

In The Matter Of:
PACIFIC ASIAN ENTERPRISES, INC. v.
BOB CONCONI

BRIAN BERGMARK - EXPERT
March 14, 2016

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL DISTRICT

PACIFIC ASIAN ENTERPRISES,)
INC., a California)
corporation,)
Plaintiff,)
vs.) Case No. 30-2014-00738802
BOB CONCONI, an individual;)
DIANE CONCONI, an individual;)
ALBERTA SERVICE BUREAU, INC.,)
a Canadian entity of unknown)
form; and DOES 1 through 100,)
inclusive,)
Defendants.)

ROBERT CONCONI, an individual)
DIANE CONCONI, an individual;)
ALBERTA SERVICE BUREAU, INC.,)
a Canadian corporation,)
Cross-Complainants,)
vs.)
DANLL STREECH, an individual;)
JAMES LEISHMAN, an individual)
JEFFREY LEISHMAN, an)
individual; PACIFIC ASIAN)
ENTERPRISES, INC., a)
California corporation; and)
ROES 1 through 25, inclusive,)
Cross-Defendants.)

Deposition of BRIAN BERGMARK, EXPERT
taken onbe half of Plaintiff, at 2040
Main Street, Ste. 250, Irvine, California,
commencing at 1:02 p.m. on Monday,
March 14, 2016, before Rebecca A. Harp,
Certified Shorthand Reporter No. 11895.

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Also Present:
Robert Conconi
Diane Conconi

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BY MR. CONNER

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EXHIBITS

(None offered.)

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IRVINE, CALIFORNIA

MONDAY, MARCH 14, 2016

1:02 P.M.

BRIAN BERGMARK

was sworn, examined and testified as follows:

THE REPORTER: You do solemnly state that the evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

* * * *

MR. GODES: Before we get started. I am sorry, Mr. Conner. During the last deposition there was apparently someone on the phone unbeknownst to us. Is there anyone on the phone for this deposition?

MR. CONNER: No.

MR. GODES: Thank you.

(EXAMINATION)

BY MR. CONNER:

Q Please state your name for the record.

A Brian Bergmark.

Q And how did the cross-complainants find you?

1 MR. GODES: Calls for speculation.

2 THE WITNESS: I had worked for Mr. Godes' firm
3 in the past.

4 Q (By Mr. Conner) How many times?

5 A Probably 5 to 10 over the last 20 years.

6 Q Okay. What kind of cases?

7 A Some are business related issues. Some are
8 wage loss type calculations as well. I have been asked
9 to address damage issues.

10 Q And do you consider yourself a forensic
11 accountant?

12 A Yes.

13 Q How much of your practice involves forensic
14 accounting?

15 A More of than half of it, I would say.

16 Q What other kinds of work do you do?

17 A Forensic accounting, you need to define what
18 that is. If I include business valuation work within
19 forensic accounting, which I generally do, then my
20 practice includes forensic accounting, consulting work
21 with businesses related to valuation issues, consulting
22 work with businesses related to their accounting
23 systems and accounting issues. Those types of things.

24 Q Do you primarily do litigation support?

25 A I would say the majority of my work is in

1 matters that involve some sort of litigation or
2 dispute.

3 Q Have you been involved in any cases involving
4 yachts before?

5 A Yes.

6 Q And what has that been?

7 A I have been asked to evaluate similar type
8 issues related to delays in construction or delays in
9 usage, and costs associated with that transaction.

10 Q How many times have you testified as an expert
11 witness?

12 A More than 100.

13 Q You have been asked to bring all reports
14 prepared regarding the subject matter of your expert
15 testimony in this case. Have you done that?

16 A Yes.

17 Q And you have provided me with two folders.
18 Does that include those reports?

19 A Yes. I have provided anything that would be
20 considered a report. What I have is some summaries of
21 my analysis and underlying schedules associated with
22 that. The two binders include those summaries, and
23 also the documents that are supportive of those
24 summaries.

25 Q Have you provided all the documents that

1 support the opinions that you have given in the
2 summaries?

