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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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NATURAL RESOURCES DEFENSE		:
COUNCIL, SAN DIEGO BAYKEEPER,		:
KENNETH J. MOSER,		:
	Plaintiffs,	:
		:
vs.		:
		:
SOUTHWEST MARINE, INC.,		:
	Defendant.	:
		:
-----		:

No. 96-1492-B-AJB

DEPOSITION OF CHARLES VON FANGE
San Diego, California
October 7, 1997

Reported by Rita J. Bowen
C.S.R. No. 3313

BARBER & ASSOCIATES

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1 CHARLES VON FANGE,

2 Having been duly sworn, testified as follows:

3

4 EXAMINATION BY MR. McDONALD:

5 Q. Could you please state your full name and
6 spell it for the record.

7 A. Charles Alvin Von Fange. Last name is
8 spelled V-o-n, capital F-a-n-g-e.

9 Q. And Mr. Von Fange, what is your current
10 address?

11 A. 1277 Bitterbush --

12 Q. And you are represented -- I beg your
13 pardon.

14 A. -- Lane.

15 Q. Is that in San Diego?

16 A. El Cajon.

17 Q. El Cajon. And the zip code is?

18 A. 92019.

19 Q. Thank you. And you're represented by
20 counsel today?

21 A. Yes.

22 MR. McDONALD: And I just want to go around for
23 appearances for the record. Mr. Miller?

24 MR. MILLER: David A. Miller, appearing
25 especially for Mr. Von Fange.

26 MR. McDONALD: And I'm Steve McDonald of Luce,
27 Forward, Hamilton & Scripps. And I represent the
28 defendant in this proceeding, Southwest Marine.

1 MR. MAJORS: Gary Majors, also on behalf of
2 Southwest Marine.

3 MR. DeLANO: And Everett DeLano on behalf of the
4 plaintiffs in this action.

5 BY MR. McDONALD:

6 Q. Mr. Von Fange, are you familiar with the
7 complaint that's been filed in this action?

8 A. Not in any depth. I know that there's a
9 complaint been filed over some pollution issues at
10 Southwest Marine.

11 Q. Okay. Just briefly, there's been a
12 complaint filed alleging that Southwest Marine has
13 violated certain permits, National Pollution and
14 Discharge Elimination System, NPDES, permit, and storm
15 water permits, and certain other environmental issues.
16 And the purpose of the deposition today is to explore
17 facts and information that you might have relating to
18 the allegations in that complaint. Okay.

19 I understand that you have some actions,
20 yourself, that you have filed against Southwest Marine;
21 is that correct?

22 A. Yes.

23 Q. And now, you've had your deposition taken
24 before --

25 A. Yes.

26 Q. -- and know, generally, the ground rules
27 of deposition taking?

28 A. Yes.

1 Q. Let me just remind you of a couple, partly
2 as reminders for myself. First, please try to wait
3 until I finish asking my question so that the reporter
4 can get it down, and then you can complete your answer.
5 I will try to do likewise. And please, if I interrupt,
6 I mean, don't feel shy at all about telling me you're
7 not finished, so we can have your full and complete
8 answer on the record. Is that understood?

9 A. Yes.

10 Q. If you don't understand any of my
11 questions, again, please feel free to let me know that
12 you don't understand the question, or that the question
13 is ambiguous, so we can be sure that what I'm asking
14 and what you're answering has to do with the same
15 subject. Is that understood?

16 A. Yes.

17 Q. And you are also familiar with the rules
18 here; that you are taking a deposition in an office,
19 but it is as if you were in court, under penalty of
20 perjury, in a courtroom?

21 A. Yes.

22 Q. And you are aware that the deposition you
23 are giving today could be used as evidence at a trial
24 in this proceeding?

25 A. Yes.

26 Q. Mr. Von Fange, are you under any
27 medication or taking any drugs that might impair in any
28 way your ability to give full and complete testimony

1 today?

2 A. No.

3 Q. And I've had some difficulty pronouncing
4 people's names. Am I pronouncing your name right,
5 Mr. Von Fange?

6 A. Yes.

7 Q. Mr. Von Fange, I'd like to show you a
8 document that I'd like entered as the next in order,
9 which I believe is Exhibit 60.

10 MR. McDONALD: And, Mr. Miller, we are
11 consecutively numbering exhibits in this matter. So 1
12 through 59 relate to prior depositions.

13 MR. MILLER: Sure.

14 BY MR. McDONALD:

15 Q. Mr. Von Fange, this is a subpoena in this
16 civil case. Have you seen this subpoena previously?

17 A. Yes.

18 Q. I'd like to refer you -- and it's pursuant
19 to this subpoena that you are appearing today?

20 A. Yes.

21 Q. I'd like to refer you to the third page,
22 entitled "Exhibit A." Do you understand your
23 obligation, subject to objections of your counsel, to
24 have produced the documents that are in your
25 possession, custody, control, identified in Exhibit A?

26 A. Yes.

27 Q. Okay. I'd like to also show you, and
28 enter into the record --

1 MR. McDONALD: Let's go off for a second.

2 (Discussion off the record)

3 BY MR. McDONALD:

4 Q. And I'd like to have this exhibit marked
5 as Exhibit 61. And it's entitled, "Charles Von Fange's
6 Notice of Objection of Subpoena for Production of
7 Documents."

8 And have you seen this document
9 previously, Mr. Von Fange?

10 A. Yes.

11 Q. If I can refer you back to Exhibit 60,
12 Exhibit A, for a moment. And if I could refer you to
13 No. 3, "All photographs in your possession, custody or
14 control depicting places or things at any facility of
15 Southwest Marine."

16 Do you have in your possession, custody or
17 control documents -- or, excuse me, photographs
18 depicting the facility at Southwest Marine?

