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1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2 CIV.A.NO.2:20-1441 (LEAD)
C/W 2:@0-1453 & 2:20-1506
3 JUDGE ELDON E. FALLON
MAGISTRATE JUDGE JANIS VAN MEERVELD

4
5 CORNERSTONE CHEMICAL
COMPANY,
PLAINTIFF,

6 VS.

7 M/V NOMADIC MILDE, IMO NO.
8 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 PIOTR KOWALSKI

13 DATE: JUNE 23, 2020

14 REPORTER: JODY PRALAT

PLACE: PHELPS DUNBAR, LLC
100 SOUTH ASHLEY DRIVE, SUITE 200
TAMPA, FLORIDA 33602

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(APPEARED TELEPHONICALLY)
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1 STIPULATION

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THE DEPOSITION OF PIOTR KOWALSKI, TAKEN AT PHELPS
DUNBAR, LLC, 100 SOUTH ASHLEY DRIVE, SUITE 200, TAMPA,
FLORIDA 33602 ON SUNDAY THE 23RD DAY OF JUNE 2020 AT
APPROXIMATELY 9:09 A.M.; SAID DEPOSITION WAS TAKEN
PURSUANT TO THE FLORIDA RULES OF CIVIL PROCEDURE.

IT IS AGREED THAT JODY PRALAT, BEING A NOTARY PUBLIC AND
COURT REPORTER FOR THE STATE OF FLORIDA, MAY SWEAR THE
WITNESS AND THAT THE READING AND SIGNING OF THE
COMPLETED TRANSCRIPT BY THE WITNESS IS NOT WAIVED.



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PROCEEDINGS

COURT REPORTER: The time is 9:09 a.m. Please be advised that these proceedings are being recorded. Our video tech is Johany Rivera, and she will be observing these proceedings to ensure the quality of the video. Madam Interpreter, will you please raise your right hand?

COURT REPORTER: Do you swear or affirm that you will truly and correctly translate these proceedings from English to Polish and Polish to English?

INTERPRETER: I do.

COURT REPORTER: And sir, will you please raise your right hand? Do you solemnly swear or affirm that the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

MR. BERCAW: For the purposes of the record, I will attach Ms. Jankowski's resume as Jankowski Exhibit number 1, and all the exhibits thereafter will be Kowalski Exhibit 1, 2, 3, and so forth until we conclude the deposition.

(JANKOWISKI EXHIBIT 1 MARKED FOR
IDENTIFICATION)



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1 DIRECT EXAMINATION

2 BY MR. BERCAW:

3 Q Mr. Kowalski, my name is Jim Bercaw. We just
4 met. I'm the attorney representing Cornerstone Chemical
5 Company, whose dock the Nomadic Milde struck back in May
6 8, 2020. We're here to take your deposition today. Have
7 you ever given testimony in a deposition format before?

8 A No. Never. This is my first time.

9 Q Have you ever testified in a court or other
10 judicial proceeding, either in Poland, the United
11 States, or any other country?

12 A Yes. In Poland a few years ago.

13 Q Can you explain to me what that proceeding was
14 about that you testified at in Poland?

15 A Of course. It was connected to an incident.
16 It was a crash. I was called by a car dealer to testify
17 as a witness. That I received a courtesy car that I
18 could use for the time that my car was being repaired.
19 And it was some kind of a money issue between the dealer
20 and the insurance company. And this was with regards to
21 the replacement car that I received.

22 Q Okay. Have you ever been a party to any
23 litigation, either in Poland or elsewhere in the world?

24 A No. I was not a party to any kind of
25 litigation, no.



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1 Q So this deposition will be maybe similar to
2 your testimony in the Polish proceedings you just talked
3 about. The court reporter has placed you under oath to
4 tell the truth and nothing but the truth. Do you
5 understand that?

6 A Yes. I understand. Of course.

7 Q Also, this is a question and answer session
8 where the attorneys will ask you questions and you
9 provide the answers. Do you understand that?

10 A I understand.

11 Q As a result, I'm going to ask you to wait
12 until I finish asking my question before you begin your
13 answer.

14 A Okay. I understand.

15 Q This will be our third day of working with Ms.
16 Jankowski as a Polish translator, and so those of us
17 who don't know Poland have picked up that (speaking
18 Polish) or (speaking Polish) means yes and no,
19 respectively. What I want to make sure is that you
20 understand the question that I'm asking, understand?

21 A I understand.

22 Q If you do not understand the question that I'm
23 asking, what I'd like you to do is tell me, I don't
24 understand, can you rephrase, or similar words, okay?

25 A I understand. Thank you.



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1 Q Otherwise, I'm going to operate with the
2 understanding that you fully understood my question and
3 answered truthfully to the best of your ability. Do we
4 have that understanding?

5 A Yes.

6 Q Lastly, and this probably doesn't happen as
7 much when there is a translator present, but I've
8 noticed that during the asking of my questions, you
9 often nod your head. That's understandable because we
10 tend to become more conversational the longer the
11 deposition goes on. So if your response to the
12 translator's translation of my question is a nod of the
13 head or a shake of the head from left to right, then I'm
14 going to ask you to confirm whether you meant yes or no.
15 That's all I'm trying to come across with.

16 A I understand.

17 Q Lastly, this is not an endurance test. So if
18 you need to take a break at any time, just let us know
19 and we'll do that. But if there is a question that's
20 been asked and you want to take a break, I'm going to
21 ask that you answer the question before we take the
22 break; do you understand?

23 A I understand.

24 Q And just for your information, counsel for the
25 Nomadic Milde interest generally requests a break at a



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1 convenient stopping point, usually every hour, and that
2 break is about five minutes, okay? So that will happen,
3 too. It's not just you that will be calling for a
4 break; do you understand?

5 A I understand.

6 Q Regardless of the number of breaks we take,
7 however, you will still be under oath to tell the truth.
8 You will not be re-sworn when we reconvene after a
9 break, do you understand that?

10 A I understand.

11 Q Okay. Officer Kowalski, could you please
12 state your full name for the record?

13 A Piotr Kowalski.

14 INTERPRETER: Interpreter spelling the first
15 name, P-I-O-T-R, last name, K-O-W-A-L-S-K-I.

16 Q Mr. Kowalski, what is your home address?

17 A I live in the city of Gdynia. It's spelled G-
18 D-Y-N-I-A, and that's [REDACTED]
19 [REDACTED], Gdynia, that's spelled,
20 G-D-Y-N-I-A.

21 Q You're a citizen of the Commonwealth of
22 Poland?

23 A Yes. I'm -- I'm a citizen of Poland.

24 Q You hold a citizenship of any other country
25 besides Poland?



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1 A No. I'm only a citizen of Poland?

2 Q What is your date of birth?

3 A [REDACTED].

4 Q Tell me about your training that led to you in
5 becoming the chief mate of the Nomadic Milde on May 8,
6 2020?

7 INTERPRETER: Counsel, the interpreter did not
8 hear the question. Could I have the question again?

9 Q Sure. Tell me about your training that led up
10 to your being the chief mate of the Nomadic Milde on May
11 8, 2020?

12 A A few years back when I was passing my chief
13 exam before the national board in Poland, the -- the
14 board is established under the Maritime Authority in
15 Gdynia. I passed the final examination, and I was then
16 awarded the professional license of chief officer.

17 Q How many times did you take the chief
18 officer's exam before you passed?

19 A Just once. I passed the first time.

20 Q Around what date did you pass your final exam
21 for chief officer?

22 A It was a few years back. I do not remember
23 the exact time, but we can ask Michael Held to pull out
24 my license, and there should be a date when I passed the
25 -- the -- the exam.



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1 MR. BERCAW: We got that, we have a copy. How
2 do you want me to get this to you guys?

3 MR. BUTTERWORTH: Do you guys have a Bates
4 number?

5 MR. BERCAW: Yes.

6 MR. HELD: Because he's got everything right
7 here, I think.

8 MR. BERCAW: I think you'd be referring to
9 NM000013.

10 MR. BUTTERWORTH: Hold on one second.

11 MR. BERCAW: Sure. Through 14.

12 MR. BUTTERWORTH: Just tell him the number.

13 MR. BERCAW: Yes. 13 and 14.

14 MR. BUTTERWORTH: Uh-huh.

15 BY MR. BERCAW:

16 Q Sir, the Bates number documents, NM13 through
17 14, is that a true and accurate copy of your current
18 chief officer's license issued by Poland?

19 A Yes. It is a copy of my license.

20 Q Is this the first issuance of your chief
21 officer's license?

22 A Yes. Yes. It is.

23 Q Okay. And Mr. Kowalski, I apologize if I
24 insulted you, but on the front page on page 13 it says,
25 chief mate certificate, so I understand you're the chief



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1 officer, but chief mate and chief officer is the same
2 thing, right?

3 A It is exactly the same thing. Some people use
4 chief mate and some people use chief officer.

5 Q Thank you. On the second page of this
6 document, which would be NM000014, there are some notes
7 regarding potential limitations that apply to your
8 license as a chief mate, do you see that?

9 A Yeah. I see that.

10 Q Okay. Note number two says, "Possible
11 necessity of wearing corrective lenses should be read
12 from valid medical certificate," correct?

13 A Yes. I see that.

14 Q Everyone in this room, except for the very
15 young eyes of the court reporter and possibly Mr. Held,
16 although I have a suspicion he's wearing contact lenses,
17 is wearing glasses. I need mine to see distance. Why
18 do you use your glasses, Mr. Kowalski?

19 A In general, I wear my glasses all the time.
20 Again, in -- in general, I use my glasses to see in the
21 distance. But if I do not use my glasses for reading
22 and then my eyesight gets tired very quickly and I don't
23 see well.

24 Q Okay. How long have you been wearing
25 corrective lenses, Mr. Kowalski?



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1 A To be honest, I started wearing glasses when I
2 was 15. Later, when I was about 24 or 25, I had a laser
3 correction of my eyesight. It was a -- a surgery. And
4 then I had no problems with my vision for a number of
5 years. But then again, a few years back, I don't know
6 how many years back, I need glasses again.

7 Q All right. Just so I'm clear. You only wear
8 glasses, you don't switch between glasses and contact
9 lenses; is that accurate?

10 A No. I only have glasses, no contacts.

11 Q Me, too. The first note on your chief mate's
12 certificate states on ships indicated in Chapter V of
13 the STCW Convention and on ships with ECDIS, "This
14 certificate is valid in connection with an adequate
15 certificate of training only." That's -- I read that
16 correctly, didn't I?

17 A Yeah. Yes. That's correct.

18 Q Okay. Do you have a certificate of training
19 in ECDIS operations?

20 A Yes. I do.

21 Q Who issued the ECDIS certificate of training
22 for the purposes of your chief mate certificate?

23 A A general ECDIS certificate is issued by the
24 Polish Maritime Authority.

25 Q Do you have a copy of that general certificate



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1 with you?

2 A I don't have it with me, but you can go
3 through the records.

4 MR. BUTTERWORTH: What is the document?

5 MR. BERCAW: The ECDIS -- looking for the ECDIS
6 certificate, trying to --

7 MR. BUTTERWORTH: I don't think that's there.

8 MR. BERCAW: I'll have to request it, I'm going
9 to tell him. Let's find out about --

10 MR. BUTTERWORTH: You can answer, sir.

11 THE WITNESS: So Mr. Michael, we have a --
12 here, like, one to nine, it's ECDIS but it's like
13 ECDIS technical documents here (in English)?

14 MR. BERCAW: Yeah. That's true.

15 THE WITNESS: Yeah (in English).

16 INTERPRETER: We do not have it with us.

17 BY MR. BERCAW:

18 Q Okay. Do you know if it's on board the ship?
19 Is it with you, or is it back in Poland?

20 A It is on the ship.

21 MR. BERCAW: Okay. What I'd like to do now is
22 attach the chief mate certificate that we've been
23 talking about as Kowalski Exhibit number 1.

24 (KOWALSKI EXHIBIT 1 MARKED FOR IDENTIFICATION)

25 MR. BUTTERWORTH: They did two, because we had



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1 the one which here -- is -- his license. I'm going
2 to write that down wrong. They do the deposition
3 notice, which I had Exhibit 1, I had Exhibit 2 for
4 this one. I don't care.

5 MR. BERCAW: All right.

6 MR. BUTTERWORTH: It's Exhibit 1 --

7 MR. BERCAW: We'll briefly go off the record.

8 MR. BUTTERWORTH: Yeah.

9 COURT REPORTER: The time is 9:40 a.m. We're
10 going off the record.

11 (OFF THE RECORD)

12 COURT REPORTER: We're going back on the
13 record. The time is 9:40 a.m.

14 BY MR. BERCAW:

15 Q Mr. Kowalski, if you would turn to NM15? That
16 is a true and correct two-page document issued by the
17 Republic of Marshall Islands to you concerning your
18 capacity as a chief mate of a vessel, correct?

19 A Yes. That is correct.

20 MR. BERCAW: I'll attach this as Kowalski
21 Exhibit 2. Counsel, I mean, I have copies for you
22 both, if that what you want to do -- I may --

23 (KOWALSKI EXHIBIT 2 MARKED FOR IDENTIFICATION)

24 MR. BUTTERWORTH: That's okay. Is this already
25 a Bates numbered exhibit?



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1 MR. BERCAW: Yeah.

2 MR. BUTTERWORTH: If you identify by Bates
3 numbers, that's fine for us.

4 MR. BERCAW: All right. Perfect.

5 MR. BUTTERWORTH: Thank you.

6 BY MR. BERCAW:

7 Q Mr. Kowalski, before you attained chief mate
8 -- chief officer's status in the Commonwealth of Poland
9 or within the Republic of the Marshall Islands had you
10 held any other certificates with respect to vessel
11 navigation or operation?

12 A Prior to taking and passing the exam that we
13 were talking about, I held a watch officer license.

14 Q Which government issued you the watch officer
15 license?

16 A It was issued by Poland, so Polish Maritime
17 Authority and whether I had any other certificates from
18 other countries, I do not remember.

19 Q When were you issued approximately your watch
20 officer license by the Maritime Authority of Poland?

21 A I do not remember and I don't want to guess.

22 Q Very good. I don't want you to guess either.
23 Because we've -- actually we've asked you to tell the
24 truth. And if you guess, you're not telling the truth,
25 so we don't want you to go there, understand?



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1 A Of course.

2 Q How many issuances of your watch officer
3 license did you have? If you can remember?

4 A I don't remember.

5 Q Did you hold any other licenses besides watch
6 officer license and the chief mate certificate we've
7 been talking about?

8 A At the very beginning of my career, when I was
9 still in the -- in the deck -- in the deck department, I
10 just had a regular license, like a seaman license.

11 Q When did you first go to sea?

12 A 2004.

13 Q Is it fair to say that from 2004 through the
14 present, your principal occupation has been dealing with
15 vessel operations and navigation?

16 A No, we cannot. Because the navigation, this
17 is up to the watch officer, primarily.

18 Q Is it fair to say that from 2004 through the
19 present, you've been working in some capacity of the
20 deck department of the vessels that are in navigation?

21 A No. Because back in 2004, when I was under my
22 first contract ever, I was an assistant coordinator. I
23 was a waiter assistant on a passenger ship. And I
24 worked for Princess Cruises company.

25 MR. BERCAW: What was the last position he held



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1 with Princess Cruises company before he changed
2 employers?

3 A Oh, that's the only one that I had with
4 Princess Cruises, and that was my only job that I had
5 with that company.

6 MR. BERCAW: Approximately how long did he
7 serve as a waiter on the Princess Cruises passenger
8 ship?

9 A About eight months.

10 MR. BERCAW: After he left that job with
11 Princess Cruises, what was the next job that he had?

12 A I worked -- I was employed on ferries, and
13 that was -- and that was in the F&B department.

14 INTERPRETER: I just -- the interpreter just
15 heard an explanation that's the food and beverage
16 department.

17 A And that was for ferries that were going
18 between Poland and Scandinavia.

19 BY MR. BERCAW:

20 Q What was your official position with those
21 ferry lines where you worked in the food and beverage
22 department?

23 A I do not remember the exact name of the
24 position, but we can say that I was a waiter.

25 Q How long did you work in the food and beverage



1 department of the ferry service that ran between Poland
2 and Scandinavia?

3 A A few years, but I don't remember how many
4 years exactly.

5 Q Okay. What was the next job that you held?

6 A The next, I was a seaman on a -- on a yacht.

7 Q And what was the yacht's name?

8 A Motor J Oras.

9 INTERPRETER: Let me spell that. M-O-T -- O-
10 R, J, O-R-A-Z. Okay. O-R-A-S.

11 Q And you're saying yacht, as in, Y-A-C-H-T,
12 yacht?

13 A Yes. A yacht.

14 Q Okay. How long did you work as a seaman on
15 the Oras?

16 A I think it was approximately three months, but
17 the -- the log -- I would have to double check in the
18 logbook how long that was --

19 Q Okay.

20 A -- exactly.

21 Q It's fine. Did you receive a certificate that
22 you worked as an ordinary seaman, an able-bodied seaman,
23 or any other type of seaman from the Maritime Authority
24 of Poland to work on the Oras?

25 INTERPRETER: Counsel, could I have that



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1 question again?

2 Q Yes. When you worked on the Oras, were you
3 issued a license or certificate by the Polish Maritime
4 Authority either as an ordinary seaman, an able-bodied
5 seaman, or any other classification?

6 A I couldn't get the AB license because it is
7 issued to more experienced seamen. And I don't remember
8 whether I had a deck hand or OS license.

9 Q Where did you work after you worked as a deck
10 hand or a seaman onboard the Oras?

11 A For a few years, I was working -- for a few
12 years, I was working on sea vessels.

13 Q Refrigerated vessels?

14 A On refrigerate -- refrigeration vessels, and
15 -- and I worked for a few years on those types -- on
16 this type of vessels. I was a seaman first and then an
17 officer.

18 MR. BERCAW: When he was working as a seaman on
19 reefer vessels, who was his employer?

20 A STAR Reefers company.

21 MR. BERCAW: Who was his employer when he
22 worked as a watch officer on reefer vessels?

23 A It was -- it was also STAR Reefers Company.

24 COURT REPORTER: I'm sorry. Could you repeat
25 that? The Starry [sic] company?



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1 MR. BERCAW: It was also STAR Reefers.

2 INTERPRETER: STAR Reefers. STAR Reefers

3 Company.

4 BY MR. BERCAW:

5 Q Okay. In order to get your watch officer's
6 certificate or license from the Polish Maritime
7 Authority, did you have to attend a naval school or
8 academy?

9 A Yes. I had to graduate from the naval
10 academy, but I also had to pass the examination before
11 the National Board -- Maritime Board. It was not an
12 academy. It -- it was maritime school.

13 Q Where was the naval school located?

14 A It was in my town of Gdynia.

15 Q Did it have a specific name for the naval
16 school or was it just, you know, the naval school of
17 Gdynia?

18 A I think the correct name in English is the
19 Maritime School -- Gdynia Maritime School [sic].

20 Q And how long did he study at the Gdynia
21 Maritime School in order to attain -- in order to
22 qualify to sit for the national exam as a watch officer?

23 A I -- I was at school for two-and-a-half years.

24 Q No offense intended, but how many times did
25 you sit for the national exam before you passed as a



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1 watch officer?

2 A Just once. I was able to pass the first time.

3 Q During the period where you worked as a seaman
4 on board reefer vessels or even the Oras, did anyone
5 take action against your license or certificate?

6 A No. Never.

7 Q Did you work as a watch officer for any other
8 employer besides STAR Reefers?

9 A Yes. For Intership Navigation.

10 Q How long did you work as a watch officer for
11 STAR Reefer?

12 A A few years. I don't remember how many.

13 Q How long did you work as a watch officer with
14 Intership?

15 A Also a few -- a few years. I don't remember,
16 but I can double check in the -- in the log book.

17 Q You referred to the log book. Do you keep a
18 personal log or diary of your employment activities?

19 MR. MARTIM: Excuse me. This is
20 interpretation. May I?

21 INTERPRETER: Sure.

22 MR. MARTIM: I think that the officer was
23 referring to seaman's book, not the log book. Thank
24 you.

25 BY MR. BERCAW:



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1 Q Okay. Do you keep a --

2 INTERPRETER: This is the -- this is the
3 interpreter. Counsel, do you want to -- I mean,
4 does this explanation affects your question or
5 should I ask the question the way you ask it?

6 MR. BERCAW: Yeah. It's not going to affect my
7 question. But I will ask it again.

8 MR. BUTTERWORTH: No objection. No problems
9 here. Go ahead.

10 BY MR. BERCAW:

11 Q Yep. Mr. Kowalski, do you keep a personal
12 diary reflecting your activities on board ships?

13 A Yes. I have a book which is called a seaman's
14 book.

15 Q And how many volumes are your seaman's books
16 at this time?

17 A The book is not in volumes. You can compare
18 size-wise. The book is about the size of a passport.

19 Q In that book, we would find all the vessels
20 that you worked upon, including whether you were an
21 officer or a member of the ship's crew. Is that fair to
22 say?

23 A Yes. That -- starting with the deck
24 department job that I had, yes.

25 Q Okay. And is that the Oras that it started



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1 with or the reefer ships?

2 A I think it starts with the Oras. Yeah. But I
3 haven't looked at the book for a while now, so I -- I do
4 not remember.

5 Q Okay. That's fine. When you were a watch
6 officer employed by STAR Reefer, did the Polish Maritime
7 Authority take any action against your license?

