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1 P R O C E E D I N G S

2 JUDGE RENDAHL: Good morning, we're here  
3 before the Washington Utilities and Transportation  
4 Commission this morning, Monday, June 21st, 2004, to  
5 begin a hearing in Docket Number TS-040650, captioned In  
6 re Application Number B-079273 of Aqua Express, LLC, for  
7 a Certificate of Public Convenience and Necessity to  
8 Provide Commercial Ferry Service. I'm Ann Rendahl, the  
9 Administrative Law Judge presiding over this hearing  
10 with Chairwoman Marilyn Showalter and Commissioners  
11 Richard Hemstad and Patrick Oshie.

12 The focus of our hearing is whether the  
13 service proposed by the applicant Aqua Express is  
14 required by the public convenience and necessity and to  
15 consider other statutory requirements in Chapter 81.84  
16 RCW.

17 After we take the appearances of the parties,  
18 we'll address several administrative details and then  
19 begin the testimony of the applicant's first witness.  
20 Let's take appearances from the parties. All of you  
21 have previously made appearances in this proceeding, so  
22 please just state your name and the party you represent  
23 for the record. Let's begin with the applicant.

24 MR. WILEY: Thank you, Your Honor, David W.  
25 Wiley appearing for the applicant, Aqua Express, LLC.

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1 If I could also, I would like to introduce a Rule 9  
2 intern from my office, Joe Corr, who is attending his  
3 first administrative hearing today.

4 JUDGE RENDAHL: Thank you, welcome. And  
5 could you spell his last name for the record, please.

6 MR. WILEY: C-O-R-R.

7 JUDGE RENDAHL: Thank you.

8 And for the Inlandboatmens' Union, please.

9 MR. IGLITZIN: Dmitri Iglitzin, Schwerin  
10 Campbell Barnard, representing the protestant  
11 Inlandboatmens' Union of the Pacific.

12 JUDGE RENDAHL: Thank you. And just to  
13 remind you, you need to speak into the microphones.  
14 Remember if the button is up, it's on, and down it's  
15 off.

16 COMMISSIONER HEMSTAD: And I don't believe  
17 you need to stand to speak in the mike just for  
18 convenience.

19 JUDGE RENDAHL: For Kitsap Transit.

20 MR. SELLS: James Sells appearing on behalf  
21 of intervenor Kitsap Transit.

22 JUDGE RENDAHL: Thank you.

23 For Staff.

24 MR. TROTTER: Donald T. Trotter, Assistant  
25 Attorney General.

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1 JUDGE RENDAHL: Thank you.

2 Although we did address this off the record,  
3 are there any preliminary issues we need to discuss this  
4 morning that we haven't discussed off the record?

5 Okay, in terms of exhibits, I did circulate a  
6 proposed exhibit list that premarked some of the  
7 exhibits or all of the exhibits that the parties  
8 provided in advance of the hearing, and we'll use this  
9 exhibit list unless you have objections.

10 I also distributed an agenda for the hearing,  
11 which indicates an estimated schedule for the hearings  
12 today and tomorrow. It does provide for a kind of a  
13 worse case scenario, so we may be able to be more  
14 efficient than the agenda states. And the breaks will  
15 be generally at that time, but wherever it works best.

16 And finally, if you all would please turn off  
17 your cell phones and refrain from holding side  
18 conversations during hearings so that we can keep noise  
19 in the hearing room to a minimum, that would be  
20 appreciated. Thank you.

21 Is there anything further before we start  
22 with the applicant's first witness?

23 Okay, Mr. Wiley, would you call your first  
24 witness, please.

25 MR. WILEY: Yes, Your Honor, I call Darrell

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1 Bryan to the stand, please.

2 JUDGE RENDAHL: Good morning, Mr. Bryan.

3 THE WITNESS: Good morning.

4 JUDGE RENDAHL: Would you please state your  
5 full name and address, and spell any words or names that  
6 may not be common.

7 THE WITNESS: My name is Darrell E. Bryan,  
8 that's D-A-R-R-E-L-L, Bryan, B-R-Y-A-N, and my address,  
9 my home address, is 3925 - 97th Avenue, Mercer Island,  
10 98040.

11 JUDGE RENDAHL: Thank you very much. Please  
12 rise and raise your right hand.

13 (Witness Darrell Bryan was sworn.)

14 JUDGE RENDAHL: Okay, you may proceed.

15 THE WITNESS: Thank you.

16 MR. WILEY: Thank you.

17

18 (The following exhibits were identified in  
19 conjunction with the testimony of DARRELL  
20 BRYAN.)

21 Exhibit 1 - Darrell Bryan CV.

22 Exhibit 2 - Description of Aqua Express  
23 Partners.

24 Exhibit 3 - Boat Illustration.

25 Exhibit 4 - Map of Proposed Route.

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1                   Exhibit 5 - Certificate of Inspection USCG.

2                   Exhibit 6 - Proposed Time Schedule.

3                   Exhibit 7 - Proposed Tariff.

4                   Exhibit 8 - Dock Lease Arrangement with

5                   Argosy.

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1 Whereupon,

2 DARRELL BRYAN,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILEY:

7 Q. Mr. Bryan, could you also give us your

8 current business address for the record, please.

9 A. Current business address is 2701 Alaskan Way,  
10 Seattle 98121.

11 Q. Thank you. By whom are you employed?

12 A. Clipper Navigation, Inc.

13 Q. And what is Clipper Navigation, Inc. just  
14 briefly?

15 A. Clipper Navigation operates the Victoria  
16 Clipper vessels that operate between Seattle and  
17 Victoria and also has another entity, San Juan Express,  
18 Inc., which operates service between Seattle and Friday  
19 Harbor as certificate Seattle/Friday Harbor as well as  
20 Friday Harbor/Port Townsend.

21 Q. Thank you. What relation does Clipper  
22 Navigation have to the applicant Aqua Express?

23 A. Clipper is one of four partners in the entity  
24 Aqua Express, LLC.

25 Q. And are you indicated on an exhibit that you

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1 caused to be prepared for admission into the record of  
2 this proceeding?

3 A. Yes, I am.

4 Q. And that would be the exhibit -- do you have  
5 a copy of the exhibits?

6 A. Mine is all marked up.

7 Q. Okay. Calling your attention to the exhibit  
8 that's been previously identified as the first exhibit  
9 in line.

10 A. Yes, sir.

11 Q. Would you please state what those two pages  
12 show?

13 A. The first page --

14 JUDGE RENDAHL: Please hold on. The first  
15 exhibit, if you can, do you have a copy of the exhibit  
16 list that was circulated?

17 THE WITNESS: No, ma'am, I do not.

18 JUDGE RENDAHL: I will hand you mine.

19 THE WITNESS: Thank you.

20 JUDGE RENDAHL: And that will show you what  
21 number your exhibits have been assigned.

22 So, Mr. Wiley, if you could refer to the  
23 number in the exhibit list, that would be useful.

24 MR. WILEY: Sure, thank you.

25 BY MR. WILEY:

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1 Q. Exhibit 1, Mr. Bryan, just generally what  
2 does that show?

3 A. That shows my professional job history as  
4 well as professional associations that I have been  
5 affiliated with, various organizations that I have been  
6 involved with, as well as my educational background.

7 Q. And the Aqua Express members page of Exhibit  
8 1 is to show what, please?

9 JUDGE RENDAHL: Actually, I think that's been  
10 marked as Exhibit 2. I separated them.

11 MR. WILEY: Oh, okay, I'm sorry.

12 BY MR. WILEY:

13 Q. Mr. Bryan, she has separated the two  
14 exhibits, so if you would tell us what that is, please.

15 MR. IGLITZIN: I'm sorry, my copy of the  
16 exhibit list does not appear to have Exhibit 2.

17 Pardon me, it's in front of Exhibit 1.

18 JUDGE RENDAHL: When you need to speak,  
19 you'll need to press the button up.

20 Let's be off the record for a moment.

21 (Discussion off the record.)

22 BY MR. WILEY:

23 Q. Mr. Bryan, I believe I was asking you about  
24 Exhibit 2, what that just was prepared to show.

25 A. Yes, sir, that shows the four partners in

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1 Aqua Express, LLC, and those companies being Argosy  
2 Cruises, Clipper Navigation, Four Seasons Marine  
3 Services, and Nichols Brothers Boat Builders.

4 Q. And generally could you just briefly  
5 characterize the experience of those partners or those  
6 members --

7 A. Yes, sir.

8 Q. -- in the industry.

9 A. Thank you. Argosy Cruises has been providing  
10 service in Seattle for 55 years. Nichols Brothers  
11 Boatyard has been building boats in either Hood River,  
12 Oregon, or in Whidbey Island for 65 years. Four Seasons  
13 Marine has been operating since 1990. And Clipper  
14 Navigation has been operating vessels for 18 plus years.

15 Q. For instance, Clipper Navigation, how much --  
16 what is that relative experience in terms of commercial  
17 passenger ferries?

18 A. Clipper Navigation is the second most tenured  
19 high speed ferry operator in North America. The only  
20 company with more experience is Catalina Cruises in  
21 Southern California. They operate between Long Beach  
22 and Catalina Island. So we have been around. In fact,  
23 our history predates the establishment of criteria for  
24 high speed catamarans by the Coast Guard.

25 Q. Can you just generally explain the genesis

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1 for the creation of Aqua Express and what it was formed  
2 in response to, please.

3 A. Yes, sir. Clipper Navigation has had an  
4 interest in service between Seattle and Kingston since  
5 1992. In fact, Clipper's interest predates that of the  
6 three partners. In 1993 Clipper Navigation and Puget  
7 Sound Express filed for a transfer of the Port Townsend  
8 to Kingston certificate, and unfortunately that  
9 certificate because of technical errors on the part of  
10 Puget Sound Express and Clipper Navigation, that  
11 certificate was revoked. Clipper chose not to challenge  
12 that decision on the basis of a number of things but  
13 probably most notably was that Clipper was not prepared  
14 to provide immediate service between Seattle and  
15 Kingston, and that certificate was Port Townsend to  
16 Kingston to Seattle. Two is the cost of the hearing  
17 that we had gone through, which was a contentious and  
18 adversarial hearing with Puget Sound Express, had cost  
19 quite a bit more money than we had anticipated. And  
20 three, news came out that Washington State Ferries had  
21 an interest in providing service between Seattle and  
22 Kingston.

23 Q. If I can interrupt you, this was in the mid  
24 1990's was it that you're referring to about news coming  
25 out?

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1           A.     1993 was the first news, and so we stepped  
2 back, and in 1996 Clipper filed an application to  
3 provide service Seattle to Kingston. And in 1997,  
4 February, the Commission under SBC Order Number 533  
5 deferred. And that was a pretty involved case because  
6 Horlock Transportation was involved, but the part that  
7 was germane to us was that a decision was deferred for  
8 three years, and we were ordered to on the anniversary  
9 date of that decision to provide a status report. So in  
10 1998 and '99 and 2000, Clipper wrote to Mr. Paul Curl  
11 indicating the status, and that was that we were still  
12 awaiting a decision on the part of Washington State  
13 Ferries and implementation of the service.

14           Q.     In other words, you forbore in following  
15 through on the certificate proceeding or certificate  
16 implementation until the ferry system operated?

17           A.     Yes, sir, that's correct. We had taken a  
18 position that the best provider of cross sound service  
19 would, in fact, be the Washington State Ferries, and we  
20 have continued that up until the point when Kitsap  
21 Transit was going to go forward. When the voters  
22 decided in their infinite wisdom with the R51 and 695  
23 not to support funding, the -- well, I won't go into  
24 those details, you all probably know them better than I,  
25 but that the State Ferries could not go forward with

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1 passenger only and Kitsap Transit then wanted to provide  
2 service based on a sales tax increase, we supported  
3 Kitsap Transit. And it was only after it was clear that  
4 neither entity would be able to provide the service that  
5 we decided to get involved.

6           And the we, the four companies, were all very  
7 close friends, had been working together for a very long  
8 time. In fact, John Blackman from Argosy and I had been  
9 interviewed over the years on radio and so on about the  
10 use of ferries for commuter service and the  
11 establishment and the development of the marine highway  
12 system. So we have been long time advocates for use of  
13 the waterways. But, of course, our vision had been for  
14 a public entity to do that at the time, and when Kitsap  
15 Transit was unfortunately not supported by the voters,  
16 we decided that it was time for the private sector to  
17 step in.

18           Q.     When was that referendum or the vote for  
19 Kitsap Transit that you're referring to?

20           A.     That was a year, let's see, last year, 2003.

21           Q.     During the last decade, have you in your  
22 capacity with Clipper Navigation or in any other  
23 capacity conducted any informal surveys of the market?

24           A.     We have conducted three surveys, and they  
25 were surveys that Clipper had done, the most recent

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1 being 2004, the one prior to that was 2000, where we  
2 were trying to determine demand and price sensitivity  
3 and how people that currently or at those times  
4 transitted between Kingston and Seattle.

5 Q. And was there -- were those informal surveys  
6 of riders, prospective riders?

7 A. Yes, sir, we did not use an outside research  
8 company.

9 Q. And what did they, just briefly, what did  
10 they consist of in terms of how you surveyed the market?

11 A. We, in 2000, we actually handed out surveys  
12 on Washington State Ferry property to ferry riders going  
13 from Edmonds, or excuse me, Kingston to Edmonds and also  
14 from Bainbridge to Seattle. 2004 we asked Mr. Thorne,  
15 Washington State Ferries, about doing the same thing,  
16 and it wasn't felt that it would be appropriate at that  
17 time, that it might be a contentious issue, so we used  
18 the Chamber of Commerce in Kingston, a number of  
19 outlets. We had information that was put out through  
20 several of the newspapers over in Kitsap Peninsula  
21 advising people, and we distributed them throughout the  
22 community in Kingston, and they were self addressed.  
23 And one of the things we required on both the 2000 and  
24 2004 surveys was the only way we would tabulate them was  
25 if there was a name, address, and phone number

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1 available.

2 Q. Without getting into the substantive content  
3 of those surveys, as a result of those surveys what did  
4 you as Aqua Express determine to do?

5 A. That there was a market for the service  
6 between Kingston and Seattle, and it -- at the time that  
7 we did the 2004, we had not -- well, excuse me. 2004 we  
8 had wanted to see if the presumptions we had made in  
9 2000 were still accurate and if people were still  
10 interested in a direct service from Kingston to Seattle.

11 Q. Did anything in the 2003 legislative session  
12 increase your interest or heighten the issue in the  
13 minds of Aqua Express?

14 A. Well, a number of things. 2003 wherein  
15 changes to the law about the ten mile rule, one of --  
16 really I think it can be said that when it became clear  
17 to us that the Washington State Ferry System was not  
18 going to be stepping in to the passenger only service  
19 and that Kitsap Transit, which was really the only, as I  
20 used to refer, was the only white night available from  
21 the public sector, when that was not available, it  
22 became clear to us that if there's going to be service  
23 any time soon between those two communities, it was  
24 going to take a private sector initiative.

25 Q. When you reached that determination, what was

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1 the next step in terms of identifying equipment, vessels  
2 to perform the service, et cetera?

3 A. Things came together pretty quickly as a  
4 matter of fact when we learned that the Tyee catamaran  
5 built by Nichols Brothers in I believe 1985 was being  
6 sold on eBay, we -- that's what was the catalyst for the  
7 formation or formalizing the partnership. Because we,  
8 although we did not buy it on eBay, we bought it from a  
9 broker who had the sense to buy it on eBay, and we  
10 bought it from him for \$150,000 more than he purchased  
11 it for, but we quite frankly got a very good deal on it,  
12 which enabled us from a pricing mechanism, having a good  
13 enough price on that vessel so that we could come up  
14 with affordable ticket price, and so everything moved  
15 very quickly. We actually bought the boat, the four of  
16 us, then we formed Aqua Express, LLC, but it was all  
17 coming together very, very quickly, and that was -- the  
18 boat was purchased late 2003, and the LLC was created  
19 early 2004.

20 Q. Mr. Bryan, calling your attention to Exhibit  
21 3 that's been previously marked as Exhibit 3, we have  
22 kind of a grainy rendition of something, would you tell  
23 us what that is, please.

24 A. That is the vessel formerly known as the Tyee  
25 and the Tyee and currently renamed to Aqua Express.

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1 Q. And is that a catamaran vessel, or what kind  
2 of vessel is it, please?

3 A. That is a Nichols Brothers Boatyard built  
4 catamaran.

5 Q. And we have a smaller color picture of that  
6 vessel in the hearing room, do we not, today?

7 A. Yes, we do.

8 Q. And how long a vessel is that?

9 A. That vessel, I have to quite frankly look at  
10 the COI because --

11 JUDGE RENDAHL: When you say COI, what do you  
12 mean?

13 A. Oh, I'm sorry, the certificate of inspection  
14 which is performed by the Coast Guard.

15 Q. And you're skipping to Exhibit 5, are you?

16 A. That's correct, and I apologize for --

17 Q. I think the exhibit will speak for itself,  
18 Mr. Bryan, I just wanted to get some idea of the  
19 specifications of the vessel just in terms of its  
20 passenger carrying characteristics, et cetera.

21 A. Yes, sir. And, in fact, on the face of the  
22 certificate it shows the gross tonnage as well as the  
23 length, 86.5 feet overall.

24 Q. Thank you. And Exhibit 5, what's the  
25 certificate of inspection for the Commission, please?

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1           A.     Thank you.  That is what authorizes you to  
2  sail.  If you're carrying passengers, you can not sail  
3  or operate without a certificate of inspection being  
4  conducted and signed off by the Coast Guard.

5           Q.     So anyone who performs passenger  
6  transportation on the water must have a certificate of  
7  inspection; is that correct?

8           A.     That's correct.

9                    JUDGE RENDAHL:  Mr. Wiley and Mr. Bryan, you  
10  need to be careful not to speak over one another.

11                   THE WITNESS:  I apologize.

12                   JUDGE RENDAHL:  Mr. Bryan, if you just wait  
13  for a minute after Mr. Wiley is finished, then that will  
14  work, thank you.

15                   THE WITNESS:  Thank you.

16  BY MR. WILEY:

17           Q.     In addition to the acquisition of the vessel,  
18  did you also find a route that you wanted to propose  
19  service for?

20           A.     Yes, in fact Seattle to Kingston.

21           Q.     And you intend a round trip route, is that  
22  true, it's not just a one way?

23           A.     That's correct, although people over on  
24  Kitsap Peninsula are interested in going Kingston to  
25  Seattle for commute purposes, these vessels have -- it's

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1 not a unique capability, they can do round trips, and so  
2 we're looking to also generate business from Seattle to  
3 Kingston. And, of course, they need that for the return  
4 segment of their trip.

5 Q. What has Aqua Express done with respect to  
6 proposing a time schedule that you would provide service  
7 to commuters and other commercial ferry riders for?

8 A. It is our intention to operate morning  
9 departures from originating Kingston, round trips from  
10 Kingston to Seattle in the morning, and then also in the  
11 late afternoon with the afternoon departures commencing  
12 from Seattle, and it is really geared towards the  
13 commuter traffic.

14 Q. Calling your attention to Exhibit 6 that's  
15 been pre-identified as Exhibit 6, is this, in fact, the  
16 schedule that you're proposing?

17 A. Yes, sir, that's correct.

18 Q. And is the service, if this application is  
19 granted, is the service set to begin September 13, or is  
20 that date slightly pushed now?

21 A. That was a best case date. Right now we're  
22 anticipating the 1st of October subject to approvals but  
23 looking to start the first part of October.

24 Q. In looking at Exhibit 6, is there any science  
25 or goal that is being served in terms of how you group

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1 departures or sailings, are you looking at a particular  
2 market; can you just elaborate a little bit on that?

3 A. The largest market will be Kingston to  
4 Seattle for folks over on the peninsula. What we have  
5 determined is with the housing prices, Kitsap Peninsula  
6 being significantly lower than King County, there are a  
7 lot of people living over there that want to have direct  
8 easy access to downtown Seattle. Our surveys indicated  
9 that the bulk, the largest segment of people are going  
10 to downtown Seattle and that this will cut off a  
11 significant transit time for them. What we found are  
12 many of those people are having to battle traffic on 305  
13 to Bainbridge or when they get to Edmonds are in that  
14 gridlock in the morning going down I-5. So that's what  
15 we're really geared towards, and hopefully what we will  
16 also be able to do is to develop the market going west  
17 as well as that preponderance of commuters going from  
18 Kitsap to Seattle.

19 Q. Looking at Exhibit 4, the map of that  
20 proposed service, despite what at least a segment of the  
21 Commission Web site said about the location of Kingston,  
22 could you identify where Kingston is, please. It's not  
23 on Bainbridge Island, is it?

24 A. No, it is not. It's 15.8 miles from Seattle.  
25 And as you pointed out, the map, the proposed map, shows

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1 the routing going from Seattle through Elliott Bay into  
2 the main traffic lanes to Kingston.

3 Q. And do you hope to draw commuters, you have  
4 talked about the economic base in Seattle and the  
5 residents in the Kingston area, do you hope to draw  
6 commuters to this passenger only ferry from Kitsap,  
7 North Kitsap County in general?

8 A. Yes. In fact, we have talked to people as  
9 far north as Sequim and Port Townsend that currently  
10 drive to Bainbridge that are interested in service from  
11 Kingston where they can leave their car or take  
12 Jefferson Transit down to Kingston and make the  
13 connection. One of the things about what we're doing  
14 that is so important is our relationship with Kitsap  
15 Transit. Kitsap Transit has been very helpful in terms  
16 of schedules, indication that they will work their  
17 schedules to meet the departing vessel and the arriving  
18 vessel, and also working with Jefferson Transit to make  
19 it much more convenient for the traveling public for  
20 that interconnectivity.

21 Q. And Kitsap Transit will be here to testify in  
22 this proceeding.

23 A. Yes, sir.

24 Q. Mr. Bryan, also I want to talk with respect  
25 to the service you're proposing to provide, would you

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1 please identify Exhibit 7 and tell us what that is.

2 A. Exhibit 7 is our proposed tariff, which again  
3 shows fares beginning September 13, would be the 1st of  
4 October, and what we have shown here are the one way and  
5 round trip prices. And you will also note that there is  
6 no discounting for age on those passengers, because  
7 we're looking at commuters, a high demand portion, and  
8 so it will be what we believe predominantly adults,  
9 folks that are characterized as adults.

10 Q. I do note that infants one or under are free;  
11 is that correct?

12 A. That's correct.

13 Q. And you also proposed to take bicycles as at  
14 least in terms of establishing a rate that's subject to  
15 Commission approval; tell us a little bit about why  
16 bicycles might be relevant.

17 A. There are a large number of folks that like  
18 to use their bicycles particularly upon arrival in  
19 Seattle, and one of the things frankly we're doing we  
20 want to have that as an option, to take their bicycles,  
21 but we're also working with Kitsap Transit to use  
22 bicycle containers where people can leave their bikes  
23 either at Kingston if they wish if they're riding their  
24 bikes to the Kingston dock or to leave their bicycles in  
25 Seattle, but that is a important part of the commuter

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1 market. And I think if you see the State Ferries at  
2 Colman Dock, you will see the number of people that get  
3 off with their bicycles.

