

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OCEANGATE INC., a Washington
corporation,

Plaintiff,

v.

DAVID LOCHRIDGE and CAROLE REID
LOCHRIDGE, and the marital community
composed thereof,

Defendants.

No. 2:18-cv-01083 RAJ

**DEFENDANT/COUNTERCLAIM
PLAINTIFFS' ANSWER TO
COMPLAINT, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS**

Defendants/Counterclaim Plaintiffs David Lochridge and Carole Reid Lochridge (hereafter "Defendants"), through their undersigned counsel of record, admit, deny and allege as follows:

I. PARTIES

1. Defendants admit the allegations contained in Paragraph 1 of the Complaint.
2. In response to the allegations contained in Paragraph 2 of the Complaint, Defendants admit they are lawful permanent residents in the United States, and that David

1 Lochridge is a former employee of OceanGate. Defendants deny the remaining allegations
2 contained in Paragraph 2 of the Complaint.

3 **II. JURISDICTION & VENUE**

4 3. In response to the allegations contained in Paragraph 3 of the Complaint,
5 Defendants admit that jurisdiction and venue are proper.

6 **III. ALLEGATIONS OF FACT**

7 4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

8 5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

9 6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.

10 7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

11 8. Defendants admit the allegations contained in Paragraph 8 of the Complaint, and
12 aver that David Lochridge reached out to OceanGate because OceanGate was actively
13 recruiting.

14 9. Upon information and belief, Defendants admit the allegations contained in
15 Paragraph 9 of the Complaint.

16 10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

17 11. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

18 12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

19 13. Defendants admit the allegations contained in Paragraph 13 of the Complaint.

20 14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.

21 15. Defendants admit the allegations contained in Paragraph 15 of the Complaint.

22 16. In response to the allegations contained in Paragraph 16 of the Complaint,
23 Defendants admit the first two sentences. With respect to the remaining, Defendants admit that
24 David Lochridge signed an Employee Intellectual Property Agreement on February 22, 2016,
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1 but denies that it was properly executed or in furtherance of his change from independent
2 contractor to employee. All remaining allegations are denied.

3 17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

4 18. In response to the allegations contained in Paragraph 18 of the Complaint,
5 Defendants aver that the document speaks for itself, including any obligations or limitations
6 thereunder, but Defendants deny the enforceability of said document and any relief thereunder.

7 19. Defendants deny the allegations contained in Paragraph 19 of the Complaint.

8 20. In response to the allegations contained in Paragraph 20 of the Complaint, the
9 allegations contain legal conclusions within the meanings of highly confidential and proprietary
10 information, and Defendants therefore deny the same. Defendants deny that any disclosures
11 were made in furtherance of the Agreement, and deny all remaining allegations.

12 21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

13 22. Defendants admit the allegations contained in Paragraph 22 of the Complaint.

14 23. Upon information and belief, Defendants admit the allegations contained in
15 Paragraph 23 of the Complaint.

16 24. In response to the allegations contained in Paragraph 24 of the Complaint,
17 Defendants admit that he submitted an “OceanGate Cyclops 2 Quality Control Inspection
18 Report” on January 18, 2018, that David Lochridge authored at the request of OceanGate’s
19 Chief Executive Officer, Stockton Rush. Defendants deny the remaining allegations contained
20 in Paragraph 24 of the Complaint.

21 25. Defendants are without information sufficient to form a belief as to the truth of
22 the allegations contained in Paragraph 25 of the Complaint, and therefore deny the same.

23 26. In response to the allegations contained in Paragraph 26, Defendants admit that
24 David Lochridge is not an engineer and was not hired to perform engineering services, but as
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1 part of his job duties, he was hired to ensure the safety of all crew and clients during
2 submersible and surface operations.

3 27. In response to the allegations contained in Paragraph 27 of the Complaint,
4 Defendants admit that the company called a meeting on January 19, 2018, to discuss the safety
5 concerns that David Lochridge documented in his January 18, 2018 OceanGate Cyclops 2
6 Quality Control Inspection Report. Defendants admit that David Lochridge again expressed
7 concerns at the January 19, 2018 meeting regarding the quality control and safety of the Titan,
8 particularly OceanGate's refusal to conduct critical, non-destructive testing of the experimental
9 design of the hull. Defendants deny the remaining allegations contained in Paragraph 27 of the
10 Complaint.

11 28. Defendants deny the allegations contained in Paragraph 28 of the Complaint, and
12 aver that David Lochridge objected to OceanGate's and its CEO's deviation from the original
13 plan to conduct non-destructive testing and unmanned pressure testing.