3 A Yes.

4 Q And have you provided all the documents that
5 you expect to use testifying at trial?

6 A I have brought everything that I have with me
7 to date. To the extent I receive additional
8 information, that obviously wouldn't be something that
9 I have brought with me today.

10 Q Have you brought all documents that are
11 communication with any person related to this
12 assignment?

13 A I believe so, yes.

14 Q Where are those?

15 A I have an administrative binder, in addition
16 to my analysis files, that has correspondence.

17 Q Have you provided a copy of that for me?

18 A I didn't have time to make a copy of this.
19 You are more than welcome to make a copy.

20 Q Let me take a look at it. Under this tab
21 notes, it says Pacific Asian Enterprises vs. Robert
22 Conconi, document inventory. What is that?

23 A I tried to list all the information that I
24 received.

25 Q And there is notes relating to the deposition

1 of Robert Conconi. Are these your notes?

2 A Me and other people in my office. It is a
3 combination of our efforts in reviewing that testimony.

4 Q I will probably want copies of the notes
5 section at some point. We can continue on. How much
6 have you been paid for this assignment so far?

7 A I don't know offhand.

8 Q Did you bring any documents relating to that?

9 A I have my invoices I have issued to date.

10 Q Do you have those available here?

11 A Yes.

12 Q Are they in that notebook I looked at?

13 A They are in the pocket. I think you may have
14 missed it. I have one invoice for \$2,735. Another for
15 \$14,995.

16 Q That is a total of about \$21, \$22,000?

17 A That would be closer to \$18,000.

18 Q Okay. \$18,000. Oh, \$2,000. Okay.

19 A Yes.

20 Q And has that been paid?

21 A I don't know offhand.

22 Q Did you get an initial retainer?

23 A No.

24 Q What assignment were you given?

25 A Generally I was asked to evaluate the

1 accounting records and information related to the
2 relationship between the plaintiff and defendant
3 related to the N-120. Then also provide observations
4 or analysis related to damages that may have been
5 sustained as well.

6 Q Is that summarized on this page called summary
7 of damages?

8 A There is one page that identifies the damage
9 analysis, which includes adjustments to the final
10 invoice and also damages. And then there is another
11 page that follows that, that are additional
12 observations regarding accounting information that I
13 have been provided. And also identifies other
14 potential issues I may be asked to address at some
15 point.

16 Q If we go to the summary of damages page, it
17 starts off with the amount owed to P.A.E., per
18 preliminary delivery invoice?

19 A Yes.

20 Q That is \$768,256?

21 A Correct.

22 Q And you have made adjustments to that?

23 A Yes.

24 Q What is the first adjustment?

25 A First adjustment was, based on conversations

1 with Mr. Conconi and also with Kells Christian, I had
2 identified -- or I had removed the additions that were
3 included on that invoice. Mr. Conconi's position is
4 that those additions were not part -- or already part
5 of the contract he had entered into. So I eliminated
6 those, or made an adjustment related to those items.

7 Q That is set out in Exhibit B?

8 A It is set out in -- I have a section B in my
9 binder. There is a page B-1 and 2 that identifies the
10 dollar amount associated with that. The second page of
11 that B section, you will see the double underlined
12 total is the \$691,363 amount shown on the first page we
13 were talking about.

14 Q And how did you calculate that?

15 A It is really just right from the invoice, the
16 preliminary delivery invoice. It includes all the
17 additions, less any credits that were specifically
18 related to those additions.

19 Q If we start on this B-1, it says interior
20 installation of warm floors in his and her heads.
21 \$1,624. Where is that number from?

22 A That is from the invoice.

23 Q And have you made any adjustments based on
24 that number?

25 A It is actually eliminating that number, which

1 was on the invoice.

2 Q Why was that number eliminated?

3 A For the reasons I stated earlier, which were
4 Mr. Conconi believes the \$16 million amount he had
5 negotiated did not call for any other additions
6 consistent with what were added to the invoice. And
7 Kells Christian didn't have any way to dispute that
8 that was the case either. That there was anything --
9 that wasn't already in the contract, that should be
10 added to the contract. So a combination of those
11 things indicates that they should not have been added
12 to that invoice and shouldn't be removed.

