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IN THE SUPREME COURT OF THE STATE OF IDAHO

MARK VAN,

Plaintiff and

Appellant, VS.

PORTNEUF MEDICAL CENTER, ET AL.,

Defendant and

Respondent.

HONORABLE PETER D. McDERMOTT District Judge

Appealed from the District Court of the Sixth Judicial District of the State of Idaho, in and for Bannock County.

Nick L. Nielson

Attorney for Appellant

Patricia Olsson

Paul D. McFarlane

Attorney for Respondent

Filed this day of 20

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Clerk

Deputy

34888

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARK VAN,

Plaintiff-Appellant,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program
Director, GARY ALZOLA, Director of
Operations, RON FERGIE, Chief Pilot/
Safety Officer, BARRY NIELSON,
Pilot, and DOES 1-X,

Defendants-Respondents.

Volume III

Supreme Court Case No. 34888

CLERK'S TRANSCRIPT ON APPEAL

Appeal from the District Court of the Sixth Judicial District of the State of Idaho
in and for the County of Bannock.

HONORABLE PETER D. McDERMOTT, District Judge

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PLAINTIFF'S
EXHIBIT

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PROCEEDINGS BEFORE THE UNITED STATES DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

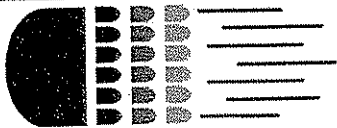
MARK VAN,)	
)	
Plaintiff,)	
)	
vs.)	Complaint No.
)	CV-0-0160-05-016
PORTNEUF MEDICAL CENTER,)	
)	
Defendant.)	

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

MARK VAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	CV-2005-4053-OC
PORTNEUF MEDICAL CENTER, PAT)	
HERMANSON, Hospital)	
Administrator, PAM HUMPHREY, EMS)	
Program Director, GARY ALZOLA,)	
Director of Operations, RON)	
FERGIE, Chief Pilot/Safety)	
Officer, BARRY NEILSEN, Pilot,)	
and DOES I-X,,)	
Defendants.)	

DEPOSITION OF BARRY G. NEILSEN
August 22, 2007, 3:07 p.m.
Pocatello, Idaho

Tina DuBose Gibson, RPR, CSR



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

COPY

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Tina DuBose Gibson RPR, CSR

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Mr. Nielson

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499

1 A. -- that he may have changed the records,
 2 but I don't think he did.
 3 Q. All right. So if Mark Van testifies
 4 that you certainly told him that Ron Fergie changed
 5 the records, would you disagree with that?
 6 A. I don't know if I told him that or if I
 7 said I was concerned about him changing it. I don't
 8 know.
 9 Q. Is there anything that could help us
 10 find out?
 11 A. You could go back and look at the
 12 records.
 13 Q. And what records would those be?
 14 A. The flight records, the logbook records.
 15 Q. Are those still kept?
 16 A. I think they are.
 17 Q. What aircraft would this be for?
 18 A. That was in the 109.
 19 Q. Okay. So you believe the log records
 20 are still kept for the 109?
 21 A. He has log records; he was duty-log
 22 records. The two of them would indicate whether --
 23 what was written down.
 24 Q. Okay. You say "he" has log records and
 25 duty-log records. Who are you referring to?

1 Q. If he was -- do you know if he was ever
 2 warned or reprimanded for possibly flying without ten
 3 hours rest?
 4 A. No, I don't.
 5 Q. This issue about Mr. Fergie possibly
 6 changing the records to appear that he got the rest,
 7 did you talk about it with anyone besides Mark Van
 8 and Chad Waller?
 9 A. No.
 10 Q. Have you dis -- other than counsel, have
 11 you discussed this issue with anyone in preparation
 12 for your deposition?
 13 A. No.
 14 Q. Has there been a new Part 91 standard
 15 released by the NTSB with regard to pilot duty time?
 16 A. Not that I'm aware of.
 17 Q. Nothing within 2007?
 18 A. Not under Part 91 -- for crew rest under
 19 Part 91?
 20 Q. Well, for pilot duty time under Part 91?
 21 A. No, not that I know of.
 22 Q. Okay. With regard to the engine cowling
 23 incident, were you aware that Mr. Van tried to
 24 protect you by rotating the aircraft's damaged engine
 25 cowling away from the street so that it couldn't be

1 A. Well, the hospital maintains them. We
 2 maintain them.
 3 Q. Who in the hospital maintains them.
 4 A. Gary and Ron. Gary Alzola and Ron
 5 Fergie.
 6 Q. Do you recall Chad Waller being with you
 7 on those conversations about those records?
 8 A. Chad and I talked about it.
 9 Q. What did you talk about, and what did
 10 you discuss?
 11 A. The same thing we talked about with
 12 Mark, that we were concerned that he had spent too
 13 much time and that he hadn't put it down correctly
 14 or...
 15 Q. Do you recall ever looking -- actually
 16 looking at those logbooks?
 17 A. No, I didn't.
 18 Q. Is it your understanding that
 19 falsification of pilot records is actually a
 20 violation of the federal aviation rules?
 21 A. Yes.
 22 Q. Do you know if Ron Fergie was ever
 23 warned or reprimanded for this action, for the 20
 24 hours?
 25 A. No, I don't.

1 seen?
 2 A. No, I wasn't.
 3 Q. And that he scheduled removal of the
 4 damaged cowling for repairs prior to Lynn Higgins
 5 arrival to do training?
 6 A. No, I wasn't aware of that.
 7 Q. I'd like to go now to an incident in
 8 which we believe occurred about October 30th or 31st,
 9 2004, with regard to possible ice and snow on the
 10 rotor blades. Do you recall that incident?
 11 A. I recall being -- having it talked
 12 about, yes.
 13 Q. Okay.
 14 MR. NIELSON: It appears I only have one
 15 copy. Wrong. I'll hand that to him.
 16 (Exhibit 1 marked.)
 17 Q. (BY MR. NIELSON) Mr. Neilsen, you have
 18 been handed what's been marked as Deposition
 19 Exhibit 1. Please review that and tell me when
 20 you're done.
 21 A. Okay.
 22 Q. Have you seen that document before
 23 today?
 24 A. Yes.
 25 Q. Okay. When was the last time you saw

1. been asked and answered.
 2 MR. NIELSON: It hasn't been asked and
 3 answered.
 4 Q. (BY MR. NIELSON) I'd like to know when
 5 you did the preflight that morning?
 6 MR. MCFARLANE: He said he didn't know.
 7 THE WITNESS: I did it prior to taking off.
 8 Q. (BY MR. NIELSON) Okay. Did you do it
 9 after Greg Stoltz moved the blades?
 10 A. I don't know.
 11 Q. Okay. Did you ever tell Mr. Van when
 12 you did it?
 13 A. No.
 14 Q. When you did the preflight, what did you
 15 check?
 16 A. We checked the entire aircraft.
 17 Q. Okay. Did you ever tell Mr. Van that
 18 you pulled the rotor blades down so far to look at
 19 the blades?
 20 A. That's usually my course of action.
 21 Q. Okay. How much of the rotor blade can
 22 you see when you do that?
 23 A. I can feel the last probably third of
 24 it. I'm tall enough if it's down in the front.
 25 Q. But I don't understand your testimony --

1 A. I do on all my preflights, so I've got
 2 to assume I did.
 3 Q. Okay. If I represent to you that
 4 Ron Fergie stated in his deposition that when he
 5 asked you about this incident about this matter, you
 6 could not recall the incident at all. Would you
 7 disagree with that?
 8 A. No, I can't recall it now.
 9 Q. Okay.
 10 A. What I'm saying is I do a complete
 11 preflight before every flight, before each shift, and
 12 if I'm going out there to fly and I haven't
 13 preflighted yet, I'm going to look at the aircraft.
 14 Q. But the preflight may be at seven or at
 15 any time later, correct?
 16 A. Could be. Could be before seven.
 17 Q. in doing the preflight, do you have any
 18 policy of checking with the mechanic to make sure the
 19 mechanic is saying the helicopter is airworthy?
 20 A. No. The mechanic, if he finds a fault,
 21 should take the aircraft out of service. If he has a
 22 problem, he'll put it down in the logbook, and we
 23 check the logbook prior to every flight to make sure
 24 we're not overflying inspections.
 25 Q. Is it your testimony that a mechanic can

1 A. You run your hand along the top of it.
 2 If there's ice, you'll be able to feel it. If it's
 3 wet, you'll be able to feel it.
 4 Q. You can feel the whole rotor blade?
 5 A. I said the last third.
 6 Q. Okay. So that the first two thirds you
 7 can't feel it?
 8 A. From the root out from the top, I'm not
 9 that tall, no.
 10 Q. Okay. So you couldn't check unless you
 11 got a ladder, correct?
 12 A. Probably.
 13 Q. Okay. So is it fair to say you didn't
 14 fully inspect the rotor blades that day?
 15 A. No.
 16 Q. Okay. Why do you say that?
 17 A. It's not fair to say that.
 18 Q. You don't -- you don't recall what you
 19 did, then?
 20 A. I check the aircraft on every preflight.
 21 Q. Okay. And you check the entire rotor
 22 blade?
 23 A. Yes, you can -- yes, I do.
 24 Q. Okay. And you say that you checked the
 25 entire rotor blades on this specific incident?

1 take the aircraft out of service?
 2 A. Absolutely.
 3 Q. Okay. If there is testimony, deposition
 4 testimony in this case indicating that only the pilot
 5 in command can take the aircraft out of service,
 6 would you disagree with that?
 7 A. Yes.
 8 Q. Okay. Now, you indicated that you
 9 talked to Greg Stoltz about this incident, right?
 10 A. We've talked about it since then, yeah.
 11 Q. Okay. Can you recall the substance of
 12 your conversations?
 13 A. Not so much, no. We talked about it,
 14 and he said, "I was concerned."
 15 And I said, "Well, thank you."
 16 Q. Just about to the bottom of that
 17 Deposition Exhibit 1, there's a sentence which starts
 18 off: "I advised Ron..."
 19 Can you see that?
 20 A. Yes.
 21 Q. I advised Ron of my concerns against --
 22 again about the ice being thrown off the blades into
 23 the parking lot and damage to the helicopter.
 24 Did Mr. Stoltz ever indicate to you that
 25 ice was thrown off the blades in this incident?

S

1 it?

2 A. At HR when we were having a meeting, I
3 read this over. I think that's when it was.

4 Q. Okay. When was the HR meeting? Do you
5 recall?

6 A. Oh, shoot, no. No, I don't remember the
7 dates.

8 Q. Okay. Could it have been just prior to
9 Mr. Van's termination?

10 A. Yeah, it was that. I don't remember the
11 dates, the year, whatever.

12 Q. Okay. I'd like you to talk about that
13 meeting for a minute. Who was in attendance at this
14 meeting?

15 A. Gary, Pam, me, Mark, Audrey. Greg
16 wasn't there, and I think Ron Fergie was there.

17 Q. Okay. I'd like you to just go over what
18 you can recall -- having read Deposition Exhibit 1,
19 what you can personally recall about the events and
20 circumstances on this issue of ice on the rotor
21 blades on or about October 30th and 31, 2004?

22 A. What I remember about it is Ron had
23 called and asked me if I had had ice on the blades
24 when I took off and I says no. And that's about it.
25 I know that it was looked into by the FAA, and they

1 would have pulled out a Herman Nelson and cleaned it
2 off or I would have. If you've got ice on two blades
3 and no ice on the other two blades, it's going to set
4 up a significant vibration when you start it up.

5 There was none.

6 Q. Now, the policy in the LifeFlight
7 program was to perform flight inspections on shift
8 change?

9 A. We do a preflight every shift change,
10 yes.

11 Q. Every shift change?

12 A. That's right.

13 Q. That morning, did you do a preflight at
14 7 a.m.?

15 A. I believe I did. I don't know.

16 Q. Okay. Do you recall telling anybody you
17 did a preflight?

18 A. Usually you -- almost always, you sign
19 the logbook that you had been out there and done a
20 preflight.

21 Q. Okay. Did you tell Ron Fergie you did a
22 preflight?

23 A. I do a preflight every shift. Whether I
24 did it right at seven o'clock, that part I don't
25 know. But I do do a preflight when I start every

1 could find no indication there was ice on the blades
2 when I took off.

3 Q. There was an FAA investigation?

4 A. From what I understand, there was, and
5 they found nothing, and nobody in the aircraft
6 noticed any ice or snow. Nobody -- I didn't notice
7 any vibration. It was a nonevent.

8 Q. Okay. What did you tell the FAA
9 investigators about this?

10 A. I didn't talk to them.

11 Q. Okay. They never interviewed you?

12 A. They never interviewed me. They
13 interviewed the people that were on the aircraft, and
14 I guess they talked to Greg. There was no evidence
15 that there was ice on the aircraft when I lifted.

16 Q. Why do you say that?

17 A. I was in the aircraft and if I had taken
18 off with ice on there, you can see it come off. You
19 can see a vibration. Greg told me that he had ice on
20 two blades. The other two blades had melted off, so
21 he turned it around so sun hit the other two blades
22 better and would melt that off. If there's that --

23 Q. Did Greg --

24 A. -- if there's that little bit of ice,
25 it's not going to take long for it to come off or he

1 shift.

2 Q. Do you recall doing a preflight the
3 morning this occurred?

4 A. I can say yes, but I can recall doing a
5 preflight every day. I do one every time I come on
6 shift.

7 Q. Do you have any specific recollection as
8 to doing a preflight on this specific day,
9 October 31st?

10 A. No. That's too long ago. I don't
11 remember that far back. You do a preflight every
12 day. It's like getting up and tying your shoe. How
13 did you tie the knot on the right and the one on the
14 left? The same way you do it every day. Can you
15 remember doing that? No.

16 Q. Did you do a preflight at seven o'clock
17 that morning?

18 MR. MCFARLANE: Objection to form. It's
19 been asked and answered.

20 THE WITNESS: I don't know if it was at
21 seven o'clock.

22 Q. (BY MR. NIELSON) Did you do a preflight
23 immediately before you took off?

24 A. Yes.

25 MR. MCFARLANE: Objection to form. It's

1 A. ATP is the type of rating that I have.
 2 You have a private, commercial, airline transport
 3 pilot rating. I have an airline transport pilot
 4 rating and I have a CFI -- certified flight
 5 instructor, certified instrument instructor.
 6 Q. **And have you actually taught flying?**
 7 A. Yes, I have.
 8 Q. **Okay. When was that?**
 9 A. While I was working at the INEL, I was
 10 the instructor training officer and safety officer,
 11 and we kept the pilots current.
 12 Q. **How much of your flight time has been**
 13 **involved with helicopters?**
 14 A. All of it.
 15 Q. **None with -- none with general aircraft?**
 16 A. No, I'm not rated in fixed wing,
 17 airplanes. They're scary. You have to go to fast to
 18 land.
 19 Q. **Just so I understand better -- and I**
 20 **think you've explained this. I just need to have it**
 21 **delineated further. Please go over each employer**
 22 **that you've had where you have been a helicopter**
 23 **pilot.**
 24 A. Other than the U.S. Army?
 25 Q. **Well, we'll start with the U.S. Army?**

1 until '96 when the operation was shut down. After
 2 they shut down the operation at the INEL, I flew
 3 part-time as a relief pilot for Rick Wyman out of
 4 Boise in '96, '97 and '98. I was also running my
 5 ranch, which is south of here. I came to work at the
 6 hospital in 2000 as a relief pilot to begin with, and
 7 shortly thereafter was given a full-time position,
 8 and I've been working here ever since.
 9 Q. **With regard to the U.S. Army, as it**
 10 **pertains to your flight duties and responsibilities,**
 11 **did you ever receive any warnings or reprimands of**
 12 **any sort?**
 13 A. No.
 14 Q. **Okay. I'm going to ask this for each**
 15 **your employers. Did you receive any with the Idaho**
 16 **National Guard?**
 17 A. No.
 18 Q. **Idaho Helicopters?**
 19 A. No.
 20 Q. **Reeder's Flyer Service?**
 21 A. No.
 22 Q. **INEL?**
 23 A. No.
 24 Q. **Rick Wyman?**
 25 A. No.

1 A. Okay. The U.S. Army, the Idaho National
 2 Guard, Idaho Helicopter out of Boise, I flew fire
 3 contracts in '84, Reeder Flying Service in '85, fire
 4 contract.
 5 Q. **If you could go just a little bit**
 6 **slower --**
 7 A. Okay.
 8 Q. **-- while a take down notes, appreciate**
 9 **that.**
 10 **After the National Guard, you said what?**
 11 A. During the National Guard --
 12 Q. **Okay.**
 13 A. -- in '84, it was Idaho Helicopters out
 14 of Boise, fire contract with BLM.
 15 Q. **Okay.**
 16 A. In '85, Reeder's Flyer Service on
 17 another fire contract for the BLM out of Shoshone,
 18 Idaho.
 19 Q. **Okay.**
 20 A. In '85 I went to work at the INEL, and
 21 if I can remember the name of the people that were
 22 there. We went through four or five different
 23 contractors while I was there. The last one was
 24 Lockheed Martin. We flew 222s to begin with in 1985.
 25 In 1993 we went to Bell 412s. We were flying 412s

1 Q. **Okay. And the -- now, I'm going to**
 2 **refer to the hospital Bannock, Portneuf, all of this**
 3 **just as the hospital, just so you know.**
 4 A. All right.
 5 Q. **You've received -- have you ever**
 6 **received any informal or dis -- or formal discipline**
 7 **while employed with the hospital?**
 8 A. Yes.
 9 Q. **Okay. I'd like to go through each, if**
 10 **you could list them for me.**
 11 A. I lost a fuel cap on the 105 on a flight
 12 to Burley -- or no, Rupert. Excuse me.
 13 Q. **When was that?**
 14 A. I don't remember. It was when we had
 15 the 105. Right after we got -- the one we
 16 were leasing -- I can't remember what year that was.
 17 Q. **So is that after 2001?**
 18 A. I'm trying to remember when the other
 19 aircraft crashed because it was after that, and I
 20 guess it was 2001, 2002.
 21 Q. **If I represent to you that the crash**
 22 **involving Tim Brulotte happened November 14th, 2001,**
 23 **is --**
 24 A. Yeah.
 25 Q. **-- is that right?**

1 A. That could be. I'm not sure of the good at
2 dates.
3 Q. Okay.
4 A. So it was -- it was subsequent to
5 that --
6 Q. Okay.
7 A. -- and the aircraft we leased.
8 Q. Okay.
9 A. Then I received counseling statement,
10 formal letter for not securing a cowling on a flight
11 to Burley.
12 Q. Okay. Let's go back to the lost fuel
13 cap. Did you receive any written discipline?
14 A. I'm sure. Yes, there was a letter
15 written.
16 Q. Okay. Who was it written by?
17 A. Gary Alzola.
18 Q. Do you recall the substance of the
19 letter?
20 A. Other than don't lose any more fuel
21 caps, secure the fuel cap, don't do that anymore.
22 Q. Okay. Did you receive any demotion or
23 reduction in rate of pay?
24 A. No.
25 Q. Okay. The next I believe you mentioned

1 time of the fuel cap, correct?
2 A. Yes.
3 Q. Did he provide you with a written -- a
4 written letter of discipline?
5 A. Yes.
6 Q. Anything else?
7 A. No.
8 Q. You weren't demoted or rate of pay
9 decreased?
10 A. No.
11 Q. When this cowling incident occurred, did
12 Mr. Alzola say this is the second strike against you?
13 A. Yes, or something like that.
14 Q. Did he say one more strike and you're
15 out?
16 A. Basically.
17 Q. Okay. Any other warnings, reprimands at
18 the hospital?
19 A. Yes.
20 Q. Okay. Go ahead.
21 A. I -- and I came in too low and bumped
22 the tail skid on the fence.
23 Q. When was that?
24 A. About close to -- at least two or
25 three -- two years ago, maybe three. Two and a half

1 cowling?
2 A. Yes. The cowling was left unsecured on
3 a night flight.
4 Q. Was that to Burley?
5 A. Yes.
6 Q. Was there damage to the aircraft?
7 A. Not much. The cowling was burned by the
8 exhaust, but it was functional, and it was on the
9 aircraft when we gave it back to them.
10 Q. Okay. You -- do you know how much it
11 took to -- how much it cost to repair the cowling?
12 A. It wasn't repaired. They just bent it
13 back into shape and put it back up. They never took
14 it off, as far as I know.
15 Q. And tell me again, what happened to the
16 cowling that caused it to be damaged?
17 A. It was unsecured during flight. So it
18 was up against a heat exhaust, the engine exhaust.
19 Q. Okay. Are you saying that you failed to
20 latch it?
21 A. Right.
22 Q. And who was your supervisor at that
23 time?
24 A. Gary Alzola.
25 Q. Okay. And he was your supervisor at the

1 years ago, at least.
2 Q. 2000 --
3 A. It was in the 109.
4 Q. 2005?
5 A. It might have been 2004. I don't
6 remember.
7 Q. Was Gary Alzola your direct supervisor
8 then?
9 A. Yes, he was.
10 Q. Were you disciplined for this incident?
11 A. Yes.
12 Q. And what type of discipline was that?
13 A. A letter. And I was mistaken, he didn't
14 give me a last chance on the cowling. He gave me
15 last chance on this one. So I'm not allowed to screw
16 up anymore.
17 Q. So you're getting four strikes --
18 A. Probably.
19 Q. -- before you're out?
20 A. I guess that's true.
21 Q. Was there any demotion or rate of pay
22 with that letter?
23 A. No. It's hard to demote the bottom guy
24 on the pole.
25 Q. Why do you say you're the bottom guy?

1 A. That could be. I'm not real good at
 2 dates.
 3 Q. Okay.
 4 A. So it was -- it was subsequent to
 5 that --
 6 Q. Okay.
 7 A. -- and the aircraft we leased.
 8 Q. Okay.
 9 A. Then I received counseling statement,
 10 formal letter for not securing a cowling on a flight
 11 to Burley.
 12 Q. Okay. Let's go back to the lost fuel
 13 cap. Did you receive any written discipline?
 14 A. I'm sure. Yes, there was a letter
 15 written.
 16 Q. Okay. Who was it written by?
 17 A. Gary Alzola.
 18 Q. Do you recall the substance of the
 19 letter?
 20 A. Other than don't lose any more fuel
 21 caps, secure the fuel cap, don't do that anymore.
 22 Q. Okay. Did you receive any demotion or
 23 reduction in rate of pay?
 24 A. No.
 25 Q. Okay. The next I believe you mentioned

1 time of the lost fuel cap, correct?
 2 A. Yes.
 3 Q. Did he provide you with a written -- a
 4 written letter of discipline?
 5 A. Yes.
 6 Q. Anything else?
 7 A. No.
 8 Q. You weren't demoted or rate of pay
 9 decreased?
 10 A. No.
 11 Q. When this cowling incident occurred, did
 12 Mr. Alzola say this is the second strike against you?
 13 A. Yes, or something like that.
 14 Q. Did he say one more strike and you're
 15 out?
 16 A. Basically.
 17 Q. Okay. Any other warnings, reprimands at
 18 the hospital?
 19 A. Yes.
 20 Q. Okay. Go ahead.
 21 A. I -- and I came in too low and bumped
 22 the tail skid on the fence.
 23 Q. When was that?
 24 A. About close to -- at least two or
 25 three -- two years ago, maybe three. Two and a half

1 cowling?
 2 A. Yes. The cowling was left unsecured on
 3 a night flight.
 4 Q. Was that to Burley?
 5 A. Yes.
 6 Q. Was there damage to the aircraft?
 7 A. Not much. The cowling was burned by the
 8 exhaust, but it was functional, and it was on the
 9 aircraft when we gave it back to them.
 10 Q. Okay. You -- do you know how much it
 11 took to -- how much it cost to repair the cowling?
 12 A. It wasn't repaired. They just bent it
 13 back into shape and put it back up. They never took
 14 it off, as far as I know.
 15 Q. And tell me again, what happened to the
 16 cowling that caused it to be damaged?
 17 A. It was unsecured during flight. So it
 18 was up against a heat exhaust, the engine exhaust.
 19 Q. Okay. Are you saying that you failed to
 20 latch it?
 21 A. Right.
 22 Q. And who was your supervisor at that
 23 time?
 24 A. Gary Alzola.
 25 Q. Okay. And he was your supervisor at the

1 years ago, at least.
 2 Q. 2000 --
 3 A. It was in the 109.
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 6 remember.
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 15 last chance on this one. So I'm not allowed to screw
 16 up anymore.
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 18 A. Probably.
 19 Q. -- before you're out?
 20 A. I guess that's true.
 21 Q. Was there any demotion or rate of pay
 22 with that letter?
 23 A. No. It's hard to demote the bottom guy
 24 on the pole.
 25 Q. Why do you say you're the bottom guy?

1 pilots that sleep through the night.
 2 Q. Anyone in -- specifically?
 3 A. All of us.
 4 Q. Are you familiar with the cold weather
 5 policy for making the aircraft available?
 6 A. Yes.
 7 Q. Okay. Can you describe what that policy
 8 was in the beginning of 2005?
 9 A. The policy was that we would cover the
 10 aircraft, keep it as flyable as possible as often as
 11 possible. If the snow or ice accumulated, it would
 12 be deiced prior to any flight. We put on as many
 13 covers as we think is necessary to cover all the
 14 flight surface -- control surfaces to make sure the
 15 aircraft is available as often as possible.
 16 Q. Was there ever a policy to -- when it
 17 was snowing, to wipe off part of the blade, install
 18 the cover as far as you could, wipe off another
 19 portion of the blade and continue installing the
 20 cover that way?
 21 A. A policy? Not that I'm aware of.
 22 Q. Was it a practice?
 23 A. The practice was to clean off the
 24 blades, put the blade covers on.
 25 Q. Okay. And who conformed with that

1 about it and said that they had done that, put blade
 2 covers on.
 3 Q. Okay. Why did they talk to you about
 4 it, do you know?
 5 A. I think that Mark was upset because they
 6 didn't put it on right, or he didn't think that they
 7 had put it on right.
 8 Q. Okay. So they were telling you -- what
 9 were they telling you about what Mark said?
 10 A. Oh, Ron just told me what happened.
 11 Q. Okay. Did he make any comments about
 12 Mark's claims or accusations?
 13 A. Not that I remember.
 14 Q. Do you remember an incident about -- on
 15 or about February 25th, 2005, in which you approached
 16 Mark Van on the helipad?
 17 A. Yes, I do.
 18 Q. Okay. What do you remember about that?
 19 A. I remember that -- I think we were
 20 getting ready for a meeting. But Ron and I had been
 21 talking, and we read a letter that Mark had sent out,
 22 an e-mail or something, and he was pretty critical of
 23 the pilots of the operation. I was angry. I went up
 24 and talked to Mark.
 25 THE REPORTER: Can we take a quick break?

1 practice?
 2 A. I think everybody.
 3 Q. Okay. Do you know if Ron Fergie did?
 4 A. As far as I know to the best of his
 5 ability, you'd have to ask him.
 6 Q. Okay. If he ever admitted that he
 7 should have worked harder in cleaning off the blades,
 8 would you disagree with that?
 9 A. No, I wouldn't disagree with you.
 10 Q. And I apologize, I don't recall your
 11 testimony. With regard to an incident on or about
 12 February 1st, 2005 in which there were snow and ice
 13 on the rotor blades, do you know anything about that
 14 incident?
 15 A. February when?
 16 Q. February 1st, 2005?
 17 A. No, not in particular.
 18 Q. And I'll represent to you that
 19 Mr. Fergie and Mr. Waller installed covers on the
 20 rotor blades the night before and that Mr. Van
 21 removed snow and ice from the rotor blades the next
 22 morning. Do you recall that incident at all?
 23 A. I recall them talking about it now, yes.
 24 Q. Okay. What do you recall?
 25 A. That they -- Ron and Chad talked to me

1 MR. NIELSON: Sure.
 2 (Break from 4:07 p.m. to 4:16 p.m.)
 3 (Exhibit 2 marked.)
 4 Q. (BY MR. NIELSON) Mr. Neilsen, you've
 5 been handed what has been marked Deposition
 6 Exhibit 2. I believe you indicated in your previous
 7 testimony that you and Ron Fergie had talked about an
 8 e-mail pertaining to Mark Van. Did you state that in
 9 your previous testimony?
 10 A. Yes.
 11 Q. Okay. I'd like you to review this and
 12 tell me if that's the e-mail that you were referring
 13 to in your earlier testimony?
 14 A. Now that I couldn't -- I couldn't
 15 testify to that. I don't know. We -- we had several
 16 e-mails. This may be it.
 17 Q. Have you ever seen this e-mail before?
 18 A. I don't remember. I may have.
 19 Q. So your testimony is this could possibly
 20 be an e-mail that --
 21 A. It may be, yeah. I may have seen it.
 22 Q. Okay.
 23 A. The stuff in it is familiar. I've seen
 24 the -- seen or heard of it somewhere before.
 25 Q. Okay. And just so I understand your

1 testimony is that Mr. Fergie showed you an e-mail
 2 that was prepared by Mark Van; is that correct?
 3 A. He either showed me or we talked about
 4 it. Because I don't -- I don't think it came to me.
 5 I think it went to Gary or Ron or something. I'm not
 6 sure I saw it, but we talked about what was in it and
 7 he was talking about how we needed to be up at night
 8 instead of sleeping, cleaning the aircraft off all
 9 the time and a lot of things that -- like that.
 10 Q. Okay. I just want to confirm what I
 11 understand to be your testimony, that Ron Fergie
 12 talked to you about an e-mail that Mark Van sent to
 13 Gary Alzola; is that --
 14 MR. MCFARLANE: Object to form. It
 15 mischaracterizes his testimony.
 16 MR. NIELSON: Well, I'm trying to find out
 17 what his testimony is. Is that accurate? And if it
 18 isn't, please tell me.
 19 THE WITNESS: As far as I can remember, Ron
 20 and I discussed an e-mail in which Mark talked about
 21 all the things that he thought we needed to be doing.
 22 Q. (BY MR. NIELSON) And to your
 23 recollection, Mark wrote that e-mail to Gary Alzola?
 24 MR. MCFARLANE: Object to form, same
 25 objection.

1 Q. And what did you reply to that?
 2 A. I says, "Yes, you do."
 3 Q. What else did you say?
 4 A. I don't remember exactly.
 5 Q. Did you say, Well, you're going to find
 6 out?
 7 A. I says you're going to find out or we're
 8 going to find out or we're going to get to the bottom
 9 of it.
 10 Q. Okay. Did you say we're going to find
 11 out in the next meeting we have?
 12 A. I don't know. I don't know if I said
 13 that.
 14 Q. Did you tell anyone in the LifeFlight
 15 team about this incident?
 16 A. In what way? I -- I may have talked to
 17 Ron.
 18 Q. What would you have told Ron if you
 19 talked to him?
 20 A. Basically that I just talked to Mark.
 21 Q. Was that conduct fostering a positive
 22 team environment?
 23 A. Fostering a positive team environment
 24 between who?
 25 Q. In the LifeFlight team?

1 THE WITNESS: I can't remember that
 2 specific, but I would think so, yes.
 3 Q. (BY MR. NIELSON) Okay. And you believe
 4 that it was either this e-mail or other e-mails which
 5 prompted you to go to the helipad to talk to Mark; is
 6 that correct?
 7 A. Yes.
 8 Q. Okay. When you got to the helipad, what
 9 did you say?
 10 A. I asked him what he was trying to do,
 11 whether he was trying to shut the operation down or
 12 exactly what it was he wanted to accomplish.
 13 Q. Were you angry?
 14 A. I was angry.
 15 Q. Did you show that anger?
 16 A. I'm sure I did.
 17 Q. Did you say, you're going to make this
 18 program go down the crapper?
 19 A. I may have said something to that order.
 20 Q. Okay. Did you say, I'm fired of all
 21 these e-mails flying around?
 22 A. I don't remember if I said that or not.
 23 Q. Do you recall what Mr. Van said?
 24 A. He says, "I don't know what you're
 25 talking about."

1 A. No.
 2 Q. Were you ever warned or reprimanded for
 3 that conduct?
 4 A. No.
 5 Q. Did anyone ask you about your conduct on
 6 that day?
 7 A. No.
 8 Q. Do you recall a meeting held on or about
 9 April 4th, 2005? I believe that was a meeting you
 10 were referring to earlier when I asked you who was
 11 present in that meeting.
 12 A. That's when I saw that letter, yes.
 13 Q. Okay. Do you recall what happened in
 14 that meeting?
 15 A. Basically yes, I do.
 16 Q. Okay. Please tell me.
 17 A. We had an opportunity to talk about this
 18 letter, talk about some of the things that Mark was
 19 having a problem with. I think Gary took an
 20 opportunity to speak. He may have been last. Audrey
 21 mediated the meeting and asked what the problems
 22 were, what we were doing to solve them, to work with
 23 them or around them, and we discussed a lot of the
 24 problems that we were having in the -- in the flight
 25 operation --

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2 that was prepared by Mark Van; is that correct?

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4 it. Because I don't -- I don't think it came to me.
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7 he was talking about how we needed to be up at night
8 instead of sleeping, cleaning the aircraft off all
9 the time and a lot of things that -- like that.

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11 understand to be your testimony, that Ron Fergie
12 talked to you about an e-mail that Mark Van sent to
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18 isn't, please tell me.

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20 and I discussed an e-mail in which Mark talked about
21 all the things that he thought we needed to be doing.

22 Q. (BY MR. NIELSON) And to your
23 recollection, Mark wrote that e-mail to Gary Alzola?

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25 objection.

1 Q. And what did you reply to that?

2 A. I says, "Yes, you do."

3 Q. What else did you say?

4 A. I don't remember exactly.

5 Q. Did you say, Well, you're going to find
6 out?

7 A. I says you're going to find out or we're
8 going to find out or we're going to get to the bottom
9 of it.

10 Q. Okay. Did you say we're going to find
11 out in the next meeting we have?

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13 that.

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15 team about this incident?

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17 Ron.

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19 talked to him?

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4 that it was either this e-mail or other e-mails which
5 prompted you to go to the helipad to talk to Mark; is
6 that correct?

7 A. Yes.

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9 did you say?

10 A. I asked him what he was trying to do,
11 whether he was trying to shut the operation down or
12 exactly what it was he wanted to accomplish.

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18 program go down the crapper?

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21 these e-mails flying around?

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23 Q. Do you recall what Mr. Van said?

24 A. He says, "I don't know what you're
25 talking about."

1 A. No.

2 Q. Were you ever warned or reprimanded for
3 that conduct?

4 A. No.

5 Q. Did anyone ask you about your conduct on
6 that day?

7 A. No.

8 Q. Do you recall a meeting held on or about
9 April 4th, 2005? I believe that was a meeting you
10 were referring to earlier when I asked you who was
11 present in that meeting.

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14 that meeting?

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6 out?

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20 opportunity to speak. He may have been last. Audrey
21 mediated the meeting and asked what the problems
22 were, what we were doing to solve them, to work with
23 them or around them, and we discussed a lot of the
24 problems that we were having in the -- in the flight
25 operation --

1 Q. Okay.
 2 A. -- between maintenance and the pilots.
 3 Q. During that meeting did you talk to
 4 Mark, anything -- did you say anything to Mark about
 5 this February 25th incident?
 6 A. I don't remember if I did or not. It
 7 may have come up or it may not have.
 8 Q. Do you recall apologizing to Mark?
 9 A. I don't recall that.
 10 Q. Do you recall in the meeting saying to
 11 Mark that he was just too sensitive?
 12 A. No, I don't.
 13 Q. Do you recall saying to Mark that
 14 mechanics were just pilots' helpers?
 15 A. No, I don't.
 16 Q. Could you have said that?
 17 A. I don't think so.
 18 Q. Do you recall saying, in regard to
 19 putting the blade covers on to Mark, let me explain
 20 it so even you can understand?
 21 A. I may have said that, yes.
 22 Q. Okay. Were you being condescending?
 23 A. I think everybody was angry. I was
 24 angry at that time.
 25 Q. Okay. So were you being condescending

1 Q. Okay. When was that instituted?
 2 A. I think shortly after Ron Fergie's
 3 incident --
 4 Q. Okay.
 5 A. -- where he had to put in such a long
 6 day.
 7 Q. Shortly after February -- or excuse me
 8 July of '03, as I recall?
 9 A. Yes.
 10 Q. Okay. What was it before then?
 11 A. We had a 14-hour duty day that we would
 12 work, and if something happened, it could be extended
 13 and we would compensate by coming in later.
 14 Q. Okay.
 15 A. So it was -- that's basically the way it
 16 worked. Now it's 16 hours, shut her down, walk away.
 17 Q. Okay. So the 16-hour shut-her-down walk
 18 away was instituted sometime after Ron Fergie's
 19 20-hour incident?
 20 A. Yeah, we wanted a definite policy on
 21 that.
 22 Q. Okay. I appreciate your testimony on
 23 that.
 24 Were you involved in Mark Van's
 25 termination?

1 to Mark?
 2 A. Possibly, yes.
 3 Q. Did that foster a positive team
 4 environment?
 5 A. No.
 6 Q. Do you know why that meeting was held?
 7 A. I think Mark Van requested the meeting,
 8 I believe.
 9 Q. And if I represented to you that
 10 Mark Van requested the meeting in order to make
 11 relations correct again, would you have any reason to
 12 disagree with that?
 13 A. If that was his intent, no, I wouldn't
 14 argue with that.
 15 Q. Do you have any reason to believe that
 16 was not his intent for the meeting?
 17 A. No.
 18 Q. I'd like to go back to a minute -- back
 19 for a minute to the area that I talked to you about
 20 earlier on pilot duty time. In your operations
 21 manual currently, do you have a restriction for pilot
 22 duty time for Part 91 flights?
 23 A. We have a 16 hour maximum we're working
 24 on. If we're gone more than 16 hours, we park it and
 25 we bring it home tomorrow.

1 A. No.
 2 Q. Okay. Were you interviewed by
 3 Audrey Fletcher?
 4 A. Other than that meeting in -- whenever
 5 it was?
 6 Q. Other than that meeting, did
 7 Audrey Fletcher conduct an interview and ask you
 8 about Mark Van or any incidents?
 9 A. Not that I remember. No.
 10 Q. Okay. Do you know why Mark Van was
 11 terminated?
 12 A. I don't know what specifically they
 13 said, no.
 14 Q. Have you heard what the reasons were?
 15 A. The reasons were that we had an unsafe
 16 situation.
 17 Q. Okay. How do you say it was unsafe?
 18 A. There was just too much animosity and
 19 too much distrust going on.
 20 Q. Okay. Did you ever threaten to leave if
 21 Mark Van didn't quit?
 22 A. Yes.
 23 Q. Did you voice those threats to anyone?
 24 A. I believe I said -- I said pretty much
 25 that to Ron, to Chad, I may have said that to Gary.

1 it?
 2 A. At HR when we were having a meeting, I
 3 read this over. I think that's when it was.
 4 Q. Okay. When was the HR meeting? Do you
 5 recall?
 6 A. Oh, shoot, no. No, I don't remember the
 7 dates.
 8 Q. Okay. Could it have been just prior to
 9 Mr. Van's termination?
 10 A. Yeah, it was that. I don't remember the
 11 dates, the year, whatever.
 12 Q. Okay. I'd like you to talk about that
 13 meeting for a minute. Who was in attendance at this
 14 meeting?
 15 A. Gary, Pam, me, Mark, Audrey. Greg
 16 wasn't there, and I think Ron Fergie was there.
 17 Q. Okay. I'd like you to just go over what
 18 you can recall -- having read Deposition Exhibit 1,
 19 what you can personally recall about the events and
 20 circumstances on this issue of ice on the rotor
 21 blades on or about October 30th and 31, 2004?
 22 A. What I remember about it is Ron had
 23 called and asked me if I had had ice on the blades
 24 when I took off and I says no. And that's about it.
 25 I know that it was looked into by the FAA, and they

1 would have pulled out a Herman Nelson and cleaned it
 2 off or I would have. If you've got ice on two blades
 3 and no ice on the other two blades, it's going to set
 4 up a significant vibration when you start it up.
 5 There was none.
 6 Q. Now, the policy in the LifeFlight
 7 program was to perform flight inspections on shift
 8 change?
 9 A. We do a preflight every shift change,
 10 yes.
 11 Q. Every shift change?
 12 A. That's right.
 13 Q. That morning, did you do a preflight at
 14 7 a.m.?
 15 A. I believe I did. I don't know.
 16 Q. Okay. Do you recall telling anybody you
 17 did a preflight?
 18 A. Usually you -- almost always, you sign
 19 the logbook that you had been out there and done a
 20 preflight.
 21 Q. Okay. Did you tell Ron Fergie you did a
 22 preflight?
 23 A. I do a preflight every shift. Whether I
 24 did it right at seven o'clock, that part I don't
 25 know. But I do do a preflight when I start every

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1 could find no indication there was ice on the blades
 2 when I took off.
 3 Q. There was an FAA investigation?
 4 A. From what I understand, there was, and
 5 they found nothing, and nobody in the aircraft
 6 noticed any ice or snow. Nobody -- I didn't notice
 7 any vibration. It was a nonevent.
 8 Q. Okay. What did you tell the FAA
 9 investigators about this?
 10 A. I didn't talk to them.
 11 Q. Okay. They never interviewed you?
 12 A. They never interviewed me. They
 13 interviewed the people that were on the aircraft, and
 14 I guess they talked to Greg. There was no evidence
 15 that there was ice on the aircraft when I lifted.
 16 Q. Why do you say that?
 17 A. I was in the aircraft and if I had taken
 18 off with ice on there, you can see it come off. You
 19 can see a vibration. Greg told me that he had ice on
 20 two blades. The other two blades had melted off, so
 21 he turned it around so sun hit the other two blades
 22 better and would melt that off. If there's that --
 23 Q. Did Greg --
 24 A. -- if there's that little bit of ice,
 25 it's not going to take long for it to come off or he

1 shift.
 2 Q. Do you recall doing a preflight the
 3 morning this occurred?
 4 A. I can say yes, but I can recall doing a
 5 preflight every day. I do one every time I come on
 6 shift.
 7 Q. Do you have any specific recollection as
 8 to doing a preflight on this specific day,
 9 October 31st?
 10 A. No. That's too long ago. I don't
 11 remember that far back. You do a preflight every
 12 day. It's like getting up and tying your shoe. How
 13 did you tie the knot on the right and the one on the
 14 left? The same way you do it every day. Can you
 15 remember doing that? No.
 16 Q. Did you do a preflight at seven o'clock
 17 that morning?
 18 MR. MCFARLANE: Objection to form. It's
 19 been asked and answered.
 20 THE WITNESS: I don't know if it was at
 21 seven o'clock.
 22 Q. (BY MR. NIELSON) Did you do a preflight
 23 immediately before you took off?
 24 A. Yes.
 25 MR. MCFARLANE: Objection to form. It's

PROCEEDINGS BEFORE THE UNITED STATES DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

MARK VAN, Plaintiff, vs. PORTNEUF MEDICAL CENTER, Defendant.

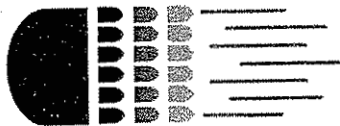
Complaint No. CV-0-0160-05-016

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK MAGISTRATE DIVISION

MARK VAN, Plaintiff, vs. PORTNEUF MEDICAL CENTER, PAT HERMANSON, Hospital Administrator, PAM HUMPHREY, EMS Program Director, GARY ALZOLA, Director of Operations, RON FERGIE, Chief Pilot/Safety Officer, BARRY NIELSON, Pilot, and DOES I-X,, Defendants.

Case No. CV-2005-4053-0C

VIDEOTAPED DEPOSITION OF RONALD C. FERGIE July 25, 2007, 9:12 a.m. Pocatello, Idaho



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

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1 you ever try to hide the fact that the accident was
 2 caused by pilot error?
 3 A. No.
 4 Q. Did you ever indicate to anyone not to
 5 talk about the cause of the accident?
 6 A. We didn't know the cause of the
 7 accident. Anything that I would have been able to
 8 say about the cause of the accident was my opinion
 9 and speculative.
 10 Q. Did you ever learn about the cause of --
 11 find out what the cause was?
 12 A. The NTSB sent something out. I read it
 13 on the Internet.
 14 Q. Was the NTSB report produced to the
 15 media?
 16 A. On the Internet. I -- I don't know what
 17 other media. It would have been on the Internet.
 18 They -- they also post -- NTS -- they also post
 19 findings to different magazines, aviation
 20 newsletters, some of them -- I can't give you the
 21 names of them, but they would have an NTSB section
 22 where accidents are in there, and it's very possible
 23 it would have been published in one of those.
 24 Q. Did Mark Van ever indicate his concerns
 25 that the media was implying that maintenance caused

1 the accident?
 2 A. Not to me.
 3 Q. Did you ever hear about that from
 4 anyone?
 5 A. No, not that -- well, not that I recall.
 6 Q. Did you ever have any problems with the
 7 doors to the utility sheds coming open when -- in
 8 takeoff?
 9 A. Yes.
 10 Q. Okay. Would -- would you consider that
 11 as a safety concern?
 12 A. Yeah. It could be. It wasn't
 13 necessarily, but it -- it could be.
 14 Q. Okay. Do you recall Mr. Van bringing up
 15 that issue?
 16 A. Not him specifically. It was brought
 17 up, but I -- I do remember the issue coming up. I
 18 don't know if Mark brought it up or someone else.
 19 Q. Were there ever any instances where
 20 pilots took off with the -- with the doors open?
 21 A. Yes. I have no doubt there were.
 22 Q. Do you recall who did that?
 23 A. No. I probably did. There may have
 24 been others. But I don't recall who or when or where
 25 over -- well, that's it. I don't recall.

1 the pilots didn't secure the landing
 2 area, would that be a safety risk?
 3 A. You're going to have to rephrase that
 4 question or -- or explain it because if I'm flying a
 5 helicopter into a landing zone, I have -- I do not
 6 have the ability to secure it, so maybe I'm not --
 7 Q. When -- when you're flying out of it --
 8 A. Yes.
 9 Q. Okay. -- and the doors are open and the
 10 pilots haven't secured those doors, would that create
 11 a safety risk?
 12 A. It's possible, yes.
 13 Q. Okay. Were -- to your knowledge, were
 14 any pilots ever reprimanded or disciplined for not
 15 securing those doors?
 16 A. Disciplined or reprimanded, I don't
 17 know. They were certainly talked to about it. I
 18 guess it depends on whose definition of discipline
 19 we're looking at. You know, nobody was ever publicly
 20 flogged, but if you left one open, you know, it's
 21 like don't do it again. This was -- you know.
 22 And we -- we implemented things to go to
 23 make sure, you know, everybody is supposed to look
 24 around, you know, take an extra look. We put -- and
 25 Mark may have been responsible for this. I'm not

1 sure. We put bungee cords on because at one time it
 2 was just a latch, like a latch on a gate, you know,
 3 the kind you shut that latches over were -- were the
 4 only thing holding those doors shut. So we put
 5 bungee cords on to strap them to hold them a little
 6 more securely, and that worked.
 7 Q. You indicated the pilots would be talked
 8 to about the -- about this. What -- who would talk
 9 to them? Would you?
 10 A. It depends. I would talk to all when we
 11 had a pilots meeting or whatever, that -- or that
 12 would come up. You know, if -- if we'd ever -- if we
 13 had an issue with anything like that, I would bring
 14 that up and -- and -- and point it out. If it was --
 15 it was something that I did or -- or it was raised as
 16 a safety issue, then myself or Gary or both of us,
 17 depending on who did it, you know, would talk to the
 18 pilot involved.
 19 Q. Do you -- do you recall any incidences
 20 where it continued to occur despite these talking to
 21 A. No. Not -- not specifically, no.
 22 Q. I'd like to go now to an incident that
 23 occurred on -- on July 5th, 2003, involving your
 24 flight or your duty time of 20 hours.
 25 A. Okay.

1 you ever try to hide the fact the accident was
 2 caused by pilot error?
 3 A. No.
 4 Q. Did you ever indicate to anyone not to
 5 talk about the cause of the accident?
 6 A. We didn't know the cause of the
 7 accident. Anything that I would have been able to
 8 say about the cause of the accident was my opinion
 9 and speculative.
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 11 find out what the cause was?
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 14 Q. Was the NTSB report produced to the
 15 media?
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 19 findings to different magazines, aviation
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 21 names of them, but they would have an NTSB section
 22 where accidents are in there, and it's very possible
 23 it would have been published in one of those.
 24 Q. Did Mark Van ever indicate his concerns
 25 that the media was implying that maintenance caused

1 the accident?
 2 A. Not to me.
 3 Q. Did you ever hear about that from
 4 anyone?
 5 A. No, not that -- well, not that I recall.
 6 Q. Did you ever have any problems with the
 7 doors to the utility sheds coming open when -- in
 8 takeoff?
 9 A. Yes.
 10 Q. Okay. Would -- would you consider that
 11 as a safety concern?
 12 A. Yeah. It could be. It wasn't
 13 necessarily, but it -- it could be.
 14 Q. Okay. Do you recall Mr. Van bringing up
 15 that issue?
 16 A. Not him specifically. It was brought
 17 up, but I -- I do remember the issue coming up. I
 18 don't know if Mark brought it up or someone else.
 19 Q. Were there ever any instances where
 20 pilots took off with the -- with the doors open?
 21 A. Yes. I have no doubt there were.
 22 Q. Do you recall who did that?
 23 A. No. I probably did. There may have
 24 been others. But I don't recall who or when or where
 25 over -- well, that's it. I don't recall.

1 Q. The pilots didn't secure the landing
 2 area, wouldn't that be a safety risk?
 3 A. You're going to have to rephrase that
 4 question or -- or explain it because if I'm flying a
 5 helicopter into a landing zone, I have -- I do not
 6 have the ability to secure it, so maybe I'm not --
 7 Q. When -- when you're flying out of it --
 8 A. Yes.
 9 Q. Okay. -- and the doors are open and the
 10 pilots haven't secured those doors, would that create
 11 a safety risk?
 12 A. It's possible, yes.
 13 Q. Okay. Were -- to your knowledge, were
 14 any pilots ever reprimanded or disciplined for not
 15 securing those doors?
 16 A. Disciplined or reprimanded, I don't
 17 know. They were certainly talked to about it. I
 18 guess it depends on whose definition of discipline
 19 we're looking at. You know, nobody was ever publicly
 20 flogged, but if you left one open, you know, it's
 21 like don't do it again. This was -- you know.
 22 And we -- we implemented things to go to
 23 make sure, you know, everybody is supposed to look
 24 around, you know, take an extra look. We put -- and
 25 Mark may have been responsible for this. I'm not

1 sure. We put bungee cords on because at one time it
 2 was just a latch, like a latch on a gate, you know,
 3 the kind you shut that latches over were -- were the
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 5 bungee cords on to strap them to hold them a little
 6 more securely, and that worked.
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 8 to about the -- about this. What -- who would talk
 9 to them? Would you?
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 11 had a pilots meeting or whatever, that -- or that
 12 would come up. You know, if -- if we'd ever -- if we
 13 had an issue with anything like that, I would bring
 14 that up and -- and -- and point it out. If it was --
 15 it was something that I did or -- or it was raised as
 16 a safety issue, then myself or Gary or both of us,
 17 depending on who did it, you know, would talk to the
 18 pilot involved.
 19 Q. Do you -- do you recall any incidences
 20 where it continued to occur despite these talking to?
 21 A. No. Not -- not specifically, no.
 22 Q. I'd like to go now to an incident that
 23 occurred on -- on July 5th, 2003, involving your
 24 flight or your duty time of 20 hours.
 25 A. Okay.

VIDEOTAPE DEPOSITION OF RONALD C. FERGIE - 07/25/2007

1 Q. Can you tell me at give me a rough
 2 summation of what happened and why you went 20 hours?
 3 A. Okay. I cannot give you specific times
 4 because I don't remember. I can give you rough --
 5 roughage on times.
 6 We got a flight to depart from here to
 7 Salt Lake City. We took the patient to Salt Lake
 8 City, and it was one of those very close to shift
 9 change but looked like -- when I looked at the -- we
 10 could -- we could go down there and get back well
 11 before the 14-hour duty day.
 12 We got down there, and the aircraft
 13 would not start for us to leave. I immediately
 14 called maintenance, and we were informed by dispatch
 15 that maintenance was en route, so I expected
 16 maintenance to be there within two to three hours.
 17 And I think this was roughly 6:30, seven o'clock, and
 18 I -- again, I don't know for sure.
 19 Q. Who came from maintenance?
 20 A. Frank Prickett.
 21 Q. Anyone else?
 22 A. No. Frank is the only one I recall.
 23 Q. Okay. Go ahead.
 24 A. Okay. So it -- it took him a long time
 25 to get there, a couple of things came into play. He

1 had -- it was -- it was the 4th of July. The log may
 2 show the 5th of July because we ended up ending after
 3 midnight, but the flight originated on the 4th of
 4 July.
 5 And so there was heavy traffic is what
 6 he told me when he got there. There was heavy
 7 traffic. He got lost. He could not -- he did not
 8 know how to get the University of Utah. And so he
 9 got turned around, and he finally got there, so he
 10 got there late, very late. And I'm -- I don't know
 11 what -- how long. And then it took him longer --
 12 longer to fix the problem than what we had
 13 anticipated.
 14 So we departed there, and again before
 15 we departed, because it was that long, I wanted to
 16 make sure that the crew was okay with me flying and
 17 not worried about me being fatigued because I was not
 18 at the time.
 19 Q. Who was the crew?
 20 A. Mark Romero and Jim Rogers, I believe.
 21 Q. Go ahead.
 22 A. And so we departed and flew back without
 23 incident. That was a -- and I don't know if it was a
 24 20-hour day or not. I can't remember it. We got
 25 back sometime between midnight and one, 1:30,

1 maybe -- if -- even later, I don't know. And that
 2 was it.
 3 Q. Well, if I say 20 hours, would you have
 4 any reason to disagree?
 5 A. Let me add it up in my head for a
 6 minute.
 7 Q. Sure.
 8 A. I -- I could -- I won't disagree that it
 9 was an extremely long day. It was over the 14-hour
 10 day. I won't disagree with that at all because it
 11 certainly was. Seven -- no, I'm not going to argue
 12 that it was a 20-hour day.
 13 Q. Okay.
 14 A. I don't think.
 15 Q. So this 20-hour day was a violation of
 16 the 16-hour duty time policy, was it not?
 17 A. No.
 18 Q. Why not?
 19 A. The 16-hour duty policy wasn't in place
 20 at the time.
 21 Q. Didn't you tell me earlier in your
 22 testimony that that policy was implemented in 2002?
 23 A. Yeah, sometime in July. It was
 24 implemented after that.
 25 Q. Okay. We're talking about -- right now

1 we're talking about your policy -- your 20-hour
 2 flight in July 5th, 2003.
 3 A. No. This was -- no, I think that
 4 policy -- now, this is where I got dates messed up.
 5 That policy didn't come into play until
 6 after that flight in -- sure, it's maybe 2003.
 7 Whenever you say it was, I'll stipulate that. But
 8 the policy came into play after that flight, to the
 9 best of my knowledge. That's my understanding.
 10 That's why I remember when, it was after July
 11 sometime.
 12 Q. So you didn't have a 16-hour policy in
 13 2002?
 14 A. You know, not to my recollection, no.
 15 Q. Okay. So you're changing your
 16 testimony?
 17 A. I'm not changing my -- I'm correcting my
 18 testimony.
 19 Q. Oh, you're correcting your testimony.
 20 So you're saying that the policy for 16 hours was
 21 implemented sometime between July 2003 and the end
 22 2003?
 23 A. There would be a much better way to do
 24 this.
 25 Q. Okay.

1 Q. Whos... responsibility was it to destroy
 2 it?
 3 A. Myself or Gary could have done it. I
 4 usually do that. I go through at the end of the year
 5 and make sure there's something in there that's -- or
 6 keep -- keep the things that we need to keep that are
 7 still pertinent, excuse me, and get the things out
 8 that don't need to be in there anymore.
 9 Q. Do you have any specific recollections
 10 of pulling out this --
 11 A. I do not.
 12 Q. -- policy?
 13 A. No, I don't.
 14 Q. Was the policy changed because of your
 15 20-hour time?
 16 A. I think it had -- probably had quite a
 17 bit to do with it, yes.
 18 Q. Were you ever reprimanded for your --
 19 for your 20-hour day?
 20 A. I was counseled by Gary about it, yes.
 21 Q. What did the counseling consist of?
 22 A. Well, you know, I can't remember
 23 specifics. I recognized immediately that that was
 24 not -- although it wasn't illegal, it was not a smart
 25 thing to do, if for nothing else the appearance of

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1 being -- acting in an unsafe manner.
 2 So basically, Gary said, "Okay, well,
 3 let's not let that happen again. Let's, you know, be
 4 more careful about it."
 5 Q. Was that the extents -- extent of his
 6 counseling, to be more careful about it?
 7 A. That's my recollection, yeah. Again,
 8 there's no -- I wasn't flogged publicly, that I can
 9 remember.
 10 Q. Have you had any public floggings at
 11 LifeFlight?
 12 A. Not that I can remember.
 13 Q. As a -- as a safety officer and chief
 14 pilot, you were an example to the other pilots,
 15 weren't --
 16 A. Correct.
 17 Q. -- were you not?
 18 Was this -- was this a good example to
 19 the other pilots?
 20 A. Absolutely not.
 21 Q. Did you talk to the other pilots about
 22 not doing this?
 23 A. Yeah.
 24 Q. What did you say?
 25 A. Same thing. They realized. I mean,

1 s... situations will drive things, and it's very
 2 easy to look back on them and say, you know, we
 3 shouldn't have done that.
 4 Q. Okay. When you talked to Mark Rome
 5 and Jim Rogers before taking off that day, what d
 6 they tell you about if they had -- did they tell you
 7 they had any concerns about you flying?
 8 A. They did not.
 9 Q. Okay. Did they tell you they had no
 10 concerns?
 11 A. I don't recall them saying any -- having
 12 any concern.
 13 Q. If they had concern, would you have n
 14 flown?
 15 A. Correct, I would have not.
 16 Q. How come you were not relieved that
 17 A. Well, again, it was -- it was a matter
 18 of we expected the mechanic to be there much soc
 19 than he was, and when -- it just got later and later.
 20 It would have actually taken me longer to drive bac
 21 and -- and more unsafe in a car. I was not tired at
 22 the time, so we opted to fly the aircraft back.
 23 Q. Okay. You said just then, again, the
 24 mechanic took longer. Were you referring initial
 25 to the Tim Brulotte incident?

1 A. No, I'm referring to the 20-hour
 2 incident.
 3 Q. Okay. Is it your testimony that the
 4 pilot duty time was exceeded in this instance be
 5 of mechanics?
 6 A. No. Because of maintenance, there we
 7 several factors that caused the 20-hour day to occ
 8 one of which was the time it took maintenance to c
 9 to the aircraft and then repair the aircraft.
 10 Q. Do you know if Jim Rogers or Mark F
 11 ever expressed concern about your fatigue or al
 12 your 20-hour day?
 13 A. No.
 14 Q. When you got back to Pocatello, did
 15 take off on another flight?
 16 A. No.
 17 Q. Did you receive your ten-hour rest
 18 requirement between -- between that and your r
 19 flight?
 20 A. Between that and the next Part 135
 21 flight, yes. Between the time I actually took off, I
 22 don't think so. I think I may have taken off a few
 23 minutes prior to the ten hours, but again that wou
 24 have been a Part 91 flight.
 25 Q. And you're saying there were -- were

1 Q. Tell me what happened there.
 2 A. Prior to flying the aircraft, when I go
 3 out in the morning to preflight the aircraft, we set
 4 it up to how we want it so we can go into a
 5 minimal -- so we can reduce our start times. In that
 6 particular aircraft, the BO-105, the anticollision
 7 lights were left -- we always had them on. The
 8 position lights, same thing if we were flying at
 9 night. They had been turned off. And I did not
 10 check them. So when I got to the airport, it was
 11 dark, and I had been flying with no lights on without
 12 knowing it.
 13 Q. Why didn't you check them?
 14 A. Well, I normally do. I run up my -- I
 15 run my hands over, and it's very easy to -- again, we
 16 have that thing set to where we want to take off.
 17 Every time we have it set prior to flight, and then
 18 we may go away for a while and come back and get back
 19 in the aircraft, and we expect things to be the way
 20 we left them. So it's -- it's a check, and I missed
 21 the fact that they had turned -- somebody had turned
 22 them off.
 23 Q. Okay. Were you ever reprimanded for not
 24 checking those lights?
 25 A. I don't -- a written reprimand, if

1 that's what you're asking, not that I recall. I was
 2 told again to watch what you're doing, make sure, you
 3 know, even if you get in an aircraft and you -- and
 4 you have done all the checklist and then you get out
 5 and get back in, do it all over again because if
 6 maintenance is going to get in there and turn the
 7 switches off, then you're going to have to get it
 8 back on. And at the time, that was not -- had never
 9 been a big issue, where switches were left off. If
 10 we had a switch on, if the maintenance guys turned it
 11 off, they would turn it back on. And that's no
 12 longer the case right -- in fact, right after that it
 13 seemed to be no longer the case.
 14 Q. Okay. So we have the instance of the
 15 20-hour day on or about July 5th, 2003, and then we
 16 have the incident with you driving with no lights at
 17 the end of 2003. Those are two errors within one
 18 year. Isn't -- isn't that abnormally high?
 19 A. For me it's extremely high, yes.
 20 Q. Okay. So why weren't you ever --
 21 A. Well, let's go back --
 22 Q. -- written up for it?
 23 MR. MCFARLANE: Objection, you know, to the
 24 extent, you know, that that calls for some sort of
 25 speculation.

