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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TIGERS LIMITED and TIGERS)	
(USA) GLOBAL LOGISTICS,)	
INC.,)	Case No. 1:15-cv-947
)	Alexandria, Virginia
Plaintiffs,)	
)	July 11, 2016
v.)	10:06 a.m.
)	
TAMERLANE GLOBAL SERVICES,)	
ARTEMIS GLOBAL, INC., AND)	
JAMES M. O'BRIEN,)	
)	
Defendants.)	

Volume I

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE CLAUDE M. HILTON

UNITED STATES DISTRICT JUDGE

AND A JURY

APPEARANCES:

For the Plaintiffs: Katherine L. McKnight, Esq.
John C. McIlwee, Esq.

For the Defendants: Glenn H. Silver, Esq.
Erik B. Lawson, Esq.

Court Reporter: Tracy L. Westfall, RPR, CMRS, CCR

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

	<u>I N D E X</u>				
	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	
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2					
3	<u>FOR THE PLAINTIFF:</u>				
4	M. Bongean	29	82	107	108
5	J. O'Brien	109	--	--	--
6					
7	<u>FOR THE DEFENDANT:</u>				
8	C. Kennedy	206	--	--	--
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1 P R O C E E D I N G S

2 THE CLERK: Civil action 2015-947, *Tigers Limited and*
3 *Tigers USA Global Logistics, Inc. v. Tamerlane Global Services,*
4 *Artemis Global, Inc., and James O'Brien.*

5 This case comes on for trial by jury. Will counsel
6 please note your appearances for the record.

7 MS. MCKNIGHT: Yes. Good morning, Your Honor. Kate
8 McKnight and John McIlwee here on behalf of the plaintiffs,
9 Tigers.

10 THE COURT: Good morning.

11 MR. SILVER: Good morning, Your Honor. Glenn Silver of
12 the law firm Silver & Brown. I have with me my associate, Erik
13 Lawson.

14 THE COURT: Good morning.

15 THE CLERK: Ladies and gentlemen of the jury, as I call
16 your name, please stand, answer present, and be seated as the
17 next name is called.

18 THE CLERK: Sanjoli Agarwal.

19 THE PROSPECTIVE JUROR: Present.

20 THE CLERK: Samuel Altman, Jr.

21 THE PROSPECTIVE JUROR: Present.

22 THE CLERK: Michael Alvarado.

23 THE PROSPECTIVE JUROR: Present.

24 THE CLERK: Steven Banks.

25 THE PROSPECTIVE JUROR: Present.

1 THE CLERK: David Bergert.
2 THE PROSPECTIVE JUROR: Present.
3 THE CLERK: Helga Brown.
4 THE PROSPECTIVE JUROR: Present.
5 THE CLERK: Nicholas Bruner.
6 THE PROSPECTIVE JUROR: Present.
7 THE CLERK: Kimberly Dare.
8 THE PROSPECTIVE JUROR: Present.
9 THE CLERK: Martha Ethington.
10 THE PROSPECTIVE JUROR: Present.
11 THE CLERK: Thomas Evans, III.
12 THE PROSPECTIVE JUROR: Present.
13 THE CLERK: Joshua Forrest.
14 THE PROSPECTIVE JUROR: Present.
15 THE CLERK: Nathan Gray.
16 THE PROSPECTIVE JUROR: Present.
17 THE CLERK: Susan Grinnings.
18 THE PROSPECTIVE JUROR: Present.
19 THE CLERK: Kaelynn Kurtz.
20 THE PROSPECTIVE JUROR: Present.
21 THE CLERK: James Malley.
22 THE PROSPECTIVE JUROR: Present.
23 THE CLERK: Mari Marotta.
24 THE PROSPECTIVE JUROR: Present.
25 THE CLERK: Tammy Martin.

1 THE PROSPECTIVE JUROR: Present.
2 THE CLERK: Harvey Miles, Jr.
3 THE PROSPECTIVE JUROR: Present.
4 THE CLERK: Dylan Moran.
5 THE PROSPECTIVE JUROR: Present.
6 THE CLERK: Carol O'Connor.
7 THE PROSPECTIVE JUROR: Present.
8 THE CLERK: Megan O'Kane.
9 THE PROSPECTIVE JUROR: Present.
10 THE CLERK: Christopher Patrick.
11 THE PROSPECTIVE JUROR: Present.
12 THE CLERK: Richard Romar.
13 THE PROSPECTIVE JUROR: Present.
14 THE CLERK: Lila Ross.
15 THE PROSPECTIVE JUROR: Present.
16 THE CLERK: Anne Sommers.
17 THE PROSPECTIVE JUROR: Present.
18 THE CLERK: Nicholas Soto.
19 THE PROSPECTIVE JUROR: Present.
20 THE CLERK: Thomas Spence.
21 THE PROSPECTIVE JUROR: Present.
22 THE CLERK: Michael Szego.
23 THE PROSPECTIVE JUROR: Present.
24 THE CLERK: Ladrina Tart. Ladrina Tart?
25 Kirsten Thompson?

1 THE PROSPECTIVE JUROR: Present.

2 THE CLERK: David Tsui.

3 THE PROSPECTIVE JUROR: Present.

4 THE CLERK: Helena Ward.

5 THE PROSPECTIVE JUROR: Present.

6 THE CLERK: Karen Welch.

7 THE PROSPECTIVE JUROR: Present.

8 THE CLERK: Kevin Wheeler.

9 THE PROSPECTIVE JUROR: Present.

10 THE CLERK: And Tiffany Williams.

11 THE PROSPECTIVE JUROR: Present.

12 THE CLERK: Ladies and gentlemen of the jury, please
13 stand, raise your right hands, and respond after the oath.

14 (The jury panel is sworn.)

15 THE CLERK: Please be seated.

16 THE COURT: Ladies and gentlemen, we have for trial
17 today a civil case wherein the plaintiff, Tigers Limited, has
18 filed this suit against Tamerlane Global Services, Artemis
19 Global, Inc., and James O'Brien, alleging a breach of contract
20 entered into in September of 2013 involving the movement of
21 certain equipment in the Middle East.

22 Now, the plaintiff is being represented by Ms. Kate
23 McKnight and Mr. James McIlwee, seated at the table to my left.

24 The defendants are being represented by Mr. Glenn
25 Silver and Erik Lawson, seated at the table to my right.

1 I would ask if any of you know anything about the facts
2 and circumstances of this case?

3 Are any of you either close personal friends, relatives
4 of, have any kind of business relationship with either the
5 plaintiffs or the defendants or any of the lawyers involved in
6 this case?

7 Have any of you ever been involved in a civil case
8 before either as a plaintiff, a defendant, or a witness?

9 Yes, sir. Would you please stand and tell me your name
10 and the circumstances briefly.

11 THE PROSPECTIVE JUROR: Thomas Spence. I was an
12 employee and general counsel at a business that was a defendant
13 in a civil suit about 20 years ago.

14 THE COURT: All right. Thank you.

15 Anyone else, either a plaintiff or a defendant or a
16 witness in a civil case?

17 Have any of you or any member of your immediate family
18 ever served in any branch of the United States military?

19 Yes, ma'am.

20 THE PROSPECTIVE JUROR: My son is in the U.S. Air
21 Force.

22 THE COURT: I'm sorry?

23 THE PROSPECTIVE JUROR: My son is in the U.S. Air
24 Force.

25 THE COURT: Your name?

1 THE PROSPECTIVE JUROR: Carol O'Connor.

2 THE COURT: Thank you.

3 Yes, sir.

4 THE PROSPECTIVE JUROR: David Bergert. I served eight
5 years in the U.S. Army.

6 THE COURT: Anyone else?

7 Yes, ma'am.

8 THE PROSPECTIVE JUROR: Mari Marotta. My dad served in
9 the Air Force.

10 THE COURT: Thank you. I saw another hand somewhere.

11 THE PROSPECTIVE JUROR: Megan O'Kane. My father was
12 U.S. Army; my husband was Air Force.

13 THE COURT: Thank you. Yes, sir.

14 THE PROSPECTIVE JUROR: Michael Szego. My dad served
15 in the U.S. Army.

16 THE COURT: Thank you. Yes.

17 THE PROSPECTIVE JUROR: Nick Bruner. My father was in
18 the U.S. Army.

19 THE COURT: Thank you.

20 THE PROSPECTIVE JUROR: Tammy Martin. My dad was in
21 the U.S. Army.

22 THE COURT: Thank you. Yes, ma'am.

23 THE PROSPECTIVE JUROR: Anne Sommers. My father was
24 also in the Army, but I don't know anything about him.

25 THE COURT: Thank you. Yes, ma'am.

1 THE PROSPECTIVE JUROR: Kim Dare. My dad was in the
2 U.S. Air Force.

3 THE COURT: Thank you.

4 THE PROSPECTIVE JUROR: Kirsten Thompson. My dad was
5 in the U.S. Coast Guard.

6 THE COURT: Thank you. Yes.

7 THE PROSPECTIVE JUROR: Susan Grinnings. My husband
8 was in the Navy.

9 THE COURT: Yes.

10 THE PROSPECTIVE JUROR: Sam Altman. My father was in
11 the Air Force.

12 THE COURT: Yes, sir.

13 THE PROSPECTIVE JUROR: Richard Romar. My father was
14 in the Army.

15 THE COURT: Yes, ma'am.

16 THE PROSPECTIVE JUROR: Martha Ethington. My dad was
17 in the Army.

18 THE COURT: Okay.

19 THE PROSPECTIVE JUROR: James Malley. My father
20 retired from the U.S. Army.

21 THE COURT: Thank you.

22 THE PROSPECTIVE JUROR: Helena K. Ward. My husband
23 is -- used to be in the Army, and I work for Walter Reed
24 National Military Medical Center.

25 THE COURT: Thank you. Anyone else?

1 Now, do you-all speak, read, and understand the English
2 language?

3 Are you going to finish the evidence today in this
4 case?

5 MS. MCKNIGHT: We believe so, Your Honor.

6 THE COURT: All right. This case will probably go into
7 tomorrow. Is there any reason why any one of you could not sit
8 on this jury today and tomorrow? Do you have any kind of a
9 particular difficulty or disability?

10 Yes, ma'am.

11 THE PROSPECTIVE JUROR: You want me to tell you? I
12 have an appointment at John Hopkins tomorrow.

13 THE COURT: All right. Well, I'll excuse you. What's
14 your name?

15 THE PROSPECTIVE JUROR: Susan Grinnings.

16 THE COURT: Just remain here until the other jurors are
17 excused.

18 Anyone else? Yes, ma'am.

19 THE PROSPECTIVE JUROR: Martha Ethington. I have three
20 children at home. The youngest is 7. I have a 13-year-old.
21 They're fine for a few hours, but I've never left them for an
22 extended --

23 THE COURT: We'll quit about 5:00, 5:30 this afternoon.
24 Is that okay?

25 THE PROSPECTIVE JUROR: Hopefully. I gave them

1 breakfast.

2 THE COURT: All right. Well, I'll excuse you. Just
3 remain here until the other jurors are excused.

4 Anyone else?

5 All right. Considering all of the questions I've asked
6 you, is there any reason why any one of you could not sit on
7 this jury, render a fair and impartial verdict based on the
8 evidence presented here in the courtroom and the instructions on
9 the law as will be given you by the Court?

10 Yes, ma'am.

11 THE PROSPECTIVE JUROR: I worked for an insurance
12 company as a liability adjuster for 13 years, if that makes any
13 kind of difference. Kim Dare.

14 THE COURT: Would that in any way prevent you from
15 rendering a fair and impartial verdict in this case?

16 THE PROSPECTIVE JUROR: No, especially if there are
17 no --

18 THE COURT: Thank you.

19 THE PROSPECTIVE JUROR: -- involved.

20 All right. Pick a jury. Pick eight this time.

21 THE CLERK: As I call your name, please come forward
22 and have a seat in the jury box as directed by the marshal.

23 Juror No. 1, Sanjoli Agarwal.

24 Juror No. 11, Joshua Forrest.

25 Juror No. 17, Tammy Martin.

1 Juror No. 12, Nathan Gray.

2 Juror No. 16, Mari Marotta.

3 Juror No. 26, Nicholas Soto.

4 Juror No. 8, Kimberly Dare.

5 Juror No. 32, Helena Ward.

6 (Pause.)

7 THE CLERK: Will the following jurors please return to
8 your seats in the courtroom.

9 Juror No. 11, Joshua Forrest, and Juror No. 32, Helena
10 Ward.

11 Will the following jurors please come forward and have
12 a seat in the jury box.

13 Juror No. 28, Michael Szego.

14 Juror No. 31, David Tsui, T-S-U-I.

15 (Pause.)

16 THE CLERK: Will Juror No. 28, Michael Szego, please
17 return to your seat in the courtroom.

18 Juror No. 18, Harvey Miles, Jr.

19 (Pause.)

20 THE CLERK: Juror No. 18, Harvey Miles, Jr., please
21 return to your seat in the courtroom.

22 Juror No. 30, Kirsten Thompson.

23 (Pause.)

24 THE CLERK: Will Juror No. 30, Kirsten Thompson, please
25 return to your seat in the courtroom.

1 Juror No. 35, Tiffany Williams.

2 (Pause.)

3 THE CLERK: Will Juror No. 35, Tiffany Williams, please
4 return to your seat in the courtroom.

5 Juror No. 34, Kevin Wheeler.

6 (Pause.)

7 THE CLERK: Ladies and gentlemen of the jury, will you
8 please stand, raise your right hands, and respond after the
9 oath.

10 (The jury is sworn.)

11 THE CLERK: Please be seated. Those jurors not
12 selected are excused until your next court date.

13 (Potential jurors not selected exit at 10:29 a.m.)

14 THE COURT: Members of the jury, now that you have been
15 sworn, I'll give you some preliminary instructions which I hope
16 will guide you in your participation in the trial.

17 It's going to be your duty to find from the evidence
18 what the facts are. You and you alone are the judges of the
19 facts. You then will have to apply those facts to the law as
20 the Court will give it to you. You must follow that law whether
21 you agree with it or not.

22 Now, the evidence from which you will find the facts
23 will consist of the testimony of witnesses, documents received
24 into the record as exhibits, any facts the lawyers agree or
25 stipulate to, and any facts that the Court may instruct you to

1 find.

2 Certain things are not evidence and must not be
3 considered by you. Statements, arguments, and questions by
4 lawyers are not evidence. Objections to questions are not
5 evidence. The lawyers have an obligation to their clients to
6 make an objection when they believe that there's evidence that's
7 offered which is improper under the Rules of Evidence. You
8 should not be influenced by the objection or by the Court's
9 ruling on it. If the objection is sustained, ignore the
10 question. If the objection is overruled, treat the answer like
11 any other.

12 If you're instructed that some item of evidence is
13 received for a limited purpose only, you must follow that
14 instruction. The testimony that the Court has excluded or told
15 you to disregard is not evidence and must not be considered by
16 you. Anything you may have seen or heard outside the courtroom
17 is not evidence in this case and must be disregarded. You're to
18 decide this case solely on the evidence presented here in the
19 courtroom.

20 Now, just a few words as to your conduct as jurors. I
21 would instruct you that during this trial, you're not to discuss
22 this case with anyone nor permit anyone to discuss it with you.
23 Until you retire to the jury room at the end of the case to
24 deliberate on your verdict, you simply should not talk about the
25 case. Don't read or listen to anything touching the case in any

1 way. If anyone should try to talk to you about the case, bring
2 it to the Court's attention promptly.

3 Don't try to do any research or make any investigation
4 about the case on your own. And finally, don't form any opinion
5 until all the evidence is in. Keep an open mind until you start
6 your deliberations at the end of the case.

7 Now, I would prefer that you-all not take notes, but
8 listen to the evidence as it's presented and rely on your
9 collective recollection when you begin your deliberations.

10 Now, the trial is going to begin. The lawyers will
11 make their opening statements, and we'll proceed with the
12 plaintiffs' evidence, thereafter the defendants' evidence.

13 When all the evidence is in, the lawyers will make
14 their closing arguments to you. I will instruct you on the law
15 and you will retire to deliberate on your verdict.

16 Now, we'll take a brief recess in the middle of the
17 morning, try to recess around 1 o'clock for lunch, and take a
18 recess in the middle of the afternoon. And as I said before,
19 we'll probably go in the neighborhood of 5:00, 5:30 this
20 afternoon.

21 All right. Ms. McKnight.

22 MS. MCKNIGHT: Good morning, ladies and gentlemen.
23 Thank you for your time today.

24 This case is about a breach of contract, and it's
25 fairly simple: Who should be held to pay for losses under a

1 contract to move U.S. government equipment in Afghanistan? At
2 the end of the day, this case is about accountability, holding
3 people and companies responsible for promises that they make.
4 More pointedly, it's also a case about holding a wrongdoer
5 accountable for his misconduct.

6 My colleague, John, and I represent plaintiffs, Tigers.
7 Here with us today is Sebastian Tschackert, president of Tigers
8 (USA), along with Mark Bongean, vice president of freight
9 management for Tigers (USA).

10 On the other side, you have Jim O'Brien, sitting with
11 his counsel at this table, and his two companies, Tamerlane and
12 Artemis. Those three, O'Brien, Tamerlane, and Artemis, are the
13 three defendants in this matter.

14 So what was supposed to happen? Tigers partnered with
15 Mr. O'Brien's company, Tamerlane, to help a third company called
16 Louis Berger Group -- sometimes we'll refer to it as LBG -- move
17 U.S. government cargo in Afghanistan. In this case, that meant
18 about 20 truckloads of enormous generators. Not just the type
19 of generator you have in your homes, but enormous generators
20 meant to generate power in places such as schools, hospitals,
21 small cities, U.S. military bases, et cetera, all in sort of the
22 sticks of Afghanistan.

23 Now, Tigers and Tamerlane were both in the business of
24 freight movement. Tigers, on a global scale, with relationships
25 with airplanes, ships, and established -- and an established

1 back office to manage invoices, the complicated moves, and to
2 prepare the related paperwork, such as for customs, both
3 outgoing export and incoming customs paperwork.

4 Now, Tamerlane, because of Mr. O'Brien, was the
5 so-called subject matter expert, with specific expertise in
6 moving cargo in conflict zones on the ground. Indeed,
7 Mr. O'Brien held himself out as having a particular skill in
8 that area: Moving cargo inside and across conflict zones such
9 as Afghanistan and Pakistan.

10 It seemed like a match of specialties and skills and a
11 good place to start for a relationship that Tigers hoped would
12 be long and fruitful with Louis Berger Group.

13 Now, the contract between Tigers and Tamerlane was
14 broken up into two separate moves. Now, for the sake of
15 clarity, because they'll be referred to by different names as we
16 go along, one was meant to move equipment within Afghanistan to
17 U.S. Bagram Air Force Base. I'll refer to that as the domestic
18 move because it was all supposed to take place within
19 Afghanistan.

20 The second move was supposed to take place from
21 Afghanistan to a port in Pakistan and then on to Dubai. I will
22 refer to that sometimes as the international move.

23 Now, Tamerlane was responsible for all movement on the
24 ground in Afghanistan and Pakistan, and Tigers would be
25 responsible for movement outside of those countries as well as

1 those other back office responsibilities I described earlier:
2 invoicing, customs, that sort of thing.

3 Now, Tigers and Tamerlane agreed that they would
4 complete these shipments, these two shipments for Louis Berger
5 Group, and split the profits and losses for the jobs 50/50.

6 We are here today because that is not what happened.
7 So what went wrong? Both of the moves covered by the contract
8 between Tigers and Tamerlane were botched. I'll talk first
9 about that international move and then I'll talk about the
10 domestic move.

11 Now, in the international move, it was Tamerlane's job
12 to move cargo over the ground in Afghanistan to a seaport in
13 Pakistan. Recall that this was Tamerlane's specialty, moving
14 shipments within conflict zones like Afghanistan and Pakistan.
15 It was Tigers' job to pick up that cargo from that port in
16 Pakistan and move it by ship to Dubai.

17 Under the contract, that movement was to be completed
18 in 2013. As of today, three years later, the cargo for that
19 international move still sits in Afghanistan. It never even
20 arrived in Pakistan where Tigers could assume responsibility for
21 it.

22 Now, Louis Berger Group, that third party who asked
23 these two parties to move the equipment, is coming after Tigers
24 for the entire loss. Now, why hasn't the cargo moved? You'll
25 hear testimony today that it's because Tamerlane and Mr. O'Brien

1 owe money to a third party called Ghazanfar. That's the
2 trucking company that they contracted to move the cargo. Now,
3 along with Louis Berger Group, this is the only other company
4 you'll need to know about today. Ghazanfar is a reputable
5 trucking company in Afghanistan. And it was O'Brien and
6 Tamerlane, you'll hear testimony, who owed them money.

7 So back to what went wrong with the international move.
8 When Ghazanfar held that cargo because of O'Brien's debt, did
9 O'Brien pay that debt? You'll hear testimony today that the
10 answer to that is no. Did O'Brien tell Tigers about that
11 problem so that Tigers could come up with another solution so
12 that they could move the cargo for Louis Berger Group? You'll
13 hear testimony today that the answer to that also is no.

14 In fact, you'll hear testimony today that as Tigers
15 pressed for details about the delay in this cargo movement, they
16 heard from O'Brien that it was delayed due to border closings
17 and elections.

18 Now, when those events passed, the cargo still didn't
19 move. You'll hear testimony today that when Tigers pressed for
20 more detail about why the cargo was still not moving, Tigers was
21 told by O'Brien the cargo had been seized; it was in the hands
22 of war profiteers. And O'Brien told Tigers that O'Brien was
23 willing to go to Pakistan to negotiate for the cargo's release,
24 but needed money from Tigers in order to do so.

25 Tigers paid that money to O'Brien to get the cargo

1 released. When you hear the evidence today, ask yourself, did
2 O'Brien use the money from Tigers to pay for the cargo's
3 release? Did O'Brien ever set foot in Pakistan to negotiate for
4 the cargo's release? So why didn't Tigers end its relationship
5 with Tamerlane as soon as it saw things going so poorly?

6 Because O'Brien was Tigers' only connection to the
7 cargo, and Tigers wanted to complete the job and protect its
8 relationship with Louis Berger Group.

9 There was that second move I talked about, the domestic
10 move. What went wrong with that move? Here, it was Tamerlane's
11 job to move cargo from a different location in Afghanistan to
12 Bagram, Afghanistan. Tigers' job was to review costs and
13 quotations and generate billing statements for Louis Berger
14 Group, generate supporting material and that sort of thing so
15 that it could send its bill on to Louis Berger Group.

16 This time, although Tamerlane's trucks eventually made
17 it to their final destination in Bagram, the cargo arrived so
18 late and in such a damaged condition -- indeed, some of the
19 cargo had been stolen on route -- but at first Louis Berger
20 refused to pay a dime for the move. So who did pay? Tigers
21 paid.

22 Louis Berger Group was so unhappy with this movement
23 that it effectively cut off Tigers from any future business
24 dealings. We'll ask you to consider the fairness of this result
25 during the trial.

1 As I mentioned a moment ago, this is a case about who
2 should pay for these losses. Here, you will need to listen
3 carefully to the evidence. It will show that Tigers and
4 Mr. O'Brien specifically thought about and agreed to how they
5 would share not only profits, but also losses incurred under the
6 contract between them.

7 The evidence will also show that Mr. O'Brien
8 specifically agreed that, at a minimum, his company, Tamerlane,
9 would cover 50 percent of any losses incurred during the two
10 moves I just described. The evidence will also show that
11 Mr. O'Brien agreed that his company, Tamerlane, would bear full
12 responsibility for any losses incurred due to their own
13 misconduct.

14 Now, I told you this was a simple case, and it is.
15 What makes this case colorful is what Mr. O'Brien told
16 plaintiffs during the performance of their contract on the one
17 hand and what Mr. O'Brien and his companies actually did on the
18 other hand.

19 You will hear about the differences between the
20 defendants' words and deeds in the presentation of evidence and
21 we ask you to pay careful attention to that.

22 The evidence will show that not only have defendants
23 failed to pay their fair share of losses as required by their
24 contract with Tigers, but that defendants' own misconduct
25 actually caused those losses.

1 Now briefly about the defense you may hear. As a
2 defense or excuse for this unfair conduct and breach of
3 contract, you may hear from defendants' counsel that only
4 Tamerlane, that one company, should be held to account for the
5 losses under the contract, and that Mr. O'Brien and Artemis
6 should be ignored and excused for their involvement.

7 You'll also hear evidence, however, that Jim O'Brien
8 created and personally controlled both Tamerlane and Artemis,
9 that he directed every move of both companies, and that the two
10 companies were effectively one and the same when it came to
11 performance of the contract.

12 Now, after hearing all the evidence in the case, we
13 will ask you to decide three issues. First, we will ask you to
14 decide that Mr. O'Brien, Artemis, and Tamerlane were one and the
15 same when it came to performance of the contract for Tigers, and
16 that they should be held liable for the losses incurred by the
17 botched shipments in Afghanistan.

18 Number two, we will ask you to decide that, at a
19 minimum, Mr. O'Brien and his companies owe Tigers 50 percent of
20 the losses resulting from the botched moves of equipment in
21 Afghanistan.

22 Finally, number three, we'll ask you to decide that due
23 to defendants' own misconduct, they are responsible for
24 100 percent of the losses on the cargo moves, the loss of
25 business opportunity with Louis Berger Group, and attorneys'

1 fees related to righting this wrong.

2 This case is simple and it's about accountability.
3 Today we ask you to hold Mr. O'Brien and his companies
4 accountable for what they promised in their agreement and find
5 that they are responsible for the cost of their own misconduct.

6 At the end of the evidence, you'll hear from my
7 colleague, John, in closing with a detailed description of the
8 evidence you've heard and the task ahead of you.

9 This is the last time I will speak with you directly.
10 So again, I thank you for your time.

11 MR. SILVER: Good morning, ladies and gentlemen. My
12 name is Glenn Silver. I am a lawyer with the law firm of Silver
13 & Brown. I have with me my associate, Erik Lawson. And sitting
14 at the counsel table with me is Candice Kennedy and Jim O'Brien.

15 Counsel has told you this is a simple case, and I agree
16 with her, but she didn't make the case simple for you.

17 There are certain fundamentals in this case that we
18 agree on. And they're very important fundamentals because they
19 are the backbone of the plaintiffs' case, and that's what I'm
20 going to talk about primarily.

21 Now, first you need to know who the players are.

22 The first player is Jim O'Brien. And he and another
23 person were the owners of Tamerlane Global Logistics.

24 Candice Kennedy was not a member of that company, had
25 nothing to do with that company, until the company was ready to

1 shut down when she became employed to help shut down the
2 company. Interestingly enough, she used to work for Tigers, and
3 she left Tigers to join Jim O'Brien in his endeavors.

4 Counsel doesn't talk about Candice Kennedy because they
5 want to make believe that she isn't here. And why is that?
6 Because Candice Kennedy is one of the owners of Artemis, along
7 with Jim O'Brien.

8 So when she talks about it, she kind of lumps everybody
9 together into one little package. She says Jim O'Brien is
10 Tamerlane, Jim O'Brien is Artemis, and therefore, they ought to
11 be treated as one and the same, and whatever you decide to do in
12 this case, they ought to be treated together.

13 She doesn't tell you that if you do so, you're
14 punishing Candice Kennedy, who is the owner of Artemis and had
15 nothing to do with the problems that they're talking about, and
16 that they can't be lumped together. They're separate entities.

17 Now, I want to talk about the things that the parties
18 agree to. I want to take a look at the complaint that the
19 plaintiffs filed in this case, because that is the roadmap for
20 where this case goes and what they can prove and what you-all
21 are entitled to look at when you make your decisions in this
22 case.

23 What do we agree on? Well, we agree that Tigers
24 Limited is a foreign corporation organized under the laws of the
25 United Kingdom. That's not in dispute.

1 Tigers (USA) Global Logistics is a U.S. company.
2 They're out of New Jersey. We don't disagree about that either.

3 Tamerlane is a Virginia corporation, organized and
4 existing under the laws of the state of Virginia, with its
5 registered office at 11710 Plaza America Drive, Suite 2000, in
6 Reston, Virginia. We don't disagree about that either.

7 Artemis is a corporation organized and existing under
8 the laws of the state of Virginia, with its registered office
9 located at 222 Central Park Avenue, Suite 1700, Virginia Beach,
10 Virginia. We're in agreement on that too.

11 They say in their complaint that on September 6, 2013,
12 Tigers and Tamerlane entered into a valid and enforceable
13 written contract titled Primary Agency Agreement. And the
14 contract is attached to the complaint as Exhibit Number 1. We
15 agree with that. And if you look at -- when you get the
16 opportunity, if you look at Exhibit Number 1 which is the
17 attached, and it says the agency agreement, herein referred to
18 as the agreement, is effective from the 6th day of
19 September 2013 between the following parties: Tigers Limited,
20 head office Hong Kong, hereinafter called Tigers, and agent,
21 Tamerlane Global Services, hereinafter referred to the agent.

22 So we are in agreement. The parties to the contract,
23 the thing that guides everybody in this case, is the UK company
24 Tigers UK and Tamerlane.

25 What you don't see in this contract, which is as

1 important as what you do see, is you don't see Artemis. You
2 don't see Jim O'Brien individually. Now, we agree that Jim
3 O'Brien was the president of Tamerlane. But the officers and
4 directors of corporations are not liable for the -- whatever the
5 corporation does. If the corporation is in breach of contract,
6 any -- only in extreme egregious circumstances can you do what's
7 called pierce the corporate veil and get to the shareholders,
8 the officers and the directors. That -- you won't hear any
9 evidence of that in this case, I don't think. You won't hear
10 anything about Artemis and Tamerlane being one and the same.
11 They've admitted they're two separate corporations.

12 Counsel talked about there being two moves. And at one
13 time there were two moves contemplated. The first move
14 Tamerlane started to complete and then hired Artemis to complete
15 it. And in paragraph 16 of their complaint, they say, after
16 move one was completed. We agree on that. Move one was
17 completed. There was then an exchange of funds, about \$159,000.
18 And we agree that the funds were to pay for the first move.

19 And counsel has, I think, argued to you that, well, we
20 had -- Tamerlane had to pay its subcontractors, wherever they
21 were, as part of that deal. Well, that's not how it works. You
22 get -- the work gets done. You get billed for it. And that's
23 what happened. Tigers was billed for the completed move that
24 they say happened in paragraph 16 of their complaint. And
25 Tamerlane was paid for it. Whether or not Tamerlane paid

1 anybody else out of those funds or kept the funds for themselves
2 or paid their rent or their utilities or whatever, that is not
3 Tigers' business. And Tigers can't complain about that.

4 So that's where we are, and that's what this case is
5 about. But we also know -- and it's agreed -- Tamerlane
6 basically went out of business. They ran out of money. They
7 were having some other difficulties on other jobs, and they went
8 out of business.

9 So what does Tigers want to do? They tried to find
10 somebody who is still in business, and the principals of the
11 company, Jim O'Brien, and say, well, if we can't get our money
12 out of Tamerlane, let's throw the spaghetti up against the wall
13 and see if we can't get it out of Artemis or out of Jim O'Brien.

14 But at the end of the day, you're going to find they
15 don't have any evidence to support their theory of how they're
16 going to get their money. Now, you may -- they may well
17 convince you that Tamerlane did something wrong or didn't
18 complete the second move. We don't disagree with that.
19 Tamerlane did not complete the second move. It didn't get
20 completed.

