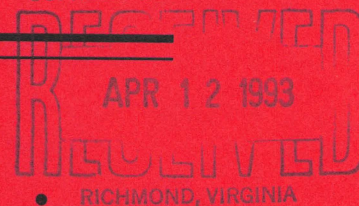


246 Va. 244

CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 921705

McCLANAHAN INGLES,

Appellant,

v.

ROBERT C. DIVELY,

Appellee.

**JOINT APPENDIX
VOLUME I**

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COMMONWEALTH OF VIRGINIA



NOTICE OF MOTION FOR JUDGMENT

Case No. 5856

City of Williamsburg and County of James City Circuit Court

P.O. Box 385, Williamsburg, Virginia 23187

ADDRESS

TO:

McCLANAHAN INGLES

Serve at: Martin, Hicks & Ingles,
Ltd.
Court Circle
Gloucester, VA 23061

You are hereby notified that unless within twenty-one (21) days after service of the notice of Motion for Judgment on you, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default.

Done in the name of the Commonwealth of Virginia.

April 26, 1991
DATE

Helene S. Ward, Clerk

by May J. Winbush
DEPUTY CLERK

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

ROBERT C. DIVELY,

Plaintiff,

v.

McCLANAHAN INGLES,

SERVE AT: Martin, Hicks & Ingles, Ltd.
Court Circle
Gloucester, VA 23061,

Defendant.

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) At Law No. 5856
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MOTION FOR JUDGMENT

Plaintiff Robert C. Dively ("Dively"), by counsel, moves for judgment against defendant McClanahan Ingles ("Ingles") on the grounds and in the amount set forth herein.

1. Dively is a resident of Williamsburg, Virginia, and at all relevant times has been a 50 percent owner of Sea Technology Ltd. ("STL") a Virginia corporation that manufactures and markets marine utility pedestals. Until March 1990, Dively was president of STL.

2. Ingles is a resident of Gloucester County, Virginia, and is a licensed member of the Virginia State Bar. At all relevant times, Ingles has been a 50 percent owner of STL.

3. STL was formed in 1984 by Ingles and Dively to manufacture and market a marine utility pedestal designed and ultimately patented by Dively.

4. During 1988 and 1989, the relationship between Dively and Ingles deteriorated and they explored the possibility of selling STL. When these efforts were not fruitful, in March 1990, Dively resigned. Dively had no employment agreement and no covenant not to compete with STL.

5. Jane Hogge, a STL employee who was responsible for, among other things, invoicing STL's customers, resigned from STL on or about March 19, 1990.

6. Following Dively's resignation, Ingles reviewed STL's books and records and contacted STL's customers as well as customers of Marina Technology, Inc. ("MTI") a Virginia corporation formed by Dively to manufacture and sell a dockbox marine utility product.

7. In or about April, 1990, Ingles, by counsel, filed suit on behalf of himself and STL against Dively in the Williamsburg Circuit Court. A copy of the Bill of Complaint filed on behalf of Ingles is attached as Exhibit A.

8. On or about April 11, 1990, Ingles, by counsel, brought on for hearing a Motion for Temporary Injunction against Dively to enjoin Dively and MTI from competing with STL.

9. At the hearing on April 11, 1990, The Honorable Russell Carneal denied Ingles' motion for preliminary injunction.

10. The next day, on or about April 12, 1990, Ingles met with Investigator William W. Adams of the Gloucester County Sheriff's office and reported that Dively had embezzled from STL various tools and funds from the sale of dockboxes and marine utility pedestals that were sold and/or delivered by MTI to its customers in or around February 1990.

11. Before Hogge left STL, she prepared a detailed list of items to be invoiced by STL in March 1990. Included on this list was the amount to be billed to MTI for labor, materials, and equipment used in manufacturing MTI dockboxes and for pedestals purchased by MTI. Attached to the list Hogge prepared was an accounting prepared by Dively of all labor, materials, and equipment used or purchased by MTI. The list prepared by Hogge and Dively's accounting are attached as Exhibit B.

12. The STL labor and materials used in connection with MTI's production of dockboxes and the STL utility pedestals sold to MTI that were the subject of the charges Ingles lodged against Dively were accounted for on Hogge's list and in Dively's accounting.

13. Ingles was in possession of Hogge's list and Dively's accounting on or before March 30, 1990, and before meeting with Investigator Adams on April 12, 1990.

14. On information and belief, Ingles failed to inform Investigator Adams of Hogge's list or of the fact that Dively had accounted to STL for the labor and materials used in the production of the dockboxes and for the utility pedestals sold by MTI, and claimed that these items had been embezzled. Ingles further failed to inform Adams that Dively was a 50 percent owner of STL, or that Ingles had purchased STL utility pedestals for Willoughby Harbor Marina, of which Ingles is the majority owner, at a price equal to or less than the unit price at which Dively had instructed Hogge to bill MTI for STL utility pedestals MTI purchased.

15. As a result of Ingles' complaint to Adams, charges against Dively were certified to the Gloucester County grand jury.

16. At the meeting of the grand jury, only Ingles and Investigator Adams testified.

17. On information and belief, Ingles did not disclose to the Commonwealth's Attorney, Adams, or the grand jury the fact that Dively had accounted to STL for the labor, materials, and pedestals used or purchased by MTI or of the fact that Hogge had left explicit instructions that such items were to be invoiced to MTI in March 1990 in STL's ordinary billing cycle. He further failed to inform either Adams or the Commonwealth's Attorney that Dively was a 50 percent stockholder of STL.

18. As a result of Ingles' testimony, on May 7, 1990, the grand jury certified five felony indictments against Dively as follows:

- No. 5171. Embezzlement of funds from sale to Pools Grant Marina.
- No. 5170. Embezzlement of funds from sale to Dock of the Bay Marina.
- No. 5173. Embezzlement of tools from Lower Chesapeake Associates.
- No. 5174. Embezzlement of tools from Sea Technology, Ltd.
- No. 5175. Embezzlement of funds from sale to Shark Island Marina.

19. On or about May 9, 1990, Dively was arrested by Virginia State Police at the office of MTI in the presence of his employees, and MTI was searched for the tangible personal property Ingles had reported had been embezzled. No such tools and equipment were found. Dively's indictment and arrest were widely covered in newspapers of general circulation in the Williamsburg and Gloucester areas.

20. Subsequently, Ingles alone appeared before the Gloucester County grand jury and on July 27, 1990, Dively was indicted in Case No. 5423 on a felony charge of embezzling funds from a sale by MTI to Pelican Harbor Marina. Once again, Dively was taken into custody and processed.

21. On information and belief, in July 1990, Ingles still did not disclose to the Commonwealth's Attorney, Adams, or the grand jury, that Dively was a 50 percent stockholder of STL, that

Dively had accounted for MTI's purchase of STL utility pedestals and use of STL labor and materials, or that Hogge had left instructions that MTI should be billed for these amounts.

22. Following Dively's resignation from STL, Ingles met with or had telephone conversations with current and prospective STL and MTI customers and suppliers during which Ingles told such customers and suppliers that Dively was a criminal who had been caught stealing from STL. Ingles also told such persons, among other things, that he would be putting Dively in jail and that MTI, therefore, was unlikely to be able to fill any orders that it might be given and was an unreliable credit risk.

23. Among the persons to whom Ingles made such comments are Miles Booth, owner of Salt Marsh Industries, Carl Wolf, Dock Master of Dock of the Bay Marina, William Tindall, Manager of West-Rec Properties, and Tom Petty, Partner, Newport Beach Marina, Newport Beach Michigan.

24. Ingles' purpose in making the foregoing false statements was to induce prospective clients and suppliers to refrain from dealing with Dively and MTI and to disparage the reputation of Dively, all because of his outrage over Dively's resignation from STL.

25. After Dively's resignation from STL, Ingles called a meeting of STL employees at which he claimed that Dively had stolen from STL and said that Ingles "would serve Dively's ass up

to him on a platter." Ingles also said to one or more STL employees that he would force Dively out of the marine industry.

26. On November 19, 1990, the date on which Dively's criminal charges were to be tried, the Commonwealth moved for nolle prosequi orders on Case Nos. 5173 and 5174, pertaining to the alleged embezzlement of tangible property from Lower Chesapeake Associates and STL, respectively, which the Court granted. The remaining charges were consolidated, and the trial was continued to March 27, 1991, at the Commonwealth's request and because the Commonwealth disclosed to defense counsel documents Ingles had delivered to the Commonwealth's Attorney only that morning.

27. On March 29, 1991, following the presentation of the evidence on the remaining four charges, The Honorable Fred W. Bateman sustained defense motions to strike the evidence against Dively and dismissed all four remaining indictments.

COUNT I

Malicious Prosecution

28. Dively repeats and realleges the allegations in Counts 1 through 27 as if restated herein.

29. The felony indictments issued against Dively were issued at Ingles' insistence and were terminated, as referenced above, in Dively's favor.

30. Ingles acted with actual malice in instituting the criminal proceedings as evidenced by his comments to customers, suppliers, and STL employees; his reporting the alleged embezzlement after losing the Motion for Preliminary Injunction in Williamsburg; and his withholding from the County and State Police Investigators and the Commonwealth's Attorney valuable exculpatory information, including but not limited to, the accounting Dively had prepared, the memorandum Jane Hogge had prepared instructing STL to invoice MTI for the labor, materials, and products sold to MTI, and the fact that Dively was a 50 percent owner of STL.

31. At the time Ingles reported the alleged embezzlements, he knew Dively had accounted for the very labor, materials, and products that he claimed had been embezzled, and he further knew Hogge had instructed STL to invoice MTI for these items. Ingles thus lacked probable cause to believe that Dively had committed all or any of the crimes charged.

32. As a member of the Bar, Ingles knew or should have known that criminal intent was a necessary element and, especially in view of Judge Carneal's ruling on Ingles' Preliminary Injunction Motion, that these charges were unfounded.

33. Ingles' ulterior motive in reporting the alleged embezzlement was to accomplish what he had been denied in civil court which was to prevent Dively and MTI from competing with STL

and, in addition, to hold Dively up to great humiliation and public ridicule in his own community and in the marine industry so as to destroy his reputation and push him into financial insolvency.

34. As a result of the foregoing conduct, Ingles has caused Dively to be held out to great public shame and humiliation, has impaired Dively's ability to earn a livelihood, has caused Dively to suffer substantial monetary damages, including attorneys' fees and expenses in defending the criminal charges, has caused great harm to Dively's reputation, and has caused Dively great emotional pain and suffering, among other damages.

COUNT II

Abuse of Process

35. Dively repeats and realleges the allegations in Counts 1 through 34 as if restated herein.

36. In instituting the criminal proceedings against Dively, Ingles acted with the ulterior purposes of obtaining what he had been unable to obtain in the civil court which was to prevent Dively from competing with STL; of using the Commonwealth to obtain discovery of information useful in the pending civil suit; of forcing Dively to divert financial resources from his new business to his criminal defense; of causing prospective customers to refrain from dealing with Dively; and of ostracizing

Dively from friends, family, and the community. In doing so, Ingles abused the criminal process.

37. Ingles misused the criminal process solely to further the foregoing personal and improper objectives.

38. As a result of Ingles' abuse of process, Ingles has caused Dively to be held out to great public shame and humiliation, has impaired Dively's ability to earn a livelihood, has caused Dively to suffer substantial monetary damages, has caused great harm to Dively's reputation, and has caused Dively great emotional pain and suffering, among other damages.

COUNT III

Intentional Infliction of Emotional Distress

39. Dively repeats and realleges the allegations in paragraphs 1 through 38 as if restated herein.

40. Ingles' conduct in instituting criminal proceedings against Dively was done with the specific purpose of causing and did cause Dively and his family severe emotional distress.

41. Ingles' conduct, especially in view of his status as an attorney licensed to practice law in this Commonwealth and who had represented Dively, was outrageous and intolerable and offends generally accepted standards of decency and morality.

42. As a direct and proximate cause of Ingles' conduct, Dively has suffered severe emotional distress.

COUNT IV

Defamation

43. Dively repeats and realleges the allegations in paragraphs 1 through 42 as if restated herein.

44. Ingles, in his conversations with customers and potential customers of STL and MTI during the summer of 1990, falsely stated, among other things, that Dively was a criminal who had stolen from STL and that Dively could not be trusted and would not be able to fill any orders such customers might place with him and was not a reliable credit risk for suppliers. In addition, Ingles contacted Floyd Bishop, who he knew was considering purchasing or investing in MTI, by letter, a copy of which is attached as Exhibit C, and impugned Dively's integrity and trustworthiness.

45. Ingles' statements constitute defamation per se or defamation in that, among other things, they imputed to Dively the commission of a crime involving moral turpitude and prejudiced Dively in his trade or profession.

46. As a result of Ingles' defamatory statements, Dively has suffered injury to his reputation and standing in the community, embarrassment, humiliation, and mental suffering as well as monetary damages, and other damages.

COUNT V

Violation of Virginia Code § 8.01-45

47. Dively repeats and realleges the allegations in paragraphs 1 through 46 as if restated herein.

48. The foregoing conduct by Ingles, including his false statements that Dively had committed crimes while employed at STL, are actionable under Virginia Code Section 8.01-45.

49. As a direct and proximate result of such violation, Dively has suffered injury to his reputation and standing in the community, embarrassment, humiliation, and mental suffering, as well as monetary damages, and other damages.

COUNT VI

Tortious Interference With Potential Economic Relationship

50. Dively repeats and realleges the allegations in paragraphs 1 through 49 as if restated herein.

51. Ingles, knowing that MTI and Dively had established prospective contractual relations with Floyd Bishop, as well as numerous marinas, contacted Mr. Bishop and representatives of such marinas and falsely stated or implied that Dively had committed crimes and that Dively was untrustworthy and an unreliable source for marine products because of his impending criminal trial, and knowing that such customers were considering

placing orders with MTI, Ingles interfered with Dively's and MTI's prospective contractual relations.

52. As a direct and proximate cause of Ingles' interference, third parties were induced not to enter into contractual relations with Dively or MTI or entered into such contracts only on terms less favorable to Dively and MTI than they otherwise would have.

53. Ingles acted with malice towards Dively in making the false statements about Dively to prospective contractual parties.

54. As a direct and proximate cause of Ingles' interference, Dively has suffered a loss of income he otherwise would have earned from the contracts, as well as great harm to his reputation and emotional distress, and other damages.

WHEREFORE, Dively moves the Court for judgment against McClanahan Ingles, individually, in the amount of \$10,000,000 compensatory damages, \$10,000,000 punitive damages, his costs, and attorneys' fees incurred herein and such other and further relief as the Court deems appropriate.

ROBERT C. DIVELY

By 

Of Counsel

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Richmond, Virginia 23210-1320
(804) 643-1991

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND JAMES
CITY COUNTY

McCLANAHAN INGLES, Individually and in
the right of Sea Technology, Ltd.,
a Virginia Corporation,

Plaintiff,

v.

CHANCERY NO. 8150

ROBERT C. DIVELY, JR.
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

LINDA LEE DIVELY
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

MARINA TECHNOLOGY, INC.

SERVE: Robert C. Dively, Jr., Registered Agent
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

ALSTON G. BROOKS
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia

Defendants.

BILL OF COMPLAINT

Comes now the Plaintiff, McClanahan Ingles ("Ingles"), by counsel,
and respectfully represents to the Court as follows:

Parties

1. Ingles is and was at all times pertinent hereto a resident of Gloucester County, Virginia, and an officer, director and shareholder of Sea Technology, Ltd. ("Sea Tech"), a corporation duly organized and existing under the laws of the State of Virginia.

2. Defendant, Robert C. Dively, Jr. ("Dively") is and was at all times pertinent hereto a resident of James City County, Virginia. Dively was formerly a director and President of Sea Tech, having resigned from those positions on March 9, 1990.

3. Defendant, Linda L. Dively ("Linda Dively") is the wife of Dively, a resident of James City County, Virginia, and is or was a director of Sea Tech.

4. Defendant, Marina Technology, Inc. ("Marina Tech") is a corporation organized by Dively in August, 1987, existing under the laws of the Commonwealth of Virginia, and having its principal place of business in James City County, Virginia.

5. Dively is an officer, director and shareholder of Marina Tech.

6. Defendant, Alston G. Brooks ("Brooks"), is a resident of the City of Newport News, Virginia.

7. Brooks was formerly the production manager of Sea Tech and is now employed by Marina Tech in a similar capacity.

COUNT I

Breach of Fiduciary Duty

8. Ingles brings this action individually and as a shareholder derivative action in the right of Sea Tech.

9. Sea Tech has its principal place of business in Gloucester County, Virginia, and is engaged in the business of designing, manufacturing and marketing marine utility pedestals.

10. Sea Tech's marine utility pedestals have the trade names "Docksider" and "mini-Docksider", and are used by marinas to deliver electricity, telephone service, cable TV and water to boats.

11. Sea Tech has experienced great success in its product market, having begun in 1984 with no assets and no product line, and having been developed into a corporation with annual sales of approximately 2 million dollars.

12. Dively was employed by Sea Tech in 1985 to provide engineering expertise and to serve as a director of the corporation, and as President of Sea Tech, to oversee the day-to-day design, manufacturing and marketing activities of Sea Tech.

Competing Products

13. While he remained a director and President of Sea Tech, Dively had a fiduciary duty to and occupied a special relationship of trust and confidence with Sea Tech for the benefit of its shareholders requiring him to act in good faith in the corporation's best interest.

14. While still a director and President of Sea Tech, and contrary to his fiduciary duty, Dively designed, manufactured and marketed a "Dock Box" at Sea Tech's expense, using Sea Tech employees, Sea Tech materials and showing the product at boat shows which he attended at Sea Tech's expense and to the detriment of Sea Tech in marketing its Sea Tech Docksider and mini-Docksider pedestals.

15. The Dock Box developed by Dively is essentially a storage box

incorporating generally the same features of the Docksider.

16. Dively, through Marina Tech, is now manufacturing and marketing the Dock Box and similar utility pedestals that were developed and manufactured by Sea Tech.

Disparaging Sea Tech's Product and Name

17. The Docksider was approved by Underwriter's Laboratories ("U.L.") until 1989.

18. In order to sell the Docksider in some regions, it is necessary that it be U.L. approved.

19. While he was still a director and President of Sea Tech, Dively failed to renew the U.L. approval and/or allowed the U.L. approval to expire with the specific intention of injuring the Sea Tech in its trade.

20. While Dively was a director and President of Sea Tech, he advised customers of Sea Tech that the Docksider is not U.L. approved, with the intent of causing economic loss to Sea Tech and obtaining an unfair advantage for Marina Tech and Dively.

21. Prior to and since Dively's resigning as a director and President of Sea Tech, and Brooks' resigning as an employee, Dively and Brooks, and each of them, have wrongfully advised customers and prospective employees that Ingles is no longer associated with Sea Tech; that Dively has taken over Sea Tech; that Marina Tech is a Sea Tech facility; that Sea Tech in Gloucester County, Virginia will be closed, and have otherwise made disparaging comments regarding Sea Tech.

22. Dively acted as aforesaid with the express design of placing

Marina Tech in a better position to compete with Sea Tech.

Diversion of Orders

23. While he was a director and President of Sea Tech, Dively secretly solicited orders for the Dock Box, Docksider, mini-Docksider and similar utility pedestals on behalf of Marina Tech.

24. While he was a director and President of Sea Tech, Dively encouraged Sea Tech customers to delay ordering the Sea Tech Docksider, mini. Docksider and similar products with the intent of eventually selling to those customers the Dock Box or similar products manufactured by Marina Tech.

25. While he was a director and President of Sea Tech, Dively secretly diverted orders of Sea Tech products and secretly solicited Sea Tech customers to facilitate the purchase of competing products manufactured by Marina Tech.

26. Dively has fraudulently stated to some Sea Tech customers, prospective customers, employees and prospective employees that Marina Tech is affiliated with Sea Tech.

Materials and Supplies

27. While a director and President of Sea Tech, Dively failed to keep a sufficient inventory of materials and supplies for Sea Tech to operate. He also removed materials and supplies from Sea Tech to Marina Tech without authority and without paying for them, using Sea Tech employees at Sea Tech's expense.

28. While a director and President of Sea Tech, Dively failed to pay the legitimate bills of Sea Tech which adversely affected the

financial condition and reputation of Sea Tech.

29. While Dively was a director and President of Sea Tech, he incurred debt in the name of Sea Tech or Sea Technologies or Sea Technologies, Ltd., or similar names for parts for the Dock Box and/or other products sold by Marina Tech. Dively caused Sea Tech to pay these invoices for materials and supplies used in the construction of products sold by Marina Tech.

Sale of the Corporation

30. Dively, as a director and President of Sea Tech, had a fiduciary duty to keep the other directors, including the Plaintiff, advised of all offers and negotiations for the sale of Sea Tech or its assets.

31. Dively failed to advise Plaintiff of offers made by and meetings with prospective purchasers.

32. Dively's actions were intended to reduce the value of Sea Tech and/or force Sea Tech out of business.

Customer List

33. At considerable expense to Sea Tech, through attendance at boat shows throughout this country, Europe and Australia, through contacts made by being in business for over five years, through sales of product to satisfied customers, through advertising in trade publications, through the screening of many calls to and from potential customers and through other means, Sea Tech was able to develop a customer list and related records ("Customer List") which is of great value to the corporation.

34. Sea Tech's Customer List was confidential, not to be shared with any other person in the industry.

35. Sea Tech's Customer List included the name and address of the customer, the individual to contact, prior sales history, and other pertinent data that was of considerable benefit in marketing Sea Tech's product, and similar products.

36. Dively, while he was still a director and President of Sea Tech, in breach of his position of trust and confidence, wrongfully appropriated Sea Tech's Customer List for use by Marina Tech.

37. Dively is and has wrongfully and with the intent to injure Sea Tech in its business used Sea Tech's Customer List in soliciting customers on behalf of Marina Tech. Such actions give Marina Tech an unfair advantage by allowing it to target Sea Tech's customers to Sea Tech's detriment, instead of competing generally in the market place.

38. All of the aforesaid acts of Dively constitute a breach of his position of trust and confidence with Sea Tech. Said acts constitute fraudulent or unfair conduct and shock one's sense of fair play.

Conflict of Interest

39. While Dively was a director and President of Sea Tech, he removed finished and unfinished products from Sea Tech to Marina Tech and to Marina Tech customer locations without disclosing the material facts of the transactions to the board of directors of Sea Tech and without authority from the board of directors of Sea Tech.

40. In addition to trading as Marina Tech, Dively traded in the name of Sea Technologies and/or Sea Technologies, Ltd. and invoiced

customers in said name(s) utilizing a different address, and appropriated payments received for his own benefit or that of Marina Tech, all to the detriment of Sea Tech.

41. The said transactions were unfair to Sea Tech and Sea Tech has not been paid for the finished and unfinished products removed from Sea Tech to Marina Tech and to Marina Tech customer locations, nor has Sea Tech been reimbursed for payments misappropriated as aforesaid.

42. Said transactions constitute a conflict of interest on the part of Dively.

Failure to Perform Duties

43. While Dively was a director and President of Sea Tech, he failed to supervise other employees; kept his office locked and refused access to Sea Tech's employees and otherwise failed to keep Sea Tech's employees apprised of his activities and to direct them in their employment.

44. During said period of time, Dively was being compensated by said corporation as President.

45. Dively failed to properly perform his duties, refusing to oversee employees' conduct; refusing to contact customers in a responsive and responsible manner; and refusing to engage in the conduct of Sea Tech business on a full time basis as he had agreed to do.

46. While Dively was a director and President of Sea Tech, he directed Sea Tech employees not to communicate with the Plaintiff; he was seen at Sea Tech wearing swastika arm bands; and he brandished a firearm while meeting with one or more Sea Tech employees.

47. While Dively was a director and President of Sea Tech, he directed that other employees ship products to Sea Tech customers which were cracked or had stripped threads or were of a configuration not ordered by the respective customer or products which were otherwise defective or not in conformity with the work order despite questioning and objections from other employees.

48. While Dively was a director and President of Sea Tech, he was furnished with an automobile and cellular telephone at Sea Tech's expense. Dively failed to maintain said automobile and damaged said telephone thus causing significant expense to Sea Tech.

49. Dively's failure to perform his duties as a director and President of Sea Tech; failure to work full time on behalf of Sea Tech; intimidation of Sea Tech's employees; lack of care of equipment; and shipping of defective product were done with the specific intent of causing economic loss to Sea Tech.

COUNT II

Violation of Section 18.2-499 et seq.

50. The allegations of paragraphs 1 through 49 are hereby incorporated by reference.

51. During his tenure as a director and President of Sea Tech, Dively attempted to combine, associate, agree, mutually undertake and/or concert together with Linda Dively, Marina Tech, Brooks, customers of Sea Tech, and potential purchasers of Sea Tech for the purpose of willfully and maliciously injuring Sea Tech in its reputation, trade and business, in violation of 18.2-499(b) of the Code

of Virginia, 1950, as amended.

52. During his tenure as a director and President of Sea Tech, Dively combined, associated, agreed, mutually undertook and/or concerted together with Linda Dively, Marina Tech, Brooks, customers of Sea Tech, and potential purchasers of Sea Tech for the purpose of willfully and maliciously injuring Sea Tech in its reputation, trade and business, in violation of 18.2-499(a) of the Code of Virginia, 1950, as amended.

53. Sea Tech has been injured in its reputation, trade and business by reason of violation of 18.2-499 of the Code of Virginia through the activities of Dively, Linda Dively, Marina Tech, and Brooks, and is therefore entitled to recover three-fold the damages sustained by Sea Tech, the costs of this suit including reasonable attorney's fees to counsel for Ingles, and lost profits, and to injunctive relief as requested below.

COUNT III

Trade Secrets Act

54. The allegations of paragraphs 1 through 53 are incorporated by reference.

55. Dively has misappropriated trade secrets of Sea Tech as defined by the Trade Secrets Act, 59.1-336 of the Code of Virginia.

56. The misappropriation of trade secrets alleged above has been accomplished by Dively through improper means as defined in the Trade Secrets Act, Section 59.1-336 of the Code of Virginia.

COUNT IV

Unfair Competition

57. The allegations of paragraphs 1 through 56 are hereby incorporated by reference.

58. Dively's conduct, as aforesaid, constitutes unfair competition.

COUNT V

Conversion

59. The allegations of paragraphs 1 through 58 are hereby incorporated by reference.

60. Dively and Marina Tech wrongfully, fraudulently and illegally converted to their own use the Docksider, mini Docksider, Dock Box, similar utility pedestals, the Customer List of Sea Tech, materials and supplies of Sea Tech and the proceeds of sale from the aforesaid, causing loss to Sea Tech.

COUNT VI

Punitive Damages

61. The allegations of paragraphs 1 through 60 hereinabove are incorporated by reference.

62. Dively has evinced a willful, malicious and conscious disregard of his civil obligations to the Plaintiff and Sea Tech, amounting to a criminal indifference to said obligations.

63. Punitive damages are appropriate to punish Dively for his actions and to stand as an example to others who as directors and

officers of corporations are tempted to forsake their positions of confidence and trust.

COUNT VII

Linda Dively

63. The allegations of paragraphs 1 through 63 are incorporated by reference.

64. Linda Dively is an employee of Marina Tech. She has participated generally in the same activities attributed to Dively as set forth in paragraphs 14, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 45, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 above. She has knowingly benefited from the proceeds of Sea Tech assets converted by Dively as alleged in paragraph 61. She has engaged in unauthorized travel at Sea Tech's expense. She has attended boat shows where she and Dively have promoted Sea Tech products that they intended to sell through Marina Tech. She has aided, abetted, encouraged and incited Dively in all of the activities set forth in the preceding Counts.

COUNT VIII

Alston G. Brooks

65. The allegations of paragraphs 1 through 65 hereinabove are incorporated by reference.

66. Brooks was an employee of Sea Tech and acted as production manager. He had a duty of loyalty to the company which he breached. He participated in those same activities attributed to Dively in

paragraphs 14, 16, 21, 22, 23, 24, 25, 26 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 45, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 above. He assisted Dively in the design, manufacture and production of products at Sea Tech's expense, which he and Dively produced and sold for Marina Tech's benefit. He removed products and supplies from Sea Tech to Marina Tech without paying for those items. He assisted in the installation of a rural route box so that payments to Sea Tech could be misappropriated. He has disparaged Sea Tech products. He has performed substantial duties for Marina Tech while still on the Sea Tech payroll. He has aided, abetted, encouraged and incited Dively in the activities alleged in the preceding Counts.

COUNT IX

All Defendants

67. The allegations of paragraphs 1 through 67 hereinabove are incorporated by reference.

68. The conduct of all Defendants, as aforesaid, constitutes willful misconduct and a knowing violation of criminal law.

69. The allegations set forth above reveal that the Defendants, and each of them, obtained money from the Plaintiff and Sea Tech by false pretenses, false representations and/or actual fraud, and that these same monies were obtained by willful and malicious injury to the Plaintiff and Sea Tech.

70. At all times pertinent hereto, Ingles, Dively, Linda Dively and Lorraine J. Ingles were the only directors of Sea Tech. Based upon the makeup of the Board of Directors of Sea Tech, demand for action by the Board of Directors of Sea Tech is excused, as no action by the

Board against Dively was possible when no majority of the Board of Directors could be united against him.

WHEREFORE, Ingles individually and in the right of Sea Technology, Ltd. prays for the following relief:

A. A temporary restraining order and permanent injunction pursuant to 59.1-337 of the Code of Virginia on the grounds set forth above against use by the Defendants and each of them of trade secrets of Sea Tech, including but not limited to:

- i) use of the Customer List of Sea Tech;
- ii) solicitation of sales to or orders from customers of Sea Tech;
- iii) marketing, licensing, selling or otherwise benefiting from the Docksider, mini-Docksider, Dock Box or similar pedestals; and
- iv) any and all interference with Sea Tech in its business.

B. Pursuant to 18.2-500 of the Code of Virginia, an award of damages to Ingles individually and in the right of Sea Technology, Ltd. for three-fold the damages by him sustained as a result of: (i) the conduct of the Defendants and each of them as aforesaid, and (ii) the costs of this suit, including a reasonable fee to counsel for Ingles, in the total amount of Two Million and No/100 Dollars (\$2,000,000.00);

C. Compensatory damages to Ingles individually and in the right of Sea Technology, Ltd. for unjust enrichment to the Defendants and each of them caused by the misappropriation of trade secrets by improper means as alleged herein;

D. Punitive damages to Ingles individually and in the right of Sea Technology, Ltd. in the amount of Three Million and No/100 Dollars (\$3,000,000.00);

E. Sea Tech be granted an exclusive license in and to the Docksider, mini-Docksider, Dock Box, similar utility pedestals and other products being marketed by Marina Tech and/or Dively;

F. This matter be heard in camera and that the record herein be sealed;

G. Defendants and their attorneys be enjoined from disclosing any of Sea Tech's trade secrets;

H. Defendants be required to provide an accounting of all revenues and profits received from the sale of Docksiders, Mini-Docksiders, Dock Boxes, similar utility pedestals, or other products manufactured and sold by Defendants and that any and all such revenues and profits be imposed with constructive trust for the benefit of Sea Tech and/or Ingles.

I. Defendants be required to provide an accounting of all revenues and profits received as a result of their actions and that any and all such revenues and profits be imposed with constructive trust for the benefit of Sea Tech and/or Ingles.

J. Defendants be required to return all customer lists, customer files, materials and supplies taken from Sea Tech.

K. Such other and further relief as the nature of this case may require and to the Court seem justified.

Respectfully submitted,

McCLANAHAN INGLES, individually and in the right of
Sea Technology, Ltd., a Virginia corporation

By: 

Of Counsel



Alvin P. Anderson, Esquire
Gregory R. Davis, Esquire
ANDERSON & FRANCK, P.C.
Post Office Drawer Q
Williamsburg, Virginia 23187
(804) 229-7322

Invoice #

Shipments That Need Invoicing



1/23/90 Mr. James Bell 1 Unit
1624 S.E. 11th Street UPS - GRD Invoiced
Ft. Lauderdale, FL 33310 Shipping

Banyan Marine Apts Meter - Replacement Invoiced
111 Isle of Venice UPS - GRD
Ft Lauderdale, FL 33301

2/12/90 RJA Development 6 Units @ 700.00
2381 S.W. Cincenga Hill Terrace = 4,200.00
Palm City, FL 34990 Shipping 95.7
UPS - COD - GRD \$4,295.7

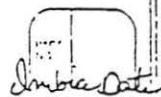
Arrowhead Yacht Club 5 Units - Quind 50 with
AHN: Joe Harwood Two 5 FT. , Pumps, C.A.
Ketchum, OK 75439 Water @
UPS - GRD - COD Shipping 5,007.50

2/13/90 Mackay Harbor Club Replacement Parts / no charge
30675 1/2 Ruler Road
MT. Clemons, MT 48045 UPS - GRD

EXHIBIT B

Shipments That Need Invoicing

2/14/80	Ray Carter, Wm A Mallins	1 Photocell Control 1 Bells
	1101 Gulf Stream Way	UPS - OKD Replacement / no chg
	Riviera Way, FL 33404	
	Hank's West Yacht Club	1 Replacement Control / no chg
	7910 W. Dixie	UPS - OKD
	K Bay Village, FL 33103	
	Liberty Yacht Club	3 bued. bar assemblies @ 12.40
	64 Old South River Road	UPS - OKD - Net 30 37.20
	Edgewater, MD 21037	Shipping 3.50
	(Credit to be raised upon receipt of O.H. Mat.)	40.70
	Seaboard Marine	Meters @
	87 Ocean Ave.	UPS - OKD Shipping
	Bay Shore, N.Y. 11706	Net 30 COD Total 480.28
		(Returned to US & Reshipped)
	Tidy Coast	
	102 Northshore Ave	UPS - OKD
	Beigartine, N.J. 08203	
	Yeuber Enterprises	1 Unit
	16 Laganore Road	UPS - OKD
	Palm Beach, FL 33480	Shipping
		Total
	Aircraft Ent.	1 Unit
	71-46 Myrtle Ave	UPS - Blue-COD
	Glen Dale N.Y. 11385	Shipping
		Total 696.00



Invoice Date _____ Shipments That Need To be Ordered _____

2/15/90² Timber Enterprises 1- Unit - Replacement of one red
#6 Lagonax Road incorrectly on 2/14/90 - That unit
Palm Beach, FL to be returned

Central Systems & Controls 90 - 30 Amp Receptacles @ 6c
29275 Clemens Road UPS - N/A 540.00
Westlake, OH 44145 unit 30 Shipping
Total

2/16/90¹³ Palm Grove Marine 3. Skelley Only @ \$250.00 =
2500 Main Street UPS - Net 30 - Red 450.00
Ft Myers Beach, FL 33931 Shipping

2/19/90¹⁶ Seaboard Marina meters
871 Ocean Ave UPS - Red Shipping
Bay Shore, N.Y. 11706 Net 30 Total

2/20/90²⁵ Central Systems & Controls
29275 Clemens Road UPS - Red
Westlake, OH 44145 Net 30 Shipping
Total

Access Head Upst. Club Quot. pipe & Elbow w/ left out
Attn: Joe Harwood of shipment / No Charge
Ketchum, OR 74349 UPS / red

Invoice Date

Shipments That Need Invoicing

Page 1 of 1

2/22/90 Mike Hampton 1 - Mini 30/30
4245 North Central Expressway, Suite 420 Sales Sample
Dallas, TX 75205 No Charge
UPS/Red

2/28/90 Channel Port Marine (OK River yacht Club) 1 Sample @ 30
5300 Whiskey Island made in style +
Cleveland, Ohio 44102 Color requested for
order in house
UPS/Red No Charge

2/19/90 Marine Service 10 - Shells & Base Only
Brian Sparks 4 - Unit Tops Only
UPS/Air

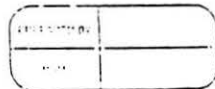
3/23/90 Marine Technology 100 Cakes @ 3.00 ea 300.00
105 Wm. Allen 100 Jaws @ 1.25 ea 125.00
Whaley, Va 23185 50 Photocalls @ 4.00 ea 200.00
100 Facelplates @ 1.13 ea 113.00
Total 738.00
Va Sales Tx.

3/1/90 Marine Technology See Attached Sheet for
105 Wm. Allen Breakdown
Whaley, Va 23185

executive

Invoice Date

Shipments That Need Invoicing



3/5/90 Arrowhead Yacht Club 2 - Quad 50 Units -
 Ketchikan, AK 99849 Sent as Replacements for
 two units damaged in shipping
 on 2/2/90 - No Charge
 UPS is processing claim &
 pickup of units back to us.

City of Port Huron 1 - Unit
 100 McMoran Blvd, Room 322 shipping
 Port Huron, MI 48060 UPS - PREPAID

Mr. Flap Poltrage 1 Meter Replacement / No Charge
 50 Isle of Venice UPS / YCO
 Ft. Lauderdale, FL 33301

Mr. Gordon Shelton 10 - 13 WTT Bulbs / No Charge
 10 Crawford Parkway UPS / YCO 46's Sending back old
 Portsmouth, Va 23704 One for Graybar / GE.

3/2/90 Harbor West Yacht Club 1 - Meter ^{presently} 100.00
 7910 West Drive Shippin' 6.15
 North Bay Village, FL 33141 UPS-COD-YCO 106.15

Kingsmill Marine 2 - Hoffman Mini Buoys - 50/50
 Sent to Marine
 Wmsby Va 23185 Already inbound

Invoice Date

Shipments That Need Invoicing

PREPARED BY	
DATE	

1			
2			
3	Gulford Yacht Club	1 Base - Replacement for	
4	32 Haviland Street	Broken one in previous	
5	South Norwalk, CT 06854	Shipment	
6		56 feet of Galv pipe & Elbow	
7	UPS / Rd	Left out of original shipment	
8		of base by Ted Exp.	
9		No charge	
10			
11			
12	Borden Light Marina	Sent COD / UPS	
13	90 Twin City Electric & Alen Corp.	ALREADY INVOICED	
14	303 Robeson Street	20 Units	
15	Trill River, Mass. 02721		
16			
17			
18			
19	3/14/90	Colony Marine	16 Minia 30/30 -
20		6509 Highway M-29	
21		Algonac, MI 48001	UPS / RD
22			Reprint RL
23			Shipping
24			Total
25			
26	3/16/90	Gyman Marine	1 Sample Quad 30 sheet
27		1445 Gilman Blvd	No Charge
28		Osageville, IA 98027	
29			
30			
31			
32			
33			
34			
35			

Parts Due In or To be Ordered

Structural Foam Plates 426 Tops
213 Sacs

Shipment Expected 3/19/90

More tops need to be ordered - Bases are in stock
but did not continue to cover the tops, because
of money.

Shawn Williams

Light Blue
Dark Blue
Gray
White
Catalyst
Accelerator

Due in Monday

Need Freight Check

See Wilson

Prepaid

Shipment of Screws IFC -

Need Check for Monday Delivery - Jo has Am.

Graybar - Needs to be ordered Monday

500 - 13W - Bulbs, wire ties, wire nuts, ~~and~~ 1000 Lugs, Pro.

Green #10 wires, min 2,000 feet, (13 watt ~~each~~ 4 per unit) 500

Receptacles & Breaker stock needs to be checked. Rocky
has Releases in stock.

AD

Parts Due In or Not To be Ordered

PREPARED BY	
DATE	

Acme Plastics

AHN: Harry

(Unit) 50 Shuts Sinter waiting to be Released

Ruse Mold & Engineering

Build Box Plates, 30 amp & Breaker Cords on Order. Should
be on the way in.

Check just sent for Jacuplida, check file for gty
Call Ya for delivery time.
500 inches

Cardinal Alum.

Extension should be counted & order placed for
protection over next 60-90 days. Normal Leadtime
on shipments - 4-6 weeks delivery.

Vossloh

13 water Sinter need to be ordered.

Normal Office Supplies

Copy paper — Low

Fax paper — Out

FD

FILE NO.	
DATE	

Banner Safety

Bill needs cartridges or filters for mask.
Number of Mask in file.

Dust Pipe — ?

isolator - rubber - C.H.T.C.

2.5 weeks of labor ————— 3/1/90

6.00
6.00
6.25
5.50
6.00
3.20
42.95 X 60

8 2520 labor

2520.00

24 pullets @ 275 ————— 7375 ————— 73.75

Parts — 30 ap @ ^{5.26}~~5.11~~ — X 25 143.75
30 ay bk @ ^{5.33}~~6.00~~ — X 25 158.25
Balls @ 25 — ~~2.75~~ 2.58 62.75
Ball net @ 25 — ~~1.90~~ 1.96
Socks @ 25 — ~~1.75~~ 1.43
Pore plate — ~~1.20~~ 1.13
Wire = 4' @ .25 X X 25
~~and~~ Pt + TV —
10379.75

Shank 2nd.

Shank 2nd. 25-10 in @ ^{14.76}~~14~~ = 448
25 17 in @ ¹⁶~~16~~ = 448
7.6 X 3 = 22.80
wire = 4.00

Paints = 6 X 35 = 210
1132.80

\$ 11,511.75

2/23/90

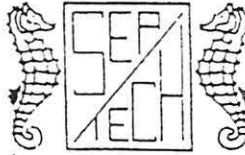
Jane:

Please bill Maria Technology. for

100	Covers of various types	@ \$3.00 each
100	fine binder & fine	@ @1.25 each
50	photo cells	@ 4.00 each
100	face plates	@ 1.13 each

Mark





Sea Technology, Ltd.
Docksider TM


May 1, 1990

Mr. Floyd L. Bishop
American Industrial Products Corporation
P.O. Box 22563
Cleveland, Ohio 44122

Dear Floyd:

I previously wrote you indicating that Sea Technology is asserting its rights in the dockbox which has been marketed as a Sea Technology product in the past and has been shipped with Sea Technology labels to several different locations including the New York Boat Show, Miami Boat Show, Cleveland Boat Show, Shark Island Marina and Dock of the Bay Marina. Since forwarding you that letter, I have not heard from you. Therefore, I have enclosed a copy of the suit papers which have been filed in the Circuit Court of James City County, Virginia, so that you might ascertain the basis for Sea Tech's claim to the dockbox. After reviewing the enclosed, should you care to pursue the acquisition of Sea Tech, please contact me at your convenience.

Yours very truly,



McClanahan Ingles
President

MI/jcp

enclosure

✓ cc: Mr. Floyd L. Bishop
Gates Mills, Ohio 44140

P.O. Box 489 Gloucester, Virginia 23061 Phone 804-642-3568/1-800-341-8324

FAX: 804-642-3569

EXHIBIT C

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG AND JAMES
CITY COUNTY

McCLANAHAN INGLES, Individually and in
the right of Sea Technology, Ltd.,
a Virginia Corporation,

Plaintiff,

v.

CHANCERY NO. 9150

ROBERT C. DIVEY, JR.
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

LINDA LEE DIVEY
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

MARINA TECHNOLOGY, INC.

SERVE: Robert C. Divey, Jr., Registered Agent
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia 23185

and

ALSTON G. BROOKS
c/o Marina Technology, Inc.
106 International Business Park
Busch Corporate Center
Williamsburg, (James City County) Virginia

Defendants.

BILL OF COMPLAINT

Comes now the Plaintiff, McClanahan Ingles ("Ingles"), by counsel,
and respectfully represents to the Court as follows:

Parties

1. Ingles is and was at all times pertinent hereto a resident of Gloucester County, Virginia, and an officer, director and shareholder of Sea Technology, Ltd. ("Sea Tech"), a corporation duly organized and existing under the laws of the State of Virginia.

2. Defendant, Robert C. Dively, Jr. ("Dively") is and was at all times pertinent hereto a resident of James City County, Virginia. Dively was formerly a director and President of Sea Tech, having resigned from those positions on March 9, 1990.

3. Defendant, Linda L. Dively ("Linda Dively") is the wife of Dively, a resident of James City County, Virginia, and is or was a director of Sea Tech.

4. Defendant, Marina Technology, Inc. ("Marina Tech") is a corporation organized by Dively in August, 1987, existing under the laws of the Commonwealth of Virginia, and having its principal place of business in James City County, Virginia.

5. Dively is an officer, director and shareholder of Marina Tech.

6. Defendant, Alston G. Brooks ("Brooks"), is a resident of the City of Newport News, Virginia.

7. Brooks was formerly the production manager of Sea Tech and is now employed by Marina Tech in a similar capacity.

COUNT I

Breach of Fiduciary Duty

8. Ingles brings this action individually and as a shareholder derivative action in the right of Sea Tech.

9. Sea Tech has its principal place of business in Gloucester County, Virginia, and is engaged in the business of designing, manufacturing and marketing marine utility pedestals.

10. Sea Tech's marine utility pedestals have the trade names "Docksider" and "mini-Docksider", and are used by marinas to deliver electricity, telephone service, cable TV and water to boats.

11. Sea Tech has experienced great success in its product market, having begun in 1984 with no assets and no product line, and having been developed into a corporation with annual sales of approximately 2 million dollars.

12. Dively was employed by Sea Tech in 1985 to provide engineering expertise and to serve as a director of the corporation, and as President of Sea Tech, to oversee the day-to-day design, manufacturing and marketing activities of Sea Tech.

Competing Products

13. While he remained a director and President of Sea Tech, Dively had a fiduciary duty to and occupied a special relationship of trust and confidence with Sea Tech for the benefit of its shareholders requiring him to act in good faith in the corporation's best interest.

14. While still a director and President of Sea Tech, and contrary to his fiduciary duty, Dively designed, manufactured and marketed a "Dock Box" at Sea Tech's expense, using Sea Tech employees, Sea Tech materials and showing the product at boat shows which he attended at Sea Tech's expense and to the detriment of Sea Tech in marketing its Sea Tech Docksider and mini-Docksider pedestals.

15. The Dock Box developed by Dively is essentially a storage box

incorporating generally the same features of the Docksider.

16. Dively, through Marina Tech, is now manufacturing and marketing the Dock Box and similar utility pedestals that were developed and manufactured by Sea Tech.

Disparaging Sea Tech's Product and Name

17. The Docksider was approved by Underwriter's Laboratories ("U.L.") until 1989.

18. In order to sell the Docksider in some regions, it is necessary that it be U.L. approved.

19. While he was still a director and President of Sea Tech, Dively failed to renew the U.L. approval and/or allowed the U.L. approval to expire with the specific intention of injuring the Sea Tech in its trade.

20. While Dively was a director and President of Sea Tech, he advised customers of Sea Tech that the Docksider is not U.L. approved, with the intent of causing economic loss to Sea Tech and obtaining an unfair advantage for Marina Tech and Dively.

21. Prior to and since Dively's resigning as a director and President of Sea Tech, and Brooks' resigning as an employee, Dively and Brooks, and each of them, have wrongfully advised customers and prospective employees that Ingles is no longer associated with Sea Tech; that Dively has taken over Sea Tech; that Marina Tech is a Sea Tech facility; that Sea Tech in Gloucester County, Virginia will be closed, and have otherwise made disparaging comments regarding Sea Tech.

22. Dively acted as aforesaid with the express design of placing

Marina Tech in a better position to compete with Sea Tech.

Diversion of Orders

23. While he was a director and President of Sea Tech, Dively secretly solicited orders for the Dock Box, Docksider, mini-Docksider and similar utility pedestals on behalf of Marina Tech.

24. While he was a director and President of Sea Tech, Dively encouraged Sea Tech customers to delay ordering the Sea Tech Docksider, mini Docksider and similar products with the intent of eventually selling to those customers the Dock Box or similar products manufactured by Marina Tech.

25. While he was a director and President of Sea Tech, Dively secretly diverted orders of Sea Tech products and secretly solicited Sea Tech customers to facilitate the purchase of competing products manufactured by Marina Tech.

26. Dively has fraudulently stated to some Sea Tech customers, prospective customers, employees and prospective employees that Marina Tech is affiliated with Sea Tech.

Materials and Supplies

27. While a director and President of Sea Tech, Dively failed to keep a sufficient inventory of materials and supplies for Sea Tech to operate. He also removed materials and supplies from Sea Tech to Marina Tech without authority and without paying for them, using Sea Tech employees at Sea Tech's expense.

28. While a director and President of Sea Tech, Dively failed to pay the legitimate bills of Sea Tech which adversely affected the

financial condition and reputation of Sea Tech.

29. While Dively was a director and President of Sea Tech, he incurred debt in the name of Sea Tech or Sea Technologies or Sea Technologies, Ltd., or similar names for parts for the Dock Box and/or other products sold by Marina Tech. Dively caused Sea Tech to pay these invoices for materials and supplies used in the construction of products sold by Marina Tech.

Sale of the Corporation

30. Dively, as a director and President of Sea Tech, had a fiduciary duty to keep the other directors, including the Plaintiff, advised of all offers and negotiations for the sale of Sea Tech or its assets.

31. Dively failed to advise Plaintiff of offers made by and meetings with prospective purchasers.

32. Dively's actions were intended to reduce the value of Sea Tech and/or force Sea Tech out of business.

Customer List

33. At considerable expense to Sea Tech, through attendance at boat shows throughout this country, Europe and Australia, through contacts made by being in business for over five years, through sales of product to satisfied customers, through advertising in trade publications, through the screening of many calls to and from potential customers and through other means, Sea Tech was able to develop a customer list and related records ("Customer List") which is of great value to the corporation.

34. Sea Tech's Customer List was confidential, not to be shared with any other person in the industry.

35. Sea Tech's Customer List included the name and address of the customer, the individual to contact, prior sales history, and other pertinent data that was of considerable benefit in marketing Sea Tech's product, and similar products.

36. Dively, while he was still a director and President of Sea Tech, in breach of his position of trust and confidence, wrongfully appropriated Sea Tech's Customer List for use by Marina Tech.

37. Dively is and has wrongfully and with the intent to injure Sea Tech in its business used Sea Tech's Customer List in soliciting customers on behalf of Marina Tech. Such actions give Marina Tech an unfair advantage by allowing it to target Sea Tech's customers to Sea Tech's detriment, instead of competing generally in the market place.

38. All of the aforesaid acts of Dively constitute a breach of his position of trust and confidence with Sea Tech. Said acts constitute fraudulent or unfair conduct and shock one's sense of fair play.

Conflict of Interest

39. While Dively was a director and President of Sea Tech, he removed finished and unfinished products from Sea Tech to Marina Tech and to Marina Tech customer locations without disclosing the material facts of the transactions to the board of directors of Sea Tech and without authority from the board of directors of Sea Tech.

40. In addition to trading as Marina Tech, Dively traded in the name of Sea Technologies and/or Sea Technologies, Ltd. and invoiced

customers in said name(s) utilizing a different address, and appropriated payments received for his own benefit or that of Marina Tech, all to the detriment of Sea Tech.

41. The said transactions were unfair to Sea Tech and Sea Tech has not been paid for the finished and unfinished products removed from Sea Tech to Marina Tech and to Marina Tech customer locations, nor has Sea Tech been reimbursed for payments misappropriated as aforesaid.

42. Said transactions constitute a conflict of interest on the part of Dively.

Failure to Perform Duties

43. While Dively was a director and President of Sea Tech, he failed to supervise other employees; kept his office locked and refused access to Sea Tech's employees and otherwise failed to keep Sea Tech's employees apprised of his activities and to direct them in their employment.

44. During said period of time, Dively was being compensated by said corporation as President.

45. Dively failed to properly perform his duties, refusing to oversee employees' conduct; refusing to contact customers in a responsive and responsible manner; and refusing to engage in the conduct of Sea Tech business on a full time basis as he had agreed to do.

46. While Dively was a director and President of Sea Tech, he directed Sea Tech employees not to communicate with the Plaintiff; he was seen at Sea Tech wearing swastika arm bands; and he brandished a firearm while meeting with one or more Sea Tech employees.

47. While Dively was a director and President of Sea Tech, he directed that other employees ship products to Sea Tech customers which were cracked or had stripped threads or were of a configuration not ordered by the respective customer or products which were otherwise defective or not in conformity with the work order despite questioning and objections from other employees.

48. While Dively was a director and President of Sea Tech, he was furnished with an automobile and cellular telephone at Sea Tech's expense. Dively failed to maintain said automobile and damaged said telephone thus causing significant expense to Sea Tech.

49. Dively's failure to perform his duties as a director and President of Sea Tech; failure to work full time on behalf of Sea Tech; intimidation of Sea Tech's employees; lack of care of equipment; and shipping of defective product were done with the specific intent of causing economic loss to Sea Tech.

COUNT II

Violation of Section 18.2-499 et seq.

50. The allegations of paragraphs 1 through 49 are hereby incorporated by reference.

51. During his tenure as a director and President of Sea Tech, Dively attempted to combine, associate, agree, mutually undertake and/or concert together with Linda Dively, Marina Tech, Brooks, customers of Sea Tech, and potential purchasers of Sea Tech for the purpose of willfully and maliciously injuring Sea Tech in its reputation, trade and business, in violation of 18.2-499(b) of the Code

of Virginia, 1950, as amended.

52. During his tenure as a director and President of Sea Tech, Dively combined, associated, agreed, mutually undertook and/or concerted together with Linda Dively, Marina Tech, Brooks, customers of Sea Tech, and potential purchasers of Sea Tech for the purpose of willfully and maliciously injuring Sea Tech in its reputation, trade and business, in violation of 18.2-499(a) of the Code of Virginia, 1950, as amended.

53. Sea Tech has been injured in its reputation, trade and business by reason of violation of 18.2-499 of the Code of Virginia through the activities of Dively, Linda Dively, Marina Tech, and Brooks, and is therefore entitled to recover three-fold the damages sustained by Sea Tech, the costs of this suit including reasonable attorney's fees to counsel for Ingles, and lost profits, and to injunctive relief as requested below.

COUNT III

Trade Secrets Act

54. The allegations of paragraphs 1 through 53 are incorporated by reference.

55. Dively has misappropriated trade secrets of Sea Tech as defined by the Trade Secrets Act, 59.1-336 of the Code of Virginia.

56. The misappropriation of trade secrets alleged above has been accomplished by Dively through improper means as defined in the Trade Secrets Act, Section 59.1-336 of the Code of Virginia.

COUNT IV

Unfair Competition

57. The allegations of paragraphs 1 through 56 are hereby incorporated by reference.

58. Dively's conduct, as aforesaid, constitutes unfair competition.

COUNT V

Conversion

59. The allegations of paragraphs 1 through 58 are hereby incorporated by reference.

60. Dively and Marina Tech wrongfully, fraudulently and illegally converted to their own use the Docksider, mini Docksider, Dock Box, similar utility pedestals, the Customer List of Sea Tech, materials and supplies of Sea Tech and the proceeds of sale from the aforesaid, causing loss to Sea Tech.

