

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

REZA ZANDIAN,)
)
 Plaintiff,)
)
 vs.) Case No. BC325137
)
 LAZO TRUCKING EXPRESS,)
 LTE FREIGHT SYSTEMS,)
 AND DOES 1-100,)
)
 Defendants.)
)

DEPOSITION OF : VINCENT CARNOVALE
Taken by : SUSAN D. SALISBURY, ATTORNEY AT LAW
Commencing : 10:51 A.M.
Location : 700 South Flower Street, Suite 1100
 Los Angeles, California 90017
Day, Date : Tuesday, September 20, 2005
Reported by : JOLYNE K. ROBERTS, C.S.R. NO. 10823
Pursuant to : Subpoena
Original to : STEPHEN T. WAIMEY, ESQUIRE

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JOB NO. 95656

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22
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24
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LOS ANGELES, CALIFORNIA, TUESDAY, SEPTEMBER 20, 2005
10:51 A.M.
-oOo-

VINCENT CARNOVALE,
the witness herein, after having been first duly sworn/affirmed, was deposed and testified as follows:

EXAMINATION

BY MS. SALISBURY:

Q Mr. Carnovale, would you state your name and spell it for the record, please.

A Vincent Carnovale. That's C-a-r-n-o-v-like Victor-a-l-e.

Q Mr. Carnovale, are you employed by Evergreen?

A Uh-huh, yes, I am.

Q What do you do for Evergreen?

A I'm an import traffic manager.

Q And your attorney is present here with you?

A Yes.

Q I assume your attorney has explained to you what a deposition is, but it's a little ritual California attorneys do, so --

A Yes, ma'am.

MR. WAIMEY: Court reporters love it. They get

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a few bucks out of it every time they do a depo.

THE REPORTER: Oh, yeah.

Q BY MS. SALISBURY: This young lady to your right is taking down every word that you say. She's just sworn you to tell the truth, and that's the same that you would take if you were in court. And, therefore, your testimony here at this deposition, despite our informality, is just as serious and important as if you were giving it in court in front of a jury.

A I understand.

Q And you may be called as a witness if this lawsuit goes to trial. The lawsuit is one brought by Reza Zandian against Lazo Trucking Express regarding cargo. And in this deposition you're required to give me the best information you have. Unlike in court, hearsay evidence can be elicited, and things that other people told you that might not be admissible in court, I'm allowed to ask you here.

If you can't remember, that's a good answer. If you remember approximate numbers and not actual numbers or approximate dates and not actual dates, that's okay as long as you say, I'm not sure what date it was, but it was somewhere in March. That sort of statement is perfectly okay. But you need to give me your best testimony.

Is there any reason why you would have difficulty in testifying accurately today as opposed to any

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other day?

A No, I wouldn't say that. No, not at all.

Q If at any time you need to take a break, just say something, and we'll stop. It's not an endurance contest.

A Uh-huh.

Q And Evergreen's not a party to this lawsuit, so I don't think you need to worry about that.

Okay?

A Okay.

MR. WAIMEY: Before we start, I just wanted to identify for the record before we start, this is not a deposition subpoena that we were served with. We decided to show up anyway voluntarily, and we have done a search for the documents that we can understand are relevant to this matter. But we do not feel that this deposition is -- he was required to come pursuant to subpoena because this was a trial subpoena and not a deposition subpoena.

MS. SALISBURY: Oh, okay.

MR. WAIMEY: But in good faith, we've done our best to prepare for the depo so that he can provide meaningful testimony.

MS. SALISBURY: Thank you.

I was thinking you were saying it was not a subpoena.

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1 MR. WAIMEY: It's a subpoena, but it's a trial
 2 subpoena. We discussed it and decided we'd show up anyway.
 3 MS. SALISBURY: Thank you.
 4 Q BY MS. SALISBURY: Mr. Carnovale, you did bring
 5 some documents with you, and we're waiting for those
 6 documents to be copied. So in the meantime, I want to ask
 7 you some general questions.
 8 How long have you worked for Evergreen?
 9 A 21 years.
 10 Q And as your job as import traffic manager --
 11 well, what does the import traffic manager do, just in
 12 general terms?
 13 A We monitor and coordinate with the shipping
 14 public concerning the transport of goods from Far East,
 15 Europe, out across the world into the U.S. That's basically
 16 what we do.
 17 Q And I'm afraid you're going to be educating me
 18 on the import business.
 19 A Right.
 20 Q So does Evergreen have its own port in Long
 21 Beach?
 22 A No, in Los Angeles -- we call Los Angeles --
 23 it's right across the bridge from Long Beach and San Pedro.
 24 A lot of people refer to it as the Evergreen terminal, but we
 25 are the sole tenant of that terminal basically with the

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1 exception of, I believe, another small carrier, NYK, that
 2 shares one of the trains, double -- you know, by and large
 3 it's -- that's as close, to my knowledge, that we have for
 4 terminal. But we don't own any terminal.
 5 Q So the terminal that you lease from the City of
 6 Los Angeles or --
 7 A Port of Los Angeles.
 8 Q Port of Los Angeles. Okay.
 9 MR. WAIMEY: Let her finish her questions.
 10 THE WITNESS: Okay.
 11 MR. WAIMEY: Just -- and also try not to keep
 12 talking so long. You answered her question and you kept
 13 talking, and she very gently interrupted you because you kept
 14 talking. But try to be more concise.
 15 THE WITNESS: Got you.
 16 Q BY MS. SALISBURY: So Evergreen leases space at
 17 a terminal that's owned by the Port of Los Angeles, and
 18 Evergreen manages, if I'm correct -- and correct me if I'm
 19 wrong -- Evergreen manages the shipping of cargo from pickup
 20 point to its ultimate destination; is that right?
 21 A Yes.
 22 Q Now, does Evergreen actually own ships, or do
 23 they just hire space on ships?
 24 A We own our ships.
 25 Q Before getting it from the port to its ultimate

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1 destination within the Continental United States, do you
 2 normally make agreements with other local truckers or
 3 shippers?
 4 A That can be the case.
 5 Q Okay.
 6 A Depending on what the bill of lading shows.
 7 Q So there's basically at least three components
 8 to any cargo being imported, which is getting it from its
 9 pickup point in some foreign country to the port in that
 10 foreign country onto a ship; lands in San Pedro; removed from
 11 the ship; and then normally a truck picks it up and takes it
 12 to its final destination, correct?
 13 A That's correct, if that were stipulated on the
 14 bill of lading.
 15 Q So sometimes people pick up their own cargo at
 16 the port?
 17 A That's correct.
 18 Q Now, is there anything that -- any Customs that
 19 has to be passed or anything else that has to be done for the
 20 cargo to leave the port?
 21 A Yes, most certainly.
 22 Q Would you tell us what that is.
 23 A Well, basically the custom house broker would
 24 clear the entry of the cargo at the port for duty purposes;
 25 or the other choice being it's cleared at the final

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1 destination of the cargo. So it's usually cleared at the
 2 port of entry or at the final destination, one or the other.
 3 Q But Evergreen doesn't do that?
 4 A No, no.
 5 Q And a Customs house broker is basically that is
 6 what they do, correct?
 7 A Correct.
 8 Q And sometimes are they the people who on behalf
 9 of the owner of the cargo make the arrangements with
 10 Evergreen to do the shipping?
 11 A That's possible, yes.
 12 Q I do have some documents.
 13 Did you come to know a company called Lazo
 14 Trucking? Basically a family owned business run by the Lazo
 15 family.
 16 MR. WAIMEY: Wait a second. You're testifying.
 17 MS. SALISBURY: I'm sorry.
 18 Q BY MS. SALISBURY: In your job as the import
 19 manager for Evergreen, did you come to know a company that
 20 has been known as Lazo Trucking?
 21 A Yes.
 22 Q And how did you come to know them?
 23 A Lazo Trucking is what we classify as a preferred
 24 trucker, or in the business, house trucker.
 25 Q What does that mean to you?

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1 A Basically, it's one of the preferred of many
 2 other trucking companies that Evergreen will use for certain
 3 destinations and what have you that we use for inland
 4 deliveries.
 5 Q And just to be clear -- well, strike that.
 6 Does Evergreen deal with anything other than
 7 containers coming in?
 8 A Occasionally yachts -- what we call break bulk
 9 shipments. But for most purposes, no, just strictly
 10 containerized cargo.
 11 Q And with regard to containerized cargo, is it
 12 true that a seal is placed on the container at some point
 13 before Evergreen picks it up or has its local carrier pick it
 14 up, and that seal is required to remain attached until it's
 15 delivered?
 16 A That's correct.
 17 Q And what we're talking about is in essence like
 18 a little wire thing that goes through, and it's sealed shut
 19 so that you can't open the door without cutting the wire; is
 20 that correct?
 21 A That's correct.
 22 Q So it's not really secure as far as being a
 23 lock, but it is secure as far as showing whether or not the
 24 door was ever opened; is that correct?
 25 A Yes.

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1 Q And each seal has a number; is that correct?
 2 A Yes.
 3 Q So you can't take the seal off and replace it
 4 with a different seal without it being discovered?
 5 A No, that's correct.
 6 Q Now, under normal circumstances, does Evergreen
 7 ever open the cargo --
 8 A No.
 9 Q -- container?
 10 So how does Evergreen know what's in the
 11 container?
 12 A It's a term we use like shipper's load and
 13 count. Basically information that's provided to us by the
 14 shipper.
 15 Q Now, is it true that in terms of security checks
 16 that since September 11, 2001, those checks are primarily
 17 done overseas before the shipment is placed on a ship or
 18 cargo container is placed on a ship?
 19 A I can't expand on the security portion. But I
 20 can tell you that Customs has linked up internationally
 21 whereby the parties -- the steamship line cannot load any
 22 cargo on the vessel. They must load it 24 hours before the
 23 vessel arrives at the berth. So they must file a manifest 24
 24 hours before the vessel berths. They have to prepare and
 25 file the manifest with Customs, and the Customs, they're

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1 linked up so that they will know what's being loaded on the
 2 ship. And Customs wants to know that. They want to know who
 3 the ultimate receiver of the goods are.
 4 MR. WAIMEY: Is Evergreen involved in that
 5 process, or --
 6 THE WITNESS: Yes, yes.
 7 Q BY MS. SALISBURY: When you say before the
 8 vessel arrives, you're talking about in the overseas port?
 9 A Yes.
 10 Q So they want to check the cargo before it ever
 11 leaves that port?
 12 A That's correct.
 13 Q And before it ever goes on that ship?
 14 A Correct.
 15 MR. WAIMEY: And who's "they"?
 16 THE WITNESS: Customs.
 17 Q BY MS. SALISBURY: And that may be the foreign
 18 Customs?
 19 A Foreign Customs inputs the information, and U.S.
 20 Customs has access to that information.
 21 Q Okay.
 22 A They call that the 24-hour rule.
 23 Q And does Evergreen participate in that process
 24 by facilitating it?
 25 A Yes, certainly.

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1 Q Now, I'd like to show you a document which is
 2 entitled, "Bill of Lading."
 3 A Uh-huh.
 4 MR. WAIMEY: Are we going to mark this?
 5 MS. SALISBURY: Yes, we are.
 6 MR. WAIMEY: I was going to ask what --
 7 MS. SALISBURY: This has been previously marked
 8 as Exhibit C, but I'm going to mark it -- remark it as
 9 Exhibit A.
 10 MS. MARTIN: Exhibit A?
 11 MS. SALISBURY: Yes.
 12 (Defendants' Exhibit A was marked for
 13 identification and bound separately.)
 14 Q BY MS. SALISBURY: Is this an Evergreen bill of
 15 lading?
 16 A Yes, it is.
 17 Q And looking at this bill of lading, can you tell
 18 me who the Customs broker was?
 19 A I will say Ocean World Lines. And to expand on
 20 that, it's really they're classified, I know, in the business
 21 as an NVOCC. That means nonvessel operating common carrier.
 22 Basically they don't own any vessels, but they act like a
 23 steamship line.
 24 MR. WAIMEY: So does that mean they're also a
 25 Customs broker?

