Witness: David Weber

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Called by: People (prosecution)

Phase: Guilt

Examinations: Direct – David Harris; Cross – Mark Geragos; Redirect – David Harris; Recross – Mark Geragos

Day 1 of 1 for this witness

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Direct Examination by David Harris

HARRIS: Mr. Weber, who are you employed by?

WEBER: I'm employed by Lowe Aluminum Boat Group, which is a division of Brunswick.

HARRIS: What do you do for Lowe Boats?

WEBER: Vice President of Engineering.

HARRIS: Are you familiar with a Game Fisher brand boat, fourteen-foot aluminum boat?

WEBER: Yes, sir, I am.

HARRIS: I'd like to show you a photograph. It is quadruple E-1. Does this appear to be the Game Fisher boat that we are referring to?

WEBER: This is a 1457? Yes.

HARRIS: All right.

GERAGOS: Did you say 1457?

WEBER: Yes, sir.

HARRIS: Now, this boat, or the 1457 that you were asking about, the Game Fisher 14-foot aluminum boat, is that originally manufactured by Sea Nymph?

WEBER: Yes, it was. In Syracuse, Indiana.

HARRIS: Was, did they manufacture it and sell it under a brand name for Sears Roebuck?

WEBER: Actually they were manufacturing a Sea Nymph product identical to this, and that same product was private labeled for Sears and Roebuck.

HARRIS: Now, this particular boat you are looking at on the screen, that's 4E-1, this particular boat, is it still manufactured by your company at this point in time?

WEBER: Yes, sir, it is.

HARRIS: How long has that boat been manufactured?

WEBER: Going through the records that I could find, approximately, we're looking somewhere in the neighborhood of thirty years. Very possibly could have been longer than that, but I couldn't find records that would fall back any further.

HARRIS: When you, this particular brand, was it acquired by Lowes at some point in time?

WEBER: The Sea Nymph brand was actually acquired by Outboard Marine Corporation mid 80s, which was also, Lowe was owned by them too.

HARRIS: And that's part of the parent company that Lowes is owned by at this point in time?

WEBER: Actually that was in the 80s. Then through bankruptcy they were acquired by Genmar, G-e-n-m-a-r, now currently under Brunswick.

HARRIS: Is Brunswick the parent company for Lowes Boats as well?

WEBER: Yes, sir.

HARRIS: There has been some transition in the boating industry over the years?

WEBER: Quite a bit.

HARRIS: Now, with regards to this particular boat, what I want to talk about, when a boat is manufactured, do you just kind of put some pieces of wood or metal together and just sell it in the market? Or does it have to go through some certification process?

WEBER: Early on when some of the boats were put together, they were put together for performance and competitive values. Today they are put together for certification purposes that comply to what we call Coast Guard or Federal Regulations Certification, which fall under NMMA certification.

HARRIS: What is that?

WEBER: NMMA. National Marine Manufacturers Association. That's our trade association for the marine industry.

HARRIS: When you say it's a trade association, can you explain that a little bit?

WEBER: What they do is, it's a service that you are a part of that gives you support legally. You know. There is issues that fall under compliance issues, environmental compliance issues, which they offer support, you know, at the government level. They also offer these certification programs, too, that we're a member of.

HARRIS: As part of the certification program, when a boat goes through this, is there some kind of, I want to say seal of approval. Is there some kind of indication that is put on a boat, labeled on, stamped on a boat that it's been through this certification process?

WEBER: With NMMA, depends upon, quite a bit on the boat certification, certifying types, which this type is called the Utility-V. The things that we're specifically looking for is what we call level flotation, in compliance with flotation regulations that are set in place.

HARRIS: Let me show you another exhibit, 132. This is a photograph from the back of the boat that's in evidence. Do you recognize that?

WEBER: Yes. That's the capacity tag.

HARRIS: Let me go ahead and put this up. This would be People's 132.Now, looking at this particular capacity tag from the Game Fisher that we're talking about. I just want to go through this, where it starts at the top, where it says U.S. Coast Guard Maximum Capacities. Is this a requirement of the Coast Guard that boats be rated?

WEBER: It's the same capacities the Coast Guard has that NMMA adopts.

HARRIS: Looking at the bottom of this, does it indicate on this particular stamp the National Marine Manufacturers Association?