1 (BY MR. NIELSON) Okay. So were you
 2 ever written up for having those two errors in one
 3 year?
 4 A. Written up, I don't know. No -- no one
 5 ever showed me anything in writing. Was I counseled
 6 about it, yes.
 7 And if we may go back and correct, the
 8 error on the 20-hour day, was just an error in
 9 spending too much time. There was nothing illegal or
 10 against policy about that, so I don't know what
 11 you -- how you can -- if you want to refer to it as
 12 an error.
 13 Q. Well, you've -- you've admitted that you
 14 did something wrong, didn't you?
 15 A. I didn't say I did anything wrong. I
 16 said it was not the smartest thing to do.
 17 Q. Not proper judgment?
 18 A. No. I think the judgment in terms of
 19 my -- my ability to safely control that aircraft, I
 20 never had a question about it, or I would have never
 21 taken off.
 22 Q. Then why were you counseled?
 23 A. Because -- for mostly for appearance'
 24 sake, and the fact is that I could have been
 25 fatigued. I wasn't.

1 Q. Okay. If you didn't --
 2 A. And when I say "appearance' sake," I
 3 mean, as -- as the chief pilot and safety guy, taking
 4 a day like that, that long is -- is quite a while.
 5 Q. If you didn't do something wrong, why
 6 would the policy change?
 7 A. Again, to promote safety.
 8 Q. Okay.
 9 A. There was a recognition that there was
 10 a -- that that could be a problem again some time,
 11 and Gary wanted to make sure that that didn't happe
 12 again.
 13 Q. Mark Van reported an incident on
 14 September 7th, 2003, which the term is used -- the
 15 term that's been used of -- of "buzzing." Do you
 16 recall that incident?
 17 A. Yes, I do.
 18 Q. Please describe that for me as you
 19 recall it.
 20 A. We departed Soda Springs, I believe,
 21 with a patient with -- a critical patient, either a
 22 head wound or a chest wound that -- that the medic
 23 crew requested we stay low, as low as we could. S
 24 did. We came over the mountains east of town and
 25 just -- began a descent and continued that descent

1 Q. Tell me a *what happened there.*
 2 A. Prior to flying the aircraft, when I go
 3 out in the morning to preflight the aircraft, we set
 4 it up to how we want it so we can go into a
 5 minimal -- so we can reduce our start times. In that
 6 particular aircraft, the BO-105, the anticollision
 7 lights were left -- we always had them on. The
 8 position lights, same thing if we were flying at
 9 night. They had been turned off. And I did not
 10 check them. So when I got to the airport, it was
 11 dark, and I had been flying with no lights on without
 12 knowing it.
 13 Q. Why didn't you check them?
 14 A. Well, I normally do. I run up my -- I
 15 run my hands over, and it's very easy to -- again, we
 16 have that thing set to where we want to take off.
 17 Every time we have it set prior to flight, and then
 18 we may go away for a while and come back and get back
 19 in the aircraft, and we expect things to be the way
 20 we left them. So it's -- it's a check, and I missed
 21 the fact that they had turned -- somebody had turned
 22 them off.
 23 Q. Okay. Were you ever reprimanded for not
 24 checking those lights?
 25 A. I don't -- a written reprimand, if

1 that's what you're asking, not that I recall. I was
 2 told again to watch what you're doing, make sure, you
 3 know, even if you get in an aircraft and you -- and
 4 you have done all the checklist and then you get out
 5 and get back in, do it all over again because if
 6 maintenance is going to get in there and turn the
 7 switches off, then you're going to have to get it
 8 back on. And at the time, that was not -- had never
 9 been a big issue, where switches were left off. If
 10 we had a switch on, if the maintenance guys turned it
 11 off, they would turn it back on. And that's no
 12 longer the case right -- in fact, right after that it
 13 seemed to be no longer the case.
 14 Q. Okay. So we have the instance of the
 15 20-hour day on or about July 5th, 2003, and then we
 16 have the incident with you driving with no lights at
 17 the end of 2003. Those are two errors within one
 18 year. Isn't -- isn't that abnormally high?
 19 A. For me it's extremely high, yes.
 20 Q. Okay. So why weren't you ever --
 21 A. Well, let's go back --
 22 Q. -- written up for it?
 23 MR. MCFARLANE: Objection, you know, to the
 24 extent, you know, that that calls for some sort of
 25 speculation.

1 (MR. NIELSON) Okay. So were you
 2 ever written up for having those two errors in one
 3 year?
 4 A. Written up, I don't know. No -- no one
 5 ever showed me anything in writing. Was I counseled
 6 about it, yes.
 7 And if we may go back and correct, the
 8 error on the 20-hour day, was just an error in
 9 spending too much time. There was nothing illegal or
 10 against policy about that, so I don't know what
 11 you -- how you can -- if you want to refer to it as
 12 an error.
 13 Q. Well, you've -- you've admitted that you
 14 did something wrong, didn't you?
 15 A. I didn't say I did anything wrong. I
 16 said it was not the smartest thing to do.
 17 Q. Not proper judgment?
 18 A. No. I think the judgment in terms of
 19 my -- my ability to safely control that aircraft, I
 20 never had a question about it, or I would have never
 21 taken off.
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 23 A. Because -- for mostly for appearance'
 24 sake, and the fact is that I could have been
 25 fatigued. I wasn't.

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 3 mean, as -- as the chief pilot and safety guy, taking
 4 a day like that, that long is -- is quite a while.
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 6 would the policy change?
 7 A. Again, to promote safety.
 8 Q. Okay.
 9 A. There was a recognition that there was
 10 a -- that that could be a problem again some time,
 11 and Gary wanted to make sure that that didn't happen
 12 again.
 13 Q. Mark Van reported an incident on
 14 September 7th, 2003, which the term is used -- the
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 16 recall that incident?
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 18 Q. Please describe that for me as you
 19 recall it.
 20 A. We departed Soda Springs, I believe,
 21 with a patient with -- a critical patient, either a
 22 head wound or a chest wound that -- that the medical
 23 crew requested we stay low, as low as we could. So I
 24 did. We came over the mountains east of town and
 25 just -- began a descent and continued that descent

1 rest requirements for Part 91 flight?
 2 A. That's correct.
 3 Q. Mark Van will testify that Barry Nielson
 4 and Chad Waller indicated to him that they saw
 5 records indicating that you initially had not
 6 received the ten hours of crew rest, and then the
 7 records were changed to reflect that you had. Have
 8 you ever heard that story before?
 9 A. No. This is the first time I've ever
 10 heard that.
 11 Q. Did you change any -- any records with
 12 regard to crew rest time?
 13 A. No. The only changes I would make to
 14 any records would have been if I screwed it up when I
 15 wrote it down the first time.
 16 Q. So if Chad Waller or Barry Nielson
 17 testify that the records were changed, you would --
 18 would you say they were lying?
 19 A. No. If they said I -- if they said I
 20 did it to -- to cover up flying early, that's
 21 incorrect. The only time I've ever changed those --
 22 and if you look back through any of the logs, you'll
 23 see scribbles and -- well, we don't have whiteout
 24 anymore. You just scribble it out and change it. So
 25 mistakes are made.

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1 Q. Have those -- have those records been
 2 destroyed?
 3 A. The flight manifest would have been
 4 destroyed after 30 days.
 5 Q. Do you recall Mark Van raising this
 6 issue of -- of your 20-hour day?
 7 A. He didn't raise it to me.
 8 Q. Do you know whether he raised it to
 9 anyone else?
 10 A. Well, since it came up again, I'm sure
 11 he raised it to probably Gary Alzola, maybe Pam.
 12 I -- I don't know.
 13 Q. When did it come up again?
 14 A. I -- I can't recall.
 15 Q. If I represent to you that it came up
 16 again in a -- in an August 21st, 2003, LifeFlight
 17 leadership meeting, would you disagree with that?
 18 A. No, because I don't know.
 19 Q. Okay. Do you recall ever being briefed
 20 about that meeting?
 21 A. I'm not sure if that -- if I was or not.
 22 Q. Do you recall Gary Alzola talking to you
 23 about it?
 24 A. You'd have to refresh my memory about
 25 what went on in the meeting. I don't know.

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1 y. I'll represent to you that
 2 Mr. Van will testify that he was in that meeting and
 3 Mark Romero expressed his concerns about the pilot --
 4 about the 20 hours and that Jim Rogers agreed to
 5 that.
 6 Have you ever heard of that before?
 7 A. I may have. I don't know that I
 8 remember it. I do recall, now that you bring it up,
 9 thinking that if they had had a problem, they should
 10 have said something before we took off. That's what
 11 we train people to do. And if they had a problem
 12 with it at the end, they should have done it during
 13 the -- the debriefing of the flight which we do after
 14 every flight.
 15 Q. So you're saying they didn't -- they
 16 didn't raise the problem at the debriefing?
 17 A. No. And they didn't -- they didn't
 18 raise it at debriefing, and they didn't raise it
 19 prior to flight.
 20 Q. Do you have any personal knowledge as to
 21 whether they raised it at all?
 22 A. Obviously, they did if they talked about
 23 it in a meeting.
 24 Q. But I'm talking about your own
 25 knowledge. Did anyone talk to you about that, about

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1 Mark Romero raising those concerns?
 2 A. I don't know that names were
 3 specifically mentioned. I think Gary probably spoke
 4 about it because that's what drove this whole thing,
 5 I believe.
 6 Q. Do you recall what he said?
 7 A. No.
 8 Q. When you say "that's what drove this
 9 whole thing," you mean the policy change?
 10 A. As I said earlier, I think that had a
 11 lot to do with the policy change, yes.
 12 Q. Was anything ever placed in your
 13 personnel file about this 20-hour day?
 14 A. Not to my knowledge. That doesn't mean
 15 it wasn't.
 16 Q. Do you have access to your personnel
 17 file?
 18 A. I've never tried to access it, so I
 19 don't know.
 20 Q. You've never looked in it?
 21 A. No.
 22 Q. Do you recall an incident in
 23 December 2003 in which you piloted the helicopter t
 24 the airport without any lights?
 25 A. Yes.

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1 Q. Tell me what happened there.
 2 A. Prior to loading the aircraft, when I go
 3 out in the morning to preflight the aircraft, we set
 4 it up to how we want it so we can go into a
 5 minimal -- so we can reduce our start times. In that
 6 particular aircraft, the BO-105, the anticollision
 7 lights were left -- we always had them on. The
 8 position lights, same thing if we were flying at
 9 night. They had been turned off. And I did not
 10 check them. So when I got to the airport, it was
 11 dark, and I had been flying with no lights on without
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 21 A. Well, let's go back --
 22 Q. -- written up for it?
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 24 extent, you know, that that calls for some sort of
 25 speculation.

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 21 taken off.
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 24 sake, and the fact is that I could have been
 25 fatigued. I wasn't.

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 3 mean, as -- as the chief pilot and safety guy, taking
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 22 head wound or a chest wound that -- that the medi
 23 crew requested we stay low, as low as we could.
 24 did. We came over the mountains east of town an
 25 just -- began a descent and continued that descen

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VIDEOTAPED DEPOSITION OF RONALD C. FERGIE - 0112512001

1 higher." That's it.
 2 Q. So he told you to keep it up higher?
 3 A. If I had to. No, actually he didn't.
 4 He said, if you have to fly low, fly low, but, you
 5 know, try not to -- again, my recollection is, you
 6 know, stay off -- away from neighborhoods. And he
 7 specifically mentioned that Mark had called in as a
 8 noise complaint, and that was -- that was pretty much
 9 it.
 10 Q. Prior to that, did you stay away from
 11 neighborhoods?
 12 A. I try to stay away from neighborhoods as
 13 much as I can.
 14 Q. But on this specific occasion, were you
 15 closer to the neighborhood?
 16 A. It's very possible. I don't -- again, I
 17 don't recall flying over the neighborhood. I recall
 18 flying next to it.
 19 Q. When -- when this issue came up, did you
 20 talk to Mark Romero about it?
 21 A. I don't recall.
 22 Q. Okay. Did you talk to Laura Vice about
 23 it?
 24 A. Again, I don't recall either one of them
 25 talking about it.

1 Q. Do you -- you don't recall them
 2 mentioning anything to you about it?
 3 A. No. They didn't have any concerns. I
 4 would have mentioned -- I would have remembered that
 5 if they had had a concern about it.
 6 Q. Other than speaking with Gary Alzola
 7 about it, you received no discipline, correct?
 8 A. Again, your -- your definition of
 9 discipline. When I get counseled about something,
 10 I -- I deem that as discipline. I don't need to
 11 be -- it doesn't have to be written up. I don't have
 12 to have a public flogging.
 13 Q. Okay.
 14 A. So I would -- I would term him talking
 15 to me about that as inquiry, and -- and there was no
 16 need to be disciplined because I didn't do anything
 17 wrong.
 18 Q. Okay. I -- I've got to understand your
 19 testimony better. I thought you just indicated that
 20 if you're talked to, you deem that as discipline. Is
 21 that your testimony?
 22 A. If -- in a general sense, if -- if
 23 something comes up where -- where I'm accused of
 24 doing something wrong and it's determined I've done
 25 something probably not smart or wrong, then -- then,

1 ye. I've been counseled about it, I would determine
 2 that -- I -- I deem that as discipline.
 3 In that particular incidence, it was a
 4 matter of Gary asking me about it, I told him about
 5 it, I did nothing wrong, and therefore there was no
 6 discipline. Not only was it not needed, it didn't
 7 happen.
 8 Q. So were you or were you not disciplined
 9 in your own mind for this incident?
 10 A. No, I was not.
 11 Q. How many times were you disciplined in
 12 2003?
 13 A. I don't know. We talked about the
 14 20 hours, if you want to call that a discipline. It
 15 was counseling. I don't know. I wouldn't call that
 16 necessarily discipline.
 17 What was the other thing I was accused
 18 of doing?
 19 Q. Flying with the lights off.
 20 A. With the lights off, yeah. That one I
 21 would take that as discipline because that was --
 22 that was wrong to fly with the lights off, no doubt
 23 about it.
 24 Q. Now, in June 2004, there was an AD
 25 overflight, was there not?

1 A. Yes.
 2 Q. Okay.
 3 MR. MCFARLANE: Counsel, before we go in
 4 new area, I think the tape is about to run out, and
 5 maybe it's an appropriate time for a break.
 6 MR. NIELSON: Is the tape about to run out?
 7 THE VIDEOGRAPHER: Let's put it this way
 8 you've got ten minutes of tape left. You can decide.
 9 MR. NIELSON: Why don't we take a break.
 10 THE VIDEOGRAPHER: Okay.
 11 We'll now go off the record.
 12 (Break from 11:06 a.m. to 11:25 a.m.)
 13 THE VIDEOGRAPHER: This is Tape No. 2
 14 video deposition of Ron Fergie. We are now on the
 15 record.
 16 Q. (BY MR. NIELSON) Mr. Fergie, before
 17 took a break, I started asking you about an AD
 18 overflight.
 19 A. Yes.
 20 Q. Could you recall how that happened
 21 any circumstances you can remember pertainin
 22 that?
 23 A. I can give you everything I can
 24 remember.
 25 Q. Okay. Very good.

1 A. It was a ... from Portneuf to Salt
2 Lake City, and I looked at the AD and the time it
3 would take to get to Salt Lake and back. In my
4 judgment, I could make it without overflying the AD.
5 And in fact, when we got back, there was a wind out
6 of the south, so I flew the aircraft around to land
7 into the wind, like we normally do. Had I not done
8 that, it never would have turned over to be an
9 overflight of the AD. I think it went over maybe by
10 a tenth of a -- of a minute. I'm not sure. It just
11 rolled over right when I did it to where it was
12 beyond the AD.

13 It was not an intentional override. I
14 thought I could do it. Yeah. And between winds and
15 just general flying, it -- it didn't work out that
16 way. It was right at the edge. That's pretty much
17 it.

18 Q. Did you report that to anyone?

19 A. Yes.

20 Q. Who did you report it to?

21 A. Gary knew about it. I think Mark knew
22 about it almost immediately. It was in the logbook.
23 I don't recall if I actually told Mark. I -- I think
24 I did. But I don't know that. I can't remember.

25 Q. When did you tell Gary about it?

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1 A. I would -- I would have told him the
2 next time I saw him, and I -- I don't know what
3 shift, what portion of the shift I was on, but Gary
4 would relieve me of my last night shift, Gary comes
5 on duty, and I will relieve him in his last night
6 shift. That's just how our system works, so I would
7 have told him the next time I saw him.

8 Q. Would that have been within 24 hours?

9 A. I -- I can't -- I just don't know. I
10 can't remember.

11 Q. Or would it been -- would it have been
12 within two days?

13 A. You know, it was a night flight. It's
14 possible it could have been within a couple -- the
15 maximum it would have been would be 72 hours.

16 Q. Did you have to write anything up on
17 that?

18 A. I did not. Gary did a what's called a
19 self-disclosure to the FAA. If -- if I wrote
20 something up on it, and I may have, I don't recall
21 writing it up.

22 Q. Do you --

23 A. I may have written it up to explain the
24 circumstance, and that's about it.

25 Q. Do you recall -- do you recall talking

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1 to I ... about it?

2 A. ... I don't recall. I actually don't.

3 I -- I think I did, but I -- I cannot say for sure
4 whether I told Mark about it.

5 Q. That was a violation of FARs, correct?

6 A. It was.

7 Q. Did anyone ask you to report it to Gary?

8 A. No. I did that on my own.

9 Q. Did you receive any reprimands for that?

10 A. I don't know if they were written. I --
11 I can't remember. I was certainly talked to about
12 it.

13 Q. Okay.

14 A. And the FAA was notified about it.
15 That's -- that's a pretty serious thing when you
16 overfly an AD.

17 Q. Okay. So given your definition of -- of
18 what you call discipline, were you disciplined?

19 A. In the -- in the -- excuse me. Let me
20 point out something.

21 Q. You're fine. Take your time.

22 A. Okay. I had an hour of sleep last
23 night. I -- I flew. So if I stumble, it's because
24 I'm getting tired. And if I tend to be snappy, it's
25 not because I don't think this is important. It's

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1 just because I -- we had a long night, okay? So I
2 not trying to be crabby or anything if I do so. I
3 just want you -- I know this is important, and we
4 need to get this taken care of.

5 So when we're talking about my
6 definition of -- of discipline, we're talking about
7 what I said if I get talked to about something, I
8 consider that discipline? Yes.

9 Q. Yes.

10 A. Yes.

11 Q. You were disciplined?

12 A. Yes.

13 Q. I -- I want to ask you, given your hou
14 of -- of sleep last night, is that what you said?

15 A. Yeah. Approximately an hour, maybe
16 maybe two.

17 Q. Is that affecting the way you're
18 answering any questions today?

19 A. At this point, I don't think it is. I
20 may -- I may look at the transcript at some point
21 say I can't believe I said that, but I may do that if
22 I'm fully awake too. So no, I think I'm okay.

23 Q. I want you to let me know if it affect
24 your ability to answer questions in any way.

25 A. If my -- if I start getting cloudy about

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2 Lake City, and I looked at the AD a certain time it
3 would take to get to Salt Lake and back. In my
4 judgment, I could make it without overflying the AD.
5 And in fact, when we got back, there was a wind out
6 of the south, so I flew the aircraft around to land
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24 I did. But I don't know that. I can't remember.

25 Q. When did you tell Gary about it?

1 to Mark Van about ...

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4 whether I told Mark about it.

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24 circumstance, and that's about it.

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1 just because I -- we had a long night, okay? So I'm
2 not trying to be crabby or anything if I do so. I
3 just want you -- I know this is important, and we
4 need to get this taken care of.

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20 may -- I may look at the transcript at some point and
21 say I can't believe I said that, but I may do that if
22 I'm fully awake too. So no, I think I'm okay.

23 Q. I want you to let me know if it affects
24 your ability to answer questions in any way.

25 A. If my -- if I start getting cloudy about

1 things, I will only let you know.
 2 Q. Appreciate that.
 3 You say you were disciplined, but as far
 4 as you know, was there anything put in your personnel
 5 file?
 6 A. Again, I don't know. I've -- I've never
 7 looked at the personnel file. I know that my name
 8 was turned in to the FAA by Gary when he wrote it up.
 9 Q. Did the FAA talk to you about it?
 10 A. I don't remember if they did or not.
 11 Q. I'll represent to you that there was
 12 another overflight of approximately four-tenths of an
 13 hour. Do you recall that?
 14 A. Yes.
 15 Q. Do you recall who the pilot was in that
 16 instance?
 17 A. Yeah. It was Chad Waller.
 18 Q. Do you ever recall a relief pilot by the
 19 name of John?
 20 A. Yes.
 21 Q. What was his last name?
 22 A. Ferguson.
 23 Q. Did -- you're sure that this other
 24 overflight did not pertain to John Ferguson?
 25 A. Yeah, I am sure.

Page 89

1 Q. It pertained to Chad Waller?
 2 A. Yes.
 3 Q. Do you know if Chad Waller was
 4 disciplined?
 5 A. No. I wouldn't -- I wouldn't --
 6 Q. You don't have any knowledge of --
 7 A. Right, yeah.
 8 Q. Do you instruct your pilots not to
 9 overfly the ADs?
 10 A. Yes.
 11 Q. Is this -- you would admit, then, that
 12 this is another bad example?
 13 A. No.
 14 MR. MCFARLANE: Object to form.
 15 Q. (BY MR. NIELSON) Go ahead.
 16 A. Okay. No. It wasn't a bad example.
 17 When I looked at the -- when we fly, we take in to
 18 consider weather, winds and how fast we can go. And
 19 by looking at that, I looked at it, I said, well, we
 20 can make it.
 21 And as I stated before, had I landed
 22 with a tail wind, and the winds weren't that strong,
 23 but had I landed with a tail wind, that would have
 24 never flipped over to be an over -- it would have
 25 never been an overflight. As it was I took the safe

Page 90

1 ion and came in and landed to the south, s
 2 could be -- and that -- and that's when it flip
 3 over to become an overflight.
 4 I used the best judgment I could i
 5 in determining that I can fly this. If I didn't ha
 6 any deviations, I could fly this flight without
 7 overflying the AD.
 8 Q. Okay. You're saying it was -- it
 9 not a bad example, but it was a violation o
 10 correct?
 11 A. It was.
 12 Q. I'd like to go now to the -- to an
 13 incident that occurred approximately Oct
 14 2004, involving Barry Nielsen and snow at
 15 rotor blades.
 16 A. Okay.
 17 Q. Do you recall that incident?
 18 A. I do.
 19 Q. Tell me what you remember ab
 20 A. Mark reported that incident to m
 21 very last of December or the -- correction, th
 22 last of November or the first week in Decem
 23 that year. And he said that Greg Stoltz, the
 24 the time, he was a part-time mechanic, had
 25 note saying that he thought he was -- that t

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 4 finished with the preflight, I went downstair
 5 immediately called Greg Stoltz. My recolle
 6 is he was busy and he called me back, but
 7 within the hour that I spoke with Greg.
 8 Q. What did Greg tell you?
 9 A. Greg said that he could not rer
 10 date of when it happened but that he -- th
 11 concerned. He explained that he had gon
 12 and there was frost on the aircraft -- excu
 13 ice, and he -- I'm pretty certain he used th
 14 "frost," not ice, but that the blades were fr
 15 and that the two blades that were on the f
 16 portion of the aircraft were getting sun, ar
 17 had melted. He was doing a daily, his da
 18 maintenance on the aircraft, and he took
 19 turned the blades around so that the two
 20 still had frost on them would be in the su
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 22 He said -- he wasn't so conce
 23 someone taking off with icing on the airc
 24 was concerned that when they started th
 25 there was ice on it, it would fling it and o

1 A. Yes, I think so. [REDACTED] who I -- I -- I
 2 believe that's who Mark reported [REDACTED] but I don't know
 3 that for sure.
 4 Q. Okay. You wanted Mark to report to Gary
 5 Alzola, didn't you?
 6 A. I did.
 7 Q. Did you push for that?
 8 A. Did I push for it?
 9 Q. Yeah.
 10 A. I suggested it. I -- I asked why it
 11 wasn't that way and was told that they had changed it
 12 and suggested to Gary, I believe, but I don't know.
 13 I can't remember who I spoke with. You know, can we
 14 change it back, and I think it was a pretty much no,
 15 but I don't -- I don't even remember the conversation
 16 well enough to talk about it.
 17 Q. Do you believe that that would have
 18 resolved concerns if he was placed under Gary Aizola?
 19 A. I doubt it.
 20 THE VIDEOGRAPHER: Excuse me. We have ten
 21 minutes of tape left.
 22 MR. MCFARLANE: Guzunheit.
 23 (Exhibit 9 marked.)
 24 Q. (BY MR. NIELSON) You've been handed
 25 Deposition Exhibit 9. Could you look at that and

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1 tell me if you've seen it before.
 2 A. No, I have not seen this before.
 3 Q. You've never seen it before today?
 4 A. Right.
 5 (Exhibit 10 marked.)
 6 Q. (BY MR. NIELSON) You've been given
 7 Deposition Exhibit 10. Please take a look at that
 8 and tell me if you've seen it before.
 9 A. You know what, I'm -- I'm not sure if I
 10 have or not, but I -- well, I -- I probably have, but
 11 I don't know.
 12 Q. What is it, as far as you know?
 13 A. It is a letter of correction from --
 14 signed by Lynn Higgins, and it has to do with a base
 15 inspection, I think, where he found some errors or
 16 omissions, one or the other, in one of the pilot's
 17 logbooks.
 18 Q. Okay. Do you believe that this was
 19 brought to your attention at the time it happened?
 20 A. You mean, when -- when the -- when this
 21 letter came, you mean?
 22 Q. Yes.
 23 A. Yes, it probably was, but I don't -- you
 24 know, I don't know for sure.
 25 Q. Do you have any recollection at all

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1 regarding the incident that's indicated in this
 2 warning?
 3 A. Well, there's no names on here, so I can
 4 only guess. If you've got some information that you
 5 can refresh my memory with, I'd appreciate it.
 6 Otherwise, I would be guessing between what I think
 7 the incident was, and I don't want to guess.
 8 Q. It indicates, "Certificate holder did
 9 not maintain adequate pilot records: pilot flight
 10 time."
 11 A. (Moving head up and down.)
 12 Q. You don't have any idea what that's
 13 about, then?
 14 A. I do. I just need to -- you know, if --
 15 if it happened -- I mean, I know of one occasion when
 16 Lynn Higgins came up and did a base inspection, and
 17 there was a -- an error in one of the pilot's books.
 18 In fact, there are errors in a couple of the pilot's
 19 books that were corrected immediately because it was
 20 a matter of transcription. It wasn't somebody not
 21 logging time or logging the wrong time. It was
 22 putting something in the wrong place.
 23 The one issue that we couldn't take care
 24 of at the time was a flight time issue that had not
 25 been recorded in the right place or a date, and I --

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1 I can't remember which one it was. The -- the pilot
 2 was not available for comment, so I couldn't have him
 3 come in and correct it and -- and explain to Lynn
 4 Higgins satisfactorily what happened.
 5 Q. In the instance that you're talking
 6 about right now, who was the pilot?
 7 A. That was Chad, Chad Waller.
 8 Q. Okay.
 9 THE VIDEOGRAPHER: Excuse me, we have five
 10 minutes of tape left.
 11 Q. (BY MR. NIELSON) Do you believe that
 12 this pertained to Chad Waller?
 13 A. I do.
 14 Q. Okay.
 15 A. But let me qualify that. I think so,
 16 but again, because there's no name on it, and I don't
 17 recall the date, you know, it could be George Bush
 18 for that matter. I just don't know. He was a pilot.
 19 Q. Was there a pilot named John Ferguson?
 20 A. There was.
 21 Q. Okay. Could this have pertained to John
 22 Ferguson?
 23 A. It -- it could have, yes.
 24 Q. Was he a relief pilot?
 25 A. He was.

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1 just don't know. I wasn't.
 2 **Q. Has there ever been any situations in**
 3 **which pilots have slept through the night and left**
 4 **the aircraft unairworthy because of snow and ice on**
 5 **the rotor blades?**

6 **A. I'm sure there has.**

7 **Q. Would you consider that as a waste of**
 8 **taxpayer resources to do that?**

9 **A. No.**

10 **Q. Why not?**

11 **A. Well, number one, the taxpayers don't**
 12 **pay anything in the hospital.**

13 **Q. Isn't the hospital a governmental**
 14 **entity?**

15 **A. It doesn't use government funds.**

16 **Q. What funds does it use?**

17 **A. It uses funds made by the hospital.**

18 **Q. Okay. Aren't those governmental funds?**

19 **A. No. To my knowledge, that hospital**
 20 **hasn't used any government funds for in excess of 30**
 21 **years, and that's my knowledge. I could be wrong.**

22 **Q. So the money is generated by the**
 23 **hospital or do not belong to the County?**

24 **A. They go back into the hospital. You're**
 25 **asking me way out of my scope of -- of practice as**

1 you were. I have no clue, to be quite honest with
 2 you. But I just know is if it were a true government
 3 agency, then I would be able to get government
 4 benefits. I don't.

5 **Q. Well, okay. Aside from that, then, you**
 6 **don't believe it was a waste of the hospital's funds**
 7 **to have a crew there on staff while a pilot is**
 8 **sleeping and snow and ice is on the rotor blades?**

9 **A. Well, what happens is -- that's --**
 10 **that's a very tough question to answer, and I can --**
 11 **you -- it can just start snowing and the weather can**
 12 **turn to crap, and two hours later the weather can**
 13 **clear up, that's why the crew stays there overnight.**
 14 **It's no worse than having a mechanic stay there all**
 15 **day and do nothing. It's -- if -- I mean, that's the**
 16 **kind of reference you are making here. If you have a**
 17 **crew there and you know the aircraft can't fly, then**
 18 **we're wasting money. If you have a mechanic there**
 19 **and he doesn't have anything to do with maintenance**
 20 **at the time, then the hospital is wasting money.**

21 **Q. Well, I'm talking of -- about a pilot**
 22 **that sleeps through the night and doesn't remove snow**
 23 **and ice, doesn't do that function. Is that**
 24 **considered waste?**

25 **A. I don't know. Again, it depends. If --**

1 if a snow storm stopped at -- or -- or the icing
 2 stopped at two o'clock in the morning or three,
 3 whenever, and the pilot knew that it stopped and he
 4 got out -- and he didn't get out and clear the ice
 5 off, and then again that's -- that's his call because
 6 it depends on there may be more weather coming in.
 7 There's, you know, a whole lot of -- of variables
 8 here that are not coming into your -- your statement
 9 that I just can't address. It's, I guess, a
 10 case-by-case issue is what I would say.

11 **Q. Well, did you know of any instances**
 12 **where pilots didn't get out and clean rotor blades**
 13 **until the morning?**

14 **A. I'm certain I didn't. I couldn't give**
 15 **you a date or a time, but I can tell you that -- that**
 16 **if the weather was forecast to be bad and stay bad**
 17 **all night, and it got that way, there's no sense**
 18 **cleaning them off if you're going to have to go do it**
 19 **again.**

20 **Q. So if there was a call received in the**
 21 **middle of the night and there was snow and ice on the**
 22 **rotor blades, how long would it take to -- to clean**
 23 **them off and be ready to go?**

24 **A. It would depend on how much ice, whether**
 25 **the blade covers were on or not and if you had any**

1 help. It could be anywhere from 20 minutes to an
 2 hour and a half.

3 **Q. Okay. Well, the hospital prides itself**
 4 **on quick response times, doesn't it?**

5 **A. It does.**

6 **Q. Okay. And then isn't this procedure**
 7 **that you're talking about of letting snow and ice**
 8 **accumulate, doesn't that basically counteract the**
 9 **quick response time?**

10 **A. No more than it does anywhere else in**
 11 **the world. I don't know of any -- in fact --**

12 **Q. What do you mean "anywhere else in the**
 13 **world"?**

14 **A. Well, Air Idaho Rescue, north of us, has**
 15 **the same -- they have the exact same issues that we**
 16 **do. Salt Lake City has the exact same issues that we**
 17 **have when it comes to knowing when to put the covers**
 18 **on that blade, knowing when to get out there and**
 19 **deice, sometimes you call it right, sometimes you**
 20 **don't. And when you don't, you know, the aircraft**
 21 **is -- is essentially out of service until you can get**
 22 **it deiced. That happens on occasion. It's rare, but**
 23 **it doesn't happen.**

24 **Q. Do you know if either of those entities**
 25 **let their pilots sleep through the night?**

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3 **which pilots have slept through the night and left**
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23 **it doesn't happen.**

24 **Q. Do you know if either of those entities**
25 **let their pilots sleep through the night?**

30

1 blades before you got to it?
 2 A. No. I don't -- I don't know. We were
 3 both out there. That's all I remember.
 4 Q. Did you instruct him not to remove the
 5 snow and ice before putting on the blades?
 6 A. I did not instruct him not to remove
 7 snow and ice on the blades. I said let's put them on
 8 before the snow and ice gets on there. I mean, it
 9 was snowing a little bit, and when -- when you pull
 10 those blades or those covers up over the blade, if
 11 it's not snowing too much, it will just move the ice,
 12 or the snow rather, off the blade, and that's what my
 13 intent was. But I did not tell him not to wipe them
 14 off.
 15 Q. Did you tell him the snow would come
 16 right off with the covers?
 17 A. I may -- wait a minute. Come off while
 18 taking the covers off or would the snow come off
 19 while I pulled the covers on?
 20 MR. MCFARLANE: You need to ask him to
 21 rephrase the question.
 22 THE WITNESS: Would you rephrase the
 23 question, sir.
 24 Q. (BY MR. NIELSON) Okay. Let's go with
 25 putting the covers on first.

1 Did you tell him that the snow would
 2 come right off when you put the covers on?
 3 A. I -- I may very well, yes, because
 4 that's what I thought we were going to do. I thought
 5 that was -- would work, yes, so it's possible I made
 6 that statement.
 7 Q. Did you tell him that the snow would
 8 come right off when the covers came off?
 9 A. No.
 10 Q. Okay. Did -- did you get upset with --
 11 with Chad for trying to get the snow and ice off
 12 before putting on the covers?
 13 A. No.
 14 Q. Okay. Do you know if there was a
 15 preflight inspection the next morning?
 16 A. Yes.
 17 Q. Did you do that preflight inspection?
 18 A. I did.
 19 Q. When did you do it?
 20 A. I started probably at eight. It was --
 21 it was late because -- for two reasons, the sun
 22 was -- I wanted the sun up so I could see what I'm
 23 doing, and then the other was Gary Alzola and I were
 24 talking down in the office for some time.
 25 Q. Do you recall what you were talking

1 about?
 2 A. No.
 3 Q. Did you perform this preflight
 4 inspection prior to Mr. Van deicing the -- the
 5 blades?
 6 A. No. I came out. Mark was starting to
 7 deice already when I got out there.
 8 Q. Okay. And so you're saying that was
 9 about eight in the morning?
 10 A. Yeah, I think somewhere around there.
 11 Q. If I represent to you that Mr. Van was
 12 deicing the plane at -- the blades at 8:45, would you
 13 have reason to disagree with that?
 14 A. Yeah, I would. I'm not going to dispute
 15 it a hundred percent, but yes. I --
 16 Q. You believe it was earlier in the
 17 morning?
 18 A. Yes.
 19 Q. How long did it take to deice the plane?
 20 A. I don't know. I don't recall.
 21 Q. The helicopter, I'm sorry.
 22 A. I don't recall.
 23 Q. Okay. If I represent to you that it
 24 took 45 minutes, would you disagree with that?
 25 A. No.

1 Q. Do you recall the substance of any
 2 conversation that you had with Mark when -- when he
 3 was deicing the helicopter?
 4 A. Yeah. He seemed upset that there was
 5 ice on the blades, and I said, "Yes, it was snowing
 6 last night when we landed."
 7 Q. Were you upset?
 8 A. No. He thought I was.
 9 Q. How did -- how do you know he thought he
 10 was?
 11 A. Well, my recollection is, and I could be
 12 wrong, he told somebody that I got mad about it when
 13 he asked me about it. It wasn't the case. I raised
 14 my voice, A, because I was quite a ways -- I mean, I
 15 was on the pad, but he was up on -- on a ladder to my
 16 recollection. This was also prior to me getting
 17 hearing aids, so I tended to talk loud anyway. I --
 18 I may still. But I was not upset about it. I just
 19 made the statement.
 20 Q. There was no anger in your voice?
 21 A. Not to me.
 22 Q. How heavily was it snowing the night
 23 before?
 24 A. When we landed, it was -- it was
 25 snowing. I don't want to say heavy, probably

VIDEOTAPED DEPOSITION OF RONALD C. FERGUSON

1 moderately, but . . . snowing.
 2 Q. Okay. It wasn't a real blizzard, then?
 3 A. I don't know if it was a blizzard or
 4 not. No. But it was -- it was snowing, and it
 5 wasn't just light snow, but, you know . . .
 6 Q. Mr. Van will testify that until he got
 7 on a ladder, he couldn't see the snow on the blades.
 8 Would you have any reason to disagree
 9 with that?
 10 A. I can't think of any reason.
 11 Q. Whose responsibility is it to make sure
 12 that the snow and ice are off the blades?
 13 A. Before takeoff?
 14 Q. Before takeoff.
 15 A. The pilot's.
 16 Q. Okay. Did you ask Barry Nielsen if he
 17 was sure there was no ice and snow on the blades
 18 before he took off?
 19 MR. MCFARLANE: Object to form. It's been
 20 asked and answered.
 21 Q. (BY MR. NIELSON) Go ahead.
 22 A. Yes, but it didn't make a difference
 23 because he didn't remember the flight, period.
 24 Q. Following -- let me -- let me go back.
 25 Prior to this incident of February 1st,

1 2005, you don't recall Mark Van bringing up
 2 suggestions for a cold weather operations policy?
 3 A. Yes, I -- I do recall that.
 4 Q. Okay. And that was prior to
 5 February 1st, 2005?
 6 A. Probably, but I can't remember for sure,
 7 but I -- he did bring up several suggestions.
 8 Q. Do you recall what those suggestions
 9 were?
 10 A. Not all of them, but they were out of --
 11 we decided we weren't going to do everything Mark Van
 12 wanted us to do.
 13 Q. Did you do anything Mark Van wanted you
 14 to do?
 15 A. We already had -- yes, we did. We
 16 got -- there's several things in place now, but some
 17 of them we were already doing, some of them we got
 18 much more diligent about. And some of the other
 19 things he wanted to do were -- and I don't know
 20 specifically what they were, but they were
 21 unacceptable.
 22 Q. Did you indicate to him that you weren't
 23 going to accept some of the things?
 24 A. I don't remember if I did specifically.
 25 He was meeting with Gary about those issues more than

1 . . . had written a policy that covered
 2 every . . . I thought and put in some of the things
 3 that Mark had recommended and left others out.
 4 Q. When did you write that policy?
 5 A. Probably -- I don't know. I can't
 6 remember. It would have been -- because what we
 7 is we beefed up the policy that was there. It was
 8 essentially, you know, if the weather is forecast for
 9 bad weather, we get the covers on and whatever, s
 10 made it a little more specific. And again, some of
 11 Mark's recommendations were put in there, some of
 12 them weren't.
 13 Q. Did you write up this policy before or
 14 after February 1st, 2005?
 15 A. I -- I would say before, but I cannot
 16 remember.
 17 Wait a minute. Before 2005?
 18 Q. Before February 1st, 2005.
 19 MR. MCFARLANE: If you don't remember
 20 you don't remember.
 21 THE WITNESS: You know, I just don't
 22 remember, to be honest with you.
 23 Q. (BY MR. NIELSON) This policy that
 24 wrote -- that you wrote up, did it include any
 25 provision for taking the snow and ice off of -- off

1 the rotor blades, wiping it off before putting on the
 2 covers?
 3 A. No.
 4 Q. Is there such a policy now?
 5 A. Not that I know of. I've never seen
 6 anything like that in writing. If you're -- if
 7 you're -- let me back up.
 8 If you are referring to put the blade or
 9 the cover on, you know, wipe it off, put the cover
 10 a little bit, and then wipe it off some more, if
 11 you're referring to that specific procedure, I have
 12 never seen anything like that in writing. If you're
 13 referring to wiping off the blades and putting the
 14 covers on, yes, that's probably in there because
 15 don't want to put covers on wet blades.
 16 Q. Well, with regard to that procedure,
 17 wiping off all the blades and then putting the c
 18 on, when was that put in the policy?
 19 A. Again, I don't remember.
 20 Q. Okay. Did Gary Alzola ever tell you
 21 wipe the blades off a little at a time?
 22 A. Yeah, he suggested it as matter of fa
 23 He says, well -- either him and Chad or him or C
 24 at some point both, but Gary was the one that I
 25 recall making that statement. And as I told him

1 had never thought about doing that. That was the
 2 first time it -- it had ever been pointed out.
 3 Q. And your testimony is that ever since
 4 then you've done it that way?
 5 A. Absolutely.
 6 Q. You don't know when he made that
 7 suggestion?
 8 A. No. That was right after this incident
 9 with the -- with the snow staying under -- a
 10 little -- a little bit of snow staying under the
 11 blades.
 12 Q. Were you disciplined for this?
 13 A. I just don't recall. I don't think so.
 14 I don't know. Maybe I was. I'm sure I was talked to
 15 about it. And again, if I was talked to about it, I
 16 would have taken that as a discipline maybe or just a
 17 discussion. But I -- I really just don't remember.
 18 Q. As far as you know, nothing was written
 19 up about it, correct?
 20 A. Correct.
 21 Q. Have you ever lifted off with snow on
 22 the rotor blades?
 23 A. No.
 24 Q. That goes for the same -- the same for
 25 ice or frost?

1 A. Absolutely not.
 2 Q. Okay. You make sure that there's none
 3 before you go?
 4 A. Yes.
 5 Q. Do you know of any pilots who have?
 6 A. Not to my knowledge.
 7 MR. NIELSON: I'm thinking this would
 8 probably be a good time for a break, for a lunch
 9 break.
 10 MR. MCFARLANE: Okay. Do you have any idea
 11 how much more you've got?
 12 MR. NIELSON: I'd say one to two hours.
 13 MR. MCFARLANE: Okay.
 14 Are you okay with that, taking a lunch
 15 break and coming back or --
 16 THE WITNESS: Yeah, we can do that.
 17 THE VIDEOGRAPHER: Okay. We will now go off
 18 the record.
 19 (Break from 12:17 p.m. to 1:04 p.m.)
 20 THE VIDEOGRAPHER: We are now on the record.
 21 Q. (BY MR. NIELSON) Mr. Fergie, just as a
 22 courtesy, I'll -- I'll ask you, are you still able to
 23 answer questions --
 24 A. Yes.
 25 Q. -- this afternoon?

1 A. Yes, sir, yes.
 2 Q. Considering that we've been in this for
 3 probably about a little over three hours now?
 4 A. Yes, I can answer them. It will just
 5 make me sleep better tonight.
 6 Q. I'm glad you feel that way.
 7 (Exhibit 4 marked.)
 8 Q. (BY MR. NIELSON) Mr. Fergie, I'm going
 9 to hand you what -- you've been handed what has been
 10 marked as Deposition Exhibit 4. Please look over
 11 that and tell me if you recognize that document.
 12 A. This is the first time I've ever seen
 13 this document.
 14 Q. I'll represent to you that it was --
 15 it's my understanding that it was prepared by Audrey
 16 Fletcher pertaining as it's stated on the front
 17 cover, "Sequence of Events Leading to Mr. Van's
 18 Dismissal."
 19 I'd like you to turn to page 8.
 20 A. Okay.
 21 Q. Do you see the first sentence on page 8
 22 that indicates "He stated"?
 23 A. Yes.
 24 Q. Okay. He stated that Barry had walked
 25 right up to him when he made these comments and th

1 he, Mark, felt physically threatened by Barry. Barry
 2 stated that he had just been informed by Ron Fergie
 3 that the incident -- excuse me, Ron Fergie, pilot, in
 4 parentheses, that the incident (Take-off with
 5 (alleged) ice on the blades) from last October had
 6 been raised again, and that he was angry that,
 7 despite an investigation at the time and subsequent
 8 action, Mark seemed unable to let this matter drop.
 9 Do you recall informing Barry Nielsen
 10 that the incident from October '04 had been raised
 11 again?
 12 A. Yes. Some -- let me rephrase that. I'm
 13 not sure if I remember it or if just by reading it
 14 here. I think, yes.
 15 Q. What did you tell Barry?
 16 A. I don't recall. I -- I just remember
 17 that when it came up again, I let Barry know that it
 18 was -- we're going to have to deal with it again.
 19 Q. Okay. Wasn't that information with
 20 regard to a safety concern?
 21 MR. MCFARLANE: Object to form.
 22 Q. (BY MR. NIELSON) Did you disclose
 23 information to Barry again that Mark was raising a
 24 safety concern?
 25 A. I told Barry that Mark was raising this

1 had never thought about [redacted] ing that. That was the
 2 first time it -- it had ever been pointed out.
 3 Q. And your testimony is that ever since
 4 then you've done it that way?
 5 A. Absolutely.
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 7 suggestion?
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 10 little -- a little bit of snow staying under the
 11 blades.
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 17 discussion. But I -- I really just don't remember.
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 19 up about it, correct?
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 22 the rotor blades?
 23 A. No.
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 25 ice or frost?

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 2 Q. Okay. You make sure that there's none
 3 before you go?
 4 A. Yes.
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 6 A. Not to my knowledge.
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 8 probably be a good time for a break, for a lunch
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 23 answer questions --
 24 A. Yes.
 25 Q. -- this afternoon?

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 2 Q. Considering that we've been in this for
 3 probably about a little over three hours now?
 4 A. Yes, I can answer them. It will just
 5 make me sleep better tonight.
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 25 right up to him when he made these comments and th

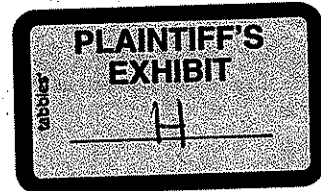
1 he, Mark, felt physically threatened by Barry. Barry
 2 stated that he had just been informed by Ron Fergie
 3 that the incident -- excuse me, Ron Fergie, pilot, in
 4 parentheses, that the incident (Take-off with
 5 (alleged) ice on the blades) from last October had
 6 been raised again, and that he was angry that,
 7 despite an investigation at the time and subsequent
 8 action, Mark seemed unable to let this matter drop.
 9 Do you recall informing Barry Nielsen
 10 that the incident from October '04 had been raised
 11 again?
 12 A. Yes. Some -- let me rephrase that. I'm
 13 not sure if I remember it or if just by reading it
 14 here. I think, yes.
 15 Q. What did you tell Barry?
 16 A. I don't recall. I -- I just remember
 17 that when it came up again, I let Barry know that it
 18 was -- we're going to have to deal with it again.
 19 Q. Okay. Wasn't that information with
 20 regard to a safety concern?
 21 MR. MCFARLANE: Object to form.
 22 Q. (BY MR. NIELSON) Did you disclose
 23 information to Barry again that Mark was raising a
 24 safety concern?
 25 A. I told Barry that Mark was raising this

1 issue about he allegedly taking off with icing.
 2 Q. Did you give Barry Nielsen any e-mails
 3 that Mark had sent to Gary Alzola?
 4 A. Not that I know of.
 5 Q. Okay.
 6 (Exhibit 5 marked.)
 7 Q. (BY MR. NIELSON) I'm handing you
 8 Deposition Exhibit 5. Please take a look at that and
 9 tell me if you've seen that before.
 10 A. I -- this stuff looks familiar. Again,
 11 I don't know if -- if it's because I've seen this
 12 document before or if it's just because of some of
 13 the stuff I'm familiar with.
 14 Q. Do you recall -- do you recall when you
 15 first saw the document?
 16 A. No.
 17 MR. MCFARLANE: Object to form.
 18 Q. (BY MR. NIELSON) You do recall seeing
 19 the document before.
 20 MR. MCFARLANE: Object to form.
 21 MR. NIELSON: Could you explain your
 22 objection so --
 23 MR. MCFARLANE: He just testified that he's
 24 not sure if he has seen it before, that he's not sure
 25 if it's because he has seen it before or because he

1 is familiar with the incidents described in this
 2 document, so if he's not sure if he's seen it
 3 before . . .
 4 Q. (BY MR. NIELSON) Is it your
 5 understanding that you saw this sometime before
 6 today?
 7 A. It's -- it's my understanding that I've
 8 seen some of the items on here. If I read the whole
 9 thing, I may be able to determine if there's some
 10 that I have not seen. But to be quite honest, I just
 11 don't know if I've seen it before or not.
 12 Q. I'll represent to you that on or about
 13 February 25th, 2005, Barry Nielsen -- Mark Van will
 14 testify that Barry Nielsen was -- came up to him on
 15 the helipad and indicated what's this about all the
 16 e-mails flying around. Do you have any knowledge
 17 about that?
 18 A. About e-mails, no.
 19 Q. Do you know what Barry Nielsen could
 20 have been referring to?
 21 A. You'd have to refresh my memory in terms
 22 of what specific -- I -- I don't know every
 23 conversation that Mark and Barry had. I know there
 24 was an incident where Mark felt threatened.
 25 That's -- if you are referring to that one, I still

1 know anything about e-mails. I don't know
 2 Barry said.
 3 Q. Well, tell me about the incident with
 4 Mark felt threatened.
 5 A. And again, all it's -- I don't know how
 6 or why he -- he felt -- I just know that Mark --
 7 Barry went on to the pad and confronted Mark
 8 regarding, I think, the icing issue, and that's
 9 pretty much all I know about it.
 10 Q. Do you -- did Barry Nielsen ever tell
 11 you what he said?
 12 A. No. Well, he may have. Yes, he did
 13 a matter of fact. He just -- he -- I believe he
 14 stated to Mark what are you trying to do, run the
 15 program into the ground or words to that effect.
 16 Q. Okay. Did he tell you what Mark's
 17 response was?
 18 A. If he did, I don't remember it.
 19 Q. Okay. Did Barry Nielsen tell you
 20 said that to Mark?
 21 A. No, other than he was -- he was afraid
 22 about having to continue to deal with the same
 23 over and over again.
 24 Q. Do you know if Barry Nielsen was
 25 and said that because of what you told Barry

1 A. No, I don't. You'd have to ask Barry
 2 that question.
 3 Q. He didn't tell you why he made those
 4 comments to Mark, then?
 5 A. No. I didn't -- I didn't know he even
 6 went out -- I didn't even know there was what
 7 might call an incident where he -- he confronted
 8 until some time afterward.
 9 Q. Did you talk to Mark about the incident?
 10 A. Did I talk with -- with him about the
 11 incident with Barry coming and talking to him?
 12 Q. Yes.
 13 A. No.
 14 Q. Okay. Did you feel that it was his
 15 place?
 16 A. I didn't know it happened until sometime
 17 afterwards, so. And by that time, it's certainly
 18 my place.
 19 Q. Okay. Was it anybody's place to
 20 about it, in your mind?
 21 A. Between two grown men, I -- you
 22 guess it would depend on the incident. I don't
 23 know.
 24 Q. Well, based on what Barry told you
 25 would it have been anybody's place in Life
 LifeFlight to -- to investigate the matter?



Transcript of the Testimony of **MARK C. VAN**

Date: May 24, 2007

Case: VAN v. PORTNEUF MEDICAL

Printed On: September 11, 2007

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1 A. I believe that my W-2 said \$80,000. I had
2 cashed in some vacation. I think otherwise I would have
3 made \$78,000 or something like that. But I am not
4 certain because I don't have the facts in front of me.
5 Q. Somewhere 75, 80,000, in that range.
6 A. Uh-huh. (Witness nods head affirmatively.)
7 Q. Did you collect any unemployment after you
8 left Portneuf?
9 A. I did not.
10 Q. Have you ever made a workers' COMP claim?
11 A. I did.
12 Q. Can you tell me about that?
13 A. I was having problems with the postaccident
14 situation where Portneuf Medical Center wouldn't release
15 the NTSB report that showed clearly that the pilot had
16 caused the accident of November 14 of 2001. And there
17 were other issues going on where people weren't held
18 accountable by -- for instance, Gary Alzola said the FAA
19 said he couldn't release any information while an
20 accident was under investigation because the FAA told him
21 so, which turned out to be false. Just those kind of
22 issues and them not making Gary Alzola accountable for
23 blocking information that would have cleared the
24 maintenance department's reputation.
25 I made a workers' compensation claim alleging

1 remember her name. It was an LPN that I talked to about
2 it. I don't recall her name, though. Mary something.
3 Q. And you filled out a form that she gave you?
4 A. That's correct.
5 Q. And what did you do with that form, did you
6 leave it with Portneuf or did you send --
7 A. I left it with them. I left it with them, I
8 believe.
9 Q. You didn't send it in to the state?
10 A. I believe that they did, the way I remember
11 it.
12 Q. And at some point the state denied the claim.
13 A. That's correct.
14 Q. But you were still working at the time that
15 you --
16 A. That's correct. Yeah, I was working until
17 2005 or April 20.
18 Q. So you were working at the time that you had
19 submitted the claim, you were still working.
20 A. That's correct.
21 Q. Were you required to go to any doctors --
22 A. I was --
23 Q. Hold on, let me finish the question for the
24 court reporter, okay?
25 A. Sure.

1 that I possibly had posttraumatic stress syndrome.
2 Q. What happened with that workers' COMP claim?
3 A. They denied it.
4 Q. Do you know why -- did they say why they
5 denied it?
6 A. I don't have the document -- I haven't seen
7 the document for a long time. I don't even know -- I
8 have not seen it, I don't think I have it. I don't
9 recall.
10 Q. This was a letter from the state, from the
11 department of --
12 A. I think they said something about that it
13 wasn't a job related work thing or it wasn't reported in
14 a timely manner, I just don't remember exactly.
15 Q. When did you make the claim?
16 A. I don't recall. It was possibly 2003, but I
17 can't tell you exactly when.
18 Q. Did you approach your employer about that
19 claim or is this something that you just did on your own
20 with respect to the agency?
21 A. I did not approach my employer; I approached a
22 home health nurse or that department with that issue and
23 filled out a form.
24 Q. And the home health nurse being at Portneuf?
25 A. Yes, it was Portneuf Medical Center. I don't

1 Q. By the way, if I ever ask you a question and
2 you don't understand it, just ask me to rephrase it.
3 Lawyers can ask, for people who talk all the time, they
4 can ask terrible questions. So if I ask a bad question
5 and you don't understand it, just tell me and I will
6 rephrase the question. Okay?
7 A. Sure.
8 Q. But as part of the process of filing this
9 workers' COMP claim, did you see any medical providers?
10 A. In the process of -- no, I did not.
11 Q. Did you see any medical providers before you
12 filed the claim?
13 A. I saw one.
14 Q. Was that Dr. Hazle or Hazley --
15 A. Hazle something, Hazlewood or Hazle, I don't
16 know. That was part of the EAP, employee assistance
17 program, Audrey Fletcher, she said he was a friend of her
18 husband -- Audrey Fletcher tried to get me to go see an
19 EAP counselor at least two times, and I went and . . .
20 Anyway, Dr. Hazle had preconceived notions of
21 what had taken place at the hospital, and so I felt his
22 counsel was of no value to me. He told me that things
23 didn't happen that I told him happened, such as Gary
24 Alzola not telling the truth about what the FAA told him.
25 So after about 45 minutes, I left and never went back.

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1 Q. No? I thought you said 36 and change.

2 A. On my last evaluation or pay raise form that I
3 had, it was \$36 and something per hour, that's what it
4 said. And, yes, I was salary, but I was paid for 40
5 hours a week times that \$36 an hour, you know, so --
6 that's how they did it.

7 Q. Did you get overtime for --

8 A. No. I was salary but that's how they broke it
9 down on the pay raises, it came out as a number per hour.

10 Q. There is a lot of documents in this case and I
11 have read a lot of the documents. I take it you didn't
12 get along very well with Gary Alzola.

13 A. That's not true.

14 Q. Do you feel that you did get along well with
15 Gary Alzola?

16 A. I thought Gary Alzola was a friend of mine
17 until I found out that he wasn't tell the truth about FFA
18 policy about releasing information while an accident is
19 under investigation. And then I tried to rectify that
20 situation, and even after that, all through the -- up
21 until my termination I spoke with Gary Alzola in a very
22 civil manner and never lost my temper, never raised my
23 voice.

24 He just didn't like the issue of me bringing
25 up safety issues. He felt it wasn't my place to bring up

1 Q. And who filled out -- before this September 3,
2 2002, date, who filled out your evaluations?

3 A. Gary Alzola never filled out my evaluation.
4 Before that, Gordon Roberts was the program director for
5 about seven years, so Gordon Roberts was filling out my
6 evaluation. Vince Digaetano one year as the director of
7 operations filled out my evaluation, and other than that
8 it was always the program director that filled out my
9 evaluations from my time starting as an employee of
10 Bannock Regional Medical Center.

11 Q. So usually it was the program director that
12 filled it out.

13 A. That's correct.

14 Q. One year it was the director of operations --

15 A. Sometimes it was the chief flight nurse
16 because it was Jackie Hansen when I first started out,
17 and Jackie Hansen -- I don't even think there was a
18 program director way back then, but it was just one year
19 that the director of operations filled out my evaluation,
20 and that was Vince Digaetano did it one year.

21 Q. What year was that, do you remember?

22 A. I do not. You have all the evaluations, you
23 can find out.

24 Q. To your recollection, was it immediately
25 before they said that Gary Alzola was going to fill yours

1 safety issues. That pilot safety issues should be a
2 secret, discussed behind closed doors. But other than
3 that, I was very amicable towards Gary Alzola.

4 Q. When did you first meet him?

5 A. When he came to work at Portneuf or Bannock
6 Regional Medical Center; it was in the nineties, I don't
7 know what year.

8 Q. And he was your supervisor for a while?

9 A. I was told by Diane Kirse in a September 3,
10 2002, meeting with Audrey Fletcher and Gary Alzola that
11 he was going to be filling out my employee evaluations,
12 and I went to see Pat Hermanson because I thought that
13 was totally wrong and convinced him that I should be
14 working for the program director, not Gary Alzola, who
15 was the director of operations, because I couldn't raise
16 safety issues to Gary Alzola. It would be much more safe
17 if I could bring them to the program director and they
18 could decide.

19 Q. When did Gary Alzola become director of
20 operations?

21 A. When Don Humphrey, Pam Humphrey's husband, was
22 terminated after he had an affair with Donna Favor, Dr.
23 Favor's wife.

24 Q. When was that, approximately?

25 A. 2000, 1999, I don't know.

1 out in '02?

2 A. It had to be in the nineties, early nineties
3 when Vince did it. I'm not certain of the date.

4 Q. Would it be fair to say that since the
5 accident in 2001, was it November of 2001 --

6 A. November 14.

7 Q. Since that accident you began having problems
8 with Gary Alzola?

9 A. No. After the accident of November 14 of
10 2001, I was there on the site. Tim Brulotte, for one,
11 had been on duty for 17 hours. No. 2, you couldn't see
12 the horizon, we were in a valley with no lights anywhere.
13 I am doing my job as a mechanic. I get the aircraft
14 airworthy, changed the fuel pumps. I am putting stuff
15 back together in my trailer. I am worried about getting
16 back on the road.

17 And I am not looking at what Tim Brulotte is
18 doing, if it's safe to fly for him. It's not my
19 business. I always kind of let live kind of a guy, just
20 do my job. But after that happened, when he took off and
21 he was tired, he couldn't see, and he flies off and runs
22 into a mountain and explodes, after that date, you know,
23 I just started looking at what the pilots were doing and
24 it just changed my life. If a pilot is doing to do
25 something that's unsafe, then I am going to raise an

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1 issue about it, and they didn't like that.

2 Q. At some point you asked -- you thought that
3 Gary Alzola should be fired?

4 A. No, I never said Gary Alzola should be fired.
5 It's documented what I said. I said that Gary Alzola
6 should be removed as the director of operations. I did
7 not further explain that he could just be a pilot, but
8 that was my statement, that he should not be the director
9 of operations. He made information be withheld that Tim
10 Brulotte had supplied that there was no mechanical
11 problem with that aircraft that night, and he made up FAA
12 policy that didn't exist. Therefore, I felt that he was
13 not the proper person to be the director of operations.
14 I never said that he should be fired, ever.

15 Q. Did you feel that -- I thought I read
16 somewhere that you felt that this had a negative impact
17 on your family or on your reputation. Tell me about
18 that.

19 A. It did have an impact on my family.

20 Q. In what way?

21 A. Okay, the information is released to the
22 press. I heard several times that aircraft crashes after
23 maintenance. And there is information that Tim Brulotte
24 requested to be released, who was the injured pilot that
25 caused the accident, that there was no mechanical problem

1 with the aircraft that night.

2 My wife at work and in other places, people
3 would just make accusatory comments. My son at high
4 school, me. I mean -- Kerry Heintz at Farmers Insurance
5 is a supervisor, and in 2004, in the fall -- my wife came
6 home from work and she was in tears, and she wanted to
7 quit because they were going to put her underneath Kerry
8 Heintz. And Kerry Heintz had said some pretty mean stuff
9 to her. And I mean it wasn't just her, it was my son, it
10 was me.

11 Q. What did Kerry Heintz say to your wife?

12 A. You would have to ask my wife. He said some
13 derogatory things about I should be terminated. I don't
14 remember the specifics of the conversation because I
15 wasn't there. But I know she was upset about it.

16 Q. Was it something to do with the crash?

17 A. Oh, yes. And the way the media had released
18 it. And that Portneuf Medical Center never stood up and
19 released the -- they released plenty of information about
20 the accident but not that there was no mechanical problem
21 with the aircraft. Which left the maintenance department
22 with the blame.

23 Q. The newspaper articles you are talking about
24 that were in the press that caused the concern, what did
25 they say that caused concern, did they blame you or blame

1 the maintenance department for the crash?

2 A. Pull out the West article.

3 Q. I am just asking you from your recollection.

4 A. If you pull out the West article or the
5 article in the journal, it's not what happened that
6 night. And it makes the mechanic look like an idiot,
7 like, oh, he said the aircraft was okay to fly three
8 times and then it crashes. Well, that's not what the
9 mechanic said. It's not even accurate. Then we have
10 Gary Alzola saying you can't release any information
11 about an accident while it's under investigation, but you
12 are releasing all this other information about an
13 accident, it's under investigation. I see there is a
14 double standard here. You can't release any pilot
15 information, I guess.

