

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of
SEAHAWK DEEP OCEAN
TECHNOLOGY, INC.

INITIAL DECISION

Washington, D.C.
May 26, 1993

Edward J. Kuhlmann
Administrative Law Judge

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APPEARANCES: Catherine M. Shea, Robert G. Wilson, Bari S. Krein
for the Division of Enforcement

Burton W. Wiand, Jeffrey Jirles for Seahawk Deep
Ocean Technology, Inc.

BEFORE: Edward J. Kuhlmann, Administrative Law Judge

This public proceeding was instituted pursuant to §8(d) of the Securities Act of 1933 by order of the Commission dated January 12, 1993 (Order). On March 18, 1992, Seahawk Deep Ocean Technology, Inc. (Seahawk) filed a registration statement on Form S-1 under the Securities Act of 1933 to register shares of common stock for sale by Seahawk and certain selling shareholders. Under the provisions of §8(a) of the Securities Act, the registration statement became effective by the lapse of time on Saturday, August 1, 1992. On July 30, 1992, the Commission issued an order directing the staff to conduct an examination pursuant to §8(e) of the Securities Act to determine whether a Stop Order should issue under §8(d) of the Act.

The Division of Enforcement alleges that Seahawk's registration statement includes untrue statements of material fact and omits to state material facts required to be stated or necessary to make the statements provided not misleading. In particular, the Division alleges that:

- (1) Seahawk overvalued shipwreck artifacts on its balance sheet and in other financial information provided in the registration statement.
- (2) The value of the Seahawk I assets is substantially less than stated in the registration statement. As a consequence, Seahawk misstated the accounts receivable and note receivable from Seahawk I, a related partnership, and its investment in Seahawk I on its balance sheet.
- (3) Seahawk did not include in its registration statement audited financial statements for Seahawk I and another related partnership, Seahawk II, as is required by Regulation S-X and to insure that the registration statement would not be misleading.

- (4) Seahawk did not cooperate with the Division's examination of the registration statement when it did not allow inspection of artifacts and photographs or negatives of the artifacts.

Evidence was taken on the Division's allegations at hearing sessions held on January 26, 27 and 28, 1993 at Washington, D.C. and February 8, 9, and 10 at Tampa, Florida. The record was closed on February 10, 1993. The Division filed proposed findings and conclusions and a brief on March 12, 1993 and Seahawk filed proposed findings and conclusions and a brief on April 1, 1993. The Division filed a reply on April 13, 1993.

FINDINGS OF FACT

Seahawk Deep Ocean Technology, Inc. (Seahawk) is an oceanographic service company which is involved in deep water search, survey and recovery operations. (Div. Ex. 7 at 4) John C. Morris is the Chief Executive Officer and Director and Gregory P. Stemm is Secretary and Director of Seahawk. (Div. Ex. 7 at 49-51) Seahawk is the general partner for three related limited partnerships, Seahawk I, Ltd., Seahawk II, Ltd. and Eagle Partners, Ltd. The partnerships were formed for the purpose of raising money to search for and locate shipwrecks. (Div. Ex. 7 at 32) Seahawk receives substantially all its revenues from rental of vessels and equipment to the partnerships. The partnerships have no significant business with anyone but Seahawk. (Id. at 31-48, F26)

I. SEAHAWK'S VALUATION OF ARTIFACTS RETRIEVED FROM A COLONIAL ERA SHIPWRECK IN ITS REGISTRATION STATEMENT

A. The Artifacts

On May 19, 1988, a Seahawk subsidiary, R/ V Seahawk, Inc., obtained from Tanit Corp., a company owned by marine archaeologist Robert Marx, research and data covering a shipwreck search area near the Dry Tortugas Islands. In April 1989, Seahawk I located a colonial era shipwreck which Seahawk believes is a ship from a Spanish fleet that sailed in 1622. (Div. Ex. 7 at 32-34) While several witnesses suggested possible names for the ship found by Seahawk I (Tr. 662, 791-2), the available evidence, Seahawk explained in the registration statement, makes it impossible to state the name of the wreck with any certainty. (Div. Exh. 7 at 33)

By December 31, 1990, Seahawk I had recovered 32 gold "finger" bars and fragments, 5 gold jewelry stems, 726 silver coins and fragments, one gold and emerald ring, 3 mariner's astrolabes, 44 clay "olive jars," 3,144 pearls and pearl beads, one bronze bell, one silver fork, one brass religious medallion, one lead line sounding weight, 2 mortars and pestles, 2 ceramic pitchers, 3 ceramic bowls, one fragmented ceramic plate decorated with a blue papal miter and two crossed keys, and various miscellaneous artifacts including musket balls, wood and other items. (Div. Ex. 9; Div. Ex. 15 at 23-24; Div. Ex. 64) Additional items were recovered during 1991: one gold bar, one six-strand gold chain bound by a gold ring, 3,495 pearls, 2 gold coins, 457 silver coins and fragments, 76 clay olive jars, and miscellaneous items including pottery and pottery shards. Seahawk I has recovered

16,480 artifacts from the Tortugas site. (Div. Ex. 15 at 24; Div. Ex. 77; Div. Ex. 64)

In addition to the artifacts found at the Tortugas shipwreck, Seahawk purchased shipwreck artifacts from Robert Marx, dealers, and third parties for \$132,319, which it planned to use in a museum. (Div. Ex. 8; Tr. 1132-35) Seahawk maintains that it also paid Robert Marx or Tanit Corporation one million shares of Seahawk stock for the Marx artifacts. But the accounting records of Seahawk do not list the shares as consideration for the Marx artifacts.

B. Seahawk's Valuation of the Artifacts Preceding the Filing of the Registration Statement

In May 1989, when only a bell had been removed from the Tortugas site, John Morris told The Tampa Tribune that if the wreck is a small merchant ship from the 1622 fleet, the site may have close to \$92 million in treasure. (Tr. 1136-37; Div. Ex. 124) During June 1990, Seahawk I recovered the first gold bar from the site; Morris told The St. Petersburg Times, on June 17, 1990, that it could be worth \$100,000. (Div. Ex. 127) Daniel Bagley, a Seahawk Director, represented in the same article that the site could be richer than the shipwreck site of the Atocha. In August 1990, after other artifacts had been recovered, Bagley told The Tampa Tribune that each of the olive jars could be worth \$10,000. (Div. Ex. 128)

The Atocha shipwreck, referred to by Bagley, was a lost Spanish galleon that was found in 1985 by the famous treasure hunter, Mel Fisher, after a sixteen year search. (Div. Ex. 61 at

24) The Atocha was one of the lead galleons of the 1622 fleet, its passengers were historically important, and documents in the Seville archives describe the Atocha, its cargo, its crew and passengers, and their possessions. (Id.) Through the use of the Seville archives researchers have been able to determine who owned some of the items recovered from the Atocha. (Tr. 698-700) It was discovered that some of the recovered silver bullion were tax receipts which belonged to the King of Spain and that the valuable astrolabes were found in or near the sea chest of the Atocha's pilot, who has been identified from archive records. (Div. Ex. 61 at 57) Fisher also found a second guard galleon from the 1622 fleet, the Santa Margarita. (Div. Ex. 61 at 24)

Fisher's discoveries have resulted in a Hollywood movie, National Geographic specials, and magazine articles. Fisher received five percent of the Atocha's artifacts and he established the Mel Fisher Maritime Heritage Society Museum in Key West, Florida. (Tr. 780. 840) Five hundred people visit the museum each day and the gift shop run by the museum which sells artifacts. In June 1988, Fisher and some of his associates sold at Christie's auction house in New York artifacts from the Atocha. (Div. Ex. 61) The gold bars auctioned in that sale are similar to those recovered by Seahawk I. Christie's auction house also held an auction, in May 1992, of artifacts found at the shipwreck site of the Maravillas, a Spanish galleon from the 1654 fleet. (Div. Ex. 56) Like the Atocha, historical facts about the Maravillas have been well documented in the Spanish archives. The gold bars from the

Maravillas auction were similar to those found by Seahawk I. (Tr. 402)

C. Seahawk's Registration Statement

Seahawk filed a registration statement on Form S-1, number 33-46464, on March 18, 1992. (Div. Ex. 15) It did not initially contain a "delaying amendment" as provided in Rule 473(a). (Tr. 119-20) The registration statement was amended twice, on April 14, and July 13, 1992, and became effective on August 1, 1992, when no delaying amendment was filed with the July 13 amendment. The S-1 Statement registered 1,114,000 shares on behalf of selling shareholders, which included relatives of Morris and Stemm, an accountant for Seahawk, creditors of Seahawk, investors in Seahawk, and other related parties. (Tr. 1103-04) In the S-1 statement, Seahawk registered 2,022,144 shares for use in a potential exchange of debentures, a potential exchange of partnership interests, the potential exercise of warrants, and in connection with potential future acquisitions by Seahawk. (Div. Ex. 7)

The S-1 Statement contains the audited financial statements of Seahawk and summary financial information for Seahawk I, Seahawk II, and Eagle Partners. The audited financial statement of Seahawk includes the consolidated balance sheet. No audited financial statements were submitted for Seahawk I and II. Seahawk's auditors stated that in their opinion the financial statements presented fairly "in all material respects" the financial position of Seahawk as of December 31, 1991 and 1990 in conformity with generally accepted accounting principles. The auditors also stated that:

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As shown in the financial statements, the Company incurred a net loss of \$1,732,806 for 1991 and incurred substantial net losses for each of the past four years. At December 31, 1991, the Company has negative working capital as indicated by current liabilities exceeding current assets by \$863,692. These factors, in addition to other factors as discussed in Note 14, raise substantial doubt about its ability to continue as a going concern. (Div. Exh. 7 at F-1)

1. Recording of Artifacts

Seahawk represents in the registration statement that its artifacts are stated at the lower of cost or market value. (Div. Ex. 7 at F-2) Cost is the historical cost of acquisition. (Tr. 152) Market value is defined as "Net Realizable Value" (NRV), which is what the artifacts could be sold for between a willing buyer and a willing seller under ordinary conditions, less any costs to sell or dispose of those assets. (Tr. 122) While ordinarily the artifacts would be stated at cost, if market is less than cost, a write down is taken to market. (Tr. 26)