14 29. In response to the allegations contained in Paragraph 29 of the Complaint,
15 Defendants admit that David Lochridge disagreed with OceanGate's position to dive the
16 submersible without any non-destructive testing to prove its integrity, and to subject passengers
17 to potential extreme danger in an experimental submersible. Defendants deny the remaining
18 allegations contained in Paragraph 29 of the Complaint.

19 30. Defendants deny the allegations contained in Paragraph 30 of the Complaint, and
20 aver that OceanGate summarily terminated David Lochridge's employment because he raised
21 critical safety concerns regarding OceanGate's experimental and untested design of the Titan.

22 31. In response to the allegations contained in Paragraph 31 of the Complaint,
23 Defendants admit that David Lochridge promptly returned his OceanGate laptop. Defendants
24 deny the remaining allegations contained in Paragraph 31 of the Complaint.

1 thus no response is required. To the extent a response is required, Defendants deny the same.

2 39. In response to the allegations contained in Paragraph 39, Defendants admit that
3 David Lochridge desired to work indefinitely for OceanGate, and negotiated and received
4 payments as an independent contractor, and then payments and benefits as an employee.
5 Defendants deny the remaining allegations contained in Paragraph 39 of the Complaint.

6 40. Defendants admit the allegations contained in Paragraph 40 of the Complaint.

7 41. Defendants are without information sufficient to form a belief as to the truth of
8 the allegations contained in Paragraph 41, and therefore deny the same.

9 42. Defendants deny the allegations contained in Paragraph 42 of the Complaint.

10 43. Defendants deny the allegations contained in Paragraph 43 of the Complaint.

11 44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.

12 45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

13 46. Defendants are without information sufficient to form a belief as to the truth of
14 the allegations contained in Paragraph 46, and therefore deny the same.

15 47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

16 **THIRD CAUSE OF ACTION: UNJUST ENRICHMENT**

17 48. The allegations contained in Paragraph 48 are not directed to Defendants, and
18 thus no response is required. To the extent a response is required, Defendants deny the same.

19 49. Defendants admit the allegations contained in Paragraph 49 of the Complaint.

20 50. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

21 51. Defendants deny the allegations contained in Paragraph 51 of the Complaint.

22 **FOURTH CAUSE OF ACTION: CONVERSION**

23 52. The allegations contained in Paragraph 52 are not directed to Defendants, and
24 thus no response is required. To the extent a response is required, Defendants deny the same.

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1 53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

2 54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

3 **FIFTH CAUSE OF ACTION: INJUNCTIVE RELIEF**

4 55. The allegations contained in Paragraph 55 are not directed to Defendants, and
5 thus no response is required. To the extent a response is required, Defendants deny the same.

6 56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

7 57. Defendants deny the allegations contained in Paragraph 57 of the Complaint.

8 **SIXTH CAUSE OF ACTION: MISAPPROPRIATION OF TRADE SECRETS**
9 **RCW 19.108**

10 58. The allegations contained in Paragraph 58 are not directed to Defendants, and
11 thus no response is required. To the extent a response is required, Defendants deny the same.

12 59. The allegations contained in Paragraph 59 constitute a legal conclusion for which
13 no response is required. To the extent a response is required, Defendants deny the same.

14 60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

15 61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

16 **IV. PLAINTIFF'S PRAYER FOR RELIEF**

17 Plaintiff's Prayer for Relief does not contain factual allegations to which an answer is
18 required. To the extent an answer is required, Defendants deny that Plaintiff is entitled to the
19 relief requested.

20 **AFFIRMATIVE DEFENSES**

21 By way of further Answer, and under penalty of waiver, Defendants assert the following
22 in good faith to preserve these affirmative defenses:

23 1. The Complaint, and each of its causes of action, fails to state facts sufficient to
24 constitute a cause or claim upon which relief can be granted;

25 2. Plaintiff may have failed to mitigate its damages, if any;

1 parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive
2 of costs or interest.

3 **III. FACTUAL BACKGROUND**

4 4. Defendant David Lochridge (hereafter “Lochridge”) has extensive background as
5 a submarine pilot and training of the same, including as a qualified CSWIP 3.4U Underwater
6 Inspector, and trained to recognize flaw and points of failure in subsea equipment.

7 5. In or about May 2015, Lochridge began working with OceanGate as an
8 independent contractor. Lochridge relied on OceanGate’s representations that it would sponsor
9 and help Lochridge and his family obtain visa status to legally work and live in the United
10 States.

11 6. Based on OceanGate’s representations, Lochridge uprooted his family and his
12 entire life in Scotland to move to the United States and reside in Washington State.