4 Q. And your understanding is we're going to have  
5 some prospective riders who can talk about the bicycle  
6 issue?

7 A. That's correct, yes, sir.

8 Q. Mr. Bryan, what has Aqua Express done with  
9 respect to docking arrangements in general, please?

10 A. On the Seattle side it is our intention to  
11 use Argosy's dock at Pier 56. They have docks I believe  
12 it's from Pier 54 to Pier 57 but use Pier 56 as the  
13 primary dock for arrivals and departures. And in  
14 Kingston we are working with the Port of Kingston to  
15 have a dock that is owned and operated by the Port of  
16 Kingston for service.

17 Q. And have you, has Aqua Express received an  
18 indication from one of its partners as to the economics  
19 of the docking arrangement in Seattle?

20 A. We have, yes.

21 Q. And calling your attention to the exhibit  
22 that's been pre-identified as Exhibit 8, will you tell  
23 us what that is, please.

24 A. This is a letter indicating the willingness  
25 to allow docking at \$200 per day for the use of Pier 56

0086

1 to dock on the Seattle side.

2 Q. And I note that there is a last sentence  
3 about labor disruptions and contingencies involving  
4 labor disruptions, does Aqua Express have a contingency  
5 plan if in the unlikely event that should occur at the  
6 Argosy docks?

7 A. Yes, sir, in the unlikely event that that  
8 would occur, Clipper Navigation has a dock at Pier 69,  
9 actually we have three docks at that location where that  
10 vessel can arrive and depart.

11 Q. And if that should be the case, would you  
12 propose to submit the terms of that transaction in terms  
13 of the costs that would be charged Aqua Express, Inc.,  
14 to the Commission for review and approval?

15 A. Yes, sir.

16 Q. Could you tell us just a little bit more  
17 briefly before Mr. Hayes' testimony, we would like to  
18 hear from you about what role Kitsap Transit is set to  
19 play in terms of the linkage with the passenger only  
20 ferry that Aqua Express will operate and the ground  
21 arrangements that Kitsap Transit would propose to  
22 provide.

23 A. I'm pleased that the first discussion that  
24 Clipper had with Kitsap Transit dates back to 1993, and  
25 the two individuals that we spoke to at the time are

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1 still at Kitsap Transit, Mr. Clauson and Mr. Hayes.

2 JUDGE RENDAHL: Sorry, could you spell the  
3 name Clauson.

4 THE WITNESS: C-L-A-U-S-O-N, and I use the  
5 last name because I can't remember the first name.

6 JUDGE RENDAHL: That's fine.

7 THE WITNESS: Thank you.

8 A. The enthusiasm they had in 1993 is no less  
9 today. In 1993, Mr. Hayes indicated that part of the  
10 reason for their support was it meant greater  
11 utilization of their equipment with fewer road miles to  
12 provide service into Kingston. And they were willing to  
13 set schedules to assist supporting the service at that  
14 time, and today as I say they're no less interested in  
15 being of assistance.

16 And, of course, the legislation that came out  
17 2003 made it necessary for us to work through Kitsap  
18 Transit, and although we would have anyway because they  
19 are integral to our success in providing the service.  
20 They have access to remote parking. Their ability --  
21 because as much parking as there is in the immediate  
22 area, it's insufficient for the numbers of people that  
23 we're going to carry. So we have been very involved in  
24 setting -- discussing schedules, discussing the land  
25 side, the upland side of the transportation solution,

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1 and we also worked through them for a number of months  
2 to develop a working relationship consistent with the  
3 goals of the 2003 legislation.

4 BY MR. WILEY:

5 Q. Mr. Bryan, if this application is granted,  
6 would Aqua Express intend to conduct its operations in  
7 compliance with Commission law and rule?

8 A. Yes, sir.

9 Q. Has Aqua Express or any of its members to  
10 your knowledge ever been cited by the Commission for  
11 violation of laws and rules?

12 A. No, sir.

13 Q. You mentioned enthusiasm with respect to  
14 Kitsap Transit, can you just summarize as to why you  
15 appear to have the same sort of enthusiasm about this  
16 proposal?

17 A. Well, it's been a long time coming. We have  
18 been interested for a very, very long time, one, as an  
19 individual, two, as an independent company Clipper, but  
20 the other partners of this entity, Aqua Express, share  
21 the same enthusiasm. We have spent a lot of time  
22 planning, we all are members of the Passenger Vessel  
23 Association. That's a trade association that represents  
24 passenger vessel operations in North America, and I'm  
25 the former president of that organization and have

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1 worked on a number of issues. As you may know or may  
2 not know, while I was president of the Passenger Vessel  
3 Association I authorized the filing of an amicus brief  
4 in support of Washington State Ferries on the Rich  
5 Passage issue. Also we work with Argosy on looking at  
6 -- and that's where we really came together in terms of  
7 helping the gridlock on 520, service between Kirkland  
8 and Seattle.

9           Unfortunately the economy started to take a  
10 downturn, and it was you're competing with a bridge, and  
11 when there is a gridlock, the attractiveness of the  
12 ferry goes kind of away. But we have all been working  
13 very, very diligently and have tried in our own ways to  
14 support the efforts of State Ferries, Kitsap Transit,  
15 because regardless of who is doing it, there is, I have  
16 been cautioned I shouldn't talk about need, but there is  
17 a great deal of interest of service not only between  
18 Kingston and Seattle but other parts of the Puget Sound,  
19 and we're just excited to see a first step going ahead  
20 and hopefully to see another step from Bremerton.

21           But we feel that this is an excellent example  
22 of collaborative efforts between the public and the  
23 private sector to make something happen and that by  
24 working very, very hard and diligently, as we have done  
25 with our own individual businesses, that this will be a

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1 success.

2 MR. WILEY: Thank you, Mr. Bryan.

3 I have no further questions at this point,  
4 Your Honor, I tender the witness and offer Exhibits 1  
5 through 8 for admission.

6 JUDGE RENDAHL: Are there any objections to  
7 what have been marked as Exhibits 1 through 8?

8 Hearing no objection, those will be admitted.

9 Mr. Iglitzin.

10 MR. IGLITZIN: Yes, if I could just have a  
11 few minutes prior to cross-examination.

12 JUDGE RENDAHL: Okay, we will be off the  
13 record, we'll take a break for a few minutes and be back  
14 on the record.

15 MR. IGLITZIN: Thank you.

16 JUDGE RENDAHL: Okay, we'll be off the  
17 record.

18 (Recess taken.)

19

20 JUDGE RENDAHL: I think we're ready to start  
21 with your cross-examination, Mr. Iglitzin.

22

23

24

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0091

1 C R O S S - E X A M I N A T I O N

2 BY MR. IGLITZIN:

3 Q. Good morning, Mr. Bryan, I just have a few  
4 questions for you. Let me start by asking you, I  
5 noticed the material says that you are a principal in  
6 Aqua Express, can you describe for us what your  
7 day-to-day responsibilities, if any, for Aqua Express  
8 are or will be?

9 A. Let me first clarify, Clipper Navigation is  
10 the partner in that entity. With regard to my specific  
11 involvement, since Clipper was involved from the  
12 beginning and when the partnership came together I have  
13 been actively involved in going to meetings. Actually  
14 all of the partners have had their representatives  
15 involvement in meetings. But primarily I have been  
16 involved with the meetings on docking in Kingston, in  
17 terms of the vessel acquisition and plans for the  
18 vessel, but I have had an active involvement because we  
19 have not yet hired our general manager, which should  
20 take place within the next three weeks or so.

21 Q. So does Aqua Express have any employees at  
22 this point?

23 A. Aqua Express has no current employees. Well,  
24 let me step back one moment. We made an offer of  
25 employment to a captain I believe last week that will be

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1 working on that vessel once he formally accepts the  
2 position, but at this point there are no official Aqua  
3 Express employees.

4 Q. And what employees do you envision Aqua  
5 Express ultimately having?

6 A. The testimony that Dave Tougas will present  
7 will give some specifics as to what our ProForma, what  
8 our business plan shows in terms of the number of  
9 employees. And if I might, it probably would -- that's  
10 the area he has worked on.

11 Q. That's fine. Do you -- but you don't  
12 anticipate yourself becoming an employee of Aqua  
13 Express?

14 A. No, sir. In fact, what we want to do is to  
15 make Aqua Express a stand alone company, and that there  
16 may be certain services that they will contract, but we  
17 haven't gotten into those kinds of details. But  
18 ultimately, I shouldn't even say ultimately, it is our  
19 intention to have that as a stand alone business.

20 Q. As I understand it, Clipper Navigation is a  
21 one quarter partner in Aqua Express?

22 A. Yes, sir, that's correct.

23 Q. To date, what kind of financial commitments  
24 have the four partners made to Aqua Express?

25 A. Again, that will be an area that Dave Tougas

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1 will testify specifically to, but I can say that the  
2 four partners, one, equally purchased the vessel and  
3 funded that, have also done some other initial funding  
4 that will -- for some specific things with regard to the  
5 boat, some work that had to be done at Nichols Brothers,  
6 et cetera. But we have done this equally, and I think  
7 the detail of that will become clearer as Mr. Tougas  
8 goes through the financials.

9 Q. But as I understand it, Aqua Express does not  
10 own the vessel that was the Tyee; is that correct?

11 A. No, the -- Aqua Express -- we had early  
12 discussions as to -- and this is not my area of  
13 expertise frankly, but we had some initial discussions  
14 as to what would be the best way to establish the  
15 business as to whether -- and much of that had to do  
16 with the taxable considerations or tax considerations,  
17 but the most current information Mr. Tougas will have,  
18 but Aqua Express will have the vessel.

19 Q. I noticed that in the Aqua Express  
20 application, I apologize, just because I have you here  
21 and I don't want to have the situation where Mr. Tougas  
22 then doesn't have the answers and you do, the  
23 application of Aqua Express states that the vessel is  
24 going to be leased from ACNT, LLC.

25 JUDGE RENDAHL: Mr. Iglitzin, before you go

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1 farther, do you intend to make the application a cross  
2 exhibit to use it as an exhibit in the proceeding?

3 MR. IGLITZIN: I was not intending to do that  
4 at this point. Depending on the testimony, I didn't  
5 necessarily think I would need to. I imagine that the  
6 witnesses for the applicant will in fact be able to  
7 answer the questions. I don't object if someone or the  
8 Commission wants that to be an exhibit.

9 JUDGE RENDAHL: Let's be off the record for a  
10 moment.

11 (Discussion off the record.)

12 JUDGE RENDAHL: While we were off the record  
13 we marked the application of Aqua Express as Exhibit 9.  
14 Are there any objections to this exhibit being admitted?

15 MR. WILEY: No.

16 JUDGE RENDAHL: Okay.

17 MR. TROTTER: Your Honor, just, no objection,  
18 but does that include -- by application do you mean all  
19 of the attachments of fare schedules and balance sheets  
20 and so on?

21 JUDGE RENDAHL: Yes, it would be the entire  
22 application, which I have as including five pages of the  
23 application form signed by Mr. Bryan, then an Exhibit A  
24 which is the route, Exhibit B which is the tariff  
25 schedule, Exhibit C, which is the schedule, then follows

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1 a ProForma income statement, then a ridership and  
2 revenue forecast, and then lastly a resolution from  
3 Kitsap Transit Board of Commissioners.

4 MR. TROTTER: Thank you.

5 JUDGE RENDAHL: That's what I am including in  
6 the application.

7 MR. TROTTER: We have no objection to that  
8 exhibit.

9 JUDGE RENDAHL: Okay, Exhibit Number 9 will  
10 be admitted.

11 Go ahead, Mr. Iglitzin.

12 MR. IGLITZIN: Thank you.

13 BY MR. IGLITZIN:

14 Q. My question was about the ACNT, LLC, which is  
15 referenced in the application as the entity from which  
16 the vessel's going to be leased. Can you tell us  
17 anything about ACNT?

18 A. Excuse me, did I interrupt you?

19 Q. No.

20 A. Okay, I'm practicing here. ACNT is the  
21 Argosy, Clipper, Nichols, Tougas. And initially as I  
22 mentioned in previous testimony, everything was moving  
23 very quickly. So when we submitted the application, it  
24 was predicated on having that entity own the vessel with  
25 a leaseback, if you will, to Aqua Express. And I

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1 believe in subsequent testimony there will be  
2 clarification on what we're proposing to do at this  
3 point in time that there is not a need to go through  
4 that. We have had lots of discussions on the tax issues  
5 in the last month or so, and that's something Mr. Tougas  
6 will be able to clarify.

7 JUDGE RENDAHL: Okay, just to clarify for the  
8 record, on page 3 of the application form, question  
9 number 10 of the application requests the applicant to  
10 list the vessels which are owned unless otherwise  
11 stated, and that's the information you're referring to,  
12 Mr. Iglitzin?

13 MR. IGLITZIN: Yes.

14 JUDGE RENDAHL: Okay, thank you.

15 BY MR. IGLITZIN:

16 Q. So would we be correct in understanding that  
17 ACNT is another corporation that the four principals  
18 created?

19 A. That was a organization that we were creating  
20 to handle the -- to hold on to the vessel, that's  
21 correct. And frankly I don't know if we formalized that  
22 entity formally or legally at this point because of what  
23 we have chosen to do with the vessel through Aqua  
24 Express.

25 Q. So is it possible that that vessel is in fact

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1 not going to be leased by Aqua Express from ACNT, but in  
2 fact the title would be transferred from ACNT to Aqua  
3 Express?

4 A. That's correct.

5 Q. You said that ACNT as I understood it was  
6 Argosy, Clipper, Nichols, Tougas, may I take it that the  
7 Tougas refers to David Tougas and that Mr. Tougas is in  
8 some way connected with Four Seasons Marine Services?

9 A. It refers to Tom Tougas, who is the principal  
10 in Four Seasons Marine, and Dave Tougas is the CPA and  
11 handles the financial matters for Four Seasons Marine,  
12 which is headquarters in Poulsbo, and Tom Tougas is in  
13 Alaska.

14 Q. Is it your understanding that ACNT currently  
15 owns the vessel which is being renamed Aqua Express or  
16 has been renamed Aqua Express outright not subject to  
17 any liens or bank loans?

18 A. Yes, sir, that's correct. Oh, excuse me, let  
19 me step back. Again, I would feel more comfortable with  
20 David Tougas answering the questions with regard to bank  
21 loans and that. It's my -- we purchased the vessel. We  
22 recently arranged a line of credit. But not knowing the  
23 nuances and rather than to trip myself up here, I think  
24 I would rather show my ignorance and kind of limit it to  
25 that.

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1 Q. If I understood your earlier testimony, it  
2 sounds like the functions that you were more involved  
3 with had to do with the docks, finding the sites from  
4 which the vessel could sail?

5 A. Yes, sir. The operating aspects of the  
6 service, the docking, the plans for the staffing, the  
7 helping to establish operating procedures, ensuring that  
8 the safety culture that our businesses have is in place,  
9 and that the financial aspects would be handled by David  
10 Tougas.

11 Q. And you testified that the Aqua Express  
12 vessel, the plan would be to have it embark and  
13 disembark at Pier 56 on the Seattle side?

14 A. That's correct.

15 Q. And we looked at Exhibit 8, which is a letter  
16 from Argosy Express saying that they will make that  
17 facility available for \$200 per day?

18 A. That's correct.

19 Q. Did you look at other pier options that might  
20 be available in Seattle?

21 A. I guess I should answer this twofold. One is  
22 in our mind, and this is one of the things that brought  
23 the genesis of bringing folks together, we each have  
24 something to offer, and one of the things Argosy has are  
25 the best, most centrally located docks on the Seattle

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1 waterfront, so we did not look specifically to find  
2 another dock. Now the second point to that is having  
3 dock location ourselves where pocket cruise vessels use  
4 it, we know a little bit about pricing. And then also  
5 in terms of the available docking, we know generally  
6 because it's a very small waterfront, there are very few  
7 places that vessels can go into, what those prices are.  
8 But frankly we didn't look for another location because  
9 we had the best location at Argosy.

10 Q. Do you have any knowledge or understanding of  
11 whether \$200 per day is a market rate for that -- for  
12 use of that dock facility?

13 A. Based upon my experience and my knowledge,  
14 that is a market rate for a regular use dock, yes, sir.

15 Q. I believe you testified that if for some  
16 reason due to labor disruption or picketing Aqua Express  
17 was not able to use Pier 56 that the backup would be  
18 Pier 69?

19 A. That's correct.

20 Q. And Pier 69 is leased by Clipper Navigation  
21 from the Port of Seattle?

22 A. That's correct.

23 Q. Is there a backup in case the same labor  
24 disruption or picketing that rendered Pier 56  
25 unavailable followed the Aqua Express up to Pier 69 and

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1 rendered that also unsuitable?

2 A. We have not investigated that.

3 Q. Has there been any discussion of the terms  
4 under which the Clipper Navigation would allow Pier 69  
5 to be used under these circumstances?

6 A. We have made no such limitations. We have  
7 been at that dock for 18 years, both prior to and  
8 subsequent to the Port of Seattle moving in to that  
9 dock, and have had no problems.

10 Q. Is there a written document that evidences  
11 Clipper Navigation's willingness to make Pier 69  
12 available?

13 A. At the --

14 Q. Go ahead.

15 A. I apologize. At the current time, no, but  
16 one could be made available as and when necessary.

17 Q. Have you had the opportunity to look at the  
18 financial statement that was made part of the  
19 application as being the financial information about  
20 Aqua Express?

21 A. I saw the first one and a number of  
22 iterations since then and also briefly have seen the one  
23 that Mr. Tougas will have for review. There have been a  
24 number of changes from the submission made to the UTC.

25 Q. You mentioned that surveys were taken, are

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1 those surveys something that you're willing to make  
2 available to the Commission?

3 A. If the Commission would like them, I will be  
4 more than happy to give the actual surveys as well as  
5 the summaries.

6 MR. IGLITZIN: My understanding is that the  
7 purpose of the hearing today is not to address need  
8 issues, but the protestant IBU thinks it would be useful  
9 to have those surveys produced by this witness prior to  
10 the subsequent hearing date since that's clearly going  
11 to be relevant to the need issues.

12 JUDGE RENDAHL: Mr. Wiley.

13 MR. WILEY: Your Honor, we are not proposing  
14 to introduce the survey results into the record. We  
15 have no objection to having them reviewed in, you know,  
16 bringing them to the hearing room, but we think that the  
17 statute requires live witnesses and that the surveys are  
18 hearsay. We certainly don't have anything to hide in  
19 the results but don't intend to make them a part of the  
20 record.

21 CHAIRWOMAN SHOWALTER: Do you have any  
22 objection to making them a part of the record?

23 MR. WILEY: I don't think so, Your Honor. I  
24 want to make sure that I review again the 2004 survey.  
25 There have been a number of market surveys, but I don't

0102

1 have an objection. We have a matrix that summarizes the  
2 surveys that Mr. Bryan has with him I believe, but they  
3 are quite voluminous, are they not?

4 THE WITNESS: Yes, and if -- Your Honor, may  
5 I make a comment that we would be more than happy if  
6 it's felt appropriate to provide that raw data.  
7 However, what we would prefer is the addresses and phone  
8 numbers and E-mail addresses not be subject to public --  
9 we did not get permission from folks to make those  
10 things public. And, in fact, I think there might be a  
11 concern on the part of some people having that  
12 information available.

13 JUDGE RENDAHL: Let's be off the record for a  
14 moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: While we were off the record,  
17 we determined that it was appropriate to allow the  
18 summary of the surveys from 2000 and 2004 into the  
19 record. Copies will be made of the 2004 summary of the  
20 survey results today, and the summary of the 2000 survey  
21 will be made available tomorrow, and we'll bring  
22 Mr. Bryan back if need be to address the results of the  
23 2000 survey.

24 Okay, let's go ahead, Mr. Iglitzin.

25 MR. IGLITZIN: Thank you.

0103

1 BY MR. IGLITZIN:

2 Q. I want to ask you a couple of questions now  
3 in your capacity as a representative of Clipper  
4 Navigation, trying to understand the contractual  
5 relationship between Clipper Navigation and Aqua  
6 Express, so I am -- which is why I'm going to ask these  
7 questions to you rather than Mr. Tougas. Has Clipper  
8 Navigation other than the what I understand to be one  
9 quarter of the cost of the vessel provided additional  
10 economic resources to Aqua Express?

11 MR. WILEY: Objection to the form, Your  
12 Honor, if we could get that clarified as to what  
13 economic resources he would be referring to.

14 JUDGE RENDAHL: Can you restate the question  
15 to be more clear.

16 MR. IGLITZIN: Sure, I was stating the  
17 question broadly precisely because I don't know what  
18 types of economic resources, and I guess I will break  
19 the question down.

20 BY MR. IGLITZIN:

21 Q. Has Clipper Navigation provided cash to first  
22 to ACNT, LLC, to your knowledge?

23 A. To the best of my knowledge, no, not beyond  
24 the purchase of the vessel. At this time we have in  
25 fact done some services, but no, I do not believe that

0104

1 we have done any additional funding beyond the purchase  
2 of the vessel.

3 Q. And did Clipper Navigation provide its  
4 portion of the cost of the vessel to the vessel owner or  
5 to another entity like ACNT which then purchased the  
6 vessel?

7 A. Actually, there was an intermediary that we  
8 funded the money to to pay to the broker in Florida, a  
9 Mr. Kim who does this professionally, and he held the  
10 funds basically I guess in escrow while they came in  
11 from each of the partners to pay the broker for the  
12 vessel. That was the essence of it.

13 Q. On the Aqua Express interim balance sheet  
14 dated June 15, it indicates the worth of the vessel at  
15 \$922,000.

16 JUDGE RENDAHL: And which exhibit are you  
17 referring to now, the application or one of the marked  
18 exhibits?

19 THE WITNESS: This is Exhibit 15, thank you.

20 JUDGE RENDAHL: Exhibit 15.

21 MR. IGLITZIN: Yes.

22 JUDGE RENDAHL: Thank you. Do you have a  
23 copy of that, Mr. Bryan?

24 THE WITNESS: Yes, ma'am.

25 BY MR. IGLITZIN:

0105

1 Q. So would it be fair to understand your  
2 testimony in conjunction with this exhibit being that  
3 Aqua Express came up with roughly one quarter of the  
4 price of the Aqua Express vessel, Clipper Navigation,  
5 I'm sorry?

6 A. Again, I want to caveat here in terms of this  
7 is not my area of expertise, but the funding that  
8 Clipper Navigation provided for the purchase of the  
9 vessel was based upon the initial cost or selling price  
10 from the broker in Florida of \$710,000 as I recall, and  
11 then the vessel was taken to Nichols Brothers Boatyard  
12 where improvements were made and additional work was  
13 done on the vessel, and I believe that's what between  
14 those numbers came to the 922. But beyond that, that's  
15 -- I would again like Dave Tougas to speak to those  
16 details.

17 Q. And the detail I would like you to speak to,  
18 if maybe you can help me out.

19 A. Yes.

20 Q. If Clipper Navigation provided one quarter of  
21 the cost of purchasing the vessel and the vessel  
22 subsequently had repairs done on it, did Clipper  
23 Navigation contribute financially to the cost of those  
24 repairs?

