

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2012-CA-023358-XXXX-MB

JAMES TODD WAGNER, SUPERCAR
ENGINEERING, INC., a Florida
corporation,

Plaintiffs,

vs.

WARREN MOSLER, MOSLER AUTO CARE
CENTER, INC. ("MACC") a Florida corporation,
d/b/a Mosler Automotive,

Defendants.

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TRANSCRIPT OF HEARING PROCEEDINGS

DATE TAKEN: Wednesday, November 6, 2024
TIME: 12:11 p.m. - 12:46 p.m.
PLACE: Judge Daniel T.K. Hurley Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Judge Luis Delgado, Circuit Judge

This cause came on to be heard at the time and place aforesaid,
when and where the following proceedings were stenographically
reported by:

Melanie Wustrau, RMR, CRR

Job No: 383400

1 APPEARANCES:

2

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BY: JAMES TODD WAGNER, Pro Se

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1 Proceedings began at 12:11 p.m.:

2 THE COURT: How are you doing?

3 MR. WEBER: Good. How are you, Your Honor?

4 THE COURT: Thank you for coming in during lunch
5 today. I know we blocked off one hour because I do
6 want to get out of here sooner than later.

7 As far as this final judgment, we've gone
8 through almost all of it. There's one count that
9 we're addressing today.

10 MR. WEBER: Correct, Your Honor.

11 MR. ZAPPOLLO: Your Honor, if I may, a
12 housekeeping matter. This morning just before I was
13 coming down here, Mr. Wagner called me and informed
14 me that he was relieving me of my responsibilities
15 and wants to represent himself. I informed him you
16 can't represent SEI, so I will continue to represent
17 SEI today. Mr. Wagner is speaking for himself.

18 THE COURT: Okay.

19 MR. WAGNER: I confirm that, Your Honor.

20 MR. WEBER: I would say, Your Honor, that this
21 is a motion regarding only plaintiff SEI's Count B.
22 So Plaintiff Wagner really doesn't have a say in this
23 argument.

24 THE COURT: Mr. Zappolo?

25 MR. ZAPPOLLO: I was under the impression that we

1 were still talking about the final judgment that
2 would be entered that entails all the parties.

3 THE COURT: So we're here on the final judgment
4 which does entail all the parties.

5 MR. ZAPPOLLO: Right.

6 THE COURT: But we tackled most of it with the
7 exception of the one thing and then I said based on
8 the JNOV that I would entertain motions on that one
9 thing.

10 MR. ZAPPOLLO: On the motion for -- I forget,
11 they did another motion for directed verdict or
12 judgment on the stand of verdict as to one count, I
13 agree with that, Your Honor. The issue is I need to,
14 if the court would indulge me, I need to address one
15 issue that came up last time with respect to the
16 language of the final judgment in total.

17 MR. WAGNER: If I may, that actually involves
18 the one against me personally.

19 MR. ZAPPOLLO: It does. And so that issue, Your
20 Honor, is this, we had discussed the language for the
21 final judgment and I had convinced Your Honor that
22 you should include the language that is in the
23 complaint. What's interesting about this is after
24 that hearing, I went back and consulted with
25 appellate counsel and they said we didn't inject that

1 language in there, that's Mr. Weber's language. And
2 then I compared Mr. Weber's language to the language
3 that's actually in the complaint and it doesn't
4 match. The language that is in the final judgment
5 doesn't match the language in the complaint and I'll
6 remind the court I had proposed a very simple final
7 judgment prior to the trial. Your Honor said you
8 wanted to go with Mr. Weber's final judgment that had
9 some language in it and then work backwards from
10 there. So this is from my perspective, as I said at
11 the trial, I've never had someone make something so
12 complex as Mr. Weber did. Your Honor ruled and I
13 respect the court's ruling. I'm not taking issue
14 with that. But if there's any error with this, I
15 don't want it to be from my doing, it's Mr. Weber's
16 drafting that did it.

17 We filed and we submitted as part of our
18 pretrial stipulation a very simple final judgment or
19 proposed final judgment and then the trial was had by
20 consent of the parties. I mean, we were suing on, we
21 believed what was, well, I'll let Mr. -- I guess
22 Mr. Wagner can address the claim specific to him but
23 as for SEI, the trade liable claims, Mr. Weber's
24 proposed final judgment, or, excuse me, yes, the
25 proposed final judgment that was actually used with

1 the jury doesn't even track the complaint
2 allegations. We thought we were suing on what was
3 said in the -- what was said by Mr. Mosler, the words
4 that came out of his mouth that we stressed that at
5 trial and the evidence of the words that came out of
6 Mr. Mosler's mouth were these articles and that's
7 going to be a whole another thing that gets all
8 twisted up in appeal, I am sure.

9 But our perspective was and has always been we
10 sued Mr. Mosler for the words that came out of his
11 mouth. The evidence of that was the articles. The
12 articles were admitted into evidence without
13 objection and so from SEI's perspective -- from SEI's
14 perspective that is the -- what was tried is what
15 should be included in the final judgment.

16 I've never had, you know, do it as specific as
17 the court wanted in this case and so Mr. Weber
18 drafted that. If it's in conflict, I guess we're
19 just kind of stuck where we are. As to the other
20 count, Mr. Wagner --

21 THE COURT: Mr. Wagner, very briefly.

22 MR. WAGNER: Thank you, Your Honor. One other
23 bit of evidence that goes to what Mr. Mosler said to
24 the journalist, which is what the defamation is, was
25 in the sworn depositions of the individual

1 journalists which were presented to the jury as
2 testimony. So there's both the articles themselves
3 are evidence and also the testimony, the sworn
4 testimony of the journalists themselves are also
5 evidence. And as I understood, and correct me if I'm
6 wrong, it is still part of the debate here is which
7 version of the final judgment Your Honor is going to
8 go with. I do have some prepared statements I'd like
9 to make if Your Honor would allow it.

10 THE COURT: How much time is that going to take?

11 MR. WAGNER: Five minutes.

12 THE COURT: Go ahead.

13 MR. WAGNER: May I sit down? I went to a
14 Virginia tech engineering school and Yale for an MBA
15 and learned about statistical process control.
16 Statistical process control is used by Fortune 500
17 companies and multi-national corporations almost
18 universally as a means of insuring both quality and
19 consistency of outputs from all forms of systems
20 ranging from CNC machines to entire production lines
21 to hospital operating rooms. There is published
22 adaptation of the statistical process control. It's
23 a decades-old tool. I evaluated the sum total of the
24 actions taken by this court to strip the outcome of
25 my 13-year running lawsuit away from the jury, using

1 this statistical process control which is used around
2 the world. Using assumptions that are highly
3 advantageous to the court, this analysis tool
4 concludes that the 22 claims of no evidence or
5 inference would only happen in a normal what's called
6 in control environment once every 37 billion years.
7 This is a very rare and unique moment. The predicted
8 life span of the universe is only 13.8 billion years.