13 7. As a part of his job duties, Lochridge was the Director of Marine Operations and
14 was tasked with “ensuring the safety of all crew and clients during submersible and surface
15 operations.”

16 8. OceanGate was in the process of developing an experimental submersible named
17 Cyclops 2 or the “Titan.” The Titan utilized carbon fiber, rather than a metallic composition, in
18 its hull. OceanGate intended the experimental Titan to carry passengers and dive to extreme
19 depths of 4,000 meters—a depth never before reached by an OceanGate manned submersible
20 composed of carbon fiber.

21 9. OceanGate held a meeting at its facility in Everett, Washington to discuss the
22 imminent handover of the Titan from the Engineering department to Lochridge’s Operations
23 department. In attendance were the Engineering Director, Engineering Manager, Electrical and
24 Electronic leads, the Director of Operations, the Chief Executive Officer, and Lochridge (the
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1 Director of Marine Operations).

2 10. Issues of quality control with the new submersible Titan were raised, as there
3 were evident flaws throughout the build process that several individuals had expressed concerns
4 over to the Engineering Director. The Chief Executive Officer, Stockton Rush, asked Lochridge
5 to carry out a Quality Inspection before the handover of the submersible Titan. Mr. Rush
6 selected Lochridge because Lochridge had the most experience working with submersibles and
7 stated he was “the best man for the job.”

8 11. Over the course of the next several days, Lochridge worked on his report and
9 requested paperwork from the Engineering Director regarding the viewport design and pressure
10 test results of the viewport for the Titan, along with other key information. Lochridge was met
11 with hostility and denial of access to the necessary documentation that should have been freely
12 available as a part of his inspection process.

13 12. Lochridge first expressed verbal concerns over the safety and quality control
14 issues regarding the Titan to OceanGate executive management. These verbal communications
15 were ignored.

16 13. Lochridge issued his OceanGate Cyclops 2 Quality Control Inspection Report
17 (“Inspection Report”) on January 18, 2018. The preamble to the Inspection Report states:

18 With Cyclops 2 (Titan) being handed off from Engineering to Operations in the
19 coming weeks, now is the time to properly address items that may pose a safety
20 risk to personnel. Verbal communication of the key items I have addressed in my
21 attached document have been dismissed on several occasions, so I feel now I
22 must make this report so there is an official record in place.

23 14. In the Inspection Report, Lochridge identified numerous issues that posed serious
24 safety concerns, and offered corrective action and recommendations for each.

25 15. Lochridge primarily expressed concern regarding the lack of non-destructive
testing performed on the hull of the Titan. Lochridge was repeatedly told that no scan of the

1 hull or Bond Line could be done to check for delaminations, porosity and voids of sufficient
2 adhesion of the glue being used due to the thickness of the hull. Lochridge was told that no
3 form of equipment existed to perform such a test, and OceanGate instead would rely solely on
4 their acoustic monitoring system that they were going to install in the submersible to detect the
5 start of hull break down when the submersible was about to fail.

6 16. Lochridge again expressed concern that this was problematic because this type of
7 acoustic analysis would only show when a component is about to fail—often milliseconds
8 before an implosion—and would not detect any existing flaws prior to putting pressure onto the
9 hull.

10 17. Given the prevalent flaws in the previously tested 1/3 scaled model, and the
11 visible flaws in the carbon end samples for the Titan, Lochridge again stressed the potential
12 danger to passengers of the Titan as the submersible reached extreme depths. The constant
13 pressure cycling weakens existing flaws resulting in large tears of the carbon. Non-destructive
14 testing was critical to detect such potentially existing flaws in order to ensure a solid and safe
15 product for the safety of the passengers and crew.

16 18. Immediately following issuance of the Inspection Report, OceanGate called a
17 meeting the following day on January 19, 2018. In attendance was the Chief Executive Officer,
18 the Human Resources Director, Bonnie Carl, the Engineering Director, Tony Nissen, the
19 Operations Director, Scott Griffith, and the Director of Marine Operations, Lochridge.

20 19. At the meeting, Lochridge discovered why he had been denied access to the
21 viewport information from the Engineering department—the viewport at the forward of the
22 submersible was only built to a certified pressure of 1,300 meters, although OceanGate intended
23 to take passengers down to depths of 4,000 meters. Lochridge learned that the viewport
24 manufacturer would only certify to a depth of 1,300 meters due to the experimental design of the
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1 viewport supplied by OceanGate, which was out of the Pressure Vessels for Human Occupancy
2 (“PVHO”) standards. OceanGate refused to pay for the manufacturer to build a viewport that
3 would meet the required depth of 4,000 meters.

