

1 PATRICIA A. MILLETT, Assistant to the Solicitor
2 General, Department of Justice, Washington, D.C.; on
3 behalf of the United States, as amicus curiae,
4 supporting the Petitioners.

5 SCOTT A. SHORR, Portland, Ore.; on behalf of the
6 Respondents.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	PAGE
1 ORAL ARGUMENT OF	
2 MAUREEN E. MAHONEY	
3 On behalf of the Petitioners	4
4 ORAL ARGUMENT OF	
5 PATRICIA A. MILLETT	
6 On behalf of the United States, as amicus	
7 curiae, supporting Petitioners	18
8 ORAL ARGUMENT OF	
9 SCOTT A. SHORR	
10 On behalf of the Respondents	28
11 REBUTTAL ARGUMENT OF	
12 MAUREEN E. MAHONEY	
13 On behalf of Petitioners	48
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

P R O C E E D I N G S

(10:04 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

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in 06-84, Safeco Insurance Company versus Burr, and 06-100, GEICO General Insurance Company versus Edo.

Ms. Mahoney.

ORAL ARGUMENT OF MAUREEN E. MAHONEY

ON BEHALF OF THE PETITIONERS

MS. MAHONEY: Mr. Chief Justice, and may it please the Court:

I'd like to turn first to the Ninth Circuit's interpretation of the term "willfully" and its determination that the case had to be remanded for further proceedings to permit an opportunity to explore Petitioners' communications with their counsel. We ask this Court to find that there is no necessity for any such inquiry for waivers of attorney-client privilege because summary judgment should have been affirmed in this case.

Petitioners and their counsel, if you think about what communications you might find, they could not have known anything more about these statutory issues of first impression than the district court did. It's questions of law. And if the district court's opinion

1 does not reflect reckless disregard for the law, for the
2 reading of the statute, then it would be inappropriate
3 to characterize Petitioners' adoption of the very same
4 views as either a knowing or reckless violation of the,
5 of the FCRA.

6 The first -- the Ninth Circuit nevertheless
7 reached a contrary conclusion, and said it was time to
8 go ahead and look at privileged communications if the
9 Petitioners wanted to defend the case, because they made
10 several interpretive errors about the meaning of
11 "willfully."

12 And the first is that they read "willfully" in
13 this setting to mean recklessly, and relied on several
14 cases where this Court has read the term willfully in
15 civil statutes to mean recklessly.

16 But this Court has said repeatedly that the
17 word "willfully" is contextual, that you have to look at
18 all of the sections of the statute to see how it's used
19 to determine whether it means with knowledge that your
20 conduct violates the law, or whether reckless violations
21 are sufficient. And in this particular statute, unlike
22 the other three that were at issue, Congress has used
23 the term "willfully" in other sections of the law to mean,
24 as plaintiffs concede, that the defendant knows that
25 their conduct violates the Act.

1 JUSTICE SCALIA: Well, it's also used in the
2 phrase "knowing and willful." That appears in several
3 other parts of the statute, and that wouldn't make any
4 sense if the only meaning of "willful" is knowing.

5 MS. MAHONEY: Well, it actually says
6 "willfully and knowingly --"

7 JUSTICE SCALIA: In one formulation or
8 another, but it combines the two words, "knowing" and
9 "willful."

10 MS. MAHONEY: Well, this Court, though, has
11 held that "willfully and knowingly," when that phrase is
12 used together, it's been discussed in a number of cases
13 including Dixon recently, that it means -- "willfully"
14 means knowledge that the conduct violates the law, and
15 "knowingly" means knowledge of the relevant facts. And
16 that would make perfect sense in this setting, and so
17 the term "willfully" when, again, used --

18 JUSTICE SCALIA: You mean willfully alone?

19 MS. MAHONEY: It --

20 JUSTICE SCALIA: Where -- where it -- where
21 it means what you think it means, which is knowingly,
22 that does not mean knowing the facts? If you mistake
23 the facts and are laboring under a misimpression of the
24 facts, you have nonetheless willfully violated the law?

25 MS. MAHONEY: Your Honor, in Ratzlaf, the

1 phrase was "willfully," not "willfully and knowingly,"
2 and the Court held that it meant that you knew that your
3 conduct violated the law. And that seems to be the most
4 reasonable reading here because if you look, there are
5 also sections of section 1681n that refer to knowing
6 conduct, and that would require the conclusion that
7 Congress used "willfully" in this section to mean a -- a
8 less -- a more -- a less culpable mens rea than
9 knowingly. And that's --

10 CHIEF JUSTICE ROBERTS: So that if you're
11 the CEO of your company, and the lawyer -- general counsel
12 comes in and says we've got a real issue under the Fair
13 Credit Reporting Act, I need to brief you on that, we
14 need to make an important decision about whether we are
15 complying. You say I don't want to hear about it, I
16 don't want to know about it. That would not be
17 willfully violating the statute?

18 MS. MAHONEY: Well, under -- some cases have
19 suggested that there could be a willful blindness
20 instruction that would govern whether you define that as
21 knowing or not. Certainly --

22 CHIEF JUSTICE ROBERTS: So it doesn't have
23 to be actual knowledge?

24 MS. MAHONEY: I think that the best reading
25 of knowingly is actual knowledge or something that is,

1 that is everything but, you know, that really is --

2 JUSTICE SCALIA: How about reckless
3 disregard?

4 MS. MAHONEY: Well, conscious disregard is a
5 recklessness standard, and even if the Ninth Circuit
6 correctly determined that this should be interpreted as
7 a recklessness standard, this Court has defined
8 recklessness to mean that it has to be conscious
9 disregard, actual knowledge of a high risk of, of -- of
10 harm or in this case illegality. And in these
11 circumstances, you can't say that there was a high risk
12 of illegality because what the district court found is
13 that the Petitioners' interpretations of the statute
14 were actually not only reasonable, but correct, and
15 having --

16 JUSTICE ALITO: Since the term "knowingly" or
17 "knowing" appears in two places in 1681n, can't we infer
18 from that that "willfully" in that provision also means
19 something different?

20 MS. MAHONEY: I think the way it's used, it
21 says knowing, knowingly that they did not have a
22 permissible purpose. Permissible purpose, that may not
23 be knowledge of the law, it just may be knowledge that
24 your purpose wasn't permissible. And even if they were
25 using it --

1 JUSTICE ALITO: I thought the statute says
2 what the permissible purposes are.

3 MS. MAHONEY: It does, but it doesn't
4 necessarily mean that the individual knew precisely what
5 the statute said. Because for instance, users are told
6 what the permissible purposes are when they get a credit
7 report from, from a credit agency. But more
8 importantly, Your Honor, I think that the use of the
9 term "knowingly" there can also be explained.

10 If you look at section 1681h, it actually
11 provides that certain tort actions cannot proceed unless
12 there is a willful intent to injure, except as provided
13 in section 1681n, and they are the same kinds of actions
14 that are carved out in 1681n.

15 And so I think it was to make clear, I think
16 it was to make clear that you didn't have to have a
17 willful intent to injure. So even if they meant it to
18 be interchangeable with a knowing violation of the law
19 there, I think there was a reason for it, it wasn't just
20 surplusage. It was to clarify that they didn't have to
21 have a willful intent to violate.

22 JUSTICE BREYER: Would you say it's all
23 right to use the model penal code definition of
24 reckless, which is basically what you -- taking it here,
25 you would have to consciously disregard a substantial

1 and unjustifiable risk that the action is unlawful?

2 MS. MAHONEY: That's correct, Your Honor.

3 JUSTICE BREYER: Have you come across
4 anything that would use that -- I mean "reckless" itself
5 is unclear. The model penal code tried to clarify it
6 based on this Court's opinions primarily.

7 MS. MAHONEY: But I think you can look to
8 the way this Court described recklessness in Farmer vs.
9 Brennan as well, though, as well as --

10 JUSTICE BREYER: What's the difference?

11 MS. MAHONEY: The difference is just, there
12 is two forms of recklessness. One which says that if
13 the risk is sufficiently high, if a person should have
14 known, you could be -- you could be liable. But that
15 the form of recklessness that Congress presumably used
16 here in this setting, where there is the potential for
17 very punitive sanctions, was what is referred to --
18 Farmer versus Brennan calls it "criminal," the criminal
19 recklessness standard.

20 And that means that not only do you have to
21 have an objectively high risk of illegality, but you
22 must be actually conscious of that risk. But in this
23 case, you don't even need to get to the issue of
24 consciousness.

25 JUSTICE BREYER: Well, you said there is no

1 way they couldn't have been conscious of the risk here.
2 I mean, after all, that's why they went to lawyers.
3 They know there's a risk that this is unlawful.

4 MS. MAHONEY: The question is --

5 JUSTICE BREYER: But consciousness, I mean,
6 maybe it should come in in the standard, but I don't
7 know that that would help you.

8 MS. MAHONEY: Well, I think that the issue
9 on conscious -- the issue of the risk, though, it has
10 to be a high risk. And if it is a reasonable
11 interpretation of the statute, or even if it is just an
12 interpretation of the statute that is fairly debatable,
13 that you have a fair chance of success, then how can
14 you say that is a high risk of illegality, so high that
15 we should say that Congress wanted to sanction you for
16 taking that position?

17 And for saying that, you know, you shouldn't
18 be permitted to adopt a compliance program if there was
19 a fair ground for believing that it was lawful. And
20 here what the Ninth Circuit did --

21 JUSTICE SCALIA: Suppose there is a fair
22 ground for believing it was lawful. Lawyers are in
23 disagreement, but in fact, I believe the lawyers who say
24 it is unlawful, and I nonetheless go ahead and do it.
25 Is that a willful violation?

1 MS. MAHONEY: I don't, I don't think so,
2 Your Honor, if, in fact, it was a fair ground for -- -

3 JUSTICE SCALIA: But I think I'm violating.

4 MS. MAHONEY: I don't -- yes. But you
5 couldn't know you were violating it, and because if it
6 really is a fair ground for litigation --

7 JUSTICE SCALIA: I'm a better lawyer than my
8 advisors.

9 (Laughter.)

10 MS. MAHONEY: Your Honor, I think if it's an
11 area where the law is truly unsettled. And here an
12 issue of first impression, a lawyer's assessment that
13 you may lose is inherently predictive. These are not
14 true or false answers when there is almost nothing to go
15 on.

16 And so in that area, it's much like what
17 this Court did in *Screws*, where it said that this was a
18 case involving a willful violation of, or interference
19 with rights secured by -- by Federal law. And what the
20 Court says, well, it's not just any bad purpose that
21 Congress had in mind, it is a bad purpose to defy
22 announced rules of law. They have to be, there has to
23 be sufficient clarity in the law to say that there was a
24 high risk of illegality that you could disregard.

25 JUSTICE SCALIA: Would you look to the

1 subjective intent of the actor at all?

2 MS. MAHONEY: Only --

3 JUSTICE SCALIA: Or would you just look to
4 the outcome and say, well, you know, it was a close
5 question, so even if the actor indeed thought he was in
6 violation, it was a close question; it's okay?

7 MS. MAHONEY: I don't think you would look
8 at the intent until you found that there -- there was no
9 reasonable ground or at least no, no -- no fair ground
10 for debate about the question. And at that point, Your
11 Honor, if there was an objectively high risk of
12 illegality, then you do have to ask, what were they
13 consciously aware of; what did they do?

14 JUSTICE SCALIA: I must say that -- that is
15 not the normal meaning of "willful," willfully violating
16 the law.

17 MS. MAHONEY: Well, I think in Screws --

18 JUSTICE SCALIA: You're changing it to mean
19 willfully -- willfully and blatantly violating the law.

20 MS. MAHONEY: I don't think so.

21 JUSTICE SCALIA: I mean, if I know that what
22 I'm doing is in violation of the law, even if it's a
23 close question, it seems to me I am willfully violating
24 the law.

25 MS. MAHONEY: Your Honor, Screws says you

1 can't know the unknowable. And if the law, if it's
2 really, truly an issue of first impression, you may
3 think you're violating the law, but you -- you can't
4 know the unknowable. And that's why this setting is so
5 important, because you can't, you know, put -- impose
6 sanctions. Here we're talking about the potential for
7 an industry facing billions of dollars without any
8 actual harm to -- to individuals. And that --

9 JUSTICE GINSBURG: Is it really billions?
10 How many of these have been certified as class actions?

11 MS. MAHONEY: I believe that there are two
12 certified class actions. But many -- there are many
13 cases pending and it could be billions of dollars, Your
14 Honor. Certainly if the classes are certified, and --

15 JUSTICE GINSBURG: Would you, would you, as
16 a representative of the insurers, would you have a sound
17 objection to class action certification in these cases?