13 Q That is based on Mr. Conconi's statement?

14 A And Mr. Christian, yes.

15 Q What did Mr. Christian know about that?

16 A He made an effort to look at the items that
17 were included in the additions, and compare that with
18 what was on the contract and with his knowledge of the
19 boat to see if he could see anything that was in the
20 additions, that were in addition to what were already
21 contracted for. He couldn't identify anything along
22 those lines.

23 Q The custom fly bridge, fully enclosed. Is
24 your removal of that item based on the idea that that
25 was included in the original purchase contract?

1 A That that wasn't something that would be an
2 additional charge per Mr. Conconi.

3 Q That is per Mr. Conconi?

4 A Correct.

5 Q Not based on your analysis of the contract?

6 A No.

7 Q Is that the same with all of these items?

8 A Correct.

9 Q So were there any additions that you felt were
10 appropriate?

11 A Not that weren't already credited on the
12 invoice, and I have taken those into consideration.

13 Q What about the flights for Robert and Diane
14 Conconi from ABAC to Seattle?

15 A Again, Mr. Conconi indicated that those should
16 not be an added charge associated with the invoice.

17 Q Why is that?

18 A We didn't talk about each specific item.

19 Q Was that part of the original contract?

20 A It is his contention he shouldn't have been
21 charged additional amounts associated with this.

22 Q For personal airfare?

23 A For anything related to the items that were
24 included on this list.

25 Q So that Exhibit B means you were reducing the

1 amount owed by the \$691,000; is that correct?

2 A Correct.

3 Q What is the next item? Remove markup on
4 equipment supplied by Conconi?

5 A There is items included on the invoice. There
6 is credit included on the invoice for budget for
7 electronic, budget for AB, and so forth that were
8 supplied by Mr. Conconi, or that were supplied by
9 buyers. But in looking at the detail associated with
10 those items, only the cost, the budgeted cost amount
11 was excluded. Not the markup related to those items.

12 So I have excluded the markup related to those
13 items that were credited only for the cost, as opposed
14 to what the actual contract amount was associated with
15 that.

16 Q That is shown on Exhibit H?

17 A In binder two.

18 Q Explain that to me.

19 A The schedule, H-1, shows the amount that was
20 actually per the invoice accounting, which is shown on
21 the H-3 of this section. Shows what the invoice that
22 added up to the \$16 million amount was. I compared
23 that to what the credit that were included for those
24 items supplied by buyer, and the difference between
25 those two is what I included as the adjustment.

1 Q This first number, 706, 689, what invoice is
2 that?

3 A There is a summary -- an invoice accounting
4 that is shown on H-3 and 4 in that section.

5 Q This is one dated September 4th, 2013?

6 A Correct. If you go to the second page of
7 that, on H-4, you can see the total is approximately
8 \$13,000 more than the \$16 million amount. So the
9 intention with this document was to show what each
10 charge was related to each different item.

11 You can see on the page H-4 of that document,
12 is the items that were indicated that there would be
13 credit for those items. It identifies the dollar
14 amounts associated with those credits. It also
15 indicates that the buyer accessories purchased were
16 deleted from the final purchase price, and identifies
17 the dollar amounts of that.

18 But the credit that was given on the invoice
19 was only for the cost of those items. Not for the
20 amount identified on the invoice.

21 Q So that is true as to each of these items?

22 A Yes.

23 Q So like the Nautica 17-foot Express Tender,
24 amount per cost per invoice accounting. That is the
25 H-3 or H-4?

1 A The invoice accounting is on page H-5 through
2 6. H-6, you can see there is a numbered H-1
3 handwritten on the right-hand side of that H-6
4 document.

5 Q Yes.

6 A That identifies the \$91,799 amount associated
7 with the Nautica 17-foot express tender.

8 Q Correct.

9 A So I can see this is -- so this document, H-5
10 and H-6, is the cost analysis that was prepared. You
11 will see the total cost is actually \$13.8 million. The
12 bill was actually \$16 million, if you look on that
13 document. But the amounts that are shown on that
14 document, on H-6, were the dollar amounts that were
15 credited on the invoice.

