

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

The City and Borough of Yakutat,)
)
Plaintiff,)
)
vs.)
)
Alaskan Adventure Tours, Inc.,)
)
Defendant.)

Case No. 1JU-08-434 CI

The City and Borough of Yakutat,)
)
Supplemental Complaint)
Plaintiff,)
)
vs.)
)
ABC Leasing, LLC and Kimberly)
Riedel-Byler, a/k/a Kimberly C.)
Riedel, K. Christina Riedel and/or)
Kimberly Byler,)
)
Supplemental Complaint)
Defendants,)

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT

INTRODUCTION

The judgment in this case was entered on March 18, 2010, one year ago today.

Motions to vacate for fraud and misconduct under Civil Rule 60(b)(3) are due in a year.

Because of recent discoveries in related litigation, relief is sought at this time. AAT, in order meet the requirements of the Rule, seeks to vacate the judgment at this time, but will be

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satisfied if it is allowed additional time to conduct discovery with the motion held in abeyance until that has been completed.

Since the judgment entered in this Court, the parties have continued their battle in US District Court over the assets of Alaskan Adventure Tours ("AAT"). The Estate of Jerry L. Byler ("Estate") has brought a wrongful death claim against AAT, which is being contested by the City and Borough of Yakutat ("CBY"), as the limited assets of AAT are probably insufficient to satisfy both claims. As part of CBY's attack on the Estate's claim, it has relied extensively on two interviews of Kimberly Byler taken by Chief John Nichols of CBY at the time of its investigation into the death of Jerry Byler.¹ The Estate has begun discovery concerning those interviews, as it may be that one or more of the interviews were edited, depriving the Estate of relevant evidence concerning the death of Jerry Byler. There is substantial reason to believe that there has been spoliation of evidence by CBY, and that Chief Nichols testified untruthfully to the jury in the case tried before this Court when he claimed that he told Ms. Byler about a tax claim of CBY in a ride to the airport.

That is of supreme importance in this case, as the testimony of a law enforcement official is naturally given substantial weight by a jury, and concerned a crucial element of the case, namely whether AAT had notice of the tax obligation. Chief Nichols testified that he told Ms. Byler of the tax; she testified that he did not. The jury obviously believed him and rejected her testimony.

Chief Nichols testified in a recent deposition that on May 15, 2007, between the time of the two Byler interviews, that he helped officer Rose Gordon of the CBY police force

¹ Declaration of John E. Casperson dated March 17, 2011, paragraph 3. All of the exhibits to this memorandum in support of the motion are attached to the Casperson Declaration.

move the body of Jerry Byler from a police vehicle into the public works bay at the police office. However, at the time the first interview ended, Officer Gordon was still three minutes away from the police station. There was no way that Chief Nichols could have ended the first interview, waited for Officer Gordon to arrive, moved Mr. Byler's body into the public works bay, then gone upstairs to the police station and started the second interview in the short time between the two interviews, as revealed by the starting and stopping times of the two interviews. It is AAT's contention that the interviews of Ms. Byler have been altered in some fashion in order to hide evidence that contradicts the testimony of Chief Nichols. There is other, corroborating evidence that disproves the Chief's testimony. AAT expects that additional evidence will also be produced in the course of discovery that will further demonstrate that Chief Nichols testified falsely when he described the supposed ride to the airport with Ms. Byler and their conversation about city taxes.

For all of these reasons, AAT seeks relief from judgment pursuant to Civil Rule 60(b)(3) for fraud and misconduct.

LEGAL STANDARD

A motion for Relief from Judgment based on fraud, misrepresentation or misconduct requires a showing of clear and convincing evidence. *Babinec v. Yabuki*, 799 P.2d 1325, 1333 (Alaska 1990). "This subsection of the rule is aimed at judgments which were unfairly obtained, not at those that are factually incorrect." *McCall v. Coats*, 777 P.2d 655, 661 (Alaska 1989) citing *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978). The particular facts of each case will govern the application of the law. As set forth below, there is ample evidence to warrant further discovery into the factual basis for Chief Nichols' testimony.

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BACKGROUND

This case arises out of a claim for taxes. An essential element of CBY's case was proving that AAT was aware of CBY's claim. CBY's Chief of Police, John S. Nichols provided the missing link by describing a ride to the airport with Ms. Byler, the owner of AAT, about noon on May 15, 2007, the date when Ms. Byler had flown in to Yakutat following the drowning death of her father in law, Jerry L. Byler.² She had earlier flown in to Yakutat with the body of Mr. Byler and another employee. She was met by Chief Nichols and taken to the Yakutat police station. He secretly recorded his conversation with her on the way to the station.³ That interview began at 10:31 am, according to the Chief's own words on the recording.⁴ The recording lasted for 17 minutes and 19 seconds.⁵ He started the second interview of Ms. Byler 2 minutes and 19 seconds later.⁶ In between the two interviews, he testified that he and Officer Rose Gordon removed Mr. Byler's body from the pick-up truck and placed it in the public works bay at the police station.⁷ The second interview lasted for 19 minutes and 54 seconds.⁸ Again, according to the Chief's own words, it ended at 11:10 am.⁹ After that interview, Chief Nichols testified that he interviewed Brian "Luke" Barton, the AAT employee, and that interview ended at 11:26, whereupon he supposedly took Ms. Byler on the

² See generally the testimony of Chief Nichols on re-direct on February 12, 2010, Exhibit A.

³ See Chief Nichols Deposition of February 24, 2011, page 23, line 20 through 22, Exhibit B.

⁴ See Kimberly Byler First Interview Transcript, page 3, line 10, Exhibit C.

⁵ See Declaration of Douglas S. Lacey, paragraph 3, Exhibit D. Mr. Lacey is the Estate's aud expert, and this information was provided by Mr. Lacey from the results of his review of the audio recordings taken by Chief Nichols.

⁶ Lacey Declaration, paragraph 3, Exhibit D.

⁷ See Chief Nichols Deposition, page 24, line 12, through page 25, line 9, Exhibit B.

⁸ Lacey Declaration, paragraph 3, Exhibit D.

⁹ See Kimberly Byler Second Interview Transcript, page 17, line 23, Exhibit E.

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ride to the airport.¹⁰ Chief Nichols recently testified in his deposition in the federal case that after taking the interviews, he downloaded them from his digital recording device into his office computer.¹¹

CBY very recently produced a disc containing the interviews taken directly from Chief Nichols' computer in response to a discovery request from the Estate.¹² That disc has been analyzed by an audio expert, who confirms that it shows the times and dates of the interviews, but also the times the interviews were placed onto the computer.¹³ The first interview of Ms. Byler and the interview of Mr. Barton were put on the computer on May 17 and May 15, of 2007, respectively.¹⁴ However, the second interview of Ms. Byler was apparently put on the computer on March 24, 2009,¹⁵ only three days before Chief Nichols signed an affidavit stating for the first time that he took Ms. Byler for a ride to the airport and that he "brought up the pending issue as to the non-payment by her business, AAT, of the Borough sales and "bed" taxes."¹⁶ It is AAT's contention that the second interview has been altered in some fashion, which, if true, casts serious doubt on the veracity of Chief Nichols' testimony. It is AAT's belief that, when CBY's computers are analyzed and additional witnesses testify, further proof of evidence tampering will be revealed, and will likely provide evidence that contradicts the Chief's time line of events and his story about the ride to the airport. Additionally, other evidence has been developed in the federal case that supports

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¹⁰ Chief Nichols Testimony, at page 5, lines 15-17, Exhibit A.

¹¹ Chief Nichols Deposition, page 12, line 3 through page 13, line 9, Exhibit B.

¹² Casperson Declaration, paragraph 6.

¹³ Lacey Declaration, paragraph 5, Exhibit D.

¹⁴ Lacey Declaration, paragraph 6, Exhibit D.

¹⁵ Lacey Declaration, paragraph 6, Exhibit D.

¹⁶ Chief Nichols Affidavit, paragraph 4, Exhibit F.

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AAT's contentions.

SERGEANT COX AND CHIEF NICHOLS AT THE AIRPORT

Sergeant Robert Cox was the Alaska State Trooper assigned to investigate the death of Jerry Byler. He flew from Juneau to Yakutat on May 15, 2007 as part of his work. He had called Chief Nichols previously to enlist CBY's assistance.¹⁷ Chief Nichols testified on re-direct as follows:

Attorney Brennan: And had Sergeant Cox of the Alaska State Troopers arrived yet at the airport when you delivered Ms. Byler back to the airport?

Chief Nichols: Yes. When I was out at the airport, actually, Sergeant Cox from Alaska State Troopers had just arrived.¹⁸

Having just taken Ms. Byler to the airport, and Sergeant Cox, having just arrive to investigate the death, Chief Nichols apparently did not think to introduce them. Right there at the airport was the main witness, who was also the daughter in law of the decedent, the owner of the company that operated the vessels, and employer of Mr. Jerry Byler, and the Stat Trooper sent to investigate. Chief Nichols didn't take the time to make the introduction.

In fact, Chief Nichols did not make the introduction because Ms. Byler was not at the airport. The Estate subpoenaed Alaska Airlines records, which reveal that the flight with Sergeant Cox aboard arrived at the gate in Yakutat at 11:57 a.m. that day.¹⁹ At that very minute, as the Yakutat police phone records reveal, Ms. Byler was in the Yakutat police office calling the decedent's family in Arkansas.²⁰ If Chief Nichols testified truthfully that Sergeant

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¹⁷ Chief Nichols Deposition, page 17, lines 12-24, Exhibit B.

¹⁸ Chief Nichols Testimony, page 6, lines 5-9, Exhibit A.

¹⁹ AK Airlines records, Exhibit G.

²⁰ Kimberly Byler Declaration, paragraph 5, Exhibit H, and CBY phone records, Exhibit I
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Cox had arrived when he took Ms. Byler to the airport, and Sergeant Cox's flight got to the gate at 11:57 am, how did Ms. Byler manage to place the call to Arkansas from the Yakutat police office at the very same time?

The phone records also reveal a call that Kimberly Byler placed at 11:16 am to Cal Wilson, who lives in Anchorage and is a family friend.²¹ He explains that Ms. Byler called to tell him of Jerry's death, but that she had very little time to talk, as she was about to be interviewed by the police.²² Chief Nichols testified that his interview of Ms. Byler had ended at 11:10.²³ This is obviously incorrect, as 6 minutes later Mr. Wilson got a call from Ms. Byler where she stated that she had not yet been interviewed.

Sergeant Cox recently told the Estate's personal representative, Darren Byler, in a telephone call that he did not see Ms. Byler until he got to the police station. Mr. Cox was sent a declaration, but has not returned it yet.²⁴ If he does not, his deposition will be taken. Another independent witness, Pam Girdwood, who worked for AAT and was in Yakutat at the time and was interviewed by Sergeant Cox, has signed a declaration stating that Chief Nichols did not take Ms. Byler to the airport as he claims.²⁵

An independent witness, George Davis, operated a lodge in Icy Bay where Jerry Byler drowned. He had flown into Yakutat in his own plane the morning of May 15 to meet the jet coming from Juneau. He saw Ms. Byler arrive on the Yakutat Coastal Air flight with Mr. Byler's body. He saw them leave with Chief Nichols. He waited at the airport for the

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²¹ Kimberly Byler Declaration, para.4, Exhibit H.

²² Cal Wilson Declaration, Exhibit J.

²³ Chief Nichols Testimony, Exhibit A, page 4, line 15 through page 5, line 4.

²⁴ Darren Byler Declaration, Exhibit K.

²⁵ Pamela Girdwood Declaration, paragraphs 5 and 6, Exhibit L.

flight, and saw Chief Nichols return to the airport by himself, without Ms. Byler, around noon that day. He then saw Chief Nichols leave with a uniformed Trooper, who was no doubt Sergeant Cox.²⁶ Of course, there is more.