9 So I have some testimony here that the court has
10 deemed to be no evidence. I want to read that into
11 the record. Trial testimony of Warren Mosler
12 testifying page 931, line 21 through page 932, line
13 14, Question -- this is reading from the exclusive
14 distribution. Question is: Okay, SEI will forfeit
15 its exclusive distribution rights in China and
16 Thailand immediately upon failure to perform any of
17 the two through six, terms two through six in
18 paragraph A provided that MACC has fulfilled its
19 obligation to supply vehicles as described in
20 paragraph B. The question continues. Since MACC
21 didn't supply any vehicles, that paragraph can't come
22 into effect, can it?

23 The answer: Why not?

24 Question: Well, it says provided how, provided;
25 right?

1 Answer: Yeah.

2 Question: So the requirement from paragraph 1
3 to act as a forfeit of SCS distribution rights would
4 be that MACC has fulfilled its obligation to supply
5 vehicles?

6 Answer: Well, a couple things. Todd was in
7 charge of sales and production so he is on both sides
8 of this.

9 THE COURT: Mr. Wagner, let me stop you for a
10 second because I think what you're doing is you're
11 arguing your case all over again and this is not the
12 right time to do that. What are you trying to do?
13 What are you trying to accomplish right now?

14 MR. WAGNER: I want to discern what things I
15 will need to upgrade from this evidence to make it
16 considered to be actual evidence by the court. What
17 things need to be improved. I have like seven
18 different quotes I want to read into the record and
19 then ask that question.

20 THE COURT: You want to figure out what evidence
21 needs to be improved?

22 MR. WAGNER: Yes.

23 THE COURT: For what purpose?

24 MR. WAGNER: The court has discerned that none
25 of this is evidence. I want to figure out why in

1 case we have a second trial so I can do a better job
2 of making sure what is submitted to the jury is
3 actually evidence. Is that fair?

4 THE COURT: I think I understand you. I think
5 you're a smart man and I think you're maybe curious
6 and so you're asking these questions because you want
7 to ascertain some knowledge but this is not the right
8 time and this is not the appropriate vehicle and what
9 you're asking for is what's sometimes called an
10 advisory opinion and we don't do that.

11 MR. WAGNER: Okay. I only have a few more
12 minutes, is it okay?

13 THE COURT: If you're going to be doing the same
14 thing that you just did for the past couple minutes,
15 I don't think it's appropriate and a waste of time.

16 MR. WAGNER: May I ask some rhetorical
17 questions?

18 THE COURT: You can ask it. I don't know that
19 I'll answer it but go ahead.

20 MR. WAGNER: Okay. If the testimony that I just
21 mentioned and the 12,000 other questions were truly
22 not relevant to the issues of the lawsuit, why didn't
23 defendants object on the basis of relevance?

24 Next rhetorical question, if the court is now
25 coming back and saying there is no evidence of

1 anything for plaintiffs, why did the court allow the
2 trial to continue through 11 days?

3 THE COURT: All right, thank you very much. I
4 can appreciate it, but that's not what we're here for
5 today.

6 MR. WEBER: Before we do, Your Honor, I want to
7 note my objection to what Mr. Zappolo did. He just
8 threw a lot of statements out there that we object to
9 and we think were inaccurate and I also want to
10 object to what Mr. Wagner just did trying to re-argue
11 and supplement what's already been argued and decided
12 by the court.

13 THE COURT: So we're not going to re-argue
14 anything. As far as the work that we did last time
15 we were present, that's going to stand. Let's tackle
16 the new work now, please, so that we can reach
17 finality.

18 MR. WEBER: Thank you, Your Honor. So we're
19 here today on -- may I sit down, Your Honor?

20 THE COURT: Please.

21 MR. WEBER: Thank you. We're here on defendant
22 MACC's motion for judgment notwithstanding the
23 verdict as to plaintiff SEI's Count B. Okay, Your
24 Honor. Just that sole count. And the count is a
25 claim for quantum meruit regarding certain alleged

1 unpaid EPA approval work. I think it's undisputed
2 that even though the entirety of the work encompassed
3 a larger time frame, the work at issue in Count B is
4 for the limited time frame of between April 16 to
5 September 28, 2011.

6 Now, as set forth in our motion, we think there
7 is no evidence or inference that supports that MACC
8 accepted or assented to the work and that a
9 reasonable person under the circumstances would
10 expect to pay for it because the work that was done
11 after April 15th was really done by plaintiff SEI for
12 plaintiff Wagner and plaintiff SEI's benefit because
13 the testimony cited in our motion demonstrates that
14 plaintiffs testified that they knew that Mr. Mosler
15 said that the work should stop on April 15th and
16 that's the end of it and that's cited on page 5 of
17 our motion, trial transcript 1572, lines 3 through
18 10, and also at other places in our motion.

19 And the reason that the work was for plaintiff
20 SEI's benefit and not defendant MACC's was because
21 Mr. Mosler was attempting to sell defendant MACC and
22 there is testimony from Mr. Wagner himself that says
23 that using the certification would allow him to take
24 the company in a different direction than Mr. Mosler
25 had planned.

1 So we made numerous citations to the transcript,
2 Your Honor, and we have analyzed the exhibits in our
3 motion and even if it can be said that defendant MACC
4 agreed to or assented to or that the work should be
5 paid for, there is no evidence or inference that
6 supports an award of damages because in this case
7 plaintiff Wagner or plaintiff SEI testified that they
8 believed the amount of damages should be based on the
9 hours associated with plaintiff Wagner's salary or
10 the value of what was created by the work during that
11 time frame.

12 So let's start with the value of what was
13 created. The law does not allow a party to seek the
14 value to the defendant that the completed project
15 represents. Instead, the measure of recovery is the
16 reasonable value of the labor performed and the
17 market value of any materials furnished and that's
18 cited in the cases included in our motion, Your
19 Honor.

20 So this plaintiff SEI's request for the value of
21 what was created runs contrary to the law. The only
22 possible basis for an award of damages would be based
23 on the reasonable value of the labor performed and
24 the market value of the materials furnished. As set
25 forth in our motion, plaintiffs' testimony was

1 unclear and only gave approximations. They could not
2 provide any accuracy as to the actual hours worked on
3 the work, which is even clearer because as set forth
4 in Defendant's Exhibit 134, plaintiff Wagner admitted
5 he was working on the work during the time frame
6 approximately 50 percent of the time. So he doesn't
7 know the amount of hours with any precision and he
8 doesn't know when during the relevant time frame he
9 was working those hours.