21 If you decide that Tamerlane is responsible for that,
22 that's fine, but not Artemis, because you won't find a contract
23 between Tigers and Artemis. You will not find anything that Jim
24 O'Brien did that was wrong other than perhaps make some bad
25 business judgments on behalf of Tamerlane, and Tamerlane went

1 out of business.

2 But that's not how it works.

3 Let's talk about the Louis Berger Group. You won't see
4 a contract between Tamerlane and Louis Berger Group. You won't
5 see a contract between Artemis and Louis Berger Group. The only
6 contract that you're going to see -- the only evidence you're
7 going to have in this case is that Tamerlane and Tigers entered
8 into a contract. Part of the contract was done, part of the
9 contract was paid for, and that's the end of the case.

10 It is, as counsel has said to you, a simple case,
11 unless you allow her to make it complicated, and she's got to
12 make it complicated to see what she can do to get you to find
13 that Artemis did something wrong or Jim O'Brien did something
14 wrong. I challenge you at the end of the case, listen to what
15 she told you she's going to prove and hold her to feet to the
16 fire. If she didn't prove it, tell her so. If she proves
17 everything she said, then tell me so. That's fair. But I don't
18 think the evidence is going to bear out what she says.

19 And what you will find -- and the Court will instruct
20 you that what I tell you and what counsel tells you is not the
21 evidence in the case. We're advocates for our respective
22 clients, and we're going to tell things in the best light to our
23 clients. But keep in mind the evidence is what you're going to
24 decide on, and the evidence in this case, there really isn't
25 that much disagreement about. But the big roadmap, the

1 complaint and what is said in the complaint, that is what
2 they're -- they have to prove, and if they don't prove it, you
3 find in favor of my clients. Thank you very much.

4 And you undoubtedly will be hearing from me again. And
5 if I get a little long-winded, you'll excuse me for that. After
6 doing this for so many years, I tend to talk a lot. Thank you
7 very much.

8 THE COURT: Call your first witness.

9 MS. MCKNIGHT: Yes, Your Honor. We would like to call
10 Mark Bongean of Tigers (USA).

11 **MARK BONGEAN,**

12 after having been duly sworn or affirmed,

13 took the stand and testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. MCKNIGHT:

16 Q. Good morning, Mr. Bongean. Could you tell the jury who you
17 are and what you do for work.

18 A. My name is Mark Bongean. I'm vice president of freight
19 management with Tigers (USA) Global Logistics.

20 Q. And how many years of experience do you have in freight
21 management?

22 A. I've been in the business for about 25 years.

23 Q. Is that experience in domestic or international freight
24 management?

25 A. Primarily international, but a lot of domestic also built

1 in.

2 Q. And what does Tigers do?

3 A. Tigers performs freight management --

4 MR. SILVER: Excuse me. Clarification as to what
5 Tigers we're talking about.

6 THE COURT: I think that's fair enough.

7 MR. SILVER: There are two different companies.

8 MS. MCKNIGHT: I'd be happy to, Your Honor.

9 BY MS. MCKNIGHT:

10 Q. Mr. Bongean, from here on out, when I reference Tigers, I'll
11 be referring to Tigers (USA).

12 A. Okay.

13 Q. What does Tigers do?

14 A. Tigers performs import/export activities, customs clearance
15 on behalf of companies that want to bring goods into the U.S.,
16 export them from the U.S., or in between two countries outside
17 of the USA.

18 Q. Because I've limited the definition of Tigers for you, is
19 that also true for Tigers -- for the other company, your parent
20 company?

21 A. That is true. We're all involved in the same business.

22 Q. Okay. So when a company comes to you and wants to move,
23 say, hospital equipment from Illinois to overseas, what does
24 Tigers do for them?

25 A. The company will call us, give us a description of what they

1 have and what they're trying to accomplish, what it is they want
2 to move. We will speak with them, if it's going to go air
3 freight, if it's going to go ocean freight. We will go over the
4 cost of moving the goods, the logistics of when they're
5 available. Is there hazardous material? Upon receipt, is there
6 need for a customs broker overseas? Does the recipient at the
7 receiving location have the equipment to recover from the
8 airport or from the ocean port?

9 We will also provide delivery services on their behalf, so
10 we'll arrange for the pickup of goods, once everything has been
11 sorted, arrange for the collection of the goods, movement of the
12 goods by air freight or ocean to the nearest port or airport of
13 destination, and then coordinate with the customer, customs
14 clearance, and delivery to the end usage point.

15 Q. And have you worked on freight contracts that require
16 performance in other countries around the world?

17 A. I have, yes.

18 Q. In which regions?

19 A. Every region, every country that could probably be named.

20 Q. Now, I'd like to ask the court security officer to show you
21 Plaintiffs' Exhibit Number 1.

22 A. Okay.

23 Q. Could you tell the jury what this is?

24 A. This is the primary agency agreement between Tigers and
25 Tamerlane.

1 Q. And -- now, is this the contract that Tigers contends that
2 defendants breached?

3 A. It is.

4 Q. And -- now, why did Tigers enter this agreement with
5 Tamerlane?

6 MR. SILVER: Your Honor, the contract speaks for
7 itself. Also, Your Honor, I'd also object. The contract is
8 Tigers Limited, head office Hong Kong. And counsel's question
9 was Tigers, which she said was Tigers (USA), which is a
10 different company. For those two reasons I object.

11 THE COURT: Rephrase your question.

12 MS. MCKNIGHT: Your Honor, my question was trying to
13 get at why Tigers entered this agreement with Tamerlane. That
14 was my question, which is not told by the contract itself.

15 BY MS. MCKNIGHT:

16 Q. So the question again is why did Tigers enter this agreement
17 with Tamerlane?

18 MR. SILVER: Objection again, Your Honor. Tigers did
19 not enter this agreement. The agreement speaks for itself.
20 It's Tigers United Kingdom, which is not Tigers (USA).

21 MS. MCKNIGHT: Your Honor, pardon me. I don't want to
22 cause confusion for the jury. I think that -- let me rephrase
23 the question.

24 BY MS. MCKNIGHT:

25 Q. Why did Tigers Limited enter this agreement with Tamerlane?

1 A. Tigers was to be involved in the government military
2 activities. In order to do so, we --

3 MR. SILVER: I'm going to object, Your Honor. It's not
4 responsive. Again, he's using Tigers, which is a different
5 company.

6 THE COURT: Objection overruled.

7 THE WITNESS: The companies entered into the agreement.
8 Tigers wanted to be engaged in the government military
9 activities. We sought to have a subject matter expertise in the
10 area in order for both sides to be able to conduct business
11 immediately and to fulfill agreements with the Louis Berger
12 basic purchase agreement.

13 BY MS. MCKNIGHT:

14 Q. Now, what did Tigers bring to the table, meaning what value
15 did Tamerlane get out of entering a contract like this with
16 Tigers Limited?

17 A. Tigers --

18 MR. SILVER: I'm going to object -- and I apologize.
19 But that calls for -- for Tamerlane's state of mind as to what
20 Tamerlane thought they were going to get out of the contract.
21 Again, the contract speaks for itself. It says what the
22 obligations are and what each party is going to get.

23 THE COURT: Objection sustained.

24 BY MS. MCKNIGHT:

25 Q. Mr. Bongean, what did Tigers bring to the table in this

1 contract?

2 A. Tigers brought a network of 33 offices worldwide, 700
3 employees, access to ocean contracts, access to air freight
4 agreements, access to a network that Tamerlane did not have.

5 The agreement was for many services outside of just what was
6 to take place in Afghanistan. This agreement was to be in place
7 for goods that moved into the UK, that moved into Europe, that
8 moved into western Africa, that moved into any other places.

9 MR. SILVER: Your Honor, again, I apologize. I've got
10 to object. The contract speaks for itself, and none of that is
11 in this contract.

12 MS. MCKNIGHT: Your Honor, we're asking about a
13 contract formation, why Tigers --

14 THE COURT: Objection overruled. You can testify about
15 what they were thinking about when they entered into the
16 contract. Objection overruled.

17 BY MS. MCKNIGHT:

18 Q. Did you have anything further to say?

19 A. No, I didn't.

20 Q. Okay. Now, could you turn to page 8 of this document and
21 tell the jury who signed this agreement.

22 MR. SILVER: We'll stipulate that Tigers signed --
23 Tigers Limited signed and that Tamerlane signed.

24 THE COURT: All right.

25 MR. SILVER: We'll stipulate to the whole contract. It

1 can go into evidence.

2 MS. MCKNIGHT: Your Honor, I would like to -- I'm
3 grateful for the stipulation, but I do need this one point on
4 the record.

5 BY MS. MCKNIGHT:

6 Q. What individual signed on behalf of Tamerlane?

7 A. Jim O'Brien.

8 Q. Thank you. Now, I would like to ask you several questions
9 to help give the jury Tigers' understanding of this agreement,
10 and by that I mean Tigers Limited and Tigers (USA).

11 I'd like to get your understanding. You signed this
12 agreement. I would like to get your understanding and the
13 company's understanding of this agreement.

14 MR. SILVER: Your Honor, before she begins, we have a
15 parol evidence rule. Unless she's going to show that this
16 contract is ambiguous, the contract speaks for itself and she --
17 the testimony is improper.

18 THE COURT: That would be correct, wouldn't it?

19 MS. MCKNIGHT: Well, Your Honor, they're going to
20 dispute what our understanding of the contract is. I think it's
21 relevant to tell the jury what our understanding of the contract
22 was.

23 THE COURT: Well, that doesn't matter. It's whatever
24 the contract says. Objection sustained.

25

1 BY MS. MCKNIGHT:

2 Q. You can set Plaintiffs' Exhibit 1 to the side, Mr. Bongean.

3 Now, in your work with Tamerlane, how did you understand
4 profits and losses were to be shared?

5 A. Profits and losses would be split 50 percent, the total
6 selling rate to the customer less any expenses that were
7 involved with the transport of the shipment to be split 50/50.
8 If there was a profit, the profit to be split 50/50. If there
9 was a loss, the loss to also be split 50/50.

10 Q. Now, how did you understand losses related to misconduct by
11 either party?

12 MR. SILVER: Objection, Your Honor. There's no
13 foundation laid. The contract, again, speaks for itself, and
14 his understanding of it is irrelevant at this point.

15 MS. MCKNIGHT: Your Honor, we're not -- I'm not asking
16 questions about the contract. I'm asking about his
17 understanding of the contract. He's a signer of it and he was
18 part of the performance of the contract.

19 THE COURT: Well, that wouldn't be relevant. The jury
20 is going to decide what the contract -- the contract speaks for
21 itself. Objection sustained.

22 BY MS. MCKNIGHT:

23 Q. I'd like to ask the court security officer to hand
24 Mr. Bongean Plaintiffs' Exhibit 2.

25 A. Okay.

1 Q. Now, could you tell the jury what this is.

2 A. This is the basic purchase agreement from Louis Berger
3 Group. It's the agreement between Louis Berger and Tigers
4 Global Logistics in partnership with Tamerlane.

5 Q. And who is this agreement between?

6 A. This agreement is between Louis Berger, Tigers (USA), and
7 Tamerlane.

8 MR. SILVER: Objection, Your Honor. The exhibit itself
9 does not have any signatures on it. By -- I don't think it's
10 got signatures by anybody. It's certainly got no signatures by
11 Tamerlane. And unless this is a signed agreement, I would
12 object to it for those reasons, and no foundation being laid.
13 At this point, it's at least irrelevant. But his testimony is
14 not even consistent with the document that she's having him
15 refer to.

16 THE COURT: Objection overruled. Maybe that objection
17 will become relevant later. But she can inquire.

18 MR. SILVER: She asked if this was a contract -- who
19 this contract was with. Nobody has signed this particular
20 document. So there is no --

21 THE COURT: I understand. Objection overruled.

22 BY MS. MCKNIGHT:

23 Q. Now, Mr. Bongean, I would like to ask you to bring
24 Plaintiffs' Exhibit 1 in front of you. I realize they're in the
25 binder, but if you can consider Exhibits 1 and 2 together, I

1 will ask you questions about them together.

2 A. Okay.

3 Q. Does Plaintiffs' Exhibit 1 reference this basic purchasing
4 agreement, Exhibit Number 2?

5 A. It does.

6 Q. Where does it reference it?

7 A. As attachment A in that -- in the agreement that Tamerlane
8 would be upholding to all of the terms and conditions that exist
9 in the Louis Berger BPA.

10 Q. Just for the jury's reference when they go back in the jury
11 room with Exhibit 1, could you point to where in Exhibit 1 this
12 BPA is referenced?

13 A. Give me a couple of minutes. It's -- give me a couple of
14 minutes to go through it. It's kind of a longer document.

15 Q. So if you're looking at Exhibit 1 --

16 A. Yes.

17 Q. Okay. I ask you to look at, first, page 1 and see if
18 there's any reference to this BPA on page 1 of Exhibit 1.

19 If I could ask you to look toward the end of section 1, the
20 last paragraph in section 1, and tell the jury if this BPA is
21 referenced?

22 A. It says specifically pertaining to the government
23 military-related import/export storage of goods and as
24 identified to the Louis Berger BPA terms and conditions
25 statement of work as identified actually in appendix C.

1 And appendix C was the Louis Berger BPA that was
2 submitted with the agency agreement.

3 Q. Okay. So we've talked about a reference on page 1 of
4 Exhibit 1 to the BPA. And then what does appendix C say?

5 A. Appendix C refers strictly to the basic purchase agreement
6 for the Louis Berger agreement.

7 Q. So that's all in Exhibit 1; is that right?

8 A. I'm sorry?

9 Q. That's in Exhibit 1; is that right?

10 A. Yes.

11 Q. So turning to Exhibit 2, that BPA we were just talking about
12 as referenced in Exhibit 1, does this BPA bind Tamerlane as far
13 as your understanding?

14 MR. SILVER: Objection, Your Honor. Calls for a legal
15 conclusion.

16 MS. MCKNIGHT: I can rephrase, Your Honor.

17 THE COURT: All right.

18 BY MS. MCKNIGHT:

19 Q. This BPA in Exhibit 2, does it reference Tamerlane at all?

20 A. It does.

21 Q. Where does it reference Tamerlane?

22 A. In the very first page. It's -- and Tamerlane ends -- it is
23 listed as in partnership, Tigers in partnership with Tamerlane
24 Global Services.

25 MS. MCKNIGHT: Your Honor, I would like to move for the

1 admission of Plaintiffs' Exhibit Number 2.

2 THE COURT: Objection?

3 MR. SILVER: I'll object, Your Honor, unless -- it's
4 kind of going into isolation. Exhibit Number 1, which is the
5 only -- which this appears to be part and parcel of, needs to
6 goes into evidence too.

7 MS. MCKNIGHT: Your Honor, Exhibit 1 is already
8 admitted into evidence.

9 THE COURT: I haven't admitted it yet, but I will. Or
10 maybe it's been admitted because you haven't objected.

11 MS. MCKNIGHT: That's correct.

12 THE COURT: I haven't seen any objection on it.

13 MR. SILVER: I agree, Your Honor.

14 THE COURT: Both are admitted.

15 MR. SILVER: Thank you, Your Honor.

16 BY MS. MCKNIGHT:

17 Q. From Tigers' standpoint, how would losses be shared if
18 Tigers' or Tamerlane's own misconduct caused losses to the work
19 under the BPA agreement?

20 MR. SILVER: Objection, Your Honor. Foundation.

21 THE COURT: Objection sustained. The contract speaks
22 for itself.

23 BY MS. MCKNIGHT:

24 Q. Now, Mr. Bongean, between Tigers and Tamerlane, which was
25 responsible for moving the cargo in the ground -- on the ground

1 in Afghanistan?

2 A. Tamerlane was.

3 Q. Now that we have a general idea of the contracts at issue,
4 I'd like to ask you questions about the two moves at issue in
5 this case. Now, I'll get to what actually happened in a moment.
6 For now I'd like to focus on what was supposed to happen.

7 What was supposed to happen in the international move from
8 Kunduz to Pakistan?

9 A. The goods were to be collected in Kunduz, and they were to
10 be taken across the Afghan border into Pakistan and delivered to
11 the port of Karachi, at which point Tigers would take over
12 responsibility of the goods and move the goods from Karachi into
13 Dubai.

14 Q. And for that Afghanistan portion of that move, was Tigers
15 responsible for any administrative obligations related to that
16 portion of the move?

17 MR. SILVER: Which Tigers are we talking about now? Is
18 that USA or is it Limited?

19 MS. MCKNIGHT: Your Honor, this may cause an issue --
20 it seems it's causing an issue for counsel. I'm happy to
21 clarify.

22 BY MS. MCKNIGHT:

23 Q. I think that, where relevant, we will ask you --
24 Mr. Bongean, we will ask you to say that it was Tigers -- it was
25 Tigers -- we will rely on it being Tigers (USA). Where it's not

1 Tigers (USA), if you could let us know.

2 MR. SILVER: Your Honor, the problem I have with that
3 is we have two separate plaintiffs.

4 THE COURT: I think we ought to refer to -- there's
5 Tigers Limited and there's Tigers (USA) Global. I think we
6 ought to refer to them. That's well taken.

7 MR. SILVER: Thank you, Your Honor.

8 BY MS. MCKNIGHT:

9 Q. Mr. Bongean, was Tigers (USA) the operating entity for
10 Tigers Limited?

11 A. Yes.

12 Q. And what was Tigers (USA)'s responsibility as far as
13 administrative work related to the Afghanistan ground move of
14 that international move?

15 MR. SILVER: Objection, Your Honor. Relevance.

16 THE COURT: Objection overruled.

17 THE WITNESS: Tigers (USA) was responsible for the
18 invoicing, for the overall management, for the communication,
19 for the updating to Louis Berger of the status of the cargo,
20 generating any type of update information.

21 BY MS. MCKNIGHT:

22 Q. And what was supposed to have happen in the move of
23 equipment -- now I'm moving to the domestic move. Pardon me.

24 What was supposed to happen in the move of equipment from
25 Tarin Kowt to U.S. Bagram Air Force Base? I'll refer to this as

1 the domestic move.

2 A. The goods were to be collected from one base and delivered
3 to the second base.

4 Q. And what was Tigers (USA) responsible for in this second
5 move, the domestic Bagram move?

6 A. Responsible for submitting the bid for the move, for
7 organizing the billing, for the communication, for the
8 administrative functions of these moves.

9 Q. Now, as between Tigers (USA) and Tamerlane, which company
10 was responsible for which parts of these two moves?

11 A. The Tigers (USA) --

12 MR. SILVER: Objection, Your Honor. The agreements --
13 the contracts speak for themselves. But more importantly,
14 Exhibit Number 1, which is the contract, is between Tigers
15 Limited and Tamerlane.

16 This Exhibit Number 2, which is the basic purchasing
17 agreement, is between Louis Berger and Tigers (USA) in
18 partnership with Tamerlane. But what's missing from there is
19 Tigers Limited.

20 So the -- the circle is not complete. Until they lay
21 the foundation completing that circuit through some other
22 contract, I don't see how they can bring in testimony as to what
23 Tigers (USA) is supposed to do under the contract they're suing
24 under.

25 THE COURT: Objection overruled.

1 BY MS. MCKNIGHT:

2 Q. I'll ask my question again, Mr. Bongean. As between Tigers
3 (USA) and Tamerlane, which company was responsible for which
4 parts of these moves, the two moves?

5 A. Tamerlane was responsible for the moves that would take
6 place within Afghanistan and moving -- on the domestic move, and
7 moving the goods from Afghanistan to Karachi, Pakistan, for the
8 second international move.

9 Q. Now, you talked about administrative support work, paperwork
10 that Tigers (USA) was completing for the domestic moves.

11 Did that work involve gathering supporting information from
12 Tamerlane about the payments to be made by Louis Berger Group
13 under the contract?

14 MR. SILVER: Objection. Leading.

15 THE COURT: Objection sustained.

16 BY MS. MCKNIGHT:

17 Q. What kind of information did Tigers (USA) gather related to
18 their administrative portion of work related to these moves?

19 A. We gathered the status of the cargo, when it had been
20 collected, the status upon delivery. When the goods were
21 delivered, there were damages and items that were missing from
22 the cargo. And the status of the cargo and disposition was
23 communicated to Louis Berger USA.

24 Q. Now, I would like to ask you about what actually happened
25 with these moves.

1 The international move to Pakistan and on to Dubai, when did
2 you first know that this wasn't going well?

3 MR. SILVER: Objection. No foundation laid for the
4 question.

5 THE COURT: Well, objection overruled. Should have
6 asked, did he ever find out that it wasn't going well?

7 Objection overruled.

8 THE WITNESS: When the goods were picked up -- again,
9 going into this area, we know that moves don't happen perhaps as
10 routinely as they would moving a shipment from Chicago to
11 London, that there would be occasional delays or there would be
12 challenges to go through.

13 The goods needed to cross from Afghanistan into
14 Pakistan, and they needed to cross at the border. There were --
15 before, there were a number of reasons why things were delayed
16 and that was acceptable. It was plausible for the moves
17 considering where they were taking place.

18 The last one that -- there was an election that was
19 taking place and no goods were being allowed to cross the border
20 during the election period. Okay. Understandable. But then
21 the elections were over, and it had been a couple of days since
22 the elections were over. We had received information from other
23 sources that the borders had been opened.

24 MR. SILVER: Objection. Hearsay, Your Honor.

25 THE COURT: Objection overruled.

1 THE WITNESS: That the items were moving through, but
2 yet our goods were not moving. And so I was asking for updates.
3 What is the status? What can we do? What is the next step?

4 And we were continuing to get delays and continuing to
5 get half answers and uncertainties. And that's really when it
6 became apparent that something else besides just what would be
7 considered a reasonable delay for the area was taking place.

8 BY MS. MCKNIGHT:

9 Q. And so after those issues were resolved, what did you
10 understand was going on with the shipment?

11 A. That --

12 MR. SILVER: Objection, Your Honor. Still no
13 foundation what the problem was and how it --

14 THE COURT: Objection sustained. His understanding.
15 Objection sustained.

16 BY MS. MCKNIGHT:

17 Q. Now, you just testified about borders closing and the issue
18 being resolved. Then what happened?

19 A. Again, we inquired -- we pushed about the status of the
20 goods. We were then informed that the goods were being turned
21 over to local authorities, being turned over to tribal warlords,
22 being --

23 MR. SILVER: Objection, Your Honor. This is all
24 hearsay. There's no foundation laid and it's hearsay.

25 THE COURT: Objection overruled.

1 THE WITNESS: That the goods were being gifted to local
2 authorities and that we had lost control of the goods.

3 BY MS. MCKNIGHT:

4 Q. And who was telling you that the cargo had been seized by
5 warlords?

6 A. Jim O'Brien.

7 Q. And what else did Jim O'Brien tell you about the cargo being
8 seized?

9 A. That the cargo had been seized and that -- looking for
10 payment for previous moves, and that the seals were going to be
11 broken on the cargo as compensation for payment. Seals being
12 that -- on the containers themselves. At origin, each container
13 has a numbered lock that is on it that identifies that the goods
14 have been secured, and those same seals or numbers are checked
15 upon arrival.

16 If the seals are broken while in transit, then the integrity
17 of the cargo is dismissed and you don't know if the goods are
18 all okay, and he said that he would break the seals and have the
19 cargo disbanded.

20 Q. Mr. Bongean, thank you. You covered a lot of ground there.
21 Let me -- if you don't mind, I'll take you by steps just so
22 everything is clear.

23 You testified that you learned from Mr. O'Brien that the
24 cargo had been seized by warlords. Did Mr. O'Brien tell you he
25 was going to do anything about the cargo being seized?

1 A. He was to travel --

2 MR. SILVER: Objection. Leading, Your Honor.

3 THE COURT: Objection sustained.

4 BY MS. MCKNIGHT:

5 Q. What did Mr. O'Brien tell you after the cargo had been
6 seized?

7 A. He was to travel to Pakistan to negotiate the release of the
8 cargo.

9 Q. And how was he going to negotiate the release of the cargo?

10 A. He was going to negotiate the release of the cargo with the
11 \$159,000 that Tigers (USA) had paid to Artemis, and that that
12 was going to be the funds to negotiate the release of the goods
13 from the warlords and...

14 Q. Now, do you know if any of this was actually true?

15 A. He did not travel to Pakistan for -- to negotiate the
16 release of the goods.

17 Q. As you understand, was the cargo ever gifted to warlords?

18 A. It was not gifted to warlords.

19 Q. Was it ever seized by warlords?

20 A. It was not seized by warlords.

21 MR. SILVER: Objection. There's no foundation for his
22 knowledge.

23 MS. MCKNIGHT: I'm asking his understanding.

24 MR. SILVER: His understanding is irrelevant.

25 THE COURT: Objection --

1 MR. SILVER: He didn't even know if it was seized.

2 THE COURT: Objection overruled. You can cross-examine
3 him.

4 BY MS. MCKNIGHT:

5 Q. Now, did you understand that Mr. O'Brien -- had he ever set
6 foot in Pakistan?

7 A. No.

8 MR. SILVER: Same objection, Your Honor. Relevance and
9 foundation.

10 THE COURT: Objection overruled.

11 BY MS. MCKNIGHT:

12 Q. So what did happen?

13 A. Tigers (USA) arranged for payment of \$159,000. It was
14 communicated to myself that the payment of the \$159,000 would
15 then be used to liberate the goods that were to be sent into --
16 into Pakistan, that if this \$159,000 were paid, it would effect
17 the release of the goods, of the cargo.

18 And so we paid \$159,000 in expectation that the goods would
19 be released and we could have them move on their way.

20 Q. And how did you come to that understanding?

21 A. Of the?

22 Q. Of what was going to happen.

23 A. Jim had communicated this through email and through verbally
24 saying, yes, if the \$159,000 is given to us in time, we will be
25 able to have the cargo released and continue its voyage.

1 Q. Now, you just testified about what you understood was
2 supposed to happen. What actually happened?

3 A. The -- as we continued to engage with Jim, we weren't able
4 to arrange for the release of the cargo. We weren't able to
5 really make any headway whatsoever. The status was still the
6 same.

7 We were notified by Louis Berger that Louis Berger --

8 MR. SILVER: Objection. Hearsay, Your Honor.

9 THE COURT: Objection sustained.

10 BY MS. MCKNIGHT:

11 Q. Let me ask you, Mr. Bongean, who was holding the cargo?

12 A. There was a trucker in Afghanistan called Ghazanfar that was
13 holding the cargo.

14 Q. And did you come to an understanding of why they were
15 holding the cargo?

16 MR. SILVER: Objection. I think there has to be a best
17 evidence rule here, or a foundation at least as to what somebody
18 else was doing.

19 THE COURT: Objection sustained.

20 BY MS. MCKNIGHT:

21 Q. Now, in your role as vice president of freight management at
22 Tigers (USA), were you responsible for the moves at issue in
23 this case?

24 A. I was.

25 Q. And were you responsible for investigating what happened in

1 those moves?

2 A. I was.

3 Q. Okay. And during the course -- did you investigate the
4 moves at issue, the two at issue in this case?

5 A. I did.

6 Q. Okay. And when you investigated the move that was seized in
7 Afghanistan, what did you discover about that seizure?

8 A. That the goods were being held in Afghanistan by trucker
9 Ghazanfar.

10 Q. And through your investigation, what was your understanding
11 of why they were holding the cargo?

12 MR. SILVER: Objection. That would be hearsay, and it
13 calls for speculation on his part, Your Honor.

14 THE COURT: Objection sustained.

15 Actually, it's time for us to take a brief recess.

16 (Recess taken at 11:35 a.m.; the jury enters at 11:52 a.m.)

17 BY MS. MCKNIGHT:

18 Q. Mr. Bongean, before the break we were discussing the
19 international move and what happened with it.

20 Could you tell the jury what you understand to have happened
21 to the international move? Again, this is the move that was
22 meant to go from Afghanistan to that Pakistan port and onward.

23 A. The goods were collected from the pickup point and basically
24 brought to Ghazanfar's trucking and hold depot, remaining in
25 Afghanistan outside of Kabul. And Ghazanfar would not take the

1 goods any further because there were --

2 MR. SILVER: Objection, Your Honor. That would be
3 hearsay.

4 MS. MCKNIGHT: Your Honor, it's an exception to
5 hearsay. We're trying to get an understanding of the effect of
6 this information on the listener.

7 THE COURT: Well, it doesn't make any difference what
8 its effect was, does it?

9 MS. MCKNIGHT: Well, we're not offering it for the
10 truth of the matter asserted. We're offering it to understand
11 what effect this information had on Mr. Bongean and Tigers as
12 they moved forward with trying to --

13 THE COURT: Why don't you just ask what effect -- what
14 action they took? What did they do? Instead of what they
15 understood, what did they do?

16 Objection sustained.

17 MR. SILVER: Thank you, Your Honor.

18 MS. MCKNIGHT: Your Honor, thank you.

19 BY MS. MCKNIGHT:

20 Q. Mr. Bongean, what -- what did you do?

21 A. Spoke with the trucker, Ghazanfar, who informed us that
22 the goods would be --

23 MR. SILVER: Objection, Your Honor. That's hearsay.

24 THE COURT: Objection sustained. He can tell us what
25 he did after he talked to them.

1 BY MS. MCKNIGHT:

2 Q. Mr. Bongean, just so we can be clear for the jury, what did
3 Tigers do when it learned that the cargo was being held by
4 Ghazanfar?

5 A. What did Tigers do when they learned that the cargo was
6 being held by Ghazanfar?

7 Q. Yes.

8 A. We worked with Ghazanfar to see if there was the ability to
9 release the cargo.

10 Q. And what did you understand the problem was with Ghazanfar
11 releasing the cargo?

12 MR. SILVER: Objection, Your Honor. That calls for
13 hearsay. Calls for speculation.

14 MS. MCKNIGHT: Again, Your Honor, this goes to the
15 effect on Tigers. We're not offering it for the truth of the
16 matter asserted. We're offering it to show -- to establish the
17 steps of what Tigers understood was the problem and what -- the
18 effect of that on Tigers and the actions they --

19 THE COURT: Well, he told us they were holding it and
20 they wouldn't release it. He can tell us what he did, his
21 understanding. Objection sustained.

22 BY MS. MCKNIGHT:

23 Q. Mr. Bongean, why didn't Tigers end the agreement with
24 O'Brien when it learned of this?

25 MR. SILVER: Objection. Relevancy.

1 THE COURT: Objection overruled.

2 THE WITNESS: We didn't end the agreement with
3 Tamerlane or Jim, because at that point we had no other
4 connection to the cargo. The objective was to move the cargo
5 forward. We were trying to move, even in small steps, to get
6 somewhere, to make some type of progress. But outside of Jim
7 specifically, we had no other tentacle. We had no other way to
8 know the status of the cargo.

9 And if we had severed that relationship or ceased
10 speaking with Jim, then we would have no relationship with the
11 cargo. We had no idea where it was. We had no idea who was
12 holding it. And we would really have no options at that point.

13 So we needed to maintain some type of dialogue with Jim
14 and with Tamerlane in order to hold out any hope of
15 understanding where the cargo was and to have any chance of
16 recovering the cargo and have it continue its voyage.

17 BY MS. MCKNIGHT:

18 Q. Now, what went wrong with the other move, the domestic move
19 within Afghanistan to Bagram Air Force Base?

20 A. Well, the domestic move, when it arrived there were a number
21 of discrepancies, and the discrepancies were brought to our
22 attention by Louis Berger. They needed to do an inventory to
23 see what damages had taken place and what damages -- or what
24 items had been missing.