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1 THE WITNESS: Yes.
 2 MR. WAIMEY: Okay.
 3 THE WITNESS: Some are; some aren't. But
 4 they're a big outfit, and I'd venture to say they are.
 5 Q BY MS. SALISBURY: And looking at this bill of
 6 lading, can you tell when this cargo left Hamburg?
 7 A Uh-huh.
 8 Q When was that?
 9 A I would say June -- June 27, 2002.
 10 Q Now, is there anything on this bill of lading
 11 that would tell you when it arrived in San Pedro?
 12 A No.
 13 Q And what kind of document would show when it
 14 actually arrived?
 15 A The arrival notification typically would show
 16 that. An arrival notice is sent to the consignee of record
 17 on the bill of lading, the consignee being, in this case,
 18 Ocean World Lines would receive notification of the arrival.
 19 Q Do you know if Ocean World Lines is still in
 20 business?
 21 A To my knowledge, yes.
 22 Q Now, can you tell from looking at this bill of
 23 lading how many containers were being shipped with this
 24 shipment?
 25 A Yes, the left-hand column under container

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1 number/seal number, marks and numbers, column 18 --
 2 Q Okay.
 3 A -- lists all of the containers there.
 4 Q And can you tell us what the difference is
 5 between a flat and something that had a seal number is?
 6 A Yeah, a flat is indicative of a flat rack
 7 container. It's the sides are collapsible. They're not a
 8 standard -- your typical container that you see on the road
 9 that's like a closed steel box. It's open on the sides.
 10 They may have some tarp coming down the sides of it, but it's
 11 not -- just the ends are made of steel structure that also
 12 collapse. So that's what the flat rack container is. And
 13 they are typically used for heavy duty type of machinery.
 14 Q And I notice that the flats have no seal number;
 15 is that correct? They're not sealed?
 16 A It appears the numbers right next to the slash
 17 are the container numbers. See? Those should be seal
 18 numbers. Oh, but for flat racks --
 19 Q There's no seal numbers?
 20 A Doesn't appear there are seal numbers.
 21 Q Now, it says no marks and numbers. What does
 22 that mean?
 23 A That basically -- if you have cartons, you've
 24 seen them with triangles and the country of origin and all
 25 that stuff on the boxes of cartons in the contents of the

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1 container. Apparently that means there isn't any -- I can
 2 only suppose that's because of the nature of the cargo being
 3 these giant machines that they don't have any markings on
 4 them. So that means no marks and numbers represented on the
 5 cargo itself.
 6 Q I see. So the marks and numbers might -- let's
 7 say in the case of if you had a container full of Xerox
 8 machines --
 9 A Uh-huh.
 10 Q -- that might indicate what the model numbers
 11 were or a serial number?
 12 A That's right.
 13 Q And who would be responsible as far as you know
 14 for indicating whether there were marks or numbers?
 15 A The shipper.
 16 Q Now, can you tell from looking at this bill of
 17 lading what type of machinery was being shipped?
 18 A Absolutely not.
 19 Q Can you tell from looking at this bill of lading
 20 what the value of the machinery was?
 21 A No.
 22 Q Now, who would --
 23 MR. WAIMEY: This document is four pages. Are
 24 all four pages part of the bill of lading?
 25 THE WITNESS: That's correct.

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1 Q BY MS. SALISBURY: Is there anything on this
 2 document that would tell you who paid Evergreen to do the
 3 shipping?
 4 A In this case, it would appear to be that of the
 5 shipper in the sense that the charges are shown as strictly
 6 prepaid. Prepaid means paid at origin, and we can only say
 7 by what's the party -- the shipper in this case also is Ocean
 8 World Lines. So I would say they are the payer of record.
 9 By the way, it says, "1 unit machinery, NOS."
 10 Means not otherwise specified. So that pretty much clarifies
 11 that there's no means of identification on the type of
 12 machinery. Otherwise, it would say maybe printing machinery,
 13 woodworking machinery. But that's not mentioned.
 14 Q And who's responsible for the description of the
 15 goods being shipped?
 16 A The shipper.
 17 Q So then Evergreen just basically takes their
 18 word for it?
 19 A That's correct.
 20 MS. SALISBURY: Would you hand your copy to the
 21 court reporter.
 22 MS. MARTIN: Are we going to number the pages?
 23 A-1 --
 24 MS. SALISBURY: A-1, A-2, A-3 and A-4. They may
 25 not be in the exact order that they were put together.

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1 Q BY MS. SALISBURY: Before -- well, strike that.
 2 Now, did it come to your attention that the
 3 ultimate owner of this shipment was Reza Zandian?
 4 A Eventually, yes.
 5 Q And how did that come to your attention?
 6 A He visited our office.
 7 MS. SALISBURY: Let's take a break. I want to
 8 see how we're doing on the document copying.
 9 (Break in proceedings from 11:16 A.M. to 11:20 A.M.)
 10 MS. SALISBURY: Let's go back on the record and
 11 get what we can get without the documents.
 12 Q BY MS. SALISBURY: Did this shipment begin to
 13 present some problems to Evergreen at some point, if you
 14 recall?
 15 A A problem in the sense of time?
 16 Q Yes.
 17 A Delay? I would say so.
 18 Q And what was --
 19 A Most certainly.
 20 Q Normally, how soon do you expect containers to
 21 be picked up after they've reached the port?
 22 A Within a week. Even less typically. We have a
 23 free time, so --
 24 MR. WAIMEY: What do you mean by free time?
 25 THE WITNESS: The cargo owner is allowed to have

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1 the cargo remain at our port for a period of five business
 2 days before we start charging demurrage, which is storage
 3 charges. And it's not -- that's it.
 4 Q BY MS. SALISBURY: Now, going back to that free
 5 time issue and demurrage, is it five days total that you have
 6 to get the container back within five days to port plus an
 7 additional time after it's picked up to have the container
 8 returned?
 9 A Yeah, those are separate issues.
 10 Q And how many days do they get after the cargo is
 11 picked up? How many days do they have before --
 12 A Five, including the day of pickup to return.
 13 MR. WAIMEY: That's business days?
 14 THE WITNESS: Yes, business days.
 15 Q BY MS. SALISBURY: And you normally charge the
 16 local trucker for that, or --
 17 A I might stand corrected. I believe it's
 18 business days. I'm almost pretty sure for per diem. There's
 19 another department for that, but I would venture to say it's
 20 probably business days as well. But it's five. It's either
 21 calendar or business, but it's five days including the day of
 22 pickup.
 23 Q And you call that per diem?
 24 A Per diem.
 25 Q That's what you get charged for after --

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1 A Pickup.
 2 Q -- it's picked up and leaves the port?
 3 A Correct.
 4 Q And you want your container back within five
 5 days?
 6 A That's right.
 7 Q Now, do you have a recollection as you sit here
 8 today of approximately how long this cargo was at the port
 9 before it was picked up?
 10 A I would say at least -- I would estimate 18
 11 months conservatively, if not longer.
 12 Q Now, do you recall the reasons why it -- well,
 13 strike that.
 14 That 18 months would be quite unusual in terms
 15 of how cargo's --
 16 A Most certainly.
 17 Q Okay. And, in fact, can you think of any other
 18 cargo that sat at your port for that long?
 19 A We've had even recently unusual circumstances,
 20 no doubt. But definitely we've had two or three years on
 21 occasions. Very far and few between, let me tell you. But
 22 those are very rare cases.
 23 Q So it's not at all the normal.
 24 A No, not at all.
 25 Q Now, do you recall with regard to this cargo

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1 what the reasons were why it stayed there that long?
 2 A My understanding at the time when first becoming
 3 aware of the delays going through Ocean World Lines that
 4 there was some settlement dispute or something between them
 5 and the -- who we'll call the ultimate receiver of the goods.
 6 Q And that would be Reza Zandian?
 7 A To my knowledge, yes.
 8 Q And how did that affect -- or why did that
 9 affect the cargo staying or result in the cargo staying in
 10 the port?
 11 A Well, before cargo can be abandoned or picked
 12 up, certain conditions have to be met with the steamship
 13 lines, Customs, and things of that sort. You know, they --
 14 you have to meet certain criteria even closer to the shipping
 15 side.
 16 Q So you're not sure what all the details were,
 17 but there was something going on between Ocean World Lines
 18 and Zandian. They wouldn't release the cargo?
 19 A That's right. That's the bottom line. They
 20 were not releasing the cargo, and that's, of course, the
 21 delay. Not being released.
 22 Q Now, sometime in December of 2003 or January
 23 2004, was the cargo released, or was it released before then?
 24 A I would say within the first quarter of 2004. I
 25 can safely say that's when the cargo was released.

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1 Q And did you call Gracy Lazo or somebody at Lazo
2 Trucking and ask them to complete the delivery of this cargo?
3 A Yes, yes.
4 Q At that point did somebody owe demurrage to
5 Evergreen for the 18 months that it had been sitting at the
6 port?
7 A Yes.
8 Q And do you remember approximately what the
9 charges were?
10 A I would say they were about half a million.
11 MR. WAIMEY: Dollars?
12 THE WITNESS: Dollars.
13 Q BY MS. SALISBURY: And do you know if those
14 charges were paid?
15 A No, the half a million was not paid.
16 Q Was any settlement agreement entered, that you
17 know of, with Mr. Zandian?
18 A Yes.
19 Q And did you bring that with you today?
20 A I have --
21 MR. WAIMEY: Bring what?
22 MS. SALISBURY: The settlement agreement.
23 MR. WAIMEY: You said settlement, not settlement
24 agreement.
25 Q BY MS. SALISBURY: Was there a written

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1 settlement agreement with Mr. Zandian?
2 A No, there was no written settlement agreement
3 per se, no.
4 Q Was there anything in writing that memorialized
5 an oral agreement? An e-mail or letter or something like
6 that?
7 A I can't recall -- there was a lot of
8 correspondence about this case, as you see. I can't recall
9 anything specific about the demurrage settlement. This --
10 MR. WAIMEY: When the documents get here, you
11 can look at them.
12 THE WITNESS: Yeah, exactly. I can tell you how
13 that pertains when we see the documents.
14 MS. SALISBURY: Okay.
15 THE WITNESS: I can't remember that.
16 MS. SALISBURY: Let me go check on the documents
17 again.
18 Off the record.
19 (Break in proceedings from 11:28 A.M. to 11:39 A.M.)
20 (Defendants' Exhibits B through X were
21 marked for identification and bound
22 separately.)
23 Q BY MS. SALISBURY: Looking at Exhibit B, which
24 is three pages, this is Evergreen's copy of the bill of
25 lading; is that correct?

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1 A Correct.
2 Q And I've looked at Exhibit A, and the only
3 difference between the two is that Exhibit A has two copies
4 of one page. If you want to check out the difference between
5 your copy and --
6 MR. WAIMEY: So it looks like 2 and 4 on Exhibit
7 A are the same page.
8 MS. SALISBURY: Right.
9 MR. WAIMEY: Is that what it is?
10 THE WITNESS: This one?
11 MR. WAIMEY: Yes.
12 THE WITNESS: Okay, they just got mixed up.
13 MR. WAIMEY: Yeah, that's not our copy. That
14 got marked earlier in the proceedings.
15 MS. SALISBURY: Right.
16 THE WITNESS: This is the one Ocean Freight
17 portion. Should be --
18 MR. WAIMEY: That's page 3.
19 THE WITNESS: Oh, okay.
20 MR. WAIMEY: So looking at Exhibit B, which is
21 Evergreen's copy of the bill of lading, there are three
22 pages. And the first three pages are the same as the first
23 three pages of Exhibit A, but there's an additional page 4 of
24 Exhibit A which is simply a duplicate of page 2.
25 THE WITNESS: Of this (indicating).