19 A. Yes.

20 Q. Okay. In the response to No. 3, in
21 Exhibit 61, it states that, "Mr. Von Fange will produce
22 the few photographs shown to Moser and which relate to
23 issues of this case."

24 Have you brought with you any photographs
25 today?

26 A. Yes.

27 MR. MILLER: For the record, these are the
28 photographs responsive to that request. It's 14 pages

1 of laser color-copied photographs, which photographs
2 have already been produced to Southwest Marine in
3 another recent case this year.

4 MR. McDONALD: Let's go off the record.

5 (Discussion off the record)

6 MR. McDONALD: I'd like to introduce the photos
7 that have just been produced, 14 pages of photos, as
8 the next in order, 62. And I'd like the pages
9 consecutively numbered, 62.1, 62.2, et cetera.

10 BY MR. McDONALD:

11 Q. Mr. Von Fange, do you have other photos of
12 Southwest Marine facilities?

13 A. I have some personal photos of the
14 facility, that we have taken over at parties and stuff
15 like that over the years.

16 Q. Do any of those photos relate at all to
17 any environmental conditions at Southwest Marine's
18 facility?

19 A. Not that I'm aware of.

20 Q. The photos that were just produced here in
21 Exhibit 62, is it correct that these are photocopies of
22 original photos?

23 A. Yes.

24 Q. Okay. Where are the photos of which these
25 photocopies were made?

26 A. The pictures those were copied from were
27 in the book in Mr. Miller's office. The actual
28 negatives and the original pictures and the original

1 book should be at Southwest Marine.

2 Q. The negatives for these pictures are in
3 the control of Southwest Marine?

4 A. Should be, yes.

5 Q. Do you know who at Southwest Marine has
6 those negatives?

7 A. That book and those pictures were taken by
8 the proposals department at Southwest Marine. So I
9 don't know whether that still exists or not. But Dick
10 Camacho was in charge of it at the time it was taken.

11 Q. And Dick Camacho is an employee -- or was
12 an employee of Southwest Marine?

13 A. He was an employee. I don't know whether
14 he is or not anymore.

15 Q. Mr. Miller, do you know who took these
16 photos?

17 MR. MILLER: Mr. Von Fange, you mean.

18 MR. McDONALD: Excuse me.

19 BY MR. McDONALD:

20 Q. Mr. Von Fange, do you know who took these
21 photos?

22 A. It may have been Tom DeLeon. He was
23 taking a lot of pictures for SWM at the time. Or there
24 was another photographer they had there, that I can't
25 recall his name.

26 Q. Do you know how Mr. DeLeon spells his
27 name?

28 A. It's D-e capital L-o-i-n, I believe. I'm

1 not really sure. It's pretty close.

2 Q. And was Mr. DeLeon an employee of
3 Southwest Marine?

4 A. No longer. At least, that I'm aware of.
5 I haven't really kept track of him. But last thing, he
6 was working at PacShip.

7 Q. Do you know the purpose of these
8 photographs? Excuse me. Let me strike that.

9 Do you know the reason why these
10 photographs were taken?

11 A. We were having a lot of problems in the
12 sandblast facility keeping the grit contained. And
13 when it rained, it was just a mess, and grit went
14 everywhere. And we were trying to persuade management
15 to build a containment area that would keep this sand
16 and everything in place.

17 Q. During what period of time were these
18 photos taken?

19 A. I'm going to guess at '93. That's just a
20 guess.

21 Q. One of the ground rules of the
22 deposition -- I do not want you to guess. I don't
23 think any other counsel want you to guess. If you have
24 a recollection as to a reasonable period of time that
25 you're estimating or recalling, that's fine. But
26 otherwise, a guess doesn't help us much.

27 A. Okay.

28 Q. So let me reask the question in light of

1 that. Do you have any recollection as to the
2 approximate period of time during which these photos
3 were taken? Month, year, whatever?

4 A. I'd say somewhere between '92 and '94.

5 Q. Mr. Von Fange, have you ever shared these
6 photos with anyone, other than someone from Southwest
7 Marine?

8 A. Yes.

9 Q. Who have you shared these photos with?

10 A. With Mr. Moser. And he actually -- he
11 knew they existed. I don't think he really seen any
12 detail of them. We showed him the book of the
13 facility, and we paged through it. But as far as him
14 actually getting a good, hard look at anything that was
15 in there -- I don't recall him, you know, actually
16 spending a lot of time looking at anything.

17 Q. Did you ever give copies of these photos
18 to Mr. Moser?

19 A. No.

20 Q. Did you ever give copies of the photos to
21 anyone else, other than your counsel?

22 MR. MILLER: And Mr. Majors.

23 THE WITNESS: Yes. We produced them for
24 Mr. Majors.

25 BY MR. McDONALD:

26 Q. Okay. Previously, I excluded Southwest
27 Marine. I guess I included Mr. Majors --

28 MR. MAJORS: Let me just state for the record,

1 since I'm here, they were not produced to me, so --

2 THE WITNESS: Well, I don't want to argue.

3 BY MR. McDONALD:

4 Q. That's fine. This is not the time and
5 place, you know, for that. You represented they were
6 produced. They may or may not have been. That's
7 something that may or may not be important at some
8 future proceeding, at some future date.

9 Let's get back to my other, original
10 question, though. Did you ever provide copies of these
11 photos to anyone, other than your counsel and to
12 Southwest Marine or its counsel?

