

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 MEADWESTVACO CORPORATION, :

4 SUCCESSOR IN INTEREST TO :

5 THE MEAD CORPORATION, :

6 Petitioner :

7 v. : No. 06-1413

8 ILLINOIS DEPARTMENT OF :

9 REVENUE, ET AL. :

10 - - - - - x

11 Washington, D.C.

12 Wednesday, January 16, 2008

13

14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States
16 at 11:17 a.m.

17 APPEARANCES:

18 BETH S. BRINKMANN, ESQ., Washington, D.C.; on behalf
19 of the Petitioner.

20 BRIAN F. BAROV, ESQ., Assistant Attorney General,
21 Chicago, Ill.; on behalf of the Respondents.

22

23

24

25

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

C O N T E N T S

ORAL ARGUMENT OF	PAGE
BETH S. BRINKMANN, ESQ.	
On behalf of the Petitioner	3
BRIAN F. BAROV, ESQ.	
On behalf of the Respondents	27
REBUTTAL ARGUMENT OF	
BETH S. BRINKMANN, ESQ.	
On behalf of the Petitioner	53

1 P R O C E E D I N G S

2 (11:17 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 06-1413, MeadWestvaco v. The
5 Illinois Department of Revenue.

6 Ms. Brinkmann.

7 ORAL ARGUMENT OF BETH S. BRINKMANN

8 ON BEHALF OF THE PETITIONER

9 MS. BRINKMANN: Mr. Chief Justice, and may
10 it please the Court:

11 The ruling of the Illinois Appellate Court
12 in this case radically expanded the Court's
13 operational-function tax. The State tax at issue
14 violates the principles of constitutional limitations on
15 state taxing authority for at least two reasons.
16 First, the factors relied on by the appellate court here
17 for functional -- for operational function would mean
18 that ownership and investment would meet that standard.
19 But that's what this Court rejected in Allied-Signal.

20 A State does not have the authority to reach
21 out to tax all investments owned by a company that does
22 business in the State. The operational function demands
23 more. It applies --

24 JUSTICE GINSBURG: You are saying to me, Ms.
25 Brinkmann -- we talk about an asset, an investment.

1 This was one company. This -- it's strange to talk
2 about unitary basis or investment. This is a division
3 of one company. And we are talking about a sale of
4 assets. Not the sale of stock of a subsidiary.

5 So what more is there than this is one
6 company, it sells some of its assets?

7 MS. BRINKMANN: Well, Your Honor, the fact
8 that it's a division does not mean that it meets either
9 the operational-function test or the unitary-business
10 test. A long line of cases from this Court tell us
11 that. It --

12 JUSTICE GINSBURG: Do we have any cases --
13 do we have any decisions that go against the state
14 taxing authority that involve divisions as opposed to
15 subsidiaries?

16 MS. BRINKMANN: No, but the Exxon case
17 involved divisions, and it went in favor of the state
18 taxing authority. But the Court applied a
19 straightforward, unitary business analysis to that.
20 And, Your Honor, this dates back to the Adams Express
21 case of 1897.

22 The Court in that case said it's not
23 ownership. It's about the use, the unitariness of use,
24 not of ownership. Mobile followed on that. Mobile
25 talked about the fact that it's not the corporate form

1 that mattered. It pointed out that that could have
2 little to do with the underlying determination of
3 apportionment, which depends upon whether it's a
4 discrete business enterprise.

5 And then following on the heels of that
6 analysis in Mobil, the Court applied it to the Exxon
7 case that involved divisions. That was a vertically
8 integrated corporation. It's very different from the
9 facts of this case, and it reached a different result.

10 Moreover, the Woolworth case involved
11 subsidiaries. Three out of the four of them were 100
12 percent wholly owned.

13 JUSTICE STEVENS: Can I go back to sort of a
14 fundamental question I'm not quite sure I know the
15 answer to. Supposing we don't have corporations here,
16 but an individual resident of New York owned this whole
17 business and a big bunch of it was activities in
18 Illinois, and he sold the business. Would Illinois have
19 the authority to impose any tax on that transaction?

20 MS. BRINKMANN: If it was a capital gain,
21 Your Honor, on the sale of investment, the Court's
22 longstanding cases teach that it is the domicile that
23 taxes that commercial gain.

24 JUSTICE STEVENS: I'm assuming it's not the
25 domicile. The owner lives in New York. The business is

1 all over the country, but does millions of dollars of
2 business in Illinois. And they sell the whole business.
3 Would the owner be subject to any tax of any kind in
4 Illinois on that transaction? Could he constitutionally
5 be subjected to any tax?

6 BRINKMANN: If there was -- the domiciliary
7 State generally is the State which has the authority to
8 tax an income on a capital gain --

9 JUSTICE STEVENS: Assume it's not the
10 domiciliary State.

11 MS. BRINKMANN: But what the Court explained
12 in Mobil, for example, if it is under the unitary
13 business principle, then the State in which --

14 JUSTICE STEVENS: Could we get an answer
15 without reference to cases? Do you think Illinois would
16 have the authority to impose a tax on that transaction?

17 MS. BRINKMANN: If the -- there was
18 sufficient nexus to the company doing business --

19 JUSTICE STEVENS: Millions of dollars of
20 business in Illinois, that's my assumption.

21 MS. BRINKMANN: Yes, they would be able to
22 tax the ongoing business activity in that State.

23 JUSTICE KENNEDY: No.

24 JUSTICE STEVENS: Could they tax the sale of
25 the business?

1 JUSTICE KENNEDY: I have the same --

2 MS. BRINKMANN: The sale of the business
3 would be to the domicile of the seller. They would be
4 able to --

5 JUSTICE STEVENS: You're saying only the
6 domicile could impose a tax?

7 MS. BRINKMANN: Yes, unless, as the Court
8 recognized in Mobil, there is this unitary business
9 exception, because the State's ability to tax begins at
10 the starting point at the territorial limitations of the
11 State. And the Court has --

12 JUSTICE STEVENS: But if they owned a truck
13 instead of a business, they could tax that transaction,
14 I suppose?

15 JUSTICE SCALIA: You can't have a unitary
16 business -- a person who is a unitary business. I mean,
17 a person can't be unitary with Exxon. I mean, when you
18 speak of a unitary business you're talking about a
19 corporation which, you know, is unitary with another
20 corporation.

21 MS. BRINKMANN: That's the area --

22 JUSTICE SCALIA: Once you put it into a
23 personal taxation scheme, it seems to me the whole
24 unitary business notion has no application at all.

25 MS. BRINKMANN: Well, I agree with you, Your

1 Honor. But it does come back to the taxing, the right
2 of the domicile State to tax on a sale --

3 JUSTICE GINSBURG: What is -- what does the
4 domicile State -- we have Ohio. But you say as a matter
5 of constitutional law, not State tax policy, as a matter
6 of constitutional law, the only State that has authority
7 to tax the capital gain is Ohio?

8 MS. BRINKMANN: That's right, Your Honor,
9 unless --

10 JUSTICE GINSBURG: Does Ohio -- would Ohio
11 give credit for the tax that its sister State thinks is
12 due? What is, in fact, Ohio's tax law in this respect?
13 Does Ohio give credit to taxes paid by other States --
14 to other States?

15 MS. BRINKMANN: Ohio would allocate the
16 entire gain as a capital gain on an intangible that was
17 sold in the State of Ohio. That would be allocated in
18 its entirety to Illinois.

19 Now, what the Court has recognized is that
20 default principle sometimes gives way when that gain has
21 had enough connection to business activity in another
22 jurisdiction. That's where these issues arise, because
23 there are States taxing multi- state activities. And
24 that's --

25 JUSTICE GINSBURG: Can I have an answer to a

1 very simple question? If Illinois claimed the tax,
2 would Ohio give credit for the tax paid in Illinois?

3 MS. BRINKMANN: Not if Ohio had the
4 constitutional right to allocate that tax to Ohio, as it
5 does.

6 JUSTICE GINSBURG: Do we know what -- what
7 Ohio does in these situations?

8 MS. BRINKMANN: Yes. It allocates it to the
9 State of Ohio. The only exception for that would be in
10 a situation, not the facts here, but if that capital
11 gain either served an operational function to the
12 business activities that were conducted in another
13 State, then that State would have a right to apportion
14 it and tax its portion of that or if the operational
15 function applied. And that is because the activity now
16 has transformed from just a capital gain that's
17 connected to the domiciliary State of the seller to a
18 business income because it is part of this unitary
19 business. That's why the other State has a right to
20 apportion.

21 JUSTICE ALITO: What has Ohio done --

22 MS. BRINKMANN: That's not the situation
23 here.

24 JUSTICE ALITO: What has Ohio done up to
25 this point with respect to this transaction?

1 MS. BRINKMANN: Under Ohio's laws this would
2 be allocated to that State.

3 CHIEF JUSTICE ROBERTS: To Ohio?

4 MS. BRINKMANN: Yes, because it's a capital
5 gain on a sale of an investment.

6 CHIEF JUSTICE ROBERTS: Ms. Brinkmann, you
7 begin your brief by saying this, a paper company, that
8 happens to own a data processing company. Why couldn't
9 you equally say this is a data processing company that
10 happens to own a paper company?

11 MS. BRINKMANN: No, Your Honor. This has
12 been a paper company since 1846.

13 CHIEF JUSTICE ROBERTS: Well, and
14 Lexis/Nexis has been a data processing company since
15 whenever.

16 MS. BRINKMANN: But under the Court's
17 unitary --

18 CHIEF JUSTICE ROBERTS: It's not the
19 oldest -- whichever is oldest isn't the one that gets to
20 be regarded as the dominant partner, is it?

21 MS. BRINKMANN: No. But when you do the
22 analysis, you're looking at the taxpayer, which is Mead
23 Corporation. And it clearly has a --

24 CHIEF JUSTICE ROBERTS: Is General Electric
25 a light bulb company or, since it owns NBC, a media

1 company.

2 MS. BRINKMANN: I would have to know many
3 more facts in order to answer that questions, Your
4 Honor. But I -- and I don't mean to be evasive --

5 JUSTICE GINSBURG: Why isn't the answer
6 both? Why isn't the answer both, just as here it is
7 both a paper or office supply company and a Lexis/Nexis,
8 electronic data company?

9 MS. BRINKMANN: It's an analytical construct
10 that we're doing here. We're looking at the taxpayer
11 who is being taxed, the Mead Corporation. So you look
12 at its business that's being conducted in Illinois.
13 They have a unitary paper company that's vertically
14 integrated that's doing business activities in Illinois.

15 CHIEF JUSTICE ROBERTS: Well, that's because
16 they sell paper in Illinois?

17 MS. BRINKMANN: Yes.

18 CHIEF JUSTICE ROBERTS: Well, Lexis sells
19 data services in Illinois, too.

20 MS. BRINKMANN: Yes. But when you're
21 looking -- and for both purposes, Your Honor, for State
22 tax on the operating income of both of those businesses,
23 Illinois does have a right to apportion those taxes.
24 And those taxes were paid without objection by both of
25 those businesses.

1 We're talking about a tax on a different
2 event, on a capital gain on a sale of the business in
3 Ohio.

4 CHIEF JUSTICE ROBERTS: Well, why doesn't --
5 I mean, you just said, as I understand it, Illinois has
6 the right to tax Lexis under business activities in
7 Illinois. Illinois would argue the reason it has a
8 capital gain is partly because they were doing business
9 in Illinois and so we should be entitled to part of that
10 capital gain. Almost -- I mean, it seems to me it would
11 be pretty easy if they get to tax 2 percent of Lexis's
12 business, well then maybe they should get 2 percent of
13 the capital gain when it's sold or tax 2 percent.

14 MS. BRINKMANN: Your Honor, that is a
15 belated argument that the State of Illinois has raised
16 in this Court. It did not present an argument to the
17 Illinois appellate court based on Lexis/Nexis's
18 connection to Illinois. It raises a host of
19 jurisdictional, procedural and substantive bars.

20 Under the rules of Illinois, as we point out
21 in our reply brief, that argument is waived. This comes
22 to the Court from a State court, not a Federal court of
23 appeals. Because of that waiver, it's an independent
24 and adequate state ground.

25 Moreover, that argument wasn't raised in the

1 brief in opposition, either.

2 JUSTICE GINSBURG: They're raising it in --
3 in support of the judgment. So if it's novel, but it
4 supports the judgment, then at least shouldn't the
5 Illinois courts have a chance to look at it and say, oh,
6 that's what we really meant, we just got -- explained it
7 the wrong way?

8 MS. BRINKMANN: Well, that would certainly
9 be a matter for the Illinois court rather than for this
10 Court, Your Honor. But in addition, I think any
11 disposition on the merits of that issue would be a
12 ruling by this Court that would be trumping that
13 independent and adequate State ground waiver.

14 Moreover, this argument wasn't raised in the
15 brief in opposition, either. And the Court's precedent,
16 of course, and practice would not be to address that.
17 Particularly in this case, it denied notice to the amici
18 who would be affected by this argument.

19 But turning to the substance of it --

20 JUSTICE KENNEDY: I think this is part of
21 the substance. I thought that as part of one of your
22 answers you said that Ohio is free to allocate part of
23 this capital gains tax to Illinois? Did I hear you say
24 that, because I don't understand that?

25 MS. BRINKMANN: No, Your Honor, I'm sorry.

1 I apologize if I misspoke. Ohio would allocate, I mean,
2 take the entire gain for itself as the domicile State of
3 the seller --

4 JUSTICE KENNEDY: I see.

5 MS. BRINKMANN: -- of the investment. In
6 other factual scenarios, if it turns out that that asset
7 actually was not an investment and in fact had enough
8 connection to the business activities in Illinois
9 because it was really the supplier of the raw materials,
10 or the two examples that this Court has given as
11 operational functions is the interest on the bank
12 account, which is the working capital, or the -- the
13 futures hedging against the raw material of corn.