4 20. The paying passengers would not be aware, and would not be informed, of this
5 experimental design, the lack of non-destructive testing of the hull, or that hazardous flammable
6 materials were being used within the submersible.

7 21. Lochridge again expressed concerns regarding the quality control and safety
8 issues relating to the Titan, as outlined in his Inspection Report, and insisted that OceanGate
9 perform non-destructive testing on the experimental hull. Lochridge also strongly encouraged
10 that OceanGate utilize a classification agency, such as the American Bureau of Shipping, to
11 inspect and certify the Titan.

12 22. Rather than address his concerns or undergo corrective action to rectify and
13 ensure the safety of the experimental Titan, or utilize a standard classification agency to inspect
14 the Titan, OceanGate did the exact opposite—they immediately fired Lochridge. OceanGate
15 gave Lochridge approximately 10 minutes to immediately clear out his desk and exit the
16 premises.

17 **IV. FIRST CAUSE OF ACTION**

18 **Wrongful Termination in Violation of Public Policy**

19 23. Defendants incorporate by reference all prior allegations as if fully set forth
20 herein.

21 24. Lochridge repeatedly alerted OceanGate via verbal communications and his
22 Inspection Report of serious quality control and safety concerns regarding the experimental
23 Titan, including but not limited to, his concerns regarding the lack of non-destructive testing on
24 Titan, including but not limited to, his concerns regarding the lack of non-destructive testing on
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1 the design of the hull that is critical to passenger safety.

2 25. As is standard across the industry, many companies use a classification agency,
3 such as the American Bureau of Shipping, to inspect and certify submersibles prior to releasing
4 them for use. The American Bureau of Shipping, like other classification agencies, have an
5 “ABS Rules and Guides” that is utilized to ensure the submersibles pass quality assurance tests
6 and satisfy industry-standard safety controls.
7

8 27. Lochridge repeatedly urged OceanGate to perform non-destructive testing and to
9 use a classification agency to inspect the experimental Titan. OceanGate refused both requests,
10 and stated it was unwilling to pay for a classification agency to inspect its experimental design.

11 26. Washington has a clear and articulated public policy of protecting whistleblowers
12 and those who refuse to commit an illegal act.

13 28. Rather than addressing Lochridge’s concerns, OceanGate instead summarily
14 terminated Lochridge’s employment in efforts to silence Lochridge and to avoid addressing the
15 safety and quality control issues.
16

17 29. Discouraging whistleblowers from coming forth with quality control issues and
18 safety concerns that threaten the safety of innocent passengers would undermine and jeopardize
19 the public policy, and put innocent passengers at increased risk.
20

21 30. Lochridge was in good-standing as an employee prior to his Inspection Report,
22 and was immediately terminated as a result of the same.

23 31. OceanGate has no overriding justification for Lochridge’s termination.

24 32. Lochridge, who uprooted his entire family to move across the world based on
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1 OceanGate's representations to him and his employment with the same, has been damaged by
2 his wrongful termination in an amount to be proven at trial.

3 **DEFENDANTS' PRAYER FOR RELIEF**

4 A. That Plaintiff's Complaint be dismissed in its entirety with prejudice, and that
5 judgment be entered for Defendants;

6 B. That Defendants be awarded damages in an amount to be determined at trial;

7 C. That Defendants be awarded their attorneys' fees and costs; and

8 D. That Defendants be awarded such other and further relief as the Court deems just
9 and proper.

10 DATED this 15th day of August, 2018.

11 CORR CRONIN LLP

12 *s/ Blake Marks-Dias*

13 Blake Marks-Dias, WSBA No. 28169
14 Jordann Hallstrom, WSBA No. 48036
15 1001 Fourth Avenue, Suite 3900
16 Seattle, Washington 98154
17 (206) 625-8600 Phone
18 ((206) 625-0900 Fax
19 bmarksdias@corrchronin.com
20 jhallstrom@corrchronin.com

21 *Attorneys for Defendants David Lochridge*
22 *and Carole Reid Lochridge*

DECLARATION OF SERVICE

The undersigned declares as follows:

1. I am employed at Corr Cronin LLP, attorneys for Defendants David Lochridge and Carole Reid Lochridge.

2. On this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Thomas L. Gilman
Barrett & Gilman
1000 Second Avenue, Suite 3000
Seattle, WA 98104
Phone: (206) 464-1900
Fax: (206) 471-7798
Email: tgilman@bgseattle.com

- Via ECF
- Via U.S. Mail
- Via Messenger Delivery
- Via Overnight Courier
- Via electronic mail

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of August, 2018, at Seattle, Washington.

s/ Christy A. Nelson

Christy A. Nelson