25 A. No, Clipper did not, and one of the partners

0106

1 has taken the lead on handling some of those functions,  
2 and that work was done through the authorization of the  
3 managing partner and will be reimbursed by Aqua Express.  
4 And again looking to Mr. Tougas to give all those  
5 details, but that is the best of my recollection as to  
6 what was being done.

7 Q. You stated that the work was done pursuant to  
8 the authorization of the managing partner, the managing  
9 partner of what?

10 A. What we have done is while we are awaiting  
11 the hiring of a general manager who will report to the  
12 four partner businesses, there is a senior partner or a  
13 managing partner, which is John Blackman from Argosy  
14 Cruises. And we each kind of work in concert, and he is  
15 responsible for herding these cats, keeping us all  
16 together, and that's been his role.

17 Q. Is there a written agreement between the four  
18 principals who make up the four owners of Aqua Express?

19 A. There is an agreement in place between the  
20 four partner businesses, yes, sir.

21 Q. And has that agreement to your knowledge been  
22 made available to the Commission to date?

23 A. I do not believe that it's one that has been  
24 submitted nor asked for.

25 MR. IGLITZIN: I guess I will address this to

0107

1 the Administrative Law Judge. It seems to the IBU that  
2 the issue of the financial stability and viability of  
3 the entity Aqua Express, the applicant in this case,  
4 clearly is going to depend on the relationship between  
5 Aqua Express and the four principals and the economic  
6 stability and viability of those four principals, so I  
7 guess we would ask that those documents be made  
8 available as part of the record as well.

9 JUDGE RENDAHL: So you're asking for a record  
10 requisition for the written agreement between the four  
11 partners?

12 MR. IGLITZIN: And basic financial  
13 information, balance sheets, financial statements, for  
14 the four partners. The interim balance sheet dated June  
15 15 is dramatically more detailed than the balance sheet  
16 that was made part of the application, which showed  
17 \$6,000 in assets and \$9,000 in liabilities. And I'm  
18 going to continue with this witness to find out where  
19 the \$181,900 in cash came from, but I think some  
20 fundamental questions that any business has to ask  
21 itself is, well, what do we do if our projections turn  
22 out not to be -- turn out to be too optimistic.

23 It's clear in this case what Aqua Express  
24 will do if it needs more cash is turn to its four  
25 partners. If additional repairs need to be made on the

0108

1 vessel, it will turn to its four partners. The extent  
2 to which those four partners are either willing or able  
3 to provide the additional financial resources or other  
4 resources that they -- clearly implicit in this  
5 arrangement they're prepared to do that or they are  
6 committing to do it, but I think we need to see both the  
7 nature of that agreement and the basic financial  
8 information about those four partners. I think what we  
9 have here is basically I'm going to call it a shell  
10 company, but I don't mean that with any kind of  
11 pejorative meaning, it's a new company formed, and it  
12 only has what the four principals give it, and it is  
13 only going to be able to function to the extent that the  
14 four principals continue to back its function.

15 JUDGE RENDAHL: Thank you.

16 Mr. Wiley.

17 MR. WILEY: Well, Your Honor, I don't think  
18 we're required to produce financial statements,  
19 particularly from unregulated entities, of which at  
20 least two of the partners are. There are annual reports  
21 I'm sure filed for the Clipper portion that's regulated  
22 and for anything that Argosy does that's regulated,  
23 which I understand to be a very limited aspect of their  
24 service, but I think the showing that we have to make  
25 under the statute is the showing that we have to make,

0109

1 and we will have Mr. Tougas here with the financial  
2 information. And at this point we're not prepared nor  
3 do I have in my possession financial statements on the  
4 separate partner entities.

5 JUDGE RENDAHL: What about the written  
6 agreement itself?

7 MR. WILEY: I have an unsigned copy of an  
8 operating agreement that Aqua Express entered into. I  
9 didn't draft it. We certainly -- all limited liability  
10 companies enter into these sorts of agreements, and I  
11 would be happy to provide an executed copy of the  
12 operating agreement.

13 JUDGE RENDAHL: Let's be off the record for a  
14 moment.

15 (Discussion off the record.)

16 JUDGE RENDAHL: Okay, having heard  
17 Mr. Iglitzin's request and response from Mr. Wiley and  
18 having conferred on that, at this point it's appropriate  
19 to have a copy of the written operating agreement be  
20 provided in response to Record Requisition Number 1 for  
21 Mr. Iglitzin, and if we can have that provided after the  
22 lunch break, that would be helpful. At this point, as  
23 to the financial information from the four partners, I  
24 don't think we have had enough testimony on the issue of  
25 the financials yet. After Mr. Tougas has testified and

0110

1 you have an opportunity to cross Mr. Tougas, if you  
2 still believe that information is necessary, we'll  
3 entertain that record requisition at that time.

4 MR. IGLITZIN: Thank you.

5 JUDGE RENDAHL: Okay, let's go forward.

6 BY MR. IGLITZIN:

7 Q. Mr. Bryan, I was riding a ferry yesterday  
8 from Kingston to Edmonds, and they have a big sign that  
9 says that the Washington State Ferries will no longer be  
10 accepting unaccompanied freight, and the whole issue of  
11 freight was new to me. Can you explain what the Aqua  
12 Express's policies and procedures with regard to freight  
13 will be? And I guess if you have some insight as to the  
14 difference between accompanied freight and unaccompanied  
15 freight and why Washington State Ferries has changed its  
16 policy, that would be helpful.

17 A. With regard to our application, we included  
18 in there -- let me just -- I don't have it with me here.

19 JUDGE RENDAHL: That's marked as Number 9 or  
20 admitted as Number 9.

21 THE WITNESS: I don't unfortunately have the  
22 benefit of having a copy of that.

23 MR. WILEY: If I may approach the witness,  
24 Your Honor, I do have a copy.

25 JUDGE RENDAHL: You may, Mr. Wiley.

0111

1 THE WITNESS: Thank you.

2 A. Okay, with regard to Washington State  
3 Ferries' prohibition about unaccompanied freight, I  
4 don't have any inside information. However, I am almost  
5 certain it has to do with the post 9/11 security  
6 considerations. With auto ferries there is a higher  
7 risk associated with that by the Coast Guard.

8 Clipper Navigation carries a great deal of  
9 freight between Seattle and Victoria and also between  
10 Seattle/Friday Harbor a lesser amount. Aqua Express  
11 also plans to have the ability, although that's  
12 certainly not going to be a large revenue source. In  
13 the case of San Juan Express, Inc.'s certificate to  
14 Friday Harbor, one of the requirements we have is  
15 someone is there to meet the vessel, because we do not  
16 have staff at Friday Harbor to accept it.

17 With Aqua Express, there will be similar  
18 operating procedures put together if there is freight.  
19 We don't see it as a large generator of revenue for us,  
20 but it is in our application to be able to carry  
21 freight. But that's not where we're going to be putting  
22 our greatest emphasis, it's going to be filling those  
23 seats.

24 BY MR. IGLITZIN:

25 Q. So you will be carrying unaccompanied freight

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1 if someone wants to ship it?

2 A. Yes.

3 Q. As I understand it, the post 9/11 period,  
4 there have been a number of changes with regard to the  
5 security requirements applicable to passenger vessels;  
6 is that correct?

7 A. That's correct.

8 Q. And you must be informed about that because  
9 of the work for Clipper Navigation?

10 A. Yes, sir.

11 Q. Are those requirements in flux, or have they  
12 been set?

13 A. There are federal regulations and  
14 requirements for facilities security as well as vessel  
15 security. Clipper Navigation has approvals from the  
16 Coast Guard for its vessels as well as its facility.  
17 And this, of course, is something that we will be  
18 working on both with regard to a facilities security and  
19 vessel security for the commuter operations. There is  
20 a, and this is not of any great concern in terms of  
21 being able to meet that burden, a responsibility to the  
22 traveling public and our crew, it's a what if situation,  
23 and it's our responsibility to come up with a plan that  
24 is subject to approval by the Coast Guard.

25 Q. That was actually -- you anticipated my next

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1 question, and I appreciate that. Precisely whose  
2 approval will Aqua Express need with regard to its  
3 security arrangements, and for what kinds of -- if there  
4 are multiple different -- you mentioned vessel and  
5 facility, if there are separate approvals if you could  
6 explain that process?

7 A. With U.S. flag vessels it's the United States  
8 Coast Guard, and effectively it's the captain of the  
9 port in Seattle, which would be Captain Danny Ellis, and  
10 we have to do a vulnerability analysis and then get his  
11 staff's approval and its review and approval.

12 Q. And that would apply to both the vessel and  
13 the facility?

14 A. That's correct.

15 Q. I want to back up to the financial  
16 contribution matter that we were discussing briefly  
17 before. And again, I am looking at Exhibit 15. I had  
18 asked financial contribution that Aqua Express had made  
19 to date, and you had indicated one quarter of the cost  
20 of the vessel, which I believe you said was \$710,000. I  
21 take it Aqua Express has also made some of your time of,  
22 I'm sorry, Clipper Navigation has made some of your time  
23 available to Aqua Express formally or informally; is  
24 that correct?

25 A. That's correct.

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1 Q. Can you give us an idea of how much of your  
2 time has been spent on behalf of Aqua Express say in the  
3 last year?

4 A. My wife might say too much. I would say  
5 probably 15%, 20% of my time in one way or the other.  
6 It's difficult to -- and I'm not trying to be cute here,  
7 I -- my work schedule is not a 40 hour week work  
8 schedule, so I am trying to ascribe the time I do in  
9 conjunction with my Clipper responsibilities, but I  
10 would say 15% to 20% of the time at present has been put  
11 into meetings and so on for Aqua Express.

12 Q. And other than the financial contribution to  
13 the vessel, has Clipper Navigation made any other  
14 financial contribution to Aqua Express?

15 A. Other than some of the survey things we have  
16 done, which we have done with in-house talent, I do not  
17 believe that we have done any additional funding of Aqua  
18 Express.

19 Q. How many employees does Clipper Navigation  
20 have?

21 A. The number of employees ranges by season from  
22 about 135 to a little over 200, 200 of course being  
23 during our peak season.

24 Q. Have other employees of Clipper Navigation  
25 spent time assisting and enabling Aqua Express to get

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1 off the ground or get in the water?

2 A. The people who have assisted are primarily  
3 our operations manager and our creative director, who  
4 has done a few things for us in terms of Web site design  
5 and a creative piece to pass out to people in Kingston.  
6 But it's been very limited, and it's been timed the  
7 normal work week. We haven't experienced any additional  
8 costs as a result of it, just reallocations of their  
9 time.

10 Q. What role is Clipper Navigation going to have  
11 in terms of the operation, if any, in terms of the  
12 operation of Aqua Express?

13 A. It is our intent, our desire that we will  
14 have nothing to do with the day-to-day operations.  
15 That's why we're looking for a general manager right now  
16 and why an offer was made to a captain and that we will  
17 be investors, provide some sought or unsought advice to  
18 help the operation, but nothing to do with the  
19 day-to-day.

20 MR. IGLITZIN: Thank you, that's all I have.

21 JUDGE RENDAHL: Thank you.

22 JUDGE RENDAHL: Okay, for Kitsap Transit,  
23 Mr. Sells.

24 MR. SELLS: I have no questions, Your Honor.

25 JUDGE RENDAHL: Okay, Mr. Trotter, for Staff.

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1 MR. TROTTER: Thank you, Your Honor.

2 C R O S S - E X A M I N A T I O N

3 BY MR. TROTTER:

4 Q. If you would turn to Exhibit 3, which is the  
5 vessel.

6 A. Yes, sir.

7 Q. I believe you testified that this vessel was  
8 previously operated by the State Department of  
9 Transportation; is that right?

10 A. Yes, sir.

11 Q. And on what route did it operate?

12 A. It was, as I understand, it was primarily  
13 used on the -- well, it had been used on the  
14 Bremerton/Seattle, and I also believe it was used on the  
15 Vashon to Seattle service.

16 Q. Was it retired from service by the State  
17 because it was inadequate?

18 A. It's my understanding that the cost of  
19 maintenance and repair, et cetera, and they had the  
20 Chinook and the Snohomish available to them, and that  
21 they did in fact retire it rather than incur additional  
22 ongoing expenses.

23 Q. Was there also a problem with the wake damage  
24 over in the area of the city of Bremerton?

25 A. Yes, sir.

0117

1 Q. And the wake of the vessel was causing damage  
2 to private property, was that the concern?

3 A. That's correct.

4 Q. Is there a similar concern on the Kingston to  
5 Seattle route?

6 A. One of the reasons -- one of the reasons  
7 we're so excited about Kingston is because you get out  
8 into the traffic lane so quickly, and so the areas where  
9 there is potential wake impact are very minimal. And so  
10 the area that there would be a wake consideration is  
11 simply how much wake you bring into the dock at  
12 Kingston, but they are not the same issues as with the  
13 property owners at Rich Passage.

14 Q. And who owns this vessel today?

15 A. Aqua Express.

16 Q. And prior to that it was owned by ACNT?

17 A. Yes.

18 Q. And before that it was owned by a broker in  
19 Florida?

20 A. Yes, sir.

21 Q. And before that the State Department of  
22 Transportation?

23 A. That's correct.

24 Q. And do you know what price the broker paid?

25 A. The broker was smarter, bought it at \$560,000

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1 on eBay.

2 Q. And then ACNT purchased it for \$710,000?

3 A. Yes, sir.

4 Q. And then during this time the boat was  
5 located in Puget Sound, was it not?

6 A. Yes, it was taken from Eagle Harbor up to  
7 Nichols Brothers Boatyard where it was repainted and  
8 some interior work and some maintenance work was done on  
9 the engines.

10 Q. And is it currently located there at the  
11 Nichols facility?

12 A. No, sir, it's working in Southeast Alaska in  
13 revenue service.

14 Q. And who is operating it?

15 A. It is being operated under contract to Four  
16 Seasons Marine, who has a contract with a cruise company  
17 to provide service.

18 Q. So Aqua Express has entered into an agreement  
19 with one of the owners of Aqua Express, Four Seasons  
20 Marine Services, to operate -- allowing them to contract  
21 out the use of that vessel to another firm in Southeast  
22 Alaska?

23 A. Well, actually Four Season Marine is  
24 operating the vessel, and they're providing the service  
25 for another company.

0119

1 Q. And are the revenues from that flowing back  
2 to Aqua Express?

3 A. Yes, sir.

4 Q. And should we ask where those are on your  
5 ProFormas with Mr. Tougas?

6 A. Yes, sir, thank you.

7 Q. When was the vessel sold to Aqua Express?

8 A. It was late 2003. I do not have the exact  
9 date, but it was late 2003. Oh, excuse me, no, it was,  
10 I'm sorry, I was stepping ahead here once again, the  
11 vessel was purchased from the broker in Florida late  
12 2003. In terms of the transfer between the two Aqua  
13 entities was 2004. And please forgive me once again,  
14 because this whole tax thing, that was only a recent  
15 decision last month or so not to use ACNT as the owner  
16 of the vessel.

17 Q. Well, okay, let's get back to my question.  
18 The application which is Exhibit 9 is dated April 8th of  
19 2004, and we have already discussed in prior questioning  
20 that it shows that the vessel was expected to be leased  
21 from ACNT. Are you familiar with those facts?

22 A. Yes.

23 Q. Do I assume correctly then that the sale from  
24 ACNT to Aqua Express took place sometime after April 8th  
25 of this year?

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1 A. Yes, sir.

2 Q. Thank you.

3 Now let's go to Exhibit 5, which is the  
4 certificate of inspection. I was confused a little bit  
5 by this exhibit. The upper right-hand corner of the  
6 first page shows a certification date of February 22nd  
7 of 2002. Do you see that?

8 A. Yes, sir.

9 Q. Then if you look on the second page, just the  
10 first item, the hull exam shows that there was an exam  
11 in February of 2003, and the last exam was in January of  
12 this year. Do you see that?

13 A. Yes, sir.

14 Q. So can you explain why the certification date  
15 predates the more recent examinations of the hull? I  
16 guess I was expecting to see a certification date that  
17 would be more consistent with the dates in which these  
18 other examinations apparently took place.

19 A. Oh, they're different functions. The  
20 certificate of inspection is done for the vessel, and it  
21 carries a certain period of time that it's valid for.  
22 In terms of the hull exam, depending on whether you're  
23 operating a vessel on salt water or fresh water you have  
24 to have an inspection a predetermined period of time.  
25 And with just as an analogy Victoria Clipper vessels

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1 have to be inspected annually, and with this vessel I  
2 believe it's every two years. But since we had the  
3 vessel at dry dock at Nichols Brothers, we thought we  
4 would get a credit for the inspection, because with the  
5 prior date of 2003 we would have had to have had the  
6 hull inspected again 2005, but since we had it out of  
7 the water anyway 2004, it extended until the next  
8 inspection being 2006. We just -- it's just essentially  
9 getting a credit on the inspection.

10 Q. So am I correct then in looking at the bottom  
11 of the second page of Exhibit 5 that there have been  
12 some amendments to this certification that was issued in  
13 2002?

14 A. That's correct.

15 Q. And those would serve as updates?

16 A. Yes, sir.

17 Q. Let's go to Exhibit 2, please, which is  
18 entitled Aqua Express Members. Now Aqua Express is a  
19 limited liability corporation; is that right?

20 A. That's correct.

21 Q. All four companies shown on this exhibit then  
22 each owns 25% of the stock?

23 A. Yes, sir.

24 Q. And so would it be more accurate to say Aqua  
25 Express shareholders at the top?

0122

1 A. Yes, sir.

2 Q. There has also been reference to these four  
3 companies being "partners" and I don't mind that, but is  
4 it more proper to say that they're equal shareholders?

5 A. Yes, sir.

6 Q. And you have answered some questions  
7 regarding Clipper Navigation's contribution of capital  
8 to the corporation, and is the next witness the one to  
9 ask for the details of other information in that regard?

10 A. Yes, sir.

11 Q. But Clipper Navigation has put forth 25% of  
12 the \$710,000 purchase price; is that right?

13 A. Yes, sir.

14 Q. And that was done with cash?

15 A. That's correct.

16 Q. And is it your understanding that Clipper is  
17 on the hook for its share of the cost of improvements  
18 that Nichols made to the vessel after purchase?

19 A. Aqua Express is on the hook and as a equal  
20 shareholder, yes, Clipper ultimately is for any  
21 encumbrances or any expense associated with it.

22 Q. I know we'll get the operating agreement  
23 later, but just as a preview to that, is it your  
24 understanding that that agreement requires the  
25 shareholders to contribute capital and states the

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1 conditions under which they will contribute capital?

2 A. That's correct.

3 Q. Is there any other written agreement between  
4 the four companies shown on Exhibit 2 with respect to  
5 Aqua Express other than the operating agreement that is  
6 to be provided shortly?

7 A. Could you clarify pertaining to the ownership  
8 of the business or the --

9 Q. Let's start with that.

10 A. No other agreements.

11 Q. Is there any other agreement between the four  
12 entities shown in Exhibit 2 that is pertinent to the  
13 operation of Aqua Express?

14 A. No, sir.

15 Q. And do you understand that -- let me ask it  
16 differently.

17 Is it your understanding that Nichols  
18 Brothers Boat Builders is an affiliated interest of Aqua  
19 Express under -- as the Commission's statutes define  
20 that term?

21 A. I probably could not answer that.

22 Q. Is it your commitment that Aqua Express will  
23 comply with any affiliated interest filing requirements  
24 with the Commission to the extent such are required?

25 A. If my understanding is correct about the

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1 affiliated interest that the lines ultimately go to the  
2 other companies, one, we're going to abide by any laws,  
3 regulations, or what have you affecting this entity.  
4 And with regard to the affiliated companies, as I  
5 understand it, and I don't know all the legal, that each  
6 of the parent companies, if you will, or the  
7 shareholders will abide by those regulations.

8 Q. I was curious as to how bicycles are  
9 transported on the vessel; can you explain?

10 A. That vessel, Washington State Ferries had the  
11 bikes walked right into the cabin, and they had an area  
12 to keep the bikes. That is not our plan, because one,  
13 damage to the interior of the vessel, and also in terms  
14 of bicycles hitting people's feet and so on. We want to  
15 keep the liability issues to a minimum, so we are, in  
16 fact, working at this point to how we can easily put  
17 them up above or to the stern of the vessel for easy  
18 access, but we do not plan to use the same practice that  
19 Washington State Ferries had done.

20 With Clipper where we handle a lot of bikes  
21 between Seattle and Victoria and Seattle and Friday  
22 Harbor, we put them into an area, lift them above the  
23 main deck to the after deck, second deck, and store  
24 them. And frankly, we're working on that now for a  
25 design modification.

0125

1 Q. And do you understand that before operations  
2 begin, assuming you're granted a certificate, that you  
3 will need to file appropriate insurance coverage, proof  
4 of insurance coverage with the Commission?

5 A. Yes, sir.

6 Q. Have you taken steps to secure that  
7 insurance?

8 A. We have talked to our broker, Accordia, who  
9 coincidentally handles all four of the shareholders in  
10 this entity, and have spoken to them, yes, sir.

11 Q. Do you see any difficulties in that regard?

12 A. None whatsoever.

13 MR. TROTTER: Those are all my questions,  
14 Your Honor, at this time.

15 JUDGE RENDAHL: Thank you.

16 Is there any redirect, Mr. Wiley, at this  
17 point?

18 CHAIRWOMAN SHOWALTER: Don't we usually ask  
19 our questions first.

20 JUDGE RENDAHL: That's true, thank you, yes.  
21 Chairwoman Showalter, do you have any questions?

22 CHAIRWOMAN SHOWALTER: Just a couple.

23 E X A M I N A T I O N

24 BY CHAIRWOMAN SHOWALTER:

25 Q. Regarding the price of the Tye at \$710,000,

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1 did you regard it as a good price?

2 A. We regarded it as a super price. It was --  
3 it would have been very difficult to move forward  
4 frankly without getting such a good price, but it's a  
5 good vessel, and in fact we told the Washington State  
6 Ferries it was far superior to what we had expected.

7 Q. And what cross street is at Pier 56 in terms  
8 of the east-west street?

9 A. Pier 56 is, oh, boy, there's a parking lot --  
10 it's -- do you know where Bay Pavilion is, I'm sorry?

11 Q. By the way, for the record, we mean in  
12 Seattle.

13 A. Yes, ma'am.

14 Q. But maybe in relation to Pike Place Market or  
15 the Bainbridge ferry terminal.

16 A. Yes, it is just north of Elliott's  
17 restaurant, which is north of the Bainbridge ferry, it  
18 is two blocks south of the Aquarium, and it is -- well,  
19 actually it's one block north of Spring Street.

20 Q. That answers the question.

21 A. Thank you.

22 Q. If I do my streets right, that's one block  
23 north of Spring is it, let's see, Seneca or Union?

24 A. I see Mr. Tougas nodding his head, and he  
25 lives in --

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1 Q. We think it's at Seneca.