14 CHIEF JUSTICE ROBERTS: Well, isn't it kind
15 of like futures hedging? I mean, you've got a paper
16 company and then you've got something that is sort of
17 the paperless aspect, and they can look at it and say,
18 well, we're kind of hedging our paper business by
19 investing heavily in something that's supposedly going
20 to take away the need for paper.

21 MS. BRINKMANN: No, Your Honor. Under the
22 operational function test, it has to be a much closer
23 nexus to the operating, the operations of the paper
24 company; and short of that operational function -- or if
25 it were part of the unitary business, the domiciliary

1 State would allocate. And if I could turn --

2 JUSTICE KENNEDY: Are you saying this is a
3 passive investment?

4 MS. BRINKMANN: Yes, Your Honor.

5 JUSTICE SOUTER: How can you call it a
6 passive investment, not only when there was -- I think
7 undisputedly -- as -- as much interest and activity in
8 Nexis's business planning by the Mead people? But to my
9 mind even more importantly, when in fact Mead, I think a
10 couple of times, merged with -- with Nexis -- with Lexis
11 -- when that provided a tax advantage, by -- by giving
12 them loss carryforwards that reduced their taxes. Why
13 isn't it fair to -- to say under the operational
14 function test that if -- if the company is -- if Nexis
15 is -- is mergeable with Mead when it produces a tax
16 advantage and is certainly in a very operational sense
17 functional then, because it's saving them a lot of
18 money -- and that's, that has nothing to do with passive
19 investment. If it's usable in a merger scenario there,
20 it ought when the -- when the tide turns be -- be
21 regarded as close enough in operational function to be
22 taxable when the gain comes in.

23 MS. BRINKMANN: Your Honor, that's contrary
24 to the Court's long-standing recognition that something
25 that enriches the taxpayer is not necessarily part of

1 the unitary business's operational function.

2 JUSTICE SOUTER: That's -- that's right.

3 But weren't the enrichment cases in which income was
4 being generated by an investment? The investor, of
5 course, was the -- was the taxpayer company, and it
6 simply reaped the benefits of a profitable investment.
7 That's something very different from merging
8 corporations, then unmerging them, and then merging them
9 again to provide not merely enrichment, but great tax
10 savings; and if they are operationally close enough to
11 produce great tax savings, why shouldn't they be treated
12 as operationally close enough when in fact they -- they
13 produce a capital gain?

14 MS. BRINKMANN: Because that isn't the
15 operational connection that justifies a State --

16 JUSTICE SOUTER: The gain alone certainly is
17 not. If they had absolutely done nothing but make their
18 investment and wait to see whether the ship came in, I
19 would understand your argument. But between the
20 investment and the return of the ship, they were merging
21 these corporations back and forth for -- for their --
22 for Mead's tax advantage. And that seems to me to take
23 it out -- take the facts of this case out of the sort of
24 the paradigm of the -- the operational or the
25 nonoperational function cases.

1 MS. BRINKMANN: Your Honor, I think not, if
2 we look at Allied-Signal, we look at Woolworth, and we
3 look at ASARCO. Allied-Signal was a sales and
4 investment -- and getting back to the point about the
5 argument really was waived about the connection with
6 Lexis/Nexis in Illinois, those were the same facts in
7 Allied-Signal. The investment there was --

8 JUSTICE GINSBURG: It was a sale of stock in
9 that case, wasn't it?

10 MS. BRINKMANN: Yes.

11 JUSTICE GINSBURG: It was the sale of a
12 subsidiary. And here we have a sale of assets of one
13 company, and that's why it's so hard for me to see this,
14 as, why are we talking about unitary or not? There is
15 only one company; it's Mead.

16 MS. BRINKMANN: In Allied-Signal, the
17 investment there was also doing business within the
18 State. In the Exxon case, there were divisions to which
19 this Court applied the entire unitary business
20 principle, because what the Court has said repeatedly in
21 Mobil, in Exxon, in all these cases, it's not the
22 corporate form; it is whether there is a discrete
23 business enterprise; and ASARCO speaks to this.

24 JUSTICE GINSBURG: You told me that there
25 was no case that the tax -- taxing authority lost that

1 involved divisions of a single company and sale of
2 assets, rather than the sale of stock.

3 MS. BRINKMANN: That's correct. We have
4 four or five cases here. One of them does involve
5 divisions, Exxon, but in that case it was a vertically
6 integrated corporation, and the State prevailed in that
7 case, but it did not change the analysis that applied.

8 JUSTICE GINSBURG: Well, we're talking about
9 what Due Process permits States to do, and you're asking
10 us to declare a restriction that, as far as I know, has
11 never been declared in any case.

12 MS. BRINKMANN: It has, Your Honor. It goes
13 back to principles that ownership do -- does not
14 determine; simply because there is a business operating
15 in the State, the State does not have the right to tax
16 every investment that's owned by that. That dates back
17 to 1897.

18 JUSTICE GINSBURG: It's not just that it's
19 an investment, it's not just that it's holding on to the
20 shares in another company. It's both of these are
21 ongoing businesses, Lexis/Nexis and Mead, and they are
22 both generating income, and all along Illinois has been
23 taxing the income of both of them, right?

24 MS. BRINKMANN: Yes, the operating income
25 within the State's apportioned. But if you look to the

1 business activity of the taxpayer Mead, operating in
2 Illinois, it is that nexus on which Illinois is claiming
3 that they have a right to tax here. And if we look at
4 the Woolworth case, for example, I think that is also
5 instructive. Those were four subsidiaries. Three of
6 them were 100 percent wholly owned, and the Court
7 expressly said we recognize they are wholly owned
8 subsidiaries. These could be integrated divisions, and
9 they said, that is not significant, if they are
10 independent, different business enterprises.

11 JUSTICE GINSBURG: Weren't those foreign
12 corporations?

13 MS. BRINKMANN: Yes, Your Honor.

14 JUSTICE GINSBURG: So running them as -- as
15 a single company would have been a little harder.

16 MS. BRINKMANN: Well, no, in fact there were
17 also some foreign subsidiaries, I believe, involved in
18 the ASARCO case, for example, Your Honor, and the same
19 analysis applied -- you know, whether it was vertically
20 integrated and whether or not it met -- the unitary
21 business test goes back to three core principles, and
22 this Court has said at least four if not five times that
23 the unitary business principle is the linchpin of
24 apportionment. That is whether or not there is
25 functional integration.

1 JUSTICE SOUTER: Don't we start -- I don't
2 mean to cut off your argument, but don't we start with
3 the assumption that this is not a unitary business?
4 Wasn't that the finding of the trial court which was not
5 disturbed on appeal?

6 MS. BRINKMANN: That's right, Your Honor.
7 That's right.

8 JUSTICE SOUTER: You can say it if you want,
9 but I wanted to make sure --

10 MS. BRINKMANN: There is no virtual
11 integration; there is no sharing of centralized
12 management; there's no economies of scale. We think
13 this is unassailable in the stipular record --

14 JUSTICE BREYER: Am I thinking about that
15 part correctly? I -- I found this difficult. I go back
16 to the railroad; that seems the easiest case. You have
17 a railroad in 50 States, and Illinois finds it very hard
18 to evaluate its -- evaluate its value, its railroad
19 property in Illinois, because the value of that depends
20 on service everywhere. So the court says that's the
21 unitary principle; and really what you're supposed to
22 look at is whether when you look at the supposedly
23 separate part of the business, does that separate part
24 of the business contribute to the whole thing? So that
25 if you were in fact trying to say what is Illinois doing

1 without considering that separate part, it would be
2 tough to do.

3 I mean, that's the underlying theme.

4 MS. BRINKMANN: We would --

5 JUSTICE BREYER: And if that's so, there is
6 no second test. I mean, I grant you there is language,
7 but really what people have done is they've said, we are
8 here in a special situation because we have an interest
9 in another company, and that's a special part of our
10 business, and has nothing to do with the rest of the
11 business. And then the argument is no, it does have
12 something to do with the rest of the business. And if
13 it does, like it provides you with working capital, it's
14 just like the railroad track in California vis-a-vis
15 Illinois.

16 MS. BRINKMANN: It's contributing to the
17 business.

18 JUSTICE BREYER: And if it doesn't, it
19 doesn't. So now, if that's right, then it's the form of
20 analysis rather than the result that's wrong in the
21 court below. Because they start talking about two
22 separate tests and then people argue whether the second
23 should swallow up the first, and at that point I get
24 totally lost. It's fairly long, but I'd appreciate your
25 evaluating what I've just said.

1 MS. BRINKMANN: Well, Your Honor, there --
2 on this record, there's no question that the Lexis/Nexis
3 cannot meet the unitary business test.

4 JUSTICE GINSBURG: Yes, there is, Ms.
5 Brinkmann. The Illinois appellate court never got to
6 that question. Illinois argued all along this is a
7 unitary business. The only one who said it wasn't was
8 this trial court, and the Illinois intermediate
9 appellate court says, well, we don't have to deal with
10 that because if you use the other label, operational
11 function, that comes out all right, too.

12 But this argument was certainly the number
13 one argument that Illinois was making. It lost only in
14 the trial court on -- on it. And the appellate court
15 said we don't have to get to it. So I think your answer
16 to Justice Souter really wasn't accurate because it
17 isn't --

18 MS. BRINKMANN: Well, our position is on the
19 record here, Your Honor, the stipulated record, that
20 it's unassailable. But we do --

21 JUSTICE GINSBURG: All we know is that a
22 trial judge said that was so.

23 MS. BRINKMANN: And then that's our
24 position, obviously, on the record, Your Honor; but we
25 agreed this was properly raised in the appellate court,

1 as opposed to the other argument which was not. And
2 this also was mentioned in the brief in opposition, as
3 opposed to their other argument, which was not.

4 So we do think the Court could reach this
5 argument, and we maintain that on this record the
6 linchpin of apportionment giving the right of a State --
7 and this is a right to extend beyond its territory.

8 The Court has already let it go beyond its
9 territory to get to something outside the State if it's
10 part of the unitary business -- the railroad case, the
11 express case.

12 And in that situation there are three
13 factors, none of which can be met on this record. There
14 was no shared, centralized management, none. There was
15 no integrated functions, none. And there were no
16 economies of scale. Lexis/Nexis did not even get a
17 discount on any paper they bought from Mead. They were,
18 you know, minor customers of each other.

19 JUSTICE GINSBURG: Maybe when we're talking
20 about Due Process and Commerce Clause limitations on
21 what States can tax, we ought to ask ourselves if those
22 three -- is that it? If we're trying to measure, is
23 there a sufficient relationship between Lexis/Nexis,
24 Mead, and the State of Illinois to make it fair for them
25 to tax?

1 And you say, oh, yes. Each year when
2 they're making income, when they are a going concern,
3 Illinois can get a piece of it. But when the assets are
4 sold, assets that would have generated income for
5 Illinois year after year, but when those assets are
6 sold, Illinois can get nothing to represent -- to
7 substitute for that stream of income that it would have
8 gotten.

9 MS. BRINKMANN: No. It will continue to get
10 income tax on an apportioned basis before and after.

11 JUSTICE GINSBURG: But Lexis/Nexis is gone.

12 MS. BRINKMANN: Well, Lexis/Nexis continues
13 to operate. It's now owned by Reed Elsevier. So it
14 would continue to pay an apportioned income tax.

15 It's a different event here, Your Honor. It
16 is the sale of an investment that occurred in Ohio. And
17 as the domicile State, Ohio has provided benefits to the
18 corporate headquarters, to management --

19 JUSTICE GINSBURG: Suppose it had been
20 Delaware, and there was nothing there in Delaware except
21 it was a Delaware corporation.

22 MS. BRINKMANN: That's not the commercial
23 domicile, Your Honor. There is a distinction in all of
24 these cases between the State of incorporation and the
25 commercial domicile. The commercial domicile --

1 CHIEF JUSTICE ROBERTS: Ms. Brinkmann, one
2 thing that concerns me is how this will complicate the
3 process. I think, with respect to ordinary income, the
4 States work this out, and they figure we get 5 percent
5 because we have 5 percent of the presence or business,
6 whatever.

7 Now, they're going to have that, and they're
8 going to have an overlay on that. They're going to say,
9 well, it's 5 percent; but, you know, we sold this asset
10 that doesn't have any connection to Illinois; and that's
11 part of the income we've got. So you don't get quite 5
12 percent of all.

13 And another -- Illinois is going to come
14 back and say, well, yes, but you sold this other one;
15 and, as to that one, you've got sufficient connection
16 with Illinois. It seems to me it's going to be
17 impossible to sort this out.

18 MS. BRINKMANN: Your Honor, this has been
19 going on since at least 1992 in the Allied-Signal case.
20 The lower courts, the State courts, except for the court
21 in this case, have been able to apply that easily.

22 In order to take the expansive view of
23 Illinois here, you would be undermining Allied-Signal,
24 which had the same facts as in this case, not to mention
25 ASARCO, Woolworth.

1 And I would just say, before I could reserve
2 the remainder of my time, Allied-Signal was the case in
3 which this Court was faced with new arguments raised by
4 the States, at argument. You went back and had
5 resupplemental briefing and reargument, and questioned
6 in your questions to those parties whether or not ASARCO
7 and Woolworth should be revisited and overruled.

8 So the Allied-Signal case took into account
9 all of these concerns and came back with a ringing
10 affirmation of the linchpin of an apportionability for
11 state taxation being the unitary-business test with the
12 operational-function aspect.

13 JUSTICE KENNEDY: I don't like to intrude on
14 the white light, but if I could just ask one question.

15 If the unitary-tax argument has been
16 preserved and is met and if there's a finding that they
17 are unitary, does Illinois have the right to tax the
18 sale, or to -- to a portion of it?

19 MS. BRINKMANN: We think that the finding is
20 that it is not unitary.

21 JUSTICE KENNEDY: No, no. Assume -- assume
22 it is unitary. Can Illinois then, in your view, have a
23 part of -- tax part of the gain on the sale?