COUNT VI

Punitive Damages

61. The allegations of paragraphs 1 through 60 hereinabove are incorporated by reference.

62. Dively has evinced a willful, malicious and conscious disregard of his civil obligations to the Plaintiff and Sea Tech, amounting to a criminal indifference to said obligations.

63. Punitive damages are appropriate to punish Dively for his actions and to stand as an example to others who as directors and

officers of corporations are tempted to forsake their positions of confidence and trust.

COUNT VII

Linda Dively

63. The allegations of paragraphs 1 through 63 are incorporated by reference.

64. Linda Dively is an employee of Marina Tech. She has participated generally in the same activities attributed to Dively as set forth in paragraphs 14, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 45, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 above. She has knowingly benefited from the proceeds of Sea Tech assets converted by Dively as alleged in paragraph 61. She has engaged in unauthorized travel at Sea Tech's expense. She has attended boat shows where she and Dively have promoted Sea Tech products that they intended to sell through Marina Tech. She has aided, abetted, encouraged and incited Dively in all of the activities set forth in the preceding Counts.

COUNT VIII

Alston G. Brooks

65. The allegations of paragraphs 1 through 65 hereinabove are incorporated by reference.

66. Brooks was an employee of Sea Tech and acted as production manager. He had a duty of loyalty to the company which he breached. He participated in those same activities attributed to Dively in

paragraphs 14, 16, 21, 22, 23, 24, 25, 26 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 45, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 above. He assisted Dively in the design, manufacture and production of products at Sea Tech's expense, which he and Dively produced and sold for Marina Tech's benefit. He removed products and supplies from Sea Tech to Marina Tech without paying for those items. He assisted in the installation of a rural route box so that payments to Sea Tech could be misappropriated. He has disparaged Sea Tech products. He has performed substantial duties for Marina Tech while still on the Sea Tech payroll. He has aided, abetted, encouraged and incited Dively in the activities alleged in the preceding Counts.

COUNT IX

All Defendants

67. The allegations of paragraphs 1 through 67 hereinabove are incorporated by reference.

68. The conduct of all Defendants, as aforesaid, constitutes willful misconduct and a knowing violation of criminal law.

69. The allegations set forth above reveal that the Defendants, and each of them, obtained money from the Plaintiff and Sea Tech by false pretenses, false representations and/or actual fraud, and that these same monies were obtained by willful and malicious injury to the Plaintiff and Sea Tech.

70. At all times pertinent hereto, Ingles, Dively, Linda Dively and Lorraine J. Ingles were the only directors of Sea Tech. Based upon the makeup of the Board of Directors of Sea Tech, demand for action by the Board of Directors of Sea Tech is excused, as no action by the

Board against Dively was possible when no majority of the Board of Directors could be united against him.

WHEREFORE, Ingles individually and in the right of Sea Technology, Ltd. prays for the following relief:

A. A temporary restraining order and permanent injunction pursuant to 59.1-337 of the Code of Virginia on the grounds set forth above against use by the Defendants and each of them of trade secrets of Sea Tech, including but not limited to:

- i) use of the Customer List of Sea Tech;
- ii) solicitation of sales to or orders from customers of Sea Tech;
- iii) marketing, licensing, selling or otherwise benefiting from the Docksider, mini-Docksider, Dock Box or similar pedestals; and
- iv) any and all interference with Sea Tech in its business.

B. Pursuant to 18.2-500 of the Code of Virginia, an award of damages to Ingles individually and in the right of Sea Technology, Ltd. for three-fold the damages by him sustained as a result of: (i) the conduct of the Defendants and each of them as aforesaid, and (ii) the costs of this suit, including a reasonable fee to counsel for Ingles, in the total amount of Two Million and No/100 Dollars (\$2,000,000.00);

C. Compensatory damages to Ingles individually and in the right of Sea Technology, Ltd. for unjust enrichment to the Defendants and each of them caused by the misappropriation of trade secrets by improper means as alleged herein;

D. Punitive damages to Ingles individually and in the right of Sea Technology, Ltd. in the amount of Three Million and No/100 Dollars (\$3,000,000.00);

E. Sea Tech be granted an exclusive license in and to the Docksider, mini-Docksider, Dock Box, similar utility pedestals and other products being marketed by Marina Tech and/or Dively;

F. This matter be heard in camera and that the record herein be sealed;

G. Defendants and their attorneys be enjoined from disclosing any of Sea Tech's trade secrets;

H. Defendants be required to provide an accounting of all revenues and profits received from the sale of Docksidiers, Mini-Docksidiers, Dock Boxes, similar utility pedestals, or other products manufactured and sold by Defendants and that any and all such revenues and profits be imposed with constructive trust for the benefit of Sea Tech and/or Ingles.

I. Defendants be required to provide an accounting of all revenues and profits received as a result of their actions and that any and all such revenues and profits be imposed with constructive trust for the benefit of Sea Tech and/or Ingles.

J. Defendants be required to return all customer lists, customer files, materials and supplies taken from Sea Tech.

K. Such other and further relief as the nature of this case may require and to the Court seem justified.

Respectfully submitted,

McCLANAHAN INGLES, individually and in the right of
Sea Technology, Ltd., a Virginia corporation

By: 

Of Counsel



Alvin P. Anderson, Esquire
Gregory R. Davis, Esquire
ANDERSON & FRANCK, P.C.
Post Office Drawer Q
Williamsburg, Virginia 23187
(804) 229-7322

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WILLIAMSBURG

ROBERT C. DIVELY,

Plaintiff,

v.

AT LAW #5856

McCLANAHAN INGLES,

Defendant.

DEFENDANT'S ANSWER AND GROUNDS OF DEFENSE

COMES NOW the defendant, McClanahan Ingles, by counsel, and files herewith his answer to the motion for judgment, and asserts his affirmative defenses thereto, the paragraphs of this Answer to correspond with the allegations in the motion for judgment:

1. The defendant denies that Dively has been a 50% owner of the STL at all relevant times. The remaining allegations contained in paragraph 1 of the motion for judgment are admitted.

2. The defendant denies that he is only a 50% owner of STL. The remaining allegations contained in paragraph 2 of the motion for judgment are admitted.

3. The defendant admits that STL was formed in 1984 by Ingles and Dively. The defendant denies that the sole product to be marketed by STL was a marine utility pedestal.

4. The allegations contained in paragraph 4 of the motion for judgment are denied as phrased.

[Handwritten signature]

5. The allegations contained in paragraph 5 of the motion for judgment are denied as phrased.

6. The defendant admits that, following Dively's resignation, he reviewed STL's books and records and contacted STL's customers. The remaining allegations contained in paragraph 6 of the motion for judgment are denied.

7. Admitted.

8. Admitted.

9. The allegations contained in paragraph 9 of the motion for judgment are denied as phrased.

10. The defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 10, and accordingly denies same. However, the defendant admits that he met with Investigator William W. Adams, and several other Gloucester County Sheriff's representatives, regarding Dively's embezzlement from STL in the spring of 1990.

11. The allegations contained in paragraph 11 of the motion for judgment are denied as phrased.

12. Denied.

13. The defendant admits that, prior to April 12, 1990, he was in possession of certain notes left by Hogge and Dively, which in no way accounted for Dively's activities. The remaining allegations contained in paragraph 13 are denied.

14. Denied.

15. The defendant admits the charges against Dively were certified to the Gloucester County grand jury. The defendant

is without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 15.

16. The defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 16.

17. Denied.

18. The defendant admits that five felony indictments were made by a Gloucester County grand jury against Dively. The defendant is without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 18.

19. The defendant denies that MTI did not have within its possession embezzled tools and items belonging to STL. The defendant is without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 19.

20. The defendant admits that Dively was indicted by a Gloucester County grand jury for embezzling funds regarding a sale to Pelican Harbor Marina. The defendant is without sufficient information or knowledge to either admit or deny the remaining allegations contained in paragraph 20.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

Y. BREEDEN
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TERRY
KEYS AT LAW
VIRGINIA 22480

27. Upon information and belief, the allegations contained in paragraph 27 are admitted.

28. Paragraph 28 contains a legal incorporation clause, not requiring a response by the defendant.

29. The allegations contained in paragraph 29 are denied as phrased.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. The defendant is without sufficient information or knowledge to either admit or deny the allegations contained in paragraph 34 of the motion for judgment, but denies that Dively has been damaged to the extent claimed.

35. Paragraph 35 of the motion for judgment contains an incorporation clause, not requiring a response by the defendant.

36. Denied.

37. Denied.

38. Denied.

39. Paragraph 39 of the motion for judgment contains an incorporation clause, not requiring a response by this defendant.

40. Denied.

41. Denied.

42. The defendant is without sufficient information or knowledge to either admit or deny the allegations contained in

paragraph 42 of the motion for judgment, but denies that Dively has been damaged to the extent claimed.

43. Paragraph 43 of the motion for judgment contains an incorporation clause, not requiring a response by this defendant.

44. The defendant admits that the Exhibit C to the motion for judgment is a true and correct copy of a letter. The remaining allegations contained in paragraph 44 are denied.

45. Denied.

46. Denied.

47. Paragraph 47 of the motion for judgment contains an incorporation clause, not requiring a response by this defendant.

48. Denied.

49. Denied.

50. Paragraph 50 of the motion for judgment contains an incorporation clause, not requiring a response by this defendant.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. To the extent not previously admitted or denied, each and every remaining factual allegation contained in the motion for judgment is hereby denied, and strict proof thereof is demanded.

FIRST GROUNDS OF DEFENSE

As and for his first grounds of defense to the motion for judgment, the defendant states that the motion for judgment, or specific counts thereof, fail to state a cause of action upon which relief can be granted.

SECOND GROUNDS OF DEFENSE

As and for his second grounds of defense to the motion for judgment, the defendant asserts that any of his actions taken with respect to Dively's relationship with STL, were based upon advice of reputable attorneys at law, properly sought and acted on in good faith.

THIRD GROUNDS OF DEFENSE

As and for his third grounds of defense to the motion for judgment, the defendant asserts that any and all criminal actions instituted against Dively were based upon probable cause, properly found by a grand jury sworn and impanelled within Gloucester County, Virginia.

FOURTH GROUNDS OF DEFENSE

As and for his fourth grounds of defense to the motion for judgment, the defendant asserts that, in taking any and all actions against Dively regarding Dively's relationship with STL, the defendant had a positive and definite reasonable belief that he had probable cause to take such actions.

FIFTH GROUNDS OF DEFENSE

As and for his fifth grounds of defense to the motion for judgment, the defendant asserts that all criminal proceedings

against Dively were proper, in the regular prosecution of criminal proceedings, and undertaken for a lawful purpose.

SIXTH GROUNDS OF DEFENSE

As and for his sixth grounds of defense to the motion for judgment, the defendant asserts that, to the extent that defendant made representations to third parties regarding Dively's conduct, those statements were factually truthful and correct.

SEVENTH GROUNDS OF DEFENSE

As and for his sixth grounds of defense to the motion for judgment, the defendant relies upon the doctrine of estoppel, and further asserts that Dively is not entitled to relief due to his own actions and unclean hands.

EIGHTH GROUNDS OF DEFENSE

As and for his sixth grounds of defense to the motion for judgment, the defendant asserts that, if Dively has been damaged to any extent, that Dively has failed to mitigate his damages.

WHEREFORE, having addressed each and every allegation contained in the motion for judgment, and asserting his affirmative grounds of defense thereto, the defendant requests that this Court dismiss this action against him with prejudice, and award him his costs expended herein.

Respectfully submitted,

McClanahan Ingles

By Counsel

BY BREEDEN,
BARD, BUGG
TERRY
ATTORNEYS AT LAW
VIRGINIA 22480

Rumsey, Breeden, Hubbard, Bugg & Terry
P. O. Box 340
Irvington, Virginia 22480
(804) 438-5522

By:


of counsel

CERTIFICATE OF SERVICE

I hereby certify that I have mailed/delivered, postage prepaid, a true copy of the foregoing pleading to all counsel of record on May 16, 1991.



(csr\Ingles.agd)

—

RUMSEY, BREEDEN,
HUBBARD, BUGG
& TERRY
ATTORNEYS AT LAW
IRVINGTON VIRGINIA 22480

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

ROBERT C. DIVELY,)	
)	
Plaintiff,)	
)	
v.)	At Law No. 5856
)	
McCLANAHAN INGLES,)	
)	
Defendant.)	

AMENDED MOTION FOR JUDGMENT

Plaintiff Robert C. Dively, by counsel, pursuant to an agreement among counsel for the parties reached on June 1, 1992, submits this Amended Motion for Judgment as to Counts II and III of his Motion for Judgment. Except as Amended herein, Dively reaffirms and incorporates herein by reference all remaining allegations contained in his Motion for Judgment.

ABUSE OF PROCESS

35. Dively repeats and realleges the allegations in paragraphs 1 through 34 of his Motion for Judgment as if fully set forth herein.

36. Ingles was instrumental in instituting the issuance of criminal process against Dively, and in so acting, Ingles acted with the ulterior motives of, inter alia, (a) obtaining what he had been unable to obtain in the civil court which was

to prevent Dively from competing with STL; (b) to use the Commonwealth's resources to obtain discovery of information useful in the pending civil suit; (c) of destroying Dively financially by causing Dively to devote substantial time and money to defending the criminal action so that such funds would be diverted from Dively's new business; (d) of using the criminal indictments to cause prospective customers to refrain from dealing with Dively thereby giving STL a competitive advantage over Dively and his new business and further injuring Dively financially; and (e) of ostracizing Dively from his friends, family and community.

37. After issuance of the criminal process against Dively, Ingles used such process perversely and oppressively by, inter alia, (a) contacting customers and prospective customers in the marine products industry throughout the United States and claiming that Dively was a criminal, had been indicted, and, therefore, could not be relied upon as a supplier of marina products because he would be in jail, all to obtain a competitive advantage over Dively and injure Dively financially; (b) using the Commonwealth to obtain information Ingles intended to use in the civil litigation; (c) withholding information from the Commonwealth's Attorney and delivering such information on the morning of trial causing the trial to be continued so as to significantly increase the expense of

Dively's defense; and (e) to induce Dively to settle the civil litigation and to compel Dively to give up his interest in STL and marina products designed and developed by Dively.

38. In undertaking the acts alleged above, Ingles acted with actual malice, and personal ill will toward Dively and in a manner showing reckless disregard for Dively's rights. As a result of Ingles' abuse of process, Ingles has caused Dively to be held out to great public shame and humiliation, has impaired Dively's ability to earn a livelihood, has caused Dively to suffer substantial monetary damages, has caused great harm to Dively's reputation, and has caused Dively great emotional pain and suffering, among other damages.

COUNT III

Intentional Infliction of Emotional Distress

39. Dively repeats and realleges the allegations in paragraphs 1 through 34 of his Motion for Judgment and paragraphs 36 through 38 of this Amended Motion for Judgment as if fully set forth herein.

40. Ingles instituted criminal proceedings against Dively for alleged crimes he knew or should have known Dively did not commit specifically to inflict emotional distress on Dively and his family, and Ingles knew or should have known that emotional

distress would result from the institution of such criminal proceedings.

41. Ingles' instigation of criminal proceedings against Dively with the intent to cause Dively to suffer emotional distress and for the ulterior purposes set forth in paragraph 36 above was outrageous in character, went beyond all possible bounds of decency, was atrocious and utterly intolerable in a civilized community, especially in view of the fact that Ingles is and at all relevant times has been an attorney licensed to practice law in this Commonwealth, who has represented Dively in legal matters and who knew or should have known that Dively was innocent of the crimes Ingles alleged Dively had committed.

42. As a direct and proximate result of Ingles' conduct as set forth above, Dively suffered severe emotional distress, including, (a) great shock and horror at being arrested and indicted for alleged crimes he did not commit; (b) great anxiety as to what people would think of him, especially given the broad newspaper coverage of his arrest and indictment; (c) fear that persons would consider him a criminal or felon; (d) lost personal freedom during his arrest; (e) restricted personal freedom under the bond imposed pending trial; (f) anxiety over his new business venture because of time lost defending the criminal charges and trying to mitigate the

adverse effect of Ingles' contact with Dively's prospective customers across the United States and informing them that Dively had been indicted; and (g) anxiety over the impact of the indictments on his daughter who, at the time, was 9 years old.

ROBERT C. DIVELY

By 
Of Counsel

William D. Bayliss, VSB #13741
Dana D. McDaniel, VSB #25419
Glen A. Lea, VSB #31831
WILLIAMS, MULLEN, CHRISTIAN & DOBBINS
Two James Center
1021 East Cary Street, 15th Floor
P. O. Box 1320
Richmond, VA 23210-1320
(804) 643-1991

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Amended Motion for Judgment was ^{FAXED AND} mailed this 8th day of June, 1992, to A. Davis Bugg, Jr., Esq., Rumsey, Breeden, Hubbard, Bugg & Terry, P. O. Box 340, Irvington, Virginia 22480.



LIT1:DDM2781

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

ROBERT C. DIVELY,
Plaintiff,

v.

Law No. 5856

McCLANAHAN INGLES,
Defendant.

GROUND OF DEFENSE TO AMENDED MOTION FOR JUDGMENT

Comes now the defendant, McClanahan Ingles, by counsel, and for his grounds of defense to the amended motion for judgment filed on behalf of the plaintiff herein restates and incorporates herein by reference his response to all allegations except Counts II and III of the motion for judgment and, as his grounds of defense to the aforesaid Counts, states the following:

35. Paragraph 35 of the motion for judgment contains an incorporation clause, not requiring a response by the defendant.

36. Denied.

37. Denied.

38. Denied.

39. Paragraph 39 of the motion for judgment contains an incorporation clause not requiring a response by the defendant.

40. Denied.

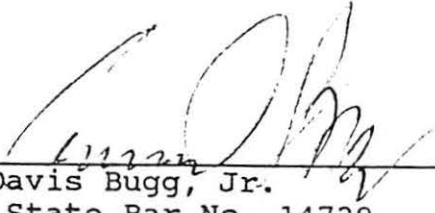
41. Denied.

42. Denied.

MSEY, BREEDEN,
JBBARD, BUGG
& TERRY
ATTORNEYS AT LAW
WILLIAMSBURG, VIRGINIA 22400

McCLANAHAN INGLES

By Counsel



A. Davis Bugg, Jr.
Va. State Bar No. 14729
RUMSEY, BREEDEN, HUBBARD, BUGG & TERRY
P.O. Box 340
Steamboat Road
Irvington, Virginia 22480
(804) 438-5522

CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing was sent to Dana D. McDaniel, Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23210-1320 this 15 day of June, 1992.



BREEDEN,
D. BUGG
RRY
S AT LAW
GINIA 22480

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG

ROBERT C. DIVELY,

Plaintiff,

v.

Law No. 5856

McCLANAHAN INGLES,

Defendant.

DEFENDANT'S MOTION IN LIMINE

Comes now the defendant, McClanahan Ingles, by counsel, and moves that the Court determine the following matters in limine:

I.

1. William Shaw, Commonwealth's Attorney for Gloucester County, will testify in this action that before he sought criminal indictments against the plaintiff, he made a determination not only that probable cause existed but that the evidence was sufficient to support convictions; Shaw will also testify that the decision to seek indictments was his and that he was neither pressured nor persuaded to do so by Ingles.

2. Plaintiff has indicated his intention to call as a witness Fred Pesch (and perhaps others) who is expected to testify that during June 1987 Ingles said, in the context of a business meeting, that he "controlled Gloucester County" or "owned Gloucester County," and suggested that he controlled the public officials of Gloucester County, including the judiciary.

3. The plaintiff intends to offer this evidence to attempt to prove that in taking action against Dively, Shaw was acting as Ingles' pawn and was under Ingles' control.

4. If the plaintiff could demonstrate that Ingles controlled Shaw, he could do so only by relevant evidence specifically indicating control over Shaw; evidence of general comments, three years before the operative events, even if believed, is wholly irrelevant on the issue of whether Shaw was controlled by Ingles.

5. Moreover, such evidence is unduly prejudicial, particularly in light of its utter lack of probative value.

6. Such evidence should be excluded or, at the very least, plaintiff's counsel should be precluded from mentioning it in his opening statement and any such evidence should be taken out of the presence of the jury so that a ruling can be made to determine whether it is properly admissable.

II.

7. The plaintiff intends to offer evidence that investigating officers William Colton and William Adams of the Virginia State Police in the Gloucester County Sheriff's Department, respectively, advised Mr. Shaw, after the indictments were issued, that in their opinion the conduct of Dively which was the subject of the investigation raised civil rather than criminal issues.

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IRGINIA 22480

8. The response of Shaw was that the matter of legal sufficiency was within his discretion and that the officers should concern themselves with the investigation.

9. The proffered testimony of these officers is an opinion offered by lay witnesses not qualified to state that opinion, and is irrelevant since the decision to prosecute rests with the commonwealth's attorney.

10. The opinions of Colton and Adams are therefore inadmissible and plaintiff's counsel should be precluded from offering those opinions into evidence; at the very least, plaintiff's counsel should be precluded from mentioning such matters in his opening statement and the evidence should be taken out of the hearing of the jury so that a ruling on its admissibility can be made.

III.

11. Plaintiff has offered evidence on Ingles' credibility in the criminal trial and in the case tried in Gloucester before the Honorable Dixon Foster, both of which were bench trials, that Ingles wrongfully backdated a private pension plan in 1988, and that he signed an "Application for Determination for Defined Benefit Plan" IRS Form 5300 showing that the plan was signed December 30, 1987 when in fact it was signed sometime in 1988. Ingles' signature was immediately below the words "Under penalties of perjury, I declare that I have examined this application,

including accompanying statements, and to the best of my knowledge and belief it is true, correct and complete".

12. Ingles denies that his conduct was wrongful and further states that the evidence which the plaintiff intends to offer is of a collateral act having no relevance to any issue in this case; it is therefore inadmissible with regard to his credibility.

13. Such evidence is extremely prejudicial and should not be admitted; at the very least, plaintiff's counsel should be precluded from mentioning such evidence in his opening statement and the evidence should be taken outside of the hearing of the jury so that a determination of its admissibility can be made.

IV.

14. The defendant is unsure whether plaintiff's counsel intends to place before the jury statements of Judges Bateman or Foster in ruling on the criminal and Gloucester civil cases, respectively, or by this Court in a hearing held on April 11, 1990.

15. As a matter of law, comments from the bench or reasons given in judicial decisions are not admissible in evidence to prove any issue.

16. Plaintiff's counsel should be precluded from mentioning any statements from the bench in any case which is related to the present action.

V.

17. The plaintiff has sought in each count of his motion for judgment a recovery of punitive damages from the defendant.

18. The plaintiff will seek to offer evidence of the defendant's net worth in support of the punitive damage claim.

19. Evidence of the defendant's net worth is highly prejudicial and creates a significant risk that the jury's perception of the defendant's net worth will bias their decision on unrelated factual issues.

20. Plaintiff's counsel should not be permitted to mention in his opening statement defendant's net worth or otherwise offer evidence of that net worth unless and until the jury has determined that the plaintiff is entitled to a recovery of punitive damages.

21. At the very least, plaintiff's counsel should not be permitted to mention defendant's net worth or to offer evidence of that net worth until the plaintiff has made a prima facie showing of his entitlement to a recovery of punitive damages.

22. The defendant therefore moves for a bifurcated trial where the jury is not permitted to hear evidence of the defendant's net worth until it has first decided that the plaintiff is entitled to punitive damages; at that point, after the evidence is received, the jury can retire to consider its punitive damage verdict.

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IBBARD BUGG
& TERRY
ATTORNEYS AT LAW
FALLS CHURCH, VIRGINIA 22040

VI.

23. The plaintiff asserted in a hearing before this Court on July 13, 1992, that certain unspecified issues in the present action are or may be barred by collateral estoppel and/or res judicata.

24. Since res judicata applies to bar a party from asserting a cause of action in a subsequent suit that he asserted in an earlier suit, the doctrine is not applicable here; moreover, the doctrine is not applicable if the exact point in issue was not decided in the former suit in the moving party's favor.

25. The issue in dispute in this action was not decided in Dively's favor in Gloucester.

26. Collateral estoppel applies where a different cause of action is asserted in a subsequent suit and is applicable only where an issue of fact was actually litigated and essential to the result in the former action; where the prior judgment could have been grounded upon an issue other than that which the plaintiff seeks to foreclose from consideration here, collateral estoppel is not applicable.

27. Judge Foster determined that Dively was guilty of wrongful conduct in the Gloucester litigation, since he found Dively guilty of "unclean hands."

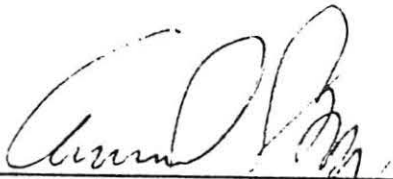
28. Therefore, neither collateral estoppel nor res judicata apply in the present matter and plaintiff's counsel should be precluded from stating in his opening statement or otherwise

placing before the jury the assertion that the Gloucester litigation determined in any way that Dively did not commit the crimes charged, that probable cause did not exist, or that Ingles did not have a reasonable basis to believe that Dively had committed the crimes charged.

WHEREFORE, the defendant, McClanahan Ingles, by counsel, moves that these matters be determined in limine before trial of this action begins.

MCCLANAHAN INGLES

By Counsel



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CERTIFICATE

I HEREBY CERTIFY that a true copy of the foregoing was sent via telecopier to counsel of record for the plaintiff on July 17, 1992.



Y BREEDEN
ARD BUGG
TERRY
NEYS AT LAW
VIRGINIA 22480

COPY

Instruction No. 12

With regard to the plaintiff's claim for defamation, you shall return your verdict for the plaintiff, if he has proved by the greater weight of the evidence that:

(1) the defendant made one or more of the following statements:

- y a. That Bob Dively is a thief.
- y b. That Bob Dively is a criminal.
- y c. That Bob Dively had stolen equipment from Sea Technology.
- y d. That Bob Dively had stolen money from Sea Technology.
- N e. That Bob Dively had been convicted of stealing from Sea Technology.

y (2) That one or more of the above statements was
heard by someone other than the plaintiff; and

y (3) was about the plaintiff; and

y (4) was false; and

y (5) the defendant knew the statement or statements to be false or, believing it to be true, lacked reasonable grounds for such belief or acted negligently in failing

to ascertain the facts on which the statement was based.

You should consider each statement separately and you shall find your verdict for the defendant as to a given statement if the plaintiff failed to prove any one or more of the elements above. If the plaintiff proved all of the above elements as to any one or more of the statements, you shall find your verdict for the plaintiff but only as to that statement.

COPY

Instruction No. 13

Your verdict on the claims the plaintiff asserts must be based on the facts as you find them and on the law contained in all of these instructions.

The issues with respect to the plaintiff's defamation claim are:

(1) Did the defendant make one or more of the following statements or statements of similar effect:

- ☒ a. That Bob Dively is a thief.
- ☒ b. That Bob Dively is a criminal.
- ☒ c. That Bob Dively had stolen equipment from Sea Technology.
- ☒ d. That Bob Dively had stolen money from Sea Technology.
- ☒ e. That Bob Dively had been convicted of stealing from Sea Technology.

☒ (2) If he did, was one or more of the statements that the defendant made heard by someone other than the plaintiff?

☒ (3) Were such statements about the plaintiff?

☒ (4) Was one or more of the statements false?

☒ (5) Did the defendant know the statements to be false or, believing them to be true, did the defendant lack

reasonable grounds for such belief or act negligently
in failing to ascertain the facts on which the
statements were based?

- (6) If the plaintiff is entitled to recover, what is the
amount of his damages?

On these is the plaintiff has the burden of proof.

Your decisions on these issues must be governed by the
instructions that follow.

1 hundreds of thousands dollars, car phones, trips to
2 the Caribbean, Australia, et cetera, et cetera, et
3 cetera, and on top of it all tax fraud out of the
4 ying-yang is what he did, and Mr. Wolff is here to
5 show tax fraud, and for that reason it shows motive
6 as well as prior inconsistency.

7 THE COURT: I'll still let you use it
8 for rebuttal if Ingles takes the stand.

9 MR. BUGG: I don't know whether
10 Mr. Bayliss intends to use in opening statement or
11 try to get into evidence any comments from the bench
12 in the Gloucester case or criminal case.

13 MR. BAYLISS: No, sir, we don't intend
14 to.

15 MR. BUGG: That's it, Your Honor.
16 Please note my exception to the adverse witness.

17 THE COURT: I noted your exception from
18 the beginning. Let's set the rule right now,
19 exceptions are noted from the beginning of time to
20 the end of the world.

21 MR. BAYLISS: Can we recognize the
22 witnesses?

23 MR. BUGG: There's one further thing I
24 would like to know. We were here a week ago. You
25 ordered them to produce documents, a letter of

M. Ingles - Direct (Adv.)

1 case with anyone or permit anyone to talk do you
2 concerning this case.

3 Recessed until 1:00.

4 (The jury withdrew from the courtroom.)

5 (A luncheon recess was taken at this
6 time.)

7 THE COURT: We seem to have seven
8 jurors. Do you waive the poll?

9 MR. BAYLISS: Yes, sir.

10 MR. BUGG: Yes, sir.

11 MR. BAYLISS: Mac Ingles, call him as
12 an adverse witness.

13
14 McCLANAHAN INGLES, called as an adverse
15 witness by and on behalf of the Plaintiff, having
16 been first duly sworn, was examined and testified as
17 follows:

18
19 DIRECT EXAMINATION (ADV.)

20 BY MR. BAYLISS:

21 Q. You are Mac Ingles, correct?

22 A. Yes, sir.

23 Q. And you are an attorney licensed to
24 practice law?

25 A. Yes.

M. Ingles - Direct (Adv.)

1 Q. And is that in Gloucester County?

2 A. Yes, sir.

3 Q. And that is where your principal
4 practice has been located for approximately 20
5 years?

6 A. That's correct.

7 Q. And you are with the firm of Martin,
8 Hicks & Ingles?

9 A. Yes, I am.

10 Q. And your office is right across from
11 the courthouse?

12 A. It's on one side of the Court Circle.

13 Q. It's right in the area?

14 A. Yes.

15 Q. And Bill Shaw is in the courthouse?

16 A. Yes.

17 Q. And you've known Bill Shaw for 18 years
18 approximately?

19 A. I guess 17 or 18 years.

20 Q. You when did you receive your law
21 license?

22 A. In 1972 I passed the Bar.

23 Q. And your principal practice is
24 commercial and real estate now, right?

25 A. No. I do a lot of domestic relations

1 work and I do real estate and some civil litigation.

2 Q. And you at one time did some criminal
3 litigation?

4 A. A number of years ago, yes.

5 Q. But you don't do a whole lot of it now?

6 A. No.

7 Q. You met Bob Dively and formed Sea
8 Technology, Limited and each of you owned 50 percent
9 of the stock, right?

10 A. Initially, that's right.

11 MR. BAYLISS: Now, Judge, to help you
12 I'd like to give the witness one book and give you
13 one book that you can follow along. We'll introduce
14 the originals or separate copies because all of
15 these may not come in. He's seen all these. We are
16 going to give him the exhibit as it goes on.

17 BY MR. BAYLISS:

18 Q. Turn if you would to Exhibit Number 1.
19 Now, that is a copy, is it not, of the stock ledger
20 for Sea Technology?

21 A. Yes.

22 Q. And you kept that in your own office,
23 correct?

24 A. That's right.

25 Q. And your secretary made entries in it,

M. Ingles - Direct (Adv.)

1 correct?

2 A. That's correct.

3 Q. Jo Payne, that's Jo Payne's
4 writing?

5 A. I believe so.

6 Q. And you kept all the minute books and
7 all the corporate records of Sea Technology in your
8 books and records, right?

9 A. Yes, I believe so.

10 Q. And on that stock ledger sheet it shows
11 Certificate Number One and Certificate Number Two
12 were issued on 9-27-84, correct?

13 A. Yes.

14 Q. And Certificate Number One was issued
15 to Bob Dively and Certificate Number Two was issued
16 to Mac Ingles, correct?

17 A. Yes.

18 Q. And then Certificate Number Three shows
19 that on 6-15-85 a certificate for 15 shares of stock
20 were issued to Mac Ingles, correct?

21 A. That's correct.

22 Q. And that's Bob Dively's original 15
23 shares, right?

24 A. That's right.

25 Q. So on June 15, 1985 you owned 30 shares

M. Ingles - Direct (Adv.)

1 of stock?

2 A. That's right.

3 Q. And there were only 30 shares of stock
4 outstanding?

5 A. That's right.

6 Q. And it says there amount paid thereon,
7 \$1500. You never paid that, did you?

8 A. No.

9 Q. Even though the records reflect that
10 you never did, did you?

11 A. I just said that.

12 Q. Now, behind, if you would, just so we
13 can identify it for the record --

14 A. That was for the third certificate of
15 stock. I did pay for the first certificate.

16 Q. I'll ask you the questions. Behind,
17 sir, are there copies of the certificates
18 themselves?

19 A. The next document I have behind the
20 first one appears to be identical to the first
21 document.

22 Q. And behind that you see copies of the
23 stock certificates themselves, right?

24 A. The next document is Number One, the 15
25 shares issued to Robert C. Dively, that's correct.

M. Ingles - Direct (Adv.)

1 Q. And then it goes Number Two and Number
2 Three?

3 A. Mine is Number Two and then Number
4 Three.

5 MR. BAYLISS: I would move to introduce
6 this as Plaintiff's Exhibit Number 1.

7 MR. BUGG: No objection.

8 THE COURT: Introduced and marked as
9 Plaintiff's Exhibit Number 1.

10 (The document referred to was marked by
11 the Court as Plaintiff's Exhibit 1, and received
12 into evidence.)

13 BY MR. BAYLISS:

14 Q. Turn if you would to Plaintiff's Number
15 2. Would you identify that, please?

16 A. That was election by a small business
17 corporation. It's a Chapter S. Some people called
18 it Sub-Chapter S Election.

19 Q. That's your signature, is it not?

20 A. That's my signature on December 19,
21 1986. I was the sole stockholder and that's what
22 that shows. It shows I own 30 shares of stock at
23 that time.

24 Q. Now, that reflects that you acquired 15
25 shares on June 15, 1985 and that you owned 30 shares

M. Ingles - Direct (Adv.)

1 on that date, correct?

2 A. I think that's what this shows. This
3 is a bad copy but I think that's what it shows.

4 MR. BAYLISS: I move to introduce that
5 as the next exhibit.

6 MR. BUGG: No objection.

7 THE COURT: Introduced and marked as
8 Plaintiff's Exhibit Number 2.

9 (The document referred to was marked by
10 the Court as Plaintiff's Exhibit 2, and received
11 into evidence.)

12 BY MR. BAYLISS:

13 Q. That election by Sub-S is dated
14 December 18, 1986, correct?

15 A. Yes, it is.

16 Q. You when Sea Technology was formed your
17 law office was the firm and your office represented
18 Sea Technology in any legal matters, correct?

19 A. We formed the corporation. Mr. Dively
20 retained other attorneys from time to time to
21 represent the company unbeknownst to me.

22 Q. Answer my question. You were the
23 lawyer for Sea Technology for the corporation?

24 A. We formed the corporation.

25 Q. My question is you were the lawyer for

M. Ingles - Direct (Adv.)

1 Sea Technology?

2 A. Yes.

3 Q. And your law firm did work for the
4 corporation?

5 A. Yes.

6 Q. You maintained --

7 A. We may have done a few minor
8 collections for Sea Technology.

9 Q. Who did all the corporate records?

10 A. We did.

11 Q. That's legal work, isn't it?

12 A. Yes.

13 Q. So you were the general counsel for the
14 company, were you not?

15 A. If you consider a small corporation has
16 a general counsel I guess we would have been
17 considered to be the general counsel. Sea
18 Technology never paid us any fees. We didn't charge
19 any fees. This was all pro bono work.

20 Q. Pro bono, do you mean pro bono because
21 Sea Technology didn't have any money?

22 A. No. We did not charge. I don't
23 normally charge legal fees for an entity in which I
24 am involved.

25 Q. In fact, you were involved in many

M. Ingles - Direct (Adv.)

1 other entities as partner during that period of time
2 other than your legal practice?

3 A. I was involved in several others.

4 Q. Marinas, land deals?

5 A. One marina.

6 Q. Land deals?

7 A. There were several land transactions,
8 yes.

9 Q. Partnerships?

10 A. I assume there was one or two
11 partnerships.

12 Q. Now, turn to Exhibit Number 3, please.
13 Do you have that in front of you?

14 A. Yes, I do.

15 Q. Could you identify that, please?

16 A. That's an agreement dated April 20,
17 1987.

18 Q. And that is an option agreement?

19 A. Yes.

20 Q. That was prepared by you?

21 A. Yes.

22 Q. Signed by you?

23 A. Yes.

24 Q. Signed by Mac Ingles and signed by Bob
25 Dively?

M. Ingles - Direct (Adv.)

1 A. That's correct.

2 Q. Notarized by Jo Payne, your secretary?

3 A. Yes.

4 Q. Now, in that agreement, it says among
5 other things that you were the owner of certain
6 stock in the following named corporations and you
7 list Sea Technology, United Metering and Innovative
8 Technology International, correct?

9 A. Yes.

10 Q. They were all corporations in which Bob
11 Dively had an interest at one time, correct?

12 A. Yes.

13 Q. Bob Dively didn't draft this, Mac
14 Ingles did, correct?

15 A. That's correct.

16 Q. And then it says Ingles wishes to offer
17 Dively -- and this is dated April 20, 1987 -- Ingles
18 wishes to offer Dively the option to purchase stock
19 in said corporations up to an amount equaling
20 Ingles' stock, correct?

21 A. No. It doesn't. It says for one half
22 of Ingles' costs therein.

23 Q. It says whereas, Ingles wishes to offer
24 Dively the option to purchase stock in said
25 corporations up to an amount equaling Ingles' stock

M. Ingles - Direct (Adv.)

1 in said corporation, right?

2 A. Yeah.

3 Q. The last --

4 A. The last recital is he has to pay half
5 of my costs.

6 Q. That's not a recital, that's part of
7 the agreement. I'm asking you to --

8 A. Whereas Ingles wishes to offer Dively
9 the option to purchase stock in said corporations up
10 to an amount equaling Ingles' stock in said
11 corporations.

12 Q. And, in fact, you had not paid for 15
13 of the 30 shares that you owned, at that time,
14 right?

15 A. I didn't pay for the 15 shares he
16 turned back in, but I had significant costs.

17 Q. You didn't pay for the 15 shares that
18 you owned that he turned back to you, right?

19 A. That's what I said.

20 Q. So you paid for 15 in the beginning but
21 you didn't pay for the other so you owned 30 when
22 you signed this, and you owned 30 but 15 were free?

23 A. I didn't pay for half.

24 Q. So you had one block free and one block
25 that you paid money for?

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1 A. I think we just said that.

2 MR. BAYLISS: I introduce that as the
3 next exhibit.

4 MR. BUGG: No objection.

5 THE COURT: Introduced and marked as
6 Plaintiff's Exhibit 3.

7 (The document referred to was marked by
8 the Court as Plaintiff's Exhibit 3, and received
9 into evidence.)

10 BY MR. BAYLISS:

11 Q. Now, if you turn to Exhibit Number 4.
12 Are you familiar with that?

13 A. Yes.

14 Q. That's a K-1, correct?

15 A. That's correct.

16 Q. It was prepared by Mr. Eaton, correct?

17 A. I think so.

18 Q. And Mr. Eaton was the accountant you
19 retained to do the tax returns for Sea Technology?

20 A. When you say you retained, the company
21 retained him, yes.

22 Q. You, in fact, called him to do it,
23 correct, you personally?

24 A. No. I think Mr. Dively did.

25 Q. Had he ever done any work for you

M. Ingles - Direct (Adv.)

1 personally before?

2 A. He is the accountant still for
3 Willoughby Harbor Marina.

4 Q. And that's how you met him?

5 A. No. That's not how I met him.

6 Q. He had done work for you before?

7 A. He was the office manager for Coopers &
8 Lybrand and I knew Coopers & Lybrand -- their
9 regional office in Newport News, I knew the man who
10 ran that office and this was his office manager,
11 Mr. Eaton. Mr. Freeman retired from Coopers &
12 Lybrand and Mr. Eaton went on his own and picking up
13 accounts.

14 Q. You sat in a meeting with Mr. Eaton and
15 you and Mr. Dively discussing tax returns, do you
16 remember that?

17 A. Which meeting?

18 Q. Sir, can you please answer the
19 questions and then explain your answer. Do you
20 remember sitting in a meeting with Mr. Dively and
21 yourself and discussing the ownership of Sea
22 Technology, Limited some time after the option
23 agreement was signed by the two of you?

24 A. No, I don't.

25 Q. You don't remember that?

M. Ingles - Direct (Adv.)

1 A. No.

2 Q. You don't remember sitting in that
3 meeting?

4 A. No. I remember having meetings with
5 Mr. Eaton about Sea Technology, but I don't remember
6 ever discussing the ownership of Sea Technology with
7 Mr. Eaton and Dively.

8 Q. This K-1 says as of -- for the year
9 beginning 9-1-87 and ending 8-31-88 it says the
10 shares are issued 50 percent to Dively, correct?

11 A. That's what it says.

12 MR. BAYLISS: I move to introduce this
13 as the next exhibit.

14 MR. BUGG: No objection.

15 THE COURT: Introduced and marked as
16 Plaintiff's Exhibit 4.

17 (The document referred to was marked by
18 the Court as Plaintiff's Exhibit 4, and received
19 into evidence.)

20 MR. BAYLISS: To Number 6, please.
21 Judge, I would ask you to bear with us on the
22 numbering that we have.

23 MR. BUGG: Judge, we've done exactly
24 the same thing when our time comes. There's going
25 to be gaps in the numbers but I think it will be

1 easier for the Court.

2 BY MR. BAYLISS:

3 Q. Letter from Jimmy Eaton to Bob Dively.
4 Have you seen that letter?

5 A. Yes.

6 Q. In fact, you had a conversation with
7 Mr. Eaton, did you not, regarding the subject matter
8 of this letter?

9 A. Yes.

10 Q. And the letter is dated September 16,
11 1990, right?

12 A. Yes, it is.

13 Q. So about a year or two after that K-1
14 showing Bob Dively as a 50 percent stockholder?

15 A. When was the K-1? I don't see a date
16 on Exhibit 4.

17 Q. Year beginning 9-1-87.

18 A. It doesn't have a date on it. It says
19 it's for that tax period. It doesn't say when it
20 was prepared.

21 Q. Let's use the dates on those
22 documents. These are documents filed with the
23 Federal Government.

24 A. I wanted to look to see the date on
25 this document. They were prepared prior to this

M. Ingles - Direct (Adv.)

1 time.

2 Q. And the date on the letter is September
3 16, 1990?

4 A. That's correct.

5 Q. It appears to be two years later than
6 the date 8-31-88?

7 A. But that's not the date when that
8 exhibit was prepared.

9 Q. So you know when it was prepared?

10 THE COURT: Take a couple of minutes
11 recess. Let me see both of you in chambers.

12 (The judge and attorneys retired to
13 judge's chambers.)

14 THE COURT: Mr. Ingles?

15 (Mr. Ingles retired to judge's
16 chambers.)

17 BY MR. BAYLISS:

18 Q. Sir, Exhibit 6 in front of you states
19 it's from Mr. Eaton, the accountant for Sea
20 Technology, Limited, correct?

21 A. Yes.

22 Q. It states, "Please be advised amended
23 Federal and State income tax returns for the period
24 ending August 1, 1988," and that's the same period
25 on the K-1, correct, August 31, '88?

M. Ingles - Direct (Adv.)

1 A. Certainly.

2 Q. And the loss and other Schedule K items
3 from 50 percent to zero percent, correct?

4 A. Yes.

5 Q. And in fact, you told Jimmy to do that,
6 didn't you?

7 A. Yes.

8 MR. BAYLISS: I move to introduce that
9 as Exhibit Number 6.

10 THE COURT: Introduced and marked as
11 Plaintiff's Exhibit 5.

12 MR. BUGG: No objection.

13 MR. BAYLISS: If you bear with us with
14 the number.

15 MR. BUGG: It's pre-labeled 5.

16 THE COURT: Introduced and marked as
17 Plaintiff's Exhibit Number 6.

18 (The document referred to was marked by
19 the Court as Plaintiff's Exhibit 6, and received
20 into evidence.)

21 BY MR. BAYLISS:

22 Q. September of 1990, that was some five
23 or six months after the criminal indictments had
24 been issued, correct? They were issued in May of
25 1990?

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1 A. I think that's four months but I don't
2 want to dispute what you are saying.

3 Q. It's several months after the
4 indictments have been issued, correct?

5 A. Yes.

6 Q. And you, in fact, had a conversation
7 with one of the investigators, Mr. Adams, that it
8 was very important to him who owned all the stock in
9 the company, wasn't it?

10 A. No. It wasn't important at all who
11 owned all the stock.

12 Q. Let me ask the question, please, and
13 then you can explain your answer. Do you recall
14 having a conversation with Mr. Adams, one of the
15 principal investigators in this case, where he told
16 you he wanted to know who owned the stock in this
17 company?

18 A. I do recall that he wanted to know,
19 yes.

20 Q. And you told him that you owned all the
21 stock, correct?

22 A. Yes, it is.

23 Q. And, in fact, the records filed with
24 the income tax people indicated that you didn't own
25 all the stock, correct?

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1 A. No, that's incorrect, because that
2 return was never filed and the record on the Sub-S
3 Election clearly showed I owned a hundred percent.

4 Q. Sir, turn to Exhibit Number 7. Now,
5 they are four financial statements, Mr. Ingles.
6 Could you look at them and identify them for the
7 record, please?

8 A. Yeah. They're my financial statements
9 you subpoenaed for 1992, 1991, 1990, 1989 and 1988.

10 Q. In 1988, I'm going to go back to the
11 chronology, sir, because it's important. January
12 28, 1988, you show on a financial statement that you
13 gave to Federal banking institutions that you owned,
14 and turn if you would to the second page, that you
15 owned 15 shares of Sea Technology, Limited, correct?

16 A. That's correct, yeah.

17 Q. And you also show on the last page
18 where your net worth is identified and your
19 estimated income, you show your income for 1988 as
20 \$395,000, correct?

21 A. That's what this financial statement
22 shows, yes.

23 Q. And income from investments, salaries
24 and consulting fees from other sources shows
25 \$220,000, correct?

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1 A. Correct.

2 Q. And one of those sources was Sea
3 Technology, Limited, correct?

4 A. Yes.

5 Q. And flip over again. That date says
6 January of '88 which was before the documents which
7 I showed you which was 8-31-88 and September of 1990
8 which was Mr. Eaton's letter and the K-1, so I'm
9 helping you chronologically now. I show you the
10 next document, the next financial statement is
11 January 3, '89, correct?

12 A. That's correct.

13 Q. And again, this is on the first page.
14 It shows you own 15 shares of Sea Technology,
15 Limited, correct?

16 A. Correct.

17 Q. It doesn't say 30 shares, does it?

18 A. It says 15 shares of Sea Technology.

19 Q. And turn to the last page and estimated
20 income shows \$399,000, correct?

21 A. That was estimated income for 1988.

22 Q. And net worth of \$8,362,900, right?

23 A. Yes, sir.

24 Q. And it shows investments from other
25 sources and it shows Sea Technology, United Metering

M. Ingles - Direct (Adv.)

1 Services, Lower Chesapeake, et cetera. Part of your
2 \$220,000 came from Sea Technology, Limited, correct?

3 A. Yeah. I think that's the same 220.
4 You see my 1988 return shows the same 220 that was
5 estimated for 1988 and 1989 I filled out and I'm
6 still talking about 1988. That's still the same.

7 Q. As far as banking institutions who you
8 give your financial statements you are telling them
9 you own 15 shares of Sea Technology, right?

10 A. Yeah.

11 Q. Go to January 3, 1990. January 3, 1990
12 is after the 8-31-88 statement, correct, but it's
13 before the September letter to Eaton, correct?

14 A. Yes.

15 Q. And again, you show that you own 15
16 shares of Sea Technology, Limited, correct?

17 A. That's correct.

18 Q. And the records that we introduced
19 earlier as Exhibit Number 1 showed you owned 30
20 shares?

21 A. Yeah.

22 Q. But the banking institutions that you
23 are dealing with show that you own 15 shares,
24 correct?

25 A. Yes. I don't want to overstate what I

M. Ingles - Direct (Adv.)

1 own.

2 Q. Go to the last page and your estimated
3 income came from the \$400,000 income to the \$800,000
4 range, \$796,000, right?

5 A. From the sale of assets, right.

6 Q. Does it say from the sale of assets or
7 does it say income from investments, salaries and
8 consulting fees from other sources?

9 A. But then it goes on to the list those
10 sources.

11 Q. It doesn't say from the sale of assets,
12 does it?

13 A. No, it doesn't say here.

14 Q. And a substantial source of income was
15 Sea Technology, Limited, was it not?

16 A. Yes.

17 Q. And at that point your net worth was
18 \$7,908,300?

19 A. Yes.

20 Q. Now, the next one is January 10, 1991,
21 correct?

22 A. That's right.

23 Q. All of a sudden your financial
24 statement has changed, correct, on Sea Technology?

25 A. It shows 30 shares.

1 Q. It all of a sudden shows 30 shares, so
2 something happened that you acquired 15 additional
3 shares in 1991; is that right?

4 A. No.

5 Q. Go to the last page --

6 A. But if I could explain that, you asked
7 why it changed.

8 Q. I didn't ask why it changed. I asked
9 you what it showed.

10 THE COURT: I think he has a right to
11 explain.

12 THE WITNESS: On that same page,
13 Mr. Bayliss, right below where I show 30 shares of
14 Sea Technology stock, I put 15 shares of Sea
15 Technology, Limited stock is currently contested
16 because at that time I was involved in litigation
17 and Mr. Dively claimed he owned 15 shares of that
18 stock pursuant to the option agreement, so this is
19 consistent with the statements. I didn't want to
20 overstate my ownership interest in Sea Technology.
21 BY MR. BAYLISS:

22 Q. But Mr. Dively had been contesting that
23 for over a year and you didn't state it.

24 A. This financial statement was dated
25 January of 1991. Mr. Dively filed his suit against

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1 me in April of 1990 in Gloucester County. The last
2 financial statement prepared before this was the
3 January 3, 1990 statement. That's the one where I
4 showed the 15 shares of stock being owned in Sea
5 Technology, so once he filed his suit -- I prepare a
6 financial statement annually, January of 1991,
7 that's why I showed it this way, 30 shares with 15
8 being contested in the litigation.

9 Q. And you filed a suit and contended that
10 on whether you owned 15 shares or 30 shares,
11 correct?

12 A. That wasn't the sole issue. That was
13 one of the issues.

14 Q. That was one of the issues to determine
15 you only owned half of it?

16 A. It's on appeal.

17 Q. It was determined, sir, that you only
18 owned half of the stock in the corporation, is it
19 not?

20 A. Yes.

21 Q. And that case was tried three months
22 ago, right?

23 A. It was tried I believe in March.

24 Q. March of 1992 by Judge Dickson Foster?

25 A. That's correct.

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1 Q. Now, this financial statement, sir,
2 shows on the last page that your estimated annual
3 income has dropped from 796 to 575?

4 A. That's correct.

5 Q. And one of the reasons it's dropped was
6 that your income from Sea Technology had dropped,
7 correct?

8 A. One of the reasons.

9 Q. The next one is dated January 6, 1992?

10 A. Uh-huh.

11 Q. And again you list 30 shares of Sea
12 Technology, correct?

13 A. That's correct.

14 Q. And you got 15 shares is contested,
15 correct?

16 A. That's correct.

17 Q. And, in fact, are you going to change
18 1993 because the Court's already ruled that you only
19 own 50 percent of the stock?

20 A. I will continue to show that until the
21 appeal is heard.

22 Q. And in this one your net worth is
23 \$5,882,543, correct?

24 A. Yes.

25 Q. And your annual income is now \$505,000

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1 a year?

2 A. That's correct.

3 MR. BAYLISS: I move to introduce those
4 as the next exhibit, Judge, Exhibit 7.

5 MR. BUGG: Our objection was previously
6 recorded.

7 THE COURT: I will introduce and mark
8 those as Plaintiff's Exhibit Number 7.

9 (The document referred to was marked by
10 the Court as Plaintiff's Exhibit 7, and received
11 into evidence.)

12 BY MR. BAYLISS:

13 Q. Turn to Exhibit Number 9, please. This
14 is a whole group of documents, is it not?

15 A. Yes.

16 Q. You have seen these statements, have
17 you not?

18 A. Yes.

19 Q. You prepared these, did you not?

20 A. Yes and no. My secretary typed those,
21 some at my direction and some at Bob Dively's
22 direction.

23 Q. Was Bob Dively a lawyer in this
24 transaction?

25 A. He is not a licensed lawyer, no.

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1 Q. Now, if you would turn to the second
2 page and fifth line down, fourth and fifth line
3 down, this document was, in fact, prepared in late
4 '89, early 1990, correct?

5 MR. BUGG: Which one are you talking
6 about?

7 BY MR. BAYLISS:

8 Q. The first one, the Risley proposal.

9 A. My first one is the bill of sale and
10 agreement.

11 Q. Right.

12 A. That was in the '89 time frame?

13 A. I believe so, yes.

14 Q. And you reference from that document
15 that you and Bob Dively were the sole shareholders
16 of Sea Technology, Limited?

17 A. Yes.

18 Q. That's your document that you prepared,
19 correct?

20 A. Yeah.

21 Q. And you reference on the signature page
22 a signature for two shareholders, not one, correct?

23 A. For Bob Dively and me.

24 Q. Because the two of you were the two
25 shareholders of the company, correct?

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1 A. No, we weren't.

2 Q. You also reference on the special
3 meeting of the stockholders and directors prepared
4 by your office as corporate counsel that Mac Ingles
5 owned 15 shares and Bob Dively owned 15 shares,
6 correct?

7 A. That's a document prepared by my office
8 that shows that, that's correct.

9 Q. And you reference on that same document
10 there were only 30 shares outstanding, right?

11 A. Yes.

12 Q. And you reference on that same document
13 a signature for two stockholders, Bob Dively and Mac
14 Ingles, correct?

15 A. That's correct.

16 MR. BAYLISS: And I would move, sir, to
17 introduce the rest of these -- I won't go through
18 all of them -- to introduce that as the next
19 exhibit, Exhibit Number 9.

20 THE COURT: Any problem, Mr. Bugg?

21 MR. BUGG: Your Honor, I don't want to
22 prolong this. We only talked about the top
23 document. I think only the top one ought to come
24 in.

