

1 IN THE CIRCUIT COURT OF
2 THE SEVENTH JUDICIAL
3 CIRCUIT, IN AND FOR
4 FLAGLER COUNTY, FLORIDA

5 Attorney-Client Session
6 Pursuant to Section
7 286.0111, Florida Statutes

**CERTIFIED
TRANSCRIPT**

8 DENNIS McDONALD and
9 JANET McDONALD,

10 Plaintiffs,

11 v.

12 CITY OF PALM COAST,

13 Defendant.
14 _____/

15 CITY COUNSEL WORKSHOP
16 **ATTORNEY-CLIENT SESSION**

17 DATE: Tuesday, April 19, 2016

18 TIME: 10:24 a.m. until 11:01 a.m.

19 PLACE: City of Palm Coast
20 160 Lake Avenue
21 Palm Coast, Florida 32164

22 REPORTED BY: LEANNE W. FITZGERALD, FPR
23 Florida Professional Reporter
24 Court Reporter and Notary Public

25 ATTENDANCE:

- 26 Mayor Jon Netts
- 27 Council Member Jason DeLorenzo
- 28 Council Member Bill McGuire
- 29 Council Member Steven Nobile
- 30 City of Palm Coast City Manager Jim Landon
- 31 Attorney William Reischmann, Jr.
- 32 Attorney Debra Babb-Nutcher

INDEX OF EXAMINATION

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

PROCEEDINGS	3
CERTIFICATE OF REPORTER	39

- - -

NO EXHIBITS

- - -

1 (The proceedings began at 10:24 a.m.)

2 MR. REISCHMANN: We're here today to --
3 I'm going to turn it over to Landon pretty
4 quick, but we're here today for an executive
5 session as consistent and in compliance with
6 Chapter 286 dealing with government and
7 Sunshine. I would remind everyone that this
8 matter is being recorded by a court reporter.
9 And it will -- so everything we say will be
10 transcribed and it will become a public record.
11 It won't become a public record today; it won't
12 become a public record until the litigation is
13 resolved. But I did want to remind everyone
14 that this will be subject to scrutiny as any
15 other public record would be. It's for
16 purposes of how we conduct today.

17 And with that reminder and request, I will
18 turn it over to Mr. Landon. I think he had a
19 couple of comments.

20 MR. LANDON: Yeah. I just wanted to do
21 the background to bring you up to -- I mean
22 it's all history -- and then to turn it over to
23 the attorneys to talk about where we are going
24 from here. But I think it's always important
25 to bring up the history, so we are all on the

1 same page.

2 The McDonalds have filed a claim against
3 the city for allegedly tripping on our sidewalk
4 that has a crack in it. And it's not -- it
5 does not happen every day, but it's not
6 uncommon for someone to file a claim against a
7 local government for -- on public property.

8 And we did what we always do, and that is
9 we have insurance. And the insurance carrier
10 in this case is the Florida League of Cities
11 Insurance Trust. It's a trust of cities that
12 serves for liability insurance.

13 We have zero deductible in that insurance.
14 And when that happens, typically city council
15 does not get involved. Actually city
16 administration does not get involved. We turn
17 it over to insurance and they handle the claim.

18 They are always interested in trying to
19 figure out a settlement without going to trial.
20 And in this case both the attorney representing
21 the McDonalds and our insurance company asked
22 to sit down and start settling real quick.
23 Because Mr. McDonald had recently filed another
24 lawsuit against the city, and obviously has a
25 history with us, city council asked to discuss

1 our options at that time.

2 So you had an executive session, you may
3 recall. And during that time, our legal
4 representatives outlined some options. And
5 city council made it very clear, the majority
6 of you at least, that you did not want to
7 settle, that you felt it was important that the
8 case was strong enough and that you start
9 settling and it opens the floodgate, I think
10 was what the conversation led to as to
11 additional lawsuits in the future.

12 So you told us not to settle, so we did not
13 agree to settlement. And the judge then said,
14 "But by state rule" -- (gesturing to attorneys)
15 I'll let you-all address that.

16 But we had to -- the judge told us we're
17 going to mediation to see if we couldn't
18 settle. And I made it very clear that
19 authorization was zero, because that's what you
20 told us. But in these cases, it's important to
21 always remember that who really settles is not
22 the city. Who settles is the insurance
23 company. So in mediation -- I was there --
24 they made it -- the mediator was looking at the
25 insurance adjuster, because he knew he was the

1 one in charge.

2 So in this case, the action of city council
3 today is really not about whether or not you
4 want to settle or not settle, because that's
5 the insurance company's prerogative. The real
6 issue is whether or not you want to take on the
7 liability yourself, meaning not have it be --
8 basically say to the insurance company, we are
9 not going to continue the claim; we're going to
10 handle the claim ourselves. And then it would
11 just be under city cost and city future
12 liability. You can do that. But that's your
13 decision. But your decision really is not
14 whether or not to settle when the insurance
15 company is handling it, because they're
16 handling it.

17 And then there's a lot of details, and I'm
18 not in legalese and none of that, so I'm going
19 to turn it back over to Bill. Because they
20 did, in the mediation, agree to a settlement,
21 the insurance company did, subject to city
22 council approval, which is, kind of, a standard
23 language is what I'm being told. But we need
24 to talk about exactly what that all means and
25 that's why we're here today. So...

1 MR. REISCHMANN: Just a couple of
2 introductory remarks, because Debra
3 Babb-Nutcher, my partner, has been, you know,
4 on the nickel of the Florida League of Cities,
5 has been defending the city. So that's a good
6 thing.

7 The last time we were here with an
8 executive session, I wanted to add one -- this
9 is a technicality for one of what I think may
10 have been a factor: At that point in time, the
11 city had pending a motion for summary judgment.
12 And we were optimistic and hopeful that the
13 court was going to grant that. And I think
14 that might have been a factor in some of the
15 direction that you give to our office and to
16 Mr. Landon at that time. And I'm going to let
17 Debra talk about how that turned out.
18 Obviously, that motion was heard. It was
19 argued. And the court ruled. I'm going to let
20 Debra explain what the court's ruling was.
21 Following that ruling, as Mr. Landon said, this
22 is just under the Florida Rules of Civil
23 Procedure that there was an obligation -- the
24 court is going to -- and the parties can stand
25 up and say, "Your Honor, there's not a chance

1 that this can settle, you know, no way."

2 And the court will say, "Well, I've heard
3 that before, and then cases settled." So we
4 did not have any choice. The city did not have
5 a choice. Mr. McDonald and his attorney did
6 not have a choice. The court ordered the
7 mediation. The mediation is -- I don't know if
8 any of you participated or attended the
9 mediation. But it's not like a courtroom in
10 any -- it's basically a structured settle
11 conference. You get together; you have an
12 initial meeting where everyone is in the room.
13 People describe what their positions are. And
14 then the mediator pretty much for the rest of
15 the session breaks it apart. And you have a
16 mediator kind of like Henry Kissinger -- I'm
17 dating myself -- but going back and forth on an
18 airplane between Egypt and Israel. Except in
19 this case it was between our room and
20 Mr. McDonald's room, for lack of a better
21 analogy. But I think you get the idea. So you
22 try to whittle away at the various positions of
23 the parties by explaining their strengths and
24 their weaknesses, until there's an opportunity
25 to find a middle ground. And that was obtained

1 between Mr. McDonald and his attorney and the
2 representatives before the Florida League of
3 Cities. And so because of what Mr. Landon did
4 indicate to you about the unique nature of this
5 matter, that is why I requested to have the
6 second opportunity, if you will, to sit down
7 and talk with you about what the city's options
8 are at this time, given what happened in the
9 litigation and at the mediation, because this
10 obviously does have some extra parameters, some
11 extra factors, that we knew that you were
12 concerned about. So with that I'm going to let
13 Debra then tell you -- you know, kind of bring
14 us up to speed as far as the litigation goes,
15 and educating council members, as far as the
16 summary judgment, and then going forward what
17 would likely happen in trial and so on if we
18 don't settle.