8 A No. Never.

9 Q Okay. Once you began working as a se -- as a
10 watch officer with Intership Navigation, have you
11 continued to work with Intership Navigation through your
12 employment as a chief mate on the Nomadic Milde in an
13 interrupted fashion?

14 A Yes. I have been working for Intership for a
15 few years.

16 Q And since you began working with Intership,
17 you have not worked for any other employer on board
18 vessels; is that accurate?

19 A That's correct. That's correct. My only
20 employer is the Intership company.

21 Q In order to qualify for the national exam as a
22 chief officer, did you have to return to the Maritime
23 School in order -- for additional training?

24 A Yes. I had to take a chief officer course,
25 which is a few months. And then at the end of this, you



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1 take the exam -- the final exam -- the chief officer
2 exam, before the National Maritime Authority Board in
3 Poland.

4 Q Once you passed the chief officer's exam, did
5 you begin working immediately as a chief officer or did
6 you still work as an off -- a watch officer until
7 sometime afterwards?

8 A I do not remember how much time passed from
9 the time that I passed the exam to the time that I
10 actually went out on the vessel as chief officer.

11 Q All right. What vessels, while you are
12 employed as a chief officer by Intership, did you serve
13 as a chief officer besides the Nomadic Milde?

14 A Yes. Do you want the names of the vessels?

15 Q Yes. I do. Thank you.

16 A Nomadic Hjellestad, Federal Mosel, Augusta
17 Sun.

18 MR. BUTTERWORTH: We may want to help Jody with
19 the spelling of those. The court reporter. James,
20 it's up to you.

21 MR. BERCAW: Yeah. No. We'll do that.

22 BY MR. BERCAW:

23 Q Can you please spell Hjellestad, after the
24 Nomadic Hjellestad.

25 INTERPRETER: Interpreter's spelling, that's H-



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1 J-E-L-L-E-S-T-A-D. It's possible that there is a T
2 after D, but Mr. Kowalski is not sure.

3 BY MR. BERCAW:

4 Q Understand. Hjellestad. The second ship was
5 the Federal Mosel, is that -- is the -- Mosel is M-O-S-
6 U-L or how do you spell that second word?

7 A M-O-S-E-L.

8 Q And third vessel was the Augusta Sun; is that
9 correct?

10 A That's correct, yes.

11 Q When you were working on any of those vessels
12 that we just -- any of those three vessels that we just
13 mentioned, were you employed in the deck department
14 where Captain Tomasz Markowski was the master?

15 A No. I met Cap -- Captain Markowski for the
16 first time on Nomadic Milde.

17 Q Do you recall who was the designated person
18 ashore for the Nomadic Hjellestad?

19 A Yes. It was Captain Piotr Rusinek.

20 INTERPRETER: Interpreter spelling of the first
21 name, P-I-O-T-R. Last name, R-U-S-I-N-E-K.

22 Q Okay. Do you-all abbreviate the designated
23 person ashore as DPA?

24 A Yes. That's correct.

25 Q Who was the DPA of the Federal Mosel when you



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1 were the chief officer?

2 A I do not remember who the person was on
3 Federal Mosel or the Augusta Sun.

4 Q Okay. As chief officer of the Nomadic
5 Hjellestad, what were your reporting obligations, if
6 any, to Captain Rusinek?

7 A I do not have any reporting responsibilities
8 to report anything to the company.

9 MR. BERCAW: Mike Butterworth, it's been over
10 an hour. Are you ready for a break?

11 MR. BUTTERWORTH: I'm ready for a break.

12 MR. BERCAW: Okay. All right. Let's --

13 COURT REPORTER: The time is --

14 MR. BUTTERWORTH: Coffee time.

15 COURT REPORTER: -- 10:21 p.m. We are going
16 off the video record.

17 (OFF THE RECORD)

18 COURT REPORTER: The time is 10:33 a.m. We're
19 back on the video record.

20 MR. BERCAW: I have to go check something, but
21 Michael's here. Just -- you can go ahead.

22 COURT REPORTER: Okay.

23 BY MR. BERCAW:

24 Q All right. So we've just taken our first
25 break of the day, Mr. Kowalski. And again, like we



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1 mentioned at the very beginning, you're still under
2 oath. You understand that, right?

3 A I understand, of course.

4 Q Okay. So is it accurate that Captain Rusinek
5 is not only the -- was not only the DPA for the Nomadic
6 Hjellestad, but also was the DPA for the Nomadic Milde
7 at the time of the incident in May 8, 2020?

8 A Are we talking May 8th, that date?

9 Q Yes. The -- I probably got the month. For
10 some reason, I often say March 8, but I'm talking about
11 May 8, 2020. I don't know why March is sneaking in
12 there, but I mean, May 8, 2020.

13 A Okay. On May 8, 2020, Captain Rusinek was the
14 designated person ashore for Nomadic Milde. And whether
15 he was also, on that day, the DPA for Nomadic
16 Hjellestad, I don't know that.

17 Q Okay. When you were the chief officer of the
18 Nomadic Hjellestad, Captain Rusinek was the DPA, right?

19 A Yes. Back then, yes.

20 Q Okay. And on May 8, 2020, Captain Rusinek was
21 also the DPA for the Nomadic Milde?

22 A Yes.

23 Q How long did you work as the chief officer for
24 the Nomadic Hjellestad?

25 A It was about four months, but I would have to



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1 double check on the exact dates in my seaman's book.

2 Q Okay. Is your seaman's book in front of you?

3 A No. It is on the ship with the rest of the
4 documentation.

5 Q Okay. Do you recall at what location you
6 boarded the Nomadic Hjellestad?

7 A That was in Spain, but I don't remember which
8 port that was.

9 Q Okay. And you know where you departed the
10 Nomadic Hjellestad?

11 A I think it was December 1st of last year, but
12 again, to be exact, I would have to double check in the
13 seaman's book.

14 Q Okay. How long did you work aboard the
15 Federal Mosel as a chief officer?

16 A Again, approximate time would four months,
17 maybe a little bit over that, but the exact dates, I'd
18 have to see the seaman's book.

19 Q Okay. And same question regarding the Augusta
20 Sun, how long did you work as chief officer on the
21 Augusta Sun?

22 A That was a while back. So for that one, I --
23 I just don't want to do any guessing here, but this one,
24 I would really have to see the seaman's book.

25 Q Who was the master of the Augusta Sun when you



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1 served as chief officer?

2 A One of the captains on -- on board of that
3 ship was Captain Krzysztof Jurkiewicz.

4 INTERPRETER: Interpreter's spelling of the
5 first name. K-R-Z-Y-S-Z-T-O-F, last name J-U-R-K-I-
6 E-W-I-E-Z.

7 A And whether there was any other master during
8 the duration of -- of that contract, I -- I just do not
9 -- do not recall.

10 BY MR. BERCAW:

11 Q When you were working as chief officer of the
12 Augusta Sun, were you ever disciplined by the master,
13 the DPA, or anyone else with Intership?

14 A No. Never.

15 Q Same question with respect to the Federal
16 Mosel. When you were the chief officer there, were you
17 ever written up by the master, the DPA, or anyone at
18 Interships, or otherwise disciplined?

19 A No. Never.

20 Q Same thing with the Nomadic Hjellestad. Were
21 you ever disciplined by the master, the DPA, or anyone
22 else with Intership while you served as a chief officer
23 of that vessel?

24 A No. I was never written up by anyone during
25 my entire career as a chief officer.



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1 Q When you were the chief officer of the Nomadic
2 Hjellestad, did that vessel enter into the Mississippi
3 River?

4 A Yes. It -- it did.

5 Q Okay. How many times?

6 A Once.

7 Q Okay. When you were chief officer of the
8 Federal Mosel, did that vessel enter the Mississippi
9 River?

10 A I don't recall.

11 Q When you were chief officer of the Augusta
12 Sun, did that vessel enter the Mississippi River?

13 A I don't -- I don't recall.

14 Q When you were chief officer of the Nomadic
15 Hjellestad, and that vessel entered the Mississippi
16 River, do you recall around what time of year it was?

17 A I don't want to guess. I do not remember, but
18 it was the second half of the year.

19 Q Okay. Do you recall whether the Mississippi
20 River was in flood stage when the Nomadic Hjellestad
21 entered her?

22 A I do not remember the condition of the
23 Mississippi River at that time.

24 Q When you were chief officer of the Nomadic
25 Hjellestad and she was navigating the Mississippi River,



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1 did she ever have to set her anchors or was she at a
2 berth dock the whole time?

3 A I'm sure that we were at a -- at a berth -- at
4 a pier because we were dropping off a load, but whether
5 we had to drop anchors at the Lower Mississippi or at
6 Southwest Pass, I just do not remember that.

7 Q Okay. And what pier, if you recall, did you
8 discharge the cargo of the Nomadic Hjellestad?

9 A As far as I remember, that was Harmony Street.

10 Q Okay. What documents did you review in
11 preparation for your deposition today?

12 A The entire documentation that we prepared here
13 in those binders. I also listened to the VDR, and I
14 also watched the ECDIS recording.

15 Q Approximately how many hours did it take you
16 to complete those tasks?

17 A Over a dozen.

18 COURT REPORTER: Over? I'm sorry.

19 INTERPRETER: A dozen. Excuse me. The
20 interpreter would like to clarify something with Mr.
21 Kowalski.

22 A There was over a few dozen, not over a dozen.
23 Over a few dozen.

24 BY MR. BERCAW:

25 Q Okay. How many times did you listen to the



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1 VDR in preparation for your deposition?

2 A A few times.

3 Q Okay. When you were undergoing your formal
4 schooling at the Gdynia Maritime School for officer
5 watch certification, did you receive training in the
6 ECDIS system?

7 A Yes. It is one of the courses at the school.

8 Q And what's the name of the course?

9 A The course is called Navigation, and ECDIS is
10 part of the Navigation.

11 Q When was the last time you had training before
12 May 8, 2020 on the ECDIS systems in general?

13 A That was back in 2019, but I don't remember
14 the exact date.

15 Q And where was that training provided?

16 A At the same school that we had talked about.

17 Q That would be the Gdynia Maritime School? Do
18 I have that correct?

19 A That's correct.

20 Q Why did you go back to the Gdynia Maritime
21 School in 2019 for training in ECDIS if you already had
22 your chief mate's license?

23 A First of all, because the ECDIS system
24 training takes -- takes time. I mean, it -- it happens
25 every now and then. And number two reason would be that



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1 I had to receive training on a special type of the ECDIS
2 system. And this is why I went back for the training.

3 Q What was the special type of ECDIS system that
4 you required training at the Gdynia Maritime School?

5 A It was EC -- ECDIS Transas.

6 Q Did the Nomadic Hjellestad have an ECDIS
7 system on board when you were the chief officer?

8 A Yes. It did have the ECDIS system.

9 Q And it was the system X -- X ECDIS system
10 [sic]? Did I understand that correctly?

11 INTERPRETER: No.

12 MR. BERCAW: All right. I'll ask again.

13 INTERPRETER: Could I have that name again?

14 MR. BERCAW: It was the system X -- ECDIS
15 system. Did I hear you correctly?

16 A Well, there are different types of ECDIS
17 systems. And -- and from what I remember, the Nomadic
18 Hjellestad ship has a different ECDIS system than the
19 Nomadic -- Nomadic Milde ship.

20 BY MR. BERCAW:

21 Q Okay. All right. Did the Nomadic Hjellestad
22 have the same or a different ECDIS system than the
23 Federal Mosel?

24 A I don't remember what the ECDIS system was on
25 Federal Mosel.



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1 Q Do you recall the type of ECDIS system that
2 the Augusta Sun had? It was a Raytheon system?

3 A Raytheon system, yes (in English).

4 Q Yeah. Okay.

5 A Okay. So they had the -- the Raytheon system.

6 Q Yeah. All right. And so the Augusta Sun had
7 a Raytheon ECDIS system?

8 A As -- as I remember, yes.

9 Q This is getting scary, yeah. Okay. And what
10 was the ECDIS system that the Nomadic Hjellestad had on
11 it?

12 A I don't remember.

13 Q Okay. You do recall that the ECDIS system for
14 the Hjellestad was different than the Milde?

15 A Yes.

16 Q Okay.

17 A I do remember that.

18 Q All right. I meant to ask this a while ago,
19 and it just slipped my mind. For those Intership
20 vessels we've been talking about, including the Nomadic
21 Milde, identify the ship you first worked on, then the
22 next ship after that, then the next ship after that, and
23 then, of course, the last one would be the Nomadic
24 Milde. I know that. But include that in the list, too.

25 A I'm not able to give you a list of all the



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1 ships that I was on. But I can give you a few names of
2 different ships, but it's not going to be in
3 chronological order.

4 Q Okay. I'm only interested in the three ships
5 we've been talking about, the Nomadic Hjellestad, the
6 Augusta Sun, and the Federal Mosel. What was the order
7 in which you served as chief officer? Which was the
8 first ship, what was the middle ship, and the last ship
9 of those three ships?

10 A Okay. The first one was the Augusta Sun. The
11 second was -- the second one was the Federal Mosel.
12 Third one Nomadic Hjellestad, and the last one was
13 Nomadic Milde.

14 Q How much time passed between the day you left
15 the Nomadic Hjellestad and you began working as chief
16 officer on the Nomadic Milde?

17 A About five months.

18 Q During that five-month period, did you serve
19 as chief officer on any other vessel?

20 A No. I was not.

21 Q Did you have other employment during that
22 five-month period between the time you left the Nomadic
23 Hjellestad and the time that you joined the Nomadic
24 Milde?

25 A No. I was not working for anyone else.



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1 Q During the time that you underwent training in
2 part of ECDIS systems in 2019, did that occur while you
3 were working on the Nomadic Hjellestad, before or after?

4 A No. The training was after I did -- I --
5 after I worked on Nomadic Hjellestad. And you have to
6 be at home to be able to -- to participate in the
7 training.

8 Q Okay. Did you receive a certificate or
9 anything from the Gdynia Maritime School for that
10 training in 2019?

11 A Yes. I received a certificate from the school
12 in Gdynia.

13 Q Okay. And this was for the course that you
14 took in 2019, correct?

15 A Yes.

16 Q Okay. Do you have a copy of that certificate
17 on board the ship?

18 A Yes. Yes.

19 Q Like when convenient, no need to make a
20 special trip today, but we'd like a copy of that
21 certificate.

22 MR. BUTTERWORTH: Of the --

23 MR. BERCAW: The ECDIS certificate in 2019.

24 MR. BUTTERWORTH: Okay. I think we're trying
25 to get all the ECDIS certificates that the --



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1 MR. BERCAW: Okay.

2 MR. BUTTERWORTH: -- witness has right now. As
3 soon as we get them --

4 MR. HELD: Here's the certificates, Jim, right
5 here, if you want them.

6 MR. BERCAW: Excellent timing.

7 MR. HELD: Just send them over.

8 MR. BERCAW: How about that?

9 MR. HELD: That's yours.

10 MR. BERCAW: Mike, can I see a copy?

11 MR. HELD: Yeah. I'm sorry. I would've
12 printed out more, but -- let's see.

13 MR. BUTTERWORTH: Put a whole bunch of more
14 paper in the copier, just because someone -- the
15 captain's deposition.

16 BY MR. BERCAW:

17 Q Captain, the documents in front of you don't
18 have Bates numbers on them at this time. They will. And
19 we'll pick up with the next Bates number for purposes of
20 accuracy. But can you describe to me the two pages of
21 documents that have been handed to you by Mr. Held just
22 now?

23 A The first document is the certificate how to
24 operate and use the ECDIS system. That was issued in
25 September of 2013. The second certificate is -- is for



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1 a special type of ECDIS, and that was issued in January.
2 That was issued in January 2020.

3 Q Okay. I will attach as Kowalski 3, the
4 certificate issued in September of 2013. And I will
5 attach as Kowalski Exhibit 4, the Transas ECDIS Type
6 Specific training issued on January 15, 2020. The
7 Nomadic Milde was equipped with a Furuno manufactured
8 ECDIS system; is that correct?

9 (KOWALSKI EXHIBIT 3 MARKED FOR IDENTIFICATION)

10 (KOWALSKI EXHIBIT 4 MARKED FOR IDENTIFICATION)

11 A I don't understand the question, because if
12 you ask about Nomadic Milde, Nomadic Milde had Transas.
13 Maybe you're asking me about it Nomadic Hjellestad.

14 Q Who was the manufacturer of the ECDIS system
15 on Nomadic Milde?

16 A The manufacture of ECDIS that we had on the
17 Nomadic Milde was Transas.

18 Q And we've been using the abbreviation for some
19 time, but ECDIS stands for Electronic Chart Display and
20 Information System; is that correct?

21 A That's correct.

22 Q When you attended the Transas' ECDIS display
23 course, did they provide you with any manuals, texts,
24 computer printouts or other files for your personal use
25 after you completed the course?



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1 A No. I did not.

2 Q All right. What is the function of an ECDIS
3 system on board a ship?

4 A It's our main navigation device, (coughs)
5 excuse me. A main navigation device. It's an
6 electronic map that contains all the necessary
7 information that we need for navigation and that would
8 include speed, our position, any corrections made.
9 Usually it's the system that makes the corrections.
10 Also, the wind direction and the wind speed. It's a
11 very elaborate system and comprehensive and other
12 devices that we have on the bridge are connected to the
13 ECDIS system. And because of that device, we are able
14 to see everything on the display on the bridge.

15 Q Okay. So the ECDIS display will indicate to
16 those who are looking at, all marked obstructions to
17 navigation?

18 A Yes. Of course.

19 Q When the Nomadic Milde was dis -- well, when
20 the officers and the master of the Nomadic Milde
21 discovered that they would be heading up the Mississippi
22 River to pick up a cargo at Avondale, did they update
23 the ECDIS system at that time or was it automatically
24 updated for them to include information concerning the
25 Mississippi River?



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1 A It's up to the navigation officer to update
2 the -- the system. And in our case, that would be the
3 second officer who would be responsible for that. But
4 before we came to Avondale, I could not really tell you
5 much because -- because I joined the ship in Avondale.

6 Q Do you recall what date in May you joined the
7 ship in Avondale?

8 A May 6th.

9 Q I'm going to show you a document that's been
10 produced and as NM104. Okay. Are you there, Mr.
11 Kowalski?

12 A Yes. Yes. I'm here.

13 Q Okay. This is your 96-hour work-rest history
14 form that the Coast Guard requires to be filled out, in
15 the event of a marine casualty; is that correct?

16 A Yeah. I see that.

17 Q Okay. And I'll attach a copy of NM104 as
18 Kowalski Exhibit 5. According to this form, you joined
19 the Nomadic Milde sometime between 2200 hours and 2300
20 hours on May 6; is that correct?

21 (KOWALSKI EXHIBIT 5 MARKED FOR IDENTIFICATION)

22 A I remember this was late at night. I don't
23 remember the exact time.

24 Q Okay. And according to this form, your first
25 work shift onboard the Nomadic Milde started at 1600



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1 hours on the day of the incident, May 8, 2020, correct?

2 A No. I started my first shift on May 7th, at
3 6:00 a.m. And on May 8th, at 16 hours [sic], that was
4 my first navigation watch.

5 Q Okay. What work were you doing at -- starting
6 at 0600 hours on May 7, 2020?

7 A First of all, there was a transfer of
8 responsibilities from the person that was in my position
9 before me. But we also were taking care of loading the
10 cargo onto the ship.

11 Q Okay. At 0800 hours on May 8, 2020, what were
12 you doing?

13 A I was also getting -- I was also getting the
14 transfer of responsibilities from the person that was in
15 my position before, I was also getting familiar with the
16 paperwork, and also with getting the cargo on board.

17 Q Okay. Prior to 1600 hours on May 8th, had you
18 inspected the anchors of the Nomadic Milde?

19 A It's part of transferring the
20 responsibilities, yes.

21 THE WITNESS: Excuse me, just one -- one other
22 thing. Maybe we can use the word hand -- hand over
23 instead of transferring, okay (in English)?

24 INTERPRETER: Okay.

25 MR. BERCAW: Okay.



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1 A A better term for transferring the
2 responsibilities would be hand over, you said? Hand
3 over. Okay.

4 BY MR. BERCAW:

5 Q Okay. So who was with you when you inspected
6 the port anchor of the Nomadic Milde during any part of
7 the handover operations?

8 A Except for maybe a couple of exceptions, the
9 entire time the person that was with me was the previous
10 chief officer.

11 Q What's his name?

12 A Robert Oswiecimski.

13 INTERPRETER: Interpreter spelling of the first
14 name, R-O-B-E-R-T, last name, O-S-W-I-E-C-I-M-S-K-
15 I. Okay. Okay. The witness is not sure whether
16 it's O-S-W-I-E-C-I-N-S-K-I or M-S-K-I.

17 BY MR. BERCAW:

18 Q Okay. So when you were inspecting the port
19 anchor of the Nomadic Milde during your handover
20 operations, how did you conduct that examination?

21 A When you are at port, close to a berth, there
22 is no other way to do the inspection except for -- but
23 just to do a visual inspection. So you check -- so you
24 check how the winch and windlass if they are greased --
25 whether they're greased or lubricated properly. You



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1 also check for any fractures. We also visually inspect
2 the chain. We also look at the stopper on the chain, in
3 the hawse -- in the hawsepipe, we also check -- so we
4 check for -- we check the swivel, we check anchors
5 stock, and also when you check the draft, we also look
6 at the anchor from the outside. The -- you pretty much
7 do the same thing for the anchor and everything around
8 the anchor on the right side, from the starboard side,
9 except that on the other side we cannot really go
10 outside of the ship and look at it.

