be talking about contracts</p> <p>21 that are done for two purposes. Stage one</p> <p>22 purpose is to obtain funding for the work to go</p> <p>23 forward; is that right?</p> <p>24 A. Right.</p> <p style="text-align: right;">94</p>	<p>1 THE WITNESS: No. For funding and then</p> <p>2 executed contracts.</p> <p>3 BY MR. UNDERHILL:</p> <p>4 Q. And then executed contracts?</p> <p>5 A. Correct.</p> <p>6 Q. Steve is right. I'll use that term.</p> <p>7 We'll call them funding contracts and we'll call</p> <p>8 them executed contracts.</p> <p>9 So when you look at Plaintiff's</p> <p>10 Exhibit 3, what you're telling us is that's a</p> <p>11 funding contract?</p> <p>12 A. That is correct.</p> <p>13 Q. You signed it so that the owner could</p> <p>14 go out and get funding?</p> <p>15 A. Correct.</p> <p>16 Q. But it's not an executed contract in</p> <p>17 that it doesn't really oblige you or abide you</p> <p>18 in your opinion to perform this work for those</p> <p>19 prices?</p> <p>20 MR. CYRANOSKI: I'll object to the</p> <p>21 extent that these are legal conclusions, but you</p> <p>22 can go ahead and answer anyway.</p> <p>23 THE WITNESS: That the dollars are,</p> <p>24 correct, yes.</p> <p style="text-align: right;">96</p>

<p>1 BY MR. UNDERHILL:</p> <p>2 Q. If you sign a contract that's a funding</p> <p>3 contract, if nothing changes, is there an</p> <p>4 executed contract normally done as well or does</p> <p>5 the funding contract become the executed</p> <p>6 contract?</p> <p>7 A. In this case the funding contract did</p> <p>8 not become the executed contract.</p> <p>9 Q. And why not?</p> <p>10 A. We took De Pere, Wisconsin out of it.</p> <p>11 We wanted to go for 20 million and it was for</p> <p>12 the purchase of Oconto Falls Tissue. It had</p> <p>13 nothing to do with the De Pere facility.</p> <p>14 Q. So that seemed to be a pretty</p> <p>15 significant change then.</p> <p>16 MR. CYRANOSKI: Wait for a question.</p> <p>17 BY MR. UNDERHILL:</p> <p>18 Q. Is it?</p> <p>19 You're making it sound like, or maybe</p> <p>20 I'm mishearing it, that that's a small change</p> <p>21 from what the funding contract was, but it</p> <p>22 actually sounds like kind of a significant</p> <p>23 change.</p> <p>24 MR. CYRANOSKI: Wait for a question.</p> <p style="text-align: right;">97</p>	<p>1 Q. What are close-out documents?</p> <p>2 A. Where we turn out all of the manuals,</p> <p>3 all of the start-up support, everything.</p> <p>4 Q. And are you anticipating at that point</p> <p>5 you'll be engaging PCDI and TPTC under the</p> <p>6 executed Oconto Falls contract?</p> <p>7 MR. CYRANOSKI: I'll object that it</p> <p>8 calls for speculation.</p> <p>9 THE WITNESS: We don't know at this</p> <p>10 point. We're not to that point yet.</p> <p>11 BY MR. UNDERHILL:</p> <p>12 Q. How far are you from that point, do you</p> <p>13 think?</p> <p>14 MR. CYRANOSKI: Again I'll object that</p> <p>15 it calls for speculation.</p> <p>16 THE WITNESS: To the best of my</p> <p>17 knowledge, the middle of this year to the end of</p> <p>18 this year.</p> <p>19 BY MR. UNDERHILL:</p> <p>20 Q. June till December of 2008?</p> <p>21 A. Yes.</p> <p>22 Q. And it's also possible that neither</p> <p>23 PCDI nor TPTC will be engaged as subcontractors</p> <p>24 under that contract?</p> <p style="text-align: right;">99</p>
<p>1 BY MR. UNDERHILL:</p> <p>2 Q. Is that a significant change, in your</p> <p>3 opinion?</p> <p>4 A. No.</p> <p>5 Q. So at some point you have in your files</p> <p>6 a copy of the executed Oconto Falls contract?</p> <p>7 A. Yes.</p> <p>8 Q. And is it your testimony that no work</p> <p>9 has begun on that contract yet?</p> <p>10 A. Yes, work has been.</p> <p>11 Q. Some work has begun?</p> <p>12 A. Yes.</p> <p>13 Q. And is it your testimony that TPTC and</p> <p>14 PCDI have not been engaged as subcontractors</p> <p>15 under that contract?</p> <p>16 A. At this moment, no.</p> <p>17 Q. Is there any plans to engage them as</p> <p>18 subcontractors?</p> <p>19 A. We need to get to the rest of contract</p> <p>20 and there may be the things down the road.</p> <p>21 Q. When you say "get to the rest of</p> <p>22 contract," do you mean redrafting the contract</p> <p>23 or progress along the way?</p> <p>24 A. I'm sorry. Close-out documents.</p> <p style="text-align: right;">98</p>	<p>1 MR. CYRANOSKI: Again I'll object that</p> <p>2 it calls for speculation.</p> <p>3 THE WITNESS: At this moment I have no</p> <p>4 knowledge.</p> <p>5 BY MR. UNDERHILL:</p> <p>6 Q. The contract that we've been talking</p> <p>7 about is the Oconto Falls contract, is that fair</p> <p>8 to say that?</p> <p>9 A. Yes.</p> <p>10 Q. So under the Oconto Falls executed</p> <p>11 contract, has Spirit Construction engaged Ron</p> <p>12 Van Den Heuvel to perform any work?</p> <p>13 A. No.</p> <p>14 Q. Do you have any plans to engage Ron Van</p> <p>15 De Heuvel to perform any work?</p> <p>16 A. No.</p> <p>17 Q. Now, you also testified that there's</p> <p>18 another contract out there -- of the four</p> <p>19 contracts that you mentioned in your March 2007</p> <p>20 acknowledgment, we've talked now about an Oconto</p> <p>21 Falls executed contract which we haven't seen.</p> <p>22 We don't have it here today.</p> <p>23 There's another contract I thought you</p> <p>24 said that was in full force and effect and that</p> <p style="text-align: right;">100</p>

<p>1 was for \$239,000?</p> <p>2 A. No. \$239 million.</p> <p>3 Q. 239 million.</p> <p>4 What is the title of that contract? If</p> <p>5 this contract, Exhibit 3, eventually becomes the</p> <p>6 Oconto Falls executed contract, what is the \$239</p> <p>7 million contract called?</p> <p>8 A. It would be the De Pere, Wisconsin.</p> <p>9 Q. And when was that contract signed?</p> <p>10 A. Early March.</p> <p>11 Q. Of what year?</p> <p>12 A. This year, '08.</p> <p>13 Q. And who was the owner under that</p> <p>14 contract?</p> <p>15 A. ST Paper.</p> <p>16 Q. And so that contract was signed in</p> <p>17 March of 2008 you're saying?</p> <p>18 A. Yes.</p> <p>19 Q. The executed version?</p> <p>20 A. The funding for it.</p> <p>21 Q. Only the funding version?</p> <p>22 A. The funding version.</p> <p>23 Q. Now, what about the other two contracts</p> <p>24 then?</p> <p style="text-align: right;">101</p>	<p>1 A. Okay.</p> <p>2 Q. And you said that was a funding</p> <p>3 contract that you believe was executed in March</p> <p>4 of 2008?</p> <p>5 A. Yes.</p> <p>6 Q. And then you said there's two other</p> <p>7 contracts out there, but they're both funding</p> <p>8 contracts.</p> <p>9 One is for St. George and one is for</p> <p>10 Pennsylvania; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now, those are the four contracts that</p> <p>13 you were referring to in your March of 2007</p> <p>14 acknowledgment and consent to assignment, right?</p> <p>15 A. Yes.</p> <p>16 Q. The answer is right?</p> <p>17 A. Yes.</p> <p>18 Q. But if I understand your testimony</p> <p>19 today, the funding contracts are not final</p> <p>20 executed contracts?</p> <p>21 A. That is correct.</p> <p>22 Q. And yet you told IFC in your March</p> <p>23 of 2007 letter that the EPC contracts remain in</p> <p>24 full force and effect.</p> <p style="text-align: right;">103</p>
<p>1 A. The other two?</p> <p>2 Q. Well, the other two contracts you</p> <p>3 represented to IFC.</p> <p>4 A. Absolutely. St. George and</p> <p>5 Pennsylvania.</p> <p>6 MR. CYRANOSKI: St. George, Utah?</p> <p>7 THE WITNESS: St. George, Utah.</p> <p>8 BY MR. UNDERHILL:</p> <p>9 Q. And are there executed contracts for</p> <p>10 the St. George and the Pennsylvania projects?</p> <p>11 A. Back in '06, I believe we signed them</p> <p>12 and it was earlier than the March of '07.</p> <p>13 Q. So those were executed contracts?</p> <p>14 A. No. They were contracts to go out to</p> <p>15 get to see how the markets are doing.</p> <p>16 Q. They were funding contracts?</p> <p>17 A. Funding contracts.</p> <p>18 Q. So of the four contracts we're talking</p> <p>19 about, there's the De Pere, Wisconsin contract.</p> <p>20 You're saying that a funding contract</p> <p>21 was signed in March of 2008, right?</p> <p>22 A. Please repeat the question.</p> <p>23 Q. You're talking about the De Pere</p> <p>24 project, De Pere, Wisconsin EPC contract, right?</p> <p style="text-align: right;">102</p>	<p>1 So that statement couldn't be true?</p> <p>2 MR. CYRANOSKI: I'll object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: If it was funded</p> <p>5 specifically per that, they would remain the</p> <p>6 same.</p> <p>7 BY MR. UNDERHILL:</p> <p>8 Q. But they haven't been funded yet?</p> <p>9 A. No.</p> <p>10 Q. But you didn't tell IFC that we confirm</p> <p>11 that the terms of the EPC contracts if they are</p> <p>12 funded and eventually executed will remain in</p> <p>13 full force and effect.</p> <p>14 In fact, you told IFC that the terms of</p> <p>15 the EPC contracts were already in full force and</p> <p>16 effect, correct?</p> <p>17 MR. CYRANOSKI: I object. The document</p> <p>18 speaks for itself.</p> <p>19 THE WITNESS: I signed the contract,</p> <p>20 this piece of paper per those contracts that I</p> <p>21 signed before.</p> <p>22 BY MR. UNDERHILL:</p> <p>23 Q. My point is, sir, is that you didn't</p> <p>24 tell IFC that those contracts were not yet</p> <p style="text-align: right;">104</p>

<p>1 executed, did you?</p> <p>2 A. I had no contact with IFC.</p> <p>3 Q. But you gave them a letter in which you</p> <p>4 represented that these contracts were in full</p> <p>5 force and effect.</p> <p>6 Do you understand how that might</p> <p>7 confuse IFC and they might believe these are</p> <p>8 actual what you call executed contracts?</p> <p>9 MR. CYRANOSKI: I'm going to object to</p> <p>10 lack of foundation. I'm also going to object</p> <p>11 that these call for legal conclusions.</p> <p>12 BY MR. UNDERHILL:</p> <p>13 Q. Can you answer my question?</p> <p>14 A. My knowledge to me was that IFC knew</p> <p>15 that these were not funded projects at that</p> <p>16 time.</p> <p>17 Q. And where did you obtain that</p> <p>18 understanding from?</p> <p>19 A. Conversations with Ron.</p> <p>20 Q. And what did he tell you, if you can</p> <p>21 recall?</p> <p>22 A. I cannot recall.</p> <p>23 Q. Did you make any notes of those</p> <p>24 conversations?</p> <p style="text-align: right;">105</p>	<p>1 been calling a funding contract for De Pere,</p> <p>2 Wisconsin.</p> <p>3 Is this the contract that you're</p> <p>4 referring to?</p> <p>5 A. Yes.</p> <p>6 Q. And has this contract been signed?</p> <p>7 A. Yes.</p> <p>8 Q. Has an executed version of this</p> <p>9 contract been signed?</p> <p>10 A. It is in the funding phase right now.</p> <p>11 Q. When you say it's "in the funding</p> <p>12 phase," what does that mean?</p> <p>13 A. To the best of my knowledge, we've been</p> <p>14 working with Barclays and they have all of the</p> <p>15 information they need to go for funding.</p> <p>16 Q. Now, you thought the earlier contracts</p> <p>17 were between ST Paper, LLC. This one says ST</p> <p>18 Paper, II.</p> <p>19 Is this a different entity?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. If you know, who was the managing</p> <p>22 partner of ST Paper, II or who is running the</p> <p>23 show at ST Paper II?</p> <p>24 A. Sharad Tak.</p> <p style="text-align: right;">107</p>
<p>1 A. No.</p> <p>2 Q. Was anyone else present during those</p> <p>3 conversations?</p> <p>4 A. One of my brothers were, either Tim or</p> <p>5 Dave.</p> <p>6 Q. Where are Tim and Dave? Where do they</p> <p>7 reside?</p> <p>8 A. De Pere, Wisconsin.</p> <p>9 MR. UNDERHILL: Mark this as Exhibit</p> <p>10 No. 7.</p> <p>11 (Whereupon, Plaintiff's</p> <p>12 Exhibit No. 7 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. UNDERHILL:</p> <p>15 Q. Steve, I show you what has been marked</p> <p>16 as Exhibit 7, Plaintiff's Exhibit 7, and for</p> <p>17 purposes of the record, it's a document titled</p> <p>18 ST Paper II, LLC and Spirit Construction and</p> <p>19 then it's titled EPC and it seems to be for the</p> <p>20 amount of \$329 million.</p> <p>21 A. Oh, I misspoke before. It was 329. I</p> <p>22 kept saying 239. It was 329.</p> <p>23 Q. And it's dated March 6, 2008. You've</p> <p>24 testified earlier that there was what we have</p> <p style="text-align: right;">106</p>	<p>1 Q. Sharad Tak?</p> <p>2 A. Yes.</p> <p>3 Q. That's the same guy you talked about</p> <p>4 earlier?</p> <p>5 A. Yes.</p> <p>6 Q. Does the ST Paper come from his</p> <p>7 initials?</p> <p>8 A. I believe so.</p> <p>9 Q. When you say Barclays, are you in</p> <p>10 communication with anybody from Barclays?</p> <p>11 A. No.</p> <p>12 Q. Who are you in communication with with</p> <p>13 respect to this contract outside of Spirit?</p> <p>14 A. At this time I'm not in contact. At</p> <p>15 that time, yes, I have talked to -- to get to</p> <p>16 this point, we were talking with Barclays and ST</p> <p>17 Paper and one of their consulting firms,</p> <p>18 Barclays' consulting firms.</p> <p>19 Q. What is the name of the consulting</p> <p>20 firm?</p> <p>21 A. R.W. Beck.</p> <p>22 Q. R.W. Beck, B-e-c-k?</p> <p>23 A. Yes.</p> <p>24 Q. Who at R.W. Beck were you talking to?</p> <p style="text-align: right;">108</p>

<p>1 A. I do not know the person's name.</p> <p>2 Q. Who at ST Paper were you talking to?</p> <p>3 A. Sharad Tak.</p> <p>4 Q. By the way, does Ron Van Den Heuvel</p> <p>5 have any interest, financial interest or</p> <p>6 ownership interest even as a member of ST Paper?</p> <p>7 A. I do not know that, no. I try to stay</p> <p>8 out of it.</p> <p>9 Q. Does anybody in the Van Den Heuvel</p> <p>10 family have any financial interest in either ST</p> <p>11 Paper or ST Paper, II, as far as you know?</p> <p>12 A. Other than Ron, that I don't know, no.</p> <p>13 I can answer that as no.</p> <p>14 Q. And what is the status then of the</p> <p>15 funding through Barclays for this De Pere</p> <p>16 project, do you know?</p> <p>17 A. It's four weeks into the process, four</p> <p>18 or five weeks into the process. This contract</p> <p>19 is signed for 75 days and I have not been in</p> <p>20 contact since I signed the contract.</p> <p>21 Q. Is Ron involved in this contract at</p> <p>22 all?</p> <p>23 Let me take that back and ask you this:</p> <p>24 With respect to Plaintiffs Exhibit No. 7, this</p> <p style="text-align: right;">109</p>	<p>1 that the funding of this project will go</p> <p>2 through?</p> <p>3 A. All I was told is that it had a very</p> <p>4 good rating, the EBITDA was extremely good for</p> <p>5 the off takes, there is off takes signed with</p> <p>6 both Wausau Paper and Kraft and that it looks</p> <p>7 good, except the market is not in great shape</p> <p>8 right now.</p> <p>9 Q. What does EBITDA mean?</p> <p>10 A. The off take, what comes off of there</p> <p>11 and can they sell it. So how much is it</p> <p>12 produced for and how much can we sell it for and</p> <p>13 what's that difference.</p> <p>14 Q. So what's an off take contract then?</p> <p>15 A. An off take is somebody purchasing all</p> <p>16 of the finished product off the end of the</p> <p>17 machine.</p> <p>18 Q. And you said Wausau Paper and Kraft</p> <p>19 were both interested?</p> <p>20 A. Wausau Paper has a signed off take for</p> <p>21 the tissue side and Kraft has the off take side</p> <p>22 for the liner for it.</p> <p>23 Q. Let me direct your attention to Page 18</p> <p>24 of this document.</p> <p style="text-align: right;">111</p>
<p>1 De Pere contract, have you had any conversations</p> <p>2 with Ron Van Den Heuvel about it?</p> <p>3 A. Yes.</p> <p>4 Q. What had been the nature of the</p> <p>5 conversations?</p> <p>6 A. The nature of the conversations were</p> <p>7 getting this contract complete.</p> <p>8 Q. Well, I guess what I'm trying to figure</p> <p>9 out is why are you talking to Ron Van Den Heuvel</p> <p>10 about this if he's not Spirit Construction and</p> <p>11 he's not ST Paper?</p> <p>12 A. Sharad Tak uses him as a consultant.</p> <p>13 However, I don't want to put words in his mouth.</p> <p>14 When we met with Sharad Tak, he was involved in</p> <p>15 most of the conversations with this in the room.</p> <p>16 Q. When you say we met with him, who was</p> <p>17 in the meeting?</p> <p>18 A. Me and Dave met with him a number of</p> <p>19 times. Me and Tim met with him a number of</p> <p>20 times and me and Jim Rottier, our construction</p> <p>21 manager, when we were trying to see if that 329</p> <p>22 was a good number.</p> <p>23 Q. And you talked earlier -- strike that.</p> <p>24 Has anyone told you when it's likely</p> <p style="text-align: right;">110</p>	<p>1 Before we do that, go to the front. Go</p> <p>2 to the second page.</p> <p>3 A. Page 2?</p> <p>4 Q. Yes.</p> <p>5 A. Okay.</p> <p>6 Q. Do you know why the table of contents</p> <p>7 shows continued at the top? What happened to</p> <p>8 the first couple of pages of this contract? In</p> <p>9 other words, do you know why somebody would have</p> <p>10 produced this without producing all of the</p> <p>11 pages?</p> <p>12 A. I have no idea, none whatsoever.</p> <p>13 Q. Have you ever seen the table of</p> <p>14 contents to this agreement?</p> <p>15 A. I believe that's in there.</p> <p>16 Q. Under this agreement is TPTC or PCIDI a</p> <p>17 subcontractor?</p> <p>18 A. We will be giving money, yes,</p> <p>19 absolutely, for this.</p> <p>20 Q. What will they be doing for you?</p> <p>21 A. Well, the first thing and the thing</p> <p>22 that we're getting is they'll be supplying nine</p> <p>23 after dryers.</p> <p>24 Q. And what are after dryers?</p> <p style="text-align: right;">112</p>

