

EXHIBIT D

JESSIE LEOPOLD

Page 1

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ROBYN VIRTUE ALLEN

Plaintiff

v.

Case No. 1:14-CV-00022-JGM

JONATHAN PORTER AARON
LEOPOLD III, a/k/a JESSIE LEOPOLD

Defendant

v.

ARMSTRONG NAUTICAL PRODUCTS,
VALLERY INDUSTRIES, INC., et al.

Third-Party Defendants

-----/

SKYPE DEPOSITION

OF

JONATHAN PORTER AARON LEOPOLD III, a/k/a JESSIE LEOPOLD

Taken on Thursday, January 22, 2015, 10:14 a.m., at
the offices Maley and Maley, PLLC, 30 Main Street,
Burlington, Vermont.

Appearances continued...

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JESSIE LEOPOLD

Page 2

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JESSIE LEOPOLD

Page 3

INDEX

EXAMINATION

Witness Name	Page
JESSIE LEOPOLD	
EXAMINATION BY MR. MALEY	5
EXAMINATION BY MR. BRADY	98
EXAMINATION BY MR. MALEY	154

EXHIBITS

Exhibit	Description	Page
6	Picture of boat purchased in 2008	7
2	Picture of ladder	55
3	Document entitled "The Ladder That Works"	57
4	Copy of lable referencing ABYC ... H-41 Standard	59
8	Burlington College Invoice	70
9	Answers to Interrogatories	77
7	Copy of signed release	89
1	Photograph of Ladder	111
10	Diagram drawn by witness	128

REQUESTS TO PRODUCE

Description	Page
Copy of E-mail agreement referencing termination of agreement with Burlington College referencing incident with Robyn Virtue Allen	97
Copies of any documents relating to purchase of the property and specifically boat	99

JESSIE LEOPOLD

Page 4

S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED BY AND
between the attorneys of record for the respective
parties hereto as follows:

1. That the testimony of JESSIE LEOPOLD
may be taken and treated as if taken pursuant to
notice and order to take depositions and that all
formalities of notice and order are waived by the
parties, and the signatures to the stipulation are
in like manner waived;

2. That all objections except as to
matters of form are reserved until the deposition
or any part thereof is offered in evidence;

3. That the deposition may be signed by
the said JESSIE LEOPOLD before any notary public;

4. THAT all exhibits offered for
identification may be retained by counsel until the
time of the trial.

* * *

JESSIE LEOPOLD

Page 5

1 JESSIE LEOPOLD,
2 having been sworn, did testify as follows:
3

4 EXAMINATION BY MR. MALEY:

5 Q. Good morning.

6 A. Good morning.

7 Q. Can you hear me all right, Jessie?

8 A. Yes.

9 Q. Is it okay if I call you Jessie?

10 A. Yes.

11 Q. For the record, I'm located in
12 Burlington, Vermont with the court reporter, and
13 you're located where, Jessie?

14 A. Andros Island in the Bahamas.

15 Q. And you are there with your attorney?

16 A. Yes.

17 Q. In preparation for this deposition,
18 Jessie, have you reviewed any documents?

19 A. Yes.

20 Q. What have you reviewed, please?

21 A. The documents within the packet that were
22 sent.

23 Q. What packet would that be, please? You
24 talking about the exhibits?

25 MR. KUPFER: Yes.

JESSIE LEOPOLD

Page 6

1 THE WITNESS: Yes.

2 MR. MALEY: Q. You've reviewed
3 those in preparation for your deposition?

4 A. Yes.

5 Q. Have you reviewed any other documents,
6 Jessie?

7 A. I don't believe so.

8 Q. You are the owner of the Andros Beach
9 Club; is that correct?

10 A. Yes.

11 Q. When did you purchase that property,
12 please?

13 A. 2008.

14 Q. And are you the owner of the property in
15 your name alone?

16 A. Yes.

17 Q. Who did you purchase the property from
18 and what does it include, please, Jessie?

19 A. A man named Burt Ammons. It was the
20 house and the property, the boat, and a small --
21 two small sailboats. And there were two vehicles,
22 which are no longer around.

23 Q. Okay. We are back, Jessie, I hope. Can
24 you hear me all right?

25 A. We are here.

JESSIE LEOPOLD

Page 7

1 MR. KUPFER: You've been on the
2 whole time.

3 MR. MALEY: Q. Okay. So when you
4 purchased the real estate in 2008, what
5 did it consist of, please?

6 A. The house, property, and a motorboat and
7 two sailboats and two vehicles, which I'm not sure
8 if they were around when I actually made the
9 purchase. I was leasing the property for five
10 years.

11 Q. The motorboat that came with the
12 property, is that the motorboat that you were using
13 the day that Robyn was injured?

14 A. Yes.

15 Q. What's the designation of that boat, the
16 name and the manufacture and so forth, please?

17 A. Carolina Skiff, and it's 14 feet long.

18 Q. Showing you Exhibit 6, is that a picture
19 of the boat that you purchased with the property in
20 2008?

21 MR. KUPFER: John, you said
22 Exhibit 6; is that right?

23 MR. MALEY: I did.

24 MR. KUPFER: Let me find it. Okay,
25 Exhibit 6 is before the witness.

JESSIE LEOPOLD

Page 8

1 THE WITNESS: The boat is the same.

2 The motor and the center console with the
3 steering wheel were put on in 2009.

4 MR. MALEY: Q. So, the motor
5 and the center console were purchased by
6 you a year or so after you got the boat
7 in the deal when you bought the property?

