



1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2 CIV.A.NO.2:20-1411(LEAD)
C/W 2:20-1453 & 2:20-1506
3 JUDGE ELDON E. FALLON
MAGISTRATE JUDGE JANIS VAN MEERVELD

4
5 CORNERSTONE CHEMICAL
COMPANY,
PLAINTIFF,

6 VS.

7
8 M/V NOMADIC MILDE, IMO NO.
9463554, HER ENGINES, TACKLE, EQUIPMENT,
FURNITURE, APPURTENANCES, ETC., IN REM;
9 M/V ATLANTIC VENUS, IMO NO.
9628257, HER ENGINES, TACKLE, EQUIPMENT,
10 FURNITURE, APPURTENANCES, ETC., IN REM;
AND CRESCENT TOWING &
11 SALVAGE, INC., IN PERSONAM,
DEFENDANT.

12 _____ /
DEPOSITION OF TOMASZ MARKOWSKI
13 DATE: JUNE 12, 2020
REPORTER: JODY PRALAT
14 PLACE: PHELPS DUNBAR, LLC
100 SOUTH ASHLEY DRIVE, SUITE 200
15 TAMPA, FLORIDA 33602

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<p style="text-align: right;">2</p> <p>1 APPEARANCES 2 ON BEHALF OF THE PLAINTIFF, CORNERSTONE CHEMICAL COMPANY 3 JAMES BERCAW, ESQUIRE KING & JURGENS, LLC 4 201 SAINT CHARLES AVENUE SUITE 4500 5 NEW ORLEANS, LOUISIANA 70170 TELEPHONE NO. (504) 582-3800 6 E-MAIL JBERCAW@KINGJURGENS.COM (APPEARED VIA ZOOM) 7 8 ON BEHALF OF THE DEFENDANT, NEW NOMADIC SHORT SEA SHIPPING A.S., INTERSHIP NAVIGATION CO., INC., M/VNOMADIC MILDE, IN REM 9 MICHAEL M. BUTTERWORTH, ESQUIRE MICHAEL F. HELD, ESQUIRE 10 PHELPS DUNBAR, LLP 365 CANAL STREET SUITE 2000 11 NEW ORLEANS, LOUISIANA 70130 TELEPHONE NO. (504) 566-1311 12 E-MAIL BUTTERM@PHELPS.COM MICHAEL.HELD@PHELPS.COM 13 ON BEHALF OF THE DEFENDANT, CRESCENT TOWING & SALVAGE, INC. 14 DAVID M. FLOTTE, ESQUIRE SALLEY HITE MERCER & RESOR, LLC 15 365 CANAL STREET SUITE 1710 16 NEW ORLEANS, LOUISIANA 70130 TELEPHONE NO. (504) 566-8800 17 E-MAIL DFLOTTE@SHMRLAW.COM (APPEARED VIA ZOOM) 18 19 ON BEHALF OF THE DEFENDANT, GOLDEN HELM SHIPPING CO. 20 S.A., OSAKA FLEET CO., LTD., M/V ATLANTIC VENUS, IN REM PETER B. TOMPKINS, ESQUIRE 21 TIMOTHY D. DEPAULA, ESQUIRE MURPHY, ROGERS, SLOSS & GAMBEL & TOMPKINS 22 701 POYDRAS STREET SUITE 400 23 NEW ORLEANS, LOUISIANA 70139 TELEPHONE NO. (504) 523-5574 24 E-MAIL PTOMPKINS@MRSNOLA.COM E-MAIL TDEPAULA@MRSNOLA.COM 25 (APPEARED VIA ZOOM)</p>	<p style="text-align: right;">4</p> <p>1 INDEX 2 Page 3 PROCEEDINGS 6 4 DIRECT EXAMINATION BY MR. BERCAW 13 5 6 EXHIBITS 7 Exhibit Page 8 1 CV OF KATE JANKOWSKI, INTERPRETER 11 9 2 CERTIFICATE OF MARSHALL 36 10 3 HANDWRITTEN STATEMENT FROM THE 11 CAPTAIN 36 12 4 NOTICE TO MARINERS, BATES NM 3241 94 13 5 TRANSCRIPT OF THE VDR 69 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES CONTINUED 2 ON BEHALF OF THE DEFENDANT, CORNERSTONE CHEMICAL CO. UNDERWRITERS: 3 DAVID B. SHARPE, ESQUIRE LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD 4 601 POYDRAS STREET SUITE 2775 5 NEW ORLEANS, LOUISIANA 70130 TELEPHONE NO.: (504) 568-1990 6 E-MAIL: DSHARPE@LAWLA.COM (APPEARED VIA ZOOM) 7 8 ALSO PRESENT: 9 KATARZYNA JANKOWISKI, OFFICIAL POLISH INTERPRETER MAGDELENA MAJKA, INTERPRETER 9 MAREK MDAB MARTIM, INTERPRETER (APPEARED VIA ZOOM) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">5</p> <p>1 STIPULATION 2 3 THE DEPOSITION OF TOMASZ MARKOWSKI TAKEN AT PHELPS 4 DUNBAR, LLC, 100 SOUTH ASHLEY DRIVE, SUITE 200, TAMPA, 5 FLORIDA 33602 ON FRIDAY THE 12TH DAY OF JUNE 2020 AT 6 APPROXIMATELY 9:10 A.M.; SAID DEPOSITION WAS TAKEN 7 PURSUANT TO THE FLORIDA RULES OF CIVIL PROCEDURE. 8 9 IT IS AGREED THAT JODY PRALAT, BEING A NOTARY PUBLIC AND 10 COURT REPORTER FOR THE STATE OF FLORIDA, MAY SWEAR THE 11 WITNESS AND THAT THE READING AND SIGNING OF THE 12 COMPLETED TRANSCRIPT BY THE WITNESS IS NOT WAIVED. 13 14 15 16 17 18</p>



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1 PROCEEDINGS
 2 COURT REPORTER: Madam Interpreter, do you
 3 swear or affirm that you will truly and correctly
 4 translate these proceedings from English to Polish
 5 and Polish into English?
 6 INTERPRETER: I do.
 7 MR. BERCAW: Thank you. Ms. Jankowski, my
 8 name's Jim Bercaw. I am representing the plaintiff
 9 and a claimant known as Cornerstone Chemical
 10 Company. Your translation service has provided us
 11 with a resume that's been updated through November
 12 of 2019 concerning you. Do you need to update your
 13 resume since that time?
 14 INTERPRETER: I don't. I've been a contract
 15 interpreter for the local circuit court here in
 16 DuPage County. That's a western suburb of Illinois.
 17 And I work there every single day. On my resume
 18 list are major cases that I interpreted for the --
 19 for -- in previous years. At the beginning of the
 20 year, we didn't really have anything else as for big
 21 cases. And I don't think there was anything to add
 22 to it.
 23 MR. BERCAW: Okay. Thank you.
 24 MR. BUTTERWORTH: Hey, Jim --
 25 MR. BERCAW: And I will attempt --

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1 MR. BUTTERWORTH: Jim --
 2 MR. BERCAW: -- okay. Yes.
 3 MR. BUTTERWORTH: -- Mike Butterworth, here.
 4 We also have interpreters. We have a Marek
 5 Debrowsky (phonetic) and Magda Majka. I don't know
 6 if you want to swear them in or not, but they're
 7 going to be listening in -- and -- if there's any
 8 difficulties with technical terms. Because I know
 9 your translator primarily works in the civil courts
 10 and the family courts, and I don't believe she went
 11 to a maritime academy or has a maritime background.
 12 So to the extent there's any difficulties with
 13 translating and understanding words, we'd like the
 14 translators all to work together so we can arrive at
 15 the truth and make sure that what the witness says
 16 is translated properly, if that's not a problem with
 17 you guys.
 18 MR. BERCAW: Well, Mike, I'm all for finding
 19 out the truth, but I think if we're going into get
 20 an argument among the translators, that's going to
 21 cause more problem than it's going to solve. We'll
 22 just have to ask the question, and we'll move from
 23 there. And if Ms. Jankowski has difficulty -- but
 24 I don't want to have three other -- three Polish
 25 translators in the same deposition --

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1 MR. BUTTERWORTH: There's only one --
 2 MR. BERCAW: -- just --
 3 MR. BUTTERWORTH: There's only one official
 4 translator, Jim. That will be your translator. And
 5 if there is a dispute -- if they can't -- if we
 6 can't go off the record and work out between the
 7 translators what the correct word is, then we'll
 8 just say, on the record, the official translation is
 9 this. And she thinks the witness said, port. And
 10 the other surveyor -- or the other translator
 11 believes that the word is basketball and, then,
 12 leave it at that. There's not going to be any fighting
 13 or argument or disagreement. If they can agree,
 14 fantastic. And if they can't, that's fantastic,
 15 too. The official record will be your translator,
 16 and the word will be just preserved on the record.
 17 I don't think it's going to be any problem -- just
 18 kind of see how it goes. If it is a problem, we can
 19 just revisit it, because I agree. We don't want to
 20 have squabbles all the time.
 21 MR. BERCAW: I agree. So does anyone have any
 22 other questions concerning --
 23 INTERPRETER: Wait -
 24 MR. BERCAW: Allison [sic]?
 25 INTERPRETER: I have a -- I have a question if

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1 -- whether those two interpreters are -- interpret
 2 for professional interpreters?
 3 MR. BUTTERWORTH: No. They are not. They are
 4 professional maritime background people.
 5 INTERPRETER: Okay.
 6 MR. BUTTERWORTH: Yeah. They're not quite --
 7 INTERPRETER: I definitely --
 8 MR. BUTTERWORTH: -- certified --
 9 INTERPRETER: -- I definitely welcome any
 10 terminology explanations. And you're right. I do
 11 not work in the field. And I'm sure we can come to
 12 an agreement as to the terminology, okay?
 13 MR. BUTTERWORTH: Yes. Very good. It's not a
 14 problem, but you're the boss lady. No matter what
 15 happens, you're the boss lady. And your translation
 16 is going to be the official translation. Okay.
 17 MR. BERCAW: And, then, Ms. Jankowski, we can
 18 set up a protocol. I mean, your job basically is a
 19 cipher, so an attorney is going to ask a question.
 20 You're going to repeat that question in Polish, if
 21 necessary. And, then, you're going to -- the
 22 witness will respond. And, then, you are going to
 23 repeat it verbatim back to the extent that you can
 24 both on the questions and the answers. If you have
 25 difficulty, you need to explain, I'm not sure what



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1 this means, or something. But you are to give the -
 2 - to the best of your ability, the authentic and
 3 accurate translation from English to Polish and from
 4 Polish to English, okay?
 5 INTERPRETER: Yes.
 6 MR. BERCAW: It's just like you do in court,
 7 but I just want to make sure that I'm operating from
 8 the same rule book that you are playing on.
 9 INTERPRETER: Sure. Yes.
 10 MR. BERCAW: Okay.
 11 INTERPRETER: You said -- you said "if
 12 necessary" as to interpreting the English, so I'm
 13 assuming the witness does speak English?
 14 MR. BUTTERWORTH: Not --
 15 INTERPRETER: We usually interpret everything,
 16 even if the witness understands the question. Is
 17 that --
 18 MR. BUTTERWORTH: Yes.
 19 INTERPRETER: -- what you want?
 20 MR. BUTTERWORTH: Yeah. The witnesses don't
 21 speak English well enough to give a deposition in a
 22 foreign country. So if you'll please just, you
 23 know, translate the questions. And, then, translate
 24 the answers. And I know just how you -- in court
 25 you always do it. If the witness says, I then went

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1 to see Mr. Smith, you'll translate it exactly that
 2 way. I went to see Mr. Smith. You won't say, he
 3 says that he, then, went to see Mr. Smith.
 4 INTERPRETER: No. I got it.
 5 MR. BUTTERWORTH: Yeah. Okay. So no. You're
 6 a professional --
 7 INTERPRETER: Yes.
 8 MR. BUTTERWORTH: You know your job better than
 9 I do, so perfect. I think probably we're A-okay.
 10 Well, I can't think --
 11 MR. BERCAW: Does anybody have any other
 12 questions for Ms. Jankowski?
 13 MR. BUTTERWORTH: I think she seems eminently
 14 qualified.
 15 MR. BERCAW: Excellent. Then we'll attach her
 16 resume, which we told you her, previously, the
 17 Counsel will give to the court reporter as Markowski
 18 Exhibit number 1. It's my intention from this point
 19 forward that I'm going to attach an exhibit on the
 20 premise it has Markowski Exhibit 1, but more than
 21 likely, I'll probably just refer to it by the Bates
 22 number that's already in the record within the
 23 Bates --
 24 MR. BUTTERWORTH: I don't have the exact page.
 25 MR. BERCAW: -- number exhibit to the deposition.

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1 (EXHIBIT 1 MARKED FOR IDENTIFICATION)
 2 MR. BUTTERWORTH: That sounds fine, Jim.
 3 COURT REPORTER: Is there any way we can turn
 4 that up a little bit.
 5 MR. BUTTERWORTH: What? Turn this up?
 6 COURT REPORTER: Yes, please.
 7 MR. BERCAW: That's it. That's all I got.
 8 It's all the way up. You may want to come over.
 9 We're going to have to --
 10 MR. BUTTERWORTH: I'll take my mask off. I'll
 11 risk my life --
 12 COURT REPORTER: Can we set it inside of the --
 13 I'm going to go off the record really quickly.
 14 (OFF THE RECORD)
 15 COURT REPORTER: Sir, can you please raise your
 16 right hand.
 17 THE WITNESS: Yes.
 18 COURT REPORTER: Do you solemnly swear or
 19 affirm that the testimony you are about to give in
 20 this case be the truth, the whole truth, and nothing
 21 but the truth?
 22 THE WITNESS: I do.
 23 MR. TOMPKINS: Jim, before we get started, can
 24 we get a list of our identity for all the people who
 25 are on the Zoom conference right now?

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1 MR. BERCAW: Yes, Peter, we can do that. Ms. --
 2 INTERPRETER: Yes.
 3 MR. BERCAW: Ms. --
 4 INTERPRETER: -- Jankowski.
 5 MR. BERCAW: -- Jankowski, no need to
 6 translate at this time. We'll go off the record.
 7 (OFF THE RECORD)
 8 DIRECT EXAMINATION
 9 BY MR. BERCAW:
 10 Q Captain Markowski, again, my name is Jim
 11 Bercaw. I represent Cornerstone Chemical Company, the
 12 owner of the dock that the Nomadic Milde struck.
 13 INTERPRETER: Could I have your company again,
 14 please?
 15 MR. BERCAW: Cornerstone Chemical Company.
 16 THE WITNESS: Good morning. My name is Tomasz
 17 Markowski. I'm the captain of the vessel --
 18 INTERPRETER: And could I have the vessel's
 19 name again, please?
 20 THE WITNESS: Nomadic Milde.
 21 INTERPRETER: Nomadic Milde.
 22 MR. BUTTERWORTH: We can spell for the court
 23 reporter. It's N-O-M-A-D-I-C, Nomadic, like the
 24 Bedouin tribes, nomadic tribes. And then Milde, M-
 25 I-L-D-E.



14

1 BY MR. BERCAW:
 2 Q Captain, have you given a deposition before?
 3 A No. Never.
 4 Q I will briefly explain the rules that will
 5 apply to the deposition, but your vessel is represented
 6 by a very competent counsel, and I'm sure this will be a
 7 review for you. First, you are sworn to tell the truth,
 8 the whole truth, and nothing but the truth. Do you
 9 understand that?
 10 A Of course. Yes, I understand.
 11 Q We may take a break -- one or more breaks
 12 during this deposition, but you will still be sworn to
 13 tell the truth. Do you understand that?
 14 A I do. Yes. I understand.
 15 Q Okay. Because we have a translator on both
 16 sides of the conversation, I would ask that you wait for
 17 the translator to finish asking the question before you
 18 give your answer. Do you promise to do that?
 19 A Yes. I understand.
 20 Q If not, you may miss the actual meaning of the
 21 question. And so your testimony would be inaccurate in
 22 that event.
 23 A Yes. I understand.
 24 MR. BUTTERWORTH: Okay. Now, Captain,
 25 sometimes I can't hear you. You're naturally soft-

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1 spoken. If you can please speak up to make sure
 2 that the court reporter can hear you, yes?
 3 THE WITNESS: Okay. I will speak a little
 4 louder.
 5 BY MR. BERCAW:
 6 Q If for whatever reason you don't understand
 7 the question that is being asked of you, I request that
 8 you state that on the record. Do we have that
 9 understanding?
 10 A Yes.
 11 Q Otherwise, I'm going to operate under the
 12 assumption that you understood my question and that you
 13 answered it truthfully.
 14 A Yes. I understand.
 15 Q Now, I just want to clarify that although we
 16 are taking this deposition via Zoom, that we are not
 17 videotaping the deposition, only we'll be recording the
 18 answers and making a transcript.
 19 A I understand.
 20 Q Okay. Additionally, we are operating under
 21 the Federal Rules of Procedure, and so therefore only
 22 objections to form and the responsiveness of the answer
 23 are permitted at this time. All other objections are
 24 preserved for trial.
 25 COURT REPORTER: All other objections are what?

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1 MR. BUTTERWORTH: Preserved for trial.
 2 Preserved for trial. If I can interject for a
 3 moment, Jim. I understand that the Zoom can be
 4 preserved. You said that you're not doing a
 5 videotaped deposition.
 6 MR. BERCAW: That's right.
 7 MR. BUTTERWORTH: I want to make clear this is
 8 going to be the one and only deposition for our
 9 captain. So if you need to get a videographer in
 10 here, then I think you should do that, or we could
 11 just agree to use the Zoom recording of his
 12 deposition. I don't want to be in a situation where
 13 six months from now you're saying, hey, you know
 14 what, we need to take a video deposition now of the
 15 captain. This is going to be once and for all.
 16 MR. BERCAW: That's correct. And I'm
 17 clarifying that we're not using any videotape
 18 whatsoever. I thought that was fairly clear.
 19 Also --
 20 MR. BUTTERWORTH: Do you have any objection to
 21 the Zoom being preserved?
 22 MR. BERCAW: Even though Zoom has that
 23 capability we are not using it in expressly --
 24 rejecting its use. So I understand what you said.
 25 MR. BUTTERWORTH: I understand what you're

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1 saying. Very good. Well, keep going.
 2 BY MR. BERCAW:
 3 Q All right. Captain, what that -- the
 4 reference to objections means for you is that unless
 5 your counsel advises you not to answer, you must answer
 6 the question subject to the objection. Do you
 7 understand?
 8 A Okay. I understand.
 9 Q Please state your full name for the record.
 10 A Tomasz Bartosz Markowski.
 11 INTERPRETER: Interpreter's spelling of the
 12 first name, T-O-M-A-S-Z, middle name B-A-R-T-O-S-Z,
 13 last name spelled M-A-R-K-O-W-S-K-I.
 14 BY MR. BERCAW:
 15 Q What is your home address, Captain?
 16 INTERPRETER: The interpreter did not hear the
 17 address. Could I have the address again?
 18 A I will spell (in English).
 19 INTERPRETER: That's okay. You don't have to.
 20 A The address is [REDACTED].
 21 [REDACTED].
 22 INTERPRETER: Interpreter spelling, [REDACTED].
 23 [REDACTED].
 24 [REDACTED].
 25 BY MR. BERCAW:



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1 Q Captain, I understand that you're a citizen of
 2 the Commonwealth of Poland; is that correct?
 3 A Yes. I'm the -- I'm a citizen of Poland.
 4 Q Are you citizen of any other country or nation
 5 besides Poland?
 6 A No. I'm not.
 7 Q Who is your current employer?
 8 A It's the company by the name of Internship
 9 [sic] Navigation -- Intership Navigation.
 10 MR. BUTTERWORTH: For the court reporter,
 11 that's I-N-T-E-R-S-H-I-P, Intership.
 12 Q And your position with Intership currently is
 13 as master?
 14 A Yes. I'm a captain. I'm a master at the
 15 company, yes.
 16 Q I'm going to pull up on the main screen what I
 17 understand to be your Polish license. It bears Bates
 18 stamp NM-9 through 10. I would like you to look at
 19 that.
 20 A I see the document, yes.
 21 Q That is a true and correct copy of your
 22 current license?
 23 A Yes. That's the correct copy, yes.
 24 Q What restrictions are there on your license?
 25 A There are no restrictions on the license, and

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1 as a captain, I can be a captain of any vessel. Can I
 2 add something? The -- my license does not really allow
 3 me to be the captain of any specialty vessels.
 4 INTERPRETER: I would have to inquire our
 5 experts here as to the types of vessels that the
 6 captain mentioned. Is the (speaking Polish) and the
 7 other type.
 8 A So the gas carrier and the oil carrier would
 9 be the vessels that my license does not allow me to be
 10 the captain for.
 11 BY MR. BERCAW:
 12 Q Okay. I notice that you're wearing glasses
 13 during your deposition; is that correct?
 14 A I do have glasses, yes.
 15 Q Do you wear glasses all the time, when you're
 16 -- assuming you're not sleeping?
 17 A I do, yes.
 18 Q What correction is needed to your vision?
 19 A I do not remember exactly, but I think it's
 20 1.5 and 2.0.
 21 Q Do you have trouble seeing things that are
 22 close or things that are far?
 23 A My glasses are what we call progressive
 24 glasses, so I can also read in them, but I can also see
 25 anything that is far away.

20

1 Q If you are not wearing your glasses, do you
 2 have difficulty seeing things that are close or things
 3 that are far away?
 4 A I think reading would be a problem. So my
 5 glasses are readers, basically.
 6 Q Okay. Do you have a certificate of training
 7 to operate an E-C-D-I-S system?
 8 A Yes. I do.
 9 Q Who issued you the certificate of training for
 10 the ECDIS system?
 11 A My ECDIS system certificate of training would
 12 be issued by this same marital [sic] office that issued
 13 my diploma that you see on the screen. But additional
 14 training is also done at training centers that issue any
 15 additional certificates.
 16 Q Okay. What issue is the license that appears
 17 on the screen for you?
 18 INTERPRETER: Counsel, the interpreter did not
 19 hear the beginning of the question. Could I have
 20 the question again?
 21 BY MR. BERCAW:
 22 Q I'll repeat. What issue is the license for
 23 you that appears on the screen?
 24 INTERPRETER: Below the table, there is a date
 25 when this license was issued, and it says "granted

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1 on" in English. And the -- well, the witness said
 2 2013, but the interpreter sees the date of 2003, and
 3 that's 18th of December.
 4 A I will add on because there was some
 5 additional dates, so let me explain.
 6 MR. BUTTERWORTH: Captain, the translator has
 7 difficulty -- you have to turn it down. One little
 8 bit by little bit because otherwise it's impossible
 9 for the translator to remember everything that
 10 you've said.
 11 INTERPRETER: Thank you, Counsel, for that.
 12 I'm taking notes, and I will ask a question if I'm
 13 missing something, but thank you for that.
 14 A Okay. The 2003 year, that's where the license
 15 was first issued. Now, there are additional dates, and
 16 the last one -- and it's renewed every five years but --
 17 for the certificate to be valid. The last date is 2019,
 18 and the valid-through date is 2024.
 19 BY MR. BERCAW:
 20 Q What Polish government entity issued the
 21 license that appears on the screen?
 22 A Urzad Morski (phonetic) Szczecin, and it's
 23 marital [sic] office in Szczecin. Let me spell it for
 24 the court reporter. That's S-Z-C-Z-E-C-I-N.
 25 MR. BUTTERWORTH: Just so the record's clear, I



<p style="text-align: right;">22</p> <p>1 think it's maritime, not marital. Marital in 2 English means, like, a wedding office for a man and 3 a wife. I think it's the maritime office, but maybe 4 the translator's been -- 5 INTERPRETER: Maritime. Yes. Yes. You -- are 6 correct. That's -- that's what I meant to say. 7 BY MR. BERCAW: 8 Q Before the incident involving the Nomadic 9 Milde and the Cornerstone dock, has any action had been 10 taken against any of your licenses by the Polish 11 Maritime Authority? 12 INTERPRETER: Again, Counselor, I do not know 13 why, but the beginning of the question, the 14 interpreter did not hear. It was breaking again. I 15 apologize, but could I have that question again? 16 BY MR. BERCAW: 17 Q That's no problem. Besides the incident 18 involving the Nomadic Milde and the Cornerstone dock, 19 has the Polish Maritime Authority taken any action 20 against your license? 21 A No. Never. 22 Q Before you were issued your master's license 23 by the Polish Maritime Authority, what other licenses 24 have you held to operate -- concerning a ship? 25 A Prior to this license, I received a license as</p>	<p style="text-align: right;">24</p> <p>1 think, 2002, but I think it was between eight to nine 2 years between me being the watch officer and then 3 becoming the chief officer. 4 Q And then in 2003, that's when you first were 5 issued your master's license for the vessels that you 6 currently operate, correct? 7 A Yes. Yes. 8 Q When you were a watch officer, were you ever 9 on a vessel that navigated the Mississippi River during 10 flood? 11 A No. During the flood, no, I was not. 12 COURT REPORTER: During the what? 13 Q When -- 14 MR. BUTTERWORTH: The flood. During the flood. 15 Flood conditions. Strong current flood conditions. 16 F-L-O-O-D. 17 BY MR. BERCAW: 18 Q During the time that you acted as a chief 19 officer on a vessel, did you enter the Mississippi River 20 during flood? 21 A No. 22 Q Besides the Nomadic Milde during May of 2020, 23 when you were a master of a vessel before that time, did 24 you ever enter the Mississippi River during flood? 25 A During a flood, I was not, no.</p>
<p style="text-align: right;">23</p> <p>1 a chief officer, and prior to that, I had another 2 license, and that was for a watch officer. 3 Q Are there any other licenses that you held 4 before watch officer that was issued by the Polish 5 government? 6 A No. After -- after I graduated from the 7 academy, the maritime academy in Poland, that was my 8 first license that I received. 9 Q When did you graduate from the maritime 10 academy in Poland? 11 A In 1989. 1989. 12 Q How long did you serve as a watch officer 13 before you received your chief officer's license? 14 A Okay. I -- I started my work right after 15 school, that was 1990, and that was first for two or 16 three years, I do not remember exactly. I was first an 17 assistant, and -- but then wait, the question was about 18 how long I was the watch officer. I think it was -- I 19 think it -- I got it in 1991. 20 Q How long was it between the time you received 21 your watch officer's license and you received your chief 22 officer's license? 23 A I -- I think it was, between the watch officer 24 and the chief officer, I think I received the chief 25 officer license, I'm not sure here, that was in 2001, I</p>	<p style="text-align: right;">25</p> <p>1 Q So the only time you have entered the 2 Mississippi River during flood stage was on board the 3 Nomadic Milde during May of 2020; is that correct? 4 A Yes. That's what I remember being my first 5 time, yes. 6 Q All right. Have you been in the Mississippi 7 River at any other time when the river was not in flood? 8 A Yes. I was. 9 Q How many other times? 10 A As a watch officer, I think, two times, and 11 then as a captain, I also think two times. 12 Q When you were the captain of a vessel that 13 entered the Mississippi River when it was not in flood, 14 what was the name of the vessel? 15 A It was just one vessel. The name is UBC 16 Miami. 17 Q Who was his employer when he was the captain 18 of the UBC Miami? 19 A It was also Intership Navigation. 20 Q When did he enter the Mississippi as captain 21 of the UBC Miami? 22 A That was back in -- it was back in 2016 or 23 2017. It was twice. 24 Q Okay. Do you remember what month and the year 25 that you entered the first time in the Mississippi River</p>



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26	<p>1 as captain of the UBC Miami?</p> <p>2 A I think it was December of -- well, I'm not</p> <p>3 positive, but I think it was December, was right before</p> <p>4 Christmas.</p> <p>5 Q What year?</p> <p>6 A 2000 -- 2016. 2016, I think. But -- but I'm</p> <p>7 not sure, I just do not remember.</p> <p>8 Q When was the second time, approximately, that</p> <p>9 you operated the UBC Miami in the Mississippi River?</p> <p>10 A I think it was in two -- 2017. That was in --</p> <p>11 in the spring of 2017 because after some time off, I</p> <p>12 returned to the same shift, and -- and I remember being</p> <p>13 on that Mississippi River in New Orleans.</p> <p>14 Q What type of ship is the UBC Miami?</p> <p>15 A It -- it's a -- it's a general cargo vessel,</p> <p>16 but it's smaller than the Nomadic Milde ship.</p> <p>17 Q When he was captain of the UBC Miami and</p> <p>18 traveling in the Mississippi River approximately</p> <p>19 December of 2016, what anchorages did the vessel visit?</p> <p>20 INTERPRETER: I believe the witness says Davant</p> <p>21 anchorage, and that was below New Orleans.</p> <p>22 Q Okay. Was he picking up or dropping off coal</p> <p>23 at Davant anchorage during that visit?</p> <p>24 A I don't remember -- I don't remember -- I</p> <p>25 don't remember this being about coal. I remember it was</p>	28	<p>1 Bend anchorage, correct?</p> <p>2 MR. BUTTERWORTH: I'll object as to -- I'll</p> <p>3 object as to form because "moor" -- Jim, you're a</p> <p>4 land man. "Moored" means tied up to a dock, so you</p> <p>5 can't moor at the anchorage. You can anchor at an</p> <p>6 anchorage. You don't moor at anchorage.</p> <p>7 BY MR. BERCAW:</p> <p>8 Q Let me ask the question: The first time that</p> <p>9 the Nomadic Milde anchored near the Kenner Bend</p> <p>10 anchorage occurred on March 8, 2020, when he was</p> <p>11 captain?</p> <p>12 A Close to -- yes. That's correct. Yes.</p> <p>13 That's correct.</p> <p>14 Q And I meant to say by -- if it wasn't clear,</p> <p>15 May 8, 2020, that was the first time, correct?</p> <p>16 A Yes. That's correct. May 8, 2020, yes.</p> <p>17 Q That was the first time that a vessel that you</p> <p>18 had been a captain of had anchored in the Mississippi</p> <p>19 River above New Orleans. Is that also true?</p> <p>20 A Yes.</p> <p>21 Q I think we're going to sidetrack here. And</p> <p>22 I'm going to refer to the certificate issued by Marshall</p> <p>23 Islands concerning Captain Markowski. Is this --</p> <p>24 Captain, is this a true and correct copy of your current</p> <p>25 certificate issued by the Republic of the Marshall</p>
27	<p>1 cereal and --</p> <p>2 Q Okay. Is the Davant anchorage the only</p> <p>3 anchorage the UBC Miami visited during the trip that</p> <p>4 occurred approximately in December of 2016?</p> <p>5 A I had one exchange at one anchorage, and then</p> <p>6 I went home after that. And then the second time when</p> <p>7 the cereal was loaded onto the vessel. But I do not</p> <p>8 remember whether it was at the anchorage or at a</p> <p>9 different location. I just do not remember that.</p> <p>10 Q Okay. I'm going to ask some questions about</p> <p>11 the anchorage or anchorages the UBC Miami they had</p> <p>12 visited in the spring of 2017. Can you please identify</p> <p>13 them for the record?</p> <p>14 A It was below New Orleans for sure. I remember</p> <p>15 going back to the airport and going up the river and</p> <p>16 crossing the river, and then getting to the airport.</p> <p>17 That's what I remember. So it must have been below New</p> <p>18 Orleans. That's my memory.</p> <p>19 Q The first and only time that the Nomadic Milde</p> <p>20 moored in the Kenner Bend anchorage when he was a</p> <p>21 captain occurred on or about May 8, 2020; is that true?</p> <p>22 A No. That was not the first time we moored on</p> <p>23 Mississippi.</p> <p>24 Q Okay. I'll ask it again. Yeah. On or about</p> <p>25 May 8, 2020, the Nomadic Milde moored near the Kenner</p>	29	<p>1 Islands?</p> <p>2 A Yes.</p> <p>3 Q I understand from other documents that have</p> <p>4 been produced by the Nomadic Milde interests that you</p> <p>5 joined that vessel on January 16, 2020; is that correct?</p> <p>6 A Yes.</p> <p>7 Q Is that the first time you served as captain</p> <p>8 or master of that vessel?</p> <p>9 A Yes.</p> <p>10 Q Had you served before January 16, 2020 as</p> <p>11 either a chief officer or watch officer on the Nomadic</p> <p>12 Milde?</p> <p>13 A No. I was not.</p> <p>14 Q The Nomadic Milde has a controllable pitch</p> <p>15 propeller, correct?</p> <p>16 A There would be an easier term to use for the</p> <p>17 interpreter. It is equipped with a CPP. And that's</p> <p>18 correct, it does have that.</p> <p>19 Q And when you said "CPP," you mean controllable</p> <p>20 pitch propeller, correct?</p> <p>21 A Yes. Yes.</p> <p>22 MR. MARTIM: Excuse me, if I may.</p> <p>23 MR. BUTTERWORTH: If you want -- if the</p> <p>24 translators want to go off the record for a moment,</p> <p>25 that's how we normally do it so that the court</p>



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30

1 reporter doesn't have to try to type what you guys
 2 talk about.
 3 MR. BERCAW: I don't understand the confusion.
 4 He just said the CPP is a controllable pitch
 5 propeller in English?
 6 MR. BUTTERWORTH: It's a -- the translator was
 7 providing the proper term.
 8 INTERPRETER: One of our experts -- this is the
 9 interpreter. One of our expertS did provide me with
 10 a Polish equivalent term for the controllable pitch
 11 propeller. The witness provided me with, I think, a
 12 workable solution also, as to call it a CPP.
 13 MR. BERCAW: Right. That's all I'm going to
 14 do, is refer to it as a CPP from here on out.
 15 MR. BUTTERWORTH: And, Jim, I think that's
 16 fair.
 17 BY MR. BERCAW:
 18 Q Good. Captain, have you been employed as a
 19 master on any other vessel that was equipped with a
 20 single CPP?
 21 A Yes. I have been.
 22 Q What are the names of those vessels?
 23 A UBC Miami, Lingediep.
 24 Q Captain, can you spell that? The Lingediep,
 25 please?

31

1 A Yes. Lima, India, November, Golf, Delta,
 2 India, Echo, Papa (in English).
 3 INTERPRETER: Interpreter spelling, L-I-N-G-D-
 4 I-E-P, Lingediep.
 5 A Lingediep.
 6 MR. BUTTERWORTH: Lingediep, yeah. Lingediep.
 7 Okay.
 8 A And -- besides that other vessel, some other
 9 vessels (in English).
 10 Q What are those, Captain?
 11 A Leuvediep, Lima, Echo, Uniform, Victor, Echo,
 12 Delta, India, Echo, Papa (in English).
 13 Q Any others?
 14 INTERPRETER: Leuvediep. Interpreter spelling,
 15 L-E-U-V-E-D-I-E-P.
 16 A Yes. Velserdiep. It's a Dutch company.
 17 Velserdiep. I will -- I will spell. I will spell. I
 18 will spell. Victor, Echo, Lima, Sierra, Echo, Romeo,
 19 Delta, India, Echo, Papa. Velserdiep (in English).
 20 Q Any others, Captain?
 21 A Yes. There is two more from what I remember.
 22 That's Onego Trader. And another one, Zuiderdiep (in
 23 English). Zulu, Uniform, India, Delta, Echo, Romeo,
 24 Delta, India, Echo, Papa. Zuiderdiep (in English).
 25 INTERPRETER: Okay. So, Counsel, just to make

32

1 sure. I have two additional names, Onego Trader and
 2 Zuiderdiep.
 3 A Yes (in English).
 4 Q That's Zuiderdiep, yes? Who was your employer
 5 on the deep vessels that you were talking about, The
 6 Lingediep, the Leuvediep, the Velserdiep, and the
 7 Zuiderdiep?
 8 A UBC Miami, Intership Navigation (in English).
 9 The ships belong to the group UBC Miami, Intership
 10 Navigation. Onego Trader, Zuiderdiep, Lingediep were --
 11 belonged to --- Feederlines (in English) -- belonged to
 12 a company by the name of Feeder -- lines (in English) --
 13 lines. But Feederlines was part of the group that
 14 Intership Navigation belonged to as well. And I
 15 remember being hired by the crewing department from
 16 Intership Navigation.
 17 Q So except for his employment with Intership
 18 Navigation and possibly Feederlines, he's not been
 19 employed by any other company as the captain of the
 20 vessel?
 21 MR. BERCAW: Everyone's frozen. It's not just
 22 her.
 23 MR. BUTTERWORTH: Oh, yeah. People are frozen
 24 up right now. I don't know what it is. Well,
 25 actually, we've been going about an hour --

33

1 (OFF THE RECORD)
 2 COURT REPORTER: We're back on the record.
 3 BY MR. BERCAW:
 4 Q Captain?
 5 A Yes (in English).
 6 Q In your own words, and without looking at any
 7 document, please tell your version of the incident on
 8 May 8, 2020 involving the Nomadic Milde.
 9 A On the May 8, the vessel completed loading at
 10 the anchorage in Avondale. And it wasn't at the
 11 anchorage. We were moved.
 12 MS. MAJKA: Excuse me. It's Magda here. I
 13 think it's dock.
 14 A At -- at the dock in Avondale. Then the ship
 15 with a pilot onboard went to the anchorage at Canonburg
 16 [sic] -- at Cananburt -- Canonburg (in English). And
 17 then after we dropped the anchor --
 18 INTERPRETER: Excuse me, if that's not the
 19 proper terminology.
 20 A -- so we waited there. We stayed there for
 21 about one hour-and-a-half. Then the vessel started to
 22 drag because of a very strong current. And then it hit
 23 the Atlantic Venus vessel. I contacted and informed the
 24 local authorities, VTS, Coast Guard about the incident.
 25 A -- a pilot appeared on our ship.