13 A. I think, yes, I did.

14 Q. And who would that be?

15 A. We -- there was another action against
16 Southwest Marine, when the photos were produced.

17 Q. To whom were they produced?

18 A. The federal attorney.

19 Q. Is the other action you refer to a
20 so-called Keytom action?

21 A. Yes.

22 Q. Did you ever provide copies of these
23 photos to Mr. DeLano, who is here in the room?

24 A. No.

25 Q. Mr. Crandall, who is the counsel for
26 Natural Resources Defense Council and Baykeeper?

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

28 Q. Have you ever met Mr. Crandall?

1 A. I sense I have.

2 Q. Do you recall when?

3 A. No. He may have been out at Mr. Moser's
4 place. And I'm not really sure. I'd have to see him.

5 Q. Okay. If I can refer you back to Exhibit
6 60, again, Exhibit A. And I'd like to refer you to
7 No. 4, "All documents in your possession, custody or
8 control that have been given to or received from the
9 National Resources Defense Council, San Diego
10 Baykeeper, Kenneth J. Moser or attorneys for these
11 entities or the individual."

12 MR. DeLANO: Counsel, if I could interject here.
13 I think we are operating under the assumption that this
14 is the Natural Resources Defense Council, one of the
15 plaintiffs in this case; is that correct?

16 MR. McDONALD: That's correct.

17 MR. DeLANO: Okay.

18 BY MR. McDONALD:

19 Q. Counsel pointed out there was a
20 typographical error here. It said, "the National
21 Resources Defense Council," and it should have been the
22 Natural Resources Defense Council.

23 A. I didn't even know who that -- I'm sorry.

24 Q. Are you familiar with the Natural
25 Resources Defense Council?

26 A. No.

27 Q. Are you familiar with San Diego Baykeeper?

28 A. Only in the limited dealings I've had with

1 them.

2 Q. Okay. And Mr. Kenneth Moser? You're
3 familiar with Mr. Moser?

4 A. Yes.

5 Q. And let me go back and ask the question.
6 Have you ever given any documents, or has anyone on
7 your behalf given documents, to Kenneth Moser or
8 San Diego Baykeeper?

9 A. Not that I'm aware of.

10 Q. Do you know if anyone has ever given
11 documents that were in your possession, custody or
12 control, to counsel for San Diego Baykeeper or Kenneth
13 J. Moser?

14 A. Not that I'm aware of.

15 Q. And you've never given any documents to
16 the Natural Resources Defense Council or anyone on
17 their behalf?

18 A. Not that I'm aware of.

19 Q. Have you ever received any documents from
20 any of those persons or entities?

21 A. No.

22 Q. You've mentioned you met with Mr. Moser at
23 least once; is that correct?

24 A. Yes.

25 Q. Did you take any notes during that
26 meeting?

27 A. No.

28 Q. Have you ever talked with Mr. Moser on the

1 telephone?

2 A. Yes.

3 Q. Have you ever taken notes of any of your
4 phone conversations with Mr. Moser?

5 A. No.

6 Q. Okay. You mentioned previously that you
7 met with Mr. Moser and showed him a notebook; is that
8 correct?

9 A. Yes.

10 Q. Other than these photographs, was there
11 anything else in that notebook?

12 A. Yes. It was a book which contained a plan
13 to build a sandblast facility at Southwest Marine.

14 Q. Did you put that notebook together?

15 A. No.

16 Q. Who assembled that notebook?

17 A. The proposals department at Southwest
18 Marine.

19 Q. Was this notebook identified in any way?
20 Did it have a sticker on it, or something on the spine,
21 that identified it as being a particular document?

22 A. I think it said something about --
23 "Proposed Sandblast Facility," or something. I don't
24 recall. The first page or something.

25 Q. And do you recall when that proposal was
26 put together?

27 A. Again, like I said, somewhere between '92
28 and -3 or -4.

1 Q. Do you have with you the other documents
2 that were in that binder, or that notebook?

3 A. No. They were given to Mr. Majors
4 earlier.

5 Q. Do you believe that that entire notebook
6 was produced to Southwest Marine in another proceeding?

7 A. Yes. We went through it during my
8 deposition, somewhat.

9 Q. Mr. Von Fange, do you have any other
10 documents in your possession, custody or control that
11 refer or relate to Southwest Marine, other than those
12 photos that you've previously identified and the
13 documents that we have talked about?

14 A. If I understand your question, I think
15 you've covered everything. No, I don't.

16 Q. Mr. Von Fange, would you please just
17 briefly describe for me your education since high
18 school.

19 A. I went to some courses when I was in the
20 Navy, training courses. I went to San Diego City
21 College for a couple courses. Other than that, there's
22 been no formal education since high school.

23 Q. Have you ever had any training in
24 environmental law and regulations?

25 A. Only what I received at SWM, an overview.

26 Q. What kind of training did you receive at
27 Southwest Marine?

28 A. Basically, it was just on environmental

1 issues, you know, cleaning up, and what you could and
2 couldn't do, and so on. They were -- I don't think it
3 was formal training. It was just in meetings and talks
4 with the environmental people.

5 Q. Did those environmental issues include
6 compliance with what are known as best management
7 practices?

8 A. Not that I can recall.

9 Q. When did you first go to work for
10 Southwest Marine?

11 A. 1977.

12 Q. Let me also clarify something for the
13 record. Earlier, you mentioned working for SWM; is
14 that correct?

15 A. Yes.

16 Q. By "SWM," you are referring to the acronym
17 S-W-M --

18 A. Yes.

19 Q. -- for Southwest Marine?

20 Okay. So if I use the word "SWM," you'll
21 understand me as referring to Southwest Marine --

22 A. Yes.

23 Q. -- in that context?

24 A. Yes.

25 Q. I'm sorry. When did you first go to work
26 for Southwest Marine?

27 A. 1977.

28 Q. And what was your position at that time?

1 A. I was a machinist journeyman.

2 Q. And how long did you work as a machinist

3 for Southwest Marine?

