

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF LOUISIANA

3  
 4 IN RE: OIL SPILL BY THE OIL RIG \* Docket 10-MD-2179  
 DEEPWATER HORIZON IN THE \*  
 5 GULF OF MEXICO ON APRIL 20, 2010 \* Section J  
 \*

6 Applies to: \* New Orleans, Louisiana  
 \*

7 Docket 10-CV-02771, \* February 26, 2013  
 IN RE: THE COMPLAINT AND \*  
 8 PETITION OF TRITON ASSET \*  
 LEASING GmbH, et al \*  
 9 \*

10 Docket 10-CV-4536, \*  
 UNITED STATES OF AMERICA v. \*  
 11 BP EXPLORATION & PRODUCTION, \*  
 INC., et al \*  
 \*

12 \* \* \* \* \*

13  
 14 DAY 2, AFTERNOON SESSION  
 TRANSCRIPT OF NONJURY TRIAL  
 15 BEFORE THE HONORABLE CARL J. BARBIER  
 UNITED STATES DISTRICT JUDGE  
 16

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01:52 1 AFTERNOON SESSION

01:52 2 (February 26, 2013)

02:03 3 THE COURT: Everyone be seated.

02:03 4 All right, Mr. Brock.

02:03 5 MR. BROCK: Thank you, Your Honor.

02:03 6 ROBERT BEA,

02:04 7 having been duly sworn, testified as follows:

02:04 8 CROSS-EXAMINATION

02:04 9 BY MR. BROCK:

02:04 10 Q. Dr. Bea, are you ready to proceed?

02:04 11 A. Yes.

02:04 12 Q. Okay. Thank you.

02:04 13 I want to come back to a topic that you mentioned  
02:04 14 this morning, which is the "every dollar counts" topic. So  
02:04 15 that's what I'm moving to now. Okay?

02:04 16 A. Thank you. Yes.

02:04 17 Q. I want to go back to the performance assessment of John  
02:04 18 Guide that you mentioned this morning.

02:05 19 MR. BROCK: If we could pull up 7099.

02:05 20 BY MR. BROCK:

02:05 21 Q. This morning you quoted from this document a sentence that  
02:05 22 says: "Culture in place for every dollar matters." Do you  
02:05 23 remember that?

02:05 24 A. Yes.

02:05 25 Q. You were not shown the language from this document that



## ROBERT BEA - CROSS

02:05 1 says, "Rentals have been reduced by 40,000 a month," were you?

02:05 2 A. No.

02:05 3 Q. That is one of the things that the BP folks were being  
02:05 4 encouraged to do, which was not have equipment sitting around  
02:05 5 that they weren't using, right?

02:05 6 A. Correct.

02:05 7 Q. Because the equipment is expensive, and if you coordinate  
02:05 8 things and manage when things go to the rig and when they  
02:05 9 leave, you can save a substantial amount of money by doing  
02:05 10 that?

02:05 11 A. That's true.

02:05 12 Q. There's nothing wrong with conveying to your employees  
02:06 13 about costs, "Treat the money like it's your own, spend it  
02:06 14 wisely." That's a good message to send, isn't it?

02:06 15 A. Yes, sir.

02:06 16 **THE COURT:** Mr. Bea, pull that microphone a little  
02:06 17 bit closer to you. Thank you.

02:06 18 **BY MR. BROCK:**

02:06 19 Q. Then another point that you did not make this morning when  
02:06 20 you were shown this document is John Guide's January to  
02:06 21 December 2009 performance evaluation where we see on the first  
02:06 22 page, the very first thing that's mentioned in the key  
02:06 23 performance indicators is safety. Do you see that?

02:06 24 A. Yes, sir.

02:06 25 Q. If you come down --

## ROBERT BEA - CROSS

02:06 1 MR. BROCK: Donny, can you go into the document,  
02:06 2 please, and go down. In that same box it's the last paragraph,  
02:06 3 that says: "Safety improved dramatically." It's right there.

02:07 4 BY MR. BROCK:

02:07 5 Q. It says: "Safety improved dramatically as the year  
02:07 6 progressed. No DAFWCs." Can you help us with that?

02:07 7 A. Personal injuries.

02:07 8 Q. HiPos is the second one, correct.

02:07 9 A. High potentials.

02:07 10 Q. Yes. High potential events? Is that what that addresses?

02:07 11 A. Correct.

02:07 12 Q. And HiPos takes into account process safety, doesn't it?

02:07 13 A. It can.

02:07 14 Q. Yes?

02:07 15 A. Or it can exclude it.

02:07 16 Q. So in John Guide's annual individual assessment for the  
02:07 17 last year before this event occurred, the first thing in his  
02:07 18 review is safety; and we also see safety improved dramatically  
02:07 19 as the year progressed, and it mentions HiPos, which is a  
02:08 20 process safety issue?

02:08 21 A. Correct.

02:08 22 Q. Now, you were also shown Exhibit 866, which is a key  
02:08 23 strategies document. It's the Gulf of Mexico SPU.

02:08 24 And they pulled out for you a statement there about  
02:08 25 15 or 20 points down where it says: "Foster an every dollar

## ROBERT BEA - CROSS

02:08 1 counts culture." Do you remember that?

02:08 2 A. Yes, sir.

02:08 3 Q. Put it on the screen on there in big letters, "Foster  
02:08 4 every dollar counts," remember?

02:08 5 A. Yes.

02:08 6 Q. You were not shown at that time, though, the first bullet  
02:08 7 point: "Safe, reliable, and efficient operations." Do you see  
02:08 8 that?

02:08 9 A. Yes.

02:08 10 Q. One of the really important points there is the second  
02:08 11 one, which says: "Embrace OMS and continuous improvement as  
02:09 12 key enablers to the business."

02:09 13 A. Yes.

02:09 14 Q. Those kinds of key strategies are what you want to see in  
02:09 15 a company that's safety-minded.

02:09 16 A. Yes.

02:09 17 Q. So we have to keep in mind that when we look at documents  
02:09 18 like a performance evaluation or a Gulf of Mexico SPU key  
02:09 19 strategies, we have to look at the whole document. You have to  
02:09 20 put everything in context, don't you?

02:09 21 A. Correct.

02:09 22 Q. Next question, and just a slightly different topic, so I  
02:09 23 will introduce that so I'm not sneaking up on you. You  
02:09 24 mentioned this morning or responded to some questions about  
02:09 25 some tables that I have produced in the case, and counsel asked

## ROBERT BEA - CROSS

02:10 1 you some questions about those. Do you remember that?

02:10 2 A. Yes, sir.

02:10 3 Q. I want to just follow up on that for just a second with a  
02:10 4 few questions.

02:10 5 First, you have not analyzed the number of fires or  
02:10 6 explosions experienced by any of the major oil companies over  
02:10 7 the past 10 years, have you?

02:10 8 A. Please repeat that question.

02:10 9 Q. Yes. Have you analyzed the number of fires or explosions  
02:10 10 experienced by any of the major oil companies over the past  
02:10 11 10 years?

02:10 12 A. No.

02:10 13 Q. Have you analyzed the number of oil leaks experienced by  
02:10 14 any of the major oil companies in any of the past 5 to  
02:10 15 10 years?

02:10 16 A. No.

02:10 17 Q. The total of volume of oil leaks?

02:10 18 A. No.

02:10 19 Q. Have you analyzed the safety record of the operations --  
02:10 20 have you analyzed the safety record of any of the operators in  
02:11 21 the Gulf of Mexico over the past five years?

02:11 22 A. Yes.

02:11 23 Q. The work that you would have done there is that you did a  
02:11 24 review of the U.S. Mineral Management Service website?

02:11 25 A. That's correct. In addition, information available

## ROBERT BEA - CROSS

02:11 1 through the International Association of Drilling Contractors.

02:11 2 Q. Have you done any sort of analysis or comparison of the  
02:11 3 performance of different operators in the Gulf of Mexico based  
02:11 4 on the MMS data?

02:11 5 A. Yes.

02:11 6 Q. Let me direct your attention to your deposition, and let's  
02:11 7 see if I can refresh your recollection. Page 143, line 15. Do  
02:12 8 you see the question that's asked of you?

02:12 9 "QUESTION: Have you done any sort of analysis or  
02:12 10 comparison of the performance of the different operators  
02:12 11 in the Gulf of Mexico based on the MMS data?"

02:12 12 What was your answer?

02:12 13 A. "No."

02:12 14 Q. Now I'm going to switch to a different topic, moving to  
02:12 15 some safety focus communications from the Macondo team.

02:12 16 One of the things that -- well, let me go to a  
02:12 17 document.

02:12 18 MR. BROCK: TREN-05969, please. Yes.

02:12 19 BY MR. BROCK:

02:12 20 Q. This is a note, March 7, 2010, from Brett Cocalles to David  
02:12 21 Sims and Mark Hafle. Do you see that?

02:13 22 A. Yes, sir.

02:13 23 Q. Do you understand that Cocalles, Sims, and Hafle are  
02:13 24 onshore representatives of BP who participate in the drilling  
02:13 25 and completions work?

## ROBERT BEA - CROSS

02:13 1 A. Yes, sir.

02:13 2 Q. He says here: "David, I talked with the guys briefly on  
02:13 3 the sat phone, as they are having problems with the coms line."

02:13 4 Then they go down a bit and they say: "If anything  
02:13 5 looks strange on the FC or the PWD tools, they will shut in and  
02:13 6 bring up the lines. Sounds like they are aware and have just  
02:13 7 discussed the concerns we have. I have no worries at the  
02:13 8 time."

02:13 9 Do you see that?

02:13 10 A. Yes, sir.

02:13 11 Q. Now, if we go to the earlier e-mail, which is Treatment  
02:13 12 2.1, do you see that Hafle is conveying to Cocalis and Sims  
02:13 13 about using caution below 11,638 feet?

02:14 14 A. Yes.

02:14 15 Q. Several times there he says: "Use caution, use caution.  
02:14 16 Be prepared for gas levels, high gas levels, as experienced  
02:14 17 previously while cleaning out the rathole."

02:14 18 Do you see that?

02:14 19 A. Yes, sir.

02:14 20 Q. You agree that an indication of a high-reliability  
02:14 21 organization is being concerned with failure rather than  
02:14 22 success?

02:14 23 A. Yes.

02:14 24 Q. Do you agree that this note here reflects Mark Hafle's  
02:14 25 expression to other members of the team, let's be careful and

## ROBERT BEA - CROSS

02:14 1 cautious about potential failures?

02:14 2 A. For this particular case -- instance, yes.

02:14 3 Q. Thank you.

02:14 4 If we look at Exhibit 5969.1.2, from -- this is  
02:15 5 treatment -- there we go.

02:15 6 Again, this is Sims saying: "Either way, I think we  
02:15 7 should be careful about the gas. Take it through the choke at  
02:15 8 reduced rate."

02:15 9 Do you see that?

02:15 10 A. Yes, sir.

02:15 11 Q. Again, the kind of communication that high-reliability  
02:15 12 organizations will make?

02:15 13 A. That's one type, yes.

02:15 14 Q. You would agree that this type of e-mail evidences David  
02:15 15 Sims' safety-mindedness in this instance?

02:15 16 A. Yes.

02:15 17 Q. Now, if we turn to TREN-48154, this is a March 26 e-mail  
02:16 18 from Dave Rainey to Sims, Guide, Hafle, and others. Do you  
02:16 19 have that?

02:16 20 A. I think it's from Brent Cocalles.

02:16 21 Q. I apologize for that. I'm going to show you a different  
02:16 22 note. So if we could look at 1.1, from Cocalles to LeBleu and  
02:16 23 others, is the one I want to focus on. I apologize for that.

02:16 24 A. Correct.

02:16 25 Q. Now, we know that on March 8 there was a kick on the

## ROBERT BEA - CROSS

02:16 1 Macondo well, correct?

02:16 2 A. Yes, a very serious one.

02:17 3 Q. You have testified about your view about the well being  
02:17 4 behind schedule. We've heard about that this morning. I want  
02:17 5 to focus now on this note that's contained in our  
02:17 6 Treatment 5721.1.

02:17 7 Now, this is March 26. Do you see that?

02:17 8 A. Yes, sir.

02:17 9 Q. This is after the March 8 kick, obviously, just by date.  
02:17 10 Let's just look at this for a second.

02:17 11 "Some of you will know that we have a standing agenda  
02:18 12 item on the Gulf of Mexico leadership team staff meeting  
02:18 13 recognitions. I wanted to let you know that Pinky, Iain, and  
02:18 14 Jay recognized you all by name during Monday's staff meeting  
02:18 15 for your recent efforts on the Macondo exploration well. I  
02:18 16 know this well has demanded more than its fair share of your  
02:18 17 time and attention and wanted you to know that it has not gone  
02:18 18 unnoticed or unrecognized. Thank you for your commitment to  
02:18 19 remaining by far the highest performance exploration wells team  
02:18 20 in the Gulf of Mexico."

02:18 21 Did I read that right?

02:18 22 A. Yes, sir.

02:18 23 Q. This is Rainey communicating to Sims, Guide, Hafle, Morel,  
02:18 24 Cocalles, the Sepulvados, Vidrine, Earl Lee, Bobby Bodek, and  
02:18 25 others, correct?



## ROBERT BEA - CROSS

02:18 1 A. Yes.

02:18 2 Q. Important members of the wells team, right?

02:18 3 A. Yes.

02:18 4 Q. And on March 26, Rainey is not communicating to the team,  
02:19 5 "Hurry up, we are behind schedule," is he?

02:19 6 A. Not directly.

02:19 7 Q. He doesn't say, "Every dollar counts," does he?

02:19 8 A. Not directly.

02:19 9 Q. He sends a positive message here about the work that the  
02:19 10 men did on the March 8 kick?

02:19 11 A. Well, I can't make the connection with the March 8 kick.  
02:19 12 But he does refer to the highest performing exploration wells  
02:19 13 team, and *high performance* can mean making hole.

02:19 14 Q. He also says that certain individuals had been recognized  
02:19 15 for their work in dealing with the March 8 kick?

02:20 16 A. Yes.

02:20 17 Q. You are aware that BP is willing to abandon a well if it's  
02:20 18 experiencing high losses, correct?

02:20 19 A. Please repeat your question.

02:20 20 Q. Right. You remember in your deposition we asked you about  
02:20 21 the Juneau well, which was abandoned after drilling to  
02:20 22 26,500 feet?

02:20 23 A. Yes, sir.

02:20 24 Q. I apologize for not changing the topic for you. We are  
02:20 25 going to, just briefly, this topic.

## ROBERT BEA - CROSS

02:20 1 In a high reliability organization, a company that is  
02:20 2 willing to stop drilling when they think it's too dangerous  
02:20 3 rather than to keep going ahead to try to find oil deeper down,  
02:20 4 that's a safety-minded company?

02:20 5 A. Yes.

02:20 6 Q. New topic, Houma week. I'll show you a document.

02:21 7 MR. BROCK: Pull up 47414, please.

02:21 8 BY MR. BROCK:

02:21 9 Q. Do you see this is a March 28, 2010 e-mail from Joe  
02:21 10 Neumeyer re the Houma leadership week, sending the week agenda?  
02:21 11 Do you have that there?

02:21 12 A. Yes, sir.

02:21 13 Q. Am I ringing any bells yet?

02:21 14 A. Not loudly.

02:21 15 Q. We'll keep going.

02:21 16 You're aware that BP -- or do you recall that BP held  
02:21 17 and sponsored a three-day retreat that included sessions on  
02:21 18 safety, where they brought in rig contractors?

02:21 19 A. Yes.

02:21 20 Q. If we look at 47414.2.1, do you see that this is a note  
02:22 21 from John Guide, the wells team leader, to Andrew Frazelle,  
02:22 22 Sanders, Paul Johnson, Daun Winslow, and others? Do you see  
02:22 23 that?

02:22 24 A. Yes, sir.

02:22 25 Q. Do you recognize those names -- some of those names as

## ROBERT BEA - CROSS

02:22 1 folks that are associated with Transocean leadership?

02:22 2 A. Yes, sir.

02:22 3 Q. He says: "All, attached is the agenda for the HSSE  
02:22 4 performance meeting this coming Wednesday during Houma week."

02:22 5 Do you see that?

02:22 6 A. Yes, sir.

02:22 7 Q. This is March 28, 2010, right?

02:22 8 A. Yes.

02:22 9 Q. Then if we go to our next Treatment 1.2, this is deepwater  
02:22 10 wells leadership Houma leadership engagement. Do you see that?

02:23 11 A. Yes, sir.