16 Q. What information did the hospital release
17 about the accident?

18 A. You have got the --

19 MR. NIELSON: To your knowledge, what you
20 recall.

21 A. I would rather have the article in front of
22 me.

23 MR. NIELSON: Do you have a copy of the
24 article?

25 A. Okay, for one, one of the inaccuracies was

1 that I drove to Salmon to make repairs. Another one was
2 that I talked to the pilot three times on the phone and
3 kept on telling him that the aircraft was airworthy,
4 there's nothing wrong with it. There is inaccuracies in
5 both articles, and it's just not the truth.

6 That's not the worst part. The worst part was
7 hearing over the radio and hearing on TV that the
8 aircraft crashed after maintenance. Which it did, but
9 there was other information that would at least have said
10 that the pilot noted no mechanical difficulties, and they
11 never released that. So here is my family getting fried
12 and me, and they won't release the information.

13 In fact the NTSB report was released, I swear
14 it was May, the NTSB report was finalized in May and I
15 fought with them until I swear it was August, and they
16 came up with this phony news release that they never
17 released, and they said they were going to release it on
18 a Wednesday. It was Sunday. Nothing in the media.

19 And Audrey Fletcher made a statement, and it's
20 in the evidence, that, oh, Mark, this was old information
21 and the media is probably not interested. So I took the
22 NTSB report and I faxed it out to 30 some radio stations,
23 television stations, all over Southeast Idaho, with the
24 website where the NTSB report could be found to confirm
25 it, and by Monday at noon everybody was reporting it.

1 Q. So it did make the news.

2 A. After I released it.

3 Q. After you released it.

4 A. They said they released a report on, say, a
5 Wednesday before that. I don't believe they did. It was
6 a watered down version. I don't believe they ever
7 released it. And I had had enough by then.

8 Q. What do you mean you'd had enough?

9 A. I'd had enough of being scapegoated, in my
10 opinion. I didn't cause that accident and there was no
11 reason to cover up the reason why the accident happened,
12 there was no reason.

13 Q. Now, you talked about how the article said
14 that you had driven to Salmon and that you had and then
15 you talked to the pilot three times --

16 A. And kept on saying that everything was okay.
17 And I never once told the pilot that it was okay. There
18 is a document that I wrote that explains exactly what
19 happened that night or that day and night.

20 But I asked Tim Brulotte that day when he
21 called me, I said what does the minimum equipment list
22 say? The minimum equipment list tells you what equipment
23 can be inoperable to operate the aircraft. And he called
24 me, and I was driving from the airport to the hospital,
25 and I didn't have the document in front of me, but he

1 information?

2 A. Marilyn Speirn talked to the Wests, Gordon
3 Roberts talked to the Journal.

4 Q. Gordon Roberts?

5 A. Gordon Roberts.

6 Q. Was he the HR manager?

7 A. Gordon Roberts was the program director.

8 Q. After Pam Humphrey?

9 A. Before Pam Humphrey.

10 Q. That's right. Do you know what Marilyn and
11 Gordon told the West and the Journal?

12 A. It's in the newspaper article, that's all I
13 know. It's in both newspaper articles, they are quoted.

14 Q. And their quotes are wrong?

15 A. We would have to get it out and I can show you
16 what is wrong and what is right. I don't think there is
17 much.

18 Q. I guess what I am trying to understand is in
19 these articles -- my sense is that you feel that these
20 articles are unfair in what they said about the accident.

21 A. I think it's unfair to release information
22 about an accident if you don't release all the
23 information. And if somebody is getting hurt by it, such
24 as people that work for the maintenance department, then,
25 yes, that is very wrong to scapegoat another department

1 read, you know, the four or five paragraphs of the
2 minimum equipment list that had to do with the fuel
3 system that was pertinent, and when he got done, I said
4 so can you fly within the limits of the minimum equipment
5 list, and he didn't say anything for a while. And
6 finally he said he could.

7 I never said the aircraft was airworthy. If
8 he would have brought up -- you can read in the document
9 that I wrote, if he would have brought some issues up
10 about what the minimum equipment list says about certain
11 things that you have to check to make sure things are
12 working -- and I think even at that there is an issue
13 with the minimum equipment list that you can't -- if you
14 have a fuel pump out, which the way he was operating the
15 aircraft, he knew a fuel pump was out because the circuit
16 breaker was popped.

17 The minimum equipment list says that you can't
18 predicate your flight on the main fuel, you have to
19 predicate your flight on the supply tank. The supply
20 tank holds 25 gallons, the helicopter burns one gallon a
21 minute. And you have to have a 20-minute reserve, so,
22 what, you can fly for five minutes? So he just totally
23 messed up. But that didn't cause the accident anyway.

24 Q. This erroneous information that was in the
25 newspapers, did the hospital release that erroneous

1 to cover up for a mistake from another department. That
2 is very wrong.

3 Q. Did you feel that the articles were unfair?

4 A. They were wrong. If you don't release all the
5 information, then it can make the public feel that you
6 have done something wrong, as I have been confronted with
7 many times. I was at the ski hill one day and there was
8 probably 15 people standing in line and Mike Collaer goes
9 so did you get fired?

10 And I met all sorts of people, I talked to
11 people on the lift, people all the time, what do they
12 say. What do you say to somebody you don't know. Where
13 do you work? Where does that lead you? Oh, so you know
14 about the accident. And then, you know, there is all
15 these preconceived notions that you are guilty.
16 Especially the way it was reported in the press.

17 And I am not saying that -- I am not saying
18 that the Portneuf Medical Center schemed to do it, but it
19 happened and they had the opportunity to fix it and they
20 never did. Marilyn Speirn was trying to get Gary Alzola
21 to release some information of Tim Brulotte's statement,
22 and Gary Alzola came up with the FAA told me that I
23 couldn't release the information so. Talk about foster a
24 positive team environment.

25 Q. Did this incident cause you to resent Gary

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15 (Pages 54 to 57)

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1 helicopter before the accident.
2 Q. So Tim didn't tell you that, he told Gordon
3 Roberts that.
4 A. He did not tell me, I'm sorry.
5 Q. You say I told him that I was taking a lot of
6 heat from an angry public and that my wife and son had
7 unpleasant confrontations with co-workers and students.
8 You indicated your wife's coworker, Cindy Heintz --
9 A. Kerry Heintz. He is a man.
10 Q. I'm sorry, Kerry Heintz had been very
11 unpleasant and your wife had come home in tears. You
12 talked about an incident --
13 A. She was going to quit, and I said okay. So
14 they decided not to put her under him.
15 Q. You talked about your son having a couple of
16 unpleasant experiences at school?
17 A. That's true.
18 Q. Do you remember any of the details of those?
19 A. My son is pretty quiet. You know, he didn't
20 get explicit.
21 Q. What did he tell you?
22 A. Just that the kids were saying some pretty
23 mean things about me.
24 Q. He didn't say specifically what they were?
25 A. No.

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1 Q. How old is your son now, is he 18, 19?
2 A. 22. He was 17 then.
3 Q. Is he here in Pocatello?
4 A. He is in Moscow.
5 Q. Is he going to school up there?
6 A. (Witness nods head affirmatively.)
7 Q. And you talked yourself about an incident at
8 the ski hill where somebody in the lift line, Mike
9 Collins or --
10 A. Collaer.
11 Q. -- Mike Collaer asked if you had been fired
12 yet?
13 A. Very loudly he said it, so did they fire you?
14 Q. Did he say it in a serious way or --
15 A. Very serious.
16 Q. -- joking way?
17 A. Very serious, serious angry.
18 Q. Like he was angry at you?
19 A. Yes. I caused somebody to get hurt.
20 Q. Who is he? Is he a friend of yours or a
21 colleague?
22 A. Not really, he is an acquaintance. I have
23 maybe skied one day with him out of hundreds. But just
24 somebody -- I think he instructs up there occasionally
25 and he is up there or used to be up there a lot, he is

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1 not there as much as he used to be. Just somebody that
2 skis a lot, I don't know much more than that.
3 Q. And that's the only way you know him, is
4 through skiing?
5 A. That's correct.
6 Q. And he said that in a loud tone of voice. He
7 said, so did they fire you yet in a loud tone of voice
8 in an angry sort of way?
9 A. So did they fire you, did they fire you, yeah.
10 Q. Anybody else --
11 A. And the conversation continued from there
12 because I had to defend myself.
13 Q. Tell me about the rest of the conversation.
14 A. I said, no; no, I didn't get fired, you know.
15 I had to explain that there was nothing mechanically
16 wrong with the aircraft, but if you listen to the media,
17 you know, how it was portrayed, you know, it didn't need
18 to be that way, the Portneuf Medical Center would have
19 protected everybody instead of releasing just part of the
20 information.
21 Q. And what did he say?
22 A. I don't think he believed me. I don't think a
23 lot of people believed me when I told them. I think a
24 lot of people would not say too much about it and they
25 believed that I was culpable for the accident.

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1 Q. Other than -- I am sorry, Mike Collier --
2 A. Collaer, it's Collaer. That's how it is
3 pronounced, I don't know how it's spelled.
4 Q. Other than the comment that he made to you, do
5 you know the names of any other people that made comments
6 to you --
7 A. It's --
8 Q. Let me finish the question.
9 A. I am sorry.
10 Q. -- about the culpability of you and/or the
11 maintenance department for this accident?
12 A. Most of them were strangers that I just met.
13 In fact all of them were strangers. In fact I stopped
14 talking to people just because I didn't want to go
15 through it anymore. I stopped, you know -- I wouldn't
16 say much. They asked me where I worked, I would just
17 kind of be vague, I wouldn't tell them because I didn't
18 want to go through it anymore.
19 Q. So other than Mike Collaer, all the people
20 that said anything at all to you were strangers that you
21 didn't know?
22 A. That's true.
23 Q. With respect to your culpability for the
24 accident. How many were there, did this happen 30 times,
25 five times? Can you give me a range of --

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17 (Pages 62 to 65)

1 A. I would say at least 10 to 15 times.

2 Q. Over a period of how long, from the accident
3 until the release of information? Was there a particular
4 window where this happened?

5 A. It was pretty much the first six months after
6 the accident. But then, like I said, I stopped telling
7 people where I worked. And most people that knew me
8 wouldn't come up, even if they thought I did it, they
9 would have a little tact, they wouldn't come out and make
10 accusatory comments.

11 But I have others that have said that they
12 fielded a lot of questions, you know, that people thought
13 I had caused the accident. So it's not -- you know, it's
14 real. The angry public was real.

15 Q. Now, it looks like you told Gary that you were
16 feeling heat from an angry public.

17 A. That's true.

18 Q. And he barked, It's your job. I am looking at
19 that same paragraph.

20 A. It's true, he said, It's your job, just like
21 that. And I was like wow.

22 Q. Did he elaborate any --

23 A. Pretty compassionate. No.

24 Q. Did he say it's your job and walk away or --

25 A. Just stood there.

1 aftermath of the helicopter crash in which you feel that
2 Gary Alzola lied to you --

3 A. Okay, we had a meeting and it was over with,
4 they didn't do anything.

5 Q. Issues involving ice on rotor blades.

6 A. Okay.

7 Q. And cold weather directives. Did you feel
8 that those were a controversy with your employer?

9 A. I believe that the ice, flying with ice on the
10 main rotor blades was a safety issue, a Federal Aviation
11 Regulation violation. A controversy? I guess if you
12 want to call it controversy, you are welcome to. I guess
13 it is a controversy; it's the wrong thing to do, it's
14 unsafe.

15 Q. Did you feel that you had a controversial
16 relationship with your employer ever, with the hospital?

17 MR. NIELSON: I am going to object --

18 A. There were safety issues --

19 MR. NIELSON: Just a minute, Mark. I am going
20 to object to the form of the question as controversy. It
21 appears to be a question as to the definition and what we
22 are talking about here. Go ahead.

23 A. Where was I?

24 Q. I was wondering, if you viewed your
25 relationship with the hospital --

1 Q. Did you say what did you mean by that?

2 A. I just let it go. I am not confrontational as
3 far as getting in an argument with somebody, and he was
4 obviously, you know -- he got loud and that was enough of
5 that. I am not going to get into a shouting match with
6 anybody.

7 Q. There has been a fair amount of controversy
8 involving the last few years of your employment. Would
9 that be fair to say, you have been involved in
10 controversy with your employer with respect to safety
11 issues and with respect to the aftermath of the accident
12 leading up to your termination; do you feel that way?

13 A. There were issues. If you want to categorize
14 them as controversy, I guess you are welcome to. I just
15 had issues that I had to present which were safety, you
16 know, whatever they were, I had to present them.

17 Q. Did you feel that there was controversy
18 involved in your job?

19 A. I believe that you could view it that way.

20 Q. I am interested in knowing what you felt, what
21 you thought.

22 A. I felt that -- what issue are we talking
23 about? If you want to take the whole thing and call it a
24 controversy, it's not fair.

25 Q. I am referring to the incident with the

1 A. Off and on there were controversies.

2 Q. -- as controversial, you feel, you know, I am
3 going against my employer --

4 A. I had to, I had to make an affirmative stance
5 in the name of safety. I saw what happens if you don't
6 do the right thing. And I didn't want to work there
7 anymore if that kind of thing was going to happen again.
8 I lived through one accident. If you can avoid an
9 accident, it's worth it.

10 You know, if you want to call it a
11 controversy -- you have to make your point, you have to
12 take an affirmative stance, and if they don't -- if they
13 disagree with you, well, there is other people's lives
14 involved, too, and that's what I tried to do.

15 I tried to get the paramedics and the flight
16 crew involved because the pilot issues were kept secret
17 from the flight crew. And I can prove that fact. If you
18 look at all the Life Flight minute meetings, all the
19 safety meetings, you can't find one pilot issue in, what,
20 three years of meeting minutes? That's not right. When
21 87 percent of the accidents are caused by pilot error,
22 that's not right.

23 Q. What do you mean when you say a pilot issue?
24 What is a pilot issue?

25 A. Pilot error is what I said, I didn't say

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1 pilot -- I forget I said pilot issue, I don't --
2 Q. You talked about pilot issues in the context
3 of in three years of minutes of the meetings there is no
4 pilot issues.
5 A. There is none.
6 Q. What do you mean by pilot issue?
7 A. Safety issues.
8 Q. Safety issues concerning pilots?
9 A. Correct.
10 Q. Or safety issues, period?
11 A. No, they have safety meetings, but none of the
12 safety meetings in any of the minutes that you can find
13 have anything to do with the pilots. Tim Brulotte
14 crashes an airplane -- not an airplane, a helicopter and
15 there is not one sentence in any safety meeting minute
16 that follows. I raised safety issues in meetings, you
17 can't find my comments in any of those meetings either,
18 very serious issues. I call that a coverup.
19 Q. Gary Alzola told you that the FAA wouldn't let
20 him release information about the accident to the press
21 or something to that effect; right?
22 A. Gary Alzola stated in the 9/3/2002 meeting --
23 I called the meeting with Diane Kirse and Audrey Fletcher
24 and him because I wanted to know, Gordon Roberts had told
25 me that Gary Alzola was the one blocking the information

1 A. In that 9/3/02 meeting Gary Alzola stated that
2 the FAA had told him he could not release accident
3 information while an accident was under investigation.
4 Q. So in the meeting he said that the FAA told
5 me --
6 A. That's correct.
7 Q. -- and on the helipad he said --
8 A. He changed it.
9 Q. -- they didn't tell me, but that's just my
10 understanding of the regs?
11 A. No, he said -- nobody at the FAA actually told
12 me but that's FAA policy, that you can't release
13 information about an accident while it's being
14 investigated.
15 Q. In the meeting did he tell you who at the FAA
16 had told him?
17 A. No.
18 Q. Did you ask him?
19 A. I was devastated when he said that. I just
20 said, well, if the FAA told you that, I guess it's over.
21 It's documented in one of my documents. I just called
22 the meeting to a close because I mean if the FAA told him
23 that he couldn't release any information, I had no leg to
24 stand on. It wasn't until later I started thinking about
25 it, going, well, I have been investigated by the FAA, I

1 being released that Tim wanted released. And that is
2 when Gary Alzola said that he couldn't release any
3 information because the FAA had told him that it's FAA
4 policy, you can't release information while an accident
5 is being investigated. Which later turned out to be
6 untrue.
7 Later I asked him on the helipad, I said I
8 have been through NTSB, FAA investigation and nobody said
9 I couldn't release any information. He said, oh, well,
10 nobody really told me at the FAA, it's just FAA policy.
11 So then I called Brent Robinson and another operations
12 inspector, it's in an e-mail and they said they had never
13 heard of anything where anybody but the FAA can release
14 information.
15 Later on the actual accident investigator,
16 Lynn Higgins, who investigated the 2001 accident, I
17 e-mailed him, he e-mailed me back and said that there is
18 no FAA policy stopping anyone from releasing accident
19 information. The FAA can't do it but there is no policy
20 about, you know, operators or persons. Does that answer
21 your question? Was there more to your question? I went
22 on too long, I can't remember.
23 Q. That's okay. Did Gary Alzola ever tell you
24 that someone at the FAA had told him that he couldn't
25 release information?

1 have been investigated by the NTSB because of this
2 accident, and nobody ever said to me I couldn't release
3 information. So how is that right? Things aren't adding
4 up here.
5 Q. And that's what made you decide to contact the
6 FAA yourself?
7 A. That's correct.
8 Q. On the third page here of Exhibit No. 3, you
9 say you brought this information, on the second
10 paragraph, to Diane Kirse, and who is Diane Kirse?
11 A. I am a little confused about it all, so many
12 people changed, came and went. I believe she was the
13 program director, in fact I am pretty sure she was. When
14 the hospitals merged, Gordon Roberts lost his position,
15 and I think Diane Kirse had that position. I am pretty
16 sure she was, because I took the problem with Gary
17 Alzola, the complaint resolution to her.
18 But Diane Kirse wasn't making any sense at
19 all, this was I believe in the -- this was in a meeting
20 with Audrey Fletcher and Diane Kirse. This was after the
21 9/3 meeting. I don't know what the date is, they
22 wouldn't release the e-mails so I could figure that out.
23 And in the meeting she was just not making any
24 sense at all. She was just getting really emotional and
25 Audrey had to calm her down several times. And the next

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19 (Pages 70 to 73)

1 day she resigned her position.

2 Q. What information did you bring to Diane?

3 A. Just the information that the FAA had told me
4 that there is no FAA policy and that -- there is no FAA
5 policy and Gary should be held accountable.

6 Q. And you brought it to her because Gordon
7 Roberts was gone?

8 A. Gordon Roberts -- Diane Kirse I believe got
9 assigned as the program director, among other
10 departments, she was over other departments, too. But
11 she was the program director for Life Flight.

12 Q. So you brought the information to her, she was
13 acting irrationally, and at that same meeting she told
14 you that Gary Alzola was going to do your evals?

15 A. No. At the 9/3/02 meeting, the meeting before
16 this, when Gary Alzola stated that the FAA had told
17 him -- it was that meeting, the 9/3 meeting that she told
18 me -- after I had said, well, you know, there is nothing
19 more for me to say, Gary Alzola can't say anything
20 because of the FAA, it's FAA policy, you know. That's
21 when Diane Kirse at that 9/3 meeting, '02, told me that
22 Gary was going to be filling out my evaluations. That's
23 how it ended up. And this was a meeting I'll betch you a
24 month or two later. Like I said, I don't have the exact
25 dates because the hospital wouldn't release the e-mails

1 to me.

2 Q. And you felt that the fact that Gary was going
3 to do your evals after you had filed a grievance against
4 him was a surreal situation that defied logic?

5 A. Very surreal. But this was after I found out
6 that he had lied (indicating) about FAA policy. And I
7 brought it up to Diane Kirse and she is making notes.
8 She is going off the walls. Later Audrey Fletcher said
9 that she was having personal problems. When I met with
10 Pat Hermanson I went over the issue to make it so that
11 Gary Alzola was not filling out my evaluations or my
12 supervisor, Pat Hermanson said she was crazy. That was
13 his exact words. She is crazy.

14 Q. Down here on the paragraph starting I believe
15 that Gary Alzola should be punished --

16 A. I am not seeing it.

17 Q. It's on the third page, it starts I believe,
18 it's right about the middle.

19 A. Okay. Yeah.

20 Q. How did you feel that he should be punished?

21 A. Well, I had later documented it that I thought
22 he should be removed as the director of operations, when
23 I sent the letter -- when I sent the document MV002, I
24 thought, to Pam Humphrey. It spells it right out, says
25 that he should be removed as the director of operations.

1 Q. So that's what you were thinking at this time,
2 you didn't say how you thought he ought to be punished
3 but you thought he ought to be removed as director of
4 operations?

5 A. Well, at this time maybe I hadn't formulated
6 that that's what should be done. But I felt he should be
7 held accountable. I can't say for certain, you know, two
8 months prior to the MV002 that that's a fact.

9 Q. The information was not released that would
10 have cleared the maintenance department. And by that you
11 are referring to this misinformation in the newspaper
12 article that could lead one to believe that it was the
13 maintenance department's fault?

14 A. Well, not only that, I don't remember any --
15 the West or the Journal, I don't know what else they
16 released. If those are the only two articles, it doesn't
17 say that the aircraft crashes after maintenance, it
18 doesn't say anything about maintenance. It just says
19 that the mechanic and Tim Brulotte went over the aircraft
20 and decided it was fine, inspected the aircraft, I am not
21 sure of the exact terminology, and they said it was fine.
22 And then Tim Brulotte took off and crashed the
23 helicopter. That's what was said there.

24 But in the TV reports, in the radio reports,
25 aircraft crashes after maintenance. I mean they didn't

1 really go into it in a lot of depth, especially the
2 radio, they just say Life Flight helicopter crashes after
3 maintenance. I mean it was great; it was great. Great
4 time.

5 Q. At the bottom paragraph I see where you are
6 talking about now, you say I want Gary Alzola removed
7 from the position of director of operations. I am
8 looking at the bottom paragraph. After that it says I
9 want to have a role in choosing the new director of
10 operations. I request to have the power to veto any
11 selectee for the position of director of operations
12 during this selection process.

13 Had the director of maintenance ever had that
14 sort of role in selecting director of operations before?

15 A. Should have.

16 Q. Had the director of maintenance ever had that
17 role?

18 A. No. I believe that they should have, though;
19 that's why I wrote it. I was excluded from -- see, I
20 wrote that because right around 1996, '97, middle
21 nineties, Don Humphrey became the director of operations
22 and I was excluded from the meeting so all the pilots got
23 to decide who the next director of operations was going
24 to be and I didn't get to choose.

25 Don Humphrey had crashed a helicopter on

1 Carter Street in 1993. He didn't have the continuous
2 ignition system on, he was operating the aircraft in
3 violation of the flight manual and an airworthiness
4 directive that is issued by the FAA. You have never
5 released that information, and the FAA never properly
6 investigated because he covered it up.

7 And it wasn't found out until later by me and
8 Greg Stoltz as we were driving down the road one day, I
9 just happened to have the flight manual in the car, and I
10 said, Greg, what does it say about the continuous
11 ignition system. And that's why -- I can go on and on
12 about this issue. But it was covered up.

13 All the pilots, Curt Cornelison was a good
14 friend of mine, went on several vacations together. Curt
15 never told me that the continuous ignition system should
16 be on. He knew it, though. And then the pilots were
17 creating all of these issues of, oh, the engine flamed
18 out because the fuel control was bad or -- I mean they
19 come up with a lot of different issues. It sucked up a
20 slug of water and made the engine flame out, you know,
21 they had these issues. And I had a document, but I don't
22 have it any more, that I wrote and gave it to Pam
23 Humphrey, she was the program director at the time.

24 So I didn't get a chance, I was very angry,
25 too, about that because Don Humphrey was not the person

1 meeting and the pilots chose Don Humphrey. Gary Alzola I
2 think, wasn't there very long at the time, and I am not
3 sure who was still there at the time and who wasn't, but
4 I think Ron Fergie had just got there and Brulotte hadn't
5 been there very long, so all of those guys were new guys,
6 or else maybe it was Neilson was there by then, I don't
7 remember.

8 Q. How did Gary Alzola get chosen to be the
9 director of operations?

10 A. I was excluded from that, too. I didn't have
11 a problem with that. I didn't have a problem with Gary
12 Alzola.

13 Q. You were excluded from the --

14 A. I was excluded from that choice, too. Don
15 Humphrey, like I said, he was terminated after having an
16 affair with Dr. Favor's wife.

17 Q. If you know, who did choose --

18 A. I don't know.

19 Q. -- Gary Alzola be to the director of
20 operations?

21 A. I don't know. I didn't have a problem with it
22 so I never questioned it. I had a problem with Don
23 Humphrey being chosen as the director of operations. So
24 I questioned Gordon Roberts, and that's how I found out
25 that they had a meeting with the pilots, the pilots chose

1 to be the director of operations after covering up a very
2 serious safety issue and crashing a helicopter on Carter
3 Street and causing over \$150,000 worth of damage.

4 So I felt -- I am the director of
5 operations -- if you look at -- I don't know what you
6 call it, a chart that tells -- like say the program
7 director is here, I mean I was on an equal level with
8 Gary Alzola as far as, you know, we both reported to the
9 same supervisor. I don't see why -- in fact I don't see
10 why the chief flight nurse shouldn't have a say in who is
11 going to be the next director of operations, the director
12 of maintenance. Even the head dispatcher should have a
13 say in who is going to be the next director of
14 maintenance. It shouldn't be, you know --

15 Q. Director of maintenance or director of
16 operations?

17 A. I am sorry, director of operations. My
18 mistake, director of operations. Everybody should have
19 had a say, all the leadership positions in Life Flight
20 should have had a say in who was going to be the next
21 director of operations in the middle nineties when Don
22 Humphrey became the director of operations. But that
23 didn't happen, that's why I wrote that.

24 Q. Who did choose the director of operations?

25 A. The pilots. The pilots had a clandestine

1 them. But I have no idea with Gary Alzola, I didn't have
2 a problem with it.

3 MR. McFARLANE: We need to take a brief break
4 for a second to change the tape.

5 MR. POPA: Going off the record. The time is
6 11:10. This is the end of Tape No. 2.

7 (Short recess.)

8 MR. POPA: We are back on the record. The
9 time is 11:17. This is the beginning of Tape No. 3.

10 Q. Mr. Van, I would like to direct your attention
11 to what we are going to mark as Exhibit No. 4.

12 (Deposition Exhibit No. 4 marked for
13 identification.)

14 Q. On the second page, is that your signature?

15 A. Yeah, this is from the first meeting. It's
16 the only one I ever signed.

17 Q. And this is a memo from Pam Humphrey to you?

18 A. It's a summary of a meeting, is it not? Is it
19 not a summary of a meeting?

20 Q. I am just saying it looks like a memorandum.
21 It's got a to and a cc and a letter or some form of
22 communication --

23 A. Okay.

24 Q. -- to you from Pam Humphrey. Are you familiar
25 with this document?

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1 No. 5, this is an e-mail from you to Gary Alzola about a
2 flight that went over your house.
3 A. Uh-huh. Yes.
4 Q. And you wrote this, right --
5 A. Excuse me?
6 Q. You wrote this e-mail and sent it to Gary?
7 A. That's true; that's true.
8 Q. Let's try to remember to let me finish my
9 questions --
10 A. I am sorry.
11 Q. -- for the court reporter. It makes it real
12 hard for him to write down what two people say at the
13 same time, and I will try real hard to wait until you are
14 done before I jump in. Okay?
15 A. Sure.
16 Q. Thanks. So this is talking about how on a
17 Sunday morning you are in your kitchen eating breakfast,
18 you heard a helicopter, and then a couple seconds later
19 you hear a really loud rotor wash, loudest since you
20 moved in the house, and it was the Life Flight
21 helicopter. And it was 300 feet to the west at window
22 level.
23 A. That is correct.
24 Q. They had passed directly overhead. So you
25 called dispatch and it was Ron Fergie who was piloting

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1 the aircraft, the helicopter.
2 A. That's correct.
3 Q. Now, I believe I read somewhere that you
4 thought this was retaliation for something or other. Was
5 this retaliation on behalf of Ron to you?
6 A. You would have to ask Ron, but I believe it
7 was.
8 Q. And what do you believe it was retaliation
9 for?
10 A. July 5, 2003, Ron Fergie flew back from Salt
11 Lake City after being on duty for 20 hours, over 20
12 hours, I think when he landed it was 21 hours. There was
13 a verbal, if not written, Life Flight pilot policy
14 because Chad Waller had told me that there was a policy
15 and also operations had told me that after the 2001
16 accident, Lynn Neilson -- not Lynn Neilson, Lynn Higgins,
17 the FAA investigator, felt that part of the problem of
18 why the accident happened was because Tim Brulotte had
19 been on duty for 17 hours straight.
20 So there was a policy, and I have never seen
21 it, never saw it in writing, it could have been verbal,
22 Chad Waller told me that the policy existed, he is one of
23 the Life Flight pilots, he said that Ron Fergie was
24 training, teaching them, telling them that you are not
25 supposed to fly after 15 hours, or thereabouts. And here

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1 comes Ron Fergie, the chief pilot and training officer
2 flying back from Salt Lake City after being on duty 20
3 hours.
4 I am on a river trip down the Middle Fork of
5 the Salmon River and one of my relief mechanics goes to
6 Salt Lake City and fixes the helicopter, and then on the
7 way back -- Frank Prickett was his name -- on the way
8 back he pulled over in a rest area because he was so
9 tired and he started thinking about the correlations of
10 what happened to Tim that night and him being on duty for
11 17 hours --
12 (Pause in proceedings while court
13 reporter answers cell phone.)
14 MR. POPA: We are on the record. The time is
15 11:38.
16 A. Tim Brulotte, and Tim being on duty for 17
17 hours, and the FAA you know recommending that the pilots
18 not fly that many hours, under Part 135 rules, which is
19 Federal Aviation Regulations, the pilots are restricted
20 to I think 12 hours of duty time and 14, I think at the
21 most, and then they have to have 10 hours of rest after
22 that. But since there was no passengers, no paying
23 passengers on board, it could be viewed as a Part 91
24 flight. So no violation, there was no violation of him
25 doing it, but it was unsafe and it was my understanding

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1 that Lynn Higgins -- in fact I talked to Lynn briefly
2 about it and he said it was wrong, it was unsafe.
3 Anyway, I was on the Middle Fork of the
4 Salmon, I came back and it was several weeks later that
5 Frank Prickett said, he told me the story and he said,
6 you know, that bothers me to go out and fix a helicopter
7 and 3:00 in the morning, you know, Ron flies it back
8 after he has been on duty for 20 hours. So I brought it
9 up in a Life Flight meeting, the issue of Ron flying
10 after being on duty for 20 hours.
11 Q. When was the Life Flight meeting in which you
12 brought it up?
13 A. Well, it happened July 5, it was in August.
14 Q. I see you are referring to a document. What
15 are you referring to?
16 A. It's just a bunch of -- it's all my documents
17 and just brief descriptions of what they are so I can
18 find them.
19 Q. Was that prepared by your attorney?
20 A. No. There they are (indicating), it was Life
21 Flight meeting 8/21/03.
22 Q. 8/21/03?
23 A. Yes, which is my MV007 which is a letter I
24 wrote and read for the most part in the Life Flight
25 leadership meeting. Which is right before or right after

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1 the Life Flight leadership meeting they have the Life
2 Flight meeting, they are back to back. And I brought up
3 the issue of Ron flying after being on duty 20 hours.
4 Ron Fergie was not -- he was not at the meeting. Gary
5 Alzola was, Pam Humphrey was not. Do you want me to stop
6 while you review that?

7 MR. McFARLANE: Let's make this No. 6.
8 (Deposition Exhibit No. 6 marked for
9 identification.)

10 A. But I went over this briefly. I don't think I
11 read it sentence per sentence, but I got my point across.
12 Gary Alzola was present, Ron Fergie was not present, Pam
13 Humphrey was not present at this meeting.

14 The crew was very concerned. Pam Humphrey --
15 not Pam Humphrey -- Gary Alzola said on several occasions
16 during that meeting that Ron had done nothing wrong, and
17 probably is true, Part 91 he didn't do anything wrong but
18 it was still unsafe. It was Part 91 when Tim crashed
19 into that ridge line that night and lost his leg and
20 caused an accident.

21 And, like I said, Ron was training the pilots
22 not to fly after 15, 16 hours, I don't remember exactly
23 the exact number because I had never seen that policy in
24 writing, but I know that Lynn Higgins had told him that
25 he wanted the pilots not to fly over so many hours of

1 worried about it, Jim Rogers doesn't want to get on the
2 airplane, or on the helicopter: Mortimer, who I think
3 was the chief flight nurse then, yes, he was, Tom
4 Mortimer, he was very adamant that he didn't want his
5 crew flying with tired pilots, but nobody brings up the
6 issue but me.

7 I believe it's an atmosphere of possibly -- I
8 don't know. I guess nobody wants controversy, you know.
9 But it was brought up to me by Ron -- Frank Prickett and
10 I thought it was a very, very valid issue.

11 After the meeting I saw Ron Fergie several
12 times and he was so upset that he couldn't talk to me.
13 He was very abrupt. And then this fly-over on a Sunday
14 morning happened.

15 Q. And that was two and a half weeks after the
16 safety meeting in which you read Exhibit No. 6?

17 A. I guess. I gave you the date, whatever --

18 Q. I looks like, if what you wrote down here is
19 right, you read it in a Life Flight meeting on 8/21 --

20 A. There you go, sure.

21 Q. -- and your house got buzzed on 9/7; is that
22 right?

23 A. My house did get a very low flyover with
24 maximum pitch pulled.

25 Q. When you say maximum pitch pulled, explain

1 duty time in order to avoid another accident like Tim
2 Brulotte's.

3 Anyway, the crew got very agitated at that
4 meeting and told Gary that they didn't want unsafe
5 pilots, tired, unsafe pilots flying their aircraft. And
6 I told them in that meeting that if it's a maintenance
7 event and I am out there fixing the helicopter and I
8 think you guys are tired, I am not going to put it in
9 service. I am not going to let you guys go out and have
10 an accident if I feel you are tired. I just won't do it.

11 And Gary got very upset over it. And by the
12 end of the meeting I think he was browbeat into making a
13 policy about pilot duty time, a written policy, but --
14 also Mark Romero at that meeting was one of the crew
15 members, and Jim -- I don't remember his last -- Jim
16 Rogers were the two crew members that flew back from Salt
17 Lake City to PMC with them at 3:00 o'clock in the morning
18 after Ron had been on duty for 20 hours.

19 And Mark Romero said he had reservations about
20 getting on the helicopter and flying back, and Jim Rogers
21 told him, which is hearsay, Jim Rogers had the same
22 reservations about getting on board with Ron that night.

23 The funny thing I find is that these things
24 happen at Life Flight and the crew members don't even
25 bring it up. I have to bring it up. Mark Romero is

1 that to me.

2 A. You have rotor blades that spin and when you
3 pull the collective up, every one of the blades goes into
4 maximum pitch so that you have the most lift possible --

5 Q. So the rotors are tilted forward (indicating)?

6 A. No, you have all the rotors spinning in a
7 disk. When you pull the collective up, all of them go up
8 at the same time so that you go straight up (indicating).

9 Q. I see, okay.

10 A. Well, if you do that over somebody, you create
11 the most noise that's right below them, because all the
12 rotor wash, all the noise is directed straight down below
13 whatever you have pulled pitch over.

14 Q. Can you tell from the sound the level of
15 pitch?

16 A. It was a lot of pitch. I would guess it was
17 max, or close to it. The thing is, like I wrote in my
18 letter, I have worked for Life Flight for years, so you
19 you just hear a helicopter and all of a sudden, boom,
20 your job is on your mind. I have heard them come from
21 the east for years and you hear them coming for minutes.

22 Not this time. I am in the kitchen and I am
23 hearing a noise, it's like was that a helicopter? I am
24 just not knowing if that's a helicopter. The next thing
25 I know, it's the loudest rotor wash you wouldn't believe.

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1 And the reason is Ron was flying so low -- I have a hill
2 right behind my house, I live up on Sagewood Hills, it's
3 on the East Bench, and up above my house there is --
4 there is two levels of houses now, but I believe the only
5 way that that sound signature was not reaching my house
6 when he was flying into the city was that he was so low
7 that all the sound was going out over the ridge line
8 (indicating) and my house was kept quiet.

9 So he was so low that right whenever he got
10 over the top of my house, because the top of him was
11 probably 40 feet behind my house up, or maybe even 60,
12 but he pulled max pitch right over my house. I ran from
13 the kitchen, looked through the living room window and
14 there is a Life Flight in my picture window about 150
15 feet over the subdivision which is right below my house.

16 Because right below my house was a huge gully
17 that drops off and then, say, 300 feet down the hill is
18 another subdivision, another cul de sac. But he was
19 about 150 feet over those houses and the helicopter is
20 going like this (indicating), which you can't do
21 (indicating), the helicopter was swinging from side to
22 side like it was unstable. And there he is in my picture
23 window.

24 Q. How far is your house from the hospital?

25 A. Two miles.

1 A. There was some document, either that or Pam
2 said that the patient that was under doctor's orders to
3 stay as low as possible for some medical reason. But I
4 have yet to see the -- yet to see any documentation to
5 prove that.

6 Q. Do you have any reason to dispute that that
7 was the case, that there was a medical reason to fly low?

8 A. I am sure that they exist, but even if they do
9 exist, it's more for going over high mountain passes, to
10 try to stay as low as you can over that, not to break
11 Federal Aviation Regulation minimums.

12 Q. So is it your belief that Fergie, Ron Fergie
13 violated FAA flight regs?

14 A. I know he did, I witnessed it happen.

15 Q. Did you report that to the FAA?

16 A. I did not report it to the FAA, I reported it
17 to Gary Alzola.

18 Q. Why didn't you report it to the FAA?

19 A. Because I was trying to work within the
20 company. I take that back, I later did report it to the
21 FAA but I did not report it at that time.

22 Q. When did you report it to the FAA?

23 A. I sent a letter to the FAA I believe it was
24 MV015 and I cannot tell you the exact date. You would
25 have to ask Lynn Higgins what date he received it. I do

1 Q. And he was on his way to the hospital?

2 A. He was. But you are supposed to have a
3 500-foot minimum, I believe the FARs say, and he didn't
4 have a 500-foot minimum.

5 Q. Do you know what his elevation was?

6 A. He was 150 foot above the subdivision. 300 feet
7 down the hill from my house.

8 Q. So what was his elevation when he went over
9 your house; do you have any idea?

10 A. I didn't see that.

11 Q. And when you saw him over the subdivision,
12 what was his elevation?

13 A. The subdivision right below my house, he was
14 150 feet over the houses.

15 Q. 150 feet. Do you know anything about who was
16 on board or --

17 A. I do, Laura Vice and Mark Romero were on
18 board.

19 Q. Did you talk to them?

20 A. I did.

21 Q. What did they tell you?

22 A. They told me that they were busy with a
23 critical care patient and that they didn't notice
24 anything.

25 Q. Do you know what was wrong with the patient?

1 not know the exact date. I felt it was 2003, in the
2 fall, but I cannot confirm that.

3 Q. It was while you were still employed?

4 A. Oh, yes.

5 Q. So you believe that Ron Fergie essentially
6 buzzed your house in retaliation for what you said at the
7 safety meeting a couple of weeks before on --

8 A. I do believe that's true.

9 Q. Let me finish my question. -- on --

10 A. Life Flight meeting 8/21/03.

11 Q. That's right, thank you. That is your belief?

12 A. That is my belief.

13 Q. Did you ask Ron Fergie if that's what he was
14 doing?

15 A. I did not.

16 Q. Did you ever discuss the issue with Ron
17 Fergie?

18 A. I never discussed the issue with Ron Fergie.
19 I immediately sent an e-mail to Gary Alzola about what
20 had happened. And that's what MV008 is.

21 Q. Now, this safety meeting --

22 A. There was a Life Flight leadership meeting and
23 I believe there is a safety portion of the Life Flight
24 leadership meeting where they go around and they say,
25 okay, dispatch, do you have any safety issues;

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25 (Pages 94 to 97)

1 maintenance, do you have any safety issues; pilots, do
2 you have any safety issues; crew, you know, that's how
3 that works.

4 Q. Do you consider it to be a maintenance issue
5 if pilots fly too long?

6 A. I believe it's a -- okay, it's everybody's
7 responsibility to ensure that the aircraft is operated
8 safely. Ron Fergie more than once and at least twice to
9 my memory, the last time being, I believe it was the
10 3/24/05 meeting, the last Life Flight meeting I ever went
11 to, he -- I tried to bring up issues about Ron but he
12 wasn't there at the time at the leadership meeting.

13 And all of a sudden he walked in for the Life
14 Flight meeting that follows and he gave a big safety
15 speech. Ron said that it was everybody's responsibility
16 to break the links in the chain of events that cause
17 accidents. I was instructed by Ron Fergie on at least
18 two occasions, those exact words, it's everybody's
19 responsibility to break the links and chains that lead up
20 to accidents. The chain of events.

21 Q. And in order to break this chain, you were
22 going to not let aircraft fly if the pilots had been up
23 too long?

24 A. I didn't want to be responsible for another
25 accident that I could have stopped from happening.

1 Q. And how would you have kept the aircraft from
2 flying as maintenance director if you thought a pilot was
3 up too long, on duty too long?

4 A. I am talking about a maintenance event. I am
5 not going to jump out of the bushes and say, hey, you
6 know. I am talking about a maintenance event where I am
7 there, if I am aware of it, or even if it's not a
8 maintenance event and I am aware of it, I am going to
9 bring up the issue. If it's a maintenance event, you
10 know, obviously there is something wrong with the
11 aircraft, correct? And then I have to fix the aircraft
12 in order to make it airworthy.

13 Q. Right.

14 A. If I make it airworthy, let the pilot fly off
15 and he is unsafe, then I believe I am responsible also.

16 Q. So if you fix the aircraft and you finish your
17 repair job and it's fixed and it's now airworthy but you
18 feel that the pilot is too tired or has been up for too
19 long or on duty too long, what were you going to do?

20 A. I wasn't going to complete the job, I was
21 going to disable the aircraft, take the battery out of
22 it, I don't know. I wasn't going to let another tired
23 pilot cause an accident.

24 Q. Was there a dispute --

25 A. I -- excuse -- go ahead.

1 Q. I was going to ask if there was a dispute
2 between you and Gary Alzola or any of the other pilots,
3 for that matter, as to whether that was an appropriate
4 role for the director of maintenance to take.

5 A. In that meeting he expressed that but by the
6 time the crew, the nurses and the paramedics got done
7 with Gary in the July -- I don't know, it was August, the
8 August 2003 Life Flight leadership meeting, after
9 everybody expressed their concerns, Gary acquiesced to
10 creating a policy about pilot duty time. The only
11 problem with that policy was that it didn't address all
12 Part 91 flights.

13 So I had an issue with that and Gary, there is
14 an e-mail that PMC has produced, and I could research it,
15 but there is an e-mail that Gary sent to Pam Niece
16 complaining about me because I was nit-picking his
17 policy. My concern was that the crew didn't want to fly
18 with tired pilots, why was this flight duty time only for
19 at post maintenance flights. You know, the crew doesn't
20 want to fly with tired pilots, they expressed that quite
21 concisely in the August of 2003 Life Flight leadership
22 meeting, and here is Gary only addressing after
23 maintenance flights.

24 Q. What is an after maintenance flight?

25 A. After the mechanic gets done working on the

1 aircraft.

2 Q. So only if there is a maintenance event, the
3 next flight after that, that's the only flight --

4 A. Correct --

5 Q. -- that this policy would attach to.

6 A. That's correct. And if the nurses and
7 paramedics were out someplace and something happened,
8 maybe some weather came through, whatever the scenario,
9 that the pilots could still fly back after being on duty
10 20 hours, because Gary didn't want to make a policy about
11 that.

12 Q. As far as the policy that was implemented for
13 maintenance -- what did you call it, maintenance flights,
14 post maintenance flights?

15 A. Yes, it's called post maintenance flights.

16 Q. Post maintenance flights. What was the time
17 for the policy? What was the duty time allowable for
18 pilots?

19 A. I believe it was 16 hours but it might have
20 been 15. I am not real sure of that answer.

21 Q. Now, on this instance where Ron Fergie flew
22 back from Salt Lake after being on duty for a number of
23 hours, 20 hours or so, you said that Romero and Rogers
24 were on the flight with him and you said that Romero and
25 Rogers had hesitations about getting on the flight with a

1 pilot that tired?
2 A. I said that Mark Romero said that he had
3 reservations and Jim Rogers had told him the same thing,
4 they both had reservations, because Jim Rogers was not in
5 that meeting.
6 Q. So Rogers told Romero and Romero told who?
7 A. Spoke in the Life Flight meeting about it.
8 Q. On 8/21?
9 A. Correct, well, 8/03; if it's 21, it's 21.
10 Q. 8/21/03. Did you ever discuss that issue with
11 them personally, either of them?
12 A. No. The only time it was discussed was at the
13 meeting. And I had never discussed previously to the
14 meeting that I was going to bring that up. It was an
15 issue that Frank Prickett brought up and I thought it was
16 very valid.
17 Q. Was it your habit to deal with other people in
18 the Life Flight program and interact with them just by
19 e-mail, or did you talk to other people in the Life
20 Flight program when you had issues?
21 A. Both. I love e-mail.
22 Q. Like you talk about you didn't talk to Ron
23 Fergie about your concerns that he was flying when he was
24 tired, you e-mailed him.
25 A. I didn't e-mail Ron about flying while he was

1 tired, ever. I did not e-mail Ron about flying when he
2 was tired. I e-mailed Gary about him flying over my
3 house.
4 Q. Did you e-mail Ron about flying over your
5 house?
6 A. I did not.
7 Q. And you didn't talk to him either?
8 A. I did not. I talked to his supervisor. I
9 didn't feel that there was any productive conversation
10 that would take place over that, considering how he had
11 been acting after the Life Flight leadership meeting in
12 August of 2003.
13 Q. And you talked about the way he was acting.
14 A. Yes.
15 Q. How was he acting?
16 A. He was very short, he just wouldn't talk to
17 me.
18 Q. Did you try to talk to him and he wouldn't
19 answer?
20 A. He would be very short and you could tell he
21 was very angry.
22 Q. He was angry at you?
23 A. It appeared that way.
24 Q. For bringing up this issue of pilots flying --
25 A. I could only assume.

1 Q. You assume that it was because --
2 A. I can only assume.
3 Q. Let me finish my question. You assume that it
4 was because of what you read at the 8/21 leadership
5 meeting about pilots flying when they are too tired?
6 A. That's correct.
7 Q. Before this leadership meeting did you ever
8 talk to Ron about your concerns about pilots flying too
9 tired?
10 A. No, not that I recall.
11 Q. Did he ever say anything to the effect when he
12 was being short with you that you ambushed me or you
13 sandbagged me or anything like that?
14 A. He did not.
15 Q. So looking at Exhibit No. 6, down at this
16 second to the last paragraph, it says, Since my
17 department has been adversely affected by pilots' bad
18 decisions in the past, I feel I must know of the unsafe
19 incidents in an attempt to change policy as needed to
20 preclude another accident.
21 So when you say my department has been
22 adversely affected by pilots' bad decisions in the past,
23 what are you referring to?
24 A. Well, we could start with the 1993 crash
25 landing on Carter Street where my department had to rent

1 a crane and a flatbed to put the helicopter on the
2 flatbed and take it out to the airport and work on it for
3 several months and \$150,000 down the drain. And unsafe
4 issues that happened with that.
5 The 2001 accident obviously adversely affected
6 me and my department, reputationwise and definitely
7 workloadwise, it was just a horrible experience. And not
8 only that, you know, you don't ever want to see somebody
9 get killed, do you? I mean seeing somebody get maimed,
10 that was horrible. How would you like to see somebody
11 get killed?
12 Q. Looking at the bottom paragraph, it says,
13 After all future maintenance activities, the mechanic on
14 duty will screen the pilot for proper rest minimums
15 before completing and signing off repairs to the
16 aircraft. I would like some input as to what the pilot
17 duty cut off time should be for safe operation.
18 Now, is this a policy that you unilaterally
19 enacted?
20 A. I did.
21 Q. And announced in that meeting?
22 A. I don't know if I got that far. You know, I
23 got so far down the letter and then everything was
24 flying. I am not sure, like I told you, I didn't read
25 this sentence per sentence, every paragraph. I read

1 enough of it to where I felt I got what I needed out
2 there. Yes, I made, I think it was Policy Letter No. 12,
3 Life Flight -- you guys -- you guys. PMC refused to send
4 me my Life Flight policy letters, Life Flight maintenance
5 policy letters. But I think I do have a copy of it and I
6 believe that you guys -- you guys -- that you were
7 supplied with that policy.

8 But, yes, there was a policy created. And it
9 said that I can't make -- I told the mechanics what the
10 situation was and I am sure Frank Prickett totally agreed
11 and as far as Greg Stoltz, I don't know. Frank Prickett
12 totally agreed. He was the one that brought up the issue
13 to begin with about pilots being tired and him feeling
14 bad about even being in a situation, being placed in a
15 situation where a pilot had flown back after 20 hours
16 after he put his name on the books.

17 Q. So was the motivation for this partly to
18 protect the maintenance department from --

19 A. Partially.

20 Q. -- from consequences if there was an accident?

21 A. It's everybody's protection. It's everybody's
22 protection. But, yes, partially it is the maintenance
23 department. The maintenance department got adversely
24 affected by the 1993 crash landing. The maintenance
25 department was adversely affected by the 2001 accident.

1 Q. Is this one of the reasons you came up with
2 this policy, then, the mechanic on duty will screen the
3 pilot for proper rest minimums before completing and
4 signing off repairs to the aircraft. You testified that
5 you came up with that policy and you put it in a policy
6 letter.

7 Is one of the reasons you came up with this
8 because you felt that maintenance had been unfairly
9 blamed for the previous 2001 crash and you didn't want
10 that to happen again?

11 A. It was part of the reason of many reasons.
12 The main reason being safety and people's lives.

13 Q. Sure.

14 A. But of course, it adversely affected the
15 maintenance department in many ways, not just being left
16 with the public's perception that maintenance was
17 culpable.

18 Q. Let's look at Exhibit No. 7. Is this 7?

19 A. That's the policy letter.

20 (Deposition Exhibit No. 7 marked for
21 identification.)

22 Q. This is the policy letter that's been marked
23 as Exhibit No. 7, document MV009. You drafted this it
24 looks like or you wrote this on 8/21/03, which is the
25 same day as the leadership meeting; is that right?

1 A. That's what the date says.

2 Q. What did you do with this policy letter?

3 A. It went in a Life Flight maintenance policy
4 book that was located in the Life Flight maintenance
5 office, and the other mechanics read it and would have
6 had to sign it, that they had read and understand the
7 policy.

8 Q. Do you know if the other mechanics ever did
9 read and sign this policy?

10 A. Yes, they did. Every year during evaluations
11 part of their evaluation process was to review the Life
12 Flight maintenance policies.

13 Q. Do you write all -- did the director of
14 maintenance write all the maintenance policies?

15 A. The director of maintenance wrote all the Life
16 Flight maintenance policies while I was there. I would
17 assume that that would still be the case.

18 Q. Now, at the top it says, the first full
19 paragraph, On 11/14/01 our helicopter had an accident due
20 to pilot error. Life Flight maintenance was blamed for
21 the accident. The last sentence of that paragraph, From
22 this point forth we need to monitor the state of the
23 pilots and question what they do, to avoid a repeat of
24 that very bad situation.

25 Is this kind of language common in policy

1 letters? Do you usually discuss in the policy letters
2 that you have written, do you discuss --

3 A. This was a very emotional policy letter. If
4 you read any of my other letters, it wouldn't have
5 anything like this written in them. I was a little upset
6 by Gary Alzola's position and with even the thought of
7 Ron Fergie flying after 20 hours as the safety officer
8 and training pilot and chief pilot, I was upset that
9 something else was going to happen if safety issues were
10 not taken care of.

11 Q. It says in the next paragraph, It's apparent
12 to me now, that the new program director, director of
13 operations, and the chief pilot will shift the blame to
14 maintenance, even if they have information that will
15 clear maintenance of any wrongdoing.

16 Are you referring, then, to the 2001 crash?

17 A. Also things happened in 1993 that included Pam
18 Humphrey, but there were things said by the chief pilot
19 and the director of operations and the program director
20 that all pointed to that. Pam Humphrey in the February
21 of 2003 meeting -- yeah, 2003 meeting about Gary Alzola
22 stated that we are never going to release any accident
23 information. I am never going to do anything to Gary
24 Alzola.

25 And right after the accident Ron Fergie was

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1 upset as could be and stated that if I were Tim Brulotte,
2 I wouldn't tell anybody what happened with regard with
3 the accident, let the FAA figure it out. That upset me
4 because my name is tied to that accident, so if the pilot
5 isn't going to tell the truth, that would just be a
6 horrible scenario. The director of operations in the
7 9/3/02 meeting stated that if another accident happens,
8 only I am going to know what happened and no others need
9 to know.

10 Q. So in this policy letter, when you are talking
11 about how the program director and director of operations
12 and chief pilot will shift the blame to maintenance even
13 if they have information that will clear maintenance of
14 wrongdoing, would it be fair to say that you are bringing
15 up again the issues that you would agree were closed back
16 in the February 19 of 2003 memorandum from Pam Niece,
17 which is Exhibit 4?

18 A. I disagree.

19 Q. Tell me why that isn't bringing it up again.

20 A. I signed a letter, a statement, the summary of
21 a meeting, but I never agreed never to bring the accident
22 up again; if there are safety issues related to that
23 accident, I have to bring them up in the future.

24 There is another document I wrote after the --
25 in fact, you have already covered it, the September 19,

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1 A. Well, I told you he said that Ron didn't do
2 anything wrong several times, and the crew kept on
3 saying, well, like Tom Mortimer said, that, hey, Tim
4 Brulotte was on duty for 17 hours and he had -- that's
5 another thing, too, Ron was on 20 hours, we don't want to
6 fly with tired pilots. Another thing Gary said was, oh,
7 Ron had several naps that day. Tom Mortimer came back
8 and said, he said so Tim Brulotte stated that he had
9 several naps that day and it just went.

10 It wasn't just me and Gary, but Gary was very
11 upset, and finally I piped in and said that maintenance
12 isn't going to release an aircraft to a tired pilot, to a
13 pilot that's been on duty for 20 hours or, you know, just
14 not going to do it.

15 Q. Did you ever infer that maintenance would
16 sabotage an aircraft to keep it from flying?

17 A. Never.

18 Q. Maybe sabotage isn't the right word. You
19 talked earlier about taking out a battery or something
20 like that?

21 A. If you take out the battery, you can't start
22 it.

23 Q. Right.

24 A. I talked to Carl McGuire of the FAA when this
25 whole situation got heated, and Carl McGuire, said, yeah,

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1 2003, meeting, I have a summary document which I believe
2 is MV013, that states that if safety issues that are
3 related to the accident come up, then I will bring up the
4 accident again because it's relative. If you forget the
5 past, you are doomed to repeat the past and the same
6 mistakes of the past. I did not specifically bring up
7 the accident here, I did not specifically bring it up.

8 And you are right, I shouldn't have written
9 it, but I was a little emotional after, you know -- I
10 did, I wrote it right after the meeting because Gary
11 Alzola, he took a stand that, you know, Ron didn't do
12 anything wrong, we can do anything we want to and you
13 can't do anything about it.

14 Q. Tell me about that. You wrote the policy
15 right after the meeting in which you had gone by your
16 outline here of your, I don't know, memo, I guess it is,
17 and you say that Gary took a stand. And Gary was -- was
18 it fair to say, was Gary upset?

19 A. He was very upset.

20 Q. So Gary was very upset after you read this,
21 what is Exhibit No. 6.

22 A. That's correct.

23 Q. And tell me how you know he was upset.

24 A. He was emotional.

25 Q. What did he say?

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1 take out the battery, make a logbook entry, it's all
2 legal.

3 Q. When did you talk to McGuire?

4 A. Right about this time.

5 Q. Is he in Salt Lake?

6 A. He is the supervisor for the primary -- or for
7 the maintenance inspectors.

8 Q. And you say that Gary Alzola as a result of --
9 after you read this memo and got into it, you said
10 something to the effect that Gary Alzola took a stand and
11 that you aren't going to tell pilots what to do or
12 something like that?

13 A. He stated to the point that, right,
14 maintenance can't tell pilots what to do. And I just
15 said, fine, then I will disable the aircraft so you can't
16 fly it or I won't make repairs, one of the two. We will
17 do whatever we have to do. We are not going to have a
18 repeat performance of Tim Brulotte.

19 Q. And that was from the 2001 accident?

20 A. Correct, correct.

21 Q. And one of your motivations, as you stated,
22 was to keep maintenance from getting blamed if there was
23 an accident.

24 A. It's not the major one.

25 Q. Now, in this policy letter, going back to

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29 (Pages 110 to 113)

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1 No. 7, when you say in that second full paragraph, I am
2 sorry to say we have an us against them scenario fostered
3 by the aforementioned staff. And by the aforementioned
4 staff, are you talking about program director, director
5 of operations, and chief pilot? Who are you talking
6 about, who is the aforementioned staff?
7 A. Well, Gary Alzola is definitely the
8 aforementioned staff. Pam Humphrey stated that Ron
9 Fergie had done nothing wrong by flying 20 hours. The
10 chief pilot obviously didn't think there was anything
11 wrong, because he did it. So I guess that's the
12 aforementioned staff.
13 Q. You are talking about Gary, Pam, and Ron?
14 A. They all said it was okay, A okay.
15 Q. And when you are talking about us, who is the
16 us? Is the us maintenance or --
17 A. The maintenance staff.
18 Q. The maintenance staff, because the policy
19 letter is directed towards the maintenance staff.
20 A. It is a policy letter for maintenance.
21 Q. For maintenance, okay. You say you don't want
22 to foster an us against them but you must always remember
23 that if it's a decision they have to make, pilot against
24 mechanic, you are going to take the hit.
25 A. It happened to me twice, well, more actually.

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1 Q. And let's talk about what those hits are.
2 Happening more than once, twice, there is the 1993 --
3 A. There is the 1993, but it's the circumstances
4 of 1993 that's more than once.
5 Q. There is the 2001?
6 A. Yes.
7 Q. What else?
8 A. Okay, I had this figured out the other day.
9 Anyway, in 1993 a helicopter flamed out, which means an
10 engine quit running because of ice and snow ingestion.
11 There was snow found by Greg Stoltz, me, Steve Smith; a
12 tech rep from Eurocopter; Metro Aviation, Milton Geltz
13 was director of maintenance at the time, and we took the
14 cowling off right after the accident, there was snow and
15 ice inside the transmission cowling. Damaged both
16 compressors, made one of the engines quit running.
17 Okay, the pilot that caused that crash, that
18 engine flame-out, did not have the continuous ignition
19 system on as he was supposed to per the flight manual and
20 and the airworthiness directive that was issued by the
21 FAA.
22 And at the meeting right after the accident,
23 the post crash meeting, he stated that -- well, the first
24 question was from Rick Jones's mouth, he said -- he was
25 one of the attendants on that day -- he said, Don, wasn't

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1 the continuous ignition supposed to be on. And Don
2 stated, no, only if it's snowing.
3 And that's the story I was telling you about,
4 later on we found the flight manual that any time -- I
5 didn't get into that, but any time there is an
6 accumulation of snow on the cabin roof, any time there is
7 snow inside the transmission cowling, you have to take --
8 you have to remove that snow and after you have removed
9 the snow, you have to have the continue ignition system
10 on. Well, for one, he didn't remove the snow from inside
11 the transmission cowling; No. 2, he didn't have the
12 continuous ignition system on. Adversely affect the
13 maintenance department.
14 Now I have all the crew coming up to me, going
15 did they ever find out what happened to the engine, did
16 they ever find out what happened to the engine. I have
17 got all the pilots, even a friend of mine, a very good
18 friend of mine, not telling me what happened. That is
19 adversely affecting me.
20 Then later on Don Humphrey and Pam, she is the
21 program director, he is just a pilot at the time, but one
22 of them is trying to -- one of them is trying to tell
23 National Airmotive that the compressor is wore out, to
24 try to put the blame on maintenance. Okay, so I get a
25 call from National Airmotive saying that the compressor

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1 is out of limits. That's what caused -- actually I
2 didn't get it from National Airmotive, I got it from the
3 insurance company who had talked to National Airmotive,
4 and I said, no, I had just been in there a couple of
5 months earlier and measured it and it was within limits.
6 So I called National Airmotive and I say,
7 okay, what are you inspecting this compressor, what
8 manual are you inspecting it to. And he said the
9 overhaul manual. I said, well, it was out here in the
10 field operating so you should have to inspect it by the
11 operations manual, the maintenance operations manual.
12 So they call me back several hours later, they
13 go, well, it passes and everything but it won't pass the
14 overhaul. I am going, you called the insurance company
15 and told them that the accident was caused because the
16 compressor was out of limits, that's not the case. So
17 that adversely affected the maintenance department.
18 Another adverse reaction was me telling Clint
19 and Megan -- I tell the crew members every once in a
20 while when they'd ask me because they were scared to fly.
21 Here we have a helicopter and the pilots are creating
22 stories as to why the engine flamed out.
23 Well, I had a letter written up, but I don't
24 have it anymore. And it had five different scenarios
25 that the pilots had come up with. One was there was some

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1 water in the fuel and a slug of fuel went through the
2 engine and caused the engine to stop. Another one was
3 just a faulty fuel control and that just happens
4 sometimes. And they had several scenarios.

5 But none of them would say that the continuous
6 ignition was supposed to be on so everybody would feel
7 safe again. Nobody would own up that that's what really
8 happened. So there are three adverse reactions right
9 there.

10 A fourth even to '93 is I tell Clint and Megan
11 Atkins, Clint is going back to medical school, his wife
12 was on board that day, he asked me, well, why did the
13 engine flame out? All these people are asking me and
14 they are scared to fly and I told them, I said Don was
15 supposed to have the continuous ignition system on
16 according to the flight manual.

