

THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Procedural Conference

October 8, 2015

Jefferson City, Missouri

Volume 1

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The Manufactured Housing	)	
Consumer Recovery Fund	)	File No. MO-2016-0035
Advisory Committee	)	

RON PRIDGIN, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE

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REPORTED BY:  
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ALSO PRESENT:

TOM HAGAR

NATELLE DIETRICH

JUSTIN SMITH

1 JUDGE PRIDGIN: Good afternoon. This is the  
2 procedural conference in File Number MO-2016-0035. I'm  
3 Ron Pridgin. I am the regulatory law judge assigned to  
4 preside over this conference being held on October 8,  
5 2015 in the Governor Office building in Jefferson City  
6 Missouri. The time is 2:00 in the afternoon.

7 Could I get entries of appearance from  
8 Counsel, please, beginning with Staff.

9 MR. THOMPSON: Thank you, Judge. Kevin A.  
10 Thompson and William Hampton Williams, III --

11 MR. WILLIAMS: II.

12 MR. THOMPSON: -- II, pardon me, for Staff of  
13 Missouri Public Service Commission, Post Office Box 360,  
14 Jefferson City, Missouri 65102.

15 JUDGE PRIDGIN: Mr. Thompson, thank you.  
16 Mr. Williams, thank you.

17 On behalf of Public Counsel.

18 MS. BAKER: Thank you. Christina Baker,  
19 PO Box 2230, Jefferson City, Missouri 65102, appearing on  
20 behalf of the Office of the Public Counsel.

21 JUDGE PRIDGIN: Ms. Baker, thank you.

22 Have I overlooked any counsel?

23 MR. THOMPSON: I don't believe so.

24 JUDGE PRIDGIN: All right. And I'll try to  
25 keep this as informal as possible.

1           Could I have others just identify themselves  
2     for the court reporter, please.

3           MR. HAGAR: Tom Hagar with Missouri  
4     Manufactured Housing Association.

5           MS. DIETRICH: Natelle Dietrich, Staff  
6     director, Public Service Commission.

7           MR. SMITH: Justin Smith, program manager for  
8     Manufactured Housing Department.

9           JUDGE PRIDGIN: Thank you. And you'll notice  
10    I'm not wearing a coat and tie, which is unusual for me,  
11    just because this is a little bit different animal. This  
12    is a conference that Chairman Hall wanted me to call to  
13    at least get everybody together once to see -- I think he  
14    wanted to see, I guess, further detail on what the -- I  
15    guess the dispute is at the advisory committee. And  
16    since I guess this is a first claim against this fund, I  
17    think he just wanted me to give you an opportunity to  
18    explore further.

19           And just to make it clear to you, Mr. Hagar,  
20    I'm not going to be deciding anything today. I'm not  
21    going to be deciding anything at all. This is all done  
22    for the benefit of the commissioners, especially Chairman  
23    Hall. I think he wanted to hear more of your concerns  
24    about releasing the money from this claim.

25           And so unless anyone wants to do something

1 different, I would like to let Mr. Hagar just make a  
2 statement.

3 And you'll see I have a court reporter, and  
4 that's so I don't run the risk of misunderstanding or  
5 misinterpreting what anybody says. That way he can read  
6 exactly what everybody says and I don't get the summary  
7 wrong or I don't get the idea wrong.

8 So other than that, I mean, that's the only  
9 formality. Otherwise, I'd like to let -- unless somebody  
10 wants to do something different, just let Mr. Hagar speak  
11 his mind. And then if anybody else has anything they'd  
12 like to add, I'll be glad to listen. And that will  
13 probably be the end of my participation. And you're free  
14 to keep using this room, if you have other things you  
15 want to talk about.

16 So if there's nothing further, if nobody else  
17 wants to say anything, I guess, Mr. Hagar, you have the  
18 floor.

19 MR. HAGAR: Well, thank you for this  
20 opportunity to address this issue. It's been going on  
21 for probably a couple of years prior to my involvement in  
22 this. And the advisory committee for the recovery fund  
23 has been in existence, I believe, since 2005. And this  
24 is the first -- the first case that, you know, came  
25 before it. But the unusual part of this was is that the

1 recovery fund was intended and was mandated by the  
2 federal government to compensate individuals in the event  
3 of damage or of a home being improperly set up. So it  
4 was in conjunction with licensing that we did not have  
5 prior to 2000 and so forth. So all of that came  
6 together.

7 But one of the things that the two directors  
8 ago previously addressed when the rules and so forth were  
9 developed for this fund was a clear stipulation that  
10 before a claim could be filed, there must have explored  
11 all legal possibilities, including going to a local  
12 circuit court and -- and filing a claim.

13 I've been with the association now for a  
14 little over 8 years and, prior to that, I spent 27 years  
15 as a retailer here in the state. And, grand total, I  
16 think I've been in this industry about 40 years. And I  
17 know these people. I know the people that were involved  
18 in this. And when I found out about this, I contacted  
19 them and basically to get some facts and to get some  
20 ideas of what occurred and what happened, because it was  
21 a multilot operation. It was more than one under the  
22 same ownership.

23 JUDGE PRIDGIN: If I could interrupt for just  
24 a second. When you say you know these people, do you  
25 mean the homeowners or the people who installed the home?

1                   MR. HAGAR: I know the people who sold the  
2 home.

3                   JUDGE PRIDGIN: Sold it. Thank you.

4                   MR. HAGAR: I do not know the people at all.  
5 And my job is not to keep someone from receiving some  
6 kind of just compensation, because there's a lot of  
7 things that I saw with the -- let's say the mind of a  
8 retailer and somebody that's been there and owned a  
9 company and so forth that just didn't jibe. Claims on  
10 tires, wheels, and axles, for example. Well, how do you  
11 get the home from point A to point B if you don't have  
12 tires, wheels, and axles underneath it. They had to be  
13 there when the home was delivered. So they were in the  
14 customer's possession. They were in somebody's other  
15 than the dealer. And for them then to claim that they  
16 didn't get the tires, wheels, and axles because they had  
17 to give them away to the installer of the home just  
18 didn't make any sense to me.