AUDIO EVIDENCE, PART ONE

Everyone who has a passing familiarity with courtrooms and witness testimony understands that statements are sometimes made with complete sincerity but are completely untrue. AAT does not solely rely on witness testimony to support this motion. There is an electronic trail as well.

After much resistance, CBY very recently produced a disc of the interviews of Ms. Byler and Brian Barton in the federal case following the deposition of Chief Nichols on February 24, 2011.²⁷ That disc was analyzed by an audio expert, Douglas S. Lacey of Bek Tek LLC. It reveals some interesting things. As explained by Mr. Lacey, there are a number of times and dates noted on the disc with reference to the interviews. The time and date of the interview according to the digital recording device is recorded on the disc. This date is easily manipulated by the person with the recorder, as it can be set to virtually any time the operator chooses, and the recorder and the computer will not know any different. In any event, according to the analysis by Mr. Lacey, the disc states that the starting and ending times of each interview are as follows:

"07-0438-0043 First contact Kim Byler. WMA"
Start: 05/15/2007 10:29:01 AM
End: 05/15/2007 10:46:20 AM
Length: 00:17:19 (hours:minutes:seconds)

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²⁶ George Davis Declaration, paragraph 3, Exhibit M.

²⁷ Casperson Declaration, paragraph 5.

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"07-0438-0043 Interview Kim Byler. WMA"
Start: 05/15/2007 10:48:39 AM
End: 05/15/2007 11:07:33 AM
Length: 00:18:54

"07-0438-0043 Interview Brian Barton. WMA"
Start: 05/15/2007 11:12:29 AM
End: 05/15/2007 11:24:25 AM
Length: 00:11:55²⁸

The recording pegs the start of the first interview at 10:29 am. It has no ending time, but the recording is just over 17 minutes long.²⁹ The interview ends with a radio transmission between Officer Gordon of the CBY police force and another unknown person, most probably the police dispatcher.³⁰ Officer Gordon, who is "Unit 4" in CBY,³¹ states that her estimated arrival time is 3 minutes. That is the final transmission on the recording, but there is 1 minute and 44 seconds of dead air on the recording before it ends,³² meaning that only 4 minutes and 3 seconds passed between Officer Gordon's three minute estimated time of arrival and the commencement of the second interview. The next interview on the disc, of Chief Nichols interviewing Ms. Byler at the police station, starts 2 minutes and 19 seconds after the end of the recording of the first interview, according the disc analysis.³³ That is significant for this reason: Between the end of the first interview and the beginning of the second interview, Chief Nichols has recently testified that he helped move Mr. Byler's body

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²⁸ Lacey Declaration, paragraph 3, Exhibit D.

²⁹ Lacey Declaration, paragraph 3, Exhibit D.

³⁰ Kimberly Byler First Interview Transcript, page 10, lines 15-17, Exhibit C.

³¹ Officer Gordon is Unit Four. Gordon Depo. of February 23, 2011, page 26, lines 10 to 11, Exhibit N.

³² Kimberly Byler First Interview Transcript, page 10, line 18, Exhibit C.

³³ Lacey Declaration, paragraph 3, Exhibit D.

into the loading bay at the police station for inspection and photographs.³⁴ If Officer Gordon's three minute estimate is accurate, they had only one minute and 3 seconds to move Mr. Byler's body and return to the office to start the second recording. That is virtually impossible. If unaltered, the digitally recorded date and time very clearly and unequivocally establish the length of the interval between the interviews, and make either Chief Nichols' description of his activities or the integrity of the recordings quite suspect. They can't both be right, and if either is wrong, Chief Nichols is not worthy of belief.

The digital evidence is consistent with Chief Nichols' own words. It has to be, or Chief Nichols story would come apart at once. There is good reason to believe that the recordings have been altered to match the other facts of the case. As noted above, the first interview of Ms. Byler begins with Chief Nichols stating in the recording that the time is 10:31 a.m.³⁵ He stated at the end of the second interview of Ms. Byler that the time was 11:10 am.³⁶ Simple math reveals that if the first interview at started at 10:31 and lasted slightly more than 15 minutes, and the second interview ended at 11:10 am and lasted almost 18 minutes and 54 seconds, there was barely 4 minutes for Chief Nichols to wait for Officer Gordon and then move the Mr. Byler's body. Chief Nichols' own words, in the recordings themselves, bracket the events, and lead inevitably to the conclusion that he had insufficient time to end one recording, move Mr. Byler's body, and start the second recording. At the end of the first interview, Officer Gordon was still three minutes away from being able to help Chief Nichols move Jerry Byler's body. Yakutat is an exceedingly small town. Officer Gordon has lived

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³⁴ Chief Nichols Deposition of February 24, 2011, page 24, line 12 through page 25, line 9, Exhibit B.

³⁵ Kimberly Byler First Interview, page 3, line 10, Exhibit C.

³⁶ Kimberly Byler Second Interview, page 17, line 23, Exhibit E.

there most of her life³⁷, so her estimated arrival time was probably very accurate. There is simply no way Chief Nichols could have ended the first interview, waited three minutes for Officer Gordon to arrive, moved the body of the deceased with Officer Gordon's help into the public works bay, returned to the police office, and started the next interview only 4 minutes and 5 seconds after the first interview ended. Obviously, Chief Nichols' story is contradicted by the facts.

AUDIO EVIDENCE, PART TWO

Of course, that is not all. As noted above, something happened to the recording of the second interview of Kimberly Byler on March 24, 2009. This was only 3 days before the affidavit of Chief Nichols in this case was prepared, yet was almost 2 years after the interview was recorded. The Estate's audio expert, Douglas S. Lacey, explains that, in addition to the date and time of the interviews as recorded by the digital recorder, the disc also reveals when each interview was copied to the computer. The data for each interview is as follows:

"07-0438-0043 First contact Kim Byler.WMA": 05/17/2007
13:53:13

"07-0438-0043 Interview Kim Byler.WMA": 03/24/2009
14:23:15

"07-0438-0043 Interview Brian Barton.WMA": 05/15/2007
15:24:24³⁸

This date is much more difficult to manipulate, requiring specialized software and experience.³⁹ and reveals that Ms. Byler's second interview was probably downloaded, not at the time it was taken, but on March 24, 2009, only 3 days before Chief Nichols signed his

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³⁷ Officer Gordon, page 11, lines 24-25, Exhibit N.

³⁸ Lacey Declaration, paragraph 5, Exhibit D.

³⁹ Lacey Declaration, paragraph 8, Exhibit D.

affidavit describing the ride to the airport. Chief Nichols testified in his recent deposition on February 24, 2011, as follows: "At the time when we originally had taken the interviews and had downloaded them into the desktop that is a desktop that I do not have any more...."⁴⁰ He was later asked: "Has anybody done anything to the hard drive in that computer since May of 2007 when those interviews were downloaded? A: You would have to speak with Matt Joy our computer IT guy."⁴¹ Unfortunately, the disc analyzed by Mr. Lacey was not produced until after Chief Nichols' deposition, or there would have been more follow-up questions, but Matt Joy's deposition is set for today, March 18, 2011, so further information will be available very shortly. Additionally, the parties have not settled on terms for production of the computer hard drive in the federal lawsuit, but that is coming. In the meanwhile, the Estate's attorney has put CBY on notice that it needs to preserve the integrity of the computer hard drives pending resolution of the production request.⁴²

There was no good reason for CBY to go back into its computer and do anything with Ms. Byler's second interview in March of 2009. The timing of that change is quite suspicious, coming only three days before Chief Nichols' sworn statement about the ride to the airport. AAT expects that computer analysis of the CBY hard drives will provide more information on what happened to the interviews.

OTHER OPEN ITEMS

When the context of Chief Nichols' alleged statement about taxes is considered in addition to the foregoing, it makes no sense that he would have made such a statement at the

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⁴⁰ Chief Nichols Deposition, page 13, lines 6-8, Exhibit B.

⁴¹ Chief Nichols Deposition, page 13, lines 13-15, Exhibit B.

⁴² Casperson Declaration, paragraph 4.

time. There was no obligation to report taxes to CBY until July 31, 2007, more than 2 months after Chief Nichols' claimed statement.⁴³ Ms. Byler's father in law had just drowned in a tragic accident. Discussion of tax obligations months before they were due at that very difficult time is inconsistent with common experience and courtesy.

It is AAT's opinion that Mr. Barton's interview was conducted before Ms. Byler's second interview, because Mr. Barton described things and events to Chief Nichols that are not mentioned in Ms. Byler's first interview, but appear in her second interview, such as the fact that the body of the deceased was found by a helicopter. Chief Nichols had no other way to learn this fact. Additionally, in spite of Chief Nichols' claims to the contrary, he obtained pictures of Jerry Byler from Mr. Barton's camera, and showed those to Ms. Byler in her second interview, as she had no pictures with her.⁴⁴ Chief Nichols claimed that although she had pictures, and they were obviously discussed in the deposition, he did not take copies.⁴⁵ That is either very sloppy police work or, as AAT contends, a fabrication. Finally, Cal Wilson has stated that he spoke with Ms. Byler at 11:16 am, and that Ms. Byler had not yet been interviewed. Mr. Barton's interview was taking place at that very time, according to Chief Nichols.⁴⁶ There is a very good chance that computer analysis will confirm this fact.

As noted above, there was simply not enough time for Chief Nichols to move the body of Mr. Byler and complete Ms. Byler's second interview and still meet the time frames as reflected by the audio evidence from the recording. AAT believes that the second interview of Ms. Byler actually followed the interview of Mr. Barton, but was later doctored i

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⁴³ Kimberly Byler Declaration, paragraph 3, Exhibit H.

⁴⁴ Kimberly Byler Declaration, paragraph 1, Exhibit H

⁴⁵ Chief Nichols Deposition, page 26, lines 18 through page 27, line 1, Exhibit B.

⁴⁶ Chief Nichols Testimony, page 5, lines 6-8, Exhibit A.

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a way to hide its actual time of recording and then inserted into the computer at a later time, probably on March 24, 2009, in order to cover up conflicting evidence to Chief Nichols' affidavit and later testimony.

Along those same lines, Chief Nichols received a 29 page fax from the State Troopers on February 12, 2010, the morning of his testimony on re-direct. The first 5 pages were produced by CBY in discovery in the federal case. Chief Nichols stated in his recent deposition that he probably disposed of them. He couldn't remember why he asked for them either.⁴⁷ The Estate is seeking the records from the State of Alaska. It may be harmless, but again, obtaining a fax from the Troopers on the day of testimony and not retaining a copy of what was received from the Troopers in the middle of trial is inconsistent with good record maintenance in any business, but especially a police department.

CONCLUSION

AAT believes that the recorded interviews taken by Chief Nichols have been altered in some fashion. If the original interviews can be recovered from CBY's computers, AAT expects to find evidence that will further contradict Chief Nichols' timeline for May 15, 2007, and demonstrate not only that he did not take Ms. Byler to the Yakutat airport as he claimed at trial, but that he spoiled the evidence to cover his tracks. Without his testimony, and especially if the jury had been told of its inherent and inexplicable contradiction by the facts, of which has until been hidden until very recently, the likelihood of a different outcome at trial is obvious.

For all of the foregoing reasons, AAT respectfully requests that its motion to vacate be granted or held in abeyance while discovery is re-opened.

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Dated at Anchorage, Alaska March 18, 2011.

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Attorneys for Defendants

By: 

Kevin T. Fitzgerald
ABA No. 8711085

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on
the 18 day of March,
20 11, a copy of the foregoing was
sent to the following via:

☒ U.S. Mail, First Class, Postage Prepaid
☐ Hand-Delivery
☒ Fax to 278-0877
☐ Federal Express

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⁴⁷ Chief Nichols Deposition, page 35, line 17 through page 36, line 11, Exhibit B.
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1.
2. IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3. FIRST JUDICIAL DISTRICT AT JUNEAU

4. The City and Borough of Yakutat,

5. Plaintiff,

6. v.