18 MS. MAHONEY: Your Honor, I'm sure there
19 would be some bases to resist. But classes have been
20 certified, so I --

21 JUSTICE GINSBURG: And gone to, gone to
22 judgment?

23 MS. MAHONEY: I do not believe any have gone
24 to judgment, but I don't, I don't -- I think that the
25 point is that if you allow a thousand dollar penalty or

1 the potential for a thousand dollar penalty for every
2 consumer who didn't get a notice, simply because they
3 may have gotten a better price if they had even better
4 credit, across the country, if you interpret the statute
5 that way, and then say you can get this thousand
6 dollar, what is in essence a penalty, and you multiply
7 that by the number of consumers, then you certainly have
8 the potential for very, very substantial liability.

9 JUSTICE GINSBURG: It's a question how many
10 will sue for a thousand dollars, given the litigation
11 costs.

12 MS. MAHONEY: Well, given that these are
13 proceeding as class actions, the answer is there is
14 plenty on the line to incentivize plaintiffs' attorneys
15 to bring these class actions, and they have been
16 brought, and this is a class action. There are two
17 class actions.

18 JUSTICE GINSBURG: They haven't -- neither
19 has been certified, has it?

20 MS. MAHONEY: No, it has not. They are
21 putative class actions, Your Honor. But I, but I think
22 that whether it's a class action or not, we have to look
23 at what did, what did Congress presumably have in mind
24 when it authorized these kinds of penalties and punitive
25 damages based on a willful violation in a technical area

1 where there is no potential for harm? And certainly --

2 JUSTICE KENNEDY: I have just two, two
3 questions on, on willful and then -- because you may
4 want to talk about the other issue in the case. First,
5 you began by saying that here a district judge has come
6 to the contrary conclusion; by definition, it can't be
7 reckless. Do you have any authority, where we -- for
8 that proposition, where we have said that?

9 MS. MAHONEY: Well --

10 JUSTICE KENNEDY: We find all the time that
11 a right is not clearly established under AEDPA, and so
12 forth -- and disregard what I just said. That's my
13 first question.

14 And the second is "willfully," as Screws
15 itself makes very clear, is interpreted differently
16 in the criminal context than it is in the civil context.

17 MS. MAHONEY: Except Screws, Your Honor,
18 actually says that it was adopting a criminal
19 recklessness standard, not a knowing standard, but a
20 reckless standard. And that is the same standard that
21 has been applied in the civil cases that use "willfully"
22 in the punitive damage context.

23 So I think it's exactly the same standard in
24 that Screws does say that the, you can't have, it can't
25 just be a bad purpose, that it has to have been a bad

1 purpose to violate clearly defined rules. And this
2 Court has said in various contexts in the, in the
3 qualified immunity area that picking the losing side
4 does not mean that your conduct was objectively, you
5 know, wrongful.

6 And that's really -- I think that there is
7 great significance to the district court's ruling. I'm
8 not saying that in every case, it would absolutely be
9 dispositive. I think you have to look at what was the,
10 you know, the clarity of the law, what was the reasoning
11 of the district court. But what the Ninth Circuit did,
12 is it, in essence, said that you can't rely on
13 creative but unlikely answers to issues of first
14 impression.

15 Well, if an administration official goes to
16 a lawyer in the administration and asks about a course
17 of conduct, and is told, well, it's completely an issue
18 of first impression, there is probably a 40 percent
19 chance of success, do you say that's reckless to
20 proceed on that basis?

21 CHIEF JUSTICE ROBERTS: Well, just because
22 an issue is one of first impression doesn't mean there's
23 a high degree of uncertainty. The statute may be
24 clearly addressed to that issue. It hasn't come up
25 before.

1 MS. MAHONEY: Absolutely, Your Honor.

2 CHIEF JUSTICE ROBERTS: First impression.

3 MS. MAHONEY: It certainly -- this Court has
4 made clear that if the language of the statute is very
5 plain, then, of course, that can be noticed, that can be
6 adequate warning. But certainly this statute doesn't
7 satisfy that standard. Congress didn't provide the
8 benchmarks that you have to use for comparison to
9 determine whether there has been an increase in a charge
10 or whether there has been an adverse action based on the
11 consumer report. You need benchmarks to answer those
12 questions, and there aren't any regulations and there
13 were no cases.

14 If I could save the balance of my time for
15 rebuttal.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 Ms. Millett.

18 ORAL ARGUMENT OF PATRICIA A. MILLETT,

19 ON BEHALF OF THE RESPONDENTS

20 MS. MILLETT: Mr. Chief Justice, and may it
21 please the Court:

22 The court of appeals correctly concluded
23 that "willfulness" in the civil context, as used here,
24 includes a reckless disregard component or a
25 recklessness component. That is what this Court has

1 held in a number of cases that have similar uses of
2 willfulness focused on a departure from the law, have
3 held. Thurston, Richland Shoe and Hazen Paper are the
4 three that have been most discussed in the case, in the
5 papers here.

6 But where the Ninth Circuit misstepped here
7 was in the application of that standard. And in
8 particular, we agree with Petitioners that when it
9 concluded that a creative but unlikely position
10 constitutes recklessness, it erred. Recklessness speaks
11 an extreme deviation from an ordinary standard of care.
12 It requires that the defendant act in the face of or
13 fail to act --

14 JUSTICE STEVENS: Is it a subjective
15 standard or an objective standard?

16 MS. MILLETT: It has both in this context.
17 It is, I think, first and foremost, an objective
18 component, because there is -- this is a civil case.
19 It's not purely subjective. And that objective
20 component is very important because that is what makes
21 the act or inaction reckless, and that is the risk.
22 There has to be an objectively high and obvious risk.

23 JUSTICE STEVENS: So if the potential
24 liability, as in these cases, is huge, then you have to
25 be even more careful because there is liability so

1 great. So is it the greater the liability -- the
2 greater chance of recklessness, the greater the
3 potential liability?

4 MS. MILLETT: No, to the extent you're
5 talking about dollar liability, I don't think that's
6 true. I do think it's fair to say that in recklessness
7 generally in the tort law, the more serious an injury
8 that could result, can -- we'll tolerate less risk. If
9 the risk is causing serious bodily injury or death to
10 somebody, we'll -- the law will tolerate a lesser degree
11 of risk than it will if, if it's simply causing, you
12 know, a delay in something or a sort of paper injury or
13 maybe even a dollar injury.

14 And it's not set. It's a variable
15 calculation. So in that sense, it is. I don't think
16 that when we talk about a high and objective risk in
17 this context, we are talking about the dollars that a,
18 that a company would have to pay, although I'm sure they
19 are interested in hearing about that from their lawyers.

20 What we are talking about here -- and this
21 is a very unusual statute the way it's written -- that
22 the liability itself, not just the damages, but the
23 liability itself turns upon the extent of departure from
24 law. You have to -- there is no recovery here like
25 there is in almost -- or commonly in Federal statutes

1 for just a violation. That isn't it.

2 You have to show either a willful violation
3 or a negligent violation, and that requires a
4 determination not only that the defendants violated the
5 law, but a determination as to how much, how far, how
6 many standard deviations from correct their position was
7 and that is an objective determination.

8 Once an objectively high risk has been found
9 by a court, then -- then the case can shift to looking
10 into subjective things. I think a plaintiff would be
11 entitled, once an objectively high and obvious risk has
12 been found by the court, to rely on that, and allow a
13 jury to, or a judge, whoever is deciding the case, to
14 infer the existence of willfulness from that. And
15 that's often when defendants -- I'm sorry.

16 JUSTICE STEVENS: May I also ask, do you
17 agree with the Petitioner on the meaning of adverse
18 action?

19 MS. MILLETT: No, we agree with Respondents
20 on the meaning of adverse action.

21 CHIEF JUSTICE ROBERTS: Correct me if I'm
22 wrong. You think if I have an insurance policy, I'm
23 paying a certain rate, they look at my credit report and
24 they say, you know, good news, we're going to lower your
25 rates, that's an adverse action because they might have

1 lowered the rates even further if they had notified me
2 about the credit report and there were some errors in
3 it?

4 MS. MILLETT: Right. It's a complicated
5 answer, in part because that assumes that you have an
6 existing account and you're not an initial account here.
7 And when you have an existing account, there's a
8 definition of adverse action for insurance provisions,
9 but in iv there is a separate, there's another
10 definition, and this is on, on page -- sorry. Excuse
11 me. On page 3a of the appendix to our brief, iv under
12 big I -- I'm sorry, there's a lot of provisions -- talks
13 about reviewing an existing account, and it
14 cross-referenced another provision which talks about
15 reviewing an account for purposes of termination. And
16 that would include, in our view, not only completely
17 canceling it, but terminating the existing thing and
18 charging you more for saying you now need to pay a new
19 rate. So which would govern in that particular context
20 is a little bit harder.

21 But it could, and here's logically why,
22 because I think the understanding of "increase" that's
23 at issue here is one that's very basic to the operation
24 of this statute, and that is, did the content of your
25 information in your credit report, if it had been

1 better, could you have had a better rate or a better
2 deal.

3 CHIEF JUSTICE ROBERTS: Right.

4 MS. MILLETT: So have you been hit in the
5 pocketbook.

6 CHIEF JUSTICE ROBERTS: So if they lower, if
7 they lower the rates, you still say that that fits the
8 meaning of adverse action because they might have
9 lowered them further if the information hadn't been
10 erroneous?

11 MS. MILLETT: It could have, and here -- in
12 this sense, it could be adverse. In the same way that
13 in my -- this is sort of the flip side, but in my office,
14 if everybody in the hallway gets a 5 percent salary
15 increase and I only get a 1 percent salary increase, I
16 am certainly better off, but if the reason I got a
17 lesser increase is because of my gender or because of my
18 credit report, it's an adverse action. So the fact that
19 you're doing somewhat better doesn't mean --

20 JUSTICE BREYER: That isn't how the statute
21 defines it.

22 MS. MILLETT: Excuse me?

23 JUSTICE BREYER: The statute says an adverse
24 action is an increase in a charge for -- in connection
25 with underwriting.

1 MS. MILLETT: But it also --

2 JUSTICE BREYER: That's what it says. And
3 then it says an increase is -- and if you take an
4 adverse action, i.e., if you increase it, and your
5 increase is based in whole or in part on information
6 contained in a consumer report, you have to send the
7 thing. How did you get -- in your example, there was no
8 increase. I mean, in a charge. In your salary, it's a
9 decrease in the salary. Same thing.

10 MS. MILLETT: The definition -- again I'm on
11 3a -- includes not just increase, but includes an
12 unfavorable change in the terms. And so it's not
13 settled whether --

14 JUSTICE BREYER: You mean unfavorable change
15 in terms, unfavorable change in terms.

16 MS. MILLETT: Exactly.

17 JUSTICE BREYER: Well, suppose you don't
18 have, you don't have any terms because you never did it
19 before. There's no change in terms.

20 MS. MILLETT: If you're a new customer --
21 and again, I want to reiterate that, how this adverse
22 action applies to existing accounts is complicated --

23 JUSTICE BREYER: You mean those words
24 "change in terms" refer to rates, in other words?
25 That's a rather odd way to refer to it. In one place,

1 you refer to an "increase"; in the other place, you'd
2 refer to it as a "change in terms." That's sort of an
3 odd way to write a statute.

4 MS. MILLETT: Well, you can have a change in
5 terms that is not necessarily an increase. It could be
6 you will no longer be entitled to a free rental car when
7 your car is in for repair for some reason. That's not
8 an increase.

9 JUSTICE BREYER: No, no, I understand that.
10 But what we're after is this. Everybody has a credit
11 report, just about. You put it in and you give people
12 the best possible rate conceivable, and now, how do you
13 know that maybe there could have still been a better
14 rate? And it can't be that the statute intends you to
15 send out notices in such circumstances or you'd have to
16 send notices whenever you read a credit report. Now, I
17 think that's, I've overstated slightly, but that's
18 basically the argument. So what's your response?

19 MS. MILLETT: And Justice Breyer, my
20 response is that if the content of the information in
21 your credit report would have made you -- had it been
22 better information you'd have gotten a better rate, a
23 better result, your pocketbook wouldn't have been hit as
24 hard, you had a dollars-and-cents injury because of the
25 content of your information, then you have had an

1 adverse action.

2 JUSTICE BREYER: Okay, so your response is
3 just to repeat my question and say that's right?

4 MS. MILLETT: No. If I could continue on
5 that, if I could add on, if I could add on, the way
6 insurance companies work is they don't have 3 million
7 customers and 3 million rates. They have ranges and
8 most of them will have a top tier. They may have
9 specialized things for employees, but putting aside a
10 specialized category, there's a top range and they will
11 tell you, as they say in the briefs, that 10 to 15
12 percent of people fit in there. So they know what the
13 best rate is. They know what the next, above average
14 rate, the standard rate.

15 JUSTICE SCALIA: How do you fit, how do you
16 fit that within the language of the statute? Is it, I
17 fail -- you're a first-time customer and I fail to give
18 you a, you know, a break that maybe you could have had.
19 Is it a denial or cancellation of insurance? No. Is it
20 an increase in, an increase in any charge for insurance?
21 Is it a reduction or other adverse or unfavorable change
22 in the terms of coverage or in the amount of any
23 insurance? I find it hard to shoehorn your case into
24 that language.