25 According to the agreement of the BPA, when you have those

1 type of damages or those type of discrepancies, there needs to
2 be an audit of the goods, and then Louis Berger comes back with
3 their findings and they advise, here is what we're seeing as a
4 discrepancy in the cargo, and then they ask for the BPA holders
5 to find a solution.

6 Q. And at first, did Louis Berger Group pay Tigers and
7 Tamerlane for that domestic move?

8 A. No.

9 MR. SILVER: Objection. Relevance.

10 THE COURT: Objection overruled.

11 THE WITNESS: When the move first took place, it was
12 quoted at \$103,000 or something along those lines. And then we
13 received an invoice for a much higher amount. It was \$144,000.
14 And when we asked about why the charges went up, it was because
15 there were --

16 MR. SILVER: Objection. That is hearsay.

17 THE COURT: Well, it's from your client.

18 MR. SILVER: No. This was from Louis Berger.

19 THE WITNESS: No.

20 MR. SILVER: It was from my client?

21 THE COURT: Objection overruled.

22 MR. SILVER: I withdraw my objection. I misunderstood.

23 THE WITNESS: Tamerlane had advised that there were
24 additional crane charges that were due to the move. And Tigers
25 had asked, well, we weren't notified of those charges, we

1 weren't notified that there were delays, we weren't notified of
2 any of these. To suddenly have the invoice increased by
3 50 percent is quite a sum, in addition to have the damage that
4 took place on the goods.

5 And so that was the -- kind of where the shipment stood
6 at the point when the goods arrived. It did arrive, but the
7 goods arrived in -- damaged, and they arrived with charges that
8 were 50 percent higher than [sic] were originally quoted, and
9 when -- we weren't advised of the higher charges or really what
10 they represented until it was after the fact.

11 BY MS. MCKNIGHT:

12 Q. You described your responsibility as Tigers (USA) to collect
13 information and invoice -- about invoices and send it on to LBG.
14 Do you did that in relation to this move?

15 A. We did, yes.

16 Q. Okay. And at first, did Louis Berger Group pay for this
17 shipment?

18 A. No, they did not.

19 Q. Okay. I'd like to ask you to turn to Plaintiffs' Exhibit 6,
20 please. Are you familiar with this document?

21 A. I am.

22 Q. Could you tell the jury -- give them a brief summary of what
23 this document is?

24 MR. SILVER: I'm going to object, Your Honor. I think
25 the document speaks for itself. He's not a party to this

1 document.

2 MS. MCKNIGHT: Your Honor, he just testified that he's
3 familiar with this document. I could have him lay additional
4 foundation for the email if you'd like.

5 MR. SILVER: This is an email between Candice Kennedy
6 and Brooks Isoldi. And they can bring in Brooks Isoldi to
7 testify if they want, but I don't think this is the proper
8 person to --

9 THE COURT: You can go ahead and ask him any further
10 questions.

11 MS. MCKNIGHT: Okay.

12 BY MS. MCKNIGHT:

13 Q. Could you give the jury a brief summary of this document?

14 A. This is an email from Candi advising of the invoices for the
15 12 trucks for the domestic move and a copy of the invoice
16 itself.

17 Q. Who is the invoice from?

18 A. The invoice is from Artemis.

19 Q. Why isn't the invoice from Tamerlane?

20 A. On the invoice itself, it says Tamerlane Global Services
21 officially became Artemis Global on November 15, 2013.

22 Q. Did Tigers pay this invoice right away?

23 A. No, because we had questions on the increased charges, and
24 as -- part of our responsibility to Louis Berger under the BPA
25 was to understand the charges. Louis Berger, very familiar with

1 doing business in the area, and even when we were working with
2 them to become an approved partner, they understood that in
3 this --

4 MR. SILVER: Objection as to what they understood.

5 THE COURT: Objection sustained.

6 THE WITNESS: In discussions --

7 MR. SILVER: Move to strike.

8 THE WITNESS: In discussions with Louis Berger, they
9 understood that there would be occasions where --

10 MR. SILVER: Objection, Your Honor.

11 THE COURT: Objection sustained.

12 MR. SILVER: Thank you.

13 BY MS. MCKNIGHT:

14 Q. Mr. Bongean, could I ask you, what were some of the problems
15 with this invoice? You just described that there were problems,
16 you didn't pay them right away. What were some of those
17 problems?

18 A. One, there was still ongoing review of the damages and the
19 theft from the shipment that had not been finalized. And the
20 invoice -- the charges on the invoice were higher than what was
21 originally quoted. And we weren't sure, from Tigers'
22 standpoint, why the charges were higher.

23 If the charges were going to change, especially obviously be
24 higher, we needed to communicate that to Louis Berger so that
25 they would understand, yes, there was this additional charge and

1 here is why. And we didn't understand what those charges were,
2 especially at the amount that the invoice was higher versus what
3 was originally quoted.

4 BY MS. MCKNIGHT:

5 Q. And was it a problem that the invoice was coming from
6 Artemis instead of Tamerlane?

7 MR. SILVER: Object to the leading form of the
8 question.

9 THE COURT: Objection overruled.

10 THE WITNESS: There was a question on why it was coming
11 from Artemis versus Tamerlane, and we were given the information
12 Tamerlane and Artemis were one and the same.

13 BY MS. MCKNIGHT:

14 Q. Ask you to turn to Plaintiffs' Exhibit Number 7.

15 A. Okay.

16 MS. MCKNIGHT: Your Honor, I would like to move for the
17 admission of Plaintiffs' Exhibit Number 6.

18 THE COURT: Is that the email he just testified to?

19 MS. MCKNIGHT: Exactly.

20 THE COURT: It's admitted.

21 BY MS. MCKNIGHT:

22 Q. Now, looking at Plaintiffs' Exhibit Number 7, is this email
23 about the moves at issue in this case?

24 A. It is.

25 Q. And are you familiar with this email?

1 A. I am.

2 Q. I'd like you to turn to page 2 of this email. What company
3 was in Jim O'Brien's signature line in the most recent email?

4 A. Artemis Global Logistics.

5 Q. And you mentioned that you were familiar with this email.
6 If you need a moment to look through it, please do.

7 The question I'm going to ask you is what will this email
8 show the jury about the cost invoiced by Artemis as compared to
9 the amount quoted?

10 A. Can you repeat that, please?

11 Q. Sure. What will Plaintiffs' Exhibit 7 -- what will this
12 email string show the jury about the cost invoiced by Artemis as
13 compared to the amount quoted?

14 A. It will show that the invoice amount went up, and that
15 when we were questioning, you know, how come they went up, the
16 total should have been \$103,000, what instructions were put in
17 place, we need to have an understanding of what the charges
18 were, then we were kind of given an email and a communication
19 that came back that, you know, is threatening. That we're going
20 to -- from the -- from Jim saying that he was going to call the
21 Department of Justice. That the independent auditors of Louis
22 Berger -- as we were trying to find out the information of what
23 was going on with the shipment, were trying to come across just
24 the facts, it just became very threatening and really not able
25 to get to the point of just having a proper exchange of business

1 questions and answers in order to have a solution.

2 Q. And was a clear explanation ever given for why the invoice
3 was increasing?

4 A. Part of it was. We were given -- because there were
5 additional crane charges that were needed at destination, but
6 the crane charges, they were always -- they were after the fact.
7 We weren't advised of the -- of these charges as they were
8 actually going on.

9 And actually who -- we wanted to let Louis Berger know. We
10 would have had a much higher sense of -- of truthfulness if we
11 could have said, while the shipment was going on, hey, we're
12 having a problem with the crane, we're having a problem with the
13 trucks, the crane is not there, but we weren't given the
14 opportunity to do that. We weren't given the opportunity to try
15 and solve the problem or keep Louis Berger inside the
16 communication loop.

17 It was just simply, here's an invoice for charges that were
18 50 percent higher. And then Louis Berger asked, well, why is
19 this? And then I went back and I asked for the charges of why
20 they were, which I did receive. But then Louis Berger said,
21 well --

22 MR. SILVER: Objection. Hearsay.

23 THE COURT: Objection sustained as to what they said.

24 BY MS. MCKNIGHT:

25 Q. Thank you, Mr. Bongean. Now, you testified about threats in

1 the email language from Mr. O'Brien. Do pages 1 and 2 of
2 Exhibit 7 show examples of what you described?

3 MR. SILVER: Objection. Relevance, Your Honor.
4 Documents speak for themselves.

5 THE COURT: Objection overruled.

6 MR. SILVER: They're neither admissions or
7 declarations --

8 MS. MCKNIGHT: Your Honor, I --

9 MR. SILVER: -- against interest.

10 MS. MCKNIGHT: -- believe you've ruled.

11 THE COURT: Objection overruled.

12 THE WITNESS: Yes. Several examples of really becoming
13 very aggressive and very threatening throughout the course of
14 this email and several emails.

15 Anytime that we wanted to have something accomplished,
16 if we started to peel back the facts a little bit or started to
17 want to know additional information, this was a typical response
18 to come back and say, I'll call the Department of Justice, I
19 will do this, you know, throw all the acronyms out of how Tigers
20 was going to be held accountable and officers going to jail.

21 BY MS. MCKNIGHT:

22 Q. Now, at the time did his reaction make any sense to you?

23 A. No.

24 MR. SILVER: Objection, Your Honor.

25 THE COURT: Objection sustained.

1 MS. MCKNIGHT: Your Honor, I would like to move for the
2 admission of Plaintiffs' Exhibit Number 7.

3 THE COURT: Admitted.

4 MR. SILVER: Your Honor, there are parts of Number 7 I
5 have no objection to, those that are with -- between Mr. Bongean
6 and Tamerlane or Artemis.

7 But there are others in there that are from Mr. Isoldi,
8 and they would be hearsay. It's part of a string, some of which
9 he was involved and some of which he was not. Those with
10 Mr. Isoldi, I think Mr. Isoldi needs to testify to.

11 THE COURT: That would be correct, wouldn't it?

12 MS. MCKNIGHT: Your Honor, this is part of an email
13 string. They've had an opportunity to either object to or
14 redact this email before. Moreover, the Isoldi-only emails
15 would not be offered --

16 THE COURT: You've had no objection before now?

17 MR. SILVER: I believe they were objected to, Your
18 Honor.

19 MS. MCKNIGHT: Your Honor, the objection -- there were
20 objections.

21 THE COURT: Well, you-all can redact that. I'll admit
22 it subject to redaction from hearsay statements.

23 MR. SILVER: Thank you, Your Honor.

24 MS. MCKNIGHT: Your Honor, I had two points on this.
25 The first is that, first, this is a business records exception

1 under Rule 803. It should be -- that's for the parts of this
2 email that are as between Brooks Isoldi and Tigers.

3 THE COURT: Emails aren't business records.

4 MS. MCKNIGHT: You'll see by these emails that they are
5 recording the progress of the move, they're invoicing. This is
6 how they dealt with and managed the move and payments for the
7 move.

8 THE COURT: No, I think the first ruling is correct.
9 I'll admit those statements other than the hearsay ones. It can
10 be redacted later.

11 BY MS. MCKNIGHT:

12 Q. Mr. Bongean, could you turn to Plaintiffs' Exhibit 5,
13 please.

14 A. Okay.

15 Q. Now, on page 1, could you tell the jury who the most recent
16 email is from?

17 A. From Candi Kennedy.

18 Q. And what company is she writing from?

19 A. From Artemis.

20 Q. But this is related to the moves at issue in this case?

21 A. This is related to the -- yes, it is.

22 Q. Could you take a moment to review this email and give the
23 jury a quick summary.

24 A. This is the copy of the invoice from Artemis for now
25 \$159,000. So it had increased, again, to \$159,000 that had come

1 in. It contains email from Jim that is more threatening to
2 report to the Department of Justice stating given Louis Berger's
3 previous CEO spent 20 years in prison for violating the
4 conditions. Also stating that rank -- in the future, we are to
5 work this out with the COO, who is Candi.

6 And then coming back with demands on follow-ups, saying,
7 one, they owe us an updated invoice, which was provided. They
8 have put back on LBG support, and Brook writes an apology for an
9 item.

10 MR. SILVER: Objection to the hearsay portion, anything
11 done by Brooks Isoldi. If it's done by him, I have no
12 objection.

13 MS. MCKNIGHT: Your Honor, all of these emails -- there
14 are two emails. One was written by Mr. Bongean and there was a
15 response by Ms. Kennedy. And it attaches an invoice.
16 Mr. Bongean was copied on all emails and is managing the move
17 from Tigers' standpoint.

18 THE COURT: Objection overruled.

19 BY MS. MCKNIGHT:

20 Q. Now, you mentioned there was an invoice. Was that invoice
21 from Tamerlane?

22 A. Invoice is from Artemis. And in the notes of the invoice,
23 Tamerlane Global Services was officially absorbed by Artemis
24 Global on January 1, 2014. It also has on the invoice that the
25 terms are due upon receipt when the terms and conditions of the

1 agreement are 30 days.

2 Q. Now, you mentioned there was an increase. Did the increase
3 in the invoice amount make any sense to you at the time?

4 A. No, it did not.

5 Q. Why not?

6 A. It was --

7 MR. SILVER: I think this was asked and answered
8 several times now, Your Honor.

9 MS. MCKNIGHT: This is the first time he's testifying
10 about this invoice.

11 THE COURT: Objection overruled.

12 THE WITNESS: The invoices -- the increases were almost
13 arbitrary in that it just went up from 103 to 134 to 144 to
14 \$159,000. There really was no justification of why they went
15 up.

16 We were just continuing to go along with the story, and
17 that we wanted to be -- Tigers wanted to be the good people, so
18 to speak, trying to continue to move. If we had said, no, we
19 are not paying that invoice, we will not -- no longer do
20 business with you, we again would lose touch -- we would lose
21 that tentacle with the cargo.

22 So this was a way that we would just at least try and
23 stay in touch with the cargo itself.

24 MS. MCKNIGHT: Your Honor, I would like to move for the
25 admission of Plaintiffs' Exhibit Number 7.

1 THE COURT: It's admitted.

2 MS. MCKNIGHT: Pardon, Number 5.

3 MR. SILVER: Again, Your Honor, the portions that
4 Mr. Bongean were involved in, I don't have a problem with. The
5 parts that are hearsay I do.

6 THE COURT: Well, is there any people in this email
7 between this gentleman and Artemis?

8 MR. SILVER: The one between he and Artemis I don't
9 have a problem with, Your Honor.

10 MS. MCKNIGHT: Your Honor, they are all between him and
11 Artemis.

12 THE COURT: Well, all those that are with Artemis are
13 admitted.

14 BY MS. MCKNIGHT:

15 Q. Mr. Bongean, could you turn to Plaintiffs' Exhibit Number 8,
16 please.

17 A. Okay.

18 Q. Are you familiar with this email?

19 A. I am.

20 Q. The earliest email in this string, who is it sent from?

21 A. The earliest email?

22 Q. The front of the chain.

23 A. It's from myself.

24 Q. So -- pardon me. That's my error, Mr. Bongean. The most
25 recent, so the latest email.

1 A. From Candi Kennedy.

2 Q. Okay. And was she writing from Tamerlane?

3 A. She was writing from Artemis.

4 Q. And this email is about the moves at issue in this case?

5 A. It is.

6 Q. Could you turn to the earliest email, so the last email in
7 this string, and tell the jury the date of that email.

8 A. The date is March 7, 2014.

9 Q. If you could flip back to Plaintiffs' Exhibit 5 quickly, and
10 tell the jury when you received the Artemis invoice attached to
11 Plaintiffs' Exhibit 5.

12 A. The Artemis invoice date is March 2, 2014.

13 Q. Okay. So Plaintiffs' Exhibit 8, the first email in that
14 string, is this related to that invoice in Plaintiffs'
15 Exhibit 5?

16 A. It is.

17 Q. Okay. And how quickly did you pay that invoice in
18 Plaintiffs' Exhibit 5?

19 A. In five days.

20 Q. Pardon me?

21 A. Five days.

22 Q. How long did Tigers have to pay this invoice per the
23 contract?

24 A. The terms were 30 days.

25 Q. And how did you pay this invoice?

1 A. I'm sorry?

2 Q. How did you pay this invoice?

3 A. The invoice was ultimately paid by a wire transfer directly
4 into the accounts for Artemis.

5 Q. Did you try to pay in any other way?

6 A. It was the -- I was told --

7 MR. SILVER: Objection, Your Honor. Hearsay and also
8 relevance.

9 THE COURT: I don't know who told him.

10 MR. SILVER: He hasn't said yet. He just said I was
11 told.

12 THE WITNESS: Jim informed me.

13 MR. SILVER: Still -- well, the bill was paid. I
14 don't --

15 MS. MCKNIGHT: Your Honor, does he have a basis for his
16 objection?

17 MR. SILVER: Relevance.

18 THE COURT: Objection overruled.

19 THE WITNESS: Jim informed me that with the payment of
20 the \$159,000, of what the multiple increased invoice was, with
21 these funds, he would be able to work with, negotiate, and pay
22 the warlords, the holding authorities of the cargo, so that the
23 cargo would be released.

24 I said okay. So we paid this, and we also guaranteed
25 additional charges that would there be -- if there was

1 additional storage, we would pay \$40,000. If there was
2 demurrage on the containers, we would pay that too. We offered
3 these charges up as Tigers in order to have the goods released.

4 So a check was cut -- a paper check was cut for the
5 goods. And this was on a Friday. We couldn't get the check out
6 in time to be set up. We had to set up Artemis as a vendor.

7 And then we're told that the goods would not be
8 there -- the check wouldn't be there in time. It had to be
9 there. So it was, you know, under duress, that we need this
10 money right now and we have to have it. If we don't have it,
11 the seals on the trailer will be cut, the goods will be gone, we
12 will lose control over the goods.

13 As I said before, when you cut the seals on the truck
14 and the doors are open, that the goods basically disappear, we
15 don't have integrity of the goods anymore.

16 So we arranged for the money to be wire transferred.
17 Our due date was -- it was Wednesday, the 14th, I think was the
18 due date of the money. We wired the money in. And then it was
19 confirmed by Artemis that the goods -- that the money had been
20 received by that -- by the date that we were assigned.

21 BY MS. MCKNIGHT:

22 Q. You've mentioned this term a few times, cut the seals. Who
23 was going to cut the seals?

24 A. Jim said that he would cut the seals.

25 Q. Would Louis Berger Group have paid for cargo in a container

1 that had cut the seal?

2 A. They would have disputed the payment, yes.

3 MR. SILVER: Objection, Your Honor. Calls for
4 speculation on his part.

5 THE COURT: Well, objection sustained.

6 MR. SILVER: I'd move to strike.

7 THE COURT: That will be granted.

8 BY MS. MCKNIGHT:

9 Q. So Mr. Bongean, what happens to cargo in a container that
10 has had its seals cut?

11 MR. SILVER: Your Honor, unless she references to this
12 particular case, it's irrelevant.

13 THE COURT: I would think so. Anything could happen to
14 it, couldn't it?

15 MS. MCKNIGHT: Well, Your Honor, I think it's relevant
16 that -- the value of the cargo, whether it would remain the same
17 or go down. We had --

18 THE COURT: It isn't going to go up. We know that.

19 MS. MCKNIGHT: Fair enough, Your Honor.

20 THE COURT: It's got to go down. If it's not there,
21 it's worth nothing; who knows what damage in between. But all
22 of that is mere speculation.

23 MS. MCKNIGHT: Thank you, Your Honor.

24 BY MS. MCKNIGHT:

25 Q. So at the time when you were trying to manage this movement

1 and trying to finalize it, how did Mr. O'Brien's demands seem to
2 you?

3 MR. SILVER: Objection. Relevance.

4 THE COURT: Objection sustained.

5 BY MS. MCKNIGHT:

6 Q. In all your experience in managing freight movement
7 internationally and domestically, have you ever received threats
8 like the ones you were receiving from Mr. O'Brien?

9 MR. SILVER: Objection, Your Honor. Relevance again.

10 THE COURT: Objection sustained.

11 BY MS. MCKNIGHT:

12 Q. Now, you mentioned that you wired -- you ultimately wired
13 payment for the invoice; is that right?

14 A. Correct.

15 Q. And who did you wire money to?

16 A. To Artemis, to their bank account.

17 Q. Why didn't you wire it to Tamerlane, the party to the
18 contract?

19 A. We were given instruction to wire the money to Artemis by
20 Candi and by Jim.

21 Q. And did Artemis confirm that it had received the funds?

22 A. Yes, they did.

23 Q. Mr. Bongean, you've answered a number of questions about --
24 actually, pardon me.

25 MS. MCKNIGHT: If I can take care of an administrative

1 matter. Your Honor, we'd like to move for the admission of
2 Plaintiffs' Exhibit Number 8.

3 THE COURT: It's admitted.

4 MR. SILVER: No objection, Your Honor.

5 BY MS. MCKNIGHT:

6 Q. Mr. Bongean, you've testified about a number of exhibits,
7 and you've mentioned someone named Candice or Candi Kennedy.

8 I'd like to ask you a few questions about Ms. Kennedy. Is
9 Ms. Kennedy sitting in the courtroom today?

10 A. She is.

11 Q. And where is she?

12 A. She is sitting next to Jim.

13 Q. And how do you know her?

14 A. She was a former employee of Tigers (USA).

15 Q. And did she leave Tigers to work with Jim O'Brien?

16 A. She did.

17 Q. And what did you understand her relationship with Jim
18 O'Brien to be at that time?

19 MR. SILVER: Objection. Relevance, Your Honor.

20 MS. MCKNIGHT: Your Honor, this goes -- this goes to
21 witness bias, Your Honor.

22 THE COURT: His bias? He's the only witness we've had
23 so far.

24 MS. MCKNIGHT: Yes, Your Honor. Hold on one moment.

25 Your Honor, in the opening statement, counsel for

1 defendant suggested that Ms. Kennedy -- reasons for why
2 Ms. Kennedy left Tigers and also suggested that she was an
3 independent witness who worked for an independent company.

4 I only have a few questions here.

5 THE COURT: What a lawyer said is not evidence in this
6 case.

7 MS. MCKNIGHT: Your Honor, I'm happy to hold over these
8 questions until a later time if Ms. Kennedy is called as a
9 witness.

10 THE COURT: If they become important, that will be
11 fine.

12 MS. MCKNIGHT: I'm sorry?

13 THE COURT: I said that will be fine. If they become
14 important later on, why, you can do it.

15 MS. MCKNIGHT: Thank you, Your Honor.

16 BY MS. MCKNIGHT:

17 Q. Mr. Bongean, I have a handful more questions for you. For
18 the domestic move -- this is the move to Bagram -- how many
19 final invoices did Tigers receive from defendants? Again, I'll
20 say how many final invoices did Tigers receive?

21 A. I think it was three.

22 Q. Final invoices?

23 A. The final invoice was -- the 159 was the final invoice.
24 159,000.

25 Q. And who sent Tigers -- which company sent Tigers that final

1 invoice?

2 A. Artemis.

3 Q. Now, for the international move, the move that went to
4 Pakistan and would go further on to Dubai, how many final
5 invoices did Tigers receive from defendants for that work?

6 A. Didn't receive any.

7 Q. Who was in charge of Tamerlane?

8 A. Jim O'Brien.

9 Q. And who was in charge of Artemis?

10 A. Jim O'Brien.

11 MR. SILVER: Objection, Your Honor, unless foundation
12 is laid he has accurate knowledge.

13 MS. MCKNIGHT: Your Honor, we've spent the morning
14 laying a foundation of his --

15 THE COURT: Objection overruled.

16 BY MS. MCKNIGHT:

17 Q. And who caused the Kunduz move to be retained in the holding
18 station in Afghanistan?

19 A. Jim O'Brien.

20 Q. And how did they cause the cargo to be retained?

21 A. Monies were owed by Tamerlane to the trucker, Ghazanfar,
22 that were not paid, so Ghazanfar held the Louis Berger cargo.

23 MR. SILVER: Objection, Your Honor, unless there's some
24 foundation laid as to what Ghazanfar did. They can call
25 Ghazanfar as a witness.

1 THE COURT: Objection overruled. You can cross-examine
2 him.

3 THE WITNESS: Ghazanfar stated --

4 MR. SILVER: Hearsay, Your Honor.

5 THE COURT: Objection sustained as to what he said.

6 BY MS. MCKNIGHT:

7 Q. You can testify about what you understood.

8 A. My understanding was that --

9 MR. SILVER: Objection as to what he understood, Your
10 Honor. It's what happened.

11 THE COURT: We've heard all of this. I don't think you
12 can start objecting to it now. We've heard about Ghazanfar.
13 Let him testify to what he has already testified to. Objection
14 overruled.

15 THE WITNESS: -- that Jim and Tamerlane owed Ghazanfar
16 funds. Ghazanfar had tried -- for previous moves. That
17 Ghazanfar had tried for a long time to settle those amounts, to
18 collect those amounts.

19 MR. SILVER: Your Honor --

20 THE COURT: Now we're going beyond the understanding.
21 The evidence was he was holding them for previous monies due.

22 MR. SILVER: Move to strike.

23 THE COURT: Let's move on.

24 BY MS. MCKNIGHT:

25 Q. Now, Mr. Bongean, in your role as vice president of freight

1 management at Tigers (USA), are you familiar with different
2 monetary losses that Tigers (USA) has suffered because of
3 defendants' actions?

4 A. I am.

5 Q. Could you tell the jury briefly why you were qualified to
6 testify about monetary damages suffered by Tigers due to
7 defendants' misconduct?

8 A. I mean, in my role, I am a member of the (USA) executive
9 management team. I have exposure to the operational moves, to
10 freight management, to many different facets of the company.

11 Q. And were you responsible for these Louis Berger Group moves?

12 A. And I was responsible for the Louis Berger moves and all of
13 the follow-up since then.

14 Q. And -- now, what is owed to Louis Berger Group for the
15 international Pakistan move?

16 A. I believe the amount for the value of the goods themselves
17 is \$944,000.

18 Q. And how do you know that figure?

19 A. They have --

20 MR. SILVER: Objection.

21 THE WITNESS: -- put in a demand.

22 MR. SILVER: That would be hearsay, Your Honor. Unless
23 they've paid it, it's not a damage.

24 THE COURT: He's testifying for the plaintiff and the
25 firm, plaintiff can always testify to his own damages.

1 Objection overruled.

2 MR. SILVER: I think, Your Honor, if he wants to
3 testify that they have these damages, they've got to testify
4 that they paid the damages, not that maybe somebody else has
5 demanded because that is --

6 THE COURT: He can testify what his damages are, and
7 then you can cross-examine him.

8 MR. SILVER: All right.

9 THE COURT: Plaintiff can testify to his own damages.

10 BY MS. MCKNIGHT:

11 Q. So I'll restate the question just -- I think before the
12 interruption.

13 How do you know this amount is owed to Louis Berger Group?
14 A. Louis Berger has formally written to Tigers advising of the
15 damage amounts and --

16 MR. SILVER: Objection. That's hearsay, Your Honor.

17 THE COURT: Objection overruled.

18 THE WITNESS: They have written to Tigers and advised
19 the amount that is there of \$944,000.

20 BY MS. MCKNIGHT:

21 Q. Have they initiated any sort of related proceedings?

22 A. They have.

23 Q. What kind of proceedings?

24 A. For arbitration, demand for arbitration.

25 Q. And so does Tigers treat this arbitration demand as some

1 sort of distant or uncertain obligation?

2 A. No. It's very real. It's there. It's very real.

3 Q. Now, regarding this amount, do you have an understanding of
4 what comprises the amount demanded?

5 A. The \$944,000?

6 Q. Correct.

7 A. It's strictly the value of the goods.

8 MR. SILVER: Objection, Your Honor.

9 MS. MCKNIGHT: Your Honor --

10 MR. SILVER: Louis Berger can testify to that. That's
11 not his --

12 THE COURT: He can testify to it as well. He's got the
13 bill. They've been sued. And he can testify to it. Objection
14 overruled.

15 BY MS. MCKNIGHT:

16 Q. Sorry. Before the interruption, were you -- do you have a
17 sense of what comprises this amount?

18 THE COURT: Now, "sense" bothers me. If he's gotten a
19 bill from them, demand from them for what monies are due, let
20 him testify to that.

21 He can obviously testify to the demand on them and what
22 their suit is. But what he thinks about it and what he senses
23 about it, irrelevant.

24 MS. MCKNIGHT: Okay. Thank you, Your Honor.

25

1 BY MS. MCKNIGHT:

2 Q. Why this amount of money?

3 A. That is the physical value of the goods that are in
4 question.

5 MR. SILVER: Same objection, Your Honor.

6 THE COURT: Objection overruled.

7 BY MS. MCKNIGHT:

8 Q. Now, has Tigers lost any business opportunities due to
9 defendants' conduct?

10 MR. SILVER: Objection, Your Honor. That is not an
11 element of damages for a breach of contract case.

12 THE COURT: I don't believe it is.

13 MS. MCKNIGHT: It's called for in the -- we believe
14 it's called for in the contract, Your Honor.

15 THE COURT: What in the contract calls for it?

16 MS. MCKNIGHT: Pardon? We believe the contract allows
17 for --

18 THE COURT: What provision in the contract --

19 MS. MCKNIGHT: I believe it's 10-A --

20 THE COURT: -- calls for --

21 MS. MCKNIGHT: -- but let me confirm.

22 THE COURT: -- other loss of business?

23 MS. MCKNIGHT: Yes, Your Honor. It's provision 10-A of
24 Plaintiffs' Exhibit Number 1. It's the very first sentence.

25 THE COURT: 10-A. Exhibit 1?

1 MS. MCKNIGHT: Yes, Your Honor. It's Plaintiffs'
2 Exhibit Number 1. It's on page number 5. And paragraph --

3 THE COURT: 10-A is indemnity.

4 MS. MCKNIGHT: Correct. It's indemnity for a party's
5 own misconduct. And so we're eliciting testimony about damages
6 related to that misconduct.

7 THE COURT: Well, that just has to do with the breach
8 of the contract and the damages to this contract. Where does it
9 say anything else?

10 MS. MCKNIGHT: It says hold harmless from any damage,
11 delay, loss --

12 THE COURT: No. Objection sustained.

13 BY MS. MCKNIGHT:

14 Q. As a result of defendants' conduct in this case, has Tigers
15 had to retain legal counsel?

16 A. Yes, we have.

17 Q. And as a result of defendants' conduct, has Tigers had to
18 retain legal counsel for the arbitration with Louis Berger
19 Group?

20 MR. SILVER: Objection, Your Honor. Relevancy.

21 THE COURT: Is there a provision in the contract for
22 attorneys' fees?

23 MS. MCKNIGHT: This is the same provision, Your Honor,
24 that allows for, quote, any damage, delay, loss, or expense.

25 THE COURT: That's under the indemnity?

1 MS. MCKNIGHT: Yes.

2 THE COURT: Objection sustained.

3 MS. MCKNIGHT: Your Honor, I have no further questions.

4 And I hesitate to excuse Mr. Bongean. I'd like to have a chance

5 to redirect, but I'd also just like to remind the parties that

6 we may need to call him if Ms. Kennedy testifies.

