

IN THE CIRCUIT COURT OF THE 3rd
JUDICIAL CIRCUIT IN AND FOR
COLUMBIA COUNTY, FLORIDA

CASE NO.: CACE-18-000105-CA

ADD HELIUM, LLC
a Delaware Limited Liability Corporation
and PETER SOTIS, individually,

Plaintiffs,

vs.

INTERNATIONAL ASSOCIATION OF NITROX
DIVERS, INC.,
a Florida Corporation,

Defendants.

**PLAINTIFFS' NOTICE OF FILING DEPOSITION OF MARK FOWLER
IN SUPPORT OF MOTION TO COMPEL DISCOVERY**

Plaintiffs, ADD HELIUM, LLC and PETER SOTIS, by and through undersigned counsel, in support of their Motion for Reconsideration file the Transcript of Deposition of Mark Fowler taken on October 18, 2018 in support of Plaintiff's Motion to Compel Discovery.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished by e-mail this 8th November, 2018 to: Jennifer C. Biewend, Esq., Robinson, Kennon & Kendron, P.A., 582 W. Duval Street, Lake City, Florida 32055; Telephone: 386-755-1334; Email: jcb@rkkattorneys.com.

KENNEDYS AMERICAS LLP
1395 Brickell Ave.
Suite 610
Miami, FL 33131
Tel.: (305) 371-1111
E-Mail: neil.bayer@kennedyslaw.com

By: /s/ Neil Bayer
Neil Bayer, Esquire
FBN: 615684

UNOFFICIAL
DOCUMENT

1 IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
2 IN AND FOR COLUMBIA COUNTY, FLORIDA

3

4

5 ADD HELIUM, LLC, a Delaware
6 Limited Liability Corporation,
7 and PETER SOTIS, individually,

8 Plaintiffs,

9 vs.

CASE NO.: CACE-000105-CA

10 INTERNATIONAL ASSOCIATION OF NITROX
11 DIVERS, INC., a Florida Corporation,

12

13 Defendant.



14

X

15

16

DEPOSITION OF

17

MARK FOWLER

18

Taken on behalf of the Plaintiffs

19

20

DATE TAKEN: October 18, 2018

21

TIME: 9:00 a.m. - 11:00 a.m.

22

PLACE: Third Circuit Court Reporters & Video
136 Southwest Nassau Street
Lake City, Florida 32025

23

Examination of the witness taken before:

24

Carol Day, CSR, RPR, Court Reporter
Notary Public, State of Florida at Large

25

26

27

28

THIRD CIRCUIT REPORTERS & VIDEO

29

Toll-Free: 855-850-7038
www.AllCourtReporters.com

1 A P P E A R A N C E S :

2 NEIL BAYER, ESQUIRE
3 KENNEDYS CMK, LLP
4 1395 Brickell Avenue
5 Suite 610
6 Miami, Florida 33131
7 305-371-1111
8 neil.bayer@kennedyscmk.com

9 Appearing on behalf of the Plaintiffs

10 JENNIFER C. BIEWEND, ESQUIRE
11 ROBINSON, KENNON & KENDRON, P.A.
12 582 West Duval Street
13 Lake City, Florida 32055
14 386-755-1334
15 jcb@rkkattorneys.com
16 cp@rkkattorneys.com

17 Appearing on behalf of the Defendant

18 Also Present: Peter Sotis

19

20

21

22

23

24

25

1	I N D E X	Page 3 Page
2	TESTIMONY OF MARK FOWLER:	
3	Examination By Mr. Bayer	4
4	CERTIFICATE OF OATH	61
5	CERTIFICATE OF REPORTER	62
6	ERRATA PAGE	64
7		
8		
9		
10	EXHIBITS	
11	PLAINTIFF'S EXHIBITS MARKED FOR IDENTIFICATION:	
12	Plaintiff's Exhibit 1 (Letter dated March 8, 2017)	30
13	Plaintiff's Exhibit 2	45
14	(Letter dated March 9, 2017)	
15	Plaintiff's Exhibit 3	51
16	(Letter dated September 11, 2018)	
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THEREUPON:

2

MARK FOWLER,

3 was called as a witness and, after having been duly sworn,

4 was examined and testified as follows:

5

EXAMINATION

6 BY MR. BAYER:

7 Q. Could you state your name for the record, please.

8 A. Mark Edward Fowler.

9 Q. And can I ask your home address, please,

10 Mr. Fowler.

11 A. 570 Northwest Zack Drive, Lake City, Florida.

12 Q. Have you ever had your deposition taken before?

13 A. I have. Not in this matter, but yes.

14 Q. Okay. I will just run through the ground rules
15 only because it's sort of for everybody's benefit, my ground
16 rules anyway.

17 Number one, this is just a question and answer
18 session, and I want to know what you do know or what you may
19 not know. If you don't know and you don't recall, those are
20 perfectly acceptable answers. Sometimes witnesses strain to
21 find an answer and they don't do themselves or any of the
22 lawyers any good.

23 Number two, if you could let me finish my question
24 before you answer that helps the court reporter out.

25 Number three, if you could give me verbal responses

1 because sometimes we will get back a transcript and it says
2 witness shook head and we don't know which direction your
3 head was going in and whether it was a yes or a no.

4 Number four, if you ever don't understand one of my
5 questions just tell me and I will ask it a different way.

6 Number five, you may hear Jennifer object to the
7 form of a question. You can still answer it. She is just
8 preserving the record for something she may or may not want
9 to raise with the judge in the future.

10 And finally, if you ever need to take a break for
11 any reason just tell me. There's no ball and chain here.

12 A. Okay.

13 Q. So are you presently employed?

14 A. Yes.

15 Q. Okay. What do you do presently?

16 A. I am a dive instructor and I have my own dive shop.

17 Q. Where is your dive shop?

18 A. Located here in Lake City.

19 Q. What's the name of your dive shop?

20 A. Lake City Dive Center.

21 MS. BIEWEND: May I interrupt real quick?

22 Can we go ahead and put on the record what we
23 discussed?

24 MR. BAYER: Oh, yes. I am sorry.

25 We have a pending motion for protective order in

1 this file, and I represented to the Court yesterday that
2 -- and the Court has not ruled -- that to the extent
3 that I may ask questions today of the witness that might
4 be covered by a protective order, if granted, that, you
5 know, we would bring those questions to the Court at a
6 later time as to whether or not they would be
7 admissible.

8 MS. BIEWEND: And I don't need to object to
9 preserve my objection on those specific issues?

10 MR. BAYER: Yes, your objections are fully
11 preserved.

12 MS. BIEWEND: Okay. Thank you.

13 BY MR. BAYER:

14 Q. So I think I left off -- the name of your dive shop
15 again is what? I am sorry.

16 A. Lake City Dive Center.

17 Q. What particular types of diving does Lake City Dive
18 Center teach, what certifications?

19 A. We teach everything from snorkeling all the way
20 through rebreathers, cave, Trimix.

21 Q. And what agencies are you accredited with?

22 A. Right now I am currently certified with IANTD to
23 teach at the instructor trainer level. SDI, TDI, ERDI, I am
24 an instructor trainer with those folks also, and PADI.

25 Q. Can I ask you a little bit about your diving

1 experience and sort of your diving resume, would be a good
2 way to put it?

3 A. Uh-huh. You want me to just give you an overview?

4 Q. Yes.

5 A. I was a Virginia state trooper for 32 years. I
6 retired back in 2013. Most of my whole career I spent with
7 the scuba unit. I also spent the last probably ten or 15
8 years of my career as the senior diver and one of the team
9 instructors.

10 I have been an instructor or instructor trainer
11 probably for the last ten or 12 years also.

12 Also I hold my 100 ton captain's license and have
13 some pretty extensive experience, you know, running charter
14 boats, both diving and nondiving.

15 MS. BIEWEND: And also once you get to the acronyms
16 and things like that, although you annunciate very well,
17 just make sure the court reporter is getting the
18 acronyms that will start flowing.

19 BY MR. BAYER:

20 Q. And what diving certifications do you presently
21 hold?

22 A. Gosh, I couldn't -- I would have to have them in
23 front of me --

24 Q. Okay.

25 A. -- but I hold a lot. Like I said, pretty much I

1 guess a general answer would be I hold everything from a
2 snorkeling instructor or instructor trainer up through
3 rebreather instructor, instructor trainer, as well as cave,
4 Trimix, and some we consider the higher-end courses.