7. Alaskan Adventure Tours, Inc.,

8. Defendant.

Case No. 1JU-08-434 CI

9. DECLARATION OF JOHN E. CASPERSON

10. I, John E. Casperson, being first duly sworn, declare as follows:

11. 1. I am the attorney for the Estate of Jerry L. Byler ("Estate") in the Federal Case of
12. the Estate of Jerry Byler v. ALASKAN LEADER, O.N. 558637, et al., case
13. number 3:10-cv-00055-HRH.
14. 2. I have personal knowledge of the matters set forth herein.
15. 3. The Estate has sued AAT and its vessels for wrongful death arising out of the
16. drowning of Jerry L. Byler on May 14, 2007. The City and Borough of Yakutat
17. ("CBY") has intervened in that litigation and is contesting the claims of the
18. Estate. In particular, CBY has challenged the factual basis of the Estate's claims,
19. relying on statements allegedly made by Ms. Byler to Chief Nichols in Yakutat on
20. May 15, 2007.
21. 4. The Estate is conducting discovery into the statements, and has requested that
22. CBY make its computers available for inspection. CBY is resisting that request,
23. which remains unresolved at this time, but CBY has been put on notice that the
24.

25.
26. DECLARATION OF JOHN E. CASPERSON
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EXC. 87

1. hard drives of each computer should be maintained and preserved for forensic
2. analysis.

3. 5. Also attached are transcripts of the testimony of Chief Nichols on re-direct on
4. February 12, 2010 (Exhibit A), the initial contact interview of Kimberly Byler by
5. Chief Nichols, (Exhibit C), and the second interview of Kimberly Byler by Chief
6. Nichols (Exhibit E), all prepared by Van Pelt, Corbett, Bellows Court Reporters
7. from discs supplied by my office. The trial testimony was taken from a CD
8. produced by the Court System to Darren Byler, the personal representative of the
9. Estate, and the interviews are from a disc copied from one provided by the office
10. of CBY's counsel on February 25, 2011.

11. 6. Attached hereto are excerpts from the deposition of Chief John Nichols (Exhibit
12. B) of CBY's police department taken in the federal action by my office.

13. 7. Our audio expert Douglas S. Lacey is currently on a business trip and is unable to
14. sign his declaration and return it to me. However, he has email and telephone
15. capability, has read the declaration, has authorized me to represent to the Court
16. that it is true and correct, and that he will provide a signed copy as soon as he is
17. able. The unsigned Declaration is attached (Exhibit D).

18. 8. Attached is the Affidavit of Chief John S. Nichols dated March 27, 2009, filed in
19. this action (Exhibit F).

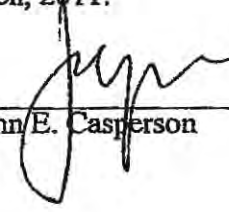
20. 9. Attached is the record received from Alaska Airlines regarding the arrival of
21. Flight 61 from Juneau to Yakutat on May 15, 2007 (Exhibit G).

22. 10. Attached is the Declaration of Kimberly Byler dated March 17, 2011 (Exhibit H).

23. 11. Attached are telephone records of CBY produced in discovery in the federal case
24. (Exhibit I).

1. 12. Attached is the Declaration of Cal Wilson dated March 16, 2011 (Exhibit J).
2. 13. Attached is the Declaration of Darren Byler dated March 17, 2011 (Exhibit K).
3. 14. Attached is the Declaration of Pamela Girdwood dated March 17, 2011 (Exhibit
4. L).
5. 15. Attached is the Declaration of George Davis dated March 17, 2011 (Exhibit M).
6. 16. Attached hereto are excerpts from the deposition of Officer Rose Gordon (Exhibit
7. N) of CBY's police department taken in the federal action by my office.
8. 17. We have subpoenaed the records of the State Troopers in connection with the
9. death investigation of Mr. Byler. We have obtained some records, but not all, and
10. we continue to pursue those remaining records.

11. DATED this 18 day of March, 2011.

12. 
13. John E. Casperson
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.

1. CERTIFICATE OF SERVICE

2. I hereby certify that on this 18 day
3. of March, 2011, a true and
4. correct copy of the foregoing was sent via
5. fax & U.S. Mail to:

6. James Brennan
7. Sara Heideman
8. Hedland, Brennan and Heideman
9. 1227 W. 9th Avenue, Suite 300
10. Anchorage, AK 99501

11. Jennifer M. Jones

12. G:\5194\25043\Pleading\Dec of Caspersen A103803_1811.doc

26. DECLARATION OF JOHN E. CASPERSON
CBY v. ALASKAN ADVENTURE TOURS, INC.
Case No. 1JU-08-434 CI - Page 4 of 4

HOLMES WEDDLE & BARCOTT, PC.
777 THIRD AVENUE, SUITE 2600
SEATTLE, WA 98104-4011
TELEPHONE (206) 252-8008
FAX (206) 340-0287

EXC. 90

EXHIBIT B

Van Pelt, Corbett, Bellows
206-682-9339 * www.vanpeltdep.com * 888-4WA-dep

1 Q Is that a question for Connie?

2 A That would possibly be a question for Connie, yes.

3 Q All right. To go back to it, once you took those interviews
4 and they're on your digital recorder, what did you do with
5 those digital recordings?

6 A What you do is you download them for the recorder to my
7 computer.

8 Q All right. And how many computers do you use in connection
9 with your work at Yakutat?

10 A I have one desktop.

11 Q Do you have a laptop?

12 A Yes. There's a laptop.

13 Q All right. Do you ever download any digital recordings to
14 your laptop?

15 A No, I do not.

16 Q So at no time in any of your work have you ever done that;
17 am I understanding you correctly?

18 A That is correct. There is no downloads of any types of
19 audio files to that. That's strictly a training one where
20 you do a PowerPoint presentation or so on. But it's not
21 utilized in the capacity of downloading interviews onto it.

22 Q Have you ever transferred any files from your desktop to
23 your laptop?

24 A No, I have not.

25 Q How about the other way around?

Ex. B, p. 2 of 11

1 A From my laptop to my desktop? No.

2 Q Okay. Next step. So you put those into your desktop.

3 And have those files, those interview files, been moved
4 to any other computer or are they still in that original
5 desktop?

6 A At the time when we originally had taken the interviews and
7 had downloaded them into the desktop that is a desktop that
8 I do not have anymore. It's not -- I'm not using it
9 anymore.

10 Q Is it still in the office of the police department?

11 A Yes, it is. It is being utilized in the corrections
12 department in the booking room.

13 Q Has anybody done anything to the hard drive in that computer
14 since May of 2007 when these interviews were downloaded?

15 A You would have to speak with Matt Joy our computer IT guy.
16 I know he did something, to what extent I'm not sure.

17 Q All right. We can do that.

18 If you went in today and were going to produce another
19 CD like Exhibit 1 with those interviews on, what would you
20 do?

21 A They're currently on my computer that I'm using now.

22 Q Okay. So you've moved them from the one to the other.

23 A I didn't move them, Matt Joy did.

24 Q Fair enough.

25 Okay, why did he do that?

Ex. B, p. 3 of 11

1 Q [By Mr. Casperson] I'd like to get a little bit of a
2 timeline. I presume by now this should be a little bit back
3 in your memory. But you're not going to remember
4 everything.

5 But I'd like to get an idea from you just -- if you
6 could walk me through it and tell me when you first learned
7 of Jerry Byler's death, how you learned of that, who you
8 learned it from, and just walk me through your involvement
9 in this whole investigation.

10 Let's start at the beginning with your first call as
11 best you can remember.

12 A As best I can remember is on the 15th I came in and I spoke
13 with Sergeant Cox on the phone. And he informed me of the
14 death of Mr. Byler up in Icy Bay and that they would be
15 transporting the body into Yakutat. And I believe at that
16 time I was told that Darren Byler would be coming with the
17 body and that they would come through Yakutat Coastal.

18 And then what we did is -- Sergeant Cox was supposed to
19 be coming on -- arriving on Alaska Airlines. That would be
20 Flight 61. So what we did is kind of a preliminary
21 assistance to the troopers and assisted him with meeting
22 with the body and people flying in on the plane, conducting
23 some preliminary interviews, and then assisting him if he
24 needed it.

Ex. B, p. 4 of 11

25 Q Was that at his request that he asked you folks to do that

1 A We transported Mr. -- the body of Jerry Byler, and I
2 transported Kimberly Byler to the station.

3 Q And which vehicle did you drive?

4 A I had the pickup.

5 Q And so was Kimberly Byler with you?

6 A Yes, she was.

7 Q And you had Mr. Byler's body in the bed of the pickup,
8 correct?

9 A That is correct.

10 Q And did Officer Gordon take Mr. Barton with her?

11 A Yes, she did.

12 Q Did you go directly from there to the police department?

13 A Yes, we did.

14 Q And did you record an interview of Kimberly Byler while you
15 driving to the office?

16 A Yes, I did.

17 Q And we've got a copy of the transcript of that here as one
18 of our exhibits; and you've see that, correct?

19 A That is correct.

20 Q All right. Was Ms. Byler aware that you were interviewing
21 or recording the interview?

22 A No. I don't believe she did.

23 Q All right. And did you record this interview on your
24 digital recorder?

25 A Yes, I did.

Ex. B, p. 5 of 11

1 Q All right. There's a starting time I think at 10:31 a.m. I
2 think is what it says on the transcript. And I think that's
3 apparently your voice.

4 Do you think that's correct, that starting time?

5 A That is correct.

6 Q I don't believe there's an ending time on that.

7 Would you normally put an ending time on that
8 transcript or that interview when you were wrapping it up?

9 A Typically, yeah.

10 Q Why isn't there one on this one?

11 A I cannot remember why I did not do that.

12 Q So you drove back with Kimberly. You did a little interview
13 with her on the way.

14 And then when you got back to the police department,
15 what did you do next?

16 A Well, after getting back to the police department, we were
17 able to put the body of Jerry Byler into the public works
18 bay. And then after that, I went upstairs and conducted an
19 interview with Ms. Byler.

20 Q All right. Did you assist in moving the body into the
21 public works bay?

22 A Yes, I did.

23 Q Who helped with you on that?

24 A That would have been Officer Gordon and I.

25 Q Did Brian Barton help with that?

1 A I can't recall him helping with that.

2 Q Now, I understand that some photos were taken of Mr. Byler's
3 body at that time.

4 Did you participate in that activity at all?

5 A I did not take photos.

6 Q Were those taken by Officer Gordon?

7 A Correct.

8 Q Was the next thing you did after you got back to the police
9 department the interview then of Kimberly Byler?

10 A That is correct.

11 Q All right. And we've got a transcript of that here as well.

12 And you've reviewed that, correct?

13 A Yes, I have.

14 Q Did you make any visual inspection of Mr. Byler? Did you --

15 A I believe -- I'm sorry. I believe at one time I may have
16 saw Mr. Byler, but I can't be for certain.

17 Q Do you recall if you saw any bruising or marks or anything
18 on his body?

19 A I believe from -- the photos of Mr. Byler were from photos
20 that Officer Gordon had taken are what I viewed of
21 Mr. Byler.

22 Q Yeah. I'm looking for any independent recollection you
23 might have of your own visual inspection.

24 Do you have any independent recollection beyond what's
25 in the photos?

1 A No, I don't.

2 Q Okay. So you took the interview of Ms. Byler. That
3 interview also it doesn't start with a starting time unlike
4 your previous interview.

5 Do you know why there's no starting time on that second
6 interview?

7 A Yes, I do.

8 Q Why is that?

9 A I went to actually -- if you listen to it, I went to say the
10 time. I went to say, This is Chief Nichols, time -- and
11 then at that point, Ms. Byler, who was holding some photos
12 of Jerry Byler, interrupted me and showed me the photos. So
13 I wasn't able to actually say the starting time.

14 Q Okay.

15 A I'm sorry. I didn't hear you.

16 Q No. I just said, "Okay." I was gathering my thoughts about
17 me. So you did the interview then.

18 And the photos that Ms. Byler had, do you recall what
19 the photos were?

20 A No, I don't. I just know they were photos of Jerry.

21 Q And did you take copies of those photos?

22 A No, I did not.

23 Q And why not?

24 A I didn't feel that at that time it was part of the case
25 report for whatever reason. It didn't seem like I needed

1 the photos.