4 A. Must have been two or three years.

5 Q. And then what job did you hold?

6 A. Ship superintendent.

7 Q. And what were your general functions as a

8 ship superintendent?

9 A. Basically, overseeing the jobs.

10 Q. And when you say "overseeing jobs," you

11 mean overseeing jobs on ships that were being

12 retrofitted or built?

13 A. On ships, yes, and in the yard.

14 Q. How long did you remain in that position?

15 A. It was a few years, I believe.

16 Q. And what subsequently was your position

17 after being a ship superintendent?

18 A. I believe it was assistant program manager

19 after that.

20 Q. And during what period of time were you an

21 assistant program manager?

22 A. All the years have run together. I'd have

23 to say in the '80s. Sometime during the '80s.

24 Q. And what generally were your job functions

25 as a program manager -- or an assistant program

26 manager?

27 A. It was overseeing the work force on the

28 job.

1 Q. And did you have ship superintendents
2 working for you at that time?

3 A. Yes.

4 Q. And then what did you do subsequently to
5 being an assistant program manager?

6 A. I was a machinery superintendent at
7 Southwest Marine at one point in time. I can't
8 remember whether that was before or after.

9 Q. And did you have any other positions at
10 Southwest Marine subsequent to --

11 A. Yes. I was program manager, also.

12 Q. I'm sorry?

13 A. Program manager.

14 Q. A program manager. And what generally
15 were your responsibilities as a program manager?

16 A. I was responsible for the program,
17 performance of the program.

18 Q. And when you say "a program," how are you
19 using that word?

20 A. It was mostly a series of ships. There
21 was a number of ships in the program. I think it was
22 the 1052 contract that SWM had had in the early years.

23 Q. Would a program refer to like a contract
24 for --

25 A. Yes.

26 Q. -- for the Navy, or for some other entity?

27 A. Yes.

28 Q. Did you have responsibilities as a program

1 manager for environmental compliance?

2 A. I don't think there was too much
3 environmental issues when I was a program manager.

4 Q. How long were you a program manager,
5 number of years?

6 A. Probably a year.

7 Q. And do you recall what the last year was
8 in which you were a program manager?

9 A. It was, again, in the '80s.

10 Q. Okay. Then what position did you hold
11 after being a program manager?

12 A. I think these are out of sequence, but I
13 was the -- what do they call it? Production
14 superintendent.

15 Q. And is this subsequent to being a program
16 manager, or prior to?

17 A. This is after.

18 Q. And what is the function of a production
19 superintendent?

20 A. Basically, I control the shipyard as far
21 as the various programs and the crafts; contracts.

22 Q. And was this into the 1990s, or are we
23 still in the 1980s?

24 A. Actually, yes, it did go into the '90s.
25 And there's a title change there to production manager,
26 from production superintendent, so --

27 Q. How does a production manager relate to a
28 program manager?

1 A. A program manager usually has control of
2 just a single contract, or multiple contracts. But his
3 control is strictly within that contract, usually.
4 Production manager's control is usually over the yard
5 and all the contracts, somewhat. It's not -- he
6 wouldn't -- the program manager wouldn't report to him,
7 but they would interface.

8 Q. Did you have responsibilities as a program
9 manager for environmental compliance?

10 A. As a program manager?

11 Q. As a production manager?

12 A. Production manager? Yes.

13 Q. And what were those responsibilities?

14 A. Basically, the responsibilities -- if I
15 see anything wrong, was to report it.

16 We never actually had environmental people
17 until the early '90s, as I recall. We may have had
18 them before that, but they weren't really active in
19 anything that I can remember.

20 Q. Do you recall when Southwest Marine hired
21 someone that -- brought in to handle environmental
22 issues specifically?

23 A. I know Dana Austin was brought in at some
24 point in time. I don't actually know the year. But I
25 think he may have been the first one. Maybe Bruce Geir
26 was -- had something to do with it. I don't know.

27 Q. Did you hold any positions after being a
28 production manager?

1 A. No. Oh, yes, I did. Sorry. Before I
2 left, I was a ship superintendent.

3 Q. A ship superintendent?

4 A. Yes.

5 Q. And what were the functions of that
6 position?

7 A. Basically, I had work items within a
8 contract, that I'd oversee.

9 Q. And you were a ship superintendent at the
10 time you left Southwest Marine?

11 A. Yes.

12 Q. What was your employment immediately after
13 leaving Southwest Marine?

14 A. I worked at NASSCO, National Steel and
15 Shipbuilding, for approximately four months, five
16 months.

17 Q. You might have mentioned this. But you
18 left Southwest Marine in 1995; is that correct?

19 A. Yes.

20 Q. And what was your job at Southwest
21 Marine -- or, excuse me, at NASSCO?

22 A. I was a machinery superintendent.

23 Q. And what did that job function entail?

24 A. I, basically, had all of the machinery for
25 new construction repair throughout the yard.

26 Q. And so you began working at NASSCO in
27 1995?

28 A. Yes.

1 Q. And you said, for four or five months.
2 Did you work for them into '96?
3 A. No. I left in December, I believe, end of
4 December of '95.
5 Q. Okay. And then what employment did you
6 have?
7 A. I went to work at Dolphin Industries.
8 Q. And what does Dolphin Industries do?
9 A. They are also a ship repair company.
10 Q. Are they a competitor with NASSCO and
11 Southwest Marine?
12 A. Not in my opinion. They would compete for
13 smaller jobs, a lot smaller jobs, that NASSCO or SWM
14 may or may not compete for. But employment --
15 employees -- there was 50, 60 employees, at the max.
16 It was a very small yard.
17 Q. Okay. And what was your job with Dolphin
18 Industries?
19 A. Started out as a consulting position. And
20 that may be the wrong term, but all I was, was an
21 advisor to the owner.
22 Q. And what period of time were you a
23 consultant or advisor to the owner?
24 A. For the first few months that I worked
25 there. For probably two months, three months. And
26 then I had two other titles in the short time I was
27 there. I was operations manager, and one was
28 production manager.