34	<p>1 COURT REPORTER: A what appeared on the ship? 2 I'm sorry. 3 MR. BUTTERWORTH: Pilot. P-I-L-O-T. 4 INTERPRETER: Pilot. 5 THE WITNESS: Pilot, yes (in English). 6 INTERPRETER: Pilot. 7 THE WITNESS: Pilot (in English). 8 A And we were waiting for additional -- 9 INTERPRETER: I -- I want to say hauler boats 10 but -- 11 THE WITNESS: Tugs (in English) -- 12 MR. BUTTERWORTH: Tugboats. 13 THE WITNESS: Tug -- tugboats. Tugboats (in 14 English). 15 A Okay. Tugboats. So additional ones were 16 called in by the pilot. Yes (in English). And then the 17 additional tugboats that were called in were called in 18 to assist us because of the strong currents on the 19 river. It was -- they were necessary to separate us 20 from the other vessel. After the tugboats were called 21 in, we had a stable situation for -- I don't know. I 22 want to say a couple of hours, two hours. About -- 23 about two hours (in English). About two hours. And 24 then at one point, the vessel -- our vessel started to 25 go forward a little bit. And the pilot ordered the ship</p>	36	<p>1 the big screen, but I've got it on this -- that same 2 document NM51-53 in the binders, all the documents 3 that we've sent you. But he's looking at it right 4 now. 5 MR. BERCAW: Okay. 6 BY MR. BERCAW: 7 Q Captain, what is that document? 8 A It's a statement. It's my statement, and it 9 was drafted right after the accident. 10 MR. BERCAW: We haven't done this already, so 11 this is for the court reporter as well as everyone 12 else on the call. We've attached the Polish license 13 previously identified as Markowski Exhibit number 1. 14 We will attach the certificate issued by the 15 Republic of the Marshall Islands as Markowski 16 Exhibit number 2. And we will attach the 17 handwritten statement of Captain Markowski that he 18 just identified as Markowski Exhibit 3. 19 (EXHIBIT 2 MARKED FOR IDENTIFICATION) 20 (EXHIBIT 3 MARKED FOR IDENTIFICATION) 21 BY MR. BERCAW: 22 Q Captain, I'm going to ask you a couple of 23 specific questions about this statement. So for present 24 purposes and until I think it otherwise, I'm going to 25 just be referring to Markowski Exhibit 3. Do you</p>
35	<p>1 -- for -- for the engine to -- to work so that the 2 vessel would actually either reverse or stay in one 3 place. And then all of a sudden we noticed that setting 4 or -- CPP (in English) -- C -- the CPP setting changed 5 from reverse to forward. The vessel, all of a sudden, 6 went forward and hit -- and then -- then hit the 7 Cornerstone. 8 INTERPRETER: Is that -- 9 THE WITNESS: Yes (in English). 10 MR. BUTTERWORTH: Yeah. Cornerstone. 11 THE WITNESS: Cornerstone (in English). 12 MR. BUTTERWORTH: Cornerstone wall. 13 INTERPRETER: Okay. 14 A The -- dock -- yeah. The -- the Cornerstone. 15 That was -- it was very close to the vessel. And that's 16 what happened. 17 BY MR. BERCAW: 18 Q I'm going to refer to a document that's been 19 produced by the Nomadic Milde interests. It begins on 20 page NM51, then it continues on 53. Pull that up. 21 MR. BUTTERWORTH: If you can read that. So why 22 don't you pull something up. Leave this. Well, 23 there. 51 to 53. Oh, here. 24 A Yeah. I can see that. 25 MR. BUTTERWORTH: And Jim, we can't read it on</p>	37	<p>1 understand? 2 A Okay. Yes. 3 Q Okay. I know the report is dated May 8, 2020, 4 but who asked you to write it? 5 A From what I understand, there was information 6 that was given to us by the pilot who kind of 7 substituted the pilot that was on the ship before. So 8 Mr. Shirah was the pilot that was onboard the ship at 9 the time of the incident. So he was -- there -- there 10 was someone else who -- who replaced him at one point. 11 And from what we were told by this second pilot, we were 12 told that he was Coast Guard, required us to have a 13 statement when they -- when the Coast Guard comes the -- 14 the next day to our vessel. What I remember today is 15 that it was information given to us by this pilot that 16 we need to prepare a statement like that for the Coast 17 Guard to be available to them. 18 Q So Pilot Shirah, S-H-I-R-A-H, was the pilot on 19 board the Milde at the time of the incident; is that 20 correct? 21 A Yes. 22 Q And the pilot that replaced Pilot Shirah was 23 the individual that asked you to prepare the document 24 that is attached as Markowski Exhibit 3, correct? 25 A That one I remember happening when the pilot</p>



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<p style="text-align: right;">38</p> <p>1 was on the side of the ship and then that's what I 2 remember being told by -- by the -- the pilot. That's - 3 - that's -- that's the best of my memory. 4 Q Okay. And it was the second pilot that 5 bordered the Milde after the incident that instructed 6 you to prepare the statement? 7 A I'm not -- I'm -- also don't know 100 percent 8 sure, but that's what I remember. It was the second 9 pilot who -- who told us to prepare a statement to be 10 available for the US Coast Guard. 11 Q And Captain, if you don't remember the -- what 12 I'm asking you, that is a perfectly acceptable response 13 for purposes of your deposition. 14 A I understand that. I also want to tell the 15 truth, and that's what I remember, that it was the 16 second individual who was the pilot, and he had told us 17 to prepare the statement. 18 Q When did you, Captain Markowski, write or 19 begin writing the master statement? 20 A It was the night -- it was the night of the 21 incident. I -- it was a sleepless night for me. I -- I 22 didn't sleep the -- the entire night. The date on the 23 document is the 8th, so I think it was on the 8th 24 something before midnight. I was -- I had a lot of 25 different documents in front of me. So that's -- that's</p>	<p style="text-align: right;">40</p> <p>1 MR. BERCAW: Mike, Mike -- 2 MR. BUTTERWORTH: Yeah. 3 MR. BERCAW: -- just stop, okay? And that's a 4 fair question that I asked. Let him try to answer 5 it, okay? Unless you're going to object to the 6 form, you don't -- 7 MR. BUTTERWORTH: I -- 8 MR. BERCAW: -- need your clarifications -- 9 MR. BUTTERWORTH: Okay. 10 MR. BERCAW: -- okay? 11 INTERPRETER: Okay. Just to make it clear, 12 could I have the question again? 13 MR. BUTTERWORTH: Sure. 14 BY MR. BERCAW: 15 Q At the time the incident the chief officer was 16 on watch, correct? 17 A Yes. The chief officer was on watch. 18 Q What's the name of the chief officer that was 19 on watch? 20 A Piotr Kowalski (in English). Piotr Kowalski. 21 INTERPRETER: Interpreter spelling. First name 22 P-I-O-T-R. Last name K-O-W-A-L-S-K-I. 23 Q When you wrote the statement that's been 24 attached as Markowski Exhibit 3, who else was present? 25 A No one else was there with me. I was in -- in</p>
<p style="text-align: right;">39</p> <p>1 what I remember that it was during the night. 2 Q There are certain time entries that appear on 3 Markowski Exhibit 3, correct? 4 A Yes. Yes. There were some -- some times and 5 hours. Yes. 6 Q When you were preparing your statement, did 7 you refer to any other documents to obtain those time 8 entries? 9 A Yes. Deck log book. Deck log -- bell book -- 10 bell book (in English). 11 INTERPRETER: Okay. 12 A I remember referring to the deck log book and 13 the bell log book to get some of the times that are 14 mentioned in my statement. Can I say something more? 15 Some of the time references are approximate. It says 16 around a certain time. I remember well. It was fresh 17 at the time that it happened when I was trying to do my 18 best writing those times down. 19 Q At the time that you first became aware of the 20 incident, is it correct that the chief officer was on 21 watch? 22 MR. BUTTERWORTH: If I can -- this isn't an 23 objection. It's just a clarification. There's a 24 couple of different incidences. There's dragging 25 anchor, there's contact with the Venus, there's --</p>	<p style="text-align: right;">41</p> <p>1 the cabin, and I was by myself. 2 Q Besides the deck log book and bell log book 3 what other documents, if any, did you refer to in 4 preparing Markowski Exhibit 3? 5 A We were able to see the recording on the ECDIS 6 system. So it is possible because we were able to see 7 the recording that some of the times are just taken off 8 this recording. And -- and before the -- before officer 9 -- before Pilot Shirah got off the vessel, he also 10 showed us his tablet. And it was a recording on his 11 tablet. So there were also times and we would see what 12 the recording was. 13 Q Now, he refers to Pilot Shirah's tablet. Is 14 that a computer like an iPad, or is it a notebook? 15 A It is a tablet that is used by pilots. And -- 16 and then the Pilot Shirah's tablet is -- just it -- it 17 has the recording. It is a -- a computer. 18 Q Did Pilot Shirah or anyone else on board the 19 Milde print out what appeared on Pilot Shirah's computer 20 before at anytime? 21 A I don't know. I don't know. 22 Q The only time that you saw what was on Pilot 23 Shirah's tablet was when he showed it to you before he 24 left the vessel; is that correct? 25 A Yes.</p>



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<p style="text-align: right;">42</p> <p>1 Q Did you make any drafts of your master's 2 statement that's been attached as Markowski Exhibit 3 3 before you did a final version, or is this the only 4 version of the draft -- of the statement? 5 A Yeah -- no (in English). No. This is the 6 only version I can see some minor corrections here and 7 there. So that's -- that's the only version and the 8 statement that I made. 9 Q Okay. The master statement refers to the 10 Milde being anchored at the Ama, that's A-M-A anchorage, 11 correct? 12 A It's how we called the anchorage because I 13 think that was -- that was either a town or some -- some 14 place by that name. So that's how we called it, Ama 15 anchorage. 16 Q Who else besides Captain Markowski called it 17 the Ama anchorage? 18 A Well, we talked to the pilot who was leading 19 us, we also use the same name. And before that -- 20 before that, you know, again to referring to it (in 21 English) -- and also the -- the agent that we worked 22 with before -- before the loading, he was also using the 23 same name. 24 Q Who was the agent that referred to it as the 25 Ama anchorage?</p>	<p style="text-align: right;">44</p> <p>1 was using the name of Ama anchorage at that time. 2 Q Was it your understanding, before the Nomadic 3 Milde dropped any anchors after leaving Avondale that 4 she was to moor at the Ama anchorage? 5 A When we were leaving Avondale, we knew that 6 that's where we were headed, yes. 7 Q And where was that? The Ama anchorage or the 8 Kenner Bend anchorage? 9 A From what I remember, we referred to that 10 location as Ama, that was the name that appeared on that 11 -- that's the name that we used. So we knew that we 12 were going to Ama anchorage. 13 Q All right. Are you aware that the Ama 14 anchorage is across the Fairview Crossing on the left 15 descending bank of the river? 16 A I do not -- I'm not familiar with the names 17 and I -- I'm not familiar with the -- with the area -- 18 the local area there. 19 Q Do you know how many vessels were anchored at 20 the Ama anchorage prior to the Nomadic Milde attempting 21 to anchor near the Kenner Bend anchorage? 22 A There were a few, I remember, that anchored at 23 the location, were three other vessels. And then we 24 also, I remember, we passed on our way a few other 25 vessels, but how many exactly, I -- I do not remember.</p>
<p style="text-align: right;">43</p> <p>1 A Yes. And the name of -- of Kenner Burt [sic], 2 I heard that after the incident. 3 Q Okay. My question was: What's the name of the 4 agent that referred to it as the Ama anchorage? 5 A Cel -- Celtic International Shipping or 6 something like that. Celtic -- Celtic International 7 Shipping (in English) -- I remember the agency by the 8 name of Celtic International Shipping. I think that's 9 the correct name. Yeah. The Celtic International 10 Shipping was the agent. 11 Q Okay. Do you know the name of the individual 12 with Celtic International Shipping that referred to the 13 anchorage as the AMA anchorage? 14 A The agent that would come to the vessel was -- 15 he -- his first name was Ryan. I do not know the last 16 name of the person. 17 Q Okay. You understand that instead of the Ama 18 anchorage, the Nomadic Milde was anchored near the 19 Kenner Bend anchorage; is that correct? 20 A I understand it now that the official name is 21 Kenner Bend anchorage and not Ama. Yes, I understand 22 now. If I may -- 23 Q Go ahead. 24 A But I just wanted to add when we were, kind 25 of, reporting the incident to vessel traffic service, I</p>	<p style="text-align: right;">45</p> <p>1 Q I'm -- now, I want to make sure that when you 2 answer the question, you're referring to the vessels 3 anchored at the Ama anchorage as opposed to any vessels 4 anchored at the Kenner Bend anchorage. Do you know how 5 many vessels were anchored at the Ama anchorage before 6 the Nomadic Milde attempted to anchor near the Kenner 7 Bend? 8 A When we were headed there, I wasn't aware of 9 how many vessels were anchored there. But when we got 10 there, I remember, at Ama anchorage there being three 11 vessels, two ahead of us and one behind us, and it was 12 the Atlantic Venus vessel. 13 Q All right. So if the area -- if the anchorage 14 closest to where the Nomadic Milde dropped her anchors 15 on May 8th after leaving Avondale is referred to as the 16 Kenner Bend anchorage, then he is referring to the three 17 vessels that were near the Kenner Bend anchorage in his 18 previous statement? 19 A I'm thinking about three vessels at Ama 20 anchorage because that's how the pilot set us up to go. 21 So I'm -- I'm thinking about Ama anchorage. 22 Q Well, let me ask it this way. Captain, your 23 master statement refers to both the Kenner Bend 24 anchorage and the Ama anchorage. Are you referring to 25 the same the locale when you use Ama anchorage versus</p>



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<p style="text-align: right;">46</p> <p>1 Kenner Bend anchorage? 2 A For me, that's the same location. I found out 3 about the other name after the -- the incident and 4 before that, the -- the location where we were headed 5 was always Ama anchorage. And that's how it was 6 referred to throughout our -- our passage from the -- 7 the previous location. 8 Q If the Ama anchorage is further up river, and 9 located near the left descending bank of the Mississippi 10 River, and that location goes by the name Ama anchorage, 11 would you agree that at no time was the Nomadic Milde 12 anchored at the Ama anchorage prior to the incident? 13 A If there is a different location that goes by 14 the same name, then I would agree with that, except that 15 our pilot anchored us, our vessel, at a location that 16 was always referred to as Ama anchorage. And that's how 17 I understand this name or this place to be called. 18 Q Okay. When you were captain of the Milde, and 19 the vessel was preparing to depart from the Avondale 20 facilities, you were at the helm when the pilot boarded 21 the vessel, correct? 22 A Yes, I'm -- I'm always there whenever the -- 23 the pilot appears on -- on the -- on the vessel and -- 24 yes. 25 Q Before the vessel left the Avondale dock, you</p>	<p style="text-align: right;">48</p> <p>1 have at least been present during that conversation? 2 A For sure, because I was on the bridge the 3 entire time. 4 Q I want to refer back to your statement, 5 Markowski Exhibit 3. You referred to two distances in 6 the third line with respect to the Nomadic Milde and the 7 Atlantic Venus, correct? 8 A You mean the distance from the Atlantic Venus 9 vessel? Is the question asking about that? 10 Q Yes. He refers -- Captain, you referred to 11 1.5, and I believe it looks like 1.4 cables in your 12 handwritten statement; is that correct? 13 A That's what I remember being the distance at 14 that time. It may be incorrect, but I think you can use 15 the ECDIS system to -- that will check on the exact 16 distance. I don't know. But that's what I remembered 17 when I was writing it. 18 Q How many meters is one cable? 19 A One -- it's 185.2. So 185 meters and 20 20 centimeters. 21 Q I could make out that the first referenced to 22 cables and the master statement is 1.5. What is the 23 second number immediately appearing before the word 24 "cables" in -- at the master statement? 25 A Okay. The "ABT" stands for about, and there</p>
<p style="text-align: right;">47</p> <p>1 informed that pilot that the vessel was to anchor at the 2 Ama anchorage, correct? 3 INTERPRETER: The interpreter would like the 4 question again. 5 Q Sure. I'm sorry, we keep breaking up over 6 here. Before the vessel left the Avondale dock, you 7 told the pilot to take the Nomadic Milde to the Ama 8 anchorage, correct? 9 A No. It's the pilot who comes to the ship he 10 knows where to take the vessel so he -- he knew that. 11 Q In the course of transit from Avondale dock to 12 the location where the anchors of the Nomadic Milde were 13 dropped, did the pilot explain to you why the vessel was 14 going to moor at that location instead of the Ama 15 anchorage? 16 A I don't remember the pilots telling me 17 anything like that. I know that before the anchors 18 dropped we were headed towards that location, but I 19 don't remember a conversation about that. 20 Q During the transit of the Nomadic Milde from 21 Avondale to the place where her anchors were dropped, 22 you remained on the bridge of the vessel? 23 A Yes, yes, yes. 24 Q So if the pilot had said why he preferred the 25 Kenner Bend anchorage over the Ama anchorage, you would</p>	<p style="text-align: right;">49</p> <p>1 was 1.5 and then 1.4 cables. 2 Q Where was that distance measured? 3 A On the radar. We were using a radar. The 4 pilot was using a radar and we were using the radar 5 and -- 6 THE WITNESS: The pilot was using our radar, it 7 was same radar (in English). 8 A The pilot was using our radar. It was the 9 same radar. And then after he dropped the anchor, the 10 ship goes backwards just a little bit. There is a 11 tension -- there is a tension on the chains. Maybe the 12 terminology would be different here a little bit, but 13 because of the tension that a vessel can go backwards 14 after the anchors are dropped. 15 Q Right. My question is a little simpler than 16 that. Well, what point on the Nomadic Milde was about 17 1.4 to 1.5 cables from what point on the Atlantic Venus? 18 A The radar measures the distance from the -- 19 the antenna is on the ship. So it's on the aft mast of 20 the ship. So the measurement was taken -- for the 21 distance was to the front of the Atlantic Venus vessel. 22 Q Okay. So what you're telling me, Captain, is 23 that the measurement of about 1.4 to 1.5 cables was 24 measured from the aft mass of the Nomadic Milde to the 25 closest point of the Atlantic Venus which was at her</p>



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<p style="text-align: right;">50</p> <p>1 bow?</p> <p>2 A That's what the measurement that's stated here</p> <p>3 refers to. That's the distance. But because you can</p> <p>4 see that it says "about," the three letters A-B-T, the</p> <p>5 distance that is here on the statement is approximate.</p> <p>6 Q Okay. What is the distance forward from the</p> <p>7 stern of the Nomadic Milde to the aft mast of that ship?</p> <p>8 A About 20 meters, I think.</p> <p>9 Q And how far from the port side of the Nomadic</p> <p>10 Milde is the aft mast located?</p> <p>11 INTERPRETER: Counsel, the interpreter did not</p> <p>12 hear the very first term that you used. If you</p> <p>13 could repeat that? What's --</p> <p>14 BY MR. BERCAW:</p> <p>15 Q Sure. How far in meters is the aft mast from</p> <p>16 the port side of the Nomadic Milde?</p> <p>17 A So if we take that the width of the vessel is</p> <p>18 21 meters, that would be ten-and-a-half meters. That's</p> <p>19 what it would be.</p> <p>20 Q Your statement also refers to shackles of</p> <p>21 anchor chain, correct?</p> <p>22 A Yes.</p> <p>23 Q How many meters is a shackle of anchor chain</p> <p>24 on the Nomadic Milde?</p> <p>25 A 27-and-a-half.</p>	<p style="text-align: right;">52</p> <p>1 was: Was there nine shackles of anchor chain in the</p> <p>2 starboard anchor chain locker of the Nomadic Milde?</p> <p>3 A Yes.</p> <p>4 Q Okay. The port anchor chain locker contained</p> <p>5 ten shackles of anchor chain for the Nomadic Milde,</p> <p>6 correct?</p> <p>7 A Yes. There were ten. That's correct.</p> <p>8 Q Okay. The ten shackles of anchor chain is</p> <p>9 approximately 275 meters, right?</p> <p>10 A Yes.</p> <p>11 Q And again, nine shackles of anchor chain is</p> <p>12 approximately 247.5 meters of anchor chain, right?</p> <p>13 A Yes. Nine times 27.5, that's correct.</p> <p>14 Q Okay. Did you -- I'm going to start over.</p> <p>15 When you first boarded the Nomadic Milde in January of</p> <p>16 this year, did the vessel have the same amount of anchor</p> <p>17 chain as we've just described?</p> <p>18 A Yes. It was the same amount.</p> <p>19 Q Why did the starboard anchor chain locker have</p> <p>20 one less shackle than the port anchor chain locker?</p> <p>21 A I do not know. The ship was built back in</p> <p>22 2011, and when I -- from the time that I entered the</p> <p>23 ship, that's how it was. Nine on the right, ten on the</p> <p>24 left.</p> <p>25 Q As the captain of the Nomadic Milde, you're</p>
<p style="text-align: right;">51</p> <p>1 Q I understand from reviewing the vessel records</p> <p>2 that the Nomadic Milde had nine shackles of anchor chain</p> <p>3 in her starboard anchor chain locker; is that correct?</p> <p>4 INTERPRETER: If we could go off the record</p> <p>5 here and I would like to ask the experts as to how</p> <p>6 to best translate that, unless the witness himself</p> <p>7 understands.</p> <p>8 MR. BUTTERWORTH: Actually right now a good</p> <p>9 time to take a break if the translators want to</p> <p>10 confer, and we could come back after a break. We've</p> <p>11 been going for a little over an hour.</p> <p>12 MR. BERCAW: Okay. That's fine. I don't have</p> <p>13 a problem with taking a break at this time. But I</p> <p>14 believe the captain and everyone else is going to</p> <p>15 refer to it as a shackle whether it's in Polish or</p> <p>16 English.</p> <p>17 MR. BUTTERWORTH: Okay. Okay. Jim, take a</p> <p>18 little break. Five minutes.</p> <p>19 MR. BERCAW: Okay.</p> <p>20 MR. BUTTERWORTH: Translators, do you know how</p> <p>21 to get in touch with each other?</p> <p>22 (OFF THE RECORD)</p> <p>23 COURT REPORTER: We can go back on the record.</p> <p>24 BY MR. BERCAW:</p> <p>25 Q Captain, you heard my last question, which</p>	<p style="text-align: right;">53</p> <p>1 responsible for the safety of the vessel at all times,</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q You weren't curious as to why the starboard</p> <p>5 anchor chain locker had one less shackle than the port</p> <p>6 anchor chain locker?</p> <p>7 INTERPRETER: Could I have the question again,</p> <p>8 Counsel?</p> <p>9 MR. BERCAW: Yes.</p> <p>10 Q You weren't curious as to why there was one</p> <p>11 less shackle of anchor chain in the starboard locker</p> <p>12 than in the port anchor chain locker?</p> <p>13 A I don't think there's anything -- anything</p> <p>14 unusual. I -- I was previously on different vessels,</p> <p>15 where there was a difference between the number of</p> <p>16 shackles. So it is -- it's -- it's nothing unusual.</p> <p>17 Q Tell me what was the last thing.</p> <p>18 A There was a difference of one shackle between</p> <p>19 the two. I was on vessels like that before.</p> <p>20 Q Who directed the Nomadic Milde during her</p> <p>21 anchoring maneuvers near the Kenner Bend anchorage?</p> <p>22 INTERPRETER: Who -- again I didn't hear the</p> <p>23 very first word of --</p> <p>24 MR. BERCAW: Yes.</p> <p>25 BY MR. BERCAW:</p>



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<p style="text-align: right;">54</p> <p>1 Q Who directed the Nomadic Milde during her 2 maneuvering near the Kenner Bend anchorage to drop her 3 anchors? 4 A The pilot -- the pilot was making orders. 5 Q During the time the Nomadic Milde was 6 maneuvering to set her anchors, did you override the 7 pilot at any time? 8 A No. I always -- I always make the same orders 9 as I get from the pilot. 10 Q It's true that in anchoring the Nomadic Milde 11 that while the pilot can provide advice as to where the 12 anchors are to be dropped, you as captain are ultimately 13 responsible for the safe anchoring of that vessel at all 14 times? 15 A Yes. Yes. But that's when I think it could 16 result in a dangerous situation. At that time and at 17 that point, I trusted the pilot. 18 Q Whether you trusted the pilot or not, it is 19 accurate to state that at all times you remain 20 responsible for the safe anchoring of the Nomadic Milde? 21 A Yes. 22 Q Describe for me the procedure by which the 23 Nomadic Milde became anchored near the Kenner Bend 24 anchorage on May 8, 2020? 25 A When we were approaching the anchorage, we</p>	<p style="text-align: right;">56</p> <p>1 the water and a shackle on deck? 2 A I think it was five meters -- five to six 3 meters. 4 Q Let me backtrack for a second during the 5 voyage of the Nomadic Milde from Avondale to near the 6 Kenner Bend anchorage. 7 A Okay. 8 Q What cargo did the Nomadic Milde take on or 9 load at -- in Avondale? 10 A Lead concentrate in bulk (in English). The 11 ship loaded lead concentrate in bulk. 12 Q Assuming this incident did not occur, what was 13 the plan for the Nomadic Milde after she departed the 14 Kenner -- the area near the Kenner Bend anchorage? 15 A We were supposed to go to a -- a different 16 port in Pensacola and take on additional cargo. 17 Q What was the purpose in the Nomadic Milde 18 traveling further up the Mississippi River after taking 19 on the cargo of lead concentrate in Avondale, rather 20 than immediately traveling out of the river than over to 21 Pensacola? 22 A The purpose was that there was supposed to be 23 one of the cylinders that is for the opening of the 24 cargo area. 25 INTERPRETER: Please correct me if that's</p>
<p style="text-align: right;">55</p> <p>1 already had lowered our anchors and it was about a meter 2 above the water. That's how we -- in preparation for 3 anchoring, that's how we do it. The pilot selected the 4 location where the anchors were supposed to be dropped. 5 First, we dropped the right anchor, and it was five 6 shackles into the water. Then the vessel moved left, 7 and we dropped -- and then on -- for the left anchor, 8 that was three shackles into the water. And then we 9 pulled one shackle on the right up, and the rest 10 remained in water. So we had four shackles on the 11 right, three shackles on the left, and at that point the 12 pilot told us that -- that's sufficient, and we remained 13 with the vessel with it anchored like that. 14 Q What is the difference in measurement for the 15 Nomadic Milde, between a shackle in the water versus a 16 shackle on deck as it concerns anchorage? 17 A Well, it depends on how -- how deep the vessel 18 is in the water. Oh. The vessel is -- is deeper in the 19 water, then -- then the distance would be different -- 20 the -- the measurement would be different -- then the 21 more the vessel goes -- goes up, the -- then it -- it -- 22 it just varies. 23 Q In the condition in which the Nomadic Milde 24 was at the time she was more near the Kenner Bend 25 anchorage, what was the difference between a shackle in</p>	<p style="text-align: right;">57</p> <p>1 wrong. 2 A But one of the cylinders was supposed to be 3 replaced and that was the purpose. 4 Q Where was it going to be replaced? 5 A At -- at the anchorage. 6 Q Were you aware of any other anchorages located 7 between Avondale and the Kenner Bend anchorage that had 8 space available for the Nomadic Milde to anchor? 9 A No. I was not aware. No. 10 Q Remind me again, who selected the Kenner Bend 11 anchorage as the location for the Nomadic Milde to 12 undergo repairs of her hatch cover cylinders? 13 A I think it was the agent. The agent set up 14 the -- the anchorage. The agent set up the pilot and 15 the -- the anchorage where we could go to get it 16 replaced. 17 Q Do you know which contractor was going to 18 board the Nomadic Milde or at least deliver the parts to 19 the Nomadic Milde to affect the repairs to the cargo 20 hatch? 21 A We have -- we have the spare part on board of 22 our vessel, and I also know the name of the contractor 23 who was supposed to do the replacement. 24 THE WITNESS: Ship Repair (in English). 25 A It was supposed to be the company by the name</p>



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<p style="text-align: right;">58</p> <p>1 of Coastal Ship Repair.</p> <p>2 Q Did the personnel from Coastal Ship Repair</p> <p>3 board the Nomadic Milde prior to the incident?</p> <p>4 INTERPRETER: Counsel, could I have the</p> <p>5 question again if you --</p> <p>6 MR. BERCAW: Yes.</p> <p>7 BY MR. BERCAW:</p> <p>8 Q Did the personnel from Coastal Ship Repair</p> <p>9 board the vessel prior to the incident?</p> <p>10 A Yes.</p> <p>11 Q Now I'm going to return to some questions</p> <p>12 about the anchoring procedure of the Nomadic Milde near</p> <p>13 the Kenner Bend anchorage, okay?</p> <p>14 A Yes. Uh-huh.</p> <p>15 Q Between the time the vessel began maneuvering</p> <p>16 to drop her anchors until the anchors were initially set</p> <p>17 with four shackles on the right anchor and three</p> <p>18 shackles on the left anchor, did you consider the</p> <p>19 Nomadic Milde to be in an emergency situation?</p> <p>20 A At bedtime, I did not. No.</p> <p>21 Q We haven't got to that point in your statement</p> <p>22 yet. But between the time the anchors were set with</p> <p>23 four shackles in the water on the right anchor and three</p> <p>24 shackles in the water on the left anchor, but before the</p> <p>25 chief officer called you back to the bridge, did you</p>	<p style="text-align: right;">60</p> <p>1 consider the Nomadic Milde to be in an emergency</p> <p>2 situation whatsoever, correct?</p> <p>3 A Yeah (in English). That's correct, I did not.</p> <p>4 Q Okay. I understand from your statement that</p> <p>5 the captain's quarters has an ECDIS display located in</p> <p>6 it, correct?</p> <p>7 INTERPRETER: Counsel, I didn't hear your --</p> <p>8 MR. BERCAW: That's fine.</p> <p>9 INTERPRETER: The --</p> <p>10 MR. BERCAW: I'll ask it --</p> <p>11 MR. BERCAW: -- Captain's --</p> <p>12 BY MR. BERCAW:</p> <p>13 Q I understand from the master statement that</p> <p>14 the captain's sleeping quarters has an ECDIS display</p> <p>15 located in it, correct?</p> <p>16 A Yes.</p> <p>17 Q The ECDIS display in the captain's quarters</p> <p>18 displays the same information as the ECDIS display on</p> <p>19 the bridge of the Nomadic Milde, correct?</p> <p>20 A Yes.</p> <p>21 Q And you as the captain altered the display of</p> <p>22 the ECDIS system in your room, but leave it the same as</p> <p>23 it currently is on the bridge?</p> <p>24 A No.</p> <p>25 Q So basically, whatever is shown on the ECDIS</p>
<p style="text-align: right;">59</p> <p>1 consider the Nomadic Milde to be in an emergency</p> <p>2 situation?</p> <p>3 A When I was called back to the bridge, yes,</p> <p>4 because the vessel was swinging. Yes.</p> <p>5 Q According to the master statement attached as</p> <p>6 Markowski Exhibit 3, it looks like about an hour passed</p> <p>7 between the time the Nomadic Milde completed anchor</p> <p>8 setting operations and until the time he was called back</p> <p>9 to the bridge by the chief officer; is that correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. And it was only approximately 4:30 p m.</p> <p>12 local time, or in mariner's context, 16:30 hours, that</p> <p>13 you began to feel that Nomadic Milde was in an emergency</p> <p>14 situation; is that correct?</p> <p>15 A The time is there because I remember that at</p> <p>16 that time I was called by the chief officer. So yes,</p> <p>17 that would be correct.</p> <p>18 Q Okay. But -- and it would also be correct</p> <p>19 that before 16:30 hours that you did not consider the</p> <p>20 Nomadic Milde to be in any emergency situation</p> <p>21 whatsoever, correct?</p> <p>22 A I was not on the bridge. And at that time, I</p> <p>23 -- I was told that there was something going on.</p> <p>24 Q Right. But my question was different. Before</p> <p>25 he was called back to the bridge, your captain did not</p>	<p style="text-align: right;">61</p> <p>1 display on the bridge is also what's shown on the ECDIS</p> <p>2 display in your room?</p> <p>3 A Yes.</p> <p>4 Q The ECDIS display that was on the bridge of</p> <p>5 the Nomadic Milde during the anchor maneuvering</p> <p>6 operations contained dashed pink lines that showed the</p> <p>7 boundaries of the Kenner Bend anchorage, correct?</p> <p>8 A Yes.</p> <p>9 Q Okay. It's accurate that the pilot requested</p> <p>10 the Nomadic -- the -- to drop her anchors at such a</p> <p>11 location that the Nomadic Milde was located outside the</p> <p>12 dashed pink lines indicated on the ECDIS display for the</p> <p>13 Kenner Bend anchorage.</p> <p>14 A The pilot set it up that way. That's correct.</p> <p>15 Yes.</p> <p>16 Q Okay. And when you were looking at the ECDIS</p> <p>17 display prior to -- on -- the Nomadic Milde begins</p> <p>18 swinging on her anchors, the Nomadic Milde was located</p> <p>19 outside of the boundary of the Kenner Bend anchorage,</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q Okay. At no time did -- before the incident,</p> <p>23 was the Nomadic Milde located within the boundary of the</p> <p>24 Kenner Bend anchorage, right?</p> <p>25 A That's correct.</p>



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<p style="text-align: right;">62</p> <p>1 Q On the ECDIS display in your cabin, did it 2 also indicate position of the Atlantic Venus? 3 A Yes. 4 Q The ECDIS display in your cabin showed the 5 entire length and width of the ATLANTIC VENUS from at 6 least 1530 hours until you were called back to the 7 bridge at 1430 hours, correct? 8 A Yes. Yes. 9 Q Okay. Like the Nomadic Milde, during that 10 time period we just talked about, at no time was the 11 Atlantic Venus located within the boundaries of the 12 Kenner Bend anchorage according to the ECDIS display of 13 the Nomadic Milde? 14 A Yes. 15 Q During the time that the Nomadic Milde was 16 approaching the Mississippi River from Venezuela, the 17 Nomadic Milde had downloaded a notice to mariners 18 through week 19 of the year 2020; is that correct? 19 A I would like to have that question again. I - 20 - I didn't quite understand the question. 21 Q Sure. I'm going to pull up a page from the 22 Notice to Mariners up to Week 2020/19 that bears Bates 23 numbers NM003241, okay? 24 MR. BUTTERWORTH: Yeah. Let's find that. 33:2 25 -- it's 32:41. Or -- we got a long ways to go.</p>	<p style="text-align: right;">64</p> <p>1 A Yes. 2 Q Before the Nomadic Milde entered the 3 Mississippi River, did you review the entirety of E- 4 NP69A Notices to Mariners up to Week 2020/19? 5 A I did. Yes. 6 Q Did you also make sure that the chief officer, 7 the second officer, and the third officer of the Nomadic 8 Milde were also familiar with the document I'm talking 9 about before the vessel entered the Mississippi River? 10 A I'm not sure if they familiarized themselves 11 with the document, but I would assume that they did. 12 Q At least you would expect the chief officer 13 being second in command of the bridge department of the 14 Nomadic Milde to have familiarized himself with the 15 Notices to Mariners that we've been talking about, 16 correct? 17 A Yes. Yes. 18 Q There is a provision on the sheet marked 19 "NM003241" under "River anchorages 8.58" that states, 20 "Anchoring is prohibited outside the established areas 21 except in emergency," correct? What was his answer? 22 A Yes. That's correct. I'm -- uh-huh. 23 Q Okay. It's your understanding that not only 24 for the anchorages located below New Orleans, but also 25 the Kenner Bend anchorage and the Ama anchorage that</p>
<p style="text-align: right;">63</p> <p>1 Here we go. Bates number 1 -- here it is. I think 2 it's right in here. 3 BY MR. BERCAW: 4 Q Do you have that page in front of you, 5 Captain? 6 MR. BUTTERWORTH: Yeah. I think we're getting 7 it out of the binder, Jim. 8 A Just a second (in English). Yes. I've got it 9 (in English). 10 Q Okay. This document of which we just had one 11 page we're referring to right now, that was provided to 12 the Nomadic Milde before she entered the Mississippi 13 River on a voyage departing Venezuela; is that correct? 14 A Yes. That's correct (in English). 15 Q Okay. 16 INTERPRETER: The answer is yes. That's 17 correct. 18 Q This is -- the documents that we've been 19 produced or provided by the Nomadic Milde interests that 20 concern the Notice to Mariners does not contain the 21 pages describing the Kenner Bend bridge, but they do 22 describe certain other anchorages. And so on the page 23 that I referred to, NM -- or NM003241, there is a 24 provision in the right column known as "River anchorages 25 8.58." Do you see that?</p>	<p style="text-align: right;">65</p> <p>1 anchoring is prohibited outside the established areas of 2 those anchorages, right? 3 A None -- none of the -- none of the vessels was 4 within the -- the boundaries of the anchorage and the 5 pilot picked the location for us to anchor. So I 6 assumed that that's how it is here at this location that 7 vessels can anchor if the pilot decided that we're going 8 to anchor at that point. 9 Q Do you understand that not only does the 10 Notices to the Mariners we've been referring to prohibit 11 the Nomadic Milde from anchoring outside of the 12 boundaries, but also a federal regulation governing 13 navigation on the Mississippi River also prohibits 14 anchoring outside of the established boundaries of the 15 Kenner Bend anchorage? 16 A But let me repeat one more -- one more time 17 that we are obligated to use the pilot, and the pilot 18 who is much more familiar with the local rules and how 19 it's done locally than me would anchor the ship at that 20 location. And there were other vessels that were also - 21 - also anchored outside the boundaries of the anchorage. 22 So I was sure that that's how we could proceed. 23 Q My question was a little bit different than 24 that, but I understand his answer. I'm going to re-ask 25 my question though. Not only was anchoring the Nomadic</p>