19 MS. BABB-NUTCHER: So a typical personal
20 injury case has two aspects to it. It has a
21 liability aspect, and it has a damages aspect.
22 And we have been focusing most of our efforts
23 from the day this case was filed on the
24 liability. The city did not have any
25 liability. And you have probably already seen

1 pictures, maybe not. But this was basically
2 the condition that we were dealing with at the
3 time that the accident occurred. There was
4 some kind of crack and a depression in the
5 sidewalk, which caused this part of the
6 sidewalk to raise about a quarter of an inch.

7 And this is what Mr. McDonald said he
8 tripped on as he was taking his regular walk
9 with his wife. They take these every evening,
10 same path, pretty much every night. Here's a
11 picture of Mrs. McDonald standing at the
12 location where he tripped.

13 MR. REISCHMANN: Well, where he says he
14 tripped. We don't have any witnesses.

15 MS. BABB-NUTCHER: Yeah. I was going to
16 get there.

17 MR. REISCHMANN: I'm sorry. I'm going to
18 try to be quiet. It's hard.

19 MS. BABB-NUTCHER: Where he says that he
20 tripped was right here (indicating). And
21 because he lost his balance when he tripped, he
22 tumbled down this embankment, which another
23 part of his claim is this is so steep that it
24 resulted in him tumbling basically head over
25 heels.

1 And there is no doubt that he got injured.
2 We have got records from the ER right after
3 this incident occurred that show that he had
4 injured three of his fingers on his left hand.
5 And there are lacerations. And he actually
6 dislocated them and pushed them back into place
7 physically at the scene.

8 So what his wife testified to was after he
9 fell, she went down. And then they were
10 walking, so -- they didn't have a car -- so
11 they walked back up the embankment and flagged
12 down a car, who took him to the ER. One of the
13 points that I raised was, "Well, how do you
14 know that this was where you fell? And --
15 because if you tumbled down a hill and then
16 you're not sure that you walked back up
17 directly from the hill, how do you know that's
18 where you fell?"

19 So we could argue to a jury; there is some
20 argument there that this is self-serving that
21 he goes back a few days later and says, "Aha,
22 this is where I fell," when he's just picking a
23 place on the sidewalk that has a crack in it.

24 So liability from the perspective of the
25 city, a city has liability to maintain its

1 sidewalks in a reasonably safe manner. That is
2 the law in the State of Florida. However,
3 cities are not insurers of the absolute safety
4 of everyone who uses their streets and
5 sidewalks. But you have to be reasonable. And
6 one of our arguments against the City's
7 liability has always been we have a good
8 inspection program. We have an aggressive
9 sidewalk inspection program, and we repair
10 sidewalks quickly. We have an annual
11 inspection. And we have a spreadsheet that
12 showed that this stretch of the sidewalk on
13 Clubhouse Drive had just been inspected not
14 less than three months prior to this incident.
15 It was inspected in January of 2013, and this
16 incident occurred in March of 2013. So we had
17 an inspection and nothing on the spreadsheet
18 showed that there was any kind of defect. So
19 what that can tell you, and what a jury would
20 think about, is either, A, the inspector missed
21 it, did not see this, or, B, this occurred
22 sometime between January and March of 2013.

23 Our position has been in this case that we
24 have a very good inspection program. And we
25 filed our motion for summary judgment, which is

1 a way to get out of the case. When you file a
2 motion for summary judgment, that's your
3 argument as to: "We don't think there is
4 enough evidence, Your Honor. We all agree on
5 what the facts are. And based on these facts,
6 you should find for the city." We got very
7 close to winning, but we did not win on the
8 summary judgment.

9 What Plaintiff's attorney argued was,
10 "Well, Your Honor, if that crack and that
11 defect had been there for a long time, the city
12 should have known and should have repaired it."
13 And that is true. The law does say if a
14 condition has existed for a long period of
15 time, the city should have known. But there
16 was no evidence as to how long that crack had
17 been there. The judge decided, "Well, if the
18 Plaintiff does not bring any additional
19 evidence to trial," then this might be what
20 they call a directed verdict.

21 Which means that we would actually prepare
22 for trial, go to trial. The Plaintiff would
23 put on his entire case. And after the
24 Plaintiff puts on his case, we stand up and
25 say, "Motion for directed verdict, Your Honor.

1 There's no evidence supporting the city's
2 liability, that the city knew this crack had
3 been in existence for a long period of time."

4 And the judge suggested that our case was
5 more suitable for a directed verdict, because
6 at this point the Plaintiff's attorney was
7 arguing, "I still need to take more
8 depositions. And I want to get records from
9 FDOT, and I want to get records from FPL,"
10 because there's apparently an FPL line out
11 there somewhere. So he argued to the judge
12 that there was still more investigation work
13 that he needed to do. So the judge denied our
14 motions for summary judgment. And then we went
15 to -- we were forced to go to the mediation at
16 that point. So that's the history on the case
17 on liability.

18 One of the interesting things that happened
19 at the mediation when Mr. McDonald's attorney
20 was giving his opening, he revealed a
21 photograph taken recently of this very strip of
22 the sidewalk. And despite my argument that we
23 are very -- that we are proactive, he seemed to
24 believe that the city had left the condition in
25 not the best shape, and he showed us a picture

1 of a big crack.

2 Now, how do we know that that's this strip
3 of the sidewalk? How do we know when that
4 picture was taken? We don't know. We don't
5 know if that is an accurate representation. We
6 don't know if the court would even allow that
7 kind of evidence into the record.

8 But what the Plaintiff's attorney was
9 trying to tell us at mediation is: "Look, you
10 don't have that great of a program, if you're
11 allowing a huge crack in the sidewalk." So one
12 of the things that they asked for at the
13 mediation was to have that repaired.

14 So that, from the perspective of the
15 mediation, there -- Mr. Landon is correct.
16 There was an insurance adjuster present. And
17 that adjuster had the authority to make a
18 decision on whether to settle. And I will tell
19 you, he wanted to settle this case much
20 earlier. He was chomping at the bit to settle
21 it much earlier, because he saw this as a
22 typical case. This is a typical trip-and-fall.
23 He sees them all the time. Let's throw some
24 money. Let's put some money out there.

25 And we successfully asked him to please

1 hold off; "Please hold off, because the council
2 does not want to try to settle." He was well
3 aware that the direction was not to settle. He
4 just felt, that at that point, it was a
5 business decision.

6 \$9,000 was the number that we came to.
7 Which based on my 25 years of experience doing
8 civil litigation and a lot of personal injury,
9 that's very low. A case, a trip-and-fall case,
10 you could estimate 15-, 20-, even \$25,000 for a
11 case like this, for a settlement.

12 Now, if we had gone to trial, I took the
13 liberty of doing some jury verdict research.
14 And what that is, is you can go onto the
15 computer and search for jury verdicts in this
16 area with similar types of cases, a
17 trip-and-fall on a sidewalk with dislocated
18 fingers. And it brought forth a wide range of
19 verdicts that have come out. And what I mean
20 by verdicts, these are cases that actually went
21 to a jury trial on similar facts and similar
22 injuries. And they report what a jury awarded.
23 And there was quite a range. And I would tell
24 you just to summarize, most -- the biggest
25 chunk of the range fell within the

1 zero-to-\$50,000 range, that a case similar to
2 this could end up with jury verdict between
3 zero and 50-. However, it could also end up in
4 access of \$5 million. Because there were about
5 36 cases that were in the \$2 million to
6 \$5 million range. There were 400 cases within
7 the zero to \$50,000 range. And then it just
8 varies greatly. So the point I'm trying to
9 make is: There is really no way to predict
10 what a jury would do with a case like this.

