

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of

**FOSS MARITIME COMPANY AND
PORT OF SEATTLE**

from an interpretation issued by the Director,
Department of Planning and Development

Hearing Examiner File Nos.
S-15-001; S-15-002

DECLARATION OF JOHN C.
McCULLOUGH

(Code Interpretation No. 15-001)

I, JOHN C. McCULLOUGH, under penalty of perjury under the laws of the State of
Washington, declare as follows:

1. I am an attorney with McCullough Hill, PS, attorneys for Foss Maritime
Company. I am competent to make this declaration based on my personal knowledge. Attached
to this Declaration are true and correct copies of the following documents:

2. Attached as Exhibit 1 is the relevant excerpts of the testimonies of Andy McKim
and Greg Englin, dated August 13, 2015. The excerpts included in Exhibit 1 are cited in Foss
Maritime's Post-Hearing Brief.

3. Attached as Exhibit 2 is the relevant excerpts of the testimony of Paul Gallagher,
dated August 25, 2015. The excerpts included in Exhibit 1 are cited in Foss Maritime's Post-

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1 Hearing Brief. The excerpts included in Exhibit 2 are cited in Foss Maritime's Post-Hearing
2 Brief.

3 4. Attached as Exhibit 3 is the relevant excerpts of the testimonies of Vince
4 O'Halloran, Jim Johnson, and Mark Knudsen, dated August 24, 2015. The excerpts included in
5 Exhibit 3 are cited in Foss Maritime's Post-Hearing Brief.
6

7 5. Attached as Exhibit 4 are the definitions of "transfer," "carrier," "intrinsic," and
8 "incidental" from the Webster's New Collegiate Dictionary (1981) from the Seattle Public
9 Library.
10

11 6. Attached as Exhibit 5 are the definitions of "strict construction" and "liberal
12 construction" from Black's Law Dictionary, Third Pocket Edition, 2006.

13 I declare under penalty of perjury under the laws of the State of Washington that the
14 foregoing is true and correct. Executed this 10th day of September, 2015, at Seattle, Washington.
15

16 
17 John C. McCullough
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EXHIBIT 1

1 BEFORE THE HEARINNG EXAMINER

2 CITY OF SEATTLE

3 In the Matter of the Appeal of) No. S-15-001
4 FOSS MARITIME COMPANY,) S-15-002
5)
6 from an interpretation by the)
7 Department of Planning and)
8 Development.)

9 VERBATIM TRANSCRIPT OF PROCEEDINGS

10 OF

11 AN EXCERPTED PORTION OF DAY 1 OF A HEARING
12 BEFORE THE HONORABLE ANNE WATANABE, HEARING EXAMINER

13 8/13/2015

14 APPEARANCES

15 For Foss Maritime: David R. West & John C. McCullough
16 Port of Seattle: Traci Goodwin, Patrick J. Schneider and
17 Adrian Winston

18 For DPD: Eleanor S. Baxendale

19 For Puget Soundkeeper/Earth Justice: Patti Goldman & Matthew Baca

20 For T-5: Molly Barker

21 Transcribed at the Request of the Seattle City Attorney

22 Transcribed by Brian Killgore

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1 (Proceedings of 8/13/2015)

2 (Excerpt begins after opening statements)

3 HEARING EXAMINER: Thank you.

4 Well I think then that we are ready to hear from the
5 first witness, and I guess Mr. West?

6 MR. WEST: We call Mr. McKim.

7 At this point we are going to steal one of the
8 microphones and slide it over to --

9 (Brief Pause in Proceedings)

10 HEARING EXAMINER: As soon as he gets his water, I
11 will swear him in.

12 All right, if you would raise your right hand?

13 ANDY MCKIM IS SWORN

14 HEARING EXAMINER: All right, and your witness,
15 Mr. West?

16 MR. WEST: Thank you.

17 * * * * *

18 D I R E C T E X A M I N A T I O N

19 BY MR. WEST:

20 Q. Mr. McKim, in front of you, you have a number of binders
21 there to your right as you can see, and those contain a
22 number of exhibits that have tabs on them that are numbered,
23 and as we go through the testimony today, I will be
24 referring to some of those documents, just to orient you.

25 All right?

1 on what is intrinsic to the function and could be allowed as
2 an accessory use, but the interpretation does focus on what
3 may or may not be moored at the cargo terminal.

4 Q. So going back to paragraph 7, which is your definition
5 paragraph on page 2, you believe this is not ambiguous,
6 correct?

7 A. Correct.

8 Q. And when performing an interpretation, your job as the
9 director's designee is to interpret the words in the
10 shoreline master program as the words are written, correct?

11 A. Correct.

12 Q. And so you used the language that is actually there in the
13 program, correct?

14 A. Correct.

15 Q. It is not your job to insert words into the definition,
16 correct?

17 A. That's correct.

18 Q. It is not your job to take things out of the definition,
19 correct?

20 A. That's correct.

21 Q. It is not your job to ignore things that are in the
22 definition, correct?

23 A. That's correct.

24 Q. Your job is to follow the rules of statutory interpretation
25 because that is what you're doing, correct?

1 A. Yes.

2 Q. So a primary role of statutory interpretation is to use the
3 plain language of the definition, correct?

4 A. That is correct.

5 Q. And are you aware of the last antecedent rule? Have you
6 ever heard of that?

7 A. I have heard of that, yes.

8 Q. When was the first time you heard about it?

9 A. I don't remember.

10 Q. Within the last week?

11 A. No.

12 Q. So you have heard of that rule before?

13 A. Yes.

14 Q. Okay.

15 Let's talk a little bit about your past experience.
16 You mentioned that you work for the city Department of
17 Planning and Development.

18 How long have you worked there?

19 A. 28 years.

20 Q. And you are the head of the group that issues formal
21 interpretations such as this one?

22 A. I am a provider in that group, yes.

23 Q. Okay.

24 You have supervised that group since 1990; is that
25 right?

1 A. Yes.

2 Q. And the port did provide you with information about what was
3 going to happen at terminal 5, correct?

4 A. Yes.

5 Q. And that was -- this here is -- exhibit number 3 is part of
6 the information you were provided; is that right?

7 A. Yes.

8 Q. And you read this information and did you consider it in
9 reaching your interpretation?

10 A. Yes.

11 Q. Do you remember who attended the meeting on behalf of the
12 port?

13 A. I don't recall specifically. I believe that George Blomberg
14 was there. I don't recall who else was there.

15 Q. Was Mike McLaughlin there?

16 A. I believe so, yes.

17 Q. And did you take notes at that meeting?

18 A. I did.

19 Q. Take a look at exhibit number F017 marked as exhibit number
20 4.

21 Are these your handwritten notes of the meeting?

22 A. Yes, and I'm sorry, I correct my previous answer. I believe
23 you asked about a Mike McLaughlin. My notes say Mike
24 Merritt.

25 Q. And do you recall now that it was Mr. Merritt who was there?

1 A. Yes.

2 Q. And let me just read a portion of these notes and make sure
3 I understand them correctly.

4 In the top center of the document there appears to be
5 the words T91 similar -- dash -- wintering fishing vessels.

6 Is that what that says?

7 A. Yes.

8 Q. And to the right of that it says, "Leave each summer, return
9 late fall."

10 Is that right?

11 A. Yes.

12 Q. And then a bit down further -- this is kind of towards the
13 bottom third of the page -- "Moorage of commercial vessels,
14 including those not" -- and the word not is underlined --
15 "transferring products is a typical" -- is that word
16 component?

17 A. Yes.

18 Q. Of the use of a cargo terminal?

19 A. Yes.

20 Q. Was this what Mr. Blomberg and Mr. Merritt told you?

21 A. I don't recall specifically who said this. I will often
22 write things down during a meeting just to stay on track, so
23 I don't recall who specifically said it, but this is
24 something that I would have just taken down in the course of
25 that meeting.

1 Q. And this letter was from Foss Maritime to you answering the
2 questions that you had asked about the activities at
3 terminal 5?

4 A. Yes.

5 Q. And after you received this, you asked for some additional
6 information regarding lay berthing or long-term moorage; is
7 that right?

8 A. I don't recall.

9 Q. Do you recall -- well, let's mark the exhibit number 22.

10 HEARING EXAMINER: We have it marked it as 9 in
11 our --

12 MR. WEST: Thank you.

13 HEARING EXAMINER: -- numbering.

14 Q. (By Mr. West) If you would look at Exhibit 22, please?

15 Have you got 22?

16 This is a letter that the port sent you in response to
17 an email message from you asking additional questions about
18 the moorage or storage of vessels at cargo terminals?

19 A. Yes.

20 Q. And the port gave you a host of information about that
21 topic, did they not?

22 A. They gave me -- yes, what is in this email.

23 Q. Did they also give you two declarations?

24 A. I don't recall.

25 Q. Let's look at F23, please, the declaration of George

1 Blomberg?

2 Did they give you that document?

3 A. Yes.

4 Q. Let's look at F24, exhibit number 11, I believe now.

5 HEARING EXAMINER: That's correct.

6 A. Yes.

7 Q. (By Mr. West) Did the port give you that exhibit?

8 A. Yes, I believe so.

9 Q. So this is the information that you had available to you
10 when you were performing the interpretation, correct?

11 A. Yes.

12 MR. WEST: So I will move for the admission of
13 exhibits 1 through 11 at this point.

14 MS. BAXENDALE: No objection.

15 HEARING EXAMINER: Okay, they are admitted.

16 MR. WEST: Thank you.

17 Q. (By Mr. West) So let's now go back to the process that you
18 undertook to prepare the interpretation with this
19 information you had.

20 Let's look at F008.

21 (Brief Pause in Proceedings)

22 Q. (By Mr. West) Is F008 a list of questions that you prepared?

23 A. Yes.

24 Q. And were those questions designed to help you get your mind
25 around what the issues were that needed to be addressed in

1 this particular interpretation?

2 A. Yes.

3 Q. And earlier -- could you look at exhibit number 2? That is
4 F2.

5 A. Yes.

6 Q. And this was again the draft that you had prepared, correct?

7 A. Yes.

8 Q. And this draft was prepared after you had gotten the port's
9 materials of April 15, correct, because it quotes from those
10 materials?

11 A. I don't recall.

12 Q. Okay. Well let's just take a look at that real quickly so
13 we can make sure we are all on the same page.

14 Exhibit number 2 is your initial draft, and on page 3
15 of that document with RFP 10000006 at the bottom there is a
16 paragraph that begins: "Based on information received from
17 the port, lay berthing," etc.; do you see that?

18 A. Yes.

19 Q. That was material that the port had supplied to you on April
20 15, the lay berthing information, correct?

21 A. Yes.

22 Q. So that would tell you this document was prepared after
23 April 15, right?

24 A. Yes.

25 Q. After you had received all of the information you had

1 requested from the port?

2 A. Yes.

3 Q. And in the interpretation in paragraph 3 of the findings of
4 fact, you describe the types of activities that Foss is
5 going to undertake at the terminal, correct?

6 You say, "The Foss representative said Foss intended to
7 receive and move goods, cargo, equipment, supplies, stores,
8 provisions and other materials on the vessel," etc.,
9 correct?

10 A. Yes.

11 Q. That was taken from the letter that Foss sent you; is that
12 right?

13 A. I don't recall.

14 Q. But you understood when you were preparing the
15 interpretation that Foss was going to load all of these
16 types of goods onto the oil rig itself, correct?

17 A. Yes, I believe so, yes.

18 Q. As far as you knew, there were no other vessels that were
19 going to load cargo, right?

20 A. Yes.

21 Q. So you understood that, but Foss had also told you that they
22 were going to load vessels onto other -- load cargo and
23 goods onto other material -- other vessels. Let me start
24 that question again.

25 Foss had also told you, had they not, that they were

1 going to load goods and container cargo onto other vessels,
2 correct?

3 A. I don't recall.

4 Q. Did you understand that Foss was going to load goods and
5 container cargo onto vessels that Foss owned or chartered
6 itself?

7 A. No, I don't believe I knew that at that time.

8 Q. Foss had told you that the vessels were going to arrive in
9 May, correct?

10 A. I don't recall specifically, no.

11 Q. You knew the vessels were going to arrive in May, though,
12 because you were trying to complete the interpretation
13 before they arrived?

14 A. That's correct.

15 Q. And in Foss's letters didn't they say that they would
16 receive materials at the dock to be loaded onto the vessels?

17 A. I don't recall.

18 Q. And didn't they say that they would load those materials for
19 several weeks?

20 A. I don't specifically recall that.

21 Q. Didn't they say that the vessels would leave in late May or
22 early June?

23 A. I would have to refer to the letter.

24 Q. None of that stuff is mentioned in the interpretation,
25 correct?

1 A. No.

2 Q. The moorage connected to the loading activity is not
3 mentioned in the interpretation at all?

4 A. Not specifically, no.

5 Q. But that is the information you asked Foss to supply,
6 correct? That is what Foss was going to do at the terminal?

7 A. Yes.

8 Q. And they gave you that information and you ignored it?

9 A. I didn't specifically put it in the interpretation.

10 Q. The port told you, in connection with lay berthing or long-
11 term moorage, that they charge fees to vessels that use its
12 facilities that don't load and unload, correct?

13 A. Yes.

14 Q. And that is a charge that is contained in their tariff? Is
15 that right?

16 A. Yes.

17 Q. And the tariff is a contract that applies to vessels that
18 use the port's facilities, correct?

19 A. I would have to take your word for that.

20 Q. Did the port tell you that vessels commonly lay berth at
21 their facilities?

22 A. I believe so, yes.

23 Q. Did they tell you that was a necessary part of their
24 business?

25 A. I don't recall.

1 Q. Correct?

2 So this three definition here of "good," is that what
3 you were using in interpreting the word "goods" --

4 A. Yes.

5 Q. -- in the cargo terminal?

6 A. Yes.

7 Q. Sorry.

8 A. That's all right.

9 Q. Try to finish my question before I ask you for an answer.

10 So going back then to exhibit number 2, which is your
11 draft, you cite one of those definitions here, right?

12 "Goods are something that has economic utility or satisfies
13 an economic want," correct?

14 I am on page 2 of Exhibit 2.

15 A. Yes.

16 Q. And you say, quote, "A broad range of items, including
17 exploratory drilling equipment can fall under the
18 definition of goods," correct?

19 A. Yes.

20 Q. And you say, "the definition of cargo terminal is broad
21 enough to include transportation of many different types of
22 freight in greatly differing quantities," correct?

23 A. Yes.

24 Q. And your conclusion at the last sentence: "The drilling rig
25 is within the range of items that might be managed at a

1 cargo terminal," correct?

2 A. Yes.

3 Q. That was your preliminary conclusion in this draft?

4 A. Yes.

5 Q. Okay.

6 And then you looked at the three options that are in
7 the definition; that is the goods be stored without
8 undergoing any manufacturing processes, transfer to other
9 carriers, or stored outdoors in order to transfer them to
10 other locations.

11 That is part of the definition of cargo terminal,
12 correct?

13 A. Yes.

14 Q. And you say "this provides three activities: Outdoor
15 storage without manufacturing, transfer to other carriers,
16 or outdoor storage pending transfer to other locations,"
17 correct?

18 A. Yes.

19 Q. If you would turn the page?

20 You state, quote: "The words 'in order to transfer
21 them to other locations' is meant to modify only the words
22 'stored outdoors.'

23 "This is clarified by the addition of a comma after
24 'carriers,' in the updated version of the code currently
25 being adopted." Close quote.

1 That is what you said there, right?

2 A. Yes.

3 Q. And let's just talk about that comma.

4 So did the city update its shoreline master program
5 recently?

6 A. Yes.

7 Q. And did that process take several years to accomplish?

8 A. Yes.

9 Q. And in the process of updating the shoreline master program
10 definition of cargo terminal, a comma was added to the
11 definition of cargo terminal, correct?

12 A. Yes.

13 Q. And that comma was added after the word "carriers" in the
14 definition, right?

15 A. Yes.

16 Q. So going back to page 2, which has part of the definition
17 there, "Will the goods be stored," in the original
18 definition in effect until June of this year, after the word
19 "carriers" there was no comma; is that right?

20 A. Yes.

21 Q. And after June of this year, a comma was inserted, correct?

22 A. Yes.

23 Q. And that was passed by the city council, correct?

24 A. Yes.

25 Q. And reviewed by the Department of Ecology, correct?

1 A. Yes.

2 Q. And sent out for public comment to everyone who cared about
3 reviewing the city's changes to its shoreline master
4 program?

5 A. I assume so.

6 Q. Now let's talk about the last antecedent rule.

7 You said you're familiar with it?

8 A. Yes.

9 Q. The last antecedent rule says that when there is a
10 qualifying phrase at the end of a list, that qualifying
11 phrase only applies to the last item in the list unless that
12 qualifying phrase is set off separately by a comma.
13 Correct?

14 A. Yes.

15 Q. And that is what you were doing here at the top of page 3.
16 You were applying the last antecedent rule, correct? You
17 were applying that last provision in the definition only to
18 the stored outdoor of the three items in the list, correct?

19 A. Yes.

20 Q. And that is a matter of statutory interpretation, --

21 A. Yes.

22 Q. -- that rule?

23 A. Yes.

24 Q. And were you applying that rule here when you applied --
25 when you interpreted what that meaning was?

1 A. Yes.

2 Q. And so the next paragraph there that reads: "In short" --
3 you concluded, "In short, based on this analysis,
4 transporting an item or items to a site and storing the item
5 or items at that site for a period is completely consistent
6 with the definition of cargo terminal under the code."
7 Correct?

8 A. Yes.

9 Q. And so from your perspective, at this time, what Foss was
10 describing doing, that was transporting items or items to
11 the site, storing them at the site for a period would be
12 operations of a cargo terminal? Is that right?

13 A. Yes.

14 Q. There would be no need for that cargo to be loaded onto a,
15 quote "cargo vessel," correct?

16 A. Yes.

17 Q. In fact that -- those items could be loaded onto any other
18 type of carrier, correct?

19 A. Yes.

20 Q. Under that interpretation?

21 A. Yes.

22 Q. And that was your initial conclusion?

23 A. Yes.

24 Q. And then the second half of this memorandum -- or excuse me,
25 let's say the third part of the memorandum, and it begins

1 with Roman three, looks at the question of whether or not
2 moorage is a proper accessory use to a cargo terminal
3 operation, correct?

4 A. Yes.

5 Q. And it includes, does it not, that moorage is in fact
6 appropriate as an accessory use at a cargo terminal?

7 A. Yes.

8 Q. I'm just going to quote: "We conclude that moorage of a
9 vessel such as the Shell Oil barge, with drilling equipment,
10 is permissible as accessory use as a cargo terminal."

11 That is what you concluded, correct?

12 A. Yes.

13 Q. And you said Shell Oil barge, you meant the Shell Oil rig,
14 correct?

15 A. Yes.

16 Q. So your initial conclusions were as follows:

17 "Number 1. An oil rig is within the range of
18 activities that might be managed at a cargo terminal,"
19 correct?

20 A. Yes.

21 Q. "The transfer clause, in order to transfer, only modifies
22 the third list of those elements," correct?

23 A. Yes.

24 Q. "Storing items to a site after they have been transported is
25 consistent with cargo terminal use," correct?

1 A. Yes.

2 Q. And "moorage, lay berthing is permissible as an accessory
3 use," correct?

4 A. Yes.

5 Q. And this document was written some time after April 15,
6 right?

7 A. Yes.

8 Q. The interpretation came out on May 4, correct?

9 A. Yes.

10 Q. That is when it was sent out to the public, correct?

11 A. That's correct.

12 Q. And the interpretation reverses all four of those
13 conclusions, doesn't it?

14 A. Yes.

15 Q. It concludes an oil rig can't be managed at a cargo
16 terminal, correct?

17 A. Correct.

18 Q. And that is based on the conclusion that the transfer
19 clause, in order to be transferred, modifies all three
20 options, correct?

21 A. Yes.

22 Q. And it modifies that, even though there was a comma added,
23 correct?

24 A. Yes.

25 Q. And it concludes that storing items on a site after they --

1 there has been -- after they have been transported is not
2 sufficient for cargo terminal use unless there are other
3 conditions that are met, which includes some activity in
4 connection with a vessel whose primary function is moving
5 cargo in commerce.

6 Is that a fair statement?

7 A. Yes.

8 Q. And it concludes that lay berthing, or long-term moorage of
9 the oil rig, is not allowed -- not an accessory use?

10 A. Yes.

11 Q. Okay.

12 All right, so before we go back to the interpretation,
13 let's -- let's finish up with some factual issues here.

14 You said neither the drilling rig nor the tugboats
15 would contain -- would carry container cargo.

16 That was an assumption of yours, you said?

17 A. Yes.

18 Q. And have you been provided with copies of the photographs
19 that have been designated as exhibits in this matter?

20 A. Yes.

21 Q. And have you looked at those photographs and seen the types
22 of materials that were in fact loaded at terminal 5?

23 A. I have seen photographs from terminal 5. I don't know
24 whether they were specifically there.

25 I was not on the site visit where they were taken, so I

1 don't know what representations were made about what they
2 were.

3 Q. You are talking about photographs that were taken by
4 enforcement personnel?

5 A. Yes.

6 Q. Have you seen any of the other photographs that were
7 designated by Foss as exhibits in this matter?

8 A. There were photographs. There have been photographs of the
9 site through the years.

10 Q. Well let me show you some photographs. I think that that
11 will make it a little easier.

12 Start with F61.

13 MS. BAXENDALE: I object as to foundation. We
14 don't know how these photographs were taken, when they were
15 taken. There is nothing to identify them -- no witnesses
16 identifying where they came from.

17 MR. WEST: As you might imagine, we are going to
18 lay our foundation with our witness who has knowledge of
19 that.

20 We will move to admit them when we move to admit them.
21 We are not doing that at this point.

22 HEARING EXAMINER: So they have been marked as
23 Exhibit 14.

24 Can you give me the number again, please?

25 MR. WEST: 14.

1 HEARING EXAMINER: No, no --

2 MR. WEST: 61.

3 HEARING EXAMINER: 61.

4 Q. (By Mr. West) Could you take a look through all of those
5 photographs that are marked as Exhibit 61 -- or excuse me,
6 Exhibit 14?

7 Thank you.

8 (Brief Pause in Proceedings)

9 Q. (By Mr. West) And actually let me ask you a question as you
10 are doing that, Mr. McKim.

11 Could you tell me if you see anything in those exhibits
12 that does not appear to be to you goods or container cargo?

13 MS. BAXENDALE: Objection, speculation.

14 HEARING EXAMINER: I am going to let him answer it
15 if he has an answer.

16 (Brief Pause in Proceedings)

17 A. I see pictures of a lot of items that could qualify under a
18 definition of goods.

19 At the end I see things that appear to be in
20 containers.

21 Q. (By Mr. West) So why don't we take a look, for example, at
22 page 14 of Exhibit 14?

23 Do you see there is a -- at the bottom photograph?

24 A. Yes.

25 Q. Would you describe the things that are on that trailer as

1 containers?

2 A. To the -- they are consistent with my understanding of
3 containers, yes.

4 Q. How about on page 15? Is that consistent with your
5 understanding of what constitutes a container?

6 A. Yes.

7 Q. And 16, is that consistent with what you understand to be a
8 container?

9 A. Yes.

10 Q. Looking at photograph -- page 1 shows pipe, right?

11 A. Yes, there's a lot of long tubular items --

12 Q. Okay.

13 A. -- I assume to be pipe.

14 Q. And would you agree that all of those tubular items qualify
15 as goods as that term is used in the definition of a cargo
16 terminal?

17 A. I would have to go back. I don't remember which exhibit the
18 definition was.

19 HEARING EXAMINER: Well our Exhibit 13. I
20 don't --

21 Q. (By Mr. West) 25. It is on tab 25.

22 (Brief Pause in Proceedings)

23 A. Yes, to the extent that they could be wares, commodities or
24 merchandise. They are at least something that has economic
25 utility.

1 Q. You would agree they are all personal property having
2 intrinsic value, correct?

3 A. They are that, yes.

4 Q. And that is actually the definition you used in the
5 interpretation, isn't it?

6 A. Was that what I used?

7 Q. 3B, "personal property having intrinsic value"?

8 (Brief Pause in Proceedings)

9 A. Yes.

10 Q. (By Mr. West) So again, all of the tubular items you see
11 there would qualify as goods under that definition?

12 A. Yes.

13 Q. And do you know whether or not any of the containers that
14 you have seen in this exhibit were actually loaded onto the
15 Polar Pioneer?

16 A. I don't know.

17 Q. I would like you to assume that a number of those items were
18 in fact loaded; that is the items in the containers, and I
19 would like you to assume that a number of the tubular items
20 were loaded on the containers.

21 Would you agree that if that was so that the Polar
22 Pioneer was loaded with goods and container cargo?

23 A. I would agree that they would qualify as goods under a
24 certain -- under one of those definitions, yes, and that
25 they were items in containers, as well, yes.

1 Q. All right.

2 Let's go back to exhibit F21, which is exhibit number 6
3 for the hearing examiner, which is the letter that Foss sent
4 you about what they were going to do at terminal 5.

5 Do you have 21 with you?

6 A. Yes.

7 Q. And I would like you to turn to the third to the last page
8 of that document, which is the second page of Foss's letter
9 to -- it has got 975 at the bottom.

10 Are you with me?

11 A. Yes, 8.

12 Q. All right. I am just going to read a portion of that third
13 paragraph that begins "we know."

14 "We expect two vessels, as well as ancillary support
15 fleet to call at terminal 5 in April, and Foss expects that
16 it will provide the services described above to these
17 vessels.

18 "Specifically, Foss intends to receive goods, cargo,
19 equipment, supplies, stores, provisions and other materials
20 from third parties who will deliver these items to terminal
21 5 by rail or truck.

22 "The materials will be staged on the terminal for
23 loading and Foss intends to load these items onto those
24 vessels for transportation to other locations.

25 "The loading activity is anticipated to take several

1 weeks and the vessels are expected to depart in late May or
2 early June 2015."

3 We will stop there and let me ask you, you did not
4 consider the information Foss provided you in this regard in
5 making the interpretation?

6 A. This was considered; however, I didn't necessarily accept
7 the characterization provided in the letter.

8 Q. You did not accept what Foss told you?

9 A. In terms of the central issue of the interpretation about
10 the purpose -- where it says "for transportation to other
11 locations."

12 I assumed that the letter writer was focusing on our
13 code definition, but as far as that interpretation, we have
14 apparently a different understanding about what that
15 language means.

16 Q. The writer was describing vessels, correct?

17 A. Yes.

18 Q. Two vessels as well as ancillary support fleet, correct?

19 A. Yes.

20 Q. Did you investigate what those vessels were?

21 A. I believe that my understanding of the vessels that they
22 were talking about were the ones that we had received -- we
23 had seen news reports about and interpretation. Our
24 assumption was that the vessels were the ones specifically
25 identified in the interpretation.

1 Q. So you are relying on use reports in determining what Foss
2 was going to do at terminal 5?

3 A. I was relying on use reports about the two main vessels that
4 we were talking about, yes.

5 Q. You're talking about the drill rigs?

6 A. Yes.

7 Q. The two drill rigs?

8 A. Yes.

9 Q. What about the ancillary support fleet?

10 A. I did not rely on news reports about those.

11 Q. All right, but you also didn't consider whether or not
12 loading or unloading of those vessels was appropriate,
13 correct?

14 A. I don't think that I specifically looked at that, no.

15 Q. Okay.

16 Foss told you, as well, that lay berthing is normal,
17 customary and an essential practice at marine cargo
18 terminals? Is that correct?

19 A. Yes.

20 Q. And you didn't accept that as true?

21 A. No.

22 I'm sorry, at cargo terminals specifically, no.

23 Q. Okay.

24 And you concluded in fact that lay berthing is not
25 intrinsic unless there is some cargo vessel involved,

1 correct?

2 A. Yes.

3 Q. And it has to be a cargo vessel that actually is loading or
4 unloading cargo, correct?

5 A. Yes.

6 Q. So if a cargo vessel comes to a cargo terminal without any
7 cargo in it, and doesn't load, and doesn't unload, it can't
8 moor at that cargo terminal, correct?

9 A. We would regard that as a moorage use, so yes, correct.

10 Q. It would not fall within the cargo terminal use?

11 A. Yes.

12 Q. They would need some other permit to do that?

13 A. That's correct.

14 Q. Okay.

15 And similarly, vessels that aren't cargo vessels at all
16 can't come and moor at cargo terminals for any purpose under
17 the cargo terminal use, correct?

18 A. Absent establishing the different or additional use there,
19 that is correct.

20 Q. So for example, they can't come and take crew on and off,
21 right, because they can't moor?

22 A. Right.

23 If it were related to, and I don't think that we got
24 into that in the interpretation, the question would be is
25 this something that is happening in relation to the

1 transportation of cargo, so you know if somebody were to
2 putter up in their motorboat in order to, you know, go to
3 their job associated with a cargo terminal, then you know I
4 don't think that we would have any objection with that being
5 ancillary to, or accessory, legitimate accessory activity
6 because this is associated otherwise with the activity of
7 the transportation of goods.