2 Q How many photos did she have with her, do you know?

3 A I don't. I don't recall how many.

4 Q As you sit here today, do you have any recollection of what
5 was depicted in the photos?

6 A I'm sorry, I don't.

7 Q Okay. When you finished that interview of Ms. Byler, what
8 did you do next?

9 A After the interview with Ms. Byler, I conducted the
10 interview with Brian Barton.

11 Q Was there any time lag between the two?

12 A Yeah. The interview with Ms. Byler ended at 11:10. My
13 interview with Brian Barton began at 11:15.

14 Q Okay. So just five minutes or so.

15 Do you recall what you did during that five minute
16 period?

17 A I don't recall.

18 Q All right. I wouldn't expect you to.

19 And once you finished interviewing Mr. Barton, what did
20 you do next?

21 A After interviewing Mr. Barton, I can't recall what my
22 activity was after that, what I did.

23 Q Do you recall meeting with Trooper Cox?

24 A Yes, I do.

Ex. B, p. 9 of 11

25 Q Tell me when you first saw him in connection with this

EXHIBIT C

No. IJU-08-434 CI

TRANSCRIPTION OF THE INTERVIEW
OF
KIM BYLER

MAY 15, 2007

Juneau, Alaska

WILLIAM A. MCLAUGHLIN

CCR 3128

INDEX OF EXAMINATION

	Page

Examination	
By Mr. John Nichols	3

INDEX OF EXHIBITS

No.	Description	Marked	Identified
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(No Exhibits introduced.)

1 KIM BYLER, having been electronically recorded and
2 thereafter stenographically transcribed
3 by the Notary Public testified as
4 follows:
5

6 E X A M I N A T I O N
7
8
9
10

11 BY MR. NICHOLS:

12 Q This is Jeff Nichols. The time --

13 A This is Jerry. This is Jerry. This is a man enjoying his
14 life.

15 Q He looks in great shape.

16 A He's in excellent shape. You don't know how it happened or
17 why. There's so many bad people in this world. Why did God
18 take one of the good ones? He's one of the good ones.

19 Q How long ago was this picture?

20 A About two weeks.

21 Q Two weeks ago? About 160 pounds.

22 A He wasn't overweight. He was stronger than guys half his
23 age that were couch potatoes with guts. And he was proud of
24 being physically strong and alert?

25 Q Yeah, he looks to be in good shape. I'm very sorry. And as

1 I say, if there's a time, Kimberley, that we need to stop or
2 you need some time just to gather your thoughts, we're not
3 in a rush here.

4 A I don't know. What more I can tell you than what I told the
5 Coast Guard 50 million times last night and I told the
6 trooper 50 million times last night. The story is not
7 changing.

8 Q I'm not looking at anything changing, Kimberley. I've been
9 asked to do a follow-up interview and that's all I'm doing.
10 Basically, what I was told last night is that you guys were
11 on a -- is it a catamaran or a boat? I don't have much
12 information as to what happened other than supposedly the
13 call came at about 7:21. And about that time you reported
14 that you had a person overboard, and then someone in the
15 helicopter helped or something find the body. I don't know
16 the timeframes. I don't know when the last time Jerry was
17 seen or anything like that. And that's what we're getting
18 as to some of the circumstances, and actually just to your
19 best knowledge of what happened. I mean, where were you
20 guys located at?

21 A At Icy Bay by George's lot. You know George.

22 Q I know George Davis. I've never been up to Icy Bay.

23 A We were right there anchored up in that small protected
24 cove.

25 Q How far away from the beach were you anchored up? Is

1 it . . .

2 A It's not far.

3 Q So you guys weren't going, in motion?

4 A We were on anchor. We were on anchor. Our clients out a
5 day and a half, two days early. And we were having off
6 time, down time, unwind time, and we were watching Discovery
7 Channel's Most Dangerous Jobs. And Jerry liked to go up and
8 call Lena in the evening so we figured he just must be up
9 calling her outside on the deck.

10 Q Lena is his wife?

11 A Yes.

12 Q Okay.

13 A And after the show was over at 6:00, Darren went to look for
14 him and couldn't find him. And we did a complete boat
15 search because, like I say, he likes to do projects. We
16 thought maybe he's down doing something in the engine room,
17 just, he's always doing something.

18 Q Something working.

19 A And then Darren noticed that one of the skiffs was pulled up
20 short. And he put it together that his dad went against his
21 wishes and went up there and pumped that stupid, stupid boat
22 out. We told him don't do it.

23 Q Pump?

24 A We got skiffs in the water that are hanging off the back of
25 the boat. And when it's heavily rainy, you need to keep the

1 bilges pumped out or they fill up with water.

2 Q Oh, they're skiffs?

3 A They're tiny skiffs, yes, they're 16, 20 footer. And Darren
4 told him that later on that night he's going to go out and
5 pump those boats. And Jerry said -- this was about, I don't
6 know, 5:00, I don't know. I wasn't there. And Jerry said
7 I'll go do it.

8 This is what Darren told me happened. He said, No,
9 dad. Don't go do it. It's bad weather out there. Have one
10 of the other people help you or I'll help you or we'll do it
11 ourselves. You don't need to be out there dad. I want to
12 do it right before we go to bed anyhow because then it has
13 all night to fill up again. You don't want to do it in the
14 middle of the evening.

15 And Jerry said, no, I'll do it. That's just how he
16 talked. No, I'll do it, it's no -- I'll do it. And Darren
17 said, Dad, don't do it. It's unsafe. He had to have done
18 it because it's all I can figure out. He was in all his
19 rain gear and he had his extra tubs on and he always dresses
20 for the weather. He had to have been planning to do
21 something outside.

22 Q Because of the way he was dressed? And in the boat you said
23 they were -- you have to bail them out, or is there a
24 bilge --

25 A No, you just flip the bilge pump. We have a Mako and a

1 whaler and then the big boat. The Mako is the one that you
2 flip the switch on and that was the one Darren said we're
3 going to pump out later to his dad, that his dad decided --
4 we think he decided on his own that he could do it on his
5 own, which was unsafe, and we told him it was unsafe. And
6 the boat was pulled up tighter -- it's on a leader and it
7 was pulled up tighter to the back of the whaler.

8 And Darren noticed that. And that's when he started
9 looking and searching for his dad, because he didn't see his
10 dad and he knew his dad wouldn't have left it like that.

11 Q Like that, I see.

12 A So he thought maybe he had to go and get something. He
13 found some project he wanted to do. Because that's how he
14 was. He'd see something, he'd want to do it right then and
15 there. And we looked all over the boat. We looked
16 afterwards, we looked every compartment. Everybody was
17 looking. We couldn't find him. We started looking in the
18 water; we couldn't see anything in the water.

19 We got Pat Cat which was our 35-foot landing craft and
20 we started searching the water, searching the log rafts, the
21 logging companies out there. We searched the log rafts. We
22 thought if he fell in surely he swam to one of those and
23 he'd be holding on we could get him. He wasn't. And there
24 was a big sand bar out there. We thought maybe he could
25 swim to that. He wasn't there. We looked at the beaches

1 and we looked and we looked and we looked and we couldn't
2 find him. And then we called the Coast Guard.

3 Q Do you know how long you were looking for him before you
4 called the Coast Guard, approximately, before you notified
5 them.

6 A Maybe 30, 40 minutes? It took 30 minutes to get the Coast
7 Guard to frickin answer the phone. We had a book of numbers
8 and nobody would answer phones.

9 Q So you couldn't get ahold of anybody for about 30 to 40
10 minutes?

11 A Yes, I have a list of phone numbers we tried and not one of
12 them worked. They went to answering machines or nobody
13 answered them. And they were all saying they were -- we
14 called Valdez, we called Kodiak, we called Cordova, we
15 called the 1-800 number to report all emergencies. Nobody
16 answered. We finally got ahold of Kodiak air station.

17 Q And that was probably, you said, about 40 minutes later?
18 Probably longer if you add on the numbers that you called
19 and weren't able to get ahold of anybody. Because you
20 actually searched for them for about 30, 40 minutes, you
21 think? Now, to step down off your boat -- and I don't know
22 what type of boat, you said a catamaran style. Is it kind
23 of a dangerous step to step off onto the skiffs, to get onto
24 them?

25 A He didn't fall off of the big boat getting down. He fell

1 off of the whaler.

2 Q The whaler?

3 A The 16-foot Nautilus Whaler. He made it to the Mako. He
4 pumped out the Mako. And he got back on the whaler and was
5 releasing the line, because the line was still short, but it
6 wasn't tied off. Jerry, sergeant safety, always did wraps,
7 complete wraps. There was just the back cleat with the line
8 just kind of, just caught, really. It was really just
9 caught on that back cleat. And Jerry wouldn't have said
10 that that was a good way to tie up a boat, to be going on
11 any other boat. Because you had to have it tied up to get
12 back on from the Mako to the whaler. So we know the Mako
13 was pumped out because we went and looked to see if it was
14 pumped out and it was dry.

15 Q And it was pumped out, okay.

16 A There was no rain water and it was dry. And Jerry wouldn't
17 have left that line like that.

18 Q On the Mako?

19 A On the back of the cleat of the whaler. He got on that
20 whaler from that Mako. And what we think was happening was
21 he was cutting the line loose and releasing it and giving
22 the Mako a shove back with his hand. And we think his
23 defibrillator went off.

24 Q All right. And the whaler wasn't pumped out?

25 A Whaler doesn't need to be. It's self bailing.

1 Q So the Mako was actually pumped out. And you think he was
2 rearranging the boats or something?

3 A We think he was just pushing it back. That's the only thing
4 that makes sense. He was very sure-footed, very
5 sure-footed. He wasn't wearing any big loose gear like you
6 see these guys wearing that could get caught or hung up.
7 When you see him, he's got his sailing hands and rain gear
8 on. It's very form fitting. There's nothing to get caught
9 on.

10 Q You said he had a pacemaker or defibrillator?

11 A Defibrillator.

12 Q And he's had that for about a year now? And was he
13 experiencing any heart conditions out there with you? How
14 long had he been out there with you guys?

15 A Since the middle of April.

16 Q And he's just been out there helping you with your business
17 and everything else?

18 A Everything, yes, he's a part of our business. We're a
19 family business.

20 Q And no medical alarms, no complaining about anything at all?

21 A No, I checked in with him often.

22 Q Do you know if he was taking medication or anything like
23 that?

24 A He has medication he takes for that. Lena, his wife, would
25 know what that all is. I don't know what it all is. But he

1 was taking his medication. He wasn't out of medication.
2 Matter of fact, he was planning on staying a couple extra
3 weeks since a couple local boys in Yakutat run off a couple
4 of our guides with their mouth. So Jerry was planning, he
5 said he had enough medication to stay.
6 Q So he was going to stay?
7 A Yeah, he wasn't out.
8 Q Who was this on the boat at the time? It was you and
9 Darren?
10 A It was Darren, myself, Luke?
11 Q Is Luke the person out here?
12 A Yeah, and Eddie, and -- oh, I can't remember people's names,
13 Pam, and Amanda. That was our whole crew.
14 Q And you said a female, I'm sorry, I didn't . . .
15 A Amanda and Pam.
16 Q Do you know Eddie's last name?
17 A Macdonald, M-A-C-D-O-N-A-L-D.
18 Q And Amanda's name?
19 A S-A-S-S, sass.
20 Q S-A-S-S. And then Pam's?
21 A Girgwood.
22 Q Girgwood? Okay. And how was the body found? I mean, how
23 did the helicopter become in play in all this?
24 A The Coast Guard put a distress out on channel 16 and they
25 answered back as a good Samaritan.