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66	<p>1 Milde outside the boundaries of the Kenner Bend 2 anchorage a violation of the Notice of Mariners, but 3 you, Captain Markowski, also knew it was a violation of 4 federal regulations governing the Kenner Bend anchorage, 5 correct? 6 A Yes. Yes. 7 Q Did you discuss with the pilot when you 8 realized after the anchors of the Nomadic Milde had been 9 set that the vessel was outside of the boundaries of the 10 Kenner Bend anchorage? 11 A No. 12 Q In other words, you relied solely on where the 13 pilot located the vessel in anchoring near the Kenner 14 Bend anchorage and did not exercise independent judgment 15 as a master to override the pilot when he was engaged in 16 the prohibited anchorage? 17 A I fully depended on the experience and 18 knowledge of the pilot of the local area and especially 19 seeing other vessels anchored at that location in a 20 similar manner. 21 Q Based upon the ECDIS display on May 8, 2020, 22 with the Nomadic Milde at anchor, you would agree with 23 me that of the four vessels anchored near the Kenner 24 Bend anchorage, the Nomadic Milde was the closest to the 25 middle of the river?</p>	68	<p>1 MR. BUTTERWORTH: VDR. Yeah. Victor. Delta. 2 Romeo. VDR, Voyage Data Report. 3 COURT REPORTER: Thank you. 4 BY MR. BERCAW: 5 Q When you were preparing for this deposition, 6 did you also review a transcription or written version 7 of the communications that appeared on the VDR? 8 MR. BERCAW: Yes. 9 A Yes. 10 MR. BERCAW: All right. We'll call for the 11 production of that transcript at the end of the 12 deposition. 13 MR. BUTTERWORTH: Jim. 14 MR. BERCAW: Yeah. 15 MR. BUTTERWORTH: Why don't we call for the -- 16 MR. BERCAW: Yes. 17 MR. BUTTERWORTH: -- production of it right now 18 and take a lunch break, then you can read it. 19 MR. BERCAW: That's perfect. All right. Let's 20 do that. 21 MR. BUTTERWORTH: Okay. 22 MR. BERCAW: Let's take -- how long do you want 23 to have a lunch break? 24 MR. BUTTERWORTH: Half an hour. 25 MR. BERCAW: Even the witness? That's fine.</p>
67	<p>1 A Yeah. Yes. 2 Q Is it correct that before the pilot that was 3 on board the Nomadic Milde during the anchoring 4 operations left the vessel, he indicated that the 5 current was very strong in that area? 6 A Yes. He did say that the current was strong. 7 Q The pilot we've been talking about before he 8 left the vessel, also commented that the strength 9 current was important to consider given the loaded 10 condition of the Nomadic Milde at that time that she was 11 near the Kenner Bend anchorage, correct? 12 MR. BUTTERWORTH: Object to form. Object to 13 form. 14 A Well, there was no mentioning on the vessel 15 being loaded or about the load on the vessel. And there 16 -- there was conversation about the current being 17 strong. 18 Q In preparation for your deposition today, what 19 documents did you review? 20 A The documents that -- that they had in front 21 of me -- that I have in front of me, that would be the 22 log books, the VDR, the ECDIS display -- 23 COURT REPORTER: I'm sorry, Madam Interpreter. 24 Did you say the VDR? 25 MR. BERCAW: VDR.</p>	69	<p>1 So we'll recon -- 2 MR. BUTTERWORTH: Like 1:15 or so? And -- 3 MR. BERCAW: I think the - 4 MR. BUTTERWORTH: Yeah. And Michael is going 5 to e-mail to you guys the transcript of the VDR. 6 MR. BERCAW: Excellent. Great. We will see 7 you-all in a half hour. 8 (OFF THE RECORD) 9 COURT REPORTER: We're going back on the record 10 at 1:26 p m. 11 MR. BUTTERWORTH: Okay. 12 BY MR. BERCAW: 13 Q Captain, you understand that you're still 14 under oath to tell the truth, correct? 15 A Yes (in English). Yes. Yes. 16 Q During our break, we were provided by Counsel 17 for the Nomadic Milde interests with many banks their 18 transcript dated 8 May, 2020. Without waiving any 19 objection as to the accuracy of the transcript, because 20 Captain Markowski indicated he reviewed this, we will 21 attach it as Markowski Exhibit 5. 22 (EXHIBIT 5 MARKED FOR IDENTIFICATION) 23 MR. BUTTERWORTH: That's fine, Jim, we don't 24 have an objection. It's a work in progress, it's 25 something that David Flotte and I and sometimes</p>



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70	<p>1 Peter and Tim will do. We prepare transcripts of 2 the VDR when we're doing something similar for the 3 Atlantic Venus as well. And it's -- it kind of 4 grows as we take depositions and witnesses testify 5 because sometimes it's hard to hear the words, 6 sometimes it's hard to, you know, know the context. 7 So, but -- 8 MR. BERCAW: Right. 9 MR. BUTTERWORTH: -- usually by the end of the 10 time we have all the depositions, we'll have a VDR 11 transcript that we can all agree on. 12 MR. BERCAW: No, I think that's a -- I think 13 that's a sound aspirational goal. I just don't want 14 to do -- make that -- waive any objection at this 15 time. 16 MR. BUTTERWORTH: Absolutely. 17 MR. BERCAW: I do want to talk to the Captain, 18 Tomasz Markowski, on the -- 19 MR. BUTTERWORTH: Sure. 20 BY MR. BERCAW: 21 Q So Captain, on page 1 of Markowski 5, there 22 are -- there's typing in normal font and then typing in 23 italics. Do you see that? 24 A I have page 5 in front of me. 25 MR. BUTTERWORTH: I've got Page 1. Page 5?</p>	72
71	<p>1 A Page 1, yeah. (in English) 2 MR. BUTTERWORTH: Can we have the official 3 translator translate the Captain's response? 4 A I do see that. Okay. 5 Q Is my assumption correct that the italics 6 represents a translation from Polish to English? 7 A I don't know. I don't know why it's in 8 italics. 9 MR. BERCAW: Okay. 10 MR. BUTTERWORTH: Jim -- 11 MR. BERCAW: It's fine. 12 MR. BUTTERWORTH: Jim. 13 MR. BERCAW: Yes. 14 MR. BUTTERWORTH: That's exactly what it -- 15 that is exactly what it is. I thought -- how we 16 normally try to do it is put different kinds of font 17 for different types of witnesses. So for this time, 18 just for -- out of conformity, italics is when the 19 witnesses are speaking Polish. We're going to use a 20 different kind of client for people speaking 21 Tagalog, but that wasn't germane to this deposition. 22 MR. BERCAW: Right. 23 MR. BUTTERWORTH: It will actually be more 24 germane to the Atlantic Venus witness deposition. 25 So for this one -- for this particular document,</p>	73
70	<p>1 Exhibit 5, the italics are Polish language that -- 2 we worked with the interpreters and the witnesses to 3 try to come up with the most accurate possible 4 rendition of what's said. The regular type is stuff 5 that's in English. The C/O means chief officer, 2/O 6 means a second officer. Let's see, we've got CPT is 7 captain. And if we go to page 3, you'll see P1 8 Brown, the pilot 1 is Captain Brown, is the pilot 9 that anchored our vessel. And then we have -- and 10 that's in bold. So whenever we're sure that that's 11 the pilot speaking, then we have done that in bold. 12 MR. BERCAW: All right. 13 MR. BUTTERWORTH: And let's say -- I'm trying 14 to think of any other -- there's R. If you go to 15 page 5, and you'll look and you'll see some Rs. Let 16 -- look at 1845-1. That's VDR time 1845-1, which is 17 local time 13:46 -- or 13:45-1. And R is -- was the 18 off-going chief officer. He had already signed off, 19 he was no longer chief officer of the vessel, he was 20 an outsider. So -- just so we can distinguish 21 between Chief Officer Peter and Chief Officer 22 Robert, because they're both chief officers. We 23 just picked R to represent Robert. So I think 24 that's all the people that are speaking. Later on 25 we have P2, which is --</p>	73
71	<p>1 MR. BERCAW: Right. 2 MR. BUTTERWORTH: -- Shirah. 3 MR. BERCAW: Yep. 4 MR. BUTTERWORTH: So that was -- 5 MR. BERCAW: All right. 6 MR. BUTTERWORTH: That's how we set it up. 7 BY MR. BERCAW: 8 Q Great. Okay. So Captain, we're going to go 9 back over some anchor information concerning the Nomadic 10 Milde, all right? 11 A Yes. Okay. 12 Q So we already talked about the starboard 13 anchor and the length of the starboard anchor chain, 14 which has also been referred to as the right anchor and 15 right anchor chain in this case, correct? 16 A Yes. 17 Q Okay. The -- if there are four shackles of 18 this right anchor chain in the water, obviously that 19 means there were five shackles of right anchor chain 20 above the water, right? 21 A So if we have four shackles of the anchor 22 chain submerged in the water, then the fifth is kind of 23 in between the water and above the water. 24 Q Okay. So all right, I understand. How does 25 the Nomadic Milde distinguish the various shackles of</p>	73



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<p style="text-align: right;">74</p> <p>1 anchor chain, starting with the shackle closest to the 2 stem of the anchor -- the shank of the anchor, and then 3 going back towards the hawsepipe of the vessel? 4 A Okay. The shackles on the vessel are 5 connected with each other and it's the - the connector 6 is called a canter link. Yes (in English). Then -- 7 then the nu -- shackles are also numbered in the way 8 that -- right either directly before or directly after 9 the canter link, there would be a number on the shackle. 10 This way we know which one that is. So when you look 11 from the anchor, starting from the anchor and you look 12 at the first 20 -- the first shackle, which is the first 13 27.5 meters. So there is this canter link between the 14 first shackle and the -- the shackle number 2. So the 15 first shackle right before the link -- first link. 16 Before and after canter link. First link. (in English) 17 The first link before canter link and the -- the first 18 link right after the canter link are numbered, and 19 that's how we know. So then you go to the second canter 20 link and then right before and right after that, you 21 would have again numbers indicated -- indicating which 22 one that is. Between the third and fourth, you would 23 have one that would be marked -- marked as number 3 and 24 this way you are able to tell. Yes (in English). 25 Q Okay. And what colored paint does the Nomadic</p>	<p style="text-align: right;">76</p> <p>1 example, three shackles are already underwater because 2 they're close to the numbers. 3 Q So I need to be in close proximity to the 4 hawsepipe and that's H-A-W-S-E-P-I-P-E, or actually the 5 edge of the bow of the vessel and count how many ropes 6 go into the water and that's going to tell me how many 7 shackles are in the water. Is that what you're saying, 8 Captain? 9 A Well, you would -- you would have to be -- you 10 would have to be in close proximity to the anchor and -- 11 and then mariners who -- mariners who -- who would drop 12 the -- the anchor they -- they can see that, because 13 it's -- it's visible when -- when you are on board. 14 Q Okay. So as the anchor chain pays out of the 15 anchor winch, then you can tell when another rope goes 16 by and that way there's another shackle; is that 17 correct? 18 A Yes -- yes. 19 Q So back to the right or starboard anchor of 20 the Nomadic Milde when she was moored near Kenner Bend 21 anchorage, there were four shackles in the water and 22 there would be approximately more or less 137 meters of 23 anchor chain left to pay out before you reach the end of 24 the anchor's chain? 25 A So it -- it would actually be that if we have</p>
<p style="text-align: right;">75</p> <p>1 Milde put on the links before and after the canter link 2 to designate the shackle number? 3 A Well, it's actually the paint is not the best 4 way to mark that. We usually use rope for markings. So 5 this way it's just more durable because the -- the paint 6 would just be -- would disappear over time. 7 Q So how does the rope distinguish each shackle 8 from the next adjacent shackle? 9 A So the -- the rope is attached to the links 10 that are close to the canter links. And the rope is a 11 little bit longer so that you can actually see where it 12 is attached and at which shackle are we at. 13 Q And what's to distinguish the rope that is 14 signifying shackle number 2 from shackle number 3 on 15 either side of the canter link of an anchor chain? 16 A The ropes -- the ropes are the same, but they 17 are kind of a marker -- they provide a marker so that as 18 we move the shackles along, you can tell at which 19 shackle you are at a -- at a given time. 20 Q Okay. Is there a landman looking at the 21 anchor chain to tell which shackle I'm dealing with? 22 A So if you are out and looking from the outside 23 or you are on board and you looking at how many shackles 24 you have left and then you look at the ropes attached to 25 each canter link, then you are able to tell that, for</p>	<p style="text-align: right;">77</p> <p>1 four in the water, then we would have 4 times 27.5 2 meters for 5 -- 0.5 meter in the water and then we would 3 have 5 times 27.5 meter left on board. 4 Q Right. Okay. Same thing for the port or the 5 left anchor chain. If there are three shackles of 6 anchor chain in the water for that port or left anchor, 7 that means there are seven shackles above the water; is 8 that correct? 9 A Yes. 10 Q Okay. And I did the math. So seven shackles 11 of anchor chain is approximately 192 meters of anchor 12 chain; is that correct? 13 A I think that -- that is about right. You 14 would have to multiply 7 by probably 27.5, and I -- I 15 think it's correct, yeah. Approximately 190 meters, 16 yes. 17 Q Okay. So you would agree that 192 meters is 18 less than 1.4 cables, correct? 19 A Yes. 20 Q So would you agree that if all nine shackles 21 of anchor chain for the starboard or right anchor -- ask 22 that so far, please -- and all ten shackles of accurate 23 chain for the fourth or left anchor were paid out, then 24 the stern of the Nomadic Milde, where she was anchored 25 near Kenner Bend anchorage, would still be above the bow</p>



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78	<p>1 of the Atlantic Venus?</p> <p>2 A Well, not really because we would then have</p> <p>3 1.5, that would be approximately 270, and then ten</p> <p>4 shackles. Well, they would be touching, but that's kind</p> <p>5 of in theory, you can say so.</p> <p>6 Q So in theory, you agree with my statement?</p> <p>7 A In theory, yes. They would be hatched. I</p> <p>8 would agree with that.</p> <p>9 Q Okay. All right. Who was on anchor watch</p> <p>10 after completing of anchor operations of the Nomadic</p> <p>11 Milde near the Kenner Bend anchorage?</p> <p>12 A On -- on the bridge we had the watch officer</p> <p>13 and then we have the second officer at the time that the</p> <p>14 anchors were dropped. At 16:00 hours he was changed by</p> <p>15 the chief officer. Then -- then there was one watch</p> <p>16 mariner that is, kind of, on duty to -- to go in between</p> <p>17 the officers. During the day it could also be a boss</p> <p>18 man [sic], who is -- who is also -- could also be</p> <p>19 dropping the anchors, and he can radio and be in touch</p> <p>20 with the officers onboard.</p> <p>21 Q Okay. Who was the officer on watch at the</p> <p>22 time the anchoring operations were completed near the</p> <p>23 Kenner Bend anchorage?</p> <p>24 A According to the schedule, it was the second</p> <p>25 officer, but on the bridge, it was me and the chief</p>	80	<p>1 have?</p> <p>2 A There was one boatswain.</p> <p>3 Q And what's the name of the boatswain on the</p> <p>4 Nomadic Milde?</p> <p>5 A Vincent -- just a second (in English).</p> <p>6 MR. BUTTERWORTH: Captain, when you refer to a</p> <p>7 document, you must tell the lawyer. You must say, I</p> <p>8 am looking at the crew list, which is --</p> <p>9 A Yes, I am looking from the crew list (in</p> <p>10 English) -- I'm looking at the crew list number NM00050,</p> <p>11 the first name from what I remember was Vincent and I'm</p> <p>12 looking up the -- his last name. Number 8, Aparacio,</p> <p>13 Aparacio, Vincent (in English) --</p> <p>14 BY MR. BERCAW:</p> <p>15 Q Vincent Aparacio was the boatswain?</p> <p>16 A Yes (in English). Yes.</p> <p>17 Q Were any seamen, able-bodied or otherwise,</p> <p>18 assisting Boatswain Aparacio during the anchor</p> <p>19 operations involving the Nomadic Milde?</p> <p>20 A I'm sure -- I'm sure that they were. I think</p> <p>21 it was number 9, the name that is under number 9 on the</p> <p>22 crew list, and then two additional men. I am not sure</p> <p>23 how many, but I'm sure that there were more than -- more</p> <p>24 than one person.</p> <p>25 Q I just want to be clear. In addition to the</p>
79	<p>1 officer.</p> <p>2 Q During the anchoring operations of the Nomadic</p> <p>3 Milde near the Kenner Bend anchorage, were any personnel</p> <p>4 stationed near the forecandle, or forecandle as part of</p> <p>5 the anchor watching?</p> <p>6 COURT REPORTER: Counsel, what was the term</p> <p>7 that you used for where they were -- the location</p> <p>8 where they were stationed again?</p> <p>9 MR. BERCAW: Forecandle.</p> <p>10 COURT REPORTER: Can you please try spelling</p> <p>11 that?</p> <p>12 MR. BUTTERWORTH: F-O-R-E-C-A-S-T-L-E,</p> <p>13 forecandle, like a castle, you know, forecandle.</p> <p>14 A Anchor -- anchors are never dropped just --</p> <p>15 anchors are never dropped by just one person, so I think</p> <p>16 that the boatswain and -- and -- and Jan, another</p> <p>17 mariner was -- was there at that time.</p> <p>18 COURT REPORTER: I'm sorry. What was that name</p> <p>19 that was -- bow --</p> <p>20 MR. BUTTERWORTH: Boatswain -- boatswain, a</p> <p>21 boatswain, B-O-A-T-S-W-A-I-N, boatswain. But they</p> <p>22 say it fast. We say it fast, mariners, bosun, B-O-</p> <p>23 S-U-N. Sounds, like, bossman, bosun.</p> <p>24 BY MR. BERCAW:</p> <p>25 Q How many boatswains did the Nomadic Milde</p>	81	<p>1 boatswain, there was at least more than one seamen</p> <p>2 stationed near the forecandle, or the forecandle, during</p> <p>3 the anchoring operation?</p> <p>4 A I'm sure that there were at least three</p> <p>5 people, because they were working two anchors at the</p> <p>6 same time, so assistance was necessary.</p> <p>7 Q You remained in the bridge the entire time</p> <p>8 from the beginning through the completion of the</p> <p>9 anchoring operation; is that correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. During the anchoring operations, was</p> <p>12 the Nomadic Milde ever operated to where the CPP would</p> <p>13 be in the astern position?</p> <p>14 A I -- I think that -- I think that one point it</p> <p>15 -- it is possible that -- that it -- it was, and that's</p> <p>16 how you maneuver the -- the ship. And I -- I think at -</p> <p>17 - at one point it -- it could have been, yes.</p> <p>18 Q If the Nomadic Milde was not operated in the</p> <p>19 astern configuration for the CPP, then any movement of</p> <p>20 the vessel downstream would've been by operation of the</p> <p>21 river current; is that correct?</p> <p>22 A Yes. Yes.</p> <p>23 Q I know counsel for Crescent Towing has</p> <p>24 requested this information, but does the engine room</p> <p>25 keep a list, or a tape, or the telegraph operations that</p>



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<p style="text-align: right;">82</p> <p>1 give the actual instructions from the bridge to the 2 engine room concerning which direction the vessel should 3 be heading, and at what speed, either forward or astern? 4 A With CPP, no. With CPP, there is nothing like 5 that. When I'm giving an information how the engine 6 works to the bridge, I directly operate the engine from 7 the bridge, and there is no tape, or telegraph, or 8 anything like that. 9 Q I was reviewing the bell book, or the bell log 10 book, and it strikes me that that is basically the rough 11 notes of the officer on watch that would later been 12 written in the formal deck log book; is my assumption 13 correct? 14 A Bell book is -- bell book is to write down 15 whatever is happening at the time of, let's say, 16 maneuvering the -- the vessel. And you do that kind of 17 in real time, as it is happening. And then the main 18 points, or the -- main -- the main points are then 19 entered into the deck log book. 20 Q The CPP system of the Nomadic Milde has a 21 propeller pitch controller in the bridge, correct? 22 INTERPRETER: I -- the interpreter did not hear 23 the question -- the end of it. 24 Q That's fine. 25 A The CPP system, uh-huh?</p>	<p style="text-align: right;">84</p> <p>1 A Okay. 2 Q And this is going to be a potentially long 3 question, so I'm going to break it up into little parts. 4 A Okay. 5 Q Was the tension of the starboard, or right, 6 anchor chain adjusted by vessel personnel at any time 7 after the completion of anchoring operations, and before 8 the Nomadic Milde was observed by you to be dragging 9 anchors? 10 INTERPRETER: Okay. That's a challenge. 11 MR. BERCAW: I'll do it again. I said I was 12 going to break it up, and then I just went right 13 through, so that's on me. I apologize. I'm going 14 to -- just let -- Captain, I'm going to re-ask the 15 question. 16 INTERPRETER: Okay. 17 BY MR. BERCAW: 18 Q Was the tension of the starboard, or right, 19 anchor chain adjusted by vessel personnel at any time 20 after the completion of anchoring operations, and before 21 the Nomadic Milde was observed by you to be dragging 22 anchors? 23 A In general, it could be done, but when you 24 have the vessel that is already anchored, this is kind 25 of the -- that's how it naturally is -- is done. I --</p>
<p style="text-align: right;">83</p> <p>1 Q No. No. I'll re-ask it. The CPP system has 2 a propeller pitch controller in the bridge of the 3 vessel, correct? 4 A Yes. 5 Q Does the Nomadic Milde also have a pitch 6 controller in the engine room for the CPP system? 7 A Yes. 8 Q During the time the Nomadic Milde was 9 maneuvering to set her anchors, the pitch of the CPP 10 system was controlled by the captain at all times? 11 A Yes. 12 Q It's my understanding of the CPP system, that 13 the main engines will maintain a constant RPM during 14 vessel maneuvering, but the speed of which the vessel is 15 going, either forward or backward, will be determined by 16 the pitch controller of the CPP system. 17 A It's the -- the angle of the propeller pitch 18 that can be controlled, but yes, that's correct. The 19 RPM of the engine is at a constant, yes. 20 Q So whether the vessel is traveling forwards or 21 astern, that depends upon the pitch controller of the 22 CPP system? 23 A Yes. 24 Q Okay. I'll go back to the anchor and the 25 anchor chains for a few more questions, all right?</p>	<p style="text-align: right;">85</p> <p>1 MR. BUTTERWORTH: I'm lost in translation. 2 INTERPRETER: Of course. Please. 3 A Okay. The tension is kind of natural by -- by 4 the forces of nature. That's how the tension is on -- 5 on the -- on the shackles when we have the ship -- the 6 vessel anchored. If we want to adjust -- if we want to 7 adjust the tension, we can -- we can kind of put in a 8 little bit of more -- more chain. Okay. 9 Q If you were going to put in more chain, are 10 you -- does that mean you're actually weighing anchor, 11 or letting go of the chain? 12 A It all depends on the -- on the situation. 13 You can -- you can just -- you can use a device to 14 control it, or you can just let it go so that it -- it 15 kind of -- the -- the entire chain goes. I -- 16 Q Okay. The device you're talking about is the 17 anchor winch? 18 A Anchor winch, yes (in English). Yes. 19 Q So do you know whether the tension on the 20 starboard anchor chain was adjusted before you observed 21 the Nomadic Milde dragging anchor? 22 A No. The tension remained -- the tension 23 remained the same as from the time that the pilot was 24 still onboard. 25 Q And that's -- the tension remained the same</p>



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<p style="text-align: right;">86</p> <p>1 for the port anchor chain during the time period that 2 we've been talking about as well, correct? 3 A Yes. Because the -- the anchoring is done -- 4 for the vessel is done in a kind of a triangle, and then 5 depending on the lengths of the chains on both sides, it 6 -- it kind of sets at one point, and the same tension 7 was on both sides from the time that we had the -- the 8 pilot. 9 Q And I want to make sure that I'm clear on 10 this, but no vessel personnel changed the tension of 11 either the starboard or port anchor chains from the time 12 the pilot left until the time he noticed the vessel 13 dragging anchor? 14 A The -- the personnel did not adjust it in any 15 way. I was the only one who was in charge of a decision 16 like that. 17 Q You would agree with me, Captain, that one of 18 the options a vessel at anchor has, once it is observed 19 to be dragging anchors is to drop more anchor chain to 20 prevent the dragging; is that correct? 21 A Yes. 22 Q How much time elapsed between the time you 23 realized the Nomadic Milde was dragging anchors until 24 the Nomadic Milde struck the Atlantic Venus? 25 A I was close to the bridge at 16:25. So I</p>	<p style="text-align: right;">88</p> <p>1 Q Your first response after observing the 2 Nomadic Milde to the -- dragging her anchors was to 3 engage the main engine, and operate the CPP system to 4 move the vessel forward; is that correct? 5 A Yes. Yes. 6 Q Were you able to move the bow of the Nomadic 7 Milde, during this time, closer to where the anchors had 8 been dropped, or were you continuing to lose ground when 9 you were operating the vessel in the forward direction? 10 A I was not successful, because the vessel got 11 turned around by the current, and it was really pushed 12 really hard towards the Atlantic Venus. So I was trying 13 to work with the main engine, kind of doing full ahead 14 and using the bow caster to turn -- to turn the ship to 15 the right side, but with the strong -- I mean, 16 considering how the current -- the strong -- considering 17 how strong the current was, I wasn't able to do that. 18 Q Did you want to add anything else? 19 A No. That's my answer to your question. 20 Q When you've been a captain of a vessel, have 21 you ever been onboard when that vessel ran over her own 22 anchor chain? 23 A You mean -- you mean -- I want to make clear 24 that -- are we talking about a ship dragging, or are we 25 talking about the chains being broken?</p>
<p style="text-align: right;">87</p> <p>1 think that was ten -- well, I'm thinking seven to eight 2 minutes. 3 Q This may be inaccurate, but from my listening 4 to the DVR recordings, it appears that the order to drop 5 anchors was not given until less than a minute before 6 the Nomadic Milde struck the Atlantic Venus. Do you 7 agree with that? 8 A No. Because it was not an order to hold the 9 vessel in position. It was about something else. At -- 10 and a minute -- and a minute prior to the vessel 11 striking the other ship, we were already dragging very 12 hard, because we were positioned against the -- the 13 current that was -- that was pushing us very hard. What 14 is important is to tell that the current was pushing us 15 from the side, so I was trying to position the -- the 16 vessel in a way that the -- the bow -- with -- with the 17 current. So that would be up the river, so that the bow 18 would be with the current, and then maneuvering the ship 19 would -- would be easy, so that we can actually regain 20 control over the ship. The anchors that the -- that the 21 chains were holding on, and they were holding the -- the 22 bow, and we wanted to -- to give -- to give it some 23 slack, so that we could maneuver the vessel. And there 24 was what you were probably hearing, within that minute 25 before we struck the other ship.</p>	<p style="text-align: right;">89</p> <p>1 Q I am talking about a situation -- not where 2 the chain -- the anchors are being dragged at all. I'm 3 just talking about the simple occurrence where the 4 vessel, for whatever reason, has run across her own 5 anchor chain? 6 A No. Because the anchor chains are in the 7 front, and the -- usually the -- the dragging is kind of 8 backwards. No. I -- no. I had not had a situation 9 like that. 10 Q Okay. And I'm not -- again, I just want to 11 make sure I'm clear. I don't -- it doesn't presume that 12 the anchor is -- the anchors are dragging in any way. 13 Has he ever been the captain of the vessel that has run 14 over her own anchor chain for whatever reason? 15 A I have not. No. 16 Q Have you been the captain of a vessel where 17 one of the officers of the vessel who was at the wheel 18 ran over the anchor chain of that vessel? 19 A No. I -- I have not, and I do not know 20 anything about any experience like that of -- of other 21 officers. No. 22 Q Who onboard the vessel is responsible for 23 inspecting the condition of the anchors of the Nomadic 24 Milde? 25 A The chief officer is in charge of that.</p>



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<p style="text-align: right;">90</p> <p>1 Q How does the chief officer actually go about 2 inspecting the condition of the anchor of the Nomadic 3 Milde at any time?</p> <p>4 A So the chief officer who is onboard is able to 5 see whether there was any damage and -- whether there is 6 any damage, and also the -- the boswain is directly 7 involved in -- in making sure that everything is -- is 8 working properly. So the -- the two of them would -- 9 would see if there was anything wrong. And there is 10 also monthly inspections, and checks, and visual 11 inspections to see if there are any problems. And then 12 there is also annual inspections by authorities and then 13 -- by class. And then there is this -- a certificate is 14 issued following this type of inspection, the annual 15 inspection. The document is called the certificate of 16 class, and it kind of verifies that the -- the vessel is 17 in good working condition.</p> <p>18 Q Remind me, Captain -- I know it's in the 19 records that your counsel have provided to us, but when 20 was the last annual class inspection of the Nomadic 21 Milde?</p> <p>22 A It was -- from what I remember, it was back in 23 November of 2019. I would have to double-check on the - 24 - on the exact date, but -- but I remember November 25 2019.</p>	<p style="text-align: right;">92</p> <p>1 Q My question was a little bit different. Where 2 does the chief engineer and the bosun inspect the anchor 3 of the Nomadic Milde on a monthly basis?</p> <p>4 A The inspection -- the inspection -- the most 5 reliable one -- would be to perform it at the time that 6 the anchors are being used, and usually about once a 7 month. The rest of, kind of, a time when -- when the 8 ship uses the anchors, and that's the time of the 9 inspection. So you don't do it in a way that you 10 actually pull out the entire anchor chain and you look 11 at it. The inspection is done mostly at the time when 12 the ship uses the anchors and the anchor chain.</p> <p>13 Q So I'm clear, at no point during the monthly 14 inspection of the anchor of the Nomadic Milde is the 15 anchor actually hauled up on deck and looked at by the 16 chief officer or the bosun?</p> <p>17 A This -- this is not done this way, no. No. 18 You don't pull it on -- onboard. You, kind of, observe 19 the -- the anchor and the chain as it is being used.</p> <p>20 Q But the anchor is in the water. Then it's 21 really actually buried, most likely, in the floor or 22 whatever water body the vessel appears to be located in, 23 correct?</p> <p>24 A Yes.</p> <p>25 Q How can you inspect a buried anchor that's</p>
<p style="text-align: right;">91</p> <p>1 Q Who does the monthly inspection and checks of 2 the anchor of the Nomadic Milde?</p> <p>3 A There is a report from Anchor Check done for 4 the month of April. And then the vessel itself also 5 used the anchors three days prior to the incident, and 6 it was when it was already on the Mississippi River.</p> <p>7 Q Monthly checks and inspections of the anchors 8 of the Nomadic Milde are reported in the AMOS -- that's 9 A-M-O-S -- computer system for the vessel?</p> <p>10 A There is a form which is used to -- to do a -- 11 a monthly deck report, and on that form, if there is any 12 problems, then on this report, then that -- that problem 13 would have been stated.</p> <p>14 Q Okay. And the monthly report form, does that 15 become part of the ship's AMOS system?</p> <p>16 A The AMOS system has its own schedule of 17 different inspections for the ship, and then the ISM 18 code also requires us to do the monthly inspection. So 19 it's under, kind of, a different regulation that we do 20 the monthlies.</p> <p>21 Q Okay. For the monthly inspection and check of 22 the anchors of the Nomadic Milde, where are those 23 inspections and checks conducted onboard the ship?</p> <p>24 A You mean where they are documented? They go 25 into a computer every month. The --</p>	<p style="text-align: right;">93</p> <p>1 submerged underwater?</p> <p>2 A When we haul it up, and it's -- and it's no 3 longer in the water -- so for -- so for few a meters, as 4 it's being pulled up, you can see the anchor, and you 5 can inspect the way it looks, and if there is any 6 damage.</p> <p>7 Q And so where are you located during that 8 inspection as the anchor is being retrieved from the 9 floor?</p> <p>10 MR. BUTTERWORTH: We've been going an hour, and 11 I need to have a personal call.</p> <p>12 MR. BERCAW: That's fine. Can we --</p> <p>13 MR. BUTTERWORTH: Finish -- finish this 14 question. Have the witness answer the question, and 15 if you have another follow-up question, that's fine, 16 too, but just at a convenient time, I have a urgent 17 personal call.</p> <p>18 MR. BERCAW: That's fine. I just want the 19 question answered.</p> <p>20 A The person is usually on the bow. And it's 21 directly above where the anchor is kind of coming out of 22 the water and going up. Also the anchor is being rinsed 23 out of mud or any other material, so a person standing 24 directly above it is able to see the condition of the 25 anchor being lifted from the water.</p>



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94	<p>1 BY MR. BERCAW:</p> <p>2 Q And the anchor is being rinsed by virtue of a</p> <p>3 hose pouring water through the hawsepipe and onto the</p> <p>4 anchor chain and anchor; is that accurate?</p> <p>5 A Well, it's the water -- the water actually</p> <p>6 comes out of a nozzle in hawsepipe, and -- and also</p> <p>7 sometimes it could be rinsed a little bit as the ship</p> <p>8 starts to move, and then it's rinsed in the -- the -- in</p> <p>9 the seawater. Seawater is used to rinse the anchor.</p> <p>10 MR. BERCAW: All right. We can take a break</p> <p>11 now, Mike. I don't want your mowers to flood.</p> <p>12 MR. BUTTERWORTH: Thank you very much.</p> <p>13 MR. BERCAW: Okay.</p> <p>14 MR. BUTTERWORTH: Much appreciated. Five-</p> <p>15 minute break.</p> <p>16 (OFF THE RECORD)</p> <p>17 COURT REPORTER: We are back on the record.</p> <p>18 The time is 2:55 p.m.</p> <p>19 MR. BERCAW: Just some bookkeeping before we</p> <p>20 get started back up again. If it hasn't happened</p> <p>21 already, before I start, I'm going to attach the</p> <p>22 Notice to Mariners discussed previously as our past</p> <p>23 Exhibit number 4, and the Bates numbers for</p> <p>24 Markowski Exhibit number 5, are NM0606112 through</p> <p>25 NM0061147.</p>	96
95	<p>1 BY MR. BERCAW:</p> <p>2 Q Okay. We were talking about -- while we took</p> <p>3 the break, we were talking about inspections of the</p> <p>4 anchors of the Nomadic Milde. It's safe to say,</p> <p>5 captain, that you rely on the chief officer and the</p> <p>6 bosun to report any physical conditions of the anchors</p> <p>7 of the Nomadic Milde to you, correct?</p> <p>8 (EXHIBIT 4 MARKED FOR IDENTIFICATION)</p> <p>9 A Yes.</p> <p>10 Q And if that report has been made concerning</p> <p>11 any kind of problem with the anchor of the Nomadic</p> <p>12 Milde, ultimately, that will be included within a report</p> <p>13 by the captain back to the designated person ashore or</p> <p>14 in the ship; is that correct?</p> <p>15 A Yes, I have to do this.</p> <p>16 Q Who is the designated person ashore for the</p> <p>17 Nomadic Milde?</p> <p>18 A That would be a DPA by -- by the name of Piotr</p> <p>19 Rusinek.</p> <p>20 INTERPRETER: The interpreter spelling, P-I-O-</p> <p>21 T-R, last name, R-U-S-I-N-E-K.</p> <p>22 Q Same thing for the anchor chains of the</p> <p>23 Nomadic Milde? Basically, the anchor chains are</p> <p>24 inspected how on that vessel?</p> <p>25 A So there is also the same type of class</p>	97
94	<p>1 inspection, which is done annually. This planned</p> <p>2 inspection looks at any device, or any condition, that</p> <p>3 would have an effect on the chain, or the anchor, or the</p> <p>4 safety of the vessel, so they would definitely look at</p> <p>5 the chains as well. So the inspection -- the inspection</p> <p>6 of the -- of the anchor chains is about measuring the</p> <p>7 thickness of the links. And if the links are not a</p> <p>8 certain thickness, then it -- it gets reported.</p> <p>9 Q The measuring of the links -- is that done</p> <p>10 during the annual class survey, or is that done by the</p> <p>11 vessel personnel, or is it done by both?</p> <p>12 A No. We don't do it onboard -- on the ship.</p> <p>13 This is for the class inspection.</p> <p>14 Q Okay. Who, onboard the vessel, is responsible</p> <p>15 for inspecting the anchor chains of the Nomadic Milde?</p> <p>16 A The -- the chief officer is.</p> <p>17 Q And (sound effect) who -- is that someone?</p> <p>18 MR. BUTTERWORTH: Butterworth and Held are</p> <p>19 still here, and Captain Tomasz.</p> <p>20 Q Okay. We just lost video feed, that's all.</p> <p>21 You said -- is the bosun also responsible for assisting</p> <p>22 the chief officer in the inspection of the anchor chains</p> <p>23 of the Nomadic Milde?</p> <p>24 A Yes. Yes. Yes.</p> <p>25 Q Do they -- do the chief officer and the bosun</p>	97



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<p style="text-align: right;">98</p> <p>1 or who?</p> <p>2 MR. BUTTERWORTH: Bosun. Maybe repeat the</p> <p>3 question.</p> <p>4 MR. BERCAW: He said yes.</p> <p>5 A So the -- the deck conditions report includes</p> <p>6 what -- what is -- what goes into the report is -- is</p> <p>7 just a note that an inspection was performed. And if</p> <p>8 there is any damage or any problem, then it's -- it's</p> <p>9 being fixed. You don't have to wait until the end of</p> <p>10 the month to do that. It's -- it's -- once it's -- it's</p> <p>11 visible, and it's noticed during the inspection, then</p> <p>12 it's taken care of.</p> <p>13 BY MR. BERCAW:</p> <p>14 Q Does the Nomadic Milde retain copies of the</p> <p>15 monthly deck condition reports on a going forward basis?</p> <p>16 A Every report that we need to make monthly,</p> <p>17 including the deck condition, or the report about the</p> <p>18 engine, or any other reports that we are required to --</p> <p>19 to do, all of them are sent to the company.</p> <p>20 Q Okay. The deck condition report form itself,</p> <p>21 however, does not reflect that an inspection of the</p> <p>22 anchor or anchor chain was actually conducted. That is</p> <p>23 only inferred, because of the existence of the deck</p> <p>24 condition report, right?</p> <p>25 A The -- the anchor chains and the anchor itself</p>	<p style="text-align: right;">100</p> <p>1 A Of course. Yes.</p> <p>2 Q You would also expect the chief officer and</p> <p>3 the bosun to report to you if the anchor chain was --</p> <p>4 appeared -- the weights of the anchor chain appeared to</p> <p>5 be warped towards one side or another, correct?</p> <p>6 A I'm sure they would, yes.</p> <p>7 Q I understand that the starboard anchor and a</p> <p>8 portion of her anchor chain of the Nomadic Milde failed</p> <p>9 during the incident; is that correct?</p> <p>10 A I -- I am aware of a failure, but also the</p> <p>11 loads that -- and the forces that worked on the chains</p> <p>12 were -- were such that it was just very, very heavy.</p> <p>13 Q Are you aware that once the starboard anchor</p> <p>14 of the Nomadic Milde was retrieved from the bottom of</p> <p>15 the Mississippi River, that she was -- that it was in a</p> <p>16 deformed condition?</p> <p>17 A Yes. Yes.</p> <p>18 Q In what way were -- did you understand that</p> <p>19 the starboard anchor of the Nomadic Milde was deformed</p> <p>20 and observed back to the accident?</p> <p>21 A I saw that the flaks [sic] being bent. So the</p> <p>22 -- so I -- this is the first time that I have -- that I</p> <p>23 have ever seen anything like that.</p> <p>24 Q Any other deformations that you're aware of,</p> <p>25 of the starboard anchor, that were observed after the</p>
<p style="text-align: right;">99</p> <p>1 are not small things that you can just pull up and look</p> <p>2 at it, and so we inspect them whenever they are being</p> <p>3 used.</p> <p>4 Q The deck condition report, however, is</p> <p>5 generated on a specific day during each month; is that</p> <p>6 correct?</p> <p>7 A It is -- it is due and generated at the end of</p> <p>8 each month, and then also at the end of each month we --</p> <p>9 we have another report that is about all -- all the</p> <p>10 repairs, or whatever was -- was done on -- on the</p> <p>11 vessel.</p> <p>12 Q So if the -- on the last day of the month, if</p> <p>13 the ship is at anchor, and remains that way going</p> <p>14 forward into the following month, the latest condition</p> <p>15 of the anchor and anchor chains will not appear on the</p> <p>16 deck condition report; is that correct?</p> <p>17 A If it happens -- if it happens to fall on the</p> <p>18 exact last day of the month, then yes, we wouldn't be</p> <p>19 able to observe the condition of the anchor and the</p> <p>20 anchor chains. But usually throughout the -- the month</p> <p>21 we are -- we are able to see the position of the anchor</p> <p>22 and the chains.</p> <p>23 Q You would expect the chief officer and the</p> <p>24 bosun to report to you if the flukes of the anchors of</p> <p>25 the Nomadic Milde were not in alignment; is that true?</p>	<p style="text-align: right;">101</p> <p>1 incident?</p> <p>2 A No. The only -- the only thing was the -- the</p> <p>3 fluke was bent. And well, we also lost the anchor, so</p> <p>4 that was another thing. It just detached.</p> <p>5 Q You agree with me that if the starboard anchor</p> <p>6 of the Nomadic Milde was in the condition before the</p> <p>7 anchoring at the Kenner Bend anchorage, that she was</p> <p>8 observed in after the incident, that that would've been</p> <p>9 unsuitable anchor for use in anchoring the vessel at</p> <p>10 that location, under those conditions, at that time?</p> <p>11 A Yes.</p> <p>12 Q Are you aware of any deformities in the</p> <p>13 remnants of the starboard anchor chain that were</p> <p>14 retrieved after the incident?</p> <p>15 A The links -- the links were damaged and bent</p> <p>16 from the chain, and the -- also, one of the links that</p> <p>17 was onboard, this link -- was also broken. So I -- I</p> <p>18 know of the broken link that was directly onboard.</p> <p>19 Q And the links that were retrieved from the</p> <p>20 water -- they were also deformed, correct?</p> <p>21 A Yes. Yes. That's correct. Yes.</p> <p>22 Q If the anchor chain of the Nomadic Milde,</p> <p>23 before she attempted to board near Kenner Bend</p> <p>24 anchorage, contained the deformities observed when those</p> <p>25 anchor chain remnants were removed from the water after</p>