19                   About halfway through this an issue came up  
20 on the title and the taxation of the home. And at that  
21 time I made a trip down to the dealer and who has not or  
22 did not file bankruptcy, was still trying to work through  
23 some issues and so forth. But I wanted to find out about  
24 the tax and what we could do. And so then I came back  
25 and met with the Department of Revenue, and they agreed

1 that they would issue a title if we could find the  
2 original manufacturer's certificate of origin, which we  
3 did. The Public Service Commission Staff obtained that  
4 from the consumer. I then provided it to the Department  
5 of Revenue. And we got the people a title, which saved  
6 them roughly, I think, \$1,600 or a little over \$1,600 on  
7 that end of it, which was actually probably one of the  
8 bigger items that were being claimed.

9 So -- but as I said in my email to Chairman  
10 Hall, you know, the situation is really a matter of were  
11 the rules followed, you know, was there a court order,  
12 was there a judgment, was there anything done legally,  
13 which it says is to be the very first step in claiming  
14 anything under the recovery fund; was that, in fact,  
15 done? And you have copies, I'm sure, of all these  
16 emails. And they were not. There was not an effort made  
17 to do that.

18 And then I had addressed that in a previous  
19 email, and then the -- I was informed that there was  
20 going to be a waiver, the last communication I had with  
21 the public service -- the Manufacturers Housing  
22 Department said -- my president of the board had sent an  
23 email, I sent an email; and the statement was, Thank you  
24 both, I will have legal counsel review the rules and  
25 statutes again. Well, that was the last I heard. And

1 the next thing I found out was that there was going to be  
2 a hearing with the Commission to request a waiver of the  
3 rules. And my concern went up substantially with that,  
4 you know, regardless of the consumer, regardless of  
5 anything else was that the very first -- as I said in my  
6 email, the very first one out of the box, we're going to  
7 grant a waiver so that we can give these people a check.

8 And I still think there's questions. I think  
9 there's -- as to the legitimacy of it. But that should  
10 have been decided in a court. That's why the rules were  
11 written the way they were, is that they would go to the  
12 court, they would make their claim, get a judgment, and  
13 then proceed to attempt to recover and so forth from  
14 the -- from the dealer, which was under individual  
15 ownership, not a corporation. So there wasn't -- it  
16 wasn't a matter that the guy, you know, didn't have money  
17 or didn't have the means. But one of my questions to him  
18 is did anyone contact you, and he said no. So how can we  
19 have a claim? If the consumer didn't contact him, if the  
20 PSC didn't contact him, if nobody talked to him, then how  
21 do we have a claim and so forth against this fund?

22 And basically other than what I've already  
23 submitted, I don't know if there's anything else.

24 JUDGE PRIDGIN: Okay. Let me see if anybody  
25 else has anything they'd like to say in response. And I

1 don't -- it doesn't necessarily have to be counsel, and I  
2 don't -- you're not required to respond. If there's  
3 something you wanted to say, you're certainly welcome to.

4 MS. DIETRICH: Well, many of the things  
5 related to the rules and those types of things are legal  
6 issues, so I'll let Counsel respond to those.

7 Just to clarify a couple of things. So the  
8 waiver that's requested is only a waiver of the part of  
9 the rule that says we have to file a recommendation to  
10 the Commission within 60 days or 90 days -- I don't  
11 remember off the top of my head what it is. We were  
12 obviously well past that, because it has been a couple of  
13 years. So that's the only waiver that's being requested  
14 is to require the present committee to file its  
15 recommendation within a certain period of time.

16 I think the rest of it is spelled out in the  
17 recommendation as to what the Staff numbers of the  
18 advisory committee versus Mr. Hagar, what their views are  
19 on the various sides and how we viewed them.

20 So I guess that's it at that point. And I'll  
21 let legal counsel address the rules issues.

22 JUDGE PRIDGIN: Thank you.

23 MR. THOMPSON: The regulation specifies a  
24 number of things that the advisory committee can consider  
25 in determining whether or not all legal remedies have

1 been pursued or not. These would include, of course, a  
2 judgment that's unsatisfied or evidence that the dealer  
3 has sought bankruptcy protection. But those are not the  
4 only factors that the rule lists.

5 The rule can also -- the committee can also  
6 consider that the dealer, installer, or manufacturer has  
7 gone out of business, has closed their place of business  
8 or has become no longer subject to the jurisdiction of  
9 the Commission. And in this case both of those factors  
10 are true; the dealer registration has lapsed, and so the  
11 Commission no longer has jurisdiction over that  
12 individual or that business. And all of the facts in our  
13 possession indicate that the dealer's no longer doing  
14 business, has closed his doors at that location.

15 So because those two factors are in the list  
16 of factors that the advisory committee can consider in  
17 determining whether or not legal recourse is futile, I  
18 think the advisory committee's determination that, based  
19 on those factors that it is futile, is within the  
20 tenements of the Commission's regulation.

21 MS. DIETRICH: And I guess one of the other  
22 issues is what constitutes the repair. I think that was  
23 one of your concerns, was that this wasn't actually a  
24 repair. Is that correct?

25 MR. HAGAR: That was one of the items, yes.

1 MS. DIETRICH: And I guess our interpretation  
2 of repair is not something broken's, then you have to fix  
3 it necessarily. In this case the homeowners did not  
4 receive their home as intended and in the manner that  
5 they had paid for or contracted for, and so repair was a  
6 broader definition as to it should have been installed  
7 and should have been in a manner to which they had  
8 contracted.

9 JUDGE PRIDGIN: Okay. Any further comments?  
10 Mr. Hagar has something else to say?  
11 Any others?  
12 Okay. Go ahead.