Ex. C, p. 11 of 18

1 Q Where were they stationed at Icy Bay, the helicopter?

2 A I don't know where they're from.

3 Q Were they in direct contact with you to tell you -- because
4 my understanding is you went over to where the helicopter
5 was.

6 A Yeah, they told us that they were there and they were
7 looking and where did we think to look? And we told them
8 and we communicated. And they were on their way out and did
9 one last sweep and he had just washed up from the beach.
10 Well, not on the beach, he was stuck on a little sand rise
11 that had probably about this much water in it. And it was
12 maybe three, four feet from the beach.

13 Q Three, four feet. And they notified you that his location?

14 A Yeah, and they landed that 'copter right there on the beach
15 and they got out and pointed.

16 Q Okay. And did you guys jump in the skiff or something?

17 A Immediately.

18 Q And how far was that away from the boat? In your search,
19 did you go that way?

20 A Yes.

21 Q You just didn't see him?

22 A He wasn't there. He was underwater. The wind and the tide
23 were pushing that direction.

24 Q Oh, pushed everything up on the beach?

25 A The whole time. That's how he washed up on that shore.

1 Q Okay. How is your husband doing?

2 A Terrible. Blames the government for it, for stressing us
3 out with the trooper nonsense. And then my father-in-law,
4 which is his best friend, they talk about it and he thinks
5 the added stress contributed to it and you won't convince
6 him otherwise and I'm not entirely sure he's not right on
7 that.

8 Q You know, right now, with everything that's going on, it's
9 just a lot of stress on you and your husband and feelings
10 and emotions and everything else. I don't know him, but
11 just by his picture he just seems like a hell of a nice guy.

12 A He was a wonderful man.

13 Q Do you remember about the last time you saw him, that you
14 can remember the last time you saw him, or where he was at
15 when you last saw him?

16 A We all move around so much, I don't remember. I know that
17 the girls were in the galley making cookies and he came in
18 and asked for a pair of scissors to cut off a pair of his
19 outdoor gloves. And we figured that was the last time
20 anybody saw him.

21 Q Do you roughly know about what time that was, Kimberly?

22 A I think it was about 5:00.

23 Q About 5:00. And the time that the 'copter found him washed
24 up on the beach?

25 A At that point, I didn't . . .

Ex. C, p. 13 of 18

1 Q You were just -- I understand, I totally understand, you
2 kind of lose time. Well, as I said, I do appreciate this.
3 I understand this creates a little more stress for you but
4 typically this is just something we have to do. It's not to
5 add any more burden on you or anything else like that. It's
6 unfortunate that we have to do this. But sometimes we do
7 that right at the time because it's kind of fresh in your
8 mind. But if there's anything that we can do, if you have
9 any questions --

10 A Do you have the facilities here to know what happened?

11 Q You mean the cause of death?

12 A Yeah, can you --

13 Q No, basically now what will happened is you're just going to
14 have to assume what happened now. Because they released the
15 body to the parish, to the family. And they don't do an
16 autopsy the family could request an autopsy but it's pretty
17 spendy. But as I said --

18 A Well, he has that defibrillator and they can hook it up and
19 see what the last thing happened on it, to see if he got --

20 Q Oh, they might be able to do that with the technology they
21 have and see if it fired or something.

22 A Because we don't want to think he fell in and drowned, he
23 couldn't get out. It's not fair.

24 Q And you're right, life isn't fair.

Ex. C, p. 14 of 18

25 A We even have an emergency latter in the water in case

1 somebody were to fall in. It's already there. Everybody
2 knows where it's at. It wasn't that far from where he went
3 in. He had to have been unconscious or dead already.

4 Q You know, one of these things is, I know not actually
5 knowing exactly what happened, that's frustrating in itself.
6 It really is, the not knowing. Because it's easier to cope
7 with things knowing how, what happened. Hopefully the
8 defibrillator, the injury to his head, I don't know what
9 we'll be able to take some photos, someone will be able to
10 look at it and determine, well, is that significant? Is
11 that something that possibly he could lose consciousness,
12 possibly?

13 A We don't know if he fell in because he got his balance
14 knocked off and coming up, maybe he hit the boat underneath,
15 we don't know.

16 Q That possibly could happen. The only realistic thing that
17 would tell is an autopsy because they could do an
18 examination inside to see if he actually did drown or was he
19 conscious. The defibrillator may give us some indication as
20 to what happened, an idea what happened. And there may be a
21 point where you just don't really know. I don't know what
22 to tell you. In this case you just think about what a
23 wonderful man he was and all the good times you've had
24 together. And, you know, unfortunately --

25 A He died in Alaska where he -- this is his home. This is

1 what he loved, is Alaska.

2 Q Well, if he loved the place and this it is where he wanted
3 to be, I mean, not to say that any time is a good time. But
4 he was doing something he enjoyed. He was with you and the
5 business and doing the things he truly enjoyed to do. And
6 he was happy.

7 A If he just would have listened to Darren.

8 Q Now, see, the one thing you can't go back is -- I know you
9 will. I know you'll go back and say, I wish I would have
10 done this, I wish I would have done that. I did the same
11 thing when my brother killed himself. I should have went up
12 and watched a movie with him. I know he was going through a
13 divorce. I mean, all these things went through my head.
14 It's the things that I should have done. There's nothing
15 you could have done. Unfortunately these things happen.
16 It's unfortunate it happened to you but they do happen. And
17 there's nothing that you can go back and blame yourself or
18 Dan or anybody else on the boat as to who would have done
19 this. It's unfortunate, it really is. Do you have any
20 questions at all? No? Because I'll be happy to try to
21 answer any of your questions if you have any?

22 A I just really want to take him to Anchorage.

23 Q See, that's playing --

24 A Maybe we'll have more flight options.

Ex. C, p. 16 of 18

25 Q The only way we can take him to Anchorage -- possibly they

1 can redirect the late flight going to Anchorage, but it
2 won't get there till later. If you want, I think, if you
3 got the contact with the family, I think they're already
4 making arrangements in Juneau. We'll let you use the phone
5 here. You can sit down and call whoever you have to call to
6 make those, and see what's going on. And they can probably
7 answer your questions way better than I. Regardless of what
8 you guys decide, we'll head to the facility out there either
9 to transport him to Juneau or first thing in the morning
10 take him out to Anchorage. Or there may be a possibility to
11 take him to Juneau tonight and to get him to Anchorage
12 earlier tonight. I'm not sure. But I'm pretty sure the
13 Juneau to Anchorage flight, they don't get there till 11:00
14 or so. I don't know, it's later. But would you like to
15 make a phone call and talk to some people?

16 A Cells don't work here?

17 Q No, we don't have cell phone service you can be happy to
18 use -- actually we've got one in B and B to give you some
19 privacy and so on.

20 A I'd like to call Lena and tell her I'm here, [inaudible]
21 Anchorage since it doesn't look like I'm going to Anchorage
22 I'm not calling her.

23 Q This is Chief Nichols. The time right now is 11:10.
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I, William McLaughlin, a Notary Public in and for
the State of Washington, do hereby certify:

That the testimony of the witness and all objections made
at the time of the examination were recorded electronically
by the court, and thereafter transcribed stenographically
under my direction;

That the foregoing transcript is a true record of
the testimony given by the witness and of all objections made
at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any
party to this matter nor to any of counsel, nor do I have any
interest in the matter.

Witness my hand and seal this 17th day of
March, 2011.

William McLaughlin, Notary
Public in and for the State
of Washington, residing at
Seattle. Commission
expires July 10, 2011.

Ex. C, p. 18 of 18

EXHIBIT D

John E. Casperson
HOLMES WEDDLE & BARCOTT, P.C.
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,

Plaintiff,

v.

ALASKAN LEADER, Official No. 558637, its
Engines, Machinery, Appurtenances, etc.,
In Rem, and ALASKAN ADVENTURE
TOURS, INC., *in personam*,

Defendants,

CITY AND BOROUGH OF YAKUTAT,

Intervenor.

IN ADMIRALTY

Case No. 3:10-cv-00055-HRH

DECLARATION OF DOUGLAS S. LACEY

I, Douglas S. Lacey, declare as follows:

1. I work as an associate and forensic consultant/examiner with BEK TEK LLC, a company specializing in the forensic analyses of audio and video recordings. BEK TEK LLC has been retained by the Estate of Jerry L. Byler to assist in analyzing certain audio recordings, represented as having been produced by the police department of the City and Borough of Yakutat. My curriculum vitae is attached.

Ex. D, p. 1 of 10

2. As part of my work in this matter, I have initially reviewed two data compact discs (CDs), designated as specimens Qc1 and Qc4 by BEK TEK LLC. Each of the data CDs contain three audio recordings in Windows Media Audio (WMA) file format, which are named as follows on each disc: "07-0438-0043 First contact Kim Byler.WMA", "07-0438-0043 Interview Kim Byler.WMA", and "07-0438-0043 Interview Brian Barton.WMA". It has been represented that two of these recordings are interviews of Ms. Kimberly Byler and one is an interview of Mr. Brian Barton. The identically-named files on each disc were found to be identical in content.

3. It is my understanding that each interview was recorded on an Olympus digital audio recorder, and then transferred to a computer by a police officer. Digital data analyses of the WMA files confirmed that the recording device indicated for each file was an Olympus WS-300M recorder, and that the record start times, end times, and durations for the three recordings (as written into the file by the Olympus recorder, based on its internal clock) are as follows:

"07-0438-0043 First contact Kim Byler.WMA"

Start: 05/15/2007 10:29:01 AM

End: 05/15/2007 10:46:20 AM

Length: 00:17:19 (hours:minutes:seconds)

"07-0438-0043 Interview Kim Byler.WMA"

Start: 05/15/2007 10:48:39 AM

End: 05/15/2007 11:07:33 AM

Length: 00:18:54

"07-0438-0043 Interview Brian Barton.WMA"

Start: 05/15/2007 11:12:29 AM

End: 05/15/2007 11:24:25 AM

Length: 00:11:55

Ex. D, p. 2 of 10

4. It is noted that the date and time of the Olympus digital audio recorder can easily be reset by an operator in-between recordings. The internal clock of the Olympus digital recorder is not synched to a standard time source, such as an atomic clock, and recordings produced on the recorder will be stamped with whatever date/time it is given by the internal clock, regardless of whether the date and/or time are accurate.

5. Upon their completion, audio recordings made on the Olympus recorder can be transferred to the hard drive of a computer as separate files. The Windows operating system will assign dates and times to the transferred files based on the internal clock of the computer at the time of file transfer. For the three files on specimens Qc1 and Qc4, the Windows dates/time files are as follows

(note that the hours column of the time may not accurately reflect the time zone in which the recordings were produced):

"07-0438-0043 First contact Kim Byler.WMA": 05/17/2007 13:53:13

"07-0438-0043 Interview Kim Byler.WMA": 03/24/2009 14:23:15

"07-0438-0043 Interview Brian Barton.WMA": 05/15/2007 15:24:24

6. Assuming that the three WMA files on specimens Qc1 and Qc4 were transferred directly from an Olympus digital audio recorder in the manner described above, the "First contact Kim Byler" file was transferred to a computer on May 17, 2007 (approximately two days after the alleged date that the recording took place) and the "Interview Brian Barton" file was transferred to a computer on May 15, 2007 (the same day that the recording allegedly took place). However, the "Interview Kim Byler" file would be consistent with having been transferred to a computer on March 24, 2009, approximately one year and ten months after the recording allegedly took place.
7. I am currently unable to determine if this latter file was recorded on the same digital recorder as the first two, if it was transferred from another media to the computer (as opposed to being directly transferred from the Olympus recorder), or if there have been some other modification(s) to the file on the computer from which the specimen Qc1 and Qc4 data CDs were produced. However, the March 24, 2009 date for the "Interview Kim Byler" file does reflect that something occurred with respect to that file on that date. Based on my initial review of this file, I cannot determine what occurred on that date with certainty.
8. Modifying the date and/or time settings of a file residing on a computer's hard drive is not as simple and straightforward a process as that on the Olympus recorder. In the least, specialized software and knowledge of its use and capabilities are required. Therefore, it is likely that the dates assigned to the files as described above in paragraph 6 are correct and have not been modified after the fact through such a process.
9. It is my understanding that the Estate of Jerry L. Byler is claiming that the "Interview Kim Byler" recording has been altered or edited since the time it was allegedly first recorded on May 15, 2007. At present, that possibility cannot be ruled out, without further information about the cause of the March 24, 2009 date of the file.
10. Analysis of the computer hard drive(s) by a computer forensics examiner may provide additional information regarding the reason for the March 24, 2009

date of the "Interview Kim Byler" file and would assist with BEK TEK LLC's further analysis of this file for the purposes of determining whether or not it is an original, continuous, and unaltered recording.