02:23 12 Q. Then it has on there "town leaders," and you can see that  
02:23 13 BP folks are attending. And then it has below that "offshore  
02:23 14 leaders" with -- including BP well-site leaders and  
02:23 15 Transocean's OIM, senior toolpusher, toolpusher, maintenance  
02:23 16 folks, the deck foreman, the driller, and then similar titles  
02:23 17 from folks with Pride. Do you see that?

02:23 18 A. Yes, sir.

02:23 19 Q. Then if we go to 8093.1.1, we see the objectives of the  
02:23 20 meeting and it refers to having a deep engagement with rig  
02:23 21 leadership, listen to rig leadership. Do you see that?

02:23 22 A. Yes.

02:23 23 Q. This is BP sponsoring the Transocean folks coming in and  
02:23 24 having an interaction over a period of days about enhancing  
02:24 25 safety performance?

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02:24 1 A. Personal safety performance.

02:24 2 Q. Well, what the question says is: "Will it make a  
02:24 3 difference in safety performance?"

02:24 4 That's the question, correct?

02:24 5 A. Correct.

02:24 6 Q. Now, go to 2.1, which is the agenda. You have talked  
02:24 7 about the Challenger incident today, correct?

02:24 8 A. I referred to Challenger. I discussed Columbia, the echo  
02:24 9 of Challenger.

02:24 10 Q. My question was simply: You have talked about it today,  
02:24 11 correct?

02:24 12 A. I mentioned it, yes.

02:24 13 Q. The Challenger issue was obviously something you have  
02:24 14 described as a process safety issue, correct?

02:24 15 A. Yes, and NASA as well.

02:25 16 Q. So it's clear, is it not, that the Houma week clearly  
02:25 17 included process safety in terms of the agenda that they were  
02:25 18 looking at?

02:25 19 A. Well, in terms of video shown; but in terms of the agenda,  
02:25 20 the focus was HSSE personal safety.

02:25 21 Q. And the Challenger incident that's being referred to here  
02:25 22 was a process safety incident, wasn't it?

02:25 23 A. That's correct.

02:25 24 Q. New issue, calling total depth at Macondo.

02:25 25 You're aware that the BP and Transocean team did not

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02:26 1 reach the original planned depth at Macondo, correct?

02:26 2 A. That's correct.

02:26 3 Q. They stopped some 1500 feet short of that?

02:26 4 A. That's correct.

02:26 5 Q. BP's decision to call total depth early is another example  
02:26 6 of safety-mindedness on the part of BP?

02:26 7 A. Please repeat that question.

02:26 8 Q. So this notion that BP was willing to stop when it thought  
02:26 9 its risk level had gotten too high, rather than push ahead and  
02:26 10 try to find more oil that might be down there, exhibits  
02:26 11 safety-mindedness on the part of BP, correct?

02:26 12 A. That's not correct.

02:26 13 Q. Let's look at your testimony at page 250, lines 17 to 24.  
02:26 14 Page 250. Were you asked in your deposition:

02:27 15 "QUESTION: And so, again, this notion that BP was  
02:27 16 willing to stop when it thought its risk level had gotten  
02:27 17 too high, rather than push ahead and try to find more oil  
02:27 18 that might be down there, exhibits some safety-mindedness  
02:27 19 on the part of BP, correct?"

02:27 20 A. Correct.

02:27 21 Q. Was your answer "Correct"?

02:27 22 A. Yes.

02:27 23 Q. Thank you. Now, I want to talk to you for a minute about  
02:27 24 conducting safety drills on the rig.

02:27 25 MR. BROCK: If we could go to 571 and maybe -- if we

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02:27 1 have a title page on that one, if we can pull that out, please.

02:28 2 **BY MR. BROCK:**

02:28 3 **Q.** You're aware that safety drills were conducted daily on  
02:28 4 the *Deepwater Horizon* rig, correct?

02:28 5 **A.** I was not or don't recall the daily part, but they were  
02:28 6 performed frequently.

02:28 7 **Q.** If we go down to our Treatment 571.13.1, do you see here  
02:28 8 that on April -- this is -- the date of this is April 18.

02:28 9 There is a discussion of the roles and responsibilities of the  
02:28 10 crew. Do you see that?

02:28 11 **A.** Yes, sir.

02:28 12 **Q.** It says down below: "Wells have been lost."

02:28 13 Do you see that?

02:28 14 **A.** Yes, sir.

02:28 15 **Q.** Then it gives some circumstances under which that can  
02:29 16 occur?

02:29 17 **A.** Yes.

02:29 18 **Q.** In this particular case you have the crew, including with  
02:29 19 the well site leader, discussing the risks associated with  
02:29 20 upcoming operations?

02:29 21 **A.** Yes.

02:29 22 **Q.** And that is a form of risk assessment?

02:29 23 **A.** Yes.

02:29 24 **Q.** I want to turn your attention now to some language from  
02:29 25 your report --

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02:29 1 MR. BROCK: You can pull that down.

02:29 2 BY MR. BROCK:

02:29 3 Q. -- some language from your report.

02:29 4 One of the things that you refer to in your report is  
02:29 5 some interaction between David Sims and John Guide. Do you  
02:29 6 remember that?

02:29 7 A. Yes, sir.

02:29 8 Q. You refer to Sims thinking that Guide was mad at him and  
02:29 9 Guide thought Sims was going to fire him and that Sims makes  
02:30 10 the comment to Guide, "We can't fight over every decision."  
02:30 11 You quote, "I'll turn the well over to you and you will be able  
02:30 12 to do whatever you want."

02:30 13 Do you remember that?

02:30 14 A. Yes, fight.

02:30 15 Q. In your report you pull out a couple of statements. I  
02:30 16 want to ask you about some other things that would constitute  
02:30 17 the rest of the story. Okay?

02:30 18 At TREX-1148.1.2, John Guide writes to Sims, after  
02:30 19 they have had some spirited e-mails in the morning, and says:  
02:30 20 "Got it. I'll visit with John regardless, as I do on a regular  
02:30 21 basis. Have a nice peaceful time off. I give you my word I  
02:31 22 will consult the team and make well-thought-out decisions.  
02:31 23 Will you be my Valentine?"

02:31 24 You got that?

02:31 25 A. Yes.

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02:31 1 Q. Then David Sims writes back later and says: "Forever  
02:31 2 yours." Right?

02:31 3 A. Yes.

02:31 4 Q. This is the rest of the e-mail chain concerning the  
02:31 5 information that you put in your report?

02:31 6 A. Correct.

02:31 7 Q. Basically what this shows is that they had had a heated  
02:31 8 exchange and they made up?

02:31 9 A. I can't tell.

02:31 10 Q. Let's look at your testimony at page 236, line 13.

02:32 11 "QUESTION: So it looks like basically had their  
02:32 12 heated exchange and made up, right?"

02:32 13 And was your answer to that "Yes"?

02:32 14 A. Yes.

02:32 15 Q. Then do you recall that David Sims went on vacation at  
02:32 16 that time, that's what he is referring to -- that is, John  
02:32 17 is -- when he says: "Have a peaceful time off. I give you my  
02:32 18 word I will consult with the team and make well-thought-out  
02:32 19 decisions"?

02:32 20 A. Yes.

02:32 21 Q. Then David Sims comes back on March 20 or thereabouts and  
02:32 22 he has a communication with Guide at that point about what  
02:32 23 Guide had been doing while Sims was on vacation. Do you  
02:32 24 remember that?

02:32 25 A. Vaguely.



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02:32 1 Q. TREX-05973.1.1, he says -- David does to John: "Thanks,  
02:33 2 John. Vacation was great. You did a great job getting  
02:33 3 redrilled. I think everything is going well with the DQ  
02:33 4 qualification. *West Sirius* may be out. Haven't farmed out."

02:33 5 Here, Sims is complimenting Guide on the excellent  
02:33 6 work getting out of the kick situation, correct?

02:33 7 A. Correct.

02:33 8 Q. And that kind of communication -- that is, complimenting  
02:33 9 employees when they do well on what is essentially a  
02:33 10 safety-related task, that is, dealing with the kick -- is a  
02:33 11 good thing?

02:33 12 A. Yes.

02:33 13 Q. That's the kind of reinforcement that you look for in  
02:33 14 safety-reliable organizations?

02:33 15 A. Yes.

02:33 16 Q. Then if we look at TREX-5974.1.1, we see Sims writing to  
02:34 17 Guide on March 22 and he says: "Any thoughts on these  
02:34 18 questions? I have to answer these for next week's meeting."

02:34 19 So he is now seeking out Guide's assistance in  
02:34 20 answering questions?

02:34 21 A. Yes.

02:34 22 Q. Again, in terms of the relationship of these two men, the  
02:34 23 process that's being reflected is Sims, who is now John Guide's  
02:34 24 boss, is collaboratively reaching out to John and saying, "I  
02:34 25 want your thoughts, too, on these questions that I need to

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02:34 1 answer"?

02:34 2 A. That's what's represented here.

02:34 3 Q. Thank you. And that kind of dialogue reflects a healthy  
02:35 4 communication environment?

02:35 5 A. Correct. Although, I would comment that these kinds of  
02:35 6 things are better conducted in the process safety framework  
02:35 7 person to person. We have learned e-mail is no way to  
02:35 8 communicate.

02:35 9 Q. So what we see here is a good, positive communication  
02:35 10 about what Sims saw -- or about Sims asking for John Guide's  
02:35 11 input, correct?

02:35 12 A. Yes.

02:35 13 Q. I think you probably know this. I'll just ask you if you  
02:35 14 do. These guys that work together, they talk all the time,  
02:35 15 don't they?

02:35 16 A. I hope.

02:35 17 Q. Yeah, they do.

02:36 18 Now, let's go to 5946.78.1. Here, you say that --  
02:36 19 this is from your report, sir: "Guide and his boss, Sims, were  
02:36 20 not effectively communicating. Guide told Sims he didn't know  
02:36 21 what his responsibilities or the level of authority," and then  
02:36 22 you refer to this language that we heard about yesterday,  
02:36 23 "paranoia and chaos."

02:36 24 Do you see that?

02:36 25 A. Yes.

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02:36 1 Q. Then you say: "The wells team leader felt his team was  
02:36 2 flying by the seat of his pants and he foretold that the  
02:36 3 Macondo operation was not going to succeed if they continued in  
02:36 4 this manner."

02:36 5 Do you see that?

02:36 6 A. Yes, sir.

02:36 7 Q. Then you say: "But Sims did not take Guide seriously and  
02:36 8 brushed off his remarks before leaving for his vacation."

02:36 9 Do you see that?

02:36 10 A. Yes.

02:36 11 Q. But that's not accurate, is it?

02:37 12 A. Well, that's my impression from the documentation.

02:37 13 Q. Sims went on vacation in March, didn't he?

02:37 14 A. Yes.

02:37 15 Q. So Sims didn't run off on vacation after having this  
02:37 16 communication with Guide, did he?

02:37 17 A. I'm confused. I'm sorry.

02:37 18 Q. This note here is a quote from April 17, 2010, right?

02:37 19 A. Correct.

02:37 20 Q. You know that David Sims was on the *Deepwater Horizon* on  
02:37 21 the day of the event?

02:37 22 A. Correct.

02:37 23 Q. You know that he took a vacation back in March?

02:37 24 A. Yes.

02:37 25 Q. We looked at that a few minutes ago. He said, "Have a

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02:37 1 good vacation"?

02:37 2 A. Yes.

02:37 3 Q. Can you tell me what your basis was for saying this: "But  
02:37 4 Sims did not take Guide seriously and brushed off his remarks  
02:37 5 before leaving for vacation"?

02:37 6 A. Referring to the seriousness of the loss of well control  
02:38 7 and its implications for the risk of the system.

02:38 8 Q. Sir, I'm focusing on your statement that Sims did not take  
02:38 9 Guide seriously, brushed off his remarks, and then went on  
02:38 10 vacation, referring to this April communication. That's not  
02:38 11 true, is it?

02:38 12 A. I'm confused and don't know. So restructure, with your  
02:38 13 permission, the sequence.

02:38 14 Q. We should strike this sentence, shouldn't we, that Sims  
02:38 15 did not take Guide seriously, brushed off his remarks, and left  
02:38 16 on vacation? You can't support that, can you?

02:38 17 A. I wouldn't agree to that until I have reconstructed  
02:39 18 mentally the sequencing.

02:39 19 Q. All right. Let's look at TREX-03695.

02:39 20 MR. BROCK: That's okay. I don't need that one.  
02:39 21 01694, please.

02:39 22 BY MR. BROCK:

02:39 23 Q. Now, you remember that John Guide had asked David Sims,  
02:39 24 "What is my authority?" You remember that was in the e-mail?

02:39 25 A. Yes, sir.

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02:39 1 Q. There was an issue about the fact that there had been a  
02:39 2 reorganization within the group and John Guide is now reporting  
02:40 3 to David Sims?

02:40 4 A. Correct.

02:40 5 Q. Where they had been equals before?

02:40 6 A. Yes.

02:40 7 Q. Or on the same level?

02:40 8 And Sims actually doesn't go off on vacation or brush  
02:40 9 off the issue. Actually what he says is the bottom e-mail: "I  
02:40 10 don't think anything has changed with respect to engineering  
02:40 11 and operations. Mark and Brian . . ."

02:40 12 Let me get you to -- that's okay.

02:40 13 "Mark and Brian write the program based on" -- here  
02:40 14 we go. I want to make clear that we are looking at the note  
02:40 15 from Sims to Guide. Thank you. I didn't want you to be  
02:40 16 confused. I apologize.

02:40 17 A. Thank you.

02:40 18 Q. He says, in response to the issue on the inquiry about  
02:40 19 authority: "I don't think anything has changed with respect to  
02:40 20 engineering and operations. Mark and Brian write the program  
02:41 21 based on discussion/direction from you and our best engineering  
02:41 22 practicing. If we had more time to plan this casing job, I  
02:41 23 think we would have all worked it out before it got to the rig.  
02:41 24 If you don't agree with something engineering related, you and  
02:41 25 Greg can't come to an agreement, John or me gets involved. If

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02:41 1 it's purely operational, it's your call."

02:41 2 Do you see that?

02:41 3 A. Yes.

02:41 4 Q. Then let's look at the next e-mail from John Guide back to  
02:41 5 Sims at the top: "I totally concur. I told them we will work  
02:41 6 through it together. I want to do better."

02:41 7 A. Yes.

02:41 8 Q. So Sims didn't blow him off. He basically sent him a note  
02:41 9 clarifying what his authority was and Guide agreed, correct?

02:41 10 A. I'm not sure I can agree to the authority, but they  
02:41 11 reached agreement.

02:42 12 Q. Have you looked at John Guide's deposition to see that, as  
02:42 13 a result of these interactions, that he felt he understood his  
02:42 14 authority?

02:42 15 A. Yes.

02:42 16 Q. Thank you.

02:42 17 Now you agree, do you not, sir, that the -- new topic  
02:42 18 now. We are going to a new topic.

02:42 19 You agree that the causes of the Macondo well blowout  
02:42 20 can be traced to a series of identifiable mistakes by BP and  
02:42 21 Transocean?

02:42 22 A. And others.

02:42 23 Q. And you agree that Transocean's conduct caused or  
02:42 24 contributed to the *Deepwater Horizon* incident?

02:42 25 A. Repeat.

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02:42 1 Q. Yes. You agree that Transocean's conduct caused or  
02:43 2 contributed to the *Deepwater Horizon* incident?

02:43 3 A. Contributed to?

02:43 4 Q. I just apologize. I didn't hear the second thing you  
02:43 5 said.

02:43 6 A. Contributed to?

02:43 7 Q. Contributed to the *Deepwater Horizon* accident?

02:43 8 A. Yes, sir. Thank you.

02:43 9 Q. TO, Transocean, did some things that were wrong which led  
02:43 10 to the blowout?

02:43 11 A. Correct.

02:43 12 Q. Now, I want to focus you, please, sir, on  
02:43 13 Exhibit 5946.86.1.

02:43 14 **MR. BROCK:** If we could highlight -- I'm not sure if  
02:43 15 we can do this. I'm trying to get the "Transocean was blind to  
02:43 16 major process safety system risks."

02:44 17 **BY MR. BROCK:**

02:44 18 Q. One of the things that you identified in your report was  
02:44 19 that Transocean was blind to major process system risks,  
02:44 20 correct, sir?

02:44 21 A. Yes.

02:44 22 Q. I want to focus your attention now on Exhibit 05777.1.2.  
02:44 23 Do you see that this is a Transocean launch of a major  
02:44 24 evaluation of safety processes and culture in the fall of 2009?

02:44 25 A. Yes.

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02:44 1           **MR. BRIAN:** Your Honor, I would object to this being  
02:44 2 as beyond the scope of his report. He has not opined in his  
02:44 3 report about Transocean's safety process system.

