

EXHIBIT B

DUPLICATE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ALAN HOROWITCH,)
)
 Plaintiff,)
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 v.)
)
 DIAMOND AIRCRAFT)
 INDUSTRIES, INC.,)
)
 Defendant.)
)
 _____)
 /

CASE NO.: 6:06-CV-1703-Orl-19JGG

**PLAINTIFF’S FIRST REQUEST TO PRODUCE TO
DEFENDANT, DIAMOND AIRCRAFT INDUSTRIES, INC.**

Pursuant to Civil Rule 34, Plaintiff, Alan Horowitch, hereby requests Defendant, Diamond Aircraft Industries, Inc., to produce the documents designated herein which are in Defendant's possession, custody, or control, within thirty (30) days from the service of this Request, at the offices of **Jennifer Dempsey, Powell Goldstein, One Atlantic Center, Fourteenth Floor, 1201 West Peachtree Street, NW, Atlanta, GA 30309-3488**, or at a mutually convenient time and place for the purposes of inspection and copying by counsel for Plaintiff.

DEFINITIONS AND INSTRUCTIONS

1. The terms Plaintiff or Dr. Horowitch mean Plaintiff Alan Horowitch.
2. The terms Defendant or Diamond mean Defendant Diamond Aircraft Industries, Inc., including their agents and representatives, jointly and severally.
3. The term “Document” shall be construed in the most comprehensive and inclusive sense permitted by the Federal Rules of Civil Procedure and includes, but is not limited to, any

written, typed, printed, recorded (including electronic, magnetic, photographic, graphic and computerized) matter of every type and description, including any and all drafts thereof, however and by whomever prepared, produced, reproduced, disseminated, or made in any form, now or formerly in your actual or constructive possession or control, regardless of the medium on which it is produced, reproduced or stored. Any such document bearing thereon any marks, such as (but not limited to) initials, stamped indicia, comment or notations, of any character and not a part of the original text or photographic reproduction thereof, is to be considered a separate document. "Document" also includes, but is not limited to, electronically stored data or magnetic or optical storage media saved as an "active" file, any electronic file saved as a backup, any "deleted" but recoverable electronic files, and any electronic file fragments (files that have been deleted and partially overwritten with new data).

4. If any requests for documents are deemed to call for the production of privileged or work product materials and such privilege or work product is asserted, identify in writing each document so withheld and provide the following information:

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege, work product or other ground of nondisclosure;
- (c) a brief description of the document including:
 - (1) the date of the document;
 - (2) the number of pages, attachments, and appendices;
 - (3) the names of the author, authors, or preparers and an identification by employment and title of each such person;

(4) the name of each person who was sent, shown, or blind copied or carbon copied on the document, who sent the document, who had access to, or custody of, the document together with an identification of each such person;

(5) the present custodian;

(6) the subject matter of the document, and in case of any document relating to or referring to a meeting or conversation, identification of such meeting or conversation.

5. If the producing party cannot produce any document or a part of a document specified below because such document or part of a document has been lost, destroyed, or transferred to the possession, custody or control of a person who is not subject to the control of the producing party, said party shall furnish a list setting forth for each such document or part of a document the information specified as follows:

(a) The type of document;

(b) Its date;

(c) Its author(s);

(d) Each addressee;

(e) Its present location;

(f) Its present custodian;

(g) The number of pages of the document;

(h) A description of the document or a description of the contents of the documents (subject to appropriate privilege);

(i) The name and address of each person who was provided with a copy of the document; and

(j) The reason the producing party cannot produce the document or part of the document (e.g., because it was lost, destroyed or transferred to the custody or control of another, including the identity and address of this other person).

6. The terms “relating to” and “relate to” shall be construed in their broadest sense and shall mean directly or indirectly describing, setting forth, discussing, mentioning, commenting upon, supporting, contradicting, or referring to the subject or topic in question, either in whole or in part.