8 Q. Well let's talk about the types of vessels that do use cargo
9 terminals.

10 If a fishing boat wants to come up and load and unload
11 fishing nets at a cargo terminal, it can't do that because
12 it is not a cargo vessel, right?

13 A. If the purpose is to use those nets on that, or from that
14 fishing vessel, yes, you're right.

15 Q. It can't moor?

16 A. It could not moor under that use definition, yes.

17 Q. Short or long-term?

18 A. That's correct.

19 Q. And in fact if it came there with no purpose other than to
20 moor, it couldn't do that, correct?

21 A. That's correct.

22 Q. A NOAA vessel that uses sonar equipment, it couldn't load
23 and unload the sonar equipment at a cargo terminal, correct?

24 A. That's correct.

25 Q. Because that sonar equipment is used in its mission and not

1 delivered somewhere else, correct?

2 A. That's right.

3 Q. And also because the primary function of the vessel isn't as
4 a cargo vessel, right?

5 A. That's right.

6 Q. Okay.

7 And there are oil spill response vessels at cargo
8 terminals. These are vessels that make sure if there is an
9 oil spill, there is a vessel that goes out and lays a bunch
10 of boom out to contain the spill?

11 Those can't moor at cargo terminals either, can they?

12 A. That's right.

13 Q. And in fact they can't load and unload their boom and
14 absorbants and all the other things that they use at a cargo
15 terminal either, right?

16 A. That's right.

17 Q. Who at DPD is the expert on the operation of cargo
18 terminals?

19 A. I don't believe we have anybody with expertise in that
20 field.

21 Q. Do you have expertise in that field?

22 A. No.

23 Q. Do you have expertise on moorage?

24 A. No.

25 Q. Do you have expertise on the operation of cargo vessels?

1 A. No.

2 Q. Do you have expertise on the operation of any types of
3 commercial vessels?

4 A. No.

5 Q. Let's go back to the interpretation now, which is exhibit
6 number 1, and particularly to the definition of cargo
7 terminal, and that is set forth in section 7, correct, of
8 the findings of fact?

9 A. Yes.

10 Q. And you concluded in paragraph 6, which is on page 4, that
11 the unifying theme of this definition is that last phrase in
12 the first sentence: "In order to transfer them to other
13 locations," correct?

14 A. "In order to be transferred to other locations."

15 Q. To be transferred? Are we reading the same definition?

16 I am reading paragraph 7 of the interpretation. It
17 says, "in order to transfer them."

18 A. Yes, that's right. I paraphrased in conclusion number 6.

19 Q. Correct.

20 And if that last phrase, "in order to transfer them to
21 other locations," does not modify each of the three
22 paragraphs, or the three options ahead, there is no unifying
23 theme, correct?

24 A. Well other than being a transportation facility.

25 Q. Correct, and a transportation facility, as described here in

1 the interpretation, is something that would either support
2 or provide the means of moving cargo, correct?

3 A. Hmmm -- I would have to look at the definition of
4 transportation facility. I think it is broader than that.

5 (Brief Pause in Proceedings)

6 Q. It is also in the interpretation, I believe -- in the first
7 conclusion, as I recall.

8 (Brief Pause in Proceedings)

9 Q. (By Mr. West) So looking at Exhibit 2, the second page, "the
10 land use code defines transportation facility as, quote, 'a
11 use that supports or provides the means of transporting
12 people and/or goods from one location to another,'" correct?

13 A. Yes.

14 Q. So in other words, a transportation facility use does not
15 have to actually move -- there doesn't actually have to be
16 any movement of goods from one location, it merely has to
17 support that use, correct?

18 A. Yes.

19 Q. And a cargo terminal is a type of transportation facility,
20 right?

21 A. Yes.

22 Q. And you would agree with me, I assume, that storing items on
23 a dock will support the movement of those goods from one
24 location to another as set forth in the definition of
25 transportation facility?

1 A. Yes.

2 Q. All right.

3 So let's go back now to the definition of cargo
4 terminal and this unifying theme.

5 So in your initial draft, you concluded that that last
6 phrase did not qualify all three of the options, but in the
7 interpretation you decided otherwise; is that correct?

8 A. That's correct.

9 Q. And you decided to ignore the rule that you had previously
10 adopted regarding the last antecedent, correct?

11 A. I decided that other factors superseded the application of
12 that rule.

13 Q. And you reached that conclusion after several arguments with
14 city attorney staff, correct?

15 A. I know I said arguments; it's probably an exaggeration. We
16 had spirited discussions as we often do.

17 Q. So that's a yes?

18 A. Yes.

19 Q. All right.

20 And you don't remember discussing that particular point
21 with any other DPD staff, correct?

22 A. I don't specifically recall that, no.

23 Q. You don't recall, for example, discussing it with Mr. Mills
24 who is the person that you often run your interpretations
25 by, correct?

1 A. I don't recall, no.

2 Q. And you don't recall running that by either of your
3 supervisors, do you?

4 A. No.

5 Q. All right.

6 So in this instance, the only person that you can
7 recall discussing that with are lawyers in the city
8 attorney's office?

9 A. That's correct.

10 Q. And after those discussions, you reached a different
11 conclusion than you had reached in your draft; is that
12 right?

13 A. That's right.

14 Q. We talked earlier about the extra comma that was added in
15 this definition; so that comma in paragraph 7 of exhibit
16 number 1 where the cargo terminal description is, that is
17 the old definition, correct?

18 A. Yes.

19 Q. And the new definition inserts a comma after the word
20 "carriers," which is on the third line there?

21 A. Yes.

22 Q. And that comma then sets off the second clause from the
23 third clause, does it not?

24 A. Yes.

25 Q. But you ignored the addition of that comma in the

1 interpretation; is that right?

2 A. I concluded that it wasn't relevant.

3 Q. So you ignored it, correct?

4 MS. BAXENDALE: Objection.

5 HEARING EXAMINER: I will sustain the objection.

6 Q. (By Mr. West) You testified in your deposition that you
7 ignored it, did you not?

8 A. I don't recall.

9 Q. And if -- let's go through the definition, if one uses the
10 original interpretation that you have.

11 You agree that terminal 5 is a transportation facility
12 as it was going to be used by Foss, correct?

13 A. Yes.

14 Q. And you agree that the tubulars, and the other items that
15 you saw in those pictures constitute goods or containers,
16 correct?

17 A. Yes.

18 Q. And you agreed that they were stored there on terminal 5 as
19 shown by the photos, correct?

20 A. Yes.

21 Q. And they were stored, to your understanding, without
22 undergoing any manufacturing processes, correct?

23 A. Correct.

24 Q. And if one stops there and does not use your unifying theme,
25 jumping that -- two clauses forward -- that would be the end

1 of the analysis, correct? Foss's use would be a cargo
2 terminal use and would be permitted? Right?

3 A. Well if it was simply being stored on the site as a storage
4 yard, I don't know that I would agree that it was a
5 transportation facility, which would still be part of the
6 definition, so if there was -- if all that was happening on
7 the site was storage, without relation to any plan to
8 transfer or transport the materials, no, I wouldn't agree
9 that it would meet that definition.

10 Q. Because it doesn't fall within the definition of a
11 transportation facility at that point?

12 A. Yes.

13 Q. I thought you already agreed it was a transportation
14 facility?

15 A. I don't recall how you specifically worded the question
16 before.

17 Q. Let's go back to the definition of transportation facility.
18 That's in exhibit number 2 on page 2.

19 "A use that supports or provides the means of
20 transporting people and/or goods from one location to
21 another," correct?

22 A. That's correct.

23 Q. Storage supports the transportation of goods from one
24 location to another, correct?

25 A. It can.

1 Q. And for Foss to meet the definition of a transportation
2 facility, you are saying something actually has to move it
3 off of the facility?

4 A. Well I believe that the second time you asked the question
5 you were asking whether mere storage would qualify so long
6 as these are goods or container cargo and there is no
7 manufacturing process; that the mere storage would qualify
8 it under this definition, and I would not agree that it
9 would meet this definition because it still wouldn't be a
10 transportation facility at that point because it wouldn't be
11 supporting by the means of transporting -- something
12 wouldn't be supporting the transport if it is not being
13 transported.

14 Q. Well we don't know if it is -- we would have to determine
15 that, would we not?

16 A. That's correct.

17 Q. So if it was to be transported, then it would meet the
18 definition

19 A. Yes.

20 Q. And all of this material was in fact transported, correct?

21 A. I would have to take your word for that.

22 Q. Because you didn't check to find out?

23 A. You mean did I go visit terminal 5 after the Polar -- after
24 the rig had left? No, I did not.

25 Q. You didn't ask Foss the question, What is going to happen

1 transferred to other locations, correct?

2 A. Yes.

3 Q. And then later on in paragraph 11 talks about accessory
4 uses, and it says that "lay berthing of vessels otherwise
5 used for transporting goods in the stream of commerce may be
6 regarded as incidental and intrinsic to the function of a
7 cargo terminal."

8 Do you see that?

9 A. Yes.

10 Q. And when you say "vessels otherwise used for transporting
11 goods in the stream of commerce," you mean to say vessels
12 whose primary function is moving goods from one location to
13 another; is that right?

14 A. Yes.

15 Q. And this primary function test is one that then determines
16 what types of vessels can come to cargo terminals and what
17 type of vessels can't come to cargo terminals, correct?

18 A. Well in terms of types of vessels, I don't think that we are
19 talking about the physical nature of the vessel or, as I
20 believe I have said before, a rig versus a barge; that is
21 something different, or a yacht; what we are talking about
22 is how the vessel is used.

23 Q. So when we say different types of vessels, what we mean are
24 vessels that are used in different ways?

25 A. That's right.

1 Q. And that would be their function, correct? That's when we
2 say primary function of the vessel?

3 A. Yes.

4 Q. So the primary function of the vessel has to be to move
5 cargo from one place to another, in your estimation,
6 correct?

7 A. Yes.

8 Q. Tell me where that is in the definition of cargo terminal?

9 (Brief Pause in Proceedings)

10 A. The definition of cargo terminal talks about -- the words
11 being "in order to transfer them to other locations," so I
12 believed "in order to" as suggesting that that is the
13 purpose of the things being there, so if the facility
14 provides for things to be there in order to be transferred,
15 it is a cargo terminal use.

16 Q. (By Mr. West) Does that definition include the word vessel?

17 A. I don't think a cargo terminal necessarily has to be --
18 involve vessels. I think that you could have something that
19 would qualify under the general definitions of the code as a
20 cargo terminal, even if it was nowhere near the water.

21 Q. My question was much similar. Is the word vessel in the
22 definition?

23 A. No.

24 Q. Is the word primary function in the definition?

25 A. No.

1 Q. So this primary function test that you have adopted is not
2 in the definition; is that right?

3 A. It reflects our understanding of what the definition calls
4 for.

5 Q. Your understanding, that is DPD's understanding?

6 A. Yes.

7 Q. And that understanding, has that ever been the subject of a
8 public hearing?

9 A. Not that I know of.

10 Q. Was it ever adopted by the city council?

11 A. Not in so many words.

12 Q. Not in any words, correct? The primary function test has
13 never been identified to the city council as a test,
14 correct?

15 A. Not in so many words.

16 Q. Has it ever been presented to the Department of Ecology for
17 their approval as an ordinance or a use in the shoreline
18 master program?

19 A. Not in so many words.

20 Q. Has the public had any opportunity to weigh in on whether or
21 not the primary function test would work?

22 A. Not that I know of.

23 Q. Instead the primary function test was created by DPD by you;
24 is that right?

25 A. It reflects our understanding of what the definition calls

1 for.

2 Q. Well you were the only person who worked on the
3 interpretation, right?

4 A. No.

5 Q. Well the only other people were lawyers, right?

6 A. No, it was reviewed by others, as I believe I have testified
7 before.

8 I don't recall specifically what input I received from
9 others, but it has been discussed with others in the
10 department.

11 Q. So let's just be really clear, though. You don't remember
12 who reviewed it, right, other than the director?

13 Is that correct?

14 A. That's correct.

15 Q. You don't remember what input they gave you on any specific
16 topic, correct?

17 A. Yes.

18 Q. The only people you remember you put on a specific topic
19 were the lawyers?

20 A. Yes.

21 Q. And so besides the lawyers, you are the only person who can
22 stand up and say, Here is the reasoning?

23 MS. BAXENDALE: Objection, misstates the
24 testimony.

25 A. Because this is something that --

1 HEARING EXAMINER: Okay, let's wait a moment.

2 Ms. Baxendale, I'm sorry, you were objecting because he
3 was misstating the testimony?

4 You're going to have to take a step back for me.

5 MR. WEST: If he answers the question yes, then it
6 is true.

7 MS. BAXENDALE: You would have to read the
8 question back. When I heard it, it misstated his testimony.

9 I believe that he had testified that other people
10 had -- had reviewed the decision. He couldn't remember what
11 their specific contributions were, and from that you asked
12 him, So the only people who commented on this issue were the
13 lawyers, which is not what he testified to. He just said he
14 couldn't remember.

15 MR. WEST: Your honor, this is cross-examination.
16 I'm allowed to develop inconsistencies in the witness's own
17 testimony, and if the witness changes their testimony, that
18 goes to their credibility.

19 So it is not a proper objection to say it misstates the
20 testimony.

21 HEARING EXAMINER: I will overrule the objection
22 at this point. Go ahead.

23 Do you remember the question at this point --

24 WITNESS McKIM: No.

25 HEARING EXAMINER: -- Mr. McKim?

1 I don't either, so --

2 Q. (By Mr. West) The only person that you can testify from your
3 personal knowledge who commented specifically on this issue,
4 the primary function test, are yourself and the lawyers
5 because you don't remember what anybody else said, or who
6 they were?

7 A. That's correct.

8 Q. But you're sure that somebody else was involved?

9 A. Yes, the interpretation was reviewed by others who agreed
10 with the determination.

11 Q. Agreed with the result?

12 A. Yes.

13 Q. So let's take a couple of different types of vessels and
14 talk about this primary function test.

15 So let's take an offshore supply vessel. These are
16 vessels that are used to supply materials to offshore
17 facilities and they transport those materials from docks all
18 over the world.

19 Would that meet your definition of a vessel that has a
20 primary function of moving cargo or goods from one place to
21 another?

22 A. Yes.

23 Q. And would the offshore supply vessels that Foss loaded at
24 terminal 5 in May and June meet that definition?

25 A. If they were -- if they were loaded to transport materials

1 from terminal 5 to the oil rig, yes, they would.

2 Q. Do you know whether that happened? That is that they were
3 loaded to transport those materials to the oil rig?

4 A. I do not know what was loaded onto those versus what was
5 loaded onto the rig.

6 Q. Or what the purpose of the loading was?

7 A. That's correct.

8 Q. Let's take cargo barges. So these are barges that are
9 loaded at a cargo terminal and unloaded at some other
10 location, perhaps the oil rig?

11 Would that meet the primary fashion test in your mind?

12 A. Yes.

13 Q. And let's assume that the barges that were loaded at
14 terminal 5, and the offshore supply vessels that were loaded
15 at terminal 5, were loaded with exactly the same material
16 that was put onto the Polar Pioneer; that is, tubulars,
17 other goods, drilling materials, food, groceries,
18 provisions, equipment -- all the same material; all of that
19 material would constitute goods in your mind, correct?

20 A. Yes.

21 Q. And you would say that if that material is put onto an
22 offshore supply vessel to be delivered to the Polar Pioneer
23 in Alaska while it is sitting on location at its drill site,
24 it is a cargo vessel, correct?

25 A. Yes.

1 Q. And it can properly load and unload at terminal 5, correct?

2 A. Yes.

3 Q. And it can properly moor at terminal 5, long term, so long
4 as that is associated with a loading or unloading activity?

5 A. Yes.

6 Q. But the Polar Pioneer itself cannot do that because it
7 doesn't meet this primary function test; is that your
8 testimony?

9 A. Yes.

10 Q. And the reason why is because it has some other primary
11 function? Is that what you're saying?

12 A. I think beyond that, as I understand it, it is not being
13 used to transport something, the goods from one place to
14 another place, other than transporting things that would
15 actually be used on the Polar Pioneer or in association with
16 its function as a drill rig.

17 Q. And that understanding was developed from information
18 provided to you by Foss?

19 A. I don't recall where I obtained that understanding.

20 Q. In fact you never asked Foss that question, did you?

21 A. I don't recall.

22 Q. You never asked anybody that question, did you?

23 A. I don't recall.

24 Q. So your understanding of how an oil rig operates is based on
25 assumptions?

1 A. Yes.

2 Q. Newspaper articles?

3 A. I don't recall that the newspaper articles specifically
4 addressed how they operate.

5 Q. Are interpretations supposed to be based on assumptions?

6 A. No.

7 Q. And you had people available to you to tell you the facts,
8 right? You had my email, you communicated with Foss,
9 correct?

10 A. Correct.

11 Q. And you never asked, What is going to happen with this
12 material when it gets to the Arctic?

13 A. I don't recall having asked that, no.

14 Q. Okay.

15 So again let's assume that these tubulars, and other
16 materials, are going to be taken to a specific location by
17 the Polar Pioneer.

18 That specific location is licensed by the federal
19 government, and the Polar Pioneer stops and anchors itself
20 there, and then it puts all of that material into the ground
21 and leaves it there.

22 Is that transferring that material to another location?

23 A. In a broad sense, yes.

24 Q. In the sense used in the definition of a cargo terminal,
25 isn't that transferring it from one location to another?

1 A. Again the -- the reason -- the purpose is like in order
2 to -- it is in order to conduct a particular operation as
3 opposed to being in order to move the equipment, so I would
4 say no.

5 Q. I'm sorry, isn't the purpose of it coming here and loading
6 the material to transfer it up to the Arctic?

7 A. It is to -- to take it up there in order to use it there.

8 Q. And to -- and to transfer it into the ground, correct?

9 A. I would say that it is not a delivery as opposed -- I would
10 say it is a use rather than a delivery, so I wouldn't regard
11 that as a transfer, no.

12 Q. But you agree it is left there in the other location,
13 correct?

14 A. I again don't know.

15 Q. And the distinction between the operations of the OSV's and
16 the barges, the offshore supply vehicles and the barges, and
17 the rig itself, both of which contain -- carry the exact
18 same items, and both of which were loading those exact same
19 items at terminal 5, the only distinction is that the OSV's
20 and the barges put them onto the oil rig first? That makes
21 them qualify whereas the oil rig doesn't qualify?

22 A. That's correct.

23 Q. That is the only distinction?

24 A. Yes.

25 Q. So that all takes place 2000 miles away from terminal 5?

1 A. I don't know the exact distance, but --

2 Q. You can take my word for it; it is 2000 miles away. And
3 2000 miles away from the city of Seattle, correct?

4 A. That's right.

5 Q. And several days' if not weeks' distance of the vessel's
6 traveling up there, right?

7 A. I assume so.

8 Q. So your land use definition is based not on what the vessels
9 do here, it is based on what they're going to do months from
10 now 2000 miles away?

11 A. Yes.

12 Q. Let's take a fishing vessel. Let's take a regular old
13 fishing vessel that catches fish and transfers that fish to
14 what we call a tender. So a tender is a vessel that
15 transfers the fish to some processing facility.

16 So it doesn't do anything but catch the fish. Right?

17 A. Yes.

18 Q. That type of vessel can't moor at a cargo terminal, correct,
19 because it doesn't carry its cargo anywhere, just transfers
20 it at sea?

21 A. Okay, could you describe that again?

22 Q. Sure.

23 Fishing boat. It catches fish. It takes those fish
24 and it transfers it to another vessel at sea and it comes
25 back to port?

1 It can't moor at a cargo terminal because it is not
2 a -- it's primary function is not that of a cargo
3 terminal -- cargo vessel, correct?

4 A. Its function, with respect to the moorage, is not the
5 transfer of the goods, so no, that would not be a cargo
6 terminal use.

7 Q. Okay.

8 So let's add a factor to a different type of vessel.
9 Sometimes we call these factory trawlers.

10 So a factory trawler will catch fish, and then on board
11 it has a processing facility where it processes those fish,
12 and let's say it processes all that fish, and again it
13 transfers it to another carrier while at sea and it comes
14 back to Seattle to a cargo terminal. It can't moor at that
15 cargo terminal, correct?

16 A. Correct.

17 Q. All right.

18 Let's take a third scenario. That same vessel, factory
19 trawler, but instead of transferring its catch to another
20 vessel, it brings it back to Washington, and it delivers it
21 at the cargo terminal. It is still a fishing boat and a
22 processing boat.

23 Would it meet your primary function test of having a
24 primary function of transferring goods from one location to
25 another?

1 A. I think that is something that we would have to consider,
2 but I believe that a better case could be made that its
3 purpose was the transfer, so it is something that I -- we
4 have not specifically examined for purposes of this
5 interpretation.

6 Q. Well lots of vessels have multiple functions, correct?

7 A. Correct.

8 Q. And your test that you have developed here, the primary
9 function test, you have applied to the Polar Pioneer without
10 even knowing all of its functions, right?

11 A. That's correct.

12 Q. But you're not prepared to make a determination of what
13 happens on a fishing boat in the simple little scenario I
14 gave you?

15 A. That's right.

16 Q. In your deposition you said those vessels would be cargo
17 vessels, didn't you?

18 A. Yes, I believe I did.

19 Q. And you concluded that those vessels could in fact moor at
20 cargo terminals so long as they delivered their fish to that
21 particular cargo terminal, right?

22 A. Yes, I believe that there would be more support for saying
23 that they could be regarded as a cargo terminal use.

24 Q. So so long as they deliver at that terminal, they get to
25 moor; if they don't deliver at that terminal, they don't get

1 port's operations right now.

2 HEARING EXAMINER: Okay, so this is tying into
3 your argument that other people could ask for
4 interpretations and it becomes a competitive sort of --

5 MR. WEST: Correct.

6 HEARING EXAMINER: -- business issue?

7 MR. WEST: I have about five questions.

8 HEARING EXAMINER: Okay, I will allow you to --

9 MR. WEST: All right.

10 MR. McCULLOUGH: Could I interrupt for a second,
11 Ms. examiner?

12 Is the tape machine on? We are not showing --

13 HEARING EXAMINER: No, it is on. It is not -- it
14 is not displaying the time. In order for us to do that, we
15 would have to apparently restart the computer, and I would
16 rather not.

17 MR. McCULLOUGH: That's okay.

18 HEARING EXAMINER: Thank you, Mr. McCullough.

19 MR. WEST: Thank you.

20 Q. (By Mr. West) So I think -- let me make sure I got an answer
21 to the question.

22 Anyone can request an interpretation, correct?

23 A. That is my understanding. I don't have that code language
24 in front of me, but my -- my general understanding is that
25 anybody could request an interpretation.

1 to moorage -- or this was specifically relating to emergency
2 response boats, and so his analysis was not focused on what
3 was already there, how it should be categorized, and whether
4 it was consistent with the use permits.

5 Q. Since you've studied the permits at terminal 91 now, are you
6 aware of any permit there, besides the cargo terminal --
7 excuse me, the cargo facility permit, that would allow long-
8 term moorage of fishing boats and tugs and other large
9 vessels?

10 A. Not that I'm aware of, no.

11 Q. So it is either the cargo terminal use or nothing, right?

12 A. Exactly. Not that -- I don't know of anything else that
13 would be pointing to.

14 Q. All right.

15 Let's talk a little bit more again about the primary
16 function test as it is applicable to the Polar Pioneer and
17 the other vessels that are going up -- that have gone up now
18 to Alaska.

19 So just to remind you, earlier you said if an offshore
20 supply vessel or barge were to take on goods or container
21 cargo at terminal 5, and transport those goods or container
22 cargo to the Arctic, and transfer them to the Polar Pioneer,
23 then that offshore supply vessel or barge would be -- would
24 fit the primary function test, correct?

25 A. Correct.

1 Q. All right.

2 Let's take the situation where the Polar Pioneer loads
3 those same materials, transports them to the Arctic, and
4 then transfers some of those materials to the barges or the
5 offshore supply vessels as part of its operations.

6 Would that make the Polar Pioneer a cargo vessel under
7 your test?

8 A. Again I think that -- I think that we would have a look at,
9 again, what the -- getting back to the definition, what is
10 the purpose? What is the purpose of the moorage, and -- at
11 terminal 5? What purpose is that -- is the Polar Pioneer
12 being used for there, so I would say that, for example, that
13 if -- if we are loaded up with a bunch of stuff, and the
14 vast bulk of that stuff was being used, it was either
15 provisions or was being used as part of the function as a
16 drill rig as opposed to -- for the point of delivery, I
17 would still say that the primary function of that, if you
18 will, was not delivery.

19 Q. And you're not an expert on how these vessels operate?
20 Right?

21 A. No.

22 Q. In fact all the information you have about how the vessels
23 operate are assumptions, right?

24 A. What -- from -- yeah, from what I've read about -- yeah, the
25 materials that were submitted and -- but otherwise, yeah,

1 just a general understanding.

2 Q. And in order to find out how they actually operate, you
3 would have to ask people who know about it, people like
4 Foss, correct?

5 A. That's correct.

6 Q. And you didn't ask Foss?

7 A. I don't believe I asked that specifically, no.

8 MR. WEST: That's all the questions I have now,
9 but will reserve the right to re-call him on rebuttal.

10 HEARING EXAMINER: I don't know if -- if --

11 MR. SCHNEIDER: I have just a few.

12 HEARING EXAMINER: Okay.

13 * * * * *

14 C R O S S - E X A M I N A T I O N

15 BY MR. SCHNEIDER:

16 Q. Andy, the interpretation Foss -- I guess Exhibit 1 for the
17 hearing, it doesn't mention the primary function test,
18 correct?

19 (Brief Pause in Proceedings)

20 A. No, I don't think I used those words in the interpretation.

21 Q. (By Mr. Schneider) So why not? If that is the test, why
22 isn't it in the interpretation?

23 A. I think that the wording of primary function was more --
24 elaborated at my deposition -- as an explanation about how
25 we would differentiate between the activities at different

1 sorts of vessels, so it is one of those things in terms of
2 that particular wording. It was meant as explanatory --
3 when pressed in detail for six hours in my deposition.

4 Q. So does that mean the primary function test -- that
5 articulation of the test did not exist until after the
6 interpretation was issued?

7 A. I don't believe that we used that in so many words, but I
8 believe it is consistent with the interpretation.

9 Q. So that is your explanation provided after the
10 interpretation was issued in response to questions at the
11 deposition?

12 A. Yes.

13 Q. And but that is the test that the port should use going
14 forward in determining which vessels can and cannot moor at
15 cargo terminals?

16 A. I would say yes, which vessels would require -- could --
17 what activities would be permitted in association with
18 vessels moored at cargo terminals versus moored at -- or at
19 locations with additional or other permits established, yes.

20 Q. So if Greg Englin, who will testify after you, and is
21 responsible for moorage at T91 and a host of other places,
22 including portions of T5 not under lease to Foss, if he gets
23 a call from an agent saying a vessel is coming, and they
24 want to moor at a cargo terminal -- not to load and unload
25 cargo, but to lay berth or to do some minor repairs or

1 whatever -- then he needs to ask the agent what the primary
2 function of the vessel is and make that determination?

3 A. Yes, I would say specifically if they call and say, We just
4 want to come to the -- to take advantage of your moorage,
5 or, We just want to come in order to, you know, perform
6 repairs, the response would be that that is not associated
7 with the transportation of goods and it is not within the
8 range of what you can do at a cargo terminal.

9 Q. And I think you said earlier in response to some questions
10 from Mr. West that the primary function doesn't necessarily
11 have anything to do with what happens in the city of
12 Seattle; it could be what happens in an ocean 2000 miles
13 from here, correct?

14 A. Yes.

15 Q. Okay, and what standard should Mr. Englin use in deciding
16 what the primary function of a vessel is when he apparently
17 needs to inquire what it does anywhere on the planet?

18 A. Well it seems like -- yes, there is a possibility that, you
19 know, two similar vessels could do similar things at
20 terminal 91, or terminal 5, rather, and then depending on
21 what they're doing elsewhere, one of them might be
22 transporting goods within the meaning of the interpretation
23 and the other wouldn't be.

24 On the other hand if -- if you have some things like
25 the ones you described where the activity at terminal 5

1 doesn't involve either picking up or dropping off goods, I
2 think something like that clearly would not be a cargo
3 terminal use.

4 Q. Well again, I think my question was what standard should Mr.
5 Englin use if he has to determine the primary purpose of the
6 vessel, given all of its activities, anywhere on the planet?

7 Are there any such standards?

8 A. I don't know specifically what standards.

9 Q. And is it fair to say that if a vessel's right to moor in
10 Seattle depends on its primary purpose in the Arctic, there
11 is no difference in its effect in Seattle depending on what
12 its primary function is elsewhere?

