

EXHIBIT 7

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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 ALFRED L. JOHNSON

I, Alfred L. Johnson, 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 work as a forensic consultant in computer matters. I have been retained by the Estate of Jerry L. Byler to assist in evaluating computer evidence from the police department of the City and Borough of Yakutat ("CBY"). My curriculum vita is attached.

3. As part of my work in this matter, I have reviewed the affidavit of Matthew Joy with exhibits and a 26 page report from Mr. Joy that describes work he did to locate computer records and files relating to the investigation into the death of Jerry L. Byler that I understand was produced at the time of his deposition on March 18, 2011. I have also been told that Chief John S. Nichols has testified that he downloaded 4 photographs from the camera of one Brian Barton onto the CBY computer.

4. Mr. Joy describes in his report how he searched for file archives with the case number for this matter. Quite a number of items were recovered from his work, including a series of 14 photographs. I have been told that Officer Gordon took 14 photographs of the decedent and that those have been produced. Those 14 photographs appear several times in his report and are listed in order each time. There is no separate grouping of 4 photographs. If the Barton photos were downloaded to the computer as Chief Nichols has testified, they should appear in this list.

5. I am concerned that Mr. Joy's work did not follow customary and accepted protocol. A forensic computer examination should include a review of unallocated or deleted space on the hard drives. There is no suggestion that Mr. Joy did this as part of his work to ascertain whether there are deleted or modified versions of a particular file. This is usual procedure in any forensic computer examination.

6. Mr. Joy makes much of the fact that the file creation date is May 15, 2007. It is quite simple for someone to preserve a file creation date. Without review of the unallocated and deleted space on the computer, the review called for in this case has not been done. Mr. Joy's reference to file byte sizes being the same is not generally accepted as competent evidence that the files are the same, as file byte size only tells you how much space on the computer disc is allocated to the file. It tells you nothing about the

quantity of data contained in each file. Mr. Joy's statement regarding identical hash values is more to the point, but the software he used to perform his analysis is not customarily relied on by forensic examiners for this type of work. It is freeware downloadable from the internet whose source code is readily available for change and alteration. This makes it vulnerable to defeat or being "fooled." Better and more reliable software is available and is customarily used for this work. Further, it assumes that the files that were compared have not been otherwise changed or altered. Mr. Joy's report contains nothing that suggests that he took any steps to confirm that the original file has not been changed or altered. This conclusion cannot be confirmed or disproven without examining the hard drives themselves to confirm the accuracy of Mr. Joy's work to verify that the interviews were in fact downloaded to the computer on the dates that are asserted by Mr. Joy and that they have not been changed since.

7. There are three interviews listed in Mr. Joy's report, and each time they appear in the same order. First is the "First contact Kim Byler." Second is the "Interview Brian Barton." Third is the "Interview Kim Byler." While impossible to confirm with certainty without examining the computer, it would normally be expected that the interviews would download in order from the digital recording device, as the photographs have done in each instance. This suggests that the interviews, when downloaded from the recording device to the computer, were recorded in that same order. It is possible that someone could change the order, but there is no reason that someone would do that in the normal course of business. If the interviews occurred in the order Chief Nichols described in his testimony, then it would be expected that they would be downloaded in the same order. It should also be noted that the firsts interview taken by Chief Nichols, the "First contact Kim Byler" interview, according to the computer record, was

DECLARATION OF ALFRED L. JOHNSON

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

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days after it was taken, on May 17, 2007. On the other hand, Mr. Joy states that the other Byler interview and the Barton interview were downloaded immediately after they were concluded on May 15. As noted above, when a digital recording device is connected to a computer for downloading, all materials on the device are downloaded unless unusual steps are taken to override the default procedure.

8. The download times for all 3 interviews on the disc produced by CBY that Mr. Lacey analyzed are quite different from what has been reported by Mr. Joy. Mr. Joy offers no explanation for the differences. If these recordings were all the same, as Mr. Joy asserts in his report, the creation dates and times should likewise be identical.

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

DATED at 10:00 PM, this 5TH day of April, 2011.



ALFRED L. JOHNSON

EXHIBIT 8

EXHIBIT 8

Radio Log Yakutat Dept of Public Safety

Unit1 Chief Nichols D		Unit2 Officer Jensen E		Unit3 Officer Lawless E		Unit4 Officer Gordon D	
CO/DMV Blazina D		Jail Guard		Clinic Becky 3138		Date 05/14/2007	
	Time	Unit	P	W			
1	0815			✓	Robert Rockwood	DMV	10-27
2				✓	Lane Halvorsen	DMV	
3				✓	Ems. address		
4				✓	Chenier	DMV	10-28
5				✓	Lane Halvorsen		
6				✓	Jimmi Lindh	DMV	
7	1015			✓	Bob Beasley		
8	1018			✓	Kris Widdow		
9	1100			✓	Fred	DMV	
10	1000			✓	Donna		
11				✓	Betty	3138	
12	1113	1			10-36	DRS	737
13		1			10-8		
14	1128	1			10-16	Yakutat	Senford's
15	1132	1			10-8		
16	1138	1			10-16	Ok Air Cargo	
17	1147			✓	Ed Torres	for	1
18	1148	1			10-8		
19	1150	1			10-16	Rus	
20	1158	1			10-8		
21	1159			✓	Jack Endicott	DMV	3322
22	1200			✓	Rip		
23	1204	1			10-19		
24	1207			✓	Sam Demmart	DMV	3371
25				✓	Becky Anthony	le	FP
26				✓	Les Holcomb		
27	1242			✓	DMV		
28	1321			✓	Nomsg		
29	1344			✓	Rip		
30	1345			✓	DMV w/ Nye Ford		

Totals:

Phone: 28 911; Alarms: Walk-ins: 7 10-36: F.P. CH:

DMV: 7 LD/10-27: 1 10-28 5

5/14/2007

1	1423		✓	Salt water cline.
2	1426		✓	Lindsey Hershey FP
3	1429		✓	Mag
4	1433		✓	Carol
5			✓	Sam Demmet
6	1541		✓	Becky
7			✓	Kip O
8			✓	Isabel
9				
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Radio Log Yakutat Dept of Public Safety