5 Q. Are you presently affiliated with the IANTD?

6 A. Yes, as an instructor.

7 Q. How long have you been affiliated or how many
8 positions with IANTD?

9 A. I have been an instructor and instructor trainer
10 probably for, gosh, 20 years, 22, 23 years with IANTD. I
11 don't remember exact.

12 I served as their training consultant back in '13
13 and became their training director at some point thereafter
14 up until a couple of months ago.

15 Q. Now, you indicated that you became a training
16 consultant with IANTD in 2013?

17 A. Yes.

18 Q. Other than the certifications and the teaching
19 credentials that you held from IANTD, was that your first
20 affiliation with the organization in terms of working for
21 them?

22 A. Yes.

23 Q. Was that a salaried position?

24 A. No.

25 Q. Approximately how much of your time did you devote

1 to your position as training consultant with IANTD?

2 A. It varied. It's hard to really recount because a
3 lot of times there were phone calls while I was doing other
4 things. But I guess if you wanted me to put it into like
5 hours as a consultant, I probably put in 15, 20 hours a week.

6 Q. And approximately how long did you serve as
7 training consultant before changing over to training
8 director?

9 A. Approximately a year.

10 Q. Okay. What were your responsibilities as a
11 training consultant with the organization?

12 A. Just to gather business for the company.

13 At the point I came on board the company was
14 located out in South Dakota, and I was involved in kind of
15 trying to revamp and bring the company back to north Florida.

16 Q. Do you have any ownership interest in IANTD
17 presently?

18 A. No.

19 Q. Have you had any ownership interest in it in the
20 past?

21 A. No.

22 Q. In your job as training consultant you were not
23 compensated monetarily in any way for that position?

24 A. Sort of the deal I had with them was that for
25 certifications and training materials, I didn't pay for any

1 of that. So if I had a class that I was teaching, the
2 company covered my materials that I had to supply for the
3 students and the certification costs for those students.

4 Q. So it was a sort of quid pro quo, you gave your
5 services --

6 A. Yes.

7 Q. -- and in return they didn't charge you for
8 training materials that they otherwise would have?

9 A. Yes, correct.

10 Q. In terms of when you say gathered business, what
11 were you doing specifically?

12 A. I would just go out and talk to other divers,
13 shops, and try to promote and sell IANTD to those instructors
14 and facilities.

15 Q. Who were the directors of IANTD when you started in
16 2013?

17 A. When I started Tom Mount was the CEO owner, Joe
18 Dituri was I guess a coowner or shareholder, also the
19 training director at that point, and David Mount, which was
20 Tom Mount's son.

21 Q. What position did David Mount hold?

22 A. Last going out he was the -- I guess the chief
23 financial officer. I really don't know. To be honest with
24 you, I don't know.

25 Q. In your tenure as a training consultant, did you

1 have anything to do with the day-to-day management of the
2 company?

3 A. That's a hard question. Yes; but as far as
4 decision-making, that was done by Tom, Joe and David Mount.

5 Q. What types of management decisions would you have
6 been involved in or were you involved in?

7 A. Working with shops and instructors, making deals as
8 far as, you know, this is what I intended to do for you if
9 you came and worked for us, negotiating, you know, a path for
10 that dive facility or instructor to come on board with IANTD.

11 Q. Were you in any way in your tenure as training
12 consultant responsible for the development or modification of
13 the IANTD standards?

14 A. As a consultant, no, even though opinions were
15 usually asked and comments were given. But as far as having
16 any impact on those, I don't feel like I did.

17 As training director, probably even less.

18 Q. To the best of your knowledge, who is responsible
19 for modifications to the training standards or updating of
20 the training standards?

21 A. Luis Pedro.

22 Q. Is there anyone else other than Luis who is
23 involved in that?

24 A. John Jones carried pretty heavy weight there. Tom
25 always had input.

1 Q. And you indicated in response to my question that
2 there might have been times where you had some involvement.

3 Can you give me an example?

4 A. Well, like for example, when an issue would arise
5 and we were tweaking or kind of refining a particular
6 standard maybe because of an industry shift or whatever, we
7 would talk about -- you know, just as we are sitting at this
8 table, we would all sit in the conference room and talk about
9 everybody's kind of input as to what they felt the standards
10 should be or should we modify or should we adjust, and we
11 would all talk about it. Then from that point the standard
12 would be drafted.

13 At one point any changes in standards were put
14 before a board of advisors. And probably for the last year
15 or two that really hasn't happened, so it was pretty much
16 done just in-house with all of us.

17 MS. BIEWEND: Can I interrupt because the Court
18 just entered an order?

19 MR. BAYER: Okay.

20 MS. BIEWEND: And he granted a limitation on the
21 deponent's income, the current diving certifications of
22 Brock Cahill, the source of documents and transcripts in
23 possession of defendant, opinions regarding fault in the
24 death of Robert Stewart, other than the fault of
25 plaintiffs.

1 MR. BAYER: Okay.

2 MS. BIEWEND: So it's like the first order but
3 modified by a little bit.

4 MR. BAYER: What was the last question?

5 (The court reporter read back the previous
6 question.)

7 BY MR. BAYER:

8 Q. Now, you indicated that previously there was a
9 board of advisors that would weigh in on the modification of
10 standards?

11 A. Yes.

12 Q. Okay. When that board of advisors was in place,
13 who was on it?

14 A. There was a number of people. Myself, Peter Sotis.
15 I couldn't name them all. It's about probably 15 or so
16 people that were on that board.

17 Q. Okay.

18 A. But I couldn't tell you everybody.

19 Q. So if there was a proposed or contemplated change
20 of standard would it be disseminated to the people on that
21 advisory board for comment?

22 How would it work?

23 A. Luis would prepare a document with the standard and
24 the proposed changes that would be e-mailed out to all the
25 board of advisor members, even of which I am a member of that

1 board of advisors, and we would make comments based on our
2 experience and our input from diving, and we would make
3 recommendations, and then the company, which usually
4 consisted of Luis and Tom and John Jones, would sit and
5 pretty much make the last -- I guess the last adjustment to
6 it.

7 Q. And I guess there came a point in time when that
8 advisory board was either let go or ceased to be the --

9 A. They are still there. As far as I know as of today
10 the board of advisors is still in place. It's just the use
11 of the board kind of lessened and lessened as standards would
12 change and be updated.

13 And some updates might be something as simple as
14 changing some wording, changing -- just refreshing it a
15 little bit, not necessarily changing the actual standard.

16 Q. As the involvement of the advisory board
17 diminished, who became responsible for making the changes in
18 standards? Was it Luis?

19 A. Yes, Luis probably -- Luis made all the changes,
20 did all the adjustments. Tom would usually give an okay.
21 John Jones would have probably the bulk of the input with
22 some of those that would occur there.

23 Q. I am going to come back to this later on, but just
24 to keep it in context, there were several changes to
25 standards made after the death of Rob Stewart.

1 Do you know whether or not those involved the
2 advisory board or whether those were unilateral modifications
3 that Luis had proposed and enacted?

4 MS. BIEWEND: Object to form.

5 MR. BAYER: You can answer.

6 THE WITNESS: I can answer?

7 MS. BIEWEND: Yes. I am just preserving. Don't
8 worry about it.

9 THE WITNESS: So the best of my recollection is
10 that the changes were made by Luis and Tom and John
11 Jones without going to the board of advisors for those
12 particular --

13 MS. BIEWEND: Do you mind?

14 (Discussion off the record.)

15 BY MR. BAYER:

16 Q. And I believe in response to that answer that those
17 were changes that Luis himself developed?

18 A. Luis and Tom and John Jones as a group, but Luis
19 was the one that was -- made all the modifications to the
20 standards.

21 Q. I think you indicated to me that there came a point
22 in time when you assumed the role of training director?

23 A. Yes.

24 Q. When did that occur?

25 A. I don't recall the exact date, but I think around

1 2014, close to 2015. 2014, somewhere around there.

2 Q. And how long did you hold that position for?

3 A. I held that position up through -- I think it was
4 around May or June. Maybe June.

5 Q. Of this year?

6 A. Yes.

7 Q. What were your responsibilities as the training
8 director?

9 A. Supposedly it was to keep abreast of our standards
10 and procedures, handle instructor issues as they arose.

11 At the time I was responsible for investigating any
12 complaints that came in on our instructors, amongst helping
13 answer the phone on various days when I was there.

