

The Honorable Sharon Armstrong
Hearing Date: Friday, February 17, 2006
Time: 3:30 p.m.
With Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RANA FRENCH, as Personal Representative of
the Estate of RALPH DALE,

Plaintiff,

v.

SAGERHAGEN HOLDINGS, INC., et al.

Defendants.

Case No. 05-2-09268-8SEA

**SUPPLEMENTAL DECLARATION OF
J. MICHAEL MATTINGLY IN
SUPPORT OF WARREN PUMPS,
LLC'S MOTION FOR SUMMARY
JUDGMENT**

I, J. Michael Mattingly declare and state as follows:

1. I am one of the attorneys representing Warren Pumps, Inc. in this matter.
2. Attached hereto as "Exhibit H" is a true and accurate copy of selected portions of the perpetuation deposition transcript of Ralph Dale, taken on April 21, 2005.
3. Attached hereto as "Exhibit I" is a true and accurate copy of selected portions of the deposition transcript of Ralph Dale, taken on April 29, 2005.

PAGE 1 - SUPPLEMENTAL DECLARATION OF J. MICHAEL MATTINGLY IN
SUPPORT OF WARREN PUMPS, LLC'S MOTION FOR SUMMARY
JUDGMENT

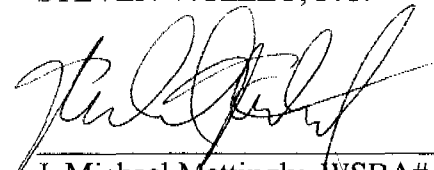
STEVEN V. RIZZO, P.C.
LINCOLN PLACE, SUITE 350
1620 S.W. TAYLOR STREET
PORTLAND, OREGON 97205
TELEPHONE: (503) 229-1819

1 4. Attached hereto as "Exhibit J" is a true and accurate copy of the Court's Order
2 Granting Defendant General Electric Company's and Swenson Technology, Inc.'s Motions to
3 Suppress Perpetuation and Discovery Depositions, entered by this Court in this matter on
4 January 20, 2006.

5 I declare under penalty of perjury under the law of the State of Washington that the
6 foregoing is true and correct to the best of my knowledge.
7

8 Dated: February 16, 2006 at Portland, Oregon.
9

10 STEVEN V. RIZZO, P.C.

11 
12 _____
13 J. Michael Mattingly, WSBA# 33452
14 Attorney for Warren Pumps, Inc.

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

RALPH DALE,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
SABERHAGEN HOLDINGS, INC; et al)	)	
	)	
Defendants.	)	Case No. 05-2-09268-8 SEA
	)	

VIDEOTAPED DEPOSITION ON ORAL EXAMINATION
FOR PERPETUATION PURPOSES

OF

RALPH DALE

10:30 a.m.
April 21, 2005
815 Jackson Street
Ketchikan Alaska 99901

EXHIBIT H
PAGE 1 OF 2

1 Q Thank you, Mr. Dale, I appreciate your testimony today.
2 Godspeed. Pass the witness. Do you want to take a
3 break?

4 A Yes.

5 THE REPORTER: Off record.

6 2:10

7 Defense Counsel reserved the right to cross examination
8 pending the completion of the Examination for Discovery.
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EXHIBIT H
PAGE 2 OF 2

IN THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

RALPH DALE,)
)
Plaintiff,)
vs.)
)
SABERHAGEN HOLDINGS, INC; et al))
)
Defendants.) Case No. 05-2-09268-8 SEA)

DEPOSITION ON ORAL EXAMINATION FOR DISCOVERY PURPOSES
CONTINUED

OF

RALPH DALE

10:03 a.m.
April 29, 2005
815 Jackson Street
Ketchikan, Alaska 99901

EXHIBIT

PAGE 1 OF 1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that, pursuant to Notice of Taking Deposition upon oral examination for Discovery Purposes of Ralph Dale on Friday, the 29th day of April 2005, at the hour of 10:33 a.m. thereof, at the 815 Jackson Street, Ketchikan, Alaska 99901, before Judy A. Zenge appearing, a Notary Public in and for the State of Alaska, duly commissioned and qualified, personally appeared, Ralph Dale called as a witness by the defendants, who was thereupon examined and interrogated as hereinafter set forth:

THE REPORTER: On record.