16 So we can go to the delivery invoice, and see
17 what was credited. It was these dollar amounts which
18 were the costs. It wasn't the dollar amounts that were
19 shown on H-3 and 4, that were the invoiced amounts or
20 the contract amounts.

21 Q So in doing that, you removed \$231,820?

22 A Yes.

23 Q And the next is disputed charges for repairs
24 to N-8602 trade-in?

25 A Yes.

1 Q Is that the entire amount of those charges?

2 A That is the entire amount of the charges
3 related to the trade-in, yes. The costs that were
4 identified as being incurred related to the N-86.

5 Q Why do you believe that wasn't an appropriate
6 charge?

7 A My understanding, from Mr. Conconi, is that
8 was not part of the agreement.

9 Q Additional interest, how did you calculate
10 that?

11 A That is in the aft section of my analysis.
12 Mr. Conconi's position is that the advance payments
13 would continue to accrue interest until he had a fully
14 delivered, completed boat. So I have calculated what
15 the interest on those advance payments would be through
16 the present date.

17 Q And interest on equipment purchase advances,
18 what is that?

19 A In addition, I calculated interest on those
20 charges for the equipment that Mr. Conconi bought, and
21 incurred the dollar amounts associated with. So I
22 identified the cost of those purchases, and identified
23 the interest associated with that.

24 Q And why do you believe Mr. Conconi entitled to
25 credit for that?

1 A It is his position he is entitled to a credit.
2 He also came out of pocket for the equipment charges
3 that weren't his original expectation.

4 Q Why not?

5 A Because he had contracted for a \$16 million
6 completed boat is my understanding.

7 Q And there were no changes to that?

8 A I understand he doesn't believe there should
9 be any charges associated with any changes, and the
10 fact he provided the equipment. He believes he should
11 be compensated for the use of his funds in providing
12 that equipment.

13 Q Revised preliminary delivery invoice, amount
14 due Conconi. Your calculation is, based on that, there
15 is an amount of \$936,211 owed to Mr. Conconi?

16 A Associated with the invoice, yes.

17 Q Who is the owner of the boat?

18 A I haven't been asked to address that.

19 Q Do you know?

20 A Not at this point, no.

21 Q Do you know how that relates to whether
22 Mr. Conconi has been damaged or not?

23 A Not from a legal standpoint.

24 Q Mr. Conconi doesn't own the boat. Do you
25 understand that?

1 A I don't know that one way or the other.

2 Q Okay. Would that change your opinion?

3 A No.

4 Q Why not?

5 A Because I haven't been asked to address who
6 owns the boat. I have been asked to address the
7 accounting issues.

8 Q Your next item, what is that? Just your next
9 section.

10 A I also quantified the amount of cost, or out
11 of pocket cost to date, that Mr. Conconi had incurred
12 related to the use of the boat that he indicates were
13 not costs that he would have incurred, if the boat had
14 been on a completed basis and to his expectations.

15 Q So you are basing that, which is your Exhibit
16 C, on Mr. Conconi's belief that he would not have
17 incurred these charges had the contract been properly
18 performed?

19 A That's correct.

20 Q The first item on Exhibit C, there are
21 payments to Alberta Service Bureau. What are those
22 for?

23 A I haven't identified the specific categories
24 for each of them. I have documents and invoices and
25 costs associated with them. I haven't tried to

1 identify the cost of each of them. I relied on
2 Mr. Conconi's representation that these costs were not
3 things he would have otherwise incurred.

4 Q So you don't know what these things are for?

5 A I haven't tried to identify each of them. If
6 I look through the invoices, I may be able to make that
7 determination. I haven't done that at this point.