25 MR. BAYLISS: Let's go through and

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1 identify all of them.

2 MR. BUGG: That's all right.

3 THE COURT: If you are familiar with
4 them --

5 MR. BUGG: I'm familiar with them.

6 THE COURT: The whole package is
7 introduced and marked as Plaintiff's Exhibit Number
8 9.

9 (The document referred to was marked by
10 the Court as Plaintiff's Exhibit 9, and received
11 into evidence.)

12 BY MR. BAYLISS:

13 Q. Turn if you would to Plaintiff's
14 Exhibit Number 10, and I ask you to look at those
15 documents and tell me if you are familiar with
16 them?

17 MR. BUGG: Your Honor, may we approach
18 the bench?

19 THE COURT: Certainly.

20 (A conference was held at the bench.)

21 BY MR. BAYLISS:

22 Q. You've seen these documents before,
23 have you not?

24 A. Yes.

25 Q. And you are familiar with the pension

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1 profit sharing plan that Mr. Wolff was going to put
2 in place for the company, are you not?

3 A. He came down to talk to us about a
4 pension profit sharing plan for Sea Technology, yes.

5 Q. So you are familiar with the pension
6 profit sharing plan that he was going to put in for
7 Sea Tech?

8 A. No. It never got done so I couldn't be
9 familiar with it.

10 Q. Are you familiar that Bob Wolff put a
11 presentation on for the company to put in a pension?

12 A. Yes.

13 Q. And Bob Dively signed a check for Sea
14 Technology, Limited, is that Bob Dively's signature?

15 A. Yes.

16 Q. It's \$750 for a portion of defined
17 benefit pension plan and trust for \$1500, correct?

18 A. That's what the bill says, yes.

19 Q. And then there's a letter attached to
20 it signed by Wolff and signed by Sea Technology for
21 the establishment of a defined benefit pension plan,
22 Bob Dively, President, correct?

23 A. Yes.

24 Q. And, in fact, that defined benefit
25 pension plan never got set up, did it?

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1 A. It couldn't.

2 Q. Never got set up, could it?

3 A. No.

4 Q. In fact, you used that \$750 to set up
5 your own Mac Ingles' benefit plan?

6 A. No. Could I explain that?

7 Q. Your answer is no?

8 A. Right. Bob Wolff after he came down to
9 set up the plan for Sea Technology found he couldn't
10 because he had to include all the employees in the
11 defined benefit plan. We had a number of employees
12 and our intent was to set up a benefit plan for Bob
13 Dively and Mac Ingles. Innovative Technology
14 International, we looked at setting up ITI, and at
15 that point Bob couldn't do that because of creditor
16 problems. I set up my own pension plan, just me,
17 and that was set up by Wolff, and he gave me on my
18 plan credit for the \$750 that Sea Technology had
19 paid. That \$750 was going to be charged anyway.

20 Q. So Wolff gave -- money that came out of
21 Sea Technology, Limited went to pay for your own
22 personal pension plan?

23 A. A portion of it.

24 Q. And it didn't benefit Bob Dively any,
25 did it?

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1 A. No, it didn't.

2 MR. BAYLISS: I move to introduce that
3 as Exhibit 10.

4 MR. BUGG: No objection.

5 THE COURT: Introduced and marked as
6 Plaintiff's Exhibit 10.

7 (The document referred to was marked by
8 the Court as Plaintiff's Exhibit 10, and received
9 into evidence.)

10 BY MR. BAYLISS:

11 Q. In fact, in October of 1988 Wolff sent
12 you a big, thick package of documents for the
13 McClanahan Ingles Defined Benefit Pension Plan?

14 A. Yes, I believe so.

15 Q. And that was the big stack of documents
16 that Sea Technology paid for?

17 A. Just a portion of it. I paid another
18 \$1500 out of my own pocket.

19 Q. And I ask you to look at Exhibit Number
20 11. Is that the defined benefit pension plan we are
21 talking about, all the documents related to it?

22 A. A lot of documents here. I assume it
23 is. The top document looks like it's the lead
24 document to this plan.

25 Q. And it was sent to you on or about

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1 October 7, 1988?

2 A. I have no reason to doubt that is the
3 date on the top of the letter.

4 MR. BAYLISS: I move to introduce that
5 as the next exhibit, Judge.

6 MR. BUGG: May we approach the bench
7 one more time, Your Honor?

8 THE COURT: Yes, sir.

9 (A conference was held at the bench.)

10 THE COURT: Without objection,
11 introduced and marked as Plaintiff's Exhibit Number
12 11.

13 (The document referred to was marked by
14 the Court as Plaintiff's Exhibit 11, and received
15 into evidence.)

16 BY MR. BAYLISS:

17 Q. Let's go back to Sea Technology. You
18 were what we call an absentee owner, correct, you
19 weren't there on a regular basis?

20 A. No. I wasn't. I was there more in the
21 early years and less in the later years.

22 Q. And you did a lot of traveling for Sea
23 Technology?

24 A. At times. I didn't in the early
25 years. I did in the later years.

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1 Q. Some of the places you went was the
2 Boston Boat Show?

3 A. I never went to the Boston Boat Show.

4 Q. Did you ever go to New England for the
5 boat show?

6 A. I don't believe so.

7 Q. Did you go to New York on any boat
8 shows?

9 A. Yes, I did.

10 Q. Miami?

11 A. Yes.

12 Q. Took your secretary at Sea Technology's
13 expense for boat shows?

14 A. That is a false statement. I've never
15 taken my secretary to any place. She works in my
16 office. She's never been out of my office for Sea
17 Technology or anybody else. We had a receptionist
18 in my office with whom Bob Dively was somewhat
19 intimate. He at Sea Technology's expense had her
20 taken down to a Fort Lauderdale Boat Show. I had
21 nothing whatsoever to do with that receptionist and
22 she is prepared to testify to that.

23 Q. I didn't ask you about your
24 receptionist.

25 A. No. You asked me about my secretary.

1 Q. You went to Australia, did you not?

2 A. Yes.

3 Q. And you went with a friend?

4 A. Yes.

5 Q. And you went to a boat show in

6 Australia?

7 A. Yes, I did.

8 Q. And you were there a couple of weeks,
9 were you not?

10 A. I don't think it was that long.

11 Q. It was long enough to spend \$17,000,
12 was it not?

13 A. No. It wasn't long enough to spend
14 \$17,000.

15 Q. Turn to Exhibit Number 17. You are
16 familiar with that, are you not?

17 A. Yes.

18 Q. This is a check record from the ledger
19 book of Sea Technology?

20 A. Yes.

21 Q. And in that check ledger is a check
22 from Sea Technology, Limited payable to McClanahan
23 Ingles for reimbursement for travel expenses,
24 \$17,136.82?

25 A. That would have been for Bob and me.

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1 We used my credit card. Sea Technology didn't have
2 a credit card. Bob couldn't get a credit card, so I
3 let him use my credit card. I have an American
4 Express card, and I went to American Express and
5 guaranteed his payment on his card and gave him a
6 card and let him travel on my card. This clearly
7 says this is to reimburse me to travel to Australia
8 and other trips. Those are trips I took and Bob had
9 taken.

10 He had been to Europe by that time. He
11 had been to other places. He had been to the
12 Chicago Boat Show. He had traveled extensively. He
13 had taken his wife and daughter. This was for a lot
14 of different trips. This isn't just for Australia.

15 Q. The check ledger, whose handwriting is
16 that?

17 A. I think that's Jo Payne's.

18 Q. And you gave Jo Payne the information
19 to put on that, correct?

20 A. She would have seen the receipts from
21 the credit card company.

22 Q. Do you see Bob Dively's name on there
23 anywhere? Is it on there anywhere?

24 A. No. It's payable to me.

25 MR. BAYLISS: Move to introduce that as

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1 Exhibit 21.

2 THE COURT: Introduced and marked as
3 Plaintiff's Exhibit 21.

4 (The document referred to was marked by
5 the Court as Plaintiff's Exhibit 21, and received
6 into evidence.)

7 BY MR. BAYLISS:

8 Q. Some of the other trips you took, you
9 met your wife in Hawaii?

10 A. She met me on my way back from
11 Australia.

12 Q. And Sea Technology paid your wife's
13 expenses to get to Hawaii?

14 A. Yes.

15 Q. And your wife had nothing to do with
16 Sea Technology?

17 A. Very little to do with Sea Technology.

18 Q. Your wife also you traveled to San
19 Francisco; is that correct?

20 A. On the way back to Hawaii Bob asked me
21 to go by --

22 Q. Answer the question and then explain
23 your answer.

24 THE COURT: Answer the question and
25 then explain your answer.

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1 THE WITNESS: My answer is yes. May I
2 explain?

3 BY MR. BAYLISS:

4 Q. And Sea Technology paid the expenses,
5 did they not?

6 A. Yes.

7 Q. And and you bought an automobile for
8 your wife, did you not?

9 A. No. When Bob Dively could not have an
10 automobile due to creditor problems, we leased him
11 an automobile through Sea Technology. Sea
12 Technology paid for the automobile and since we were
13 supposed to be equal in the company or more or less
14 equal -- he was a little -- he always got paid a
15 little more than I did, but we were more or less
16 equal on the fringe benefits. I said if you are
17 getting an automobile then I want one and my wife
18 will drive it. He knew about it. We went to the
19 same dealership, got the exact same car. It's an
20 Oldsmobile 98.

21 Q. Sir, Sea Technology wrote off as a
22 business expense the lease payments for the
23 automobile for your wife who had nothing to do with
24 the company, correct?

25 A. I think it probably did, but Mr. Eaton

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1 will be here to testify. He can testify to that.

2 Q. This Sea Technology thing was a great
3 deal for you, made a lot of money for you?

4 A. It was a bad deal. I am now \$420,000
5 in debt because of Mr. Dively. If you looked at
6 what I made compared to what I lost it is
7 significant. I am \$420,000 in debt. I have had to
8 loan the company over \$350,000 to keep it afloat
9 since Bob took things from the company, so you total
10 that and I'm negative over \$700,000. Compare that
11 to a few good years, it has not been good for Mac
12 Ingles.

13 Q. Mr. Ingles, I asked you a question.
14 Sea Technology paid you a lot of money, didn't they?

15 A. Yes, for a couple of years.

16 Q. Turn to Exhibit 18, please. Can you
17 identify Exhibit 18?

18 A. What's your question?

19 Q. Can you identify Exhibit 18?

20 A. Yes. That appears to be a K-1 for the
21 year ending August 31, 1988.

22 Q. Same K-1. Before August 31, '88 it
23 shows you are a 50 percent stockholder of Sea
24 Technology, Limited; is that right?

25 A. That's right.

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1 Q. And at that time you represented to the
2 world in your financial statement you were a 50
3 percent owner of Sea Technology, right?

4 A. No.

5 Q. Your financial didn't say that?

6 A. It said I owned 15 shares because there
7 was an option.

8 Q. And 15 shares was half of the company?

9 A. Yes.

10 Q. And Mr. Eaton prepared that at your
11 request?

12 A. He prepared this, yes.

13 Q. And he put that you owned 50 percent of
14 the stock in Sea Tech on that form, correct?

15 A. Sure did.

16 Q. Go to the next page, stockholders basis
17 and Sub-S Corporation. That again is prepared by
18 Mr. Eaton, correct?

19 A. Yeah, I believe so, or somebody in his
20 office perhaps.

21 Q. It shows Bob Dively owned 50 percent of
22 the stock that same year, correct?

23 A. Is this part of that? Yeah. It
24 appears to be.

25 Q. Now, flip over until you get to United

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1 Metering as part of the same exhibit. Are you
2 familiar with that? It's United Metering's income
3 tax return.

4 A. It's been a long time since I've seen
5 it, but yes.

6 Q. And you own 50 percent of United
7 Metering as it shows on Page 3, right, Page 3 of the
8 tax return, sir, lower left-hand corner, L-2, enter
9 percentage owned Sub-Section B, 50 percent?

10 A. I may be missing something. My Page 3
11 doesn't show anything.

12 Q. Right here.

13 A. I see. I'm sorry. Sure, this says 50
14 percent.

15 Q. Each?

16 A. 50 percent each, yeah.

17 Q. And each was you and Bob Dively, right?

18 A. Yes.

19 Q. And United Metering was one of those
20 corporations in the option agreement, correct?

21 A. Yes.

22 Q. And you told Jimmy to prepare that
23 return and gave him the information with which to
24 prepare it?

25 A. Bob would have. He gave him the

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1 figures.

2 Q. Keep flipping, sir, until you get to
3 the Sea Technology income tax return.

4 MR. BUGG: That's 1986 you are talking
5 about?

6 BY MR. BAYLISS:

7 Q. '86 return. Let me help you
8 chronologically again because we've talked about
9 '88. It's in the same group. It says U.S.
10 Corporation income tax return, Sea Technology,
11 Limited 1986 in the upper right-hand corner. I can
12 find it for you, Judge. You are familiar with that,
13 are you not?

14 A. Yes. I've seen it before.

15 Q. Prepared by Jim Eaton?

16 A. I don't think so. I think back then --

17 Q. Look at the bottom of it.

18 A. Excuse me. We had an accountant before
19 we had Jimmy Eaton.

20 Q. But he prepared this, correct?

21 A. Yes.

22 Q. Let me help you chronologically because
23 we talked about '88 and now we are back in '87.
24 1986 for the year ending 8-31-87. In '88 all the
25 income tax records showed 50/50?

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1 A. No, they didn't.

2 Q. The ones I've shown to you showed
3 50/50?

4 A. The ones you've shown me showed 50/50.

5 Q. On this particular return turn to Page
6 2. This is back in '87 for the year ending 8-31-87
7 and it shows you own 100 percent of the stock?

8 A. Yes.

9 Q. And it shows Dively owns zero percent?

10 A. Yes.

11 Q. And it shows Dively devotes 100 percent
12 of his time to the business?

13 A. Right.

14 Q. And you devote 35 percent of your time?

15 A. Yes.

16 Q. You didn't devote 35 percent of your
17 time?

18 A. Yes. That's the year I went to
19 Australia, I went to Europe, I went to probably
20 eight or ten different boat shows and I could very
21 well have spent 35 percent of my time on Sea
22 Technology that year.

23 Q. What do you mean you could very well?
24 This is a tax return. Did you spend 35 percent?

25 A. I said I could very well have, yes.

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1 Q. Do you know if you did?

2 A. I did not keep separate time records
3 how much time I spent on Sea Technology.

4 Q. All you did is go on boat shows?

5 A. That isn't all I did, no.

6 Q. Kept the checkbook in your office,
7 right?

8 A. Yes.

9 Q. Now, you made \$204,000 and Bob Dively
10 made \$147,000 that year, right? That's what the
11 income tax return shows? See it?

12 A. No, I don't.

13 Q. Schedule E, right there, same thing we
14 were just looking at?

15 A. I'm looking at 1120S. I'm not looking
16 at Schedule E. Okay. Yes. That's what that shows.

17 Q. \$204,000 for going to boat shows. I
18 move to --

19 THE COURT: No comments. Ask
20 questions, no comments.

21 BY MR. BAYLISS:

22 Q. I'm sorry. Flip over towards the end
23 of this one to the 1987 Virginia Small Business
24 Corporation tax return. It is five pages from the
25 end. Are you familiar with that?

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1 A. Yes.

2 Q. This says 8-31-88. The tax return we
3 just looked at showed 8-31-87?

4 A. That's correct.

5 Q. In 8-31-88 Eaton is now saying it's
6 50/50?

7 A. Yes.

8 Q. And that's a change from 8-31-87?

9 A. Yes.

10 MR. BAYLISS: And I move to introduce
11 this has Exhibit 18.

12 MR. BUGG: No objection.

13 THE COURT: Without objection, this
14 will be mark as Plaintiff's Exhibit 18.

15 (The document referred to was marked by
16 the Court as Plaintiff's Exhibit 18, and received
17 into evidence.)

18 BY MR. BAYLISS:

19 Q. Mr. Ingles, turn to Exhibit Number 13,
20 please. This is Mr. Dively's resignation letter,
21 correct?

22 A. Yes.

23 Q. And you received that sometime in
24 March, 1990, correct?

25 A. Yes.

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1 Q. And in that letter he among other
2 things told you that he had not been paid any wages
3 since October of '89, correct?

4 A. Yes. He says any wages or expenses.

5 Q. And he asked to be reimbursed for that,
6 correct?

7 A. Yes.

8 Q. And that's a true statement, he hadn't
9 been paid a single wage from Sea Technology, Limited
10 since October of 1989, correct?

11 A. Not from Sea Technology.

12 Q. So five, six months Sea Technology
13 hadn't paid him any income?

14 A. Since October he wouldn't have been
15 paid --

16 Q. October, November, December, January,
17 February he hadn't been paid any income?

18 A. He didn't work --

19 Q. Sir, hadn't been paid any income?

20 A. I agree with you.

21 MR. BAYLISS: I move to introduce that
22 as Exhibit 13.

23 THE COURT: Introduced and marked as
24 Plaintiff's Exhibit 13.

25 MR. BUGG: There are other matters

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1 extraneous. He covered matters relevant from his
2 standpoint, but I don't think the whole letter
3 should be put in.

4 MR. BAYLISS: The letter is absolutely
5 relevant. It's his resignation letter.

6 THE COURT: I overrule the objection
7 and it's going into evidence. Plaintiff's Exhibit
8 13.

9 (The document referred to was marked by
10 the Court as Plaintiff's Exhibit 13, and received
11 into evidence.)

12 BY MR. BAYLISS:

13 Q. That was delivered to you in March of
14 1990. I'm looking at your financial statement for
15 January 3, 1990 and you don't prepare another one
16 for that entire calendar year; is that correct?

17 A. Right.

18 Q. During that same period of time when
19 Dively hadn't been paid a salary you estimate your
20 income as \$796,000; is that correct?

21 A. Let me look back and see.

22 Q. While Dively wasn't being paid anything
23 for that five months you received \$796,000? I
24 submit it shows it in your financial statement?

25 A. Which one are you talking about?

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1 Q. The one at the top. It's dated January
2 3, 1990.

3 A. That was my estimated income for the
4 previous year, the full year 1989.

5 Q. So during that period of time when Bob
6 Dively is not taking any money out of Sea Technology
7 your estimated income is \$796,000; is that correct?

8 A. He was taking money out of Sea
9 Technology.

10 Q. October, November, December January
11 February, did he take anything out of Sea Technology
12 by way of salary?

13 A. Not during those months.

14 Q. Now, you, sir, have been involved in
15 commercial transactions where you drafted employment
16 agreements and covenants not to compete, correct?

17 A. I have done very few.

18 Q. But you have done them in the past?

19 A. Not before I met Bob Dively. Now I
20 have become very learned in that field, but I don't
21 believe I had ever prepared an employment agreement
22 or non-compete agreement before my experience with
23 Sea Technology and Bob Dively.

24 Q. At the time you met Bob Dively you knew
25 about employment agreements, did you not?

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1 A. Sure I did.

2 Q. And you knew about covenants not to
3 compete?

4 A. Yes.

5 Q. And you knew if you didn't have a
6 covenant not to compete that employees could go out
7 and compete fairly?

8 A. I knew that they could go out and
9 compete fairly, yes.

10 Q. And, in fact, you had not drawn one so
11 you knew that Bob Dively could go out and compete
12 fairly when he resigned, did you not?

13 A. I knew he could compete fairly when he
14 resigned.

15 Q. In fact, you filed a lawsuit trying to
16 get him to -- prevent him from competing with you in
17 any form or fashion; is that correct?

18 THE COURT: Answer the question and
19 then you may explain it, but answer the question.

20 THE WITNESS: I filed the lawsuit.

21 BY MR. BAYLISS:

22 Q. And you sought to enjoin Mr. Dively
23 from competing with you even though you never
24 drafted a covenant not to compete, correct?

25 A. Yes. I definitely did that.

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1 Q. And you came here to Williamsburg on
2 April the 11th, 1990 and you tried to have a hearing
3 to temporarily enjoin Mr. Dively from competing with
4 you on April the 11th, 1990?

5 A. From building the dock boxes he was
6 building at that time, yes.

7 Q. Is that all you did, just to enjoin him
8 from building the dock boxes?

9 A. That's all he represented he was doing.

10 Q. You tried to enjoin him from competing
11 with you in any manner, correct?

12 A. I have to look at the pleadings. I
13 thought we were trying to get him to stop building
14 dock boxes.

15 Q. We'll look at those. In fact, you
16 didn't get that injunction on April the 11th, 1990?

17 A. No, I didn't.

18 Q. And that was at 4:00 in the afternoon,
19 correct?

20 A. We appeared before 4:00.

21 Q. It was in the afternoon of April 11,
22 1990?

23 A. Yes, it was.

24 Q. And turn if you would to Exhibit 23.
25 You are familiar with this, are you not? You've

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1 looked at it before?

2 A. I don't know that I've seen this
3 before, Mr. Bayliss.

4 Q. Mr. Ingles, you don't remember ever
5 seeing this?

6 A. No, I don't believe I've seen it, but I
7 may have before. I don't recall seeing it.

8 Q. All right. Mr. Ingles, I don't care
9 about the document then. It's an offense report by
10 the Gloucester County Sheriff's Department. You
11 remember going on April the 12th, 1990 within 12 to
12 18 hours after you left this court when this Court
13 would not enjoin Mr. Dively, you remember going down
14 and meeting with Mr. Adams, an investigator, or
15 someone in the sheriff's department where you
16 reported an embezzlement of goods in Sea Technology
17 and the amount embezzled was \$70,730?

18 A. I remember meeting with Mr. Adams on
19 that date, yes.

20 Q. And you remember telling him just what
21 was written, just what I read to you, don't you,
22 that Mr. Dively embezzled money and goods from Sea
23 Technology totaling \$70,730?

24 A. No, sir.

25 Q. You don't remember telling him that?

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1 A. No, sir.

2 Q. Mr. Adams will be here later so we
3 don't have to go into that.

4 A. We've got a tape of that.

5 Q. You saw Adams before you ever saw
6 Mr. Shaw, correct?

7 A. I believe I did see Mr. Adams before I
8 saw Mr. Shaw, yes.

9 Q. Mr. Shaw is the Commonwealth's
10 Attorney, correct?

11 A. Yes, he is.

12 Q. And your counsel, Mr. Alvin Anderson,
13 told you to call Bill Shaw?

14 A. He told me --

15 Q. Just answer the question.

16 A. No. He didn't tell me to call
17 Mr. Shaw. He told me to call the proper
18 authorities.

19 THE COURT: Mr. Ingles, the question is
20 either yes or no, sir.

21 BY MR. BAYLISS:

22 Q. Now, that initiation of the criminal
23 prosecution on April the 12th, 1990 culminated in
24 indictments being issued in May of 1990, correct?

25 A. Would you run that by me again?

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1 Q. When you began the criminal prosecution
2 process in full force on April the 12th, 1990 that
3 ultimately culminated in indictments being issued on
4 or about May 7, 1990?

5 A. Yes.

6 Q. And there were six indictments -- five
7 indictments at that time, right?

8 A. In May of 1990, yes.

9 Q. And then you found some more stuff and
10 told Mr. Shaw about it and then another indictment
11 came down later, right, so that there were six?

12 A. Yes, six.

13 Q. Now, you didn't tell Mr. Shaw, did you,
14 that you were a 50/50 owner of Sea Technology?

15 A. Yes, I did.

16 Q. You told Mr. Shaw you were a 50/50
17 owner of Sea Technology?

18 A. No. What I told him was that
19 Mr. Dively thought he owned 50 percent of the stock
20 in Sea Technology.

21 Q. But you told him you were a hundred
22 percent stockholder?

23 A. That's exactly what I told him. That's
24 right.

25 Q. And it's been determined you weren't a

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1 hundred percent stockholder by court of record,
2 correct?

3 A. Yes. That's been determined. It's on
4 appeal.

5 Q. And you did not give him Jane Hogge's
6 memo, did you, at that time before the indictments
7 were issued?

8 A. I don't think that he had Jane Hogge's
9 memo before the indictment. I'm not sure, because
10 I'm not sure when I first saw the Jane Hogge memo.

11 Q. In fact, you tried to get your lawyers
12 to draft an affidavit to be signed by Mr. Shaw and
13 I'll turn to Exhibit 30. Have you seen that before?

14 A. I didn't see it before it was given to
15 Mr. Shaw. I've seen it once.

16 Q. And you gave the information to your
17 lawyers to draft that affidavit for Mr. Shaw?

18 A. No, I didn't.

19 Q. You didn't give them any of that
20 information?

21 A. No.

22 Q. They got this on their own?

23 A. They got this from representing me in
24 the Gloucester civil matter and they did this on
25 their own.

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1 Q. Turn to Page 2 of this affidavit,
2 Paragraph 4-B states, "Prior to preparing
3 indictments I met with Ingles on several occasions
4 to investigate this matter and Ingles fully
5 disclosed the following matters to me," and B, it
6 says, "The alleged existence of Sea Technology,
7 Limited invoicing memo prepared by Jane Hogge, the
8 Hogge memo," that's not true is it?

9 A. What isn't true?

10 Q. It isn't true that Bill Shaw was given
11 that memo before he prepared the indictments?

12 A. I don't know if he was given that or he
13 was just made aware of it. We didn't catalog what
14 Bill received on any particular date.

15 Q. What we do know is Bill Shaw wouldn't
16 sign that affidavit, would he, because that was an
17 incorrect statement?

18 A. I don't know. You'll have to ask my
19 attorneys.

20 Q. Turn to the next page and look at five
21 because it mysteriously deletes that he received the
22 Hogge memo. Do you see that?

23 A. I see it's not there, yes, Mr. Bayliss.

24 MR. BAYLISS: I move to introduce these
25 two affidavits as the next exhibit.

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1 THE COURT: One of them is Plaintiff's
2 Exhibit 30 and the other is Plaintiff's Exhibit --

3 MR. BAYLISS: It's all together.

4 THE COURT: All Plaintiff's Exhibit
5 30.

6 (The document referred to was marked by
7 the Court as Plaintiff's Exhibit 30, and received
8 into evidence.)

9 MR. BAYLISS: The record will reflect
10 the first affidavit referred to was not signed by
11 Shaw. The second affidavit we referred to was
12 signed by Shaw.

13 THE COURT: The first affidavit
14 indicates it's not signed by anybody. The second
15 one is purported to be signed by William A. Shaw,
16 III.

17 BY MR. BAYLISS:

18 Q. You didn't tell Mr. Shaw, did you,
19 before he issued those indictments of all the perks
20 that you were taking out of Sea Technology, did you?

21 A. Probably not all the perks, no.

22 Q. And you didn't tell Mr. Shaw at that
23 point in time of all the trips that you had taken
24 before he issued the indictments that were all paid
25 for company expense with your wife and people in

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1 your office, you didn't tell him anything about
2 that?

3 A. We discussed trips. Whether I told him
4 about each and every one I can't say.

5 Q. And you didn't tell him, did you, about
6 Willoughby Harbor and your interest in Willoughby
7 Harbor and an account receivable from the company
8 that was carried on the books at Sea Technology that
9 Willoughby Harbor owed Sea Technology money. You
10 didn't tell him that, did you?

11 A. No, because that had nothing to do with
12 it.

13 Q. And you didn't disclose that you had
14 interest in Willoughby Harbor as a partner?

15 A. Mr. Shaw knew that. That's common
16 knowledge in the community.

17 Q. Did you disclose it?

18 A. Sure I did.

19 Q. You didn't tell him you were making
20 \$204,000 in 1987 and over \$150,000 in 1988 and Bob
21 Dively hadn't been paid any income for the last five
22 months, you didn't tell him that, did you?

23 A. No.

24 Q. Didn't think any of that was important,
25 did you?

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1 A. No.

2 Q. And you hired a law firm, in fact, you
3 hired two law firms, didn't you, to help you
4 investigate facts to charge Bob Dively with criminal
5 activity?

6 A. No. Mr. Bayliss, that's not true.

7 Q. You hired Alvin Anderson and his
8 partner to help you investigate that, didn't you?

9 A. I just said no, I did not. Can I
10 explain this?

11 Q. Go ahead.

12 A. I hired Alvin Anderson to represent me
13 in the civil litigation that was pending in
14 Gloucester and he assisted me in that regard.
15 During the preparation for the civil litigation it
16 appeared that there had been wrongdoing on
17 Mr. Dively's part; therefore, Mr. Anderson met with
18 me and the Commonwealth's Attorney on at least one
19 if not two occasions.

20 Q. And you hired Steve Russell before you
21 met Dave Bugg, and Steve Russell was hired to help
22 you investigate and prepare information to feed to
23 the Commonwealth's Attorney's office to prosecute
24 Bob Dively. That's a correct statement, isn't it?

25 A. No, sir. That's a false statement.

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1 Q. Have you ever seen Bill Shaw's file,
2 criminal file?

3 A. No.

4 Q. Aren't you aware that every single file
5 folder in his file was prepared by Steve Russell?
6 Aren't you aware of that?

7 A. No, because I haven't seen Bill Shaw's
8 file. That would surprise me if it's true.

9 Q. Aren't you aware that one of these
10 cases was continued because Steve Russell came up
11 and whispered in Bill Shaw's ear something that you
12 allege you didn't give him?

13 A. No, sir. I know you allege that.

14 Q. During this period of time when you
15 were involved in the criminal prosecution of Bob
16 Dively, isn't it true that you spoke with Miles
17 Booth and told him that you were going to put Bob
18 Dively in jail? Isn't that true, sir?

19 A. No, sir.

20 Q. Isn't it true that you spoke to Miles
21 Booth and warned him about doing business with
22 Marina Technology, said he was going to get them,
23 get Marina Technology?

24 A. I warned him about doing business with
25 Marina Technology. I sure did.

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1 Q. And you said that you were going to get
2 Marina Technology, didn't you?

3 A. No. I'll tell you what I did tell him,
4 though.

5 Q. I just asked you a question. You said
6 you were going to put Bob in jail, you said you
7 would have indictments, didn't you?

8 A. No, I did not.

9 Q. Do you know who Miles Booth is?

10 A. Yes.

11 Q. You saw him out here today?

12 A. Yes.

13 Q. You saw Allison King up at Shark
14 Island, didn't you?

15 A. I didn't know her name but I've come to
16 learn her name.

17 Q. And you went up there and talked to
18 Allison King?

19 A. I went to talk to Howard Hoffman.

20 Q. And while up there you talked to
21 Allison King?

22 A. In passing.

23 Q. You told Allison King that Bob Dively
24 was a thief and stole from Sea Technology?

25 A. No. I didn't. I talked to Howard.

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1 Q. And you saw Gary McAllister of Poole's
2 Grant, didn't you?

3 A. Yes.

4 Q. And you've done business with Gary
5 McAllister, had you not?

6 A. No.

7 Q. Bob had done business with him?

8 A. I don't know.

9 Q. Poole's Grant?

10 A. Poole's Grant, yes.

11 Q. It was one of the indictments, correct?

12 A. Sure.

13 Q. And you remember being outside --
14 Judge, pardon my language. I told you in the
15 opening statement I would have to say things. You
16 remember being outside in the courthouse when the
17 mechanic's lien hearing was going on and you told
18 Gary McAllister that Bob was a slimeball piece of
19 shit. Do you remember that?

20 A. No. I don't remember that. I remember
21 telling him the pedestals that Poole's Grant had got
22 were not paid.

23 Q. You remember telling him that Bob was a
24 thief?

25 A. I may have used that word.

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1 Q. So you did tell him Bob was a thief?

2 A. I don't recall that, but it wouldn't
3 surprise me if I used that word.

4 Q. And you are a lawyer with 20 years of
5 licensed practice and know the rules and all that
6 stuff and you told him he was a thief?

7 A. I know what a thief is, Mr. Bayliss,
8 and I may have used that expression in regard to
9 Mr. Dively, yes.

10 Q. And a thief is someone who steals and
11 if prosecuted is convicted, correct?

12 A. No. A lot of thieves go unconvicted.

13 Q. You also told Gary McAllister that he
14 stole money out of Sea Technology?

15 A. No. We didn't get into money at all.

16 Q. And you also told Gary McAllister that
17 you'll find out what kind of guy Bob is if you deal
18 with him?

19 A. I don't know if I told Gary that. I
20 told Miles Booth that.

21 Q. And you told Gary McAllister that Bob
22 was going to get put away by you?

23 A. No. I don't remember that.

24 Q. Do you know who Gary Taylor is?

25 A. Yeah.

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1 Q. He runs a marina?

2 A. I don't think he runs a marina.

3 Q. Involved in the marina business?

4 A. I think he's in marine design down in
5 South Carolina.

6 Q. And you saw him?

7 A. Talked to him on the phone first.

8 Q. Saw him, too?

9 A. I talked to him in April of 1990 after
10 Bob Dively left Sea Technology, and I met him when
11 my family was on vacation down in the South
12 Carolina/North Carolina area, down in his office
13 down near Charleston.

14 Q. During this period of time you told
15 Gary Taylor that they had gotten felony convictions
16 against Bob?

17 A. I never said that.

18 Q. And you told Gary Taylor Bob had been
19 led off in handcuffs?

20 A. Never said that.

21 Q. Bill Tindal?

22 A. Later that summer --

23 Q. Better look into doing business with
24 Dively because he would be put in jail?

25 A. I told him to look into doing business

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1 with Dively.

2 MR. BAYLISS: I put him on for one
3 specific purpose, to ask him if he told a person one
4 thing and these people are out here and I'm not
5 asking what he told him. I would ask him to be
6 responsive.

7 THE COURT: I will direct him to be
8 responsive.

9 BY MR. BAYLISS:

10 Q. I don't need an explanation. These are
11 words that came out of someone else's mouth. You
12 told him it was very doubtful if Bob could produce
13 because he would be in jail?

14 A. No.

15 Q. You told him Bob stole a lot of things?

16 A. No.

17 Q. Fred Pesch?

18 A. Yes.

19 Q. And Fred Pesch was somebody you did
20 business with?

21 A. Somebody I never did.

22 Q. Sea Technology did?

23 A. Sea Technology did.

24 Q. And you negotiated a contract with him,
25 do you remember that?

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1 A. No. Bob negotiated.

2 Q. You were in that room, though, weren't
3 you?

4 A. No.

5 Q. Never met with Fred Pesch and
6 negotiated any contract?

7 A. I met with Fred Pesch to renegotiate a
8 contract after he was in default.

9 Q. And one of the issues you were going to
10 negotiate had to do with venue?

11 A. Venue was already in the agreement.

12 Q. And you told Fred Pesch it had to be in
13 Gloucester because you controlled everyone in
14 Gloucester County, didn't you?

15 A. No.

16 Q. And you told Fred Pesch that it had to
17 be in Gloucester County because you controlled the
18 new circuit judge because he just bought land from
19 you?

20 A. No. That is absolutely false. There
21 is not one word of truth to that.

22 Q. And you know Frieda Cox?

23 A. Yes.

24 Q. And Frieda worked for Sea Technology?

25 A. Yes.

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1 Q. And you tried to talk to Frieda Cox and
2 get her to be helpful to you in this case?

3 A. Yes. She came forward.

4 Q. She came forward?

5 A. Uh-huh.

6 Q. And you tried to meet with her and talk
7 to her about being helpful with you?

8 A. I did meet with her.

9 Q. And you told Frieda Cox during that
10 period of time she was employed that you had
11 Gloucester locked up and --

12 A. No.

13 Q. And you told her you were going to use
14 Jane Hogge and keep her in the company until you
15 didn't need her anymore, remember telling her that?

16 A. No. I couldn't have said that.

17 Q. I just want a yes or no. And you told
18 her Bob tried to ruin your business, had stolen
19 money and equipment from your company, remember
20 that?

21 A. She told --

22 Q. I asked you a question.

23 A. I may have discussed that with her,
24 yeah.

25 Q. Let me ask you again. You told Frieda

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1 Cox that Bob tried to ruin your business, stole
2 money and equipment from your company?

3 A. Yeah. I may have said that.

4 Q. And you told -- and again, you told
5 Frieda Cox that you're going to have that fucking
6 bastard locked up, you will not stop until that
7 bastard is buried and you have your ways to do it?

8 A. Not an ounce of truth.

9 Q. And you told her you would ruin Bob's
10 business, that you will make sure that you have Bob
11 out of business before the year is up?

12 A. No.

13 Q. And you told her you wanted everything
14 that Bob owned. Do you remember that?

15 A. No.

16 Q. It's true that you have a psychic,
17 isn't it, her name is Alice Miller?

18 A. No.

19 Q. You go to Alice Miller for psychic --

20 A. No.

21 Q. You used to?

22 A. At times I would go see a lady named
23 Alice.

24 Q. And she's a psychic?

25 A. She purports.

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1 Q. And you went to her about these offers
2 to buy your business, Sea Technology?

3 A. I may have mentioned that in the
4 meetings with her.

5 Q. And sought her advice?

6 A. Bounced things off her, yes.

7 Q. And it's true she told you things that
8 turned out to be true?

9 A. Yes.

10 Q. So you believed everything she said?

11 A. That's absolutely false.

12 Q. How about a psychic named Dickie Rich?

13 A. I think I saw her one time.

14 Q. So you had more than one psychic?

15 A. Over the course of the last number of
16 years I may have seen three or four.

17 Q. Three or four psychics?

18 A. Yes.

19 Q. And you saw Dickie Rich with your
20 friend, Mr. Foster?

21 A. No, I didn't. That's not true.

22 Q. Isn't it true that the Commonwealth's
23 Attorney before the prosecution was concluded
24 nol-prossed, dismissed two of the counts, correct?

25 A. I believe so.

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1 Q. And those two counts dealt with taking
2 property, personal property, from Sea Technology and
3 from Willoughby Harbor, correct?

4 A. Yes.

5 Q. And isn't it true that the
6 Commonwealth's Attorney prosecuted the other four
7 counts and that the evidence was struck at the
8 conclusion of the Commonwealth's evidence and
9 Mr. Dively didn't have to put any evidence on,
10 correct?

11 A. That's true.

12 Q. Now, turn if you would to Exhibit 31.
13 You are familiar with that, are you not? These are
14 newspaper articles that appeared in various
15 publications?

16 MR. BUGG: Your Honor, may we approach
17 the bench on this?

18 THE COURT: Yes, sir.

19 (A conference was held at the bench.)

20 THE COURT: Ladies and gentlemen, go to
21 the jury room, please.

22 (The jury withdrew from the courtroom.)

23 THE COURT: All right, Mr. Bugg.

24 MR. BUGG: Judge, this article was
25 written in large part I believe by Dick Davis, one

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1 of the lawyers. Mr. Davis was the one who gave the
2 newspapers the information. This is a comment from
3 Judge Bateman. Judge Bateman never talked to the
4 press. Dick Davis gave this to the press. This is
5 in effect calling the bench as a witness, and this
6 is the subject of our motion in limine because one
7 of the lawyers in the case tells the newspaper, this
8 is what the judge said, does not make it admissible,
9 Your Honor.

10 THE COURT: I agree with that.

11 MR. BAYLISS: The reason it's
12 admissible as are all of these articles, they are
13 not offered for the truth or falsity. They are
14 offered for what people saw in the community and
15 that's what any newspaper article is offered for.
16 That's why it's an exception to the hearsay rule and
17 we can put on three, four, five people that can --

18 THE COURT: I'll permit it in with an
19 admonition that it's not offered for the truth of
20 the statement.

21 MR. BUGG: That statement should be
22 stricken. The prejudicial effect of that statement
23 so far outweighs any probative value that you should
24 not let it in, Your Honor.

25 THE COURT: Mr. Bugg, this is a

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1 statement that the people of Gloucester County,
2 Williamsburg, everywhere else read, had the
3 opportunity to read, and that's part of Mr. Dively's
4 case, is that his character, reputation and so on
5 was injured. This certainly helps clear it up. I'm
6 going to permit it. Note your exception.

7 I do want to make one statement for the
8 record. This case has been hanging around for two
9 years and you have had meetings after meetings after
10 meetings with the judge concerning discovery,
11 interrogatories, production of documents and all
12 that. We come down to the day of trial and you
13 would think that the script had been well written
14 and well rewritten and then rewritten again but it
15 hasn't been.

16 What's the matter with you-all? This
17 case isn't going forward in the manner that it
18 should proceed. You've had at least I know six
19 meetings with me. And even as say late as last
20 Thursday you are filing motions. Bring the jury
21 back in.

22 (The jury was returned to the
23 courtroom.)

24 BY MR. BAYLISS:

25 Q. Mr. Ingles, you are familiar that what

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1 was going on in Gloucester at that period of time
2 was being reported, are you not?

3 A. I saw some newspaper articles from time
4 to time.

5 Q. I am showing you a group of newspaper
6 articles and I just asked you whether the
7 prosecution resulted in striking the evidence and
8 nol-prossing and you indicated that that was true.
9 The first newspaper article, "Man Acquitted on
10 Embezzlement Charges," written by Bill Talbrick.
11 Can you see that one?

12 A. Yes.

13 Q. And you were there, were you not, when
14 the judge made the rulings, were you not?

15 A. No. I was excluded from the courtroom.

16 Q. Mr. Russell was there, wasn't he?

17 A. No. Mr. Russell was never in the
18 courtroom during the criminal trial.

19 Q. At your instructions, sir, did you have
20 members of the Rumsey, Breeden firm in that trial
21 court?

22 A. There wasn't any member of the Rumsey,
23 Breeden firm in the trial court.

24 Q. That article says, "According to the
25 transcript Bateman was astounded at the speculation

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1 on which the prosecution based its case," was it
2 not?

3 A. It's printed.

4 MR. BAYLISS: I move to -- I'm not
5 going to go through all of these. I move to
6 introduce all of them as a group as articles
7 appearing on this.

8 THE COURT: Note your exception.
9 Introduced and marked as Plaintiff's Exhibit Number
10 31.

11 (The document referred to was marked by
12 the Court as Plaintiff's Exhibit 31, and received
13 into evidence.)

14 THE COURT: Ladies and gentlemen, these
15 particular things are being introduced for the fact
16 that they were in the public eye. They are not for
17 the truth that is therein contained.

18 BY MR. BAYLISS:

19 Q. You remember during the course of the
20 investigation before these cases were tried talking
21 to Officer Colton, do you not?

22 A. Yes.

23 Q. And you know he was a state police
24 investigator, correct?

25 A. Yes.

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1 Q. And Officer Colton told you that he
2 thought it was a civil matter, do you remember him
3 telling you that?

4 A. No, I don't believe he did.

5 Q. Don't remember him telling you that?

6 A. No.

7 Q. And you remember talking to Bill Shaw
8 during the prosecution of this case and Bill Shaw
9 telling you that Colton and Adams told you this was
10 a civil matter, not a criminal matter?

11 A. I think at one point Bill Shaw did say
12 that.

13 Q. But you went forward with the
14 prosecution anyhow, didn't you?

15 A. I never went forward with the
16 prosecution, no.

17 MR. BAYLISS: Judge, I move to keep the
18 record straight -- well, I would ask that the Court
19 turn to Exhibits 28 and 29. Judge, I think that we
20 stipulate 28 and 29. 28 is a copy of the capias for
21 Mr. Dively's arrest and the indictments themselves
22 and 29 are copies of the orders dismissing and
23 nol-prossing all the indictments.

24 MR. BUGG: Your Honor, there are
25 writings that the Court put on there, but I don't

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1 think it's any problem. No objection.

2 THE COURT: Without objection they are
3 introduced and marked as Plaintiff's Exhibits 28,
4 that is the five indictments and the five capiases,
5 and Number 29 is the orders of the Court concerning
6 these indictments.

7 (The documents referred to were marked
8 by the Court as Plaintiff's Exhibits 28 and 29, and
9 received into evidence.)

10 BY MR. BAYLISS:

11 Q. Turn to Exhibit 32, please. Now,
12 Mr. Ingles, the two other civil cases. You are
13 familiar with those, are you not?

14 A. Yes.

15 Q. And one of those civil cases Bob Dively
16 filed and he sought an accounting, correct?

17 A. And more, yes.

18 Q. He didn't seek money damages, did he?

19 A. I thought he did.

20 Q. Do you want to see those pleadings,
21 too?

22 A. Yes.

23 Q. We'll get them in through Mr. Dively.
24 You filed a lawsuit. You didn't seek an accounting,
25 did you?

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1 A. I sought damages.

2 Q. You sought damages of \$5 million?

3 A. I thought it was \$3 million. You said
4 \$6 million earlier.

5 Q. It was \$3 million in punitive and \$2
6 million in compensatory. Do you remember that?

7 A. May have been.

8 Q. And both of those cases were
9 consolidated?

10 A. Yes.

11 Q. And both of them were tried down in
12 Gloucester?

13 A. Yes.

14 Q. And this is a copy of the order down in
15 Gloucester?

16 A. Yes.

17 Q. This is the order, "It is adjudged,
18 ordered and decreed that Dively is and always has
19 been a 50 percent stockholder of Sea Tech"?

20 A. Yes.

21 Q. And it also said that Dively was not
22 entitled to any accounting at this point, doesn't
23 it?

24 A. I don't --

25 MR. BUGG: I don't think it's proper to

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1 cite anything from the order. I don't think the
2 order should be admitted for reasons I previously
3 stated. Your Honor, the transcript that I tendered
4 to Your Honor gave the Court's reasons for these and
5 they aren't in the order and that's why I don't
6 think it's proper for this, any of it.

7 THE COURT: This is a matter of public
8 record, public information.

9 MR. BUGG: I understand, Your Honor.

10 THE COURT: I'm going to permit it to
11 be in.

12 MR. BAYLISS: I move to introduce the
13 order as Exhibit 32.

14 THE COURT: Introduced and marked as
15 Plaintiff's Exhibit 32.

16 (The document referred to was marked by
17 the Court as Plaintiff's Exhibit 32, and received
18 into evidence.)

19 MR. BAYLISS: Judge, I don't have any
20 other questions.

21 THE COURT: Are you going to
22 cross-examine him now or talk to him later?

23 MR. BUGG: I'm going to ask. A break
24 is fine.

25 THE COURT: Take a break, walk around a

M. Ingles - Cross (Adv.)

1 little bit. We'll call you back in about five
2 minutes. I admonish you do not discuss the case or
3 let anyone talk to you.

4 (The jury withdrew from the courtroom.)

5 (Recess.)

6 (The jury was returned to the
7 courtroom.)

8 THE COURT: All right, Mr. Bugg.

9 CROSS-EXAMINATION

10 BY MR. BUGG:

11 Q. Mr. Ingles, Mr. Bayliss referred to two
12 of the warrants on the indictments being nol-prossed
13 I think in November. Did you know anything about
14 that?

15 A. No, I didn't.

16 Q. Did you have anything to do with that?

17 A. Not a thing.

18 Q. When did you first contact the sheriff
19 of Gloucester County about what Mr. Dively had done
20 down at Sea Technology?

21 A. I contacted him sometime in March of
22 1990 shortly after Mr. Dively had left Sea
23 Technology and I contacted him -- I told him at that
24 time that I thought there had been some wrongdoing
25 and that I hoped to get an investigator who was

M. Ingles - Cross (Adv.)

1 going to be capable of handling the case and I
2 talked to him again later -- let me see. It was
3 early April. He and I missed each other. We had
4 several calls back and forth and we missed each
5 other.

6 Q. Did he put you in touch with a
7 Lieutenant Nicely?

8 A. Yeah. After my trip to Shark Island
9 Marina in New Jersey and Dock of the Bay Marina in
10 Sandusky, Ohio which occurred during the weekend of
11 April 8th, 19930 with a return on April 9th, 1990, I
12 talked to the sheriff on my return on either the 9th
13 or 10th of April. He put me in touch with
14 Lieutenant Nicely. I believe he heads up the
15 investigative unit in Gloucester and Lieutenant
16 Nicely and I spoke I believe again on the 10th,
17 right around there at any rate, and on the 12th of
18 April he had Lieutenant Adams -- not Lieutenant
19 Adams -- I guess Investigator Adams get in touch
20 with me and he requested a meeting with me at Sea
21 Technology during the afternoon of April 12th.

22 Q. Did you contact Mr. Adams that day or
23 did he contact you because of Officer Nicely?

24 A. I think he contacted me because of
25 Officer Nicely.

M. Ingles - Cross (Adv.)

1 Q. Now, if you could flip over to
2 Plaintiff's Exhibit Number 30, the two affidavits
3 that Mr. Bayliss referred to. I would like to refer
4 you to the second affidavit which would be the one
5 that was signed under oath by William H. Shaw, III,
6 the Commonwealth's Attorney for Gloucester County.
7 Mr. Bayliss read Paragraph 7 to you about -- excuse
8 me -- read a portion to you I'm not even sure what
9 it was.

10 THE COURT: Paragraph 5.

11 BY MR. BUGG:

12 Q. Read Paragraph 5 to you. Would you
13 please read the remaining parts of that affidavit to
14 the jury?

15 A. Starting with Paragraph 5.

16 Q. Starting with the beginning.

17 MR. BAYLISS: The affidavit speaks for
18 itself.

19 MR. BUGG: He's had the man read a part
20 of it. I think the jury is entitled to hear it
21 all.

22 MR. BAYLISS: I object to it. The
23 affidavit speaks for itself.

24 THE COURT: Mr. Bayliss, what's sauce
25 for the goose is sauce for the gander. You had part

M. Ingles - Cross (Adv.)

1 of it. Let him read the other part.

2 THE WITNESS: It says, "Personally
3 appeared before me, William H. Shaw, III, who stated
4 that the following facts are true and correct to the
5 best of his knowledge" --

6 THE COURT: I thought he wanted you to
7 read beginning with Paragraph 5.

8 MR. BUGG: No, beginning with Paragraph
9 1.

10 THE COURT: All right. Go ahead.

11 THE WITNESS: "During 1990 I was the
12 duly elected Commonwealth's Attorney for Gloucester
13 County, Virginia, and as such was the chief law
14 enforcement officer in that jurisdiction.

15 "In April, 1990, McClanahan Ingles,
16 Ingles is in paren, provided me with information
17 concerning his former business associate, Robert C.
18 Dively. At that time Ingles provided me with a box
19 of miscellaneous documents concerning Ingles'
20 business relationship with Dively and various
21 financial transactions engaged in by either Dively
22 or the Virginia corporation known as Sea Technology,
23 Limited, STL.

24 "Based upon my investigation, I
25 believed there was probable cause that Dively had

M. Ingles - Cross (Adv.)

1 committed certain crimes and presented proposed
2 indictments to a duly convened grand jury panel in
3 Gloucester County on May 7, 1990, which issued
4 criminal indictments against Dively.

5 "Based upon my further investigation I
6 believed that there was probable cause that Dively
7 had committed a certain additional crime and
8 presented a further proposed indictment to a duly
9 convened grand jury panel in Gloucester County on
10 July 27, 1990 which issued a further criminal
11 indictment against Dively.

12 "Prior to preparing any indictments I
13 met with Ingles on several occasions to investigate
14 this matter, and Ingles disclosed the following
15 matters to me: The existence of a stock option
16 agreement which Ingles had given to Dively in the
17 past concerning a possible conveyance of STL stock,
18 stock option in paren, attached hereto as Exhibit
19 A.

20 "The existence of a handwritten
21 memorandum prepared by Dively requesting that STL
22 invoice Dively's company, Marina Technology, Inc.,
23 for materials and labor purportedly used on jobs
24 which were the subject of some of the indictments,
25 parenthesis, Dively memo. The Dively memo is

M. Ingles - Cross (Adv.)

1 attached hereto as Exhibit B.

2 "Prior to requesting the indictments I
3 personally reviewed the Exhibit A stock option.

4 "Before the scheduled criminal trial
5 date in November, 1990 I had in my file and fully
6 reviewed the Dively memo as well as an invoicing
7 memo prepared by Jane Hogge which is attached as
8 Exhibit C, Hogge memo.

9 "Subsequent to the issuance of the
10 indictments and in preparation for the criminal
11 trial in this case I discussed the stock option,
12 Hogge memo and Dively memo with Ingles in depth --
13 excuse me -- at length. During my investigation
14 Ingles did not withhold any information regarding
15 these items.

16 "The stock option had no effect on my
17 decision to seek indictments against Dively or on my
18 decision to prosecute Dively based upon those
19 indictments.

20 "Neither the Dively memo nor the Hogge
21 memo had any effect on my decision to prosecute
22 Dively based upon the indictments.

23 "The decision to prosecute was mine. I
24 was neither pressured nor persuaded to prosecute by
25 Ingles. Given the choice again I would prosecute

M. Ingles - Cross (Adv.)

1 again."

2 BY MR. BUGG:

3 Q. Who signed it?

4 A. William H. Shaw, III, and it was signed
5 under oath on June 1 of this year.

6 MR. BUGG: Your Honor, the copy that
7 has been offered as an exhibit does not have the
8 exhibits actually attached to the affidavit. May I
9 those those?

10 THE COURT: You may offer those.

11 MR. BUGG: Your Honor, I would like to
12 offer up Exhibit A which is the stock option
13 agreement, Exhibit B which are the Dively memos and
14 Exhibit C which is the Hogge memo and ask that they
15 be attached to Plaintiff's Exhibit --

16 THE COURT: It will be attached to 31,
17 Plaintiff's Exhibit 31 as 31A, B and C. Does that
18 cover it?

19 MR. BAYLISS: Yes, sir. That's fine.

20 MR. RUSSELL: Your Honor, I believe
21 that that may be Plaintiff's Exhibit 30.

22 MR. BAYLISS: That's correct.

23 THE COURT: 30, you're right. They'll
24 be attached to Plaintiff's Exhibit Number 30 as 30A,
25 30B and 30C.

M. Ingles - Cross (Adv.)

1 (The documents referred to were marked
2 by the Court as Plaintiff's Exhibits 30A, 30B, and
3 30C, and received into evidence.)

4 BY MR. BUGG:

5 Q. Mr. Ingles, you heard Mr. Bayliss ask
6 you if it wasn't a fact that Mr. Dively didn't get a
7 salary from Sea Technology starting in October of
8 1989?

9 A. Yes, sir.

10 Q. Did you?

11 A. No, sir.

12 Q. Whose idea was it to stop paying
13 salary?

14 A. It was Bob Dively's. We had each
15 taken -- at his suggestion in February of that year
16 we had taken a \$30,000 bonus each. It was his
17 suggestion that we quit paying salaries. He said we
18 didn't have enough money to pay the salaries. Going
19 back looking at the checkbook we had \$30,000 in the
20 account. Salaries could have been paid.

21 Q. During that period from October of '89
22 to March of 1990 did he tell you he had gotten
23 \$120,000 from Dock of the Bay?