14 Q. So helping with the certifications when they would
15 come in to be certified, answering questions, liasoning with
16 other training agencies and so forth?

17 I am sorry. I am taking notes.

18 But I have a list. The first thing you indicated
19 on that list was that you would, as training director, keep
20 abreast of the standards and procedures.

21 How would you do that; what did that entail?

22 A. It would be easier for me just to tell you that
23 Luis took care of all that.

24 Q. Okay. So even though it was in your wheelhouse, so
25 to speak, it was something that was handled by Luis; would

1 that be a fair statement?

2 A. Yes.

3 Q. Okay. I think the next thing was that -- I just
4 deleted one, but I think you said you kept abreast of
5 instructor issues as they arose?

6 A. Yes.

7 Q. Okay. Can you give me an example of what might be
8 an instructor issue?

9 A. So if we received a call or a complaint that an
10 instructor didn't follow standards with a course, or that
11 somebody had done something in error, then usually I would do
12 a follow-up to investigate to find out if that was, in fact,
13 the truth, if that happened, and then move it through a
14 process that at the time I had prepared as far as a procedure
15 to follow for that.

16 Q. How would you go about investigating complaints
17 specific to instructors?

18 A. Normally I would initiate a phone call with the
19 instructor.

20 Of course, let me back up on that.

21 I would talk to the complainants and gather
22 information from that standpoint. I would contact the
23 instructor and discuss the information that had been brought
24 forth or provided, ask for a written response. And, you
25 know, interview any witnesses or any back -- you know, I call

1 it backup information, that maybe the instructor had
2 witnesses to disprove, and I would try to gather all the
3 facts that revolved around that incident and prepare a
4 recommendation to the board of directors, which at the time
5 was Luis, Tom and David Mount, as to what I found and the
6 recommendations for any disciplinary for that.

7 Q. In conjunction with the death of Rob Stewart, did
8 you receive a formal complaint regarding Peter Sotis?

9 A. I did not.

10 Q. Do you know whether anybody at IANTD did?

11 A. That I don't know.

12 Q. Okay.

13 A. I mean, I don't know. I know -- you know, I know I
14 had received a phone call, and I don't recall who from, that
15 there had been an accident. I communicated that to Tom and
16 John Jones at the time because they were together in the
17 office, and was inquiring whether I needed to go to south
18 Florida and investigate or look into the matter, and was told
19 that it had nothing to do with the training director, and so
20 subsequently I didn't get involved in that part.

21 Q. Did there come a point later in time when you did
22 any type of investigation regarding the death of Rob Stewart?

23 A. I never did any investigation into that incident at
24 all.

25 Q. Okay. Do you know whether anybody else at IANTD

1 did?

2 A. I know Tom. I know John Jones. And Luis, I am
3 really not sure what his involvement was as far as actual
4 talking to folks and getting statements and so forth.

5 Q. Okay. Do you know whether IANTD itself took
6 statements from any people surrounding the death of Rob
7 Stewart?

8 A. I don't know. I do know that they got information
9 from somewhere because I heard discussions and so forth.
10 Where that information came from, I don't recall, and I don't
11 believe I was privy to that at that time.

12 Q. Now, you indicated -- and I am going to come back
13 -- I am jumping around and I am sorry -- that you had a
14 process and procedure.

15 Was that something that was a written process and
16 procedure that you had developed?

17 A. There was a due process, I guess, if you will, that
18 was in, I guess, what would be considered the instructor
19 manual.

20 Q. Okay.

21 A. There was some question as to whether that due
22 process was what we actually followed or what we didn't.
23 That was basically what I had operated off of. It was not
24 part of our standards, but it was in one of the instructor
25 manuals.

1 Q. I am not going to ask you the source of the
2 information that IANTD had, but can you tell me what
3 materials were provided to them that factored into their
4 investigation of the death of Rob Stewart?

5 A. You know, again, I don't know whether -- I don't
6 know what their process was other than verbal communication
7 with folks, talking, probably e-mails.

8 I never saw any letters that I recall that came in
9 as far as actual complaints and so forth. It was a couple of
10 weeks after the accident before any of that really took place
11 anyway.

12 MR. BAYER: Just as a housekeeping matter, I am
13 going to put just a notation on the record that --
14 because I intend to move for a rehearing on the third
15 element of the judge's orders -- I am fine with not
16 looking at income, I am fine with not looking at
17 certifications.

18 I don't -- I think it was the third one, was the --
19 and I don't have the order other than looking at it --
20 oh, you have a copy there?

21 MS. BIEWEND: Well, my only copy.

22 MR. BAYER: So item Number 3 in the court order,
23 the source of documents and transcripts in possession of
24 the defendant.

25 MS. BIEWEND: I think he said he doesn't know all

1 that anyway.

2 MR. BAYER: Yes, but I just wanted to -- I think
3 it's going to come up later in the deposition, so I just
4 want to voice a -- reserve my rights to possibly recall
5 the witness at a later point in time if the Court
6 reconsiders that.

7 MS. BIEWEND: I believe you probably have that
8 right.

9 BY MR. BAYER:

10 Q. Okay. So as you sit here today do you know any of
11 the materials that either Mr. Mount or Mr. Jones or Mr. Pedro
12 reviewed?

13 MS. BIEWEND: Asked and answered.

14 THE WITNESS: I don't recall. I don't recall
15 seeing anything. I don't recall seeing anything that
16 came in as far as -- if there was, I am drawing a blank
17 on it, but I don't recall that.

18 BY MR. BAYER:

19 Q. Approximately what percentage of your professional
20 time did you devote to your position as training director for
21 IANTD?

22 A. Again, probably equal to what I did as a
23 consultant, because really as a consultant I was doing the
24 training -- mostly the training director duties anyway, but
25 probably 20, 25 hours a week. Not every week, but if I

1 wasn't out teaching for myself or doing things that I had to
2 do, I was usually there at the IANTD office.

3 Q. In your capacity as training director, did you have
4 any involvement with quality assurance?

5 A. Yes.

6 Q. Okay. What would your involvement have been?

7 A. When -- it just depended upon what came across my
8 desk, so to speak. There were complaints on instructors that
9 I investigated that I brought to a logical conclusion and
10 ended in various suspensions, expulsions and so forth, not
11 determined by me, but determined by a panel, a review board
12 that we would assemble, that would make the final decision on
13 what the -- what action was going to be taken. So I was
14 involved in that process, but only in complaints that came in
15 to me.

16 So if Tom was working on something, if Luis was
17 working on something, e-mails went back and forth,
18 communications went back and forth, but they didn't
19 necessarily go through me to go back and forth.

20 I know sometimes I would see -- I would kind of
21 catch an e-mail going with my name on it, but that was
22 basically as coming from the office of the training director,
23 if you will.

24 Q. Okay. Just so I understand the structure, if a QA
25 board was to be convened that would happen one of two ways,

1 either it could be in conjunction with some type of complaint
2 or investigation that you were undertaking or that could also
3 take place without your involvement if it was something that
4 either Tom, Luis or John were working on individually or in
5 tandem?

6 A. Yes.

7 Q. With respect to the Rob Stewart matter, did you
8 personally receive any direct complaint?

9 A. I never --

10 MS. BIEWEND: Asked and answered.

11 I am sorry.

12 THE WITNESS: I never really recall receiving an
13 actual like complaint that, you know, they want to
14 complain about this or complain about a specific.

15 I was called and they said that there had been an
16 accident, and that was really about the extent of that
17 part of it.

18 BY MR. BAYER:

19 Q. Were you asked to investigate the Stewart death in
20 any fashion?

21 A. No. I was -- to the contrary, I was told in the
22 beginning not to proceed with anything.

23 Q. In your position as training director, did you have
24 any involvement in the impaneling of a QA board to review
25 Mr. Sotis' potential liabilities in the Stewart death?

1 A. I believe Tom Mount assembled the quality assurance
2 board for that one.

3 So the answer to that question is I don't recall
4 being involved in that process as all.

5 Q. So then you would not have been involved in either
6 the impaneling of the board or selection of any of the people
7 who were on the board?

8 A. Not for that one, I would not have been. There
9 again, depending on what I was dealing with, I might have
10 assembled a board for cases that I handled, but this case I
11 did not get involved in that process.