7 THE COURT: All right. That's fine. Cross-examine.

8 MS. MCKNIGHT: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 BY MR. SILVER:

11 Q. Mr. Bongean, am I pronouncing that right?

12 A. Bongean.

13 Q. Bongean. Mr. Bongean, could you direct your attention to

14 Plaintiffs' Exhibit Number 1.

15 A. Okay.

16 Q. And turn to page 1. This is the primary agreement between

17 Tamerlane and Tigers Limited, head office Hong Kong, correct?

18 A. Correct.

19 Q. Do you see Artemis mentioned in there at all?

20 A. I do not.

21 Q. Okay. And you knew that Tigers Limited Hong Kong was

22 dealing with Tamerlane Global Services, a corporation; is that

23 correct?

24 A. I'm not sure the question you're asking. I'm sorry.

25 Q. You knew that Tamerlane was a corporation.

1 A. Correct.

2 Q. Okay. And do you see where it says that Jim O'Brien
3 individually is responsible for anything under this contract?

4 A. I do not.

5 Q. And do you see anything in here in that says Artemis is
6 responsible for anything under this contract?

7 A. I do not.

8 Q. Okay. And directing your attention to the signature page,
9 is it fair to say that the only signatory to that for the
10 defendants is Jim O'Brien signing on behalf of the corporation
11 Tamerlane, correct?

12 A. Correct.

13 Q. And Artemis never signed this contract either; is that
14 correct?

15 A. Correct.

16 Q. And Jim O'Brien did not sign individually either; is that
17 correct?

18 A. Correct.

19 Q. Okay. And he signed as the president of the company?

20 A. Correct.

21 Q. Directing your attention now to Plaintiffs' Exhibit
22 Number 2, which was the basic purchasing agreement, the
23 agreement is between Louis Berger Group, Inc., and Tigers (USA)
24 Global Logistics; is that correct?

25 A. Tigers (USA) Global Logistics in partnership with Tamerlane

1 Global Services.

2 Q. What does that mean, in partnership with Tamerlane -- let me
3 withdraw that for a minute.

4 Let's now take a look at the last page of the BPA, the basic
5 purchasing agreement. I'm talking about the signature page, if
6 you will.

7 A. What page is that?

8 Q. I'm looking for that myself. Take a look at -- I think it's
9 marked at the bottom PX-02.

10 A. They're all 02.

11 Q. All 02? They are. You're right.

12 Let me ask it a different way. Make it easier for me, a
13 little harder for you. Going through this BPA, is there
14 anyplace that Tamerlane or Artemis or Jim O'Brien have signed?

15 A. No.

16 Q. Okay. That made it easy.

17 So this contract -- the basic purchasing agreement is only
18 between Louis Berger Group and Tigers Global Logistics, Inc.;
19 isn't that right? It may say it's a partnership, but the only
20 signatories are Tigers (USA) Global Logistics and Louis Berger
21 Group, Inc., right?

22 A. In the primary agency agreement, the primary agency
23 agreement refers to compliance with and recognition --

24 Q. That's not my question. I understand you want to explain --
25 try to explain it. But my question is in this BPA, the basic

1 purchasing agreement, it is between Louis Berger Group and
2 Tigers (USA) Global Logistics; those two parties, correct?
3 They're the only ones who signed.

4 A. Those are the two parties that signed it, that is correct.

5 Q. Okay. And then when you go back to Exhibit Number 1, which
6 is the primary agency agreement, that's between Tigers Limited,
7 head office Hong Kong, and Tamerlane Global Services, is it not?

8 A. That's correct.

9 Q. Okay. So the Tigers Limited head office in the primary
10 agency agreement and the Tigers (USA) Global Logistics, they're
11 two different companies, are they not?

12 A. Tigers (USA) --

13 Q. That's a yes or no --

14 MS. MCKNIGHT: Could you let him finish his answer?

15 MR. SILVER: It's a yes or no answer, Your Honor.

16 THE COURT: After he answers it, he can explain.

17 MR. SILVER: I think that's true, but I would like my
18 answer first.

19 BY MR. SILVER:

20 Q. They are two separate companies, are they not?

21 A. I'm sorry, but I don't think it's as simple or yes or no.

22 Q. Let me direct your attention --

23 THE COURT: You're asking him now for a legal
24 conclusion, perhaps.

25

1 BY MR. SILVER:

2 Q. Well, are you familiar with the complaint in this case?

3 A. With the what?

4 Q. The complaint that was filed on your behalf?

5 A. I am.

6 Q. Okay. Let me direct your attention --

7 MS. MCKNIGHT: Your Honor, he's going to ask the
8 witness about his opinion about a legal document. That is a lay
9 witness. He's not here to testify as a lawyer or counsel.

10 MR. SILVER: He is bound by his pleadings, Your Honor.

11 THE COURT: Objection overruled. Go ahead and answer.

12 I don't know what you're going to ask him.

13 MR. SILVER: Can I approach the witness with this, Your
14 Honor?

15 THE COURT: Yes.

16 BY MR. SILVER:

17 Q. In your complaint at paragraph number 2, it says Tigers
18 Limited is a foreign corporation organized and existing under
19 the laws of the United Kingdom with its principal place of
20 business located at 4A King Industrial Building, 19 Wang Hoi
21 Road, in Kowloon Bay, Kowloon, Hong Kong. Tigers (USA) Global
22 Logistics, Inc., is a domestic corporation, organized and
23 existing under the laws of the State of New Jersey, with its
24 principal place of business -- and it goes on to Elk Grove
25 Village, Illinois.

1 MS. MCKNIGHT: Your Honor, this complaint speaks for
2 itself. It sounds an awful lot like he's going to be looking
3 for a legal conclusion from this lay witness.

4 THE COURT: All right. Well, let him ask his question
5 and then I'll rule on it.

6 BY MR. SILVER:

7 Q. Are Tigers Limited and Tigers (USA) Global Logistics, Inc.,
8 two separate corporations?

9 A. No, they're not.

10 MS. MCKNIGHT: Objection, Your Honor.

11 THE COURT: Objection overruled.

12 THE WITNESS: They are not.

13 BY MR. SILVER:

14 Q. They are not separate corporations?

15 A. No, they are not.

16 Q. Well, why did you say they were in your complaint?

17 MS. MCKNIGHT: Your Honor, again --

18 THE COURT: He's not a lawyer. You're asking legal
19 conclusions here. Objection sustained.

20 BY MR. SILVER:

21 Q. Do you know whether or not it pays separate taxes?

22 A. I'm sorry. I don't know that.

23 Q. Do you know whether they have separate boards of directors?

24 MS. MCKNIGHT: Your Honor, again, I just hesitate to
25 have testimony elicited that requires a legal background to

1 understand how companies were formed. And I would suggest that
2 he's trying to seek some sort of legal conclusion from
3 Mr. Bongean.

4 MR. SILVER: He testified --

5 THE COURT: Objection overruled as to the board of
6 directors, if he knows.

7 THE WITNESS: I'm sorry?

8 BY MR. SILVER:

9 Q. Do they each have their own boards of directors?

10 A. I'm sorry. I don't know.

11 Q. I thought you testified you were on the board of one of
12 them.

13 A. No, I'm not.

14 Q. You're not?

15 A. No.

16 Q. What's your position with Tigers (USA) Logistics?

17 A. I'm vice president of freight management.

18 Q. All right. That's a senior position, is it not?

19 A. It is.

20 Q. Do you know who the president and other officers of your
21 company -- of Tigers Logistics are -- (USA)?

22 A. Yes.

23 Q. And are they the same people who are the president and
24 officers of Tigers Hong Kong?

25 MS. MCKNIGHT: Your Honor, I'd object on relevance. I

1 don't know where this is going or why.

2 THE COURT: Objection overruled.

3 THE WITNESS: I'm sorry. I don't know.

4 BY MR. SILVER:

5 Q. So if I understand you correctly, you don't know anything
6 about the management of Tigers, the Hong Kong entity; is that
7 correct?

8 MS. MCKNIGHT: Your Honor, that misstates the
9 testimony.

10 THE COURT: Objection sustained.

11 BY MR. SILVER:

12 Q. What, if anything, do you know about the management of
13 Tigers Hong Kong?

14 MS. MCKNIGHT: Your Honor, I'd object on relevance.

15 THE COURT: What relevance does that have?

16 MR. SILVER: There are two contracts with two different
17 parties. Each of them has to prove their damages. And I'm
18 trying to figure out what the interrelationship is.

19 MS. MCKNIGHT: Your Honor, he's already testified --

20 THE COURT: Objection overruled. Objection sustained
21 rather.

22 BY MR. SILVER:

23 Q. Do you know what damages Tigers Limited had in this case?

24 A. Do I know what damages?

25 Q. Yes. Talking about Tigers Limited. Did they have any

1 damages in this case? Do you know?

2 MS. MCKNIGHT: Your Honor, this is seeking a legal
3 conclusion again. He was able to testify about damages to the
4 companies. For him to identify how those are parsed out is
5 beyond his understanding as a lay witness.

6 MR. SILVER: Then it should all be stricken, Your
7 Honor. If he can't identify which party is entitled to damages,
8 there are no damages. They have named two separate plaintiffs.

9 THE COURT: Objection sustained.

10 BY MR. SILVER:

11 Q. Can you tell me the damages sustained by Tigers' head office
12 Hong Kong Limited as a result of the acts of Tamerlane -- of
13 Tamerlane?

14 MS. MCKNIGHT: Your Honor, our objection stands, the
15 objection you just sustained. That's the same question.

16 THE COURT: I sustained the objection. Same question.

17 BY MR. SILVER:

18 Q. What damages did Tigers (USA) Global Logistics -- let me
19 withdraw that.

20 MR. SILVER: If I could have just a minute, Your Honor.
21 I want to think this out.

22 BY MR. SILVER:

23 Q. All right. You testified that Louis Berger Group has
24 claimed \$944,000?

25 A. Correct.

1 Q. Against who? Against Tigers Limited or against Tigers Hong
2 Kong -- Tigers (USA) or Tigers Hong Kong?

3 MS. MCKNIGHT: Your Honor, again, he testified that
4 those are the damages asserted by Louis Berger Group. I
5 understand that counsel is trying to divvy out which plaintiff
6 incurred those damages. That is beyond the testimony of this
7 lay witness. He has testified to the damages caused by
8 defendants' misconduct. He does not need to testify what the
9 legal basis of which company that those damages are parsed out
10 on.

11 THE COURT: I believe that is correct. The witness
12 said he didn't -- they're the same companies.

13 MR. SILVER: No, he said they're separate companies,
14 Your Honor. They pled they're separate companies.

15 THE COURT: He said they pled as separate companies,
16 but he also testified that they were not, that he didn't
17 understand them to be separate companies. He's testified to the
18 damages, and that's sufficient.

19 BY MR. SILVER:

20 Q. Who's the arbitration against?

21 A. Who is the arbitration against?

22 Q. Right.

23 A. Tigers (USA).

24 Q. It's not against Tigers Hong Kong, correct?

25 MS. MCKNIGHT: Your Honor, again, I believe this is

1 leading down the same line of it doesn't -- what his
2 understanding of who the arbitration is directed to -- he's
3 trying to elicit testimony, legal information, about which
4 company sustained which damages.

5 THE COURT: Objection overruled as to that question.
6 He can testify as to who was sued, the other company in the
7 arbitration, and who made a demand to get there, and he has. So
8 what's your next question?

9 MR. SILVER: All right.

10 BY MR. SILVER:

11 Q. How long ago was that arbitration started?

12 A. How long ago?

13 Q. Yes.

14 A. I think the letter was received fairly recently, within the
15 last 30 days. I don't know the exact date.

16 MR. SILVER: Excuse me, Your Honor.

17 THE COURT: All right.

18 BY MR. SILVER:

19 Q. Does Tigers owe the 944,000 to Louis Berger Group?

20 A. I'm sorry?

21 Q. Does Tigers owe the \$944,000 to Louis Berger Group?

22 A. It's in the beginning of arbitration right now. So I don't
23 know that --

24 Q. So you have not agreed -- or Tigers has not agreed that they
25 owe that money. That's why it's in arbitration, correct?

1 A. Correct.

2 Q. And you have not paid out any of that money to Louis Berger
3 Group, correct?

4 A. Correct.

5 Q. You have disagreed with how Louis Berger Group arrived at
6 that amount, correct?

7 A. I disagreed how they arrived?

8 Q. Right. How they arrived at the 944,000. You disagreed.
9 That's why you haven't paid the money and that's why it's in
10 arbitration; is that correct?

11 MS. MCKNIGHT: Your Honor, that calls for a legal
12 conclusion. He's saying -- he's suggesting that somehow
13 Mr. Bongean disagrees. He has suggested no such disagreement.

14 THE COURT: He can tell us one way or another.

15 THE WITNESS: I haven't, and Tigers has not disagreed
16 to this point.

17 BY MR. SILVER:

18 Q. Well, Tigers hasn't paid the money, has it?

19 A. No.

20 Q. So if you agreed, you'd pay the money.

21 A. It's ongoing. The arbitration has just started.

22 Q. But if you agreed you owed 944,000 and that Louis Berger
23 Group had correctly billed you for 944,000, Tigers would pay it,
24 correct? There would be no need for the arbitration.

25 THE COURT: Well, that's speculative.

1 MR. SILVER: No.

2 THE COURT: If they didn't have the money, they
3 wouldn't pay it --

4 MR. SILVER: Well, he can testify if they didn't have
5 the money. But if they agree to it, they can agree to a
6 judgment.

7 THE COURT: But your question did not allow for that
8 kind of reasoning. There could be umpteen reasons why somebody
9 didn't pay.

10 MR. SILVER: That's true, Your Honor.

11 THE WITNESS: It's an oversimplification. It's not a
12 matter of agreeing or disagreeing. It's going through the
13 motions to understand what is correct and what is not correct
14 before a check gets written for \$944,000.

15 BY MR. SILVER:

16 Q. But if you thought it was all correct, you would pay it.

17 A. We haven't gotten to that point.

18 Q. Well, that's not my question.

19 A. But that's not a fair question to ask at this point.

20 Q. Sure, it is.

21 MS. MCKNIGHT: Your Honor, I object. It's
22 argumentative.

23 BY MR. SILVER:

24 Q. If you get a bill --

25 MS. MCKNIGHT: Let the witness testify.

1 THE COURT: Objection sustained. We've gone through
2 this. A lot of reasons why you don't pay something or when you
3 pay it and when you don't.

4 BY MR. SILVER:

5 Q. What is the reason that you have not paid this?

6 MS. MCKNIGHT: Your Honor, I would object on relevance
7 and also --

8 THE COURT: Objection overruled.

9 THE WITNESS: Is that we are going to go down the
10 arbitration course, and the results of the arbitration will
11 determine what is paid or what is not paid.

12 MR. SILVER: Your Honor, am I beating a dead horse at
13 this point?

14 THE COURT: I think so.

15 MR. SILVER: All right. Then I'm going to stop asking
16 that question.

17 BY MR. SILVER:

18 Q. Now, you testified that you know Candice Kennedy, correct?

19 A. Correct.

20 Q. And she was a good employee of Tigers until she left?

21 A. Correct.

22 Q. All right. And she left under good circumstances?

23 A. Correct.

24 Q. Okay. And you were aware that she was an officer of Artemis
25 and an owner, correct?

1 A. At what point?

2 Q. Well, when she was writing the emails to you to show that
3 she was the CFO or COO of Artemis, you knew that she was an
4 officer of Artemis, correct?

5 A. Correct.

6 Q. Okay. And at some point you also learned that she was a
7 shareholder of Artemis, correct?

8 A. I believe so. Yes.

9 Q. Okay. And you also learned that she was never a shareholder
10 of Tamerlane; isn't that correct?

11 A. I don't know that I ever knew or didn't know that.

12 Q. All right. Were you aware of a master agreement between
13 Tamerlane and Artemis?

14 A. A master agreement?

15 Q. Yes. Let me direct your attention into the defendants'
16 book, please, and direct your attention to Defendants' Exhibit
17 Number 9.

18 Have you seen this document that's called Master Services
19 Agreement before?

20 A. No, I have not.

21 Q. Not even in the context of this litigation? This is the
22 first time you've seen this?

23 A. I believe so. I don't think that I've seen this document
24 before.

25 Q. All right. Then I'm not going to ask you about it.

1 When you received the invoice or the request that the
2 \$159,000 be paid to Artemis, did it make any difference to you
3 who you paid as long as you were getting credit for -- from
4 Tamerlane?

5 A. It was a concern of why the invoice was being issued by
6 Artemis and why Tigers was paying Artemis, yes.

7 Q. But you paid them nevertheless?

8 A. We paid them because Jim had said that Artemis and Tamerlane
9 were one and the same.

10 Q. Did you ever hear that -- never mind.

11 Why didn't you make the -- is there a reason you didn't make
12 the check out to Tamerlane and Artemis just to be safe?

13 A. We asked for instructions on who the check should be made
14 payable to, and we received the instructions to make it payable
15 to Artemis.

16 Q. Okay. You really didn't care. That's why you went ahead
17 and did it, correct?

18 A. I don't think that that is accurate. We did care. We did
19 inquire.

20 Q. All right. But then, ultimately, you paid it to Artemis as
21 they requested?

22 A. Correct.

23 Q. All right. Who is Brooks Isoldi?

24 A. He was the station manager for the Washington office.

25 Q. And he was primarily involved in the two moves by Tamerlane;

1 isn't that correct?

2 A. Correct.

3 Q. Okay. And you were kind of upstairs on the outside?

4 A. I oversaw the movements where Brooks was a direct report in
5 to myself at that time, and him and I worked on these moves
6 together.

7 Q. But he was more intimately involved in the business of
8 Tigers and Tamerlane, correct?

9 A. He would be more involved in the nuts and bolts and the
10 actual day-to-day, hour-to-hour operations, yes.

11 Q. And he was more involved with the problems that Tamerlane
12 was having in Afghanistan or Pakistan or wherever, correct, and
13 then he would report to you?

14 A. No, not necessarily. I also had direct dialogue with Jim
15 and with Candi.

16 Q. But most of the direct dialogue was with Jim and Brooks
17 Isoldi; isn't that correct?

18 A. Actually, there came a point where I asked Brooks to step
19 completely aside because it was not productive, and I was the
20 one that maintained all of the interaction.

21 Q. Was that at the end of the relationship?

22 A. I wouldn't say it was at the end of the relationship, but it
23 was certainly at a -- you know, a point where I saw that it
24 would be a struggle for Brooks to continue to carry on as he was
25 doing.

1 Q. Move number one that Brooks Isoldi was involved with
2 primarily, that was completed, was it not?

3 A. It was.

4 Q. And they were entitled to be paid for that; isn't that
5 correct?

6 A. Yes.

7 Q. Okay. And at least a portion of that 159,000 was to pay for
8 move number one, was it not?

9 A. I don't know for sure how they were -- how Tamerlane or
10 Artemis was breaking out the money internally, if that's what
11 you're asking.

12 Q. No, that's not what I'm asking.

13 THE COURT: Mr. Silver, it's time for us to recess for
14 lunch. We'll be in recess now until 2:15.

15 MR. SILVER: Thank you, Your Honor.

16 (Lunch recess taken at 1:05 p.m.; the jury enters at
17 2:17 p.m.)

18 BY MR. SILVER:

19 Q. Mr. Bongean, I have just a few more questions for you. If
20 you could direct your attention to Plaintiffs' Trial Exhibit
21 Number 30.

22 A. Is that the one after the folder? Is this the information
23 after the tab -- the 30 tab or before it?

24 Q. It would be after.

25 A. Okay.

1 Q. And go to the second page there. Do you see the -- it
2 says -- starts off: Jim. It says: No one has forgotten your
3 agreement. For shipping noted, the agreement is with Tamerlane
4 and not Artemis. So all invoicing must be done through
5 Tamerlane.

6 Do you see that language?

7 A. I do.

8 Q. And that was written by Tigers to Tamerlane and Artemis?

9 A. That was from Brooks Isoldi who was the manager in
10 Washington at the time, yes.

11 Q. All right. Let me direct your attention now to Exhibit
12 Number 31. Go to the fourth page of that.

13 A. Okay.

14 Q. That's your email, is it not, to Jim O'Brien and from Jim
15 O'Brien back to you?

16 A. Yes.

17 Q. Fourth page. And it starts -- Jim says: Re the name change
18 - Artemis and Tamerlane are separate entities.

19 A. Wait a minute. I don't think we're on the same page. 31?

20 Q. Yes.

21 A. Fourth page?

22 Q. Fourth page in, yes. At the top, Tigers -- it says Mark
23 Bongean --

24 A. Good morning, Jim?

25 Q. At the very top of the page, it says: The status of

1 Tamerlane as a company has not changed. Regards, Mark.

2 A. Okay.

3 Q. Do you see that?

4 A. I do.

5 Q. Okay. Good. Those are your words, correct?

6 A. They are, yes.

7 Q. And then go to the bottom of that page. Jim writes back.

8 He says: Re the name change - Artemis and Tamerlane are

9 separate entities. My Tamerlane email is temporarily

10 transferring over to Artemis as a result of a tech glitch.

11 Artemis is a new company Candi Kennedy has stood up, within

12 which I am an early investor, that is standing up in Georgia?

13 Correct?

14 A. Correct.

15 Q. So you were -- recognized that one of the owners of Artemis

16 was Candi Kennedy and the other was Jim O'Brien, correct?

17 A. There were other messages and other communications where

18 that was not the case.

19 Q. Well, I understand that, but my question right now is on

20 November --

21 MS. MCKNIGHT: Your Honor, can I ask him to allow the

22 witness to finish his answer?

23 MR. SILVER: That's fair. I'm sorry.

24 THE WITNESS: There were other communications where

25 that was not the case. And this was information pertaining to,

1 correct, the startup of Artemis and that Candi was heading up
2 that company.

3 BY MR. SILVER:

4 Q. But at least on November 27, 2013, you knew that Tamerlane
5 and Artemis were two separate companies and had different
6 ownership interests, correct?

7 MS. MCKNIGHT: Your Honor, that's a compound question.
8 If he doesn't mind just breaking up his question into two
9 different questions.

10 MR. SILVER: I can do that.

11 MS. MCKNIGHT: Thank you.

12 THE COURT: All right.

13 BY MR. SILVER:

14 Q. On November 27th, you knew that there were two separate
15 companies, Artemis and Tamerlane, correct?

16 A. We knew that there was another company. I don't know if it
17 would be at this time that they were separate companies, but we
18 knew that there was another company that was now brought into
19 the fold.

20 Q. Well, what did you think Jim was saying when he said in the
21 November 13th -- November 27, 2013, email Artemis and Tamerlane
22 are separate entities?

23 MS. MCKNIGHT: Your Honor, that calls for speculation.
24 Objection.

25 THE COURT: Objection overruled.

1 THE WITNESS: Can you repeat the question?

2 BY MR. SILVER:

3 Q. Yeah. Didn't you learn on November 27, 2013, that at least
4 Jim O'Brien was telling you Artemis and Tamerlane are separate
5 entities?

6 A. In this message, yes.

7 Q. And that Candi Kennedy was an owner of Artemis, correct?

8 A. Correct.

9 Q. So you knew all that?

10 A. Correct.

11 Q. All right. Let me direct your attention to defendants'
12 exhibits this time. Direct your attention to Exhibit 14.

13 MS. MCKNIGHT: Your Honor, so you know, there's a
14 standing objection to this exhibit as being incomplete.

15 THE COURT: All right.

16 THE WITNESS: Okay.

17 BY MR. SILVER:

18 Q. This is from -- this email is from Brooks Isoldi, your
19 employee, right, to Jim O'Brien, correct?

20 A. Correct.

21 Q. And it's dated February 11, 2014?

22 A. Correct.

23 Q. And it says: Hi, Jim. That's great news. We're not going
24 to link the two shipments together. They are separate
25 transactions and not dependent upon each other. We can,

1 however, discuss a payment solution for the Kunduz freight
2 thing.

3 Do you recall seeing this email before?

4 A. I don't recall the premise of the email. I'm sorry.

5 Q. The two shipments that he's referring to here --

6 A. I know what he's referring to. Just specifically on the
7 email, I don't know what else was in -- behind this email or
8 whatever else had taken place.

9 Q. Do you know of something else that should go behind this?
10 This is all I have.

11 MS. MCKNIGHT: Your Honor, again, I just reiterate that
12 one of the problems we're running into is that it's an
13 incomplete document.

14 MR. SILVER: If counsel has some more -- part of this
15 document, I would love to see it. I don't know of any.

16 MS. MCKNIGHT: Well, Your Honor, we asked for a number
17 of documents from defendants in discovery, and this is what they
18 produced. The subject line clearly references "re," but there's
19 only one email in the string. Furthermore, it's clear that
20 there's a reference to "that's great news," but there's no email
21 below it that's been produced to show what news was so great.

22 This is a document produced by defendants in discovery.
23 They were the ones to produce the incomplete email.

24 MR. SILVER: It came from them. If they know something
25 else --

1 THE COURT: Where are we going with this? What value
2 is it? It isn't this witness' email.

3 MR. SILVER: The purpose of this is to talk about --
4 there are two shipments together, but they are treating them
5 separately. One was --

6 THE COURT: It's not this witness' email.

7 MR. SILVER: That's correct. He was the supervisor of
8 this witness, and he says that he knows what they're talking
9 about.

10 THE COURT: Well, why don't you ask him about that
11 instead of whatever we're after?

12 MR. SILVER: Well, I thought I did, but I'll ask --

13 THE COURT: Maybe ask again now.

14 MR. SILVER: All right.

15 BY MR. SILVER:

16 Q. Do you know what two shipments were being referred to by
17 your employee, Brooks Isoldi?

18 A. In this case, it would need to be the two shipments, the
19 domestic shipment and the international shipment.

20 Q. And they were not to be linked together; isn't that correct?

21 A. I'm sorry?

22 Q. They were not to be linked together it says.

23 MS. MCKNIGHT: Your Honor, again, the text speaks for
24 itself. But again, because it was incompletely produced, we
25 don't know what it's referring to as far as linking or what's

1 great news about not linking or what that link means.

2 THE COURT: Well, nobody does. The contract speaks for
3 itself. It doesn't matter what this email or what this fellow
4 thought about it, does it?

5 MR. SILVER: All right.

6 BY MR. SILVER:

7 Q. Has Tigers ever accounted to Tamerlane for profits and
8 losses in their partnership?

9 A. Accounted for or --

10 Q. Yes.

11 A. -- shared or --

12 Q. Accounted for. Let me ask it -- has Tigers ever done
13 accounting of profits and losses in this partnership with
14 Tamerlane?

15 A. We did the profits and losses on a shipment-by-shipment
16 basis. Each shipment was its own individual transaction.

17 Q. Can you go through your exhibits and show me where there's
18 an accounting shipment by shipment on that partnership?

19 MS. MCKNIGHT: Your Honor, I would object as to
20 relevance. He's suggesting that because -- what emails there
21 are in exhibits, that this sort of accounting hasn't happened.
22 I think we can rely on Mr. Bongean's testimony that they did
23 perform these accountings on a shipment-by-shipment basis.

24 THE COURT: Well, he can answer the question. They're
25 either exhibits or not. If he did one, he did one. If he

1 didn't, he didn't. If it's here, it's here. If it's not, it's
2 not. He can answer that very simply.

3 BY MR. SILVER:

4 Q. Did you do a profit and loss accounting for this partnership
5 between Tigers and Tamerlane?

6 A. Yes, we did.

7 Q. Where is it?

8 A. I don't have it here with me.

9 Q. Do you know what it said?

10 A. Do I know --

11 Q. Do you know what the exact numbers are?

12 A. I'm sorry. I don't.

13 MR. SILVER: That's all I need, Your Honor.

14 THE COURT: All right. Do you have any redirect?

15 MS. MCKNIGHT: Thank you, Your Honor. A brief
16 redirect.

17 **REDIRECT EXAMINATION**

18 BY MS. MCKNIGHT:

19 Q. Mr. Bongeant, on the arbitration demand that Mr. Silver was
20 asking you about, did Louis Berger Group demand their fees,
21 costs, and interest under the BPA?

22 A. Yes.

23 Q. And does Tigers consider the international move a total
24 loss?

25 A. Yes.

1 Q. And who caused that loss?

2 A. Jim O'Brien.

3 Q. And do you expect Tigers to pay Louis Berger Group for that
4 loss?

5 MR. SILVER: Objection, Your Honor. Until they do,
6 it's irrelevant.

7 THE COURT: Objection overruled.

8 BY MS. MCKNIGHT:

9 Q. Do you expect Tigers to pay Louis Berger Group for that
10 loss?

11 A. Yes.

12 MS. MCKNIGHT: Thank you, Mr. Bongean. No further
13 questions, Your Honor.

14 MR. SILVER: One question, Your Honor.

15 **RECCROSS EXAMINATION**

16 BY MR. SILVER:

17 Q. But you don't know what amount that you are going to pay
18 Louis Berger Group, if any, right?

19 THE REPORTER: I'm sorry. I missed part of your
20 question.

21 BY MR. SILVER:

22 Q. And you are not prepared to testify here today the amount
23 that Tigers is willing to pay Louis Berger Group, if anything,
24 correct?

25 A. Right now today, no. It's --

1 Q. Okay. Thank you.

2 THE COURT: All right. Thank you. You may step down.

3 (Witness stands down.)

4 THE COURT: Who's your next witness?

5 MR. MCILWEE: Your Honor, plaintiffs call Jim O'Brien

6 to the stand as an adverse witness.

7 **JAMES M. O'BRIEN,**

8 after having been duly sworn or affirmed,

9 took the stand and testified as follows:

10 **DIRECT EXAMINATION**

11 BY MR. MCILWEE:

12 Q. Good afternoon, Mr. O'Brien.

13 A. Good afternoon.

14 Q. You're aware of what it means for a contractor to be
15 debarred, correct?

16 MR. SILVER: Objection, Your Honor. May we approach
17 the bench?

18 THE COURT: Yes.

19 (Conference at the bench, as follows:)

20 MR. MCILWEE: What's the basis for the objection?

21 MR. SILVER: The Court ruled the other day that if
22 they're allowed to go into the debarment at all, it would be in
23 cross-examination and for impeachment purposes only.

24 Here, this is direct examination, even though he's
25 calling him as an adverse witness. And he can't impeach him on

1 something he hasn't even -- there's been no testimony from him.
2 So what is he impeaching him on other than to try to prejudice
3 this jury on this question of debarment?

4 THE COURT: All right.

5 MR. MCILWEE: Would you like a response, Your Honor?

6 THE COURT: Yes.

7 MR. MCILWEE: This witness just swore an oath to tell
8 the truth, the whole truth, and nothing but the truth to this
9 jury. I'm allowed immediately to test what that means to him
10 and his character for truthfulness, and the jury is entitled to
11 hear in full color everything that you allowed in the motions in
12 limine with respect to this debarment proceeding.

13 I asked one question: Are you aware of what it means
14 to be debarred?

15 If we have to deal with objections all day, we are not
16 going to finish this trial.

17 THE COURT: Well, I guess we have to deal with as many
18 as we can. I said you can use this as impeachment. He hasn't
19 testified to anything yet.

20 MS. MCKNIGHT: Your Honor, that was a misstatement of
21 your ruling. Your ruling was about cross-exam and rebuttal. It
22 had to do with the introduction of actual letters. What you
23 said was that you denied the motion in limine as to the
24 debarment. So discussing the debarment was not prohibited by
25 your ruling on the motions in limine.

1 THE COURT: Well, but that has no relevance in this
2 case.

3 MR. MCILWEE: Your Honor, it does.

4 THE COURT: What relevance does it have?

5 MR. MCILWEE: Well, first of all, as I said before, Jim
6 O'Brien is the key witness in this case. He has just sworn to
7 tell the truth before this jury, and immediately I'm allowed to
8 test his character for truthfulness.