02:44 4           **MR. BROCK:** This is from his deposition --

02:44 5           **THE COURT:** Did you talk about this in your report?

02:44 6           **THE WITNESS:** What's "this"? No.

02:44 7           **THE COURT:** What's on the screen.

02:44 8           **THE WITNESS:** No. No.

02:45 9           **MR. BROCK:** Your Honor, this goes to our  
02:45 10 cross-examination in terms of his opinions about causation. He  
02:45 11 has clearly said that Transocean's conduct was causal. There  
02:45 12 are a number of references in his report to safety failings.

02:45 13                       This also goes to the issue of the  
02:45 14 incompleteness of his report. Because when we showed him  
02:45 15 things in his deposition, some of which he had seen, some of  
02:45 16 which he hadn't, that demonstrate that Transocean's conduct was  
02:45 17 causal, he agreed. So I think for cross-examination, we are  
02:45 18 entitled to pursue that.

02:45 19           **MR. BRIAN:** Your Honor has ruled at least four times,  
02:45 20 maybe five times, that the expert opinions are limited to the  
02:45 21 four corners of their report. I agree with Mr. Brock that he  
02:45 22 can test what an expert has or has not considered, but he  
02:45 23 cannot elicit opinions --

02:46 24           **THE COURT:** I sustain your objection. Okay.

02:46 25           **MR. BROCK:** Your Honor, if I could just say one more



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02:46 1 thing for the record?

02:46 2 **THE COURT:** Go ahead.

02:46 3 **MR. BROCK:** I should be going quicker.

02:46 4 In his report he says: "Transocean was blind to  
02:46 5 major process safety system risks in the same way as BP's  
02:46 6 onshore well team. In particular, a 2010 study by Lloyd's  
02:46 7 Register reached the following conclusions about Transocean."  
02:46 8 And this is the document I'm going to right here.

02:46 9 This is what's on the screen. This is the  
02:46 10 report.

02:46 11 **THE COURT:** That sounds like a different document to  
02:46 12 me. I don't know if it is or it isn't. But it didn't sound  
02:46 13 like the same document.

02:46 14 **THE WITNESS:** It's different.

02:46 15 **THE COURT:** Than what was just on the screen?

02:46 16 **MR. BROCK:** This is the report --

02:46 17 **THE COURT:** What was on the screen referred to  
02:46 18 something in 2009.

02:46 19 **MR. BROCK:** Go back.

02:46 20 **THE COURT:** Now, you are referring to 2010. It says  
02:46 21 fall of 2009.

02:47 22 **MR. BROCK:** I'll go to 4261, then, which is this  
02:47 23 report.

02:47 24 **BY MR. BROCK:**

02:47 25 **Q.** Dr. Bea, is this the reference to the Transocean safety

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02:47 1 management systems and safety culture document that is in your  
02:47 2 report?

02:47 3 A. Attributed to Lloyd's.

02:47 4 Q. Yes. Thank you.

02:47 5 This report here is the result of work that was done  
02:47 6 by Lloyd's in the fall of 2009 and then into early 2010?

02:47 7 A. Yes, sir.

02:47 8 Q. The document I showed you was just the one announcing that  
02:47 9 this is what was going to be done?

02:47 10 A. Yes.

02:48 11 Q. You agree that it is a good idea for Transocean to have a  
02:48 12 study like this conducted by Lloyd's? This is something that  
02:48 13 can be helpful to the company?

02:48 14 A. Certainly.

02:48 15 Q. We are looking here now at the Lloyd's Register Safety  
02:48 16 Management Systems and Safety Culture/Climate reviews. This is  
02:48 17 the closing meeting, March 16, 2010, correct?

02:48 18 A. Yes, sir.

02:48 19 Q. Did this report find, sir, that fatigue was a significant  
02:48 20 weakness for Transocean?

02:48 21 A. I recall that it did, yes.

02:49 22 Q. Let's look at 4261.1.1, "What we have found."

02:49 23 "Policy changes impacting fatigue and impairment."

02:49 24 Was the finding that overwhelming concern existed relating to  
02:49 25 the 21 on/21 off work schedule"?

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02:49 1 A. Yes.

02:49 2 Q. Was the finding made and reported to Transocean on their  
02:49 3 last week, "They seem like they are in another world"?

02:49 4 A. Yes.

02:49 5 Q. "On the last week you are so tired you feel like a robot"?

02:49 6 A. Yes.

02:49 7 Q. You agree that fatigue is a negative factor that  
02:49 8 influences employees and their ability to safely discharge  
02:49 9 their duties?

02:49 10 A. Correct.

02:49 11 Q. Companies should make sure that their employees are not  
02:49 12 overly fatigued, especially in deepwater drilling environments?

02:50 13 A. Very definitely.

02:50 14 Q. Do you agree that Transocean should have conducted a  
02:50 15 process safety risk assessment before implementing a change to  
02:50 16 the 21/21 work schedule?

02:50 17 **MR. BRIAN:** Your Honor, I'm going object to this as  
02:50 18 going beyond the scope of the report. The document he refers  
02:50 19 to in his footnote is actually Exhibit 929. This is a  
02:50 20 different document that Professor Bea did not cite in his  
02:50 21 report. I would move to object to this question and to strike  
02:50 22 the questions and answers, the last four or five. I think it  
02:50 23 goes beyond the report.

02:50 24 **THE COURT:** Well, a few minutes ago everyone seemed  
02:50 25 to agree that this was a document he referred to in his report.

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02:50 1 MR. BRIAN: I heard -- I thought he was going to put  
02:50 2 up the one he cited here, which is 929.

02:50 3 THE COURT: There are two Lloyd's documents?

02:50 4 MR. BRIAN: There are two Lloyd's documents, and he  
02:50 5 refers to Exhibit 929.

02:50 6 MR. BROCK: I would have to get them and look at them  
02:51 7 side by side.

02:51 8 THE COURT: What's the difference in the two  
02:51 9 documents? Are they different dates?

02:51 10 MR. BRIAN: The one he has on the screen now is a  
02:51 11 PowerPoint presentation.

02:51 12 THE COURT: But does it all relate to the same  
02:51 13 Lloyd's study?

02:51 14 MR. BRIAN: Yes, sir, it relates to the same study.

02:51 15 THE COURT: So the substance of it is the same. I  
02:51 16 will overrule the objection.

02:51 17 BY MR. BROCK:

02:51 18 Q. Now, as a process safety expert, this raises a red flag to  
02:51 19 you as to whether fatigue would have been a contributing factor  
02:51 20 in why the driller missed three kick indicators?

02:51 21 A. Fatigue has a potentially pervasive effect on process  
02:51 22 safety.

02:51 23 Q. Let me go back just a minute because I'm not sure that I  
02:52 24 have got an answer to an earlier question. I may have. If I  
02:52 25 did, I apologize.

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02:52 1 Do you believe that Transocean should have done a  
02:52 2 risk assessment before implementing a change like the 21/21,  
02:52 3 which was going to have a negative effect of making the  
02:52 4 employees feel so tired they felt like a robot?

02:52 5 **MR. BRIAN:** Objection, beyond the scope of his  
02:52 6 report.

02:52 7 **THE COURT:** Is that opinion in your report?

02:52 8 **THE WITNESS:** I don't think so.

02:52 9 **THE COURT:** I sustain the objection.

02:52 10 **BY MR. BROCK:**

02:52 11 **Q.** Are you aware that the Transocean driller on duty at the  
02:52 12 time of the incident, Dewey Revette, was on the last day of a  
02:52 13 21-day hitch?

02:52 14 **MR. BRIAN:** Same objection.

02:52 15 **THE COURT:** That's not an opinion; that's asking if  
02:52 16 he is aware of it.

02:52 17 **MR. BROCK:** A fact I'm asking if he was aware of.

02:52 18 **THE COURT:** Are you aware of that?

02:52 19 **THE WITNESS:** Yes, sir.

02:52 20 **BY MR. BROCK:**

02:52 21 **Q.** Was he on the last day of a 21-day hitch?

02:52 22 **A.** I recall that's accurate.

02:53 23 **MR. BROCK:** Your Honor, if I could just have one  
02:53 24 second. I think I understand your ruling, so I don't want to  
02:53 25 start some questions on something.

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02:53 1 THE COURT: Okay. I was just going to say, we had  
02:53 2 had a couple complaints earlier today that the temperature in  
02:53 3 the courtroom was a little cold. I see everybody nodding their  
02:54 4 head. I usually don't it up here with this thing on.

02:54 5 MR. BROCK: I was going to say exactly the opposite.

02:54 6 THE COURT: During the lunch hour my assistant back  
02:54 7 there supposedly called whoever -- I don't even know who does  
02:54 8 these things, but somebody who controls -- we have no control  
02:54 9 over the temperature -- no thermostats in here -- it's some big  
02:54 10 computer in the sky somewhere -- and asked them to turn it up a  
02:54 11 couple notches, so hopefully it will be a little more  
02:54 12 comfortable this afternoon.

02:54 13 THE WITNESS: Thank you.

02:54 14 THE COURT: We always seem to have a chronic problem.  
02:54 15 It's either so warm it's uncomfortable or so cold it's  
02:54 16 uncomfortable.

02:54 17 BY MR. BROCK:

02:54 18 Q. I want to turn year attention to a new issue now.

02:54 19 MR. BROCK: If we could have TRES-5946.86.2, please.

02:54 20 BY MR. BROCK:

02:55 21 Q. Do you have that there?

02:55 22 A. No.

02:55 23 Q. I'm sorry. Do you see here that you say in your report,  
02:55 24 "In many cases, Transocean managed those risks poorly"? Do you  
02:55 25 see that?

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02:55 1 A. Yes.

02:55 2 Q. You say: "There is no evidence that Transocean performed  
02:55 3 a formal risk assessment prior to conducting simultaneous  
02:55 4 operations during the displacement of the riser."

02:55 5 Do you see that?

02:55 6 A. Correct.

02:55 7 MR. BROCK: You can pull that down.

02:55 8 BY MR. BROCK:

02:55 9 Q. You're aware, are you not, that Don Vidrine, the BP  
02:55 10 well-site leader, requested a flow check during the sheen tests  
02:55 11 in that period of time about 9:08 to 9:14?

02:56 12 A. Yes, sir.

02:56 13 Q. You agree that that was a good process safety thing to do  
02:56 14 by Mr. Vidrine, because with the pumps off during the sheen  
02:56 15 test, it was a prime time to check to see if the well was  
02:56 16 flowing?

02:56 17 A. Yes.

02:56 18 Q. You understand enough about drilling, I know, that once  
02:56 19 the pumps go down, you shouldn't see activity in terms of  
02:56 20 pressure?

02:56 21 MR. BRIAN: Two objections, Your Honor. One, it goes  
02:56 22 beyond the scope of the report. And, two, Mr. Brock has  
02:56 23 already elicited he is not an expert in well control and  
02:56 24 drilling of wells.

02:56 25 MR. BROCK: I'll move on. I'll move on.

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02:56 1 THE COURT: Okay. I'll sustain the objection.

02:56 2 BY MR. BROCK:

02:56 3 Q. You looked at the interface between the driller and the  
02:56 4 shaker hand, did you not?

02:56 5 A. Yes.

02:56 6 Q. You recall that there was a breakdown in communication  
02:56 7 between the T0 driller and the shaker hand as to where flow was  
02:57 8 going on the rig?

02:57 9 A. I recall the confusion, yes.

02:57 10 Q. That was a process safety failure.

02:57 11 A. What is that in your question?

02:57 12 Q. The breakdown in communication between the T0 driller and  
02:57 13 the shaker hand.

02:57 14 A. Certainly.

02:57 15 Q. You are familiar with the fact that the Transocean crew  
02:57 16 did not divert overboard and instead diverted to the mud/gas  
02:57 17 separator?

02:57 18 MR. BRIAN: Same two objections, Your Honor. Beyond  
02:57 19 the scope of his report and beyond his expertise. This is a  
02:57 20 well control issue, not a process safety issue.

02:58 21 THE COURT: You did earlier establish he was not an  
02:58 22 expert in any of these things, and now it seems like you are  
02:58 23 asking him expert questions.

02:58 24 MR. BROCK: This is a process -- can I ask one more  
02:58 25 question?



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02:58 1 THE COURT: Okay. I'll give you a chance to restate  
02:58 2 it, rephrase it.

02:58 3 BY MR. BROCK:

02:58 4 Q. Process safety includes both mechanical systems and human  
02:58 5 elements?

02:58 6 A. Yes.

02:58 7 Q. You agree that on a MODU like the *Deepwater Horizon*, for  
02:58 8 the hazard of an uncontrolled release of hydrocarbons, well  
02:58 9 control is the most important process safety event?

02:58 10 MR. BRIAN: Objection, beyond the scope of his  
02:58 11 report.

02:58 12 MR. BROCK: I think it is supported by the report.

02:58 13 THE COURT: Is that from the report?

02:58 14 MR. BROCK: 59.

02:59 15 Dr. Bea's report says: "Additionally" --

02:59 16 THE COURT: What page are you reading from?

02:59 17 MR. BROCK: Page 59. "Additionally, Transocean  
02:59 18 personnel on the rig refused to maintain proper situational  
02:59 19 awareness and missed key indicators that control of the Macondo  
02:59 20 well was being lost and the well was blowing out."

02:59 21 MR. BRIAN: That's why, Your Honor, at the beginning  
02:59 22 I reserved the right to move to strike portions of this report,  
02:59 23 because observations about well control go beyond the scope of  
03:00 24 Professor Bea's expertise, by his own admission.

03:00 25 THE COURT: It seems like the witness is saying what

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03:00 1 he understands from other witnesses' testimony.

03:00 2 Is that correct?

03:00 3 **THE WITNESS:** Yes.

03:00 4 **THE COURT:** So I overrule the objection.

03:00 5 **BY MR. BROCK:**

03:00 6 **Q.** In the area of process safety, is loss of well control --  
03:00 7 well, let me rephrase the question.

03:00 8 On a MODU like the *Deepwater Horizon*, for the hazard  
03:00 9 of an uncontrolled release of hydrocarbons, well control is the  
03:00 10 most important process safety event?

03:00 11 **A.** It is at a high-risk level.

03:01 12 **Q.** Dr. Bea, I apologize. Could you just say that one more  
03:01 13 time. I just didn't get it.

03:01 14 **A.** It is at a high-risk level.

03:01 15 **Q.** All right. Let me direct your attention to your  
03:01 16 deposition at 175, lines 14 to 18.

03:01 17 **"QUESTION:** If the hazard or threat is uncontrolled  
03:01 18 release of hydrocarbons, well control is the most  
03:01 19 important process safety event, correct?"

03:01 20 Was your answer "Correct"?

03:01 21 **A.** Correct.

03:01 22 **Q.** Is it your understanding, in looking at the systems on the  
03:01 23 *Deepwater Horizon*, that Transocean was responsible for kick  
03:01 24 detection?

03:01 25 **A.** Yes.

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03:02 1 Q. Just one second. I apologize.

03:02 2 Okay. New topic. This one concerns BP's evaluation  
03:02 3 of the risk of an uncontrolled blowout. You gave some  
03:02 4 testimony about that this morning. I'm going to ask you a few  
03:02 5 questions about that. Okay?

03:02 6 A. Thank you.

03:02 7 Q. If we look at 4170.1.1, do you see that's the Gulf of  
03:03 8 Mexico SPU?

03:03 9 A. Yes.

03:03 10 Q. I'm looking for the date. January 16, 2010.

03:03 11 A. Yes.

03:03 12 Q. Then if we go to -- let me just ask you this question.  
03:03 13 Would you agree, Dr. Bea, that the loss of well control was one  
03:03 14 of the top risks identified by BP's Gulf of Mexico business  
03:03 15 unit?

03:03 16 A. Yes.

03:03 17 Q. In this document here, at 23.1, do we see that loss of  
03:03 18 well control during the drilling -- during drilling, with the  
03:03 19 potential for significant environmental spill, is listed as a  
03:04 20 major accident hazard?

03:04 21 A. Yes, sir.

03:04 22 Q. In this document there is reference to a number of assets  
03:04 23 within BP's relationships with others. Some of these are  
03:04 24 owned, but the *Horizon* is listed there?

03:04 25 A. Yes.

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03:04 1 Q. Now, if we look at the Gulf of Mexico annual engineering  
03:04 2 plan, which is at 4170.23.1, this refers to the *Horizon*.

03:04 3 Is this the same document?

03:04 4 A. Yeah.

03:04 5 Q. Let me just do it this way. From the documents that you  
03:05 6 looked at of BP's, including the one that we are looking at  
03:05 7 now, you agreed that BP identified the loss of well control as  
03:05 8 having the potential for significant environmental and human  
03:05 9 risks, correct?