DATED this _____ day of March, 2011.

Douglas S. Lacey

Ex. D, p. 4 of 16

EXHIBIT E

EXHIBIT E

INDEX OF EXAMINATION

Page

Examination

By Mr. John Nichols

3

INDEX OF EXHIBITS

No.	Description	Marked	Identified
---	-----	-----	-----

(No Exhibits introduced.)

1 KIM BYLER, having been electronically recorded and
2 thereafter stenographically transcribed
3 by the Notary Public testified as
4 follows:

6 E X A M I N A T I O N

9 BY MR. NICHOLS:

10 Q This is Chief Nichols. The time right now is 10:31. I'm at
11 the airport here to pick up a body that's been transported
12 from Icy Bay. Deceased was identified as Jerry Byler. Hi,
13 Kimberly. I'm Chief Nichols. You personally have my
14 condolences from myself for what's going on.

15 A Thank you.

16 Q I have been in contact with the troopers. I guess what they
17 want to do is we need to examine the body and everything
18 else for them. They're coming on this flight about 11:40,
19 11:45, whenever it arrives. And we'd just like to take you
20 to the station if that would be possible and I can talk to
21 you and get some information about what happened and so on.
22 And then there have been arrangements through the family. I
23 don't think they're going to be able to get it to go to
24 Anchorage, but they are going to make arrangements for
25 Juneau and they can transport the body, hopefully, this

1 afternoon on Alaska Airlines on Juneau down to --

2 A I'm flying with the body.

3 Q Okay. So you'll be going down on Alaska?

4 A And I want the body to go to anchorage to the mortuary. My
5 understanding is it can't fly without being prepped so I'm
6 taking it to the mortuary.

7 Q As I said, I don't know if it's going to make that. Because
8 there's this northbound coming up right now, and the crunch
9 time just is so soon I don't think it's going to make that
10 flight to Anchorage. The troopers down in Juneau were on
11 the phone with the family down in Arkansas, I believe.

12 A Correct.

13 Q And I think they were making arrangements for a mortuary in
14 Juneau to make arrangements to have it all the way flown
15 down because they don't want it here for a whole day either.
16 But we can make some phone calls out. We can get to the
17 station. I'll let you make some phone calls, whoever you
18 need to get ahold of to make that arrangements. If you
19 want, we can just take the car and we can do this.

20 A Is that Sergeant Cox?

21 Q Yes, Sergeant Cox. If you don't want to watch this, you can
22 have a seat in the car. Do you have transportation to the
23 station?

24 UNKNOWN: No, I don't.

Ex. E, p. 4 of 11

25 Q Then what we'll do is we can take a ride down there.

1 A So are we doing some big hairy investigation here? I mean,
2 the man probably had his defibrillator go off and lose his
3 footing. Nobody knew he was outside.

4 Q No, we're not doing a big investigation. But the MEs, in
5 order to release it, they just have to do a follow up. They
6 have to cover their bases. It's not that they suspect
7 anything, it's just they have to do that. On any death like
8 this, what we have to do is we have to examine the body even
9 though it's been released, just examine it and make sure
10 everything is okay and so on. And they're not trying to say
11 any foul play is involved because obviously they don't think
12 that. But they have to do this. There's steps we have to
13 cover. And fortunately this won't take too long. This will
14 be very quick. And I don't think our interview will take
15 that -- and they just want to get other people on the boat
16 just make sure they talk to them. In cases of death they
17 have to make sure they talk to everybody. One sec. Let me
18 come out that way. Were you out there also?

19 UNKNOWN: Do you want me to help?

20 Q So, yeah, can you come up and we'll get an interview as to
21 what you know. Do you want to ride with Officer Gordon?

22 UNKNOWN: So I just leave my stuff here?

23 Q Just put that down there.

24 A Can I just be right up front with you?

25 Q Sure.

1 A Is this the trooper car playing with us? Because we have
2 bad blood with between us and the troopers.

3 Q No, I'm going to be totally honest with you, no. This is
4 typically, in this case, regardless what a death in this
5 case is, this is typically what we do. The trooper by no
6 means said anything about foul play. They're doing
7 typically what's basic in all these cases, Kimberly. And
8 I've done, probably in my career, between 20, 25 kind of
9 situations like this. And it's the same?

10 A I just can't understand how it happened. He was the nicest
11 man. Darren, my husband told him, Don't go out there and
12 check those boats by yourself. We told him. He's one of
13 those guys that's a handy guy, you know, he's always got to
14 be doing something. And he had a heart condition that he's
15 supposed to be slowing down, and we were trying to get him
16 to slow down, but he didn't want to hear it. He was like
17 any one of us, you know, you don't want to know when you're
18 getting old.

19 Q How old was he?

20 A He's 69, he 70 in January.

21 Q Station 1, I'm going to be 10-34 to 10-19, providing 10-86.

22 A He was in better shape than guys half his age.

23 Q You said he had a heart condition?

24 A He had a defibrillator in.

25 Q Oh, he did?

1 A The only thing we can figure out is that maybe it went off
2 and it caused him to lose his footing, because he was very
3 sure-footed.

4 Q How long has he had that defibrillator? Has he had it for a
5 while?

6 A About a year.

7 Q Was the weather out there pretty -- we had a lot of rain and
8 a little bit of wind but not too bad.

9 A It was rainy, windy, low visibility there was a lot of wind
10 and chop.

11 Q It's really, I know, I'm not feeling the pain you're
12 feeling, but something like this happens and it's not
13 planned and you don't know what to --

14 A He was our best friend. He was the only one that supported
15 us, the only one that was always there for us.

16 Q In these situations, you just sit here and you think what
17 can I say to make you feel better?

18 A There's nothing. There's absolutely nothing anybody can
19 ever say to anybody. I appreciate it but I know exactly
20 what you're talking about. You can't -- nothing you say to
21 anybody about this can make them feel better. I can't tell
22 my husband anything that will make him feel -- the only
23 thing that gives us some sense of peace is that Jerry died
24 doing what he loved to do. He loved the water and being out
25 there in the middle of our hunting season. He loved being

1 out here.

2 Q I want to say just take some time. When I lost my brother
3 in '86, he committed suicide. It took a long time. It
4 really did.

5 A We looked so hard for him.

6 Q But it sounded like he was doing something he really
7 enjoyed, so in that sense -- he didn't want to slow down.
8 It's like you said, he's a pretty handy man so he was doing
9 what he really enjoyed.

10 A He could fix anything for anybody. He was just trying to --
11 he has a nickname, old buddy, because he's always just
12 trying to help out. He's everybody's buddy. He'd always
13 lend a hand even when everybody else is tired and Darren
14 needed a hand with stuff he'd always be there. It's a
15 tremendous tragedy for our family.

16 Q Is his wife still alive?

17 A Well, that's not Darren's mom. It's his step-mom.

18 Q Step-mom?

19 A We called his former wife and told her and she told Darren's
20 brother so everybody knows. We were on the phone until late
21 last night. I haven't looked at the body but the way we
22 found him in the water, he looked like he bruised his
23 forehead so all we can think is he hit his head and he
24 couldn't get out. But he had -- you're still alive and
25 you're breathing and you go under the water, you sink,

1 right?

2 Q Well, no. A lot of times, it depends on body chemistry. If
3 you have a lot of body fat or a lot of clothing that traps
4 air, and what happens is a lot of times bodies won't sink.
5 You know, there's that myth that once you drown, you sink.
6 Some bodies will, but depending on what type of clothing,
7 possibly trapping air and so on, he'll stay afloat.

8 A He has zero body fat. You'll see. He has zero body fat.
9 He was in the best shape that anybody could be or hope to be
10 ever except for his heart failed. I feel so terrible.

11 Q What was he wearing at the time?

12 A He had his rain gear on and his extra tubs and clothes. I
13 don't know what he was wearing a hat or not. I couldn't --
14 I don't know if he had any fleece on underneath.

15 Q Yeah, rain gear at the time, even though the coats are big
16 and bulky they will trap air inside them and kind of act as
17 a flotation device sometimes. I'm just glad you were able
18 to recover the body.

19 A I couldn't handle him being crab bait. Oh, my God. That's
20 why we tried so hard to find him.

21 Q I don't know if you have the opportunity but after Officer
22 Gordon is done but if you want to go down and view one more
23 time, that's fine.

24 A My husband didn't want to see his dad's face. He told me
25 not to, but I think I want to see it. I want to see what

1 happened. I don't understand. He's so careful. Another
2 nickname we gave him was sergeant safety because he's always
3 preaching about safety, just safety this, safety that.

4 Q Sergeant safety?

5 A He always told people, you know, don't go out in the field
6 even if it's a sunny day without packing your rain gear.
7 Never leave your pack, you know. [inaudible]

8 Q What I'm going to do is, we're going to kind of do
9 everything down here and I'll take you up straight up for
10 some coffee or something. Do you need any help carrying
11 anything, Kimberly? I'm just going to carry this real
12 quick, rose and what I'm going to do is I'll come down and
13 we'll bring -- yeah, just come up. Kimberley, why don't you
14 get the door and [inaudible] I'll be right back.

15 UNKNOWN: CR unit 4, when do you estimate your
16 time.

17 UNKNOWN: Three minutes.

18 [1:44 of inaudible follows]

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

I, William McLaughlin, a Notary Public in and for
the State of Washington, do hereby certify:

That the testimony of the witness and all objections made
at the time of the examination were recorded electronically
by the court, and thereafter transcribed stenographically
under my direction;

That the foregoing transcript is a true record of
the testimony given by the witness and of all objections made
at the time of the examination, to the best of my ability.

I further certify that I am in no way related to any
party to this matter nor to any of counsel, nor do I have any
interest in the matter.

Witness my hand and seal this 17th day of
March, 2011.

William McLaughlin, Notary
Public in and for the State
of Washington, residing at
Seattle. Commission
expires July 10, 2011.

EXHIBIT G

EXHIBIT G



direct line: (206) 392-5082
email: angela.leifer@alaskaair.com

VIA Facsimile
& U.S. Mail

March 9, 2011

Mr. Jeffrey J. Waller
Holmes Weddle & Barcott, P.C.
701 W. 8th Avenue, Suite 700
Anchorage, AK 99501

Re: Subpoena/Subpoena Duces Tecum
Estate of Jerry I. Byler v. Alaska Leader, et al.

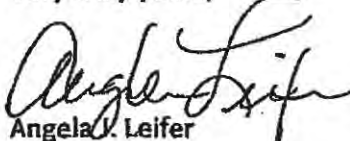
Dear Mr. Waller:

In response to the above-referenced subpoena, Alaska Airlines responds as follows:

1. The arrival time at Yakutat, Alaska, for Alaska Airlines Flight 61 on May 15, 2007: Flight 61 (Juneau to Yakutat), 11:56 AM, May 15, 2007
2. The arrival time of all Alaska Airlines flights arriving at Yakutat on May 15, 2007:
Flight 61 (see above)
Flight 66 (Cordova to Yakutat), 6:25 pm, May 15, 2007

No responsive information has been withheld. In providing the above information we have fully complied with the terms of the subpoena. Should you have any questions or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,


Angela J. Leifer
Paralegal

Enclosure (Cert of Records Custodian)



direct line: (206) 392-5082
email: angela.leifer@alaskaair.com

VIA Facsimile & U.S. Mail

March 15, 2011

Mr. Jeffrey J. Waller
Holmes Weddle & Barcott, P.C.
701 W. 8th Avenue, Suite 700
Anchorage, AK 99501

Re: Subpoena/Subpoena Duces Tecum
Estate of Jerry I. Byler v. Alaska Leader, et al.