WEBER: Yes.

HARRIS: And this, again, you can see Sears Roebuck and Company. This is that badging that you are referring to?

WEBER: Correct.

HARRIS: This one indicates four persons or 500 pounds. Then beneath that it says 680 Pounds, Person, Motor, Gear, 15 Horsepower Motor. I want to know, when you are talking about Coast Guard standard, or NMMA standard, what kind of testing do you do to get these particular ratings?

WEBER: There are some flotation tests that we're doing. This is a flotation test that's called a submerged test without persons weight. This is a stability test, which is a submerged test. Then a side stability test. And those three tests, I guess, I want to make sure I don't go through too much detail. Let me know if I go too long. The side stability is just basically a test that we submerge the boat, put weights to a side, and then we record the information that tells us whether we pass or fail. And then the center test without persons weight, which is, we flood the boat. We get measurements and make sure we pass. Then the third test we talk about is a stability test, with persons weight, which is simulated weight with the boat submerged.

HARRIS: So these tests you actually flood the boat?

WEBER: Yes.

HARRIS: And then it still has to meet certain flotations or stability even after it's flooded?

WEBER: And it's not just how, I say there is certain things that we have to record. What we talk about is angle of heel of side stability test. The boat doesn't heel to a certain degree. The other thing we need to make sure of is the boat doesn't go under water at a certain point for your main stability, or your center stability.

HARRIS: And this particular boat, did it pass its certification?

WEBER: It passed the test parameters that are given to us by NMMA. Those are to the exact same standards from the Coast Guard Federal regulations.

HARRIS: Now, based on your testing of this particular boat, what is the total maximum capacity that this boat is rated for?

WEBER: At the time that boat was manufactured, total persons, total gear, motor, persons weight was 680.

HARRIS: And four persons, or 500 pounds?

WEBER: Correct.

HARRIS: How many times has this boat been through certification, if you recall?

WEBER: For the flotation or the certification that you are talking about, it was done initially at 5-11-79. And then we just did it recently this year, because what we call the S30 Engine Weight Tables got changed, because engine technology is changing. It's getting heavier engines, so we recertified it this year. But it's been reinspected by NMMA, I'm going to say fifteen times, I guess, just looking at this sheet.

HARRIS: During this approximate thirty years that this boat has been manufactured, has it been a good product line for you?

GERAGOS: Objection. Calls for speculation. He doesn't,

JUDGE: Sustained. Sustain the objection.

HARRIS: Is this product still being manufactured by your company?

WEBER: Yes, it is.

HARRIS: You said before it was in a particular capacity or certain category. What category is this boat?

WEBER: This is a category which, you know, we have different families of products. This product is what we call Utility-V.

HARRIS: What does that mean?

WEBER: It's a utility product. Doesn't have a lot of amenities. It's a V, meaning that the dead rise of the goat has a V-shape to it, instead of like a flat bottom boat. Designed to cut through rough water.

HARRIS: People have no other questions.

Cross Examination by Mark Geragos

GERAGOS: Good morning.

WEBER: Good morning.

GERAGOS: How are you?

WEBER: Great.

GERAGOS: Good. You brought some pictures with you from Missouri?

WEBER: Yes, sir.

GERAGOS: Do you have those with you up there?

WEBER: I have got them up here, yes, I do.

GERAGOS: Okay. And then you have some worksheets, I think, also?

WEBER: Yeah.

GERAGOS: Take those also.

WEBER: Okay.

GERAGOS: Thanks. Let me just ask you so I can identify them for the record. These three pictures, you just testified to the jury that you did three different tests recently, is that correct?

WEBER: Yes, sir.

GERAGOS: One was a, first thing I'm going to mark a bunch. Without persons test, a side stability test, and a level flotation test?

WEBER: That's correct.

GERAGOS: Okay. Then in connection with those, this is some worksheets, pages of worksheets and notes to, as to the test itself?

WEBER: That's right. That's where we record the documents.

GERAGOS: Okay. If I could mark these defendant's next in order.

JUDGE: All right. That would be defendant's 5Ds. How many have you got?

GERAGOS: Six pages.

JUDGE: He was one through six. Defendant's 5Ds one through six.

GERAGOS: Thanks, judge.