In 1990 and 1991, Seahawk I incurred total costs of locating, recovering, conserving and storing the artifacts from the Tortugas site of approximately \$3,384,000. (Div. Ex. 7 at 33) In 1990, Seahawk I capitalized \$847,484 of these costs on the balance sheet of Seahawk I, under the heading "Inventory - Artifacts." (Div. Ex. 10) In 1991, Seahawk I capitalized an additional \$1,134,295 of artifact costs, for a total capitalized cost of \$2,042,320. (Div. Ex. 10)

In January 1991, Seahawk purchased from Seahawk I 26 of the artifacts recovered from the Tortugas site for registered stock valued at \$468,675. (Div. Ex. 5) Seahawk prepared a list of the artifacts that it would purchase from Seahawk I. (Div. Ex. 6) The price was set at 75 percent of the value as appraised by John de Bry of Historical Research and Development, Inc. (Tr. 30-31; Div. Ex. 5; Div. Ex 6) Seahawk carries these artifacts on its balance sheet at their cost of purchase of \$468,675. (Tr. 25)

Using the de Bry appraisal to determine the relative costs of salvage of the individual artifacts sold to Seahawk, Seahawk I assigned costs of \$109,419 to the 26 artifacts sold to Seahawk. (Div. Ex. 6) These costs of sale of \$109,419 were credited from Seahawk I "Inventory - Artifacts" account balance, leaving a remaining capitalized cost of salvaged artifacts for Seahawk I of \$1,932,902, as of December 31, 1991. (Div. Ex. 11; Div. Ex. 10)

Seahawk includes the artifacts it obtained from Seahawk I on its consolidated balance sheet at the cost of purchase in the line item "Artifacts," under the heading "Other Assets," which as of December 31, 1991 totaled \$607,286. This line item also includes artifacts purchased by Seahawk from third parties, which are stated at their cost of purchase of \$132,319. (Div. Ex. 7 at F-2; Div. Ex. 20 at 10; Tr. 25, 86) The artifacts were reclassified as of March 31, 1992, under the heading "Current Assets." (Div. Ex. 7 at F-12) Current assets are those assets which are readily convertible to cash within one year. (Tr. 191)

The summary financial information for Seahawk I in the S-1 Statement indicates that as of December 31, 1991, Seahawk I had current assets of \$1,935,830. (Div. Ex. 7) But it does not state that all but \$2,928 of Seahawk I's current assets consists of the capitalized costs of artifacts recovered by Seahawk I from the Tortugas site. Seahawk does not characterize Seahawk I's current assets by type or amount in the summary financial information provided in the S-1 Statement. (Div. Ex. 7 at F-15; Div. Ex. 11 at 3; Tr. 191) The total reported values of the artifacts recovered from the Tortugas site, and purchased from third parties, on the books of Seahawk and Seahawk I, for the years ending December 31, 1990 and December 31, 1991 are as follows:

CARRYING VALUE OF ARTIFACTS

| | <u>TORTUGAS SITE ARTIFACTS</u> | | <u>TOTAL ARTIFACTS</u> |
|-----------|--------------------------------|------------------|------------------------|
| | <u>12/31/90</u> | <u>12/31/91</u> | <u>12/31/91</u> |
| SEAHAWK | -0- | 468,675 | 607,286 |
| SEAHAWK I | <u>847,484</u> | <u>1,932,902</u> | <u>1,932,902</u> |
| TOTAL | 847,484 | 2,401,577 | 2,540,188 |

2. Other Line Items

Seahawk states as current assets as of December 31, 1991 on its consolidated balance sheet a "Note receivable - affiliate," of \$22,967, which is due from Seahawk I and is non-current. (Div. Ex. 7 at F-2, F-19) Seahawk states as current assets, as of December 31, 1991, "Trade accounts receivable - affiliates," of \$949,164.

Of this amount, \$803,242 is due from Seahawk I and \$145,922 is due from Eagle Partners. (Div. Ex. 7 at F-2 and S-1) Seahawk also states as current assets as of December 31, 1991 on its consolidated balance sheet, "Investment in affiliates," of \$706,867. All of this amount is attributable to Seahawk's investments in Seahawk I. Seahawk's investment in Seahawk II and Eagle Partners is carried at zero. (Div. Ex. 20 at 10, 11; Div. Ex. 7 at F-2; Tr. 163)

3. Disclosures Regarding Intentions to Sell Artifacts and Need for Money

In the registration statement, Seahawk stated that it needed additional financing in order to search for other shipwrecks, the continued excavation of shipwreck sites and to pay overhead expenses. It said that "future revenues or financing will depend upon the sale of artifacts by Seahawk I." (Div. Ex. 7 at 8) In footnote 14 to the financial statements, Seahawk represented that:

In order for the Company to remain in business during the next 12 months it is necessary for the Company to either generate revenues or raise additional financing. The Company, acting in its capacity as general partner for Seahawk I, is attempting to arrange for an auction or sale of the artifacts owned by Seahawk I, If Seahawk I is able to conduct an auction of the artifacts, management believes that the auction should yield at least enough for Seahawk I to pay all of its accounts payable to the Company The Company also expects to receive the return of some or all of its capital invested in Seahawk I. However, the final resolution and recoverability of actual amounts is dependent upon future events, the outcome of which are not fully determinable at the present time. Accordingly, no provision for any losses that may result has been made in the financial statements. Management believes that actions presently being taken to revise the Company's

operating and financial requirements provide the opportunity for the Company to continue as a going concern. (Div. Ex. 7 at F-30-31)

D. Seahawk's Information Regarding The Value Of Artifacts At The Time Of Submission Of The Registration Statement

1. The de Bry Appraisal

Seahawk relied on the appraisal of John de Bry as evidence of the market value of the artifacts and its claim that the artifacts had been stated at the lower of cost or market. (Div. Ex. 9; Div. Ex. 10; Tr. 28) Seahawk contacted de Bry in March 1991 about appraising the artifacts. (Tr. 211) On March 14, 1991, de Bry went to Seahawk's offices where he was told by Stemm that he wanted to see "big figures" in de Bry's estimates. (Tr. 212-13) De Bry admits that he estimated the market value of artifacts at the upper limit of their value, consistent with Stemm's request. (Tr. 257) According to de Bry, Stemm said the artifacts would be put in Seahawk's planned museum and would not be sold. (Tr. 213-14) Morris told de Bry that Seahawk planned on opening a museum theme park in Florida. (Tr. 214) De Bry testified that Morris said that there was not much money in treasure hunting but that there was in the entertainment business. Seahawk did not tell de Bry that his appraisal would be used in justifying or compiling Seahawk's financial statements. He was under the impression that it was for in-house use. (Tr. 217-18) De Bry said he was surprised that Seahawk publicized his appraisal in March 1991 because of what he had been told about its purpose. (Tr. 219)

To assist him in performing his appraisal, de Bry was shown the astrolabes, gold bars, a few dozen pearls, some silver coins, some broken plates, and Seahawk's olive jars. He examined the objects he was shown on that day and within five days he completed his appraisal. De Bry estimated that the artifacts were worth \$4,792,100. (Tr. 220) De Bry valued all the items recovered at that time, excluding minor artifacts. His estimate was the retail value and did not exclude cost of sale. (Div. Ex. 9; Tr. 215-16, 259) De Bry believed he could assign maximum values, as Stemm had asked, because the artifacts would be in a museum and would not be sold. (Tr. 221-22)

De Bry appraised the olive jars at \$10,000 apiece because someone at Seahawk told him that one of them had already sold for that price. (Tr. 225-26) This was de Bry's first experience appraising olive jars. In conducting his appraisal, he looked at three or four of them, but he used the claimed sale as a precedent to establish his estimate. Seahawk had not actually sold one of the olive jars and de Bry said that, if he had known that, he would not have valued the olive jars as he did. (Tr. 226, 632)

De Bry appraised a fragmented plate with the Papal miter at \$50,000 because he believed the plate belonged to a high church official traveling on the ship. (Tr. 227) After examining a few silver coins, de Bry concluded that the coins were worth \$250 each. De Bry said that similar silver coins (which he found to be heavily corroded) are sold by Mel Fisher in Key West at the price he estimated. (Tr. 228)

De Bry had never appraised astrolabes before, but based on the price that the Atocha astrolabes brought at auction, he concluded that the Tortugas shipwreck astrolabes would be worth twice as much, or \$200,000 to \$275,000. (Tr. 228-29, 258) De Bry, after examining a few dozen pearls, concluded that the pearls could bring \$600 apiece. De Bry appraised them at that price because he found the pearls he was shown to be in excellent condition. He explained that usually shipwreck pearls are badly deteriorated; they are black in color, have no luster and crumble easily. When de Bry was shown photographs of a mass of Seahawk's pearls, he had difficulty telling they were pearls and he said he would not appraise them at \$600 apiece. (Tr. 229-31) De Bry had not appraised pearls before either. (Tr. 259)

De Bry also appraised the gold bars that were found at the Tortugas shipwreck; he concluded that Seahawk's gold bars would on the average sell for 8.8 times their melt down value. (Tr. 232-34) He believed that the gold bars that were found at the Atocha and Maravillas shipwreck were similar to Seahawk's and he knew they had sold at auction for three times their melt down value when they were well marked. In March 1992, de Bry wrote to Stemm and told him the Maravillas auction could effect the value of Seahawk's gold bars.

De Bry testified that, when Seahawk's registration statement went into effect, his 1991 estimates were no longer reliable because the Maravillas auction indicated that the interest of

private collectors in similar artifacts had diminished and the antique market had collapsed. (Tr. 235-36)

De Bry also agreed that because Seahawk had not identified the ship from which the artifacts had been removed, the value he assigned to the Seahawk artifacts had diminished.