24 MS. BRINKMANN: Yes, if it were unitary, but
25 we think there's no way this record could meet the

1 standards compared to Woolworth, ASARCO. In all those
2 cases, they were much closer. Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you, Ms.
4 Brinkmann.

5 Mr. Barov.

6 ORAL ARGUMENT OF BRIAN F. BAROV

7 ON BEHALF OF THE RESPONDENTS

8 MR. BAROV: Mr. Chief Justice, and may it
9 please the Court:

10 Illinois is not attempting to tax income
11 earned outside its borders. To the contrary, the income
12 it seeks to tax here is income earned by Mead on its
13 electronic publishing business, Lexis, which conducted
14 substantial business in Illinois.

15 Mead paid taxes on the income that the
16 electronic publishing business earned. Yet, it now
17 contends that the Constitution bars it from taxing any
18 of the gains it realized on the sale of Lexis, even
19 though Illinois undeniably contributed --

20 JUSTICE KENNEDY: Well, if you did not
21 proceed on the unitary business there, let's take that
22 off the table. It seems to me that Lexis's presence in
23 Illinois is quite irrelevant.

24 MR. BAROV: No, Your Honor. It's --

25 JUSTICE KENNEDY: It seems to me that, under

1 your theory, you could tax the sale, even if Lexis were
2 not in Illinois at all, just because Mead is.

3 MR. BAROV: If this - if they were unitary,
4 yes, then Lexis's presence in Illinois would be
5 irrelevant to this case, if they met the
6 unitary-business doctrine.

7 JUSTICE BREYER: That's not the question. I
8 thought that the -- I agree with the same question
9 Justice Kennedy had. Suppose that I'm a Massachusetts
10 company that sells tables, and I sell some tables in
11 Illinois. And one day I take some of the money, and I
12 buy an iron mine in New Mexico. And then I sell the
13 iron mine. And Illinois, not Massachusetts, wants to
14 impose a tax. And suppose there is no connection
15 whatsoever between the iron mine and anything else but
16 for four, which are the four listed on page 13a:

17 One, that I have contributed capital support
18 to the iron mine.

19 Two, I approve the major capital
20 expenditures of the iron mine, sitting in my office in
21 Massachusetts.

22 Three, sometimes -- and this is a tougher
23 one -- I call the iron mine a division of my table
24 company.

25 And, four, I sometimes retain tax benefits

1 and control over the extra cash of the iron mine, but
2 I'm not using it in my day-to-day work.

3 Now, are those four things alone sufficient
4 for Illinois to tax the sale of my iron mine? That, it
5 seems to me, is the way they presented it. Maybe it is
6 a unitary business really, but I guess we have to send
7 it back for that.

8 MR. BAROV: Under -- under those bare facts,
9 probably there would be not a sufficient connection.

10 JUSTICE BREYER: All right. Then why isn't
11 that the end of this case? That's what they said it
12 was. That's what they said, perhaps wrongly, that this
13 isn't a unitary business. And, therefore, we are left
14 with those four facts, and why not send it back and say
15 you haven't reached the unitary-business question; go
16 reach it?

17 MR. BAROV: Because, Your Honor --

18 JUSTICE KENNEDY: And if I can just add on
19 to that same question: If you're going to have the
20 unitary-tax theory, that's -- that's very helpful. But
21 if we take the unitary-tax theory off the table, it
22 seems to me that you are confusing the law by having
23 some midway test. I don't know what your theory is,
24 that -- in relation to this part of Justice Breyer's
25 question.

1 MR. BAROV: There's a two-part answer to
2 that question -- those questions, Your Honor.

3 First, there's a second avenue of State
4 taxation that's been well recognized by this Court for
5 at least 80 years, which is that if a business conducts
6 business in a State, a State has a tax -- has the right
7 to tax a share of that business. And that's all
8 Illinois did here. When it apportioned the income in
9 this case, it apportioned the income only based on
10 Lexis's in-State Illinois presence. So under that
11 avenue alone, the tax is constitutional.

12 The second --

13 JUSTICE KENNEDY: But Mead didn't receive --
14 pardon me -- Lexis didn't receive the money for the
15 sale, Mead did.

16 MR. BAROV: Right.

17 JUSTICE KENNEDY: Unless, again, if Mead's
18 presence or nonpresence is simply irrelevant to what
19 happened here, absent a unitary theory.

20 MR. BAROV: No, Your Honor. Mead received
21 the tax -- the gain for the sale because Lexis was a
22 division of Mead, and the only tax-paying -- the only --
23 there is no -- there was no legal entity known as
24 "Lexis" at the time that Lexis was sold. It was assets
25 -- it was assets owned by the Mead Corporation.

1 Now, Mead received the benefit -- the gain
2 on the sale because Mead was the only tax-paying entity
3 in this case. So Mead was conducting a business in
4 Illinois called "Lexis," and, therefore, Illinois could
5 tax at least --

6 JUSTICE KENNEDY: Do you think that if there
7 had been a separate corporation and that Lexis was a
8 subsidiary corporation and the subsidiary was -- it was
9 sold, that, again, absent a finding of unitary, Illinois
10 then could have had a tax?

11 MR. BAROV: Yes. Illinois could have taxed
12 based on the --

13 JUSTICE KENNEDY: All right. So, then, the
14 asset stock doesn't make any difference?

15 MR. BAROV: But the -- but the point, Your
16 Honor, is that Lexis had a presence in Illinois. It was
17 conducting business in Illinois. That, alone, gave
18 Illinois the power to tax a share of the income --

19 JUSTICE KENNEDY: That gets back to Justice
20 Stevens's initial hypothetical. If you live in New York
21 and you have an investment in a company that does a lot
22 of business in Illinois and you in New York, a resident
23 individual, sell that stock, under your theory Illinois
24 could tax it.

25 MR. BAROV: No. Illinois can't tax that

1 State because there is no relationship -- there has to
2 be some relationship, you know, between Illinois and the
3 tax-paying activity and the taxpayer.

4 In Justice Breyer's hypothetical there was
5 none. But there is a -- but let me, if I can, address
6 that prong of the analysis, also.

7 Here there was a much closer connection
8 between Lexis and Mead than simply that of a passive
9 investment. It wasn't just that Mead helped Lexis buy,
10 make, handle acquisitions. They were involved in the
11 actual acquisitions themselves, in purchasing and
12 contracting to make those acquisitions.

13 Mead was involved in many of the -- in
14 controlling lots of their capital investment, its -- and
15 its -- it was also involved in manipulating excess -- in
16 their excess cash. And there is a whole -- there was a
17 host of facts that supported a closer relationship
18 between Mead and Lexis than simply that, that passive
19 investment.

20 So whether -- even if you are looking at it
21 from the operational-function point of view, there was
22 -- there was a -- a sufficient connection between Lexis
23 and Mead beyond that of Justice Breyer's hypothetical.

24 JUSTICE ALITO: If you traded places with
25 Ohio, how would you have treated this transaction under

1 your tax laws?

2 MR. BAROV: Under our tax laws --

3 JUSTICE ALITO: Say that Mead was domiciled
4 in Illinois but Lexis/Nexis operated in Ohio, would you
5 have just taken -- would you have allocated or would you
6 have claimed that -- the right to tax the entire capital
7 gain?

8 MR. BAROV: This would have probably, I
9 think, Your Honor -- I believe this would have been
10 apportioned as business income under Illinois law.

11 JUSTICE GINSBURG: Do you know what -- or
12 did you know what Ohio did in the --

13 MR. BAROV: I don't know what Ohio did.
14 They -- Mead has never cited anything in the record to
15 support the contention that it has been -- that it was
16 allocated all to Ohio. My understanding of Ohio law at
17 the time was they -- they have the same business-income
18 test, basically, that Illinois does.

19 JUSTICE GINSBURG: Well, what would you say
20 -- I mean, we talk about apportioning income and
21 allocating income, allocating to the commercial
22 headquarters.

23 What in an enterprise like this would you
24 say is allocated to the commercial headquarters as
25 opposed to being apportioned among all the States?

1 MR. BAROV: Different States have different
2 rules, Your Honor, and these are State-law rules, not
3 constitutional rules, about allocation and
4 apportionment. Some States will allocate an intangible
5 capital gain like this to their own domicile State.

6 Other States will apportion it based on the
7 share of income that is done in the State.

8 Again, I don't know what Ohio did. But the
9 point is that's a rule -- that's a State-law rule of
10 choice, not a rule of -- a constitutional rule. I think
11 this Court has been pretty clear in the Mobil Oil case
12 that these -- those -- that doesn't have a
13 constitutional significance.

14 That when a State, a domicile State, and a
15 State where a source -- which is the source of income,
16 when those conflict, in fact, this Court has signaled
17 that apportionment is the default rule. And that the
18 source State actually would have -- the source State
19 would win that confrontation.

20 JUSTICE SOUTER: Mr. Barov, I just want to
21 go back to an earlier answer to see how far you would go
22 with the position that you took.

23 Assume that, exclusive of Nexis, Mead is the
24 same kind of unitary corporation as under -- under
25 everybody's understanding now. Assume, also, as you

1 suggested in a hypo, that Lexis was doing business in
2 Illinois. So that at least a -- a portion of its own
3 activity could be taxed in Illinois. And assume, third,
4 that the relationship between Mead and Lexis is simply
5 one of passive investment. Mead simply bought a lot of
6 stock, maybe 100 percent of the stock at the right time;
7 and, otherwise, it kept hands off. And at this point
8 Mead now -- now sells.

9 On -- on your theory, would -- would the
10 State of Illinois be able to tax a portion of the
11 capital gain?

12 MR. BAROV: Yes, they would, Your Honor.
13 But they would be limited in how much of that capital
14 gain they could apportion. They would apportion it
15 limited to the amount of income that arose in Illinois.
16 And that's what the auditor did in this case.

17 JUSTICE SOUTER: Well, but that would be, in
18 effect, the portion of the Nexis business, total
19 business that took place in Illinois, total sales, total
20 payroll, however you do it.

21 MR. BAROV: Right, and then that would be
22 put -- that would be put into --

23 JUSTICE SOUTER: Okay. But the only point I
24 wanted to be clear on to understand your position is
25 that purely passive investment would be enough to

1 trigger your theory?

2 MR. BAROV: Yes, it would be.

3 JUSTICE SOUTER: Okay.

4 MR. BAROV: It is, Your Honor.

5 CHIEF JUSTICE ROBERTS: Counsel, why isn't
6 your friend correct that you have waived any argument
7 based on the presence of Lexis in Illinois?

8 MR. BAROV: Your Honor, two reasons:

9 First, under the -- they have cited
10 basically two basis grounds for waiver, one under
11 Illinois law and under this Court's rules. But they
12 misstate Illinois law in the -- on the waiver regard.

13 The cases and rules they cite to stand for a
14 simple proposition that a point not raised in a brief
15 before a particular court can't be raised on oral
16 argument. But what the Illinois Supreme Court has been
17 clear on "otherwise" is that an argument, even if it's
18 not raised in the appellate court, as long as it's
19 raised in the trial court in support of a judgment, may
20 be raised in a reviewing court on further review.

21 I can provide a couple of cites, Your Honor.

22 JUSTICE GINSBURG: And -- and I'm not
23 following your argument, because I thought that the
24 argument that this was a unitary enterprise was made in
25 the Illinois appellate court, and the appellate court

1 recognizes that it was made, and said we are not going
2 to reach it because we have this operational-function
3 test?

4 MR. BAROV: Yes, Your Honor. That's --
5 that's correct.

6 CHIEF JUSTICE ROBERTS: Well, but that's --
7 they are very different from your current argument,
8 which you emphasize that whether they are unitary or
9 not, Lexis/Nexis was in Illinois.

10 MR. BAROV: That's correct, Your Honor.

11 CHIEF JUSTICE ROBERTS: Okay. Now, as to
12 that argument, at least I am very reluctant to overturn
13 a State court on an argument that they didn't have an
14 opportunity to consider. And whether it's technically
15 waived because you raised it in the trial court or not,
16 it certainly was not an argument you made to the
17 Illinois appellate courts.

18 MR. BAROV: That's correct, Your Honor. And
19 -- but I think, as this Court set forth in Caterpillar
20 v. Lewis, it is a predicate to the intelligent
21 resolution of this case.

22 CHIEF JUSTICE ROBERTS: Well, it wasn't in
23 Allied-Signal. In Allied-Signal the asset that was sold
24 was in New Jersey, and that was totally irrelevant to
25 how we treated the issue in that case.

1 MR. BAROV: Certainly, Your Honor. But New
2 Jersey was taking a very different position in that
3 case. They were making a much broader argument than we
4 are making here. They were trying to overturn the
5 entire unitary doctrine.

6 And so they may have -- they may have chosen
7 not to make that argument. It may very well have been
8 in that case that ASARCO's apportionment factors in that
9 case were so minimal that it wasn't worth their making
10 that argument.

11 But, for whatever reason, they weren't
12 interested in taxing based on the source alone.

13 But here, as the facts show, Illinois did
14 tax. We taxed Lexis, or the gain on Lexis, pursuant to
15 Lexis' in-state apportionment factors.

16 JUSTICE STEVENS: May I ask this question
17 just -- it shows my ignorance, but if the
18 unitary-business approach to taxation was not applied in
19 this case, how did you compute the amount of the tax?

20 MR. BAROV: It was computed -- what the
21 department did in this case is it -- it took the entire
22 gain that put -- that went into Mead's apportionable tax
23 base. But, then, in order to find the Illinois-Lexis
24 share of the gain, he looked at the -- he looked at
25 Lexis's Illinois sales and Illinois's -- Lexis's

1 Illinois payroll and pulled that amount out, which was
2 about four percent of the gain, and put that into Mead's
3 --

4 JUSTICE STEVENS: So you use a different
5 formula from the normal three-factor formula to compute
6 the tax?

7 MR. BAROV: Right. You use a different
8 formula. You use a two-factor formula, but it was just
9 related to Mead's sales, not to --

10 JUSTICE KENNEDY: But it seems to me that
11 those factors are wholly irrelevant to the fact of sale.
12 It's just whimsical. It has nothing to do with the
13 sale.