10 Even worse, Your Honor, is that in the response,
11 plaintiffs have not cited any evidence that supports
12 an award of damages. Plaintiffs cite to a document
13 that Your Honor may have been referring to when Your
14 Honor generally referenced the testimony but that
15 document, Plaintiff's Exhibit 109, which is included
16 in the materials, Your Honor, has, I believe, and I
17 can tell Your Honor it's Tab H, that document would
18 be regarding the value of any work created which is
19 not a valid basis for an award under quantum meruit
20 and the document itself doesn't even identify that
21 the alleged \$5 million identified there in the
22 document pertains to the work at issue in Count B,
23 rather than some other certification which plaintiffs
24 identify also existed.

25 The other bases and we have filed a reply that

1 Your Honor may not have had a chance to look to at
2 this morning also fail plaintiffs' response to our
3 motion which vaguely references alleged evidence
4 without providing any citation to the evidence.
5 During trial plaintiff supposedly testified that he
6 believed the value of the unpaid work was 5 million
7 to 10 million. Again, the value of what was created
8 is irrelevant to the analysis.

9 Plaintiffs cite testimony from Mr. Mosler
10 allegedly. Well, if you look at the transcript, that
11 testimony on page 264 of the trial transcript, line
12 22 to page 265, line 12 isn't even from defendant
13 Warren Mosler. It was instead from a Ms. Klaker and
14 if Your Honor looks at the testimony, Your Honor
15 doesn't have the reply, it's not in your binder, I
16 can hand you a copy.

17 THE COURT: I just got the reply as I was
18 walking on the bench.

19 MR. WEBER: If Your Honor looks on page 5 of the
20 reply, we quote the missing portion of Ms. Klaker's
21 testimony. It states: Okay, and why would you care
22 whether it passed emissions? Lines 15, 16.

23 Answer: Because it was our product to start
24 with. It would be nice if it passed emissions.

25 She's not saying clearly and there's no

1 reasonable inference that they are going to use this
2 work for the benefit of defendant MACC. They are
3 referring to a certain vehicle that was purchased by
4 plaintiff SEI itself and plaintiffs were doing the
5 work on that vehicle for their own benefit. That the
6 court denied, well, initially denied a motion for
7 judgment that was stating the verdict as to Count C
8 has no bearing on Count B because, in fact, the court
9 later granted the judgment notwithstanding the
10 verdict as to Count C. And in our reply, which we go
11 through each of these alleged evidences and we state
12 that to the extent they haven't identified the
13 evidence, they can't rely on just vague allegations
14 that there is such evidence.

15 Their response argues that, as Mr. Wagner just
16 mentioned, the odds supposedly don't support the
17 outcome in this court and that the odds would not
18 allow Count B to be dismissed. Well, that argument
19 is completely frivolous because litigation is
20 unpredictable. There's no odds on outcomes here.

21 Finally, plaintiffs' attempt to shift the burden
22 on the elements of quantum meruit claim by saying we
23 should have raised, assented to in our affirmative
24 defenses, that's an element of quantum meruit claim
25 and it's plaintiffs' burden to prove that element and

1 I'll reserve the remainder of my time, if any, Your
2 Honor, once I see with any specificity what evidence
3 Mr. Zappolo is going to refer to in his argument.

4 MR. ZAPPOLO: Good morning, Your Honor, or good
5 afternoon now. Counsel's argument about Count B is
6 that there's no evidence or inference and that's the
7 law here. Is there any evidence whatsoever or is
8 there even evidence that an inference can be drawn?
9 That's a very high burden that they have to meet.

10 Now, what do we know? When the work was done
11 and Mr. Mosler was advised that the certifications
12 had been completed and that work included the time
13 period of April 16 to September 28, 2011, that's a
14 long time, Your Honor, that Mr. Weber -- excuse me,
15 Mr. Wagner was doing work on this. Mr. Mosler
16 responded, good job. That's the evidence in this
17 case. He wasn't surprised. He didn't say, what are
18 you talking about? What are you doing? Et cetera.

19 Now, what do we also have? We have counsel said
20 that there's no evidence that MACC accepted the work.
21 Well, good job, is an acceptance of the work. The
22 certificate was issued to MACC. So they accepted
23 that. They forwarded -- the evidence shows they
24 forwarded that e-mail with the certificate to
25 potential buyers, that the price that was being

1 offered and negotiated for the company went up by a
2 substantial price and the evidence that we had is
3 there's an e-mail in the record where the person says
4 that the valuation of that certification is at least
5 \$5 million or words to that effect.

6 Now, they say no reasonable person would expect
7 for to pay for the work but here's what we know, Your
8 Honor. During the, quote/unquote, "contract period,"
9 MACC paid for the work. They not only expected to
10 pay for the work, they did pay for the work. So then
11 when we get outside of that contract, when we get
12 outside of that period and we're into the 4-16 to
13 9-28-2011 period, suddenly they are not expecting to
14 pay for the work?

15 Now, they said this was a different direction
16 than Mosler wanted to take the company but here's the
17 problem, Your Honor. The trial transcript at page
18 264, line 22.

19 Question: You were aware that Supercar
20 Engineering, Inc. through Todd Wagner was working on
21 EPA certifications for that car; correct?

22 Answer: Yes.

23 Question: Okay. And why was SEI doing that?

24 Answer: Working on the certification?

25 Question: Yes, the EPA.

1 Answer: So it would pass emissions. The car
2 would pass emissions.

3 Question: Okay. And in your mind what did
4 passing emissions mean?

5 Answer: It means it would meet the requirements
6 that the government set forth for those fumes or
7 whatever.

8 Question: Okay. And did you have any hopes
9 about whether or not the car would pass emissions?

10 Answer: Of course we wanted it to pass.

11 And what else do we have in the record, Your
12 Honor? We have, you might recall, those big blowups
13 of that orange car that Mr. Mosler was trying to sell
14 during the same time period. If he had EPA
15 certification, he could sell the car legally. If he
16 didn't, he couldn't sell the car legally.