Unit1 Chief Nichols D		Unit2 Officer Jensen M		Unit3 Officer Lawless /		Unit4 Officer Gordon D	
CO/DMV Blazina D		Jail Guard		Clinic Daky 3138		Date 5/15/07	
	Time	Unit	P	W			
1	0755		✓		Tanya		
2	0811		✓		Russ		
3	0820		✓		Leo		
4			✓		Chief		
5			✓		Kimberly Bayler		
6	0857		✓		Madonna		
7	0848	4			10-19		
8	0852	1			10-8		
9	0858	1			10-16 Yakutat Coastal		
10	0901	1			10-8		
11	0907	1			10-19		
12	0915		✓		Skip Johnson DMV		
13	0926	1			10-8		
14	0928		✓		Jon Jensen DMV		
15	0929		✓		MaAha Demohue		
16	0939	1			10-19		
17	0944		✓		Sonny		
18	0946		✓		Tina		
19	1012		✓		Redan		
20			✓		Nomsg		
21			✓		Nomsg		
22			✓		Nomsg		
23			✓		Chris		
24			✓		Nomsg		
25			✓		Nomsg		
26			✓		Nomsg		
27			✓		Chris Cook		
28			✓		Lane		
29				✓			
30				✓			

Totals:

Phone: 911: Alarms: Walk-ins: 7 10-36: F.P.: C.H.:

28

DMV: I.D./10-27: | 10-28 |

5/15/07

1	1539 1539	u-4		10-16 Court
2			✓	Lan DMV 10-27
3			✓	Judith Ramos DMV DMV 10-28
4			✓	Bobble Kanitz
5			✓	Cody Murphy
6	1421		✓	Russ
7	1447	4		10-8 10-34 10-80 69377.7
8	1450	4		10-16 School
9	1450		✓	Casey
10	1452	4		10-8 10-34 Boat Harbor
11	1453	4		Contact Court about 10-80
12			✓	MUA Donohue
13			✓	James Mortuary
14	1501	4		10-8 10-34 School
15		4		10-19
16	1509		✓	Kare Reis
17	1514	4		10-8
18	1517	4		10-16 School
19	1529	1		10-8
20	1530	4		10-8
21	1530	4		10-23
22	1532	1		10-16 School Super.
23	1540	4		10-19 Red SE Mallott
24	1551	1		10-8
25	1554		✓	Step
26	1554	1		10-16
27	1557		✓	Ryan
28	1557	1		10-19
29	1557		✓	Gary w/ CPD
30	1603		✓	Billy
31	1618	1		10-8
32	1633	4/41		10-8 10-34 airport
33	1641	4		10-16, air
34	1641	4		10-8
35				

Radio Log Yakutat Dept of Public Safety

Unit 1	Chief Nichols <i>D</i>	Unit 2	Officer Jensen <i>M</i>	Unit 3	Officer Lawless <i>A</i>	Unit 4	Officer Gordon
	CO/DMV Blazina <i>D</i>	Jail Guard		Clinic		Date <i>5-16-07</i>	
	Time	Unit	P	W			
1	0831	4			10-19		
2	0832	1			10-34 airport		
3	0834		✓		Mag Donohue		
4			✓		Rose Mary		
5	0907	4			10-8		
6	0911	4			10-16 School		
7	0951	1			10-8		
8	0953	1			10-16 School		
9	1002		✓		Spiney		
10	1013	4			10-8		
11	1014	4			10-16 Res		
12	1021	4			10-8		
13	1029	4			10-19		
14		1			10-8		
15	1038	1			10-19		
16	1110	1			10-8		
17			✓		Inga Hanlon		
18			✓		Skip Ryman		
19	1111	R2			10-8 10-34 Airport		
20	1120		✓		Stadonna for R2		
21	1128	1			10-19		
22	1139	4			10-8		
23	1140	4			10-16 Schmecker Res		
24	1144	4			10-16 Schmecker		
25			✓		Jim Calma		
26	1147		✓		Summer Mortuary		
27	1153	4			10-19		
28			✓		Ken Davis		
29	1201		✓		Jen		
30	1206		✓		Dilyn		

Totals:

Phone: *25* 911: Alarms: Walk-ins: *3* 10-36: F.P.: C.H.:

DMV: I.D./10-27: 10-28

1	1206		✓	William Milton
2	1218		✓	CIU
3	1222		✓	Russ
4			✓	Russ
5			✓	Russ
6	1300		✓	Dennison Schwaner 10-27
7	1305		✓	Ewing Cross
8	1310		✓	Jeremy P. Conner for Richard
9	1329		✓	Hin @ OCS
10	1330		✓	Angel
11	1340		✓	Olaf Iceland Boat Key
12			✓	Harold Rittler
13	1408		✓	Karen Russ
14	1408	1		10-8
15	1439		✓	Renny
16	1443		✓	undeland for 1
17			✓	# for May
18	1508		✓	Lilly
19	1542		✓	Wini
20	1559		✓	Adrian
21				
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Radio Log Yakutat Dept of Public Safety

Unit 1 Chief Nichols <i>D</i>		Unit 2 Officer Jensen <i>M</i>		Unit 3 Officer Lawless <i>E</i>		Unit 4 Officer Gordon <i>O</i>	
CO/DMV Blazina <i>D</i>		Jail Guard		Clinic Maina 3994		Date 5/17/07	
	Time	Unit	P	W			
1			✓		Steww/Uneau Mortuary		
2			✓		Chief		
3	0834	1			10-19		
4				✓	Harold Robbins DMV 10-27		
5	0906		✓		Shelly Mellooti		
6	0914		✓		Tom Clemens		
7	0931		✓		Rose re 10-8		
8	1030			✓	Erma Melton		
9	1049	1			10-8		
10	1051	1			10-6 AC		
11	1056		✓		Motorolla		
12	1124		✓		Rox		
13	1134			✓	Binky re: Radar Trailer		
14	1138		✓		Kathy		
15	1146	1			10-8 J		
16	1148	1			10-19		
17	1154		✓		Skip		
18	1154		✓		Harold Robbins		
19	1305	1			10-8		
20	1307	1			10-6 AC		
21	1327		✓		Hank		
22	1327		✓		Basil		
23	1334			✓	Harold Robbins DMV		
24	1336	1			10-19		
25	1420		✓		NOMAY		
26	1506		✓		Kimberly Pryler		
27	1507		✓		PUN		
28	1507		✓		Kimberly Pryler		
29	1528	1			10-8		
30	1530	1			10-6 AC		