25 MS. MILLETT: Well, to begin with, that may

1 be why Petitioners' position here certainly was not
2 reckless and the Ninth Circuit erred. But we do think
3 that the statutory language read as a whole supports
4 this. It could be a denial of a particular term in an
5 insurance contract. But you have to look at -- it's
6 important to understand you look --

7 JUSTICE SCALIA: I read the term as, as one
8 of the Justices here does, not referring to the rate.
9 The earlier part refers to the rate. An increase in any
10 charge for, that's the rate. And then it speaks of
11 change in the terms of coverage. I mean, that is, you
12 know, whether it covers hurricanes, or in the amount of
13 the insurance, whether you're insured for --

14 MS. MILLETT: Or it could be a reduction in
15 the terms. I mean, these things are statutory
16 construction issues to be litigated, and the important
17 issue here -- and they are presented in this case.
18 They're to be litigated and the important issue is that
19 when there is fair debate about these issues, insurance
20 companies will not be held to be willfully violating the
21 statute if they got the answer wrong.

22 But I think on the, on the substantive
23 question, it's important to read "adverse action" in
24 light of, if I could just finish the sentence, in light
25 of the definition of when a notice is required to be

1 issued, which turns upon the content of the information
2 in the report.

3 Thank you.

4 JUSTICE SCALIA: Which is where?

5 MS. MILLETT: And that's on page 6a of our
6 appendix.

7 JUSTICE SCALIA: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.
9 Mr. Shorr.

10 ORAL ARGUMENT OF SCOTT A. SHORR

11 ON BEHALF OF THE RESPONDENTS

12 MR. SHORR: Mr. Chief Justice and may it
13 please the Court:

14 When Congress intended to require a knowing
15 violation of the Fair Credit Reporting Act, it expressly
16 said so. It did not do so in connection with the claims
17 here under section 1681n(a)(1)(A). In each instance
18 where Congress wanted to allow -- to require a higher
19 mens rea, it said so and did so in connection with
20 liability that was greater. They required knowing mens
21 rea for the criminal provision. They required knowing
22 mens rea to obtain the even higher statutory damages
23 that are available under the act.

24 JUSTICE SOUTER: What do you say to the
25 argument from drafting history that looks at the history

1 both of little n and little o and it points out that as
2 originally, in the original bill, little o providing for
3 the actual damages required a finding of gross
4 negligence? Little n used the word "willful" just as it
5 does now, suggesting that "willful" would not include
6 gross negligence or something close to gross negligence
7 like recklessness. Then in, then in o, they changed the
8 standard from gross negligence to mere negligence, but
9 they made no change in n, which suggests that n stayed
10 whatever it always was, and if the argument from
11 contrast was that n probably meant knowing rather than
12 reckless, it stayed knowing even when the standard was
13 changed to negligence in o. What do you say to that
14 argument?

15 MR. SHORR: Justice Souter, I think the
16 only thing we can say about that is Congress reduced the
17 culpability for the actual damages from gross negligence
18 to negligence. I don't think that tells us much about
19 "willful" means, what willful means as a separate matter.

20 JUSTICE SOUTER: But the fact that they had
21 originally drafted n as it is, in contrast to the
22 original o, does tell us, doesn't it, something about
23 what they had in mind in n. And they must have had
24 something in mind, probably had in mind, something in n
25 which was a standard higher than gross negligence.

1 MR. SHORR: No, Justice Souter, I suggest
2 that what you can infer from that is that, if anything,
3 is perhaps Congress wanted to move, make clear that
4 under o the actual damages aren't close to willful or
5 reckless, so they reduced gross negligence to negligence
6 in that circumstance. But that still doesn't tell us
7 separately what "willful" meant, and of course "willful"
8 had been interpreted by this Court in similar cases
9 involving similar statutes to mean a knowing or reckless
10 disregard. And I respectfully disagree with --

11 JUSTICE SOUTER: Well, I mean, there's no
12 question it has been and that is sort of the usual
13 reading in the civil context. But we also keep
14 repeating, you know, "willful" is a word of many
15 meanings and you always look to the context. And here
16 the argument is that if you look to the context of the,
17 of the two statutory sections right up next to each
18 other, you can draw a, an inference about what "willful"
19 means.

20 MR. SHORR: I think if anything, Justice
21 Souter, here the context should be the actual statutory
22 terms used, and in section 1681n(b) they expressly
23 required the knowing standard and that's a knowing
24 violation of the law, as Justice Alito's question seemed
25 to draw out, a knowing impermissible purpose. And the

1 statute directly defines what a permissible purpose is
2 under this law.

3 So that reference to "knowing" could not refer
4 to a knowing, knowing the facts. And of course,
5 "willful" in some sense always includes some knowledge
6 of the factual circumstances.

7 In addition, the logical structure of the
8 act -- as I mentioned, we had negligence and actual
9 damages. We have a reckless standard, a knowing or
10 reckless standard for certain statutory damages, but
11 then an even higher level for the criminal and higher
12 statutory penalty provisions. And as I started to say,
13 a willful, knowing, reckless standard is entirely
14 consistent with how this Court has interpreted the term
15 in similar civil statutes that were in fact passed about
16 the same time the Hazen Paper case and Thurston and
17 McLaughlin cases interpreting the ADA and the FLSA and
18 other similar cases.

19 CHIEF JUSTICE ROBERTS: Counsel, even if
20 you're right about the standard, how can you suggest
21 that it's willful here when you have no judicial
22 construction, you have no administrative construction,
23 you have the statutory language that at least the
24 questions this morning have suggested is not perfectly
25 clear? How can you suggest that the action of the

1 companies on this case even under your standard was
2 willful?

3 MR. SHORR: Mr. Chief Justice, of course we
4 believe and the statute is in fact clear, you do not
5 need further interpretation by the Court.

6 CHIEF JUSTICE ROBERTS: So if we don't agree
7 with you on that, you would lose on the application of
8 the willfulness standard?

9 MR. SHORR: If you don't agree with us --

10 CHIEF JUSTICE ROBERTS: In other words,
11 your, your, your conclusion that this was a willful
12 violation depends upon your assertion that the statute
13 is perfectly clear?

14 MR. SHORR: I think that there is a level of
15 objective component that the statute at least has to be
16 understood by a reasonable person at some level using
17 standard aides of statutory construction. But that
18 isn't to suggest that the statute needs to be
19 interpreted by a higher court or even a district court
20 for counsel to get guidance. And of course, in this
21 case, there was no guidance supporting Respondents --
22 excuse me -- no guidance supporting Petitioners',
23 defendants', position. In fact, the only guidance
24 supported our position, including guidance from the FTC.

25 CHIEF JUSTICE ROBERTS: You're talking about

1 the Ball letter?

2 MR. SHORR: I am talking about the Ball
3 letter.

4 CHIEF JUSTICE ROBERTS: That wasn't even
5 binding on the commission, so why would that be regarded
6 as authoritative?

7 MR. SHORR: It was not, and we are not
8 suggesting it is, although it's entitled to Chevron
9 deference. But if you get past the minimum level of
10 objective standard, the question becomes what indicia
11 and markers were out there that would have guided this
12 company as to whether there was a high risk that they
13 were violating the act. And certainly the Ball letter,
14 which was sent by the staff specifically to address this
15 exact question and to guide insurance companies, gave
16 notice and it said charging anyone a higher amount than
17 the best available rate based on their credit score was
18 an adverse action. And in addition, there was --

19 JUSTICE BREYER: Well, how could that be? I
20 mean I agree that the statute is clear, but I think it's
21 clear the other way. That is, if you look at the
22 language, as you've just heard, if you look at the
23 purpose it's very hard to reconcile with the purpose an
24 instance where a person has continuous accidents. He's
25 a reckless driver. His insurance company puts him in

1 just a category below the bottom and they read his
2 credit report and they discover, despite his faults, he
3 always pays his bills on time. So they increase it, not
4 to the top category, but they give him a much better
5 deal. And you're saying this statute means that what I
6 just described is an adverse action based on a credit
7 report?

8 MR. SHORR: Yes.

9 JUSTICE BREYER: Yes. Okay. And then if
10 you're going to say yes, I want to hear why yes, and
11 then in light of the following: The little boy who says
12 wolf. You're probably puzzled what I mean by that. I
13 mean that if you're right in that interpretation, there
14 will be tens of millions of notices going out and
15 they'll have the same effect on the public that these
16 privacy notices have today. We get them every day,
17 dozens of them, and they go right in the wastebasket,
18 because they will become meaningless because to an
19 average person that notice will not mean that he better
20 look at his credit report. It will mean throw it in the
21 wastebasket.

22 All right, now I've got the purpose, I've
23 got the language, and I have what I think of as common
24 sense. Now, you explain why it's obvious the opposite.

25 JUSTICE GINSBURG: This is a different

1 question. We've been talking about "willful" up to now.

2 MR. SHORR: Yes, and this is the adverse
3 action question.

4 JUSTICE GINSBURG: You haven't addressed
5 adverse action at all.

6 MR. SHORR: And I'm happy to do so now.

7 JUSTICE GINSBURG: Yes. But, was there
8 anything further on willful? You said that the statute
9 was clear enough and you had the FTC informal advice,
10 but now we know that courts have divided on this
11 question, right? On --

12 MR. SHORR: Divided in the sense -- well,
13 the Ninth Circuit of course overturned the district
14 court's ruling so there's no current division, but if
15 that's what you mean, yes, Your Honor.

16 In a -- I guess I'll address quickly your
17 question. There's additional guidance provided by the
18 FTC that was subject to formal rulemaking and that was
19 16 CFR, I believe it's Part 601 Appendix C, and in that
20 instance the FTC, again subject to formal notice and
21 comment of rulemaking, said that the statute is defined
22 very broadly and it includes any action that can even be
23 considered to have a negative impact. And that plays in
24 the subjective aspect as well, but addressing your
25 question, Justice Breyer, first on the statutory

1 language --

2 JUSTICE SCALIA: It's pretty sloppy
3 lawyering, don't you think, any action that can even be
4 considered to have -- wow. This is a standard?

5 MR. SHORR: That was --

6 JUSTICE SCALIA: Any action that can even be
7 considered to have a negative impact.

8 MR. SHORR: That was guidance, Your Honor.

9 JUSTICE SCALIA: This is guidance?

10 MR. SHORR: That was guidance. That was
11 guidance to provide that in the context of reading this
12 statute, it should be read broadly.

13 JUSTICE SCALIA: But you know, I would tell
14 my CEO ignore to that, that it's meaningless.

15 MR. SHORR: In addition, the CEO would have
16 the guidance provided by the Ball letter.

17 But again addressing your question, Justice
18 Breyer, an increase based on credit. If we had let's
19 say an increase based on race, someone goes in and has
20 a product to buy and there's the best rate, and they
21 charge someone else based on their race a higher rate,
22 certainly that's an increase based on credit. There's
23 only one best rate.

24 CHIEF JUSTICE ROBERTS: But this is not an
25 antidiscrimination provision. It doesn't say anyone who

1 discriminates in the setting of rates has to send out
2 letters. It requires an adverse action. It requires an
3 increase in the charge.

4 MR. SHORR: And Your Honor, I was only using
5 that example to try and explain the statutory language.

6 JUSTICE BREYER: It doesn't explain it
7 because if you have an increase in the charge based on
8 race, of course that's an increase based on race.

9 MR. SHORR: Well, here we have --

10 JUSTICE BREYER: And if you refuse to give a
11 person the best rate, and lower his rate but not the
12 best rate, based on race, that is not an increase based
13 on race. That is discrimination based on race.

14 MR. SHORR: You're charging someone more
15 based on credit.

16 JUSTICE BREYER: That's true, and it's a
17 discrimination, but you didn't increase the rate. You
18 decreased it.

19 MR. SHORR: I think a natural --

20 JUSTICE BREYER: It's still a
21 discrimination, it's still unlawful.

22 MR. SHORR: Applying it to credit, a natural
23 definition that is charging someone more than you charge
24 others is an increase.

25 JUSTICE ALITO: When you say more, in order

1 for there to be an adverse action there has to be an
2 increase or an unfavorable change. And when you have an
3 initial application you have to figure out what is the
4 baseline in order to determine whether there has been an
5 increase or an adverse action. And you and the
6 Solicitor General just assert that the baseline in that
7 situation is the best possible rate that you can get,
8 but I don't understand where that comes from.

9 MR. SHORR: Because charging someone more
10 than someone else who qualifies for that better rate
11 based on their credit, is increasing them, charging them
12 more, but it's also evident from the statutory purpose,
13 which I think was a question you asked --

14 JUSTICE BREYER: Let me look at the
15 language. Go back to give me -- because in ordinary
16 English, which I hope I speak, it is not an increase,
17 but maybe there is a technical term in the technical
18 language of commercial law or in FTC law where the word
19 "increase" means decrease. And if you -- is there
20 anything you want -- no. It's a serious question, at
21 least if you want to cite me to some authority that uses
22 this word "increase" in the way you just suggested.

23 MR. SHORR: We believe that it's a standard
24 dictionary definition, to charge someone more for
25 insurance than they would otherwise qualify for is

1 increasing their charge.