12 Q. Does IANTD have any type of formal protocol for
13 investigation of injuries or deaths of divers?

14 A. Yes.

15 Q. Is that something that's written down?

16 A. It is.

17 Q. Is it in the standards or instruction manuals or is
18 it an internal document?

19 A. It is in the standards and procedures now. It
20 hasn't always been. That's what I was kind of referring to a
21 few minutes ago.

22 That document was part of, I guess, our instructor
23 manual, if you will. It was in there, it's been in there,
24 but it was never part of the actual standards and procedures.
25 And that was one of the items that we were kind of working

1 on, seems like forever, trying to develop the due process for
2 these investigations.

3 Q. Was that something that was in the standards and
4 procedures at the time of Rob Stewart's death or was that one
5 of the subsequent modifications to the standards and
6 procedures?

7 A. I don't recall, but I think that came after. I am
8 not 100 percent on that one.

9 But the document existed in our instructor manual,
10 which was a guide for instructors to use, a very old and
11 outdated manual, but it was still there, and I just don't
12 recall the date that it was made part of the standards and
13 procedures. I think it would have been after, I am pretty
14 sure.

15 Q. When you say it was an old and outdated instructor
16 manual, do you remember, perhaps, the version that it was?

17 A. No, I don't.

18 Q. Have there been multiple versions of that
19 instructor manual?

20 Is that something that's updated constantly or is
21 that --

22 A. That manual, to my knowledge, has been the same
23 ever since I came on with IANTD. I don't think it had
24 changed.

25 Q. With respect to the modification of that standard

1 which was after the Stewart death, do you know whether it was
2 something that was enacted going forward or whether it had
3 retroactive application?

4 A. That I don't know. Yes, I don't know.

5 Q. I am not asking for verbatim, but can you tell me
6 what that change was?

7 A. Gosh. Most of the change I prepared to -- you
8 know, that's the background I came from, so naturally when I
9 started doing these investigations not having a four-minute
10 process to go through was confusing to me because I was used
11 to investigating crimes and so forth with my career and there
12 was a clear path of what you had to do, what rights people
13 had and so forth.

14 We had kind of restructured that document to have a
15 better due process, so it would be clear what the process was
16 when a complaint was made, what the process was for appeals,
17 you know, letters when a response was required to be
18 submitted by the instructor and so forth.

19 Q. All right. And those were all things, again, that
20 were implemented after the death of Rob Stewart?

21 A. I believe it was after.

22 Q. Okay. And would they have been implemented after
23 the death of Rob Stewart and before the suspension of Peter
24 Sotis?

25 A. I don't think I can answer that without seeing the

1 dates.

2 The document had been there for a long time.

3 Q. When you say the document, you are talking about
4 the reference in the training manual?

5 A. Yes, the due process part had been there for a long
6 time, and we -- as the complaints were coming in, we needed
7 to polish that process and make it better and make it more
8 understandable. I don't know if that was started prior to
9 the Rob Stewart accident or after, but I know some changes
10 took place after.

11 Q. Do you know whether or not -- well, do you know who
12 is IANTD's legal counsel?

13 A. Craig Jenni, I believe.

14 Q. Do you know whether Mr. Jenni had any involvement
15 in the modification of the standard that we are discussing?

16 A. Specifically? There may have been something that
17 might have been -- like I may have proposed a paragraph,
18 let's say, a paragraph going over due process. It may have
19 gone to him to get his approval, you know, what do you think,
20 and it would have come back, you know, kind of as a CYA to
21 make sure we are staying within the legal realms of what we
22 are doing.

23 I don't recall anything specific around -- like I
24 said, the Rob Stewart was pretty much handled by Tom, John
25 Jones and Luis Pedro.

1 Q. So you may or may not know whether counsel was
2 involved?

3 And I am not talking about the investigation as
4 much as I am about the change of standard.

5 And I don't want -- I am not allowed to ask you
6 what you said to Mr. Jenni or specifically what Mr. Jenni
7 told you.

8 A. Right. I know just from me personally there were a
9 couple of situations where I would e-mail Mr. Jenni and say,
10 We are proposing to change this to this, how does this sound
11 to you, and, you know, he would give us his feedback on that
12 part.

13 Q. And that applied to the change in this particular
14 standard; is that correct?

15 A. It was during my process of trying to revamp that
16 whole due process standard as to creating a path that was
17 very clear and precise as it pertained to investigations and
18 complaints.

19 Q. Okay. With respect to the impaneling of the QA
20 board that looked at Mr. Sotis' potential liability in the
21 Stewart death -- I am sorry if I have asked you this -- I
22 think you told me that you were not the person who selected
23 the board?

24 A. No.

25 Q. For the record, do you know who was on that

1 particular board?

2 A. No. No.

3 Q. Do you know what information was given to the board
4 in conjunction with their review of either Mr. Sotis' actions
5 or Mr. Stewart's experiences?

6 A. I was not privy to that.

7 Q. Do you know if the board prepared any type of
8 written report or letter?

9 A. Not that I am aware of.

10 Q. Did you have any input into the initial suspension
11 of Mr. Sotis for the events surrounding the death of Rob
12 Stewart?

13 A. I was -- yes, I did.

14 Q. Can you tell me what your involvement was?

15 A. We had discussion as to what the outcome was going
16 to be and the path that we were going to take. I recall
17 discussions about the severity of things. There were
18 discussions about standards that maybe were not in place when
19 the accident took place that were in place shortly
20 thereafter. And I just recall having input that the two-year
21 suspension with a path to come back was kind of agreed upon
22 by all of us at IANTD.

23 That was a group discussion. I did not have the
24 final say in it. I know my name -- my signature is on the
25 suspension letter to Mr. Sotis regarding that. Again, that

1 was just merely in part that that was supposed to be my
2 office that things were supposed to flow through.

3 Q. And I know you were looking at this --

4 A. Yes.

5 Q. -- and I have it here. So just to keep it clear,
6 this was -- I think it was Exhibit 5 to Mr. Mount's
7 deposition, but I am just going to mark it as Exhibit Number
8 1 to your deposition, and this is a March 8th 2017 letter to
9 Peter Sotis which is signed by you and Mr. Mount, and this is
10 the "suspension letter."

11 (Plaintiffs' Exhibit 1 was marked for
12 identification.)

13 BY MR. BAYER:

14 Q. So is that the letter you just referenced?

15 A. Yes.

16 MR. BAYER: I am going to come back to that in a
17 minute, but, Jennifer, just so you have a copy.

18 MS. BIEWEND: Thank you.

19 BY MR. BAYER:

20 Q. Now, going back to those elements that you have
21 just delineated, you said we.

22 So who is we that would have been involved?

23 A. The folks at IANTD, which would have been Tom, Luis
24 and John Jones.

25 Q. You indicated that you discussed what the outcome

1 would be?

2 A. The outcome as far as -- which is actually written
3 in this letter -- that the board had come back and ruled, I
4 guess, the suspension as we had it written in here.

5 Q. Okay.

6 A. Yes, yes.

7 Q. So when you said -- when you used the word -- and
8 it was your word -- outcome, the outcome, was that the
9 suspension?

10 A. Yes. It was a conclusion to that process at this
11 point.

12 Q. And the conclusion is what, what is delineated in
13 Exhibit 1?

14 A. Yes, if you are referring to the same copy of what
15 I have.

16 Q. Yes, I am. Yes. I think you talked about -- you
17 used the word path.

18 What did you mean by that?

19 A. Path means -- you know, with any quality assurance
20 issue there needs to be a clear path spelled out to reach a
21 logical conclusion or an end to the investigation as far as
22 the due process that's involved in that.

23 Q. And what was the path here?

24 A. The path here was exactly what we kind of put forth
25 in this letter.

1 Again, this path did not involve me personally in
2 each step. I wasn't really involved until we got to this
3 point.

4 And based on the information that Luis, Tom, John
5 Jones had come into, it went to the board, then the board
6 ruled their finding, and then this letter was basically
7 prepared by us -- or Luis and I and Tom -- and signed by Tom
8 and myself.

9 But the path was not -- the path that led us to
10 here, I am not sure exactly what that exact path was.

11 Q. Okay. Do you know what information the board
12 relied on in -- strike that.

13 Do you know what information the board relied on in
14 making its decisions?

15 A. No.

16 Q. Do you know what documents they looked at from the
17 investigation into the Stewart death, if any?

18 A. I was not privy to all of that.

19 Again, you know, Tom Mount was involved in a lot of
20 that. Luis was involved in a lot of that. John Jones was
21 involved in a lot of that.