13 MR. HAGAR: If I could, that last statement,  
14 that was not the original intent of the recovery fund.  
15 That's why we have the local courts. You know, that's  
16 why people go to the local judge and the judge rules. If  
17 the dealer hasn't done what he's supposed to do -- if  
18 anyone in business has not performed in whatever it is,  
19 then it's not a matter that you earmark X number of  
20 dollars to take care of every little item that would come  
21 along. This is a situation where we have a consumer  
22 that's claiming -- and I believe it's a  
23 daughter-in-law -- or a daughter that's claiming on  
24 behalf of the parents that certain things weren't  
25 performed on behalf of the -- of the consumer. And as I

1 said in the beginning of my initial statement, the  
2 intentions were and the mandate was under federal law was  
3 that we develop a recovery fund -- I believe there's 26  
4 states that have done this throughout the country -- and  
5 that that was to specifically cover damage and unresolved  
6 surface issues, things that were wrong and so forth with  
7 the home, not lack of performance on behalf of.

8 It's just like so many things, you have  
9 certain things that can be done under a -- you know,  
10 remedy under a bond or under something else, but most of  
11 this stuff is then taken care of in a civil -- in a civil  
12 way in the local courts. And that's been my position on  
13 this is, you know, where we are at.

14 And, you know, I understand a dealer's  
15 registration. I understand the dealer closed some  
16 stores. But the owner was still there, and he's still  
17 there today. And why there would be -- because we have  
18 this fund. If we didn't have the fund, we wouldn't be  
19 having this hearing.

20 So we have the fund, and so it's a means to  
21 somehow remedy this. And I don't -- I've asked -- I've  
22 been -- about how this even originated in the first  
23 place. I don't quite understand that, why -- it should  
24 have been, in my opinion, that a consumer must have  
25 exhausted all legal remedies prior to submitting a claim.

1 So did this consumer actually submit a claim?

2 MS. DIETRICH: The consumer submitted a claim  
3 to the recovery fund.

4 MR. HAGAR: Did they -- I mean, is there -- I  
5 guess I'm just -- maybe I'm asking something I shouldn't  
6 be asking, but is that a formal claim that they --  
7 because I've never seen one.

8 MR. WILLIAMS: The answer is that under the  
9 rule -- the commission rules, it identifies a claim being  
10 made; and there's a claim form, I believe, that was  
11 submitted. I thought it was included in the packet of  
12 material that was submitted to the commissioners.

13 MR. THOMPSON: While he's looking for that,  
14 Judge, I would just direct your attention to the  
15 definitional Section 4 CSR 240-126.010, definition 9,  
16 which is unsatisfied claim, defined as any claim for the  
17 actual cost of damages or repairs arising from a  
18 violation of Chapter 700 RSMo, the Commission's rules, or  
19 the Federal Standards in 24 CFR Parts 3280 and 3282 in  
20 which a consumer has not been able to recover.

21 So I think it's pretty clear that the funds  
22 sought here by the claimant are within the scope of that  
23 definition.

24 MS. DIETRICH: And as far as timing of  
25 whether the dealer was there or not, the paperwork we

1 have shows that the balance is paid in full in October of  
2 2012 and the license expired on January 2013 and all the  
3 home delivery work was in March of 2013. So the dealer  
4 was out of business, and the home was -- if I recall, the  
5 home was on a bank lot or the bank was going to move the  
6 home, and so they had -- it was moved -- somehow having  
7 to do with the bank, the home was moved. And so the  
8 homeowners didn't actually get the home till after the  
9 dealer went out of business, and it was through all these  
10 other people where there are receipts and the packet with  
11 the Staff's recommendation that document all of the dates  
12 and the times -- or the amounts related to the delivery.  
13 And so that's what we're using.

14 JUDGE PRIDGIN: Any further comments?

15 MR. WILLIAMS: Judge, I do have a general  
16 comment with regard to the function of the advisory  
17 committee well. The advisory committee itself was  
18 authorized by Statute 700.1, Subsection 2, to assist in  
19 the evaluation of all claims filed by customers. The  
20 Commission Rules 241.26.20, paragraph 2, the purpose of  
21 establishing the committee, it set forth that it consists  
22 of three members. State Statute 1.050 provides that a  
23 majority may act for all stating, words importing joint  
24 authority to three or more persons shall be construed as  
25 authority of the majority of the persons, unless

1 otherwise declared in the law giving authority.

2 Here the Commission rules, which created the  
3 advisory committee, created a three-person panel;  
4 therefore, a majority, or a vote of two, can act on  
5 behalf of the committee.

6 MS. DIETRICH: And I think it's in the  
7 documentation, but just to clarify, the committee started  
8 out as Mr. Hagar, myself, and John Borgmeyer, I think is  
9 the first attorney. And then -- well, at any rate,  
10 throughout the process we had multiple manufactured  
11 housing managers and multiple attorneys. And -- but we  
12 have had a committee since we first approached Mr. Hagar  
13 with the claim. Just the Staff makeup changed as Staff  
14 people moved on or were promoted or whatever.

15 JUDGE PRIDGIN: Okay. All right. Thank you.  
16 Any further comments?

17 All right. Hearing none, we'll go off the  
18 record here in just a moment. I'll excuse myself.  
19 You're certainly free to continue talking in this room or  
20 elsewhere, if you'd like. But if not, if Mr. Thompson or  
21 somebody else can just let me know so I can be sure and  
22 lock up.

23 MR. THOMPSON: I think the door will be  
24 locked. I'll just turn off the lights --

25 JUDGE PRIDGIN: That would be great.

1 MR. THOMPSON: -- and pull the door shut  
2 behind me, Judge.

3 JUDGE PRIDGIN: That would be great. And  
4 then once the transcript is available, I'll let the  
5 chairman see how he wants to proceed with this.

6 MR. THOMPSON: I think we should probably, at  
7 least in closing and on the written transcript, indicate  
8 that if the vote were taken again today, it would be the  
9 same. I would certainly vote in favor of disbursements.

10 MS. DIETRICH: I would vote in favor.

11 MR. THOMPSON: And I assume, Mr. Hagar, you  
12 would vote against it?

13 MR. HAGAR: Yes.

14 MR. THOMPSON: Okay. Thank you, sir.

15 JUDGE PRIDGIN: All right. If there's  
16 nothing further? All right. Thank you very much. We  
17 are off the record.