17 They went would to their outprocessing
18 interview, Megan and Clint Atkins, a week later I was
19 told that Pam Humphrey resigned from her position as
20 program director. I can only assume why. There is four
21 adverse effects right there just for the '93.

22 The 2001, the 2001. I mean just having to be
23 there and going up and rescue a pilot, that's pretty
24 adversely affected. My family was adversely affected.
25 We had to go and find a rental aircraft, had to do all

1 this extra work. That adversely affected the maintenance
2 department. Okay, there is about seven or eight. Is
3 that enough for you? Do you want to go on? That's
4 probably enough really.

5 MR. McFARLANE: Let's pick it up after a quick
6 break. We need to switch the tape.

7 MR. POPA: Going off the record, the time is
8 12:17 p.m.

9 (Short recess.)

10 MR. POPA: We are back on the record. The
11 time is 12:22. This is the beginning of Tape No. 4.

12 Q. Mr. Van, we were talking about the Life Flight
13 Maintenance Policy Letter No. 12, Exhibit No. 7, and I
14 was asking you about how maintenance, when you say that
15 in the third full paragraph, I am cordial with them and
16 do not wish to foster a us against them situation but you
17 must always remember that if it's a decision they have to
18 make (pilot against mechanic) you are going to take the
19 hit.

20 And I was asking you about incidences in which
21 maintenance has taken the hit, and you described a bunch
22 adverse impacts on maintenance department stemming from
23 the 1993 and 2001 crashes. And you described them as
24 adverse impacts. Is that what you meant by maintenance
25 taking the hit?

1 A. I do.

2 Q. And by taking the hit, is also the fact that
3 your belief that Gary Alzola would not release
4 information, you know, clearing you of blame was taking a
5 hit for the 2001 accident?

6 A. He had a pattern of doing just that, not only
7 him, Pam Humphrey, you know, made statements that we are
8 not going to release any information about an accident,
9 and she has totally supported Gary Alzola. Ron Fergie
10 made statements that he would never tell anybody.

11 Q. You say they will gang up on you. You are
12 talking about Gary, Pam, and Ron in this third full
13 paragraph, says, They will gang up on you and make little
14 to no sense to attain the end they desire. It has
15 happened to me on five separate occasions.

16 Are you talking about Gary, Pam, and Ron?

17 A. No, I am just talking about different
18 situations that had happened. It didn't have to be -- it
19 could have been Audrey Fletcher and Diane Kirse and me in
20 the meeting where here I have information that Gary
21 Alzola didn't tell the truth, but we are not going to do
22 anything about it.

23 We could be talking about the February
24 meeting, I believe it was February of 2003 where I had
25 the complaint resolution procedure against Gary, and, you

1 know, Pam saying all these crazy things. I am never
2 going to do anything against Gary, you know, we don't
3 have to tell you why, you know. It doesn't make any
4 sense. It does not make sense.

5 Q. Who is "they," is it pilots?

6 A. Whoever is involved with whatever meeting, you
7 know, that I had problems with. It could be any meeting
8 involving whoever that if you don't make any sense to
9 your argument, then that's what I am talking about.

10 Q. Then you advise the maintenance staff to
11 confide in you, confide in you, Mark Van, if they find
12 themselves at odds with these people, and we will work
13 out a solution. If there is an accident or an incident
14 you are involved in, don't talk to them about it until we
15 get together to go over it.

16 Is that a standard policy in maintenance, if
17 there is any sort of --

18 A. It was my policy. Gary Alzola made the
19 statement in the 9/3/02 meeting that no one -- it would
20 be an information blackout, any accident, incident, would
21 be an information blackout, and I didn't care for that.
22 I didn't care for that power thing, you know, that he had
23 going. That only operations needs to know and everybody
24 else is kept in the dark. It didn't work very well, you
25 know, the last time he handled it in 2001.

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1 rebuttal was because if I let her summary slide, then she
2 would say, look, I wrote this summary and he accepted it
3 because you never made any rebuttal to it.

4 Q. You advised the maintenance staff to take the
5 battery out and put it in their vehicle so the plane
6 wouldn't fly.

7 A. I did, if they thought there was an unsafe
8 situation with the pilot.

9 MR. McFARLANE: This will be Exhibit No. 8.
10 (Deposition Exhibit No. 8 marked for
11 identification.)

12 Q. Showing you a document, it's an e-mail from
13 Pam Humphrey to yourself dated --

14 A. This was handed to me by Pam Humphrey, it was
15 not an e-mail. It was handed to me right before -- well,
16 we will go into that later.

17 Q. When was it handed to you? Let me ask you
18 that.

19 A. If you go to my document MV010, Pam Humphrey,
20 it addresses that it was handed to me on a Friday, I
21 believe, right before I went to go pick up the new Agusta
22 helicopter. So it was September-October of -- you would
23 have to look at the letter.

24 Q. It summarizes a meeting that you had on
25 September 19, 2003, with Pam Humphrey and Pam Niece.

1 And this was all brought on because when I
2 initially gave Pam Humphrey MV002, when I initially gave
3 her that document and we went over it, she made an
4 accusation that she had information that I was culpable
5 for that accident of 2001. And I didn't want to get into
6 it at that time, get distracted. So we just talked about
7 Gary Alzola. But it festered in my mind as far as, you
8 know, she is saying it, who else has heard it.

9 So I asked several of the crew, you know, in a
10 nonchalant way if they had ever heard anything derogatory
11 and during one of my questioning of the crew if they ever
12 heard anything derogatory that I had caused the accident,
13 Tom Mortimer said that he had never seen that letter.
14 And if you look at MV001, which is my letter of what
15 happened to me that night up on the hill with Tim
16 Brulotte, it says to all crew members.

17 Well, Pam Humphrey decided not to give it to
18 any of the crew members and then tell them, I believe she
19 told them, somebody told them -- well, no, Tom Mortimer
20 told me that, that she told them not to talk to me about
21 the accident. So here I am wondering how come nobody is
22 talking to me.

23 Initially I wrote the letter because I didn't
24 want to go over the story over and over and over with
25 every crew member but I wanted them to see it. But I did

1 A. It does.

2 Q. And what was the gist of that meeting about?

3 A. You know, I don't really recall exactly what
4 the gist of it was. I remember some pieces and parts of
5 it. You would have to ask Pam Humphrey that, why she
6 called the meeting. I think -- well, it happened after
7 Ron's -- after I brought up the issue of Ron's 20 hours
8 on duty, obviously, and then it happened after Ron
9 overflew my house --

10 Q. After the safety meeting?

11 A. After the Life Flight leadership meeting.

12 A. When was the house fly-over, I don't recall.

13 Q. September ??

14 A. Yes, so the 19th -- so I think it had
15 something to do with those issues.

16 Another thing took place, I was talking to Tom
17 Mortimer, the chief flight nurse on the helipad --
18 anyway, Tom Mortimer told me -- I asked him if he had
19 ever seen the letter I wrote back after the accident,
20 MV001, because, you know, nobody had ever talked to me
21 about it, none of the crew had ever said anything about
22 it, and he said he had never seen it. But this was after
23 I had -- I asked him if he ever heard -- has anybody ever
24 said anything derogatory about me that I had caused the
25 accident?

1 not want to be in seclusion.

2 So that was one of the issues I believe she
3 brought up because I wrote a document demanding that Pam
4 Humphrey submit every issue that I was culpable for the
5 accident. And part of that reason was for this meeting.
6 I like this, continues to bring up the past, specifically
7 agrees that corrective action was taken.

8 At that meeting I did not bring up Gary
9 Alzola, she brought up Gary Alzola. She produced a
10 document that said that agents of the FAA cannot release
11 information while an accident is under investigation.
12 And I stated Gary Alzola is no agent of the FAA. And at
13 that point Pam Niece goes, so Gary was lying, people lie
14 about me all the time. And I documented in MV010.

15 And my rebuttal letter to this, nothing in
16 that rebuttal, it's a five-page rebuttal, nothing in it,
17 nobody brought up an issue about, nobody ever said, Mark,
18 you are lying about this, you are lying about that,
19 nobody ever said anything. But if I had let this summary
20 here stand, then Pam would have said, see, all of this
21 stuff is true. Well, it's not true and I never signed
22 it --

23 Q. Did you refuse to sign it?

24 A. She didn't make me sign it. She just handed
25 it to me right before I was leaving, it was late on a

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1 up the accident. Are you talking about this summary here
2 (indicating)?
3 Q. Bring up the blaming issue.
4 A. You are talking about this summary here
5 (indicating).
6 Q. Let's go back to Exhibit No., I believe it's
7 4, No. 4 on the last page.
8 A. Okay.
9 Q. We made every attempt to come to a
10 satisfactory resolution, it is therefore the expectation
11 from this point that the issue is closed for further
12 discussion.
13 A. What issue?
14 Q. That's what I am asking you.
15 A. The issue was Gary Alzola lying to the FAA and
16 causing that situation or causing about what the FAA had
17 told him about information that could be released from an
18 accident.
19 Q. Does that issue include your feeling of
20 maintenance being blamed?
21 A. It happened more than that time.
22 Q. Blamed for the accident because of Gary
23 Alzola's failure to put forth that information from the
24 FAA?
25 A. If you look at the beginning -- where in the

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1 letter does it say -- I disagree. The accident should be
2 brought up. I signed a document that I wouldn't bring up
3 Gary Alzola's lying, you know, I signed a document, but
4 it doesn't say -- I have read above summary and have
5 received a copy of the summary. Does it say I agree to
6 the summary?
7 Q. Did you?
8 A. Does it say I agree to the summary?
9 Q. I am asking you --
10 A. I agreed that I wasn't going to bring up Gary
11 Alzola, the issue about Gary Alzola lying, but if there
12 are issues of safety that are intermingled, safety is
13 more important than any of that. And I never signed
14 anything that says I agree. And on top of that -- well,
15 I'll just leave it there.
16 Q. This letter that you wrote to Pam Humphrey,
17 Exhibit No. 9, it's dated 1/19. Did you write it that
18 day, too?
19 A. No.
20 Q. Did you write it several days before that
21 or --
22 A. I believe it took a week or so to compose in
23 between working.
24 Q. Looking on Page 3 of 4 for that exhibit, at
25 the bottom, it seems like, I have been told the

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1 appropriate action has been taken concerning Gary Alzola,
2 but since he has a right to privacy I can't be told what
3 actions were taken. It seems that lying to shift the
4 blame to innocent parties is conduct that should reach
5 the level of termination. At the very least he shouldn't
6 be allowed to supervise anyone.
7 So I guess --
8 A. If you look in the employee handbook, that's
9 exactly what it says, that lying can lead to termination.
10 And that's exactly where I got that from.
11 Q. So were you advocating in this letter that
12 Gary Alzola should be fired?
13 A. I was advocating that the right thing wasn't
14 done, and the only reason I was advocating it was because
15 Pam Humphrey continues to bring up the past (indicating)
16 and I all the time agreed -- here we go, continues to
17 bring up the past when specifically agreed that
18 corrective action was taken in regards to your concerns
19 addressed in February (indicating). Well, I never agreed
20 to any of those things. Do you see in that letter where
21 I say I agreed to any of that? It doesn't say that.
22 Q. In the meeting itself did you indicate that
23 you were okay with leaving things where they were and
24 that they wouldn't be brought up again?
25 A. I did not. I told them point-blank that if

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1 issues about the accident in the future come up, I am
2 going to raise them because it's safety, and the accident
3 may have to be brought up again. I am never going to
4 agree to that. If you are talking about the February of
5 2003 meeting. I made the same point in the September
6 meeting, though, too. I am never going to agree to not
7 talk about the accident. I will try not to bring it up.
8 I mean it's too important. Safety is too important to
9 say you are never going to talk about it again.
10 Q. Is bringing up blame for the accident the same
11 as bringing up the accident, in your mind?
12 A. I don't know what you mean by -- do you want
13 to expand it, would you like to expand your question?
14 Q. If you don't understand the question, just
15 tell me and I will try to rephrase it.
16 A. That's what I say, would you expand it or make
17 it so -- I really don't understand what you are --
18 MR. NIELSON: Are you referencing the policy
19 letter in which he was bringing up the issues about the
20 pilot flying and the maintenance issues?
21 Q. Well, I guess what I am asking is, with
22 respect to -- you feel that maintenance was unfairly
23 blamed for the 2001 accident --
24 A. Unfairly left with the blame. I am sorry to
25 interrupt you.

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1 Q. That's fair. Unfairly left with the blame
2 because of Gary Alzola's unwillingness to --
3 A. And the handling of the whole situation, it
4 was more than just Gary Alzola.
5 Q. And the hospital's unwillingness to say that
6 it was pilot error?
7 A. That's correct. Where are we going with this?
8 Q. Well, you say that -- you say that you will
9 always bring up the accident because of safety reasons.
10 A. If it's relevant to my concern, yes. Just
11 like when I bring up, when it was brought up that Ron
12 Fergie had flown 20 hours, I am supposed to not make
13 references to Tim Brulotte being on duty 17 hours?
14 Q. Let me finish my question. What I am asking
15 is, is your sense that maintenance was unfairly left with
16 the blame, is that a safety issue to you?
17 A. No, it's not a safety issue.
18 MR. McFARLANE: I think we are probably at a
19 pretty good stopping point, if we want to go off the
20 record.
21 MR. POPA: Going off the record, the time is
22 12:54 p.m.
23 (Lunch recess taken from 12:54 to 2:05 p.m.)
24 MR. POPA: We are back on the record. The
25 time is 2:07 p.m., the date is May 24. This is the

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1 beginning of Tape No. 5.
2 Q. (By Mr. McFarlane.) Mr. Van, when you came in
3 today you brought some photographs with you. Are these
4 photographs that you took?
5 A. Those are photographs that Lance Taysom took,
6 I believe.
7 Q. Lance who?
8 A. Taysom, flight nurse.
9 Q. Is this the 2001 --
10 A. Accident.
11 Q. -- accident?
12 A. Yes.
13 Q. When did you get these from Lance?
14 A. Gordon Roberts e-mailed them to me. I didn't
15 personally get them from Lance. I believe that's who
16 took them, though.
17 Q. When did Gordon Roberts e-mail them to you?
18 A. Sometime in 2002.
19 Q. Do you have copies of these on your hard
20 drive?
21 A. I do.
22 Q. And they are color?
23 A. They are color.
24 Q. Do you have any other pictures of anything on
25 your hard drive relating to Life Flight, Life Flight

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1 helicopters, Life Flight personnel?
2 A. I don't recall -- no, I don't recall any. I
3 did at work but I don't at home.
4 Q. When you left work, did you save a copy of
5 your work hard drive?
6 A. I didn't even know I could do that, or I would
7 have.
8 Q. Did you save information on your work computer
9 in any way before you left or when you left?
10 A. I just left. Anything that was saved was
11 already saved. I don't know what you mean.
12 Q. Did you put any information on a thumb drive,
13 an external hard drive --
14 A. I never took any information with me. The
15 only thing I took out of that office informationwise was
16 I think my employee handbook and a letter from Greg
17 Stoltz. But electronically I took nothing off the
18 computer.
19 Q. Was the letter -- what was the letter from
20 Greg Stoltz?
21 A. The one about the ice on the blades in October
22 of 2004 that Greg Stoltz signed.
23 Q. I think we will talk about that in a few
24 minutes, I think I know which one you are talking about.
25 MR. McFARLANE: Let's make this No. 10.

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1 (Deposition Exhibit No. 10 marked for
2 identification.)
3 Q. Looking at the bottom of Exhibit No. 10, it
4 looks like the bottom of this e-mail thread is an e-mail
5 from you to Gary Alzola and Pam Humphrey on June 21,
6 2004. Do you recognize this e-mail?
7 A. I do.
8 Q. Now, this has to do with overflight issues.
9 A. It has to do with airworthiness directive,
10 Federal Aviation Regulation violations for exceeding the
11 inspection time intervals for the inspections due to the
12 airworthiness directive.
13 Q. Now, this e-mail dated June 21, is this the
14 first time that you told anybody at the hospital about
15 this AD violation?
16 A. I was on the helipad right after the
17 helicopter came back and Ron Fergie was on the helipad
18 and I grabbed the logbook and as Ron Fergie was leaving,
19 because he had a flight -- it was probably 9 or 10
20 o'clock in the morning, it was early, and Ron was going
21 off shift, and Gary Alzola was coming on shift. And I
22 opened up the book and Ron had overflown the
23 airworthiness directive.
24 Gary Alzola was standing there and I told Gary
25 Alzola that Ron had overflown the AD, and it was the day

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1 that it happened and in fact it was minutes after he
2 arrived back at Pocatello or Portneuf Medical Center.
3 Q. Was that the 5/17 violation or the 6/7
4 violation?
5 A. It would be the 5/17.
6 Q. So you told Gary right on the helicopter pad?
7 A. Yes, I did. There is a document, I don't know
8 which one it is, but there is some correspondence that
9 states that exact fact. I don't know which one it is
10 right now. But Gary Alzola was on the heli -- well, Ron
11 Fergie was walking off the helipad and Gary was coming
12 and I opened the book and I said, hey, you know, Ron just
13 overflew an AD, and Gary said some incredible thing like,
14 oh, you can't overfly an airworthiness directive, and it
15 was a 25-hour inspection.
16 It was relayed later to the FAA, the
17 conversation that took place with Gary. I think it might
18 be MV015, but I am not sure. No, it would have to be
19 later, because I think 015 was sent before. There were
20 some e-mails and stuff to Lynn Higgins I believe later.
21 Q. How about the overflight of 6/7, tell me about
22 that one.
23 A. I just was doing the books again and found
24 that Chad Waller had overflowed an airworthiness
25 directive.

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1 Q. And Chad's overflight was for .4 of an hour?
2 A. I don't have my documents in front of me, I
3 don't know. It was over, I don't know exactly what it
4 was. I have given you guys copies of the AD compliance
5 lists and you should have that information.
6 Q. Was Ron Fergie's overflight of 5/17, was that
7 by .1 of an hour?
8 A. I believe so.
9 Q. After the 6/7 overflight, did you tell anybody
10 at the hospital about that overflight?
11 A. I am sure I instructed Gary Alzola, but I
12 can't remember the date or the time. I reported it.
13 Q. Do you know when you reported it?
14 A. I do not.
15 Q. I guess the question is, other than this
16 e-mail of June 21, did you report these AD overflights?
17 A. To the FAA?
18 Q. To anyone.
19 A. I told you I reported it immediately when it
20 happened on 5/17, Ron Fergie was leaving the helipad,
21 Gary Alzola was walking up to the helicopter and I
22 reported it immediately.
23 Q. And the next time you reported it was June 21?
24 A. I think we had had some discussions, Gary and
25 I -- I know we did -- about it; anyway, I talked, you

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1 know. I know I reported Chad's overflight, too. I can't
2 tell you when.
3 Q. Do you know who? Who did you report Chad's
4 overflight to?
5 A. I reported it, one, to the FAA, eventually. I
6 don't know the exact date because I don't have my
7 documents in front of me, and I reported it to Gary
8 Alzola.
9 Q. Before June 21.
10 A. If it happened on the 6th, I am sure I did.
11 Q. June 7 was the overflight.
12 A. I am sure I did. I just don't have --
13 Q. You just don't know when or under what
14 circumstances?
15 A. I might be able to research that and find it
16 out for you and provide documentation. But I don't have
17 it on the top of my head, off the top of my head I can't
18 tell you. I know it was reported.
19 Q. So you send this e-mail to Gary and Pam and it
20 looks like Pam writes you back. She says, I want you and
21 Gary to get together and resolve this. She writes you
22 back on the 21st at 5:16 p.m., I want you and Gary to get
23 together and resolve this and come up with how it will be
24 dealt with in the future. I haven't spoken to Gary but
25 he may have already reported it. Update me on your

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1 solutions also after you have met.
2 So that's what you were instructed to do by
3 Pam; right?
4 A. Okay.
5 Q. Is that correct; is that your understanding of
6 what you were instructed to do by Pam?
7 A. And Gary and I did get together, so your point
8 is?
9 Q. I am asking if that's your understanding of
10 what you were instructed to do by Pam, to get together
11 with Gary and work out a solution.
12 A. Yes, that's what it says.
13 Q. Did you get together with Gary?
14 A. Yes, I did get together with Gary.
15 Q. And when was that?
16 A. I don't have the date.
17 Q. It looks like you replied to Pam's
18 instructions to you the next day, June 22, at 11:23 a.m.,
19 that's the top thread. You say, After more thought on
20 this matter I have come to the conclusion I do not want
21 to be viewed by the FAA as part of a conspiracy to cover
22 up a violation of the Federal Aviation Regulations. At
23 the inspection authorization meeting in March of 2004 for
24 my IA license, we were told by the FAA that we are
25 supposed to report overflowed AD's. If we don't the FAA

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1 will come down on us in full force. I didn't think at
2 first I could get in trouble for this since it was not my
3 action that caused the overflight, but now I see that I
4 could and don't want to be associated with a cover up.

5 So you sent that to Pam the next day on the
6 22nd; right?

7 A. Right. You know what I think happened is I
8 believe that I had conversations with Gary Alzola --
9 well, in fact look, look at the very first e-mail, it
10 says to Alzola, Gary; Humphrey, Pam. I had lunch
11 with Shane Palagi the director of maintenance. This was
12 sent to both of them.

13 I had already discussed this issue with Gary
14 Alzola by the time I had sent this e-mail, the very first
15 one, or else it would be out of the blue, you know. I
16 discussed it with Gary Alzola and I believe that his
17 position was that, you know, he didn't want to report it.
18 He knew about it.

19 Q. So you think that you discussed it with Gary
20 before you sent the first e-mail --

21 A. I know I did on the helipad that day, and I
22 swear we discussed it. We discussed it, what was
23 supposed to happen, what we should do in the future so
24 that overflights don't happen again. In fact there is
25 another document floating around that is a letter to the

1 e-mail where she tells you to talk to Gary and deal with
2 it, did you talk to Gary again?

3 A. I don't know.

4 Q. You are not sure if you talked to him after
5 Pam instructed you to?

6 A. I don't know. I know after I thought about
7 it, the one thing I do know I documented it; I didn't
8 want to be part of having the FAA find out about it and
9 having me be violated with the 135 certificate and have
10 my reputation damaged.

11 I was told by the FAA that 80 overflights
12 should be reported immediately or else draconian action
13 may ensue. And I didn't want to be part of that. And
14 after speaking with Gary and Pam and the way it was
15 handled, right off the beginning from the helipad, oh,
16 you can't overfly ADs? We had an AD that had to be done,
17 before every flight, the pilots had to sign it off. They
18 knew very well. But Gary's cavalier attitude of trying
19 to cover it up by saying, oh, we can't overfly ADs? He
20 is the director of operations, he knew we couldn't
21 overfly ADs. So that's why I wrote that. Because I
22 thought about it, and I didn't want to be part of it.

23 Q. But to the best of your recollection after
24 Pam's June 21 e-mail back to you saying talk to Gary and
25 come up with a resolution, you don't recall if you talked

1 pilots, I don't know if -- it's an e-mail that I sent to
2 the pilots about inspection times and what can't be
3 overflown and what can be overflown and airworthiness
4 directives definitely can't be overflown and it was about
5 this issue. Where the document is, I don't know.

6 Q. So you discussed it with Gary Alzola on the
7 pad --

8 A. On the helipad, when it happened.

9 Q. On 5/17.

10 A. Correct.

11 Q. And then you think you discussed it with
12 him --

13 A. I know I discussed it with him.

14 Q. -- at other points before June 21 but you are
15 not sure when.

16 A. That's correct.

17 Q. And his position was he told you -- his
18 position was he didn't want to report it?

19 A. That was the feeling that I got. I can't tell
20 you the exact words that he used.

21 Q. Did he say I am not going to report it or I
22 don't want to report it?

23 A. No, I think we more discussed what to do in
24 the future to make sure it doesn't happen again.

25 Q. After you get Pam's response to your June 21

1 to Gary --

2 A. I --

3 Q. Let me finish my question for the court
4 reporter.

5 A. I am sorry.

6 Q. You don't recall if you actually did talk to
7 him after Pam's e-mail?

8 A. I don't recall two years ago what day I talked
9 to Gary Alzola, no, unless it's documented.

10 Q. Between Pam's e-mail to you saying talk to
11 Gary on June 22 at 9:49 and your reply to her back at
12 11:23 that same day saying that after more thought on
13 this matter, et cetera, et cetera, did you talk to Gary
14 Alzola in between those two e-mails? It looks like there
15 is about an hour and a half window.

16 A. I have no documentation that I did. I could
17 have, I don't know.

18 MR. McFARLANE: Make this No. 11, please.

19 A. MV014, airworthiness directives might give you
20 some insight into that MV014. I don't know what it says.

21 (Deposition Exhibit No. 11 marked for
22 identification.)

23 Q. MV014?

24 A. Correct.

25 Q. Have you seen this document before, the

1 document that's been marked as Exhibit No. 11?
2 A. I believe I have.
3 Q. This is a letter from Gary Alzola to the FAA;
4 correct?
5 A. That is correct.
6 Q. And in that letter Gary Alzola performs a
7 self-disclosure of the two AD violations; is that right?
8 A. Yes.
9 Q. It says in the bottom of the first full
10 paragraph, he says, the last sentence, he has
11 investigated and found the following. Did Mr. Alzola
12 involve you in any way, involve you in any way in that
13 investigation?
14 A. I don't recall.
15 Q. Did he seek your assistance?
16 A. I don't recall. He might have asked me for
17 copies of the airworthiness directives since they were
18 kept in my office for the 25-hour inspection, not the
19 daily; the daily the pilots kept.
20 Q. When you look down at the bottom of the first
21 page, it says, The pilots all fully understand it is
22 their responsibility to monitor and comply with all
23 maintenance requirements --
24 A. That's not what he told me that day, 5/17.
25 Q. And Having said that, we have discussed some

1 A. That's fine; it was still the pilot's
2 responsibility, so there seems to be a little bit of
3 blame shift here. If we want to take measures to make
4 sure it doesn't happen in the future, that's fine, but it
5 kind of seems like there is a little bit of, you know --
6 what both of these cases have in common is that they
7 appear -- it happened over a weekend with a weekend
8 mechanic on duty. They should have completed the AD when
9 they did the daily since on 5/17 there was only 3.7 hours
10 left (indicating). Well, that's kind of making excuses
11 for the pilots or for the pilot that overflowed it. If you
12 want to just make sure it doesn't happen in the future,
13 you know, just write recommendations to make sure it
14 doesn't happen, don't try to shift the blame.
15 Q. Are these recommendations in 1 through 5, are
16 these recommendations for the future?
17 A. I think some of them are.
18 Q. Do you think they are appropriate
19 recommendations for the future?
20 A. Yes.
21 Q. In your professional opinion as a mechanic, do
22 you believe that these procedures will prevent the
23 problem of overflying ADs in the future?
24 A. If the pilots follow the procedures, yes.
25 Q. Now, as of the time of the accident in 2001,

1 procedures for better coordination with the mechanics to
2 help this situation, and he lists five procedures. Could
3 you look at those procedures, please, for a minute.
4 A. (Witness complies.) I read them.
5 Q. Now, you helped formulate some of these
6 procedures, did you not?
7 A. I don't recall.
8 Q. Are some of these --
9 A. I don't recall, no.
10 Q. Are these your idea?
11 A. I don't think so.
12 Q. These aren't your suggestions?
13 A. They are not. I did write or e-mail a letter
14 to the pilots of what had to be done. It was a hard
15 time, you could not overfly it and what could be
16 overflown because there was a window of grace that they
17 would let you overfly it a little bit. But I don't
18 recall writing any of this.
19 Q. I am not asking if you wrote them per se.
20 A. Well, Gary might have talked to me and some of
21 my input might have been used, but I didn't sit down and
22 type it.
23 Q. Do you agree with the gist of these procedures
24 for better coordination with mechanics to remedy the
25 situation?

1 were you the only full-time mechanic at the hospital?
2 A. I was the only full-time mechanic until 2004,
3 fall of 2004.
4 Q. And there was one or two part-time mechanics
5 that would help fill in during busy times?
6 A. They were occasional, they weren't part time.
7 Q. And I believe that it was your belief that --
8 you wanted more help; right?
9 A. No, I needed more help. I needed more help or
10 else I was violating a standard of the FAA's AC135-14
11 alpha, and I was violating the CAMTS recommendations for
12 certification of a mechanic having at least one day off
13 in any 17 consecutive days.
14 Q. CAMTS, tell me what that is?
15 A. Creditation of ambulatory -- I don't know,
16 it's a certification, they have a sticker on the side of
17 the airplane. I don't have what the acronym means in
18 front of me. I know that they had to go through a
19 certification process in order to do it, in order to --
20 in fact, one, they didn't want to let them fly into Utah
21 anymore because they weren't CAMTS certificated. So
22 there is a certification and a process and rules that you
23 are supposed to follow.
24 Q. Is that a pretty big deal for the hospital to
25 be certificated?

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1 A. You would have to ask Pam Humphrey or somebody
2 on the medical end of it, I don't know. They did it, so
3 I imagine they thought it was worthwhile.
4 Q. And that CAMTS certificate --
5 A. It's like C-A-M-P-T-S -- I don't know what it
6 means. I have seen it before but it's just not in my
7 head right now.
8 Q. What impacts did that certification process
9 have on maintenance -- Commission on Accreditation of
10 Medical Transport Systems; does that sound right?
11 A. Yes.
12 Q. CAMTS. I think it's CAMTS, CAMTS. What
13 impact did the CAMTS certification process have on your
14 department, on maintenance?
15 A. I had to come up with, you know, what seemed
16 like at least seven policies to conform to their
17 certification requirements. Now, what those are I
18 couldn't tell you. I know if I had my policy letters, I
19 could probably name four or five of them because I made
20 Life Flight policy letters to address what needed to be
21 taken care of in order to be in compliance.
22 Q. Was the certification period, was it like
23 every three years or something like that?
24 A. I think they came and reviewed every year.
25 Q. Were there major inspections of the helicopter

1 maintenance events that were over 70 some hours each
2 event and some as high as 92 hours, and I was just
3 exhausted by the new helicopter and she wouldn't do
4 anything about it. She kept on ignoring me. Finally I
5 wrote that document, MV033 and it said towards the end of
6 it that unless you want to put it in writing that I work
7 more, I can't work any more than ten hours a day, six
8 days in a row, due to safety. If you would like me to
9 work more, please put it in writing. I was just
10 exhausted at that point. I didn't want to make a
11 mistake.
12 MR. McFARLANE: Let's make this 12.
13 (Deposition Exhibit No. 12 marked for
14 identification.)
15 Q. Showing you what's been marked as Exhibit 12,
16 is this the second document that you sent Pam that you
17 just referred to?
18 A. No, I think this was the first. This was
19 after the first. She was asking me to -- it just
20 seemed -- I was frustrated. She just seemed to be making
21 more work for me and I didn't have time to take care of
22 what I was needing to take care of to begin with.
23 Q. Looking at her e-mail thread first, August 2,
24 2004, she writes, Mark, I need you to put together a
25 justification for hiring another mechanic, including the

1 to be done by you in conjunction with this certification?
2 A. No.
3 Q. What was it that was requiring a second
4 full-time mechanic, why was the workload increasing?
5 A. I sent a letter to Pam Humphrey, justification
6 for hiring a second mechanic. I am sure you have it.
7 There it is (indicating), do you have MV033?
8 Q. I might. Could I see that for a second, the
9 document you are referring to?
10 (Document handed to Mr. McFarlane.)
11 Q. It's sort of an index --
12 A. It's just so I can find something, so I can
13 find the more interesting documents. You can have a
14 copy, if you would like.
15 Q. Okay. When did you prepare this?
16 A. Maybe three or four days ago. I have been --
17 about three or four days ago.
18 Q. I'll make a copy of that at the next break.
19 So you sent Pam a letter saying that you needed more
20 help.
21 A. It was a document, and I sent her two
22 different documents, I believe. One was earlier,
23 probably two or three months earlier in the summer of
24 2004, and the last one, I had just had enough, I had
25 worked, the way I remember it, eight different

1 following: And it lists a bunch of stuff that she needs
2 you to do. Clearly she is responding to something. What
3 is she responding to, your first letter?
4 A. I stepped into her office several times and
5 verbally conveyed my situation, and I had sent her -- or
6 I handed her a document, I don't know which, stating that
7 we needed more staffing in the maintenance department.
8 Q. So this e-mail from her dated August 2 could
9 be a response to a verbal request for another maintenance
10 person, full-time maintenance person?
11 A. It was documented and verbalized I am sure by
12 August 2 and she might have even got the second one, but
13 I don't know.
14 Q. So she asked you to put together a
15 justification. She is putting together wage and salary.
16 And, you know, she talks about how it would be nice to
17 have two FTEs -- and that's full time employees, I'm
18 taking it?
19 A. Yes.
20 Q. And the budget says they should only have 1.5.
21 A. But I had been talking about this to her all
22 summer, and I was pretty frustrated and couldn't keep up.
23 Q. And in your reply to her you say, I don't have
24 available time for this. Should I let work backlog more?
25 Working this much is a safety issue. You got mad when I

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1 this was created after that e-mail and me being upset at
2 the airport because of something Pam said while I was
3 doing maintenance.
4 Q. And you don't recall what she said that upset
5 you?
6 A. It is just going to get worse (indicating) was
7 your response. That upset me. And I am sure it had to
8 do with staffing.
9 Q. And you don't recall what she said that was
10 not true?
11 A. Well, it's probably in this document right
12 here.
13 Q. In No. 13?
14 A. In PMC171, I don't know. I usually address
15 things that I feel people say that are untrue, that
16 aren't true, I should say.
17 (Pause in proceedings.)
18 Q. The very back page, the last sentence of the
19 letter says, The only tools I have available is a lot of
20 downtime to ensure adequate rest for the director of
21 maintenance, the only full-time mechanic on staff. What
22 does that mean?
23 A. Well --
24 Q. What did you mean by that.
25 A. -- if we have an aircraft out of service

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1 because it's required an inspection and I am exhausted, I
2 need to rest. If I am resting, the aircraft is not being
3 prepared to be returned to service.
4 Q. The only tools I have available is a lot of
5 downtime.
6 A. To ensure adequate rest for the director of
7 maintenance, which is me.
8 Q. Do you mean that you won't certify the
9 aircraft to be ready to fly in order to have more off
10 time?
11 A. No, I meant that once I got to a point where I
12 was exhausted, I was going to take some rest; I was going
13 to rest before I worked on it anymore.
14 Q. I am just having a hard time understanding how
15 downtime is a tool. How is downtime a tool?
16 A. The only tool that I had available to me was
17 to rest. If I rest, the aircraft does not get repaired.
18 Therefore, the aircraft cannot fly. And if I don't rest,
19 I am unsafe.
20 Q. Was this a particularly busy period of time?
21 A. Summers usually are, but also the Agusta had
22 many, many more inspection events that were scheduled and
23 required by the manufacturer. It had, you know -- the
24 old Bolkow had fixed landing gear, this one had
25 retractable landing gear. The new aircraft had fully

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1 electronic instrumentation and all sorts of electronics.
2 It acted up quite a bit. It had air conditioning which
3 the old one didn't have. It had a full auto pilot. And
4 all these pieces and parts fail, and the more pieces and
5 parts you have, the more problems you have.
6 Q. When did you take possession of the new
7 aircraft, new helicopter?
8 A. It must have been, you know, October of 2003,
9 but I'm not certain. I'm pretty sure, though. Yes,
10 because this is 2004. Yes, it was 2003, because the
11 September summary, I left for an airplane, to go pick up
12 the new airplane, or new helicopter, so it was about
13 October or late September, something like that.
14 Q. Was a second full-time mechanic hired?
15 A. Yes.
16 Q. When?
17 A. After my Justification For Hiring Additional
18 Maintenance Staff, I also sent this letter I believe to
19 Audrey Fletcher and then I think Dave Perkins was hired
20 sometime in November, but I'm not certain.
21 Q. And he was hired as full time?
22 A. He was.
23 Q. Were you asking for a raise in this?
24 A. I was not; I was asking for adequate rest and
25 staffing.

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1 Q. Look at the second to the last paragraph on
2 the last page. It says, I'll be more than happy to
3 return to working long hours to get the job done when my
4 staffing increases to meet the demand of an increased
5 work load, and to compensate me for my increased days of
6 downtime maintenance that 109E aircraft has added to our
7 operation.
8 A. Okay, it's not monetary compensation, it's
9 time off compensation. Let's say -- the old helicopter
10 took 25 days, 25 full 15-hour days out at the airport to
11 keep it airworthy. Let's say the new aircraft, the 109E,
12 takes 50 days out of service out at the airport, 15 days
13 a week -- 15 hours a day.
14 When I am not out there doing maintenance on
15 the aircraft, I want some slack time to compensate me for
16 my efforts of being out there killing myself to get the
17 aircraft ready, to the point -- not to the point of being
18 unsafe.
19 And another, thing, too, is with two full-time
20 mechanics, I had a lot of problems, if you read the
21 letter, of not having anybody to help me. So you have
22 two occasional mechanics, they can come and or they can
23 go if they want come or help you or not help you, and
24 then you are out there by yourself. Which was another
25 major issue.

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1 And on top of that, you are out there working
2 all these hours, you get done and you have nobody to
3 relieve you. You have two occasional mechanics that can
4 work or don't have to. So there is no compensation --
5 there is no time off, there is no -- it was horrible, a
6 horrible situation. How would you like to work 92 hours
7 one week and 50 hours the next just to keep things going
8 at the hospital. It was no fun. And Pam Humphrey
9 ignored it for months.

10 Q. Tell me about your involvement in procuring
11 the second aircraft, the Agusta.

12 A. You need to get a little more specific.

13 Q. You were involved in some negotiations
14 regarding that aircraft; correct?

15 A. Yes.

16 Q. Was your negotiations, your participation in
17 procuring or obtaining that aircraft or in maintenance
18 contract for that aircraft or what? What was your role?

19 A. I negotiated -- okay, we had concerns of the
20 aircraft that we were looking at, we were looking at the
21 EC135, the 109E, and the 900, was it an Explorer? The
22 MD900 I think is what it was. But I had the position of
23 looking at the maintenance contracts and giving my
24 recommendation on what aircraft, you know, could work and
25 what couldn't work.

1 Tom Mortimer, Russ Wight, and myself, and at the end of
2 the meeting point-blank I asked Russ Wight on two
3 separate issues, are we protected. One of them was if a
4 mechanic works on the 109E, that is not school trained,
5 is it not true that all the money that we pay Agusta
6 Aerospace, they can keep the money and not supply any
7 service to us?

8 What you are doing is you are paying \$320 an
9 hour up front for every hour that the aircraft flies.
10 There could be, you know, 1,800 hours before the main
11 rotor gear box for \$250,000 has to be replaced. So you
12 have given all of this money to them, and at any time
13 they could come out and say, well, the mechanics haven't
14 been school trained, such as either one of the occasional
15 mechanics at the time, and even now they have Frank
16 Prickett and Chris Ogden working on the airplane that
17 aren't school trained, so still the money is in jeopardy.

18 Any time Agusta Aerospace says they don't want
19 to do the contract anymore, they can say, well, you have
20 nontrained mechanics, we are going to keep the \$450,000
21 you gave us and we're not going to supply the future
22 maintenance that's coming due.

23 There were other issues with, there was many
24 issues with it --

25 Q. Were your concerns primarily financial with

1 And the maintenance contract, the salesman
2 came for the Agusta 109E, they came and they gave me a
3 copy of the COMP contract. So I called Jim Minouge
4 back who was -- I guess he was head of customer service,
5 he is the one that talked to me about the COMP contract.
6 So I called him back with all of these concerns because
7 the way the contract was written, it was unworkable as
8 far as securing the assets that we would pay to Agusta
9 Aerospace for all the maintenance, all the parts that
10 wore out, all the time life parts, all the overhaul
11 parts.

12 So Jim Minouge over the phone, you know, said
13 we can work this out, we will work that out, we will do
14 this for you, we will do that for you. And then when it
15 came time to actually sign the contract, he wouldn't put
16 it in writing. And so I got involved with Russ Wight,
17 this was before Pam Humphrey had anything to do with it,
18 I got involved with Russ Wight and we went over the
19 contract and Russ Wight totally agreed with me that there
20 were several aspects of the contract that would put the
21 hospital's money in jeopardy. And we were trying to work
22 it out and Pam Humphrey got involved and I believe she
23 told Russ Wight not to talk to me anymore.

24 But I knew -- then we had a meeting after that
25 with the division manager, Cindy Richardson, Gary Alzola,

1 respect to the COMP contract?

2 A. Protecting the interests of the hospital.

3 Q. So your concerns with the contract were not
4 safety related?

5 A. No, but they were government waste issues.

6 Q. In your opinion, Portneuf by signing that COMP
7 contract would be putting its money at risk.

8 A. Assets of the hospital at risk, assets of the
9 county at risk.

10 Q. How did you become involved in the COMP
11 contract negotiations? Did someone ask you to become
12 involved?

13 A. It was a maintenance issue. Either we save
14 money for all the parts that are going to come due or we
15 pay for them as we go, and all of a sudden you get a bill
16 for a \$250,000 transmission because it's timed out or
17 because it starts making metal, the hospital is not going
18 to like that.

19 Q. How did you become involved in it? Somebody
20 must have triggered that involvement.

21 A. I have always been involved in it. I was
22 involved in the 105, we had a COMP contract for the
23 engines on the 105. So I have always been involved in
24 it, in that kind of an arrangement.

25 Q. Did you negotiate the COMP contract on the

1 105?
 2 A. I did.
 3 Q. With who?
 4 A. With Rolls-Royce Allison. Allison, we paid X
 5 number of dollars per hour for the engines. And that was
 6 the helicopter that we bought in 1993.
 7 Q. Who else from Portneuf was involved in the
 8 contract negotiations with Agusta?
 9 A. Gary Alzola. Gary Alzola pretty much was the
 10 main guy that handled the contract issues and I pretty
 11 much had to deal with, you know, when Agusta Aerospace
 12 didn't follow through with what they had promised us,
 13 such as skis or whatever the issue was.
 14 Q. How about Russ Wight, what was his
 15 involvement?
 16 A. I'm sure he looked over the contract. The
 17 only time I was involved with Russ Wight was when we were
 18 talking about the TurboMecha engine, power by the hour
 19 maintenance plan, just like the COMP plan for the 109
 20 power. So I negotiated the TurboMecha power by the hour
 21 plan, too, with a lawyer at TurboMecha.
 22 Q. Was this with -- is this in connection with
 23 the Agusta helicopter?
 24 A. Yes, but it has TurboMecha engines, so it's a
 25 separate manufacturer.

1 A. I think it was just those three.
 2 Q. Were you on the selection committee?
 3 A. I don't know. I definitely attended some
 4 meetings. I would imagine I was considered to be on the
 5 selection committee.
 6 (Deposition Exhibit No. 14 marked for
 7 identification.)
 8 Q. Showing you what's been marked as Exhibit 14
 9 to your deposition, this looks like a memorandum or a
 10 letter to Pat Hermanson from you.
 11 A. Yes.
 12 Q. And there is no date on it. Do you know when
 13 you did this? And I can't read your MV number, it's
 14 MV0 -- I don't know if it's 11 or 77 or -- I can't read
 15 it on my fax copy. 17, 14 --
 16 A. It's MV018.
 17 Q. 18?
 18 A. Uh-huh.
 19 Q. Do you know when you did this?
 20 A. It was the fall, September-October of 2004.
 21 Q. What was your purpose in sending this to Mr.
 22 Hermanson?
 23 A. I had alerted the division manager, my
 24 supervision may have just ignored it. There was problems
 25 with the Agusta 109 aircraft, the helicopter. Agusta had

1 Q. Separate contract.
 2 A. You have TurboMecha engines put in an Agusta
 3 helicopter airframe.
 4 Q. Okay. And Russ Wight was involved with you in
 5 the turbo engine?
 6 A. TurboMecha, yes, until Pam told him to not
 7 talk to me anymore. So there were several issues left
 8 open that never did get resolved and I believe that Life
 9 Flight -- Portneuf Medical Center lost money on that,
 10 too, because I was in the process of getting them to
 11 reword some of the contract as to what they had promised
 12 me for better coverage.
 13 Q. Who gave you the authority to negotiate on
 14 behalf of Portneuf Medical Center?
 15 A. It's just what I did from the beginning. We
 16 needed a maintenance contract for any helicopter that we
 17 operated. So I am the one that asked all the questions,
 18 what were the terms of the contracts, made my
 19 recommendations, who had the best terms, who had the best
 20 products --
 21 Q. Made recommendations to who?
 22 A. Gary Alzola, Pam Humphrey, Ron Fergie; anybody
 23 who was on the selection committee. I think it was just
 24 those three, though.
 25 Q. Who was on the selection committee?

1 promised that they would have a temperature problem
 2 fixed, and we had an opportunity to return the aircraft
 3 to them since they had not had it fixed and it had been
 4 over a year, actually two years that they had promised or
 5 something like that.
 6 But, anyway, there was a window of opportunity
 7 for us to be able to go in there and hold their feet to
 8 the fire and try to get them to fix the COMP contract so
 9 that the assets we had paid them and would in the future
 10 pay them could be corrected so that PMC would be
 11 protected.
 12 Q. So what did you want Hermanson to do?
 13 A. To look at the contract and talk to Russ Wight
 14 and try to get an agreement with Agusta Aerospace to
 15 budge on the COMP contract in order to -- since they
 16 didn't deliver on their side of the bargain on the
 17 delivery of the helicopter, it could be returned to them
 18 and a full refund.
 19 Q. So this is a way to negotiate, you wanted Pat
 20 Hermanson to negotiate more favorable terms with --
 21 A. To correct the problems with the contract.
 22 Q. -- with Agusta to correct the problems, with
 23 what you saw as problems with the COMP contract?
 24 A. It's not what I saw, it was problems.
 25 Q. Looking at the bottom sentence here, it says,

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1 Why would anyone recommend that you sign this contract?
 2 Someone should be held accountable. Are you talking
 3 about the COMP contract?
 4 A. I am.
 5 Q. Was Pat Hermanson recommending that you do
 6 sign this contract?
 7 A. I don't know. Pat Hermanson I don't think was
 8 even involved with any of it, he didn't know anything
 9 about it. He was just told to sign this, in my opinion,
 10 I don't know.
 11 Q. Okay, someone should be held accountable. Who
 12 should be held accountable?
 13 A. Someone should be. If they recommended to
 14 sign a contract that puts government funds in jeopardy,
 15 they should be held accountable.
 16 Q. Who was recommending that this contract be
 17 signed that would put the government funds in jeopardy?
 18 A. Pam Humphrey for one.
 19 Q. So was it Pam and Gary and Ron?
 20 A. I don't know if Ron was at that -- I don't
 21 know, you would have to ask them.
 22 Q. Was it Pam and Gary?
 23 A. Pam was definitely pushing for it.
 24 Q. How about Gary, do you know?
 25 A. My supervisor was Pam Humphrey. I didn't

1 all right if non AAC trained mechanics work on the
 2 aircraft.
 3 The next paragraph, My experience dictates we
 4 cannot trust what the AAC puts in writing let alone what
 5 is said verbally. We are paying for a service upfront
 6 that is not secure. Augusta can legally refuse to
 7 provide the service we are paying for due to untrained
 8 mechanics working on aircraft.
 9 Is AAC Agusta?
 10 A. Agusta Aerospace Corporation.
 11 Q. I thought so. So why do you say you can't
 12 trust what the AAC puts in writing?
 13 A. There was a temperature problem with the
 14 helicopter that they said they would have fixed well
 15 before we bought the helicopter. It was going on a year
 16 from the time we took delivery of it and it still wasn't
 17 fixed. So that was two years, and they had put in
 18 writing, they had put that in writing. They had put a
 19 lot of things in writing that they were going to give us
 20 that, and give us this, and it was just a big fight the
 21 whole way.
 22 Q. You didn't trust AAC, I take it.
 23 A. My experiences with AAC made me not trust what
 24 was said to me by some of them and even what was put in
 25 writing, they didn't come through with a lot of things.

1 really talk about the COMP contract with Gary Alzola much
 2 at all. I know Pam Humphrey was. I know we went to the
 3 meeting and I made my arguments and they decided to go
 4 with it anyway.
 5 Q. So you believe that Pam should have been held
 6 accountable for --
 7 A. I think Russ Wight should.
 8 Q. -- for recommending that this contract be
 9 signed?
 10 A. I don't know; I believe that the legal counsel
 11 should have made a bigger effort to protect the assets of
 12 the county.
 13 Q. So Russ Wight should have been held
 14 accountable?
 15 A. Somebody should have.
 16 MR. McFARLANE: Let's take a quick break.
 17 MR. POPA: We have reached the end of Tape
 18 No. 5. We are going off the record. The time is 3:06.
 19 (Short recess.)
 20 MR. POPA: Back on the record, Tape No. 6, the
 21 time is 3:07.
 22 Q. Looking at the second to the last paragraph on
 23 the first page of Exhibit No. 14, actually the third to
 24 the last paragraph, says, Pam Humphrey told me not to
 25 worry, Agusta representatives assured her that it will be

1 Q. Pam Humphrey told you not to worry and that
 2 you could trust AAC?
 3 A. Pam Humphrey put that in an e-mail, I can't
 4 tell you which one it is, but I could find it if I had my
 5 documents in front of me.
 6 Q. You got a response from Hermanson.
 7 A. Yes.
 8 Q. And that was --
 9 MR. McFARLANE: Let's make this 15.
 10 (Deposition Exhibit No. 15 marked for
 11 identification.)
 12 Q. You received that response from Mr. Hermanson;
 13 correct?
 14 A. Yes, I did.
 15 Q. You discussed this response with Audrey
 16 Fletcher?
 17 A. Yes, I did.
 18 Q. You can look over that e-mail. I would like
 19 to know, how did you take this e-mail to mean, what was
 20 its meaning to you?
 21 A. It seemed to me to -- I really didn't believe
 22 that Pat Hermanson had even written it. I even told
 23 Audrey Fletcher the same thing.
 24 Q. Who did you think had written it?
 25 A. It sounded like something Russ Wight and Pam

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1 helicopter. I argued against the contract for several
2 reasons before it was entered into. I was removed from
3 any decisions concerning the COMP agreement by Pam
4 Humphrey and reprimanded for my position verbally and in
5 writing. Russ Wight stopped returning my calls and
6 e-mails.

7 Did you write that?

8 A. It's possible.

9 Q. Then you talk about the dollars expended, and
10 you said, I feel we have an opportunity to persuade
11 Agusta Aerospace Corporation to make changes to the
12 contract to secure the money we are paying them. I don't
13 trust the representatives from AAC. They have lied to
14 us -- they have time and again lied to us about numerous
15 issues.

16 Does that sound that you wrote that?

17 A. It's possible. I can barely read this.

18 Q. It's pretty small. So you are not sure
19 whether or not this was part of an e-mail you sent to Pam
20 Humphrey --

21 A. I find it very odd that the text would be a
22 different size. Not that -- what I can read here sounds
23 like something I would write.

24 Q. But you are not sure one way or the other?

25 A. I'm not.

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1 Q. Can you think of any reason why anybody would
2 phony up an e-mail from you to Pam Humphrey?

3 A. I don't know. It is true, though, that she --
4 well, I don't know, I don't know.

5 Q. Who is Ron Cooper?

6 A. Salesman for Agusta Aerospace.

7 Q. Here is a letter --

8 MR. McFARLANE: Let's mark this 17.

9 Q. -- to Ron Cooper from you.

10 (Deposition Exhibit No. 17 marked for
11 identification.)

12 Q. There is no date on that letter. Do you know
13 when you wrote this? First let me ask you, did you write
14 this?

15 A. I believe so.

16 Q. Do you remember writing a letter to Ron
17 Cooper?

18 A. I do.

19 Q. Following a visit apparently, saying I enjoyed
20 our visit last week?

21 A. I do.

22 Q. Do you know when this letter was written,
23 approximately?

24 A. It was sent to Ron Cooper right before I sent
25 the e-mail to Pat Hermanson and Cal -- is it Cal? CFO,

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1 chief financial officer or something like that. I'm not
2 sure of his name. I read it the other day, but I don't
3 recall.

4 Q. Would this have been in the fall of 2004?

5 A. 2004, yeah.

6 Q. Presumably before September 16, would that be
7 right? September 16 is the date you have got a letter
8 from Pat Hermanson.

9 A. I got the Pat Hermanson letter after I sent
10 this to Ron Cooper.

11 Q. Right. So the letter to Ron Cooper would have
12 been sometime before September 16; is that right?

13 A. The Ron Cooper letter was sent before the
14 e-mail to Pat Hermanson. The Ron Cooper letter was sent
15 before the e-mail to Pat Hermanson about the COMP
16 contract.

17 Q. Was it sent before the letter from Pat
18 Hermanson to you on September 16?

19 A. Well, I sent the e-mail to Pat Hermanson and
20 then he sent the letter back to me.

21 Q. Right.

22 A. But this was sent before either one of them.

23 Q. The letter to Ron Cooper was sent before
24 either one of them.

25 A. If you read this, it says, There is a

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1 September 30 deadline approaching because the ISA plus
2 30, which is a temperature issue, has not been resolved
3 by AAC. I will be giving the administrator my opinion of
4 the maintenance department position regarding operating a
5 109E aircraft. So it was written before that.

6 Q. Looking at 17, about two thirds of the way
7 down there is a paragraph that starts out, The second
8 intolerable issue with COMP is the statement that the
9 aircraft will only be maintained by mechanics who have
10 satisfactorily completed the 109E maintenance course
11 conducted by AAC.

12 What's the first intolerable issue with COMP?

13 A. When I reviewed the contract per section
14 2 Covered Components it states that no components other
15 than those identified in exhibit 1 shall be eligible for
16 coverage under this agreement.

17 Verbally they came out, marketed this COMP
18 program that every part on that helicopter that was over
19 \$100 would be covered. Then when it comes time to sign
20 the contract, they say, no, only components in -- I don't
21 know what that section was called, like A or something
22 like that, but they weren't all listed. And I wanted
23 them to list or put a statement in the covered components
24 section of the COMP contract that stated how they
25 marketed the contract. And they wouldn't do it. They

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47 (Pages 182 to 185)

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1 did add quite a few, but they still wouldn't quite get it
2 done.
3 Q. Were you instructed to send a letter out to
4 Ron Cooper by anyone or did you make this --
5 A. Ron Cooper --
6 Q. Let me finish my question. It's making it
7 hard for the court reporter. All right?
8 A. Yes.
9 Q. Were you instructed to send a letter to Ron
10 Cooper at Agusta by anyone at the hospital?
11 A. I was not.
12 Q. Did you send a copy of this letter to Ron
13 Cooper to anyone else at the hospital?
14 A. I don't recall.
15 Q. Now, down here on the third to the top, from
16 the bottom paragraph, excuse me, it says, We are told not
17 to worry AAC will take care of us. But AAC has made
18 promises on other issues they have not come through with,
19 such as ISA plus 30.
20 A. ISA plus 30 is I believe at this altitude that
21 you couldn't fly the helicopter if it was over 96.6
22 degrees, something like that. So, therefore -- luckily
23 we had a cool summer and there was only a couple of days
24 it got over that, but a lot of summers it gets in the
25 100s and you couldn't fly the helicopter when it was like

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1 that. So that's what the problem was.
2 And they had promised it would be fixed before
3 we even picked up the helicopter, and here it is, we have
4 almost had it a year and they still haven't fixed it.
5 Part of the contract that we signed that Russ Wight
6 negotiated, Gary Alzola, was that we could give the
7 helicopter back if it wasn't fixed. Therefore, we had a
8 window of opportunity to fix the COMP contract.
9 Q. At the very last paragraph on the second page
10 you say, There is a September 30 deadline approaching
11 because the ISA plus 30 issue has not been resolved by
12 AAC. I will be giving the administrator my opinion of
13 the maintenance department's position regarding operating
14 the 109E aircraft. I will turn in my opinion to the
15 administrator by the 15th of September so he has time to
16 decide if we will continue to operate a 109E.
17 Are you giving AAC a deadline to change the
18 contract --
19 A. I am just telling AAC what I am going to do,
20 what I am going to recommend, if they don't -- you know,
21 they asked me what they could do for me as a maintenance
22 department, and I told them.
23 Q. So if they changed the terms of the COMP
24 contract before the 15th of September, then you wouldn't
25 turn in your opinion to the administrator; is that what

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1 you are alluding to?
2 A. Yes.
3 Q. Now, who was the administrator you are talking
4 about, is it Hermanson?
5 A. Pat Hermanson. That's who I sent it to.
6 Q. Let's talk about this ice on the rotor blades
7 issue that seems to have been kind of a big issue leading
8 up to your termination. Is that your sense of things?
9 A. Actually it wasn't a big issue until it
10 snowballed that way because of actions of people that
11 handled it. But go ahead.
12 Q. What's your perception of the snowball that
13 you just described?
14 A. Let's talk about it and you will find out.
15 Just, to start off with, Ron Fergie investigated the
16 matter, later in a meeting he tells me -- later I asked
17 him about it, after I had told him, maybe a week or so
18 later, and he said, oh, it was nothing. I kind of let it
19 go.
20 Later on in a 2/28/05 meeting Ron Fergie says,
21 we were talking about -- it comes up again because he has
22 done something similar to that, so the issue was brought
23 up again, and he says, oh, Greg Stoltz told me it was
24 just frost. And I said, no, Greg Stoltz never said it
25 was frost on the rotor blades when Barry Neilson flew it

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1 in October of 2004 and I will get it in writing. So
2 that's where it went from there. And then I did get it
3 in writing.
4 But, you know -- go ahead, ask your questions.
5 It was just the mishandling of it, that's how it got
6 blown out of proportion. If it would have been handled
7 above the board and it didn't happen again, I wouldn't
8 have brought it up again.
9 Q. Do you believe that Barry Neilson, took off
10 with ice on the rotor blades?
11 A. All I can say is that Greg Stoltz told me he
12 did, and Greg Stoltz documented that he did.
13 Q. Did Greg Stoltz see it take off with ice on
14 the rotor blades?
15 A. According to his letter, he says he did.
16 According to his verbal testimony to me the first of
17 November of 2004, he told me he walked out and saw the
18 helicopter flying away.
19 Q. Do you know how far he was from the helicopter
20 when he saw it flying away?
21 A. You need to get Greg Stoltz on the stand for
22 those questions. I can't answer it.
23 Q. I'm just asking, you talked to Greg Stoltz,
24 Greg Stoltz has talked to you about the incident, what
25 did he tell you?

1 A. I talked to Greg Stoltz about the incident
2 November 1, 2004. I asked Greg Stoltz to put it in
3 writing right after the meeting of 2/28/05, which Greg
4 did. Which I believe his letter is 3/1/05, I am not
5 certain. That's all I have ever talked to Greg about it.

6 Q. Did Greg ever tell you how far he was from the
7 aircraft when he saw it taking off?

8 A. He said he came out of the hospital and the
9 helicopter was flying away.

10 Q. How far from the hospital is the helicopter
11 pad?

12 A. It's right there. You walk out the front door
13 and it's 100 feet to the corner, 150 feet maybe -- no,
14 not even 150, less than 100. It was reported to me that
15 Barry Neilson flew the helicopter with ice on the blades.
16 Not only verbally but in writing.

17 Q. So when Stoltz first told you about that, he
18 said, hey, I think Barry took off with ice on the rotor
19 blades?

20 A. He didn't say think, he said Barry flew the
21 helicopter with ice on the main rotor blades, he didn't
22 say I think.

23 Q. So he told you that Barry took off with ice on
24 the rotor blades.

25 A. Yes.

1 didn't put the covers on and wipe the blades down and
2 make sure that the aircraft was airworthy, so it was
3 unairworthy all night long.

4 Barry comes in, doesn't do his preflight
5 inspection, Greg Stoltz comes in, I am not sure, he never
6 put a time, but I would guess it would be after 9:00,
7 just knowing the time Greg usually came in. So there is
8 the aircraft from the time Barry was supposed to do a
9 preflight inspection at 7:00 in the morning until Greg
10 finds it unairworthy and he is deicing the aircraft and
11 trying to get it ready.

12 He told me that morning that he tried to go --
13 he needed something from the maintenance office, he went
14 downstairs, called Barry, came right back up and it was
15 less than five minutes and Barry Neilson was flying away.

16 Q. He told you that it was less than five
17 minutes?

18 A. Yes, he did. The reason was, the reason I
19 know that is because -- he went downstairs, told me he
20 went to call Ron Fergie. My maintenance policy letter
21 is -- I can't tell you which one -- states that if you
22 find the aircraft in an unairworthy condition, that you
23 must immediately notify dispatch and record the
24 unairworthy issue in the maintenance logbook to stop an
25 unsafe flight from occurring.

1 Q. And what did you do?

2 A. What did I do? I hemmed and hawed for about
3 two to three weeks because of all the issues that I had
4 brought before that weren't handled very well. And I
5 finally decided -- Gary Alzola was on at first and I just
6 couldn't bring myself to tell Gary. I just didn't need
7 the aggravation with everything else that had gone on,
8 with Pat Hermanson and Pam Humphrey trying to work me to
9 death. Finally I told Ron Fergie, the safety officer,
10 and, you know, as I usually expected, I got that it was
11 nothing as a response from Ron Fergie after his
12 investigation.

13 Q. So Ron Fergie did an investigation and told
14 you it was nothing.

15 A. He did.

16 Q. And then what did you do?

17 A. I made recommendations that -- well, actually
18 about the same time I was requested -- we had a new
19 helicopter, we didn't have a policy on how to keep it
20 protected for the winter, so Gary Alzola had asked me to
21 send him some recommendations.

22 So my recommendations also included wiping the
23 main rotor blades down, installing the blade covers,
24 because that's what had happened the night before Barry
25 had flown with ice on the blades, was that Ron Fergie

1 Greg Stoltz didn't do that, and I asked him
2 why, and he said, well, I just went downstairs and it was
3 less than five minutes. So I didn't get real upset about
4 it, but it was wrong.