14 The reason we use apportionment in other
15 cases is, just as in Justice Breyer's railroad example,
16 there is no other way to tell, and so forth.

17 But here the presence of Lexis in Illinois
18 is wholly accidental with reference to what went on in
19 the sale.

20 MR. BAROV: No, Your Honor, it wasn't. I
21 mean Lexis did considerable business in Illinois, and
22 the auditor was isolating Illinois's business in
23 attempting to accurately value the amount of gain that
24 should be attributable to Mead based on Lexis's Illinois
25 presence.

1 CHIEF JUSTICE ROBERTS: Well, that's why
2 it's even more dramatic to me that you didn't raise the
3 argument based on the Lexis connection to Illinois.
4 That's the basis on which your auditor is claiming these
5 taxes; and, yet, you don't even raise it before the
6 Illinois appellate court as a ground for being able to
7 reach the Lexis/Nexis income.

8 MR. BAROV: -- the trial court -- actually
9 the appellate court ruled on whether the State law tests
10 had been met at the time. And when it went up on appeal
11 we -- we prevailed in the appellate court based on
12 operational -- I'm sorry, in the trial court, based on
13 the court's finding the operational function had been
14 met. That's how the appellant framed the issue, and the
15 case sort of turned on really Illinois State law's
16 interpretation of Allied-Signal. But, you know, at this
17 point the -- the facts and the law are clear and a
18 decision --

19 JUSTICE STEVENS: In the Illinois courts,
20 they did argue that as a matter of Federal
21 constitutional law the tax is impermissible, didn't
22 they?

23 MR. BAROV: Correct, yes. Yes, they did.
24 At this point, Your Honor, I mean, to render a decision
25 that doesn't take into account the facts of the case,

1 the economic reality, accordingly would be artificial.

2 CHIEF JUSTICE ROBERTS: We couldn't do
3 anything more if we said you haven't waived it, we
4 couldn't do anything more than send it back. You're
5 telling us Lexis has this presence in Illinois, but we
6 have nothing in the record about that.

7 MR. BAROV: Yes, it is in the record. The
8 auditor's -- I mean, the stipulation itself shows that
9 Lexis was in Illinois. And the Illinois appellate court
10 made a finding that the presence of Lexis -- Mead to tax
11 Nexis with Illinois was undisputed. So the Illinois
12 appellate court recognized that Lexis had a taxing --
13 adequate taxing connection with Illinois.

14 CHIEF JUSTICE ROBERTS: Where is that?

15 MR. BAROV: That is -- I don't have the page
16 cite handy, Your Honor, but the appellate court did make
17 a finding that it was undisputed that the --

18 CHIEF JUSTICE ROBERTS: I just -- usually
19 appellate courts don't make findings. That's why I'm
20 curious --

21 MR. BAROV: I'm sorry. Made a statement.

22 JUSTICE GINSBURG: Was there any sort of
23 stipulation between the parties to say what each, what
24 Lexis/Nexis was doing in Illinois, what Mead was doing
25 in Illinois?

1 MR. BAROV: There was, there was a long
2 stipulation, yes, Your Honor, and plus there was
3 exhibits attached to the stipulation, which are
4 reflected in our briefs, that discuss in detail what
5 Mead and Lexis were both doing, at least their
6 relationship to each other.

7 JUSTICE GINSBURG: Let me ask you about the
8 theory that both the trial court and the intermediate
9 appellate court went on, this operational function test,
10 which has been brought up in a few of our cases, but I
11 don't know any that was decided. Did we ever have any
12 case that turned on the operational function test to
13 hold for the State taxing authority?

14 MR. BAROV: No, Your Honor. But in
15 Allied-Signal there was -- examples were given of
16 certain --

17 JUSTICE GINSBURG: Yes. But one of the
18 problems with applying it as you urge here is that that
19 would just override -- why would anyone go to the
20 trouble of making a case under the so-called unitary
21 business test, because the operational function test
22 would be much easier to meet? So --

23 MR. BAROV: I guess on that point I would
24 disagree with you a bit, Your Honor. I think there are
25 very -- they're different types that look at different

1 relationships. So one doesn't -- while the same facts
2 can support them in instances, you can have situations
3 where a business is unitary but not operational or --
4 I'm sorry, an asset is operational, but isn't
5 necessarily --

6 JUSTICE BREYER: What? What? What could it
7 be? That is -- as I read this, I thought, well, there
8 is no separate test. It's just there's a certain
9 situation that comes up fairly commonly where someone
10 claims that an asset of a company was really quite
11 separate, and therefore when they get income from it or
12 they sell it it has nothing to do with my business. And
13 the answer is: It did have something to do with your
14 business, you used the working capital and so forth, in
15 which case it's part of the business. So how -- how is
16 it -- how is it different from that?

17 MR. BAROV: I agree, Your Honor.

18 JUSTICE BREYER: Well, if you agree with
19 that, do you really agree, because if you agree with
20 that there's no such separate test, this court was wrong
21 to consider it separately, the lower court, and they
22 should have reached the question they didn't reach,
23 which was is this whole thing one single business, which
24 is normally called the unitary business test?

25 MR. BAROV: Your Honor, on that point I

1 disagree.

2 JUSTICE BREYER: Good. All right.

3 MR. BAROV: I think there is -- I mean,
4 they're both ways of reaching the overall unitary
5 principle, whether you can show the intangible flow of
6 assets -- of value between a company -- I can give you
7 an example, say, of a company that would be unitary but
8 where the operational function analysis wouldn't apply
9 is the Container Corp. Type fact pattern, where you have
10 a domestic -- a domestic parent providing value out to
11 the foreign subsidiaries, but there is nothing sort of
12 flowing back to the domestic parent. They're not really
13 using those subsidiaries in the domestic business. But
14 nevertheless, there is enough value being thrown out
15 that it passed the unitary threshold.

16 The unitary -- the unitary -- I'm sorry.
17 The operational function analysis or test or principle,
18 whatever you want to call it, arises in the examples
19 given in Allied-Signal. As you said, you've got
20 something which isn't really part of the rest of your
21 business, but you're using it in that business to
22 support it way beyond just a passive investment.

23 And this -- in this case, that's how Mead
24 was using Lexis. They were using it to support their,
25 the value of their multiple, their multi-state business,

1 by manipulating -- by making capital contributions,
2 manipulating corporate structures, and bringing back
3 that tax and net loss carryforwards, which increased the
4 value, which increased their business activities.

5 So this case actually is that -- is that --
6 falls within that paradigm also. It's not unlike any --
7 like either of those hypotheticals in Allied-Signal, not
8 unlike the use of working -- investment of working
9 capital.

10 So, yes, both -- the test, while there are
11 facts that overlap them, they can show that there are
12 different relationships.

13 JUSTICE GINSBURG: So say you -- but you
14 would be asking us, if you were going to go on that
15 operational function, to take two examples that were
16 given in Allied-Signal that are quite different from
17 what's involved here, and to make that a doctrine when
18 you recognize that we have never used that theory to
19 hold for a State taxing authority in the context of a
20 multi-state enterprise?

21 MR. BAROV: Your Honor, I don't think you
22 have to create a separate doctrine again. I think these
23 are both considered different ways of showing the
24 intangible flow of value, the significant links between
25 a business that give rise to constitutional

1 apportionment. And whether they're considered separate
2 analyses -- they have been described by some academics
3 as corollaries of each other. It's certainly, given
4 this Court's signals in Allied-Signal, I think it's
5 certainly appropriate where the facts arise to make the
6 constitutional finding based on the operational function
7 that an asset serves in a business.

8 JUSTICE STEVENS: May I ask this question.
9 Does the record tell us whether other States have sought
10 to tax the capital gain on this transaction?

11 MR. BAROV: No, it does not, Your Honor.

12 JUSTICE STEVENS: As far as we know,
13 Illinois is out on its own here?

14 MR. BAROV: I don't know, Your -- I don't
15 know the answer to that, Your Honor. I hope not.

16 In any event, Your Honor --

17 JUSTICE SCALIA: You'd not wager, however,
18 right?

19 MR. BAROV: In any case, Your Honor, as you
20 said, as I've said, there are two possible ways that --
21 two different constitutional paths or theories that we
22 can go down in this case to meet the -- that allows
23 Illinois to apportion.

24 Independent of the operational links, Mead
25 can tax the gain on Lexis simply because Lexis conducted

1 business in Illinois. A state may tax a nonresident's
2 investment income based on its investment in a separate
3 business, and that's exactly what Illinois -- that's
4 another way to uphold the Illinois appellate court's
5 decision.

6 JUSTICE GINSBURG: If Illinois -- if Ohio
7 is, in fact, taxing the whole gain at its full rate on
8 the theory that this entire income should be allocated
9 to Ohio, then you do have an element of double taxation,
10 right?

11 MR. BAROV: That's possible, Your Honor, but
12 it's -- first, there is no -- there's no evidence that
13 Ohio in fact did that. But I think the Mobil Oil case
14 should have disposed of that, that contention, because
15 this Court rejected a similar argument that the mere
16 possibility of taxation by a domiciliary State
17 foreclosed taxation by a State where the business was
18 present.

19 And under Mobil Oil, when a resident State's
20 claim and a source State's claim conflict, this Court
21 indicated that the resident State's claim must yield to
22 that of the source State. So there should be no issue
23 of multiple taxation in this case.

24 Just -- Chief Justice Roberts, just to go
25 back to your question, it's page 11A of the pet. app.

1 where the appellate court said: "Mead does not dispute
2 that Lexis/Nexis had the requisite connection or nexus
3 with Illinois."

4 CHIEF JUSTICE ROBERTS: I thought -- I've
5 been looking, too. I thought 18A does say that they had
6 \$46 million of sales attributable to Lexis/Nexis.

7 MR. BAROV: Right. Certainly. There was
8 hundreds of millions of dollars of sales in Illinois.
9 So that's really not an issue in this case.

10 CHIEF JUSTICE ROBERTS: No, only 46 million.

11 MR. BAROV: I'm sorry.

12 CHIEF JUSTICE ROBERTS: It said 46, not
13 hundreds of millions.

14 MR. BAROV: I'm sorry. In 1994, yes, that's
15 correct.

16 The -- and again there's -- both Mead and
17 Lexis -- as both Mead and Lexis had adequate
18 constitutional connection here, there is no basis not to
19 sustain --

20 JUSTICE SCALIA: You're taxing Mead, not
21 Nexis/Lexis?

22 MR. BAROV: Correct. That's correct.

23 JUSTICE SCALIA: So what relevance is it
24 that Nexis/Lexis has business in Illinois?

25 MR. BAROV: It's --

1 JUSTICE SCALIA: I mean that's fine if
2 that's who you're taxing.

3 MR. BAROV: Well, it's relevant if, only if,
4 this Court finds that there was no operational
5 relationship between Lexis and Mead. Then Lexis's
6 presence in Illinois becomes relevant because in that
7 case, whether you look at this as a separate business
8 conducted by Mead or whether it was even a passive
9 investment of Mead's, Illinois can still tax it in the
10 manner that it did by -- by isolating the values of
11 Lexis's -- that Lexis earned in Illinois.

12 JUSTICE KENNEDY: And that is different --

13 JUSTICE SCALIA: I might say that I don't
14 follow that. It seems to me what you can establish from
15 the fact that it did a lot of business in Illinois is
16 that can you tax it and -- but I don't see how.

17 JUSTICE GINSBURG: There was no "it" to tax,
18 right?

19 MR. BAROV: That 's correct. There was no
20 "it" to tax and under this court's well-established case
21 law, International Harvester, J.C. Penney, a State can
22 tax a nonresident on an investment in that State as well
23 as the tax is properly prorated to the amount of income
24 that rose within that State.

25 JUSTICE GINSBURG: At the time of this sale

1 of Lexis/Nexis assets, there was only one taxpayer; it
2 was Mead.

3 MR. BAROV: That's correct, Your Honor.
4 There was one taxpayer and it was Mead. That was the
5 only party that could have been taxed. That's correct.

6 So here, in this case, Mead is taking an
7 all-or-nothing approach to taxation but this could --
8 this disregards the connections between Mead's
9 electronic publishing business in Illinois. And the
10 Court should decline to rule in their favor. In fact --

11 JUSTICE SCALIA: Do you have any case like
12 that where your ability to tax a surviving corporation
13 has to do with, not whether the surviving corporation
14 itself has sufficient contacts with the State, but
15 whether some other corporation that has disappeared now
16 but that merged into it had sufficient -- it seems to me
17 you have to establish connection with the taxpayer. Not
18 -- not with somebody from whom the taxpayer made some
19 money.

20 MR. BAROV: You have to establish a
21 connection with the taxpayer's activities in the taxing
22 State. That's the constitutional touchstone. So if
23 Mead -- whether Mead was running a business in Illinois
24 or investing in Illinois or had a unitary business that
25 operated in Illinois, those -- that's the -- that

1 provides a sufficient link.

2 JUSTICE SCALIA: That's fine.

3 MR. BAROV: So that provides the taxing --
4 the ability --

5 JUSTICE SCALIA: But that isn't established
6 by the mere fact that Lexis/Nexis did business there.
7 Ultimately you have to come down to connecting it to
8 Mead, either by your unitary business doctrine or by
9 this functional doctrine that you're relying on.

10 MR. BAROV: No, Your Honor. Under
11 International Harvester, I think that the Court made it
12 very clear that even a passive investment can be taxed
13 by a State. If Mead -- Mead can be taxed -- even if
14 LEXIS was a passive investor and Mead was only investing
15 in Illinois, Illinois could still tax Mead on the value
16 of its investment that arose in Illinois. And so Mead
17 realized the gain. Mead is the taxpayer. Mead can be
18 taxed as long as the tax is properly prorated to the
19 Illinois presence, which it was in this case.