18 (Off the record.)  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF REPORTER

I, Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

*Angie D. Threlkeld*

Angie D. Threlkeld, CCR



<p><b>A</b></p> <p><b>ability</b> 18:6</p> <p><b>able</b> 14:20</p> <p><b>act</b> 15:23 16:4</p> <p><b>action</b> 18:9,13</p> <p><b>actual</b> 14:17</p> <p><b>add</b> 5:12</p> <p><b>address</b> 5:20 10:21</p> <p><b>addressed</b> 6:8 8:18</p> <p><b>advisory</b> 1:12 4:15 5:22 10:18,24 11:16 11:18 15:16,17 16:3</p> <p><b>afternoon</b> 3:1,6</p> <p><b>ago</b> 6:8</p> <p><b>agreed</b> 7:25</p> <p><b>ahead</b> 12:12</p> <p><b>amounts</b> 15:12</p> <p><b>Angie</b> 1:18 18:3 18:19</p> <p><b>animal</b> 4:11</p> <p><b>answer</b> 14:8</p> <p><b>anybody</b> 5:5,11 9:24</p> <p><b>appearance</b> 3:7</p> <p><b>appearing</b> 3:19</p> <p><b>approached</b> 16:12</p> <p><b>arising</b> 14:17</p> <p><b>asked</b> 13:21</p> <p><b>asking</b> 14:5,6</p> <p><b>assigned</b> 3:3</p> <p><b>assist</b> 15:18</p> <p><b>Assistant</b> 2:3</p> <p><b>association</b> 4:4 6:13</p> <p><b>assume</b> 17:11</p> <p><b>attempt</b> 9:13</p> <p><b>attention</b> 14:14</p> <p><b>attorney</b> 16:9 18:11</p>	<p><b>attorneys</b> 16:11</p> <p><b>authority</b> 15:24 15:25 16:1</p> <p><b>authorized</b> 15:18</p> <p><b>available</b> 17:4</p> <p><b>axles</b> 7:10,12,16</p> <p><b>B</b></p> <p><b>B</b> 7:11</p> <p><b>back</b> 7:24</p> <p><b>Baker</b> 2:8 3:18 3:18,21</p> <p><b>balance</b> 15:1</p> <p><b>bank</b> 15:5,5,7</p> <p><b>bankruptcy</b> 7:22 11:3</p> <p><b>based</b> 11:18</p> <p><b>basically</b> 6:19 9:22</p> <p><b>beginning</b> 3:8 13:1</p> <p><b>behalf</b> 3:17,20 12:24,25 13:7 16:5</p> <p><b>believe</b> 3:23 5:23 12:22 13:3 14:10</p> <p><b>benefit</b> 4:22</p> <p><b>best</b> 18:6</p> <p><b>bigger</b> 8:8</p> <p><b>bit</b> 4:11</p> <p><b>board</b> 8:22</p> <p><b>bond</b> 13:10</p> <p><b>Borgmeyer</b> 16:8</p> <p><b>box</b> 2:5,10 3:13 3:19 9:6</p> <p><b>broader</b> 12:6</p> <p><b>broken's</b> 12:2</p> <p><b>building</b> 2:3,8 3:5</p> <p><b>business</b> 11:7,7 11:12,14 12:18 15:4,9</p>	<p><b>C</b></p> <p><b>C</b> 2:1</p> <p><b>call</b> 4:12</p> <p><b>care</b> 12:20 13:11</p> <p><b>case</b> 5:24 11:9 12:3</p> <p><b>CCR</b> 1:18 18:4 18:19</p> <p><b>certain</b> 10:15 12:24 13:9</p> <p><b>certainly</b> 10:3 16:19 17:9</p> <p><b>certificate</b> 8:2 18:1</p> <p><b>Certified</b> 18:3</p> <p><b>certify</b> 18:5</p> <p><b>CFR</b> 14:19</p> <p><b>chairman</b> 4:12 4:22 8:9 17:5</p> <p><b>changed</b> 16:13</p> <p><b>Chapter</b> 14:18</p> <p><b>check</b> 9:7</p> <p><b>Chief</b> 1:14 2:2</p> <p><b>Christina</b> 2:8 3:18</p> <p><b>circuit</b> 6:12</p> <p><b>City</b> 1:7 2:5,10 3:5,14,19</p> <p><b>civil</b> 13:11,11</p> <p><b>claim</b> 4:16,24 6:10,12 7:15 9:12,19,21 13:25 14:1,2,6 14:9,10,16,16 16:13</p> <p><b>claimant</b> 14:22</p> <p><b>claimed</b> 8:8</p> <p><b>claiming</b> 8:13 12:22,23</p> <p><b>claims</b> 7:9 15:19</p> <p><b>clarify</b> 10:7 16:7</p> <p><b>clear</b> 4:19 6:9 14:21</p> <p><b>closed</b> 11:7,14</p>	<p>13:15</p> <p><b>closing</b> 17:7</p> <p><b>coat</b> 4:10</p> <p><b>come</b> 12:20</p> <p><b>comment</b> 15:16</p> <p><b>comments</b> 12:9 15:14 16:16</p> <p><b>commission</b> 1:1 2:6 3:13 4:6 8:3 9:2 10:10 11:9,11 14:9 15:20 16:2</p> <p><b>Commission's</b> 11:20 14:18</p> <p><b>commissioners</b> 4:22 14:12</p> <p><b>committee</b> 1:12 4:15 5:22 10:14,18,24 11:5,16 15:17 15:17,21 16:3 16:5,7,12</p> <p><b>committee's</b> 11:18</p> <p><b>communication</b> 8:20</p> <p><b>company</b> 7:9</p> <p><b>compensate</b> 6:2</p> <p><b>compensation</b> 7:6</p> <p><b>concern</b> 9:3</p> <p><b>concerns</b> 4:23 11:23</p> <p><b>conference</b> 1:5 3:2,4 4:12</p> <p><b>conjunction</b> 6:4</p> <p><b>consider</b> 10:24 11:6,16</p> <p><b>consists</b> 15:21</p> <p><b>constitutes</b> 11:22</p> <p><b>construed</b> 15:24</p> <p><b>consumer</b> 1:11 8:4 9:4,19</p>	<p>12:21,25 13:24 14:1,2,20</p> <p><b>contact</b> 9:18,19 9:20</p> <p><b>contacted</b> 6:18</p> <p><b>continue</b> 16:19</p> <p><b>contracted</b> 12:5 12:8</p> <p><b>copies</b> 