2. Auction House Consideration of the Value of Seahawk's Artifacts

During January and February 1992, Seahawk discussed with Christie's and Sotheby's auction houses the possibility of auctioning off major artifacts. Sotheby's was given de Bry's appraisal, photographs of the artifacts, a video, and some promotional materials. The items were considered by Paul Song, director of Sotheby's coin department, Gerard Hill, the administrator of Sotheby's coin department, and David Tripp, a numismatic consultant to Sotheby's for 17 years. Arnold Saslow, a New York coin dealer, represented Seahawk in its discussions with Sotheby's. Saslow told Sotheby's that he believed that de Bry had estimated the silver coins too high. (Tr. 271)

Song and Tripp estimated the value of the gold bars. They used the photographs provided by Saslow and the descriptions in the de Bry appraisal. To find comparable items they looked at Christie's June 1990 auction of artifacts from the Atocha, which Paul Song characterized as being the most important treasure sale in 25 years. (Tr. 272) They also considered a Sotheby's auction from June 1990. Song testified that gold bars similar to Seahawk's usually sell at auction for approximately 50 to 75 percent above the melt down value. (Tr. 282-283) Some have reached a value of

up to three times melt down value, he said. Smaller ingots, under one ounce, could sell for four to five times their melt down value. Sotheby's estimated that the Seahawk gold bars would sell between \$297,700 and \$423,300. (Div. Ex. 36)

Seahawk received from Saslow a comparison of de Bry and Sotheby's estimates of Seahawk's artifacts. (Tr. 309-11) Through Saslow, Sotheby's was told that Seahawk wanted the estimates raised to \$750,000. While Song and Tripp believed their estimates were accurate, they also believed there could be some upward potential through good marketing and the fortuitous selection of an extremely good day for the auction. If the estimates were put at \$750,000, Hill told Saslow, Seahawk would have to agree to sell the artifacts without a reserve, which meant that the gold bars would have been sold for whatever bids were received. Saslow then told Hill that Seahawk would want to bid on the bars if there could be no reserve. (Tr. 297) Hill told Saslow that Sotheby's did not permit consignors to bid on their own property. (Tr. 297-98)

James Lamb, head of Christie's coin department, testified that he was contacted, in January or February 1992, by Eric Gold, an employee of Saslow, about auctioning the Seahawk artifacts. He was told that Seahawk wanted to sell its artifacts quickly. (Tr.360-62) Lamb also was sent photos of the artifacts, Seahawk press releases and the de Bry appraisal. (Tr. 362) In mid-February, Lamb visited Seahawk's headquarters in Florida and looked at the gold bars, astrolabes, ceramic pots, unglazed pottery, large pots and groups of ceramic fragments, and "shard with the crossed

keys design on it." (Tr. 366, 368) Upon examination of the astrolabes, Lamb concluded that they were worth in the lower end of a \$20,000 to \$40,000 range. (Tr. 368) This estimate was markedly lower than those sold at the Atocha auction.

He found the pearls aesthetically lacking and without much of an auction market. (Tr. 397) Lamb has had extensive experience estimating and appraising numismatic and shipwreck material. Along with Anthony Phillips, he was responsible for the Atocha auction at Christie's. On March 2, 1992, Lamb prepared a memorandum in which he estimated that the value of Tortugas items suitable for auction would bring \$1,000,000. (Div. Ex. 33; Tr. 385) The estimate included the gold bars, a six strand gold chain, gold and emerald ring, astrolabes, a sample of ceramics (up to two dozen), pearls and certain collateral items such as mortars and pestles and combs. Lamb believed his estimates were very accurate because there were good direct precedents for comparison. He also factored in the Seahawk "story." His estimate included the gold bars which, he said, had become increasingly available in the commercial market. (Tr. 405)

Lamb told Seahawk of his estimate and also told it that his estimates were much lower than de Bry's. (Tr. 386) He may have even told Seahawk that the items would bring \$1,000,000 or less. (Tr. 386-87) In May 1992, Christie's auctioned similar shipwreck items from the Maravillas shipwreck; the prices paid at that auction confirmed for Lamb his appraisal of the Seahawk artifacts.

In fact, he believes he may have been slightly optimistic in his estimates of the Seahawk artifacts. (Tr. 391)

E. The Information Provided by Seahawk to Its Auditors

For the year ended December 31, 1991, the financial statements of Seahawk and its three related limited partnerships were audited by the Tampa, Florida accounting firm, Baumann & Company, P.A. (Div. Ex. 7 at F-1; Div. Ex. 11) Baumann also agreed to review Seahawk's Form 10-K for 1991, the registration statement under consideration in this proceeding, and to prepare certain income tax returns. (Div. Exs. 1,2; Tr. 9) Richard Reeder was the audit manager and performed the field work from February 4 to 11, 1992. (Tr. 8-9, 37) Baumann's audit was issued on March 13, 1992. Seahawk's management provided Baumann with the information to conduct the audit and was responsible for its accuracy and completeness. (Div. Ex. 1) Baumann considered the value assigned to Seahawk and Seahawk I's artifacts to be a significant audit area and material to their balance sheets and operating statement of income and loss. (Tr. 18-19)

Baumann relied on the de Bry appraisal, which had been given to the firm by Seahawk management, to determine whether the NRV of the artifacts held by Seahawk and Seahawk I exceeded their costs as recorded on the Seahawk and Seahawk I books. (Tr. 32, 35) Reeder did not contact de Bry. (Tr. 29) However, Reeder did ask Seahawk Controller Pam Ward and Morris whether there was additional information available about the NRV of the artifacts. (Tr. 38) Reeder asked whether any of the artifacts had been sold, whether

there was a more recent appraisal and whether an appraisal had been done on newly recovered artifacts. (Tr. 38) He was told that there had been no other appraisals and that the only sale of the artifacts had been between Seahawk I and Seahawk. (Tr. 38-39) Reeder also asked whether there were any sales of similar artifacts by third parties. He was told that management was not aware of any sales of similar artifacts. (Tr. 39) Reeder then concluded that the de Bry appraisal was sufficient evidence of the market value of the artifacts. (Tr. 27-28)

Baumann held an audit closing meeting with Seahawk on March 13, 1992. (Div. Ex. 3) The audit closing meeting is held to ensure that nothing that would affect the financial statements had occurred since the close of the field work and the date that the company is ready to issue the financial statements, and to review the financial statements with management to insure that the auditors have not misunderstood any facts provided by management. (Tr. 41) The Seahawk audit closing meeting was attended by Reeder, John Baumann, Pam Ward, Morris, and Doug Wakeling of Seahawk. (Tr. 41)

At the closing meeting, the parties discussed the artifacts. Seahawk management stated that it was exploring the option of selling artifacts at auction. This was the first time that Seahawk management told Baumann of Seahawk's interest in auctioning the artifacts. (Tr. 42-43) Baumann would have wanted to know about specific auction plans because such plans would be material to the audit and in establishing the current market value of the

artifacts. (Tr. 44) Reeder again asked whether there had been third party sales of similar artifacts and Morris told him he was not aware of any. John Baumann also asked whether there was any additional information that would impair the value of the artifacts as stated on the appraisal. (Tr. 42) The auditors obtained a management representation letter from Seahawk at the meeting, (Div. Ex. 3) which states that Seahawk has no plans or intentions that may materially affect the carrying value of assets, which includes the artifacts. Baumann would have needed to know if there was any new information that would affect the stated value of Seahawk's assets. (Tr. 45)

Baumann was never told that Seahawk had received estimates from auction houses which valued artifacts removed from the Tortugas site. (Tr. 106) Baumann would have considered auction estimates outside evidence of the current value of the artifacts. (Tr. 106) Information received by management between the close of the fiscal year and the date the financial statements are issued is considered by auditors. Relevant and significant information arising in that period must be disclosed. (Tr. 107)

F. Seahawk's Response to the Division of
Corporation Finance's Request for Information
About Market Value of the Artifacts

On March 18, 1992, Seahawk filed its first version of the S-1 Statement. (Div. Ex. 15) The Division of Corporation Finance requested additional information about the value of the artifacts recovered from the Tortugas site. (Tr. 121-125) On April 3, 1992, in a comment letter, Corporation Finance asked for further

disclosure about the appraisal, the NRV of the artifacts held by Seahawk and Seahawk I and the accounts receivable from the partnerships. (Div. Ex. 18 at 4, 8, and 9) On April 14, 1992, Seahawk filed an amendment to the registration statement which deleted all mention of the appraisal. (Div. Ex. 19) Seahawk's response letter, dated April 13, 1992, explained that because all information about the appraisal had been deleted from the registration statement, it was not necessary to identify the appraiser. (Div. Ex. 20 at 4)

The April 14, 1992 amended registration statement was silent about NRV. The response letter explained that management believed that the NRV was not below the amount at which the artifacts are carried on the books of Seahawk and Seahawk I because they had been appraised at \$4,792,100 and costs were only \$2.4 million, the appraisal was performed by an expert, and a conservative approach to costs had been used. In response to the Division of Corporation Finance's request for information about the receivables, Seahawk represented that Seahawk I "has the ability and is planning to sell artifacts to generate cash to pay its payable to the Company." (Div. Ex. 20 at 9)

On April 29, 1992, the Division of Corporation Finance again requested that Seahawk provide information on the appraisal of the artifacts and for information on sales of similar artifacts by third parties at auction. (Div. Ex. 21; Tr. 142-143) On July 13, 1992, Seahawk amended its registration statement for the second time. In the amendment it stated that as a result of the passage

of time and the auction of artifacts from the Spanish ship Maravillas the appraisal was obsolete and had been omitted from the registration statement. (Div. Ex. 7 at 33) In response to Corporation Finance's request for information about third party sales, on July 10, 1992, Seahawk stated that it had not provided information about the Atocha sale at Christie's because it would be misleading. (Div. Ex. 22 at 3) The Division of Corporation Finance wrote to Seahawk, on July 23, 1992, and requested information about the Maravillas auction. (Div. Ex. 23) On July 28, 1992, Seahawk replied that it did not believe any response to the Division's request was necessary "in view of the response provided to the earlier comment letters." (Div. Ex. 24 at 3) Seahawk also notified the Commission that it intended "to let the Registration statement go effective pursuant to the provisions of Section 8(a) of the Securities Act."

As a result of Seahawk's failure to provide the information requested by Corporation Finance, the Division was unable to determine whether Seahawk's disclosure about the artifacts was adequate or misleading. (Tr. 171) The matter was referred to the Division of Enforcement and, on July 30, 1992, the Commission ordered an examination of Seahawk's S-1 Statement pursuant to §8(e) of the Securities Act of 1933.