<p>1 A. They're part of the tissue machine to 2 make higher quality paper. 3 MR. CYRANOSKI: If I can make a quick 4 comment, I'll note that this document appears to 5 be incomplete. It goes from D04289 to D04292. 6 MR. UNDERHILL: And I'll represent for 7 the record that -- and we can take the break. 8 I'll go get you a copy of what you produced to 9 me and this is the exact same condition and 10 form. For some reason you have removed when you 11 produced it three pages. 12 MR. CYRANOSKI: Well, I don't know 13 where the copying error took place. 14 MR. UNDERHILL: You guys made it and 15 gave it to us. 16 MR. CYRANOSKI: Did you make additional 17 copies, though? 18 MR. UNDERHILL: Yes, but went back and 19 checked. 20 MR. CYRANOSKI: I have a copy right 21 here that has the additional pages. So if you'd 22 like. 23 MR. UNDERHILL: That's great. I 24 appreciate that. Let's keep moving. Let's not</p> <p style="text-align: right;">113</p>	<p>1 you see that? 2 A. Yes. 3 Q. Is there a reason why they're not shown 4 as a subcontractor? 5 MR. CYRANOSKI: I'll object to lack of 6 foundation. 7 THE WITNESS: We may use them. I don't 8 know yet. 9 BY MR. UNDERHILL: 10 Q. I know I've asked you about the other 11 contracts, but I want to ask you about this one. 12 If you know, where did the information 13 as to who the subcontractors are going to come 14 from on this exhibit? 15 MR. CYRANOSKI: Objection. Lack of 16 foundation. 17 MR. UNDERHILL: Well, I'll tell you 18 what. I'll put a foundation in. 19 BY MR. UNDERHILL: 20 Q. Sir, could you read the first sentence 21 to me that shows above the little matrix that 22 begins the words the following? 23 A. Yes. The following is a list of 24 subcontractors that the contractor expects to be</p> <p style="text-align: right;">115</p>
<p>1 make a big deal about it. I'm sure it was 2 inadvertent. So we won't worry about it. 3 BY MR. UNDERHILL: 4 Q. So you're saying that TPTC or PCDI will 5 be providing nine after dryers? 6 A. Yes. 7 Q. Are those the IFC after dryers? 8 A. Yes. 9 Q. And is TPTC or PCDI going to provide 10 any other subcontractor services under this 11 agreement, to your knowledge? 12 A. Not to my knowledge. I will say, 13 though, that we -- at closing IFC will be paid 14 total. So that would be a moot point after 15 that. 16 Q. Let me direct your attention to Exhibit 17 D. 18 A. Yes. 19 Q. For the record it's Bates stamped 20 D4353. 21 Exhibit D lists the subcontractors? 22 A. Yes. 23 Q. And do you see the subcontractors that 24 are shown? It doesn't include TPTC or PCDI, do</p> <p style="text-align: right;">114</p>	<p>1 performing work at the owner's site or 2 performing work at another site that will be 3 used at the owner's site. 4 Q. Did you provide this list of 5 subcontractors to the owner? 6 MR. CYRANOSKI: Are you talking about 7 whether he individually did? 8 MR. UNDERHILL: No. I'm talking about 9 Spirit Construction. 10 THE WITNESS: No, we wouldn't have. ST 11 Paper would have made this and we have no 12 objection with the list that they gave us. 13 BY MR. UNDERHILL: 14 Q. So as you sit here today, do you expect 15 -- does Spirit Construction expect to perform 16 work with these subcontractors? 17 A. Yes. 18 Q. And it does not include PCDI or TPTC? 19 A. Yes. 20 Q. Let me direct your attention to Exhibit 21 H and for the record it's identified as 22 milestone schedule. 23 Do you see that? 24 A. Yes.</p> <p style="text-align: right;">116</p>

<p>1 Q. Now, you talked a little bit earlier</p> <p>2 that this contract has not been funded yet, but</p> <p>3 that a fixed price of approximately \$329 million</p> <p>4 has been arrived at; is that correct?</p> <p>5 A. That is correct.</p> <p>6 Q. So the idea is that this contract is</p> <p>7 used to go out -- this funding contract is used</p> <p>8 to go out to find funding for this project?</p> <p>9 A. Yes.</p> <p>10 Q. And so to convince the funding sources</p> <p>11 to give the money, everybody signs off on it so</p> <p>12 it can be deemed to be a genuine contract of</p> <p>13 some kind?</p> <p>14 A. Yes.</p> <p>15 Q. Your point is -- I know you're not a</p> <p>16 lawyer -- but maybe subject to some</p> <p>17 modifications or changes later on, but this is</p> <p>18 basically the deal?</p> <p>19 A. Yes.</p> <p>20 Q. And I think your testimony was that the</p> <p>21 fixed price is guaranteed for 75 days from the</p> <p>22 date this contract was signed, right?</p> <p>23 A. Yes.</p> <p>24 Q. And then if it's not, if the funding</p> <p style="text-align: right;">117</p>	<p>1 in there.</p> <p>2 BY MR. UNDERHILL:</p> <p>3 Q. And did the executed copy of the Oconto</p> <p>4 Falls contract show TPTC or PCDI as</p> <p>5 subcontractors?</p> <p>6 MR. CYRANOSKI: Objection. Lack of</p> <p>7 foundation.</p> <p>8 THE WITNESS: Which contract?</p> <p>9 BY MR. UNDERHILL:</p> <p>10 Q. The Oconto Falls.</p> <p>11 A. You asked me two questions.</p> <p>12 Q. Yes.</p> <p>13 A. The one that you gave me did show them</p> <p>14 as a subcontractor. If that same exhibit is in</p> <p>15 the executed one, then yes, they are shown.</p> <p>16 Q. Do you know any reason why TPTC or PCDI</p> <p>17 would not have turned over to IFC in this</p> <p>18 litigation copies of the executed Oconto Falls</p> <p>19 contract, if you know?</p> <p>20 MR. CYRANOSKI: I'm going to object to</p> <p>21 foundation.</p> <p>22 THE WITNESS: I don't know. Not to my</p> <p>23 knowledge.</p> <p>24</p> <p style="text-align: right;">119</p>
<p>1 doesn't come through or if the owner doesn't</p> <p>2 give the notice, I forget what they call the</p> <p>3 notice here, but if the owner doesn't give the</p> <p>4 notice within that time --</p> <p>5 A. Notice to proceed.</p> <p>6 Q. Notice to proceed.</p> <p>7 So you have 75 days to give the notice</p> <p>8 to proceed?</p> <p>9 A. That's right.</p> <p>10 Q. Has the owner given you the notice to</p> <p>11 proceed yet?</p> <p>12 A. No, not at this time.</p> <p>13 Q. Jumping a little bit, on the Oconto</p> <p>14 Falls contract, you did receive a notice to</p> <p>15 proceed?</p> <p>16 A. Yes.</p> <p>17 Q. And we don't have a copy of that</p> <p>18 contract, but when the notice to proceed came on</p> <p>19 the Oconto Falls contract -- by the way, did</p> <p>20 that funding contract for Oconto Falls list TPTC</p> <p>21 or PCDI as subcontractors, if you can recall?</p> <p>22 MR. CYRANOSKI: Objection. Lack of</p> <p>23 foundation.</p> <p>24 THE WITNESS: If the same exhibit was</p> <p style="text-align: right;">118</p>	<p>1 BY MR. UNDERHILL:</p> <p>2 Q. You're not trying to hide anything from</p> <p>3 IFC you don't think?</p> <p>4 MR. CYRANOSKI: I'm going to object.</p> <p>5 THE WITNESS: I don't think so.</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. So now go to Exhibit H of this</p> <p>8 contract, this being the De Pere contract.</p> <p>9 Do you see the second line item? It</p> <p>10 says after dryers received and accepted by TM</p> <p>11 supplier, do you see that line there?</p> <p>12 A. Yes.</p> <p>13 Q. What does TM stand for there?</p> <p>14 A. Tissue machine.</p> <p>15 Q. And who is the tissue machine supplier?</p> <p>16 A. At this time we have an obligation to</p> <p>17 go to three contractors. That's why it says</p> <p>18 tissue machine contractor. We either have an</p> <p>19 Andritz machine, a Metso machine or a Toscotec</p> <p>20 machine.</p> <p>21 Q. So one of those contractors or one of</p> <p>22 those companies has to accept the after dryers?</p> <p>23 A. Yes.</p> <p>24 Q. As a stage in the payment schedule?</p> <p style="text-align: right;">120</p>

<p>1 A. Correct.</p> <p>2 Q. Are those the IFC after dryers?</p> <p>3 A. Yes.</p> <p>4 Q. Where are the IFC after dryers, do you</p> <p>5 know?</p> <p>6 A. Yes. They're in a warehouse in Green</p> <p>7 Bay, Wisconsin.</p> <p>8 Q. Are they still crated?</p> <p>9 A. I do not know that.</p> <p>10 Q. How do you know they're in a warehouse</p> <p>11 in Green Bay, Wisconsin?</p> <p>12 A. Because I was told that.</p> <p>13 Q. Who told you that?</p> <p>14 A. My brother Dave.</p> <p>15 Q. When did he tell you that?</p> <p>16 A. We've been talking about it numerous</p> <p>17 occasions.</p> <p>18 Q. So this contract contemplates using the</p> <p>19 IFC after dryers, correct?</p> <p>20 A. Yes. I'm going to clear something up</p> <p>21 which might make it a little easier. IFC, we</p> <p>22 need to put a lot of money through PCDI if this</p> <p>23 contract goes through. We cannot pay them a</p> <p>24 penny until we pay IFC 100 percent off. We</p> <p style="text-align: right;">121</p>	<p>1 A. Seven installed, two spares.</p> <p>2 Q. So it does anticipate nine after</p> <p>3 dryers?</p> <p>4 A. Yes.</p> <p>5 Q. Which by coincidence is the number of</p> <p>6 after dryers at IFC?</p> <p>7 A. Yes.</p> <p>8 Q. And you're saying somebody has put a</p> <p>9 current value on those after dryers of \$3.2</p> <p>10 million?</p> <p>11 A. Yes, R.W. Beck.</p> <p>12 Q. R.W. Beck has said that that's what</p> <p>13 their value is?</p> <p>14 A. That's what we could sell to them, yes.</p> <p>15 Q. And did they provide a written</p> <p>16 appraisal?</p> <p>17 A. No.</p> <p>18 Q. And when did they provide that</p> <p>19 estimate?</p> <p>20 A. This was the last document that we</p> <p>21 finished up before signing. So February.</p> <p>22 Q. So as of February of 2007, you're</p> <p>23 representing to us that an outside source came</p> <p>24 in and said that after dryers are worth</p> <p style="text-align: right;">123</p>
<p>1 acknowledge that and agree to that in here.</p> <p>2 So whether we're using IFCs after</p> <p>3 dryers or there's anywhere from -- there's over</p> <p>4 50 after dryers over there. You, I believe, do</p> <p>5 not own all of the after dryers. You only own a</p> <p>6 portion of them. Whether we're using yours or</p> <p>7 somebody else's, I don't -- I can't answer that.</p> <p>8 All I know is that we are going to fulfill the</p> <p>9 obligation to IFC which at that point IFC would</p> <p>10 own none of the after dryers.</p> <p>11 Q. The payment here that says</p> <p>12 \$298,810,000, is that relating to the -- of the</p> <p>13 purchase or sales of after dryers or is that</p> <p>14 something different?</p> <p>15 A. No, that is the purchase of the after</p> <p>16 dryers.</p> <p>17 Q. And where did that number come from?</p> <p>18 A. It is what can be -- we have worked on</p> <p>19 this schedule for a long time. It was what the</p> <p>20 market would accept. Our first number was</p> <p>21 \$7 million.</p> <p>22 Q. By the way, it doesn't say here the</p> <p>23 number of after dryers received.</p> <p>24 How many are referred to here?</p> <p style="text-align: right;">122</p>	<p>1 approximately \$3.2 million? It's actually</p> <p>2 closer to 3.3.</p> <p>3 A. Yes.</p> <p>4 MR. MOREL: Is that '08?</p> <p>5 THE WITNESS: I'm sorry. '08.</p> <p>6 MR. UNDERHILL: Can we take a five-</p> <p>7 minute break.</p> <p>8 (Recess taken.)</p> <p>9 BY MR. UNDERHILL:</p> <p>10 Q. Directing your attention to this</p> <p>11 De Pere, Wisconsin construction Exhibit 7</p> <p>12 contract, do you know when you're likely to get</p> <p>13 a word on whether this will be funded?</p> <p>14 MR. CYRANOSKI: Objection. It calls</p> <p>15 for speculation.</p> <p>16 BY MR. UNDERHILL:</p> <p>17 Q. You said it's five weeks out, but has</p> <p>18 anyone come and told you recently funding is</p> <p>19 soon, it's not likely to happen soon?</p> <p>20 A. No. All that we've gotten is it looks</p> <p>21 good.</p> <p>22 Q. And that comes from who?</p> <p>23 A. Sharad Tak. No specifics.</p> <p>24 MR. UNDERHILL: Let me mark this as</p> <p style="text-align: right;">124</p>

<p>1 Exhibit 8.</p> <p>2 (Whereupon, Plaintiff's</p> <p>3 Exhibit No. 8 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. UNDERHILL:</p> <p>6 Q. Let me show you what has been marked as</p> <p>7 Exhibit 8 and ask if you can identify Exhibit 8?</p> <p>8 A. It's the executed contract for the</p> <p>9 Oconto Falls upgrades.</p> <p>10 Q. Is this the same contract that you've</p> <p>11 been testifying to earlier?</p> <p>12 A. Yes.</p> <p>13 Q. And did you sign this?</p> <p>14 A. Yes.</p> <p>15 Q. And is that on Page 30 something?</p> <p>16 A. 34.</p> <p>17 Q. So directing your attention to Page 34,</p> <p>18 is this the contract that you signed on behalf</p> <p>19 of Spirit Construction?</p> <p>20 A. Yes.</p> <p>21 Q. And so what we're looking at here is</p> <p>22 one of the four contracts that you were</p> <p>23 referring to when you gave the acknowledgment</p> <p>24 and consent to IFC?</p> <p style="text-align: right;">125</p>	<p>1 side, were left out of the exhibit that I gave</p> <p>2 you a little while ago called Exhibit 7. It</p> <p>3 really appears to be a cover page and then the</p> <p>4 first page is the table of contents.</p> <p>5 The only reason I'm showing it to you</p> <p>6 now is that if you look at the upper right-hand</p> <p>7 corner of one of these pages, the first page of</p> <p>8 Exhibit 9, which is Bates stamped 4290, it has</p> <p>9 the wording on top execution version. Do you</p> <p>10 see that?</p> <p>11 A. Yes.</p> <p>12 Q. So when you talked about the executed</p> <p>13 version of a contract, is that the language that</p> <p>14 you used to show that it's the final and</p> <p>15 forceable executed version of the contract?</p> <p>16 A. This contract will be, yes. It is both</p> <p>17 -- it will be both the funding and the executed</p> <p>18 because there was so much due diligence done up</p> <p>19 on it.</p> <p>20 Q. I see.</p> <p>21 So you're not anticipating that the</p> <p>22 Exhibit 7 contract, the De Pere contract, is</p> <p>23 going to be modified much, if at all?</p> <p>24 A. It cannot be.</p> <p style="text-align: right;">127</p>
<p>1 A. Yes.</p> <p>2 Q. Did this contract involve or this</p> <p>3 construction project involve any after dryers?</p> <p>4 A. No.</p> <p>5 Q. What was the nature of the work done?</p> <p>6 A. We upgraded to put new rolls in the</p> <p>7 tissue machine to increase the speed, get more</p> <p>8 steam to the machines. There are two machines</p> <p>9 up there. It includes putting in a new wood</p> <p>10 fire boiler.</p> <p>11 Q. Is this contract what you referred to</p> <p>12 as an executed contract?</p> <p>13 A. Yes.</p> <p>14 MR. UNDERHILL: By the way, I'm going</p> <p>15 to digress for just a moment and ask the court</p> <p>16 reporter to mark this Exhibit 9.</p> <p>17 (Whereupon, Plaintiff's</p> <p>18 Exhibit No. 9 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. UNDERHILL:</p> <p>21 Q. Just so the record is clear, sir, I</p> <p>22 show you what has been marked as Exhibit 9. It</p> <p>23 consists of two pages that your counsel produced</p> <p>24 today that inadvertently, I'm not sure on whose</p> <p style="text-align: right;">126</p>	<p>1 Q. Why can't it be?</p> <p>2 A. Is what I was told.</p> <p>3 Q. Who told you that?</p> <p>4 A. Barclays.</p> <p>5 Q. Returning now then to this Oconto Falls</p> <p>6 contract that's dated February 20, 2007, was</p> <p>7 TPTC or PCDI a subcontractor under this</p> <p>8 contract?</p> <p>9 A. Were they? No.</p> <p>10 Q. I direct your attention to Page 41.</p> <p>11 To avoid the objection your counsel has</p> <p>12 made every time I've done this, let's start with</p> <p>13 Exhibit D. It's titled subcontractors.</p> <p>14 Can you read the first sentence to me?</p> <p>15 A. The following is a list of</p> <p>16 subcontractors that the contractor expects to be</p> <p>17 performing work at the owner's site or</p> <p>18 performing work at another site that will be</p> <p>19 used at the owner's site.</p> <p>20 Q. Do you know who prepared this Exhibit D</p> <p>21 to this contract?</p> <p>22 A. ST Paper. I'm sorry. I do not know,</p> <p>23 but ST Paper is the one that gave this to us to</p> <p>24 go through.</p> <p style="text-align: right;">128</p>