03:05 10 A. The record is conflicting there. But relative to the SPU  
03:05 11 and what was actually done on Macondo, the risk register  
03:05 12 reflects not a high-consequence issue associated with loss of  
03:05 13 well control.

03:05 14 Q. Let's look at your deposition at page 152, lines 4 through  
03:06 15 13. Do you see that you were asked the question, sir?

03:06 16 "QUESTION: So in other words, you're not testifying  
03:06 17 that that was a risk -- the risk of loss of well control  
03:06 18 is something that BP wasn't conscious of?"

03:06 19 What was your answer to that?

03:06 20 A. "That's correct."

03:06 21 BY MR. BROCK:

03:06 22 Q. Then do you say:

03:06 23 "QUESTION: They were conscious, from the board of  
03:06 24 directors all the way to the bottom level of management we  
03:06 25 discussed earlier."

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03:06 1 A. Yes.

03:06 2 Q. That was your testimony then, and that's your testimony  
03:06 3 now?

03:06 4 A. Yes. *Conscious* doesn't necessarily translate to an  
03:06 5 appropriate evaluation of the risk.

03:06 6 Q. Sir, I'm asking you if they were aware of it. That's the  
03:06 7 question I'm asking you now.

03:06 8 A. Yes, they were.

03:06 9 Q. Just stay with me.

03:06 10 Now, you have said that there was some conflicting  
03:07 11 evidence or something to that effect. Let me ask you to look  
03:07 12 at now Exhibit 4946.82.1.

03:07 13 MR. BROCK: Actually, give me 4170.21.1. This is the  
03:07 14 one I was trying to do a minute ago.

03:07 15 BY MR. BROCK:

03:07 16 Q. So this is the Gulf of Mexico annual engineering plan. Do  
03:07 17 you see that?

03:07 18 A. No.

03:07 19 Q. Do you want me to show you the front page?

03:07 20 A. Please.

03:07 21 Q. Gulf of Mexico SPU?

03:07 22 A. Yes, sir.

03:07 23 Q. Then if we go back to where we were.

03:07 24 And it says here: "In conformance with the GoM SPU  
03:07 25 major hazard risk management policy, each producing asset and

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03:08 1 BP-owned drilling rig has developed a major hazard and risk  
03:08 2 register. These registers document hazard scenarios  
03:08 3 characteristic of asset and drilling operations that have the  
03:08 4 potential to expose the organization to major health, safety,  
03:08 5 security, environmental risks."

03:08 6 Do you see that?

03:08 7 A. Yes.

03:08 8 Q. Then if you come down below, the second matter that is  
03:08 9 listed there is loss of well control, correct?

03:08 10 A. That's correct, as it applies to BP-owned assets.

03:08 11 Q. I understand. This is BP recognizing that loss of well  
03:08 12 control exposes the organization to health, safety, security,  
03:08 13 and environmental issues, correct?

03:08 14 A. Correct.

03:08 15 Q. Then if we look at TREN-4171.1.1, this is the risk  
03:09 16 mitigation plan. Do you see that?

03:09 17 A. Yes, sir.

03:09 18 Q. It says: "Potential environmental damage, and could, if  
03:09 19 ignited, lead to fire and explosion."

03:09 20 Do you see that?

03:09 21 A. Yes, sir.

03:09 22 Q. "This plan applies to BP-owned rigs in the Gulf of Mexico  
03:09 23 along with all contracted MODUs operating in the SPU fleet."

03:09 24 Do you see that?

03:09 25 A. Yes, sir.

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03:09 1 Q. Now, I want to turn your attention, please, sir, to  
03:09 2 Exhibit 2187. And do you see that this is the title page for  
03:09 3 the major accident hazard risk assessment for the  
03:09 4 *Deepwater Horizon*?

03:09 5 A. I see this is a MAR for *Deepwater Horizon*, I believe  
03:10 6 performed by Transocean.

03:10 7 Q. This is a Transocean document. You are correct.

03:10 8 The purpose of this study would be to demonstrate  
03:10 9 that adequate controls are in place so that HSE risks on the  
03:10 10 *Deepwater Horizon* would be as low as reasonably practicable?

03:10 11 MR. BRIAN: Objection, beyond the scope of his  
03:10 12 report, Your Honor.

03:10 13 MR. BROCK: Your Honor, on page 21, Dr. Bea  
03:10 14 criticizes BP for not conducting a MAR. Our position is this  
03:10 15 assessment is conducted by Transocean. I want to prove that it  
03:10 16 has been conducted.

03:10 17 THE COURT: I overrule the objection.

03:11 18 BY MR. BROCK:

03:11 19 Q. So if we turn to 3.1, this is referring to a major  
03:11 20 accident hazard risk assessment conducted August 4, 2003, over  
03:11 21 a four- or five-day period of time concluding on August 8,  
03:11 22 2003. Do you see that?

03:11 23 A. Yes.

03:11 24 Q. If we look at 2187.8.1, do you see that the report lists  
03:11 25 various hazard scenarios that are assessed?

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03:11 1 A. Yes.

03:11 2 Q. Reservoir blowout is included in the hazard analysis  
03:11 3 that's being conducted here?

03:12 4 A. It's titled a "Major Hazard Risk Analysis." That is not  
03:12 5 equal to the BP MAR.

03:12 6 Q. Dr. Bea, would you please focus on trying to answer my  
03:12 7 questions?

03:12 8 A. I'm trying to.

03:12 9 Q. My question is: Does this page here that you were looking  
03:12 10 at identify reservoir blowout in the list of hazard scenarios  
03:12 11 that are included in the Transocean major accident risk  
03:12 12 evaluation?

03:12 13 A. Yes, sir.

03:12 14 Q. That's process safety?

03:12 15 A. I can't agree to that.

03:12 16 Q. In fact, if you have gas in the riser or reservoir  
03:12 17 blowout, those are the two biggest, if not biggest, process  
03:13 18 safety risks you can encounter while drilling?

03:13 19 A. Certainly those are close to the top of process safety  
03:13 20 hazards, but a process safety system is much more than  
03:13 21 recognizing the hazard.

03:13 22 Q. So for each hazard, Transocean's study looks at  
03:13 23 consequences, preventions, and mitigations in place on the  
03:13 24 *Deepwater Horizon*. That's true, isn't it?

03:13 25 A. Yes.



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03:13 1 Q. If we look at 2187.178.1., do we see there the hazards and  
03:13 2 the preventions and mitigations that are in place to mitigate  
03:13 3 the major process safety issue of reservoir blowout?

03:13 4 A. Yes.

03:13 5 Q. Those include, for preventions, well control, maintenance  
03:13 6 and testing of the BOPs, instrumentation and indication of well  
03:14 7 status, hydrocarbon combustible gas detection system, and  
03:14 8 redundant BOP controls?

03:14 9 A. Yes.

03:14 10 Q. Now, in the deepwater drilling environment, is it correct  
03:14 11 that if a prudent operator is going to be operating in a risky  
03:14 12 environment that they should put in layers of protection?

03:14 13 A. Yes.

03:14 14 Q. One of the first steps that an operator would want to do  
03:14 15 would be to hire a drilling contractor who has a track record  
03:14 16 and reputation for safe drilling?

03:14 17 A. Yes.

03:14 18 Q. Would you want to work with that contractor to select the  
03:14 19 right rig for the well?

03:14 20 A. Yes.

03:15 21 Q. Would you want to look for them to have a highly trained  
03:15 22 crew and make sure that their controls certifications were  
03:15 23 current?

03:15 24 A. Yes.

03:15 25 Q. Would you want the contractor to instill in its crew that

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03:15 1 they should always be vigilant in monitoring a well?

03:15 2 A. Yes.

03:15 3 Q. If you are a prudent operator, you would want the drilling  
03:15 4 contractor to have the best technology available for kick  
03:15 5 detection?

03:15 6 A. Correct.

03:15 7 Q. You would want the system for detecting kicks to be  
03:15 8 customizable to optimize the driller's ability to detect kicks?

03:15 9 A. Certainly.

03:15 10 Q. You would want to have alarms for the system in case the  
03:15 11 driller was tired?

03:15 12 A. Yes.

03:15 13 Q. A safety-conscious operator would want to have in place a  
03:16 14 BOP?

03:16 15 A. That works.

03:16 16 Q. And that was approved by the MMS?

03:16 17 A. That works.

03:16 18 Q. That works. And in case it doesn't work, because it's not  
03:16 19 activated or it's not maintained, you would want to have a  
03:16 20 layer of protection that would say, "Well, maybe one day all  
03:16 21 these layers will fail, so I'm going to install a diverter that  
03:16 22 will divert well contents safely away from the rig"?

03:16 23 A. Correct.

03:16 24 Q. In the eventuality that none of those succeeded, you would  
03:16 25 want to have another layer of protection, that we call in this

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03:16 1 case *EDS*, which allows the rig to safely disconnect and sail  
03:16 2 away?

03:16 3 A. Correct.

03:16 4 Q. The systems that we have just talked about are essentially  
03:17 5 the same that are used by other operators in the Gulf of  
03:17 6 Mexico, these layers of protection?

03:17 7 A. Yes.

03:17 8 Q. Changing topics now to audits.

03:17 9 Before the incident, BP conducted audits of the MODUs  
03:17 10 that were under contract to it, correct?

03:17 11 A. Yes.

03:17 12 Q. It's important for a company like BP to conduct safety  
03:17 13 audits of the *Deepwater Horizon* and other MODUs, correct?

03:17 14 A. Yes.

03:17 15 Q. It was important that BP audited the *Deepwater Horizon*?

03:17 16 A. Yes.

03:17 17 Q. These audits look at equipment that would be important for  
03:18 18 process safety issues?

03:18 19 A. The audits can, if they are performed correctly.

03:18 20 Q. You're aware that BP conducted an audit of the  
03:18 21 *Deepwater Horizon*, a follow-up audit in September of 2009?

03:18 22 A. Yes.

03:18 23 Q. You're aware that in September of 2009, four auditors  
03:18 24 spent around five days on the rig?

03:18 25 A. Yes, sir.

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03:18 1 Q. Coming out of that audit --

03:18 2 MR. BROCK: If we could look at TREN-4362.2.1.

03:18 3 BY MR. BROCK:

03:18 4 Q. I just want to confirm what I have just talked about.

03:18 5 A rig and marine assurance audit was performed on the  
03:18 6 semisubmersible drilling rig *Deepwater Horizon*, and do you see  
03:19 7 that refers to that being done on the location at the Kodiak  
03:19 8 prospect? Do you see that?

03:19 9 A. Yes, sir.

03:19 10 Q. That's where the *Deepwater Horizon* Transocean crew and BP  
03:19 11 folks had drilled the well before Macondo, just before Macondo?

03:19 12 A. Yes.

03:19 13 Q. This gives the dates on which that occurred.

03:19 14 If you look at 101.1 -- I'm sorry, 5946.101.1. This  
03:19 15 is a statement from your report that I want to address here.  
03:19 16 Okay?

03:19 17 A. Yes.

03:19 18 Q. "The GoM D&C did not close out, address important action  
03:19 19 items for safety-critical equipment in a timely way."

03:20 20 You go on to say: "The audit identified an overdue  
03:20 21 planned maintenance backlog of 390 jobs, requiring more than  
03:20 22 3500 man-hours of work had developed."

03:20 23 Do you see that?

03:20 24 A. Yes, sir.

03:20 25 Q. Now, before reaching this conclusion, the one that you

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03:20 1 state here, you reviewed deposition testimony and documents  
03:20 2 relating to the September 2009 audit, correct?

03:20 3 A. Yes.

03:20 4 Q. Are you aware, sir, that the audit was conducted during a  
03:20 5 scheduled out-of-service period?

03:20 6 A. Yes.

03:20 7 Q. During this scheduled out-of-service period, Transocean  
03:20 8 was conducting rig maintenance?

03:20 9 A. I don't recall that for sure, but I think that's correct.

03:21 10 Q. In other words, if it was out of service, the rig would  
03:21 11 not be drilling while the maintenance was being conducted?

03:21 12 A. Correct.

03:21 13 Q. Then if we look at Exhibit 1374.1.1, do you see that there  
03:21 14 were issues to be resolved that were noted in a note from John  
03:21 15 Guide to Paul Johnson before drilling operations could resume?

03:21 16 A. Yes.

03:21 17 Q. There's reference to a new iron roughneck there. Do you  
03:21 18 see that?

03:21 19 A. Yes.

03:21 20 Q. And it was not operating mechanically in the right way, so  
03:21 21 they felt that needed to get fixed. Then down below a little  
03:21 22 more, you see something about an actuator?

03:21 23 A. Yes.

03:22 24 Q. If we look at 1374.1.2, do you see that John Guide is  
03:22 25 sending his list of issues to Transocean on September 17, 2009?

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03:22 1 Do you see that?

03:22 2 A. Yes.

03:22 3 Q. Then if we look at 1.1 -- excuse me, 47182.1.1, they write  
03:22 4 back to John, Transocean does, and says: "We are addressing  
03:22 5 all of the issues on the auditor's list."

03:22 6 Do you see that?

03:22 7 A. Yes.

03:22 8 Q. That's the kind of interaction you want to see in response  
03:22 9 to an audit?

03:22 10 A. Yes.

03:22 11 Q. That shows the safety-mindedness that BP is in as well as  
03:22 12 that Transocean is in?

03:22 13 A. Yes.

03:22 14 Q. If we look at 44024.1.1, Transocean says to BP: "As per  
03:23 15 our conversation with Iain Little, Transocean is satisfied that  
03:23 16 we can start up operations safely."

03:23 17 Do you see that?

03:23 18 A. Yes, sir.

03:23 19 Q. You have no reason to think that was not true, do you?

03:23 20 A. Well, the caution word I have as you read that is *safely*.

03:23 21 Q. What's conveyed to John Guide with BP by Transocean is  
03:23 22 that Transocean has addressed the issues and believes it can  
03:23 23 start up operations safely, correct?

03:23 24 A. That's correct.

03:23 25 Q. You would want BP to have that confirmation from

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03:23 1 Transocean before drilling resumed?

03:23 2 A. Yes, an agreement on what *safely* means.

03:24 3 Q. If we look at 44027.1.1, do you see that BP evaluated that  
03:24 4 and said the information provided throughout the course of the  
03:24 5 day is satisfactory for the *Horizon* to return to work?

03:24 6 Correct?

03:24 7 A. Yes.

03:24 8 Q. So you would expect an interaction between Transocean and  
03:24 9 BP to occur, for BP to get Transocean's input as to whether the  
03:24 10 audit items had been addressed, and for BP to have an  
03:24 11 interaction to confirm that was so?

03:24 12 A. Correct.

03:24 13 Q. This reflects, as far as you can see from this, a good  
03:24 14 process and interaction?

03:24 15 A. To the extent of this documentation, yes. There were  
03:25 16 other components in this phase that indicated otherwise.

03:25 17 Q. Let me ask you to focus on what I have asked you about,  
03:25 18 and then I'm coming to the issue that I think you want to talk  
03:25 19 about.

03:25 20 In terms of the interaction between BP and Transocean  
03:25 21 as relates to the audit, you would expect Transocean to respond  
03:25 22 to BP's audit, to let BP know if, in its judgment, it could  
03:25 23 return to operations safely. You see that here?

03:25 24 A. Yes.

03:25 25 Q. You would expect BP to confirm that, as they say here, the

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03:25 1 information provided through the course of the day, that the  
03:25 2 *Horizon* could work -- return to work?

03:25 3 A. Yes.

03:25 4 Q. Now, it's also true, is it not, that BP and Transocean  
03:25 5 developed a joint plan to close out the action items on the rig  
03:26 6 audit?

03:26 7 A. Yes, sir.

03:26 8 Q. This is what you want to talk about, maybe. We'll see.

03:26 9 Are you aware that BP provided the audit report to  
03:26 10 Transocean after the audit?

03:26 11 A. Yes.

03:26 12 Q. If we look at 1831.1.1, we see that Brett Cocalles  
03:26 13 describes the findings and says: "This is an opportunity for  
03:26 14 improvement for the safe and efficient working of the rig.  
03:26 15 This is a two-way street. We very much want your input on  
03:26 16 content and timing of these things, which will be reviewed by  
03:26 17 John Guide and Paul Johnson. We are all a team in this  
03:26 18 effort."

03:26 19 Right?

03:26 20 A. Yes.

03:26 21 Q. Teamwork is expected and is a good thing in this  
03:26 22 environment, right?

03:26 23 A. It's essential.

03:26 24 Q. Essential.

03:26 25 For the September '09 rig audit, there was a



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03:27 1 formalized closeout program, correct?

03:27 2 A. There was a formalized program, correct.