Dear Mr. Waller:

In follow-up to my March 9, 2011 correspondence, you asked me to clarify the following information:

1. The arrival time at Yakutat, Alaska, for Alaska Airlines Flight 61 on May 15, 2007: Flight 61 (Juneau to Yakutat), 11:56 AM, May 15, 2007
2. The arrival time of all Alaska Airlines flights arriving at Yakutat on May 15, 2007:
Flight 61 (see above)
Flight 66 (Cordova to Yakutat), 6:25 pm, May 15, 2007

The above times are the arrival times at the gate, which were reported to the FAA. Gate times represent when the aircraft has reached the arrival gate and the aircraft engines are shut off. Should you have any further questions or if I can be of further assistance, please do not hesitate to contact me.

Very truly yours,



Angela J. Lelfer
Paralegal

EXHIBIT H

1. John E. Casperson
2. HOLMES WEDDLE & BARCOTT, P.C.
3. 999 Third Avenue, Suite 2600
4. Seattle, Washington 98104
5. Telephone: (206) 292-8008
6. Facsimile: (206) 340-0289
7. Email: jcasperson@hwb-law.com

8. Attorneys for Plaintiff

9. IN THE UNITED STATES DISTRICT COURT
10. FOR THE DISTRICT OF ALASKA

11. ESTATE OF JERRY L. BYLER,

12. Plaintiff,

13. v.

14. ALASKAN LEADER, Official No. 558637, its
15. Engines, Machinery, Appurtenances, etc.,
16. *In Rem*, and ALASKAN ADVENTURE
17. TOURS, INC., *in personam*,

18. Defendants,

19. CITY AND BOROUGH OF YAKUTAT,

20. Intervenor.

IN ADMIRALTY

Case No. 3:10-cv-00055-HRH

21. DECLARATION OF KIMBERLY BYLER

22. I, Kimberly Byler, declare as follows:

23. 1. I have reviewed the deposition transcript of Chief John Nichols. He states that I
24. had photographs of Jerry Byler with me. This is incorrect. I had no photos with
25. me. He showed me photos on a computer screen at the time of my interview that I
26. understood that he had downloaded from Brian Barton's camera. Brian was
interviewed before me.

Ex. H, p. 1 of 4

2. I have listened to the recorded interviews produced by Yakutat. The first words heard on the recording of my second interview are of me saying "This is Jerry." That was not how the interview began. It began with Chief Nichols stating the date and time, stated my name, and then asking questions. Part of the start of the interview is missing.
3. Contrary to his sworn testimony, Chief Nichols did not take me to the airport after I was interviewed. He did not talk to me about unpaid City taxes, which were not due for months. I left the police station that day after 1:30pm with Eddy MacDonald, Brian Luke Barton and Pam Girdwood. After leaving the police station we all had lunch together at a local establishment. Later on that afternoon at approximately 4:00 pm I was dropped off at the airport by Eddy MacDonald in the van that he previously rented that day. Upon being dropped off at the airport I went directly to Alaska Airline Cargo and paid for the shipping costs to ship my Father-In-Law's Body to Arkansas.
4. I first saw Sergeant Robert Cox when he arrived from the airport at the Yakutat police station where I had remained all morning. I spoke with him there. We talked about what happened, but he did not conduct a formal interview of me, as that had been done by Chief Nichols. I later saw him at the airport while waiting to board Flight 66 from Yakutat to Juneau, and he gave me a ride after we landed in Juneau.
4. I have reviewed the telephone bill produced by CBY. I was allowed to make a number of calls from the police station. I recognize some of them in the bill, including a call I made to Cal Wilson, who has a home in Anchorage where my family often stays when we are in town. I called him and told him about Jerry's

Ex. H, p. 2 of 4

death and told him I might be coming to Anchorage. It was a quick call, as I was about to be interviewed by Chief Nichols, and I told him as much. The phone record reflects the time of the call as 11:16.53 a.m. Cal Wilson has confirmed this call and its contents. The phone record shows that this was only a 30 second call. Cal is a friend and knew Jerry. I would not have spent only 30 seconds on that first call after Jerry's death if I wasn't in a hurry to get off to speak with the police. In the transcript of my second interview with Chief Nichols, at the end he is heard saying that the time was 11:10. That cannot possibly be correct, as my call with Mr. Wilson was after that time, but was before Chief Nichols interviewed me. I was not referring to what Chief Nichols has called my initial, or "contact" interview, as that was recorded without my knowledge.

5. The phone records also reflect calls placed by me to Arkansas at 11:11.11 a.m., 11.12.50 a.m., 11.17.38 a.m., 11.57.18 a.m., and 12.10.56 p.m. I also called the funeral home in Juneau, where Jerry's body was going to be prepared for transport, at 12.02.18 p.m. I have reviewed the testimony where Chief Nichols states that he saw Sergeant Cox when he supposedly took me to the airport. If the flight from Juneau arrived at 11.57 a.m., as stated by Alaska Airlines in response to a subpoena, then Chief Nichols could not have been there to meet Sergeant Cox, since I was still at the police station. Chief Nichols testified that he completed the interview of Brian Barton at 11.26 a.m. and then took me to the airport, where he dropped me off. It virtually impossible for him to take me from the police station, drop me off to make arrangements for transport of the body, then for me to somehow get back to the police station in time to place a call at 11.57 a.m.

Ex. H, p. 3 of

DATED this 17 day of March, 2011.

Kimberly Byler
Kimberly Byler

DECLARATION OF KIMBERLY BYLER
Estate of Jerry L. Byler v. ALASKAN LEADER
Case No. 3:10-cv-00055-HRH - Page 4 of 5

EXC. 144
Ex. H, p. 4 of 4

EXHIBIT I

EXHIBIT I

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007

Subaccount: 735 053 4240 001



at&t Alascom

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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BILLED NUMBER: 907 784-3334
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTERSTATE DIRECT DIALED

12	5/14/07	10:57:41A	TO JUNEAU	AK 907 789-4831	1:02	DDC	OPEAK	0.16
13	5/14/07	11:01:19A	TO JUNEAU	AK 907 789-4831	0:49	DDC	OPEAK	0.12
14	5/14/07	11:21:33A	TO JUNEAU	AK 907 789-4831	2:28	DDC	OPEAK	0.37
15	5/15/07	9:08:44A	TO JUNEAU	AK 907 463-7127	1:01	DDC	OPEAK	0.15

000001483

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007

Subaccount: 735 053 4240 001



at&t Alascom

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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BILLED NUMBER: 907 784-3281
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTERSTATE DIRECT DIALED

20	5/14/07	10:53:44A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
21	5/14/07	10:56:00A	TO JUNEAU	AK 907 789-1094	0:50	DDC	OPEAK	0.13
22	5/14/07	10:59:44A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
23	5/14/07	11:00:57A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
24	5/14/07	11:02:19A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
25	5/14/07	11:03:53A	TO JUNEAU	AK 907 789-1094	0:36	DDC	OPEAK	0.09
26	5/14/07	11:25:01A	TO JUNEAU	AK 907 789-1094	0:57	DDC	OPEAK	0.14
27	5/14/07	3:33:08P	TO JUNEAU	AK 907 463-7388	1:44	DDC	OPEAK	0.26
28	5/15/07	10:10:39A	TO JUNEAU	AK 907 463-5480	0:35	DDC	OPEAK	0.09
29	5/15/07	2:34:35P	TO JUNEAU	AK 907 465-2806	0:41	DDC	OPEAK	0.10
30	5/15/07	2:36:07P	TO JUNEAU	AK 907 465-2806	5:20	DDC	OPEAK	0.80
31	5/15/07	11:52:49P	TO JUNEAU	AK 907 465-2772	0:43	DDC	OPEAK	0.11

EXC. 146

Ex. 1, p. 1 of 5

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007



at&t Alascom

Subaccount: 735 053 4240 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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BILLED NUMBER: 907 784-3334
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTERSTATE DIRECT DIALED

12	5/14/07	10:57:41A	TO JUNEAU	AK 907 789-4831	1:02	DDC	OPEAK	0.16
13	5/14/07	11:01:19A	TO JUNEAU	AK 907 789-4831	0:49	DDC	OPEAK	0.12
14	5/14/07	11:21:33A	TO JUNEAU	AK 907 789-4831	2:28	DDC	OPEAK	0.37
15	5/15/07	9:08:44A	TO JUNEAU	AK 907 463-7127	1:01	DDC	OPEAK	0.15

080001483

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007



at&t Alascom

Subaccount: 735 053 4240 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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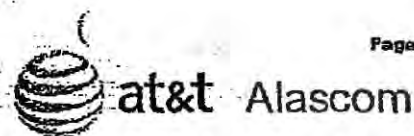
BILLED NUMBER: 907 784-3281
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTERSTATE DIRECT DIALED

20	5/14/07	10:53:44A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
21	5/14/07	10:56:00A	TO JUNEAU	AK 907 789-1094	0:50	DDC	OPEAK	0.13
22	5/14/07	10:59:44A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
23	5/14/07	11:00:57A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
24	5/14/07	11:02:19A	TO JUNEAU	AK 907 789-1094	0:30	DDC	OPEAK	0.08
25	5/14/07	11:03:53A	TO JUNEAU	AK 907 789-1094	0:36	DDC	OPEAK	0.09
26	5/14/07	11:25:01A	TO JUNEAU	AK 907 789-1094	0:57	DDC	OPEAK	0.14
27	5/14/07	3:33:08P	TO JUNEAU	AK 907 463-7388	1:44	DDC	OPEAK	0.26
28	5/15/07	10:10:39A	TO JUNEAU	AK 907 463-5480	0:35	DDC	OPEAK	0.09
29	5/15/07	2:34:35P	TO JUNEAU	AK 907 465-2806	0:41	DDC	OPEAK	0.10
30	5/15/07	2:36:07P	TO JUNEAU	AK 907 465-2806	5:20	DDC	OPEAK	0.80
31	5/15/07	11:52:49P	TO JUNEAU	AK 907 465-2772	0:43	DDC	OPEAK	0.11

EXC. 147

Ex. I, p. 2 of 5

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007



Subaccount: 735 053 4243 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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BILLED NUMBER: 907 784-3206
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTERSTATE DIRECT DIALED

TOTAL INTERSTATE DIRECT DIALED \$1.80

INTRALATA DIRECT DIALED

7	5/14/07	8:15:03P	TO JUNEAU	AK 907 463-2000	3:45	BDC	OPEAK	0.56
8	5/15/07	11:16:53A	TO ANCHORAGE	AK 907 229-0464	0:30	BDC	OPEAK	0.08
9	5/15/07	12:02:18P	TO JUNEAU	AK 907 789-0611	5:10	BDC	OPEAK	0.78
10	5/15/07	2:01:32P	TO JUNEAU	AK 907 789-0611	1:05	BDC	OPEAK	0.16
11	5/15/07	3:11:15P	TO JUNEAU	AK 907 465-4800	5:05	BDC	OPEAK	0.74
12	5/31/07	3:33:33P	TO ANCHORAGE	AK 907 269-5575	2:15	BDC	OPEAK	0.34
13	6/02/07	5:40:31P	TO JUNEAU	AK 907 789-4862	5:39	BDC	OPEAK	0.85

TOTAL INTRALATA DIRECT DIALED \$3.53

SUBTOTAL FOR 907 784-3206 \$5.33

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007



at&t Alascom

Subaccount: 735 053 4243 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Details

ITEM	DATE	TIME	PLACE	AREA CODE/NUMBER	DURATION (minutes)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
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BILLED NUMBER: 907 784-3522
 LONG DISTANCE SERVICE
 INELIGIBLE FOR DISCOUNT
 INTRALATA DIRECT DIALED