5 Q. So Stoltz had written in the logbook like he
6 was supposed to --

7 A. He did not. It's required, too -- Greg Stoltz
8 was doing a daily preflight inspection and if you are
9 doing an inspection, according to Part 43, FAR 43, which
10 is Federal Aviation Regulations, 43, it's either .11 or
11 .9, that you must write up -- if you find an aircraft
12 unworthy, that you must write that aircraft up as
13 unairworthy, and Greg Stoltz didn't do that.

14 Q. If he had done that, he would have put it in
15 the logbook; correct?

16 A. Correct.

17 Q. And Barry Neilson would have seen it in the
18 logbook and wouldn't have taken it out.

19 A. I would hope so. But still what he should
20 have done is went and told dispatch and that way
21 everybody gets told. The dispatch will not let the
22 helicopter take off. They are the ones with the control.
23 The helicopter doesn't just fly away and the dispatcher
24 doesn't know about it. They are the control center.

25 That was my policy. But it was also to write

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1 it up, and Greg didn't do that. He went downstairs and
2 said -- he called Barry and came straight back up and it
3 was less than five minutes, but, you know. So it's
4 Greg's fault that it happened and it's also Barry
5 Neilson's fault that it happened, because he didn't do a
6 preflight at 7:00 in the morning.
7 It's also the pilot who is on duty the night
8 before, who didn't keep the aircraft covered and
9 protected and left the aircraft out of service all night
10 and decided to sleep through the night.
11 Q. Now, if I understand this correctly, then,
12 it's an FAA violation to take off with ice on the rotor
13 blades; correct?
14 A. 135.227, I believe, yes.
15 Q. It is not an FAA violation, as I understand
16 it, and tell me if this is your understanding -- I'll
17 rephrase the question. It's a terrible question.
18 It's not a violation, an FAA violation, for a
19 helicopter to have ice on the rotor blades on the helipad
20 without taking off?
21 A. No.
22 Q. Is that correct?
23 A. That's correct.
24 Q. Now, if Stoltz had either put the aircraft
25 down as unairworthy in the logbook or told the

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1 dispatcher, Barry Neilson could not have taken off;
2 correct?
3 A. That's correct.
4 Q. Now, do we know how much ice was on the rotor
5 blades when he took off?
6 A. It's documented in Audrey Fletcher's sequence
7 of events, and I believe she said two or three
8 centimeters as to Greg's testimony. But you would have
9 to look at that document.
10 Q. On two of the rotor blades?
11 A. The letter states that two of the main rotor
12 blades were almost deiced. He turned the two that were
13 almost deiced out of the sun to put the ones that were
14 still iced in the sun. And so all four blades had ice on
15 them.
16 MR. McFARLANE: Let's make this No. 18,
17 please.
18 (Deposition Exhibit No. 18 marked for
19 identification.)
20 Q. What is Exhibit No. 18, Mr. Van? The second
21 page is dated February 1, '05. The first one, I would
22 like to know who it's directed to and about when you made
23 it, if you did in fact create this document.
24 A. This is to the FAA, I believe. I believe this
25 is part of MV015, this first letter. The second letter

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1 is an e-mail, it's an attachment to an e-mail that I sent
2 to I believe Gary Alzola and I believe also to Pam
3 Humphrey about Ron Fergie placing -- and also instructing
4 a junior pilot to place main rotor blade covers over
5 unairworthy main rotor blades.
6 So he placed main rotor blade covers and told
7 Chad Waller to stop wiping the blades down: Look, the
8 snow comes right off when when you slide the blade covers
9 on, which it didn't. The next morning 8:45, here I am, I
10 go to do an inspection, I pull the blade covers off and
11 there is ice and snow underneath the blade covers.
12 It may not be an FAA violation but it's
13 government waste to leave the aircraft out of service all
14 night in an unsafe condition, they are unairworthy. You
15 cannot fly an aircraft even with snow adhering to the
16 main rotor blades regardless if it had froze yet.
17 Q. Did that also mean that you had to deice the
18 aircraft?
19 A. Yes, it took about 45 minutes to deice. Ron
20 Fergie helped me deice it.
21 Q. This letter to the FAA, MV015, when did you
22 send that to the FAA?
23 A. I swear you already asked me this. I believe
24 it was the fall of 2003, but I'm not certain. Lynn
25 Higgins can tell you when he received it. I just don't

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1 know.
2 Q. This letter here, the first page of No. 18
3 says, In early November, 2004 --
4 A. Where are we at?
5 Q. -- Greg Stoltz --
6 MR. NIELSON: No. 18.
7 A. Oh, this one here.
8 Q. -- a maintenance employee of mine contacted
9 me. So we are writing somebody about this --
10 A. Oh, it kind of looks like an FAA letter. It
11 might have been after I was fired that I sent it because
12 I did send copies of different things. It might have
13 been that letter to the FAA after I was terminated.
14 Q. After you were terminated. The letter you
15 sent after you were terminated, what date did you send
16 the letter to the FAA, do you remember?
17 A. I don't.
18 Q. In this letter, down at the bottom, the second
19 to the last paragraph, it says Every time I bring up
20 safety -- I have a bad attitude about the lack of safety
21 and accountability of pilot safety violators in the Life
22 Flight department. Every time I bring up safety issues
23 involving pilots, I am blown off. Or worse threatened or
24 my house dive-bombed at 6 a.m. on a Sunday morning. When
25 I bring up a safety issue with the pilots I plan on being

1 it off and pulling the cover on and Ron said, aw, you
2 don't need to do that, look, snow just comes right off
3 when you pull the covers on.

4 Q. Pull the covers on or off?

5 A. Pull the covers on.

6 Q. Did you discuss this issue with Ron?

7 A. I did not.

8 Q. Did you say, Ron, you got it wrong?

9 A. I take that back, because he was there that
10 morning deicing it and, yes, I did start discussing it
11 with him until he started raising his voice. That's
12 where I stopped talking to him.

13 Q. What did you say and what did he say until the
14 point where he started raising his voice?

15 A. Something to the effect that you should have
16 wiped these blades down before you put the covers on.
17 There is no reason to put covers on over snow covered
18 blades. And right about that time he got real, real
19 angry, and I was just helping him deice the aircraft and
20 didn't say much to him after that.

21 Q. Putting covers on rotor blades that have snow
22 or ice on them is not an FAA violation, is it?

23 A. No, but it's a safety issue, and it's a
24 government waste issue, too.

25 Q. Isn't it true that is not -- it is not a

1 A. I believe there is a violation of a standard
2 to leave the aircraft in an unairworthy condition,
3 expecting to immediately at a moment's notice jump in
4 that helicopter and fly off. I believe it is violation
5 to the NTSB's recommendation to the FAA. And that is a
6 standard.

7 Q. Let's talk about FAA regulations.

8 A. Okay.

9 Q. Is it true that it's not an FAA violation?

10 A. It's true.

11 Q. Until you take off with ice or snow on the
12 rotor blades?

13 A. It depends. It is not a violation if nobody
14 sees it. If somebody sees it, if somebody is inspecting
15 the aircraft and they see it and it's unairworthy and
16 they don't do anything about it, it is a violation. And
17 Ron Fergie should have done his 7:00 preflight inspection
18 on 2/1/05 and found that ice underneath the main rotor
19 blade since he is the one that put it underneath there
20 and realized that he was being negligent and didn't do
21 his job.

22 (Deposition Exhibit No. 19 mark for
23 identification.)

24 Q. Have you seen this e-mail from Gary before,
25 Gary Alzola?

1 violation of the FAA unless the aircraft takes off with
2 ice or snow on the rotor blades, is that true?

3 A. It may not be a Federal Aviation Regulation
4 violation, but it is a violation of a standard. In my
5 research recently I came across a document by the NTSB,
6 recommendations to the FAA, and one of them is that all
7 Part 91 flights be restricted the same as 135 flights to
8 avoid future accidents.

9 The second was, the second had to do with risk
10 management, which definitely would include installing
11 main rotor blades over unairworthy covers -- or covers
12 over unairworthy blades because, you know, you include a
13 second person in the pilot's decision making to make sure
14 that they are making the right decision. And I
15 definitely believe that a standard would be violated by
16 doing that.

17 Q. By putting covers on snow covered rotor
18 blades?

19 A. No, on unairworthy main rotor blades. They
20 are snow covered but they are unairworthy. Unairworthy,
21 you can't fly it that way.

22 Q. There is no violation -- is it true, that
23 there is no violation until the aircraft takes off?

24 MR. NIELSON: I think he just answered that.
25 A regulation or a standard, what are you asking?

1 A. Oh, yeah.

2 Q. There is some language written in pencil, and
3 I guess I am wondering, did you write that, that
4 handwritten --

5 A. PMC149 is not a document that I gave you. I
6 have this document but it has an MV number, I put an MV
7 number on it.

8 Q. Did you write pilot in control on that?

9 A. I did not.

10 Q. This is a letter to you or an e-mail to you
11 and Pam from Gary Alzola dated February 17, '05. He is
12 addressing your e-mail. Do you know which e-mail of
13 yours he is addressing?

14 A. He is addressing Exhibit 18 --

15 Q. The second page?

16 A. No, no, no, where is that one, where is the
17 one that -- he is addressing the 2/1 --

18 Q. That's 18, Page 2.

19 A. Yes, you are right, you are right. He is
20 addressing PMC0134.

21 Q. Now, he says in Paragraph 2, he says, As long
22 as the aircraft is parked out in the elements, there will
23 be times when it's not flyable. It's always been that
24 way and will continue during our Idaho winters. We will
25 do what is practical to minimize these situations.

1 Do you disagree with his statement that as
2 long as the aircraft is parked out in the elements there
3 will be times when it's not flyable due to ice, snow,
4 frost, et cetera?

5 A. I think that there are occasions, very, very
6 limited occasions where an ice storm would move in and
7 everything would freeze just instantly and you have no
8 time to do anything about it. But to put main rotor
9 blades covers over unairworthy blades and to leave that
10 all night and to sleep through the night, that's not
11 practical. A 12-hour shift worker sleeping through the
12 night, letting the aircraft, a multimillion dollar
13 aircraft go out of service so that you can't use it,
14 causing government waste, is not practical.

15 Q. Paragraph No. 3 says, We appreciate advice and
16 information from the mechanics and crew members in regard
17 to any condition or situation that may affect aircraft
18 airworthiness. However, only the PIC -- is that pilot in
19 charge?

20 A. Correct.

21 Q. -- has the responsibility and authority to
22 determine aircraft airworthiness. Do you agree with that
23 statement, only the PIC has the responsibility and
24 authority to determine aircraft airworthiness?

25 A. FAR, Federal Aviation Regulation, 43, I think

1 identification.)

2 A. No. 24 is a letter that I never finished and
3 27 is my termination document from Portneuf Medical
4 Center, and this definitely isn't 27, I would say it's
5 24. That's the one I told you about that I was writing
6 that I never finished, it's an incomplete draft. It has
7 my thoughts post meeting with Gary. It is convoluted,
8 drafting stage, never finished.

9 Q. So this reflected your thoughts but you
10 never --

11 A. Well, I never really put them together. I
12 just put a lot of thoughts down and tried to make sense
13 of what actually happened because -- all of a sudden
14 Barry threatened me and things are going on, this doesn't
15 make any sense to be treated this way. This is wrong.

16 Q. So this is a draft that wasn't sent to
17 anybody.

18 A. That's correct. Look at the second page, Ask
19 Barry who sent them to him or shared their content. What
20 was their motive? It was just a bunch of questions, just
21 a bunch of paragraphs and sentences trying to make a
22 sensible document out of it and I never got far enough to
23 even decide who I would send it to.

24 Q. On the second page there is a paragraph that
25 says, I would like to know, and the second sentence of

1 it's 11 or 9, .9 or .11, but, anyway, as I earlier told
2 you, if a mechanic doing an inspection finds an
3 unairworthy item on an aircraft, he must make a logbook
4 entry that that aircraft is unairworthy. He is therefore
5 required per FAR, the FARs, to determine the aircraft is
6 unairworthy.

7 Under Part 135.427, and I might have it wrong,
8 but it says that an inspection party, an inspection team
9 cannot be reprimanded -- not reprimanded, they used a
10 word of -- nobody can overturn what -- how they have
11 inspected the aircraft and determine if something is
12 unairworthy unless it's the director of maintenance or
13 somebody who is over the inspection team.

14 And I wish I had the document in front of me,
15 but I don't have it. But I will.

16 Q. So you disagree with that statement?

17 A. Totally. It's not even correct, not even
18 close to correct. Countermand is the word they use, no
19 one can countermand an inspector's decision, unless they
20 are over the inspection team.

21 MR. McFARLANE: Let's look at this next
22 document, No. 20. This is another one of those MV
23 documents that you can't read the top of. It might be
24 27, but I'm not sure. Can you identify this document?
25 (Deposition Exhibit No. 20 marked for

1 that sentence says, Maybe our pilots are too sensitive.
2 Did you feel that the pilots were too sensitive?

3 A. You are taking it out of context, though. I
4 would like to know what I did directly to make the pilots
5 unsafe. They were telling me in the 2/28/05 meeting that
6 I was making the pilots unsafe by raising safety issues.
7 The next sentence, So if someone raises a safety issue,
8 the pilots are now unsafe. The next sentence, Maybe our
9 pilots are too sensitive. It was a draft.

10 MR. McFARLANE: Let's make this one No. 21.
11 (Deposition Exhibit No. 21 marked for
12 identification.)

13 Q. Still another document with cut-off MV
14 numbers.

15 A. Okay, would you like to know what this is?

16 Q. I would.

17 A. This is -- after the April 4, 2005, meeting
18 with the human resources, and here is a problem because I
19 am not certain of April 4, because PMC and their
20 attorneys would not send me the e-mails I asked for, so I
21 am not certain that it was the 4th of April of 2005 when
22 this meeting took place.

23 These are questions I was going to ask Audrey
24 and her supervisor about the way the meeting was
25 conducted. I felt it was a very, very poorly held

1 meeting where people were allowed to say things that were
2 childish and mean spirited like as let's see if we can
3 make somebody -- Mark lose his temper. And I wasn't
4 going to buy it. I wasn't going to buy it. But that's
5 what this document is about, is questions that I never
6 got to ask Audrey Fletcher and her supervisor as to how
7 and why she conducted this meeting this way and why I was
8 treated this way.

9 Q. And the meeting that you are referring to,
10 again, is an April --

11 A. To the best of my recollection, it would be
12 April 4, 2005, but, like I said, since the e-mails were
13 never produced, I cannot confirm that. It was a meeting
14 called to talk with Barry Neilson, myself, and Audrey
15 Fletcher, and when I got there, Pam Humphrey and Gary
16 Alzola were there. Kind of a free-for-all after that.

17 Q. Was this the meeting to discuss --

18 A. Barry Neilson threatening me.

19 Q. Barry Neilson threatening you. Tell me how
20 that came about --

21 MR. NIELSON: Barry Neilson threatening him?

22 MR. McFARLANE: That's right.

23 A. Where should we start. Okay, we went over the
24 letter from Gary Alzola -- Gary's e-mail response which
25 was, what, the 17th of, the 17th of February of 2005, I

1 Page 7, it's a 10-page document, I believe, it's a PMC
2 document, it states that Ron Fergie had given a copy of
3 that e-mail to Barry Neilson, and that's what inflamed
4 Barry Neilson to come out and threaten me.

5 A private e-mail about a safety concern from
6 the director of maintenance to the director of operations
7 was given to Barry Neilson, who everybody knows has a bit
8 of a temper, and he came out and threatened me on the
9 helipad. And he didn't say a lot.

10 It was 2/25/05 when it happened, it was
11 probably the middle of the day, a little bit later,
12 afternoon a little bit. But I was out there doing
13 documents on the top of my tool box, my roll-around, and
14 Barry came out, and I am writing and not really paying
15 too much attention to Barry.

16 And he comes out and he's going, he gets
17 pretty close to me and he goes, you are making this
18 program go down the crapper. I just kept on writing, I'm
19 going I don't know what you are talking about, Barry.
20 And he says I am tired of all these e-mails and stuff
21 flying around. And actually I think he said both of
22 those sentences before I said I don't know what you are
23 talking about, Barry.

24 And that's when he turned around and stomped
25 off the helipad, he slammed the gate, and he bellowed,

1 e-mailed Gary back and my words on the original e-mail
2 were in blue and I just put paragraphs in between his
3 paragraphs and responded to each paragraph that he had.
4 It's MV022. You should have that.

5 At the beginning of that letter, or the
6 e-mail, it starts out with something to the effect let's
7 get back to the beginning about Barry flying with ice on
8 the blades in October of 2004. This was a private e-mail
9 to Gary Alzola. And in every paragraph that he made I
10 had several paragraphs countering what he had said in his
11 e-mail that we just went over, which would have been
12 Exhibit No. -- is that 19? Yes, Exhibit No. 19.

13 So at the very beginning I believe what made
14 Barry mad was that I said let's get back to the
15 beginning, because something similar to what Barry had
16 done, which was not do his preflight -- of course the
17 helicopter wasn't full of ice on the blades but the same
18 scenario was set up, aircraft left out of service all
19 night with ice on the blades, unairworthy, with the
20 exclusion of nobody flew it.

21 So I said let's get back to the beginning, and
22 I made an example of the instance of Barry, but I did not
23 e-mail it to anybody but to Gary Alzola, it was a private
24 e-mail to Gary Alzola.

25 In Audrey Fletcher's sequence of events, on

1 well, you are going to find out, and he stomped on down
2 the pad. And that was the threat. My heart was racing,
3 I was like, whoa, what did I do.

4 Q. What did you take to mean you are going to
5 find out?

6 A. It was a veiled threat, I have no idea what he
7 meant. He was open to any kind of an interpretation. I
8 don't know what he meant. I know he was mad and he
9 didn't tell me what. Heck, I didn't know what was going
10 on. I didn't have a clue. I didn't have a clue because
11 I didn't e-mail him. I didn't tell him anything. I had
12 no discussions about the ice with blades -- ice on the
13 blades.

14 MR. McFARLANE: Let's take a brief break, go
15 off the record.

16 MR. POPA: Going off the record, the time is
17 4:06, end of Tape No. 6.

18 (Short recess.)

19 MR. POPA: Back on the record. The time is
20 4:14. This is the beginning of Tape No. 7.

21 Q. Mr. Van, you were telling me about Mr.
22 Nielson's, Barry Neilson's threat to you on February 25
23 of 2005 and you stated he went off the helipad, he closed
24 the gate, and did he shout at you?

25 A. I'd say he bellowed.

1 Q. He bellowed at you, You are going to find out.
2 A. Yes. I wouldn't say it was actually a shout,
3 it was a very loud gruff voice.

4 Q. You are going to find out?
5 A. "You are going to find out" and he was quite
6 always away from me and he was still quite loud. You
7 could tell he was just as angry as he could be. He
8 slammed the gate, and he was in a huff. I am just in a
9 mystery going what did I do, I didn't do anything.

10 Q. Did he specifically threaten you with
11 violence?

12 A. No.

13 Q. You didn't know what the threat was.

14 A. I am going to find out.

15 Q. You just felt threatened?

16 A. My heart was racing.

17 Q. Did you feel threatened?

18 A. I felt threatened, I felt intimidated.

19 MR. McFARLANE: Let's look at this document
20 here, No. 22.

21 (Deposition Exhibit No. 22 marked for
22 identification.)

23 Q. This is an e-mail from you to Audrey Fletcher.
24 Excuse me, it's an e-mail originally from you to Gary
25 Alzola on February 21, starting out, This is in response

1 Q. It doesn't look like it.

2 A. It is all Gary's text on that page, and then
3 the next paragraph on the next page, The statement it
4 might be better just to leave the covers off and deal
5 with the ice or snow when the weather permits. The
6 problem could have been taken care of when Chad and Ron
7 were putting the blade covers on. Chad was willing to
8 put forth the effort. That is mine.

9 And then down to 2, 2 is Gary again. And then
10 the next paragraph after 2 is mine. 3 is Gary's. The
11 next paragraph after 3 is mine, This statement is pure
12 fallacy. And it's all mine down to 4. And then after
13 4 --

14 Q. It looks like the "I have also witnessed" is
15 yours, too, right under 4.

16 A. Yeah, that's mine. But after that, that's
17 Gary's, If we need to talk some more, let me know. But
18 then the next one is mine, I would love to talk to
19 you and will need some assurances that this situation
20 will be rectified.

21 Q. Four.

22 A. Four, that's mine. Yep, I guess it's all mine
23 after that.

24 Q. And that's yours all the way down to the
25 bottom where it says, I have noted a significant increase

1 to your e-mail dated 2/17/05 which is highlighted in
2 blue.

3 A. This is very convoluted because you don't have
4 it in blue or in black the way I had it e-mailed to Gary.
5 Do you understand what I am saying?

6 Q. Yes.

7 A. Because Gary's e-mail, we already went over
8 Gary's e-mail with the four, what was it, four or five
9 paragraphs. But when I sent it to Gary, it was very
10 obvious what my part was and what he had said, in his
11 part, because mine was all in blue. So now it's a little
12 convoluted. I can tell you which paragraphs are mine and
13 which are his or if you want to look at -- was it 14? 9?

14 Look at 19. It even has numbers on his. I don't see any
15 numbers, though. Ron returned.

16 Q. It looks like a portion of Gary's e-mail is in
17 the smaller font near the bottom.

18 A. There it is, yeah. There is one that starts
19 there. So all this above the 1 is. Like the second to
20 the bottom paragraph is where Gary's first paragraph
21 starts, where it says Gary Alzola's e-mail dated 2/17 is
22 blue in text. Item No. 1, that's where Gary's text
23 starts. Mine is from the top down to Gary's text.

24 Q. And then is the rest of it Gary's text?

25 A. No.

1 in the focus by the pilots, of protecting our aircraft
2 from ice and snow and frost. I commend you and the
3 pilots for the steps that have been taken.

4 A. That's mine.

5 Q. So by writing that, were you stating that the
6 pilots --

7 A. Have done a better job this year or that year,
8 2005, but when you come across a problem like 2/1/05,
9 that pretty much negates everything but, still, everybody
10 had been putting in a better effort but to put blade
11 covers on over the main rotor blades and leave it out of
12 service all night is unacceptable to me, totally
13 unacceptable.

14 Q. And they were making improvements?

15 A. I thought so, overall; overall I thought --

16 Q. Based on your suggestions?

17 A. You know, I don't know why. Maybe it was
18 because some of my suggestions. I don't know the reason.
19 But I do believe that some of the pilots did step it up.

20 Q. You had made suggestions with respect to rotor
21 blade covers?

22 A. Back in November, November or December, I sent
23 an e-mail to Gary, one, and one to Ron Fergie with
24 different issues about taking care of the aircraft in the
25 wintertime. Yes. And some of my issues were accepted

1 and some of them weren't.

2 Q. Now, looking at Exhibit 22, is this the e-mail
3 that you believe was forwarded to Barry Neilson which got
4 Barry Neilson mad at you?

5 A. This is the one. And another reason was
6 because the word negligent is -- is the word negligent in
7 there? Anyway, I had written in one of my documents, and
8 it was about the meeting in April 4, 2005, and Barry
9 Neilson used the word negligent and he kept on saying
10 that's inappropriate, that's inappropriate, and I swear
11 that the only document that I ever -- that I had used the
12 word negligent was this one (indicating). At first I
13 thought the reason he got mad was because of the document
14 that I created right after the March 2005 Life Flight
15 leadership meeting, but I am just not seeing it pop out
16 at me.

17 Q. Looking at the second page in Gary Alzola's
18 Paragraph 3 -- following Gary Alzola's Paragraph 3 Gary
19 Alzola says, However, only the PIC has the responsibility
20 and authority to determine the aircraft airworthiness.
21 And you state, This statement is pure fallacy. The
22 maintenance department determines aircraft airworthiness
23 all the time. I need only write up a discrepancy and the
24 aircraft is out of service. If you want to push this to
25 the limit, it is true that the PIC can sign off the

1 operations.

2 Q. Is this the first time that issue had come up
3 between the two of you?

4 A. It is.

5 Q. In this time period of February of 2005?

6 A. It's the first time I ever remember hearing
7 it. I do believe it's the first time, I don't ever
8 recall ever discussing it with him before that.

9 Q. No. 4 on that same second page, Gary Alzola's
10 No. 4, his last sentence says, The bottom line, pilots
11 and mechanics need to communicate. And you wrote as a
12 response, Bottom line maintenance and pilots do
13 communicate as long as the pilots don't get emotional
14 with us.

15 A. That's true, I won't talk to a pilot -- I
16 won't talk to anybody who gets emotional. If you start
17 raising your voice, there is no discussion to be had.

18 Q. Is it fair to say that you shy away from
19 confrontation?

20 A. Most of the time. I stopped shying away from
21 safety issues, though, but if they got emotional as
22 getting loud, I am just not going to -- there is no
23 dialogue that takes place with people that are in that
24 emotional state. The dialogue stops.

25 Q. Were you referring to any particular pilot's

1 discrepancy and fly the aircraft. I haven't seen it done
2 yet and you would have to explain to the FAA why you
3 signed it off.

4 It sounds like you guys were in a pretty big
5 argument about who had the authority to take an aircraft
6 out of service.

7 A. I had the authority; he told me I didn't.

8 Q. That's not an argument? Is that an argument
9 between you as to who had the authority to take the
10 aircraft out of service?

11 A. I guess there was an argument there. But it's
12 an FAR, it's two different FARs. It's my responsibility
13 as a mechanic and the director of maintenance for an air
14 carrier operation to take the aircraft out of service if
15 it's unairworthy. It's my responsibility. It's also the
16 pilot in charge's responsibility to determine
17 airworthiness, but it doesn't mean he can negate a
18 maintenance personnel's determination of airworthiness.

19 As I told you about 135.427, it says right in
20 there that nonmaintenance personnel cannot countermand an
21 inspection -- a maintenance detail's determinations.
22 That's paraphrased for sure, but it's in the FAR, Federal
23 Aviation Regulation. Of course I am going to get mad
24 when somebody tells me I can't take the aircraft out of
25 service. He should know better, he is the director of

1 emotions in this e-mail when you say --

2 A. I think I was making an issue of Ron Fergie
3 getting upset with me, 2/1/05.

4 Q. After Paragraph 2, on the second page, Gary
5 Alzola's Paragraph 2, he says, The snow left under the
6 blade covers was pure apathy and negligence.

7 A. There you go, because that's the word that he
8 used in the April 4, 2005, meeting. He said something
9 about, you know, being called negligent or whatever, and
10 he threw the document on the table. And I thought that
11 it was the March document that I had created for the
12 special safety meeting. But I looked through that
13 document and there was no word negligent in it. So it
14 had to be this one (indicating).

15 Then, like I said, if you look at Audrey
16 Fletcher's ten-page whatever it's called, sequence of
17 events leading up to Mark Van's dismissal, on Page 7 it
18 says that Ron Fergie gave Barry Neilson a document. I am
19 not sure if it was that document or how it's stated, but
20 it's a PMC document and you have it.

21 Q. If I understand this right, then, in a meeting
22 that was held on April -- is it 4th?

23 A. April 4, human resources meeting.

24 Q. With the human resources meeting Barry was at
25 and you were at, Barry used -- and that meeting was

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56 (Pages 218 to 221)

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1 subsequent to this e-mail in Exhibit No. 22 between you
2 and Gary, in that meeting Barry Neilson used the word --

3 A. I--

4 Q. Let me finish my question. -- Barry Neilson
5 used the word negligent a bunch of times; is that right?
6 Answer my question.

7 A. He did, and also Audrey Fletcher. There was a
8 volley going back and forth saying this is not the right
9 word to use. But go ahead.

10 Q. So in that meeting Barry Neilson used that
11 word a bunch of times, negligent.

12 A. Uh-huh.

13 Q. And he threw down a document, and you are not
14 sure what that document was or you did see that document?

15 A. I saw it laying on the table and I thought it
16 was the -- I think it was created 3/28/05. It was right
17 after the March of '05 Life Flight leadership meeting, I
18 created a document and Pam Humphrey said we are going to
19 have a special safety meeting.

20 And I e-mailed out the highlights of what I
21 wanted to talk about at the special safety meeting and
22 that's the document that I thought Barry Neilson was mad
23 about. But then in hindsight, too, how could he get mad
24 about a document that I wrote after he threatened me,
25 because it was in March that I wrote that letter, and

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1 a document that I had written, and that's got to be it.

2 Q. Did you ask Gary Alzola not to forward this
3 e-mail to anybody? Did you talk to him by phone or in
4 person and say, hey, I am going to send you a
5 confidential e-mail or please keep this under your hat or
6 anything of that nature?

7 A. I did not.

8 MR. McFARLANE: Let's make this one 23.
9 (Deposition Exhibit No. 23 marked for
10 identification.)

11 Q. Document No. 23, Mr. Van, is this the
12 statement from Greg Stoltz that you were talking about
13 earlier?

14 A. It looks like it.

15 Q. You requested that he write this?

16 A. In the 2/28/05 meeting Ron Fergie -- since he
17 caused a similar situation that caused Barry to fly with
18 ice on the blades, that issue of Barry flying with ice on
19 the blades was brought up again at the 2/28 meeting.

20 At the 2/28 meeting, 2/28/05, Ron Fergie
21 stated it was just frost, as in reference to the October
22 2005 flight with ice on the blades. And I said, fine, I
23 will get it in writing from Greg Stoltz. And you asked
24 me earlier how it snowballed. Well, this is how it
25 snowballed, because people weren't taking care of safety

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1 that letter, that e-mail was written before he threatened
2 me on 2/25 and that had to be the document that he threw
3 on the table that day.

4 Because I believe how it started out was I
5 asked Barry why he was mad at me, and he brought up -- he
6 didn't want to be called negligent or he wasn't
7 negligent, it was something to that effect. That's got
8 to be the document he was talking about.

9 Q. So this document he threw down, you didn't
10 actually see what that document was?

11 A. I didn't.

12 Q. And what you believe is that he threw down
13 this document, the e-mail from you to Gary Alzola,
14 Exhibit No. 22, because that document has the word
15 "negligent" in it?

16 A. And also the time that the document was
17 created falls in the time line.

18 Q. And you think that Barry, seeing this
19 e-mail --

20 A. Let's get back to the beginning --

21 Q. -- set him off.

22 A. I do. And I do believe that it's also
23 documented in Audrey Fletcher's sequence of events. If
24 you read, like I said, Page 7, the bottom of Page 6, top
25 of Page 7, it talks about Ron Fergie getting an e-mail or

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1 issues. They were leaking documents to cause me to be
2 intimidated and threatened, saying, you know, downplaying
3 what it actually was, even if it was frost, it was still
4 an FAR violation. You know, things weren't being taken
5 care of and snowballed.

6 Q. Are the maintenance offices in the hospital?

7 A. The office was on the west side of the
8 building, in the back, what used to be the back, you
9 know, they built another medical office building and a
10 parking garage behind the maintenance office, where it
11 used to be. And around the front is where the helipad
12 was.

13 Q. So would you go through the hospital, through
14 the front and then --

15 A. Almost always, but sometimes you would walk
16 around, if it's a nice day. It would just depend on the
17 day. A lot of times you would just walk straight through
18 the basement and then up the stairs and right out the
19 front door. But I don't know which way Greg went.

20 Q. Did you provide this document to anyone at the
21 hospital?

22 A. I provided a copy to Gary Alzola and Pam
23 Humphrey.

24 Q. When?

25 A. Right after I got it; I am guessing two days

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57 (Pages 222 to 225)

1 or a day after it was written or as soon as I could --
2 because Gary worked three days, three nights, six days
3 off, I am not certain. Pam I am sure got it immediately.
4 As soon as I got it in my hands, I got a copy to them.

5 MR. McFARLANE: This will be No. 24.

6 (Deposition Exhibit No. 24 marked for
7 identification.)

8 Q. What is Exhibit No. 24, Mr. Van?

9 A. It looks like an e-mail. Here we have another
10 e-mail with different sized writing that I didn't write.
11 The only e-mail I sent to Audrey Fletcher said I want a
12 meeting about Barry Neilson threatening me and our
13 working relationship since Gary Alzola didn't seem to
14 want to patch things up or help us get together on it.
15 This, I never sent this.

16 Q. Can I see what you are looking at?

17 A. I want to discuss the human resources ongoing
18 (indicating) -- that is an e-mail that you will have to
19 prove that it is -- I never sent it. I have been telling
20 OSHA that from the beginning. There is another meeting
21 that I sent for a meeting with Barry Neilson and that's
22 the only e-mail that I sent to Audrey Fletcher for a
23 meeting. I did not write that e-mail.

24 MR. McFARLANE: Counselor, can you give that
25 copy to the -- we have got apparently two copies of one

1 that was supposed to be set up.

2 Then Ron Fergie walks in at the Life Flight
3 meeting that happens right after the leadership meeting,
4 or it used to. Ron Fergie walks in and he gives the
5 greatest safety speech you ever heard. It's everybody's
6 responsibility to break the chain of events or to break
7 the links in the chain of events that lead up to
8 accidents, and we are so safe, and our program is so
9 safe.

10 And it was the second time, at least, that I
11 had heard that part of the speech. And it galvanized me
12 to the point where I said, you know what, we need to talk
13 about all of this stuff. We have got a special safety
14 meeting coming up. Let's talk about all of these things
15 that happened and were not taken care of.

16 And so I wrote this document, and I e-mailed
17 it to almost all the nurse -- in fact I think I did mail
18 it to all the -- e-mailed it to all the full-time nurses
19 and paramedics. And I wrote separate little memos for
20 each one of them, you know, so they weren't all the same,
21 you know, asking them to please come -- in so many words,
22 please come and view your opinions, you know, whatever
23 they may be at the special safety meeting, it's in
24 everybody's interest for safety. And everybody's was a
25 little bit different so I can't tell you exactly what I

1 thing and one copy of another.

2 MR. NIELSON: I have already marked this
3 No. 24 on the bottom.

4 MR. McFARLANE: Okay, here we go. Let's mark
5 this one 25.

6 (Deposition Exhibit No. 25 marked for
7 identification.)

8 Q. Let's go to No. 25, and then we will go back
9 to 24. Can you identify what No. 25 is?

10 A. It is a document that I created after the
11 3/24/05 safety meeting -- actually it was a Life Flight
12 leadership meeting. When it came around to my turn --
13 they asked everybody if we had any safety issues. It
14 came around to my turn and I was a little upset with Ron
15 Fergie putting blade covers over unairworthy blades,
16 altering safety witness testimony into it was just frost.
17 Being threatened. I just wanted to bring up some of
18 those issues.

19 And it was mainly about Ron Fergie. Ron
20 Fergie was not at the leadership meeting so I didn't say
21 a whole lot. And then abruptly Pam Humphrey cut me off
22 and said, well, I'll have Lance Taysom set up a special
23 safety meeting for you. So there was supposed to be a
24 special safety meeting scheduled, and there were plenty
25 of people to witness this, this special safety meeting

1 wrote for each one. None of them were long winded, maybe
2 a paragraph or something.

3 Q. A special safety meeting hadn't yet been
4 scheduled; is that right?

5 A. Lance Taysom was ordered to schedule it, so --

6 Q. When you wrote out this e-mail to the
7 full-time nurses and the paramedics --

8 A. It had not been scheduled.

9 Q. -- it had not been scheduled yet. Were you
10 trying to stir up the nurses and the paramedics?

11 MR. NIELSON: Objection, argumentative.

12 A. No, I was not.

13 Q. Were you trying to galvanize them into taking
14 some sort of action against the pilots?

15 A. I wanted -- okay, let's go back to the 2003,
16 Ron flew for 20 hours in August Life Flight leadership
17 meeting when I brought up the issue of him flying for 20
18 hours. Pam Humphrey, he didn't do anything wrong. Gary
19 Alzola, he didn't do any wrong. Okay? And then this
20 continues and continues. I just wanted the crew to be
21 safe. I wanted these safety issues to be where they
22 belonged, with the Life Flight crew. Safety shouldn't be
23 a closed door someplace, you know, behind a closed door
24 there is no safety.

25 Q. Did you feel supported by the nurses and the

1 paramedics?

2 A. I did, after I sent this letter out, after I
3 sent this letter out, everybody was very nice and overly
4 nice to me and very supportive. We didn't really talk
5 about it, but they were glad that somebody stood up, just
6 like I told you, in the August of 2003 with Ron being on
7 duty for 20 hours, nobody would bring up the issue, only
8 me.

9 Q. You did not feel supported by Gary Alzola, Ron
10 Fergie, and Pam Humphrey?

11 A. I tried to bring --

12 Q. Is that correct?

13 A. I tried to bring these issues of the 2/28/05
14 meeting in front of the Life Flight crew or at least the
15 leadership committee, and Pam Humphrey would have none of
16 that. There are e-mails you have, PMC e-mails, that I
17 have, too, that we will be bringing out in court about
18 that. They have these safety committees, they have these
19 safety sections of the leadership meetings, but you can't
20 bring up issues about pilots.

21 Q. Let me ask you this again. Is it true that
22 you did not feel supported in terms of safety issues by
23 Gary Alzola, Pam Humphrey, and Ron Fergie?

24 A. It depends on the safety issue. A blanket yes
25 or no is impossible. I mean sometimes they did.

1 Q. When Pam Humphrey indicated that there would
2 be a safety special meeting, did she indicate who would
3 be attending?

4 A. She did not.

5 Q. Did she say, Mark, invite everybody? Did she
6 say --

7 A. She said in the leadership meeting that we
8 were going to have a special leadership meeting -- a
9 special leadership -- or a special safety meeting. It's
10 always been my understanding that everybody is invited to
11 safety meetings, everybody.

12 Q. So because she said safety meeting, you
13 assumed that everybody should come and you took it upon
14 yourself to invite everybody?

15 A. It was my special safety meeting that she was
16 creating for my issues. But I couldn't invite anybody?

17 Q. Now, going back to 25, this is the e-mail that
18 you sent to Pam, Gary Alzola, and Ron Fergie; Pam
19 Humphrey, Gary Alzola, and Ron Fergie. These are the
20 issues that you want to see discussed.

21 A. Yes.

22 Q. At the bottom of the page here on PMC0120, it
23 says, For example, the aircraft should be ready to fly 24
24 hours a day. Is that your belief, that the aircraft
25 needs to be ready to fly 24 hours a day?

1 A. That is the service we provide, yes, unless
2 it's out of service for maintenance or the weather is so
3 bad that you can't fly, yes.

4 Q. And the rule for some pilots was that if it
5 snowed and the slush froze to the aircraft rendering it
6 unserviceable, the pilots sleeping through the night was
7 more important than being ready to launch on a mission.

8 Do you feel that the pilots were lazy?

9 A. Some of them more than others; some of them
10 were very articulate. Some of them took care of the
11 aircraft very, very well, and others -- you know, it was
12 the same two pilots, Ron Fergie and Barry Neilson that --
13 Ron Fergie worse than Barry Neilson -- that would leave
14 the covers off and cause the situations.

15 Q. So Ron and Barry, do you feel they were the
16 too laziest pilots?

17 A. They didn't take care of the aircraft as well
18 as Gary and Chad Waller. I am not going to say they were
19 lazy. They didn't do their jobs. They left the aircraft
20 in out of service conditions more so, not more so --
21 pretty much Gary and Chad, you know, I don't even recall
22 a time that they let the aircraft go out of service other
23 than the time that Ron Fergie instructed Chad to put the
24 covers over unairworthy blades. I had never seen Chad
25 involved in anything like that.

1 Q. I have seen a couple of times in the documents
2 where you have referred to times when the pilots are
3 sleeping instead of being out in a snowstorm and clearing
4 out the blades or something. Do you believe that the
5 pilots or at least some of the pilots did that so that
6 the maintenance would have to deice the aircraft and get
7 it ready?

8 A. It doesn't have anything to do with
9 maintenance having to deice the aircraft. It has to do
10 with having a 24-hour service available 24 hours a day
11 when somebody needs their life saved, that's what it has
12 to do with, and to operate it safely. If you have an
13 unsafe aircraft and you are stuck -- all of a sudden you
14 get a call to go, now you have to decide am I going to
15 get in trouble and deice it or should we just fly it with
16 ice on the blades.

17 And that's what the risk assessment is all
18 about, the NTSB recommendation to the FAA. That's what
19 it's all about, not getting into situations like that,
20 and having others decide with the pilots what is the best
21 means to keep the operation safe.

22 Q. You talk in Paragraph 3 on the second page
23 about sanctions against safety offenders. There need to
24 be real consequences for safety violators. Do you
25 believe there were no consequences for safety violators

1 minutes to do it. I showed Ron Fergie my house many
2 times and talked about my motor home, my sailboat. He
3 knew where I lived. He claims he doesn't know where I
4 live, but that's fine.

5 Q. Let's go to Exhibit No. 24. You started to
6 talk about that, but I wasn't looking at the same
7 documents. I want to go back to it. This is an e-mail
8 from you to Audrey Fletcher --

9 A. What was the number again?

10 Q. No. 24. You were starting I think to say that
11 this is something you --

12 A. I didn't author this document. The fact of
13 the matter is that this document that Pam created and she
14 has March 29 written as the date, I never saw until after
15 the human resources meeting, which I believe took place
16 4/4/05.

17 At the 4/4/05 human resources meeting about
18 Barry Neilson, after we got done talking about Barry,
19 they started talking about my safety issues that I had
20 written in my document for the special safety meeting,
21 and I told Pam Humphrey I don't want to talk about those,
22 I am saving those for the -- I am not prepared, for one
23 thing, and I am saving those for the safety special
24 meeting, and that's when I was told there will be no
25 special safety meeting.

1 Audrey Fletcher, "I went to discuss with human resources
2 this ongoing situation privately."

3 I only called a meeting about Barry Neilson.
4 That's all I encountered, and also I wanted to discuss a
5 few issues before we talked with Barry Neilson about Ron
6 Fergie and it was about him twisting witness testimony
7 and some other issues about Ron personally.

8 Q. So this middle e-mail here from Pam Humphrey
9 dated March 30, 2005, cc, Catherine Luchsinger and Audrey
10 Fletcher, Re: Safety meeting, are you saying that you
11 didn't get it until after an April 4 meeting?

12 A. I opened an e-mail like I say with this
13 document attached right here (indicating), this March 29,
14 2005, I guess there is no title to it, PMC0111, I opened
15 an e-mail with this document attached after the 4/4/05
16 human resources meeting.

17 Q. Now, is it possible it was in your in box for
18 your e-mail and you just didn't open it until after the
19 meeting?

20 A. That might be possible, but I did not author
21 the very top e-mail that says I want to discuss with
22 human resources this ongoing situation privately, I
23 didn't author that.

24 Q. Right, I am talking about the middle thread.

25 A. I don't know about that part.

1 Q. On the front page of Exhibit No. 24, the
2 middle thread of the e-mail says it's from Pam Humphrey
3 to you on March 30, 2005. It says, I have reviewed the
4 items you would like addressed during a safety meeting.
5 At this time I do not feel that an additional meeting is
6 necessary. I have attached a memo addressing the reasons
7 why I have made this decision. Please review it and if
8 you have any follow-up items as it relates to those
9 pertaining to my response, please let me know. And it
10 looks like there is an attachment, a Word document, Mark
11 Van, March 29 --

12 A. I believe that's the document right here
13 (indicating).

14 Q. Right. Are you saying that you didn't get
15 this e-mail?

16 A. I did not get this e-mail until after -- well,
17 I don't know about this e-mail, I did not receive this
18 document that's attached to this e-mail (indicating)
19 until after the 4/4/05 human resources meeting where I
20 was notified that we weren't going to have a special
21 safety meeting.

22 And in this e-mail it says I reviewed the
23 items, like you said, and at this time I don't feel we
24 need to have a meeting. Well, I never got this e-mail at
25 all because I didn't write the top part from Mark Van to

1 Q. You just know you didn't see it until after
2 the April 4 meeting.

3 A. Correct, correct. I am not sure about the
4 rest of it. I know that this document, though, I did not
5 see until after.

6 Q. So it looks like the original message was from
7 you to Gary Alzola, Ron Fergie, and Pam Humphrey, I am
8 looking at the bottom thread, on March 28. And you say,
9 At the leadership meeting I voiced concerns about safety.
10 I have addressed in a letter. These are the issues I
11 want addressed, okay, and you attach a document called
12 safety. And that's Exhibit No. 25 (indicating); right,
13 if you look at 25?

14 A. Yes.

15 Q. You have got one right there, I think.

16 A. Right.

17 Q. So you sent that to Pam, Ron, and Gary on
18 Monday, the 28th. It looks like Wednesday the 30th Pam
19 wrote you back and said, I reviewed the items you
20 addressed in your attachment. At this time I don't feel
21 it's necessary. I have attached a memo why. You are
22 saying you didn't read that until --

23 A. I didn't read her document --

24 Q. Until after the April 4 meeting.

25 A. That is correct.

1 Q. And this top thread, which is also a March 30
2 at 10:12 a.m., what it says is that you forwarded or you
3 sent an e-mail -- you forwarded this below thread to
4 Audrey and said, I want to discuss with human resources
5 this ongoing situation privately. I am unable to bring
6 up safety violations or issues in meetings. The
7 situations are covered up and I have been intimidated and
8 threatened with no accountability.

9 Are you saying you didn't write that?

10 A. I didn't.

11 Q. Do you know or do you suspect somebody else
12 wrote that from your computer at work?

13 A. I don't have a clue. All right, let's look at
14 this last e-mail. "I have been intimidated and
15 threatened. With no accountability." By March 30 it --
16 it was probably March 23 or thereabouts that I scheduled
17 a meeting or first notified Audrey Fletcher of Barry
18 Neilson's threat. Why would I write that I have been
19 intimidated and threatened with no accountability when we
20 are going to have a meeting about it? It just doesn't
21 make any sense.

22 As far as who made it or how it became made, I
23 don't have a clue. I just know I didn't write it. I had
24 a human resources meeting with Barry Neilson scheduled
25 because of his threat and I wanted to get a working

1 MR. POPA: Back on the record. The time is
2 5:04 p.m.

3 Q. Mr. Van, looking on the third page of Exhibit
4 No. 24, under No. 5, these are the categories that you
5 had indicated that you had written in your e-mail to Pam
6 Humphrey indicating what you wanted to talk about at the
7 safety meeting, the specially scheduled safety meeting.
8 Under No. 5, the second paragraph under No. 5, I have
9 received calls from team members who are upset with your
10 attempts to "pull them into a situation" which they see
11 as a trust issue between you and the pilots.

12 Do you feel that you had a trust issue with
13 the pilots?

14 A. With some of them. They did things that any
15 reasonable person would question what they were doing.
16 And after a while if a person loses your trust, your
17 trust in them becomes eroded. It's not my fault that
18 their actions may have caused my trust to be eroded, such
19 as Ron Fergie's continued behavior.

20 Q. You had trust issues with Gary Alzola stemming
21 from the 2001 crash; is that correct?

22 A. That was a life experience, yes. I had that
23 life experience that he betrayed my trust.

24 Q. You had trust issues with Ron Fergie with
25 respect to --

1 relationship back with Barry Neilson. And there is an
2 e-mail that you sent me that I have with the PMC number
3 on it that states just that.

4 Q. Do you have a password for your computer at
5 work, or did you?

6 A. I do -- or I did.

7 Q. Did you leave your computer on all day or did
8 you log in and out?

9 A. I find it very unlikely that somebody came
10 into my computer and -- I mean sometimes you would leave
11 it on, but I mean --

12 Q. Did anybody else at work know your password?

13 A. Pretty much I'd be the only one there.

14 Q. Did anyone else at work know your password?

15 A. Greg Stoltz knew it, but I don't think he is
16 going to write it.

17 Q. So you received -- looking at the second page
18 of what's been marked as Exhibit 25 --

19 A. 25?

20 Q. Or 24, I am sorry.

21 MR. McFARLANE: Let's go off the record for a
22 minute.

23 MR. POPA: Going off the record. The time is
24 5:02.

25 (Discussion off the record.)

1 A. Safety issues.

2 Q. -- safety issues, flying a helicopter over
3 your house --

4 A. Safety issue.

5 Q. Did you have a trust issue with him regarding
6 flying a helicopter over your house?

7 A. That's a safety issue, he violated the Federal
8 Aviation Regulations by flying underneath the minimums,
9 the minimum flight altitude over my house and over my
10 neighbor's house as I witnessed it out my front window.

11 Q. I understand you want to characterize it as a
12 safety issue, and that's fine. But what I am asking you
13 is did you have a trust issue with him as a result of him
14 flying over your house?

15 A. Yes, did.

16 Q. Now with respect to Barry Neilson, you had
17 trust issues with him because of the threat?

18 A. I didn't have trust issues with Barry Neilson.
19 In fact I considered Barry Neilson a friend.

20 Q. Did you have trust issues with Chad Waller?

21 A. I did not. He was a friend of mine. Chad was
22 a pretty good friend of mine.

23 Q. Did you have trust issues with Pam Humphrey?

24 A. She said things that later on she changed her
25 story. There are some issues that cause some erosion of

1 trust with Pam Humphrey.

2 Q. You have trust issues with Russ Wight as a
3 result of the Agusta COMP negotiations; correct?

4 A. That is correct -- that is not correct that I
5 had trust issues. I had no problem at all with Russ
6 Wight. Russ Wight told the truth, he told the truth in
7 the meetings. They just decided to -- not avoid, but not
8 to go with his concerns. And Russ Wight didn't stand up
9 and say this is wrong -- he did say it was wrong but he
10 didn't stand up and say you shouldn't be doing this.

11 Q. You had trust issues with Agusta; is that
12 correct?

13 A. Agusta did some things that I lost trust in
14 them, made promises that they didn't keep, verbally and
15 in writing.

16 Q. Did you try and pull team members into a
17 situation between maintenance and the pilots?

18 A. Would you like to tell me what situation? She
19 could be talking about me asking Mark Romero, who is a
20 friend of mine, and Laura Vice if I had noticed what Ron
21 Fergie did over at my house or what happened. You know,
22 back in 2003 and I think it was September, what, 7. They
23 were aboard but I didn't try to draw them into anything.
24 I just asked them if they noticed anything and I never
25 talked to them again.

1 Q. Is it possible she is referring to your
2 invitation, so to speak, to the safety meeting to nurses
3 and to paramedics?

4 A. Everybody has the right to raise safety
5 issues. Everybody should be invited to safety meetings.

6 Q. Let me ask the question again. Is it possible
7 that's what she was referring to when she talks about
8 pulling team members into a situation?

9 MR. NIELSON: Objection, calling for
10 speculation.

11 A. You need to ask Pam Humphrey that question. I
12 don't know what Pam Humphrey's thoughts were.

13 Q. You have no idea what she was talking about
14 trying to pull team members into a situation which they
15 see as a trust issue between you and the pilots?

16 A. I told you about asking Laura and Mark Romero.
17 You know, I wrote that letter after the team meeting
18 where Ron Fergie said it was everybody's job to break the
19 links in a chain that lead up to accidents. I sent out
20 an e-mail and invited everybody to come and asked them to
21 come and tell their opinions of -- you know, raise your
22 opinions. I didn't try to drag anybody in. I don't know
23 what you are talking about. And I don't know what Pam
24 Humphrey means.

25 Q. In the next paragraph she says, You continue

1 to have these personal trust issues. Your inability to
2 foster a positive working relationship with the pilots
3 and other team members is, in itself, a safety concern.
4 I would expect that you take a look at your actions and
5 make attempts to resolve trust issues.

6 A. That's interesting, so it's my fault that
7 others have done things in the past that have eroded my
8 trust in them. And they are not responsible for their
9 behavior. That is interesting.

10 Q. Did you attempt to foster a positive working
11 relationship with the pilots?

12 A. I went out of my way.

13 Q. How did you go out of your way to foster a
14 working relationship with the pilots?

15 A. If they needed anything, I would do it for
16 them. If they had an issue with something, I would go
17 out of my way to make it work, make it fixed. If they
18 came in and they were in a hurried to turn around, I
19 would go wash their window without them asking. I would
20 do whatever. I went out of my way. They do things, like
21 the 20-hour flying after being on duty 20 hours, I just
22 kept on working with Ron Fergie, no matter what he did.
23 No matter what any of them did, I was very nice to them,
24 very congenial, and I did my job and I did more than my
25 job. But I did raise safety issues, valid safety issues.

1 Q. Do you want to go back to work at Portneuf
2 Medical Center?

3 A. I do.

4 Q. As director of maintenance?

5 A. Yes.

6 MR. McFARLANE: Let's make this Exhibit
7 No. 26.

8 (Deposition Exhibit No. 26 marked for
9 identification.)

10 Q. Have you seen this document before? It's been
11 produced in discovery.

12 A. I have.

13 Q. The gist of this is that there was no
14 violation by the FAA with respect to cold weather
15 operations procedures and with respect to taking off with
16 ice on the rotor blades. Is this a cover up?

17 A. No, it's an FAA investigation where the safety
18 witness couldn't remember the exact day that the
19 violation happened, where the safety witness told me one
20 thing and told the FAA, according to what Les Denagle
21 (phonetic) told me and according to OSHA, that it could
22 have been up to 20 minutes that Greg was gone from the
23 helipad before he came back, so the ice could have
24 melted.

25 So, therefore, without a solid testimony from

1 Greg Stoltz, what is the FAA going to find? They can't
2 level a conviction without solid testimony. You don't
3 have the date.
4 Q. Do you have trust issues with Greg Stoltz?
5 A. I never questioned Greg until OSHA and the FAA
6 came and told me that he had told them that it had been
7 up to 20 minutes or it could have been up to 20 minutes.
8 And, no, I never questioned Greg ever once. Whatever
9 Greg told me I believed it. I believed when Greg Stoltz
10 wrote me that letter, I believe when Greg Stoltz verbally
11 told me of that October flight with ice on the blades.
12 Why would I question him? I never caught him in any type
13 of a trust issue before.
14 Q. Since the OSHA investigation have you had
15 trust issues with him?
16 A. I really don't talk to Greg. I don't talk to
17 any of the employees at PMC, really. I mean every once
18 in a while I will see them or something, but I don't go
19 out of my way to talk to PMC employees.
20 Q. If he told you something now, would you
21 believe him?
22 A. I would question him a little bit.
23 Q. Because?
24 A. It depends on the gravity of what I have to
25 trust him for. If it's something very, very, very

1 important, I would have to think about it. It's called a
2 life experience. Everybody has them and if you erode
3 somebody's trust, you don't have -- they don't have full
4 trust in you anymore. It's a common sense thing.
5 MR. McFARLANE: Let's go off the record.
6 MR. POPA: Going off the record. The time is
7 5:15, end of Tape No. 7.
8 (Short recess.)
9 MR. POPA: Back on the record. The time is
10 5:17, beginning of Tape No. 8.
11 Q. Mr. Van, let's talk for a minute about the
12 meeting on April 4, 2005. What led to that meeting, what
13 prompted that meeting?
14 A. Is that the correct date?
15 Q. I think it is. You probably know from your
16 index.
17 A. I don't know for sure, I really don't.
18 Because I don't have no documents, I have no e-mails
19 stating when it was. It was just my best guess. I think
20 it happened on a Monday, I wasn't even sure of that. But
21 it happened after my birthday, which is the 29th of
22 March.
23 Q. Let's talk about the meeting that occurred
24 approximately April 4, let's call it April 4, but we will
25 say for the record that neither of us know for sure of

1 the date when that meeting was.
2 A. Okay.
3 Q. What prompted that meeting? What prompted the
4 meeting, where was it, how did you find out about it, who
5 was there?
6 A. You produced copies of e-mails that I sent to
7 Audrey Fletcher, and I believe it was on the 23rd of
8 March requesting a meeting to get back to a working
9 relationship with Barry Neilson, and, like I said, also
10 there was a sentence in there that I think said I wanted
11 before the meeting to talk -- without Barry there, to
12 talk a little bit about Ron Fergie because we -- we have
13 been over that. That's what the meeting was about. And
14 I assumed that he would be at the meeting between human
15 resources, Barry Neilson, and myself.
16 When I got there, Gary Alzola and Pam Humphrey
17 were there.
18 Q. Was Barry there, too?
19 A. Yes.
20 Q. And Audrey Fletcher?
21 A. Yes.
22 Q. So it was you, Barry Neilson, Gary Alzola, Pam
23 Humphrey, and Audrey Fletcher. Was anybody else there?
24 A. No.
25 Q. Did Audrey Fletcher facilitate the meeting,

1 did she run the meeting?
2 A. She was supposed to.
3 Q. Is it your testimony that she did not?
4 A. She didn't hold the meeting in a congenial
5 way. She let people say things that shouldn't have been
6 said, like Barry Neilson, I am there because Barry
7 Neilson, you know, threatened and intimidated me, and
8 Barry Neilson, you know, he says things like, well, you
9 are just a pilot's helper; and, what else did he say,
10 here, let me explain it so that even you can understand
11 as he was talking about the ice on the main rotor blades.
12 And Audrey Fletcher just let it roll on.
13 Q. Did she ever indicate to participants in the
14 meeting that certain actions or statements were
15 inappropriate or to redirect --
16 A. No.
17 Q. -- participants of the meeting to a more
18 conciliatory tone?
19 A. No. I asked Barry Neilson why he was mad at
20 me, and in that context Audrey Fletcher piped up and said
21 Barry Neilson has every right to be mad at you. I'm
22 like, wow. So it was pretty obvious that they had a
23 meeting before our meeting and that they had aired their
24 side of the issues.
25 And Audrey Fletcher also in that meeting

1 stated, well, there was no reports of any main rotor out
2 of balance, making excuses that there wasn't any ice on
3 the blades, there was no report of any ice being flung in
4 the parking lot or cars or people being hit by ice, and
5 there was no out of balance with the main rotor system.

6 Audrey Fletcher knows nothing about
7 helicopters and without being told these kind of things
8 in a meeting that took place prior to that, she would
9 have never known any of that.

10 Q. So you suspect that the other participants had
11 a meeting before the meeting that you came to.

12 A. Had communication, at least.

13 Q. Do you know that for sure or is that your
14 supposition?

15 A. Audrey Fletcher knows nothing of main rotor
16 balance --

17 Q. I understand she doesn't know anything --

18 A. -- and of main rotor could become out of
19 balance because ice could be thrown off of one blade and
20 cause the helicopter to come apart. Audrey Fletcher
21 knows nothing of that unless somebody tells her that.

22 Q. Do you have actual knowledge that a meeting
23 took place?

24 A. I don't; I have my suspicions.

25 Q. So Barry Neilson said some inappropriate stuff

1 I said because I don't want to see another accident like
2 the one that happened before. And that's when Gary
3 Alzola got up and screamed, so you think I want to cause
4 another accident or I want to have another accident? And
5 he went over to the door and slammed it and left. Audrey
6 Fletcher goes, That was all your fault. I said, I can't
7 help what Gary Alzola thinks, you know. I don't want
8 another accident. Whatever Gary Alzola thinks, that's
9 what Gary Alzola thinks. I didn't say Gary Alzola's
10 name, I didn't look at Gary Alzola when I said it.

11 Q. Did you indicate that you cared more about
12 safety than others in the room?

13 A. I don't recall making a statement such as
14 that. I did make statements but I didn't make that
15 statement.

16 Q. Do you believe that you were more concerned
17 about helicopter safety than any of the pilots at the
18 hospital?

19 A. No, I can't say any of the pilots. I was very
20 receptive to what people weren't doing right anymore
21 after the accident of 2001, just because I knew after
22 that I could have stopped that. I could have said, no,
23 you are not flying, I can't see. What would have
24 happened if I would have done it? What if I had said,
25 Tim, you can't fly, can't see out there, maybe I could

1 in your view. He said you are just a pilot's helper and
2 he said let me explain something to you so that even you
3 can understand?

4 A. Let me explain it so that even you can
5 understand.

6 Q. What else was addressed at this meeting? How
7 long did the meeting take, ten minutes, half an hour, an
8 hour?

9 A. I would guess about a half hour.

10 Q. Where was it?

11 A. Human resources.

12 Q. And did Pam or Gary say anything that was
13 inappropriate, in your view?

14 A. No, I can't really say that. I don't think
15 so.

16 Q. Just Barry?

17 A. Not that I recall. Not that I recall right
18 now. I have, you know, documented some of it but I don't
19 recall right now.

20 Q. Did you tell Gary Alzola that you were the
21 only one that was really concerned about safety or words
22 to that effect?

23 A. No. But what I did say -- the question was
24 put to me why do you keep on bringing up all of these
25 issues. And it was at the very end of the meeting. And

1 have been fired for that.

2 Pilot trust issue, I don't the trust pilots to
3 fly out there in the dark when they can't see the
4 hillsides or they have been on duty for 17 hours.

5 Q. Is that a maintenance safety issue?

6 A. If you see a safety issue, it's everybody's
7 issue, especially if you work there and it's your job and
8 it's your livelihood, it's everybody's safety issue.
9 Even Ron Fergie preached that, it's everybody's job to
10 break the links in the chain that cause events -- events
11 that cause accidents.

12 Q. Do you believe that you were more concerned
13 with safety than Ron Fergie?

14 A. How do you weigh that? I know I was concerned
15 with safety. I saw Ron Fergie do things that made me
16 feel that he wasn't quite as concerned.