17 Now, the -- so moving on. Counsel referred to
18 there's no evidence of damages. I call the court's
19 attention to the fact the jury asked for a
20 calculator. We don't know, we can't second-guess
21 what the jury was thinking back in the jury room but
22 we do know there was testimony about Mr. Wagner's
23 salary and we know that and to address counsel's
24 argument that there's case law that says that you
25 can't get the value of whatever the ultimate product

1 was worth or something, here's the concern about
2 that, Your Honor, if that was the case and that's
3 what the jury had ruled upon, we would have had a \$5
4 million verdict for this count -- 5 to 10 million.
5 We don't. We have what's obviously something that is
6 almost, and I said in my response to their motion,
7 we're in the 90 something percentile about the
8 correlation between Mr. Wagner's testimony about the
9 amount of time he spent, his hourly rate, et cetera,
10 and what the jury awarded. So I think it's pretty
11 clear that the jury awarded it based upon the hours
12 and there is record evidence to support that the
13 jury -- to give the jury that linchpin within or upon
14 which to base its judgment.

15 And counsel even alluded to the fact that Wagner
16 allotted approximately 50 percent of his time, et
17 cetera. There's a whole lot of testimony about that
18 and it's not our job now to sit here and go back and
19 reassess, et cetera, and sit here as the seventh
20 juror.

21 Exhibit 5, Your Honor, is another thing that
22 counsel doesn't address and that talks and Exhibit 5
23 that's in evidence, it has copies of Mr. Wagner
24 submitting how much his time is worth. That's within
25 the ultimate bill of sale for the car that was sold

1 to SEI.

2 Now, Ms. Klaker says it would be nice if it
3 passed emissions but of course it would be nice if it
4 passes emissions because that increases the value of
5 the company, you can infer that, because it increases
6 the value of the other cars that Mr. Mosler was
7 selling at the time, the jury could certainly infer
8 that, and then counsel arguments it's just about,
9 she's only talking about SEI's car but the testimony
10 shows and the evidence shows they were trying to sell
11 other cars.

12 And so in conclusion, Your Honor, it's not lost
13 on me that all argument -- every argument that I've
14 heard is in the absolutes. Anything I argue in this
15 case -- I think anything I've argued in this case has
16 been deemed, quote/unquote, "absolutely frivolous" or
17 at least "frivolous" by opposing counsel. I don't
18 know whether the court buys into those types of
19 things but it's not lost on me that anything I say is
20 absolutely outrageous, absolutely frivolous,
21 absolutely unheard of.

22 THE COURT: I wouldn't personalize it.

23 MR. ZAPPOLO: I'm not. I'm just saying that
24 it's almost like what Mr. Wagner was talking about.
25 Statistically, I mean, I'd be disbarred if everything

1 I said was absolutely frivolous.

2 THE COURT: I wouldn't take it personally.

3 MR. ZAPPOLO: So now, you decided this motion at
4 least as to the companion count for the breach of
5 contract and everything, while the issues in the
6 middle of trial, while the issues were fresh in your
7 mind, while you had the demeanor of the witnesses, et
8 cetera, fresh on your mind. Now here we are a year
9 and a half after and they are asking you to just
10 basically disregard your thought process, et cetera,
11 about what you made contemporaneously with the
12 evidence as it was being admitted.

13 I remind the court six people who sat in this
14 jury saw the issue as Mr. Wagner and SEI saw it.
15 They certainly didn't feel there was no inference
16 that could be made or absolutely no evidence. So to
17 say there's not even an inference, as I said before,
18 it's got to be the highest burden and this is -- and
19 I think a review of the record shows this is a type
20 of thing we've gone over and over and over.

21 So with all that being said, a year and a half
22 after the fact to ask you to sit as the seventh juror
23 we think is inappropriate. We think that --

24 THE COURT: I don't think they are asking me to
25 sit as seventh juror. I think what they are asking

1 me to do is look at the legal elements in this case
2 and I guess my question for you is how long did he
3 work on this?

4 MR. ZAPPOLLO: The time period that we said, he
5 worked on it for several months. He worked on it
6 from April 16 to September 28th, 2011.

7 THE COURT: How many hours?

8 MR. ZAPPOLLO: He said he spent almost 50 percent
9 of his time and he testified about how much he worked
10 and the evidence of his hourly rates, et cetera, is
11 found in Exhibit 5, and another thing, Your Honor,
12 they did -- his salary, by the way, it wasn't even --
13 so that's an interesting thing because he's paid by
14 salary, it doesn't even have to be broken out by the
15 hour because he's salary. So we don't have to say
16 and be as precise and pinpoint specific as counsel
17 would suggest by innuendo and there's just one other
18 bit of evidence that is in the record that I want to
19 call the court's attention to.

20 After the certification was obtained, the record
21 reflects that Mr. Mosler obtained a \$50,000
22 non-refundable deposit. He didn't get that before.
23 So there was certainly -- from another purchaser. So
24 there was certainly --

25 THE COURT: My question to you is this, okay.

1 He worked on the certification for MACC.

2 MR. ZAPPOLLO: Yes. Well, he worked on it for
3 SEI which was taken by MACC.

4 THE COURT: And he was paid salary by?

5 MR. ZAPPOLLO: He was paid salary by -- his
6 salary was paid by MACC.

7 THE COURT: So he worked on something for SEI,
8 he was paid by MACC and so you have his salary from
9 MACC and what you're telling me is that is
10 dispositive of whatever his salary would have been
11 for SEI.

12 MR. ZAPPOLLO: He worked -- well --

13 THE COURT: He's arguing that this is a salary
14 issue, not an hourly issue.

15 MR. ZAPPOLLO: Well, he was paid on an hourly
16 basis during the time. They knew he was being
17 paid -- excuse me, on a salary basis. They were
18 paying that. They were paying it.

19 THE COURT: So your argument is that his salary
20 at MACC would be the same as his salary at SEI?

21 MR. ZAPPOLLO: Yes.

22 THE COURT: Where is that in the evidence?

23 MR. ZAPPOLLO: Because it was.

24 THE COURT: Where?

25 MR. ZAPPOLLO: That's where he was working.

1 MR. WAGNER: Exhibit 5.

2 THE COURT: So his salary at MACC would be his
3 exact same salary if paid by SEI?

4 MR. ZAPPOLLO: Yes, Your Honor.

5 THE COURT: Where is that in the evidence?

6 MR. WAGNER: Your Honor, may I counsel for a
7 moment?

8 MR. ZAPPOLLO: It's in Exhibit 5. It was just
9 being passed through, passed on to them and they paid
10 it.

11 THE COURT: So MACC pays SEI.

12 MR. ZAPPOLLO: They were paying in credits to SEI
13 for the car and the credits were the value of his
14 salary.

15 THE COURT: Anything else?

16 MR. ZAPPOLLO: No, I don't think so, Your Honor.

17 THE COURT: Response?

18 MR. WEBER: Less than three minutes, Your Honor.
19 I object. I don't say everything is frivolous. A
20 good job e-mail doesn't show anything. Mr. Zappolo
21 said why didn't Mr. Mosler respond was he
22 surprised -- what are you doing? Responded good job.
23 They knew he was doing the work prior to April 15.
24 It's undisputed that plaintiff SEI received a credit
25 towards the purchase of the vehicle. Mr. Zappolo

1 mentioned an e-mail of a potential buyer. It hasn't
2 been identified. We don't know what he's talking
3 about. Mr. Zappolo says the price went up, potential
4 buyer after the alleged work. What evidence? It's
5 undisputed that the company was eventually sold for
6 under a million dollars. Under what Mr. Wagner was
7 initially trying to purchase it.