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1 MS. MARTIN: Yes.
2 MR. WAIMEY: Yeah, pages 4 and 2 of Exhibit A
3 are identical.
4 THE WITNESS: That's right.
5 MR. WAIMEY: So the Evergreen copy of Exhibit B
6 only has three pages.
7 THE WITNESS: That's right.
8 Q BY MS. SALISBURY: Now, let's go to Exhibit B is
9 G.O. cargo --
10 MR. WAIMEY: No, Exhibit C.
11 Q BY MS. SALISBURY: I'm sorry, Exhibit C is G.O.
12 Cargo dated 7/30/02.
13 A Yes.
14 Q Could you tell us what this document is.
15 A When cargo does not clear Customs, as we spoke
16 about earlier, Evergreen, the steamship line, known as the
17 carrier is required by U.S. Customs to file a notification
18 that the cargo has not cleared Customs. And this is within
19 15 days of arrival of the vessel, all cargo must be cleared.
20 If not, the steamship line is required to notify Customs as
21 such.
22 Q Now, who's Wing Lee?
23 A He's the -- one of the -- he's the clerk in our
24 office, traffic clerk, whose function at that time is to
25 handle G.O. cargo.

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1 Q And what is G.O.?
 2 A General order.
 3 Q What does general order mean, as distinguished
 4 from non-G.O. cargo?
 5 A Right. It's cargo that has been taken into
 6 possession by Customs. Basically takes jurisdiction or
 7 possession of the cargo. And it's stored at a bonded
 8 warehouse.
 9 Q Do they always take actual possession, or do
 10 they just say, That's our cargo and leave it with you? Or
 11 what happens?
 12 A It goes both ways. They can take it in their
 13 possession at their facility, their designated bonded
 14 facility.
 15 Or as was the case here, they would just order
 16 it to stay or remain at the terminal, but it's still under
 17 their jurisdiction.
 18 Q So the owner at that point can't come and pick
 19 it up?
 20 A Right.
 21 MR. WAIMEY: Now, when it stays at the terminal,
 22 it's referred to as constructive?
 23 THE WITNESS: Constructive general order, right.
 24 Q BY MS. SALISBURY: But what it does mean is that
 25 they have legal authority over what happens to the cargo?

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1 A Uh-huh, that's correct.
 2 Q And not the owner?
 3 A That's correct.
 4 Q Or Evergreen?
 5 A Right. And mind you, demurrage is a
 6 continuing -- a demurrage is -- I guess that's the downside
 7 of this. And this is no control of the steamship line. The
 8 Customs agent, Customs will deem it which way the cargo
 9 should remain at our terminal or be picked up and be stored
 10 at their facility, which would be storage charges. So either
 11 way they get charged.
 12 Q So even though they can't come and pick it up,
 13 there are charges for storage?
 14 A That's correct.
 15 Q And you have ETA 7/22/02. Is that the date when
 16 the vessel arrived in port?
 17 A That's correct.
 18 Q And you have the container numbers. And is
 19 there anything on this document, Exhibit C, which would tell
 20 you why it was under -- it failed to clear Customs?
 21 A No. It's just that --
 22 MR. WAIMEY: That may be the answer. She's just
 23 asking what the document says.
 24 THE WITNESS: Oh, the document. No, there's no
 25 indication as to why.

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1 MR. WAIMEY: Fine.
 2 Q BY MS. SALISBURY: Now, do you have from looking
 3 at this document any additional recollection as to why it
 4 failed to clear Customs, beyond what you can see in the
 5 document?
 6 A No.
 7 Q So go to Exhibit D. It's the Notification of
 8 Eligible General Order Merchandise; is that correct?
 9 A That's right.
 10 Q What is the purpose of this document?
 11 A This is to submit -- this is submitted to the
 12 bonded facility for Customs. This is the warehouse of
 13 Customs.
 14 Q And that's letting them know that you have this
 15 merchandise, this general order merchandise?
 16 A Right.
 17 Q Now -- well, let's look that over for a minute.
 18 And you still can't tell what the problem is as
 19 to why it hasn't cleared Customs?
 20 A No.
 21 Q Go on to Exhibit E, the Lien Notice. Would you
 22 tell us what this document is.
 23 A This is filed in conjunction with the first
 24 Exhibit D to the -- this is for -- this is where actually the
 25 lien notice is where the -- the Customs assigns a general

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1 order number for the cargo. And as you can see where it says
 2 "Price Transfer," column 8, "(Constructive G.O.)," they've
 3 now made a determination that the cargo will not go to Price
 4 Transfer, which is a bonded warehouse, but will remain at the
 5 terminal as constructive G.O.
 6 Q And then this lien notice, is this a lien by
 7 Evergreen for their shipping charges or for some demurrage
 8 charges?
 9 A Correct.
 10 Q Demurrage charges.
 11 A Right.
 12 Q And then F is the Delivery Order, and it's dated
 13 8/9/02.
 14 A Uh-huh.
 15 Q And would you tell us what this is.
 16 A This is, to my understanding -- this would be --
 17 my understanding to this document would be for the -- any
 18 transportation of the cargo from the terminal to the
 19 warehouse, although it appears that that never occurred.
 20 This has to go out the same time. In the event that Price
 21 Transfer were to pick up cargo from our terminal, this would
 22 be their authorization in doing so, to pick up the cargo.
 23 Q But down at the bottom where it says, "Commodity
 24 Received by Truck Company," it says no; is that right?
 25 A Where is that?

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1 Q Is that a no, or is that something else?
2 A Yeah, truck --
3 Q Oh, truck number. Maybe number?
4 A Yeah. But this is not assigned. This is if it
5 were to have been delivered.
6 Q Let's go to Exhibit G, says, "Marine Terminals
7 Corporation" at the top.
8 A Uh-huh.
9 Q Now, tell us what this is.
10 A This is from our terminal. Our terminal is
11 advising or sending notification to Price Transfer, which is
12 the bonded warehouse, advising them of the shipments that are
13 now classified as general order cargo in constructive status
14 at our terminal.
15 Q This says G.O. date 8/6/02. What does that
16 mean?
17 A That is -- that should equate to the -- with
18 respect to the ETA 15 days, give or take. I believe it
19 should be -- the G.O. date is defined as the drop-dead date,
20 if you will, that this cargo must be filed. We must file our
21 paperwork with Customs by that date.
22 Q And if --
23 A Otherwise we get a penalty.
24 Q So it becomes G.O. cargo if it hasn't cleared
25 Customs by that date?

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1 A That's right. That's correct.
2 Q And then down below the container numbers are on
3 it?
4 A Uh-huh.
5 Q Okay.
6 A Uh-huh.
7 Q Let's go to Exhibit H. It's an e-mail.
8 A Uh-huh.
9 Q And could you tell us what this is.
10 A This is an inquiry by our agent over in Le
11 Havre, France, about the cargo.
12 Q And the 3,300 means what?
13 A Somebody scribbled that on there. I couldn't
14 begin to tell you what that is.
15 Q Okay.
16 A I can only -- in my estimation may have
17 something to do with the demurrage at the time.
18 Q Okay. So this was just basically they wondered
19 if at this point demurrage had been occurring, and he was
20 wanting to know how much it was?
21 A That's correct.
22 Q And then Exhibit I is also an e-mail?
23 A Yes. That makes it clearer. Now this is a
24 response from my traffic team, Wing Lee, who handles the --
25 handled the G.O.'s, but he confirms, too, the agent in France

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1 of what the demurrage was.
2 Q And it's \$3,300 for all 13 containers; is that
3 correct?
4 A That's correct.
5 Q And then Exhibit J, can you tell us what this
6 is.
7 A Joanne Aizen, she is in the sales department --
8 we call the business department -- in New York. I would
9 estimate that she's involved in this case because of the
10 business aspect of things because Ocean World Lines is based
11 in New York. So, hence, her involvement with the situation.
12 Q And then just for the record, Wing Lee works for
13 you; is that correct?
14 A Yes.
15 Q How many employees do you supervise, by the way?
16 A 15.
17 Q And who's Alan Baer?
18 A He's with Ocean World Lines.
19 Q Now, she's responding -- or she's forwarding to
20 you or to your department --
21 A Uh-huh.
22 Q -- an e-mail that she received from Alan Baer;
23 is that correct?
24 A Yes.
25 Q So I'm going to start with his e-mail dated

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1 1/27/2003 at 4:00 P.M.
2 MS. MARTIN: Whose?
3 MS. SALISBURY: Alan Baer's, which is at the
4 bottom of the first page and seems to go on to the second
5 page.
6 MR. WAIMEY: In other words, Alan Baer's e-mail
7 is to Joanne Aizen then patched to --
8 MS. SALISBURY: Vincent Carnovale.
9 MR. WAIMEY: -- everybody. Essentially the cc.
10 Q BY MS. SALISBURY: Now, he says, "The importer
11 never cleared the goods."
12 What does that mean?
13 A He's basically referencing the importer of
14 record on our bill of lading, Ocean World Lines has not
15 cleared the cargo, has not followed through.
16 MS. MARTIN: Just for clarification before we go
17 forward, can we have an agreement that when you're asking
18 what does that mean, you're asking him for what his
19 understanding is when it's somebody else's e-mail?
20 MS. SALISBURY: Yes.
21 Q BY MS. SALISBURY: What does that mean to you?
22 MS. MARTIN: Do you understand that, Vincent?
23 THE WITNESS: Right, she's clarifying the
24 interpretation of what the terminology or the contents of the
25 message.

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1 MS. SALISBURY: Right, what it means to you as a
2 person who is in the business.
3 THE WITNESS: Right.
4 MS. SALISBURY: Right.
5 THE WITNESS: Exactly. Okay.
6 Q BY MS. SALISBURY: So when it says, "The
7 importer never cleared the goods," what does that mean to
8 you?
9 A Means they never filed any entry with Customs.
10 Q And that would be Ocean World Lines?
11 A That's correct.
12 Q And it doesn't say why that happened?
13 A No, no.
14 Q But they have documents they have to file with
15 Customs in order for that cargo to --
16 A Yeah.
17 Q -- clear?
18 And it says, "they went into G.O. with EG."
19 Would that be Evergreen?
20 A Evergreen.
21 Q Acting as the government G.O. warehouse. Now,
22 it says, "the cargo was never stripped."
23 What does that mean?
24 A It means completely removed from the container.
25 Q And does that normally happen at the port?

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1 MR. WAIMEY: Well, is this e-mail to you, or is
2 it --
3 THE WITNESS: It's actually addressed to my
4 staff. I'm copied as the supervisor. So in essence, it was
5 directed to Evergreen Los Angeles import traffic.
6 Q BY MS. SALISBURY: Cc'ed to you?
7 A Yes, that's right.
8 Q Let's go on to Exhibit K. And this is an e-mail
9 from Rita Lopez dated 2/6/2003.
10 Could you tell me who Rita Lopez is.
11 A Also one of my staff. Still my staff.
12 Q And what is her general job description?
13 A At that time I can only suppose it involves --
14 she handles the cargo from Europe.
15 Q Okay.
16 A So that's probably how she got involved.
17 Q Could you tell me what B/L hold means to you.
18 A Yeah, it -- it's the consignee of record on our
19 bill of lading who requests the steamship line to not release
20 the cargo for whatever reason. They're just telling us
21 regardless of the circumstance, we are informing you, do not
22 release the cargo; to put it on hold in our system.
23 Q And the consignee of record for this cargo was
24 at that point Ocean World Lines?
25 A Uh-huh, yes.