17 Q. Do you feel that you were more --

18 A. I don't know what Ron Fergie thinks.

19 Q. I was asking if you had a sense that, you
20 know, you were more concerned than he was.

21 MR. NIELSON: Calls for speculation. I
22 object.

23 MR. McFARLANE: He can testify as to his own
24 sense.

25 MR. NIELSON: He can't testify as to what Ron

1 Fergie sensed.
2 MR. McFARLANE: I didn't ask him that. I
3 asked him what he sensed.
4 A. Over what Ron Fergie sensed.
5 Q. Do you sense that you had more of a sense of
6 safety than Ron Fergie did?
7 MR. NIELSON: Same objection.
8 Q. You can answer.
9 A. I don't know what Ron Fergie sensed.
10 Q. I am not asking you what he sensed.
11 A. You are asking me my senses versus his senses
12 and I don't know what his senses are.
13 Q. Let's put it this way, you see what Ron Fergie
14 does and you deal with Ron Fergie on a pretty regular
15 basis and you see how Ron Fergie interacts with safety
16 issues.
17 A. I think Ron Fergie could have been safer and
18 didn't do the right thing all the time. So as far as I
19 am safer than he is, or sense that I am safer, I'm not --
20 I don't know. That's an unfair question.
21 Q. How about, let's say the same question with
22 respect to Chad Waller and Barry Neilson.
23 MR. NIELSON: It calls for speculation. I
24 don't see how he can testify as to what sense of safety
25 they had and how he could compare it with his sense of

1 would you rank them? From least safe to safe.
2 A. From what I could see, because I don't fly
3 with them, maybe in the air they were more unsafe than
4 when I could see what they were doing on the ground.
5 Q. Sure.
6 A. So as far as personal safety -- it's a mind
7 boggling question. I would guess that Ron Fergie was
8 probably the least safe just because of all the -- and I
9 guess there wasn't all that many but, you know, you just
10 kind of lose trust in people after a while when they are
11 saying things that didn't happen or they did happen and
12 they say they didn't do it, I don't know.
13 I think Barry Neilson was a fairly safe pilot.
14 Some of the things that happened on the ground he should
15 have taken care of business, but I don't know of any
16 flying situations that makes him unsafe. Other than I
17 guess he hit the fence coming in for a landing.
18 So I don't know. I guess Chad Waller and Gary
19 Alzola are probably the two safest. I don't know which
20 one is safer, Gary Alzola seems pretty meticulous as far
21 as what he does. As far as how he makes the people that
22 work for him, that may be another story.
23 Q. Are there any of these four pilots that you
24 would not fly with?
25 A. No.

1 safety. He can testify only to what he observed.
2 Q. You can go ahead and answer.
3 A. I have answered, I don't know what they sensed
4 or how seriously they took safety other than my
5 experiences with them --
6 Q. Well, based on your experiences with them --
7 A. -- where I believed something was unsafe and
8 they didn't believe it was unsafe.
9 Q. Based on your experience with them, what was
10 their approach to safety?
11 A. There, you are talking about Ron Fergie?
12 Q. Talking about Ron Fergie, we already talked
13 about him, and Chad Waller, and then Barry Neilson?
14 A. Well, which one do you want to start with?
15 Q. How about Chad Waller?
16 A. And what's the question? What's the question?
17 How safe did I think Chad Waller was?
18 Q. Yes.
19 A. From what I could see, he seemed quite safe.
20 He seemed to cover all the bases, I don't know.
21 Q. How about Barry Neilson?
22 A. He seemed pretty safe. I mean there wasn't
23 that many issues. I was a friend of his. I don't know.
24 Q. Well, if you were going to rank the pilots in
25 the order of how safe they were, in your perception how

1 Q. You would fly with all of them?
2 A. Yes.
3 Q. So did this meeting end when -- the meeting we
4 think was about April 4, 2005, in the HR, did that end
5 when Gary Alzola --
6 A. Slammed the door.
7 Q. -- left?
8 A. Yes.
9 Q. Did you stay and talk with Audrey Fletcher --
10 A. Audrey and Pam for just a little bit. I think
11 it was pretty much over, though. We did have a few
12 sentences but I don't think it was of any import.
13 Q. And do you recall what you discussed with
14 Audrey and Pam?
15 A. I don't. I think it was just small talk, I
16 don't think it was anything --
17 Q. To the best of your recollection, what was
18 discussed at that meeting?
19 A. Barry Neilson's threat to me. I asked him why
20 he threatened me. He threw that document on the table
21 and started talking about negligence; and, I don't know,
22 then he -- I don't know. He told me that the mechanics
23 were just pilots' helpers. He started saying, okay --
24 what he said is -- we went over what he said, and then he
25 started to say, What I meant to say was that you are

1 going to find out at the meeting Monday. That's what he
2 said, and he kept on -- he was adding words and
3 changing -- and he also said that he didn't say you are
4 making this program go in the crapper, he changed that,
5 too, to a little different verbiage.

6 I guess that didn't take too long, and he
7 said -- oh, yeah, Audrey said, well, can you work with
8 Barry -- or can your relationship go back to what it used
9 to be? And I said, well, relationships never go back to
10 exactly what they used to be, but, yes, I can work with
11 Barry. He made the comment -- the closest he came to an
12 apology was he said, well, I probably shouldn't have done
13 it. And he did not apologize to me. And nobody said do
14 you accept Barry's apology as Audrey Fletcher has
15 documented in her sequence of events document. And
16 pretty much that ended the discussion with Barry.

17 Q. So what else was discussed?

18 A. That's when Pam started bringing up my letter
19 she had wrote. And I said, well, I don't want to talk
20 about that, I want to talk about those issues at the
21 special safety meeting. She said, We are not going to
22 have a special safety meeting, and that's when I found
23 out about that. I said, I am not ready to discuss it, I
24 don't have anything ready, any arguments or I don't have
25 anything, I am not ready for a special safety meeting.

1 on it.

2 Q. So you weren't happy that this meeting had
3 turned into what it did?

4 A. It was a free-for-all. And then right before
5 Gary got mad and stomped out of the room, Audrey Fletcher
6 says, so do you trust Gary Alzola? And I should have
7 said something different but what I said was no. And it
8 wasn't true because I do trust Gary Alzola to a point.
9 But I was not trusting him very much to take care of
10 issues that he wasn't taking care of.

11 But there was truth that partially I didn't
12 trust him, but it wasn't true that I didn't totally trust
13 him. I would go fly with him. I believed that he was a
14 very meticulous pilot personally, took care of the
15 aircraft very well, made sure everything was in order.
16 But as far as making the other pilots, you know, do their
17 jobs, it didn't seem like the job was getting done.

18 Q. Now, was this the last meeting that you
19 attended before you were terminated?

20 A. That is correct.

21 Q. Now, with respect to your termination, you
22 were called several times to come to a meeting.

23 A. Two times.

24 Q. And you didn't -- why didn't you go to a
25 meeting?

1 Then she started saying things, she started
2 paraphrasing what I had said in my letter. I said where
3 is that letter? Where is the letter that I wrote? It
4 wasn't a meeting for the letter that I wrote to the crew
5 about the special safety meeting. And she said she
6 didn't have one.

7 So nobody in that room had a letter that I had
8 wrote about the special safety meeting. So here I am
9 supposed to talk about my issues, I am not prepared for
10 it. I don't even have the letter that I wrote for the
11 special safety meeting.

12 And every time I would bring up an issue,
13 like, say, the blade covers over unairworthy blades, they
14 would all in chorus go you are bringing up old issues. I
15 mean after bringing up several issues, I just, what's the
16 point of this, there is no dialogue going on here.

17 Q. So the meeting went into a discussion of the
18 issues that you had brought up in that --

19 A. Not really, not really, because I didn't have
20 a list of my issues. I was not prepared for a meeting
21 for that. I was there for a human resources meeting with
22 Barry Neilson to get a relationship, a working
23 relationship back. That was my agenda, and you can read
24 it on my e-mail that I believe is dated the 23rd of March
25 of 2005. Which was sent to me by PMC with a PMC number

1 A. Because Pam Humphrey wouldn't tell me what the
2 meeting was about. And it was with human resources and I
3 told Pam Humphrey that I have e-mailed Audrey Fletcher
4 and I wanted to go over the sequence of -- not the
5 sequence of events, but that document that had all my
6 issues about the way the last HR meeting was done with
7 her supervisor. And I wanted to go over those issues
8 before I went to another meeting that I didn't even know
9 what it was for and it wasn't even scheduled.

10 Q. So you wanted to go over issues stemming from
11 the April 4 meeting?

12 A. How the meeting was conducted and how it was
13 very unfair and how things were left to be said that were
14 very inappropriate.

15 Q. So Pam Humphrey is your supervisor, she is
16 your boss; correct?

17 A. That's correct.

18 Q. And your boss calls and says I want you to go
19 to a meeting and you just said no, or you said --

20 A. I did. She said it was a human resources
21 meeting, I kept asking her what's it for and I said,
22 well, I am going to -- I have a meeting with Audrey
23 Fletcher that I want to go to, you know. What's the
24 meeting about, what's it for? I just said I wasn't going
25 to show up.

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1 Q. And you were asked twice and you didn't show
2 up?
3 A. That's correct. Well, she didn't say to be
4 here now, I just said I wasn't coming, and she said, oh,
5 you are not coming. It wasn't like if you don't come,
6 you are fired. She didn't say that.
7 Q. Did you suspect that you may be terminated?
8 A. No, I didn't.
9 Q. So you got a call twice from Pam --
10 A. Yes.
11 Q. -- asking you to go to HR meetings and you
12 said I don't want to go --
13 A. It was within a half hour, I think.
14 Q. Both calls were within a half hour?
15 A. Yes.
16 Q. Then what happened?
17 A. Then Dale Mapes called.
18 Q. Did he ask you to go to a meeting, too?
19 A. I don't recall. I don't recall.
20 Q. What did Dale Mapes say?
21 A. He just kind of read the first of that letter
22 and said I was terminated, I was going to be terminated.
23 Q. Were you at work at the time?
24 A. I was at home.
25 Q. Was this a day off?

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1 A. It was a day that I was resting up from
2 maintenance. I wasn't at work at that time.
3 MR. McFARLANE: This is 27.
4 (Deposition Exhibit No. 27 marked for
5 identification.)
6 Q. This is a copy of the termination letter; is
7 that right?
8 A. It looks like it.
9 Q. Now, the phone call that you got, was that
10 also on April 20, 2005?
11 A. Yes, it was, by Dale Mapes.
12 Q. By Dale Mapes. Now, what was your
13 understanding of the reason of why you were terminated?
14 A. I had no understanding other than what it says
15 right here (indicating), that the decision is based on
16 your inability to maintain positive interpersonal
17 relations with your colleagues and foster positive team
18 environment. That was the reason.
19 Q. Do you disagree with that statement?
20 A. I do, totally.
21 Q. Do you believe that you maintained positive
22 interpersonal relations with your colleagues?
23 A. I believe that I maintained an excellent
24 rapport given the safety issues that I had to tackle.
25 Q. And those safety issues that you had to

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1 tackle, let's --
2 A. Do you want to go over them again?
3 Q. I don't want the whole novel, just the list,
4 let's list them off.
5 MR. NIELSON: Are you saying that we need to
6 repeat everything he has said today about safety issues?
7 MR. McFARLANE: No.
8 Q. A thumbnail list. The safety issues, you did
9 an excellent job, you said, given the safety issues you
10 had to tackle.
11 A. Uh-huh.
12 Q. What are the safety issues you had to tackle?
13 I am sure we discussed most of them at length today but
14 if we can list them off in short form, I want to see if I
15 have missed any. Because I am not sure what you are
16 referring to when you said the safety issues I had to
17 tackle.
18 A. Well, where do we start.
19 MR. NIELSON: Can we shorten this by saying
20 are there any other safety issues that he hasn't
21 mentioned today? Because we have gone at it ad nauseam.
22 A. All right, the issue of Ron Fergie flying
23 after being on duty 20 hours. The issue of Ron Fergie
24 flying over my house below minimum altitude requirements
25 per the FARs. Pam Humphrey ignoring my pleas for more

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1 help in the maintenance department, maintenance staffing.
2 The flight with ice on the blades, Barry
3 Neilson. The comment by Ron Fergie that it was nothing.
4 Barry Neilson -- not Barry Neilson but Ron Fergie
5 installing and training Chad Waller to install main rotor
6 blades covers over an unairworthy set of main rotor
7 blades. Ron Fergie giving Barry Neilson confidential
8 e-mail from a safety witness to inflame Barry Neilson to
9 cause a safety witness to be threatened and intimidated.
10 Q. Ron Fergie or Gary Azola?
11 A. Ron Fergie, according to Audrey Fletcher's
12 sequence of events letter, Page 7.
13 Q. The safety witness being you?
14 A. Yes. Being threatened 2/25/05. Sitting in a
15 meeting 2/28/05 about Ron Fergie installing main rotor
16 blade covers over unairworthy main rotor blades and other
17 issues that were part of that e-mail such as only pilots
18 can take the aircraft out of service. Those were safety
19 issues that Gary Azola got very emotional about in that
20 meeting, which he was wrong.
21 An attempt to bring up safety issues at a Life
22 Flight leadership meeting during the safety portion of
23 the meeting. Ron Fergie then instructing me that it's
24 everybody's responsibility to break the links in the
25 chain of events that cause accidents in the Life Flight

1 meeting which spurred me into action to involving the
2 crew since Pam Humphrey had set up or had told Lance
3 Taysom to set up a special safety meeting.
4 Q. Involving the crew, okay. Anything else?
5 A. Involving the crew. Bringing up to human
6 resources, bringing up to human resources a threat that
7 neither Pam Humphrey nor Gary Azola did anything about
8 bringing that issue up to human resources. I think
9 that's the highlights.
10 Q. These are the safety issues that you had to
11 deal with?
12 A. Yes.
13 Q. And given those safety issues you believe that
14 you did foster a positive team environment?
15 A. I believe that I did better than anybody could
16 have done, given all those issues that I had to bring up.
17 People aren't happy when you raise safety issues about
18 them. That's why they have whistle blower laws.
19 Q. Now, Portneuf Medical Center's employment
20 handbook discusses a grievance procedure. Are you
21 familiar with that grievance procedure in the event of
22 termination?
23 A. I did not become aware of that until well
24 after the timetable had lapsed, so, no, I was not aware
25 of that at the time. I did not know that if you were

1 Q. What did you do at human resources when you
2 went to human resources after you were terminated?
3 A. I don't recall.
4 Q. Who did you talk to?
5 A. I believe it was Naomi Perez.
6 Q. And you believe you signed some forms but you
7 don't recollect what they were?
8 A. I only know I had to go there. I don't
9 remember.
10 Q. You are not sure if you did go there?
11 A. I did go there, I just don't remember why.
12 Q. You may have signed some forms, you may not
13 have signed some forms?
14 A. I just don't remember.
15 Q. You don't remember.
16 A. It got taken care of and I just don't -- it
17 wasn't significant in my life, I just didn't memorize it.
18 Q. Had you been aware of the grievance procedure,
19 would you have taken advantage of it?
20 A. I believe I would have.
21 Q. Is it your testimony that no one advised you
22 of the grievance procedure?
23 A. No one did advise me of a grievance procedure.
24 Q. Did you have --
25 A. My lawyer advised me of it when we were going

1 terminated, that you had an opportunity -- and Dale Mapes
2 surely didn't tell me of my rights.
3 Q. This severance agreement, when did you receive
4 that?
5 A. I received no severance agreement -- I
6 received an agreement, but it was about a week later,
7 within a week, I don't know.
8 Q. This is attached to the back of Exhibit
9 No. 27, this is the termination letter sent by Dale
10 Mapes. This is an unsigned severance agreement.
11 A. Yes.
12 Q. And you received that about a week after you
13 were terminated?
14 A. I am not certain. I went into the human
15 resources office to do some business with them, and they
16 might have given it to me there. I think they mailed it
17 to me, though, within a week, but I am not certain.
18 Q. After you received the letter of termination,
19 did you call human resources?
20 A. After I was terminated, did I call human
21 resources? I had to go to human resources to sign
22 something or do something with them. Did I call them. I
23 called them maybe to see if somebody was going to be
24 there when I came to do it, but I didn't call them just
25 to talk to them.

1 over documents, and he read it in the book, and that was
2 the first time I had ever seen it. And I had read the
3 employee handbook, but I guess I skipped over it or
4 didn't pay attention. But I hadn't read the employee
5 handbook obviously thoroughly enough right before my
6 termination.
7 Q. You did read it right before your termination?
8 A. I say obviously I had not, it had been a
9 while.
10 Q. Did you read it after your termination?
11 A. Yeah, but not in time. Like I said, Curt
12 Holmes is the one that pointed out to me, did you know
13 about this, and I told him no.
14 Q. That auto rotation incident with -- what is
15 it?
16 A. Transavia.
17 Q. Transavia. I keep wanting to say Transylvania
18 and I am sorry. The auto rotation incident where the
19 leak check didn't get done and the helicopter ran out of
20 oil and it auto rotated down, and you got terminated as a
21 result of that. Did the FAA ever investigate that auto
22 rotation?
23 A. Not to my knowledge. I am sure that they
24 didn't want to bring the FAA into it because the pilot
25 didn't have the documents to prove -- to ascertain the

1 had an accident with a pilot that had 17 hours, was on
2 duty for 17 hours, and the FAA, Lynn Higgins, the
3 accident investigator, tells Gary Alzola, the operations
4 director, that they need a policy to keep this from
5 happening, because this contributed to the accident, they
6 need to have a policy in effect, then I got too close to
7 it, it's an issue. I believe that it's a valid issue.
8 In fact it's in the operations manual now that you
9 cannot -- it has been changed -- that's where I wanted it
10 put to begin with, was in the operations manual, so it's
11 a done deal, it's in the operations manual, you can't
12 argue with it. So now it is in there, I believe it says
13 16 hours.
14 Q. So it's a numbers issue, under 16 you are fine
15 to fly, over 16 you are too tired.
16 A. You have got to do it somehow.
17 Q. So before this was put into the -- what did
18 you call it, the manual?
19 A. Operations manual --
20 Q. The operations manual.
21 A. -- the air carrier certificates operations
22 manual.
23 Q. When was it put into the operations manual,
24 the 16-hour requirement?
25 A. The document I got from PMC, and I believe it

1 was March -- no, no, no, June or July of 2005, but you
2 need to look at your document, I don't know for sure. It
3 was after I was terminated.
4 Q. Okay, after you were terminated. And before
5 that number went in, what was Greg Stoltz' or one of the
6 other mechanics, what were they supposed to base their
7 assessment on, whether a pilot was too tired or not?
8 A. Well, I don't think they addressed that. But
9 I felt that, you know, it needed to be discussed. If you
10 can get a pilot to come along with you for the
11 maintenance event, swap out pilots or whatever it takes.
12 I didn't have a -- I didn't put an hourly limit on it. I
13 just know that 17 hours, Tim -- the FAA felt that it
14 attributed to Tim's mistake in 2001, and I didn't put a
15 number on it.
16 Q. Did you suggest that mechanics undergo some
17 sort of training or something to determine when pilots
18 would be too tired?
19 A. I left it up to them other than our
20 conversations between ourselves that, you know, try to
21 avoid it. We don't need another accident, at all cost.
22 Q. It looks like you also had a safety issue with
23 the doors to the utility sheds; is that right?
24 A. Yeah, there was an issue with that.
25 MR. McFARLANE: This will be No. 28.

1 (Deposition Exhibit No. 28 marked for
2 identification.)
3 Q. It looks like this is an e-mail from you to
4 Gary and Pam talking about in the last several months you
5 have on two occasions found the doors of the utility
6 shelves damaged. "I feel there is a safety issue if the
7 aircraft takes off with the pad being unsecured." Are
8 the utility sheds right on the pad?
9 A. Yes, they are.
10 Q. Is that because the doors kind of open in the
11 rotor wash?
12 A. If you don't secure them before they take off,
13 yes, they can. And when they open, they slam back and
14 forth and damage the hinges and things fly out of the
15 boxes and can be sucked into the intakes, and it's just
16 not a good thing.
17 Q. And then the last two paragraphs here, they
18 seem to focus on who has to fix the damage.
19 A. Uh-huh. (Witness nods head affirmatively.)
20 Q. Is that correct? You feel that the pilot that
21 takes off with the pad unsecured should be responsible for
22 the repair of the damage they cause. And the responsible
23 pilot should take appropriate action to see that repairs
24 are forthcoming. If no one takes responsibility, then
25 collectively the pilot should take on the

1 responsibilities of the repairs.
2 A. What's wrong with that?
3 Q. So would it be fair to say that your main
4 concern was repairing the damage as opposed to a safety
5 issue?
6 A. No, I consider it safety because it's
7 discipline. If the pilots don't want to do their job and
8 be negligent in securing the pad, then they should be
9 disciplined and have to take care of the damage that
10 their unsafe behavior has caused.
11 MR. McFARLANE: This is No. 29.
12 (Deposition Exhibit No. 29 marked for
13 identification.)
14 Q. I apologize, I am not going to ask you any
15 questions about this. We have got both of these
16 documents in. I didn't have 009 -- I had them separately
17 instead of together in this set. I believe we have
18 looked at both of these.
19 A. I don't know, I have looked at a lot.
20 Q. We have Policy No. 12, which is signed by you
21 at the very last page, I think the earlier one we had was
22 not signed by you, but I don't recall for sure.
23 MR. NIELSON: It was.
24 Q. Now, I want to ask you about your letters to
25 the FAA, because there are several of them, and it's

1 of '06, which was your last visit with Dr. Kishiyama, he
2 advised you again of outpatient counseling. Is that
3 true?

4 A. He might have, I don't recall it. If he did,
5 he didn't say it very strongly.

6 Q. He said Discussed again, this is on Page 11,
7 Discussed again that he might benefit from outpatient
8 individual psychotherapy to teach him relaxation skills,
9 have a therapist he can vent/cathart to, learn some
10 thought stopping techniques to interrupt the ruminating
11 thought patterns when they start. He is resistant to my
12 suggestions. Asked him if there is another way that he
13 thought I could be of help to him other than prescribing
14 Xanax. He does not really think so.

15 Do you recall having a conversation as to that
16 with Dr. Kishiyama?

17 A. Not specifically, no.

18 Q. Are you seeing Dr. Kishiyama through your
19 health insurance through your wife --

20 A. Yes.

21 Q. -- or are you paying --

22 A. I think we are paying a deductible, but yes.

23 Q. I am just asking because I didn't get the --
24 the billing records are sort of unclear and I don't
25 actually have the billing records. So I am not sure how

1 2004. You denied that.

2 What information did you provide to the
3 federal government relating to any violation or alleged
4 violation, excepting information relating to the crash of
5 2001?

6 A. We just went over the ADs overflights that I
7 sent to Lynn Higgins.

8 Q. So it's the ADs.

9 A. Yes, I guess.

10 Q. And it looks like you sent him a letter about
11 ice on the rotor blades.

12 A. That was after I was terminated. I did not
13 send that letter while I was employed. I believe it says
14 during your employment here.

15 Q. So you sent them a letter about the AD, you
16 sent a couple letters about the ADs.

17 A. Yes.

18 Q. And had a couple of phone calls with them.

19 A. Yes.

20 Q. Any other time throughout your entire history
21 of employment that you gave the FAA any information about
22 violations of orders, regs, or standards or anything
23 else?

24 A. MV015.

25 Q. Which is? I don't know your numbers as well

1 much your treatment with Dr. Kishiyama has cost. Did you
2 pay Dr. Hazle or did that go through your Portneuf
3 Medical insurance?

4 A. Portneuf. I am sorry, I think the employment
5 assistant program, I don't think there was any charge,
6 you would have to ask Audry.

7 Q. Was it through the employment assistance
8 program that you saw Dr. Hazle?

9 A. I thought so. You would have to ask Audrey
10 Fletcher, she set it up.

11 Q. I want to ask you a couple of questions about
12 the request for admissions that we made. Basically I
13 want to -- I would like you to read the answers and tell
14 me what the right answer is, because we asked a couple of
15 sets of requests for admissions and I frankly had a hard
16 time putting two and two together. So let's make this
17 No. 37.

18 (Deposition Exhibit No. 37 marked for
19 identification.)

20 Q. The first one is Admit that during your
21 employment by Portneuf Medical Center you did not provide
22 to the federal government any information relating to any
23 violation or alleged violation of any order, regulation,
24 or standard of the FAA or other provision of federal law,
25 excepting information relating to the helicopter crash of

1 you do.

2 A. It's the document that we went over today. It
3 was a letter that I wrote to the FAA that pretty much
4 gave the history since 1993 of Portneuf Medical Center.
5 It had issues of Ron Fergie's streamlining the checklists
6 which is short cutting the checklists and not following
7 the checklists, causing problems with, say, starting the
8 aircraft or operating the aircraft.

9 Q. I don't know your numbers as well as you do,
10 so I am not sure what 0015 is off the top of my head.

11 A. I swear we went over it. You didn't really
12 ask too much about it, but I know the document was
13 produced. But it's, I don't know, at least a five-page
14 letter that has a lot of issues in it. And it does have
15 airworthiness directive. Especially for the crash of
16 1993, it explains that Don Humphrey was supposed to have
17 the continuous ignition on in violation of the flight
18 manual, which is an FAR violation.

19 I don't -- from memory, I really don't want to
20 recall MV015. It's in this stack, I swear we have been
21 over it. But I most definitely did report to the FAA
22 violations of Federal Aviation Regulations while I was
23 employed at Portneuf Medical Center.

24 Q. Did you report anything to the FAA about Ron
25 Fergie's --

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2007 SEP 11 PM 4:54

BY *[Signature]*
DEPUTY CLERK

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Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program
Director, GARY ALZOLA, Director of
Operations, RON FERGIE, Chief
Pilot/Safety Officer, BARRY NIELSON,
Pilot, and DOES I-X,

Defendants.

Case No. CV-2005-4053-OC

**AFFIDAVIT OF GREGG
SCHILLING**

STATE OF FLORIDA)
) ss.
COUNTY OF DUVAL)

Gregg Schilling, being first duly sworn upon oath, deposes and states as follows:

1. I over the age of eighteen years and make this affidavit of my own personal knowledge.
2. I am currently employed with Agusta Aerospace Corporation ("Agusta") in Jacksonville, Florida as a site manager on a military program.

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3. I was employed by Agusta in 2003 as the Technical Representative for the negotiations of the purchase of a helicopter by Portneuf Medical Center ("Portneuf") from Agusta.

4. I worked with the Plaintiff, Mark Van, in working out the maintenace contract "COMP contract" between Portneuf and Agusta.

5. I have never heard of any Agusta employee, including mechanics, who walked off the job because of Mark Van. In fact, during the negotiations between Portneuf and Agusta, I was never informed of any Agusta employee walking off the job. Because of my position with Agusta, I would be aware if any person walked off the job and, to the best of my knowledge, I am the only representative from Agusta who ever walked onto the Portneuf Medical Center site. Mark did not cause problems in the negotiations between Agusta and Portneuf.

6. Mark is a very thorough individual. He takes the time to read through everything, fix everything and follow-up on everything. Some people may call that a "pain in the butt" because it makes them look bad and they don't want to take the time to research everything.

7. I was actually surprised to hear of Mark Van's termination from Portneuf Life Flight. In my opinion, Mark is a very experienced helicopter mechanic and I found Mark's input in the contract negotiations to show how much he cared about the safety of the program. Mark knew more about the situation than anyone else involved in the contract.

8. The person who replaced Mark does not have experience with helicopters like Mark does. Portneuf is letting Mark go was a mistake as far as I am concerned.

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FURTHER YOUR AFFLANT SAYETH NOT.

DATED this 11th day of September, 2007.

Gregg Schilling

GREGG SCHILLING

On this 11th day of September, 2007, before me, personally appeared Gregg Schilling, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Jennifer Bernauer
Commission # DD565025
Expires June 18, 2010
Bonded Fidelity Insurance Co. 800-365-7018

Jennifer Bernauer

NOTARY PUBLIC
Residing at
My Commission Expires: June 18, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2007, I served a true and correct copy of the foregoing AFFIDAVIT OF GREGG SCHILLING as follows:

Patricia M. Olsson
Paul D. McFarlane
MOFFAT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, Idaho 83701

- U.S. Mail, postage prepaid
- Overnight Delivery
- Hand Delivered
- Facsimile: (208) 385-5384

Nick L. Nielson

NICK L. NIELSON

S

NICK L. NIELSON - Idaho State Bar No: 3787
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Attorney for Plaintiff

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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program
Director, GARY ALZOLA, Director of
Operations, RON FERGIE, Chief
Pilot/Safety Officer, BARRY NIELSON,
Pilot, and DOES I-X,

Defendants.

Case No. CV-2005-4053-OC

**AMENDED AFFIDAVIT OF NICK
L. NIELSON IN SUPPORT OF
PLAINTIFF'S MEMORANDUM IN
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
) ss.
COUNTY OF BANNOCK)

Mark Van, being first duly sworn upon oath, deposes and states as follows:

- I am the Plaintiff in this action and make this affidavit of my own personal knowledge.
- Attached hereto as Exhibit "A" is a true and correct copy of Dr. Kayne Kishiyama's report.



3. Attached hereto as Exhibit "B" is a true and correct copy of the deposition of Pam Holmes, Page 76.

4. Attached hereto as Exhibit "C" is a true and correct copy of the deposition of Audrey Fletcher, Pages 87, 88, and 103.

5. Attached hereto as Exhibit "D" is a true and correct copy of the deposition of Chad Waller.

6. Attached hereto as Exhibit "E" is a true and correct copy of the deposition of Pat Hermanson, Pages 40, 41, 44, 61, 62, 63, 67, and 78.

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7. Attached hereto as Exhibit "F" is a true and correct copy of the deposition of Barry Nielson, Pages 10, 11, 12, 21, 26, 27, 30, and 37.

8. Attached hereto as Exhibit "G" is a true and correct copy of the deposition of Ron Fergie, Pages 54, 55, 57, 66, 72, 73, 74, 75, 76, 83, 85, 87, 89, 90, 109, 112, 119, 121, 125, 128, 129, 167, and 168.

9. Attached hereto as Exhibit "H" is a true and correct copy of the deposition of Mark Van, Pages 30, 44, 49, 50, 51, 53, 57, 62, 63, 64, 65, 66, 69, 70, 71, 77, 78, 79, 80, 86, 87, 89, 90, 91, 92, 94, 96, 97, 98, 104, 105, 109, 110, 112, 113, 116, 117, 118, 128, 129, 137, 141, 142, 144, 145, 146, 147, 153, 154, 155, 156, 157, 163, 164, 165, 166, 167, 168, 172, 173, 176, 185, 187, 190, 191, 192, 194, 195, 196, 200, 201, 202, 204, 205, 206, 207, 209, 210, 211, 212, 213, 216, 217, 218, 219, 222, 223, 224, 226, 227, 228, 229, 232, 233, 238, 242, 248, 253, 255, 256, 257, 261, 262, 267, 268, 269, 270, 271, 272, 279, 280, 281, 320, and 321.

10. Attached hereto as Exhibit "I" is a true and correct copy of the deposition of Gary Alzola, Pages 32-33.

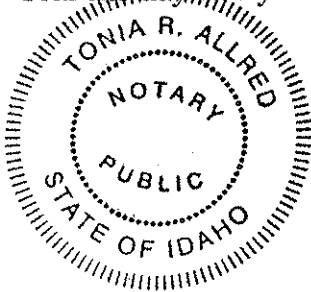
FURTHER YOUR AFFIANT SAYETH NOT

DATED this 12th day of September, 2007.

Nick L. Nielson
NICK L. NIELSON

On this 12th day of September, 2007, before me, personally appeared Nick L. Nielson, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Tonia R. Allred
NOTARY PUBLIC
Residing at Pocatello
My Commission Expires: 2/1/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2007, I served a true and correct copy of the foregoing AMENDED AFFIDAVIT OF NICK L. NIELSON as follows:

Patricia M. Olsson
Paul D. McFarlane
MOFFAT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, Idaho 83701

- U.S. Mail, postage prepaid
- Overnight Delivery
- Hand Delivered
- Facsimile: (208) 385-5384

Nick L. Nielson
NICK L. NIELSON

S



PINNACLE HEALTH SYSTEMS, PLLC
Kayne Kishiyama, MD

1522 Elk Creek Drive, Idaho Falls, Idaho 83404, (208) 552-9020, (208) 529-2564 Fax

PT NAME: MARK VAN
DATE OF EVALUATION: May 18, 2005
REFERRAL SOURCE: Self
THERAPIST: None
PRIMARY PHYSICIAN: None

HISTORY OF PRESENT ILLNESS

This is the first Pinnacle Health Systems psychiatric evaluation for this 48-year-old, married, Caucasian male who is self referred for problems with anxiety and obsessive, ruminating thoughts. The patient worked for over 20 years for Portneuf Medical Center and was the maintenance supervisor for the Life Flight helicopter. About one year ago there was a helicopter crash. He had been called out because of problems with the fuel system with the helicopter. He did repairs in the field and the helicopter pilot took off but crashed a few minutes later. The patient went to the accident site and was the first one on the scene and helped the pilot out of the wreck. The pilot lost his leg in the accident and is no longer working as a pilot. The local media reported that the crash was due to mechanical and maintenance errors. The federal transportation safety agency/FAA report was that it was pilot error. The patient says that people at the hospital and in the local community assumed he was responsible for the accident. He says that his wife was being harassed at her workplace by her coworkers because of the accident. He pressed the hospital administration to release the FAA report but they would not do that. Over the ensuing months there were other things that he pointed out that were of safety concerns but did not feel that his statements were taken seriously and were not heeded. He grew increasingly more frustrated. About one month ago, in his final attempt to have hospital release the FAA report, they refused to do that. He released a copy of the report to the local media himself. He was subsequently fired from his job. He says that the reason cited was for not being able to get along with coworkers. Patient denies any problems getting along with coworkers prior to this incident. Patient has found himself being frustrated, irritated, and anxious with ruminating thoughts. The ruminating thoughts are starting to slowly decrease. He denies any panic attacks. He has intermittent difficulties with waking up in the middle of the night and reports low appetite with weight loss. Concentration and short term memory are variable. Energy level is generally good. He at times feels like crying but cannot cry. He denies thoughts of suicide. Patient denies any prior history of problems with depression or anxiety and denies being "a troublemaker"

Pinnacle Health Systems, PLLC
Kayne K. Kishiyama, MD
1522 Elk Creek Drive
Idaho Falls, ID 83404

PT NAME: VAN, MARK

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on the job. He has never been treated with any psychiatric medications. At this time he is still unemployed but looking for work. He is struggling with whether to file a report with OSHA regarding work safety concerns and/or filing a report with the state whistleblower's department.

PAST PSYCHIATRIC HISTORY

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Patient has never been psychiatrically hospitalized and has never attempted suicide. He has never been in counseling before. He saw Dr. Hazzle in Pocatello briefly but found that to be a very unpleasant experience. He denies any history of self-mutilatory behaviors or any compulsive handwashing, counting, or checking behaviors. He is somewhat perfectionistic. He denies any history of an eating disorder. His wife has commented that he snores at night but has never commented that he stops breathing while asleep. Patient denies waking up in the middle of the night short of breath, denies waking up with headaches first thing in the morning, and denies sudden sleep attacks during the daytime.

FAMILY HISTORY

Patient suspects that his mother had problems with depression as well as his sister. He is not aware of any family history of substance abuse.

DRUG AND ALCOHOL HISTORY

Patient admits to drinking "three beers maybe two or three times a week". He reports rare intoxications ("maybe once a year"). He denies ever being a heavy drinker. He denies any history of blackouts, withdrawal symptoms, or any medical or legal sequelae related to his alcohol use. He admits to smoking marijuana in high school but none since then. He denies any other illicit drug use. He denies any history of prescription medication abuse. He does not use nicotine products. Caffeine use is minimal.

PAST MEDICAL HISTORY

Surgeries include bilateral ORIF ankle surgeries a few years ago (fractured them while doing motocross racing). His only other surgery was a hernia repair. Patient denies any history of seizures, strokes, severe head injuries, migraine headaches, or other neurologic illnesses. He has mild hayfever. He denies any history of thyroid disease, pulmonary illness, cardiac disease, liver disease, renal disease, or any GI or GU illnesses. He denies any history of anemia, hypertension, diabetes, or dermatologic illnesses. He has a little arthritis pain in his knee. He is allergic to penicillin. He is not currently on any medications and does not take any vitamins or other supplements.

SOCIAL HISTORY

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Patient was the youngest of two children from a low middle income, Catholic, Minnesota family. His parents divorced when he was about three years old and he never saw his father after that (his mother moved the family to Minnesota from Florida away from their father). He does not know why his parents divorced. Patient denies any early childhood history of physical, emotional, verbal, or sexual abuse. He denies any academic or disciplinary problems throughout his schooling other than being suspended once in high school for smoking. He denies being hyperactive or disruptive in the classroom. He had an average number of friends and dated about the same amount as peers in high school. He was active in sports. Patient is a high school graduate. He has not taken any college classes. Patient was in the United States army for about three years where he learned helicopter maintenance. He did not see any combat action. He denies any disciplinary problems in the military and received an honorable discharge from the military. He has been married just one time and that is to her current wife. They have been married for over 20 years and have two grown children. Patient reports a stable supportive marriage. He has worked in the helicopter maintenance field at Portneuf Medical Center for over 20 years and was fired about one month ago. His wife works for a local insurance company. Patient reports a good relationship with both of his children. One child is in Moscow, Idaho going to college and another child lives in northern Idaho but will be moving to Boise soon. Patient reports having a few good friends in the area for support. He denies significant financial stressors at this time. He says that he is not religious. Patient likes motocross racing, working on his motorcycles, and skiing.

MENTAL STATUS EXAMINATION

Patient is a slightly thin, casually dressed, and neatly groomed Caucasian male. He is alert, verbal, and cooperative. He is maybe somewhat guarded. Eye contact is fair. Speech is hesitant and halting but normal in volume. He is oriented times four and short term memory is three or three objects after five minutes. Simple calculations are intact. He could name five of the six states that border Idaho and all of the last four presidents. He could spell "world" backwards and say the months of the year backwards without errors. He does well with simple similarities and is fair with interpretation of proverbs. Affect is mildly constricted. Thought processes are linear and coherent. There is no evidence of bizarre delusions or hallucinations. Insight is fair. Impulse control is not observably impaired and simple practical judgment is intact.

IMPRESSION

Patient is a 48-year-old, married, Caucasian male who denies any prior psychiatric illness. Over the last several months he has had increasing problems with anxiety and low mood, especially since being fired from his job about one month ago. His biggest complaint of this time is of ruminating thoughts regarding the circumstances related to the helicopter crash and his frustration with his former employer. There is no evidence of a substance abuse problem. Family history is significant for possible depression in his mother and sister.

AXIS I: ADJUSTMENT DISORDER WITH MIXED EMOTIONAL FEATURES
R/O MAJOR DEPRESSION

AXIS II: DEFERRED (OBSESSIVE COMPULSIVE TRAITS)

AXIS III: HAYFEVER

AXIS IV: MODERATE PSYCHOSOCIAL STRESSORS

AXIS V: GAF = 60, HIPY = 85-90

RECOMMENDATION

1. We discussed my clinical impression and treatment recommendations. We discussed that he could approach treatment with counseling and/or medications. We discussed outpatient counseling. Patient is very hesitant and reluctant about doing that and does not see how that would really be helpful for him. He says that he does not want to rehash the accident and the situation at his former workplace but just wants to learn how to stop ruminating about those things. We discussed treatment with medications. He would prefer to have a medicine that he could use on a PRN basis. We discussed that the main medicine for that type of use would be a benzodiazepine. We discussed potential addictiveness of benzodiazepines and he decided that he did not want to be on those kinds of agents. We discussed a trial of Lexapro. We discussed potential adverse side effects. Patient was agreeable to a trial. He is to start with 5 mg a day for five days then if tolerating it, increase to 10 mg a day. I gave him samples to use.
2. We discussed getting baseline labs. I sensed that he was somewhat reluctant to doing that. We agreed that we would first do the trial of Lexapro and if he was not showing improvement with that medication then we would get baseline labs.
3. Patient does not have anyone that he wanted me to send a copies of this report to.
4. Patient is to call me in one week and return to clinic in three weeks, sooner PRN.

Kayne Kishiyama, M.D.

5/29

Pinnacle Health Systems, PLLC
Kayne K. Kishiyama, MD
1522 Elk Creek Drive
Idaho Falls, ID 83404

PT NAME: VAN, MARK

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Transcript of the Testimony of:
Gary Alzola

Date: July 24, 2007

Volume: I

Case: VAN v. PORTNEUF MEDICAL CENTER

Printed On: September 11, 2007

T&T Reporting
Phone: 208/529-5491
Fax: 208/529-5496
Email: tntreport@ida.net
Internet: www.tandtreport.com

1 get to know, and maybe in some respects I'm that way
2 too. But I did feel, like, when we needed to talk
3 that we did. And we had, you know, cordial
4 relationship. At least that's how I felt.

5 Q. Do you recall any specific problems with
6 his -- with maintenance in the LifeFlight program
7 during that period?

8 A. Well, do I recall maintenance problems?
9 I'm not sure what your -- I'm unclear of your
10 question.

11 Q. Well, let me -- let me define it a
12 little bit more, then.

13 During this period of time from 1996 to
14 November 14th, 2001, did you ever request the
15 maintenance department to level -- level their
16 stand -- to raise their standard, raise the level of
17 standards with regard to -- to maintenance and
18 efficiency?

19 A. No.

20 Q. During this period of time, did you ever
21 have any concerns that Mr. Van was raising issues
22 that he wouldn't let go?

23 A. No.

24 Q. I'm now going to go to the
25 November 14th, 2001, accident. What was your title

1 A. Don Humphrey.

2 Q. Do you know why -- why he left? Or what
3 was the situation there?

4 A. I think I would just like to say that he
5 was asked to leave.

6 Q. Okay. Do you know the specifics?

7 A. I do, but I -- I would really -- I'd
8 rather not answer because it doesn't have anything to
9 do with me and it's kind of a personal -- it was --
10 it was a personal issue.

11 Q. Did it have anything to do with the
12 department?

13 A. No.

14 Q. So the -- but the -- but the hospital
15 asked him to leave?

16 A. Well, when you say "the department," you
17 mean as far as it related to --

18 Q. LifeFlight.

19 A. -- to LifeFlight? And anything that had
20 to do with the flight program or anything like that
21 or safety or anything like that?

22 Q. Well, did it have something to do with
23 his job responsibilities?

24 A. No.

25 Q. Okay. To your knowledge, was it because

1 or position with the hospital at that time?

2 A. I was the director of operations.

3 Q. Okay.

4 A. Slash, aviation manager, whatever.

5 Q. Okay. Were you the aviation manager at
6 that period -- at that time, at November 14th, 2001?

7 A. Yes, sir.

8 Q. Are you saying that the director of
9 operations is the same position as the aviation
10 manager?

11 A. Yes.

12 Q. Okay. And it wasn't such that you were
13 the director of operations on November 14th, 2001,
14 and you later became the aviation manager?

15 A. When I first went to work at the
16 hospital -- the director of operations is actually an
17 FAA term that's a required job that you have to have
18 to operate under Part 135. The hospital at that time
19 called that job the aviation manager. That was the
20 hospital name for the same job.

21 Q. Okay. When did you -- tell me again,
22 when did you become the operations director or the
23 aviation manager?

24 A. In 2000.

25 Q. Okay. Who did you replace?

1 he had an affair with a nurse?

2 A. Yes.

3 Q. Okay. What was the nurse's name?

4 A. I think it was Donna Favor.

5 Q. Did that disrupt operations in
6 LifeFlight?

7 A. No.

8 Q. You didn't see any disruption, correct?

9 A. No. Actually, it was a relief.

10 Q. Okay. You're saying that he was -- he
11 was asked to resign and that he did resign was a
12 relief?

13 A. Yes.

14 Q. Okay. I'm asking: Was the affair a
15 disruption?

16 A. To whom?

17 Q. To -- to the LifeFlight operation.

18 A. Yes.

19 Q. How was it a disruption?

20 A. I guess just -- just because of the
21 rumors and everything if it were going around every
22 time you would go to work because everybody knew
23 about it pretty much. So it was just that kind of
24 stuff that you get when something like that is going
25 on.

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To: Mark Van, Chief Mechanic
From: Pat Hermanson, CEO *PH*
Date: September 16, 2004
Re: Your concerns

542
Mark, I received your note in the mail yesterday and followed up with a conversation with Russ Wight, our in-house counsel who negotiated the documents related to the purchase and maintenance of the Agusta 109 helicopter. As you are well aware, he collaborated extensively with the Flight Team in negotiating the appropriate language and details of the agreement. I remain confident and satisfied that we have a valid, comprehensive agreement that will serve our needs for years to come.

You have raised several concerns over the past year or so that have been addressed directly with Agusta. We are satisfied that Agusta maintains a posture to support our program with the necessary resources to keep us safe and operational on an ongoing basis. While the language of the agreement may not comply with your particular desires, other involved parties, i.e. Russ Wight, Pam Humphrey, Gary Alzola, and myself believe that we have a legally binding, workable agreement that serves our hospital well.

Your note indicates that you continue to have a personal trust issue with Agusta. While I am not in a position to resolve that for you, the fact remains that Agusta is our vendor and we will work with them to ensure that our program meets the needs of our community and region. Obviously, your challenge is to find a way to resolve your personal trust issues so that you can move on toward a productive relationship with our vendor to ensure that our program remains safe and reliable. In fact, as the lead maintenance professional responsible for the aircraft it is imperative that you have a positive working relationship with our vendor. It is my expectation that this will occur.

Cc: Pam Humphrey
Russ Wight

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EXHIBIT J

603

U.S. DEPARTMENT OF LABOR

Occupational Safety & Health Administration
1111 Third Avenue, Suite 715
Seattle, Washington 98101 - 3212



RECEIVED

OCT 16 2006

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHFD.

Via Certified Mail
October 11, 2006

Mr. Mark Van
914 Mt. McGuire
Pocatello, ID 83201

Re: Portneuf Medical Center/Van/0-0160-05-016
Secretary's Findings

Dear Mr. Van:

The investigation of the above-referenced whistleblower complaint has been completed. On July 11, 2005, Mark Van (complainant) filed the above-referenced complaint against Portneuf Medical Center (respondent), under the employee protection provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121, (hereinafter called AIR 21).

Mr. Van claimed that he was discharged in retaliation for complaining about alleged violations of federal aviation regulations by respondent's pilots. Portneuf Medical Center denied any retaliatory motive and maintains that Mr. Van was fired because he was unable to maintain positive interpersonal relations with his colleagues and failed to foster a positive team environment.

Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration, Region X, finds no reasonable cause to believe that Portneuf Medical Center violated the employee protection provision of the Act and issues the following findings.

Secretary's Findings

The complainant and the respondent are both covered under the employee protection provisions of the Act. Respondent is an "air carrier" within the meaning of 49 U.S.C. §42121. Respondent is also a "citizen of the United States" within the meaning of 49 U.S.C. §40102(a)(15)(C) because it is an association organized under the laws of

the state of Idaho.¹ Respondent is a county hospital that operates an emergency air ambulance service based at Portneuf Medical Center in Pocatello, Idaho. Respondent transports and provides critical care to ill or injured patients in the states of Idaho and Utah. Respondent's workforce includes approximately 1,350 employees, none of whom is represented by a labor union. Complainant was employed by respondent as Director of Maintenance.

The statute requires a complaint alleging discharge or discrimination in violation of the Act to be filed with the Secretary of Labor no later than 90 days after the date the discriminatory decision has been both made and communicated to the complainant. Complainant was discharged on or about April 20, 2005, which he claims is the most recent date of discrimination. On July 11, 2005, he filed a complaint with the Secretary of Labor – OSHA, alleging that respondent discriminated against him in violation of 49 U.S.C. §42121. This complaint was timely filed.

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The Act prohibits discharging or otherwise discriminating against an employee if the employee "provided...to the employer or Federal Government...information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States..." 49 U.S.C. §42121(a)(1).

Complainant was employed by respondent for nearly 19 years, of which the last 7½ years he was the Director of Maintenance for respondent's LifeFlight air ambulance program. By all accounts complainant was an excellent mechanic and cared deeply about the safe operation of respondent's aircraft. Additionally, in November 2001, complainant proved himself to be a true hero in his response to a crash involving respondent's LifeFlight helicopter, where he rescued the downed pilot and probably saved the pilot's life through his first aid efforts that day. The crash did not occur as a result of any maintenance or mechanical problems with the aircraft.

During the course of his employment, the complainant raised numerous concerns that he categorized as protected under the Act. The investigation revealed that some of his concerns are indeed protected, but some are not. His concerns are described as follows.

Protected Activity: June 21, 2004, complaint of overflown airworthiness directive

Complainant engaged in protected activity on June 21, 2004, when he reported to respondent, by e-mail, that a pilot had overflown an FAA airworthiness directive on May 17, 2004, and that another pilot had overflown an FAA airworthiness directive on

¹ Respondent's argument that it is not a "citizen of the United States" and thus not an "air carrier" was undermined by the fact that on its application to the FAA for a Part 135 Air Carrier certificate, Respondent certified that it was a "citizen of the United States"; specifically, an "association." Additionally, 14 CFR Part 119.33 provides that a Part 135 certificate can only be issued to a "citizen of the United States."

June 7, 2004.² Airworthiness directives specify inspections that must be performed after a certain number of flight hours to ensure the safe operation of aircraft. 14 CFR Part 39.7 provides that failing to comply with an airworthiness directive is a violation of a federal aviation regulation (FAR). Complainant had discovered the apparent violations on June 10, 2004, while reviewing records, but for some reason did not report the violations to respondent until eleven days later.

Complaints of ice/snow found on rotor blades during inspections

Complainant complained to respondent on multiple occasions going back to at least 1997 that he had found ice and/or snow on the helicopter blades during daily inspections. On February 1, 2005, complainant again made such a complaint to respondent. Afterwards, he called respondent's dispatch office and informed them of the condition as well. Complainant claimed that these complaints were protected activity.

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Complainant said during his interview that he was concerned that if respondent's pilots failed to perform required pretakeoff contamination checks, then they might not notice ice and/or snow on the blades before taking off. However, it was not reasonable for complainant to believe that respondent's pilots would fail to perform pretakeoff contamination checks because the pilots routinely performed pretakeoff contamination checks. Although complainant said that he found ice and snow on the blades on a number of occasions while the aircraft was on the ground, the preponderance of the evidence did not suggest that that aircraft was *flown* in an unairworthy condition.

Additionally, the preponderance of the evidence indicated that the concerns complainant expressed to respondent regarding ice and/or snow on the helicopter's rotor blades related to operational and dispatch issues rather than to alleged violations of orders, regulations, or standards of the FAA. Complainant believed that the aircraft should be ready to fly 24 hours a day, and that it would be detrimental to the LifeFlight program if rescue missions had to be declined because the aircraft was not immediately flyable due to the 60-90 minutes it would take to de-ice the aircraft. Complainant's concerns may have been understandable from a business standpoint; however, it is not a violation of any known order, regulation, or standard of the FAA (or of any other federal law relating to air carrier safety) for an aircraft to have ice and/or snow adhering to the rotor blades *while the aircraft is on the ground*.

Therefore, complainant's complaints regarding ice and/or snow found by the maintenance department during inspections of a helicopter *on the ground* are not protected activity.

² See *Davis v. United Airlines, Inc.*, 2001-AIR-5 (ALJ July 25, 2002) (even "informal" complaints to supervisors can be protected activities under AIR 21).

November 2004 complaint of flight with ice on blades

Complainant alleged that he engaged in protected activity on or about November 22, 2004, when he verbally reported to respondent that one of the pilots had flown the LifeFlight helicopter with ice and snow on the main rotor blades during takeoff. The alleged violation, which had occurred between three and four weeks earlier, was not witnessed by complainant, but he apparently understood this had happened. No one actually witnessed an aircraft taking off with any ice or snow adhering to a rotor blade. It took nearly a month for complainant to notify respondent of the incident.

14 CFR Part 135.227 provides in relevant part:

(a) No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade [...]

(b)[...] no pilot may take off an airplane any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane unless [...]

(1) A pretakeoff contamination check, that has been established by the certificate holder and approved by the Administrator for the specific airplane type, has been completed within 5 minutes prior to beginning takeoff. A pretakeoff contamination check is a check to make sure the wings and control surfaces are free of frost, ice, or snow.

In order to be protected under AIR 21, the complainant's belief that an air carrier safety violation occurred must be *objectively reasonable*.³ Complainant has failed to meet this burden.

The preponderance of the evidence established that on or about October 31, 2004, the mechanic on duty had de-iced the entire aircraft except for two rotor blades, which had some remaining ice. As it was a clear and sunny day, the mechanic turned the remaining blades into the sun before he went into the flight office to log his work and contact the pilot on duty. The evidence showed that as many as 20 minutes may have elapsed from the time the mechanic turned the blades into the sun to when he returned to the helipad. Upon the mechanic's return, he observed the helicopter taking off. The mechanic said that he thought it was possible that the sun had melted the remaining ice. No reports were received concerning ice scattering from the rotor blades or of other conditions which would suggest that the aircraft was flown with ice and snow on the rotor blades.

Complainant has not provided a credible explanation for why he would have waited nearly a month to report the incident to anyone if he truly believed that a violation of a FAR had occurred. It would have been appropriate for the complainant, as Director of Maintenance, to immediately report the apparent violation to either respondent or to the

³ See *Svendsen v. Air Methods, Inc.*, 2002-AIR-16 (ALJ Mar. 3, 2003), slip op. at 48, adopted, ARB No. 03-074 (ARB Aug. 26, 2004).

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FAA.⁴ Therefore, complainant has not established that it was objectively reasonable for him to believe that the LifeFlight helicopter took off with ice on the blades in October 2004. Under the above circumstances, complainant's November 2004 report to respondent of the alleged takeoff involving ice and snow on a rotor blade does not constitute protected activity.

Nonetheless, upon receipt of complainant's report of the incident, respondent investigated the incident. Respondent's investigation did not yield any evidence that the helicopter had taken off with ice on the blades.

Thereafter, respondent addressed complainant's concerns by drafting and implementing a new Cold Weather Operations policy, which aimed to keep ice and snow from accumulating on the blades in the first place through the careful use of heaters and blade covers. The evidence showed that complainant contributed many suggestions to this policy, and that the vast majority of complainant's suggestions were incorporated.

During the final six months of his employment with respondent, complainant referred back to the October 2004 takeoff on multiple occasions. Complainant continued to raise this allegation despite the lack of evidence that any violation of a FAR had occurred. Complainant's repeated raising of an issue that did not constitute protected activity in the first place – and that had been resolved by involving complainant in the design of respondent's new Cold Weather Operations policy – also does not constitute protected activity.⁵

March 24, 2005, e-mail

On March 24, 2005, complainant sent an e-mail to many of respondent's managers, dispatch personnel, and medical staff that he contends is protected activity. By its own terms, the e-mail concerned "pilot management practices." The e-mail again referred to the alleged flight with ice on the rotor blades in October 2004. The e-mail also questioned whether the pilots would go along with the new cold weather policy (for preventing ice accumulation on the blades during ground operations), and stated that "safety offenders" needed to be sanctioned. This e-mail does not constitute protected activity because it did not allege any violation of any order, regulation, or standard of the FAA (or any other provision of federal law related to air carrier safety).

⁴ The FAA advises employees of air carriers that known violations of FARs should immediately be reported to the nearest FAA Flight Standards District Office. See http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/whistleblower/policy/ga/.

⁵ Once a whistleblower's safety concerns have been adequately addressed to the extent that it is no longer reasonable to keep raising the same concerns, new complaints do not constitute protected activity. See *Williams v. Baltimore City Public Schools System*, No. 03-1749 (4th Cir. Nov. 18, 2005) (*per curiam*) (case below ARB No. 01-021, ALJ No. 2000-CAA-15).

Respondent Knowledge

Respondent had knowledge of complainant's protected activity because complainant's air safety complaint was made directly to respondent.

Unfavorable Personnel Action

Complainant's allegation that he was "verbally threatened" by a co-worker on February 25, 2005, is untimely because it was not filed with OSHA within 90 days of its occurrence. Accordingly, that allegation is dismissed.⁶

Complainant experienced an unfavorable personnel action when his employment was terminated on April 20, 2005.

Nexus

Complainant was ultimately unable to demonstrate by a preponderance of the evidence that his alleged protected activities were a contributing factor in the termination of his employment. First of all, the ten months that elapsed between complainant's most recent protected activity and when he was fired is too remote in time to infer any causal connection.

Additionally, respondent's response to complainant's air safety concern expressed on June 21, 2004, indicated that respondent took complainant's concerns seriously. Respondent self-reported the violation promptly to the FAA and submitted a "comprehensive fix" for airworthiness compliance which was fully approved by the FAA and implemented by respondent. Respondent thanked complainant for reporting the issue. Complainant did not allege, and the evidence did not support, that there were any further violations of airworthiness directives during his employment.

This investigation revealed no evidence that complainant's protected activity played any role in respondent's decision to discharge him. Complainant was not disciplined for his protected activity. To the contrary, after complainant engaged in protected activity, his next performance evaluation (for the fiscal year ending September 30, 2004) was quite positive and actually resulted in complainant being awarded a 2% performance-based pay raise for his performance during fiscal year 2004.

The preponderance of the evidence indicates that respondent had concerns about complainant's conduct during the last few months of his employment, and that a

⁶ Although not mentioned in his written complaint, Complainant alleged during his interview that his home was "dive-bombed" by one of Respondent's pilots in September 2003. In addition to being untimely, that allegation was not substantiated during this investigation. Rather, the evidence showed that Complainant's home was located in the LifeFlight helicopter's flight path, and that the helicopter was returning to the hospital with a critical head injury patient onboard. The evidence showed that the medical crew onboard had specifically asked the pilot to fly at a low altitude to minimize the patient's bleeding.

communication breakdown had resulted in the LifeFlight program.⁷ The issues between complainant and other team members did not relate to his protected activity. The evidence showed that the motivation to fire the complainant was related to his involvement with pilot management practices and not his air carrier safety concerns. Accordingly, complainant's protected activity was not a contributing factor in the decision to discharge him.

There is no reasonable cause to believe that respondent has violated the employee protection provision of the Act. This complaint, therefore, is dismissed.

Appeal Notification

610
In accordance with federal regulations, this letter notifies the parties of the right to file objections and request a formal hearing on the record. To exercise this right, the parties must make such a request, within thirty (30) days of receipt of this letter, by facsimile (fax), hand delivery, or overnight/next day delivery mail or telegram to:

Beverly Queen, Chief Docket Clerk
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400
Washington, D.C. 20001-8002
Phone No. (202) 693-7300
Fax No. (202) 693-7365

Unless a request for appeal is received by the Administrative Law Judge within the thirty-day period, this finding will become the Final Order of the Secretary of Labor. Both parties are being advised of the determination in this case and the right to a hearing. A copy of this letter has also been sent to the Chief Administrative Law Judge with a copy of this complaint. The address of the Chief Administrative Law Judge, is in care of the U.S. Department of Labor, 800 K Street NW, Suite 400, Washington, D.C. 20001.

If an objection is filed, please send copies of the request to the complainant and respondent, and to this office at the address noted in the above letterhead. After copies of the request are received, appropriate preparations can be made. If you have any questions, please do not hesitate to call me at (206) 553-5930.

The Administrative Law Judge who conducts the hearing will issue a recommended decision to the Secretary based on the evidence, testimony, and arguments presented by the parties at the hearing. The hearing is an adversarial proceeding in which the parties will be allowed an opportunity to present their evidence for the record. The Final Order of the Secretary will then be issued after consideration of the Administrative Law

⁷ The last seven months of Complainant's employment were not reflected on any performance evaluation because Complainant was fired before the end of fiscal year 2005.

Judge's recommended decision and the record developed at the hearing, and will either provide for appropriate relief or dismiss the complaint.

Sincerely,



Richard S. Terrill
Regional Administrator

cc: Chief Administrative Law Judge
Gene Kirkendall, FAA Whistleblower Protection Program
Curtis Holmes, Representative for Complainant
Patricia Olsson, Attorney for Respondent

b6

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EXHIBIT K

612

5

Subject: FAA Inspection
Date: 10/13/05

To Whom It May Concern:

The Federal Aviation Administration came to Portneuf Medical Center on 10/13/05 in response to a written complaint they received regarding Life Flight. The complaint alleges a Portneuf pilot had violated Federal Aviation Regulation Part 135.227 which states: "No pilot may take off an aircraft that has frost, ice, or snow, adhering to a rotor blade.....". The incident occurred sometime during October of 2004.

Greg Stoltz and I were interviewed by, Mr. Dennis A. Seals, from the Salt Lake Flight Standards Office. In addition to our explanation of the incident Mr. Seals inspected our cold weather operation procedures and the covers we use on the aircraft. His comments indicated that he found no violation.

Ron Fergie
Chief Pilot/Safety Coordinator
Portneuf Life Flight

NICK L. NIELSON - Idaho State Bar No: 3787
NIELSON LAW OFFICE
120 North 12th Avenue, Suite #7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Tel: (208) 232-1735
Fax: (208) 232-0048

Attorney for Plaintiff

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BY *[Signature]*
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

614
MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSEN, Hospital Administrator,
PAM HUMPHREY, EMS Program
Director, GARY ALZOLA, Director of
Operations, RON FERGIE, Chief
Pilot/Safety Officer, BARRY NIELSON,
Pilot, and DOES I-X,

Defendants.

Case No. CV-2005-4053-OC

**PLAINTIFF'S MEMORANDUM IN
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW Plaintiff, Mark Van, by and through his attorney, Nick L. Nielson, and hereby submits this Memorandum in Response to Defendant's Motion for Summary Judgment.

I. INTRODUCTION

According to Pat Hermansen, CEO for Portneuf Medical Center, PMC employees are trained and expected to bring up concerns about decisions in their department or organization no matter how

**PLAINTIFF'S MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

PAGE 1

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difficult or unpopular. Deposition of Pat Hermansen ("Hermansen Depo."), p. 78, LL. 4 - 7. Mark Van, as Director of Maintenance for the hospital's Life Flight Program, raised safety and government waste concerns that were difficult and not popular. The hospital chose to stop listening to Mark for various reasons. Some thought Mark brought up issues that had been resolved. Others didn't appreciate the way Mark looked at them or the way he talked.

6/17
Mark was terminated because of his inability to maintain positive interpersonal relations with his colleagues and foster a positive team environment. The fact is that the hospital ignored its own serious flaws in the safety of the Life Flight Program, failed to treat Mark with the respect and concern that he deserved, and failed to discipline others for their bad behavior. The end result was that Mark was wrongfully terminated from his employment while other employees were exonerated from their wrong doing. In terms of justice for Mark Van, there was none.