20 JUSTICE KENNEDY: But the proration, it
21 seems to me -- that should have nothing to do with the
22 extent of Lexis in Illinois --

23 MR. BAROV: Exactly.

24 JUSTICE KENNEDY: -- nor does it have to do
25 with the extent of Mead in Illinois.

1 MR. BAROV: Well, no, Your Honor. It's --
2 under this -- then under this Court's precedent, that
3 you're looking for the source State, the activity of the
4 business was conducted in the source State. Now, in
5 this case it happened that the amounts are fairly close
6 to each other. So if there is any question about it,
7 there's no -- you know, there is no constitutional
8 problem that arises out of that. But clearly this -- I
9 mean it's settled precedent that a State can tax based
10 on income -- the income that arose in that State and
11 that's what happened here.

12 Indeed, to accept Mead's contention which
13 also would create a constitutional loophole that for
14 income in ae State's marketplace helped create but which
15 a State cannot recover, the Illinois court's decision
16 permitting Illinois to tax a fraction of the gain should
17 be affirmed.

18 And if the Court has no other questions --

19 JUSTICE SCALIA: Can you tax me on stock --
20 on stock that I own on companies that do business in
21 Illinois?

22 MR. BAROV: In the abstract, yes, you could,
23 Your Honor.

24 JUSTICE SCALIA: Do you know any State that
25 tries to do it.

1 MR. BAROV: No, Your Honor, but again, Your
2 Honor --

3 JUSTICE SCALIA: That's extraordinary. I
4 don't know of any tax that a State could possibly
5 impose, that no State has imposed.

6 (Laughter.)

7 MR. BAROV: Your Honor, this is -- but Your
8 Honor, International Harvester is the perfectly precise
9 fact pattern where this Court upheld a tax on a -- on
10 investors, on the shareholder's investment in a State in
11 which they were not present, so -- but in this case Mead
12 had an independent tax presence also in Illinois. So
13 that issue just doesn't arise in this case.

14 CHIEF JUSTICE ROBERTS: Thank you, Counsel.
15 Ms. Brinkmann, you have three minutes.

16 REBUTTAL ARGUMENT OF BETH S. BRINKMANN

17 ON BEHALF OF THE PETITIONER

18 MS. BRINKMANN: I have four very quick
19 points, Your Honor. Two go into this new, very
20 breathtaking argument that the State is making based on
21 Lexis/Nexis's presence to the State. Concerning
22 Illinois law, if you look Repondents' brief in
23 opposition, on page 12 at note 4, they cite the same
24 Illinois law we do, trying to argue that we had waived
25 arguments in the brief in op, so we are on pretty solid

1 ground there. I think it's their cert page, they were
2 agreeing with us on what the Illinois law meant.

3 On the substance of it, I think Justice
4 Scalia and Justice Kennedy brought out the weaknesses.
5 Their position would lead to taxes on all stock sales.
6 Any State where an investment was doing business could
7 then reach out and apportion the gain on that. And as
8 far as International Harvester and J.C. Penney, those
9 were tax on the investment, not the investor. And the
10 dissent -- that was the dispute -- the majority. It was
11 the incident of the tax fell on the invest -- the
12 investment that was doing business in the State.

13 The State concedes, Your Honor, on Justice
14 Ginsburg's, the distinction between -- the sale of
15 assets and the sale of stocks that you were concerned
16 about. On page 43, they concede and I think it's very
17 well recognized through Mobil and Exxon and Woolworth
18 that "apportionment has nothing to do with the form a
19 business organization takes."

20 CHIEF JUSTICE ROBERTS: Ms. Brinkmann, your
21 final point.

22 MS. BRINKMANN: Finally I would point out,
23 on the question you asked -- I think it was Justice
24 Ginsburg -- what Illinois would do in this.
25 Interestingly --

1 JUSTICE GINSBURG: Ohio.

2 MS. BRINKMANN: -- the record in this case
3 at -- it's not in the joint appendix, but it's at C-851.
4 It's Exhibit 1, to the stipulation of facts. It
5 indicates that interest and dividends allocable are
6 allocable to Illinois if the commercial domicile is in
7 Illinois.

8 JUSTICE SCALIA: Illinois or Ohio, were you
9 talking about?

10 MS. BRINKMANN: This is the Illinois return,
11 and the question was what Illinois would do? And they
12 say commercial domicile, we get your interest and
13 dividends.

14 CHIEF JUSTICE ROBERTS: Ms. Brinkmann, on
15 the waiver point -- I'm looking at page 18a -- it not
16 only says that Lexis/Nexis contributed \$46 million from
17 its presence in Illinois; it begins the sentence by
18 saying "as the Department notes, \$46 million of Mead's
19 income came from Lexis/Nexis activities in Illinois."
20 So that doesn't sound like a waiver of that point to me.

21 MS. BRINKMANN: At one point, after they got
22 through the unitary business and operational functional
23 analysis, there was an argument about whether it was
24 grossly disproportionate, and that's where some of that
25 information came. It was never in the context of this

1 legal --

2 CHIEF JUSTICE ROBERTS: Initially, it's
3 about the context in which -- what I regard as an
4 important fact -- was raised, whether it was raised in
5 the context of an argument on unitary business or
6 whether or not they went too far, but the stubborn fact
7 is still there.

8 MS. BRINKMANN: There are facts, Your Honor,
9 but the Illinois law is very clear; it's rule 341(h)(7)
10 and (i) which applies to applee. If you don't raise a
11 point in the appellate court, it is waived. That's an
12 independent and adequate State ground. And it's a very
13 breathtaking argument, as Justice Scalia pointed out,
14 that also wasn't brought forth in the brief in
15 opposition. Thank you, Your Honor.

16 CHIEF JUSTICE ROBERTS: Thank you. The case
17 is submitted.

18 (Whereupon, at 12:18 p.m., the case in the
19 above-entitled matter was submitted.)
20
21
22
23
24
25

A	43:17,18,19,19	appeal 20:5 40:10	approach 38:18 50:7	24:3,4,5 30:24 30:25 44:6 50:1 54:15
ability 7:9 50:12 51:4	agreed 22:25	appeals 12:23	appropriate 46:5	Assistant 1:20
able 6:21 7:4 25:21 35:10 40:6	agreeing 54:2	APPEARAN... 1:17	approve 28:19	assume 6:9 26:21,21 34:23 34:25 35:3
above-entitled 1:14 56:19	AL 1:9	appellant 40:14	area 7:21	assuming 5:24
absent 30:19 31:9	ALITO 9:21,24 32:24 33:3	appellate 3:11 3:16 12:17 22:5,9,14,25 36:18,25,25 37:17 40:6,9 40:11 41:9,12 41:16,19 42:9 47:4 48:1 56:11	argue 12:7 21:22 40:20 53:24	assumption 6:20 20:3
absolutely 16:17	Allied-Signal 3:19 17:2,3,7 17:16 25:19,23 26:2,8 37:23 37:23 40:16 42:15 44:19 45:7,16 46:4	appendix 55:3	argued 22:6	attached 42:3
abstract 52:22	allocable 55:5,6	applee 56:10	argument 1:15 2:2,7 3:4,7 12:15,16,21,25 13:14,18 16:19 17:5 20:2 21:11 22:12,13 23:1,3,5 26:4 26:15 27:6 36:6,16,17,23 36:24 37:7,12 37:13,16 38:3 38:7,10 40:3 47:15 53:16,20 55:23 56:5,13	attempting 27:10 39:23
academics 46:2	allocate 8:15 9:4 13:22 14:1 15:1 34:4	application 7:24	arguments 26:3 53:25	Attorney 1:20
accept 52:12	allocated 8:17 10:2 33:5,16 33:24 47:8	applied 4:18 5:6 9:15 17:19 18:7 19:19 38:18	arises 44:18 52:8	attributable 39:24 48:6
accidental 39:18	allocates 9:8	applies 3:23 56:10	arose 35:15 51:16 52:10	auditor 35:16 39:22 40:4
account 14:12 26:8 40:25	allocating 33:21 33:21	apply 25:21 44:8	artificial 41:1	auditor's 41:8
accurate 22:16	allocation 34:3	applying 42:18	ASARCO 17:3 17:23 19:18 25:25 26:6 27:1	authority 3:15 3:20 4:14,18 5:19 6:7,16 8:6 17:25 42:13 45:19
accurately 39:23	allows 46:22	apportion 9:13 9:20 11:23 34:6 35:14,14 46:23 54:7	asked 54:23	avenue 30:3,11
acquisitions 32:10,11,12	all-or-nothing 50:7	apportionabili... 26:10	asking 18:9 45:14	a.m 1:16 3:2
activities 5:17 8:23 9:12 11:14 12:6 14:8 45:4 50:21 55:19	amici 13:17	apportionable 38:22	aspect 14:17 26:12	B
activity 6:22 8:21 9:15 15:7 19:1 32:3 35:3 52:3	amount 35:15 38:19 39:1,23 49:23	apportioned 18:25 24:10,14 30:8,9 33:10 33:25	asset 3:25 14:6 25:9 31:14 37:23 43:4,10 46:7	back 4:20 5:13 8:1 16:21 17:4 18:13,16 19:21 20:15 25:14 26:4,9 29:7,14 31:19 34:21 41:4 44:12 45:2 47:25
actual 32:11	amounts 52:5	appportioning 33:20	ASARCO's 38:8	bank 14:11
Adams 4:20	analyses 46:2	appportionment 5:3 19:24 23:6 34:4,17 38:8 38:15 39:14 46:1 54:18	assets 4:4,6 17:12 18:2	bare 29:8
add 29:18	analysis 4:19 5:6 10:22 18:7 19:19 21:20 32:6 44:8,17 55:23			Barov 1:20 2:5 27:5,6,8,24 28:3 29:8,17 30:1,16,20 31:11,15,25 33:2,8,13 34:1 34:20 35:12,21 36:2,4,8 37:4 37:10,18 38:1
addition 13:10	analytical 11:9			
address 13:16 32:5	answer 5:15 6:14 8:25 11:3 11:5,6 22:15 30:1 34:21 43:13 46:15			
adequate 12:24 13:13 41:13 48:17 56:12	answers 13:22			
advantage 15:11 15:16 16:22	apologize 14:1			
ae 52:14	app 47:25			
affirmation 26:10				
affirmed 52:17				
agree 7:25 28:8				