G. Materiality of the Value of the Artifacts

Seahawk represented in the registration statement that it needed financing to remain in business and it was considering auctioning the artifacts to provide the necessary funds. Melanie Fowler, Assistant Chief Accountant in the Division of Corporation Finance, pointed out that Seahawk carries at full value, without reserves, the accounts receivable and note receivable from Seahawk I, and the investments in Seahawk I. She explained that Seahawk can only realize the full value of these assets if Seahawk I converts the artifacts to sufficient cash to pay its receivables in full and cover the investment. Therefore, she said, the only way that an investor in Seahawk will realize a return on her/his investment is if Seahawk sells the artifacts. (Tr. 127-30)

Richard Reeder, who managed the Baumann audit, testified that if the artifacts that Seahawk purchased from Seahawk I have an NRV less than the cost of purchase, Seahawk would be required to write them down to their NRV. (Tr. 55) This would cause a direct change to the balance sheet and increase in the loss on the income statement. Moreover, if the artifacts recovered by Seahawk I have an NRV less than their capitalized cost, Seahawk I must write down those artifacts to their NRV. (Tr. 55-6) Any loss would flow to the investment accounts of the partners and would cause a decrease in the Seahawk "Investment in Affiliates" account. And if the write down is large enough, Reeder said, it could affect the Seahawk's ability to collect the note and accounts receivable owed

to Seahawk and could cause a write off of some or all of the receivables. (Tr. 63-6)

1. Net Realizable Value of Seahawk and Seahawk I Artifacts

Division expert witnesses testified that the highest value market for the individually more valuable artifacts (astrolabes, gold bars, jewelry) is the auction market. (Div. Exs. 60, 64, and 70) The highest value market for the individually less valuable artifacts (coins and fragments, utilitarian ceramics, "natural" pearls), according to the Division expert witnesses, is a retail collectibles market, either through direct mail, or through a museum or gallery gift shop, or through traveling expositions. (Div. Exs. 54, 64, 77; Tr. 719-796) In the non-auction markets, the experts explained, buyers are willing to pay a more modest sum for a smaller or less valuable artifact, although market entry costs and selling costs are much higher than costs in the auction market. (Div. Exs. 54, 71; Tr. 782, 840) Division experts in estimating the value of the artifacts assumed that Seahawk could market the artifacts in the most lucrative market. This was done despite the fact that Seahawk does not have access to all markets such as a museum gift shop or other retail outlet.

a. *Ceramics and olive jars*

Seahawk's collection of ceramics and olive jars includes 76 intact olive jars, cracked jars, fragments and shards, and various ceramics. The Division on the basis of its experts' evaluation values them at an NRV of \$62,175. Sylvia Falcon, an expert in the field of artifacts and antiquities, appraised several ceramic

pieces and olive jars recovered by Seahawk I from the Tortugas site. (Div. Ex. 54) Falcon has a masters degree in art history and has been employed for 12 years as a senior art appraiser at O'Toole-Ewald Art Associates in New York City. Falcon specializes in fine art, antiquities, tribal art, American Indian art and pre-Columbian art. (Tr. 414-416) Falcon's appraisals are reviewed by Elin Lake Ewald, who is the president of O'Toole and the president of New York chapter of the American Society of Appraisers. Ewald is also a member of the National Organization of Review Appraisers. As review appraiser, Ewald insures that the firm's appraisals address the proper questions, use the proper methodology and arrive at the correct conclusions. (Tr. 418) Ewald reviewed the appraisal Falcon did of the Seahawk artifacts. (Id.)

Falcon valued the 76 intact olive jars at \$450 each and arrived at total value of \$32,500. (Div. Ex. 54) Falcon stated that the most appropriate sale venue for the olive jars would be through a museum or gallery type gift shop. Olive jars can be sold for prices ranging from \$350-\$1500, depending on their size. The cost of selling them is 50 percent. From this she concluded that the NRV would be from \$175-\$750, for an average price of \$450. Falcon considered comparable sales and offerings of olive jars by established dealers to arrive at her estimates. (Div. Ex. 54, 57, and 58) In addition, she consulted academic experts at the Hispanic Society in New York City about the historic significance of the artifacts. (Tr.426-7) The Hispanic Society had provided advice to owners of the Atocha artifacts. (Tr. 701)

Seahawk's initial appraisal of the olive jars by John de Bry valued the olive jars at \$10,000 each. (Tr. 224) De Bry had never appraised an olive jar before and the basis for his estimate was his claim that someone at Seahawk told him that one of the jars had sold for the estimated price. (Tr. 226) He could not remember who told him and if it was not true, he said, the estimate would not be valid. Robert Baer valued the artifacts for Seahawk after the Division's witnesses had testified. He said the intact olive jars were worth \$4,000 each. (Tr. 962) To justify that figure, Baer said he had a certificate for an olive jar that sold for \$8,000 at Treasure Salvors in Miami. (Tr. 970) But after questioning, Baer conceded the certificate price was written on the certificate by him and it was only an offering price. (Tr. 970-5) Baer also said he had heard that Mel Fisher and subcontractors had sold olive jars for \$1,500 to \$2,000 to \$4,000. (Tr. 972) Baer had no information about the circumstances of any sale. He did not know the price at which any particular olive jar had sold, nor the type or size, the buyer or seller, or the volume. Baer also presented no evidence about the cost of selling the artifacts.

The Seahawk inventory lists 10 cracked olive jars, which Baer valued at \$3,000 each or \$30,000 total. He valued 27 "broken" and "reconstructed" olive jars at \$300 each or \$8,100 total. (Seahawk Ex. 29) Baer also valued the olive jar fragments and pieces at \$10 to \$130 each. (Seahawk Ex. 29) Jeffrey Chapman, a management consultant to Mel Fisher, testified that Fisher sells pottery shards from the Atocha at his Museum gift shop for \$10 to \$30. (Tr.

822) Buyers receive a certificate of authenticity that they are buying something that came from the Atocha. (Tr. 830)

In Falcon's opinion, the shards and fragments have no commercial value, but they would be interesting archival pieces for study and as educational tools in museums. (Tr. 477)

b. *Crossed key plate*

One of the Seahawk artifacts valued by de Bry is a part of a plate with a crossed key design. De Bry believed that the crossed key was historically significant and he appraised the plate at \$50,000. (Tr. 227) Falcon described the plate as Talaveran, or possibly Sevillian, tin-glazed earthenware in fragmentary condition. The design is a papal miter and the crossed keys of St. Peter. (Div. Ex. 54) Falcon's research indicates that if the plate belonged to an important person, there would be some indication of a name or coat of arms. (Tr. 935) Falcon found that a comparable plate had been auctioned by Sotheby's in May 1992. That plate was more highly decorated, larger, primarily intact and sold for a hammer price of \$1,000. Falcon appraised the NRV of the plate at \$800 to \$1200. (Tr. 432) Baer assigned a value of \$10,000 to the same plate. (Seahawk Ex. 28) Baer did not have any documented comparable examples of actual sales to support his estimate. (Tr. 957-60) Like de Bry's estimate, Baer's was based on speculation about the history of the plate. (Tr. 957)

c. *Other ceramics*

Falcon appraised from photographs three ceramic bowls and two ceramic pitchers. (Div. Ex. 54) In her view, the items are

utilitarian and common and could realize their highest value if they were sold in a low-level auction or auction/gallery shop. To arrive at her appraisal, Falcon looked at similar items that had sold at auction in New York at the Harmer Rooke Galleries. Falcon estimated that the five items she appraised would bring at best an NRV of \$1,425. Baer assigned in Seahawk Ex. 29 values of up to \$2,500 for bowls, \$1,500 for cups and jugs, \$4,000 for pitchers, and \$1,000 for plates. Baer valued 39 items in this category.

d. *Gold bars and fragments*

Frank Sedwick appraised the gold bars and fragments as being worth \$386,740. (Div. Ex. 64) He stated that the highest value could be realized if they were sold at auction. Sedwick is a professional numismatist, specializing in Spanish colonial coins and monetary instruments. (Tr. 515-22) In reaching his estimate, Sedwick examined each gold bar and fragment. He said, there are two established markets in which Spanish colonial gold bars are sold: the dealers market in which dealers trade and the auction market. Gold bars, he said, have become very common. Dealers normally buy at 1 1/2 to 1 3/4 melt down value of the bar. They sell at two times melt down value. Sedwick regularly buys and sells gold bars using that formula.

In Christie's Atocha auction, gold bars reached hammer prices of approximately three times their melt down value but many did not reach the reserve price. (Div. Ex. 61; Tr. 283) When Sotheby's estimated the value of Seahawk's gold bars, it applied a multiple of melt down value. Auctions achieve higher prices for gold bars

than dealer sales because they reach many more buyers and auction buyers may not be as knowledgeable as buyers from dealers, Sedwick explained. Sedwick appraised Seahawk's gold bars at three times melt-down value, plus an increment for bars with attractive markings, less ten percent cost of sale, to reach the NRV of Seahawk's gold bars in an auction market. (Div. Ex. 64) Sedwick appraised the fragments at three times melt-down value and the smaller bars at four or five times melt-down value because they are affordable to more people. (Tr. 283, 520-30)

Seahawk has used the gold bars as collateral for loans from relatives of Seahawk officers and third parties at approximately 1.4 times the melt down value. (Div. Ex. 7; Tr. 1154-55) James Sinclair, an associate of Mel Fisher, who markets treasure artifacts at "road shows," often as promotional events at jewelry stores, estimated the value of the gold bars for Seahawk. He said that he had heard of two sales of gold bars, one "in San Francisco for \$70,000" and one "in Spain for \$50,000." (Tr. 755-756)

In contrast to the two sales cited by Sinclair, the sale prices at Christie's resulted from a market where over 40 Spanish colonial gold bars and discs were offered at two sales of shipwreck artifacts from the Atocha and Maravillas. (Div. Exs. 56 and 61) In the fall of 1992, Sedwick offered and sold a well-marked gold bar from the Atocha and a gold disc from the 1715 fleet, both for two times their melt-down value. (Div. Ex. 64) Sinclair claimed that the value of his estimates for the gold bars was high because gold bars are "very scarce in the market." (Tr. 769) Although

Sinclair said he knew that Christie's had sold gold bar fragments, he decided to base his estimates of Seahawk's fragments on gold coin prices. (Tr. 774-75) He offered no reason for not using comparable items in appraising the gold bars.