As will be shown below, Defendants violated Idaho's Whistleblower Act, harassed and discriminated against Mark. Now, Defendants continue in their attempt to justify their unjustifiable actions through their summary judgment motion. Genuine issues of material fact pertaining to the issues in Mark's lawsuit preclude summary judgment in this case and Defendants' Motion must be denied.

II. FACTS

BACKGROUND

When Mark first became associated with the hospital¹, he worked for Freedom Helicopters, which contracted with the hospital to provide helicopter service. In 1985, Mark became the Director

¹The word "hospital" is utilized to denote Bannock Regional Medical Center as well as Portneuf Medical Center for purposes of this Brief.

of Maintenance for Freedom Helicopters. When Freedom Helicopters went bankrupt, Mark contracted his labor with the hospital for about a year as their Director of Maintenance. In 1986, Mark became a full-time employee of the hospital as the Director of Maintenance and held that position until his termination. Deposition of Mark C. Van ("Van Depo."), p. 44, LL. 1 - 13. Pat Hermansen, the current CEO for Portneuf Medical Center, has said of Mark, "I've always understood that he's an excellent mechanic and competent in maintenance of a helicopter." Hermansen Depo., p. 67, LL. 9 - 11.

LIFE FLIGHT'S ADMITTED MISHAPS, ACCIDENTS AND HARASSMENT

616
During his tenure as the Director of Maintenance, the Life Flight Program was plagued with accidents and pilot errors. Obviously, many incidents are disputed between the parties. There are many matters pertaining to safety and the waste of taxpayer's money, however, which hospital employees have admitted in the course of this litigation. Such problems include but are not limited to the following:

1. Pilots took off with the utility shed doors on the helipad open, creating possible safety risks. As far as employee discipline was administered, the pilots were "talked" to about it. Deposition Ronald C. Fergie ("Fergie Depo."), p. 54, LL. 19 - 21; p. 55, LL. 9 - 12, 16 - 17.

2. In July 2003, Ron Fergie, Life Flight's Chief Pilot and Safety Officer, flew the Life Flight Helicopter, having been on duty for 20 hours. Fergie Depo., p. 55, LL. 22 - 25; p. 57, LL. 1 - 18. Fergie admitted that this was not a good example to other pilots. Fergie Depo., p. 66 LL. 13 - 20. He was "counseled" "mostly for appearance' sake" Fergie Depo., p. 75, LL 22 - 25. A policy change regarding pilot duty time was subsequently implemented to promote safety. Fergie

Depo., p. 76, LL. 5 - 8.

3. According to Chad Waller, Ron Fergie went to work before he had satisfied rest requirements. Deposition of Chad Waller ("Waller Depo."), p. 26, LL 16 - 25; p. 27, LL. 1 - 7. Chad Waller saw Ron Fergie's flight log and told Mark that Ron Fergie changed the flight log. He saw the flight log changed. Waller Depo., p. 27, LL. 9 - 16. Falsification of pilot records is a violation of the Federal Aviation Regulations. Deposition of Barry Nielsen ("Nielsen Depo."), p. 30, LL. 18 - 21. Ron's behavior created frustrations within the pilot portion of the Life Flight team. Waller Depo., p. 30, LL. 1 - 2.

6-17
4. In December 2003, Ron Fergie did not check the lights on the helicopter before taking off. The lights had actually been turned off and Ron flew the helicopter to the airport without any lights. He was told to watch what he was doing. Fergie Depo., p. 72, LL. 23 - 25; p. 73; p. 74, LL. 1 - 14.

5. In June 2004, Ron Fergie violated a Federal Aviation Regulation by overflying an airworthiness directive. Fergie Depo., p. 83, LL 24 - 25; p. 85, LL. 1 - 15; p. 87, LL. 5 - 6. (He was "talked" to about it.) Fergie Depo., p. 87, LL. 9 - 12. Fergie didn't consider the violation to constitute a bad example on his part. Fergie Depo., p. 90, LL. 11 - 13.

6. After Ron Fergie's violation, pilot Chad Waller violated the same Federal Aviation Regulation. Fergie Depo., p. 89, LL. 11 - 17; Waller Depo., p. 10, LL. 22 - 23. Life Flight's Director of Operations, Gary Alzola, "talked" to him about the incident and what he did wrong, and that he had to be more diligent. Waller Depo., p. 11, LL. 22 - 25.

7. The hospital was given an Air Carrier's Certificate warning because pilot flight time

records were not maintained adequately. Fergie Depo., p. 167, LL. 8 - 25; p. 168, LL. 1 - 16; Waller Depo., p. 11, LL. 7 - 12. Gary Alzola indicated to Chad that he needed to be more diligent on his record keeping and his duty log. Waller Depo., p. 12, LL. 14 - 15.

8. Pilots have slept through the night and left the aircraft unairworthy because of snow and ice on the rotor blades. Fergie Depo., p. 109, LL. 2 - 6. And yet, the hospital prides itself on quick response times. Fergie Depo., p. 112, LL. 3 - 5.

9. On or about January 31, 2005, Ron Fergie and Chad Waller were installing blade covers on the main rotor blades when Ron told Chad that he didn't need to wipe the blades off because the covers would knock all the snow off. Waller Depo., p. 37, LL. 5 - 24. Mark Van found snow and ice on the rotor blades the next morning.

10. Ron Fergie **did not** perform a 7:00 a.m. pre-flight inspection on the helicopter on February 1, 2005, prior to Mark Van taking off the rotor blade covers. Fergie Depo., p. 119, LL 3 - 7. Fergie admitted that it is the pilot's responsibility to make sure that snow and ice are off the blades before take off. Fergie Depo., p. 121, LL. 11 - 14.) Barry Nielsen was adamant that pre-flight inspections are performed every shift change. Nielson Depo., p. 35, LL. 6 - 12.) Fergie was talked to about the incident. Fergie Depo., p. 125, LL. 12 - 17.

11. After Fergie had left snow and ice on the rotor blades, he informed Barry Nielson that Mark Van was raising Nielsen's snow and ice incident with snow and ice on the rotor blades again. Fergie Depo., p. 128, LL. 22 - 25; p. 129, L.1.

12. Pilot Barry Nielsen was disciplined for losing a fuel cap on a flight to Rupert or Burley. Nielsen Depo., p. 12, LL. 5 - 12.

13. Barry Nielsen was disciplined for leaving the helicopter's cowling unsecured on a night flight to Burley. Nielsen Depo., p. 14, LL. 2 - 5.

14. Barry Nielsen was disciplined for bumping the helicopter's tail skid on a fence. Nielson Depo., p 15, LL. 21 -22.

619
15. On February 25, 2005, Barry angrily approached Mark on the helipad. Nielsen Depo., p. 47, LL. 14 - 24. He and Ron Fergie had previously discussed an e-mail in which Mark talked about all the things that Mark thought they needed to be doing. Nielsen Depo., p. 49, LL. 19 - 21. It was either this e-mail or other e-mails which prompted Barry to go to the helipad and talk to Mark. Nielsen Depo., p. 50, LL. 3 - 7. Nielsen admitted his conduct did not foster a positive team environment. However, he was not warned or reprimanded for his conduct. Nielson Depo., p. 51, LL. 21 - 25; p. 52, LL. 1 - 4. No one even asked him about his conduct on that day. Nielsen Depo., p. 52, LL. 5 - 7. CEO Pat Hermansen was not made aware of Nielson's behavior. Hermansen Depo., p. 61, LL. 18 - 23. Hermansen opined that "to threaten someone in the workplace in any manner is not acceptable workplace behavior." Hermansen Depo., p. 62, LL. 22 - 23. Hermansen concluded that the behavior exhibited by Barry Nielsen, as documented by Audrey Fletcher, Employer Relations Facilitator for the hospital, would be subject to disciplinary action under the hospital's policy. Hermansen Depo., p. 63, LL. 16 - 25; p. 64, LL. 1 - 3. Audrey Fletcher admitted that Barry Nielsen did not comply with the standard of teamwork and appropriate behavior, but was not terminated. Deposition of Audrey Fletcher ("Fletcher Depo."), p. 87, LL. 23 - 25, p. 88, LL. 1 - 4. Fletcher considered Barry Nielsen's behavior to constitute harassment against Mark. Fletcher Depo., p. 103, LL. 5 - 9.

16. Barry Nielsen admitted to being "possibly" condescending to Mark in an April 4, 2005 meeting and that such conduct did not foster a positive team environment. Nielsen Depo., p. 53, LL. 21 - 25; p. 54, LL. 1 - 5.

Defendants have admitted to many violations, problems with safety issues and harassment against Mark Van. As will be shown below, this is only the tip of iceberg as it pertains to Defendants' wrong-doing toward Mark.

LIFE FLIGHT'S EARLY PROBLEMS

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A hospital pilot, Don Humphrey, crashed a helicopter on Carter Street in Pocatello in 1993, causing over \$150,000.00 worth of damage. He didn't have the continuous ignition system on, and was operating the aircraft in violation of the flight manual and an airworthiness directive issued by the FAA. Van Depo., p. 77, LL. 25; p. 78, LL. 1 - 7; p. 79, LL. 3. The hospital never released such information and, consequently, the matter was never properly investigated by the FAA. Van Depo., p. 78, LL. 4 - 6.

The pilots were making up stories as to why the engine flamed out. One of the stories was that the engine compressor wore out, and blame was placed on the Maintenance Department. Van Depo., p.116 , LL. 20 - 25; p. 117, LL. 1 - 5, 16 - 17, 24 - 25; p. 118, LL. 1 - 4. Nobody would own up to what really happened. Van Depo., p. 118, LL. 6 - 7. The Maintenance Department had to rent a crane and a flatbed to secure the helicopter and transport it to the airport to work on in for several months. Van Depo., p. 104, LL. 24 - 25; p. 105, LL. 1 - 4. Eventually, Don Humphrey was asked to leave Life Flight after having an affair with a Life Flight nurse, Donna Favor. Van Depo., p. 80, LL. 14 - 16; Deposition of Gary Alzola ("Azola Depo."), p. 32, LL. 4 - 25; p. 33, LL. 1 - 2.

LIFEFLIGHT'S NOVEMBER 14, 2001 ACCIDENT

On November 14, 2001, Mark Van was called to fix Life Flights' helicopter in a remote section of Idaho. When Mark and his son reached the helicopter, they were in a valley and there were no lights anywhere. Mark changed the fuel pumps and got the helicopter airworthy. Van Depo., p. 49, LL. 11 - 14. He worried about getting back on the road. Van Depo., p. 49, LL. 15 - 16. Pilot Tim Brulotte had been on duty for 17 hours. Van Depo., p. 49, LL. 10 - 11. Tim was tired and he couldn't see. He flew off and ran into a mountain and the helicopter exploded.² Van Depo., p. 49, LL. 20 - 22.

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It was Mark's understanding that the FAA felt that Tim's duty time of 17 hours contributed to Tim's mistake which caused the crash. Van Depo., p. 279, LL. 13 - 15. Tim Brulotte had requested that information be released indicating that there was no mechanical problem with the aircraft that night. Van Depo., p. 50, LL. 23 - 25; p. 51, L. 1. The accident changed Mark's life and he started to look at what pilots were doing. Van Depo., p. 49, LL. 22 - 24.

Mark wrote a letter addressed to all crew members about the 2001 accident. He didn't want to go over and over the accident with all the crew members but he did want them to see the letter. Mark did not want to be in seclusion. Van Depo., p. 128, LL. 23 - 25; p. 129, L. 1. Pam Holmes, Life Flight Program Director, claims, however, that Mark did not indicate to her that he wanted the letter addressed to the flight crew. Deposition of Pam Holmes, ("Holmes Depo.") p. 76, LL. 14 - 16.

Information about the accident was released to the press and Mark heard several times over the radio and TV that the aircraft crashed after maintenance. Van Depo., p. 50, LL. 21 - 22; p. 53,

² Pictures of the destroyed helicopter are attached to the Affidavit of Mark Van filed herein.

LL. 6 - 8. Mark's wife heard derogatory statements from a co-worker, indicating that Mark should be terminated. Mark's wife then learned that the co-worker was going to be her supervisor, and she went home from work in tears, wanting to quit her job. Van Depo., p. 51, LL. 1 - 15. Mark's teenage son informed Mark that the kids at school were saying some pretty mean things about him. Van Depo., p. 62, LL. 13 - 25. Pilot Chad Waller's wife heard people giving opinions that the accident occurred because of a maintenance problem. Waller Depo., p. 21, LL. 1 - 7.

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Mark was at the ski-hill one day with about fifteen people standing in line and an acquaintance asked Mark very loudly and in an angry, serious tone, "so did they fire you?" Van Depo., p. 57, LL. 7 - 9; p. 63, LL. 11 - 22; p. 64, LL. 1 - 9. Mark had to explain that he didn't get fired and that there was nothing mechanically wrong with the aircraft. Mark Depo. p. 64, ll. 13 - 16. Mark thought that a lot of people believed that Mark was culpable for the accident. Van Depo., p. 64, LL. 22 - 25. At least ten to fifteen times, strangers would ask Mark where he worked and he would be vague, because he didn't want to go through it anymore. This happened for about the first six months after the accident. Van Depo., p. 65, LL. 12 - 18; 66, LL. 1 - 6. Mark had other people say that they fielded a lot of questions, implying that Mark had caused the accident. Van Depo., p. 66, LL. 11 - 13.

When Mark informed Gary Alzola that he was feeling heat from an angry public, Gary barked at him that it was his job. Van Depo., p. 66, LL. 18 - 21. It was Pat Hermansen's understanding that Mark saved the pilot. However, he didn't give any consideration as to whether Mark would have an emotional reaction to the accident. Hermansen Depo., p. 67, LL. 23 - 25, p. 68, LL. 1 - 7.

The 2001 accident was a horrible experience, adversely affecting the reputation and workload of Mark and the Maintenance Department. Right after the accident, Ron Fergie was very upset and stated that if he were Tim Brulotte, he wouldn't tell anybody what happened about the accident, he would let the FAA figure it out. This upset Mark because he thought it would be a horrible scenario if the pilot didn't tell the truth. Van Depo., p. 109, L. 25; p. 110, LL. 1 - 10.

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Portneuf would not release the NTSB report that clearly showed that the pilot had caused the accident on November 14, 2001. Van Depo., p. 30 ll. 14 - 16. Mark fought with the hospital from May to August, 2002 to release the NTSB report. Van Depo., p. 53, LL. 13 - 18. Audrey Fletcher said it was old information and the media would probably not be interested so Mark took the NTSB report himself and faxed it to 30 + radio and TV stations. Van Depo., p. 53, LL. 19 - 23.

Gary Alzola stated in a 9/03/02 meeting that the FAA had told him that according to FAA policy, he couldn't release any information while an accident was being investigated. Van Depo., p. 71, LL. 2 - 6. When later approached by Mark on the helipad, Gary stated that nobody really told him at the FAA, that it was just FAA policy. Van Depo., p. 71, LL. 7 - 10. Mark later learned from the actual FAA investigator for the 2001 accident that there was no FAA policy stopping anyone from releasing accident information. Van Depo., p. 71, LL. 15 - 19.

During a September 19, 2003 meeting, Pam Humpheys produced a document stating that agents of the FAA cannot release information while an accident is under investigation. Mark replied that Gary was not an agent of the FAA. Pam Niece of Human Resources stated, "so Gary was lying, people lie about me all the time." Van Depo., p. 129, LL. 8 - 14.

Mark talked to Audrey Fletcher about the way everything was handled with Gary Alzola and

about Portneuf not doing anything about Alzola lying about his position of what the FAA had told him. This bothered Mark greatly. Van Depo., p. 35, LL. 1 - 5. Mark asked Audrey Fletcher if he could see a counselor of his own choosing and she wouldn't allow that. Van Depo., p. 34, LL. 15 - 20.

Within two weeks after talking to Audrey about his concerns, he saw Dr. Hazle, a doctor retained through the hospital's employee assistance program. Mark told Dr. Hazle that he went through depression after the crash. Van Depo., p. 301, LL 10 - 15. Mark felt Dr. Hazle had preconceived notions of what had taken place at the hospital, telling him that things didn't happen as Van indicated. Van Depo., p. 33, LL. 11 - 25; p. 36, LL. 6 - 16.

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Later on, Mark also saw Dr. Kayne Kishiyama, an Idaho Falls psychiatrist. Dr. Kishiyama reported that Mark found himself as being frustrated, irritated, and anxious with ruminating thoughts over his past employer. Dr. Kishiyama also reported that Mark had intermittent difficulties with waking up in the middle of the night, low appetite and weight loss and that at times, he felt like crying but could not cry. Affidavit of Nick L. Nielson, Exhibit A.

~~Mark eventually made a worker's compensation claim based on posttraumatic stress disorder, which was denied. Van Depo., p. 30, L. 25; p. 31, H. 1-3.~~

RON FERGIES' 20 HOURS OF DUTY TIME.

On July 5, 2003, Pilot Ron Fergie flew back from Salt Lake City after being on duty for 20 - 21 hours. Van Depo., p. 87, LL. 10 - 12. Mark had been told by Chad Waller that Ron Fergie had been training the pilots they were not to fly after 15 hours. Van Depo., p. 87, LL. 20 - 25. Mark raised the issue of Ron being on duty for 20 hours in a Life Flight meeting on August 21, 2003. Van

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Depo., p. 89, LL. 8 - 10, 20 - 22. Gary Alzola said several times during the meeting that Ron Fergie had done nothing wrong. Van Depo., p. 90, LL. 15 - 16. Gary said that Ron had several naps that day, to which Tom Mortimer, the chief flight nurse, replied that Tim Brulotte also stated that he had several naps the day of his accident. Van Depo., p. 112, LL. 6 - 9. The crew were very concerned and agitated because they didn't want tired, unsafe pilots flying their aircraft. Van Depo., p. 90, LL. 14. Van Depo., p. 91, LL. 3 - 5.

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Mark stated in the August meeting that if there was an occasion in which he would be fixing the helicopter and the pilot was tired, he would not put the aircraft in service. He did not want to have the aircraft go out and have an accident. Van Depo., p. 91, LL. 5 - 20. Gary stated that Maintenance couldn't tell pilots what to do. Mark stated that they would do whatever they had to, they were not going to have a repeat performance of Tim Brulotte's accident. Van Depo., p. 113, LL. 16 - 18. When Mark saw Ron Fergie after the meeting, he was so upset with Mark that he was abrupt and couldn't talk to him. Van Depo., p. 92, LL. 11 - 13.

RON FERGIE'S LOW LEVEL FLIGHT OVER MARK VAN'S HOUSE

On a Sunday morning in September, 2003, Mark was in his kitchen eating breakfast, and he heard a helicopter. A couple of seconds later, he heard a very loud noise, the loudest since he had moved into his house. Van discovered that the Life Flight helicopter was about 300 feet to the west of him at window level. Ron Fergie was the pilot. Van Depo., p. 86, LL. 16 - 25; p 87, LL. 1 - 2. Mark described the incident as a very low flyover "with maximum pitched pulled." Van Depo., p. 92, LL. 23 - 24. Mark ran from his kitchen, looked through the living room picture window and saw the Life Flight helicopter about 150 feet over the subdivision right below his house. Van Depo., p.

94, LL 13 - 15. The helicopter was swinging from side to side like it was unstable. Van Depo., p. 94, LL. 21 - 22. Mark believed Ron Fergie's actions violated Federal Aviation Regulations and reported the incident to Gary Alzola. Van Depo., p. 96, LL. 12 - 17. Mark later reported the incident to the FAA. Van Depo., p. 96, LL. 18 - 21. (MVO 51). Mark believed Ron's conduct was in retaliation for what Mark had said at the Safety Meeting on August 21, just a couple of weeks before. Van Depo., p. 87, LL. 4 - 7; p. 97, LL. 5 - 12.

LIFE FLIGHTS' 2004 VIOLATIONS OF FEDERAL AVIATION REGULATIONS

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Mark raised issues regarding Life Flight's FAA violations for exceeding inspection time intervals. Van Depo., p. 141, LL. 9 - 12. Minutes after Ron Fergie had come back from a flight on May 17, 2004, Mark discovered and then informed Gary Alzola that Ron had overflowed an FAA airworthiness directive. Van Depo., p. 141, LL. 16 - 25; p. 142, LL. 1 - 2. Additionally, Mark had reviewed the books and discovered that Chad Waller had also overflowed an airworthiness directive. Van Depo., p. 142, LL. 21 - 25. Mark also reported Chad's overflight to Gary Alzola and the FAA. Van Depo., p. 144, LL. 1 - 8.

When Mark discussed the overflights with Gary Alzola, he received the impression that Gary did not want to report the overflights. Van Depo., p. 146, LL. 13 - 18; p. 147, LL. 17 - 20. Mark then sent an e-mail to Pam Holmes on June 22, stating that he did not want to be viewed by the FAA as part of a conspiracy to cover up a violation of the Federal Aviation Regulations. Van Depo., p. 145, LL. 17 - 22.

LIFE FLIGHT'S MISREPRESENTATIONS ABOUT MARK VAN AND THE AGUSTA HELICOPTER

In the hospital's negotiations for the purchase of a new helicopter, Mark Van had the position of looking at the maintenance contracts and giving his recommendations on what aircraft could and couldn't work. Van Depo., p. 166, LL. 22 - 23. Mark was given a copy of the maintenance contract ("COMP contract") to review in connection with the possible procurement of the Agusta 109 E helicopter from Agusta Aerospace Corporation. Van Depo., p. 167, LL. 1 - 3.

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Mark felt that the COMP contract was unworkable as far as securing assets to pay Agusta for certain parts. He advised the head of Customer Service for Agusta of his concerns and received assurances that things would be worked out. When it came time to sign the contract, Agusta's representative would not put the assurances in writing. Van Depo., p. 167, LL. 1 - 16. Russ Wight, the hospital's attorney, agreed with Mark that there were several aspects of the contract that would put the hospital's money in jeopardy. Van Depo., p. 167, LL. 18 - 21.

The hospital was paying \$320.00 an hour up front to Agusta for every hour that the aircraft flew. Two mechanics were not Agusta trained. Mark was concerned that Agusta could say that because the mechanics were not school trained, they would not supply future maintenance that would come due. Van Depo., p. 168, LL. 1 - 22. Also, Agusta marketed the COMP contract to the effect that every part on the helicopter costing over \$100.00 would be covered. Van Depo., p. 185, LL. 17 - 19. When it came time to sign the contract, all the parts weren't listed. Van Depo., p. 185, LL. 19 - 22. Mark wanted Agusta to list the parts or put a statement in the COMP contract that stated how they marketed the contract. Agusta wouldn't comply. They added some parts but not all. Van Depo., p. 185, LL. 22 - 25; p. 186, LL. 1 - 2.

At one point, Mark wrote a letter to Pat Hermansen indicating there was a window of

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opportunity to change the COMP Contract to the hospital's benefit. Van Depo., p. 172, LL. 12 - 25; p. 173, LL. 1 - 20. Particularly, there had been a temperature problem with the helicopter and Agusta said they would have it fixed well before the hospital bought the helicopter. Almost a year had lapsed since the hospital purchased the helicopter and the problem still wasn't fixed. Van Depo., p. 176, LL. 13 - 21. The COMP contract contained a provision that the hospital could give the helicopter back if the temperature problem wasn't fixed. Van Depo., p. 187, LL. 5 - 7. Mark stated in his letter, "[m]y experience dictates we cannot trust what the AAC puts in writing let alone what is said verbally. We are paying for a service upfront that is not secure. Agusta can legally refuse to provide the service we are paying for due to untrained mechanics working on the aircraft." Van Depo., p. 176, LL. 3 - 8. Pat Hermansen dismissed Mark's concerns and advised him that his "challenge is to find a way to resolve your personal trust issues so that you can move on toward a productive relationship with our vendor to ensure that our program remains safe and reliable."

At his deposition, Pat Hermansen confirmed that some of the parts costing over \$100.00 were not listed in the addendum to the COMP contract. Hermansen Depo., p. 40, LL. 6 - 18. Hermansen did not consider Mark's adamant about having every single part over \$100.00 listed on the addendum as a "big deal". Hermansen Depo., p. 41, LL. 10 - 16. Hermansen asserted that, "if you can get commitments from a vendor and you can rely on them that you have a deal." Hermansen Depo., p. 44, LL. 1 - 3. Hermansen didn't actually know, however, if those commitments were obtained from Agusta. Hermansen Depo., p. 44, LL. 10 - 12. Hermansen didn't know what would happen to the money that the hospital paid to Agusta if the helicopter were destroyed today. Hermansen Depo., p. 48, LL. 7 - 11.

Pam Holmes has claimed that Mark's interactions deteriorated to the point that one Agusta mechanic walked off the job, and stated that he could not work with Mark Van anymore. Affidavit of Pamela K. Holmes, ¶ 15. This information is proven false by the Affidavit of Greg Schilling filed herein.

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Greg Schilling was employed by Agusta in 2003 as a Technical Representative to negotiate the purchase of a helicopter by the hospital. Affidavit of Greg Schilling ("Schilling Affidavit") ¶ 3. He worked with Mark Van in negotiating the maintenance contract for the helicopter. He was the only Agusta representative who ever walked onto the Portneuf Medical Center site. Schilling Affidavit, ¶¶ 4 and 5. Because of his position, he would have been aware of anyone walking off the job and he was never informed of such happenings. Schilling Affidavit, ¶ 5.

According to Schilling, Mark was very thorough and did not cause problems in the negotiations between Agusta and Portneuf. Mark showed how much he cared for the safety of the program. He knew more about the helicopter situation than anyone else involved with the helicopter. Schilling Affidavit, ¶¶ 5, 6 and 7. Schilling was surprised to hear of Mark's termination. He felt that Mark's termination was a mistake. Schilling Affidavit, ¶¶ 7 and 8.

PAM HOLMES' WRONGFUL TREATMENT OF MARK VAN REGARDING OVERTIME ISSUES

Mark was the hospital's only full time mechanic until the fall of 2004. Van Depo., p. 153, LL. 1 - 3. There were "occasional" mechanics who would fill in during busy times. Van Depo., p. 153, LL. 4 - 6. The occasional mechanics could come and go when they wanted to. Van Depo., p. 165, LL. 22 - 23.

The Agusta aircraft then owned and maintained by the hospital had many, many more

inspection events that were scheduled and required by the manufacturer than previous aircraft. Van Depo., p. 163, LL. 20 - 25; p. 164, LL. 1 -5. Mark felt that he needed more help or he would be violating an FAA standard and the "CAMTS" (Commission on Accreditation of Medical Transport Systems) recommendations for certification of a mechanic having at least one day off in any 17 consecutive days. Van Depo., p. 153, LL. 9 - 13; p. 154, LL. 8 - 11.

Mark had worked eight different maintenance events that were over seventy hours each, with some as high as 92 hours. Pam Holmes ignored Mark and would not do anything about getting additional help. Mark was exhausted and did not want to make a mistake, but he could not keep up with the workload. Van Depo., p. 155, LL. 24 - 25; p. 156, LL. 1 - 11; p. 157, LL. 21 - 22.

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Upon Pam Holmes' insistence, Mark wrote a document entitled "Justification for Hiring Additional Maintenance Staff. Van Depo., p. 156, LL. 23 - 25; p. 157, ll. 1 - 3. He was just asking for adequate rest and staffing. Van Depo., p. 164, LL.. LL. 24 - 25. Pam Holmes, however, was repulsed by Mark's request and wrote a letter to hospital management claiming, "With Mark's attitude and threats, I feel that continuing to have Mark does jeopardize the safety of our program." Holmes Depo., p. 48, LL. 6 - 9.

9 safety of our program.

LIFE FLIGHT'S DEBACLE OVER ICE AND SNOW ON THE HELICOPTER'S ROTOR BLADES

On or about November 1, 2004, Mark Van received a report from mechanic Greg Stoltz that pilot Barry Nielson had taken off with ice on the main rotor blades. Van Depo., p. 190, LL. 1 - 5, 17 - 25. Two of the main rotor blades were almost deiced. Greg turned the two that were almost deiced out of the sun to put the ones that were still iced in the sun. All four blades had ice on them.

Van Depo., p. 195, LL. 11 - 15. Greg told Mark that he went to the maintenance office, called Barry, and it was less than five minutes until Barry was flying away. Van Depo., p. 192, LL. 12 - 18. It is an FAA violation to take off with ice on the rotor blades. Van Depo., p. 194, LL. 11 - 14.

With all the other issues that Mark raised that weren't handled well, Mark hesitated in bringing up this issue, particularly with Gary Alzola. Van Depo., p. 191, LL. 2 - 9. Mark finally told Ron Fergie, who investigated the matter and told Mark that it was nothing. Van Depo., p. 191, LL. 9 - 15. In a February 28th meeting, Ron Fergie claimed that there was just frost on the rotor blade, after which Mark obtained a statement from Greg Stoltz. Van Depo., p. 224, LL. 11 - 24. The FAA investigated the incident but they never interviewed Barry Nielsen! Nielsen Depo., p. 34, LL. 8 - 15.

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At about the same time, Mark provided to Gary Alzola, upon Gary's request, recommendations for keeping the helicopter protected for the winter. Van Depo., p. 191, LL. 17 - 21. Mark's recommendations included wiping the main rotor blades down and installing blade covers. Mark had seen pilot Chad Waller and Gary Alzola wipe the blades off and put the covers up, a foot at a time. Van Depo., p. 201, LL. 12 - 17. Some of Mark's suggestions were accepted and some of them were not. Van Depo., p. 217, LL. 22 - 25; p. 218, LL. 1.

On January 31, 2005, Ron Fergie placed main rotor blade covers on the blades and told Chad Waller to stop wiping the blades down because the snow came right off when the blade covers were slid on the blades. Van Depo., p. 196, LL. 6 - 9; p. 201, L. 25; p. 202, L. 1 - 3. Ron Fergie should have completed a 7:00 pre-flight inspection on 2/01/05 and found the ice underneath the blade covers. Van Depo., p. 204, LL. 17 - 21. At 8:45 a.m. when Mark went to do an inspection, however,

he pulled the blade covers off and found snow and ice underneath the blade covers. Mark could tell that half of one blade was wiped off and the other half had snow and ice on it. Van Depo., p. 201, LL. 21 - 24.

It took Mark about 45 minutes to deice the blades Van Depo., p. 196, LL. 9 - 11, 17 - 18. Mark did discuss the issue with Ron until Ron got really angry and started raising his voice. Van Depo., p. 202, LL. 9 - 20. Mark believed that there was a violation of a standard, namely, the NTSB's recommendation to the FAA, to leave an aircraft in an unairworthy condition. Van Depo., p. 204, LL. 1 - 6.

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Ron Fergie and Barry Nielson didn't do their jobs. They left the aircraft in out-of-service conditions. Van Depo., p. 232, LL. 15 - 20. Mark wasn't concerned about maintenance having to clean off the rotors, his issues pertained to safety and efficiency:

It doesn't have anything to do with maintenance having to deice the aircraft. It has to do with having a 24-hour service available 24 hours a day when somebody needs their life saved, that's what it has to do with, and to operate it safely. If you have an unsafe aircraft and you are stuck – all of a sudden you get a call to go, now you have to decide am I going to get in trouble and deice it or should we just fly it with ice on the blades.

And that's what the risk assessment is all about That's what it's all about not getting into situations like that, and having others decide with the pilots what is the best means to keep the operation safe.

Van Depo., p. 233, LL. 8 - 21.

In an e-mail from Gary Alzola to Mark and Pam Holmes dated February 17, 2005, Gary stated, "As long as the air craft is parked out in the elements, there will be times when it's not flyable." Gary also stated, "We will do what is practical to minimize these situations." Van Depo., p. 205, LL. 21 - 25. Mark disagreed with this position, stating:

I think that there are occasions, very, very limited occasions where an ice storm would move in and everything would freeze just instantly and you have no time to do anything about it. But to put main rotor blades covers over unairworthy blades and to leave that all night and to sleep through the night, that's not practical. A 12-hour shift work sleeping through the night, letting the aircraft, a multimillion dollar aircraft go out of service so that you can't use it, causing government waste, is not practical.

Van Depo., p. 206, LL. 5 - 14.

Gary Alzola also stated that only the pilot in charge had the responsibility and authority to determine aircraft worthiness. Van Depo., p. 206, LL. 15 - 22.³ Mark's understanding was that under Federal Aviation Regulation, if a mechanic doing an inspection found an unairworthy item on an aircraft, he must make a logbook entry that the aircraft was unairworthy, and such determination of unairworthiness can only be countermanded by the Director of Maintenance. Van Depo., p. 207, LL. 1 - 20; p. 219, LL. 19 - 21. It was Mark's responsibility as a mechanic and the Director of Maintenance to take the aircraft out of service if it was found unairworthy. Van Depo., p. 219, LL. 12 - 15.

It was government waste to leave the aircraft out of service all night in an unsafe, unairworthy condition. Van Depo., p. 196, LL. 12 - 16. Blade covers should be put over airworthy blades to keep them airworthy. Blade covers should not be placed over unairworthy blades. Van Depo., p. 200, LL. 12 - 15. Particularly, there is the issue of having staff on call, namely, the pilot, nurse, dispatchers, with a helicopter than can't safely fly. Van Depo., p. 200, LL. 23 - 25; p. 201, LL. 1 - 8. Mark's reasonable position was that the aircraft needed to be ready to fly 24 hours a day

³ Barry Nielsen testified in his deposition that a mechanic "absolutely" can take an aircraft out of service. Nielsen Depo., p. 39, LL. 25, p. 40, LL. 1 - 7.

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unless it was out of service for maintenance or if the weather was so bad it couldn't be flown. Van Depo., p. 232, LL. 1 - 3.

BARRY NIELSON'S WRONGFUL BEHAVIOR

Mark sent a private e-mail to Gary Alzola in February, 2005. At the beginning of the e-mail, Van addressed Barry Nielson's flight with ice on the blades. Van Depo., p. 210, LL. 23 - 25; p. 211, LL. 1 - 12. Mark ended the e-mail by stating, "I have noted a significant increase in the focus by the pilots, of protecting our aircraft from ice and snow and frost. I commend you and the pilots for the steps that have been taken. Van Depo., p. 216, LL. 24 - 25; p. 217, LL. 1 - 3.

The e-mail was not sent to anyone besides Gary. Van Depo., p. 211, LL. 21 - 24. According to Audrey Fletcher, Ron Fergie had given a copy of the e-mail to Barry. Van Depo., p. 211, L. 25; p. 212, LL 1 - 4. Mark considered this to be a private e-mail about a safety concern from the director of maintenance to the director of operations. Van Depo., p. 212, LL. 5 - 7. On February 25, 2005, Barry came out to the helipad and told Mark that he was making the program go down the crapper. Van Depo., p. 212, LL. 16 - 18. Barry said that he was tired of the e-mails and stuff flying around. Van Depo., p. 212, LL. 19 - 21. Mark told Barry that he didn't know what Barry was talking about. Van Depo., p. 212, LL. 18 - 19. Barry then turned around, stomped off the helipad, slammed the gate, and bellowed, "Well, you are going to find out." Van Depo., p. 212, LL. 24 - 25; p. 213, L. 1. Mark's heart was racing. He questioned himself as to what he may have done. He considered Barry's statements as a threat. Van Depo., p. 213, LL. 2 - 3; p. 214, L. 18.

LIFE FLIGHT MANAGEMENT'S REFUSAL TO ADDRESS MARK'S SAFETY CONCERNS

In a Life Flight safety meeting held March 24, 2005, everyone was asked if they he/she had any safety issues. When it became Mark's turn, Pam Holmes cut him off and stated that she would have Lance Taysom set up a special safety meeting for Mark. Van Depo., p. 227, LL. 13- 23. After the safety meeting, Ron Fergie gave his "opus" safety speech stating that it was everyone's responsibility to break the links in the chain of events that lead up to accidents. Van Depo., p. 228, LL 2 - 9. This galvanized Mark to the point that he felt that he needed to talk about things that happened that were not taken care of. Van Depo., p. 228, LL. 10 - 14.

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Mark sent out an e-mail to crew members highlighting points he wanted to talk about at the special safety meeting. Van Depo., p. 222, LL. 20 - 21; p. 228, LL. 16 - 19. He wanted the crew to be safe. He wanted safety issues to be where they belonged, with the Life Flight crew. Van Depo., p. 229, LL. 20 - 24. After Mark sent out the e-mail, he felt supported by the nurses and paramedics. They were glad that somebody stood up for the issues. Van Depo., p. 229, L. 25; p. 230 LL. 1 - 8.

Mark sent an e-mail to Audrey Fletcher stating that he wanted a meeting about Barry Neilson threatening him and to discuss their working relationship. Van Depo., p. 226, LL. 9 - 14.

Mark wanted to get a working relationship back with Barry. Van Depo., p. 242, LL 23 - 25, p. 243, L 1. In attendance at the meeting were Mark Van, Barry Nielson, Gary Alzola, Pam Humphrey and Audrey Fletcher. Van Depo., p. 257, LL. 16 - 21. At the meeting, Mark asked Barry why he was mad at him. Barry threw a document on the table and said something to the effect that he didn't want to be called negligent or that he wasn't negligent. Van Depo., p. 223, LL 4 - 7; p. 262, LL. 19 - 25; p. 262 LL. 1 - 5. Barry told Mark that he was just a pilot's helper. Van Depo., p. 253, LL. 2 -

9. He also said, "here, let me explain it so that even you can understand" when talking about the main rotor blades. Van Depo., p. 253, LL. 9 - 10. Audrey Fletcher supported Barry by stating that Barry had every right to be mad at Mark. Van Depo., p. 253, LL 20 - 21.

After the issues with Barry Nielson were discussed, others in the meeting started talking about Mark's safety issues. Mark said that he didn't want to talk about those issues and that he was saving those issues for the special safety meeting. Mark was then told that **there would be no special safety meeting.** Van Depo., p. 238, LL. 17 - 25.

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In the meeting, Mark was asked why he kept bringing up issues. Mark said that he didn't want to see another accident like the one that had happened before. Van Depo., p. 255, LL. 20 - 25; p. 256, LL. 1 - 2. Gary Alzola then screamed, "so you think I want to cause another accident or I want to have another accident?" He then left the room and slammed the door. Van Depo., p. 256, LL. 2 - 5. The meeting then ended. Van Depo., p. 261, LL. 3 - 8. Audrey Fletcher blamed Mark for Gary's actions. Van Depo., p. 256, LL. 5 - 6.

SAFETY

Mark had to make an affirmative stance in the name of safety. He saw what would happen if he didn't do the right thing. He had lived through one accident and he wanted to avoid another one. Van Depo., p. 69, LL. 4 - 9. Mark was not going to let another tired pilot cause an accident. Van Depo., p. 98, LL. 22 - 23. "Safety is too important to say you are never going to talk about it again." Van Depo., p. 137, LL. 8 - 9.

Mark tried to get the paramedics and the flight crew involved because the pilot issues were kept secret from the flight crew. Van Depo., p. 69, LL. 15 - 17. The Life Flight program had safety meetings, but none of the minutes specifically mentioned safety issues involving pilots. Van Depo.,

p. 70, LL. 11 - 13. Mark's comments about safety issues can't be found in the meeting minutes either. Van Depo., p. 70, LL. 16 - 18.

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Mark considered the safety issues that he dealt with to include Ron Fergie flying after being on duty 20 hours, Ron flying over his house at a low level, Pam Humphrey ignoring his pleas for more help in the maintenance department, Barry Nielson flying with ice on the rotor blades, Ron Fergie's dismissing Nielson's flight as "nothing", Ron Fergie installing and training Chad Waller to install main rotor blade covers over unairworthy rotor blades, Ron Fergie giving Barry Nielson confidential e-mail to inflame Barry Nielson to threaten and intimidate Mark. Van Depo., p. 268, LL. 22 - 25, p. 269, LL. 1 - 25. Mark also considered the pilot's problem of taking off without securing the helipad to be a safety issue. Van Depo., p. 280, LL. 3 - 3 - 25; p. 281, LL. 1 - 10.

III. STANDARDS OF REVIEW

Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Farmers Ins. Co. of Idaho v. Talbot*, 133 Idaho 428, 431, 987 P.2d 1043, 1046 (1999). The district court is to construe the record in favor of the party opposing the motion and draw all reasonable inferences and conclusions which are supported by the record in favor of the non-moving party. *Id.*

In moving for summary judgment, the burden of establishing the absence of a genuine issue of material fact rests, at all times, with the moving party. *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996)(citing *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963(1994)). The moving party must challenge and establish through evidence the absence of any genuine issue of material fact on an element of the nonmoving party's case. *Id.* If the moving party fails to challenge an element or fails to present evidence establishing the absence of a genuine

issue of material fact on an element, the nonmoving party is not required to respond with supporting evidence. *Id.*, *Orthman v. Idaho Power Co.*, 130 Idaho 597, 600, 944 P.2d 1360, 1363 (1997).

In ruling on a summary judgment motion, the district court is not permitted to weigh evidence or resolve controverted factual issues. *Bybee v. Clark*, 188 Idaho 254, 257, 796 P.2d 131, 134 (1990). If reasonable persons could arrive at differing conclusions or draw conflicting inferences from the evidence, summary judgment must be denied. *Smith*, 128 Idaho at 718, 918 P.2d at 587 (citing *Harris v. Department of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)).

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Affidavits which contain general or conclusory allegations and which are unsupported by specific facts, are not sufficient to preclude an entry of summary judgment where opposing affidavits set forth specific and otherwise uncontroverted facts. *Cameron*, 130 Idaho at 901, 950 P.2d at 1240 (1997).

IV. ARGUMENT

MARK VAN'S WRONGFUL TERMINATION CLAIMS ARE NOT SUBJECT TO THE IDAHO TORT CLAIMS ACT.

Defendants utilize ~~*Smith v. Mitton*, 140 Idaho 893, 104 P.3d 367 (2004)~~ for the proposition that ~~Mark's wrongful termination claims, including his whistleblower claims fall within the notice provisions of the Idaho Tort Claims Act and that Mark failed to file a Notice with the Hospital.~~ This argument is not tenable upon a close reading of *Smith* and other applicable case law.

In *Smith*, a central issue was whether the District Court had erred in denying the City of Burley's motion for directed verdict on the grounds that the plaintiff failed to plead and prove compliance with the ITCA. *Smith*, 140 Idaho at 897, P. 3d at 371. The Smith Court specifically notes that "Burley does not challenge Smith's compliance with the ITCA. *Id.*, at 898, P. 3d at 372.

The issue was whether a pleading in compliance with I.R.C.P. 9(c) was required. The *Smith* Court ruled that the pleading requirements of I.R.C.P. 9(c) do not apply to the ITCA.

~~The *Smith* Court made no specific finding that the filing of a Notice under ITCA is required under the Whistleblower's Act. That issue was not before the Court. Defendants cannot claim that Smith establishes the requirement of such notice because the relevant language in Smith is purely dicta. Defendants should not be allowed to stretch such dicta into precedent for summary judgment purposes.~~

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Any implication derived from Smith that a public employee must file a Notice of Forfeiture Claim to preserve his claims of wrongful termination under the Whistleblowers Act is misplaced and contrary to established Idaho case law. Public policy of the State of Idaho may be found and set forth in statutes, judicial decisions, or in the Constitution of the State. *Quiring v. Quiring*, 130 Idaho 560, 566, 944 P.2d 695, 701 (1997). Public policy was certainly established by the Legislature's adoption of the State's Whistleblower's Act. The intent of the Act is stated as follows:

LEGISLATIVE INTENT. The legislature hereby finds, determines and declares that government constitutes a large proportion of the Idaho work force and that it is beneficial to the citizens of this state to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.

I.C. §6-2101.

~~Through this statute, the State of Idaho created the public policy that public employees should not experience adverse employment actions due to their reporting of waste or violations.~~

Mark has asserted that the hospital violated public policy through its actions against him. A

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cause of action for wrongful termination in violation of public policy is a breach of contract rather than a tort. *Hummer v. Evans*, 129 Idaho 274, 280, 923 P.2d 981, 987 (1996). The Hummer Court cited *Jackson v. Minidoka Irrigation District*, 98 Idaho 330, 563 P. 2d 54, stating:

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In *Jackson*, 98 Idaho at 334, 563 P.2d at 58, this Court indicated that employment at will constitutes a contract. The *Jackson* Court relied upon *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974), in which the New Hampshire court recognized the cause of action for discharge in violation of public policy as a breach of the employment contract. Inherent in the *Monge* court's decision is the conclusion that all employees are subject to employment contracts, "whether at will or for a definite term." 316 A.2d at 551. In *Jackson*, this Court also referred to a contract of employment at will," which exemplifies this Court's intent to classify a cause of action for wrongful termination in violation of public policy as a breach of contract rather than a tort. (citation omitted).

Hummer, 129 Idaho at 280, 923 P.2d at 987.

~~In accordance with *Hummer*, Mark Van's cause of action for wrongful termination in violation of the public policy enunciated in the Whistleblower's Act is a contract action, not a tort action. Any finding otherwise would be directly contrary to *Hummer* and *Jackson*. It is also important to note that Smith did not address *Hummer* or *Jackson* and never reached the point of determining whether cause of action under the Whistleblower's Act is a contract or a tort cause of action. Furthermore, nothing in the Whistleblower's Act requires a claimant to file a Notice of Tort Claim.~~

Defendants state that in *Jackson*, "the Idaho Supreme Court recognized the tort claim of wrongful termination in violation of public policy as an exception to the at-will doctrine."

Defendants' Memorandum in Support of Motion for Summary Judgment, pp. 30 - 31. This

statement is again wrong. As cited in *Hummer*, the *Jackson* Court recognized a claim for wrongful termination in violation of public policy as a contract action. Defendants' contortion of the case law may support their arguments, but it is certainly not correct. ~~Because Mark's cause of action for wrongful termination is a contract action, no Notice of Tort Claim was necessary and Defendants' arguments for summary judgment in this vein must be rejected.~~

VAN HAS DEMONSTRATED THAT HE ENGAGED IN PROTECTED ACTIVITY

Van's employment claims are similar to employment discrimination claims in that Van was discriminated against for raising safety and waste issues. Although not controlling, language found in *Ginest v. GTE Service Corp.* 360 F.3d 1103, 1112 (9th Cir. 2004) certainly provides direction in this case:

In evaluating motions for summary judgment in the context of employment discrimination, we have emphasized the importance of zealously guarding an employee's right to a full trial, since discrimination claims are frequently difficult to prove without a full airing of the evidence and an opportunity to evaluate the credibility of the witnesses. *See, e.g., Schnidrig*, 80 F.3d at 1410-11; *Lam*, 40 F.3d at 1563; *Sischo-Nownejad v. Merced Community College Dist.*, 934 F.2d 1104, 1111 (9th Cir. 1991). As the Supreme Court has stated, "The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." *Oncala v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75, 81-82 (1998). As a result, when a court too readily grants summary judgment, it runs the risk of providing a protective shield for discriminatory behavior that our society has determined must be extirpated.

Ginest 360 F.3d at 1112.

Defendants have gone out of their way to paint a picture showing that they did nothing wrong and that Mark Van's termination was brought on solely by his refusal to let go of old

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issues. As with marriages, employment relationships seldom, if ever, fall apart solely by actions of one party. ~~The facts show substantial problems on the part of Life Flight management which they chose to unilaterally determine "have been handled"~~. Mark fought to preserve the issues until they were handled properly.

Defendants assert that Van cannot show he communicated in good faith the existence of any was of public funds, property or manpower, or the violation of law because Van's issues were "pilot management issues, not safety issues." Defendants' Memorandum at 25 - 26. Defendants would have the Court adopt a very narrow and inappropriate definition of safety. They claim that Mark's attitude was causing safety problems, and yet they refuse to admit that Mark's claims against the pilots and their attitudes raised safety issues. Defendants cannot have it both ways!

~~At a minimum, the determination of what actions of Defendants constitute safety issues for purposes of the Whistleblower's Act are genuinely disputed.~~ Such issues should be left for resolution by a jury. Plaintiff asserts that until the time of his termination, Mark raised issues that were directed toward the safety of the Life Flight program and ultimately led to his dismissal.

Defendants claim that the only real safety issues raised were Van's allegations that Barry Nielson took off with ice on the rotor blades and his report that two pilots had overflowed airworthiness directives. Defendants' Memorandum, p. 26. Defendants claim that Gary Alzola and the FAA investigated Nielsen's incident and found no violation had occurred. *Id.* It must be pointed out that Barry Nielsen, the primary safety violator, was never interviewed by the FAA!

Defendants claim that "Van was never discouraged from bringing up new safety concerns to anyone's attention." Memorandum, p. 26. Again, Defendants seek to define "safety concerns" in a manner which best protects their wrongful behavior. Tim Brulotte was on duty for 17 hours and

caused a terrible accident. Mark Van raised this issue again when Ron Fergie was on duty for 20 hours, but was put in his place by Gary Alzola. Mark raised Nielson's snow and ice incident when Ron Fergie left snow and ice on the rotor blades. Again, Mark was chastised for raising old issues. The point is that the problems kept happening. They were not resolved! Yet, Mark Van was terminated because the issues he raised were not popular and did not "foster a positive team environment." This is directly contrary to the hospital's expectations among its employees to raise concerns no matter how difficult or unpopular.

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~~Defendants assert that Van did not communicate any waste issues in good faith.~~ Defendants' Memorandum, at 26. Defendants claim that the helicopter should have been ready to fly at all times and the Agusta COMP contract was inadequate are subjective and are not supported by the evidence. *Id.* at 26, 27. These arguments are equally misplaced. Defendants' assertions in and of themselves are subjective. Such subjective can prove successful in a summary judgment motion.

An advertisement by Portneuf Medical Center states that "Portneuf's Life Flight team is on-call 24 hours a day . . ." and that "Portneuf's Life Flight can respond at a moment's notice." *See* Van Affidavit. With such advertisement presented to the public by the hospital, Van is certainly reasonable in his conclusions that the helicopter should be ready to fly except when it is out of service and during times of bad weather. Defendants merely choose to argue that the issues were not presented in good faith because they didn't want to hear the issues from Mark.

Regarding the ~~COMP~~ contract, the Defendants' claim that "Van can provide no evidence that the Agust COMP contract was wasteful." First of all, Defendants have refused to provide the COMP contract, stating that it is irrelevant, and/or too burdensome to provide. *See* Plaintiff's Motion for Reconsideration filed herein. Mark has been severely prejudiced and cannot fully demonstrate the

wastefulness of the COMP contract solely because of Defendants' bad faith refusal to provide the contract. Notwithstanding, the deposition testimony of CEO Pat Hermansen, the affidavit testimony of Greg Schilling, and the deposition testimony of Mark Van all serve to establish that Mark communicated in good faith under the terms of the statute to raise issues of government waste.

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~~Defendants argue that Van cannot show a causal connection between any protected activity and his termination because "[t]he issues that Van claims are protected activity were raised by Van months and years before his termination." Defendants' Memorandum, p. 29. Again, a review of the facts proves otherwise. Ron Fergies' snow and ice incident occurred less than three months prior to Van's termination. Ron brought Mark's discussion of Nielsen's snow and ice incident to Barry Nielsen's attention which led to actual harassment by Nielsen against Van. A meeting was held on April 4, 2005 to discuss the harassment and sixteen days later, Van is fired. There is certainly enough evidence to establish proximity and causality of Mark's protected activity with his termination.~~

MARK VAN'S BREACH OF CONTRACT, BREACH OF PUBLIC POLICY AND BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING MUST SURVIVE.

Sufficient evidence in the record exists to create a genuine issue of material fact as to the hospital's breach of public policy, the breach of their implied contract of employment with Van and their breach of their implied covenant of good faith and fair dealing. Substantial, undisputed evidence in the record establishes that pilot errors created safety concerns and waste issues which Van kept raising. Contrary to Defendants' arguments, the evidence shows that Van fulfilled his obligations as a citizen and employee of the county owned hospital and reported waste, safety issues, and violations of laws, rules and standards. Defendants can try to run with their arguments that Van

was terminated for "team" related reasons, but they cannot hide. They cannot meet their burden of proof on summary judgment on these issues.

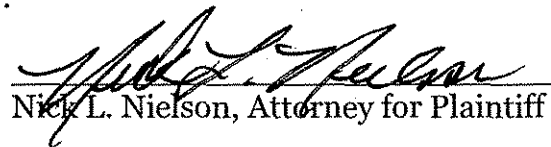
DEFENDANTS ARE NOT ENTITLED TO COSTS AND FEES

Contrary to Defendants' allegations, the evidence set forth above unequivocally establishes a basis in law and fact for Mark's whistleblower claims. There is absolutely no basis for any entitlement to attorney fees or costs under the Whistleblower's Act.

IV. CONCLUSION

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Mark Van was subjected to harassment, intimidation and bullying by Life Flight management. He witnessed a horrible accident which changed his way of thinking about safety forever. Rather than help Mark through his trauma, Life Flight pilots became angered and refused to deal with him. Mark was terminated, not because he couldn't get along, but because management did not want to listen to his safety and waste issues any longer. In the process of terminating him, Defendants violated the State's Whistleblower's Act, public policy, and their employment relationship with Mark. For these reasons, Defendants' Motion for Summary Judgment must be denied.

DATED this 11th day of September, 2007.


Nick L. Nielson, Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2007, I served a true and correct copy of the foregoing **PLAINTIFF'S MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** as follows:

Patricia M. Olsson
Paul D. McFarlane

U.S. Mail, postage prepaid
 Overnight Delivery

PLAINTIFF'S MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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PAGE 32

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NICK L. NIELSON

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program Director,
GARY ALZOLA, Director of Operations,
RON FERGIE, Chief Pilot/Safety Officer,
BARRY NIELSON, Pilot, and DOES I-X,

Defendants.

Case No. CV 2005-4053 OC

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF COURT'S
ORDER GRANTING DEFENDANTS'
MOTION FOR PROTECTIVE ORDER**

Plaintiff's motion for reconsideration is untimely. The Court granted Defendants' Motion for a Protective Order nearly six months ago, yet Plaintiff completely failed to take any steps to set aside the order until now, once Defendant's Motion for Summary Judgment is set for hearing and the discovery cutoff has passed. Moreover, Defendants sought the protective order

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**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF
COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER - 1**

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in good faith, as plaintiff completely failed to allege any facts in his complaint that would lead a reasonable defendant to believe that the COMP contract would even be relevant. Plaintiff's Motion for Reconsideration is without merit, and should be denied.

A. Plaintiff's Motion Is Untimely As Plaintiff Has Had Six Months To Address The Issue But Failed To Do So.

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Defendants' motion for protective order was granted nearly six months ago on March 16, 2007. Plaintiff's counsel has been well aware of this protective order yet has waited until after Defendant's Motion for Summary Judgment was set for hearing and the week before the discovery cutoff to move this Court to set aside the order. The discovery cutoff is September 19, 2007, and will have passed by the time this motion is heard. Plaintiff's claim that the need for the requested comp agreement is "critical" is belied by the fact that he waited until six months after the protective order was entered to ask the Court to reconsider this issue. While Plaintiff blames his prior attorney for failing to respond to the motion for protective order, Plaintiff has had nearly six months with his current attorney to seek to have the protected order lifted. He has failed to do so. Plaintiff's motion for reconsideration is untimely and should be denied.

B. Defendants Sought A Protective Order In Good Faith As Plaintiff Failed to State Any Factual Allegations Of Government Waste In His Complaint.

Plaintiff argues that Defendants' relevance objection to producing the COMP contract in February 2007 was bogus and that Defendants had no grounds to object to plaintiff's request for the COMP contract. This argument sidesteps the real issue -- that there was not a single factual allegation of government waste in plaintiff's complaint, and a government waste theory was not even part of plaintiff's case until after the Secretary of Labor found there was no

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reasonable cause to find that Portneuf Medical Center violated the whistleblower provisions of the AIR 21 Act.

Plaintiff filed his complaint on October 13, 2005. His Complaint alleged numerous facts relating to alleged safety violations: ice on rotor blades (Complaint, ¶¶ XXI – XVII, XX); a threat by a fellow employee (¶ XIX); mechanics taking the aircraft out of service (¶ XIX); and plaintiff's inability to voice his concerns at safety meetings (¶¶ XII-XXIII).

Plaintiff's complaint culminates with his allegation as to why he believes he was fired:

On April 20, 2005, Plaintiff was terminated as an employee of Portneuf Medical Center. In his termination letter prepared by Pam Humphrey and Dale Mapes, Plaintiff was accused of being "unable to maintain positive interpersonal relations with [his] colleagues" and failing to "foster a positive team environment." **Plaintiff alleges that the ONLY bases for such accusations relate directly to the fact that he had reported FAR violations and related misconduct of his fellow employees AS THEY PERTAINED TO SAFETY AND OPERATIONAL READINESS of Life Flight Aircraft.**

Complaint, ¶ XXIV (emphasis added). All of the factual allegations in Plaintiff's Complaint relate to his perceived safety issues. Not a single factual allegation relates to government waste of any kind.¹

Likewise, Plaintiff's first set of discovery requests sought only information related to information related to alleged safety violations – and nothing related to government waste. See Plaintiff's First Set of Interrogatories and Requests for Production, and Responses, attached as Exhibit A to Affidavit of Paul D. McFarlane in Support of Defendants' Motion for

¹ The solitary reference to government waste in Plaintiff's complaint is a statutory catchall phrase in Count I alleging he was terminated because "he had reported in good faith the existence of waste of public funds and/or violations or suspected violations of the law." Complaint, ¶ XXVI. As stated above, the complaint fails to state a single factual allegation that would support plaintiff's "waste of public funds" statement.

Protective Order (Interrogatory No. 8, requesting information concerning lawsuits or actions against Defendants regarding violations of policies, standards, regulations and laws; Interrogatory No. 9, seeking disciplinary actions resulting from violations of policies, standards, regulations and laws; Interrogatory No. 10, seeking information provided to state or federal agencies regarding investigations into violations of policies, standards, regulations and laws; Requests for Production Nos. 6-8, seeking documents relating to same).

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On December 5, 2007, Plaintiff propounded a set of discovery in which he asked for a copy of Defendants' helicopter maintenance contract with a third-party vendor (the COMP contract).² Defendants objected for various reasons, and particularly on relevance grounds, as the COMP contract was completely irrelevant to any of the factual allegations in Plaintiff's complaint. After Plaintiff propounded a third set of discovery, which in numerous cases asked for irrelevant information or the same information sought in previous discovery, Defendants moved the Court in good faith for a protective order to avoid needless expense and restore some order to a discovery process that had become abusive. Plaintiff completely failed to respond or oppose the motion, which was granted on March 16, 2007. In the six months that have passed since the Court granted the motion, Plaintiff has not sought to overturn the Court's order or have the Protective Order lifted.

C. Plaintiff's Legal Theory Changed From Safety Violations To Government Waste After The Secretary Of Labor's Finding Of No Reasonable Cause.

On October 11, 2006 the Secretary issued detailed findings that there was no reasonable cause to believe that Defendants had violated federal whistleblower laws with respect

² This discovery was propounded just two months after the Secretary issued his findings.

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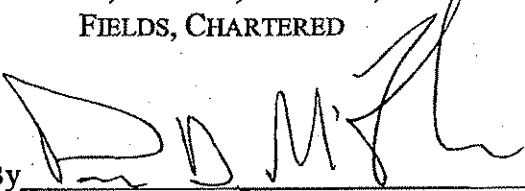
to reporting safety violations. On May 24, 2007, Defendants took plaintiff's deposition.³ Then, for the first time, Plaintiff voiced a new theory that Portneuf Medical Center wasted taxpayer dollars because it did not make certain changes Plaintiff wanted to the helicopter maintenance contract.⁴ In retrospect, it appears that after the Secretary of Labor issued his findings, plaintiff sought to change his theory of liability (and discovery efforts) under the state whistleblower act from safety violations to government waste. Otherwise, Plaintiff would have alleged government waste in his complaint and would have sought appropriate discovery before the ruling.

D. Conclusion

Plaintiff's argument that Defendants' have "precluded" him from securing the COMP contract is disingenuous. ~~Plaintiff failed to articulate any allegations of public waste in his complaint and then failed to oppose or move to set aside the Court's Order, despite having six months to do so. For the above reasons, Plaintiff's Motion for Reconsideration must be denied.~~

DATED this 17th day of September, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Paul D. McFarlane - Of the Firm
Attorneys for Defendants

³ Plaintiff had sought to take Plaintiff's deposition as early as October, 2006, but the deposition was postponed twice by Plaintiff's request.

⁴ Defendants note that Plaintiff has failed to amend his complaint to assert this newfound allegation.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2007, I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

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- Facsimile



Paul D. McFarlane


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Attorneys for Defendants

659
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program Director,
GARY ALZOLA, Director of Operations,
RON FERGIE, Chief Pilot/Safety Officer,
BARRY NIELSON, Pilot, and DOES I-X,

Defendants.

Case No. CV 2005-4053 OC

**DEFENDANTS' REPLY BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiff Mark Van's ("Van") response to Defendants' Motion for Summary

Judgment consists of dozens of assertions of bad acts committed by Defendant Portneuf Medical

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - 1**

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Center ("PMC") and various employees. Nearly all of Van's assertions, which are based on his own conclusory and inadmissible deposition testimony, are immaterial to this summary judgment motion. Van cannot withstand summary judgment as to his Idaho Protection of Public Employees Act ("Whistleblower Act") claim and any emotional distress claim, as he failed to make a notice of claim under the Idaho Tort Claims Act ("ITCA"). Van cannot establish a prima facie case under the Whistleblower Act, because he offers no evidence that he engaged in protected activities, much less that his employment was terminated because of those activities. He cannot show that his termination from LifeFlight was a violation of any public policy. Van provides no evidence to establish that PMC breached any contract or covenant of good faith and fair dealing, that he even suffered emotional distress, or that any of the individual defendants in this case are proper defendants in this action. Van is unable to meet his burden with respect to any of his claims, and summary judgment in favor of PMC should be granted.

II. ARGUMENT

A. **The Standard: Van Fails to Meet His Burden of Setting Forth Specific Facts Requiring a Trial.**

The Idaho Rules of Civil Procedure are intended "to secure the just, speedy and inexpensive determination of every action." Idaho Rule of Civil Procedure 1. Summary judgment should be granted to protect the right of any party from unnecessary cost and delay. Van's opposition brief has fallen far short of demonstrating any genuine issue of triable fact. Van's conclusory, unsubstantiated, and self-serving allegations that material issues of fact exist so as to defeat summary judgment are insufficient. The uncontested facts clearly indicated that PMC and the individual defendants are entitled to summary judgment.