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<p style="text-align: right;">102</p> <p>1 the incident, you would agree with me that the anchor 2 chain was not suitable for its purpose under the 3 prevailing conditions at that time? 4 A Yes. Absolutely so. 5 Q You mentioned one of the links in the 6 starboard anchor chain failed, and that you could see it 7 on the deck after the incident, correct? 8 A Yes. 9 Q Okay. What prevented the starboard, or right, 10 anchor chain from hanging out overboard and thereby 11 causing the link to break during the incident? 12 A I think it was the -- the forces working 13 against the -- the links, and it was very unusual, as to 14 the strength of -- of the forces and conditions on that 15 day. 16 Q Go ahead. 17 A From what I know, we lost -- we -- from what I 18 know, we lost the anchor chain, because after -- after 19 the -- the engine, and the -- after the CPP was -- was 20 locked, the -- the vessel moved. So I think the -- 21 there isn't -- there isn't a chain or a link that would 22 -- would be able to sustain a force like that. 23 Q So you're saying because the vessel moved 24 under engine power, the forces of that movement imparted 25 on the starboard anchor chain caused that anchor link to</p>	<p style="text-align: right;">104</p> <p>1 anchor winches on the port and starboard side? 2 A Yes. They were the same on both sides. Yes. 3 Q Okay. The maintenance schedule for the anchor 4 windlasses and the anchor windlass brakes are part of 5 the ship's AMOS system; is that correct? 6 A Yes. There is a PMS system that kind of 7 records all the maintenance schedules and reports. Yes. 8 Q So every time that maintenance is required of 9 the anchor windlasses and the anchor windlass brakes, 10 there is a report generated by the vessel's computer 11 system; is that accurate? 12 A So each -- each maintenance check, or any 13 inspection, is recorded in the PMS system, because 14 that's required by the system. But it also kind of 15 records any other checks or inspections that are 16 required outside of the scheduled inspections. So if 17 there is some kind of a maintenance work being done, 18 then also it goes into the monthly report. 19 Q The vessel's PMS system is accessible by 20 shore-based management of either Intershops or the 21 vessel owner, correct? 22 A Yeah, the idea is that the -- the system is 23 accessible to the office on -- onshore. So yes, both of 24 them have access to the information. 25 Q And is that real-time access to the systems,</p>
<p style="text-align: right;">103</p> <p>1 fail? 2 A Yes. 3 Q The starboard anchor windlass of the Nomadic 4 Milde has a brake mechanism, correct? 5 A Yes. There is a brake system on the -- on the 6 anchor winch. 7 Q Okay. And that brake is manually engaged? 8 A Yes. You can close it manually. Yes. 9 Q Okay. So you can also close it remotely. Is 10 that what you're saying? 11 A No. No. After each use of the anchor, you -- 12 you can close it manually. 13 Q And you're supposed to close it, right? 14 A Of course. To secure the anchor, yes. 15 Q Right. Okay. What's the rated maximum force 16 that starboard anchor windlass brake can hold? 17 A I -- I do not know that. No. I just do not 18 remember. I -- I would have to double-check in -- in 19 the manual or instructions. 20 Q Okay. But it's written down somewhere, 21 correct? 22 A Oh, of course. In -- in instructions for the 23 anchor winch, or -- or a document like that, yes, for 24 sure. 25 Q Okay. And the Nomadic Milde had identical</p>	<p style="text-align: right;">105</p> <p>1 where the second you perform maintenance and issue the 2 computer-generated report, the shore-based management 3 would have also access to that identical report at that 4 time? 5 A It is -- it's not real time. There is a -- a 6 few hour delay, because it is reported through a 7 satellite system or e-mail. That's how the system is 8 set up, so it is not in real time. 9 Q Okay. But within at least half a day, 12 10 hours, they would have access to that information; is 11 that accurate? 12 A Oh, for sure. The delay is no longer than 13 half-a-day, maybe even less than that. 14 Q Right. Okay. So from the records that we've 15 been provided by the Nomadic Milde interests, a report 16 was generated that the -- before the vessel entered the 17 Mississippi River, that the brake lining of the port 18 anchor windlass brake needed to be replaced; is that 19 true? 20 A The brake lining was actually -- and the 21 maintenance was done on it during the voyage from 22 Europe. 23 COURT REPORTER: I'm sorry. Where was that 24 voyage from? 25 A From Europe -- from Holland -- from the</p>



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<p style="text-align: right;">106</p> <p>1 Netherlands to Venezuela. 2 Q I want to add -- translate what he said, 3 please. 4 A From the Netherlands to Venezuela, the brake 5 lining was -- was replaced. 6 Q I want to make sure we're talking about the 7 same anchor windlass. I saw a report where, before the 8 vessel entered the Mississippi River, the brake lining 9 for the starboard anchor windlass brake was replaced. 10 A So I have -- the document number that I'm 11 looking at is NM5614 -- and there is a monthly -- deck 12 maintenance chief officer report (in English) -- deck 13 maintenance report by chief officer -- officer (in 14 English) and the date -- chief (in English) that the 15 main -- April 15 (in English) maintenance was done April 16 -- April, 15. Yes. And was changing brake lining 17 starboard anchor winch (in English). 18 Q And so I understand that same report may 19 indicate that the port anchor winch brake needed to be 20 replaced at the next port of call; is that accurate? 21 A Not necessarily -- not necessarily if it was 22 still in good condition, it wouldn't have to be 23 replaced. 24 Q Okay. 25 A The one on the right side, it was necessary to</p>	<p style="text-align: right;">108</p> <p>1 of the incident, we used the -- the brakes and the -- 2 the devices on both sides, and we have not -- we did not 3 notice that there was anything wrong with them. 4 Q The classification society in its interim 5 survey instructed that before leaving port -- or before 6 leaving the port, windlass brakes to be made fully 7 operational. And this was issued on -- or it's due by 8 May 30, 2020. Do you disagree that there is an 9 operational defect with the port anchor windlass brake? 10 A So is it the report dated May 30th? 11 Q No. It looks like it's dated May 11. 12 A The brake lining on the left side was -- was 13 in fact damaged, and it was in fact replaced. Fully 14 operational (in English). And it was full -- fully 15 operational. 16 Q It was damaged as part of the incident, or was 17 it damaged before the incident? 18 A During the incident at the time that the ten 19 shackles of the anchor chain went through it. 20 Q Okay. If the records that we've been provided 21 by the Nomadic Milde interests show that the port anchor 22 windlass brake lining needed to be replaced before May 23 8, 2020, and that repair did not occur until after May 24 8, 2020, then the land-based management of the vessel 25 would also know about that defect or repair by virtue of</p>
<p style="text-align: right;">107</p> <p>1 replace because we could see that it needed replacement. 2 But the other one, not necessarily. 3 Q Okay. We know that during the incident the 4 brake lining of the port anchor winch brake failed, and 5 as a result, the entire ten shackles of anchor chain 6 paid out overboard; is that correct? 7 A Yes. But it was more related to the brake not 8 being -- the unlocking. No. The -- the brake was open. 9 The brake was open. That's why there was no -- no -- 10 brake was -- was engaged in this -- in this moment. 11 That's why we lost all -- all chain (in English). 12 INTERPRETER: He just repeated the same thing, 13 that the brake was open and that that's why we lost 14 the entire chain and the ten shackles. 15 BY MR. BERCAW: 16 Q Okay. The classification interim survey 17 generated after this incident reads, "Poor anchor, 18 windlass brake, not holding chain as ten shackles of 19 chain was fully paid out. Suspected to be not 20 operational." That means that there's a defect in the 21 brake mechanism, not the fact that the brake was not 22 engaged, correct? 23 A I do not -- I do not agree with that. It is 24 possible that the brake was not fully engaged and also - 25 - also (in English) three -- three days prior to the day</p>	<p style="text-align: right;">109</p> <p>1 the PMS system we talked about earlier, correct? 2 A It -- it would've been except that we were 3 actually watching how the brakes being engaged, how it 4 all worked, right before the incident. And it worked 5 well. The -- the -- it -- it was in -- in good working 6 condition right before the incident because we could see 7 it. 8 Q If the PMS schedule indicated that the brake 9 lining of the port anchor windlass brake was to be 10 replaced in March of 2020 and that replacement had not 11 occurred prior to the time of the incident, then shore- 12 based management of the Nomadic Milde would have 13 knowledge of that occurrence; is that fair? 14 A Yes. 15 Q We know that the stopper anchor windlass brake 16 held during the incident and that's why the starboard 17 anchor chain failed in part, correct? 18 INTERPRETER: Counsel, could I have that 19 question again? 20 Q Yes. We know that the starboard anchor chain 21 windlass brake held and that's what caused in part, the 22 starboard anchor chain to fail during the incident, 23 right? 24 A It is a possibility. There was also a chain 25 stopper that is also holding the chain, so it is a</p>



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110	<p>1 possibility. Yes.</p> <p>2 Q Okay. Was there a chain stopper used on the</p> <p>3 port anchor chain?</p> <p>4 A Usually -- usually it is, but was it -- was it</p> <p>5 actually engaged at the time of the incident? I am not</p> <p>6 able to tell you. But usually that's the case.</p> <p>7 Q Okay. If a chain stopper was used on the port</p> <p>8 anchor chain, that would've prevented the port anchor</p> <p>9 chain from paying out all ten shackles as a result of</p> <p>10 the incident, correct?</p> <p>11 A It's -- it's hard -- it's hard to -- to say</p> <p>12 what would have happened. It would have prevented it,</p> <p>13 but it would also be a cause of the chain breaking off.</p> <p>14 Q You would expect the personnel operating the</p> <p>15 anchor chains at the bow -- the vessel during anchor</p> <p>16 maneuver in the Kenner Bend anchorage to have the</p> <p>17 starboard anchor chain in the same basic configuration</p> <p>18 as the port anchor chain with respect to engaging brakes</p> <p>19 and chain stoppers, correct?</p> <p>20 A At the time -- at the time when the vessel was</p> <p>21 anchored, yes. But at the time that it started</p> <p>22 dragging, then we were lowering the anchors. So not.</p> <p>23 INTERPRETER: Excuse me. It's Magda. I think</p> <p>24 the Captain said more like releasing the anchors,</p> <p>25 right?</p>	112
111	<p>1 A So at the time that we were -- at the time</p> <p>2 that we were maneuvering right before the -- the</p> <p>3 incident, the -- the stoppers were not being used.</p> <p>4 Q The stoppers were removed before the Nomadic</p> <p>5 Milde made contact with the Atlantic Venus; is that</p> <p>6 correct?</p> <p>7 A Yes. When we are about to use the anchors,</p> <p>8 then you have to lift or remove the stoppers. Yes.</p> <p>9 Nothing can be in the way of the anchor being released.</p> <p>10 Yes.</p> <p>11 Q Okay. From the time the stoppers were removed</p> <p>12 from the port and starboard anchor chains until the time</p> <p>13 the Nomadic Milde hit the Cornerstone dock, were the</p> <p>14 anchor stoppers ever replaced?</p> <p>15 A Whether -- whether they were replaced and new</p> <p>16 ones were put in? I -- I do not --</p> <p>17 INTERPRETER: It's Magda. I think the question</p> <p>18 was if they were engaged again.</p> <p>19 A I -- I don't remember -- I don't remember</p> <p>20 getting any orders like that or -- or anything like</p> <p>21 that. No. I just don't -- don't think so. No.</p> <p>22 BY MR. BERCAW:</p> <p>23 Q Right. So it was the -- if consistent with</p> <p>24 what you think happened, that the chain stoppers were</p> <p>25 not replaced after they had been removed the first time</p>	113
110	<p>1 and before the vessel hit the dock, then the only</p> <p>2 equipment of the vessel that is maintaining the tension</p> <p>3 on the anchor chain is the brake of the anchor chain</p> <p>4 windlass, correct?</p> <p>5 A Yes. That would be by brakes only then. Yes.</p> <p>6 Q Okay. And so we know that as the Nomadic</p> <p>7 Milde began to move forward in an uncontrolled fashion</p> <p>8 that is the time that the starboard anchor chain failed</p> <p>9 at that link we talked about earlier; is that correct?</p> <p>10 A Yes. That's what I think is correct. Yes.</p> <p>11 Q And it was during the time that the Nomadic</p> <p>12 Milde began to move forward in an uncontrolled fashion</p> <p>13 towards the Cornerstone dock, that the port anchor chain</p> <p>14 paid out completely, correct?</p> <p>15 A Yes. Okay. And we're talking about the</p> <p>16 anchor on the right side? Yes.</p> <p>17 Q Well -- okay. The anchor on the right side is</p> <p>18 the anchor chain that broke, correct?</p> <p>19 A Yes.</p> <p>20 Q Okay. I'm talking about the anchor on the</p> <p>21 left side or the port side anchor. The anchor -- that</p> <p>22 anchor chain paid out entirely as the Nomadic Milde</p> <p>23 began to move towards the Cornerstone dock in an</p> <p>24 uncontrolled fashion; is that correct?</p> <p>25 A Yes.</p>	113



114	<p>1 to be -- to heave up. Yes.</p> <p>2 MR. BERCAW: Mike, is the captain looking at a</p> <p>3 pilot report or a document right now? If so, could</p> <p>4 it be identified?</p> <p>5 MR. BUTTERWORTH: Yeah. It's Exhibit 5. And I</p> <p>6 think he's looking at page 23 of Exhibit 5, the time</p> <p>7 entry 22:57:56, which is local time 17:57:56.</p> <p>8 MR. BERCAW: The video transcript?</p> <p>9 MR. BUTTERWORTH: Video transcript, yes.</p> <p>10 BY MR. BERCAW:</p> <p>11 Q Before the starboard anchor chain failed, how</p> <p>12 many shackles of anchor chain on that starboard anchor</p> <p>13 were out?</p> <p>14 A Four of them. The brake was at fourth one, so</p> <p>15 four must have been in the water already.</p> <p>16 Q Why did the port anchor chain pay completely</p> <p>17 out on the Nomadic Milde after she made contact with the</p> <p>18 Atlantic Venus but before she made contact with the</p> <p>19 Cornerstone dock?</p> <p>20 A I think -- I think the reason is that -- that</p> <p>21 the -- the brake was not fully engaged and it was not</p> <p>22 properly secured the way it normally is.</p> <p>23 Q The brake of the anchor winches or windlasses,</p> <p>24 they're either engaged or not engaged. They can't be</p> <p>25 partially engaged, can they?</p>	116	<p>1 A Yes.</p> <p>2 Q Okay. If you go down to the entry on page</p> <p>3 5216 for May 8, 2020. Let me know when you get there.</p> <p>4 A Is it 5218 or 5216?</p> <p>5 Q 5216.</p> <p>6 A Okay. I see it.</p> <p>7 Q So at the entry towards the bottom of the page</p> <p>8 for 20:35:19.177 seconds. Let me know when you're</p> <p>9 there.</p> <p>10 A Is it 20:37 minutes and 32 seconds?</p> <p>11 Q No. It's 20:35 minutes and 19.177 seconds.</p> <p>12 A Okay. I see it now.</p> <p>13 Q The entry at that date and time is, "M/E CPP</p> <p>14 control system failed," correct?</p> <p>15 A Yes. I see that.</p> <p>16 Q Okay. There's an "XA" immediately to the</p> <p>17 right of that entry. What does that mean?</p> <p>18 A I don't know. You'd have to ask the chief</p> <p>19 engineer for what those notations mean there. I don't</p> <p>20 know.</p> <p>21 Q Okay. When that alarm is triggered at that</p> <p>22 time, is there a way that the alarm is communicated to</p> <p>23 those of you who are on the bridge of the vessel?</p> <p>24 A If it was a real damage with some real</p> <p>25 problem, then probably yes, we would have received an</p>
115	<p>1 A That's correct.</p> <p>2 Q We have been provided by counsel for the</p> <p>3 Nomadic Milde interests with numerous pages comprising</p> <p>4 the alarm list of the Nomadic Milde, starting on January</p> <p>5 29, 2020 and running through May 10, 2020, which</p> <p>6 comprise the entirety of the document located at</p> <p>7 NM005190 to NM005219. Okay?</p> <p>8 MR. BUTTERWORTH: What number is that again?</p> <p>9 THE WITNESS: This one, this one (in English).</p> <p>10 Q Do you have that document in front of you,</p> <p>11 Captain?</p> <p>12 A I do.</p> <p>13 Q The alarm list is broken into numerous columns</p> <p>14 of information. The one appearing most on the left is</p> <p>15 the date in European format; is that correct?</p> <p>16 A Yes. That's -- that's right.</p> <p>17 Q Immediately to the right of that is a time</p> <p>18 entry but that is based on the universal -- or the UTC</p> <p>19 time, correct?</p> <p>20 A Yes. It is the UTC time. Yes.</p> <p>21 Q So for May of 2020, UTC time is five hours</p> <p>22 ahead of New Orleans time; is that accurate?</p> <p>23 A Yes.</p> <p>24 Q Okay. So to get local time, we would subtract</p> <p>25 five hours from the UTC time, right?</p>	117	<p>1 alarm. But the -- but the alarms that you see here are</p> <p>2 probably, from what I can see, related more to the</p> <p>3 engine being on and off. This is not an alarm telling</p> <p>4 you about a -- a problem.</p> <p>5 Q Okay. To the right of this entry, there are</p> <p>6 two columns, both of which were the -- the one on the</p> <p>7 far right indicates the state of the condition and the</p> <p>8 one immediately to the left of that is the actual</p> <p>9 condition; is that correct?</p> <p>10 A Yeah, I see. Uh-huh.</p> <p>11 Q Okay. So for the entry we've been talking</p> <p>12 about, those columns contain the word "alarm," right?</p> <p>13 A Yes.</p> <p>14 Q Okay. And then if you go further down the</p> <p>15 page for the entry for 20:37 minutes and 28.994 seconds,</p> <p>16 let me know when you --</p> <p>17 MR. BUTTERWORTH: Jim -- Jim, I'm not objecting</p> <p>18 but I'm just pointing out the witness has said this</p> <p>19 isn't his document. This is something that the</p> <p>20 chief engineer uses. So you can keep going -- keep</p> <p>21 asking him questions about it but I question whether</p> <p>22 this is a proper witness. He doesn't see this, he</p> <p>23 doesn't use this in his normal course of duty.</p> <p>24 MR. BERCAW: Well, Mike, just think of it as a</p> <p>25 gift to prepare you for the chief engineer</p>



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118	<p>1 deposition then. So --</p> <p>2 MR. BUTTERWORTH: If you wanted just to read</p> <p>3 or, you know, we can just stipulate. The record is</p> <p>4 what the record is. But go ahead. Just keep</p> <p>5 asking. I'm not -- just -- whatever.</p> <p>6 MR. BERCAW: Okay. Thank you.</p> <p>7 MR. BUTTERWORTH: It's also late, it's 4:11.</p> <p>8 So we've been going a little more than an hour. And</p> <p>9 so I'd like to take a little break or you keep</p> <p>10 asking questions all you want on the chief</p> <p>11 engineer's records.</p> <p>12 MR. BERCAW: As soon as I close it out, Mike,</p> <p>13 on this, I will let you know. It's not going to be</p> <p>14 too much longer.</p> <p>15 MR. BUTTERWORTH: All right.</p> <p>16 MR. BERCAW: And then we can take a break, all</p> <p>17 right?</p> <p>18 MR. BUTTERWORTH: Or do you want to take a</p> <p>19 break or do you want to go five more minutes more?</p> <p>20 What do you want to do?</p> <p>21 MR. BERCAW: I want to go five more minutes.</p> <p>22 MR. BUTTERWORTH: Five more minutes more?</p> <p>23 Well, you got it.</p> <p>24 MR. BERCAW: Okay.</p> <p>25 MR. BUTTERWORTH: But five more minutes and I'm</p>	120	<p>1 that there is an actual alarm as to a technical</p> <p>2 difficulty.</p> <p>3 Q Okay. So whatever the condition was that gave</p> <p>4 rise to the alarm at 20:35, thereabouts, has been</p> <p>5 resolved by 20:37; is that accurate?</p> <p>6 A I -- I cannot tell you how to read that and</p> <p>7 how to interpret that. I -- I just do not know. Please</p> <p>8 don't ask -- do not ask me questions like that. The</p> <p>9 chief engineer would be the person to ask about that.</p> <p>10 Q Okay. The piece of equipment on the vessel</p> <p>11 that's triggering the alarm, though, is the main engine</p> <p>12 CPP control system; is that correct?</p> <p>13 A I -- I don't know that.</p> <p>14 MR. BERCAW: Okay. We can take a break. We'll</p> <p>15 take five minutes.</p> <p>16 MR. BUTTERWORTH: Very good.</p> <p>17 (OFF THE RECORD)</p> <p>18 COURT REPORTER: We're back on the record at</p> <p>19 4:34.</p> <p>20 BY MR. BERCAW:</p> <p>21 Q The Nomadic Milde interests reported to us</p> <p>22 your master's orders dated May 7, 2020. The master's</p> <p>23 orders appeared around NM7, you know, there's five</p> <p>24 zeroes that are in front of that seven, but it's NM7.</p> <p>25 That's what I want to talk about. On the anchor or the</p>
119	<p>1 barely going to make the door.</p> <p>2 MR. BERCAW: Well, you and me both, pal. And</p> <p>3 I'm in the same condition, all right?</p> <p>4 MR. BUTTERWORTH: Got the 63-year-old prostate.</p> <p>5 MR. BERCAW: Well, you know, you just TM'ed all</p> <p>6 of us now.</p> <p>7 MR. BUTTERWORTH: Yeah. Exactly.</p> <p>8 BY MR. BERCAW:</p> <p>9 Q All right. Let's get back to it. Okay.</p> <p>10 Captain, tell me when you're at 20:37 and 28 seconds --</p> <p>11 28.994 seconds, okay?</p> <p>12 A Yes, I see that. Uh-huh.</p> <p>13 Q Okay. So the far right entry format is</p> <p>14 return, and the condition is alarm, correct?</p> <p>15 A Yes.</p> <p>16 Q Again, do you know if you received any similar</p> <p>17 warning or transmission of an alert to the bridge or the</p> <p>18 alarm initially and the alarm return?</p> <p>19 A We also on the bridge have the same screen</p> <p>20 that the chief engineer -- engineer can see but -- but</p> <p>21 this one does not indicate a technical issue here. I'm</p> <p>22 not the person to ask questions about it, but from my</p> <p>23 experience, all those alarms and -- and whatever you see</p> <p>24 on the screen, usually that's an indication of the</p> <p>25 engine being on and off. This does not really tell you</p>	121	<p>1 watch keeping duties at anchor, the first entry is</p> <p>2 ensure that an efficient lookout is being maintained.</p> <p>3 When the vessel, Nomadic Milde, was near the Kenner Bend</p> <p>4 anchorage on May 8th, who was the efficient lookout?</p> <p>5 A It was the watch officer, the -- the one that</p> <p>6 was on -- on the watch.</p> <p>7 Q Was there any other member of the vessel's</p> <p>8 crew besides the officer on watch that was serving as</p> <p>9 the efficient lookout while the Nomadic Milde was at</p> <p>10 anchor in the Kenner -- near the Kenner Bend anchorage?</p> <p>11 A The chief -- the chief officer -- the chief</p> <p>12 officer served as the one who was providing the</p> <p>13 efficient lookout and he was on watch. There could've</p> <p>14 been another -- another officer there.</p> <p>15 Q Where was the chief officer situated when he</p> <p>16 was acting as the efficient lookout?</p> <p>17 A He was on the -- on the bridge and he was</p> <p>18 looking at all the screens that are available to him --</p> <p>19 to him.</p> <p>20 Q Item 11.3 of your May 7th order says, "Ensure</p> <p>21 the state of readiness of main engines and anchor when</p> <p>22 it was in accordance with my additional instructions."</p> <p>23 Do you see that?</p> <p>24 A Yes, I see that. Yes.</p> <p>25 Q Where can we find your additional instructions</p>



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122	<p>1 for May 7, 2020?</p> <p>2 A The additional instructions were given orally</p> <p>3 after the anchors were dropped and after we agreed with</p> <p>4 the pilot that we can turn the engine off. But the</p> <p>5 engine must remain on what you call a short standby,</p> <p>6 which allows you to turn it on very quickly. And this</p> <p>7 was relayed to -- to chief engineer. And I know that</p> <p>8 was the case because later on the engine was actually</p> <p>9 started very quickly.</p> <p>10 Q How long does it normally take the main</p> <p>11 engines of the Nomadic Milde to start from a hold stop?</p> <p>12 A About an hour. But if the weather is cold, it</p> <p>13 could take more than an hour.</p> <p>14 Q What were your initial instructions concerning</p> <p>15 the readiness of the anchor windlass for the Nomadic</p> <p>16 Milde after she anchored near the Kenner Bend anchorage?</p> <p>17 A The bosun and additional mariners were</p> <p>18 supposed to be in kind of immediate -- immediately ready</p> <p>19 and available when called. In case of an emergency</p> <p>20 situation (in English).</p> <p>21 Q Well, where were they located when the vessel</p> <p>22 was anchored in Kenner Bend anchorage?</p> <p>23 A They were on board. They were on -- they were</p> <p>24 on the deck because the pilot was there and the trap --</p> <p>25 they were getting the trap [sic] ready. So they were on</p>	124	<p>1 INTERPRETER: -- "trap."</p> <p>2 MR. BERCAW: -- the translator said --</p> <p>3 INTERPRETER: I understood it to be a trap,</p> <p>4 like, T-R-A-P, right?</p> <p>5 MR. BUTTERWORTH: I thought he said the pilot</p> <p>6 needs drafts. Because that's how they get paid, you</p> <p>7 know. They want to know how deep draft the ship is,</p> <p>8 or -- very important to a pilot to know what the</p> <p>9 drafts are.</p> <p>10 BY MR. BERCAW:</p> <p>11 Q All right. So Captain, the only master's</p> <p>12 orders that are written and we've been provided are</p> <p>13 dated May 7, 2020. Why were no master's orders issued</p> <p>14 for May 8, 2020?</p> <p>15 A Because this (in English) -- they were signed</p> <p>16 on May 7th so that they could be signed by the new chief</p> <p>17 officer. And they are in effect, well, the entire time.</p> <p>18 So they would be in effect on May 8th, and they would</p> <p>19 also be in effect as of today. The next standing orders</p> <p>20 would be issued if -- when there would be an -- a</p> <p>21 replacement for the chief officer, or the first officer,</p> <p>22 or the second officer. One of them would be replaced.</p> <p>23 Or there would be a replacement for the captain, and the</p> <p>24 new captain would issue a new -- would issue new orders.</p> <p>25 Q I want to get back to the events leading up to</p>
123	<p>1 the deck.</p> <p>2 Q What trap were they getting ready?</p> <p>3 A It was the trap for the pilot, because she was</p> <p>4 leaving. So it was the pilot trap.</p> <p>5 Q Oh, the draft?</p> <p>6 MR. BUTTERWORTH: Draft, D-R-A-F-T --</p> <p>7 INTERPRETER: Thank you.</p> <p>8 MR. BUTTERWORTH: -- the depth that the vessel</p> <p>9 was sitting in the water.</p> <p>10 MR. BERCAW: No. That's not what he said at</p> <p>11 all, Mike. He said "trap" or --</p> <p>12 MR. BUTTERWORTH: Trap?</p> <p>13 THE WITNESS: I-hook ladder (in English).</p> <p>14 MR. BUTTERWORTH: Huh?</p> <p>15 THE WITNESS: I-hook ladder (in English).</p> <p>16 MR. BUTTERWORTH: Ladder? Ladder.</p> <p>17 MR. BERCAW: Ladder?</p> <p>18 THE WITNESS: Ladder. I hook ladder (in</p> <p>19 English).</p> <p>20 MR. BUTTERWORTH: He said "ladder."</p> <p>21 MR. BERCAW: He said -- I thought he said</p> <p>22 "draft."</p> <p>23 THE WITNESS: No. No.</p> <p>24 INTERPRETER: No. He said --</p> <p>25 MR. BERCAW: The translator --</p>	125	<p>1 the time that you first observed the Nomadic Milde</p> <p>2 dragging her anchors. The chief officer calls you to</p> <p>3 the bridge from your cabin, correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. Is your cabin on the same level as the</p> <p>6 navigation bridge of the Nomadic Milde?</p> <p>7 A No. It's not.</p> <p>8 Q Okay. So in any event, you get called and you</p> <p>9 enter the bridge of the Nomadic Milde, correct?</p> <p>10 A Yes.</p> <p>11 Q What is the situation on the vessel at the</p> <p>12 time that you first return to the bridge?</p> <p>13 A That it was stable. It was swinging a little</p> <p>14 bit from right to left, but the ship was close to</p> <p>15 Atlantic Venus. But it was stable. It did seem like an</p> <p>16 emergency situation at this point. And we could -- from</p> <p>17 what we could observe it was kind of expected that it</p> <p>18 would keep dragging, then we could hit the other vessel.</p> <p>19 That's why my orders were to immediately start the</p> <p>20 engine. And I also called on the vessel traffic service</p> <p>21 to send a pilot and to move the ship to a safe location.</p> <p>22 Q Did it occur to you at that time that in</p> <p>23 addition to starting your main engines, that the deck</p> <p>24 crew should start dropping more anchor chain to</p> <p>25 stabilize the vessel and prevent her from dragging</p>



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<p style="text-align: right;">126</p> <p>1 anchors further?</p> <p>2 A It wouldn't have been a good idea at that</p> <p>3 point because we were getting very, very close. The</p> <p>4 only good thing -- good decision that I could've taken</p> <p>5 was to move the vessel to a safe location.</p> <p>6 Q How close was the aft mast of the Nomadic</p> <p>7 Milde to the bows of the Atlantic Venus at this time?</p> <p>8 A I cannot tell you exactly because both us and</p> <p>9 the other ship, Atlantic Venus, both of us were</p> <p>10 swinging. But my best estimate is -- I want to say 80</p> <p>11 to 100 meters, maybe less. It was close.</p> <p>12 Q So in -- from the time that the Nomadic Milde</p> <p>13 had set her anchors near the Kenner Bend anchorage at</p> <p>14 approximately 15:30 hours local time until the time that</p> <p>15 you returned to the bridge at approximately 16:30 hours</p> <p>16 on May 8th, the vessel had -- the vessels had become</p> <p>17 significantly closer than the 1.5 cables that you</p> <p>18 initially indicated was the distance between the aft</p> <p>19 mast of the Nomadic Milde and the bows of the Atlantic</p> <p>20 Venus?</p> <p>21 A The -- what is on the statement, the distance</p> <p>22 is approximate. It says about -- I don't know whether</p> <p>23 it was actually 1.5 cables or not. But I think on the</p> <p>24 ECDIS system you can actually check what the distance</p> <p>25 was. The first distance that was recorded was when we -</p>	<p style="text-align: right;">128</p> <p>1 Q Right. How far from the farthest right to the</p> <p>2 farthest left at this time?</p> <p>3 A It's hard to -- it's hard to position. It's</p> <p>4 hard to tell -- it's hard for me to tell right now, but</p> <p>5 if you -- the exact distance, I just cannot tell you,</p> <p>6 but I think it would -- it was several tenths of meters.</p> <p>7 You would have to double-check that on the AGUS system.</p> <p>8 Q Was this an unusual occurrence for you as</p> <p>9 captain of the Nomadic Milde?</p> <p>10 A It was very new to me. I was not expecting</p> <p>11 the ship to behave in that way. I was just -- I didn't</p> <p>12 expect the ship to be like that on a river and on a</p> <p>13 strong current on a river. The current being in front</p> <p>14 of the ship, that's not something new for me, but the</p> <p>15 current shifting and causing the ship to swing a lot,</p> <p>16 that's something very new to me.</p> <p>17 Q Have you ever had to handle a vessel equipped</p> <p>18 with CPP under similar circumstances before May 8, 2020?</p> <p>19 A Yes. I did.</p> <p>20 Q Okay. How did you correct the swing of those</p> <p>21 vessels on those occasions before May 8, 2020?</p> <p>22 A Well, first of all, we were using just one</p> <p>23 anchor on the other ships, and it's just easier to</p> <p>24 maneuver if you have one. Number two, the -- number</p> <p>25 two, the locations where to anchor were selected by me,</p>
<p style="text-align: right;">127</p> <p>1 - the pilot told us to drop the anchors. After the</p> <p>2 anchors were dropped and the chains were released, then</p> <p>3 the ship got closer to Atlantic Venus. And then for a</p> <p>4 time of about 40 to 50 minutes, the ship was stable. It</p> <p>5 wasn't dragging. It wasn't swinging. It was stable.</p> <p>6 Q I know it's been a long day, a long -- a lot</p> <p>7 of questions, but at the outset of your deposition, I</p> <p>8 thought we established that your approximation of 1.4 to</p> <p>9 1.5 cables between the aft mast of the Nomadic Milde and</p> <p>10 the bows of the Atlantic Venus was after the vessel had</p> <p>11 settled on her anchors with four shackles in the water</p> <p>12 on the starboard side and three shackles in the water on</p> <p>13 the port side; is that correct?</p> <p>14 A No. What my testimony was, that these are</p> <p>15 adjust approximate distances, that I was writing it</p> <p>16 without actually double-checking on the actual distance.</p> <p>17 The actual distance between the ships can be checked on</p> <p>18 the on the ECDIS system.</p> <p>19 Q Okay. The -- what was the -- when you first</p> <p>20 noticed the Nomadic Milde swinging at anchor, what was</p> <p>21 the lateral movement that the vessel was undergoing?</p> <p>22 A So it was moving -- it was moving to the right</p> <p>23 and to the left. You can check it on the AGUS system</p> <p>24 that it wasn't going backwards. It was going to the</p> <p>25 right and to the left.</p>	<p style="text-align: right;">129</p> <p>1 so we had a little bit more room to maneuver the ship.</p> <p>2 Q Anything else for those other occasions?</p> <p>3 A So prior to that, using the engine and one</p> <p>4 anchor, I was able to kind of have the ship in control.</p> <p>5 But it was the first time that the current was so strong</p> <p>6 that it was kind of on the side of the ship, and it was</p> <p>7 the -- for the first time that I completely lost control</p> <p>8 of the ship.</p> <p>9 Q During the prior occasions, when you were</p> <p>10 trying to regain control of the ship at single anchor,</p> <p>11 did you let out more anchor chain?</p> <p>12 A Well, it would depend on the situation.</p> <p>13 Sometimes letting more of a chain into the water would</p> <p>14 help. That would be one solution, one thing I could do.</p> <p>15 But another thing that sometimes needs to be done is to</p> <p>16 actually pull the anchor back and drop it again and to</p> <p>17 select a different spot for the anchor to anchor the</p> <p>18 ship properly. And usually, when I pick the location</p> <p>19 where we drop the anchors, I usually pick a spot where</p> <p>20 there was more room, and at the same time it would give</p> <p>21 you more time if the vessel started dragging. So</p> <p>22 usually, if you have more room and more time, you can</p> <p>23 even maneuver it into safety easier.</p> <p>24 Q So I appreciate those answers. I want to</p> <p>25 follow up on the first one that you gave. It's accurate</p>