03:27 3 Q. John Guide is the person who supervised the program, true?

03:27 4 A. I believe that's true.

03:27 5 Q. With regard to the September 2009 audit, Transocean  
03:27 6 maintained updated spreadsheets tracking the status of each  
03:27 7 audit recommendation?

03:27 8 A. Yes.

03:27 9 Q. Transocean was routinely transmitting those spreadsheets  
03:27 10 to BP following the September 2009 audit so that BP would be  
03:27 11 aware of the progress?

03:27 12 A. I don't know that to be true.

03:27 13 Q. Let me ask you to look at -- did you look at the testimony  
03:28 14 of Ronnie Sepulvado? Was that one of the depositions that you  
03:28 15 reviewed?

03:28 16 A. Yes, sir.

03:28 17 Q. Let me pull up Ronnie Sepulvado's deposition at 166,  
03:28 18 line 10. Do you see the question -- this is of Ronnie.

03:28 19 "QUESTION: Did BP keep track record or any record of  
03:28 20 Transocean's effort to address any of the 350-plus  
03:28 21 deficiencies cited in the September 2009 audit?

03:28 22 "ANSWER: Yes. We had a printout similar to this  
03:28 23 that was on the desk in the office and it had a list of  
03:28 24 the items and, you know, every so often the heads of the  
03:28 25 department would come in, whether it was maintenance,

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03:28 1 marine drilling, whoever was involved with part of the  
03:28 2 list, and they would put a percentage complete down, you  
03:28 3 know, a hundred percent, 50 percent. And then some of  
03:28 4 them would be -- all I ever saw was 'waiting on parts.'"

03:28 5 Do you see that?

03:28 6 A. Yes, sir.

03:29 7 Q. Are you aware that John Guide, the BP wells team leader,  
03:29 8 and Paul Johnson, TO's rig manager, were speaking on a regular  
03:29 9 basis, at least once a week, once a week to every 10 days, to  
03:29 10 make sure that Transocean was making progress on the audit  
03:29 11 findings?

03:29 12 A. I believe that to be factual.

03:29 13 Q. And that Transocean's crew was conducting weekly meetings  
03:29 14 to discuss progress on the audit items?

03:29 15 A. I don't recall the answer to that weekly progress.

03:29 16 Q. All right. Thank you.

03:29 17 Now, do you know that John Guide visited the rig to  
03:30 18 assess the closeout of the audit action items?

03:30 19 A. I think that's true.

03:30 20 Q. That's what you would expect of a good wells team leader  
03:30 21 who was safety-minded?

03:30 22 A. Yes, sir.

03:30 23 Q. If we look at TREN-20198.1.1, just to verify here: "Paul  
03:30 24 Johnson, Transocean, and John Guide came out to the rig on  
03:30 25 January 12. They seemed to be pleased with everything except

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03:30 1 food quality and bilges, made several changes in the ART  
03:30 2 catering personnel."

03:30 3 The food must have been really bad that day.

03:30 4 Then it goes on to say: "We have been giving  
03:30 5 maintenance help wherever possible to clean bilges. John Guide  
03:30 6 signed off on several rig audit items while on board. BOP was  
03:30 7 in the stowed position at that time."

03:30 8 Do you see that?

03:30 9 A. Yes.

03:30 10 Q. That shows a good process and interaction between  
03:31 11 Transocean and BP in coming to the rig together to look to see  
03:31 12 if the audit items are being satisfied?

03:31 13 A. Yes.

03:31 14 Q. Now in your report, you reference or call attention to the  
03:31 15 audit finding relating to overdue maintenance. And you refer  
03:31 16 to the 390 jobs requiring 350 man-hours of work, correct?

03:31 17 A. Correct.

03:31 18 Q. Before reaching your conclusion about the audit closeout,  
03:31 19 did you review the deposition of James Kent, Transocean's rig  
03:31 20 manager?

03:31 21 A. I don't recall.

03:31 22 Q. Are you aware that the 390 figure is a result of duplicate  
03:32 23 entries that were made because Transocean was in a transition  
03:32 24 system, a transition change in terms of its audit system?

03:32 25 A. No.

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03:32 1 Q. You didn't know that?

03:32 2 A. No.

03:32 3 THE COURT: Mr. Brock, how close are you to  
03:32 4 finishing? This has been going on a long time now. I would  
03:32 5 like to see if we could move this along.

03:32 6 MR. BROCK: Okay.

03:32 7 THE COURT: The witness has been on the stand since  
03:32 8 8:00 a.m. and you have had him since 11:00. I know we took a  
03:32 9 lunch break in there, but it's been going on for quite a while.

03:32 10 MR. BROCK: I'm trying to be efficient. I wonder if  
03:32 11 we might take a short break, let me look at where I am, and I  
03:32 12 will try to move this as quickly as I can.

03:32 13 THE COURT: That's a good idea. Let's take a  
03:32 14 15-minute recess.

03:32 15 THE DEPUTY CLERK: All rise.

03:32 16 (Recess.)

03:49 17 THE COURT: Please be seated, everyone.

03:49 18 BY MR. BROCK:

03:49 19 Q. Dr. Bea, hopefully just a little more here.

03:49 20 Let me wrap up our discussion now, if I could, on the  
03:49 21 topic of the audit. And if I could get you to turn to  
03:49 22 Exhibit 47221, and I am going to pull out 3.1 here.

03:50 23 I'm directing your attention now to 2.3.5. Do you  
03:50 24 see that?

03:50 25 A. Yes.

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03:50 1 THE COURT: Was that an eye chart --

03:50 2 MR. BROCK: I put my reading glasses on and I  
03:50 3 thought, What happened?

03:50 4 THE COURT: Is that an eye chart test? I think he  
03:50 5 passed.

03:50 6 BY MR. BROCK:

03:50 7 Q. Sorry about that. So this refers to the overdue  
03:50 8 maintenance in excess of 30 days was considered excessive. It  
03:50 9 gives the 390 jobs and the man-hours. Do you see that?

03:50 10 A. Yes.

03:50 11 Q. Then if we come across on that -- well, go back to that  
03:51 12 one. I apologize.

03:51 13 Do you see the last sentence there says, "Many of the  
03:51 14 overdue maintenance routines were" -- I need 2.3.5 -- okay --  
03:51 15 "were high priority"?

03:51 16 Yes. Then if you go over to the actual completion  
03:51 17 date, you will see the date of October 15. Do you see that?

03:51 18 A. Yes, sir.

03:51 19 Q. And then if you go to the Percent Complete column, you see  
03:51 20 it shows 100 percent.

03:51 21 A. Yes. I don't know how to interpret the 100 percent, given  
03:51 22 the previous statement of many of the high priority.

03:52 23 Q. This is the close-out report, is it not?

03:52 24 A. I don't know the report. I don't think I have looked at  
03:52 25 this document before.

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03:52 1 Q. Okay. This document was not made available to you to  
03:52 2 consider in terms of your opinion about the audit, true?

03:52 3 A. Well, it may have been -- may have been available and I  
03:52 4 didn't access it.

03:52 5 Q. In any event, you don't feel like you're able to comment  
03:52 6 on it today?

03:52 7 A. That's correct.

03:52 8 Q. Let's go over now to another subject. I want to talk to  
03:52 9 you about the issue that you have raised today and in your  
03:52 10 report of "every dollar counts." Okay?

03:53 11 A. Yes.

03:53 12 Q. We have talked about that a little bit already, but I want  
03:53 13 to review with you a couple of issues here.

03:53 14 First of all, are you aware that it was Neil Shaw who  
03:53 15 came up with the "every dollar counts" slogan?

03:53 16 A. No.

03:53 17 Q. Let me show you the testimony of Mr. Shaw at D-12.2. Do  
03:53 18 you see this is a question by Mr. Williamson, and he says:

03:53 19 "QUESTION: 'Every dollar counts' was the slogan you  
03:53 20 came up with when you came to the Gulf of Mexico after  
03:53 21 meeting with your respective members of your leadership  
03:53 22 team?

03:53 23 "ANSWER: I believe there was an interchangeability  
03:53 24 of every dollar matters and every dollar counts, but the  
03:53 25 intent of it was all about how do we drive continuous

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03:54 1 improvement and efficiency in the business and ensure that  
03:54 2 we spend every dollar wisely for the benefit of our  
03:54 3 shareholders."

03:54 4 Do you see that?

03:54 5 A. Yes, sir.

03:54 6 Q. You are also aware, are you not, that Mr. Shaw testified  
03:54 7 that he would never instruct someone to sacrifice safety for  
03:54 8 cost?

03:54 9 A. I don't recall that, but I think that would be  
03:54 10 representative of his position. Thank you.

03:54 11 Q. Thank you.

03:54 12 You're also aware, are you not, that safety was a  
03:54 13 very explicit boundary condition, that is, not to compromise  
03:54 14 safety?

03:54 15 A. No.

03:54 16 Q. Let's look at Mr. Shaw's testimony on this issue, 12.4.

03:54 17 "QUESTION: Do you have an expectation of those that  
03:54 18 worked in the SPU with respect to how they would handle  
03:55 19 safety under the 'every dollar counts' model?"

03:55 20 Do you see that question?

03:55 21 A. Yes, sir.

03:55 22 Q. Does he say:

03:55 23 "ANSWER: Absolutely. It was very, very clear,  
03:55 24 statement and understanding: Safety is our number one  
03:55 25 priority. And you know, you'll see in the documentation

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03:55 1 it is a very explicit boundary condition that cost targets  
03:55 2 were all in the boundary condition of not having any  
03:55 3 compromise to safety or operating integrity."

03:55 4 Do you see that Mr. Shaw has testified to that?

03:55 5 A. Yes.

03:55 6 **MR. BROCK:** If we look at Exhibit 5689.8.1 -- let's  
03:55 7 show him the title page there, or if you can just . . .

03:55 8 **BY MR. BROCK:**

03:55 9 Q. This is Performanzfest, September 2009. Do you see that?

03:56 10 A. Yes, sir.

03:56 11 Q. Then if we go over to this page, I think you can see there  
03:56 12 at the top, there is a 2009 cash cost. Do you see that, "every  
03:56 13 dollar counts"?

03:56 14 A. Yes.

03:56 15 Q. Then in this document does it say: "All of this, of  
03:56 16 course, takes place within the boundary condition that safe and  
03:56 17 reliable operations always come first"?

03:56 18 A. That's what those words say.

03:56 19 Q. Now, I want to turn our attention to some testimony that  
03:56 20 you gave earlier today about the Bly report.

03:56 21 You are aware, are you not, that BP's internal  
03:56 22 investigation was initiated on April 22, 2010, just a couple of  
03:57 23 days after the event?

03:57 24 A. Yes, sir.

03:57 25 Q. And that that investigation, from the beginning, was a



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03:57 1 nonprivileged investigation?

03:57 2 A. I did not know the privilege.

03:57 3 Q. You do know that that report has been published?

03:57 4 A. Yes.

03:57 5 Q. It's Exhibit 1 in this litigation?

03:57 6 A. Yes.

03:57 7 Q. It was published in September of 2010?

03:57 8 A. Correct.

03:57 9 Q. You know that there was information received from numerous  
03:57 10 individuals in terms of the investigation that was conducted?

03:57 11 A. Yes.

03:57 12 Q. Over 50 witnesses were interviewed?

03:57 13 A. Yes.

03:57 14 Q. Experienced personnel in areas of safety, cementing,  
03:57 15 fluids, well control, drilling, BOP, process hazard analysis,  
03:58 16 subsea, failure mode testing, and operations participated in  
03:58 17 that investigation?

03:58 18 A. Yes.

03:58 19 Q. During that period of time, BP was utilizing resources --  
03:58 20 its resources, that is, experienced people from across the  
03:58 21 globe -- to conduct the investigation?

03:58 22 A. Yes.

03:58 23 Q. You had engineers that came -- many engineers and other  
03:58 24 experts who came to Houston to help pull the report together?

03:58 25 A. Yes, sir.

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03:58 1 Q. I believe the IIT team constituted about 50 experts or so,  
03:58 2 50 engineers and others from within the company?

03:58 3 A. Yes.

03:58 4 Q. Now, during that time it's also correct that BP had  
03:59 5 limited access to some of the other parties that were involved  
03:59 6 in the accident?

03:59 7 A. I don't know that to be a fact, in terms of the limit on  
03:59 8 access.

03:59 9 Q. Okay. You don't have a factual basis one way or another  
03:59 10 to comment on that?

03:59 11 A. That's correct.

03:59 12 MR. BROCK: Just one second. I apologize.

03:59 13 BY MR. BROCK:

03:59 14 Q. Now, you have read the testimony of Mr. Mark Bly?

03:59 15 A. Yes.

03:59 16 Q. And you know that he has testified that BP believed that  
03:59 17 it was important to get as quick an accurate understanding of  
04:00 18 the immediate causes of the accident as soon as possible?

04:00 19 A. Yes.

04:00 20 Q. So the immediate task that the Bly team had at hand was to  
04:00 21 understand what caused the incident?

04:00 22 A. Correct.

04:00 23 Q. You agree that the investigation, given the size and  
04:00 24 scope, was conducted quickly?

04:00 25 A. Correct.

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04:00 1 Q. Do you know that BP shared its lessons learned from the  
04:00 2 accident with folks in industry as well as government?

04:00 3 A. Yes.

04:01 4 Q. Okay. In your report, you note that the Gulf of Mexico  
04:01 5 SPU reduced its cash costs between 2008 and 2009 by a  
04:01 6 substantial amount. I think you referenced something in the  
04:01 7 range of \$250 million?

04:01 8 A. 22 percent reduction.

04:01 9 Q. You also say that during the same time period that there  
04:01 10 was a significant increase in production?

04:01 11 A. Yes. 55 percent.

04:01 12 Q. Now, your report does not discuss the specifics of what is  
04:01 13 included in the reduction in cash costs, does it?

04:02 14 A. Specifics to the limit of the information sources used to  
04:02 15 compile those figures.

04:02 16 Q. So you know that there are components, that is, numbers  
04:02 17 that relate to why costs are going down in one year and  
04:02 18 production is going up in the same year, correct?

04:02 19 A. Please repeat that question.

04:02 20 Q. That was terrible. I apologize.

04:02 21 Your report does not provide any details regarding  
04:02 22 either the GoM's cash costs, other than the totals that you put  
04:02 23 into your table?

04:02 24 A. That's correct.

04:02 25 Q. That's the point I was trying to get to. Thank you.

## ROBERT BEA - CROSS

04:02 1 Now, I want to talk about the reasons for those  
04:03 2 differences. Okay? If we go to 48250.36.1, do you see this is  
04:03 3 a performance management report dated January 28, 2010?

04:03 4 A. Yes.

04:03 5 Q. If we go to 36.1 -- first of all, you have not seen this  
04:03 6 document before today, have you?

04:03 7 A. No, I have not.

04:03 8 Q. This shows, does it not, that in 2008 the Gulf of Mexico  
04:03 9 SPU spent \$205 million on repairs to the *Thunder Horse* and  
04:03 10 *Atlantis* in infrastructures? Do you see that?

04:03 11 A. Yes, sir.

04:04 12 Q. But then when we go over to the 2009 actual totals, the  
04:04 13 cost on those items is much less than that, isn't it?

04:04 14 A. Yes.

04:04 15 Q. 43?

04:04 16 A. Correct.

04:04 17 Q. Then if we think about production --

04:04 18 MR. BROCK: If we could go to 48250.16.1 --

04:04 19 BY MR. BROCK:

04:04 20 Q. -- you can see that *Thunder Horse's* production was very --  
04:04 21 well, *Thunder Horse's* production in 2008 was only a fraction of  
04:04 22 what it was in 2009. Correct?

04:05 23 A. Correct.

04:05 24 Q. Therein lies the increase in production that occurred,  
04:05 25 correct, sir?

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04:05 1 A. Part of.

04:05 2 Q. Increase in production from a production facility like  
04:05 3 *Thunder Horse* is a matter that -- is a matter that requires a  
04:05 4 very substantial investment in infrastructure, in setting up  
04:05 5 the production facility?

04:05 6 A. Yes, sir.

04:05 7 Q. Once that investment is made, it will then begin to  
04:05 8 produce if things go well?

04:05 9 A. Yes.

04:05 10 Q. Here we see BP has made a substantial investment in a  
04:05 11 production facility that pays off in 2009 with substantially  
04:05 12 more production in the Gulf of Mexico than it had in 2008?

04:06 13 A. Yes.