2 A. Yes, ma'am.

3 Q. Could you answer the same question for Pier  
4 69?

5 A. Pier 69 is one block south of Broad Street,  
6 and it is just north of the Edgewater Hotel, Wall  
7 Street. It's best known for we're on the main level of  
8 the Port of Seattle headquarters.

9 Q. And one question on the bicycles, I'm not  
10 sure I understood you, but did you say that part of your  
11 plan potentially is to allow a commuter to keep a  
12 bicycle in a container somewhere say in Seattle and then  
13 not have to pay the bicycle price every day but pay some  
14 kind of price for storing it there?

15 A. That would be our preference, yes, ma'am.

16 Q. And is that price for storing it there part  
17 of our tariffs or a separate issue?

18 A. That would be a separate issue. That would  
19 be our approach, that that is a separate issue.

20 Q. And you said a couple of times that you had  
21 always been a supporter of the public ferry system,  
22 either the State level or Kitsap County, and I wondered  
23 why that was your position that that is preferable to  
24 the private sector?

25 A. A number of reasons. One is they don't have

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1 to worry about making a profit. They can, the greater  
2 good I guess, sell tickets at a lower price as a  
3 component of the transportation system, and that's  
4 probably the largest part of that. Both Kitsap Transit  
5 and Washington State Ferries provide that. They don't  
6 have to worry about the price of capital investment, et  
7 cetera. And government to government, that integration  
8 planning is something that is easier for governmental  
9 bodies to do than for the private sector in many cases  
10 to work with governmental entities. What we have done  
11 with Kitsap Transit I think is good public policy and is  
12 going to be basically a good model for other areas to do  
13 the same thing in terms of commuter service.

14 Q. Despite the disadvantages, financial  
15 disadvantage I guess of the private sector providing  
16 this service, do you feel that over some period of years  
17 it can and will be profitable?

18 A. Yes, we do, but only in the context at this  
19 point in time I liken it to what has happened in New  
20 York. New York Waterways operates 42 vessels between  
21 Manhattan and New Jersey and elsewhere. They started  
22 with one vessel during commute hours and grew that as  
23 they have a lot of critical mass, and the frequency  
24 developed and then middle of the day and evening.

25 For us to do this, we have to look at the

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1 peak periods of travel so that you're not incurring  
2 additional cost for low ridership periods. So during  
3 this enhanced period of demand, we can operate and get  
4 optimum ridership and not have an underutilized vessel.  
5 So until we grow the awareness and that critical mass,  
6 we would stick to the commute periods. But we do  
7 believe the way the population base in Western  
8 Washington and Kitsap County have grown that it will  
9 continue to and there will be other opportunities.

10 Q. Where will a commuter from Kingston park at  
11 the Kingston end; how would a resident who lives in that  
12 area but needs to drive get there?

13 A. Kitsap Transit has a number of remote  
14 locations. They have something near Port Madison, they  
15 have a number of parking areas. There are also the Port  
16 of Kingston owns a parking area. And I will say that  
17 the Port of Kingston, that immediate area has limited  
18 parking, but what we envision and what we have  
19 envisioned in discussion with the Port of Kingston and  
20 with Kitsap Transit is that they will use remote  
21 locations with easy access with Kitsap Transit shuttle  
22 vans and bus service, and then the closer you get to the  
23 Kingston dock that there would be charges for parking.  
24 And that's been done in other areas where there's free  
25 parking, but the closer you get to the dock you pay. So

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1 right now we have a study that Kitsap Transit, and I'm  
2 sure Mr. Hayes will be providing that information, shows  
3 the number of parking spaces available in the Kitsap  
4 area where people can park and have access.

5 Q. Would you expect to see growth in housing  
6 stock in response to a direct ferry between Kingston and  
7 Seattle?

8 A. Yes, ma'am. In fact, in conversations with  
9 people in the Kingston area we have already heard that  
10 there's been appreciation in real estate just on the  
11 basis of discussion of the service, and there are a lot  
12 of homes being -- the cost of homes is significantly  
13 less expensive than the greater Seattle area, but we  
14 believe that there will be increased demand in that area  
15 for folks moving across the water.

16 Q. If you know, is the cost of homes currently  
17 less than the Bainbridge Island area and Bremerton  
18 areas?

19 A. It's definitely less than Bainbridge.  
20 Bremerton, although it's appreciating, has got a ways to  
21 go to challenge. But we think Bremerton is going to  
22 benefit in the same manner, probably even more  
23 significantly than Kingston, that there is a lot of  
24 affordable potential housing along the water in  
25 Bremerton and that whole community. We really do

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1 believe this is going to open things, and it's going to  
2 be what we envision are going to be a lot of families  
3 moving to the other side where affordable housing but  
4 yet ease and convenient transportation.

5 CHAIRWOMAN SHOWALTER: I have no further  
6 questions, but I would like to say for the record that  
7 the Commissioners do know where Kingston is.

8

9 E X A M I N A T I O N

10 BY COMMISSIONER HEMSTAD:

11 Q. I just have one question or area, and that's  
12 your reference in the tariff to the entrant fee will be  
13 free under the age of one. I'm a bit curious about  
14 that. You don't have any kind of lower fare for  
15 children, so if a mother has a child at age one and a  
16 half, then that baby would be charged a full fare  
17 apparently.

18 A. Yes, sir.

19 I'm sorry, did I interrupt you?

20 Q. No.

21 A. Okay, I've got to get over that practice, I  
22 apologize.

23 It's a Coast Guard regulation that any child  
24 over one has to have his or her own seat, and that's  
25 always been the basis in the marine side for making that

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1 separation. And frankly, this is -- we're going to  
2 learn things as we get this service going, much as we  
3 did with the Victoria Clipper. It may be simply  
4 coincidental but Merideth Tall who owns the majority of  
5 Clipper didn't have a lot of the symptoms to take  
6 children when we first started the company. She has  
7 five now and we carry children free to Victoria most of  
8 the year. I don't know if one has anything to do with  
9 the other. But I think we're going to learn a lot as we  
10 go forward, and our experience with the UTC in the past  
11 is if we can make the case, they have been cooperative  
12 in terms of making those changes to our tariff.

13 Q. Well, do you anticipate during the commuter  
14 hours that your boat would be full or relatively full?

15 A. It is our goal and we, in terms of our  
16 ridership, that in the morning from Kingston will be  
17 relatively full, on the return legs significantly less  
18 so, although that's our goal. Whatever we can do to  
19 fill up the westbound traffic in the mornings or the  
20 eastbound in the afternoon can make a significant  
21 difference. We did not, not to take anything out of  
22 Dave's presentation or his testimony, but we did not  
23 anticipate high ridership on those reverse moves while  
24 we develop that.

25 COMMISSIONER HEMSTAD: That's all I have,

0133

1 thank you.

2 THE WITNESS: Thank you.

3

4 E X A M I N A T I O N

5 BY COMMISSIONER OSHIE:

6 Q. Mr. Bryan, I believe, I may have misheard you  
7 and I'm not sure it was your company, but there have  
8 been three surveys of the market done. Testimony to  
9 this morning discussed the survey in 2000 and 2004,  
10 maybe you could describe the third survey a bit and the  
11 date of that survey and what that survey at least told  
12 you about the market.

13 A. That survey, and unfortunately we did not  
14 keep that information, but was done in early 1996, and  
15 that was about the time, March of '96 is when we filed  
16 an application for Seattle to Kingston service, and  
17 essentially it was very similar to the results to what  
18 we found in 2000, 2004. That people were looking for  
19 direct service and that -- so that they could avoid  
20 going to either Bainbridge or to Edmonds. And this is  
21 simply on recollection, the price range that they showed  
22 price sensitivity was really very close to what they had  
23 shown in 2000, 2004, and that was an \$8 to \$10 range.  
24 And on the survey we had them show the desired departure  
25 times, and really again very close to what we found in

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1 those later ones. But that was kind of the extent.

2 We know we can't make everyone happy with the  
3 exact departure, but we felt that if we offer enough  
4 alternatives they can adjust. As a former commuter in  
5 New York and Chicago and L.A., I know you can adjust  
6 your work schedule a little bit to meet the schedule  
7 that's put out.

8 Q. Who or what entity conducted the surveys in  
9 2000 and in 2004?

10 A. It was Clipper, and in 2004 we worked in  
11 conjunction with the Kingston Chamber of Commerce and  
12 different businesses in terms of distribution. And in  
13 2000 again, one of the witnesses that will be  
14 testifying, Tom Wagner, Kingston Lumber, who was the  
15 president of the Kingston Chamber, assisted us at that  
16 time too in distributing. And then we had some  
17 employees in 2000 that were also at the ferry docks  
18 passing out to Washington State Ferry passengers those  
19 surveys.

20 Q. Let me move on to one more subject, and then  
21 I think this will do it. But as far as the negotiations  
22 with the Port of Seattle for Pier 69, how would you  
23 describe the status of the negotiations?

24 A. In terms of docking?

25 Q. Right.

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1           A.     I believe you mean for Kingston. For the  
2 Pier 69, we have a long-term lease, Clipper Navigation  
3 does, on the Seattle side, and we have had those docking  
4 arrangements since 1990, and we have occupied that since  
5 '86. And if I understand the intent, I believe you mean  
6 Kingston.

7                     Very, very good. We have had a number of  
8 meetings with them. They are fully on side in terms of  
9 temporary and permanent solutions to docking over there.  
10 In fact, as recent as Saturday we had a meeting with  
11 Kitsap Transit, Art Anderson Associates, a naval  
12 architectural firm that is going to be doing design work  
13 for us, and we have another meeting scheduled with the  
14 Port of Kingston in terms of our time line. So it's  
15 very positive. We, in fact, the Port of Kingston has  
16 facilitated two meetings with the County, the fishery  
17 people, and the Army Corps of Engineers, et cetera, for  
18 the permanent docking solution.

19           Q.     Do you anticipate -- what's your anticipated  
20 date in which the docking solution would be resolved?

21           A.     By the time all the permitting is done. I  
22 don't have my schedule, but it would be I believe the  
23 fall of '05 for the permanent docking, and we have an  
24 interim temporary solution that would facilitate or  
25 would accommodate us until that time.

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1 COMMISSIONER OSHIE: Thank you.

2 THE WITNESS: Thank you.

3

4 E X A M I N A T I O N

5 BY JUDGE RENDAHL:

6 Q. I just have a few questions, Mr. Bryan, also  
7 related to the dock. If you look at Exhibit 8, which is  
8 the Argosy agreement or the lease with Argosy, the  
9 second sentence indicates that Aqua Express would have  
10 to coordinate the dock times with Argosy, and I'm not  
11 familiar with the Royal Argosy schedule, but considering  
12 that the Aqua Express vessel will be docked I'm assuming  
13 in Seattle during the middle of the day, is there any  
14 conflict now with Argosy's schedule?

15 A. No, generally with the Royal Argosy they move  
16 to vessel to Pier 56 for their evening dinner cruises  
17 and on the weekend, and the remainder of the time they  
18 leave it at Pier 54, which is the dock just north of  
19 Ivar's, between the Ivar's pier and the central pier.  
20 And in terms of the Aqua Express vessel, we have talked  
21 about shifting that boat to Pier 69 during the day for  
22 any scheduled maintenance work, so we feel very  
23 comfortable that we will be in and out both prior to and  
24 subsequent to the Royal. Their schedule, their sailing  
25 schedule, they generally board -- they've got a set

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1 boarding time and departure time and arrival so that we  
2 don't have to worry about being at the dock. It lines  
3 up with our schedule, and so we don't see any problems  
4 in that respect. During the course of the day they, as  
5 I say, the Royal is at another dock, and we would be  
6 coming in and departing. And then in the evening when  
7 they're departing, we're out of the way.

8 Q. Okay. And then one other question just in  
9 terms of the docking arrangements. You said you didn't  
10 look into any other docking arrangements because of the  
11 convenience of Pier 56 I guess it is?

12 A. That's correct.

13 Q. Did you make any attempt to coordinate with  
14 the State Ferry in terms of use of their docking  
15 facilities?

16 A. No, there are too many, how tactful can I be  
17 here, there are too many strings attached with using at  
18 the present time public dock, and there are too many  
19 issues involved, and there are no issues with using  
20 either Argosy's central waterfront dock or Clipper's  
21 dock as a backup.

22 JUDGE RENDAHL: Okay, thank you, that's all I  
23 have.

24 THE WITNESS: Thank you.

25 JUDGE RENDAHL: And I think what we will do

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1 is we will save the redirect until after our lunch  
2 break, and we'll also bring in the survey questions and  
3 the operating agreement and address those questions  
4 after the lunch break. So we will be off the record,  
5 and we will be back at 1:30.

6 Let's be off the record.

7 (Luncheon recess taken at 12:00 p.m.)

8

9 A F T E R N O O N S E S S I O N

10 (1:30 p.m.)

11 JUDGE RENDAHL: Mr. Wiley.

12 MR. WILEY: Yes, thank you, Your Honor.

13

14 R E D I R E C T E X A M I N A T I O N

15 BY MR. WILEY:

16 Q. Mr. Bryan, during the lunch break we copied  
17 the document that's been identified now as Exhibit 10  
18 encaptioned 2004 Kingston/Seattle Commuter Ferry  
19 Surveys. Is this, in fact, the summary matrix of the  
20 2004 survey questionnaire results that you performed?

21 A. Yes, sir.

22 Q. And do these, in fact, show the responses  
23 with appropriate tabulation of how many respondents  
24 there were, how many responses you got out of how many  
25 respondents, et cetera?

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1 A. That's correct.

2 Q. And is this one of the -- is this the 2004  
3 survey that you referred to in earlier testimony?

4 A. Yes, sir, it is.

5 Q. You used the term in your cross-examination  
6 testimony pocket cruise vessels, I just want to make  
7 sure the record is clear on that because I don't know  
8 what that is. What is a pocket cruise vessel?

9 A. I apologize. They are regarded as overnight  
10 cruise vessels that are generally no more than 150  
11 passengers, although there are some that are up to 220,  
12 but they are small overnight cruise vessels.

13 Q. You also referred to a Kim Marine as a  
14 "intermediary". You didn't mean to imply there was any  
15 nefarious role there by Kim Marine, did you? And what  
16 is Kim Marine in terms of how it acted in this  
17 transaction?

18 A. Kim Marine specializes in helping handle  
19 vessel documentation. They're probably the premier  
20 business for handling this, handling the fiduciary  
21 responsibilities on title transfer and handling of  
22 funding on purchases of vessels and also title  
23 transfers.

24 Q. They act as a fiduciary then in closing  
25 transactions for sales and purchases of vessels?

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1 A. Yes, sir.

2 Q. Mr. Iglitzin asked you about new security  
3 arrangements with the United States Coast Guard. I  
4 would like you to elaborate a little bit on those,  
5 because as I understand they're fairly recent, and then  
6 I want to ask you a couple questions on the timing.

7 A. They are recent. In fact, the new security  
8 requirements go into effect 1 July. However, the  
9 process for getting approvals work up to having these  
10 things in place prior to 1 July. It's something that  
11 there has been a public process on this, public  
12 hearings, meetings, and lots of briefings and seminars  
13 put on by the Coast Guard, so it's been a process that's  
14 been going on for the greater part of a year and a half.

15 Q. We call those stakeholder sessions, don't we?

16 A. Yes, sir.

17 Q. Okay. And as a result of those stakeholder  
18 sessions, you are going to then make the application to  
19 the Coast Guard, the captain of the Port of Seattle,  
20 regarding this proposed service by Aqua Express?

21 A. Yes. And, in fact, there is an industry plan  
22 in place that can be utilized for Kingston, and we see  
23 absolutely no difficulties in having that ready and  
24 available in a relatively short while.

25 Q. And certainly would that process be completed

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1 before October 1, 2004?

2 A. Well in advance of that date.

3 Q. Finally, you were asked by Mr. Iglitzin about  
4 your time that you have "contributed" to Aqua Express  
5 over the past year, you estimate about 15%, 20% of your  
6 time. Does Clipper Navigation view that as sort of  
7 tending to an investment of the company in Aqua Express?

8 A. Very much so. In fact, over the years my  
9 involvement on areas like this have been considerable  
10 looking for opportunities. And on this, this is an  
11 investment to get it started, and I certainly don't view  
12 my involvement continuing to this degree, particularly  
13 after we have a general manager in place.

14 MR. WILEY: Thank you, no further questions,  
15 and I believe Exhibit 10 is a records requisition  
16 request, so it's in the record, is it, Your Honor, or  
17 should I formally move?

18 JUDGE RENDAHL: Yes, and I should clarify,  
19 well, it's not in the record until you move it, but I  
20 should clarify that I believe the survey should be  
21 Record Requisition Number 1, and the operating agreement  
22 should be Record Requisition Number 2 just to clarify  
23 for the record.

24 So you are moving to admit Exhibit Number 10?

25 MR. WILEY: Yes, I am, Your Honor.

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1 JUDGE RENDAHL: Any objections?

2 Hearing no objection --

3 MR. TROTTER: Your Honor.

4 JUDGE RENDAHL: Mr. Trotter.

5 MR. TROTTER: While we were off the record we  
6 noted that Exhibit 21 refers to an Exhibit A that is not  
7 attached, so subject to that being added to the exhibit,  
8 we don't object.

9 JUDGE RENDAHL: At this point I'm not asking  
10 about 21 yet. I'm just asking about the survey, Exhibit  
11 Number 10, if there are any objections. If there are  
12 none, we'll admit the exhibit.

13 Okay, the exhibit is admitted.

14 All right, is there any recross? And I'm  
15 allowing that limited because we just now have the  
16 survey. Mr. Iglitzin, are there any questions you would  
17 like to ask this witness about the survey?

18 MR. IGLITZIN: Thank you.

19

20 R E C R O S S E X A M I N A T I O N

21 BY MR. IGLITZIN:

22 Q. First question I have about the survey is  
23 that the copy of Exhibit 10 that I have received starts  
24 with question 7 on the first page and then goes to  
25 question 1 on the second page.

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1                   MR. WILEY: It was misstapled. I can't take  
2 the blame for that since I didn't do the stapling.

3                   MR. IGLITZIN: I'm just going to take another  
4 second to look at this if that's all right.

5                   JUDGE RENDAHL: Please do.

6 BY MR. IGLITZIN:

7           Q.       My first question is, was this survey --  
8 where was -- how was the survey handed out and to what  
9 population?

10           A.       This survey was distributed in a number of  
11 different areas. One, through the Kingston Chamber of  
12 Commerce. Some were given to Kitsap Transit, and I  
13 don't know frankly whether or not the riders on Kitsap  
14 Transit turned them in. But we had a number of outlets  
15 in the Kingston area. Also people contact us directly  
16 to have us send surveys to them. And they were self  
17 addressed surveys with our address as the return  
18 address. And I say our, I should clarify that, Clipper  
19 Navigation, I apologize.

20           Q.       My next question has to do with the price  
21 sensitivity. What I'm seeing here is 46% of the  
22 respondents said that they would pay between \$8 and \$9  
23 for Kingston/Seattle passenger service, and 42% said  
24 they would pay between \$10 and \$11. In your passenger  
25 projections in the other material that we have seen, are

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1 you projecting a certain percentage of people who  
2 currently take the Kingston/Edmonds ferry as switching  
3 to the Kingston/Seattle ferry that you plan on  
4 operating?

5 A. We believe that there will be a number of  
6 people who currently use auto ferries that will change  
7 to the passenger only. Don't have a breakdown as to  
8 what number that will be, but that's clearly one of our  
9 presumptions.

10 Q. And did anyone to your knowledge sit down and  
11 attempt to make projections as to what percentage of  
12 people who currently are taking the Kingston/Edmonds  
13 ferry during rush hour would switch to the  
14 Kingston/Seattle ferry?

15 A. No, sir.

16 Q. Were you involved in putting together the  
17 ridership projections that the various financial  
18 documents we have seen are predicated on?

19 A. No, that was Mr. Tougas, excuse me, yes,  
20 Mr. Tougas.

21 Q. All right. Please elaborate if you had some  
22 involvement in it or --

23 A. No, I had no involvement. One of our  
24 employees that lives in that area had some discussion,  
25 but the analysis was done by Mr. Tougas.

0145

1 Q. Do you know if Mr. Tougas had a copy of this  
2 survey matrix as part of his analysis?

3 A. The initial report that was done by  
4 Mr. Tougas was done without this.

5 Q. Were you part of the decision by Clipper  
6 Navigation to invest in Aqua Express, to become a  
7 limited partner of Aqua Express?

8 A. Yes.

9 Q. And did you make that decision based on the  
10 premise that there would be adequate number of  
11 passengers on the Kingston/Seattle ferry to make that at  
12 least an economically feasible business?

13 A. Frankly I made that recommendation and  
14 decision on the basis of the I guess 14 plus year  
15 involvement with the Kingston community and talking to  
16 people in that area, including my own brother, as to the  
17 demand and the desire to have downtown to downtown  
18 service. It really is the same basis we used when we  
19 started the Victoria Clipper in 1986. We didn't do any  
20 marketing surveys in 1986. We knew there was a demand.  
21 And as you may know, we're the first company to  
22 successfully operate year round between Seattle and  
23 Victoria, but we felt there was a demand, and in fact  
24 there has been a demand, and the same reasoning went  
25 into play in terms of the Kitsap area.

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1           Q.     Do you have a sense then, either an estimate  
2     or -- and I am respectful of the -- that you're making  
3     business decisions based on your overall sense of what  
4     the market will bear and what people will want, are -- I  
5     guess is your target group of passengers people who are  
6     primarily getting from Kitsap to King County or Seattle  
7     via the Washington State Ferries right now, or are there  
8     other commuters or other individuals who you think you  
9     will then be bringing on board the vessels who are not  
10    otherwise going to be taking the ferry?

11          A.     We believe that the availability of the  
12    service, reliable service, on time performance,  
13    affordable, will grow the market and that there will be  
14    new riders that will use that service, folks over there  
15    that might currently drive around, people who are moving  
16    to the area, as well as people who are currently taking  
17    the auto ferries because they want to avoid either I-5  
18    or the heavy congestion on State Route 305.

19          Q.     And will you describe what you mean when you  
20    say drive around?

21          A.     Well, there are some people who will drive,  
22    take the southern route and come around. I don't know  
23    the exact routing, but I know my brother who has worked  
24    for Amtrak will take that route, particularly in the  
25    summer when there are long waits, and will drive south.

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1 And I think that's down the Tacoma Straits Bridge and  
2 around and then fight I-5 coming north to get to Amtrak.  
3 So a lot of this is anecdotal in talking to people in  
4 terms of what their options are, and we think this is  
5 just a much cleaner option for many people.