8 Q So this comes up with checks through March 7th
9 of this year.

10 A Correct.

11 Q And so that comes up with a U.S. amount of
12 \$426,549?

13 A Yes.

14 Q That is the number that is on your summary?

15 A Yes.

16 Q And the future costs to reorganize engine
17 room?

18 A Yes.

19 Q What is that?

20 A I have also spoken with two individuals, Doug
21 Sharp and Kells Christian, regarding other future costs
22 of things they believe will need to be incurred to
23 bring the boat back to, I guess, expected standards.
24 They identified -- Mr. Sharp identified \$1 million
25 associated with the engine room. Mr. Christian

1 identified \$420,000 associated with other repairs.

2 Q Do you know how that \$1 million was
3 calculated?

4 A Not offhand, no.

5 Q You just took his word for it?

6 A Yes. He has better knowledge on that than I
7 would.

8 Q Did he provide you any breakdown of how that
9 was calculated?

10 A No.

11 Q Did Mr. Christian provide you any breakdown as
12 to this \$420,000 amount?

13 A No.

14 Q How did you get that number?

15 A He provided me with a dollar amount by phone.

16 Q Nothing else?

17 A Yes. That's correct.

18 Q So you don't know how he calculated that?

19 A No.

20 Q Says excess import taxes paid, \$1,293,972.
21 How was that calculated?

22 A I looked at Mr. Conconi's analysis of what he
23 originally paid for the export taxes -- for the import
24 taxes. Excuse me. Compared it to what he ultimately
25 paid for those. He has indicated, if not for the

1 problems associated with the delivery of the boat or
2 however things were handled, he would not have incurred
3 those additional costs.

4 Q Did he tell you why the additional costs were
5 incurred?

6 A Because of the way the boat was run through
7 imports or delivered. I am not sure of the specifics
8 of it. I know he indicated the original amount was his
9 expected amount that he would have paid, and he paid a
10 much higher amount.

11 Q So did you independently verify these numbers?

12 A From his accounting records, yes.

13 Q So the actual amount of import taxes paid by
14 Mr. Conconi was \$2,326,518 in Canadian?

15 A Yes.

16 Q And he expected to pay \$956,995?

17 A That is the amount he originally had paid,
18 that was ultimately refunded to him.

19 Q And on September 5th, 2013, he had to pay this
20 \$2 million?

21 A Plus, yes.

22 Q He blames that on Pacific Asian Enterprises?

23 A Yes.

24 Q Not his own lying to the Canadian customs?

25 MR. GODES: Argumentative. Misstates reality,

1 and the evidence in this lawsuit. You don't have to
2 answer that.

3 MR. CONNER: Perhaps the reason he took the
4 fifth amendment when we asked him about that.

5 MR. GODES: There is no question for you to
6 answer.

7 THE WITNESS: I didn't think so.

8 Q (By Mr. Conner) Loss of use. How did you
9 come up with that?

10 A I have done an analysis based on information
11 from Mr. Conconi about how he would have used the boat,
12 had he received it at the expected date in June of 2012
13 compared to what he was able to do. Based on research
14 that I have identified, I have come up with a daily
15 rental date for the use of the boat, come up with the
16 annual incremental operating cost. And identified what
17 the net value of the use of the boat would be, the end
18 20 compared to what he did. Was able to use the N-86
19 for and arrived at \$3.7 million.

20 Q You adjusted that for his use of the Nordhavn
21 86?

22 A Yes.

23 Q You estimated the daily value on rental rate
24 for the Nordhavn 120 was \$14,000 per day?

25 A Yes.

1 Q And the Nordhavn 86, \$5,000 per day?

2 A Yes.

3 Q And for 2012, the estimate that is he would
4 have used that boat for 100 days each year?

5 A He said it was a little more than that. But
6 yes, 100 days per year would be his expected use.

7 Q How did you arrive at a loss of use number for
8 the Nordhavn 86?

9 A Based on same type of information. Based on
10 cost, information based on rental rate, based on
11 research I have done. Speaking with Mr. Conconi as
12 well.

13 Q How did he lose use of the Nordhavn 86?

14 A Really what the analysis is is I am looking at
15 how he lost use during the time period that he would
16 have had the N-120. Did he have the use of any other
17 boat. And so I am not saying there is a loss of use of
18 the N-86. What I am saying is I need to subtract the
19 loss of the use of the N-86 because had he had it for a
20 longer period of time than he would have otherwise had
21 it, if the N-120 was delivered on time. I don't have a
22 loss of use with the N-86. I am actually subtracting
23 that.