1 Q. And how long were you with Dolphin
2 Industries?

3 A. About seven months, I believe. Eight
4 months, maybe.

5 Q. And when did you leave Dolphin Industries?

6 A. July or August of '96, I believe.

7 Q. During your period of time at Dolphin
8 Industries, did you have any occasion to interact with
9 Southwest Marine?

10 A. There was a couple phone calls that I had
11 with Barbara Eddy, who was Mr. McKay's secretary, over
12 some -- the ship repair council issues. That was it.

13 Q. Did you visit Southwest Marine anytime
14 during that period of time?

15 A. Go in the facility?

16 Q. Yes. Go in the facility?

17 A. No.

18 Q. Okay. After July, August '96, then, what
19 was your employment?

20 A. Sometime after that, I went to work at
21 Bancroft Motors.

22 Q. Is it Bancroft?

23 A. Bancroft, yes.

24 Q. Could you spell it for me.

25 A. B-a-n-c-r-o-f-t.

26 Q. What was your position at Bancroft Motors?

27 A. I got a lot of positions there. It's a
28 very small place. So I did everything from buying cars

1 to fixing them.

2 Q. And are you still with Bancroft Motors?

3 A. Yes.

4 Q. Okay. Since you left Dolphin Industries,
5 have you visited Southwest Marine, the facility at
6 Sampson Street?

7 A. Actually went in it?

8 Q. Actually went in it.

9 A. No.

10 Q. Have you ever observed the facility since
11 July, August 1996?

12 A. Yes.

13 MR. MILLER: Observed it from the outside of the
14 gate?

15 MR. McDONALD: From anywhere.

16 MR. MILLER: Okay.

17 BY MR. McDONALD:

18 Q. Let me just clarify it. You testified,
19 since July, August, 1996, you haven't been on Southwest
20 Marine's facility, physically within the gate; is that
21 correct?

22 A. Yes.

23 Q. You've testified you observed the
24 facility, however, since July, August 1996?

25 A. Yes.

26 Q. Do you recall when you observed that
27 facility, other than just driving by and seeing the
28 front gate?

1 A. The last time was probably -- well, that's
2 all we did then, was drive by the front gate. My wife
3 and I had went out on a harbor cruise, and we were
4 coming back. And she also used to work at Southwest
5 Marine. So she said, "Why don't we swing by and take a
6 look at the place?" So we did, and we took a few
7 pictures, and left.

8 Q. Did you observe any ongoing operations at
9 Southwest Marine in connection with that harbor cruise?

10 A. Not any other than just working. We were
11 out there for enjoyment.

12 Q. Did you observe sandblasting, for example?

13 A. It was over a weekend. I don't think
14 there was too much activity at all.

15 Q. Did you observe anything relating to any
16 environmental issues during that harbor cruise?

17 A. Other than the containment was all blowing
18 loose.

19 Q. And when you say "containment blowing
20 loose," what containment are you referring to?

21 A. When they're sandblasting paint, you
22 usually put up a material called shrink-wrap. It's a
23 white material, and it is used to contain the
24 sandblasting, painting, and whatever other thing they
25 are doing. And apparently, the wind had come up, and
26 it was all flapping in the breeze.

27 Q. Is it correct, you did not observe
28 operations ongoing to sandblasting at that time?

1 A. There wasn't any workers that I noticed.
2 If they were inside the -- partially contained, I
3 couldn't, obviously, see them.

4 Q. Did you observe any sandblast grit in the
5 area?

6 A. We were out quite a ways for that.

7 Q. Okay.

8 A. No.

9 Q. Have you, since July, August 1996,
10 observed any sandblast operations at Southwest Marine?

11 A. No.

12 Q. Have you ever had occasion since July,
13 August 1996, to observe any sandblast grit in or about
14 Southwest Marine?

15 A. No.

16 Q. Mr. Von Fange, I'd like to go back for a
17 moment. You testified that you had had a couple of
18 lawsuits against Southwest Marine. Is it correct that
19 you have a lawsuit -- excuse me. Start over.

20 Is it correct that you filed a lawsuit
21 against Southwest Marine, alleging, among other things,
22 wrongful termination?

23 A. Yes.

24 Q. What's the status of that lawsuit?

25 A. It is under appeal.

26 Q. And do you know the nature of the appeal?
27 What is being appealed?

28 A. It was, basically, not let into court by

1 the judge, and we're appealing that.

2 Q. And what are you seeking by way of that
3 lawsuit?

4 MR. MILLER: I think that's a question more
5 appropriately addressed to me, as the attorney.

6 MR. DeLANO: I would --

7 MR. McDONALD: I generally want to know the
8 relief that's being sought. I'm not here to discover
9 that other case, but just generally the lawsuit
10 liabilities for wrongful termination. I just want to
11 know generally the relief that's being sought.

12 MR. MILLER: The complaint has --

13 MR. McDONALD: And I'll accept your
14 representation.

15 MR. MILLER: It's prayed for monetary and
16 injunctive relief, as well as punitive damages.

17 MR. DeLANO: And, Counsel, I've been holding
18 back here, but I'm wondering what the relevance of this
19 line of inquiry is.

20 BY MR. McDONALD:

21 Q. Mr. Von Fange, have you also filed what's
22 known as a Keytom action?

23 A. Yes.

24 Q. And what is the status of that action, to
25 your understanding?

26 MR. MILLER: If you know.

27 THE WITNESS: We're working on it. That's what
28 I know, that we are working on it.

1 BY MR. McDONALD:

2 Q. Are there allegations in that action that
3 relate to environmental conditions or alleged
4 violations of Southwest Marine?