6 Q. Did you have any involvement in the  
7 preparation of the estimated expenses?

8 A. This is going to sound very familiar,  
9 Mr. Tougas put that together.

10 MR. IGLITZIN: I have no further questions.

11 THE WITNESS: Thank you.

12 JUDGE RENDAHL: Are there any other questions  
13 about the survey?

14 MR. TROTTER: Just one, Your Honor.

15 R E C R O S S - E X A M I N A T I O N

16 BY MR. TROTTER:

17 Q. On Exhibit 10, the question number 3 uses the  
18 term D&P, does that mean driver and passenger?

19 A. That's correct.

20 MR. TROTTER: That's all I have, thanks.

21 JUDGE RENDAHL: Mr. Sells.

22 MR. SELLS: No, Your Honor.

23 JUDGE RENDAHL: Do we have any questions from  
24 the Commissioners as to the survey?

25 Okay, I have none either. At this point,

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1 Mr. Bryan, you can step down. We may recall you when  
2 the other survey results are available tomorrow if there  
3 is a need for that.

4 THE WITNESS: Okay, very good, thank you.

5 JUDGE RENDAHL: So thank you very much.

6 MR. WILEY: Your Honor.

7 JUDGE RENDAHL: Mr. Wiley, do you need a few  
8 minutes to get Mr. Tougas together?

9 MR. WILEY: Yes, I do, because of the late  
10 exhibit distribution, give me about two minutes off the  
11 record.

12 JUDGE RENDAHL: All right, at 2:00 we will  
13 start in with Mr. Tougas, we will be off the record  
14 until 2:00.

15 (Recess taken.)

16 JUDGE RENDAHL: Mr. Wiley, your next witness.

17 MR. WILEY: Yes, I'm calling Dave Tougas to  
18 the stand.

19 JUDGE RENDAHL: Okay, Mr. Tougas, if you  
20 could state your name and spell any words, and your  
21 address too, and any words or spellings that aren't  
22 common.

23 THE WITNESS: Okay, my name is David Tougas,  
24 T-O-U-G-A-S. My home address is 25974 Rolling Hills  
25 Place Northeast, Poulsbo, P-O-U-L-S-B-O, Washington, and

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1 the zip is 98370.

2 JUDGE RENDAHL: Thank you. If you could  
3 please stand and raise your right hand.

4 (Witness David Tougas was sworn.)

5 JUDGE RENDAHL: Okay, thank you, please be  
6 seated.

7 Mr. Wiley.

8

9 (The following exhibits were identified in  
10 conjunction with the testimony of DAVID  
11 TOUGAS.)

12 Exhibit 15 - Aqua Express Interim Balance  
13 Sheet as of June 15, 2004.

14 Exhibit 16 - Kingston/Seattle Ferry Division  
15 ProForma Income Statement, 2004 Dollars,  
16 Years 1-5.

17 Exhibit 17 - Kingston/Seattle Ferry Division  
18 Ridership and Revenue Forecast, Year 1 by  
19 month.

20 Exhibit 18 - Kingston/Seattle Division  
21 Ridership and Revenue Forecast, Years 2-5.

22 Exhibit 19 - Aqua Express, LLC, ProForma  
23 Income Statement, 2004 Dollars, Year 1.

24

25

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1 Whereupon,

2 DAVID TOUGAS,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILEY:

7 Q. Good afternoon, Mr. Tougas, thank you for  
8 your patience this morning. Would you please tell the  
9 Commission what your position is with both the Aqua  
10 Express and the member company Four Seasons Marine,  
11 please.

12 A. Okay, I will start with the member company,  
13 Four Seasons Marine. I am the Vice President and Chief  
14 Financial Officer for Four Seasons Marine. It is a  
15 vessel leasing and operating company and a tour  
16 operating company primarily in Alaska. And we are also  
17 a investor in Aqua Express, LLC. We own a 25% share of  
18 Aqua Express.

19 Q. Are you by profession a certified public  
20 accountant?

21 A. Yes, I am.

22 Q. And how long have you been one?

23 A. Since 1987, so that's 17 years.

24 Q. And you're also in business with your brother  
25 in Four Seasons Marine who has been referred to as Tom

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1 Tougas on this record, could you just tell us what he  
2 does?

3 A. Correct. Tom Tougas is the sole owner of  
4 Four Seasons Marine Services. He has been involved in  
5 the Alaska tourism industry since 1974. He for the  
6 first 16 years of his career he worked for Holland  
7 America Line West Tours, eventually as Vice President of  
8 Transportation for Holland America Line. After Holland  
9 America Line merged with Carnival Cruise Lines he left  
10 Holland America Line and purchased Seattle Harbor Tours,  
11 and he operated that for about three years. At that  
12 time, John Blackman, who was a limited partner, wanted  
13 to become more involved in Seattle Harbor Tours, and  
14 another opportunity to operate a boat company in Alaska,  
15 a boat company called Kenai Fjords Tours, became  
16 available, and so he sold his general partnership share  
17 in Seattle Harbor Tours, which is now Argosy, to John  
18 Blackman and moved to Seward, Alaska, where he operated  
19 Kenai Fjords Tours for several years, selling it to  
20 another company in Alaska, and subsequently starting up  
21 Four Seasons Marine, which operates boats in Southeast  
22 Alaska.

23 Q. When did he start Four Seasons Marine?

24 A. 1997.

25 Q. And could you describe your interest and the

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1 interest of your company in terms of the Kingston to  
2 Seattle passenger only ferry market.

3 A. I personally have a very strong interest  
4 because I live in Poulsbo, and whenever I have to go to  
5 Seattle I either have to drive around through Tacoma  
6 across the Tacoma Narrows Bridge as Darrell pointed out  
7 or go down through the congested Highway 305 corridor,  
8 and so I would like to see alternative ways to get to  
9 downtown Seattle from a personal point of view.

10 From a business point of view, Four Seasons  
11 Marine Services has a number of vessels that we lease to  
12 other parties, and we want to see vessels operating  
13 whenever there is an opportunity to operate vessels. We  
14 think that it's in our best interests to put together  
15 those kinds of operations, not necessarily to operate  
16 them ourselves, but as an opportunity for our  
17 investments, to put them to work.

18 Q. In that capacity in terms of looking at an  
19 investment in the Seattle/Kingston route, when did you  
20 come into active participation in this venture in terms  
21 of looking at the startup of a passenger only ferry?

22 A. Well, after the defeat of the Kitsap Transit  
23 Proposition 1 in November of 2003, I sent an E-mail to  
24 John Blackman at Argosy saying that perhaps it was time  
25 for private enterprise to step up and begin this

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1 operation, and John responded that he had been talking  
2 the same way with Darrell Bryan and Matt Nichols of  
3 Nichols Brothers Boat Builders, and it kind of all came  
4 together, all of us were thinking the same thing at the  
5 same time.

6 Q. And that was in November of 2003?

7 A. And thereafter.

8 Q. And have you since that time sort of filled  
9 the role of the CPA for Aqua Express for whatever that  
10 entailed over the last six months?

11 A. Yes.

12 Q. And in that capacity do you supervise the  
13 preparation of any financial ProFormas and exhibits for  
14 instance in this proceeding?

15 A. Yes, I have worked on all of the financials  
16 in conjunction with the other partners.

17 Q. If this application is granted and Aqua  
18 Express becomes a reality, do you -- what is your plans  
19 with respect to a financial employee at Aqua Express,  
20 will you be it, or will you hire somebody else?

21 A. We intend to hire a general ledger  
22 accountant, an accounting manager type who would handle  
23 the day-to-day books, and the books would be reviewed  
24 annually by an independent CPA. And, you know, if there  
25 were a need for one of the partners, the Chief Financial

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1 Officer is one of the partners, to become involved, we  
2 would become involved, and, you know, I would probably  
3 be the most likely candidate.

4 Q. Would you be the party to supervise and  
5 provide oversight to parties handling day-to-day  
6 financial operations at Aqua express?

7 A. I would be involved in establishing the  
8 procedures, yes.

9 Q. And with respect to regulatory filings of  
10 this Commission such as annual reports or any other  
11 thing, tariffs, et cetera, would you be at least partly  
12 involved in that?

13 A. Yes.

14 Q. Since this application was filed in early  
15 April, I think the verb that was used was there's been  
16 some iterating of the financial exhibits, and I'm  
17 wondering if you could tell the Commission what that was  
18 a result of and what has gone on in the fairly busy two  
19 months since the application was filed.

20 A. It's very typical when a business is  
21 preparing budgets to adjust the budgets as they go  
22 along. Sometimes even after operations begin they still  
23 adjust the budgets. And after our initial application,  
24 well, you know, the financials that we included in the  
25 initial application were probably about the third round

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1 of us going back and forth about exactly what  
2 assumptions we wanted to make. And since that time we  
3 have refined those assumptions and developed the current  
4 financial statements that we have. Again, these are  
5 just ProFormas, they're just budgets, they're our best  
6 estimate of what we think will happen, but they're not  
7 actual numbers. And it's a new service, and it's kind  
8 of difficult to estimate what's going to actually happen  
9 when it's a brand new service.

10 Q. With respect to the information that is known  
11 as of June 15th, with respect to a balance sheet, there  
12 have been some substantial changes since April 8th. Can  
13 you please state, and referring to Exhibit 15, please,  
14 can you please state what basically has changed in  
15 general terms at least between April and June and why  
16 this reflects a much more accurate portrayal of the  
17 assets and liabilities of the applicant entity.

18 A. Okay. Initially the way that we envisioned  
19 organizing our operations is that one entity would own  
20 the vessel and would charter it to a second entity, and  
21 this was done for tax purposes, that we could pay the  
22 tax over a longer period of time. The other --

23 Q. By tax you mean sales tax --

24 A. Sales tax.

25 Q. -- or income tax?

0156

1 A. Sales tax.

2 Q. The Washington state --

3 A. Washington state --

4 Q. -- sales tax?

5 A. -- sales tax, correct.

6 JUDGE RENDAHL: Mr. Wiley and Mr. Tougas, as  
7 I advised Mr. Bryan, please be sure to wait to speak  
8 until the other one is finished. We'll get it all on  
9 the record, so.

10 MR. WILEY: I just want to clarify when he  
11 makes his statement with reference to tax, Your Honor,  
12 that's why I interrupted there, I'm sorry.

13 BY MR. WILEY:

14 Q. So you were talking about the tax issue, the  
15 sales tax issue.

16 A. Correct. We decided that it would be simpler  
17 and that in the long run it would probably be less  
18 expensive to just have the vessel held in the same  
19 entity as the operations were occurring, so that is the  
20 primary reason that this balance sheet looks  
21 substantially different than the balance sheet that was  
22 presented earlier.

23 Q. And if we could go down just generally  
24 through Exhibit 15, and you could maybe explain that  
25 statement with respect to the entries, it may be

0157

1 clearer. Let's start with the vessel valuation, which  
2 is the largest asset on the balance sheet, \$922,000,  
3 what does that consist of, please?

4 A. That consists of the initial \$710,000  
5 purchase of the vessel from the boat broker in Florida  
6 plus the refurbishment of the vessel that was performed  
7 at Nichols Brothers this spring.

8 Q. So that's cost plus improvements; is that  
9 what you're saying?

10 A. Correct.

11 Q. Okay.

12 A. And the vessel is probably worth  
13 substantially more than that, as Darrell Bryan referred  
14 to. We think we got a really good deal on this boat,  
15 and we think that it's probably worth substantially more  
16 than what we have it on the books for.

17 Q. Cash of \$181,900 in the asset side of the  
18 ledger, what does that consist of, please?

19 A. That's the money in our checking account. It  
20 primarily came from the down below the liabilities the  
21 Foundation Bank long-term debt of half a million  
22 dollars. Part of that half a million dollars went to  
23 refurbish the vessel, and the balance of it went to  
24 cash.

25 Q. And would you describe the recent lending

0158

1 arrangements with Foundation Bank, please.

2 A. When we -- after we bought the vessel and we  
3 were considering refurbishing it, we talked to several  
4 different banks, and we had several offers from banks to  
5 lend us money, and the loan offer that we received from  
6 Foundation Bank was the most attractive. It's a five  
7 year loan, and we pay it down over the five year period.  
8 And it was -- it's on the credit of Aqua Express itself,  
9 none of the partners have guaranteed this loan, which is  
10 one of the reasons that we found Foundation Bank  
11 attractive is that they did not expect partner  
12 guarantees, which we appreciate.

13 Q. I'm not familiar with Foundation Bank, for  
14 those either at the Commission or other counsel, where  
15 is Foundation Bank headquartered, and what is it,  
16 please?

17 A. It's headquartered in Bellevue. It's a small  
18 commercial bank.

19 Q. So looking up above at the assets, some of  
20 the cash in the account now is from the long-term or the  
21 five year term loan from Foundation Bank; is that  
22 correct?

23 A. Correct.

24 Q. And the cost of the vessel, that was  
25 contributed by the partners based on Mr. Bryan's

0159

1 testimony; is that correct?

2 A. Correct.

3 Q. And Mr. Trotter had raised a point about the  
4 operating agreement, we'll talk about that specifically,  
5 but there was a reference to an Exhibit A in the  
6 operating agreement which is not attached. Can you  
7 explain why that's not attached and what that would say  
8 if it were attached, please.

9 A. To my knowledge, Exhibit A was never  
10 prepared. What it would say -- the reason is is that  
11 this operating agreement was prepared after the fact,  
12 after the partners had contributed their cash, and  
13 everybody knew what Exhibit A would say, which is if you  
14 flip over to the second page of Exhibit 21, you have a  
15 list of the four different members, and each one of the  
16 members contributed -- it's kind of an odd number and I  
17 want to make sure that I get the right number, it's  
18 \$710,000 is what we bought the boat for divided by the  
19 four partners, so it's \$177,500 each partner had  
20 contributed.

21 Q. Is that what Exhibit A to the best of your  
22 knowledge would reflect at this point, keying to  
23 Paragraph 2.2 and converting that percentage to dollars?

24 A. Correct. Each partner, each one of the four  
25 partners would have contributed, or each one of the four

0160

1 partners did contribute \$177,500.

2 Q. Going back to Exhibit 15, there is an AR line  
3 item which is somewhat surprising since we think of this  
4 as a company that's starting in October by the  
5 testimony, in fact there is an account receivable due  
6 Aqua Express because why?

7 A. Because the vessel is currently being  
8 chartered to Four Seasons Marine in Alaska, and Four  
9 Seasons Marine is paying Aqua Express a charter fee for  
10 the vessel.

11 Q. And is that charter fee reflected in  
12 subsequent exhibits that we're going to be talking about  
13 this afternoon?

14 A. Yes, it is.

15 Q. And, in fact, you have separated into  
16 divisions the three separate divisions of Aqua Express  
17 for accounting purposes this afternoon and for lenders;  
18 is that correct?

19 A. That is correct.

20 Q. And what are those divisions within Aqua  
21 Express?

22 A. At this time the three different divisions of  
23 Aqua Express are the Kingston/Seattle Ferry, second  
24 division is concessions, and the third division is the  
25 leasing division.

0161

1 Q. And that is also a change from what was  
2 envisioned at least in April of 2004 as you filed this  
3 application; is that correct?

4 A. That's correct. Again, if we had two  
5 separate entities with one entity leasing the vessel to  
6 the other entity, there was no need for a leasing  
7 division. But because we have combined the leasing  
8 function and the operating function together in one  
9 company, we wanted to separate it out into divisions so  
10 that as business operators we could determine which  
11 divisions were making money and how to manage the  
12 company better.

13 Q. Before we finish on Exhibit 15 I just wanted  
14 to go briefly to an error in Exhibit 16 in terms of the  
15 line item explanation now that we have touched upon  
16 concessions. Last line of Exhibit 16 under other  
17 expenses, is it correct that including concession is in  
18 error, that that should be deleted?

19 A. That's correct, that should be deleted.  
20 Again, we have been through several iterations of this  
21 ProForma financial statement, and I have been  
22 concentrating on the numbers, and I missed the caption  
23 correction.

24 Q. Because with the operating division of  
25 concessions, that obviously would be in error now as you

0162

1 organized the financial statement?

2 A. Correct.

3 Q. Okay, let's go back to Exhibit 15, just  
4 briefly touch upon the inventory, Aqua Express parts.

5 Parts are always rather a large item in vessel balance  
6 sheets in my experience, what are those parts, are they  
7 engines or what are they?

8 A. There isn't an engine, but there is an awful  
9 lot of parts. I don't think we quite have enough parts  
10 to build an engine out of the spare parts, but we've got  
11 a spare for just about everything that could go wrong.

12 Q. And the owners equity partners, is there any  
13 anticipation of when that money would be paid back to  
14 the partners?

15 A. There is no requirement that we pay it back  
16 to the partners, but in the partnership agreement it  
17 says that if there is excess funds that upon the  
18 approval of the partners it may be distributed to the  
19 partners.

20 Q. Consistent with any other regulatory  
21 requirements; is that correct?

22 A. Correct.

23 Q. Okay, let's go to the --

24 A. I should also point out that under owners  
25 equity it says partners \$760,000, and again the partners

0163

1 have contributed \$710,000, and the extra \$50,000 is due  
2 to profits that we have realized from leasing the boat  
3 to Alaska this summer.

4 Q. Going over to Exhibit 16, can you please give  
5 us a little background on that exhibit's preparation and  
6 show what it up -- strike that.

7 Let's go back to Exhibit 15 right now, and  
8 tell me a little bit about the how you established the  
9 value of the paint. How -- what's the \$30,000 a month  
10 figure from?

11 JUDGE RENDAHL: And you're referring to  
12 Exhibit 15?

13 MR. WILEY: Yes, or an item that's included  
14 in the subsequent exhibits, Your Honor, I'm sorry.

15 MR. TROTTER: Can we ask that question be  
16 reasked, I'm very confused where --

17 MR. WILEY: I can understand why,  
18 Mr. Trotter.

19 BY MR. WILEY:

20 Q. Let's go back in terms of how -- let's go to  
21 Exhibit 16, maybe that would be a better way to do this,  
22 Mr. Tougas. He's shaking his head yes, so I won't have  
23 to back up over these questions.

24 Could you please describe for the record some  
25 of the assumptions that you make in this ProForma income

0164

1 statement so that we can understand how you get to some  
2 of the numbers that you get, particularly the larger  
3 ones.

4 A. Okay, I will start at the second from the  
5 bottom, the \$360,000 in charter and rents, and that  
6 \$360,000 divided by 12 months is the \$30,000 per month  
7 that Mr. Wiley began to refer to. Four Seasons Marine  
8 is in the vessel leasing business. We currently own 10  
9 Coast Guard certified passenger vessels. We operate 3  
10 of them, and the other 7 are chartered out to other  
11 operators, and we are in the business of chartering  
12 vessels out to other operators. At this time we have  
13 chartered out more vessels than we can, but we're in the  
14 fortunate situation that the Aqua Express was available  
15 this summer, and so Four Seasons Marine chartered the  
16 Aqua Express from Aqua Express, and we're operating it  
17 in Alaska currently, we meaning Four Seasons Marine  
18 Services.

19 Based on our experience and our negotiations  
20 with the other partners, we established a charter rate  
21 of \$30,000 a month, which we feel is a fair market value  
22 rate based on again our experience with all the other  
23 vessels that we have chartered out and based on our  
24 negotiations with the other partners at Aqua Express.  
25 And so in our ProFormas we have continued to use that

0165

1 \$30,000 a month rate for the charter.

2 Q. And again, is that figure arrived at by  
3 looking at what your experience in the industry is in  
4 leasing comparable vessels over a 30 day period to  
5 establish the \$30,000 a month figure?

6 A. Yes. There's a number of variables that go  
7 into a charter, but considering the particular situation  
8 here, we feel like this is a fair market rent.

9 Q. Okay. Let's go back up Exhibit 16, we're  
10 going to jump around a little bit, I apologize for that,  
11 but I want to get to some of the assumptions that you  
12 used in creating this ProForma, because, as you know,  
13 the statute calls for a ProForma statement to be  
14 supported by the applicant. Could you tell us about how  
15 you got to the full fare revenue line item and what  
16 that's based on?

17 A. Yeah, we will be getting into much more  
18 detail in the revenue section when we get into the  
19 ridership section.

20 Q. Which is Exhibit 17 you're referring to?

21 A. Which is Exhibit 17, and I also think it's  
22 Exhibit 18 for future years. But in general, the  
23 revenues we project to increase steadily over the years.  
24 The discounted fare revenue will increase as a  
25 proportion of the total revenue, because the commuters

0166

1 will develop habits of buying discounted tickets, and  
2 they will, you know, they will know which ones or the  
3 benefits of buying the discounted tickets, and it will  
4 develop to where about half of our passengers will buy  
5 the discounted tickets. But we expect a smaller  
6 percentage than half in the first year because it will  
7 take time to develop those habits on the part of the  
8 commuters. The revenues is the key to the profitability  
9 of this service. The expenses of operating a boat are  
10 the same whether there is 1 passenger or whether there  
11 is 200 passengers, so the expenses are in a lot of ways  
12 easier to predict and more stable, but the revenues will  
13 make the difference in profitability.

14 Q. With respect to some of the expenses that  
15 you're projecting there, for instance fuel, that's  
16 certainly been very dramatically escalating in the  
17 transportation industry this year. Would you tell us  
18 what you have assumed about fuel just in general so we  
19 can get a handle on your projections in the ProForma?

20 A. Okay, we assumed that we burn 110 gallons per  
21 hour for 6 hours per day. If you take the actual  
22 operating time of the vessel, it works out to be about 6  
23 hours per day, and the vessel burns about 110 gallons  
24 per hour. We estimated \$1.50 per gallon in year 1.  
25 Right now it's a little bit higher than that, but we

0167

1 expect, you know, the fuel prices have been dropping in  
2 the last few weeks, and on an average for year 1 we're  
3 estimating that it will be about \$1.50 per gallon, and  
4 we estimated that fuel prices would increase by about a  
5 dime per gallon per year.

6 Q. And did you say that you estimated you would  
7 burn about 660 gallons total, or is that -- that would  
8 be 110 gallons per hour times how many hours you operate  
9 I assume?

10 A. Correct, per day.

11 Q. Is that 6 hours initially that you're  
12 projecting, or how many hours per day is that?

13 A. We're projecting 6 hours per day that the  
14 vessel is actually operating.

15 Q. Now with respect to years 2 through 5, you up  
16 the fuel, and what's that based on, please?

17 A. A 10 cent per gallon increase in the price  
18 per gallon.

19 Q. And you spread that out over the balance of  
20 the 5 year period; is that correct?

21 A. Right. So in other words, we're estimating  
22 \$1.50 a gallon in year 1, \$1.60 a gallon in year 2,  
23 \$1.70 a gallon in year 3, \$1.80 a gallon in year 4, and  
24 \$1.90 a gallon in year 5.

25 Q. In recent years, historically you wouldn't

0168

1 have seen 10% per gallon cost increases until the last  
2 year or two; is that true?

3 A. That's true. It's difficult to predict the  
4 price of fuel though.

5 Q. Let's go back up to the crew payroll line  
6 item for expenses. What are you assuming in that  
7 expense?

8 A. We're assuming -- well, the certificate of  
9 inspection, again that was Exhibit 5, the Coast Guard  
10 requires us to have four crew members, one master, an  
11 engineer or a mate, and then two deck hands. And in our  
12 experience, that's what's necessary to operate the boat,  
13 in the Coast Guard's mind that's what's necessary to  
14 operate the boat, so we have budgeted for four crew  
15 members. They average about \$20 per hour, we're  
16 budgeting 10 hours a day for the crew, which would be  
17 about an hour before the initial departure and then an  
18 hour to clean up the vessel at the end of the morning  
19 commute, again an hour before the afternoon commute  
20 begins, and then an hour at the end of the day to clean  
21 up the vessel.