Totals:

Phone: 911: Alarms: Walk-ins: 10-36: F.P.: C.H.:

DMV: *10* I.D./10-27: *1* 10-28

2

EXHIBIT 9

EXHIBIT 9



Alaska Airlines / Horizon Air

PO Box 68900 – Seattle WA 98168
Phone: 877 815 8257
Fax: 206 392 2621

DATE: April 06 2011

TO: Aaron

FAX: 206-340-0289

PHONE: _____

FROM: Julie

To whom it may concern:

Between 2005 to Present our Yakutat Freigh Facility has closed down 30 minutes prior to a flight arrival as well as closed 30 minutes after a flight departure. We operate this way becasuse our staff that works our freight facility is also our crew that load and off load our flights. Once our freight facility is able to arrive all cargo into the system we resume service to the public approximately 30 minutes after the flight departs.

EXHIBIT 10



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Reservations | Deals | Day of Flight | Destinations | Mileage Plan™ | Cargo | More...

Ask John for Help

Price City Information Flighter Schedule Shipment Tracking Show All...

Air Cargo Shipment Tracking

Prefix: 027 AWB Number: 39663072

Airway Bill 39663072

Air Waybill: 39663072 n/a > n/a

Event Date*	Flight	Origin	Destination	Pieces / Weight	Activity
05/15/2007 16:08:35	066	YAK	JNU	1 / 253	Booked YAK > JNU departing 05/15/2007
→ 05/15/2007 16:10:13	066	YAK	JNU	1 / 253	Accepted from shipper YAK > JNU
05/15/2007 20:23:03	066	YAK	JNU	2 / 253	Departed YAK
05/15/2007 21:13:58	066	YAK	JNU	1 / 253	Arrived JNU
05/15/2007 21:13:59	066	YAK	JNU	1 / 253	Arrived JNU
05/16/2007 08:06:45	066	YAK	JNU	1 / 253	Delivered to Steve graves

(* All times are listed in Pacific Time Zone.

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Q2

Untitled

Air Cargo Shipment Tracking
Prefix:027 AWB Number: 39663072

Air Waybill: 027 39663072

Event Date* Flight Origin Destination Pieces 1 / weight 253LBS Activity
→ 05/15/2007 16:08:35 066 YAK JNU 1 / 253 Booked YAK > JNU departing 05/15/2007
05/15/2007 16:10:13 066 YAK JNU 1 / 253 Accepted from shipper YAK > JNU
05/15/2007 20:23:03 066 YAK JNU 2 / 253 Departed YAK
05/15/2007 21:13:58 066 YAK JNU 1 / 253 Arrived JNU
05/15/2007 21:13:59 066 YAK JNU 1 / 253 Arrived JNU
05/16/2007 09:06:45 066 YAK JNU 1 / 253 Delivered to Steve graves

(*) All times are listed in Pacific Time Zone.

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[Click here](#)

FAX
DATE: 2/2
TIME: 3

EXC. 253

EXHIBIT 12

Estate of Jerry L. Byler v. ALASKAN LEADER, et al.
Our File No. 5194.25043
Testimony of Edward James MacDonald, February 9, 2010

Judge: Raise your right hand and tell me when it is raised.

EM: It's raised.

Judge: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

EM: Yes, Your Honor.

Judge: And could you state your full name and spell your last name for the record.

EM: Edward James MacDonald, M-a-c-D-o-n-a-l-d.

Judge: I'm sorry. Could you spell your last name again for me?

EM: M-a-c-D-o-n-a-l-d.

Judge: All right. Thank you.

Atty: May I inquire, Judge?

Judge: Yes.

Atty: Mr. MacDonald, you have kind of a soft-spoken voice. If you can speak up as best you can it would be greatly appreciated.

EM: Okay.

Atty: Were you an assistant guide for AAT during the spring of 2007?

EM: Yes, sir.

Atty: And were you an independent contractor or employee?

EM: I was an independent contractor.

Atty: And where, give us some idea where you first had contact with either Kimberly Rydell Byler or Darren Byler for purposes of being an assistant guide that spring.

EM: Well, I first touched bases with them, was in Whittier, Alaska. Is where I met up with them and got on the boat with them.

Atty: And do you remember approximately when that was?

EM: No, I don't. I'd have to, you know, I'd have to look and find out my airplane ticket to know exactly what date it was.

Atty: So you flew into Whittier to join up with the vessel at that time?

EM: I flew into Anchorage and then drove to Whittier.

Atty: And did you, what vessel, what vessel did you hook up with?

EM: The ALASKAN LEADER, the ALASKAN ADVENTURE.

Atty: And did you, where did you travel once you were on the vessel?

EM: To Windy Bay.

Atty: And what happened in Windy Bay?

EM: From Windy Bay we transferred over on the NORTH PACIFIC and took the NORTH PACIFIC into, I can't think of the dang town's name right there. Where Darren and Kimberly live. We took the boat into that town and we had to put a couple generators and fuel that boat up to get it ready to go to Icy Bay.

Atty: Would that have been Cordova?

EM: Cordova, yes, sir.

Atty: And did, what happened with respect to the ALASKAN LEADER? Is that ...

EM: And what's that again?

Atty: The ALASKAN, you came in on the NORTH PACIFIC?

EM: We took the ALASKAN LEADER to Windy Bay where we anchored it up and got onto the NORTH PACIFIC. And took the NORTH PACIFIC into Cordova.

Atty: And when you say "we," who went into Cordova with you?

EM: Me, Darren, and ... I think it was just me and Darren.

Atty: And ...

EM: I think Duke might have come in with us too. I'm not ... I think Duke did come into town with us also.

Atty: And was Duke another assistant guide?

EM: Yes, sir.

Atty: And did you then, after picking up some generators and such, did you then proceed to Icy Bay?

EM: Yes, we went back towards Windy Bay, met up with the ALASKAN ADVENTURE, and then we took off out of there and went to Icy Bay.

Atty: And do you recall when approximately it was that you were back or you arrived in Icy Bay?

EM: It was about, I want to say around 10 days before we had hunters come in. So I'm not, it was right around 10 days before we had hunters come in.