13 It would be -- it could be moored here or not, have the
14 same impacts or not, depending on what happens somewhere
15 else.

16 A. Yeah, there may not a difference between one individual --
17 with one individual vessel between the impacts of moorage
18 versus the impacts of operating as a cargo terminal -- in
19 that sense -- but -- and in the larger sense, as a
20 general -- as a general thing, if you have multiple vessels
21 regularly coming back and forth, there would be a difference
22 between a facility that is used purely for moorage versus a
23 facility that is being used for loading and unloading of
24 goods.

25 Q. Well again, my question is if you -- if there is -- if a

1 vessel's right to moor depends on its primary function
2 somewhere else, there is no impact on the city of Seattle as
3 to how that decision is resolved -- how that question is
4 resolved, is there?

5 A. And what I'm saying is that the impact may differ little
6 with respect to an individual vessel, but in terms of the
7 general overall use, a facility where the vessels are all
8 there to be loaded and unloaded with cargo, and they are in
9 the stream of commerce would be different than the impacts
10 in Seattle of a facility that is used purely for moorage.

11 Q. Well if a vessel is here to moor, lay berth, it is going to
12 have fewer impacts on the city of Seattle, will it not, than
13 a vessel that is here to load or unload cargo?

14 A. I would generally agree with that, yes.

15 Q. Can we turn please to Foss 20? I forget what exhibit number
16 it has been given.

17 MR. WEST: 7.

18 Q. (By Mr. Snyder) Exhibit 7, and just to remind everyone, this
19 is Linda Styrk's memo to Diane and to you from April 6.

20 It is the document that I read from in my opening
21 statement, and I want to direct your attention to the last
22 paragraph on the second page of the memo -- where she lists,
23 under the heading "diversity of vessels and uses," different
24 kinds of vessels that moor at the cargo terminal T91, and I
25 want to ask you how each of those vessels, based on what you

1 know, would satisfy or fail the primary function test?

2 So the first type of vessel is a marine construction
3 vessel. Would that -- would its primary function be
4 transporting cargo in the stream of commerce?

5 HEARING EXAMINER: What page are we on?

6 MR. SCHNEIDER: It is the second page of Foss 70
7 at the bottom. It has the Bates stamp -- 96.

8 MR. WEST: Foss 19?

9 MR. SCHNEIDER: Excuse me, Foss 20.

10 MR. WEST: 20. Yeah.

11 MR. SCHNEIDER: Sorry.

12 Let me know when everyone is there.

13 Have you got it? Okay, I think we are all there.

14 Q. (By Mr. Schneider) So the first category is marine
15 construction vessel. For example, they are fairly common on
16 the waterfront with big cranes on barges as an example of
17 that?

18 Would that be a vessel whose primary function is
19 transporting cargo in the stream of commerce?

20 A. I would have an un- -- I don't have an expert opinion, not
21 being familiar with general practices about how those
22 vessels are used.

23 It would seem to me that if you have something that is
24 being used to transport something that it would be, if it is
25 something -- you know, for example, something that is taking

1 a pile out to drive it, or something like that, then that
2 seems like that would not be a cargo terminal use.

3 Q. So if the primary function of a construction vessel is
4 construction, it would fail the test, correct?

5 A. I would say so, yes.

6 Q. Okay.

7 And how about a cruise vessel?

8 A. Well cruise vessels, I think that we would probably
9 categorize that -- we would say that you're not carrying
10 cargo primarily, although there would be certainly
11 provisions involved with it -- that it probably would be
12 more appropriate at a passenger terminal.

13 Q. Okay, so it would fail the primary function test?

14 A. Yes.

15 Q. Okay.

16 And the MUP decision approving the cruise facility at
17 T91 talked about how there were vessel calls by cruise ships
18 before that MUP was issued, correct?

19 A. I believe so, yes.

20 Q. Okay.

21 How about state ferries? Would they fail or pass the
22 primary function test?

23 A. I don't know. I think that would be something that we would
24 have to discuss.

25 Q. Why don't you know? How could their primary function be the

1 transporting of cargo in the stream of commerce?

2 A. Well they are transporting, generally transporting
3 passengers, again, or -- so you know I would say that they
4 probably also would be a passenger terminal rather than
5 cargo terminal.

6 Q. Okay, how about government vessels? For example, we are
7 going to hear from Mr. Englin that -- that -- what are
8 called ships of state, foreign flagged vessels come and moor
9 at cargo terminals -- for Seafair or other purposes.

10 Would they fail or pass the test?

11 A. Based on my understanding, I would say that would not be --
12 that they wouldn't be involved in the transport of cargo and
13 they wouldn't belong at a cargo terminal.

14 Q. Okay.

15 Now how about -- the next category is tugs and barges.
16 Let's focus just on tugs.

17 Under what circumstances using the primary function
18 test can a tug moor at a cargo terminal?

19 A. Well I think that we have talked about tugs as potential
20 accessory use, so if you had a tug that was assisting
21 vessels that were there to transport cargo, it would be
22 appropriate at a cargo terminal because it would be
23 assisting something with the primary function of
24 transporting cargo.

25 Q. So if the tug is there lay berthing, awaiting its next call,

1 then it wouldn't be consistent with a cargo terminal use?

2 A. Well I think that we have also said that lay berthing of
3 things that otherwise belong at cargo terminals is regarded
4 as -- as an intrinsic to a cargo terminal use, and so that
5 it would be permissible.

6 Q. So if a tug was used to assist into a birth somewhere a non-
7 cargo vessel, then it couldn't moor at that cargo terminal?

8 A. Well, that would be one that -- I mean you could -- I would
9 say on that day it wasn't being used in that manner.

10 If you have a tug that is routinely used and normally
11 used for assisting cargo vessels, it would normally be
12 permissible at a cargo terminal, I would say yes; the use
13 otherwise as assisting something that is not cargo -- that
14 is not bearing cargo would not be a cargo terminal use.

15 Q. Well, I am going to make an assumption here.

16 Let's assume that tugs assist every possible -- every
17 imaginable kind of vessel. So how do those types know
18 whether they can moor any cargo terminal or not?

19 A. Well I mean I guess the bottom line is if the things that
20 they are assisting are limited to legitimate cargo vessels,
21 then there is no problem with the tug.

22 If the things that they are assisting are -- include
23 other types of vessels, then the main problem is those other
24 types of vessels as opposed to the tug.

25 Q. So does it follow from what you just said that Foss or

1 Crowley -- tug companies would need to divide their vessels
2 into those that assist cargo vessels and those that don't in
3 order to know which ones could moor at a cargo terminal?

4 A. No, I would say if they are in the business of providing
5 both moorage associated with cargo terminal use of
6 transportation of goods, as we have described it, and also
7 that they use the facility or provided the facility moorage
8 on a commercial basis or a -- you know, things that aren't
9 cargo vessels, then it would be reasonable, and if they get
10 permits establishing both of those things, then the tug
11 could do either of both of those things.

12 Q. Well again my question is about -- not what -- about future
13 permits someone might obtain, but right now at a cargo
14 terminal using the primary function test, wouldn't Foss and
15 Crowley have to divide the sheep from the goats -- the tugs
16 that assist cargo vessels from those that don't?

17 A. Well I think the bottom line would be that they just
18 couldn't have the goats unless they established -- got a
19 permit for the goats.

20 Q. So the answer then is yes, vessels -- tugs cannot moor at a
21 cargo terminal under the interpretation if those tugs are
22 assisting vessels that aren't -- that don't pass the primary
23 function test?

24 Is that fair?

25 A. Yeah.

1 What I am saying is that if you have a cargo terminal
2 and -- yeah, you can't have vessels that aren't carrying
3 cargo or else -- cargo or vessels -- or else vessels that
4 are assisting vessels that carry cargo.

5 Q. Okay.

6 How about icebreakers, pass or fail the primary
7 function test?

8 A. My again uneducated understanding would be that an
9 icebreaker, that the function is not to carry cargo, and
10 therefore that it wouldn't be a cargo terminal use. A
11 different moorage use should be established for it.

12 Q. Okay, the next category is offshore oil supply vessels.

13 I think you responded to a question from Mr. West about
14 those and indicated that they would pass the test?

15 A. Yes, if they are carrying -- carrying products from here to
16 an offshore oil drilling facility, that would be a
17 legitimate cargo terminal use.

18 Q. Okay, so if they were carrying supplies up to the Polar
19 Pioneer in the Arctic, that would be okay?

20 A. Yes.

21 Q. And now we get to ships of state, which I sort of lumped in
22 with the government vessels earlier, and your answer to that
23 is?

24 A. Again, you know, as I have said, I am not an expert in what
25 happens on any of these types of vessels, but based on my

1 understanding of what a ship of state is, it is not there to
2 pick up or deliver products, and so it would not be a cargo
3 terminal use.

4 Q. Okay.

5 So research vessels? For example, we will hear from
6 Mr. Englin that one of the vessels that is moored today at
7 T91 is the Tommy Thompson. It is a research vessel operated
8 by the University of Washington.

9 Does it pass or fail the primary function test?

10 A. I would say that that would not be a cargo terminal.

11 Q. How about diving vessels?

12 A. Again, I don't believe that that would be a cargo terminal
13 use.

14 Q. Oil spill response vessels?

15 A. No, I don't believe that would be, either.

16 Q. Pilot vessels?

17 A. I don't know what that is.

18 Q. A pilot vessel is a vessel that takes a harbor pilot out to
19 meet an ongoing ocean vessel. The pilot is on the vessel
20 and then brings it into its birth.

21 A. I suppose if the pilot vessel were being used in conjunction
22 with bringing a vessel carrying cargo to that particular
23 facility, it would be similar to a tugboat being used to
24 assist a cargo vessel, so it might be allowed as an
25 accessory use.

1 Q. So it would depend on the vessel that the pilot was going to
2 pilot?

3 A. Yes, and with the assumption that it is being brought to
4 that same location.

5 Q. Okay.

6 How about a seismic vessel? Again, a kind of
7 government research vessel?

8 A. Right. I assume that would be like a research vessel.

9 Q. So it would not be allowed to moor at a cargo terminal
10 because it fails the primary function test?

11 A. That's correct.

12 Q. Now to my ears things got a little confused a while ago when
13 you and Mr. West were having a colloquy, and I thought you
14 started applying the primary function test to the uses at
15 the cargo terminal, but in fact -- correct me if I'm
16 wrong -- it is the test that you believe determines -- that
17 applies to the vessel, correct?

18 A. What we are looking at is what -- what is the primary
19 function of the moorage and at that call, so if you are --
20 you know, if the primary function, when they are mooring
21 there, is to -- is to transport goods, then it would be --
22 then that activity is appropriately categorized as a cargo
23 terminal use.

24 Q. What you just said contradicts what you said earlier, that
25 the primary function would depend on -- not what it was

1 into, the interpretation, for example, was the -- the
2 general nature of the shoreline code.

3 The shoreline code is -- the way it is worded, there is
4 actually a code provision near the beginning of it.

5 When I talk about the shoreline code, I mean chapter
6 23.60, the Seattle Shoreline Master Program; that there is
7 language at the front of it that says it is supposed to be
8 liberally construed to achieve its intent and its effect,
9 which we read as, you know, apply it strictly to achieve,
10 you know, particular things specific to the shoreline, so we
11 are more stringent in how we apply the code standards in the
12 shoreline because of that -- so in that context -- you know,
13 for example.

14 Q. Going back and looking at the definition of cargo terminal,
15 which is in Foss 1 -- which is your interpretation -- and
16 page 2, paragraph 7 --

17 (Brief Pause in Proceedings)

18 Q. (By Ms. Baxendale) You concluded ultimately that the phrase
19 "in order to transfer them to other locations" applied to
20 the list of actions where -- that preceded it in that
21 sentence; is that correct?

22 A. That is correct.

23 Q. What happens if that phrase is not applied to the first
24 part, which is "stored without undergoing any
25 manufacturing"?

1 If you just read it as "stored without undergoing any
2 manufacturing"?

3 A. Well I think that would really be no different than
4 warehoused -- whatever kind of goods -- and I think what we
5 intend to regulate by cargo terminal is actually something
6 that is associated with being transferred to other
7 locations.

8 I think this is -- particularly -- that is ultimately
9 what we concluded in the interpretation.

10 This is particularly the case in the shoreline where in
11 order to even be in that location, as a general rule under
12 the shoreline, you need uses that are water dependent, or
13 water related, so if you had something that, you know,
14 wasn't there, in order to be transferred to another
15 location, and presumably either arriving or leaving by
16 water, then it wouldn't be consistent with what is desired
17 under the shoreline code.

18 Q. Is a storage use different from a transportation use in
19 terms of how they are regulated? Are they --

20 A. Oh, well yes, certainly. Yeah, storage would be a
21 warehouse. You know if it were -- or else outdoor storage.

22 On its own, it wouldn't be water related or water
23 dependent because on its own if all you're doing is storing,
24 then you are not -- you don't need to be water --

25 Q. Historically different category views from transportation?

1 A. Yes.

2 Q. You and Mr. West spent some time talking about goods, and I
3 want to go back through and maybe see if we can parse it so
4 that it is more crystal-clear.

5 So cargo terminal -- so a cargo terminal warehouse is a
6 transportation use?

7 A. Yes.

8 Q. And is it a transportation use that involves goods?

9 A. Yes.

10 Q. Do the goods need to be connected to transportation?

11 A. Yeah. I mean in order to qualify here, and as we have read
12 the interpretation, it has to be stored in order to be
13 transferred to another location, and also -- yeah.

14 Q. So might coffee be goods?

15 A. It might.

16 Q. If coffee is put on the vessel, and the vessel delivers the
17 coffee to a place where it is sold, is that a transportation
18 use?

19 A. Yes.

20 Q. And if the coffee is put on a vessel, and the vessel
21 delivers the coffee to a place where it is put on a train
22 and taken away, is that a transportation use?

23 A. Yes.

24 Q. If the coffee is put on the vessel and the crew consumes it,
25 is that a transportation use?

1 taking to generally -- my general understanding is that they
2 are uniform size boxes that we see when we look out at the
3 harbor -- that that would be, you know, what you would
4 expect.

5 Q. And could that be partially because it is obvious that these
6 are businesses engaged in moving things from one place to
7 another?

8 A. Right.

9 You know I -- I think that's what I meant to say
10 earlier, that you know in -- in many cases it should be
11 clear, it should be obvious from what is happening here what
12 the purpose of that vessel and trip is.

13 Q. Now Mr. West asked you about items that the vessels might
14 leave in the ground, I believe.

15 Do you remember that?

16 A. Yes.

17 Q. Okay.

18 Let's assume that the place they are leaving those
19 pipes or casings or tubulars, I think, in the ground, is a
20 place that they are leasing and that they plan to return to,
21 so if we can just assume that for my next question.

22 Does that sound to you like a transfer under the
23 definition of a cargo terminal?

24 A. Well I think that it is being -- yes, we got into the
25 difference between transfer and transport, but yes, I

1 believe that they would be -- that that would be
2 transferring those things to that location.

3 Q. Would it be transferring possession at all?

4 A. No. I mean assuming that they lease that space, it is still
5 their own, and they have just placed it there.

6 Q. One last question for you -- just about provisioning.

7 Is your understanding -- perhaps you don't know the
8 answer because you're not an expert about container ships,
9 but to the extent you know, is your understanding that they
10 use cargo terminals to exclusively load up to provision for
11 a voyage?

12 A. So the idea is that a vessel that already has containers on
13 it just stops by a particular location to refuel or pick up
14 more coffee and breakfast cereal?

15 Q. Right?

16 A. I think that that particular use -- I don't believe would be
17 the -- would fall under this.

18 This actually talks about -- you know, under the rest
19 of it, I mean you have quantities of goods being stored,
20 transferred or stored outdoors in order to be transferred to
21 other locations.

22 I think that -- no, I don't believe that that would be
23 consistent with that.

24 Q. All right.

25 MR. BACA: I have no further questions.

1 HEARING EXAMINER: We will just call it port
2 Exhibit 1, port exhibit --

3 MR. SCHNEIDER: Right. Thank you.

4 And just for orientation, these are port exhibits 23
5 and 24, 23 being on the right, and we will talk about those
6 shortly.

7 * * * * *

8 D I R E C T E X A M I N A T I O N

9 BY MR. SCHNEIDER:

10 Q. So Mr. Englin, would you state your name and spell it?

11 HEARING EXAMINER: I will swear him in.

12 GREG ENGLIN IS SWORN

13 HEARING EXAMINER: Your witness, Mr. Schneider.

14 MR. SCHNEIDER: Thank you.

15 Q. (By Mr. Schneider) Mr. Englin, would you spell your name for
16 us, please?

17 A. E-N-G-L-I-N.

18 Q. And what is your position?

19 A. Manager of maritime operations for the Port of Seattle.

20 Q. Port of Seattle?

21 What are your responsibilities in a general way as
22 manager of maritime operations?

23 A. Basically I manage the outer harbor for assets that we
24 manage directly on behalf of the Port of Seattle, including
25 some assets up the Duwamish River.

1 Q. Is the dockage fee different at the mooring bollards than it
2 is at a cargo terminal?

3 A. Yes.

4 Q. Why and how much?

5 A. Well it can vary. It is significantly different because the
6 functionality of the moorage dolphin system is much less
7 than if you are alongside of an apron at a pier, which gives
8 you a lot more ability to conduct other operations and ship
9 repair provisioning, crewing. It is just much easier when
10 you are alongside the dock.

11 Q. Okay, and can you use examples of ships that would come to
12 one of the port's facilities -- let's now move on from
13 mooring dolphins, but to an actual cargo terminal -- and
14 just be charged dockage, and not any other fees?

15 Can you give us examples of why a ship would come in
16 and only be charged dockage?

17 A. Yeah, we do it all the time.

18 We have barges that come in that don't have any product
19 on board, don't have any operations. They're just -- it is
20 just lay berthed.

21 They come in and they are waiting to go into a shipyard
22 somewhere.

23 We have tugs that come in.

24 The locks are -- the Ballard locks are closed and they
25 can't get into their shipyard -- into the north lake. They

1 will call us and they just want to tie up alongside the
2 pier.

3 Factory trawlers come in and they are not going to
4 discharge any product. They discharge -- let's say American
5 Seafoods would have discharged product up in Bellingham, and
6 they come down and they lay up for a few months until the
7 next season opens up and then fix the vessel, provision,
8 back load all of the materials and supplies that they need.

9 The same with -- there is a lot of seasonality in the
10 maritime industry, so you will get vessels that will come
11 down from Alaska and the season is over and now it is time
12 to repair the vessel and give people time off. And they
13 need lay berthing, so they call us up all the time.

14 Sometimes people come over to the mooring dolphins, lay
15 up there because they're waiting to go up the Duwamish up to
16 another facility in order to transload all the cargo.

17 So we will get Alaska Marine Lines, for instance, comes
18 down with all the frozen salmon and seafood products from
19 Alaska, and materials, and they will just -- they will tie
20 up at a mooring dolphin, or they might come into a facility
21 and tie up in some instances.

22 Q. But their purpose is not to load or unload at that facility,
23 but to await going somewhere else?

24 A. Correct.

25 Q. Now you referred to offloading of fish product in

1 Bellingham, and then the vessel, here.

2 Why does that happen?

3 A. Because they have certain conditions -- they have negotiated
4 certain rates and conditions with the Port of Bellingham and
5 with the stevedores and their cargo, the cargo ship
6 operators to transload their product up in Bellingham rather
7 than trying to -- to do it down here at the Port of Seattle,
8 or any facilities down here.

9 Q. Then why, after they have offloaded their cargo in
10 Bellingham, why then do they come to Seattle?

11 A. Well it is one of the best hubs internationally in the world
12 for supporting very complex maritime vessels.

13 You have ship repair. You can access crew if you have
14 to recruit people. You can go into a shipyard in this area,
15 so you can just conduct all these operations in preparation
16 to be able to maintain and keep that vessel operating in
17 harsh conditions.

18 Q. If a -- can you identify specific businesses that use that
19 business model of offloading somewhere else and then coming
20 to Seattle just for moorage?

21 A. Well American Seafoods has a fleet of I think seven factory
22 trawlers. They do it.

23 We have US Seafoods. They come in with their whole
24 fleet and have done the same thing. They don't usually --
25 they don't offload usually at our facilities.

1 I have tug and barges. I mean we have articulated tug
2 and barges -- they are called ATB's is the acronym of these
3 large tank barges. They come in and they do their repair
4 here. They will have inspections done here by the US Coast
5 Guard, and then they will depart and actually go into
6 service at some point, but they may be just laid up for any
7 period of time before they are under contract to go north.

8 We have offshore vessels that come in. We have --

9 Q. What do you mean by offshore vessels?

10 A. Offshore vessels would be like offshore supply vessels. It
11 is kind of a -- it is an overall term. There is actually
12 offshore supply vessels, which we saw like at terminal 5,
13 but we have them at 91. We have almost -- the Harvey Gulf
14 vessels, Edison Schweiz -- the Aiviq came over.

15 So they come over and they -- so for instance they were
16 getting -- they were -- the Aiviq came over. They just had
17 a couple of US Coast Guard admirals that were coming to
18 inspect the vessel and take a look at it before it left and
19 was going to transit up to the Arctic.

20 They just came over to pier 91 and just to take a look
21 around and see the vessel firsthand.

22 But we have a number of vessels that will come over for
23 inspections.

24 We have seismic vessels. We have research vessels that
25 come in. We have the NOAA ships coming over -- I think

1 this -- within a few days. We have the Bell Shimada NOAA
2 vessel, research vessel coming in -- and they're not -- we
3 have the University of Washington Thomas G. Thompson at the
4 end of pier 91 right now.

5 They are loading on an ROV. It is not -- it is a
6 remotely operated vehicle, like a small sub that's tethered
7 for research.

8 So that is all commonplace.

9 Q. So are they loading that research submarine to take it
10 somewhere else, or to use it?

11 A. They just use it out here and they will -- they will train
12 people on it, and -- on the use of it, and then they will
13 bring it back in and they will also test the government
14 for -- under contract to private contractors in some cases,
15 so they can take it out and test it before they send it out
16 somewhere.

17 So no, they are just -- it is not for the -- it is not
18 cargo and it is -- it is certainly not cargo, and it is --
19 it is more just a scientific expedition.

20 They also take crew on.

21 The Coast Guard comes over. They just recently
22 did a short -- well what they did was they wanted all of the
23 families, because they were going to deploy a Coast Guard
24 cutter for a long cruise.

25 All of the families get on board over at our terminal.

1 They steam over to the US Coast Guard headquarters and then
2 they unload them, but they get to see the vessel before they
3 go to sea.

4 We host Seafair, as you guys all know. We just got
5 done with that.

6 Q. What do you mean by hosting Seafair?

7 A. So we have -- so we call it Fleet Week, so the U.S. Navy,
8 they come into the various facilities around the outer
9 harbor, and it is -- it is an opportunity for families to
10 get together.

11 A lot of times they are coming off of a long cruise,
12 and so then they end the cruise here in Seattle and steam in
13 and tie up, and then it is an opportunity for all of the
14 public to basically see some of the various U.S. Navy
15 vessels, as well as Canadian Navy vessels, Canadian Coast
16 Guard vessels, and our own, of course, Coast Guard vessels.

17 Q. Okay, so if a vessel comes in and lay berths, and -- how
18 common is it for a vessel in that situation to be doing
19 maintenance?

20 A. Maintenance is ongoing and ever present. It is -- basically
21 it is -- the assumption is that they are going to be
22 conducting maintenance almost all the time on any vessel.

23 You have to maintain those vessels in order for them to
24 be able to operate, and it is just like any plant and
25 equipment. You have people on the vessel that are trying to

C E R T I F I C A T E

I, Brian Killgore, do hereby certify:

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EXHIBIT 2

1 BEFORE THE HEARING EXAMINER
2 FOR THE CITY OF SEATTLE

3

4 In the Matter of the Appeals of:)

5 FOSS MARITIME COMPANY AND) Hearing Examiner File Nos.

6 PORT OF SEATTLE) S-15-001; S-15-002

7 from an interpretation) (Directors Interpretation

8 issued by the Director) 15-001)

9 Department of Planning)

10 and Development)

11

12 Administrative Hearing - Testimony of Paul Gallagher

13 before

14 HEARING EXAMINER ANNE WATANABE

15

16

17 August 25, 2015

18

19

20

21

22 TRANSCRIBED BY: Bonnie Reed, CETD and Marjorie Jackson, CETD

23 Reed Jackson Watkins

24 Court-Certified Transcription

25 206.624.3005

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PAUL GALLAGHER

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August 25, 2015

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(8:59:36)

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HEARING EXAMINER: Good morning, Mr. Gallagher. I need to swear you in, so if you could raise your right hand. Do you swear or affirm that the testimony you'll present is true? If so, say, I do.

9

THE WITNESS: I do.

10

HEARING EXAMINER: All right. Your witness, Mr. West.

11

MR. WEST: Thank you.

12

13

PAUL GALLAGHER,

Witness herein, having first been duly sworn on oath, was examined and testified as follows:

14

15

16

17

D I R E C T E X A M I N A T I O N

18

BY MR. WEST:

19

Q. Mr. Gallagher, could you spell your last name for the record?

20

21

A. My last name is Gallagher, G-A-L-L-A-G-H-E-R.

22

Q. And who is your current employer?

23

A. I work for Foss Maritime Company.

24

Q. What's your title at Foss?

25

A. I'm vice president of terminal services.

1 5.1?

2 A. No.

3 Q. All right. So let's go back then and talk a little bit
4 about the Shell fleet and the project that Foss and its
5 affiliate companies were undertaking. Could you describe
6 what that project involved?

7 A. Sure. We're only one of a variety of subcontractors that
8 support the client in this project. And the project is very
9 complicated, so there's a lot of moving pieces and a lot of
10 things that are dynamic and happening in this project and we
11 only sort of perform our small part.

12 Q. And what does your part involve?

13 A. So Foss Maritime as a whole provides marine transportation
14 services and tugboats to support the fleet of vessels and
15 that's what we've really been doing since about 2009. We
16 have tugs and barges that support Shell in their efforts.
17 So we move cargo for them, we push vessels around, we tow
18 vessels if they need their -- need to be moved. We're also
19 there in case of an emergency to support them. And then we
20 have some barges that give them supplies, give them cargo,
21 and then we take different things back at the end of the
22 season for them; sometimes that involves water, sometimes
23 that involves drill cuttings from the sea floor, depending
24 upon where they're working.

25 My specific focus is working on the terminal side

1 providing them a place where they can come tie up the vessel
2 safely, move people on and off and load cargo back and
3 forth.

4 Q. Okay. And how many vessels are involved in this effort for
5 Shell?

6 A. I believe as of today it's approximately 30 vessels. Now
7 some vessels might come and go for a short period of time,
8 for, you know, a few weeks, but for the most part, some of
9 those vessels travel from as far away as Sweden and Finland
10 or Singapore and Malaysia to work on the project and then
11 they may leave when the project is over. So right now I
12 think the number is 30 large vessels.

13 Q. How many of those vessels called, that is cane (phonetic)
14 and moored at Terminal 5 this year?

15 A. I don't have the exact list in front of me, but out of the
16 30 vessels, I believe maybe eight -- seven or eight. I'd
17 have to go back through our notes and see.

18 Q. Okay. So let's talk about some of those vessels just to
19 identify them and their characteristics.

20 A. Sure.

21 Q. So was one of those vessels the Polar Pioneer?

22 A. Yes, sir.

23 Q. So tell me about the Polar Pioneer, what is it?

24 A. The Polar Pioneer is a large -- referred to a mobile
25 offshore drilling unit. So it is a large vessel. That

1 vessel has thrusters, the vessel has approximately 114
2 people that live aboard, and her job is to travel around the
3 world and drill exploratory holes looking for things. Her
4 career has been primarily in Norway where she's drilled more
5 than half the holes in the Arctic looking for oil and gas.
6 She's done that safely and without incident. And the vessel
7 was taken out of Norway and the Arctic environment and
8 chartered in for a period of time to this project to work in
9 the Alaskan Arctic.

10 Q. When you say "chartered in," what does that mean?

11 A. There's a company named Transocean who owns the Polar
12 Pioneer and they're working every day at the direction of
13 Shell. So Shell chartered their vessel and their people to
14 perform a service for them. So it's a very common term in
15 the maritime community for using someone's vessel and paying
16 for it.

17 Q. I see. Were there offshore supply vessels that came to
18 Terminal 5?

19 A. Yes.

20 Q. And can you describe those vessels to us?

21 A. We had a couple of offshore supply vessels came to
22 Terminal 5. Their job is to sort of be the -- kind of a bad
23 analogy -- the pickup truck of the industry where they move
24 cargo and equipment and supplies, and even some things that
25 are kept in their tanks like fuel and water and cement and

1 baryte. They move things from a shore-based facility to the
2 rig or they move it back from the rig to shore. So they're
3 generally referred to as OSV or offshore supply vessel.