38:20 39:7,20 40:8,23 41:7 41:15,21 42:1 42:14,23 43:17 43:25 44:3 45:21 46:11,14 46:19 47:11 48:7,11,14,22 48:25 49:3,19 50:3,20 51:3 51:10,23 52:1 52:22 53:1,7 bars 12:19 27:17 base 38:23 based 12:17 30:9 31:12 34:6 36:7 38:12 39:24 40:3,11,12 46:6 47:2 52:9 53:20 basically 33:18 36:10 basis 4:2 24:10 36:10 40:4 48:18 begins 7:9 55:17 behalf 1:18,21 2:4,6,9 3:8 27:7 53:17 belated 12:15 believe 19:17 33:9 benefit 31:1 benefits 16:6 24:17 28:25 BETH 1:18 2:3 2:8 3:7 53:16 beyond 23:7,8 32:23 44:22 big 5:17 bit 42:24 borders 27:11 bought 23:17 35:5 breathhtaking 53:20 56:13	BREYER 20:14 21:5,18 28:7 29:10 43:6,18 44:2 Breyer's 29:24 32:4,23 39:15 BRIAN 1:20 2:5 27:6 brief 10:7 12:21 13:1,15 23:2 36:14 53:22,25 56:14 briefing 26:5 briefs 42:4 bringing 45:2 Brinkmann 1:18 2:3,8 3:6 3:7,9,25 4:7,16 5:20 6:6,11,17 6:21 7:2,7,21 7:25 8:8,15 9:3 9:8,22 10:1,4,6 10:11,16,21 11:2,9,17,20 12:14 13:8,25 14:5,21 15:4 15:23 16:14 17:1,10,16 18:3,12,24 19:13,16 20:6 20:10 21:4,16 22:1,5,18,23 24:9,12,22 25:1,18 26:19 26:24 27:4 53:15,16,18 54:20,22 55:2 55:10,14,21 56:8 broader 38:3 brought 42:10 54:4 56:14 bulb 10:25 bunch 5:17 business 3:22 4:19 5:4,17,18 5:25 6:2,2,13	6:18,20,22,25 7:2,8,13,16,16 7:18,24 8:21 9:12,18,19 11:12,14 12:2 12:6,8,12 14:8 14:18,25 15:8 17:17,19,23 18:14 19:1,10 19:21,23 20:3 20:23,24 21:10 21:11,12,17 22:3,7 23:10 25:5 27:13,14 27:16,21 29:6 29:13 30:5,6,7 31:3,17,22 33:10 35:1,18 35:19 39:21,22 42:21 43:3,12 43:14,15,23,24 44:13,21,21,25 45:4,25 46:7 47:1,3,17 48:24 49:7,15 50:9,23,24 51:6,8 52:4,20 54:6,12,19 55:22 56:5 businesses 11:22 11:25 18:21 business's 16:1 business-inco... 33:17 buy 28:12 32:9 <hr/> C C 2:1 3:1 California 21:14 call 15:5 28:23 44:18 called 31:4 43:24 capital 5:20 6:8 8:7,16 9:10,16 10:4 12:2,8,10 12:13 13:23	14:12 16:13 21:13 28:17,19 32:14 33:6 34:5 35:11,13 43:14 45:1,9 46:10 carryforwards 15:12 45:3 case 3:4,12 4:16 4:21,22 5:7,9 5:10 13:17 16:23 17:9,18 17:25 18:5,7 18:11 19:4,18 20:16 23:10,11 25:19,21,24 26:2,8 28:5 29:11 30:9 31:3 34:11 35:16 37:21,25 38:3,8,9,19,21 40:15,25 42:12 42:20 43:15 44:23 45:5 46:19,22 47:13 47:23 48:9 49:7,20 50:6 50:11 51:19 52:5 53:11,13 55:2 56:16,18 cases 4:10,12 5:22 6:15 16:3 16:25 17:21 18:4 24:24 27:2 36:13 39:15 42:10 cash 29:1 32:16 Caterpillar 37:19 centralized 20:11 23:14 cert 54:1 certain 42:16 43:8 certainly 13:8 15:16 16:16 22:12 37:16	38:1 46:3,5 48:7 chance 13:5 change 18:7 Chicago 1:21 Chief 3:3,9 10:3 10:6,13,18,24 11:15,18 12:4 14:14 25:1 27:3,8 36:5 37:6,11,22 40:1 41:2,14 41:18 47:24 48:4,10,12 53:14 54:20 55:14 56:2,16 choice 34:10 chosen 38:6 cite 36:13 41:16 53:23 cited 33:14 36:9 cites 36:21 claim 47:20,20 47:21 claimed 9:1 33:6 claiming 19:2 40:4 claims 43:10 Clause 23:20 clear 34:11 35:24 36:17 40:17 51:12 56:9 clearly 10:23 52:8 close 15:21 16:10,12 52:5 closer 14:22 27:2 32:7,17 come 8:1 25:13 51:7 comes 12:21 15:22 22:11 43:9 Commerce 23:20 commercial
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5:23 24:22,25 24:25 33:21,24 55:6,12 commonly 43:9 companies 52:20 company 3:21 4:1,3,6 6:18 10:7,8,9,10,12 10:14,25 11:1 11:7,8,13 14:16,24 15:14 16:5 17:13,15 18:1,20 19:15 21:9 28:10,24 31:21 43:10 44:6,7 compared 27:1 complicate 25:2 compute 38:19 39:5 computed 38:20 concede 54:16 concedes 54:13 concern 24:2 concerned 54:15 Concerning 53:21 concerns 25:2 26:9 conducted 9:12 11:12 27:13 46:25 49:8 52:4 conducting 31:3 31:17 conducts 30:5 conflict 34:16 47:20 confrontation 34:19 confusing 29:22 connected 9:17 connecting 51:7 connection 8:21 12:18 14:8 16:15 17:5	25:10,15 28:14 29:9 32:7,22 40:3 41:13 48:2,18 50:17 50:21 connections 50:8 consider 37:14 43:21 considerable 39:21 considered 45:23 46:1 considering 21:1 Constitution 27:17 constitutional 3:14 8:5,6 9:4 30:11 34:3,10 34:13 40:21 45:25 46:6,21 48:18 50:22 52:7,13 constitutionally 6:4 construct 11:9 contacts 50:14 Container 44:9 contends 27:17 contention 33:15 47:14 52:12 context 45:19 55:25 56:3,5 continue 24:9,14 continues 24:12 contracting 32:12 contrary 15:23 27:11 contribute 20:24 contributed 27:19 28:17 55:16 contributing	21:16 contributions 45:1 control 29:1 controlling 32:14 core 19:21 corn 14:13 corollaries 46:3 Corp 44:9 corporate 4:25 17:22 24:18 45:2 corporation 1:5 5:8 7:19,20 10:23 11:11 18:6 24:21 30:25 31:7,8 34:24 50:12,13 50:15 corporations 5:15 16:8,21 19:12 CORPORTA... 1:3 correct 18:3 36:6 37:5,10 37:18 40:23 48:15,22,22 49:19 50:3,5 correctly 20:15 Counsel 36:5 53:14 country 6:1 couple 15:10 36:21 course 13:16 16:5 court 1:1,15 3:10,11,16,19 4:10,18,22 5:6 6:11 7:7,11 8:19 12:16,17 12:22,22,22 13:9,10,12 14:10 17:19,20 19:6,22 20:4	20:20 21:21 22:5,8,9,14,14 22:25 23:4,8 25:20 26:3 27:9 30:4 34:11,16 36:15 36:16,18,19,20 36:25,25 37:13 37:15,19 40:6 40:8,9,11,12 41:9,12,16 42:8,9 43:20 43:21 47:15,20 48:1 49:4 50:10 51:11 52:18 53:9 56:11 courts 13:5 25:20,20 37:17 40:19 41:19 court's 3:12 5:21 10:16 13:15 15:24 36:11 40:13 46:4 47:4 49:20 52:2,15 create 45:22 52:13,14 credit 8:11,13 9:2 curious 41:20 current 37:7 customers 23:18 cut 20:2 C-851 55:3 <hr/> D <hr/> D 3:1 data 10:8,9,14 11:8,19 dates 4:20 18:16 day 28:11 day-to-day 29:2 deal 22:9 decided 42:11 decision 40:18 40:24 47:5	52:15 decisions 4:13 declare 18:10 declared 18:11 decline 50:10 default 8:20 34:17 Delaware 24:20 24:20,21 demands 3:22 denied 13:17 department 1:8 3:5 38:21 55:18 depends 5:3 20:19 described 46:2 detail 42:4 determination 5:2 determine 18:14 difference 31:14 different 5:8,9 12:1 16:7 19:10 24:15 34:1,1 37:7 38:2 39:4,7 42:25,25 43:16 45:12,16,23 46:21 49:12 difficult 20:15 disagree 42:24 44:1 disappeared 50:15 discount 23:17 discrete 5:4 17:22 discuss 42:4 disposed 47:14 disposition 13:11 disproportion... 55:24 dispute 48:1 54:10 disregards 50:8
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

dissent 54:10 distinction 24:23 54:14 disturbed 20:5 dividends 55:5 55:13 division 4:2,8 28:23 30:22 divisions 4:14 4:17 5:7 17:18 18:1,5 19:8 doctrine 28:6 38:5 45:17,22 51:8,9 doing 6:18 11:10 11:14 12:8 17:17 20:25 35:1 41:24,24 42:5 54:6,12 dollars 6:1,19 48:8 domestic 44:10 44:10,12,13 domicile 5:22,25 7:3,6 8:2,4 14:2 24:17,23 24:25,25 34:5 34:14 55:6,12 domiciled 33:3 domiciliary 6:6 6:10 9:17 14:25 47:16 dominant 10:20 double 47:9 dramatic 40:2 due 8:12 18:9 23:20 D.C 1:11,18 <hr/> E <hr/> E 2:1 3:1,1 earlier 34:21 earned 27:11,12 27:16 49:11 easier 42:22 easiest 20:16 easily 25:21	easy 12:11 economic 41:1 economies 20:12 23:16 effect 35:18 either 4:8 9:11 13:1,15 45:7 51:8 Electric 10:24 electronic 11:8 27:13,16 50:9 element 47:9 Elsevier 24:13 emphasize 37:8 enriches 15:25 enrichment 16:3 16:9 enterprise 5:4 17:23 33:23 36:24 45:20 enterprises 19:10 entire 8:16 14:2 17:19 33:6 38:5,21 47:8 entirety 8:18 entitled 12:9 entity 30:23 31:2 equally 10:9 ESQ 1:18,20 2:3 2:5,8 establish 49:14 50:17,20 established 51:5 ET 1:9 evaluate 20:18 20:18 evaluating 21:25 evasive 11:4 event 12:2 24:15 46:16 everybody's 34:25 evidence 47:12 exactly 47:3	51:23 example 6:12 19:4,18 39:15 44:7 examples 14:10 42:15 44:18 45:15 exception 7:9 9:9 excess 32:15,16 exclusive 34:23 Exhibit 55:4 exhibits 42:3 expanded 3:12 expansive 25:22 expenditures 28:20 explained 6:11 13:6 express 4:20 23:11 expressly 19:7 extend 23:7 extent 51:22,25 extra 29:1 extraordinary 53:3 Exxon 4:16 5:6 7:17 17:18,21 18:5 54:17 <hr/> F <hr/> F 1:20 2:5 27:6 faced 26:3 fact 4:7,25 8:12 14:7 15:9 16:12 19:16 20:25 34:16 39:11 44:9 47:7,13 49:15 50:10 51:6 53:9 56:4,6 factors 3:16 23:13 38:8,15 39:11 facts 5:9 9:10 11:3 16:23	17:6 25:24 29:8,14 32:17 38:13 40:17,25 43:1 45:11 46:5 55:4 56:8 factual 14:6 fair 15:13 23:24 fairly 21:24 43:9 52:5 falls 45:6 far 18:10 34:21 46:12 54:8 56:6 favor 4:17 50:10 Federal 12:22 40:20 fell 54:11 figure 25:4 final 54:21 Finally 54:22 find 38:23 finding 20:4 26:16,19 31:9 40:13 41:10,17 46:6 findings 41:19 finds 20:17 49:4 fine 49:1 51:2 first 3:16 21:23 30:3 36:9 47:12 five 18:4 19:22 flow 44:5 45:24 flowing 44:12 follow 49:14 followed 4:24 following 5:5 36:23 foreclosed 47:17 foreign 19:11,17 44:11 form 4:25 17:22 21:19 54:18 formula 39:5,5 39:8,8 forth 16:21 37:19 39:16	43:14 56:14 found 20:15 four 5:11 18:4 19:5,22 28:16 28:16,25 29:3 29:14 39:2 53:18 fraction 52:16 framed 40:14 free 13:22 friend 36:6 full 47:7 function 3:17,22 9:11,15 14:22 14:24 15:14,21 16:1,25 22:11 40:13 42:9,12 42:21 44:8,17 45:15 46:6 functional 3:17 15:17 19:25 51:9 55:22 functions 14:11 23:15 fundamental 5:14 further 36:20 futures 14:13,15 <hr/> G <hr/> G 3:1 gain 5:20,23 6:8 8:7,16,16,20 9:11,16 10:5 12:2,8,10,13 14:2 15:22 16:13,16 26:23 30:21 31:1 33:7 34:5 35:11,14 38:14 38:22,24 39:2 39:23 46:10,25 47:7 51:17 52:16 54:7 gains 13:23 27:18 General 1:20
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10:24 generally 6:7 generated 16:4 24:4 generating 18:22 getting 17:4 Ginsburg 3:24 4:12 8:3,10,25 9:6 11:5 13:2 17:8,11,24 18:8,18 19:11 19:14 22:4,21 23:19 24:11,19 33:11,19 36:22 41:22 42:7,17 45:13 47:6 49:17,25 54:24 55:1 Ginsburg's 54:14 give 8:11,13 9:2 44:6 45:25 given 14:10 42:15 44:19 45:16 46:3 gives 8:20 giving 15:11 23:6 go 4:13 5:13 20:15 23:8 29:15 34:21,21 42:19 45:14 46:22 47:24 53:19 goes 18:12 19:21 going 14:19 24:2 25:7,8,8,13,16 25:19 29:19 37:1 45:14 Good 44:2 gotten 24:8 grant 21:6 great 16:9,11 grossly 55:24 ground 12:24 13:13 40:6	54:1 56:12 grounds 36:10 guess 29:6 42:23 <hr/> H handle 32:10 hands 35:7 handy 41:16 happened 30:19 52:5,11 happens 10:8,10 hard 17:13 20:17 harder 19:15 Harvester 49:21 51:11 53:8 54:8 headquarters 24:18 33:22,24 hear 3:3 13:23 heavily 14:19 hedging 14:13 14:15,18 heels 5:5 helped 32:9 52:14 helpful 29:20 hold 42:13 45:19 holding 18:19 Honor 4:7,20 5:21 8:1,8 10:11 11:4,21 12:14 13:10,25 14:21 15:4,23 17:1 18:12 19:13,18 20:6 22:1,19,24 24:15,23 25:18 27:24 29:17 30:2,20 31:16 33:9 34:2 35:12 36:4,8 36:21 37:4,10 37:18 38:1 39:20 40:24 41:16 42:2,14 42:24 43:17,25	45:21 46:11,15 46:16,19 47:11 50:3 51:10 52:1,23 53:1,2 53:7,8,19 54:13 56:8,15 hope 46:15 host 12:18 32:17 hundreds 48:8 48:13 hypo 35:1 hypothetical 31:20 32:4,23 hypotheticals 45:7 <hr/> I ignorance 38:17 Ill 1:21 Illinois 1:8 3:5 3:11 5:18,18 6:2,4,15,20 8:18 9:1,2 11:12,14,16,19 11:23 12:5,7,7 12:9,15,17,18 12:20 13:5,9 13:23 14:8 17:6 18:22 19:2,2 20:17 20:19,25 21:15 22:5,6,8,13 23:24 24:3,5,6 25:10,13,16,23 26:17,22 27:10 27:14,19,23 28:2,4,11,13 29:4 30:8,10 31:4,4,9,11,16 31:17,18,22,23 31:25 32:2 33:4,10,18 35:2,3,10,15 35:19 36:7,11 36:12,16,25 37:9,17 38:13 38:25 39:1,17	39:21,24 40:3 40:6,15,19 41:5,9,9,11,11 41:13,24,25 46:13,23 47:1 47:3,4,6 48:3,8 48:24 49:6,9 49:11,15 50:9 50:23,24,25 51:15,15,16,19 51:22,25 52:15 52:16,21 53:12 53:22,24 54:2 54:24 55:6,7,8 55:10,11,17,19 56:9 Illinois's 38:25 39:22 Illinois-Lexis 38:23 impermissible 40:21 important 56:4 importantly 15:9 impose 5:19 6:16 7:6 28:14 53:5 imposed 53:5 impossible 25:17 incident 54:11 income 6:8 9:18 11:22 16:3 18:22,23,24 24:2,4,7,10,14 25:3,11 27:10 27:11,12,15 30:8,9 31:18 33:10,20,21 34:7,15 35:15 40:7 43:11 47:2,8 49:23 52:10,10,14 55:19 incorporation 24:24	increased 45:3,4 independent 12:23 13:13 19:10 46:24 53:12 56:12 indicated 47:21 indicates 55:5 individual 5:16 31:23 information 55:25 initial 31:20 Initially 56:2 instances 43:2 instructive 19:5 intangible 8:16 34:4 44:5 45:24 integrated 5:8 11:14 18:6 19:8,20 23:15 integration 19:25 20:11 intelligent 37:20 interest 1:4 14:11 15:7 21:8 55:5,12 interested 38:12 Interestingly 54:25 intermediate 22:8 42:8 International 49:21 51:11 53:8 54:8 interpretation 40:16 intrude 26:13 invest 54:11 investing 14:19 50:24 51:14 investment 3:18 3:25 4:2 5:21 10:5 14:5,7 15:3,6,19 16:4 16:6,18,20 17:4,7,17
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