9 Your Honor, this is 608(b). We covered this all in the
10 motions in limine.

11 THE COURT: No, I'm not going to permit that. That's
12 unfairly prejudicial. The only thing you're trying to do now is
13 just blacken his character before he's ever said a word, and I
14 am not going to permit -- I don't permit that in my courtroom.

15 MR. MCILWEE: So it's my understanding --

16 THE COURT: There's no reason for that.

17 MS. MCKNIGHT: As we understand it, if his testimony is
18 deceitful, we're able to bring up this topic. And let me just
19 say the reason you denied their motion in limine was because of
20 our argument at this --

21 THE COURT: I don't know. Your memory is better than
22 mine. I don't know exactly what I did. But if he testifies and
23 you want to cross-examine him, we'll deal with whether or not
24 you can go into it at the time you think it might be proper to
25 go into it. But you certainly can't come up here and just try

1 to paint him black with your first question.

2 (Thereupon, the following proceedings continued in open
3 court:)

4 BY MR. MCILWEE:

5 Q. Mr. O'Brien, do you have Plaintiffs' Exhibit 1 in front of
6 you?

7 A. I do not.

8 I have it now, sir.

9 Q. You recognize this document, right?

10 A. Yes, sir.

11 Q. This is the primary agency agreement between Tigers and
12 Tamerlane, correct?

13 A. Yes, sir.

14 Q. You signed the primary agency agreement, correct?

15 A. Yes, sir.

16 Q. You also initialed and dated each page of the primary agency
17 agreement.

18 A. Yes, sir. It appears that way.

19 Q. On the first page you initialed, there is a section titled
20 Representation. Will you flip to that, please?

21 A. Yes, sir.

22 Q. In this section, you agreed to cooperate with Tigers,
23 correct?

24 A. Yes, sir.

25 Q. Actively and closely.

1 A. Yes, sir.

2 Q. With an aim to develop a business, right?

3 A. Yes, sir.

4 Q. And that business would provide air and sea freight,
5 correct?

6 A. Yes, sir.

7 Q. And related services.

8 A. Yes, sir.

9 Q. Such as pickup and delivery of cargo, right?

10 A. Yes, sir.

11 Q. And you also agree in this section to act in an appropriate
12 manner, right?

13 A. That language is not specifically in here. I think the
14 agreement itself, yes, sir.

15 Q. In a legal manner, right?

16 A. I don't know anything about legal manner. What the --
17 that's what I assume, yes, sir. I can't break the law. Is that
18 what you're asking?

19 Q. Pardon me?

20 A. I'm sorry. I apologize. I don't understand the question.
21 Do you mean I can't break the law? Is that what you're asking?

22 Q. That's correct. In the performance of this contract, you do
23 not intend to break the law; is that right?

24 A. Yes, sir.

25 Q. And that you performed all these -- what you set out in the

1 representations to the best of your ability, correct?

2 A. Yes, sir.

3 Q. Also, on the first page that you initialed of Plaintiffs'
4 Exhibit 1, there's a section titled Good Conduct. Would you
5 refer to that, please?

6 MR. SILVER: Page 1?

7 THE WITNESS: Yes, sir.

8 BY MR. MCILWEE:

9 Q. Now, here you agreed to conduct business in such a manner as
10 to mutually benefit both parties, correct?

11 A. Yes, sir.

12 Q. And to use your best efforts to promote each other's
13 services, right?

14 A. Yes, sir.

15 Q. Moving to the seventh page of Plaintiffs' Exhibit 1 that you
16 initialed in subsection E -- as soon as you flip to it, I'll ask
17 my question.

18 A. Yes, sir. I'm on page 7.

19 Q. All right. In this section you agreed to certain situations
20 that are cause for early termination of the contract, correct?

21 A. I'm sorry. Can you please point out the section, sir.

22 Q. Take a minute and read subsection E, and I'll ask my
23 question again.

24 MR. SILVER: Your Honor, if it helps, we will stipulate
25 that the obligations are that he was required to uphold what's

1 set forth in the contract.

2 THE COURT: I doubt that's going to help. I expect he
3 wants an answer to his question, but I don't know.

4 Would that stipulation suffice?

5 MR. MCILWEE: No, Your Honor. Thank you, but we'll
6 just go forth.

7 BY MR. MCILWEE:

8 Q. Read the subsection E and I'll reask my question. Just look
9 up when you've had a chance to read it.

10 A. I've had a chance to read it. Yes, sir.

11 Q. Your memory is now refreshed as to your obligations under
12 subsection E?

13 A. Yes, sir.

14 Q. In this subsection you agree to certain situations that are
15 cause for early termination of a contract, correct?

16 A. Yes, sir.

17 Q. Such as the liquidation of a party to the contract, correct?

18 A. Yes, sir.

19 Q. Or any circumstances that are likely to affect substantially
20 one party's ability to carry out its obligations under the
21 agreement, correct?

22 A. Yes, sir.

23 Q. Moving to the eighth page that you initialed, and the
24 title -- in a section titled Assignment. Flip there, have a
25 chance to read it, look up when you're done.

1 A. Yes, sir.

2 Q. In this section you agree not to assign your agency to
3 another entity, correct?

4 A. Yes, sir.

5 Q. In whole or in part, correct?

6 A. Correct.

7 Q. Without Tigers' written consent, right?

8 A. Yes, sir.

9 Q. Now, when you signed this agreement, PX-1, Tigers and
10 Tamerlane already had their first client, correct?

11 A. Yes, sir.

12 Q. The Louis Berger Group, right?

13 A. Yes, sir.

14 Q. Louis Berger Group is a prime contractor of the United
15 States government, correct?

16 A. Yes, sir.

17 Q. And so you and Tigers decided to make your agreement with
18 Louis Berger a part of PX-1, the agency agreement, did you not?

19 A. Yes, sir. I believe so. Yes, sir.

20 Q. Would you flip to PX-2?

21 A. Just to clarify. The Louis Berger Group basic purchasing
22 agreement; is that correct, sir?

23 Q. Perfect. PX-2. You recognize this document as the Louis
24 Berger Group basic purchasing agreement, correct?

25 A. It appears to be so, yes, sir.

1 Q. This is the contract between Louis Berger Group, Tamerlane,
2 and Tigers, correct?

3 A. It appears to be so, although, to be fair, I don't recall
4 ever receiving this particular document.

5 Q. Is it your testimony today that PX-2 is not the contract
6 between Louis Berger Group, Tamerlane, and Tigers? Is that what
7 I understand?

8 MR. SILVER: Objection, Your Honor. The document
9 speaks for itself and that's not what it says.

10 THE COURT: Well, he said he never received the
11 document.

12 MR. MCILWEE: Your Honor, I believe I have a question
13 pending that is that he is -- that he has an inconsistent
14 statement with what we already know he has said this document
15 is.

16 Now, if I'm permitted to lay that foundation, then I'll
17 be able to impeach him with his prior inconsistent statement.
18 If he testifies consistent with his prior statement, then we can
19 move on.

20 THE COURT: All right. Go ahead and ask your question.

21 BY MR. MCILWEE:

22 Q. Is it your testimony here today that you do not recognize
23 PX-2 as the contract between Louis Berger Group, Tamerlane, and
24 Tigers?

25 MR. SILVER: Your Honor, I've got to object again

1 because Tamerlane is not mentioned as a party to this contract.
2 It says in partnership with this other company. Does not say
3 what he's -- it's a trick question.

4 MR. MCILWEE: Your Honor, what is the basis for the
5 objection?

6 MR. SILVER: Relevance.

7 THE COURT: Well, I think the objection is well taken
8 if you're putting another name in the title of this document
9 than what's in there.

10 MR. MCILWEE: Understood, Your Honor.

11 BY MR. MCILWEE:

12 Q. What I'm understanding your testimony to be is that there is
13 another party that's not a part of the agreement in PX-02; is
14 that correct?

15 A. I'm sorry. I don't understand that question, sir.

16 Q. What we're trying to figure out here is if you are agreeing
17 with me or not agreeing with me that PX-02 is a contract between
18 Louis Berger Group, Tamerlane, and Tigers.

19 Do you agree with that statement?

20 MR. SILVER: Your Honor, it's the same objection.

21 THE COURT: I'm going to sustain the objection because
22 he is not a party to this contract, says he hasn't seen it.
23 Objection sustained.

24 BY MR. MCILWEE:

25 Q. You gave a deposition in this case, did you not?

1 A. I believe I did, yes, sir.

2 Q. At that deposition, you were asked questions?

3 A. Yes, sir.

4 Q. You gave answers?

5 A. Yes, sir.

6 Q. Truthful answers?

7 MR. SILVER: Your Honor --

8 THE WITNESS: Yes, sir.

9 MR. SILVER: I've got to object. It sounds like he's
10 trying to impeach him with something said earlier when the Court
11 has sustained the objection and he hasn't given an answer that
12 can be impeached.

13 THE COURT: I don't know what the question is. So I
14 can't rule on it until I know what the question is.

15 MR. SILVER: That's true, Your Honor.

16 BY MR. MCILWEE:

17 Q. You gave truthful answers at your deposition?

18 A. Yes, sir.

19 Q. Because you were under oath to tell the truth, correct?

20 A. Yes, sir.

21 Q. It's the same oath that you took here today?

22 A. Yes, sir.

23 Q. At this deposition, you were asked this question and you
24 gave this answer.

25 MR. MCILWEE: Counsel, O'Brien's page 24, lines 23

1 through 25.

2 MR. SILVER: Excuse me while I get there.

3 BY MR. MCILWEE:

4 Q. What is Exhibit 2?

5 Answer: It appears to be the contract between Louis Berger
6 Group and Tamerlane and Tigers.

7 MR. SILVER: Your Honor, I'm going to object again.

8 This is --

9 BY MR. MCILWEE:

10 Q. You were asked that question and you gave that answer.

11 MR. SILVER: It is not a proper impeachment when the
12 first question was already sustained and not allowed. Because
13 he did the deposition doesn't allow him to bring it out in this
14 trial when the witness is here and the witness is testifying.
15 The Court has sustained the objection and he's trying to go
16 around the Court's sustaining of the objection.

17 THE COURT: I believe that's correct. There's no
18 statement here because I sustained the objection. So there's
19 nothing you can impeach if you're trying to impeach something.

20 BY MR. MCILWEE:

21 Q. In the first paragraph of PX-02 -- correct me if I'm
22 wrong -- Tamerlane Global Services is listed as a party,
23 correct, listed in that first paragraph?

24 MR. SILVER: Objection, Your Honor. This document
25 speaks for itself, and it is not.

1 THE COURT: Objection overruled.

2 THE WITNESS: It says Tamerlane Global Services is --
3 is part of this paragraph here, yes, sir.

4 BY MR. MCILWEE:

5 Q. And as part of your incorporation of PX-02 into the primary
6 agency agreement, PX-01, you understood that PX-02 -- you were
7 bound to it as equally as PX-01, correct?

8 A. Again, I'm not aware of ever receiving PX-02 so I wouldn't
9 be able to state one way or the other what the conditions of the
10 contract were between the two companies, between Louis Berger
11 Group and Tigers. We weren't a party to those contract
12 negotiations or the document.

13 Q. My question: PX-02 is incorporated in PX-01, right?

14 A. Honestly, I don't know. I assume it is. I can't tell.
15 Honestly, I don't know.

16 Q. Referring again to your deposition where you were asked
17 questions and gave truthful answers because you were under an
18 oath to tell the truth -- do you remember that deposition?

19 A. Yes, sir.

20 Q. At that deposition you were asked this question and gave
21 this answer --

22 MR. MCILWEE: Counsel, page 25 of the deposition, lines
23 1 through 3.

24 BY MR. MCILWEE:

25 Q. -- And this is the contract that is referred to in

1 appendix C of Exhibit 1, correct?

2 Answer: That appears to be the case.

3 You were asked that question and you gave that answer.

4 MR. SILVER: Objection, Your Honor. That's not
5 impeachment.

6 THE COURT: Objection overruled.

7 BY MR. MCILWEE:

8 Q. You were asked that question and you gave that answer,
9 correct?

10 A. I did, yes, sir. That does appear to be the case.

11 Q. You read PX-01 and PX-02 prior to signing, correct?

12 A. I never signed PX-02. I never received PX-02. But I
13 received PX-01 and I signed PX-01. I do not recall PX-02. I
14 don't have a signature on it at all.

15 Q. You wouldn't sign a contract without reading all of it,
16 would you?

17 A. I would try to read as much as possible. Sure. I mean,
18 sometimes I skip past things to be perfectly honest. I'm a
19 small business owner.

20 Q. I'm going to remind you of your deposition testimony again.
21 You remember that deposition, right?

22 A. Yes, sir.

23 Q. At that deposition, you were asked this question and you
24 gave this answer.

25 Question --

1 MR. MCILWEE: Counsel, page 26, lines 4 through 7.

2 BY MR. MCILWEE:

3 Q. -- You wouldn't sign a contract without reading all of it,
4 correct?

5 Answer: That's correct.

6 You were asked that question and you gave that answer?

7 A. Yes, sir.

8 Q. We're here to talk today about two moves that were made
9 under the primary agency agreement. The first move involved a
10 shipment of cargo by truck from Kunduz, Afghanistan, to the port
11 of Karachi, Pakistan, right?

12 A. Yes, sir.

13 Q. Several truckloads of cargo in this move, right?

14 A. Yes, sir.

15 Q. And the cargo belonged to Louis Berger Group, correct?

16 A. Yes, sir.

17 Q. When I refer to move one or I say the Kunduz move, I'm
18 referring to this move. Okay?

19 A. Yes, sir.

20 Q. It's also been referred to as the international move today?

21 A. Yes, sir.

22 Q. It's also referred to as move one. So I can understand the
23 confusion, but when I'm talking about move one today, I'm
24 referring to the movement of cargo between Kunduz and the port
25 of Karachi. Is that clear?

1 A. Yes, sir.

2 Q. The second move involved the shipment of cargo by truck from
3 Tarin Kowt Base to Bagram Air Base, correct?

4 A. Yes, sir.

5 Q. And you remember there being 12 truckloads of cargo in this
6 move, correct?

7 A. Not entirely, but it began as 12 carloads -- truckloads,
8 yes.

9 Q. The cargo belonged to Louis Berger Group?

10 A. Yes, sir.

11 Q. When I refer to move two today, or the TK move, I'm
12 referring to this move. Okay?

13 A. Understood, sir.

14 Q. And it's also been referred to as the domestic move. Do you
15 understand sort of the similarities there?

16 A. Yes, sir.

17 Q. Very good. Besides these two movements, there are no other
18 movements that you're aware of with respect to PX-01 and PX-02,
19 correct?

20 A. Not entirely, but as far as this case is concerned, that is
21 correct.

22 Q. Let's talk about move one. Tamerlane handled the ground
23 shipment for move one, correct?

24 A. The -- let me -- for movement one -- when you said movement
25 one, you mean the international move?

1 Q. Let me rephrase. And I apologize for the confusion.

2 Tamerlane handled the ground shipment for the Kunduz to Karachi
3 move, correct?

4 A. Yes, sir.

5 Q. Tamerlane sent trucks to Kunduz on August 29, 2013, correct?

6 A. Yes, sir.

7 Q. To pick up the LBG cargo?

8 A. Yes, sir.

9 Q. And for the actual trucking that was involved in move one,
10 Tamerlane subcontracted with Ghazanfar, correct?

11 A. Not entirely, no, sir.

12 Q. It's your testimony today that, for move one, Tamerlane did
13 not subcontract with Ghazanfar for the trucking services?

14 A. That's not my testimony, sir. There's multiple players that
15 were involved in that particular movement. Without getting too
16 wordy, it actually did not start as an international movement.

17 It started as a domestic movement from Kunduz to Karachi --
18 sorry, not Karachi. Kunduz to Kabul. It was then moved from
19 Kabul to Karachi. So there were different players involved,
20 multiple subcontractors, not just Ghazanfar.

21 Q. Was Ghazanfar the trucking subcontractor?

22 A. One of them, yes, sir.

23 Q. Ghazanfar provided the trucks between Kunduz and Kabul,
24 right?

25 A. Not all of them, no, sir.

1 Q. I am going to remind you of your deposition testimony. You
2 remember that deposition, right?

3 A. Yes, sir.

4 Q. At that deposition you were asked this question and gave
5 this answer.

6 MR. MCILWEE: Counsel, page 38, lines 15 through
7 page 39-1.

8 BY MR. MCILWEE:

9 Q. Question: So you mentioned Ghazanfar. Was Ghazanfar
10 involved in move one?

11 Answer: Ghazanfar was involved in move one, yes.

12 Question: How so?

13 Answer: Ghazanfar provided the trucks to go between Kunduz
14 and Kabul, then at its facility in Kabul, loaded the materials
15 onto containers we provided and was set -- set the containers
16 onto trucks, and was moving the containers from Kabul to
17 Karachi.

18 Question: So they would be an additional subcontractor to
19 move one?

20 Answer: That's correct.

21 You were asked those questions and you gave those answers,
22 correct?

23 A. That's correct, yes, sir.

24 Q. Now, once in Kabul, Ghazanfar loaded the LBG cargo onto
25 containers provided by Tamerlane, correct?

1 A. That's correct, yes, sir.

2 Q. Ghazanfar set the containers onto trucks, right?

3 A. Ghazanfar -- yes, sir. May I -- if I can please correct.

4 No, they didn't. The containers originated in Bagram. In
5 Bagram, there was a different trucking company for the
6 containers that were required for the movement of cargo. It's a
7 second trucking company, a local trucking company.

8 When they got to Kabul, that's when Ghazanfar took
9 possession of the cargo, and from there began the stuffing
10 process. The cargo was not stuffed in Kunduz for international,
11 because it wasn't originally an international movement, sir.

12 MR. MCILWEE: Counsel, page 38, same section.

13 BY MR. MCILWEE:

14 Q. You were asked this question and you gave this answer.

15 Question: How so?

16 Answer: Ghazanfar provided the trucks to go between Kunduz
17 and Kabul. Then at its facility in Kabul, loaded the materials
18 into containers we provided and set the containers onto trucks
19 and was moving the containers from Kabul to Karachi.

20 You were asked that question and you gave that answer,
21 correct?

22 A. Yes, that's correct, sir.

23 Q. What you now know is that the LBG cargo never made it to
24 Karachi, right?

25 A. I don't know that, no, sir.

1 Q. Never made it out of Kabul?

2 A. Not to my knowledge, sir. To be honest, I don't know what
3 happened with the cargo to be fair.

4 Q. As far as you know, the LBG cargo is still in Kabul to this
5 day.

6 A. I don't know that. In fact, my understanding is LBG
7 received the cargo.

8 Q. It's your testimony today that LBG received the cargo in the
9 Kunduz to Karachi movement?

10 A. I can't answer that one way or the other, sir. I have
11 not -- that is a movement that I am no longer involved in so I
12 don't know. Honestly, I have no idea what happened to the cargo
13 after we -- after we removed ourselves from that process, sir.

14 MR. MCILWEE: Counsel, page 192, question on 14 through
15 22.

16 BY MR. MCILWEE:

17 Q. Question: What you know now.

18 Answer: What we know now, right. What we know now, what we
19 finally figured out at the end of March is that it never left
20 Kabul.

21 Question: And it was being held because of unpaid invoices
22 that Ghazanfar had provided to Tamerlane?

23 Answer: It was being held because of the unpaid invoices
24 related to movement two to -- involving Tamerlane. Yes,
25 movement two. So movement.

1 You were asked those questions and you gave those answers,
2 correct?

3 A. I did, sir, but I want to make sure it's clear. We're
4 talking about March 2014, sir. This is 2016. To be fair, I
5 honestly do not know what happened to the cargo in the past two
6 years since March 2014, sir. I just don't know.

7 Q. You were asked those questions and you gave those answers?

8 A. Yes, sir.

9 Q. If you could flip to page 2 of Plaintiffs' Exhibit 3,
10 please.

11 A. Yes, sir.

12 Q. You recognize this document, correct?

13 A. Yes, sir.

14 Q. This document contains invoices issued to Tamerlane from
15 Ghazanfar, correct?

16 A. Yes, sir.

17 Q. When Tamerlane received Ghazanfar invoices, Tamerlane
18 printed them, correct?

19 A. Yes, sir.

20 Q. The printed copies were kept as part of Tamerlane's overall
21 file, correct?

22 A. Yes, sir. I believe so, sir.

23 Q. And Tamerlane did this to record the financial transactions
24 that ultimately led to the final invoice, correct?

25 A. Yes, sir.

1 Q. And PX-3 is in the same or substantially the same condition
2 as when you saw it last, correct?

3 A. It's been a while since I first saw these or last saw these,
4 sir, to be fair.

5 Q. No changes though that you know of?

6 A. Honestly, I can't answer that at this stage, sir.

7 MR. MCILWEE: Your Honor, Plaintiffs move Exhibit 3
8 into evidence.

9 MR. SILVER: Objection, Your Honor. Exhibit 3 is
10 hearsay.

11 THE COURT: I'm sorry?

12 MR. SILVER: Exhibit 3 is hearsay. It's not a book and
13 record of Tamerlane. It's a book and record of Afghan Active
14 Logistic --

15 THE COURT: Plaintiffs' Exhibit 3?

16 MR. MCILWEE: Yes, Your Honor.

17 THE COURT: We went through this before, didn't we?

18 MR. SILVER: No, Your Honor.

19 THE COURT: No?

20 MR. MCILWEE: Your Honor, this witness just testified
21 that when he received these invoices from Ghazanfar, he put them
22 in a file. That was Tamerlane's standard business practice.
23 They did so to record the final transactions that ultimately led
24 to the final invoices.

25 If there's an objection to hearsay, it certainly meets

1 a well-settled exception to the hearsay rule, 803(8), and may be
2 used for the truth of the matter asserted.

3 THE COURT: That would be correct, wouldn't it?

4 MR. SILVER: I don't think so, Your Honor. The receipt
5 of the invoice I don't have a problem with. The contents of the
6 invoice is not his. And therefore --

7 THE COURT: If it's kept in the normal course of
8 business, relied on for his business records --

9 MR. SILVER: It's not relied on.

10 THE COURT: Objection overruled. They're admitted.

11 BY MR. MCILWEE:

12 Q. You had a billing dispute with Ghazanfar, did you not?

13 A. I did, yes, sir.

14 Q. Between August 2013 and March 2014, Ghazanfar invoices to
15 Tamerlane totaled somewhere around \$175,000, right?

16 A. I don't know the number exactly, sir. It was probably -- it
17 was substantial, no question about it.

18 Q. Ghazanfar, however, was asking you for a bit more, right?

19 A. More than they had originally agreed to charge, yes, sir.

20 Q. \$215,000?

21 A. I don't remember the exact number, sir.

22 Q. Well, whether you remember or not, it resulted in a
23 discussion on disagreements about the bills, right?

24 A. No question that the invoices were -- yes, they were
25 discussed, yes, sir.

1 Q. Now, while this billing dispute was going on, let's talk
2 about the information that your business partner, Tigers, had.
3 Before March 2014, Tigers had no idea about Ghazanfar's unpaid
4 invoices, did they?

5 MR. SILVER: Objection. He couldn't possibly know
6 what's in their minds.

7 THE COURT: Objection sustained.

8 BY MR. MCILWEE:

9 Q. You had conversations with Tigers in March of 2014, correct?

10 A. Yes, sir.

11 Q. And before March of 2014, you had never told Tigers about
12 Ghazanfar, had you?

13 A. I don't recall if we had said anything about Ghazanfar
14 specifically as a name, no, sir. Afghan truckers, yes.

15 Q. Tigers had no idea that Tamerlane was even using Ghazanfar
16 for move one, did they?

17 A. Not to my knowledge, no, sir.

18 Q. So then the first question was a fair one, right? Before
19 March 2014, Tigers had no idea about Ghazanfar's unpaid invoices
20 because you didn't tell them?

21 A. That's not entirely true, sir.

22 Q. What about that is not entirely true?

23 A. We made it very clear to Tigers' management that we were
24 having issues on the ground. We had several contracts that were
25 being challenged as a result of an unpaid invoice that Tigers

1 was playing games with at the time.

2 Q. I'm going to remind you of your deposition testimony.

3 MR. MCILWEE: Counsel, page 98, line 24, through 99,
4 page -- line 2.

5 BY MR. MCILWEE:

6 Q. At your deposition you were asked this question and gave
7 this answer.

8 Question: Okay. Backing up for a second, was March 2014
9 the first time that you had notified Tigers of pricing disputes
10 with Ghazanfar?

11 Answer: I believe it was.

12 You were asked that question and you gave that answer,
13 correct?

14 A. Yes, sir. That was the first time I spoke to them about
15 Ghazanfar.

16 Q. Tigers asked you for the name of the trucking subcontractor
17 though, correct?

18 A. Yes, sir.

19 Q. During the moves, right?

20 A. During the moves? I don't recall during the first move, the
21 domestic move, sir.

22 Second move, towards the end when we were transitioning
23 custody, they asked for the name, and we gave them the name of
24 the contact details for them to take over the cargo, sir.

25 Q. All right. Well, let's talk about January 2014. You had

1 told that -- they had asked about who you were using for a
2 trucking subcontractor in January 2014; is that right?

3 A. Yes, sir.

4 Q. But in January 2014, you told them that you were the
5 trucking subcontractor, right?

6 A. That's right, yes, sir.

7 Q. You never mentioned Ghazanfar?

8 A. That's correct, sir.

9 Q. Even though Ghazanfar was in fact providing trucking
10 services?

11 A. Not all trucking services for this particular contract, sir.

12 MR. MCILWEE: Counsel, page 83, lines 20 through 23.

13 BY MR. MCILWEE:

14 Q. Mr. O'Brien, you were asked these questions and you gave
15 these answers.

16 Question: And Ghazanfar, in fact, was providing trucking
17 services for move one?

18 Answer: Ghazanfar was providing trucking services for
19 move one.

20 You were asked that question and you gave that answer,
21 correct?

22 A. Yes, sir.

23 Q. All right. So Tigers was not informed of the trucking
24 subcontractor, the unpaid invoices. So let's talk about the
25 information that Tigers had about the location of the move one

1 cargo, the Kunduz to Karachi cargo.

2 A. Yes, sir.

3 Q. Tigers asked you for the location of the move one cargo,
4 correct?

5 A. Again, can you please repeat which one move one is again?
6 Are we talking about the domestic or the international, sir?

7 Q. No problem. Tigers asked you for the location of the cargo
8 that was moving between Kunduz and Karachi.

9 A. The international move, sir?

10 Q. Yes.

11 A. Which time, sir? Because, yes, there were multiple times
12 they were asking for status reports, sir.

13 Q. All right. Let's talk about the first time.

14 A. Yes, sir.

15 Q. Do you remember the first time they asked for the location
16 of the Kunduz to Karachi movement?

17 A. Yes, sir. That would be during -- the point at which it
18 left Kunduz, probably in September of 2013, sir.

19 Q. Tigers didn't have any personnel on the ground, did they?

20 A. No, sir.

21 Q. Tigers was relying on you to provide them with the location
22 of the cargo, correct?

23 A. Yes, sir.

24 Q. And you tracked the location of the Kunduz to Karachi cargo
25 in various ways, right?

1 A. Yes, sir.

2 Q. You used a security team, right?

3 A. Yes, sir.

4 Q. You used the Afghan personal protective force, correct?

5 A. They're typically one and the same. Sometimes they're
6 separate, but, yes, sir.

7 Q. You used in-transit visibility devices to track cargo?

8 A. Yes, sir.

9 Q. Which are GPS-type units, right?

10 A. Yes, sir.

11 Q. And you used email to communicate the location of cargo,
12 correct?

13 A. Yes, sir.

14 Q. And the combination of these tracking measures could not
15 have been any more robust in confirming the location of the
16 Kunduz to Karachi cargo, could it have?

17 A. Not exactly, sir. It was the best we could possibly do on
18 the ground, but it will not always be accurate, unfortunately,
19 in a war zone, sir.

20 MR. MCILWEE: Counsel, page 164, lines 10 through 14.

21 BY MR. MCILWEE:

22 Q. Mr. O'Brien, you were asked this question at your deposition
23 and you gave this answer.

24 Question: Would you say that -- I mean, you described that
25 tracking system as robust. Could it have been any more robust

1 in sort of confirming the location of the cargo at all points?

2 Answer: No.

3 You were asked that question and you gave that answer,
4 correct?

5 A. Regarding the tracking system, yes, sir, it was the most
6 advanced tracking system we could have. Again, it's not always
7 accurate, unfortunately, because it's Afghanistan.

8 Q. You were asked that question and you gave that answer?

9 A. Yes, sir.

10 Q. Now, with all that tracking information, let's track
11 move one between September 2013 and March 2014. In
12 September 2013, the move one cargo, the Kunduz to Karachi cargo,
13 that was still in Kabul, right?

14 A. I believe it was traveling to Kabul, and it may have been in
15 Kabul by then, yes, sir.

16 Q. In Ghazanfar's trucking yard. That's where you would find
17 the cargo in September 2013, right?

18 A. Yes, sir.

19 Q. And your plan for the cargo at the time was to load the
20 move one cargo into COCs, right?

21 A. Into -- COCs. When you're saying COCs, do you mean carry
22 your own container, sir?

23 Q. I do. Thank you for explaining. Carry your own containers
24 are sometimes abbreviated as COCs, that's right.

25 A. Yes and no. It actually wasn't exactly a COC, sir. There's

1 a little more complexity involved in U.S. military cargo
2 movements.

3 Q. Well, you can get into that when your counsel asks you
4 questions. My question is simply this: You proposed to use the
5 carry your own containers for move one belonging to Maersk, did
6 you not?

7 A. Yes, sir.

8 Q. And you proposed to load those Maersk containers with LBG
9 cargo onto 40-foot flatbed trucks, right?

10 A. Yes, sir.

11 Q. And you proposed to mark those carry your own containers
12 belonging to Maersk as empty on the border crossing memorandum,
13 correct?

14 A. No, sir.

15 Q. So it's your testimony today that when this jury goes back
16 and deliberates, they won't find a border crossing memorandum
17 coming from your office with carry your own containers 1 through
18 7 marked empty. That's what you're telling these ladies and
19 gentlemen of the jury?

20 A. No, that's not what I'm saying. What I'm saying is that I
21 don't have the authority to create a border crossing memo. The
22 border crossing memo is created by a group called the surface
23 deployment and distribution command. They're run by the Defense
24 Logistics Agency of the U.S. Army. So we have to go by whatever
25 they write on that document.

1 As a U.S. contractor, we're not allowed to write anything on
2 those documents. The Pakistani government, the Afghan
3 government, and the U.S. Army makes a determination as to what
4 they want to write on that document. So if they write empty on
5 those documents, we're all supposed to comply with the law if
6 they write empty.

7 Often the U.S. military will not want to disclose the
8 contents of containers because they don't want things to be
9 stolen in places like Pakistan or Afghanistan where a lot of
10 cargo theft occurs, unfortunately. Usually they reserve that
11 for high value cargo.

12 Q. I apologize. Thank you for that answer.

13 You asked for a border crossing memorandum with respect to
14 move one cargo, right?

15 A. Yes, sir.

16 MR. MCILWEE: Your Honor, could I ask for the security
17 officer to present an exhibit to the witness?

18 THE WITNESS: Yes, sir.

19 MR. SILVER: Excuse me. Your Honor, this was not part
20 of their exhibits in this case. I don't think it's proper for
21 them to be using it today. I've never seen it before.