8 A. Yes.

9 Q. Is that Yamaha engine the motor that you
10 purchased in 2009?

11 A. Yes.

12 Q. Did you purchase that new?

13 A. Yes.

14 Q. Now, the ladder that we are going to be
15 talking about, did that come with the boat in the
16 purchase in 2008, Jessie?

17 A. Yes.

18 Q. What was the condition of the ladder when
19 you purchased it?

20 A. One of the treads was missing, and
21 otherwise it was in -- as is.

22 Q. Do you know what the longevity of that
23 ladder was when you had purchased it in 2009?

24 MR. KUPFER: You mean how old it
25 was?

JESSIE LEOPOLD

Page 9

1 MR. MALEY: Yes, better way to put
2 it.

3 MR. KUPFER: You can answer that
4 question.

5 THE WITNESS: I don't. When I came
6 to the island was 2003, and it was here
7 at that point.

8 MR. MALEY: Q. Okay. Explain
9 to me what you mean by when you came to
10 the island in 2003.

11 A. I moved down here and leased the property
12 for five years before purchasing it.

13 Q. Oh, I see. So, you had some sort of a
14 lease purchase deal with the seller?

15 A. Yes.

16 Q. Now, you say that the boat was there in
17 2003 as well?

18 A. Yes.

19 Q. As well as the ladder that came with the
20 boat when you purchased the whole setup in 2008?

21 A. Yes.

22 Q. In 2003 when you were leasing the
23 property, did you use the boat during that period
24 of time, 2003 to 2008?

25 A. Yes.

JESSIE LEOPOLD

Page 10

1 Q. Did you use the ladder as well?

2 A. Yes.

3 Q. Did the ladder in 2003 have one of the
4 treads missing?

5 A. Yes.

6 Q. We talk about treads, can we call that a
7 plastic covering over one of the steps?

8 A. Yes.

9 Q. I think some of the literature calls it a
10 tread cap; would you agree with that?

11 A. Yes.

12 Q. Which tread cap was missing in 2003?

13 A. I don't remember exactly. I believe the
14 middle one or the top one.

15 Q. Now, when you undertook to lease that
16 property from the eventual seller, did you have
17 some discussion with him about the missing tread
18 cap on the ladder?

19 A. No.

20 Q. Did you ever have any conversation at all
21 with him about a missing tread cap on the ladder
22 when you purchased the property?

23 A. No.

24 Q. Did you have any conversations with him
25 after Robyn was injured about the missing tread cap

JESSIE LEOPOLD

Page 11

1 on the ladder?

2 A. No.

3 Q. Is the seller of the property still with
4 us or is he deceased?

5 A. Deceased.

6 Q. When did he die, Jessie, please?

7 A. I believe 2012 or '13.

8 Q. Now, as I understand it, from some -- at
9 some point after you purchased the property in
10 2008, another tread cap went missing; is that true?

11 A. Sorry. Say the timeline again.

12 Q. After you purchased the property in 2008
13 another one of the tread caps went missing.

14 A. Yes.

15 Q. Do you know how it occurred that that
16 other tread cap came off?

17 A. Yes.

18 Q. How?

19 A. I was diving with a customer. There was
20 a short line off of the stern of the boat and
21 the -- when we left -- when we started to drive
22 away, the line got caught in the propeller and
23 wrapped around or alongside -- I didn't really see
24 exactly what happened, but the line was caught in
25 the, in the propeller, and the ladder was still

JESSIE LEOPOLD

Page 12

1 attached to the boat. And I assume the line
2 tightened and pulled off the cap.

3 Q. And which cap was it that was pulled off
4 by this incident?

5 A. I don't remember, to be sure. I believe
6 either the middle one or the top one, because the
7 lower one would have been deeper in the water.

8 Q. So at the time Robyn was injured is it
9 fair to conclude that only the bottom step had a
10 tread cap on it?

11 MR. KUPFER: Objection to form. You
12 can answer the question.

13 THE WITNESS: Sorry, say it again.

14 MR. MALEY: Q. Is it fair to
15 conclude that at the time Robyn was
16 injured in March of 2011 only the bottom
17 step had a tread cap on it?

18 MR. KUPFER: Objection to form. You
19 can answer.

20 THE WITNESS: My recollection is the
21 bottom step had the -- it was the bottom
22 that still had the cap.

23 MR. MALEY: Q. Now from 2003 to
24 2008, when you were leasing the property
25 and using the ladder with the one missing

JESSIE LEOPOLD

Page 13

1 step, did you ever attempt to replace the
2 missing tread cap?

3 A. No.

4 Q. Did you ever attempt to do anything to
5 make any kind of repair to the ladder at all?

6 MR. KUPFER: Same time period
7 between 2003 and 2008?

8 MR. MALEY: Yes, please.

9 THE WITNESS: No.

10 MR. MALEY: Q. Now from 2008
11 after you purchased the property until
12 2011 when Robyn was hurt, did you ever
13 attempt to replace the one missing tread
14 cap and then when the second missing
15 tread cap went did you attempt to replace
16 that?