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1 A Not at the port if it's been taken into general
2 order. The warehouse facility, in that case Price Transfer,
3 it would be removed, yes.
4 Q So if they want to come and pick it up, they'll
5 take it out of the container and give you back your
6 container?
7 A Yeah, but once it gets to their facility,
8 they'll remove it and return the empties back to us.
9 Q He says, "The importer has finally come alive."
10 Now, do you think he's referring to Ocean World Lines or to
11 Mr. Zandian?
12 MR. WAIMEY: Well, that's --
13 MS. MARTIN: Objection.
14 MR. WAIMEY: You're asking him to speculate.
15 MS. MARTIN: Same objection.
16 THE WITNESS: Yeah, I don't know.
17 Q BY MS. SALISBURY: So what is EISU? What is the
18 reference to EISU 5402051?
19 A That sounds to be the bill -- where's that?
20 MR. WAIMEY: First page.
21 THE WITNESS: That's Evergreen's bill of lading
22 number.
23 Q BY MS. SALISBURY: Now, going to Joanne Aizen's
24 e-mail to you, she's just asking you what the status is, is
25 that correct, at this point?

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1 Q And then it says, "no Customs ever submitted."
2 What does that mean to you?
3 A Again, no entry has been filed with local U.S.
4 Customs.
5 Q Okay. And it says, "The original bill of lading
6 was never surrendered to Evergreen."
7 What does that mean to you?
8 A Initially we did not receive the endorsed -- you
9 know, you have an original bill of lading document that's
10 generally -- generally they're submitted to the shipper who
11 then submits it to the broker, and they in turn eventually
12 submit it to the steamship line. That's what they mean by us
13 not having any original document in our possession, original
14 bill of lading.
15 Q When you say endorse, does that mean there's an
16 actual signature on it?
17 A Yes, the shipper endorses the back, and the
18 consignee endorses the back. Then it's considered a
19 negotiable document.
20 MS. SALISBURY: Let's go off the record.
21 (Break in proceedings from 12:02 P.M. to 12:04 P.M.)
22 MS. SALISBURY: Back on the record.
23 Q BY MS. SALISBURY: We were looking at Exhibit K.
24 A Uh-huh.
25 Q And let's go on, then, to Exhibit J --

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1 MS. MARTIN: L?

2 MS. SALISBURY: Sorry, L.

3 Q BY MS. SALISBURY: And this is from Joanne Aizen

4 to you; is that correct?

5 A That's correct.

6 Q Now, it says here, "According to the a/c" --

7 second line of the e-mail.

8 What's a/c normally mean to you?

9 A Account.

10 Q And the account would be who?

11 A Consignee.

12 Q So that would be --

13 A Ocean World Lines.

14 Q Ocean World Lines? Okay.

15 Then it says something about Wing Lee reading.

16 Can you tell us what they're asking you as you interpret it

17 in that paragraph where it says, "Wing Lee Reading"?

18 A She's soliciting his response to whatever she's

19 asking here.

20 Q So it's your understanding looking at that that

21 she was talking about how Mr. Zandian gets the containers out

22 of the terminal or Ocean World Lines get the containers out?

23 A Ocean World Lines.

24 Q And it says, "Alan Baer spoke to the pic."

25 Do you know what that would mean?

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1 A Person in charge.

2 Q Now, what was your interpretation of what she

3 was asking you to do in this e-mail?

4 A Solve the problem. It was basically -- I guess

5 trying to put the pieces of this puzzle together is my

6 observation here.

7 Q And she's asking you to reduce demurrage

8 charges, also.

9 A Yes.

10 MS. MARTIN: Well --

11 THE WITNESS: Demurrage, yeah, it appears that

12 she's asking --

13 I'm sorry.

14 MR. WAIMEY: Yeah, you have to rely upon what

15 your understanding was at that time, not what you're sort of

16 guessing at now. It's kind of complicated, but when you

17 answer a question like that, you have to look at this from a

18 business standpoint as to what your reaction was at that

19 time.

20 THE WITNESS: Uh-huh. Give me a moment here.

21 MS. MARTIN: Well, first of all, I mean, are you

22 going to direct him to -- you're directing him to the Wing

23 Lee reading in the e-mail. I mean, you sort of asked him to

24 tell you generally what this e-mail means to him, but there's

25 also a quote from another e-mail. Are you going to address

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1 that?

2 MS. SALISBURY: The other e-mail that's in

3 there --

4 MS. MARTIN: Is that part of what you're asking

5 him to --

6 MS. SALISBURY: I'm asking him what his

7 understanding is that Joanne Aizen -- this e-mail was

8 directed to him. It says, "Hello Vincent."

9 What his understanding on February 26, 2003, was

10 that Joanne Aizen was asking him to do.

11 THE WITNESS: Okay.

12 In this portion directed to me, she just wants

13 me to clarify precisely where the containers are. And that's

14 basically all she wants to know, where the containers are.

15 MR. WAIMEY: That was your understanding at that

16 time what she wanted?

17 THE WITNESS: Right, this constructive G.O.

18 probably is not something every port is familiar with, every

19 office is familiar with.

20 Q BY MS. SALISBURY: And then where it says Alan

21 Baer's e-mail, your understanding is that everything that

22 follows after that is Alan Baer's e-mail, not Joanne Aizen's

23 e-mail?

24 MR. WAIMEY: Here (indicating).

25 MS. MARTIN: Well, there's quote and unquote.

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1 MS. SALISBURY: Well, that's what I'm wondering.

2 THE WITNESS: Alan Baer is pretty much telling

3 Joanne the situation as he knows it from Evergreen having

4 spoken with Wing Lee, et cetera, and the terminal of what the

5 situation actually is at that point in time.

6 That's what Alan was trying to do here.

7 Q BY MS. SALISBURY: Go, then, to Exhibit M. It's

8 a memo from -- or e-mail from Jay Buckley to Joanne Aizen; is

9 that correct?

10 A This is strange. It's addressed to Joanne, but

11 he's making some -- he's making some inquiries to both myself

12 and Wing Lee.

13 MS. MARTIN: Are you talking about the one on

14 the top, or the second one?

15 Q BY MS. SALISBURY: That includes a copy of the

16 e-mail that we had marked as Exhibit L, or a partial copy?

17 A M.

18 Q Right. Would you tell us what Exhibit N is? It

19 says Daniel Grogg -- I'm sorry, Exhibit N is --

20 A Right, from Daniel Grogg.

21 Q Would you tell us what this is.

22 A Yeah, he's -- he's the national traffic person

23 in charge, Daniel Grogg. And he's asking me or having me

24 clarify whether, in fact, these shipments are at the Price

25 Transfer warehouse facility in general order. That's what

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1 he's asking.
 2 Q And then Exhibit O is an e-mail from you; is
 3 that correct?
 4 A Uh-huh, that's correct.
 5 Q And can you tell us what this is.
 6 A Yeah, I'm just replying to or just addressing
 7 some issues to Joanne Aizen, and with all other parties that
 8 were involved with the case. And let me see here. Yeah,
 9 just basically making it very clear that the cargo is in
 10 general order on constructive general order and what the
 11 charges are to date for the period of time.
 12 And there was a brief discussion about the
 13 possibility of discount on the demurrage.
 14 Q Who's Mr. Ken Nartowicz? Do you remember who he
 15 is?
 16 A He, as I recall, is with Ocean World Lines.
 17 Q And then we have another e-mail dated -- Exhibit
 18 P -- another e-mail dated 2/26/2003 from you to Daniel Grogg?
 19 A Uh-huh.
 20 Q Could you tell us what this is.
 21 A I'm basically replying to his information and
 22 confirming that the cargo is in constructive general order,
 23 and trying to update him on where we were at at that time
 24 with our dealings on the demurrage issue with Ocean World
 25 Lines.

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1 Q And then Exhibit Q is an e-mail from you to Jay
 2 Buckley.
 3 A Yeah, this is also a reply -- a response, I
 4 believe, on what he addressed to myself and Wing Lee. And
 5 I'm just letting him know, again, the demurrage situation
 6 that we're facing and some of the prospects of discounts.
 7 Q Exhibit R is a two-page --
 8 MR. WAIMEY: Five pages.
 9 Q BY MS. SALISBURY: Five-page letter from Image
 10 Line Graphics.
 11 A Uh-huh.
 12 Q Would you tell me what that is.
 13 A Okay. Well, he's basically giving me background
 14 on the shipments themselves, what -- how they should have
 15 been shipped as he claimed with Ocean World Lines. They were
 16 supposed to have been to Las Vegas, but for unknown reasons
 17 it just did not -- the bill of lading did not reflect that.
 18 And there was -- there was problems.
 19 And then he goes on to talk about the cargo
 20 value and facing the same situation with another steamship
 21 line as well, Cosco mentioned here in the fifth paragraph, I
 22 believe.
 23 And he's just giving me some -- something in
 24 writing about the situation after he claims that when we
 25 first met. And just to put it in perspective on the -- the

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1 entire situation with Ocean World Lines and the shipment
 2 itself.
 3 Q Now, you had actually met him in person before
 4 this date?
 5 A Yes.
 6 Q Is that correct?
 7 A Yes.
 8 Q And do you recall the approximate date when you
 9 met him in person?
 10 A Wow. I can only go by what -- if he's
 11 referencing in this letter here two weeks ago, I can only
 12 suppose that was the case, give or take.
 13 So what are we looking at?
 14 Q This is July 3rd at the top.
 15 A Mid-June perhaps.
 16 Q Okay.
 17 A Yeah.
 18 Q And looking at page 2, can you tell us what this
 19 is?
 20 A Yeah, this is the bill -- Ocean World Lines'
 21 bill of lading. It's what they call a house bill of lading.
 22 That's Ocean World Lines' bill of lading. And now we see the
 23 consignee of record for them being Image Line Graphics. And
 24 this is evidently what he's trying to attempt to show us that
 25 he was the ultimate receiver, the intended ultimate receiver.

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1 Q Now, there's some handwriting on that first page
 2 that looks like P-something-T hold?
 3 A Freight.
 4 Q Freight hold?
 5 A F-R-T.
 6 Q And do you have any familiarity with what that
 7 terminology would mean?
 8 A Yes, it leads back to the previous
 9 correspondence about e-mails regarding the request to place
 10 the shipment on hold. That's what this is.
 11 Q And what would that normally mean to you as to
 12 what the reason was for the hold?
 13 A There's a dispute of some kind. Something not
 14 right between the Ocean World Lines and Image.
 15 Q And then page 3 of this is part of the bill of
 16 lading describing the containers?
 17 A Correct.
 18 Q And page 4 is also part of the Ocean World
 19 Lines' bill of lading?
 20 A That's correct.
 21 Q And 5, can you tell us what that is.
 22 A It's an e-mail -- yes.
 23 Q Addressed to you from Mr. Zandian?
 24 A Yes. And this is where he mentions about the
 25 discussions, the agreement of the acceptance of the demurrage

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1 settlement, \$1,000 per container.
 2 Q And is there any of your handwriting on this
 3 page?
 4 A Yes, I see the bill of lading number
 5 (indicating).
 6 Q Okay.
 7 A The Christine O -- Ocean World Lines with the
 8 phone number is also my handwriting. Actually, everything
 9 here appears to be my handwriting.
 10 Q There's an e-mail address at the bottom, "boec."
 11 A Uh-huh.
 12 Q Do you know what that is?
 13 A That is the custom house broker that, as I
 14 recall, we -- I elected to use to assist with the Customs
 15 clearance of the cargo.
 16 Q And expeditors.com is a Customs broker?
 17 A Correct.
 18 Q And it was you and Evergreen who hired that
 19 broker in order to get the cargo out of the port?
 20 A Yes. Actually, let me rephrase that. No, we --
 21 no, we suggested that -- this had nothing to do with
 22 Evergreen. It was just advised to -- the -- Expeditors was
 23 advised by myself about the situation to assist with Image
 24 Line Graphics in clearing the cargo. And then they did the
 25 rest together.