8 Mr. Zappolo quotes from Ms. Klaker's testimony
9 that's in the response. She says, oh, they were
10 aware he's working on certifications. Of course.
11 SEI got paid for the first time frame which is not at
12 issue. The second time frame is the one at issue.
13 Nowhere in the testimony does it say from Ms. Klaker
14 what time frame is being referred to there.

15 There's no evidence about what the blowups of
16 the orange car they were trying to sell were and as
17 Your Honor pointed out, Mr. Zappolo cannot say with
18 any accuracy or precision how many hours were worked.
19 All we have is approximation of 50 percent of the
20 time and approximately an amount.

21 So based on the law, there is no evidence or
22 inference that supports with accurate precision an
23 award of damages for Count B.

24 THE COURT: Thank you. Anything else?

25 MR. WEBER: No, Your Honor.

1 MR. ZAPPOLLO: Just, Your Honor, the trial
2 transcript on Mosler's testimony continues, the
3 question was: Okay. Do you remember what your
4 response was when talking about that e-mail?

5 His response, his answer: I think I was very
6 pleased when he received it. Meaning the EPA
7 certifications.

8 Question: Okay. Would the phrase, good job --
9 I was interrupted.

10 Answer: Yes, definitely.

11 THE COURT: I think that's the least problematic
12 part of your argument.

13 MR. ZAPPOLLO: As far as counsel's argument, all
14 of his argument is to infer that there's -- that
15 everything that we say is just wrong or what have
16 you.

17 THE COURT: No, I don't think so. I think he's
18 saying that there's a deficiency in the evidence.
19 That's his argument.

20 MR. ZAPPOLLO: We're saying that if you look at
21 the evidence that is in the record in the light most
22 favorable to us, as you must, and you make all
23 reasonable inferences in our favor, as you must, that
24 the jury could certainly make the findings.

25 THE COURT: I think if I look at the evidence,

1 maybe he worked 50 percent of the time for a salary
2 that wasn't determined and I think those damages are
3 speculative. JNOV is granted.

4 MR. WEBER: Thank you, Your Honor. I think we
5 have everything we need now to prepare the final
6 judgment unless Mr. Zappolo disagrees.

7 MR. ZAPPOLO: No, I believe you are correct.

8 THE COURT: All right. Thank you very much,
9 gentlemen, please have a great day.

10 MR. WEBER: Thank you, Your Honor.

11 MR. ZAPPOLO: Thank you, Judge.

12 THE BAILIFF: Court is adjourned.

13 (Proceedings concluded at 12:46 p.m.)
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COURT CERTIFICATE

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Melanie Wustrau, Registered Professional Reporter,
State of Florida at Large, certify that I was authorized to and
did stenographically report the foregoing proceedings and that
the transcript is a true and complete record of my stenographic
notes.

DATED this 22nd day of November, 2024.

Melanie Wustrau

Melanie Wustrau, RMR, CRR

	1572		absolute	14:4	13:8
\$	12:17	4	s	22:12	14:7
	15th		21:14	advantag	20:9
\$5	12:11, 15	4-16	acceptan	eous	26:20
14:21	16	18:12	ce	8:3	analysis
18:5	12:4		17:21	advised	8:3 15:8
20:3	15:22	5	accepted	17:11	analyzed
\$50,000	17:13		12:8	advisory	13:2
23:21	23:6	5	17:20, 22	10:10	appeal
		12:16	accompli	affirmat	6:8
1	2	15:6, 19	sh	ive	appellat
		20:4, 21,	9:13	16:23	e
1	2011	22 23:11	accuracy	afternoon	4:25
9:2	12:5	25:1, 8	14:2	17:5	approval
10	17:13	50	26:18	agree	12:1
12:18	23:6	14:6	accurate	4:13	approxim
15:7	21	20:16	26:22	agreed	ately
20:4	8:12	23:8	act	13:4	14:6
109	22	26:19	9:3	ahead	20:16
14:15	8:4	28:1	actions	7:12	26:20
11	15:12	500	7:24	10:19	approxim
11:2	18:18	7:16	actual	allegati	ation
12	264		9:16	ons	26:19
15:12	15:11	9	14:2	6:2	approxim
12,000	18:18	9-28-	adaptati	16:13	ations
10:21	265	2011	on	alleged	14:1
12:11	15:12	18:13	7:22	11:25	April
3:1	28	90	address	14:21	12:4, 11,
12:46	12:5	20:7	4:14	15:3	15 17:13
28:13	17:13	931	5:22	16:11	23:6
13-year	28th	8:12	19:23	26:4	25:23
7:25	23:6	932	20:22	allegedl	argue
13.8		8:12	addressi	y	21:14
8:8	3		ng	15:10	argued
134	3	A	3:9	allotted	11:11
14:4	12:17	absolute	adjourne	20:16	21:15
14	37	ly	d	alluded	argues
8:13	8:6	21:16,	28:12	20:15	16:15
15		20, 21	admitted	amount	arguing
15:22		22:1, 16	6:12		9:11
25:23					24:13