11 The damages themselves are very low.
12 There's \$4,600. But he has a doctor who said
13 that he probably -- he might need surgery. He
14 has not had surgery. He has, so far, chosen
15 not to have surgery. But he is not completely
16 healed. He still has limitations. He contents
17 he still has limitations in his flexion and his
18 extension. So that, to a jury, the Plaintiff's
19 attorney would argue that he would be entitled
20 to more damages, because he has a permanent
21 injury and he may need surgery. So if I had to
22 estimate the damages, I would estimate \$50,000,
23 if we had to take this case to trial.

24 Liability, that would be the first issue
25 for the jury whether the city is really liable.

1 I would say 50 to 60 percent chance that we
2 would win on liability.

3 So that's what I would like you to think
4 about. Because as Mr. Landon said, the
5 settlement has been approved by the League.
6 The League is willing to pay \$9,000 to settle
7 this case.

8 MR. NOBILE: Can I ask a question?

9 MS. BABB-NUTCHER: Yes.

10 MR. NOBILE: So if we were to take on the
11 case and we were to win, what would our costs
12 be?

13 MS. BABB-NUTCHER: I would estimate about
14 \$30,000.

15 MR. NOBILE: If we win.

16 MS. BABB-NUTCHER: Win or lose. If we
17 took this case to trial, it would cost you
18 about \$30,000.

19 MR. NOBILE: Okay. So it's a no-brainer.

20 MR. REISCHMANN: It's cost and attorney's
21 fees.

22 MR. NOBILE: We will get the \$9,000,
23 right, from --

24 MS. BABB-NUTCHER: Not necessarily.

25 MR. NOBILE: Not necessarily. Okay.

1 MR. LANDON: What do you mean by "we get"?

2 MR. NOBILE: The Florida League.

3 MR. LANDON: We do not write these checks;
4 they will. The check is written directly by
5 the League.

6 MR. DELORENZO: They would pay.

7 MR. NOBILE: No, no, no. Yeah, they
8 offered a \$9,000 settlement.

9 MR. REISCHMANN: Right.

10 MR. NOBILE: Would they give that to us
11 and we take it on.

12 MR. REISCHMANN: No.

13 MR. LANDON: If we took that on. That is
14 up to --

15 MR. NOBILE: That's up to their
16 discretion.

17 MR. LANDON: Yes.

18 MR. REISCHMANN: They're not contractually
19 obligated to.

20 MR. NOBILE: That's what I needed to hear.

21 MS. BABB-NUTCHER: And the adjuster --

22 MR. REISCHMANN: They might, but they're
23 not obligated.

24 MR. NOBILE: Well, we're still going to be
25 \$20,000, \$21,000 in the hole if we win. If we

1 lose, we don't know where we're going to be.

2 MS. BABB-NUTCHER: If we lose, we don't
3 know where we will be, because the damages
4 could be anything.

5 MR. NOBILE: Yeah. I don't need to know
6 anymore.

7 MR. REISCHMANN: Let me put it another
8 way: Your best day, if you take this on -- I
9 mean, a jury trial could be a couple of days at
10 least, probably three.

11 MS. BABB-NUTCHER: Probably two days on
12 this one.

13 MR. REISCHMANN: Two days. And then you
14 figure at least two days of preparation for two
15 days of jury trial. That's normally a day for
16 a day to get ready for jury trial.

17 MS. BABB-NUTCHER: It's probably a little
18 more than that.

19 MR. NETTS: Spoken like a true attorney.

20 MR. REISCHMANN: Let's say it's four to
21 five days, so you're looking at -- and then the
22 Plaintiff's attorney alleged that he's going to
23 do a lot more discovery, so you've got that to
24 get ready for. And then there's the pretrial
25 work and that sort of thing.

1 So your best -- let's assume that the
2 League was willing to pay the \$9,000 that it
3 would have paid to settle, they then paid to
4 the city. So \$30,000 minus 9- is \$21,000. And
5 that's if you won. That's your best day in
6 court, that's if the Plaintiff gets a goose
7 egg.

8 Now, you're -- honestly, your guess is as
9 good as ours whether it could be zero or
10 whether it would be anywhere from -- and I
11 don't want to argue with the jury verdicts, but
12 in this county, my guess is that if they find
13 that this is completely the responsibility of
14 the city, it will be probably somewhere in the
15 middle of that range. And I'm looking at --
16 and she said it was -- and Debra said it was
17 about \$4,000, \$4,500 in his --

18 MS. BABB-NUTCHER: For his damages.

19 MR. REISCHMANN: For his damages. That's
20 his out of pocket.

21 MR. NOBILE: So far. It's the permanent
22 damage and the unforeseen --

23 MS. BABB-NUTCHER: It's the pain and
24 suffering that tacks on. And there is just a
25 real general rule of thumb out there: You take

1 the damages, which are \$4,500, and you multiply
2 it by between three or four times. And that's
3 your typical pain and suffering payment.

4 MR. NOBILE: And this is really low. It
5 is really nothing here. So he's getting back
6 his \$4,500 in outlay.

7 MS. BABB-NUTCHER: Yes.

8 MR. NOBILE: And then he's pocketing 45-.

9 MR. REISCHMANN: Lower. He's --

10 MR. NOBILE: He's going to walk away
11 with --

12 MS. BABB-NUTCHER: He's actually getting
13 very little out of this settlement. He's
14 getting --

15 MR. REISCHMANN: He'll probably get repaid
16 the amount of his out of pockets. Because he's
17 got costs; he's got costs too.

18 MR. MCGUIRE: No. He's getting a lot out
19 of this if we pay him any money. Maybe not so
20 much in remuneration, but --

21 MR. REISCHMANN: That's all we were
22 talking about --

23 MR. MCGUIRE: I understand, but I'm
24 talking more. I'm talking, "Hey, people. I
25 brought the city to their knees," you know.

1 "I've showed that, you know, you can stand up
2 to the city hall and win."

3 Where are the pictures with the blood on
4 the sidewalk?

5 MS. BABB-NUTCHER: There are no pictures.

6 MR. MCGUIRE: Where's the evidence that he
7 can't have sex with his wife, because he fell
8 down a hill?

9 MS. BABB-NUTCHER: She did not testify
10 that that was --

11 MR. MCGUIRE: It was in her deposition, I
12 believe.

13 MS. BABB-NUTCHER: No. She did not testify
14 to that.

15 MR. NETTS: Wasn't there a lack -- loss of
16 consortium --

17 MS. BABB-NUTCHER: She made a loss of
18 consortium claim, but it's not just sex. It's
19 that I have to help my husband. But as we made
20 clear at the mediations, she did not have a
21 claim, because she did not file the required
22 presuit notice. So that is not even a part of
23 the analysis.

24 MR. MCGUIRE: How is it proven that
25 whatever he went to the hospital with happened

1 on city property? I mean there was not even
2 police --

3 MS. BABB-NUTCHER: There was a witness.
4 There was a couple that drove by and saw him
5 fall. And they pulled over. And they were
6 actually the ones that drove him to the ER.

7 MR. MCGUIRE: Okay. I see. Okay.

8 MR. NETTS: First of all, if I were going
9 to settle for \$9,000, I would give him 45- up
10 front. And if he has the surgery, I would give
11 him the other 45-, but that's probably not an
12 option.