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1 Q Image Line Graphics hired Expeditors?
 2 A Right.
 3 MS. MARTIN: Do you mind if, before we move on,
 4 I ask him a quick question?
 5 MS. SALISBURY: Sure.
 6 MS. MARTIN: The fifth page of the document,
 7 what appears to be a letter from Zandian, it's dated July 7,
 8 2003. Is it possible that it came at a later time than the
 9 original four pages?
 10 MR. WAIMEY: (Indicating.)
 11 THE WITNESS: That's a good question. I would
 12 say that's a possibility because I can't say that these -- if
 13 I understand your question correctly -- these basically come
 14 to us at the same time. Is that what you're asking?
 15 MS. MARTIN: Yeah, I'm just wondering if it just
 16 got included in this.
 17 THE WITNESS: I would say that could have very
 18 well been the case.
 19 MS. MARTIN: Because I also notice there's no
 20 fax identification number at the top.
 21 THE WITNESS: Uh-huh, right.
 22 MS. MARTIN: But you don't have any independent
 23 recollection of receiving either one?
 24 THE WITNESS: Honestly, no.
 25 MS. MARTIN: Okay. Thank you.

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1 Q BY MS. SALISBURY: Exhibit S is a letter dated
 2 July 14th from Image Line Graphics to you. Could you tell us
 3 what you recall about this document.
 4 A This appears to be his -- his request to accept
 5 the offer, his bottom line offer of \$1,000 per container.
 6 Because we had mentioned 1,750, and this was his way of
 7 saying that when he checked with Customs, that the cargo --
 8 if it just basically not resolved, that this -- you know,
 9 it's going to be -- there's going to be a no-win situation
 10 here. And that was his perception after checking with
 11 Customs what would happen and things of that nature. So he's
 12 appealing to renegotiate his offer for 1,000.
 13 Q Do you have any independent recollection of your
 14 conversations with Mr. Zandian around this time?
 15 A No, I can't say -- all I -- I do recall only
 16 that there was a \$1,750 offer, and he was insistent upon
 17 \$1,000. And the very fact that we were not moving on that
 18 just kept him, you know, that's all I can -- he was very
 19 persistent.
 20 Q The 1,750 was a huge discount; is that correct?
 21 A Yes.
 22 Q Go to Exhibit T. And this is an e-mail from
 23 Vincent Carnovale to A. Baer dated 8/9/2003; is that correct?
 24 A Uh-huh.
 25 MR. WAIMEY: You have to say yes.

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1 THE WITNESS: Yes.
 2 MR. WAIMEY: Okay.
 3 THE WITNESS: Yes.
 4 Q BY MS. SALISBURY: Now, in this letter were you
 5 offering to just waive all demurrage costs?
 6 A To Ocean World Lines.
 7 Q To Ocean World Lines.
 8 A Yes.
 9 Q But not to Mr. Zandian?
 10 A Correct.
 11 Q Exhibit U appears to be a two-page e-mail to you
 12 from Alan Baer. Can you tell me what you recall about this.
 13 A Yes, originally we, as you so read in the
 14 records, that there were no original bills of ladings on
 15 hand. And the determination being shown here that there
 16 were, in fact, no original bill of ladings per se issued.
 17 It's what we deem -- what we call an express or seaway bill
 18 of lading or express bill, as they refer to it in Europe.
 19 Means that no original bill of ladings are required to be
 20 issued by copy.
 21 Q And why would that --
 22 A It's an agreement between the shipper and the
 23 consignee. As you notice on the bill of lading, the shipper
 24 is Ocean World Lines; consignee is Ocean World Lines. Two
 25 companies doing business together. Since they're a direct

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1 connection, that's how -- because the short transit time,
2 they don't bother with the hard copy. You'll see on the bill
3 of lading, just says non-negotiable. It's not original.
4 Q So when they say non-negotiable, you can't use
5 it to pick up --
6 A Claim the cargo, correct.
7 Q Exhibit V. And this appears to be an e-mail
8 from you to Alan Baer.
9 A That's right. Yeah, basically expressing my
10 concern that we have not officially received any official
11 word from -- as far as the -- let me see.
12 This is to Ocean World. Yeah, we're still
13 establishing the fact on whether this is a seaway bill of
14 lading or not.
15 Q So now we're talking about basically paperwork?
16 A Uh-huh, uh-huh.
17 Q To make sure that you dotted every I and crossed
18 every T?
19 A That's correct.
20 Q And then Exhibit W is a three-page e-mail from
21 Alan Baer to you; is that correct?
22 A Uh-huh -- yes.
23 Q And --
24 A Once again, elaborating on paperwork since there
25 appears that the records show original, I believe in the

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1 system or system has three originals issued. And he's just
2 having us verify with our port of loading office that the --
3 whether we first issued originals or not and eventually
4 replaced by the seaway.
5 Q Exhibit X. And this appears to be an e-mail
6 from you to Alan?
7 A Uh-huh -- yes.
8 Q And --
9 A Also telling them that I'm following up, that we
10 will make that inquiry and confirm.
11 Q Okay.
12 MR. WAIMEY: That's the end of the ones that we
13 marked before.
14 MS. SALISBURY: Okay.
15 MR. WAIMEY: So you want to give the court
16 reporter and the witness a break?
17 MS. SALISBURY: Yes, break.
18 MR. WAIMEY: And then we can go ahead and mark
19 the rest of them.
20 MS. SALISBURY: Yes, let's do that.
21 (Break in proceedings from 12:31 P.M. to 12:56 P.M.)
22 MS. SALISBURY: Back on the record.
23 We're looking at Exhibit Y.
24 ///
25 ///

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1 (Defendants' Exhibits Y through DDD
2 were marked for identification
3 and bound separately.)
4 Q BY MS. SALISBURY: And this is an e-mail,
5 appears to be a set of e-mails, the top one of which is
6 directed to you from Sabine Kamke, S-a-b-i-n-e, K-a-m-k-e.
7 Could you tell us who she is.
8 A She's another one of the representatives of our
9 office in Germany -- no --
10 MR. WAIMEY: Germany.
11 THE WITNESS: Yeah. Germany, Deutschmark.
12 Yeah, Germany was the headquarters for Europe
13 cargo.
14 Q BY MS. SALISBURY: Okay. And that had to do
15 with the seaway bill? Is that what this was about?
16 A Yes, yes.
17 Q Exhibit Z appears to be a three-page --
18 four-page document. The top page appears to be an e-mail
19 from you to Alan Baer. Would you tell us what this was.
20 A Just reaffirming that the -- the shipping was as
21 regular original bill of lading but changed to a seaway. And
22 that's basically it.
23 Q And then on 8/15/2003 you have a five-page
24 document marked as AA, and the top page of which appears to
25 be an e-mail to you from Alan Baer. It contains copies of

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1 other --
2 A Yeah.
3 Q And then Exhibit BB appears to be an e-mail from
4 Alan Baer on 8/15/2003 at 6:31. And this appears to be an
5 agreement from Ocean World Lines to release the containers
6 directly to Mr. Zandian; is that correct?
7 A Correct.
8 Q So as of 8/15/2003 Mr. Zandian could pick these
9 documents up?
10 A These --
11 MR. WAIMEY: Containers.
12 THE WITNESS: He's classified as the consignee
13 of now releasing the ownership, I guess it is.
14 Q BY MS. SALISBURY: Right. Now, going to Exhibit
15 CC, could you tell us what this is.
16 A Yeah, this is a recommendation that I'm --
17 prepared for the office head. And it says that we're
18 requesting the demurrage be reduced since having now cleared
19 up the matter with Ocean World Lines. So I'm requesting
20 management's confirmation to allow us to reduce the
21 demurrage. So this is a standard practice that any ultimate
22 decision has to be authorized by management.
23 Q So Mr. Brunson and Mr. Wang were people who had
24 the authority to make that decision; is that right?
25 A Those are my superiors, yes.

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1 Q Exhibit DD appears to be a two-page document
 2 from Expeditors. Could you tell us what this is.
 3 A Yeah, here is Expeditors informing us that the
 4 custom clearance had, in fact, occurred, or was filed. I say
 5 was filed because he's giving us a copy of what we call an
 6 entry with Customs. So he's kind of giving us a heads-up.
 7 Of course, we have to -- yeah, that's all he's advising us,
 8 that they filed with Customs.
 9 Q And could you tell us what page 2 of that
 10 document is.
 11 A Yeah, that's a -- at the bottom there, Customs
 12 Form 3461. It's what they call a delivery authorized
 13 document. It's a Customs filing.
 14 Q And that's a form that the shipper -- the person
 15 who owns the cargo files?
 16 A Custom house broker, the broker who filed with
 17 Customs.
 18 Q Okay.
 19 A And this is a hard copy of that evidence of
 20 that. So he's letting us know because we have to seat it in
 21 our system electronically.
 22 Q And this is a declaration of value, among other
 23 things; is that correct?
 24 A Uh-huh, uh-huh.
 25 Q Is that a yes?

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1 A Oh, yes, that's correct.
 2 Q And what does it show as the total value of the
 3 cargo?
 4 A The -- 83,000?
 5 Q Does it show what the tariff is?
 6 A It shows the -- the only reference I see here is
 7 the -- let's see.
 8 Q I'm not familiar with this form; that's why I'm
 9 asking you.
 10 A Right. No, the only thing I see here is the --
 11 appears to be harmonized code number 8443.19.9000. I have no
 12 idea what that -- I can only believe that has to do with the
 13 commodity or the -- now he says printing machine.
 14 Description of merchandise, printing machine.
 15 Q And do you know what that MS number is or --
 16 A No, I'm not familiar.
 17 Q Go on to EE. And this appears to be a two-page
 18 document containing e-mails, the top one being from you to
 19 Mr. Baer.
 20 A Uh-huh -- yes.
 21 Q And this is your e-mail; is that correct?
 22 A That's correct.
 23 Q In here you say that you attempted to contact
 24 Mr. Zandian, and you were unable to reach him; is that
 25 correct?

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1 A That's correct.
 2 Q Do you have any memory of what happened?
 3 A No, I don't. I just recall that we were just
 4 hot on the trail getting it finally settled, and then
 5 suddenly he -- I could not establish contact.
 6 Q Then Exhibit FF appears to be an e-mail from you
 7 also on 11/3 at 5:18 to Mr. Baer. And this one you make
 8 reference that you received an e-mail from Image Line
 9 Graphics. And this is a three-page document. So different
 10 e-mails; is that correct?
 11 A That's correct.
 12 Q And Exhibit GG, this appears to be a three-page
 13 document, top page appears to have an e-mail from Alan Baer
 14 to you. And this seems to be a response to FF; is that
 15 correct?
 16 A Yes.
 17 Q And HH. Would you tell us what HH is.
 18 A This -- let me just back up here. This appears
 19 to be the same document, 3461. And I believe on this one --
 20 I don't know if that was clearly on the other one. But what
 21 I do see evidence here is the mark by Customs stamped Customs
 22 Received, November 12th, 2003. This is a clearer copy of the
 23 entry filed with Customs.
 24 Q Okay.
 25 A It's just another copy.