18:16,19 24:16 31:21 32:9,14 32:19 35:5,25 44:22 45:8 47:2,2 49:9,22 51:12,16 53:10 54:6,9,12 investments 3:21 investor 16:4 51:14 54:9 investors 53:10 involve 4:14 18:4 involved 4:17 5:7,10 18:1 19:17 32:10,13 32:15 45:17 in-state 30:10 38:15 iron 28:12,13,15 28:18,20,23 29:1,4 irrelevant 27:23 28:5 30:18 37:24 39:11 isolating 39:22 49:10 issue 3:13 13:11 37:25 40:14 47:22 48:9 53:13 issues 8:22	4:12 5:13,24 6:9,14,19,23 6:24 7:1,5,12 7:15,22 8:3,10 8:25 9:6,21,24 10:3,6,13,18 10:24 11:5,15 11:18 12:4 13:2,20 14:4 14:14 15:2,5 16:2,16 17:8 17:11,24 18:8 18:18 19:11,14 20:1,8,14 21:5 21:18 22:4,16 22:21 23:19 24:11,19 25:1 26:13,21 27:3 27:8,20,25 28:7,9 29:10 29:18,24 30:13 30:17 31:6,13 31:19,19 32:4 32:23,24 33:3 33:11,19 34:20 35:17,23 36:3 36:5,22 37:6 37:11,22 38:16 39:4,10,15 40:1,19 41:2 41:14,18,22 42:7,17 43:6 43:18 44:2 45:13 46:8,12 46:17 47:6,24 48:4,10,12,20 48:23 49:1,12 49:13,17,25 50:11 51:2,5 51:20,24 52:19 52:24 53:3,14 54:3,4,13,20 54:23 55:1,8 55:14 56:2,13 56:16 justifies 16:15 J.C 49:21 54:8	<hr/> K <hr/> Kennedy 6:23 7:1 13:20 14:4 15:2 26:13,21 27:20,25 28:9 29:18 30:13,17 31:6,13,19 39:10 49:12 51:20,24 54:4 kept 35:7 kind 6:3 14:14 14:18 34:24 know 5:14 7:19 9:6 11:2 18:10 19:19 22:21 23:18 25:9 29:23 32:2 33:11,12,13 34:8 40:16 42:11 46:12,14 46:15 52:7,24 53:4 known 30:23 <hr/> L <hr/> label 22:10 language 21:6 Laughter 53:6 law 8:5,6,12 29:22 33:10,16 36:11,12 40:9 40:17,21 49:21 53:22,24 54:2 56:9 laws 10:1 33:1,2 law's 40:15 lead 54:5 left 29:13 legal 30:23 56:1 let's 27:21 Lewis 37:20 Lexis 11:18 12:6 15:10 27:13,18 28:1 30:14,21 30:24,24 31:4 31:7,16 32:8,9 32:18,22 35:1	35:4 36:7 38:14,14,15 39:17,21 40:3 41:5,9,10,12 42:5 44:24 46:25,25 48:17 48:17 49:5,11 51:14,22 Lexis's 12:11 27:22 28:4 30:10 38:25,25 39:24 49:5,11 Lexis/Nexis 10:14 11:7 17:6 18:21 22:2 23:16,23 24:11,12 33:4 37:9 40:7 41:24 48:2,6 50:1 51:6 55:16,19 Lexis/Nexis's 12:17 53:21 light 10:25 26:14 limitations 3:14 7:10 23:20 limited 35:13,15 linchpin 19:23 23:6 26:10 line 4:10 link 51:1 links 45:24 46:24 listed 28:16 little 5:2 19:15 live 31:20 lives 5:25 long 4:10 21:24 36:18 42:1 51:18 longstanding 5:22 long-standing 15:24 look 11:11 13:5 14:17 17:2,2,3	18:25 19:3 20:22,22 42:25 49:7 53:22 looked 38:24,24 looking 10:22 11:10,21 32:20 48:5 52:3 55:15 loophole 52:13 loss 15:12 45:3 lost 17:25 21:24 22:13 lot 15:17 31:21 35:5 49:15 lots 32:14 lower 25:20 43:21 <hr/> M <hr/> maintain 23:5 major 28:19 majority 54:10 making 22:13 24:2 38:3,4,9 42:20 45:1 53:20 management 20:12 23:14 24:18 manipulating 32:15 45:1,2 manner 49:10 marketplace 52:14 Massachusetts 28:9,13,21 material 14:13 materials 14:9 matter 1:14 8:4 8:5 13:9 40:20 56:19 mattered 5:1 Mead 1:5 10:22 11:11 15:8,9 15:15 17:15 18:21 19:1 23:17,24 27:12
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

27:15 28:2 30:13,15,20,22 30:25 31:1,2,3 32:8,9,13,18 32:23 33:3,14 34:23 35:4,5,8 39:24 41:10,24 42:5 44:23 46:24 48:1,16 48:17,20 49:5 49:8 50:2,4,6 50:23,23 51:8 51:13,13,14,15 51:16,17,17,25 53:11 MeadWestvaco 1:3 3:4 Mead's 16:22 30:17 38:22 39:2,9 49:9 50:8 52:12 55:18 mean 3:17 4:8 7:16,17 11:4 12:5,10 14:1 14:15 20:2 21:3,6 33:20 39:21 40:24 41:8 44:3 49:1 52:9 meant 13:6 54:2 measure 23:22 media 10:25 meet 3:18 22:3 26:25 42:22 46:22 meets 4:8 mention 25:24 mentioned 23:2 mere 47:15 51:6 merely 16:9 mergeable 15:15 merged 15:10 50:16 merger 15:19 merging 16:7,8	16:20 merits 13:11 met 19:20 23:13 26:16 28:5 40:10,14 Mexico 28:12 midway 29:23 million 48:6,10 55:16,18 millions 6:1,19 48:8,13 mind 15:9 mine 28:12,13 28:15,18,20,23 29:1,4 minimal 38:9 minor 23:18 minutes 53:15 misspoke 14:1 misstate 36:12 Mobil 5:6 6:12 7:8 17:21 34:11 47:13,19 54:17 Mobile 4:24,24 money 15:18 28:11 30:14 50:19 multi 8:23 multiple 44:25 47:23 multi-state 44:25 45:20 <hr/> N N 2:1,1 3:1 NBC 10:25 necessarily 15:25 43:5 need 14:20 net 45:3 never 18:11 22:5 33:14 45:18 55:25 nevertheless 44:14 new 5:16,25	26:3 28:12 31:20,22 37:24 38:1 53:19 Nexis 15:10,14 34:23 35:18 41:11 Nexis's 15:8 Nexis/Lexis 48:21,24 nexus 6:18 14:23 19:2 48:2 nonoperational 16:25 nonpresence 30:18 nonresident 49:22 nonresident's 47:1 normal 39:5 normally 43:24 note 53:23 notes 55:18 notice 13:17 notion 7:24 novel 13:3 number 22:12 <hr/> O O 2:1 3:1 objection 11:24 obviously 22:24 occurred 24:16 office 11:7 28:20 oh 13:5 24:1 Ohio 8:4,7,10,10 8:13,15,17 9:2 9:3,4,7,9,21,24 10:3 12:3 13:22 14:1 24:16,17 32:25 33:4,12,13,16 33:16 34:8 47:6,9,13 55:1 55:8 Ohio's 8:12 10:1	Oil 34:11 47:13 47:19 Okay 35:23 36:3 37:11 oldest 10:19,19 Once 7:22 ongoing 6:22 18:21 op 53:25 operate 24:13 operated 33:4 50:25 operating 11:22 14:23 18:14,24 19:1 operational 3:17 3:22 9:11,14 14:11,22,24 15:13,16,21 16:1,15,24 22:10 40:12,13 42:9,12,21 43:3,4 44:8,17 45:15 46:6,24 49:4 55:22 operationally 16:10,12 operational-fu... 3:13 4:9 26:12 32:21 37:2 operations 14:23 opportunity 37:14 opposed 4:14 23:1,3 33:25 opposition 13:1 13:15 23:2 53:23 56:15 oral 1:14 2:2 3:7 27:6 36:15 order 11:3 25:22 38:23 ordinary 25:3 organization 54:19 ought 15:20	23:21 outside 23:9 27:11 overall 44:4 overlap 45:11 overlay 25:8 override 42:19 overruled 26:7 overturn 37:12 38:4 owned 3:21 5:12 5:16 7:12 18:16 19:6,7 24:13 30:25 owner 5:25 6:3 ownership 3:18 4:23,24 18:13 owns 10:25 <hr/> P P 3:1 page 2:2 28:16 41:15 47:25 53:23 54:1,16 55:15 paid 8:13 9:2 11:24 27:15 paper 10:7,10 10:12 11:7,13 11:16 14:15,18 14:20,23 23:17 paperless 14:17 paradigm 16:24 45:6 pardon 30:14 parent 44:10,12 part 9:18 12:9 13:20,21,22 14:25 15:25 20:15,23,23 21:1,9 23:10 25:11 26:23,23 29:24 43:15 44:20 particular 36:15 Particularly 13:17
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>parties 26:6 41:23</p> <p>partly 12:8</p> <p>partner 10:20</p> <p>party 50:5</p> <p>passed 44:15</p> <p>passive 15:3,6 15:18 32:8,18 35:5,25 44:22 49:8 51:12,14</p> <p>paths 46:21</p> <p>pattern 44:9 53:9</p> <p>pay 24:14</p> <p>payroll 35:20 39:1</p> <p>Penney 49:21 54:8</p> <p>people 15:8 21:7 21:22</p> <p>percent 5:12 12:11,12,13 19:6 25:4,5,9 25:12 35:6 39:2</p> <p>perfectly 53:8</p> <p>permits 18:9</p> <p>permitting 52:16</p> <p>person 7:16,17</p> <p>personal 7:23</p> <p>pet 47:25</p> <p>Petitioner 1:6 1:19 2:4,9 3:8 53:17</p> <p>piece 24:3</p> <p>place 35:19</p> <p>places 32:24</p> <p>planning 15:8</p> <p>please 3:10 27:9</p> <p>plus 42:2</p> <p>point 7:10 9:25 12:20 17:4 21:23 31:15 32:21 34:9 35:7,23 36:14 40:17,24 42:23</p>	<p>43:25 54:21,22 55:15,20,21 56:11</p> <p>pointed 5:1 56:13</p> <p>points 53:19</p> <p>policy 8:5</p> <p>portion 9:14 26:18 35:2,10 35:18</p> <p>position 22:18 22:24 34:22 35:24 38:2 54:5</p> <p>possibility 47:16</p> <p>possible 46:20 47:11</p> <p>possibly 53:4</p> <p>power 31:18</p> <p>practice 13:16</p> <p>precedent 13:15 52:2,9</p> <p>precise 53:8</p> <p>predicate 37:20</p> <p>presence 25:5 27:22 28:4 30:10,18 31:16 36:7 39:17,25 41:5,10 49:6 51:19 53:12,21 55:17</p> <p>present 12:16 47:18 53:11</p> <p>presented 29:5</p> <p>preserved 26:16</p> <p>pretty 12:11 34:11 53:25</p> <p>prevailed 18:6 40:11</p> <p>principle 6:13 8:20 17:20 19:23 20:21 44:5,17</p> <p>principles 3:14 18:13 19:21</p> <p>probably 29:9 33:8</p>	<p>problem 52:8</p> <p>problems 42:18</p> <p>procedural 12:19</p> <p>proceed 27:21</p> <p>process 18:9 23:20 25:3</p> <p>processing 10:8 10:9,14</p> <p>produce 16:11 16:13</p> <p>produces 15:15</p> <p>profitable 16:6</p> <p>prong 32:6</p> <p>properly 22:25 49:23 51:18</p> <p>property 20:19</p> <p>proposition 36:14</p> <p>prorated 49:23 51:18</p> <p>proration 51:20</p> <p>provide 16:9 36:21</p> <p>provided 15:11 24:17</p> <p>provides 21:13 51:1,3</p> <p>providing 44:10</p> <p>publishing 27:13,16 50:9</p> <p>pulled 39:1</p> <p>purchasing 32:11</p> <p>purely 35:25</p> <p>purposes 11:21</p> <p>pursuant 38:14</p> <p>put 7:22 35:22 35:22 38:22 39:2</p> <p>p.m 56:18</p>	<p>30:2 38:16 43:22 46:8 47:25 52:6 54:23 55:11</p> <p>questioned 26:5</p> <p>questions 11:3 26:6 30:2 52:18</p> <p>quick 53:18</p> <p>quite 5:14 25:11 27:23 43:10 45:16</p> <hr/> <p>R</p> <hr/> <p>R 3:1</p> <p>radically 3:12</p> <p>railroad 20:16 20:17,18 21:14 23:10 39:15</p> <p>raise 40:2,5 56:10</p> <p>raised 12:15,25 13:14 22:25 26:3 36:14,15 36:18,19,20 37:15 56:4,4</p> <p>raises 12:18</p> <p>raising 13:2</p> <p>rate 47:7</p> <p>raw 14:9,13</p> <p>reach 3:20 23:4 29:16 37:2 40:7 43:22 54:7</p> <p>reached 5:9 29:15 43:22</p> <p>reaching 44:4</p> <p>read 43:7</p> <p>reality 41:1</p> <p>realized 27:18 51:17</p> <p>really 13:6 14:9 17:5 20:21 21:7 22:16 29:6 40:15 43:10,19 44:12 44:20 48:9</p>	<p>reaped 16:6</p> <p>reargument 26:5</p> <p>reason 12:7 38:11 39:14</p> <p>reasons 3:15 36:8</p> <p>REBUTTAL 2:7 53:16</p> <p>receive 30:13,14</p> <p>received 30:20 31:1</p> <p>recognition 15:24</p> <p>recognize 19:7 45:18</p> <p>recognized 7:8 8:19 30:4 41:12 54:17</p> <p>recognizes 37:1</p> <p>record 20:13 22:2,19,19,24 23:5,13 26:25 33:14 41:6,7 46:9 55:2</p> <p>recover 52:15</p> <p>reduced 15:12</p> <p>Reed 24:13</p> <p>reference 6:15 39:18</p> <p>reflected 42:4</p> <p>regard 36:12 56:3</p> <p>regarded 10:20 15:21</p> <p>rejected 3:19 47:15</p> <p>related 39:9</p> <p>relation 29:24</p> <p>relationship 23:23 32:1,2 32:17 35:4 42:6 49:5</p> <p>relationships 43:1 45:12</p> <p>relevance 48:23</p> <p>relevant 49:3,6</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