22 And if there was documents -- I don't recall any
23 documents or seeing any information that came through other
24 than when we drafted -- after the quality assurance board
25 made their finding, we drafted this letter and mailed it or

1 sent it to Mr. Sotis.

2 Q. Okay. So this letter followed the impaneling and
3 the decision of the QA board?

4 A. Yes.

5 Q. When in relation -- I will just ask you to assume
6 that I believe Rob Stewart died on January 31st of 2017.

7 Does that sound right?

8 A. Yes.

9 Q. And this letter was issued on March 8th, 2017, so
10 roughly five weeks later.

11 When in relation to Mr. Stewart's death was the QA
12 board impaneled?

13 A. I don't recall what date. It was at some point
14 after.

15 Again, for whatever reasons, I was not really
16 involved in the actual investigation, so I just don't have
17 any knowledge of when certain things were discovered and
18 found.

19 Q. And, again, the board members were -- and I have
20 them here -- Mr. Dituri --

21 A. Joe Dituri was not a board member at this point.
22 It was just Tom Mount and Luis Pedro.

23 Q. No, I mean, so the QA board then would have been
24 Tom and Luis?

25 A. Well, the QA board would have been assembled by Tom

1 and Luis.

2 Q. Yes. And who was on the QA board?

3 A. I am not sure who was on it. That was a board, I
4 believe, assembled by Tom and Luis.

5 Q. Do you know whether the QA board met live or
6 whether their interaction was by e-mail and phone?

7 A. I don't know how they -- normally it's done by
8 e-mail and between the board members, but I have no personal
9 knowledge of that.

10 Q. Do you know what information was given to the QA
11 board to facilitate their analysis?

12 A. No.

13 MS. BIEWEND: Objection. Asked and answered.

14 BY MR. BAYER:

15 Q. And again, you don't know when the board was
16 impaneled?

17 A. I don't have any -- I have no recollection of that.

18 Q. Do you know whether or not the board reached out to
19 Mr. Sotis for any comments or information as they were
20 deliberating?

21 A. No, because I was really not in that process.

22 Q. Okay. Is that something that's generally done?

23 Does a board look to the instructor involved for
24 information or do they look at things strictly from what is
25 provided to them by IANTD?

1 MS. BIEWEND: Form.

2 THE WITNESS: All of the above.

3 BY MR. BAYER:

4 Q. But you don't know one way or the other whether any
5 of the board members had any contact with Mr. Sotis --

6 A. It did not go through me if it did, so that I don't
7 know.

8 Q. Do you know when in relation to the issuance of the
9 March 8th suspension letter that the QA board made its final
10 determinations?

11 A. I know that the QA board, as we refer to it, it
12 made their decision and it communicated that to Tom and Luis,
13 and then this letter was drafted in response -- or after that
14 to respond to Mr. Sotis.

15 Q. Do you know how long it took the QA board to make
16 its decision?

17 How long did they have all this information from
18 instruction until recommendation to --

19 A. I don't remember when, and I don't believe there
20 was ever a timeline in place that required them to respond.

21 So again, because I wasn't involved in that panel,
22 I didn't monitor or keep up with the dates on that.

23 Q. When a QA board reports back to Tom and Luis, do
24 they issue a formal report of any kind?

25 A. Normally the QA board -- in that particular case I

1 am not sure. The ones that I was involved in in various
2 other cases, we would get a written response back from each
3 member of the QA board, and it could be anywhere from three
4 to four people, and they would rule what their motion would
5 be to either suspend, expel or modify, but they would give us
6 that.

7 Q. Going back to the elements you discussed, I think I
8 asked you who we was. We discussed the outcome. We
9 discussed the path.

10 The next element you listed I think was severity.

11 What do you mean by severity?

12 A. As far as what the outcome would be. You know, for
13 lack of a better way of putting it, you know, what action
14 would be taken against the instructor for what had taken
15 place.

16 Q. So severity would be suspension versus expulsion or
17 a reprimand or --

18 A. It could have been a reprimand, it could have been
19 suspension, it could have been expulsion. It could have
20 been, you know, probation. It could have been retraining.
21 It was just -- it just depended upon how the case was handled
22 and to what degree and what happened within that case.

23 Q. Prior to this event, do you have any opinions on
24 Peter Sotis' status as an IANTD instructor?

25 A. What do you mean by opinions?

1 Q. In other words, had he had any prior incidents or
2 complaints before the Rob Stewart death that you
3 investigated?

4 A. Not to my knowledge. I mean, Peter or Mr. Sotis
5 was a member of the board of advisors with IANTD and at that
6 point a very qualified instructor/instructor trainer in, you
7 know, good standing.

8 Q. Maybe that would have been a better way to put it.
9 Prior to the Rob Stewart death was Mr. Sotis in
10 good standing?

11 A. He was. And there was a point, and I just don't
12 recall the dates, but there was a point where I know
13 Mr. Sotis had contacted us and had actually gave a
14 presentation, and he was going to create his own training
15 agency.

16 So there was some -- and I don't recall the dates
17 when all that took place, but I remember up to that point he
18 was a current member of our board of advisors, you know, a
19 respected IT, instructor trainer, and, you know, had no
20 issues.

21 And then with the creation of his own training
22 agency, again there was a very professional conversation back
23 and forth about, you know, staying with IANTD versus doing
24 his own agency.

25 And other than that, that was the only dealings

1 that I think I have ever dealt with with Mr. Sotis.

2 Q. What were the specific reasons for Mr. Sotis'
3 suspension?

4 A. Because I was not part of the QA board, and because
5 I wasn't part of the actual investigation that I would have
6 some documents to sit down and tell you, you know, I
7 investigated and I found this, this and this, and these were
8 the issues, all I could go by is what had been provided to
9 IANTD by -- with no input from me -- I don't recall the
10 exact, but that there was some maybe not -- I am trying to
11 pick my words -- maybe not a violation of a standard, but
12 maybe a violation of a -- maybe a -- the duties of an
13 instructor as it pertained to a student/instructor
14 relationship.

15 Q. So as you sit here today your understanding of the
16 grounds for the suspension had something to do with his
17 duties as an instructor or the instructor/student
18 relationship?

19 A. Yes, basically.

20 Q. As training director do you know any of the other
21 reasons why he was suspended?

22 A. Without reviewing the documentation from IANTD, it
23 would be -- I can't answer that without reviewing all of our
24 documents, of which I have been shut off from. So, you know,
25 I don't have access to any of that anymore.

1 Q. Okay. And I understand that you indicated that
2 although you signed the letter you didn't prepare it, but
3 nevertheless your name --

4 A. I was involved in preparing it. I mean, the
5 two-year suspension -- I was not involved in the
6 determination of the board -- not the board -- the quality
7 assurance board, I was not involved in that process.

8 When this letter was drafted, Tom, Luis -- and I
9 believe John Jones was there also -- when the final outcome
10 came it was a two-year suspension but it had an end to it, I
11 believe. I haven't read through this word-for-word, but
12 during the two years you could come back.

13 And that's what I remember the quality assurance
14 board recommending, Tom recommending, and then this letter
15 was basically drafted with direct input from Tom and Luis and
16 John Jones.

17 Q. Okay.

18 A. I think I typed this letter. I personally typed
19 this letter.

20 Q. But as you sit here today you can't remember the
21 specific violations that triggered this correspondence, what
22 the board found?

23 A. Could I speculate a little bit?

24 Q. You can just say you are speculating and that's
25 fine.

1 A. I am speculating, and I don't want to say something
2 that's not accurate --

3 MS. BIEWEND: It will be in the record that you are
4 speculating.

5 THE WITNESS: Yes. So I know that there was
6 discussion about that this was a student, there was a
7 break in the class, then there was some dives that were
8 done that ultimately led in the accident of Mr. Stewart.

9 And I remember as part of a conversation in the
10 group that it was the group felt that the dives were
11 beyond the level of training of the student, and whether
12 it was instructional mode or not, the instructor should
13 have not taken the student to a level that he wasn't
14 trained in outside of a training environment.

15 And discussion came up from that, you know, as to
16 your responsibilities and the fact that, you know, when
17 you teach, if you stop -- and Mr. Sotis has done nothing
18 that probably the rest of us don't do. We have students
19 that come back and hire us to do -- safety divers and do
20 things like that.

21 I think in this particular case it was just the
22 fact that the training had not been completed the depth
23 that they went to. As an instructor we felt they should
24 -- the instructor should have been more of an instructor
25 at that point than just a safety diver and not allowed

1 the dive to go to that depth.