<p>1 Q. Did you give ST Paper a list of</p> <p>2 subcontractors that you expected to be</p> <p>3 performing work at an owner's site or performing</p> <p>4 work at another site?</p> <p>5 MR. CYRANOSKI: Do you mean Steve Van</p> <p>6 Den Heuvel or do you mean Spirit Construction?</p> <p>7 MR. UNDERHILL: I mean Spirit</p> <p>8 Construction.</p> <p>9 THE WITNESS: I would say yes.</p> <p>10 BY MR. UNDERHILL:</p> <p>11 Q. So you did give this information to ST</p> <p>12 Paper?</p> <p>13 A. I am sure that we did not produce this</p> <p>14 exhibit.</p> <p>15 Q. But did you tell ST Paper that you</p> <p>16 intended to use Tissue Products Technology</p> <p>17 Company to do the purchasing of equipment,</p> <p>18 certain engineering, operations engineering,</p> <p>19 check out, start-up, operations and maintenance</p> <p>20 training and manuals and permit application?</p> <p>21 A. We signed this contract that if they</p> <p>22 were the preferred person at that school, we</p> <p>23 could use it, yes.</p> <p>24 Q. Now, this contract doesn't have the</p> <p style="text-align: right;">129</p>	<p>1 the form of the question. It mischaracterizes</p> <p>2 his testimony.</p> <p>3 BY MR. UNDERHILL:</p> <p>4 Q. Do you understand my question?</p> <p>5 A. No.</p> <p>6 Q. Well, then you have to tell me.</p> <p>7 Otherwise we have to sit here in silence.</p> <p>8 A. I'm sorry.</p> <p>9 Q. So there's some context to my question,</p> <p>10 we're looking at Exhibit D in which TPTC is</p> <p>11 identified as the subcontractor and if I</p> <p>12 understand what you're telling me, as of this</p> <p>13 date, whatever today's date is, April 8th of</p> <p>14 2008, to date Spirit Construction has not used</p> <p>15 TPTC as a subcontractor under this contract, has</p> <p>16 it?</p> <p>17 A. Yes, we have not.</p> <p>18 Q. You have not?</p> <p>19 A. We have not.</p> <p>20 Q. And as you sit here today, is there any</p> <p>21 plan by Spirit Construction to use TPTC in</p> <p>22 connection with this contract?</p> <p>23 A. I cannot answer that.</p> <p>24 Q. So you don't know?</p> <p style="text-align: right;">131</p>
<p>1 cover page or a page that says execution</p> <p>2 version.</p> <p>3 Is this the execution version?</p> <p>4 A. Yes.</p> <p>5 Q. How do you know that?</p> <p>6 A. Well, the biggest thing is the executed</p> <p>7 versions are usually initialed each page.</p> <p>8 Q. So that's how you --</p> <p>9 A. That's how I say that this is the</p> <p>10 executed.</p> <p>11 Q. Now, after this contract was signed,</p> <p>12 did you make a -- did Spirit Construction make a</p> <p>13 determination not to use TPTC as a</p> <p>14 subcontractor?</p> <p>15 MR. CYRANOSKI: I'm going to object to</p> <p>16 lack of foundation.</p> <p>17 THE WITNESS: To this point.</p> <p>18 BY MR. UNDERHILL:</p> <p>19 Q. To this point what?</p> <p>20 A. To where we are in the contract.</p> <p>21 Q. So till this date Spirit Construction</p> <p>22 has made the determination not to use TPTC as a</p> <p>23 subcontractor?</p> <p>24 MR. CYRANOSKI: I'm going to object to</p> <p style="text-align: right;">130</p>	<p>1 A. I don't know.</p> <p>2 MR. UNDERHILL: Mark this as</p> <p>3 Exhibit 10.</p> <p>4 (Whereupon, Plaintiff's</p> <p>5 Exhibit No. 10 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. UNDERHILL:</p> <p>8 Q. Steve, I show you what has been marked</p> <p>9 as Exhibit 10 which for the record is a letter</p> <p>10 dated June 29, 2007 and sent to Spirit</p> <p>11 Construction Services to your attention. Why</p> <p>12 don't you take a moment just to look at this</p> <p>13 letter.</p> <p>14 Have you ever seen this letter before?</p> <p>15 A. Yes.</p> <p>16 Q. Did you receive it on or about the date</p> <p>17 of June 29, 2007?</p> <p>18 MR. CYRANOSKI: If you know.</p> <p>19 THE WITNESS: I do not know what date.</p> <p>20 BY MR. UNDERHILL:</p> <p>21 Q. But was it around early June,</p> <p>22 July 2007?</p> <p>23 A. Yes.</p> <p>24 Q. Flip to the first page. Do you see the</p> <p style="text-align: right;">132</p>

<p>1 second sentence?</p> <p>2 Could you read that first sentence in</p> <p>3 the second paragraph for me?</p> <p>4 A. The assignors are in default of certain</p> <p>5 lease payment obligations to IFC and the pledge</p> <p>6 agreement.</p> <p>7 Q. At that point did you have any reason</p> <p>8 to doubt that the assignors were in default of</p> <p>9 the lease payment obligations to IFC?</p> <p>10 MR. CYRANOSKI: I'm going to object to</p> <p>11 lack of foundation.</p> <p>12 THE WITNESS: I have no personal</p> <p>13 knowledge.</p> <p>14 BY MR. UNDERHILL:</p> <p>15 Q. A little while ago you kind of made a</p> <p>16 little statement that IFC was going to get paid</p> <p>17 its money once the funding occurs under this</p> <p>18 Exhibit 7.</p> <p>19 As you sit here today, has Ron Van Den</p> <p>20 Heuvel or anybody on behalf of PCDI or TPTC told</p> <p>21 you that those companies owe any money to IFC</p> <p>22 under the lease of the IFC dryers?</p> <p>23 A. I had that knowledge that IFC has</p> <p>24 monies borrowed to PCDI for the dryers.</p> <p style="text-align: right;">133</p>	<p>1 whether they have not made payments or not.</p> <p>2 BY MR. UNDERHILL:</p> <p>3 Q. You don't know?</p> <p>4 A. No.</p> <p>5 Q. When you received this letter from</p> <p>6 Mr. Morel that said the assignors were in</p> <p>7 default of certain lease payments, did you take</p> <p>8 any steps to either ascertain that that</p> <p>9 statement was correct or not correct?</p> <p>10 A. We did take a step and we made a phone</p> <p>11 call.</p> <p>12 Q. And who did you call?</p> <p>13 A. I'm sorry. I cannot remember who we</p> <p>14 called, but somebody at this firm, either you or</p> <p>15 Mr. Morel. I don't know which one we made a</p> <p>16 phone call to and it was me and my brother did.</p> <p>17 Q. And did we tell you that they owed</p> <p>18 money?</p> <p>19 A. You told us that they owed you money.</p> <p>20 Q. Did you talk to Ron or anybody at TPTC</p> <p>21 or PCDI to confirm that the money was owed?</p> <p>22 A. We knew the money was owed because we</p> <p>23 signed an agreement that we would pay it back,</p> <p>24 we would have to pay PCDI.</p> <p style="text-align: right;">135</p>
<p>1 Q. So you understand that there was a</p> <p>2 settlement agreement, but then subsequent to</p> <p>3 that there was a master lease agreement.</p> <p>4 Have you ever heard anybody talk about</p> <p>5 the master lease agreement?</p> <p>6 MR. CYRANOSKI: I'm going to object to</p> <p>7 the form of the question. Lack of foundation.</p> <p>8 BY MR. UNDERHILL:</p> <p>9 Q. Can you answer my question?</p> <p>10 A. Not to my knowledge, no.</p> <p>11 Q. Do you understand that TPTC and PCDI</p> <p>12 have possession of IFC's nine after dryers? You</p> <p>13 know that?</p> <p>14 A. Yes.</p> <p>15 Q. Because your brother has told you he's</p> <p>16 seen them over there?</p> <p>17 A. Yes.</p> <p>18 Q. And you also understand that PCDI and</p> <p>19 TPTC have not made any payments to IFC as they</p> <p>20 were expected to do under the agreements that</p> <p>21 you yourself signed, right?</p> <p>22 MR. CYRANOSKI: I'll object to lack of</p> <p>23 foundation.</p> <p>24 THE WITNESS: Not to my knowledge</p> <p style="text-align: right;">134</p>	<p>1 Q. Yes, but that was back in March of 2007</p> <p>2 and this is June of 2007.</p> <p>3 So were you surprised to find somebody</p> <p>4 saying that TPTC and PCDI were in default of the</p> <p>5 lease agreement?</p> <p>6 MR. CYRANOSKI: I'm going to object to</p> <p>7 the form of the question to the use of the word</p> <p>8 surprised. The question lacks foundation.</p> <p>9 BY MR. UNDERHILL:</p> <p>10 Q. Do you understand my question?</p> <p>11 A. Could you reask it.</p> <p>12 Q. I'll ask it this way: When you got</p> <p>13 this letter, did you call up your brother and</p> <p>14 say, hey, do you owe the money or something like</p> <p>15 that? Did you call Ron?</p> <p>16 A. I knew at that time when we received it</p> <p>17 that we still did owe the money.</p> <p>18 Q. How did you know that?</p> <p>19 MR. CYRANOSKI: Answer the question</p> <p>20 that he asks.</p> <p>21 BY MR. UNDERHILL:</p> <p>22 Q. How did you know you still owed the</p> <p>23 money?</p> <p>24 A. Because it's exactly the same amount of</p> <p style="text-align: right;">136</p>

<p>1 money that we signed the piece of paper for.</p> <p>2 Q. So you didn't say, oh, there's no way</p> <p>3 my brother could not have paid this back right</p> <p>4 now? In other words, you didn't conduct an</p> <p>5 independent investigation to confirm the money</p> <p>6 was owed or not owed?</p> <p>7 A. No, we did not.</p> <p>8 Q. You simply called up the lawyers for</p> <p>9 IFC and said we know you're owed the money,</p> <p>10 we're going to try and pay it as soon as we can?</p> <p>11 A. That's correct.</p> <p>12 Q. Now, look at the second page. I guess</p> <p>13 I jumped ahead a little bit here.</p> <p>14 Read the first sentence on that page.</p> <p>15 A. Accordingly?</p> <p>16 Q. Yes.</p> <p>17 A. "Demand is hereby made for the payment</p> <p>18 to IFC in the amount of \$3,900,222 or to any and</p> <p>19 all sums which may become due to assignors until</p> <p>20 such time as IFC shall have been fully paid in</p> <p>21 accordance with the assignment."</p> <p>22 Q. Did Spirit Construction service pay</p> <p>23 that amount upon that demand?</p> <p>24 A. No.</p> <p style="text-align: right;">137</p>	<p>1 MR. CYRANOSKI: My point is he said he</p> <p>2 didn't know whether any monies had been paid and</p> <p>3 then you said did Ron ever tell you why no</p> <p>4 monies were paid. He said he didn't know</p> <p>5 whether any monies were paid.</p> <p>6 BY MR. UNDERHILL:</p> <p>7 Q. Has Ron ever given you any explanation</p> <p>8 as to why monies were not paid?</p> <p>9 A. No.</p> <p>10 Q. Has he ever come to you and said that</p> <p>11 IFC didn't do something it was supposed to do?</p> <p>12 A. It's not relevant to Spirit. So we</p> <p>13 don't talk about those things.</p> <p>14 Q. So your answer is no?</p> <p>15 A. No.</p> <p>16 MR. UNDERHILL: I may have asked you</p> <p>17 these and if I did, I apologize.</p> <p>18 MR. CYRANOSKI: Objection. Asked and</p> <p>19 answered.</p> <p>20 BY MR. UNDERHILL:</p> <p>21 Q. First of all, what is Spirit</p> <p>22 Fabrication?</p> <p>23 A. It's a piping manufacturer and a steel</p> <p>24 manufacturer.</p> <p style="text-align: right;">139</p>
<p>1 Q. Do you know whether any of the other</p> <p>2 defendants in this case paid that money?</p> <p>3 A. No.</p> <p>4 Q. As you sit here today, do you</p> <p>5 understand that amount is still due and owing?</p> <p>6 MR. CYRANOSKI: Objection. Lack of</p> <p>7 foundation.</p> <p>8 THE WITNESS: To my understanding, I</p> <p>9 don't know if any payments have been paid.</p> <p>10 BY MR. UNDERHILL:</p> <p>11 Q. Has anyone told you payments have been</p> <p>12 made?</p> <p>13 A. No.</p> <p>14 Q. Has Ron, your brother Ron, come to you</p> <p>15 and given any explanation as to why this money</p> <p>16 has not been paid by PCDI or TPTC?</p> <p>17 MR. CYRANOSKI: I'm going to object</p> <p>18 that that assumes facts not in evidence. He</p> <p>19 just testified he didn't know whether any</p> <p>20 amounts were paid or not. It mischaracterizes</p> <p>21 his testimony.</p> <p>22 MR. UNDERHILL: I think that</p> <p>23 mischaracterizes his testimony. What's your</p> <p>24 point?</p> <p style="text-align: right;">138</p>	<p>1 Q. Is it a corporation?</p> <p>2 A. It is a corporation, yes.</p> <p>3 Q. Is it one of the corporations that's</p> <p>4 owned by the VHC Investment Group?</p> <p>5 A. Yes.</p> <p>6 Q. Is Eco-Fibre a company that is owned by</p> <p>7 VHC Investment Group?</p> <p>8 A. No.</p> <p>9 Q. Are you a shareholder of Eco-Fibre?</p> <p>10 A. No.</p> <p>11 Q. Is Oconto Falls a company that is owned</p> <p>12 by VHC Investment Group?</p> <p>13 A. No.</p> <p>14 Q. Are you a shareholder of Oconto Falls?</p> <p>15 A. No.</p> <p>16 Q. Do you know whether those two companies</p> <p>17 still exist?</p> <p>18 A. Oconto Falls does not exist. Eco-Fibre</p> <p>19 does exist.</p> <p>20 Q. Do you know what the business of</p> <p>21 Eco-Fibre is?</p> <p>22 A. A pulp producer.</p> <p>23 Q. Did you ever use them as a</p> <p>24 subcontractor?</p> <p style="text-align: right;">140</p>