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1 Q Well, let's see. You were making reference to
 2 Exhibit DD?
 3 A Yes.
 4 Q And on Exhibit DD, I don't think it's signed by
 5 Customs.
 6 A So I was correcting that.
 7 MR. WAIMEY: Off the record for a minute.
 8 (A discussion was held off the record.)
 9 Q BY MS. SALISBURY: Now, there is a notation
 10 change, box 23. Do you have any idea what that might mean?
 11 I'm sorry, on HH.
 12 A No.
 13 Q Thank you.
 14 II, could you tell us what that is? And this is
 15 a document that says in the upper left-hand corner, SCR: B101
 16 Inbound Cargo Release.
 17 A Yeah, this is an internal program in our system
 18 that is just what it states. Inbound cargo release screen.
 19 And it just gives the status of the bill of lading, freight;
 20 and over to the right, as you see over there, custom release
 21 status, RLS status, on the right-hand side, and then a 1C,
 22 which means cleared. And that's what we need to apply in our
 23 system electronically. And it's dated November 13, 2003.
 24 Q On to Exhibit JJ. This appears to be an
 25 e-mail -- this is a four-page document, top page is an e-mail

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1 from Sharifa Cox-Batts.
2 Could you tell us who that is.
3 A Yeah, she's the acting supervisor at our
4 terminal.
5 Q So you report to her, or she reports to you?
6 A She -- you would say she reports to me. She's
7 our customer, or we're her customer.
8 Q She's part of Evergreen?
9 A No, part of the terminal.
10 Q Part of the terminal.
11 A Yes.
12 Q Okay.
13 A But the terminal serves us. She doesn't really
14 report to me; she just --
15 Q You're like in two separate departments?
16 A Right.
17 Q She's part of Evergreen; you're part of
18 Evergreen, but two separate departments?
19 A No, she's part of the terminal, but the terminal
20 is by itself, a separate entity in a sense. They just serve
21 us because we're their only tenant at the terminal.
22 Q She works for the terminal?
23 A Right.
24 Q She works for the Port Authority?
25 A No. The terminal is separate from the Port

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1 Q I see.
2 And then we have Exhibit LL, a one-page
3 document, bearing a handwritten note on top and a copy of a
4 check. Could you tell us what this is.
5 A Yes, this was his check surrendered to us in
6 payment for the agreed demurrage.
7 Q And that was \$13,000?
8 A That's correct.
9 Q And the note on the bottom that says,
10 Surrendered on November/26, is that your handwriting?
11 A Yes, that's my handwriting.
12 Q MM dated February 24th, 2004.
13 A Yes.
14 Q Could you tell us what this is. It's a
15 three-page document of e-mails, the top one to Vincent
16 Carnovale from -- I don't know how you say that name.
17 A Boechori.
18 Q And Expeditors.
19 A Right. And let's see. Yeah, he's just --
20 obviously because of the previous times we were involved with
21 this shipment, I think it appears just out of sheer curiosity
22 wondering what's going on.
23 Q And he's asking how can this trucker pick up
24 without our delivery order? Was that some irregularity, or
25 not a problem?

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1 Authority. I don't know the exact arrangement of that.
2 Q She doesn't work for Evergreen?
3 A Huh-uh -- no.
4 Q And in this e-mail she's letting you and a
5 number of other people know that the cargo hadn't been picked
6 up as of November 13th?
7 A Yes.
8 Q Exhibit KK. This is a four-page document with
9 the first of e-mails, and the top one is to Sharifa from you.
10 Now, you say in --
11 A Yeah, there's a little confusion here.
12 Q What's the confusion?
13 A There were other shipments -- see, the terminal,
14 for obvious reasons, they want to clear the terminal of
15 unnecessary cargo lying idle there for an extended period of
16 time. So they kind of place these gentle reminders to us.
17 It just so happens at that point in time we were
18 dealing with other cargo in addition to Zandian's cargo. So
19 there's one in particular here they're referencing some
20 refrigerated containers at the terminal. And that's the
21 "cool down." Means to freeze it because they were thinking
22 of transporting that, but they couldn't because there was
23 leakage.
24 Q Oh.
25 A So that has nothing to do with that cargo.

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1 A He -- based on this information, to my
2 recollection, he was going to be initially the party to pick
3 up as well, to arrange the trucking, because he was doing the
4 entry. So with that, typically, the broker can arrange for
5 the delivery as well. They like to make it maybe a package
6 or something. So based on this, this is now his concern
7 like, Hey, we're -- you know, we have not seen any delivery
8 order or this and that. So he evidently is questioning, you
9 know, still DR, nothing's moved, no delivery order. What's
10 up? That kind of thing.
11 Q And NN is a four-page document of e-mails with
12 the top one being from Vincent Carnovale to Boechori Husen at
13 expeditors.com?
14 That's H-u-s-e-n, and Boechori is
15 B-o-e-c-h-o-r-i?
16 A Correct.
17 My reply to his inquiry, basically, it again
18 appears that things have somewhat come to a halt. Things
19 were not progressing along as we anticipated. And I'm just
20 basically telling him this and that Lazo Trucking being one
21 of our house truckers would move -- would -- or make the
22 arrangements in moving the cargo.
23 Q And OO is from James Chen to Vincent Carnovale.
24 A Yes.
25 Q Who's James Chen?

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1 A He's a Chinese fellow because he calls me, "Dear
 2 Boss, Vincent." But he's one of the employees at Evergreen
 3 in another section called Equipment Control. And he deals
 4 with the empty containers. So for some reason he just
 5 mentions that he just gets -- he's making an inquiry about
 6 the shipments.

7 Q This is on March 17th, 2004?

8 A Right.

9 Q And this is a two-page document that also
 10 appears to include an e-mail from Toni Baca at LTE Freight
 11 Systems.

12 MR. WAIMEY: To James Chen.

13 MS. SALISBURY: To James Chen, right.

14 Q BY MS. SALISBURY: PP is a two-page --
 15 three-page document of e-mail. The top one is from Vincent
 16 Carnovale to James Chen.

17 A Yes.

18 Q And you have an abbreviation here which is a/c.
 19 What does that mean?

20 A Account.

21 Q And do you have any memory of what this
 22 discussion was about other than what you've put down here in
 23 this e-mail?

24 A No, I don't. I honestly don't. If I read going
 25 through this, it will refresh my memory, but I don't recall

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1 any -- how he was even involved in the situation, to tell you
 2 the truth, with the exception, I guess, of the fact that Lazo
 3 corresponded with him.

4 Q And do you recall any discussion about the
 5 difficulties involved in devaning the cargo?

6 A Devaning --

7 Q Did you have any discussion with Toni Baca
 8 around this time about the problem of getting the cargo off
 9 the containers?

10 A All I recall is that they were going to the
 11 accounts, Image Line Graphics were going to inform them and
 12 make the arrangements to advise them where the cargo would be
 13 delivered. They needed to know where the delivery address
 14 would be.

15 Q I'm going to Exhibit QQ. This appears to be a
 16 two-page document, which is an e-mail from Gracy Lazo
 17 addressed to Jason Hsu.

18 Did you get a copy of this, also?

19 A It does not -- I'm not certain because the hard
 20 copies don't necessarily reflect whether -- sometimes they
 21 don't carry all the cc parties. So I don't totally know
 22 whether, in fact, I did receive this originally or not or it
 23 was forwarded to me by someone. Although if it was
 24 forwarded, I would see that. So I can't answer that.

25 Q And going to Exhibit RR, a three-page document

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1 of e-mails, and the top one appears to be from you to Gracy
 2 Lazo dated March 23rd.

3 A Correct.

4 Q And then Exhibit SS is a three-page -- four-page
 5 document in a series of e-mails, and the top one is from Toni
 6 Baca, LTE Freight Systems to you.

7 A Correct.

8 Q Do you recall having a conversation with Toni
 9 Baca about returning -- about their effort to return
 10 containers to the port?

11 A Not particularly, no. I would say I don't
 12 recall --

13 Q Any particular detail --

14 A -- any essence of the conversation, if you will.

15 Q Do you recall that you did say that they could
 16 not return the containers to the port?

17 A Yes.

18 Q Now, at the same time the issue of per diem was
 19 a big issue; is that correct?

20 A Yes.

21 Q Because by this time the containers were way
 22 beyond the free date.

23 A Yes.

24 Q And after having reviewed these documents, do
 25 you recall that by this time the per diem for all of the

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1 containers was somewhere around \$30,000?

2 A I knew there was some substantial amounts. I
 3 was not made privy as to what those figures really were. I
 4 just felt that at that point I knew there were, but I don't
 5 want to get involved with the per diem issues.

6 Q Going on to Exhibit TT, this is a five-page
 7 document with a series of e-mails. And the first page is
 8 Vincent Carnovale e-mail to Toni Baca, Gracy Lazo, all kinds
 9 of other people.

10 A Yes.

11 Q Do you recall sending this e-mail?

12 A Yes, I do.

13 Q Exhibit UU is a five-page document of e-mails;
 14 the top one is from Toni Baca to you. And do you recall
 15 receiving this e-mail?

16 A Yes.

17 Q And she in there asks to have a meeting. Do you
 18 recall if the meeting ever took place?

19 A To my knowledge, no.

20 Q You don't recall having a meeting with her about
 21 this specific issue?

22 A No, all I do recall is that I discussed it with
 23 my -- the person in charge, Jason Hsu, about the matter,
 24 brought it to his attention. And that's all I know of that.

25 Q Do you recall what he said about it?

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1 A That the per diem would need to be paid at that
2 time. And that's all I know.
3 Q Exhibit VV is a six-page document, collection of
4 e-mails. The top one is from Vincent Carnovale to Jason Hsu.
5 A Yes.
6 Q And with copies to Raymond Butman and Steve
7 Wang?
8 A Yes.
9 Q And you're just forwarding on all the e-mails
10 you've received to people higher up in the corporation,
11 correct?
12 A That's correct.
13 Q And Exhibit WW is a six-page document of
14 e-mails; the top one is from Jason Hsu to Toni Baca and Gracy
15 Lazo, and I assume somewhere in there you got a copy of this.
16 A That's correct.
17 Q And this is basically just getting in touch with
18 Toni and Gracy about their concerns?
19 A That's correct.
20 Q And what is Jason Hsu -- that's H-s-u -- what is
21 his position with Evergreen?
22 A He's the operations junior vice president.
23 Q Going to Exhibit XX, appears to be a one-page
24 document, which is an e-mail from Gracy Lazo to you and Jason
25 Hsu and James Chen.

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1 Do you recall doing anything with this? Do you
2 recall how this problem came out? She's complaining that
3 there's a problem with one of the containers.
4 A No, I don't even recall this.
5 Q Do you recall it coming back to you?
6 A No.
7 Q And do you recall that out of the 13 that they
8 only picked up 12 containers because there was a container
9 that couldn't be --
10 A Yes, as I understand, one was leaking some oil
11 or something.
12 Q So there was one container that couldn't be
13 taken out on the road; is that correct?
14 A That's correct.
15 Q Do you recall what happened to that container?
16 A It remained at the terminal until -- oh, what
17 happened to it? It remained at the terminal, and then it was
18 classified as abandoned. And that was -- the contents of
19 which were disposed or sold.
20 Q By Evergreen?
21 A By Evergreen.
22 Q That was never picked up by Mr. Zandian?
23 A No.
24 MR. WAIMEY: Can we take a two-minute break
25 here?