11 Q So because the vessel was more on the port
12 side to the dock at Avondale, you were able to get on
13 the dock and then conduct an inspection of the port
14 anchor and anchor chain system, is that fair to say?

15 A Yes. The -- the anchor from the dock side was
16 visible to us, yes.

17 Q And that anchor would be the port side anchor,
18 correct?

19 A Yes. The port side anchor.

20 Q Okay. When you were inspecting the port side
21 anchor from the dock, did the vessel crew let out the
22 anchor chain so you could get a better look at it from
23 the dock side or did the anchor stay in place during
24 that inspection on the dock?

25 A No. The -- the chains were not let out for



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1 either one of the anchors. The visual inspection
2 happened in the parking position of the anchor.

3 Q Okay. The parking position for the anchor, is
4 that where the stock and the swivel would be pulled up
5 into the hawsepipе itself?

6 A Yes. That's correct.

7 Q Okay. And so when the anchor inspections were
8 going on that you've described, that was the position
9 that the stock and the swivel were in, pulled up as high
10 as they could go in the hawsepipе. No chain was let
11 out, it was just left in that position during the entire
12 inspection, correct?

13 A That's correct. The chain is not let out at
14 all.

15 Q Okay. How did you determine whether the
16 flukes of the port anchor were in alignment during the
17 course of your anchor inspection while the vessel was in
18 Avondale?

19 INTERPRETER: Counsel, could I have that
20 question again?

21 Q Yes. How did you --

22 INTERPRETER: Thank you.

23 Q -- determine whether the flukes of the port
24 anchor were in alignment while the vessel was at dock in
25 Avondale?



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1 A Well, you can see that. It's -- it's just
2 visible.

3 Q And where were you located when you determined
4 that the flukes of the port anchor were in alignment
5 while the vessel was at dock in Avondale?

6 A I looked at the anchor both from the ship and
7 that would be looking from the -- from the -- kind of,
8 the top of the anchor. And also when I -- when -- when
9 I was on the dock. So from the outside.

10 Q Okay. It's my understanding that the way the
11 forecastle area of the Nomadic Milde is arranged, that
12 there is deck naturally above the area where the
13 hawsepipe is located.

14 A That's correct.

15 Q And depending on how thick that hawsepipe
16 actually is, it runs in a diagonal direction towards the
17 bow of the ship and in an overboard direction, is that
18 fair to say?

19 A Diagonally, I don't know. It kind of runs at
20 an angle but I'm not sure whether it is diagonally.

21 Q All right. Okay. But it runs at an angle
22 outboard of the ship, is that fair to say?

23 A That's correct, yes.

24 Q So when the stock and the swivel of the anchor
25 are pulled all the way into the hawsepipe, the flukes of



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1 the anchor would be very close to the, I guess, the
2 bottom of the forecastle of the ship, is that fair to
3 say?

4 A Yes. So we can look into the -- we can -- we
5 can see the anchor from looking from the top, from the
6 deck.

7 Q Okay.

8 A I mean, the -- the swivel. It's the swivel
9 (in English). You can see the swivel.

10 Q Okay.

11 A Yeah (in English).

12 Q The swivel of the anchor, right?

13 A We can see the swivel.

14 Q Right. Okay. That's how far it's pulled into
15 the hawsepipe? Okay.

16 A Yes.

17 Q Okay. Because the Nomadic Milde was port side
18 to the dock at Avondale, obviously, you couldn't see the
19 starboard anchor flukes while you were standing on the
20 dock; is that true?

21 A Not entirely. I wasn't able to go on the --
22 on the dock to be able to see the starboard side, but I
23 was able to see the anchor on the deck while on board of
24 the ship.

25 Q Okay. As concerns the starboard anchor of the



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1 Nomadic Milde, did you later learn that when that anchor
2 was retrieved from the river that the flukes of the
3 starboard anchor were out of alignment?

4 A Are we talking about the anchor that was
5 pulled out of the river after the accident, right?

6 Q That's correct, yes. You're with me.

7 A Yes. At that time, I found out that the
8 anchor was damaged.

9 Q Right. And part of the damage to the anchor
10 were that the flukes of the anchor were out of
11 alignment, correct?

12 A I think the best -- I think the best way would
13 be to actually look at the picture because it's been six
14 weeks since the -- since the last time that I saw the
15 pictures.

16 Q Okay. So without looking at the pictures, you
17 can't testify one way or the other whether the flukes of
18 the starboard anchor were out of alignment? Is that
19 what you're telling me?

20 A I remember that the anchor was damaged. I
21 would prefer not to guess and seeing the picture would
22 just be better for me.

23 Q Okay. You would agree with me, though -- and
24 we're about to take a break. But you would agree with
25 me that if the anchor that was retrieved from the river



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1 after the accident was in that condition at the time the
2 vessel was in that dock at Avondale, that that anchor
3 was unsuitable to serve as an anchor for the Mississippi
4 River at flood time?

5 A If it was -- if it -- if the anchor was in
6 that condition at the time of my inspection in Avondale,
7 yes. That is correct. It wouldn't be at good condition
8 of the anchor, but it was not.

9 MR. BERCAW: Okay. We're going to take a break
10 now for a half hour and then we'll reconvene at
11 12:15.

12 MR. BUTTERWORTH: Do you want to break now for
13 lunch, or do you want to take --

14 MR. BERCAW: Yeah. That's what I'm saying.

15 MR. BUTTERWORTH: -- you want a five --

16 COURT REPORTER: The time is 11:46 a.m. --

17 MR. BUTTERWORTH: -- you want to take a five-
18 minute break and then go have lunch later, or there
19 is lunch here?

20 MR. HELD: No. It all will be here at noon,
21 so --

22 MR. BUTTERWORTH: Do you want to take a five-
23 minute break now and then we'll just do it at 12:30?

24 MR. HELD: However you want to do it.

25 MR. BERCAW: Sure. No. No. That's fine. We



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1 will take a five-minute break and then we'll
2 continue until further notice. So it's a five-
3 minute break now.

4 MR. BUTTERWORTH: Okay.

5 COURT REPORTER: The time is 11:47. We're off
6 the video record.

7 (OFF THE RECORD)

8 COURT REPORTER: The time is 11:59 a.m. We are
9 back on the video record.

10 BY MR. BERCAW:

11 Q Okay. Where we left off was the suitability
12 of the anchor after the accident, to serve as an anchor
13 for the Nomadic Milde prior to the accident. Okay. And
14 we're going to be locating some photographs to share
15 with you for that purpose later on. Besides the
16 misalignment of the flukes of the starboard anchor that
17 were seen after the accident, are you aware of any other
18 -- go ahead. Have you been made aware of any other
19 problems with the starboard anchor as it was seen after
20 the accident?

21 A I was not the one who handled the anchors
22 after the accident. So I don't know if this type of
23 questions should be directed to me.

24 Q Okay. I understand. You did not inspect the
25 starboard anchor that was retrieved from the Mississippi



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1 River after the accident. Is that what you're saying?

2 A That's correct. I was not present during the
3 inspection of the anchors after they were retrieved
4 after the accident.

5 Q Okay. Describe for me the process through
6 which you and Officer Oswiecimski inspected the stock of
7 the starboard anchor while the vessel was at dock in
8 Avondale.

9 A That -- that was done in a similar fashion to
10 the port anchor, and the inspection was done visually.
11 It was a visual inspection because there was no other
12 way to -- to conduct an inspection of the starboard
13 anchor.

14 Q Okay. I understand how it's possible to
15 inspect the portion of the anchor stock that's close to
16 the swivel. Can you tell me how you inspected that
17 portion of the stock that was closest to the base of the
18 flukes of the starboard anchor?

19 A Are we talking about the lower part of the
20 anchor, or are we talking about the lower part of the
21 stock?

22 Q Sorry. The lower part of the stock near the
23 lower part of the anchor. In other words, on the side
24 opposite of where the swivel is located.

25 A So you can do it visually through -- you can



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1 do it visual -- you can do a visual inspection through
2 the hawsepipe.

3 Q And just so I'm clear -- I may have asked this
4 question before. But the starboard anchor when it was
5 being visually inspected while the vessel was at
6 Avondale, the anchor was pulled all the way as far as it
7 could go into the hawsepipe, such that the swivel was
8 visible from the deck; is that correct?

9 A Yes. It was -- the anchor was -- was all the
10 way to the top.

11 Q Okay. And at no time during the inspection
12 was the starboard anchor chain paid out, correct?

13 A That's correct. It was not.

14 Q Okay. Tell me how you would inspect the first
15 three shots of the anchor chain while the vessel was at
16 dock in Avondale, either the port or starboard anchor
17 chain lockers?

18 INTERPRETER: I apologize --

19 Q I'll do it again.

20 INTERPRETER: -- Counsel, but I didn't hear the
21 middle part of the question. For some --

22 MR. BERCAW: That's fine.

23 INTERPRETER: -- reason, the -- it was
24 breaking.

25 MR. BERCAW: That's fine.



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1 INTERPRETER: Uh-huh.

2 BY MR. BERCAW:

3 Q Tell me how you would inspect the first three
4 shots of the anchor chain while the vessel was at dock
5 in Avondale while -- and those anchor chain was located
6 in the corresponding anchor chain lockers.

7 A The first three -- the three shackles are
8 impossible to inspect when the anchor is all the way up
9 in -- in the chain lockers. It -- the only way you can
10 actually do an inspection is when the ship is on the
11 anchor, and the anchor chain is kind of being heaved
12 back to -- onto the deck. But when the entire chain is
13 in the lockers, it's impossible to conduct an
14 inspection.

15 Q So there was no anchor chain inspection at the
16 time that the Nomadic Milde was at dock in Avondale?

17 A Not quite so. The inspection of the three
18 shackles was not done. But the part of the chain that
19 goes from the anchor through the deck and goes into the
20 chain locker, but this part you can see and you can
21 inspect.

22 Q Right. It's above deck. So you can look at
23 it?

24 A Yes.

25 Q Okay. And so in order to heave the anchor, is



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1 it the anchor windlass or the anchor winch that does the
2 work?

3 A The windlass --

4 Q Okay.

5 A -- does the job.

6 Q All right. And so the anchor windlass also is
7 affixed with a manual braking device; is that correct?

8 A Yes. It is a brake.

9 Q Yeah. On the portion of the starboard anchor
10 and anchor chain that were retrieved from the
11 Mississippi River after the incident, are you aware of
12 any issues concerning the condition of that portion of
13 the anchor chain?

14 A I know that the starboard chain -- I know that
15 the starboard chain just broke off.

16 Q Okay. Besides the link of the starboard
17 anchor chain that failed, are you aware of any other
18 problems with the starboard anchor chain of the Nomadic
19 Milde at the time it was retrieved from the Mississippi
20 River?

21 A I don't recall.

22 Q Okay. I understand that the Nomadic Milde
23 departed the Avondale dock on May 8, 2020 and headed
24 upriver where she was to set her anchors at an anchorage
25 on the Mississippi River; is that correct?



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1 A That's correct, yes.

2 Q Okay. The anchors, the anchor chain, the
3 anchor windlass, the anchor brake, these are all items
4 of the Nomadic Milde that were within the
5 responsibilities of the chief officer to confirm they
6 were in proper working condition at all times, correct?

7 A That's correct. But for the mechanical parts,
8 for the engine, or for any other mechanical, or
9 mechanics, or electrical things, it's the chief engineer
10 who is responsible.

11 Q Okay. So to the extent that the anchor
12 windlass was operated by electrical power and there was
13 a problem with the electrical power being fed to the
14 anchor windlass, that would fall within the chief
15 responsibility of the chief engineer, correct?

16 A Yes. If there was an electrical or power
17 problem, then the chief engineer would take care of it.

18 Q Conversely, if there was a problem with the
19 brake linings of the anchor brake or a problem with the
20 condition of the anchor chain, or a problem with the
21 alignment of the flukes of the anchor, or the stock of
22 the anchor, that would fall within your responsibility
23 as the chief officer, correct?

24 A Yes. That's correct.

25 Q Okay.



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1 MR. BERCAW: And we'll go off the record. You
2 want to take the lunch break?

3 COURT REPORTER: The time is 12:20 p.m. We are
4 off the video record.

5 (OFF THE RECORD)

6 COURT REPORTER: The time is 12:58 p.m. We are
7 going back on the video record.

8 BY MR. BERCAW:

9 Q Okay. I understand that after the incident
10 you prepared a handwritten statement; is that accurate?

11 A That's correct, yes.

12 Q Okay. I meant to ask you, do you have any
13 nicknames that you go by?

14 A No. I don't.

15 Q Okay. That's fine.

16 MR. BERCAW: We're up to 6, right? Kowalski
17 6?

18 COURT REPORTER: Yes, sir.

19 MR. BERCAW: Yeah.

20 BY MR. BERCAW:

21 Q Why don't you turn to NM54? Do you have that
22 in front of you, Mr. Kowalski?

23 A Yes. I do have it in front of me.

24 Q Okay. Is this a true and accurate copy of
25 your handwritten statement concerning this incident?



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1 A Yes.

2 Q All right. I'll attach NM54 as Kowalski
3 number 6. When did you prepare your statement, Mr.
4 Kowalski?

5 (KOWALSKI EXHIBIT 6 MARKED FOR IDENTIFICATION)

6 A It was right after the -- the incident. But
7 the exact time, I just do not remember.

8 Q Who asked you to prepare the statement?

9 A The captain.

10 Q Okay. Was there anybody else in the room with
11 you when you prepared your statement?

12 MR. BUTTERWORTH: Jim, you keep going. I've
13 got to run do something.

14 A I don't remember.

15 Q As you prepared your statement, did you refer
16 to any other document or computer information or vessel
17 information?

18 A Yes. We had some certain times written down
19 or recorded in our log, in -- in the deck log book.

20 Q Okay. All right. And so you consulted the
21 deck log book in preparing your statement; is that
22 correct?

23 A Yes. I took some information from the deck
24 log book, yes.

25 Q Okay. Did you take any information from the



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1 vessel's VDR system in preparing your statement?

2 A No.

3 Q Did you take any information from the vessel's
4 ECDIS system when you prepared your statement?

5 A No.

6 Q Okay. So the only information that you
7 consulted in preparing your statement was the deck log
8 book. Is that fair to say?

9 A Yes. That's correct.

10 Q Okay. We've been provided with a document
11 identified as the bell book. Are you familiar with the
12 bell book?

13 A Yes. I'm familiar with that document, yes.

14 Q Okay. And for the record, I'm referring to
15 pages NM183 and 184, which I will attach -- which I will
16 attach as Kowalski Exhibit 7, okay? Mr. Kowalski, does
17 your handwriting appear anywhere on page NM183?

18 (KOWALSKI EXHIBIT 7 MARKED FOR IDENTIFICATION)

19 A Yes. That is at the time of 1326, 1340, and
20 1350.

21 Q Okay. I take it then that none of your
22 handwriting appears on page NM184; is that correct?

23 A That's correct, there wasn't.

24 Q Okay. Whose handwriting appears at 1600 hours
25 on page NM184?



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1 A I don't know. It could be the captain's or it
2 could be the second officer.

3 Q Did you take a GPS reading when you came on
4 duty at 1600 hours on May 8, 2020?

5 A The -- the position of the GPS is on display
6 constantly.

7 Q I understand. I'm trying to figure out did
8 you, Officer Kowalski, ever take a GPS recording when
9 you came on duty or on watch on May 8, 2020?

10 A Give me a second. The GPS position is
11 recorded on page number NM178. This is a copy -- and
12 this is a copy from our deck log book.

13 Q Right. Which entry gets made first, the entry
14 in the bell book or the entry in the deck log book?

15 A Bell book is a little bit -- a different
16 document from the deck log book. The bell book can also
17 be called the maneuvering book log of the vessel. And
18 we record the movement of the ship in this bell book
19 when and only when at the time that the ship is
20 maneuvering. So they would be approaching dock,
21 departing or when there -- there is any maneuvering done
22 with a pilot. Things like that would go into the bell
23 book.

24 MR. BERCAW: Can you attach that as 7?

25 Q Were you on the bridge of the Nomadic Milde



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1 when she was setting her anchors in the Mississippi
2 River after the departing the Avondale dock?

3 INTERPRETER: Counsel, could I have the
4 question again? What was happening with the
5 anchors?

6 Q Yes. Were you on the bridge of the Nomadic
7 Milde when she was setting her anchors after having
8 departed the Avondale dock?

9 A Yes. I was on the bridge.

10 Q Okay. What role, if any, did you play in
11 setting the anchors of the Nomadic Milde after she left
12 the Avondale dock on May 8, 2020?

13 A I didn't play any role.

14 Q Okay. You just observed the setting of the
15 anchors?

16 A Are we talking at the time that the anchors
17 were being prepared to be dropped, or are we talking at
18 the time that they are actually dropping?

19 Q Oh, I understand my question wasn't clear, so
20 we'll take it a little bit at a time. After the Nomadic
21 Milde arrived at the destination or in the vicinity of
22 where she was going to drop her anchors, were you on the
23 bridge at that time?

24 A Yes. I was on the bridge at that time.

25 Q Okay. When the Nomadic Milde first pulled



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1 away from the dock and all lines were cast off, is that
2 when the anchor chains of the Nomadic Milde were
3 lowered?

4 A I don't remember when the order to have to set
5 the anchors above the water was given. I don't remember
6 the exact time, but I think I was on the bridge the
7 entire time.

8 Q Okay. Do you understand that when you're
9 navigating the Mississippi River during flood stage, the
10 anchors need to be out of the hawsepipes and some
11 distance above the level of the water in case they need
12 to be dropped on an emergency basis, right?

13 A Yes. It's kind of routinely done at many
14 places around the world that you keep your anchors about
15 a meter above water or at a certain distance to be
16 ready, yes.

17 Q Okay. When the anchors of the Nomadic Milde
18 were approximately a meter or a fixed distance above the
19 water after she departed the dock at Avondale, did you
20 inspect the anchor chain at that time?

21 A No. I wasn't doing an inspection of the
22 chains at that time.

23 Q Okay. When those anchors were in that
24 configuration I just talked about, did you inspect the
25 stock of the starboard anchor?



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1 A I didn't do any inspection at that time. I
2 just don't -- this is not the time when you do
3 inspections. When the ship is kind of on the way, this
4 is not the time to do -- to do inspections.

5 Q Okay. And you may have figured this out
6 already, but I have to ask questions that I know the
7 answer to or I think I know the answer to even though,
8 you know, based upon your prior answers, just to make
9 sure that I have a clear understanding. So, you know, I
10 hate to belabor the point but I'm going to have to ask
11 you some more questions about inspection, okay?

12 A Okay (In English).

13 Q All right.

14 A I understand.

15 Q So based on your previous answers, I take it
16 that you did not inspect the flukes of the starboard
17 anchor when the anchor chain had been let out and the
18 Nomadic Milde is traveling from the Avondale dock to her
19 anchorage, right?

20 A After we left the -- the dock, no, I did not.

21 Q Okay. We had several -- numerous questions
22 concerning inspection by you and Mr. Oswiecimski -- I
23 think I butchered that name -- of the anchor, anchor
24 stock, flukes, anchor windlass and brake. When did that
25 inspection occur?



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1 A It was done on May 7th during the hand --
2 handover process. That handover process proceeds in a
3 way that we have, like, rounds, we'll go rounds around
4 the ship. And part of the handover process and part of
5 those rounds that we do is -- is checking the -- the
6 windlasses and the -- and the anchor winches.

7 Q Right. Okay. All right. Tell me in your own
8 words - and you may want to take a pause for the
9 translator. What happened between the time the vessel
10 began anchoring in the river on May 8th, until the time
11 that she made contact with the Atlantic Venus?

12 A I'm -- I'm sorry, but it's a very general kind
13 of question. I don't know what you want me to say, and
14 how to best respond.

15 Q Without getting too smart, I want to hear your
16 version of the events from the time the vessel was in
17 position to drop her anchors, until the time when the
18 vessel made contact with the Atlantic Venus.

19 A I would like to, if possible, use VDR records
20 because all the times are reported there. And the
21 reason for that is, that I don't want to guess. And if
22 you want me to go step-by-step, I don't want to kind of
23 guess what happened. And that would help me to
24 remember, and give you a good answer.

25 Q Okay. So let me understand that response. You



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1 need to refer to a transcript of VDR communications, in
2 order to answer my question about telling us in your own
3 words what happened?

4 A If you want me to tell you how it happened at
5 -- at certain times over a period of time, then that
6 would be very good. I would -- I would use the
7 assistance of the VDR, the recordings to answer your
8 question. I -- I can give you my version of the events
9 without maybe going into the details as to what time --
10 what exactly the time was at the time that things were
11 happening.

12 Q Okay. Well, that's what I wanted you to do.
13 So if you could, with appropriate breaks for the court
14 reporter, give in your own words, tell us what happened
15 between the time that the Nomadic Milde was in a
16 position to drop her anchors until the time that she
17 made contact with the Atlantic Venus.