7. The singular shall include the plural, and vice versa; the use of the word “any” shall include and encompass the word “all,” and vice versa; the use of the disjunctive shall include the conjunctive, and vice versa.

8. The relevant time period for these requests to produce shall be from January 1, 2002 to the present, unless otherwise stated.

REQUESTS

Please produce:

1. All documents referring to, relating to, or regarding the purchase, or negotiation for the purchase, of the Diamond Single Engine Jet Aircraft (“Aircraft”) by Dr. Horowitz.

2. All documents referring to, relating to, or regarding the decision to increase the list or base price of the Aircraft from \$850,000 to \$1,380,000.

3. All correspondence and other communications between Diamond and Dr. Horowitz, including but not limited to correspondence and communications regarding the Aircraft, the Contract for the purchase of the Aircraft (attached as exhibits A&B to the Complaint) (hereinafter referred to as the “Contract”), the price of the Aircraft, the specifications of the Aircraft, the design of the Aircraft, and/or Dr. Horowitz’s deposit regarding the Aircraft.

4. All internal Diamond correspondence and communications regarding the Aircraft, the Contract, the price of the Aircraft, the changes or modifications to the specifications for the Aircraft that Diamond contends caused the base price to increase, the changes or modifications to the design of the Aircraft that Diamond contends caused the base price to increase, Dr. Horowitch's deposit regarding the Aircraft, any other deposit received for a Diamond Single Engine Jet Aircraft, and any other entity or individual that entered into a contract with Diamond for the purchase of a Diamond Single Engine Jet Aircraft who was informed by Diamond that the price increased from \$850,000 to \$1,380,000.

5. All documents referring to, relating to, or regarding the letter Diamond sent to Dr. Horowitch on August 31, 2006, a copy of which is attached as exhibit C to the Complaint.

6. Copies of all marketing material, promotional material, or informational material regarding the Diamond Single Engine Jet Aircraft that was created or provided to any customers or potential customers at any time from 2003 to the present.

7. All documents provided to prospective buyers of the Diamond Single Engine Jet Aircraft regarding any price changes from the beginning of its offering for sale to date.

8. Documents sufficient to identify each individual or entity that placed a deposit with Diamond for a Diamond Single Engine Jet Aircraft.

9. All documents referring to, relating to, or regarding the negotiation of the Contract.

10. All documents referring to, relating to, or regarding the drafting of the Contract, the form of the Contract, and the enforceability of the Contract.

11. All documents referring to, relating to, or regarding the decision of Diamond to accept Dr. Horowitch's offer to purchase the Aircraft and to accept other similar offers by other purchasers.

12. Any and all documents internal to Diamond or external with third-parties regarding price changes on contracts for the sale of the Diamond Single Engine Jet Aircraft.

13. All documents that you believe are related to or support in any way your defenses asserted in this litigation and/or the claims asserted against you.

14. Any and all documents which support your contention that Plaintiff fails to state a claim upon which relief may be granted.

15. Any and all documents which support your contention that Plaintiff waived and released his claims against Diamond except for return of his deposit.

16. Any and all documents which support your contention that Plaintiff was aware that the design of the Aircraft was not complete and that both the price and specifications of the Aircraft were only "preliminary estimates subject to change."

17. Any and all documents used in responding to the interrogatories served upon you by Plaintiff.

18. The curriculum vitae of any expert witness identified in your interrogatory answers.

19. Any and all reports, drafts or otherwise, prepared by any expert identified in your interrogatory answers.

20. Any and all investigative reports made by any person identified in your interrogatory answers.

21. Any and all documents sufficient to show the changes and/or modifications made

to the specifications and/or design of the Aircraft that Diamond contends caused the base price to increase from \$850,000 to \$1,380,000.

Dated this 2nd day of January, 2007.