5 A. Yes.

6 Q. And can you describe for me the
7 environmental conditions or alleged violations which
8 are the subject of that complaint?

9 A. They are, basically, the same as the
10 complaint we have with Mr. Majors, Southwest
11 Marine's -- in the other case.

12 Q. So in the wrongful termination lawsuit --

13 MR. McDONALD: May I refer to it as a wrongful
14 termination lawsuit? Is that acceptable, Mr. Miller?

15 MR. MILLER: Yes.

16 BY MR. McDONALD:

17 Q. In the wrongful termination lawsuit, there
18 are also allegations related to environmental
19 conditions or alleged violations of environmental
20 matters at Southwest Marine?

21 A. Yes.

22 Q. Mr. Von Fange, could you describe for me
23 the environmental conditions or alleged violations
24 which are the subject of those two lawsuits?

25 A. Well, the pictures that you have in front
26 of you -- the sandblast containment is one of the
27 issues. I believe there are some other documents
28 concerning oil spillage, that was given to us, that --

1 ground contamination, I believe it is.

2 Q. Okay. In connection with the issues
3 related to sandblast, do you contend that any of the
4 alleged violations occurred after 1995?

5 A. After I left?

6 Q. Yes.

7 A. I have no way of knowing.

8 Q. Well, my question, Mr. Von Fange, is not
9 whether conditions or alleged violations, in fact,
10 occurred. My question is whether or not you are
11 contending that, subsequent to 1995, any of the
12 environmental conditions or alleged violations which
13 you have identified, occurred? You know, is it your
14 contention?

15 A. Yes.

16 Q. And what conditions or alleged violations
17 do you contend occurred after 1995?

18 A. The -- I'm sorry. After 1995?

19 Q. After 1995.

20 A. After I left in 1995?

21 Q. That's correct.

22 A. I'm going -- I'm going to have to say that
23 I made a mistake there, because I don't know of
24 anything that happened there after 1995 --

25 Q. Okay.

26 A. -- after I left in 1995. I thought that's
27 what I said earlier.

28 Q. Let's clarify that --

1 A. Okay.

2 Q. -- because maybe my question was somewhat
3 ambiguous. Let me turn the question around. Is it
4 correct that all of the environmental conditions and
5 alleged violations which are the subject of your
6 wrongful termination suit relate to allegations prior
7 to your leaving Southwest Marine in 1995?

8 A. Yes. They were prior to me leaving, yes.

9 Q. And those are the same allegations,
10 generally, that are in the Keytom action?

11 A. Yes.

12 Q. So the facts and allegations of the Keytom
13 action relating to environmental conditions or alleged
14 violations, also relate to circumstances prior to your
15 leaving Southwest Marine in 1995?

16 A. Yes. There may be other issues in the
17 Keytom - I haven't looked at it in a while - than what
18 is here.

19 Q. I am only interested in the issues related
20 to environmental matters. We are not getting into
21 other allegations, except insofar as they could relate
22 to environmental issues.

23 Mr. Von Fange, is it correct, then, that
24 you have no knowledge of the environmental conditions
25 presently at Southwest Marine?

26 A. No, I do not.

27 Q. Do you have any information related to
28 environmental conditions or compliance for

1 environmental laws at Southwest Marine since -- well,
2 since you left Southwest Marine in 1995?

3 A. No.

4 MR. McDONALD: Let's take a short break right
5 now, because I'm going to get into something that's
6 going to take a while. We have been going for almost
7 an hour. Let's take a short five-minute break, visit
8 the bathroom, get a drink and come on back.

9 MR. MILLER: Sure.

10 (Recess)

11 BY MR. McDONALD:

12 Q. Let's go back on.

13 A. Before you start, the -- we are back on?

14 Q. Yes.

15 A. One of the issues that I forgot to mention
16 on the pollution was the standing water. There was
17 areas in the yard which -- when it rained, the water
18 pooled up. And one of them was in front of the
19 trailers -- the program management trailers for the
20 cost contracts. And the water would get anywhere from
21 six to eight inches deep there.

22 And we had petitioned Herb on a number of
23 occasions to -- Herb Engel -- to pave it over so the
24 water wouldn't pool up, because it made -- number one,
25 it made a mess, and we had to put pallets and
26 everything else to walk over the holes. That was
27 pumped right into the bay. Sucked off the ground and
28 pumped right directly into the bay.

1 Q. What period of time are you referring to?

2 A. That was right up until January of '95.
3 At least when I was still production manager, we were
4 still trying to get that done.

5 The runoff from the buildings and the pipe
6 shop, which the pipe shop had no roof at the time - we
7 couldn't get a roof put on it - would all accumulate.
8 The water would all accumulate in one area. And there
9 was no drainage for it. So they just hooked up
10 sandpipers, portable pump and a hose, and run it right
11 out to the bay.

12 Q. Do you know if that water was ever tested
13 by anyone?

14 A. Not that I'm aware of.

15 The facility would usually set the pumps
16 up as soon as it'd start raining, to try to keep the
17 water down. I never seen anybody test it.

18 Q. Your testimony was that this was a
19 situation that occurred up into January of 1995. Did
20 something occur as of January 1995 to change the
21 situation?

22 A. No. That's when -- was my last
23 involvement with the yard, shortly after that, when I
24 left in February.

25 Q. Do you know if the yard was ever paved?

26 A. No, I do not.

27 Q. Do you know if Southwest Marine, after
28 January of 1995, ever pumped water into the bay, that

1 was pooled in front of these trailers?