<p>1 A. No.</p> <p>2 Q. Has Spirit Construction paid any monies</p> <p>3 to TPTC or PCDI since January of 2007 in</p> <p>4 connection with any of the four EPC contracts</p> <p>5 that you mentioned in your letter to IFC?</p> <p>6 A. No.</p> <p>7 Q. Has Spirit Construction engaged TPTC or</p> <p>8 PCDI as subcontractors on any of those four</p> <p>9 projects that you described in your letter since</p> <p>10 January of 2007?</p> <p>11 A. No.</p> <p>12 Q. Has Spirit Construction engaged Ron Van</p> <p>13 Den Heuvel personally as a consultant or in any</p> <p>14 capacity on any of those four projects that you</p> <p>15 described in your letter to IFC?</p> <p>16 A. No.</p> <p>17 MR. UNDERHILL: I have no further</p> <p>18 questions at this time.</p> <p>19 MR. CYRANOSKI: If the deposition is</p> <p>20 over, you can explain signature.</p> <p>21 FURTHER DEPONENT SAITH NOT.</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">141</p>	<p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF C O O K)</p> <p>4 I, Janice A. Prystalski, a notary public</p> <p>5 within and for the County of Cook County and</p> <p>6 State of Illinois, do hereby certify that</p> <p>7 heretofore, to-wit, on the 9th day of April,</p> <p>8 2008, personally appeared before me, at</p> <p>9 203 North LaSalle Street, Suite 2500, Chicago,</p> <p>10 Illinois, STEVEN R. VAN DEN HEUVEL, in a cause</p> <p>11 now pending and undetermined in the United</p> <p>12 States District Court, for the Northern District</p> <p>13 of Illinois, Eastern Division wherein IFC CREDIT</p> <p>14 CORPORATION, an Illinois corporation is the</p> <p>15 Plaintiff, and TISSUE PRODUCTS TECHNOLOGY</p> <p>16 CORPORATION, a Wisconsin corporation; ECO-FIBRE,</p> <p>17 INC., a Wisconsin Corporation; PARTNERS CONCEPTS</p> <p>18 DEVELOPMENT, INC., a Wisconsin Corporation;</p> <p>19 OCONTO FALLS TISSUE, INC., a Wisconsin</p> <p>20 corporation, RONALD H. VAN DEN HEUVEL, an</p> <p>21 individual, and SPIRIT CONSTRUCTION SERVICES,</p> <p>22 INC., a Delaware Corporation are the Defendants.</p> <p>23 I further certify that the said witness was</p> <p>24 first duly sworn to testify the truth, the whole</p> <p style="text-align: right;">143</p>
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF ILLINOIS</p> <p>3 EASTERN DIVISION</p> <p>4 IFC CREDIT CORPORATION, an)</p> <p>5 Illinois corporation,)</p> <p>6 Plaintiff,)</p> <p>7 vs.) No. 07 L 4351</p> <p>8 TISSUE PRODUCTS TECHNOLOGY)</p> <p>9 CORPORATION, a Wisconsin)</p> <p>10 corporation, et al.,)</p> <p>11 Defendants.)</p> <p>12 This is to certify that I have read the</p> <p>13 transcript of my deposition taken in the</p> <p>14 above-entitled cause by Janice A. Prystalski,</p> <p>15 Certified Shorthand Reporter, on April 8, 2008,</p> <p>16 and that the foregoing transcript accurately</p> <p>17 states the questions asked and the answers given</p> <p>18 by me as they now appear.</p> <p>19 _____</p> <p>20 STEVEN R. VAN DEN HEUVEL</p> <p>21</p> <p>22 SUBSCRIBED AND SWORN TO</p> <p>23 before me this ____ day</p> <p>24 of _____, 2008.</p> <p>_____ Notary Public</p> <p style="text-align: right;">142</p>	<p>1 truth and nothing but the truth in the cause</p> <p>2 aforesaid; that the testimony then given by said</p> <p>3 witness was reported stenographically by me in</p> <p>4 the presence of the said witness, and afterwards</p> <p>5 reduced to typewriting by Computer-Aided</p> <p>6 Transcription, and the foregoing is a true and</p> <p>7 correct transcript of the testimony so given by</p> <p>8 said witness as aforesaid.</p> <p>9 I further certify that the signature to the</p> <p>10 foregoing deposition was reserved by counsel for</p> <p>11 the respective parties.</p> <p>12 I further certify that the taking of this</p> <p>13 deposition was pursuant to Notice, and that</p> <p>14 there were present at the deposition the</p> <p>15 attorneys hereinbefore mentioned.</p> <p>16 I further certify that I am not counsel for</p> <p>17 nor in any way related to the parties to this</p> <p>18 suit, nor am I in any way interested in the</p> <p>19 outcome thereof.</p> <p>20 IN TESTIMONY WHEREOF: I have hereunto set my</p> <p>21 hand and affixed my notarial seal this _____</p> <p>22 day of _____, 2008.</p> <p>23 _____</p> <p>24 NOTARY PUBLIC, COOK COUNTY, ILLINOIS</p> <p style="text-align: right;">144</p>

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4 April 10, 2008

5 Michael Best & Friedrich, LLP
6 Mr. Steven E. Cyranoski
7 180 North Stetson Avenue, Suite 2000
8 Chicago, Illinois 60601
9 IN RE: IFC Credit vs. Tissue Products, et al.
10 COURT NUMBER: 07 C 4351
11 DATE TAKEN: April 8, 2008
12 DEPONENT: Steven R. Van Den Heuvel

13 Dear Mr. Cyranoski:

14 Enclosed is the deposition transcript for the
15 aforementioned deponent in the above-entitled
16 cause. Also enclosed are additional signature
17 pages, if applicable, and errata sheets.
18 Per your agreement to secure signature, please
19 submit the transcript to the deponent for review
20 and signature. All changes or corrections must
21 be made on the errata sheets, not on the
22 transcript itself. All errata sheets should be
23 signed and all signature pages need to be signed
24 and notarized.

After the deponent has completed the above,
please return all signature pages and errata
sheets to me at the above address, and I will
handle distribution to the respective parties.

If you have any questions, please call me at the
phone number below.

Sincerely,

Margaret Setina Janice A. Prystalski
Signature Department Court Reporter
cc: All attorneys of record.

145

A			
abbreviation 16:3 abide 96:17 able 95:4 aboveentitled 142:14 145:11 absolutely 66:20 102:4 112:19 accept 120:22 122:20 accepted 120:10 accurate 12:22 56:23 accurately 54:24 142:16 acknowledge 94:5 122:1 acknowledgement 23:3 acknowledging 39:5 acknowledgment 19:1 20:21 29:3,19 29:21 34:14 37:13 39:14 42:1 43:2,7 44:21 47:20 63:2,6 75:17 82:2 89:11 93:11 100:20 103:14 125:23 activities 12:1,11,16,17,19 13:3 14:15 actual 95:14 105:8 add 40:8 41:4 added 21:10 addition 29:2 additional 32:16 113:16,21 145:11 address 6:8 30:10 145:18 addressed 46:12,24 54:11 advance 24:21 affixed 144:21 aforementioned 145:11 aforesaid 144:2,8 aggregate 33:17 ago 13:24 59:17 127:2 133:15 agree 6:16 22:22 95:15,18 122:1 agreed 36:13 agreement 19:2,21 40:3 44:13,17,19 44:23 45:2,13,19 46:3 51:6,6,12,19 52:10,19,22 53:1 68:14,15 73:11 112:14,16 114:11 133:6 134:2,3,5 135:23 136:5 145:13 agreements 30:3,18 134:20 ahead 32:18 47:13,14 66:3 69:2 77:22 96:22 137:13 al 142:10 145:7 allow 69:24 70:11,13 76:23 85:14 ambiguous 12:5 65:23 amount 33:17 106:20 136:24 137:18,23 138:5 amounts 33:15 138:20 andritz 120:19 answer 4:22 5:20 12:22 17:12,15,17 18:6 19:7 21:6 32:19 47:13,14 55:12 64:2 66:3 70:21 74:5,7 75:6 77:22 78:2,4 83:12 84:14 92:21 96:22 103:16 105:13 109:13 122:7 131:23 134:9 136:19 139:14 answered 59:24 77:21 78:8,9 84:16 92:23 139:19 answering 4:18 83:19 85:7 answers 62:21 142:17 anticipate 123:2 anticipating 99:4 127:21 anybody 18:12 38:1 46:2 108:10 109:9 133:20 134:4 135:20 anyway 21:6 96:22 apologize 18:14 139:17 appear 44:8 142:18 appearances 2:1 appeared 143:8	appears 52:3 113:4 127:3 applicable 145:12 application 129:20 appraisal 123:16 appreciate 85:10 113:24 approximate 52:17 approximately 26:19 42:4 49:7 60:20 86:2 117:3 124:1 april 1:22 26:19 131:13 142:15 143:7 145:3,8 area 15:9 argue 84:18 arguments 84:11 arisen 55:20 array 60:16 arrived 117:4 ascertain 135:8 aside 29:2 asked 35:9 36:17 37:19 38:9 39:10 44:1 49:15 58:16 59:24 72:16,20,21 77:20 78:1,8 87:6 115:10 119:11 139:16,18 142:17 asking 4:18 13:12 23:22 25:13 38:7 40:2 41:5 50:4 70:14 75:17 79:13 84:22 asks 136:20 assignment 20:22 23:4 29:4,19,22 34:15 37:14 39:15 42:2 43:3,7 47:10 47:21 50:11 63:3,6,9 74:1,10 82:3 90:10 93:12 103:14 137:21 assignors 133:4,8 135:6 137:19 assist 17:11 35:10 assisted 17:15 assume 4:23 47:8 assumes 138:18 assumptions 47:16 attached 20:4,8 21:7,13,14,23 22:4,21 24:2 attention 23:2 33:7 39:13 42:12 46:8 46:13 47:1 53:24 70:17 73:14 85:20 111:23 114:16 116:20 124:10 125:17 128:10 132:11 attorney 5:6,10,19 6:15 17:23 45:22,23 69:19 attorneys 4:4 144:15 145:24 avenue 2:13 145:5 avoid 128:11 aware 16:19 30:23	bears 51:4 beck 108:21,22,22,24 123:11,12 began 91:20 begins 34:4 56:1 73:15 115:22 begun 98:9,11 behalf 46:15 90:14,16 125:18 133:20 belief 25:2 believe 7:19 19:9 26:11 39:21 52:1,5 59:11 67:2,6 76:16 78:10 81:21 102:11 103:3 105:7 108:8 112:15 122:4 best 2:11 9:2,24 32:20 49:10 50:17 88:9 99:16 107:13 145:4 better 45:9 94:19 beyond 17:24 big 10:6,7 21:23 114:1 bigger 73:12 biggest 130:6 bill 10:11,13 39:2 birth 10:22 bit 117:1 118:13 137:13 board 31:6 81:23 82:1 boiler 126:10 borrow 40:15 41:17 borrowed 133:24 bought 60:17 bound 69:13 brand 31:21 33:4,5 breach 34:12 42:24 82:21,23 break 5:13,21 50:19 67:18,24 69:2,8 70:19 85:3,7,9,12,17 113:7 124:7 briefly 15:2 31:1 bring 81:10 broke 11:19,19 broken 14:19 brother 8:19 15:20,21 16:10 23:20 29:17 35:9 36:20 41:14,14 43:6 63:17 121:14 134:15 135:16 136:13 137:3 138:14 brotherinlaws 10:9,12 brothers 10:5 106:4 brought 39:24 41:24 brown 49:7 bs 24:1 25:1 build 33:1 building 36:2 built 9:24 business 12:11 13:13 140:20 butch 10:9,12 buying 41:11	
	B		
answer 4:22 5:20 12:22 17:12,15,17 18:6 19:7 21:6 32:19 47:13,14 55:12 64:2 66:3 70:21 74:5,7 75:6 77:22 78:2,4 83:12 84:14 92:21 96:22 103:16 105:13 109:13 122:7 131:23 134:9 136:19 139:14 answered 59:24 77:21 78:8,9 84:16 92:23 139:19 answering 4:18 83:19 85:7 answers 62:21 142:17 anticipate 123:2 anticipating 99:4 127:21 anybody 18:12 38:1 46:2 108:10 109:9 133:20 134:4 135:20 anyway 21:6 96:22 apologize 18:14 139:17 appear 44:8 142:18 appearances 2:1 appeared 143:8	b 3:9 20:18 21:21 22:6,13,14 23:3 39:10 39:13 42:1 44:15 75:11,13 back 13:11 35:13 39:7 44:9 46:6 55:22 70:4 73:10 74:18 75:6 76:7 77:21 78:13 79:8 83:6 87:20 88:7,17 89:18 89:23 93:4 94:4 102:11 109:23 113:18 135:23 136:1 137:3 background 26:3 badgering 85:7 bain 10:11,11 barclays 76:24 107:14 108:9,10,16,18 109:15 128:4 barone 14:20 48:19 based 43:9 87:1 91:11 basically 117:18 bates 114:19 127:8 bay 49:2 121:7,11	<th data-bbox="1062 1472 1451 1493">C</th> c 1:5 20:9 22:4 143:3 145:7 call 17:1 19:11 51:14,20 95:7,13 96:7,7 105:8,11 118:2 135:11,12,16 136:13 136:15 145:19 called 1:15 6:2 9:7 15:13 16:11 44:13 44:17 101:7 127:2 135:14 137:8 calling 107:1 calls 47:13 57:2 62:16 64:23 65:24 66:24 99:8,15 100:2 124:14 cant 88:23 94:6 122:7 128:1 capacity 23:10 28:18 141:14 capital 31:12,12 case 4:4 18:17 82:11 97:7 138:2 cause 142:14 143:10 144:1 145:11 cc 145:24	C

cement 13:21 14:1 15:10,11 certain 53:11 89:21 129:18 133:4 135:7 certainly 89:19 certified 142:15 certify 142:12 143:6,23 144:9,12,16 chance 19:6 45:24 46:4,20 67:17 change 25:6 35:6 38:18 39:5 42:8 44:4 97:15,20,23 98:2 changed 39:12 42:3 81:21 changes 97:3 117:17 145:14 characterization 85:11 characterize 93:6 characterized 95:19 characterizing 29:12 check 58:24 129:19 checked 113:19 chicago 1:21 2:7,14 143:9 145:2,6 circled 38:12 city 31:7,15 civil 1:16 clarify 21:4 45:9 69:22 70:7,12 79:6 88:19 94:19 clear 22:3 23:24 69:23 80:22 121:20 126:21 client 17:23 67:20 69:19 close 84:13 closeout 98:24 99:1 closer 124:2 closing 25:16,22 26:17 35:10 40:14 41:10,18,20,23 91:14,15,17,18 114:13 coincidence 123:5 collateral 86:5,6,12 87:2 come 11:16 13:22 49:15,22,24 50:3 84:12 91:13,15 108:6 115:13 118:1 122:17 124:18 138:14 139:10 comes 111:10 124:22 comment 113:4 communicate 64:8 communication 108:10,12 communications 17:22 69:20 companies 9:23 10:19 16:18,22 55:3 86:16 120:22 133:21 140:16 company 9:7,10,11 10:18 11:19,22 15:3,13,16,17,18,19,22 16:10,11,13 16:24 17:1 28:4 48:18 56:17 57:15 71:21 129:17 140:6,11 complain 21:15 complaint 17:7,12,16 18:7 19:7 20:5,7 20:8,9,10 21:12,13 22:4 84:17 complete 55:10 110:7 completed 145:17 completely 28:9 complicated 75:16 computeraided 144:5 concept 38:2 concepts 1:8 16:11 34:10 42:22 46:16 82:19 143:17 concerning 6:20 conclusion 57:2 62:17 66:1,24 conclusions 96:21 105:11 condition 113:9 conduct 137:4 conference 4:21 35:22 36:2 confirm 33:9,13 34:4,7,13 42:13,19 43:1 73:15,19 74:11 75:18 78:19 82:16 87:7 104:10 135:21 137:5 confuse 105:7	confused 67:8,19 69:9 74:21 89:15 confusing 83:11 connection 28:18,23 37:3 40:18 49:17 131:22 141:4 consent 20:21 23:3 29:4,19,21 34:15,16 35:5 37:14 39:15 42:2 43:3,4,7 44:3 44:22 45:11 47:20 63:3,6,9 74:1,10 75:18 82:3 87:7 90:10 93:11 103:14 125:24 consists 20:15,17,20 126:23 construct 32:1,15 construction 1:11 7:20,22 9:15 11:9,12 11:14,17 12:2,10,19 13:4,13,14,16 14:11,16 15:12 17:2,3,8,14 18:4 19:8 20:12 23:11 29:10,22 30:1,3,17 31:3 31:21 32:1,24 33:24 34:23 35:4 36:1 38:2 44:2 46:2,13 47:1,3,9,19 48:2,13 48:14 50:12 51:6,7 52:9,12,18 54:16 54:19 57:8,19,22 58:15 61:7,12 62:1 62:2,4,8 64:15 66:9 72:8 79:24 87:8 87:24 90:15,17 91:11,20,22 92:6,9,11 93:7,23 95:8,11,14 100:11 106:18 110:10,20 116:9,15 124:11 125:19 126:3 129:6,8 130:12,21 131:14,21 132:11 137:22 141:2,7,12 143:21 consultant 110:12 141:13 consulting 108:17,18,19 contact 92:10 105:2 108:14 109:20 contains 47:20 49:10 contemplates 121:18 contents 112:6,14 127:4 context 131:9 continue 40:20 41:12 continued 112:7 continuing 19:20 44:13,17,19,23 45:2 45:13 46:3 52:11 73:11 contract 23:13 31:19,20 52:14 56:24 57:10 59:19 61:1 62:12 63:12,18 64:6 66:11,22 67:1,4,11 68:4,7,16,22 70:2 73:8,22 74:2,11,13,22 75:1 76:12,20 77:3,5,19 79:18,19,23 80:9 81:8,10 82:5 90:21 91:5,6,7,9,24 92:2,13 93:7,14,16 94:11,12 95:10,11,14 96:11,16 97:2,3,4,5,6,7,8,21 98:6,9,15 98:19,22,22 99:6,24 100:6,7,11,18,21 100:23 101:4,5,6,7,9,14,16 102:19,20 102:24 103:3 104:19 107:1,3,6,9 108:13 109:18,20,21 110:1,7 111:14 112:8 117:2,6,7,12,22 118:14,18,19 118:20 119:4,8,19 120:8,8 121:18,23 124:12 125:8,10,18 126:2,11,12 127:13,15,16,22,22 128:6,8,21 129:21 129:24 130:11,20 131:15,22 contractor 13:14 54:9,15 56:4,9,12 72:6,24 95:4 115:24 120:18 128:16 contractors 120:17,21 contracts 29:23 30:1,14,15,20,23 31:2 31:4 33:18 34:8,13,24 35:6 42:20 43:1 44:5 51:15 63:1,8,22 69:10,15 69:15 73:16,20,24 74:15,17 75:19,23 76:10 77:17,18 78:19,24 79:5,12 82:8 82:17,22 83:2,22 84:6,20 86:14,20 87:4,9,16,20,24 88:11,13,15,16,17,21 89:7,9,10,17,22 90:8 91:1 92:16 93:3 93:10,20,21,22,23 94:7,20 95:8,20 96:2,4,7,8 100:19 101:23 102:2,9,13 102:14,16,17,18 103:7,8,12,19,20,23	104:11,15,20,24 105:4,8 107:16 115:11 125:22 141:4 contrary 33:15 conversations 18:5 40:24 41:15 45:22 105:19,24 106:3 110:1,5,6,15 converting 14:4 convicted 7:6 convince 117:10 cook 1:20 143:5 144:23 copies 22:6 113:17 119:18 copy 21:23 22:2 44:9 50:10 63:12 68:13 68:15 80:9 98:6 113:8,20 118:17 119:3 copying 113:13 corner 127:7 corporate 14:23,23 corporation 1:3,3,7,7,8,9,10,11 4:5,7 8:2 15:14,24 16:4,21 20:11 34:9 42:21 46:16 82:18 140:1,2 142:4,5,9 142:10 143:14,16,16,17,18,20,22 corporations 8:5,9 9:13 11:1 140:3 correct 10:15 14:6 18:11 22:4 27:21 30:4,21,23 37:21 38:23 39:8,16 42:5 44:8 56:13 58:18,19 67:12 88:1 89:24 91:4,21 95:6 96:5,12,15,24 103:10,21 104:16 117:4,5 121:1,19 135:9,9 137:11 144:7 correcting 90:7 corrections 145:14 correctly 32:12 couldnt 58:4 104:1 counsel 17:17 22:3 24:18 46:7 70:19 79:7 84:10 126:23 128:11 144:10,16 counsels 94:18 county 1:20 143:3,5,5 144:23 couple 81:21 112:8 course 50:20 69:21 court 1:1 4:16 26:3 75:5 126:15 142:1 143:12 145:1,7,23 courtroom 4:20 courts 1:17 cover 40:10 41:22 127:3 130:1 covered 31:3 craig 10:10,13 crated 121:8 created 57:22 credit 1:3 4:5,6 16:21 20:11 34:1 142:4 143:13 145:7 cs 21:7 csr 1:24 current 123:9 cut 41:2 cyranoski 2:12 6:18 9:2 12:3,12 13:5 19:13 21:4,11,16,20 22:20 23:23 30:6 32:17 37:15 41:5 47:11 50:14,18 53:15,20 55:7,15 57:1 59:24 62:16 63:13 64:23 65:22 66:12,23 67:17 68:2 69:3,7 70:5,8 71:15,23 72:11 75:12 76:6 77:8,20 78:4,7 83:5,8,24 84:8 85:2,6,15 86:15 88:3 89:8 92:18 93:15,24 94:13 95:22 96:20 97:16,24 99:7,14 100:1 102:6 104:2,17 105:9 113:3,12,16,20 115:5,15 116:6 118:22 119:6,20 120:4 124:14 129:5 130:15 130:24 132:18 133:10 134:6,22 136:6 136:19 138:6,17 139:1,18 141:19 145:5,9
--	--	---