18 A So the ship drops the anchors between 1530 and
19 1600 hours. Before 1600 hours, I leave the bridge to
20 change. About 1600 hours, I go back to the bridge. I
21 take the watch duty from the second officer. Several
22 minutes later, I received a -- a VHF phone call from
23 Atlantic Venus, with a request to be on a proper lookout
24 because the anchoring positions are very close to each
25 other. And then I confirm with them that we will do a



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1 proper lookout. A little bit -- a little bit later, I
2 want to say about half an hour later, we started -- we
3 start swinging or turning on the cable. In the
4 meantime, we receive a second phone call from Atlantic
5 Venus with the information that we're getting very close
6 to the bow of Atlantic Venus. And of course, our
7 response is that, "Yes. We have noticed that." At the
8 same time, I'm making the captain aware of the
9 situation. He instantly appeared on the bridge. The
10 captain got in touch with VTS New Orleans, and he
11 requested a pilot to be sent to move the ship to a safer
12 location. And the response was negative, and we were
13 told that the pilot can only be requested through an
14 agent. And a few minutes later, I made a call to engine
15 -- to the engine room to start the engine. The captain
16 is trying very hard to -- to avoid the -- the -- the
17 contact with Atlantic Venus. He's doing everything in
18 his power. But a few minutes before 1700 hour, the --
19 there is a contact between Nomadic Milde and Atlantic
20 Venus.

21 Q Okay. Have you been the chief officer on
22 board another vessel when that vessel was at anchor and
23 began turning on the cable?

24 A Whether I was a chief officer or a second
25 officer, I do not remember that.



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1 Q If you were the officer on watch and your
2 vessel was at anchor, and begins turning on the cable,
3 what are you to do to correct that condition?

4 A It would depend on -- it would depend on the
5 situation and the location. It would depend on the
6 distance from the land. It would depend on how safe is
7 the anchorage. It would depend on the weather, the
8 information that we would get from the pilot, also the
9 instructions from the captain. We would kind of apply
10 different procedures depending on the situation.

11 Q Okay. Depending on one of -- depending on
12 those variables, one of the options that is available to
13 correct the swinging or turning of a vessel on the
14 cable, is to let out more anchor chain, correct?

15 A I do not know if you can do that on the river.
16 I do not have that information.

17 Q Okay. Another subject of the variables you
18 just explained, another option to correct a vessel
19 that's swinging or turning on her cable, is to use the
20 vessel's own engines to maintain her position, correct?

21 A That -- that's correct. You can use your own
22 engine to hold the ship in position, yes.

23 Q Okay. What other options, subject to the
24 variables you discussed, besides letting out anchor
25 chain or using the vessel's engines to maintain



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1 position, are available to an officer on watch or a
2 chief officer who's on duty to prevent a vessel from
3 swinging or turning on her cable?

4 A Me -- me, personally, I cannot really do much
5 because every option that is available to me, and any --
6 any decision or any option used, would depend on the
7 captain's order. Because the captain is the person who
8 would have the power to decide in a situation like that.

9 Q Okay. So you're telling me that under the
10 conditions that were present on May 8, 2020 when the
11 Nomadic Milde was at anchorage, the only person that
12 could make a decision as to what to do regarding the
13 vessel swinging on her anchor or dragging anchor was
14 Captain Markowski?

15 A My duty is to report and let the captain know
16 if I see if there was anything wrong with the ship, and
17 then he takes further decisions what to do.

18 Q So under no circumstances on May 8, 2020,
19 could you have requested the anchor crew to let out more
20 anchor without first discussing it with Captain
21 Markowski?

22 A That would be the case. Me, myself, I
23 wouldn't be able to make that decision.

24 Q Similarly, you also did not have the ability
25 to position the vessel using her own engines to correct



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1 when the vessel's swinging in anchor or turning on her
2 cable when she was moored or when she was at anchor in
3 the Mississippi River? Only Captain Markowski had that
4 ability?

5 A I cannot imagine a situation where you have an
6 officer under a captain -- I cannot imagine a situation
7 that you have an officer who is doing this kind of
8 outside of the supervision of the captain, or without a
9 captain's knowledge. I just cannot imagine a situation
10 like that.

11 Q Okay. I understand from Captain Markowski's
12 deposition that his sleeping quarters had an ECDIS
13 display installed in it; is that correct?

14 A Yes. He has an ECDIS screen in his sleeping
15 quarters, yes.

16 Q Right. Who is responsible, after the vessel
17 has set her anchors, for making sure that the anchor
18 dragging warning is turned on on the ECDIS system for
19 the Nomadic Milde?

20 A Usually, it's the officer who is present at
21 the time of dropping the anchors, but I'm not aware that
22 you have to kind of activate it in any special way. I
23 think they are kind of on the entire time. And then,
24 when we have the anchor watch function on on our ECDIS,
25 the alarms are on.



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1 Q Okay. At any time that you were on the bridge
2 after 1600 on May 8 until the time the Nomadic Milde
3 made contact with the Atlantic Venus, did the anchor
4 warning -- anchor watch warnings, the anchor dragging
5 warnings, whatever you want to call it -- ever sound or
6 were triggered?

7 A I won't be able to just say it in -- answer in
8 one word, so let me give you an explanation. ECDIS
9 system has an alarm system, and the alarm system would
10 send different types of alarms for different situations.
11 And the alarm for -- and the anchor drop -- the anchor
12 watch system alarm, the anchor watch alarm, would be
13 activated when -- that would be activated when the ship
14 is outside of a safe zone. And it would get activated,
15 you would see it on the display. In addition, this type
16 of alarm is in use when, let's say, an officer is busy
17 doing some paperwork, and then he would kind of lose his
18 awareness of the time, and then he, for example, would
19 not notice when the ship -- when the ship would actually
20 move outside of the safe zone. On May 8th, when I was
21 on the watch, we didn't have a situation like that. And
22 I know it because -- because I was on active watch the
23 entire time, and that was due to this close proximity to
24 the other vessel. So I was on active watch the whole
25 time. I just don't know when would be the time that the



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1 anchor alarm would get off.

2 Q Was the Nomadic Milde anchored in such a way
3 with respect to the Atlantic Venus that, had that anchor
4 warning system been on, the alarm would've constantly
5 sounded because the vessels were that close together?

6 A The -- the anchor watch is not about assessing
7 how -- the proximity of the vessels. The watch -- the
8 anchor watch alarm would set off if the ship would go
9 beyond the anchor watch or would be leaving the safe
10 area. But when it -- but when it comes to proximity
11 with another vessel, then there was a different --
12 different alarm for that, and it's called closest point
13 of approach alarm. All of those alarms are there for
14 the reason that -- who actually help the officer who is
15 on the bridge, who is on the watch, but his attention
16 was kind of drifted into something else and he just
17 missed something.

18 COURT REPORTER: I'm sorry. Madam Interpreter,
19 did you say he missed something?

20 INTERPRETER: He missed, yes. He missed
21 something.

22 COURT REPORTER: Thank you.

23 BY MR. BERCAW:

24 Q Okay.

25 A Because when you have a situation with two



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1 vessels anchored very close to each other, then you have
2 to really control the situation all the time when
3 something like that happens.

4 Q Okay. The closest point of approach or CPA
5 warning system, can that be adjusted for specific
6 distances?

7 A Yes. The -- the margin of -- the margin of
8 closeness can be adjusted and set, yes.

9 Q Do you recall if the second officer, when you
10 were handing over the watch -- or he was handing over
11 the watch to you, told you what that distance on the CPA
12 warning was?

13 A I do not recall that he told me about that,
14 but I would like to give you a little bit of
15 clarification on the CPA, if I may.

16 Q Okay.

17 A The CPA is actually for a vessel kind of --
18 would -- who -- who were just moving, so a vessel on the
19 move. So if we have a situation that could potentially
20 happen, let's say, in 45 minutes, and we have a vessel,
21 let's say, on our right side that we need to let pass,
22 so if we were to come very close, or the proximity with
23 the closeness would be zero with the passing vessel,
24 then the alarm would actually tell us. So we would --
25 from the system, we would have that information ahead of



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1 time, so this would allow us to actually adjust our
2 position and maybe move away from this passing vessel.

3 Q Okay. The CPA function of the ECDIS system
4 basically requires the officer on watch or the master of
5 the Nomadic Milde to select the target, and then the
6 system will calculate the closest point of approach
7 based upon the current vectors of both the Nomadic Milde
8 and the target vessel; is that accurate?

9 A Partially, yes, I would agree with that. But
10 on the ECDIS system display, we also have the echoes
11 from the AIS system, and those echoes do not have to be
12 activated. They are right there. And then, depending
13 on the margin set for the CPA system, the system would
14 calculate that we are approaching this unsafe kind of
15 proximity or closeness, and then it would be -- let's
16 say it would be blinking red or -- or there would be
17 some kind of blinking or alert that would let us know
18 that this is happening.

19 Q So you don't have to select a target on the
20 ECDIS system because the AIS information that's
21 generated will also identify if an unknown vessel that
22 you have not selected is on a course and heading and
23 speed that would pose a risk of collision, depending on
24 the CPA settings; is that accurate?

25 A Yes. In general, that's the case. But the --



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1 the officer who is operating the system would have the
2 first warning when -- but if we want to rely on the data
3 from the particular echo -- what I mean by that is just
4 to have different data for the echo -- you can just
5 click on it.

6 Q Right. So you have the option of it's either
7 going to show up by virtue of the AIS system or, as we
8 discussed, the first part, the officer that's operating
9 ECDIS can select any given target to determine if there
10 is a CPA issue that's going to come about in the future.

11 A It's -- it's possible, yes. That's -- that's
12 how it works, yes.

13 Q Okay. So in order for there to be a properly
14 operating CPA system, the vessel speed log needs to be
15 in an operating condition; is that accurate?

16 A Not necessarily. Because the speed log shows
17 us the speed over water, but if we have a GPS connected
18 to the ECDIS, we do get the speed over bottom, and
19 that's our real speed, the actual speed.

20 Q All right. A properly operating speed log is
21 necessary for the anchor alarm of the ECDIS system to
22 work properly?

23 A I don't -- no, not at all. I don't think the
24 speed log has anything to do with what we've been
25 talking about.



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1 Q Okay. Would the speed log identify a
2 situation where the vessel, Nomadic Milde, is moving
3 downstream with the current of a river even while she's
4 at anchor?

5 A We wouldn't have information like that from
6 the speed log, no.

7 Q Okay. We know from the -- at least the VDR
8 system, that that VDR system was not picking up any
9 information from the speed log of the Nomadic Milde
10 during May 8, 2020, correct?

11 A To be honest, I kind of didn't pay attention
12 whether there was any speed log recording or information
13 in the VDR system.

14 Q Okay. All right. Did Chief Officer
15 Oswiecimski tell you during the handover procedures that
16 the -- there was a problem, malfunction, failure of the
17 speed log of the Nomadic Milde?

18 A Yes. He did let me know that there is a
19 malfunction in the speed log on the ship, yes.

20 Q What was the specific malfunction of the speed
21 log of the Nomadic Milde?

22 A The speed log was not providing information as
23 to the speed over water.

24 Q How long had that malfunction been present on
25 board the Nomadic Milde before May 8, 2020?



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1 A I do not know.

2 Q Is the ensuring that the speed log of the
3 Nomadic Milde is in proper working conditions part of
4 the responsibilities of the chief officer of that
5 vessel?

6 A No. It's not among the responsibilities of --
7 it's not among my responsibilities on the ship.

8 Q Who is responsible for maintaining a properly
9 functioning speed log?

10 A To be honest, I do not know whose -- whose
11 responsibility would that be. But just the repairs or
12 any service on the speed log is so complicated that --
13 that I cannot imagine that it could actually be done
14 without hiring an outside contractor or some kind of
15 service that would -- that would fix whatever was
16 malfunctioning.

17 Q Okay. If a piece of the ship's equipment such
18 as the speed log is discovered to be malfunctioning, is
19 it your understanding that that failure, that problem
20 needs to be included within the noon reports of the
21 captain to the DPA for the Nomadic Milde?

22 A I'm sure that the captain would let someone
23 know about the malfunctioning part. I'm not sure
24 whether that would be DPA or a different person.

25 Q Who --



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1 MR. BERCAW: Yeah. Give me five minutes.

2 Q Who besides the DPA, would you expect the
3 captain to notify that there was a problem with the
4 speed log of the Nomadic Milde?

5 A We have a company that takes care of problems
6 like that, and it's the company by the name of Raytec.

7 INTERPRETER: Interpreter spelling, R-A-Y-T-E-
8 C.

9 Q Okay. But according to the quality and safety
10 management manual for the Nomadic Milde, at least
11 somebody in the management of Intershops or the DPA
12 needs to be advised of a problem with the speed log
13 should that occur, right?

14 A For any kind of external contact -- contact
15 between the ship and anyone else outside, the
16 responsibility lies with the captain. So I won't be
17 able to tell you who that person would be to contact for
18 that.

19 Q Okay.

20 MR. BERCAW: We're going to take a five-minute
21 break and then we'll go back on the record, okay?

22 MR. BUTTERWORTH: Okay.

23 COURT REPORTER: The time is 2:14 p.m. We're
24 off the video record.

25 (OFF THE RECORD)



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1 COURT REPORTER: The time is 2:26 p.m. We're
2 back on the video record.

3 BY MR. BERCAW:

4 Q Okay. You mentioned earlier that one of the
5 reasons why the Nomadic Milde wasn't using the speed log
6 was because the GPS system could provide speed over
7 ground as opposed to speed over the water; is that
8 accurate?

9 A Well, no. Nomadic Milde was not using the
10 speed log because it malfunctioned.

11 Q Right. And so to make up for the
12 malfunctioning speed log, the Nomadic Milde relied on
13 the GPS system of the vessel to provide similar
14 information that the speed log would have?

15 A Yes. It had two GPSs, yes. Two -- two GPS
16 systems.

17 Q Okay. Did both of those GPS systems have an
18 anchor alarm associated with them?

19 A The anchor alarm system was activated in the
20 ECDIS system that is connected to GPS. But whether the
21 GPS itself has an -- an anchor watch function, this I
22 cannot tell you.

23 Q Okay. The anchor alarm system of the ECDIS on
24 the Nomadic Milde could be turned off and on by the
25 operator of the ECDIS system, correct?



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1 A Yes. The anchor watch is a function that you
2 can turn off or turn on.

3 Q Okay. And if the anchor warning system was
4 turned on the ECDIS system, then the captain in his
5 sleeping quarters would know if the anchor alarm was
6 going off on the ECDIS system; is that correct?

7 A To be honest, I'm not sure how the system
8 works in his sleeping quarters. I just won't be able to
9 tell you that.

10 Q Okay. If the captain testified at his
11 deposition that the ECDIS display he receives in his
12 sleeping quarters is the same display that's shown on
13 the bridge of the Nomadic Milde, then the anchor alarm
14 system was activated on the ECDIS then if all that's
15 true, then he would've seen an anchor alarm had one that
16 sounded via the ECDIS system; is that correct?

17 A I -- I would say yes, because what he can see
18 on the screen for the ECDIS system in his quarters is
19 exactly the same as what you can see on display for the
20 ECDIS system on the bridge.

21 Q When you came on watch and replaced the second
22 officer at 1600 hours, give or take, on May 8, 2020, did
23 you turn on the anchor alarm system or the ECDIS system?

24 A The anchor watch was already activated at the
25 time that the anchors were dropped.



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1 Q Okay. And just so I'm clear, you're talking
2 about the anchor watch function on the ECDIS system; is
3 that correct?

4 A Yes.

5 Q Okay. So whatever its setting was when you
6 came on watch, you didn't touch it, concerning the
7 anchor watch system of the ECDIS system; is that
8 accurate?

9 A Had it been off, I would've probably put it
10 on. But I cannot imagine a situation that you -- where
11 you have -- you're dropping anchors and you don't know
12 whether your anchor watch system is on and off. I just
13 cannot imagine that happening.

14 Q Okay. Again, I'm going to ask you did at any
15 time between the time you came on duty on the bridge on
16 May 8th until the time that the Nomadic Milde made
17 contact with the Atlantic Venus, did the anchor watch
18 alarm ever go off?

19 A I don't recall.

20 Q Had the anchor watch alarm gone off, would
21 that have been some information that at least somebody
22 who prepared a written statement about this case would
23 have reported?

24 A This I cannot tell you because at the time I'd
25 been following the contact between Nomadic Milde and



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1 Atlantic Venus, the conditions on the ship were such --
2 the conditions were just so stressful. Everyone was
3 under such -- such pressure that I -- I do not know if
4 anyone actually heard any alarm going off.

5 Q Okay. If the anchor watch alarm had been
6 triggered, there would've been a sound generated as part
7 of that alarm, correct?

8 A Yes. There is a sound associated with that
9 going off, yes.

10 Q Is the sound of the anchor alarm system
11 distinct from the sound that the CPA alarm would give
12 off?

13 A I think it is the same sound of the alarm.

14 Q Okay. And if those alarms had been sounding
15 and the VDR was recording accurately, they would've been
16 recorded as part of the VDR; is that true?

17 A I am not sure if the sound when the alarm goes
18 off is actually detectable and recordable by the VDR
19 system. I -- I just -- I'm not able to tell you that.

20 Q The Nomadic Milde came in contact with the
21 Atlantic Venus while the Atlantic Venus was at anchor
22 and the vessels were more or less in a T-shape for an
23 extended period of time; is that accurate?

24 A Yes. That's correct.

25 Q And then we know that a pilot boarded the



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1 Nomadic Milde around 1753 or so, right?

2 A Yes. That was Pilot Shirah.

3 Q Okay. When Pilot Shirah came on the bridge,
4 what was your responsibility at that time? Did you stay
5 on the bridge? Did you move around the ship? What was
6 your activity?

7 A I was on the bridge, but I was also moving
8 around the deck to kind of assess the damage. Most of
9 my time was on the bridge, though.

10 Q Okay. All right. The -- what was the plan to
11 remove the Nomadic Milde from the Atlantic Venus?

12 A I don't remember the exact details of whatever
13 Pilot Shirah presented to us but I was told to go on the
14 bow with the second officer to make sure that people who
15 were there were safe. I was the only person that was
16 supposed to be communicating with the bridge because the
17 maneuvers of the ship, the moves, were supposed to be
18 very sharp.

19 Q Okay. All right. So you were on the
20 forecastle when the starboard anchor chain failed; is
21 that true?

22 A No. I was still on -- on the bridge. I was
23 getting ready to go to the bow and that was at the time
24 of the second collision with Cornerstone terminal.

25 Q Okay. Do you know or do you not know whether



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1 the Cornerstone terminal that the Nomadic Milde hit was
2 a chartered obstruction in navigation?

3 A The terminal was marked on the chart.

4 Q Okay. So I take it that you are also on the
5 bridge when all of the anchor chain on the port anchor
6 paid out overboard; is that true?

7 A Yes. That's correct.

8 Q Okay. Why did the starboard anchor chain of
9 the Nomadic Milde fail on May 8, 2020?

10 INTERPRETER: Counsel, could I have that
11 question again?

12 Q Yes. Why did the starboard anchor chain of
13 the Nomadic Milde fail on May 8, 2020?

14 A What do you mean by it failed?

15 Q It broke, correct?

16 A The only explanation for that is those huge
17 forces that were working against the chain.

18 Q Okay. Why did all of the port anchor chain
19 pay out overboard?

20 INTERPRETER: Is that the end of the question,
21 Counsel?

22 Q Yes, ma'am.

23 A Sir, did you ask about the port side, correct
24 (in English)?

25 INTERPRETER: Can we clarify whether it was



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1 over on the -- the port side, right?

2 Q Yes. I'll ask the question again.

3 INTERPRETER: Yes. Okay.

4 Q Why did all of the port anchor chain pay out
5 overboard?

6 A I do -- I do not know. I cannot give you a --
7 an answer to your question. Maybe he was looking at the
8 different angle and it -- I don't know.

9 Q Okay. At the time that the starboard anchor
10 chain broke of the Nomadic Milde, who was located at the
11 bows of the ship?

12 A In the boat, there was a bosun, my -- my
13 bosun. And whether there was any other person with him
14 at the very time that the chain broke, I -- I don't
15 remember.

16 Q Okay. Was the port anchor chain paying out
17 overboard at the time that the starboard anchor chain
18 broke?

19 A I'm sorry, but I -- I won't be able to answer.
20 I just do not remember.

21 Q Okay. Why did the Nomadic Milde come in
22 contact with the Cornerstone dock?

23 A At one point, when we were in this T-
24 configuration and we remained stable, we started to
25 change the heading together with the Atlantic Venus, and



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1 it was for a reason that I cannot explain. I don't know
2 why that was happening. And because of that, we started
3 to shift along the bow of the other ship. And today, we
4 already know that looking at our CPP, that the chain of
5 Atlantic Venus got hooked on our CPP, and that's why the
6 engine operations changed. So it would go forward or
7 ahead. And then a -- a dozen or so seconds later, we
8 just came in contact with the Cornerstone terminal.

9 Q Before the Atlantic Venus began turning in the
10 river like you just described, were there any tugs --
11 were there any tugs in the vicinity of either ship?

12 A Yes. There -- there were. We had two
13 tugboats already assisting us. And we were waiting for
14 two more.

15 Q Do you remember the name of the tugboats?

16 A Ervin Cooper and Ned Ferry.

17 Q Mr. Kowalski, it's true that the Ervin Cooper,
18 for the most part, stayed near the port side of the
19 Nomadic Milde towards her bows; is that accurate?