relied 3:16	rise 45:25	says 20:20 22:9	53:10	source 34:15,15
reluctant 37:12	Roberts 3:3 10:3	55:16	shares 18:20	34:18,18 38:12
relying 51:9	10:6,13,18,24	scale 20:12	sharing 20:11	47:20,22 52:3
remainder 26:2	11:15,18 12:4	23:16	ship 16:18,20	52:4
render 40:24	14:14 25:1	Scalia 7:15,22	short 14:24	Souter 15:5 16:2
repeatedly	27:3 36:5 37:6	46:17 48:20,23	show 38:13 44:5	16:16 20:1,8
17:20	37:11,22 40:1	49:1,13 50:11	45:11	22:16 34:20
reply 12:21	41:2,14,18	51:2,5 52:19	showing 45:23	35:17,23 36:3
Repondents	47:24 48:4,10	52:24 53:3	shows 38:17	so-called 42:20
53:22	48:12 53:14	54:4 55:8	41:8	speak 7:18
represent 24:6	54:20 55:14	56:13	signaled 34:16	speaks 17:23
requisite 48:2	56:2,16	scenario 15:19	signals 46:4	special 21:8,9
reserve 26:1	rose 49:24	scenarios 14:6	significance	stand 36:13
resident 5:16	rule 34:9,9,10	scheme 7:23	34:13	standard 3:18
31:22 47:19,21	34:10,17 50:10	second 21:6,22	significant 19:9	standards 27:1
resolution 37:21	56:9	30:3,12	45:24	start 20:1,2
respect 8:12	ruled 40:9	see 14:4 16:18	similar 47:15	21:21
9:25 25:3	rules 12:20 34:2	17:13 34:21	simple 9:1 36:14	starting 7:10
Respondents	34:2,3 36:11	49:16	simply 16:6	state 3:13,15,20
1:21 2:6 27:7	36:13	seeks 27:12	18:14 30:18	3:22 4:13,17
rest 21:10,12	ruling 3:11	sell 6:2 11:16	32:8,18 35:4,5	6:7,7,10,13,22
44:20	13:12	28:10,12 31:23	46:25	7:11 8:2,4,5,6
restriction	running 19:14	43:12	single 18:1	8:11,17,23 9:9
18:10	50:23	seller 7:3 9:17	19:15 43:23	9:13,13,17,19
result 5:9 21:20		14:3	sister 8:11	10:2 11:21
resupplemental	S	sells 4:6 11:18	sitting 28:20	12:15,22,24
26:5	s 1:18 2:1,3,8	28:10 35:8	situation 9:10	13:13 14:2
retain 28:25	3:1,7 49:19	send 29:6,14	9:22 21:8	15:1 16:15
return 16:20	53:16	41:4	23:12 43:9	17:18 18:6,15
55:10	sale 4:3,4 5:21	sense 15:16	situations 9:7	18:15 23:6,9
Revenue 1:9 3:5	6:24 7:2 8:2	sentence 55:17	43:2	23:24 24:17,24
review 36:20	10:5 12:2 17:8	separate 20:23	sold 5:18 8:17	25:20 26:11
reviewing 36:20	17:11,12 18:1	20:23 21:1,22	12:13 24:4,6	30:3,6,6 32:1
revisited 26:7	18:2 24:16	31:7 43:8,11	25:9,14 30:24	34:5,7,14,14
right 8:1,8 9:4	26:18,23 27:18	43:20 45:22	31:9 37:23	34:15,18,18
9:13,19 11:23	28:1 29:4	46:1 47:2 49:7	solid 53:25	35:10 37:13
12:6 16:2	30:15,21 31:2	separately 43:21	somebody 50:18	40:9,15 42:13
18:15,23 19:3	39:11,13,19	served 9:11	sorry 13:25	45:19 47:1,16
20:6,7 21:19	49:25 54:14,15	serves 46:7	40:12 41:21	47:17,22 49:21
22:11 23:6,7	sales 17:3 35:19	service 20:20	43:4 44:16	49:22,24 50:14
26:17 29:10	38:25 39:9	services 11:19	48:11,14	50:22 51:13
30:6,16 31:13	48:6,8 54:5	set 37:19	sort 5:13 14:16	52:3,4,9,10,15
33:6 35:6,21	saving 15:17	settled 52:9	16:23 25:17	52:24 53:4,5
39:7 44:2	savings 16:10,11	share 30:7 31:18	40:15 41:22	53:10,20,21
46:18 47:10	saying 3:24 7:5	34:7 38:24	44:11	54:6,12,13
48:7 49:18	10:7 15:2	shared 23:14	sought 46:9	56:12
ringing 26:9	55:18	shareholder's	sound 55:20	statement 41:21

States 1:1,15 8:13,14,23 18:9 20:17 23:21 25:4 26:4 33:25 34:1,4,6 46:9 State's 7:9 18:25 47:19,20,21 52:14 State-law 34:2,9 STEVENS 5:13 5:24 6:9,14,19 6:24 7:5,12 38:16 39:4 40:19 46:8,12 Stevens's 31:20 stipular 20:13 stipulated 22:19 stipulation 41:8 41:23 42:2,3 55:4 stock 4:4 17:8 18:2 31:14,23 35:6,6 52:19 52:20 54:5 stocks 54:15 straightforward 4:19 strange 4:1 stream 24:7 structures 45:2 stubborn 56:6 subject 6:3 subjected 6:5 submitted 56:17 56:19 subsidiaries 4:15 5:11 19:5 19:8,17 44:11 44:13 subsidiary 4:4 17:12 31:8,8 substance 13:19 13:21 54:3 substantial 27:14 substantive	12:19 substitute 24:7 SUCCESSOR 1:4 sufficient 6:18 23:23 25:15 29:3,9 32:22 50:14,16 51:1 suggested 35:1 supplier 14:9 supply 11:7 support 13:3 28:17 33:15 36:19 43:2 44:22,24 supported 32:17 supports 13:4 suppose 7:14 24:19 28:9,14 supposed 20:21 supposedly 14:19 20:22 Supposing 5:15 Supreme 1:1,15 36:16 sure 5:14 20:9 surviving 50:12 50:13 sustain 48:19 swallow 21:23 T T 2:1,1 table 27:22 28:23 29:21 tables 28:10,10 take 14:2,20 16:22,23 25:22 27:21 28:11 29:21 40:25 45:15 taken 33:5 takes 54:19 talk 3:25 4:1 33:20 talked 4:25 talking 4:3 7:18	12:1 17:14 18:8 21:21 23:19 55:9 tax 3:13,13,21 5:19 6:3,5,8,16 6:22,24 7:6,9 7:13 8:2,5,7,11 8:12 9:1,2,4,14 11:22 12:1,6 12:11,13 13:23 15:11,15 16:9 16:11,22 17:25 18:15 19:3 23:21,25 24:10 24:14 26:17,23 27:10,12 28:1 28:14,25 29:4 30:6,7,11,21 31:5,10,18,24 31:25 33:1,2,6 35:10 38:14,19 38:22 39:6 40:21 41:10 45:3 46:10,25 47:1 49:9,16 49:17,20,22,23 50:12 51:15,18 52:9,16,19 53:4,9,12 54:9 54:11 taxable 15:22 taxation 7:23 26:11 30:4 38:18 47:9,16 47:17,23 50:7 taxed 11:11 31:11 35:3 38:14 50:5 51:12,13,18 taxes 5:23 8:13 11:23,24 15:12 27:15 40:5 54:5 taxing 3:15 4:14 4:18 8:1,23 17:25 18:23 27:17 38:12	41:12,13 42:13 45:19 47:7 48:20 49:2 50:21 51:3 taxpayer 10:22 11:10 15:25 16:5 19:1 32:3 50:1,4,17,18 51:17 taxpayer's 50:21 tax-paying 30:22 31:2 32:3 teach 5:22 technically 37:14 tell 4:10 39:16 46:9 telling 41:5 territorial 7:10 territory 23:7,9 test 4:9,10 14:22 15:14 19:21 21:6 22:3 26:11 29:23 33:18 37:3 42:9,12,21,21 43:8,20,24 44:17 45:10 tests 21:22 40:9 Thank 27:2,3 53:14 56:15,16 theme 21:3 theories 46:21 theory 28:1 29:20,21,23 30:19 31:23 35:9 36:1 42:8 45:18 47:8 thing 20:24 25:2 43:23 things 29:3 think 6:15 13:10 13:20 15:6,9 17:1 19:4 20:12 22:15	23:4 25:3 26:19,25 31:6 33:9 34:10 37:19 42:24 44:3 45:21,22 46:4 47:13 51:11 54:1,3 54:16,23 thinking 20:14 thinks 8:11 third 35:3 thought 13:21 28:8 36:23 43:7 48:4,5 three 5:11 19:5 19:21 23:12,22 28:22 53:15 three-factor 39:5 threshold 44:15 thrown 44:14 tide 15:20 time 26:2 30:24 33:17 35:6 40:10 49:25 times 15:10 19:22 told 17:24 total 35:18,19 35:19 totally 21:24 37:24 touchstone 50:22 tough 21:2 tougher 28:22 track 21:14 traded 32:24 transaction 5:19 6:4,16 7:13 9:25 32:25 46:10 transformed 9:16 treated 16:11 32:25 37:25 trial 20:4 22:8
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

22:14,22 36:19 37:15 40:8,12 42:8 tries 52:25 trigger 36:1 trouble 42:20 truck 7:12 trumping 13:12 trying 20:25 23:22 38:4 53:24 turn 15:1 turned 40:15 42:12 turning 13:19 turns 14:6 15:20 two 3:15 14:10 21:21 28:19 36:8,10 45:15 46:20,21 53:19 two-factor 39:8 two-part 30:1 Type 44:9 types 42:25	7:17,18,19,24 9:18 10:17 11:13 14:25 16:1 17:14,19 19:20,23 20:3 20:21 22:3,7 23:10 26:17,20 26:22,24 27:21 28:3 29:6,13 30:19 31:9 34:24 36:24 37:8 38:5 42:20 43:3,24 44:4,7,15,16 44:16 50:24 51:8 55:22 56:5 unitary-busin... 4:9 26:11 28:6 29:15 38:18 unitary-tax 26:15 29:20,21 United 1:1,15 unmerging 16:8 upheld 53:9 uphold 47:4 urge 42:18 usable 15:19 use 4:23,23 22:10 39:4,7,8 39:14 45:8 usually 41:18	vis-a-vis 21:14 <hr/> W <hr/> wager 46:17 wait 16:18 waived 12:21 17:5 36:6 37:15 41:3 53:24 56:11 waiver 12:23 13:13 36:10,12 55:15,20 want 20:8 34:20 44:18 wanted 20:9 35:24 wants 28:13 Washington 1:11,18 wasn't 12:25 13:14 17:9 20:4 22:7,16 32:9 37:22 38:9 39:20 56:14 way 8:20 13:7 26:25 29:5 39:16 44:22 47:4 ways 44:4 45:23 46:20 weaknesses 54:4 Wednesday 1:12 well-established 49:20 went 4:17 26:4 38:22 39:18 40:10 42:9 56:6 weren't 16:3 19:11 38:11 we're 11:10,10 12:1 14:18 18:8 23:19,22 we've 25:11 whatsoever	28:15 whichever 10:19 whimsical 39:12 white 26:14 wholly 5:12 19:6 19:7 39:11,18 win 34:19 Woolworth 5:10 17:2 19:4 25:25 26:7 27:1 54:17 work 25:4 29:2 working 14:12 21:13 43:14 45:8,8 worth 38:9 wouldn't 44:8 wrong 13:7 21:20 43:20 wrongly 29:12 <hr/> X <hr/> x 1:2,10 <hr/> Y <hr/> year 24:1,5,5 years 30:5 yield 47:21 York 5:16,25 31:20,22 <hr/> \$ <hr/> \$46 48:6 55:16 55:18 <hr/> 0 <hr/> 06-1413 1:7 3:4 <hr/> 1 <hr/> 1 55:4 100 5:11 19:6 35:6 11A 47:25 11:17 1:16 3:2 12 53:23 12:18 56:18 13a 28:16 16 1:12	18a 48:5 55:15 1846 10:12 1897 4:21 18:17 1992 25:19 1994 48:14 <hr/> 2 <hr/> 2 12:11,12,13 2008 1:12 27 2:6 <hr/> 3 <hr/> 3 2:4 341(h)(7) 56:9 <hr/> 4 <hr/> 4 53:23 43 54:16 46 48:10,12 <hr/> 5 <hr/> 5 25:4,5,9,11 50 20:17 53 2:9 <hr/> 8 <hr/> 80 30:5
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------