17 A. No.

18 Q. Did you ever contact the seller about the
19 problem with the missing tread caps?

20 A. No.

21 Q. Did you ever contact the manufacturer of
22 the ladder, if you knew who it was?

23 A. I don't believe so.

24 Q. Did you ever attempt to look for a
25 replacement tread cap?

JESSIE LEOPOLD

Page 14

1 A. No.

2 Q. Do you know -- did you know or do you now
3 know the purpose of those tread caps on the step of
4 the ladder?

5 MR. KUPFER: Objection to form. You
6 can answer the question.

7 THE WITNESS: Sorry. Do I know the
8 purpose of the --

9 MR. MALEY: Yes.

10 THE WITNESS: -- tread caps?

11 MR. MALEY: Yes.

12 THE WITNESS: I mean, it's part of
13 the design.

14 MR. MALEY: Q. Why do you think
15 it was designed that way to have tread
16 caps on there?

17 MR. KUPFER: Objection to form. You
18 can answer.

19 THE WITNESS: For comfort.

20 MR. MALEY: Q. Any other
21 reasons?

22 A. No.

23 Q. Do you think now or did you think when
24 the missing tread caps came off that they were
25 there for to provide a slip resistant surface for

JESSIE LEOPOLD

Page 15

1 the users of the ladder?

2 MR. KUPFER: Objection to form. You
3 can answer the question.

4 THE WITNESS: Sorry. Repeat the
5 question, please.

6 MR. MALEY: Q. Do you know now
7 or did you know at any time that the
8 tread caps were there to provide a slip
9 resistant surface for users of the
10 ladder?

11 A. I don't know. I mean, they were plastic;
12 so, they weren't necessarily slip resistant.

13 Q. When you leased the property, Jessie, in
14 2003, did the ladder that came with the boat have
15 any, any emblems or contact information on it?

16 A. I remember seeing the name Armstrong on
17 the ladder.

18 Q. Referring you to Deposition Exhibit 1,
19 which is the ladder that David brought to my office
20 a couple weeks ago, do you have that in front of
21 you, please?

22 A. Yes.

23 Q. Is that the ladder or is that a facsimile
24 of the ladder that you used from 2003 up until
25 Robyn was injured in 2011?

JESSIE LEOPOLD

Page 16

1 A. It's very similar. The only -- there's
2 one difference.

3 Q. That would be what?

4 A. The knobs which come out to connect to
5 the bracket were different on my ladder.

6 Q. How did you connect your ladder to your
7 boat?

8 A. It had two knobs instead of four, and the
9 knobs pointed in toward the boat and the bracket.
10 The one in the exhibit, they point to the sides.

11 Q. And how was it, then, that you attached
12 the ladder to the boat during the years that you
13 used the ladder?

14 A. The two fittings would fit into the
15 bracket and then you would push it down to lock it
16 in place.

17 Q. And did you leave it locked in place when
18 you were operating the boat?

19 A. No.

20 Q. What did you do with it when you were
21 operating the boat?

22 A. Pull the ladder up and keep it in the
23 boat.

24 Q. Excuse me, pulled the ladder up and what?

25 A. Keep it in the boat.

JESSIE LEOPOLD

Page 24

1 snorkel on your facility, true?

2 A. I, I wouldn't -- I'm not sure
3 discriminate is the right word. I use my judgment
4 to take people or not take people if I don't think
5 they are capable.

6 Q. As it relates to the school trip that we
7 are going to be talking about, Jessie, did you
8 allow all the students who requested to do
9 snorkeling to do snorkeling?

10 A. Yes.

11 Q. You didn't tell any of the students that
12 you didn't feel it was appropriate for them to try
13 to do snorkeling?

14 A. I don't believe so.

15 Q. You understand if you invite individuals,
16 including students, to your premises that you have
17 an obligation to keep those premises reasonably
18 safe for the invitees who come to your premises?

19 MR. KUPFER: Objection to form.

20 Based on your understanding, you can
21 either agree or not agree with Mr. Maley.

22 THE WITNESS: Can you repeat it,
23 again.

24 MR. MALEY: Q. You understood
25 that you had a duty, an obligation as the

JESSIE LEOPOLD

Page 25

1 owner of the premises when you invite
2 individuals to your premises to provide
3 premises that were safe, correct?

4 MR. KUPFER: Objection to form. You
5 can answer the question.

6 THE WITNESS: That is my
7 understanding.

8 MR. MALEY: Q. Now, with
9 respect to the ladder, for any
10 individuals that use those ladders, that
11 ladder from 2003 up until Robyn was
12 injured, did you provide any warnings to
13 them that either one step was missing or
14 two -- excuse me, one tread was missing
15 or two treads were missing?

16 A. Yes.

17 Q. What warning did you provide?

18 A. I recommended that they pay attention and
19 use the ladder appropriately and that one or two of
20 the caps were missing.