argument 3:23 16:18 17:3,5 19:24 21:13 24:19 27:12, 13,14,19	aware 18:19 26:10	bench 15:18		14:23 18:4,24 19:15 23:20 24:1	claims 5:23 8:4
argument s 21:8	B	benefit 12:12,20 16:2,5	C	calculat or 19:20	clear 20:11
articles 6:6,11, 12 7:2	back 4:24 10:25 19:21 20:18	big 19:12	call 19:18 23:19	certific ations 17:11 18:21 26:10 27:7	clearer 14:3
ascertai n 10:7	backward s 5:9	bill 20:25	called 3:13 8:5 10:9	cetera 17:18 20:9,17, 19 22:8, 10 23:10	CNC 7:20
assented 12:8 13:4 16:23	BAILIFF 28:12	billion 8:6,8	car 18:21 19:1,9, 13,15,16 20:25 21:9 25:13 26:16	chance 15:1	companie s 7:17
assumpti ons 8:2	base 20:14	blocked 3:5	care 15:21	charge 9:7	companio n 22:4
attempt 16:21	based 4:7 13:8,22 20:11 26:21	blowups 19:12 26:15	cars 21:6,11	China 8:15	company 12:24 18:1,16 21:5 26:5
attempti ng 12:21	bases 14:25	breach 22:4	case 6:17 9:11 10:1 13:6 17:17 19:24 20:2 21:15 23:1	circumst ances 12:9	compared 5:2
attentio n 19:19 23:19	basical y 22:10	briefly 6:21	care 15:21	citation 15:4	complain t 4:23 5:3,5 6:1
award 13:6,22 14:12,19 26:23	basis 10:23 13:22 14:19 24:16,17	broken 23:14	cars 21:6,11	citation s 13:1	complete d 13:14 17:12
awarded 20:10,11	bearing 16:8	burden 16:21,25 17:9 22:18	case 13:18	cite 14:12 15:9	complete ly 16:19
	began 3:1	buyer 26:1,4	cases 13:18	cited 12:13,16 13:18 14:11	complex 5:12
	believed 5:21 13:8 15:6	buyers 17:25	certific ate 17:22,24	claim 5:22 11:25 16:22,24	concern 20:1
		buys 21:18	certific ation 12:23		conclude d 28:13

conclude 8:4	convince 4:21	26:23	25:24	Defendan	discerne
s	d	couple	credits	t's	d
		9:6	25:12, 13	14:4	9:24
conclusi	copies	10:14	curious	defendan	discusse
on	20:23	court	10:5	ts	d
21:12	copy	3:2, 4,		10:23	4:20
confirm	15:16	18, 24	D	defenses	dismis
3:19	corporat	4:3, 6, 14		16:24	d
conflict	ions	5:6	damages	deficien	16:18
6:18	7:17	6:17, 21	13:6, 8,	cy	disposit
consent	correct	7:10, 12,	22 14:12	27:18	ive
5:20	3:10 7:5	24 8:3, 9	19:18	demeanor	24:10
consider	18:21	9:9, 16,	26:23	22:7	disregar
ed	28:7	20, 23, 24	28:2	demonstr	d
9:16	correlat	10:4, 13,	day	ates	22:10
consiste	ion	18, 24	28:9	12:13	distribu
ncy	20:8	11:1, 3,	days	denied	tion
7:19	counsel	12, 13, 20	11:2	16:6	8:14, 15
consulte	4:25	15:17	debate	deposit	9:3
d	17:19	16:6, 8,	7:6	23:22	document
4:24	19:17	17	decades-	depositi	14:12,
contempo	20:15, 22	21:18, 22	old	ons	15, 17,
raneousl	21:8, 17	22:2, 13,	7:23	6:25	20, 22
y	23:16	24 23:7,	decided	determin	dollars
22:11	25:6	25 24:4,	11:11	ed	26:6
continue	counsel'	7, 13, 19,	22:3	28:2	drafted
3:16	s	22, 24	deemed	directed	6:18
11:2	17:5	25:2, 5,	8:10	4:11	drafting
continue	19:23	11, 15, 17	21:16	directio	5:16
s	27:13	26:24	defamati	n	drawn
8:20	count	27:11,	on	12:24	17:8
27:2	3:8, 21	17, 25	6:24	18:15	
contract	4:12	28:8, 12	defendan	disagree	E
18:8, 11	6:20	court's	t	s	e-mail
22:5	11:23, 24	5:13	11:21	28:6	17:24
contrary	12:3	19:18	12:20, 21	disbarre	18:3
13:21	14:22	23:19	13:3, 14	d	25:20
control	16:7, 8,	created	15:12	21:25	26:1
7:15, 16,	10, 18	13:10,	16:2	discern	27:4
22 8:1, 6	17:5	13, 21		9:14	
	20:4	14:18			
	22:4	15:7			
		credit			

effect 8:22 18:5	12:1 18:21, 25 19:14 27:6	exact 25:3	failure 8:16	found 23:11	21 25:20, 22 27:8
element 16:24, 25	error 5:14	exceptio n 4:7	fair 10:3	frame 12:3, 4 13:11 14:5, 8 26:11, 12, 14	governme nt 19:6
elements 16:22 23:1	evaluate d 7:23	exclusiv e 8:13, 15	favor 27:23	fresh 22:6, 8	granted 16:9 28:3
emission s 15:22, 24 19:1, 2, 4, 9 21:3, 4	eventual ly 26:5	excuse 5:24 17:14 24:17	feel 22:15	frivolou s 16:19 21:16, 17, 20 22:1 25:19	great 28:9
encompas sed 12:2	evidence 6:5, 11, 12, 23 7:3, 5 8:4, 10 9:15, 16, 20, 25 10:3, 25 12:7 13:5 14:11 15:3, 4 16:13, 14 17:2, 6, 7, 8, 16, 20, 23 18:2 19:18 20:12, 23 21:10 22:12, 16 23:10, 18 24:22 25:5 26:4, 15, 21 27:18, 21, 25	Exhibit 14:4, 15 20:21, 22 23:11 25:1, 8	figure 9:20, 25	filed 5:17 14:25	guess 5:21 6:18 23:2
end 12:16		exhibits 13:2	final 3:7 4:1, 3, 16, 21 5:4, 6, 8, 18, 19, 24, 25 6:15 7:7 28:5	fulfille d 8:18 9:4	H
engineer ing 7:14 18:20		existed 14:24	findings 27:24	fumes 19:6	half 22:9, 21
entail 4:4		expect 12:10 18:6	finality 11:17	furnishe d 13:17, 24	hand 15:16
entails 4:2		expected 18:9	Finally 16:21	G	happen 8:5
entered 4:2		expectin g 18:13	forfeit 8:14 9:3	gave 14:1	heard 21:14
entertai n 4:8		extent 16:12	forget 4:10	generall y 14:14	hearing 4:24
entire 7:20		F	forms 7:19	gentleme n 28:9	high 17:9
entirety 12:2		fact 16:8 19:19 20:15 22:22	Fortune 7:16	give 20:13	highest 22:18
environm ent 8:6	evidence s 16:11	fail 15:2	forward ed 17:23, 24	good 3:3 17:4, 16,	highly 8:2
EPA					Honor 3:3, 10, 11, 19, 20 4:13, 20, 21 5:7, 12 6:22 7:7, 9