GERAGOS: While the clerk is marking that. The tests basically are done, you have seen the first picture. You have a kind of a tank or a something like a swimming pool, indoor swimming pool?

WEBER: Yes, sir.

GERAGOS: And you put it in, fill it with fresh water?

WEBER: Correct.

GERAGOS: Okay. And then the test itself, if we have, I don't think I have got a good picture of the back of the boat. But you do have 121-E, which is this kind of a schematic. Does that look similar to the boat?

WEBER: Identical, yes.

GERAGOS: Okay. Now, on this, on 121-E, we just went down and took a look at the, just did a jury view to look at the boat.

WEBER: Okay.

GERAGOS: You and I talked this morning, correct?

WEBER: Correct.

GERAGOS: Okay. When we were talking, we were trying to determine where the plug hole was. What do you call that?

WEBER: It's a drain plug.

GERAGOS: Drain plug. You thought it was in the center area. I went down and looked there. It's actually on the back of the boat.

WEBER: Okay.

GERAGOS: Right about there where that thing is right there?

WEBER: On some of the newer boats, it's in the center of what I call the transom. This one is on the side of the transom.

GERAGOS: If I were to tell you that, this is it, right there?

WEBER: Yes, sir.

GERAGOS: Okay. That makes sense. You don't see it anywhere else in the center?

WEBER: That's correct.

GERAGOS: So that I understand what you do when you test it, I have got D 5D 1. You put the boat into this indoor water container, is that right?

WEBER: Yes, sir.

GERAGOS: Then you pull out the plug, is that right?

WEBER: Correct.

GERAGOS: And then you let water get into the boat, right?

WEBER: Yeah. We let it fully what we call ingress into the interior of the boat.

GERAGOS: By doing that, does that increase the stability or decrease the stability of the boat?

WEBER: In this case it would increase instability.

GERAGOS: Okay. Now, when you, when I asked you that question, when we talk about stability, that means that the boat is not as likely to tip over, is that a fair statement?

WEBER: It would yes.

GERAGOS: Okay. So you do that, if I understand correctly, I didn't think this up. You told me when we were discussing it before, part of what you are doing when you do these tests is to figure out what's going to happen in a kind of a worst-case scenario, is that right?

WEBER: Correct. Worst-case condition.

GERAGOS: Okay. And in this case, at least your understanding of why you are doing, for instance, this side stability test, and this is D 5D-2, it is, your understanding is that you do these tests so that the, for instance, if water gets into the boat, two people are overboard, you want to see what the stability of the boat is if those two people are grabbing on to the side of the boat?

WEBER: Yes. That's my understanding.

GERAGOS: Okay. So what you do is, on a side stability test, you put, I have got D 5D-5. You put some weight on the side right here where I'm pointing to, is that correct?

WEBER: Correct.

GERAGOS: Okay. And the amount of weight that you tested on this side stability test, which is this picture?

WEBER: Right.

GERAGOS: I don't know if we can see it. But I assume the weights are spread evenly, those steel weights? Steel weights right there?

WEBER: Yes.

GERAGOS: What my finger is pointing to right there are the weights?

WEBER: Correct.

GERAGOS: And then, there, there?

WEBER: Correct.

GERAGOS: And then you distributed, if I understand correctly on this form, 142 pounds?

WEBER: 142.5.

GERAGOS: And when you did that, the boat goes underwater on the one side?

WEBER: It heeled to the starboard side 12 degrees. And the starboard rear corner was under like 1.3.

GERAGOS: So when you say, have to excuse me. What I know about boats is probably exceeded by what I know about fishing. The 12 degrees means that the boat is leaning on a 12 degree angle?

WEBER: If you were to, see if I can describe it. If you are looking at rear profile of the boat transom area,

GERAGOS: This is the transom?

WEBER: Transom, the rear of the boat. I'm assuming things then.

GERAGOS: Okay.

WEBER: It's actually you have got left, port, right, starboard. It's going to the starboard side by 12 degrees.

GERAGOS: So it's higher here?

WEBER: Yes.

GERAGOS: Than it is,

WEBER: I can't see that from here. But I think the portside transom area says 7 inches.

GERAGOS: If we're talking about that marking right there, 7 inches here, it says negative 1.375?

WEBER: Then the bow is 5 inches, and then the,

GERAGOS: Bow being right there, 5?