21 Q. And why did you recommend that they pay
22 attention and use the ladder appropriately because
23 one or two of the caps were missing, treads were
24 missing, please?

25 A. Well, I would recommend they use caution

JESSIE LEOPOLD

Page 26

1 anyway when coming out.

2 Q. That's not my question, Jessie. My
3 question has to do specifically with the missing
4 tread caps. Did you warn them and recommend that
5 they use caution because there were missing tread
6 caps?

7 A. The warning was more of a general advice
8 to use caution when coming out.

9 Q. Okay. Tell me generally what the warning
10 was that you provided.

11 A. To keep a hand on the boat or the ladder
12 and climb out carefully.

13 Q. Did you provide any warning that because
14 a tread cap or tread caps was missing that the
15 surface of the steps might be slippery?

16 A. I don't believe so, no.

17 Q. What was the surface of the steps if
18 there was a missing -- excuse me, waive it, ask it
19 this way.

20 What was the surface of the steps without
21 the tread caps?

22 A. It was a metal U-shaped step.

23 Q. And were there sharp edges on that metal
24 U-shaped step?

25 A. The step was finished, a finished metal.

JESSIE LEOPOLD

Page 27

1 On the outside edge, it was a little bit sharp.

2 Q. And did you give any warning to any users
3 of the steps and ladder that the outside edge was a
4 little sharp?

5 A. I don't believe so.

6 Q. And do we have an agreement that you
7 provided no warnings to any of the students,
8 including Robyn, who were there in 2011 that the
9 outside edge of the steps without the tread caps
10 was a little sharp?

11 A. I don't remember.

12 Q. Now looking again at Exhibit 1, please,
13 Jessie.

14 MR. KUPFER: I'm sorry?

15 MR. MALEY: Q. Look again at
16 Exhibit 1, please.

17 A. Yes.

18 Q. Do you see up at the top in the center
19 pole there seems to be a sticker with some writing
20 that's not clear?

21 A. Yes.

22 Q. Was that sticker type thing with writing
23 on it on your ladder?

24 A. I don't remember.

25 Q. Did you ever recall reading the

JESSIE LEOPOLD

Page 30

1 steps didn't have slip resistant surfaces?

2 Q. That's the question, yes.

3 A. They were missing the caps. If you call
4 them the --

5 Q. Well, let's ask it this way. If the caps
6 or the tread caps were considered to be slip
7 resistant surfaces, they didn't exist when Robyn
8 was injured, correct?

9 MR. KUPFER: Objection to form. You
10 can answer the question.

11 THE WITNESS: They -- two of the
12 caps were missing, yes.

13 MR. MALEY: Q. Now, after Robyn
14 was injured, it's my understanding that
15 you took steps to discard the ladder?

16 A. Yes.

17 Q. What did you do as it relates to
18 discarding the ladder?

19 A. I gave the ladder and the other gear from
20 the boat to my yard worker at the time and asked
21 him to put the gear away and advised him that he
22 could discard the ladder, because I didn't intend
23 to use it again; so, there wasn't a need to store
24 it with the other gear.

25 Q. What was the name of the yard worker?

JESSIE LEOPOLD

Page 31

1 A. Karl.

2 Q. Karl what? Who?

3 A. Saunders, I believe.

4 Q. Is Karl still working for you?

5 A. No.

6 Q. Where is Karl located?

7 A. He's now living here on the island. He
8 was in Nassau for a couple of years, I believe.

9 Q. Is he a native of the island?

10 A. He's a Bahamian. I don't believe he's
11 from this island.

12 Q. What is he doing now?

13 A. Oh, some yard work, I think, for others.

14 Q. Now, after you told him that he could
15 discard the ladder, do you know what he did with
16 it?

17 A. I mean, I didn't see him discard it.

18 Q. Do you know --

19 A. We have a trash collection area by the
20 main road, and there's a service which picks it up.

21 Q. Is it your assumption that's where the
22 ladder went?

23 A. Yes.

24 Q. Did you ever talk to Mr. Saunders
25 afterwards about specifically what he did as it

JESSIE LEOPOLD

Page 37

1 Shawn.

2 Q. How about somebody named Taylor?

3 A. I remember Taylor.

4 Q. Do you recall whether he was on that trip
5 or not?

6 A. I, I believe so.

7 Q. What's his full name; do you know?

8 A. No, I don't remember.

9 Q. I don't either, that's why I asked. I
10 have it somewhere.

11 In addition to the students were there
12 other people on the boat that left at 12:30?

13 A. Yes.

14 Q. Who?

15 A. The instructor Jeff Wager.

16 Q. Jeff Wager, as I understand it, at that
17 point in time was an employee of Burlington
18 College?

19 A. That's my understanding.

20 Q. Now in connection with your duties that
21 day on the trip that left at 12:30, what did you
22 consider your duties to be?

23 A. I was acting as the tour guide and
24 captain and snorkeling instructor for on behalf of
25 the Burlington College.

JESSIE LEOPOLD

Page 58

1 "The ladder that works." Do you see
2 that?

3 A. Yes.

4 Q. And to the right it says, "Just swing it
5 up to store in the mount or twist to remove."
6 Could you do that with your ladder?