8:15</p> <p><b>corporation</b> 9:15</p> <p><b>correct</b> 11:24</p> <p><b>cost</b> 14:17</p> <p><b>counsel</b> 2:2,3,8 2:11 3:8,17,20 3:22 8:24 10:1 10:6,21 18:8 18:11</p> <p><b>country</b> 13:4</p> <p><b>couple</b> 5:21 10:7 10:12</p> <p><b>course</b> 11:1</p> <p><b>court</b> 1:18 4:2 5:3 6:12 8:11 9:10,12 18:3</p> <p><b>courts</b> 12:15 13:12</p> <p><b>cover</b> 13:5</p> <p><b>created</b> 16:2,3</p> <p><b>CSR</b> 14:15</p> <p><b>customer's</b> 7:14</p> <p><b>customers</b> 15:19</p> <p><b>D</b></p> <p><b>D</b> 1:18 18:3,19</p> <p><b>damage</b> 6:3 13:5</p> <p><b>damages</b> 14:17</p> <p><b>dates</b> 15:11</p> <p><b>daughter</b> 12:23</p> <p><b>daughter-in-law</b> 12:23</p> <p><b>days</b> 10:10,10</p> <p><b>dealer</b> 7:15,21 9:14 11:2,6,10</p>
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12:17 13:15 14:25 15:3,9 <b>dealer's</b> 11:13 13:14 <b>decided</b> 9:10 <b>deciding</b> 4:20,21 <b>declared</b> 16:1 <b>defined</b> 14:16 <b>definition</b> 12:6 14:15,23 <b>definitional</b> 14:15 <b>delivered</b> 7:13 <b>delivery</b> 15:3,12 <b>Department</b> 4:8 7:25 8:4,22 <b>Deputy</b> 1:14 2:8 <b>detail</b> 4:14 <b>determination</b> 11:18 <b>determining</b> 10:25 11:17 <b>develop</b> 13:3 <b>developed</b> 6:9 <b>Dietrich</b> 2:15 4:5,5 10:4 11:21 12:1 14:2,24 16:6 17:10 <b>different</b> 4:11 5:1,10 <b>direct</b> 14:14 <b>direction</b> 18:7 <b>director</b> 4:6 <b>directors</b> 6:7 <b>disbursements</b> 17:9 <b>dispute</b> 4:15 <b>document</b> 15:11 <b>documentation</b> 16:7 <b>doing</b> 11:13 <b>dollars</b> 12:20 <b>door</b> 16:23 17:1	<b>doors</b> 11:14 <hr/> <b>E</b> <b>E</b> 2:1,1 <b>earmark</b> 12:19 <b>effort</b> 8:16 <b>email</b> 8:9,19,23 8:23 9:6 <b>emails</b> 8:16 <b>employed</b> 18:8 18:11 <b>employee</b> 18:11 <b>entries</b> 3:7 <b>especially</b> 4:22 <b>establishing</b> 15:21 <b>evaluation</b> 15:19 <b>event</b> 6:2 <b>everybody</b> 4:13 5:6 <b>evidence</b> 11:2 <b>exactly</b> 5:6 <b>example</b> 7:10 <b>excuse</b> 16:18 <b>exhausted</b> 13:25 <b>existence</b> 5:23 <b>expired</b> 15:2 <b>explore</b> 4:18 <b>explored</b> 6:10 <hr/> <b>F</b> <b>fact</b> 8:14 <b>factors</b> 11:4,9,15 11:16,19 <b>facts</b> 6:19 11:12 <b>far</b> 14:24 <b>favor</b> 17:9,10 <b>federal</b> 6:2 13:2 14:19 <b>file</b> 1:11 3:2 7:22 10:9,14 <b>filed</b> 6:10 15:19 <b>filing</b> 6:12 <b>financially</b> 18:12	<b>find</b> 7:23 8:1 <b>first</b> 4:16 5:24 5:24 8:13 9:5,6 13:22 16:9,12 <b>fix</b> 12:2 <b>floor</b> 5:18 <b>followed</b> 8:11 <b>foregoing</b> 18:4,5 <b>form</b> 14:10 <b>formal</b> 14:6 <b>formality</b> 5:9 <b>forth</b> 6:5,8 7:9 7:23 9:13,21 13:6 15:21 <b>found</b> 6:18 9:1 <b>free</b> 5:13 16:19 <b>full</b> 15:1 <b>function</b> 15:16 <b>fund</b> 1:11 4:16 5:22 6:1,9 8:14 9:21 12:14 13:3,18,18,20 14:3 <b>funds</b> 14:21 <b>further</b> 4:14,18 5:16 12:9 15:14 16:16 17:16 18:10 <b>futile</b> 11:17,19 <hr/> <b>G</b> <b>general</b> 15:15 <b>give</b> 4:17 7:17 9:7 <b>giving</b> 16:1 <b>glad</b> 5:12 <b>go</b> 9:11 12:12,16 16:17 <b>going</b> 4:20,21 5:20 6:11 8:20 9:1,6 15:5 <b>Good</b> 3:1 <b>government</b> 6:2 <b>Governor</b> 2:3,8	3:5 <b>grand</b> 6:15 <b>grant</b> 9:7 <b>great</b> 16:25 17:3 <b>guess</b> 4:14,15,16 5:17 10:20 11:21 12:1 14:5 <b>guy</b> 9:16 <hr/> <b>H</b> <b>Hagar</b> 2:14 4:3 4:3,19 5:1,10 5:17,19 7:1,4 10:18 11:25 12:10,13 14:4 16:8,12 17:11 17:13 <b>halfway</b> 7:19 <b>Hall</b> 4:12,23 8:10 <b>Hampton</b> 2:3 3:10 <b>happened</b> 6:20 <b>head</b> 10:11 <b>hear</b> 4:23 <b>heard</b> 8:25 <b>hearing</b> 9:2 13:19 16:17 18:5,6,9 <b>held</b> 3:4 <b>home</b> 6:3,25 7:2 7:11,13,17,20 12:4 13:7 15:3 15:4,5,6,7,8 <b>homeowners</b> 6:25 12:3 15:8 <b>housing</b> 1:11 4:4 4:8 8:21 16:11 <hr/> <b>I</b> <b>idea</b> 5:7 <b>ideas</b> 6:20 <b>identifies</b> 14:9	<b>identify</b> 4:1 <b>II</b> 3:11,12 <b>III</b> 3:10 <b>importing</b> 15:23 <b>improperly</b> 6:3 <b>include</b> 11:1 <b>included</b> 14:11 <b>including</b> 6:11 <b>indicate</b> 11:13 17:7 <b>individual</b> 9:14 11:12 <b>individuals</b> 6:2 <b>industry</b> 6:16 <b>informal</b> 3:25 <b>informed</b> 8:19 <b>initial</b> 13:1 <b>installed</b> 6:25 12:6 <b>installer</b> 7:17 11:6 <b>intended</b> 6:1 12:4 <b>intent</b> 12:14 <b>intentions</b> 13:2 <b>interested</b> 18:12 <b>interpretation</b> 12:1 <b>interrupt</b> 6:23 <b>involved</b> 6:17 <b>involvement</b> 5:21 <b>issue</b> 5:20 7:19 8:1 <b>issues</b> 7:23 10:6 10:21 11:22 13:6 <b>item</b> 12:20 <b>items</b> 8:8 11:25 <hr/> <b>J</b> <b>January</b> 15:2 <b>Jefferson</b> 1:7 2:5 2:10 3:5,14,19