WEBER: Starboard bow is 5 inches. Port bow is 16 inches.

GERAGOS: That's, when you put it into this tank, you are measuring from the water level to that point in the boat to the highest point of the boat.

WEBER: Which is the gunwale in this case.

GERAGOS: So we have got this point, when you add 142 pounds spread evenly along the side of the boat, it's 16 inches out of the water right there, correct?

WEBER: Correct.

GERAGOS: 5 inches out of the water right here, correct?

WEBER: Correct.

GERAGOS: And an inch and a third and change under water right there?

WEBER: Correct.

GERAGOS: 7 inches above water right there?

WEBER: Correct.

GERAGOS: You try and do this with the weight evenly spread out, correct?

WEBER: Correct.

GERAGOS: Did you ever try and put 400 pounds in one area, like right there?

WEBER: No, we haven't.

GERAGOS: Ever tried to put 400 pounds in one area right there?

WEBER: No, we haven't.

GERAGOS: How about right there on the seat?

WEBER: No.

GERAGOS: How about in the front? Have you ever tested it by putting 150 pounds just in that one area?

WEBER: If I can answer your question a little in detail, make sure I answer it properly for you.

GERAGOS: Sure.

WEBER: If you will see the flotation test, the next one directly above it.

GERAGOS: First let me just deal with side stability. I was going to move to flotation in a second. The side stability test here is when you have weight that's distributed along the side of the boat?

WEBER: That is correct.

GERAGOS: Okay. And the boat, so that it's clear, it's your testimony that the way that you test this is, the boat is more stable than if there isn't water in there, correct?

WEBER: That would be correct.

GERAGOS: Okay. And when you test it when it is more stable, and you spread 142 pounds evenly, it goes under water an inch and change, right? Is that, do I understand correctly?

WEBER: Correct.

GERAGOS: Now, in terms of a side stability test, you did it with just 142 pounds, correct?

WEBER: Correct.

GERAGOS: You tested that with 400 pounds for the side stability test?

WEBER: No, we haven't.

GERAGOS: And then I'll move on to the flotation test. That was the one you were referring to?

WEBER: Yes.

GERAGOS: Okay. And I think we have got a picture of that as well, right?

WEBER: Yes.

GERAGOS: The flotation test is, is that level, what you call level flotation?

WEBER: Without persons weight. You have got two pictures there. You have got level flotation, then you have got level flotation without persons weight.

GERAGOS: Okay. The first one that's on here is the flotation test?

WEBER: That's correct.

GERAGOS: Which picture corresponds to that?

WEBER: That one would correspond. You should have two.

GERAGOS: Does that correspond to the level flotation?

WEBER: That would be it, correct.

GERAGOS: Okay. Now, the level flotation test, that's right here, correct?

WEBER: That's correct.

JUDGE: What number is that, Mr. Geragos?

GERAGOS: That is D 5D-3.

JUDGE: Okay.

GERAGOS: Now, that's the same, once again, this is the same water tank, the boat, and then right here is the water in the boat?

WEBER: That's correct.

GERAGOS: Okay. Once again I assume it would be the same with this test as it was for the side test, that it's, the boat is more stable when you have water in it, meaning it's not going to, not going to move as much, correct?

WEBER: There is a term, if I can describe this for you. It's, there is a term that we call, especially side stability is real important. The term we use is turn turtle. Make, if I can,

GERAGOS: Could you spell that?

WEBER: Turtle. T-u-r-t-l-e.

GERAGOS: Turtle. Okay.

WEBER: What it's doing, what it describes, it's a little more stable. It's considerably more stable with the water. But if you are going to have a failure, it's going to be catastrophic. As it starts to turn, it turns fast and goes over, versus a little slower with the, you know.

GERAGOS: So when you say turn turtle, I'm guessing it's like a turtle shell, so it turns over. Or when you say going to be catastrophic, if the stability is such that you put too much weight to the side, the boat's going to do what?

WEBER: It goes over.

GERAGOS: Capsizes in a catastrophic way?

WEBER: What I'm trying to describe is the negative and positive things that you deal with in a flotation situation where you are submerging the boat. We're dealing with worst-case scenario.

GERAGOS: Okay. Now, this level flotation test is not as likely to have a turn, you call a turn turtle?