7 A. No.

8 Q. How did you remove it?

9 A. You had to pull it up out of the bracket.

10 Q. It didn't twist?

11 A. No.

12 Q. The ladder could be handled by one
13 individual, could it not?

14 A. I could handle it, yes.

15 Q. Where did you store the ladder when the
16 boat was not being used?

17 A. In my tool shed or gas shed.

18 Q. And each trip you would then take the
19 ladder from the tool shed or the gas shed down to
20 the boat?

21 A. Yes.

22 Q. Now, on Exhibit 3 there's four types of
23 two, three and four-step models; do you see that,
24 Jessie?

25 A. Yes.

JESSIE LEOPOLD

Page 61

1 Q. You didn't know what H-41 standard was
2 until we started chatting about it until today,
3 Jessie?

4 A. Yes.

5 Q. You don't know anything about ABYC
6 standards in general, do you?

7 MR. KUPFER: I believe he's told you
8 that, but go ahead.

9 THE WITNESS: Correct. I'm not
10 aware of it.

11 MR. MALEY: Q. Okay. So, then,
12 from 2003 to 2011, you never made any
13 effort or steps to ensure that your
14 ladder complied with H-41 standard, did
15 you?

16 A. No, I wasn't aware of the standard, so I
17 didn't make steps to comply.

18 Q. Pretty hard to comply or make steps to
19 comply if you don't know what the standard is;
20 isn't that true?

21 MR. KUPFER: That's an argumentative
22 question, which he's already answered.

23 MR. MALEY: Q. This action was
24 filed in February 2014, Jessie. Where
25 did you live then, there, please? Where

JESSIE LEOPOLD

Page 62

1 did you live in of February 2014?

2 A. In Vermont.

3 Q. Where in Vermont?

4 A. Burlington.

5 Q. Where in Burlington?

6 A. 2 -- 283 Appletree Point Road.

7 Q. Is that property you owned?

8 A. No.

9 Q. Who owned it?

10 A. I believe a woman named Susan Warner.

11 Q. Did you rent from her or lease from her?

12 A. I, I wasn't the one leasing it.

13 Q. Who was?

14 A. My, my parents.

15 Q. In February 2014 were you registered to
16 vote in Burlington?

17 MR. KUPFER: In the state of
18 Vermont, you mean, or the city of
19 Burlington?

20 MR. MALEY: No, the city of
21 Burlington.

22 MR. KUPFER: You can answer that
23 question.

24 THE WITNESS: I believe so.

25 MR. MALEY: Q. And did you take

JESSIE LEOPOLD

Page 104

1 Q. So do you have any -- did you make any
2 conclusion yourself when you first started using
3 the ladder in 2003 as to how old it was?

4 A. No.

5 Q. You wouldn't have been able to tell at
6 that time whether it was one month old versus five
7 to ten years old; is that fair to say?

8 MR. KUPFER: Well, that's a
9 different question, but go ahead.

10 THE WITNESS: That's fair to say. I
11 mean it appeared in good working order,
12 so.

13 MR. BRADY: Q. Okay. And as of
14 the time that Robyn's accident happened
15 in -- was it 2011?

16 A. Yes.

17 MR. KUPFER: Yes.

18 MR. BRADY: Q. All right. Was
19 the ladder still in generally the same
20 condition other than it had the one
21 additional tread removed?

22 A. Yes.

23 Q. So as of the date of Robyn's accident the
24 only thing that you can recall about the ladder
25 that looked anything other than a ladder might look

JESSIE LEOPOLD

Page 110

1 Q. Were you the one who reattached it?

2 A. Yes.

3 Q. So you -- is it simply a matter of
4 unscrewing and screwing back in some screws?

5 A. There's some bolts.

6 Q. That go right through?

7 A. Yeah, I believe there are two bolts that
8 go through the hull.

9 Q. And you are the person who did that?

10 A. Yeah, I believe so.

11 Q. Do you know if you painted the bracket
12 while it was attached or unattached?

13 A. Probably attached.

14 Q. Did you ever obtain any information from
15 the seller of the vessel as to whether the
16 manufacturer of the ladder was the same as the
17 manufacturer of the bracket?

18 A. No. I mean I assume that --

19 MR. KUPFER: You answered the
20 question.

21 MR. BRADY: Q. So is it your
22 assumption that the manufacturer of the
23 ladder is the same as the manufacturer of
24 the bracket for the ladder and bracket
25 that were involved in this accident?

JESSIE LEOPOLD

Page 111

1 A. Yes. It's my assumption that's the
2 ladder and bracket.

3 Q. Putting in front of you -- I'm sorry.
4 Did I interrupt you?

5 A. No, go ahead.

6 Q. Putting in front of you Exhibit 1, which
7 is a photocopy of a photograph on a piece of eight
8 and a half by eleven paper with Leopold triple 022
9 at the bottom of it, which appears to be a ladder;
10 is that correct?

11 A. Yes.

12 Q. The ladder that you owned, was the
13 sticker in the same approximate location on the
14 ladder as you see on this exhibit?

15 MR. KUPFER: Just before you answer
16 it, just for the record, there's two
17 stickers on the center shaft, the center
18 pole and the ladder. I assume you mean
19 the one that is above the uppermost step?