04:06 14 Q. And I know we haven't talked about every single number  
04:06 15 that accounts for the differences in cash and in production.  
04:06 16 But those two items that we have just discussed, increased cost  
04:06 17 to maintain infrastructure, out-of-pocket costs to repair  
04:06 18 infrastructure in 2008 that didn't occur in 2009, and  
04:06 19 significantly increased production that occurs in 2009 because  
04:06 20 an asset comes on line, account for a good bit of the tables  
04:06 21 that you presented?

04:06 22 A. Yes.

04:06 23 MR. BROCK: Your Honor, give me just one minute. I  
04:06 24 may be at a place where I can stop.

04:07 25 Dr. Bea, that's all the questions I have. Thank

04:07 1 you for your patience today.

04:07 2 **THE WITNESS:** Thank you.

04:07 3 **MR. BROCK:** Your Honor, we have a good number of  
04:07 4 exhibits that we have referenced in our examination. I think  
04:07 5 the most efficient thing for me to do is to -- we'll have a  
04:07 6 list by 5:00 that we can present.

04:07 7 **THE COURT:** That's fine. I was going to --

04:07 8 Ben, did you talk to anybody at all about --

04:07 9 **THE LAW CLERK:** No.

04:07 10 **THE COURT:** Ben raised with me earlier today that it  
04:07 11 would be helpful to him -- he is helping me keep track of  
04:07 12 exhibits that are used during a witness's examination.

04:07 13 You all have given us, which we requested, the  
04:08 14 copies of the demonstratives. For example, I have the PSC's  
04:08 15 demonstratives for Dr. Bea's direct testimony. We don't have  
04:08 16 what was used in cross-examination.

04:08 17 But even within the PSC's, it occurs to me --  
04:08 18 and I guess it's a matter of how we -- I know we went back and  
04:08 19 forth about how we defined what is a demonstrative. So I'm not  
04:08 20 faulting anybody for this.

04:08 21 If possible, going forward, it would be helpful  
04:08 22 if you all could -- when you give us these binders like this,  
04:08 23 if you could also include -- an example, Mr. Cunningham, you  
04:08 24 referred to other exhibits that are not in the binder because  
04:08 25 they are not technically demonstratives. You just put up

04:08 1 another document that is a separate exhibit.

04:08 2 **MR. CUNNINGHAM:** I have a list of both the graphics  
04:08 3 and the exhibits that I offered.

04:08 4 Will that work, Ben?

04:09 5 **THE LAW CLERK:** Yes.

04:09 6 **THE COURT:** If you all can each do that going  
04:09 7 forward, that would be helpful.

04:09 8 Any questions from Cameron?

04:09 9 **MR. BECK:** Your Honor, Cameron has no questions of  
04:09 10 this witness at this time.

04:09 11 **THE COURT:** M-I?

04:09 12 **MR. TANNER:** Your Honor, M-I has no questions of this  
04:09 13 witness.

04:09 14 **MR. BRIAN:** Your Honor, on behalf of Transocean, I  
04:09 15 was going to ask leave to reopen to ask three to four minutes  
04:09 16 of questions. Mr. Cunningham did not elicit any testimony from  
04:09 17 this witness about Transocean and I asked, as a result, only  
04:09 18 about six questions.

04:09 19 Mr. Brock did go into some areas. I can do it  
04:09 20 in three to four minutes, I promise. It's very short.

04:09 21 **THE COURT:** We are going to start a bad precedent  
04:09 22 here.

04:09 23 **MR. BRIAN:** I know you're afraid of that. But trust  
04:09 24 me, Your Honor, I can be very brief.

04:09 25 **MR. BROCK:** The only point we would make about this

04:09 1 is that -- I think Your Honor has said there will be one  
04:09 2 direct, one cross, one redirect.

04:09 3 **THE COURT:** We established the order of presentation.

04:09 4 **MR. BROCK:** The order of presentation.

04:09 5 The direct exam is in the report, so to the  
04:10 6 extent someone wanted to test the direct exam, that opportunity  
04:10 7 has been available.

04:10 8 **THE COURT:** I'm not going to allow you to do that,  
04:10 9 Mr. Brian, for the reasons he just said.

04:10 10 **MR. BRIAN:** Very well, Your Honor.

04:10 11 **THE COURT:** If I start doing that, it becomes chaos  
04:10 12 because everybody will want redirect and recross and all of  
04:10 13 this. We are not going to go there.

04:10 14 **MR. BRIAN:** I understand, Your Honor.

04:10 15 **THE COURT:** Mr. Cunningham. Redirect.

04:10 16 **MR. CUNNINGHAM:** May it please the Court.

04:10 17 Your Honor, I hope to finish in less than 15  
04:10 18 minutes.

04:10 19 **REDIRECT EXAMINATION**

04:10 20 **BY MR. CUNNINGHAM:**

04:10 21 **Q.** Dr. Bea, I want to give you an opportunity to correct a  
04:10 22 part of your report that BP inquired about in their  
04:10 23 examination. Exhibit 1694.

04:10 24 Do you recall the portion of the examination that you  
04:10 25 were asked about the statement that Mr. Sims brushed off



## ROBERT BEA - REDIRECT

04:11 1 remarks and didn't take them seriously before he left for  
04:11 2 vacation?

04:11 3 A. Yes, sir.

04:11 4 Q. Let me get you to look at the e-mail between Mr. Sims and  
04:11 5 Mr. Guide and give you a chance to correct it. At the top of  
04:11 6 the e-mail from Mr. Sims -- correction, from Mr. Guide -- or,  
04:11 7 rather, from Mr. Sims to Mr. Guide, where he really went was  
04:11 8 not on vacation -- if you look at that first sentence -- but he  
04:11 9 went to dance practice. Correct? Is that what you got  
04:11 10 confused, and instead of saying he went to dance practice, you  
04:11 11 said he went on vacation?

04:11 12 A. That's correct.

04:11 13 Q. Down at the bottom of the e-mail, he says that they are  
04:11 14 dancing to the Village People. Did you read that in the  
04:11 15 e-mail?

04:11 16 A. Yes.

04:11 17 Q. Now, you were asked about the period 2005 to 2010, and the  
04:12 18 question from BP was that BP expressed a major commitment to  
04:12 19 process safety. Do you recall that?

04:12 20 A. Yes, sir.

04:12 21 Q. Then we went through a long series of citations about  
04:12 22 multiple expressions by executives at BP or by people at BP  
04:12 23 about their commitment to process safety?

04:12 24 A. That's correct.

04:12 25 Q. Do you recall that?

## ROBERT BEA - REDIRECT

04:12 1 Is there a difference between expressing a commitment  
04:12 2 and fulfilling a commitment?

04:12 3 A. Certainly.

04:12 4 Q. In your view and in your opinion, did BP fulfill the  
04:12 5 commitment that they repeatedly expressed that they had to  
04:12 6 process safety?

04:12 7 A. Not in terms of the exploratory drilling operations  
04:12 8 deepwater Gulf of Mexico.

04:12 9 Q. All right.

04:13 10 A. It was absent.

04:13 11 Q. You were shown a series of documents -- some involved  
04:13 12 Kevin Lacy -- regarding the OMS and the fact it had been -- and  
04:13 13 I think the word was very carefully used -- adopted in the Gulf  
04:13 14 of Mexico. Do you recall that?

04:13 15 A. Yes.

04:13 16 Q. Was it ever implemented in the Gulf of Mexico with respect  
04:13 17 to contractor-owned MODUs?

04:13 18 A. No.

04:13 19 Q. Who was the lead proponent of the adoption and  
04:13 20 implementation of OMS in the Gulf of Mexico?

04:13 21 A. Kevin Lacy.

04:13 22 Q. What happened to Kevin Lacy in the fall of 2009?

04:13 23 A. He was fired.

04:13 24 Q. Now, you were shown a colored GAP chart, which stated on  
04:13 25 the top line certain facts about the implementation of OMS.

## ROBERT BEA - REDIRECT

04:14 1 And I think I'm quoting correctly the statement. Quote: This  
04:14 2 shows implementing OMS was identified as a GAP, and by  
04:14 3 12-18-09 had been fully implemented in the Gulf of Mexico. End  
04:14 4 quote.

04:14 5 Do you recall Mr. Brock saying that or words to that  
04:14 6 effect?

04:14 7 A. Yes. Yes.

04:14 8 Q. Let's look at D-2874. We have seen this before.

04:14 9 Well, something is not working, so I will describe  
04:14 10 2874. It's a quote from the deposition of Mr. John Baxter at  
04:14 11 the top where he says: "OMS was not implemented."

04:14 12 MR. BROCK: Your Honor, we are just going over the  
04:14 13 same ground.

04:14 14 MR. CUNNINGHAM: No. I'm going to change part of it,  
04:14 15 Your Honor.

04:14 16 THE COURT: Go ahead.

04:14 17 BY MR. CUNNINGHAM:

04:14 18 Q. The second quote was from Mr. O'Bryan --

04:14 19 A. That's correct.

04:14 20 Q. -- who said OMS was not implemented, correct?

04:15 21 A. That's correct.

04:15 22 Q. Now, what relationship was there between Mr. --

04:15 23 THE COURT: I think your document might be on the  
04:15 24 screen. Is that what you were looking for?

04:15 25 MR. CUNNINGHAM: Yes, sir.

## ROBERT BEA - REDIRECT

04:15 1 BY MR. CUNNINGHAM:

04:15 2 Q. What position did Mr. O'Bryan assume when Mr. Lacy was  
04:15 3 fired?

04:15 4 A. Mr. Lacy's position.

04:15 5 Q. Mr. Lacy, the person who tried to implement OMS;  
04:15 6 Mr. O'Bryan, after Mr. Lacy was fired, was appointed to his  
04:15 7 position?

04:15 8 A. That's correct.

04:15 9 MR. BROCK: I object to leading and argumentative.

04:15 10 THE COURT: Try not to lead the witness.

04:15 11 BY MR. CUNNINGHAM:

04:15 12 Q. Were you asked questions about whether or not T0 had a  
04:15 13 safety management system that covered process safety?

04:15 14 A. Yes.

04:15 15 Q. Were you asked questions about whether or not T0 did an  
04:15 16 MAR, a major accident risk assessment?

04:15 17 A. Correct.

04:15 18 Q. What difference was there, if any, between Transocean's  
04:16 19 safety management system and the BP safety management system  
04:16 20 OMS?

04:16 21 A. Well, the principal difference is Transocean is addressing  
04:16 22 their part of the system exemplified by the graphic we  
04:16 23 discussed earlier today, the *Deepwater Horizon*. BP has to  
04:16 24 encompass that with the operating management system; in  
04:16 25 addition, the other onshore operating management elements. So

## ROBERT BEA - REDIRECT

04:16 1 Transocean cannot do a process safety evaluation or a MAR  
04:16 2 evaluation that will include details of the well and the other  
04:16 3 parts of that complex system.

04:17 4 Q. Who owned the rig?

04:17 5 A. Transocean.

04:17 6 Q. Who owned the well and who was responsible for the design  
04:17 7 of the well and the engineering of the well?

04:17 8 A. BP.

04:17 9 Q. Can somebody who is not responsible for the design and  
04:17 10 engineering of the well implement a process safety system that  
04:17 11 will deal with all of the risks inherent in the drilling of a  
04:17 12 well?

04:17 13 A. No, they can't.

04:17 14 Q. Is the same true of a MAR?

04:17 15 A. Yes.

04:17 16 Q. You were also asked about Mr. Guide improving safety in  
04:17 17 the Gulf of Mexico, and you were shown 5966, page 4. Do you  
04:17 18 recall that?

04:17 19 A. Yes, sir.

04:17 20 Q. Let's look at page 4.

04:17 21 MR. CUNNINGHAM: If you blow up that top part, the  
04:18 22 box there.

04:18 23 BY MR. CUNNINGHAM:

04:18 24 Q. Do you recall being asked about what's highlighted on the  
04:18 25 right-hand side here about safety in the Gulf?

## ROBERT BEA - REDIRECT

04:18 1 A. Yes, sir.

04:18 2 Q. And how that indicated that Mr. Guide was fulfilling his  
04:18 3 responsibilities?

04:18 4 A. Yes, sir.

04:18 5 Q. Well, let's look down at the bottom left and pull out the  
04:18 6 bottom left statement, the bottom left sentence.

04:18 7 Does it say that the Gulf of Mexico is the only major  
04:18 8 strategic performance unit with a deteriorating safety  
04:18 9 performance in 2009?

04:18 10 A. Yes.

04:18 11 MR. CUNNINGHAM: Exhibit 6015. Pull up the  
04:18 12 third-from-the-bottom paragraph.

04:19 13 Your Honor, this paragraph contains a reference  
04:19 14 to the Baker Panel. BP filed a motion in limine to prohibit  
04:19 15 any reference to the Baker Panel. We have not referred to the  
04:19 16 Baker Panel, which was the panel that BP paid to investigate  
04:19 17 the Texas City event. Here they have presented to Your Honor  
04:19 18 this portion of the document which says: "We are making good  
04:19 19 progress in addressing the recommendations of the Baker Panel."

04:19 20 I would like to have the opportunity to rebut  
04:19 21 that with three sentences from the Baker Panel report.

04:19 22 MR. BROCK: Your Honor, I would -- I did not draw  
04:19 23 attention to the Baker Panel report in my examination, did not  
04:19 24 mention the Baker Panel.

04:19 25 MR. CUNNINGHAM: They pulled out that very paragraph,

## ROBERT BEA - REDIRECT

04:19 1 Your Honor.

04:19 2 THE COURT: That document?

04:19 3 MR. CUNNINGHAM: That document and that paragraph.  
04:20 4 Isn't that true?

04:20 5 MR. BROCK: I did use that document, but I didn't  
04:20 6 refer to the Baker Panel.

04:20 7 THE COURT: I overrule the objection. Go ahead.

04:20 8 MR. CUNNINGHAM: 22806. 2830.

04:20 9 BY MR. CUNNINGHAM:

04:20 10 Q. Dr. Bea, are these quotes from the Baker report?

04:20 11 A. Yes.

04:20 12 MR. BROCK: Your Honor, excuse me. The only way in  
04:21 13 which I used the document was to call attention to progress  
04:21 14 that had been made from -- I think I said 2006 to 2009, in  
04:21 15 response to testimony that he had given that we were not making  
04:21 16 progress during that time period. So I referenced a very  
04:21 17 specific statement in that document. To now have them put in  
04:21 18 substantive findings relating to another event is walking right  
04:21 19 into what we have said that we will not do.

04:21 20 If this is an issue, I will withdraw that  
04:21 21 exhibit, just let the testimony stand for what it is, because I  
04:21 22 was not in any way intending to open the door on examination  
04:21 23 about prior events which Your Honor has been clear about.

04:21 24 MR. CUNNINGHAM: Judge, that argument might stand if  
04:21 25 they had not pulled out the very paragraph that says: "We are

**ROBERT BEA - REDIRECT**

04:21 1 making good progress in addressing the recommendations of the  
04:22 2 Baker Panel and have begun to" --

04:22 3 **THE COURT:** Okay. I overrule the objection. Go  
04:22 4 ahead, Mr. Cunningham.

04:22 5 **BY MR. CUNNINGHAM:**

04:22 6 **Q.** Dr. Bea, did that report state: "BP has not provided  
04:22 7 effective process safety leadership"?

04:22 8 **A.** Yes.

04:22 9 **Q.** "BP has not adequately established process safety as a  
04:22 10 core value"?

04:22 11 **A.** Yes.

04:22 12 **Q.** "BP's management system does not effectively translate its  
04:22 13 corporate expectations into measurable criteria for the  
04:22 14 management of process risk"?

04:22 15 **A.** Yes.

04:22 16 **Q.** In your opinion, based on your study of the events in this  
04:22 17 case and the materials in this case, has BP changed in any  
04:22 18 respect with respect to these three points?

04:22 19 **A.** No.

04:22 20 **MR. BROCK:** Same objection, Your Honor.

04:22 21 **THE COURT:** Overruled.

04:22 22 **MR. CUNNINGHAM:** No further questions.

04:22 23 **THE COURT:** I think you are finished, Mr. Bea. It's  
04:22 24 a long day, huh?

04:22 25 **THE WITNESS:** Yes.



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**THE COURT:** Thank you.

Next witness for the plaintiffs.

**MR. CUNNINGHAM:** Judge, we call Mr. McKay.

**THE COURT:** Mr. McKay.

If anybody needs to stand up and stretch, go ahead.

I think Mr. McKay has arrived. Everybody can take their seats again, please.