24 A. Never.

25 Q. Did he tell you he had gotten \$8,000

A. King - Direct

1 ALLISON KING, called as a witness by
2 and on behalf of the Plaintiff, having been first
3 duly sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. BAYLISS:

7 Q. Would you please state your name for
8 the record.

9 A. Allison King.

10 Q. And your occupation?

11 A. Housewife.

12 Q. Where are you from, ma'am?

13 A. Brielle, New Jersey.

14 Q. And how old are you?

15 A. 44.

16 Q. When was the first time you met Bob
17 Dively?

18 A. At the boat show in New York in 1990.

19 Q. And did you talk to Bob Dively at that
20 boat show?

21 A. Yes. We were there. We were employed
22 by Shark Island Yacht Club and we were there
23 specifically to look for dock boxes, pedestals. We
24 were renovating the marina.

25 Q. And did you end up buying some dock

A. King - Direct

1 boxes?

2 A. Not at that time.

3 Q. Did there come a time when you bought
4 some dock boxes?

5 A. Yes.

6 Q. Tell me when that occurred.

7 A. Approximately about a month later we
8 were in touch with Mr. Dively.

9 Q. Tell me when that would have been
10 approximately.

11 A. Mid February.

12 Q. 1990?

13 A. '90, right.

14 Q. You got in touch with Dively and tell
15 me what your conversation was.

16 A. Well, we basically ordered them.
17 Before then he had sent us a fax of the exact
18 replica of the dock box.

19 Q. Did you buy any power pedestals?

20 A. No, sir.

21 Q. Did you know the difference between a
22 pedestal and dock box?

23 A. Yes, sir.

24 Q. Why did you buy the dock box?

25 A. It was self-contained. It had

A. King - Direct

1 everything, the power pedestal and dock box put
2 together. It had water, electric, phone, cable
3 T.V., lights for the dock and inside the dock box.

4 Q. You said Mr. Dively. Did you know of a
5 company by the name of Marina Technology?

6 A. Yes, sir.

7 Q. Did you know of a company named Sea
8 Technology back then?

9 A. Yes, sir.

10 Q. You say ultimately, how many did you
11 buy?

12 A. The original order was 14.

13 Q. And were they, in fact, shipped?

14 A. Yes, sir, they were.

15 Q. Did there come a time where you once
16 they were shipped made payment?

17 A. Yes, sir, we did.

18 Q. Tell me the circumstances that you made
19 payment for those.

20 A. It was a bit odd. They were delivered
21 very late on a Friday evening around 8:00.

22 Q. And approximately when would that have
23 been?

24 A. Probably the end of February, middle of
25 February, somewhere around there. They were

A. King - Direct

1 delivered very late. My husband and I both stayed.
2 Usually I make out the checks, but for some reason I
3 must have been out of the office or talking to a
4 customer when the driver came in for the check. The
5 overseer of the marina at that time was
6 Mr. Hoffman. He had directed my husband to --

7 MR. RUSSELL: Your Honor, I object.

8 THE COURT: Sustain the objection as to
9 hearsay.

10 BY MR. BAYLISS:

11 Q. Don't tell what Mr. Hoffman said.

12 A. The check was made out to Sea
13 Technology.

14 Q. Who did you buy the dock boxes from?

15 A. Marine Technology, Bob Dively.

16 Q. Did there come a time that you had a
17 discussion with Bob Dively about that check?

18 A. He called me a few days later and said
19 the check was made out for Sea Technology instead of
20 Marine Technology. I apologized. 99 percent of the
21 time I write out the checks and for some reason I
22 wasn't there and it had been made out inaccurately
23 and I asked Bob if he would like to send the check
24 back to me I would void it and he would cut a new
25 check. He said no. That was quite all right. He

A. King - Direct

1 didn't want me to go to any trouble.

2 Q. Did there come a time after that that
3 you had any conversations with Mr. Ingles sitting at
4 the table over there?

5 A. Yes, sir.

6 Q. Tell me when that occurred and the
7 circumstances surrounding it.

8 A. Approximately in mid March, I believe.
9 I was looking out the window and I saw two men on
10 the dock looking at the dock boxes. Being a small
11 marina I knew everybody at the marina. I sent
12 Mr. Hoffman down to find out who these people were.
13 They came back to the trailer with Mr. Hoffman and
14 had a discussion in Mr. Hoffman's office.

15 Q. With Mr. Ingles?

16 A. Mr. Ingles, Mr. Risley and Mr. Hoffman.

17 Q. Would you recall for me if you would
18 what Mr. Ingles said?

19 A. It was basically behind closed doors.
20 Being in the trailer you could hear everything. The
21 voices were loud.

22 Q. Whose voices were loud?

23 A. Mr. Risley's and Mr. Ingles'. They
24 were speaking of problems with Mr. Dively.

25 Q. Tell me what they told you.

A. King - Direct

1 A. Well, that was just me overhearing.
2 Later on I was introduced to both the gentlemen and
3 they weren't very nice. They called Mr. Dively a
4 thief, a liar, a forger, and I couldn't understand
5 it because at the boat show Mr. Risley was with --

6 MR. RUSSELL: I object, not responsive
7 to the question.

8 MR. BAYLISS: It's very responsive to
9 the question.

10 THE COURT: I thought she answered it,
11 Mr. Russell. I'm going to permit her to answer it
12 anyway.

13 THE WITNESS: I thought it was very
14 unusual because at the boat show Mr. Risley was at
15 the boat show. The dock box was Mr. Dively's baby.
16 He designed it, created it and it was his original
17 design, and to have the stories changed when they
18 came back I found most unusual. I had no
19 conversation with Mr. Ingles or Mr. Risley about the
20 dock boxes, ordering them, when they were going to
21 come. Everything was through Mr. Dively.

22 BY MR. BAYLISS:

23 Q. When you had the discussions when you
24 mentioned about thief, stole, liar, whatever, who
25 said that?

A. King - Cross

1 A. Both gentlemen, but especially
2 Mr. Ingles. He kept saying, I'm a lawyer, I'm a
3 lawyer.

4 Q. He kept saying, I'm a lawyer?

5 A. Right, and I didn't find that relevant
6 at all.

7 MR. BAYLISS: That's all I have.

8 MR. RUSSELL: Thank you, Your Honor.
9 Your Honor, we, as counsel for the plaintiff, also
10 have a book that has our exhibits in it and we would
11 like to show that to the witness also.

12 CROSS-EXAMINATION

13 BY MR. RUSSELL:

14 Q. Good afternoon. I promise I won't ask
15 you about everything in the book. What was your job
16 at Shark Island?

17 A. I was secretary/bookkeeper.

18 Q. Mr. Hoffman was your boss?

19 A. He was the overseer of the project,
20 yes.

21 Q. And later in the project we got to a
22 Mr. Gerwick and he was also your boss?

23 A. He was originally. He was there from
24 the beginning.

25 Q. Now, Shark Island Marina ended up

A. King - Cross

1 buying a lot more than 14 boxes, did they not?

2 A. Yes.

3 Q. The original shipment up there was 14,
4 correct?

5 A. Yes.

6 Q. And those 14 had Sea Technology labels
7 fixed on them, didn't they?

8 A. No, sir.

9 Q. They did not?

10 A. No, sir.

11 Q. If there are photographs of dock boxes
12 up at Shark Island with Sea Technology labels on
13 them you are saying Mr. Dively did not provide
14 those?

15 A. We kept our boat at Shark Island and we
16 had one of the original dock boxes and it did not
17 have a label on it.

18 Q. None of the boxes up there had Sea Tech
19 labels on it?

20 A. None that I know of.

21 Q. Now, when Mr. Ingles came up there he
22 met with Mr. Hoffman as you indicate behind closed
23 doors?

24 A. Yes.

25 Q. And Mr. Hoffman was your boss and he

A. King - Redirect

1 THE COURT: Are you finished
2 cross-examining the witness?

3 MR. RUSSELL: I have.

4 REDIRECT EXAMINATION

5 BY MR. BAYLISS:

6 Q. Could you, Ms. King, the check that has
7 been introduced, when Mr. Ingles was up talking to
8 you and saying the things you said he said, did you
9 discuss that check with him and tell him anything
10 about it?

11 A. Yes, I did. I had taken from the bank
12 statement and he wanted to see it, so I showed it to
13 him and I said that in error it was written out
14 incorrectly as was partially my fault because I
15 wasn't in the office. I said Mr. Dively and I had
16 cleared it up because I asked if he wanted the check
17 resubmitted and he said no.

18 Q. You told him there was an error and you
19 did this well before April the 12th, 1990?

20 A. Yes, sir.

21 MR. BAYLISS: That's all I have,
22 Judge.

23 MR. RUSSELL: That's all I have.

24 THE COURT: Any further need for this
25 witness?

W. Tindal - Direct

1 MR. BAYLISS: No, sir.

2 MR. RUSSELL: No, sir.

3 THE COURT: You may have a seat in the
4 courtroom or you may leave as you see fit. Next
5 witness?

6 MR. BAYLISS: Bill Tindal.

7
8 WILLIAM TINDAL, called as a witness by
9 and on behalf of the Plaintiff, having been first
10 duly sworn, was examined and testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. BAYLISS:

14 Q. Mr. Tindal, would you please state your
15 name and your address and age?

16 A. William Charles Tindal. I'm 43 years
17 old, and right now I live in Phoenix, Arizona.

18 Q. What is your current occupation?

19 A. Right now I'm a student in medical
20 school fixing to attend this fall in Missouri.
21 Previously I was employed by a company, Westrec
22 Properties. I was a project manager for them.

23 Q. Tell me what you did as project
24 manager.

25 A. I did conceptual estimating. I located

W. Tindal - Direct

1 bids from different contractors and I did on-site
2 supervision for a company that owns and manages
3 marina around the country. Two of the marinas we
4 worked on were up in the Washington, D.C. area.

5 Q. And where were you located at that
6 time?

7 A. At the James Creek Marina and the Gang
8 Plank Marina which is right on the Washington
9 channel in Washington, D.C.

10 Q. Now, in 1990 or 1989, 1990 did you do
11 any business with Bob Dively or Sea Technology?

12 A. Yes, sir, I did. Since we were
13 refurbishing, the marina part of the refurbishment
14 was to upgrade the power and Bob Dively at the time
15 had designed a new power pedestal that's used to
16 plug the power cords from the boat into. We had
17 approximately four companies that were bidding on
18 that property to supply those pedestals. Bob had
19 come to me very early with a new pedestal that was
20 still under testing and things with the UL
21 laboratories, and he came and submitted a proposal
22 to me for it.

23 Q. Did you ultimately buy any?

24 A. Yes, sir, we did. We bought 150 units
25 for the marina at James Creek and since then we had

W. Tindal - Direct

1 purchased some more units at some of our other units
2 located in Georgia and Florida.

3 Q. When did you ultimately buy those, was
4 it after March of 1990?

5 A. Yes, sir. It would have been in the
6 fall.

7 Q. Of 1990?

8 A. Yes, sir.

9 Q. So the September, October, November
10 time frame?

11 A. That time frame, yes, sir.

12 Q. Now, when was it that you first met or
13 talked with Bob Dively?

14 A. Bob approached me because he knew that
15 we were refurbishing the marina and he was fairly
16 close and he wanted to set up a meeting and it would
17 have been early summer.

18 Q. Of 1990?

19 A. Yes, sir.

20 Q. And by whom was he employed? Was he
21 working for Sea Technology?

22 A. No, sir.

23 Q. Who was he working for?

24 A. The label was M-Tech.

25 Q. Had you ever met Mac Ingles or knew Mac

W. Tindal - Direct

1 Ingles at that time?

2 A. No, sir, I had not.

3 Q. Had you ever heard of a company named
4 Sea Technology at that time?

5 A. Yes, sir.

6 Q. Was Bob Dively to your information
7 involved in Sea Technology in the summer of 1990?

8 A. No.

9 Q. Did there come a time when you had an
10 opportunity to meet Mr. Ingles?

11 A. Yes, sir.

12 Q. When did that occur?

13 A. It was probably a month or so after I
14 had received bids from Bob and some of the other
15 companies.

16 Q. So that would have been August or so of
17 1990?

18 A. Somewhere in that time frame, yes.

19 Q. Is Mr. Ingles in the courtroom?

20 A. Yes, sir.

21 Q. Did you see him in person or did you
22 was it over the phone?

23 A. It was in person.

24 Q. Tell me to the best of your
25 recollection what occurred when you saw him. Who

1 was with him and what was said?

2 A. Sea Technology approached me with a
3 phone call. It was one of their sales reps named
4 Debbie. I don't remember her last name. She
5 submitted a proposal to me and at that point this is
6 a personal situation. I wasn't really impressed
7 with the Sea Technology pedestal so I had not called
8 them to ask for a bid. They approached me.

9 I got a phone call after I received the
10 fax of the proposal from a Rick Risley I believe his
11 name was. He was a sales representative with them
12 and he wanted to set up a meeting to come up and
13 talk to me about the pedestals and I agreed.

14 Q. Who showed up for that meeting?

15 A. He did, Mac Ingles, and there was
16 another fellow and I apologize. I don't remember
17 his name.

18 Q. What happened at that meeting?

19 A. Mr. Risley started the conversation as
20 most sales reps do, try to sell me on the pedestal
21 and get my feelings and inputs back on it. There
22 were two things that I think weren't going well at
23 that time because one of them was the proposal they
24 resubmitted was over \$20,000 higher than M-Tech for
25 the same site. Plus the fact that I didn't care for

W. Tindal - Direct

1 the Sea Technology pedestal that much and that's
2 when -- in fact, Mr. Ingles had not even spoken at
3 that point, and that's when he started talking and
4 telling me he was running Sea Technology and that if
5 I had had any dealings with Bob Dively -- he
6 questioned me on that.

7 Q. What did you tell him and what did he
8 tell you?

9 A. I told him I had been looking at the
10 M-Tech pedestal and I was very impressed. I thought
11 the materials were excellent and I thought the
12 pedestal was a good product, and that's when he
13 informed me that Bob Dively -- that he and Bob had
14 been working together at one point with the company
15 of Sea Technology. I had previously thought that
16 Bob Dively was a partner of Sea Technology and I was
17 led to believe by Mr. Ingles that he was more of an
18 employee because it was like he stole things from
19 us, tools and parts and materials, and I'm fixing to
20 take him into litigation and if you go ahead and
21 order this new pedestal from him the chances are you
22 won't be able to receive it because I'm going to
23 have him in court and he'll probably be in jail and
24 if you invest money in that you will probably end up
25 losing your money.

W. Tindal - Direct

1 Q. How did you respond?

2 A. I was concerned for more than one
3 reason. I was investing money for my company. I
4 thought I had saved them quite a bit of money by
5 going with one company but if I'm fixing to invest
6 \$75,000 into a company that I can't get the product
7 from I was very concerned. Mr. Ingles gave me a
8 list of people that if I wanted to check up on
9 Mr. Dively I was more than welcome to call and I
10 told him I would and we more or less parted at that
11 point. I didn't say yes or no on any commitment to
12 any of the product.

13 Q. Did you ultimately call the people?

14 A. Yes, I did. In fact, as soon as he
15 left I called Mr. Dively because I was concerned. I
16 said, you have got a problem here. I don't know if
17 you need to straighten it out because I don't know
18 you. I didn't know Bob Dively before he came up
19 with the pedestal, but there's a person that is
20 fixing to take you to court and I'm fixing to invest
21 \$75,000 in your company to provide a product and you
22 have to straighten this out.

23 He was a little shocked and I told him
24 I had a list of people that I was going -- that
25 Mr. Ingles had given me to call and he said can you

W. Tindal - Cross

1 tell me who they are and I said sure. I read off a
2 few names. He said call them, and he said if you
3 need a few more I will give you a few more. I had
4 called some of those people and part of that was the
5 accusation was made that he didn't follow up
6 sometimes on products that he had given to people
7 and when I called there was only one person --

8 MR. BUGG: I don't think it's proper to
9 relate what these people said. He can say what he
10 did.

11 MR. BAYLISS: I think it is proper
12 because Mr. Ingles told him to call.

13 THE COURT: He was told to call, no
14 question about that.

15 BY MR. BAYLISS:

16 Q. In your discussions with Ingles did it
17 bother you when he said that Bob would be in jail?

18 A. Yes.

19 MR. BAYLISS: That's all I have, Your
20 Honor.

21 THE COURT: Cross-examine.

22 CROSS-EXAMINATION

23 BY MR. BUGG:

24 Q. Mr. Tindal, after all of this happened
25 you bought the M-Tech pedestal, didn't you?

J. Taylor - Direct

1 A. Yes, sir.

2 Q. In fact, you went back and bought more?

3 A. Yes, sir.

4 Q. And you continue to have a good
5 business relationship with Mr. Dively?

6 A. Yes, sir.

7 MR. BUGG: Thank you.

8 THE COURT: Any further need for
9 Mr. Tindal?

10 MR. BAYLISS: No, sir.

11 MR. BUGG: We have one witness,
12 Mr. Ward, and he can only be here today.

13 THE COURT: We'll put him on out of
14 order.

15
16 JON TAYLOR, called as a witness by and
17 on behalf of the Plaintiff, was examined and
18 testified as follows:

19
20 DIRECT EXAMINATION

21 BY MR. BAYLISS:

22 Q. Mr. Taylor, would you please state your
23 name, your address and your age?

24 A. My name is Jon Jguerry Taylor, 52 years
25 old, 1063 Deleisseliue Boulevard, Mount Pleasant,

J. Taylor - Direct

1 South Carolina.

2 Q. And your occupation?

3 A. I'm a professional engineer.

4 Q. And by whom are you employed?

5 A. I'm self-employed.

6 Q. And what is the name of your company?

7 A. Jon Jguerry Taylor, P.E., Incorporated.

8 Q. Do you have any business that has to do
9 with the operation, construction, maintenance of
10 marinas?

11 A. I design marinas, yes, I do.

12 Q. Is that your principal occupation?

13 A. My principal occupation, design marinas
14 and environmental type of consulting work.

15 Q. Were you involved in the design or
16 construction of any marinas back in 1989 or 1990
17 when you had the dealings with Bob Dively?

18 A. Yes, sir.

19 Q. And tell me about that.

20 A. I worked with Mr. Dively on or he
21 supplied materials to several projects of mine, one
22 to Sea Technology. One was Mariner's Point in
23 Little River, South Carolina. Another one was Fort
24 Royal Landing in Beaufort, South Carolina. Another
25 one was Bald Head Island in South Port, North

J. Taylor - Direct

1 Carolina.

2 Q. Any of those projects had you had any
3 problems with Bob Dively?

4 A. No, sir, I didn't.

5 Q. What kind of relationship did you have
6 with him during that time?

7 A. Had a very good professional business
8 relationship.

9 Q. Did you know Mac Ingles at that time?

10 A. No, sir, I did not.

11 Q. Had you ever heard of Mac Ingles at
12 that time?

13 A. No, sir, I don't think so.

14 Q. Did there come a time when you met Mac
15 Ingles?

16 A. Yes. On August 6th, 1990 Mr. Ingles
17 called my office and asked to come by and see me.

18 Q. Called your office down in South
19 Carolina?

20 A. In South Carolina, yes, sir.

21 Q. Was it like he just wanted to come by
22 and see you?

23 A. He said he wanted to come by and see me
24 and never had an opportunity to meet me and wanted
25 to come by and see me.

J. Taylor - Direct

1 Q. Did he tell you who he was?

2 A. He told me he was Mac Ingles.

3 Q. Did you know he had anything to do with
4 Sea Technology?

5 A. I had heard Bob mention Mac before and
6 I believe at one point we had been scheduled to go
7 on a fishing trip and Mr. Ingles was supposed to go
8 on a fishing trip so I kind of knew there was some
9 relationship.

10 MR. BAYLISS: Judge, let me
11 procedurally I think if it's okay with Mr. Bugg,
12 this witness was not here earlier this morning. We
13 forgot to swear him in.

14 (The witness was sworn in at this
15 time.)

16 MR. BAYLISS: Can we stipulate instead
17 of going back through --

18 MR. BUGG: Yes. That's fine.

19 THE COURT: He hasn't said anything
20 yet.

21 MR. BAYLISS: I don't want to have any
22 problem. Plus somebody told me to do it.

23 THE COURT: I've been doing that for 50
24 years.

25 BY MR. BAYLISS:

J. Taylor - Direct

1 Q. Mr. Taylor, did that result in a
2 meeting?

3 A. Yes, sir, it did. About 12:10 or 12:15
4 that afternoon we got a call at the office that said
5 Mr. Ingles was at Sea Island Shopping Center which
6 is about two blocks from my office and would like to
7 come on in.

8 Q. Did you meet with him?

9 A. Yes, I did.

10 Q. Tell me -- first of all, was he by
11 himself?

12 A. He was by himself or at least he was by
13 himself when he came in the office, yes, sir.

14 Q. Would you please relate to me the
15 conversation you had?

16 A. We exchanged pleasantries. He
17 mentioned that we almost met that one time on the
18 fishing trip and that he mentioned that he was in
19 the Wilmington area and had heard about some work
20 coming up potentially at Bald Head Island and had
21 come down to see me to see if I knew anything about
22 the work at Bald Head Island.

23 Q. And did you know about any work going
24 on?

25 A. No, sir. I didn't know about any work

J. Taylor - Direct

1 at Bald Head Island.

2 Q. Were you familiar?

3 A. I did some design work in Bald Head
4 Island. Indigo Plantation and Bald Head Island was
5 one project at South Port.

6 Q. Did you ever question him about why he
7 was telling you why there was work there?

8 A. He really didn't have any specifics on
9 the work. He said he talked to someone and heard
10 something might be coming up at Bald Head Island.
11 It kind of diminished from that point on. There
12 didn't seem to be any real lead.

13 Q. Did you ever discuss Bob Dively with
14 Mac Ingles?

15 A. Yes, we did. I mentioned that it was
16 unfortunate that the company had taken the track
17 that it had and that Bob was no longer associated
18 with Sea Technology and that I had had a very good
19 relationship with Bob and I felt like it was rather
20 tragic that the company had broken up because it
21 seemed to be a good company.

22 Q. Did Mac speak highly of Bob at that
23 point?

24 A. No, sir, he didn't.

25 Q. Tell me what he said.

J. Taylor - Cross

1 A. He indicated that the new company that
2 Mr. Dively now had, all the products that he
3 developed there would be properties of Sea
4 Technology because they were developed while
5 Mr. Dively worked for Sea Technology and with monies
6 from Sea Technology. He also indicated to me that
7 Mr. Dively had been found guilty of some felonies
8 and had been put in handcuffs and led away.

9 MR. BAYLISS: That's all I have.

10 CROSS-EXAMINATION

11 BY MR. BUGG:

12 Q. Mr. Taylor, do you see the black book
13 in front of you?

14 A. Yes, sir.

15 Q. Could you turn to Defendant's Exhibit
16 Number 66. That should be a check. Mr. Taylor, you
17 have in front of you a check, Number 778, dated June
18 12th, 1987 to KHD, Inc. in the amount of \$5,000?

19 A. Yes, sir.

20 Q. Did you write that check?

21 A. Yes, sir.

22 Q. And is Faye Taylor your wife?

23 A. Yes, sir.

24 Q. And Mrs. Taylor was buying stock in
25 KHD, Incorporated?

J. Taylor - Cross

1 A. That's correct.

2 Q. That was a small closely held
3 corporation that Mr. Dively started?

4 A. Correct.

5 Q. And owned by members of his family?

6 A. I don't know the answer to that. I
7 know it was a small corporation, closely held with
8 the idea in mind of developing products for
9 handicapped and that type of thing.

10 Q. Have you invested in other business
11 ventures of Mr. Dively's?

12 A. No, sir.

13 Q. Now, you furnished Mr. Dively with a
14 computer program to generate the layout for the
15 electrical systems in marinas for his pedestals,
16 haven't you?

17 A. No, sir. I've done some work with him
18 and helped him on some programs but I never
19 furnished him with a program to do that, no, sir.

20 Q. You worked with him on a number of
21 marina projects?

22 A. I helped him on some projects and he
23 helped me on some, yes.

24 Q. In fact, he referred work to you and
25 you referred work back to him?

J. Taylor - Cross

1 A. I have referred people to him as a
2 potential supplier of materials that he does because
3 he's always done a good job for me.

4 Q. But he has, in fact, referred work to
5 you also?

6 A. He has referred people to me as a
7 consultant in the business who can design marinas.

8 Q. In fact, he referred you Bald Head
9 Island, Indigo Plantation job, did he not?

10 A. No, sir, I don't think so.

11 Q. Turn to 68, Mr. Taylor.

12 A. It may be --

13 Q. 68A.

14 A. Okay. Do you have 68A in front of you?

15 A. Yes, sir, I sure do.

16 Q. And that's a memorandum on your
17 letterhead?

18 A. Yes, sir.

19 Q. And it refers to the project Bald Head
20 Island, Indigo Plantation?

21 A. That's correct.

22 Q. "Please confirm everything with Danny
23 Cutler. Sell directly to them as we discussed"?

24 A. That's correct.

25 Q. And it says at the bottom, "Bob, thanks

J. Taylor - Cross

1 for the referrals on work," and your initials?

2 A. Yes, sir.

3 Q. And you were thanking him for referring
4 work to you?

5 A. You asked specifically about Bald Head
6 Island and he had been referring people to me in the
7 southeast, and I don't know that he specifically
8 gave me a lead on Bald Head Island. I developed
9 Bald Head Island from Dot Manufacturer.

10 Q. Turn to Number 69 if you would, please,
11 Mr. Taylor. Mr. Taylor, do you have Number 69 in
12 front of you?

13 A. Yes, I do.

14 Q. That bill was for work done on the
15 Poole's Grant Marina, was it not?

16 A. I don't remember. It was for a marina
17 that we were working with Bob on. I don't know the
18 name of the marina right off.

19 Q. Do you remember that the marina was in
20 Hampton, Virginia?

21 A. I remember it was in Virginia.

22 Q. Do you remember it was in Hampton,
23 Virginia?

24 A. I don't remember that it was in
25 Hampton, Virginia. I remember it was in Virginia.

J. Taylor - Cross

1 Q. Do you remember it had 39 pedestals?

2 A. No, sir. I don't remember that.

3 Q. Do you remember when you sent this bill
4 with Mr. Ingles he got back with you and told you it
5 was for Poole's Grant, and you told him it was?

6 A. I may have. I don't remember. I may
7 have but I don't remember.

8 Q. Well, you are remembering a project
9 where Bob Dively was building a marina?

10 A. I remember Bob building a marina, yes.

11 Q. And that was in 1989?

12 A. I believe that's correct.

13 Q. In February, April, May, along in
14 there?

15 A. I don't remember that. I do remember
16 Bob was building a marina.

17 Q. In 1989?

18 A. I believe that's correct.

19 Q. And this was for work that you did for
20 Bob Dively in connection with designing and building
21 that marina?

22 A. This was for working with him I believe
23 in developing electrical drawings for the marina
24 power pedestals.

25 Q. Used in that marina?

J. Taylor - Cross

1 A. I would assume so, yes, sir. That's
2 what we were told.

3 Q. And that was the only marina that you
4 worked on with Bob Dively where he was building in
5 1989?

6 A. I believe that's correct.

7 Q. And you billed this bill to Sea
8 Technology because Mr. Dively told you to send the
9 bill to Sea Technology for the work on this marina?

10 A. I don't know that that's the case. It
11 may very well have been the case.

12 Q. Well, you were dealing with Mr. Dively,
13 weren't you?

14 A. That's correct.

15 Q. You weren't dealing with Mac Ingles,
16 were you?

17 A. No.

18 Q. Bob Dively didn't tell you to send the
19 bill to Marina Technology, did he?

20 A. I sent the bill to wherever Bob told me
21 to send it.

22 MR. BUGG: Thank you. I don't have
23 anything else. I move to admit 66, 68A and 69.

24 THE COURT: All three admitted as
25 defendant's exhibits, introduced and marked as

J. Taylor - Cross

1 defendant's exhibits according to the numbers he
2 assigned to them.

3 (The documents referred to were marked
4 by the Court as this Defendant's Exhibits 66, 68A
5 and 69, and received into evidence.)

6 THE COURT: Anything further?

7 MR. BUGG: Yes, Your Honor. One
8 further. Number 67, if you can refer to that.

9 MR. BAYLISS: Judge, we can either
10 approach the bench or -- I guess approach the
11 bench. This is the first time we've seen this.

12 (A conference was held at the bench.)

13 THE COURT: I'm not going to let that
14 in. You can argue all you want. It's not coming
15 in. I'm one of those judges that may be wrong but
16 I'm never in doubt.

17 MR. BUGG: I appreciate that. In light
18 of that I have no more questions.

19 MR. BAYLISS: No questions, Judge.

20 THE COURT: Any further need for
21 Mr. Taylor?

22 MR. BAYLISS: No, sir.

23 MR. BUGG: No, sir.

24 Would you mark 67 refused?

25 THE COURT: Mark it refused.

G. McAllister - Direct

1 MR. BAYLISS: Gary McAllister is the
2 next witness.

3
4 GARY McALLISTER, called as a witness by
5 and on behalf of the Plaintiff, having been first
6 duly sworn, was examined and testified as follows:

7
8 DIRECT EXAMINATION

9 BY MR. BAYLISS:

10 Q. Mr. McAllister, would you state your
11 name, please, for the record.

12 A. Gary McAllister.

13 Q. And your occupation, sir?

14 A. Real estate broker and developer.

15 Q. Your age?

16 A. 53.

17 Q. And by whom are you employed?

18 A. Myself.

19 Q. Real estate broker and developer, did
20 you develop a marina at one time?

21 A. Yes, sir.

22 Q. What was the name of that marina?

23 A. Poole's Grant Condominiums and Marina.

24 Q. Where was that marina located?

25 A. Hampton, Virginia on the Hampton River.

G. McAllister - Direct

1 Q. Was that done in a partnership?

2 A. Yes.

3 Q. Who were you partnerships?

4 A. The partner's name was Hampton Harbor
5 Associates.

6 Q. Who were the partners?

7 A. I was the managing general partner.

8 Q. Are you still involved in that
9 development?

10 A. Yes, I am.

11 Q. When you developed that project who
12 built it for you?

13 A. Well, there were a number of major
14 contracts let on that project. We were more or less
15 the general and we had condos built. We had marinas
16 built.

17 Q. Let me ask you this question: How did
18 you learn about Bob Dively?

19 A. Through a friend who had been my CPA
20 for 20 years, Robert L. Freeman, Sr.

21 Q. And as a result of learning from
22 Mr. Freeman about Dively what did you do?

23 A. I contacted Mr. Dively to see if he
24 would be interested in assisting me in building this
25 marina on this project.

G. McAllister - Direct

1 Q. Did you end up working out a deal with
2 him?

3 A. Yes, we did.

4 Q. Did you sign an agreement with him?

5 A. Yes, we did. We signed the agreement
6 with Marina Technology, Incorporated.

7 Q. Did you know the existence of Sea
8 Technology then?

9 A. Only by the nature of the information
10 we've been provided on the power pedestals that they
11 manufacture.

12 Q. What did you understand the business of
13 Marina Technology to be?

14 A. To build my marina.

15 Q. As a result of your discussions with
16 Dively, describe the contract for me that you
17 entered into with him.

18 A. Well, we entered into a turnkey
19 contract which I think the final price was \$296,000
20 to build a 72 slip marina.

21 Q. When you say turnkey, what do you mean?

22 A. Mr. Dively or Marina Technology was to
23 provide all the components of the marina, stick
24 building the boat slips, floating slips, floatation
25 systems, electrical, plumbing, power pedestals for

G. McAllister - Direct

1 boat hook-ups, lighting, everything pertaining to
2 the operation of that marina.

3 Q. There was a bottom line number?

4 A. Yes, sir.

5 Q. That number was?

6 A. \$296,000.

7 Q. Did you care about the components of
8 that number?

9 A. As far as payments, schedules and so
10 forth?

11 Q. How he got to the 296.

12 A. No, not really. We were satisfied with
13 the overall price.

14 Q. Did he, in fact, build the marina?

15 A. Yes, he did.

16 Q. And did he, in fact, supply power
17 pedestals?

18 A. Yes, he did.

19 Q. And they were Sea Technology power
20 pedestals?

21 A. Yes, sir, my understanding.

22 Q. Did there come a time when there was a
23 mechanic's lien filed against that project?

24 A. Yes.

25 Q. Could you tell us what you understood

G. McAllister - Direct

1 the mechanic's lien is and how it got filed?

2 A. Well, there were three mechanic's liens
3 filed. I'll go into the first mechanic's lien was
4 filed by Sea Technology.

5 Q. Sea Technology, Limited?

6 A. That's correct.

7 Q. Who signed that?

8 A. Vice president of Sea Technology was
9 Mac Ingles or McClanahan Ingles.

10 Q. Were there any other mechanic's liens
11 filed?

12 A. That one was petitioned and removed in
13 Circuit Court in Hampton. We filed a petition
14 against it and had it removed or prior to it
15 actually going into court Mr. Ingles removed it,
16 voluntarily removed that lien. Subsequent to that
17 within a matter of days a second lien was filed.

18 Q. By who?

19 A. By Sea Technology.

20 Q. Did you talk to him about that one? He
21 removed the first one and then he filed another
22 one.

23 A. The first one was for power pedestals
24 that were labeled for Sea Technology. The second
25 one was filed for electrical contracting work for

G. McAllister - Direct

1 Levinsky Electric, and the first lien was like
2 \$18,000 and some for pedestals and the second was
3 \$17,000 and some dollars for Levinsky Electric, an
4 electrical firm out of Norfolk who performed work
5 out in the marina.

6 Q. Did there come a time when a third lien
7 was filed?

8 A. Yes. The first was March 28th, '90,
9 the second was May 24th of '90, the third was May
10 25th of '90. The third lien was finally corrected.
11 The second lien was removed. I guess I should clear
12 that because the petition was filed by my counselor,
13 our attorneys, again, for Hampton Harbor Associates
14 asking to have the invalid lien removed and asking
15 for sanctions against Mr. Ingles.

16 Q. As a result of that was it removed?

17 A. It was removed. There were some
18 negotiations on that.

19 Q. So the first two liens filed by
20 Mr. Ingles were removed without payment of any
21 money?

22 A. That's correct. The third lien was
23 filed by Mr. Ingles representing Levinsky Electric
24 which was in proper order as far as who the
25 contractors and subcontractors and claimants were.

G. McAllister - Direct

1 That was for \$23,000 and some, and I got involved as
2 a general partner to negotiate that lien with the
3 electrical contractor in an attempt to get it
4 removed because this was creating a tremendous
5 burden, these mechanic's liens, on a development
6 that. We owed our lender about \$5 million on this
7 project.

8 We were not able to make construction
9 draws. We were having to put 125 percent of these
10 liens in an escrow account in order to get Lawyer's
11 Title so we could take construction draws to pay
12 other contractors.

13 Q. Let me show you the second lien that
14 you talked about and the Levinsky lien and ask you
15 if you can identify those as two of the three that
16 you were talking about?

17 A. This was the first lien filed. What
18 was improper about it, it went in the corporation as
19 a general contractor, had no relationship with
20 Hampton Harbor Associates on this lien.

21 Q. And that was signed by Mac Ingles?

22 A. That's correct.

23 Q. And then the Levinsky lien is next. Is
24 that a copy of the Levinsky lien?

25 A. Yes. Hampton Harbor is the general,

G. McAllister - Direct

1 Sea Technology and Marina Technology is the
2 subcontractor and Levinsky is the claimant. That
3 was the third lien filed.

4 MR. BAYLISS: I move to introduce those
5 two as Exhibit 35.

6 (The document referred to was marked by
7 the Court as Plaintiff's Exhibit 35, and received
8 into evidence.)

9 THE WITNESS: That's only two of the
10 three liens.

11 THE COURT: Are these two or all
12 three?

13 MR. BAYLISS: These are just two.

14 BY MR. BAYLISS:

15 Q. Now, you've got lien one and lien two
16 that Ingles signed and released and now Mr. Levinsky
17 has one and who represents Mr. Levinsky?

18 A. Mr. Ingles.

19 Q. And so he is suing again and this time
20 on behalf of Mr. Levinsky?

21 A. That's correct.

22 Q. Did there come a time there was a
23 hearing in the courthouse on this lien?

24 A. The hearing in the courthouse was on
25 lien number two when we had asked for sanctions and

G. McAllister - Direct

1 filed the petition against Mr. Ingles on the second
2 lien filed.

3 Q. Did you have occasion at that time to
4 have any discussion with Mr. Ingles where Bob Dively
5 was the subject of the conversation?

6 A. Yes. I had verbally requested
7 Mr. Dively be at that hearing that morning. He
8 didn't remember the date or for whatever reason he
9 wasn't there. It didn't really make that much
10 difference. When we were in Judge Overton's office
11 Judge Overton asked us to please retire to a
12 conference room and see if we could not resolve this
13 mechanic's lien and its removal thereof without
14 having to go through the court hearing.

15 Q. Was Dively at that?

16 A. No.

17 Q. Who was there?

18 A. One of my attorneys, myself, Mr. Ingles
19 and his attorney, at least one I believe.

20 Q. Who was his attorney?

21 A. I don't recall.

22 Q. Was it Breck Ingles?

23 A. No.

24 Q. Did you-all retire and try to resolve
25 it?

G. McAllister - Direct

1 A. Yes. We started discussing the
2 mechanic's lien and the situation and what his
3 concerns were even though Sea Technology had nothing
4 to do with Levinsky Electric. As far as I was
5 concerned Hampton Harbor didn't either. We were in
6 a position to try to clear our title on the property
7 and the conversation got into several things, number
8 one, about Mr. Dively.

9 Q. We'll get into what he said about
10 Mr. Dively in a second. When did this occur?

11 A. I believe that hearing was June the 7th
12 of '90.

13 Q. Tell me, sir, to the best of your
14 recollection what he said about Mr. Dively. I know
15 some of these words regarding --

16 THE COURT: Use the language he used,
17 sir, whatever it is.

18 THE WITNESS: In elaborating about
19 Mr. Dively he said he was a slimeball piece of shit,
20 said he was a thief, an embezzler and had used his
21 labor and materials from Sea Technology to build my
22 marina and that I would find out if I continued to
23 do business with him what kind of business he did
24 and that he was going to put him away.

25 BY MR. BAYLISS:

G. McAllister - Cross

1 Q. In that meeting your lawyer -- was your
2 lawyer there?

3 A. Yes.

4 Q. And his lawyer was there?

5 A. That's correct.

6 MR. BAYLISS: That's all I have.

7 THE COURT: We already have a 35 so
8 this will be 36.

9 (The document previously marked by the
10 Court as Plaintiff's Exhibit 35 was remarked as
11 Plaintiff's Exhibit 36, and received into evidence.)

12 CROSS-EXAMINATION

13 BY MR. RUSSELL:

14 Q. Good afternoon, sir. In talking about
15 the contract that Poole's Grant had with Marina
16 Technology, Inc. you represented the owner, the
17 general contractor, correct?

18 A. Yes, sir. The project's name was
19 Poole's Grant. The entity is Hampton Harbor
20 Associates, a Limited Partnership. That's who the
21 contract entity was on our part with Marina
22 Technology, Incorporated.

23 Q. Just so the jury can get the players
24 right here. You are the limited partnership?

25 A. That's correct.

G. McAllister - Cross

1 Q. Mr. Dively, Marina Technology, Inc.,
2 they were going to be the general contractor to
3 build the marina?

4 A. That's correct.

5 Q. And when he gave you a proposal you
6 knew that Sea Technology was going to supply the
7 dock side or power pedestals?

8 A. I assume that's who the power pedestals
9 would be. That's the brochure I had seen. That's
10 what I expected to get on my marina, the power
11 pedestal or equal. The power pedestals were a small
12 component of the total marina.

13 Q. There's a book in front of you. If you
14 could please flip to Tab Number 23. There's 23 and
15 23A and so forth. It's a proposal.

16 A. The original proposal.

17 Q. This is the original proposal. It's
18 given to you by Mr. Dively and Item Number 9, part
19 of his contract with you was he was going to install
20 40 Sea Technology Docksidiers with power and water
21 and meters, paren, see brochure?

22 A. Yes, sir.

23 Q. And if you flip over to the second
24 page, the contract was that you were going to pay
25 him draws on certain dates?

G. McAllister - Cross

1 A. That's correct.

2 Q. Now, will you flip over to 23A, little
3 Tab 23A, until you get to the March 7 draw request.
4 Do you have that in front of you?

5 A. Yes, sir.

6 Q. Now, Mr. Dively submitted you a draw
7 request and he wanted his first payment of \$65,000
8 and this was dated March 7, 1989?

9 A. Correct.

10 Q. At the bottom it has what's called a
11 lien waiver?

12 A. Uh-huh.

13 Q. Can you explain to the jury what a lien
14 waiver is and why it was important to you?

15 A. Well, the lien waiver certifies to the
16 developer, the owner, that the payment of bills or
17 invoices -- certifies that they have been paid by
18 the general contractor.

19 Q. So on this draw request he has listed a
20 couple of things that he's done and Number 7 is he
21 is certifying to you that he has ordered Sea
22 Technology Docksidars with 25 percent down for
23 \$9,500, correct?

24 A. Yes, sir. That's fine.

25 Q. When this thing is signed under oath

G. McAllister - Cross

1 you naturally assumed he paid that bill, correct?

2 A. I assumed that he had. I assumed that
3 I had been released from the lien. It was
4 irrelevant to me whether he paid that bill or not
5 because he was president of Sea Technology, and as I
6 understood owned half of Sea Technology and whatever
7 he wanted to do with his company was up to him.

8 Q. So you assumed any deal between him and
9 Sea Technology had been taken care of?

10 A. Certainly did, and so did my bank and
11 attorneys until this thing came up.

12 Q. And the 25 percent down that he has
13 written here you-all assumed that was a deposit,
14 correct?

15 A. Well, I think you need to have some
16 clarification on this initial draw if you would like
17 to hear it.

18 Q. Let me ask you first, sir, when you saw
19 25 percent down, the words written on here, you-all
20 assumed that was a deposit to get with the pedestals
21 ordered, correct?

22 A. Sure.

23 Q. And if you flip to the next page,
24 that's your \$65,000 check, you paid him?

25 A. That's correct.

G. McAllister - Cross

1 Q. Sir, could you flip to 23B. Now,
2 here's another draw request dated May 9, 1989 and
3 item seven, can you read that for me?

4 A. It shows the first draw was \$9,500, on
5 site paid \$39,710, amount due and owing zero.

6 Q. What's it for?

7 A. Order Sea Technology Docksiders.

8 Q. And \$9,500, that was the amount you
9 paid him for the first draw out of that?

10 A. That's correct.

11 Q. And on site paid, what did that mean to
12 you?

13 A. That would have been if the Docksiders
14 had been delivered onto the site and paid for, where
15 I had paid for them, but that was part of my
16 contract, that I would pay on-site material even if
17 it hadn't been installed.

18 Q. And the dock side or pedestals they
19 were on site, weren't they?

20 A. Yes.

21 Q. In fact, they were there about six
22 months before they were installed, weren't they?

23 A. I would say they were in the trailers
24 or something.

25 Q. They were sitting in a trailer?

1 A. Tractor-trailer, yes, sir.

2 Q. Now, the total amount Marina Technology
3 was charging you under this contract for the Sea
4 Technology Docksider pedestals was \$39,710, that was
5 the line item, correct?

6 A. Okay. Yes. That's what it called for.

7 Q. And if you flip to the second page,
8 there's another lien waiver which certifies to you
9 he had taken care of it however he was supposed to
10 take care of it with Sea Technology, he had taken
11 care of it?

12 A. That's correct.

13 Q. And you relied on that and that's why
14 you paid him his money?

15 A. That's correct.

16 Q. Now, Mike Levinsky was an electrician
17 and he worked down there at Poole's Grant, too,
18 correct?

19 A. That's correct.

20 Q. And he was working under Mr. Dively, he
21 was a subcontractor, right?

22 A. That's correct.

23 Q. Now, Mr. Dively also certified to you
24 in these draw requests that he had paid and taken
25 care of Mr. Levinsky, hadn't he, gotten a lien

G. McAllister - Cross

1 waiver for Mr. Levinsky?

2 A. No, because a tremendous amount of
3 electrical work done on this marina was done by
4 Mr. Dively and Marina Technology prior to
5 Mr. Levinsky getting involved.

6 Q. Did you really expect -- you thought
7 that Mr. Levinsky was paid, didn't you? That was up
8 to Mr. Dively to take care of that?

9 A. That's correct. We pay our general.
10 It's up to the general to pay them. He signs off to
11 me, so I feel I'm protected. That's supposed to be
12 the system.

13 Q. You want a lien waiver so there's no
14 comebacks to you?

15 A. That's correct.

16 Q. And Mr. Levinsky was one of his
17 subcontractors, the electrician?

18 A. That's correct, yes.

19 Q. One of the main reasons you entered
20 into this contract with Mr. Dively was because you
21 liked the Sea Technology Dockside pedestals,
22 correct?

23 A. Not only that, I liked the marina that
24 Mr. Dively had built previously in the area.

25 Q. And that was Willoughby Harbor. But

G. McAllister - Cross

1 you wanted to use the Sea Technology pedestals?

2 A. It was one of the better power
3 pedestals that I had seen.

4 Q. It turned out despite the lien waivers
5 and despite the fact you paid your general
6 contractor under the contract, it turned out
7 Mr. Levinsky hadn't been paid, had he?

8 A. Apparently not.

9 Q. And as a matter of fact, Mr. Dively was
10 refusing to pay him, wasn't he?

11 A. I don't know that they were refusing to
12 pay him. The reason I know this is because I had to
13 get involved in the negotiations to try to resolve
14 this lien.

15 Q. Exactly, and you didn't want to get
16 involved?

17 THE COURT: Let him finish.

18 THE WITNESS: So there was a dispute
19 involved between what Mr. Levinsky apparently told
20 Mr. Dively, told him it would cost to do the
21 electrical work, versus the amount of the
22 mechanic's -- as a matter of fact, three times as
23 much, \$7,500 instead of \$23,000, which ended up
24 settling for \$18,500 and some dollars. Mr. Dively
25 paid. I paid Mr. Levinsky \$13,000 as an offset of

G. McAllister - Cross

1 Marina Technology and gave Mr. Levinsky a promissory
2 note for \$3,500 which was also an offset for
3 Mr. Dively's contract. I also had to pay \$5,500 in
4 lawyers' fees.

5 THE COURT: You are going into a long
6 line of time and so on. The main reason this man is
7 here is obviously about the conversation he had
8 about Ingles. What's all this other got to do with
9 it?

10 MR. RUSSELL: Because Mr. Levinsky who
11 is working down there is sending his bills for Sea
12 Technology. Mr. Levinsky was trying to bill Sea
13 Technology and our contention before this jury is
14 that Mr. Dively was exactly what Mr. Ingles accused
15 him of, a thief.

16 MR. BAYLISS: I ask to strike that. He
17 was tried and --

18 THE COURT: You absolutely ignore that
19 statement. Please put that out of your mind. That
20 has no bearing on this for a lawyer to make a
21 statement like that, and I admonish you,
22 Mr. Russell, for making a statement of that nature.

23 MR. RUSSELL: Your Honor, it is
24 relevant for that reason.

25 THE COURT: It may be relevant, but

G. McAllister - Cross

1 statements of that nature are not relevant, not in
2 this court. Go ahead.

3 BY MR. RUSSELL:

4 Q. You had paid Mr. Dively everything you
5 were supposed to pay him under the contract,
6 correct, sir?

7 A. Not at the time.

8 Q. You didn't want to get involved in
9 paying Mr. Levinsky any money, you assumed that was
10 Mr. Dively's responsibility, correct?

11 A. Didn't want to, but I had to, but it
12 wasn't my money I was paying Mr. Levinsky. It was
13 Mr. Dively's money I was paying Mr. Levinsky.

14 Q. You got that back from Mr. Dively?

15 A. I was doing an offset. I still owed
16 him money fortunately or unfortunately for him that
17 we still owed money on the marina. But I could not
18 meet Mr. Levinsky's demand nor Mr. Ingles' demand
19 nor the amount they claimed because Mr. Dively did
20 not agree that that was the amount he owed;
21 therefore, I couldn't just pay Mr. Levinsky and
22 offset it because he could have turned around and --
23 Mr. Dively could have turned around and filed a
24 mechanic's lien against me or a judgment and
25 enforced it.

G. McAllister - Cross

1 Q. And despite the lien waivers that you
2 had under oath it turns out Mr. Levinsky hasn't been
3 paid?

4 MR. BAYLISS: He's asked and answered
5 four times.

6 THE COURT: Yes, he has. Come on,
7 Mr. Russell, if you can't do any better than that
8 get on to something else.

9 MR. RUSSELL: I would like to move in
10 23, 23A and 23B.

11 THE COURT: 23, 23A and 23B are
12 introduced and marked as defendant's exhibits as
13 such.

14 (The documents referred to were marked
15 by the Court as Defendant's Exhibits 23, 23A and
16 23B, and received into evidence.)

17 MR. BAYLISS: No other questions,
18 Judge.

19 THE COURT: Any further need for
20 Mr. McAllister?

21 MR. BAYLISS: No, sir.

22 MR. BUGG: No, sir.

23 MR. RUSSELL: Could we call Mr. Randy
24 Ward out of turn?

25 MR. BAYLISS: Could we take a five

G. Ward - Direct

1 customers that have dealt with Mr. Dively?

2 A. Yes, sir.

3 Q. You talked to competitors in the field.
4 who compete with Mr. Dively?

5 A. Yes, sir.

6 Q. You know of your personal observation
7 of items in the field Mr. Dively has put out there?

8 A. Yes, sir.

9 Q. And you've done that for 12 years?

10 A. Yes, sir.

11 MR. RUSSELL: Foundation has been --

12 THE COURT: Let him answer.

13 MR. BAYLISS: I do object, Your Honor.

14 BY MR. RUSSELL:

15 Q. What's Mr. Dively's reputation in the
16 marine industry field for telling the truth?

17 MR. BAYLISS: I've got to object to
18 that. He's talked to two people. The marine
19 industry is worldwide and he is sitting here and
20 said two people plus Trump's and now he's going to
21 give this man's reputation for telling the truth in
22 the marine industry.

23 THE COURT: Has the man ever lied to
24 you?

25 THE WITNESS: No, sir.

A. Brooks - Direct

1 ALSTON BROOKS, called as a witness by
2 and on behalf of the Plaintiff, having been first
3 duly sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. BAYLISS:

7 Q. Mr. Brooks, would you state your name
8 and your occupation?

9 A. Alston G. Brooks. I'm production
10 manager for Innovative Marine.

11 Q. And do you work with Bob Dively?

12 A. Yes, I do.

13 Q. How old are you, sir?

14 A. 29.

15 Q. And where are you from?

16 A. Originally from Jamaica, but I was
17 raised in New Jersey.

18 Q. And you've been here most of your life?

19 A. Correct.

20 Q. When did you first meet Bob Dively?

21 A. Back in April of 1984.

22 Q. What were you doing before you met Bob
23 Dively?

24 A. I was a student at a technical
25 institute in Pittsburgh.

A. Brooks - Direct

1 Q. What are your skills, sir? What's your
2 general work that you've done with Bob Dively?

3 A. When I first started with Bob Dively I
4 started as a draftsman and when that job ran out I
5 supervised the completion of Willoughby Harbor,
6 building the marina there.

7 Q. By whom were you employed back in
8 early -- in the '84 time frame?

9 A. For Lower Chesapeake Associates.

10 Q. Who was that?

11 A. That was a company that Mac Ingles
12 owned and they developed -- well, financed and built
13 Willoughby Harbor back in '84, '85.

14 Q. Who paid your salary?

15 A. Lower Chesapeake Associates.

16 Q. Did Bob Dively have an interest in
17 Lower Chesapeake Associates?

18 A. I have no idea.

19 Q. So you worked for Mac Ingles?

20 A. Yes.

21 Q. Did there come a time when that evolved
22 into a relationship with Sea Technology?

23 A. Yes. At that time back in '85 --
24 actually '84, '85 we needed to develop a power
25 pedestal for the marina. It's shore power to hook

A. Brooks - Direct

1 up for boats and all that, and back in say the first
2 part of '85 we needed a power pedestal for the
3 marina, so Bob designed and developed a power
4 pedestal for that particular marina and that's how
5 Sea Technology came about, with that particular
6 power pedestal.

7 Q. Now, tell me what you did between 1984
8 and 1989, just give me a general evolution.

9 A. Well, I worked for Willoughby Harbor
10 and then I went to work for Sea Technology back in
11 '86, April of '86 full-time, and I worked up till
12 1989 -- actually I worked until like '90 -- no. In
13 1990 I resigned from Sea Technology and between that
14 time frame and 1990 I was a production manager at
15 Sea Technology.

16 Q. When you say production manager what
17 were your job duties?

18 A. My job duties was to make sure any work
19 orders that came in was filled, building the
20 pedestals, just mainly production work.

21 Q. Tell me, just describe the production
22 procedure for the power pedestal.

23 A. Basically it consists of parts coming
24 in, housings that were developed from another
25 manufacturer and we would place those housings

A. Brooks - Direct

1 together. We would insert the receptacles,
2 breakers, phone, cable T.V., water, and any
3 particular special design that might need to be done
4 on the power pedestal.

5 Q. Was it complicated?

6 A. No. There wasn't any complication to
7 it at all because everyone has their own job to do,
8 and, for instance, it might take one person maybe
9 ten minutes to put maybe 20 or 30 receptacles in the
10 face plate and another person would insert the face
11 plate into the power pedestal itself and that would
12 take about five minutes or so, and it was an easy
13 process because everyone had one particular step
14 which would take them each about 10 to 15 minutes to
15 do.

16 Q. Where did you get the molds? Tell me
17 about how you got the pedestal there, the things
18 that you put into it. We don't have one here.

19 A. The parts that we get are mainly from
20 Graybar Electric.

21 Q. Not the parts that go into it, the
22 pedestal itself.

23 A. The pedestal was designed --

24 Q. Did you manufacture that at Sea
25 Technology?

A. Brooks - Direct

1 A. No, not the pedestal. At first we did
2 manufacture the pedestal at Sea Technology out of
3 fiberglass and then back in '85, '86 I believe we
4 went to Lexan molded material. It's a plastic
5 injection molded material and we got that from
6 Structural Foam. That's in New Jersey and they
7 supplied the halves, the base, and we assembled the
8 units after that.

9 Q. Was that a patented item, the Sea
10 Technology power pedestal to your knowledge?

11 A. To my knowledge it was a patented
12 product, yes.

13 Q. Now, did -- was there ever a time when
14 Sea Technology manufactured a dock box or did
15 somebody else manufacture a dock box?