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<p style="text-align: right;">130</p> <p>1 to say that on other occasions you have corrected a 2 vessel's swing by dropping more anchor chain; is that 3 correct? 4 A Yes. But that was in the case where I had one 5 anchor and more room behind the vessel. 6 Q I understand that. My question is: Why does 7 letting out anchor chain reduce the swaying of the 8 vessel? 9 A The swinging is not going to be helped as much 10 by letting out more chain. What it would help with is 11 to hold the ship better because the anchor works better 12 when the chain is longer. So with dragging, that would 13 help, but not with swinging. 14 Q And the reason why it had -- more anchor chain 15 helps with dragging is because there's more weight at 16 the bottom of the water body, an issue that helps the 17 anchor begin to vet the whole of that water body; is 18 that accurate? 19 A No. It is about -- it is about the angle of 20 how the chain is positioned at the bottom. And the 21 longer the chain, it allows for the anchor to actually 22 be anchored better and more stable because the longer 23 piece of the chain is lying at the bottom and keeping it 24 stable. A longer chain is also not that -- is less 25 flexible. So the anchor is kind of secured better. It</p>	<p style="text-align: right;">132</p> <p>1 Q If my recollection is accurate, the vessel 2 immediately in front of the Nomadic Milde, near the 3 Kenner Bend anchorage, was called the Ionian Sea. Do 4 you recall that? 5 A Yes. 6 Q Was the Ionian Sea in ballast or was she 7 loaded at the time that the pilot proposed to anchor the 8 Nomadic Milde near the Kenner Bend anchorage? 9 A I don't know. I was not in contact with the 10 Ionian Sea vessel. 11 Q I'm just asking, could you recall based upon 12 your visualization of that vessel, whether she was 13 loaded or in ballast? 14 A I would say -- I would say that it was in 15 ballast. And I -- kind of my estimate is based on a 16 similar -- how similar that vessel was converged in the 17 water as compared to the Atlantic Venus. 18 Q All right. Does the depth or the -- excuse 19 me. Yeah. I'm getting landlubbed all of a sudden. 20 Does the draft of a vessel affect how she handles in a 21 strong river current such as the Mississippi River was 22 on May 8, 2020 when the Nomadic Milde was in anchor? 23 A It has a huge impact, yes. 24 Q Explain that to me, please. 25 A The higher the draft, the more power on the</p>
<p style="text-align: right;">131</p> <p>1 doesn't move that much when there is something pulling 2 on the chain. A shorter chain causes the anchor to even 3 go up, and it's just not as stable as it should be. 4 Q So the longer the anchor chain, the less 5 likely it is that the anchor will drag out of position? 6 A Yes. 7 Q Okay. When the pilot on this occasion on May 8 8, 2020 was proposing that area near the Kenner Bend 9 anchorage as the anchoring spot for that vessel, were 10 you concerned about the number of vessels in the 11 vicinity of the Nomadic Milde? 12 A I did see that the distance to other vessels 13 was very close. The other vessels were -- but other 14 vessels, when you looked at the distance between them -- 15 those other ships, they were anchored at similar 16 distances. That's why I thought that the pilot picked a 17 location that would be a good location for our ship. 18 Q Was the Atlantic Venus loaded or in ballast at 19 the time that the pilot proposed the Nomadic Milde to 20 anchor in her vicinity? 21 A I think it was in ballast, because it wasn't 22 deep in the water and then it was loaded. 23 Q It was loaded after the incident is what 24 you're saying, correct? 25 A Yes.</p>	<p style="text-align: right;">133</p> <p>1 water that is kind of working against the vessel has. 2 Q Okay. So a loaded vessel will experience the 3 current greater than a vessel of similar size in 4 ballast; is that accurate? 5 A The current will not have as big of an impact 6 to a vessel with a smaller draft because there is just 7 less water going against the ship. 8 Q And so a vessel in ballast has less ship 9 beneath the water than a loaded ship, such as the 10 Nomadic Milde was on May 8, 2020? 11 A Well, we have to -- we have to consider also 12 the size of the vessel. If the draft is smaller than 13 the -- we have to be comparing -- we have to be 14 comparing -- to talk about the effect of the draft, we 15 have to be comparing the vessels of the same size. 16 Q Right. That's why I was asking if a vessel 17 with a similar size to the Nomadic Milde was in ballast 18 versus the condition the Nomadic Milde was in on May 8, 19 2020 when she was anchored at the Kenner Bend anchorage. 20 Would the current of the river have more of an effect on 21 the Nomadic Milde or a similar vessel in ballast? 22 A Yes. Yes. That's correct. 23 Q Okay. So again, you are following the 24 recommendations of the pilot in the location where the 25 Nomadic Milde is going to be anchoring near the Kenner</p>



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<p style="text-align: right;">134</p> <p>1 Bend anchorage. You see that the distance between the 2 ships is less than ideal from your perspective and you 3 know that you are the loaded vessel under these river 4 conditions. Did you talk to the pilot and say, please, 5 let's move my ship to another location where I have more 6 room should I need it? 7 A Well, what we -- what you are telling me now, 8 we found out, it's kind of after the fact. And at the 9 time on May 8th, I was not aware of how strong the 10 current at that location could be. And I wasn't aware 11 that the current at that location would have this type - 12 - or this force -- this type of an effect on our vessel. 13 Q Did the pilot before he left -- the pilot that 14 assisted in anchoring the Nomadic Milde, before he left, 15 did he mention to you that there was a strong current in 16 the Mississippi River at that location? 17 A We were aware -- we were aware of the strong 18 currents because we were on the river for about an hour, 19 but we were not aware of the effect that the strong 20 current would have on our vessel. 21 Q Okay. I understand that the -- from the VDR 22 that it did not record the river speed, on the versions 23 of the VDR that we've been provided to date by the 24 Nomadic Milde. Is -- do you know the speed of the 25 current while the Nomadic Milde was at anchor near the</p>	<p style="text-align: right;">136</p> <p>1 MR. BERCAW: Five-minute break. 2 INTERPRETER: Thank you. 3 (OFF THE RECORD) 4 MR. BERCAW: I'm going to go back on the record 5 then. 6 MR. BUTTERWORTH: Great. 7 BY MR. BERCAW: 8 Q Captain, I'm going to take a short detour. I 9 know that Polish is your native language. And I 10 understand in order to be captain of this vessel you 11 have to be at least 75 percent fluent in English; is 12 that correct? 13 MR. BUTTERWORTH: I object to the form of the 14 question. 15 A As to the percentage of understanding, I don't 16 know. But English is the official language in my field, 17 and we communicate in English, always. 18 MR. BERCAW: Whoever objected to the form, tell 19 me what was wrong with the question. 20 MR. BUTTERWORTH: 75 percent? I've never heard 21 of that. I've been a mariner for all my life, and 22 I've never heard of a 75 percent. And who would 23 even measure that 75 percent? So they're fluent in 24 Navglish, but Navglish is the official language of 25 the sea, but certainly not enough to do a deposition</p>
<p style="text-align: right;">135</p> <p>1 Kenner Bend anchorage? 2 A We know the speed on the water without the 3 current and going up -- and going up the river. So 4 against the current we could see what the speed -- what 5 our speed was with similar settings. So we knew that 6 the speed was four to five knots -- the speed of the 7 current was four to five knots. 8 Q Was that based upon a piece of equipment that 9 was located on board the Nomadic Milde or was that based 10 upon your observations while sailing up the river 11 towards the anchorage? 12 A It was based on the -- it was based on the 13 GPS, and the GPS is the system that gives us the speed 14 that we have in relation to ground. And we also know -- 15 depending on the setting of the engine, we know what the 16 speed of the vessel is. So knowing what the -- whatever 17 speed is, and how slow we are moving against the 18 current, we can more or less know what the current's 19 speed would be. 20 Q Okay. Is there a piece of -- 21 INTERPRETER: Excuse me. Excuse me. Can we 22 have a -- just a two-minute break? 23 MR. BUTTERWORTH: Yeah. It's -- we've been 24 going a little over an hour and ten minutes. So 25 it's fine with me.</p>	<p style="text-align: right;">137</p> <p>1 in. So lack of foundation, I guess, would be the -- 2 MR. BERCAW: Okay. 3 MR. BUTTERWORTH: -- the objection. 75 4 percent -- 5 BY MR. BERCAW: 6 Q That's fine. The -- besides Navigational 7 English, are you fluent in any other languages, Captain? 8 A No. I use English. 9 Q Okay. Do you converse with the Philippine 10 crew members in Polish? 11 A No. 12 Q Do you communicate with the Philippine crew 13 members of the Nomadic Milde in Tagalog? 14 A No. 15 Q You only communicate with the Philippine crew 16 members in English; is that correct? 17 A Yes. In English. 18 Q From my review of the records -- and I may 19 have left someone off. But to me, it seems that at -- 20 on May 8, 2020, the Nomadic Milde had two chief officers 21 who were Polish nationals and a chief engineer who was a 22 Polish national and yourself captain. Is that -- did I 23 leave any Polish nationals off the list? 24 A No. This is it. 25 Q The remainder of the officers, the deck</p>



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<p style="text-align: right;">138</p> <p>1 department, and the engineering department for the 2 Nomadic Milde were from the Philippines; is that 3 accurate? 4 A That's correct. 5 Q Okay. Captain, I'm going to shift gears and 6 discuss in general, if we can, river characteristics 7 that you know through your own experience as a captain 8 of a CPP equipped vessel, okay? 9 A Okay. 10 Q Is it accurate to say that as concerns the 11 Mississippi River near the Kenner Bend area that the 12 river current is faster towards the middle of the river, 13 as opposed to the right descending bank of the river? 14 A I am not familiar with the current at the 15 bank. I am only familiar with the current at the 16 location where we anchored. 17 Q Do you think that if the Nomadic Milde had 18 been more closer to the right descending bank of the 19 Kenner Bend that the action of the river, mainly her 20 current, would've been greater than it was where she was 21 anchored, less than, or you don't know? 22 A The water was very high on the river at that 23 time. The current was strong, I would assume, 24 throughout the river. So it's very hard for me to know 25 what would be the effect of if we were closer to the</p>	<p style="text-align: right;">140</p> <p>1 current was from the side of the ship already, not from 2 -- from the bow of the ship -- the vessel. 3 Q So at that time, when the current was against 4 the side of the vessel, whatever hydrodynamic 5 engineering went into the design of the Nomadic Milde 6 was completely canceled out because the vessel was no 7 longer taking the current off her bow; is that correct? 8 A I don't understand the question -- the part of 9 the question about the design. What I was -- what I was 10 saying before is when we know -- it -- when it was 11 already after the incident, and we were just looking at 12 the currents of -- in the river. They were very strong, 13 no matter at what point in the river. 14 Q I'm going to move on. Before the Nomadic 15 Milde anchored near the Kenner Bend anchorage, when was 16 the last time that you as captain had placed the CPP 17 system in the astern or greater configuration? 18 A It was before we left -- before we left 19 Avondale because then we kind of test whether -- well, 20 how it -- the system works, and that the work -- maybe, 21 it worked well. Whether it was put in the forward 22 position on the -- or the -- in astern position also (in 23 English) -- astern position, both of them worked well. 24 Q And this was while the vessel would remain 25 more to the Avondale dock or was this in the river?</p>
<p style="text-align: right;">139</p> <p>1 bank. We were observing the river after the incident, 2 and we were already -- we were closer to the bank. And 3 we -- and the currents on the river were also very 4 strong, so my suspicion is that they were kind of the 5 same strength throughout the river. 6 Q And at the time that you were close to the 7 dock, that was when the Nomadic Milde was taking the 8 force of the current on her side, as opposed to across 9 her bows; is that correct? 10 A Are you -- please let me know at what point of 11 time? Was it when we were already -- when we were on 12 the deck or when we -- was it after -- or was it after 13 the incident or when we were anchored? 14 Q It's the time you were drawing your own 15 comparison between the force of the river when you were 16 at anchorage versus the time when you were pointing 17 towards the shores. So whenever that time was. 18 A My estimate that -- what I was talking about, 19 was after the incident when the current was against -- 20 kind of going against the front of the -- the bow of the 21 ship. And -- 22 INTERPRETER: Okay. Okay. The witness is 23 saying -- right, I misspoke. 24 A At the time that we -- it was after the 25 incident, and we were looking at the river. The -- the</p>	<p style="text-align: right;">141</p> <p>1 A No. This kind of testing is done before you 2 even start any maneuvering, and then you also check 3 other system on the vessel. And this is required by the 4 regulation to actually check whether everything works. 5 And we were testing or checking the CPP system, also 6 dropping -- while dropping the anchor, and also in the 7 forward and astern positions, and everything was working 8 well. 9 Q I understand that after you instructed the 10 chief engineer to turn on the main engines on short 11 notice to attempt to gain control of the Nomadic Milde, 12 that the swing of the vessel actually increased; is that 13 accurate? 14 A No. It was at the time that the pilot was 15 still on the deck. I asked the pilot whether we can 16 turn the engine off, and I was told that I could, but 17 that we should be able to start it shortly. And that's 18 what I told the chief engineer. 19 Q Okay. That was a bad question on my part. 20 I'll try again. After you were called to the bridge by 21 the chief officer because he noticed the vessel 22 swinging, you instructed the chief engineer to start the 23 main engines, correct? 24 A Yes. When I came on the bridge and I saw that 25 it is becoming an emergency situation, then I ordered</p>



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<p style="text-align: right;">142</p> <p>1 the engine to be started, yes. 2 Q Okay. And then once the engine was started, 3 you maneuvered the CPP control to have the vessel go 4 full ahead; is that accurate? 5 A And -- yes. That was shortly before we struck 6 the Atlantic Venus, and the situation looked like it was 7 -- it looked very dangerous. And the vessel was already 8 perpendicular to the current, so what I was trying to do 9 is to have the current against the front of the ship. I 10 was trying to turn it back so that the current would not 11 push us more towards Atlantic Venus but would push us in 12 a different direction. Correct. Whatever the power the 13 engine had, it wasn't enough to help us turn the ship 14 around. 15 Q Between the time that you asked the chief 16 engineer to restart the main engine until you were able 17 to use the main engine to operate the CPP system, how 18 much time had passed? 19 A Just give me a minute and I will try to find 20 here. Seven, eight, maybe six minutes. I want to say 21 seven, approximately 22 Q So between the time that you gave the order 23 until the time that you were able to take control of the 24 navigation of the vessel through the CPP system, the 25 vessel's swing had increased significantly; is that</p>	<p style="text-align: right;">144</p> <p>1 Atlantic Venus? 2 A Okay. Well, if the anchor was still good and 3 still holding on, then probably, yes. But with the 4 current and with the ship being turned around the way it 5 was, it was clear to us that we would be -- that we 6 would struck [sic] the other ship. 7 Q Which anchor was he referring to, that the 8 anchor had held or remained strong? 9 A It was the one, I think, on the right side 10 because the current was coming from the right side. 11 Q And so if the -- in your opinion, if the 12 starboard or right anchor we've been talking about had 13 held, and the Nomadic Milde had swung left, even then at 14 that point the Milde would have struck the Atlantic 15 Venus, in your opinion? 16 A No. What I'm saying is if the right anchor 17 was still holding on, then maybe after another swing we 18 would have passed the front of the other ship. But at 19 one point the right anchor must have just not held 20 anymore, because it looked like the ship was drifting to 21 the side. And then we starting to get to the other ship 22 very fast, and there was no way to avoid the -- for us 23 to avoid striking the other vessel. 24 Q I understand that the number 15 frame of the 25 Nomadic Milde came to rest more or less approximately on</p>
<p style="text-align: right;">143</p> <p>1 true? 2 A I just found on page 16 -- I have it in front 3 of me, and you can look at that. The time is 16:46. 4 Chief Officer moving. Okay. Tell the chief engineer to 5 start the engine (in English). So the timing of this 6 conversation is 16:46. And then on page 17 at 16:51. I 7 asked is your engine ready? Chief Officer moving, yes, 8 we are ready. So we can pull over. So it was five 9 minutes (in English). So I asked the question if the 10 engine is ready, and I got the response that it was 11 ready, so -- it was five minutes (in English) -- so it 12 was five minutes. 13 Q I understand that. My question was: During 14 that five-minute period, the swing of the vessel, that 15 increased substantially, correct? 16 A I'll have to double check that on the ECDIS 17 system. I think at that time we were already pushed to 18 the side, so the current was more on the side of the 19 vessel. I don't remember exactly. At the time that the 20 -- the time that you are asking me about, the five 21 minutes, I think we were still turning to the right. 22 The vessel was turning to the right, and then we started 23 drifting. 24 Q If you had allowed the vessel to swing back to 25 the left would the Nomadic Milde have struck the</p>	<p style="text-align: right;">145</p> <p>1 the bulbous bow of the Atlantic Venus during this time 2 period; is that correct? 3 INTERPRETER: We would like the question to be 4 repeated, please. 5 Q I understand that around this time the number 6 15 frame on the port or left side of the Nomadic Milde 7 made contact with the bulbous bow of the Atlantic Venus, 8 correct? 9 MR. BUTTERWORTH: Objection. Objection as to 10 form. 11 A It wasn't the 15th, it was the 75th frame. 12 Q Okay. But it was on the port left side of the 13 Nomadic Milde; is that correct? 14 A Yes. That's correct. 15 Q Okay. At that point both vessels resembled a 16 T in the river, with the Atlantic Venus being the up- 17 and-down portion of the letter T and the Nomadic Milde 18 being the cross part of the capital T; is that correct? 19 A Yes. 20 Q The vessels maintained that position with 21 respect to each other for some time before Pilot Shirah 22 boarded the Nomadic Milde, correct? 23 A Yes. Yes. 24 Q I understand during this time period of the 25 Atlantic Venus also had a pilot board; is that accurate?</p>



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<p style="text-align: right;">146</p> <p>1 A I don't know. I -- I don't know. I just -- 2 don't know when there was a pilot who -- who -- who got 3 to the other ship. I only know a -- a Pilot Shirah came 4 to our ship. 5 Q Okay. How long after the number 75 frame of 6 the Nomadic Milde made contact exactly with the bulbous 7 valve of the Atlantic Venus was the plan developed to 8 get the vessel separated? 9 A I'm reviewing -- I'm reviewing the documents 10 that I have in front of me. I can see the time here of 11 17:53. I remember that Pilot Shirah was on the phone, 12 he was talking on the phone and also on the radio. And 13 planning for -- for the vessels to be separated. I'm 14 looking for the exact time for you in the documentation 15 I have. And what I'm see -- what I'm seeing is the time 16 of 17:57, and that's -- that's Pilot Shirah saying, "We 17 have a plan 1A," and that's on -- on page 23. And at -- 18 at that point, they were talking about sending tugboats 19 to assist us. So the plan was -- as he was talking to 20 different people, the plan was kind of forming, was -- 21 was very quickly. 22 Q At this time, the plan forming, was the main 23 engine of the Nomadic Milde still on? 24 A Yes. 25 Q At any time when the -- after the Nomadic</p>	<p style="text-align: right;">148</p> <p>1 A Well, the -- I think that's correct. I like 2 to have the support of the documentation because it 3 gives me the accurate information and numbers. Yes. It 4 is helpful. 5 Q Okay. But no one has agreed that that's 6 actually what the VDR is saying, but yet you're relying 7 on it to form part of your testimony in this case so 8 far, right? 9 A Well, the -- the documentation available from 10 the DVR [sic] and this transcripts, this is not 11 something that I created. This is the documentation 12 from the vessel, and I just want my testimony to be 13 accurate. 14 Q Well, I understand that you were a participant 15 in a lot of the conversations appearing on the VDR, but 16 you did not author the transcript that you're relying 17 on, correct? 18 MR. BUTTERWORTH: I object to the -- object to 19 the form of the question. He's the one talking on 20 the VDR. All we're doing is typing up with the time 21 on the VDR, Jim. Tsk-tsk. And you guys have had 22 the VDR since May the 15th, and if you haven't 23 prepared your own transcript, shame on you. And you 24 can certainly check it tonight. And I suggest that 25 we take a break for tonight because you've been</p>
<p style="text-align: right;">147</p> <p>1 Milde came in contact with the Atlantic Venus, and so 2 the -- just before the Nomadic Milde struck the 3 Cornerstone dock, was the main engine of the Milde 4 turned off? 5 A The engine -- the main engine was on the 6 entire time, and it was necessary for the engine to be 7 on for us to remain stable. 8 Q In America, if you have a plan 1 or A, that 9 seems to imply that there was a plan number 1. Was 10 there two plans developed to separate the vessels that 11 you were aware of or just one? 12 A That is a plan 1A, and could it go all the way 13 to plan 26Z but (in English) -- I am not familiar with 14 how the plans are -- I know that the -- the letters or 15 the numbers that go with the plans. But that's what 16 you'll see in the transcript. And then he also refers 17 to 26Z, but I do not know what those numbers and letters 18 referred to or what do they mean. 19 Q Okay. And this incident occurred on May 8, 20 2020, correct? 21 A Yes. 22 Q Okay. You are not comfortable at this time 23 testifying from your recollection concerning this 24 incident, rather you would prefer to rely on a partial 25 transcript obtained by the VDR system; is that true?</p>	<p style="text-align: right;">149</p> <p>1 going on for 45 minutes and you said you just needed 2 another half hour. 3 MR. BERCAW: Give me another 15 minutes, and 4 I'll be done. 5 MR. BUTTERWORTH: That's what you said an hour 6 ago. Fine with me. Go -- 15 -- 7 MR. BERCAW: Give me five minutes. 8 MR. BUTTERWORTH: -- 15 more minutes. 9 MR. BERCAW: Thank you. 10 BY MR. BERCAW: 11 Q Captain, this transcript was not prepared by 12 you. Your voice just appears on the VDR system from 13 which the transcript is prepared; is that accurate? 14 A It's right, but because there is references as 15 to the time, that's why I'm using this documentation. 16 Q Okay. At some point, the CPP system of the 17 Nomadic Milde malfunctioned while the vessel was laying 18 against the Atlantic Venus; is that correct? 19 MR. BUTTERWORTH: Object to the form. 20 A Well, not -- not exactly. The CCP [sic] 21 system malfunctioned two -- about two hours after we 22 stayed there. So for two hours nothing was -- was going 23 on. So it -- 24 Q Right. 25 A -- wasn't right away.</p>



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<p style="text-align: right;">150</p> <p>1 Q Right. For the time that you were asked to 2 put the Nomadic Milde half the stern by Pilot Shirah, 3 the CPP system was unable to perform that task; is that 4 accurate? 5 MR. BUTTERWORTH: Object to the form. 6 A That -- that was the effect of it. Well, yes. 7 I agree. Yes. 8 Q Okay. You were the only individual on the 9 Nomadic Milde during this time period that was operating 10 the CPP controls of that vessel, correct? 11 A Yes. 12 Q Okay. Instead of going astern like you wanted 13 the CPP system to execute, the Nomadic Milde instead 14 went forward, correct? 15 MR. BUTTERWORTH: Object to the form. 16 A That's what we noticed, that the CPP was in 17 the position forward, not in the position astern. 18 Q Why did the CPP system go forward while you 19 were operating the controls to have the CPP system go 20 astern? 21 A Right now we -- well, we know already that the 22 CPP was struck by the anchor chain and it was damaged -- 23 so that -- that not -- not the system, not the CPP, but 24 the propeller was struck by the anchor chains and it was 25 damaged. That's -- that's the reason why instead of</p>	<p style="text-align: right;">152</p> <p>1 that. 2 Q Okay. So how do you know that the propeller 3 struck the starboard chain of the Atlantic Venus? What 4 did you base that on? 5 A Before the -- shortly before the damage, when 6 you were talking about the -- the T letter, so it's 7 shifted -- the -- the T shape that were in -- to port 8 (in English) -- and kind of shifted a little bit -- T -- 9 T letter shifted to port, little bit to port (in 10 English). And it shifted to -- towards the port. And I 11 saw -- I was able to see the -- the anchor chain, the 12 right anchor chain from -- from the other ship going 13 under our vessel. So as we -- as we shifted from the T 14 shape, we were pushed by the current forward, and that's 15 why Pilot Shirah asked us to go astern. But our vessel 16 at that time was being pushed by the current. So at 17 that point, because the Atlantic Venus also shifted its 18 position, the right anchor chain got closer to our 19 propeller and it coin -- it coincided with the -- the -- 20 the order of -- of -- that -- that I was given from 21 Pilot Shirah for me to go astern. And -- and there was 22 an alarm for -- and -- overload (in English) -- overload 23 -- overload (in English) -- overload of the engine. I 24 knew that whatever I did by actually pushing the lever, 25 that wasn't enough for the engine overload message that</p>
<p style="text-align: right;">151</p> <p>1 going astern, it went forward. 2 Q Which anchor chain did the propeller of the 3 Milde strike? 4 A It -- it looked like it was from the right 5 anchor from the Atlantic Venus ship. 6 Q Where were you located at the time you think 7 the propeller of the Nomadic Milde struck the anchor 8 chain of the Atlantic Venus? 9 A I was at the place that when -- I was at the 10 helm, and I was told the one hand on the lever -- CPP 11 lever, yes (in English) -- on -- on CPP lever, and my 12 other hand was at the helm. 13 Q And were you looking forward? Were you 14 looking to port? Were looking to starboard? 15 A I was looking to the left at -- at the pilot 16 who was standing on the outside of the bridge, on the 17 left side of the wing. 18 Q Okay. So that, from where you were standing, 19 could you see the starboard anchor chain of the Atlantic 20 Venus? 21 A Yes. I was -- I -- I did. 22 Q Okay. So you actually saw the results of the 23 propeller of the Nomadic Milde striking the anchor chain 24 of the Atlantic Venus? 25 A No. I wasn't -- no. I wasn't able to see</p>	<p style="text-align: right;">153</p> <p>1 I received. It must've been something else. And 2 because we saw the propeller -- propeller blade being 3 damaged. I think it was at that point that it was 4 damaged by the anchor chain. 5 Q Did -- 6 A And at the same time, also, the chief engineer 7 was saying that there was something going on. So the 8 engine overload must've been caused by something other 9 than me pushing on the lever. 10 Q Did the starboard anchor chain of the Nomadic 11 Milde break before or after you think the propeller of 12 the Nomadic Milde struck the anchor chain of the 13 Atlantic Venus? 14 A It was -- it must have been after because then 15 our ship was moved forward very fast. 16 Q Did the port anchor chain of the Nomadic Milde 17 begin paying out before or after the propeller of the 18 Milde struck the anchor chain of the Atlantic Venus? 19 A It was after our ship was already moving 20 forward. 21 Q And I take it that once the Nomadic Milde 22 began moving forward, that she couldn't stop until she 23 ran aground at the river bank near the Cornerstone dock? 24 Hold on, Captain. Okay. 25 MR. BERCAW: You get it?</p>



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154	<p>1 Q A few sentences because there's no way --</p> <p>2 A So at that --</p> <p>3 Q -- now ways that this --</p> <p>4 A -- at point because --</p> <p>5 Q Okay. So --</p> <p>6 A -- at that point because we were moving</p> <p>7 forward so -- so fast, the only -- the only thing I</p> <p>8 could think of was to maybe -- because the engines were</p> <p>9 still working, the only thing that came to -- to my mind</p> <p>10 was to -- to maybe turn the vessel so that we wouldn't -</p> <p>11 - wouldn't hit the -- the kind of head on, but maybe hit</p> <p>12 on -- on the side.</p> <p>13 Q It's fair to say that if the Nomadic Milde had</p> <p>14 not been anchored in the way that she was at near the</p> <p>15 Kenner Bend anchorage, that she would not have begun</p> <p>16 swinging in the river; is that accurate?</p> <p>17 A Yes.</p> <p>18 Q Also fair to say that if the Nomadic Milde had</p> <p>19 not been swinging at her anchors, she would not have</p> <p>20 ended up in a T configuration at the bows of the</p> <p>21 Atlantic Venus?</p> <p>22 A Yes.</p> <p>23 Q Likewise, it's also fair to say that if the</p> <p>24 Nomadic Milde had not assumed a T configuration with the</p> <p>25 Atlantic Venus, that the propeller of the Milde would</p>	156	<p>1 Understood. And, Jim, you are good as your word.</p> <p>2 You finished up in 15 minutes. Thank you very much.</p> <p>3 COURT REPORTER: Did you guys want to wait</p> <p>4 until the depositions are finished to order them, or</p> <p>5 did you want to go ahead and just order them daily</p> <p>6 as we go?</p> <p>7 MR. BUTTERWORTH: Well, we're all going to</p> <p>8 order.</p> <p>9 MR. BERCAW: We're -- no -- well, yeah.</p> <p>10 MR. BUTTERWORTH: So for me, I'm going to order</p> <p>11 it. So just -- I'm a permanent order.</p> <p>12 MR. BERCAW: I'm --</p> <p>13 COURT REPORTER: Mr. Bercaw, did you want to</p> <p>14 order the original --</p> <p>15 MR. BERCAW: Correct.</p> <p>16 COURT REPORTER: -- sir?</p> <p>17 MR. BERCAW: Yeah. We'll order the original,</p> <p>18 but, you know, we don't need it on an expedited</p> <p>19 basis.</p> <p>20 COURT REPORTER: Absolutely.</p> <p>21 MR. BUTTERWORTH: Okay. Yeah. No. Yeah. We</p> <p>22 -- you better have it --</p> <p>23 MR. BERCAW: Let's take good notes during --</p> <p>24 MR. BUTTERWORTH: -- ready by tomorrow morning.</p> <p>25 No. Come on. It's fine. We're already A-okay. So</p>
155	<p>1 not have struck the anchor chain of the Venus?</p> <p>2 MR. BUTTERWORTH: Object to form.</p> <p>3 A Not necessarily because in this T</p> <p>4 configuration, we were stuck for about two hours. Very</p> <p>5 stable (in English) but -- it was very stable. And we</p> <p>6 were waiting for additional tugboats. And the time that</p> <p>7 the T configuration shifted, we -- we had no effect or</p> <p>8 impact at the way it shifted. And it was at that time</p> <p>9 that the propeller blade was damaged by the anchor</p> <p>10 chain.</p> <p>11 Q Okay. And that's the anchor chain of the</p> <p>12 Atlantic Venus, right?</p> <p>13 A Yes.</p> <p>14 Q And it's fair to say that if the propeller of</p> <p>15 the Nomadic Milde had not struck the anchor chain of the</p> <p>16 Atlantic Venus, then it would not have had a main engine</p> <p>17 overload and you would've been able to control the pitch</p> <p>18 of that propeller, thereby preventing the striking of</p> <p>19 the Cornerstone dock?</p> <p>20 A Yes.</p> <p>21 MR. BERCAW: All right. I reserve the right to</p> <p>22 ask some follow-up questions depending on the</p> <p>23 questioning of the other counsel, but I tender the</p> <p>24 witness for further questioning at this time.</p> <p>25 MR. BUTTERWORTH: Okay. Understood.</p>	157	<p>1 -- and then our witnesses will all read and sign</p> <p>2 because these were translated depositions and stuff,</p> <p>3 and then you can --</p> <p>4 COURT REPORTER: Absolutely.</p> <p>5 MR. BUTTERWORTH: -- look at it again.</p> <p>6 (DEPOSITION CONCLUDED AT 6:49 P.M.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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158	<p>1 CERTIFICATE OF OATH</p> <p>2</p> <p>3 STATE OF FLORIDA</p> <p>4 COUNTY OF ORANGE</p> <p>5</p> <p>6 I, the undersigned, certify that the witness in the</p> <p>7 foregoing transcript personally appeared before me and</p> <p>8 was duly sworn.</p> <p>9</p> <p>10 Identification: Produced Identification</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 JODY LYNN PRALAT</p> <p>17 Court Reporter, Notary Public</p> <p>18 State of Florida</p> <p>19 Commission Expires: 02/03/2024</p> <p>20 Commission Number: GG 952277</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	160
	<p>1 ERRATA</p> <p>2</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 I have read the entire transcript of my deposition taken</p> <p>17 in the captioned matter or the same has been read to</p> <p>18 me.I request that the following changes be entered upon</p> <p>19 the record for the reasons indicated. I have signed my</p> <p>20 name to the Errata Sheet and authorize you to attach the</p> <p>21 changes to the original transcript.</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 Date NAME</p>	

159	<p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4 STATE OF FLORIDA)</p> <p>5 COUNTY OF ORANGE)</p> <p>6</p> <p>7 I, JODY LYNN PRALAT, Court Reporter and Notary</p> <p>8 Public for the State of Florida at Large, do hereby</p> <p>9 certify that I was authorized to and did report the</p> <p>10 foregoing proceeding, and that said transcript is a true</p> <p>11 record of the testimony given by the witness.</p> <p>12</p> <p>13 I FURTHER CERTIFY that I am not of counsel for,</p> <p>14 related to, or employed by any of the parties or</p> <p>15 attorneys involved herein, nor am I financially</p> <p>16 interested in said action.</p> <p>17</p> <p>18 Submitted on: June 24, 2020.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 JODY LYNN PRALAT</p> <p>25 Court Reporter, Notary Public</p>	161
	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Read and Sign Letter</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	



<p>0</p> <p>0.5 77:2</p> <p>02/03/2024</p> <p>158:18</p>	<p>149:3, 6, 8</p> <p>156:2</p> <p>15:30 126:14</p> <p>1530 62:6</p> <p>15th 145:11</p> <p>148:22</p> <p>16 29:5, 10</p> <p>143:2</p> <p>16:00 78:14</p> <p>16:25 86:25</p> <p>16:30 59:12, 19</p> <p>126:15</p> <p>16:46 143:3, 6</p> <p>16:51 143:6</p> <p>17 143:6</p> <p>17:53 146:11</p> <p>17:57 146:16</p> <p>17:57:56 114:7</p> <p>1710 2:16</p> <p>1845-1 72:16</p> <p>185 48:19</p> <p>185.2 48:19</p> <p>18th 21:3</p> <p>19 62:18</p> <p>19.177 116:11</p> <p>190 77:15</p> <p>192 77:11, 17</p> <p>1989 23:11</p> <p>1990 23:15</p> <p>1991 23:19</p> <p>1A 146:17</p> <p>147:12</p>	<p>2</p> <p>2 4:9 36:16, 19</p> <p>74:14 75:14</p> <p>2.0 19:20</p> <p>2/O 72:5</p> <p>2:20-1453 1:2</p> <p>2:20-1506 1:2</p> <p>2:55 94:18</p> <p>20 48:19 50:8</p> <p>74:12</p> <p>20:35 116:11</p> <p>120:4</p> <p>20:35:19.177</p> <p>116:8</p> <p>20:37 116:10</p> <p>117:15 119:10</p> <p>120:5</p> <p>200 1:14 5:4</p> <p>2000 2:11 26:6</p> <p>2001 23:25</p> <p>2002 24:1</p> <p>2003 21:2, 14</p> <p>24:4</p> <p>201 2:4</p> <p>2011 52:22</p> <p>2013 21:2</p> <p>2016 25:22</p> <p>26:6, 19 27:4</p> <p>2017 25:23</p> <p>26:10, 11 27:12</p> <p>2019 6:12 21:17</p> <p>90:23, 25</p> <p>2020 1:13 5:5</p>	<p>24:22 25:3</p> <p>27:21, 25</p> <p>28:10, 15, 16</p> <p>29:5, 10 33:8</p> <p>37:3 54:24</p> <p>62:18 66:21</p> <p>69:18</p> <p>108:8, 23, 24</p> <p>109:10</p> <p>115:5, 21 116:3</p> <p>120:22 122:1</p> <p>124:13, 14</p> <p>128:18, 21</p> <p>131:8 132:22</p> <p>133:10, 19</p> <p>137:20 147:20</p> <p>159:18</p> <p>2020/19 62:22</p> <p>64:4</p> <p>2024 21:18</p> <p>21 50:18</p> <p>22:57:56 114:7</p> <p>23 114:6 146:17</p> <p>24 159:18</p> <p>247.5 52:12</p> <p>26Z 147:13, 17</p> <p>27.5 52:13</p> <p>74:13</p> <p>77:1, 3, 14</p> <p>270 78:3</p> <p>275 52:9</p> <p>2775 3:4</p> <p>27-and-a-half</p> <p>50:25</p> <p>28 119:10</p> <p>28.994 117:15</p>
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<p>119:11 29 115:5</p> <hr/> <p>3</p> <hr/> <p>3 4:10 36:18,20,25 37:24 39:3 40:24 41:4 42:2 48:5 59:6 72:7 74:23 75:14</p> <p>30 108:8</p> <p>30th 108:10</p> <p>32 116:10</p> <p>32:41 62:25</p> <p>3241 4:12</p> <p>33:2 62:24</p> <p>33602 1:15 5:5</p> <p>36 4:9,11</p> <p>365 2:10,16</p> <hr/> <p>4</p> <hr/> <p>4 4:12 77:1 94:23 95:8</p> <p>4:11 118:7</p> <p>4:30 59:11</p> <p>4:34 120:19</p> <p>40 127:4</p> <p>400 2:22</p> <p>45 149:1</p> <p>4500 2:4</p> <hr/> <p>5</p> <hr/> <p>5 4:13 69:21,22 70:21,24,25</p>	<p>72:1,15 77:2,3 94:24 114:5,6</p> <p>50 127:4</p> <p>504 2:5,12,17,23 3:5</p> <p>51 35:23</p> <p>5216 116:3,4,5</p> <p>5218 116:4</p> <p>523-5574 2:23</p> <p>52C/6 17:20,23</p> <p>53 35:20,23</p> <p>566-1311 2:12</p> <p>566-8800 2:17</p> <p>568-1990 3:5</p> <p>582-3800 2:5</p> <hr/> <p>6</p> <hr/> <p>6 4:3</p> <p>6:49 157:6</p> <p>601 3:4</p> <p>63-year-old 119:4</p> <p>69 4:13</p> <hr/> <p>7</p> <hr/> <p>7 77:14 120:22 122:1 124:13</p> <p>701 2:22</p> <p>70130 2:11,17 3:5</p> <p>70139 2:23</p> <p>70170 2:5</p>	<p>72-005 17:20,23</p> <p>75 136:11,20,22,2 3 137:3 146:5</p> <p>75th 145:11</p> <p>7th 121:20 124:16</p> <hr/> <p>8</p> <hr/> <p>8 27:21,25 28:10,15,16 33:8,9 37:3 54:24 66:21 69:18 80:12 108:23,24 116:3 124:14 128:18,21 131:8 132:22 133:10,18 137:20 147:19</p> <p>8.58 63:25 64:19</p> <p>80 126:10</p> <p>8th 38:23 45:15 121:4 124:18 126:16 134:9</p> <hr/> <p>9</p> <hr/> <p>9 80:21</p> <p>9:10 5:6</p> <p>94 4:12</p> <p>9463554 1:8</p> <p>952277 158:19</p> <p>9628257 1:9</p> <hr/> <p>A</p> <hr/> <p>A.M 5:6</p>	<p>A.S 2:8</p> <p>ability 10:2</p> <p>able 41:5,6 74:24 75:25 88:6,17 90:4 93:24 99:19,21 102:22 110:6 129:4 141:17 142:16,23 151:25 152:11 155:17</p> <p>able-bodied 80:17</p> <p>Absolutely 70:16 102:4 156:20 157:4</p> <p>ABT 48:25</p> <p>A-B-T 50:4</p> <p>academy 7:11 23:7,10</p> <p>acceptable 38:12</p> <p>access 104:24,25 105:3,10</p> <p>accessible 104:19,23</p> <p>accident 36:9 100:20</p> <p>accordance 121:22</p> <p>according 59:5 62:12 78:24</p> <p>accuracy 69:19</p> <p>accurate 10:3 54:19 61:9</p>
--	--	---	---