24 Q I see. So the indicated net incremental value
25 of \$43,000 at the bottom is subtracted from the total

1 on the N-120 column?

2 A Yes.

3 Q So his estimated use of the Nordhavn 120 would
4 have been, for those four years, would have been
5 320 days?

6 A Yes.

7 Q Explain to me how you are coming up with --
8 you have got use for 2013, 100? Is that right,
9 100 days?

10 A Correct. In 2012 and 2013.

11 Q And is this assuming that he did not use the
12 boat at all in 2012 and 2013?

13 A During the season, yes.

14 Q And what about 2014? There are 60 there.
15 What does that mean?

16 A He indicated he was able to use it 40 days as
17 opposed to the 100. The loss is the difference between
18 those two.

19 Q So he lost use of it for 60 days each year?

20 A Yes.

21 Q And so we take the \$14,000 per day, times
22 320 days loss of use?

23 A Yes.

24 Q And you come up with \$4,480,000?

25 A Yes.

1 Q And then you are subtracting operating costs?

2 A Correct.

3 Q So you come up with the operating costs of
4 \$663,333?

5 A Yes.

6 Q And that leads you to a \$3,816,667 indicated
7 net incremental value for the Nordhavn 120; is that
8 right?

9 A Yes. Although I see that I need to make a
10 math change here. I can do that for you, if you want
11 me to do that at a break.

12 Q Well, do it right now.

13 A Okay. I realize that when I had -- there was
14 a calculation error here on the N-120. That instead of
15 multiplying times one and a half years, it was
16 multiplied by a portion of a year. So this \$663
17 number, should be \$1,492,500.

18 Q Could you make the changes that reflect yours?

19 A Sure. So that changes the calculation.
20 Instead of \$3.7 million, it is \$2.9 million.

21 Q Okay. That changes your summary as well?

22 A It does.

23 Q It changes it to \$2,944,500.

24 A The total at the bottom is \$7,021,232.

25 Q How did you come up with these costs per year?

1 A Based on research for boats. For yachts,
2 super yachts. Identified the cost associated with
3 that. And this is -- I believe this is far in excess
4 of what Mr. Conconi indicated that they incur on an
5 annual basis. But it is consistent with the articles I
6 had seen.

7 Q You have here maintenance per year is
8 \$500,000?

9 A Correct.

10 Q And where did you get that number?

11 A Based on the research I had done, and taking
12 into consideration the size of the 120. Again, that is
13 far in excess of what Mr. Conconi indicated they
14 incurred.

15 Q Here in your materials, do you have supporting
16 materials for that \$500,000 number?

17 A Yes.

18 Q Where is that?

19 A When I made my copies, I don't have some of
20 the notes on the tabs. But there is a tab that was an
21 operating cost tab. I think you have it. There is an
22 article there that identifies the costs, and the
23 calculations associated with that. That was on the
24 page you just went past. The article identifies the
25 annual operating costs, and I have taken into

1 consideration the size of the boat that they use
2 compared to the size of the N-120.

3 Q So what size boat were they using in this
4 article?

5 A About three times the size. I think I have
6 been conservative by using this analysis. Even though
7 I adjusted for the size. Or the value.

8 Q So the --

9 A It is three times the 86 size.

10 Q So it says the super yacht owner spends
11 \$400,000 on fuel, \$350,000 on docking, \$24,000 on
12 insurance, \$1 million on maintenance and repairs, and
13 \$1.4 million on crew salaries; is that right?

14 A For that type of boat, yes.

15 Q And you adjusted that?

16 A Yes.

17 Q On the next page, it says that operating costs
18 should be estimated at 10 percent of the initial value.
19 Do you see that?

20 A Yes.

21 Q Do you think that is a reasonable number?

22 A Well, it includes some things that are aside
23 -- that the Conconi's don't have on their yacht,
24 specifically the crew. So it is more -- it is better
25 to look at the more specific costs on the following

1 page. That is what I have done is to make that
2 analysis.