2 JUSTICE BREYER: Which dictionary shall I
3 look at?

4 MR. SHORR: I think we can look at any
5 dictionary. I don't have a cite, Your Honor, but --

6 JUSTICE SOUTER: Aren't you making this
7 argument, and I think you got close to it a minute ago
8 when you alluded to statutory purpose. I think this is
9 what's behind, and you tell me if I'm wrong. One
10 purpose of the statute is to alert a consumer that the
11 consumer's credit report may contain errors which are
12 doing the consumer some kind of damage.

13 MR. SHORR: Yes, Your Honor.

14 JUSTICE SOUTER: And you want this consumer
15 alerted so the consumer can ask to see the report and
16 correct it if possible.

17 MR. SHORR: That's exactly right.

18 JUSTICE SOUTER: Reading the adverse action
19 the way you read it, it would give the consumer, or
20 consumers, a tip-off in the maximum number of cases.
21 In every case in which the consumer might have done
22 better if the credit report had assumed different
23 facts, on your reading theoretically, the consumer is
24 going to say I want to look at that report and correct
25 it if it's wrong. But isn't the fallacy of that

1 argument the fallacy of saying because that is one
2 object of the statute, every term within the statute
3 has got to be read in a way that maximizes the
4 effectuation of that object? And the trouble that
5 we're having on the bench is that "discrimination"
6 and "increase" are different terms. Increase says
7 the rate actually goes up from a baseline that the
8 consumer previously had, whereas discrimination does
9 not. And your reading in effect, "increase" to mean
10 discrimination in order to maximize the likelihood
11 that the consumer will look at the report, isn't that
12 the basis of your argument?

13 MR. SHORR: I think it has to be an increase
14 based on some aspect, but the only way to give effect to
15 that statutory purpose is an increase above what you
16 would otherwise qualify for had you had better credit
17 and of course --

18 JUSTICE SOUTER: Well, that's a way to give
19 every conceivable effect to that policy. But the
20 statute in drafting adverse, or drafting the terms of
21 adverse action, may very well have said we don't want to
22 give every conceivable effect to this purpose because if
23 we do, we'll get into the situation that Justice Breyer
24 described. Everybody will be getting notices and the
25 notices will be meaningless.

1 MR. SHORR: I don't think the notice is
2 problematic because you're alerting the consumer to
3 check that the information that the insurance company
4 expressly relied on to increase your charge --

5 JUSTICE SOUTER: To set the charge. I mean,
6 that's circular. To set the charge that it gives you.

7 MR. SHORR: I don't think you need a prior
8 charge to suffer an increase. If I walk into a candy
9 store and I've never purchased that candy before and the
10 best price that day is 5 cents but they say we're going
11 to charge you 10 cents, I've certainly suffered an
12 increase.

13 JUSTICE BREYER: By that you're talking
14 linguistically, but I am interested in the purpose. So
15 I looked up on the Internet approximately what percent
16 of the people have the best credit score and that's
17 about 1 percent. So 99 percent of the public doesn't
18 have the best possible credit score. Now I take it that
19 means that you could in fact, if it's even roughly
20 right, have 99 percent or a little less or even perhaps
21 a little more when they look at that report that, since
22 it's not perfect in 99 percent of the cases, it's quite
23 possible that they won't get the best conceivable rate
24 which might be reserved for just perfect people. And if
25 that's so, in 99 percent of the cases they'll send out

1 notices. And that's why I asked my question about the
2 boy who calls wolf. What will happen if 99 percent of
3 the people who apply for insurance or any other thing
4 get notices? I suspect that this is only intuitive,
5 that the notices are more likely to go into the
6 wastebasket than they are if there was really a
7 decrease. Now, do you have any light you can shed on
8 that?

9 MR. SHORR: Sure. The -- as an initial
10 matter, it's not the perfect credit that is the
11 standard, it's whatever would qualify you for GEICO's
12 best rate. And that's a much broader standard. We
13 don't know the exact amounts but if you look at GEICO
14 JA-67/68, they have fairly broad tiers, maybe five or six.
15 And of course not everyone is going to get the notice.
16 If your driving record totally eliminates -- if you have
17 great credit but your driving record eliminates the
18 possibility that you qualify for the better rate, you
19 wouldn't get notice in that circumstance either. But
20 the key to the notice is, if I have very good credit but
21 the information that the insurance company looks at is
22 incorrect, I will be charged more based on incorrect
23 information without ever having the opportunity to tell
24 the insurance company or whoever is collecting that
25 information for them, you've charged me the wrong amount

1 and I in fact qualify for that better rate.

2 CHIEF JUSTICE ROBERTS: Don't you have that
3 right independently, though, every year to look at a
4 copy of your credit report?

5 MR. SHORR: Well, what's significant here --
6 that has been added to the statute in the last two
7 years. But since 1970, Congress's concern is giving
8 notice at a critical time, when the insurance company
9 tells you we are relying on it and we may have taken an
10 adverse action.

11 I wanted to also mention, here it's not just
12 an increase. There's also been a denial, and that
13 Mr. Edo applied for insurance from GEICO, and was denied
14 insurance with the stand-alone company GEICO General, so
15 that is also an adverse action under the act.

16 CHIEF JUSTICE ROBERTS: When you say you
17 look at the increase with respect to the best credit
18 rate, why is that? Why wouldn't you look at it relative
19 to say the average insured who walks in the door?

20 MR. SHORR: Because that -- GEICO's
21 argument, and I think that's what they want, presumes
22 they're looking at accurate credit information. And the
23 problem is, Congress was always told that there is
24 significant inaccuracies in the credit information. I
25 think it's cited in the National Consumer Law Center

1 brief. In 1996, Congress was told that the error rate
2 in consumer information was 50 percent and there was a
3 20 percent serious error in the rates. Under GEICO's
4 interpretation --

5 CHIEF JUSTICE ROBERTS: I don't understand
6 what pertinence that has to my question which is, why do
7 you get to pick the best credit report as the baseline
8 from which you would measure your hypothetical increase?

9 MR. SHORR: Because under GEICO's theory of
10 the statute you may never get notice, even though you're
11 being charged more for insurance based on inaccurate
12 information, as long as you're not charge -- your charge
13 doesn't move below average. So a lot of people who are
14 in fact intended to be protected under this act will not
15 be protected until their charge goes below average, even
16 though the insurance company is continuing to charge
17 them more based on inaccurate information.

18 JUSTICE SOUTER: Why do we -- how do we know
19 that they were intended to be protected in this way by
20 getting this notice? That's the issue in the case.

21 MR. SHORR: Because going through the
22 statute and the increase based on credit, and then the
23 notice will give them the opportunity to check. The
24 consumer here is the -- it's a system of checks and
25 balances, and unless you give this consumer the

1 opportunity to check that they are in fact using the
2 correct information, it wasn't mistaken, it wasn't
3 driven down by identity theft, you can continue to
4 charge people more --

5 JUSTICE SOUTER: Okay. So that's --

6 MR. SHORR: -- based on inaccurate
7 information.

8 JUSTICE SOUTER: Your basic argument is the
9 statute, the definitions of adverse action have got to
10 be read in a way that maximizes the occasion upon which
11 a consumer will get a notice that may lead that consumer
12 to ask to see his credit report. That's your basic
13 premise?

14 MR. SHORR: Both based on the text and
15 purpose of statute, yes.

16 JUSTICE SOUTER: All right.

17 MR. SHORR: Briefly addressing the
18 application of the standard to the facts in this case,
19 we do think it's appropriate to remand for further
20 consideration in light of some new developments. GEICO
21 has just recently produced documents to us that
22 addressly -- directly address the question of scienter
23 here, so if there's -- if you go past a minimum
24 threshold --

25 JUSTICE STEVENS: I've read your reference

1 to those documents. Explain why you think that's so
2 important.

3 MR. SHORR: Because those documents directly
4 address the subject of standard here, that GEICO was
5 reckless or understood their --

6 JUSTICE STEVENS: How do those documents
7 shed any light on recklessness? I didn't see that.

8 MR. SHORR: I'm sorry, Your Honor?

9 JUSTICE STEVENS: How do the documents that
10 you describe shed any light on the extent of their
11 recklessness, if any?

12 MR. SHORR: I want to be careful, because I
13 had presented -- I asked to lodge them with the Court
14 and I can quote them if necessary, but within those
15 documents there is direct evidence that GEICO
16 interpreted the statute exactly how we do, that not
17 putting someone in the best tier based on credit --

18 CHIEF JUSTICE ROBERTS: Who's GEICO? I
19 mean, you're talking about particular lawyers at a
20 particular level, an ongoing debate about what this law
21 means. If you get one lawyer who says, you know, I
22 think you could read it this way, does that mean that
23 GEICO reads it that way?

24 MR. SHORR: No, Your Honor. In this
25 instance, this document involves top level GEICO

1 executives. And with respect to the advice of counsel
2 issue, frankly it's a red herring. We have never asked
3 to compel the defendants in either of these cases or any
4 of the cases we're involved in, to waive their
5 privilege. They've got the right, of course, to offer
6 advice of counsel as an affirmative -- as a defense in
7 this case, but we don't believe it's necessary to prove
8 our case to even reach what the counsel said. We
9 believe we can prove our case based on the documents and
10 subjective intent alone.

11 JUSTICE STEVENS: I still don't really
12 understand this part of the case very much. Assume that
13 a lawyer writes a letter saying you read it two or three
14 different ways, read the statute, it's very ambiguous,
15 and we think the Government's reading is the better
16 reading. And the executives think about it and they say
17 no, we don't think that's right. Has that proved
18 reckless disregard?

19 MR. SHORR: If the statute was clear and the
20 guidance --

21 JUSTICE STEVENS: If the statute's clear.
22 And of course, Miss Mahoney says the district judge
23 thought it was clear, but the other way.

24 MR. SHORR: And with respect to the district
25 court, we believe the district court here clearly erred,

1 as the Ninth Circuit found. And the guidance -- that
2 opinion certainly didn't precede the conduct that's at
3 issue here. The only guidance, again, available at the
4 time supported our reading of the statute. There was no
5 guidance from any court or from the FTC, or from
6 anywhere that would have supported defendants'
7 interpretation at that time. So that's another aspect
8 of inquiry into the subjective intent of the defendants.

9 If there are no further questions?

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.
11 Ms. Mahoney, you have four minutes remaining.

12 REBUTTAL ARGUMENT OF MAUREEN E. MAHONEY

13 ON BEHALF OF THE PETITIONERS

14 MS. MAHONEY: If I could start by just
15 responding to the issue of the new document, I just want
16 to emphasize that this document was created by people
17 who weren't lawyers. It was done before GEICO even
18 started using credit to price insurance. They were --
19 said they were brainstorming about what the statute
20 might mean. And I would point the Court to the
21 supplemental excerpt of records at 504 where when GEICO
22 implemented the policy that we're talking about here,
23 the -- they said that the intent was that we would send
24 to the people who were supposed to get the adverse
25 action notice. With the early systems development we

1 didn't have the ability to identify whether they were
2 supposed to receive the notice or not; that was because
3 they had not yet developed the way to do with what they
4 call the neutral, where they compare how the applicant
5 would have done if they hadn't taken credit, hadn't
6 taken credit into account at all. And this is a
7 procedure that's required actually in most States in
8 order to ensure that those who don't want to allow
9 access to credit reports or who don't have a sufficient
10 credit history are not treated adversely in the meaning
11 of those State laws, and that means worse than the
12 average loss ratio. So there's nothing in this record,
13 even if you take into account the documents they're
14 talking about, to suggest that there was somehow a
15 knowing or deliberate intent to try to violate the law.

16 With respect to a few of the factual or --
17 issues that came up, Safeco estimates that approximately
18 80 percent of all consumers that they are selling new
19 insurance to now have to get notice under the standards
20 established by the Ninth Circuit.

21 With respect to who can qualify for the top
22 tier of credit, it's only, at least at GEICO,
23 approximately 10 percent. So 90 percent of the
24 consumers would not qualify for that.

25 And the statute very plainly does not

1 prohibit differential treatment based on persons with
2 better credit, nor do State laws. And so the analogies
3 to race discrimination simply don't hold water, because
4 there Congress has told you what the baseline is, you
5 can't treat any person of a different race in a
6 different way, and that's not true under this statute.
7 And instead, it's quite reasonable, as GEICO has
8 concluded, to simply say look, if we wouldn't -- if
9 we're treating you worse than we would have treated you
10 if we ever looked at your credit report, worse than if
11 you had an average loss ratio for this criteria, we'll
12 send you the notice.

13 JUSTICE KENNEDY: Why did they use credit
14 reports? Is it just a hedge against late premiums and
15 the cost of late premiums, or does it bear on risk
16 factors generally?

17 MS. MAHONEY: Well, generally there are
18 about 15 factors that they look at to try to come up
19 with a prediction of loss ratio, and someone who has a
20 good credit history is generally regarded as
21 responsible, and responsible people tend to make less
22 claims. And so, again, it's just one factor of 15
23 though.