22 THE COURT: It's for the purpose of impeachment?

23 MR. MCILWEE: Correct, Your Honor.

24 THE COURT: All right. Go ahead.

25

1 BY MR. MCILWEE:

2 Q. You recognize this document, Mr. O'Brien, right?

3 A. Yes, sir.

4 Q. Marked in the lower right-hand corner DEF 01792. And if you
5 flip over to the next page, the next page is DEF 1793, correct?

6 A. Yes, sir.

7 Q. And on that page there is a list of trucks 1 through 7 in a
8 column on the left-hand side, the column that you would use to
9 describe what is contained in the containers. And that
10 column --

11 MR. SILVER: Your Honor --

12 BY MR. MCILWEE:

13 Q. -- is marked empty.

14 MR. SILVER: -- I'm going to object. This is a hearsay
15 document. It's not his document. It's not one binding the
16 parties in the case. It's by somebody else. There's been no
17 showing as to reliability or anything else. It's hearsay. I
18 don't see how he gets to use it in this case without it having
19 been an exhibit.

20 MR. MCILWEE: Your Honor, three responses there. First
21 of all, this was produced by defendants in discovery. Second,
22 as to any potential hearsay statements, Mr. O'Brien just said
23 himself this comes from the U.S. government. It is a record of
24 public office that is admitted under 803, the public records
25 exception. Therefore, there are no hearsay problems. And as

1 you said yourself, this is merely used to confront the witness
2 with his prior inconsistent statement.

3 THE COURT: Objection overruled.

4 BY MR. MCILWEE:

5 Q. My question to you, Mr. O'Brien, was in that first column,
6 the column where you can write in what the contents of the
7 container are, that column is marked empty, right?

8 A. I can't write in that column, sir. I don't have that right.
9 This column -- this document was produced by the Department of
10 the Army and so they get to write whatever they want in there,
11 whatever they feel is in the best interest of the U.S.
12 government, sir.

13 Q. Okay. In that first column, it's marked empty, right?

14 A. Yes, sir.

15 Q. Flip the exhibit over, if you could.

16 A. Yes, sir.

17 Q. And draw your attention to paragraph 2 and read it
18 completely. Look up when you've had a chance to read it.

19 A. Yes, sir.

20 Q. You've had a chance to read it?

21 A. Yes, sir.

22 Q. This particular paragraph describes move one, does it not?

23 A. Yes, sir. The international move, yes, sir.

24 Q. This border crossing memorandum pertains to move one, the
25 international movement, correct?

1 A. This particular document does, yes, sir.

2 Q. Ghazanfar took issue with this border crossing memorandum,
3 didn't it?

4 A. Yes, sir.

5 Q. They took issue with marking full containers empty, correct?

6 A. Yes, sir.

7 Q. And this was -- this document is November 2013, right?
8 November 1, 2013?

9 A. Yes, sir.

10 Q. While the cargo was still located in Kabul?

11 A. Yes, sir. I believe it was still in Kabul. It may have
12 been somewhere else. The problem with these documents is
13 sometimes they cut them after they've already been in motion,
14 sir. So it could have already been in motion. I just don't
15 know. Sometimes they will cut these documents as they get
16 closer to the border.

17 Q. But my question, whether in November 2013 the move one cargo
18 was still located in Kabul, the answer to that question is yes?

19 A. I believe it was.

20 Q. In December 2013, the LBG cargo was still located in Kabul,
21 was it not?

22 A. I believe it was, yes, sir.

23 Q. Ghazanfar had been charging halting fees on the LBG cargo
24 for sitting in its trucking yard since September, correct?

25 A. That's not true, sir.

1 Q. Flip back to PX-03 if you would.

2 A. Yes, sir.

3 Q. Do you see how PX-03 has numbers within it in the lower
4 right-hand corner?

5 A. Yes, sir.

6 Q. Tigers 268, 269. Do you see those numbers?

7 A. Yes, sir.

8 Q. If you could flip to the exhibit that is marked PX-03 at
9 page Tigers 000269. Take a look at that document and look up
10 when you've had a chance to read it.

11 A. Yes, sir.

12 Q. Now, you see at the bottom of the invoice description there
13 are charges that relate to the period 12/11/2013 through
14 12/30/2013.

15 A. Yes, sir.

16 Q. Now, that date period, that's within December, right?

17 A. Yes, sir.

18 Q. My question to you was: In December 2013, had Ghazanfar
19 been charging you halting fees for the trucks sitting in the
20 yard since September?

21 Is this one of the invoices where you're being charged
22 halting fees for trucks sitting in Ghazanfar's yard?

23 A. Again, this appears to be one of the invoices where they
24 charged halting charges. However, if you're asking me about
25 December or November, we don't know what they were doing. We

1 were not aware that they were holding these trucks really till
2 late January.

3 Q. Okay.

4 A. As a result of payment issues anyway. We had a dispute in
5 November regarding the SDC form. They disputed with the U.S.
6 Army and the U.S. Army told them move.

7 On November 4th, the U.S. Army said to get going; you have
8 no right to stop the cargo. So we assumed the cargo was in
9 motion as the U.S. Army directed them to do so, sir.

10 Q. All right. Flip to the previous page that's marked 268 in
11 the lower right-hand corner. And correct me if I'm wrong, but
12 this period has halting charges from October 27th to
13 December 10, 2013, correct?

14 A. Yes, sir.

15 Q. Okay. If we can flip to the previous page, 267 -- and this
16 is the September invoice for the cargo located in Kabul that
17 Ghazanfar was holding onto, right?

18 A. Yes, sir.

19 Q. Okay. Does flipping through these invoices refresh your
20 recollection as to whether you were paid halting charges from
21 September to December 2013?

22 A. We were never paid halting charges, sir. We were never paid
23 them at all by Tigers.

24 Q. You were charged them by Ghazanfar?

25 A. Again, we received these invoices -- if I ever received

1 these, these were -- we were first made aware of halting charges
2 in late January of 2014, sir. That's the last time that -- they
3 may have created these anytime. I don't really know. Our last
4 directive was from the Army. It was November 4th. Get it
5 going. Get this cargo moving. You've got the right
6 documentation.

7 They had no reason to hold it, sir.

8 Q. Ghazanfar was charging halting fees of about 76.50 a day,
9 right, when you ultimately found out what they were?

10 A. When we ultimately found out what they were, I found out
11 sometime in late January, maybe early February. Even that --

12 Q. 76.50 was my question.

13 A. They may have charged -- yes, sir, it appears to be the
14 case. Yes, sir.

15 Q. Per day?

16 A. Yes, sir.

17 Q. Per truck?

18 A. I'd have to take a look and see.

19 Looks like \$75 per day, yes, sir, plus an additional \$45
20 charge, sir.

21 Q. And parking charges of \$10.20 a day, right?

22 A. Something like that, sir.

23 Q. Per truck.

24 A. The invoices are a little bit sporadic, sir. Some of the
25 numbers change based on the month and then where they say the

1 cargo is.

2 Q. So the cargo is in Kabul. But in December 2013, you
3 informed Tigers that move one cargo has been seized, right?

4 A. Move one -- no. Let me make sure it's clear. Move one is a
5 company. So move one is a separate company. It's -- in fact,
6 move one is a company for UPS on the ground in Afghanistan.
7 They are the ones who deliver cargo for them.

8 So when I say move one cargo is seized on the ground, it's
9 not movement one. I want to make sure it's clear. Move one is
10 a separate company, separate entity. In fact, Tigers uses them
11 on occasion as a subcontractor, as do we on occasion.

12 Q. Could you flip to PX-10 for me. My question pertains to an
13 email --

14 A. Yes, sir.

15 Q. -- exchange relating to the location of the cargo in
16 December of 2013 when Tigers is asking you where the cargo is.

17 A. Yes, sir.

18 Q. Flip to page 6 for me. This is an email from Brooks Isoldi
19 to you and Tim Timpson, correct?

20 A. Yes, sir.

21 Q. December 2013?

22 A. December 9, 2013, yes, sir.

23 Q. And Mr. Isoldi is asking you in the first line if you could
24 update on the seven Kunduz D-mode containers, right?

25 A. Yes, sir.

1 Q. He wants to know where the cargo is, right?

2 A. Yes, sir.

3 Q. And in the next email, page 5 spilling over into page 6,
4 Mr. Isoldi asks you again to please advise on the Kunduz cargo
5 questions, right?

6 A. Yes, sir.

7 Q. Okay. Moving up the email chain, Brooks Isoldi again asks
8 you the next day, kind reminder, please respond, right? He's
9 looking for a response from you.

10 A. Yes, sir. It was later on in the same day.

11 Q. That one is December 10th, right?

12 A. We have December 9th on one of them. I can't really tell
13 the timing, unfortunately, because I've got CST time, but I also
14 have Afghan time in between here, interspersed. So
15 unfortunately, it would have happened within 24 hours. Let me
16 put it that way.

17 Q. Okay. Well, what does the date on the email say?
18 December 10th, right?

19 A. I have December 10th and December 9th, yes, sir.

20 Q. Okay. And then on the next page, page 4, your colleague,
21 Mr. Timpson, responds, right?

22 A. Yes, sir.

23 Q. And you know, he says what he says. And then the next email
24 above it, that's where you jump in, right?

25 A. Yes, sir.

1 Q. You say: Guys, PAKGLOC has a massive seizure of USMIL
2 cargo. Will report as soon as I can. Learned of this last
3 night and awaiting details. Right?

4 A. Yes, sir.

5 Q. And you're talking about the Kunduz cargo, right?

6 A. I'm talking about all kinds of cargo. While I'm not
7 specifically speaking of the Kunduz cargo, I'm just trying to
8 figure out what's going on.

9 Q. Sure.

10 A. In Afghanistan and Pakistan -- again, it's a war zone. So a
11 lot of times Pakistan would screw around with U.S. military
12 cargos and take stuff. Afghans would take stuff. They would
13 seize all kinds of U.S. military cargo. It wasn't always
14 specific -- until you find out exactly what was happening at the
15 borders. Unfortunately, it was kind of confusing there.

16 So that's why I say U.S. mil cargo and not specifically this
17 particular movement till we can find out a little more details.

18 Q. The subject of this email where you're talking about
19 different types of cargo all over the place and different types
20 of procedures and whatnot, the subject is specifically "Re:
21 Kunduz Cargo," right?

22 A. That's correct, sir. That's what the subject says.

23 Q. In plain English?

24 A. Yes, sir.

25 Q. And that's what everybody is talking about through this

1 entire email chain?

2 A. No, not exactly. Again, sir, I just want to make sure I'm
3 clear. Mil cargo gets lumped into groups. So if we don't have
4 knowledge -- mil cargo may have been seized. If it's there,
5 it's there. If it's not, we have to make reports.

6 Q. Well, you clear it up on the following pages. So let's look
7 at page 3. Brooks Isoldi asks you in particular was our cargo
8 amongst the seized materials?

9 He asked you that question, right?

10 A. Yes, sir.

11 Q. And then you respond, Everything. Right? All military
12 cargo. Will report soon. Do not report until details sent.

13 A. Yes, sir.

14 Q. Right? So when he asked was our cargo amongst the seized,
15 you knew at that point he was talking about Kunduz cargo, LBG
16 cargo, this case.

17 A. I knew that he was concerned about that particular cargo.
18 Again, the reason why I asked him not to report, we don't -- a
19 lot of stuff, when you're on the border in Afghanistan and
20 Pakistan, a lot of stuff you have to kind of parse out.

21 So -- and when you're operating in Afghanistan in general --
22 so when I say U.S. military cargo seized, hang tight, don't
23 report until we find out exactly whether or not our cargo is
24 part of that.

25 MR. MCILWEE: Your Honor, I would move Exhibit 10 into

1 evidence.

2 THE COURT: Any objection?

3 MR. SILVER: I am going to object, Your Honor. I think
4 it's hearsay.

5 THE COURT: Which one? 10?

6 MR. MCILWEE: Your Honor, 10 is the email that we've
7 been talking about, the words of the party.

8 THE COURT: It's admitted.

9 MR. MCILWEE: Thank you, Your Honor.

10 MR. SILVER: This is from Mr. Isoldi. This is not from
11 Mr. O'Brien.

12 THE COURT: It's admitted.

13 BY MR. MCILWEE:

14 Q. Mr. O'Brien, in March 2014, you informed Tigers that the --
15 Tigers that the cargo was actually in Waziristan, Pakistan,
16 didn't you?

17 A. That was my understanding, yes, sir.

18 Q. And that Pakistani authorities had gifted this cargo, right?

19 A. My understanding was Pakistani authorities were going to
20 take that cargo for payment, yes, sir.

21 Q. And that they gifted it, right?

22 A. That's what they typically do. They take it and they hand
23 it back over to the truckers for payment. Yes, sir. If they
24 feel that there's a payment dispute, some of these countries
25 will do that, yes, sir.

1 Q. That's what you told Tigers, right?

2 A. Yes, sir.

3 Q. And on March 20th, you proposed that you would meet with the
4 truckers, right?

5 A. Yes, sir.

6 Q. To negotiate some sort of a ransom, right?

7 A. I wouldn't call that a ransom, sir, no, sir.

8 Q. All right. Negotiate a sum to have the cargo ungifted?

9 A. I would say that it was to meet with them to see how we can
10 get this dispute resolved, yes, sir.

11 Q. And you were going to go there, right?

12 A. Yes, sir.

13 Q. And a mediator was going to be involved, right?

14 A. Yes, sir.

15 Q. To negotiate the release of the cargo?

16 A. Yes, sir.

17 Q. Now, at this point in the whole process, Tigers finally had
18 asked you, hey, can we send a third party with you?

19 A. Which date was that, sir?

20 Q. In March of 2014, Tigers had requested a third party to
21 accompany you during these negotiations?

22 A. Yes, sir.

23 Q. If a third party had met with you and Ghazanfar, Tigers
24 would have known that the move one cargo was not in Pakistan,
25 right?

1 A. They would ultimately have found out that it was not
2 Pakistan at that time, no, sir.

3 Q. If a third party met with you and Ghazanfar, Tigers would
4 have known that the cargo from move one was actually still
5 sitting in Kabul, right?

6 A. Yes, sir.

7 Q. If a third party met with you and Ghazanfar, Tigers would
8 have known the actual amounts of the unpaid invoices that were
9 in dispute for the LBG cargo in move one?

10 A. No, sir.

11 Q. Again, I'm going to refer you back to your deposition where
12 you were sworn under oath to tell the truth, that same oath that
13 you took here today.

14 MR. MCILWEE: Counsel, page 205, lines 18 through 21.

15 BY MR. MCILWEE:

16 Q. Question: If a third party representative met with you and
17 Ghazanfar, Tigers would have known the actual amounts that were
18 in dispute as to move one?

19 Answer: Yes.

20 You were asked that question and you gave that answer?

21 A. That's right, I did, sir. And again, unfortunately,
22 regarding the numbers that we have, numbers change quite a bit.
23 So I may have misspoke, and I apologize.

24 Q. You were asked that question and you gave that answer?

25 A. Yes, sir.

1 Q. Artemis never paid Ghazanfar for move one, did they?

2 A. Not for move one, no, sir.

3 Q. Tamerlane never paid Ghazanfar for move one, did they?

4 A. Not for the international movement, no, sir.

5 Q. You never personally paid Ghazanfar for move one, did you?

6 A. Not the international movement, no, sir. It was never
7 completed.

8 Q. The LBG cargo never left Kabul, right?

9 A. That's what we eventually found out, that it never left
10 Kabul.

11 Q. You would agree that move one was unsuccessful, wouldn't
12 you?

13 A. I would say move one was unsuccessful, yes, sir. It could
14 have been a success.

15 Q. You would agree that move one was unsuccessful, yes or no?

16 A. I would say move one could have been a success, but
17 unfortunately someone dropped the ball.

18 Q. I'm going to remind you of your deposition testimony again.

19 Page 94, question, line 10 through 11: Would you say that move
20 one was unsuccessful?

21 Answer: Yes.

22 You were asked that question and you gave that answer,
23 correct?

24 A. Yes, sir.

25 Q. All right. Let's talk about move two.

1 Just to reiterate for the members of the jury, move two is
2 the movement of truckloads of cargo between Tarin Kowt and
3 Bagram airfield, right?

4 A. Yes, sir. The domestic move that was referred to earlier.

5 Q. Domestic move?

6 A. Yes, sir.

7 Q. And Ghazanfar was the trucking subcontractor that Tamerlane
8 chose for move two as well, right?

9 A. Yes, sir.

10 Q. You did not notify Tigers that you were using Ghazanfar as a
11 subcontractor for the domestic move, did you?

12 A. No, sir.

13 Q. The domestic move trucks were loaded in Tarin Kowt on
14 October 10, 2013, right?

15 A. Approximately. Early October, yes, sir. Over a few days,
16 actually. It wasn't just a one-day move.

17 Q. On November 9, 2013, 6 of the 12 trucks had made it to
18 Bagram Air Base, right?

19 A. No, sir. On November 9th, they had gotten to the base, but
20 they weren't allowed access to the base at that time, sir.
21 There was a problem. I think there was delays that were
22 involved, sir.

23 Q. Okay. But as of November 9th, the trucks were at least
24 there in the perimeter?

25 A. In the perimeter, yes, sir.

1 Q. And the other trucks did not arrive until November 15, 2015,
2 right?

3 A. Sometime around that time, possibly later. Yes, sir.

4 Again, it's around that time frame, sir.

5 Q. After the move when the cargo was inspected, some of the LBG
6 cargo had been damaged, right?

7 A. It appeared to be the case at the time, sir.

8 Q. Some had been vandalized, right?

9 A. That's correct, sir.

10 Q. Some of the cargo had even been stolen, right?

11 A. Not the main cargo, no, sir. What they had stolen was oil,
12 gas, things -- I believe the generators and generator kits. So
13 what they did was, in transit, the Afghan truckers appeared to
14 have drained much of the fluids out of the generators. They
15 also took, I think, some fire extinguishers, things of that
16 nature. That's the kind of stuff they were taking. They didn't
17 actually -- the main cargo itself made it to the base, sir.

18 Q. Okay. I just said some of the cargo had been stolen. And
19 you agree, some had been stolen, right?

20 A. The cargo itself was not stolen. The content -- again, the
21 oil and gas was. They drained the fuel, the fluids from it.

22 Q. Okay. Whatever your memory is as to what was stolen and
23 what wasn't, it resulted in an investigation by the criminal
24 investigative division of the U.S. Army, right?

25 A. Yes, sir.

1 Q. What followed was an inspection that you were asked to take
2 place -- or take part of, right?

3 A. That Artemis was in charge of, yes, sir.

4 Q. Now, with respect to the delay, 6 trucks, 12 trucks, damage,
5 vandalism, theft, and investigation, you would agree that
6 move two was nothing short of a disaster, right?

7 A. Not at all. In Afghanistan, those are pretty -- super
8 success, actually, in many ways. You're talking about the
9 violent -- one of the most violent areas of Afghanistan, Tarin
10 Kowt to Bagram.

11 During -- in fact, I think during the period of time of
12 Ramadan when many of the attacks begin to occur in earnest. In
13 fact, the cargo got there. There were some challenges. No
14 question about it.

15 But to move 12 truckloads, and eventually 11 truckloads to
16 transfer cargo, and only lose some fuel that we eventually paid
17 out of pocket, that was pretty solid stuff. It was challenging.
18 All cargo in Afghanistan is challenging.

19 MR. MCILWEE: Your Honor, may I ask the security
20 officer to hand up an exhibit to the witness?

21 BY MR. MCILWEE:

22 Q. Flip to page 5, spilling over to page 6. This is an email
23 from you to Stephen Jackson, right?

24 A. Yes, sir.

25 Q. And several members of the Ghazanfar group, correct?

1 A. Yes, sir.

2 Q. Okay. And in the first sentence of this email with the
3 subject heading damaged/stolen LBG cargo, you write: Steve/AALC
4 team, this shipment was nothing short of a disaster, period.

5 I read that right, right?

6 A. Yes, sir.

7 Q. At the end of this first paragraph you have a sentence
8 saying: This is really bad, period.

9 A. Yes, sir.

10 Q. You say: In essence, this lost us a 33-country,
11 multimillion contract that I worked two years to qualify.
12 Right?

13 A. Yes, sir.

14 Q. You say: I pray that the cargo that has not yet been
15 delivered looks nothing like the cargo below it and attached.

16 A. Yes, sir.

17 Q. Does this email refresh your memory about describing
18 move two as nothing short of a disaster?

19 A. Actually, yeah, I told exactly what happened, sir. The --
20 this is from November 13th, about four weeks before the Army was
21 able to eventually do its investigation that you referenced,
22 sir.

23 After the Army did its investigation, it turned out that LBG
24 was overstating its case as to what had been damaged and what
25 had been stolen. All that was stolen was largely fuel, oil,

1 gas. So three weeks later, when we were finally provided the
2 CID investigation results, it turned out that most of the stuff
3 wound up being replaceable, and we paid out of our own pockets.

4 In fact, my guys on the ground paid out of their own pockets
5 the cash that they had to make sure that the fuel and the oil
6 was replaced. But it took about a few weeks for the CID
7 investigation to be completed.

8 So, yeah, I was pretty ticked off at the time, but it turned
9 out to be okay.

10 Q. Anything else you would like to add to that?

11 A. No, sir.

12 Q. You still invoiced Tigers for the move that you described as
13 nothing short of a disaster, right?

14 A. Sir, yes, of course we invoiced them for the cargo that
15 ultimately proved not to be the disaster we thought it
16 originally was.

17 Q. Okay. Flip to PX-6 if you can.

18 A. Yes, sir.

19 Q. This is the Army's invoice to Tigers, right?

20 A. Yes, sir.

21 Q. Go ahead and flip to PX-5 in the bottom right-hand corner.

22 A. PX-5 in the bottom right-hand corner, sir? Yes, sir.

23 Q. Okay. And that one contains a revised invoice from Artemis
24 to Tigers, right?

25 A. Yes, sir.

1 Q. This is the final invoice for move two, correct?

2 A. Yes, sir.

3 Q. There are no other invoices for outstanding work under the
4 agency agreement, correct?

5 A. No, sir, not for that particular item. No, sir. Not for
6 domestic movement.

7 Q. And Tigers paid this invoice, right?

8 A. Yes, they did, for the move that was completed.

9 Q. In full?

10 A. Yes, sir.

11 Q. Within five days of the revised invoice, right?

12 A. Not within five days, no, sir. The revised invoice here
13 shows March 2nd. I believe it was sent on March 2nd as well.
14 It would have paid sometime around the 15th, somewhere around
15 that time frame, sir. 14th. Two weeks.

16 Q. A narrow time frame, right? Not a lot of time passed.

17 A. Well, given that the movement was completed December 10th,
18 it's very rare for somebody to hold on to those kind of payments
19 from December 10th till March 14th. So I wouldn't consider it a
20 narrow time frame, sir, but it was a narrow time frame from this
21 final invoice date.

22 Q. And that's what I'm asking. From the time the final invoice
23 was sent to the time that you received a wire from Tigers, it
24 was a short period of time, right?

25 A. A relatively short time, yes, sir.

1 Q. All right, sir. Let's talk about the invoices contained in
2 5 and 6. Since the invoices came from Artemis, I want to get an
3 understanding of the relationship between Tamerlane and Artemis.

4 You would say that Tamerlane and Artemis are one and the
5 same, correct?

6 A. No, sir.

7 Q. Could you flip to PX-7 for me?

8 A. Yes, sir.

9 Q. PX-7 has an email from you to Brooks Isoldi. Mr. Bongean is
10 copied.

11 A. Excuse me one moment, sir. There's quite a few documents in
12 PX-7. I'm sorry.

13 Q. Well, that's okay. I'm just asking about PX-7, page 1, your
14 email to Mr. Isoldi with Mark Bongean and others in copy.

15 A. Yes, sir.

16 Q. You say to Brooks in the first sentence of this email:
17 Tamerlane and Artemis are one and the same. Right?

18 A. Yes, sir.

19 Q. I'm reading that correctly, right?

20 A. Absolutely, yes, sir.

21 Q. And when the jury takes this exhibit back into the jury room
22 and looks at it, that's what they're going to read, right?

23 A. Yes, sir.

24 Q. Tamerlane and Artemis are the one and the same?

25 A. Yes, sir. That's what it says on that document, sir.

1 Q. And that's what you wrote?

2 A. That's one of the documents -- that's one of the statements
3 I wrote, yes, sir.

4 Q. Okay. Flip back to PX-6 for me.

5 A. Yes, sir.

6 Q. PX-6 is another Artemis invoice, right? I think that's one
7 we talked about.

8 A. Yes, sir.

9 Q. And in the notes section in PX-6, the invoice says:
10 Tamerlane Global Services officially became Artemis Global, Inc.
11 It says that, right?

12 A. Yes, sir.

13 Q. So when Tigers got this email and they read it and they read
14 the notes section, they were reading words that said Tamerlane
15 Global Services officially became Artemis Global, Inc., right?
16 That's what they were --

17 A. Yes. At Tigers' direction, yes, sir.

18 Q. Okay. Flip to PX-5 for me.

19 A. Yes, sir.

20 Q. And in particular, the invoice. It's on the final page.

21 A. Yes, sir.

22 Q. This is the revised invoice, right?

23 A. Yes, sir.

24 Q. Revisions give you the opportunity to change things that
25 aren't correct, right? That's just general knowledge.

1 A. Typically, sir.

2 Q. Okay. And in the revised invoice in the notes section,
3 there is a note that says: Tamerlane Global Services was
4 officially absorbed by Artemis Global, Inc.

5 It says that, right?

6 A. Yes, sir. That's what it says, sir.

7 Q. So when Tigers got this invoice and they read the notes
8 section, they read the words that Tamerlane Global Services was
9 officially absorbed by Artemis Global, Inc., right?

10 A. Yes. It was placed in the notes section at Tigers'
11 suggestion -- requirement.

12 Q. And you are the owner of both companies, Tamerlane and
13 Artemis, correct?

14 A. I am an owner of Tamerlane and an owner of Artemis, not the
15 owner of each.

16 Q. Flip to PX-29, please.

17 A. Yes, sir.

18 Q. PX-29 has an email from you to Mark, correct?

19 A. Yes, sir.

20 Q. And in the very first sentence, PX-29, you say to Mark:
21 Mark, note - I am the owner of both companies.

22 Right?

23 A. Yes, sir.

24 Q. Period, end of sentence.

25 A. Yes, sir.

1 Q. I own 100 percent of Tamerlane and 50 percent of Artemis.

2 Right?

3 A. That's what it says, sir. It turned out that the

4 100 percent is not accurate.

5 Q. So when Mark read these words, your words --

6 A. Yes, sir.

7 Q. -- he was able to understand from you that you owned both

8 companies, right?

9 A. That I'm an owner of both companies, yes, sir. An owner.

10 MR. MCILWEE: Your Honor, Plaintiff moves to admit 29.

11 THE COURT: It's admitted.

12 BY MR. MCILWEE:

13 Q. Ms. Kennedy was an employee of Tamerlane, correct?

14 A. She was briefly an employee at Tamerlane, yes, sir.

15 Q. She was a compliance officer, right?

16 A. She was a -- I believe that might have been her title, yes,

17 sir.

18 Q. Now, she is an officer -- officer of Artemis Global, Inc.,

19 right?

20 A. She is an officer and an owner, yes, sir.

21 Q. Ms. Kennedy is the only other officer of Artemis, correct?

22 A. She is the only other officer of Artemis, yes, sir.

23 Q. Besides yourself?

24 A. Besides myself, yes, sir.

25 Q. Maersk was Tamerlane's largest client, correct?

1 A. Yes, sir.

2 Q. Maersk is Artemis' only client, right?

3 A. No, sir.

4 Q. I'll remind you of your deposition testimony again.

5 MR. MCILWEE: Counsel, page 103, lines 9 through 19.

6 BY MR. MCILWEE:

7 Q. Question: Does Artemis Global have any active contracts
8 that it's servicing?

9 Answer: It does. It has one active contract at this stage.

10 Question: Who is that contract with?

11 Answer: Maersk.

12 You were asked those questions and gave those answers,
13 correct?

14 A. That's a truthful answer, sir, but you asked your question
15 differently.

16 Q. You were asked those questions and you gave those answers?

17 A. You just asked a different question of me, sir, but, yes.

18 Q. Tamerlane handled retrograde movement of cargo in
19 Afghanistan, right?

20 A. No, sir. Some -- to some extent, but not really. The
21 majority of Tamerlane cargo movements were sustained cargo and
22 deployment cargo, sir.

23 Q. Okay. Is it fair to say that Tamerlane handled retrograde
24 movement of cargo in Afghanistan?

25 A. For rolling stock, yes, sir.

1 Q. Rolling stock, like the kind involved in this case?

2 A. No, sir. None of this cargo is rolling stock, sir.

3 Q. What's rolling stock?

4 A. Rolling stock is cargo that can actually roll: trucks,
5 tanks, things of that nature. That's what a rolling stock is.
6 It's something that can go on what's called a rolling on/rolling
7 off vessel, sir.

8 Q. Okay. But truckloads of LBG cargo that are rolling through
9 Afghanistan, there's a distinction there?

10 A. Yes, sir.

11 Q. Okay. Artemis also handles retrograde movement of cargo in
12 Afghanistan, right?

13 A. Artemis handles retrograde cargo -- yes, sir. Cargo, not
14 rolling stock.

15 Q. Tamerlane is organized under the laws of the Commonwealth of
16 Virginia, right?

17 A. Tamerlane is organized under the laws of Virginia, yes, sir.

18 Q. I'm sorry. I didn't catch that.

19 A. Under the laws of Virginia, yes, sir.

20 Q. Okay. And Artemis is also organized under the laws of the
21 Commonwealth of Virginia, right?

22 A. Yes, sir.

23 Q. When you emailed Ghazanfar, you used both your Tamerlane and
24 Artemis email accounts, did you not?

25 A. Yes, sir. On occasion, yes, sir.

1 Q. Artemis has been mistakenly invoiced for services provided
2 to Tamerlane, correct?

3 A. I believe so, sir. Again, I don't recall, but I believe so.

4 Q. Now that we've talked about the similarities between
5 Tamerlane and Artemis, let's talk about why Artemis was formed
6 in the first place.

7 By November 2013, it became very clear to you that Tamerlane
8 was not going to be a viable operating entity much longer,
9 correct?

10 A. That's correct, sir.

11 Q. One of the reasons for this was because Tamerlane had lost a
12 lawsuit in the Eastern District of Virginia, right?

13 MR. SILVER: Objection. Relevance, Your Honor.

14 THE COURT: What relevance would that have?

15 MR. MCILWEE: Your Honor, at issue in this case is our
16 theory that Artemis and Tamerlane are one and the same. When a
17 company suffers a judgment and are following actions to
18 liquidate the company and pass all of its assets into a new
19 company, then that judgment is some evidence that goes to the
20 issue of whether or not there's a unity of interest in ownership
21 such to pierce the corporate veil or to hold them vicariously
22 liability [sic] as a single entity.

23 THE COURT: Objection overruled.

24 BY MR. MCILWEE:

25 Q. One of the reasons that Tamerlane was no longer going to be

1 a viable operating entity was because it lost a lawsuit in this
2 courthouse, correct?