20 A Yes. That's correct. On the port side.

21 Q Right. And then the Ned Ferry was located
22 towards the stern of the Nomadic Milde, between the
23 Nomadic Milde's CPP and the Atlantic Venus on the port
24 side.

25 A From what I remember, that is correct. But we



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1 would have to look at the ECDIS to be able to give you
2 the exact position.

3 Q Okay. And I'm just talking generally --

4 A Okay (in English).

5 Q -- I'm not going to be talking and I'm not
6 going to go down the vessel frame --

7 A Okay (in English).

8 Q -- or that specific, okay?

9 A Okay (in English).

10 Q All right. Although, I like your tendency to
11 try to get as specific as possible. I do like that.

12 Okay. So were there any other tugs or vessels in the
13 vicinity of the Nomadic Milde, the Atlantic Venus, the
14 Ervin Cooper, and the Ned Ferry, while the vessel
15 started twisting in the river, as you described it
16 earlier?

17 A I do not remember today. I just do not recall
18 whether there was anyone else or not.

19 Q Okay. So as far as you can recollect, both
20 the Ervin Cooper -- no, not both. I'm going to strike
21 that question and ask again. Based upon your
22 recollection, at the time those vessels began to twist
23 in the river, the Ervin Cooper, the Atlantic Venus'
24 bulbous bow, and the Ned Ferry, were in contact with the
25 port side of the Nomadic Milde?



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1 MR. FREY: Object to form.

2 COURT REPORTER: I'm sorry, who was that
3 objecting? I'm sorry.

4 MR. BUTTERWORTH: That was Kevin Frey.

5 MR. FREY: That was me, Kevin Frey.

6 MR. BUTTERWORTH: For the Crescent Towing.

7 COURT REPORTER: Thank you.

8 MR. BERCAW: Ms. Translator, can you go?

9 INTERPRETER: The interpreter would like to
10 hear your question again.

11 MR. BERCAW: Subject to Mr. Frey's objection.

12 MR. FREY: I'll just continue if it's the same
13 question.

14 MR. BERCAW: Yeah. Subject to that. And wow,
15 we've done quite a while without an objection. For
16 purposes of this deposition, we're going to allow
17 one objection by one counsel would be good for all
18 counsels. Do we have that agreement?

19 MR. BUTTERWORTH: Fine with us.

20 MR. BERCAW: Yeah. That way we don't --

21 MR. FREY: That's fine with me.

22 MR. BERCAW: Yeah. That way we don't --

23 MR. SHARPE: Yes.

24 MR. BERCAW: -- have everyone saying objection,
25 objection, objection.



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1 BY MR. BERCAW:

2 Q So all right, I'll re-ask the question. At
3 the time the vessels began turning in the river like you
4 described, Mr. Kowalski, the Ervin Cooper, the bulbous
5 bow of the Atlantic Venus, and the Ned Ferry were all in
6 contact with the port side of the Nomadic Milde, as far
7 as you can recollect?

8 A The bow of Atlantic -- the bow of the Atlantic
9 Venus for sure, yes. I wouldn't want to do any guessing
10 without actually seeing anything on the ECDIS system as
11 far as the tug boats are concerned.

12 Q Okay.

13 A I -- I won't be able to tell you.

14 Q All right. At the time that the vessels were
15 turning, were you located within the bridge or on the
16 bridge wings of the Nomadic Milde?

17 A The shifting itself of the turn took a little
18 while and I was basically on the bridge, but also with
19 the -- communicated with the pilots on the -- who was on
20 the wing. So I was, kind of, actively moving between
21 the bridge and the wing.

22 Q Okay. And which wing were you actively moving
23 between --

24 A It would be the port side.

25 Q According to some video recordings that had



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1 been produced in this case, we can see bow view of the
2 Ned Ferry while it's in proximity to the Nomadic Milde
3 as well as the Atlantic Venus. Have you seen that
4 video?

5 A I didn't see the recording.

6 Q Okay. We know that the -- at some point the
7 Nomadic Milde moves ahead in a forward direction towards
8 the right descending bank of the Mississippi River,
9 contrary to what the pilot is instructing the captain to
10 do, which is go astern. Do you recall that?

11 A I do, yes. I do recall that.

12 Q Okay. Did the Nomadic -- no. Did you hear or
13 did you see or did you learn about when the CPP system
14 of the Nomadic Milde made contact with the anchor chain
15 of the Atlantic Venus?

16 A If the question is about any vibrations on the
17 bridge and whether I was able to feel or detect that in
18 any way, I did not. But the moment that they touched is
19 the moment that the engine worked the other way.

20 Q What I am trying to understand is, and this
21 may be the great unknown in the case. Okay.

22 MR. BERCAW: Go ahead and translate.

23 Q That if the bulbous bow of the Atlantic Venus
24 maintains its position against the port side of the
25 Nomadic Milde, then the propeller won't cut the anchor



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1 chain of the Atlantic Venus. So there's -- now, I'm a
2 land lover, so I don't know much. But either the
3 Atlantic Venus's chain moves towards the stern of the
4 Nomadic Milde, it's -- or the propeller of the Nomadic
5 Milde moves forward towards the Atlantic Venus's chain.
6 So did you see either of those events happen before the
7 -- you heard -- knew that the CPP system of the Milde
8 had cut the anchor chain of the Atlantic Venus?

9 A What I've noticed is the stable T-
10 configuration that we were in, started to shift. So the
11 shift in the -- the configuration of the T letter caused
12 us to slide along the bow of the Atlantic Venus. So the
13 moment that the CPP, the -- the propeller touched the
14 anchor chain of Atlantic Venus is exactly at the time
15 that the engine got reversed. So at the time that we
16 are in this unstable T-configuration and we start to
17 shift, maybe at the very time the chain, the angle of
18 the chain and how it was positioned, also shifted.

19 Q Do you know what caused the vessels to change
20 from their previously stable configuration to the twist
21 in the river that you've been describing?

22 A I do not know that, but we know from the VDR
23 recording that the captain of Atlantic Venus, at one
24 point starts to work the engine to go ahead to move away
25 from the Cornerstone terminal.



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1 Q When did that occur with respect to the
2 Nomadic Milde moving forward?

3 A I -- I know it happened. I think it was
4 before. We would have to look at the VDR recording to
5 know the exact time, but I -- I know it happened.

6 Q Okay. Was it your understanding that the
7 Atlantic Venus was moving forward at the time the
8 vessels began to twist in the river or had that stopped
9 sometime before that?

10 INTERPRETER: Counsel, could I have that
11 question again?

12 Q Sure. Is it your understanding that the
13 Atlantic Venus was moving ahead at the time the vessels
14 were turning in the river or had the Atlantic Venus
15 stopped her engines going ahead for some time before the
16 vessels began to twist in the river?

17 A At the time that we were beginning to shift, I
18 do not know and we -- whether it stopped or whether it
19 was moving. We didn't have that -- that information on
20 the telegraph. Because at that time, the pilots were
21 communicating, the -- the pilots of the ships were
22 communicating between each other.

23 Q At the time of the maneuvering of the ships,
24 once the pilots got on board, only Captain Markowski was
25 operating the helm and the pitch of the propeller of the



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1 Nomadic Milde, correct?

2 A Yes. That's correct. Only the captain was
3 able to maneuver the ship.

4 Q You were running communications between the
5 pilot and Captain Markowski during this time period?

6 A Yes. I was exactly between those two and I
7 was just giving the orders from the pilot to the
8 captain.

9 Q Okay. I've only about ten more minutes of
10 questions. But I'm going to jump around now, okay? I
11 may have some follow up, depending on who else asks
12 questions, but I'm drawing my initial questioning to a
13 close.

14 A Okay.

15 Q When you first got on board or came on watch
16 around four -- 1600 hours. There's some communications
17 on the VDR between you and another individual. Do you
18 recall the name of that other individual?

19 A I think it was the second officer. But can we
20 go ahead and check in the documents?

21 Q Yeah. Sure. If it's going to refresh your
22 recollection.

23 MR. BERCAW: Let the record reflect I've just
24 handed the witness the transcript. It's the one
25 that we had sent out earlier in the afternoon. It's



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1 the same as the captain's transcript from the 12th
2 of June, except we've added it in Tagalog, and also
3 the translators and all the witnesses have gone
4 through one more time to listen and tell us what
5 more they had. So it used to be 36 pages. Now it's
6 39 pages. But mainly it's that Tagalog been added.
7 And the section that you're referring to, Counsel,
8 is exactly the same as it was with the captain's
9 deposition.

10 MR. BUTTERWORTH: That's fine. It doesn't have
11 the same Bates numbers on it though, does it?

12 MR. BERCAW: I don't think we Bates numbered
13 the captain's deposition. We made it was like
14 Exhibit 7 something to the captain's deposition.
15 But we can use - - if you want to, I can take my
16 Post-Its out and we can use this one from the
17 captain's deposition.

18 MR. BUTTERWORTH: No. No. Just make sure that
19 whatever was attached and produced with the
20 captain's deposition doesn't have the same Bates
21 numbers on it.

22 MR. BERCAW: No. It does not, sir.

23 MR. BUTTERWORTH: Otherwise we'll never keep
24 them straight.

25 MR. BERCAW: That's a fact.



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1 BY MR. BERCAW:

2 Q Okay. So you're at 1600 or thereabouts?

3 A Yes.

4 Q It mentions this is your first time on the
5 ECDIS display?

6 A On the ship with this kind of height (in
7 English).

8 Q Yeah. Right. So --

9 A On the ship with this type of height.

10 Q Right. Okay. Yeah. When you were undergoing
11 the training in the end of 2019 and 2020, were you
12 actually operating a physical model that was identical
13 to that on board the Nomadic Milde, or was it a
14 different version, or were you just watching videotape
15 of someone else operate that equipment?

16 A No. I actually had the physical ECDIS system
17 in front of me and I was sitting in front of the display
18 offices.

19 Q Okay. And this was while you were in school?

20 A That's correct. I can provide you a little
21 bit of a clarification as far on how the course was
22 if --

23 Q Yes.

24 A The course is divided into theory and
25 practice. The theory part of the exam, you can take it



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1 on the computer. I don't remember the software that --
2 that is used for that, but you take it on the computer.
3 But the practical part of the exam is actually taken on
4 a simulator of -- of the ECDIS system.

5 Q Okay. So how many days did you spend in front
6 of the ECDIS system in school before the course ended?

7 A I don't remember whether it was one day or two
8 days.

9 Q Okay. And did you have to take a test in
10 order to complete the course?

11 A Yes. It was an online test.

12 Q The -- were you graded on the simulated bridge
13 that you talked about earlier?

14 A The -- the way it's graded is actually by
15 percentage points. So if you have 60 or 70, I think
16 it's a pass. So once you have that percentage and then
17 you pass. If you don't, well, you fail.

18 Q Okay. And this is the combined online course
19 with the simulation or is it just the online course?

20 A It's a combination of the two.

21 Q Okay. The -- what was your score?

22 A I don't remember the exact score, but I
23 passed.

24 MR. BERCAW: Okay. Okay. We mentioned some
25 photographs and now if Johany is able to, I'd like



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1 to show picture 1 of the anchor. And all counsel
2 have been given an e-mail containing these -- the
3 next three photographs we're going to talk about.
4 Johany, can you please put up the first --

5 COURT REPORTER: Give me one second and I'll
6 get picture 1 up for you.

7 MR. BERCAW: Thank you.

8 COURT REPORTER: You're welcome.

9 MR. BERCAW: Okay. Thank you, Johany.

10 COURT REPORTER: Do you see the photo?

11 MR. BERCAW: Yes. We can.

12 COURT REPORTER: Okay.

13 MR. BUTTERWORTH: Jim?

14 MR. BERCAW: It was clear.

15 MR. BUTTERWORTH: Jim, when we're going over
16 these anchor things, just to make sure the
17 translators are getting it all right, could the
18 witness like show and point out for us the different
19 parts of the anchor and what the Polish words are
20 and what the English words are?

21 COURT REPORTER: Yeah. That would be helpful.
22 Thank you.

23 MR. BERCAW: Okay. We're back on the record.
24 If we went off, we're back on the record. Okay.

25 BY MR. BERCAW:



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1 Q Mr. Kowalski, the first picture that's on the
2 video screen is a picture of a side view of an anchor,
3 correct?

4 A That's correct.

5 Q Okay. And there is two vertical parts. And
6 we've been using the term flukes, and those two vertical
7 parts are the flukes; is that correct?

8 A That's correct.

9 Q Okay. And then there is a rectangular piece
10 of metal that runs from the upper left-hand side of the
11 photograph down towards the area between the flukes, and
12 that's called the anchor stock, correct?

13 A That's correct, yes.

14 Q Okay. And that section of the anchor that's
15 resting on the ground, okay? That flat -- that more or
16 less flat piece of metal to which the flukes have been
17 welded is called what?

18 A To be honest, I didn't know how to call it.
19 Could be the base of the anchor, you could call it that.

20 Q That sounds good to me. Okay. Counsel
21 referenced what appears to be some welded-on letters on
22 the anchor stock. Do you know what those letters are
23 and what they say?

24 A What I remember -- from what I remember and
25 what I know, it's the weight of the anchor. And whether



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1 there was any other information in those letters, I do
2 not recall.

3 Q Okay. Captain, you'd agree with me that in
4 picture 1, which we'll attach as Kowalski Exhibit number
5 8, the flukes of that anchor are not in alignment,
6 correct?

7 (KOWALSKI EXHIBIT 8 MARKED FOR IDENTIFICATION)

8 A That's correct. Yes. I agree.

9 Q Okay. You'll also note the area that we've
10 been talking about as the anchor stock as it nears the
11 flukes on the upper edge, there is -- it looks like
12 someone has taken their thumb and rubbed it on that
13 corner and squished it flat. Is that accurate, to the
14 extent it was squished?

15 A Yes. I see that.

16 Q Okay. Would an anchor that has an anchor
17 stock with that squished part we've just talked about be
18 suitable to hold the Nomadic Milde in the Mississippi
19 River in the condition the vessel was in on May 8, 2020?

20 A We're just talking about the stock and the
21 squished part, right?

22 Q Yes.

23 A For me, an anchor with this part squished like
24 that is not appropriate, no.

25 Q Okay. Likewise, an anchor with the flukes



1 that are not in alignment as shown in photograph 1 also
2 is not suitable to hold the Nomadic Milde in a loaded
3 condition as she was on May 8, 2020, correct?

4 A The anchor that we are seeing in the picture
5 is undoubtedly -- is undoubtedly damaged and therefore
6 unsuitable. But whether an anchor like that would be
7 able to hold a vessel in a position, this I won't be
8 able to tell you.

9 Q Okay. Do you know what caused the flukes of
10 the anchor in picture 1 to become out of alignment.

11 A I do not know what could have caused it, but
12 you can see with a naked eye that it must have been some
13 great forces that were working on this anchor.

14 Q The squished part on the top of the anchor
15 stock that we talked about also, do you know what caused
16 that condition?

17 A I do not know. It looks like there must've
18 been some kind of obstruction, but what was it exactly,
19 I do not know.

20 Q Okay. And we've been talking about the top
21 edge of the anchor stock, but you can see similar but
22 less deformation of the underside of the anchor stock as
23 it nears the flukes of the anchor in pictures 1 and 2,
24 correct?

25 A Yes. There was something there. Right.



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1 Q Yeah. And it's not as severe as the squished
2 part on the top, but it's a similar type deformation
3 just on the lower edge, correct?

4 A I think you can, kind of -- these two are
5 comparable. Right, yes.

6 Q Had your inspection of the Nomadic Milde when
7 she was at the dock in Avondale, discovered this type of
8 damage at that time, you would have notified --

9 MR. BERCAW: I'm sorry? Go ahead and start the
10 translation.

11 INTERPRETER: No. Please continue. Yeah. I'm
12 taking notes. That's okay.

13 BY MR. BERCAW:

14 Q Had your inspection of the anchor at Avondale
15 dock, of the starboard anchor, revealed these
16 conditions, you would agree that, at that time, the
17 anchor was not suitable for its purpose of holding the
18 Nomadic Milde in the Mississippi River in a loaded
19 condition, correct?

20 A Had I discovered damages like we can see in
21 this picture during my inspection that I did, the
22 captain would have been notified about that within a
23 minute. But as far as the properties of the anchor to
24 actually hold a vessel, for an anchor that we see in
25 that picture, whether it's suitable or not, or good or



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1 not, I wouldn't be able to assess that.

2 Q Okay. When the anchor, the starboard anchor
3 of the Nomadic Milde was hauled up into the hawsepipe of
4 that vessel on May 7, 2020, the smudged parts that we've
5 been talking about on the top and lower end of the
6 anchor stock, those portions of the anchor would have
7 been closest to the bottom of the hawsepipe, correct?

8 A They would be farther away. I don't know how
9 far away, but, yes, that's correct.

10 Q Yeah. I mean, those smudged portions would
11 have been actually inside the hawsepipe itself; is that
12 correct?

13 A That's correct.

14 Q And when the anchor is in the hawsepipe, I
15 mean, the view that we have on picture 1, when you are
16 looking over the side of the vessel, you did not have a
17 similar view to be able to compare the deflection of one
18 fluke from the other fluke while you were at the
19 Avondale dock, correct?

20 A That's correct. I don't. And when I'm on the
21 -- on the deck and I look from above, then I see the
22 anchor from the top.

23 Q Uh-huh. Right.

24 MR. BERCAW: Okay. Let's go to picture number
25 2.



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1 COURT REPORTER: Can you see it?

2 MR. BERCAW: Yeah. We can see it.

3 COURT REPORTER: Perfect.

4 BY MR. BERCAW:

5 Q Officer Kowalski, I'm going to represent to
6 you that this is another view of the anchor stock we've
7 been talking about, but just from a front vision,
8 looking front to back along the shaft of the anchor
9 stock. And that this is the -- and this is the
10 starboard anchor that was retrieved from the Mississippi
11 River, concerning the Nomadic Milde, okay? Okay.

12 A Okay.

13 Q So this area to the left of this lighter
14 splotch is the smudged part of the anchor stock that
15 we've been discussing concerning the first picture,
16 correct?

17 A It's the -- kind of the bigger part of the
18 stock.

19 Q Right. And it's on the left edge of the stock
20 looking at picture number 2, correct?

21 A On the left side, yes. Uh-huh.

22 MR. BERCAW: Okay. We'll attach picture 2 as
23 Kowalski number 9.

24 Q Do you know what caused the condition to the
25 immediate right of that smudge on the left side of the



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1 anchor stock that we're talking about?

2 (KOWALSKI EXHIBIT 9 MARKED FOR IDENTIFICATION)

3 A I do not know where it could have come from.
4 Probably, the anchor came into contact. It must have
5 come into contact with something.

6 Q Okay. Do you recall how long the starboard
7 hawsepipe of the Nomadic Milde is?

8 A I do not remember, no.

9 Q Okay. You would agree with me that the anchor
10 stock can go either forward or back from this
11 perspective. And if we're looking along a line
12 identical to the flukes, it would be moving left and
13 right?

14 A Yes. It is a movable part.

15 Q Yeah. And it's mounted on a swivel that
16 connects the anchor stock to that base assembly that we
17 talked about.

18 A As far as I remember, yes. That's how it is
19 connected, uh-huh.

20 Q Okay. And at the top of the anchor stock a
21 chain is connected to another swivel that's mounted
22 itself on top of the anchor stock; is that correct?

23 A Yes. There was a shackle -- there was a link
24 that connects the shackle, and there was a swivel
25 connecting those, yes.



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1 Q Okay. And the swivel that connects the anchor
2 to the anchor chain allows the anchor to rotate 360
3 degrees in either direction, correct?

4 A That's exactly right, yes.

5 Q Great. Okay. So if this smudged area on the
6 left of the anchor stock is laying against the inboard
7 side of the hawsepipe, you could not tell there was a
8 smudge there with the anchor pulled entirely into the
9 hawsepipe, correct?

10 A To -- to be honest, I do not know. I do not
11 remember what's the distance between the hawsepipe and
12 the stock. But I know for sure that I didn't see any
13 damage during my inspection.

14 Q Okay. And one reason why is, it could be --
15 the damage could've been concealed by simply the way the
16 anchor stock was resting within the hawsepipe based upon
17 the ability of the top swivel to rotate?

18 A It is possible.

19 Q Okay.

20 A Yes.

21 Q And when you were inspecting the anchor stock
22 in the hawsepipe, you didn't have a flashlight with you
23 to verify the angles of the anchor stock were true as
24 opposed to being smooshed?

25 A I always have a flashlight while on board. I



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1 never let go of it. So I'm sure I had one with me. So
2 part of the inspection is also my views -- my views of
3 this flashlight and to see as much as I was able to see,
4 but I didn't see any damage like that during the
5 inspection.

6 Q Okay. All right. I'll put up picture 3. I've
7 got two more questions and then we'll take a break.
8 Officer Kowalski, this is a photograph of a portion of
9 the starboard anchor chain that was retrieved from the
10 Mississippi River after the incident. Do you notice how
11 the anchor chain link is warped on the left side of the
12 anchor chain link?

13 A I see that, yes.

14 Q Okay. I'll attach that picture as Kowalski
15 number 10. Is there a maritime term for the way that
16 that anchor chain now looks? I mean is it, like,
17 kinked? Twisted? I'm sure they'll make it a maritime
18 term for it, but maybe not. I'm just asking.