e. *Gold and silver coins*

There are 1,180 silver coins and fragments or cobs in Seahawk's accumulation of artifacts. (Div. Ex 64) In contrast, Mel Fisher recovered over 150,000 coins from the Atocha. (Tr. 780) The highest market for Seahawk's silver coins is the market for retail collectibles, according to the Division's expert numismatist, Frank Sedwick. (Div. Ex. 64) Sedwick, who examined each silver coin, determined that the NRV for Seahawk's silver coins and fragments is \$131,600. He found the silver coins to be in very poor condition. (Tr. 535) He stated that the condition of the coins is important since their value depends on their weight, beauty, detail, the visibility of the mint mark, and the visibility of the assayer. (Tr. 536) Sedwick found that all of Seahawk's coins were well under their minted weight because of corrosion. (Tr. 536) He evaluated the Seahawk coins according to the system developed by Mel Fisher. Fisher's system grades the quality of coins on a scale of one to four, with one being the best and weighing the most. Nearly all of Seahawk's coins are in worse condition than Fisher grade four, Sedwick found. He pointed out that grade four coins weigh less than 12 ounces and are very hard to sell. (Tr. 535)

Because the Seahawk coins are not in good condition, Sedwick said that they could not be sold individually in the auction or numismatic dealers' markets. Sedwick would buy a small number of the Seahawk coins and would be willing to pay \$35 for a coin that he would resell for \$50. (Div. Ex. 64) If the coins were sold in the collectibles market, Sedwick believes that they could be sold for an average price of \$125, with an NRV of \$110. (Tr. 535-39) Three of the Seahawk coins are rare and they would bring \$600 apiece, Sedwick said.

James Sinclair also appraised the Seahawk silver coins. He did not examine all the coins; instead, Sinclair relied on a written evaluation prepared by Henry Taylor which Seahawk gave to him. (Tr. 726) Sinclair examined only two percent of Seahawk's coins and he was unable to verify that Taylor's grading was accurate. (Tr. 781) Sinclair testified that he sells coins through jewelry stores and he has heard about the prices charged for shipwreck coins in Mel Fisher's museum gift shop. There, Sinclair has heard, grade one coins sell for \$1,200 and grade four coins sell for \$300. Taylor and Sinclair's opinion of the quality of Seahawk's coins is contradicted not only by Sedwick but by the appraisal which de Bry did for Seahawk. De Bry found that the Seahawk coins were not in good condition; but he believed that when the Seahawk coins are compared to those sold at the Mel Fisher gift shop, they would sell for \$250. (Tr. 228) Duncan Mathewson, who also looked at the coins for Seahawk, found the coins were "not in great condition." (Tr. 701) Sinclair represented that when he

sells silver coins through jewelry stores, 50 percent of the retail price goes to the store. He also has additional overhead costs, which include returns. And, if the coin is sold on consignment, the return is even less. (Tr. 782-88)

Among Seahawk's artifacts are two two-escudo gold coins. (Div. Ex. 64) Sedwick found that they were in "low average" condition, very common, with an NRV of \$750 apiece, and a total NRV of \$1,500, without accounting for negligible selling costs. Seahawk urges that each of the coins is worth \$20,000. Sinclair testified that he had "seen" gold coins sell for prices between \$20,000 and \$30,000. (Tr. 741) However, a receipt, which Sinclair produced for a sale he made of a two-escudo coin, shows a retail sale price of \$3,500, without deducting any costs. (Seahawk Ex. 34) In 1988, Christie's offered at auction seven two-escudos from the Atocha and four two-escudos from the Santa Margarita, both ships of the 1622 fleet. (Div. Ex. 61, lots 105-12 and lots 163-66) Christie's sold seven of these eleven, with hammer prices starting at \$3,000 for a coin in "very good" condition, to a high of \$5,800. Christie's also offered and sold two-escudos from 1715 at lower prices. (Div. Ex. 61, lots 175-79) In 1992, Christie's sold 30 two-escudos from the Maravillas shipwreck, with hammer prices starting at \$675 for a coin in "fine" condition, to a high of \$1,400. (Div. Ex. 56, lots 87-116)

f. *Astrolabes*

Raymond Giordano appraised the three Seahawk mariner's astrolabes from professional quality photographs. (Div. Ex. 60)

The photos contained rulers which measured the dimensions of the astrolabes. Giordano has been buying and selling antique scientific instruments for 17 years. (Tr. 559-62) He appraises antique scientific instruments, publishes a catalogue of antique scientific instruments, and co-publishes a quarterly journal on the history of American scientific instruments, their making and selling. Giordano is an expert on antique scientific instruments.

Giordano testified that the primary markets for mariner's astrolabes are public auctions and, occasionally, private sales by dealers. (Div. Ex. 60) He stated that the market for astrolabes is weaker because there is an increasing supply and reduced demand. (Id.) He believes that demand may continue to decrease because, in 1990, the American Marine Museum Association adopted a ban on acquisition of salvage treasure and the International Congress of Maritime Museums is going to consider a similar ban in August 1993. (Id.) Major buyers of astrolabes have been marine museums.

Giordano found that the Seahawk astrolabes were in poor condition. Their surfaces are encrusted and eroded, they are missing the suspension ring, and their only visible history is that they are post-1600 Spanish or Portuguese. Based on Giordano's observation of the astrolabes, he valued them individually at \$22,500, \$35,000, and \$75,000. These prices were based on auction sales but the estimates were not reduced by buyer's or seller's premium because Giordano believes that the astrolabes can be sold in direct private sales. Giordano does not believe that the astrolabes found by Seahawk are comparable to those found on the

Atocha. The Atocha astrolabes, which were auctioned in 1988 for prices between \$60,000 and \$132,000, were in better physical condition and had historically important markings.

Duncan Mathewson appraised the Seahawk astrolabes at prices between \$50,000 to \$100,000. He believed that they are comparable to the Atocha astrolabes that sold at the highest prices in the Christie's auction in 1988. (Tr. 692) He reached his conclusion despite his recognition of the fact that the Atocha astrolabes were in superior condition. (Tr. 690-92)

g. Jewelry and pearls

The Division's witness, Joseph Tenhagen, appraised the gold and emerald ring, gold chain, and pearls recovered by Seahawk I. (Div. Ex. 77) As is commonly done, Tenhagen appraised the items from photographs provided to Christie's and Sotheby's by Seahawk. Tenhagen, who is a member of the American Gemologist Association and a senior member of the American Society of Appraisers and co-chair of the ASA section on gems and jewelry, has been appraising gemstones and jewelry for 17 years. He appeared as an expert appraiser of gems in this proceeding. (Tr. 600) Tenhagen concluded that the emerald ring, if sold at auction, would sell for \$15,000; he found Seahawk's ring to be similar to the ring in lot 153 at Christie's Atocha sale which had a low estimate of \$20,000 but did not sell. Tenhagen assumed that the reserve was 80 percent of the low estimate and because it did not sell at that price, \$15,000 would be a selling price. Christie's sold a small gold emerald ring at the Maravillas sale for \$3,900 and a larger gold emerald

ring for \$16,000. (Div. Ex. 56) Tenhagen said he had seen between 6 and 10 rings similar to Seahawk's in his store. (Tr. 617)

Seahawk witness Sinclair appraised the ring at \$30,000. (Seahawk Ex. 28) Sinclair did not use comparable sales as a guide; instead, because he had not seen rings like Seahawk's for sale, he assumed they were scarce. (Tr. 763) Seahawk witness Dureen said he sold a gold and emerald ring in his traveling jewelry show for \$30,000 and another for \$80,000. He said the smaller one was similar to Seahawk's in style and size. (Tr. 806-07) Dureen's estimates are not stated at NRV. (Tr. 812)

Tenhagen appraised Seahawk's gold chain at \$137,280 in the auction market. (Div. Ex. 77) He found the chain comparable in terms of link size, weight, and workmanship to one sold in the Christie's Atocha auction for \$28,000, which included the buyers premium. (Div. Exs. 77 and 61, lot 132) The Atocha chain which sold at Christie's was only one strand 68 inches long and the Seahawk chain has six strands each 64 inches long. Tenhagen arrived at the NRV for the Seahawk chain by multiplying the price received for the Atocha chain times six and deducting the auction commissions. (Tr. 606, 608) Seahawk witness Sinclair estimated that the chain would bring \$325,000. (Seahawk Ex. 29) While Sinclair did not identify any comparable sales for his estimate, he did say that he had purchased a 13-inch segment of a chain for \$15,000 and that Mel Fisher was offering a chain in his gift shop for \$100,000. (Tr. 763-66, 786-87) Sinclair did not provide an exact analysis of why he believed the Seahawk chain was comparable

to his and Fisher's chains. He assumed that all chains from the period would bring the same price per inch.

Tenhagen estimated that the Seahawk pearls have an NRV of \$65,000 in a retail collectibles or memorabilia market. (Div. Ex. 77) Tenhagen concluded that the pearls raised from the Tortugas site have no gemological value and cannot be sold in a jewelry store or to pearl collectors. He reached this conclusion on the basis of the shape, size and color of the pearls. (Tr. 602-06, 620-23) Tenhagen stated that pearls could be sold in a gift shop for \$25 and would realize about \$10.