Marc P Ossinsky
Marc P. Ossinsky (by JBD)
Ossinsky & Cathcart, P.A.
2699 Lee Road
Suite 101
Winter Park, FL 32789
(407) 865-6281
Fax: (407) 629-4429

William V. Custer
Jennifer B. Dempsey
Powell Goldstein LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309
(404)572-6600
Fax: (404)572-6999

Attorneys for Plaintiff Alan Horowitch

NOTICE TO PRESERVE ELECTRONIC DATA

Plaintiff hereby requests the Defendant affirmatively act to preserve any and all electronic data that may relate to the transaction between the parties at issue, the Claims in the Complaint, the Contract, and the Aircraft.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ALAN HOROWITCH,)
)
 Plaintiff,)
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 vi.)
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 DIAMOND AIRCRAFT)
 INDUSTRIES, INC.,)
)
 Defendant.)
 _____/

CASE NO.: 6:06-CV-1703-Orl-19JGG

CERTIFICATE OF SERVICE

This is to certify that I have this date served opposing counsel with a true and correct copy of the foregoing **PLAINTIFF'S FIRST REQUEST TO PRODUCE TO DEFENDANT, DIAMOND AIRCRAFT INDUSTRIES, INC.** by hand delivery at the following address:

James A. Washburn, Esq.
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

Dated this 2nd day of January, 2007.

Marc P Ossinsky

Marc P. Ossinsky (by JBD)
Ossinsky & Cathcart, P.A.
2699 Lee Road
Suite 101
Winter Park, FL 32789
(407) 865-6281
Fax: (407) 629-4429

Attorneys for Plaintiff Alan Horowitch

DUPLICATE

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CASE NO.: 6:06-CV-1703-Orl-19JGG

**PLAINTIFF'S FIRST SET OF INTERROGATORIES TO
DEFENDANT, DIAMOND AIRCRAFT INDUSTRIES, INC.**

The Plaintiff hereby propounds the following Interrogatories to Diamond Aircraft Industries, Inc. ("Diamond"), in accordance with Rule 33 of the Rules of Civil Procedure. Please take notice that you are required to answer each of the following Interrogatories under oath and serve your answers on the Plaintiff within thirty (30) days after the date of service hereof. The answers must include all information concerning the matters inquired about available to you, your attorney, or any other agents for you or your attorney.

DEFINITIONS

- A. The terms Plaintiff or Dr. Horowitch mean Plaintiff Alan Horowitch.
- B. The terms Defendant or Diamond mean Defendant Diamond Aircraft Industries, Inc., including their agents and representatives, jointly and severally.
- C. The term "Document" shall be construed in the most comprehensive and inclusive sense permitted by the Federal Rules of Civil Procedure and includes, but is not limited to, any written, typed, printed, recorded (including electronic, magnetic, photographic, graphic and

computerized) matter of every type and description, including any and all drafts thereof, however and by whomever prepared, produced, reproduced, disseminated, or made in any form, now or formerly in your actual or constructive possession or control, regardless of the medium on which it is produced, reproduced or stored. Any such document bearing thereon any marks, such as (but not limited to) initials, stamped indicia, comment or notations, of any character and not a part of the original text or photographic reproduction thereof, is to be considered a separate document. "Document" also includes, but is not limited to, electronically stored data or magnetic or optical storage media saved as an "active" file, any electronic file saved as a backup, any "deleted" but recoverable electronic files, and any electronic file fragments (files that have been deleted and partially overwritten with new data).

D. Identify a person means to state his or her full name, address, and telephone number; his or her occupation; the name, address and telephone number of his or her employer, if known; and any family, social, recreational, professional, or employment relationship to Defendant.

E. Identify a business entity means to give that entity's full name; the principal address of the business; its telephone numbers; the type of entity (corporation, partnership, and so on); its place of incorporation (where applicable); and the names, addresses, and titles of its principal executive officers.

F. Identify a document (including a statement) means to describe briefly the form of the document; describe generally the subject of its contents; state the date and place of preparation or mailing; and identify the person or firm who prepared the document, the person or firm who received it, and the person or firm who has possession or control of the original of the document.