Atty: All right. And did you make then some preparations in Icy Bay for, in advance of the clients coming in?

EM: Yes, sir. Yep.

Atty: And then did you proceed to participate as an assistant guide for a period of time that spring of 2007 in Icy Bay?

EM: Yeah. I think it was around five weeks I worked for them.

Atty: And why did, why did work stop after five weeks?

EM: That's when Darren's father, Jerry, had fallen overboard and drowned and I just, after that whole situation I didn't really want to work there anymore.

Atty: And with regard to Jerry falling overboard, did you, can you tell us what happened after it was discovered that he had fallen overboard as far as any contact with the city of Yakutat?

EM: Once, we never had any contact with the city of Yakutat. I didn't or none of us did until the day that we flew the body back into town and that's when I was brought from the boat at Icy Bay to Yakutat. Kimberly and Luke flew in with Jerry's body and then the airplane came back and picked me and Pam up and brought me and Pam back into town. And at that time I had walked over to the rental place in Yakutat where I rented a van and then I had driven to the police station to be interviewed also.

Atty: Let me stop you there. You've given some first names to us but Luke, is that, is his last name Barton?

EM: Yes, sir. Luke Barton.

Atty: And then with regard to Pamela, is her last name Girdwood?

EM: Yes, sir.

Atty: Did Luke and Kimberly come in a little bit earlier on a plane?

ED: Yeah, they flew in with Jerry's body.

Atty: And was that through Yakutat Coastal?

EM: Yes.

Atty: And then when you arrived, you took the next, they ferry back out and brought both you and Ms. Girdwood in?

EM: Yes.

Atty: And you indicated that you, upon arrival at the airport, you went and rented a van?

EM: Yes, sir.

Atty: What happened then?

EM: From me getting the van, the Yakutat [inaudible] informed me that Kimberly and Luke Barton were both at the police station which they gave me directions how to get there. I drove down there because they wanted, they said that the state cop wanted to get testimonies from us also of what happened that day and from that point I drove into the police station. We were probably there about an hour for, you know, Pam's testimony, my testimony. When I arrived there Kimberly was still getting interviewed and then once she come out, I can't remember which one went first, if it was Pam or me. I'm not exactly sure. And then after we were interviewed, Kimberly took all four of us to lunch. There was Kimberly, Pam, Luke, and myself and I drove them over to the place where we ate lunch. And from there, once we were done eating lunch, I brought her to the airport and I dropped her off.

Atty: So did all four of you leave the police station together?

EM: Yes.

Atty: And this was after you had been interviewed, Ms. Girdwood had been interviewed, Ms. Rydell Byler had been interviewed?

EM: Yep. And also Luke. Luke Barton had been interviewed also.

Atty: And Mr. Barton? Okay. And when you left the police station, you used the rented van that you had rented?

EM: Yes, sir.

Atty: Were you driving?

EM: Yes, I was driving. I was the only person registered to drive the van.

Atty: And you went to, you went some place to eat?

EM: Yes.

Atty: And then, from there where did you go?

EM: I took Kimberly straight to Alaska Airlines where I dropped her off.

Atty: And do you remember that pretty specifically?

EM: Yes, sir. I remember like it was yesterday. I mean, everything that happened that, those two days of that incident is very clear in my mind.

Atty: Did she have any luggage that she was taking or any baggage?

EM: Yes, she had a couple, I think she just had a carry-on. She might have had one piece of luggage with some clothes because I knew she was flying, I think, back to Anchorage to do some stuff for Jerry.

Atty: Mr. MacDonald, if a police officer has said that he gave a ride to Ms. Rydell to the airport, would that be true or false?

EM: That is false.

Atty: If a police officer said that during this ride he spoke to Ms. Rydell regarding taxes, would that be true or false?

JB: Objection.

EM: That's false.

Judge: Lay your foundation.

Atty: Well, ...

Judge: How would he know?

Atty: Because there was no ride.

Judge: Lay your foundation.

Atty: Okay. Mr. MacDonald, you indicated that you were the one that gave Ms. Kimberly Rydell a ride as well as Ms. Girdwood and Mr. Barton?

EM: Yes.

Atty: And the police officer did not give her a ride to the airport?

JB: Objection.

EM: No, sir.

Judge: I think the objection is to form. If you could clarify that on time, please.

Atty: Okay. When, in relation to being at the police station, did you take Ms. Byler to the airport?

EM: From the police station we drove about a block and a half to the, there's a restaurant/bar that's right there in town where we ate lunch. From there we walked out of the bar/restaurant and drove straight to Alaska Airlines where I dropped her off for her flight. From leaving the police station, I'd say from eating lunch to when I dropped her off was probably about an hour, hour and a half.

Atty: And are you absolutely positive that that was the sequence of events?

EM: Yes, sir.

Atty: No further questions.

JB: Hello, Mr. MacDonald. This is Jim Brennan, attorney for the City and Borough of Yakutat. Are you there, sir?

EM: Yes, sir.

JB: All right. And you and I spoke briefly on the telephone last night for the first time, correct?

EM: Yes, sir.

JB: All right, sir. Now, you indicated that there were two airplanes as I understand it that came out to Icy Bay to, on the heels of this unfortunate accident, correct?

EM: Yes, sir.

JB: And the first airplane took Kimberly and Luke Barton into Yakutat, along with the deceased?

EM: Yes, sir.

JB: And then that same airplane came back from Yakutat to Icy Bay to pick up yourself and Pam?

EM: Yes, sir.

JB: And how long does it take for an airplane to fly from Yakutat to Icy Bay?

EM: It's about an hour roundtrip, so it was about an hour from, once Kimberly got dropped off, it was about an hour from when I was dropped off in town.

JB: All right. Does that include takeoff and landing?

EM: Yes.

JB: Okay. So, does that mean that you got into Yakutat about an hour later than they did?

EM: An hour later, yes, sir.

JB: All right. And then you walked over to rent a van?

EM: Yes.

JB: And then you rented the van, correct?

EM: Yes, sir.

JB: And how long did that process take you, roughly? I realize this has been a couple years but for you to ...

EM: 15, 20 minutes.

JB: All right.

EM: You know, fill out the paperwork, for them to take down my credit card information, and ...

JB: Sure. And that includes your walk over to there after you got off the airplane?