WEBER: It's not. This is strictly center stability.

GERAGOS: And center stability meaning in here?

WEBER: All the weight is right at the centerline of the boat except for the battery.

GERAGOS: And this, the total amount of weight that you put in for this center stability looks like that.

WEBER: 285 for persons weight, and a hundred, and I apologize, my eyes aren't that good. 112 pound, is that right? For the engine weight, I believe. And then thirteen and half, or twelve and the half, for the battery.

GERAGOS: You got 112 there, correct?

WEBER: Correct.

GERAGOS: And that represents the engine?

WEBER: Correct.

GERAGOS: When you and I talked this morning, I think you told me, correct me if I'm wrong, that the engine that was on the boat that you tested probably weighs ten or twenty percent more than the engine that is currently on the boat that the jury just saw?

WEBER: Correct. This is worst-case scenario again.

GERAGOS: It's a different engine, meaning?

WEBER: Four stroke.

GERAGOS: Four stroke. Not a two-stroke. And then you have got the battery there that you said was twelve and half pounds, or something like that?

WEBER: That's submerged weight.

GERAGOS: Then, well, submerged 285?

WEBER: Yes, 285.

GERAGOS: How many inches was the deepest, how many inches?

WEBER: I cannot see that from here. I'm sorry. I would guess it would be somewhere around like two to three and a half inches.

GERAGOS: Looks like on here, this isn't your handwriting. This is Mr. Johns' handwriting?

WEBER: This isn't.

GERAGOS: Looks likes two and half inches.

WEBER: Yes, two and half inches that's exactly what it is.

GERAGOS: And then on,

WEBER: On the port side that appears to be four and a quarter inches.

GERAGOS: Then eight and a half inches?

WEBER: Eight and a half, and seven and a half, which as we talked about the heel again, that's approximately the one degree of heel, I believe.

GERAGOS: So when you load just 285 in, you are two and a half inches from water to the top of the boat?

WEBER: That's when the boat is fully submerged.

GERAGOS: And, once again, this is a test that was not done when there is no water in the boat, correct?

WEBER: No. This test is when the boat is with water.

GERAGOS: With water?

WEBER: Yes.

GERAGOS: You did not do a test, any test when there wasn't water in the boat?

WEBER: No, we did not.

GERAGOS: So we don't, whether or not you got this turn turtle effect, we wouldn't be able to test that, because only tests that you, as you say, this worst-case scenario is when you fill the boat with water, right?

WEBER: That's correct.

GERAGOS: Okay. And then the last one is this without persons test that you just did, is that right?

WEBER: Right.

GERAGOS: That's the one that's marked as D 5D-6, is that right? And how much weight did you put in this?

WEBER: Basically in this test this boat is fully submerged. Again, I think you have picture of that too.

JUDGE: Pretty noticeable when you, there it is.

GERAGOS: D 5D-1?

WEBER: That's it.

GERAGOS: What did you do in this test?

WEBER: Basically that's a representation of the boat fully submerged with no persons weight, you know. With the attitude the boat is, all you have got there is the engine weight and battery weight.

GERAGOS: And when you have got the engine weight and the battery weight,

WEBER: You can see your center of gravity moves all the way towards the center. You have got the bow coming up, appears to be one and a half inches on port and starboard.

GERAGOS: Which means right there and there?

WEBER: Yes.

GERAGOS: Two and half inches here?

WEBER: I can't see what the other one would be. More on the port side, I would believe.

GERAGOS: Looks like, just show you like three,

WEBER: That would make sense.

GERAGOS: Does that make sense?

WEBER: Yeah. So that gives you somewhere around one degree heel again.

GERAGOS: This, so if we're to use any of these tests to try to understand these tests, you are doing it on a surface that's fresh water, correct?

WEBER: Correct.

GERAGOS: You don't introduce any kind of current or waves into the water?

WEBER: That was the, maybe if I could interject a little bit. That was the problem with our industry. We had to have a standard set so we could all do the same thing. And, you know, we couldn't account for variables. So that's why the Coast Guard set up the standard. That's why we all complied to it.

GERAGOS: You haven't done any testing on this kind of boat without water in it, and then putting weight on the side, or the center, or anything else, correct?