19 (KOWALSKI EXHIBIT 10 MARKED FOR
20 IDENTIFICATION)

21 A Screwed (in English).

22 Q Watch your tongue, sir.

23 COURT REPORTER: I did not get what he just
24 said.

25 MR. BUTTERWORTH: That's all right. It doesn't



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1 matter.

2 A I would just bend it (in English).

3 BY MR. BERCAW:

4 Q Okay. All right.

5 MR. BERCAW: Ms. Translator?

6 A Okay. I would -- I would call it bent.

7 Q Okay. And you would agree with me that a bent
8 anchor chain that has 27 links that are in a similar
9 bent condition in a row would be unsuitable to serve as
10 an anchor chain for the Nomadic Milde?

11 A It wouldn't be wise to use it.

12 MR. BERCAW: We'll take a break now.

13 COURT REPORTER: The time is 4:01 p.m. We are
14 going off the video record.

15 (OFF THE RECORD)

16 COURT REPORTER: Ready? We are going back on
17 the video record. The time is 4:09 p.m.

18 BY MR. BERCAW:

19 Q Do you recall the third photograph where we
20 had the bent anchor chain?

21 A (No verbal response.)

22 Q If there were 27 consecutive lengths of anchor
23 chain that had a similar bend in it, would that anchor
24 chain be suitable to use in anchoring the starboard
25 anchor of the Nomadic Milde on May 8, 2020?



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1 A If I had a chain like that, I wouldn't be
2 putting this into use. But whether it would be able to
3 sustain any loads or as far as any durability issues, I
4 am not able to tell you what a chain like that would
5 hold.

6 Q But we are clear that you would not use that
7 chain if it had 27 consecutive links that each had that
8 bend for the starboard anchor chain of the Nomadic
9 Milde?

10 A If I -- had I had a chain like that, I would
11 have ordered a different one right away.

12 MR. BERCAW: I tender the witness.

13 MR. BUTTERWORTH: Jim, for housekeeping
14 purposes, now the transcript -- we have the
15 transcript, which is 62 -- NM6237 through NM6275.
16 And with your permission, I'll switch it out because
17 it has the proper Bates number on it. He referred
18 to it during your examination, the transcript?

19 MR. BERCAW: Oh. Yeah. I'm going to -- I
20 mean, if you're going to -- are you going to attach
21 it as an exhibit?

22 MR. BUTTERWORTH: Why don't we? What are we
23 on, Kowalski 10? 11. Kowalski 11.

24 (KOWALSKI EXHIBIT 11 MARKED FOR
25 IDENTIFICATION)



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1 MR. BERCAW: I'll object to accuracy and
2 completion.

3 MR. BUTTERWORTH: Sure. Jim, I'm printing out
4 another copy for you. Would you like one?

5 MR. BERCAW: Oh, sure.

6 MR. BUTTERWORTH: Yeah. That should be -- it
7 should be warm in just a second.

8 MR. BERCAW: Peter, you're next up, huh?

9 MR. TOMPKINS: I guess so. I'll wait for Mike,
10 I guess, to come back.

11 MR. BERCAW: Yeah.

12 MR. BUTTERWORTH: I just Purrelled so it should
13 be sterile.

14 MR. BERCAW: Thank you.

15 MR. BUTTERWORTH: You're welcome.

16 MR. TOMPKINS: Mike, you ready?

17 MR. BUTTERWORTH: I'm ready.

18 CROSS EXAMINATION

19 BY MR. TOMPKINS:

20 Q Okay. Good afternoon. My name is Peter
21 Tompkins. I represent the Atlantic Venus interests.

22 A Good afternoon. It's a pleasure to meet with
23 you.

24 Q Thank you. I'm going to apologize in advance
25 that my questions will bounce around to try to fill gaps



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1 that I think I need covered that Mr. Bercaw may not have
2 covered.

3 A Okay. Of course.

4 Q I will try not to repeat too many questions
5 and get us out of here, okay?

6 A (No verbal response.)

7 Q He understands?

8 A Yes. Yeah. I understand, yes. Okay.

9 Q Just briefly, back to your training. When did
10 you graduate from the Maritime Academy?

11 A I don't know what -- what year. I would have
12 to look at my diploma. I don't want to guess the year.

13 Q Well, I'm not going to hold you to it, but can
14 you just approximate the year for me?

15 A I think it was 2010 or 2011. I don't -- I
16 don't like guessing.

17 COURT REPORTER: I'm sorry, I didn't get what
18 the translator said.

19 INTERPRETER: I don't -- I don't like guessing.

20 BY MR. TOMPKINS:

21 Q And you told us you arrived on the Nomadic
22 Milde on May 6, 2020, correct?

23 A On May 6 in the evening, yes.

24 Q And was it on May 7th that you had that
25 handover meeting with the off-going chief officer?



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1 A Yes. But I want to say the -- the handover is
2 a process, and it started on the 7th and had ended on
3 the 8th.

4 Q What time did it start on the 7th and what
5 time did it end on the 8th?

6 A On the 7th, we started at 6:00 a.m. and on the
7 8th, we can tell that when I started my watch, so that
8 would be 1600 hours.

9 Q Did you stand any watch at all on the Nomadic
10 Milde before 1600 hours on May 8th?

11 INTERPRETER: Counsel, it is breaking. Could I
12 have that question again?

13 Q Did you stand any watch on the Nomadic Milde
14 before 1600 hours on May 8th?

15 A No. That was my first watch under this
16 contract.

17 Q And are there documents called handover notes
18 or something like that that would show in writing what
19 was discussed between you and the chief officer who was
20 leaving?

21 A In my -- in my company, we -- it does not
22 require -- the chief officers are not required to have
23 handing -- a handover document of any kind. The -- it
24 is required -- a document like that is required for
25 captains and chief engineers. But in our company we



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1 kind of have a custom of -- of preparing an unofficial
2 hand -- handover document just for ourselves.

3 Q What is that document called?

4 A It's a handover report.

5 Q And is there a handover report on the Nomadic
6 Milde now relating to the March [sic] 7 and 8th handover
7 with you and the off-going chief officer?

8 INTERPRETER: Counsel, you said March. You
9 mean May?

10 Q Yes. I've got Mr. Bercaw's problem.

11 INTERPRETER: Okay. All right.

12 A Yes. We have. We have that report.

13 Q Is that report different than the
14 familiarization document that we have that's marked
15 NM5857?

16 MR. BUTTERWORTH: I have them right here, I
17 think.

18 A Oh, yeah. It's a different document.

19 Q Okay. Is the document that tells us what was
20 written down about the handover operation in the book of
21 documents you have in front of you?

22 A I will double check. Yes. Please -- please
23 refer to NM5816. 5816.

24 Q Okay. So those are the notes you were
25 referring to earlier, correct?



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1 A Yes. That -- that's correct.

2 Q Let's look at the "Familiarization with Bridge
3 Equipment Form 5857."

4 A I have it in front of me.

5 Q I see your name on the lower right-hand corner
6 with the date of May 8, 2020.

7 A That's correct.

8 Q And then who are the names of -- that are on
9 the left side, that sign off as the officer performing
10 the familiarization?

11 A The signature of the previous chief officer
12 and then below that is the signature of the second
13 officer.

14 Q Did the chief officer familiarize you with
15 certain equipment, and the second officer familiarize
16 you with different equipment?

17 A Most of the familiarization was done by the
18 chief officer. I won't be able to tell you what
19 different equipment the second officer was familiarizing
20 me with. I just do not recall that.

21 Q Do you know which officer familiarized you
22 with the ECDIS system?

23 A The second officer.

24 Q Okay. And if there is a check-mark in the
25 box, does that mean every one of those items was



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1 discussed as part of the familiarization?

2 A Yes.

3 Q If you look toward the bottom, there's an
4 entry for a speed/distance recorder, is that the same as
5 the speed log or speed logger?

6 A To be honest, I don't know whether it's the
7 same as the speed log or a different one. I -- I don't
8 know.

9 Q But we know this -- the speed logger was not
10 working, correct?

11 A That -- that sounds -- that's right, yes.

12 Q Do you know -- do you remember what time you
13 signed this document on May 8th?

14 A I don't recall.

15 Q Would it have been before you took the watch
16 at 1600?

17 A For sure.

18 Q Would it have been before you left the dock at
19 Avondale?

20 A For sure.

21 MR. BUTTERWORTH: You can keep asking
22 questions. Jim, make sure that Peter doesn't ask a
23 bad question.

24 MR. BERCAW: Okay.

25 MR. BUTTERWORTH: Thank you. I'll be back in



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1 one. Keep going.

2 MR. BERCAW: Peter, Mike has left the room, but
3 he wants you to keep asking questions.

4 MR. THOMPCKINS: Okay.

5 BY MR. TOMPKINS:

6 Q Now, Chief, when you came on watch at 1600 of
7 the second officer -- first of all, strike that. I'll
8 start over. When you came on watch on 1600, you were
9 relieving the second officer of his watch, correct?

10 A That's correct, yes.

11 Q And the second officer had the watch when the
12 Nomadic Milde was being anchored at the Kenner Bend
13 Anchorage, correct?

14 A That's correct.

15 Q Was it the second officer who should have set
16 the anchor watch alarms on the ECDIS after the ship
17 anchored?

18 A That's correct, yes.

19 Q Did you observe him activating those alarms?

20 A I saw on the screen anchor watch and that's
21 synonymous with turning them on.

22 Q When did you first see that on the screen?

23 A I don't remember whether it was before 1600
24 hours or after when I was already doing my watch.

25 Q And then she -- when the second officer set



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1 the anchor watch, he would also set the parameters for
2 what would trigger the alarm to go off, correct?

3 A That's correct, yes.

4 Q What was the distance that the chief -- that
5 the second officer put in that would allow the movement
6 or distance before the alarm would go off?

7 A Are we talking about the size of the anchor
8 watch area that was set by the second officer?

9 Q Yes.

10 A The anchor watch was set for 180 meters.

11 Q Does that mean that the Nomadic Milde had to
12 move more than 180 meters in any given direction before
13 the alarm would go off?

14 A The ship would have to -- the ship would have
15 to either get very close to, I mean, attach or go beyond
16 this set area for the alarm -- for the alarm to be
17 activated.

18 Q And is that set area a circle around the
19 Nomadic Milde?

20 A Yes. That's correct.

21 Q After the Nomadic Milde was anchored by the
22 pilot --

23 MR. TOMPKINS: Start that, please.

24 Q What was the distance between the stern of the
25 Nomadic Milde and the bow of the Atlantic Venus?



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1 A I do not recall that. We would have to get
2 some ECDIS records to know that.

3 Q Okay. When you assumed the watch at 1600, did
4 you change that 180 meter setting on the ECDIS?

5 A I didn't make any changes to the ECDIS
6 settings.

7 Q Okay. I want to talk about the VDR transcript
8 that we just marked as Exhibit 11 to this deposition.
9 And I'd like you to tell me generally what did you do to
10 help prepare the transcript?

11 A I was partially helping with the translation
12 with my attorney, Michael Held. So at -- at some parts,
13 I was helping with the translation of the text.

14 Q Were you focusing mainly on your words that
15 you could hear?

16 A No. It was everything that was audible.

17 Q Was the captain or any other person present
18 during any of these sessions where you listened to the
19 VDR and helped write a transcript?

20 A The captain always.

21 Q Anyone else?

22 A Our attorneys.

23 Q Good. But I'm talking about anybody other
24 than the attorneys, you, and the captain?

25 A No. I don't recall any other person, no.



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1 Q When did you first go up on to the bridge of
2 the Nomadic Milde on May 8th?

3 A Early in the morning -- early in the morning
4 at 6:00 a.m. And it was kind of part of a handover
5 process on the bridge.

6 Q Did you stay on the bridge from 0600 until the
7 Nomadic Milde stopped at Cornerstone dock, except for a
8 meal breaks?

9 A No. Not at all. With the outgoing shift, we
10 -- we came to the bridge at 6:00 a.m. and then stayed
11 there for maybe an hour, maybe a couple of hours. We
12 were loading the ship, so I had other responsibilities
13 connected to the loading to take care of.

14 Q Were you on the bridge when the pilot was
15 onboard transiting from Avondale to Kenner Bend
16 anchorage?

17 A Yes. I was on the bridge then, yes.

18 Q Look at page 15 of the transcript of the VDR.
19 At the very bottom of -- the very bottom of the page,
20 that starts with 1533-1. Does he recall overhearing
21 those statements by the pilot?

22 A I don't recall.

23 Q Do you recall being aware that there was
24 weather coming in and that the current in the
25 Mississippi River was strong that day?



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1 A On May 8th, all of us were aware that there
2 were currents in the river, that the currents are very
3 strong, but we were not aware that we couldn't drop
4 anchors.

5 Q Who said you couldn't drop anchor?

6 A Pilot Shira.

7 Q Were you aware that Pilot Brown, the pilot who
8 brought you to Kenner Bend, advised to keep the engines
9 on a short leash?

10 A Yes. I was made aware of that, and when I was
11 starting my watch, I knew that the engines were supposed
12 to be on what we call a short notice.

13 Q And you knew that the reason for that was that
14 the vessel needed to maneuver because of some problem in
15 the anchorage, you could do that fairly quickly,
16 correct?

17 A Yes.

18 Q Now, on the top of page 60 in the first box,
19 do you see the statement of the captain that because
20 it's in italics, it supposedly means it was said in
21 Polish?

22 A Yeah. I see that. Uh-huh. Yes.

23 Q And the captain who says there that there's a
24 ship 100 meters ahead of us and 100 meters behind us,
25 correct?



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1 A That's what he said, yes.

2 Q Do you think this transcript is accurate to
3 his statement as you recall listening to it?

4 A I don't recall. It was a while ago.

5 Q Well, if you would have heard something
6 different, would you have suggested that the transcript
7 be edited until it was corrected?

8 A Of course. I would, yes.

9 Q So if there's ships 100 meters ahead and 100
10 meters behind the Nomadic Milde and your ECDIS anchor
11 alarm or anchor unit was set on 180 meters, it would not
12 go off before you potentially hit either of those ships,
13 correct?

14 A I have a clarification for that. I have no
15 idea where the distance of 100 meters ahead of us and
16 behind us, where the captain took that distance from.
17 But when setting up the anchor watch, I am not sure
18 whether the 180 meters is the radius of this area or is
19 it the diameter of the area. Because the difference
20 between those two makes a huge difference. I don't want
21 to comment on whatever the captain said because I don't
22 know who those statements -- who was he talking to at
23 that time.

24 Q Okay. So do we agree based on the transcript
25 that you're looking at, that at 1533, the anchoring



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1 operation was completed and the engines were stopped?

2 A That's correct.

3 Q And for the next 40 minutes or so, the Nomadic
4 Milde was fairly stable in the anchorage?

5 A From what I remember seeing on the ECDIS
6 display, the ship started to swing a little bit at the
7 time that the pilot was leaving.

8 Q A little bit or a lot?

9 A It's hard to say.

10 Q You should be swinging up to --

11 A Sorry. I think we would have to look at the
12 ECDIS records to be able to say that, because from my
13 memory, I'm just not able to tell you exactly how it
14 was.

15 Q Okay. It wasn't enough to set off the (audio
16 cuts out) -- we call it anchor movement along, correct?

17 COURT REPORTER: I'm sorry. The court reporter
18 didn't get that question. You broke up pretty
19 badly.

20 MR. TOMPKINS: Yeah. Let's go off the record
21 for one second.

22 COURT REPORTER: The time is 4:54 pm. We are
23 going off the video record.

24 (OFF THE RECORD)

25 COURT REPORTER: The time is 4:55 p.m. We are



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1 back on the video record.

2 BY MR. TOMPKINS:

3 Q Shortly after the pilot left, you talked about
4 some movement in the Nomadic Milde, but that movement
5 was not enough to set off the anchor watch alarm,
6 correct?

7 A That's -- that's correct. The swinging was
8 not -- not hard enough, yes.

9 Q Let's look at page 17 of the transcript you
10 have in front of you. And I'm looking at the entry of
11 2102-1. Do you see that, sir?

12 A I see that.

13 Q What do you mean, why are we not in the middle
14 of the anchorage. What do you mean there?

15 A I don't know. Maybe I was just talking to
16 myself. Maybe it was just a shortcut that I use. I do
17 not recall.

18 MR. BUTTERWORTH: And Peter, not by objection
19 but way of clarification. The different witnesses
20 and translators say, why are we not in the middle of
21 the anchorage? But then there's also witnesses here
22 at anchor watch. Why are we not in the middle of
23 the anchor watch? So we put them both in there for
24 clarity's sake.

25 BY MR. TOMPKINS:



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1 Q Okay. We'll change. Do you remember what you
2 said, at 2102?

3 A I do not recall.

4 Q Okay. Let's look at the next entry where the
5 second officer reportedly says you've been on this ship
6 with this kind of ECDIS before; you see that?

7 A I see that.

8 Q And you respond, this is your first time,
9 correct?

10 A Yes.

11 Q Does that mean it's your first time with this
12 make and model ECDIS?

13 A Yes.

14 Q Had you received any detailed training on how
15 to use this particular ECDIS?

16 A Yes. We were showing -- earlier today we were
17 showing the certificate from the maritime school that I
18 received.

19 Q So that certificate was training you received
20 on the exact make and model ECDIS that was on the
21 Nomadic Milde?

22 A That's correct.

23 Q And so who manufactured that ECDIS on the
24 Nomadic Milde?

25 A Transas.



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1 Q Spelling?

2 A T-R-A-N-S-A-S (in English).

3 Q Okay. Still in that same box where you're
4 talking with the second officer. There's a reference to
5 you going to school last year, but not remembering too
6 much; you see that?

7 A Yes. I see that.

8 Q And you want to say this is the first vessel,
9 but normally there's a Raytheon and this stuff I don't
10 remember; you see that?

11 A Yes. I see that.

12 Q Does that mean you're used to working with
13 Raytheon ECDIS machines?

14 A There are -- the systems right now have really
15 a lot of different manufacturers and there are many
16 different types, but on the ships that I was on before,
17 it was the Raytheon system that was most common.

18 Q Would you agree that you were more familiar
19 with how to operate a Raytheon ECDIS than you are a
20 Transas ECDIS?

21 A No. I do not agree with that.

22 Q Why do you not agree with that if your
23 experience was with Raytheon prior to working on the
24 Nomadic Milde?

25 A On my previous ship, Hjellestad, it was a



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1 different ECDIS system, not the Raytheon system. So I
2 do not agree with what you said about my experience with
3 the ECDIS system. I do agree with the fact that
4 depending on what system you use and there are so many
5 different manufacturers right now, you do need to use it
6 for where -- you do need to gain some experience using
7 it. I agree with that. But the basic functions on any
8 of the ECDIS systems are basically the same.

9 Q Although the last line at the 2102 entry says
10 I was on the training in maritime school. But it was
11 like, "Training, fuck, 90 minutes and finito, fuck.
12 Certificate, fuck. Sayonara;" you see that?

13 A Yes. I see that.

14 Q Are you talking about the maritime school
15 where you got the certificate to be trained on the
16 Transas ECDIS?

17 A Probably, yes.

18 Q Okay. Then go down to the bottom of that page
19 2113-2. You see that entry?

20 A I see that.

21 Q It goes on to the top of page 18.

22 A Yeah. I see that.

23 Q This is the first call from Atlantic Venus
24 expressing some concern about the short distance between
25 the Nomadic Milde and Atlantic Venus, correct?



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1 A Yes. Yes. That's correct.

2 Q And Atlantic Venus called you expressing
3 concern about the short distance. Did you call the
4 captain at that time, 2113?

5 A No. I did not. There was no basis for me to
6 call the captain then.

7 Q At that point, were you carefully monitoring
8 the ECDIS to see what kind of swing you were
9 experiencing on the Nomadic Milde?

10 A Through the entire time of my watch, I was
11 active on the watch. So I was watching the movement of
12 the ship, both on the ECDIS system, but I was also using
13 my own eyes to assess the situation. I would go to the
14 wing to observe Atlantic Venus.

15 Q Did you ever use the ECDIS to measure the
16 distance from where you originally anchored to the most
17 extreme points, whether it's called the bank or toward
18 the middle of the river, to see what distance you were
19 moving?

20 A I do not recall.

21 Q Is it possible to do that? In other words, is
22 it possible to make those measurements using the ECDIS?

23 A Yes. You can do that, yes.

24 Q Okay. Going down on that same page 2139, so
25 we're talking about 23 minutes later or so, you say,



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1 "What is this fucking Atlantis -- Atlantic? We are too
2 close." Do you see that?

3 A Yes. I see that.

4 Q And then you ask if -- is it true that you
5 asked the ship's second officer how far apart are you
6 from Atlantic Venus?

7 A Yes. That's correct, because I was walking on
8 the wing at that time.

9 Q Okay. And what was his actual answer as far
10 as the distance?

11 A I don't recall what he said.

12 Q Well, what does it say in the transcript?

13 A It is 0.3 cables, 0.03, or 0.18.

14 Q Are those three different measurements?

15 A I don't recall.

16 Q So he did not answer you with a single clear
17 answer when you asked him the distance, correct?

18 A I don't know, maybe he did give me a clear
19 answer, but it was just not audible enough to be
20 reported.

21 Q When you had just finished saying, "We are too
22 close," what's your best estimate as to how close you
23 were?

24 A It's very hard to say. I -- I do not know.
25 From the very beginning, we were very close.



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1 Q But something changed, though, to make you say
2 for the first time, "We're too close," versus, "We are
3 monitoring the situation."