3 A. At what time are you talking about, sir?

4 Q. In November 2013.

5 A. No, sir, not in November 2013. It did appear that Tamerlane
6 might actually be able to win a -- win an appeal. We were still
7 in the appeals process at that time, sir.

8 Q. Had you lost a jury verdict by November 2013 for \$1.9
9 million against Tamerlane?

10 A. Against Tamerlane, yes, sir.

11 Q. That's what I'm asking about.

12 A. Yes, sir.

13 Q. And that verdict was \$1.9 million plus interest, right?

14 A. Yes, sir.

15 Q. Tamerlane didn't have the money to pay the judgment, right?

16 A. That's correct, sir.

17 Q. And your Tamerlane work from Maersk was now going into a new
18 entity called Artemis, right?

19 A. No, sir.

20 Q. Flip to Defendant Exhibit 6 for me.

21 A. Sorry. I apologize. I don't have Defendants' 6.

22 MR. MCILWEE: Would the courtroom security officer
23 please present Defendant Exhibit 6?

24 THE WITNESS: Yes, sir.

25

1 BY MR. MCILWEE:

2 Q. You recognize this document, correct?

3 A. I do, sir.

4 Q. This document is dated November 15, 2013, right?

5 A. No, sir. It's dated 1st of October 2013, approximately a
6 month before the -- about a month before the judgment, sir,
7 before you even went to court, sir.

8 Q. Okay. Why don't you flip to the signature page where there
9 are signatures and dates. What's the last date you see on that
10 page? Just go ahead and read it to the members of the jury.

11 A. I see a date of November 15, 2013.

12 Q. In this document, Defendants' Exhibit 6, is an addendum to
13 the agreement for services between below-specified parties
14 dated 2nd of October 2012, correct?

15 A. Yes, sir.

16 Q. All right. So let's find out who the between parties are
17 that are listed below. One of them is Maersk, right?

18 A. Yes, sir.

19 Q. Maersk Line in Pakistan, right?

20 A. Yes, sir.

21 Q. Okay. Above -- or just next to Maersk Line is the name
22 Tamerlane, right?

23 A. Yes, sir.

24 Q. Okay. And below that there are representations that Artemis
25 was now taking over Tamerlane's obligations with respect to

1 movement of cargo from Maersk, right?

2 A. With regard to cargo management, yes, sir.

3 Q. Okay. So now the Maersk work is going from -- by operation
4 of this document, Maersk work is going from Tamerlane to Artemis
5 by the time it's signed in November 2013, right?

6 A. No, sir. Actually, again, it's dated on October 2nd, about
7 a full month before it went to court. So at that point we were
8 already beginning to transition and create Artemis well before
9 we went into court, sir.

10 Q. Okay. That's fine. What I'm asking though is around this
11 time frame, the Maersk work was sent from Tamerlane to Artemis,
12 right?

13 A. Yes, sir.

14 Q. By operation of this agreement?

15 A. Yes, sir.

16 MR. MCILWEE: Your Honor, plaintiffs move Defense
17 Exhibit 6 into evidence.

18 MR. SILVER: No objection.

19 THE COURT: It's admitted. Time for to us to take a
20 brief recess.

21 MR. MCILWEE: Yes, Your Honor.

22 (Recess taken at 3:49 p.m.; the jury enters at 4:03 p.m.)

23 BY MR. MCILWEE:

24 Q. Mr. O'Brien, before the break we had discussed that
25 Tamerlane was moving work over to Artemis, Maersk work.

1 And my next question is as of October 2013, all of the
2 Tamerlane personnel you had pulled out of country, correct?

3 A. No, sir.

4 Q. Tamerlane no longer had personnel in country to receive or
5 move goods. That's correct, right?

6 A. We did have personnel on ground in October of 2013, sir.

7 Q. I'm going to remind you of your deposition testimony again.

8 MR. MCILWEE: Counsel, page 103, lines 6 through 21.

9 BY MR. MCILWEE:

10 Q. Question: Why is it that Tamerlane was no longer able to
11 perform its responsibilities under the agency agreement?

12 Answer: Two reasons. One, Maersk fired us, so to speak, in
13 October of 2013. So we were no longer going to have program
14 managers for Tamerlane Global Services in country that may be
15 able to be used for the receipt or movement of goods.

16 The second reason was because Tamerlane had just lost a
17 lawsuit in the U.S. Eastern District Court that was undergoing
18 appeals -- I forgot what they call it, post motions or whatever
19 they are -- through the month of November. So it got toward the
20 end of November, it was very clear that Tamerlane was no longer
21 going to be a viable operating entity much longer.

22 You were asked that question and you gave that answer,
23 correct?

24 A. Yes, sir.

25 Q. You did not take any action to inform Tigers of the judgment

1 that was rendered against your company, Tamerlane, did you?

2 A. I believe we had conversations of that nature, but I'm
3 not -- I don't recall, sir. I don't think we wrote anything
4 specifically. It was a pretty high-profile case.

5 Q. Page 107, question, 25: You didn't take any action with
6 respect to -- page 108 -- the agency agreement in order to
7 inform Tigers of the judgment against Tamerlane, did you?

8 Answer: No, not that I recall.

9 You were asked that question and you gave that answer,
10 correct?

11 A. Yes, sir.

12 Q. All right. So let's talk about what Tigers knew about the
13 creation of Artemis. Take a look at PX-9.

14 A. Yes, sir.

15 Q. This document contains an email exchange between you at
16 Artemis and Mark Bongean at Tigers, correct?

17 A. Yes, sir.

18 Q. And PX-9 is in the same or substantially the same condition
19 as when you saw it last, correct?

20 A. I believe so, sir.

21 MR. MCILWEE: Your Honor, we would like to move 9 into
22 evidence.

23 THE COURT: It's admitted.

24 BY MR. MCILWEE:

25 Q. On page 5, November 27, 2013, Mark observes you dropped your

1 name -- you dropped your Tamerlane email domain. He says that,
2 correct?

3 A. Yes, sir.

4 Q. Mark asks you for some insight on the name change, right?

5 A. Yes, sir.

6 Q. You would agree that it's reasonable to be confused when an
7 executive from one company who you have a contract with, his
8 email is starting to be routed to another company as an
9 executive of a different company. That's confusing, right?

10 MR. SILVER: Objection as to what's in the mind of
11 somebody else, Your Honor.

12 THE COURT: Objection sustained.

13 BY MR. MCILWEE:

14 Q. You explained regarding the name change that Tamerlane and
15 Artemis are separate companies, right?

16 A. Yes, sir.

17 Q. That your Tamerlane email is being routed to your Artemis
18 account as a result of a tech glitch, right?

19 A. Yes, sir.

20 Q. Bongean asked at the top of page 4: The status of Tamerlane
21 as a company has not changed then? Question mark.

22 A. Yes. He asked that question, yes, sir.

23 Q. You respond: Correct, Mark.

24 Right?

25 A. Yes, sir.

1 Q. Nowhere in this email exchange do you tell Tigers that
2 Artemis accepted responsibility for LBG movements, did you?

3 A. Sir, they did not take over responsibility for LBG movements
4 at this time, sir, so, no, there was no reason to tell them.

5 Q. Nowhere in this email do you tell Tigers that Tamerlane no
6 longer had personnel in country, correct?

7 A. No, sir.

8 Q. Nowhere in this email do you tell Tigers about Tamerlane's
9 \$1.9 million judgment against it?

10 A. Not in this email, no, sir.

11 Q. In this email where Mr. Bongean was specifically asking
12 about whether the status of Tamerlane had changed.

13 A. Correct. And again, at that time, Tamerlane's status has
14 not changed. We were going through the appeals process hoping
15 to win.

16 Q. You have argued in this case about your interest, Tamerlane
17 interest, Artemis interest, and how they've been kept separate,
18 so let's talk about that.

19 Flip over to PX-26 if you could.

20 A. Yes, sir.

21 Q. You recognize this document, right?

22 A. It appears to be a banking statement, yes, sir.

23 Q. A March 2014 bank statement for Artemis Global?

24 A. Yes, sir.

25 Q. And PX-26 is in the same or substantially the same condition

1 as when you saw it last?

2 A. It appears to be, sir.

3 MR. MCILWEE: Your Honor, plaintiff moves Exhibit 26
4 into evidence.

5 THE COURT: It's admitted.

6 BY MR. MCILWEE:

7 Q. Page 2 of PX-26 indicates a wire to Artemis from Tigers,
8 correct?

9 MR. SILVER: Excuse me. Where is that?

10 MR. MCILWEE: Page 2, PX-26.

11 THE WITNESS: Yes, sir. That's for the payment for the
12 move we completed, yes, sir.

13 BY MR. MCILWEE:

14 Q. This was the payment for move two, correct?

15 A. For the domestic move we completed, yes, sir. This is their
16 payment for that completed movement. Yes, sir.

17 Q. And then there's actively showing \$155,000 of that amount
18 being deposited into another Artemis account, right?

19 A. Yes, sir.

20 Q. All right. Flip over to PX-27 if you could. You recognize
21 PX-27, right?

22 A. Yes sir.

23 Q. PX-27 contains the March 2014 bank statement for the other
24 Artemis Global account, right?

25 A. Yes, sir.

1 Q. The one that the \$155,000 went into?

2 A. Yes, sir. That's the account we pay bills out of, yes, sir.
3 The other one is a receivables account, sir.

4 MR. MCILWEE: Your Honor, plaintiff moves 27 into
5 evidence.

6 THE COURT: It's admitted.

7 BY MR. MCILWEE:

8 Q. \$155,000 of the Tigers payment was deposited into this
9 account, right?

10 A. Yes, sir.

11 Q. And after the \$155,000 deposit, Artemis paid its payroll,
12 right?

13 A. It appears to be about the same time, yes, sir. It was
14 hitting around March 15th. Yes, sir.

15 Q. And after the \$155,000 deposit that Tigers, you know,
16 provided, Artemis paid down a balance on a Visa card, right?

17 A. Yes, sir.

18 Q. That payment was for \$7700 and some change, right?

19 A. Sorry. Let me back up. Where do you see 7700? I'm just
20 curious. Which line item? It's a fairly large statement, sir.

21 Q. I'll direct you to the page. Do you see how, in the lower
22 right-hand corner above PX-27, there are numbers?

23 A. Yes, sir.

24 Q. DEF 00882. Do you see that?

25 A. Yes, sir.

1 Q. Okay. I'm referring to that page.

2 A. Okay.

3 Q. Halfway up that page, there is an entry for payment out of
4 the Artemis account for \$7703.03, right?

5 A. Yes, sir.

6 Q. And that payment was for an account labeled James O'Brien,
7 correct?

8 A. That's for a Visa card in my name, yes, sir.

9 Q. After the \$155,000 that was deposited into this account,
10 Artemis paid down a balance on another Visa card, right?

11 A. Yes, sir.

12 Q. Just below the James O'Brien entry, right?

13 A. Yes, sir.

14 Q. And that was for \$3500, right?

15 A. Yes, sir.

16 Q. And that payment was for a Visa account in Tamerlane Global
17 LLC's name, correct?

18 A. Yes, sir.

19 Q. After the \$155,000 deposit, Artemis also paid down an
20 American Express card, correct?

21 A. If I can just point out one thing that I'm looking at here.
22 I don't know the timing of the \$155,000 transfer, sir. I know
23 it happens on March 14th, no question about it. However, it
24 appears -- or, sorry, March 12th.

25 We were also receiving other funds at the same time,

1 including it looks like \$50,000, \$20,750. So there's a number
2 of payments that are coming in from the other accounts. So I
3 don't know whether or not this money was specifically coming out
4 of the 155,000 or the money that -- from your earlier bank
5 statement, sir.

6 We also had received at the same time \$144,784, of which we
7 then used -- that was from our Maersk payment. So we had about
8 roughly 285, \$290,000 in that statement, sir. So I wouldn't
9 know exactly which monies were going where.

10 For instance, if you don't mind, I have a number of
11 independent contractors that are listed here being paid. Those
12 independent contractors are individuals involved in movements
13 that were a part of the Louis Berger contract that you're
14 describing. In some cases they weren't. In some cases they
15 were folks just working here. I've got individuals here across
16 the board. I can't tell which money was where and who was
17 supposed to get what. That's just the way these numbers work.

18 Q. Anything else?

19 A. No, sir. I mean, you're asking me questions about it, and I
20 just wanted to make sure we're clear, sir.

21 Q. Okay. Well, getting back to my question that I asked before
22 that response, out of this account, on page 883, there is a
23 payment for \$7500 to an American Express account. Is that right
24 or is that not right?

25 A. That's for \$7500, sir? On which page, sir?

1 Q. 883.

2 A. Yes, sir. That was an account that I had in my name and
3 also my now ex-wife's name that we used for paying for things
4 like airplane bills, that kind of stuff.

5 Q. Okay. And that payment was to an American Express account
6 in the name of Siobhan O'Brien, right?

7 A. Yes, sir.

8 Q. And Siobhan O'Brien is your soon-to-be ex-wife?

9 A. Soon-to-be ex, yes, sir.

10 Q. So Artemis made a payment to your soon-to-be ex-wife's AmEx
11 account. And that payment was after, right, the \$155,000
12 deposit that you can clearly see on page 1 of PX-27, right?

13 A. Well, again, without context, sir. \$144,000 was also put in
14 there. And also I don't know which charges were the American
15 Express. We used it to pay for little things for the office and
16 so forth.

17 Q. Right.

18 A. That's around the same time --

19 THE REPORTER: I'm sorry. One at a time.

20 BY MR. MCILWEE:

21 Q. I apologize, but we only have a certain amount of time, sir.

22 So my question was simply, page 1 --

23 A. Yes, sir.

24 Q. -- that reflects a \$155,000 deposit, right?

25 A. Of many, yes, sir.

1 Q. Okay. And that was on March 12th, right?

2 A. Yes, sir.

3 Q. Okay. And then on the 882 page, the AmEx payment to your
4 ex-wife's AmEx bill, that was dated March 18th. So March 18th
5 is after March 12th, right?

6 A. That's correct. That's after March 12th, yes, sir.

7 Q. That's all I'm asking.

8 And after the March 12th, \$155,000 deposit, Artemis paid
9 down an Infiniti car payment, correct?

10 A. Yes, sir.

11 Q. And that payment was for \$650.58, right?

12 A. Yes, sir.

13 Q. And that's for an Infiniti car registered to Timothy Salaba,
14 correct?

15 A. Tim Salaba, an employee of Tigers, yes, sir.

16 Q. Okay. And Tim Salaba is Candi's ex-husband, correct?

17 A. Yes, sir.

18 Q. After the \$155,000 deposit, you also paid Nicodino Noble,
19 Sherry McIntyre, Chris Edwards, Steve Gore, and Tim Timpson,
20 correct?

21 A. Yes, sir.

22 Q. These were all Tamerlane contractors or employees, correct?

23 A. Not all of them, no, sir.

24 Q. Nicodino Noble was not a Tamerlane independent contractor?

25 A. Correct. I don't believe Dino was -- he may have been at

1 one time, but he was an Artemis contractor as well. We can't --
2 if he's being paid from Artemis, he would have had the Artemis
3 contract. He was required by the Department of Defense to have
4 one. So when he received payment, he would have been an Artemis
5 employee for sure. That's a condition that's required in a
6 particular type of insurance that we're responsible for managing
7 for our personnel.

8 So, for instance, if you're a Tamerlane employee and then
9 you want to come work for Artemis, you would have to have been
10 fired and then rehired, assuming your performance matched the
11 Department of Defense's needs.

12 Q. Okay. Let me remind you of your deposition testimony where
13 you testified truthfully under oath. You were asked this
14 question and you gave this answer.

15 MR. MCILWEE: Counsel, page 61, lines 2 through 9.

16 BY MR. MCILWEE:

17 Q. And see if these -- question: And see if these -- Nicodino
18 Noble?

19 Answer: I believe Dino Noble -- actually, I don't think
20 Dino Noble became involved as an Artemis independent contractor
21 either. He was involved -- he was not involved in either one or
22 two, I don't believe. No, I don't believe so.

23 Question: He was a Tamerlane independent contractor?

24 Answer: He was a Tamerlane 1099, that's correct.

25 You were asked those questions and you gave those answers,

1 right?

2 A. In two different questions, but, yes, sir. Dino was a
3 Tamerlane 1099 at one time. He tried to come over and convert
4 to Artemis, but unfortunately we weren't able to keep him.

5 MR. MCILWEE: Your Honor, at this time I'd ask to
6 strike the nonresponsive answer.

7 THE COURT: I don't know how that was nonresponsive.
8 You go ahead with your questions.

9 BY MR. MCILWEE:

10 Q. You were asked that question and you gave that answer,
11 correct?

12 A. Yes, sir. Answer to a different question though, sir.

13 Q. A moment ago you said that Chris Edwards was not a Tamerlane
14 independent contractor, right?

15 A. That I believe is correct. I don't believe Chris Edwards
16 was ever one.

17 MR. MCILWEE: Counsel, page 61, line 15 through 20.

18 BY MR. MCILWEE:

19 Q. Chris Edwards, Tamerlane independent contractor?

20 Answer: It's unlikely that he was involved in one or two,
21 but if he was involved, it would have been as a Tamerlane 1099.
22 I don't exactly -- I don't recall exactly when the rotations had
23 occurred.

24 You were asked that question and you gave that answer?

25 A. Yes, sir. I answered that question.

1 Q. You also said a moment ago that Stephen Gore was not a
2 Tamerlane independent contractor, correct?

3 A. I don't believe I said that, no, sir.

4 Q. So Tamerlane or -- Tamerlane did contract with Steve Gore?

5 A. Steve Gore was employed by Artemis for some period of time,
6 and I think he was also part of Tamerlane at some point in time.

7 Q. Tim Timpson, Tamerlane independent contractor?

8 A. Again, he was at Tamerlane at one point in time, and then he
9 worked for Artemis for a brief period of time.

10 Q. Sherry McIntyre, Tamerlane employee?

11 A. She was both a contractor for Artemis for a brief period of
12 time and a Tamerlane employee.

13 The individuals that you just listed off, I don't believe
14 they were allowed by the DOD to continue working under the
15 Artemis contracts.

16 Q. All right. Now that we've seen how Artemis handles its
17 banking, let's take a look at how it runs its business.

18 Artemis was formed in November 2013, correct?

19 A. Yes, sir. November 12th, I believe. Yes, sir.

20 Q. Since its inception, Artemis has not filed an income tax
21 return, correct?

22 A. That's -- well, yes, you're correct, sir. We have not filed
23 an income tax return, sir.

24 Q. Artemis owes \$14,000 in unpaid employee withholdings,
25 correct?

1 A. That is not true.

2 MR. SILVER: Objection, Your Honor. It's irrelevant to
3 the breach of contract issues in this case or any other issue in
4 the case.

5 THE COURT: What relevance does it have?

6 MR. MCILWEE: Your Honor, at issue in this case is the
7 corporate formalities that Artemis held. If it didn't have
8 formalities, then it is more likely the case that it is a shell
9 of a corporation for Tamerlane.

10 Evidence that they owed an employee \$14,000 worth of
11 unpaid withholdings is some evidence that it does not treat
12 itself --

13 THE COURT: That's correct. Objection overruled.

14 THE WITNESS: That is incorrect, sir. We have paid all
15 taxes that are required. We've actually completed all of our
16 tax payments by the end of January consistent with our agreement
17 with the IRS, sir.

18 BY MR. MCILWEE:

19 Q. At your deposition you were asked this question and you gave
20 this answer.

21 MR. MCILWEE: Counsel, page 99.

22 BY MR. MCILWEE:

23 Q. Question: Does Artemis owe back taxes to either the State
24 Department of Revenue or the IRS?

25 Answer: Only to our knowledge as it pertains to the

1 employee withholdings. Again, the employee withholdings are
2 approximately \$14,000 that is owed by Artemis.

3 You were asked that question and you gave that answer,
4 correct?

5 A. Yes. As of December 29, 2015, we owed approximately
6 \$14,000. As of today, we do not owe any money on employee
7 holdings [sic].

8 Q. You were asked that question and you gave that answer,
9 right?

10 A. Yes, sir.

11 Q. Artemis has not completed any financial statements to date,
12 has it?

13 A. That's not true, sir, no. We actually have completed 2013
14 and 2014. And they are with our CD, sir.

15 Q. I'm going to remind you again of your deposition testimony
16 where you provided a different answer.

17 MR. MCILWEE: One moment, Your Honor.

18 Page 101, lines 18 through 20.

19 BY MR. MCILWEE:

20 Q. Question: Are there any financial statements that have been
21 completed for Artemis Global to date?

22 Answer: No.

23 You were asked that question and you gave that answer,
24 correct?

25 A. That's correct. As of my deposition in December 2015, there

1 were no financial statements completed. But as part of our IRS
2 agreement, in January of 2016 we completed all financial
3 statements in compliance with their request.

4 Q. You were asked that question and you gave that answer?

5 A. Last year, yes, sir.

6 Q. Artemis does not currently have insurance, does it?

7 A. Can you please specify which kind of insurance, sir?

8 Q. Any insurance.

9 A. I'm trying to remember if we have any personal insurance for
10 ourselves. I do not believe -- we just -- our insurance policy
11 for -- our personal insurance I think just ended, in fact, if
12 I'm not mistaken, maybe June. Personal insurance stuff.

13 MR. MCILWEE: Counsel, page 101, next question and
14 answer, 21 through 23.

15 BY MR. MCILWEE:

16 Q. Question: Is Artemis insured?

17 Answer: Define insurance. Artemis is not insured now, no.

18 You were asked that questions and you gave that answer,
19 correct?

20 A. Again, sir, based on the context of the question, the
21 insurance -- yes, I gave that answer, but I'd really like to
22 know what kind of insurance you're talking about, sir.

23 Q. Artemis' board of directors has not met quarterly since
24 April 2014, correct?

25 A. That's correct.

1 Q. And it was founded in November 2013, right?

2 A. Yes, sir.

3 Q. So that means it hasn't had quarterly meetings of the board
4 of directors not even two quarters since it was established,
5 correct?

6 A. Well, there's only two of us, sir, but, yes, sir.

7 Q. So since 2014, the board only meets to satisfy minimum
8 requirements of the Commonwealth of Virginia, right?

9 A. Whatever those minimums are, yes, sir. We have other
10 counsel that handles that kind of stuff.

11 Q. And the minutes to those meetings are simple, right?

12 A. I would say they are simple, yes, sir.

13 Q. Sort of along the lines of the officers have not changed,
14 right?

15 A. Something along those lines. I forget what they set out.

16 Q. Still me and Candi, that sort of thing, right?

17 A. That's about right, sir.

18 Q. You reside at 2532 Ships Watch Court in Virginia Beach,
19 Virginia, correct?

20 A. Yes, sir.

21 Q. There's no unit number to this residence, right?

22 A. Correct.

23 Q. It's a townhouse, right?

24 A. Yes, sir.

25 Q. And you're currently standing up a new business, right?

1 A. No. Well, I've got a small restaurant. Totally different
2 type of business line.

3 Q. You're not starting up a business in Anchorage, Alaska?

4 A. We were looking at opening up one in Anchorage, Alaska, yes,
5 sir. We chose not to do that. It turned out that it was just
6 not -- it was cost-prohibitive.

7 Q. You were planning on starting up a company called Arctic
8 Crating and Packing, right?

9 MR. SILVER: Objection, Your Honor. It's irrelevant to
10 the issues in this case.

11 THE COURT: What relevance would it have?

12 MR. MCILWEE: Your Honor, at issue in this case is the
13 identity and the opportunity under Rule 404(b) of the defendant
14 to completely take out the income of one company, pass it
15 through a shell company that was just created for the purpose of
16 evading judgments. This is relevant to our theory of the case,
17 to Mr. O'Brien and the defendants' theory of the liability as
18 these defendants are all one --

19 THE COURT: Do you have some evidence of something to
20 do with Anchorage, Alaska?

21 MR. MCILWEE: Yes, Your Honor.

22 THE COURT: All right. Well, then go ahead.

23 BY MR. MCILWEE:

24 Q. The new business that you're starting up in Anchorage,
25 Alaska, is called Arctic Crating and Packing, correct?

1 A. No, sir. We were going to open one. We went out there,
2 take a look at it. One of the business partners that we were
3 going to work with kind of dropped out, and it was just really
4 too costly. The contract work really wasn't there so we just
5 let it die on the vine. There was no LLC ever filed; there was
6 no S corporation ever filed.

7 Q. Christopher Brumley, a former Tamerlane contractor, was the
8 person you were going to start this company up with?

9 A. Yes, sir.

10 Q. But you have no intention of moving to Alaska?

11 A. No. It's a little cold. And my kids are down here. I kind
12 of like Virginia. Great beaches, wine, mountains.

13 Q. 2532 Ships Watch Court.

14 A. Yes, sir.

15 Q. Do you live with anyone in that residence?

16 A. I'm sorry?

17 Q. Do you live with anyone in that residence?

18 A. Yes, sir.

19 MR. SILVER: Objection, Your Honor. Irrelevant. Who
20 he lives with -- that is his private residence.

21 THE COURT: What relevance would it have?

22 MR. MCILWEE: Your Honor, may we approach?

23 (Conference at the bench, as follows:)

24 MR. MCILWEE: Your Honor, if allowed to testify, we
25 have a good faith basis to believe that Mr. O'Brien lives with

1 Candi Kennedy and they are involved in a romantic relationship.

2 We do not intend to probe very deeply into this.

3 However, counsel for the defense and the defendants'
4 theory of this case is that there is some independence between
5 the owners of Artemis, Mr. O'Brien, and Ms. Kennedy. And if, in
6 fact, there is a romantic relationship, that is probative of the
7 fact that the independence does not exist and the control that
8 Mr. O'Brien is touting that he provides to Candi is actually
9 suspect. We intend to provide that evidence.

10 MR. SILVER: It's probative of nothing. It could be
11 prejudicial depending on --

12 THE COURT: Does the same thing hold with husbands and
13 wives? If you've got your wife somewhere, that's an indication
14 that --

15 MR. MCILWEE: Your Honor --

16 THE COURT: -- that's a problem?

17 MR. MCILWEE: I mean no disrespect, and I don't want to
18 be flip, but if there is a romantic involvement between two
19 people --

20 MR. SILVER: They're not husband and wife.

21 MR. MCILWEE: -- husband and wife, what have you,
22 however, they are also business partners. That romantic
23 relationship is probative of how much control either one has.
24 And, you know, it's --

25 THE COURT: Well, does the same hold true for husband

1 and wife? You would be able to make the argument that there's
2 no independence because they're married, and you want to argue
3 that there's no independence because they are living together.

4 MS. MCKNIGHT: Not saying there's no independence
5 because they live together. We're saying it's probative of that
6 the fact -- the evidence in the arguments they have made that
7 there's separate ownership between Tamerlane and Artemis.

8 Their point is that is evidence which is probative of
9 the idea there is joint ownership -- there's joint interest
10 between Artemis and Tamerlane.

11 THE COURT: Just because the boyfriend and the
12 girlfriend each own half of Artemis?

13 MS. MCKNIGHT: Not just because of that. We have other
14 evidence, powerful evidence the relationship is not independent.
15 They both live together. They're girlfriend and boyfriend.
16 They have a romantic relationship. We believe the jury is
17 entitled to hear that evidence.

18 THE COURT: Well, if they were husband and wife and
19 each of them owned half of Artemis, would that be probative of
20 the fact that there's some kind of fraud going on?

21 MS. MCKNIGHT: We're not talking about fraud. We're
22 talking about identity of interest for purposes of piercing the
23 corporate veil.

24 THE COURT: Well, you've got to have some fraud in
25 piercing the corporate veil, don't you? I mean, you're saying

1 that he's taking money -- I don't think so. I'm thinking the
2 thing through. I don't think that's probative of anything about
3 the corporation. Objection sustained.

4 MR. SILVER: Your Honor, while we're here, unless he's
5 going to connect that last set of questions, I would ask that
6 all that be stricken also. He said he was going to, but he
7 hasn't.

8 THE COURT: That will be denied.

9 (Thereupon, the following proceedings continued in open
10 court:)

11 BY MR. MCILWEE:

12 Q. Mr. O'Brien, would you flip to Plaintiffs' Exhibit 25.

13 A. Yes, sir.

14 Q. This is the document that required Artemis to designate a
15 corporate representative, correct?

16 MR. SILVER: Objection, Your Honor. This calls for a
17 legal conclusion. This is an amended notice of deposition in
18 this case.

19 THE COURT: I'm sorry. I don't understand.

20 MR. SILVER: I don't understand either. It's -- this
21 exhibit that he's going to ask about is an amended notice of
22 deposition in this case. I don't know why it's an exhibit. I
23 don't know --

24 THE COURT: Well, let's find out and see what his
25 question is.

1 MR. SILVER: The question he asked calls for a legal
2 conclusion, which I don't think he's capable of --

3 THE COURT: What legal conclusion?

4 MR. SILVER: Whether or not he's the designated
5 representative of Artemis. In a deposition as opposed to --

6 THE COURT: He'd know whether he represented them or
7 not, wouldn't he?

8 MR. SILVER: I don't think --

9 THE COURT: Somebody went and represented them. He'd
10 know whether he did or he did not.

11 MR. SILVER: All right.

12 THE COURT: Objection overruled.

13 BY MR. MCILWEE:

14 Q. Artemis chose to designate you as a corporate representative
15 in this case, correct?

16 A. Yes, sir.

17 Q. Artemis chose not to designate Candice Kennedy, correct?

18 MR. SILVER: Objection, Your Honor. That's a legal
19 conclusion. Trial strategies. It has nothing to do with --

20 THE COURT: Objection overruled.

21 THE WITNESS: Yes, sir.

22 BY MR. MCILWEE:

23 Q. So my question -- that's a yes that Ms. Kennedy was not
24 selected by Artemis as a corporate representative, correct?

25 MR. SILVER: Are we talking at the deposition? Because

1 he's the corporate representative today.

2 THE COURT: That was his question.

3 MR. SILVER: For the deposition or for today's trial?

4 THE COURT: His question was for the notice that you're
5 objecting to that's right in front of you, wasn't it?

6 MR. SILVER: I don't know.

7 BY MR. MCILWEE:

8 Q. My question, Mr. O'Brien, was Artemis chose not to designate
9 Candi Kennedy as a corporate representative, correct?

10 A. At the deposition, we did not, yes, sir.

11 Q. And the reason for this was because you knew more about the
12 historic movements in question, correct?

13 A. That may have been one of the reasons, yes, sir.

14 Q. Whereas Candi did not, correct?

15 A. She would have only known some of the -- I would have known
16 more information for sure, sir.

17 Q. Candi did not know about the historic movements in question
18 to the extent you did?

19 A. She would know about the Artemis side of things, sir. As
20 for the Tamerlane side, she would not know about Tamerlane.

21 Q. Ms. Kennedy never wanted to be a part of the relationship
22 with Tigers, did she?

23 A. No, sir.

24 Q. Candi Kennedy has some personal animosity that you would
25 know of between herself and Tigers' leadership, correct?

1 A. Yes, sir, you can call it that.

2 Q. And Artemis felt that you would be best to represent the
3 company, correct?

4 A. I don't believe that was the thought process during the
5 course of the deposition or here, sir.

6 MR. MCILWEE: Counsel, page 86, lines 16 through 25.

7 BY MR. MCILWEE:

8 Q. Question: And just to start, why did Artemis designate you
9 and not Candi Kennedy?

10 Answer: I think it's because I knew more about the historic
11 nature of the two movements in question whereas Candi did not.
12 And Candi Kennedy never wanted to be a part of the relationship
13 with Tigers to begin with. Plus, I -- there was some personal
14 animosity between Tigers' senior leadership and former
15 management and Candi Kennedy, so I felt that I would be best.