WEBER: Specifically recorded tests have not been done.

GERAGOS: And you haven't done any tests whatsoever in saltwater, is that correct?

WEBER: None whatsoever.

GERAGOS: All of these tests, in fact, are all done in freshwater, is that correct?

WEBER: Correct.

GERAGOS: There is different buoyancy factors in, I didn't know this, you told me this, in salt water as opposed to fresh water?

WEBER: We have worst-case condition in this case.

GERAGOS: Worst-case condition. However, there is no test that takes into account in salt water on a bay with waves, or current, or with wind, correct?

WEBER: No.

GERAGOS: And you haven't, is it a fair statement that, at least in this scenario that you have tested for, for this, the National Marine, it's the National Marine Association, is that it? Is that the name?

WEBER: NMMA, National Marine Manufacturers Association.

GERAGOS: NMMA. Now, when you are testing for them, that's for marketability purposes, is that right? You are testing to comply so that you can then market the boat as meeting these standards, is that right?

WEBER: I did tell you that. I guess the one point that I should have brought out, so that we're, there is a level playing field within industry, first of all, just as there is in the automotive, there is the federal regulations to comply to. But not in our industry. Not all manufacturers have to comply. So we do. It's a marketable product.

GERAGOS: You were the ones that, pronounced gun-wale?

WEBER: Gunwale.

JUDGE: Gunwale. An old Navy man.

GERAGOS: Gunwale.

GERAGOS: Could you point me to where the gunwale is?

WEBER: Move your pen down. And the brightest part right near the very top leading edge of the boat. It wraps around the boat.

GERAGOS: Okay. Now, have you ever done any tests to see what would happen if you put weight in the boat in that area right there?

WEBER: No.

GERAGOS: Have you ever done any test to see if you put weight on the side at all, if there wasn't any water in the boat?

WEBER: Just, no, we have not. Just complied with NMMA standards.

JUDGE: Mr. Geragos, before you finish this witness, unless I missed something, D 5D-4 has never been identified. I don't know if that's important or not. I may have missed that.

GERAGOS: D 5D-4 looks like?

WEBER: That's the initial worksheet for the certification. So that's basically the information what that tells us, and there is, I didn't want to overwhelm you with a lot of paper, backup paperwork. That gives you the calculations to determine the numbers here, that allows us to give the information to NMMA as to what we want to put on the label.

GERAGOS: That's what this is?

WEBER: Yes. Which is backed up by the other two sheets we looked at showing the actual test.

GERAGOS: You took, for instance right here, you got persons weight 250. And that corresponds to a factor of the .88,which is steel.

WEBER: That's where we get that calculation.

GERAGOS: Now, the, and that was for the level flotation test?

WEBER: Yes. Maybe I can give you a little more history. What it is is when you comply to NMMA, normally just have to do it by paperwork. And in this case, we take it one step further. You are not required to do it. We do it by actually tank testing the boat.

GERAGOS: Does the stability of the boat depend on whether or not it has been modified aftermarket?

WEBER: No, we don't take that.

GERAGOS: I guess my question is, if somebody has modified the boat aftermarket, does that somehow affect the stability of the boat?

WEBER: Maybe I can better answer it this way. We do test the boat, not just the boat, but we have to test it with any available option offered with the boat. Other than that, if the consumer does something other than what we offer with the boat, we can't say that it would be certified for that.

GERAGOS: Okay. And, in this case, do you, have you looked at the boat, the boat that we're talking about, the one, I know they showed a picture of it. Have you actually looked at it?

WEBER: In detail to any modifications?

GERAGOS: It's downstairs. We just went down and saw it. Did anybody take you down to take a look at it?

WEBER: No, sir.

GERAGOS: If you looked at it, if I told you there were a number of modifications to the boat that are readily apparent, would that affect the certification on that particular boat?

HARRIS: Objection. Assumes a fact not in evidence.

JUDGE: Sustained.

GERAGOS: We just saw, we did the jury view.

JUDGE: I know. But I don't know what's modified and what isn't. There is no evidence it's been modified.

GERAGOS: Well, then, I would invite the witness to let him go take a look at it.

JUDGE: We can have him go down the, the boat is still there. If you want him to go, we'll take a recess.

GERAGOS: I can describe the modifications.