24 JUSTICE STEVENS: Yes. May I ask this
25 question? The reading of the statute in subsection i

1 about, in the charges for insurance advice, seems to
2 favor your view. But subsection ii about denial of
3 employment really seems to read in favor of the
4 Government's reading.

5 MS. MAHONEY: Well actually, I think that
6 when you factor in employment, it has -- it has the
7 opposite effect. Because what happens here is if you're
8 using employment verification reports, consumer reports
9 about employment, there are all kinds of consumer
10 reports. How do you tell who had the optimal employment
11 history? How could the baseline be the best employment
12 history possible?

13 JUSTICE STEVENS: No. But my point is, it
14 seems to me that getting a lesser salary, it just seems
15 like the first applicant would be an adverse employment
16 action under subparagraph ii, just -- do you see what
17 I'm trying to say?

18 MS. MAHONEY: That if you -- that in other
19 words, if you gave someone a lower salary --

20 JUSTICE STEVENS: It adversely affects any
21 current or prospective employee. Now the language in i
22 isn't, it doesn't read that way. But the thing that's
23 troubling me is whether you should interpret i in the
24 light of what ii seems to say.

25 MS. MAHONEY: Your Honor, I think that if

1 GEICO in this example, if you actually pay them less
2 because you looked at their credit report, then GEICO
3 would concede that that is in fact an adverse action.
4 So I don't think it's inconsistent at all.

5 Thank you, Your Honor.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 Miss Mahoney. The case is submitted.

8 (Whereupon, at 10:59 a.m., the case in the
9 above-entitled matters was submitted.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<p style="text-align: center;">A</p> <p>ability 49:1</p> <p>above-entitled 1:19 52:9</p> <p>absolutely 17:8 18:1</p> <p>access 49:9</p> <p>accidents 33:24</p> <p>account 22:6,6,7 22:13,15 49:6 49:13</p> <p>accounts 24:22</p> <p>accurate 43:22</p> <p>act 5:25 7:13 19:12,13,21 28:15,23 31:8 33:13 43:15 44:14</p> <p>action 10:1 14:17 15:16,22 18:10 21:18,20 21:25 22:8 23:8,18,24 24:4,22 26:1 27:23 31:25 33:18 34:6 35:3,5,22 36:3 36:6 37:2 38:1 38:5 39:18 40:21 43:10,15 45:9 48:25 51:16 52:3</p> <p>actions 9:11,13 14:10,12 15:13 15:15,17,21</p> <p>actor 13:1,5</p> <p>actual 7:23,25 8:9 14:8 29:3 29:17 30:4,21 31:8</p> <p>ADA 31:17</p> <p>add 26:5,5</p> <p>added 43:6</p> <p>addition 31:7 33:18 36:15</p> <p>additional 35:17</p> <p>address 33:14</p>	<p>35:16 45:22 46:4</p> <p>addressed 17:24 35:4</p> <p>addressing 35:24 36:17 45:17</p> <p>addressly 45:22</p> <p>adequate 18:6</p> <p>administration 17:15,16</p> <p>administrative 31:22</p> <p>adopt 11:18</p> <p>adopting 16:18</p> <p>adoption 5:3</p> <p>adverse 18:10 21:17,20,25 22:8 23:8,12 23:18,23 24:4 24:21 26:1,21 27:23 33:18 34:6 35:2,5 37:2 38:1,5 39:18 40:20,21 43:10,15 45:9 48:24 51:15 52:3</p> <p>adversely 49:10 51:20</p> <p>advice 35:9 47:1 47:6 51:1</p> <p>advisors 12:8</p> <p>AEDPA 16:11</p> <p>affirmative 47:6</p> <p>affirmed 4:19</p> <p>agency 9:7</p> <p>ago 39:7</p> <p>agree 19:8 21:17 21:19 32:6,9 33:20</p> <p>ahead 5:8 11:24</p> <p>aides 32:17</p> <p>AJENE 1:14</p> <p>AL 1:5,8,11</p> <p>alert 39:10</p> <p>alerted 39:15</p>	<p>alerting 41:2</p> <p>ALITO 8:16 9:1 37:25</p> <p>Alito's 30:24</p> <p>allow 14:25 21:12 28:18 49:8</p> <p>alluded 39:8</p> <p>ambiguous 47:14</p> <p>AMERICA 1:4</p> <p>amicus 2:3 3:6</p> <p>amount 26:22 27:12 33:16 42:25</p> <p>amounts 42:13</p> <p>analogies 50:2</p> <p>announced 12:22</p> <p>answer 15:13 18:11 22:5 27:21</p> <p>answers 12:14 17:13</p> <p>antidiscrimin... 36:25</p> <p>appeals 18:22</p> <p>APPEARAN... 1:22</p> <p>appears 6:2 8:17</p> <p>appendix 22:11 28:6 35:19</p> <p>applicant 49:4 51:15</p> <p>application 19:7 32:7 38:3 45:18</p> <p>applied 16:21 43:13</p> <p>applies 24:22</p> <p>apply 42:3</p> <p>Applying 37:22</p> <p>appropriate 45:19</p> <p>approximately 41:15 49:17,23</p> <p>area 12:11,16</p>	<p>15:25 17:3</p> <p>argument 1:20 3:1,4,8,11 4:3 4:8 18:18 25:18 28:10,25 29:10,14 30:16 39:7 40:1,12 43:21 45:8 48:12</p> <p>aside 26:9</p> <p>asked 38:13 42:1 46:13 47:2</p> <p>asks 17:16</p> <p>aspect 35:24 40:14 48:7</p> <p>assert 38:6</p> <p>assertion 32:12</p> <p>assessment 12:12</p> <p>Assistant 2:1</p> <p>Assume 47:12</p> <p>assumed 39:22</p> <p>assumes 22:5</p> <p>attorneys 15:14</p> <p>attorney-client 4:18</p> <p>authoritative 33:6</p> <p>authority 16:7 38:21</p> <p>authorized 15:24</p> <p>available 28:23 33:17 48:3</p> <p>average 26:13 34:19 43:19 44:13,15 49:12 50:11</p> <p>aware 13:13</p> <p>a.m 1:21 4:2 52:8</p>	<p>balance 18:14</p> <p>balances 44:25</p> <p>Ball 33:1,2,13 36:16</p> <p>based 10:6 15:25 18:10 24:5 33:17 34:6 36:18,19 36:21,22 37:7 37:8,12,12,13 37:15 38:11 40:14 42:22 44:11,17,22 45:6,14 46:17 47:9 50:1</p> <p>baseline 38:4,6 40:7 44:7 50:4 51:11</p> <p>bases 14:19</p> <p>basic 22:23 45:8 45:12</p> <p>basically 9:24 25:18</p> <p>basis 17:20 40:12</p> <p>bear 50:15</p> <p>began 16:5</p> <p>behalf 1:23 2:3 2:5 3:3,6,10,13 4:9 18:19 28:11 48:13</p> <p>believe 11:23 14:11,23 32:4 35:19 38:23 47:7,9,25</p> <p>believing 11:19 11:22</p> <p>bench 40:5</p> <p>benchmarks 18:8,11</p> <p>best 7:24 25:12 26:13 33:17 36:20,23 37:11 37:12 38:7 41:10,16,18,23 42:12 43:17 44:7 46:17</p>
<p>B</p>				
<p>back 38:15</p> <p>bad 12:20,21 16:25,25</p>				

<p>51:11 better 12:7 15:3 15:3 23:1,1,1 23:16,19 25:13 25:22,22,23 34:4,19 38:10 39:22 40:16 42:18 43:1 47:15 50:2 big 22:12 bill 29:2 billions 14:7,9 14:13 bills 34:3 binding 33:5 bit 22:20 blatantly 13:19 blindness 7:19 bodily 20:9 bottom 34:1 boy 34:11 42:2 brainstorming 48:19 break 26:18 Brennan 10:9 10:18 Breyer 9:22 10:3,10,25 11:5 23:20,23 24:2,14,17,23 25:9,19 26:2 33:19 34:9 35:25 36:18 37:6,10,16,20 38:14 39:2 40:23 41:13 brief 7:13 22:11 44:1 Briefly 45:17 briefs 26:11 bring 15:15 broad 42:14 broader 42:12 broadly 35:22 36:12 brought 15:16 Burr 1:8 4:5</p>	<p>buy 36:20</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 4:1 35:19 calculation 20:15 call 49:4 calls 10:18 42:2 canceling 22:17 cancellation 26:19 candy 41:8,9 car 25:6,7 care 19:11 careful 19:25 46:12 carved 9:14 case 4:14,20 5:9 8:10 10:23 12:18 16:4 17:8 19:4,18 21:9,13 26:23 27:17 31:16 32:1,21 39:21 44:20 45:18 47:7,8,9,12 52:7,8 cases 5:14 6:12 7:18 14:13,17 16:21 18:13 19:1,24 30:8 31:17,18 39:20 41:22,25 47:3 47:4 category 26:10 34:1,4 causing 20:9,11 Center 43:25 Cents 41:10,11 CEO 7:11 36:14 36:15 certain 9:11 21:23 31:10 certainly 7:21 14:14 15:7 16:1 18:3,6 23:16 27:1</p>	<p>33:13 36:22 41:11 48:2 certification 14:17 certified 14:10 14:12,14,20 15:19 CFR 35:19 chance 11:13 17:19 20:2 change 24:12,14 24:15,19,24 25:2,4 26:21 27:11 29:9 38:2 changed 29:7,13 changing 13:18 characterize 5:3 charge 18:9 23:24 24:8 26:20 27:10 36:21 37:3,7 37:23 38:24 39:1 41:4,5,6,8 41:11 44:12,12 44:15,16 45:4 charged 42:22 42:25 44:11 charges 51:1 charging 22:18 33:16 37:14,23 38:9,11 CHARLES 1:8 check 41:3 44:23 45:1 checks 44:24 Chevron 33:8 Chief 4:3,10 7:10,22 17:21 18:2,16,20 21:21 23:3,6 28:8,12 31:19 32:3,6,10,25 33:4 36:24 43:2,16 44:5 46:18 48:10 52:6</p>	<p>Circuit 5:6 8:5 11:20 17:11 19:6 27:2 35:13 48:1 49:20 Circuit's 4:13 circular 41:6 circumstance 30:6 42:19 circumstances 8:11 25:15 31:6 cite 38:21 39:5 cited 43:25 civil 5:15 16:16 16:21 18:23 19:18 30:13 31:15 claims 28:16 50:22 clarify 9:20 10:5 clarity 12:23 17:10 class 14:10,12 14:17 15:13,15 15:16,17,21,22 classes 14:14,19 clear 9:15,16 16:15 18:4 30:3 31:25 32:4,13 33:20 33:21 35:9 47:19,21,23 clearly 16:11 17:1,24 47:25 close 13:4,6,23 29:6 30:4 39:7 code 9:23 10:5 collecting 42:24 combines 6:8 come 10:3 11:6 16:5 17:24 50:18 comes 7:12 38:8 comment 35:21 commercial 38:18</p>	<p>commission 33:5 common 34:23 commonly 20:25 communicatio... 4:16,22 5:8 companies 26:6 27:20 32:1 33:15 company 1:4,11 4:4,5 7:11 20:18 33:12,25 41:3 42:21,24 43:8,14 44:16 compare 49:4 comparison 18:8 compel 47:3 completely 17:17 22:16 compliance 11:18 complicated 22:4 24:22 complying 7:15 component 18:24,25 19:18 19:20 32:15 concede 5:24 52:3 conceivable 25:12 40:19,22 41:23 concern 43:7 concluded 18:22 19:9 50:8 conclusion 5:7 7:6 16:6 32:11 conduct 5:20,25 6:14 7:3,6 17:4 17:17 48:2 Congress 5:22 7:7 10:15 11:15 12:21 15:23 18:7 28:14,18 29:16</p>
--	---	--	---	---