22 Q. And what sort of average pay increments are  
23 you using there?

24 A. We're again assuming an average of about \$20  
25 per hour. At the beginning it would be a little bit

0169

1 more for the masters and the engineers and a little bit  
2 less for the deck hands, and then that would increase by  
3 about 25 cents per hour per year. The employees  
4 themselves would probably get larger pay increases, but  
5 there is a regular turnover in our business where you  
6 hire new people and they get a lower rate than the  
7 people that left.

8 Q. So normal attrition is what you're saying?

9 A. Correct.

10 Q. The repair and maintenance seem to escalate  
11 years one through five, could you just briefly describe  
12 that.

13 A. Well, again we just spent a couple hundred  
14 thousand dollars refurbishing the boat at the shipyard,  
15 so hopefully in the first couple of years we won't have  
16 to do a whole lot of major repairs. In subsequent years  
17 the machinery is going to wear down, and it will be  
18 likely that we'll need to do some more major repairs in  
19 the later years.

20 Q. And you reflect that in Exhibit 16?

21 A. That's correct.

22 Q. The moorage, we had some discussion about the  
23 cost for that this morning, is that \$200 a day figure  
24 included in the moorage line item?

25 A. Correct.

0170

1 Q. And did you use a similar figure in Kingston,  
2 or what did you use for the Kingston?

3 A. Yeah, we estimated a similar amount for  
4 moorage in Kingston.

5 Q. And based on your discussions to date, would  
6 that appear to be reasonable in terms of what you would  
7 expect to pay in Kingston?

8 A. Yes.

9 Q. Okay. Looking down below to the SG&A  
10 expenses, just we don't need to go down through all of  
11 them, but at least with respect to the SG&A payroll,  
12 what does that consist of by your ProForma projection,  
13 how many people, et cetera?

14 A. We budgeted four people in the SG&A line  
15 item, a general manager, an accountant, a marketing  
16 manager, and a customer service person. We also show in  
17 years four and five that the SG&A payroll would drop  
18 off. That's primarily because we are expecting that the  
19 marketing manager would not be needed and that we would  
20 cut that down to a half-time position. At the same time  
21 by year four and five, hopefully we will be adding  
22 another route or another vessel or somehow expanding our  
23 business and that that marketing person would be used in  
24 other divisions of the company.

25 Q. This ProForma income statement for the ferry

0171

1 division does not include any reference to revenues from  
2 an additional route, does it?

3 A. No.

4 Q. It assumes just this route as being  
5 performed?

6 A. Correct, it is just the Kingston/Seattle  
7 route.

8 Q. Things like advertising appear to be going  
9 down, professional fees, tell us about advertising, tell  
10 us why that basically gets cut in half instead of  
11 increasing at the end of five years?

12 A. Well, we think that our biggest hurdle is  
13 going to be early on building awareness of what our  
14 company does, and so we budgeted more money to make  
15 people aware of Aqua Express in the early years. And in  
16 subsequent years once people become more aware, we won't  
17 need to do as much advertising.

18 Q. And the bottom line that you get to at the  
19 bottom of page Exhibit 16, net income, could you just  
20 describe what you're showing there. The numbers  
21 obviously speak for themselves, but what are you -- can  
22 you give us some analysis or narrative behind the  
23 numbers.

24 A. Yeah, I guess we'll go to the major breaks.  
25 Again the revenue, net revenue is both the full fare and

0172

1 discounted revenue, the vessel expenses is the cost to  
2 actually operate the vessel, with the subtotal there  
3 called gross profit. And then the selling general and  
4 administrative costs are just the general administration  
5 of the operation coming down to a subtotal called  
6 operating income. And then subtracting out the charters  
7 we come to the bottom line net income.

8 Q. On an operating income basis, do you project  
9 a profit from year one?

10 A. From an operating income basis, yes.

11 Q. From a net income?

12 A. From a net income basis, no, we project a  
13 loss the first year.

14 Q. And also a smaller loss the second year; is  
15 that correct?

16 A. Correct. In subsequent years the losses will  
17 go away, and we will become profitable.

18 Q. In your experience in terms of being a  
19 financial officer for marine vessel entities, is it  
20 unusual to have a startup venture lose money in the  
21 first couple of years?

22 A. Yes, it's unusual for a startup venture to  
23 make money in the first year.

24 Q. That was my question. So in other words,  
25 it's not extraordinary to project a loss for a startup

0173

1 marine operation in the first couple years of its life?

2 A. Correct, we expect losses in the early years.

3 Q. Have you also caused to be prepared a  
4 ridership and revenue forecast both for year one and  
5 looking out over a five year period?

6 A. Yes.

7 Q. And would you identify for the record what  
8 exhibits those are, plural?

9 A. Exhibit 17 is the first year ridership and  
10 revenue forecast by month, and Exhibit 18 is basically a  
11 continuation of Exhibit 17 for years two, three, four,  
12 and five.

13 Q. And was one reason Exhibit 18 was prepared to  
14 be consistent with the ProForma that you have over a  
15 similar time period for?

16 A. Correct.

17 Q. Okay, let's go to Exhibit 17, please, and  
18 just briefly tell us about some of the assumptions that  
19 you made in preparing this exhibit.

20 A. Okay, the first line again is the capacity of  
21 the vessel, the Aqua Express has seating for 250  
22 passengers. The number of legs per day, again each leg  
23 would be Kingston/Seattle or Seattle to Kingston. We're  
24 planning on five legs in the morning and five legs in  
25 the afternoon, so the next line is just multiplying the

0174

1 250 times the 10 to get the total capacity per day for  
2 the vessel.

3           The next line is the load factor, how full we  
4 expect the boat to be. Initially we have a 45% because  
5 we think it will be popular as a novelty, that a lot of  
6 people will ride the boat just to see what it's like,  
7 and that's why we project the load factor in the first  
8 month to be a little bit higher than in subsequent  
9 months. But again in the subsequent months we're  
10 estimating a load factor of 40% on an ongoing basis.

11       Q.     And are you assuming in Exhibits 17 and 18 or  
12 at least 17, are you assuming commuters that are  
13 starting in Seattle round trip?

14       A.     We are assuming that there will be no  
15 commuters starting in Seattle and going to Kingston.

16       Q.     And that's a fairly conservative assumption,  
17 is it?

18       A.     It's a very conservative assumption. We know  
19 that there will be some people from Seattle that will  
20 want to take the ferry to Kingston, but it's not going  
21 to be the large number of people that we expect to be  
22 going from Kingston to Seattle.

23       Q.     And again, the vessel has capacity I believe  
24 the exhibit shows in Exhibit 5 of 292 or 298 roughly,  
25 you are not making the assumption that you will carry

0175

1 292 to 298 passengers, are you?

2 A. No, we're assuming 250 passengers. That's  
3 how many inside seats we have. If additional, you know,  
4 if more than 250 passengers show up and we're able to  
5 accommodate them, it's legal for us to do it according  
6 to the Coast Guard, and we will take the additional  
7 customers. But we are making the conservative  
8 assumption based on the number of inside seats that we  
9 have that we will hold it to 250.

10 Q. Is it correct that you're projecting  
11 approximately a 41% load percentage factor for the first  
12 year?

13 A. Yes, that's correct.

14 Q. Is that sustainable in your view?

15 A. Yes, that's sustainable. Again, if you  
16 assume a 0% load factor on what I call the back runs,  
17 the morning runs from Seattle to Kingston and the  
18 afternoon runs from Kingston to Seattle, if you assume  
19 that the load factor there is zero, it still works out  
20 to about a 67% load factor on the commuter runs, and so  
21 the boat would only be about two thirds full, which we  
22 think is very achievable and probably is still  
23 conservative.

24 Q. Your paying passengers per day line item  
25 comes also to a sort of a modulated or average figure of

0176

1 1,013 passengers a day; is that correct?

2 A. Correct.

3 Q. Is that similarly fairly conservative in your  
4 view for six runs per day?

5 A. Yes.

6 Q. You're actually having 12 runs, 6 round trip  
7 runs per day; is that correct, or 5?

8 A. No, it's 5.

9 Q. Okay.

10 A. It would start in Kingston, go to Seattle,  
11 back to Kingston, Seattle, back to Kingston. I would  
12 need to look at the schedule to figure it out. I'm  
13 confused, that's all.

14 Q. The exhibit will reflect that there's five  
15 round trips per day.

16 A. Could you talk also about the percentage of  
17 passengers paying full fare versus discount and what the  
18 discount is, et cetera.

19 A. Again, we assume that the commuters will take  
20 some time to really learn about our service and come to  
21 understand the different features that we offer. We are  
22 offering a monthly pass at a 5% discount. We think that  
23 initially very few people are going to buy that because  
24 they want to get a feel for whether or not they're going  
25 to keep on taking this month after month and day after

0177

1 day. And as you can see from the line item percentage  
2 of passengers with discount about halfway down Exhibit  
3 17, that we start at 10% and work our way up to about  
4 50% by month 12 and that on the average for the year it  
5 would average about 35% of the fares would be discounted  
6 fares.

7 Q. The latter half of Exhibit 17 seems to or at  
8 least most of the bottom of the 17 includes the  
9 calculations of bicycle, cargo, accessorial income as we  
10 might call it; what does that show in your view?

11 A. Well, again, it's additional income that will  
12 help us to make this operation profitable. None of it  
13 is very big dollars, and we aren't doing this service  
14 for those additional fares, but they will help us out a  
15 little bit in our operation.

16 Q. You show concession revenues also of filing  
17 towards the bottom of Exhibit 17, that's not a regulated  
18 source of income, is it, as you understand it?

19 A. No. Again initially on this workpaper it was  
20 in there, and we have transferred it to a separate  
21 division on Exhibit 19 so that those numbers tie in over  
22 there at Exhibit 19.

23 Q. Is it offered to show other sources of income  
24 for the ferry service?

25 A. Yes.

0178

1 Q. Okay. Let's go over to Exhibit 18 quickly.  
2 What kind of assumptions do we see occurring in years  
3 two through five of the Kingston/Seattle ferry service?  
4 For instance, what kind of load factor --

5 A. Yeah.

6 Q. -- are we seeing adjustments in that line  
7 item?

8 A. We're showing about a 5% increase per year  
9 increase in the load factor. The other major item on  
10 Exhibit 18 is that we're showing a 25 cent per person  
11 fare increase in years two, three, and four.

12 Q. First of all, the growth factor of 5%, is  
13 that consistent with demographic trends in Kitsap County  
14 to the best of your knowledge?

15 A. Yes, historically Kitsap County has been  
16 growing around 5% per year. We think it's a  
17 conservative estimate because now we will have this new  
18 passenger only ferry service which is going to create  
19 more people moving to Kingston and more demand.

20 Q. And Exhibit 18 also includes some fare  
21 increases that would be subject to regulatory approval;  
22 is that correct?

23 A. Yes, subject to UTC approval, we are  
24 projecting 25 cent per passenger fare increases.

25 Q. Otherwise in Exhibit 18, are we seeing the

0179

1 same sort of assumptions that took place in Exhibit 17?

2 A. Correct, otherwise the trends that were  
3 developed in the first year continue on through years  
4 two, three, four, and five.

5 Q. Calling your attention to Exhibit 19, did you  
6 also prepare Exhibit 19 for this proceeding?

7 A. Yes, I did.

8 Q. Okay. And would you please state what's  
9 going on in Exhibit 19, particularly since there has  
10 been a change in owning the boat outright and the  
11 division operation concept of Aqua Express; what do we  
12 see here on Exhibit 19, please?

13 A. Okay, the first column on Exhibit 19 that  
14 says Kingston/Seattle ties back to Exhibit 16, the  
15 ProForma income statement for the Kingston/Seattle ferry  
16 division. So if you look, the net income bottom line on  
17 Exhibit 16 exactly equals the net income on the  
18 Kingston/Seattle column on Exhibit 19.

19 Q. So the bottom line in both the far left  
20 corners of the columns is the same; is that what you're  
21 saying?

22 A. Correct.

23 Q. Now this will be obvious to some of the  
24 commissioners and to others in the room, but why aren't  
25 we showing depreciation for instance on Exhibit 16 and

0180

1 here?

2 A. Because the vessel is being chartered, it's  
3 not owned and being depreciated. We don't have a --  
4 it's not owned by the Kingston/Seattle ferry division,  
5 it's owned by the company as a whole, but the leasing  
6 division is leasing the vessel to the Kingston/Seattle  
7 ferry division as well as leasing the vessel to third  
8 parties, including Four Seasons Marine, including other  
9 people who would be leasing the vessel for charters or  
10 parties or whatever.

11 Q. So then taking a depreciation expense  
12 wouldn't be appropriate in your view for that  
13 circumstance?

14 A. Correct, the Kingston/Seattle division  
15 doesn't own any property, it rents property from others.

16 Q. Even though it's all owned by the same  
17 entity?

18 A. That's correct.

19 Q. And again, this is to reflect on a separation  
20 basis the operating divisions of the single entity; is  
21 that correct?

22 A. That's correct. Again, I -- this is how we  
23 do it at Four Seasons Marine, and we lease our vessels  
24 to various entities including ourselves. And in order  
25 to reflect the leasing income, we have to have a

0181

1 separate leasing division that shows the depreciation  
2 and shows the leasing revenue and shows the expenses  
3 related to the leasing in order for us to manage that  
4 leasing business. And then separately the ferry  
5 business is reported separately.

6 Q. Is it correct that on Exhibit 19 that on a  
7 consolidated basis, meaning taking the concessions,  
8 leasing, and proposed Seattle ferry route together, that  
9 this entity is profitable from year one?

10 A. Yes.

11 Q. Could you just comment generally without  
12 walking through individual line items what we're seeing  
13 on Exhibit 19 that you haven't already said in terms of  
14 what the exhibit is depicting on a ProForma basis?

15 A. Well, again, we have discussed the  
16 Seattle/Kingston ferry route in detail. The concessions  
17 division is pretty straightforward, the revenue minus  
18 the expenses. The leasing division again is the revenue  
19 that we would get from leasing minus the expenses  
20 related to leasing the vessel. And then the elimination  
21 column is in order to eliminate the intercompany  
22 transactions and get to a net third party lease revenue.  
23 I'm speaking now of the fourth line down, other revenue,  
24 where the leasing division has \$610,000 worth of revenue  
25 minus the \$360,000 intercompany revenue equals the

0182

1 \$250,000 that is leasing revenue from third parties.

2 Q. Okay.

3 COMMISSIONER HEMSTAD: What column is that  
4 in?

5 THE WITNESS: The column that says  
6 eliminations, the second column from the right.

7 BY MR. WILEY:

8 Q. Subtracting that from leasing, is that what  
9 you're saying, Mr. Tougas?

10 A. Right.

11 Q. To get to the total on the far right?

12 COMMISSIONER HEMSTAD: I have it.

13 Q. You also caused to be prepared another  
14 exhibit over the weekend that you had not submitted in  
15 your pre-filed exhibits; is that correct?

16 A. Yes.

17 Q. And that's been identified as Exhibit 20 for  
18 the record in this proceeding. Do you have that in  
19 front of you?

20 A. Yes. In our discussions it became clear to  
21 me that we were required to show that we had the  
22 financial resources to operate through the first year.  
23 And so I sat down and asked myself what financial  
24 resources do we have, and exactly what would be our  
25 break even point as far as passengers was concerned in

0183

1 order to cover our first year expenses.

2 Q. And is that what is termed a cash flow  
3 analysis in the industry in terms of how you finance out  
4 a fare revenue at a break even point?

5 A. Yes.

6 Q. Okay. And looking at Exhibit 20, could you  
7 tell us how that ties in to some of the previous  
8 financial exhibits? For instance the net revenue, I'm  
9 seeing fares only, a different figure of \$1.24 Million  
10 in Exhibit 20 than I have seen in some other, could you  
11 tie us back in other words?

12 A. Okay, the top two lines on Exhibit 20 come  
13 from, well, both Exhibit 16 and Exhibit 19. Again, the  
14 first column in Exhibit 19 is exactly the same as the  
15 first column in Exhibit 16. But if you go about halfway  
16 down just above gross profit, it says total cost of  
17 goods sold.

18 Q. Where are you, in Exhibit 16 or 20, I'm  
19 sorry?

20 A. Either Exhibit 16 or Exhibit 19.

21 Q. Okay.

22 A. Again, they're duplicate numbers.

23 Q. Okay. And what is the number for the record,  
24 please, so we can track?

25 A. The first column it says total cost of goods

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1 sold \$826,443, and so I put that on the first line of  
2 Exhibit 20.

3 JUDGE RENDAHL: I don't see the words total  
4 cost of goods sold. Oh, I see, midway down, \$826,443.

5 MR. WILEY: Yeah, Mr. Tougas, could you be  
6 real literal here so we can track it, because some of us  
7 are a little behind.

8 JUDGE RENDAHL: And this is on Exhibit 19  
9 about midway down.

10 THE WITNESS: Okay.

11 JUDGE RENDAHL: \$826,443.

12 THE WITNESS: Correct.

13 BY MR. WILEY:

14 Q. Okay.

15 A. And then if you drop down to the next section  
16 where it says total SG&A expenses, the amount is  
17 \$414,960.

18 Does everyone see that number?

19 Okay, and so I added those two numbers are  
20 our cash expenses. Those are the expenses that we need  
21 to pay third parties cash in order to operate our  
22 business. And those two numbers total up to the 1  
23 million, again I'm back on Exhibit 20, the \$1,241,403,  
24 and that's the amount of cash that we need to come up  
25 with in our first year in order to cover all of our

0185

1 costs.

2           The first column that says fares only, I took  
3 our average fare of \$5.125, which again is the average  
4 between \$5.25 full fare and \$5 discounted fare, and  
5 calculated how many passengers at that fare we would  
6 need to develop that much money. And we came up with an  
7 average passenger per leg of 95 passengers, which is a  
8 load factor of 38. And again, if you assume 0% on the  
9 return legs, it would mean 63% on the commuter legs. On  
10 Exhibit 20 if we skip over to the last column that says  
11 ridership projections, what we had projected in our  
12 ProForma is 101 passengers, a load factor of 41%, and a  
13 total load factor on just the commuter legs of 68%.

14           The columns in between there are other  
15 financial resources that we have in order to pay for our  
16 operating expenses besides just the fares. For example,  
17 right now we have \$181,900 in cash in the bank. Between  
18 now and the end of September we will generate an  
19 additional \$90,000 in cash from the charter in Alaska.  
20 And finally we estimate about \$28,000 in added cash from  
21 leasing the vessel to third parties over the coming  
22 year.

23           Q.     In your view, does Exhibit 20 say anything  
24 about the nature of the projections in Exhibits 17 and  
25 18 as to whether they are conservative or not?

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1           A.     Well, the exhibits are conservative, but even  
2 if they were -- even if things were worse than what we  
3 have projected, we still have plenty of financial  
4 resources to sustain the business through the first  
5 year.

6           Q.     And does that include bank loans and other  
7 possibilities of equity infusion from other sources?

8           A.     Yes. I don't think it would be necessary,  
9 but again when we got our loan from Foundation Bank  
10 there were several other banks looking to do business  
11 with us, they gave us very favorable terms, and I'm  
12 convinced that we could get an additional loan either  
13 from them or from another bank. And as has been  
14 discussed previously, the partners if necessary are able  
15 to inject additional cash for our operating expenses.

16          Q.     Your exhibits don't anticipate that that will  
17 be necessary though, do they?

18          A.     No, I do not expect that to be necessary.

19          Q.     Looking at your exhibits and your calculation  
20 of rates which are on proposed tariff Exhibit 7, there  
21 was a reference in the pre-hearing filing by the  
22 Inlandboatmens' Union to a concept of "shadow-price" of  
23 WSF tariffs, and there was a statement in that brief at  
24 page 3 that said you -- that basically accused Aqua  
25 Express of copying the fare structure of the Washington

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1 State Ferries to propose the new service, indicating  
2 that there's -- that they essentially mimicked them.  
3 Would you comment on that, please, with respect to not  
4 only Exhibit 7 but your walk through of the financial  
5 exhibits, are we in fact mimicking Washington State  
6 Ferry walk-on peak passenger fares?

7 A. No, our fare structure is substantially  
8 different from the Washington State Ferries. One of the  
9 large differences is that we propose to collect fares  
10 going to both directions, \$5.25 each way. Washington  
11 State Ferry fare collection system collects passenger  
12 only ferries only on the westbound direction. So the  
13 Washington State passenger only ferry fare of \$5.70 is  
14 in essence a round trip fare, and our \$5.25 is a one way  
15 fare, so our total round trip fare would be \$10.50,  
16 which would be comparable to the Washington State  
17 Ferries' \$5.70.

18 Q. In other words, if you tried to mimic the  
19 fares, you in fact propose to double them; is that  
20 correct?

21 A. More or less, yes.

22 Q. Calling your attention to the exhibit that's  
23 been premarked as 21, which is encaptioned the Operating  
24 Agreement of Aqua Express, LLC, would you please state  
25 what that is for the record.

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1           A.     This is the agreement among the partners as  
2 to --

3                   JUDGE RENDAHL:   Excuse me, Mr. Tougas.

4                   If you're going to have conversations you  
5 need to please take them out of the room.  It's a little  
6 bit distracting to hear what the witness is saying.  
7 Thank you very much.

8                   Go ahead.

9                   THE WITNESS:   Thank you.

10           A.     The operating agreement of Aqua Express, LLC,  
11 Exhibit 21, is the agreement among the partners as to  
12 how the company will be managed, what the partners'  
13 interests are in the company, and has various other  
14 administrative features to it.

15 BY MR. WILEY:

16           Q.     Would it be fair to say it's sort of the road  
17 map as to how operations and finances and other decision  
18 making is going to occur within the limited liability  
19 company?

20           A.     Yes.  And more than that, it's the agreement  
21 among the partners rather than exactly how the  
22 operations will be run on a day-to-day basis.  The  
23 general manager is going to be responsible for the  
24 day-to-day operations, but from an overall  
25 administrative point of view, this describes the

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1 relationship between the partners.

2 MR. WILEY: Thank you.

3 Your Honor, I don't believe I have any other  
4 questions at this time on direct, and I would tender the  
5 witness and offer Exhibits 15 through 21.

6 JUDGE RENDAHL: Okay, first taking up the  
7 exhibits, are there any objections to entering Exhibits  
8 15 through 21 into the record?

9 MR. IGLITZIN: Not from the IBU.

10 JUDGE RENDAHL: Thank you.

11 Hearing no objections, those exhibits will be  
12 entered.

13 I think this is a good time for us to take  
14 our afternoon break for about 15 minutes. Okay, we will  
15 be back on the record at 3:15, let's be off the record.

16 (Recess taken.)

17 JUDGE RENDAHL: We'll start with  
18 Mr. Iglitzin, your cross-examination of Mr. Tougas.

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0190

1 C R O S S - E X A M I N A T I O N

2 BY MR. IGLITZIN:

3 Q. Good afternoon.

4 A. Hi.

5 Q. Let me just first clarify some things from  
6 your testimony. Are you currently employed by Four  
7 Seasons Marine?