13 The concern that I have is a bigger one,
14 and that's precedent. You have seen the
15 photographs submitted by that lady who lives in
16 the C section, complaining about the pavers and
17 next yard and the driveway. Virtually every
18 driveway that's installed is installed to city
19 specifications. And there is a gap of this
20 much (gesturing) between the asphalt and the
21 driveway. We're saying put the driveway a
22 little bit higher because eventually we're
23 going to repave this road, and then it will
24 come out even. So if I trip bringing my
25 garbage can back from the curb, it's the city's

1 fault. I mean, this is precedent setting in my
2 mind. It's a very easy, quick way to get
3 \$9,000. I don't know how you defend yourself
4 against that. I suggest you-all go down to the
5 city of Bunnell to the Playhouse and look at
6 the gaps in the sidewalk that are two, two and
7 a half inches.

8 MR. LANDON: Our sidewalks are -- I mean,
9 and you see we replace squares all over town
10 every year. We do the annual inspection and
11 annual replacement.

12 MR. NETTS: All that being said, you put
13 it in the hands of a jury and who knows.

14 MR. NOBILE: I don't believe that this
15 case is going to be public enough to -- you
16 know, whether we win or lose, prevent
17 additional lawsuits or encourage additional
18 lawsuits either way. I just can't spend --
19 there is no way I can see spending \$21,000 when
20 I can spend zero. And that's my best option.
21 And even if we get sued again, what are we
22 going to do? Spend another 20-, you know what
23 I mean? What, are we going to keep throwing
24 money at -- and I understand. I don't like --
25 I wish those people would, you know, would just

1 not do this. But I don't see an avalanche of
2 cases if we settle this. And, you know -- and
3 they are not getting anything from us if we
4 follow --

5 MR. NETTS: Oh, yes, they are.

6 MS. BABB-NUTCHER: Well, for what it is
7 worth -- Jim, if you remember -- the mediator
8 said multiple times, "Mr. McDonald says he's
9 not going to talk about the settlement; he's
10 not going to talk about the settlement. He's
11 not going to brag about it." Now, that's why I
12 said for what it's worth.

13 MR. MCGUIRE: Not much.

14 MS. BABB-NUTCHER: And we can't put a
15 confidentiality provision in, because it's
16 public record. So anybody who asks for a copy
17 of this mediated settlement agreement can get a
18 copy of it. So we couldn't require
19 confidentiality. So if he wants to talk about
20 it, he's allowed to talk about it.

21 MR. NOBILE: See, I like this because it's
22 so low it will not entice somebody to go, "Hey,
23 I could walk away with \$500." You know, if we
24 settle for 50-, if the League of Cities says,
25 "We're going to give him 50 grand," well, now,

1 that's a jackpot, you know, if he's going to
2 walk away with -- but he's going to walk away
3 with piddles.

4 MR. NETTS: Well, maybe, the attorney that
5 he has -- I don't know how relevant this is --
6 but is this no cost unless we settle?

7 MS. BABB-NUTCHER: Right.

8 MR. NETTS: So if they settle --

9 MR. NOBILE: He's got --

10 MR. NETTS: He's got \$9,000 and the
11 attorney is going to get a portion of that.

12 MS. BABB-NUTCHER: The attorney is going
13 to get probably a third of that.

14 MR. NOBILE: Right. That is what I'm
15 thinking, \$3,000. And he's going walk away
16 with \$1,500. And if he thinks he wants to brag
17 about that, we'll just call him stupid.

18 MR. REISCHMANN: Yeah. He's going to have
19 to reimburse his attorney for the costs that
20 has been incurred unless he's been paying for
21 it up front.

22 MR. NOBILE: Oh, yeah.

23 MR. NETTS: The bottom line is: Do we --

24 MR. REISCHMANN: The cost of litigation.

25 MR. NETTS: Is this an issue where we're

1 trying to fight for principal, or is this an
2 issue where we're trying to fight for the best
3 use of the taxpayers' -- the best use of the
4 taxpayer' dollars?

5 MR. DELORENZO: Well.

6 MR. NOBILE: And since we have a personal
7 stake in this, personally, I would defer to a
8 third party, which is the League of Cities that
9 says, "You know what? Let's settle and get out
10 of here." If they said, "Hey, this is going to
11 cost" -- I mean these -- I'm trusting them,
12 because I'm thinking if they see this as a
13 potential gate for more, they would -- you
14 know, they would come to us, and say, "Hey, you
15 know what? This is a potential problem.
16 You're opening yourself up to" -- you know,
17 because they must see this hundreds of times a
18 day.

19 MS. BABB-NUTCHER: Well, and I will tell
20 you that we made a very big deal about how
21 proactive the city is. And the adjustor agreed
22 that many cities, most cities, do not have a
23 sidewalk inspection program, and Palm Coast is
24 one -- is more unique and proactive about its
25 sidewalk inspect program.

1 MR. NETTS: That and \$4 gets you coffee.
2 What is it you need from us at this point?

3 MS. BABB-NUTCHER: Well, your decision on
4 whether you --

5 MR. NETTS: Want to take it away from the
6 insurance company and fight it on our own.

7 MR. LANDON: And just to clarify, the
8 adjuster has been very respectful to the city
9 council's desires. They did not settle until
10 we got through this process. So the League is
11 not, in any way, being disrespectful to city
12 council.

13 MR. NETTS: No, it's a business decision,
14 I know.

15 MR. LANDON: So with that said, the
16 adjuster made it very clear that as long as
17 we -- this is a claim that we are responsible
18 for, it is really our --

19 MR. REISCHMANN: We, the League.

20 MR. LANDON: -- we the League, we are
21 responsible for determining whether to settle
22 or not. And even if city council says, "No, do
23 not settle." If they have to pay the
24 attorneys' fees and are going to have to take
25 on the liability, they are very likely to say,

1 "no, we're going to settle."

2 So then to say, yes, settle or don't settle
3 right now, I think is irrelevant for city
4 council. To say, "League, step aside, we're
5 going to do this one on our own," you could do
6 that, but then that's where it's all about
7 dollars. So to tell the League not to settle
8 is really not in your purview. To take it on
9 is a different story.

10 MR. REISCHMANN: Let me be Br'er Rabbit
11 and jump right into the nest of thorns.
12 Because I think that the real issue and what
13 I'm hearing and what has been -- what I
14 perceive to be the real issue -- is what is the
15 precedent of this? And I don't mean
16 necessarily with this particular Plaintiff.
17 And that I think is a forgone conclusion. But
18 I mean with how does this play out? A couple
19 of thoughts: First of all, to your --
20 Mr. Nobile, to your issue of whether it will
21 get press or not. This is the type of matter,
22 as Mr. Landon indicated, that but for the
23 specific parties, Plaintiff in particular, this
24 would not get any press.

25 MR. NOBILE: Right.

1 MR. REISCHMANN: Because it happens all
2 the time, and it gets settled all the time. So
3 I'm not going to sit here -- and Debra is not
4 going to sit here -- and promise you that if
5 this matter is settled that we're not going to
6 read about it in the newspaper. I'm not going
7 to make that prediction.

8 MR. NETTS: Let me ask a different
9 question: In the last several years, has the
10 League of Cities, on behalf of Palm Coast,
11 settled similar claims?

12 MR. LANDON: Yes.

13 MR. NETTS: So being as fair as I can be,
14 it's our personal feelings about the Plaintiff
15 in this case that are influencing our
16 decisions.