<p>30:3 43:23 44:1 50:4 Congress's 43:7 connection 23:24 28:16,19 conscious 8:4,8 10:22 11:1,9 consciously 9:25 13:13 consciousness 10:24 11:5 consideration 45:20 considered 35:23 36:4,7 consistent 31:14 constitutes 19:10 construction 27:16 31:22,22 32:17 consumer 15:2 18:11 24:6 39:10,12,14,15 39:19,21,23 40:8,11 41:2 43:25 44:2,24 44:25 45:11,11 51:8,9 consumers 15:7 39:20 49:18,24 consumer's 39:11 contain 39:11 contained 24:6 content 22:24 25:20,25 28:1 context 16:16,16 16:22 18:23 19:16 20:17 22:19 30:13,15 30:16,21 36:11 contexts 17:2 contextual 5:17 continue 26:4 45:3 continuing</p>	<p>44:16 continuous 33:24 contract 27:5 contrary 5:7 16:6 contrast 29:11 29:21 copy 43:4 correct 8:14 10:2 21:6,21 39:16,24 45:2 correctly 8:6 18:22 cost 50:15 costs 15:11 counsel 4:16,21 7:11 18:16 28:8 31:19 32:20 47:1,6,8 48:10 country 15:4 course 17:16 18:5 30:7 31:4 32:3,20 35:13 37:8 40:17 42:15 47:5,22 court 1:1,20 4:11,17,24 5:14,16 6:10 7:2 8:7,12 10:8 12:17,20 17:2 17:11 18:3,21 18:22,25 21:9 21:12 28:13 30:8 31:14 32:5,19,19 46:13 47:25,25 48:5,20 courts 35:10 court's 4:25 10:6 17:7 35:14 coverage 26:22 27:11 covers 27:12 created 48:16</p>	<p>creative 17:13 19:9 credit 7:13 9:6,7 15:4 21:23 22:2,25 23:18 25:10,16,21 28:15 33:17 34:2,6,20 36:18,22 37:15 37:22 38:11 39:11,22 40:16 41:16,18 42:10 42:17,20 43:4 43:17,22,24 44:7,22 45:12 46:17 48:18 49:5,6,9,10,22 50:2,10,13,20 52:2 criminal 10:18 10:18 16:16,18 28:21 31:11 criteria 50:11 critical 43:8 cross-referenc... 22:14 culpability 29:17 culpable 7:8 curiae 2:3 3:7 current 35:14 51:21 customer 24:20 26:17 customers 26:7</p> <hr/> <p>D</p> <p>D 4:1 damage 16:22 39:12 damages 15:25 20:22 28:22 29:3,17 30:4 31:9,10 day 34:16 41:10 deal 23:2 34:5 death 20:9</p>	<p>debatable 11:12 debate 13:10 27:19 46:20 deciding 21:13 decision 7:14 decrease 24:9 38:19 42:7 decreased 37:18 defend 5:9 defendant 5:24 19:12 defendants 21:4 21:15 32:23 47:3 48:6,8 defense 47:6 deference 33:9 define 7:20 defined 8:7 17:1 35:21 defines 23:21 31:1 definition 9:23 16:6 22:8,10 24:10 27:25 37:23 38:24 definitions 45:9 defy 12:21 degree 17:23 20:10 delay 20:12 deliberate 49:15 denial 26:19 27:4 43:12 51:2 denied 43:13 Department 2:2 departure 19:2 20:23 depends 32:12 describe 46:10 described 10:8 34:6 40:24 despite 34:2 determination 4:14 21:4,5,7 determine 5:19 18:9 38:4</p>	<p>determined 8:6 developed 49:3 development 48:25 developments 45:20 deviation 19:11 deviations 21:6 dictionary 38:24 39:2,5 difference 10:10 10:11 different 8:19 34:25 39:22 40:6 47:14 50:5,6 differential 50:1 differently 16:15 direct 46:15 directly 31:1 45:22 46:3 disagree 30:10 disagreement 11:23 discover 34:2 discriminates 37:1 discrimination 37:13,17,21 40:5,8,10 50:3 discussed 6:12 19:4 dispositive 17:9 disregard 5:1 8:3,4,9 9:25 12:24 16:12 18:24 30:10 47:18 district 4:24,25 8:12 16:5 17:7 17:11 32:19 35:13 47:22,24 47:25 divided 35:10,12 division 35:14 Dixon 6:13</p>
--	--	--	---	---

<p>document 46:25 48:15,16</p> <p>documents 45:21 46:1,3,6 46:9,15 47:9 49:13</p> <p>doing 13:22 23:19 39:12</p> <p>dollar 14:25 15:1,6 20:5,13</p> <p>dollars 14:7,13 15:10 20:17</p> <p>dollars-and-ce... 25:24</p> <p>door 43:19</p> <p>dozens 34:17</p> <p>drafted 29:21</p> <p>drafting 28:25 40:20,20</p> <p>draw 30:18,25</p> <p>driven 45:3</p> <p>driver 33:25</p> <p>driving 42:16,17</p> <p>D.C 1:16,23 2:2</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 1:23 3:2,12 4:1,1,8 48:12</p> <p>earlier 27:9</p> <p>early 48:25</p> <p>Edo 1:14 4:6 43:13</p> <p>effect 34:15 40:9 40:14,19,22 51:7</p> <p>effectuation 40:4</p> <p>either 5:4 21:2 42:19 47:3</p> <p>eliminates 42:16 42:17</p> <p>emphasize 48:16</p> <p>employee 51:21</p> <p>employees 26:9</p> <p>employment 51:3,6,8,9,10</p>	<p>51:11,15</p> <p>English 38:16</p> <p>ensure 49:8</p> <p>entirely 31:13</p> <p>entitled 21:11 25:6 33:8</p> <p>erred 19:10 27:2 47:25</p> <p>erroneous 23:10</p> <p>error 44:1,3</p> <p>errors 5:10 22:2 39:11</p> <p>essence 15:6 17:12</p> <p>established 16:11 49:20</p> <p>estimates 49:17</p> <p>ET 1:4,8,11</p> <p>everybody 23:14 25:10 40:24</p> <p>evidence 46:15</p> <p>evident 38:12</p> <p>exact 33:15 42:13</p> <p>exactly 16:23 24:16 39:17 46:16</p> <p>example 24:7 37:5 52:1</p> <p>excerpt 48:21</p> <p>excuse 22:10 23:22 32:22</p> <p>executives 47:1 47:16</p> <p>existence 21:14</p> <p>existing 22:6,7 22:13,17 24:22</p> <p>explain 34:24 37:5,6 46:1</p> <p>explained 9:9</p> <p>explore 4:15</p> <p>expressly 28:15 30:22 41:4</p> <p>extent 20:4,23 46:10</p> <p>extreme 19:11</p>	<hr/> <p style="text-align: center;">F</p> <hr/> <p>face 19:12</p> <p>facing 14:7</p> <p>fact 11:23 12:2 23:18 29:20 31:15 32:4,23 41:19 43:1 44:14 45:1 52:3</p> <p>factor 50:22 51:6</p> <p>factors 50:16,18</p> <p>facts 6:15,22,23 6:24 31:4 39:23 45:18</p> <p>factual 31:6 49:16</p> <p>fail 19:13 26:17 26:17</p> <p>fair 7:12 11:13 11:19,21 12:2 12:6 13:9 20:6 27:19 28:15</p> <p>fairly 11:12 42:14</p> <p>fallacy 39:25 40:1</p> <p>false 12:14</p> <p>far 21:5</p> <p>Farmer 10:8,18</p> <p>faults 34:2</p> <p>favor 51:2,3</p> <p>FCRA 5:5</p> <p>Federal 12:19 20:25</p> <p>figure 38:3</p> <p>find 4:17,22 16:10 26:23</p> <p>finding 29:3</p> <p>finish 27:24</p> <p>first 4:4,12,24 5:6,12 12:12 14:2 16:4,13 17:13,18,22 18:2 19:17 35:25 51:15</p> <p>first-time 26:17</p>	<p>fit 26:12,15,16</p> <p>fits 23:7</p> <p>five 42:14</p> <p>flip 23:13</p> <p>FLSA 31:17</p> <p>focused 19:2</p> <p>following 34:11</p> <p>foremost 19:17</p> <p>form 10:15</p> <p>formal 35:18,20</p> <p>forms 10:12</p> <p>formulation 6:7</p> <p>forth 16:12</p> <p>found 8:12 13:8 21:8,12 48:1</p> <p>four 48:11</p> <p>frankly 47:2</p> <p>free 25:6</p> <p>FTC 32:24 35:9 35:18,20 38:18 48:5</p> <p>further 4:15 22:1 23:9 32:5 35:8 45:19 48:9</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 4:1</p> <p>GEICO 1:10 4:5 42:13 43:13,14 45:20 46:4,15 46:18,23,25 48:17,21 49:22 50:7 52:1,2</p> <p>GEICO's 42:11 43:20 44:3,9</p> <p>gender 23:17</p> <p>general 1:10 2:2 4:5 7:11 38:6 43:14</p> <p>generally 20:7 50:16,17,20</p> <p>getting 40:24 44:20 51:14</p> <p>GINSBURG 14:9,15,21 15:9,18 34:25</p>	<p>35:4,7</p> <p>give 25:11 26:17 34:4 37:10 38:15 39:19 40:14,18,22 44:23,25</p> <p>given 15:10,12</p> <p>gives 41:6</p> <p>giving 43:7</p> <p>go 5:8 11:24 12:14 34:17 38:15 42:5 45:23</p> <p>goes 17:15 36:19 40:7 44:15</p> <p>going 21:24 34:10,14 39:24 41:10 42:15 44:21</p> <p>good 21:24 42:20 50:20</p> <p>gotten 15:3 25:22</p> <p>govern 7:20 22:19</p> <p>Government's 47:15 51:4</p> <p>great 17:7 20:1 42:17</p> <p>greater 20:1,2,2 28:20</p> <p>gross 29:3,6,6,8 29:17,25 30:5</p> <p>ground 11:19,22 12:2,6 13:9,9</p> <p>guess 35:16</p> <p>guidance 32:20 32:21,22,23,24 35:17 36:8,9 36:10,11,16 47:20 48:1,3,5</p> <p>guide 33:15</p> <p>guided 33:11</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hallway 23:14</p> <p>happen 42:2</p>
---	--	---	--	---

happens 51:7	44:8	increase 18:9	4:4,5 21:22	30:9
happy 35:6		22:22 23:15,15	22:8 26:6,19	issue 5:22 7:12
hard 25:24	I	23:17,24 24:3	26:20,23 27:5	10:23 11:8,9
26:23 33:23	identify 49:1	24:4,5,8,11	27:13,19 33:15	12:12 14:2
harder 22:20	identity 45:3	25:1,5,8 26:20	33:25 38:25	16:4 17:17,22
harm 8:10 14:8	ignore 36:14	26:20 27:9	41:3 42:3,21	17:24 22:23
16:1	ii 51:2,16,24	34:3 36:18,19	42:24 43:8,13	27:17,18 44:20
Hazen 19:3	illegality 8:10,12	36:22 37:3,7,8	43:14 44:11,16	47:2 48:3,15
31:16	10:21 11:14	37:12,17,24	48:18 49:19	issued 28:1
hear 4:3 7:15	12:24 13:12	38:2,5,16,19	51:1	issues 4:23
34:10	immunity 17:3	38:22 40:6,6,9	insured 27:13	17:13 27:16,19
heard 33:22	impact 35:23	40:13,15 41:4	43:19	49:17
hearing 20:19	36:7	41:8,12 43:12	insurers 14:16	iv 22:9,11
hedge 50:14	impermissible	43:17 44:8,22	intended 28:14	i.e 24:4
held 6:11 7:2	30:25	increasing 38:11	44:14,19	
19:1,3 27:20	implemented	39:1	intends 25:14	J
help 11:7	48:22	independently	intent 9:12,17	January 1:17
herring 47:2	important 7:14	43:3	9:21 13:1,8	JA-67/68 42:14
high 8:9,11	14:5 19:20	indicia 33:10	47:10 48:8,23	judge 16:5 21:13
10:13,21 11:10	27:6,16,18,23	individual 9:4	49:15	47:22
11:14,14 12:24	46:2	individuals 14:8	interchangeable	judgment 4:19
13:11 17:23	importantly 9:8	industry 14:7	9:18	14:22,24
19:22 20:16	impose 14:5	infer 8:17 21:14	interested 20:19	judicial 31:21
21:8,11 33:12	impression 4:24	30:2	41:14	jury 21:13
higher 28:18,22	12:12 14:2	inference 30:18	interference	Justice 2:2 4:3
29:25 31:11,11	17:14,18,22	informal 35:9	12:18	4:10 6:1,7,18
32:19 33:16	18:2	information	Internet 41:15	6:20 7:10,22
36:21	inaccuracies	22:25 23:9	interpret 15:4	8:2,16 9:1,22
history 28:25,25	43:24	24:5 25:20,22	51:23	10:3,10,25
49:10 50:20	inaccurate	25:25 28:1	interpretation	11:5,21 12:3,7
51:11,12	44:11,17 45:6	41:3 42:21,23	4:13 11:11,12	12:25 13:3,14
hit 23:4 25:23	inaction 19:21	42:25 43:22,24	32:5 34:13	13:18,21 14:9
hold 50:3	inappropriate	44:2,12,17	44:4 48:7	14:15,21 15:9
Honor 6:25 9:8	5:2	45:2,7	interpretations	15:18 16:2,10
10:2 12:2,10	incentivize	inherently 12:13	8:13	17:21 18:2,16
13:11,25 14:14	15:14	initial 22:6 38:3	interpreted 8:6	18:20 19:14,23
14:18 15:21	include 22:16	42:9	16:15 30:8	21:16,21 23:3
16:17 18:1	29:5	injure 9:12,17	31:14 32:19	23:6,20,23
35:15 36:8	includes 18:24	injury 20:7,9,12	46:16	24:2,14,17,23
37:4 39:5,13	24:11,11 31:5	20:13 25:24	interpreting	25:9,19 26:2
46:8,24 51:25	35:22	inquiry 4:18	31:17	26:15 27:7
52:5	including 6:13	48:8	interpretive	28:4,7,8,12,24
hope 38:16	32:24	instance 9:5	5:10	29:15,20 30:1
huge 19:24	inconsistent	28:17 33:24	intuitive 42:4	30:11,20,24
hurricanes	52:4	35:20 46:25	involved 47:4	31:19 32:3,6
27:12	incorrect 42:22	instruction 7:20	involves 46:25	32:10,25 33:4
hypothetical	42:22	insurance 1:3,10	involving 12:18	33:19 34:9,25