2 And that was an office conference room
3 conversation.

4 BY MR. BAYER:

5 Q. And do you know what depths Mr. Cahill and
6 Mr. Stewart were certified to?

7 A. I do not. I did at the time because I remember
8 dealing -- you know, hearing at our meetings with Tom and
9 Luis and John talking about the depths that the training had
10 been done and, you know, I don't recall that today. And
11 without seeing notes and stuff from those meetings, I don't
12 recall.

13 Q. Are notes or minutes of those meetings maintained?

14 A. There may be -- officially, no. I don't know if
15 anybody would have made notes or written things down. The
16 only notes and stuff that I am referring to were basically by
17 way of the letters and stuff.

18 And like I said, this letter I did prepare, but the
19 conclusion that led to this letter, I am not sure what
20 information was provided to the QA board.

21 Q. Do you know what depths they dove to?

22 A. No, I don't remember the depths.

23 Q. Do you recall whether in the course of this
24 discussion or discussions there was any data that was
25 reviewed that enabled y'all to determine what depths

1 Mr. Stewart and Mr. Cahill had gone to that day?

2 A. Not that I was privy to.

3 Q. Do you know whether at that time the board had
4 access to any data downloads from either Mr. Cahill or
5 Mr. Stewart's computers?

6 A. I don't remember. I know I did not see any of
7 that.

8 Q. Okay. I am going to say that wouldn't the board
9 have been speculating if they didn't have some sort of hard
10 data as to what depth they had gone to?

11 MS. BIEWEND: Object to the form.

12 THE WITNESS: I would have hoped that the data --
13 that a conclusion would have come from concrete fact,
14 not speculation.

15 BY MR. BAYER:

16 Q. Did you ever challenge that?

17 Did you ever say, Well, do you recall seeing data
18 or asking for data?

19 A. I don't because this was one case that I was barred
20 from.

21 Q. Do you know why you were barred from it?

22 A. No.

23 Q. If you were sitting in that meeting or a similar
24 meeting today and there was -- and I am going to ask you to
25 assume that a student had a 200-foot certification and there

1 was a suggestion that that student had gone to 213 feet.

2 Would you accept it at its word or would you say is
3 there a data download from a computer that supports the depth
4 that they went to?

5 A. Obviously a witness -- and just to back up a little
6 bit. The best of my recollection was that Rob Stewart was
7 certified at the normoxic level, and I think that was just
8 the case. I just don't want to come out and tell you I am
9 pretty sure that's exactly what it was, and I don't know
10 because I wasn't privy to some of that stuff.

11 But to answer the question, you know, if statements
12 were substantiated by way of if there would have been
13 independent witnesses that I could have gotten ahold of their
14 computer downloads and verified, yes, I would personally much
15 rather have something written, documented or downloaded that
16 would kind of support what the witnesses were saying versus
17 just what witnesses would say.

18 Q. Yes. As a compliment, I would think that's in your
19 DNA as what you did, you know, as a state trooper.

20 A. I am a fact finder, and I have done lots of
21 investigations. I have done several scuba fatality
22 investigations for the state police in Virginia. But one
23 thing I have always said, you know, you have got to create
24 your paper trail, and I would probably fall short without
25 having something to support what the verbal statements would

1 be.

2 Q. And as you sit here today you have no idea what
3 support Mr. Mount, Mr. Pedro and Mr. Jones had?

4 A. No.

5 Q. The standard that's referenced in this letter,
6 20.7.2, is that the due process standard that we were
7 referring to before?

8 A. Yes.

9 Q. Okay. And as you sit here today you don't know
10 whether that was enacted after Mr. Stewart's -- that was put
11 into the standards after Mr. Stewart's death, but obviously
12 that --

13 A. It was in the policies and community practice.
14 That is basically the old instructor manual that we used to
15 be issued when you became an IANTD instructor. But as far as
16 when the exact date was that that was taken out and put into
17 the standards, I would have to look at the dates.

18 I am thinking it was after, but I don't remember
19 because that was something that once I became their training
20 director -- that was one of the things that I had been
21 working on ever since that point, was to come up with a
22 policy that would kind of spell out step by step how things
23 were supposed to go.

24 Q. Now, the day after this letter was sent to
25 Mr. Sotis -- I will give you what I will mark as Exhibit 2 to

1 this deposition.

2 (Plaintiffs' Exhibit 2 was marked for
3 identification.)

4 MR. BAYER: You can pass that one over to the court
5 reporter because I think I am done with it.

6 So this is Number 2. Here is a copy for you. Here
7 is a copy for you.

8 BY MR. BAYER:

9 Q. Now, this was a letter that was, I guess, sent the
10 following day -- well, strike that.

11 Let me ask you to take a moment or two and take a
12 look at this.

13 A. Yes. I guess this was sent right after. This was
14 a document that Luis Pedro drafted, wrote. And I guess this
15 was in response to, I believe, a letter that Mr. Sotis had
16 requested what IANTD based its suspension on, I believe. But
17 I do know this was a letter that was done by Luis, prepared
18 by Luis based on information that they had, and it's, you
19 know, of course, signed by Tom and myself.

20 So it went through -- yes, so this was done by
21 Luis.

22 Q. Okay. So, in other words, did this, let's say,
23 come to you in a Word file that you --

24 A. I don't recall getting a Word file. I do recall
25 seeing it before it was sent.

1 Q. You were just asked to sign it?

2 A. I was just asked to sign it since they wanted it to
3 come through the training director's office, if you want to
4 call it that.

5 Q. Do you know why it is that Mr. Pedro undertook
6 drafting this response himself but asked you and Mr. Mount to
7 sign it rather than signing it himself?

8 A. No.

9 Q. Is that something that happened with any regularity
10 there?

11 A. That was a standard practice.

12 Q. And do you know what information Mr. Pedro relied
13 on in providing the -- or setting forth the position that he
14 assumed in this letter?

15 A. Yes -- well, I know we had received a letter from
16 Mr. Sotis asking to define the reasons and so forth, I
17 remember seeing that, and then Luis had prepared this to --
18 in response to that. I am not sure where Luis pulled
19 information from. I can only -- standards that were on the
20 website, from what it looks here.

21 Q. Just directing your attention -- I will just take
22 it as a random example.

23 If we look at page 2, the second section, IANTD
24 Standard Development Procedures, Version 20.7.0, the first
25 bullet, All lectures must be completed and the written exam

1 must be passed with a minimum score of 80 percent, do you
2 know whether the lectures were completed?

3 A. I know -- let me just back up.

4 Q. We can back up to the first one, the one above it.

5 A. I believe the -- supposedly what I recall is I
6 think everything had been completed. I believe that they had
7 a weather day or two that prevented them from getting all the
8 training dives in. And I think that was -- but I did not see
9 -- I didn't see an exam. I mean, that's something the
10 instructors had and I don't recall seeing.

11 I know usually in a quality assurance process we
12 usually get copies of exams, paperwork, liability releases,
13 medical releases as part of the class. I don't remember
14 seeing any of that.

15 Q. Do you know if either Mr. Cahill or Mr. Stewart
16 even took the exam?

17 A. No, I don't know.

18 Q. Do you know whether all their training sessions had
19 been completed at that time?

20 A. At that time, no, because I wasn't involved in the
21 fact gathering with that. To the contrary, I was told that
22 -- you know, in the beginning that this was not a training
23 issue and basically keep my nose out of it.

24 But I don't have any personal knowledge whether the
25 exams were done or what exactly was done, and I don't recall

1 seeing that documentation when it came in either, if it came
2 in.

3 I know I saw an accident report that Mr. Sotis had
4 submitted. I believe that was the only document that I
5 remember seeing.

6 Q. When you say you were told it was not a training
7 issue and to keep your nose out of it, who said that to you?

8 A. John Jones.

9 Q. Do you know at what point it morphed into a
10 training issue?

11 A. It would have probably been a couple of weeks
12 later, a week or two later maybe.

13 But again, that whole process normally -- normally
14 I would have initiated a letter to Mr. Sotis, a phone call to
15 Mr. Sotis, and alleged that, you know, we are looking into
16 this incident. But again, I was not part of that process so
17 I am not sure exactly -- I really don't know what they were
18 doing.

19 Q. All right. Given the fact that this involved a
20 death, to me, as a lay person, and hopefully to you in your
21 experience, five weeks seems like a rush to judgment.