4 Q. Okay. And were some of those operated by a company named
5 Harvey?

6 A. Yes. Harvey Gulf Marine has, I think, five vessels working
7 in the project this summer. The Sisuaq, the Harvey
8 Supporter, the Harvey Champion, the Harvey Explorer, the
9 Harvey Supporter -- the Harvey Spirit, I think.

10 Q. And did the Harvey Champion cull or call at Terminal 5?

11 A. I believe she did.

12 Q. Did the Harvey Supporter call at Terminal 5?

13 A. I believe she did.

14 Q. The Harvey Explorer?

15 A. Yes, sir.

16 Q. The Harvey Spirit?

17 A. Yes, sir.

18 Q. The Sisuaq?

19 A. I don't think the Sisuaq came. It might have come while I
20 was gone for a few days. I think she did most of her work
21 in Everett.

22 Q. All right. And how about the TOR Viking 2, can you tell me
23 about that vessel?

24 A. So the TOR Viking is similar to the Harvey boats, but she
25 has a little bit different mission. She has a big winch so

1 she can tow things. She, in fact, rescued a vessel in the
2 Aleutians a few years ago with her tow winch. When the
3 vessel was in trouble, the TOR Viking went out into the
4 Aleutians to keep the vessel from going up on the rocks.
5 She tends anchors and moves large anchors and chain around.
6 And she's also ice class, so she can work in the ice and
7 help the vessels -- support the vessel in the ice, if
8 needed.

9 Q. Does the TOR Viking carry cargo?

10 A. I believe she does, yes.

11 Q. And then the Aiviq, are you familiar with the Aiviq?

12 A. The Aiviq is similar to the TOR Viking except it's much
13 bigger, newer, and much more diverse in the services that
14 she provides. She can house people like a floating hotel.
15 She has a helicopter pad, so people can land on her. She
16 has, I think, two different tow winches. So she helps with
17 anchoring the vessels. But she also has some spill response
18 capabilities. In the event of an emergency, she can deploy
19 a skimmer and oil boom and help to take -- recover oil from
20 the water.

21 Q. Does she carry cargo from one location to another?

22 A. Yes, she moves containerized cargos and anchors and chain
23 and lots of different things. These types of vessels are
24 very versatile and their jobs change quite frequently on the
25 different types of things they can carry. They were built

1 to be as versatile as possible to carry lots of different
2 things.

3 Q. Were there barges that came to Terminal 5 during the last
4 year?

5 A. Yes, we've had I think three different barges that came to
6 Terminal 5. I think the American Trader, which is a Foss
7 owned barge, the Tuuk, which is a Native Alaskan term that
8 means ice chisel, she came to Terminal 5 before she went
9 into shipyard, and then we had a barge called the KRS 286-6
10 which came to Terminal 5 for about a week.

11 Q. What is -- are the barges designed to carry cargo from one
12 place to another?

13 A. Yes. That's their primary mission.

14 Q. Are they -- do they propel themselves or how do they move
15 about?

16 A. They don't. Traditionally, these -- most of these barges
17 are not self-propelled, so they don't have any propellers or
18 any machinery. They're basically a platform that you load
19 things onto and then they're towed or moved around by
20 tugboats.

21 Q. Okay. So when did Foss take possession of Terminal 5 from
22 the Port?

23 A. I believe -- I don't have the exact date, but I believe it
24 was in February that we started to move in and make some
25 improvements to Terminal 5. It had been idle and there was

1 no phone service, no internet, no furniture. It was kind of
2 left by the previous tenant and needed to be cleaned. So we
3 moved in, I think, a little bit in advance of signing our
4 final lease.

5 Q. When was it that the Polar Pioneer arrived?

6 A. I don't have the exact date but I think it was the middle of
7 May.

8 Q. So what happened between February and May?

9 A. We got the facility ready. We did a lot of training. We
10 had to mobilize in very specialized equipment. We had to
11 get the facility prepared to run a business, so phones and
12 internet and fiber optic cables and installing work stations
13 and white boards and computers and getting all the equipment
14 to work together in a unit so we had different types of
15 cargo handling things that were brought in, cranes and
16 rigging and shackles and those things were inventoried and
17 stored getting ready for the season.

18 Q. Were materials to be loaded on to the vessel, did any of
19 those materials arrive during that time frame?

20 A. So the job of the terminal is to take things in by rail or
21 by truck or by other vessel, store them, and get everything
22 ready so that when the vessel comes, we limit the time that
23 the vessel is actually at the dock. The vessel really
24 doesn't make any money when it's at the dock. So everybody
25 wants to limit the time at the dock so that she -- the

1 vessels can go to work.

2 Q. So what period of time did materials arrive at the terminal?

3 A. I believe things started to arrive at the terminal by truck
4 in March.

5 Q. And from whom did these materials arrive? Where did they
6 originate?

7 A. So these materials came from a variety of different places.
8 Some of them are owned by different vendors or
9 subcontractors that perform jobs like Halliburton, and
10 Schlumberger, names that you hear on the news. They have
11 very specialized tools that they use. Those things come
12 from as far away as Norway and Europe and Singapore, they
13 also come from the U.S., Gulf of Mexico, from Louisiana, and
14 Houston, from different places in the oil industry where
15 they'd be stored. So most of the things came in directly by
16 truck. Some things came on a ship to Tacoma and then were
17 loaded on a truck. Most everything found its way into
18 Terminal 5 by truck.

19 Q. And after some -- when something comes in to Terminal 5 by
20 truck, what was your process for handling that material upon
21 its arrival?

22 A. So usually there's a piece of paper that tells you something
23 is coming, it's called a bill of lading and it has the list
24 of what's on the truck and what truck is bringing it and
25 when it's going to bring it and how much it weighs. We

1 usually get those in advance. Those things would come in to
2 the terminal provided either by Shell or by one of Shell's
3 trucking companies. We would then determine where that was
4 going to be loaded, we would identify the cargo when it came
5 into the terminal, we would label it, and then we would
6 depending upon what vessel it was going to be loaded onto
7 and in what priority, we would store it in the terminal.

8 Q. Was there some planning function that related to the loading
9 plan for that material?

10 A. There was a lot of planning that was done. There was
11 planning on things arriving. There was planning on where we
12 would put them in the terminal, whether they had to be kept
13 from freezing or kept from getting wet or kept from being
14 associated with other types of cargo. But really the
15 biggest job is where do you put things on the vessels so the
16 vessels have the right stability, they don't tip over, that
17 they don't get smashed up when you're putting them on, and
18 that you can get at them when you need them. So to kind of
19 make a bad analogy, it's like going camping. So if you have
20 five people going camping and you have a Volkswagen Jetta,
21 you try to fit everything in the trunk that you can, knowing
22 that you've got to pull things out when you get to the
23 campsite. So a lot of these vessels have a limited amount
24 of space, so it's all about packaging all of your things
25 that you might need because they're going to work in the

1 Arctic. And there is no Home Depot nearby, there is no
2 7-Eleven, they have to take everything they need with them
3 for the entire season pretty much.

4 Q. You described weather considerations. Is there both indoor
5 and outdoor storage at Terminal 5?

6 A. There is. We have a great warehouse, it's about 80,000
7 square feet called the transit shed. A lot of things that
8 are valuable or could get damaged by rain or damaged by the
9 elements are kept inside in the transit shed.

10 Q. Okay. So let's turn now to the next stage which is after
11 the vessels arrive. Tell me what happened during that
12 stage.

13 A. So there was a lot of planning that went into getting ready
14 for the vessels. So we did a lot of training with the
15 stevedore work force, we did a lot of training with our
16 customer. We had a lot of meetings with the Coast Guard and
17 with others about security, of keeping everybody safe. We
18 got prepared for the vessels to arrive. Foss did a lot of
19 work in Port Angeles when the Polar Pioneer arrived on the
20 back of a ship. We did a lot of work to support them to get
21 the vessel unloaded with our tugboats. We helped to anchor
22 the vessel and then to get all the systems turned back on,
23 and then when everything was ready in Port Angeles, we towed
24 that vessel down to Terminal 5 with our tugboats and tied it
25 up at the dock and set up the gangway and set up all the

1 things that they would need while they were going to be
2 there.

3 Q. And I take it loading operations commenced?

4 A. Loading operations commenced almost upon arrival. The
5 needed things like groceries and paper towels and
6 lubricating oil and grease for the crane and all those sorts
7 of things because they were trying to get the vessel ready
8 so it could go to work.

9 Q. Okay. And there were -- were there support vessels that
10 were also loaded at Terminal 5 during that time frame?

11 A. There were. They kind of came to a different schedule.
12 They kind of came and went independent of the Polar
13 Pioneer's operation. So we had, sometimes, independent
14 operations supporting them.

15 Q. Were they loaded at the same time that the Polar Pioneer was
16 loading at the --

17 A. Sometimes. Sometimes. We tried not to have anything that
18 was in conflict where the cranes would come into contact
19 with one another or where there was too much truck activity
20 moving things, we'd try to schedule those things as best we
21 could. But on any given day, there were simultaneous
22 operations happening in the terminal.

23 Q. And after the vessels came to Terminal 5 were there also
24 still materials being received at Terminal 5 that were going
25 to get loaded onto the vessel?

1 A. Yes. And there are materials still on the ground there at
2 Terminal 5 either for spare parts or for materials that
3 might be used that we'd have to ship up. So we've stored a
4 lot of things there, you know, to support the operation.

5 Q. So at some point the vessels all left to go north; is that
6 correct?

7 A. They did. They all leave on a different sort of schedule,
8 depending upon how fast they travel and depending upon what
9 their mission is when they actually get to the exploration
10 site. Some people go up -- some of the vessels go up early
11 to kind of get things done and make it ready. And then some
12 vessels come up later with more perishable type items or
13 just-in-time delivery items.

14 Q. And do you expect the vessels to come back?

15 A. I would like the vessels to come back. I'm sort of waiting
16 to see what happens in this hearing to make sure that we're
17 allowed to come back.

18 Q. Assuming that the vessels are allowed to come back, what is
19 Foss's plan for operations later on this year?

20 A. Our plan and our plan when we entered into our contract with
21 our customer was to have the vessels come back and support
22 them and unload all of their cargo and get them ready to go
23 back up next spring.

24 Q. And let's talk a little bit about that unloading operation,
25 what do you anticipate that's going to consist of?

1 A. When they come back, as they did in the winter of 2012, the
2 beginning of '13 in Seward, a lot of the things have to come
3 off the vessel to be checked: Small submarines, some of the
4 tools that they use, some of the materials have to be
5 recertified, and then there are lots of containerized things
6 that have to come off. And even things like trash and
7 recyclables and pallets and plastic all needs to come off
8 and go to the right landfill and the right place for all of
9 those things. So there is a large, what we call,
10 demobilization activity that happens and it usually takes a
11 few months to unload everything.

12 Q. Is it Foss's expectation that if the oil rig is allowed to
13 come back, that it would repeat the loading operation again
14 in 2016?

15 A. The plan as I understand it from Shell is to at this time
16 depending on what they find this fall is to reload the rig.
17 The exact location where they come back to I don't think has
18 been determined.

19 Q. That's an issue for them to deal with the federal government
20 about?

21 A. No, I think it's an issue of where they feel welcome and
22 where the work can be performed. So I think they're looking
23 at options and I think Terminal 5 is still an option, but I
24 think based upon what's happened here in the past few
25 months, they're looking at other options possibly.

1 Q. So between the period at which the vessels are unloaded
2 after they've been in the north and the period of time when
3 they would start loading again for the next season is there
4 a period of time when you would hope or expect that the
5 vessels would moor at Terminal 5?

6 A. They would moor at Terminal 5, but while they're moored,
7 they need things every day. So they need paper towels and
8 they need, you know, lubricating oil and they need the fuel
9 filters changed out occasionally. So even though they're
10 moored, things are happening every day on and off the vessel
11 and people are coming and going, you know, luggage is moved
12 because a new crew comes on. So it's not like we turn out
13 the lights, I mean, there's an active operation happening
14 every day, you know, 24 hours a day.

15 Q. You mentioned that it has 140-person crew. Is the vessel
16 crewed during that period between the loading, unloading
17 operation?

18 A. So the Polar Pioneer is allowed to have about 114 people on
19 board. And depending upon what they're doing, that number
20 moves up and down. Like if they're at the dock, they could
21 have a few more people come on board to check out the fire
22 fighting system as an example or they could have Coast Guard
23 inspectors on board for a safety drill or they could have
24 less people on board because they're not running some of the
25 machinery or not running some of the tools in the derrick

1 that allow the drill (inaudible) rig to go up and down. So
2 the number kind of goes up and down depending upon what's
3 happening on board. But for the most part, it's planned
4 that the vessel would be occupied and activities would be
5 happening to get ready for it to go.

6 Q. So you just described a range of activities that happened
7 during the loading of the oil rig and then its return and
8 then unloading and then let's call it a moorage period
9 between those two. Are any of those any different than any
10 other vessel that calls at a cargo terminal in your
11 experience?

12 A. I don't believe so, no. I think every vessel has a very
13 similar type of a cycle of coming in, unloading things,
14 getting ready, doing planning, doing training, making sure
15 the vessel is ready to operate and then loading back
16 things -- even here with containerized cargos, maybe they're
17 unloading important containers because they're going to put
18 full ones onboard to depart. I think just the timing
19 changes depending on the type of vessel and her schedule.

20 Q. And we've been talking here primarily about the oil rig.
21 But let's talk about the other seven vessels that were
22 loaded and unloaded at Terminal 5, the barges and the oil
23 supply vessels. Are those expected to go through a similar
24 sort of cycle?

25 A. I think they would all go through a similar cycle. They're

1 not as large and not as complicated, so the cycle may not be
2 as long. I'm not sure which vessels will be scheduled to
3 come back to Terminal 5. Shell keeps vessels in Bellingham,
4 they keep vessels in Everett, they keep vessels at other
5 Port of Seattle facilities. Some of the vessels may go off
6 hire or go into a shipyard to get repaired during the winter
7 when they're not being used. Some of the vessels
8 historically, if there was enough time, have returned to the
9 Gulf of Mexico to work in the Gulf of Mexico oil fields in
10 what would be our winter and then they would come back in
11 the spring or summer. So it's really a decision made by
12 probably smarter people than me up at Anchorage as to what's
13 the best use of the vessel and the most cost-effective use
14 over the wintertime.

15 Q. You mentioned Foss's parent company, what's the name of that
16 company?

17 A. Our parent company is called Saltchuk. It's a native
18 Chinook term that refers to using salt water for commerce.

19 Q. And does Saltchuk have other companies than Foss involved in
20 the Shell projects?

21 A. Yes. So we have a variety of other companies involved
22 supporting Shell and other oil and gas companies in Alaska.

23 Q. How many people overall does Foss and Saltchuk have involved
24 with Shell's project?

25 A. I don't know the exact number, but I would probably estimate

1 it's close to 500 people, especially in the summertime when
2 cargo is moving through the system.

3 Q. Let's talk a little bit about how the oil rig moves goods
4 from one location to another. So you were describing
5 loading operations at Terminal 5. What does the oil rig do
6 with the stuff that's loaded (inaudible)?

7 A. So the oil rig takes cargo from shore and stores it into a
8 variety of different places on board the rig so that they
9 have it when they're ready to use it, and that includes
10 tubulars which is drilling pipe, casing, things that they
11 need to drill a hole down into the earth. And then they use
12 different types of dry goods, cement and barite to limit the
13 pressure on the well or to control the pressure on the well
14 as they're drilling. So all of those things get loaded
15 onboard to the vessel as well as a variety of different
16 specialized equipment. And these are tools that help put
17 the pipe together, tools that measure pressure, you know, in
18 the oil reservoir, tools to, you know, get things unstuck,
19 you know, when they're drilling. All of those things sort
20 of have a place on the drilling rig where they store them
21 and they have to store them in a way that they can get at
22 them when they need them.

23 So some of the things are stored in tanks, some of them
24 are stored in containers so that they can move them around
25 easily, and then some stuff that's maybe heavier and larger

1 is stored in racks. As an example, a pipe and tubulars are
2 stored in racks. Like, if you saw a truck driving down the
3 road with logs loaded onboard, those logs are held in racks.
4 The pipe is stored in a very similar method onboard the ship
5 by size.

6 Q. And I take it some of the material you're describing is
7 going to be put into the ground in Alaska?

8 A. When a well is drilled, depending upon the geology and the
9 plan developed, a lot of things are left in the earth to
10 build the well. So they drill a hole down and then they use
11 casing, which is kind of like a large metal pipe of
12 different sizes to keep the well from collapsing on itself,
13 and then they also put cement and other chemicals and a
14 material called mud down into the well to make sure that
15 nothing blows back or blows out while they're drilling a
16 well. So a lot of that equipment, including some of the
17 valves and the preventers to limit pressure coming out, are
18 left on the sea floor. And I think that has to deal with
19 the permits they have and the agreements they have with the
20 federal government of what's left in the earth when they
21 leave.

22 Q. Can they drill the well or -- is Shell going to drill the
23 well in just any location they choose?

24 A. No, no, I think there's an extreme amount of planning and
25 preparation that goes into doing exactly what they said they

1 would do and a variety of different regulatory authorities
2 that approve that plan and hold them to doing that plan by
3 putting people onboard the rigs to oversee that work.

4 Q. So let me ask the question in a slightly different way. Is
5 there a specific location where that well is going to be
6 drilled?

7 A. Yes, yes, there's a very specific location and the well is
8 actually engineered with the geology at that very specific
9 location, and I think they're down to, you know, inches of
10 where the well will be drilled as far as the physical
11 location on the sea floor.

12 Q. And is that location something that's discussed with the
13 federal government which approves the well?

14 A. Yes, yes.

15 Q. Does the rig transfer any of the material that it carried
16 from Terminal 5 up to the Arctic to other vessels?

17 A. Yes.

18 Q. How does it do that?

19 A. So the rig, the Polar Pioneer rig has two large cranes, they
20 have a lot of containerized cargo that's on board. Some
21 things are used during a phase of drilling and then when
22 they're not needed anymore, they would take the crane and
23 lift it and put it onto a supply vessel to make room for
24 more cargo and gear using the containers that are provided.

25 Q. Does the Polar Pioneer bring back anything from the sea

1 floor to Washington?

2 A. They bring back core samples, but I'm not sure if they make
3 it back to Washington, if they come back on the vessel in
4 freezers or in coolers or if they're sent to a laboratory.
5 I'm not a drilling engineer so I don't know the specifics.
6 But I think there are lots of things that they bring back as
7 far as scientific samples, but I'm not sure the final
8 disposition of where they actually go and who moves them.

9 Q. And what's the purpose of taking core samples?

10 A. They're looking to the geology of what they find and trying
11 to match it up with the data that they've recorded over the
12 years and it may influence, when they actually decide if
13 they want to move forward, how they build their production
14 well.

15 Q. So let's put the Pioneer aside for a second and talk about
16 the OSVs, the offshore supply vessels, and the barges.
17 Those had cargo on them; is that right?

18 A. Yes, a variety of different things.

19 Q. And tell me how that stuff is used in this operation?

20 A. For the Harvey -- for the Harvey supply vessels, they carry
21 a variety of different materials to resupply the well -- or
22 resupply the drill rigs because there are two different
23 drill rigs involved. They carry pipe and extra materials in
24 case there is a problem and they need to drill a relief
25 well. The barges carry more supplies and emergency response

1 equipment onboard, things that might be needed throughout
2 the season or things they might need, if they need more pipe
3 or tubulars than they had planned on. The barges act like a
4 floating warehouse for the summer that's on -- that's close
5 to the location so they can get things quickly.

6 Q. Do they transfer that material to the oil rig as well?

7 A. They transfer things -- using the supply vessels, they
8 transfer things to the drilling rigs by using the offshore
9 supply vessels. So the barges would act a floating
10 warehouse, the supply vessel would come alongside, the barge
11 would load things onto the vessel, because the supply
12 vessels don't have their own crane. It's like having a
13 pickup truck, so heavy things need to get loaded in by
14 someone else's crane, and then the vessels would transit to
15 the location of the drill site. And the vessels are very
16 technologically advanced, they have a navigation system that
17 allows them to hover in one location next to the vessel
18 holding themselves in place no matter what the waves or the
19 wind or the weather, and then a crane lowers a hook down
20 from the drill rig and takes that containerized cargo or
21 drill pipe and puts it up onto the rig and then the empty
22 stuff comes off.

23 Q. So part of the drill rig's operation, it's designed to load
24 and unload this cargo at sea?

25 A. It has to. That's the only way it gets its support. I

1 think when the Polar Pioneer had worked in Norway for 28
2 years, she stayed out on location and she was delivered
3 things, you know, to allow her to do work. She's too big to
4 come into port on a routine basis, so she gets things
5 delivered to her. It's a much more efficient operation that
6 way.

7 Q. I know you weren't here yesterday to hear the testimony of
8 Mr. O'Halloran and Mr. Knudsen. But they both testified
9 about their use of the term "cargo" and I'm going to just
10 paraphrase, I might not get this exactly right, but
11 Mr. O'Halloran described three types of materials that are
12 loaded on to vessels: Stores, provisions, and gear. And he
13 said all of those things are cargo; would you agree with
14 that?

15 A. Yes, I would agree with that.

16 Q. Do you think that's how the term "cargo" is used in the
17 industry generally?

18 A. Yeah, I would think so, in general.

19 Q. And Mr. Knudsen was asked also about cargo and he agreed
20 with Mr. O'Halloran, but he went to describe another
21 category of cargo which he called paying cargo or maybe
22 cargo for carriage. Are you familiar with those terms?

23 A. Yes.

24 Q. And Mr. Knudsen said everything that goes on or off a vessel
25 is cargo and all these terms, stores, provisions, gear,

1 paying cargo are subcategories of cargo; is that your
2 understanding as well?

3 A. Yes.

4 Q. Is that how the term "cargo" is used in the industry?

5 A. I believe so. We come from an industry that's centuries old
6 and there's different, you know, types of both maritime law
7 and different international standards where the terms are,
8 you know, defined a little differently. So I think, you
9 know, where the definition resides and whose definition
10 you're using, you know, could be a little bit challenging
11 sometimes. But I think in general for where we work here in
12 Seattle and what happens in the United States, I think both
13 Mr. Knudsen and Mr. O'Halloran's, their sort of general
14 descriptions are correct.

15 Q. Okay. Let's turn to the second exhibit book and we're going
16 to start with Exhibit 61, Foss 61.

17 So, Mr. Gallagher, we're going to go through a number of
18 exhibits here and we're going to try to do it fairly quickly
19 so we can get done today. So I'm going to ask you a series
20 of questions that might be somewhat conclusory, but the
21 intent is to try and move through this quickly. So I don't
22 need you to explain every picture.

23 A. Sure.

24 Q. Okay. But let's start first with Exhibit 61, Foss 61, and
25 this is 21 pages of photographs. And can you just describe

1 for me, flipping through these photographs, what they show?

2 A. The photos at the beginning are different types of drill
3 casing. This is -- as they build the well, different sized
4 casing is used, it's generally pipe that screws together.
5 Most of the photos at the beginning are different sizes of
6 casing and different types of casing that are stored on the
7 ground in Terminal 5.

8 Starting with page 11, there's some drilling pipe. This
9 is all a little bit different. This is actually used to
10 drill the hole. Kind of like what you'd use as a drill bit
11 in your Makita drill at home. So this is all screwed
12 together and very strong and tested.

13 Q. Is that what's shown on 12 and 13?

14 A. Yeah, it's shown on 12 and 13.

15 Q. Okay. Let's look at 14 and --

16 A. Starting on 14.

17 Q. First of all, let's talk about what's shown in the top
18 photograph there at 14.

19 A. The top photograph is a set of -- is a rack that holds a
20 bunch of wire slings and those wire slings are used to tie a
21 group of pipe together, much like you would load logs. Logs
22 are loaded by gathering up the logs in the water and
23 lassoing a wire around the logs to cinch them all together
24 and then the crane picks up that bundle and puts it onboard
25 the vessel. So we use these slings -- they're painted blue

1 because it means they've all been certified and tested for
2 this season. So those slings are used to move the tubulars
3 up onto the rig. And depending upon how big they are, that
4 determines how many are moved in a bundle.

5 Q. And then on the bottom of page 14, can you tell me what
6 those are?

7 A. Those are a variety of different shipping containers that
8 came into the terminal. Some are open on the top so we can
9 put things in and take things out. Sometimes things are too
10 big to fit inside a container or too heavy, so that's a
11 truck that -- very much a sample of the trucks that we
12 offload into Terminal 5 that would have come from Louisiana
13 or New Orleans or Houston carrying a variety of different
14 materials and cargo into the terminal.

15 Q. Do these containers contain cargo?

16 A. Yes, most all the containers. There are some empty
17 containers, but most everything that came into the terminal
18 had stuff in it.

19 Q. Okay. Looking at page 15, are those additional containers?

20 A. Yes, those are additional shipping containers. And they all
21 have a number on them and some of them are labelled by the
22 company that owns them so that's how we track things. We
23 also weigh them when they come into the terminal, so we know
24 how much they weigh, so we know we use the right forklift
25 size or the right rigging to lift it up when we put it up on

1 the rig.

2 Q. And what does 16 show?

3 A. Another type of container. This one is longer. Usually
4 some of the tools that might travel down the well to look at
5 the science of what's in the inside the reservoir would be
6 stored in these types of containers. They're a long -- I
7 guess they call them a tubular box.

8 Q. Okay. You see on this document that there's the word Swire
9 there, what's Swire?

10 A. Oh, Swire is an international company that rents these boxes
11 to oil companies around the world. So there's a variety of
12 different companies. It's like having U-haul. So you'd go
13 and you'd borrow something from them for the season and then
14 give it back. So Swire is one of those companies that
15 operates around the world and rents these boxes to different
16 people to use so people don't have to go buy their own
17 boxes. They're also built to an industry standard and
18 they're tested and certified so you know the bottom is not
19 going to fall out when you go to pick it up.

20 Q. Mr. Knudsen testified yesterday about different sizes of
21 intermodal shipping containers. Are these also shipping
22 containers?

23 A. These are shipping containers and the term intermodal means
24 it's moved on a truck or on rail or on a ship or on a barge.
25 And my knowledge this is an intermodal type container.

1 Q. And do the photos then continuing on through number 19 all
2 show different types of containers?

3 A. Yeah. So as an example, though, on 17, you see on 17 it has
4 these two holes down by the bottom, so that's so the
5 forklift can stick its forks in and pick it up. And then it
6 also has on the corner different slings. So another example
7 of -- because we're moving it from trucks to trains to
8 barges, it truly is a very versatile container that no
9 matter what you handle it with, it can be done safely.

10 Q. All right. Look at page 20 and if you could tell me what
11 that is.

12 A. Page 20 is a wire spooling machine. We put that machine on
13 to the KRS 286 barge to remove the mooring wires from the
14 Noble Discoverer in Everett.

15 Q. And page 21 at the top, is that an indoor facility?

16 A. That's inside the transit shed at Terminal 5.

17 Q. Those are containers inside that shed?

18 A. Those are containers inside that shed. And generally things
19 that are electronic or could be damaged from freezing or
20 sunlight or rain are put inside or if they are truly
21 valuable, we want to keep them inside kind of under
22 protection.

23 Q. What is the picture on the bottom of page 21 show?

24 A. The picture on the bottom of page 21 shows the Polar Pioneer
25 anchored or moored at the Terminal 5 dock, and there's an

1 orange containment boom that was put out around the vessel
2 as a preventive measure in the event that she had a leak or
3 any type of a spill, there would already be a boom in the
4 water. What you don't see is there's also a containment
5 boom under the dock so it encircles the vessel so that
6 nothing could get away if there was a sheen or a leak. It's
7 a preventative measure.

8 Q. Were all of these photos that we've looked at in Exhibit 61
9 taken at Terminal 5?

10 A. Yes, sir.

11 Q. Let's look at the next documents, Foss 62. And generally
12 speaking, can you tell me what this group of photographs
13 shows?

14 A. All of these photos in Exhibit 62 are cargo holds and
15 storage spaces onboard of Polar Pioneer.

16 Q. So the Polar Pioneer has dedicated areas where cargo is to
17 be loaded?

18 A. Yes.

19 Q. And is this one of them that we're looking at here on number
20 1?

21 A. Number 1, this is referred to as the pipe bay. So this is
22 where -- although it's not here now, this is where they
23 would store the pipe and tubulars inside the Polar Pioneer.
24 Right now it's empty and they have some maybe machinery and
25 spare parts. This is where they would store all the

1 tubulars when they're physically loaded onto the vessel.

2 Q. And page number 2, is that another bay that is used for
3 storage of cargo?

4 A. Yes, this is another storage bay for cargo. You can see
5 that the roof opens up and then when they're done loading
6 cargo, they close the roof so they can keep things dry.