Seahawk urges that the 6500 pearls will bring \$309 apiece. Currently, Seahawk is selling pendants with a suspended pearl from its supply for \$395 apiece. Fifty of the pendants have been made. (Tr. 1160) Seahawk management decided to make them just before the hearing began. (Tr. 635) They were offered for sale after the Division presented its case. (Div. Ex. 117) The pendants cost \$61 to manufacture without including the pearl. (Tr. 886) The price of marketing each pendant is \$23 but that cost does not include allocable overhead or salaries. (Tr. 918) The remaining \$309 was the value attributed to the pearl. The record reflects that 26 of the pendants have been sold and that the buyers include Seahawk's controlling officers, their friends, former employees, limited partners of Seahawk I and II, creditors of Seahawk, shareholders, employees and former employees of the brokerage firms that make a market in Seahawk's stock, and other persons with business relationships with Seahawk. (Tr. 905-12, 1163-68) Seahawk did not

disclose in the S-1 Statement its plans to sell pendants and the risk involved. (Tr. 915)

Douglas Wakeling, Seahawk's chief operating officer, testified that Seahawk could sell 500 of the pendants within three to five months. He said that after the first 100 are sold the price will increase by \$100 to \$300. (Tr. 904) Initially, Seahawk intends to sell the pendants to its stockholders. (Tr. 923-24) Previously, during 1991-92, Seahawk attempted to sell similar shipwreck collectibles to its shareholders which included a ring reproduction at \$295. (Div. Ex. 7, Statement of Income; Tr. 919-23) But the number of sales did not generate sufficient revenues to warrant continuing the effort.

f. *Other artifacts from the Tortugus site*

Seahawk lists 15,525 artifacts in Seahawk exhibits 28 and 29. The pearls, gold and silver coins, silver coin fragments, gold bars and fragments, astrolabes, six strand gold chain, gold emerald ring, olive jars, and ceramic pieces comprise 8,057 of the artifacts. There are additionally 7,468 artifacts that were removed from the Tortugus site which Seahawk values at \$292,247. These items include ballast stones at \$100 apiece or a total of \$166,400. There are beads, bones, bottle cap fragments and parts, and larger items, a medallion, a silver fork, and a bronze bell. Also among Seahawk's artifacts are thousands of pottery shards which Division expert witness Sylvia Falcon said were without monetary value. (Tr. 477) Seahawk exhibits 28 and 29 were not completed until the day before Seahawk presented its case and a

week after the Division completed its case. (Tr. 950-53) With the exception of a few items which Seahawk asked de Bry to appraise (fork, bell, medallion, jewelry stems, sounding weight, mortars and pestles) Seahawk had considered the remaining miscellaneous items to be of nominal value until the hearing. (Div. Ex. 9 and 10) The auditors stated in the December 31, 1991 financial statements that the miscellaneous items were tracked for insurance and research purposes but "are not assigned a value on the books of Seahawk I as the value is nominal, if any."

Similar items were recovered by Seahawk II from a colonial era shipwreck off the east coast of Florida. (Div. Ex. 7 at 35-6) Those 90 artifacts, which include cannons, numerous cannon balls, copper cooking pots, 6 Spanish silver coins, cannons, lead musket and pistol balls, pulley blocks, and sheaves, Seahawk II carries on its books at zero. (Div. Ex. 11)

g. *Purchased artifacts*

Seahawk purchased artifacts from Robert Marx on February 6, 1991. The purchase price of \$100,000 was part of an agreement in which Marx also agreed to provide consulting services. Seahawk agreed to issue one million shares of restricted stock to Marx's company, Tanit Corporation, and pay him \$100,000. (Seahawk Ex. 18) Seahawk has booked the artifacts at \$100,000 and has paid Marx \$60,000 of the amount owed. (Div. Ex. 8; Tr. 1108)

In April 1991, Gregory Stemm purchased artifacts on behalf of Seahawk for \$5,012. Also, in April 1991, Seahawk purchased emeralds and coins from John E. Higgins for \$20,880. In May 1991,

Seahawk purchased an antique chest for \$4,250 and, in March 1991, Seahawk purchased artifacts from Silver Sun for \$2,177. Seahawk booked these artifacts at their purchase price of \$32,319. (Div. Ex. 8) Seahawk estimates the value of these artifacts at \$470,000. (Tr. 977-82) No consideration was given to the purchase price in setting the estimate. (Tr. 978)

II. THE PREPONDERANCE OF THE EVIDENCE INDICATES THAT SEAHAWK OVERVALUED THE SHIPWRECK ARTIFACTS ON ITS BALANCE SHEET AND IN OTHER FINANCIAL INFORMATION PROVIDED IN THE REGISTRATION STATEMENT. AS A RESULT OF THIS SEAHAWK MISSTATED THE ACCOUNTS AND NOTE RECEIVABLE FROM SEAHAWK I AND ITS INVESTMENT IN SEAHAWK I ON ITS BALANCE SHEET.

A. Seahawk Has Overvalued A Material Asset, the Shipwreck Artifacts

Section 8 (d) of the Securities Act permits the Commission to issue a stop order suspending the effectiveness of a registration statement, if after notice and an opportunity for a hearing, it appears that the registration statement "includes any untrue statement of a material fact or omits to state any material fact required to be stated." Rule 405 provides that a material fact is one to which "there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase a security." If an untrue material fact is included in a registration statement or a material fact is omitted, the registrant's good faith or scienter does not influence whether a stop order should issue. In the Matter Of the Registration Statement of Kiwago Gold Mines, Limited, 27 S.E.C. 1934 (1938); In re U.S. Molybdenum, 10 S.E.C. 796 (1941).

A stop order will be issued in this case because Seahawk has misstated the value of the artifacts. There is a substantial likelihood a reasonable investor would attach importance to the value of the artifacts in determining whether to purchase Seahawk securities. Seahawk explained in the S-1 Statement that it needs additional financing to continue its business, and its future revenues or financing will depend upon the sale of the artifacts by Seahawk I. If the artifacts are worth substantially less than Seahawk claims, Seahawk's ability to obtain needed financing will be limited. Seahawk is already in precarious financial condition. It had a \$1.7 million net loss in 1991 and lost money in each of the preceding four years. This lead Seahawk's auditors to qualify their opinion on the 1991 financial statement to indicate that Seahawk might not remain a going concern. Under these circumstances, Seahawk's overstatement of its principal salable asset is material.

In the registration statement, which Seahawk filed on March 18, 1992, Seahawk lists as an asset on the consolidated balance sheet artifacts valued at \$607,286. That amount includes \$468,675 worth of artifacts recovered by the Seahawk I partnership which Seahawk purchased from the partnership. 1/ The remaining \$132,319 worth of artifacts Seahawk purchased from third parties. The artifacts are stated at cost of purchase. In summary financial

1/ Seahawk is a general partner of Seahawk I and two other limited partnerships formed to conduct treasure hunts. The partnerships own the artifacts they recover. Seahawk leases equipment and provides personnel to the partnerships.

information about Seahawk I, Seahawk stated that Seahawk I has current assets of \$1,935,830, of which \$1,932,902 is the capitalized cost of artifacts recovered by Seahawk I from the Tortugus shipwreck.

Under generally accepted accounting principles (GAAP), Seahawk and Seahawk I must carry the artifacts on their books at the lower of the artifacts' cost or the artifacts' market value. 2/ If the market is less than cost, a write down must be taken to current operations in order to state the inventory at market. When Seahawk filed its registration statement, Seahawk's only evidence that market value exceeded the stated cost was an appraisal prepared by John de Bry. His appraisal was given to the auditors during the 1991 audit which was used in the S-1 Statement. De Bry appraised the artifacts recovered by Seahawk I at \$4.7 million.

De Bry was not told that his estimates were to be used on the balance sheet. He was instructed by Gregory Stemm, an officer and director of Seahawk, to provide high estimates. Following Stemm's direction, de Bry assigned values at the highest limits of what the artifacts could bring if sold. De Bry was also told by a Seahawk employee that one of olive jars had already sold for \$10,000, when in fact none had been sold. De Bry used that information to value the olive jars. His ability to conduct a fair appraisal was distorted in other ways because he was misinformed.

2/ Market value is defined as net realizable value (NRV), or the amount the artifacts could be sold for between a willing buyer and willing seller, less any costs to sell or dispose of those assets.

For example, he was shown only a sample of the pearls recovered by Seahawk I. Those he was shown were in good condition and he attached a high value to them. But when he was shown a picture of a mass of Seahawk's pearls during the hearing, de Bry realized he had overvalued them.

Seahawk in January 1992 approached Sotheby's auction house about auctioning some of the shipwreck artifacts. Sotheby's estimated that the gold bars were worth between \$297,700 and \$423,300. De Bry had estimated the gold bars at \$1.6 million. Seahawk, in February 1992, also approached Christie's auction house about auctioning the artifacts. Christie's told Seahawk that the items suitable for auction were worth about \$1 million. Seahawk never advised its accountants about Sotheby's and Christie's appraisal of the artifacts, even though the audit was being conducted at the time the auction houses gave their opinions and the auditors asked Seahawk management whether there was evidence of the NRV of the artifacts in addition to de Bry's appraisal.

An assessment of the most reliable hearing testimony about the value of the artifacts reflects that Seahawk overstated the value of the artifacts in the S-1 Statement. The total NRV of all the artifacts owned by Seahawk and Seahawk I is \$1,099,569, \$285,413 of the total is attributable to Seahawk artifacts and \$814,156 to Seahawk I artifacts. 3/ Seahawk currently states the

3/ If the Seahawk I minor artifacts are valued at \$256,792, as they are on the Seahawk I Inventory, the total NRV would be \$1,356,361. This number would include the rocks which Seahawk claims are worth \$166,400. This is
(continued...)

artifacts at \$2,540,083, with \$607,286 of that amount attributable to Seahawk's artifacts and \$1,932,902 attributable to Seahawk I's artifacts. The lower net realizable value assigned to Seahawk's artifacts is derived from the testimony of the expert witnesses presented by the Division. The Division's experts cited sales of comparable artifacts in reaching their appraisals and they assumed that Seahawk would sell in the most lucrative markets.

Until two weeks before the hearing, the only attempt at an appraisal on Seahawk's part was the flawed undertaking by de Bry. Seahawk called a number of witnesses who gave estimated values for the artifacts, but, in general, these witnesses did not provide verifiable evidence of comparable sales, they assumed that the artifacts could be sold in the collectibles market, and they appeared to quote a retail selling price. In addition, Seahawk included a valuation for the minor artifacts which Seahawk I had

3/(...continued)

significantly less than the \$2,540,088 the items are valued at on the books of Seahawk and Seahawk I. The Division's experts included in the \$285,413 estimate of Seahawk's artifacts the following items: \$132,319 artifacts from third parties, \$1,200 crossed key plate, \$2,700 olive jars, \$75,000 astrolabes, \$33,604 gold bars and fragments, \$15,000 gold and emerald ring, \$90 pearls and pearl beads, \$15,000 bronze bell, \$2,500 silver fork, \$4,000 medallion, \$4,000 sounding weight. The Seahawk I artifacts were valued by the Division at \$814,156 and that amount was broken down as follows: \$14,175 ceramics, \$44,100 olive jars, \$57,500 astrolabes, \$353,136 gold bars and fragments, \$137,280 six strand gold chain, \$1,500 gold coins, \$64,910 pearls and pearl beads, \$8,000 mortars and pestles, and \$1,955 jewelry stems. In some cases the Division accepted Seahawk's valuation of the artifacts because its experts were not able to view the items or until the hearing Seahawk had not considered the items to have any value.

removed from the Tortugas site. Until the hearing, Seahawk and Seahawk I had treated the minor artifacts as having nominal value on their books. While Division witnesses were not allowed by Seahawk to examine the minor artifacts, they agreed that the minor artifacts had no commercial value.