17 MR. LANDON: Right.

18 MR. NETTS: We've done this for other
19 people, and the world has not come to an end.

20 MR. REISCHMANN: Well, personal feelings,
21 yes. And I'm trying to be devil's advocate on
22 both sides. But this is not without support,
23 factual support. There is a history here.
24 There is a proven history. And again, I'm not
25 trying to inflame passions one way or another,

1 but I am trying to address what I see as the
2 elephant in the room. But, Mayor, you had a
3 comment about, "Well, there is situations out
4 there where we design driveways to be a certain
5 way and that could create influence." Well, I
6 think it's important to note from a liability,
7 a legal standpoint, that local government's
8 potential liability in these types of
9 situations is not so much where they build
10 things pursuant to a policy -- you know, we
11 have a policy of building things to a certain
12 specification. There is still arguments of
13 sovereign immunity. That's where we build
14 something and then we don't maintain it. And
15 that's where Debra's point is well taken and
16 that is we have a good argument to make in this
17 case and in the future that many of the local
18 governments can't make, in that we are very
19 proactive, the city has taken on a policy of
20 being very proactive, but not an insurer. And
21 that's, to me, where the jury is going to have
22 to come in. If it gets to that point, that's
23 what the jury is going to have to make, that
24 decision is what happened factually, what was
25 the proximate cause of this, if they find that

1 it happened where Mr. McDonald says that it
2 happened. Okay. And then, you know, to -- you
3 know, will the jury find that in order for
4 there to be a liability that they're going to
5 make -- they have to make the city the insurer.
6 And the judge will direct them, the city is not
7 an insurer. Or the jury would have to find,
8 well, we just think that the city did not do
9 enough. And again, Debra and I can't predict
10 what six strangers are going to do. Because
11 they come to the trial with their own set of
12 prejudices and presumptions. And that's why
13 it's risky to go to a trial. Because you don't
14 control -- because people don't always admit
15 during voir dire whether they have an agenda or
16 whether they have some prejudices. Fair? I
17 mean that happens.

18 MR. DELORENZO: The other part of the
19 precedent part is that if the League thought it
20 was really that important, then they would take
21 it -- they would take it to the trial. It is
22 their responsibility.

23 MR. NETTS: Right.

24 MR. DELORENZO: These cases are their
25 responsibility as our insurer.

1 MR. LANDON: Right.

2 MR. DELORENZO: So they must have some
3 comfort level with what they're doing.

4 MS. BABB-NUTCHER: Yes. And the adjuster
5 throughout the mediation -- and as you know
6 mediations, you just go back and forth with
7 numbers. And the Plaintiff started at 65-.

8 MR. REISCHMANN: \$65,000.

9 MR. LANDON: Actually \$95,000.

10 MS. BABB-NUTCHER: Well, 95- was his
11 initial demand, but his opening demand at
12 mediation was 65-.

13 MR. REISCHMANN: See how reasonable --

14 MS. BABB-NUTCHER: Came down so
15 reasonable.

16 But as the adjuster was saying to us,
17 "Until it gets to a certain number, I'm willing
18 to take this to trial. I'm willing to go."
19 And that was, gosh, even down to twenty-fifteen
20 (as heard). He was still willing to say, "I'll
21 pay Debra to take this to trial," because he
22 did not see, really, anything wrong with what
23 the city had done. But because nine -- I mean,
24 believe me, \$9,000 is cheap.

25 MR. NOBILE: And here is the -- it was

1 something else just from the personal aspect,
2 when we're dealing with Dennis, Dennis is not
3 about the win or the lose. He's about the
4 fight. Taking him to court is playing into his
5 hand, because that just prolongs this and says,
6 okay. That's where he feeds. This ends it.
7 And that, he just can't feed on that anymore.

8 MR. MCGUIRE: You're right. And he's not
9 about the money either.

10 MR. NOBILE: Right, that's what I'm
11 saying.

12 MR. MCGUIRE: He don't need any money.

13 MR. NOBILE: He's going to lose money on
14 this deal.

15 MR. MCGUIRE: He's got a ton of money.
16 This is about making the city of Palm Coast
17 look like a bunch of idiots.

18 MR. NOBILE: And I don't see we are.

19 MR. MCGUIRE: I don't either.

20 MR. NETTS: What is the appropriate step
21 at this point? A motion to --

22 MR. REISCHMANN: No. We're looking for
23 direction. We're just looking for a consensus
24 on whether to --

25 MR. NETTS: How many people want to remove

1 this from the League of Cities and take it on
2 as a personal responsibility or a city
3 responsibility?

4 MR. MCGUIRE: I do.

5 MR. DELORENZO: As much as it pains me, I
6 do not.

7 MR. NOBILE: No.

8 MR. NETTS: There's your direction.

9 MR. DELORENZO: It's not worth the risk to
10 the taxpayer unfortunately.

11 MR. NOBILE: Well, we lose the minute we
12 take the suit.

13 MR. LANDON: So the message to the League
14 is to proceed as normally they would with any
15 other similar --

16 MR. NETTS: At no more than \$9,000.
17 That's the cap. I would like to do 45 hundred
18 and 45 hundred after surgery.

19 MR. LANDON: That is actually a written,
20 signed agreement on their part, so it's
21 already --

22 MS. BABB-NUTCHER: Because the attorney is
23 taking part of that nine, so.

24 MR. MCGUIRE: Bloodsuckers.

25 MR. REISCHMANN: There's not a lot of

1 blood in this particular case.

2 MR. LANDON: I want to confirm, going from
3 here, what you're going to do is just instruct
4 the League to proceed as they normally would
5 with any other claim?

6 MS. BABB-NUTCHER: Yes.

7 MR. LANDON: And we're done?

8 MS. BABB-NUTCHER: Yes.

9 MR. NETTS: But if this reopens and \$9,000
10 is not enough and I've decided I need 15-, the
11 consensus is --

12 MS. BABB-NUTCHER: That won't happen.

13 MR. REISCHMANN: We have a contract, a
14 written contract.

15 MS. BABB-NUTCHER: We have a written --

16 MR. NETTS: That does not mean he is going
17 to abide by it.

18 MR. REISCHMANN: Well, then we go to court
19 like they do with any other contract. A motion
20 to enforce --

21 MS. BABB-NUTCHER: He signed it. The only
22 thing it was conditioned on is city council
23 approval. There is no other condition.

24 MR. NETTS: And, Bill, your point --

25 MR. LANDON: And repair the sidewalk.

1 MS. BABB-NUTCHER: Yes.

2 MR. NETTS: Let's assume that Mr. McDonald
3 decides to volley with this, I think we have an
4 equally valid response that we can make.

5 MR. NOBILE: And that's what I think. And
6 we can do that at no cost. And we can get
7 our -- you know, each one of us can get our
8 opinion and voice out there to stifle that.

9 MR. NETTS: You have the appropriate
10 direction?

11 MS. BABB-NUTCHER: Yes, sir.

12 MR. REISCHMANN: Yes.

13 MR. LANDON: Procedurally, we need --

14 MR. REISCHMANN: Close this.

15 MR. NETTS: We close the executive
16 section, and we're going to reconvene our city
17 council meeting at the city council chambers.
18 We're adjourned.

19 MS. BABB-NUTCHER: I need that
20 transcribed.

21 THE COURT REPORTER: Do you want it sealed
22 and marked confidential?

23 MS. BABB-NUTCHER: Yes. Thank you so
24 much.

25 (The proceedings were concluded at 11:01 a.m.)

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

CERTIFICATE OF REPORTER

State of Florida)
)
COUNTY OF VOLUSIA)

I, Leanne W. Fitzgerald, Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the proceedings; and that the foregoing transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this DATE_SUBMITTING day of April, 2016.