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Whether “genuine” issues exist with respect to a material fact is often a contested question. Idaho Rule of Civil Procedure 56 provides further guidance in resolving the issue. When the moving party for summary judgment meets its initial burden of identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact, the nonmoving party may not rely on mere allegations in the pleadings in order to preclude summary judgment. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630-31 (9th Cir. 1987). Rather, the nonmoving party must set forth “specific facts showing there is a genuine issue for trial.” Idaho Rule of Civil Procedure 56(e); *see also Jarman v. Hale*, 122 Idaho 952, 842 P.2d 288 (Ct. App. 1992). If the response falls short of that, summary judgment should be granted. Idaho Rule of Civil Procedure 56(e), *T.W. Elec. Serv., Inc.*, 809 F.2d at 630-31.

The existence of disputed facts will not defeat summary judgment when the plaintiff fails to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial. *Garzee v. Barkley*, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct. App. 1992). A court does not have the obligation to search the entire record for genuine issues of material fact. *Nissho-Iwai American Corp. v. Kline*, 845 F.2d 1300, 1307 (5th Cir. 1988). Because Van has the burden of proof at trial to prove his violation of the Idaho Whistleblower Act claim, public policy exception claim, and breach of contract claims, Rule 56(e) requires him to go beyond the pleadings and by his “own affidavits, or by the ‘depositions, answers to interrogatories and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986). A mere scintilla of evidence is not enough to create a

genuine issue of material fact sufficient to withstand a motion for summary judgment. *East Lizard Butte Water Corp. v. Howell*, 122 Idaho 679, 837 P.2d 805 (1992).

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Here, Van fails to provide the Court with any specific facts showing that he engaged in protected activity under the statute (reporting the waste of public funds or violations of law) or that he was fired because he engaged in that activity. He offers no affidavits showing specific facts relating to his claims. Instead, Van submits 18 pages of his own self-serving and conclusory deposition testimony, as well as selected fragments of the deposition testimony of PMC employees.¹ Van then asks the Court to sift through it all and find genuine issues of material fact. It is Van's burden, and not the Court's, to show specific facts. The Court should decline the invitation.

B. Van's Deposition Testimony is Insufficient to Meet the Summary Judgment Standard Set Forth in Idaho Rule of Civil Procedure 56(e).

Deposition testimony may be used in summary judgment proceedings and is considered to be an affidavit. *Gulf USA Corp. v. Federal Ins. Co.*, 259 F.3d 1049 (9th Cir. 2001). Conclusory or speculative statements do not satisfy the summary judgment affidavit rule.

¹ It is significant that Van does not provide the Court with dates in his laundry list of wrongdoings, since nearly all of the transgressions he cites occurred months or years before his termination. Many of the deposition snippets are presented in such a way as to give a false impression of events. It would be impractical and a waste of the Court's time to point out every instance in which Van's assertions of fact is inaccurate or lack support in the record. Therefore, Defendants urge that the Court carefully scrutinize any alleged statements of fact. Following are just two random examples: (1) On p. 5, ¶ 10 of Van's opposition brief, he implies that Ron Fergie did not perform a preflight inspection at all, citing p. 119 of Mr. Fergie's deposition. But on the transcript's previous page, Mr. Fergie testified he performed a preflight inspection that day about 8:00 a.m. (2) On p. 9 of his brief, Van implies CEO Pat Hermanson never gave any consideration as to whether Van would have an emotional reaction to the 2001 crash, citing p. 67 of his deposition page. But the next page of the transcript reveals that Mr. Hermanson testified his immediate concerns after the accident were for the pilot who lost his leg, and later he was concerned for Van's well being.

Mains v. Cach, 43 Idaho 221, 141 P.3d 1090 (2006). Deposition testimony that contains general allegations and is unsupported by specific facts cannot preclude summary judgment where opposing affidavits set forth specific facts. *See Cameron v. Neal*, 130 Idaho 898, 901, 950 P.2d 1237, 1240 (1997). The party opposing summary judgment must show that the affidavit or deposition offered by the party is based upon personal knowledge and that it sets forth facts as would be admissible in evidence. *Edmunds v. Kraner*, 142 Idaho 867, 136 P.3d 338 (2006).

Here, Van's deposition is cited nearly 150 times in the course of his brief. Much of that deposition testimony is conclusory,² speculative³ and is not based on personal knowledge.⁴ Other testimony cited is inadmissible for various reasons, including hearsay.⁵ Van's testimony does not rise to the level required by Idaho Rule of Civil Procedure 56(e), and summary judgment should be granted.

² An example of Van's conclusory testimony is on page 20 of his brief: "It was government waste to leave the aircraft out of service all night in an unsafe, unairworthy condition." (Citing Van depo., 196:12-16).

³ An example of Van's speculative testimony is on page 15 of his brief: "Agusta can legally refuse to provide the service we are paying for due to untrained mechanics working on the aircraft." (Citing Van depo., 176:3-8).

⁴ An example of Van's testimony not based on personal knowledge is on page 17 of his brief: "Pam Holmes ignored Mark and would not do anything about getting additional help." (Citing Van depo., 155:24-156:11; 157:21-22).

⁵ Examples of Van's inadmissible testimony are on pages 13 and 19 of his brief: "Mark believed that there was a violation of a standard, namely, the NTSB's recommendation to the FAA, to leave an aircraft in an unairworthy condition." (Citing Van depo., 204: 1-6); and "Mark believed Ron's conduct was in retaliation for what Mark had said at the Safety Meeting. . . ." (Citing Van depo., 87:4-7, 97:5-12)

C. Van's Whistleblower Act Claim is Barred Because he Failed to Comply with the Notice Requirements of the Idaho Tort Claims Act.

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Van correctly notes that claims brought under the public policy exception to at-will employment are actions in contract. *Hummer v. Evans*, 129 Idaho 274, 280, 923 P.2d 981, 987 (1996). This is because "employment at will constitutes a contract." *Id.*, citing *Jackson v. Minidoka Irrigation Dist.*, 98 Idaho 330, 334, 563 P.2d 54, 58 (1977). However, liability under the Whistleblower Act is not predicated on the breach of the employment at will (or any other) contract. The Whistleblower Act provides that an employee can bring an action for damages against his or her public employer, and that damages "means damages for injury or loss caused by each violation of this chapter . . ." IDAHO CODE § 6-2105(1) & (2).

The ITCA requires that all claims arising under the provisions of this act shall be presented to and filed with the political subdivision within 180 days from the date the claim arose, and that a lawsuit may not be instituted until a claim is denied. Compliance with the ITCA is mandatory for all claims, including those under the whistleblower act. A violation of the Whistleblower Act is certainly a claim under the ITCA, which is defined as "any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover under this act as compensation for the negligent or otherwise wrongful act or omission of a governmental entity . . ." IDAHO CODE § 6-902(7). *See Smith v. Mitton*, 140 Idaho 893, 898, 104 P.3d 367, 372 (2004).

Van tries to get around his failure to file a notice of claim under the ITCA (and thus salvage his claim that PMC violated the Whistleblower Act) by arguing that a Whistleblower Act claim is actually a public policy exception claim. This contortion ignores the language in the Whistleblower Act (actually cited by Van in his brief) that the legislature

specifically intended to create a distinct action by “providing a legal cause of action for public employees.” IDAHO CODE § 6-2101. Had the legislature intended that whistleblower claims be a public policy exception to the at-will employment doctrine, there would be no need for the Act at all. Whistleblower Act claims are separate and distinct from public policy exception claims.

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A review of Idaho cases recognizes that a claim brought under Idaho Code Section § 6-2101 is **not** a claim under the public policy exception. *See Mallonee v. State*, 139 Idaho 615, 623, 84 P.3d 551, 559 (2004) (plaintiff’s separate claims for violation of Idaho Whistleblower Act and public policy exception to at-will employees both dismissed); *Smith v. Mitton*, 140 Idaho 893, 104 P.3d 367 (2004) (court addressed plaintiff’s separate claims for violation of Whistleblower Act and public policy exception). Van’s argument that the Whistleblower Act and public policy exception claims are one and the same is belief by the allegations in his complaint, in which he alleged was terminated in violation of the Whistleblower Act and contrary to public policy.⁶

D. Van Cannot Establish a Prima Facie Case Under the Whistleblower Act.

To establish a prima facie case under the Protection of Public Employees Act, the public employee “must demonstrate he or she engaged or intended to engage in activity protected by the statute, he or she suffered an adverse employment action, and there is a causal connection between the protected activity and the employer’s adverse action. *Curlee v. Kootenai County Fire & Rescue*, 2007 WL 1501383 at *4, ___ Idaho ___ (Ct. App. May 24, 2007) (*reh’g denied*

⁶ “Plaintiff alleges . . . that his employment was terminated in violation of Section 6-2101 et seq., of the Idaho Code, and **contrary to public policy**, because he had reported in good faith the existence of waste and/or violations or suspected violations of the law, and that, as such, Plaintiff is entitled to a claim for wrongful termination of employment.” Complaint, ¶ XXVI (emphasis added).

July 7, 2007), Ct. App. 2007 Opinion No. 32. PMC does not dispute that it terminated Van's employment. But Van cannot establish the remaining elements of his prima facie case with respect to either his "government waste" or "safety issues" theories.

1. **Van cannot establish he engaged in protected activity.**
 - a. **Van is unable to show the existence of any waste.**

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The Whistleblower Act requires that in order for activity to be protected, the employee must "communicate in good faith the existence of any waste of public funds, property or manpower. . ." IDAHO CODE § 6-2104(1)(a). Van cannot meet this burden because he cannot establish that any waste of public funds, property, or manpower even occurred. His assertion that PMC wasted taxpayer dollars because it did not make his desired changes to the COMP contract is sheer speculation. The only evidence on the record is that Agusta has provided all parts needed for repair or replacement, even when not specifically itemized under the COMP agreement, and that no warranty issues have ever been nullified by Agusta because a mechanic was not factory trained. Affidavit of Pam Holmes, ¶¶ 13-14.

PMC admits Van reported his concerns and trust issues with Agusta to CEO Pat Hermanson in a September, 2004 letter, seven months before he was terminated. PMC immediately addressed those concerns. Two days after receiving the letter, Mr. Hermanson responded to Van, acknowledged his concerns, and informed him that while the agreement may not "comply with [his] particular desires," it was a satisfactory agreement for the hospital and that Van needed to move beyond his trust issues. Letters, McFarlane Affidavit, Exhibits H & I.

Likewise, Van's claim that LifeFlight lost revenue because the helicopter should have been able to fly 24 hours a day is speculative (and belies common sense). Van can provide no evidence that the helicopter missed a single flight or PMC lost revenue because the helicopter

was unable to fly. The only competent evidence on record is that there was no hangar, and Idaho winters did not allow and PMC did not require that the helicopter be ready to fly 24 hours a day.

b. Van cannot show that PMC violated any law, rule or regulation.

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In order for an employee's activities to be protected, the employee "must communicate in good faith . . . a violation or suspected violation of a law, rule or regulation . . ." IDAHO CODE § 6-2104(1)(a). The Whistleblower Act does not apply to violations, or suspected violations, of a public employer's internal policies. *Mallonee v. Idaho*, 139 Idaho 615, 84 P.3d 551 (2004). Van argues in his opposition brief that he demonstrated protected activity under the Act by raising "safety issues." Opposition Brief at 28. Van cannot meet his burden to make a prima facie case because he cannot establish that the "safety issues" he raised involved violations of laws, rules or regulations under the Act. None of Van's complaints implicate any state laws, rules or regulations. Any alleged misdeeds involving LifeFlight internal policies and procedures are not protected.

Not one of the following "safety issues" raised by Van implicates a single law, rule, or regulation that would trigger activity protected by the whistleblower statute:

- People blaming Van for a 1993 hard landing or the 2001 crash;
- Gary Alzola "lying" to Van about releasing information pending the results of an ongoing NTSB investigation;
- Pilot Ron Fergie being on duty 20 hours after a Part 91 flight (that had no duty time requirement) and buzzing Van's house in retaliation;
- Pam Holmes ignoring Van's request for an additional mechanic;
- The existence of ice on the rotor blades of the grounded helicopter;
- Pilots properly installing rotor blade covers;

- Barry Nielson “threatening” Van when he asked him if he was trying to run the program into the crapper; and
- Managements “refusal” to address Van’s safety concerns.

Van’s claim that these allegations involve “safety” in some way is immaterial to his Whistleblower Act Claims unless they violate a law, rule or regulation as proscribed by the Act. By his own admission, nearly all of these “safety issues” are actually pilot management practices, and involve Van’s trust issues with pilots (Affidavit of Pam Holmes, ¶ 22 and Exh. G).

Two of Van’s issues, however, potentially implicate Federal Aviation Regulations (FARs) – the May/June 2004 overflowed airworthiness directives, and the allegation that Barry Nielson lifted off with ice on the rotor blades in October, 2004. It is undisputed that on June 21, 2004, Van reported by e-mail to Gary Alzola that pilots Ron Fergie and Chad Waller had overflowed airworthiness directives (ADs), that Gary Alzola received the e-mail June 24, and that he reported overflights to the FAA on June 26, 2004. It is also undisputed that Van did not see the helicopter lift off with ice on the rotor blades, Greg Stoltz did not see the helicopter take off with ice on the rotor blades, and that both Gary Alzola and the FAA investigated and found that no violation had occurred. It is also undisputed that there is no violation of law unless the helicopter actually takes off with ice on the rotor blades. Both these “issues” were investigated and resolved to the FAA’s satisfaction.

2. Van cannot establish his employment was terminated because he engaged in protected activity.

Van cannot establish the nexus requirement of his prima facie case. To meet that burden, he must prove that he was terminated because he communicated “the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation. . .” IDAHO CODE § 6-2104(1)(a). There is no dispute that PMC took an adverse

action against Van – his employment was terminated. However, Van cannot even provide sufficient evidence to show or even permit the inference that he was terminated because he engaged in protected activity.

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The only activities that are ostensibly protected under the statute occurred long before Van's termination. Van's September, 2004 letter to Pat Hermanson about the COMP contract and Mr. Hermanson's response occurred seven months before Van was terminated. Gary Alzola self-reported the May/June 2004 AD overflights to the FAA some 10 months before Van was terminated. Barry Nielson's alleged October, 2004 lift off with ice on the rotor blades occurred six months before Van was terminated. These incidents were all reported to PMC and/or the FAA and resolved months before Van was terminated on April 20, 2005. The lack of temporal proximity between Van's activities and his termination preclude any inference that he was discharged for reporting alleged waste or violations of law. The overwhelming evidence shows that PMC's motivation to terminate Van was related to his involvement with pilot management issues -- not any concerns over waste or violations of law. Van has completely failed to show any "specific facts" showing that his employment was not terminated for anything other than his distrust of pilots and management, his inability to maintain positive interpersonal relations with his colleagues, and his inability to foster a positive team environment.

E. Van Has Not Stated a Sufficient Claim That is a Recognizable Public Policy Exception to the At-Will Doctrine.

Van's public policy exception claim fails because he cannot show that his termination falls within a recognized public policy exception. There is no evidence on the record that PMC told Van to participate in unlawful acts and he refused to do so, that he was fired for

performing important public obligations, or that he exercised certain legal rights or privileges. *Sorensen v. Comm. Tek, Inc.*, 118 Idaho 664, 668, 799 P.2d 70, 74 (1990).

Moreover, even if PMC did fire Van for reporting or threatening to report waste, safety violations or violations of law, his claim should not be recognized as a violation of the public policy exception to at-will employment, since he would already have remedies under both the Federal AIR 21 Act and the State Whistleblower Act, both of which have provisions that protect employees from retaliatory discharge. Indeed, Van availed himself of both these statutes.⁷

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Finally, Van can provide no evidence that his termination was linked to any of his "safety concerns." In the *Crea* case, the Supreme Court has held that it was not a violation of public policy to terminate an employee for disclosing documents allegedly showing environmental pollution, where that disclosure was unrelated to his termination. *Crea v. FMC Corp.*, 135 Idaho 175, 16 P.3d 272 (2000). Just as Van cannot show the nexus link for purposes of his Whistleblower Act claim, he cannot show nexus here.

F. Van Cannot Show PMC Breached a Contract of Employment or the Covenant of Good Faith and Fair Dealing.

In his opposition, Van fails to set forth any facts to support his claims for breach of contract and breach of the covenant of good faith and fair dealing. The only evidence in the record is that Van was an employee at will, who could be terminated at any time for any reason, and that he was aware of this fact (Van depo., 37:15-40:17, Exh. A to McFarlane Aff., Employee Handbook, Exh. B to McFarlane Aff.). Van has provided no evidence that PMC breached any

⁷ OSHA investigated Van's claim under the whistleblower protection provisions of the Aviation Investment and Reform Act for the 21st Century (AIR 21 Act), and the Secretary issued findings that there was no reasonable cause to believe that Van was fired for reporting safety violations. McFarlane Aff., Exh. J.

term of any contract or that PMC's conduct deprived him of a benefit he was entitled to under an express or implied term of the employment agreement. These claims must be dismissed.

G. Van's Emotional Distress Claims Must Be Dismissed.

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In his Complaint, Van claims he suffered damages for "emotional distress and suffering." Complaint, ¶ XXX. Any claim for emotional distress is precluded by Van's admitted failure to file a notice of claim under the ITCA. Moreover, Van cannot show that he suffered emotional distress at all. Van has retained no expert and has offered no other proof indicating that LifeFlight's conduct caused him to experience emotional distress. The evidence is undisputed that Van was encouraged numerous times to seek professional help after the 2001 accident, but Van refused to do so (Affidavit of Audrey Fletcher, ¶¶ 3, 4 & 15). He finally went to a mental health provider (Dr. Hazle) a year after the crash, did not like what he heard, and left after about 45 minutes "and never went back." (Van depo., 33:11-25, Exh. H to Affidavit of Nick Nielson). Finally, Van did not see another health care provider until after he was terminated, in May, 2005 (Kishiyama Report, Exh. A to Amended Aff. of Nick Nielson). Van's emotional distress claims should be dismissed.

H. Van Cannot Show That The Individual Defendants in This Case are Proper Defendants.

Van failed to state any cause of action against individually named defendants Pat Hermanson, Pam Humphrey (now Holmes), Gary Alzola, Ron Fergie, and Barry Nielsen (along with "Does I-X") are proper defendants in this matter, and has presented no evidence to support their inclusion in this lawsuit. He has presented no evidence to show that any of these defendants were Van's employer under the Whistleblower Act, that any of them entered into a contract with Van, that they were somehow acting outside of the course and scope of their

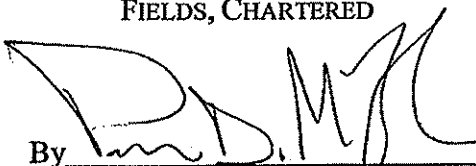
employment, or that they could be liable to Van under any theory. The individual defendants should be dismissed.

III. CONCLUSION

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Van can raise no genuine issues of material fact that preclude summary judgment. Instead of submitting affidavits, he has merely provided voluminous excerpts of his own conclusory and self-serving deposition testimony to the Court and presented it as fact, and asked the Court to somewhere find an issue of fact that will save him from summary judgment. The Court should decline Van's invitation. The overwhelming evidence in the record is that Van's distrust and refusal to accept solutions other than his own led to his inability to maintain positive interpersonal relations with his colleagues and foster a positive team environment, severe dysfunction within the LifeFlight program, and ultimately to Van's termination. For the above reasons Defendants' motion for summary judgment should be granted.

DATED this 20th day of September, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

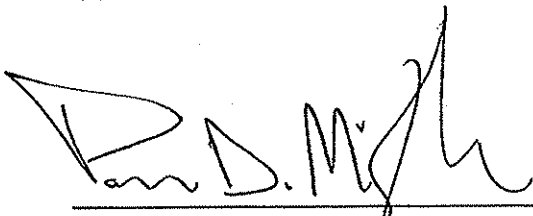
Paul D. McFarlane -- Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2007, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Nick L. Nielson
NIELSON LAW OFFICE
120 North 12th Avenue, Suite 7
Post Office Box 6159
Pocatello, Idaho 83205-6159
Facsimile (208) 232-0048

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Paul D. McFarlane

2007 OCT 31 PM 3:50

BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MARK VAN,)
)
 Plaintiff,)
)
 PORTNEUF MEDICAL CENTER, PAT)
 HERMANSON, Hospital Administrator,)
 PAM HUMPHREY, EMS Program Director,)
 GARY ALZOLA, Director of Operations,)
 RON FERGIE, Chief Pilot/Safety Officer, BARRY)
 NIELSON, Pilot, and DOES I-X,)
)
 Defendants.)
)
)
)
)

Case No. CV-2005-4053-OC

MEMORANDUM DECISION,
ORDER and JUDGMENT

NATURE OF THE ACTION

This case comes before this Court pursuant to a Motion for Reconsideration of Court's Order Granting Defendants' Motion for Protective Order ("Motion to Reconsider") filed by Mark Van ("Plaintiff" or "Mr. Van") and a Motion for Summary Judgment filed by Portneuf Medical Center ("PMC") and numerous named employee Defendants (hereinafter "the Defendants") against the Plaintiff.

The Plaintiff's Motion to Reconsider specifically seeks review of this Court's Order "prohibit[ing] Plaintiff from conducting any further discovery as to Request for Production No. 27 of Plaintiff's Second Set of Interrogatories and Requests for Production of Documents." (Mot. for Reconsid. of Court's Order Granting Defs.' Mot. for Protective Order ("Mot. for Recons.", Sept. 10, 2007, 1.) Request for Production No. 27 sought "a copy of the Component Overhaul and Maintenance Program for the Life Flight Program ("COMP contract')." (*Id.* at 2.)

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The Defendants objected to this request "as overly broad, vague, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of plaintiff's issues in the lawsuit." (*Id.*) The Plaintiff argues such objections are without merit because:

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The request was specific and limited in scope and certainly would not have been burdensome for Defendants to comply. Furthermore, the contract is absolutely relevant. It is critical for Plaintiff to have the document in order to establish one of the facets of his claim that Defendants did waste Bannock County taxpayers' money.

(*Id.*) The Plaintiff argues this "Court's Order prohibiting disclosure of the COMP contract was not based on the merits, but was issued as a result of an error on the part of Plaintiff's previous counsel." (*Id.* at 3.) The Plaintiff's previous counsel failed to respond to or otherwise oppose the Defendants' Motion for Protective Order.

Pursuant to their Motion for Summary Judgment, the Defendants are arguing that the Plaintiff's wrongful termination claims against the Defendants should be dismissed because the Plaintiff

failed to file a Notice of Tort Claim within 180 days of his termination (as required by Idaho Code Section 6-906). Moreover, Van cannot show any public policy violated by PMC, cannot show that Van engaged in any protected activity under the state whistleblower statute, and cannot show any nexus between any such alleged conduct and his termination. Finally, Van's breach of contract claims should be dismissed, as he was an employee at will and not subject to an express or implied employment contract that specified the duration of employment.

(Defs.' Mem. in Supp. of Mot. for Summ. J. ("Mem. in Supp. of Summ. J."), Aug. 3, 2007, 1.)

This Court heard oral arguments regarding the above matters on September 24, 2007, taking the motions under advisement. After receiving oral arguments and reviewing the entire

file, including the briefs filed by counsel, this Court enters the following Memorandum Decision and Order.

SUMMARY JUDGMENT STANDARD OF REVIEW

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Summary judgment shall be rendered "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994). This Court liberally construes the record in favor of the party opposing the motion and draws all reasonable inferences and conclusions in that party's favor. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). If the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

If the moving party challenges an element of the non-moving party's case on the basis that no genuine issue of material fact exists, the burden now shifts to the non-moving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley*, 125 Idaho at 90, 867 P.2d at 964. Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial. *Thomson*, 126 Idaho at 530-31, 887 P.2d at 1037-38; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The party opposing the summary judgment motion "may not rest upon the mere allegations or denials of that party's

pleadings, but the party's response, by *affidavits* or as otherwise provided in this rule, must *set forth specific facts showing that there is a genuine issue for trial.*" I.R.C.P. 56(e) (emphasis added).

ISSUES

1. Whether to grant the Defendants' Motion for Summary Judgment.
2. Whether to grant the Plaintiff's Motion for Reconsideration.
3. Whether the Defendants are entitled to costs and fees.

STATEMENT OF FACTS

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The Plaintiff began his employment with PMC on May 1, 1986, as a mechanic with the Life Flight program. On October 12, 1997, he became the director of maintenance of Life Flight and became responsible for the maintenance of PMC's Life Flight helicopter. The Plaintiff was an at-will employee. On November 14, 2001, the Life Flight helicopter crashed in the course of a rescue mission. The Plaintiff was a witness to that crash and rescued the pilot. The Plaintiff had worked on the helicopter prior to the crash, fixing a fuel transfer pump. Ultimately, the National Transportation Safety Board (NTSB) determined the crash was caused by pilot error and was unrelated to maintenance issues. However, Mr. Van seemed to believe that the media blamed the crash on the maintenance department, and PMC refused to release information explaining to the media that the maintenance department was not responsible for the accident.

By all accounts, Mr. Van's relationship with PMC management and the Life Flight pilots deteriorated following the crash, with the Plaintiff growing more frustrated and distrustful. In

August of 2003, Mr. Van authored Life Flight Maintenance Policy No. 12, a document that portrays the Plaintiff's state of mind. Pertinent excerpts from that document follow:

This letter pertains to the release of aircraft to pilots after maintenance events.

On 11/14/01 our helicopter had an accident due to pilot error. Life Flight Maintenance was blamed for the accident. The press release was Life Flight helicopter crashes after maintenance. I fought long and hard to get the NTSB report released. From this point forth we need to monitor the state of the pilots and question what they do, to avoid a repeat of that very bad situation!

It is apparent to me now, that the new Program Director, Director of Operations and the Chief pilot will shift the blame to Maintenance, even if they have information that will clear Maintenance of any wrong doing. They will be dishonest with Administration to attain their end to cover for the pilots at any costs. I am sorry to say that we have an us against them scenario fostered by the aforementioned staff.

I am cordial with them and do not wish to foster a us against them situation but you must always remember that if it's a decision they have to make (pilot against mechanic) you are going to take the hit. I have been striving to change this. I will continue to try until security escorts me off the property. They will gang up on you and make little to no sense to attain the end they desire. It has happened to me on 5 separate occasions.

Since the powers that be conspired to shift the blame to our department for Tim's accident. [sic] I feel it is our responsibility to baby sit the pilots and question there [sic] fitness flight, or any other pilot activities that could cause a situation that could blacken our reputations or the programs. The only thing I could be guilty of with Tim's accident was letting him take off after I made my repairs. I will not in the future, let pilots fly away after maintenance if I feel the aircraft is at risk. I want you to cover your ass and follow this policy also.

(Ex. F – Life Flight Maintenance Policy Letter 12, attached to Aff. of Paul D. McFarlane

(“McFarlane Aff.”), Aug. 3, 2007.) Various meetings were held to discuss Mr. Van's concerns,

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however, he continued to have issues with the management of Life Flight and felt his concerns went unresolved. In April of 2005, another meeting was held to discuss Mr. Van's issues. After this meeting, Life Flight management and PMC officials conducted an investigation to gauge the viability of the Life Flight program and determined "[t]he [Life Flight] program was in a state of severe dysfunction due to Van's serious trust issues with pilots, his superiors, and others, and because he was unable to move on from the resolution of issues unless the resolution was entirely of his own making." (Mem. in Supp. of Summ. J. at 17.) Thereafter, on April 20, 2005, the Plaintiff was terminated.

The Plaintiff filed this lawsuit on October 17, 2005, alleging that he had been fired for reporting safety and operational violations and other misconduct of his fellow employees. (See Compl., Oct. 17, 2005, 8.) Count I of the Complaint alleged wrongful termination of employment. Count II alleged breach of contract.

DISCUSSION

A. Whether to grant the Defendants' Motion for Summary Judgment.

1. Whether the Plaintiff must comply with the Idaho Tort Claims Act.

PMC first argues that the Plaintiff's "wrongful termination claim is barred because he failed to comply with the notice requirements of the Idaho Tort Claims Act." (Mem. in Supp. of Summ. J. at 20.) The Plaintiff disputes that claim, arguing that a public employee is not required to file a notice of tort claim in order to preserve his claims of wrongful termination under the Idaho Protection of Public Employees (Whistleblower) Act. (Pl.'s Mem. in Resp. to Summ. J. ("Mem. in Resp. to Summ. J."), Sept. 11, 2007, 25-26.) The Plaintiff contends that his "cause of

action for wrongful termination in violation of the public policy enunciated [in] the Whistleblower's Act is a contract action, not a tort action. ... Furthermore, nothing in the Whistleblower's Act requires a claimant to file a Notice of Tort Claim." (*Id.* at 27.) Thus, because the Plaintiff argues his action for wrongful termination "is a contract action, no Notice of Tort Claim was necessary" (*Id.* at 28.)

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PMC is a governmental entity or political subdivision covered under the ITCA. Section 6-906 of that statute imposes a notice requirement for the filing of a claim against governmental entities. That section states in pertinent part: "All claims against a political subdivision arising under the provisions of this act ... shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later." A "claim" is defined in IC § 6-902 as:

any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover under this act as compensation for the negligent or otherwise wrongful act or omission of a governmental entity or its employee when acting within the course or scope of his employment.

In turn, section 6-907 describes the contents of a claim:

All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time the claim arose. ... A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause

of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

Pursuant to section 6-909, after a notice of claim is filed, the governmental entity has 90 days to approve or deny the claim. A claim is deemed denied if it is not approved or denied within that 90-day period.¹ A lawsuit in district court against the governmental entity is only permitted once a claim is denied.²

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The purpose of the ITCA is to '(1) save needless expense and litigation by providing an opportunity for amicable resolution of the differences between parties, (2) allow authorities to conduct a full investigation into the cause of the injury in order to determine the extent of the state's liability, if any, and (3) allow the state to prepare defenses.' *Cobbley v. City of Challis*, 138 Idaho 154, 157, 59 P.3d 959, 962 (2002) (quoting *Friel v. Boise City Housing Auth.*, 126 Idaho 484, 486, 887 P.2d 29, 31 (1994)). "[T]he claim filing statute is usually the only sure and certain means by which the state or its subdivisions may be alerted to potential liability arising from a governmental activity.' *Friel*, 126 Idaho at 486, 887 P.2d at 31 (quoting *Cook v. State*, 83 Wash.2d 599, 603, 521 P.2d 725, 728 (1974)). "The failure to file within the ITCA time limitation acts as a bar to any further action." *Cobbley*, 138 Idaho at 157, 59 P.3d at 962 (citing *McQuillen v. City of Ammon*, 113 Idaho 719, 722, 747 P.2d 741, 744 (1987)).

¹ 6-909. Time for allowance or denial of claims – Effect of failure to act. - Within ninety (90) days after the filing of the claim against the governmental entity or its employee, the governmental entity shall act thereon and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of the ninety (90) day period the governmental entity has failed to approve or deny the claim.

² 6-910. Suit on denied claims permitted. If the claim is denied, a claimant may institute an action in the district court against the governmental entity or its employee in those circumstances where an action is permitted by this act.

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As explained, the ITCA requires that “[a]ll claims ... arising under the provisions of this act ... shall be presented to and filed with ... the political subdivision within one hundred (180) days from the date the claim arose” and that a lawsuit may not be instituted until a claim is denied. IDAHO CODE ANN. §§ 6-906, 6-909-10 (2007). Compliance with the ITCA is mandatory for all claims, including those under the Whistleblower Act, because a “claim” under the ITCA is defined as “any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover ... as compensation for the negligent or otherwise wrongful act or omission of a governmental entity or its employee when acting within the course or scope of his employment.” IDAHO CODE ANN. § 6-902(7) (2007).

While the Plaintiff argues his claim for wrongful termination was brought under the public policy exception to at-will employment and is therefore an action in contract and not subject to the ITCA, liability under the Whistleblower Act is not predicated on the breach of the employment at-will contract. The Whistleblower Act provides that an employee can bring an action for damages against his or her public employer. “Damages” is defined as “damages for injury or loss caused by each violation of this chapter” IDAHO CODE ANN. § 6-2105(1),(2) (2007). Additionally, the language of the Whistleblower Act indicates that the Idaho Legislature intended to create a cause of action separate from the public policy exception to the at-will employment doctrine. Specifically, section 6-2101 explains that the Whistleblower Act was created to provide “a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation.”

IDAHO CODE ANN. § 6-2101 (2007).

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The Plaintiff's wrongful termination claims, including his whistleblower claims, are covered under the Idaho Tort Claims Act since the Whistleblower Act created an action separate from the public policy exception to the at-will employment doctrine and is not exempt from the notice requirements of the ITCA. In his Complaint, the Plaintiff alleged that PMC wrongfully terminated his employment in violation of public policy and Idaho Code § 6-2101, and, as a result, he suffered damages including lost wages and benefits, decreased earning capacity, relocation costs and emotional distress and suffering. (See *Compl.* at ¶¶ XXVI, XXX.) The Plaintiff's employment was terminated on April 20, 2005. Thereafter, Mr. Van brought a "claim" for money damages against his public employer. Pursuant to IC § 6-906, he was required to file a notice of claim with the hospital or the county clerk within 180 days. It is undisputed that the Plaintiff failed to comply with this notice requirement. As such, PMC was denied its opportunity to "conduct a full investigation into the cause of the injury in order to determine the extent of ... liability, if any, and ... prepare defenses." That is in violation of the purpose of the ITCA. Since "[t]he failure to file within the ITCA time limitation acts as a bar to any further action," the Defendants' request for summary judgment on the ground that the Plaintiff failed to honor the requirements of the Idaho Tort Claims Act is hereby GRANTED and the Plaintiff's tort claims, including his claims for emotional distress, are dismissed.

2. **Whether the Plaintiff's wrongful termination claim under IC § 6-2101 fails.**

PMC next argues that the Plaintiff's wrongful termination claim under IC § 6-2101 fails because the Plaintiff cannot demonstrate that he engaged in activity protected under the Act or that he was terminated because he reported government waste or violations of law. (Mem. in

Supp. of Summ. J. at 24.) The Plaintiff maintains he was discriminated against for raising safety and waste issues. (Mem. in Resp. to Summ. J. at 29.)

As explained, the Idaho Protection of Public Employees (Whistleblower) Act was enacted to provide a cause of action for public employees who suffer adverse action from their employer as a result of reporting waste and violation of a law, rule or regulation. IDAHO CODE ANN. § 6-2101 (2007). In order to establish a prima facie case under the Whistleblower Act, the public employee "must demonstrate he or she engaged or intended to engage in activity protected by the statute, he or she suffered an adverse employment action, and there is a causal connection between the protected activity and the employer's adverse action." *Curlee v. Kootenai County Fire & Rescue*, No. 32794, 2007 WL 1501383, at *4, (Idaho Ct. App. May 24, 2007).

Idaho Code § 6-2104(1)(a) and (b) sets forth the activities that are protected under the Act relevant to this action³:

³ IC § 6-2104 states in full:

6-2104. Reporting of governmental waste or violation of law – Employer Action. –

(1)(a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

(b) For purposes of subsection (1)(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of the laws of this state, political subdivision of this state or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation of any laws, rules or regulations.

(1)(a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

(b) For purposes of subsection (1)(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.

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PMC does not dispute that it terminated the Plaintiff's employment, but takes issue with the remaining elements of the prima facie case with respect to either of the Plaintiff's "government waste" and/or "safety issues" theories.

a. The Plaintiff did not engage in protected activity.

Under the Whistleblower's Act, activity is protected if an employee "communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of law, rule or regulation . . ." IDAHO CODE ANN. § 6-2104(1)(a) (2007). First, the Plaintiff is unable to show the existence of any waste of public funds, property or manpower. Mr. Van claimed PMC lost revenue because the Life Flight helicopter was not ready to "respond at a moment's notice" as portrayed in its advertisement. (Pl.'s Mem. in Resp. at 30.) However, while the Plaintiff expressed concerns that the helicopter was not always airworthy, he provided no evidence that the Life Flight helicopter actually missed a flight or that PMC lost revenue because the helicopter was unable to fly.

Mr. Van further argued that PMC wasted taxpayer dollars by not incorporating his recommendations regarding the maintenance contract ("COMP contract") in connection with the

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possible procurement of an Agusta 109 E helicopter from Agusta Aerospace Corporation. (*Id.* at 14.) The Plaintiff “felt that the COMP contract was unworkable as far as securing assets to pay Agusta for certain parts. He advised the head of Customer Service for Agusta of his concerns and received assurances that things would be worked out. When it came time to sign the contract, Agusta’s representative would not put the assurances in writing.” (*Id.*) However, PMC ultimately determined that the agreement was satisfactory for the hospital, and the Plaintiff has not been able to show that PMC wasted taxpayer dollars because it did not make his desired changes to the COMP contract. The affidavit of Pamela Holmes indicates that Agusta has provided all parts needed for repair or replacement and no warranty issues have even been nullified by Agusta because a mechanic was not factory-trained, as Mr. Van feared. (*See* Aff. of Pamela K. Holmes, ¶¶ 13-14, Aug. 3, 2007.)

Furthermore, the Plaintiff cannot show that PMC violated any law, rule or regulation. The Idaho Supreme Court has determined that the Whistleblower Act does not apply to violations, or suspected violations, of a public employer’s internal policies. *Mallonee v. Idaho*, 139 Idaho 615, 619-20, 84 P.3d 551, 555-56 (2004). The Plaintiff claimed he has proven he engaged in protected activity by raising sixteen (16) “safety issues.” (*See* Pl.’s Mem. in Resp. at 3-7.) However, none of these “safety issues” implicate a law, rule or regulation. Instead, the Plaintiff’s allegations pertain to Life Flight internal policies and procedures. Therefore, none of alleged safety violations trigger activity protected by the Whistleblower Act. The Plaintiff’s allegations regarding safety issues more aptly pertain to pilot management practices and involve the Plaintiff’s issues of trust with pilots. Potential violations of Federal Aviation Regulations

were investigated and no violation of law was found. As such, these incidents do not rise to the level of a violation of a law, rule or regulation.

b. The Plaintiff cannot provide evidence that he was terminated because he engaged in protected activity.

Even if the Plaintiff had demonstrated that he engaged in protected activity, he still is unable to establish the nexus requirement of the prima facie case. Pursuant to the Whistleblower's Act, the Plaintiff must show that he was terminated *because* he communicated "the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation" IDAHO CODE ANN. § 6-2104 (1)(a) (2007). As mentioned, there is no dispute that PMC took an adverse action against the Plaintiff by firing him. However, the evidence shows that PMC's motivation to terminate the Plaintiff's employment was related to his inability to maintain positive interpersonal relations with his colleagues and his inability to foster a positive team environment. The record shows that the Plaintiff had severe distrust issues with the pilots and was unable to accept solutions unless those solutions were his own suggestions. The Plaintiff's attitude led to dysfunction within the Life Flight program, and the wasting and safety issues he raised did not occur contemporaneously with his termination.

3. Whether the Plaintiff's termination was a breach of public policy, breach of contract and/or breach of the covenant of good faith and fair dealing.

In his Memorandum in Response, the Plaintiff fails to set forth any facts to support his claims for breach of public policy, breach of contract and/or breach of the covenant of good faith and fair dealing. The Plaintiff states: "Sufficient evidence ... exists to create a genuine issue of

material fact as to the hospital's breach of public policy, the breach of their implied contract of employment ... and their breach of the implied covenant of good faith and fair dealing." (Mem. in Resp. to Summ. J. at 31.)

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The Plaintiff is unable to demonstrate that his termination falls within a recognized public policy exception. "The public policy exception has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations, or who exercise certain legal rights or privileges." *Sorensen v. Comm. Tek, Inc.*, 118 Idaho 664, 668, 799 P.2d 70, 74 (1990). There is no evidence that PMC asked the Plaintiff to "commit unlawful acts" and that he refused to do so, that he was fired for "performing important public obligations," or that he was terminated for "exercise[ing] certain legal rights or privileges." Furthermore, the Idaho Supreme Court has determined it was not a violation of public policy to terminate an employee for disclosing documents allegedly showing environmental pollution, *as long as* that disclosure was unrelated to the termination. *Crea v. FMC Corp.*, 135 Idaho 175, 178-79, 16 P.3d 272, 276-77 (2000). This Court has already determined that the Plaintiff cannot demonstrate a nexus between his concerns regarding the Life Flight program and his termination.

Moreover, it is clear from the record that the Plaintiff was an at-will employee and could be terminated for any reason. It is also clear that the Plaintiff was aware of his status. (Ex. A, Dep. of Mark C. Van, attached to McFarlane Aff.) There is no evidence that PMC breached any contract. As such, the Defendants' Motion for Summary Judgment as to this basis is hereby GRANTED.

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B. Whether to grant the Plaintiff's Motion for Reconsideration.

As this Court has granted the Defendants' Motion for Summary Judgment and further determined that the Plaintiff's concerns regarding the COMP contract were unfounded, this Court hereby DENIES the Plaintiff's Motion for Reconsideration of Court's Order Granting Defendants' Motion for Protective Order.

C. Whether the Defendants are entitled to costs and fees.

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PMC also asserted it is entitled to an award of the costs and fees it incurred in successfully defending against the Plaintiff's claim under IC § 6-2101 and against the Plaintiff's claims for breach of express and implied contract terms.

1. Whistleblower claim.

Idaho Code § 6-2107⁴ provides for an award of attorneys' fees and costs to an employer if the court determines that the action was brought without basis in law or fact. While this Court has determined that the Plaintiff failed to establish a prima facie case under the Whistleblower Act, Mr. Van did not bring his Whistleblower action "without basis in law or fact." As such, this Court declines to award attorney fees to the Defendants on this basis.

2. Breach of contract claims.

PMC also argued it is entitled to an award of the attorney fees it incurred in defending against the Plaintiff's breach of contract claims, including his claims for breach of express and

⁴ 6-2107. Award of attorneys' fees and costs to employer – Action without basis in law or fact. - A court may also order that reasonable attorneys' fees and court costs be awarded to an employer if the court determines that an action brought by an employee under this chapter is without basis in law or in fact. However, an employee shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing a suit, the employee files a voluntary dismissal concerning the employer, within a reasonable time after determining that the employer would not be liable for damages.

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implied contract terms and a violation of the implied covenant of good faith. Pursuant to IC § 12-120(3), attorney fees are recoverable in an action on a contract for personal services. That section states in pertinent part: "In any civil action to recover on ... [a] contract relating to ... services ..., the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs." Furthermore, the Idaho Supreme Court has specifically determined that the employer is entitled to recover fees incurred in defending against claims for an implied contract, including the covenant of good faith and fair dealing. *Atwood v. W. Const., Inc.*, 129 Idaho 234, 240-41, 923 P.2d 479, 485-86 (1996) ("[A]ctions on employment contracts are subject to the attorney fee provisions of I.C. § 12-120(3).") When an employer successfully defends against claims for breach of express and implied contract terms, including the claim for violation of the implied covenant of good faith, such employer should be granted attorney fees.)

As this Court has determined the Plaintiff's termination was not a violation of contract or a breach of public policy or the covenant of good faith and fair dealing, the Defendants, pursuant to IC § 12-120(3), are entitled to an award of those costs and fees reasonably and necessarily incurred in defending against such claims.

CONCLUSION

Based on the foregoing, this Court hereby GRANTS the Defendants' Motion for Summary Judgment. The Plaintiff failed to fulfill the notice requirement of the Idaho Tort Claims Act, requiring a dismissal of the Plaintiff's tort claims, including those for emotional distress. Furthermore, the Plaintiff failed to meet the prima facie case of the Whistleblower's

Act by failing to show that PMC committed any waste of public funds, property or manpower or violated any law, rule or regulation. Further, the Plaintiff was unable to establish the nexus requirement since he failed to show he was terminated *because* he communicated the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation. In addition, this Court determined that the Plaintiff was unable to demonstrate that his termination was a breach of public policy, breach of contract and/or a breach of the covenant of good faith and fair dealing.

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This Court also DENIES the Plaintiff's Motion for Reconsideration since the Defendants prevailed on the summary judgment motion, and the Plaintiff's concerns regarding the COMP contract were unfounded.

Lastly, the Plaintiff failed to state any cause of action against the individually named Defendants. There is no evidence that any of these individuals were Mr. Van's employer under the Whistleblower's Act, that any of them entered into a contract with the Plaintiff or that these Defendants were acting outside of the course and scope of their employment. As such, these Defendants are not liable to Mr. Van. This Court hereby DISMISSES the individually named Defendants, including Does I-X.


The Defendants are entitled to reasonable costs and fees pursuant to IC § 12-120(3). However, this Court declines to grant fees under IC § 6-2107 since it determined that the Plaintiff did not bring his Whistleblower action "without basis in law or fact."

The Plaintiff's Complaint against all the Defendants is hereby dismissed with prejudice, and the Defendants are awarded judgment against the Plaintiff for attorney's fees and court costs

reasonably incurred. Counsel for the Defendants shall submit an appropriate memorandum of costs and judgment for this Court's signature. The jury trial set to commence February 5, 2008, is vacated.

IT IS SO ORDERED.

Dated this 30 day of October, 2007.


PETER D. MCDERMOTT
DISTRICT JUDGE

Copies to:

Nick Nielson
Paul D. McFarlane

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Plaintiff, and Plaintiff's causes of action are dismissed as against Defendants Portneuf Medical Center, Pat Hermanson, Pam Humphrey, Gary Alzola, Ron Fergie and Barry Nielson with prejudice.

IT IS FURTHER ORDERED that Defendants Portneuf Medical Center, Pat Hermanson, Pam Humphrey, Gary Alzola, Ron Fergie and Barry Nielson be awarded their costs and attorney's fees incurred in defending this action pursuant to Rule 54(d)(1), I.R.C.P., the amount of which will be determined following submission of an appropriate Memorandum of Costs as provided under Rule 54(d)(5), I.R.C.P.

DATED this 9 day of November, 2007.



Honorable Peter D. McDermott
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2007, I caused a true and correct copy of the foregoing **JUDGMENT** to be served by the method indicated below, and addressed to the following:

Nick L. Nielson
NIELSON LAW OFFICE
120 North 12th Avenue, Suite 7
Post Office Box 6159
Pocatello, Idaho 83205-6159
Facsimile (208) 232-0048

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

689
Patricia M. Olsson
Paul D. McFarlane
Moffatt, Thomas, Barrett, Rock & Fields
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, Idaho 83701
Facsimile (208) 345-2000

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Deputy Clerk

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BANNOCK COUNTY
CLERK OF THE COURT
2007 NOV 21 AM 4:43
BY NW
DEPUTY CLERK

Patricia M. Olsson, ISB No. 3055
Paul D. McFarlane, ISB No. 7093
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13-782.178

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program Director,
GARY ALZOLA, Director of Operations,
RON FERGIE, Chief Pilot/Safety Officer,
BARRY NIELSON, Pilot, and DOES I-X,

Defendants:

Case No. CV 2005-4053 OC

**DEFENDANTS' MEMORANDUM
OF COSTS AND FEES**

The Court having reached its decision in the above-captioned matter with the
issuance of its Judgment on November 9, 2007, and the defendants Portneuf Medical Center, Pat
Hermanson, Pam Humphrey, Gary Alzola, Ron Fergie, and Barry Nielson being the prevailing

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parties pursuant thereto, the defendants, by and through their counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chartered, respectfully request this Court award the following costs and attorneys fees to defendants pursuant to the Court's Memorandum Decision dated October 30, 2007, Rules 54(d)(1), 54(e), and Rule 68 of the Idaho Rules of Civil Procedure and Idaho Code Section 12-121. All costs as set forth herein are, to the best of undersigned counsel's knowledge, correct and in compliance with those I.R.C.P 54 (d)(1) and 54(e) and Idaho Code Section 12-121, as more fully set forth in the Affidavit of Paul D. McFarlane and attached exhibits filed under seal contemporaneously herewith.

BILL OF COSTS

A. COSTS AS A MATTER OF RIGHT, Rule 54(d)(1)(C)

1. Court Filing Fees:

Answer \$ 52.00

2. Witness Fees (\$20 per non-party witness)

Greg Vickers	\$ 20.00
Tom Mortimer	\$ 20.00
Lance Taysom	\$ 20.00
Audrey Fletcher	\$ 20.00
Mark Romero	\$ 20.00
Greg Stoltz	\$ 20.00
Chad Waller	\$ 20.00

Subtotal \$ 140.00

3. Charges for Reporting and Transcribing of a Deposition Taken in Preparation for Trial:

<u>Deponent</u>	<u>Cost</u>
Mark Van	\$ 3,273.59
Gary Alzola	\$ 483.63
Ron Fergie	\$ 281.55
Audrey Fletcher	\$ 228.58
Patrick Hermanson	\$ 154.35
Pam Humphrey	\$ 674.61

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Tom Mortimer	\$ 96.95
Barry Nielsen	\$ 163.76
Mark Romero	\$ 132.92
Greg Stoltz	\$ 145.35
Lance Taysom	\$ 162.39
Greg Vickers	\$ 72.00
Chad Waller	\$ 101.10

Subtotal \$ 6,096.60

Total Costs as a Matter of Right \$ 6,288.60

B. DISCRETIONARY COSTS, Rule 54(d)(1)(D)

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The following costs were necessary and exceptional costs reasonably incurred by the defendants in the defense of the causes of action set forth in the plaintiff's Complaint filed with this Court, communications with client, discovery, and trial. This request is supported by the Affidavit of Paul D. McFarlane in Support of Memorandum of Costs and Attorneys Fees filed contemporaneously herewith.

Expert Fees:

<u>Expert</u>	<u>Cost</u>
Bill Patterson	\$1,300.00
James Wisecup	\$ 900.00
Subtotal	<u>\$2,200.00</u>

B. Copy Charges:

In-house copies \$736.38

C. Long Distance Calls \$ 37.95

D. Travel:

Paul D. McFarlane \$2,672.73

E. Medical Records \$ 10.00

Total Discretionary Costs \$5,657.06

C. STATEMENT OF ATTORNEY FEES, Rule 54(e)(1)

Defendant requests the Court to award the following reasonable attorney fees, including paralegal fees, for legal services rendered by the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, which it necessarily incurred in the defense of this action, pursuant to the Court's Memorandum Decision dated October 30, 2007, Rules 54(d)(1) and 54(e) of the Idaho Rules of Civil Procedure and Idaho Code Section 12-121. This request is supported by the Affidavit of Paul D. McFarlane filed contemporaneously herewith (under seal), along with the attached Exhibit.

Total Attorney Fees	<u>\$106,167.00</u>
Total Costs as a Matter of Right, Discretionary Costs and Attorney Fees	<u>\$118,112.66</u>

DATED this 21st day of November, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

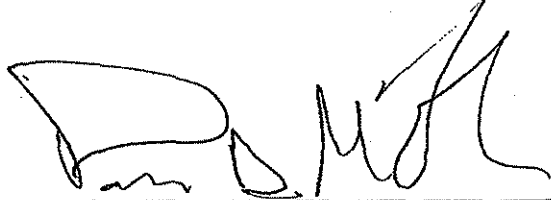
Paul D. McFarlane -- Of the Firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2007, I caused a true and correct copy of the foregoing **DEFENDANTS' MEMORANDUM OF COSTS AND FEES** to be served by the method indicated below, and addressed to the following:

Nick L. Nielson
NIELSON LAW OFFICE
120 North 12th Avenue, Suite 7
Post Office Box 6159
Pocatello, Idaho 83205-6159
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- Hand Delivered
- Overnight Mail
- Facsimile



Paul D. McFarlane

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il-21-07

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13-782.178

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Attorneys for Defendants

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MARK VAN,

Plaintiff,

vs.

PORTNEUF MEDICAL CENTER, PAT
HERMANSON, Hospital Administrator,
PAM HUMPHREY, EMS Program Director,
GARY ALZOLA, Director of Operations,
RON FERGIE, Chief Pilot/Safety Officer,
BARRY NIELSON, Pilot, and DOES I-X,

Defendants.

Case No. CV 2005-4053 OC

**AFFIDAVIT OF PAUL D. McFARLANE
IN SUPPORT OF DEFENDANTS'
MEMORANDUM OF COSTS
AND FEES**

[FILED UNDER SEAL]

**AFFIDAVIT OF PAUL D. McFARLANE IN SUPPORT OF DEFENDANTS'
MEMORANDUM OF COSTS AND FEES- 1**

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STATE OF IDAHO)
) ss.
County of Ada)

PAUL D. McFARLANE, being first duly sworn on oath, deposes and says as follows.

1. I am one of the attorneys of record providing legal representation to defendants Portneuf Medical Center, Pat Hermanson, Pam Humphrey, Gary Alzola, Ron Fergie and Barry Nielson (together, "PMC") in the above-captioned matter. I have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.

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2. I am an attorney at the Law Firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered, and am engaged in the general practice of law in Idaho. As such, I am acquainted with the costs and fees generally incurred by attorneys defending civil cases in the State of Idaho. I am personally aware of the professional services rendered in this action, the costs incurred in preparing the prosecution of this case and the amount of time expended by attorneys and paralegals of this firm in the defense of the claims brought by Mark Van ("Van").

3. The fee arrangement with our client for attorney fees was based on an hourly rate for services rendered, taking into account the service rendered, the expertise of the attorneys involved, and the time spent in completing each task.

4. PMC is the prevailing party in this matter, in light of this Court's Memorandum Decision, Order and Judgment, entered on October 30, 2007. Despite the overwhelming lack of evidence supporting plaintiff's contentions, including hundreds of documents produced and the deposition testimony of 12 separate witnesses, the plaintiff chose to ignore the facts before him, thereby prosecuting the action against PMC frivolously,

unreasonably, and without foundation. Such actions by the plaintiff caused the PMC to incur many thousands of dollars to defend this action against the plaintiff's unreasonable claims.

5. The total amount of attorney fees incurred by Plaintiff for professional services rendered by Moffatt, Thomas, Barrett, Rock & Fields, Chartered, in this proceeding amount to a total of \$106,167.00. Such fees were necessarily incurred in defending against Plaintiff's claims for reasonable professional services including, without limitation, drafting pleadings, briefing, legal and factual research, witness investigation, client communication, propounding and responding to numerous and repetitive discovery requests, defending over ten depositions of PMC personnel, summary judgment briefing and hearings, and trial preparation.

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6. The total amount of attorneys fees incurred by PMC for professional services rendered by Moffatt, Thomas, Barrett, Rock & Fields, Chartered, in this proceeding through October 30, 2007, when the Court granted PMC's motion for summary judgment, is \$106,167.00. This total is broken down by timekeeper, hourly rate and hours expended. A summary of timekeepers, their rates and hours is attached to my affidavit as Exhibit A, at the beginning of the billings.

The attorney's fees do not include any attorneys fees rendered for legal services post issuance of the Court's Memorandum Decision granting summary judgment and awarding costs and fees, dated October 30, 2007. Furthermore, the above total does not include fees incurred in the defense of Van's OSHA complaint and appeal, which plaintiff pursued simultaneously with this action. I have carefully analyzed all time and cost entries, and have withdrawn all time and cost entries that reflect OSHA-related work. A few time entries reflect time spent on both the OSHA and State Court matters. I have reduced those time entries by fifty

percent, in order to split those time entries fairly between the OSHA matter and the state court action.

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Some of the photocopies and long distance telephone calls were made in furtherance of the OSHA action. It is impossible separate out the precise number of photocopies, and which telephone calls, for each action. Therefore, in order to determine a reasonable solution, I have determined the ratio of attorney fees allocated to each action, and then assigned that same proportion to imaging costs and attorneys fees. The overall attorneys fees for both actions was \$154,537.00. Sixty-nine percent (69%) of attorneys' fees were incurred in the defense of the state court actions. Thirty-one percent (31%) of attorneys' fees were incurred in defending the OSHA action. Therefore, PMC seeks recovery of the 69% percent of the overall cost of photocopies and long distance telephone calls that are allocated to the state court action. The memorandum of costs lists the 69% figures for copies and long distance.

Because of the volume of research and briefing that were required at various times in the case, it was necessary to involve several other associates in these aspects of the litigation. The amount of attorneys fees actually incurred would have been a substantially lesser amount had Plaintiff not insisted on pursuing claims, including propounding numerous sets of written discovery and noticing eleven depositions, that were eventually dismissed by the Court following PMC's motion for summary judgment.

7. Attached as Exhibit A to my Affidavit is a true and correct copy of a summary and the billing report, redacted for entries protected by the attorney-client privilege, that encapsulates billings that have been and will be sent to PMC in this matter. The report contains time entries and services descriptions identical to PMC's billings. Attached as Exhibit

B to my Affidavit is a true and correct copy of a cost summary and report, that encapsulates costs that have been and will be sent to PMC in this matter.

8. Regarding Plaintiff's discretionary costs, the Plaintiff requests this Court award such discretionary costs in the amount of \$5,657.06 based on the following:

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(a) Expert Fees. PMC incurred a total of \$1,300.00 for the expert services of Bill Patterson that should be awarded to PMC as discretionary costs. Under the criteria of Rule 54(d)(1)(D), these reasonable costs were both necessary and exceptional. Bill Patterson is the director of the St. Alphonsus Hospital LifeFlight program in Boise, Idaho, who has numerous years of experience as a LifeFlight program director and helicopter mechanic. Mr. Patterson was hired to evaluate the plaintiff's claims and allegations of wrongdoing against PMC, and to provide expert testimony to the Court if necessary. Such costs of Mr. Patterson's expert opinions were necessary to defend and refute plaintiff's damages claims and were exceptional because of the thoroughness of his evaluations.

PMC also incurred a total of \$900.00 for the expert services of James Wisecup that should be awarded to PMC as discretionary costs. These reasonable costs were also both necessary and exceptional under the criteria of Rule 54(d)(1)(D). Mr. Wisecup is the Base Manager for Air Methods at the University of Utah. He has extensive experience as helicopter pilot and LifeFlight operations. Mr. Wisecup was hired to defend the wrongful termination claims brought by plaintiff, evaluate his allegations of wrongdoing against PMC, and to provide expert testimony to the Court if necessary. Such costs of Mr. Wisecup's expert opinions were necessary to defend and refute plaintiff's claims and were exceptional because of the

completeness of his analysis, which was performed after reviewing hundreds of pages of documents.

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(b) Copy Charges. PMC incurred a total of \$1,067.22 for copying costs associated with all of the litigation, including the OSHA administrative action and the instant state court action. Based upon the percentage of attorneys fees previously discussed, PMC is entitled to 69% percent of this total, \$736.88. Under the criteria of Rule 54(d)(1)(D), these reasonable costs were both necessary and exceptional, given the volume of documents and paper that was exchanged with counsel for the plaintiff. The copying costs were mostly handled in-house at a reduced rate. Plaintiff requested well over a thousand documents, and plaintiff served numerous and duplicative sets of discovery on PMC. Under the criteria of Rule 54(d)(1)(D), these reasonable costs were both necessary and exceptional. All copying/imaging costs were handled in-house at a reduced rate.

(c) Long Distance Calls. PMC incurred a total of \$55.00 for long distance telephone costs associated with all of the litigation, including the OSHA administrative action and the instant state court action. Based upon the percentage of attorneys fees previously discussed, PMC is entitled to 69% percent of this total, \$37.95. Under the criteria of Rule 54(d)(1)(D), these reasonable costs were both necessary and exceptional.

(d) Travel. PMC incurred a total of \$2,672.73 in travel expenses to Pocatello, to take the plaintiff's deposition and defend the depositions of Gary Alzola, Ron Fergie, Audrey Fletcher, Patrick Hermanson, Pam Holmes, Tom Mortimer, Barry Nielsen, Mark Romero, Greg Stoltz, Lance Taysom, Greg Vickers, and Chad Waller. PMC's counsel had to return to Pocatello to continue the deposition of Pam Holmes after the initial deposition was curtailed at

plaintiff's counsel's request. Furthermore, defense counsel traveled to Pocatello to oppose plaintiff's motion for reconsideration, and argue defendants' summary judgment motion. These costs include mileage; airfare, hotel, meals, car rental, and airport parking. These costs were likewise necessary and exceptional, as plaintiff noticed 13 of the 14 depositions in this case, none of which advanced his case or developed facts significantly favorable to the prosecution of his case. As such, these expenses were both necessary and exceptional under Rule 54(d)(1)(D).

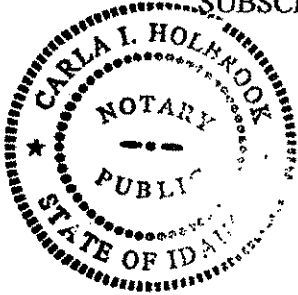
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(e) Medical Records. PMC incurred \$10.00 in expenses to obtain plaintiff's mental health records. Because plaintiff claimed damages for emotional distress, PMC found it necessary to obtain plaintiff's mental health medical records directly from the providers. Under the criteria of Rule 54(d)(1)(D), these reasonable costs were both necessary and exceptional.


Further your affiant sayeth naught.



Paul D. McFarlane

SUBSCRIBED AND SWORN to before me this 21st day of November, 2007.





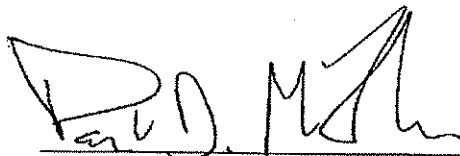
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 11-23-2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2007, I caused a true and correct copy of the foregoing **AFFIDAVIT OF PAUL D. McFARLANE IN SUPPORT OF DEFENDANTS' MEMORANDUM OF COSTS AND FEES** to be served by the method indicated below, and addressed to the following:

Nick L. Nielson
NIELSON LAW OFFICE
120 North 12th Avenue, Suite 7
Post Office Box 6159
Pocatello, Idaho 83205-6159
Facsimile (208) 232-0048

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Paul D. McFarlane

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