11:6, 18, 19, 24 13:2, 19 14:10, 13, 14, 16, 17 15:1, 14, 19 17:2, 4, 14 18:8, 17 19:12 20:2, 21 21:12 23:11 25:4, 6, 16, 18 26:17, 25 27:1 28:4, 10 hopes 19:8 hospital 7:21 hour 3:5 23:15 hourly 20:9 23:10 24:14, 15 hours 13:9 14:2, 7, 9 20:11 23:7 26:18 housekee ping 3:12	I identi fied 14:21 16:12 26:2 identify 14:20, 24 immediat ely 8:16 impressi on 3:25 improved 9:17, 21 inaccura te 11:9 inapprop riate 22:23 include 4:22 included 6:15 13:18 14:15 17:12 increase s 21:4, 5 individu al 6:25 indulge 4:14 infer 21:5, 7	27:14 inferenc e 8:5 12:7 13:5 16:1 17:6, 8 22:15, 17 26:22 inferenc es 27:23 informed 3:13, 15 initiall y 16:6 26:7 inject 4:25 innuendo 23:17 insuring 7:18 interest ing 4:23 23:13 interrup ted 27:9 involves 4:17 irreleva nt 15:8 issue 4:13, 15, 19 5:13 12:3 14:22	22:14 24:14 26:12 issued 17:22 issues 10:22 22:5, 6 J JNOV 4:8 28:3 job 10:1 17:16, 21 20:18 25:20, 22 27:8 journali st 6:24 journali sts 7:1, 4 Judge 28:11 judgment 3:7 4:1, 3, 12, 16, 21 5:4, 7, 8, 18, 19, 24, 25 6:15 7:7 11:22 16:7, 9 20:14 28:6 juror 20:20 22:22, 25	jury 6:1 7:1, 25 10:2 19:19, 21 20:3, 10, 11, 13 21:7 22:14 27:24 K kind 6:19 Klaker 15:13 21:2 26:13 Klaker's 15:20 26:8 knew 12:14 24:16 25:23 knowledg e 10:7 L labor 13:16, 23 language 4:16, 20, 22 5:1, 2, 4, 5, 9 larger 12:3 law 13:13, 21 17:7	19:24 26:21 lawsuit 7:25 10:22 learned 7:15 legal 23:1 legally 19:15, 16 liable 5:23 life 8:8 light 27:21 limited 12:4 linchpin 20:13 lines 7:20 12:17 15:22 litigati on 16:19 long 17:14 23:2 lost 21:12, 19 lot 11:8 20:17 lunch 3:4
---	--	---	---	---	---

M	Meaning	morning	N		
MACC	27:6	3:12		17,20	part
8:18, 20	means	15:2		offered	5:17 7:6
9:4	7:18	17:4	negotiated	18:1	27:12
12:7, 21	19:5	Mosler	18:1	operating	parties
13:3	measure	6:3, 10,	nice	7:21	4:2, 4
16:2	13:15	23 8:11	15:24	opinion	5:20
17:20, 22	meet	12:14,	21:2, 3	10:10	party
18:9	17:9	21, 24	non-refundable	opposing	13:13
24:1, 3,	19:5	15:9, 13		21:17	pass
6, 8, 9, 20	mentioned	17:11, 15		orange	19:1, 2,
25:2, 11	10:21	18:16		19:13	9, 10
MACC's	16:16	19:13	normal	26:16	passed
11:22	26:1	21:6	8:5	outcome	15:22, 24
12:20	meruit	23:21	note	7:24	21:3
machines	11:25	25:21	11:7	16:17	25:9
7:20	14:19	Mosler's	notwithstanding	outcomes	passes
made	16:22, 24	6:6 27:2		16:20	21:4
13:1	middle	motion		outputs	passing
22:11, 16	22:6	3:21		7:19	19:4
make	million	4:10, 11	numerous	outrageous	past
5:11 7:9	14:21	11:22	13:1	us	10:14
9:15	15:6, 7	12:6, 13,		21:20	pay
27:22, 24	18:5	17, 18	O		12:10
making	20:4	13:3, 18,		P	18:7, 10,
10:2	26:6	25 15:3			14
man	mind	16:6	object	p.m.	paying
10:5	19:3	20:6	10:23	3:1	24:18
market	22:7, 8	22:3	11:8, 10	28:13	25:12
13:17, 24	minutes	mouth	25:19	paid	pays
match	7:11	6:4, 6, 11	objection	13:5	25:11
5:4, 5	10:12, 14	moving	6:13	18:9	people
material	25:18	19:17	11:7	23:13	22:13
s	missing	multi-national	obligation	24:4, 5,	percent
13:17, 24	15:20	7:17	8:19 9:4	6, 8, 15,	14:6
14:16	moment		obtained	17 25:3,	20:16
matter	8:7 25:7		23:20, 21	9 26:11	23:8
3:12	months		odds	paragraph	26:19
MBA	23:5		16:16,	h	28:1
7:14				8:18, 20,	percentile
				21 9:2	20:7

perform 8:16	15:5 16:4	prepare 28:5	13:14	18:19, 23, 25	reason 12:19
performed 13:16, 23	25:24 Plaintif	prepared 7:8	proposed 5:6, 19, 24, 25	19:3, 8 23:2, 25 27:3, 8	reasonab le 12:9
period 17:13 18:8, 12, 13 19:14 23:4	f's 14:15 plaintif fs 11:1 12:14	present 11:15	prove 16:25	question s 10:6, 17, 21	13:16, 23 16:1 18:6 27:23
person 12:9 18:3, 6	14:11, 12, 23 15:9 16:4	presente d 7:1	provide 14:2	quote 15:20	reassess 20:19
personal ize 21:22	plaintif fs' 13:25 15:2 16:21, 25	pretrial 5:18	providin g 15:4	quote/ unquote 18:8 21:16	recall 19:12
personal ly 4:18 22:2	planned 12:25	pretty 20:10	publishe d 7:21	quotes 9:18 26:8	received 25:24 27:6
perspect ive 5:10 6:9, 13, 14	pleased 27:6	price 17:25 18:2 26:3	purchase 25:25 26:7	R	record 8:11 9:18 18:3 19:11 20:12 22:19 23:18, 20 27:21
pertains 14:22	pointed 26:17	prior 5:7 25:23	purchase d 16:3	raising 7:20	recovery 13:15
phrase 27:8	portion 15:20	problem 18:17	purchase r 23:23	rare 8:7	refer 17:3
pinpoint 23:16	potentia l 17:25 26:1, 3	problematic 27:11	purpose 9:23	rate 20:9	referenc ed 14:14
places 12:18	precise 23:16	proceedi ngs 3:1 28:13	Q	rates 23:10	referenc es 15:3
plaintif f 3:21, 22 11:23 12:11, 12, 19 13:7, 9, 20 14:4	precisio n 14:7 26:18, 22	process 7:15, 16, 22 8:1 22:10	quality 7:18	re-argue 11:10, 13	referred 19:17 26:14
	predicte d 8:7	product 15:23 19:25	quantum 11:25 14:19 16:22, 24	reach 11:16	referrin g 14:13
		producti on 7:20 9:7	question 8:13, 14, 20, 24 9:2, 19 10:24	read 8:10 9:18	
		project		reading 8:13	