**LAMAR MCKAY,**  
having been duly sworn, testified as follows:

**THE DEPUTY CLERK:** State your full name and correct spelling for the record, please.

**THE WITNESS:** My name is Lamar McKay, L-A-M-A-R,  
M-C-K-A-Y.

**DIRECT EXAMINATION**

**BY MR. CUNNINGHAM:**

**Q.** Your name is Lamar McKay?

**A.** That's right.

**Q.** You are currently the chief executive upstream for BP?

**A.** That's right.

**Q.** Upstream is comprised of exploration, development, and production, those three divisions; is that correct?

**A.** Yes, as well as the financial groups and other support groups.

**Q.** You report to Bob Dudley?

## LAMAR MCKAY - DIRECT

04:26 1 A. I do.

04:26 2 Q. In April of 2010, you were chairman and president of  
04:27 3 BP America, correct?

04:27 4 A. That is correct.

04:27 5 Q. You were also chairman and director of BP North America?

04:27 6 A. BP for North America, yes.

04:27 7 Q. You were executive vice president of BP PLC; is that  
04:27 8 right?

04:27 9 A. Correct.

04:27 10 Q. And reported to Bob Dudley at that time?

04:27 11 A. In April 2010, that would have been Tony Hayward, I think.

04:27 12 Q. That you reported to?

04:27 13 A. Yes.

04:27 14 Q. You were the lead representative in the United States for  
04:27 15 BP at the time of the explosion, true?

04:27 16 A. Yes. My job included being the chief representative for  
04:27 17 the company in the U.S., yes.

04:27 18 Q. Now, you are a petroleum engineer, are you not?

04:27 19 A. I am.

04:27 20 Q. You have been in the industry for 32 years?

04:27 21 A. Yes.

04:27 22 Q. At one time you were the business unit leader for the Gulf  
04:27 23 of Mexico?

04:27 24 A. Shelf.

04:27 25 Q. Shelf. That included drilling operations?

## LAMAR MCKAY - DIRECT

04:27 1 A. It did, on the shelf, yes.

04:27 2 Q. You were also at one time the business unit leader for  
04:27 3 BP's Central North Sea?

04:28 4 A. That's correct.

04:28 5 Q. That included drilling operation?

04:28 6 A. Yes.

04:28 7 Q. You also held the position chief of staff for worldwide  
04:28 8 exploration and production at one time?

04:28 9 A. Yes.

04:28 10 Q. Which, of course, included drilling operations?

04:28 11 A. Well, that was not an operating type role.

04:28 12 Q. Not an operating --

04:28 13 A. No. The chief of staff to the CEO of upstream.

04:28 14 Q. You have had quite a bit of experience, Mr. McKay, haven't  
04:28 15 you, in testifying?

04:28 16 A. In front of Congress, I have.

04:28 17 Q. You have testified many times in front of committees of  
04:28 18 Congress, some friendly and some not, true?

04:28 19 A. Mostly the later, yes.

04:28 20 Q. You have been in the position of answering lawyers'  
04:28 21 questions quite a few times in the past, haven't you?

04:28 22 A. Yes.

04:28 23 Q. So it would be fair to say you are not an inexperienced  
04:28 24 witness, are you?

04:28 25 A. I am in a courtroom.

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04:28 1 Q. Well, let's talk about what you knew in 2010, both you and  
04:29 2 BP, about the hazards created by BP in the Gulf of Mexico. All  
04:29 3 right?

04:29 4 A. Okay.

04:29 5 Q. You and BP knew that a deepwater blowout was a foreseeable  
04:29 6 event, didn't you?

04:29 7 A. Well, as I understand it -- well, first of all, as an  
04:29 8 engineer, I know that blowouts are possible, yes. And BP, in  
04:29 9 terms of April 2010, had a blowout in the risk registers of the  
04:29 10 Gulf of Mexico as well as the corporation.

04:29 11 Q. Which demonstrates that both you and BP, certainly you,  
04:29 12 were familiar with that fact?

04:29 13 A. I was -- I'm not sure I was familiar with the risk  
04:29 14 register at that point. I was not in the operating line. But  
04:29 15 I understand it was in the risk register, yes.

04:29 16 Q. You were certainly familiar with the fact that the  
04:29 17 possibility of a blowout and an oil spill existed in your  
04:29 18 operations in the Gulf of Mexico, weren't you?

04:29 19 A. I'm generally familiar with that, yes.

04:30 20 Q. You and BP knew of that risk before you ever spudded the  
04:30 21 Macondo well, didn't you?

04:30 22 A. There were -- yes. That was an identified risk, yes.

04:30 23 Q. You and BP knew there is inherent risk in drilling, and  
04:30 24 that once a spill occurs, there is no predictability about  
04:30 25 where it will go, didn't you?

## LAMAR MCKAY - DIRECT

04:30 1 A. I wouldn't say there's great predictability; but, yes,  
04:30 2 there was a risk identified for a blowout in a spill of  
04:30 3 sizeable proportion, yes.

04:30 4 Q. BP and you knew the complexity of drilling, with that  
04:30 5 inherent risk in deepwater, is far higher than the risk in  
04:30 6 shallow water?

04:30 7 A. Well, I'm not an expert; but as an engineer, I don't  
04:30 8 necessarily see the inherent drilling risk that much  
04:30 9 difference. It's harder to deal with, yeah.

04:30 10 Q. Let me make sure I understand what you are saying, then.  
04:30 11 Is it your testimony that deepwater drilling in the Gulf of  
04:30 12 Mexico, as opposed to shallow water drilling, for example, in  
04:31 13 the Gulf of Mexico, have the equal risk?

04:31 14 A. I would say each situation is unique, and that the  
04:31 15 drilling part of it may be very similar or it could be very  
04:31 16 different. The water depth is the difference, not the  
04:31 17 drilling.

04:31 18 Q. What is the difference that the water depth makes?

04:31 19 A. The water depth as a subsea set of equipment rather than a  
04:31 20 surface set of equipment.

04:31 21 Q. All right. So back to the basic question. Is it more  
04:31 22 dangerous, more inherently dangerous, in the deepwater drilling  
04:31 23 part of your operations than in the shallow water drilling  
04:31 24 part?

04:31 25 A. I would say both have risks.

## LAMAR MCKAY - DIRECT

04:31 1 Q. Then just to bring home the point. When we talk to the  
04:31 2 experts, we can tell them that the president of BP says that  
04:31 3 both shallow water drilling and deepwater drilling carry with  
04:31 4 them the same risks?

04:31 5 A. The drilling part could be higher in shallow water than it  
04:31 6 could be in deeper water.

04:32 7 Q. So not only do they carry the same, but it could be higher  
04:32 8 in shallow water?

04:32 9 A. Drilling risk itself, according to what type of formations  
04:32 10 you are drilling, yes. It's my general understanding, yes.

04:32 11 Q. You speak not only as an executive with BP but as a  
04:32 12 drilling engineer?

04:32 13 A. I don't speak as a drilling engineer. I'm giving my  
04:32 14 general awareness of drilling issues could be difficult  
04:32 15 onshore, offshore, and various different places.

04:32 16 Q. But you are a drilling engineer, right?

04:32 17 A. No. I wouldn't call myself a drilling engineer. I'm a  
04:32 18 petroleum engineer, worked drilling just a bit.

04:32 19 Q. Petroleum engineer?

04:32 20 A. Right.

04:32 21 Q. Now, BP knew and you knew that an uncontrolled blowout in  
04:32 22 a subsea environment is a huge risk; isn't that true?

04:32 23 A. Yes. That was a high-level risk, yes.

04:32 24 Q. That risk had been specifically identified by BP, hadn't  
04:32 25 it?

## LAMAR MCKAY - DIRECT

04:32 1 A. Yes.

04:32 2 Q. BP was fully aware of that risk long before the  
04:33 3 *Deepwater Horizon* blowout occurred, weren't they?

04:33 4 A. I believe that was a recognized risk, yes.

04:33 5 Q. And as you mentioned, I think, BP had acknowledged the  
04:33 6 existence of that risk in writing?

04:33 7 A. Yes, it was in the risk registers. That's right.

04:33 8 Q. Now, the Macondo was BP's well, was it not?

04:33 9 A. BP is the lease operator of the Macondo lease, yes. So we  
04:33 10 were the operator of that well, yes.

04:33 11 Q. Well, you owned the lease and you owned the right to drill  
04:33 12 the well that you were drilling, correct?

04:33 13 A. That's correct. We -- and with partnerships with others,  
04:33 14 Anadarko and Mitsui, yes.

04:33 15 Q. Right. But Transocean didn't own the well and didn't own  
04:33 16 the lease?

04:33 17 A. That's correct.

04:33 18 Q. Halliburton didn't and Cameron didn't; isn't that true?

04:33 19 A. That's correct.

04:33 20 Q. The only entity entitled to receive money as a result of  
04:33 21 the drilling operation out there was going to be BP and its  
04:33 22 partners, true?

04:33 23 A. Well, in a way, people -- contractors are paid before any  
04:34 24 revenues are received for their services, so they received  
04:34 25 revenue.

## LAMAR MCKAY - DIRECT

04:34 1 Q. So I'm not quite sure what you are saying. Was it BP and  
04:34 2 its partners who received the revenue from the well from the  
04:34 3 oil that came out of the well?

04:34 4 A. That would be -- that's correct. That is right. Right.

04:34 5 Q. The only reason that Transocean was drilling the well and  
04:34 6 that Halliburton was providing the cement for the well is  
04:34 7 because BP selected them; isn't that true?

04:34 8 A. Yes, that is true.

04:34 9 Q. BP was in charge of and responsible for planning the  
04:34 10 entire operation, weren't you?

04:34 11 A. Well, BP, as operators in the industry, are responsible  
04:34 12 for planning and designing the well, yes.

04:34 13 Q. All right. BP was also responsible to safely manage the  
04:34 14 risk that it had identified before it started drilling the  
04:35 15 well, true?

04:35 16 A. Well, in deepwater operations, BP would be responsible --  
04:35 17 and this is true in the industry -- of designing the well,  
04:35 18 planning the well, and the contractors that we hire, the  
04:35 19 competent contractors we hire to implement and construct the  
04:35 20 well. And it's a team effort is the way I would say it.

04:35 21 Q. Let me try the question again. Was it or was it not BP's  
04:35 22 responsibility to safely manage the risk that it had identified  
04:35 23 in the drilling of the Macondo well?

04:35 24 A. Well, I think the responsibility to plan and design the  
04:35 25 well was BP's. BP contracts people to implement the



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04:35 1 construction of the well; and I think that's a shared  
04:35 2 responsibility, to manage the safety and the risk.

04:35 3 Q. I'm not talking about the construction of the well, so let  
04:35 4 me try the question again.

04:35 5 A. Okay.

04:35 6 Q. Is it or is it not BP's responsibility to safely manage  
04:36 7 the risk of drilling the well that it had identified before it  
04:36 8 ever started?

04:36 9 A. Well, partially, because it's partly in the planning and  
04:36 10 design. And the risk that was identified was the risk of a  
04:36 11 blowout, which is also managed by the safety systems of the  
04:36 12 implementation and construction. It's both. It's the planning  
04:36 13 and design as well as the implementation.

04:36 14 Q. Who has overall final ultimate responsibility for managing  
04:36 15 the risk that BP identified in the drilling of the Macondo  
04:36 16 well?

04:36 17 A. Well, as designated operator for the lease, BP has agreed  
04:36 18 that it had ultimate responsibility and that shared  
04:36 19 responsibility. That responsibility is discharged and shared  
04:36 20 with the contractors it hires to help construct the well.

04:36 21 Q. BP had the ultimate and final responsibility for managing  
04:36 22 the risk, didn't they?

04:37 23 A. What I would say is we have agreed in our plea agreement  
04:37 24 that we had ultimate responsibility, as designated operator, to  
04:37 25 conduct operations of the well. Part of that responsibility is

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04:37 1 exercised by hiring competent, world-class contractors.

04:37 2 Q. Sure. But that doesn't relieve BP of its responsibility,  
04:37 3 does it?

04:37 4 A. Well, I think the key point to me is it doesn't mean sole  
04:37 5 or exclusive. It means shared responsibility. And that's part  
04:37 6 of the wording in the plea agreement as well.

04:37 7 Q. Well, the plea agreement aside, you understand what the  
04:37 8 MMS regulations say on this very point, don't you?

04:37 9 MR. REGAN: Objection, Your Honor, as to the  
04:37 10 foundation of his question.

04:37 11 THE COURT: Overruled.

04:37 12 BY MR. CUNNINGHAM:

04:37 13 Q. Demonstrative 2908. Tell me whether or not I read this  
04:37 14 correctly. These are MMS regulations on oil and gas drilling  
04:37 15 operations. 250.400: "Who is subject to the requirements of  
04:38 16 this subpart?

04:38 17 "The requirements of this subpart apply to lessees,  
04:38 18 operating rights owners, operators, and their contractors and  
04:38 19 subcontractors."

04:38 20 Did I read that correctly?

04:38 21 A. Yes.

04:38 22 Q. BP was the lessee, correct?

04:38 23 A. That's correct.

04:38 24 Q. BP was the operating rights owner, correct?

04:38 25 A. Yes.

## LAMAR MCKAY - DIRECT

04:38 1 Q. BP was the operator, correct?

04:38 2 A. Yes. Yes.

04:38 3 Q. And then below that: "What must I do to keep wells under  
04:38 4 control?"

04:38 5 "You must take necessary precautions to keep wells  
04:38 6 under control at all times."

04:38 7 Correct?

04:38 8 A. Yes. And I was just pointing out that it's a shared  
04:38 9 responsibility with contractors as well.

04:38 10 Q. It holds them responsible, but it also holds the lessee,  
04:38 11 the operating rights owner, and the operator responsible,  
04:38 12 doesn't it?

04:38 13 A. Yes. And we have said we have been partially responsible,  
04:38 14 yes.

04:39 15 Q. Well, let's get to the partially responsible. Insofar as  
04:39 16 managing the overall risk that you have identified in your own  
04:39 17 documents, BP had full responsibility to manage that risk,  
04:39 18 didn't it? Not partial, but full?

04:39 19 A. Well, I don't agree entirely, because we have  
04:39 20 responsibility to manage risk. That risk is then managed by  
04:39 21 the pertinent operations that occur. And sometimes contractors  
04:39 22 manage that risk, sometimes we do. Most of the time it's a  
04:39 23 team effort.

04:39 24 Q. The way a major risk such as a deepwater blowout is  
04:39 25 managed is through a company's safety management system, isn't

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04:39 1 it?

04:39 2 A. It can be, yes.

04:39 3 Q. There may be different descriptions given to that safety  
04:39 4 management system and different companies may have different  
04:39 5 ways of describing it, but the goal is the same, to manage  
04:39 6 safety and to manage the risk of drilling, isn't it?

04:40 7 A. Yeah, I think any safety management system would want to  
04:40 8 understand and mitigate risk and to try to conduct safe and  
04:40 9 reliable operations, yes.

04:40 10 Q. You are generally familiar with safety processes and  
04:40 11 procedures, aren't you?

04:40 12 A. Generally, yes.

04:40 13 Q. In fact, you're familiar enough that you have testified  
04:40 14 before Congress about those issues, haven't you?

04:40 15 A. Sometimes, yes.

04:40 16 Q. You understand the basics, at least. We can agree to  
04:40 17 that, right?

04:40 18 A. I think that's right.

04:40 19 Q. And you are familiar with the term *process safety*,  
04:40 20 correct?

04:40 21 A. Generally.

04:40 22 Q. D-2875. Do you recognize this as a definition, an  
04:40 23 accurate definition, with which you would agree of *process*  
04:40 24 *safety*?

04:40 25 A. Yes. I'm not a process safety expert, but that seems

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04:40 1 reasonable, yes.

04:40 2 Q. Process safety is the avoidance of very high-consequence  
04:41 3 risk. Can we agree on that?

04:41 4 A. Yes. Roughly, yes.

04:41 5 Q. It is an integral part of any safety management system,  
04:41 6 isn't it?

04:41 7 A. Process safety would be part of what's managed through a  
04:41 8 safety management system, I would say.

04:41 9 Q. What happened on the Macondo on April 20, 2010 is a  
04:41 10 classic example of the type of high-consequence risk that must  
04:41 11 be managed, isn't it?

04:41 12 A. That was one of -- the blowout or loss of well control,  
04:41 13 loss of primary containment, obviously was an identified risk.  
04:41 14 And it was a big risk, yes.

04:41 15 Q. D-2887. This is a BP risk mitigation plan which describes  
04:41 16 the very risk that resulted in the Macondo blowout?

04:41 17 MR. REGAN: Objection, Your Honor, foundation for  
04:41 18 this witness. Mr. McKay is here as a fact witness. He is not  
04:41 19 here as an expert to look at documents that he didn't write or  
04:41 20 receive.

04:41 21 MR. CUNNINGHAM: It's a BP document.

04:42 22 THE COURT: He can answer for himself whether he can  
04:42 23 or not.