EM: Yes. It's not very far over to that place.

JB: Okay. And then you drove into the police station?

EM: Yes, sir.

JB: Did you go directly to the police station?

EM: Yes, sir.

JB: And, how long did that take you?

EM: It's only about, you know, it's hard to say. I mean, like you said, a couple of years but it's not that far, maybe five minutes. Three or four miles out to the airport from town. I'm not exactly sure.

JB: All right. So the total time you estimate you would have taken from ... Here's what I'm trying to establish: How far, how many, how much time behind Kimberly Byler were you in arriving at the police station?

EM: Probably about an hour and a half.

JB: All right. And you say that it was the state cop that was taking interviews?

EM: Yes, sir.

JB: All right. It was not, do you know who Police Chief Nichols of the Yakutat Police, Public Safety Department is?

EM: You know the name, it doesn't sound familiar but I remember meeting a couple other cops there but everything was handled by that state police officer that had flown in that morning. He was there when Kimberly and them arrived with the body.

JB: All right. So when you were interviewed, excuse me. When you came into the station you indicated Kimberly Byler was being interviewed?

EM: Yes.

JB: And was that by the state cop?

EM: Yes.

JB: All right. It was not by Chief Nichols?

EM: I did not see him in the room but I was out in the front of the police station which I could see back there. I did, I only saw one person come out of there.

JB: And that was the state cop?

EM: Yes.

JB: Could you tell the difference between the state cop and the City and Borough of Yakutat police chief?

EM: Oh, yeah. I mean, the state police had the state trooper coat and all this, you know, the Alaskan state trooper outfit on. It's different than the city cops.

JB: Sure. So am I correct, sir, that it was after Kimberly Byler had completed her interview with the state cop that the four of you went to lunch and then you drove Kimberly out to the airport?

EM: No. He interviewed all of us. I'm pretty sure Luke had already been interviewed. Kimberly was in the interview when we arrived there and then I'm not exactly sure who went first. I think Pam went first and then I went last.

JB: All right. But when you got there was Kimberly the first of the four of you to be interviewed by the state cop?

EM: I was not there. I know Luke was already done and Kimberly was still being interviewed. It was probably about 15 minutes there where she was still being interviewed that we waited.

JB: All right. And so am I correct then that after you finished all of your interviews with the state cop, the four of you went to lunch and then you drove Kimberly out to the airport in your van?

EM: Yes, sir.

JB: Thank you. No further questions. Oh, one question, your Honor. Do you recall now approximately what time of day that was?

EM: The first flight came in, I want to say, to pick Jerry up, it was right around 9:00. So, 9:00, we got an hour and a half from when I got into town. So 10:30. I was, you know, with all the interviews that we had, they were probably 15-minute interviews, so with 15 minutes left to wait, say about two and a half hours, so it was 11:00, 11:30.

JB: All right. If a State of Alaska Public Safety Report shows that Pam Girdwood was interviewed at approximately 13:10 hours, meaning, 1:10 in the afternoon, would that comport with your recollection?

EM: That's around there, yes.

JB: All right. Thank you. No further questions.

Judge: Redirect?

Atty: Mr. MacDonald, when you came to the station, you believe that Mr. Barton had already been interviewed?

EM: Yes, he was.

Atty: And Ms. Byler had not been, she was still in the room being interviewed at that time?

~~EM: Yes, sir.~~

Atty: Okay. No further questions.

Judge: All right then. May this witness be excused?

Atty: Yes.

Judge: All right. By that, we're going to hang up. Thank you, sir, good bye.

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

SCANNED

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

RECEIVED
Kegaldon, Massie & Fitzgerald, PC

MAY 13 2011

File No. 20443

Approved for Filing: _____

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.)


NOTICE OF FILING DEPOSITION
OF ROBERT COX

COMES NOW plaintiff City and Borough of Yakutat, by and through counsel,
Hedland Brennan & Heideman, and, pursuant to the Court's order during the May 11,
2011 hearing herein on defendant's Motion for Relief from Judgment, notices its filing
of the transcript of the Deposition of Robert Cox, taken May 6, 2011, in Estate of Jerry
L. Byler, Plaintiff v. Alaskan Leader and Alaskan Adventure Tours, Inc., Defendants
and City and Borough of Yakutat, Intervenor, in the United States District Court for the
District of Alaska, Case No. 3:10-CV-00055-HRH. A copy of the deposition has also
been e-mailed to Kevin Fitzgerald, counsel for defendant AAT herein on May 11, 2011,
as directed by the court.

LAW OFFICES
HEDLAND BRENNAN & HEIDEMAN
A PROFESSIONAL CORPORATION
1227 WEST NINTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3218
(907) 279-5528

RESPECTFULLY SUBMITTED this 12th day of May, 2011.

HEDLAND, BRENNAN & HEIDEMAN
Attorneys for Plaintiff City and Borough of Yakutat

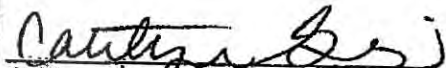


James T. Brennan, ABA No. 7610080

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2011
a copy of the foregoing was served via
U.S. mail on: *(Without attachments)*

Kevin Fitzgerald
Ingaldson, Maassen & Fitzgerald, P.C.
813 W. 3rd Avenue
Anchorage, Alaska 99501-2001



Caitlyn Gries

3000.77487

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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ESTATE OF JERRY L. BYLER,)

Plaintiff,)

vs.)

ALASKAN LEADER, Official)

No. 558637, its Engines,)

Machinery, Appurtenances,)

etc., In Rem, and ALASKAN) IN ADMIRALTY

ADVENTURE TOURS, INC., in)

personam,)

Defendants,)

CITY AND BOROUGH OF YAKUTAT,) Case No. 3:10-cv-00055-HRH

Intervenor:)

DEPOSITION OF ROBERT COX

Pages 1 through 122, Inclusive
Taken: Friday, May 6, 2011
Place: Juneau, Alaska

1 A. Correct.

2 Q. Okay. So you arrive at the airport in
3 Yakutat. What do you do next?

4 A. I met with Chief Nichols. He gave me a
5 ride to his office.

6 Q. Okay. And where did you first meet up
7 with Chief Nichols? Was he waiting at the gate?
8 Did they have that security stuff you have to go
9 there through and you have to stand outside? What
10 was your memory?