1	5/15/07	2:00:01P	TO ANCHORAGE	AK 907 632-1085	1:14	DDC	OPEAK	0.19
2	5/15/07	3:59:52P	TO JUNEAU	AK 907 789-6611	0:30	DDC	OPEAK	0.08
3	5/15/07	4:00:23P	TO JUNEAU	AK 907 789-0611	4:04	DDC	OPEAK	0.61

TOTAL INTRALATA DIRECT DIALED 50.88

SUBTOTAL FOR 907 784 3522 50.88

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007



at&t Alascom

Subaccount: 735 053 4240 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
BILLED NUMBER: 907 784-3527 LONG DISTANCE SERVICE INELIGIBLE FOR DISCOUNT INTRALATA DIRECT DIALED								
1	5/15/07	4:33:05P	TO WASILLMCCW	AK 907 841-6259	50:02	DDC	OPEAK	7.51
2	5/15/07	5:33:25P	TO ANCHORAGE	AK 907 243-2133	48:41	DDC	OPEAK	7.30
TOTAL INTRALATA DIRECT DIALED.								\$14.81
SUBTOTAL FOR 907 784-3527								\$14.81

000001487

Account Number	Bill Date	Payment Due Date
030 428 6710 001	JUN 3, 2007	JUN 28, 2007

Subaccount: 735 053 4240 001

AT&T Business Service

Alascom, Inc. dba AT&T Alascom

Call Detail

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE/ NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
BILLED NUMBER: 907 784-3324 LONG DISTANCE SERVICE INELIGIBLE FOR DISCOUNT INTERSTATE DIRECT DIALED								

7	5/15/07	4:06:40P	TO ANCHORAGE	AK 907 279-5528	0:30	DDC	OPEAK	0.08
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EXHIBIT J

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, ALASKA 99501-3408
TELEPHONE (907) 274-0666

John E. Casperson
HOLMES WEDDLE & BARCOTT, P.C.
999 Third Avenue, Suite 2600
Seattle, Washington 98104
Telephone: (206) 292-8008
Facsimile: (206) 340-0289
Email: jcasperson@hwb-law.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,

Plaintiff,

v.

ALASKAN LEADER, Official No. 558637, its
Engines, Machinery, Appurtenances, etc.,
In Rem, and ALASKAN ADVENTURE
TOURS, INC., *in personam*,

Defendants,

CITY AND BOROUGH OF YAKUTAT,

Intervenor.

IN ADMIRALTY

Case No. 3:10-cv-00055-HRH

DECLARATION OF CAL WILSON

I, Cal Wilson, declare as follows:

1. I live in Anchorage, Alaska, and have known the Bylers for many years. When they travel through Anchorage and need a place to stay, I rent a room to them.
2. On May 15, 2007 I got a call from Kimberly Byler telling me that Jerry had drowned and letting me know that she might be coming to Anchorage that night and if she did she wanted to stay at my place. She told me that she was at the police station in Yakutat but had very little time to talk, as she was getting ready to be interviewed by the police. I have reviewed the Yakutat phone log that shows a call to my number at 11:16 a.m. That is the first time

HOLMES WEDDLE & BARCOTT, PC
701 WEST EIGHTH AVENUE, SUITE 700
ANCHORAGE, ALASKA 99501-3408
TELEPHONE (907) 274-0666

she called me. I compared this to my phone record, and confirmed that I got a call at that time from a "private" caller. She called later when she arrived in Juneau that evening and told me she was not coming to Anchorage.

I certify under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Executed this 16th day of March, 2011, at Anchorage, AK.


Cal Wilson

EXHIBIT L

1. John E. Casperson
2. HOLMES WEDDLE & BARCOTT, P.C.
3. 999 Third Avenue, Suite 2600
4. Seattle, Washington 98104
5. Telephone: (206) 292-8008
6. Facsimile: (206) 340-0289
7. Email: jcasperson@hwb-law.com

8. Attorneys for Plaintiff

9. IN THE UNITED STATES DISTRICT COURT
10. FOR THE DISTRICT OF ALASKA

11. ESTATE OF JERRY L. BYLER,

12. Plaintiff,

13. v.

14. ALASKAN LEADER, Official No. 558637, its
15. Engines, Machinery, Appurtenances, etc.,
16. *In Rem*, and ALASKAN ADVENTURE
17. TOURS, INC., *in personam*,

18. Defendants,

19. CITY AND BOROUGH OF YAKUTAT,

20. Intervenor.

IN ADMIRALTY

Case No. 3:10-cv-00055-HRH

21. DECLARATION OF PAMELA GIRDWOOD


22. I, Pamela Girdwood, declare as follows:

23. 1. I was employed by Alaskan Adventure Tours in May of 2007 at the time of
24. Jerry Byler's death.
25. 2. Based on what I saw and observed at the time, I believe that Jerry fell in the
26. water while attempting to bail out the skiffs tied off to the stem of the
ALASKAN LEADER. There is a sloping steel ramp covered with portions of
plywood that went down to the waterline and was used to reach the skiffs.

1. 3. I have reviewed the declaration of Amanda Sass dated May 3, 2010. I agree
2. with the statements made in sections 3, 6, 7 and 8 of her declaration, including
3. the accuracy of the attached diagram.
4. 4. I have reviewed the declaration of Steve Reeves dated May 20, 2010. I agree
5. with the statements made in sections 4, 5 and 7 of his declaration.
6. 5. I went to Yakutat after Jerry Byler's death and was interviewed there. After
7. the interviews, I went to lunch with Kimberly Byler, Eddie McDonald and
8. Brian Luke Barton in Yakutat. After lunch, later in the afternoon, Kimberly
9. was dropped off at the airport in the rented van to board the Alaska Airlines
10. flight to Juneau.
11. 6. I have been told that Chief John Nichols of the Yakutat police department has
12. stated that he took Kimberly Byler to the airport after her interview. This is
13. not correct, as she went with us as described above.

14. I certify under penalty of perjury under the laws of United States of America that
15. the foregoing is true and correct.

16. Executed this 17 day of March, 2011, at Gibsonia, PA.

17. 
18. Pamela Girdwood
19.
20.
21.
22.
23.
24.
25.
26.

DECLARATION OF PAMELA GIRDWOOD
Estate of Jerry L. Byler v. ALASKAN LEADER
Case No. 3:10-cv-00055-FHE - Page 2 of 3

HOLMES WEDDLE & BARCOTT
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Facsimile: (206) 340-0289
Email: jcasperson@hwb-law.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,

Plaintiff.

v.

ALASKAN LEADER, Official No. 558637, its
Engines, Machinery, Appurtenances, etc.,
In Rem, and ALASKAN ADVENTURE
TOURS, INC., *in personam*.

IN ADMIRALTY

Defendants,

CITY AND BOROUGH OF YAKUTAT.

Intervenor.

Case No. 3:10-cv-00055-HRH

DECLARATION OF GEORGE DAVIS

I, George Davis, declare as follows:

1. I am over the age of 18, am competent to be a witness and make the
following declaration based on my personal knowledge.

2. I owned the Icy Bay Lodge located on Icy Bay in Alaska in 2007. When
the ALASKAN LEADER was anchored in the bay, in May of 2007, it was approximately

DECLARATION OF GEORGE DAVIS
Estate of Jerry L. Byler v. ALASKAN LEADER
Case No. 3:10-cv-00055-HRH - Page 1 of 3

HOLMES WEDDLE & BARCOTT
999 THIRD AVENUE, SUITE 2600
SEATTLE, WASHINGTON 98104
TELEPHONE (206) 292-8008

EXC. 157

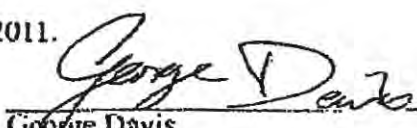
Ex. M, p. 1 of 2

350 yards from the Lodge. I could see the ALASKAN LEADER and the other vessels tied to it from the Lodge.

3. I was in Yakutat on May 15, 2007, the day after the death of Jerry Byler. I had gone into town in my own plane and had arrived at the airport about 10:15 or 10:20 a.m. I saw the Yakutat Coastal Air flight come in with Kimberly Byler and Mr. Byler's body, which arrived shortly thereafter. Ms. Byler left with Chief Nichols some 10 or 15 minutes later. I had freight business at the airport and waited for the flight from Juneau, which was late. I was at the airport when the Juneau to Yakutat flight arrived that day around noon. I saw Chief John Nichols come back to the airport in his police pick-up at about that time. He was alone. He picked up a uniformed Trooper who got off the flight from Juneau and left with him in his police pick-up shortly after noon. I did not see Kimberly Byler at the airport after she left with Chief Nichols earlier that morning. I saw her downtown in Yakutat later that afternoon.

3. I have a good recollection of these events because of the death of Mr. Byler, which was upsetting to me. I knew the Bylers prior to Mr. Byler's death, and during the summer of 2007, I was aboard the ALASKAN LEADER approximately 30 times.

DATED this 17TH day of March, 2011.


George Davis

DECLARATION OF GEORGE DAVIS
Estate of Jerry L. Byler v. ALASKAN LEADER
Case No. 3:10-cv-00055-HRJ1 - Page 2 of 3

HOLMES WEDDLE & BARNETT
974 THIRD AVENUE, SUITE 2000
JULIA WASHINGTON WATSON
TELEPHONE (907) 262-1111

EXHIBIT N

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ESTATE OF JERRY L. BYLER,
Plaintiff,

vs.

IN ADMIRALTY

ALASKAN LEADER, et al.,
Defendants,

CITY AND BOROUGH OF YAKUTAT,
Intervenor.

Case No. 3:10-cv-00055 HRH

DEPOSITION OF ROSE GORDON

Taken February 23, 2011

Commencing at 9:00 a.m.

Volume I - Pages 1 - 116, inclusive

Taken by the Plaintiff
at
HEDLAND, BRENNAN & HEIDMAN
1277 W. 9th Avenue
Anchorage, AK 99501

1 A I worked for the National Park Service.

2 Q Real briefly, what did you do there?

3 A Just greeted people when they came in, kind of manned
4 the place. There was nobody there, just like another
5 ranger was there.

6 Q Where was the Park Service located where you worked?

7 A In Yakutat.

8 Q Then, your job before that?

9 A I worked for the Census Bureau when they were getting
10 ready to do the 2000 census.

11 Q Do you remember your job before that?

12 Sooner or later you probably won't remember. I
13 couldn't remember all of mine.

14 A I worked at the Yakutat Tlingit Tribe. That's when I
15 worked some of that on-the-job training for the court
16 system and as an administrative assistant.

17 Q And do you remember if you had a job before that?

18 A That would have been Alaska Airlines, I believe.

19 Q Do you recall what you did for Alaska Airlines?

20 A Customer service agent there in Yakutat.

21 Q Did you remember a job before that?

22 A I remember working at Mallot's (ph) General Store and
23 the seafood plant.

24 Q Have you lived in Yakutat most of your life?

25 A For the most part, yes.

1 Q Did you come solo or did someone ride with you?

2 A I was solo.

3 Q And does your patrol vehicle -- I remember this old
4 show, like Adam 19 or something, way back. Do you have a
5 name like that for your car that Yakutat uses?

6 A We have a name for the officer.

7 Q And so if you're calling in to dispatch to let them
8 know where you are, do you identify by car number, by you?

9 A Unit.

10 Q What was your unit number?

11 A Four.

12 Q Do you remember when you got to the airport if you
13 checked in with dispatch?

14 A I don't remember.

15 Q Is that your normal procedure when you get to a
16 location, to call into dispatch and report where you are?

17 A Yes.

18 Q Were you trained to do that?

19 A Yes.

20 Q Why are officers trained to call in to dispatch and
21 say, Unit 4 is at the airport?

22 A So everybody else knows that they have arrived.

23 Q Do you have any reason to believe that you would not
24 have followed your training that day?

25 A Yeah. I do have reason to believe.