35:4,7,25 36:2 36:6,9,13,17 36:24 37:6,10 37:16,20,25 38:14 39:2,6 39:14,18 40:18 40:23 41:5,13 43:2,16 44:5 44:18 45:5,8 45:16,25 46:6 46:9,18 47:11 47:21 48:10 50:13,24 51:13 51:20 52:6 Justices 27:8	knowledge 5:19 6:14,15 7:23 7:25 8:9,23,23 31:5 known 4:23 10:14 knows 5:24	32:14,16 33:9 46:20,25 liability 15:8 19:24,25 20:1 20:3,5,22,23 28:20 liable 10:14 light 27:24,24 34:11 42:7 45:20 46:7,10 51:24 likelihood 40:10 line 15:14 linguistically 41:14 litigated 27:16 27:18 litigation 12:6 15:10 little 22:20 29:1 29:1,2,4 34:11 41:20,21 lodge 46:13 logical 31:7 logically 22:21 long 44:12 longer 25:6 look 5:8,17 7:4 9:10 10:7 12:25 13:3,7 15:22 17:9 21:23 27:5,6 30:15,16 33:21 33:22 34:20 38:14 39:3,4 39:24 40:11 41:21 42:13 43:3,17,18 50:8,18 looked 41:15 50:10 52:2 looking 21:9 43:22 looks 28:25 42:21 lose 12:13 32:7 losing 17:3	loss 49:12 50:11 50:19 lot 22:12 44:13 lower 21:24 23:6 23:7 37:11 51:19 lowered 22:1 23:9	34:12,13,19,20 35:15 40:9 41:5 46:19,22 48:20 meaning 5:10 6:4 13:15 21:17,20 23:8 49:10 meaningless 34:18 36:14 40:25 meanings 30:15 means 5:19 6:13 6:14,15,21,21 8:18 10:20 29:19,19 30:19 34:5 38:19 41:19 46:21 49:11 meant 7:2 9:17 29:11 30:7 measure 44:8 mens 7:8 28:19 28:20,22 mention 43:11 mentioned 31:8 mere 29:8 Millett 2:1 3:5 18:17,18,20 19:16 20:4 21:19 22:4 23:4,11,22 24:1,10,16,20 25:4,19 26:4 26:25 27:14 28:5 million 26:6,7 millions 34:14 mind 12:21 15:23 29:23,24 29:24 minimum 33:9 45:23 minute 39:7 minutes 48:11 misimpression 6:23
K	L		M	
keep 30:13 KENNEDY 16:2,10 50:13 key 42:20 kind 39:12 kinds 9:13 15:24 51:9 knew 7:2 9:4 know 7:16 8:1 11:3,7,17 12:5 13:4,21 14:1,4 14:5 17:5,10 20:12 21:24 25:13 26:12,13 26:18 27:12 30:14 35:10 36:13 42:13 44:18 46:21 knowing 5:4 6:2 6:4,8,22 7:5,21 8:17,21 9:18 16:19 28:14,20 28:21 29:11,12 30:9,23,23,25 31:3,4,4,9,13 49:15 knowingly 6:6 6:11,15,21 7:1 7:9,25 8:16,21 9:9	laboring 6:23 language 18:4 26:16,24 27:3 31:23 33:22 34:23 36:1 37:5 38:15,18 51:21 late 50:14,15 Laughter 12:9 law 4:25 5:1,20 5:23 6:14,24 7:3 8:23 9:18 12:11,19,22,23 13:16,19,22,24 14:1,3 17:10 19:2 20:7,10 20:24 21:5 30:24 31:2 38:18,18 43:25 46:20 49:15 lawful 11:19,22 laws 49:11 50:2 lawyer 7:11 12:7 17:16 46:21 47:13 lawyering 36:3 lawyers 11:2,22 11:23 20:19 46:19 48:17 lawyer's 12:12 lead 45:11 lesser 20:10 23:17 51:14 letter 33:1,3,13 36:16 47:13 letters 37:2 let's 36:18 level 31:11		Mahoney 1:23 3:2,12 4:7,8,10 6:5,10,19,25 7:18,24 8:4,20 9:3 10:2,7,11 11:4,8 12:1,4 12:10 13:2,7 13:17,20,25 14:11,18,23 15:12,20 16:9 16:17 18:1,3 47:22 48:11,12 48:14 50:17 51:5,18,25 52:7 making 39:6 markers 33:11 matter 1:19 29:19 42:10 matters 52:9 MAUREEN 1:23 3:2,12 4:8 48:12 maximize 40:10 maximizes 40:3 45:10 maximum 39:20 McLaughlin 31:17 mean 5:13,15,23 6:18,22 7:7 8:8 9:4 10:4 11:2,5 13:18,21 17:4 17:22 23:19 24:8,14,23 27:11,15 30:9 30:11 33:20	

<p>misstepped 19:6 mistake 6:22 mistaken 45:2 model 9:23 10:5 morning 4:4 31:24 move 30:3 44:13 multiply 15:6</p> <hr/> <p style="text-align: center;">N</p> <p>n 4:1 29:1,4,9,9 29:11,21,23,24 National 43:25 natural 37:19,22 necessarily 9:4 25:5 necessary 46:14 47:7 necessity 4:17 need 7:13,14 10:23 18:11 22:18 32:5 41:7 needs 32:18 negative 35:23 36:7 negligence 29:4 29:6,6,8,8,13 29:17,18,25 30:5,5 31:8 negligent 21:3 neither 15:18 neutral 49:4 never 24:18 41:9 44:10 47:2 nevertheless 5:6 new 22:18 24:20 45:20 48:15 49:18 news 21:24 Ninth 4:12 5:6 8:5 11:20 17:11 19:6 27:2 35:13 48:1 49:20 normal 13:15 notice 15:2</p>	<p>27:25 33:16 34:19 35:20 41:1 42:15,19 42:20 43:8 44:10,20,23 45:11 48:25 49:2,19 50:12 noticed 18:5 notices 25:15,16 34:14,16 40:24 40:25 42:1,4,5 notified 22:1 number 6:12 15:7 19:1 39:20</p> <hr/> <p style="text-align: center;">O</p> <p>o 4:1 29:1,2,7,13 29:22 30:4 object 40:2,4 objection 14:17 objective 19:15 19:17,19 20:16 21:7 32:15 33:10 objectively 10:21 13:11 17:4 19:22 21:8,11 obtain 28:22 obvious 19:22 21:11 34:24 occasion 45:10 odd 24:25 25:3 offer 47:5 office 23:13 official 17:15 okay 13:6 26:2 34:9 45:5 once 21:8,11 ongoing 46:20 operation 22:23 opinion 4:25 48:2 opinions 10:6 opportunity 4:15 42:23</p>	<p>44:23 45:1 opposite 34:24 51:7 optimal 51:10 oral 1:19 3:1,4,8 4:8 18:18 28:10 order 37:25 38:4 40:10 49:8 ordinary 19:11 38:15 Ore 2:5 original 29:2,22 originally 29:2 29:21 outcome 13:4 overstated 25:17 overturned 35:13</p> <hr/> <p style="text-align: center;">P</p> <p>P 4:1 page 3:1 22:10 22:11 28:5 paper 19:3 20:12 31:16 papers 19:5 part 22:5 24:5 27:9 35:19 47:12 particular 5:21 19:8 22:19 27:4 46:19,20 parts 6:3 passed 31:15 PATRICIA 2:1 3:5 18:18 pay 20:18 22:18 52:1 paying 21:23 pays 34:3 penal 9:23 10:5 penalties 15:24 penalty 14:25 15:1,6 31:12 pending 14:13</p>	<p>people 25:11 26:12 41:16,24 42:3 44:13 45:4 48:16,24 50:21 percent 17:18 23:14,15 26:12 41:15,17,17,20 41:22,25 42:2 44:2,3 49:18 49:23,23 perfect 6:16 41:22,24 42:10 perfectly 31:24 32:13 permissible 8:22 8:22,24 9:2,6 31:1 permit 4:15 permitted 11:18 person 10:13 32:16 33:24 34:19 37:11 50:5 persons 50:1 pertinence 44:6 Petitioner 21:17 Petitioners 1:6 1:12,24 2:4 3:3 3:7,13 4:9,16 4:21 5:3,9 8:13 19:8 27:1 32:22 48:13 phrase 6:2,11 7:1 pick 44:7 picking 17:3 place 24:25 25:1 places 8:17 plain 18:5 plainly 49:25 plaintiff 21:10 plaintiffs 5:24 15:14 plays 35:23 please 4:11 18:21 28:13</p>	<p>plenty 15:14 pocketbook 23:5 25:23 point 13:10 14:25 48:20 51:13 points 29:1 policy 21:22 40:19 48:22 Portland 2:5 position 11:16 19:9 21:6 27:1 32:23,24 possibility 42:18 possible 25:12 38:7 39:16 41:18,23 51:12 potential 10:16 14:6 15:1,8 16:1 19:23 20:3 precede 48:2 precisely 9:4 prediction 50:19 predictive 12:13 premise 45:13 premiums 50:14 50:15 presented 27:17 46:13 presumably 10:15 15:23 presumes 43:21 pretty 36:2 previously 40:8 price 15:3 41:10 48:18 primarily 10:6 prior 41:7 privacy 34:16 privilege 4:18 47:5 privileged 5:8 probably 17:18 29:11,24 34:12 problem 43:23 problematic</p>
---	---	--	---	---

41:2 procedure 49:7 proceed 9:11 17:20 proceeding 15:13 proceedings 4:15 produced 45:21 product 36:20 program 11:18 prohibit 50:1 proposition 16:8 prospective 51:21 protected 44:14 44:15,19 prove 47:7,9 proved 47:17 provide 18:7 36:11 provided 9:12 35:17 36:16 provides 9:11 providing 29:2 provision 8:18 22:14 28:21 36:25 provisions 22:8 22:12 31:12 public 34:15 41:17 punitive 10:17 15:24 16:22 purchased 41:9 purely 19:19 purpose 8:22,22 8:24 12:20,21 16:25 17:1 30:25 31:1 33:23,23 34:22 38:12 39:8,10 40:15,22 41:14 45:15 purposes 9:2,6 22:15 put 14:5 25:11	putative 15:21 puts 33:25 putting 26:9 46:17 puzzled 34:12 <hr/> <p style="text-align:center">Q</p> <hr/> qualified 17:3 qualifies 38:10 qualify 38:25 40:16 42:11,18 43:1 49:21,24 question 11:4 13:5,6,10,23 15:9 16:13 26:3 27:23 30:12,24 33:10 33:15 35:1,3 35:11,17,25 36:17 38:13,20 42:1 44:6 45:22 50:25 questions 4:25 16:3 18:12 31:24 48:9 quickly 35:16 quite 41:22 50:7 quote 46:14 <hr/> <p style="text-align:center">R</p> <hr/> R 4:1 race 36:19,21 37:8,8,12,13 37:13 50:3,5 range 26:10 ranges 26:7 rate 21:23 22:19 23:1 25:12,14 25:22 26:13,14 26:14 27:8,9 27:10 33:17 36:20,21,23 37:11,11,12,17 38:7,10 40:7 41:23 42:12,18 43:1,18 44:1 rates 21:25 22:1 23:7 24:24	26:7 37:1 44:3 ratio 49:12 50:11,19 Ratzlaf 6:25 rea 7:8 28:19,21 28:22 reach 47:8 reached 5:7 read 5:12,14 25:16 27:3,7 27:23 34:1 36:12 39:19 40:3 45:10,25 46:22 47:13,14 51:3,22 reading 5:2 7:4 7:24 30:13 36:11 39:18,23 40:9 47:15,16 48:4 50:25 51:4 reads 46:23 real 7:12 really 8:1 12:6 14:2,9 17:6 42:6 47:11 51:3 reason 9:19 23:16 25:7 reasonable 7:4 8:14 11:10 13:9 32:16 50:7 reasoning 17:10 rebuttal 3:11 18:15 48:12 receive 49:2 reckless 5:1,4,20 8:2 9:24 10:4 16:7,20 17:19 18:24 19:21 27:2 29:12 30:5,9 31:9,10 31:13 33:25 46:5 47:18 recklessly 5:13 5:15	recklessness 8:5 8:7,8 10:8,12 10:15,19 16:19 18:25 19:10,10 20:2,6 29:7 46:7,11 reconcile 33:23 record 42:16,17 49:12 records 48:21 recovery 20:24 red 47:2 reduced 29:16 30:5 reduction 26:21 27:14 refer 7:5 24:24 24:25 25:1,2 31:3 reference 31:3 45:25 referred 10:17 referring 27:8 refers 27:9 reflect 5:1 refuse 37:10 regarded 33:5 50:20 regulations 18:12 reiterate 24:21 relative 43:18 relevant 6:15 relied 5:13 41:4 rely 17:12 21:12 relying 43:9 remaining 48:11 remand 45:19 remanded 4:14 rental 25:6 repair 25:7 repeat 26:3 repeatedly 5:16 repeating 30:14 report 9:7 18:11 21:23 22:2,25 23:18 24:6	25:11,16,21 28:2 34:2,7,20 39:11,15,22,24 40:11 41:21 43:4 44:7 45:12 50:10 52:2 Reporting 7:13 28:15 reports 49:9 50:14 51:8,8 51:10 representative 14:16 require 7:6 28:14,18 required 27:25 28:20,21 29:3 30:23 49:7 requires 19:12 21:3 37:2,2 reserved 41:24 resist 14:19 respect 43:17 47:1,24 49:16 49:21 respectfully 30:10 Respondents 2:6 3:10 18:19 21:19 28:11 32:21 responding 48:15 response 25:18 25:20 26:2 responsible 50:21,21 result 20:8 25:23 reviewing 22:13 22:15 Richland 19:3 right 9:23 16:11 22:4 23:3 26:3 30:17 31:20 34:13,17,22
--	--	---	--	--