<p>D</p> <p>d 3:1 55:22,24 61:9 64:4,18 65:21 68:1 69:5 70:17,24 89:12 114:17,21 128:13 128:20 131:10</p> <p>d04289 113:5</p> <p>d04292 113:5</p> <p>d4353 114:20</p> <p>dan 58:12</p> <p>date 10:22 15:8 33:13 65:16 68:23 89:17 117:22 130:21 131:13,13,14 132:16,19 145:8</p> <p>dated 46:12 106:23 128:6 132:10</p> <p>dave 36:20 41:14,14,16,17 106:5,6 110:18 121:14</p> <p>david 10:8</p> <p>day 1:22 12:16 37:5,6 39:19,20,21 41:24 142:22 143:7 144:22</p> <p>days 109:19 117:21 118:7</p> <p>dayto 12:15</p> <p>daytoday 12:1,11,15,17,19 13:3 14:15</p> <p>de 6:9,9 31:6,10,12,17,20 51:8,11,20 58:9 74:22,23 76:4 90:17 93:13 97:10 97:13 100:15 101:8 102:19,23,24 106:8 107:1 109:15 110:1 120:8 124:11 127:22</p> <p>deal 21:23 37:3 114:1 117:18</p> <p>dealings 28:22</p> <p>dear 145:9</p> <p>december 99:20</p> <p>decided 65:6</p> <p>deemed 117:12</p> <p>default 133:4,8 135:7 136:4</p> <p>defendants 1:12 2:16 138:2 142:11 143:22</p> <p>define 94:19</p> <p>definitely 65:5 90:13</p> <p>definition 56:19 57:23</p> <p>delaware 1:11 143:22</p> <p>delivered 47:3</p> <p>demand 137:17,23</p> <p>den 1:10,14 3:3 4:3 6:1 7:16 8:15,16 28:3 29:9 46:14,15 63:17 100:12 109:4,9 110:2,9 129:6 133:19 141:13 142:20 143:10,20 145:8</p> <p>department 145:23</p> <p>deponent 141:21 145:8,11,13,17</p> <p>deposition 1:14 4:10,11 18:21 21:3 22:10 24:22 50:3 141:19 142:13 144:10,13,14 145:10</p> <p>depositions 1:18</p> <p>derived 58:3</p> <p>describe 31:1</p> <p>described 141:9,15</p> <p>describes 54:7</p> <p>describing 48:8 54:24</p> <p>description 56:8,23 62:19 67:7</p> <p>determination 64:16 130:13,22</p> <p>determine 62:9 64:3</p> <p>development 1:8 16:12 34:10 42:22 46:17 82:19 143:18</p> <p>didn't 16:5 40:10 41:9 44:22 64:11 67:2 67:6 71:7 72:1 73:2 92:6 104:10,23 137:2,4 138:19 139:2,4,11</p> <p>difference 4:20 24:3 72:2 111:13</p> <p>different 12:15 62:23 65:3 91:6 95:12 95:22 107:19 122:14</p> <p>digits 6:19</p>	<p>digress 126:15</p> <p>diligence 127:18</p> <p>direct 3:4 6:5 39:12 46:8 73:14 111:23 114:16 116:20 128:10</p> <p>directing 23:2 33:7 42:12 53:24 70:17 85:20 124:10 125:17</p> <p>disagreement 44:14</p> <p>discussed 38:1</p> <p>discussion 19:23 24:9</p> <p>distribution 145:18</p> <p>district 1:1,1,17 142:1,2 143:12,12</p> <p>division 1:2 142:3 143:13</p> <p>divulge 69:19</p> <p>document 20:4,14 21:17 22:5 23:4,15 23:18,22 25:9,13 34:19 35:9 37:1,9 37:23 38:7,20 39:15,16 43:20 44:7,9 44:12,16,16 45:16 46:9,12,19,22 51:4 51:11,22 52:1,2,6 53:5 54:12 70:18 70:21 71:12 73:12 75:18,24 76:18 77:15 80:12,13,15 83:10 84:16,17,19 86:5 90:11 104:17 106:17 111:24 113:4 123:20</p> <p>documents 18:20,23,24 21:1,2 22:8,9 22:12 24:19,21 30:12 37:2,4,10 40:19 48:4 49:11 80:23 98:24 99:1</p> <p>doesn't 22:5 67:14 84:8 96:17 114:24 118:1,1,3 122:22 129:24</p> <p>doing 15:11 55:19 56:20 57:5 59:9 67:10 74:22 81:18 102:15 112:20</p> <p>dollars 65:17 96:23</p> <p>dont 5:3,4 6:21 10:16,17 12:13 13:9 15:6,17 19:9 22:1 29:14 30:10 31:7,8 33:12 36:22 37:17,19 41:2 44:14 45:3 47:6,7,16 49:19 52:2,7 57:4 59:1 64:19 65:1 69:19 70:8,13 74:9 78:10 80:11 81:19 82:12 85:10 88:19 89:4,5 90:23 95:12 99:9 100:22 109:12 110:13 113:12 115:7 118:17 119:22 120:3,5 122:7 131:24 132:1,12 135:3 135:15 138:9 139:13</p> <p>doubt 47:2,6,7 133:8</p> <p>doug 14:20 48:19</p> <p>dougs 49:4</p> <p>draft 37:23 44:2</p> <p>drafts 95:3</p> <p>drive 6:9</p> <p>dryers 112:23,24 114:5,7 120:10,22 121:2,4,19 122:3,4,5,10,13,16,23 123:3,6,9,24 126:3 133:22,24 134:12</p> <p>due 33:15,16 127:18 137:19 138:5</p> <p>duly 6:3 143:24</p> <p>duties 15:2</p>	<p>77:17 78:20 79:15 82:17 83:2,22 84:7 84:9,20 87:17,20 88:17 89:18,23 93:10 100:24 103:24 104:13,16 105:5</p> <p>eifert 2:3</p> <p>either 29:8 30:8 40:19 81:9 91:22 106:4 109:10 120:18 135:8,14</p> <p>electric 8:6 9:14,24 11:10 35:22 36:1</p> <p>elses 122:7</p> <p>employed 11:8,11</p> <p>enclosed 145:10,11</p> <p>engage 91:22 92:6 98:17 100:14</p> <p>engaged 32:1 33:1 53:3 61:7 65:15 66:9,17,19 98:14 99:23 100:11 141:7 141:12</p> <p>engaging 92:11 99:5</p> <p>engineer 58:2</p> <p>engineering 30:2,17 51:5 58:3,6,7,11 58:16,17,20,24 60:21 61:2,6,12,16,24 62:4,10 65:7,16 66:9,18,19 67:3,10 71:22 129:18,18</p> <p>entirety 45:4</p> <p>entities 54:20</p> <p>entity 28:10 32:9 107:19</p> <p>epc 30:15,20,23 31:19 33:18 34:7,13,24 35:6 42:19 43:1 44:4 51:6,12 63:1,8 63:12,18,21 72:6 73:16,20,24 74:11 74:17 75:19,23 77:16,18 78:19 79:12 82:5,16,22 83:1,21 84:6,19 86:14 87:4,16,20,24 88:13,15,16,17 102:24 103:23 104:11,15 106:19 141:4</p> <p>epcs 69:16 71:18 72:19</p> <p>equipment 14:4 57:21,23 58:1 60:7,9 60:10,14,16 129:17</p> <p>errata 145:12,14,15,17</p> <p>error 38:23 113:13</p> <p>essentially 29:16</p> <p>establish 68:3</p> <p>established 94:12</p> <p>estimate 123:19</p> <p>et 142:10 145:7</p> <p>eventually 101:5 104:12</p> <p>everybody 117:11</p> <p>everyday 79:9</p> <p>evidence 138:18</p> <p>exact 113:9</p> <p>exactly 52:3 88:24 136:24</p> <p>examination 1:15 3:2,4 6:5</p> <p>examined 6:3</p> <p>example 7:5 14:17 57:18 63:11 71:21 77:4</p> <p>examples 13:18</p> <p>exbrother 10:10</p> <p>excuse 23:14</p> <p>executed 90:5,12 96:2,4,8,16 97:4,5,8 98:6 99:6 100:10,21 101:6,19 102:9 102:13 103:3,20 104:12 105:1,8 107:8 119:3,15,18 125:8 126:12 127:12,15 127:17 130:6,10</p> <p>execution 127:9 130:1,3</p> <p>exhibit 19:12,12,14,16,19 20:3,5,9 21:8 21:21 22:4 24:1,2,10,13,17,24 25:4,5 30:6,9,9,11 33:8 36:17 39:11 50:23 51:3,15,21 52:19,23 53:6 54:1,2 55:22,24 59:20 61:9 63:7,22,23 64:4 64:18 65:21 68:1 69:5,6 70:17,24 73:23 74:14,21 75:11,12 76:11,12 77:3 80:2,4,8,16 83:9 85:21 86:1</p>
	<p>E</p> <p>e 2:12 3:1,9 145:5</p> <p>earlier 30:11 35:8 37:4,9 72:16,20 73:17 76:3 102:12 106:24 107:16 108:4 110:23 117:1 125:11</p> <p>early 31:24 32:9,13 79:22 92:15 101:10 132:21</p> <p>easier 5:21 18:18 121:21</p> <p>eastern 1:2 142:3 143:13</p> <p>ebitda 111:4,9</p> <p>ecofibre 1:7 140:6,9,18,21 143:16</p> <p>ed 4:3</p> <p>edward 2:5</p> <p>effect 34:8 42:20 73:21 74:12,18 75:20</p>	

<p>87:15,15 89:12 90:1,8 93:5 96:10 101:5 106:9,12,16,16 109:24 114:16 114:21 115:14 116:20 118:24 119:14 120:7 124:11 125:1,3,7,7 126:16,18 126:22 127:1,2,8,22 128:13,20 129:14 131:10 132:3,5,9 133:18 exhibits 3:11 20:7 72:18 80:22 81:2 88:14 91:2 exist 140:17,18,19 existed 32:8 existing 59:11,12,14 expect 65:20 73:2,6 116:14,15 expected 56:10,24 58:18 65:21 91:10 91:16 129:2 134:20 expecting 39:2 expects 56:4 72:24 115:24 128:16 expertise 64:6 explain 4:15 9:2 23:21 40:1,18 41:1 141:20 explained 37:3 explanation 138:15 139:7 extending 86:7 extent 96:21 extra 22:1 extremely 111:4 eyeball 46:20</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabrication 139:22 fabrications 9:20,21 fabs 9:17,19 facilities 31:6 33:2,2 facility 31:17,22 32:2,16 33:1 97:13 fact 20:6 44:14 104:14 facts 138:18 fair 4:24 6:17 35:3 38:6 100:7 falls 1:9 25:17,23 26:6,8,18,23 27:15,21 28:19,24 29:6 32:14 35:11 41:11,19 48:9 51:8 59:15 74:22,24 75:2,3 76:1 76:4,14 79:15 90:20 97:12 98:6 99:6 100:7,10,21 101:6 118:14,19,20 119:4 119:10,18 125:9 128:5 140:11,14,18 143:19 false 83:4,23 84:2,24 falsely 77:7,13 familiar 15:13 16:13 family 10:6,7 28:3 29:9 58:13 109:10 far 28:2 49:14 50:10 99:12 109:11 faster 18:18 february 79:22 90:2,12 123:21,22 128:6 feels 70:12 fees 40:9 felony 7:6 figure 24:4,5 94:6 110:8 file 47:19 48:14,18,20 49:6,7,16 50:1,6 50:12 filed 16:20 17:8 19:7 20:10 46:1 49:21 files 68:14,15 98:5 final 103:19 127:14 financial 109:5,10 financing 12:21 find 6:24 76:24 117:8 136:3 fine 5:14 6:18 13:10 19:13 69:24 70:1,5 70:14 95:17 finish 21:19 64:7 finished 111:16 123:21</p>	<p>fire 126:10 firm 62:10 108:20 135:14 firms 108:17,18 first 6:2 20:16 25:1 31:10 37:12,19 38:20,21 45:1,6 46:5 54:4,5 55:24 62:24 72:22,22 82:15 112:8,21 115:20 122:20 127:4,7 128:14 132:24 133:2 137:14 139:21 143:24 fit 64:7 five 20:16 109:18 124:6,17 fixed 30:2,16 51:5 117:3,21 flip 132:24 flow 15:4 48:12 follow 5:18 16:9 following 54:7 56:1,3 72:23 90:6 115:22,23 128:15 follows 6:4 followup 85:14 force 34:8 42:20 73:20 74:12,18 75:19 77:17 78:20 82:17 83:2,22 84:7,9,20 87:17,20 88:22 89:23 90:1 100:24 103:24 104:13,15 105:5 forceable 127:15 foregoing 142:16 144:6,10 forget 118:2 form 44:22 47:12,21 71:16,18 77:9 88:4 94:1 104:2 113:10 131:1 134:7 136:7 forth 64:17 94:4 forward 51:10 94:23 found 57:8 foundation 12:4 32:18 53:16,21 55:8 55:16 57:3 60:1 62:17 63:14 66:2 68:3 72:12,14 77:10 86:16 105:10 115:6,16,18 118:23 119:7,21 130:16 133:11 134:7,23 136:8 138:7 four 6:19 30:2,16 69:10,14 73:24 74:17 76:3,5,10 79:5,11,14 82:8,11 83:1 84:6,8,19 86:14,20,22 87:4,20,23 88:13,15,16,17,21 89:7,8,10,17,22 90:3,4,8,13 93:10,19,21,22 100:18 102:18 103:12 109:17,17 125:22 141:4,8,14 fourth 31:8 76:2 fraction 27:9 friedrich 2:11 145:4 front 24:20 44:12 112:1 fulfill 122:8 full 27:15,18 34:8 42:20 73:20 74:12,18 75:19 77:17 78:20 82:17 83:2,22 84:7 84:9,20 87:16,20 89:23 90:1 100:24 103:24 104:13,15 105:4 fully 87:10 88:22 137:20 funai 2:3 funded 104:4,8,12 105:15 117:2 124:13 funding 76:13,24 91:3,11,13,14 94:11 94:11,22 95:5,7,9,11 96:1,7,11,14 97:2,5,7,21 101:20,21,22 102:16,17 102:20 103:2,7,19 107:1,10,11,15 109:15 111:1 117:7,8,10,24 118:20 124:18 127:17 133:17 further 34:13 43:1 141:17,21 143:23 144:9,12,16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>g 53:6 59:20 general 56:8 62:18 67:7 genuine 76:20 77:5 93:6,23 94:1,8,10</p>	<p>117:12 george 31:7 81:10,18 102:4,6,7,10 103:9 gerald 2:4 getting 13:24 54:20 79:20 91:10 95:13 110:7 112:22 give 6:7,17 12:22 13:18 15:8 43:6 44:22 50:1 71:7,9 117:11 118:2,3,7 129:1 129:11 given 32:3,4,6 50:11 63:12,18 77:4 81:16 82:9,12 87:2 118:10 138:15 139:7 142:17 144:2,7 giving 25:12 112:18 go 13:11 20:14 26:21 32:18 36:12 47:13 47:14 53:5 55:22 64:5 66:3 69:2 70:4 73:10 76:13 77:22 78:22 80:10 81:13 93:4 94:11,22 96:14,22 97:11 102:14 107:15 111:1 112:1,1 113:8 117:7,8 120:7,17 128:24 goes 113:5 121:23 going 6:15 12:3,12,23 21:5 32:17 36:5 37:8,13,15 40:13,20 43:6,9,18 47:11 51:2,10,11 57:1 59:9 63:8 64:12,16 65:2,22,24 66:1,12,23 67:3,9 68:2 69:7 70:9,14 71:15 73:6 77:8 78:13 78:15 80:12 81:14,20 82:14 83:8 84:11 85:2,6,9 86:15 88:3,20 92:18 105:9,10 114:9 115:13 119:20 120:4 121:20 122:8 126:14 127:23 130:15 130:24 133:10,16 134:6 136:6 137:10 138:17 goldman 76:16 good 4:2 16:7 22:18 110:22 111:4,4,7 124:21 gotten 78:2 88:10 124:20 great 111:7 113:23 green 49:2 121:6,11 greenfield 15:12 group 140:4,7,12 grove 33:20 guaranteed 117:21 guess 39:3 67:8 93:24 110:8 137:12 guessing 50:14,16 guy 108:3 guys 113:14</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>h 1:10 3:9 54:1,2 116:21 120:7 143:20 habit 12:13 hall 81:18 hand 144:21 handed 74:20 handle 145:18 handwriting 38:16 handwritten 25:6 happen 91:16,17 124:19 happened 112:7 happy 36:7,10,15 79:7 hasnt 55:20 havent 66:17 88:10 89:19,20 100:21 104:8 hear 58:4 92:22 heard 4:6 134:4 heavy 13:17,20 hell 6:16 helpful 14:13 18:15 helping 18:6</p>
--	--	---