MS. McDONALD: The record should reflect that Mr. Dale instructed me this morning to instruct Mr. Mesher that he is no longer welcome to come on the property. (Indiscernible - oxygen machine noise). He has been sanctioned for this kind of behavior in the past. We'll be moving for a protective order. All objections to Mr. Mesher firm on behalf his clients (indiscernible - oxygen machine noise) for the duration of this deposition.

And I've repeatedly asked you guys, to come up with a (indiscernible - oxygen machine noise) to get through this. And Mr. Dale's blood pressure yesterday was so high. I'm not blaming you, I think the rest of you have been very professional, including Brian. But what I'm going to do is I'm going to start with Jim, and go around the room give

EXHIBIT

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1 everybody 30 minutes, I'm going to rotate around the room.

2 Obviously, I'm upset too, but the way I think to proceed

3 today, (indiscernible - oxygen machine noise).

4 MR. ZERINGER: This is Brian Zeringer, and just, with
5 respect to the comments by Ms. McDonald, I want the record to
6 reflect that I am with the same law firm as Barry Mesher. I
7 have not come here today representing either of the clients
8 that Mr. Mesher has been here representing. I am not prepared
9 to ask questions on behalf of the clients that Mr. Mesher has
10 been representing, and so it's a -- it is a tremendous
11 disadvantage and I consider it prejudicial to those clients
12 that he has been representing. As to Mr. Mesher's conduct,
13 for the record, I can't agree with the representations that
14 have been made regarding him, nor can I agree that Mr. Mesher
15 has been sanctioned in the past for anything like what was
16 going on yesterday. That's all I have to say and we'll
17 proceed as best we can under the circumstances.

18 MS. McDONALD: Okay. And after 30 minutes, I'll stop
19 each person and we'll go and the next, and we'll keep going
20 around the room until we're done. You can go ahead, Mr.
21 Horne.

22 THE REPORTER: Mr. Dale, I'll just remind you that you
23 remain under oath.

24 MR. DALE: Still under oath. Yes.

25 RALPH DALE

EXHIBIT I
PAGE 3 OF 7

1 A What pieces. Here again, my main job was construction,
2 new construction. That was my main work at the plant.

3 Q Correct.

4 A And then I went -- moved into those other areas, if I had
5 knowledge of those areas.....

6 Q Right.

7 Aand usually, we'd -- to have our people become more
8 knowledgeable about all the phases of the plant. We
9 would -- on these pump lists, we might exchange. Instead
10 of going to the acid plant every time, we might go to the
11 pulp preparation building or the wood room or some other
12 area.

13 Q To change out a particular pump?

14 A Switch a pump or whatever it might be. It didn't have to
15 be a pump, another piece of equipment.

16 MS. McDONALD: Steve, we have to move it around, so
17 finish your questions.

18 MR. RIZZO: Yeah. Okay. Let me just take -- just to try
19 to close it down.

20 Q Is it a fair statement to say that during the shutdowns,
21 while you were doing your walk throughs, you were not
22 primarily focused on pumps?

23 A Well, we focused on anything that needed to be looked
24 into.

25 Q Right. And just to -- and this will only take a minute.

EXHIBIT

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1 court know for later, that I'm here ready, and willing to
2 complete my cross examination of you during this deposition.

3 MS. BOLLERO: And I would also like to add for the record
4 and should have done so before I ceased questioning, that I
5 have merely scratched the surface and I don't know that I
6 would have given up questioning had I thought that four or
7 five other people were going to come onboard afterwards. I
8 thought we were very close to being done.

9 MS. MCDONALD: We're done now. You're done Ralph, you can
10 relax.

11 MS. DINSDALE: Just for the record, I think all
12 defendants agree that we attempted to take advantage of the
13 opportunity to ask limited questions today. But I don't know
14 that any of us would -- including myself, are finished our
15 examination. We've limited questions today.

16 MR. ODOM: And I'll say that subject to objection,
17 recognizing, that we wanted to give a thorough cross
18 examination for each of our clients.

19 MS. DINSDALE: Exactly. You didn't even get a chance to
20 start on one your clients. But those of us who did ask some
21 questions for our clients, we attempted to start, but we
22 didn't have enough time.