Leanne W. Fitzgerald, FPR
Florida Professional Reporter

Digital Certificate Authenticated
By Symantec

<p style="text-align: center;">\$</p> <p>\$1,500 27:16</p> <p>\$2 17:5</p> <p>\$20,000 19:25</p> <p>\$21,000 19:25 21:4 25:19</p> <p>\$25,000 16:10</p> <p>\$3,000 27:15</p> <p>\$30,000 18:14,18 21:4</p> <p>\$4 29:1</p> <p>\$4,000 21:17</p> <p>\$4,500 21:17 22:1,6</p> <p>\$4,600 17:12</p> <p>\$5 17:4,6</p> <p>\$50,000 17:7,22</p> <p>\$500 26:23</p> <p>\$65,000 34:8</p> <p>\$9,000 16:6 18:6, 22 19:8 21:2 24:9 25:3 27:10 34:24 36:16 37:9</p> <p>\$95,000 34:9</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>11:01 38:25</p> <p>15- 16:10 37:10</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20- 16:10 25:22</p> <p>2013 12:15,16,22</p> <p>25 16:7</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>36 17:5</p>	<p style="text-align: center;">4</p> <hr/> <p>400 17:6</p> <p>45 36:17,18</p> <p>45- 22:8 24:9,11</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 18:1 26:25</p> <p>50- 17:3 26:24</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 18:1</p> <p>65- 34:7,12</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9- 21:4</p> <p>95- 34:10</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 38:25</p> <p>abide 37:17</p> <p>absolute 12:3</p> <p>access 17:4</p> <p>accident 10:3</p> <p>accurate 15:5</p> <p>action 6:2</p> <p>add 7:8</p> <p>additional 13:18 25:17</p> <p>address 32:1</p> <p>adjourned 38:18</p> <p>adjuster 15:16, 17 19:21 29:8,16 34:4,16</p> <p>adjustor 28:21</p> <p>admit 33:14</p> <p>advocate 31:21</p>	<p>agenda 33:15</p> <p>aggressive 12:8</p> <p>agree 6:20 13:4</p> <p>agreed 28:21</p> <p>agreement 26:17 36:20</p> <p>Aha 11:21</p> <p>airplane 8:18</p> <p>alleged 20:22</p> <p>allowed 26:20</p> <p>allowing 15:11</p> <p>amount 22:16</p> <p>analogy 8:21</p> <p>analysis 23:23</p> <p>annual 12:10 25:10,11</p> <p>anymore 20:6 35:7</p> <p>apparently 14:10</p> <p>approval 6:22 37:23</p> <p>approved 18:5</p> <p>area 16:16</p> <p>argue 11:19 17:19 21:11</p> <p>argued 7:19 13:9 14:11</p> <p>arguing 14:7</p> <p>argument 11:20 13:3 14:22 32:16</p> <p>arguments 12:6 32:12</p> <p>asks 26:16</p> <p>aspect 9:21 35:1</p> <p>aspects 9:20</p> <p>asphalt 24:20</p> <p>assume 21:1 38:2</p> <p>attended 8:8</p> <p>attorney 8:5 9:1</p>	<p>13:9 14:6,19 15:8 17:19 20:19,22 27:4,11,12,19 36:22</p> <p>attorney's 18:20</p> <p>attorneys' 29:24</p> <p>authority 15:17</p> <p>avalanche 26:1</p> <p>awarded 16:22</p> <p>aware 16:3</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>Babb-nutcher 7:3 9:19 10:15,19 18:9,13,16,24 19:21 20:2,11,17 21:18,23 22:7,12 23:5,9,13,17 24:3 26:6,14 27:7,12 28:19 29:3 34:4, 10,14 36:22 37:6, 8,12,15,21 38:1, 11,19,23</p> <p>back 6:19 8:17 11:6,11,16,21 22:5 24:25 34:6</p> <p>balance 10:21</p> <p>based 13:5 16:7</p> <p>basically 6:8 8:10 10:1,24</p> <p>behalf 31:10</p> <p>big 15:1 28:20</p> <p>bigger 24:13</p> <p>biggest 16:24</p> <p>Bill 6:19 37:24</p> <p>bit 15:20 24:22</p> <p>blood 23:3 37:1</p> <p>Bloodsuckers 36:24</p> <p>bottom 27:23</p> <p>Br'er 30:10</p> <p>brag 26:11 27:16</p>	<p>breaks 8:15</p> <p>bring 9:13 13:18</p> <p>bringing 24:24</p> <p>brought 16:18 22:25</p> <p>build 32:9,13</p> <p>building 32:11</p> <p>bunch 35:17</p> <p>Bunnell 25:5</p> <p>business 16:5 29:13</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>call 13:20 27:17</p> <p>cap 36:17</p> <p>car 11:10,12</p> <p>case 6:2 8:19 9:20,23 12:23 13:1,23,24 14:4, 16 15:19,22 16:9, 11 17:1,10,23 18:7,11,17 25:15 31:15 32:17 37:1</p> <p>cases 8:3 16:16, 20 17:5,6 26:2 33:24</p> <p>caused 10:5</p> <p>chambers 38:17</p> <p>chance 7:25 18:1</p> <p>charge 6:1</p> <p>cheap 34:24</p> <p>check 19:4</p> <p>checks 19:3</p> <p>choice 8:4,5,6</p> <p>chomping 15:20</p> <p>chosen 17:14</p> <p>chunk 16:25</p> <p>cities 7:4 9:3 12:3 26:24 28:8,22 31:10 36:1</p> <p>city 6:2,11,21 7:5,</p>
--	---	--	---	--

11 8:4 9:24 11:25 13:6,11,15 14:2, 24 17:25 21:4,14 22:25 23:2 24:1, 18 25:5 28:21 29:8,11,22 30:3 32:19 33:5,6,8 34:23 35:16 36:2 37:22 38:16,17	conference 8:11 confidential 38:22 confidentiality 26:15,19 confirm 37:2 consensus 35:23 37:11 consortium 23:16,18 contents 17:16 continue 6:9 contract 37:13, 14,19 contractually 19:18 control 33:14 copy 26:16,18 correct 15:15 cost 6:11 18:17, 20 27:6,24 28:11 38:6 costs 18:11 22:17 27:19 council 6:2,22 9:15 16:1 29:12, 22 30:4 37:22 38:17 council's 29:9 county 21:12 couple 7:1 20:9 24:4 30:18 court 7:13,19,24 8:2,6 15:6 21:6 35:4 37:18 38:21 court's 7:20 courtroom 8:9 crack 10:4 11:23 13:10,16 14:2 15:1,11 create 32:5 curb 24:25	<hr/> D <hr/> damage 21:22 damages 9:21 17:11,20,22 20:3 21:18,19 22:1 dating 8:17 day 9:23 20:8,15, 16 21:5 28:18 days 11:21 20:9, 11,13,14,15,21 deal 28:20 35:14 dealing 10:2 35:2 Debra 7:2,17,20 9:13 21:16 31:3 33:9 34:21 Debra's 32:15 decided 13:17 37:10 decides 38:3 decision 6:13 15:18 16:5 29:3, 13 32:24 decisions 31:16 defect 12:18 13:11 defend 25:3 defending 7:5 defer 28:7 DELORENZO 19:6 28:5 33:18, 24 34:2 36:5,9 demand 34:11 denied 14:13 Dennis 35:2 deposition 23:11 depositions 14:8 depression 10:4 describe 8:13 design 32:4 desires 29:9	details 6:17 determining 29:21 devil's 31:21 dire 33:15 direct 33:6 directed 13:20, 25 14:5 direction 7:15 16:3 35:23 36:8 38:10 directly 11:17 19:4 discovery 20:23 discretion 19:16 dislocated 11:6 16:17 disrespectful 29:11 doctor 17:12 dollars 28:4 30:7 doubt 11:1 Drive 12:13 driveway 24:17, 18,21 driveways 32:4 drove 24:4,6 <hr/> E <hr/> earlier 15:20,21 easy 25:2 educating 9:15 efforts 9:22 egg 21:7 Egypt 8:18 elephant 32:2 embankment 10:22 11:11 encourage 25:17 end 17:2,3 31:19	ends 35:6 enforce 37:20 entice 26:22 entire 13:23 entitled 17:19 equally 38:4 ER 11:2,12 24:6 estimate 16:10 17:22 18:13 evening 10:9 eventually 24:22 evidence 13:4, 16,19 14:1 15:7 23:6 executive 7:8 38:15 existed 13:14 existence 14:3 experience 16:7 explain 7:20 explaining 8:23 extension 17:18 extra 9:10,11 <hr/> F <hr/> factor 7:10,14 factors 9:11 facts 13:5 16:21 factual 31:23 factually 32:24 fair 31:13 33:16 fall 24:5 fault 25:1 FDOT 14:9 feed 35:7 feeds 35:6 feelings 31:14,20 fees 18:21 29:24
---	---	--	---	---