16:3 reflects 23:21 relevanc e 10:23 relevant 10:22 14:8 relievin g 3:14 rely 16:13 remainde r 17:1 remember 27:3 remind 5:6 22:13 reply 14:25 15:15, 17, 20 16:10 represen t 3:15, 16 represen ts 13:15 request 13:20 requirem ent 9:2	requirem ents 19:5 reserve 17:1 respect 4:15 5:13 respond 25:21 responde d 17:16 25:22 response 14:10 15:2 16:15 20:6 25:17 26:9 27:4, 5 responsi bilities 3:14 review 22:19 rhetoric al 10:16, 24 rights 8:15 9:3 room 19:21 rooms 7:21 ruled 5:12 20:3 ruling 5:13	running 7:25 runs 13:21 S salary 13:9 19:23 23:12, 14, 15 24:4, 5, 6, 8, 10, 13, 17, 19, 20 25:2, 3, 14 28:1 sale 20:25 sales 9:7 sat 22:13 school 7:14 SCS 9:3 second- guess 19:20 seek 13:13 SEI 3:16, 17 5:23 8:14 12:11 13:7 16:4 18:23 21:1	22:14 24:3, 7, 11, 20 25:3, 11, 12, 24 26:11 SEI's 3:21 6:13 11:23 12:12, 20 13:20 21:9 sell 12:21 19:13, 15, 16 21:10 26:16 selling 21:7 Septembe r 12:5 17:13 23:6 set 12:6 13:24 14:3 19:6 seventh 20:19 22:22, 25 shift 16:21 show 25:20 shows 17:23 21:10 22:19	sides 9:7 simple 5:6, 18 sit 7:13 11:19 20:18, 19 22:22, 25 smart 10:5 sold 20:25 26:5 sole 11:24 sooner 3:6 span 8:8 speaking 3:17 specific 5:22 6:16 23:16 specific ity 17:2 speculat ive 28:3 spent 20:9 23:8 stand 4:12 11:15 start 13:12 15:23	state 16:11 statemen ts 7:8 11:8 states 15:21 stating 16:7 statisti cal 7:15, 16, 22 8:1 Statisti cally 21:25 stipulat ion 5:18 stop 9:9 12:15 stressed 6:4 strip 7:24 stuck 6:19 submitte d 5:17 10:2 submitti ng 20:24 substant ial 18:2 suddenly 18:13
---	--	---	---	--	--

sued 6:10	tackle 11:15	26:8, 13 27:2	Todd 9:6 18:20	unclear 14:1	valuatio n 18:4
suggest 23:17	tackled 4:6	Thailand 8:16	tool 7:23 8:3	understa nd 10:4	vehicle 10:8
suing 5:20 6:2	taking 5:13	thing 4:7, 9 6:7 10:14 20:21 22:20 23:11, 13	total 4:16 7:23	understo od 7:5	16:3, 5 25:25
sum 7:23	talking 4:1 17:18 21:9, 24 26:2 27:4	things 9:6, 14, 17 21:19	track 6:1	undisput ed 12:1 25:24 26:5	vehicles 8:19, 21 9:5
Supercar 18:19	talks 20:22	thinking 19:21	trade 5:23	unheard 21:21	verdict 4:11, 12 11:23 16:7, 10 20:4
suppleme nt 11:11	tech 7:14	thought 6:2 22:10	transcri pt 12:17 13:1 15:10, 11 18:17 27:2	unique 8:7	version 7:7
supply 8:19, 21 9:4	telling 24:9	threw 11:8	trial 5:7, 11, 19 6:5 8:11 10:1 11:2 12:17 15:5, 11 18:17 22:6 27:1	universa lly 7:18	Virginia 7:14
support 16:16 20:12	terms 8:17	time 4:15 7:10 9:12 10:8, 15 11:14 12:3, 4 13:11 14:5, 6, 8 17:1, 12, 14 19:14 20:9, 16, 24 21:7 23:4, 9 24:16 26:11, 12, 14, 20 28:1	twisted 6:8	universe 8:8	W
supports 12:7 13:6 14:11 26:22	testifie d 12:14 13:7 15:5 23:9			unpaid 12:1 15:6	Wagner 3:13, 17, 19, 22 4:17 5:22 6:20, 21, 22 7:11, 13 9:9, 14, 22, 24 10:11, 16, 20 11:10 12:12, 22 13:7 14:4 16:15 17:15 18:20 20:15, 23 21:24 22:14
supposed ly 15:5 16:16	testifyi ng 8:12		types 21:18	unpredic table 16:20	
surprise d 17:17 25:22	testimon y 7:2, 3, 4 8:9, 11 10:20 12:13, 22 13:25 14:14 15:9, 11, 14, 21 19:22 20:8, 17 21:9		type 22:19	upgrade 9:15	
sworn 6:25 7:3			types 21:18	V	
systems 7:19		today 3:5, 9, 17 11:5, 19	U	vague 16:13	
T			ultimate 19:25 20:25	vaguely 15:3	
Tab 14:17				valid 14:19	

25:1,6 26:6 Wagner's 13:9 19:22 20:8 walking 15:18 wanted 5:8 6:17 18:16 19:10 Warren 8:11 15:13 waste 10:15 Weber 3:3,10, 20 5:12 6:17 11:6,18, 21 15:19 17:14 25:18 26:25 28:4,10 Weber's 5:1,2,8, 15,23 whatsoever 17:7 witnesses 22:7 words 6:3,5,10 18:5 work 5:9 11:14,16	12:1,2, 3,8,10, 15,19 13:4,10 14:3,5, 18,22 15:6 16:2,5 17:10, 12,15, 20,21 18:7,9, 10,14 23:3 25:23 26:4 worked 14:2 23:5,9 24:1,2, 7,12 26:18 28:1 working 14:5,9 18:20,24 24:25 26:10 world 8:2 worse 14:10 worth 20:1,24 wrong 7:6 27:15 Y Yale 7:14	year 22:8,21 years 8:6,8 Z Zappolo 3:11,24, 25 4:5, 10,19 11:7 17:3,4 21:23 22:3 23:4,8 24:2,5, 12,15, 21,23,25 25:4,8, 12,16, 20,25 26:3,8, 17 27:1, 13,20 28:6,7, 11	
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