FIRST SET OF INTERROGATORIES TO DEFENDANT, DIAMOND AIRCRAFT

1. Please identify all Diamond employees, agents, or representatives who participated in the purchase of a Diamond Single Engine Jet Aircraft ("Aircraft") by Dr. Horowitch, the negotiation and execution of the contract between Dr. Horowitch and Diamond regarding the purchase of the Aircraft (attached as exhibits A&B to the Complaint) (hereinafter referred to as the "Contract"), the determination of the price of the Aircraft, and communications with Dr. Horowitch regarding an Aircraft and/or the price of an Aircraft, and describe the nature of each individual's participation in these events.

2. Please identify each individual who participated in the drafting of the form contract that was utilized by Dr. Horowitch and Diamond to memorialize their agreement regarding the purchase of the Aircraft and describe the nature of each individuals participation in the drafting of that form contract.

3. Please identify the individuals who participated in the decision to accept Dr. Horowitch's offer to purchase the Aircraft and describe the nature of each individual's participation in this decision.

4. Please describe all conversations or communications between Diamond employees, agents or representatives on the one hand, and Dr. Horowitch on the other hand, regarding the Aircraft, including but not limited to:
 - a) The negotiation with Dr. Horowitch regarding the Aircraft or the Contract.
 - b) The price for the Aircraft which was the subject of the Contract,
 - c) Dr. Horowitch's deposit for the Aircraft, and
 - d) The dispute that is the subject of this Litigation.

5. Please describe all of Diamond's internal conversations or communications regarding:
- a) The negotiation with Dr. Horowitch regarding the Aircraft or the Contract,
 - b) The price for the Aircraft which was the subject of the Contract,
 - c) Dr. Horowitch's deposit for the Aircraft,
 - d) The dispute that is the subject of this Litigation, and
 - e) Any other individual or entity who placed a deposit with Diamond for a Single Engine Jet Aircraft who was later informed the base price for the Aircraft would be in excess of \$850,000.

6. Please described the location of all records, electronic or otherwise, regarding the proposed transaction described in the Complaint in this action which began with Dr. Horowitch, on or about March of 2002 to the present day.

7. Please identify any and all individuals or entities who provided Diamond with deposit(s) for a Diamond Single Engine Jet Aircraft(s) and who were later informed that the base price of the Aircraft would be in excess of \$850,000.

8. Please describe with specificity the changes to the design and specifications of the Aircraft that you contend occurred after the execution of the Contract as referred to in Paragraph 2 of Diamond's Affirmative Defenses.

9. Please specify with particularity all bases for Defendant's contention that it has the right to change the price of the Aircraft.

10. Please Identify all persons involved in the decision to ask Dr. Horowitch, or any other individual or entity, to pay a base price after for a Single Engine Jet in excess of \$850,000.00.

11. **Please specify the facts that support Diamond's assertion in its Affirmative Defenses that "Plaintiff's Complaint fails to state a claim upon which relief may be granted."**

12. **Please specify the facts that support Diamond's assertion in its Affirmative Defenses that "Plaintiff has waived and released his claim against Diamond Aircraft, except for return of his deposit in the amount of \$20,000.00."**

13. Please specify the facts that support Diamond's assertion in its Affirmative Defenses that "Plaintiff was fully aware that the design of the aircraft that is the subject of the contract was not completed and that both the price and the specifications of the aircraft were only preliminary estimates and subject to change."

14. Please describe with specificity the names and addresses of any expert who has advised you or with whom you have consulted regarding the claims in your complaint, and set forth with specificity the opinions of those experts, and the basis for each such opinion.

Marc P Ossinsky

Marc P. Ossinsky
Ossinsky & Cathcart, P.A.
2699 Lee Road, Suite 101
Winter Park, FL 32789
(407) 865-6281
Fax: (407) 629-4429

(by JBD)

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Jennifer B. Dempsey
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James A. Washburn
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

Dated this 2nd day of January, 2007.

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Attorneys for Plaintiff Alan Horowitch