7 Q. Okay. How about number 3?

8 A. Number 3 is the same space on deck.

9 Q. Okay. So number 4, that shows a bunch of what you call
10 tubulars; is that right?

11 A. Yes.

12 Q. And also a container there?

13 A. There's a container there with some tools in it. These are
14 tubulars. I think even loaded in that same space as the
15 first photo. And then you can see the chains over the top
16 of it that hold it in place when it goes out into the ocean
17 so it doesn't roll around.

18 Q. All right. So we see throughout the next many photos
19 different types of materials that are aboard the Polar
20 Pioneer, loaded aboard the Polar Pioneer; is that right?

21 A. Yes. Both -- on these photos both as an example on page 5,
22 different sizes of pipe and tubulars, different
23 containerized cargos and then palletized cargo, things that
24 maybe didn't go into a container but were moved on a pallet
25 and loaded onboard a vessel.

1 Q. Were all of the photos that are in Exhibit No. 62 taken
2 aboard the Polar Pioneer at Terminal 5?

3 A. Yes, because I took them. And I took them specifically so I
4 could show the people I worked with how to prepare the cargo
5 and how to get things ready and where it was going to. It's
6 difficult to tour everyone around, so it was easier to have
7 a training session with photos to show everybody.

8 Q. I see. And let's just look at 13, for example, does that
9 show a number of container cargos -- container --
10 containerized cargo?

11 A. On page 13?

12 Q. Page 13 of this document?

13 A. It shows different containerized cargo, but then it also
14 shows that white, it's called a spool piece. Some things
15 are just so big and heavy they don't fit well into
16 containers and they have to be lifted on their own.

17 Q. Let's look at the last photo, page 22, what's that item
18 there?

19 A. Page 22 is the -- we're lifting a very specialized weather
20 station that's lifted up onto the rig, it's called an AWS,
21 and it's basically to take weather readings via computer,
22 barometric pressure and temperature and wind and give that
23 information back to the scientists onboard that are trying
24 to look at weather and look at incoming ice and make
25 predictions as to what the future forecasting might be.

1 Q. Would this fall within the category of vessel gear?

2 A. Yes, I think that would be gear. It's loaded onboard and it
3 may stay onboard for the season. It might come off this
4 winter to get recalibrated.

5 We loaded a similar unit where we took one off of the
6 Noble Discoverer when they were done. It has a lot of
7 valuable components, so it doesn't necessarily stay with the
8 rig. They may just use it for the season and then take it
9 off.

10 Q. This particular photo shows a large line going up to the top
11 of the photo. So can -- is this a crane in operation?

12 A. Yeah, so if you look in the upper left-hand corner, there's
13 actually a mobile crane on the barge, there's a gentleman
14 that sits up in that crane. The crane lowers its cargo line
15 down or its main line down. It has a hook on the end, it
16 hooks onto the cargo and they work with the stevedores on
17 shore to get everything scheduled and to get everything
18 loaded, you know, in the priority and the sequencing that
19 they want. So that line in the center is the main hoist
20 line of the crane.

21 Q. And generally speaking, using that line to lift things out
22 of the Polar Pioneer, was that the method that was used to
23 load all of this cargo?

24 A. In this circumstance. You can see that there's a -- in the
25 center of the photo, there's a crane on the other side of

1 the rig. Just the nature of the construction of the design
2 of the rig sometimes you have to use two cranes to get
3 something into a specific location on the far side. The
4 crane can't reach everywhere.

5 Q. Got you. And on the dock here we see, I counted, I think,
6 eight people. Are those stevedores?

7 A. I believe seven are stevedores and the one with the
8 clipboard is the supervisor of the stevedores and he works
9 for Jones Stevedoring.

10 Q. Let's turn to Foss 63, and can you tell us what that
11 document is or series of documents?

12 A. Although hard to read, this is the stowage plan that was
13 developed of where things were going to be put onboard of
14 the Polar Pioneer at Terminal 5 when we loaded out all of
15 her cargo. So this was put together by a Foss Naval
16 architect who went onboard and measured all the spaces and
17 came back and put this drawing together so that we could
18 optimize and carry everything on the list that they needed
19 to take up to the Arctic.

20 Q. Okay. So the first two or three pages of this document
21 are -- what do they show?

22 A. The first couple of pages show abbreviations and color
23 codings and sort of the key of who owns what and what things
24 are called, so that when you look later on you'll be able to
25 understand in the drawing of where -- who owns what

1 materials that might be loaded. It's a pretty complicated
2 document all in all.

3 Q. Right.

4 A. It looks a lot better when it's in a large scale format.

5 Q. So just taking the first page, for example, and we'll
6 just -- I'll just take the middle of that page, in purple
7 there's some -- there's a purple area and then to the right
8 there's a word that says bit sub with float 6.75 inch
9 stabilizer 8.25 inch. Is that -- what's that a description
10 of?

11 A. That I believe is -- I'm not a driller, but I believe that's
12 one of the pieces of equipment that's used for a certain
13 phase of drilling the well. You can see up at the top it
14 says Sperry. So Sperry owns that, Sperry is hired to come
15 onboard and work on the rig and do that part of the job, and
16 therefore, they bring their tools with them and their job is
17 only a certain phase of the well. And when they're done,
18 they kind of sit back and let someone else take over.

19 Q. Is it fair to say that all of the items in black on these
20 three first pages are items that Foss loaded onto the Polar
21 Pioneer at Terminal 5.

22 A. I can't say a hundred percent because some things came
23 onboard the rig when she arrived here, but most all of this
24 equipment came through, I believe, Terminal 5, but some of
25 it may have already resided onboard the vessel when she

1 arrived.

2 Q. And then the fourth page of the document -- and this
3 document doesn't have numbered pages, but it's fairly
4 short -- it says machinery deck, Polar Pioneer at the
5 bottom?

6 A. Yes.

7 Q. What is this intended to show?

8 A. This is intended to show the stowage locations of the cargo
9 that was loaded on to the machinery deck. So it denotes the
10 spaces but also denotes what is going to be put there.

11 Q. And is that the same for the next two pages, the main deck
12 and the upper deck?

13 A. Yes, it just shows different decks. So it would be like the
14 floor plan of your house showing the first floor, second
15 floor, attic, similar to that.

16 Q. And the same for the next page, the drill floor?

17 A. Yes, the drill floor actually is kind of the basement of
18 where things happen onboard the rig.

19 Q. All right. And then the next page is the sack room; can you
20 tell us what the sack room is?

21 A. So the sack room is one of the cargo storage places. It
22 loads more palletized types of cargo, you can see there's a
23 little forklift in there. So in order to use the space the
24 best way, the operator uses the forklift and stacks stuff up
25 so he can get at it, so it's -- kind of like when you go to

1 Home Depot and they're storing everything up on the rack
2 with that little forklift --

3 Q. Yeah.

4 A. -- that's what's happening in this room, they're storing all
5 the different types of things that they're going to use that
6 sort of denote the property of the cement in the well. So
7 there's -- like making a cake, there's different things in
8 here that get added to make sure the chemistry is right.

9 Q. Let's turn to Foss 64. And can you tell me what that
10 document is, that set of documents?

11 A. I believe that this is a diagram that shows the casing bay
12 of what's going to be loaded in the racks of casing. Both
13 by color and size.

14 Q. The casing are a type of tubular?

15 A. Yeah, the casings are a type of tubular. So it just talks
16 about the different sizes, and then it talks about what
17 we're going to put between the rows to protect them so we
18 don't damage them from metal-to-metal contact. So it talks
19 about dunnage, so that dunnage or large pieces of wood that
20 are softer so when you lay the pipe in there then the pipe
21 doesn't have a metal-to-metal contact.

22 Q. Are these items that Foss loaded?

23 A. Yes, I would say that these were all items that -- well, we
24 saw the picture of the empty casing bay, so I would say that
25 all this stuff came through Terminal 5 and was loaded to

1 this plan.

2 Q. Okay. Let's turn to Foss 65. Can you identify the vessel
3 that's at the top picture on page 1?

4 A. I can't read it, I think, but I believe it says, Harvey
5 Champion on the side of the vessel.

6 Q. Is that one of the offshore supply vessels you described
7 earlier?

8 A. Yes. And most all of the four vessels look alike. They
9 look alike in color and size, they're sister vessels.

10 Q. And we see for the Harvey Champion, there's a large flat
11 area at the rear of the vessel that has items stored there.
12 Can you describe very generally how that area is used?

13 A. Yeah, so it's used as an open space to move different types
14 of cargo. And we do a plan of using the space the right way
15 to move whatever is on the list. So in the picture that's
16 on the bottom of one -- on the bottom of the photo, there's
17 five containers that most likely will be used to carry
18 groceries and frozen foods. In the second row, there's a
19 silver container with yellow and black. This is a liquid
20 container. And this might be used to move liquids or move
21 something on or off. I don't know -- I don't have the list,
22 so I don't know. And then there's the different sizes of
23 boxes and containers of a variety of different things as you
24 work farther back on the vessel.

25 Q. Okay. Were the items that are shown in the bottom -- the

1 bottom photo on page 1 loaded at Terminal 5?

2 A. I believe everything was loaded at Terminal 5 except those
3 five white containers. You can see they have a Harvey Gulf
4 label on the roof.

5 Q. Yes.

6 A. I believe they came with the vessel from the Gulf of Mexico.

7 Q. Did they come loaded?

8 A. I think they came empty, but I think they were wired into
9 the vessel's electrical system so they could have power so
10 they could move frozen foods through the summertime. I
11 think that was done in a shipyard when they were in the Gulf
12 of Mexico.

13 Q. Were items loaded at Terminal 5 to be put into those
14 refrigerated containers?

15 A. Yes.

16 Q. And looking at page 2, is that another picture of the Harvey
17 Champion?

18 A. I believe that's another picture taken from above of the
19 Harvey Champion.

20 Q. Okay. And number 3 is that also?

21 A. That is a picture of the Harvey Champion when she arrived in
22 Dutch Harbor alongside the Tuuk barge for unloading.

23 Q. Do the photos in Exhibit No. Foss 65 show the materials that
24 were loaded and unloaded -- or loaded, excuse me, at
25 Terminal 5 as you've described?

1 A. Yes, from the Harvey Champion.

2 Q. All right. And then let's look at 66, Foss 66?

3 A. Yes.

4 Q. And what does that show?

5 A. Foss 66 is the Harvey Champion. And these were some, I
6 believe, loads of cargo that were brought out to Port
7 Angeles, when the rig was in Port Angeles.

8 Q. So this is some of the work that you described while the rig
9 was in Port Angeles?

10 A. Correct. While the rig was in Port Angeles they needed some
11 things brought out, so the Harvey Champion and I believe the
12 Harvey Supporter were used to make some deliveries between
13 Terminal 5 and Port Angeles.

14 Q. Who loaded these materials onto the Harvey Champion at
15 Terminal 5?

16 A. We loaded these with stevedore labor force at Terminal 5.

17 Q. And those were delivered to the Polar Pioneer?

18 A. Yes, in Port Angeles.

19 Q. Let's look at Foss 67. Can you tell me what this is?

20 A. I believe that this was the stow plan of what was loaded on
21 the Harvey Champion before she left Terminal 5 for Port
22 Angeles. So this is a very simplified stow plan that just
23 tells what type of pipe and casing we're going to put in the
24 lots on the rack on the back of the vessel. So it's
25 referred to as bunks, but those are sort of spaces on the

1 rack of the -- the pipe rack on the back of the vessel.

2 Q. Let's look at Foss 68. Can you tell me what this series of
3 photographs shows?

4 A. Similar to what we just saw on the Harvey Champion, this is
5 the sister vessel Harvey Supporter that was loaded with
6 cargo at Terminal 5.

7 Q. And we won't go through all the different types of cargo
8 here, but just in general does it show containerized cargo?

9 A. Yes.

10 Q. And what -- was containerized cargo loaded on to that vessel
11 at Terminal 5?

12 A. Yes.

13 Q. And do the pictures in Exhibit No. 68 show the items that
14 were loaded onto the Harvey Supporter at Terminal 5?

15 A. Yes.

16 Q. Okay. Let's look at Foss 69, Harvey Explorer. What does
17 that photograph show?

18 A. The Harvey Explorer being tied up at -- moored at
19 Terminal 5. She's loaded some different types of equipment,
20 some scientific equipment that's being loaded onboard, boxes
21 and gear. You can see these yellow buoys, these are
22 monitoring buoys that listen for activity or take
23 temperatures or look at different scientific data. The
24 Harvey Explorer has a little bit different mission while
25 she's working in the Arctic, she has more of a science

1 mission.

2 Q. Okay. Let's look at Foss 70.

3 A. This is a picture of the Tuuk barge which is the Foss
4 warehouse barge. I believe this photo was taken at the Port
5 of Everett. This is not a photo from Terminal 5.

6 Q. Were the materials that are shown on here loaded at
7 Terminal 5?

8 A. No.

9 Q. Was -- what's the function of the Tuuk?

10 A. The Tuuk is sort of the floating warehouse for the season.
11 So in case something's needed, she goes up into the
12 operating area, maybe a hundred miles away from where
13 they're doing their explorations work, and she keeps the
14 spare parts and supplies and acts as sort of a mobile
15 warehouse.

16 Q. Let's look at Foss 71. What's this a picture of?

17 A. This is a picture of the back deck of the Sisuaq. I know
18 it's the Sisuaq because she has this big white crane that's
19 on the right-hand side. She's the only Harvey boat that has
20 a big crane.

21 Q. Was the Sisuaq loaded at Terminal 5?

22 A. Not to my knowledge, no.

23 Q. Okay. Let's take a look at Foss 72. And what vessel is
24 this?

25 A. This is the deck barge KRS 286-6.

1 Q. Is -- who is the charterer of this barge?

2 A. This is a barge chartered by Foss that was provided to do a
3 project in support of Shell. Foss didn't own the barge, but
4 we chartered it from someone else in Seattle.

5 Q. Okay. Was the KRS 286-6 loaded at Terminal 5?

6 A. Yes.

7 Q. And what was it loaded with?

8 A. Lots of different equipment to support a mission up in
9 Everett to remove mooring wires and to do some diving work
10 while the Noble Discoverer was up in Everett.

11 Q. Okay. And looking at page 3, does that show some of the
12 material that was loaded at Terminal 5?

13 A. Yes. So you can see from page 1 there's not very much --
14 many things on the vessel at that time, probably taken early
15 on. And when you look at page 3, there's a lot more things
16 loaded onboard. So we're getting closer to being completed.

17 Q. Okay. Unfortunately, we don't have a picture of the TOR
18 Viking, but we do have a diagram. So if you could turn on
19 to page -- or exhibit -- or 73 --

20 A. Yep.

21 Q. -- and tell me what that is?

22 A. This is the stow plan for the back deck of the TOR Viking.

23 Q. And can you tell me where on this plan any cargo might be
24 shown?

25 A. Sure. There's a bunch of chain that's represented by these

1 links, and these are sort of running from left to right on
2 the outer edges of the vessel. There's retrieval hooks in
3 orange, there's these yellow and black things which are
4 referred to as remotely -- remote automatic release, RARs,
5 so they're used in the mooring system. In case the ice
6 comes down, they press a button and they release the anchors
7 so that they're able to take the rig off location quickly.
8 And it looks like there's some barrels that are shown, maybe
9 these are lubricating oils, things like that.

10 Q. Were those items loaded at Terminal 5?

11 A. Yes, to my knowledge, they were all loaded at Terminal 5.
12 And there are photos somewhere.

13 Q. I'm sure there are. Just not here.

14 Foss 74. And this is another stow plan for the TOR
15 Viking; is that right?

16 A. Correct.

17 Q. And can you describe to me what cargo is shown on this stow
18 plan?

19 A. Well, it's hard to read. It looks like we had six
20 containers of the cargo with the weights located on it.
21 We've got some more on the center of these remotely --
22 remote automatic release, RARs, which are kind of like a
23 swivel that you use when you go fishing, but they're used in
24 the mooring system. And I can't see what's written in pink.
25 These might be other containers or -- actually, those are

1 the chain lockers where we lowered chain into for storage
2 inside the vessel. So it's like a compartment in the vessel
3 and we lowered chain down so that they could pull it out
4 later.

5 Q. Okay. Let's turn to Foss 75. Tell me what that set of
6 photographs shows.

7 A. This photograph in one is the back deck of the Aiviq which
8 is a big offshore supply vessel. She's at Terminal 5 and
9 it's taken from sort of the midsection of the vessel taken
10 towards the stern of the vessel so you can see the cargo
11 that's been loaded.

12 Q. We see a lot of containers there, were those containers
13 loaded at Terminal 5?

14 A. Yes, she was empty when she arrived at Terminal 5.

15 Q. Okay. And we turn to photos that are at page 3 of the
16 document. Is that the Aiviq in the foreground?

17 A. That is the Aiviq looking from what looks like the Harvey
18 Champion or Supporter towards the back deck of the Aiviq.
19 In this case you can see where not much has been loaded on
20 the Aiviq yet. Her back deck is pretty empty.

21 Q. I see. So she's actually at the top of the picture there?

22 A. She's at the top of the picture. She's a big -- she's got
23 these white domes on the top. So she serves as an ice
24 breaker and kind of a mobile command post.

25 Q. And were the photos in F75 taken at Terminal 5 during the

1 loading operation?

2 A. Yes.

3 Q. And let's turn to F76. What is that?

4 A. These are stow plans that were created for -- during the
5 planning of loading the cargo on the back deck of the Aiviq.

6 Q. At Terminal 5?

7 A. At Terminal 5. We bring a lot of people together to do this
8 work so we use those stow plans almost like a cartoon so
9 that we can get everyone on the same page of what the work
10 activities are and where things are going to be put.

11 Q. Let's turn to Foss 77. Foss 77 is a series of photographs,
12 is that correct, taken at Terminal 5?

13 A. It looks like lots of different equipment at Terminal 5.

14 Q. And so using Exhibit 77, could you just describe the process
15 of loading pipe onto the various vessels that we've seen?

16 A. Sure. Pipe is really heavy and has lots of opportunities to
17 get people injured because it rolls and it's difficult to
18 handle. So one of the things we did to reduce the exposure
19 to people and injury is we brought some specialized
20 equipment into Terminal 5. So photo one shows a forklift
21 and the forklift has an attachment called a pipe grapple,
22 and the pipe grapple is sort of like a claw and it reaches
23 down with the forks underneath the pipe and lifts it up and
24 then the claw on the top comes down by using hydraulic
25 pressure and it holds the pipe in place so it doesn't roll

1 around. So it can't roll off the forks, it can't roll off;
2 so that's on page 2.

3 So page 1 shows the empty forklift. Page 2 shows the fork
4 slides underneath the 14-inch casing. Page 3 shows the top
5 of the grapple being loaded down -- lowered down on top of
6 the pipe and being lifted up, shows the forklift backing up.
7 Now he can drive through the terminal and deliver that
8 casing somewhere. Page 6 is kind of a close-up that shows
9 the mechanism that holds the casing in place. Seven is
10 of -- shows the operator inside the cab of the pipe grapple.

11 And then if it's going to be moving a long distance, in
12 page 7, we'll put the pipe on a trailer because then you can
13 see from page 6, it's kind of difficult to drive through the
14 terminal with a 45-foot wide thing in front of you. It's
15 like trying to take a shovel through the front door of your
16 house. You know, you've got to have it oriented the right
17 way. So if we're going to be driving through the terminal,
18 to reduce exposure to accidents and injuries, we'll put it
19 on a trailer instead. And that's shown on page 7. So
20 that's a Moffett heavy lift trailer. We'll stack the pipe
21 on that and move it around the terminal.

22 Q. And looking at page 9 of this exhibit, you earlier described
23 the slings that were used to load pipe.

24 A. Right. Yep.

25 Q. Is this use of the slings in another setting?

1 A. Yeah, so this is use of the slings moving the reel from
2 shore -- it's a reel of wire, we're putting it on the
3 spooling machine. So those are the slings that we use to
4 move the cargo from the shore to the dock using the crane.

5 Q. You mentioned that using slings to lift pipe up to the
6 various vessels is similar to the technique that was used to
7 load logs on to log vessels; is that right?

8 A. Correct, yes.

9 Q. And to your knowledge was there a log operation at
10 Terminal 5 in the past?

11 A. I thought that when the Port of Seattle gave testimony
12 earlier, that they talked about one of the historic uses of
13 Terminal 5 --

14 MS. GOLDMAN: Objection; I don't think he has firsthand
15 knowledge to testify.

16 HEARING EXAMINER: I'm going to sustain the objection.

17 Q. (By Mr. West) Okay. Are you aware of Westwood Shipping?

18 A. Yes.

19 Q. And what is Westwood Shipping?

20 A. Westwood Shipping is a large international shipping company
21 that is owned by Warehouser and actually Foss Maritime does
22 the tugboat work for Westwood Shipping.

23 Q. And did Westwood Shipping use this same technique of using
24 slings to load its logs on to its lumber boats at
25 Terminal 5?

1 A. When I was involved with the tugboat business as the
2 operations manager in Puget Sound, we supported Westwood
3 Shipping, we used a similar type of cargo to load the
4 vessels at Terminal 5.

5 Q. Okay. So let's turn next to Foss 78. And can you describe
6 generally what Foss 78 consists of?

7 A. The first page -- the first few pages is a bill of lading,
8 so this is a shipping document and it's used to move cargo
9 in this case by truck. It has the company name on the top.
10 It talks about who owns the cargo, it talks about where it's
11 being moved from and being moved to. In the middle of the
12 document it talks about the commodities themselves, what the
13 number is, what type of commodity it is, how much it weighs.
14 Down below it talks about anything special about the cargo
15 that you need to know about.

16 Q. Are these bills of lading for materials that were received
17 at Terminal 5?

18 A. Yes. It looks like by the consignee name of where it's
19 being delivered to, it would be delivered to Terminal 5.

20 Q. And the bills of lading are issued by whom?

21 A. In this case they are issued by the transportation company.
22 So they're the company that's hired to move it from one
23 place to another and deliver it to Terminal 5. So they
24 issue this on behalf of the owner of the cargo.

25 Q. Turning to the fourth page of this exhibit, there's a

1 document that's entitled, Shell Material Movement Manifest.

2 Can you tell us what this document is?

3 A. So this is a document that we generate inside Terminal 5 and
4 it's sort of like the laundry -- the list that we give the
5 stevedores on their shift to go out and find something in
6 the terminal and bring it to the location next to the vessel
7 to be loaded in a sequence. So this is -- at my house, my
8 wife gives me the list to go to the grocery store so I don't
9 screw it up. This is sort of what we give the stevedores at
10 night so they get all their work done. And they can go out,
11 identify the piece by the basket number, they could look and
12 see what it is, they'd know where it's located to and then
13 they'd know what the weight is or how many of the units
14 there are. And then it kind of tells them where to bring it
15 to. Under the hook would be an example of: Bring it under
16 the crane at the Polar Pioneer.

17 Q. Are the items shown on all of these manifests, items that
18 were loaded onto the various vessels at Terminal 5?

19 A. Yes, I believe so. They're all dated. So these would be
20 things that happened on the 1st of June, on the 28th of May;
21 they're all dated so we can keep track of them.

22 Q. And one of these items has the acronym TOPP; TOPP crates
23 (inaudible), what does that acronym stand for?

24 A. TOPP is the abbreviated name for the Polar Pioneer, so
25 that's what it's referred to -- instead of writing Polar

1 Pioneer on everything they write TOPP. It's a nickname.

2 Q. What's the TO stand for?

3 A. Transocean Polar Pioneer.

4 Q. Got you. Let's turn to the next exhibit, Foss No. 79. And
5 what does this show?

6 A. This is the provision order for the Polar Pioneer that was
7 delivered to Terminal 5 by Food Services of America. So
8 these are the groceries that terminal -- that the Polar
9 Pioneer would need to load aboard the vessel.

10 Q. Were they, in fact, loaded?

11 A. Yes, they were. And I know that for a fact because it was
12 something that kind of screwed up the day they arrived.
13 They didn't tell anyone that their groceries were coming,
14 and we had to change the plan of the day when the three
15 trucks arrived and they needed to get the ice cream off. So
16 I remember it specifically.

17 Q. All right. Let's turn to Foss 80, which is the last
18 document in that binder. Is this a manifest of materials
19 that was loaded on to the Harvey Champion?

20 A. Yes.

21 Q. Turn to 81, which is in the next binder, I believe.

22 A. 81?

23 Q. 81, yes. Is 81 a manifest of the materials loaded on to the
24 Harvey Supporter?

25 A. Yes.

1 Q. And does that show the final designation as being the Polar
2 Pioneer?

3 A. Correct.

4 Q. When is that final designation going to be reached?

5 A. Sometime this summer.

6 Q. Up in the Arctic?

7 A. Up in the Arctic.

8 Q. All right. Look at Foss 82. Is that a material manifest of
9 materials loaded on to the Harvey Explorer?

10 A. Yes.

11 Q. At Terminal 5?

12 A. Yes.

13 Q. Okay. Foss 83. Is that a manifest of materials loaded upon
14 the Sisuaq at Terminal 5?

15 A. No, at the Port of Everett.

16 Q. The Port of Everett. Thank you.

17 Foss 84. Is this a manifest of materials loaded at
18 Terminal 5 on the Foss KRS 286-6?

19 A. Yes, on this day.

20 Q. On that day, right.

21 And Foss 85, is that a material manifest of materials
22 loaded onto the Aiviq?

23 A. Loaded onto the Aiviq and being delivered to the Port of
24 Everett for the Noble Discoverer.

25 Q. Okay. And these material manifests we just went through for

1 these various vessels, are these -- are these the entire
2 material manifests or just representative copies?

3 A. No, these are just representative. There's thousands of
4 these documents. This is sort of how we gave all of our
5 work activities to the crew every day. So lots of them were
6 generated for everything we moved inside the terminal.

7 Q. Great. So, Mr. Gallagher, you've looked at a whole series
8 of exhibits here, many of which were photographs. In
9 looking at the photographs, did all of the photographs
10 accurately represent matters that -- materials that were
11 loaded at Terminal 5 or at other ports as you described
12 them?

13 A. Yes.

14 Q. And were all of the photographs taken of the vessels that
15 you have personal knowledge of?

16 A. Yes, sir.

17 MR. WEST: All right. So we would move to admit Foss 62
18 through Foss 85.

19 MS. GOLDMAN: We object to the pictures that have labels
20 that say photos of cargo -- goods and cargo at T5. And we
21 let Mr. West know this as soon as we saw them because that
22 is an issue in the case, and if they said Terminal 5 and a
23 date or if they said, drill pipe, we would have no
24 objection. But we do object to a characterization of them
25 in the exhibits. And that is Foss Exhibit 61 and 62.

1 that nothing was damaged, so we take a lot of photos. And I
2 take a lot of photos for my customers to show them the
3 activities that day because I write reports to my customer
4 every day of what's happening at Terminal 5. So I can speak
5 to all these photos being photos that I took because my job
6 is to communicate to the customer what's happening at
7 Terminal 5.

8 Q. Is all of the materials shown in the pictures in Foss 61
9 personal property having intrinsic value?

10 A. Yes, I believe so.

11 Q. Is any of the materials shown in the photographs in Exhibit
12 61, money, securities or negotiable instruments?

13 A. I don't think so.

14 Q. All right. Does all of the material shown in Exhibit 61
15 have economic utility?

16 A. Yes.

17 Q. Does all this material satisfy an economic need of your
18 customers?

19 A. Yes.

20 Q. Is all of it goods?

21 A. I believe all of it is goods.

22 Q. All right. And is all of it cargo?

23 A. I believe, as we've discussed, all of this is cargo.

24 Q. So is the label: Photos of goods and cargo at T5 misleading
25 in any way?

1 A. I don't believe so.

2 Q. All right. Let's look at Foss 62. I think you already
3 testified that you took all of these photographs, correct?

4 A. I did.

5 Q. And you took them at Terminal 5?

6 A. I did.

7 Q. And that would have been in the period of time -- in 2015?

8 A. Actually, these photos here --

9 Q. Yes.

10 A. -- in this section were taken in Port Angeles before the
11 vessel transited to Terminal 5. The vessels, the ones
12 especially that show the empty spaces --

13 Q. Right.

14 A. -- because we were trying to do our planning and create all
15 the work projects for loading. The ones that were shown
16 starting with 4 were taken at Terminal 5 after we've loaded.
17 So there is a little bit of a -- of a location that I can
18 see. But they were all taken by me either in Port Angeles
19 or Terminal 5.

20 Q. Right. And the purposes of pages 1, 2 and 3 is to show the
21 empty hull spaces -- or hold spaces where the Polar Pioneer
22 was designed to carry cargo?