11 MR. BRENNAN: Objection. Leading.

12 Q. You can go ahead and answer.

13 A. I recall meeting up with Chief Nichols.
14 I think he was out in the parking lot, in his
15 vehicle. He had just arrived. And I met with him
16 out there at his vehicle and got in his vehicle.

17 Q. Do you remember what kind of vehicle it
18 was?

19 A. No, I don't remember. I believe it was
20 like a Bronco or Blazer-type vehicle, but I don't
21 know for sure. I don't remember, actually.

22 Q. Okay. Was anyone else with
23 Chief Nichols when you met him in his vehicle?

24 A. No.

25 Q. Okay. What happened next?

1 A. Well, he gave me a ride to his office.
2 We met -- we went to his -- to the police station.

3 Q. Okay. And the vehicle that you rode
4 in, I think you said it might have been a Bronco.
5 Did I understand that correctly?

6 A. Yeah. That type, you know, an SUV type
7 of a vehicle. That's what they have there, and
8 that's why I'm saying that. But I do not actually
9 have a specific memory of what vehicle he was in.
10 I don't know.

11 Q. Okay. And when Chief Nichols picked
12 you up at the airport, did you go straight to the
13 police station, or did you stop and do anything
14 else?

15 A. We went straight to the police station.

16 Q. Okay. And if you remember, is that
17 like a long ride? a short ride?

18 A. No. It's not that long of a ride. It
19 maybe is, you know, four or five minutes at the
20 most.

21 Q. Did you and Chief Nichols discuss the
22 death of Mr. Byler on the way into the police
23 station?

24 A. We did.

25 Q. What do you recall of that discussion?

1 station. What happens next?

2 A. I got there. I met with one of the
3 other officers that had been helping, a female
4 officer. I believe her name was Rose or Rosie.

5 Shortly after I arrived there,
6 Kimberly Byler showed up. They had -- she had
7 somehow acquired their own vehicle. She drove up
8 and got out, came into the police station. I spoke
9 with her and spoke with another gentleman that she
10 had with her, the two people that had already been
11 interviewed.

12 And while I was speaking with
13 them, two more people arrived. Pam -- I can't
14 remember her last name off the top of my head, but
15 I ended up doing an interview with Pam. I believe
16 she was one of the -- she was the cook on the boat.
17 And that's what happened next.

18 Q. Okay. You had mentioned that you'd
19 spoken with an officer by the name of Rose. Do you
20 recall what you and Rose spoke about?

21 A. Yeah. She had taken the photographs of
22 the -- of Jerry Byler. And she talked with me
23 about, you know, what she'd done, her photographing
24 and the condition of the body and so forth.

25 Q. Okay. Did you view Mr. Byler's body?

1 Q. Okay. And do you recall the vehicle
2 you rode in?

3 A. No, I don't. I don't recall the
4 vehicle.

5 Q. Before you left for the airport, did
6 you see Ms. Byler leave the police station?

7 A. Yes. She left before we did.

8 Q. Okay. Did you see if she left with
9 someone from the police department or someone else?
10 What do you remember?

11 A. I recall they had their own vehicle.
12 She left with this other vehicle that they had
13 acquired in Yakutat. I don't know where they got
14 it, but they had their own transportation at that
15 point. And she left with some of the folks that
16 she had there with her.

17 Q. Okay. And do you remember whether --
18 if she left with one person? two persons? ten
19 persons?

20 A. At least one other. I don't know how
21 many she left with.

22 Q. Okay. Male or female?

23 A. I believe it was the male that she came
24 with, but I don't know for sure now.

25 Q. Okay.

1 witness; so let's take a ~~real quick break~~ and go off
2 the record.

3 MR. BRENNAN: All right.

4 11:16 AM

5 (Off record.)

6 11:21 AM

7 MR. WALLER: Back on the record.

8 BY MR. WALLER:

9 Q. Okay. Sergeant Cox, you realize you're
10 still under oath; correct?

11 A. Yes.

12 Q. A couple little details I need to fill
13 in. Earlier you had mentioned, when you were at
14 the police station, you saw Kimberly Byler come in.
15 Do you remember that testimony?

16 A. Yes.

17 Q. Do you remember approximately what time
18 of day that was?

19 A. You know, I don't remember the time of
20 day, but it could probably be sorted out. I got
21 there, and it was within, you know, just five or
22 ten minutes of me getting there on my ride from the
23 airport. Within five or ten minutes, she showed
24 up. I wasn't there by myself, speaking to Rosie
25 and the chief for very long, and they came in; so

1 may have. I don't know.

2 Q. And when you are arriving to
3 investigate a death, wouldn't it be important for
4 your local man to let you know the location of all
5 the witnesses?

6 A. Well, yeah. And it was my
7 understanding that she was going to be back at the
8 office and I could speak with her there, and that
9 this Pam was on her way, coming also. So it was my
10 understanding that I was going to meet with them
11 all there at the police station.

12 Q. And you got that understanding from
13 Chief Nichols?

14 A. Yes.

15 Q. Do you recall what Ms. Byler looks
16 like?

17 A. Not off the top of my head now. It's
18 been too long.

19 Q. Do you recall whether she was tall?
20 short? Anything really unusual about her?

21 A. No. If I had to make a guess, I think
22 she has blond hair. But other than that -- she's
23 white, and I think has blond hair. But other than
24 that, I don't recall.

25 Q. And in your investigation in dealing

1 all in evidence together.

2 Q. All right. Mr. Waller indicated --
3 actually, in your answers to Mr. Waller's
4 questions, you indicated that the standard
5 destruction of evidence by the troopers would occur
6 in conjunction with filling out a form that showed
7 the evidence that was destroyed?

8 A. Yes.

9 Q. I can tell you that that form in this
10 case indicates that there were six CDs destroyed.

11 A. Okay.

12 Q. And how many CDs did you receive from
13 the City and Borough of Yakutat?

14 A. I believe I had five CDs from Yakutat.
15 Plus my CD would have been all six.

16 Q. Okay. And by "my CD" being the sixth
17 CD, which one do you mean?

18 A. The one that I had created, putting in
19 the photos that Kimberly Byler had sent me.

20 Q. All right. When did you first learn
21 that the body of Jerry Byler would not be going
22 north on the northbound flight to Anchorage, but
23 was going to have to go southbound to Juneau?