GERAGOS: Ask him. If there are two on the back on, called the transom?

WEBER: Yes.

GERAGOS: On the transom there is what appear to be holders of some kind that look like somebody had put there for wheel attachments. Is that something that you offer?

WEBER: No.

GERAGOS: There is a number of little, actually I have a picture of this. Number of other things that are put on to the side of the boat. For instance, there is a Fish Finder that's there. I'm looking at quadruple E-1. And then there is some holders, for instance, see if I can find you a picture of it. Looks like fishing pole holders. Are those things that you offer?

WEBER: Fishing pole holders we do offer.

GERAGOS: Okay. What about the Fish Finder?

WEBER: It's an option that we offer, but not for that model, that year.

GERAGOS: How about these seats? I'm looking at 121-C and also,

WEBER: We do have optional seats available.

GERAGOS: Do you know if those are ones that you installed in, your company installed on this boat?

WEBER: Kind of hard to tell, because they are folded down, so I can't honestly answer you without looking closer at them.

GERAGOS: Bunch of pictures of this. Any of those look a little better than these in terms of determining whether it's your product or not?

WEBER: No. Generally on the inside of the seat there is some marking. If I could see the inside of the seat, I could better tell you. With them folded down it's hard to tell.

GERAGOS: Something in this one that doesn't give you any guidance.

JUDGE: What about quadruple E? There is fifteen photographs of the boat. Is that what you are showing him?

GERAGOS: That's what I'm showing.

GERAGOS: None of those help you out?

WEBER: No. Generally we'll have some markings when the seats are folded up. I apologize. Just so happens this one is up. It's turned the wrong direction.

GERAGOS: You can't see the marking on it. And when did you get contacted to, when were, these tests that we just talked about were performed when?

WEBER: They would have been done just this year, within the last few months because we were just certifying for 2005 product development, or new products, our new model year specific.

GERAGOS: Is it, there is a date on D 5D-4?

WEBER: 6-1-04.

GERAGOS: When you did these tests on this prototype of this standard boat, that was in, some time in each period of time of June 1st and later?

WEBER: Correct.

GERAGOS: Okay. Of this year?

WEBER: Correct.

GERAGOS: Thank you. I have no further questions.

Redirect Examination by David Harris

HARRIS: The testing that counsel was just asking you about. Is that the same kind of testing that you were describing for us earlier that started back in 1979?

WEBER: I'm sorry. Go in detail a little bit more.

HARRIS: You said earlier that this boat had been inspected and certified, I think you said, approximately fifteen times. You gave us a year that the certification started.

WEBER: Okay. Maybe I can take it in some detail for you. It was originally certified in 1979. It was just these same types of tests that you saw there. That test hasn't changed basically. The other times were inspection points where they came in and NMMA would inspect the boat, would make sure the boat was still the exact same model. And then they would certify it. We wouldn't go back to tank it every time. It's been tank tested here definitely two times. First time in 79, and then they come back to do a further inspection every year basically. And then it changed, and we retanked the boat this year just because, what had happened was the, as we described earlier, engine weights had changed, so we had to recertify with a new engine weight.

HARRIS: Counsel was asking you a number of questions about these tests. Let me just go through this. First of all, he was saying that you didn't test it for salt water. You kept saying you are doing worst-case scenario. Is salt water more buoyant than fresh water?

WEBER: That's my understanding it is, yes.

HARRIS: So tank testing in fresh water is actually,

WEBER: Worst-case conditions, what we have been told.

HARRIS: You were also asked, going through all of those diagrams about what the weights were that you put in the boat. But the one thing, just common sense, it was overlooked. These, the boat was,

GERAGOS: Objection. Argumentative.

JUDGE: That part may be stricken. You can ask the question. The jury can disregard the comments. Just ask the question.

HARRIS: The boat was full of water when these tests were done?

WEBER: Yes, they were.

HARRIS: Is that a lot of water?

WEBER: Considerable amount of water.

HARRIS: How much, can you give us an estimate, does that considerable amount of water weigh?

WEBER: You know, I could do the calculations.

GERAGOS: Objection. There is an objection. It calls for speculation.

JUDGE: Well, if he doesn't know. Can you calculate it?

WEBER: We have never been, I could do some quick calculations on the cross sections of the boat determining where the waterlines are. But I don't have that information in front of me.