2 A. I don't know that, no.

3 Q. Are you aware of any pumping of water into
4 the bay subsequent to January 1995, at Southwest
5 Marine, from any source?

6 A. Prior to 1995?

7 Q. After 1995 --

8 A. No.

9 Q. -- January 1995?

10 A. No.

11 Q. Okay. We had a discussion off the record,
12 again referring to photographs, Mr. Von Fange. And I'd
13 like to specifically ask you whether or not you've ever
14 seen photos related to an alleged fuel overflow?

15 A. Yes. I think I told you that we had -- it
16 was a -- there was an issue in the complaint about
17 that. We had received documents from Dan Mills, I
18 believe. Matter of fact, Dan Mills is the man who put
19 me in touch with Mr. Moser.

20 Q. Now, do you have photographs of any fuel
21 overflows?

22 A. I don't think, any fueling process. They
23 are just still photos of where the pumping took place,
24 overfilling took place.

25 Q. And you received these photos from
26 Mr. Mills?

27 A. Yes.

28 Q. Do you know who took those photos?

1 A. No.

2 Q. Do you know the period of time during
3 which those photos were taken? Again, approximately.

4 A. Not really. It was -- had to be '94, '95,
5 somewhere in that time frame, I would assume. I
6 vaguely recall it as being an incident when I was
7 production manager. The fueling company was
8 overfilling one of the tanks.

9 Q. After we discussed these photos, do you
10 recall anything further that those photos depicted?

11 A. No. There was a write-up with it,
12 letters, correspondence back and forth between
13 Southwest Marine and the fuel company, I believe.

14 Q. Did you have any involvement in connection
15 with the fuel overflow?

16 A. Not that I can recall.

17 MR. MILLER: Involvement with whom? Involvement
18 with whom or --

19 MR. McDONALD: Excuse me. Let me -- that was
20 vague.

21 BY MR. McDONALD:

22 Q. During the period of employment with
23 Southwest Marine, I mean, were you involved in any
24 capacity with the fuel overflow incident that was
25 depicted in those pictures?

26 A. I think that I was only told about it by
27 environmental. It was between environmental and the
28 general manager and someone else.

1 Q. And do you recall who in environmental
2 told you about the fuel overflow?

3 A. No.

4 Q. Who was working in environmental during
5 that period of time?

6 A. I know Dana was in charge. And we had
7 hired a guy who worked right up there with me, but I
8 can't recall his name.

9 Q. Okay. In connection with the notebook
10 that you said was for a proposal related to sandblast
11 operations --

12 A. Yes.

13 Q. -- do you know if that proposal was ever
14 accepted?

15 A. Actually, it was rejected.

16 Q. It was rejected. What did that proposal
17 include?

18 A. It was to build a sandblast facility, a
19 containment facility, a building. And it went up to
20 the general manager, Bob McKay. And Bob McKay took
21 it -- at least he told me he had taken it to Herb
22 Engel, and Herb Engel said we weren't spending that
23 kind of money.

24 Q. Were any parts of that proposal ever
25 enacted during the period of time when you were at
26 Southwest Marine?

27 A. There were various Band-Aid fixes that we
28 did over the years. And I believe in '94, that there

1 was actually a building constructed, the latter part of
2 '94, somewhere around there.

3 Q. So sometime in or about 1994, Southwest
4 Marine constructed a building for sandblasting?

5 A. Yes.

6 Q. Was that building designed to contain
7 sandblast grit?

8 A. It was -- yes. It was in hopes that it
9 would do a better job than what we were doing. I don't
10 know how it actually worked.

11 Q. Did you ever observe sandblast operations
12 after that building was constructed?

13 A. I don't recall.

14 Q. Were any of the photos which you have --
15 or of which you are aware, ever taken of sandblast
16 operations being conducted in that building?

17 A. No.

18 Q. Other than building a building, what else
19 was contained in the proposal related to sandblast
20 operations?

21 A. In that proposal where the pictures came
22 out of?

23 Q. Yes.

24 A. I don't believe, anything. It was just to
25 construct a building.

26 Q. Was there anything in the proposal, that
27 you recall, that was not implemented before you left
28 Southwest Marine?

1 A. I don't recall. I'd have to go back and
2 look at the proposal and look at the building, and look
3 at everything else.

4 Q. Now, in some of your prior testimony in
5 another matter, apparently, you were involved in
6 putting together a proposal relating to sandblast
7 operations; is that correct?

8 A. I contributed to that proposal.

9 Q. Okay.

10 A. Only in getting it started and getting,
11 you know -- the points of why we needed it. It was
12 actually put together, like I said, by the proposals
13 department.

14 Q. And is it your recollection that the
15 recommendations in that proposal, although initially
16 rejected by Herb Engel, were eventually implemented?

17 A. To some degree.

18 Q. Okay.

19 A. I don't think it was actual building and
20 all that stuff. But, yes.

21 Q. Who was responsible for the implementation
22 of the sandblast facility?

23 A. I think it was David Engel. And I think
24 it was spawned by a letter that we had gotten from, as
25 I recall, the tank farm, Chevron; cease-and-desist
26 letter, saying if we contaminated their property any
27 longer, that they would have to take action. There was
28 a series of those letters over the years.

1 Q. Did you ever observe sandblast operations
2 on the marine railway?

3 A. Yes.

4 Q. Have you observed any sandblast operations
5 on marine railways since you've left Southwest Marine
6 in 1995?

7 A. No.

8 Q. In connection with sandblasting on marine
9 railways, did Southwest Marine take any actions to
10 contain sandblast grit on those operations?

11 A. In the beginning, the containment was over
12 the top, as I recall. But they eventually contained
13 the underneath. But there was quite a few vessels
14 that, as I recall, was done with no containment on the
15 bottom; just over the top, tented.