4 A I don't know how to answer your question
5 without actually looking at the ECDIS picture from that
6 time exactly.

7 Q For the first time when the Atlantic Venus
8 called you and said that you were a short distance, you
9 simply said you were going to monitor the situation,
10 correct?

11 A That's correct.

12 Q As a result of monitoring it, about 26 minutes
13 later, now you say, "We're too close," correct?

14 A Probably, there was some movement on the
15 chain, either to the right or to the left. But without
16 looking at the ECDIS picture from that time, I won't be
17 able to tell you what that was.

18 Q At 2139, when you said that Nomadic Milde was
19 too close, did you order the chief engineer to turn on
20 the main engines?

21 A No. But I did make a phone call a couple
22 seconds later to the engine room.

23 Q What was the reason for that phone call?

24 A My procedure from the bridge manual called
25 anchoring - it's from the chapter or section for



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1 anchoring. So one of the rules there says that I'm
2 supposed to make sure that the engine can be started at
3 any point.

4 Q Did you call the captain to alert him that you
5 thought he was too close before the Atlantic Venus
6 called you a second time to indicate that you were
7 coming very close?

8 A No. I notified and alerted the captain after
9 the second phone call.

10 Q And that would have been somewhere around
11 2142?

12 A Yes. That's correct.

13 Q And at 2142-3, where you say "003", what does
14 that mean?

15 A It's probably about the CPA of our stern to
16 the bow of Atlantic Venus.

17 Q But what does 003 mean in terms of distance?

18 A That's in cables.

19 Q And what does that mean in terms of meters? Is
20 that 20 feet?

21 A We can assume that it was some 20 meters.

22 Q Okay. Turn to page 20 of the transcript,
23 please. In the middle of the page, it indicates the
24 chief officer said in Polish, "Tell them to open the
25 chain-break." Do you see that?



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1 A Yes. I see that.

2 Q Who is the "them" that he is referring to?

3 A That's the crew on the bow.

4 Q What was the purpose of opening the chain-
5 break?

6 A Well, at 1652 local time -- well, I do not
7 recall that. But I think that both me and the captain,
8 we must have had the same plan to avoid the collision.
9 So this is just confirmation that we are kind of
10 executing the plan to -- to avoid the collision.

11 Q But what would opening the chain-breaks do to
12 help you avoid a collision?

13 A It -- it is that when the ship is anchored on
14 too tight chains, it is very hard to maneuver. And
15 also, if I remember correctly at that time, without
16 actually looking at the ECDIS pictures, we were also
17 being turned perpendicular to the current on the river.
18 So at that time, I think it was the -- the best
19 decision.

20 Q Okay. And then the actual order to the bosun
21 came at 21:54:10, according to this transcript?

22 A Yes. That's correct.

23 Q And at the same time --

24 MR. BUTTERWORTH: Peter.

25 Q -- the Atlantic --



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1 MR. BUTTERWORTH: Just a word of clarification,
2 not an objection. On the times, like 21:52:00 or
3 16:52:00, we just do it when the conversation
4 starts. So all this didn't happen -- everything in
5 that box didn't happen exactly at 1652. It runs on
6 and on. So later on, we're going to have to, like,
7 break it down into minutes, minute-by-minute. So
8 that the actual tell them to open chain break, yes,
9 yes, yes, and then chief officer opened the brakes.
10 That might have happened very closely. I can't
11 remember right now with the transcript. You'll want
12 to go back later and look.

13 MR. TOMPKINS: Understood.

14 MR. BUTTERWORTH: Okay.

15 MR. TOMPKINS: I'm just using your time where I
16 can see --

17 MR. BUTTERWORTH: That's -- no, that's right.
18 Absolutely. I just want to make sure everyone
19 understands.

20 BY MR. TOMPKINS:

21 Q But it's about that same time, Chief, that the
22 Atlantic Venus captain calls again to speak with the
23 Nomadic Milde?

24 A Yes. About that time. Right.

25 Q And is that your response? "Tell him to shut



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1 up. No power. Oh, fuck."

2 A This is not a response to the captain. Not at
3 all, no. At that point, the situation was really
4 tragic. We were actually really struggling and trying
5 to save our lives. And someone on the radio, someone
6 behind on the radio is calling our ship, Nomadic Milde.
7 So rather than use the radio, I was just kind of saying
8 it out loud and I did say that. But at that time, we no
9 longer had any time for -- for any discussions with
10 Atlantic Venus.

11 Q What does the statement "no power" mean there?

12 A What it meant -- what I think it -- it means
13 is that the ship doesn't have enough power to go against
14 the current.

15 MR. BUTTERWORTH: As you know, we've been going
16 about an hour. Can we take a break pretty soon?

17 MR. TOMPKINS: Let's take one now.

18 MR. BUTTERWORTH: Okay.

19 COURT REPORTER: The time is 5:27 p.m. We are
20 off the video record.

21 (OFF THE RECORD)

22 COURT REPORTER: The time is 5:35 p.m. We are
23 back on the video record.

24 BY MR. TOMPKINS:

25 Q Okay. Captain -- oh, excuse, Chief Officer,



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1 I've a few more questions. You had indicated earlier
2 that you thought that the Atlantic Venus's starboard
3 anchor chain was struck by the propeller of the Nomadic
4 Milde, correct?

5 A Yes. That's correct.

6 Q When did you come to that belief?

7 A When we were shot like a rocket towards the
8 Cornerstone terminal, and when the engine actually kind
9 of reversed itself. And we went in the other direction.

10 Q Does that mean you came to that belief very
11 shortly after the impact with the Cornerstone dock?

12 A No. Shortly after the collision, we suspected
13 that we must have struck on something, possibly a chain.
14 And then we were kind of positive as to our assessment
15 after seeing our CPP.

16 Q But when was that when you saw the CPP?

17 A At the dock in Avondale for the first time.

18 Q Okay. Because you'd agree with me, there is
19 no reference in your handwritten statement about that
20 theory, is there?

21 A That's correct, right.

22 Q And there is no discussion that we can hear on
23 the VDR that day, being the day of the accident, where
24 that theory was discussed, correct?

25 A The VDR has recording for only from the



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1 bridge.

2 Q So my question is --

3 A So we kind of -- we were taking this -- we
4 were considering this shortly after the incident.

5 Q Let me ask my question in a different way. In
6 the transcript that you have in front of you, Chief, is
7 there any reference to the theory that the Nomadic
8 Milde's CPP hit the Atlantic Venus anchor chain? Do you
9 see that in that transcript anywhere?

10 A That -- that's right. The -- the transcript
11 does not have a reference of that. That's right.

12 Q And I think you answered this, but I want to
13 make sure I'm clear. You do not know as we sit here
14 today, what caused the T to shift in such a way that the
15 Nomadic Milde began moving forward, do you?

16 A As far as the shift in the T configuration and
17 why that was, no. I do not know the reason for that.

18 MR. TOMPKINS: Thank you, sir. That's all the
19 questions I have.

20 THE WITNESS: Thank you also.

21 MR. FREY: I don't have anything, Mike.

22 MR. BUTTERWORTH: All right. Jim, do you have
23 anything?

24 MR. BERCAW: Maybe after you have questions,
25 but not right now.



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1 CROSS EXAMINATION

2 BY MR. BUTTERWORTH:

3 Q Chief, when I'm asking you the questions, you
4 have to look at the translator.

5 A Sorry, yes.

6 Q All right. Chief, my name's Mike Butterworth,
7 acting for Nomadic Milde's interests and I have a few
8 questions for you as well. Sir, based on what you knew
9 on May 8th before the incident, how safe was it to
10 anchor loaded Nomadic Milde in flood conditions near the
11 Kenner Bend Anchorage?

12 A Based on the knowledge that I had on May 8th,
13 it was safe.

14 Q But who do you expect to warn you about local
15 conditions when you come into the Mississippi River as a
16 foreign captain or a foreign watch officer?

17 MR. BERCAW: Objection to the form. He's not a
18 captain.

19 A In every corner of the world that would
20 include the Mississippi River, we always rely on and we
21 have to rely on a lawful pilot.

22 Q Based on what you know now, how safe was it to
23 anchor loaded Nomadic Milde in flood conditions near the
24 Kenner Bend Anchorage?

25 A Based on my knowledge that I have today, it



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1 was -- it was not safe and it was just stupid to anchor
2 the ship on -- on that very spot.

3 Q What did the second pilot, Pilot Shirah, tell
4 you and the captain at 1757 hours, 56 seconds? What was
5 the reason that Nomadic Milde dragged anchor?

6 MR. BERCAW: Objection to form. Hearsay.

7 INTERPRETER: I didn't hear the second part of
8 the question.

9 MR. BUTTERWORTH: Thank you, Kate.

10 INTERPRETER: It's breaking for some reason.

11 MR. BUTTERWORTH: Thank you, Kat. I will
12 repeat it.

13 BY MR. BUTTERWORTH:

14 Q At 1757 hours and 56 seconds, what did Pilot
15 Shirah tell you and the captain was the reason Nomadic
16 Milde dragged anchor?

17 MR. BERCAW: Objection to form. Calls for
18 hearsay.

19 A Pilot Shirah said something very interesting
20 right after he came on board of the ship, that there was
21 not a ship to be designed in such a way as to be on
22 anchor -- to be anchored and lead for a loaded vessel
23 with a five knot current working against it, that a ship
24 would be swinging back and forth.

25 Q Do you agree with Pilot Shira's statement?



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1 MR. BERCAW: Objection.

2 A Based on what I know right now, I agree, yes.

3 Q What would you have done as a watch officer if
4 Pilot Brown, the first pilot, had told you that it was
5 too dangerous to take loaded Nomadic Milde to anchorage
6 in flood conditions?

7 MR. BERCAW: Objection to form. Speculation.

8 A I would definitely draw attention of the
9 captain to what the pilot was say -- saying, and we
10 would have dropped anchors at a different location.

11 Q What would you have done if the pilot had told
12 you that you should go to a lay berth instead of trying
13 to anchor in the Mississippi River in flood condition?

14 A It would have been the best option, of course.

15 Q And what would you have done if the pilot had
16 told you that, as you're the watch officer and the pilot
17 comes on board at Avondale?

18 A I would notify the captain right away and then
19 we would -- and then we would have to find out a
20 solution to the situation. Or we wouldn't have left
21 Avondale at all.

22 Q What would you have done, Chief Officer, if
23 the local agent had told you that it was too dangerous
24 to take loaded Nomadic Milde to the anchorage?

25 MR. BERCAW: Objection.



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1 A I will do a similar thing, in that, I would
2 definitely let the captain know right away not to depart
3 Avondale at all, to find a resolution to the situation.

4 Q Chief Officer Piotr, in all your training, all
5 your experience, how common is it to anchor outside the
6 designated anchorage area anywhere in the world?

7 A I never, ever remember a situation when we
8 anchored outside of the anchorage area.

9 Q As you were aboard the Nomadic Milde and
10 approaching the Kenner Bend anchorage and making that
11 decision as a watch officer, as a bridge team, where to
12 anchor, as you got close, what other vessels did you see
13 that were anchored outside the Kenner Bend Anchorage?

14 A Of all vessels -- vessels that were anchored
15 in the area and that would be the Atlantic Venus, Ionian
16 Seas and I believe the witness said "gas can" and then
17 he followed up saying, I do not recall the exact name of
18 the other ship. All those ships were anchored outside
19 the -- the anchorage area.

20 Q If instead, the pilots had anchored those
21 other ships inside Kenner Bend anchorage area, would you
22 have agreed as a watch officer to be anchored outside
23 the ship channel?

24 A It would have been a very strange and unusual
25 situation if all of the other vessels will be inside the



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1 anchorage area and we would be the only vessel outside
2 of the anchorage.

3 Q In your mind, as watch officer, being up on
4 the bridge -- being part of the bridge team as you're
5 approaching the anchorage, was it a fact -- if Atlantic
6 Venus had been properly anchored inside the anchorage,
7 would you have agreed to anchor outside the anchorage or
8 would you have insisted that the pilot take you inside
9 the anchorage where it was safe?

10 A Always inside the anchorage area. Well, the
11 rule kind of is and the law is that you always drop
12 anchor -- anchors inside the anchorage area.

13 Q Sir, from your position, from your anchored
14 position, we know that ultimately you dragged anchor,
15 and you dragged anchor in a down river direction. If
16 Atlantic Venus had been anchored in the proper anchorage
17 area, about 400 meters closer to the river bank, what
18 would have happened? Would you have contacted the
19 Atlantic Venus, or would you have just kept dragging the
20 anchor down the river harmlessly?

21 MR. TOMPKINS: Object to the form.

22 A It would be a much more comfortable situation
23 we would have passed by Atlantic Venus without any --
24 making any contact with this vessel. We would have
25 dragged -- we would have dragged the vessel down the



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1 river, but without any damage to the vessel.

2 Q And logically, what would have happened if you
3 had dragged harmlessly down the river without being
4 pinned across Atlantic Venus's bow? What damage would
5 there have been to the Cornerstone wharf terminal?

6 MR. TOMPKINS: Object to the form.

7 A The -- the berth around the Cornerstone
8 terminal would not have been damaged if we didn't -- if
9 we didn't come into contact with the Atlantic Venus.
10 There wouldn't be a maritime incident of any sort, and
11 we wouldn't have met as we are doing right now.

12 Q But sir, as we know, ultimately, you did come
13 in contact with the Atlantic Venus, and we've talked
14 before about the T and with the Nomadic Milde being
15 across the bow of the Venus, which is pointed up river.
16 Do you remember about how long that you were perfectly
17 stable in the T position, with the same basic heading,
18 the same position on the T?

19 A Approximately for an hour-and-a-half.

20 Q Okay. When the pilot came aboard, Pilot
21 Shirah, what were the instructions that he gave you
22 at --

23 MR. BERCAW: Objection to form. Hearsay.

24 Q I'd like you to look at page 26 NM006262 at
25 1757.



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1 MR. BERCAW: Objection to form.

2 Q What were Pilot Shirah's instructions to you
3 as to what you should do?

4 MR. BERCAW: Same objection.

5 A Pilot Shirah was waiting for two additional
6 tugboats. Also, that the engine was working 30 percent
7 astern. And he was waiting for tugboats to push our
8 ship away from Atlantic Venus.

9 Q All right. Did you follow Pilot Shirah's
10 instructions? So if she is stable right now, you leave
11 it like this. More tugboats are coming. What did you
12 do aboard your vessel?

13 MR. BERCAW: Objection to form. Cumulative
14 question.

15 A We didn't do anything at that time. And the
16 -- the vessel was stable, so we -- we didn't do
17 anything.

18 Q All right. And so now we come to the period
19 where the T becomes unstable for about 1836 to about
20 1855. The T starts to tilt ultimately about 25 degrees
21 to port. During that time, what were you aboard the
22 Nomadic Milde doing differently?

23 MR. TOMPKINS: Objection to form.

24 A We were not doing anything. Our situation on
25 the bridge remained the same.



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1 Q So if the Nomadic Milde wasn't doing anything
2 different, what was the vessel that was pointed upriver,
3 whose rudder could easily move the entire T? What
4 vessel was that, sir?

5 MR. TOMPKINS: Object to the form. You can
6 answer.

7 A The only vessel that was able to do anything
8 in this tandem situation was Atlantic Venus. But any
9 communication as to what the vessels were doing at that
10 point, that was done between the pilots. The pilots
11 were talking among themselves what to do.

12 Q Let's go back to when you were approaching the
13 anchorage. Where did the -- where did the -- your
14 passage plan? Where did your captain want to go, and
15 what was the title of your passage plan? What anchorage
16 were you initially intending to go to?

17 A The -- the passage plan was that we would to
18 go to Ama anchorage.

19 Q When you were approaching the anchorage, what
20 -- what happened? Why did that change? Why did you go
21 -- instead of going to the Ama anchorage, you went to
22 the Kenner Bend anchorage?

23 A At one point during the passage, Pilot Brown
24 received a phone call from a different pilot to switch
25 places with another vessel to anchor the ship.



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1 COURT REPORTER: Someone --

2 MR. BUTTERWORTH: We have some sort of a
3 technical difficulty right now. Okay. It's
4 apparently over.

5 MR. BERCAW: Yep.

6 MR. BUTTERWORTH: Okay. Did you get that,
7 Court Reporter?

8 COURT REPORTER: (No verbal response.)

9 BY MR. BUTTERWORTH:

10 Q Ama anchorage is located on the left
11 descending bank of the Mississippi River, which is the
12 other side of the river from the Cornerstone terminal.
13 And it's also about a mile to two miles further upriver
14 from the position where you finally anchored. What if
15 the pilot -- what if Pilot Brown had not switched places
16 with his friend, but instead had taken you where you
17 wanted to go, to the Ama Anchorage, even if you had
18 dragged anchors? If you had another two miles distance,
19 and you were over clear across on the other side of the
20 river, what damage would there have been to the Atlantic
21 Venus and to Cornerstone?

22 A Nothing would have happened.

23 Q But in fact, we know that the pilots decided
24 to switch places, to switch anchorages. But now, you're
25 approaching the Kenner Bend Anchorage, and you mentioned



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1 that you saw the Atlantic Venus, the Ionian Sea, and the
2 Campbell (phonetic); is that correct?

3 A Yes. That's correct.

4 Q How were they anchored, sir? Were they
5 anchored perfectly stable and calm like you like to see,
6 or were they yawing and swinging in the strong current?

7 A You could see very clearly that the ships were
8 not stable, and they were swinging.

9 Q I'd like you to turn to page 13 of the
10 transcript, NM6249. At 20:08:20 or 1508 hours, 20
11 seconds, Pilot Brown. Now, between 2008 and 2009, Pilot
12 Brown is talking about the ship that's in front of you,
13 the Ionian Sea. Are you with me? Do you see that
14 section, sir?

15 A Yes. I see that.

16 Q And he even asked his friend, Dave, who was
17 nearby, "Is anyone heaving -- is anyone heaving anchors
18 on that ship in front of me, that Ionian Sea. She just
19 took a dive." Do you see that, sir?

20 MR. BERCAW: Objection to the form.

21 A Yeah. I see that.

22 Q Okay. So the Pilot Brown even thought that
23 the other vessel might be picking up her anchor because
24 she was going so far to the left and to the right up
25 ahead of you. Was that your impression that's what you



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1 were seeing when you were up on the bridge?

2 MR. BERCAW: Objection. Form.

3 MR. TOMPKINS: Objection to the form.

4 A Yes. That's all correct.

5 Q How consistent is that with your own personal
6 observations that you saw the Ionian Sea swinging and
7 the Atlantic Venus swinging?

8 A It is very consistent with what I was able to
9 see.

10 Q Sir, what if we look at the ECDIS, when we
11 look at the ECDIS for May 8th before you get to the
12 anchorage and even after you're at the anchorage. What
13 do we see that Campbell and the Ionian Sea and the
14 Atlantic Venus doing? How are they riding to their
15 anchors?

16 MR. TOMPKINS: Objection to form.

17 A You can see that the -- that the ships were
18 moving -- were swinging.

19 Q Sir, how often had you seen ships swinging
20 like this in anchorage in your career, in your prior,
21 what, ten years as a vessel officer?

22 A I do not recall ever seeing a situation like
23 that, that so many ships would be swinging at the same
24 time.

25 Q Sir, how many times did the Atlantic Venus



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1 bridge navigation team call you as you were approaching
2 and obviously going to park right between the Atlantic
3 Venus and the Ionian Sea. How many times did the
4 Atlantic Venus captain call you and say, "What the heck
5 are you doing? You're too close. You can't anchor
6 here. You can't anchor here in front of me in the -- by
7 the Ionian Sea. It's too close. It's too dangerous.
8 What are you doing"? How many times did they call you
9 and say that before the first anchor dropped from the
10 Nomadic Milde?

11 MR. TOMPKINS: Object to the form.

12 A No one ever called us.

13 Q Well, that's before you dropped the first
14 anchor. But what about after you dropped the second
15 anchor, when the pilot was still on board?

16 A No one ever called us.

17 Q When we look at the ECDIS during the 15
18 minutes that the pilot stays aboard, how is your vessel?
19 Is she riding steady at anchor or is she doing something
20 else?

21 A She was not stable. The -- the vessel was
22 swinging the entire time.

23 Q So Atlantic Venus has 15 or 20 minutes while
24 the pilot's still aboard to call and to say, what are
25 you doing? What are you doing? How many times did the



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1 Atlantic Venus call you while the pilot was still on
2 board?

3 MR. TOMPKINS: Objection to the form.

4 A No. There was no phone calls, no nothing from
5 Atlantic Venus.

6 Q What good does it do to call you 30 minutes
7 later after the pilot left?

8 MR. TOMPKINS: Objection to the form.

9 A It's kind of useless because without the pilot
10 we -- we cannot lift -- heave anchors and move the
11 vessel to a different position.

12 Q Sir, you were asked by Atlantic Venus counsel
13 to refer to page 15 and 16 of the transcript. That's
14 Bates number NM6251 and 6252. Are you there, sir?

15 A Yes. I -- I have it in front of me.

16 Q Okay. And so take a moment to read through
17 the entire section, including to the top part of page
18 16. Tell me when you're done. Bottom of page 15 and
19 the top of page 16. If you want, we could have the
20 translator read it in Polish. Are you able to make it
21 out, sir?