20 MR. BRADY: Well, no. Let me --
21 I'll ask a different question.

22 Q. There are two things on this ladder that
23 to your eye appear to be stickers on this ladder;
24 is that correct?

25 A. Yes.

JESSIE LEOPOLD

Page 113

1 MR. BRADY: Q. And you don't
2 recall if it was stamped into the metal
3 on the center pole or appearing on one of
4 the steps or on a sticker, you don't
5 know. All you recall is that you saw the
6 name Armstrong somehow on the ladder; is
7 that correct?

8 A. Correct.

9 Q. Can you recall the exact words, if any,
10 that came after Armstrong? Was it Armstrong
11 Marine? Was it Armstrong Ladder? Do you have any
12 recollection about that?

13 A. No.

14 Q. So, the only thing you recall by way of
15 letters on your ladder was Armstrong?

16 A. Yes.

17 Q. And you told us previously the knobs on
18 your ladder were different than those that we see
19 on Exhibit 1; do I have that correct?

20 A. Yes.

21 Q. On Exhibit 1, the orientation of what we
22 would call these knobs is roughly the same as the
23 orientation of the steps on the ladder; is that
24 correct?

25 A. Yes.

JESSIE LEOPOLD

Page 130

1 structure underneath the removed treads that caused
2 the lacerations to Robyn's body; is that correct?

3 MR. KUPFER: Objection to form. You
4 can answer.

5 THE WITNESS: Again, the -- what
6 these are pointing to is the full, the
7 full width of the step.

8 MR. BRADY: Q. Right. And it's
9 somewhere along the full width of one or
10 the other of those two steps that you
11 understand caused the lacerations to
12 Robyn's body; is that correct?

13 MR. KUPFER: Objection to form. You
14 can answer.

15 THE WITNESS: My understanding is it
16 was on the outside corner of one of the
17 steps.

18 MR. BRADY: Q. Okay. That outside
19 corner that you understand caused the lacerations
20 to Robyn's body was for the one step that was
21 covered was covered up by the plastic tread,
22 correct?

23 MR. KUPFER: I didn't understand
24 your question. Did you understand that?

25 THE WITNESS: It's hard to say.

JESSIE LEOPOLD

Page 133

1 Q. But it's your belief it wasn't the bottom
2 part of the cover -- of the metal, excuse me, but
3 rather it was the outside edge of the metal that
4 caused Robyn's lacerations; is that correct?

5 A. Yes.

6 Q. And so on the one step that was still
7 covered with the tread on your vessel, on your
8 ladder at the time of the accident, the part that
9 was underneath and you believe cut Robyn on the
10 other uncovered steps, for the ones that was
11 covered those parts were not exposed, correct?

12 A. I believe so.

13 Q. All right.

14 A. My point of question is on the end.
15 If -- if this is -- if the side of the step is
16 enclosed by the plastic tray or if it's open.

17 Q. You don't remember that?

18 A. I don't remember.

19 Q. On the one step that still had the tread
20 on it, on your ladder on the date of the accident,
21 was there on the ends any exposed metal?

22 A. No, I don't believe so.

23 Q. And what you believe lacerated Robyn's
24 body was exposed metal on the outside ends of one
25 of the two steps that had the tread removed,

JESSIE LEOPOLD

Page 134

1 correct?

2 A. Correct.

3 Q. So had the tread still been on whatever
4 step cut Robyn, there would have been no -- to your
5 understanding, no sharp edge that could have cut
6 her body, correct?

7 MR. KUPFER: Objection to form. You
8 can answer the question. Calls for
9 speculation. Go ahead.

10 THE WITNESS: Say -- repeat it.

11 MR. BRADY: Q. Yeah. You
12 testified earlier today that because of
13 the removal of the treads there was a
14 part that -- I think your words were --
15 made it a little sharp because of the
16 removed tread; is that correct?

17 A. I, I mean I don't remember.

18 Q. Well, okay. Let's forget what your
19 testimony was --

20 A. Okay.

21 Q. -- earlier today then. Let me ask you
22 this: Once the two treads were removed, one when
23 you first got it in 2003 and one the later accident
24 with the outboard motor, after those treads were
25 removed there was a part to -- underneath that was

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Page 136

1 he knew the ends were there or whether he
2 knew that the ends were sharp?

3 MR. BRADY: Q. You knew that
4 those sharp ends were there before the
5 date of Robyn's accident; is that right?

6 MR. KUPFER: Objection to form. You
7 can answer.

8 THE WITNESS: I didn't have that
9 opinion of it. I, I knew that the metal
10 was exposed.

11 MR. BRADY: Q. When did you
12 first become aware that the ends that
13 were exposed were a little sharp?

14 A. When we -- I think when we came in from
15 the accident was when I noticed.

16 Q. When you first got the ladder to use in
17 2003 did you do any careful evaluation or
18 inspection of it to try to determine whether it was
19 safe to be used with the step missing?