23 MR. RYAN: I also join that view.

24 MR. LINTZ: Absolutely.

25 MR. ZERINGER: If I can, this is Brian Zeringer, I am -- I

EXHIBIT

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1 have asked questions on behalf of my client Chicago Bridge
2 Iron as well as Crown Cork and Seal Company Inc. Another
3 member of my firm Barry Mesher was here on behalf of Crane
4 Co., and Sterling Fluids and Mr. Mesher at Mr. Dale's request
5 has absented himself from the proceedings here, on this fourth
6 day of the deposition. I have stepped in for purposes of
7 monitoring the deposition, and being prepared to ask questions
8 on behalf of my client -- of our firms clients, Crane Co. and
9 Sterling Fluids. I have prepared during the course of the day
10 to ask questions on behalf of Crane Co. And am prepared to do
11 so presently, as well as stay the night and be here tomorrow
12 morning for purposes of asking those questions. Also the
13 record should reflect that Crane Co., is interested in cross
14 examining Mr. Dale in the perpetuation deposition, assuming
15 the parties here do reconvene at a later time.

16 Finally I would like the record -- I would like to have
17 marked as exhibits, to this deposition. The four exhibits
18 that I conferred with Mr. Dale about, specifically, whatever
19 the next numbers are, I would like to have marked the same
20 picture that was plaintiff's exhibit number 6, plaintiff's
21 exhibit number 12, and plaintiff's exhibit number 14, and
22 plaintiff's exhibit number 15, and have those marked in the
23 next in number sequence to this deposition.

24 MR. RIZZO: This is Steve Rizzo, just to go on the record,
25 what I would like to do is point out that I don't believe the

EXHIBIT I

1 perpetuation deposition is currently able to be used as
2 evidence in light of the fact that there's been no cross. And
3 I think that that's at least in part caused by the fact that
4 the discovery deposition, was extenuated for health reasons,
5 and based on the number of defense counsel. And so even that
6 I would say is subject to our reservation to object to that in
7 the even that the Plaintiff will attempt to use that, if we're
8 not capable of finishing one or both of the (indiscernible).

9 MR. LINTZ: Randy Lintz, I join on behalf of my client.

10 MS. MARTIN: I would like it to reflect that we all join
11 unless we specifically did not so instruct.

12 THE REPORTER: 4:02

13 (Off record)

14 4:02
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EXHIBIT I
PAGE 7 OF 7

general filing

Copy Received

THE HONORABLE SHARON ARMSTRONG

JAN 20 2006

WILLIAMS, KASTNER & GIBBS
SEATTLETIME RECEIVED: 4:16

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RANA FRENCH, as Personal Representative of
the Estate of RALPH DALE,

Plaintiffs,

v.

SABERHAGEN HOLDINGS, INC.; et al.,

Defendant.

No. 05-2-09268-8 SEA

~~PROPOSED~~

GRANTING

ORDER ~~DENYING~~ DEFENDANT
GENERAL ELECTRIC COMPANY'S
AND SWENSON TECHNOLOGY, INC.'S
MOTIONS TO SUPPRESS
PERPETUATION AND DISCOVERY
DEPOSITIONS

THIS MATTER having come on regularly before this court for hearing upon Defendant General Electric Company's and Swenson Technology, Inc.'s Motions to Suppress Perpetuation and Discovery Depositions, and the Court having heard the argument of counsel, reviewed the motions and the records and files herein, including:

1. Defendant General Electric Company's and Swenson Technology, Inc.'s Motions to Suppress Perpetuation and Discovery Depositions;
2. The Declaration of Jeffery M. Odom in Support of General Electric Company's Motions to Suppress Perpetuation and Discovery Depositions, and the exhibits attached thereto

ORIGINAL

EXHIBIT

PAGE

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GRANTING
ORDER ~~DENYING~~ DEFENDANT GENERAL ELECTRIC
COMPANY'S AND SWENSON TECHNOLOGY, INC.'S
MOTIONS TO SUPPRESS PERPETUATION AND DISCOVERY
DEPOSITIONS - 1 -

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BERGMAN & FROCKT
705 SECOND AVENUE, SUITE 1601
SEATTLE, WA 98104
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3. The Declaration of Barbara L. Bollero in Support of Swenson Technology, Inc.'s, Joinder in General Electric's Motion to Suppress Perpetuation and Discovery Depositions and the exhibits attached thereto;
4. Plaintiffs' Response to General Electric Company's and Swenson Technology, Inc.'s Motions to Suppress Perpetuation and Discovery Depositions; *amended thereto*
5. The Declaration of Michelle B. Norton in Support of Plaintiffs' Response General Electric Company's and Swenson Technology, Inc.'s Motions to Suppress Perpetuation and Discovery Depositions;
6. *GE's Reply*;
7. *Supplemental Declaration of Christopher Marks*
8. *Swenson's Reply*; and
9. *Supplemental and Second Supplemental Declaration of Jeffrey Oden*;
10. *Supplemental Declaration of Barbara Bollero*.