3 Q If you don't have a crew, that would increase
4 the maintenance, wouldn't it? If you don't have a crew
5 doing maintenance?

6 A Not that I am aware of.

7 Q You don't think it would make a difference if
8 you had a crew on board maintaining the yacht?

9 A It depends on the usage. I am trying to
10 estimate the circumstances of the boat not being used.
11 What are the costs of the boat sitting on the dock is
12 what I am trying to analyze.

13 Q Have you reached any other opinions we haven't
14 discussed here?

15 A On the page following that page, I have some
16 other observations.

17 Q What are those?

18 A First, I was asked to look at the accounting
19 data that was provided by P.A.E. related to the boat
20 and the billings associated with the boat. The first
21 thing -- one of the things I was asked to do, and
22 prepared a declaration on this earlier, was to address
23 whether or not the advance funds were used for the
24 boat.

25 So I prepared an analysis. It is on Exhibit J

1 that shows how the funds for the -- how the advanced
2 funds were used, based on the documents provided to me.
3 And there was over \$440,000 of those funds that were
4 not used for the N-120.

5 Q How were they used?

6 A For lots of other purposes. Some were used
7 for other vessels. Some were used for medical
8 insurance. Some were used for rents of Florida office
9 space. Rhode Island office space. Those types of
10 things.

11 Q And you found that no separate account was set
12 up for use of the advance funds?

13 A I didn't see that. And that was consistent
14 with Mr. Streech's testimony.

15 Q Says "similar observation related to other
16 funds provided."

17 A In addition to the advance funds, P.A.
18 provided information for the other funds that were
19 provided as well. The same type of observations would
20 be -- there was a lot of that, that were identified as
21 not being used for the 120.

22 Q And there is a bullet point that says
23 pertaining to supporting data?

24 A Yes.

25 Q What are those opinions?

1 A There was no support for the tooling charges
2 that were included. The tooling charges, charges
3 related to that, I had no support for it. It was the
4 first observation. Even though I think there was a
5 request for any documents associated with any charges,
6 there was nothing that supported the tooling charges.

7 The other thing is the tooling charges that
8 were provided, as identified in the general ledger,
9 were for -- didn't identify the actual amount of the
10 charges that were on the invoice accounting, and were
11 inconsistent with what the invoice accounting said in
12 terms of how they were going to be allocated.

13 Q How so?

14 A The general ledger we had that was identified
15 as being related to N-120 had \$1.5 million of tooling
16 charges.

17 Q Is that some exhibit?

18 A Yes. Exhibit I is a summary of what the
19 general ledger provided. It has the general ledger
20 behind that. The invoice accounting says that the
21 tooling charges would be for \$460,000, which was
22 different from the \$1.5 million that showed up on the
23 general ledger. And is inconsistent with the
24 allegation over five hulls that were identified in the
25 description for that invoice accounting.

1 Q So you looked at this general ledger postings
2 relating to the 120, and this starts with a posting in
3 2007?

4 A Right. This was a general ledger we were
5 provided, that identified the charges.

6 Q And did you underline these items here?

7 A Yes.

8 Q Did you add those up?

9 A Yes.

10 Q What was the total?

11 A The total tooling charges?

12 Q Yes.

13 A Would be on I-1. \$1.5 million.

14 Q And is there an issue you see with that?

15 A Just that we were asked -- Mr. Conconi was
16 asked, requested, to have source documents for all the
17 accounting related to the costs that were associated
18 with the boat. I understand that is part of what he
19 understood was the agreement. There was no support for
20 that \$1.5 million of general ledger charges. And
21 again, \$1.5 doesn't agree to what the actual charges
22 were for the invoices.

23 Q What were the charges?

24 A \$460,000.

25 Q Tooling charges per general ledger are

1 inconsistent with invoice accounting. What do you mean
2 by that?

3 A Exactly that. There is \$1.5 million of
4 charges on the general ledger without support, and that
5 doesn't match the tooling charges on the invoice
6 accounting.