Because the appraisals prepared by the Seahawk witnesses were not done in accordance with accepted appraisal practices, the assessments are materially misleading. If these estimates were the only evidence about the artifacts in this proceeding, it would not be possible to determine from them whether the NRV of the artifacts is in fact greater than their stated carrying value. The Commission held in In the Matter of Haddam Distillers Corporation, 1 S.E.C. 37 (1934) that while valuations are a matter of judgement, valuations in an appraisal must follow certain norms and they must have been accurately and fairly followed. The Commission stated there that "[i]f the norms purported to be followed are not fairly observed, the valuations finally arrived at are in essence misrepresentations of fact because they untruthfully describe the basis on which the judgment had been exercised." Id., at 42.

To keep from being misleading an appraisal must meet two tests: First, "it is misleading to represent as an appraisal a valuation which is not based solely on scientific method, but which rests in whole or even in part, upon foundations that are arbitrary or capricious." In the Matter of Breeze Corporations, Inc., 3 S.E.C. 709, 717 (1938). Second, "there must be a fair and accurate application of the methods purported to be followed." Id.

The professional appraisers who testified explained that an appraisal is an independent valuation of an item in which a basis is established in a given market, through comparables, for the value that is given. The appraised item should be fully described. The comparable is used as a reference to establish the value for the appraised item. That method assures that the appraised values are correct and that the item can sell in the defined market. Comparables should be documented or published so that sales can be tracked. The experts agreed that offering prices are unreliable for appraising the value of the artifacts because they are commonly discounted and, therefore, can not be relied upon. The most complete list of estimates prepared by Seahawk is found in Seahawk Exhibits 28 and 29 but, as these exhibits point up, the items are often inadequately described and no trackable comparables are provided.

B. Seahawk Misstated The Accounts And Notes Receivable From Seahawk I And II And Its Investment In Seahawk I On Its Balance Sheet

The unreliable valuation of the artifacts owned by Seahawk I effects major assets on Seahawk's balance sheet. Seahawk carries at full value "trade accounts receivable" and a note receivable from Seahawk I, in the total amount of \$826,209, and values its investment in Seahawk I at \$706,805. If Seahawk I's assets are approximately \$800,000, the write down to NRV required by GAAP will completely eliminate the value of Seahawk's investment in Seahawk I. It will require that Seahawk set up an allowance for doubtful collection of accounts and notes receivable.

III. SEAHAWK'S FAILURE AND UNWILLINGNESS TO FILE AUDITED FINANCIAL STATEMENTS FOR SEAHAWK I AND SEAHAWK II

Seahawk's registration statement did not include the audited financial statements for the year ended December 31, 1991 for two of the partnerships for which it serves as general partner, Seahawk I and Seahawk II. (Div. Ex. 7) The Division of Corporation Finance repeatedly requested that Seahawk include the audited financial statements of Seahawk I and Seahawk II with the S-1 Statements, but Seahawk refused to file them.

The Division's request was premised on the conclusion that Seahawk I's audited financial statements for the year ended December 31, 1991 are required to be filed with the registration statement under Regulation S-X, Rule 3-09, because Seahawk's total investment in and advances to Seahawk I exceed 20 percent. The Division also concluded that the financial statements for the year ended December 31, 1991 for Seahawk I and Seahawk II were required to be filed with the registration statement pursuant to Regulation S-X, Rule 3-13. That rule states that the Commission may require the filing of other financial statements in addition to those that are specifically delineated and required by Regulation S-X "where such statements are necessary or appropriate for an adequate presentation of the financial condition" of a person or "whose statements are otherwise necessary and appropriate for the protection of investors." 17 C.F.R. §210.3-13.

A. The Division's Request Pursuant to Regulation S-X, Rule 3-09

If a company's total "investment in or advances to" a "50 percent or less owned person accounted for by the equity method" exceed 20 percent of the value of the company's total assets, the audited financial statements of that subsidiary must be included in a registration statement filed by that company. 17 C.F.R. §§ 210.3-09, 210.1-02(v).

Seahawk owns less than 50 percent of Seahawk I and accounts for its investment under the equity method. (Div. Ex. 7; Tr. 155) Seahawk's "investments in and advances to" Seahawk I include a note receivable of \$22,967, accounts receivable of \$803,242 and investment of \$706,867. These amount to \$1,533,517 which exceeds 20 percent of the value of Seahawk's total assets of \$7,409,650. (Tr. 159) The Division reasoned that while "Trade Accounts Receivable" are not normally included in the significant subsidiary test, those between Seahawk and Seahawk I are "equivalent" to advances by Seahawk and should be included. (Tr. 160) The Division reached that conclusion because the trade accounts receivable from Seahawk I are older than 60 days (no payment has been made since they accrued in the fall of 1991) and Seahawk has not charged Seahawk I interest. (Tr. 161)

In addition, the Division looked at past transactions between Seahawk and Seahawk I regarding the accounts receivable. On its balance sheet Seahawk lists \$706,867 as "Investment in affiliates" for 1991, \$690,900 is attributable to conversion of accounts receivable from Seahawk I to investment in Seahawk I. The

converted receivables represent 58 percent of the total \$1,190,900 Seahawk has contributed to the capital of Seahawk I since its inception. (Div. Ex. 7 at 33; Div. Ex. 24 at 3) Seahawk converted the accounts receivable to preserve its equity position in Seahawk I after Seahawk I raised additional capital from limited partners. (Div. Ex. 24) Viewed historically, the Division assumed, if Seahawk I were to raise more cash, Seahawk would be required to do the same thing to preserve its ownership position since it is out of cash. (Tr. 162) The Division also believes that it is equally true that because Seahawk I has no cash, any performance of services by Seahawk for Seahawk I results in a transfer of resources from Seahawk to Seahawk I with no reasonable expectation of repayment in the near future, short of liquidating the partnership.

The Division points out that for the two years prior to December 31, 1991, Seahawk was required to include under Rule 3-09 of Regulation S-X the audited financial statements of Seahawk I and Seahawk II in its filings with the Commission. (Tr. 164-66) While it did so in those years, when it filed its registration statement with financial information for fiscal 1989 and 1990, Seahawk did not include the audited financial statements for the partnerships. (Tr. 164-66)

B. The Division's Request Pursuant to Regulation S-X, Rule 3-13

Rule 3-13 of Regulation S-X provides that the Commission may require the inclusion of audited financial statements of related entities "where necessary or appropriate for an adequate

presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors." 17 C.F.R. § 210.3-13. The Commission may require the audited financial statements of the related entity regardless of whether they are required to be filed pursuant to other Commission rules. (Tr. 155)

The Division concluded that the audited financial statements of Seahawk's affiliated partnerships are necessary and appropriate to an adequate presentation of Seahawk's financial condition and therefore should have been filed with the S-1 Statement. The Division reached this conclusion because the registration statement does not state that the related partnerships are subject to a "going concern" opinion by the auditors. (Div. Ex. 7; Tr. 190-92)

The Division found this omission to be material to potential investors in Seahawk because Seahawk is dependent on the partnerships for all of its revenues and the realization of many of its assets, including notes and accounts receivable. Thus, the Division believes an independent third party opinion that the partnerships may or may not survive another year is critical to an investor's assessment of his or her investment. (See Tr. 193) Seahawk maintains that it has provided investors with the same information when it told them in the registration statement that the partnerships are out of cash. The Division responds that knowing that the partnership is out of cash does not advise an investor about the going concern status of the entity.

The Division also found that the summary financial information which was provided for Seahawk I was inadequate in other respects. The registration statement points out that Seahawk I has current assets of \$1,935,830, but it does not state that all but \$2,928 consists of artifacts. The Division concluded that the summary financial information does not provide any specific information as to the characterization of these current assets by type or amount (Div. Ex. 7 at F-15; Div. Ex. 11 at 3; Tr. 191); that it is misleading for Seahawk to assert that all of the Tortugas site artifacts are "current assets" and can be assumed to be convertible to cash within one year (Tr. 190); that the summary financial information for Seahawk I indicates that for the year ended December 31, 1991, Seahawk I had revenues or "expedition revenue" of \$499,162 but that it failed to explain that the revenues resulted from a related party sale to Seahawk; and that Seahawk I has never had any revenues or profits from transactions with third parties. (Div. Ex. 7 at F-15)

In addition, the Division concluded that the audited financial statements of Seahawk I and II were required because Seahawk is dependent on the partnerships for revenue as well as for the recoverability of its assets. The record reflects that Seahawk's only operation is renting equipment to the partnerships. (Tr. 157) Seahawk receives nearly all of its revenues from transactions with the three related limited partnerships. (Div. Ex. 7 at F-26) For the calendar years 1989, 1990, and 1991, Seahawk's revenues from

the related partnerships represented 95.2 percent, 86.5 percent, and 94 percent of its total revenues. (Div. Ex. 7 at F-4)

C. Seahawk's Failure To Provide Audited Financial Statements For Seahawk I And II Requires That A Stop Order Issue

The Division of Corporation Finance has demonstrated that pursuant to Regulation S-X, Rules 3-09 and 3-13 Seahawk had an obligation to provide audited financial statements for its related partnerships, Seahawk I and II. With regard to the Division's conclusion that Seahawk I meets the significant subsidiary test of rule 1-02 (v), Seahawk argues that it need not provide the audited accounting statements unless the partnerships meet the test during the most recently completed year. The record reflects that Seahawk I does meet the test during the most recently completed year before the registration statement was filed. If Seahawk is suggesting that the test must be met for each year that audited financial statements are requested, it does not demonstrate that the test would not be met in other years. The evidence of record is that Seahawk, in previous years, did file audited financial statements for the partnerships when it made filings governed by Regulation S-X.