24 A. Chief Nichols told me that when I
25 arrived in Yakutat.

1 Q. All right. Did he tell you that in the
2 car ride back to the station, or do you know?

3 A. I believe that's where he told me, yes.

4 Q. All right.

5 MR. WALLER: Jim, can I request a
6 quick break? I'm sorry. I need to step out just
7 for a minute.

8 MR. BRENNAN: That's fine. Take
9 five?

10 MR. WALLER: Yeah.

11 MR. BRENNAN: Okay.

12 MR. WALLER: If we could go off
13 record, that would be great.

14 12:02 PM

15 (Off record.)

16 12:05 PM

17 MR. WALLER: Back on the record.

18 BY MR. BRENNAN:

19 Q. All right. Mr. Cox, you indicated that
20 you had discussion with other law enforcement
21 officials while you were in Juneau, before you went
22 to Yakutat, regarding Darren and Kimberly Byler; is
23 that correct?

24 A. Yes.

25 Q. Do they have -- and I'm going to ask

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.)

NOTICE OF FILING ORIGINAL DECLARATION OF KIMBERLY BYLER

Come now defendants and supplemental complaint
defendants, by and through undersigned counsel, and give
notice of the filing of the original notarized DECLARATION
OF KIMBERLY BYLER attached hereto.

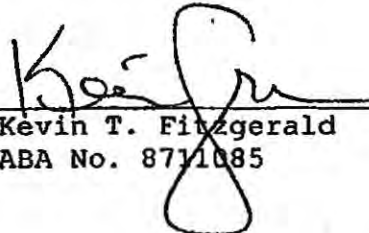
City v. Alaskan Adventure
Case 1JU-08-434 CI
Notice

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Dated at Anchorage, Alaska May 23, 2011.

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Attorneys for Defendants

By:

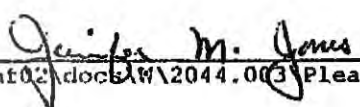

Kevin T. Fitzgerald
ABA No. 8711085

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on
the 23 day of May,
2011, 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

Ms. Sara E. Heideman, Attorney
James T. Brennan, Esquire
Hedland, Brennan & Heideman, PC
1227 West Ninth Avenue, Suite 300
Anchorage, AK 99501


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City v. Alaskan Adventure
Case 1JU-08-434 CI
Notice

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

The City and Borough of Yakutat,

Plaintiff,

v.

Alaskan Adventure Tours, Inc.,

Defendant.

Case No. 1JU-08-434 CI

DECLARATION OF KIMBERLY BYLER

I, Kimberly Byler, declare as follows:

1. I have reviewed the deposition transcript of retired Alaska State Sergeant Cox. His memory is incorrect on a couple of minor points, but he confirms my testimony and contradicts Chief Nichols of the City and Borough of Yakutat ("CBY") in some significant respects.

2. Sergeant Cox testified that he was picked up at the airport by Chief Nichols. He was told by Chief Nichols on the way to the police station that I was at the police station where he could interview me. This is exactly the opposite of Chief Nichols' testimony at trial, where he said that he had dropped me off at the airport while picking up Sergeant Cox. Chief Nichols either lied to Sergeant Cox or he lied at trial. Both stories can't be right. In fact, I was at the police station awaiting Sergeant Cox's arrival, as I was the key person in the Trooper investigation.

3. Sergeant Cox testified that he was picked up at the airport by Chief Nichols and was taken back to the airport by him. Chief Nichols didn't remember any of this at trial or in his recent deposition in the federal case. I don't understand how he

DECLARATION OF KIMBERLY BYLER
CBY v. ALASKAN ADVENTURE TOURS
Case No. 1JU-08-434 CI - Page 1 of 5

could remember my ride to the airport, yet he did not remember anything about Sergeant Cox' trips to and from the airport.

4. Sergeant Cox also said that he was told by Chief Nichols on the way to the police station that Jerry's body was not going north, but was going south to Juneau. CBY claimed in its opposition that Chief Nichols took me to the airport in a rush after my phone call at 12:18 pm to make the northbound flight. I was not going a different direction than Jerry's body, obviously, so this is another contradiction in Chief Nichols' testimony. In fact, Chief Nichols told me in the recorded interview that I was not going to make the northbound flight. I accepted that, and had no intentions of going north, but planned to go south with Jerry's body to Juneau. Sergeant Cox confirms that Chief Nichols knew that when they met at the airport, so CBY's recent story about rushing me to the airport to go north is just that, a story, without a shred of truth. The CBY phone records have made it impossible for CBY to develop a story that can accommodate both the phone records and Chief Nichols' claims about taking me to the airport.

5. Sergeant Cox testified that I was not at the police station when he arrived, but arrived with Brian Barton 5 or 10 minutes after him in a rented vehicle. In fact, he probably has us confused with Pam Girdwood and Eddie McDonald, who arrived a short time after Sergeant Cox did. They came on a later flight from Icy Bay and Mr. McDonald rented a van. Brian and myself were taken to the station by the CBY police and did not rent a vehicle. Mr. Barton was deposed in the federal court action this week and confirmed that neither he nor I ever left the police station until after Sergeant Cox arrived and completed his work. The four of us left together in Mr. McDonald's rented van at that time.

6. The phone records show that I was on the phone at the station at 11:58 am and again from 12:10 pm until 12:18 pm. In CBY's second version of the story, after their own phone records were revealed it claims that Chief Nichols took me to the airport after that call ended. If Sergeant Cox got off the plane at 11:57 am and drove straight to the station, which took 4 or 5 minutes, he would have arrived before the calls ended, and before I went to the airport with Chief Nichols. I could not have done all of that and still made it back in time to be seen by Sergeant Cox within 5 or 10 minutes after he arrived, as he testified. Cox, p. 48, lines 12-25. In their first version, of course, I was at the airport when Sergeant Cox arrived as Chief Nichols testified to in the Juneau Trial. Whichever version you like, Sergeant Cox contradicts them both.

7. Sergeant Cox testified that he never spoke with my husband about this matter. This is a minor point, but again, he is mistaken. I attach our phone records, that show a 4 minute phone call to Trooper Cox on November 19, 2010. In any event, there is nothing in my husband's statements about his conversation with Sergeant Cox that Sergeant Cox contradicted in his deposition.