16 A. Well, we got dock boxes from a variety
17 of competitors, or not competitors but people who
18 make dock boxes and we would just maybe cut the
19 sides out and add our own features onto the dock
20 box. For one instance we bought a dock box and we
21 made a top for it and we inserted power pedestal,
22 power receptacles, phone, cable T.V. and water into
23 the dock box.

24 Q. What's the difference between dock box
25 and power pedestal?

A. Brooks - Direct

1 A. The power pedestal is for shore power
2 hook-up only and the dock box is mainly a storage
3 with shore power hook-up.

4 Q. Did you know of the existence of a
5 company named Marina Technology during this period
6 of time, '86 when you were working with Sea
7 Technology, '86 through 1990?

8 A. When we were working I would say back
9 in '89 or so we were having problems paying our
10 bills and all that.

11 Q. Who is we?

12 A. Sea Technology. Anyway, we were laid
13 off back in '89. Before let me explain this.
14 Before that we were having problems a little bit
15 here and there because we couldn't complete most of
16 our work orders that were in-house because we didn't
17 have enough parts, and then at the end of '89 we
18 were laid off for a period of two weeks. Then we
19 came back and Mr. Dively told me that there might be
20 a possibility that we might be laid off again
21 because we didn't have any work but we had some
22 products that we could develop, the power dock box
23 that he designed.

24 Before that back in -- before '89, not
25 before '89 but between April and December of '89, we

A. Brooks - Direct

1 were working down in Poole's Grant for I would say
2 like maybe four or five hours a day. We would go
3 down there from 4:00 until dusk.

4 Q. Who were you working for at Poole's
5 Grant?

6 A. Marina Technology. We worked
7 part-time.

8 Q. Were you working during business hours
9 of Sea Technology?

10 A. We worked at Sea Technology -- we
11 worked for eight hours at Sea Technology, until
12 3:30, and then we leave from Sea Technology to
13 Poole's Grant and we worked for about -- no. We
14 traveled for about a half hour and get to Poole's
15 Grant at 4:00 and we worked from 4:00 until let's
16 say 8:30 or so, 8:00.

17 Q. Anybody try to hide this back then?

18 A. No. Well, I had four Sea Technology
19 employees who went down there with me.

20 Q. During that period of time Marina
21 Technology was building Poole's Grant, April through
22 December of 1989, were you also working for Mac
23 Ingles on the side?

24 A. Well, we did like, for instance, when
25 the Willoughby Harbor needed some items replaced in

A. Brooks - Direct

1 the pedestals I took maybe two or three people down
2 there and replaced bulbs and we fixed the water
3 fittings that might have been broken from the
4 boaters and all that, and there was an instance
5 where I had two or three other guys where we went
6 down to the break water and we would replace some
7 pile rings and pile rods and all that and we worked
8 maybe around four or five hours down there.

9 Q. Now, did you do any work for Mac in his
10 home?

11 A. I went down there a couple of times and
12 we -- just me, myself, actually. I was on his boat
13 and I sometimes might retrieve his boat -- well, at
14 one time I retrieved his boat during a storm.

15 Q. Up in the 1990 time frame you talked
16 about the dock box product that Bob Dively had
17 developed. Did there come a time when you were
18 working on the dock box in that 1990 time frame?

19 A. Yes.

20 Q. Tell me about that and what kind of
21 accounting records you kept and why you kept them.

22 A. When we -- as I was explaining to you
23 before, we were laid off and we came back after two
24 weeks of being laid off. We didn't have anything to
25 do but Bob Dively offered us an opportunity where we

A. Brooks - Direct

1 could work up to a period of time until Sea
2 Technology started to get some parts in to fill some
3 of the orders that were in there, but also there
4 wasn't any orders as well. Anyway, I was told by
5 Bob before we started the dock boxes to keep a
6 record of man-hours, parts being used and the amount
7 of paint and all that being used on the dock box
8 itself. There was two orders that were in-house
9 prior before we left, Shark Island and Dock of the
10 Bay. Shark Island consisted of dual 50s units which
11 weren't very complicated to do or keep track after
12 partwise, so I wrote down what we did and all that.
13 I handed it to Jane and she was supposed to invoice
14 Marina Technology for this.

15 During that time of doing the dock
16 boxes I had maybe three or four people working on
17 the dock boxes and three or four people working on
18 Sea Technology power pedestals at that time, and we
19 kept everything separated because it's fairly simple
20 because I had only like maybe six people, seven
21 people working at that time. At one time Bob had --
22 he came out there and asked me for man-hours being
23 used on the dock docks and parts being used on the
24 dock box so basically everything was kept separate.

25 For one instance, when I delivered some

A. Brooks - Direct

1 units down at Shark Island I was kind of really
2 worried because what happened was I delivered the
3 units and I got a check for these dock boxes. I
4 came back and the check was written out to Sea
5 Technology, so I said, okay, before Bob came back,
6 before I got my butt chewed, pardon my French, I
7 called Shark Island, Mr. Hoffman down there, and I
8 asked him if he could rewrite a check to Marina
9 Technology and he said no. I'm not going to do
10 that. I was kind of a little worried, so I waited
11 until Bob got back from a boat show and explained to
12 him what happened and he said that he would take
13 care of it. The reason why I'm saying that is he
14 made sure that everything was separate. I had to
15 make sure that everything was separated.

16 Q. Did you ever destroy any records when
17 you tried to make sure everything was separated?

18 A. No.

19 Q. Was it difficult to keep those things
20 separated?

21 A. No, because there were only two orders
22 in. Shark Island was a dual 50 unit.

23 Q. How many at Shark Island, 14?

24 A. 14.

25 Q. And Dock of the Bay how many?

A. Brooks - Direct

1 A. There was about maybe 15 or 20, I can't
2 recall.

3 Q. So you had to keep it separate for 30
4 or 40 different dock boxes?

5 A. Right.

6 Q. During that whole time?

7 A. Right.

8 Q. What did you do with the accounting
9 information that you kept?

10 A. I gave it to Jane to invoice Marina
11 Technology.

12 Q. Did there ever come a time during this
13 period, and we're talking January, February, March,
14 1990, when you hid any dock boxes?

15 A. No.

16 Q. Was there ever any reason for you to
17 hide any dock boxes?

18 A. No.

19 Q. Did you ever discuss the dock boxes
20 with all the employees at Sea Technology?

21 A. The discussion meaning the only type of
22 discussion I would do is explain to them how to put
23 the dock boxes together. Every one knew there was a
24 dock box there.

25 Q. Now, during the time frame '86 to 1990

A. Brooks - Direct

1 was Mr. Ingles there on a regular basis?

2 A. I would see Mr. Ingles maybe every
3 other month or so.

4 Q. Did there come a time in December,
5 January, February, March that you saw him more
6 before Bob left?

7 A. No.

8 Q. Did you ever see a change in his habits
9 before Bob left?

10 A. No.

11 Q. Did there come a time when you learned
12 that Bob was going to leave Sea Technology?

13 A. Yes. When he called me into his office
14 back in April and told me that he was going to be
15 leaving I was kind of a little worried because I
16 didn't know where I stood. He was kind of really
17 pissed off about what's been going on with Sea
18 Technology, and it seems to me I felt as if I wasn't
19 involved, that it wasn't looking out for me.

20 MR. BUGG: This witness is starting to
21 give his impressions and conclusions. If he can
22 confine himself to the facts I think it would be
23 proper.

24 THE COURT: I think so, too. Stick to
25 the facts, Mr. Brooks, and not your opinions.

A. Brooks - Direct

1 THE WITNESS: When Bob Dively left he
2 told me to get all his personal belongings, his
3 tools.

4 BY MR. BAYLISS:

5 Q. Let me go back one second before you
6 get into that. When did -- you mentioned April.
7 Bob left in March of 1990?

8 A. Oh, yes, yes. I'm sorry. It's been
9 two years.

10 Q. Did he have a conversation with you
11 before he left or after he left?

12 A. Before he left.

13 Q. So we've already established -- I'm
14 just helping you chronologically. Before we get
15 into that part of it, did you discuss any job
16 opportunities with Bob during that conversation?

17 A. No.

18 Q. Who were you working for at that point?

19 A. Sea Technology.

20 Q. Tell me what Bob told you.

21 MR. BUGG: About what?

22 THE COURT: Mr. Bugg, I am assuming he
23 is going to talk about the time that Mr. Dively told
24 him he was going to leave the corporation.

25 MR. BUGG: I would think if Mr. Dively

A. Brooks - Direct

1 said any self-serving statement this witness would
2 put in would be inadmissible.

3 THE COURT: We can let Mr. Dively
4 testify and bring Mr. Brooks back to verify it. Or
5 let Mr. Brooks say it and Mr. Dively verify it.

6 MR. BUGG: He can say it.

7 BY MR. BAYLISS:

8 Q. During that conversation when you
9 learned he was leaving what did he tell you at that
10 point?

11 A. At that time he told me to get all his
12 personal belongings together and put it on the truck
13 so he can have them. So what I did was I went out
14 there --

15 Q. Before you tell me what you did, did he
16 tell you what his personal belongings were?

17 A. No. I knew.

18 Q. He just said personal belongings?

19 A. His personal belongings meaning all his
20 tools that he brought from home and anything that he
21 bought personally. I knew what they were because I
22 worked for him for at that time six years.

23 Q. So what did you do when he told you to
24 do that?

25 A. What I did was I went to the employees,

A. Brooks - Direct

1 told them what particular items to get, band saws,
2 table saws, hand saws and all of Marina Technology's
3 belongings, the housings, the tops, the lids and all
4 that and anything that Marina Technology had paid
5 for, meaning receptacles, breakers, face plates and
6 so forth.

7 Q. Did Mr. Dively oversee that or did you
8 oversee it?

9 A. I oversaw it.

10 Q. What did you do with it once you told
11 them what to pick up?

12 A. I told the workers to put it on the
13 truck and deliver it to Williamsburg, in Busch
14 Corporate Center.

15 Q. In Williamsburg is what?

16 A. M-Tech.

17 Q. And what was M-Tech?

18 A. Marina Technology.

19 Q. Now, once you got the equipment there
20 that you just described what did you do with it?

21 A. After the truck got to M-Tech? Well, I
22 just told the workers -- Bob gave one of the workers
23 a key and they placed it inside the building and
24 they came back for one more truckload, his furniture
25 and all his stuff out of the office, his plants and

A. Brooks - Direct

1 so forth.

2 Q. Now, there came a time when Mr. Dively
3 was indicted for among other things taking
4 equipment. There were two counts. You are familiar
5 with that, aren't you?

6 A. Yes, I am.

7 Q. Did there come a time when you were
8 interviewed by a police investigator about that
9 equipment?

10 A. Yes.

11 Q. Who was it?

12 A. Mr. Colton.

13 Q. Officer Colton?

14 A. Yes, sir.

15 Q. Did you tell him the same thing?

16 A. I told him the same thing I told you.

17 Q. Did you tell Officer Colton anything
18 about Poole's Grant?

19 A. I believe he asked me that question.

20 Q. Did you tell him about you working
21 there?

22 A. Oh, I told him -- he asked me about my
23 the time that I worked down at Poole's Grant, and I
24 explained to him what everyone -- there were four
25 workers that I took down there -- did and what time

A. Brooks - Direct

1 we went down there.

2 Q. Did you discuss with Officer Colton
3 anything about your accounting that you told us
4 about Shark Island and Dock of the Bay?

5 A. It's been two years. I can't -- when I
6 talked to Officer Colton it was about maybe 20, 30
7 minutes or so.

8 Q. Would you turn in the exhibit book to
9 Exhibit 15, Plaintiff's Exhibit 15. Have you seen
10 these before?

11 A. Yes. This is Bob's handwriting. We
12 were going over man-hours and parts used on Shark
13 Island and Dock of the Bay and he was just
14 writing --

15 Q. This is information you provided him on
16 Shark Island and Dock of the Bay?

17 MR. BUGG: Leading the witness.

18 THE COURT: Please don't lead the
19 witness, Mr. Bayliss.

20 BY MR. BAYLISS:

21 Q. Let me ask you before you turn the
22 page, look at the first page. Is that information
23 accurate to the best of your recollection?

24 A. Yes, it is.

25 Q. In the hopes of speeding this along and

A. Brooks - Direct

1 not leading you, the top of it it says 29 pedestals
2 at \$275, what was that related to? Which job was
3 that?

4 A. That was Poole's Grant -- no. That was
5 Dock of the Bay.

6 Q. And then the bottom down there you have
7 Shark Island?

8 A. Yes.

9 MR. BAYLISS: I would move to introduce
10 those.

11 MR. BUGG: That's okay, I don't have
12 any objection.

13 THE COURT: No problem, right?

14 MR. BUGG: Right.

15 THE COURT: Introduced and marked as
16 Plaintiff's Exhibit Number 15.

17 (The document referred to was marked by
18 the Court as Plaintiff's Exhibit 15, and received
19 into evidence.)

20 BY MR. BAYLISS:

21 Q. The Pelican Harbor, are you familiar
22 with Pelican Harbor, that order?

23 A. Yes.

24 Q. That was an order filled by whom, Sea
25 Technology or Marina Technology?

A. Brooks - Cross

1 A. Marina Technology.

2 Q. And when did that occur?

3 A. That was end of May -- no -- end of
4 April.

5 Q. Was it before or after Bob had left?

6 A. Before -- after Bob Dively left.

7 Q. Was it before or after Bob had left Sea
8 Technology?

9 A. After.

10 Q. And what was Pelican Harbor?

11 A. What was it?

12 Q. What kind of job was it?

13 A. It was for dock boxes.

14 MR. BAYLISS: Judge, I think that's all
15 I have.

16 THE COURT: Cross-examine, Mr. Bugg?

17 CROSS-EXAMINATION

18 BY MR. BUGG:

19 Q. Mr. Brooks, if you could get Exhibit 15
20 back in front of you, those notes you said were in
21 Mr. Dively's handwriting?

22 A. Right.

23 Q. You and Mr. Dively sat down and went
24 over this together?

25 A. Yes.

A. Brooks - Cross

1 at Poole's Grant.

2 Q. There was a time he was working regular
3 hours at Sea Tech and off-hours at Poole's Grant?

4 A. Regular hours meaning he was a
5 part-time worker at Sea Technology.

6 Q. Now, it's my understanding that the
7 first you knew about this dock box was in December
8 of 1989?

9 A. Yes, when I went to Bob's house and I
10 saw this dock box that he was building. It was
11 actually a mold.

12 Q. And you had never worked on a dock box
13 before then?

14 A. Yes. I worked on -- we worked on
15 numerous dock boxes.

16 Q. That dock box?

17 A. No.

18 Q. And you were in charge of assembling
19 the dock boxes in the back?

20 A. Yes.

21 Q. And to assemble those dock boxes you
22 used screws and wire out of Sea Technology
23 inventory?

24 A. Yeah.

25 Q. And you used the face plates from the

A. Brooks - Cross

1 mold that also went on the dock side or pedestal,
2 didn't you?

3 A. Correct.

4 Q. And they were from Sea Technology
5 inventory?

6 A. Correct. You already asked me that
7 before.

8 Q. And Bob told you to keep a record and
9 write it down every day, here are the people who
10 worked on the dock box and how many hours?

11 A. Right.

12 Q. Here are the parts that were used on
13 the dock box and how many, correct?

14 A. Correct.

15 Q. And you kept that record meticulously,
16 carefully, every day?

17 A. Correct.

18 Q. And you decided who worked on the
19 boxes, didn't you?

20 A. Yes.

21 Q. And those ledger sheets that we're
22 talking about where you kept track of the labor and
23 materials on the dock boxes --

24 A. Can I explain something?

25 THE COURT: I'll let him say

A. Brooks - Cross

1 something.

2 THE WITNESS: The dock boxes and the
3 power pedestals are two completely different things
4 as we all know. I kept track of the majority of the
5 work being used on the dock box. All the parts
6 and -- let's take, for instance, receptacles,
7 breakers, screws and so forth that we used and wire,
8 it's a standard number of pieces and parts being
9 used in these dock boxes. So all you need to do is
10 times those amounts times the amount of the items
11 that were used. Man-hours, it's easy enough because
12 I had four people working on those dock boxes.

13 BY MR. BUGG:

14 Q. I understand it's simple but every day
15 you wrote it down?

16 A. Yes.

17 Q. And you gave those sheets to Jane
18 Hogge?

19 A. Yes.

20 Q. And you haven't seen them since?

21 A. No. There's a couple of days where I
22 just gave it to her verbally.

23 Q. But most of the time over those several
24 months building dock boxes you gave her the written
25 summaries?

A. Brooks - Cross

1 Q. And you continue to work for
2 Mr. Dively?

3 A. Yes.

4 Q. You work for him now?

5 A. Yes.

6 Q. You work for him at Marina Technology?

7 A. Yes.

8 Q. You worked for him when it became
9 M-Tech?

10 A. Yes.

11 Q. And what's it called now?

12 A. Innovative Marine.

13 Q. Let's talk about these tools. He told
14 you that Friday morning he was leaving, to go back
15 there and get his personal tools?

16 A. Get all his personal tools and anything
17 that belonged to Marina Technology.

18 Q. But he didn't tell you what to take?

19 A. No, because I knew what tools was his
20 and what was Sea Technology's.

21 Q. And you knew what was his because he
22 told you he had paid for it?

23 A. Because I saw him bring it in. They
24 were used. They weren't new products or -- like,
25 for instance, the band saw or table saw or any tools

F. Cox - Direct

1 with her?

2 THE COURT: Here he is.

3
4 FRIEDA COX, called as a witness by and
5 on behalf of the Plaintiff, having been first duly
6 sworn, was examined and testified as follows:

7
8 DIRECT EXAMINATION

9 BY MR. BAYLISS:

10 Q. Would you please state your name for
11 the jury.

12 A. Frieda Cox.

13 Q. And your occupation?

14 A. I'm a homemaker.

15 Q. And how old are you?

16 A. 39.

17 Q. Where do you reside?

18 A. In Gloucester.

19 Q. You at one time worked with Sea
20 Technology?

21 A. Yes.

22 Q. Could you tell the Court what you did
23 for Sea Technology when you were there and what your
24 job duties were?

25 A. I did all the marketing and sales for

F. Cox - Direct

1 Sea Technology. I did the proposals and all their
2 pricing and I did all the major boat shows,
3 international and East Coast.

4 Q. What period of time were you at Sea
5 Technology?

6 A. From '87 to '90.

7 Q. 1987 to 1990. When did you leave in
8 1990?

9 A. In January.

10 Q. Who was the president of the company
11 when you left?

12 A. Bob Dively.

13 Q. During that period of time you were
14 there did you ever see Mac Ingles over at Sea
15 Technology on a regular basis?

16 A. Mac was hardly ever there.

17 Q. Did your job duties change during that
18 period of time? Did they start doing one thing and
19 then change doing another thing?

20 A. No.

21 Q. You said you traveled to boat shows.
22 Could you tell me whether you went to any boat shows
23 where Mac attended?

24 A. Yes. I went to a boat show in Florida,
25 in Fort Lauderdale. Mac was there and also Julie

F. Cox - Direct

1 Harris which was his secretary was there and Bob
2 Dively was there and so was I and another
3 salesperson, Drew Morens.

4 Q. Did Mac work at the show?

5 A. No. He came in. We had the booth set
6 up and he would go look at boats and come back and
7 put brochures in the booth but he didn't work it.

8 Q. Did Julie work at the show?

9 A. No.

10 Q. What was she doing down there?

11 A. It was my understanding that Mac owed
12 her a trip. I don't know why.

13 MR. RUSSELL: I object to her
14 understanding.

15 BY MR. BAYLISS:

16 Q. Where did you get that understanding
17 from?

18 A. Julie.

19 MR. RUSSELL: Your Honor, I would
20 object. It's asking for hearsay and her
21 understandings I don't think are appropriate.

22 MR. BAYLISS: Not offering for the
23 truth.

24 THE COURT: Not offering for the truth,
25 I overrule the objection. Let's get on.

F. Cox - Direct

1 BY MR. BAYLISS:

2 Q. Now, were there other boat shows in
3 which you were in attendance where Mac was there?

4 A. Yes. I went to a boat show up in Long
5 Island, New York, Fort Jefferson. Mac was there on
6 that one and so was Bob and me.

7 Q. Did Mac work that show?

8 A. No, he did not. We went out to
9 dinner. Mac got drunk and that's mainly what he did
10 on the boat shows.

11 MR. RUSSELL: I object on relevance.

12 THE WITNESS: I'm just telling you what
13 happened.

14 THE COURT: I overrule the objection.
15 What happened is what happened.

16 BY MR. BAYLISS:

17 Q. Now, there's been -- you are aware, are
18 you not, that Bob Dively was indicted in May of 1990
19 for six different alleged offenses?

20 A. Yes.

21 Q. One of those was Poole's Grant. Did
22 you have any involvement, and I would ask you to
23 turn to Exhibit 5 in the book. Now, I know that's
24 difficult to read but we've gone over this before in
25 another trial. Can you identify that exhibit,

F. Cox - Direct

1 please?

2 A. Yes. It's a proposal from Sea
3 Technology to Marina Technology for the pedestals
4 for Poole's Grant Marina.

5 Q. Whose signature is on the proposal?

6 A. That's my signature.

7 Q. What involvement did you have with that
8 proposal and how did it come about?

9 A. I did this proposal for Bob because Sea
10 Technology supplied the pedestals for Poole's Grant.

11 Q. Did you have any discussions with Mac
12 about Poole's Grant during this time frame?

13 A. Mac knew all about Poole's Grant. He
14 knew Bob was working at Poole's Grant & Marina and
15 was going along.

16 Q. Anything unusual about this proposal?

17 A. No.

18 MR. BAYLISS: I move to introduce that
19 as the next exhibit.

20 MR. RUSSELL: No objection.

21 THE COURT: Introduced and mark as
22 Plaintiff's Exhibit 5.

23 (The document referred to was marked by
24 the Court as Plaintiff's Exhibit 5, and received
25 into evidence.)

F. Cox - Direct

1 BY MR. BAYLISS:

2 Q. Now, there came a time, ma'am, that you
3 left in January and you said Bob was still there.
4 Did you learn some time after you left that Bob had
5 left the company?

6 A. Yes.

7 Q. When and how did you learn Bob had left
8 the company?

9 A. I got a phone call from Mac. It was in
10 March and the very first thing that Mac said to me
11 when I picked up the phone, he said, "Do you know
12 what the son of a bitch has done to me," and I said,
13 "What," and he said, Bob Dively had resigned from
14 the company and he didn't know -- he wanted to get
15 information from me about different jobs and marinas
16 that were going on and he wanted me to meet him for
17 lunch, which, we set up a time and I met him at
18 Nick's.

19 Q. And when would that have been?

20 A. That was a couple of weeks later. I
21 don't remember exactly.

22 Q. Was it before May the 7th, 1990?

23 A. Yes.

24 Q. And who was in attendance at that
25 meeting?

F. Cox - Direct

1 A. It was Mac and myself.

2 Q. Would you tell the Court to the best of
3 your recollection -- I know it's been two years --
4 the discussion you had as it related to Bob Dively,
5 the discussion you had with Mac Ingles as it related
6 to Bob Dively?

7 A. The conversation I had with Mac that
8 day at lunch was, it was like Mac was so mad that
9 Bob had resigned from the company that he told me he
10 was going to do anything it took to get back at Bob,
11 to get even for what he had done to him. He was
12 going to do everything in his power to take his
13 house in King's Mill, that he would put him out of
14 business within a year and he also told me he would
15 get back at any employee that worked at Sea
16 Technology that went to work with Bob, he would get
17 even with them, and he also said he had Gloucester
18 County locked up as far as I guess you would say in
19 his pocket and --

20 Q. Did he use any profanity with you?

21 A. Yes. I'm not sure, Your Honor, if I
22 can say it.

23 THE COURT: Whatever he said you can
24 repeat.

25 THE WITNESS: He said he would bury the

F. Cox - Direct

1 fucking bastard if it was the last thing he did.

2 BY MR. BAYLISS:

3 Q. When you had that conversation did
4 you -- what did you say when he was telling you all
5 this?

6 A. I didn't say much. He just about
7 carried the whole conversation.

8 Q. What happened after that? Did you have
9 any more conversations with him after that?

10 A. Yes. Mac started calling me on just
11 about an every other day basis. He tried to get me
12 involved in the whole case as far as saying our
13 case, we, and us. It was almost like it was Mac and
14 he wanted someone in with him which would have been
15 me.

16 Q. Did there come a time that you were
17 subpoenaed at the criminal trial?

18 A. Yes.

19 Q. And do you remember showing up at the
20 criminal trial?

21 A. Yes.

22 Q. And did there come a time when you had
23 a conversation with either Mac or Bill Shaw at the
24 criminal trial?

25 A. At the criminal trial I think the very

F. Cox - Direct

1 first day they postponed it or something and then
2 Mr. Shaw called me into his side office and he asked
3 me some questions about proposals, if I had the
4 authority to give certain prices and I told him
5 yes. I didn't want to get involved in any of this
6 whole entire -- any of this mess, and I told him, I
7 said, I'm not going to be a good witness for Mac
8 Ingles in this whole entire thing and I was released
9 as a witness that day.

10 Q. Who released you?

11 A. Mr. Shaw.

12 Q. So you never testified?

13 A. No.

14 Q. Did you ever have any conversations
15 with either Officer Colton or Investigator Adams?

16 A. No.

17 Q. They were people that were involved --
18 MR. RUSSELL: If she didn't have any
19 conversations with him I don't know --

20 THE COURT: She may know who was
21 involved in the investigation without having talked
22 to them.

23 MR. RUSSELL: I think that's a proper
24 question, but I don't believe the statements raised
25 by Mr. Bayliss was proper.

F. Cox - Cross

1 THE COURT: The question was did she
2 know they were involved in the investigation.

3 MR. RUSSELL: I'm sorry, Your Honor. I
4 didn't understand.

5 THE WITNESS: One other thing I would
6 like to add. Mac called me on the phone the day
7 they picked up Bob just to tell me they were going
8 to pick him up. That's how he was trying to get me
9 involved in the whole entire thing.

10 MR. RUSSELL: I object. That's not
11 responsive to the question. I objected to the
12 question.

13 THE COURT: Your objection to the
14 question to begin with was not sustained because it
15 was a proper question. This question, however, I
16 will sustain the objection.

17 MR. BAYLISS: I have no further
18 questions.

19 THE COURT: Mr. Russell, you may
20 cross-examine the witness.

21 CROSS-EXAMINATION

22 BY MR. RUSSELL:

23 Q. Good morning, Ms. Cox. I'd like to
24 switch to the other book, if you would, ma'am, can
25 you switch to Tab Number 46. Ma'am, now, you did a

F. Cox - Cross

1 proposal for Marina Technology to sell pedestals --
2 I'm sorry -- for Sea Technology to sell pedestals to
3 Marina Technology to use at Poole's Grant?

4 A. Correct.

5 Q. That's the document that was just put
6 into evidence by Mr. Bayliss?

7 A. Uh-huh.

8 Q. Now, that was in December of 1989?

9 A. Whatever was on that.

10 Q. That's the right time frame? Ma'am,
11 you were a director of Marina Technology,
12 Incorporated when you did that proposal, weren't
13 you?

14 A. Yes.

15 Q. And Tab Number 46 is the annual report
16 of Marina Technology, that first page that you have
17 there and that shows you were a director of Marina
18 Technology?

19 MR. BAYLISS: She's admitted it. Asked
20 and answered.

21 BY MR. RUSSELL:

22 Q. I'm identifying the document. Is that
23 correct?

24 A. Yes.

25 Q. So when you did the proposal you are

F. Cox - Cross

1 Sea Technology sales manager, you are Marina
2 Technology's director. Ma'am, you didn't feel there
3 was any conflict of interest there at all, did you?

4 A. No, absolutely not. May I explain
5 why?

6 Q. I'm sure Mr. Bayliss can come back and
7 ask that question.

8 MR. BAYLISS: Excuse me --

9 THE COURT: Look, gentlemen, I thought
10 we went through yesterday enough. Let's get on with
11 this case. I don't want to keep this jury here
12 until next week. Come on.

13 BY MR. RUSSELL:

14 Q. Ma'am, can you flip to Tab Number 23A.
15 That would be the March 7, 1989 Poole's Grant draw
16 request. It's already in evidence. If you flip to
17 the second page you will see that you notarized
18 that, correct?

19 A. Correct, 23A at the very bottom?

20 Q. Right.

21 A. Right.

22 Q. And the stamp says that Mr. Dively
23 swore to you under oath and swore to you that the
24 facts contained in that document were correct?

25 A. No. The only thing I notarized is his

F. Cox - Cross

1 signature. A notary doesn't notarize the document.

2 Q. It doesn't say sworn?

3 A. I notarized his signature, not this
4 document.

5 Q. It says sworn to before me, correct?

6 A. Right.

7 Q. Now, you are a director of Marina
8 Technology when you did that and you were the sales
9 manager for Sea Technology when you did that?

10 MR. BAYLISS: I object to the
11 question. He has introduced an exhibit that says
12 1989 annual report and all of this occurred in '88
13 and he keeps making the statement she was a director
14 in '89. Poole's Grant occurred in '88, and if you
15 have some documents that show she was a director in
16 '88 that's fine. This is an annual report in '89.

17 MR. RUSSELL: Poole's Grant occurred in
18 1989.

19 MR. BAYLISS: It is '88 and what you've
20 shown her is '88.

21 MR. RUSSELL: 23A is the draw request
22 dated March 7, 1989.

23 MR. BAYLISS: 23 is dated in '88.

24 THE COURT: 23A is dated March 7th,
25 1989.

F. Cox - Cross

1 MR. BAYLISS: The other things he
2 showed her, Judge, was the proposal which was in
3 '88. That's the reason I object.

4 MR. RUSSELL: I don't understand the
5 objection.

6 THE COURT: I'm not either. The
7 statement that she was a director was in 1989,
8 correct?

9 MR. BAYLISS: Yes, sir. It's dated
10 February 14, 1989.

11 THE COURT: What else are you talking
12 about that he's shown her all? He asked her to turn
13 to was 23A. 23A that I'm looking at is dated March
14 7, 1989.

15 MR. BAYLISS: I withdraw the
16 objection.

17 BY MR. RUSSELL:

18 Q. That is Mr. Dively's signature on that
19 draw request?

20 A. Yes.

21 Q. And it indicates on the draw request
22 that there was a 25 percent down on the Sea
23 Technology Dockside pedestals?

24 A. On this one right here?

25 Q. Yes, ma'am. Do you see where it says

F. Cox - Cross

1 order, pedestals?

2 A. Yeah, order and deliver all dock -- is
3 that what you are talking about?

4 Q. Yes.

5 A. Yes. That's what it says.

6 Q. If you look back at your proposal,
7 ma'am, your proposal to Marina Technology you didn't
8 ask for a 25 percent deposit, did you?

9 A. If there's not one on there but that's
10 not unusual.

11 Q. You didn't ask for one, did you?

12 A. No.

13 Q. Mr. Dively wrote on that document there
14 was 25 percent down?

15 A. That's what's down there.

16 Q. And you typed that document, correct?

17 A. I'm not sure if I did or not.

18 Q. Do you recall testifying in your
19 deposition that you probably did?

20 A. I probably did. This is in '89.

21 Q. Sea Technology did not get a 25 percent
22 deposit for those pedestals, did it?

23 A. I don't know.

24 Q. You are not aware that it did?

25 A. No, I'm not aware of it.

F. Cox - Cross

1 Q. And you were in charge of invoicing at
2 the time?

3 A. No.

4 Q. You were not in charge of invoicing?

5 A. I just did the proposals. I didn't
6 take care of the invoicing, no.

7 Q. Did you tell Mr. Dively that that draw
8 request he signed under oath was inaccurate?

9 A. I explained to you once. I notarized
10 his signature only. I did not read this to see what
11 I was notarizing.

12 Q. But you probably typed it. But you
13 were in charge of boat shows marketing, so you set
14 up boat shows for Sea Technology?

15 A. Not all the time.

16 Q. Did you do the advertising?

17 A. I did an ad for one of the magazines, I
18 set it up.

19 Q. And most of the boat shows you were
20 present at or involved with because you were the
21 marketing manager, correct?

22 A. Most of them unless I had personal
23 business I had to take care of.

24 Q. And you were the marketing manager up
25 until the time you left and that was January of

F. Cox - Cross

1 1990, correct?

2 A. Yes.

3 Q. Did you ever market these dock boxes
4 that we're talking about today?

5 A. I haven't heard anything about dock
6 boxes we're talking about today.

7 Q. Did you ever market Mr. Dively's new
8 dock box in the fall of '89 up through January of
9 '90?

10 A. No.

11 Q. Ma'am, could you please flip to Tab
12 Number 6, ma'am. Tab Number 6 is a brochure, a one
13 page brochure that says Sea Technology, Limited and
14 it's an ad for a dock box, correct?

15 A. Right.

16 Q. And you as marketing manager you didn't
17 prepare that, did you?

18 A. No.

19 Q. You never even saw it before this
20 litigation, did you?

21 A. Not that I recall, no.

22 Q. In fact, you testified at prior
23 hearings that you were completely unaware --

24 MR. BAYLISS: Your Honor, I object.

25 THE COURT: I sustain the objection.

F. Cox - Cross

1 If you've got something to impeach her testimony by
2 prior inconsistent statements get the transcript and
3 go the proper procedure, Mr. Russell.

4 MR. RUSSELL: Yes, sir.

5 BY MR. RUSSELL:

6 Q. Ms. Cox, you never saw dock boxes being
7 made at Sea Technology in the fall of 1989 or
8 January of 1909, did you?

9 A. I don't remember that. We had dock
10 boxes at Sea Technology. If somebody requested a
11 dock box we would order a box from the company and
12 modify it as far as putting electrical plugs on it
13 or whatever. But yes, there were boxes in the
14 warehouse.

15 Q. Were you aware Sea Technology employees
16 were building boxes almost exclusively?

17 A. No, not that I know of, no.

18 Q. Ma'am, could you flip to Exhibit 23B
19 and that is another draw request where Mr. Dively
20 was asking for money from Poole's Grant and that's
21 dated May 16, 1989?

22 A. This is dated May 9th.

23 Q. And that's a draw request?

24 A. For May 9th, yes.

25 Q. Forgive me. Did you type that?

F. Cox - Cross

1 A. I'm not sure.

2 Q. Might have?

3 A. It's possible, yes. I don't remember
4 back then.

5 Q. Now, that shows under the line for the
6 Sea Technology Docksidiers that Mr. Dively was
7 charging Poole's Grant a total of some \$39,000 for
8 those pedestals, correct?

9 A. Yes.

10 Q. And on the second page you notarized
11 again this draw request, correct?

12 A. Yes.

13 Q. Did you tell Mr. Dively that it was
14 false because you had -- did you tell him that that
15 statement was false? .

16 A. Why would I tell him it's false?

17 Q. Ma'am, you invoice, you're the one that
18 did the proposal for Marina Technology and that was
19 for some \$18,000. You knew \$39,000 wasn't the
20 correct price, right?

21 A. The only thing -- on all of these the
22 only thing I did was notarize his signature. The
23 proposal went into the system and if he owed a
24 deposit that went into another whole department.
25 This isn't Sea Tech's --

F. Cox - Cross

1 Q. Excuse me, ma'am. That also said
2 subscribed to before me, correct?

3 A. Yes.

4 Q. Now, Ms. Cox, on or about that day
5 Mr. Dively paid you for your services in typing that
6 draw request, didn't he?

7 MR. BAYLISS: Object to the form of the
8 question. There's no evidence that she typed it.

9 THE COURT: Absolutely not. She said
10 she may have typed it.

11 BY MR. RUSSELL:

12 Q. Did he pay you for your services?

13 A. For several things. It was several
14 things as far as typing letters and things like that
15 but I can't tell you exactly what documents.

16 Q. And those letters would have been
17 letters from Marina Technology, correct?

18 A. Yes.

19 Q. And you were the director for Marina
20 Technology, we know that, correct?

21 A. Yes.

22 Q. Could you flip to Tab Number 44. That
23 reflects a payment to you of May 16, 1989 for \$100
24 for casual labor for Marina Technology, correct?

25 A. Yes.

1 MR. BAYLISS: We'll stipulate that she
2 was paid.

3 THE COURT: Let him get through the
4 questions, please.

5 BY MR. RUSSELL:

6 Q. You indicate you got a phone call from
7 Mr. Ingles in March and he advised you Mr. Dively
8 left Sea Technology?

9 A. Yes.

10 Q. And he wanted information about Sea
11 Tech's customers and clients during that phone call?

12 A. Right.

13 Q. And that's all the information he
14 wanted from you with that phone call?

15 A. No. He wanted to meet with me for
16 lunch.

17 Q. And you subsequently had lunch with
18 him?

19 A. Yes.

20 Q. And you didn't make any notes in this
21 meeting?

22 A. No.

23 Q. He didn't make any notes of it?

24 A. Not that I remember. I don't recall.

25 Q. Was anybody else at that lunch meeting?

F. Cox - Cross

1 A. No.

2 Q. Basically he was asking you about
3 customers and jobs, general business conversation,
4 correct?

5 A. No. Basically he was running down Bob
6 Dively. That was his main objective for the whole
7 entire lunch I thought.

8 Q. He wasn't asking you questions about
9 what was going on at Sea Technology?

10 A. Yes. He did ask that.

11 Q. And he asked you who the customers
12 were?

13 A. He asked me about certain customers.

14 Q. And he wanted to know about problems
15 with the business so he could keep the business
16 going?

17 A. He asked me about a job going on in
18 London and other jobs. I don't remember what the
19 names of the marinas were. Evidently the customers
20 called and they needed information and he wasn't
21 aware of it.

22 Q. And that was the gist of the
23 conversation was basic business, wasn't it?

24 A. No.

25 Q. Ma'am, you remember I took your

F. Cox - Cross

1 deposition on June 27, 1991. It would have been
2 almost a year ago. Do you recall that?

3 A. Uh-huh.

4 Q. And do you recall me asking you the
5 question, "Okay. These jobs, these specific jobs
6 you-all discussed at lunch, this was all general
7 business, it wasn't any implication that
8 Mr. Dively --"

9 "ANSWER: No. He was asking me what
10 did I know of this job because this person had
11 called and they wanted so many units, and if there
12 was a problem on it and it was very basic business,"
13 and you recall making that answer, correct?

14 A. Uh-huh.

15 Q. Now, also during this lunch --

16 THE COURT: She is explaining her
17 answer.

18 THE WITNESS: There was another lunch.
19 I don't know which lunch you are referring to.

20 BY MR. RUSSELL:

21 Q. Do you recall making that answer during
22 your deposition?

23 A. Yes. I'm also telling you I don't know
24 which lunch you are referring to.

25 Q. But when he was talking to you he was

F. Cox - Cross

1 asking about general business?

2 THE COURT: Mr. Russell, get oriented
3 to -- she says there were two lunches. Get her
4 oriented to which one she is talking about, sir.

5 BY MR. RUSSELL:

6 Q. Was anybody else at the second lunch
7 meeting?

8 A. Yes.

9 Q. Who?

10 A. Rick.

11 Q. Rick Risley?

12 A. Yes, and that one was the one that I
13 must have misunderstood that you are saying that was
14 mostly business. If that's the one you are talking
15 about, yes, it was mostly about customers and that
16 one was mostly about business but the first one, no.

17 Q. So you had two lunch meetings?

18 A. Yes.

19 Q. And as far as Mr. Ingles' comments
20 about Mr. Dively you just felt Mr. Ingles was
21 blowing off steam?

22 A. At first I thought that, but he got
23 very vindictive as far as his statements.

24 Q. You didn't repeat his comments that he
25 made about Mr. Dively to anybody, did you?

1 A. No. I went home and made a comment to
2 my husband.

3 Q. You didn't repeat them to anybody
4 except Mr. Dively and his lawyers and your husband?

5 A. Correct. That's all I recall.

6 Q. It didn't affect your opinion of
7 Mr. Dively one way or the other, did it?

8 A. I was trying to stay out of the whole
9 entire situation. But it did affect my thoughts
10 about Dively maybe. I mean, here you got somebody
11 telling you they are stealing equipment and stealing
12 money from the company.

13 Q. Do you remember me asking you the
14 question, ma'am, during your deposition on Page 180,
15 "Did anything Mr. Ingles told you, this blowing off
16 steam I'll call it, did it affect your opinion one
17 way or the other of Mr. Dively," and your answer was
18 no. Do you remember that?

19 A. No, I don't remember it.

20 Q. You didn't make any notes of this
21 second meeting either, this second lunch meeting you
22 are talking about?

23 A. No.

24 Q. And you haven't had any other meetings
25 with Mr. Ingles present since those two lunch

T. Petty - Direct

1 MR. RUSSELL: No, sir.

2 THE COURT: You may have a seat in the
3 courtroom or you may leave. Who's your next
4 witness?

5 MR. BAYLISS: Tom Petty.

6
7 TOM PETTY, called as a witness by and
8 on behalf of the Plaintiff, was examined and
9 testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. BAYLISS:

13 Q. Good morning, Mr. Petty. Would you
14 state your name and your occupation?

15 A. Tom Petty, I live in Michigan. I was a
16 developer of real estate.

17 Q. In that capacity, did you have anything
18 to do with marinas?

19 A. Yes, I did.

20 Q. And did there come a time in that
21 capacity that you had any dealings with Bob Dively
22 of Sea Technology, Limited?

23 A. That's correct, I did.

24 Q. And when would that have been?

25 A. It would have been several years ago

T. Petty - Direct

1 when we originally met him in the earlier stages of
2 planning of Newport Bridge Marina and I met him at a
3 trade show in Miami, Florida.

4 Q. Did you ever have any business
5 relationship with Mr. Dively?

6 A. Yes. That was mainly our
7 relationship. After a few years of attending
8 different shows and so forth -- this is a rather
9 large development and there was a lot of planning
10 years in front of it and I had probably saw him
11 several times in Florida and a couple of other
12 different trade shows in the area and got involved
13 with him in the product which he was manufacturing
14 at that time.

15 Q. At that time did you know Mr. Mac
16 Ingles?

17 A. No, I had not. I have never met
18 Mr. Ingles.

19 Q. Did there come a time when you had any
20 conversations with an individual by the name of Mac
21 Ingles?

22 A. Yes, we had one telephone conversation.

23 Q. And when did that occur?

24 A. Oh, it's probably been a year, maybe a
25 year and a half ago.

T. Petty - Direct

1 Q. Would you tell us to the best of your
2 recollection what occurred during that telephone
3 conversation?

4 A. It was a very brief telephone
5 conversation, probably didn't last a couple of
6 minutes. When he had called me he had mentioned
7 that he had run across my name in expense reports
8 from Sea Technology and wanted to know -- and
9 advised me at that time that Mr. Dively was no
10 longer with Sea Technology and that he was suing
11 Mr. Dively for fraud and for stealing company
12 property and that if I was interested in doing any
13 business with Sea Technology that I would be doing
14 it through him now.

15 Q. Had you had any reason to believe
16 Mr. Dively had been involved in any stealing from
17 Sea Technology?

18 MR. BUGG: I object. That's asking the
19 witness to speculate on having a reason to believe.
20 That's asking the grossest --

21 BY MR. BAYLISS:

22 Q. Let me rephrase it. What was your
23 impression of Bob Dively's position and business
24 relationship with Sea Technology prior to that phone
25 call?

T. Petty - Cross

1 MR. BUGG: If he knows that's fine, but
2 not his impression. If he knows what Mr. Dively's
3 position was that's fine.

4 THE COURT: Do you know what his
5 position was, Mr. Petty, with Sea Technology?

6 THE WITNESS: I had assumed he was the
7 owner of the company by the way he represented
8 himself in a very businesslike manner I might say.

9 MR. BUGG: That's not a proper answer.

10 THE COURT: He answered it. He doesn't
11 know.

12 BY MR. BAYLISS:

13 Q. What did you tell Mac Ingles when he
14 told you the comment that Bob had stole from the
15 company?

16 A. I really didn't have much comment to
17 it. I had said to him, well, when we get to the
18 stage of purchasing your product I'll get back with
19 you and so forth. It was a very brief
20 conversation.

21 MR. BAYLISS: I don't have any other
22 questions.

23 CROSS-EXAMINATION

24 BY MR. BUGG:

25 Q. You are not even in the marine business

T. Petty - Cross

1 anymore, are you?

2 A. Yes. I still own all the real estate
3 and marina properties and so forth. We have a real
4 downturn of the economy in Michigan and I mean
5 downturn and it's still there, too.

6 Q. So you haven't had occasion to buy the
7 kind of products that Mr. Dively sells?

8 A. I never have purchased a product yet.
9 I kind of put everything on the back burner.

10 Q. Because of the economy?

11 A. Yes.

12 MR. BUGG: Thanks.

13 THE COURT: Any further need for
14 Mr. Petty?

15 MR. BAYLISS: No, sir.

16 MR. BUGG: No, sir.

17 THE COURT: Mr. Petty, you may have a
18 seat in the courtroom or you may leave, sir.

19 MR. BAYLISS: Judge, I don't know if
20 Mr. Pesch was sworn in. I don't remember if he
21 was -- I know he wasn't here yesterday morning.

22 THE COURT: If you want to put him back
23 on the stand I'll do it.

24 MR. BUGG: No, sir. We'll stipulate
25 that his testimony is truthful. We will stipulate

J. Eaton - Direct

1 that he doesn't have to be sworn.

2 THE COURT: All right, sir. Go ahead.
3 No problem. Whose your next witness?

4 MR. BAYLISS: Jane Hogge -- well, Jim
5 Eaton is out there.

6 MR. RUSSELL: I would like to alert the
7 Court we also have a witness that would like to go
8 on and off before noon, very quick witness.

9 THE COURT: Mr. Eaton, were you sworn
10 yesterday?

11 MR. EATON: No, I was not.

12
13 JAMES EATON, called as a witness by and
14 on behalf of the Plaintiff, having been first duly
15 sworn, was examined and testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. BAYLISS:

19 Q. Good morning, Mr. Eaton. Would you
20 please state your name and your current occupation?

21 A. James W. Eaton. I'm a certified public
22 accountant.

23 Q. And by whom are you employed?

24 A. Employed by the Commissioner of
25 Revenue, City of Chesapeake.

J. Eaton - Direct

1 Q. Have you done any work for
2 Mr. McClanahan Ingles in the past?

3 A. Yes, I have.

4 Q. And what work would that be?

5 A. I did the monthly write-up work and the
6 annual tax returns for Sea Technology.

7 Q. At whose request?

8 A. Basically when it first started out if
9 I'm not mistaken I worked at the marina with Bob
10 Dively, and Bob Dively asked me to do some work for
11 him at Sea Technology and it evolved from that to
12 doing it for Sea Technology.

13 Q. And did the relationship evolve so that
14 you later were talking more with Mac than Bob?

15 A. Not while Mr. Dively was there.

16 Q. Not while Bob was there?

17 A. No.

18 Q. Turn if you would to Exhibit 6 -- turn
19 to Exhibit 4, not Exhibit 6. Can you identify that?

20 A. That's a Schedule K-1 that goes with a
21 form 1120S which is the corporate tax return for Sea
22 Technology.

23 Q. And who prepared that?

24 A. I did.

25 Q. And from whom did you get the

J. Eaton - Direct

1 information to prepare it?

2 A. I got the information basically at a
3 meeting with Mr. Dively and Mr. Ingles at Sea
4 Technology.

5 Q. Both of them were there?

6 A. That's correct.

7 Q. And both of them were there for the
8 entire meeting?

9 A. As far as I know, yes. That's a long
10 time ago.

11 Q. Now, this Schedule K-1, it shows that
12 shareholder's percentage interest, and by the way
13 it's dated year ending 8-31-88, shareholder's
14 percentage interest is 50 percent for Dively,
15 correct?

16 A. That's correct.

17 Q. Where did you get the information that
18 Bob Dively was a 50 percent stockholder, same
19 meeting?

20 A. That's correct.

21 Q. Who was the other 50 percent
22 stockholder?

23 A. Mr. Ingles.

24 Q. Did you prepare a K-1 for Mr. Ingles
25 just like that?

J. Eaton - Direct

1 A. That's correct.

2 Q. At that time when Mr. Ingles got your
3 K-1 that you sent him did anyone object and say
4 that's wrong, it's not 50/50?

5 A. Not at that time, no.

6 Q. And that time would have been on or
7 about when when you sent it to them?

8 A. Probably the spring of '89. It could
9 have even been the summer of '89. I'm not sure.

10 Q. Sometime in the spring or summer of '89
11 you sent the K-1s out?

12 A. That's correct, to the best of my
13 knowledge. I'd have to look. This is not dated.

14 Q. Now, turn if you would to Exhibit 6.
15 Now, you were aware, were you not, that Mr. Dively
16 had been indicted in May of 1990?

17 MR. RUSSELL: Your Honor, I've got to
18 object for leading.

19 THE WITNESS: I'm not sure.

20 THE COURT: Rephrase the question.

21 BY MR. BAYLISS:

22 Q. Did there ever come a time that you had
23 any discussions with Mr. Mac Ingles about Bob Dively
24 and any criminal problems that he had?

25 A. I became aware that there were some

J. Eaton - Direct

1 criminal proceedings, but I cannot tell you a date.

2 Q. Looking at Exhibit 6, is that your
3 letter?

4 A. That's correct.

5 Q. It's a brief letter. Read the letter
6 into evidence, please.

7 A. "Mr. Robert C. Dively, 105 William
8 Allen, Williamsburg, Virginia 23601, Dear
9 Mr. Dively, please be advised that Sea Tech, Limited
10 has amended the Federal and State income tax returns
11 for the period ending August 31, 1988. The amended
12 return changed your percentage of the income loss
13 and other Schedule K items from 50 percent to zero
14 percent. Very truly yours, James W. Eaton, Jr."

15 Q. Was that consistent with what
16 Mr. Ingles and Mr. Dively had told you in the
17 meeting that you described?

18 A. The original meeting?

19 Q. Right.

20 A. No, it's not.

21 Q. Well, why did you do it?

22 A. I was informed by Mr. Ingles that the
23 transaction -- and I'm not sure exactly how it was
24 put -- but basically a stock option that Mr. Dively
25 had had not been exercised and that Mr. Ingles was a

J. Eaton - Direct

1 hundred percent owner.

2 Q. Turn, if you would, to exhibit -- well,
3 let me ask you one other question. Did you bother
4 to pick up the phone and call Mr. Dively and tell
5 him what you were doing or did you just write the
6 letter?

7 A. Well, basically I was dealing with Sea
8 Technology.

9 Q. I understand, but did you bother --
10 this had a significant tax consequence, didn't it?

11 A. No, I wrote him a letter.

12 Q. It had a significant tax consequence?

13 A. That's correct.

14 Q. And all you did was write him a letter?

15 A. That's correct.

16 Q. And in fact, that letter is dated in
17 September of 1990?

18 A. That's correct.

19 Q. Do you remember when Mr. Ingles told
20 you to change it?

21 A. It probably would have been in August
22 of 1990.

23 Q. During the time that he told you to
24 change it, did you have any discussions with
25 Mr. Ingles about this litigation?

J. Eaton - Direct

1 A. About the litigation?

2 Q. That was going on between Dively and
3 Ingles.

4 A. Not to my knowledge except for the fact
5 that I knew that it was going on and he mentioned
6 that the suit was going on.

7 Q. Turn to Exhibit 18. Can you identify
8 that?

9 A. That's the K-1 that's a mirror of the
10 one that was for Mr. Dively that was originally
11 prepared for the year ending 8-31-88.

12 Q. Bear with me and just flip over the
13 pages as we go. Who prepared that, who prepared the
14 K-1, sir?

15 A. I prepared the K-1.

16 Q. And you said it mirrored, the
17 information came from the same meeting you are
18 talking about?

19 A. That's correct.

20 Q. Who prepared the next page?

21 A. I prepared it.

22 Q. And it reflects Bob Dively as a 50
23 percent stockholder. Where did you get that
24 information?

25 A. From the same meeting.

J. Eaton - Direct

1 Q. Now, flip over to where you get to
2 United Metering, the tax return for United
3 Metering.

4 MR. BUGG: What's the year for that?

5 MR. BAYLISS: '88.

6 BY MR. BAYLISS:

7 Q. Do you see it?

8 A. Yes.

9 Q. Who prepared that?

10 A. I did.

11 Q. At whose request?

12 A. I'm not sure if it was Mr. Dively or
13 Mr. Ingles.

14 Q. Turn to Page 3 of that. Line item H2b,
15 it says percentage stock owned, 50 percent each, who
16 put that information in there?

17 A. I put it in there.

18 Q. Where did you get the information to
19 put 50/50 on that?

20 A. I'm not sure whether it was from
21 Mr. Dively or Mr. Ingles.

22 Q. Did it come from the same meeting?

23 A. I don't believe so. I believe that
24 meeting was purely Sea Technology.

25 Q. Start flipping until you get to 1986

J. Eaton - Direct

1 tax return for Sea Technology, Limited. Do you see
2 that?

3 A. The form that's marked 1986 is for the
4 year ending 8-31-87. Is that the one?

5 Q. Yes. That would be the year preceding
6 all the other tax information we talked about,
7 right?

8 A. That's correct.

9 Q. Who prepared this?

10 A. I did.

11 Q. Turn to Page 2. Where did you get the
12 information that in '87, the year preceding '88
13 Ingles was a hundred percent owner and Dively was a
14 zero percent owner?

15 A. It would have been at the initial
16 meeting, whatever, that I had for Sea Technology to
17 obtain the basic data for the corporation.

18 Q. So something changed between '87 and
19 when you did the '88 return because you changed it
20 from zero and a hundred to 50/50?

21 A. That's correct.

22 Q. And that change was discussed with you
23 with Mr. Ingles and Mr. Dively?

24 A. Two things occurred. One, they applied
25 and received S Corporation status which means that

J. Eaton - Direct

1 there is a passthrough of the profit and loss from
2 the corporation to the shareholders, and at that
3 point in time I asked how do you want me to
4 prepare -- who are the exact shareholders, because I
5 had not seen any documentation that would indicate
6 who owned the corporation.

7 Q. And my question, sir, though, something
8 changed between the return you prepared in '87 and
9 the return you prepared in '88 because in '87 your
10 return reflects Ingles is a hundred percent owner
11 and in '88 you reflect 50/50?

12 A. Somewhere during the conversations with
13 Mr. Dively I was informed that in effect he was
14 going to be or through his contributions to the
15 corporation was going to become a 50 percent owner.