16 You were asked that question and you gave that answer?

17 THE COURT: Counsel, that's what he said when you asked
18 him the first time.

19 MR. MCILWEE: Your Honor, I asked --

20 THE COURT: That's not impeachment. That's confirming
21 exactly what he said.

22 MR. MCILWEE: I apologize, Your Honor.

23 BY MR. MCILWEE:

24 Q. I asked if Artemis felt that you would be best, and I did
25 not receive an affirmative answer to that, correct?

1 THE COURT: Oh, my goodness. Come on, now. Let's move
2 along. It's time to end this.

3 MR. MCILWEE: No further questions.

4 THE COURT: All right. Very good.

5 Do you have some questions you want to ask?

6 MR. SILVER: I have no questions, Your Honor.

7 THE COURT: All right. Thank you. You may step down.

8 THE WITNESS: Thank you, Your Honor.

9 (Witness stands down.)

10 THE COURT: All right. Who's your next witness?

11 MR. MCILWEE: Your Honor, we would like to move PX-26
12 into evidence.

13 THE COURT: Do you have any objection?

14 MR. MCILWEE: I apologize. 25.

15 THE COURT: 25. Is there any objection to 25?

16 MR. SILVER: I don't think it's proper evidence in this
17 case.

18 MR. MCILWEE: I apologize, Your Honor. There was some
19 confusion here. I withdraw.

20 THE COURT: All right. That works.

21 MS. MCKNIGHT: Your Honor, we have completed our
22 presentation of evidence in our case.

23 THE COURT: All right.

24 MR. SILVER: Your Honor, I have a motion, please.

25 THE COURT: All right. It's 20 to 5:00. How many

1 witnesses do you have?

2 MR. SILVER: At best, one.

3 THE COURT: Ladies and gentlemen, I'll let you-all
4 retire to the jury room for just a moment. I need to listen to
5 counsel on a motion. Couple minutes on a motion.

6 (The jury exits at 4:39 p.m.)

7 THE COURT: You go ahead.

8 MR. SILVER: If Your Honor please, I would move for a
9 directed verdict in this case.

10 THE REPORTER: Please pull the microphone back towards
11 you.

12 MR. SILVER: Is that better? Okay.

13 I would move for a directed verdict in this case.
14 There are three elements to a breach of contract action, which
15 is all that's left in this case, according to the Court's
16 previous ruling dismissing all of the other counts.

17 They have to show contract, breach of contract, and
18 damages.

19 Start with damages, because I think that there is no
20 way this jury has any idea what any damages were. They've got
21 three defendants in this case. They've got Tamerlane, and I
22 haven't heard anything about their damages because of their
23 breach of contract. They've got Artemis. I haven't heard a
24 word about damages with respect to Artemis. And Jim O'Brien, I
25 don't know what the theory of alter ego is, but it sure hasn't

1 been proven here. And certainly no damages resulting from this
2 alter ego.

3 If they want -- the cases on piercing the corporate
4 veil and, you know, I can cite to a bunch of cases -- they're in
5 the jury instructions I provided to the Court. Essentially they
6 say, if you want to pierce the veil, you've got to have some
7 egregious conduct. You've got to show that the corporation was
8 completely disregarded, that there was basically fraud on
9 somebody who's trying to pierce the corporate veil.

10 That just doesn't exist in this case. All they have at
11 best is -- against Jim O'Brien they have nothing. I have not
12 heard one iota of evidence about Jim O'Brien doing anything.

13 With respect to Tamerlane and Artemis, there were some
14 things going back and forth about they're one and the same. But
15 it was explained away, that this was how they were told to
16 invoice, this is how they were to be paid. Now, they go on to
17 say, well, the money went into Tamerlane's bank account. Well,
18 so what? Somebody can pay me or my law firm and I can pay
19 somebody else out of that, and quite frankly, it's none of their
20 business. And it does not allow somebody to try to pierce my
21 corporate veil because I paid somebody out of my company.

22 They don't have the egregious conduct that is required
23 under Virginia law.

24 THE COURT: All right.

25 MR. SILVER: With respect to -- go back to the profits.

1 They put into evidence this contract. The contract says that
2 they don't get consequential damages; they get direct damages.
3 And they called it a partnership of Global Logistics, I
4 believe -- I may have the globals backwards -- and Tamerlane, a
5 partnership. And it says that they will account for the profits
6 and losses 50/50.

7 I asked the -- Mr. Bongean, can you tell what the
8 profits are 50/50 and what the losses are 50/50? He said no.
9 They have no exhibits before the Court showing 50/50 profits or
10 losses, and that's the quantum of damages shown in the contract.
11 They also had a quantum that says it's going to be the lesser of
12 the profits and losses, or something like that, or \$3 a pound.
13 And we have heard nothing about poundage.

14 So this is what their contract requires. They don't
15 have anything signed by Jim O'Brien saying he's going to be
16 personally liable. He didn't guarantee any of this stuff.

17 So what's their case? The case is just this shimmer of
18 hope that we had a contract with Tamerlane, Tamerlane completed
19 part one, for which they were paid, and that was part of the
20 testimony. That move number one was paid and it was completed.
21 And then we have count -- move number two. That -- I'm not sure
22 what happened. The evidence seems to be, you know, kind of in a
23 state of limbo. But let's assume that Tamerlane was in breach
24 of contract by not doing move number two, which they claim they
25 could terminate at will anyway. They've proven absolutely no

1 damages coming from that.

2 Now, what they did mention was, well, there's an
3 arbitration that was started and somebody -- and Ghazanfar --
4 excuse me, not Ghazanfar -- Louis Berger Group has stated a
5 claim against us and claimed \$944,000.

6 But they don't get those damages because they haven't
7 sustained them yet. Maybe they brought this case too early,
8 maybe before this court too early. But there's an arbitration
9 out there, and there's an arbitration because they don't agree
10 with the amount of money that's owed Louis Berger Group. They
11 haven't called Louis Berger Group as a witness in this case to
12 testify to what the damages were. They don't agree what the
13 damages are. So how would this Court or this jury ever come
14 back and say they've been damaged by 200,000, 400,000, 900,000?
15 They can't. It would be pure speculation. Their entire case is
16 speculation.

17 I haven't been able to follow the claims that they're
18 making in this case and, quite frankly, I don't believe they
19 have sustained their burden of proof whatsoever, and I think the
20 case has to be dismissed.

21 THE COURT: All right.

22 MS. MCKNIGHT: Your Honor, counsel stated that there
23 were three requirements for a breach of contract case. He only
24 focused on damages so we will focus on damages as well.

25 First of all, we believe there's been more than

1 sufficient evidence to show that Mr. O'Brien controlled not only
2 Tamerlane, but Artemis throughout the course of the performance
3 of this contract.

4 There's also sufficient evidence to show that Artemis
5 was seeking payment and -- for performance of the contract, not
6 Tamerlane. And in fact, defendants even conceded that Tamerlane
7 was essentially absorbed by Artemis, was -- became one and the
8 same with Artemis, and was effectively shut down before
9 performance of this contract was even fulfilled.

10 On piercing the corporate veil, it's not right to say
11 that complete fraud is required, though we believe fraud has
12 been established in this case.

13 Piercing the corporate veil requires that -- a showing
14 that the corporation was a device to, among other things,
15 disguise wrongs. Now, there's a case right out of the Fourth
16 Circuit that says -- it's on all -- nearly all fours with this
17 case that says where all the assets of one corporation are
18 transferred to another corporation -- that's what happened with
19 Tamerlane to Artemis, as was shown in the evidence with the
20 Maersk contract -- and both corporations are under the same
21 ownership -- and here we have Mr. O'Brien owning Tamerlane and
22 Artemis -- ownership, management, and control -- he controlled
23 both -- the transferring corporation may be held responsible for
24 the debts of the transferrer.

25 That's exactly what we're seeking here. We're seeking

1 for Artemis to be held responsible for the debts of Tamerlane.

2 Now, on the evidence of damages, you heard from Tigers'
3 VP of freight management that they consider this international
4 move a complete loss. They have an arbitration demand. He's
5 very specific. \$944,000. And he understood that to be the
6 value of the cargo among -- with other fees.

7 Now, the contract -- unlike what counsel said, the
8 contract does not require a showing of poundage where there has
9 been misconduct. That goes to that paragraph 10-A on indemnity.

10 Tamerlane and Mr. O'Brien agreed to hold Tigers
11 harmless for any damages or loss related to Tamerlane or
12 Mr. O'Brien's, or Artemis' in this case, own misconduct.

13 We've put on enough evidence here today of
14 Mr. O'Brien's own lack of honesty in the performance of this
15 contract, and even today the efforts to impeach him were tiring,
16 frankly.

17 So I think at this point we have put on evidence of the
18 damages sustained.

19 It's basic Hornbook law, Michie's Jurisprudence, that
20 the rule against recovery of uncertain damages has been directed
21 against uncertainty as to cause rather than uncertainty as to
22 measure or extent.

23 Here, we have established cause. We have put on
24 evidence of cause. And we have even put on evidence of measure
25 or extent of damages.

1 I would be happy to answer any questions Your Honor
2 has.

3 THE COURT: Did you want to respond?

4 MR. SILVER: Yes, Your Honor. In the famous *Cheatle*
5 case which we all use in Virginia, it says proof that some
6 person may dominate or control the corporation, or may treat it
7 as a mere department, instrumentality, agency, is not enough to
8 pierce the veil. Something more is required to disregard the
9 entity of a corporation. Plaintiff must also prove the
10 corporation was a device or sham used to disguise wrongs,
11 obscure fraud, or conceal crime.

12 In the *CF Trust, Inc. v. First Flight Limited* case out
13 of this court, this court says standards for veil piercing are
14 very stringent and piercing is an extraordinary measure that is
15 permitted only in the most egregious circumstances. The
16 piercing of the veil is justified only when the unity of
17 interest and ownership is such that the separate personalities
18 of the corporation and the individual no longer exist and
19 adherence to that separateness would create an injustice.

20 In *Beale v. Kappa Alpha Order* --

21 THE COURT: I don't think you need to keep citing
22 cases.

23 MR. SILVER: All right. With respect to their damages,
24 they haven't addressed that. They haven't told you how much
25 you, as the Court, could award in damages. They can't tell this

1 jury based on their evidence what they can award as damages.
2 They just say somewhere between zero and what -- we did mention
3 944,000, somewhere along the line. But they say they don't owe
4 that money and that's why they're going through an arbitration.
5 They're just too early. They haven't proven a thing. They
6 haven't proven the value of anything that was lost over in
7 Afghanistan or Pakistan or whichever stan it is over there.
8 There's just nothing before this Court that they have proven as
9 far as damages.

10 THE COURT: A plaintiff can always testify to his
11 damages, can't he?

12 MR. SILVER: But he didn't.

13 THE COURT: He did. He testified that there as a
14 demand for 944 and that that's his damages.

15 MR. SILVER: A demand is very different from what the
16 damages are. And they're not his damages.

17 THE COURT: That's what you say. But the plaintiff
18 says no, can't he? The plaintiff doesn't have to agree with
19 you, and the plaintiff can testify to his damages, whereas
20 nobody else can.

21 MR. SILVER: The plaintiff has to have a foundation on
22 which to base his damages. Now, if he had a house that burned
23 down, he's allowed to say what the house is worth. If he has
24 jewelry that he lost, he can testify to its value. But he
25 cannot testify to the value of somebody else's property. And

1 even though somebody is being sued -- I could be being sued for
2 a million dollars for malpractice because of something that
3 somebody else did, and that is not proof of my damages.

4 THE COURT: All right. I understand your position.

5 MR. SILVER: That's just -- I've never heard anybody
6 try to prove damages by an amount that they disagree that they
7 owe which they may end up owing nothing. It depends on what the
8 arbitrator does. But they can't come before this Court and say,
9 well, maybe somewhere at some point in time over the rainbow I
10 can get a million dollars.

11 It doesn't work that way, Your Honor. And I ask that
12 you strike the evidence.

13 THE COURT: All right.

14 MS. MCKNIGHT: Your Honor, briefly. There was a lot of
15 mischaracterizations of the testimony that happened here today.
16 Mr. Bongean, not only did he not testify that he disagreed with
17 the amount owed, he testified that it was a certain damage to
18 Tigers. Tigers saw it as not speculative, that they saw this
19 quote of the amount as being an accurate quote of the amount of
20 the loss related to the shipment that they considered to be a
21 complete loss.

22 So not only that, I'd like to make one additional
23 point. I mean, it's basic hornbook law. Again, I would go back
24 to *Michie's Jurisprudence* on damages, that when it is certain
25 that substantial damage has been caused by the breach of a

1 contract and the uncertainty is not whether there have been
2 damages, but only as to their true amount, there can rarely be
3 any good reason for refusing damages due to the breach merely
4 because of that uncertainty.

5 Now, it's defendants' counsel that claims there is
6 uncertainty. We didn't put on evidence of an uncertain amount.
7 It's a certain fixed amount. It's 944,000. It's a complete
8 loss. And as Mr. Bongean testified, it's certain and not
9 speculative, and he expects Tigers to pay.

10 THE COURT: All right. I find -- as far as the motion
11 in regard to James O'Brien in his individual capacity, I don't
12 find any evidence here that this case can go forward against
13 him.

14 The contracts that he signed, all of the evidence that
15 you've presented, he was acting in the capacity for one or the
16 other corporations. There's been nothing that has been shown
17 here where he was acting in his individual capacity.

18 As to the other two defendants, I find there's enough
19 evidence to go forward. There is evidence of breach of this
20 contract with Tamerlane. There's evidence that Artemis Global
21 took over whatever dealing that Tamerlane had and went forward
22 with work on these contracts and monies were paid under the
23 contract to Artemis. And I find there's evidence to go forward.

24 And this damage evidence -- it's close, but I think
25 that the plaintiff can testify to the damages there. They've

1 testified that whole shipment was lost and what the claim is,
2 and I believe there's enough evidence to go forward as far as
3 damages are concerned.

4 So your motion in regard to Tamerlane Global and
5 Artemis Global will be denied.

6 Now, how long is your evidence going to take? Can we
7 get your witness on?

8 MR. SILVER: I think we can, Your Honor.

9 THE COURT: All right. Would you bring the jury in?

10 (The jury enters at 4:56 p.m.)

11 THE COURT: Have a seat. All right. Call your first
12 witness.

13 MR. SILVER: I would call Candice Kennedy, please, Your
14 Honor.

15 **CANDICE KENNEDY,**

16 after having been duly sworn or affirmed,
17 took the stand and testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. SILVER:

20 Q. Please state your name and address.

21 A. Candice Kennedy.

22 Q. And are you familiar with the company called Artemis Global,
23 Inc.?

24 A. Yes, I am.

25 Q. And are you an owner of it?

1 A. I am.

2 Q. Are there other owners of it?

3 A. Yes.

4 Q. Who's the other owner?

5 A. Jim O'Brien.

6 Q. And let me direct your attention to Defendants' Exhibit
7 Number 2.

8 MS. MCKNIGHT: Your Honor, I would just object to any
9 line of questioning that is outside of defendants' initial
10 disclosures in this case which limited Ms. Kennedy's testimony
11 to communications throughout the project.

12 THE COURT: All right.

13 MR. SILVER: I think they've admitted in their
14 pleadings what I'm about to prove through the State Corporation
15 Commission, that Artemis Global, Inc., is a corporation all on
16 its own. So I don't know what they're complaining about.

17 MS. MCKNIGHT: Your Honor, may we be heard briefly at
18 sidebar?

19 (Conference at the bench, as follows:)

20 MS. MCKNIGHT: Your Honor, I would like to avoid the
21 objection back and forth as much as possible here. Defendants'
22 own initial disclosures limited her understanding to an
23 awareness of communications throughout the project. He's trying
24 to start asking her, it appears, about corporate documents,
25 possibly about, you know, other documents outside of just

1 communications. If they had intended to do that, they had ample
2 opportunity to update the --

3 THE COURT: What did they list here?

4 MS. MCKNIGHT: This is it. Ms. Kennedy is aware of
5 communications throughout the project.

6 And I have copies to share. But that's one of the
7 reasons, Your Honor, we relied on them to decide not to depose
8 Ms. Kennedy, among other reasons.

9 THE COURT: Why is that a problem when they're asking
10 about the organization of Artemis?

11 MS. MCKNIGHT: What I would like to avoid is a back and
12 forth with a number of objections. If we can limit her
13 testimony to the topic. We expect them to -- or we can continue
14 to object.

15 THE COURT: Would you object to him asking any
16 questions about the Artemis corporation with this witness?

17 MS. MCKNIGHT: With that document? No.

18 MR. SILVER: This document was supplied to you as part
19 of the discovery, as I understand. I was not part of the case
20 then, but they have seen this stuff before. They've seen it for
21 months now from me.

22 MS. MCKNIGHT: Your Honor, that's fine for her --

23 MR. SILVER: But I saw earlier versions that --

24 MS. MCKNIGHT: -- to testify about that.

25 THE COURT: It seems to me whatever she knows about the

1 organization of the corporation, I'm going to overrule the
2 objection. If you start getting into some area -- other area,
3 that's a different matter.

4 MS. MCKNIGHT: Thank you, Your Honor.

5 (Thereupon, the following proceedings continued in open
6 court:)

7 BY MR. SILVER:

8 Q. Directing your attention again to Defense Exhibit Number 2,
9 is that the organizational charter for Artemis Global issued
10 November 17th -- excuse me, November 8, 2013, from the
11 Commonwealth of Virginia?

12 A. Yes, it is.

13 MR. SILVER: Your Honor, I would move Exhibit Number 2
14 into evidence.

15 MS. MCKNIGHT: Your Honor, Exhibit Number 2 is not
16 produced in discovery. It's a standing objection to this
17 exhibit. Rule 37 dictates that it shall not be used at trial.

18 MR. SILVER: My understanding was that it was provided
19 in discovery. They've got a copy -- with the exception that I
20 updated these for a certificate of good standing to a more
21 recent date. But the original -- the older one they have.
22 So --

23 MS. MCKNIGHT: He's --

24 THE COURT: Well, they said they never got to. Who
25 gave it to them?

1 MR. SILVER: It was provided by earlier counsel. I saw
2 it in the documents that showed what was provided to them. I
3 don't think -- I think what she's saying is my updated one -- my
4 updated certificate they did not have until maybe a couple of
5 months ago when we filed our exhibits. But the earlier one,
6 which says the same thing, they have, and they've had it for a
7 long, long time.

8 MS. MCKNIGHT: Your Honor, we're relying on what he
9 said. We have defendants' production here if you'd like to use
10 the document he produced in discovery. I cannot affirm to the
11 Court that they produced this.

12 THE COURT: All right. Well, I think it's simply an
13 update. That's what he's represented. Objection overruled.

14 MR. SILVER: Thank you, Your Honor.

15 BY MR. SILVER:

16 Q. Has Artemis Global had meetings of its officers and
17 directors since its inception?

18 A. We have.

19 Q. Okay. And who gets involved in those meetings?

20 A. Jim and myself.

21 Q. Okay. Are they formal meetings or are they just --

22 A. They're informal.

23 Q. But you-all work in the same office?

24 A. Yes.

25 Q. And you decide things together?

1 A. Yes.

2 Q. Okay. And Artemis pays its own taxes?

3 A. Yes.

4 Q. And you heard the testimony of Mr. O'Brien with respect
5 to -- was it 941 taxes, I believe?

6 A. Uh-huh.

7 Q. Have those in fact been paid, as he testified to?

8 A. Back in January -- January, February they were paid.

9 Q. Now, let me direct your attention to Exhibit Number 5,
10 Defendants' Exhibit Number 5.

11 A. Okay.

12 Q. Can you tell the Court and the jury what that is?

13 A. Corporate resolutions that were written November of 2013.

14 Q. And what was the purpose of this corporate resolution?

15 A. The purpose was to set up the company and how we were going
16 to move forward, the differences with Jim coming on board from
17 Tamerlane and the differences of how we were going to run the
18 company.

19 Q. And directing your attention to the first -- what would you
20 call that? That little black thing on the side there. What
21 does that say?

22 A. Oh, the first bullet point?

23 Q. Bullet point. That's the word I was looking for.

24 A. To assume none of the outstanding debts of Tamerlane Global
25 Services, Inc.

1 Q. And the second bullet point?

2 A. To assume none of the contractual obligations, agreements,
3 or clients of Tamerlane.

4 Q. Now, did Artemis take on any of the outstanding debts of
5 Tamerlane?

6 A. No.

7 Q. And did they assume the contractual obligations of
8 Tamerlane?

9 A. We did not assume any of them, no.

10 Q. Now, you've heard testimony and you've seen emails where
11 there was invoices that said Tamerlane is now Global. I think
12 we saw it twice.

13 A. It was the same invoice, but, yes.

14 Q. Can you tell us what that was all about?

15 A. That was -- we were simply putting that note on there so
16 that Tigers would be able to get paid by LBG, and so that we
17 would also be able to get paid.

18 Q. Who told you to put the invoices and the revised invoices in
19 that form with that language?

20 A. Initially, it was Brooks.

21 Q. Excuse me?

22 A. Brooks.

23 Q. Brooks who?

24 A. Isoldi.

25 Q. And why was he doing that?

1 A. Or -- I'm sorry. I don't know which ones they are, but
2 there are emails.

3 MR. SILVER: Erik, can you tell me which ones they are?

4 I'm sorry. If I can just have a minute, Your Honor.

5 BY MR. SILVER:

6 Q. If you can take a look at Plaintiffs' Number 6 first. That
7 says: Note, Tamerlane Global Services was officially absorbed
8 by Artemis Global, Inc., on January 1, 2014.

9 A. Excuse me one second. Okay. You said Number 1?

10 Q. No. Number 5.

11 A. Number 5, page 1. Okay.

12 Q. And that is the invoice for \$159,052.76?

13 A. Yes.

14 Q. Okay. Now, on the invoice itself, about the third page in,
15 there's a note that says: Tamerlane Global Services was
16 officially absorbed by Artemis Global, Inc., on January 1, 2014.

17 A. Correct.

18 Q. Why is that on there?

19 A. That is on there because Artemis did not have a contract
20 with Tigers. So we put that note on there to make it very clear
21 that backup has to be provided for invoices going to LBG.

22 Q. And did somebody at Tigers tell you to do that?

23 A. Yes. Initially it was Brooks that asked it to be done, to
24 be put on the invoice.

25 Q. Brian?

1 A. Brooks.

2 Q. Brooks Isoldi?

3 A. Yes.

4 Q. Okay. And he's the person that you were primarily working
5 with?

6 A. Initially, yes.

7 Q. Okay. And did he tell you that that was also a requirement
8 for Louis Berger Group in order that Tigers would get paid?

9 A. Yes.

10 Q. And did he tell you why?

11 A. Because Artemis did not have a contract with Tigers.

12 Q. But Tamerlane did.

13 A. Tamerlane did, yes.

14 Q. So why couldn't it have been made out to Tamerlane?

15 A. I was doing invoices as Artemis. I was Artemis. It was not
16 Tamerlane.

17 Q. Did Tamerlane have all the licensing and documentation that
18 was necessary -- required by Louis Berger Group?

19 A. Did? Excuse me.

20 Q. Tamerlane.

21 A. Tamerlane did. That's who they had the contract with.

22 Q. But did they have licenses required by Louis Berger to be
23 paid on this contract?

24 A. Yes.

25 Q. All right. Now, let me direct your attention to number --

1 invoice -- Number 6, Plaintiffs' Number 6.

2 A. Okay. Yes, this was the first invoice.

3 Q. All right. And why -- did somebody tell you to put that
4 language on there?

5 A. Yes. This was the first invoice. The one we were looking
6 at a moment ago was the revision.

7 Q. All right. And who told you to put that note on there?

8 A. That was Brooks.

9 Q. Okay. And again, was it true?

10 A. No, not at all.

11 Q. Has Artemis maintained a separate identity from Tamerlane
12 the entire time it's been in business?

13 A. Yes. Different business model completely.

14 MR. SILVER: I would move Plaintiffs' Exhibit Number 5
15 into evidence, please, Your Honor. Excuse me. Defendants'
16 Exhibit Number 5.

17 THE COURT: All right. It's admitted.

18 BY MR. SILVER:

19 Q. And to your knowledge -- let me ask you this. Were you ever
20 an owner of Tamerlane?

21 A. No.

22 Q. Were you ever an officer of Tamerlane?

23 A. No.

24 Q. Were you ever a director of Tamerlane?

25 A. No.

1 Q. Were you at one time an employee of Tamerlane?

2 A. Yes.

3 Q. What period of time?

4 A. September, maybe part of October. About six weeks.

5 Q. Is that when they were shutting down?

6 A. Yes, that's when we -- yes.

7 Q. Is that what you were hired for?

8 A. Well, not to shut it down. Actually, I was coming on board
9 to sell up the brokerage side of the business, which is what we
10 ended up doing with Artemis, but we weren't able to do so. So
11 it just made sense to shut it down and start over.

12 Q. All right. And has Tamerlane -- other than what we've
13 talked about here, have Tamerlane and Artemis ever done business
14 together?

15 A. No.

16 Q. When you invested in Artemis, you already knew about the
17 \$1.9 million judgment against it?

18 A. I did -- obviously, in November I knew what was going on
19 with that. Again, like Jim said, we were hopeful that
20 everything would pan out fine there. But, yes, when opening
21 Artemis, but that wasn't a concern.

22 Q. Would you have invested in Artemis if it was to be part of
23 Tamerlane?

24 A. At that point, no.

25 Q. Directing your attention now to Defendants' Exhibit

1 Number 7.

2 A. Number 7?

3 Q. Yes.

4 A. Okay.

5 Q. That is an email from Artemis to Maersk Support Group?

6 MR. MCILWEE: Your Honor, this was never produced in
7 discovery. This is the same objection, Rule 37(c) of the
8 Federal Rules of Civil Procedures.

9 THE COURT: Do you know anything about that?

10 MR. SILVER: I cannot answer that, Your Honor. I don't
11 know.

12 THE COURT: All right. Objection sustained.

13 BY MR. SILVER:

14 Q. Directing your attention now to Exhibit Number 9, Master
15 Services Agreement.

16 A. Okay.

17 Q. Can you tell the Court what that is?

18 A. That was the agreement between Tamerlane and Artemis.

19 Q. And what was the purpose of it?

20 A. This just covered the terms, the taxes. Very similar to our
21 corporate resolution.

22 Q. Was this the subcontract agreement between Tamerlane and
23 Global -- Tamerlane Global Services and Artemis where Artemis
24 agreed to become a subcontractor for Tamerlane?

25 MR. MCILWEE: Objection. Leading.

1 BY MR. SILVER:

2 Q. Could you tell us whether or not this agreement was the
3 subcontract between Tamerlane Global Services and Artemis
4 Global?

5 MR. MCILWEE: Same objection.

6 THE COURT: Objection overruled.

7 THE WITNESS: Yes.

8 BY MR. SILVER:

9 Q. All right. And is that signed on behalf of Artemis by you
10 and by Mr. O'Brien for Tamerlane?

11 A. Yes.

12 MR. SILVER: I would move Defense Exhibit Number 9 into
13 evidence, please, Your Honor.

14 MS. MCKNIGHT: No objection.

15 THE COURT: It's admitted.

16 BY MR. SILVER:

17 Q. Let me direct your attention now to Plaintiffs' Exhibit
18 Number 13.

19 MS. MCKNIGHT: Counsel, did you mean Defendants'?

20 MR. SILVER: Excuse me. Defendants' Exhibit 13. Thank
21 you.

22 THE WITNESS: Defendants', correct?

23 BY MR. SILVER:

24 Q. Yes.

25 A. Okay. I'm there.

1 Q. Is that an email sent out by Artemis Global to Mark Bongean?

2 MR. MCILWEE: Your Honor, objection. Same objection.
3 This was never produced in discovery.

4 MR. SILVER: I believe this is the same exhibit they
5 have in their exhibits.

6 THE COURT: Well, you'll have to use theirs then.

7 MR. SILVER: All right.

8 THE COURT: Objection sustained if it wasn't produced
9 in discovery.

10 BY MR. SILVER:

11 Q. Let me direct your attention to Plaintiffs' Exhibit
12 Number 31.

13 A. Okay.

14 Q. And direct your attention -- do you recognize this email?

15 A. I was not copied in on this email, but I have seen it
16 before.

17 Q. And was it authorized by Artemis Global to be sent to Mark
18 Bongean?

19 MR. MCILWEE: Objection. Foundation. Your Honor,
20 she's not seen it before so she could have reviewed it before
21 coming to court today. We don't know when she found out
22 information about this email. She's not on a single email.

23 THE COURT: Well, you can cross-examine. She's the
24 corporation. Objection overruled.

25 THE WITNESS: Can you repeat the question, please?

1 BY MR. SILVER:

2 Q. Was this authorized to be sent out by Artemis -- on behalf
3 of Artemis to Mr. Bongean?

4 A. Yes.

5 Q. Directing your attention to the last two paragraphs, can you
6 read those to the jury, please?

7 A. Which page are we on? 31?

8 Q. Yeah. It's the -- excuse me. Fourth one in.

9 A. Okay. The email that's marked number 4, PX-31?

10 Q. Yeah. It says Re: Name change.

11 A. Okay. It says: Referencing the name change, Artemis and
12 Tamerlane are separate entities. My Tamerlane email is
13 temporarily transferring over to Artemis as a result of a tech
14 glitch. Artemis is a new company that Candi Kennedy has stood
15 up, within which I am an early investor, that is standing up in
16 Georgia.

17 Q. And that was, in fact, sent to Tigers; is that correct?

18 A. Yes.

19 Q. All right. Is there a difference between Tamerlane's
20 business, or what was its business, and Artemis' business?

21 A. A significant difference in the two businesses.

22 Q. Can you tell the judge and jury what the difference is?

23 A. Certainly. Artemis was primarily moving cargo in and out of
24 Afghanistan, Pakistan, Middle East, Africa, doing cargo
25 movements and project work.

1 Artemis, using my side of the business and what I do -- I'm
2 a U.S. customs broker; I'm licensed; I've been doing business in
3 imports and exports and customs brokerage for 20-plus years. So
4 it just made sense for Jim and I to team. His side of the
5 house, knowing what I know how to do -- imports, exports, air
6 freight, ocean freight -- it made a big difference to just bring
7 us together to work together that way.

8 Maersk is a client that we had. Artemis no longer has. The
9 contracts come to an end. We did have project work that Jim
10 managed with his guys overseas. And then I had my import and
11 export business that I handled and I ran with my team of people.

12 So we had two different sides of the house. That's why I
13 was not heavily involved in what was going on in Afghanistan.
14 That just wasn't my expertise.

15 Q. And does Artemis file its own annual report with the
16 Commonwealth of Virginia every year?

17 A. Yes.

18 Q. And it's maintained its corporate status throughout the
19 years?

20 A. Yes.

21 Q. And has --

22 MR. SILVER: I think that's all I have, Your Honor.

23 THE COURT: All right. I think it's time. We are
24 going to recess until tomorrow morning at 10 o'clock.

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(Proceedings concluded at 5:20 p.m.)

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CERTIFICATION

I certify, this 17th day of January 2017, that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter to the best of my ability.

/s/

Tracy Westfall, RPR, CMRS, CCR