8. Mr. Barton testified in his deposition this week that he had 100 photos on his camera when Chief Nichols downloaded them onto his computer, some of which may have been of my father in law, Jerry Byler. Chief Nichols showed them to me in my interview at the police station, and I discussed them on the recording of my interview. Our computer expert has said that those 100 photos should still be on CBY's computer back-up hard drives. Those photos will prove that I was interviewed after Mr. Barton, which will prove that the interview recordings have been edited, as the versions produced by CBY on the eve of trial in this case place my police station interview before Mr. Barton. There is also new forensic evidence that has just surfaced in the last two days

that will prove the download time of the photos into Chief Nichols computer have been altered. We have received this information through a forensic review of the boat photo discs. We need access to the computers to prove this.

9. Mr. Barton first testified in his deposition that he was interviewed before me at the police station, which is contrary to what CBY has said. Later, he said he couldn't remember who was interviewed first. Luke Barton told me over a year ago during a phone conversation that he was definitely interviewed first and he was positive of that fact. The recorded interviews produced by CBY have a two minute gap between the end of my secret contact interview and my interview at the station. Mr. Barton testified that there was a 15 to 20 minute gap between the time we arrived at the station and the first interview, and that I was on the phone before any interviews were done. There is no way that only two minutes passed between those two interviews. They have been doctored, and we need the computers reviewed to prove it.

10. CBY got the benefit of having its Chief of Police testify to things that never happened. If CBY didn't think they needed a law enforcement officer to prove their case, CBY would not have used his perjured testimony in the first place. Only later did we discover evidence that Chief Nichols sworn testimony was demonstrably false. I only ask that I get a fair trial, where the jury gets a chance to hear this new evidence that clearly shows that CBY misled the jury in its efforts to win the case. The fraudulent conveyance judgment against me and my company is a very serious problem for myself and the business. It rests on false testimony from a police chief that testified 2 separate days in 4 days of witness testimony in your courtroom. The adverse impact on myself and my company from this judgment will follow me for the rest of my life. We deserve

the chance to clear our name. I plead with you to allow me a fair trial or reverse this case for fraud and misconduct committed by CBY.

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

DATED this 20 day of May, 2011.



Kimberly Byler



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.)

**OPPOSITION TO MOTION TO STRIKE AND
MOTION TO SUPPLEMENT THE RECORD**

Since the time of the oral argument in this matter, there have been a number of new developments in the federal action in addition to the deposition of Sergeant Cox. Since that time, Brian Barton and Eddie McDonald have also been deposed, and CBY has produced original downloads of the photos taken by Mr. Barton. The McDonald transcript has not yet been

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8751

City v. Alaskan Adventure
Case 1JU-08-434 CI
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received, but those depositions and the 4 photos have revealed the following:

1. Brian Barton testified that Chief Nichols downloaded approximately 100 photos directly into his computer during Barton's interview by Nichols on May 15, 2007. In his deposition, Chief Nichols swore that he downloaded only four photos during Barton's interview. The default numbers assigned by the computer to the four Barton photos produced by CBY are numbers 15, 16, 17 and 18. The computer record search produced by CBY's computer expert, Matthew Joy, produced no photos from Mr. Barton's camera, let alone four, 18 or 100. AAT's computer expert has advised that the 100 photos should still be on the computer if it hasn't been altered.

2. The four Barton photos were downloaded into the CBY computer at 11:59 am on May 15, 2007. The transcript of the Barton interview, which supposedly began at 11:15 a.m., sets forth the discussion between Chief Nichols and Mr. Barton concerning the download of the photos in the early part of the interview. The interview supposedly ended at 11:26 a.m., a full half hour before the photos were downloaded. Either the times on the computer are wrong, or Chief Nichols' testimony is wrong.

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3. Sergeant Cox testified that he was picked up at the airport by Chief Nichols. His plane arrived at the gate at 11:57 a.m. and it is approximately a five to eight minute ride to return to the police station. It would have been impossible for Chief Nichols to download the photos at 11:59 a.m. when he was at the airport to pick up Sergeant Cox. Again, there is an obvious inconsistency between the physical evidence and Chief Nichols' testimony.

4. CBY has had the benefit of access to the CBY hard drives, but AAT has not, so the statements of CBY's expert, Matthew Joy, have not been tested or confirmed by AAT's computer expert.

5. Brian Barton testified that he was interviewed before Kimberly Byler, but later said he did not remember the order of interviews. However, he does remember that it was 15 or 20 minutes before either he or Ms. Byler were interviewed. Either way, the timeline produced by the interview transcripts, which only allowed for two minutes between the end of Ms. Byler's first interview and the start of the second interview, is inconsistent with this testimony. Mr. Barton also testified that he observed Ms. Byler on the phone making calls before she was interviewed. This statement is consistent with the CBY phone records and AAT's assertions of the order of the

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interviews, but inconsistent with the information contained in the interview recordings.

6. Mr. McDonald testified in his very recent deposition that his interview was recorded by Alaska State Trooper Robert Cox. He also testified that CBY's counsel called him before his deposition and told him that that Cox's recording device did not have batteries in it during the time of his interview.

7. Mr. McDonald testified when he arrived at the Yakutat police station that he saw Brian Barton standing outside smoking a cigarette. He learned that Brian Barton had already been interviewed by Chief Nichols. Upon entering the front door to the police station, he witnessed Kimberly Byler still being interviewed by Chief Nichols through the glass wall of his office. This is inconsistent with Chief Nichols' testimony and the interview transcripts.

CBY sought and obtained permission to supplement the record with the testimony of Sergeant Cox. AAT seeks the opportunity to do the same with the recent testimony from the other witnesses.

It is obvious that the evidence on the subject is still being developed. AAT moves the court for a chance to do further discovery. The CBY computers need to be reviewed and

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analyzed by an expert to get to the bottom of the story:

However, it is clear, even without them, that there are serious problems with the testimony of Chief Nichols.

Dated at Anchorage, Alaska June 2, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2 day of June, 2011, a copy of the foregoing was sent to the following via:

- U.S. Mail, First Class, Postage Prepaid
 Hand-Delivery
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