72:3 77:22 94:4 104:11 105:11 106:20 113:14 115:22 120:5 129:25 130:18 132:1 133:4 138:3,10 141:13 142:4 145:25 148:3,13 149:13 150:4 154:16 across 44:14 89:4 139:8 acted 24:18 acting 121:16 action 22:9,19 138:19 159:16 actual 14:20 82:1 117:8 120:1 127:16,17 actually 32:25 35:2 51:8 71:23 75:3,11 76:4,25 85:10 87:19 90:1 92:10,15,21 94:5 98:22 105:20 109:3 110:5 122:8 126:23,24 127:16 129:16 130:21 141:4,12 148:6 151:22 152:24 add 6:21 19:2 21:4 43:24 88:18 106:2	addition 80:25 125:23 additional 20:13,15 21:5,15 32:1 34:8,15,17 56:16 80:22 121:22,25 122:2,17 155:6 Additionally 15:20 address 17:15,17,20 adjacent 75:8 adjust 85:6,7 86:14 127:15 adjusted 84:6,19 85:20 advice 54:11 advices 17:5 affect 57:19 132:20 affirm 6:3 12:19 aft 49:19,24 50:7,10,15 126:6,18 127:9 against 22:10,20 87:12 102:13 133:1,7 135:4,17 139:19,20 140:3 142:9 149:18 agency 43:7 agent 42:21,24	43:4,10,14 57:13,14 ago 149:6 agreed 5:9 122:3 148:5 agreement 9:12 aground 153:23 AGUS 127:23 128:7 ahead 43:23 45:11 88:13 102:16 115:22 118:4 142:4 156:5 airport 27:15,16 alarm 115:4,13 116:21,22 117:1,3,12 119:14,18 120:1,4,11 152:22 alarms 117:1 119:23 alert 119:17 alignment 99:25 Allison 8:24 allow 19:2,9 allowed 143:24 allows 122:6 130:21 already 11:22 36:10 55:1 72:18 73:12 76:1 84:24 87:11 91:6	94:21 114:15 139:2,11 140:1,11 142:7 143:17 150:21 153:19 156:25 altered 60:21 am 6:8 80:8,9,22 89:1 100:10 110:5 138:14,15 147:13 159:13,15 Ama 42:10,14,17,25 43:4,13,17,21 44:1,4,7,10,12 ,13,20 45:3,5,10,19,2 1,24,25 46:5,8,10,12,1 6 47:2,7,14,25 64:25 A-M-A 42:10 America 147:8 among 7:20 AMOS 91:8,15,16 104:5 A-M-O-S 91:9 amount 52:16,18 anchor 28:5 33:17 39:25 44:21 45:6 47:1 49:9 50:21,23 51:2,3 52:1,2,4,5,8,1 1,12,16,19,20 53:5,6,11,12
---	--	---	--



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<p>55:5,7 57:8 58:17,18,23,24 59:7 61:5 65:5,7,8,19 66:22 73:9,13,14,15, 18,19,21 74:1,2,11 75:15,21 76:10,12,14,15 ,19,23 77:5,6,11,21,2 3 78:9,10 79:5,14 80:18 83:24,25 84:6,19 85:10,17,18,20 ,21 86:1,11,13,18, 19 88:22 89:5,6,12,14,1 8 90:2 91:2,3 92:2,10,12,14, 15,19,20,25 93:4,8,21,22,2 5 94:2,4,9 95:11,22,23 96:3,6,15,22 97:1,4,5,19,20 98:22,25 99:13,15,19,20 ,21 100:3,4,7,8,13 ,19,25 101:3,5,9,13,2 2,25 102:1,6,10,18, 25 103:3,6,11,14, 16,23 104:1,3,4,9</p>	<p>105:18 106:7,9,17,19 107:4,5,17 108:9,19,21 109:9,15,17,20 ,22 110:3,8,15,17, 18 111:9,12,14 112:3,8,13,16, 17,18,20,21,22 113:1,11,17 114:11,12,16,2 3 120:25 121:1,10,21 122:15 125:24 127:20 128:23,25 129:4,10,11,16 ,17 130:2,5,7,11,1 4,17,21,25 131:2,4,5,20 132:7,22 134:25 141:6 144:2,7,8,12,1 6,19 150:22,24 151:2,5,7,19,2 3 152:11,12,18 153:4,10,12,16 ,18 155:1,9,11,15</p> <p>anchorage 26:21,23 27:2,3,5,8,11, 20 28:1,5,6,10 33:10,11,15 42:10,12,15,17 ,25 43:4,13,18,19, 21 44:1,4,7,8,12,</p>	<p>14,20,21 45:3,4,5,10,13 ,16,17,20,21,2 4,25 46:1,5,8,10,12 ,16 47:2,8,15,25 53:21 54:2,24,25 55:16,25 56:6,14 57:5,7,11,14,1 5 58:13 61:7,13,19,24 62:12 64:25 65:4,15,21 66:2,4,10,14,1 6,24 67:11 76:21 77:25 78:11,23 79:3 101:7,24 110:16 121:4,10 122:16,22 126:13 131:9 132:3,8 133:19 134:1 135:1,11 139:16 140:15 154:15</p> <p>anchorages 26:19 27:11 57:6 63:22,24 64:19,24 65:2</p> <p>anchored 28:9,18 42:10 43:18 44:19,22 45:3,4,5,9 46:12,15 54:23 55:13 65:21 66:19,23 72:9 77:24 84:24</p>	<p>85:6 110:21 122:16,22 130:22 131:15 133:19 138:16,21 139:13 140:15 154:14</p> <p>anchoring 53:21 54:10,13,20 55:3 58:12 64:20 65:1,11,14,25 66:13 67:3 78:22 79:2 81:3,9,11 84:7,20 86:3 101:7,9 131:9 133:25 134:14</p> <p>anchors 44:3 45:14 47:12,17,21 49:14 54:3,6,12 55:1,4 58:16,22 61:10,18 66:8 78:14,19 79:14,15 81:5 83:9 84:9,22 86:19,23 87:5,20 88:2,7 89:2,12,23 91:5,7,22 92:6,8,12 95:4,6 97:12 99:24 110:22,24 111:7 113:23,24 122:3 125:2 126:1,13</p>
--	---	--	--



<p>127:1,2,11 129:19 154:19</p> <p>anchor's 76:24</p> <p>and-down 145:17</p> <p>angle 83:17 130:19</p> <p>annual 90:12,14,20 96:10</p> <p>annually 96:1</p> <p>answer 14:18 15:22 17:5 40:4 45:2 63:16 64:21 65:24 88:19 93:14</p> <p>answered 15:13 93:19</p> <p>answers 9:24 10:24 15:18 129:24</p> <p>antenna 49:19</p> <p>anybody 11:11</p> <p>anymore 144:20</p> <p>anyone 8:21 41:18</p> <p>anything 6:20,21 19:25 47:17 53:13 82:8 88:18 89:20 90:9 100:23 108:3 111:20 129:2</p> <p>anytime 41:20</p> <p>A-okay 11:9 156:25</p>	<p>Aparacio 80:12,13</p> <p>Aparicio 80:15,18</p> <p>apologize 22:15 84:13</p> <p>appear 39:2 99:15</p> <p>APPEARANCES 2:1 3:1</p> <p>appeared 2:6,18,25 3:6,9 33:25 34:1 41:19 44:10 68:7 100:4 120:23 158:7</p> <p>appearing 48:23 115:14 148:15</p> <p>appears 20:16,23 21:21 46:23 87:4 92:22 149:12</p> <p>apply 14:5</p> <p>appreciate 129:24</p> <p>appreciated 94:14</p> <p>approaching 54:25 62:16</p> <p>approximate 39:15 50:5 126:22 127:15</p> <p>approximately 5:6 26:8,18 27:4 52:9,12 59:11 76:22</p>	<p>77:11,15 78:3 126:14,15 142:21 144:25</p> <p>approximation 127:8</p> <p>APPURTENANCES 1:8,10</p> <p>April 91:4 106:15,16</p> <p>area 44:17,18 45:13 56:14,24 66:18 67:5 131:8 138:11</p> <p>areas 64:20 65:1</p> <p>argument 7:20 8:13</p> <p>arrive 7:14</p> <p>ASHLEY 1:14 5:4</p> <p>ashore 95:13,16</p> <p>aspirational 70:13</p> <p>assist 34:18 146:19</p> <p>assistance 81:6</p> <p>assistant 23:17</p> <p>assisted 134:14</p> <p>assisting 80:18 96:21</p> <p>assume 64:11 138:23</p> <p>assumed 65:6 154:24</p> <p>assuming 10:13 19:16 56:12</p>	<p>assumption 15:12 71:5 82:12</p> <p>astern 81:13,19 82:3 83:21 140:17,22,23 141:7 150:12,17,20 151:1 152:15,21</p> <p>Atlantic 1:9 2:20 33:23 45:12 48:7,8 49:17,21,25 62:2,5,11 70:3 71:24 78:1 86:24 87:6 88:12 111:5 113:13,22 114:18 125:15 126:7,9,19 127:3,10 131:18 132:17 142:6,11 144:1,14 145:1,7,16,25 146:7 147:1 149:18 151:5,8,19,24 152:3,17 153:13,18 154:21,25 155:12,16</p> <p>attach 11:15,19 36:14,16 69:21 94:21 160:20</p> <p>attached 36:12 37:24 40:24 42:2 59:5 75:9,12,24</p>
--	---	---	--



attempt 6:25 141:11	101:12 134:9,10,17,19 147:11	basis 92:3 97:1 98:15 156:19	bell 39:9,10,13 41:2 82:9,14
attempted 45:6 101:23	away 19:25 20:3 113:22 149:25	basketball 8:11	belong 32:9
attempting 44:20	<hr/> B <hr/>	Bates 4:12 11:21,23 18:17 62:22 63:1 94:23	belonged 32:11,14
attorney 9:19	background 7:11 9:4	bears 18:17 62:22	Bend 27:20 28:1,9 43:19,21 44:8,21 45:4,7,16,17,2 3 46:1 47:25 53:21 54:2,23 55:24 56:6,14 57:7,10 58:13 61:7,13,19,24 62:12 63:21 64:25 65:15 66:1,4,10,14,2 4 67:11 76:20 77:25 78:11,23 79:3 101:7,23 110:16 121:3,10 122:16,22 126:13 131:8 132:3,8 133:19 134:1 135:1 138:11,19 140:15 154:15
attorneys 159:15	backtrack 56:4	became 39:19 54:23	beneath 133:9
authentic 10:2	backward 83:15	become 91:15 126:16	bent 100:21 101:3,15
author 148:16	backwards 49:10,13 89:8 127:24	becoming 24:3 141:25	Bercaw 2:3 4:4 6:7,8,23,25 7:2,18 8:2,21,24 9:17 10:6,10 11:11,15,25 12:7
authorities 33:24 90:12	bad 141:19	Bedouin 13:24	
Authority 22:11,19,23	ballast 131:18,21 132:6,13,15 133:4,8,17,21	bedtime 58:20	
authorize 160:20	bank 44:15 46:9 138:13,15,18 139:1,2 153:23	begin 38:19 130:17 153:17	
authorized 159:9	banks 69:17	beginning 6:19 20:19 22:13 81:8	
available 37:17 38:10 57:8 121:18 122:19 148:9	barely 119:1	begins 35:19 61:17	
AVENUE 2:4	Bartosz 17:10	begun 154:15	
avoid 144:22,23	B-A-R-T-O-S-Z 17:12	BEHALF 2:2,7,14,19 3:2	
Avondale 33:10,14 44:3,5 45:15 46:19,25 47:6,11,21 56:5,9,19 57:7 140:19,25	base 152:4	behave 128:11	
aware 39:19 44:13 45:8 57:6,9 100:10,13,24	based 66:21 109:12 115:18 132:11,15 135:8,9,12	behind 45:11 130:5	
	basic 110:17	believe 7:10 26:20 48:11 51:14	
	basically 9:18 20:5 60:25 82:10 95:23	believes 8:11	



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13:1,3,5,9,11,
 15 14:1 15:5
 16:6,16,22
 17:2,14,25
 19:11 20:21
 21:19 22:7,16
 24:17 28:7
 30:3,13,17
 32:21 33:3
 35:17
 36:5,6,10,21
 40:1,3,8,10,14
 50:14
 51:12,19,24
 53:9,24,25
 58:6,7
 60:8,10,11,12
 63:3 67:25
 68:4,8,10,14,1
 6,19,22,25
 69:3,6,12
 70:8,12,17,20
 71:9,11,13,22
 72:12
 73:1,3,5,7
 79:9,24 80:14
 84:11,17
 93:12,18
 94:1,10,13,19
 95:1 98:4,13
 107:15 111:22
 113:7,10
 114:2,8,10
 117:24
 118:6,12,16,21
 ,24 119:2,5,8
 120:14,20
 123:10,17,21,2
 5 124:2,10
 136:1,4,7,18
 137:2,5

149:3,7,9,10
 153:25 155:21
 156:9,12,13,15
 ,17,23
besides 18:5
 22:17 24:22
 31:8 41:2
 42:16 121:8
 137:6
best 10:2 38:3
 39:18 51:6
 75:3 126:10
better 11:8
 130:11,22,25
 156:22
binder 63:7
binders 36:2
bit 12:4 21:8
 34:25 49:10,12
 65:23 75:11
 85:8 92:1 94:7
 125:14 129:1
 152:8,9
blade 153:2
 155:9
B-O 79:22
board 25:2
 37:19 41:18
 57:18,21
 58:3,9 67:3
 75:23 76:13
 77:3 101:23
 122:23 135:9
 145:25
boarded 46:20
 52:15 145:22
boats 34:9

boatswain
 79:16,20,21
 80:2,3,15,18
 81:1
B-O-A-T-S-W-A-I-N 79:21
boatswains
 79:25
body 92:22
 130:16,17
bold 72:10,11
book 10:8
 39:9,10,12,13
 41:2
 82:9,10,12,14,
 19
bookkeeping
 94:19
books 67:22
bordered 38:5
boss 9:14,15
 78:17
bossman 79:23
bosun 79:22,23
 92:2,16 95:6
 96:21,25
 97:11,22 98:2
 99:24 100:3
 122:17
boswain 90:6
bottom 100:14
 116:7
 130:16,20,23
boundaries 61:7
 62:11
 65:4,12,14,21

66:1,9
boundary
 61:19,23
bow 50:1 76:5
 77:25 79:19
 87:16,17,22
 88:6,14 93:20
 110:15 139:20
 140:2,7
 145:1,7
bows 126:7,19
 127:10 139:9
 154:20
brake
 103:4,5,7,16
 105:17,18,20
 106:4,8,9,16,1
 9
 107:4,7,8,9,10
 ,13,18,21,24
 108:9,12,22
 109:8,9,15,21
 112:3
 114:14,21,23
brakes 104:4,9
 108:1,6 109:3
 110:18 112:5
break 14:11
 51:9,10,13,18
 68:18,23 69:16
 84:3,12
 94:10,15 95:3
 102:11
 118:9,16,19
 120:14 135:22
 136:1 148:25
 153:11
breaking 22:14
 47:5 110:13



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<p>breaks 14:11</p> <p>bridge 47:22 48:2 58:25 59:3,9,22,25 60:19,23 61:1,4 62:7 63:21 64:13 78:12,25 81:7 82:1,6,7,21 83:2 86:25 116:23 119:17,19 121:17 125:3,6,9,12 126:15 141:20,24 151:16</p> <p>briefly 14:4</p> <p>broke 112:18</p> <p>broken 88:25 101:17,18 115:13</p> <p>Brown 72:8</p> <p>built 52:21</p> <p>bulbous 145:1,7 146:6</p> <p>bulk 56:10,11</p> <p>buried 92:21,25</p> <p>Burt 43:1</p> <p>BUTTERM@PHELPS. COM 2:12</p> <p>Butterworth 2:9 6:24 7:1,3 8:1,3 9:3,6,8,13 10:14,18,20 11:5,8,13,24</p>	<p>12:2,5,10 13:22 14:24 16:1,7,20,25 18:10 21:6,25 24:14 28:2 29:23 30:6,15 31:6 32:23 34:3,12 35:10,12,21,25 39:22 40:2,7,9,13 51:8,17,20 62:24 63:6 67:12 68:1,13,15,17, 21,24 69:2,4,11,23 70:9,16,19,25 71:2,10,12,14, 23 72:13 73:2,4,6 79:12,20 80:6 85:1 93:10,13 94:12,14 96:18 98:2 114:5,9 115:8 117:17 118:2,7,15,18, 22,25 119:4,7 120:16 123:6,8,12,14, 16,20 124:5 135:23 136:6,13,20 137:3 145:9 148:18 149:5,8,19 150:5,15 155:2,25 156:7,10,21,24 157:5</p>	<p style="text-align: center;">C</p> <p>C/O 72:5</p> <p>C/W 1:2</p> <p>cabin 41:1 62:1,4 125:3,5</p> <p>cable 48:18</p> <p>cables 48:11,22,24 49:1,17,23 77:18 126:17,23 127:9</p> <p>CANAL 2:10,16</p> <p>Cananburt 33:16</p> <p>canceled 140:6</p> <p>Canonburg 33:15,16</p> <p>canter 74:6,9,13,16,1 7,18,19 75:1,10,15,25</p> <p>capability 16:23</p> <p>capital 145:18</p> <p>captain 4:11 13:10,17 14:2,24 16:9,15 17:3,15 18:1,14 19:1,3,6,10 21:6 25:11,12,17,20 26:1,17 27:21 28:11,18,23,24 29:7 30:18,24</p>	<p>31:10,20 32:19 33:4 36:7,17,22 38:11,18 42:16 45:22 46:18 48:10 49:22 51:14,25 52:25 54:12 59:25 60:21 63:5 66:3 69:13,20 70:17,21 72:7,8 73:8 76:8 80:6 83:10 84:14 86:17 88:20 89:13,16 90:18 95:5,13 96:19 110:24 114:2 115:11 119:10 124:11,23,24 128:9 136:8,10 137:7,22 138:5,7 140:16 149:11 153:24</p> <p>captain's 60:5,11,14,17 71:3</p> <p>captioned 160:17</p> <p>care 98:12</p> <p>cargo 26:15 56:8,16,19,24 57:19</p> <p>carrier 19:8</p> <p>case 12:20 73:15 97:3 110:6 122:8,19 130:4 148:7</p> <p>cases 6:18,21</p>
--	--	--	---



caster 88:14	53:5, 6, 11, 12	83:25 86:5, 11	24:3, 18 29:11
castle 79:13	73:13, 15, 18, 19	87:21 88:25	39:20
cause 7:21	, 22 74:1	89:6 95:22, 23	40:15, 17, 18
110:13	75:15, 21	96:5, 6, 15, 22	58:25 59:9, 16
caused 102:25	76:14, 23, 24	97:1, 4, 5 98:25	64:6, 12
109:21 153:8	77:5, 6, 11, 12, 2	99:15, 20, 22	72:5, 18, 19, 21,
causes 131:2	1, 23 84:6, 19	100:11 110:15	22 78:15, 25
causing 102:11	85:8, 9, 11, 15, 2	111:12 127:2	89:25 90:1, 4
128:15	0 86:1, 19	150:24	92:2, 16 95:5
CCP 149:20	88:22	challenge 84:10	96:16, 22, 25
Cel 43:5	89:2, 5, 14, 18	CHANGE 160:3	97:11, 22, 25
Celtic	92:10, 12, 19	changed 35:4	99:23 100:2
43:5, 6, 8, 9, 12	94:4 96:3	78:14 86:10	106:12, 13, 14
centers 20:14	97:20 98:22	changes	116:18
centimeters	100:3, 4, 8	160:18, 21	117:20, 25
48:20	101:13, 16, 22, 2	changing 106:16	118:10 119:20
cereal 27:1, 7	5	characteristics	120:9
certain 39:2, 16	102:2, 6, 10, 18,	138:6	121:11, 15
63:22 96:8	21, 25	charge 86:15	122:7
certainly	107:5, 11, 14, 18	89:25	124:16, 21
136:25 148:24	, 19 108:19	CHARLES 2:4	125:2
certificate 4:9	109:17, 20, 22, 2	check 48:15	137:20, 21
20:6, 9, 11	4, 25	91:3, 21 104:12	141:10, 18, 21, 2
21:17 28:22, 25	110:2, 3, 7, 8, 9,	126:24 127:23	2 142:15
36:14 90:13, 15	13, 17, 18, 19	141:2, 4 143:16	143:4, 7 153:6
158:1	111:24	148:24	Christmas 26:4
certificates	112:3, 8, 13, 18,	checked 127:17	cipher 9:19
20:15	22	checking 141:5	circuit 6:15
certified 9:8	113:2, 5, 11, 17	checks 90:10	circumstances
certify 158:6	114:11, 12, 16	91:1, 7, 23	128:18
159:9, 13	125:24	104:15	citizen
chain 50:21, 23	129:11, 13	Chemical 1:4	18:1, 3, 4
51:2, 3	130:2, 7, 10, 12,	2:2 3:2 6:9	CIV.A.NO.2:20-1
52:1, 2, 4, 5, 8, 1	14, 20, 21, 23, 24	13:11, 15	411(LEAD 1:2
1, 12, 17, 19, 20	131:2, 4 150:22	chief	civil 5:7 7:9
	151:2, 8, 19, 23	23:1, 13, 21, 24	claimant 6:9
	152:3, 11, 12, 18		clarification
	153:4, 10, 12, 16		39:23
	, 18		
	155:1, 10, 11, 15		
	chains 49:11		



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clarifications 40:8	37:12,13,16 38:10	13:11,13,15 18:8,15 31:16 32:12,19 57:25 98:19	8:22 22:24 28:23 73:9 82:2 95:10 122:14 147:23
clarify 15:15	Coastal 58:1,2,8	compared 132:17	concerns 55:16 138:10
clarifying 16:17	code 17:23 91:18	comparing 133:13,14,15	conclude 97:12
class 90:13,16,20 95:25 96:10,13	coin 152:19	comparison 139:15	CONCLUDED 157:6
classification 107:16 108:4	coincided 152:19	competent 14:6	condition 55:23 67:10 89:23 90:2,17 93:24 96:2 97:17,21 98:15,17,20,24 99:4,14,16,19 100:16 101:6 106:22 109:6 117:7,9 119:3,14 120:3 133:18
clear 16:7,18 21:25 28:14 40:11 80:25 86:9 88:23 89:11 92:13 144:5	cold 122:12	completed 5:12 33:9 59:7 78:22	conditions 24:15 95:6 98:5 101:10 102:3,14 134:4
client 71:20	colored 74:25	completely 112:14 114:16 129:7 140:6	conducted 91:23 98:22
close 19:22 20:2 28:12 35:15 75:10 76:2,3,10 86:25 103:8,9,12,13 118:12 125:14 126:3,6,11 131:13 139:6	column 63:24	completing 78:10	confer 51:10
closer 88:7 126:17 127:3 138:18,25 139:2 152:18	columns 115:13 117:6,12	completion 81:8 84:7,20	conference 12:25
closest 45:14 49:25 66:24 74:1	comes 37:13 47:9 94:6	comprise 115:6	configuration 81:19 110:17 140:17 154:20,24 155:4,7
CO 2:8,19,20 3:2	comfortable 147:22	comprising 115:3	conformity 71:18
coal 26:22,25	coming 93:21 144:10	computer 41:14,17,19 91:9,25 97:18 104:10	confusion 30:3
Coast 33:24	command 64:13	computer- generated 97:10 105:2	connected 74:5
	commented 67:8	concentrate 56:10,11,19	
	Commission 158:18,19	concern 63:20	
	Commonwealth 18:2	concerned 131:10	
	communicate 136:17 137:12,15	concerning 6:12	
	communicated 116:22		
	communications 68:7		
	company 1:5 2:2 6:10		



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connector 74:5	29:14,19	24:6 25:3	116:14 117:9
consider 58:18	30:4,10	28:1,12,13,15,	119:14 120:12
59:1,19 60:1	controlled	16,24	125:3,9 127:13
67:9 133:11	83:10,18	29:5,15,18,20	128:20 130:3
considering	controller	37:20,24	131:24 133:22
88:16	82:21	39:3,20 40:16	136:12 137:16
consistent	83:2,6,16,21	41:24 42:11	138:4 139:9
111:23	controls	43:9,19 46:21	140:7 141:23
constant	150:10,19	47:2,8 48:7,12	142:12 143:15
83:13,19	convenient	50:21 51:3	145:2,8,13,14,
contact 39:25	93:16	52:6,7,13 53:2	18,22 147:20
111:5 113:12	converged	56:25	148:1,17
114:17,18	132:16	59:9,14,17,18,	149:18
132:9 145:7	conversation	21	150:10,14
146:6 147:1	14:16 47:19	60:2,3,6,15,19	156:15
contacted 33:23	48:1 67:16	61:7,14,25	corrected 130:1
contain 63:20	143:6	62:7,18	correction
117:12	conversations	63:13,14,17	19:18
contained 52:4	148:15	64:16,21,22	corrections
61:6 101:24	converse 137:9	66:5 67:2,11	42:6
context 59:12	copies 98:14	69:14 71:5	correctly 6:3
70:6	copy 18:21,23	73:15 76:17	could've 113:22
CONTINUED 3:1	28:24	77:8,12,15,18	121:13 126:4
continues 35:20	Cornerstone 1:4	81:9,21	counsel 11:17
continuing 88:8	2:2 3:2 6:9	82:13,21	14:6 17:5
contract 6:14	13:11,15	83:3,18	20:18 21:11
contractor	22:9,18	86:2,20 88:4	31:25 50:11
57:17,22	35:7,10,11,12,	92:23 95:7,14	53:8 58:4 60:7
control 85:14	14 111:13	97:13,15	69:16 79:6
87:20 116:14	112:13,23	99:6,16	81:23 90:19
120:12	113:3,14,19	100:5,9	109:18 115:2
129:4,7,10	114:19 147:3	101:20,21	155:23 159:13
141:11	153:23 155:19	102:7 103:4,21	Counselor 22:12
142:3,23	correct 8:7	104:5,21	count 76:5
155:17	16:16	107:6,22	country 10:22
controllable	18:2,21,23	109:1,17	18:4
	19:13 22:6	110:10,19	County 6:16
		111:6	158:4 159:5
		112:4,9,10,14,	
		18,24 113:3,19	
		115:1,15,19	



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<p>couple 34:22 36:22 39:24</p> <p>course 14:10 47:11 85:2 100:1 103:14,22 117:23</p> <p>court 1:1 5:10 6:2,15 10:6,24 11:17 12:3,6,12,15,1 8 13:22 15:2,25 18:10 21:24 24:12 29:25 33:2 34:1 36:11 51:23 67:23 68:3 69:9 79:6,10,18 94:17 97:25 105:23 113:8 120:18 156:3,13,16,20 157:4 158:16 159:7,24</p> <p>courts 7:9,10</p> <p>cover 57:12</p> <p>CPP 29:17,19 30:4,12,14,20 35:4 81:12,19 82:4,20,25 83:1,6,9,12,16 ,22 88:3 102:19 116:13 120:12 128:18 138:8 140:16 141:5 142:3,17,24 149:16 150:3,10,13,16</p>	<p>,18,19,22,23 151:10,11</p> <p>CPT 72:6</p> <p>created 148:11</p> <p>Crescent 1:10 2:14 81:23</p> <p>crew 80:8,9,10,22 121:8 125:24 137:10,12,15</p> <p>crewing 32:15</p> <p>cross 145:18</p> <p>crossing 27:16 44:14</p> <p>curious 53:4,10</p> <p>current 18:7,22 24:15 28:24 33:22 67:5,6,9,16 81:21 87:13,14,17,18 88:11,16,17 128:13,15 129:5 132:21 133:3,5,20 134:10,11,15,2 0,25 135:3,4,7,18 138:12,14,15,2 0,23 139:8,19 140:1,3,7 142:8,9,10 143:18 144:4,10 152:14,16</p> <p>currently 18:12 24:6 60:23</p> <p>currents 34:18</p>	<p>134:18 139:3 140:12</p> <p>current's 135:18</p> <p>CV 4:8</p> <p>cylinders 56:23 57:2,12</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 156:5</p> <p>damage 90:5,6 93:6 97:6 98:8 116:24 152:5</p> <p>damaged 101:15 108:13,16,17 150:22,25 153:3,4 155:9</p> <p>dangerous 54:16 142:7</p> <p>dashed 61:6,12</p> <p>Data 68:2</p> <p>date 1:13 20:24 21:2,17,18 38:22 90:24 106:14 115:15 116:13 134:23 160:25</p> <p>dated 37:3 69:18 108:10,11 120:22 124:13</p> <p>dates 21:5,15</p> <p>Davant 26:20,23 27:2</p> <p>David 2:15 3:3 69:25</p>	<p>day 5:5 6:17 37:14 78:17 99:5,12,18 102:15 105:9 107:25 127:6</p> <p>days 91:5 107:25</p> <p>dealing 75:21</p> <p>Debrowsky 7:5</p> <p>December 21:3 26:2,3,19 27:4</p> <p>decided 65:7</p> <p>decision 86:15 126:4</p> <p>deck 39:9,12 41:2 55:16 56:1 82:12,19 91:11 92:15 97:16,21 98:5,15,17,20, 23 99:4,16 102:7 106:11,12 122:24 123:1 125:23 137:25 139:12 141:15</p> <p>deep 32:5 55:17 124:7 131:22</p> <p>deeper 55:18</p> <p>defect 107:20 108:9,25</p> <p>DEFENDANT 1:11 2:7,14,19 3:2</p> <p>definitely 9:7,9 96:4</p> <p>deformations</p>
---	--	---	--



100:24 deformed 100:16,19 101:20 deformities 101:12,24 delay 105:6,12 deliver 57:18 Delta 31:1,12,19,23, 24 68:1 depart 46:19 departed 56:13 departing 63:13 department 32:15 64:13 138:1 DEPAULA 2:21 depend 129:12 depended 66:17 depending 86:5 135:15 155:22 depends 55:17 83:21 85:12 deposition 1:12 5:3,6 7:25 10:21 11:25 14:2,5,12 15:16,17 16:5,8,12,14 19:13 38:13 67:18 68:5,12 71:21,24 118:1 127:7 136:25 157:6 160:16 depositions	70:4,10 156:4 157:2 depth 123:8 132:18 descending 44:15 46:9 138:13,18 describe 54:22 63:22 described 52:17 describing 63:21 design 140:5,9 designate 75:2 designated 95:13,16 detached 101:4 determined 83:15 detour 136:8 developed 146:7 147:10 device 85:13,16 96:2 devices 108:2 DFLOTTE@SHMRLAW .COM 2:18 difference 53:15,18 55:14,25 different 27:9 38:25 39:24 46:13 49:12 53:14 55:19,20 56:15 59:24	65:23 71:16,17,20 91:17,19 92:1 129:17 142:12 146:20 difficulties 7:8,12 difficulty 7:23 9:25 20:2 21:7 120:2 diploma 20:13 DIRECT 4:4 13:8 directed 53:20 54:1 direction 82:2 88:9 142:12 directly 74:8 82:6 90:6 93:21,24 101:18 disagree 108:8 disagreement 8:13 disappear 75:6 discuss 66:7 138:6 discussed 94:22 display 60:5,14,17,18, 21 61:1,2,4,12,17 62:1,4,12 66:21 67:22 displays 60:18 dispute 8:5 distance	48:8,13,16 49:2,18,21 50:3,5,6 55:19 126:18,21,24,2 5 127:16,17 128:5 131:12,14 134:1 distances 48:5 127:15 131:16 distinguish 72:20 73:25 75:7,13 DISTRICT 1:1 dock 13:12 22:9,18 28:4 33:13,14 35:14 46:25 47:6,11 111:13 112:1,13,23 113:3,14,19 114:19 139:7 140:25 147:3 153:23 155:19 document 18:20 33:7 35:18 36:2,7 37:23 38:23 63:10 64:8,11 71:25 80:7 90:15 103:23 106:10 114:3 115:6,10 117:19 documentation 146:14 148:2,9,11 149:15 documented 91:24
---	---	---	--



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<p>documents 29:3 36:2 38:25 39:7 41:3 63:18 67:19,20 146:9</p> <p>done 20:14 36:10 65:19 72:11 84:23,25 86:3,4 91:3 92:11,17 96:1,9,10,11 97:4 99:10 104:17 105:21 106:15 129:15 141:1 149:4</p> <p>door 119:1</p> <p>double 143:16</p> <p>double-check 90:23 103:18 128:7</p> <p>double-checking 127:16</p> <p>downloaded 62:17</p> <p>downstream 81:20</p> <p>DPA 95:18</p> <p>draft 42:4 123:5,6,22 124:7 132:20,25 133:6,12,14</p> <p>D-R-A-F-T 123:6</p> <p>drafted 36:9</p> <p>drafts 42:1 124:6,9</p> <p>drag 33:22</p>	<p>131:5</p> <p>dragged 89:2</p> <p>dragging 39:24 84:8,21 85:21 86:13,19,20,23 87:11 88:2,24 89:7,12 110:22 125:2,18,25 127:5 129:21 130:12,15</p> <p>drawing 139:14</p> <p>drifting 143:23 144:20</p> <p>DRIVE 1:14 5:4</p> <p>drop 54:2 58:16 61:10 76:11 86:19 87:4 127:1 129:16,19</p> <p>dropped 33:17 44:3 45:14 47:13,18,21 49:9,14 54:12 55:4,5,7 78:14 79:14,15 88:8 122:3 127:2</p> <p>dropping 26:22 78:19 125:24 130:2 141:6</p> <p>DSHARPE@LAWLA.C OM 3:6</p> <p>due 99:7 108:7</p> <p>duly 158:8</p> <p>DUNBAR 1:14 2:10 5:4</p> <p>DuPage 6:16</p>	<p>durable 75:5</p> <p>during 14:12 19:13 24:9,11,12,14, 18,20,22,24,25 25:2,3 26:23 27:3 39:1 47:20 48:1 53:20 54:1,5 56:4 61:5 62:9,15 67:3 69:16 78:17 79:2 80:18 81:2,11 83:8,13 86:1 88:7 92:13 93:7 96:10 98:11 99:5 100:9 102:11 105:21 107:3 108:18 109:16,22 110:15 112:11 113:17 129:9 143:13 145:1,24 150:9 156:23</p> <p>Dutch 31:16</p> <p>duties 121:1</p> <p>duty 78:16 117:23</p> <p>DVR 87:4 148:10</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 109:1 112:9</p> <p>easier 29:16 128:23 129:23</p>	<p>EASTERN 1:1</p> <p>easy 87:19</p> <p>ECDIS 20:10,11 41:5 48:15 60:5,14,17,18, 22,25 61:1,4,12,16 62:1,4,12 66:21 67:22 126:24 127:18 143:16</p> <p>E-C-D-I-S 20:7</p> <p>Echo 31:2,11,12,18, 19,23,24</p> <p>edge 76:5</p> <p>effect 96:3,17 124:17,18,19 133:14,20 134:12,19 138:25 150:6 155:7</p> <p>efficient 121:2,4,9,13,1 6</p> <p>eight 24:1 87:1 142:20</p> <p>either 29:11 35:2 42:13 74:8 75:15 82:3 83:15 86:11 104:20 114:24</p> <p>elapsed 86:22</p> <p>ELDON 1:3</p> <p>else 6:20 36:12 37:10 40:24,25</p>
---	--	--	---



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41:18 42:16 51:14 87:9 88:18 129:2 153:1 e-mail 2:6,12,18,24 3:6 69:5 105:7 emergency 58:19 59:1,13,20 60:1 64:21 122:19 125:16 141:25 eminently 11:13 employed 30:18 32:19 159:14 employer 18:7 25:17 32:4 employment 32:17 engage 88:3 engaged 66:15 103:7 107:10,22,24 109:3 110:5 111:18 114:21,24,25 engaging 110:18 engine 35:1 81:24 82:2,5,6 83:6,19 88:3,13 98:18 102:19,24 117:3 119:25 120:11 122:4,5,8 125:20 129:3 135:15 141:16 142:1,2,13,16,	17 143:5,7,10 146:23 147:3,5,6 152:23,25 153:8 155:16 engineer 92:2 116:19 117:20,25 119:20 120:9 122:7 137:21 141:10,18,22 142:16 143:4 153:6 engineering 138:1 140:5 engineer's 118:11 engines 1:8,9 83:13 121:21 122:11 125:23 141:10,23 154:8 English 6:4,5 10:3,4,12,13,2 1 17:18 21:1 22:2 30:5 31:2,9,12,19,2 3,24 32:3,8,11,12 33:5,16 34:5,7,11,14,1 6,23 35:4,9,11 39:10 40:20 42:5,21 43:7 49:7 51:16 56:10 57:24 60:3 63:8,9,14 69:15 71:1,6 72:5 74:6,16,24	80:5,10,13,16 85:18 106:12,14,15,1 7 107:11,25 108:14 115:9 122:20 123:13,15,19 124:15 136:11,16,17 137:7,8,16,17 140:23 143:5,9,11 147:13 151:11 152:8,10,22,23 155:5 ensure 121:2,20 enter 24:19,24 25:20 125:9 entered 25:1,13,25 52:22 63:12 64:2,9 82:19 105:16 106:8 160:18 entire 38:22 48:3 62:5 81:7 85:15 92:10 107:5,14 124:17 147:6 160:16 entirely 112:22 entirety 64:3 115:6 entity 21:20 entries 39:2,8 entry 114:7 115:18 116:2,7,13,17	117:5,11,15 119:13 121:1 equipment 1:8,9 112:2 120:10 135:8 equipped 29:17 30:19 128:17 138:8 equivalent 30:10 Errata 160:1,20 especially 66:18 ESQUIRE 2:3,9,15,20,21 3:3 established 64:20 65:1,14 127:8 estimate 126:10 132:15 139:18 Europe 105:22,25 European 115:15 event 14:22 97:11 125:8 events 124:25 everyone 36:11 51:14 Everyone's 32:21 everything 10:15 21:9 90:7 97:7 141:4,7 exact 11:24
---	--	---	--