22 A No. No need for the interpreter to read that.

23 Q Okay.

24 A I see that.

25 Q Do you see the part where Pilot Brown told



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1 you, "It's a good idea to keep it on short standby."
2 That's your main engine. "To keep it on short standby
3 in case you need anything or in case the vessel in front
4 of you has a problem and you should maneuver also." Do
5 you see that part, sir?

6 MR. TOMPKINS: Objection.

7 A Yes. I see that. That piece. Uh-huh.

8 Q Pilot Brown gave you that warning because the
9 Ionian Sea was swinging back and forth and taking dives.
10 Do you think that was a good instruction?

11 MR. BERCAW: Objection to form. Speculation.

12 MR. TOMPKINS: Object to the form. He's
13 already said he didn't know if he was on the bridge
14 and you keep saying he gave you that instruction.
15 His answer to me was, "I don't even know if was on
16 the bridge and heard this."

17 MR. BUTTERWORTH: To the bridge --

18 MR. TOMPKINS: It's speculative and it's not
19 based on what the prior testimony was.

20 MR. BUTTERWORTH: Objection noted.

21 BY MR. BUTTERWORTH:

22 Q Sir, what maneuvers did you see the Atlantic
23 Venus doing to keep clear of you when you started having
24 problems?

25 A I didn't -- I didn't notice anything.



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1 Q When we look on the ECDIS, what evasive
2 maneuvers do we see the Atlantic Venus doing to keep
3 clear of your vessel when you're having problems?

4 MR. TOMPKINS: Objection to the form.

5 A They didn't start doing anything. Nothing.

6 Q How useful is it for them just to squawk on
7 the radio to you as opposed to starting their engine and
8 using their rudder and making strong evasive maneuvers
9 to keep clear of you?

10 MR. TOMPKINS: Objection.

11 A The radio communication or exchange does not
12 really produce any effect.

13 Q Were the pilot's instructions to you to make
14 sure you stand by the radio so you can gripe and
15 complain as the Ionian Sea drifts down on you, drags
16 anchor down on you? Or were the pilot's instruction
17 keep your engine on short standby so you can maneuver
18 clear of the Ionian Sea?

19 MR. TOMPKINS: Object to the form.

20 A The instructions from the pilot were clear. It
21 was to keep the engine on a short standby. And he also
22 told us that if there was a situation that if the ship
23 in front of us would start having problems, we should
24 also start to maneuver.

25 Q Cornerstone counsel asked you about whether



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1 you were able to see the Cornerstone wharf on the
2 navigation chart.

3 A Yes. That's right.

4 Q During high river flood conditions, based on
5 what you know now, how safe is it for Cornerstone
6 Chemical to be located in the middle of deep draft
7 vessel anchorages when everyone knows that anchored
8 vessels may drag anchor?

9 MR. BERCAW: Objection to form.

10 A Based on the knowledge that I have today, the
11 Cornerstone Company and their location that they have is
12 very dangerous. And it's dangerous for both the
13 company, but also for the ships that anchor in the area.

14 Q Sir, what objections would you have if
15 Cornerstone Chemical demanded of the U.S. Coast Guard
16 captain of the Port BTS and NOBRA pilots not to anchor
17 any vessels within one mile upriver of Cornerstone wharf
18 during flood conditions, so there would be less danger
19 of vessels dragging into their wharf?

20 MR. BERCAW: Objection to form.

21 Q What objections would you have to that if
22 Cornerstone made that proposal?

23 MR. BERCAW: Same objection.

24 A Absolutely, I would have no objection
25 whatsoever to a rule like that.



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1 Q Chief officer, do you remember working with me
2 in front of the voyage data recorder and us taking data
3 points minute by minute from the voyage data recorder?

4 A I do remember, yes.

5 Q Okay. And we'll circulate this later, but do
6 you remember that there was a period of time between
7 2058, which is 1558 hours local time and -- and about
8 2135 which is 1635 hours local time where the Milde was
9 fairly stable in the anchorage?

10 MR. BERCAW: Objection to form.

11 A Yes. Within that time nothing was -- was
12 going on with the ship, it was stable.

13 Q And the data heading that we had looked at and
14 counsel can do this themselves, there's nothing magic
15 about it, but we looked at heading, we looked at
16 latitude, longitude, rate of turn. Do you remember
17 that, sir?

18 A Yes.

19 Q And we also looked at your rudder position and
20 the speed over ground, SOG, and your course over ground,
21 COS. Do you remember that?

22 A Yes.

23 Q Okay. During that period of time, which
24 vessel was more stable at anchorage, you or the Atlantic
25 Venus, when we look on the ECDIS?



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1 A At that point, it was Nomadic Milde.

2 Q Okay. What vessel passed by at about the time
3 that you became unstable?

4 A I only remember part of the name, which was
5 Symphony. I do not recall the entire name of the
6 vessel.

7 Q Was it the Tomini Symphony? If we look on the
8 ECDIS, will the name be there?

9 A Yes. The name would -- would be visible
10 there, yes.

11 Q When --

12 MR. BERCAW: Counsel, are you -- excuse me, you
13 can bring rule 14C in against the Tomini Symphony?

14 MR. BUTTERWORTH: We just did this last night.
15 I don't know.

16 BY MR. BUTTERWORTH:

17 Q Sir, a big deep draft vessel like Tomini
18 Symphony with NOBRA pilots on board, what are they
19 supposed to do when they're coming by vessels and they
20 see the vessels are outside of an anchorage area and
21 they're -- they're anchored outside of the proper
22 anchorage area and they're moving at anchor in strong
23 current. What is the NOBRA pilot supposed to do? He's
24 supposed to keep going at the same high speed or are
25 they supposed to slow down to bare steerageway?



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1 MR. BERCAW: Objection to form.

2 A A reasonable thing to do would be to reduce
3 speed as much as possible to the speed that would allow
4 this vessel to -- to still have control of the vessel
5 and be able to -- to navigate.

6 Q How safe was it for this vessel, the Tomini to
7 pass your position based on what you know now? Based on
8 what you know now, how safe was it for this vessel, the
9 Tomini Symphony or Harmony, whatever it was, how safe
10 was that for them to pass by you basically at full speed
11 ahead?

12 A Based on the knowledge that I have today, it
13 was dangerous for them to pass us by.

14 Q How many times did the NOBRA pilot aboard the
15 Tomini vessel that passed by you at about the same time
16 that you broke out of the anchorage, how many times did
17 that NOBRA pilot call to Atlantic Venus or to you or to
18 the Ionian Sea and say, how are you guys doing? Do you
19 need a slow bell? Do you guys want a slow bell?

20 MR. BERCAW: Objection to form. Hearsay.

21 A There was no contact with that ship.

22 Q Based on what you know now, if the Tomini
23 Symphony or the Tomini Harmony, whatever the name is, if
24 the NOBRA pilot had called you and said, hey, do you
25 want me to slow down when I go by? What would you have



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1 answered?

2 A Based on the knowledge that I have today, I
3 would definitely have asked them to slow down as much as
4 possible.

5 Q Sir, in the future, I'm hoping you have a long
6 career as a captain in the merchant marine. In the
7 future, if you are asked to -- if your vessels come into
8 the Mississippi River and it's flood conditions and your
9 ship's loaded, how likely are you to try to anchor your
10 ship at the Kenner Bend anchorage?

11 MR. BERCAW: Objection to form.

12 Q In the flood conditions.

13 A I hope that it will never, ever happen to me
14 again, that I would have to anchor considering that
15 condition of the river. But if I will have to do it,
16 there will be a pilot on board of the ship for 24 hours,
17 the engine would be on, and will be operating the entire
18 time, and two tugboats are going to be ready at any time
19 and they will be assisting my vessel should anything
20 happen.

21 Q Which pilot, Pilot Brown or Pilot Shirah, took
22 you to anchorage and told you to turn off your main
23 engine?

24 A Pilot Brown.

25 Q Based on what you know now, who do you agree



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1 with? Who was the good pilot, Pilot Brown or Pilot
2 Shira?

3 A Based on what I know today, of course, the
4 good pilot is Pilot Shirah.

5 MR. BUTTERWORTH: All right. I tender the
6 witness.

7 MR. BERCAW: Okay.

8 MR. BUTTERWORTH: Reserving my right to re-
9 rebuttal if it's needed.

10 REDIRECT EXAMINATION

11 BY MR. BERCAW:

12 Q Mr. Kowalski, just a handful of questions. At
13 the time that the Nomadic Milde was taking on cargo at
14 Avondale, you were made aware of a leaking cargo hatch
15 cylinder that required repair, correct?

16 A Yes. I was informed about that.

17 Q Okay. And you knew that the tools and parts
18 necessary to complete those repairs would be delivered
19 to the vessel while at the Avondale dock, correct?

20 A I'm -- I'm not sure if that was the case. I
21 knew that the repairs were supposed to be done there,
22 but whether the parts and -- and the tools were supposed
23 to be delivered there, this I do not know.

24 Q Okay. In any event, as the chief officer of
25 the Nomadic Milde, you are ultimately responsible to



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1 repair the leaking hatch cover cylinders?

2 A The repair of the hatch actuator cylinder,
3 this is typical work that is done at a shipyard. Or you
4 hire an outside service company that does this kind of
5 work, who has the tools, the skills and the experience
6 to be able to repair things like that. The crew -- the
7 only thing that the crew can do -- can try to limit the
8 leaking from the cylinder to the extent possible. But
9 to actually do the replacement of the cylinder and for
10 this to be done by the crew, that would be very, very
11 difficult to do.

12 Q The condition, maintenance and repair of a
13 hatch actuator cylinder is within the purview of the
14 deck department of the Nomadic Milde as contrasted to
15 the engine room department; is that accurate?

16 A What I do as far as service of those
17 cylinders, well, the extent of my work with -- with them
18 is just using them. It is a mechanical part. That's --
19 that's why we sometimes ask assistants of the
20 engineering department the -- the engine department. But
21 when you have a situation with a malfunction like that
22 it -- ultimately it -- you have to call in someone to do
23 the service and fix it.

24 Q The reason why the Nomadic Milde departed the
25 Avondale dock, headed upstream towards the Ama Anchorage



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1 and ultimately anchored in the Mississippi River was
2 because Intershops didn't want to pay for a lay berth to
3 conduct the repairs of the leaking hatch cover actuator
4 cylinder, correct?

5 MR. BUTTERWORTH: Object to form. Object to
6 form.

7 A Was the question -- Counsel, was the question
8 that it was the -- the cost of, kind of, being at the
9 dock too high for Intership and that's why they didn't
10 want to, or was it the labor cost?

11 Q My question was: It's your understanding the
12 reason why the vessel anchored in the river, instead of
13 staying at either the dock or sailing to a lay berth was
14 because Intershops did not want to pay for a lay berth
15 to conduct the repairs on the hatch cylinder we've been
16 talking about.

17 MR. BUTTERWORTH: Object to form.

18 A I do not know who -- whose decision was it
19 that some work was supposed to be done on the anchor. At
20 one point, I was just told by the captain that we will
21 be moving to an anchorage to get the repair done.

22 Q So you do agree that the repairs to the hatch
23 cover cylinder that we've been talking about were going
24 to be performed at an anchorage as opposed to at the
25 Avondale dock or a lay berth?



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1 MR. BUTTERWORTH: Object to form.

2 A I just do not know what the original plan was,
3 whether it would be repaired -- whether the repairs
4 would be done at lay berth or they would be done at an
5 anchorage. All I know is that at one point I received
6 in -- instructions from the captain that we will be
7 going to an anchorage. And the service was ordered to
8 be there at 6:00 a.m. the following day.

9 Q The only reason why the Nomadic Milde headed
10 to anchorage at -- near Kenner Bend as opposed to going
11 down river and on to Pensacola was for purpose of
12 repairing the hatch cover cylinder we've been talking
13 about?

14 A Yes. That's correct.

15 Q You were asked numerous questions about the
16 decision to moor near the Kenner Bend anchorage as
17 opposed to the Ama anchorage and under various
18 circumstances. I'm going to ask you some follow up
19 questions about that. During the time that the Nomadic
20 Milde was heading upriver, the second officer was the
21 officer on watch, correct?

22 A Yes. That's correct.

23 Q Except for that time period when you changed
24 clothes during the voyage from the Avondale dock upriver
25 towards the anchorage, you also were located in the



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1 bridge, correct?

2 A Yes. That's right.

3 Q And Captain Markowski obviously was at the
4 helm and operating the CPP system to propel the vessel
5 where the pilot requested him.

6 A Not -- not really, because when we have pilot
7 on board, then we also have -- we also have a helm --
8 helmsman. It is correct that the captain would take
9 care of the CPP system and the boat thruster if there is
10 one on the ship. But it is the helmsman that -- whose
11 job is to be at the helm.

12 Q And the helmsman's, assuming grade, a member
13 of the deck department, correct?

14 A Yes. That's correct.

15 Q So when the anchorage was changed from Ama
16 anchorage to near the Kenner Bend anchorage by the
17 pilot, you didn't hear Captain Markowski question the
18 pilot at that time, did you?

19 A That's correct. I didn't hear the captain say
20 anything about that.

21 Q And likewise, you didn't hear the second
22 officer question the pilot about that decision, correct?

23 A Yes. That's correct.

24 Q And you didn't correct the pilot -- or you
25 didn't question the pilot, either, during that change,



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1 right?

2 A Yes. That -- that's right. Yes. That's
3 right.

4 Q Okay. When you neared the upper Kenner Bend
5 Anchorage, I believe you testified that you could see
6 that none of the vessels were actually anchored within
7 the confines of the anchorage. They were anchored
8 towards the center of the river outside the anchorage,
9 correct? Okay.

10 A Yes. That's -- that's right.

11 Q Right. And you could tell that they were out
12 of the boundaries of the Kenner Bend anchorage because
13 the Nomadic Milde's ECDIS system shows the boundaries of
14 the Kenner Bend anchorage, correct?

15 A That's correct. I did see that.

16 Q Okay. So when it became clear that the pilot
17 requested the Nomadic Milde to drop anchors outside the
18 Kenner Bend anchorage, the captain didn't question him
19 at that time, did he?

20 A That's right.

21 Q The second officer didn't question the pilot
22 about anchoring outside the boundaries of the anchorage,
23 right?

24 A Yes. That's right.

25 Q Okay. You didn't question the pilot about



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1 that decision, either, did you?

2 A Yes. That's right.

3 Q The other three vessels that were moored in
4 the vicinity of the Kenner Bend anchorage along with the
5 Nomadic Milde were all riding in ballast, correct?

6 A Kind of looking from the outside, that would
7 be my guess, yes. That they were in ballast, yes.

8 Q So even in ballast, they were swinging while
9 at anchor near the Kenner Bend anchorage before the
10 pilot left the vessel, correct? Okay. Yet --

11 A Yes. That's -- that's correct.

12 Q Okay. Between the time that the Nomadic Milde
13 neared the Kenner Bend anchorage until the first pilot
14 left, so this would be before the contact with the
15 Atlantic Venus, did you believe the Nomadic Milde was in
16 an emergency situation?

17 A Are we talking about the time period up to us
18 making the contact with Atlantic Venus?

19 Q No. It was -- it was between the time that
20 the Nomadic Milde neared the Kenner Bend anchorage and
21 the pilot left, which would have been before the Nomadic
22 Milde made contact with the Atlantic Venus.

23 A No. Based on the knowledge that I had back
24 then on May 8th, it was just normal conditions.

25 Q Okay. When you observed the other three



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1 vessels near the Kenner Bend anchorage that were in
2 ballast swinging on their anchors, the master and the
3 second officer, as well as the pilot, had the same
4 opportunity to view the movement of those vessels. Do
5 you agree with me?

6 A Of course they could see that.

7 Q Okay. And at this time period before the
8 pilot left the vessel, you didn't hear the captain,
9 under all these circumstances we've been talking about,
10 the change in the anchorage, anchoring outside the
11 confines of the Kenner Bend anchorage, the swinging of
12 the other three vessels. Under those circumstances, you
13 never heard the captain question the pilot once as to
14 why are we dropping anchor here, right?

15 A That's correct. That's correct. I didn't
16 hear anything like that.

17 Q Okay. Likewise, you didn't hear the second
18 officer, the officer on watch, question the pilot under
19 those same three circumstances that we just talked
20 about, right?

21 A That's -- that's correct. I didn't hear the
22 second officer say anything, either.

23 Q And as chief officer under those conditions,
24 you, again, never questioned the pilot's decision about
25 anchoring where he did under the circumstances that he



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1 did, correct?

2 A Up until May 8, 2020, I would never dare to --
3 to question the -- the knowledge or the experience of a
4 US pilot on the Mississippi River. So everything to me
5 looked like a very routine situation without any
6 problems.

7 Q You also knew at the time the Nomadic Milde
8 anchored outside of the Kenner Bend anchorage that,
9 regardless of the pilot's advice concerning local
10 conditions, the master of the ship remained in ultimate
11 control over the vessel at all times, correct?

12 A Yes. That's correct. The ultimate decision
13 lies with the captain. And his -- but his decision
14 making in -- is based on his decisions made by the
15 pilot.

16 Q The master cannot delegate the responsibility
17 -- his responsibility for the safety of the ship or crew
18 and cargo to the pilot under any circumstances, correct?

19 A On the Mississippi River, he does not
20 delegate.

21 Q Right. Okay. But now, after the fact, you
22 want us to believe that you would step in and
23 countermand the advice of a pilot regarding the
24 anchorage of your vessel, correct?

25 INTERPRETER: I'm sorry. I didn't hear the



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1 question.

2 Q Okay. But --

3 INTERPRETER: It's breaking on my side.

4 Q -- now when asked by counsel for the Nomadic
5 Milde, you readily agreed that you would countermand the
6 advice of a pilot regarding the anchoring of the Nomadic
7 Milde, right?

8 A Yes. Based on what I know today, I would have
9 told the pilot that it's just not a good spot to anchor
10 for our ship.

11 Q Okay. And you expect the Court to believe
12 you?

13 A Yes. Because that's the truth.

14 MR. BERCAW: Okay. Tender the witness.

15 MR. TOMPKINS: Nothing on behalf of Bresden
16 (phonetic). Nothing on behalf of the Atlantic
17 Venus.

18 MR. BUTTERWORTH: I think we're all done. Oh,
19 one thing for -- no. No. No. We're all done.

20 VIDEOGRAPHER: The time is 7:24 p.m. We are
21 off the video record.

22 COURT REPORTER: Mr. Bercaw, would you like to
23 order at this time?

24 MR. BERCAW: Yeah.

25 (OFF THE RECORD)



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1 MR. BERCAW: Yeah, we'll order a copy. And as
2 far as Jim said at the beginning on the video and
3 who's going to keep it and stuff, I totally agree.

4 COURT REPORTER: Absolutely.

5 (DEPOSITION CONCLUDED AT 7:24 P.M.)
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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF ORANGE

I, the undersigned, certify that the witness in the foregoing transcript personally appeared before me and was duly sworn.

Identification: Produced Identification

 _____

JODY LYNN PRALAT

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, JODY LYNN PRALAT, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceeding, and that said transcript is a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not of counsel for, related to, or employed by any of the parties or attorneys involved herein, nor am I financially interested in said action.

Submitted on: July 08, 2020.

 _____

JODY LYNN PRALAT
Court Reporter, Notary Public





July 8, 2020

Michael Butterworth, Esquire
Phelps Dunbar, LLP
Canal Place - Suite 2000
365 Canal Street
New Orleans, LA 70130

RE: Deposition of **Piotr Kowalski (RC+)** taken on **06/23/2020**
Cornerstone Chemical Company v M/V Nomadic Milde, IMO No. 9463554

Dear Mr. Butterworth,

IMPORTANT NOTICE FOR DEPOSITION TRANSCRIPT READ AND SIGN

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter,
as considered reasonable under Federal Rules*.

 x **Attorney - Copy of Transcript Enclosed:** Signature of the Deponent is required. Please have the deponent make any corrections/changes necessary on the Errata Sheet ONLY, sign name on the form where indicated. Please return ONLY the original signed Errata Sheet to our offices within 30 days from the date of this memorandum. If you have any questions, please call our offices.

 Attorney - No Copy Ordered: Since you did not request a copy of the transcript, it will be necessary for the Deponent to call our offices to arrange for an appointment to read and sign the transcript of the Deposition within 30 days of this memorandum.

 Deponent: At the time of your deposition, you did not waive your right to read and sign the transcript of your testimony, therefore, attached please find a copy of the transcript and Errata Sheet. Please read the transcript, make any corrections necessary on the Errata Sheet ONLY, sign the bottom of the Errata Sheet, and return it within 30 days from the date of this memorandum. Please call our offices if you have any questions.

 Deponent: At the time of your deposition, you did not waive your right to read and sign the transcript of your testimony, therefore, it is necessary for you to come to our offices to read and sign same. Please call Milestone Reporting Company to arrange for an appointment at your earliest convenience.

 The attached executed copies of the Errata Sheet(s) are sent to you for your files. If you have any questions, please call our offices.

Thank you for your attention to this matter.

No. 154701

cc: James Bercaw, Esquire
Peter Tompkins, Esquire
Kevin Frey, ESQWaiver:

I, **Piotr Kowalski (RC+)**, hereby waive the reading and signing of my deposition transcript.

Deponent Signature

Date

*Federal Civil Procedure Rule 30 (e) / Florida Civil Procedure Rule 1.310 (e)

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