<p> hereinbefore 144:15 hereof 33:13 heretofore 143:7 hereunto 144:20 hes 14:23 21:5 41:5 89:11 110:10,11 134:15 heuvel 1:10,15 3:3 4:3 6:1 7:16 8:15,16 28:3 29:9 46:14,15 63:17 100:12,15 109:4,9 110:2,9 129:6 133:20 141:13 142:20 143:10,20 145:8 hey 136:14 hide 120:2 higher 113:2 hired 58:7 holding 9:10,11 28:7 honesty 7:1 hope 10:16 hour 1:23 80:12 </p> <hr/> <p style="text-align: center;">I</p> <hr/> <p> id 3:10 idea 38:2 65:19 112:12 117:6 identification 19:17 24:14 50:24 80:5 81:3 106:13 125:4 126:19 132:6 identified 53:2 54:15,21 55:14 56:16 59:8 116:21 131:11 identifies 53:10 identify 125:7 ifc 1:3 4:5,6 16:20 20:10 25:18,19 33:24 34:24 35:5 40:16,21 41:12 43:7,9,10 43:13 44:3 50:1 63:11,19 74:18 77:4 77:16 78:15,15,18 79:11 82:7 83:1 84:23 85:21 86:7,8,13,17 87:2,3,9,12 87:16,19 92:10,10 102:3 103:22 104:10,14,24 105:2,7,14 114:7,13 119:17 120:3 121:2,4,19,21,24 122:9 122:9 123:6 125:24 133:5,9,16,21,22 133:23 134:19 137:9,18,20 139:11 141:5,15 142:4 143:13 145:7 ifcs 122:2 134:12 ii 10:8 106:18 107:18,22,23 109:11 ill 4:9,17,22 12:6,7 13:5 16:8 21:18 24:16 28:10 47:15 49:22 62:22,22 63:13,15 65:2 71:23 75:5 88:7 93:6 93:24 96:6,20 99:7,14 100:1 104:2 113:4,6,8 115:5,17,18 134:22 136:12 illinois 1:1,3,20,22 2:7,14 33:20 142:2,5 143:1,6,10,13,14 144:23 145:2,6 im 4:3 6:15 7:13 8:22 10:15 12:3,12 17:21,24 18:2 20:10 21:19 22:8 24:6 24:19 28:7,7 29:13 30:16 32:17 37:15 40:5 45:21 47:11 48:8 51:2,10 57:1 61:15 62:21 64:1 65:2,22,23 66:1,4 66:12,23 67:18 68:2 69:9,15,16 70:9 70:14 71:15 74:22 75:9,14,16 77:8 78:7,13 79:7,8,13 81:14 82:9,14 83:8 84:10,11,22 85:13 86:15 87:14 88:3 89:12,15 90:6,6 91:14 92:18 94:5,15 94:19 95:13 97:20 98:24 105:9,10 108:14 110:8 114:1 116:8 119:20 120:4 121:20 124:5 126:14,24 127:5 128:22 130:15,24 131:8 133:10 134:6 135:13 136:6 138:17 important 26:2 inadvertent 114:2 inadvertently 126:24 inarticulate 94:6 </p>	<p> include 77:19 114:24 116:18 included 58:20 87:3 includes 126:9 including 20:12 incomplete 113:5 increase 126:7 increased 42:10 independent 137:5 indicate 39:5 individual 1:10 143:21 individually 116:7 industrial 13:17,20 information 64:9 71:7 107:15 115:12 129:11 initialed 130:7 initials 16:6,17 108:7 inlaw 10:11 install 13:21 14:8 installation 15:9 installed 123:1 installing 14:5,6 instructions 5:18 33:21 intended 129:16 intending 32:13,15 interest 26:14 27:2 109:5,5,6,10 interested 17:21 18:1 45:21 84:11 111:19 144:18 interpose 23:24 investigation 137:5 investment 140:4,7,12 investments 9:12 10:4,14 11:1 involve 15:3 126:2,3 involved 18:8 28:13 109:21 110:14 involvement 29:5 32:23 isnt 75:16 78:24 93:15 issues 54:8,10 item 120:9 items 57:18 ive 5:7 45:3 51:24 78:2 80:15 88:12,16 95:18 115:10 128:12 </p> <hr/> <p style="text-align: center;">J</p> <hr/> <p> j 2:5 janice 1:18,24 142:14 143:4 145:22 january 141:3,10 jim 110:20 job 12:18 jr 10:8 judgments 64:5 july 132:22 jumped 137:13 jumping 118:13 june 99:20 132:10,17,21 136:2 </p> <hr/> <p style="text-align: center;">K</p> <hr/> <p> k 143:3 kassner 10:10,10 keep 113:24 kept 106:22 kind 13:15,16,19 32:9 48:15 81:19 97:22 117:13 133:15 kinds 95:19 knew 63:11,21 105:14 135:22 136:16 know 5:14 8:24 10:17 11:4 14:14 15:16 15:17,17,23 16:5,15 17:14 26:1 27:23 27:24 28:2,12 30:15,20 31:7,8 32:19 34:22 35:16 36:6,20,22 37:8,17,19 </p>	<p> 45:3 49:10,15 50:10,15 52:2,7,8 53:3 57:4 59:1,2,5 60:20 62:11 64:19 68:7 70:20 71:4 72:9 81:6,19 86:21 88:20 89:4,5 95:13 99:9 107:21 109:1,7,11 109:12,16 112:6,9 113:12 115:8,10,12 117:15 119:16,19,22 121:5,9,10 122:8 124:12 128:20,22 130:5 131:24 132:1 132:18,19 134:13 135:3,15 136:18,22 137:9 138:1,9,19 139:2,4 140:16,20 knowing 78:15 knowledge 7:24 12:1,10 27:14,16,19 28:6,9 32:21 33:23 34:21 35:2 37:24 40:17 50:17 52:24 53:4,14,17,22 55:17,21 59:2 60:2 62:7,9 64:10,14 66:16 71:5 73:9 77:11,14 83:13 86:22 88:9 89:13,22 99:17 100:4 105:14 107:13,20 114:11,12 119:23 133:13 133:23 134:10,24 knowledgeable 13:3 knows 12:18 kraft 111:6,18,21 </p> <hr/> <p style="text-align: center;">L</p> <hr/> <p> l 2:4 142:7 lack 32:18 53:15,20 55:7,15 63:13 68:3 72:11,13 86:16 105:10 115:5,15 118:22 119:6 130:16 133:11 134:7,22 138:6 lacks 12:4 57:3 60:1 62:17 66:2 77:10 136:8 language 79:1,9 127:13 lasalle 1:21 2:6 143:9 145:1 law 4:21 12:21 lawsuit 7:8,23 16:20 17:4,9 46:1 49:18 49:21 lawyer 17:19,22 18:5,6 117:16 lawyers 36:6 49:16 50:1 137:8 lease 133:5,9,22 134:3,5 135:7 136:5 leave 65:10 leaving 29:2 left 17:17 76:2 127:1 legal 57:2 62:17 65:24 66:24 96:21 105:11 lending 78:16 85:21 letter 103:23 105:3 132:9,13,14 135:5 136:13 141:5,9,15 level 18:16 liability 28:4 limited 28:4 line 120:9,11 liner 31:5 81:23,24 111:22 list 10:16,17 56:2,3 70:24 72:2,23 73:4 115:23 116:4,12 118:20 128:15 129:1 listed 56:7 61:16 lists 114:21 litigation 6:21 7:2 49:14 119:18 little 56:11 115:21 117:1 118:13 121:21 127:2 133:15,16 137:13 llc 11:3,4,6 30:4 106:18 107:17 llp 2:11 145:4 loan 43:10,13,18 86:8 located 49:1 58:8 location 31:14 long 11:11 51:12 122:19 longrun 18:18,19 look 17:7 18:23 19:6 20:6 30:8,10 34:3 38:11 46:10,18 49:6 68:18 69:17 </p>
--	---	---

73:11 75:17 80:22 81:14 96:9 127:6 132:12 137:12 looked 21:3 22:9,16 24:21 74:24 81:22 looking 21:2 24:24 44:7 45:5 59:17 69:11,15 70:24 73:22 74:13 77:15 125:21 131:10 looks 71:17 111:6 124:20 lot 121:22 loud 33:12 34:6 42:17 82:15 low 14:12	90:22 91:6 92:12 97:11 101:2,3,7 106:20 117:3 122:21 123:10 124:1 mills 33:4,5 59:12 mind 13:22 33:12 mine 38:17 minute 19:22 59:17 124:7 mischaracterize 90:24 mischaracterizes 37:16 66:13 77:9 83:24 92:19 131:1 138:20,23 mishearing 97:20 misrepresented 82:10 92:16 misspoke 43:11 106:21 mittell 2:3 modifications 117:17 modified 34:16 35:1 43:4 127:23 modify 33:2 44:4 moment 29:3 46:10,18 73:10 98:16 100:3 126:15 132:12 money 15:4 40:13,15,21 41:18,22 52:17 52:21 60:21 77:6 78:16 85:22 87:8 112:18 117:11 121:22 133:17,21 135:18,19,21,22 136:14,17,23 137:1,5 137:9 138:2,15 monies 25:18,20 33:24 133:24 139:2,4 139:5,8 141:2 month 33:17 38:19,19 52:7 moot 114:14 morel 2:4 43:11,13 51:14,17 124:4 135:6,15 morning 4:2,10 5:13 51:10 74:14 88:13 morton 33:20 mouth 110:13 move 29:14 moved 15:10 moving 113:24	numerous 121:16
M	N	O
m 1:23 machine 81:24 82:1 111:17 113:1 120:14,15,18,19,20 126:7 machines 13:21 14:4,5 81:20 126:8,8 mail 35:18 main 11:21 59:6 maintaining 48:17 maintains 48:14 maintenance 59:7,13 60:4 129:19 makeup 27:24 making 12:14 33:19 64:5 97:19 manager 14:23,24 110:21 managers 14:18 managing 107:21 manuals 53:7,11,13 59:8,13,18,19,21 60:5,6,7,10 65:11 99:2 129:20 manufacturer 60:14 139:23,24 manufacturing 31:16 manypage 51:4 maple 6:9 march 23:6 26:19 29:17 30:22 44:10 46:12 74:19 82:3,24 83:21 84:6 87:21 88:18 89:18,23 91:8 100:19 101:10,17 102:12,21 103:3,13,22 106:23 136:1 margaret 145:22 mark 19:10 24:10 80:2 106:9 124:24 126:16 132:2 marked 3:10 19:16,19 20:2 24:13,16 50:23 51:3 80:4,7 81:3 106:12,15 125:3,6 126:18,22 132:5,8 market 88:21 111:7 122:20 markets 102:15 master 134:3,5 masuda 2:3 match 69:17 matrix 54:2,7 56:11 115:21 matter 50:2 mccorkle 145:1 mean 14:3,5 17:1 36:4 41:21 47:23 49:4 57:12 64:11 71:20 98:22 107:12 111:9 129:5,6,7 meeting 35:17,20,21,23 36:16,24 37:22 38:4 110:17 member 11:3,6 28:4 29:8 109:6 mentioned 100:19 141:5 144:15 merely 76:23 merger 11:18 met 110:14,16,18,19 metso 120:19 michael 2:11 145:4 middle 38:11 99:17 milestone 116:22 mill 25:17 26:7 59:11,14,15 million 25:2 33:18 41:12 42:4,5 43:10 52:20 65:17 80:19,20 86:2 87:10	n 3:1 145:1 name 4:3 15:23 28:15 39:4 108:19 109:1 names 71:3,9,13 nature 6:20 13:15 110:4,6 126:5 near 81:8,13 need 5:12 6:16,21 54:10 64:7 95:3 98:19 107:15 121:22 145:15 needed 40:15 57:23 67:15 needs 69:22 neither 34:11 42:23 82:20 99:22 never 4:13 45:4 78:2 80:15,16 new 31:21 33:4,5 39:14 40:2 126:6,9 nine 112:22 114:5 123:2 134:12 normally 97:4 north 1:21 2:6,13 33:19 143:9 145:5 northern 1:1 142:2 143:12 nos 81:2 notarial 144:21 notarized 145:16 notary 1:19 142:24 143:4 144:23 note 23:24 25:19 29:4 38:3 45:11 78:15 78:18 87:7 113:4 notes 105:23 notice 1:15 33:14 34:23 42:7 47:9 50:11 118:2,3,4,5,6,7,10,14,18 144:13 number 3:10 6:12,22 38:12 42:3,8 110:18,19,22 122:17,20,23 123:5 145:7,20 numbers 6:14 39:11	object 5:7,10 12:3,13 32:17 37:15 47:11 57:1 62:16 63:13 65:22,24 66:1 66:12,23 68:2 71:15 77:8 83:8 86:15 88:3 92:18 93:24 96:20 99:7,14 100:1 104:2,17 105:9,10 115:5 119:20 120:4 130:15,24 133:10 134:6,22 136:6 138:17 objected 70:19 objecting 78:7 objection 12:14 13:6 53:15,20 55:7,15 60:1 64:23 71:24 72:11 77:20 94:3 115:15 116:12 118:22 119:6 124:14 128:11 138:6 139:18 obligation 120:16 122:9 obligations 6:24 133:5,9 oblige 96:17 obtain 44:3 91:3 94:22 95:5 105:17 obtained 35:4 95:9 obviously 51:12 occasions 121:17 occur 35:21 occurred 26:18 35:24 36:4 91:17,18 occurs 133:17 oconto 1:9 25:17,23 26:5,8,18,23 27:15 27:21 28:19,24 29:6 32:14 35:11 41:11,19 48:9 51:8 59:15 74:21,23 75:1,3 76:1,4,14 79:15 90:20 97:12 98:6 99:6 100:7,10,20 101:6 118:13 118:19,20 119:3,10,18 125:9 128:5 140:11,14,18 143:19 office 4:21 68:17 officer 8:1,5,10,20 15:18 offices 36:5,6 oh 36:8 106:21 137:2 okay 4:9 9:18 20:19 45:9 46:21 49:20 79:9,10 85:16 93:18 103:1 112:5 old 10:20 once 133:17 ones 88:24 95:23 operates 16:11 58:10 operating 53:6,11 59:19 operation 59:12 operations 58:23 59:7 129:18,19 operator 11:22 opinion 96:18 98:3 opportunity 17:7 44:18 45:12 69:24 70:13 order 35:10 86:7 95:4 organizational 54:2,8 outcome 144:19 outside 14:24 108:13 123:23 owe 40:20 41:12 133:21 136:14,17 owed 25:18 135:17,19,21,22 136:22 137:6,6,9 owing 138:5 owned 9:7,23 26:8,9,10 32:14 140:4,6 140:11 owner 9:12 27:15,18,18 28:3 54:11,12 95:2,4 96:13 101:13 116:5 118:1,3,10 owners 56:5,7 116:1,3 128:17,19 129:3 ownership 26:14 27:2 28:1 109:6 owns 9:5 16:10 27:23 58:10