22 Do you think that that was a quick disciplinary
23 action?

24 MS. BIEWEND: Object to form.

25 THE WITNESS: You know, if all the evidence was as

1 black and white as what we are looking at, five weeks
2 would not be such a stretch to draw a conclusion and
3 finish.

4 But the fact that there was a lot of information
5 that needed to be verified and sifted through and
6 checked on and, you know, I never saw, you know, the
7 report on the rebreather, I mean, there was just a whole
8 investigative process that I was excluded from that,
9 quite frankly.

10 And with my background, you know, I cringed every
11 step of the way because, you know, I felt like that this
12 was definitely -- it was a death as a result of --
13 whether it was training or whether it was just a simple
14 diving accident -- and I don't mean simple to take away
15 from the death --

16 BY MR. BAYER:

17 Q. Yes.

18 A. But just an accident versus training, you know,
19 there was a process that should have been followed and T's
20 crossed and I's dotted and led through, and then there should
21 have been documentation to support everything.

22 And so I was not privy to any of that, nor was I
23 allowed to conduct the investigation into any of that.

24 Q. Do you know whether Mr. Mount and Mr. Pedro or
25 Mr. Jones completed that investigation?

1 A. I am not sure what they did.

2 Q. Would you agree with me that it would be unlikely
3 that they could do all of that in a four-or five-week span?

4 MS. BIEWEND: Object to form.

5 THE WITNESS: I guess everything would depend on,
6 again, what documentation they were able to get and be
7 able to, you know, credit or discredit.

8 You know, I don't know exactly what -- you know, I
9 don't know exactly what they came up with and how they
10 went about and got everything.

11 BY MR. BAYER:

12 Q. And you don't know what documentation they had or
13 didn't have?

14 A. I did not know.

15 MS. BIEWEND: Objection. Asked and answered five
16 times.

17 MR. BAYER: I am getting senile.

18 BY MR. BAYER:

19 Q. After the issuance of the March 8th and March 9th
20 letters, what involvement, if any, did you have in the
21 continuing investigation into death of Mr. Stewart or actions
22 that were being contemplated against Mr. Sotis?

23 A. I was not really involved in that process other
24 than, you know, sitting with Tom and discussing things and,
25 you know, maybe a conversation between him and Luis and all

1 of us at a meeting that we typically did at least once a
2 week. You know, everybody would kind of sit down and talk
3 about what they were doing for the week and what was going
4 on.

5 But again, this was one case that I tried to get
6 into from day one, and so I was sort of just -- I was out in
7 left field with this, so it was out of reach for me to try to
8 handle.

9 Q. Now, recently, last month, on September 11th, 2018,
10 there was another letter sent to Mr. Sotis.

11 I will mark this as Exhibit --

12 A. What was the date on that?

13 Q. September 11th. You may or may not have seen it.

14 A. Yes, I was not -- yeah. I can't remember the date
15 I stepped down as training director, but I think that would
16 have been probably in August.

17 MS. BIEWEND: Is this Number 3?

18 MR. BAYER: Yes.

19 (Plaintiffs' Exhibit 3 was marked for
20 identification.)

21 THE WITNESS: No, I have not seen this.

22 BY MR. BAYER:

23 Q. So is this your first viewing of this letter?

24 A. Yes.

25 Q. Do you have any knowledge of any of the information

1 that is detailed or set forth in this letter?

2 A. No. I know some of the depths were in discussion
3 back when the accident happened, but as far as all that, I
4 have not had any exposure to any of this.

5 Q. Did you ever read Mr. Cahill's deposition?

6 A. No.

7 Q. Did you ever speak to Mr. Cahill?

8 A. No.

9 Q. Did you ever see any of the videos from the
10 training class that Mr. Sotis gave to Mr. Stewart and
11 Mr. Cahill?

12 A. No, no.

13 Q. Have you ever seen the data downloads from
14 Mr. Stewart's -- either of his dive computers?

15 A. No. No.

16 Q. Do you know how many dive computers he was using on
17 the day of his death?

18 A. No.

19 Q. There's a statement here that says that these dives
20 are in the CCR Trimix range, which require a minimum of 100
21 hours on the CCR to start that class.

22 Can you explain what the Trimix range is?

23 A. So I was reading down here -- which paragraph are
24 you referring to?

25 Q. The second paragraph.

1 A. It says, Yet the computer showed 23.

2 So 100 hours on the CCR to start the class, that
3 means that the diver student is supposed to have 100 hours
4 experience, 100 hours diving on the CCR to begin that class,
5 and they are saying it only showed 23 hours.

6 Q. Again, do you know whether he had any other dive
7 computers?

8 A. No.

9 Q. And is there any requirement that all the time be
10 set forth on a single computer?

11 A. No. It could have been done in -- you know, it
12 could have been over multiple computers doing the dive.

13 Q. What about what is the current standard for
14 changing scrubbers for each dive?

15 A. Today I am not sure because I know the standards
16 tend to change pretty frequent, so without reading them every
17 day it would be hard to tell you today what the standard is
18 without reading it today.

19 But at some point the standard was changed that
20 each training dive would start each day with a fresh new
21 canister that had not been used or packed.

22 Q. And that is a standard that was changed after
23 Mr. Stewart's death, correct?

24 A. I believe that was changed after.

25 Q. Is that something that is being retroactively

1 applied to the circumstances surrounding his death?

2 A. That I don't know because I was not in that -- I
3 remember them changing requiring a fresh scrubber, you know,
4 for each day of training.

5 Q. And would you agree with me that the sentence in
6 the third paragraph that references the need for a freshly
7 packed scrubber after each dive was a standard that was
8 amended after Mr. Stewart's death?

9 A. Yes, I don't believe that would have been current
10 the day of the accident or prior to the incident.

11 Q. And with respect to going back to the proceeding
12 paragraph, the minimum 100 hours to start the CCR class, is
13 that something that's specific to a specific rebreather or is
14 that --

15 A. No, it's general for the full Trimix. And those
16 have changed a little bit, too, with some industry standards
17 since all this, but I believe -- and again, I would have to
18 look it up and read it for the date that it happened because
19 sometimes these things changed back and forth quite a bit.

20 Q. Do you know whether that 100-hour requirement was
21 the requirement that was in place on the date of
22 Mr. Stewart's death?

23 A. No, not from memory.

24 Q. But something tells you that there may have been a
25 change to that since then?

1 A. Possibly could have been a change, because it was
2 not uncommon to sit down and read a standard and three or
3 four days later read it and it had been changed, updated or
4 whatever you want to call it. So I would need to actually
5 review the standards that were current at that point. I
6 can't go from memory on that.

7 Q. Do you know whether the same QA board is still
8 impaneled that was in place for the original suspension?

9 A. Again, I didn't even know -- I came into these
10 depositions with zero information on the deposition.

11 Q. And that's fine.

12 A. Yes, so I don't have any knowledge of that at all.

13 MR. BAYER: I am going to take a two-minute break.

14 Can I just talk to you?

15 MR. SOTIS: Yes.

16 (Recess.)

17 BY MR. BAYER:

18 Q. Just in regard to the September 11th letter, which
19 I know you didn't author, but the suggestion that there is
20 100 hours on the CCR to start the class, number one, do you
21 know anything about Rob Stewart's experience on other
22 rebreathers?

23 A. No.

24 Q. Do you know how long he had been diving with
25 rebreathers?

1 A. No.

2 Q. Okay. If he had exceeded that 100-hour requirement
3 by a significant multiple over his years of diving, do you
4 know whether this is a valid statement?

5 A. You know, based on what they have got written here,
6 require a minimum of 100 hours on the CCR to start the class
7 -- I wish I had a set of standards here just to review that.

8 Q. Do you know whether this is specific to the rEvo
9 rebreather or to any rebreather?

10 A. No. That's why I said I wish I had the standards
11 to just read through that and see what that comes from.

12 But, you know, the way I am reading what he has got
13 written here, 100 hours on the CCR to start that class, so I
14 am reading it that they are saying now in here, referring to
15 100 hours on the CCR to start the class -- I am reading this
16 it would mean that the unit that he was diving he would have
17 needed to have 100 hours on.

18 Q. Would you agree with me that that doesn't really
19 make sense because it would suggest to me that if you switch
20 rebreather manufacturers or rebreathers you would have to get
21 100 hours on whichever one you were diving and have the
22 certification on it, even for people who were experienced
23 rebreather divers?