7 Q The next item says no support for actual wire
8 payments identified as being paid to Southwest Marine.

9 A Yes.

10 Q What does that mean?

11 A The documents that we provided, we have
12 general ledgers that show wire transfers to South Coast
13 Marine. But we don't have invoices or progress
14 payments, or anything that would identify what the
15 request for those wire transfers or the actual wire
16 transfers themselves.

17 Q It says no support associated with costs
18 associated with trade-in of 86. What do you mean by
19 that?

20 A Included in the general ledger, there was also
21 \$480,000 related to the trade-in of the N-86. But
22 there is no support for those costs.

23 Q Next bullet point says, "Where documentation
24 was provided for additions, 33 percent markups were
25 included in amounts on the invoices."

1 A When we were talking about the additions
2 earlier, where I was provided with any source
3 information related to those additions, where there
4 were invoices provided, the invoices were almost, in
5 every circumstance, 33 percent below what the actual
6 charge was for the addition. It looks like there was
7 markups made of 33 percent on the cost of those
8 additions on the invoices themselves.

9 Q And under other potential issues, what is
10 that?

11 A These are things that I understand I may be
12 asked to address. That is to the extent there is an
13 accounting or damage expert that P.A. presents, I may
14 be asked to comment upon their analysis. And then also
15 provide an analysis of net north of cross-defendants
16 related to the matter.

17 Q Have you been provided any information for
18 that work?

19 A Not at this point.

20 Q Have you reached any other opinions that we
21 haven't discussed?

22 A Not aside from things that would be subsumed
23 in what we already talked about.

24 Q Okay. I have nothing further.

25 MR. GODES: Do you want to make a copy of the

1 admin file, or that portion of it before we leave
2 today? We should go off the record, and get that for
3 you now if you want it.

4 MR. CONNER: I would like a copy of the notes
5 section. Let's go off the record.

6 (Off the record.)

7 MR. CONNER: Same stipulation as earlier?

8 MR. GODES: Sure.

9 COURT REPORTER: Mr. Godes, would you like a
10 copy of the transcript?

11 MR. GODES: Yes, please. And expedited for
12 the end of the week. Thank you.

13 (The parties agreed to use the following
14 stipulation taken at the deposition of Doug Sharp on
15 March 14, 2016:

16 "MR. CONNER: I would propose that we relieve
17 the court reporter of her statutory duties under the
18 code. That we have the deposition transcript prepared,
19 and so it can be signed under penalty of perjury.

20 I propose we send the original of the
21 deposition transcript to the Godes & Preis law firm,
22 and they provide a copy to Mr. Sharp. That he review
23 that transcript, and provide us any changes within 10
24 days of receiving it. Or no later than the opening of
25 trial in this matter.

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MR. GODES: Do you have any vacations planned?

THE WITNESS: I will be around the next couple of weeks. Planning on traveling to Spain, as I said, the 20th of April and returning 6th of May.

MR. GODES: That is fine. We will stipulate to that.

COURT REPORTER: Would you like a copy of the transcript?

MR. GODES: Yes, please."

(Deposition session concluded at 2:01 p.m.)

* * * *

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at _____ on _____.
(Place) (Date)

(Signature of Deponent)

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Rebecca A. Harp, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 11895 issued by the Court Reporters Board Of California and which is in full force and effect. (Bus. & Prof. 8016).

I am not financially interested in this action an am not a relative or employee of any attorney of the parties, or of any of the parties. (Civ. Proc. 2025.320).

(a) I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, section 2093 (b) and prior to being examined, the witness was first placed under oath or affirmation by me. (Civ. Proc. 2025.320, 2025.540(a))

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record of the testimony given. (Civ. Proc. 2025.540(a))

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I have not, and shall not, offer or provide any services or products to any party's attorney or third party who is financing all or part of the action without first offering same to all parties or their attorneys attending the deposition and making same available at the same time to all parties or their attorneys. (Civ. Proc. 2025.320 (b))

I shall not provide any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition to any party or any party's attorney or third party who is financing all or part of the action, nor shall I collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. (Civ. Proc. 2025.320(c))

Dated: March 18, 2016

Rebecca Allsup

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