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<p>48:15 90:24 99:18 128:5 146:14 exactly 11:1 19:19 23:16 44:25 71:14,15 119:7 126:8 143:19 146:6 149:20 EXAMINATION 4:4 13:8 example 76:1 Excellent 11:15 69:6 except 32:17 46:14 64:21 109:2 exchange 27:5 excuse 29:22 33:12,18 110:23 113:4 132:18 135:21 execute 150:13 exercise 66:14 exhibit 4:7 11:18,19,20,25 12:1 36:13,16,18,19 ,20,25 37:24 39:3 40:24 41:4 42:2 48:5 59:6 69:21,22 72:1 94:23,24 95:8 114:5,6 EXHIBITS 4:6 existence 98:23 expect 64:12</p>	<p>99:23 100:2 110:14 128:12 expected 125:17 expecting 128:10 expedited 156:18 experience 66:17 89:20 119:23 133:2 138:7 experts 19:5 30:8,9 51:5 Expires 158:18 explain 9:25 14:4 21:5 47:13 132:24 explanations 9:10 expressly 16:23 extent 7:12 9:23</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facilities 46:20 fact 107:21 108:13 134:8 fail 103:1 109:22 failed 100:8 102:6 107:4 109:17 112:8 113:2,12 114:11 116:14 failure 100:10</p>	<p>fair 30:16 40:4 97:22 109:13 113:1,17 154:13,18,23 155:14 fairly 16:18 Fairview 44:14 fall 99:17 FALLON 1:3 familiar 44:16,17 64:8 65:18 138:14,15 147:13 familiarized 64:10,14 family 7:10 fantastic 8:14 farthest 128:1,2 fashion 112:7,12,24 fast 79:22 144:22 153:15 154:7 faster 138:12 federal 15:21 65:12 66:4 feed 96:20 Feeder 32:12 Feederlines 32:11,13,18 feel 59:13 field 9:11 136:16</p>	<p>fifth 73:22 fighting 8:12 final 42:3 financially 159:15 finding 7:18 findings 113:21 fine 12:2 51:12 60:8 68:25 69:23 71:11 82:24 93:12,15,18 135:25 137:6 149:6 156:25 finish 14:17 93:13 finished 156:2,4 first 14:7 17:12 21:15 23:8,15,16 24:4 25:4,25 27:19,22 28:8,15,17 29:7 39:19 40:21 43:15 48:21 50:12 52:15 53:23 55:5 74:12,14,15,16 ,17 80:11 88:1 100:22 111:25 121:1 124:21 125:1,12 126:25 127:19 128:22 129:5,7,25 five 21:16</p>
--	--	--	--



51:18 55:5 56:2 73:19 94:14 115:21,25 118:19,21,22,2 5 120:15,23 135:6,7 143:8,11,12,20 149:7 five-minute 136:1 143:14 fixed 98:9 flaks 100:21 FLEET 2:20 flexible 130:25 flood 24:10,11,14,15 ,20,24,25 25:2,7,13 94:11 F-L-O-O-D 24:16 floor 92:21 93:9 Florida 1:15 5:5,7,10 158:3,17 159:4,8 Flotte 2:15 69:25 fluent 136:11,23 137:7 fluke 101:3 flukes 99:24 follow-up 93:15 155:22	font 70:22 71:16 force 102:22 103:15 134:12 139:8,15 forces 85:4 100:11 102:12,14,24 forecastle 79:4,9,13 81:2 F-O-R-E-C-A-S- T-L-E 79:12 foregoing 158:7 159:10 foreign 10:22 form 15:22 28:3 40:6 67:12,13 91:10,11,14 98:20 136:13,18 145:10 148:7,19 149:19 150:5,15 155:2 formal 82:12 format 115:15 119:13 forming 146:20,22 forward 11:19 34:25 35:5,6 50:6 82:3 83:15 88:4,9 98:15 99:14 112:7,12 140:21 141:7 150:14,17,18	151:1,13 152:14 153:15,20,22 154:7 forwards 83:20 foundation 137:1 fourth 74:22 77:23 114:14 frame 144:24 145:6,11 146:5 fresh 39:16 FRIDAY 5:5 front 38:25 49:21 63:4 67:20,21 70:24 89:7 115:10 120:24 128:13 132:2 139:20 142:9 143:2 144:18 146:10 frozen 32:21,23 full 17:9 88:13 108:14 142:4 fully 66:17 107:19,24 108:6,13,14 114:21 FURNITURE 1:8,10 <hr/> G <hr/> gain 141:11 GAMBEL 2:21 gas 19:8 gears 138:5	general 26:15 84:23 138:6 generated 99:5,7 104:10 105:16 107:17 germane 71:21,24 gets 96:8 getting 27:16 63:6 111:20 113:25 122:25 123:2 126:3 132:19 GG 158:19 gift 117:25 given 14:2 37:6,15 67:9 75:19 87:5 122:2 152:20 159:11 gives 135:13 148:3 giving 82:5 glasses 19:12,14,15,23 ,24 20:1,5 goal 70:13 GOLDEN 2:19 Golf 31:1 governing 65:12 66:4 government 21:20 23:5 GPS 135:13 graduate 23:9
--	--	---	--



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<p>graduated 23:6</p> <p>granted 20:25</p> <p>Great 69:6 73:8 136:6</p> <p>greater 133:3 138:20 140:17</p> <p>ground 88:8 135:14</p> <p>group 32:9,13</p> <p>grows 70:4</p> <p>Guard 33:24 37:12,13,17 38:10</p> <p>guess 137:1</p> <p>guys 7:17 30:1 69:5 148:21 156:3</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 68:24 69:7 105:9 149:2 150:2</p> <p>half-a-day 105:13</p> <p>hand 12:16 151:10,12</p> <p>handle 128:17</p> <p>handles 132:20</p> <p>handwritten 4:10 36:17 48:12</p> <p>hanging 102:10</p> <p>happened 35:16 39:17 94:20 110:12 111:24</p>	<p>happens 9:15 99:17</p> <p>hard 70:5,6 87:12,13 88:12 110:11 128:3,4 138:24</p> <p>hatch 57:12,20</p> <p>hatched 78:7</p> <p>haul 93:2</p> <p>hauled 92:15</p> <p>hauler 34:9</p> <p>haven't 36:10 58:21 148:22</p> <p>hawsepipe 74:3 76:4 94:3,6</p> <p>H-A-W-S-E-P-I-P-E 76:4</p> <p>head 154:11</p> <p>headed 44:6 45:8 46:4 47:18</p> <p>heading 82:3</p> <p>hear 14:25 15:2 17:16 20:19 22:14 50:12 53:22 60:7 70:5 82:22</p> <p>heard 43:2 51:25 136:20,22</p> <p>hearing 87:24</p> <p>heave 114:1</p> <p>heavy 100:12</p> <p>held 2:9 22:24 23:3 96:18</p>	<p>109:16,21 113:17 144:8,13,19</p> <p>helm 2:19 46:20 151:10,12</p> <p>help 129:14 130:10,13 142:13</p> <p>helped 130:9</p> <p>helpful 148:4</p> <p>helps 130:15,16</p> <p>hereby 159:8</p> <p>herein 159:15</p> <p>he's 32:18 36:3 114:6 148:19</p> <p>hey 6:24 16:13</p> <p>high 138:22</p> <p>higher 132:25</p> <p>hired 32:15</p> <p>hit 33:22 35:6 111:13 112:1 125:18 154:11</p> <p>HITE 2:15</p> <p>hold 87:8 103:16 122:11 130:11 153:24</p> <p>holding 87:21 107:18 109:25 144:3,17</p> <p>Holland 105:25</p> <p>home 17:15 27:6</p> <p>hook 123:18</p> <p>hose 94:3</p> <p>hour 32:25</p>	<p>51:11 59:6 68:24 69:7 93:10 105:6 118:8 122:12,13 134:18 135:24 149:2,5</p> <p>hour-and-a-half 33:21</p> <p>hours 34:22,23 39:5 59:12,19 62:6,7 78:14 105:10 115:21,25 126:14,15 149:21,22 155:4</p> <p>HUBBARD 3:3</p> <p>huge 132:23</p> <p>Huh 123:14</p> <p>hydrodynamic 140:4</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>I'd 118:9</p> <p>idea 104:22 126:2</p> <p>ideal 134:2</p> <p>identical 103:25 105:3</p> <p>Identification 12:1 36:19,20 69:22 95:8 158:10</p> <p>identified 36:13,18 114:4</p> <p>identify 27:12</p>
---	--	---	---



<p>identity 12:24</p> <p>I-E-P 31:4</p> <p>I-hook 123:13,15</p> <p>I-L-D-E 13:25</p> <p>I'll 11:21 12:10 20:22 27:24 28:2 60:10 83:1,24 84:11 141:20 143:16 149:4</p> <p>Illinois 6:16</p> <p>I'm 7:18 9:11,25 10:7,12 11:19 12:13 13:17 14:6 15:11 16:16 18:3,6,14,16 21:12 23:25 26:2,6 27:10 28:22 30:13 34:2 35:18 36:22,24 38:7,12 44:16,17 45:1,19,21 46:22 47:5 52:14 58:11 62:21 64:8,10,22 65:24 67:23 72:13 75:21 79:18 80:10,11,20,23 81:4 82:5 84:3,13,14 85:1 86:9 87:1 89:2,10,11</p>	<p>92:13 94:21 97:25 100:6 105:23 106:10 112:20 113:20 117:17,18 118:5,25 119:3,21 132:11,19 136:4,8 138:5 140:14 144:16 146:9,13,15 149:15 156:10,11,12</p> <p>immediate 122:18</p> <p>immediately 48:23 56:20 115:17 116:16 117:8 122:18 125:19 132:2</p> <p>IMO 1:7,9</p> <p>impact 132:23 133:5 155:8</p> <p>imparted 102:24</p> <p>imply 147:9</p> <p>important 67:9 87:14 124:8</p> <p>impossible 21:8</p> <p>inaccurate 14:21 87:3</p> <p>INC 1:11 2:8,14</p> <p>incidences 39:24</p> <p>incident 22:8,17 33:7,24 37:9,19</p>	<p>38:5,21 39:20 40:15 43:2,25 46:3,12 56:12 58:3,9 61:22 91:5 100:9 101:1,8,14 102:1,7,11 107:3,17 108:1,16,17,18 109:4,6,11,16, 22 110:5,10 111:3 131:23 139:1,13,19,25 140:11 147:19,24</p> <p>included 95:12</p> <p>includes 98:5</p> <p>including 98:17</p> <p>incorrect 48:14</p> <p>increased 141:12 142:25 143:15</p> <p>independent 66:14</p> <p>INDEX 4:1</p> <p>India 31:1,2,12,19,2 3,24</p> <p>indicate 62:2 106:19 119:21</p> <p>indicated 61:12 67:4 69:20 74:21 109:8 126:18 160:19</p> <p>indicates 117:7</p> <p>indicating 74:21</p>	<p>indication 119:24</p> <p>individual 37:23 38:16 43:11 150:8</p> <p>inferred 98:23</p> <p>information 37:5,15 60:18 73:9 81:24 82:5 104:24 105:10 115:14 148:3</p> <p>informed 33:23 47:1</p> <p>initial 122:14</p> <p>initially 58:16 119:18 126:18</p> <p>inquire 19:4</p> <p>inside 12:12</p> <p>inspect 92:2,25 93:5 97:1 99:2</p> <p>inspected 95:24</p> <p>inspecting 89:23 90:2 96:15</p> <p>inspection 90:14,15,20 91:1,18,21 92:4,9,11,14 93:8 96:1,2,5,13,22 98:7,11,21 104:13</p> <p>inspections 90:10,11,12 91:7,17,23</p>
--	--	--	--



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<p>95:3 104:15,16 instead 43:17 47:14 150:12,13,25 instructed 38:5 108:5 141:9,22 instructions 82:1 103:19,22 121:22,25 122:2,14 intention 11:18 interested 159:16 interests 29:4 35:19 63:19 69:17 105:15 108:21 115:3 120:21 interim 107:16 108:4 interject 16:2 International 43:5,6,8,9,12 Internship 18:8 interpret 9:1 10:15 120:7 interpreted 6:18 interpreter 3:8,9 4:8 6:2,6,14,15 8:23,25 9:5,7,9 10:5,9,11,15,1 9 11:4,7 13:2,4,13,18,2 1</p>	<p>17:11,16,19,22 19:4 20:18,24 21:2,11 22:5,12,14 26:20 29:17 30:8,9 31:3,14,25 33:18 34:4,6,9 35:8,13 39:11 40:11,21 47:3 50:11 51:4 53:7,22 56:25 58:4 60:7,9 63:16 67:23 82:22 84:10,16 85:2 95:20 97:14 107:12 109:18 110:23 111:17 123:7,24 124:1,3 135:21 136:2 139:22 145:3 interpreters 7:4 9:1,2 72:2 Interpreter's 17:11 interpreting 10:12 Intership 2:8 18:9,11,12 25:19 32:8,9,14,16,1 7 I-N-T-E-R-S-H- I-P 18:11 Interships 104:20 involved 90:7</p>	<p>159:15 involving 22:8,18 33:8 80:19 Ionian 132:3,6,10 iPad 41:14 Islands 28:23 29:1 36:15 ISM 91:17 isn't 39:22 102:21 117:19 issue 20:14,16,22 97:19 105:1 119:21 124:24 130:16 issued 20:9,12,25 21:15,20 22:22 23:4 24:5 28:22,25 36:14 90:14 108:7 124:13,20 italics 70:23 71:5,8,18 72:1 Item 121:20 it's 7:21 8:17 9:13 10:6 11:18 12:8 13:23 18:8 19:19 21:8,16,22 22:1,3 26:15,16 30:6 31:16 32:21 33:12,13 36:8 39:23 42:12</p>	<p>47:9 48:19 49:19 51:15 53:16 54:10 61:9 62:25 63:2 64:23 65:19 69:24 70:3,5,6 71:7,11 74:5 75:3,5 76:13 77:15 83:12,17 90:18 91:19 92:20 93:2,4,20 94:5,8 95:4 97:3,4,6 98:8,10,11,12 103:20 105:5 108:7,11 110:11,23 111:17 113:1,4 114:5 116:11 118:7,13 120:24 125:7 127:6 128:3,4,23 129:25 131:3 134:8 135:23,25 138:24 139:14 149:14 152:6 154:13,23 155:14 156:25 I've 6:14 36:1 63:8 70:25 136:20,21,22 <hr/> J <hr/> JAMES 2:3 Jan 79:16 JANIS 1:3</p>
---	---	---	--



<p>Jankowski 3:8 6:7 7:23 9:17 11:12 13:4,5 JANKOWSKI 4:8 January 29:5,10 52:15 115:4 JBERCAW@KINGJUR GENS.COM 2:6 Jim 6:8,24 7:1 8:4 12:2,23 13:10 16:3 28:3 30:15 35:25 51:17 63:7 68:13 69:23 71:10,12 117:17 148:21 156:1 job 9:18 11:8 JODY 1:13 5:9 158:15 159:7,23 joined 29:5 JUDGE 1:3 judgment 66:14 June 1:13 5:5 159:18 JURGENS 2:3</p>	<p>53:21 54:2,23 55:24 56:6,14 57:7,10 58:13 61:7,13,19,24 62:12 63:21 64:25 65:15 66:1,4,10,13,2 3 67:11 76:20 77:25 78:11,23 79:3 101:7,23 110:16 121:3,10 122:16,22 126:13 131:8 132:3,8 133:19,25 135:1 138:11,19 140:15 154:15 kinds 71:16 KING 2:3 knew 44:5,11 47:10 66:3 135:5 152:24 knots 135:6,7 knowledge 66:18 109:13 known 6:9 63:24 Kowalski 40:20 K-O-W-A-L-S-K-I 40:22</p>	<p>lady 9:14,15 land 28:4 land-based 108:24 landlubbed 132:19 landman 75:20 language 72:1 136:9,16,24 languages 137:7 Large 159:8 last 17:13 21:16,17 40:22 43:15 51:25 53:17 80:12 90:20 95:21 99:12,18 140:16 late 118:7 later 72:24 82:11 122:8 lateral 127:21 latest 99:14 L-A-W 17:23 lawyer 80:7 laying 149:17 lead 56:10,11,19 leading 42:18 124:25 least 48:1 57:18 62:6 64:12 81:1,4 105:9 136:11 leave 8:12</p>	<p>35:22 60:22 137:23 leaving 44:3,5 45:15 108:5,6 123:4 length 62:5 73:13 lengths 86:5 less 52:20 53:5,11 76:22 77:18 87:5 105:13 126:11 130:24 131:4 133:7,8 134:2 135:18 138:21 144:25 let's 62:24 68:19,22 72:6,13 82:15 113:7 119:9 134:5 156:23 letter 145:17 152:6,9 161:5 letters 50:4 147:14,17 letting 85:11 129:13 130:7,10 Leuvediep 31:11,14 32:6 L-E-U-V-E-D-I- E-P 31:15 level 125:5 lever 151:10,11 152:24 153:9 license 18:17,22,24,25</p>
<hr/> <p style="text-align: center;">K</p> <hr/> <p>KATARZYNA 3:8 KATE 4:8 Kenner 27:20,25 28:9 43:1,19,21 44:8,21 45:4,6,16,17,2 3 46:1 47:25</p>	<hr/> <p style="text-align: center;">L</p> <hr/> <p>lack 137:1 ladder 123:13,15,16,1 7,18,20</p>		



19:2,9 20:16,22,25 21:14,21 22:20,22,25 23:2,8,13,21,2 2,25 24:5 36:12 licenses 22:10,23 23:3 life 12:11 136:21 lift 111:8 lifted 93:25 likely 11:21 92:21 131:5 Likewise 154:23 Lima 31:1,11,18 line 48:6 160:3 lines 32:12,13 61:6,12 L-I-N-G-D 31:3 Lingediep 30:23,24 31:4,5,6 32:6,10 lining 105:17,20 106:5,8,16 107:4 108:12,22 109:9 link 74:6,9,13,15,1 6,17,18,20 75:1,15,25 101:17,18 102:11,21,25	112:9 links 75:1,9,10 96:7,9 101:15,16,19 102:5,13 list 6:18 12:24 80:8,9,10,22 81:25 115:4,13 137:23 listening 7:7 87:3 little 12:4 15:3 21:7,8 34:25 49:10,12,15 51:11,18 65:23 75:11 84:3 85:8 92:1 94:7 118:8,9 125:13 129:1 135:24 152:8,9 LLC 1:14 2:3,15 5:4 LLP 2:10 load 56:9 67:15 loaded 27:7 56:11 67:9,15 131:18,22,23 132:7,13 133:2,9 134:3 loading 33:9 42:22 loads 100:11 local 6:15 33:24 44:18 59:12 65:18 66:18 72:17 114:7 115:24	126:14 locale 45:25 locally 65:19 located 46:9 50:10 57:6 60:5,15 61:11,18,23 62:11 64:24 66:13 92:22 93:7 115:6 122:21 135:9 151:6 location 27:9 44:10,23 46:2,4,7,10,13 ,15 47:12,14,18 55:4 57:11 61:11 65:5,6,20 66:19 79:7 101:10 125:21 126:5 129:18 131:17 133:24 134:5,10,11,16 138:16 locations 128:25 locked 102:20 locker 51:3 52:2,4,19,20 53:5,6,11,12 log 39:9,12,13 41:2 67:22 82:9,12,19 long 23:12,18,20 62:25 68:22	84:2 122:10 127:6 146:5 longer 72:19 75:11 93:3 105:12 118:14 130:12,21,22,2 4 131:4 140:7 lookout 121:2,4,9,13,1 6 lose 88:8 lost 85:1 96:20 101:3 102:17,18 107:11,13 129:7 lot 38:24 127:6 128:15 148:15 louder 15:4 LOUISIANA 1:1 2:11,17,23 3:5 LOUSIANA 2:5 lowered 55:1 lowering 110:22 LTD 2:20 LUGENBUHL 3:3 lunch 68:18,23 lying 130:23 LYNN 158:15 159:7,23 <hr/> M <hr/> M/E 116:13 M/V 1:7,9 2:8,20
--	--	---	--



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<p>Madam 6:2 67:23</p> <p>Magda 7:5 33:12 110:23 111:17 113:4</p> <p>MAGDELENA 3:8</p> <p>MAGISTRATE 1:3</p> <p>main 18:16 82:17,18 83:13 88:3,13 106:15 120:11 121:21 122:10 125:23 141:10,23 142:16,17 146:22 147:3,5 155:16</p> <p>mainly 138:19</p> <p>maintain 83:13</p> <p>maintained 121:2 145:20</p> <p>maintaining 112:2</p> <p>maintenance 104:3,7,8,12,1 7 105:1,21 106:12,13,15</p> <p>Majka 3:8 7:5 33:12 113:4</p> <p>major 6:18</p> <p>malfunctioned 149:21</p> <p>malfunctions 149:17</p> <p>man 22:2 28:4 78:18</p> <p>management 104:20 105:2</p>	<p>108:24 109:12</p> <p>maneuver 81:16 87:23 110:16 128:24 129:1,23</p> <p>maneuvered 142:3</p> <p>maneuvering 54:2,6 58:15 61:5 82:16 83:9,14 87:18 111:2 141:2</p> <p>maneuvers 53:21</p> <p>manner 66:20</p> <p>manual 103:19</p> <p>manually 103:7,8,12</p> <p>March 28:10 109:10</p> <p>Marek 3:9 7:4</p> <p>mariner 78:16 79:17 136:21</p> <p>mariners 62:17 76:11 79:22 122:17</p> <p>mariner's 59:12</p> <p>Mariners 4:12 62:22 63:20 64:4,15 65:10 66:2 94:22</p> <p>marital 20:12 21:23 22:1</p> <p>maritime 7:11 9:4 22:1,3,5,11,19 ,23 23:7,9</p>	<p>mark 75:4</p> <p>marked 12:1 36:19,20 64:18 69:22 74:23 95:8</p> <p>marker 75:17</p> <p>markings 75:4</p> <p>Markowski 1:12 5:3 11:17,20 13:10,17 17:10 28:23 36:13,15,17,18 ,25 37:24 38:18 39:3 40:24 41:4 42:2,16 48:5 59:6 66:3 69:20,21 70:18,21 94:24</p> <p>M-A-R-K-O-W-S- K-I 17:13</p> <p>Marshall 4:9 28:22,25 36:15</p> <p>MARTIM 3:9 29:22</p> <p>mask 12:10</p> <p>mass 49:24</p> <p>mast 49:19 50:7,10,15 126:6,19 127:9</p> <p>master 18:13,14 24:23 29:8 30:19 38:19 42:9 45:23 48:22,24 59:5 60:13 66:15</p> <p>master's 22:22</p>	<p>24:5 42:1 120:22 124:11,13</p> <p>material 93:23</p> <p>math 77:10</p> <p>matter 9:14 140:13 160:17</p> <p>maximum 103:15</p> <p>may 5:10 12:8 14:11,20 24:22 25:3 27:21,25 28:15,16 29:22 33:8,9 37:3 43:22 45:15 48:14 54:24 66:21 69:18 87:3 106:18 108:8,10,11,22 ,23 115:5,21 116:3 120:22 121:4,20 122:1 124:13,14,16,1 8 126:16 128:18,21 131:7 132:22 133:10,18 134:9 137:18,20 147:19 148:22</p> <p>maybe 22:3 49:11 98:2 105:13 126:11 140:20 142:20 144:17 154:8,10,11</p> <p>MDAB 3:9</p> <p>me. I 160:18</p> <p>mean 9:18 29:19</p>
---	--	--	--



<p>48:8 85:10 88:15,23 91:24 116:17,19 147:18</p> <p>meaning 14:20</p> <p>means 10:1 17:4 22:2 28:4 72:5,6 73:19 77:7 107:20</p> <p>meant 22:6 28:14</p> <p>measure 136:23</p> <p>measured 49:2,24</p> <p>measurement 49:20,23 50:2 55:14,20</p> <p>measures 49:18</p> <p>measuring 96:6,9</p> <p>mechanism 103:4 107:21</p> <p>MEERVELD 1:3</p> <p>member 121:7</p> <p>members 137:10,13,16</p> <p>memory 27:18 38:3</p> <p>men 80:22</p> <p>mention 134:15</p> <p>mentioned 19:6 39:14 102:5</p> <p>mentioning 67:14</p> <p>MERCER 2:15</p>	<p>message 152:25</p> <p>meter 55:1 77:2,3</p> <p>meters 48:18,19 50:8,15,18,23 52:9,12 56:2,3 74:13 76:22 77:2,11,15,17 93:3 126:11 128:6</p> <p>Miami 25:16,18,21 26:1,9,14,17 27:3,11 30:23 32:8,9</p> <p>Michael 2:9 69:4</p> <p>MICHAEL.HELD@PH ELPS.COM 2:13</p> <p>middle 17:12 66:25 138:12</p> <p>midnight 38:24</p> <p>Mike 7:3,18 40:1 94:11 114:2 117:24 118:12 123:11</p> <p>Milde 1:7 2:8 13:12,20,21,24 22:9,18 24:22 25:3 26:16 27:19,25 28:9 29:4,12,14 33:8 35:19 37:19 38:5 41:19 42:10 43:18 44:3,20 45:6,14 46:11,18</p>	<p>47:7,12,20 48:6 49:16,24 50:7,10,16,24 51:2 52:2,5,15,25 53:20 54:1,5,10,20,2 3 55:15,23 56:5,8,13,17 57:8,11,18,19 58:3,12,19 59:1,7,13,20 60:1,19 61:5,11,17,18, 23 62:9,13,15,17 63:12,19 64:2,8,14 65:11 66:1,8,22,24 67:3,10 69:17 73:10,25 75:1 76:20 77:24 78:11 79:3,25 80:4,19 81:12,18 82:20 83:5,8 84:8,21 85:21 86:23,24 87:6 88:2,7 89:24 90:3,21 91:2,8,22 92:3,14 95:4,7,12,17,2 3 96:15,23 97:2,11,20 98:14 99:25 100:8,14,19 101:6,22 103:4,25 105:15 108:21 109:12</p>	<p>111:5,13 112:7,12,22 113:2,12,13,18 114:17 115:3,4 120:21 121:3,9 122:11,16 125:1,6,9 126:7,12,19 127:9,20 128:9 131:11,19 132:2,8,22 133:10,17,18,2 1,25 134:14,24,25 135:9 137:13,20 138:2,17 139:7 140:5,15 141:11 143:25 144:13,14,25 145:6,13,17,22 146:6,23 147:1,2,3 149:17 150:2,9,13 151:3,7,23 153:11,12,16,1 8,21 154:13,18,24,2 5 155:15</p> <p>mind 154:9</p> <p>minor 42:6</p> <p>minute 87:5,10,24 94:15 142:19</p> <p>minutes 51:18 87:2 116:10,11 117:15 118:19,21,22,2 5 120:15 127:4</p>
---	---	---	---



<p>135:24 142:20 143:9,11,12,21 149:1,3,7,8 156:2</p> <p>miss 14:20</p> <p>missing 21:13</p> <p>Mississippi 24:9,19,24 25:2,6,13,20,2 5 26:9,13,18 27:23 28:18 46:9 56:18 62:16 63:12 64:3,9 65:13 91:6 100:15 105:17 106:8 132:21 134:16 138:11</p> <p>misspoke 139:23</p> <p>moment 16:3 29:24 107:10</p> <p>month 25:24 91:4,25 92:7 98:10 99:5,8,12,14,1 8,20</p> <p>monthlies 91:20</p> <p>monthly 90:10 91:1,7,11,14,1 8,21 92:3,13 97:1,4,17 98:15,16 104:18 106:11</p> <p>months 16:13</p> <p>moor 28:3,5,6 44:4 47:14</p> <p>moored 27:20,22,25</p>	<p>28:4 76:20</p> <p>morning 13:16 156:24</p> <p>Morski 21:22</p> <p>mostly 92:11</p> <p>move 7:22 75:18 88:4,6 94:8 112:7,12,23 125:21 126:5 131:1 134:5 140:14</p> <p>moved 33:11 55:6 102:20,23 153:15</p> <p>movement 81:19 102:24 127:21</p> <p>moving 127:22 135:17 143:4,7 153:19,22 154:6</p> <p>mowers 94:11</p> <p>mud 93:23</p> <p>multiply 77:14</p> <p>MURPHY 2:21</p> <p>must've 153:1,8</p> <p>myself 41:1</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name's 6:8</p> <p>nation 18:4</p> <p>national 137:22</p> <p>nationals 137:21,23</p> <p>native 136:9</p> <p>natural 85:3</p>	<p>naturally 14:25 84:25</p> <p>nature 85:4</p> <p>Navglish 136:24</p> <p>navigated 24:9</p> <p>navigation 2:8 18:9 25:19 32:8,10,14,16, 18 65:13 125:6 142:24</p> <p>Navigational 137:6</p> <p>necessarily 106:21 107:2 155:3</p> <p>necessary 9:21 10:12 34:19 81:6 106:25 147:6</p> <p>Netherlands 106:1,4</p> <p>night 38:20,21,22 39:1</p> <p>nine 24:1 51:2 52:1,11,13,23 77:20</p> <p>NM 4:12 63:23</p> <p>NM00050 80:10</p> <p>NM003241 62:23 63:23 64:19</p> <p>NM005190 115:7</p> <p>NM005219 115:7</p> <p>NM0061147 94:25</p> <p>NM0606112 94:24</p>	<p>NM51 35:20</p> <p>NM51-53 36:2</p> <p>NM5614 106:11</p> <p>NM7 120:23,24</p> <p>NM-9 18:18</p> <p>nomadic 1:7 2:7,8 13:12,20,21,23 ,24 22:8,18 24:22 25:3 26:16 27:19,25 28:9 29:4,11,14 33:8 35:19 43:18 44:2,20 45:6,14 46:11 47:7,12,20 48:6 49:16,24 50:7,9,16,24 51:2 52:2,5,15,25 53:20 54:1,5,10,20,2 3 55:15,23 56:5,8,13,17 57:8,11,18,19 58:3,12,19 59:1,7,13,20 60:1,19 61:5,10,11,17, 18,23 62:9,13,15,17 63:12,19 64:2,7,14 65:11,25 66:8,22,24 67:3,10 69:17 73:9,25 74:25 76:20 77:24 78:10 79:2,25</p>
---	---	--	---



80:4,19
 81:12,18 82:20
 83:5,8 84:8,21
 85:21 86:23,24
 87:6 88:2,6
 89:23 90:2,20
 91:2,8,22
 92:3,14
 95:4,7,11,17,2
 3 96:15,23
 97:2,11,20
 98:14 99:25
 100:8,14,19
 101:6,22
 103:3,25
 105:15 108:21
 109:12
 111:4,13
 112:6,11,22
 113:2,12,13,18
 114:17 115:3,4
 120:21 121:3,9
 122:11,15
 125:1,6,9
 126:6,12,19
 127:9,20 128:9
 131:11,19
 132:2,8,22
 133:10,17,18,2
 1,25
 134:14,24,25
 135:9
 137:13,20
 138:2,17 139:7
 140:5,14
 141:11 143:25
 144:13,25
 145:6,13,17,22
 146:6,23,25
 147:2 149:17
 150:2,9,13

151:7,23
 153:10,12,16,2
 1 154:13,18,24
 155:15
N-O-M-A-D-I-C
 13:23
none 65:3
nor 159:15
normal 70:22
 117:23
normally 29:25
 71:16 114:22
 122:10
Notary 5:9
 158:16
 159:7,24
notations
 116:19
note 98:7
notebook 41:14
notes 21:12
 82:11 156:23
nothing 12:20
 14:8 53:16
 82:4 97:8
 111:9 149:22
notice 4:12
 19:12 62:17,22
 63:20 66:2
 94:22 108:3
 141:11
noticed 35:3
 86:12 98:11
 127:20 141:21
 150:16
Notices 64:4,15

65:10
November 6:11
 31:1 90:23,24
nozzle 94:6
NP69A 64:4
nu 74:7
numerous
 115:3,13

 O

oath 69:14
 158:1
object 28:2,3
 40:5 67:12
 136:13 148:18
 149:19
 150:5,15 155:2
objected 136:18
objecting
 117:17
objection 16:20
 17:6 39:23
 69:19,24 70:14
 137:3 145:9
objections
 15:22,23,25
 17:4
obligated 65:17
observations
 135:10
obtain 39:7
obtained 147:25
obviously 73:18
occasion 131:7
occasions

128:21 129:2,9
 130:1
occur 56:12
 108:23 125:22
occurred
 27:4,21 28:10
 109:11 147:19
occurrence 89:3
 109:13 128:8
off-going 72:18
office 20:12
 21:23 22:2,3
 104:23
officer
 23:1,2,4,12,18
 ,23,24,25
 24:2,3,8,19
 25:10 29:11
 39:20
 40:15,17,18
 41:8 58:25
 59:9,16
 64:6,7,12
 72:5,6,18,19,2
 1
 78:12,13,15,21
 ,25 79:1 82:11
 89:25 90:1,4
 92:16 95:5
 96:16,22,25
 97:11,22,25
 99:23 100:2
 106:12,13
 121:5,8,11,12,
 14,15
 124:17,21,22
 125:2 141:21
 143:4,7
officers 72:22



78:17,20 89:17,21 137:20,25 officer's 23:13,21,22 official 3:8 8:3,8,15 9:16 43:20 71:2 136:16,24 Oh 32:23 35:23 55:18 103:22 105:12 123:5 oil 19:8 okay 6:23 7:2 9:5,12,16 10:4,10 11:5 14:15,24 15:3,20 17:8,19 19:12 20:6,16 21:14 23:14 25:24 26:22 27:2,10,24 31:7,25 34:15 35:13 36:5 37:2,3 38:4 39:11 40:3,5,9,10,11 42:9 43:3,11,17 46:18 48:25 49:22 50:6 51:12,17,19 52:4,8,14 56:7 58:13 59:11,18 60:4 61:9,16,22 62:9,23 63:10,15 64:23 68:21 69:11	71:4,9 73:8,11,17,24 74:4,25 75:20 76:14 77:4,10,17 78:9,21 81:11 83:24 84:1,4,10,16 85:3,8,16 89:10 91:14,21 94:13 95:2 96:14,20 97:7 98:20 102:9 103:7,9,15,20, 25 104:3 105:9,14 106:24 107:3,16 108:20 110:2,7 111:11 112:6,15,17,20 113:7,8,16 115:7,24 116:2,6,12,16, 21 117:5,11,14 118:6,24 119:9,11,13 120:3,10,14 125:5,8 127:19 128:20 131:7 133:2,23 134:21 135:20 137:2,9 138:5,8,9 139:22 141:19 142:2 143:4 144:2 145:12,15 146:5 147:19,22 148:5 149:16	150:8,12 151:18,22 152:2 153:24 154:5 155:11,25 156:21 onboard 33:15 37:8 78:20 85:24 88:21 89:22 90:4 91:23 92:18 96:12,14 101:17,18 Onego 31:22 32:1,10 ones 34:15 111:16 onshore 104:23 onto 27:7 94:3 97:20 open 107:8,9,13 opening 56:23 operate 15:11 20:7 22:24 24:6 82:6 88:3 142:17 operated 26:9 81:12,18 operating 10:7 15:20 88:9 110:14 150:9,19 operation 81:3,9,20 operational 107:20 108:7,9,14,15	operations 59:8 61:6 67:4 78:10,22 79:2 80:19 81:11,25 84:7,20 opinion 144:11,15 opposed 45:3 138:13 139:8 options 86:18 orally 122:2 ORANGE 158:4 159:5 order 87:4,8 121:20 136:10 142:22 152:20 156:4,5,8,10,1 1,14,17 ordered 34:25 141:25 orders 54:4,8 111:20 120:22,23 124:12,13,19,2 4 125:19 original 156:14,17 160:21 Orleans 2:5,11,17,23 3:5 26:13,21 27:14,18 28:19 64:24 115:22 OSAKA 2:20 others 31:13,20 otherwise 15:11 21:8 36:24
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80:17 outset 127:7 outside 61:11,19 64:20 65:1,11,14,21 66:1,9 75:22 104:16 151:16 outsider 72:20 overboard 102:10 107:6 overload 152:22,23,25 153:8 155:17 override 54:6 66:15 owner 13:12 104:21 <hr/> <p style="text-align: center;">P</p> <hr/> p.m 59:11 69:10 94:18 157:6 P1 72:7 P2 72:25 page 4:2,7 11:24 35:20 62:21 63:4,11,22 70:21,24,25 71:1 72:7,15 114:6 116:2,7 117:15 143:2,6 146:17 160:3 pages 63:21 115:3 paid 77:23 107:6,19 112:14,22	124:6 paint 74:25 75:3,5 pal 119:2 Papa 31:2,12,19,24 partial 147:24 partially 114:25 participant 148:14 particular 71:25 parties 159:14 passage 46:6 passed 44:24 59:6 142:18 144:18 past 94:22 pay 76:23 114:16 paying 110:9 153:17 pays 76:14 PECK 3:3 Pensacola 56:16,21 people 9:4 12:24 32:23 71:20 72:24 81:5 146:20 percent 38:7 136:11,20,22,2 3 137:4 percentage	136:15 perfect 11:9 68:19 perfectly 38:12 perform 92:5 105:1 150:3 performed 98:7 period 62:10 86:1 113:17 143:14 145:2,24 150:9 permanent 156:11 permitted 15:23 perpendicular 142:8 person 43:16 79:15 80:24 93:20,23 95:13,16 119:22 120:9 personal 93:11,17 personally 158:7 PERSONAM 1:11 personnel 58:2,8 79:3 84:6,19 86:10,14 96:11 110:14 perspective 134:2 Peter 2:20 13:1 70:1 72:21 PHELPS 1:14	2:10 5:3 Philippine 137:9,12,15 Philippines 138:2 phone 146:11,12 phonetic 7:5 21:22 physical 95:6 pick 129:18,19 picked 65:5 72:23 131:16 picking 26:22 piece 120:10 130:23 135:8,20 pilot 33:15,25 34:3,4,5,6,7,1 6,25 37:6,7,8,11,15 ,18,22,25 38:2,4,9,16 41:9,13,16,18, 19,22 42:18 45:20 46:15,20,23 47:1,7,9,13,24 49:4,6,8 54:4,7,9,11,17 ,18 55:3,12 57:14 61:9,14 65:5,7,17 66:7,13,15,18 67:2,7 72:8,11 85:23 86:8,12 113:21 114:3 122:4,24 123:3,4
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<p>124:5,8 125:21 127:1 131:7,16,19 132:7 133:24 134:4,13 141:14,15 145:21,25 146:2,3,11,16 150:2 151:15 152:15,21</p> <p>P-I-L-O-T 34:3</p> <p>pilots 41:15 47:16</p> <p>pink 61:6,12</p> <p>P-I-O 95:20</p> <p>Piotr 40:20 95:18</p> <p>P-I-O-T-R 40:22</p> <p>pitch 29:14,20 30:4,10 82:21 83:2,5,9,16,17 ,21 155:17</p> <p>placed 140:16</p> <p>plaintiff 1:5 2:2 6:8</p> <p>plan 56:13 113:21 146:7,17,19,20 ,22 147:8,9,12,13</p> <p>planned 96:1</p> <p>planning 146:13</p> <p>plans 147:10,14,15</p> <p>playing 10:8</p> <p>please 10:22</p>	<p>12:6,15 13:14,19 15:1 17:9 27:12 30:25 33:7 56:25 77:22 79:10 85:2 106:3 120:7 132:24 134:4 139:10 145:4</p> <p>PMS 104:6,13,19 109:1,8</p> <p>point 11:18 34:24 37:10 49:16,17,25 54:17 55:11 58:21 65:8 81:14,17 86:6 92:13 125:16 126:3 139:10 140:13 144:14,19 145:15 146:18 149:16 152:17 153:3 154:4,6</p> <p>pointing 117:18 139:16</p> <p>points 82:18</p> <p>Poland 17:21,24 18:2,3,5 23:7,10</p> <p>Polish 3:8 6:4,5 7:24 9:20 10:3,4 18:17 19:6 21:20 22:10,19,23 23:4 30:10 36:12 51:15 71:6,19 72:1</p>	<p>136:9 137:10,21,22,2 3</p> <p>Poor 107:17</p> <p>port 8:9 50:9,16 52:4,20 53:5,12 56:16 77:4,6 86:1,11 104:1 105:17 106:19,20 107:4 108:5,6,9,21 109:9 110:3,7,8,18 111:12 112:13,21 113:5 114:16 127:13 145:6,12 151:14 152:7,9,10 153:16</p> <p>portion 100:8 145:17</p> <p>position 18:12 62:2 81:13 87:9,15 99:21 128:3 131:5 140:22,23 145:20 150:17 152:18</p> <p>positioned 87:12 130:20</p> <p>positions 141:7</p> <p>positive 26:3</p> <p>possibility 109:24 110:1</p>	<p>possible 41:6 72:3 81:15 107:24</p> <p>possibly 32:18</p> <p>potentially 84:2</p> <p>pouring 94:3</p> <p>power 102:24 132:25 142:12</p> <p>POYDRAS 2:22 3:4</p> <p>PRALAT 1:13 5:9 158:15 159:7,23</p> <p>prefer 147:24</p> <p>preferred 47:24</p> <p>premise 11:20</p> <p>preparation 55:2 67:18</p> <p>prepare 37:16,23 38:6,9,17 70:1 117:25</p> <p>prepared 148:23 149:11,13</p> <p>preparing 39:6 41:4 46:19 68:5</p> <p>present 3:7 36:23 40:24 48:1</p> <p>preserved 8:16 15:24 16:1,2,4,21</p> <p>presume 89:11</p>
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<p>prevailing 102:3</p> <p>prevent 86:20 125:25</p> <p>prevented 102:9 110:8,12</p> <p>preventing 155:18</p> <p>previous 6:19 45:18 46:7</p> <p>previously 11:16 36:13 53:14 94:22</p> <p>primarily 7:9</p> <p>print 41:19 97:18</p> <p>prior 22:25 23:1 44:20 46:12 58:3,9 61:17 87:10 91:5 107:25 109:11 129:3,9</p> <p>probably 11:9,21 77:14 87:24 116:25 117:2 144:3</p> <p>problem 7:16,21 8:17,18 9:14 20:4 22:17 51:13 91:12 95:11 97:6,21 98:8 116:25 117:4</p> <p>problems 90:11 91:12</p> <p>procedure 5:7 15:21 54:22</p>	<p>58:12</p> <p>proceed 65:22</p> <p>proceeding 159:10</p> <p>proceedings 4:3 6:1,4</p> <p>produced 29:4 35:19 63:19 158:10</p> <p>production 68:11,17</p> <p>professional 9:2,4 11:6</p> <p>progress 69:24</p> <p>progressive 19:23</p> <p>prohibit 65:10</p> <p>prohibited 64:20 65:1 66:16</p> <p>prohibits 65:13</p> <p>promise 14:18</p> <p>propeller 29:15,20 30:5,11 82:21 83:2,17 150:24 151:2,7,23 152:2,19 153:2,11,17 154:25 155:9,14,18</p> <p>proper 30:7 33:19 117:22</p> <p>properly 7:16 90:8 114:22 129:18</p>	<p>proposed 131:19 132:7</p> <p>proposing 131:8</p> <p>prostate 119:4</p> <p>protocol 9:18</p> <p>provide 30:9 54:11 75:17</p> <p>provided 6:10 30:11 63:11,19 69:16 90:19 105:15 108:20 115:2 124:12 134:23</p> <p>providing 30:7 121:12</p> <p>provision 63:24 64:18</p> <p>proximity 76:3,10</p> <p>P-R-Z-E-C 17:22</p> <p>Przeclaw 17:20,21,23</p> <p>P-R-Z-E-C-L-A-W 17:24</p> <p>PTOMPKINS@MRSNO LA.COM 2:24</p> <p>Public 5:9 158:16 159:8,24</p> <p>pull 18:16 35:20,22 62:21 92:10,18 99:1 129:16 143:8</p> <p>pulled 55:9 93:4 113:22</p>	<p>pulling 131:1</p> <p>purpose 56:17,22 57:3 102:2</p> <p>purposes 36:24 38:13</p> <p>PURSUANT 5:7</p> <p>push 142:11</p> <p>pushed 88:11 143:17 152:14,16</p> <p>pushing 87:13,14 152:24 153:9</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 11:14</p> <p>quarters 60:5,14,17</p> <p>question 7:22 8:25 9:19,20 10:16 14:17,21 15:7,12 17:6 20:19,20 21:12 22:13,15 23:17 28:8 40:4,12 43:3 45:2 47:4 48:9 49:15 51:25 53:7 58:5 59:24 62:19,20 65:23,25 82:23 84:3,15 88:19 92:1 93:14,15,19 98:3 109:19 111:17 117:21 130:6</p>
--	--	---	---