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1 MS. SALISBURY: Sure.
2 (Break in proceedings from 1:30 P.M. to 1:36 P.M.)
3 Q BY MS. SALISBURY: We're at YY. Would you tell
4 us what YY is. YY is a document that bears the notation in
5 the upper left-hand corner of SCR B11.
6 MR. WAIMEY: It's BI.
7 Q BY MS. SALISBURY: I'm sorry. 1013 something?
8 A It's actually BI13.
9 Q Dated 05/08/26. What is this?
10 A This is the freight release history or hold, if
11 you will. Just anything associated with the cargo release.
12 And as you can see, the hold is reflected being placed in the
13 system when requested to do so by, at that time, Ocean World
14 Lines. You see, hold for Ocean World Lines; it shows the --
15 when it went into general order and so on.
16 Q Under the date is the year, the first set of
17 numbers, and then a two-digit number for the month and then a
18 two-digit number for the day?
19 A Yes, that's correct.
20 MR. WAIMEY: In other words, you ran this off on
21 August 26th, 2005?
22 MS. SALISBURY: No, it says --
23 THE WITNESS: Yes, that is correct. August 26
24 of 2005, yes.
25 Q BY MS. SALISBURY: Okay, looked like B0508 --

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1 oh, I see, August 26, 2005. But under the date column is
2 what I was asking.
3 A Yes, what you mentioned is correct.
4 Q So that shows the history, a whole set of
5 entries?
6 A That's correct.
7 Q And now "B/L Hold by Rita Lopez."
8 A That's correct.
9 Q And going on to Exhibit ZZ, this is screen BI05;
10 is that correct?
11 A That's correct.
12 Q And that's --
13 A G.O. Notice Data Maintenance, general order.
14 Q And the date is 8/26/05?
15 A That's when we ran the report.
16 Q What does it tell you?
17 A It -- this is what shows for that cargo, the
18 G.O. date -- in this case August 6, 2002; the assigned
19 general order number. And basically at that time the
20 warehouse location would have been Price Transfer.
21 Q And then AAA.
22 MR. WAIMEY: It's BI01.
23 THE WITNESS: This is AM21, AAA.
24 MR. WAIMEY: Are you reading --
25 MS. SALISBURY: Okay, I have --

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1 MR. WAIMEY: Yeah, BI01 is AAA.
 2 THE WITNESS: Oh, okay.
 3 Q BY MS. SALISBURY: Could you tell me what this
 4 is.
 5 A That is the release screen, what we call the
 6 inbound cargo release, mentioned up on top. And basically
 7 informs the status on the freight release and the Customs
 8 release.
 9 Q And then the BBB is AM21?
 10 A That's correct.
 11 Q And is this part of a detail of -- shows one,
 12 two, three --
 13 A Uh-huh.
 14 Q How many containers are listed there?
 15 A Let me explain. This is a -- this is a
 16 Customs -- this is information received to us by U.S.
 17 Customs. And it just shows the entry status of the quantity
 18 being the 13 containers cleared. First you see the "1R
 19 Pending Eligible General," would be general order; and 1S
 20 goes to general order; and then finally that 1C I mentioned
 21 earlier, entered and released on September 9, 2003, according
 22 to Customs official.
 23 Well, they showed -- they showed one --
 24 initially they put in one unit instead of 13. That was a
 25 mistake either by the broker or Customs. But eventually on
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1 the last entry there on November 13, 2003, you see now the
 2 quantity 13 with the 1C entered and released. So officially
 3 it was being recognized as released.
 4 Q Then what was the 4E where it said, "Entry
 5 Cancelled"?
 6 A Cancelled because of the initial mistake.
 7 Q So kind of like when somebody charges you, plus
 8 I was an error, so they had to cancel that?
 9 A That's correct.
 10 Q Then CCC. And that's DI08 at the top?
 11 A Correct.
 12 Q Could you tell us what this is.
 13 A This is our freight screen, you know, for
 14 freight charges. It's a breakdown of these containers; the
 15 associated Ocean freight rates charges; and you can see
 16 everything being prepaid there. And with a total prepaid of
 17 37,431.17 we'll collect.
 18 Q And then we have DDD. And this is a -- it says
 19 DM 05106243 in the upper left-hand corner?
 20 A DM would be for demurrage. This is a demurrage
 21 history. Of course, this is not all related to this case.
 22 But at the top is the where you see the payment amount,
 23 13,000, check number, so on and so forth, Bank of America.
 24 So we just tabulate that into our system once we
 25 receive the check.
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1 Q So that's the check from Mr. Zandian?
 2 A That's correct.
 3 MS. SALISBURY: Thank you. I have some other
 4 documents that don't seem -- I'm not sure if you had these.
 5 I'm going to show you and mark this as EEE.
 6 (Defendants' Exhibit EEE was marked for
 7 identification and bound separately.)
 8 Q BY MS. SALISBURY: Do you remember --
 9 MR. WAIMEY: Give us a chance to read this. We
 10 haven't seen this before.
 11 MS. SALISBURY: Okay.
 12 MR. WAIMEY: Have you read it?
 13 THE WITNESS: Uh-huh.
 14 MR. WAIMEY: Okay.
 15 Q BY MS. SALISBURY: Do you recall receiving this
 16 e-mail from Mr. Zandian?
 17 A Yes.
 18 Q Do you recall any conversation that you might
 19 have had with him about this e-mail?
 20 MR. WAIMEY: Answer the question.
 21 THE WITNESS: Yes, I would say we did, yes. We
 22 did discuss this matter.
 23 Q BY MS. SALISBURY: What do you recall about
 24 those discussions?
 25 A Basically, I would -- I was explaining to him
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1 that any delay in the delivery was not that of Evergreen's
 2 doing; that basically it's really between Lazo and himself,
 3 and that we ourselves were not delaying -- causing the delay.
 4 And when -- just the very fact that he says your trucking
 5 company was in itself inaccurate because that is strictly a
 6 third party company, Lazo.
 7 So I tried to explain that to him, that
 8 basically we are not hindering the process.
 9 Q And the date was March 26, 2004; is that
 10 correct?
 11 A Yes.
 12 Q And --
 13 MR. WAIMEY: Did you give the documents to the
 14 court reporter?
 15 THE REPORTER: I took them. I have a way of
 16 doing that.
 17 (Laughter.)
 18 MS. SALISBURY: Now, this is Exhibit FFF, and
 19 it's a one-page e-mail from Gracy Lazo. And it has -- it
 20 contains a message apparently from you which you had sent on
 21 Wednesday, January 21st.
 22 (Defendants' Exhibit FFF was marked for
 23 identification and bound separately.)
 24 Q BY MS. SALISBURY: And do you recall sending
 25 this e-mail to her on or about January 21st?
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1 MR. WAIMEY: Let's give him a chance to finish
 2 reading this.
 3 THE WITNESS: Yeah, I'm just at the tail end.
 4 MR. WAIMEY: Take your time.
 5 THE WITNESS: Yeah.
 6 Yes, I -- I can say that I recall this case --
 7 this portion of the case.
 8 Q BY MS. SALISBURY: Now, there it seems to
 9 reference a conversation you had with Mr. Zandian.
 10 Do you have any recollection of that?
 11 A Not really, other than what has been referenced
 12 on previous correspondence.
 13 MR. WAIMEY: That was dated March 2004. This is
 14 a couple of months earlier.
 15 Q BY MS. SALISBURY: Yeah, this was in January.
 16 A Oh, January.
 17 Q Yeah, in March she's looking at an e-mail that
 18 was sent in January.
 19 A Okay.
 20 MR. WAIMEY: Do you have the e-mail that Vincent
 21 is -- Mr. Carnovale is responding to? Because she's -- "I've
 22 told Reza absolutely not." So there must have been a
 23 question that came in another e-mail, and that might help in
 24 him providing an answer.
 25 MS. SALISBURY: Well, her e-mails are kind of

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1 confused. That's one of the things I'm trying to --
 2 THE WITNESS: I cannot say --
 3 MR. WAIMEY: That's okay. Let's see if we can
 4 find her e-mail first. Maybe that will explain.
 5 THE WITNESS: Okay.
 6 MS. MARTIN: It's in here (indicating).
 7 MS. SALISBURY: Is it?
 8 MS. MARTIN: Yeah.
 9 MS. SALISBURY: Which one is it, do you think,
 10 Tara?
 11 MS. MARTIN: I've just seen it.
 12 MS. SALISBURY: I don't see any e-mails around
 13 the January date in here. In fact, there's like a gap
 14 between November and March -- February.
 15 MR. WAIMEY: So the question would be whether
 16 you recall anything about what's going on about this time
 17 period. Let her go ahead and ask a fresh question, but focus
 18 on the January time period.
 19 Q BY MS. SALISBURY: Do you recall that
 20 Mr. Zandian had requested that the cargo be returned to the
 21 terminal and that you told him no?
 22 A I vaguely recall that, yes.
 23 MS. SALISBURY: We already marked that as
 24 Exhibit FFF. Okay.
 25 Q BY MS. SALISBURY: Do you recall when the

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1 containers were returned to Evergreen? Can you tell from
 2 looking at any of these documents?
 3 A I will say March or April of 2004, to my
 4 recollection.
 5 Q Is there any document in the documents that
 6 you've produced today that would show you when the containers
 7 were returned?
 8 A I recall the screen that I was first looking at,
 9 but I don't recall if I made a copy or if someone from
 10 another department had sent me that information. We're in
 11 the -- in a -- the system has changed as of about two years
 12 ago. We -- yeah, we changed it to a global system. And what
 13 information that I was able to go back into the old system to
 14 resurrect is what I've been providing. But that empty
 15 container return status, as I remember looking at the screen
 16 at the time, told me March or April of 2004 as the return
 17 empties to our terminal. But I don't recall if that was
 18 providing -- provided to you in any of these reports or not.
 19 Q When was the last time that you can remember
 20 talking to Mr. Zandian?
 21 A Basically, it was during the time of that period
 22 when he had inquired on disposition of the shipments where
 23 Lazo was concerned. And as I recall, he -- he had
 24 specifically asked me do I have any recognition of the fact
 25 of the containers being returned back to our facility.

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1 And I looked in the system at that time -- or I
 2 can't say March. It must have been somewhere in that time
 3 frame and noted that end of March, beginning of April that I
 4 informed him, yes, they were. And that's the last I recall
 5 speaking with him because he made that inquiry with me.
 6 MS. SALISBURY: I want to show you a document
 7 that we'll mark Exhibit GGG.
 8 (Defendants' Exhibit GGG was marked for
 9 identification and bound separately.)
 10 MR. WAIMEY: We're going backwards in time.
 11 THE WITNESS: Okay.
 12 MS. SALISBURY: Yeah.
 13 MS. SALISBURY: It's a one-page document dated
 14 January 20, 2004, which appears to contain an e-mail from
 15 Toni Baca to Reza Zandian, and an e-mail from you to Reza
 16 Zandian.
 17 Do you recall --
 18 A I vaguely recall, yes. Yes. They were anxious
 19 for the delivery.
 20 Q Now, normally when Lazo picks up containers from
 21 your port, they normally get them back within the five days
 22 that you had talked about?
 23 A I would say the majority of the time, that is
 24 affirmative. Lazo's pretty good.
 25 Q Do you recall when they picked up these

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1 containers?
2 A No.
3 Q Okay.
4 A I can't say.
5 MS. SALISBURY: Take about a five-minute break.
6 I'm going to go through some of my other documents.
7 MS. MARTIN: I have a couple of questions. Do
8 you want me to go ahead?
9 MS. SALISBURY: Sure.
10 (Break in proceedings from 1:57 P.M. to 2:01 P.M.)
11 MS. SALISBURY: Back on the record.
12 MR. WAIMEY: Can we have the last two since it's
13 in the same time frame?
14 THE WITNESS: So he's -- Gracy's sending this to
15 Mr. Reza.
16 MS. SALISBURY: She's sending it to you, I
17 think.
18 THE WITNESS: Oh, but she has corresponded with
19 him.
20 MS. SALISBURY: Yeah.
21 MR. WAIMEY: And this is a couple of hours after
22 this other one.
23 MS. SALISBURY: As far as I can tell from
24 looking at it, she's sending it to you.
25 THE WITNESS: Uh-huh. Is this my reply?