Seahawk disputes the Division's consideration of its accounts receivable from Seahawk I in calculating whether Seahawk's advances to or investments in Seahawk I amount to 20 percent or more. It does not dispute the facts relied on by the Division but it argues that the accounts due from Seahawk I are collectible. In part it relies on the testimony of Reeder, who managed the audit for

Baumann. But Reeder's testimony indicates that the auditors relied on Seahawk management's representations about whether the accounts receivable were collectible from Seahawk I. (Tr. 56-62) Baumann's opinion is also based on the ability of Seahawk I to sell the artifacts it owns to repay its debts. On that issue it now evident that Baumann was not given all the facts about the net realizable value of the artifacts. Seahawk has not shown that the Division's conclusions are not based on record facts about Seahawk's business. (Tr. 160-1) And Seahawk has not pointed to other record facts that would lead to acceptance of the conclusion it urges. The evidence supports the Division's request that Seahawk provide audited financial statements for Seahawk I pursuant to Regulation S-X, Rule 3-09.

Seahawk urges that the audited financial statements of Seahawk I and II are not required pursuant Regulation S-X, Rule 3-13 because they are not "necessary or appropriate for an adequate presentation" of the financial condition of its affiliated partnerships for the protection of investors. 17 C.F.R. § 210.3-13. It supports this claim by pointing to information in the registration statement that would supply the facts which the Division has concluded are material to an investor's assessment of Seahawk's offering. The problem with Seahawk's showing is that related facts are located on widely disparate pages over the course of a very long document. It would be unreasonable to expect that an investor could put the various facts together to understand the

consequences. The Commission explained over 50 years ago in Colorado Milling & Elevator Company, 15 S.E.C. 20, 29 (1943) that:

When registration statements are viewed item by item, it may frequently appear that certain answers are technically adequate. The combination of these items in the prospectus, however, may be made in such a manner as to conceal the general nature of the offering.... "[T]he absence of statements setting forth in simple language the consequences of certain features of the financial structure of the registrant have the effect of portraying an essentially inadequate and misleading picture to the investor." quoting, National Educators Mutual Association, Inc., 1 S.E.C. 208 (1935)

But even if Seahawk's arguments were accepted, there are facts which the Division has concluded are material which are not in the registration statement which would be contained in the audited financial statements of the partnerships. The S-1 Statement does not indicate anywhere that the partnerships received a "going concern" opinion from the auditor. The summary financial information does not disclose that all of Seahawk I's revenues for 1991 were derived from the one sale of artifacts to Seahawk. Furthermore, it is doubtful that the classification of Seahawk I's assets as "current assets" is accurate. Nearly all of Seahawk I's assets are artifacts and the facts developed on this record do not support the conclusion that Seahawk I is able to or intends to convert all of the artifacts to cash within one year.

These omissions and inaccuracies are important to an investor in Seahawk because of the interest Seahawk has in Seahawk I's artifacts and its dependency on Seahawk I as a customer of its treasure exploration services. Moreover, where a registrant's financial condition is as precarious as Seahawk's is, the failure

to file financial statements which would provide material facts to an investor raises questions about whether Seahawk is acting in good faith. Doman Helicopters, Inc., 41 S.E.C. 431, 442 (1963). Seahawk's failure to comply with the rules governing registration statement filings and the Division's request for additional accounting information requires that a stop order issue.

V. Seahawk's Failure To Cooperate In The Division's §8(e) Examination

A. Seahawk's Response to the Division's Request to Examine the Artifacts and Produce Photographs

Seahawk refused during the §8(e) examination to permit the Division's expert witnesses to look at the artifacts in order that they might appraise their value. It also refused to produce photographs of the artifacts at the offices of the Commission. Both requests were eventually made by subpoena, which Seahawk ignored.

On September 25, 1992, the Division requested that Seahawk arrange a convenient date for the Division's experts to examine the artifacts. (Seahawk Ex. 4) Seahawk said it would not do so unless it could review the qualifications of the experts and object to their examination if they were not in Seahawk's view qualified. Seahawk said it was concerned that any investigation might interfere with its efforts to sell the artifacts. On October 2, 1992, the Division informed Seahawk that the existence of any Commission appraisal would remain confidential but that it could not let Seahawk interfere with the Division's selection of experts. (Seahawk Ex. 4) The Division told Seahawk who the experts would

be and issued a subpoena for production of the artifacts and photographs at Seahawk's offices. (Seahawk Ex. 5)

On October 8, 1992, Seahawk objected to the Division's request to view the artifacts because it could not determine if the Division's experts were qualified and because it believed the Division did not have the authority to issue a subpoena for the artifacts. It did not argue that the Division did not have the authority to subpoena the photographs. On October 9, 1992, the Division sent Seahawk more information about the experts and notified Seahawk that it considered Seahawk's refusal to allow the Division to examine the artifacts to be a failure to cooperate. (Seahawk Ex. 7) On October 13, 1992, Seahawk told the Commission that it would allow one of the Division's experts, Frank Sedwick, to examine the gold bars and coins the next day, October 14. (Seahawk Ex. 8) While Seahawk eventually insisted that all Division experts sign a confidentiality agreement with Seahawk, it did not require Sedwick to do so.

On October 14, 1992, Seahawk informed the Commission that the other Division experts did not meet Seahawk's view of appropriate experts and it would not let them examine the artifacts. (Seahawk Ex. 9) Seahawk did not produce the artifacts or the photographs on the return date of the subpoena. On October 16, 1992, the Division issued an amended subpoena to Seahawk for all original still print photographs, or negatives of photographs if prints were unavailable, of all artifacts except the gold bars and the coins at the Commission's offices in Washington, D.C. on October 23,

1992. (Div. Ex. 104) On October 22 and 26, 1992, counsel for Seahawk told the Division that it would not produce the photographs because Morris was out of the country. (Seahawk Exs. 10, 12) On October 26, 1992, the Division advised Seahawk that the absence of one company officer did not excuse Seahawk from complying with the subpoena.

On November 4, 1992, Seahawk informed the Division that the experts could examine the artifacts if they would sign a confidentiality agreement with Seahawk. (Div. Ex. 109) The agreement would have subjected the experts to "immediate injunctive relief" and other potential liability from suits to be litigated in Florida, if the agreement was violated. (Seahawk Ex. 14) Seahawk also wanted the Division to share the examination reports. On November 4, 1992, the Division informed Seahawk that it accepted its offer to view the artifacts but it would not consent to any limitations on the examination beyond the Commission's confidentiality rules. On November 6, 1992, Seahawk, despite the fact that it had let other people view the artifacts without a confidentiality agreement, refused to allow Division experts to examine the artifacts.

Seahawk also refused to produce the photographs but it offered to send them to the office of a Washington, D.C. defense attorney at some unspecified time. (Tr. 1063-64) The Division believes the offer was not made in good faith since Seahawk had been told that the Division's experts were located in New York, Massachusetts and Florida. (Seahawk Exs. 4, 7) The Division again requested that the

photographs be produced in accordance with the terms of the subpoena and Seahawk refused to produce them. (Tr. 626) Seahawk never did make any effort to have additional prints made of the photographs or to locate the negatives for the Division. (Tr. 1106-07)

B. A Stop Order Will Issue Because Seahawk Did Not Cooperate With the Examination Pursuant to §8(e)

Section 8(e) of the Securities Act grants the Commission the authority to make an examination of a proposed offering in any case to determine whether a stop order should issue under subsection (d). If the registrant "shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for issuance of a stop order." Seahawk's refusal is premised on the mistaken notion that an examination under §8(e) is limited to books and papers because the statute states that the Commission "may demand the production of books and papers." But §8(e) on its face indicates that examinations are not limited to books and papers, it provides that examinations may include various persons, balance sheets, or income statements. There are no limitations placed on the Commission's examination to protect investors under §8(e) and, in fact, the Commission has often tested the value of tangible assets to determine the value of issuer's business. See, Franco Mining Corporation 1 S.E.C. 285, 291 (1936) (This case and numerous cases which followed examined in detail appraisals of the assets held by the registrant.). Any other reading of §8(e) would not "empower" the Commission to

examine the issuer and other persons connected with an offering. It is also apparent that Congress knew from the Commission's very first decisions that examinations would not be limited to books and papers. 4/

The primary focus of this proceeding has been the value of the artifacts owned by Seahawk and Seahawk I. The Division was unable to view most of them because of Seahawk's refusal. Seahawk has not presented any grounds for excusing its failure to cooperate. Seahawk has failed to cooperate and refused to permit examination of the artifacts and, therefore, a stop order will issue. 5/

CONCLUSION

The registration statement filed by Seahawk Deep Ocean Technology, Inc. is materially false and misleading, the registrant failed to cooperate with the §8(e) investigation under the

4/ Seahawk argues that the Division should have moved to enforce its subpoena if it had wanted to examine the artifacts. There is no requirement in §8(e) that the Division proceed by subpoena in examining a registrant and it did not do so until Seahawk refused to cooperate. But if Seahawk believed its rights were being violated, it could have moved to quash the subpoena. See, Rule 14(b)(2).


5/ The registrant raises various other arguments which have been considered and rejected. All proposed findings and conclusions submitted by the parties have been considered, as have their arguments. To the extent such proposals and contentions are consistent with this initial decision, they are accepted. In all cases where applicable, the demeanor of the witnesses has been considered in assessing their testimony. The conclusions reached are based upon a preponderance of the evidence.

Securities Act, and therefore a stop order will issue suspending the effectiveness of the registration statement.

ORDER

Accordingly, IT IS ORDERED that the effectiveness of the registration statement (File No. 33-46464) filed by Seahawk Deep Ocean Technology, Inc. is suspended. 6/

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision will become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision, filed a petition for review pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review the decision. If the party timely files a petition for review, or the Commission takes action to review, the initial decision will not become final.


Edward J. Kuhlmann
Administrative Law Judge

Washington, D.C.
May 26, 1993

6/ On April 8, 1993, after proposed findings and briefs were filed, Seahawk filed a post-effective amendment to the registration statement which purports to withdraw the registration statement and deregister all shares. Seahawk has not requested that the amendment become effective.