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<b>jibe</b> 7:9 <b>job</b> 7:5 <b>John</b> 16:8 <b>joint</b> 15:23 <b>judge</b> 1:14 3:1,3 3:9,15,21,24 4:9 6:23 7:3 9:24 10:22 12:9,16,16 14:14 15:14,15 16:15,25 17:2 17:3,15 <b>judgment</b> 8:12 9:12 11:2 <b>jurisdiction</b> 11:8 11:11 <b>Justin</b> 2:16 4:7 <hr/> <b>K</b> <hr/> <b>keep</b> 3:25 5:14 7:5 <b>Kevin</b> 2:2 3:9 <b>kind</b> 7:6 <b>know</b> 5:24 6:17 6:17,24 7:1,4 8:10,11 9:4,16 9:23 12:15 13:9,13,14 16:21 <hr/> <b>L</b> <hr/> <b>lack</b> 13:7 <b>lapsed</b> 11:10 <b>law</b> 1:14 3:3 13:2 16:1 <b>legal</b> 6:11 8:24 10:5,21,25 11:17 13:25 <b>legally</b> 8:12 <b>legitimacy</b> 9:9 <b>let's</b> 7:7 <b>license</b> 15:2 <b>licensing</b> 6:4 <b>lights</b> 16:24	<b>list</b> 11:15 <b>listen</b> 5:12 <b>lists</b> 11:4 <b>little</b> 4:11 6:14 8:6 12:20 <b>LLC</b> 1:18 <b>local</b> 6:11 12:15 12:16 13:12 <b>location</b> 11:14 <b>lock</b> 16:22 <b>locked</b> 16:24 <b>longer</b> 11:8,11 11:13 <b>looking</b> 14:13 <b>lot</b> 7:6 15:5 <hr/> <b>M</b> <hr/> <b>Madison</b> 2:4,9 <b>majority</b> 15:23 15:25 16:4 <b>makeup</b> 16:13 <b>manager</b> 4:7 <b>managers</b> 16:11 <b>mandate</b> 13:2 <b>mandated</b> 6:1 <b>manner</b> 12:4,7 <b>manufactured</b> 1:11 4:4,8 16:10 <b>manufacturer</b> 11:6 <b>manufacturer's</b> 8:2 <b>Manufacturers</b> 8:21 <b>March</b> 15:3 <b>material</b> 14:12 <b>matter</b> 8:10 9:16 12:19 <b>mean</b> 5:8 6:25 14:4 <b>means</b> 9:17 13:20 <b>members</b> 15:22	<b>met</b> 7:25 <b>mind</b> 5:11 7:7 <b>misinterpreting</b> 5:5 <b>Missouri</b> 1:2,7 2:5,6,10 3:6,13 3:14,19 4:3 <b>misunderstan...</b> 5:4 <b>MO-2016-0035</b> 1:11 3:2 <b>moment</b> 16:18 <b>money</b> 4:24 9:16 <b>move</b> 15:5 <b>moved</b> 15:6,7 16:14 <b>multilot</b> 6:21 <b>multiple</b> 16:10 16:11 <hr/> <b>N</b> <hr/> <b>N</b> 2:1 <b>Natelle</b> 2:15 4:5 <b>necessarily</b> 10:1 12:3 <b>neither</b> 18:8 <b>never</b> 14:7 <b>notice</b> 4:9 <b>number</b> 3:2 10:24 12:19 <b>numbers</b> 10:17 <hr/> <b>O</b> <hr/> <b>obtained</b> 8:3 <b>obviously</b> 10:12 <b>occurred</b> 6:20 <b>October</b> 1:6 3:4 15:1 <b>Office</b> 2:3,8,11 3:5,13,20 <b>officer</b> 18:4 <b>Okay</b> 9:24 12:9 12:12 16:15 17:14	<b>once</b> 4:13 17:4 <b>operation</b> 6:21 <b>opinion</b> 13:24 <b>opportunity</b> 4:17 5:20 <b>order</b> 8:11 <b>origin</b> 8:2 <b>original</b> 8:2 12:14 <b>originated</b> 13:22 <b>outcome</b> 18:13 <b>overlooked</b> 3:22 <b>owned</b> 7:8 <b>owner</b> 13:16 <b>ownership</b> 6:22 9:15 <hr/> <b>P</b> <hr/> <b>P</b> 2:1,1 <b>packet</b> 14:11 15:10 <b>paid</b> 12:5 15:1 <b>panel</b> 16:3 <b>paperwork</b> 14:25 <b>paragraph</b> 15:20 <b>pardon</b> 3:12 <b>parents</b> 12:24 <b>part</b> 5:25 10:8 <b>participation</b> 5:13 <b>parties</b> 18:9,12 <b>Parts</b> 14:19 <b>people</b> 6:17,17 6:24,25 7:1,4 8:5 9:7 12:16 15:10 16:14 <b>performance</b> 13:7 <b>performed</b> 12:18,25 <b>period</b> 10:15 <b>persons</b> 15:24	15:25 <b>place</b> 11:7 13:23 <b>please</b> 3:8 4:2 <b>PO</b> 2:5,10 3:19 <b>point</b> 7:11,11 10:20 <b>position</b> 13:12 <b>possession</b> 7:14 11:13 <b>possibilities</b> 6:11 <b>possible</b> 3:25 <b>Post</b> 3:13 <b>present</b> 2:13 10:14 <b>preside</b> 3:4 <b>president</b> 8:22 <b>Presiding</b> 1:14 <b>pretty</b> 14:21 <b>previous</b> 8:18 <b>previously</b> 6:8 <b>Pridgin</b> 1:14 3:1 3:3,15,21,24 4:9 6:23 7:3 9:24 10:22 12:9 15:14 16:15,25 17:3 17:15 <b>prior</b> 5:21 6:5 6:14 13:25 <b>probably</b> 5:13 5:21 8:7 17:6 <b>procedural</b> 1:5 3:2 <b>proceed</b> 9:13 17:5 <b>PROCEEDIN...</b> 1:4 <b>process</b> 16:10 <b>program</b> 4:7 <b>promoted</b> 16:14 <b>protection</b> 11:3 <b>provided</b> 8:4 <b>provides</b> 15:22 <b>PSC</b> 9:20
--	---	---	---	--