P		
<p>page 20:4,20 53:5,6 54:1 55:22 68:18 111:23 112:2,3 125:15,17 127:3,4,7 128:10 130:1,1,7 132:24 137:12,14</p> <p>pages 20:15,16,17 46:11 52:2 112:8,11 113:11,21 126:23 127:7 145:12,15,17</p> <p>paid 25:20 27:9 33:24 52:12,17,21 60:21,24 65:16 79:20 114:13 133:16 137:3,20 138:2,9,16,20 139:2,4,5,8 141:2</p> <p>paper 13:21,23 14:3,5 15:9 26:23 27:20 27:23 28:3,5,12,18 30:4 31:21 32:7,8 32:13 33:1 41:10 48:9 51:7 52:13,18 52:21 53:3 54:13 59:16,23 60:5,11,19 68:8 70:22 71:3 76:16,23 80:1 81:17 88:1,5,8 91:3 101:15 104:20 106:18 107:17,18,22,23 108:6,17 109:2,6,11 109:11 110:11 111:6,18,20 113:2 116:11 128:22,23 129:1,12,15 137:1</p> <p>papers 26:7</p> <p>paragraph 33:8,11 34:3,5 38:21,24 42:13 50:4 56:1 72:22,22 73:15 82:15 133:3</p> <p>paragraphs 34:18</p> <p>part 39:11 44:16,16 45:14 46:9 73:12 86:4,11,21,23 87:2,12 93:13 113:1</p> <p>partial 27:17</p> <p>particular 12:17 70:1</p> <p>parties 144:11,17 145:18</p> <p>partner 107:22</p> <p>partners 1:8 16:11 34:10 42:22 46:16 82:19 143:17</p> <p>party 7:8,23 17:4 79:23</p> <p>patience 24:17</p> <p>pay 25:20 33:15 36:12,13 87:8 121:23 121:24 135:23,24 137:10,22</p> <p>paychecks 11:10</p> <p>payment 33:19 120:24 122:11 133:5,9 137:17</p> <p>payments 134:19 135:1,7 138:9,11</p> <p>pcdi 16:14,15,22 25:21 26:11,12,15 27:3,6,9,14 32:14 33:16 34:12 36:6 36:13 40:12 41:11 42:24 43:16,17 52:21 53:1 55:2 78:16,23 82:21 85:22 86:7,12 87:9,13 89:6 91:23 92:2,11 98:14 99:5,23 112:16 114:4,9,24 116:18 118:21 119:4,16 121:22 128:7 133:20,24 134:11,18 135:21,24 136:4 138:16 141:3,8</p> <p>pcdis 87:3</p> <p>pending 94:14 143:11</p> <p>pennsylvania 31:7 33:3 76:5 102:5,10 103:10</p> <p>penny 121:24</p> <p>people 14:10 15:5 18:10 36:21 79:9</p> <p>peoples 6:13</p> <p>percent 13:23 14:2 15:8 121:24</p> <p>pere 6:9,10 31:6,10,12,17,20 51:8,11,20 58:9 74:22,23 76:4 90:17 93:13 97:10 97:13 101:8 102:19,23,24 106:8 107:1 109:15 110:1 120:8 124:11 127:22</p> <p>perform 52:11 56:10 76:21 79:4 96:18 100:12,15 116:15</p> <p>performance 54:9</p> <p>performed 52:9,10</p> <p>performing 56:5,6 64:3 116:1,2 128:17 128:18 129:3,3</p>	<p>period 40:12</p> <p>perjuring 84:13</p> <p>perjury 85:8</p> <p>permit 129:20</p> <p>person 11:24 12:9,24 13:2 14:14 28:20 84:18 129:22</p> <p>personal 6:7,13,23 133:12</p> <p>personally 7:10,12,16 26:10 29:8 41:13 47:24 141:13 143:8</p> <p>persons 13:2 109:1</p> <p>pertaining 1:17</p> <p>phase 81:8 107:10,12</p> <p>phone 135:10,16 145:20</p> <p>photocopied 49:17</p> <p>piece 104:20 137:1</p> <p>pieces 59:5</p> <p>pine 58:2,6,7,10,16,16 60:21 61:1,6,12 61:14,16,24 62:4,9 65:15,20 66:9,17 66:19</p> <p>piontek 10:9,9</p> <p>pipng 139:23</p> <p>pitkowski 58:12</p> <p>place 113:13</p> <p>plaintiff 1:4 2:9 4:4 142:6 143:15</p> <p>plaintiffs 3:11 19:12,14,15,19 20:3 24:12 50:22 51:3 52:19,23 63:7 80:3 81:1 93:5 96:9 106:11,16 109:24 125:2 126:17 132:4</p> <p>plan 131:21</p> <p>plans 98:17 100:14</p> <p>plant 25:23 26:6,18,24 27:15,21 28:19 28:24 29:6 32:14 35:11 41:11 48:9</p> <p>plants 13:21 15:10,11</p> <p>please 6:7 29:18 76:7 83:5 102:22 145:13,17,19</p> <p>pledge 19:2,21 44:13,17,19,23 45:2,13 45:18 46:3 73:11 133:5</p> <p>point 5:13 6:16 16:19 17:6 24:7 29:17 30:10 31:24 39:9 40:11 43:24 44:2 46:2 47:8 49:14 57:6 58:15 64:15 69:12 70:10 82:6 94:18 95:9 98:5 99:4,10,10,12 104:23 108:16 114:14 117:15 122:9 130:17,19 133:7 138:24 139:1</p> <p>pointing 24:18</p> <p>poorlyworded 7:13</p> <p>portion 122:6</p> <p>position 8:20 88:19</p> <p>possession 134:12</p> <p>possible 99:22</p> <p>possibly 12:23 81:17</p> <p>potential 92:4</p> <p>preference 5:17,19 6:13</p> <p>preferred 129:22</p> <p>preliminary 18:15</p> <p>preparation 17:15 22:10</p> <p>prepare 18:6</p> <p>prepared 68:4,7 70:20,22 128:20</p> <p>prepares 95:1,2</p> <p>preparing 17:11</p> <p>presence 144:4</p> <p>present 106:2 144:14</p> <p>presented 39:22</p> <p>presently 34:12 42:24 48:22 82:21</p> <p>president 7:19 8:12,22 11:20,21 23:10 29:9</p> <p>pretty 26:1 97:14</p>	<p>previously 59:15</p> <p>price 30:2,16 51:5 81:16 117:3,21</p> <p>priced 81:15</p> <p>prices 96:19</p> <p>pricing 32:3,4,6 81:7 82:12</p> <p>prior 34:16 43:4 44:1,3</p> <p>privilege 17:24</p> <p>probably 21:5 46:5 69:13</p> <p>problem 5:22 89:16 94:3</p> <p>procedure 1:16</p> <p>proceed 118:5,6,8,11,15,18</p> <p>proceeds 40:14</p> <p>process 109:17,18</p> <p>procurement 30:3,17 51:5</p> <p>produce 129:13</p> <p>produced 60:5 69:10,12,13 89:17 111:12 112:10 113:8,11 126:23</p> <p>producer 140:22</p> <p>producing 112:10</p> <p>product 111:16</p> <p>production 31:22 32:16</p> <p>products 1:6 15:14,24 16:3 34:9 42:21 46:15 56:16 57:15 71:21 82:18 129:16 142:8 143:15 145:7</p> <p>progress 98:23</p> <p>project 12:20 14:18 55:9 59:4 60:22 65:7 74:3 77:1 91:11 102:24 109:16 111:1 117:8 126:3</p> <p>projects 13:19 31:3 81:9 102:10 105:15 141:9,14</p> <p>promissory 25:19</p> <p>properly 95:19</p> <p>protected 17:23</p> <p>provide 33:22 53:13 55:6,13 59:20 114:9 116:4 123:15,18</p> <p>provided 6:15 34:23 59:22,22 71:3</p> <p>providing 53:11 71:22 114:5</p> <p>prystalski 1:19,24 142:14 143:4 145:22</p> <p>public 1:19 6:14 142:24 143:4 144:23</p> <p>pulp 140:22</p> <p>purchase 26:7 28:19 57:21 60:13 76:14 97:12 122:13,15</p> <p>purchased 26:23 57:24,24 60:7,9,10</p> <p>purchaser 27:20</p> <p>purchasing 32:13 111:15 129:17</p> <p>purpose 36:24 43:19 68:1 76:17 94:22</p> <p>purposes 73:7 94:21 106:17</p> <p>pursuant 1:15 33:21 52:18 144:13</p> <p>put 5:7 6:13 27:10 79:8 81:11,11,20 93:2 110:13 115:18 121:22 123:8 126:6</p> <p>putting 126:9</p>
		Q
		<p>quality 113:2</p> <p>quarter 65:17</p> <p>question 4:22,22,23 5:3,8,20 7:14 12:4 13:8 28:11 38:10 41:1 45:10 47:12,16 49:19 55:13 62:21 64:1 65:3,23 66:5 67:23 69:18 70:4 71:16 72:16,20 74:5 74:7,9 77:9,24 83:6,10,18,19,20 84:14 85:14 86:24 87:18 88:4 92:20,23 94:1 94:13 97:16,24 102:22 104:3 105:13 131:1,4,9 134:7,9 136:7,8,10,19</p> <p>questions 4:18,19 5:7 6:23 18:15 40:5 70:7,9,10,15,19 72:21 94:6 119:11 141:18 142:17 145:19</p>

quick 67:18 69:2 113:3 quite 58:4 quote 81:17 <hr/> <p style="text-align: center;">R</p> <hr/> r 1:14 3:3 6:1 108:21,22,24 123:11,12 142:20 143:10 145:8 rating 111:4 ray 10:8,8 read 23:9,16,18 33:11 34:5,18 36:11 38:20 42:17 54:5 55:24 72:21 73:17 75:6,7 76:6,8 77:21 82:12,14 83:5,7 115:20 128:14 133:2 137:14 142:12 ready 81:13 real 79:18,19 91:7,9 93:6 realized 69:21 really 26:2 76:20 91:2 96:17 127:3 reask 136:11 reason 35:23 36:4 40:20,23 47:2 49:17 53:19 61:11 62:3 113:10 115:3 119:16 127:5 133:7 reasonable 84:18 rebuild 14:6,7,8 recall 35:17 39:18 105:21,22 118:21 receipt 33:14 receive 118:14 132:16 received 47:9 120:10 122:23 135:5 136:16 receiving 40:13 77:6 recess 50:21 69:4 85:18 124:8 record 19:20,22,23 21:5,6 24:8,9 45:23 46:11 69:23 75:7 76:8 80:21 83:7 106:17 113:7 114:19 116:21 126:21 132:9 145:24 records 6:14 redrafting 98:22 reduced 144:5 refer 15:22 30:14 51:11 reference 51:8,20 referenced 63:22 references 24:5 referred 30:2,15 46:6 122:24 126:11 referring 25:4 26:6 30:7,16 54:13 60:6 69:14 73:24 75:4,9,23 76:1 77:18 90:9 92:17 103:13 107:4 125:23 refers 15:20 31:14 regular 15:2 relate 48:4 49:11 related 31:20 32:24 44:1 48:11 144:17 relates 6:23 29:22 relating 122:12 relation 8:18 58:13 relevant 139:12 remain 34:8 42:20 73:20 74:12 75:19 77:17 78:20 82:17 83:22 87:16 89:6 103:23 104:5,12 remember 73:16 135:13 remove 21:21 removed 113:10 repaid 87:10 repeat 66:5 77:23 102:22 rephrase 13:11 38:10 49:20 63:15 93:2 replaced 38:12 reported 1:24 144:3 reporter 75:6 126:16 142:15 145:23 reporters 145:1 represent 78:23 113:6	representation 84:15 87:12,14 represented 77:16 79:11 83:1,15 102:3 105:4 representing 2:9,16 28:17 86:13 89:11 123:23 reputation 6:24 required 52:10 resembles 89:21 reserved 144:10 reside 106:7 residence 6:8 respect 35:5 108:13 109:24 respective 144:11 145:18 responsible 18:4 48:17 rest 98:19,21 return 145:17 returning 69:5 128:5 review 18:20 44:19 46:4 68:9 145:13 revised 42:1 73:13 ridge 58:2,6,7,10,16,17 60:21 61:2,6,12 61:14,16,24 62:4,9 65:15,20 66:9,17 66:19 right 5:7,15 6:12 7:3 15:5,5 21:2 22:17 22:18 24:22 25:7 28:19 29:23 31:9 35:11 54:13,16 55:4 63:3 65:8 66:15 70:22 73:23 74:1 75:2 78:16,20,24 79:13,17 81:7 85:22 86:9,19 87:10 88:8 93:7,12 94:23,24 96:6 102:21,24 103:14,16 107:10 111:8 113:20 117:22 118:9 134:21 137:3 righthand 127:6 rights 87:3 road 33:20 98:20 rolls 126:6 ron 10:8 15:18,20 23:20,21 25:9,12 26:7,9,10 29:17 35:8,9,17 36:17 37:12 38:1,7 39:7,24 40:11 41:6,7,9 41:24 43:6 44:21 45:11 46:14 63:17 81:9 87:1 100:11,14 105:19 109:4,12 109:21 110:2,9 133:19 135:20 136:15 138:14,14 139:3,7 141:12 ronald 1:10 143:20 room 4:21 35:22 36:3 110:15 rottier 48:23,24 110:20 rough 48:8 roughly 48:8 52:16 95:19 rules 1:16 4:16 running 107:22 <hr/> <p style="text-align: center;">S</p> <hr/> s 3:9 8:8 sachs 76:16 saith 141:21 sale 25:16,22 26:5,17,21 29:5 35:10 48:8 sales 15:4 28:23 122:13 saw 25:1 42:10 45:1 saying 7:15 29:16 32:12 55:20 57:14 59:21 67:11 71:6 88:4 89:18 92:5 93:3,5,9 95:8 101:17 102:20 106:22 114:4 123:8 136:4 says 38:13,21 42:13 46:24 67:13 72:22 73:19 74:21 75:18 80:19 84:17 107:17 120:10,17 122:11 130:1 schedule 20:17,18 21:7,21 22:6,13,14 23:3 24:1 25:1 39:10,13 42:1 44:15 44:15 46:9 75:13 116:22 120:24	122:19 school 129:22 scope 56:8,20 57:19 61:19 64:13,18 65:8 67:13 seal 144:21 second 5:9 21:21 24:8 33:8 38:23 95:10 112:2 120:9 133:1,3 137:12 secretary 48:23 49:3,4 sections 59:18 secure 145:13 security 6:12,14,22 see 14:13 20:16,23 24:3 25:3 33:8 37:7 38:14 42:15 45:9,13,18,24 46:4 53:8 53:10 54:4,22 56:21 61:21 71:13 74:4 75:21 102:15 110:21 114:23 115:1 116:23 120:9,11 127:10,20 132:24 seeing 69:16 seen 37:23 45:3,4,6,7 46:6,22 51:22 80:15,16,23 100:21 112:13 132:14 134:16 selfperformed 57:11 sell 111:11,12 123:14 sense 28:8 sent 132:10 sentence 38:13 54:4,5 75:21 82:15 115:20 128:14 133:1,2 137:14 separate 28:10 45:16 service 137:22 services 1:11 11:9 33:24 34:23 35:4 44:3 46:13 47:1,4,9 51:7 114:10 132:11 143:21 set 64:17 144:20 setina 145:22 settle 85:10 settlement 134:2 seven 123:1 shape 111:7 sharad 28:14,16,17,23 107:24 108:1 109:3 110:12,14 124:23 shared 36:2 shareholder 8:23 9:4,13 10:24 27:11 140:9,14 shareholders 10:3,13 shares 27:5 sheets 145:12,14,15,18 shelf 81:11 shelly 48:23 49:1 shes 49:3,4 short 9:19 41:18,20 50:18 shorten 20:7 shorthand 16:2 142:15 shouldnt 21:22 show 19:18 24:16 46:2 51:2 80:7 92:2 106:15 107:23 119:4,13 125:6 126:22 127:14 132:8 showed 62:14 showing 20:2 22:8 24:19 54:19 56:12 72:9 127:5 shown 57:18 58:21 61:19 64:4,13 65:7 68:23 71:14,22 88:13,16 89:19,20 114:24 115:3 119:15 shows 112:7 115:21 side 111:21,21 127:1 sign 23:6,19,22 25:13 29:18 35:9,19 36:7,10,14,14,15,17 37:1,1,9,13,20 38:3,7,9 39:10 40:2 44:22 45:12 52:4 68:22 79:21 87:6 97:2 125:13
--	---	---