fell 11:9,14,18,22 16:25 23:7	goose 21:6	history 14:16 31:23,24	inspection 12:8, 9,11,17,24 25:10 28:23	Kissinger 8:16
felt 16:4	gosh 34:19	hold 16:1	inspector 12:20	knees 22:25
fight 28:1,2 29:6 35:4	government's 32:7	hole 19:25	installed 24:18	knew 9:11 14:2
figure 20:14	governments 32:18	honestly 21:8	instruct 37:3	<hr/> L <hr/>
file 13:1 23:21	grand 26:25	Honor 7:25 13:4, 10,25	insurance 6:5,8, 14,21 15:16 29:6	lacerations 11:5
filed 9:23 12:25	grant 7:13	hopeful 7:12	insurer 32:20 33:5,7,25	lack 8:20 23:15
find 8:25 13:6 21:12 32:25 33:3, 7	great 15:10	hospital 23:25	insurers 12:3	lady 24:15
fingers 11:4 16:18	greatly 17:8	huge 15:11	interesting 14:18	Landon 7:16,21 9:3 15:15 18:4 19:1,3,13,17 25:8 29:7,15,20 30:22 31:12,17 34:1,9 36:13,19 37:2,7, 25 38:13
flagged 11:11	ground 8:25	hundred 36:17, 18	introductory 7:2	language 6:23
flexion 17:17	guess 21:8,12	hundreds 28:17	investigation 14:12	law 12:2 13:13
Florida 7:4,22 9:2 12:2 19:2	<hr/> H <hr/>	husband 23:19	irrelevant 30:3	lawsuits 25:17, 18
focusing 9:22	half 25:7	<hr/> I <hr/>	Israel 8:18	League 7:4 9:2 18:5,6 19:2,5 21:2 26:24 28:8 29:10, 19,20 30:4,7 31:10 33:19 36:1, 13 37:4
follow 26:4	hall 23:2	idea 8:21	issue 6:6 17:24 27:25 28:2 30:12, 14,20	left 11:4 14:24
forced 14:15	hand 11:4 35:5	idiots 35:17	<hr/> J <hr/>	legal 32:7
forgone 30:17	handle 6:10	immunity 32:13	jackpot 27:1	legalese 6:18
form 32:6	handling 6:15,16	important 32:6 33:20	January 12:15,22	level 34:3
forward 9:16	hands 25:13	inch 10:6	Jim 26:7	liability 6:7,12 9:21,24,25 11:24, 25 12:7 14:2,17 17:24 18:2 29:25 32:6,8 33:4
FPL 14:9,10	happen 9:17 37:12	inches 25:7	judge 13:17 14:4, 11,13 33:6	liable 17:25
front 24:10 27:21	happened 9:8 14:18 23:25 32:24 33:1,2	incident 11:3 12:14,16	judgment 7:11 9:16 12:25 13:2,8 14:14	liberty 16:13
future 6:11 32:17	hard 10:18	incurred 27:20	jury 11:19 12:19 16:13,15,21,22 17:2,10,18,25 20:9,15,16 21:11 25:13 32:21,23 33:3,7	limitations 17:16,17
<hr/> G <hr/>	He'll 22:15	indicating 10:20	<hr/> K <hr/>	litigation 9:9,14 16:8 27:24
gap 24:19	head 10:24	inflamm 31:25	kind 6:22 8:16 9:13 10:4 12:18 15:7	lives 24:15
gaps 25:6	healed 17:16	influence 32:5		local 32:7,17
garbage 24:25	hear 19:20	influencing 31:15		location 10:12
gate 28:13	heard 7:18 8:2 34:20	initial 8:12 34:11		
general 21:25	hearing 30:13	injured 11:1,4		
gesturing 24:20	heels 10:25	injuries 16:22		
give 7:15 19:10 24:9,10 26:25	Henry 8:16	injury 9:20 16:8 17:21		
giving 14:20	Hey 22:24 26:22 28:10,14	inspect 28:25		
good 7:5 12:7,24 21:9 32:16	higher 24:22	inspected 12:13, 15		
	hill 11:15,17 23:8			

long 13:11,14,16 14:3 29:16	15:9,13,15 34:5, 12	newspaper 31:6		photographs 24:15
lose 18:16 20:1,2 25:16 35:3,13 36:11	mediations 23:20 34:6	nickel 7:4	<hr/> P <hr/>	physically 11:7
loss 23:15,17	mediator 8:14,16 26:7	night 10:10	paid 21:3	picking 11:22
lost 10:21	meeting 8:12 38:17	no-brainer 18:19	pain 21:23 22:3	picture 10:11 14:25 15:4
lot 6:17 16:8 20:23 22:18 36:25	members 9:15	Nobile 18:8,10, 15,19,22,25 19:2, 7,10,15,20,24 20:5 21:21 22:4,8, 10 25:14 26:21 27:9,14,22 28:6 30:20,25 34:25 35:10,13,18 36:7, 11 38:5	pains 36:5	pictures 10:1 23:3,5
low 16:9 17:11 22:4 26:22	message 36:13	note 32:6	Palm 28:23 31:10 35:16	piddles 27:3
Lower 22:9	middle 8:25 21:15	notice 23:22	parameters 9:10	place 11:6,23
<hr/> M <hr/>	million 17:4,5,6	number 16:6 34:17	part 10:5,23 23:22 33:18,19 36:20,23	Plaintiff 13:18, 22,24 21:6 30:16, 23 31:14 34:7
made 23:17,19 28:20 29:16	mind 25:2	numbers 34:7	participated 8:8	Plaintiff's 13:9 14:6 15:8 17:18 20:22
maintain 11:25 32:14	minus 21:4	<hr/> O <hr/>	parties 7:24 8:23 30:23	play 30:18
make 15:17 17:9 31:7 32:16,18,23 33:5 38:4	minute 36:11	obligated 19:19, 23	partner 7:3	Playhouse 25:5
making 35:16	missed 12:20	obligation 7:23	party 28:8	playing 35:4
manner 12:1	money 15:24 22:19 25:24 35:9, 12,13,15	obtained 8:25	passions 31:25	pocket 21:20
March 12:16,22	months 12:14	occurred 10:3 11:3 12:16,21	path 10:10	pocketing 22:8
marked 38:22	motion 7:11,18 12:25 13:2,25 35:21 37:19	offered 19:8	pavers 24:16	pockets 22:16
matter 9:5 30:21 31:5	motions 14:14	office 7:15	pay 18:6 19:6 21:2 22:19 29:23 34:21	point 7:10 14:6, 16 16:4 17:8 29:2 32:15,22 35:21 37:24
Mayor 32:2	multiple 26:8	opening 14:20 28:16 34:11	payment 22:3	points 11:13
Mcdonald 8:5 9:1 10:7,11 26:8 33:1 38:2	multiply 22:1	opinion 38:8	pending 7:11	police 24:2
Mcdonald's 8:20 14:19	<hr/> N <hr/>	opportunity 8:24 9:6	people 8:13 22:24 25:25 31:19 33:14 35:25	policy 32:10,11, 19
MCGUIRE 22:18, 23 23:6,11,24 24:7 26:13 35:8, 12,15,19 36:4,24	nature 9:4	optimistic 7:12	perceive 30:14	portion 27:11
meaning 6:7	necessarily 18:24,25 30:16	option 24:12 25:20	percent 18:1	position 12:23
means 6:24 13:21	needed 14:13 19:20	options 9:7	period 13:14 14:3	positions 8:13, 22
mediated 26:17	nest 30:11	order 33:3	permanent 17:20 21:21	potential 28:13, 15 32:8
mediation 6:20 8:7,9 9:9 14:15,19	NETTS 20:19 23:15 24:8 25:12 26:5 27:4,8,10,23, 25 29:1,5,13 31:8, 13,18 33:23 35:20,25 36:8,16 37:9,16,24 38:2,9, 15	ordered 8:6	personal 9:19 16:8 28:6 31:14, 20 35:1 36:2	precedent 24:14 25:1 30:15 33:19
		outlay 22:6	personally 28:7	predict 17:9 33:9
			perspective 11:24 15:14	prediction 31:7
			photograph 14:21	prejudices 33:12,16