20 MR. KUPFER: Objection to form. You
21 can answer.

22 THE WITNESS: I used it myself.

23 MR. BRADY: Q. My question is a
24 little bit different though. Did you
25 ever do a careful inspection or

JESSIE LEOPOLD

Page 137

1 evaluation of it to see whether in your
2 opinion it could safely be used without
3 exposing people to any risk --

4 MR. KUPFER: Objection.

5 MR. BRADY: Q. -- without the step on
6 it?

7 THE WITNESS: Well --

8 MR. KUPFER: Objection to form.

9 THE WITNESS: Well, I looked at it
10 and I used it. You know, that was my
11 inspection or my test.

12 MR. BRADY: Q. And do you
13 recall noticing the edges that you later
14 noticed were sharp?

15 A. I don't recall that, no.

16 Q. Do you know if the edges that you first
17 noticed were sharp after the accident were in any
18 different condition then than they were when they
19 were first exposed when each of the two treads were
20 taken off?

21 A. No, I would say same condition.

22 Q. All right. So had you carefully
23 evaluated or inspected those ends when the treads
24 were first removed from them you would have been
25 able to conclude at that time, had you done so,

JESSIE LEOPOLD

Page 138

1 that they were a little sharp, correct?

2 MR. KUPFER: Objection to form. You
3 can answer the question.

4 THE WITNESS: Sorry. If I had taken
5 a closer look, I would have noticed they
6 were sharp? Yes.

7 MR. BRADY: Q. Okay. Forgive me
8 if you've already asked and answered
9 this. Do you recall whether Robyn was
10 standing on the uppermost, the middle, or
11 the bottom most step when she slipped?

12 MR. KUPFER: Or some combination of
13 those because she could have feet on
14 different steps too.

15 MR. BRADY: Agreed.

16 THE WITNESS: Right. I believe she
17 had two -- both feet on the ladder and on
18 different steps. So, I, I believe she
19 would have had one -- at least one foot
20 on the middle step, and then I don't
21 remember if the other foot was on the top
22 step or it if was on the bottom step.

23 MR. BRADY: Q. And you don't know
24 which one of her two feet, left or right, was on
25 which step?

JESSIE LEOPOLD

Page 139

1 A. I don't remember.

2 Q. Did it appear to your eye that what
3 caused her to come off the ladder was her foot
4 slipping on the steps versus losing her balance or
5 something else?

6 A. I -- you know, it just happened in an
7 instant. It -- I think she lost her balance, but,
8 I mean, it happened in an instant, so.

9 Q. Do you recall what the sea state was at
10 the time of her accident?

11 A. There were probably one to two foot chop
12 waves.

13 Q. And for that vessel with that load on it
14 is that rough waters?

15 A. Probably not quite two feet. Well, yeah,
16 probably a foot or 18 inches chop.

17 Q. So was the vessel rolling back and forth
18 because of the chop?

19 A. No. It's a flat bottom, so it doesn't
20 really roll from side to side.

21 Q. So, you don't think sea state and
22 movement of the vessel by wave played any role in
23 Robyn's accident?

24 MR. KUPFER: Objection to form.

25 THE WITNESS: It could have. You're

JESSIE LEOPOLD

Page 143

1 THE WITNESS: Yes.

2 MR. BRADY: Q. Do you ever have
3 inspections done by your insurance
4 company that they send somebody down and
5 look at your premises and inspect them
6 for safety before they renew you for
7 insurance, or anything like that?

8 A. No.

9 Q. Has your insurance provider ever been
10 down here to see your business?

11 A. No.

12 Q. When in relation to Robyn's accident did
13 you first notify your insurance company?

14 A. The following day, March 18.

15 Q. So, the accident happens at about noon on
16 the 17th. About what time on the 18th did you call
17 the insurance company?

18 A. Nine in the morning, something like that,
19 I believe. By the time we finished dealing with
20 Robyn at the clinic and getting her to Nassau and
21 coordinating her trip home, it was after five, so I
22 called the next day.

23 Q. And the conversation you had with Karl
24 where you told him he could put the ladder
25 somewhere else, that you were never going to have a

JESSIE LEOPOLD

Page 144

1 use for it again, on what date and time did you
2 have that conversation?

3 A. March 17th.

4 Q. At what time of the day?

5 A. Right -- pretty much right when we came
6 in from the trip, so probably sometime around
7 middle afternoon.

8 Q. Had you ever had a claim or lawsuit
9 against you with respect to this business, this
10 business before?

11 A. No.

12 Q. Had you ever had a claim or lawsuit
13 against you personally before?

14 A. No.

15 Q. Had you ever been involved in any sort of
16 employment type capacity where there's been an
17 accident and an injury resulting in a claim or a
18 lawsuit before this one?

19 A. No.

20 Q. Had you ever had any training or
21 experience of any type regarding what you do as an
22 employee or owner of a business following an
23 accident or injury?

24 A. I've had first aid and CPR training for
25 my dive certifications.

JESSIE LEOPOLD

Page 145

1 Q. I'm more interested in if you had any
2 training or experience in documenting things,
3 taking statements from witnesses, taking
4 photographs of things, things of that nature
5 following an accident with an injury? Have you had
6 any experience or training of that type at all?

7 A. No.

8 Q. At the time that you had the conversation
9 with Karl had it occurred to you that Robyn might
10 make a claim against you or your business for her
11 injury?