JUDGE: You wouldn't, if you filled it with water, you wouldn't know how much weight it would add to the boat?

WEBER: I could do the mathematics real quickly, do the cross sections. But I don't have that available.

JUDGE: You don't have that information available?

WEBER: No, sir.

JUDGE: Next question.

HARRIS: Several hundred pounds?

WEBER: Definitely.

HARRIS: So you have, in addition to the poundage of the weights that you are putting into this, you also have the several hundred pounds of water that's in there. And you were describing this turtle roll. And counsel said that you didn't test for turn turtle. Make sure I understand that.

WEBER: Okay.

HARRIS: Turn turtle is the term that you were using that the boat capsizes or rolls?

WEBER: Catastrophic failure.

HARRIS: Did that boat experience that failure?

WEBER: No, it didn't.

HARRIS: You are trying to test it for the turning turtle, and this boat didn't do it?

GERAGOS: There is an objection. Misstates what he's testified to.

JUDGE: He can answer that. Overruled. Go ahead.

WEBER: What we're trying to test for in this case specifically is that the boat complies to the standard as prescribed by Coast Guard. So what that is, it's after we do our calculations of what our capacities want to be, we know how many people, persons weight, engine weight. And that gives us a calculation of what the weight is to the side of the boat. Our goal at that point is to put the prescribed weight in and make sure we comply to the standard, which says you can only heel so much, and you can only have so much boat under the water on the side stability test.

HARRIS: And this boat passed every single test?

WEBER: Yes.

HARRIS: With regards to that, you are talking about these tests being worst-case scenario, I think is the term that you used. This wasn't your worst-case scenario. This is what the Coast Guard requires you to test for?

WEBER: That's correct.

HARRIS: So do most people normally operate their boats with the drain plugs pulled?

WEBER: No, sir.

HARRIS: Do most people normally operate their boats completely submerged in water as you demonstrated in these tests?

WEBER: No. No, sir.

HARRIS: With regard to, you were asked about the boat being more stable when it's full of water. In your engineering experience with this particular model, this boat, do you find it to be a stable boat even when it's not full of water?

GERAGOS: There is an objection. That calls for speculation. It's also vague and ambiguous.

JUDGE: Overruled.

HARRIS: You can answer the question.

WEBER: The boat is a little more, maybe a little more sensitive than larger boats. But, in fact, it is a safe boat.

HARRIS: It's been manufactured for around thirty years?

WEBER: At least, yeah.

GERAGOS: Asked and answered.

JUDGE: Sustained.

HARRIS: Now, you were asked about putting 400 pounds at one particular point. In your experience, when somebody is standing in a boat, are they standing at one particular spot in a boat?

WEBER: It's been my,

GERAGOS: Objection. Calls for speculation. Vague and ambiguous.

JUDGE: I think so. I'm going to sustain that objection. How does he know where you are standing?

HARRIS: Have you stood in this boat before?

WEBER: Yes, I have.

HARRIS: As part of being acquainted with your product lines. When a boat is on the water, do you have to adjust your balance when you are in a boat?

WEBER: Definitely.

HARRIS: Do you normally kind of stand a little bit more broad legged?

WEBER: It's a sense of balance.

HARRIS: Is this boat easy to capsize?

WEBER: It's not been my experience, no.

HARRIS: People have no other questions.

Recross Examination by Mark Geragos

GERAGOS: Sure. The reason that you have to balance yourself is why?

WEBER: Basically you have got items right on top of the water, you have got water retention. What you want to do is, it's a sense of, actually sense of balance or gravity in that effect.

GERAGOS: When you balance yourself, you are trying to balance on the center of the boat, correct?

WEBER: Correct.

GERAGOS: And if you go to the side of the boat, and on the side of the boat, that's not the center of gravity for the boat, correct?

WEBER: That's correct.

GERAGOS: Okay. When you go to the side of the boat, and you put 400 pounds on the side of the boat, have you ever done that?

WEBER: No, sir.

GERAGOS: Okay. Would you expect that would probably turn turtle?

WEBER: I can't honestly answer that.

GERAGOS: No further questions.

JUDGE: May this witness be excused?

HARRIS: No objection.

JUDGE: Okay, Mr. Weber, thank you very much.