preparation 20:14	put 13:23 15:24 20:7 24:21 25:12 26:14	relevant 27:5	32:2	sidewalks 12:1, 5,10 25:8
prepare 13:21	puts 13:24	remarks 7:2	rule 21:25	signed 36:20 37:21
prerogative 6:5	<hr/> Q <hr/>	remember 26:7	ruled 7:19	similar 16:16,21 17:1 31:11 36:15
present 15:16	quarter 10:6	remove 35:25	Rules 7:22	sir 38:11
press 30:21,24	question 18:8 31:9	renumeration 22:20	ruling 7:20,21	sit 9:6 31:3,4
presuit 23:22	quick 25:2	reopens 37:9	<hr/> S <hr/>	situations 32:3,9
presumptions 33:12	quickly 12:10	repaid 22:15	safe 12:1	sort 20:25
pretrial 20:24	quiet 10:18	repair 12:9 37:25	safety 12:3	sovereign 32:13
pretty 8:14 10:10	<hr/> R <hr/>	repaired 13:12 15:13	scene 11:7	specific 30:23
prevent 25:16	Rabbit 30:10	repave 24:23	sealed 38:21	specification 32:12
principal 28:1	raise 10:6	replace 25:9	search 16:15	specifications 24:19
prior 12:14	raised 11:13	replacement 25:11	section 24:16 38:16	speed 9:14
proactive 14:23 28:21,24 32:19,20	range 16:18,23, 25 17:1,6,7 21:15	report 16:22	sees 15:23	spend 25:18,20, 22
problem 28:15	read 31:6	REPORTER 38:21	self-serving 11:20	spending 25:19
Procedurally 38:13	ready 20:16,24	representation 15:5	session 7:8 8:15	Spoken 20:19
Procedure 7:23	real 6:5 21:25 30:12,14	representatives 9:2	set 33:11	spreadsheet 12:11,17
proceed 36:14 37:4	reasonable 12:5 34:13,15	requested 9:5	setting 25:1	squares 25:9
proceedings 38:25	recently 14:21	require 26:18	settle 6:4,14 8:1, 10 9:18 15:18,19, 20 16:2,3 18:6 21:3 24:9 26:2,24 27:6,8 28:9 29:9, 21,23 30:1,2,7	stake 28:7
process 29:10	reconvene 38:16	required 23:21	settled 8:3 31:2, 5,11	stand 7:24 13:24 23:1
program 12:8,9, 24 15:10 28:23,25	record 15:7 26:16	research 16:13	settlement 6:20 16:11 18:5 19:8 22:13 26:9,10,17	standard 6:22
prolongs 35:5	records 11:2 14:8,9	respectful 29:8	sex 23:7,18	standing 10:11
promise 31:4	regular 10:8	response 38:4	shape 14:25	standpoint 32:7
property 24:1	reimburse 27:19	responsibility 21:13 33:22,25 36:2,3	show 11:3	started 34:7
proven 23:24 31:24	REISCHMANN 7:1 10:13,17 18:20 19:9,12,18, 22 20:7,13,20 21:19 22:9,15,21 27:18,24 29:19 30:10 31:1,20 34:8,13 35:22 36:25 37:13,18 38:12,14	responsible 29:17,21	showed 12:12,18 14:25 23:1	State 12:2
provision 26:15		rest 8:14	sides 31:22	steep 10:23
proximate 32:25		resulted 10:24	sidewalk 10:5,6 11:23 12:9,12 14:22 15:3,11 16:17 23:4 25:6 28:23,25 37:25	step 30:4 35:20
public 25:15 26:16		revealed 14:20		stifle 38:8
pulled 24:5		risk 36:9		story 30:9
pursuant 32:10		risky 33:13		strangers 33:10
purview 30:8		road 24:23		streets 12:4
pushed 11:6		room 8:12,19,20		strengths 8:23

stretch 12:12	37:22	type 30:21	witnesses 10:14
strip 14:21 15:2	things 14:18 15:12 32:10,11	types 16:16 32:8	won 21:5
structured 8:10	thinking 27:15 28:12	typical 9:19 15:22 22:3	work 14:12 20:25
stupid 27:17	thinks 27:16	<hr/> U <hr/>	world 31:19
subject 6:21	thorns 30:11	understand 22:23 25:24	worth 26:7,12 36:9
submitted 24:15	thought 33:19	unforeseen 21:22	write 19:3
successfully 15:25	thoughts 30:19	unique 9:4 28:24	written 19:4 36:19 37:14,15
sued 25:21	throw 15:23	<hr/> V <hr/>	wrong 34:22
suffering 21:24 22:3	throwing 25:23	valid 38:4	<hr/> Y <hr/>
suggest 25:4	thumb 21:25	varies 17:8	yard 24:17
suggested 14:4	time 7:7,10,16 9:8 10:3 13:11,15 14:3 15:23 31:2	verdict 13:20,25 14:5 16:13 17:2	year 25:10
suit 36:12	times 22:2 26:8 28:17	verdicts 16:15, 19,20 21:11	years 16:7 31:9
suitable 14:5	today 6:3,25	verdicts 16:15, 19,20 21:11	you-all 25:4
summarize 16:24	told 6:23	Virtually 24:17	<hr/> Z <hr/>
summary 7:11 9:16 12:25 13:2,8 14:14	ton 35:15	voice 38:8	zero-to-\$50,000 17:1
support 31:22,23	town 25:9	voir 33:15	
supporting 14:1	transcribed 38:20	volley 38:3	
surgery 17:13, 14,15,21 24:10 36:18	trial 9:17 13:19,22 16:12,21 17:23 18:17 20:9,15,16 33:11,13,21 34:18,21	<hr/> W <hr/>	
<hr/> T <hr/>	trip 24:24	walk 10:8 22:10 26:23 27:2,15	
tacks 21:24	trip-and-fall 15:22 16:9,17	walked 11:11,16	
taking 10:8 35:4 36:23	tripped 10:8,12, 14,20,21	walking 11:10	
talk 6:24 7:17 9:7 26:9,10,19,20	true 13:13 20:19	wanted 7:8 15:19	
talking 22:22,24	trusting 28:11	weaknesses 8:24	
taxpayer 36:10	tumbled 10:22 11:15	whittle 8:22	
taxpayer' 28:4	tumbling 10:24	wide 16:18	
taxpayers' 28:3	turn 6:19	wife 10:9 11:8 23:7	
technicality 7:9	turned 7:17	win 13:7 18:2,11, 15,16 19:25 23:2 25:16 35:3	
testified 11:8	twenty-fifteen 34:19	winning 13:7	
testify 23:9,13			
thing 7:6 20:25			