16 Q. You said Mr. Dively, that was your
17 meeting with Mr. Dively and Mr. Ingles?

18 A. No. This was earlier.

19 Q. Did there come a time when you had a
20 meeting with Ingles and Dively?

21 A. Yes.

22 Q. Did Ingles voice any --

23 MR. RUSSELL: I have to object to
24 leading. I understood that Mr. Eaton was his
25 witness.

1 THE COURT: Ladies and gentlemen, take
2 a walk in the jury room for a minute.

3 (The jury withdrew from the courtroom.)

4 THE COURT: Mr. Russell, you may be
5 technically correct in objecting to all of this, but
6 all you are doing is wasting time about this
7 matter.

8 MR. RUSSELL: My apologies to the
9 Court, Your Honor. However, Mr. Eaton does not seem
10 to be giving Mr. Bayliss the answer he wants and he
11 is pounding and pounding again and it's leading and
12 I have to object.

13 THE COURT: I understand that and I
14 will sustain your objections, but we'll be here
15 until next week if you keep on doing it because all
16 he is going to do is rephrase the question. And you
17 are going to get the same answer that he gets from
18 asking this one.

19 MR. RUSSELL: I think there comes a
20 point where counsel has to stick with the answer he
21 got.

22 THE COURT: You follow the same
23 procedure, sir. What's sauce for the goose is sauce
24 for the gander.

25 MR. RUSSELL: Yes, sir.

J. Eaton - Direct

1 THE COURT: Let's get on with the trial
2 of this case. Let's move on. Bring the jury back.

3 (The jury was returned to the
4 courtroom.)

5 THE COURT: Mr. Bayliss, will you try
6 to refrain from asking questions that are leading?

7 MR. BAYLISS: Yes, sir.

8 BY MR. BAYLISS:

9 Q. During your meeting with Mr. Ingles and
10 Mr. Dively for preparation of the '88 return, do you
11 recall any problems that were raised by Mr. Ingles
12 about anything that went on in that meeting?

13 A. At that time, no, sir.

14 Q. Now, that same form you are looking at,
15 on Page 2 of that form where in '87, not '88, you've
16 got Ingles having \$204,000 in income and Dively
17 \$147,000 in income. Do you remember that?

18 A. That's correct.

19 Q. Do you remember the nature of that
20 discussion with Mr. Ingles about why he made more
21 money?

22 A. I did not approach that. Basically
23 this data came from check stubs and bank statements.

24 Q. Did you look into it?

25 A. Did I ask why one got more than the

J. Eaton - Direct

1 other?

2 Q. Yes, sir.

3 A. No, I did not.

4 Q. Now, in September of 1990 when you
5 wrote Mr. Dively the letter saying that it was being
6 changed from a hundred -- from 50/50 to zero and a
7 hundred, who were you representing at that time?

8 A. Sea Technology.

9 Q. And before then Mr. Dively to the best
10 of your knowledge was a 50 percent owner, right?

11 A. That's correct.

12 Q. Did that have any tax impact on either
13 party?

14 A. It had a tax impact on both parties and
15 there was another letter that went with the amended
16 return that went from 50 to a hundred and zero that
17 explained that there would be tax implications on
18 both Mr. Ingles and Mr. Dively, and since I was
19 writing to Sea Technology I stated that Mr. Dively
20 should be informed of this change.

21 Q. But you didn't call Mr. Dively?

22 A. I did not call Mr. Dively, no.

23 Q. And you talked to Mr. Ingles about it?

24 A. I sent him the letter with the change
25 with the amended return. Probably I can't -- under

J. Eaton - Cross

1 oath I could not say that I specifically addressed
2 that matter two years ago with Mr. Dively.

3 MR. BAYLISS: That's all I have,
4 Judge.

5 CROSS-EXAMINATION

6 BY MR. RUSSELL:

7 Q. Good morning, Mr. Eaton. You basically
8 did the accounting work for Sea Technology from 1986
9 all the way through 1990?

10 A. I believe it started in '87 but I could
11 be mistaken.

12 Q. Fair enough. And you were provided
13 with inventory, payables and receivables by
14 Mr. Dively while he was there, correct?

15 A. That's correct.

16 Q. These K-1 statements that Mr. Bayliss
17 has shown the jury, the 50/50 K-1 statements, they
18 were never filed with the IRS to the best of your
19 knowledge, were they?

20 A. I cannot attest whether they were or
21 not. I forwarded the tax return to Sea Technology
22 and I can't say whether or not it was filed with the
23 Internal Revenue Service.

24 Q. Your best knowledge is they weren't,
25 correct?

M. Booth - Direct

1 MR. RUSSELL: Your Honor, I tried to
2 tell you there were jurors behind me. I asked you,
3 please.

4 THE COURT: You did not say that to
5 me.

6 MR. RUSSELL: I'm sorry, Your Honor.
7 That is my recollection.

8 THE COURT: If that is your
9 recollection, you did not say that to me. Let's get
10 out and finish this case.

11 (The jury returned to the courtroom.)

12 THE COURT: Who's your next witness?

13 MR. BAYLISS: Miles Booth.

14
15 MILES BOOTH, called as a witness by and
16 on behalf of the Plaintiff, having been first duly
17 sworn, was examined and testified as follows:

18
19 DIRECT EXAMINATION

20 BY MR. BAYLISS:

21 Q. Mr. Booth, I just have a few questions
22 for you. Would you please state your name and your
23 occupation.

24 A. Miles Booth. I'm a manager for
25 Benchmark Plastics now.

M. Booth - Direct

1 Q. And prior to Benchmark Plastics by whom
2 were you employed?

3 A. Salt Marsh Industries.

4 Q. And did you have a business
5 relationship with Sea Technology?

6 A. Yes, we did.

7 Q. Did you know Bob Dively?

8 A. Yes.

9 Q. Did you have a business relationship
10 with Marina Technology?

11 A. Yes.

12 Q. Did you know Mac Ingles?

13 A. Yes.

14 Q. And was that during 1987, '88, '89 and
15 '90?

16 A. Yes.

17 Q. Now, did there come a time, sir --
18 before I get to that, briefly tell me what that
19 business relationship was with Sea Technology and
20 what it was with Marina Technology?

21 A. We are in the fiberglass business. We
22 build assorted fiberglass products, and Mr. Dively
23 came to us with several projects associated with
24 dock boxes and parts therefore, and when we were
25 doing business with Sea Technology we built a number

M. Booth - Direct

1 of dock box lids was the last job we did for them,
2 and then in December Mr. Dively came up with a new
3 design box for us to build and we built molds for
4 that and then produced about I think it was
5 somewhere around 270 or so.

6 Q. And the redesigned box, who did you
7 invoice for that?

8 A. The tooling work was invoiced to Marina
9 Technology and the production work was to the same
10 company.

11 Q. So for the new box it was invoiced to
12 Marina Technology?

13 A. Uh-huh.

14 Q. Prior to that who did you invoice?

15 A. Sea Technology.

16 Q. Now, did there come a time at some
17 point that you learned that Mr. Dively was no longer
18 with Sea Technology?

19 A. Yes.

20 Q. How did you learn that?

21 A. I had been told by Bob that this was a
22 separate project and was his project, not a Sea
23 Technology project. At one point in March I believe
24 it was Mr. Dively -- I called down there and talked
25 to Jane and she said that Bob would set up his new

M. Booth - Direct

1 outfit in Williamsburg.

2 Q. Now, did there come a time after that
3 that you spoke with Mr. Ingles about Bob Dively?

4 A. Mr. Ingles came into my office one
5 afternoon and wanted to see whatever business we had
6 been doing with Sea Technology and --

7 Q. Tell me when that would have been
8 approximately.

9 A. That would have been sometime in April,
10 I believe.

11 Q. Of 1990?

12 A. 1990, yes -- '89 -- yeah, '90.

13 Q. 1990?

14 A. 1990.

15 Q. At that point in time did you have any
16 discussions with Mac Ingles about Bob Dively?

17 A. Mr. Ingles came in and said that
18 Mr. Dively had taken his property and that he was a
19 crook and he was going to put him in jail and that
20 he would like to have whatever records we had, and I
21 said, we haven't done anything wrong.

22 Q. At that point did you have a business
23 relationship with Marina Technology and Bob Dively?

24 A. Yes, we did. We were building parts
25 for them on a daily basis.

M. Booth - Cross

1 MR. BAYLISS: That's all I have.

2 CROSS-EXAMINATION

3 BY MR. BUGG:

4 Q. Mr. Booth, could you get in front of
5 you a book called the defendant's exhibits. Flip
6 over to Tab Number 43 if you would. 43 is your
7 company's statement to Marina Technology for making
8 these dock boxes, the pieces for the dock boxes; is
9 that right?

10 A. That's correct.

11 Q. And it shows invoice on from 5-21-90,
12 the earliest one; is that right? The fourth item
13 down, \$5,787.50?

14 A. That's the earliest invoice shown on
15 this particular statement, not necessarily the
16 earliest invoice that was made to Marina Technology.

17 Q. This thing wasn't paid, was it?

18 A. These are the open accounts, yeah.

19 Q. And, in fact, you brought suit against
20 Marina Technology, Incorporated for not paying that
21 bill, didn't you?

22 A. I did not, but Salt Marsh Industries
23 did after I left.

24 Q. And, in fact, Salt Marsh Industries got
25 a judgment against Marina Technology for not paying

M. Booth - Cross

1 the bill that was submitted starting way back in May
2 of 1990 for building the dock box, right?

3 A. To the best of my knowledge, they did.

4 Q. Flip over to 22B. Do you have that in
5 front of you?

6 A. Yes.

7 Q. That's an order from the Circuit Court
8 of the City of Williamsburg?

9 A. That's the first time I've seen it.

10 Q. Salt Marsh Industries versus Marina
11 Technology, Incorporated?

12 A. Yeah.

13 Q. Look down at the bottom. It looks like
14 the company got a judgment against Mr. Dively's
15 company for \$16,653, right?

16 A. So it would appear.

17 Q. And that's for not paying the bill for
18 the dock boxes?

19 A. That is correct.

20 Q. Now, when Mr. Ingles made this
21 statement to you that didn't have any effect on your
22 opinion of Bob Dively, did it?

23 A. No.

24 Q. In fact, your opinion of Bob Dively
25 already wasn't very good, was it?

M. Booth - Cross

1 A. My opinion of Bob Dively was not bad
2 and it still isn't.

3 Q. But it doesn't pay the bills?

4 A. Neither does Mr. Ingles.

5 MR. BAYLISS: That's all I have.

6 MR. BUGG: That's all I have.

7 THE COURT: Any further need for the
8 witness?

9 MR. BAYLISS: No, sir.

10 MR. BUGG: No, sir.

11 THE COURT: Who's your next witness?

12 MR. BAYLISS: Jane Hogge.

13 MR. BUGG: Your Honor, I forgot to
14 introduce those last two exhibits. I apologize.
15 The order was Exhibit 22B.

16 THE COURT: Introduced and marked as
17 Defendant's Exhibit 22B.

18 (The document referred to was marked by
19 the Court as Defendant's Exhibit 22B, and received
20 into evidence.)

21 MR. BUGG: I'll find it in a few
22 minutes, Your Honor. Here it is, Your Honor.
23 Exhibit 43.

24 THE COURT: Exhibit 43 introduced and
25 mark as Defendant's Exhibit Number 43.

J. Hogge - Direct

1 (The document referred to was marked by
2 the Court as Defendant's Exhibit 43, and received
3 into evidence.)
4

5 JANE HOGGE, called as a witness by and
6 on behalf of the Plaintiff, having been first duly
7 sworn, was examined and testified as follows:
8

9 DIRECT EXAMINATION

10 BY MR. BAYLISS:

11 Q. Ms. Hogge, would you please state your
12 name and your address.

13 A. Jane Evans Kemp Hogge, Route 4, Box
14 807, Hayes, Virginia.

15 Q. And how old are you, ma'am?

16 A. 47.

17 Q. Back in the mid '80s we'll go back to
18 that time frame, could you tell me what you did?

19 A. In December of 1985 I went to work for
20 Sea Technology.

21 Q. And who hired you?

22 A. Robert Dively.

23 Q. Had you known Mr. Dively before then?

24 A. No.

25 Q. Had you known Mr. Ingles before then?

J. Hogge - Direct

1 A. Yes. I had known him previously as an
2 attorney in Gloucester when I worked at the
3 Treasurer's Office in Gloucester.

4 Q. And where did you -- where did you live
5 back then?

6 A. I lived at the same place, in
7 Gloucester.

8 Q. Are you married?

9 A. Yes.

10 Q. What were your job duties when you went
11 to work for Sea Technology?

12 A. Basically when I went to work in 1985
13 it was just as a receptionist and typist, to answer
14 the phone and to do typing, proposals, that type of
15 thing.

16 Q. And at that time who was in the
17 administration portion of the Sea Technology
18 business? Who worked in the office?

19 A. No one but me.

20 Q. During the '85 to 1990 time frame would
21 you tell us about what you did and other people that
22 came on in the administration part in the office?

23 A. The business eventually evolved into
24 where it needed more office help. Ms. Cox was hired
25 as a salesperson and later on another lady was hired

J. Hogge - Direct

1 to do the accounting and invoicing and I was to do
2 just the purchasing and order entry to the back.
3 This was over a period of the next four years as the
4 business grew.

5 Q. During that period of time where you
6 just described, how often would you see Mac Ingles
7 at the business?

8 A. On an average probably maybe once every
9 two months.

10 Q. And what would he be doing there when
11 he would come over?

12 A. At the times that I saw him there he
13 would be there to talk to Mr. Dively about something
14 to do with the business. I never really knew what
15 they were talking about.

16 Q. Based on what you saw on a day-to-day
17 basis, did Mr. Ingles have anything to do with the
18 operation of the business?

19 A. In the beginning I didn't even know
20 that he was a part of the business for about six
21 months because I thought I was working for
22 Mr. Dively. I didn't know there was anyone else
23 involved. As far as day-to-day operations I
24 answered directly to Mr. Dively and had limited
25 conversations with Mr. Ingles.

1 Q. Skip to the '89, '90 time frame. Would
2 you describe just generally the business of Sea
3 Technology, the good, bad, high, low, that type of
4 information?

5 A. I think probably it peaked in the
6 latter part of 1988, and during the period of '89
7 the number of orders started to decline and we
8 didn't have as busy a time as we had had
9 previously. I think that was probably due to the
10 basic overall market, but as for the Docksider
11 product we were not selling as many as we had been,
12 and I basically -- the overall atmosphere, the
13 business was not good. We had problems paying bills
14 and creditors were calling quite frequently towards
15 the end of '89.

16 Q. When you had problems paying the bills
17 and creditors were calling how did you get your
18 bills paid?

19 A. Well, at that particular time Ms. Pells
20 was handling most of that. I would have to deal
21 with it when I would call someone to order parts or
22 whatnot and then there would be either they would
23 say something about the account being overdue or
24 they would want to put us on COD basis.

25 Q. Did anyone else pay any of the bills?

J. Hogge - Direct

1 A. We would frequently have things that
2 would come in COD and Mr. Dively would write a check
3 from Marina Technology to pay for those parts.

4 Q. You say Marina Technology, what was
5 that?

6 A. That was a company that Mr. Dively had
7 started. I'm not really sure of the exact date. I
8 think it was sometime in early '89 when he was doing
9 a marina down in Hampton.

10 Q. Was Marina Technology a secret around
11 there?

12 A. No. I don't believe so. Everyone
13 there knew about it.

14 Q. During -- there came a time when Bob
15 left the business. Do you remember that?

16 A. The first part of March of 1990.

17 Q. When was the first time that you
18 learned Bob was going to be leaving the business?

19 A. I knew that things were not good. I
20 knew he was not happy there, but as far as knowing
21 exactly when he was going to leave he called me one
22 day and told me that he had resigned and he wasn't
23 coming back to the company.

24 Q. You say he called you one day. We've
25 introduced an exhibit. Do you have the plaintiff's

1 exhibit book in front of you?

2 A. Yes, I do.

3 Q. Turn if you would to Exhibit 13. It's
4 a letter dated -- I think you might have the wrong
5 book. I simply show that to you to orient you to
6 your chronology. Did he call you before or after
7 March the 9th, 1990?

8 A. I really believe it was either on the
9 9th or after the 9th. I can't remember the exact
10 date.

11 Q. Prior to that phone call had you had
12 any discussions with Mr. Dively about anything about
13 his future employment?

14 A. No.

15 Q. About leaving, about going to work with
16 him or anything?

17 A. No. I didn't know there was anywhere
18 to go to work other than I where I was.

19 Q. Now, after Bob had left did you have a
20 running number of conversations with Mr. Dively
21 about the business of Sea Technology?

22 A. I called him several times regarding
23 people that were trying to reach him on the phone.
24 He called me and gave me the phone number where he
25 would be. He called me one day and told me that he

J. Hogge - Direct

1 had installed a fax and asked me to send him a fax
2 or just anything at all to see whether it worked or
3 not. I had people calling there all day long
4 looking for answers, either people that needed plans
5 to be done or people that needed questions regarding
6 pedestals, marina electrical, things like that and I
7 couldn't help them and he was the only person I knew
8 that could.

9 Q. During that period of time that you
10 remained at Sea Technology were those calls on a
11 regular basis?

12 A. I can't say on a regular basis. They
13 were probably maybe at least once a day.

14 Q. Did you ever have any discussions right
15 around the time Bob left with Bob about employment
16 opportunities for you?

17 A. No. I didn't discuss any employment
18 opportunities with him until after I had left Sea
19 Technology.

20 Q. When did you leave Sea Technology?

21 A. I believe it was the 19th of March. It
22 was a Monday that I left my resignation there. I
23 believe it was the 19th.

24 Q. Why did you leave Sea Technology?

25 A. Well, basically because I couldn't

J. Hogge - Direct

1 stand it there anymore. I had been there in the
2 office by myself with no help for about three
3 weeks. Prior to the time Mr. Dively left, Ms. Pells
4 had left, Ms. Cox had been injured and she was out
5 of there and there was no one in the office but me.
6 When Mr. Dively left I took about two weeks of that
7 and that was all I could stand. I had basically
8 everything to do and I just didn't want to be there
9 anymore.

10 Q. Did there come a time when you had any
11 conversations with Mr. Ingles about your leaving?

12 A. Yes. He had told me that he was going
13 to keep the business going and he had told me that
14 he was going to bring a Mr. Risley in to help run
15 the company and I think that was on a Friday that I
16 decided that I was going to leave because I
17 basically did not want to stay there and have to
18 work for him. Friday I made the decision I was
19 going to leave.

20 Q. Now, turn if you would to Exhibit 15.
21 There's two pages there. Have you ever seen that
22 before?

23 A. Yes.

24 Q. Would you tell me what it is?

25 A. It's a list of parts and labor that

J. Hogge - Direct

1 Mr. Dively asked me to invoice Marina Technology and
2 there was just basically the parts and pedestals on
3 the first page and the second page is just basic
4 parts.

5 Q. There's some scribbling on there and
6 some changes, is any of that your handwriting?

7 A. Yes. Mr. Dively had listed out what he
8 thought the prices were and I went back and changed
9 them as to what the actual cost was for the
10 individual parts.

11 Q. Did you do that with his supervision or
12 did you do that on your own?

13 A. I did it on my own.

14 Q. And when did you do that, before or
15 after you left Sea Technology?

16 A. Before.

17 Q. What jobs did this accounting
18 information pertain to?

19 A. The top part of the first page applies
20 to Dock of the Bay marina. It's the labor up at the
21 very top of the page and right under it is listing
22 the 29 pedestals that Marina Technology was going to
23 pay Sea Technology for. Then the next part of it
24 are the basic parts that went into the dock boxes
25 listing out their costs. Then down below it he's

J. Hogge - Direct

1 listed out Shark Island and then I went through and
2 put the prices there for the receptacles and
3 breakers that we used on the Shark Island dock
4 boxes.

5 Q. Why would you be invoicing Marina
6 Technology for these?

7 A. Because some of these parts, the parts
8 here, had been purchased by Sea Technology and
9 Marina Technology was paying -- was going to pay Sea
10 Technology back for the parts that were used to
11 build the Marina Technology dock boxes.

12 Q. Now, turn if you would to Exhibit 16.
13 Can you identify that, please?

14 A. This is the listing of things that
15 needed to be invoiced and parts that needed to be
16 ordered. This is something I prepared the weekend
17 after I decided to leave Sea Technology. I took the
18 necessary files home to prepare this list and then
19 brought them back on Sunday and left them and this
20 list on my desk.

21 Q. Now, why didn't you prepare the
22 invoices yourself? Why did you just prepare the
23 list?

24 A. Basically as busy as I had been I
25 hadn't had time to do all of this. Most of what I

J. Hogge - Direct

1 had tried to do was to answer the phone and get out
2 proposals for Sea Technology because people were
3 calling and I guess I figured if you could get the
4 business in you could get the invoices out.

5 Q. Now, turn if you would to Page 4 of
6 Exhibit 16. At the bottom there are two entries,
7 Marina Technology and Marina Technology?

8 A. Uh-huh.

9 Q. Would you tell me what that is?

10 A. That is where I had left -- I had
11 attached a list to this --

12 Q. Now, the list was attached. Would you
13 look at Exhibit 15?

14 A. Yes. Those two pages were the list of
15 parts that I attached to my list of things to be
16 invoiced.

17 Q. Now, the top of Page 4 says shipments
18 that need invoicing. What did you mean by that?

19 A. Just that, in other words, these were
20 things that had gone out the door that needed to be
21 invoiced.

22 Q. Now, did you ever discuss with Mac
23 Ingles or anyone in Mac Ingles' office the nature of
24 what you had done with this memo, and if so tell us
25 what you said and when it was done?

J. Hogge - Direct

1 A. Well, as I said that Monday following
2 this weekend I went to Sea Technology and left my
3 resignation on my desk. I had already -- Sunday I
4 had previously left this list and the files when I
5 went back. Monday morning I had to go and open the
6 door and let the people in the back in because there
7 was no one else to let them in. I left my
8 resignation and my keys on my desk.

9 I received phone calls from Mr. Ingles
10 and from his secretary, Jo Payne. I did not want to
11 talk to Mr. Ingles because I knew he wanted me to
12 come back and I didn't want to go back. He came to
13 my door Tuesday morning to ask me to come back and I
14 got dressed and went back up to the office and was
15 there on Tuesday and I don't think I basically
16 explained this list to him that morning but I did
17 discuss it with his secretary, Jo Payne, at a later
18 date because she called me at home later in the week
19 asking me about different things on here, parts that
20 had been ordered and orders that were coming in.

21 Q. Did anyone ask you about the invoicing
22 of Marina Technology? Did Mac Ingles ever ask you
23 about invoicing Marina Technology?

24 A. No.

25 Q. Were you trying to hide anything here?

J. Hogge - Direct

1 A. No.

2 Q. Where did you leave that memo?

3 A. Because these were --

4 Q. No. I said where did you leave it?

5 A. On my desk.

6 Q. Was it hidden on your desk?

7 A. No. It was there with my resignation
8 and my keys.

9 MR. BAYLISS: I move to introduce 16.

10 THE COURT: Introduced and marked as
11 Plaintiff's Exhibit 16.

12 (The document referred to was marked by
13 the Court as Plaintiff's Exhibit 16, and received
14 into evidence.)

15 BY MR. BAYLISS:

16 Q. You said you took some papers home on
17 Friday and brought them back on Sunday. Was there
18 ever any time, Ms. Hogge, that you ever took
19 anything that didn't belong to you out of the
20 offices of Sea Technology?

21 A. Just the files that I would take to
22 work on over the weekends but I would bring them
23 back.

24 Q. Did you ever take them after you left
25 Sea Technology full-time? Did you take the files

J. Hogge - Direct

1 with you?

2 A. No. I brought all the files back that
3 I had Sunday.

4 Q. How did you have those boxes when you
5 brought them back?

6 A. Well, I don't remember even having any
7 boxes because there weren't that many files. I had
8 them in my arms. When I left Sunday I had boxes
9 that had my books and children's pictures and
10 plants. I had been there for over five years so I
11 did have a few items there.

12 Q. Did there come a time, ma'am, when you
13 became employed with Bob Dively at Marina
14 Technology?

15 A. Yes.

16 Q. And tell us when that was in relation
17 to when you left Sea Technology.

18 A. I left -- that was a Monday that I left
19 my resignation. Tuesday I went back to Sea
20 Technology and stayed there that day. The next day,
21 on Wednesday, I can't remember if I stayed home.
22 Anyway at some point in time, the latter part of
23 that week I went to Williamsburg to see Mr. Dively
24 and he did advise me that there was a position
25 available if I was interested, but he said that they

J. Hogge - Direct

1 weren't really that busy right now and it wasn't any
2 need to come to work right away. But the point is I
3 didn't stay at home because the phone kept ringing
4 and I was being constantly called either by
5 Mr. Ingles or by his secretary so I just stayed away
6 from home.

7 Q. All right. There came a time you
8 became aware Mr. Dively had been indicted?

9 A. Yes.

10 Q. Did you give a statement to anyone from
11 the Commonwealth's Attorney's Office or from anyone
12 from the police, state police or Gloucester County?

13 A. There was a state police investigator
14 that came to my home after Mr. Dively had been
15 indicted.

16 Q. The state police, was that Officer
17 Colton?

18 A. Yes, it was.

19 Q. Tell me what you told Officer Colton.

20 A. I basically told him what had gone on
21 in the company, that I was under the impression that
22 Mr. Dively and Mr. Ingles owned the company
23 together, Mr. Dively resigned from the company and
24 left, and I didn't understand why he had been
25 indicted because he hadn't really taken anything

J. Hogge - Direct

1 that --

2 MR. BUGG: Your Honor, she's talking
3 about her impressions now and I don't think she is
4 relating exactly what she told Officer Colton.

5 THE COURT: Do you remember what you
6 told the officer exactly, Ms. Hogge?

7 THE WITNESS: Exactly, no, sir, not
8 word for word.

9 BY MR. BAYLISS:

10 Q. To the best of your recollection tell
11 me what you told Officer Colton. I know you don't
12 remember word for word.

13 A. Well, just what I said, that I was
14 under the impression that Mr. Dively and Mr. Ingles
15 owned the company together and he didn't seem to
16 think that I was right. That was what he said. He
17 asked me what had gone on in the company. He asked
18 me about the different jobs that Mr. Dively had been
19 indicted on, Shark Island and Dock of the Bay. He
20 asked me about Poole's Grant, and I related what
21 information I knew to him about those particular
22 jobs.

23 Q. Did you give him any information about
24 your memo?

25 A. Yes, I did. I told him that I had left

J. Hogge - Cross

1 instructions there to have Marina Technology
2 invoiced for parts.

3 Q. Did he ask you about Pelican Harbor?

4 A. I believe he did.

5 Q. Do you know anything about Pelican
6 Harbor?

7 A. Yes. I know that's a job that was
8 exclusively dock boxes.

9 Q. Do you know when that job came about,
10 before or after Bob left?

11 A. After. The job was built in
12 Williamsburg.

13 Q. Did anyone from Mr. Ingles' office --
14 after Mr. Colton had interviewed you did anyone from
15 Mr. Ingles' office or Mr. Ingles himself come to try
16 to interview more facts you might know about the
17 jobs that Mr. Dively had been indicted on?

18 A. No.

19 MR. BAYLISS: That's all I have,
20 Judge.

21 CROSS-EXAMINATION

22 BY MR. BUGG:

23 Q. Ms. Hogge, a week after Mr. Dively left
24 Sea Technology you left and went over to
25 Williamsburg and went to work for him, is that

J. Hogge - Cross

1 right, roughly a week and a half, something like
2 that?

3 A. I think it was about two weeks or more.

4 Q. And that was at Marina Technology?

5 A. That's correct.

6 Q. And then Marina Technology folded and
7 it became M-Tech; is that correct?

8 A. Well, the two companies produced
9 something different.

10 Q. You began working for M-Tech and
11 stopped working for Marina Technology but you were
12 in the same place, right?

13 A. Same place, yes.

14 Q. And recently you stopped working for
15 M-Tech and it became Innovative Marine in the same
16 place?

17 A. That's right.

18 Q. And you still have been working for
19 Mr. Dively through all three of those companies?

20 A. Yes.

21 Q. That last week after Mr. Dively left
22 and before you left did you have a telephone
23 conversation with Miles Booth?

24 A. I really don't remember.

25 Q. You know who Miles Booth is?

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1 anything going on at Sea Technology the first two
2 weeks of March that would use up 600 breakers and
3 600 receptacles?

4 A. I didn't say order. I said stock needs
5 to be checked.

6 Q. My question is was there anything going
7 on those two weeks that would cause the company to
8 use up 600 breakers and 600 receptacles?

9 A. No.

10 Q. Now, you decided to resign I think you
11 said on March 16th which was that Friday?

12 A. Yes.

13 Q. And that's a week after Mr. Dively
14 left?

15 A. It's a week in numbers but it was a lot
16 longer than a week if you were there.

17 Q. You talked to Mr. Dively and to his
18 lawyers that day, didn't you?

19 A. That day?

20 Q. That Friday, the 16th, the Friday that
21 you decided to resign.

22 A. I possibly talked to Mr. Dively. I
23 don't know about his lawyers.

24 Q. You did not talk to his lawyers?

25 THE COURT: She didn't say that,

J. Hogge - Cross

1 Mr. Bugg.

2 MR. BUGG: I just want to know if she
3 did or didn't.

4 THE COURT: She said I talked to
5 Mr. Dively. I don't know about his lawyers. That
6 was her answer, sir.

7 BY MR. BUGG:

8 Q. And you took these files home with you
9 on Friday to work on?

10 A. Yes.

11 Q. And you brought them back on Sunday
12 afternoon?

13 A. Afternoon, yes.

14 Q. And that Sunday afternoon while you
15 were there Mr. Ingles came into the office?

16 A. That's correct.

17 Q. And you spoke with him?

18 A. Yes.

19 Q. And you told him you were just getting
20 ready for the next week?

21 A. I told him I was trying to get some
22 things straight.

23 Q. Now, that's the only Sunday you were in
24 that office that entire year, wasn't it, of 1990?

25 A. I don't know. Probably the only

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J. Hogge - Cross

1 Sunday, yes.

2 Q. Certainly the only Sunday you were
3 there in March?

4 A. Yes.

5 Q. And this one time in the afternoon you
6 say is the only time you were in there that day?

7 A. Excuse me?

8 Q. This one time that you were at Sea
9 Technology Sunday afternoon when Mr. Ingles came to
10 the office is the only time you were there that day?

11 A. Yes.

12 Q. You weren't there early that morning?

13 A. No.

14 Q. You didn't take any records out of the
15 building that morning?

16 A. No.

17 Q. You didn't take anything out of the
18 building that morning?

19 A. No.

20 Q. Did you talk to Mr. Dively on the
21 telephone that Sunday before you brought the records
22 back?

23 A. I don't remember.

24 Q. In fact, didn't you talk to him three
25 times, at 9:00, 10:30 and 11:30 in the morning that

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J. Hogge - Cross

1 Sunday morning before you took the records back?

2 A. I don't know.

3 Q. You remember testifying in an earlier
4 case?

5 A. Yes, I did.

6 Q. And I asked you that same question, did
7 you talk to Mr. Dively --

8 MR. BAYLISS: If you want to do it, do
9 it the right way.

10 MR. BUGG: I'll be glad to.

11 BY MR. BUGG:

12 Q. My question to you, "Now, how about
13 Sunday, March the 18th, the day you took the records
14 back to Sea Technology, did you talk to Mr. Dively
15 that day" --

16 MR. BAYLISS: What page?

17 BY MR. BUGG:

18 Q. 57, your answer, "I don't -- not that I
19 remember." Is that your testimony?

20 A. You are reading it. It must be.

21 MR. BAYLISS: Your Honor, I have to
22 object to that whole line. It's the same thing she
23 just said. I don't know why he read it in
24 evidence.

25 THE COURT: I don't either. It's what

J. Hogge - Cross

1 she just testified to previously.

2 BY MR. BUGG:

3 Q. Your home number is 642-3197?

4 A. Yes.

5 Q. And Mr. Dively's home telephone number
6 is 253-1986?

7 A. Correct.

8 Q. Marina Technology's telephone number is
9 220-5500?

10 A. Yes.

11 Q. 220-3835, that was the other line?

12 A. I believe so. There are rollover
13 numbers. I never can remember those.

14 Q. Now, you testified about some telephone
15 conversations that you had with Mr. Dively during
16 that week after he left and before you left and you
17 said there were at least one a day?

18 A. I don't know how many there were a
19 day. I said there were at least one a day.

20 Q. Let me read you your earlier
21 testimony. Now, this is 57, "That last week before
22 you left -- we started to talk about this -- did
23 Mr. Dively call you at Sea Technology?"

24 "ANSWER: I believe he did. I don't
25 remember the gist of the conversation, but I mean, I

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J. Hogge - Cross

1 had people calling there asking for him and I did
2 not -- at some point I did not know what to tell
3 them. I mean, they were asking for his technical
4 information and whatnot and I had no one to direct
5 them to."

6 "QUESTION: So you talked to Mr. Dively
7 one time that week but you don't remember the
8 substance of what you talked to him about?"

9 "ANSWER: No. There was, as I said, a
10 lot of confusion there and I'm not really sure what
11 the conversation was." Is that your testimony?

12 A. It must be, sir. You just read it to
13 me.

14 Q. One conversation with Mr. Dively?

15 MR. BAYLISS: That is absolutely --
16 that is not what that said and that is
17 inappropriate.

18 THE COURT: I think it's inappropriate,
19 too, Mr. Bugg.

20 MR. BUGG: That's the way I read it.

21 THE COURT: The way you read it is not
22 the way it was posed.

23 BY MR. BUGG:

24 Q. During that week, Mr. Dively called you
25 at home?

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J. Hogge - Cross

1 A. I don't remember.

2 Q. Well, in fact --

3 A. It's very possible.

4 Q. He called you on Saturday -- Monday,
5 the 12th, Saturday the 10th, Tuesday the 13th,
6 Wednesday the 14th, and Friday the 16th twice, does
7 that sound right, Ms. Hogge?

8 A. Mr. Bugg, I don't know. This was two
9 and a half years ago and you are reading from a list
10 there so I only have to assume that maybe those are
11 phone records and that is the dates of the phone
12 calls, but I can't remember every phone call.

13 Q. Turn to Exhibit 65.

14 MR. BAYLISS: If these are phone
15 records we will stipulate the phone records.
16 Whatever they say is whatever they are.

17 MR. BUGG: With that stipulation I
18 would offer in Defendant's Exhibit --

19 MR. BAYLISS: The phone records I
20 stipulate. You have something attached to the phone
21 records.

22 I'm not going to stipulate to that.
23 I'm not going stipulate to a return of memorandum
24 within their firm.

25 MR. BUGG: Your Honor, this is a list

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J. Hogge - Cross

1 that has the various telephone calls on it as
2 opposed to -- it's abstracted from a long telephone
3 bill and I think it would be helpful to the jury to
4 see those rather than having to plow through this
5 long telephone bill and that's the document on top.
6 Mr. Bayliss objects to a two line phrase across the
7 top of the document which we will be glad to strike
8 out.

9 MR. BAYLISS: I haven't checked the
10 memo, don't know who prepared it, don't know if it's
11 accurate.

12 THE COURT: You are talking about the
13 very first page at the top?

14 MR. BAYLISS: Yes, sir.

15 THE COURT: You will strike that out.

16 MR. BUGG: I have no objection to
17 striking it out and I move for its admission.

18 THE COURT: It will be introduced as
19 Defendant's Exhibit 65.

20 (The document referred to was marked by
21 the Court as Defendant's Exhibit 65, and received
22 into evidence.)

23 MR. BUGG: It's 65A.

24 THE COURT: Mine just has 65.

25 MR. BUGG: 65. I'm corrected, Your

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J. Hogge - Cross

1 Honor.

2 BY MR. BUGG:

3 Q. Let's talk about your memo, Ms. Hogge,
4 this list that you prepared. You prepared that on
5 March the 17th?

6 A. The list?

7 Q. Yes.

8 A. Yes, sometime over the weekend.

9 Q. And you left it on your desk on Sunday;
10 is that correct?

11 A. Yes.

12 Q. And it's your testimony that on Tuesday
13 when you came back and worked for the day it was
14 still right in the middle of the desk?

15 A. It was still there, yes.

16 Q. Now, if you would flip over to Exhibit
17 Number 64. That's your resignation letter. Would
18 you read, ma'am, from your resignation letter of
19 March 19th, 1990 the second paragraph -- read the
20 whole thing. It's a short letter.

21 A. It's just basically my name and
22 address. "Mr. Ingles, the situation at Sea
23 Technology has become unbearable during the last few
24 weeks and is not good for me both physically or
25 mentally. I must resign and get myself together,

317J

J. Hogge - Cross

1 and as bad as I need to work I cannot bear the
2 thought of working any longer at Sea Technology
3 under these conditions with you and Mr. Risley. I
4 think I have left things so that someone may
5 continue on for as long as possible. The petty cash
6 is in my bottom left-hand drawer. The Coke money is
7 in the file drawer in Trudy's office. I have spent
8 many hours on this decision and it is not
9 negotiable. Please send my last check to me."

10 Q. The petty cash is in the bottom drawer
11 and the Coke money is in the file drawer?

12 A. Yes.

13 Q. That's your resignation letter?

14 A. Yes, it is.

15 Q. Now, when Mr. Risley came that Tuesday
16 and Mr. Ingles was there did you tell either one of
17 them that 29 pedestals had been shipped to Dock of
18 the Bay but hadn't been invoiced yet?

19 A. Did I tell them?

20 Q. Yes, ma'am. Did you tell them?

21 A. No.

22 Q. Did you tell them that Marina
23 Technology had gotten COD payment for the pedestals
24 but no payment had been made to Sea Technology for
25 those pedestals, for those 29 or any pedestals?

317K

J. Hogge - Cross

1 A. No.

2 Q. Mr. Dively's note that was hooked to
3 your memorandum doesn't say anything about Dock of
4 the Bay, does it?

5 A. I don't think it lists the name itself.

6 Q. It just says 29 pedestals?

7 A. That's correct.

8 Q. Now, the notes from Mr. Dively that you
9 looked at just a moment ago you said they were
10 attached to your list; is that correct?

11 A. That's correct.

12 Q. What did you do, did you staple them
13 together?

14 A. Yes, I did.

15 Q. You took all the pages of your list and
16 you took the two pages of Mr. Dively's notes, one of
17 which you made some changes on and you stapled all
18 that package together and you left it in the middle
19 of your desk; is that correct?

20 A. Yes.

21 MR. BUGG: Could I see the Court's copy
22 of that exhibit, the one that Mr. Dively wrote
23 what's the number?

24 MR. BAYLISS: 15.

25 BY MR. BUGG:

317L

J. Hogge - Cross

1 Q. Ms. Hogge, if you could get Plaintiff's
2 Exhibit 15 in front of you, your copy might be hard
3 to read but the date up in the upper right-hand
4 corner 3-1-90, that's your writing, isn't it?

5 A. Yes. I believe that's the date that I
6 wrote on it.

7 Q. And some of these changes where the
8 numbers have been changed is your writing?

9 A. Yes.

10 Q. Look in the upper left-hand corner it
11 looks like it used to say 2.5 weeks of labor and
12 it's been changed to 1.5 weeks of labor. Is that a
13 change you made?

14 A. Yes.

15 Q. And you made it there at Sea Technology
16 before you left?

17 A. Yes.

18 Q. This change in the lower right-hand
19 corner where it says \$11,511.75 has been struck
20 through and \$11,400.95; is that your writing?

21 A. Yes.

22 Q. You made that change?

23 A. Yes.

24 Q. And you made that change at Sea
25 Technology when you made all these other changes?

317M

J. Hogge - Cross

1 A. Yes.

2 Q. Now, when you finished making the
3 changes that are on this document and you stapled it
4 to your memo, did you make any copies of it?

5 A. Did I make any copies of it?

6 Q. Yes.

7 A. I don't remember.

8 Q. You didn't take a copy with you, did
9 you?

10 A. No. The original that I had -- I gave
11 Mr. Dively a copy when he gave me the list to make
12 the invoices.

13 Q. You gave Mr. Dively --

14 A. So Mr. Dively had all of the paperwork
15 from Marina Technology with him and when he gave me
16 this as parts and asked me to invoice Sea Technology
17 he kept a copy of each.

18 Q. So what you are telling me is when
19 Mr. Dively handed you the original of this document
20 before any of your changes were made you made a copy
21 of it and gave it back to him?

22 A. No. I gave him a copy after the
23 changes because I wanted him to know that the
24 pricing that he had on there was incorrect.

25 Q. So you made all these changes on the

317N

J. Hogge - Cross

1 original, made a copy and gave it to Mr. Dively?

2 A. Yes.

3 Q. And then you left it on your desk,
4 stapled to the back of your memo?

5 A. I left a copy with it, yes.

6 Q. If you would get the other book back in
7 front of you, it's the same piece of paper but
8 there's another one I want you to look at, look at
9 Number 61. You will flip over and see Number 61.
10 Have you got that one in front of you?

11 A. Yes.

12 Q. Flip over to Tab Number 61B, just a few
13 pages over. That ought to be a document entitled
14 Monies owed Sea Technology for Materials and/or
15 Labor. Have you got the right one?

16 A. Uh-huh.

17 Q. And that's a document you prepared,
18 didn't you?

19 A. Yes.

20 Q. And you prepared that because
21 Mr. Dively asked you to prepare a piece of paper
22 listing all the monies that Marina Technology owed
23 to Sea Technology for Poole's Grant, Shark Island
24 and Dock of the Bay, right?

25 A. Yes, sir.

3170

J. Hogge - Cross

1 Q. Look at Shark Island and Dock of the
2 Bay. They're the two that Number 61 is supposed to
3 reflect an accounting for; is that right?

4 A. Yes.

5 Q. Number 61 is supposed to be all the
6 labor and all the parts for the dock boxes that went
7 to Shark Island and Poole's Grant plus the 29
8 pedestals -- I'm sorry -- that went to Shark Island
9 and Dock of the Bay plus the 29 pedestals that went
10 to Dock of the Bay?

11 A. Yes.

12 Q. Look back at Number 61B, the numbers of
13 Shark Island and Dock of the Bay, the \$4,195 and
14 some cents and \$12,365 and some cents, aren't they?

15 A. Uh-huh.

16 Q. Take my word they total \$16,560. Does
17 that look right?

18 A. Yes.

19 Q. And the difference between that and
20 your corrected total on 61 is \$5,151; is that
21 correct?

22 A. That's what it looks like, yes.

23 Q. You do book work, don't you?

24 A. Very limited.

25 Q. But it isn't close, is it?

J. Hogge - Cross

A. No, it isn't, but it's not the same thing. This is a listing of parts and when this second one was done it's material and labor after going over the whole job and making sure that everything that was owed Sea Technology was billed and if Mr. Dively came up with owing more money to Sea Technology than Sea Technology says then I think it would be more the better for Mr. Ingles.

Q. No, it's more money than Mr. Dively and you said on this memorandum --

MR. BAYLISS: He's arguing with the witness. Objection.

BY MR. BUGG:

Q. This piece of paper was supposed to be an accounting for all the materials and all the labor and the pedestals used for Dock of the Bay and Shark Island?

A. Yes.

Q. And it came to \$11,400?

A. Except there was another little piece of paper that was supposed to be attached to it, the second piece of paper that was attached.

Q. The six hundred and some dollars?

A. I don't know how much it was.

Q. That was the one you referred to as see

317Q

J. Hogge - Cross

attached on your list?

A. Yes.

Q. That was the \$738?

A. I assume so. I can't remember how much it was but I know there was another list of parts.

Q. You agree with me, don't you, that the invoice -- that the pedestals that went to Dock of the Bay should have been separately invoiced from Sea Technology to Marina Technology when Marina Technology took the pedestals to take them up to Dock of the Bay?

A. Could you ask me that again?

Q. I'll start over again. The way the operation worked at Sea Technology, Ms. Hogge, is if you get an order in and the people in the back room make the order and it's ready to be shipped then you invoice it when you ship it; isn't that right?

A. Yes.

Q. And when the pedestals went out of Sea Technology to Dock of the Bay that wasn't done. Sea Technology did not invoice Marina Technology, did it?

A. No.

Q. Didn't you know that was wrong?

A. It was listed on the stuff to be

317R

1 invoiced.

2 Q. Didn't you know it was wrong not to
3 invoice it when it was done like the other jobs from
4 your eight years experience?

5 A. No, and I don't have eight years of
6 experience.

7 Q. You know what COD means, cash on
8 delivery?

9 A. Yes, I do.

10 Q. It means when your product gets to the
11 job site the person that's buying it is going to
12 give you a check for the product before you drive
13 away, right?

14 A. That's right.

15 Q. Your man taking the product up there is
16 going to come back with the money or he isn't going
17 to leave the product, that's COD, right?

18 A. Right.

19 Q. And you knew Dock of the Bay was COD,
20 didn't you?

21 A. Yes.

22 Q. You knew that Shark Island was COD?

23 A. That's correct.

24 Q. You knew that the money was paid for
25 those two orders when the orders went out in

317S

J. Hogge - Cross

1 February and both of them were in February, didn't
2 you?

3 A. I believe so. I'm not real sure on the
4 dates.

5 Q. You knew some of that money was Sea
6 Tech's, didn't you, for parts and material and for
7 the pedestals?

8 A. No, I didn't, because it was invoiced
9 through Marina Technology.

10 Q. You didn't think any of that money that
11 was coming from Dock of the Bay should have been
12 paid to Sea Technology?

13 A. No, because the proposal that went out
14 went out showing dock boxes and Docksidiers on it.

15 Q. You ordered parts and inventory for
16 both the pedestals and the dock boxes, didn't you?

17 A. Yes, I did.

18 Q. And for the most part the inventory
19 used on the dock boxes is the same used on the
20 pedestals?

21 A. Most of the electrical is, yes.

22 Q. Do you know Mr. Brooks, he works at the
23 same company as you do and has for some years?

24 A. Yes.

25 Q. He was the production manager back at

317T

J. Hogge - Cross

1 the back at Sea Technology?

2 A. Yes.

3 Q. He didn't ever bring you written
4 records showing you, here's who worked on the dock
5 box, here's how many hours of labor and here are the
6 parts and inventory used on the dock box, he never
7 did that, did he?

8 A. Are you asking me or telling me?

9 Q. Yes, ma'am, I'm asking you.

10 A. He gave me some records of what went on
11 in the back but most of it he dealt directly with
12 Mr. Dively because they kept the labor part of it
13 straight. He was to give Mr. Dively a listing of
14 how many hours it took to construct the dock box.

15 Q. Ms. Hogge, Mr. Brooks never brought you
16 written records of hours worked and materials used
17 on the dock boxes at Sea Tech?

18 A. I can't say that he didn't, no, because
19 we talked about it continually and most of it went
20 through Mr. Dively. At that time Mr. Dively was
21 handling most of everything for Marina Technology.
22 He asked me to order some parts for Marina
23 Technology with the explicit instructions that they
24 were to be paid for by Marina Technology.

25 Q. Let me read you some of your testimony

317U

J. Hogge - Cross

1 from four months ago, Ms. Hogge, 66, "QUESTION:
2 While you were at Sea Technology, Sea Technology
3 employees were building Marina Technology dock boxes
4 in the back, Mr. Brooks was the production
5 supervisor, wasn't he?"

6 "ANSWER: Yes."

7 "QUESTION: Did he hand you on a weekly
8 basis some kind of journal that kept track of who
9 worked on the dock boxes and how many hours they
10 worked on the dock boxes and what parts they used on
11 the dock boxes?"

12 "ANSWER: Most of that was really
13 handled between he and Mr. Dively."

14 "QUESTION: So your answer is no,
15 Mr. Brooks didn't hand you every week a written
16 journal of those things?"

17 "ANSWER: That's correct."

18 "QUESTION: In fact, you never saw any
19 Brooks' -- written journal of those things?"

20 "ANSWER: No."

21 Do you remember those questions and
22 answers?

23 A. No.

24 Q. You don't disagree with your testimony
25 from four months ago, do you?

317✓

J. Hogge - Cross

1 A. No. I think that's what I said.

2 Q. You never saw any written records from
3 Mr. Brooks?

4 A. I have seen records from Mr. Brooks but
5 I have not seen any journal with hours on it.

6 Q. Ms. Hogge, Mr. Dively made a loan to
7 your husband, didn't he?

8 A. Yes, he did.)

9 Q. Do you remember how much it was?

10 A. Yes.

11 Q. It was \$500, wasn't it?

12 A. Yes.

13 Q. And you've testified that was for the
14 purchase of a work boat?

15 A. That's correct.

16 Q. It hasn't been paid back, has it?

17 A. Not to date, no.

18 Q. Flip over to 63 if you would. Do you
19 have that one in front of you, Ms. Hogge?

20 A. Yes, I do.

21 Q. That's a check written by Marina
22 Technology, Incorporated to Bruce Hogge?

23 A. That's correct.

24 Q. Bruce Hogge is your husband?

25 A. Yes.

317W

J. Hogge - Cross

1 Q. It says down there for casual labor, is
2 that correct, lower left-hand corner?

3 A. That's what it looks like.

4 Q. The other picture on there is the back
5 of the check. That's your signature, isn't it?

6 A. That's my signature below my husband's,
7 yes.

8 Q. It says Bruce Hogge and then your
9 signature and your social security number?

10 A. That's correct.

11 Q. And you cashed it and put it in your
12 account, correct?

13 A. I don't know that's what I did because
14 the money was used to purchase the boat. I cashed
15 it probably and gave him the cash.

16 Q. Tell the jury the date of the check.

17 A. The check is dated 3-16.

18 Q. The check is dated 3-16-90?

19 A. Uh-huh.

20 Q. That was the Friday you decided to
21 resign from Sea Technology?

22 A. That's the Friday.

23 Q. That was the Friday that you took the
24 records home from Sea Technology to work on them
25 over the weekend?

317X

J. Hogge - Cross

1 A. That's correct.

2 Q. That was the Friday of the weekend that
3 you created the memo that we talked about?

4 A. That's the same weekend, yes.

5 MR. BUGG: I move the admission of 63.

6 THE COURT: Introduced and marked as
7 Defendant's Exhibit Number 63.

8 (The document referred to was marked by
9 the Court as Defendant's Exhibit 63, and received
10 into evidence.)

11 MR. BUGG: I would also like to move in
12 Exhibit Number 64 which is the resignation letter.
13 I don't think I did that.

14 THE COURT: Introduced and mark as
15 Defendant's Exhibit Number 64.

16 (The document referred to was marked by
17 the Court as Defendant's Exhibit 64, and received
18 into evidence.)

19 BY MR. BUGG:

20 Q. Ms. Hogge, you are a convicted felon,
21 aren't you?

22 A. That's correct.

23 Q. You were convicted of embezzling of the
24 Treasurer's Office of James City County, were you
25 not?

317y

J. Hogge - Redirect

1 A. That's correct. As a matter of fact,
2 it was in Judge Carneal's court.

3 REDIRECT EXAMINATION

4 BY MR. BAYLISS:

5 Q. Let me ask you first, we talked about
6 on the examination that you stayed away from your
7 phone, were you afraid of Mr. Ingles?

8 A. Well, yes.

9 Q. Now, turn to Exhibit Number 12.
10 Mr. Bugg showed you an exhibit that showed monies
11 due from Marina Technology to Sea Technology, and
12 one of them was Poole's Grant. Have you ever seen
13 Exhibit 12 before?

14 MR. BUGG: I did not go into the issue
15 of this exhibit on my examination whatsoever.

16 MR. BAYLISS: Judge, he put it in.

17 THE COURT: He put some exhibit in
18 about expenses or billing.

19 MR. BUGG: I put in an exhibit that had
20 a reference to Poole's Grant on it. I did not ask
21 her any question about Poole's Grant and this is an
22 entirely new issue from anything raised on direct or
23 cross.

24 THE COURT: He has a chance to
25 redirect, Mr. Bugg.

J. Hogge - Redirect

1 BY MR. BAYLISS:

2 Q. Have you seen that before?

3 A. Yes, I have.

4 Q. Could you tell me what it is?

5 A. It's an accounting memo that I believe
6 Ms. Pells did when she was still there because I can
7 tell from the difference in the --

8 MR. BUGG: I object. She couldn't know
9 if Ms. Pells did it unless Ms. Pells told her.

10 THE COURT: I sustain the objection.

11 BY MR. BAYLISS:

12 Q. When was the first time you saw that
13 memo? It's dated 8-10-89.

14 A. All I can say is in the fall of '89.

15 Q. And in your capacity as bookkeeper and
16 however you describe it -- you said you weren't the
17 bookkeeper?

18 A. No. I'm not the bookkeeper.

19 Q. Working in the office and keeping
20 office records, is that how you saw that?

21 A. Yes.

22 Q. Was this maintained in the general
23 office records?

24 A. Yes, it was.

25 MR. BAYLISS: I would move to introduce

J. Hogge - Redirect

1 it on that basis.

2 MR. BUGG: I have a couple of questions
3 about it.

4 THE COURT: I thought he was going to
5 object to the introduction.

6 MR. BUGG: I'm not objecting to the
7 introduction. I wanted to ask questions.

8 THE COURT: Without objection,
9 introduced and mark as Plaintiff's Exhibit Number
10 12.

11 (The document referred to was marked by
12 the Court as Plaintiff's Exhibit 12, and received
13 into evidence.)

14 BY MR. BAYLISS:

15 Q. Did you ever have any discussions with
16 either Mr. Dively or Mr. Ingles about this
17 accounting?

18 A. I had discussions with Mr. Dively about
19 it, not Mr. Ingles.

20 Q. Tell me about your discussion with
21 Mr. Dively.

22 A. The subject came up about the amount of
23 money that was owed by Marina Technology and
24 Willoughby Harbor and Mr. Dively made the statement
25 when Mr. Ingles paid his bill he would pay his

J. Hogge - Recross

1 bill.

2 Q. What was Willoughby Harbor?

3 A. Willoughby Harbor was a marina that I
4 understand that Mr. Ingles owns or is partners with
5 someone else.

6 Q. If you turn to Page 3 of this exhibit
7 it appears to begin running entries on the
8 Willoughby Harbor invoice back to 1987, right?

9 A. Yes.

10 Q. And the Marina Technology only from
11 1989. How long did the Willoughby Harbor invoice
12 been on the books of Sea Technology is all I'm
13 trying to find out?