23 A. Right. And keep in mind, this vessel is somewhat unique and
24 we had over a hundred stevedores that were going to climb up
25 onto the vessel to load this cargo, so my job was to train

1 them how to do it safely. And they've never been in this
2 space before. So we had a lot of safety training and
3 specific training about the hazards of working these spaces
4 to make sure that no one tripped, no one falled <sic>, no
5 one got hurt, no one cut themselves. And so a lot of these
6 photos were taken not to be in a court case later on but
7 were taken as part of a training session so that we could
8 show our employees how to do this work safely.

9 Q. So everything from Exhibit 62 from page 4 on through page 22
10 were taken at Terminal 5; is that right?

11 A. Hold on, let me catch up.

12 MS. GOLDMAN: Which one are you on?

13 MR. WEST: Foss 62.

14 A. Yes, excluding the pages 1 through 3, all of the other pages
15 were taken at Terminal 5 on board of the Polar Pioneer.

16 Q. And all of them showed goods and cargo loaded on the vessel;
17 is that right?

18 A. Yes, sir.

19 MR. WEST: Move the admission of 60.

20 MS. GOLDMAN: I still renew the objection and would ask
21 that -- it's still an issue in the case and ask that the
22 labels that say, "photos of goods and cargo" be stricken
23 from the documents and they be admitted without those
24 things.

25 MR. WEST: We've laid the foundation that that is exactly

1 A. Foss 21?

2 Q. Right. The first binder. And we looked at this a little
3 earlier, Mr. Gallagher. I think you were probably in the
4 hearing room when we talked to Mr. McKim about this
5 document. So looking at the first page of Foss 21, there's
6 an email from Andy McKim dated March 24, 2014 to Traci
7 Goodwin, Eleanore Baxendale, copied to David West, Pat
8 Schneider, Frankw@Foss.com, Roger Wynne and Paul Meyer. Do
9 you see that email?

10 A. Yes, sir.

11 Q. And Mr. McKim -- you know, we can all read this to ourselves
12 here, Mr. McKim was asking for information about proposed
13 activities at Terminal 5, correct?

14 A. Correct.

15 Q. And he lists a number of detailed things that he wanted to
16 find out, correct?

17 A. Yes.

18 Q. And then looking at the third -- fourth page of the exhibit,
19 is this a letter that you sent to Mr. McKim in response to
20 his request?

21 A. Yes, sir.

22 Q. And was this letter designed to communicate to the City what
23 Foss's plans were at Terminal 5?

24 A. My assignment was to write out in great detail what we were
25 doing and what we planned to do at Terminal 5 so the City

1 understood what we were doing.

2 Q. And just to put this in time context, this letter is dated
3 April 8th; is that right?

4 A. Yes, before any vessels arrived.

5 Q. But after Foss had been on the terminal for a couple of
6 months at least?

7 A. Yes, for sure, yes.

8 Q. And so without going through and reading this letter, was it
9 your assignment to describe to the City in detail what was
10 going to happen?

11 A. Yes, sir.

12 Q. And looking at the letter, is anything in the letter
13 described -- well, is anything in the letter inaccurate in
14 terms of what actually happened?

15 A. I don't believe so, no.

16 Q. Okay. Let's go back to the first page of Exhibit No. 21,
17 Mr. McKim's questions. Do you see any question there where
18 he asked you what the function or the primary function of
19 the Polar Pioneer was?

20 A. Well, it wasn't directed to me, right? So where
21 specifically would you like me to look?

22 Q. I'm looking here in this email from Mr. McKim dated March
23 24.

24 A. To Ms. Goodwin?

25 Q. To Ms. Goodwin and to all the other addressees, correct. So

1 if you look in the second paragraph, it says: We're looking
2 specifically for information, et cetera. And then number --
3 the second paragraph says: Some details that might be
4 helpful, and there's a series of questions.

5 A. Yes.

6 Q. Do any of those questions ask for details about the purpose
7 or the function of the Polar Pioneer?

8 A. No, it doesn't appear so.

9 Q. Did Mr. McKim ask Foss to identify what vessels were going
10 to be calling at Terminal 5?

11 A. It doesn't look like it, no.

12 Q. Did he ask what other vessels' functions would be?

13 A. No, it does not appear that way.

14 Q. Did he ask whether any of the vessels carried cargo as one
15 of their functions?

16 A. No.

17 Q. Let's talk about the function of a cargo terminal from your
18 perspective. Does the function of a cargo vessel
19 including -- include loading a wide variety of goods and
20 materials on a vessel?

21 A. A cargo terminal?

22 Q. Yes.

23 A. Yes, it does.

24 Q. Does the function of a cargo terminal include loading a wide
25 variety of provisions on the vessels?

1 a class requirement. So we do that and we actually put it
2 in the official logbook on a vessel as testing gear.

3 Q. Does a function of a cargo terminal include training of
4 crew?

5 A. The crew needs to be trained in their emergency response and
6 lifeboats and firefighting. We do that a lot of times while
7 we're tied up at the terminal. We do maintenance on
8 lifeboats, we change out life rafts, we change out fire
9 extinguishers, we make sure the smoke detectors are working.
10 All of those things happen at a terminal, you know, while
11 you're getting ready for your next voyage.

12 Q. Does a cargo terminal's function include providing a
13 location for vessels to moor?

14 A. Yes. They need to tie up safely; otherwise, we'd have
15 mayhem out in the city -- in the port of vessels just
16 drifting around.

17 Q. Can those variety of different activities we've discussed:
18 Loading gear and provisions and training and maintenance,
19 can that happen without moorage?

20 A. Some of the things needed to be, you know, turned off while
21 they're doing maintenance and repair or checking systems.
22 And so you've got to tie up safely somewhere just to give
23 the crew some rest and give the engines and machinery some
24 rest and do your necessary repairs. It would be like having
25 your family car and never turning it off and just driving it

1 around all the time and never parking it.

2 Q. Is moorage a necessary part of operating a cargo terminal?

3 A. I believe so, yes.

4 Q. Is it a integral part of operating a cargo terminal?

5 A. I believe so. You can't really have a terminal without
6 mooring of vessels.

7 Q. Is it intrinsic to operating a cargo terminal?

8 A. In my opinion, it's intrinsic to operating a cargo terminal.

9 Q. Okay. During the period that Foss has had possession of
10 Terminal 5, so that's from February to today, has Foss
11 loaded quantities of goods and materials onto vessels?

12 A. At Terminal 5? Yes.

13 Q. And that would be the vessels that we described today?

14 A. Yes.

15 Q. Has it loaded provisions onto those vessels?

16 A. Yes. We showed that in the documentation.

17 Q. And did it load gear onto those vessels?

18 A. Yes.

19 Q. Did it load stores onto the vessels?

20 A. Yes.

21 Q. Did it provide a location for the vessels to load and unload
22 their crew?

23 A. It did, yes.

24 Q. Did it provide a location for those vessels to undertake
25 their long expected voyages up to the Arctic?

1 A. In preparation for the voyages, yes.

2 Q. Does Foss expect to provide a location at Terminal 5 for
3 those vessels to return after their long voyages?

4 A. Yes, that is our hope. We'd like to provide that service.

5 Q. And is that to perform the services you were discussing
6 earlier, such as unloading, maintenance and repair?

7 A. Yes. And, I mean, we'd like to perform services for other
8 vessels at Terminal 5 in addition to these ones that we've
9 talked about.

10 Q. Has Foss used Terminal 5 to store quantities of goods and
11 container cargo without undergoing any manufacturing
12 process?

13 A. Yes, sir.

14 Q. Has Foss done that to transfer those goods and container
15 cargos to other locations?

16 A. Yes. Ultimately. Some stuff is still stored on the ground
17 there now, but for the most part it's been used as a place
18 to store while we're getting ready to determine the final
19 location.

20 Q. Has Foss used Terminal 5 to transfer quantities of goods and
21 container cargos to other carriers?

22 A. I'm not sure what that -- what carriers refers to, but if
23 carriers are other vessels or other trucking companies,
24 then, yes.

25 Q. Okay. Has Foss used Terminal 5 to store quantities of goods

EXHIBIT 3

1 BEFORE THE HEARING EXAMINER
2 FOR THE CITY OF SEATTLE

3

4 In the Matter of the Appeals of:)

5 FOSS MARITIME COMPANY AND) Hearing Examiner File Nos.

6 PORT OF SEATTLE) S-15-001; S-15-002

7 from an interpretation) (Directors Interpretation

8 issued by the Director) 15-001)

9 Department of Planning)

10 and Development)

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12 Administrative Hearing - Testimony of Vince O'Halloran,

13 Jim Johnson and Mark Knudsen

14 before

15 HEARING EXAMINER ANNE WATANABE

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18 August 24, 2015

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1 Q. And also vessel side support?

2 A. Well, there is -- it's -- that's the same.

3 Q. Okay. There has been a lot of talk about gear, store and
4 provisions. Are you familiar with these terms?

5 A. Sure.

6 Q. And could you just give us a better understanding? What are
7 stores?

8 A. Well, stores can be anything, but what stores generally are
9 would be items that the vessel would need to operate. It
10 could be lube oils, engine room parts, radar, you know,
11 electronic parts, whatever operational necessities the
12 vessel needs. Any time a ship docks it has to load stores.
13 No ship ever docks and does not load stores.

14 Q. What are provisions?

15 A. Provisions would be items that the crew would use for the
16 necessary operation of the vessel: Food, laundry, you know,
17 blankets, milk.

18 Q. And how do provisions get on and off a vessel?

19 A. It depends on how many there are and what jurisdiction we
20 might be in. So sometimes we load them. If they are what
21 they call daily stores, the longshoremen will load them if
22 they are a bit more prolific. So that can vary.

23 Q. Okay.

24 A. But even if the longshoremen are called to load stores, I
25 would have to supplement with a larger gang to distribute

1 the stores inside the vessel.

2 Q. And what about gear, is that different than stores and
3 provisions?

4 A. Well, gear would be normally -- you would normally refer to
5 gear as items that are necessary to the operation of the
6 vessel. It could be mooring lines, again, lubrication
7 greases, paint, anything that the vessel needs to operate.

8 Q. And would you consider the loading of gear, stores and
9 provisions to be part of a cargo operation?

10 A. Yeah, sure. It's -- anything that isn't nailed down would
11 be cargo, anything that's not a permanent fixture of the
12 vessel.

13 Q. Do your members and affiliates also perform non-cargo
14 activities while the vessels are at port facilities?

15 A. We perform routine maintenance and repair activities while
16 the ship is alongside. Any company would also be performing
17 maintenance and repair work whenever a vessel is alongside.
18 That's --

19 Q. So --

20 A. -- normal operating procedure of a vessel.

21 Q. So if a vessel calls into Seattle and moors at a port
22 facility, they might need electrical repair, for example?

23 A. They almost always will need electrical repair.

24 Q. And maybe fabrication or painting?

25 A. Absolutely.

1 Q. Cleaning?

2 A. Yes. The cleaning of tanks, cargo tanks, absolutely.

3 Q. And when and where do those activities occur?

4 A. They occur while the vessel is alongside the dock.

5 Q. So while it's lay berthed.

6 A. Pardon?

7 Q. While it's lay berthed? Is that the right term?

8 A. Well, not necessarily, but a lay berth we might refer to as
9 a part of the terminal that may not be actively used at that
10 moment, and we would say we're going to lay berth a vessel
11 there for three days to three years.

12 Q. Okay. And during that lay berthing, the activities you just
13 described could occur.

14 A. They do occur, yes.

15 Q. And that happens all throughout the port facilities in
16 Seattle?

17 A. All throughout the port facilities.

18 Q. Terminal 5 --

19 A. Throughout every port in the United States.

20 Q. In Terminal 5 and Terminal 91?

21 A. Absolutely Terminal 5 and Terminal 91.

22 Q. Did any of your affiliates work on the Shell-related vessels
23 while they were here in Seattle?

24 A. Yes.

25 Q. And what did they do?

1 A. They did everything that was required. They loaded and
2 unloaded cargo, they assisted with the -- well, that's what
3 they did.

4 Q. Did they load gear?

5 A. Yes.

6 Q. Did they load provisions?

7 A. Yes.

8 Q. Did they load stores?

9 A. Yes.

10 Q. Do you know if they unloaded anything from these vessels?

11 A. Yeah, I asked, and apparently they -- they were unloading a
12 tremendous amount of supplies also, but I would defer more
13 to a Foss person on that.

14 Q. Okay. Do you know if any repairs, painting, fabrication was
15 done?

16 A. Well, repairs are always done on any vessel.

17 Q. Do your groups have any written agreements related to the
18 gangs' work on these port facilities?

19 A. Well, yeah, we have collective bargaining agreements with --
20 else wise we wouldn't be working with any of the -- wherever
21 we're working we have a collective bargaining agreement with
22 the various companies that are employing us.

23 Q. And do those include the vessel owners and operators or just
24 the terminal operators?

25 A. Oh, they include both the vessels owners and operators. I

1 would be -- my sailors would be paid by APL, or by American
2 President Lines, or Matson, and longshoremen for instance
3 would be perhaps paid by the terminal operators.

4 Q. Do you know if Foss uses unionized labor?

5 A. They use -- yes, they are one of the best unionized labor
6 companies in the northwest.

7 Q. Mr. O'Halloran, have you read the interpretation at issue in
8 this case?

9 A. Only the bold print.

10 Q. And are you an expert in zoning or land use?

11 A. No.

12 Q. Have you reviewed the permits for Terminal 91 or Terminal 5?

13 A. No.

14 Q. If I told you that the interpretation would prohibit
15 non-cargo activities at Terminal 5 and Terminal 91, what
16 would you say?

17 A. Well, I would ask to define cargo activities that --
18 everything that was done there on the Shell Oil rig was a
19 traditional use of a terminal.

20 Q. If vessels -- certain kinds weren't allowed to call into
21 Seattle because of the application of the interpretation,
22 would that have an impact on your members and the
23 affiliates?

24 A. It would have a severe impact. It would have a very
25 negative impact on my members.

1 Q. And why is that?

2 A. Because there would be lack of work. We work when the
3 vessels are in port.

4 Q. Do --

5 A. Well, and at sea. Excuse me.

6 Q. Do you have a sense of the size, the number of jobs in
7 Seattle's maritime cluster?

8 A. It varies. The city itself has a report, the Seattle
9 Master -- the Seattle Maritime Cluster Report, and that
10 lists 12,000 workers. I think the number is far greater
11 than that and -- just from my own observations.

12 Q. And how does that compare to other job clusters on the west
13 coast, do you know?

14 A. Seattle itself has the highest job employment of any port
15 city, including both L.A.-Long Beach. Just Seattle, not
16 Seattle-Tacoma.

17 Q. And so if the interpretation were applied in such a way to
18 ban or prohibit vessels coming into Seattle, that would have
19 a negative impact on those jobs?

20 A. Yes. Any loss of -- any loss of a vessel's ability to
21 access the Port of Seattle would create a negative impact on
22 the employment of our Seattle workforces.

23 MR. BROWER: Thank you, Mr. O'Halloran.

24 I don't have anything else, Your Honor.

25 HEARING EXAMINER: All right. Let's start with this side

1 on -- with -- when Ms. Baxendale was asking you --

2 A. Yes, but --

3 Q. -- I think you were a little more --

4 A. I think I --

5 Q. -- specific about it.

6 A. So I would say it is cargo. Loading provisions, stores and
7 gear are loading and discharging of cargo if you're taking
8 them off or you're loading them on, and you can carry -- and
9 you also carry cargo. So, I mean, it's a multipurpose
10 definition.

11 Q. All right. And --

12 A. Or use.

13 Q. -- I don't have any other questions for you.

14 HEARING EXAMINER: So Mr. Brower, anything on redirect?

15 MR. BROWER: Nothing. Mr. O'Halloran, thank you so much.

16 HEARING EXAMINER: Thank you.

17 THE WITNESS: Okay. Thank you. Really? Wow. I was
18 worried. Thank you.

19 MR. MCCULLOUGH: Thank you, Mr. O'Halloran.

20 MS. GOLDMAN: What a reputation we have.

21 MR. MCCULLOUGH: This is Mr. McCullough, Ms. Examiner. We
22 would like to call the next witness.

23 HEARING EXAMINER: All right.

24 MR. MCCULLOUGH: And it's Mr. Jim Johnson.

25 HEARING EXAMINER: All right.

1 officer of our groundfish division.

2 Q. Okay. Tell us a little bit about your background.

3 A. I've worked at Glacier for nearly seven years. And for four
4 years I was the vice president of finance and corporate
5 development, and for the last three years president.

6 Q. Mm-hmm.

7 A. And prior to that I worked in the maritime industry in the
8 investment banking and finance sectors --

9 Q. Okay.

10 A. -- for KeyBanc Capital Markets as a managing director.

11 Q. Okay. Will you tell us what Glacier Fish does?

12 A. We own and operate seven catcher-processors that operate in
13 the Bering Sea in Alaska and also off the west coast of
14 Washington.

15 Q. Mm-hmm. Okay.

16 A. (Inaudible) vessels, fish process and freeze on a continuous
17 process.

18 Q. And all of this happens within the vessel.

19 A. Correct.

20 Q. Mm-hmm. Do you -- you conduct operation -- your vessels
21 conduct operations here in Seattle? I don't mean fishing
22 operations, I mean here in the harbor. Do you -- let me ask
23 it a different way.

24 Do your vessels make any use of Terminal 91?

25 A. Yes.

1 Q. Can you tell us what use that is?

2 A. Yeah, we homeport the vessels there when we are in Seattle,
3 we do maintenance activities, we do training activities on
4 the boats, we're backloading supplies and provisions of
5 those vessels in support of our fishing operations.

6 Q. Mm-hmm. You had seven boats, you said.

7 A. Yes.

8 Q. Do all seven of them homeport at Terminal 91?

9 A. When they are not in shipyard, yes.

10 Q. Okay. And what is the general --

11 A. I should clarify. Shipyard means when we need the services
12 of a dedicated shipyard such as a dry dock or --

13 Q. Okay.

14 A. -- cranes that are in excess of --

15 Q. For major repair.

16 A. Right.

17 Q. Okay. What's the general duration of stay at Terminal 91?

18 A. On average, each of the boats -- each of three of the boats
19 are there from 125 to 150 days, four of the smaller vessels
20 are there approximately 30 to 75 days each.

21 Q. Okay. You talked about homeporting. Sometimes this is
22 referred to as overwintering; is that fair?

23 A. It's not a term we use, but --

24 Q. Right.

25 A. -- I understand what it means. It means that when our

1 vessels aren't conducting fishing operations, this is where
2 they are -- it's where we lay up the vessels.

3 Q. Mm-hmm. All right. Now, some of your -- were you here for
4 the testimony of Mr. O'Halloran?

5 A. I was.

6 Q. And you heard the distinction he was drawing among stores
7 and provisions versus other kinds of cargo?

8 A. Yes, I did.

9 Q. And what's your feeling about -- I mean, he tried to provide
10 a definitional framework for that. I mean, when you're
11 looking at cargo, does it include all of these items?

12 A. All of --

13 Q. Stores and provisions and fish and gear?

14 A. Yeah. I mean, maybe we're in the fishing industry, we're
15 less sophisticated, but we have supplies and provisions in
16 support of the vessel, and then we have the production
17 itself that -- of the vessel, which is frozen fish that we
18 produce from --

19 Q. Okay.

20 A. -- harvest.

21 Q. And these are all things you load and unload.

22 A. Yes.

23 Q. Right. So do some of your ships, your vessels when they are
24 calling at Terminal 91, do they -- do all of -- well, let me
25 ask it this way. Do all of them load and unload stores,

1 gear, provisions?

2 A. Yes.

3 Q. And do some of them load or unload, I guess, your processed
4 fish?

5 A. Some. Yeah, it depends on -- it's fishery dependent and
6 it's market dependent. Sometimes our vessels will never
7 offload frozen fish in a year, and other times they might if
8 necessary to carry down as ballast, for instance.

9 Q. Mm-hmm.

10 A. They might --

11 Q. Can you explain that when you say carry down as ballast?

12 A. Some of the vessels, if they are bringing home fishing gear,
13 like used fishing gear, that might be enough ballast for the
14 vessel's stability. We have a -- there is a -- there is
15 parameters of stability for the vessel, how it's loaded
16 weight-wise, fuel, ballast tanks, things like that.

17 Q. Mm-hmm.

18 A. So sometimes we have enough things that we're bringing
19 southbound that we don't need it, and other times we do. So
20 sometimes we will bring frozen fish for ballast. Sometimes
21 we'll have a customer that might actually require delivery
22 in Seattle, but that's pretty rare.

23 Q. Mm-hmm.

24 A. And we also conduct a fishery off the west coast here where
25 one or two of the boats might be participating in that

1 fishery each year, but it's -- again, it's dependent on the
2 year. Some years we'll have one boat fish in hake and other
3 years two boats. So the boat that wouldn't be fishing in
4 hake wouldn't offload any product.

5 Q. Hake I assume is a fish.

6 A. Yeah, Pacific hake, or otherwise known as Pacific whiting.

7 Q. Okay.

8 A. It's a fish -- a federal fishery off the coast of
9 Washington.

10 Q. Okay. So in terms of this duration of activity here at
11 Terminal 91, what percentage do you think involves unloading
12 this processed fish?

13 A. The cumulative days the boats are tied to the dock, probably
14 less than 5 percent.

15 Q. Mm-hmm. Is -- and just remind me, please, was it your
16 testimony that all of the vessels that come in unload
17 processed fish or some of them don't?

18 A. Some of them don't. It's going to be very dependent on the
19 operations.

20 Q. Mm-hmm.

21 A. Some will go through an entire year with not offloading
22 product.

23 Q. So there at Terminal 91?

24 A. Yes.

25 Q. So what other kinds of activities do you conduct then when

1 Q. Yeah. Okay. Are you aware whether -- of whether other
2 fishing companies conduct the same or similar activities at
3 T-91?

4 A. Many do.

5 Q. Okay. Such as?

6 A. Company names?

7 Q. Yes.

8 A. American Seafoods, Ocean Peace, Arctic Storm, Arctic Fjord,
9 Northern Hawk -- or I think they are called -- Coastal
10 Villages Pollock I think is the name of the company, Phoenix
11 Processor, to name a few. U.S. Seafoods, I think.

12 Q. Mm-hmm. Are -- you testified that -- again looking at this
13 95 percent of the time that ships are homeporting without
14 offloading.

15 Do you know if that's similarly the case with some of
16 these other fishing companies?

17 A. I think at least one of them doesn't do any cargo or doesn't
18 offload any frozen product. They do it --

19 Q. And that would be?

20 A. American Seafoods. I believe they do it on a barge at sea.

21 Q. Okay.

22 A. So I think theirs is zero. I think at least some of the
23 other companies that do headed and gutted frozen fish are
24 probably largely if not entirely shipping on trampers in
25 Alaska.

1 Q. Okay.

2 A. Such as Ocean Peace and Sea Fisher.

3 Q. Okay. Now, this is an appeal about an interpretation of the
4 land use code that was issued by the City.

5 Have you read that interpretation?

6 A. No.

7 Q. And do you consider yourself an expert in issues of
8 permitting or shoreline permits, land use?

9 A. No.

10 Q. Okay. And have you taken any time to review the specific
11 permits or permit history for Terminal 91 that's part of
12 your activity?

13 A. No.

14 Q. Okay. And we've talked about this homeporting activity. If
15 I told you that this interpretation that's on appeal would
16 prohibit homeporting, where there was no vessels, where
17 there was no offloading of, in your case, the fish product
18 occurring at T-91, what would be your reaction? What effect
19 would that have?

20 A. Yeah, I mean, it would have a huge effect, because I think I
21 mentioned earlier that our office is proximate -- at close
22 proximity to the terminal, all of our vendors are here, and
23 net manufacturers, everybody is in proximity of the terminal
24 to service the vessels that are doing repair and backload
25 there. So it would have a huge impact. And I just don't

1 Q. And did you hear his discussion about different kinds of
2 things that constitute cargo in his mind --

3 A. Yeah.

4 Q. -- stores, gear, provisions, other materials loaded on the
5 ship?

6 A. Yeah. Yes.

7 Q. And do you have any comment, agree or disagree with that?

8 A. That's -- I think his description of cargo is generally the
9 industry description, the same description we would use.
10 Cargo is everything that comes on and off the ship,
11 including the subsets of stores and provisions and various,
12 you know, paying cargo, if it's, you know, a piece of steel
13 or a box or whatever. So we generally look at cargo as
14 everything that moves on and off the ship, and it just has
15 different subsets underneath.

16 Q. Okay.

17 A. He was fairly sort of accurate in how he described how the
18 industry thinks of those.

19 Q. Okay. Well, setting aside for a moment the stores and gear
20 and provisions and items that -- cargo that needed to be
21 loaded in order for the ship to function --

22 A. Yeah.

23 Q. -- what other kinds of cargo do you handle at Terminal 18 or
24 25?

25 A. We handle everything. And anything that a customer comes to

1 with us we'll handle. So there was some discussion earlier
2 about pleasure boats. We frequently offload pleasure boats
3 off of the freighters that are coming in, drop them in the
4 water alongside, we'll bring them alongside and moor them
5 for a couple days to make sure that they are all functioning
6 and working before they get delivered on to the end
7 customer.

8 Q. Yeah, let me stop you there for a second. So these are
9 pleasure boats like small yachts or --

10 A. Yeah, small yachts, the 80-, 100-foot yachts, usually fairly
11 good size.

12 Q. Yeah. That's a large yacht. So when the vessel that's
13 carrying the yacht moors at Terminal 18, is it -- and
14 offloading, is it any point at which the yacht lands on
15 Terminal 18?

16 A. We try not to. We -- some of the smaller ones will land and
17 go to a trailer, but generally the yachts that are
18 transported on the cargo ships are big enough that they land
19 directly to the water.

20 Q. So there is no offloading activity in that case that is
21 conducted on the land side --

22 A. Not for that --

23 Q. -- for that particular subset of cargo.

24 A. Not for that set of cargo. They are generally dropped into
25 the water, we hold them in the slings until the operator

1 verifies that there is no leaks, that it's functioning, et
2 cetera, et cetera. Then they will -- then we'll move it
3 alongside the dock where they then, you know -- at that
4 point, we've turned it over to the cargo water and --

5 Q. So you have vessels that come in to deliver these yachts --

6 A. Yep.

7 Q. -- and they will drop the yacht in the water. Is that all
8 they will do with respect to -- other -- they will
9 presumably -- or you tell me, do they do anything in
10 connection with provisions and gear and stores?

11 A. All the vessels that come in while we're offloading the --
12 what you'd call the cargo --

13 Q. Mm-hmm.

14 A. -- the cargo for carriage, the --

15 Q. Right.

16 A. -- whether it's containers or yachts or logs or whatever it
17 is, they're also servicing the vessel at the same time. So
18 they have -- the electronics technicians come down to fix
19 whatever they messed up, there is parts and supplies for the
20 engine room and for the crew that come on board.

21 So that activity happens while we're doing -- simultaneous
22 with the cargo discharge. Generally, the vessels that --
23 depending on their schedule, but they are generally here for
24 a select -- a limited period of time.

25 Q. Mm-hmm.

1 A. Not always, but when they are in that limited period of
2 time, when they are ready to sail they want to be ready to
3 sail. So they will have vendors and suppliers 24/7 while
4 they are alongside the dock coming down.

5 Q. So as a vessel coming in to deliver the yacht, could it be
6 the case that the only onshore activity that's occurring,
7 land side activity is the provisions and gear and storage
8 loading?

9 A. Yeah, could be.

10 Q. And that the yacht is the only other delivery that's being
11 made?

12 A. Could be.

13 Q. And that is not happening on the land side. Okay.

14 So how about container cargo, you do container cargo at
15 Terminal 18?

16 A. We wish we did more. We do a lot of -- yeah, that's the
17 primary, you know, cargo at Terminal 18 is containers.

18 Q. Mm-hmm.

19 A. Not to the exclusion of other cargos, but it's the primary
20 cargo.

21 Q. Some at T-25 and 30?

22 A. At 25 and 30 as well. So --

23 Q. Mm-hmm. And 25 and 30 is, in your understanding at least, a
24 cargo terminal.

25 A. Yeah.

1 Q. The -- you talked about yachts. Are there any other cases
2 in which a vessel will come up and make deliveries of things
3 other than provisions, gear and stores directly into the
4 water?

5 A. Well, there are certain heavy lift cargos that come in that
6 get taken off the ship and put on barges. So you -- if
7 particularly large-sized pieces of generators, that type of
8 thing, that need to go directly to rail. None of the port
9 facilities currently have good rail adjacent to the ship, so
10 those -- some of those big or heavier lift projects will
11 go -- get loaded off the ship onto a barge using the barge
12 heavy lift cranes --

13 Q. Mm-hmm.

14 A. -- and then taking up. Manson is one of the companies that
15 does it locally. And it will be taken up to their terminal
16 where they have heavy rail right alongside their pier --

17 Q. Mm-hmm.

18 A. -- and it will take it directly from the barge onto that
19 heavy rail. And so some of these -- you know, some of this
20 cargo is 2-, 3-, 400 tons, and so they just -- you can't
21 easily move it across the streets.