24 MS. BIEWEND: Object to form.

25 THE WITNESS: I would need to read. And probably

1 when I leave here I probably will go read right away on
2 that. I am assuming that that is accurate.

3 BY MR. BAYER:

4 Q. But you don't know whether it accounts for the
5 prior experience?

6 A. No, I don't know that it accounts for, you know, if
7 he had, say, 50 hours on a different rebreather, you know, or
8 possibly, you know, if he was -- you know, the standards at
9 the time required that you had unlimited use of a rebreather
10 if you didn't own one, so those hours could have been
11 accumulated on a rental unit somewhere or a different unit,
12 but I would have to go review that and read that.

13 Q. Have you personally reviewed any of the deposition
14 transcripts from the Stewart litigation?

15 A. No.

16 Q. Did you see any documents produced in the Stewart
17 litigation?

18 A. No.

19 Q. Have you seen any reports that were issued by
20 either the Coast Guard or the naval experimental dive unit?

21 A. No. I know we spoke with the Coast Guard. I
22 personally spoke with them back during the investigation
23 process and had Luis prepare some documents to send to them,
24 but outside of that I have not seen any reports or even some
25 of the social media reports. I have just got to where I

1 don't even look at those anymore.

2 Q. Do you recall who you spoke with at the Coast
3 Guard?

4 A. No. It was whoever the group was that was doing
5 the investigation. I know they were asking for specific was
6 Mr. Sotis an instructor, was he current, and that sort of
7 thing. Just a couple of pretty simple quick questions.

8 Q. So they were quick questions and answers?

9 A. Yes. There was nothing that we -- no opinions, no
10 anything like that. Just, yes, he was an instructor with
11 IANTD and, yes, he was current.

12 Q. Did you or IANTD send anything to the Coast Guard,
13 do you know?

14 A. Yes, we did send something to the Coast Guard, and
15 I think it was the information around what I just said, a
16 copy of his certification, he was current, and that sort of
17 thing.

18 Q. Other than that conversation with the Coast Guard,
19 did you have any conversations with the Coast Guard?

20 A. No, no.

21 Q. Were you at all troubled by the fact that you were
22 asked to sign the March 8th and March 9th letters without
23 having done any independent investigation in this case?

24 A. Yes.

25 Q. Why is that?

1 A. Because my DNA, and as a trooper and as an
2 investigator of almost 32 -- well, right at 32 years, and
3 having been through investigations with the Coast Guard with
4 accidents on the boat, and having, you know, done scuba
5 fatality investigations, you know, you are only as good as
6 the paper trail that you can create, and you are only as good
7 as what you can document, and I had very strong reservations
8 about -- which is some of why I backed away from this after I
9 was, you know, basically screamed at that this was a
10 nontraining issue and that I need just to leave it alone.

11 That's why I just pretty much backed away from it,
12 because I didn't have -- you know, I would feel much better
13 today being able to sit down with you with my notebook and
14 say, yeah, on such and such a date this is what I did, and I
15 wasn't privy to a lot of things so I can't do that.

16 Q. Do you know if that notebook exists?

17 A. No. No, it doesn't.

18 Q. It doesn't exist?

19 A. It does not exist, at least to my knowledge. I
20 know I don't have any because, again, I was -- you know, the
21 one letter that I helped type up, we put it from Tom Mount
22 and me, I was pretty much on there just because it was my
23 office, so to speak, and desk it went through.

24 MR. BAYER: I have nothing further. I appreciate
25 your time.

1 MS. BIEWEND: I don't have any questions.

2 And you have the option to read the transcript and
3 make any corrections on the errata sheet if you need to.

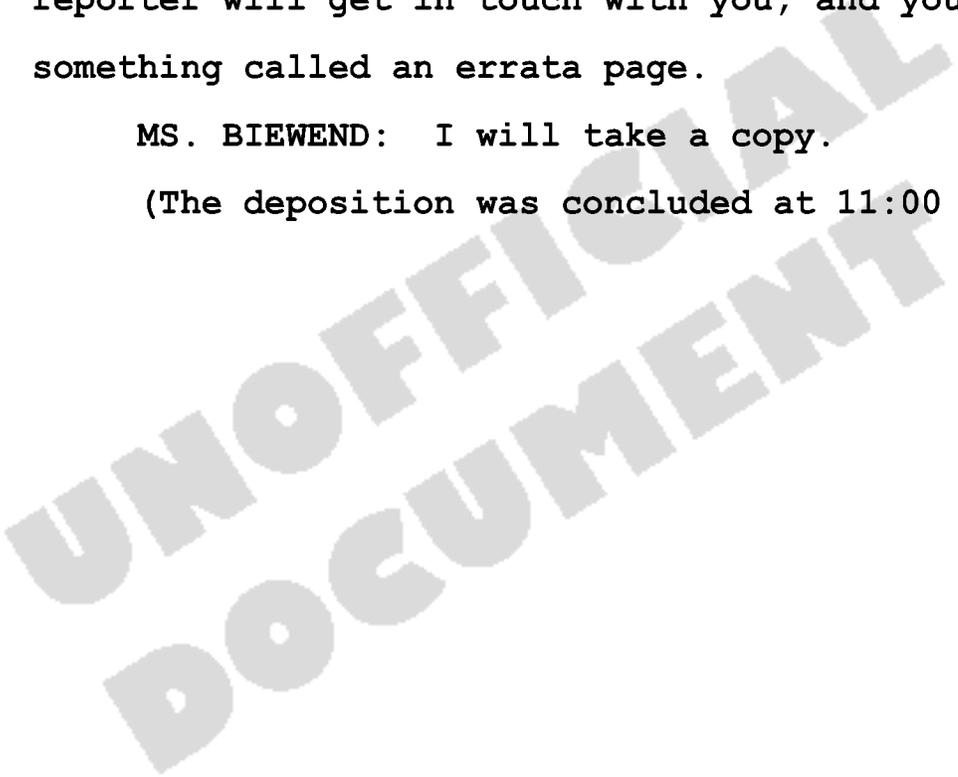
4 THE WITNESS: Yes, that probably wouldn't be a bad
5 idea.

6 MR. BAYER: I am going to order it, and the court
7 reporter will get in touch with you, and you can do
8 something called an errata page.

9 MS. BIEWEND: I will take a copy.

10 (The deposition was concluded at 11:00 a.m.)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



CERTIFICATE OF OATH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA :
COUNTY OF COLUMBIA:

I, Carol Day, CSR, RPR, Court Reporter and Notary Public, State of Florida, certify that MARK FOWLER, who is personally known by me, appeared before me and was duly sworn on October 18, 2018.

WITNESS my hand and official seal this 30th day of October 2018.

Carol Day

CAROL DAY, CSR, RPR
CSR NO.: 13768
Notary Public - State of Florida
Commission No: FF 915681
Expires: September 3, 2019



CAROL DAY
MY COMMISSION # FF 915681
EXPIRES: September 3, 2019
Bonded Thru Budget Notary Services

CERTIFICATE OF REPORTER

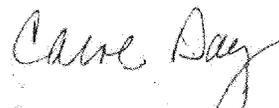
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA :
COUNTY OF COLUMBIA:

I, CAROL DAY, CSR, RPR, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 30th day of October 2018.



CAROL DAY, CSR, RPR
CSR NO.: 13768
Court Reporter

1 ADD HELIUM, LLC, and PETER SOTIS,

2 Plaintiffs,

3 vs.

4 INTERNATIONAL ASSOCIATION OF
5 NITROX DIVERS, INC.,

6 Defendant.

7 /

8 IN RE: Deposition of MARK FOWLER

9 TAKEN: October 18, 2018

10 DATE SENT TO ATTORNEY: October 30, 2018

11 The above-referenced transcript has been completed
12 and awaits reading and signing.

13 Please direct your client/witness to call our
14 office, 855-850-7038, to review a copy of the transcript and
15 note any corrections on the attached errata sheet within 30
16 days or before the date of trial. Once the errata sheet has
17 been completed, please forward it to Third Circuit Reporters
& Video, 136 Southwest Nassau Street, Lake City, Florida,
32025. Once received, it will be forwarded to all ordering
parties.

18 Thank you.

19 cc: Neil Bayer, Esquire
20 Jenifer C. Biewend, Esquire

21

22

23

24

25

**UNOFFICIAL
DOCUMENT**

**UNOFFICIAL
DOCUMENT**