14 A. Long time.

15 MR. BAYLISS: I don't have any other
16 questions.

17 THE COURT: Mr. Bugg?

18 RE CROSS-EXAMINATION

19 BY MR. BUGG:

20 Q. Ms. Hogge, that running statement of
21 interest for Marina Technology and Willoughby Harbor
22 was prepared by you, wasn't it?

23 A. No.

24 Q. You don't know who prepared it?

25 A. I said I didn't prepare it.

R. Wolff - Direct

1 documents to Ingles and he will identify. Then I'm
2 going to ask him what blanks were left incomplete,
3 period, end of story. He doesn't know. I'm not
4 going to ask him who filled it in or whatever.

5 MR. BUGG: That's fine, Your Honor.

6 THE COURT: I thought we could resolve
7 it if we tried.

8 MR. BUGG: We finally did one.

9 THE COURT: Bring in the jury --

10 MR. BAYLISS: One second. If he opens
11 the door --

12 THE COURT: That's a different ball
13 game. That's a totally different ball game. We all
14 know that. Mr. Bugg knows that as well as I do.

15 (The jury was returned to the
16 courtroom.)

17
18 ROBERT WOLFF, called as a witness by
19 and on behalf of the Plaintiff, having been first
20 duly sworn, was examined and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. BAYLISS:

24 Q. Mr. Wolff, would you please state your
25 name and your occupation for the jury.

R. Wolff - Direct

1 A. My name is Robert Anderson Wolff. I am
2 a pension consultant which means I design and
3 administer retirement plans.

4 Q. And by retirement plans, the people,
5 individuals or for companies?

6 A. All of the above. We design --
7 primarily our practice is designed around working
8 for small businesses and professionals who could be
9 in the form of a corporation, sole proprietorship or
10 a partnership, but primarily smaller businesses.

11 Q. Now, turn if you would in the
12 plaintiff's exhibit book to Plaintiff's Exhibit 10.

13 A. I have it.

14 Q. Turn to the second page -- well,
15 actually the letter that you had written in
16 September of 1988. Can you identify that?

17 A. The letter dated September 13, 1988?

18 Q. Right.

19 A. Yes. That is a fee agreement or
20 retainer agreement from our firm, my firm, to Sea
21 Technology, Limited.

22 Q. Now, tell me how you got involved with
23 Sea Technology, Limited and who you were discussing
24 the plan with.

25 A. Our name was given to Mr. Dively and

R. Wolff - Direct

1 Mr. Ingles by an accountant by the name of Roger
2 Miller up in the Washington, D.C. area, and either I
3 contacted them on that referral or they contacted me
4 on the referral from Mr. Miller about setting up a
5 retirement plan for them.

6 Q. And who did you speak with when you
7 initially made the contact?

8 A. Initially I spoke with both Mr. Dively
9 and Mr. Ingles on a three-way phone call.

10 Q. And as a result of that did there come
11 into being any work for you?

12 A. Yeah. The way the conversation went
13 was -- and the impression I got having not met
14 either of these gentlemen -- was that these men were
15 partners in business; one handled one part of the
16 business, the other handled the other part.

17 Mr. Ingles was the business side if you will and
18 that basically Mr. Dively was passing it off to him
19 and Mr. Ingles was going to handle everything as far
20 as how the plan was going to be set up, designed and
21 so forth.

22 Q. And as a result did you send your
23 letter of September 13, 1988?

24 A. That is correct. That is our normal
25 procedure that we send out a letter of engagement,

R. Wolff - Direct

1 asking for a retainer fee which is generally half of
2 the initial fee, plus having them sign an agreement.

3 Q. And right in front of that letter is
4 that retainer agreement that you just talked
5 about -- I'm sorry -- the bill?

6 A. There is a bill that went along with it
7 that says the fee for it and then we defer half of
8 it until we complete the work and then we bill the
9 balance and then there was a check that came back.

10 Q. And that's the check right in front of
11 that for \$750?

12 A. Right, exactly.

13 Q. Judge, that's already been introduced
14 so I'm not going to move to introduce it, just to
15 keep the record straight. Turn if you would then to
16 Exhibit 11. Did you, in fact, design a plan for Sea
17 Technology and have it signed, sealed and delivered?

18 A. For Sea Technology, Limited we did
19 not. In the course of collecting the data on Sea
20 Technology and in my correspondence with Mr. Ingles
21 I was instructed to change this to a plan for
22 McClanahan Ingles, a sole proprietorship, which
23 means the person is working for themselves and
24 instead we set the plan up for McClanahan Ingles.

25 Q. Did you discuss that with Mr. Dively or

R. Wolff - Direct

1 with Mr. Ingles?

2 A. No. After that initial conversation I
3 never spoke to or corresponded with Mr. Dively ever
4 again until --

5 Q. Did you ever tell Mr. Dively about the
6 McClanahan Ingles plan?

7 A. No. I had no inclination to feel that
8 I had to do that because these are two business
9 partners and it's not untypical that one handled the
10 paperwork end if you will and one handles the other
11 end of the business.

12 Q. Was there any benefit in the McClanahan
13 Ingles benefit plan for Mr. Dively?

14 A. None whatsoever.

15 Q. Was there an additional charge for the
16 McClanahan Ingles pension plan?

17 A. Over and above the initial fees as
18 stated, no, there was not. We took the fee -- on
19 Mr. Ingles' advice we took the fee that had been
20 paid as the first half of the set-up fee, the \$750,
21 and we applied that against the fee that we were
22 charging Mr. Ingles for his plan.

23 Q. Is that a check you identified earlier?

24 A. The one from Sea Technology, yes.

25 Q. And you applied that to Mr. Ingles'

R. Wolff - Direct

1 plan?

2 A. Yes.

3 Q. And who paid you for the balance of it?

4 A. Mr. Ingles.

5 Q. Looking at Exhibit 11, second page, can
6 you identify what that is?

7 A. The Federal Express receipt?

8 Q. Yes, sir.

9 A. Yes. That is a Federal Express receipt
10 from our office to Mr. Ingles transmitting or
11 sending the plan document to him for his signature.

12 Q. When was that sent Federal Express?

13 A. This copy looks pretty bad but it looks
14 like 10-7-88.

15 Q. October 7, 1988?

16 A. Correct.

17 Q. And right behind the Federal Express
18 receipt can you identify what appears next?

19 A. Yes. That is a letter from our office
20 from Delores Durand who was my plan designer if you
21 will and she -- this was the letter that went with
22 that Federal Express receipt and the plan document
23 giving Mr. Ingles details as to what is there and
24 what has to be done?

25 A. When was the plan document actually

R. Wolff - Direct

1 prepared and transmitted for the first time to
2 Mr. Ingles?

3 A. It was prepared somewhere just before
4 October 7th of '88 and it was certainly mailed to
5 him via overnight mail on October 7th, 1988.

6 Q. Now, this letter that was sent you say
7 in the first paragraph in the letter to Mac Ingles
8 from your office, it says, "Please have the
9 indicated parties sign and date the document as
10 indicated," and then you have a list of forms to
11 date?

12 A. Correct.

13 Q. Why is it that you did not date these
14 documents?

15 A. That is normally the job of the person
16 who is signing the documents, that they also date
17 the documents based on the date that they're signing
18 them. That's standard practice.

19 Q. Does the date -- the list you have in
20 that letter is a list of all the undated items. How
21 would you flag something to be dated?

22 A. We would normally put some type of --
23 yeah, that's what I thought. We have a little
24 stamp. I think we have a couple of them that has --
25 it says note, N-O-T-E, and an arrow. You can't tell

R. Wolff - Direct

1 from the copies here but it's in a red ink and it
2 clearly indicates where it needs to be signed and
3 dated.

4 Q. Turn approximately 10 or 11 pages to
5 Form 5300.

6 A. I have it.

7 Q. What is Form 5300?

8 A. At that time -- it says application for
9 determination.

10 Q. What is Form 5300?

11 A. Form 5300 is an IRS form that was used
12 at that time for the purpose of submitting a
13 qualified plan, specifically defined benefit plan,
14 for what is known as a determination letter where
15 the IRS gives you their opinion on the tax qualified
16 status of the plan.

17 Q. Now, where on form -- what is the
18 importance of Form 5300?

19 A. In this context it's the fact that the
20 dates are on it as well as the fact that it's been
21 signed, when it was signed rather.

22 Q. Tell me just using this form, and there
23 are other places in here and I'm not going to go to
24 each one of them, what on that flags that the date
25 was left blank?

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1 A. The fact that in the middle or the top
2 middle of the page and at the bottom of the page
3 there are red arrows saying note.

4 Q. They are not red on that copy?

5 A. No. They say in black and white note,
6 but in the original they would have been red and
7 very easy to determine where the date of adoption
8 was entered.

9 Q. On this form it says note with an arrow
10 and it has date planned signed and there's a date in
11 there. We don't have to talk about the date but was
12 that blank when you sent it?

13 A. Absolutely.

14 Q. And then it says date plan effective,
15 was that blank when you sent it?

16 A. Date plan effective, no, that was not
17 and you can tell by the typeface being different
18 there. Where it says date plan signed that's
19 apparently been typed in by a type whereas the date
20 plan effective is part of a laser printed form. You
21 can see the typeface is different.

22 Q. You've got another note at the bottom
23 where it says signature?

24 A. Correct.

25 Q. And was that blank when you sent it

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1 down?

2 A. Yes, it was.

3 Q. For the McClanahan Ingles' Pension
4 Profit Sharing Plan would anybody other than
5 McClanahan Ingles sign it?

6 A. No.

7 Q. Now, again, I'm not going to go through
8 here. There are other places that it's flagged and
9 says note where dates are left blank?

10 A. Yeah, and as the cover letter says very
11 specifically, it must be signed and dated and it
12 clearly points that out everywhere, on the cover
13 letter and then on the forms as well.

14 Q. If you go to the very last page of this
15 document, there's a signature page?

16 A. Yes.

17 Q. And you've got three notes to be signed
18 by McClanahan Ingles and by trustee and by trustee?

19 A. Correct.

20 Q. Because it says note were they signed
21 when you sent?

22 A. No.

23 Q. In that last page it refers to, in
24 witness whereof, this plan has been executed the
25 blank day and year first above written, you go back

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1 to page one of that agreement and that's the 60 --
2 72 page agreement and you've got note again to fill
3 in the blank?

4 A. To put the date in, yes, absolutely.

5 Q. And so who filled -- was that blank
6 when it left your office?

7 A. Absolutely, yes. Again, we would not
8 have said in the cover letter dated if it were not
9 dated.

10 Q. Turn if you would to Exhibit 17 so we
11 can just get this into evidence.

12 A. I'm sorry. I should have said if it
13 were dated.

14 Q. Are you familiar with Exhibit 17?

15 A. Yes.

16 Q. What is that?

17 THE COURT: Is this going into
18 evidence?

19 MR. BAYLISS: 11 is already into
20 evidence. 17 is not in.

21 BY MR. BAYLISS:

22 Q. Can you identify 17?

23 A. 17 is a form that we sent to Sea
24 Technology with the fee agreement, I believe, in
25 other words, at the initiation of the work asking

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1 the client to provide this information.

2 MR. BAYLISS: I would like to move that
3 as the next exhibit, Exhibit 17.

4 MR. BUGG: No objection.

5 THE COURT: Introduced and marked as
6 Plaintiff's Exhibit 17.

7 (The document referred to was marked by
8 the Court as Plaintiff's Exhibit 17, and received
9 into evidence.)

10 BY MR. BUGG:

11 Q. Mr. Wolff, the Form 5300, date plan
12 effective, you said that came out of a laser
13 printer?

14 A. I believe so.

15 Q. That means your office?

16 A. Right.

17 MR. BAYLISS: That's all I have.

18 THE COURT: Any further need from
19 Mr. Wolff?

20 MR. BAYLISS: No, sir.

21 MR. BUGG: Not from us, sir.

22 THE COURT: Who's your next witness?

23 MR. BAYLISS: Bob Dively.

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1 ROBERT DIVELY, called as a witness by
2 and on behalf of the Plaintiff, having been first
3 duly sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. BAYLISS:

7 Q. Mr. Dively, would you please state your
8 name and your current occupation.

9 A. Robert C. Dively, president and CEO of
10 Innovative Marine Products.

11 Q. Could you give us your educational
12 background?

13 A. I have a four year Bachelor of Science
14 degree in industrial engineering. I have six months
15 of extra study in electrical and a fifth year in
16 graduation thesis on the installation and design of
17 fractional horsepower electrical motors.

18 Q. Where do you reside?

19 A. 105 William Allen, Williamsburg.

20 Q. How long have you resided there?

21 A. Since August, I believe, of 1982.

22 Q. And who do you reside with at that
23 address?

24 A. My wife, Kelly, and my daughter,
25 Jennifer.

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1 Q. How old is your daughter?

2 A. She's 10 years old.

3 Q. How old are you?

4 A. 59.

5 Q. How old is Kelly?

6 A. About 42.

7 Q. Now, Mr. Dively, you sat and heard a
8 lot of this and I'm going to try to avoid some of
9 the duplication but some of it will be duplicated.
10 Let's go back to the early 70's, Mr. Dively. Could
11 you tell us what you did in the 70's to earn a
12 living?

13 A. In the early 70's I started a company
14 at that time called Environmental Products and that
15 was a company in Richmond, Virginia and what it
16 involved was the manufacture of a product that I had
17 designed and patented. It was an aeration device
18 that at a very low cost adds a lot of oxygen to
19 water to treat sewage.

20 Q. Let me ask you, Mr. Dively, how many
21 inventions have you been involved in in the last 20
22 years?

23 A. My first invention was when I was with
24 General Motors and --

25 Q. I don't want to know about every one of

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1 them. I just want to know how many.

2 A. I couldn't guess. Some have been
3 patented and given to General Motors, some to
4 Reynolds, but just roughly probably four, the
5 patents that I'm sure of and many more applications
6 than that that I don't know the outcome.

7 Q. When you come up with an invention that
8 you think is workable how do you handle that from a
9 business standpoint?

10 A. Well, usually I have it searched and
11 from that search make a determination of whether it
12 is a new, unique state-of-the-art and patentable.

13 Q. Do you form corporations or do you do
14 it by yourself or how do you do it?

15 A. I never have had the luxury of having
16 enough money to take these products to market. I've
17 always had to get other partners to take them there
18 and as in Sea Technology with the Sea Technology
19 Docksider, it's the same case there.

20 Q. Now, in the 70's did you have to file a
21 bankruptcy petition in the 1970s?

22 A. Yes. I filed bankruptcy sometime about
23 the mid 70's. I had a building business where I
24 built and constructed houses and did other
25 construction and --

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1 Q. Just go on. I'll come back.

2 A. I can finish it. I was married at that
3 time. My wife died and I couldn't pay attention to
4 my business.

5 Q. Did you incur a bunch of bills?

6 A. A lot of medical bills.

7 Q. As a result you filed bankruptcy?

8 A. That's right.

9 Q. Now, when was the first time, sir --
10 after we get through the 70's when did you first
11 meet Mac Ingles?

12 A. The first face-to-face meeting I had
13 with Mac was in 1983, late '83. I had known of him
14 and I believe I might have talked to him once or
15 twice regarding the design of a break water and
16 marina system down at Willoughby when I was with the
17 firm of DGR in Richmond.

18 Q. Did that relation -- tell me how that
19 relationship developed from that.

20 A. At that time DGR was in financial
21 trouble and I decided to -- that the best thing I
22 could do would be to leave and go on my own since I
23 did have a lot of knowledge in the marine business
24 and had been with another firm that specialized a
25 lot in marine business. In fact, I was president

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1 and chief executive officer of Johnson & Anderson.
2 It was a managing firm and we did a lot of marinas.
3 With this I went to Mac after I knew he was going to
4 do the marina and I gave him a proposal for doing
5 the complete design, construction and building of
6 his marina working as his agent.

7 Q. And that was -- what was the name of
8 that marina?

9 A. It's now known as the Willoughby Harbor
10 Marina I believe.

11 Q. Sometime after that did there come a
12 time when you developed a relationship with Mac
13 Ingles in another business venture?

14 A. Well, part way through the design and
15 build of that marina I was looking for power -- a
16 power source for the boats along with providing them
17 with all the rest of the utilities and I got the
18 idea that it would really be unique if somebody
19 could come up with a package that included all the
20 utilities, that is, it handled all the power that
21 the boats needed, all the water, phone, cable T.V.
22 and meter itself and light the dock all at the same
23 time that I would really have something unique and I
24 started working on that design and formulated that
25 sometime about the time, oh, I would say six months

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1 prior to its need on the marina at Willoughby
2 Harbor.

3 It might have been a little more than
4 that, and I went to Mac with that idea since I had
5 thought of that while I was working at Willoughby
6 and it was almost an immediate hit, Mac thought it
7 looked good and we went ahead and built some --
8 built a prototype and then the two of us together
9 decided to start a company called Sea Technology,
10 Limited.

11 Q. Did you have any money back then?

12 A. No, I sure didn't.

13 Q. Tell me about what Mac did for you or
14 for the company in the beginning and how the stock
15 was issued.

16 A. What the initial deal was is that we
17 would each own 50 percent of the company, that I
18 would do all of the engineering, design,
19 manufacturing, product development, just take care
20 of the complete manufacture, sales and marketing of
21 the project. Mac would handle the legal work and
22 the business end of the business and, of course,
23 take care of the checkbook.

24 Q. What do you mean, of course, take care
25 of the checkbook?

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1 A. Well, we didn't have a checkbook or any
2 funds at Sea Technology.

3 Q. Turn to Exhibit 1. When the stock was
4 initially issued, Exhibit 1 is the stock issued.
5 When that was initially issued did you get a stock
6 certificate?

7 A. No. I don't have a stock certificate.

8 Q. Did you get it then back in '85?

9 A. No.

10 Q. Where was it?

11 A. Mac Ingles kept it in his office I
12 guess.

13 Q. Who kept the corporate records?

14 A. Mac Ingles.

15 Q. Did you ever take possession of that
16 stock certificate?

17 A. No.

18 Q. Did he ever give it to you?

19 A. No.

20 Q. When Sea Technology was first formed
21 and began operation and these certificates appear to
22 be issued in 1984 it says amount paid thereon, did
23 you have an understanding about putting any money
24 into the company in the beginning? Did either of
25 you put any money into the company of your own?

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1 A. This was part of another business we
2 started which was called Sea Technologies of
3 Gloucester Unlimited and it was going to build boats
4 and the fellow who did the mold work and the initial
5 design work on the pedestal -- not the design work
6 but built the fiberglass molds from my design was
7 going to be involved in the boat company, so Mac
8 Ingles and I each scraped together \$5,000 and \$3,500
9 of it went to the boat company and \$1,500 of it went
10 to the stock of Sea Technology each.

11 Q. Was that money originally paid?

12 A. Yes, it was.

13 Q. In the beginning were you earning an
14 income from Sea Technology?

15 A. No, not for quite some time. It was in
16 '86 I believe. We started this in late '84, '85.
17 I don't believe I had any income out of Sea
18 Technology until sometime in '86.

19 Q. Did you and Mac discuss whether either
20 of you would have other ventures going on at the
21 same time?

22 A. I can't recall that we did. He knew I
23 had other ventures. I was -- in fact, when I was
24 working at Willoughby Harbor they were paying me
25 through another corporation. I had it called EMR,

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1 Incorporated.

2 Q. Did you and Mac have any other
3 corporations in which the two of you were involved
4 doing business?

5 A. Yes. We have United Metering Services,
6 Sea Technologies of Gloucester Unlimited, Sea
7 Technology, Innovative -- no. ITI was Innovative --
8 I can't remember.

9 Q. Those companies -- and we won't spend a
10 lot of time. Did there come a time when you were
11 able to make any money off of those other companies?

12 A. Yes. Starting in '87 time frame Sea
13 Technology started to get really profitable and in
14 the beginning of 1988 I believe -- it might be
15 '87 -- I started a company called United Metering
16 Services where I wanted to build an electronic meter
17 to put in the pedestal which would electrically
18 measure the kilowatts being used and we started that
19 company and it became very profitable.

20 Q. Did that company spin off money to both
21 of you?

22 A. Sea Technology spun off money to both
23 of us.

24 Q. I'm talking about United Metering.

25 A. I don't believe we really took a lot

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1 out of that company or anything. Maybe there was
2 one payment but most of it came from the sale of the
3 company.

4 Q. And when was the company sold?

5 A. I believe -- let's see. United
6 Metering was sold sometime in early '89.

7 Q. Did Mr. Ingles have any involvement in
8 United Metering?

9 A. None. Well, he was a 50 percent owner.

10 Q. What did he do to get his 50 percent of
11 that company?

12 A. He and I were just partners in things
13 and were just 50/50. He didn't have any specific
14 assignment. He didn't make any sales calls.

15 Q. What did you do in United Metering?

16 A. I set the company up from a
17 manufacturing standpoint, did the initial design and
18 development of the meter working with another fellow
19 out of Florida, and I believe it was January of '87,
20 set it up, and like two months later we are
21 producing and using meters out of that company and
22 all the sales and marketing and development and
23 whatever.

24 Q. This is at the same time you were at
25 Sea Technology?

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1 A. Yes. It was in a room at Sea
2 Technology.

3 Q. What did you sell the company for?

4 A. I believe we each got an initial
5 payment of \$75,000.

6 Q. Did Mac Ingles have a penny of money in
7 that company?

8 A. No.

9 Q. Did Mac Ingles spend a bit of his time
10 in that company?

11 A. No. He drew up the sale agreement when
12 we sold it. Also there was a long-term payout which
13 paid us another -- each of us received another
14 \$15,000 a month from -- I believe it was from like
15 May through December and then the fellow quit
16 paying.

17 Q. Back before Sea Technology got
18 profitable, 1985, 1986 time frame. We talked about
19 the financial problems in the mid 70's and we talked
20 about you didn't have much money when you met
21 Ingles. Did there come a time that Sea Technology
22 got profitable that you had additional financial
23 problems?

24 A. Yes. I had a default judgment against
25 me up in Michigan court that came from the work I

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1 was doing with Johnson & Anderson and that default
2 judgment had been domesticated here in Virginia and
3 they were pursuing the collection of that judgment
4 to the tune of -- I can't remember how much it was,
5 \$70,000 or something.

6 I went to Mac Ingles and I said Mac,
7 since we've started this company and I am 50 percent
8 stockholder with you I said I have a potential
9 problem and it appears that I'm going to -- I have a
10 judgment against me and they're going to pursue it.
11 I said, it's significant enough that I could declare
12 bankruptcy because I don't have the assets to cover
13 it.

14 Mac said, well, he said, I don't want
15 to be a partner with the IRS or with some bankruptcy
16 court or anybody else. He said let me figure out
17 what you should do. I believe that also came --
18 Alvin Anderson who was the attorney handling that
19 also had called Mac about the same time which
20 reinforced the need to have to do something --

21 THE COURT: I sustain the objection.

22 BY MR. BAYLISS:

23 Q. Don't say what somebody said, just your
24 conversation between you and Mr. Ingles.

25 A. Mr. Ingles said he would do the

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1 checking and find out who I should use or how I can
2 get rid of or take care of this judgment against
3 me. He came back and he said the only way you can
4 get rid of a default judgment is to file bankruptcy,
5 and he said, but I don't want to have any partners.
6 I'm going to draw up this agreement. You give me
7 your stock and I'll take it and I'll hold your stock
8 for you and whenever you decide that everything is
9 all clear we'll work a deal where you can get your
10 stock back and everything will be all right.

11 Q. Turn to Exhibit 3, please. Is that
12 what you are talking about?

13 A. Yes, and it didn't come -- I had to
14 insist a lot of times that Mac finally put it in
15 writing but that's the agreement.

16 Q. Did you prepare that?

17 A. No.

18 Q. Who prepared it?

19 A. Mac Ingles.

20 Q. Is that your signature?

21 A. One of them, yes.

22 Q. And who's the other signature?

23 A. Mac Ingles.

24 Q. That's already been introduced, Judge.
25 That's what we referred to as the option agreement?

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1 A. Yes.

2 Q. Did there come a time, sir, at some
3 point after the option agreement which is dated
4 April 20, 1987, did there come a time when you and
5 Mac discussed whether you would own 50 percent of
6 that stock again?

7 A. Yes. We had -- I was discharged from
8 my bankruptcy in -- sometime like early '87 and when
9 we had a meeting with Jim Eaton for doing the
10 financial work for Sea Technology and I believe it
11 involved the fiscal year '88 -- fiscal year '87
12 which would be done sometime in late '87 or early
13 '88. I can't tie the time frame.

14 Q. I don't want to know what Jim Eaton
15 said. I want to know what you and Mac said.

16 A. In this meeting we were discussing how
17 we would handle the financials of Sea Technology
18 from this point forward and it came up that it was a
19 Sub-Chapter S Corporation and that we would both be
20 able to share in the profits and the losses directly
21 as being owners of the corporation and Mac at that
22 time said, are you clear of all your problems now,
23 and I said, yes, I'm clear of all my financial
24 problems, and then the instructions were given by me
25 and Mac to Jim, and Jim got concurrence from both of

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1 us that it would be okay to prepare the tax return
2 with both of us being 50 percent owners each.

3 Q. You hadn't had a stock certificate
4 before. Did a stock certificate ever get issued to
5 you?

6 A. No, there didn't.

7 Q. Did there ever come a time subsequent
8 to that that anyone questioned whether you were a 50
9 percent stockholder?

10 A. Not until we filed our lawsuit after I
11 resigned from Sea Technology, the dissolution suit,
12 and Mac then claimed that I was not an owner.

13 Q. Was that the first time you heard that?

14 A. Yes. That's the first time it had ever
15 come up after the --

16 Q. During your entire employment with Sea
17 Technology did you ever enter into any employment
18 agreements or covenants not to compete?

19 A. No.

20 Q. Did Mr. Ingles ever discuss that with
21 you?

22 A. No.

23 Q. '87, '88, '89 just tell us generally
24 what the company was doing and the type of money
25 that the company was making and what you were doing

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1 in that regard.

2 A. In the Sea Technology Docksider after
3 we went to boat shows -- and we were the first one
4 to get the idea to go to the boat show -- just
5 started to really catch fire like in early '87, the
6 '86, '87 time frame, and during that '87 and then
7 early '88 period we are making literally thousands
8 of these things and we are making a lot of money.
9 In fact, I guess you saw -- it's a lot of money to
10 me in my financial condition but on the other hand
11 it's not much.

12 It's relative. But we were taking in
13 effect roughly a couple hundred thousand dollars a
14 year out of the company and bonuses and we were
15 traveling around to boat shows. Then as the '88
16 time frame started to come in that's the time the
17 boating industry started on its downturn, and the
18 boating industry is almost in disaster condition
19 now, but starting in the '88 time frame and moving
20 on down to 1989 we got to a point at Sea Technology
21 where there weren't many orders at all during the
22 fall and early winter time frame, and that's when I
23 guess or in essence we had to lay people off.

24 Q. The Sea Technology product, was it
25 state-of-the-art or did it fall behind?

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1 A. I had a meeting with Mac Ingles in
2 December of 1989.

3 Q. Turn to Exhibit 8. You had a meeting
4 in December of '89. Tell me about that meeting.

5 A. It was a meeting where I was very
6 concerned that, number one, to put things in context
7 we did have a credit line at the Crestar Bank of
8 \$250,000 and we had used up about \$150,000 or
9 \$160,000 of that credit line to buy materials we
10 needed to produce the product, but the bank came to
11 us sometime in the time frame of mid '89 and said we
12 now want to change this. We want your wife's
13 personal guarantees on this note and they said it to
14 both Mac and me, and I said, of course, I didn't
15 have any problem with it, but Mac refused to sign
16 the note because he didn't want his wife's name on
17 the note, and the bank did not allow us to go any
18 further into our credit line. So now we're maxed
19 out in credit, the business is going down and I
20 decided to have a meeting with Mac to explain the
21 situation to him and that's what this letter
22 involves.

23 Q. When you say this letter?

24 A. They are my notes of the meeting that I
25 talked to Mac about.

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1 Q. Would you read the last two paragraphs?

2 A. "We need to spend about \$75,000 to
3 \$100,000" --

4 Q. The last two paragraphs.

5 A. "We need to spend more money and make
6 design changes to meet the new UL specifications in
7 that we are no longer UL listed. Estimated \$15,000
8 to \$20,000. We need to spend about \$75,000 to
9 \$100,000 on new product tooling, mini and other
10 product areas if we are going to have a long-term
11 viable company."

12 Q. Did Mac agree to put more money into
13 the company?

14 A. No, he didn't.

15 Q. At that time had Mac put any money into
16 the company?

17 A. Not that I know of.

18 Q. At that time had you put any money in
19 the company?

20 A. No.

21 Q. During the same period of time did the
22 company -- was the company negotiating for the sale
23 of it?

24 A. We had several people approach us to
25 purchase Sea Technology and we had some nice offers

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1 to purchase Sea Technology, and I was very
2 interested in selling it because that's about -- as
3 you can see the product was wearing out and I wanted
4 to go on to new and better things and I was very
5 interested in seeing if we could sell it.

6 Q. Did Mr. Ingles want to sell the
7 company?

8 A. Every time we had a meeting that's all
9 we talked about is how much we could make from
10 selling the company, but every time we got into
11 negotiations with somebody it would run on down, so
12 he kept wanting more and more and chased them away.
13 Not only that we had another party involved in this
14 thing. Every time a decision like this was
15 necessary Mac Ingles would have to say, I'll check
16 it or bounce it off Alice.

17 Q. Who is Alice? When did you learn about
18 Alice?

19 A. Alice Miller was almost our third
20 partner. She was a psychic that Mac would see and
21 rely on all the time and I can't think -- and it got
22 worse and worse and worse as time went on. This was
23 something he didn't do very much of in the early
24 part of the business but in the '88, '89 time frame
25 that's all I heard.

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1 Q. Now, give me the names of the people
2 that were most serious about negotiating with you.

3 A. The offers to buy the business
4 excluding the one that happened way early on, and I
5 can't remember their names, but the really first
6 serious offer happened in about 1988 I guess with a
7 fellow Fred Pesch and Michael Swaneys.

8 Q. And after Fred Pesch and Michael
9 Swaneys, who?

10 A. Then came -- I may have it out of order
11 but Floyd Bishop came in and offered us I think
12 early on about \$4 million for the company, and then
13 we started dealing with another person named Rick
14 Risley and his group out of Boston and they were
15 right close to the same amount at first and then
16 things started dropping down instead of going up.
17 What was happening is where we were trying to get
18 more money for the company the marketplace for the
19 product was falling.

20 Q. When you say we were trying to get more
21 money for the company, who is negotiating with
22 Risley and Bishop?

23 A. I'm doing most of the negotiations. I
24 had to bounce everything off of Mac because we're
25 50/50 partners, but most of the meetings and most

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1 everything we did to sell the company I did all of
2 the negotiating.

3 Q. Was there a point where you wanted to
4 sell and Mac didn't?

5 A. That finally came in about I think it
6 was in February of 1990.

7 Q. And tell us about that.

8 A. That was the offer from Mr. Bishop and
9 everything finally got down to the point that I
10 became very concerned about the legal
11 representations of contracts and things we were
12 saying to these people. So what I did, I said,
13 we'll establish a basis that you pay us one time
14 annual sales no matter what that is and we'll settle
15 with that without all the representations of what
16 the company might do or what it did and Mr. Bishop
17 made that offer, and I'll be if we didn't simply go
18 back to him and say at Mac's insistence that we have
19 a letter of credit to back it up.

20 Well, what a letter of credit does is
21 tie up that much of your funds permanently until
22 it's taken care of. So Mr. Bishop refused to do
23 that and at that time he left and that's when --

24 Q. In February of 1990, tell me,
25 Mr. Ingles, what salary were you drawing from Sea

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1 Technology in February of 1990 -- I'm sorry,
2 Mr. Dively?

3 A. I have not drawn a salary from Sea
4 Technology since the fall of 1989 and on up until
5 the time I resigned.

6 Q. Was that at your suggestion?

7 A. No. I had a wife and family and I
8 didn't have any other income. I needed this money
9 to live on. I'll have to say that I was receiving
10 some money from the pay-out of United Metering
11 Services during that time but we were having to loan
12 it back to Sea Technology to keep the company
13 operating, so I really was not drawing a salary but
14 in order to keep this company going that we had I
15 had to loan some of that back.

16 Q. Did you discuss this economic problem
17 you had with Mac at that point?

18 A. Yes, I did.

19 Q. Did you have any other business venture
20 going on at that point that was to provide you any
21 income?

22 A. Yes. During the negotiations with
23 these people who were going to buy the company the
24 deal was Mac and I no matter what we sold Sea
25 Technology for it would be sold -- we would both

R. Dively - Direct

1 benefit the same amount and the dealings were with
2 Mr. Bishop and Mr. Risley and I had at that time
3 what you have heard previously, the idea for the new
4 dock box which was a self-contained unit that not
5 only provided all the other features but gave
6 somebody a place to throw all their boating stuff
7 and be very practical on the dock system.

8 So I talked to both of these people and
9 it was discussed with Mac in a meeting that since
10 this was a new item what the people were buying was
11 Sea Technology and Sea Tech's history that this
12 would be a separate item. So I right up to the last
13 second always felt that this person would buy this
14 separate from me and pay me separate for it and pay
15 both of us the same for Sea Technology and that's
16 when we went -- I took it to boat shows thinking the
17 dock box was going to be a new Sea Technology
18 product.

19 MR. BAYLISS: Let me move to introduce
20 Exhibit 8, please.

21 MR. BUGG: No problem.

22 THE COURT: Introduced and marked as
23 Plaintiff's Exhibit Number 8.

24 (The document referred to was marked by
25 the Court as Plaintiff's Exhibit 8, and received

R. Dively - Direct

1 into evidence.)

2 BY MR. BAYLISS:

3 Q. Now, Mr. Dively, turn to Exhibit 9,
4 please. This has already been introduced. You
5 mentioned that this is a new product and it was
6 going to be yours. Did you have any discussions
7 with Mac about that?

8 A. Yes. We had meetings and talked about
9 my new product. In fact, we would separate that.

10 Q. Now, would you please turn as I said
11 Exhibit 9, could you identify that? This is a group
12 of documents --

13 A. This looks like a proposed sale
14 agreement of Sea Technology.

15 Q. Who prepared these agreements?

16 A. Mac Ingles.

17 Q. And what party was negotiating this
18 particular transaction?

19 A. I started out and did most of the
20 negotiating.

21 Q. Who were you negotiating with?

22 A. Rick Risley.

23 Q. Turn if you will to the last agreement
24 which is the employment agreement which is the last
25 10 pages. Was that going to be part of the deal?

R. Dively - Direct

1 A. I can't swear to that.

2 Q. Turn to Page 5 of 9 at the bottom. You
3 mentioned before that the dock box was going to be
4 yours. Read, "Additionally, the employer shall
5 pay" --

6 A. "Additionally, the employer shall pay
7 the employee a royalty on all new products designed
8 by the employee and manufactured for sale by the
9 employer. Said royalty to be in amount equal to
10 five percent of the first \$1 million of gross sales
11 of each satisfied new product."

12 Q. What new products were you talking
13 about?

14 A. That was the dock box that Marina
15 Technology -- that I developed for Marina
16 Technology.

17 Q. Did you discuss that with Mr. Ingles or
18 Mr. Risley?

19 A. This agreement was all together, yes.

20 Q. You said you can't swear that was part
21 of the agreement, did you discuss the fact?

22 A. I meant the employment part, but yes,
23 we did.

24 Q. Now, tell the Court, please, so they
25 can understand -- again, we don't have the two boxes

R. Dively - Direct

1 here. Tell the difference in the power pedestal and
2 the dock box, just briefly.

3 A. The power pedestal is a device that
4 stands about forty-three and a half inches high. It
5 is two-sided so that one of these units sits in the
6 middle of two boats and each boat can plug into it
7 and when the boat plugs into it, of course, they can
8 pick up their power, water, phone, cable T.V. from
9 this unit and it also lights the dock. It has a
10 fluorescent light which provides very low cost light
11 to the boats. Now, the dock box goes one step
12 further than that. What it has on the end of it,
13 it's a fiberglass box that's like a big container
14 and on the end of that is like a half of a power
15 unit and on the other side is another half of a
16 power unit and then the box is split in the middle
17 so each guy can open up his lid and he can throw in
18 there paints and things he doesn't want to carry on
19 the boat that might be flammable and each one has a
20 power device.

21 Q. When did you develop the dock box?

22 A. Well --

23 Q. When and where?

24 A. The dock box was something that
25 migrated as all new things do on ideas you have over

R. Dively - Direct

1 a period of time. The final conceptual design of
2 the dock box that I decided to produce was put
3 together in my garage with my tools and with my
4 equipment in the November, maybe late October, in
5 that time frame of 1990 where I developed all the
6 wooden plugs and built all the wooden tooling that
7 was going to be used for making the fiberglass mold.

8 Q. To kind of keep this in some
9 chronological order, turn to Exhibit 12. That is
10 the accounting with respect to Marina Technology,
11 Willoughby Harbor. We heard about Poole's Grant and
12 Willoughby Harbor. Could you tell me, please, any
13 conversations you and Mac Ingles had regarding
14 Willoughby Harbor and Poole's Grant and when
15 invoices would or would not be paid?

16 A. Well, this has been a 50/50 company
17 from the beginning, and we tried to treat it that
18 way with the exception of a few things that were
19 brought up earlier. The overall objective was to
20 make it 50/50. Mac Ingles owns Willoughby Harbor,
21 and Sea Technology provided at very good pricing the
22 power pedestals that went to Willoughby Harbor.
23 They also did a lot of work afterwards repairing and
24 replacing some of the pedestals that had been
25 damaged and upgrading some for different boat

R. Dively - Direct

1 configurations. These in this document here
2 reflects that Willoughby Harbor owes Sea Technology,
3 \$20,714.38 and Marina Technology owes them
4 \$19,693.37.

5 Q. Have you ever denied owing -- has
6 Marina Technology ever denied owing the money to Sea
7 Technology?

8 A. Not at all.

9 Q. Was that subject to any prior
10 litigation?

11 A. Yes.

12 Q. Did you deny owing that money?

13 A. No. Marina Technology owes Sea
14 Technology for the power pedestals that went to
15 Poole's Grant and I might add that Poole's Grant was
16 a --

17 MR. BUGG: He's not entitled to add
18 gratuitously what he wants to the question. He
19 should respond to Counsel's question.

20 MR. BAYLISS: He is responding.

21 THE COURT: Respond to the question,
22 Mr. Dively, and then if you wish to explain your
23 answer you may do so.

24 BY MR. BAYLISS:

25 Q. You were saying I might add Poole's

R. Dively - Direct

1 Grant?

2 A. Poole's Grant was a turnkey job. It's
3 been brought up in this court that I received
4 \$39,000 for the pedestal. If I received \$295,000
5 for the pedestals it doesn't make any difference. I
6 had to perform and build a complete marina for
7 \$295,000. The pedestal price that they came up with
8 was simply my billing to try to take care of an
9 agreement that Gary McAllister and I had to cover
10 the \$65,000 down payment that he was not allowed to
11 give me but agreed that I could take in the project.

12 Q. Was there any -- was there ever any
13 effort to cover any of this up?

14 A. Never.

15 Q. And this was maintained in the books
16 and records of the company?

17 A. Yes. In fact, this has been in the
18 accounting records ever since late '89.

19 Q. Prior to the time you left Sea
20 Technology on March the 9th, 1990 was the Willoughby
21 Harbor debt ever paid by Willoughby Harbor?

22 A. Not that I know of.

23 Q. To this date do you know if it's been
24 paid or not?

25 A. I have no knowledge.

R. Dively - Direct

1 Q. Prior to the time you instituted suit
2 was it ever paid?

3 A. I don't believe it was.

4 Q. Your lawsuits that you instituted, did
5 you ever seek any money damages from Mr. Ingles?

6 A. No, I didn't. I simply wanted -- in
7 fact, I made an offer that he just take Sea
8 Technology and go his way and/or run Sea Technology
9 his own way. I would remain a silent partner and I
10 would do my own thing and give me an accounting of
11 who owed who what.

12 Q. In the lawsuit you say accounting.
13 What do you mean?

14 A. Well, Mac Ingles owed the company a lot
15 of money, too, and I owed this Marina Technology
16 bill and I owed them for some parts that I used on
17 the Shark Island job and I owed them for some
18 Docksidars, 29 or so, that went to Dock of the Bay.
19 Each one of those were invoiced or instructed to
20 invoice to Marina Technology.

21 Q. Now, turn to Exhibit 13. This has
22 already been introduced. Mr. Dively, just identify
23 it, please.

24 A. It looks like my letter of resignation
25 to Mr. Ingles.

R. Dively - Direct

1 Q. In your letter of resignation do you
2 reference you haven't been paid a salary since
3 October of 1989?

4 A. That's correct.

5 Q. As we sit here today have you ever been
6 reimbursed for your salary?

7 A. I haven't been paid and the other thing
8 mentioned is I paid my own compensations \$9,744 that
9 they still owed me.

10 Q. That is for trips?

11 A. Yes. I paid for my own trips and I
12 hired an accountant to go through all the trips and
13 take out anything that was spent on my wife and
14 daughter even though they did attend and were at the
15 booth with me and deduct it from what I claim they
16 owed me and left a balance of \$9,764 still owing.

17 Q. Turn to Exhibit 21. It's already been
18 introduced. It's a copy of a check payable to Mac
19 Ingles for \$17,136.82 for reimbursement for travel
20 expenses, Australia and other trips. Did you ever
21 have access to this checkbook? Did you maintain the
22 checkbook?

23 A. No.

24 Q. When was the first time you learned Mac
25 Ingles paid himself \$17,136.82 to reimburse for he

R. Dively - Direct

1 and his wife and the trips that they took?

2 MR. BUGG: Your Honor, I object to
3 that. Mr. Ingles explained it was for the credit
4 card and not just his trip. This witness couldn't
5 know it is for this witness unless --

6 THE COURT: Mr. Bugg, I'm going to tell
7 you what the question was and then I'm going to have
8 this young lady read it back to me. The question is
9 when did he become aware this check was written.
10 That's a proper question, when did he become aware
11 of.

12 MR. BUGG: Aware of the check written
13 for Mr. Ingles' expenses.

14 THE COURT: The question is when did he
15 become aware of --

16 BY MR. BAYLISS:

17 Q. When did you become aware of that
18 check?

19 A. I became aware of this check and
20 several other checks that I thought were
21 improprieties. It was the first time I had ever
22 seen the check stubs. Mac Ingles had Trudy Pells
23 out of our office review all the payments that we
24 made to a company called ETL because he was thinking
25 of suing them. I saw all the check stubs there for

R. Dively - Direct

1 the first time ever and this was in 1988 and the
2 company started in 1984. I said, Trudy, what I
3 would like you to do is go through all of the check
4 stubs and add up all the money owed by me and all
5 the money owed by Mac because we had an agreement
6 that we were going to get square with the company.

7 This check was one of the checks I saw
8 and I really became concerned about it because this
9 check Mac and I agreed would be paid by Innovative
10 Technologies International which was going to be our
11 company that handled the international licensing of
12 the licensing of Sea Technology Docksider.

13 Innovative didn't have enough money to
14 pay Mac and these expenses are far and away the
15 Australian trip, the trip to San Francisco, the trip
16 to Hawaii because that's what he tried to collect
17 from Innovative Tech International, and they didn't
18 have the money so finally he wrote the check out of
19 Sea Technology to himself.

20 Q. Now, would it be fair to say that the
21 relationship between the two of you deteriorated
22 late '89, early '90?

23 A. It started to deteriorate when I saw
24 what had happened in the checkbook and one of the
25 most surprising things was the \$60,000 that came up

R. Dively - Direct

1 earlier. What Mac Ingles did in the checkbook, and
2 that's all I can speak to, when I looked at the
3 checks was he in effect took an advance of about
4 \$80,000 in income and Sea Technology did not have
5 the money in the checking account but it was
6 December 31st and he needed income to offset some
7 other loss.

8 The only money we had in the account at
9 that time according to the check stubs that I looked
10 at was a few thousand dollars. So apparently what
11 he did was, and this is, it looks as though he
12 borrowed money from the bank and took \$20,000 of
13 legitimate money.

14 MR. BUGG: It's not proper to say it
15 looks so. If he's got the checks and he can qualify
16 to show the checks to the jury and here's what he
17 did and he's qualified to say here's what Mr. Ingles
18 did, fine, but he's sitting up there speculating.

19 THE COURT: I sustain your objection.

20 BY MR. BAYLISS:

21 Q. I don't want you theorizing. I want
22 you to tell me what the checkbook revealed and any
23 discussions.

24 A. The checkbook revealed that Mac Ingles
25 had written two checks to himself, one for \$20,000

R. Dively - Direct

1 and one for \$60,000.

2 Q. How much money was in the bank
3 according to the checkbook when he wrote those two
4 checks?

5 A. To the best of my knowledge there was
6 less than the \$20,000, and the \$60,000 check wasn't
7 in -- there was no way you could write a \$60,000
8 check, so Mac Ingles explains when he is challenged
9 on this, said, I needed the income so I loaned the
10 company \$60,000 so I could write this check to
11 myself, almost like kiting a check back and forth.

12 MR. BUGG: I object to that.

13 THE COURT: I sustain the objection.

14 MR. BUGG: Instruct the jury.

15 THE COURT: I sustained the objection.

16 MR. BAYLISS: Just the facts.

17 THE WITNESS: It looked --

18 BY MR. BAYLISS:

19 Q. I don't want to know what it looked
20 like. Did you and Mr. Ingles have a discussion
21 about that?

22 A. Yes. That happened like in '89.

23 Q. As this relationship continues to
24 deteriorate now, at the same time did you take out
25 that extra \$60,000?

R. Dively - Direct

1 A. No, I didn't.

2 Q. Did there finally come a time that you
3 got fed up and decided to leave?

4 A. Yes, there was. It was in the -- after
5 the rejection of the Bishop offer I just decided it
6 was fruitless to stay there. Our product was
7 obsolete. We were in the process of losing our UL
8 listing. I wanted to make changes in the unit to
9 make sure we could qualify for the UL listing and
10 the money was not available to do it. I had the
11 dock box and it looked like the Risley deal was
12 falling apart and there just wasn't any way to go,
13 and I decided I would go try to do something for
14 myself because I hadn't been paid for five or six
15 months.

16 Q. And that was on or about March the 9th?

17 A. Yes, I believe.

18 Q. Turn to Exhibit 15. This has been
19 talked about many times. Just tell me what it is.

20 A. It's my attempt to account for the
21 labor and materials used on the jobs that Marina
22 Technology supplied and these would be the parts
23 that came from Sea Technology's inventory.

24 Q. Now, let's talk about Shark Island.
25 Tell me briefly what Marina Technology sold to Shark

R. Dively - Direct

1 Island.

2 A. I don't know the full amount of the
3 total order but during the time here there were 14
4 units, 14 dock boxes, and they were sold to Shark
5 Island in the February time frame.

6 Q. And when you got paid tell us about the
7 check.

8 A. Well, we invoiced Shark Island on
9 Marina Technology, and I was I think at the boat
10 show when it was out. Al delivered it and came
11 back. When he came back Al came to me and said he
12 had a problem. I asked him what it was. He said,
13 well, Shark Island wrote the check out to Sea
14 Technology even though they had been invoiced to
15 Marina Technology. I said, well, I said, there's
16 nothing you can do about it now. I'll take care of
17 it.

18 Q. Did you have the checkbook at that
19 time?

20 A. My checkbook?

21 Q. No, Sea Technology.

22 A. No.

23 Q. So what did you do?

24 A. I called Shark Island and talked to
25 Allison King who testified here earlier and told her

R. Dively - Direct

1 that inadvertently -- that it looked like somebody
2 had inadvertently done it because I invoiced them
3 properly in the name of Marina Technology for the
4 dock boxes and that they had written the check to
5 Sea Technology, and Allison King in effect --

6 Q. Don't tell me what she said. As a
7 result, what did you do with the check?

8 A. I deposited the check in Marina
9 Technology's account, endorsed it from Sea
10 Technology to Marina Technology.

11 Q. And Dock of the Bay?

12 A. On Dock of the Bay there were -- I
13 can't remember the number of dock boxes there.

14 Q. Was it less than 20?

15 A. I want to say yes, probably. To start
16 with it made it at Sea Technology but Dock of the
17 Bay was a job that required both pedestals -- some
18 pedestals, 29 of them, and then the rest of the job
19 was dock boxes and we supplied that job probably on
20 through in the July time frame.

21 Q. While you were at Sea Technology,
22 though, you supplied some dock boxes, Marina
23 Technology did?

24 A. Yes.

25 Q. And Marina Technology was paid some

R. Dively - Direct

1 money?

2 A. Marina Technology collected money but
3 Marina Tech also paid for all of the parts for the
4 dock boxes. We bought the dock boxes from Salt
5 Marsh Industries and bought hinges and a ton of
6 parts from other people and these parts from Sea
7 Technology.

8 Q. And why, sir, when you left why would
9 you tell anybody to bill Marina Technology for this?

10 A. Because they owed it.

11 Q. Did you ever make any attempt to cover
12 that up?

13 A. Never.

14 Q. Now, Pelican Harbor, you were indicted
15 for Pelican Harbor?

16 A. Yes, I was.

17 Q. Tell me about Pelican Harbor.

18 A. Pelican Harbor --

19 Q. When did you first have wind of Pelican
20 Harbor and when did you do the work?

21 A. Pelican Harbor, I met a fellow named
22 Larry Sietzman at the Florida Miami Boat Show, and
23 down there I was displaying this new box I had
24 designed and at that time I thought it was going to
25 become a Sea Technology product and it had a Sea

R. Dively - Direct

1 Technology label on it, and Larry saw it and he
2 liked it. Subsequently he placed an order for these
3 dock boxes and I supplied them all out of Marina
4 Technology out of Williamsburg.

5 Q. And when was that subsequently? Was it
6 before you left or after you left?

7 A. I provided all the dock boxes from the
8 time after I left Sea Technology.

9 Q. That's Dock of the Bay, Shark Island,
10 Pelican Harbor, and Poole's Grant we talked about.
11 When you left, sir, did you have any discussions
12 with Al Brooks about any equipment that you might
13 have owned, and if so, tell us what that discussion
14 was?

15 A. Al Brooks and I have been together for
16 a long time, I guess 1984, and Al pretty well knew I
17 thought all my tools and there were a lot of them
18 that I had taken to Sea Technology, and I asked Al
19 when I decided to leave there to pick up my tools
20 and to move them to Williamsburg.

21 Q. Did you oversee that?

22 A. No.

23 Q. Did you tell him what to pick up?

24 A. No.

25 Q. Did you inventory it when it got to

R. Dively - Direct

1 Williamsburg that day?

2 A. Not that day.

3 Q. Now, we're in the March time frame,
4 March of 1990, early April of 1990, two lawsuits,
5 they've been introduced as exhibits, were filed.
6 You filed one and Mr. Ingles sued you seeking money
7 damages of \$5 million. Do you remember that?

8 A. Yes.

9 Q. Did there come a time that you had to
10 appear in court here in Williamsburg?

11 A. Yes.

12 Q. Was that on or about April 11th?

13 A. I believe so.

14 Q. Tell me what happened.

15 A. Mac Ingles was trying to enjoin Marina
16 Technology and me from producing the dock box or any
17 other item that would compete with him.

18 Q. And were you enjoined at that time?

19 A. No, I wasn't.

20 Q. And did you continue to produce the
21 dock box from that point forward?

22 A. Yes, I did.

23 Q. And your company, what was the name of
24 the company at that point?

25 A. Marina Technology.

R. Dively - Direct

1 Q. Was the Pelican Harbor after that
2 hearing or before?

3 A. After.

4 Q. Was the work you did for Dock of the
5 Bay -- I'm sorry -- other than the 29 pedestals for
6 Dock of the Bay was that all before or after the
7 injunction had been denied?

8 A. The 29 pedestals and the few boxes were
9 done at Sea Technology. All the rest of the order
10 was produced in Williamsburg.

11 Q. Did there come a time in April when you
12 returned some equipment and tools or whatever to Sea
13 Technology?

14 A. Yes, at the injunction hearing I
15 believe we were requested to check -- it was brought
16 up that some items had been taken over to the
17 Williamsburg plant that did not belong to us and so
18 at that time I went out in the back of the plant and
19 I observed some items there that I knew were
20 property of other -- of either Willoughby Harbor or
21 Sea Technology and instructed them to pack them up
22 and take them back.

23 Q. At that time -- strike that question.
24 Now, we're in mid April, 1990. Was there anything
25 else pending at that time to your knowledge other

R. Dively - Direct

1 bills. You have seen the bills before I know?

2 A. Sure, lots of them. Uh-huh.

3 Q. Now, the summary, sir, what does it add
4 up to?

5 A. \$96,405.75.

6 Q. To the best of your knowledge have you
7 paid at least that money to defend yourself in the
8 criminal case?

9 A. I paid at least that much.

10 MR. BAYLISS: I move to introduce 33.

11 MR. BUGG: No objection, Your Honor.

12 THE COURT: The summary and these?

13 MR. BAYLISS: Yes, sir.

14 THE COURT: 33 plus the bills attached
15 thereto are introduced and marked as Plaintiff's
16 Exhibit Number 33.

17 (The document referred to was marked by
18 the Court as Plaintiff's Exhibit 33, and received
19 into evidence.)

20 BY MR. BAYLISS:

21 Q. Now turn to Exhibit 31. It's already
22 been introduced. If you can look at these real
23 quick and just identify these, please.

24 A. The first one is an article that
25 appeared in the -- I believe it was in the Gazette

R. Dively - Direct

1 here in Williamsburg and it's titled, "Man Acquitted
2 on Embezzlement Charges."

3 Q. You don't have to go through each
4 article. The jury can read these later. I just
5 want you to generally tell me what these are.

6 A. The first one is an article that
7 describes my acquittal in that trial and makes
8 comments about what the judge said.

9 Q. Let me lead you and get through this if
10 he won't object. Is this a general summary of
11 newspaper articles that you sent to your counsel
12 that related to the problems you and Mac Ingles were
13 having?

14 A. Yes. I believe it is.

15 MR. BUGG: My objection to the first
16 one is already in the record.

17 THE COURT: You objected yesterday when
18 they were introduced and I sustained.

19 BY MR. BAYLISS:

20 Q. The civil trials that you had
21 Mr. Dively they were tried three months ago, March
22 of 1992?

23 A. Yes.

24 Q. And as a result of -- how long was that
25 trial?

R. Dively - Cross

1 A. It was a five day trial.

2 Q. And turn to Exhibit 32. Is that a true
3 and correct copy of the order?

4 A. Yes, it is. It appears to be.

5 Q. Mr. Dively, have you ever stolen
6 anything from Sea Technology?

7 A. No, I haven't.

8 Q. Have you ever taken anything from Sea
9 Technology that was not yours?

10 A. No, I haven't.

11 MR. BAYLISS: I don't have any other
12 questions, Your Honor.

13 THE COURT: Let's stop. Let's let the
14 jury have a little break. We've been at it for an
15 hour and a half, ladies and gentlemen.