22 Q. In that case, though, again, other than stores, provisions
23 and gear, there may be no other land side transfer going on.

24 A. Yeah. Or there may be, but it doesn't --

25 Q. You don't know.

1 A. It really depends on the vessel.

2 Q. Mm-hmm. Do you ever have -- host naval ships at Terminal
3 18?

4 A. Yeah. They -- we used to have the aircraft carriers come in
5 there when they brought the big aircraft carriers.

6 Q. Mm-hmm.

7 A. And we have had naval vessels at Terminal 30 as well. And
8 we try even -- you know, as you can see from the map up
9 there from the exhibit, there is 4,000-some feet of moorage
10 at Terminal 18. So in the effort of trying to help the
11 community, we'll -- we will reroute our ships to a berth
12 further south and --

13 Q. Mm-hmm.

14 A. -- (inaudible) for a Navy ship that -- if we can.

15 Q. So you testified about these ships taking on stores,
16 provisions and gear. What other kinds of activities
17 happen -- well, let me back up before I say that.

18 Are there any cases where you have -- other than the ones
19 we've described where you have a ship that will come to
20 Terminal 18 or Terminal 25 and not do anything, say act in
21 idle moorage --

22 A. Yeah.

23 Q. -- take off stores, gear, provisions, but not actually
24 deliver or take on any other kinds of cargo?

25 A. Yeah, certainly. We have a -- you know, as -- we have a

1 wide variety of customers. Currently at Terminal 25, we
2 have a Matson ship that used to be in service and has been
3 tied up at Terminal 25 for the last ten months probably.

4 Q. What kind of ship is it?

5 A. It's a cargo ship. It's a Matson containership.

6 Q. Mm-hmm.

7 A. Carries autos, carries containers, carries break bulk cargo,
8 carries a mix of things. And it's between seasons, it
9 usually becomes -- gets put into service in the winter when
10 their -- or when one of their other vessels is out in dry
11 dock. And that's -- that ship came in empty, it's been
12 there, they have been doing minor maintenance and repairs
13 and provisioning and that type of thing on it, so --

14 Q. How long has it been there?

15 A. At least ten months.

16 Q. Okay. How about any other cases where you'll have ships
17 that will just come for idle moorage, we'll call it?

18 A. Well, you'll have -- we'll have ships that will come in that
19 maybe want to clean their holds, let's say someone that was
20 carrying a cargo of sulfur and is coming to Seattle to carry
21 a cargo of grain going back out.

22 Q. Mm-hmm.

23 A. So they will bring the ship alongside, access the tanker
24 trucks and other stuff that they can come in, wash that,
25 wash the holdout so that it's clean, got to get it dried,

1 certified, bring the inspectors on board, and then go over
2 and pick up their cargo of grain at the grain terminal.

3 So --

4 Q. Now, would it have been the case in your example that the
5 ship would have offloaded its cargo of sulfur at Terminal
6 18?

7 A. No, they -- that would not happen.

8 Q. Okay.

9 A. That's one cargo we don't handle. You've got to have a
10 specialized facility for handling a cargo like that, and we
11 don't have that --

12 Q. Right.

13 A. -- specialized facility.

14 Q. So what other kinds of activities occur during a idle
15 moorage? You say cleaning the hold is one.

16 A. Maintenance, repair. They will contract with a local
17 shipyard to come in and do some cutting and welding. You
18 know, they have got to get special permits from the fire
19 department to be able to do that activity, which they do.
20 But in our case, as long as we have idle -- we have space
21 that we can put one of our customers and we can help them
22 kind of meet their needs, we'll let them do that. Our
23 primary role, of course, is to move the cargo, that's where
24 we make the --

25 Q. And tell us what you mean by customer.

1 A. Customers is a wide variety of -- I mentioned earlier we
2 have operations all across the U.S. So virtually every
3 major steamship company or cargo carrying company or barge
4 company does business with us somewhere. And if they've got
5 a vessel that's up in the northwest, we (inaudible) base of
6 good customer relationships.

7 Q. Mm-hmm.

8 A. If they need space and we can provide space for them, we do.
9 It helps us keep our business alive.

10 Q. This is a use that you described here, this idle moorage
11 that has been conducted at T-18 -- in your experience at
12 T-18?

13 A. Yeah.

14 Q. And prior to that, in your experience as a -- with the Port,
15 you were aware of these activities occurring?

16 A. Absolutely. Yeah, we've had -- I mean, moorage -- idle
17 moorage for large vessels is a limited commodity. Seattle
18 has some of the best docks really in Puget Sound for that
19 kind of moorage, and to the extent that the space is
20 available, it's been a constant for as long as I've been
21 involved in the industry to do that.

22 Q. And as long -- I mean, you've got ten years at SSA, and how
23 many years were you at the port prior to that?

24 A. About 20 years at the port.

25 Q. So about 30 years of experience you're speaking from.

1 A. Yeah. And ten years out of the Seattle-based fishing
2 industry before that. So more like 40 years.

3 Q. Mm-hmm. Did you sit down when you -- you said a client or
4 customer would call and need a location for idle moorage,
5 would you stop and check your permit to see if that was
6 allowed?

7 A. No, because it's been a standard industry practice for us
8 and all the other operators for as long as we've been in the
9 industry. So we've always just run under the presumption
10 that that's part of the operating permits that were -- that
11 went with the facility.

12 Q. And this is --

13 A. It's not something we would check.

14 Q. This dating back the same 30 years you're talking about?

15 A. Yeah.

16 Q. So you testified your customer comes in, calls, has a ship
17 in the northwest, "I need a place to be," sometimes you can
18 service them at T-18.

19 A. Right.

20 Q. What if you can't?

21 A. Then they go somewhere else. I mean, that's the -- it's
22 pretty simple. They have got a ship that needs to go to a
23 dock. They either come to Seattle.

24 Q. Mm-hmm.

25 A. If we can't service them, they will find another location,

1 they will go up to Vancouver, they will go down to Tacoma or
2 Everett.

3 Q. Mm-hmm.

4 A. Or they will just bypass the northwest all together and go
5 to California.

6 Q. Mm-hmm. Looking at Terminal 25-30, we talked about vessels
7 or things that can be at idle moorage where they are -- and
8 you mentioned the Matson ship. Are there any other kinds of
9 floating items that have been at idle moorage at --

10 A. We have had a wide variety of stuff over the years there.
11 We have -- last winter we had a barge, kind of a unique,
12 specialized barge that was tied up at 25 for several months
13 most of the winter. Before that we've had sections of the
14 floating bridges as they were being manufactured and
15 outfitted for electrical, you know, light standards and all
16 that sort of stuff.

17 Q. Mm-hmm.

18 A. We had them alongside of the pier while they were doing that
19 outfitting work for the floating -- you know, the floating
20 bridges across Lake Washington.

21 Q. They weren't out there to deliver cargo, I assume.

22 A. They -- no, not unless it was some rat that jumped off of
23 them or whatever that's -- no, they were just there for --
24 they needed a workspace with a heavy duty dock that they
25 could bring trucks and equipment alongside to, and get the

1 workers on and off the barges and have a source of power
2 supply to run them. So --

3 Q. So you testified you have not read the interpretation in
4 this case.

5 A. Correct.

6 Q. So if I told you that the effect of the interpretation would
7 be to prohibit these idle moorage activities -- cases where,
8 you know, non-stores, provisions, gear, where vessels were
9 failing to load or unload other kinds of cargo -- would
10 prohibit that kind of moorage at Terminal 18, Terminal
11 25-30, other cargo terminals at the port, what would be your
12 reaction to that?

13 A. Well, there is two, I guess. Certainly first it would be a
14 financial impact to us, because part of the reason we moor
15 vessels there is to create revenue so that we can pay our
16 lease payments to the Port of Seattle.

17 Q. Sure.

18 A. And under the presumed lease agreement that we have with the
19 Port is our ability to do this -- the type of work we've
20 been doing for a number of years. So it would be a
21 financial impact to us.

22 Depending on how sort of strenuous or severe that language
23 change could be, that would affect the ability of some of
24 our regular customers who call on a regular basis with
25 cargo. If they are not able to load stores or they are not

1 able to do repairs and not able to have a temporary lay
2 berth if they are delayed on their vessel schedule or
3 something like that, it could affect whether they would
4 continue to call on Seattle or not.

5 Q. Mm-hmm. Would you say that this idle moorage activity
6 you've described is intrinsic in operating a cargo terminal?

7 A. Yeah, it's just part and parcel of what people expect out of
8 a cargo terminal to be able to do, or at least what our
9 customers expect, is the ability to come in, lay their
10 vessels up if they need to between vessels -- there is a
11 large difference between the different types of vessels that
12 call in, but some of the ones that aren't on -- you know,
13 the high profile, big containerships are going to be pretty
14 tight on their schedules. A lot of the other ships have,
15 you know, the opportunity or maybe need the opportunity to
16 stay for a day or two to make up their schedule or wait for
17 crew or wait for parts or whatever. So --

18 Q. Has this been the case for the last 30 years, in your
19 experience?

20 A. Yeah.

21 Q. Okay. Nothing -- oh, hold on one second. Well, I just
22 thought of another question. Spontaneously.

23 So you described that -- the impact that the
24 interpretation as I've described it would have. What would
25 be the impact if the Port told you you cannot conduct any

1 C E R T I F I C A T E

2

3 STATE OF WASHINGTON)

4)

5 COUNTY OF KING)

6

7

8 I, the undersigned, do hereby certify that the
9 foregoing recorded statements, hearings and/or interviews were
10 transcribed under my direction as a transcriptionist; and that
11 the transcript is true and accurate to the best of my knowledge
12 and ability; that I am not a relative or employee of any attorney
13 or counsel employed by the parties hereto, nor financially
14 interested in its outcome.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand this
17 3rd day of September, 2015.

18

19

20

21

22

23 Marjie Jackson, CETD

24

25

EXHIBIT 4



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UNIVERSITY

un- u loot u loot y yet y- y-

and animals and characterized chemically by a long aliphatic polyene chain composed of isoprene units — **carotenoid** *adj*

carotid \kə-'rāt-əd/ *adj* [F or Gk; F *carotide*, fr. Gk *karōtides* carotid arteries, fr. *karoun* to stupefy; akin to Gk *kara* head — more at CEREBRAL] : of, relating to, or being the chief artery or pair of arteries that pass up the neck and supply the head — **carotid** *n*

carotid body *n* : a small body of vascular tissue that adjoins the carotid sinus, functions as a chemoreceptor sensitive to change in the oxygen tension of blood, and mediates reflex changes in respiratory activity

carotid sinus *n* : a small but richly innervated arterial enlargement that is located at the point in the neck where either carotid artery forms its main branches and that functions in the regulation of heart rate and blood pressure

carouse \kə-'raʊ-zəl/ *n* : CAROUSE 2

carouse \kə-'raʊ-zəl/ *n* [MF *carousse*, fr. *carous*, adv., all out (in boire *carous* to empty the cup), fr. G *garaus*] 1 archaic : a large draft of liquor : TOAST 2 : a drunken revel

carouse *vb* **caroused**; **carousing** *vi* 1 : to drink liquor deeply or freely 2 : to take part in a carouse ~ *vt*, *obs* : to drink up : QUAFF — **carouser** *n*

caroussel \kə-'raʊ-səl/ *n* [F *carrousel*, fr. It *carosello*] 1 : a tournament or exhibition in which horsemen execute evolutions 2 a : MERRY-GO-ROUND b : a circular conveyer on which objects are placed (the luggage ~ at the airport)

carp \kɑ:p/ *vi* [ME *carpen*, of Scand origin; akin to Icel *karpa* to dispute] : to find fault or complain querulously — **carper** *n*

carp *n*, *pl* **carps** or **carps** [ME *carpe*, fr. MF, fr. LL *carpa*, prob. of Gmc origin; akin to OHG *karpfo* carp] 1 : a large variable Old World soft-finned freshwater fish (*Cyprinus carpio*) of sluggish waters often raised for food; also : any of various related cyprinid fishes 2 : a fish (as the European sea bream) resembling a carp

carp or **carpo** *comb form* [F & NL, fr. Gk *karp*, *karpo*, fr. *karpos* — more at HARVEST] : fruit (*carpology*)

carp \kɑ:p/ *n* *comb form* [NL *carpium*, fr. Gk *-karpion*, fr. *karpos*] : part of a fruit (mesocarp) : fruit (schizocarp)

carpal \kɑ:'pæl/ *adj* [NL *carpalis*, fr. *carpus*] : relating to the carpus

carpal *n* : a carpal element : CARPALE

carpal \kɑ:'pæl-/ *n*, *pl* **carpals** [NL, neut. of *carpalis*] : a carpal bone

car park *n*, chiefly Brit : an area set apart for the parking of motor vehicles : PARKING LOT

carpe diem \kɑ:'pe-'di-əm, -'di-, -'em/ *n* [L, enjoy the day] : the enjoyment of the pleasures of the moment without concern for the future (the *carpe diem* theme in poetry)

carpel \kɑ:'pæl/ *n* [NL *carpellum*, fr. Gk *karpos* fruit] : one of the structures in a seed plant comprising the innermost whorl of a flower, functioning as megasporophylls, and collectively constituting the gynoecium — **carpelary** \pə-'le-ri-/ *adj* — **carpelate** \-'lāt-, -'lāt/ *adj*

carpen-ter \kɑ:'pən-'tər, 'kɑ:p-'m-tər/ *n* [ME, fr. ONF *carpentier*, fr. L *carpentarius* carriage maker, fr. *carpentum* carriage, of Celt origin; akin to OIr *carr* vehicle — more at CAR] : a workman who builds or repairs wooden structures or their structural parts

carpenter *vb* **carpen-tered**; **carpen-ter-ing** \-'(t-)rɪŋ/ *vi* : to follow the trade of a carpenter (~ed when he was young) ~ *vt* 1 : to make by or as if by carpentry 2 : to put together often in a mechanical manner (~ed many television scripts)

carpenter ant *n* : an ant (esp. genus *Camponotus*) that gnaws galleries in dead or decayed wood

carpenter bee *n* : any of various solitary bees (*Xylocopa* and related genera) that gnaw galleries in sound timber

carpen-try \-'trɪ-/ *n* 1 : the art or trade of a carpenter; *specif* : the art of shaping and assembling structural woodwork 2 : timber-work constructed by a carpenter 3 : the form or manner of putting together the parts (as of a literary or musical composition) : STRUCTURE, ARRANGEMENT

car-pet \kɑ:'pət/ *n* [ME, fr. MF *carpite*, fr. OIt *carpita*, fr. *carpire* to pluck, modif. of L *carpere* to pluck — more at HARVEST] 1 : a heavy woven or felted fabric used as a floor covering; also : a floor covering made of this fabric 2 : a surface resembling or suggesting a carpet — **carpet** *vi* — **on the carpet** : before an authority for censure or reproof

car-pet-bag \-'bæg/ *n* : a traveling bag made of carpet and widely used in the U.S. in the 19th century

carpetbag *adj* : of, relating to, or characteristic of carpetbaggers (a ~ government)

car-pet-bag-ger \-'bæg-'ər-/ *n* [fr. their carrying all their belongings in carpetbags] 1 : a Northerner in the South after the American Civil War usu. seeking private gain under the reconstruction governments 2 : a nonresident who meddles in politics — **car-pet-bag-gery** \-'bæg-'(ə-)rɪ-/ *n*

carpet beetle *n* : a small beetle (*Bothynus gibbosus*) whose larva damages woolen goods; *broadly* : any beetle of similar habits

car-pet-ing \kɑ:'pət-'ɪŋ/ *n* : material for carpets; also : CARPETS

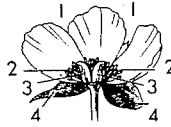
carpet knight *n* [fr. the carpet's having been a symbol of luxury] : a knight devoted to idleness and luxury

car-pet-weed \kɑ:'pət-'wi:d/ *n* : a No. American mat-forming weed (*Mollugo verticillata* of the family Aizoaceae, the carpetweed family)

car-pic \kɑ:'pɪk/ *adj* *comb form* [prob. fr. NL *-carpicus*, fr. Gk *karpos* fruit] : CARPOUS (polycarpic)

car-ping \kɑ:'pɪŋ/ *adj* : marked by or inclined to querulous and often perverse criticism *syn* see CRITICAL *ant* fulsome — **car-ping-ly** \-'pɪŋ-/ *adv*

car-po-go-ni-um \kɑ:'pə-'gō-nē-əm/ *n*, *pl* **-nia** \-'nē-/ [NL] 1 : the flask-shaped egg-bearing portion of the female reproductive



carpels: flower cut away: 1 petals; 2 stamens; 3 carpels; 4 sepals

branch in some thallophytes 2 : ASCOGONIUM — **car-po-go-ni-um** \-'nē-/ *adj*

car-polo-gy \kɑ:'pəl-ə-'jɪ-/ *n* [ISV] : a branch of plant morphology dealing with fruit and seeds

car pool *n* : a joint arrangement by a group of private automobile owners in which each in turn drives his own car and carries the other passengers; also : the group entering into such an agreement

car-poph-a-gous \kɑ:'pəf-'ə-'gəs/ *adj* [Gk *karpophagos*, fr. *karp* + *-phagos* -phagous] : feeding on fruits

car-po-phore \kɑ:'pə-'fō(r)-, -'fō(r)-/ *n* [prob. fr. NL *carpophorum*, fr. *carp* + *-phorum* -phore] 1 : the stalk of a fungal fruiting body; also : the entire fruiting body 2 : a slender prolongation of a floral axis from which the carpels are suspended

car-port \kɑ:'pɔ(r)-, -'pɔ(r)-/ *n* : an open-sided automobile shelter sometimes formed by extension of a roof from the side of a building

car-po-spore \kɑ:'pə-'spō(r)-, -'spō(r)-/ *n* : a diploid spore of a red alga — **car-po-spore-ic** \kɑ:'pə-'spōr-ik-, -'spōr-ik/ *adj*

car-pous \kɑ:'pəs/ *adj* *comb form* [NL *carpus*, fr. Gk *karpos*, fr. *karpos* fruit — more at HARVEST] : having (such) fruit or (so many) fruits (polycarpous) — **car-py** \kɑ:'pɪ-/ *comb form*

car-pus \kɑ:'pəs/ *n*, *pl* **car-pi** \-'pɪ-/ [NL, fr. Gk *karpos* — more at WHARE] 1 : WRIST 2 : the bones of the wrist

car-rack \kɑ:'ræk-, -'ɪk-/ *n* [ME *carraque*, fr. MF *caraque*, fr. OSP *caraca*, fr. Ar *qarāqir*, pl. of *qarāqir* merchant ship] : a large galleon

car-ra-geen \kɑ:'rə-'geen/ *n* [Carrageen, near Waterford, Ireland] 1 : a dark purple branching cartilaginous seaweed (*Chondrus crispus*) found on the coasts of northern Europe and No. America — called also *Irish moss* 2 : CARRAGEENAN

car-ra-geen-an or **car-ra-geen-in** also **car-ra-geen-in** \kɑ:'rə-'geen-/ *n* [Carrageen + *-an* or *-in*] : a colloid extracted esp. from carrageen and used esp. as a suspending agent (as in foods) and as a clarifying agent (as for beverages) and in controlling crystal growth in frozen confections

car-re-four \kɑ:'rə-'fʊ(r)-/ *n* [MF, fr. LL *quadrifurcum*, neut. of *quadrifurcus* having four forks, fr. L *quadri* + *furca* fork] 1 : CROSSROADS 2 : SQUARE PLAZA (the farmers ... preferred the open ~ for their transactions — Thomas Hardy)

car-rel \kɑ:'rəl/ *n* [alter of ME *carole* round dance, ring — more at CAROL] : a table that often partitioned or enclosed and is used for individual study esp. in a library

car-riage \kɑ:'rɪ-/ *n* [ME *carriage*, fr. ONF, fr. *carrier* to transport in a vehicle — more at CARRY] 1 : the act of carrying 2 : a coach : DEPARTMENT b : manner of bearing the body : POSTURE 3 : *chaic* : MANAGEMENT 4 : the price or expense of carrying 5 : *obs* : BURDEN, LOAD 6 : *obs* : IMPORT, SENSE 7 : a wheeled vehicle : *esp* : a horse-drawn vehicle designed for private use and comfort b Brit : a railway passenger coach 8 : a wheeled support carrying a burden 9 : a movable part of a machine for supporting some other movable object or part (a typewriter ~) 10 : *obs* : a hanger for a sword *syn* see BEARING

carriage trade *n* : trade from well-to-do or upper-class people

carriage-way \kɑ:'rɪ-'wɛ-/ *n*, *Brit* : a road used by vehicular traffic : HIGHWAY, *specif* : LANE 2b

car-ric-bend \kɑ:'rɪk-'bend/ *n* [prob. fr. *obs*. E *carrick* carrack, fr. ME *carraque*, *carryk*] : a knot used to join the ends of two large ropes — see KNOT illustration

car-rier \kɑ:'rɪ-/ *n* 1 : one that carries : BEARER, MESSENGER 2 : an individual or organization engaged in transporting passengers or goods for hire b : a transportation line carrying mail between post offices c : a postal employee who delivers or collects mail d : one that delivers newspapers e : an entity (as a hole or an electron) capable of carrying an electric charge 3 : a container for carrying b : a device or machine that carries : CONVEYER 4 : AIRCRAFT CARRIER 5 : a bearer and transmitter of a causative agent of disease; *esp* : one who carries in his system the causative agent of a disease (as typhoid fever) to which he is immune 6 : a usu. inactive accessory substance : VEHICLE (a ~ for a drug or an insecticide) b : a substance (as a catalyst) by whose agency some element or group is transferred from one compound to another 7 : an electric wave or alternating current whose modulations are used as signals in radio, telephonic, or telegraphic transmission 8 : an organization acting as an insurer

carrier pigeon *n* 1 : a pigeon used to carry messages; *esp* : HOW-ING PIGEON 2 : any of a breed of large long-bodied show pigeons

car-ri-ole *var* of CARIOLE

car-ri-on \kɑ:'rɪ-ən/ *n* [ME *caroine*, fr. AF, fr. (assumed) VL *caronia*, irreg. fr. L *carne*, *caro* flesh — more at CARNAL] : dead and putrefying flesh; also : flesh unfit for food

car-rion \kɑ:'rɪ-ən/ *n* : a common European black crow (*Corvus corone*)

car-ron-ad \kɑ:'rən-'əd/ *n* [Carron, Scotland] : an obsolete short light iron cannon

car-rot \kɑ:'rɒt-/ *n* [MF *carotte*, fr. LL *carota*, fr. Gk *karōton*] 1 : a biennial herb (*Daucus carota* of the family Umbelliferae, the carrot family) with a usu. orange spindle-shaped edible root; also : its root 2 : a promised often illusory reward or advantage

car-rot-y \-'ɒt-/ *adj* 1 : resembling carrots in color 2 : having hair the color of carrots

car-rou-sel *var* of CAROUSEL

car-ry \kɑ:'rɪ-/ *vb* **car-ried**; **car-ry-ing** [ME *carien*, fr. ONF *carier* to transport in a vehicle, fr. *car* vehicle, fr. L *carrus* — more at CAR] *vi* 1 : to move while supporting (as a package) : TRANSPORT (her legs refused to ~ her further — Ellen Glasgow) 2 : to convey by direct communication (~ tales about a friend) 3 : *chiefly* dial : CONDUCT, ESCORT 4 : to influence by mental or emotional appeal : SWAY 5 : to get possession or control of : CAPTURE (carried off the prize) 6 : to transfer from one place to another (~ a number in adding) 7 : to contain and direct the course of (the drain carries sewage) 8 : a : to wear or have on one's person b : to bear upon or within one (is ~ing an unborn child) 9 : a : to have as a mark, attribute, or property (~ a scar) b : IMPLY, INVOLVE (the crime carried a heavy penalty) 10 : to hold or comport (as one's person) in a specified manner 11 : to sustain the weight or burden of (pillars ~ an arch) 12 : to bear as a crop 13 : to sing

with reasonable cor in stock for sale; al head of cattle) b : person on a payroll through financial su zine singlehandedly, a principle too far) adoption or passio legislative body or reports) 19 a : stocks or merchand one's books as a de hold to and follow sail) in use 22 : to gle stroke in golf showing by lessenin 2 : a : to reach or convey itself to a carriage in a specific the scent 5 : to v 71-25)

syn CARRY, BEAR, (move something fr — carry a torch love esp. without (she still carries a broken) — carry l : bear the major p day : WIN, PREVAIL

2 carry *n* 1 : carryi or of a struck or thi (fireman's ~) b : bearer with the flag quantity that is tra the adjacent one of

car-ry-all \kɑ:'rɪ-'ɒl/ *n* [CARIOLE] a : a b : a passenger aut higher body often o bag or carrying ca earth and crushed r

carry away *vi* 1 : excessive degree of carrying capacity support without un carrying charge n property 2 : a ch the installment plan

car-ry-ing-on \kɑ:'rɪ-'ɪŋ/ *n* : scandalous carryin

carry off *vi* 1 : to sands) 2 : to per off her part brillia brave out

car-ry-on \kɑ:'rɪ-'ɒn/ *n* : carried aboard an a

carry on *vi* : COND : to behave in a foc by the way he carr in spite of hindranc

car-ry-out \kɑ:'rɪ-'aʊt/ *n* : away from its plac — carryout *adj*

carry out \kɑ:'rɪ-'aʊt/ *n* : to brin (you will be paid : to continue to an

car-ry-over \kɑ:'rɪ-'oʊvər/ *n* : 2 : somethin

carry over \kɑ:'rɪ-'oʊvər/ *n* : another season t colum, page, or b (a loss or an unus period ~ *vi* : to j another

carry through *vi* : that carry through

car-sick \kɑ:'sɪk/ *n* : automobile — car

'cart \kɑ:'kɑrt/ *n* [ME *cradole* cradle] 1 : used for farming wheeled vehicle d

2 cart *vi* 1 : to car kids to and from away without cere ~ed him off to jail

cart-age \kɑ:'tɪ-/ *n* : carte blanche \kɑ:'kɑrt-'blānʃ-/ *n* : discretionary powe and furnish the ho

carte du jour \kɑ:'tɪ-'dʊ-/ *n* : [F, lit., card of the day] : a number of the

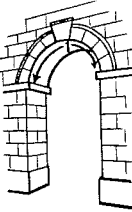
car-tel \kɑ:'tɛl-/ *n* : a ment between bell dent commercial e combination of pol