8 A. Yes.

9 Q. In full-time employ?

10 A. Yes.

11 Q. And what was your involvement in sort of  
12 putting together the various projections, both revenue  
13 and expense side, for the Aqua Express operation?

14 A. Well, initially I put together kind of the  
15 format of the financial statements, the list of revenues  
16 and expenses that we needed to address, and in  
17 conjunction with the other partners discussed the  
18 ridership and the revenue projections and discussed the  
19 various expense categories and how much we felt we  
20 needed to put in the expense categories based on our  
21 experience in the boat business, and put together the  
22 financial statements.

23 Q. Let me start then or continue then by asking  
24 you about your projected ridership and I guess ask on  
25 what did you base your -- the assumptions that are

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1 reflected in the various documents we have been looking  
2 at, for example the assumptions on Exhibit 17 or  
3 projections of roughly 1,000 riding passengers per day,  
4 how did you come up with first I think 1,025 for the  
5 first two months and then 1,000 for the rest of the  
6 first year?

7 A. Well, it was in reality we kind of approached  
8 it from two different directions. One direction was how  
9 many passengers would we need to make this profitable,  
10 and another direction of, is that a realistic ridership  
11 expectation. On the basis of the number of people that  
12 we saw commuting to Seattle, the people that live in  
13 North Kingston that we know and have worked with for  
14 years, we felt like the 1,000 passengers per day was a  
15 very realistic number.

16 Q. Do you have any idea how many passengers  
17 currently -- let me back up.

18 At 1,000 passengers per day, that's 1,000  
19 discreet ferry trips, right, that's not 1,000 round  
20 trip?

21 A. Well, to be fair, I mean if that one person  
22 went to Seattle and then commuted back and you assume  
23 that everybody does that, it would be 500 individuals, 1  
24 trip to Seattle and 1 trip back.

25 Q. Right. Could be 500 individuals traveling

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1 round trip, but when we talk about that number of 1,000,  
2 it's 1,000 passenger legs?

3 A. Correct.

4 Q. Or whatever you might want to call it?

5 A. Correct.

6 Q. So I guess the first question is, do you have  
7 any idea how many passenger legs currently take place on  
8 the Kingston/Edmonds ferry?

9 A. Not specifically on the Kingston/Edmonds and  
10 especially not as far as just the passenger only. I  
11 have a better idea on the Bainbridge/Seattle, because I  
12 know that the car ferry has a passenger capacity of  
13 about 2,200 passengers and that during the commuter runs  
14 it's pretty near full.

15 Q. Do you know how many people rode the  
16 passenger only ferry that used to run from Bremerton to  
17 Seattle?

18 A. No, I don't have those numbers, although I'm  
19 aware of another company that's applying for that run  
20 and that they have done the research, and, you know,  
21 it's a substantial number of people. Again, on the  
22 Bremerton to Seattle run, the boats were full.

23 Q. Washington State Ferries ran a Bremerton to  
24 Seattle run passenger only, did it have any other  
25 passenger only ferries?

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1           A.     There were passenger only ferries to, well,  
2     there still are passenger only ferries to Vashon Island,  
3     and that's the only other one that I'm aware of.

4           Q.     Getting back to Seattle/Kingston, you have  
5     not done any studies and you have not seen any data on  
6     the number of either drive on or passenger only  
7     passengers who are currently riding the Seattle/Kingston  
8     ferry?

9           A.     Well --

10           MR. TROTTER: I will object to the question,  
11     there is no Seattle/Kingston ferry, so I will object to  
12     the form of the question.

13           Q.     I'm sorry, I misspoke, I meant  
14     Edmonds/Kingston.

15           A.     No, I have read general information from the  
16     Washington State Ferries, their annual reports and so on  
17     about their ridership, but I don't have those figures  
18     with me.

19           Q.     You testified that the way you were or Aqua  
20     Express was sort of thinking about this service as being  
21     five round trips per day, the idea being it was  
22     essentially a commuter service?

23           A.     Yes.

24           Q.     So if you're thinking that you're going to  
25     get 1,000 riders or rider legs per day, you're thinking

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1 200 on each ferry crossing from Kingston to Seattle  
2 average, or how were you thinking that that breaks down?  
3 And I'm taking a look at Exhibit 6 if you want to take a  
4 look at that, which is the schedule, just trying to get  
5 a better sense of what kind of distribution of  
6 passengers you're imagining or hoping or projecting  
7 would take place.

8 CHAIRWOMAN SHOWALTER: Can you just be sure  
9 you're precise in your question. You said 1,000  
10 passenger legs a day, and then you appeared to divide  
11 that by 5 legs; is that what you meant to do?

12 MR. IGLITZIN: That's what I meant to do only  
13 because I thought that the assumption was that the  
14 returning legs for each one of the five round trips was  
15 potentially going to be zero, that everyone is going  
16 from Kingston to Seattle in the morning, and then  
17 everyone is going from Seattle to Kingston, but that's  
18 what I am trying to find out, whether it's more spread  
19 out over ten trips or over five.

20 A. In the morning there's three trips from  
21 Kingston to Seattle and then two return legs from  
22 Seattle back to Kingston to get the boat back to  
23 Kingston to pick up more commuters. Again, we assume  
24 that there will be, well, in our numbers we assume that  
25 there will be zero people that are going to go from

0195

1 Seattle to Kingston in the morning, so that works out to  
2 -- I mean it's, I will do the math, it's 250 passenger  
3 capacity times .67 or 67%, so about 167 passengers on  
4 each trip going from Kingston to Seattle in the morning  
5 and a like number returning in the afternoon.

6 BY MR. IGLITZIN:

7 Q. But spread out over only two vessels rather  
8 than three in the afternoon returning?

9 A. No, there would be -- in the afternoon there  
10 would be three runs from Seattle to Kingston and two  
11 from Kingston back to Seattle.

12 Q. Thank you.

13 A. So in other words, the vessel is going to  
14 stay in Seattle through the middle of the day.

15 Q. Have you had a chance to take a look at  
16 what's been marked as Exhibit 10, which is the 2004  
17 Kingston/Seattle commuter ferry survey?

18 A. I briefly reviewed it today. I have  
19 discussed it in the past with Darrell and -- Darrell  
20 Bryan and John Blackman, the other two partners.

21 Q. Is this something that you looked at in the  
22 process of trying to generate passenger ridership  
23 projections?

24 A. Yes, the results of the survey were included  
25 in generating our assumptions.

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1                   MR. IGLITZIN: Can we go off the record for a  
2 moment.

3                   JUDGE RENDAHL: Let's be off the record.

4                   (Discussion off the record.)

5 BY MR. IGLITZIN:

6           Q.     I noticed in the survey that passengers were  
7 asked about their preferred departure times from  
8 Kingston, and the preferred -- the options started at  
9 5:30 a.m. and went through 8:00 a.m., and I noticed that  
10 on Exhibit 6 one of the three planned departures from  
11 Kingston departs Kingston at 8:50 a.m., which is almost  
12 an hour later than the last time that's indicated on the  
13 survey. Do you have any way of knowing how many  
14 individuals, commuters, are going to be prepared to take  
15 an 8:50 a.m. ferry from Kingston arriving in Seattle  
16 approximately 9:30 a.m.?

17           A.     Well, the first thing to point out is on  
18 Exhibit 10 the most popular answer on the preferred  
19 departure time is 8:00 a.m., and the majority of -- I  
20 mean 36% of the people chose that answer, and that  
21 indicates, you know, if we had designed the  
22 questionnaire better and had an 8:30 or a 9:00  
23 departure, we're assuming that some of those 36% would  
24 have picked the later departure. Another observation is  
25 again on the commuter ferry from Bainbridge to Seattle,

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1 the 8:40 departure is still pretty full.

2 Q. And what time does the 8:40 departure from  
3 Bainbridge get to Seattle, if you know?

4 A. Around 9:10, 9:15.

5 Q. Other than this 2004 survey, are there any,  
6 and other than I guess what I characterize as your own  
7 personal sentiments as a commuter, is there any other  
8 data on which you are basing the 1,000 passenger trip  
9 projection?

10 A. I'm afraid that we're underestimating the  
11 number of passengers we're going to end up having based  
12 on my discussions with various people and my  
13 experiences, so I guess that from a gut point of view,  
14 my concern is that we're going to have more passengers  
15 than we can accommodate on this vessel rather than not  
16 being able to get to the 1,000 passengers per day that  
17 we're aiming for.

18 But as far as detailed studies, no, we  
19 haven't done it. As Darrell indicated, he started up  
20 services without doing surveys, and in Alaska we just  
21 began a service from Juneau to Glacier Bay this year  
22 without doing surveys. We just knew that there was  
23 demand for the service, and we've been offering it, and  
24 we've been getting customers.

25 Q. So other than the 2004 survey, you're not

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1 aware of any studies or surveys other than the kind of  
2 sense of the traveling public feedback that you have  
3 been describing. When you said we haven't done any  
4 detailed surveys, you haven't done any other surveys or  
5 scientific studies at all; is that right?

6 A. Well, that's true, and to be fair, I know the  
7 Washington State Ferries has done research on the run.  
8 They were planning on doing a Kingston to Seattle  
9 operation, and I'm sure that they did some research into  
10 it, but I'm not aware of the details of that research,  
11 and I don't think that it was ever published. But  
12 again, they were planning on doing the service, and I  
13 assume that they did research on it.

14 Q. I'm sorry, it sounded like you said two  
15 different things. Do you have some reason to know that  
16 the State Ferries did research on a passenger only run  
17 from Kingston to Seattle?

18 A. No, I don't know that for sure, but -- and  
19 I'm speculating admittedly, but it would be hard for me  
20 to imagine Washington State Ferries making an  
21 announcement and going to the legislature saying we're  
22 going to start this service without them having done  
23 some research on it.

24 Q. So, I'm sorry, the State Ferries had  
25 announced that they were going to run a passenger only

0199

1 vessel from Kingston to Seattle?

2 A. Correct.

3 Q. And when was that?

4 A. '98, I'm not exactly sure of the dates, but  
5 it was before Initiative 695 passed, and it was  
6 Initiative 695 -- I think it was '99 when they were  
7 planning on doing it, and it was Initiative 695 that  
8 caused them to decide not to.

9 Q. Let's talk about price sensitivity. Would it  
10 be fair to assume that the same general approach was  
11 taken in determining the relative lack of price  
12 sensitivity as you took in making the estimates of the  
13 number of passenger trips, i.e., your sense -- that 2004  
14 survey and in addition to that your sense that people  
15 are willing to pay in the order of \$10 and \$10.50 for  
16 the convenience of having passenger only service from  
17 Kingston to Seattle?

18 MR. WILEY: Your Honor, I just -- I wish the  
19 question could be rephrased. The witness seems to  
20 understand, I wasn't following the whole drift of the  
21 question, it was rather compound, I'm wondering if we  
22 might rephrase.

23 JUDGE RENDAHL: Could you rephrase.

24 MR. TROTTER: I also have an objection, I  
25 think there was some editorializing there at the

0200

1 beginning of that question, I will object.

2 JUDGE RENDAHL: Please just rephrase the  
3 question.

4 MR. IGLITZIN: I'm happy to rephrase it, I  
5 don't mean to editorialize.

6 BY MR. IGLITZIN:

7 Q. I'm really trying to get a sense -- I'm not a  
8 business person aside from having my own law firm, my  
9 understanding was that, and I have a lot of respect for  
10 that, so business people which you are a part deciding  
11 we think the market will bear and, you know, 1,000,  
12 maybe more, passengers, passenger trips a day will want  
13 the service.

14 My question is, was there any additional  
15 source of information beyond those that you have  
16 described that led to your conclusion that those 1,000  
17 or more people per day or people equaling 1,000 or more  
18 passenger trips per day would not be deterred by having  
19 to pay roughly twice as much than they would be paying  
20 if they somehow got themselves over to Bainbridge and  
21 were passenger only ferry at Bainbridge?

22 A. We determined our pricing based on the survey  
23 and based on other input that we got from people and  
24 based on our experience as business people.

25 Q. Thank you.

0201

1                   I want to ask you to turn to Exhibit 15, if  
2 you would. One thing that Mr. Wiley did not ask you  
3 about was the asset identified as organizational costs,  
4 can you tell us what that asset is?

5           A.     Well, it consists of legal and accounting  
6 fees to organize the company, the attorney that wrote up  
7 our partnership agreement, filing the papers with the  
8 State of Washington and getting all the taxes set up,  
9 just the initial organizational costs.

10          Q.     Most of my clients I think think of their  
11 attorney's fees as being a liability, not an asset,  
12 okay, and maybe that's something I don't understand  
13 about accounting.

14          A.     Yes.

15          Q.     But when I see it down as an asset, I think  
16 of that as something that's worth something to someone.

17          A.     Well, it's generally accepted accounting  
18 principles requires us to capitalize organization costs,  
19 and it shows up as an asset. If you take this to the  
20 bank, they're going to write that off just like you said  
21 that your clients would.

22          Q.     That was a little confused. There seems to  
23 be based on your testimony a missing \$100,000, and I  
24 want to explain to you why that jumped out at me, and  
25 then you can explain where it went, because I'm sure it

0202

1 went somewhere.

2 A. Okay.

3 Q. You get a loan from Foundation Bank for  
4 \$500,000, and you used -- I wrote this down somewhere in  
5 my notes, I don't remember. How much did you use to  
6 refurbish the vessel?

7 A. Well, it's the original \$710,000 subtracted  
8 from the \$922,000 on the balance sheet, so it's  
9 \$212,000.

10 Q. Right. So you have \$500,000 from the bank,  
11 you pay \$212,000, and I assume you paid that to the  
12 principal that was involved with doing the  
13 refurbishment, right?

14 A. It primarily went to Nichols Brothers Boat  
15 Builders, but there were additional costs for materials  
16 that have been used to refurbish the boat.

17 Q. So you have \$500,000, you pay \$212,000 to  
18 refurbish the boat, that leaves about \$288,000, and you  
19 have about \$181,900 cash right now, which leaves almost  
20 exactly \$100,000 that you received from Foundation Bank  
21 that didn't go to refurbishment that's not on your  
22 balance sheet as an asset. I was wondering if you could  
23 tell us where that money went?

24 A. Well, it's pretty complicated to get to how  
25 we arrived at each one of the balances on the balance

0203

1 sheet, and I don't want to bore everybody with every  
2 single transaction, but I think that we can get to the  
3 bottom line by pointing to the inventory in Aqua Express  
4 parts of \$93,000, \$94,000. Most of your missing  
5 \$100,000 went to buy the spare parts for the vessel.

6 Q. See, I knew you would be able to explain  
7 that.

8 Now I noticed that there's an accounts  
9 payable of \$35,000; can you tell us what that is derived  
10 from?

11 A. Well, it's derived from again the  
12 refurbishing of the boat and the purchase of the spare  
13 parts, that we haven't paid all of that. I mean it's  
14 normal in the normal course of business that you owe  
15 your vendors for odds and ends.

16 Q. Now I've got the opposite problem, which is  
17 you've got too much cash, and I'm wondering whether it's  
18 from the leases, but if you've got \$500,000 cash, you  
19 paid \$212,000 to refurbish the vessel, and the \$93,600  
20 for the inventory, and the \$50,000 for organizational  
21 costs, I'm trying to figure out where the additional  
22 cash came from so that you actually have \$181,000 cash  
23 on hand June 15?

24 A. I guess I don't understand your question.  
25 It's the balance of the proceeds from our loan at

0204

1 Foundation Bank after we have paid for the items that we  
2 just described.

3 Q. Well, let's walk through it a little bit.  
4 You had \$500,000 from the bank, paid \$212,000 to  
5 refurbish the vessel, that leaves \$288,000. You pay  
6 \$93,600 for the inventory, that leaves about \$195,000.  
7 You've got cash -- then you have organizational costs of  
8 \$50,000, so that's \$145,600 cash that you would have  
9 left.

10 A. Okay, I think the, again, the \$35,000 in  
11 accounts payable is cash that we're going to have to pay  
12 out in the coming few weeks to our vendors, plus there  
13 is the cash that we received for chartering the boat to  
14 Alaska.

15 Q. Cash above and beyond the \$47,500 that you're  
16 owed from chartering the boat to Alaska?

17 A. Correct.

18 Q. How long ago -- I noticed that you've got the  
19 interim balance sheet for Aqua Express, LLC, dated June  
20 15th, but then starting at Exhibit 16 we have this  
21 breakdown by Kingston/Seattle ferry division, was that  
22 your decision to start providing the ProForma income  
23 statements by division?

24 A. I suggested it, and after discussions with  
25 the other partners, they agreed. This is how we at Four

0205

1 Seasons Marine Services do our income statement  
2 accounting, and it works for us. We have developed it  
3 over a number of years, and it works for us, and after  
4 talking to the other partners about it, they agreed.

5 Q. So let me make sure I understand and that we  
6 all understand this breakdown. Aqua Express on paper is  
7 leasing the vessel Aqua Express to Aqua Express's  
8 Kingston/Seattle ferry division for \$360,000 a year?

9 A. Correct.

10 Q. By looking at just the Kingston/Seattle ferry  
11 division numbers then, we are seeing numbers that are  
12 either -- that could either underrepresent or  
13 overrepresent the overall profitability of the Aqua  
14 Express, LLC. Is that fair to say?

15 A. Well, by overrepresent or underrepresent, if  
16 you mean that we could either do better or we could do  
17 worse than what we're presenting here, yes. These are  
18 estimates, and we're not sure exactly what our results  
19 will be. I'm not sure if that was your question or --

20 Q. No, I appreciate your answer. What I meant  
21 was you're moving \$360,000 from one entity to your -- to  
22 one of its subentities, and that's based on your sense  
23 that \$360,000 is the fair market value of the lease I  
24 take it?

25 A. Yes.

0206

1 Q. And so when you do that, it seems to me you  
2 are then also -- is it fair that you are then treating  
3 this as if it were a lease where the entity leasing the  
4 vessel is also taking on all the costs of the vessel?

5 A. Yes, it's called a bare boat charter.

6 Q. If, in fact, \$360,000 a year was less than  
7 what it would actually cost the Kingston/Seattle ferry  
8 division to lease a vessel from some third party, then  
9 the data on Exhibit 16 would be -- would give an  
10 erroneously favorable net income statement for the  
11 Kingston/Seattle ferry division and an erroneously  
12 unfavorable net income for I think you called it the  
13 leasing division.

14 A. Yes.

15 Q. Is that correct?

16 A. Yes. And that's a big part of the reason  
17 that we have it separated into divisions, so that the  
18 leasing division we can see how much income we are  
19 getting from leasing, and the ferry division we can find  
20 out how much income we derive from operating the ferry.  
21 If the ferry division could get a better deal on a  
22 vessel charter from a third party, the managers of the  
23 ferry division ought to be free to go out and charter a  
24 vessel from someone else on a fair market value basis,  
25 and that way the true income and expense would be

0207

1 reflected.

2 Q. You're not aware of there being an option of  
3 leasing a vessel like the Aqua Express for \$360,000 a  
4 year in the marketplace right now, are you?

5 A. One of the things that we have discussed as a  
6 partnership is a backup boat, and we have discussed  
7 using the Clipper III and chartering the Clipper III  
8 from Victoria Clipper, and that would be chartered on a  
9 similar arrangement at a similar rate of charter hire.  
10 Four Seasons Marine, again we have ten vessels that  
11 would be appropriate for this service, and we would  
12 charter to Aqua Express on a similar fashion. And  
13 there's various other entities unrelated.

14 You know, this is kind of a small industry,  
15 and it sounds like we're all chartering boats between  
16 each other, and the fact is that that is the case. But  
17 there are third parties, there's Allen Marine up in  
18 Alaska, CIRI in Alaska, there's a number of companies in  
19 California that have similar types of vessels that if  
20 they were available for charter we would do that. At  
21 this time, our choice for vessel and the best option  
22 that we have for a vessel is the Aqua Express, and  
23 that's what we're planning to use.

24 Q. But the Kingston/Seattle ferry division while  
25 it has a separate identity on paper does not have

0208

1 separate management at this point from the leasing  
2 division or the concessions division; is that correct?

3 A. That's correct.

4 Q. Because there is not even a general manager  
5 yet?

6 A. That's correct, and we're not big enough that  
7 we have separate management for each one of the  
8 divisions.

9 Q. And even if you had a general manager now, in  
10 fact the Aqua Express, LLC, would not likely countenance  
11 a decision that was favorable to the Kingston/Seattle  
12 ferry division, let it say, oh, we got a great deal  
13 leasing some other vessel, if it caused an even greater  
14 economic harm to Aqua Express, LLC, let's say, because  
15 the vessel that's now the Aqua Express would otherwise  
16 be sitting idle and not be able to turn any revenue at  
17 all, it would still be a decision made by the Aqua  
18 Express, LLC, what was best for the company rather than  
19 a division by division decision without regard to the  
20 overall interest of the company?

21 A. That is correct.

22 Q. One of the things I didn't see in the  
23 ProForma income statement of the Kingston/Seattle ferry  
24 division was any expense reflecting the repayment of  
25 either interest or principal of the \$500,000 loan, which

0209

1 you said was going to be repaid at roughly \$100,000 a  
2 year, and I guess it's somewhere. I get, again not  
3 being a CPA, can you show us where in these papers on  
4 the various ProForma statements or in any other  
5 documents it is shown that in addition to the other  
6 expenses that the Aqua Express, LLC, is going to be  
7 having to pay, every year it's going to have to come up  
8 with, if I understood your testimony correctly, with  
9 \$100,000 to repay the nice folks at the bank.

10 A. Right, Exhibit 19, the column that says  
11 leasing division, the third line from the bottom shows  
12 interest expense of \$25,000 per year, which --

13 Q. So I understand the interest expense --

14 MR. TROTTER: Wait, wait, excuse me, Your  
15 Honor, he hadn't finished his answer, I will object  
16 until he does.

17 A. I was just going to calculate the interest  
18 rate. I think it's 5%, but I want to calculate it just  
19 to be sure. Yeah, that's 5%, and that's -- I mean  
20 that's the rate we're getting at the bank is prime plus  
21 1, and right now prime is at 4%.

22 Q. So I see now that you have pointed it out  
23 that spot where Aqua Express, LLC, has to come up with  
24 \$25,000 a year to pay interest on the loan is indicated  
25 on Exhibit 19. But if I understood your testimony, Aqua

0210

1 Express actually has to come up with \$100,000 a year to  
2 repay the loan?

3 A. Correct, and that would come out of the  
4 earnings of the company as a whole. Again we show  
5 \$251,000 in earnings for the company as a whole.

6 Q. Can you direct us to what you're looking at  
7 or what we should look at if we want to follow your --

8 A. That's Exhibit 19, the total column, the  
9 bottom right-hand corner.

10 Q. And just so I understand, if I borrow  
11 \$500,000 to buy a house and I agree to pay it back over  
12 five years, I know I have to pay the bank more than  
13 \$500,000, the actual amount I have to repay, well, in  
14 this case let me ask you, what is the actual, if you  
15 know or can figure it out, roughly, I'm not going to  
16 hold you to it, you indicated interest as being \$25,000,  
17 so should we -- is it fair to assume that over the five  
18 years actually Aqua Express has to pay the bank  
19 \$600,000?