12 A. No.

13 Q. Did you do anything by way of taking a
14 photograph of the ladder or videotape or other
15 image of it, or anything like that, before throwing
16 it away?

17 A. No.

18 Q. Before throwing the ladder away did you
19 look at it carefully to see if there were any
20 manufacturer markings on it like Armstrong or some
21 other company name?

22 A. No.

23 Q. So, you told me previously the first time
24 you noticed the sharp edges on the ladder was after
25 the accident. So tell me what you were doing with

JESSIE LEOPOLD

Page 148

1 A. That what?

2 Q. Were you aware or were you not aware
3 before Robyn's accident that there were some sharp
4 edges on this ladder where the steps or treads had
5 been removed?

6 A. I was aware that the metal was exposed.
7 I don't recall specifically thinking, oh, that's a
8 sharp edge, that could be dangerous.

9 Q. Okay. Let's take the "that could be
10 dangerous" part away from it, because all I'm
11 asking about it is sharp.

12 A. Right.

13 Q. You understand what I'm asking. All I
14 want to know is were you aware or were you not
15 aware before Robyn's accident that there were some
16 sharp edges where the treads were removed?

17 MR. KUPFER: I think he's answered
18 the question, but go ahead.

19 THE WITNESS: Was I aware that the
20 corner was sharp? Yeah, I guess.

21 MR. BRADY: Q. And the reason
22 you would have been aware is because at
23 times you carried the ladder down to the
24 boat you would have felt it?

25 MR. KUPFER: Objection to form.

JESSIE LEOPOLD

Page 149

1 THE WITNESS: I may have -- yeah, I
2 may have felt it out. It didn't stick
3 out in my mind.

4 MR. BRADY: Q. Had you ever purchased
5 a ladder of this particular style before, either
6 after the accident or before?

7 A. No.

8 Q. Did you do any online research at all
9 after Robyn's accident to try and figure out which
10 manufacturer was the manufacturer of your ladder?

11 A. No.

12 Q. Do you know of any information that
13 would -- strike that.

14 Have you ever looked at marine ladders on
15 line before?

16 MR. KUPFER: Before? Today?

17 MR. BRADY: Before today.

18 THE WITNESS: I remember -- I
19 went -- I was directed to go to the
20 Armstrong Web site by my original lawyer.
21 I believe that was the first time that I
22 looked at any marine ladders online.

23 MR. BRADY: Q. And I don't want
24 to know any more about what that lawyer
25 told you for now, but the date that you



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Joann M. Walsh, RPR
P.O. Box 7
Bridport, Vermont 05734

Re.: Robyn Virtue Allen v. Jonathan Porter, et. al.
Civil Action No.: 1:14-cv-00022-JGM

Dear Ms. Walsh:

Enclosed please find an errata sheet for the deposition of Jonathan Porter Aaron Leopold III, a/k/a "Jessie Leopold" taken on Thursday, January 22, 2015, together with the read and sign sheet of his deposition.

Very truly yours,

CARROLL McNULTY & KULL LLC

DAVID M. KUPFER

DMK:js
Enclosures
cc: John Maley, Esq.
John Brady, Esq.

JESSIE LEOPOLD

Page 156

1 STATE OF
2 COUNTY OF

4 I, the undersigned, say that I have read the
5 foregoing deposition and hereby declare under
6 penalty of perjury the foregoing is true and
7 correct.

8 Executed this 25th day of February 2015, at

Andros, Bahamas

Jonathan "Jesse" Leopold
JESSIE LEOPOLD

9 AND ABOVE SIGNED WITNESS PERSONALLY APPEARED
10 before me on 25th of Feb, 2015, and made
11 oath that the foregoing answers are true.

W. R. La. [Signature]
[Signature]

ERRATA SHEET

TO: JESSIE LEOPOLD

FROM: Joann M. Walsh, RPh

DATE OF DEPOSITION: January 22, 2015

CASE: Virtue Allen v Leopold v Armstrong, et al.

INSTRUCTIONS TO THE DEPONEE:

Enclosed herewith is the original transcription of your deposition to read and sign. Please use this errata sheet to clearly identify any corrections or changes you wish to make, referring to the corresponding page and line number along with your change. Do not write directly on the original transcript.

When you have completed the process described above sign the signature page, which is the next-to-the-last page of the transcript, before a Notary Public, then enclose this errata sheet with this transcript and return to the attorney conducting the deposition.

Page No. 47 Line No. 4

Add: "However, I could not see where Robyn's feet were, so I don't know." Reason for change: clarification

Change _____ to _____

Page No. 95 Line No. 7

Answer should read: "correct, one invoice was sent out in advance." Reason for change: clarification.

Change _____ to _____

Page No. 132 Line No. 11

Speaker is Mr. Kupfer, not Mr. Maley.

Change _____ to _____

Page No. 148 Line No.

Change "Yeah, I guess," to "I was aware that the metal was exposed. I don't recall specifically thinking oh, that's a sharp edge." Reason for change: clarification.

Change _____ to _____

Page No. Line No.

Change _____ to _____

Page No. Line No.

Change _____ to _____

Page No. Line No.

Change _____ to _____

John "Jew" Lepp
Signature of Deponent