<b>public</b> 1:1 2:6,8 2:11 3:13,17 3:20 4:6 8:3,21 <b>pull</b> 17:1 <b>purpose</b> 15:20 <b>pursued</b> 11:1 <hr/> <b>Q</b> <b>questions</b> 9:8,17 <b>quite</b> 13:23 <hr/> <b>R</b> <b>R</b> 2:1 <b>rate</b> 16:9 <b>read</b> 5:5 <b>really</b> 8:10 <b>recall</b> 15:4 <b>receipts</b> 15:10 <b>receive</b> 12:4 <b>receiving</b> 7:5 <b>recommendati...</b> 10:9,15,17 15:11 <b>record</b> 16:18 17:17,18 <b>recourse</b> 11:17 <b>recover</b> 9:13 14:20 <b>recovery</b> 1:11 5:22 6:1 8:14 12:14 13:3 14:3 <b>reduced</b> 18:7 <b>regard</b> 15:16 <b>regardless</b> 9:4,4 <b>registration</b> 11:10 13:15 <b>regulation</b> 10:23 11:20 <b>regulatory</b> 1:14 3:3 <b>related</b> 10:5 15:12 18:8 <b>relative</b> 18:10	<b>releasing</b> 4:24 <b>remedies</b> 10:25 13:25 <b>remedy</b> 13:10,21 <b>remember</b> 10:11 <b>repair</b> 11:22,24 12:2,5 <b>repairs</b> 14:17 <b>REPORTED</b> 1:17 <b>reporter</b> 4:2 5:3 18:1,3 <b>REPORTING</b> 1:18 <b>request</b> 9:2 <b>requested</b> 10:8 10:13 <b>require</b> 10:14 <b>required</b> 10:2 <b>respond</b> 10:2,6 <b>response</b> 9:25 <b>rest</b> 10:16 <b>retailer</b> 6:15 7:8 <b>Revenue</b> 7:25 8:5 <b>review</b> 8:24 <b>right</b> 3:24 16:15 16:17 17:15,16 <b>risk</b> 5:4 <b>Ron</b> 1:14 3:3 <b>room</b> 5:14 16:19 <b>roughly</b> 8:6 <b>RSMo</b> 14:18 <b>rule</b> 10:9 11:4,5 14:9 <b>rules</b> 6:8 8:11,24 9:3,10 10:5,21 12:16 14:9,18 15:20 16:2 <b>run</b> 5:4 <hr/> <b>S</b> <b>S</b> 2:1 <b>saved</b> 8:5	<b>saw</b> 7:7 <b>says</b> 5:5,6 8:13 10:9 <b>scope</b> 14:22 <b>second</b> 6:24 <b>Section</b> 14:15 <b>see</b> 4:13,14 5:3 9:24 17:5 <b>seen</b> 14:7 <b>sense</b> 7:18 <b>sent</b> 8:22,23 <b>service</b> 1:1 2:6 3:13 4:6 8:3,21 <b>set</b> 6:3 15:21 <b>shows</b> 15:1 <b>shut</b> 17:1 <b>sides</b> 10:19 <b>sir</b> 17:14 <b>situation</b> 8:10 12:21 <b>Smith</b> 2:16 4:7,7 <b>sold</b> 7:1,3 <b>somebody</b> 5:9 7:8 16:21 <b>somebody's</b> 7:14 <b>sought</b> 11:3 14:22 <b>speak</b> 5:10 <b>specifically</b> 13:5 <b>specifies</b> 10:23 <b>spelled</b> 10:16 <b>spent</b> 6:14 <b>Staff</b> 2:2,3,6 3:8 3:12 4:5 8:3 10:17 16:13,13 <b>Staff's</b> 15:11 <b>Standards</b> 14:19 <b>started</b> 16:7 <b>state</b> 1:2 6:15 15:22 <b>statement</b> 5:2 8:23 12:13 13:1 <b>states</b> 13:4	<b>stating</b> 15:23 <b>Statute</b> 15:18,22 <b>statutes</b> 8:25 <b>step</b> 8:13 <b>stipulation</b> 6:9 <b>stores</b> 13:16 <b>Street</b> 2:4,9 <b>stuff</b> 13:11 <b>subject</b> 11:8 <b>submit</b> 14:1 <b>submitted</b> 9:23 14:2,11,12 <b>submitting</b> 13:25 <b>Subsection</b> 15:18 <b>substantially</b> 9:3 <b>Suite</b> 2:4,9 <b>summary</b> 5:6 <b>supposed</b> 12:17 <b>sure</b> 8:15 16:21 <b>surface</b> 13:6 <hr/> <b>T</b> <b>take</b> 12:20 <b>taken</b> 13:11 17:8 18:5,6,10 <b>talk</b> 5:15 <b>talked</b> 9:20 <b>talking</b> 16:19 <b>tax</b> 7:24 <b>taxation</b> 7:20 <b>tenements</b> 11:20 <b>thank</b> 3:9,15,16 3:18,21 4:9 5:19 7:3 8:23 10:22 16:15 17:14,16 <b>thereto</b> 18:12 <b>they'd</b> 5:11 9:25 <b>thing</b> 9:1 <b>things</b> 5:14 6:7 7:7 10:4,5,7,24 12:24 13:6,8,9	<b>think</b> 4:13,17,23 6:16 8:6 9:8,8 10:16 11:18,22 14:21 16:6,8 16:23 17:6 <b>Thompson</b> 2:2 3:9,10,12,15 3:23 10:23 14:13 16:20,23 17:1,6,11,14 <b>thought</b> 14:11 <b>three</b> 15:22,24 <b>three-person</b> 16:3 <b>Threlkeld</b> 1:18 18:3,19 <b>tie</b> 4:10 <b>TIGER</b> 1:18 <b>till</b> 15:8 <b>time</b> 3:6 7:21 10:15 <b>times</b> 15:12 <b>timing</b> 14:24 <b>tires</b> 7:10,12,16 <b>title</b> 7:20 8:1,5 <b>today</b> 4:20 13:17 17:8 <b>Tom</b> 2:14 4:3 <b>top</b> 10:11 <b>total</b> 6:15 <b>transcript</b> 1:4 17:4,7 <b>trip</b> 7:21 <b>true</b> 11:10 <b>try</b> 3:24 <b>trying</b> 7:22 <b>turn</b> 16:24 <b>two</b> 6:7 11:15 16:4 <b>types</b> 10:5 <b>typewriting</b> 18:7 <hr/> <b>U</b> <b>underneath</b> 7:12
---	--	---	--	---