16 Q. Do you recall the period of time when
17 containment underneath was implemented?

18 A. Had to be in '93, -4, somewhere in there,
19 I believe.

20 Q. Were you ever aware of any removal of
21 sandblast grit or other material from underneath the
22 marine railway?

23 A. When we did a job, we cleaned up, if
24 that's what you're talking about.

25 Q. So in the normal course of business after
26 a job, sandblast grit would be cleaned up?

27 A. Like I said, in the latter part. I don't
28 exactly -- I can't remember what exactly we did prior

1 to them containing underneath. They actually put
2 plywood and everything else on the railways at one
3 point in time, to stop it from falling through and into
4 the ground underneath. But that wasn't always like
5 that, so --

6 Q. Are you aware of whether or not the ground
7 underneath was ever cleaned up, or had sandblast grit
8 removed, during the period of time you were at
9 Southwest Marine?

10 A. I'm sure it was. I don't know how often.

11 Q. Whose responsibility would it have been to
12 do that?

13 A. It would have been between the facility
14 and the dock master, which would have been Mr. Vitcum.

15 Q. Can you spell that for us, please.

16 A. No.

17 Q. Okay.

18 A. V-i-t-c-u-m, or something like that.

19 V-i-t-c-u-m. Something close.

20 Q. Okay. Mr. Von Fange, I'd like to now turn
21 your attention to asbestos removal. And I believe
22 you've testified previously -- something to do with
23 asbestos water. And one of the allegations in your
24 complaint was that asbestos water was not properly
25 disposed of, and ran into San Diego Bay. That's an
26 allegation, I'll represent to you, in a complaint.

27 And my question to you is: Do you have
28 any recollection of asbestos water not being properly

1 disposed of and running into the bay?

2 A. Wasn't with the complaint with -- I had
3 with Mr. Majors. I have to look at the Keytom. I
4 haven't looked at it in a while, so I don't know.

5 Q. My question, apart from the allegation of
6 whether it's there or not -- are you familiar with the
7 term "asbestos water"?

8 A. Yes.

9 Q. And do you have any recollection of
10 asbestos water being pumped or otherwise disposed of in
11 San Diego Bay?

12 A. There was some issues on the Ex-Strauss,
13 and I would have to go back and look at the documents
14 before I say anything else. I don't know at this time.

15 Q. You mentioned the Ex-Strauss?

16 A. Yes.

17 Q. What is the Ex-Strauss?

18 A. That was a vessel that Southwest Marine
19 had a contract on. And there was an issue with
20 asbestos water on the Ex-Strauss, and it was brought up
21 and testified to in the other complaint. But I don't
22 recall specifically it being in the bay. I'd have to
23 look.

24 Q. Okay. Do you recall the period of time in
25 which the Ex-Strauss was being worked on at Southwest
26 Marine?

27 A. In the '90s, early '90s. '92, '93,
28 somewhere. '91. Somewhere around in there.

1 Q. Other than whatever was the incident with
2 the Ex-Strauss, do you recall any other incidences
3 related to asbestos water?

4 A. Not at this time, no.

5 Q. So other than the Ex-Strauss, you don't
6 have any information related to the disposal of
7 asbestos water?

8 MR. DeLANO: Objection; asked and answered.

9 THE WITNESS: No.

10 MR. McDONALD: I think that's it. I don't have
11 any further questions.

12 MR. DeLANO: You're done?

13 MR. McDONALD: Yes.

14 MR. DeLANO: I have no questions. We are done.

15 MR. MILLER: Gary's going to remain silent?

16 MR. MAJORS: You wanted me to do 14 hours?

17 MR. McDONALD: Let's go off the record here.

18 (Discussion off the record)

19 BY MR. McDONALD:

20 Q. Let's go back. Mr. Von Fange, I'd like to
21 refer you to the photographs that have been
22 collectively labeled as Exhibit 62. On some of those
23 pages, there are what appears to be labels with
24 handwriting on them, describing those pictures. My
25 question, Mr. Von Fange, is: Do you recognize that
26 handwriting?

27 Let me first ask: Is it your handwriting?

28 A. No, it's not.

1 Q. And do you recognize that handwriting as
2 to who it might be?

3 A. It may be from Jim Triplett, but I'm not
4 sure.

5 Q. Were these labels that were on these
6 photographs in the proposal book --

7 A. Yes.

8 Q. -- that you referred to?

9 A. I'm sorry. Yes.

10 MR. McDONALD: Okay. What I'd like to do is
11 have this deposition sent to Mr. Miller, counsel to the
12 witness. Stipulate that it will be signed under
13 penalty of perjury. It will be returned within 30 days
14 after being sent to Mr. Miller. And if not signed, it
15 can be used as if signed in full.

16 MR. DeLANO: So stipulated.

17 MR. MILLER: So stipulated. No problem.

18 THE REPORTER: Do you need a copy?

19 MR. DeLANO: Yes, please.

20 THE REPORTER: Thank you.

21 (Deposition adjourns at 10:36 a.m.)

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I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this ___ day of _____, 19__ ,
_____, (city) _____
(state.)

CHARLES VON FANGE

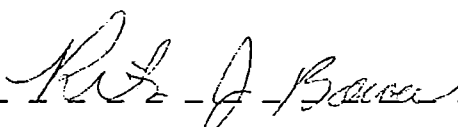
1 STATE OF CALIFORNIA,)
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I, Rita J. Bowen, Certified Shorthand Reporter in the State of California, do hereby certify:

That the witness in the foregoing deposition was by me first duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported by me stenographically and transcribed through computerized transcription under my direction; and the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 13th day of October, 1997.


Rita J. Bowen, CSR 3313