Car-te-sian \kɑ:'tɛ-'si-/ *n* : of or rel

Cartesian *n* — C

between wars
weaved; wo-
to weave to
aving his own
as) ~ vi: IN-
n — In-ter-
lj: occurring
cing or dying
us, fr. In- +
died ~> 2
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; STAMINA
l. Intestinus,
of or relating
of intestinus)
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stic tissue —
ate: FAMIL-
natus, pp. of
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contact, or
i by a warm
: suggesting
personal or
n
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ke timid or
y threats —
lor ~'tim-
g to intimi-
baptism, fr.
gere to dip,
acrament of
giving both
L in- fibrous
se wall of a
uler, fr. LL
a legislative
+ to to] 1
ction, inser-
ance) 2 a
b: to the
c: involved
ion word to
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INST (ran ~
E, fr. L in-
rable: UN-
y (Qin, täl-
)-ra-bal-nas,
ate of being
ure (a plant
to grant
b: unwill-
ights: BIG-
ER
stoning and
: the open-
g, playing
the voice in
minal junc-
ce (a falling
: makes it a
fr. MF en-
ter in musi-
monotone — in-

in to to \in-'töt-(Q) adv [L, on the whole]: TOTALLY, ENTIRELY
(accepted the plan in toto)
in-tox-i-cent \in-'tök-si-kent\ n: something that intoxicates; esp
as alcoholic drink — intoxicant adj
in-tox-i-cate \si-kät\ adj, archaic: INTOXICATED
in-tox-i-cate \si-kät\ vi -cated; -cating [ML intoxicatus, pp. of
intoxicare, fr. L in- + toxicum poison — more at TOXIC] 1: poi-
son 2 a: to excite or stupefy by alcohol or a drug esp. to the
point where physical and mental control is markedly diminished
b: to excite or elate to the point of enthusiasm or frenzy (Intox-
icated with joy)
in-tox-i-cated \so-kät-ed\ adj: affected by or as if by alcohol —
in-tox-i-cated-ly \-kät-ed-lē\ adv
in-tox-i-ca-tion \in-'tök-sä-'kä-shən\ n 1: an abnormal state that
is essentially a poisoning b: a strong excitement or elation
in-ter- \in-'trə- (Q)trā\ prefix [LL, fr. L intra, fr. (assumed) OL in-
terus, adj., inward — more at INTERIOR] 1 a: within (intraconti-
nental) b: during (intranatal) c: between layers of (intrader-
mal) 2: INTRO (an intramuscular injection)
in-ter-i-or-i-al \är-'tir-ē-äl\ adj: situated within or entering by
way of an artery; also: used in intraarterial procedures — in-tra-
er-i-or-i-ally \-ē-äl\ adv
in-ter-i-or-i-al \ä-kärd-ē-äk\ also in-tra-card-i-al \-ē-äl\ adj: ex-
tending or occurring within the heart (~ surgery); also: used in
intracardial procedures (an ~ catheter) — in-tra-card-i-ally \-ē-
äl\ adv
in-tra-cel-lu-lar \in-'säl-yä-lär\ adj: existing, occurring, or function-
ing within a protoplasmic cell (~ enzymes) — in-tra-cel-lu-lar-ly
adv
in-tra-cra-n-i-al \in-'krä-nē-äl\ adj: existing or occurring within the
cranium; also: affecting or involving intracranial structures — in-
tra-cra-n-i-ally \-nē-äl\ adv
in-tra-tract-a-ble \in-'trak-tä-bäl\ adj [L intractabilis, fr. in- + trac-
tāre to bring] 1: not easily governed, managed, or directed
2: not easily manipulated or wrought (~ metal) 3
: not easily relieved or cured (~ pain) syn see UNRULY ant
tractable — in-tra-tract-a-bil-i-ty \in-'trak-tä-bil-ät-ē\ n — in-tra-
tract-a-ble-ness \in-'trak-tä-bäl-nəs\ n — in-tra-tract-a-bly \-bäl\ adv
in-tra-cu-ta-ne-ous \in-'trä-kyü-'tä-nē-əs, -(Q)trā\ adj: INTRADER-
MAL — in-tra-cu-ta-ne-ous-ly adv
in-tra-der-mal \in-'där-mäl\ adj: situated or done within or between
the layers of the skin — in-tra-der-mal-ly \-mäl\ adv
intra-dermal test n: a test for immunity or hypersensitivity made
by injecting a minute amount of diluted antigen into the skin
in-tra-dos \in-'trä-däs, -dō; in-'trä-däs\ n, pl
-dös \-däs, -dös-əs \-däs-əs\ [F, fr.
L intra within + F dos back — more at DOS-
SER] the interior curve of an arch
in-tra-ges-tic \in-'trä-gä-'lak-tik, -(Q)trā\ adj: situated or occurring within the confines
of a single galaxy
in-tra-mo-lec-u-lar \in-'mäl-'lek-yä-lär\ adj [ISV]
: existing or acting within the molecule; also
: formed by reaction between different parts
of the same molecule — in-tra-mo-lec-u-lar-ly
adv
in-tra-mu-ral \in-'myür-äl\ adj 1 a: being or
occurring within the limits usu. of a commu-
nity or institution b: competitive only
within the student body (~ sports) 2: situ-
ated or occurring within the substance of the
walls of an organ — in-tra-mu-ral-ly \-äl\ adv
in-tra-mus-cu-lar \in-'mäs-kyä-lär\ adj [ISV]: situated within or
going into a muscle — in-tra-mus-cu-lar-ly adv
intra abbrev intransitive
intrans abbrev in transit
in-trans-i-gent \in-'tran(t)s-ä-jent(t), -'tranz-ä\ n [F]: INTRANSI-
GENCE — in-trans-i-gent \-jont\ adj or n — in-trans-i-gent-ly
adv
in-trans-i-gence \-jont(t)s\ n: the quality or state of being intransi-
gent
in-trans-i-gent \-jont\ adj [Sp intransigente, fr. in- + transigente,
pp. of transigir to compromise, fr. L transigere to transact — more
at TRANSACT] 1 a: refusing to compromise or to abandon an
extreme position or attitude: UNCOMPROMISING b: IRRECONCIL-
ABLE 2: characteristic of an intransigent person — intransigent
n — in-trans-i-gent-ly adv
in-trans-i-tive \in-'tran(t)s-ä-tiv, -'tranz-ä\ adj [LL
intransitivus, fr. L in- + LL transitive transitive]: not transitive;
esp: characterized by not having or containing a direct object (an
~ verb) — in-trans-i-tive-ly adv — in-trans-i-tive-ness n
in-trant \in-'trant\ n [L intrant, intrans, pp. of intrare to enter —
more at ENTER]: ENTRANT; esp: one entering an educational institu-
tion or a holy order
in-tra-per-i-to-ne-al \in-'trä-per-ät-'n-ē-äl\ adj: existing within or
going into the peritoneal cavity; also: introduced through the
peritoneum — in-tra-per-i-to-ne-al-ly \-ē-äl\ adv
in-tra-per-so-n-al \in-'pärs-näl, -'näl\ adj: occurring within the indi-
vidual mind or self (~ concerns of the aged)
in-tra-pop-u-la-tion \in-'trä-pöp-yä-'lä-shən, -(Q)trā\ adj: occur-
ing within or taking place between members of a population
in-tra-psy-chic \in-'trä-'sī-kik, -(Q)trā\ adj: being or occurring
within the psyche, mind, or personality — in-tra-psy-chi-cally
\-kik-äl\ adv
in-tra-spec-i-es \in-'spē-(Q)shēz, -(Q)shēz\ adj: INTRASPECIFIC
in-tra-spec-i-fic \in-'spi-'sīf-ik\ adj: occurring within a species or
involving members of one species — in-tra-spec-i-fic-ally \-kik-
äl\ adv
in-tra-state \in-'stät\ adj: existing or occurring within a state (inter-
state and ~ commerce)
in-tra-uter-i-ne \in-'yüt-ä-rən, -'rən\ adj [ISV]: situated, used, or oc-
curring within the uterus; also: involving the part of development
that takes place in the uterus



1 intrados

intrauterine device n: a device inserted and left in the uterus to
prevent effective conception — called also intrauterine contraceptive
device, IUD
in-tra-vas-cu-lar \in-'trä-'vas-kyä-lär, -(Q)trā\ adj: situated or
occurring within a vessel and esp. a blood vessel (~ thrombosis)
— in-tra-vas-cu-lar-ly adv
in-tra-ve-nous \in-'trä-'vén-əs\ adj [ISV]: situated within or enter-
ing by way of a vein; also: used in intravenous procedures — in-
tra-ve-nous-ly adv
in-tra-vi-tal \in-'trä-'vit-äl, -(Q)trā\ adj [ISV]: INTRAVITAM — in-
tra-vi-tal-ly \-äl\ adv
in-tra-vi-tam \in-'vi-täm, -'wē-täm\ adj [NL intra vitam during life]
1: performed upon or found in a living subject 2 of a stain: hav-
ing the property of tinting living cells without killing them — com-
pare SUPRAVITAL
in-tra-zon-al \in-'trä-'zön-äl, -(Q)trā\ adj: of, relating to, or being a
soil or a major soil group marked by relatively well-developed
characteristics that are determined primarily by essentially local
factors (as the parent material) rather than climate and vegetation
— compare AZONAL ZONAL
intreat archaic var of ENTREAT
intrench var of ENTRENCH
in-trep-id \in-'trep-əd\ adj [L intrepidus, fr. in- + trepidus alarmed
— more at TREPIDATION]: characterized by resolute fearlessness,
fortitude, and endurance (an ~ explorer) — in-trep-id-ty \in-'trä-
pid-ät-ē\ n — in-trep-id-ly \in-'trep-əd-lē\ adv — in-trep-id-ness
n
in-tri-ca-cy \in-'tri-kä-sē\ n, pl -cies 1: the quality or state of
being intricate 2: something intricate (the intricacies of a plot)
in-tri-cate \in-'tri-kät\ adj [ME, fr. L intricatus, pp. of intricare to
entangle, fr. in- + tricare trifles, impediments] 1: having many
complexly interrelating parts or elements: COMPLICATED 2: diffi-
cult to resolve or analyze syn see COMPLEX — in-tri-cate-ly adv —
in-tri-cate-ness n
in-tri-gant or in-tri-quant \in-'trē-'gänt, -än-, -'gä\ n [F intrigant,
fr. It intrigante, pp. of intrigare]: one that intrigues: INTRIGUER
in-tri-gue \in-'trēg\ vb in-tri-gued; in-tri-guing [F intriguer, fr. It
intrigare, fr. L intricare to entangle, perplex] vi 1: CHEAT, TRICK
2: to accomplish by intrigue (intrigued themselves into office — F.
M. Ford) 3 obs: ENTANGLE 4: to arouse the interest, desire, or
curiosity of (intrigued by the tale) ~ vi: to carry on an intrigue;
esp: PLOT, SCHEME — in-tri-gue-r n
in-tri-gue \in-'trēg, in-'ä\ n 1 a: a secret scheme; MACHINATION
b: the practice of engaging in intrigues 2: a clandestine love
affair
in-tri-gu-ing \in-'trē-gin\ adj: engaging the interest to a marked
degree: FASCINATING (a thoroughly ~ young woman) — in-tri-
gu-ing-ly \-gin-lē\ adv
in-trin-sic \in-'trin-zik, -'trin(t)-sik\ adj [MF intrinseque internal, fr.
LL intrinsecus, fr. L adv., inwardly; akin to L intra within — more
at INTRA] 1 a: belonging to the essential nature or constitution
of a thing (the ~ worth of a gem) b: being or relating to a semi-
conductor in which the concentration of charge carriers is charac-
teristic of the material itself instead of the content of any impurities
it contains 2: originating or situated within the body or part
acted on — in-trin-sic-ally \-zik-ä-lē, -säl\ adv — in-trin-sic-
al-ness \-kä-l-nəs\ n
in-trin-si-cal \-zi-käl, -säl\ adj, archaic: INTRINSIC
intrinsic factor n: a substance produced by normal gastrointesti-
nal mucosa that facilitates absorption of vitamin B₁₂
intro- prefix [ME, fr. MF, fr. L, fr. intro inside, to the inside, fr.
(assumed) OL interus, adj., inward] 1: in: into (introjection) 2
: inward: within (introvert) — compare EXTRO-
introd abbrev introduction
in-tro-duce \in-'trä-'d(y)üs\ vi -duced; -duc-ing [L introducere, fr.
intro- + ducere to lead — more at TOW] 1: to lead or bring in
esp. for the first time 2 a: to bring into play b: to bring into
practice or use: INSTITUTE (introduced reforms in court practice)
3: to lead to or make known by a formal act, announcement, or
recommendation: as a: to cause to be acquainted b: to present
formally at court or into society c: to present or announce form-
ally or officially or by an official reading d: to make prelimi-
nary explanatory or laudatory remarks about e: to bring (as an
actor or singer) before the public for the first time 4: PLACE, IN-
SERT (the risk of introducing harmful substances into the body) 5
: to bring to a knowledge of something — in-tro-duc-er n
syn INTRODUCE, INSERT, INSINUATE, INTERPOLATE, INTERCALATE,
INTERPOSE, INTERJECT shared meaning element: to put among or
between others ant withdraw, abstract
in-tro-duc-tion \in-'trä-'dök-shən\ n [ME introduccioun act of intro-
ducing, fr. MF introduction, fr. L introduction-, introductio, fr. in-
trodactus, pp. of introducere] 1: something that introduces: as a
(1): a part of a book or treatise preliminary to the main portion
(2): a preliminary treatise or course of study b: a short intro-
ductory musical passage 2: the act or process of introducing
the state of being introduced 3: a putting in: INSERTION 4
: something introduced; specif: a new or exotic plant or animal
in-tro-duc-to-ry \in-'trä-'dök-t(ə)-rē\ adj: of, relating to, or being a
first step that sets something going or in proper perspective (the
speaker's ~ remarks established his point of view) (an ~ course in
calculus) syn see PRELIMINARY — in-tro-duc-to-ry-ly \-t(ə)-rē-lē\
adv
in-tro-gres-sion \in-'trä-'gresh-ən\ n [intro- + -gression (as in re-
gression)]: the entry or introduction of a gene from one gene com-
plex into another — in-tro-gres-sant \-gres-'sant\ adj or n — in-
tro-gres-sive \-gres-iv\ adj

ə	about	°	kitten	ər	further	a	back	ä	bake	ä	cat, cart
ə	out	ch	chin	e	less	ē	easy	g	gift	i	trip
j	joke	g	sing	ō	flow	ō	flaw	oi	coin	th	thin
ü	foot	ü	foot	y	yet	yü	few	yü	furious	zh	vision

to bring about the begin-
ing of an act of inaugurating; esp
ing a presidential election
gured
auspicious — **in-aus-pi-**
authentic — **in-au-then-**

mediate (for the novice,
a ~ stand on the issue)
eral nor conservative but

before, after, and in be-

1: inside the line of a
ter line of a ship 2: to-
or closest to the longitudi-

inboard (an ~ engine);

with one: NATURAL 2

ating to putting a basket-

from out of bounds (~

ies running the length of a

ines and dividing the field

nothing) in: INHALE

grained in one's nature as

~ love of freedom) 2: a

~ of inbreed] : subjected

NATE

eed-ing: to subject to or

terbreeding of closely re-

desirable characters of

rom a stock 2: confined

field of choice

3 increase

g, prince 1 a: a mem-

maintaining an empire until

ble of this empire 2: a

nce — **in-ca-le** \in-'kə-lik\

j: not capable of being

EDICTABLE, UNCERTAIN

st-ā n — **in-cal-cu-la-bly**

[L. *incallescere* to become

n, fr. *calere* to be warm

it — **in-ca-les-cent** \-'nt\

1 private: SECRETLY

desc-ing [L. *incandescere*]

to cause to become incan-

or the quality or state of

not body of radiation that

r. L. *incandescent*, *incan-*

ot, fr. *in-* + *candescere* to

at CANDID] 1 a: white,

b: strikingly bright,

nce esp. of expression (~

ARDENT (~ affection) 2

ced by incandescence b

can-des-cent-ly adv

incandescent lamp: 1 gas

or vacuum, 2 filament, 3

support, 4 button, 5 in-

ner leads, 6 button rod,

7 exhaust tube, 8 base

shell, 9 solder

incapable or ineligible — **in-ca-pac-i-ta-tion** \-'pas-ə-'tā-shən\ n —
in-ca-pac-i-ta-tor \-'pas-ə-'tāt-ər\ n
in-ca-pac-i-ty \in-'kə-'pas-ə-'tē-, 'pas-tē\ n, pl. **-ties** [F. *incapacité*, fr.
MF. *in-* + *capacite* capacity]: the quality or state of being inca-
pable; esp.: lack of physical or intellectual power or of natural or
legal qualifications
in-car-cer-ate \in-'kär-sə-'rāt\ vt. **-ated**; **-at-ing** [L. *incarceratus*, pp.
of *incarcerare*, fr. *in-* + *carcer* prison] 1: to put in prison 2: to
subject to confinement — **in-car-cer-a-tion** \in-'kär-sə-'rā-shən\ n

in-car-di-na-tion \in-'kär-dē-'nā-shən\ n [LL. *incardination*, *incard-*
inatio, fr. *incardinus*, pp. of *incardinare* to ordain as chief priest,
fr. *in-* + *cardinalis* principal — more at **CARDINAL**]: the for-
mal acceptance by a diocese of a clergyman from another diocese
in-car-na-dine \in-'kär-nə-'dīn-, -dən-, -dān\ adj. [MF. *incarnadin*,
fr. *Old incarnadino*, fr. *incarnato* flesh-colored, fr. LL. *incarnatus*]
1: of the color flesh 2: RED; esp.: BLOODRED

incarnadine vt. **-dined**; **-dine-ing**: to make incarnadine: REDDEN
in-car-nate \in-'kär-nāt-, -nāt\ adj. [ME. *incarnat*, fr. LL. *incarnatus*,
pp. of *incarnare* to incarnate, fr. L. *in-* + *caro*, *caro* flesh — more
at **CARNAL**] 1 a: invested with bodily and esp. human nature
and form b: made manifest or comprehensible: EMBODIED (a
friend ~) 2: INCARNADINE (~ clover)

in-car-nate \in-'kär-nāt-, -nāt\ vt. **-nated**; **-nat-ing**: to make in-
car-nate as a: to give bodily form and substance to b (1): to
give a concrete or actual form to: ACTUALIZE (scientific laws were
~ in the Machine — Stringfellow Barr) b (2): to constitute an
embodiment or type of (no one culture ~s every important human
value — Denis Goulet)

in-car-na-tion \in-'kär-nā-shən\ n 1: the act of incarnating: the
state of being incarnate 2 a (1): the embodiment of a deity or
spirit in some earthly form (2) *cap*: the union of divinity with
humanity in Jesus Christ b: a concrete or actual form of a qual-
ity or concept; esp.: a person showing a trait or typical character to
a marked degree (she is the ~ of goodness) 3: time passed in a
particular bodily form or state (in another ~ he might be a first
vice-president — Walter Teater)

incense vt. OF ENCASE

in-cau-tious \in-'kə-'shən\ n: lack of caution: HEEDLESSNESS

in-cau-tious-ly adv: lacking in caution: CARELESS — **in-cau-**

tion-ism \in-'sen-dē-ə-'rīz-əm\ n: incendiary action or

behavior

in-cen-di-ary \in-'sen-dē-'er-ē\ n, pl. **-aries** [L. *incendiarius*, fr. *in-*

incendium conflagration, fr. *incendere*] 1 a: a person who delib-

erately sets fire to a building or other property b: an incendiary

agent (as a bomb) 2: a person who excites factions, quarrels, or

sedition: AGITATOR

incendiary adj 1: of, relating to, or involving a deliberate burn-

ing of property 2: tending to excite or inflame: INFLAMMATORY

(~ speeches) 3 a: igniting combustible materials spontane-

ously b: relating to, being, or involving the use of a missile con-

taining chemicals that ignite on bursting or on contact

incense \in-'sen-(t)s\ n [ME. *encens*, fr. OF, fr. LL. *incensum*, fr. L.

neut. of *incensare*, pp. of *incendere* to set on fire, fr. *in-* + *cendere*

to burn; akin to L. *candere* to glow — more at **CANDID**] 1: materi-

al used to produce a fragrant odor when burned 2: the perfume

exhaled from some spices and gums when burned; broadly: a

pleasing scent 3: pleasing attention: FLATTERY *syn* see **FRA-**

GRANCE

incense vt. **in-censed**; **in-cens-ing** 1: to apply or offer incense

to 2: to perfume with incense

in-cen-si-ty \in-'sen-(t)s\ vt. **in-censed**; **in-cens-ing** [ME. *encensen*, fr.

MF. *incenser*, fr. L. *incensum*] 1 *archaic*: to cause (a passion or

emotion) to become aroused 2: to arouse the extreme anger or

indignation of

in-cen-tive \in-'sent-iv\ n [ME, fr. LL. *incentivum*, fr. neut. of *incent-*

ivus stimulating, fr. L. setting the tune, fr. *incentus*, pp. of *incinere*

to set the tune, fr. *in-* + *canere* to sing — more at **CHANT**]: some-

thing that incites or has a tendency to incite to determination or

action *syn* see **MOTIVE** — **in-cen-tive** adj

in-cet \in-'sept\ vt. [L. *in-* + *capere*, fr. *capere*, pp. of *capere* to take]

to take in; esp.: INGEST — **in-cet-tor** \-'sep-tər\ n

in-cet-tion \in-'sep-shən\ n [L. *inception*, *inceptio*, fr. *inceptus*, pp. of

incipere to begin, fr. *in-* + *capere* to take — more at **HEAVE**]: an

sufficient to balance the weight of a column of liquid (as mercury)
one inch high in a barometer or manometer c: WATER-INCH —
every inch: to the utmost degree (looks *every inch* a winner) —
within an inch of one's life: in a very thorough manner
SOUNDLY (trounced him *within an inch of his life*)

inch vi: to move by small degrees (the long line of people ~ing

up the stairs) ~ vt: to cause to move slowly (sooner or later they

begin ~ing prices back up — *Forbes*)

inch n [ME, fr. ScGael. *innis*] chiefly Scot.: ISLAND

inched \in-'cht\ adj: measuring a specified number of inches

incher \in-'chər\ comb form: one that has a dimension of a speci-

fied number of inches

in chief adv: heading a staff: LEADING — usu. used in combina-

tion (general-in-chief) (physician-in-chief)

inch-meal \in-'mēl-, 'mē(ə)\ adv [in- + -meal (as in *piece-*

meal)] : little by little: GRADUALLY

in-cho-ate \in-'kə-'at-, 'in-kə-'wāt\ adj [L. *inchoatus*, pp. of *inchoare*,

lit., to hitch up, fr. *in-* + *cohū* strap fastening a plow beam to the

yoke]: being only partly in existence or operation; esp.: imper-

fectly formed or formulated (misty, ~ suspicious that all is not

well with the nation — J. M. Perry) — **in-cho-ate-ly** adv — **in-cho-**

ate-ness n

in-cho-ative \in-'kə-'at-iv\ adj 1: INITIAL, FORMATIVE (the ~

stages) 2: denoting the beginning of an action, state, or occur-

rence — used of verbs — **inchoative** n — **inchoative-ly** adv

inch-worm \in-'wɔrm\ n: LOOPER 1

in-ci-dence \in-(t)-sə-'dent-(t)s-, -sə-'dent-(t)s\ n 1 a: an act or the

rate of occurrence or influence (a high ~ of crime) 2 a: the arrival

of something (as a projectile or a ray of light) at a surface b: AN-

GLE OF INCIDENCE

in-ci-dent \in-(t)-sə-'dent-, -sə-'dent\ n [ME, fr. MF, fr. ML. *inci-*

dent, *incidents*, fr. L. prp. of *incidere* to fall into, fr. *in-* + *cadere* to

fall — more at **CHANCE**] 1 a: an occurrence of an action or situ-

ation that is a separate unit of experience: HAPPENING b: an

accompanying minor occurrence or condition: CONCOMITANT 2

an action likely to lead to grave consequences esp. in matters

diplomatic (a serious border ~) 3: something dependent on or

subordinate to something else of greater or principal importance

syn see **OCCURRENCE**

incident adj 1: occurring or likely to occur esp. as a minor con-

sequence or accompaniment (the confusion ~ to moving day) 2

dependent on or relating to another thing in law 3: falling or

striking on something (~ light rays)

in-ci-den-tal \in-(t)-sə-'dent-əl\ adj 1: occurring merely by

chance or without intention or calculation 2: being likely to

ensue as a chance or minor consequence (social obligations ~ to

his job) *syn* see **ACCIDENTAL** *ant* **essential**

incidental n 1: something that is incidental 2 pl: minor items

(as of expense) that are not particularized

in-ci-den-tal-ly \-'dent-ē-ē-, esp. for 2, -dent-ē-ē\ adv 1: by chance

: CASUALLY 2: by way of interjection or digression: PARENTHETI-

CALLY

incidental music n: descriptive music played during a play to

project a mood (as for a battle, a storm, or a death scene) or to

accompany stage action

in-ci-n-er-ate \in-'sin-ə-'rāt\ vt. **-ated**; **-at-ing** [ML. *incineratus*, pp. of

incinerare, fr. L. *in-* + *ciner*, *cinis* ashes; akin to Gk. *konis* dust,

ashes]: to cause to burn to ashes — **in-ci-n-er-a-tion** \-'sin-ə-'rā-

-shən\ n

in-ci-n-er-a-tor \in-'sin-ə-'rāt-ər\ n: one that incinerates; esp.: a

furnace or a container for incinerating waste materials

in-ci-pi-ence \in-'sip-ē-'sən-(t)s\ n: INCIPIENCY

in-ci-pi-en-cy \-'sən-sē\ n: the state or fact of being incipient: BE-

GINNING

in-ci-pi-ent \-'sən-t\ adj [L. *incipient*, *incipiens*, prp. of *incipere* to be-

gin — more at **INCEPTION**]: beginning to come into being or to

become apparent: COMMENCING (an ~ solar system) (evidence of

~ racial tension) — **in-ci-pi-en-t-ly** adv

in-ci-pit \in-(t)-sə-'pit-, 'in-kə-'pit\ n [L. it begins, fr. *incipere*]: the

first part: BEGINNING: *specif*: the opening words of a text of a

medieval manuscript or early printed book

in-cl-ase \in-'sīz-, 'sīz\ vt. **in-cl-ased**; **in-cl-ising** [MF or L; MF *inciser*,
fr. L. *incisus*, pp. of *incidere*, fr. *in-* + *cadere* to cut — more at

CONCISE] 1: to cut into 2 a: to carve figures, letters, or de-

vices into: ENGRAVE b: to carve (as an inscription) into a surface

in-cl-ased adj 1 a: cut in: ENGRAVED; esp.: decorated with incised

figures b of a wound: made or as if made with a sharp knife 2

having a margin that is deeply and sharply notched (an ~ leaf)

in-cl-ision \in-'sīz-ən\ n 1 a: a marginal notch (as in a leaf) b

CUT, GASH: *specif*: an incised wound made esp. in surgery into the

body 2: an act of incising 3: the quality or state of being inci-

sive

in-ci-sive \in-'sī-siv\ adj: impressively direct and decisive (as in

manner or presentation) (~ writing) — **in-ci-sive-ly** adv — **in-ci-**

sive-ness n

syn **INCISIVE**, **TRENCHANT**, **CLEAR-CUT**, **CUTTING**, **BITING**, **CRISP** *shared*

meaning element: having or manifesting or suggesting a keen

alertness of mind

in-ci-sor \in-'sī-zər\ n: a tooth adapted for cutting; esp.: one of the

cutting teeth in mammals in front of the canines — see **TOOTH** illus-

-tration

in-ci-ta-tion \in-'sī-tā-shən, in-(t)-sə-'tā- n 1: an act of inciting

: STIMULATION 2: something that incites to action: INCENTIVE

in-cite \in-'sīt\ vt. **in-cit-ed**; **in-cit-ing** [MF *inciter*, fr. L. *incitare*, fr.

in- + *citare* to put in motion — more at **CITE**]: to move to action

a abut a kitten ar further a back ā bake ā cot, cart

ā out ch chin e less ē easy g gift i trip i life

j joke ŋ sing ō flow ó flaw ōl coin th thin th this

ü loot ū foot y yet yū few yū furious zh vision

EXHIBIT 5

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constitutional convention. An assembly of state or national delegates who meet to frame, amend, or revise their constitution.

constitutional court. See COURT.

constitutional freedom. A basic liberty guaranteed by the Constitution or Bill of Rights, such as the freedom of speech.

constitutional homestead. See HOMESTEAD.

constitutional immunity. See IMMUNITY (1).

constitutionalize, vb. 1. To provide with a constitution. 2. To make constitutional; to bring in line with a constitution. 3. To make a constitutional question out of a question of law.

constitutional law. 1. The body of law deriving from the U.S. Constitution and dealing primarily with governmental powers, civil rights, and civil liberties. 2. The body of legal rules that determine the constitution of a state or country with an unwritten constitution. Cf. STATUTORY LAW; COMMON LAW.

constitutional limitation. A constitutional provision that restricts the powers of a governmental branch, department, agency, or officer.

constitutional question. A legal issue resolvable by the interpretation of a constitution, rather than a statute.

constitutional right. A right guaranteed by a constitution; esp., one guaranteed by the U.S. Constitution or by a state constitution.

constitutional tort. See TORT.

construction, n. 1. The act of building by combining or arranging parts or elements; the thing so built. 2. The act or process of interpreting or explaining the sense or intention of a writing (usu. a constitution, statute, or instrument). — **construct** (for sense 1), *vb.* — **construe** (for sense 2), *vb.*

liberal construction. An interpretation that applies a writing in light of the situation presented and that tends to effectuate the spirit and purpose of the writing.

strict construction. 1. An interpretation that considers only the literal words of a writing. See STRICT CONSTRUCTIONISM. 2. A construction that considers words narrowly, usu. in their historical context. • This type of construction treats statutory and contractual words with highly restrictive readings. 3. The philosophy underlying strict interpretation of statutes; STRICT CONSTRUCTIONISM.

construction warranty. See WARRANTY (2).

constructive, adj. Legally imputed; having an effect in law though not necessarily in fact. • Courts usu. give something a constructive effect for equitable reasons. See LEGAL FICTION. Cf. ACTUAL.

constructive adverse possession. See ADVERSE POSSESSION.

constructive assent. See ASSENT.

constructive authority. See AUTHORITY (1).

constructive bailment. See BAILMENT.

constructive custody. See CUSTODY (1).

constructive delivery. See constructive desertion.

constructive discharge. See CHARGE (7).

constructive eviction. See

constructive force. See

constructive fraud. See

constructive intent. See

constructive knowledge. See

constructive larceny. See

constructive loss. See *in* loss under LOSS.

constructive notice. See

constructive payment.

constructive possession. See

constructive-receipt rule that gross income payer's control before received (such as account income that has drawn) must be included in gross income if actual receipt is substantial constraints. II § 451.

constructive service.

constructive taking. See

constructive total loss.

constructive transfer.

constructive trust. See

construe (kən-stroo) and explain the meaning or passage).