<b>understand</b> 13:14,15,23	<b>work</b> 7:22 15:3	<b>4</b>		
<b>unresolved</b> 13:5	<b>wouldn't</b> 13:18	<b>4</b> 14:15		
<b>unsatisfied</b> 11:2	<b>written</b> 9:11	<b>40</b> 6:16		
14:16	17:7			
<b>unusual</b> 4:10	<b>wrong</b> 5:7,7	<b>5</b>		
5:25	13:6	<b>573.751.5565</b>		
<b>V</b>	<b>X</b>	2:11		
<b>various</b> 10:19	<b>X</b> 12:19	<b>573.751.6514</b>		
<b>versus</b> 10:18	<b>Y</b>	2:6		
<b>viewed</b> 10:19	<b>years</b> 5:21 6:14	<b>6</b>		
<b>views</b> 10:18	6:14,16 10:13	<b>60</b> 10:10		
<b>violation</b> 14:18	<b>Z</b>	<b>650</b> 2:9		
<b>Volume</b> 1:8	<b>0</b>	<b>65102</b> 2:10 3:14		
<b>vote</b> 16:4 17:8,9	<b>1</b>	3:19		
17:10,12	<b>1</b> 1:8	<b>65102-0360</b> 2:5		
<b>W</b>	<b>1,600</b> 8:6,6	<b>7</b>		
<b>waiver</b> 8:20 9:2	<b>1.050</b> 15:22	<b>700</b> 14:18		
9:7 10:8,8,13	<b>1382</b> 18:4	<b>700.1</b> 15:18		
<b>want</b> 5:15	<b>2</b>	<b>8</b>		
<b>wanted</b> 4:12,14	<b>2</b> 15:18,20	<b>8</b> 1:6 3:4 6:14		
4:17,23 7:23	<b>2:00</b> 3:6	<b>800</b> 2:4		
10:3	<b>200</b> 2:4,9	<b>9</b>		
<b>wants</b> 4:25 5:10	<b>2000</b> 6:5	<b>9</b> 14:15		
5:17 17:5	<b>2005</b> 5:23	<b>90</b> 10:10		
<b>wasn't</b> 9:15,16	<b>2012</b> 15:2			
11:23	<b>2013</b> 15:2,3			
<b>way</b> 5:5 9:11	<b>2015</b> 1:6 3:5			
13:12	<b>2230</b> 2:10 3:19			
<b>we'll</b> 16:17	<b>24</b> 14:19			
<b>we're</b> 9:6 15:13	<b>240-126.010</b>			
<b>wearing</b> 4:10	14:15			
<b>welcome</b> 10:3	<b>241.26.20</b> 15:20			
<b>went</b> 9:3 15:9	<b>26</b> 13:3			
<b>weren't</b> 12:24	<b>27</b> 6:14			
<b>wheels</b> 7:10,12	<b>3</b>			
7:16	<b>3280</b> 14:19			
<b>William</b> 2:3 3:10	<b>3282</b> 14:19			
<b>Williams</b> 2:3	<b>360</b> 2:5 3:13			
3:10,11,16				
14:8 15:15				
<b>words</b> 15:23				