20 A. Well, the outstanding balance on the loan  
21 would be declining over the years, so the amount of  
22 interest would be declining over the number of years. I  
23 would have to do an amortization to come up with an  
24 exact dollar amount of how much we would have to pay  
25 back.

0211

1 Q. Roughly \$575,000, something like that?

2 A. In that neighborhood.

3 Q. All right, that's fine, that's a fine  
4 neighborhood.

5 A. Okay.

6 Q. In year one what I hear you saying is that  
7 what Aqua Express, LLC, actually takes home after it has  
8 written the checks that it needs to write would be then  
9 less than the \$251,000, because it has to pay off some  
10 of the principal, so it might be closer to \$151,000 at  
11 the end of year one that's going back into the bank  
12 account; is that fair?

13 A. Yes, but you also need to consider that we  
14 have that much less debt because we have paid that much  
15 off in the bank.

16 Q. That's fair too. I think one of the concerns  
17 that's always raised in a proceeding like this is  
18 whether there's going to be enough money to pay the  
19 bills. If there's not, then it doesn't matter if you're  
20 reducing debt, because you have to have money to be able  
21 to operate.

22 MR. TROTTER: Your Honor, I will object to  
23 the colloquy. I would ask that all counsel be asked to  
24 ask questions and leave it at that.

25 MR. WILEY: I join the objection.

0212

1                   JUDGE RENDAHL: Mr. Iglitzin, there will be a  
2 time for making arguments in brief, so if you can please  
3 restrict your comments to a question form to the  
4 witness, that would be helpful.

5                   MR. IGLITZIN: I will do that, thank you.

6                   JUDGE RENDAHL: Thank you.

7 BY MR. IGLITZIN:

8           Q.     I would like to ask you about the bicycle  
9 fare revenue. If I'm reading Exhibit 17 correctly,  
10 you're estimating bicycle fare revenue of \$3,578 for the  
11 first month and then less than that for the subsequent  
12 months. Can you explain to us how you came up with  
13 those numbers?

14          A.     Well, we, again, in the first month or two we  
15 increased the revenue because we expect that people will  
16 go for a ride on the ferry just because it's a new  
17 operation and it's kind of a novelty, and in general we  
18 expect about 10% of our riders to use bicycles, to bring  
19 bicycles on board.

20          Q.     So if you're projecting approximately 1,000  
21 riders a day, you're anticipating approximately 100 of  
22 them will bring bicycles on board?

23          A.     That's correct.

24          Q.     And can I ask what you base that projection  
25 on?

0213

1           A.     We base it on how many people bring their  
2 bicycles onto Washington State Ferries and again  
3 discussions with people in the community. I'm not sure  
4 whether it's going to be 5% or whether it's going to be  
5 15% of our passengers bringing bicycles on board, but  
6 it's a relatively small part of our revenue, and so  
7 we're -- we haven't really focused on that too much.

8           Q.     Are you projecting increases in the fare  
9 charged for bicycles in the years subsequent to the  
10 first year the way I believe you indicated you're  
11 projecting fare increases for the passengers?

12          A.     Let me check my notes and find out what  
13 assumptions we had for bicycles.

14                     Yes, we did project a 25 cent per bicycle  
15 fare increase in years two, three, and five.

16          Q.     Are these projected fare increases in the  
17 application?

18          A.     No, we didn't put them in the application,  
19 because we assumed that, you know, as the business  
20 developed, we would have an opportunity to bring this  
21 before the Commission for fare increases at that time.  
22 And again, my understanding is that's how it works is  
23 that, you know, we get the fare or the business  
24 established, and then if we need fare increases in the  
25 future that we would bring it to the Commission at that

0214

1 time.

2 Q. Well, let me clarify then. The bicycle --  
3 the fee to bring a bicycle is \$3?

4 A. Correct.

5 Q. And that's \$3 in addition to the fee you are  
6 paying as a passenger?

7 A. Correct.

8 Q. And then that goes to the numbers that you  
9 have given us, the multiyear projections such as Exhibit  
10 18?

11 A. Yes, the --

12 Q. Are -- I'm sorry, go ahead.

13 A. The revenues from Exhibit 17 and Exhibit 18  
14 flow into the revenue numbers on Exhibit 16.

15 Q. The revenue numbers on Exhibit 16, am I  
16 missing the bicycle revenues on Exhibit 16, or are they  
17 included --

18 A. They're included -- sorry for interrupting.  
19 they're included in the full fare revenue line item on  
20 Exhibit 16.

21 Q. So the numbers on Exhibit 16 are predicated  
22 on the assumption that you will get a 25, among other  
23 things, that there will be a 25 cent fare increase so  
24 that the cost of bringing the bicycle on board will be  
25 \$3.25 in year two, \$3.25 in year three, and then \$3.50

0215

1 in year five; is that correct?

2 A. Yeah, I think that's right.

3 Q. And would you remind us what the  
4 non-discounted ticket price for a passenger is in year  
5 one?

6 A. The non-discounted ticket price for a regular  
7 passenger is \$5.25 each way.

8 Q. And do your numbers in Exhibit 16 include a  
9 projected increase in those ticket prices as well?

10 A. Yes.

11 Q. And will you tell us what those projected  
12 increases are?

13 A. They're 25 cents per year in years two,  
14 three, and four.

15 Q. So it will be \$5.50 for year two, \$5.75 for  
16 year three, and \$6 for year four?

17 A. Correct, and then \$6 for year five.

18 Q. In other words, no further increase for year  
19 five?

20 A. We don't anticipate that at this time.

21 Q. And what is the discounted round trip?

22 A. It's --

23 Q. Or not round trip, bulk purchase discount  
24 rate?

25 A. It's a 5% discount, and we are going to be

0216

1 selling monthly passes.

2 Q. And what does that compute to on a per trip  
3 basis?

4 A. In the first year it computes to \$5, in the  
5 second year \$5.23, in the third year \$5.46, in the  
6 fourth year and the fifth year it's \$5.70.

7 Q. Mr. Wiley asked you some questions about the  
8 costs of the crew. I take it those are considered  
9 vessel expenses that would be attributed to the  
10 Kingston/Seattle ferry division; is that correct?

11 A. Correct.

12 Q. And I believe you testified that your  
13 projection was 10 hours per day, \$20 per hour average  
14 for a master, an engineer, and two deck hands?

15 A. Correct.

16 Q. Do you know what -- I'm assuming that that  
17 \$20 per hour because it's an expense category then  
18 includes all of the various costs that an employer has  
19 when it has an employee, so those employees are not  
20 earning \$20 an hour; is that correct?

21 A. That's correct, the \$20 average includes  
22 payroll taxes, medical, and retirement plan.

23 Q. Do you know what the average wage that you're  
24 projecting would then be?

25 A. It's been a couple of months since we really

0217

1 looked at that. I've got it in my notes in my office.  
2 You know, I don't really feel comfortable speaking to  
3 that without looking at my notes. I know that taxes is  
4 about 12%, but exactly what we assumed for the medical  
5 and retirement, I'm not exactly sure.

6 Q. You would have to factor in things like sick  
7 leave and vacation as well in terms of that ultimate  
8 cost package?

9 A. I mean usually that's factored, yeah, that's  
10 factored in as part of the overall compensation.

11 Q. Because you're not just going to have four  
12 crew?

13 A. No.

14 Q. Right, on the payroll?

15 A. Right. We're assuming that there's going to  
16 be two crews, in other words two captains, two  
17 engineers, and four deck hands, but on any given day or  
18 on any given trip there would only be the four  
19 individuals that we discussed.

20 Q. Do you have personally any involvement in  
21 hiring of crew, of masters, engineers, and deck hands,  
22 in your work for Four Seasons?

23 A. I am not directly involved in hiring the  
24 captains. Our vessel operations people hire the  
25 captains. I, you know, once they are hired, I'm

0218

1 involved in the accounting side of getting them set up  
2 as employees and things like that.

3 Q. Do you know what it costs to hire a competent  
4 captain for a year?

5 A. Yes.

6 Q. What?

7 A. As far as the payroll is concerned?

8 Q. Yes.

9 A. I think that the amounts that we have in our  
10 assumptions is reasonable.

11 Q. What do you base that belief on?

12 A. Our experience. I mean in Alaska we start  
13 captains at about \$21 or \$22 an hour. And from what I  
14 understand, the captains in Puget Sound are slightly  
15 less than that. And again, as they gain experience,  
16 their pay increases.

17 Q. I'm sorry, you said in Alaska they start at  
18 \$21, \$22 an hour, that's gross wages to the captains?

19 A. Correct. I mean the captains never get that,  
20 because the taxes get deducted, so.

21 Q. And the employer pays a fair amount more than  
22 that because of all the other expenses you were talking  
23 about before?

24 A. Correct.

25 Q. Do you have any involvement in employing deck

0219

1 hands?

2 A. Yes.

3 Q. For which vessels have you been involved in  
4 employing deck hands?

5 A. The vessels that we operate in Alaska are the  
6 Admiralty Wind, currently we're operating the Admiralty  
7 Wind, the Keet, the Yukon Queen, and the Aqua Express.

8 Q. And do you know what those deck hands are  
9 being paid gross wages?

10 A. Deck hand starts at \$9 an hour.

11 Q. You have made some projections about revenue  
12 from cargo. Can you tell us what you base those  
13 projections on?

14 A. Our projected revenue from cargo is very  
15 insignificant, a very insignificant part of our total  
16 revenue. We based our numbers based on Clipper  
17 Navigation's experience hauling freight between Seattle  
18 and Victoria and Seattle and Friday Harbor.

19 Q. There's no way to get freight from Seattle to  
20 Victoria or Seattle to Friday Harbor that is as  
21 comfortably convenient as there is a way of getting  
22 freight from Seattle to Kingston by driving around, is  
23 there?

24 MR. WILEY: Objection to the form, Your  
25 Honor, I think that assumes a lot of parameters that

0220

1 aren't in the question.

2 JUDGE RENDAHL: Can you rephrase your  
3 question.

4 MR. IGLITZIN: Sure.

5 BY MR. IGLITZIN:

6 Q. Are there -- what's the alternative rather  
7 than shipping freight by a vessel to get freight from  
8 Seattle to Victoria?

9 A. Air freight or another vessel.

10 Q. And what other ways are there to get freight  
11 from Seattle to Friday Harbor other than a vessel?

12 A. Air freight or another vessel.

13 Q. You're aware, are you not, that to get  
14 freight from Seattle to Kingston one would simply have  
15 to drive down to Tacoma, if one wanted to avoid getting  
16 on a vessel, one could drive down to Tacoma and drive  
17 around?

18 A. Yes, but it frequently is more convenient to  
19 just go across the water.

20 Q. Or one could drive to Seattle to the ferry in  
21 Seattle and take the auto or the truck over to  
22 Bainbridge and drive up to Kingston, right?

23 A. (Nodding head.)

24 Q. How many miles is it from Bainbridge to  
25 Kingston from -- I'm sorry, let me be more specific --

0221

1 from the ferry terminal, what used to be Winslow and I  
2 gather -- I'm not sure if it's Winslow again now, but  
3 what used to be Winslow to Kingston?

4 A. It's six miles from Winslow to the Agate Pass  
5 Bridge, and I'm not sure how far it is from the Agate  
6 Pass Bridge to Kingston but I would guess another six  
7 miles, maybe eight miles.

8 Q. But if you were going to be driving from  
9 Bainbridge, from the ferry at Bainbridge to the ferry at  
10 Kingston, you wouldn't drive all the way to the Agate  
11 Pass Bridge. I guess you would, you would drive the  
12 Agate Pass Bridge and then drive north to get to  
13 Kingston?

14 A. Yes.

15 Q. Is that through Shoalwater, that town there?

16 A. Suquamish.

17 Q. Suquamish.

18 A. There's a map if --

19 Q. So it's 12 miles?

20 A. I'm guessing again from the Agate Pass Bridge  
21 to Kingston. I know because they've got the sign on the  
22 highway from the Agate Pass Bridge into Winslow.

23 MR. WILEY: Your Honor, just for the record,  
24 there will be a witness, Mr. Hayes, who will talk about  
25 distance, as well as we will have testimony from some

0222

1 prospective shipper witnesses about the distances that  
2 will be more accurate than I believe this witness knows.

3 JUDGE RENDAHL: Thank you, Mr. Wiley.

4 BY MR. IGLITZIN:

5 Q. Is it fair to say that your projections of  
6 the cargo revenue are based on this same general sense  
7 of the market in the sense of what there is a demand  
8 for?

9 A. Yes.

10 Q. Maybe you can help me out here, I keep  
11 flipping back and forth, you have your ridership  
12 projections in years two, three, four, and five.

13 A. Exhibit 18.

14 Q. I had understood your testimony as being that  
15 the concessions income was not part of the  
16 Kingston/Seattle ferry division. Did I misunderstand  
17 that, or is that correct?

18 A. That's correct, and I probably should have  
19 taken it out of Exhibits 17 and 18 so as not to confuse  
20 those two issues. But again, my workpaper was formatted  
21 this way, and it was easy to take the revenue from the  
22 concessions division there and bring it over to Exhibit  
23 19 where it shows the concessions revenue and expense  
24 broken out.

25 Q. Exhibit 19 is the ProForma income statement

0223

1 for just year one. You have not prepared similar  
2 ProForma income statements for the subsequent four  
3 years, correct?

4 A. Not yet.

5 Q. In looking at Exhibit 17, I see where you're  
6 making estimates as to the net concession revenue. Are  
7 you making a certain projection as to how much money  
8 each passenger is likely to spend on concessions on a  
9 given trip?

10 A. Yes.

11 Q. And what is that projection?

12 A. We are projecting in the first year that the  
13 average passenger will spend \$1 on concessions.

14 Q. And are you making a projection as to what  
15 the cost of that dollar is likely to be?

16 A. Yes, we're estimating 60%.

17 Q. Is the cost and so 40% revenue?

18 A. 40% income, yes.

19 Q. I have heard it said that the State Ferries  
20 have had a problem with their concessions being a  
21 profitable operation. Are you familiar with that?

22 A. I have heard the stories too.

23 Q. Do you have any idea how much the average  
24 passenger has been spending, prior to the beginning of  
25 this year, was spending on concessions on the State

0224

1 Ferries?

2 A. No, I don't have that information. I know  
3 that the revenue that the passengers were spending went  
4 to the concessionaire, Sodexo, and then the State Ferry  
5 System got a percentage of that revenue, but I'm not  
6 aware of what the revenues were or exactly how the  
7 contract with Washington State Ferries worked.

8 Q. Do your projections on concessions  
9 contemplate an increase in the amount of money each  
10 passenger is anticipated to spend on concessions?

11 A. Yes, we expect the passengers in future years  
12 to spend more. Again, once the commuters' habits  
13 develop, they will have their usual beverage in the  
14 morning and their usual doughnut or whatever, and that  
15 in the afternoon it will be similar. And then as they  
16 become aware of what we have to offer, that they will  
17 buy additional concessions --

18 Q. Do you have --

19 A. -- on board.

20 Q. I'm sorry.

21 Do you have specific monetary targets that  
22 you're projecting for the subsequent years?

23 A. Yes, our target for year two is \$1.30 per  
24 passenger, year three is \$1.35 per passenger, year four  
25 is \$1.40 per passenger, and year five is \$1.50 per

0225

1 passenger.

2 Q. Can you explain to us what the commission and  
3 refunds expense portion of Exhibit 17, and probably  
4 other pages as well, references?

5 A. Yeah, again it's a rather small amount given  
6 the overall financial statements, but that would  
7 primarily be what we would pay to third parties to sell  
8 our tickets and our monthly passes.

9 Q. How are you planning on selling tickets to  
10 the ferry? Let's start with the non-discounted. I'm in  
11 Kingston, I want to take the ferry to Seattle, who sells  
12 me the ticket or how does that work?

13 A. We would have tickets and passes available at  
14 retail locations in Kingston. We will have an office in  
15 Kingston where you can buy tickets and passes. You can  
16 also buy tickets on board the vessel. And I think that  
17 as time goes on, that's going to be our preferred place  
18 to sell the tickets and the passes is right on board the  
19 vessel.

20 Q. Let me take each of those in turn. Let's  
21 talk about the preferred option, you're going to have  
22 somebody on the vessel selling tickets. As I understood  
23 your projections, they would average with the beginning  
24 low numbers, the 1,000 passengers a day, you're going to  
25 have 167 people on the vessel going from Kingston to

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1 Seattle in the morning let's say, and you will agree  
2 with me that there's some reason to think that more  
3 people will find, I'm just talking about at start up now  
4 the first year, you may actually have more people on the  
5 7:10 a.m. ferry than you do on the 5:30 a.m. or the 8:50  
6 a.m., that's an eventuality you have probably thought  
7 about, right?

8 A. Yep.

9 Q. In fact, when you were saying before that  
10 you're worried you're going to have too many people,  
11 that's probably one of the things you're worrying about  
12 is that you have too many people on a given ferry and a  
13 given run and that's a problem?

14 A. (Nodding head.)

15 Q. You have a mate, an engineer, and two deck  
16 hands on the vessel. None of those four individuals are  
17 going to be selling tickets; is that correct?

18 A. There would be at least a deck hand that  
19 would be available to sell tickets. We also have a  
20 customer service person budgeted in the selling,  
21 general, and administrative area. And as demand  
22 warrants, I would expect the general manager or the  
23 sales and marketing manager to be down there selling  
24 tickets.

25 Q. So in the first year you're going to have

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1 more than just the four employees that you talked about  
2 before as crew, you're going to also have a customer  
3 service person on the vessel?

4 A. They won't be based on the vessel, they will  
5 be land based. But before the vessel leaves Kingston,  
6 you know, they're going to be available at the boat.  
7 Again, eventually most of our customers will have  
8 monthly passes or prepaid tickets, because it's just  
9 more convenient for the customer. You know, they're not  
10 going to want to wait in line, but they can buy their  
11 tickets in advance the day before during slack times  
12 when we're operating.

13 Q. Bear with me for a minute, when you're  
14 beginning, let's not talk about where you end up, you're  
15 beginning. My understanding was that there was  
16 initially from your testimony was there was going to be  
17 a mate, an engineer, and two deck hands, making it a  
18 crew of four people.

19 A. Correct.

20 Q. When you start as of now my -- would my  
21 understanding in fact be that there's going to be at  
22 least one more Aqua Express employee on the vessel, or  
23 is it just going to be those four employees?

24 A. Those four employees will be based on the  
25 vessel and will be operating the vessel. When the

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1 vessel is tied up in Kingston, when it's at the dock in  
2 Kingston, there will be other employees based in  
3 Kingston available to assist while the vessel is tied up  
4 in Kingston.

5 Q. And --

6 A. This is something that I mean --

7 Q. Let me ask you another question, okay.

8 JUDGE RENDAHL: Well, let's have the witness  
9 finish his answer, and then you can ask your question,  
10 and then I need to ask you how much longer you might  
11 have for this witness.

12 MR. IGLITZIN: Okay.

13 JUDGE RENDAHL: Okay, so why don't you finish  
14 your answer.

15 A. This is what we do in Alaska, and I know that  
16 Clipper and Argosy do it, that we have land based  
17 employee sales and customer service employees that are  
18 at the boat or close to the boat or on the boat while  
19 it's tied up at our terminal and that when it's time for  
20 the boat to go, they step away from the boat, and they  
21 let the boat crew operate the boat to its -- on its  
22 trip.

23 MR. IGLITZIN: I'm not sure how long I have  
24 for this witness.

25 JUDGE RENDAHL: Okay, why don't you --

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1 MR. IGLITZIN: Wrap up this line?

2 JUDGE RENDAHL: -- wrap up this line, and  
3 then we'll end for the day and start up again in the  
4 morning.

5 MR. IGLITZIN: Okay, thank you.

6 JUDGE RENDAHL: I'm sorry, the afternoon, I  
7 have morning etched in my head for some reason, I  
8 apologize.

9 BY MR. IGLITZIN:

10 Q. In what you're envisioning with the deck hand  
11 selling tickets, is it fair to envision that the vessel  
12 is tied up and the deck hand is selling tickets as  
13 passengers come on to the vessel, and then no more  
14 ticket sales take place after the vessel is in motion?

15 A. We would collect fares from all the  
16 employees, or excuse me, from all the passengers on  
17 board the boat before we left, but we will be selling  
18 tickets for subsequent trips, we will be selling monthly  
19 passes on board the boat, so those will be available for  
20 sale in the galley along with other concession items.

21 Q. Yeah, but I'm trying to find out whether one  
22 of your two deck hands is going to in fact be selling  
23 tickets in the galley while the vessel is in transit?

24 A. Not for that voyage. For subsequent voyages,  
25 yes.

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1 Q. Have you spoken to the Coast Guard about  
2 their feelings about having a deck hand who is meeting  
3 the responsibility of one of the four identified people  
4 on the COI selling tickets while the vessel -- while  
5 acting as a deck hand --

6 A. Yes.

7 Q. -- on that vessel?

8 A. Yes, we operate that way as a normal course  
9 of business.

10 Q. And that's not the added deck hand doing the  
11 selling of the tickets, it's one of the what I have  
12 called the above the line people?

13 A. Yes.

14 Q. And have you spoken to the Coast Guard about  
15 operating that way with the Aqua Express on the Seattle  
16 to Kingston run?

17 A. We have spoken to the Coast Guard about that  
18 in our operations in Alaska, that's exactly how we're  
19 operating right now in Alaska, and the Coast Guard has  
20 signed off on that.

21 Q. And is that signing off indicated on the  
22 certificate of inspection for the vessel in Alaska that  
23 you're referring to?

24 A. No. Typically the Coast Guard would list an  
25 objection to your operation and say that you can't do

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1 certain things if you were doing something that they did  
2 not approve of rather than specifically say on the  
3 certificate of inspection that, you know, one of the  
4 deck hands is allowed to work in the galley.

5 MR. IGLITZIN: This is probably as good a  
6 place for me to stop as any.

7 JUDGE RENDAHL: Okay, thank you.

8 Mr. Wiley.

9 MR. WILEY: Yes, I'm going to need some time  
10 estimates from Mr. Iglitzin because I've got a witness  
11 subpoenaed from the Ferry Service here tomorrow at 3:00,  
12 I've got a couple legislators who apparently can't  
13 testify on the 1st and want to testify tomorrow, and I  
14 just need some help on scheduling.

15 JUDGE RENDAHL: I'm going to ask you two to  
16 try to work that out when we go off the record. If you  
17 can give Mr. Wiley some reasonable estimates of how much  
18 longer you need for Mr. Tougas and see if you all can  
19 work that out. It may be we have to move Mr. Deardorf  
20 to the 1st, but see if you can work that out. If you  
21 can't, I will be here probably at 1:00 tomorrow. If we  
22 need to meet at 1:00 and do some scheduling discussions,  
23 we can do that.

24 Okay, let's be off the record.

25