16 (The jury withdrew from the courtroom.)

17 (Recess.)

18 (The jury was returned to the
19 courtroom.)

20 CROSS-EXAMINATION

21 BY MR. BUGG:

22 Q. Mr. Dively, when the officers came to
23 your place of business on May 9th of 1990 and you
24 went to the police station, you went over there in
25 your own car and John McMeaken drove you, didn't he?

R. Dively - Cross

1 in working with these people.

2 Q. EMR is defunct?

3 A. It's not doing any more business.

4 Q. Marina Technology, Incorporated started
5 in August of 1987, thereabouts?

6 A. Roughly.

7 Q. You owned a hundred percent of Marina
8 Technology, Inc. then?

9 A. Yes.

10 Q. And you've owned a hundred percent of
11 Marina Technology ever since then?

12 A. Yes.

13 Q. And Marina Technology became inactive
14 on July 1st, 1990, didn't it?

15 A. Marina Technology lost a lot of money
16 on the dock boxes, and I wanted to start producing
17 power pedestals so that I design a power pedestal to
18 go out in the world to sell it and at that time I
19 just simply stopped operating Marina Technology
20 which was making dock boxes.

21 Q. And at that time you became employed by
22 M-Tech?

23 A. M-Tech, yes.

24 Q. And that company was funded,
25 capitalized, by Floyd Bishop?

R. Dively - Cross

1 A. Yes.

2 Q. And --

3 A. With my tools and equipment and design,
4 yeah.

5 Q. And M-Tech is no longer in business?

6 A. That's true.

7 Q. You are doing business now as
8 Innovative Marine Products?

9 A. Yes. I personally took over the assets
10 of M-Tech from Floyd Bishop because he had given me
11 promissory notes to buy the equipment and the
12 company from him, and the promissory notes had the
13 confession of judgments attached to them as well as
14 I had a first secured interest in all the tools and
15 equipment that I had started out in putting the
16 equipment for these notes, so I gave him real hard
17 product and tools and equipment and he gave me
18 pieces of paper which he never paid for, so I
19 confessed judgment here in Williamsburg court and
20 took over the assets of M-Tech and left him with the
21 liabilities.

22 Q. And now you are in litigation with
23 Mr. Bishop over that?

24 A. Not that I know of.

25 Q. A lawsuit hasn't been filed in

R. Dively - Cross

1 Williamsburg about the confession of judgment?

2 A. About the confession of judgment?

3 Q. Yes, sir.

4 A. I don't think a lawsuit has been
5 filed. I think that somebody is contesting the
6 confession of judgment.

7 Q. The IRS has sent a notice that \$65,000
8 or so in unpaid withholding taxes is due on M-Tech,
9 haven't they?

10 A. I have no idea.

11 Q. The judgment by Cadillac Products,
12 \$25,732?

13 A. Yes, sir, there was a judgment.

14 Q. Would you get Exhibit 2 in that book in
15 front of you, please, Mr. Dively? That's a letter
16 from you back in February of '89 to a fellow named
17 McMacon at McRay Harbor, right?

18 MR. BAYLISS: I noticed this objection
19 before McMacon was never mentioned in direct
20 examination and I make it as --

21 MR. BUGG: This is cross-examination.

22 THE COURT: I agree. Go ahead.

23 BY MR. BUGG:

24 Q. And Mr. McMacon was with McRay Harbor
25 which was a pedestal job?

R. Dively - Cross

1 A. Yes. These are Sea Technology.

2 Q. And you provided 75 pedestals or Sea
3 Technology did to Mr. McMacon?

4 A. I can't remember.

5 Q. It was a lot of them, good job?

6 A. It was a nice job.

7 Q. And Mr. McMacon wanted a timer in the
8 pedestal to run a pump-out within the boats?

9 A. That's a very general but that's not
10 really what it was for. He wanted a device in the
11 pedestal to operate a sewage pump to be able to pump
12 the waste from the boats right at the dock, and the
13 only device that he could use was a device made by a
14 boat manufacturer that operated on 12 volts. Our
15 power pedestal only operated on the standard wall
16 currents so this thing took the standard AC power
17 that comes out of your wall, converted it to DC and
18 because it was a boat pump it couldn't operate very
19 long it had to have a timer to shut it off or it
20 would burn up. This is a complex device. It's not
21 a simple timer.

22 Q. You told Mr. McMacon that to put this
23 device in the pedestals you could do it cheaper
24 through another company, in order to produce the
25 source as inexpensive as possible I'm going to put

R. Dively - Cross

1 it through another company?

2 A. That's what the letter says.

3 Q. And the other company was Marina
4 Technology, Incorporated, wasn't it?

5 A. Yes.

6 Q. And Marina Technology, Incorporated
7 didn't do it a bit more cheaply than anybody else
8 could?

9 A. Than anybody else?

10 Q. Than Sea Technology could.

11 A. I believe they could have but I don't
12 know. You got your facts.

13 Q. Cost didn't have anything to do with
14 it, did it?

15 A. Several things had to do with it.
16 Number one, Sea Technology could not have modified
17 the pedestal.

18 Q. We'll get to that in a minute.

19 MR. BAYLISS: He said cost had nothing
20 to do with it. He can explain the answer. He
21 opened the door.

22 MR. BUGG: He's entitled to explain.
23 We can move through this more quickly if he answers
24 my question first.

25 MR. BAYLISS: We move a lot quicker if

R. Dively - Cross

1 he doesn't get a chance to explain the answer.

2 THE COURT: Answer the question and
3 then explain your answer.

4 THE WITNESS: Would you repeat your
5 question?

6 BY MR. BUGG:

7 Q. Marina Technology could not modify this
8 pedestal more cheaply than Sea Technology?

9 A. It certainly could.

10 Q. Let me read you something from your
11 deposition since you say it certainly could taken,
12 on January 24th of '92, Page 617, where I ask you or
13 Mr. Russell asks you, "Why was Marina Technology
14 able to modify the pedestals less expensively than
15 Sea Technology?"

16 Your answer, "I don't know that they
17 were. I suppose their overhead was a lot less."

18 A. That's saying it's less.

19 Q. Marina Technology didn't have any
20 overhead at Sea Technology, did it?

21 A. Because I did the work to modify these
22 myself and how much overhead is involved with my own
23 labor.

24 Q. You and Al Brooks modified these at Sea
25 Technology?

R. Dively - Cross

1 A. Yes, we did. I did some at my house.

2 Q. Nobody else at Sea Technology worked on
3 them?

4 A. Not to my knowledge.

5 Q. Those transformers or whatever weren't
6 put in the pedestals as they came right on through
7 production, you did that later?

8 A. Absolutely not. You couldn't install
9 them in production because the way the unit was
10 built.

11 Q. Flip over to Exhibit Number 4.

12 A. If you installed them in production you
13 could never put the UL label on them. This is a
14 modification done after production.

15 Q. Flip over to Exhibit Number 4. You
16 mentioned the modification and the UL sticker. The
17 fact that the modification meant that they couldn't
18 be UL certified if they came through Sea Technology;
19 is that correct?

20 A. That's only correct if Sea Technology
21 had not submitted a device to Underwriter's
22 Laboratory with that modification.

23 Q. What you are telling us, Mr. Dively, is
24 you used Marina Technology as an independent
25 contractor so that you could modify the device and

R. Dively - Cross

1 still have a UL label on the pedestal?

2 A. Once the device leaves Sea Technology
3 to go somewhere else if it's modified then Sea
4 Technology can still put the label on.

5 Q. So all the modifications were somewhere
6 else, not at Sea Technology?

7 A. Typically an awful lot of electrical
8 devices that people buy at the hardware store or
9 anywhere have UL labels on it and there's nothing to
10 prevent you from modifying it and the label remains
11 on it. That's what happened here.

12 Q. Look at Exhibit Number 3, Mr. Dively.

13 MR. BAYLISS: 3 or 4?

14 MR. BUGG: 3.

15 BY MR. BUGG:

16 Q. Exhibit Number 3. It's an invoice from
17 Robertson Transformer to Marina Technology?

18 A. It appears to be, yes.

19 Q. That's for the cost of those
20 transformers, isn't it?

21 A. It's for transformer. It's about the
22 right time. Yes, it appears to be.

23 Q. That's for 300 transformers, isn't it?

24 A. It looks like 300. I can't say for
25 sure.

R. Dively - Cross

1 Q. And that was for 300 transformers back
2 on Exhibit 2, that's what you were supplying, isn't
3 it?

4 A. Yes.

5 Q. And you told him you were going to do
6 it 300 times \$49.60 for a gross price of \$14,880 and
7 you take off the cost and the profit was \$11,703?

8 A. What I tried to explain to you earlier
9 it's not right, and what I want to explain is I told
10 you this device was not a simple device. It had a
11 timer, it had a full way bridge rectifier that would
12 handle 25 amps. It had a capacity to prevent
13 overcharging and fast current. It had many other
14 parts other than these transformers and you can't
15 take what I charged and take just the transformers
16 off. It's just not -- it doesn't make sense.

17 Q. Did you pay any labor?

18 A. I paid labor. I paid Al Brooks to help
19 me.

20 Q. Did you pay anybody else?

21 A. No. Nobody else helped me.

22 Q. You didn't tell Mr. Ingles anything
23 about that deal, did you?

24 A. I don't believe I did. I can't recall,
25 though. I didn't see any reason to.

R. Dively - Cross

1 Q. Don't you think you would recall?

2 A. Mr. Ingles didn't tell me everything
3 about what he was doing either but I didn't think it
4 was important. There was very little profit made on
5 that by the time you add in all the components that
6 I charged the man. I was trying to do the man a
7 favor.

8 Q. Do you remember a man named Keating
9 that ordered a box from you in early 1990?

10 A. Dr. John Keating, yes.

11 Q. He saw you at the Miami Boat Show and
12 got interested in the dock box?

13 A. I can't remember him talking to me at
14 the boat show.

15 MR. BUGG: I would like to move in
16 Numbers 2 and 3.

17 MR. BAYLISS: No objection.

18 THE COURT: Introduced and marked as
19 Defendant's Exhibits 2 and 3.

20 (The documents referred to were marked
21 by the Court as Defendant's Exhibits 2 and 3, and
22 received into evidence.)

23 BY MR. BUGG:

24 Q. Mr. Dively, turn to Exhibit 6. That's
25 a brochure that you were giving out at the boat

R. Dively - Cross

1 shows about the dock box, wasn't it?

2 A. It appears to be.

3 Q. Here is an original one, a yellow one.
4 That's what it looked like?

5 A. I have no idea.

6 Q. It says Sea Technology, Limited at the
7 top?

8 A. Yes.

9 Q. And it's talking about the dock box?

10 A. Yes.

11 Q. It says so unique we applied for a
12 patent?

13 A. That's what it says.

14 Q. You hadn't applied for a patent, have
15 you?

16 A. No, we hadn't. I had done some
17 preliminary searching which is the start of the
18 patent application process.

19 Q. You hadn't applied for one?

20 A. Well, for the formal application or the
21 search? The process had started but was dropped.

22 Q. It says Emron painted. It wasn't Emron
23 painted, was it?

24 A. I believe it was. The lid was painted.

25 Q. Fireproof fiberglass, it wasn't

R. Dively - Cross

1 fireproof fiberglass?

2 A. Yes, it was.

3 Q. That address on the bottom is a post
4 office box out on the pole, isn't it?

5 A. I don't know where it is. I assume
6 it's at the plant. We installed a mailbox at the
7 plant but I don't know the number of it.

8 MR. BUGG: I move the admission of
9 Number 6, Your Honor.

10 THE COURT: Introduced and marked as
11 Defendant's Exhibit Number 6.

12 (The document referred to was marked by
13 the Court as Defendant's Exhibit 6, and received
14 into evidence.)

15 MR. BUGG: Can the jury see that
16 particular exhibit?

17 THE COURT: Do you want them to see
18 that particular one? All right. Certainly may.
19 Will you hand them that, please?

20 BY MR. BUGG:

21 Q. The telephone number and fax number on
22 that document are Sea Tech's numbers, aren't they?

23 A. I'm only familiar with one number on
24 there. I can't remember the 800 number, but the
25 624-6538 is the Sea Technology number.

R. Dively - Cross

1 Q. Back to Mr. Keating he ordered a box
2 from you, didn't he?

3 A. Yes, he did.

4 Q. Flip over to Exhibit 7.

5 MR. BAYLISS: All this is hearsay.
6 It's letters from Keating. Keating is not hear.

7 MR. BUGG: It's just an order.

8 MR. BAYLISS: It's all hearsay. It's
9 not admissible. If they want Mr. Keating here they
10 could have brought him.

11 MR. BUGG: That's fine. I'll go on.

12 THE COURT: As long as you agree,
13 Mr. Bugg, we're in good shape.

14 BY MR. BUGG:

15 Q. Look at the next page, the check dated
16 2-22-90. It's for \$610 payable to Sea Technology,
17 Limited?

18 A. Yes.

19 Q. And that was a check you got from
20 Mr. Keating for a dock box?

21 A. That's what it says, for dock boxes.

22 Q. And right under that is a Marina
23 Technology Crestar Bank account deposit slip?

24 A. Yes.

25 Q. Has Shark Island?

R. Dively - Cross

1 A. Yes.

2 Q. Also has John Keating \$610, and it's
3 dated February 22nd, 1990?

4 A. Yes.

5 Q. Flip to the next page. Mr. Keating
6 called you --

7 A. I want to explain this. Marina
8 Technology sent this check back.

9 Q. We'll get to that.

10 A. And he reissued another check and then
11 we manufactured the box.

12 Q. You endorsed Mr. Keating's check to Sea
13 Technology and put it into Marina Technology check
14 and Mr. Keating called and wanted to know where his
15 box was; is that correct?

16 MR. BAYLISS: I guess he wants to
17 testify for Mr. Keating. I object to anything
18 Mr. Keating says. It's improper and he knows it's
19 improper.

20 BY MR. BUGG:

21 Q. At some point you returned a check to
22 Mr. Keating; is that correct?

23 A. Yes, I did.

24 Q. Flip over to the next page. Is that
25 your letter to Mr. Keating dated March 27, 1990?

R. Dively - Cross

1 A. Right.

2 Q. That's your letter to Dr. John Keating
3 dated March 27th, 1990?

4 A. It appears to be.

5 Q. And you were sending him a cashier's
6 check for \$610?

7 A. That's correct.

8 Q. And you told him, "We are returning
9 payment for the dock box you ordered because we
10 inadvertently deposited your check into the wrong
11 account and in order not to create any more
12 confusion it is simpler to return your payment and
13 ask for payment to be issued in the correct company
14 name Marina Technology, Inc.," correct?

15 A. That's correct.

16 Q. And when you got Keating's check back
17 you put it in Marina Technology, Inc., didn't you?

18 A. That's correct.

19 Q. And that's where the first one went?

20 A. That's correct.

21 Q. And there wasn't any inadvertence about
22 it, was it?

23 A. I sent the money back to him that I
24 deposited into Sea Technology's account.

25 Q. My question is, when you got the first

R. Dively - Cross

1 check and put it in Marina Tech's account, it wasn't
2 inadvertent, you didn't make a mistake?

3 A. I returned it voluntarily.

4 Q. That's not my question.

5 A. I deposited it in my account.

6 Q. And it wasn't a mistake?

7 A. At that time I didn't think it was a
8 mistake.

9 MR. BUGG: I move the admission. Since
10 Mr. Bayliss doesn't want the first page I ask the
11 clerk to prepare a new sticker.

12 THE COURT: I permit the check, the
13 endorsement thereon and Mr. Dively's letter with
14 apparently a photostat of a cashier's check, those
15 two pages will be introduced as Defendant's Exhibit
16 Number 7.

17 (The document referred to was marked by
18 the Court as Defendant's Exhibit 7, and received
19 into evidence.)

20 BY MR. BUGG:

21 Q. Let's talk about your stock in Sea
22 Technology, Mr. Dively. Any question about when it
23 started out each of you had 15 shares?

24 A. It was always my understanding that
25 each of us owned 50/50.

R. Dively - Cross

1 Mr. Dively, that this is the product that you were
2 going to be making in that space?

3 A. Absolutely not.

4 MR. BUGG: I move it into admission,
5 Your Honor.

6 THE COURT: Just that one?

7 MR. BUGG: No, all three. It would be
8 13, 14 and 15.

9 THE COURT: Defendant's Exhibits 13, 14
10 and 15 are hereby introduced into evidence.

11 (The documents referred to were marked
12 by the Court as Defendant's Exhibits 13, 14 and 15,
13 and received into evidence.)

14 BY MR. BUGG:

15 Q. Now, I think you said earlier that you
16 always intended for the dock box to be a Sea
17 Technology product?

18 A. That's correct.

19 Q. And if the company was sold that it
20 would be folded into Sea Technology and go with the
21 sale?

22 A. That's even expounded in the agreement
23 that Mac Ingles drew up with Rick Risley and myself.

24 Q. For that reason you kept separate
25 accountings for the dock box?

R. Dively - Cross

1 A. I kept separate accountings of the dock
2 box because until that time I was responsible for
3 the bills.

4 Q. And is it your testimony that both
5 Mr. Risley, one of the potential purchasers, and
6 Mr. Bishop, the other potential purchaser, agreed to
7 reimburse you for the expenses that you incurred in
8 developing this dock box if they bought the company?

9 A. And to pay me a royalty on top of it.

10 Q. They agreed to reimburse you for
11 expenses?

12 A. Yes, sir.

13 Q. You've told the jury that you filed
14 suit for an accounting and that's all you wanted,
15 but, in fact, by February 13th of 1990 you decided
16 you wanted to see Sea Technology dissolved, hadn't
17 you?

18 A. I wanted to see an accounting of where
19 Mac Ingles and I stood at Sea Technology, not
20 dissolved. This is my baby. I developed this. I
21 designed it. Everywhere I go in the country I see
22 it. I know that's part of me. I didn't want this
23 product to end. I only wanted an accounting.

24 Q. Look at Exhibit 16, Mr. Dively.

25 THE COURT: Your 16 or his 16?

R. Dively - Cross

1 something while I was at Sea Technology.

2 MR. BUGG: I move its admission, Your
3 Honor, 16A.

4 THE COURT: 16A introduced and marked
5 as Defendant's Exhibit 16A.

6 (The document referred to was marked by
7 the Court as Defendant's Exhibit 16A, and received
8 into evidence.)

9 THE WITNESS: Mr. Davis was also
10 reviewing the purchase agreement -- was reviewing
11 Sea Technology's purchase agreement from Bishop on
12 my behalf.

13 BY MR. BUGG:

14 Q. Now, Mr. Dively, it's your position
15 that Marina Technology owes about \$35,000 to Sea
16 Technology?

17 A. I don't know what it is. Whatever the
18 accounting that I asked for works out to be that's
19 what I owe them.

20 Q. It was \$35,800 and that was your
21 document, correct?

22 A. I can't remember that number.

23 Q. You say Marina Technology owes that
24 money?

25 A. I say they owe money and when the

R. Dively - Cross

1 you found that?

2 A. 61B?

3 THE COURT: 61A he said.

4 MR. BUGG: It should be 61B.

5 THE WITNESS: I don't know if this is
6 the document Ms. Hogge was looking at or not when
7 she testified.

8 BY MR. BUGG:

9 Q. It says monies owed Sea Technology for
10 materials and/or labor?

11 A. Yes, that's what it says.

12 Q. And lists three jobs, Poole's Grant,
13 Shark Island and Dock of the Bay?

14 A. Yes.

15 Q. \$35,485.67?

16 A. That's correct.

17 Q. That was a document prepared at your
18 direction, wasn't it?

19 A. Probably.

20 Q. Flip back to Exhibit 22, Mr. Dively.
21 Have you got those in front of you?

22 A. Yes. I have Exhibit 22.

23 Q. Exhibit 22 is also documents prepared
24 at your direction, weren't they, and it shows
25 overhead that you attribute to Dock of the Bay and

R. Dively - Cross

1 Shark Island jobs?

2 MR. BAYLISS: I'm going to object to
3 these. He says they were prepared at his
4 direction. They were prepared by Jane Hogge. He
5 had Jane Hogge on the stand. I don't know if this
6 man knows anything about these. These were exhibits
7 in the other trial. Jane Hogge was the one that got
8 these in the other trial.

9 THE COURT: Is that true?

10 MR. BUGG: I think he can identify.
11 She put them in. Are those documents you are
12 familiar with?

13 MR. BAYLISS: We'll stipulate that Jane
14 Hogge prepared these at Bob Dively's direction in
15 preparation for the other civil case.

16 BY MR. BUGG:

17 Q. Do you remember Exhibit 13 which
18 Mr. Bayliss handed you which were the notes about 29
19 pedestals and labor and parts?

20 MR. BAYLISS: Your accounting.

21 THE WITNESS: Yes.

22 BY MR. BUGG:

23 Q. There wasn't anything on there,
24 Mr. Dively, was there, about insurance, advertising,
25 sales expense, lab testing, salaries, rent, phone,

R. Dively - Cross

1 lights, employer's contribution to taxes, equipment
2 depreciation or waste removal, was there?

3 MR. BAYLISS: We'll stipulate there's
4 nothing on there. These exhibits are a profit and
5 loss analysis. They are not a cost analysis which
6 Exhibit 13 was, and he's misleading the jury to ask
7 that. We stipulate the documents speak for
8 themselves and don't have that on it.

9 MR. BUGG: I'm not misleading the
10 jury. There's absolutely no overhead on the
11 accounting this man leaves behind.

12 MR. BAYLISS: We stipulate.

13 THE COURT: Is that to show a weakness
14 in character?

15 MR. BUGG: It shows the accounting was
16 not in good faith, Your Honor.

17 BY MR. BUGG:

18 Q. Mr. McMeaken was at the Miami Boat
19 Show, wasn't he?

20 A. When?

21 Q. In 1990, early 1990?

22 A. Yes, in February of 1990, yes.

23 Q. And you showed the box down at the
24 Miami Boat Show?

25 A. I already said I did.

R. Dively - Cross

1 Q. And at the New York Boat Show?

2 A. Yes.

3 Q. And Sea Technology paid the expenses?

4 A. Yes.

5 Q. And you used that flyer that the jury
6 had seen to advertise the box at the boat show?

7 A. Yes. As I said, at that time it was my
8 full intention to have this as Sea Technology
9 products, as the agreements that we looked at
10 previously said the man was going to buy them.

11 Q. You never told Mr. Ingles you were
12 building that box in the back of Sea Technology and
13 selling that box, did you?

14 A. Never told Mr. Ingles? Mr. Ingles came
15 in the plant and saw the boxes.

16 Q. You never told him about it?

17 A. I didn't tell him about the pedestals
18 either. He saw those.

19 Q. You said Mr. Ingles came in and saw the
20 men making the boxes in the back?

21 A. I didn't say that. We had 15 boxes.
22 It's 48 inches by 24 inches. All you have to do is
23 walk in the plant. They look like they're
24 everywhere. You only have 20 or 30 and they look
25 like they're everywhere, and Mr. Ingles walked in

R. Dively - Cross

1 the plant but I don't know that he knows what a dock
2 box is.

3 MR. BUGG: Your Honor, can we take a
4 break? We have a witness we need to talk to him.

5 MR. BAYLISS: I think we ought to
6 finish this man.

7 THE COURT: I think we need to finish
8 this.

9 BY MR. BUGG:

10 Q. I direct your attention to your
11 testimony on January 24th, 1992 and ask you if
12 you -- "QUESTION: Do you think Mr. Ingles knew that
13 dock boxes were being made at Sea Technology before
14 you left in March?"

15 "ANSWER: I can't speak to what
16 Mr. Ingles knew or didn't know."

17 "QUESTION: Do you have any facts which
18 would indicate that he knew they were making dock
19 boxes?"

20 "ANSWER: I don't know what Mr. Ingles
21 knows."

22 "QUESTION: Do you have any facts,
23 quote, I told Mr. Ingles or I saw a picture of him
24 standing next to a dock box?"

25 "ANSWER: If I told him how would I

R. Dively - Cross

1 know he knew."

2 "QUESTION: Did you tell him?"

3 "ANSWER: I can't remember."

4 "QUESTION: Did you ever see him at Sea
5 Technology with dock boxes around?"

6 "ANSWER: I can't remember that
7 either."

8 "QUESTION: Do you have any facts you
9 can tell me today which would indicate he knew dock
10 boxes were being made at Sea Technology?"

11 "ANSWER: No, I sure don't."

12 Was that your testimony last January,
13 Mr. Dively?

14 A. It's still the same thing. I said that
15 Mr. Ingles came in the plant.

16 MR. BAYLISS: Let's go on to the next
17 question.

18 BY MR. BUGG:

19 Q. You never told Mr. Ingles you were
20 going to make this box on the side and sell it and
21 keep the money in Marina Technology, did you?

22 A. I never told Mr. Ingles -- I didn't do
23 anything on the side. It was all open and
24 Mr. Ingles even typed new products in the contract.

25 Q. That was in late February, wasn't it,

R. Dively - Cross

1 Mr. Dively?

2 A. We negotiated that thing months before
3 that.

4 Q. Without going through all these
5 documents again you've seen the draw request for
6 Poole's Grant, correct?

7 A. Yes.

8 Q. And you put in the first one in March
9 that you were being paid 25 percent down for Sea
10 Technology pedestals on site paid, under oath,
11 that's what you said, didn't you?

12 A. The document speaks for itself.

13 Q. And in May you said under oath that the
14 balance had been paid \$30,210 for a total of
15 \$39,710?

16 A. Again, the document speaks for itself.

17 Q. And that's what the documents mean in
18 the contracting field, don't they, when you put in a
19 draw request, when you ask owner for money on that
20 draw you are telling the owner, I paid these bills,
21 pay me; isn't that what you are doing?

22 A. I had an agreement with Mr. McAllister
23 that he couldn't afford to pay me a down payment and
24 I would front end load the contract to get my down
25 payment and that was the way it was done. I didn't

R. Dively - Cross

1 have any money. I had to build a marina and the
2 people wanted payment in cash and that's why it was
3 done.

4 Q. Let's go back to Exhibit 11,
5 Mr. Dively, McGeorge Car Company papers, first page
6 after the subpoena, May 13th, 1989, purchaser,
7 Marina Technology, Inc., do you see that?

8 A. Yes.

9 Q. And Marina Technology was purchasing on
10 May 13th, 1989, six days after you got paid \$30,000
11 for the rest of the pedestals, sixty-some thousand
12 dollars for a Mercedes?

13 A. This never happened. This whole
14 agreement never happened. I financed this car
15 through Crestar Bank. I didn't finance it with
16 McGeorge. Crestar Bank loaned me the money. I
17 don't know what this thing -- I guess they outlined
18 things but I financed the car with Crestar.

19 Q. Do you see anything in there about
20 Crestar Bank?

21 A. That's why I say I don't know why this
22 is in there. I financed my Mercedes through Crestar
23 Bank.

24 Q. Marina Technology gave \$20,000 on this
25 car?

R. Dively - Cross

1 A. Yes. They paid a down payment on it.

2 Q. And that was May 13th, 1989, wherever
3 you got the rest of it?

4 A. That's correct. It speaks for itself.

5 Q. Now, with regard to the invoicing and
6 proposal for Poole's Grant, you heard Ms. Cox come
7 in here and say that --

8 THE COURT: Mr. Bugg, don't comment on
9 what somebody else has testified to. Ask the
10 witness the question that you want to ask and don't
11 comment what some other witness has said. The jury
12 heard what the other witness said. Let's hear what
13 this one is going to say.

14 BY MR. BUGG:

15 Q. It's your testimony that Ms. Cox quoted
16 the prices for the Poole's Grant pedestals
17 independently of you?

18 A. It's my testimony?

19 Q. Yes, sir.

20 A. I believe I did testify to that in my
21 deposition, and I was very particular to make sure
22 that Ms. Cox did quote me independently of any input
23 from me.

24 Q. You had nothing to do with those
25 prices, they were hers?

R. Dively - Cross

1 A. I made sure I didn't.

2 Q. Flip over if you would to Exhibit
3 Number 26 if you would, Mr. Dively. Look in the
4 other book, Mr. Dively, Exhibit 12.

5 A. All right.

6 Q. You told the jury it's an agreement
7 between you and Mac Ingles to offset Poole's Grant
8 and Willoughby Harbor?

9 A. We agreed we would make a complete
10 accounting of everything we owed the company, yes.

11 Q. When did you agree to that?

12 A. It was in Mac Ingles' office, in early
13 '89 I believe, mid '89, sometime in there.

14 Q. You didn't send Mr. Ingles anything in
15 writing, Dear Mac, confirming our agreement, like
16 you sent him in Plaintiff's Exhibit 8?

17 A. I sent Mac a complete list of all of my
18 expenses, all the things that had been bought for
19 his boat, everything I had spent on things for me,
20 it was a complete analysis. I believe that Mac's
21 side of the ledger by the time you put everything in
22 his boathouse and all the parts for his boat when
23 you add his side of the ledger up he owed another
24 \$15,000 or \$20,000 more than I did. That's why I
25 wanted an accounting.

R. Dively - Cross

1 Q. Mr. Dively, there was never a time that
2 you told Mr. Ingles that, I have sent pedestals to
3 Dock of the Bay through Marina Technology or by Dock
4 of the Bay at all, was there?

5 A. I can't remember.

6 Q. And you didn't --

7 A. We sold an awful lot of pedestals to an
8 awful lot of people and I didn't tell him
9 everything.

10 Q. You didn't tell Mac Ingles about the
11 fact that you shipped pedestals down to Poole's
12 Grant quoted at \$18,900 and that you collected more
13 than that for them?

14 A. It was a lump sum contract. We've been
15 through that so many times. The bill is right in
16 front of me. We say we owe \$19,000 for the
17 pedestals. Marina Technology is a contractor and
18 has a right to purchase for what it can purchase and
19 sell for what it can sell.

20 Q. Let's talk about the tools. Mr. Brooks
21 goes back on your behalf and gathers up tools?

22 A. That's correct.

23 Q. You were up front at the time, weren't
24 you?

25 A. I don't remember that.

R. Dively - Cross

1 Q. An entire truckload or two went to
2 Williamsburg, didn't it?

3 A. I don't know that more than one truck
4 went. It might have.

5 Q. It was supposed to be your stuff?

6 A. Yes, it was.

7 Q. You knew a paint booth wasn't your
8 stuff, didn't you?

9 A. I didn't know the paint booth was on
10 there.

11 Q. You didn't know the paint booth was on
12 there, you didn't know a drill press was on there, a
13 radial arm saw was on there?

14 A. I do know a drill press that I bought
15 and paid for is in Sea Technology now.

16 Q. One was brought back from Marina
17 Technology, wasn't it?

18 A. That was a different one. My drill
19 press that I bought is still over at Sea Technology
20 right now.

21 Q. Look at Exhibits 28 and 29,
22 Mr. Dively.

23 THE COURT: Which book?

24 MR. BUGG: In the defendant's book,
25 Your Honor.

R. Dively - Cross

1 BY MR. BUGG:

2 Q. 28 is a handwritten list that you
3 prepared of the items to put on the truck to take
4 back to Sea Technology, isn't it?

5 A. I don't remember it and I don't know
6 what it's for.

7 Q. Isn't that what it looks like, isn't
8 that your handwriting?

9 A. It's my writing on the list of things
10 but there's nothing to describe it. I really don't
11 have any idea.

12 Q. Look at Exhibit 29, I think you will
13 find it's the same list that's been typed up?

14 A. Do you want me to compare the two?

15 Q. Do you agree with me, Mr. Dively, the
16 first one is your handwritten list of what somebody
17 goes back and types it up, which is 29?

18 A. I don't know that this was typed from
19 this.

20 Q. I hate to take the time but look at
21 them --

22 THE COURT: I think if you are a little
23 more specific in your questions you will get the
24 answer.

25 BY MR. BUGG:

R. Dively - Cross

1 Q. Is it not a fact that Exhibit 29 is a
2 typed rendition of the handwritten list which is
3 Exhibit 28?

4 A. I see a picture frame here, there's no
5 picture frame on here. I don't believe that they
6 are identical. Are they identical?

7 THE COURT: On what you are trying to
8 get him to answer is 28, is a handwritten list that
9 he prepared to send back?

10 MR. BUGG: Yes, sir.

11 THE COURT: Why don't you ask him
12 that?

13 MR. BUGG: He said he didn't know.
14 That's why I was asking him to look at the next one.

15 THE WITNESS: I said I don't know what
16 this is for. I really don't know what it is for.

17 THE COURT: Did you prepare a
18 handwritten list of items that you think should be
19 returned to Sea Technology after you moved over to
20 Marina Technology.

21 THE WITNESS: Your Honor, I can't
22 remember. It's my writing and this list appears to
23 be a lot of those items.

24 BY MR. BUGG:

25 Q. And Exhibit 29 is the list of things

R. Dively - Cross

1 that were actually taken back, it's typed up,
2 right?

3 A. This is signed by Sea Technology so
4 this is what was taken back to them.

5 Q. It is also signed by Adam Whiting,
6 isn't it, he was your employee?

7 A. Yes.

8 Q. And it's your testimony, Mr. Dively,
9 that from March 8th, 9th, whenever this truck or two
10 trucks left Sea Technology and went over to Marina
11 Technology in Williamsburg until April 16th, 1990
12 you didn't know that these things were at Marina
13 Technology and that they belonged to Sea Technology?

14 A. I didn't have anything to do with the
15 items. All these items were brought and placed in
16 the back of the plant and we were busy. We had to
17 completely redo the electrical in the plants we had
18 to build floors and everything. We weren't anywhere
19 near equipment in this stage.

20 Q. So you didn't know these things were
21 there is your testimony?

22 A. I didn't pay any attention to them at
23 all.

24 Q. Do you remember the April 11th, 1990
25 hearing that you talked about, Mr. Dively, in this

R. Dively - Cross

1 court?

2 A. Yes.

3 Q. And you sat there and heard Mr. Bayliss
4 say if we have --

5 MR. BAYLISS: Your Honor heard me
6 say --

7 THE COURT: I'm not going to let him
8 comment on what Mr. Bayliss said. To comment on
9 what he said, let him comment on what your lawyer
10 said, we would be here until some time next year.

11 BY MR. BUGG:

12 Q. Look at Exhibit 30, Mr. Dively. It's a
13 letter from Mr. Ingles to Mr. Bayliss dated March
14 15th. Shortly after March 15th did Mr. Bayliss tell
15 you that Mr. Ingles --

16 MR. BAYLISS: We'll stipulate that
17 letter was sent to me, but it's not fair to say did
18 Mr. Bayliss tell you such and such. I'll stipulate
19 the authenticity of the letter. It was sent to me.

20 BY MR. BUGG:

21 Q. Mr. Dively, did you know that a letter
22 dated March 15th to your lawyer, Mr. Ingles said I
23 asked that he, meaning you, return all property
24 belonging to Sea Technology, Limited including but
25 not limited to the dock box which was removed from

R. Dively - Cross

1 our manufacturing facility --

2 THE COURT: I don't know what you are
3 trying to prove, but the man already testified at
4 the hearing on April the 11th or 12th. He
5 determined that certain properties ought to be
6 returned and he did so.

7 BY MR. BUGG:

8 Q. I'm just trying to -- were you told
9 Mr. Ingles demanded the property back in March?

10 THE COURT: So what?

11 THE WITNESS: I don't know whether this
12 was communicated to me at this date or not. Since
13 my attorneys received the letter from Ingles they
14 probably informed me of what was in it but I can't
15 remember that.

16 MR. BUGG: I move to enter it, Your
17 Honor.

18 THE COURT: Introduced and marked as
19 Exhibit 30, Defendant's Exhibit 30.

20 (The document referred to was marked by
21 the Court as Defendant's Exhibit 30, and received
22 into evidence.)

23 BY MR. BUGG:

24 Q. Flip over to Exhibit 40. It says at
25 the top stipulation regarding -- look at Exhibit B.

R. Dively - Cross

1 A. Where are we?

2 Q. Exhibit 40. Look at Exhibit B to that
3 stipulation. It's a proposal to Mr. Sietzman dated
4 February 22, 1990. That was a proposal you sent to
5 Mr. Sietzman, wasn't it?

6 A. I don't know. I didn't sign it.

7 Q. That's not your signature?

8 A. No.

9 Q. Jane Hogge sign that?

10 A. I don't know who signed it.

11 Q. Anything at the top at all, is there,
12 not Sea Technology, not Marina Technology, not
13 anything?

14 A. It looks like your copy may have been
15 made with a piece of paper and a paper clip on it
16 and it removed the top.

17 Q. That was typed by Jane Hogge, wasn't
18 it?

19 A. I don't have any idea.

20 Q. The deposit check for Pelican Harbor
21 was dated March 8th, 1990, wasn't it?

22 Q. Do you have a copy of it?

23 MR. BAYLISS: We agreed to read a
24 stipulation into evidence and I don't know that we
25 need to do it through this witness.

R. Dively - Cross

1 MR. BUGG: It's Exhibit E.

2 THE WITNESS: This check is dated the
3 8th of March, 1990.

4 BY MR. BUGG:

5 Q. You didn't tell Mac Ingles anything
6 about Mr. Sietzman or Pelican Harbor?

7 A. I was gone. I had already left Sea
8 Technology.

9 Q. Flip over to Exhibit 34, Mr. Dively,
10 34B and 34C. I direct your attention to 34B first.
11 That's a proposal that you sent on Sea Technology,
12 Limited on February 22, 1990 to a Mr. Allen
13 Catskill, Land & Development or Land & Marine?

14 A. No. I didn't send that. I didn't sign
15 it.

16 Q. These are Jane Hogge's initials, aren't
17 they?

18 A. I don't know.

19 Q. Wasn't that prepared at your direction?

20 A. It probably was.

21 Q. Flip over to 34C, Mr. Dively.

22 A. But it was sent on the improper
23 proposal form.

24 Q. Flip over to 34C.

25 A. Yes.

R. Dively - Cross

1 Q. Do you see in the lower right-hand
2 corner the Number M-00270?

3 A. Yes.

4 Q. Compare the two documents, Mr. Dively.
5 With the exception of the fact that the top has been
6 copied off they are the same piece of paper, aren't
7 they? Look under phone, top line, there's only one
8 bracket around the area code, is there not?

9 A. There's a lot of additional writing on
10 this one that's not on this one?

11 A. But they're the same type. I'm not an
12 expert in this sort of thing, but there's writing on
13 this that's not on this. It's completely modified.

14 Q. Look at the phone block, 518, do you
15 see one bracket around the right side of the number
16 and no bracket on the left?

17 A. I see that, yes.

18 Q. Same thing on both documents?

19 A. Yes.

20 Q. You know on 34C the M number means it
21 was produced from Marina Tech's records?

22 A. I don't know that.

23 Q. There's nothing on the top of that
24 document, is there?

25 A. No. This has been copied an awful lot

R. Dively - Cross

1 of times and somebody has written on the top. It
2 look likes Mac Ingles' writing. It looks like he
3 modified this see phone bill, so he modified this
4 document.

5 MR. BUGG: I move to admit 34B and C.

6 MR. BAYLISS: I have to object because
7 it's not relevant. The six indictments, this wasn't
8 one of them but I know Your Honor will accept it.
9 I'm sitting down.

10 MR. BUGG: I would also like to move in
11 22.

12 THE COURT: 22 you want in? Marked as
13 Defendant's Exhibits 22 and 34B and 34C you want
14 in?

15 MR. BUGG: Yes.

16 THE COURT: Introduced and marked as
17 such.

18 (The documents referred to were marked
19 by the Court as Defendant's Exhibits 22, 34B and
20 34C, and received into evidence.)

21 BY MR. BUGG:

22 Q. Mr. Dively, by virtue of your
23 experience with the number of companies, EPI,
24 Associated Engineers, Marina Technology, you know
25 that an officer and director of a corporation has

R. Dively - Cross

1 certain duties to a corporation, don't you?

2 A. Yes.

3 Q. And you know that's called a fiduciary
4 duty?

5 A. Yes.

6 Q. It's the same duty that a trustee owes
7 to a trust, you know that?

8 A. I don't know that.

9 Q. You know it's a duty of fair dealing
10 and disclosure, don't you, that you have to treat
11 the corporation fairly if you are an officer and
12 director and disclose what you are doing, you know
13 that?

14 A. That's correct.

15 Q. And from early January after Frieda Cox
16 left there was only you and Jane Hogge and Al Brooks
17 at the company, Al running the back, Jane the
18 secretary and you the head man, plus the labor
19 people; isn't that correct?

20 A. If you say so. I can't remember.

21 Q. Well, Jane was doing the typing and
22 filing and Al ran the back where the manufacturing
23 went on, right?

24 A. I believe so, yes.

25 Q. And you took care of Sea Tech's

R. Dively - Cross

1 dealings with customers during those months,
2 January, February and up to March 9th, you alone?

3 A. Probably, yes.

4 Q. You dealt with the Wolff and the
5 Murrays, Dock of the Bay?

6 A. Yes.

7 Q. You dealt with Hoffman and Gerwick and
8 the Kings up at Shark Island?

9 A. Yes.

10 Q. Jane didn't deal with them, Al didn't
11 deal with them other than making a delivery,
12 correct?

13 A. I don't know what they did with them.
14 I can say that I had dealings with them.

15 Q. You represented Sea Technology in those
16 deals?

17 A. Everybody that worked at Sea Technology
18 represents Sea Technology.

19 Q. No, sir. You were acting for Sea
20 Technology in those deals?

21 A. You see Jane talked to people as much
22 or more than I did. It's a company.

23 Q. Mr. Dively, you were the man in charge?

24 A. That's right.

25 Q. Your first contacts with Shark Island

R. Dively - Cross

1 people was at the New York Show?

2 A. I believe that's correct.

3 Q. They saw the dock box, it had a Sea
4 Technology label?

5 A. Yes.

6 Q. And you showed them the flyer?

7 A. I don't know that.

8 Q. And 14 boxes were built at Sea
9 Technology for Shark Island, correct?

10 A. I believe so.

11 Q. And they had Sea Technology labels on
12 them?

13 A. I had nothing to do with what went on
14 in the back. I don't know that.

15 Q. But certainly Sea Technology labor and
16 parts and overhead at the plant were consumed in
17 making them?

18 A. Marina Technology contracted for
19 services from Sea Technology and has invoices from
20 them and, in fact, it includes that it's in there.

21 Q. You agree with me that the Shark Island
22 job included parts, labor and overhead that were Sea
23 Tech's, correct?

24 A. The dock boxes were made at Sea
25 Technology.

R. Dively - Cross

1 Q. Correct, you agree with that?

2 A. Yes.

3 Q. And when the boxes were shipped to
4 Shark Island they were shipped COD, weren't they?

5 A. Yes, they were.

6 Q. And they got up there on February 16th
7 and Mr. Brooks brought the check back, looking at
8 Exhibit 33 if you've got some concern about the
9 dates?

10 THE COURT: What do you want to know
11 about the check? He called and said change it. He
12 didn't change it.

13 BY MR. BUGG:

14 Q. No, sir. February 16th, 1990 was the
15 date of the check?

16 A. That's on the check, yes.

17 Q. And you endorsed it Sea Technology over
18 to Marina Technology and put it in the bank?

19 THE COURT: We've been through all
20 that.

21 THE WITNESS: That's correct.

22 BY MR. BUGG:

23 Q. While you were president and chief
24 executive officer of Sea Technology?

25 A. That's correct. Marina Technology paid

R. Dively - Cross

1 for every single item that was in this. The dock
2 box which was by far and away the largest part, I
3 bought from Salt Marsh and paid for it. Marina
4 Technology -- the money belonged to Marina
5 Technology.

6 Q. You got money COD from Shark Island?

7 A. Yes.

8 Q. You wouldn't give them the product
9 unless they paid the money?

10 A. That's the policy.

11 Q. But you took Sea Technology's time,
12 labor and overhead and materials without paying them
13 their money?

14 A. I wasn't invoiced.

15 Q. You didn't pay Sea Technology when you
16 got the money?

17 A. I didn't pay Sea Technology when I got
18 the money?

19 Q. Yes, sir.

20 A. There's an accounting that Sea
21 Technology has never taken the trouble to invoice
22 Marina Technology, and I don't typically pay bills
23 unless I am invoiced and Jane Hogge left
24 instructions to invoice me and nobody to date has
25 sent an invoice.

R. Dively - Cross

1 Q. You never told Mac Ingles about Shark
2 Island, did you?

3 A. I don't know whether I did or
4 didn't.

5 Q. Never told him about the check that you
6 endorsed over, did you?

7 A. I probably wouldn't have any reason to.

8 Q. Dock of the Bay proposal was dated
9 January 3rd, 1989. Look at Exhibit 35.

10 MR. BAYLISS: We'll stipulate whatever
11 it says it says.

12 THE COURT: He stipulates whatever it
13 says.

14 BY MR. BUGG:

15 Q. January 3rd, 1989, that should have
16 been January 3rd, 1990, shouldn't it have been?

17 A. The document says 1989 on it.

18 Q. Look down at the bottom on acceptance
19 it says January 18th, 1990?

20 A. That's dated 1990.

21 Q. Obviously whoever typed it since it's
22 the first or second working day put down 1989?

23 A. I don't know the reason.

24 Q. And that proposal was accepted on
25 January 18th, you see it right there in front of

R. Dively - Cross

1 you?

2 A. Yes. That's when it was accepted.

3 Q. And it says on the second page that a
4 25 percent deposit is going to be paid from Dock of
5 the Bay to Marina Technology of \$16,441.25?

6 A. Where are you reading at?

7 Q. Second page of Exhibit 35?

8 A. You asked me if there was a request for
9 a deposit here?

10 Q. Yes, sir, right over your signature.

11 A. Yes. There is a request for a deposit.

12 Q. And that deposit was paid, was it not?

13 A. Yes. Marina Technology invoiced them
14 and they paid the deposit to Marina Technology.

15 Q. And isn't it customary, Mr. Dively --
16 wasn't it customary at Sea Technology when a
17 pedestal order was accepted that they paid a 25
18 percent discount?

19 A. Mac Ingles didn't pay a deposit.

20 Q. Usually the customers did, most
21 proposals?

22 A. Our policy was that they pay a deposit,
23 that people pay a deposit, but oftentimes -- Mac
24 never paid a deposit to the full extent, Meeko never
25 paid a deposit, an awful lot of people didn't pay

R. Dively - Cross

1 the deposit.

2 Q. Sea Tech didn't get a 25 percent
3 deposit from Marina Technology for 29 pedestals in
4 January of 1990?

5 A. No.

6 Q. Those 29 pedestals were shipped on
7 February 28th, weren't they? Flip over to Number
8 38. That's the invoice, isn't it? Carl Wolff?

9 A. It's an invoice from Marina Technology
10 to Carl Wolff.

11 Q. Have you got that one in front of you,
12 Mr. Dively?

13 A. Yes.

14 Q. It shows that 25 Marina Technology dock
15 boxes were shipped up to Dock of the Bay on February
16 28th and 29 Sea Technology Docksider pedestals for a
17 cost of \$10,870 were shipped up to Dock of the Bay
18 on February 28th for a total of \$13,942.50 after you
19 take off part of the deposit. Have I read that
20 right?

21 A. Yes.

22 Q. And that was COD, wasn't it?

23 A. Yes. It is a COD shipment.

24 Q. You got paid cash that day for Sea
25 Tech's 29 pedestals, correct?

R. Dively - Cross

1 A. That's correct.

2 Q. It would have been easy enough to
3 multiply 29 times whatever you thought was
4 appropriate for those pedestals and paid Sea
5 Technology when you got those?

6 A. At the same time they invoiced me. I
7 waited until I got invoices typically, until I got
8 bills.

9 Q. But you didn't pay Sea Technology when
10 you got this money?

11 A. I have never been invoiced. They never
12 invoiced me. We left instructions. They never
13 invoiced me. We've been through this several
14 times.

15 Q. Flip over to 38B. Do you have that in
16 front of you?

17 A. 38A?

18 THE COURT: 38B he said.

19 BY MR. BUGG:

20 Q. It should be a check.

21 A. Is it A or B.

22 Q. A.

23 A. Yes. It's a check.

24 Q. It's a check by Murray & Company
25 Marina, that's Dock of the Bay, isn't it?

R. Dively - Cross

1 A. I believe they're a law firm that owns
2 the marina.

3 Q. That's a payment for that invoice on
4 March 1st, correct?

5 A. Are the numbers the same? I'll say it
6 is, yes.

7 Q. \$13,942.50?

8 A. Yes, the numbers the same.

9 MR. BAYLISS: We stipulate he got
10 paid.

11 BY MR. BUGG:

12 Q. They went to the trouble of writing
13 power pedestal and --

14 A. I don't have anything on mine but we
15 will stipulate the check says, pay to the order of
16 Power Pedestals & Dock Boxes, Inc. I was looking
17 down at the bottom but it says pay to the order of
18 Power Pedestals & Dock Boxes.

19 MR. BUGG: I move in 38A, 35, 38 and
20 38B.

21 THE COURT: So introduced as
22 Defendant's 35, 38, 38A and 38B.

23 (The documents referred to were marked
24 by the Court as Defendant's Exhibits 35, 38 and 38A,
25 and received into evidence.)

1 THE COURT: And 38C is some letter.

2 MR. BUGG: We haven't gotten to that.

3 THE CLERK: I don't have 38B. I have
4 35.

5 MR. BUGG: 38A should have been the
6 check and the endorsement. They're together.

7 BY MR. BUGG:

8 Q. Mr. Dively, on your note to Jane Hogge
9 you have 29 pedestals at \$275, correct?

10 A. What exhibit?

11 Q. The note you left for Jane Hogge that
12 you testified about for Dock of the Bay and Shark
13 Island?

14 A. \$275, I believe that's correct. I
15 don't have it.

16 MR. BAYLISS: That's correct. We
17 stipulate that's correct.

18 BY MR. BUGG:

19 Q. The 29 times \$275 is \$7,975 and Dock of
20 the Bay paid you \$10,870 for the pedestals?

21 A. That's what they were invoiced on that
22 previous exhibit.

23 Q. So even at \$275, Mr. Dively, you made
24 \$2,900 dollars even if you paid that, correct?

25 A. Even if I paid that?

R. Dively - Cross

1 Q. If you paid for the 29 pedestals at
2 \$275 you would still put \$2,895 in your pocket?

3 A. No, that's not so. If you look freight
4 at \$540 and other things that had to come off of
5 that. You act like it's all profit. There's a lot
6 of cost involved.

7 Q. Well, the costs involved with the
8 pedestals were all born by Sea Technology, were they
9 not?

10 A. That's correct.

11 Q. Mr. Dively, at Sea Technology and
12 probably at your company now you maintain what is
13 called a customer file, don't you?

14 A. No.

15 Q. You don't?

16 A. I don't.

17 Q. Well, your company does?

18 A. The person responsible for sales does.

19 Q. And that typically has any proposals
20 made, proposals accepted and any correspondence with
21 the company?

22 A. I don't know. The customer file
23 probably varies with every single file but typically
24 you have the customer's name and everything that had
25 to do with that customer.

1 REDIRECT EXAMINATION

2 BY MR. BAYLISS:

3 Q. They introduced an exhibit and I don't
4 know which one was marked, it's marked 61B and
5 that's monies owed Sea Technology \$35,485.67. You
6 don't have to get that. I'm going to show you an
7 exhibit.

8 MR. BUGG: Your Honor, I object to
9 this. Can we approach the bench.

10 (A conference was held at the bench.)

11 BY MR. BAYLISS:

12 Q. Mr. Dively, I'm going to show you an
13 exhibit introduced in the civil trial. Mr. Bugg has
14 showed you a document that said you owed -- Marina
15 Technology owed Sea Technology \$35,000. Did Sea
16 Technology owe you any money?

17 A. Sea Technology owed me a lot of money.

18 Q. Did you prepare a similar exhibit?

19 A. Yes, I did.

20 Q. Reflect to the jury what Sea Technology
21 owed you.

22 A. Owed me for my salary previously
23 discussed from October through March when I left. I
24 had loaned the company \$7,500 and I have a
25 promissory note and still have it that they owe me

R. Dively - Redirect

1 \$7,500 for that. I had an accountant in Gloucester
2 do a complete analysis of my expenses and this says
3 \$7,500, but I believe in the letter it's \$9,500.

4 It must be an error of some sort. He
5 owes me for half of the monies that Sea Technology
6 did not pay United Metering for \$135,000 worth of
7 meters. I owned half of United Metering. So Sea
8 Technology should pay United Metering this \$135,000,
9 and Ingles should take half and I should take half.
10 That's \$65,000, and I had behind the plant a load of
11 salt-treated four-by-fours eight feet long, a
12 complete hack of them, and that's worth \$450 and I
13 don't have those. That totals \$116,075, and I think
14 that should be offset against the \$35,000.

15 Q. And as you sit here today how much
16 stock do you own in Sea Technology?

17 A. As far as I'm concerned I own 15 shares
18 or 50 percent.

19 Q. And that was decided a month ago by
20 Judge Foster?

21 MR. BAYLISS: I move to introduce.

22 THE COURT: Introduced and mark as
23 Plaintiff's Exhibit Number 37.

24 (The document referred to was marked by
25 the Court as Plaintiff's Exhibit 37, and received

R. Dively - Redirect

1 into evidence.)

2 MR. BAYLISS: That's all I have.

3 MR. BUGG: I know the jury is tired and
4 you're tired but we have a man out in the hall that
5 can't come back and he's a very short witness. I'm
6 going to limit you to five minutes.

7 MR. BAYLISS: We have two police
8 officers that have been sitting out there all day
9 that have to work all day.

10 THE COURT: I'm not going to make these
11 folks sit here for another hour and listen to the
12 case.

13 MR. BAYLISS: Our witnesses will be
14 five minutes. He's going to put one out of turn.

15 THE COURT: I'm going to leave it to
16 the jury. Do you want to sit here and listen to it
17 or come back tomorrow?

18 THE JURY: Let's hear it.

19 MR. BUGG: The police officers aren't
20 going to be five minutes. They aren't five minute
21 witnesses. They are important witnesses.

22 MR. BAYLISS: I'll let the jury make
23 the decision. I've only got -- I've got three
24 witnesses out there that I'm going to put on. I
25 don't know what we'll ask them, no more than five