136:14,19 140:8,9 141:19 143:9,13 145:3 148:19 questioning 155:23,24 questions 8:22 9:24 10:23 11:12 27:10 36:23 58:11 83:25 117:21 118:10 119:22 120:8 127:7 155:22 quickly 12:13 122:6,9 146:21 quite 9:6 62:20	20:4 reads 107:17 ready 113:25 122:18,25 123:2 143:7,8,10,11 156:24 real 82:17 105:5,8 116:24 realized 66:8 86:23 really 6:20 12:13 19:2 78:2 88:11,12 92:21 119:25 real-time 104:25 re-ask 65:24 83:1 84:14 reason 15:6 89:4,14 114:20 130:14 150:25 160:3 reasons 160:19 recall 132:4,11 received 22:25 23:8,13,20,21, 24 116:25 119:16 153:1 recollection 132:1 147:23 recommendations 133:24 recon 69:1 record 8:6,8,15,16	11:22 12:13,14 13:6,7 15:8 17:9 27:13 29:24 33:1,2 51:4,22,23 69:8,9 94:16,17 97:10 113:7,9 118:3,4 120:17,18 134:22 136:3,4 159:11 160:19 recorded 104:13 126:25 recording 15:17 16:11 41:5,7,8,10,12 ,17 recordings 87:4 records 51:1 90:19 104:7,15 105:14 108:20 118:11 137:18 record's 21:25 reduce 130:7 refer 11:21 28:22 30:14 35:18 39:7 41:3 48:4 51:15 80:6 reference 17:4 referenced 48:21 references 39:15 149:14 referred 42:24 43:4,12 44:9 45:15 46:6,16	48:5,10 63:23 73:14 147:18 referring 36:25 39:12 42:20 45:2,16,24 63:11 65:10 144:7 refers 41:13 42:9 45:23 48:10 50:3,20 147:16 reflect 98:21 regain 87:19 129:10 regular 72:4 regulation 65:12 91:19 141:4 regulations 66:4 rejecting 16:24 related 107:7 117:2 159:14 relation 135:14 relayed 122:7 released 111:9 127:2 releasing 110:24 reliable 92:5 relied 66:12 rely 95:5 147:24 relying 148:6,16
<hr/> R <hr/>			
radar 49:3,4,6,7,8,9 ,18 radio 78:19 146:12 raise 12:15 ran 88:21 89:18 153:23 RANKIN 3:3 rated 103:15 rather 56:19 147:24 reach 76:23 readers 20:5 readiness 121:21 122:15 reading 5:11			



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<p>REM 1:8,10 2:8,20</p> <p>remain 54:19 122:5 140:24 147:7</p> <p>remainder 137:25</p> <p>remained 47:22 55:10,12 81:7 85:22,23,25 144:8</p> <p>remaining 97:13,14,15</p> <p>remains 99:13</p> <p>remember 19:19 21:9 23:16 25:4,24 26:7,12,24,25 27:8,9,14,17 31:21 32:15 37:14,25 38:2,8,11,15 39:1,12,16 43:7 44:9,22,24,25 45:10 47:16,19 48:13 59:15 80:11 90:22,24 103:18 111:19 143:19 146:11</p> <p>remembered 48:16</p> <p>Remind 57:10 90:18</p> <p>remnants 101:13,25</p> <p>remotely 103:9</p>	<p>remove 111:8</p> <p>removed 101:25 111:4,11,25</p> <p>rendition 72:4</p> <p>renewed 21:16</p> <p>repair 57:24 58:1,2,8 108:23,25</p> <p>repairs 57:12,19 99:10</p> <p>repeat 9:20,23 20:22 50:13 65:16 98:2</p> <p>repeated 107:12 145:4</p> <p>replace 107:1</p> <p>replaced 37:10,22 57:3,4,16 105:18 106:5,9,20,23 108:13,22 109:10 111:14,15,25 124:22</p> <p>replacement 57:23 107:1 109:10 124:21,23</p> <p>report 37:3 68:2 91:3,11,12,14 95:6,10,12 97:17,21 98:5,6,16,17,2 0,24 99:4,9,16,24</p>	<p>100:3 104:10,18 105:2,3,15 106:7,12,13,18 108:10 114:3 159:9</p> <p>reported 91:8 96:8 97:6,8 105:6 120:21</p> <p>reporter 1:13 5:10 6:2 11:17 12:3,6,12,15,1 8 13:23 15:2,25 18:10 21:24 24:12 30:1 33:2 34:1 36:11 51:23 67:23 68:3 69:9 79:6,10,18 94:17 97:25 105:23 113:8 120:18 156:3,13,16,20 157:4 158:16 159:7,24</p> <p>reporting 43:25</p> <p>reports 98:15,18 104:7</p> <p>represent 13:11 72:23</p> <p>represented 14:5</p> <p>representing 6:8</p> <p>represents 71:6</p> <p>Republic 28:25 36:15</p>	<p>request 15:7 160:18</p> <p>requested 61:9 81:24</p> <p>required 37:12 98:18 104:8,14,16 141:3</p> <p>requires 91:18</p> <p>resembled 145:15</p> <p>reserve 155:21</p> <p>resolved 120:5</p> <p>RESOR 2:15</p> <p>respect 48:6 110:18 145:21</p> <p>respond 9:22</p> <p>response 38:12 71:3 88:1 143:10</p> <p>responsible 53:1 54:13,20 89:22 96:14,21</p> <p>responsiveness 15:22</p> <p>rest 55:9 92:7 144:25</p> <p>restart 142:16</p> <p>restrictions 18:24,25</p> <p>result 54:16 107:5 110:9</p> <p>results 151:22</p> <p>resume 6:11,13,17</p>
--	--	---	---



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<p>11:16 retain 98:14 retracted 113:23 retrieved 93:8 100:14 101:14,19 return 58:11 119:14,18 125:12 returned 26:12 126:15 reverse 35:2,5 review 14:7 64:3 67:19 68:6 137:18 reviewed 69:20 reviewing 51:1 82:9 146:9 revisit 8:19 rinse 94:9 rinsed 93:22 94:2,7,8 rise 120:4 risk 12:11 river 24:9,19,24 25:2,7,13,25 26:9,13,18 27:15,16 28:19 34:19 44:15 46:8,10 56:18,20 62:16 63:13,24 64:3,9,19 65:13 66:25</p>	<p>81:21 87:17 91:6 100:15 105:17 106:8 128:12,13 132:21 133:20 134:3,16,18,22 135:3,10 138:6,11,12,13 ,19,22,24 139:1,3,5,15,2 5 140:12,13,25 145:16 153:23 154:16 Robert 72:22,23 ROGERS 2:21 Romeo 31:18,23 68:2 room 60:22 61:2 81:24 82:2 83:6 129:1,20,22 130:5 134:6 rope 75:4,7,9,10,13 76:15 ropes 75:16,24 76:5 rough 82:10 RPM 83:13,19 Rs 72:15 rule 10:8 rules 5:7 14:4 15:21 65:18 run 89:4,13 running 115:5 Rusinek 95:19</p>	<p>R-U-S-I-N-E-K 95:21 Ryan 43:15 <hr/> S <hr/> S.A 2:20 safe 54:13,20 95:4 125:21 126:5 safety 53:1 96:4 129:23 sailing 135:10 SAINT 2:4 SALLEY 2:15 SALVAGE 1:11 2:14 satellite 105:7 saw 41:22 100:21 106:7 141:24 151:22 152:11 153:2 schedule 78:24 91:16 104:3 109:8 scheduled 104:16 schedules 104:7 school 23:15 screen 18:16 20:13,17,23 21:21 36:1 119:19,24 screens 121:18 sea 2:7 132:3,6,10</p>	<p>136:25 seamen 80:17 81:1 seawater 94:9 second 26:8 27:6 37:11 38:4,8,16 48:23 56:4 63:8 64:7,13 72:6 74:19 78:13,24 80:5 105:1 124:22 seconds 116:8,10,11 117:15 119:10,11 secure 103:14 secured 113:24 114:22 130:25 seeing 19:21 20:2 66:19 146:15 seem 125:15 seems 11:13 137:19 147:9 seen 100:23 sees 21:2 select 129:17 selected 55:3 57:10 128:25 send 125:21 sending 146:18 sent 36:3 98:19 sentences 154:1 separate 34:19</p>
---	---	---	---



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<p>147:10 separated 146:8,13 serve 23:12 served 29:7,10 121:12 service 6:10 43:25 125:20 serving 121:8 sets 86:6 setting 35:3,4 59:8 135:15 settings 135:5 settled 127:11 seven 77:7,10 87:1 120:24 142:20,21 several 128:6 shackle 50:23 51:15 52:20 53:5,11,18 55:9,15,16,25 56:1 74:1,9,12,14,1 5 75:2,7,8,12,14 ,19,21 76:16 shackles 50:20 51:2 52:1,5,8,11 53:16 55:6,8,10,11 58:17,18,23,24 73:17,19,21,25 74:4,7 75:18,23 76:1,7,21</p>	<p>77:5,7,10,20,2 2 78:4 85:5 107:5,14,18 108:19 110:9 114:12 127:11,12 shame 148:23 shank 74:2 shape 152:7,14 SHARPE 3:3 sheet 64:18 160:20 shift 26:12 138:5 shifted 152:7,8,9,10,1 3,17 155:7,8 shifting 128:15 ship 22:24 26:14,16 33:14,25 34:1,25 37:7,8 38:1 47:9 49:10,19,20 50:7 52:21,23 56:11 57:24 58:1,2,8 65:19 81:16 85:5 87:11,18,20,25 88:14,24 91:17,23 92:8,12 94:7 95:14 96:12 99:13 124:7 125:14,21 126:9 127:3,4 128:11,12,14,1 5</p>	<p>129:1,4,6,8,10 ,18 130:11 131:17 133:7,8,9 134:5 139:21 140:1,2 142:9,13 144:4,6,18,20, 21 146:3,4 151:5 152:12 153:15,19 Shipping 2:8,19 43:5,7,8,10,12 ships 32:9 127:17 128:23 131:15 134:2 ship's 91:15 104:5 Shirah 37:8,18,22 41:9,18 73:2 113:21 145:21 146:3,11,16 150:2 152:15,21 S-H-I-R-A-H 37:18 Shirah's 41:13,16,19,23 shore 109:11 shore-based 104:20 105:2 shores 139:17 short 2:7 122:5 136:8 141:10 shorter 131:2 shortly 141:17</p>	<p>142:5 152:5 showed 41:10,23 61:6 62:4 shown 60:25 61:1 sic 8:24 18:9 20:12 21:23 33:16 43:1 78:18 100:21 122:25 144:6 148:10 149:20 sides 14:16 86:5,7 104:2 108:2 sidetrack 28:21 Sierra 31:18 sign 157:1 161:5 signed 72:18 124:15,16 160:19 significantly 126:17 142:25 signifying 75:14 SIGNING 5:11 similar 66:20 70:2 119:16 128:18 131:15 132:16 133:3,17,21 135:5 simple 89:3 simpler 49:15 single 6:17 30:20 129:10</p>
--	---	---	---



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<p>sir 12:15 156:16</p> <p>sitting 123:9</p> <p>situated 121:15</p> <p>situation 16:12 34:21 54:16 58:19 59:2,14,20 60:2 85:12 89:1,8 122:20 125:11,16 129:12 141:25 142:6</p> <p>six 16:13 56:2 142:20</p> <p>size 133:3,12,15,17</p> <p>slack 87:23</p> <p>sleep 38:22</p> <p>sleeping 19:16 60:14</p> <p>sleepless 38:21</p> <p>SLOSS 2:21</p> <p>slow 135:17</p> <p>small 99:1</p> <p>smaller 26:16 133:6,12</p> <p>Smith 11:1,2,3</p> <p>society 108:4</p> <p>soft 14:25</p> <p>solely 66:12</p> <p>solemnly 12:18</p> <p>solution 30:12 129:14</p>	<p>solve 7:21</p> <p>someone 37:10 96:17 137:19</p> <p>somewhere 103:20</p> <p>sorry 34:2 47:5 67:23 79:18 97:25 105:23</p> <p>sound 70:13 96:17</p> <p>sounds 12:2 79:23</p> <p>SOUTH 1:14 5:4</p> <p>space 57:8</p> <p>spare 57:21</p> <p>speak 10:13,21 15:1,3</p> <p>speaking 19:6 71:19,20 72:11,24</p> <p>specialty 19:3</p> <p>specific 36:23 99:5</p> <p>speed 82:3 83:14 134:22,24 135:2,4,5,6,13 ,16,17,19</p> <p>spell 13:22 17:18 21:23 30:24 31:17,18</p> <p>spelled 17:13,24</p> <p>spelling 17:11,22 31:3,14 40:21</p>	<p>79:10 95:20</p> <p>spoken 15:1</p> <p>spot 129:17,19 131:9</p> <p>spring 26:11 27:12</p> <p>squabbles 8:20</p> <p>stabilize 125:25</p> <p>stable 34:21 125:13,15 127:4,5 130:22,24 131:3 147:7 155:5</p> <p>stage 25:2</p> <p>stamp 18:18</p> <p>standby 122:5</p> <p>standing 93:23 124:19 151:16,18</p> <p>stands 48:25</p> <p>starboard 51:3 52:2,19 53:4,11 73:12,13 76:19 77:21 84:5,18 85:20 86:11 100:7,13,19,25 101:5,13 102:6,9,25 103:3,16 104:1 106:9,17 109:16,20,22 110:17 111:12 112:8 113:1,11,16</p>	<p>114:11,12 127:12 144:12 151:14,19 152:3 153:10</p> <p>start 52:14 94:21 122:11 125:19,24 141:2,17,22 143:5</p> <p>started 12:23 23:14 33:21 34:24 94:20 110:21 122:9 129:21 142:1,2 143:22</p> <p>starting 74:1,11 115:4 125:23 144:21</p> <p>starts 94:8</p> <p>state 5:10 15:8 17:9 54:19 117:7 121:21 158:3,17 159:4,8</p> <p>stated 50:2 91:13</p> <p>statement 4:10 36:8,17,23 37:13,16 38:6,9,17,19 39:6,14 40:23 42:2,4,8,9 45:18,23 48:4,12,22,24 50:5,20 58:21 59:5 60:4,13 78:6 126:21</p> <p>states 1:1</p>
--	--	---	---



<p>64:19 stationed 79:4,8 81:2 stay 35:2 stayed 33:20 149:22 stem 74:2 stern 50:7 77:24 150:2 stipulate 118:3 STIPULATION 5:1 stop 40:3 122:11 153:22 stopper 109:15,25 110:2,7 stoppers 110:19 111:3,4,8,11,1 4,24 STREET 2:10,16,22 3:4 strength 67:8 102:14 139:5 strike 151:3 strikes 82:10 striking 87:11 144:23 151:23 155:18 strong 24:15 33:22 34:18 67:5,6,17 88:15,16,17 128:13 129:5 132:21 134:9,15,17,19 138:23 139:4</p>	<p>140:12 144:8 struck 13:12 86:24 87:6,25 113:3,13,18 142:5 143:25 144:6,14 147:2 150:22,24 151:7 152:3 153:12,18 155:1,15 stuck 155:4 stuff 72:4 157:2 subject 17:6 submerged 73:22 93:1 Submitted 159:18 substantially 143:15 substituted 37:7 subtract 115:24 suburb 6:16 successful 88:10 sudden 35:3,5 132:19 sufficient 55:12 suggest 148:24 suitable 97:12 102:2 SUITE 1:14 2:4,11,16,22</p>	<p>3:4 5:4 S-U-N 79:23 support 148:2 supposed 55:4 56:15,22 57:2,23,25 103:13 113:23 122:18 sure 7:15 9:11,25 10:7,9 14:6 15:1 23:25 26:7 27:14 32:1 38:8 40:13 45:1 47:5 48:2 50:15 62:21 64:6,10 65:22 70:19 72:10 80:20,22,23 81:4 86:9 89:11 90:7 100:6 103:24 105:12 106:6 survey 96:10 107:16 108:5 surveyor 8:10 Suspected 107:19 suspicion 139:4 sustain 102:22 swaying 130:7 swear 5:10 6:3 7:6 12:18 swing 128:15,20 130:2 141:12 142:25 143:14,24</p>	<p>144:17 swinging 59:4 61:18 125:13 126:10 127:5,20 130:9,13 141:22 154:16,19 sworn 14:7,12 158:8 swung 144:13 system 20:7,10,11 41:6 48:15 60:22 82:20,25 83:1,6,10,12,1 6,22 88:3 91:9,15,16 103:5 104:5,6,11,13, 14,19,22 105:7 109:1 116:14 120:12 126:24 127:18,23 128:7 135:13 140:17,20 141:3,5 142:17,24 143:17 147:25 149:12,16,21 150:3,13,18,19 ,23 systems 104:25 Szczecin 21:22,23 S-Z-C-Z-E-C-I-N 21:24 <hr/> T <hr/></p>
---	--	--	---



<p>table 20:24</p> <p>tablet 41:10,11,13,15 ,16,23</p> <p>TACKLE 1:8,9</p> <p>Tagalog 71:21 137:13</p> <p>taking 15:16 21:12 51:13 56:18 139:7 140:7</p> <p>talk 30:2 70:17 120:25 133:14 134:4</p> <p>talked 42:18 62:10 73:12 109:1 112:9</p> <p>talking 32:5 64:8,15 67:7 85:16 86:2 88:24,25 89:1,3 95:2,3 106:6 112:15,20 113:5 117:11 139:18 144:12 146:12,18,19 148:19 152:6</p> <p>TAMPA 1:15 5:4</p> <p>tape 81:25 82:7</p> <p>task 150:3</p> <p>TDEPAULA@MRSNOL A.COM 2:24</p> <p>technical 7:8 119:21 120:1</p> <p>telegraph 81:25</p>	<p>82:7</p> <p>TELEPHONE 2:5,12,17,23 3:5</p> <p>ten 52:5,7,8,23 77:22 78:3 87:1 107:5,14,18 108:18 110:9 135:24</p> <p>ten-and-a-half 50:18</p> <p>tender 155:23</p> <p>tension 49:11,13 84:5,18 85:3,4,7,19,22 ,25 86:6,10 112:2</p> <p>tenths 128:6</p> <p>term 29:16 30:7,10 50:12 79:6</p> <p>terminology 9:10,12 33:19 49:12</p> <p>terms 7:8</p> <p>test 140:19</p> <p>testify 70:4</p> <p>testifying 147:23</p> <p>testimony 12:19 14:21 127:14 148:7,12 159:11</p> <p>testing 141:1,5</p>	<p>thank 6:7,23 21:11,13 68:3 94:12 118:6 123:7 136:2 149:9 156:2</p> <p>that's 6:11,16 7:16,20 8:14 11:22 12:7 16:6,16 17:19,23 18:11,23 21:3,14,24 22:6,17 24:4 25:4 27:17,18 28:12,13,16 29:17,25 30:13,15 31:22 32:4 33:18 35:15,18 38:1,2,3,8,15, 25 40:3,23 42:2,7,10,14 43:8 44:6,11 45:20 46:2,5,16 48:13,16 50:2,3,18 51:12 52:7,13,23 54:15 55:2,3,12 56:25 60:3,8 61:14,25 63:14,16 64:22 65:6,22 68:19,25 69:23 70:12,13 71:14 72:5,10,16,24 73:6 74:19 76:4,6 78:4 81:15 82:24</p>	<p>83:18 84:10,13,25 85:4,25 88:19 91:8 92:8,25 93:12,15,18 96:20 97:17 101:21 104:14 105:7 107:9,11,13 109:16,21 110:6 112:10 115:1,16 119:24 120:11,25 123:10 124:6 125:19 128:14,16 131:16 133:16,22 137:6 138:4 141:17 145:14 146:16,17 147:15 148:1,5 149:5,15 150:16,25 152:14 155:11</p> <p>themselves 64:10</p> <p>theory 78:5,6,7</p> <p>thereabouts 120:4</p> <p>thereby 102:10 155:18</p> <p>therefore 15:21</p> <p>there's 7:7,12 8:1,3,12 39:23,24,25 53:13 70:22 72:14 76:16</p>
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107:20 116:16 120:23 130:15 154:1 they're 7:6 9:6 72:22 76:2 114:24 136:23 thickness 96:7,8 third 48:6 64:7 74:22 throughout 46:6 99:20 138:24 139:5 tied 28:4 Tim 70:1 TIMOTHY 2:21 TMied 119:5 today 37:14 67:18 124:19 Tomasz 1:12 5:3 13:16 17:10 70:18 96:19 T-O-M-A-S-Z 17:12 tomorrow 156:24 TOMPKINS 2:20,21 12:23 tonight 148:24,25 touch 51:21 78:19 touching 78:4 towards 47:18 74:3 88:12 100:5	112:13,23 116:7 135:11 138:12 139:17 142:11 152:10 Towing 1:10 2:14 81:23 town 42:13 T-R 95:21 Trader 31:22 32:1,10 traffic 43:25 125:20 training 20:6,9,11,14 transcript 4:13 5:12 15:18 68:11 69:5,18,19 70:11 114:8,9 147:16,25 148:16,23 149:11,13 158:7 159:10 160:16,21 transcription 68:6 transcripts 70:1 148:10 transit 47:11,20 translate 6:4 10:23 11:1 13:6 51:6 71:3 106:2 translated 7:16 157:2 translating	7:13 translation 6:10 8:8 9:15,16 10:3 71:6 85:1 translator 7:9 8:4,10,15 14:15,17 21:6,9 30:6 71:3 123:25 124:2 translators 7:14,20,25 8:7 29:24 51:9 translator's 22:4 Translators 51:20 transmission 119:17 trap 122:24,25 123:2,3,4,11,1 2 124:1,3 T-R-A-P 124:4 traveling 26:18 56:18,20 83:20 trial 15:24 16:1,2 triangle 86:4 tribes 13:24 triggered 116:21 triggering 120:11 trip 27:3	trouble 19:21 true 18:21 27:21 28:19,24 54:10 99:25 105:19 143:1 147:25 159:10 truly 6:3 trusted 54:17,18 truth 7:15,19 12:20,21 14:7,8,13 38:15 69:14 truthfully 15:13 try 30:1 40:4 71:16 72:3 79:10 141:20 142:19 trying 39:17 72:13 87:15 88:12 129:10 142:8,10 Tsk-tsk 148:21 Tug 34:13 tugboats 34:12,13,15,17 ,20 146:18 155:6 Tugs 34:11 turn 12:3,5 21:7 88:14 122:4,6 141:10,16 142:10,13 154:10 turned 88:11
--	--	---	---



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<p>144:4 147:4</p> <p>turning</p> <p>143:21,22</p> <p>twice 25:23</p> <p>two-minute</p> <p>135:22</p> <p>type 19:7 26:14</p> <p>30:1 72:4</p> <p>90:14 95:25</p> <p>134:11,12</p> <p>types 19:5</p> <p>71:17</p> <p>typing 70:22</p> <p>148:20</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UBC 25:15,18,21</p> <p>26:1,9,14,17</p> <p>27:3,11 30:23</p> <p>32:8,9</p> <p>uh-huh 58:14</p> <p>64:22 82:25</p> <p>117:10 119:12</p> <p>ultimately</p> <p>54:12 95:12</p> <p>unable 150:3</p> <p>uncontrolled</p> <p>112:7,12,24</p> <p>undergo 57:12</p> <p>undergoing</p> <p>127:21</p> <p>undersigned</p> <p>158:6</p> <p>understand</p> <p>14:9,10,13,14,</p> <p>19,23</p>	<p>15:6,14,19</p> <p>16:3,24,25</p> <p>17:7,8 18:1,17</p> <p>29:3 30:3</p> <p>37:1,5 38:14</p> <p>43:17,20,21</p> <p>46:17 51:1</p> <p>60:4,13 62:20</p> <p>65:9,24 69:13</p> <p>73:24 100:7,18</p> <p>106:18 130:6</p> <p>134:21 136:10</p> <p>140:8 141:9</p> <p>143:13 144:24</p> <p>145:5,24</p> <p>148:14</p> <p>understanding</p> <p>7:13 15:9 44:2</p> <p>64:23 83:12</p> <p>136:15</p> <p>understands</p> <p>10:16 51:7</p> <p>understood</p> <p>15:12 124:3</p> <p>155:25 156:1</p> <p>underwater 76:1</p> <p>93:1</p> <p>UNDERWRITERS</p> <p>3:2</p> <p>Uniform</p> <p>31:11,23</p> <p>UNITED 1:1</p> <p>universal</p> <p>115:18</p> <p>unless 17:4</p> <p>40:5 51:6</p> <p>unlocking 107:8</p> <p>unsuitable</p>	<p>101:9</p> <p>unusual</p> <p>53:14,16</p> <p>102:13 128:8</p> <p>update 6:12</p> <p>updated 6:11</p> <p>upon 66:21</p> <p>83:21 132:11</p> <p>135:8,10</p> <p>160:18</p> <p>urgent 93:16</p> <p>Urzad 21:22</p> <p>usually 10:15</p> <p>70:9 75:4 89:7</p> <p>92:6 93:20</p> <p>99:20 110:4,6</p> <p>119:24</p> <p>129:18,19,22</p> <p>UTC</p> <p>115:18,20,21,2</p> <p>5</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 21:17</p> <p>valid-through</p> <p>21:18</p> <p>valve 146:7</p> <p>VAN 1:3</p> <p>varies 55:22</p> <p>various 73:25</p> <p>VDR 4:13</p> <p>67:22,24,25</p> <p>68:1,2,7 69:5</p> <p>70:2,10 72:16</p> <p>134:21,23</p> <p>147:25</p>	<p>148:6,15,20,21</p> <p>,22 149:12</p> <p>Velserdiep</p> <p>31:16,17,19</p> <p>32:6</p> <p>Venezuela 62:16</p> <p>63:13 106:1,4</p> <p>Venus 1:9 2:20</p> <p>33:23 39:25</p> <p>45:12 48:7,8</p> <p>49:17,21,25</p> <p>62:2,5,11 70:3</p> <p>71:24 78:1</p> <p>86:24 87:6</p> <p>88:12 111:5</p> <p>113:13,22</p> <p>114:18 125:15</p> <p>126:7,9,20</p> <p>127:3,10</p> <p>131:18 132:17</p> <p>142:6,11</p> <p>144:1,15</p> <p>145:1,7,16,25</p> <p>146:7 147:1</p> <p>149:18</p> <p>151:5,8,20,24</p> <p>152:3,17</p> <p>153:13,18</p> <p>154:21,25</p> <p>155:1,12,16</p> <p>verbatim 9:23</p> <p>verifies 90:16</p> <p>version 33:7</p> <p>42:3,4,6,7</p> <p>68:6</p> <p>versions 134:22</p> <p>versus 45:25</p> <p>55:15 133:18</p>
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139:16	97:12 99:11	131:10,12,13,1	visualization
vessel 13:17	101:9	4 133:15	132:12
14:5 19:1	102:20,23	145:15,20	voice 149:12
24:9,19,23	104:21 105:16	146:13 147:10	voyage 56:5
25:12,14,15	106:8 108:24	vessel's 13:18	63:13 68:2
26:15,19 27:7	110:15,20	104:10,19	105:21,24
28:17 29:5,8	112:1,2 113:12	121:7 130:2	VS 1:6
30:19 31:8	116:23 120:10	142:25	VTS 33:24
32:20	121:3 122:21	vet 130:17	
33:9,21,23	123:8	via 2:6,18,25	
34:20,24	125:11,18,20,2	3:6,9 15:16	<hr/> W <hr/>
35:2,5,15	5 126:5,16	vicinity	wait 8:23 14:16
37:14 41:9,24	127:10,21	131:11,20	23:17 98:9
43:14,25 45:12	128:17 129:21	Victor 31:11,18	156:3
46:15,19,21,23	130:5,8 131:9	68:1	waited 33:20
,25	132:1,10,12,16	video 16:14	waiting 34:8
47:1,6,10,13,2	,20	96:20 114:8,9	155:6
2 48:9	133:1,2,3,6,8,	videographer	waive 70:14
49:13,21 50:17	12,16,21	16:9	WAIVED 5:12
51:1 52:16	134:3,12,20	videotape 16:17	waiving 69:18
53:1 54:13	135:16 136:10	videotaped 16:5	wall 35:12
55:6,13,17,18,	138:8	videotaping	warning 119:17
21 57:22	140:2,4,6,24	15:17	warped 100:5
58:9,15 59:4	141:3,12,21	Vincent	wasn't 28:14
64:9 66:9,13	142:3,7,24	80:5,11,13,15	33:10 45:8
67:4,8,14,15	143:14,19,22,2	violation	71:21 88:17
72:9,19 74:3,4	4 144:23 146:8	66:2,3	127:5,24
76:5 81:20	148:12 149:17	virtue 94:2	131:21 134:10
82:2,16	150:10	108:25	142:13 145:11
83:3,14,20	152:13,15	visible 76:13	149:25 151:25
84:6,19,24	154:10	98:11	152:25
85:6	vessels	vision 19:18	watch
86:4,10,12,18	19:3,5,9 24:5	visit 26:19,23	23:2,4,12,18,2
87:9,10,16,23	30:22 31:9	visited 27:3,12	1,23 24:2,8
88:4,9,10,20,2	32:5	visual 90:10	25:10 29:11
1	44:19,23,25		39:21
89:4,13,16,17,	45:2,3,5,9,11,		40:16,17,19
18,22 90:16	17,19 53:14,19		
91:4,9 92:22	65:3,7,20		
95:24	66:19,23		
96:4,11,14	126:16 128:21		



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78:9,12,15,21 82:11 121:1,5,6,8,13 watching 79:5 109:3 water 55:2,6,8,10,15 ,18,19 56:1 58:23,24 73:18,20,22,23 76:6,7,21 77:1,2,6,7 92:20,22 93:3,22,25 94:3,5 101:20,25 114:15 123:9 127:11,12 129:13 130:16,17 131:22 132:17 133:1,7,9 135:2 138:22 ways 62:25 154:3 wear 19:15 wearing 19:12 20:1 weather 122:12 we'd 7:13 wedding 22:2 week 62:18,22 64:4 weighing 85:10 weight 130:15 weights 100:4 welcome 9:9	we'll 7:21,22 8:7 11:15 13:6 15:17 68:10 69:1 70:10 120:14 156:17 we're 7:19 11:9 12:9 16:17 28:21 33:2 63:6,11 65:7 69:9 70:2 71:19 72:10 73:8 106:6 112:15 120:18 148:20 156:7,9,25 western 6:16 we've 32:25 36:3,12 51:10 52:17 63:18 64:15 65:10 67:7 72:6 86:2 93:10 105:14 108:20 117:11 118:8 124:12 134:23 135:23 144:12 whatever 15:6 60:25 82:15 89:4,14 92:22 99:10 118:5 119:23 120:3 135:16 140:4 142:12 152:24 whatsoever 16:18 59:21 60:2 WHEATON 3:3 wheel 89:17 whenever 46:22	72:10 97:4,5 99:2 139:17 whether 9:1 27:8 51:15 54:18 83:20 85:19 90:5 111:15 117:21 126:22 132:12 140:19,21 141:4,15 Whoever 136:18 whole 12:20 14:8 130:17 width 50:17 62:5 wife 22:3 winch 76:15 85:17,18 103:6,23 106:17,19 107:4 winches 104:1 114:23 windlass 103:3,16 104:4,9 105:18 106:7,9 107:18 108:6,9,22 109:9,15,21 112:4 122:15 windlasses 104:4,9 114:23 wing 151:17 witness 5:11,12 7:15 8:9 9:22 10:13,16,25 12:17,22 13:16,20 15:3	21:1 26:20 30:11 34:5,7,11,13 35:9,11 49:6 51:6 57:24 68:25 71:24 93:14 115:9 117:18,22 123:13,15,18,2 3 139:22 155:24 158:6 159:11 witnesses 10:20 70:4 71:17,19 72:2 157:1 work 6:17 7:14 8:6 9:11 23:14 35:1 69:24 88:13 104:17 140:20 workable 30:12 worked 42:21 72:2 100:11 109:4 140:21,23 working 81:5 90:8,17 102:12 109:5 133:1 141:7 154:9 works 7:9 82:6 97:7 130:11 140:20 141:4 would've 81:20 101:8 109:2 110:8 138:20 155:17 write 37:4 38:18 82:14
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writing 38:19

39:18 48:17

127:15

written 68:6

82:12 97:10,18

103:20 124:12

wrong 57:1 90:9

108:3 136:19

wrote 40:23

X

XA 116:16

Y

Yep 73:3**yet** 58:22 148:6**you-all** 69:7**you'll** 10:22

11:1 72:7,15

147:16

yourself 137:22**you've** 21:10

88:20 148:25

Z

zeroes 120:24**ZIP** 17:23**Zoom** 2:6,18,25

3:6,9 12:25

15:16

16:3,11,21,22

Zuiderdiep

31:22,24

32:2,4,7,10

Zulu 31:23

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