signature 68:20 141:20 144:9 145:11 145:13,14,15,17,23 signed 18:24 23:4,10,13,15 25:7 34:19 35:13 37:4,9,22 39:4,15,18 42:7 43:22 44:9 46:14 52:1,5 62:11 63:5 68:11,13,14,16 73:2,8 75:24 76:12 77:15 80:20 81:24 82:2,5,8,24 84:5 84:16,17 86:21,23 87:24 88:21 89:1 90:2,9,12,14,16 91:15 93:11 94:12 95:3,10 96:13 101:9,16 102:11,21 104:19,21 107:6,9 109:19,20 111:5,20 117:22 125:18 129:21 130:11 134:21 135:23 137:1 145:15,15 significant 97:15,22 98:2 signing 29:3 39:23 123:21 signs 117:11 silence 131:7 silver 6:9 similar 69:17 simple 84:14,14 simply 17:24 137:8 sincerely 145:21 sir 75:16 82:14 104:23 115:20 126:21 sit 34:22 61:4 65:5 116:14 131:7,20 133:19 138:4 site 56:5,6,7 116:1,2,3 128:17,18,19 129:3,4 sites 15:12 six 20:16 slightly 62:23 slow 16:8 small 27:4 97:20 social 6:12,14,22 sole 76:17 solely 9:5 somebody 12:18,20,21 18:3,3 39:9 49:15 79:6 92:15 95:1 111:15 112:9 122:7 123:8 135:14 136:3 somewhat 39:12 soon 124:19,19 137:10 sorry 7:13 21:19 24:6 40:6 61:15 66:4 75:14 82:9 91:14 94:15 98:24 124:5 128:22 131:8 135:13 sound 91:1 97:19 sounds 97:22 source 123:23 sources 117:10 space 31:12 spares 123:1 speak 83:9 speaking 12:14 52:16 speaks 104:18 specifically 104:5 specifics 124:23 speculation 47:14 64:24 99:8,15 100:2 124:15 speed 126:7 spell 28:15 spelled 8:7 spend 15:6 80:11 spirit 1:11 7:20,22 9:15,17 11:9,12,14 11:16,18 12:2,9 13:4,13 14:10,16 15:9 17:1,3,8,14 18:3,13 19:8 20:12 23:11 25:19 29:10 32:1,24 33:23 34:22 35:3 36:1 38:2 44:2 46:1,13,24 47:3,8,19 48:2,13,14 50:12 51:7 52:8 52:12,18 54:16,19 57:8,13,14,19,22	58:15 61:6,11 62:1,2,3,8 64:15 66:8 72:7 79:24 83:15 87:8,24 90:14,16 91:20,22 92:6,9,10 100:11 106:18 108:13 110:10 116:9,15 125:19 129:6 129:7 130:12,21 131:14,21 132:10 137:22 139:12,21 141:2,7,12 143:21 spots 15:5 ss 143:2 st 26:7,23 27:20,23 28:3,4,12,18 30:3 31:7 32:7,8,12 33:1 41:10 48:9 51:7 52:12,18,21 53:3 54:13 59:16,22 60:5 60:11 68:8 70:21 71:3 76:16,23 80:1 81:10,17,18 88:1,5,8 91:2 101:15 102:4,6,7,10 103:9 106:18 107:17,17 107:22,23 108:6,16 109:2,6,10,11 110:11 116:10 128:22,23 129:1,11,15 stage 94:21 120:24 stamped 114:19 127:8 stand 120:13 standard 71:18 standing 49:7 stands 16:5 start 7:15 11:14 13:12 49:22 128:12 started 13:24 15:19 starts 33:9 startup 59:6,6 99:3 129:19 state 1:20 87:15 143:1,6 statement 38:21 83:4,20,23 84:23,24 87:19,21 104:1 133:16 135:9 states 1:1,17 142:1,17 143:12 status 109:14 stay 109:7 steam 126:8 steel 139:23 stenographically 144:3 step 79:8 135:10 steps 78:13 135:8 stetson 2:13 145:5 steve 7:16 18:20 19:18 20:2 23:9 30:10 46:14,18 49:24 51:2 53:5 86:24 96:6 106:15 129:5 132:8 steven 1:14 2:12 3:3 6:1 142:20 143:10 145:5,8 stock 27:6 stocks 27:5 stop 85:7 street 1:21 2:6 143:9 145:1 strike 28:10 93:4 110:23 structural 54:2 structure 54:8 study 51:13 subcontractor 52:22 53:2 56:9 57:9 61:17 62:15 65:6 71:18 112:17 114:10 115:4 119:14 128:7 130:14,23 131:11,15 140:24 subcontractors 34:11 42:23 56:4,13,15 61:5 71:1,4,10,13 72:3,10,23 73:3,4,7 78:23 82:20 86:14 87:4 89:7 91:23 92:3,4,7,12 98:14,18 99:23 114:21,23 115:13,24 116:5,16 118:21 119:5 128:13,16 129:2 141:8 subject 117:16 submit 145:13 subscribed 142:22 subsequent 134:2 sued 7:9,17 suit 144:18	suite 1:21 2:6,13 33:20 143:9 145:1,5 sums 137:19 supplier 120:11,15 supplying 112:22 support 54:19 55:6,14 99:3 supported 54:9 supposed 56:20 57:16 59:20 60:23 61:8 62:5 66:10,22 67:1 139:11 sure 10:15 15:4 36:21,22 62:21 64:2 67:21 69:9 80:18 89:12 90:6 114:1 126:24 129:13 surprised 38:6 71:13,16,20 136:3,8 sworn 4:1,17 6:3 142:22 143:24
T		
t 3:9 table 54:7,18 112:6,13 127:4 tak 28:14,16,17,23 107:24 108:1 109:3 110:12,14 124:23 take 5:12,20 46:10,18 50:18 67:18,24 69:1 78:13 79:8 85:2,6,9,12,17 88:7 109:23 111:10,14,15,20,21 113:7 124:6 132:12 135:7,10 taken 1:18 4:11 50:21 69:4 85:18 94:18 124:8 142:13 145:8 takes 111:5,5 talk 13:19 20:9 21:19 59:19 134:4 135:20 139:13 talked 28:20 100:20 108:3,15 110:23 117:1 127:12 talking 7:2 20:10 24:5 26:2 49:12 55:3 61:18 63:2 75:10 87:14 91:5 94:19,20 95:20 100:6 102:18,23 108:16,24 109:2 110:9 116:6,8 121:16 talks 86:6 technology 1:6 15:14,24 16:3 34:9 42:21 46:16 56:16 57:15 71:21 82:18 129:16 142:8 143:15 tell 4:17 5:3 8:4 12:6 13:10 15:1 24:24 25:12,15 29:13 37:12 41:9,13,16 46:19 63:18 64:8,11 80:22 82:7 84:12 88:23 92:10 104:10,24 105:20 115:17 121:15 129:15 131:6 135:17 139:3 telling 73:1 87:23 88:12,15 96:10 131:12 ten 27:4 term 95:16 96:6 terms 34:7,13,14 42:14,19 43:1,2 44:4 63:2 65:7 73:16,19 74:11 75:19 77:16 78:19 82:16,22 83:9,21 95:23 104:11 104:14 testified 6:3 66:8 78:14 90:23 100:17 106:24 138:19 testify 143:24 testifying 83:3 125:11 testimony 29:13 37:16 66:13 77:10 82:4 84:1 85:11 90:7 92:19 98:8,13 103:18 117:20 131:2 138:21,23 144:2 144:7,20 thank 6:11 22:19 24:18 34:17 38:22 thanks 24:17 thats 5:13 6:18 13:10 14:13,22 16:14 16:24 19:13 21:24 30:11 36:14,21 40:10 48:7 55:12,14 58:3 61:19 63:22 64:12 67:13 69:24 70:1,5,14 72:18 73:12,23 86:5 94:8 96:10 97:2,20 108:3 112:15 113:23 118:9 120:17		

<p>123:12,14 128:6 130:8,9 137:11 140:3 thereof 144:19 theres 10:7,15 51:19 56:11,19 70:24 100:17,23 102:19 103:6 122:3,3 131:9 137:2 theyll 112:22 theyre 24:20 56:20 57:5 58:3 59:12 81:20 86:21 88:14 103:7 113:1 115:3 121:6,10 theyve 65:18 81:20 thing 112:21,21 130:6 things 36:14 37:2 41:23 57:5 64:7 85:10 98:20 139:13 think 6:21 14:22 16:10 21:5,11 22:1 43:11 44:14 51:14 61:5 65:1 69:12 88:8 94:3 99:13 117:20 120:3,5 138:22 thinks 69:22 third 42:13 73:15 82:15 thought 67:9 80:13 100:23 107:16 threatening 85:8 three 10:5,8,12 93:3 113:11 120:17 till 57:6 99:20 130:21 tim 8:15,16,18 10:4 106:4,6 110:19 time 11:20 15:6 23:21 27:3 33:22,22 37:17 38:9 40:12 45:1,6 46:5 48:19 48:21 55:19 64:19 81:15 83:16 85:24 88:20 91:8 92:8,9 105:16 108:14,15 118:4,12 120:16 122:19 128:12 136:16 137:20 141:18 times 78:2 81:21 94:4 110:19,20 tissue 1:6,9 14:4 15:14,23 16:3 31:5,16 31:21 32:16 34:9 42:21 46:15 56:16 57:15 60:19 71:21 76:2 79:16 81:19 81:23 82:1,18 90:20 97:12 111:21 113:1 120:14,15,18 126:7 129:16 142:8 143:15,19 145:7 title 14:21 51:4 101:4 titled 19:20 20:21 42:1 53:6 54:1 106:17,19 128:13 tm 120:10,13 today 15:22 18:21 20:7 22:9 24:22 27:6 30:14 34:21,22 44:8 45:5 49:12 61:4 65:5 73:17 79:13 82:4 83:3 84:22 89:21 100:22 103:19 116:14 126:24 131:20 133:19 138:4 today's 131:13 told 38:18 41:6,7,13,17 61:23 74:18 78:17 86:17 87:1 103:22 104:14 110:24 111:3 121:12,13 124:18 128:2 128:3 133:20 134:15 135:19 138:11 top 112:7 127:9 toscotec 120:19 total 114:14 totally 90:4,12 95:12 towit 143:7 tptc 15:23 16:5,9,22 20:11 27:12 33:16 34:12 36:5 40:13,20 41:11 42:24 52:22 53:1,10,13 55:2 56:24 58:18 59:9,20,22 60:23 61:8,13,20 62:6,10 62:14 64:3,9,11,17 65:6,18,20 66:10 66:21 67:9 77:5 78:23 82:21 85:22 86:6,12 87:9,13 89:6 91:23 92:2,11 98:13 99:5,23 112:16 114:4,9,24 116:18 118:20 119:4,16 128:7 130:13 130:22 131:10,15,21 133:20 134:11 134:19 135:20 136:4 138:16 141:3,7</p>	<p>tptcs 87:3 training 59:8,13 60:5 129:20 transaction 28:13 32:24 48:5,7 49:12 transactions 48:11 transcript 142:13,16 144:7 145:10,13 145:15 transcription 144:6 transfer 33:21 true 44:8 84:4,5,24 85:1,5,13 87:21 104:1 144:6 truth 4:17 143:24 144:1,1 try 16:8 76:24 109:7 137:10 trying 14:22 18:2 28:8 29:13 69:16 79:8 110:8,21 120:2 turn 44:12 99:2 turned 27:5,7,8 40:12 49:16 61:12 92:5 119:17 turns 80:13 two 11:10 16:17,18 18:22,23 19:5 20:17 21:7,9,15 22:6,16 24:1,19,20 30:11 40:19 46:11 51:15 69:13,15 94:21 95:19 101:23 102:1,2 103:6 119:11 123:1 126:8,23 140:16 type 12:17 types 12:15 typewriting 144:5 typical 72:18 typographical 38:23</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uhhuh 74:6 underhill 2:5 3:5 4:2,3,9,13,15 5:2,6,12 5:17 6:6,11,20 7:4 9:6 12:6,8,23 13:1 13:7 19:10,18 20:1 21:9,14,18,22 22:7,18,22 23:1 24:7,10,15 30:8,13 32:22 37:18 41:8 43:12,14 47:15,17 50:20 51:1,16,18 53:18,23 55:11,18 57:7 60:3 62:20 63:15,16 65:1,4 66:6 66:7,14 67:5,21,22 68:5,6 69:1,5 70:3 70:6,16 71:19 72:4,13,15 75:5,8,15 76:9 77:12 78:1,6,10,12 80:2,6,21 81:5 83:17 84:3,10,21 85:4,12,16,19 86:18 88:6 89:10,14 93:1,17 94:2,16 96:3 97:1,17 98:1 99:11,19 100:5 102:8 104:7,22 105:12 106:9,14 113:6 113:14,18,23 114:3 115:9,17,19 116:8 116:13 119:2,9 120:1,6 124:6,9,16,24 125:5 126:14,20 129:7,10 130:18 131:3 132:2,7,20 133:14 134:8 135:2 136:9,21 138:10,22 139:6,16,20 141:17 understand 5:3,4 13:8,9 17:3 18:16 26:3,10 32:11 43:5,15 49:19 55:1 61:18 62:24 74:4,9 83:14 92:20 94:2 95:17 103:18 105:6 131:4,12 134:1,11 134:18 136:10 138:5 understanding 18:17 77:4 105:18 138:8 understood 4:23 36:11 43:19 63:7 85:21,24 86:4,8,11,19 87:1 undertake 57:20 undetermined 143:11 unfairly 29:12,15 unfortunately 89:15 united 1:1,16 142:1 143:11 upgraded 126:6 upgrades 125:9</p>	<p>upper 127:6 use 16:2,17 64:12,16,20,21,21 72:3,5 73:7 95:15,23 96:6 115:7 129:16,23 130:13,22 131:21 136:7 140:23 uses 110:12 usually 130:7 utah 31:8 33:3 76:4 102:6,7</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 8:7 vague 12:5 65:23 83:10 value 123:9,13 van 1:10,14 3:3 4:2 6:1 7:16 8:15,16 28:3 29:9 46:14,14 63:17 100:12,14 109:4,9 110:2,9 129:5 133:19 141:12 142:20 143:10,20 145:8 variation 95:11 varied 34:15,24 43:3 various 54:20 vdh 9:24 veracity 7:1 version 40:2 101:19,21,22 107:8 127:9 127:13,15 130:2,3 versions 130:7 versus 24:4 36:5 vhc 9:4,8,9,12,23 10:4,13 11:1 140:4,7 140:12 vice 8:22 voith 60:19,19 vos 8:6,8,12,21,23 9:5,7,14 11:9 35:22 36:1 vs 1:5 142:7 145:7</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>w 108:21,22,24 123:11,12 wait 5:9 97:16,24 want 5:9 6:19 12:13,22 15:6 19:11,11 21:20 22:3 29:14 41:2 47:16 67:18,19 69:1,8,19,23 70:6,8,13 74:4 80:11 84:13 90:24 92:22 110:13 115:11 wanted 40:7 41:3 69:20 70:10,20 97:11 warehouse 121:6,10 wasnt 27:17 40:13 76:20 waste 81:15 watch 15:4 watches 14:24 waukegan 33:19 wausau 111:6,18,20 way 16:20 21:24 62:23 68:13 69:8 93:3 98:23 109:4 118:19 122:22 126:14 136:12 137:2 144:17,18 weeks 109:17,18 124:17 went 57:24 58:16 113:18 weve 49:12 55:3 82:12 100:6,20 107:13 121:16 124:20 whats 10:22 111:13,14 138:23 whatsoever 47:5 112:12 whereof 144:20 willing 94:5 wire 33:21 wisconsin 1:7,8,9,9 6:10 31:6,14 49:2 51:9 58:9 90:18 97:10 101:8 102:19 102:24 106:8 107:2 121:7,11 124:11 142:9 143:16,17,18,19 withdraw 12:7 28:11 38:10 47:15 65:2 witness 3:2 4:1,8,12,14 5:1,5,11,16,22 6:2 9:4 22:1 32:20 37:17 41:7 50:16</p>
--	--	--

<p>53:17,22 55:9,17 57:4 60:2 62:18 66:4 67:2 70:11 71:17 72:1 75:14 77:11,23 81:4 83:13 84:2,12 85:8 89:12 92:22 93:16 94:4,7,10,15 96:1 96:23 99:9,16 100:3 102:7 104:4,19 115:7 116:10 118:24 119:8,22 120:5 124:5 129:9 130:17 132:19 133:12 134:24 138:8 143:23 144:3,4,8 wondering 85:13 wont 114:2 wood 126:9 word 71:16 94:9 124:13 136:7 wording 127:9 words 33:9 34:4 71:6 83:14 89:20 110:13 112:9 115:22 137:4 work 10:18 11:16 13:15,23 14:2,10,24 15:8 52:9,11,13 54:10 56:5,6,8,21 57:9,15,19 58:17,20 59:9,10 60:22 61:7,13,19,24 62:5,15 64:4,12,13,17 64:18 65:8,17,20 66:10,21 67:10,14 71:22 76:21 79:4 81:18 91:20,23 94:22 96:18 98:8,10,11 100:12,15 116:1,2,16 126:5 128:17,18 129:3,4 worked 122:18 working 74:2 75:1,2 79:16 107:14 works 14:17 worry 114:2 worth 123:24 wouldnt 116:10 written 33:14 34:16 35:5 43:4 44:3 61:1 123:15</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 3:1,9</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah 21:24 year 13:24 99:17,18 101:11,12 youd 113:21 youll 4:18 20:16 99:5 youre 4:16 8:5,9 11:6 21:1 25:4 29:16 30:7 32:12 44:7 55:20 57:14 67:11 69:10,14 71:6 83:18 85:7 87:23 88:4 88:12,14 89:17 90:7 91:5 92:5 93:3,5 93:9 95:8 96:10 97:19 101:17 102:20 102:23 107:3 114:4 117:15 120:2 123:8,22 124:12 127:21 131:12 137:9 youth 81:18 youve 4:17 17:22 45:6 46:19 61:23 65:15 78:14 80:16,23 90:23 106:23 125:10</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>000 24:6 33:17 38:12,13,18,19,21 60:24 101:1 122:12 05 1:23 06 68:23 102:11 07 1:5 79:22,22 90:2,12 102:12 142:7 145:7 08 101:12 124:4,5</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 3:12 19:12,12,14,16,20 20:3 30:9 39:11 63:22 75:12 86:1 87:15</p>	<p>10 1:23 3:21 52:20 132:3,5,9 145:3 100 33:20 121:24 100inch 81:23,23 82:1 106 3:18 11 68:23 12 68:23 125 3:19 126 3:20 132 3:21 15 10:23 1584 6:9 179 80:19 81:22 18 111:23 180 2:13 145:5 19 3:12</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 3:13 24:11,13,17,24 25:4,5 30:9,11 33:8,11 36:17 63:23 85:21 87:15 112:3 123:9 124:1 20 90:22 91:6 92:12 97:11 128:6 200 145:1 2000 2:13 145:5 2007 23:7 26:19 29:17 30:22 31:24 32:9,13 44:10 46:12 52:7 74:19 82:3 82:24 84:7 87:21 88:18 89:18,23 100:19 103:13,23 123:22 128:6 132:10,17,22 136:1,2 141:3,10 2008 1:22 99:20 101:17 102:21 103:4 106:23 131:14 142:15,23 143:8 144:22 145:3,8 200inch 81:23,24 203 1:20 2:6 143:9 222 137:18 2220800 2:15 239 80:20 101:1,2,3,6 106:22 24 3:13 2457500 2:8 250 60:24 2500 1:21 2:6 143:9 28 44:10 46:12 82:3 28th 23:6 83:21 29 132:10,17 298 122:12</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 3:14 24:4,4,6 25:2 33:18 40:10 41:12 42:4,4,5 43:10 50:23 51:3,15,21 52:19,23 63:7 69:6 73:23 74:14,21 76:11,12 77:3 86:2 87:10 88:14 90:1 90:8 93:5 96:10 101:5 123:9 124:1,2 124:2 137:18 30 125:15 300 145:1 312 2:8,15 329 106:20,21,22 110:21 117:3 34 33:17 38:12,18 125:16,17 340 38:13,19,21 35 68:18 38 10:15</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 3:15 25:2 33:18 40:10 41:12 42:4 80:22 81:2 88:14 91:2 400 24:4 400s 14:12 41 55:22 128:10</p>	<p>4290 127:8 4351 1:5 142:7 145:7 44 53:5 48 10:21 54:1</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 3:16 80:2,4,8,16 88:14 91:2 50 3:14 10:16 122:4 54105 6:10 59 10:23</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 3:5,17 80:22 81:2 88:14 91:2 106:23 60053 33:20 60601 2:7,14 145:6 606011014 145:2</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 3:18 106:10,12,16,16 109:24 122:21 124:11 127:2,22 133:18 75 109:19 117:21 118:7</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 3:19 10:23 125:1,3,7,7 142:15 145:8 80 3:16 81 3:15,17 810 122:12 8700 33:19 8th 1:22 131:13</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 3:20 42:4,5 43:10 52:20 86:2 87:10 126:16,18,22 127:8 90 13:23 14:2 15:8 900 24:4,6 137:18 95 11:13 9th 143:7</p>
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