<p>35:11 39:17 41:20 43:3 45:16 47:5,17 rights 12:19 risk 8:9,11 10:1 10:13,21,22 11:1,3,9,10,14 12:24 13:11 19:21,22 20:8 20:9,11,16 21:8,11 33:12 50:15 ROBERTS 4:3 7:10,22 17:21 18:2,16 21:21 23:3,6 28:8 31:19 32:6,10 32:25 33:4 36:24 43:2,16 44:5 46:18 48:10 52:6 roughly 41:19 rulemaking 35:18,21 rules 12:22 17:1 ruling 17:7 35:14</p> <hr/> <p style="text-align: center;">S</p> <p>S 4:1 Safeco 1:3 4:4 49:17 salary 23:14,15 24:8,9 51:14 51:19 sanction 11:15 sanctions 10:17 14:6 satisfy 18:7 save 18:14 saying 11:17 16:5 17:8 22:18 34:5 40:1 47:13 says 6:5 7:12 8:21 9:1 10:12 12:20 13:25</p>	<p>16:18 23:23 24:2,3 34:11 40:6 46:21 47:22 SCALIA 6:1,7 6:18,20 8:2 11:21 12:3,7 12:25 13:3,14 13:18,21 26:15 27:7 28:4,7 36:2,6,9,13 scienter 45:22 score 33:17 41:16,18 SCOTT 2:5 3:9 28:10 Screws 12:17 13:17,25 16:14 16:17,24 second 16:14 section 7:5,7 9:10,13 28:17 30:22 sections 5:18,23 7:5 30:17 secured 12:19 see 5:18 39:15 45:12 46:7 51:16 selling 49:18 send 24:6 25:15 25:16 37:1 41:25 48:23 50:12 sense 6:4,16 20:15 23:12 31:5 34:24 35:12 sent 33:14 sentence 27:24 separate 22:9 29:19 separately 30:7 serious 20:7,9 38:20 44:3 set 20:14 41:5,6 setting 5:13 6:16</p>	<p>10:16 14:4 37:1 settled 24:13 shed 42:7 46:7 46:10 shift 21:9 Shoe 19:3 shoehorn 26:23 Shorr 2:5 3:9 28:9,10,12 29:15 30:1,20 32:3,9,14 33:2 33:7 34:8 35:2 35:6,12 36:5,8 36:10,15 37:4 37:9,14,19,22 38:9,23 39:4 39:13,17 40:13 41:1,7 42:9 43:5,20 44:9 44:21 45:6,14 45:17 46:3,8 46:12,24 47:19 47:24 show 21:2 side 17:3 23:13 significance 17:7 significant 43:5 43:24 similar 19:1 30:8,9 31:15 31:18 simply 15:2 20:11 50:3,8 situation 38:7 40:23 six 42:14 slightly 25:17 sloppy 36:2 Solicitor 2:1 38:6 somebody 20:10 somewhat 23:19 sorry 21:15 22:10,12 46:8 sort 20:12 23:13</p>	<p>25:2 30:12 sound 14:16 Souter 28:24 29:15,20 30:1 30:11,21 39:6 39:14,18 40:18 41:5 44:18 45:5,8,16 speak 38:16 speaks 19:10 27:10 specialized 26:9 26:10 specifically 33:14 staff 33:14 standard 8:5,7 10:19 11:6 16:19,19,20,20 16:23 18:7 19:7,11,15,15 21:6 26:14 29:8,12,25 30:23 31:9,10 31:13,20 32:1 32:8,17 33:10 36:4 38:23 42:11,12 45:18 46:4 standards 49:19 stand-alone 43:14 start 48:14 started 31:12 48:18 State 49:11 50:2 States 1:1,20 2:3 3:6 49:7 statute 5:2,18,21 6:3 7:17 8:13 9:1,5 11:11,12 15:4 17:23 18:4,6 20:21 22:24 23:20,23 25:3,14 26:16 27:21 31:1 32:4,12,15,18</p>	<p>33:20 34:5 35:8,21 36:12 39:10 40:2,2 40:20 43:6 44:10,22 45:9 45:15 46:16 47:14,19 48:4 48:19 49:25 50:6,25 statutes 5:15 20:25 30:9 31:15 statute's 47:21 statutory 4:23 27:3,15 28:22 30:17,21 31:10 31:12,23 32:17 35:25 37:5 38:12 39:8 40:15 stayed 29:9,12 STEVENS 19:14,23 21:16 45:25 46:6,9 47:11,21 50:24 51:13,20 store 41:9 structure 31:7 subject 35:18,20 46:4 subjective 13:1 19:14,19 21:10 35:24 47:10 48:8 submitted 52:7 52:9 subparagraph 51:16 subsection 50:25 51:2 substantial 9:25 15:8 substantive 27:22 success 11:13 17:19 sue 15:10</p>
--	--	---	--	---

<p>suffer 41:8 suffered 41:11 sufficient 5:21 12:23 49:9 sufficiently 10:13 suggest 30:1 31:20,25 32:18 49:14 suggested 7:19 31:24 38:22 suggesting 29:5 33:8 suggests 29:9 summary 4:19 supplemental 48:21 supported 32:24 48:4,6 supporting 2:4 3:7 32:21,22 supports 27:3 suppose 11:21 24:17 supposed 48:24 49:2 Supreme 1:1,20 sure 14:18 20:18 42:9 surplusage 9:20 suspect 42:4 system 44:24 systems 48:25</p> <hr/> <p style="text-align: center;">T</p> <p>take 24:3 41:18 49:13 taken 43:9 49:5 49:6 talk 16:4 20:16 talking 14:6 20:5,17,20 32:25 33:2 35:1 41:13 46:19 48:22 49:14 talks 22:12,14</p>	<p>technical 15:25 38:17,17 tell 26:11 29:22 30:6 36:13 39:9 42:23 51:10 tells 29:18 43:9 tend 50:21 tens 34:14 term 4:13 5:14 5:23 6:17 8:16 9:9 27:4,7 31:14 38:17 40:2 terminating 22:17 termination 22:15 terms 24:12,15 24:15,18,19,24 25:2,5 26:22 27:11,15 30:22 40:6,20 text 45:14 Thank 18:16 28:3,7,8 48:10 52:5,6 theft 45:3 theoretically 39:23 theory 44:9 thing 22:17 24:7 24:9 29:16 42:3 51:22 things 21:10 26:9 27:15 think 4:21 6:21 7:24 8:20 9:8 9:15,15,19 10:7 11:8 12:1 12:3,10 13:7 13:17,20 14:3 14:24 15:21 16:23 17:6,9 19:17 20:5,6 20:15 21:10,22 22:22 25:17</p>	<p>27:2,22 29:15 29:18 30:20 32:14 33:20 34:23 36:3 37:19 38:13 39:4,7,8 40:13 41:1,7 43:21 43:25 45:19 46:1,22 47:15 47:16,17 51:5 51:25 52:4 thought 9:1 13:5 47:23 thousand 14:25 15:1,5,10 three 5:22 19:4 47:13 threshold 45:24 throw 34:20 Thurston 19:3 31:16 tier 26:8 46:17 49:22 tiers 42:14 time 5:7 16:10 18:14 31:16 34:3 43:8 48:4 48:7 tip-off 39:20 today 34:16 told 9:5 17:17 43:23 44:1 50:4 tolerate 20:8,10 top 26:8,10 34:4 46:25 49:21 tort 9:11 20:7 totally 42:16 treat 50:5 treated 49:10 50:9 treating 50:9 treatment 50:1 tried 10:5 trouble 40:4 troubling 51:23 true 12:14 20:6</p>	<p>37:16 50:6 truly 12:11 14:2 try 37:5 49:15 50:18 trying 51:17 Tuesday 1:17 turn 4:12 turns 20:23 28:1 two 6:8 8:17 10:12 14:11 15:16 16:2,2 30:17 43:6 47:13</p> <hr/> <p style="text-align: center;">U</p> <p>uncertainty 17:23 unclear 10:5 understand 25:9 27:6 38:8 44:5 47:12 understanding 22:22 understood 32:16 46:5 underwriting 23:25 unfavorable 24:12,14,15 26:21 38:2 United 1:1,20 2:3 3:6 unjustifiable 10:1 unknowable 14:1,4 unlawful 10:1 11:3,24 37:21 unsettled 12:11 unusual 20:21 use 9:8,23 10:4 16:21 18:8 50:13 users 9:5 uses 19:1 38:21 usual 30:12</p> <hr/> <p style="text-align: center;">V</p>	<p>v 1:7,13 variable 20:14 various 17:2 verification 51:8 versus 4:5,6 10:18 view 22:16 51:2 views 5:4 violate 9:21 17:1 49:15 violated 6:24 7:3 21:4 violates 5:20,25 6:14 violating 7:17 12:3,5 13:15 13:19,23 14:3 27:20 33:13 violation 5:4 9:18 11:25 12:18 13:6,22 15:25 21:1,2,3 28:15 30:24 32:12 violations 5:20 vs 10:8</p> <hr/> <p style="text-align: center;">W</p> <p>waive 47:4 waivers 4:18 walk 41:8 walks 43:19 want 7:15,16 16:4 24:21 34:10 38:20,21 39:14,24 40:21 43:21 46:12 48:15 49:8 wanted 5:9 11:15 28:18 30:3 43:11 warning 18:6 Washington 1:16,23 2:2 wasn't 8:24 9:19 33:4 45:2,2 wastebasket</p>
---	---	--	--	---

<p>34:17,21 42:6 water 50:3 way 8:20 10:8 11:1 15:5 20:21 23:12 24:25 25:3 26:5 33:21 38:22 39:19 40:3,14,18 44:19 45:10 46:22,23 47:23 49:3 50:6 51:22 ways 47:14 went 11:2 weren't 48:17 we'll 4:3 20:8,10 40:23 50:11 we're 14:6 21:24 25:10 40:5 41:10 47:4 48:22 50:9 we've 7:12 35:1 willful 6:2,4,9 7:19 9:12,17 9:21 11:25 12:18 13:15 15:25 16:3 21:2 29:4,5,19 29:19 30:4,7,7 30:14,18 31:5 31:13,21 32:2 32:11 35:1,8 willfully 4:13 5:11,12,14,17 5:23 6:6,11,13 6:17,18,24 7:1 7:1,7,17 8:18 13:15,19,19,23 16:14,21 27:20 willfulness 18:23 19:2 21:14 32:8 wolf 34:12 42:2 word 5:17 29:4 30:14 38:18,22 words 6:8 24:23</p>	<p>24:24 32:10 51:19 work 26:6 worse 49:11 50:9,10 wouldn't 6:3 25:23 42:19 43:18 50:8 wow 36:4 write 25:3 writes 47:13 written 20:21 wrong 21:22 27:21 39:9,25 42:25 wrongful 17:5</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,15</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 43:3 years 43:7</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>06-100 1:13 4:5 06-84 1:7 4:4</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 23:15 41:17 10 26:11 41:11 49:23 10:04 1:21 4:2 10:59 52:8 15 26:11 50:18 50:22 16 1:17 35:19 1681h 9:10 1681n 7:5 8:17 9:13,14 1681n(a)(1)(A) 28:17 1681n(b) 30:22 18 3:7 1970 43:7 1996 44:1</p> <hr/> <p style="text-align: center;">2</p>	<p>20 44:3 2007 1:17 28 3:10</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 26:6,7 3a 22:11 24:11</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 3:3 40 17:18 48 3:13</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 23:14 41:10 50 44:2 504 48:21</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6a 28:5 601 35:19</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>80 49:18</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>90 49:23 99 41:17,20,22 41:25 42:2</p>		
---	---	---	--	--