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1 MR. WAIMEY: No, the initial e-mail from Gracy
2 is missing, but you sent e-mail like at 5:28 P.M. on the
3 21st. And two hours later she sends you --
4 THE WITNESS: There's like something going on
5 simultaneous here.
6 MS. MARTIN: There's all kinds of missing stuff.
7 MR. WAIMEY: This -- yeah, it looks -- the
8 e-mail that's related to this is missing. So it's very hard
9 to tell.
10 Go ahead and ask whatever question you want.
11 MS. SALISBURY: We're going to mark this as
12 exhibit --
13 MS. MARTIN: Can I look at it real quick?
14 MS. SALISBURY: Oh, I'm sorry.
15 MS. MARTIN: That's all right.
16 MS. SALISBURY: Mark it as HHH.
17 (Defendants' Exhibit HHH was marked for
18 identification and bound separately.)
19 MS. SALISBURY: Looks like part of that e-mail
20 just got deleted.
21 MS. MARTIN: No, this is -- hmm.
22 Q By MS. SALISBURY: Exhibit HHH, do you recall
23 receiving a copy of this e-mail or what this e-mail was
24 about?
25 A No, I don't. I honestly don't.

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1 MS. SALISBURY: That's fine.
2 Just attach it as HHH.
3 I have no further questions.
4 MS. MARTIN: I have just a few questions.
5
6 EXAMINATION
7 BY MS. MARTIN:
8 Q My name is Tara Martin and I represent Plaintiff
9 Reza Zandian in this matter.
10 In the 21 years that you've been employed by
11 Evergreen, have you ever encountered a situation where goods
12 that were held in constructive -- what do you call it?
13 A G.O.
14 Q -- are finally picked up by a trucking company,
15 taken off of your property, and then you're finding yourself
16 unable to get the empty containers back to your facility?
17 A Have I ever encountered that?
18 Q Yes.
19 A I have to say quite honestly, no, I have not.
20 Q Do you know if there's any procedures for a
21 trucking company who is in possession of your containers with
22 freight in them to empty the containers if they can't locate
23 or settle a dispute with an ultimate consignee?
24 A There -- the interchange agreement is between
25 the trucking company and the steamship line, Evergreen, in

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1 this case. So once the trucking company takes possession of
2 our equipment, it is under their responsibility to have that
3 equipment returned, regardless of the nature of who has it or
4 who's holding it.
5 The trucking company, because of the interchange
6 agreement, is ultimately responsible to pay any per diem
7 charges. And how that trucking company solves that problem,
8 unfortunately, is what I personally don't have any awareness
9 because it's such a unique circumstance that it's beyond my
10 realm of expertise to know how they do that or what they do.
11 Q What about the case where Evergreen itself is,
12 as in this case, holding the items because they haven't been
13 sent out, they're in constructive G.O., and you're unable to
14 find, locate the ultimate consignee or otherwise resolve some
15 dispute, and you have their goods in your containers? Is
16 there a procedure at that point for Evergreen to employ to be
17 able to empty the containers?
18 A Yes, there's two sides to that.
19 One if Customs has been filed and one if it has
20 not been filed. Had Zandian not filed Customs, then as I
21 mentioned earlier, it's under the Customs' jurisdiction so
22 that within a six-month time frame, Customs can legally sell
23 the cargo. So it's totally out of our hands.
24 In the event that in the end they cannot sell or
25 whatever the case is, they will return it back to us,

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1 ironically, and then we get stuck with the burden of dumping
2 the cargo or whatever we can do with it. That's without the
3 Customs clearance.
4 With Customs clearance, we -- the rule being if
5 the demurrage exceeds 50 percent of the cargo value or 30
6 days idle at the terminal, either/or, we have the right to
7 take appropriate steps in what we call abandoned cargo
8 procedures with the consignee to either rid the cargo by
9 selling it or disposing of it.
10 So eventually the steamship line has a right,
11 you know, to after notifications we sell or, you know, dump
12 the cargo, whatever the case is.
13 As I said, typically the cargo does not lie
14 idle. You know, when it starts to hit 14 days, we start
15 getting concerned, much less a year or so.
16 Q Can you describe the abandonment procedures
17 you'd follow in the event it's more than 30 days at your
18 location.
19 A We notify -- we typically notify the consignee
20 that we're going to -- that the cargo has laid idle for this
21 extended period of time; these charges are due, blah, blah,
22 blah. Unless we hear you from at such and such a date, which
23 is typically maybe a week after we send out a letter, that we
24 will rightfully consider the cargo abandoned.
25 Q Then what do you do?

1 A Then we just basically -- we locate some
2 liquidators and vie for whatever someone is willing to pay
3 for the cargo and sell it. And if we can't, we dispose of it
4 and bear the costs.
5 Q If you are able to find a liquidator who bids
6 and you accept the proposal, is there any kind of an
7 accounting that's done or an inventory of contents?
8 A The only thing that we have, again, as I
9 mentioned, is the recommendation process internally. We have
10 to present that to management explaining the circumstances
11 that we faced; we give them a history of the cargo; what
12 we've been through; the cost involved; the associated added
13 costs. And they approve or disapprove -- typically they
14 approve.
15 And then as traffic people, we then set up the
16 actual cargo sale, if it is a sale, and transact that way and
17 sell the cargo. Otherwise, we get bids on the disposal of
18 how much it's going to cost to rid the cargo and then get
19 that arranged. And whether they have their own trucking
20 company to deliver it to the disposal site or if it's sold to
21 a liquidator, he then gets usually his own company to -- or
22 finds a trucking company to deliver it to wherever he wants
23 it. And that's it.
24 Q As far as you're aware, are you obligated to
25 provide notice to the consignee about the sale, date of the

1 sale, or intent to dispose of it?
2 A That is an internal. We're with ISO Certified
3 Company. We do it because it's documented in our work
4 instruction manuals. We like to do as we say, say as we do
5 kind of thing in the industry. So it's documented that we
6 follow these procedures. It's a thin line between courtesy
7 and requirements. It's a very convoluted thing when you deal
8 with Maritime law. It's an international thing, and it has
9 to do with cargo, how long it's been sitting. And this is
10 what I've gathered in the industry.
11 So it's difficult to say whether it's a real
12 requirement, but we do it basically to pretty much cover
13 ourselves and to make it very well known that the cargo is,
14 in fact, abandoned or not abandoned. And that's why we do
15 it.
16 Q Is there any requirement to keep any records
17 regarding how much you received for the items that you sold
18 or disposed of?
19 A Requirement? I personally keep in my files when
20 I start the recommendation process with management, you know,
21 dotting my I's, crossing my T's. I keep my file in my
22 records and then just keep them in separate files. Some go
23 into storage; others stay; some the staff have; I have some,
24 depending on how involved I am personally with the case.
25 But requirements? We have what we've called --

1 we've classified, again through the ISO procedure, of what is
2 considered quality documents. We've classified bills of
3 lading, of course; there are one or two other class of what
4 we have to keep records on file for five years before they
5 can be destroyed. We put them in storage and keep most of
6 those records -- I would say we basically do keep those
7 records, yes.
8 Q Have you ever allowed items to be picked up by
9 one of the trucking companies and then the containers
10 returned to your facility with the contents still in them?
11 A Under very rare circumstances where Customs
12 might be involved. I say that, for example, the bonded
13 warehouse Price Transfer, sometimes they will pick up cargo
14 with the intent of bringing it to their warehouse facility
15 and then discover that this is cargo they can't unload for
16 some reason as we talked about earlier that they devan it,
17 strip the cargo out, and then the empties come back to us.
18 When they come to the recognition they can't do
19 that, they want to return it back to our terminal, we will
20 accept that, but that's only -- the only case. That's why in
21 one of my cross-filings I said absolutely not because once
22 it's out of our possession and something goes wrong, then
23 you're up for grabs on any missing cargo. So that's why I
24 was adamant on not accepting cargo like that.
25 MS. MARTIN: No further questions.

1 MS. SALISBURY: Nothing further.
 2 MS. MARTIN: Want to do a stip?
 3 MS. SALISBURY: Stipulate that the original of
 4 the deposition will be sent to deponent's counsel.
 5 And would you put your name and address on the
 6 record for --
 7 MR. WAIMEY: She has the card.
 8 MS. SALISBURY: Will be sent to deponent's
 9 counsel and that he will make any -- along with an errata
 10 sheet and signature page, and that he will arrange to get
 11 Mr. Carnovale's signature under penalty of perjury and an
 12 errata page showing any corrections that Mr. Carnovale deems
 13 necessary to the transcript; that Mr. Waimey will forward the
 14 original transcript to me, and I will keep it in my office
 15 and produce it in court at trial or in connection with any
 16 hearings where I'm asked to do so; and that the certified
 17 copy of the original can be used for any and all purposes for
 18 which the original would otherwise be used if the original
 19 becomes unavailable for some reason; and that the court
 20 reporter is relieved of her statutory duties that conflict
 21 with the foregoing stipulation.
 22 MR. WAIMEY: 30 days to make his corrections?
 23 MS. SALISBURY: We have a trial date of November
 24 15th, so could we make it 15 days?
 25 MR. WAIMEY: You'll have it October 24th.

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1 MS. MARTIN: Fine. So stipulated.
 2 THE REPORTER: Copies?
 3 MS. MARTIN: No, thank you.
 4 MR. WAIMEY: No.
 5
 6 (The deposition proceedings
 7 were concluded at 2:16 P.M.)
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1 PENALTY OF PERJURY CERTIFICATE
 2
 3
 4 I hereby declare I am the deponent in the within
 5 matter; that I have read the foregoing transcript and know
 6 the contents thereof; that I declare that the same is true of
 7 my knowledge, except as to the matters which are therein
 8 stated upon my information or belief; and as to those
 9 matters, I believe them to be true.
 10 I declare being aware of the penalties of
 11 perjury; that the foregoing answers are true and correct.
 12
 13 Executed on the day of ,
 14 2005, at , California.
 15
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 25

VINCENT CARNOVALE

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1 REPORTER'S CERTIFICATE
 2 STATE OF CALIFORNIA)
 3) ss
 4 COUNTY OF LOS ANGELES)
 5 I, JOLYNE K. ROBERTS, C.S.R. NO. 10823,
 6 Certified Shorthand Reporter for the State of California, do
 7 hereby certify:
 8 That the deponent, VINCENT CARNOVALE, named in
 9 the foregoing deposition, prior to being examined, was by me
 10 first duly sworn/affirmed to testify to the truth, the whole
 11 truth and nothing but the truth.
 12 That said deposition was taken before me at the
 13 time and place therein stated and was thereafter transcribed
 14 into print under my direction and supervision. And I hereby
 15 further certify that the foregoing deposition is a full, true
 16 and correct transcript of my shorthand notes so taken.
 17 I further certify that I am not of counsel nor
 18 attorney for either of the parties hereto or in any way
 19 interested in the event of this case and that I am not
 20 related to either of the parties hereto.
 21
 22
 23
 24
 25

WITNESS my hand this 1st day of October, 2005.

 JOLYNE K. ROBERTS
 C.S.R. NO. 10823

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1 CERTIFIED COPY CERTIFICATE

2
3 I, JOLYNE K. ROBERTS, Certified Shorthand
4 Reporter, No. 10823, do hereby certify that the attached
5 deposition is a correct and certified copy of the deposition
6 of VINCENT CARNOVALE, taken before me on September 20, 2005,
7 as thereon stated.

8 I declare under penalty of perjury that the
9 foregoing is true and correct.

10
11 Executed at Covina, California, this 1st day
12 of October, 2005.

13
14
15 _____
JOLYNE K. ROBERTS
C.S.R. NO. 10823