IT IS ORDERED, ADJUDGED AND DECREED that General Electric Company's and Swenson Technology, Inc.'s Motions to Suppress Perpetuation and Discovery Depositions is ~~DENIED~~ *GRANTED* to the extent that plaintiffs testimony (and related exhibits) concerning GE and Swenson B Stricken. The failure to complete cross examination is unfairly prejudicial and the prejudice cannot be remedied due to Mr. Oden's death.

DONE IN OPEN COURT this 20th Day of January 2006.

Sharon A. Armstrong
HON. SHARON ARMSTRONG

GRANTING
ORDER DENYING DEFENDANT GENERAL ELECTRIC COMPANY'S AND SWENSON TECHNOLOGY, INC.'S MOTIONS TO SUPPRESS PERPETUATION AND DISCOVERY DEPOSITIONS - 2 -

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EXHIBIT I
PAGE 2 OF 3

Sent by: WATERS/KRAUS

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01/11/08 13:17; JetFax #143;Page 4/4

1

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3 Presented by:

4 BERGMAN & FROCKT

5

6

Matthew P. Bergman, WSBA #20894

7 David S. Frockt, WSBA #28568

Art Y. Brown, WSBA #29570

Counsel for Plaintiffs

9

10

Michelle B. Norton, Texas Bar # 24032914

11 | **Attorney for Plaintiff**

Admitted Pro Hac Vice

12 Counsel for Plaintiffs

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EXHIBIT 3
PAGE 3 OF 3

PAGE 3 OF 3

ORDER DENYING DEFENDANT GENERAL ELECTRIC
COMPANY'S AND SWENSON TECHNOLOGY, INC.'S
MOTIONS TO SUPPRESS PERPETUATION AND DISCOVERY
DEPOSITIONS - 3 -

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8 SUPERIOR COURT FOR THE STATE OF WASHINGTON
9 FOR THE COUNTY OF KING

10 RANA FRENCH, as Personal Representative of
11 the Estate of RALPH DALE,

12 Plaintiff,

13 v.

14 SABERHAGEN HOLDINGS, INC., et al.,

15 Defendants.

Case No. 05-2-09268-8SEA

**DECLARATION OF DELIVERY
AND/OR MAILING**

16
17 I am employed by the law firm of Steven V. Rizzo, P.C. in Portland, Oregon. I am over
18 the age of eighteen years and not a party to the subject cause. My business address is Lincoln
Place, Suite 350, 1620 SW Taylor Street, Portland, OR 97205.

19 On the date below, I caused to be served **Supplemental Declaration of J. Michael**
20 **Mattingly in Support of Warren Pumps, LLC's Motion for Summary Judgment** on all
parties in this action by transmitting a true copy thereof in the following manner unless otherwise
indicated.

21 I. Via US Mail

22
23 Matthew Bergman
24 Bergman & Frockt
25 The Hoge Building, Suite 1601
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26 **Counsel for Plaintiff**

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5 **Counsel for Plaintiff**

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Counsel for Saberhagen Holdings, Inc.

6 II. Via E-mail

7 Barry Mesher
8 Lane Powell Spears Lubersky
9 1420 Fifth Avenue, Suite 4100
10 Seattle, WA 98101-2338

11 **Counsel for Chicago Bridge & Iron Company**

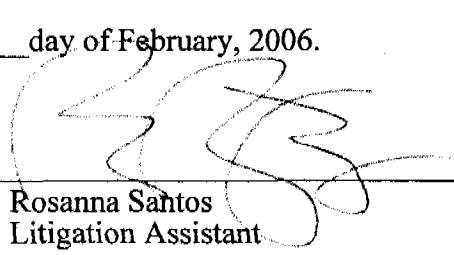
James E. Horne
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Counsel for IMO Industries

12 Kenneth Petty
13 Williams, Kastner & Gibbs
14 Two Union Square, Suite 4100
15 601 Union Street
16 Seattle, WA 98101
17 **Counsel for General Electric**

18 I declare under penalty of perjury and under the laws of the State of Washington (RCW
19 9A.72.085) that the foregoing is true and correct.

20 Executed at Portland, Oregon, this 16 day of February, 2006.

21 
22 Rosanna Santos
23 Litigation Assistant