04:42 24 THE WITNESS: I'm sorry. What's the question?  
25

**LAMAR MCKAY - DIRECT**

04:42 1 **BY MR. CUNNINGHAM:**

04:42 2 **Q.** The question is that what happened on the Macondo on  
04:42 3 April 2010 is a classic example of the type of high-consequence  
04:42 4 risk that must be managed, isn't it?

04:42 5 **A.** Yes. What happened on Macondo was a tragic accident of a  
04:42 6 risk that was identified, yes.

04:42 7 **Q.** It has to be managed by the owner and the operator of the  
04:42 8 well being drilled, doesn't it?

04:42 9 **A.** I think it has to be managed by everybody that's working  
04:42 10 on the well, including the owner/operator, yes.

04:42 11 **Q.** So would you agree that the risk identified by BP in this  
04:42 12 risk mitigation plan was a risk that it was responsible for  
04:42 13 managing?

04:42 14 **MR. REGAN:** Foundation, Your Honor.

04:42 15 **THE COURT:** Overruled.

04:43 16 **THE WITNESS:** On this -- I don't know what that risk  
04:43 17 mitigation plan says, but . . .

04:43 18 **BY MR. CUNNINGHAM:**

04:43 19 **Q.** Well, you can read right there on the right what it says.

04:43 20 **A.** I can read the description of the risk. I don't know what  
04:43 21 the mitigation plan is.

04:43 22 **Q.** Well, the question was: Isn't the risk identified here  
04:43 23 one that has to be managed by the operator of the well, in this  
04:43 24 case, BP?

04:43 25 **A.** Well, again, it has to be managed by everyone who is

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04:43 1 dealing in the well, and in some places it's the operator for  
04:43 2 planning and design, some places it's contractor for  
04:43 3 construction, sometimes it's both. I think that matters. It's  
04:43 4 a collaborative team effort.

04:43 5 Q. Is it your testimony that once the well is under  
04:43 6 construction BP has no responsibility for managing the risk?

04:43 7 A. No. No, not at all.

04:43 8 Q. They still have responsibility, don't they?

04:43 9 A. It's a shared responsibility. That's --

04:43 10 Q. Their contractor is who is drilling the well, right?

04:43 11 A. Yes. And that's what I have said, a shared  
04:44 12 responsibility.

04:44 13 Q. Process safety specifically focuses on avoiding  
04:44 14 low-probability/high-consequence disasters, doesn't it?

04:44 15 A. I'm not a process safety expert, but it tries to  
04:44 16 understand risks and the mitigation around those risks.

04:44 17 Q. Focuses on those kinds of disasters that may not happen  
04:44 18 often, but when they happen, they are major disasters; isn't  
04:44 19 that true?

04:44 20 A. I think -- well, I'm not a process safety expert. I think  
04:44 21 it's not just about that. It's about managing the process, you  
04:44 22 know, thoroughly, not just for major accidents.

04:44 23 Q. You would agree then, at least, that a deepwater blowout  
04:44 24 is one of the types of major catastrophes that process safety  
04:44 25 is designed to prevent?

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04:44 1 A. I think the whole safety management system, which includes  
04:44 2 process safety, is integral in trying to prevent blowouts like  
04:44 3 that, yes.

04:44 4 Q. 2279. What we see here -- this is what process safety was  
04:45 5 created to avoid, wasn't it?

04:45 6 A. The whole safety system was created to try to avoid this  
04:45 7 type of tragic accident, yes.

04:45 8 Q. When you say that *whole safety system*, what whole safety  
04:45 9 system are you talking about?

04:45 10 A. Well, in our case, our operating management system. In  
04:45 11 Transocean's case, their safety management system. The  
04:45 12 interrelation of those two as examples -- as examples.

04:45 13 Q. So as an example of a system designed to prevent what we  
04:45 14 see right here, you have named OMS, your operating management  
04:45 15 system?

04:45 16 A. Uh-huh.

04:45 17 Q. Process safety is not a new concept in the oil and gas  
04:45 18 business, is it?

04:45 19 A. No.

04:45 20 Q. It's not something somebody dreamed up recently, right?

04:45 21 A. Not to my knowledge, no.

04:45 22 Q. It's been around a long time in the drilling industry,  
04:45 23 correct?

04:46 24 A. I think the concepts around well control have been around  
04:46 25 forever, yeah.



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04:46 1 Q. Books have been written on the subject of process safety,  
04:46 2 haven't they?

04:46 3 A. I'm sure they have.

04:46 4 Q. In your capacity as president of BP America, can you tell  
04:46 5 us what books you read on the subject of process safety?

04:46 6 A. Well, in my job at BP America, I was not involved in the  
04:46 7 operating businesses, so I can't tell you a book I read on  
04:46 8 process safety during that time.

04:46 9 Q. How about before April 20, 2010? Had you read any books  
04:46 10 on process safety?

04:46 11 A. I wouldn't say read books, but I had had some experience  
04:46 12 with process safety in the past.

04:46 13 Q. How about after April 20, 2010? Read any books on process  
04:46 14 safety?

04:46 15 A. I haven't read any textbooks. I have read investigations  
04:46 16 around this accident and others.

04:46 17 Q. Not investigations, but any books on process safety since  
04:46 18 April 20, 2010?

04:46 19 A. I can't recall reading any books on process safety, no.

04:46 20 Q. You now are the highest person in the company under  
04:47 21 Mr. Dudley that has responsibility for exploration, correct,  
04:47 22 production? All of that includes drilling all over the world  
04:47 23 for BP, doesn't it?

04:47 24 A. That's correct.

04:47 25 Q. Now, companies like BP may actually hire and pay process

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04:47 1 safety experts to give them advice about how to incorporate and  
04:47 2 implement process safety into their systems; is that true?

04:47 3 A. We have an organization that has expertise in process  
04:47 4 safety within the operating businesses as well as a piece of  
04:47 5 the corporation called Safety and Operation Risk that has  
04:47 6 expertise in that. And of course, we would have available the  
04:47 7 ability to get other outside consultants if we needed to.

04:47 8 Q. Has BP done that in the past, hired experts in process  
04:47 9 safety to give them advice on how to implement process safety  
04:48 10 systems or safety management systems?

04:48 11 A. Probably so, yes.

04:48 12 Q. Are you aware that one of the experts who was paid to give  
04:48 13 BP advice on that very subject was Dr. Bob Bea, who has just  
04:48 14 testified in this case?

04:48 15 A. I was only aware of that because I had heard it in leading  
04:48 16 up to this.

04:48 17 Q. You have no doubt read his report in this case where he  
04:48 18 discusses the process safety of BP?

04:48 19 A. No, I have not.

04:48 20 Q. As president of BP America or in your current capacity as  
04:48 21 the chief -- is it chief executive?

04:48 22 A. Yes.

04:48 23 Q. As the chief executive, you don't think it's important to  
04:48 24 know what one of the leading process safety experts in the  
04:48 25 world had to say about BP's process safety failure?

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04:48 1 MR. REGAN: Objection, Your Honor, it's  
04:48 2 argumentative.

04:48 3 THE COURT: Overruled.

04:48 4 THE WITNESS: I have not had a chance to read his  
04:48 5 report. The organization that we have that manages our  
04:49 6 businesses has process safety expertise. I'm not aware if  
04:49 7 people have read that report or not. I'm sure that people  
04:49 8 have. I have not had a chance to read that report.

04:49 9 BY MR. CUNNINGHAM:

04:49 10 Q. So whatever we have heard in this courtroom today from  
04:49 11 Dr. Bea in terms of his opinions and conclusions and the  
04:49 12 analysis of BP's safety programs and processes, you don't know  
04:49 13 what he had to say about it?

04:49 14 A. I was not here for the testimony, no.

04:49 15 Q. You haven't read his report?

04:49 16 A. That's correct.

04:49 17 Q. Does his report discuss management failures? Do you know  
04:49 18 that?

04:49 19 A. I don't know.

04:49 20 Q. You were the president of BP America until January of this  
04:49 21 year, right?

04:49 22 A. That's correct.

04:49 23 Q. Don't you think it would at least be worthwhile to read  
04:49 24 and consider his views on the management aspects of process  
04:49 25 safety at BP?

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04:49 1 A. I don't know. I have not read the report, so I can't say.

04:50 2 Q. Were you among the executives who he advised, long before  
04:50 3 the Macondo incident, that from a process safety standpoint BP  
04:50 4 was headed for trouble?

04:50 5 A. I don't remember meeting Dr. Bea.

04:50 6 Q. Did anybody ever tell you that BP had consulted an expert  
04:50 7 on process safety who said you were headed for trouble?

04:50 8 A. I don't recall a conversation like that, no.

04:50 9 Q. When did the Amoco BP merger take place?

04:50 10 A. We -- the merger was effective, I think, December 31 of  
04:50 11 '98, around that day.

04:50 12 Q. Were you employed by BP Amoco at that time?

04:50 13 A. Yes. I was employed by Amoco and then BP Amoco after the  
04:50 14 merger, yes.

04:50 15 Q. I want to show you a document, Exhibit 5944, which shows  
04:50 16 on its face that it was created by BP Amoco Corporation. And  
04:50 17 although it doesn't have a date, based on the references, it  
04:51 18 was created sometime after 2002.

04:51 19 Have you seen this document before?

04:51 20 A. I don't believe so.

04:51 21 Q. Let's go to the top. There's no date that we can find at  
04:51 22 the top, but it deals with human and organizational factors.  
04:51 23 Do you see that?

04:51 24 **MR. REGAN:** Objection to foundation to a fact witness  
04:51 25 on a document that has no date and that he has just testified

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04:51 1 he has never seen before.

04:51 2 MR. CUNNINGHAM: Go to the bottom, please.

04:51 3 BY MR. CUNNINGHAM:

04:51 4 Q. Do you see where it says: "For the exclusive use of  
04:51 5 BP Amoco Corporation"?

04:51 6 A. I do.

04:51 7 Q. Can we conclude that this document was created during the  
04:51 8 time that BP and Amoco were merged and calling themselves  
04:51 9 BP Amoco?

04:51 10 A. I don't know the provenance of the document, whether it  
04:51 11 was created before that or after -- or during that or after  
04:51 12 that. I don't know.

04:51 13 Q. For what period of time was there an entity called  
04:51 14 BP Amoco?

04:52 15 A. Probably a year or two. I can't remember exactly.

04:52 16 Q. What years or two were those?

04:52 17 A. The BP Amoco nomenclature was probably '99, 2000, 2001,  
04:52 18 possibly. I don't remember.

04:52 19 Q. So if the nomenclature at the bottom of this document  
04:52 20 refers to BP Amoco Corporation, then it would be fair to  
04:52 21 conclude that sometime in that general time frame is when the  
04:52 22 document existed and was published?

04:52 23 A. I don't know anything about the document. I don't know if  
04:52 24 it's a draft document. It's not dated. I don't know. I don't  
04:52 25 know.

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04:52 1 Q. Is the subject, going back to the top, avoiding  
04:52 2 high-consequence accidents?

04:52 3 MR. REGAN: Same objection, Your Honor, as to  
04:52 4 foundation.

04:52 5 THE COURT: Maybe this was mentioned, but if so, I  
04:52 6 missed it. Were you with Amoco before it became part of BP?

04:52 7 THE WITNESS: Uh-huh, yes.

04:52 8 THE COURT: You said '98 is when that occurred?

04:52 9 THE WITNESS: At the very end of '98.

04:52 10 THE COURT: Go ahead. I'm sorry.

04:52 11 BY MR. CUNNINGHAM:

04:52 12 Q. The subject of the article is avoiding high-consequence  
04:53 13 accidents, isn't it?

04:53 14 A. I don't know. I don't see that.

04:53 15 Q. 2912.

04:53 16 A. Where?

04:53 17 Q. I'm pulling up another document for you to look at that's  
04:53 18 part of this. This is in the first -- I think on the first  
04:53 19 page: "Experience with high-consequence accidents involving  
04:53 20 marine and nonmarine systems indicates that approximately  
04:53 21 80 percent of these accidents have their root causes in human  
04:53 22 and organizational factors."

04:53 23 Did you ever, while you were employed by BP or Amoco  
04:53 24 or since this article was published, read it?

04:53 25 A. No. I have never seen this document.

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04:53 1 Q. Let me ask you if you are familiar with some of the  
04:53 2 information in it, 2913.

04:53 3 "Very similar stories of unexpected and undesirable  
04:53 4 interactions of people and marine systems are behind other  
04:54 5 marine accidents such as the *Torrey Canyon*, *Amoco Cadiz*, *Exxon*  
04:54 6 *Valdez*, *Brayer* (phonetic), *Herald of Free Enterprise*, and the  
04:54 7 *Estonia* and more recently the *P36* semisubmersible offshore  
04:54 8 Brazil."

04:54 9 Are you familiar generally with some of those  
04:54 10 occurrences?

04:54 11 A. A couple of them.

04:54 12 Q. "These stories testified that the majority of  
04:54 13 high-consequence, low-probability marine accidents have a  
04:54 14 common theme: A chain of significant errors made by people in  
04:54 15 critical situations involving complex technological and  
04:54 16 organizational systems."

04:54 17 Would you agree with that?

04:54 18 A. Well, I don't have any expertise in that. I don't know.

04:54 19 Q. The errors involved go far beyond the individuals directly  
04:54 20 involved in the accidents. In a majority of these accidents,  
04:54 21 the organizations involved provide cultures that invite  
04:54 22 excessive risk taking, demand superhuman performance, or  
04:54 23 develop complacency that result only in reactive safety  
04:55 24 management. Excessive cost cutting and a focus on short-term  
04:55 25 results are frequently symptomatic of such cultures."

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04:55 1           Were you aware of that, Mr. McKay?

04:55 2     A.    No.

04:55 3     Q.    So not only do you not recall ever reading this BP Amoco  
04:55 4   document on high-consequence accidents; even aside from this  
04:55 5   article, you are just not aware of that?

04:55 6     A.    I'm not aware of the conclusions that have been made in  
04:55 7   this article from those accidents, no.

04:55 8     Q.    At least BP Amoco, who published this, is aware of it,  
04:55 9   correct?

04:55 10    A.    Well, as I said, there's no date on it, there's no  
04:55 11   chronology number on it. So I don't know if it was published  
04:55 12   or not. I can't tell.

04:55 13    Q.    BP Amoco dropped the "Amoco" and became BP; is that true?

04:55 14    A.    That's true.

04:55 15    Q.    If we look at the next page of the article, or the second  
04:56 16   page of the article, D-2914, we find a reference to Dr. Bob  
04:56 17   Bea's article of May of 2002, correct?

04:56 18    A.    As it's shown on the takeout, yes.

04:56 19    Q.    You would agree at least that an organization that invites  
04:56 20   excessive risk taking where the results may be a gigantic  
04:56 21   catastrophe is a culture that should not exist?

04:56 22    A.    That's a hypothetical question. I would generally agree  
04:56 23   with that, but I don't know --

04:56 24    Q.    You would agree that a culture that focuses on excessive  
04:56 25   cost cutting and invites excessive risk taking should not



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04:56 1 exist, wouldn't you?

04:56 2 A. I don't know what context you would put that in.

04:56 3 Q. In any context.

04:56 4 A. Well, I --

04:56 5 Q. How about in oil and gas, in oil and gas drilling,  
04:56 6 exploration, and production? Would you agree that a culture  
04:57 7 that focuses on excessive cost cutting and invites excessive  
04:57 8 risk taking should not exist?

04:57 9 A. Again, it's a hypothetical. I think it's important to  
04:57 10 concentrate on safe and reliable operations. So I'm not going  
04:57 11 to comment on a hypothetical.

04:57 12 Q. You're not going to comment on whether or not excessive  
04:57 13 cost cutting might be a problem in a company?

04:57 14 A. I generally don't think anything in excess is good, but I  
04:57 15 can't comment specifically on that. You're making a  
04:57 16 hypothetical.

04:57 17 Q. We are here now. It's February of 2013, three years after  
04:57 18 the *Deepwater Horizon*, and you have not read or studied or  
04:57 19 become aware of any materials that discuss the subject of  
04:57 20 process safety, the relationship of cost cutting to risk and  
04:57 21 catastrophe. Is that your testimony?

04:58 22 **MR. REGAN:** Objection, Your Honor.

04:58 23 **THE COURT:** Overruled.

04:58 24 **THE WITNESS:** No, I have not said that. You asked me  
04:58 25 had I read a textbook on process safety.

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04:58 1 BY MR. CUNNINGHAM:

04:58 2 Q. All right. Have you then read some other documents?

04:58 3 A. I've read documents. I've read our investigation of the  
04:58 4 accident itself. I've read other investigations. So yes, I  
04:58 5 have read investigations. Yes.

04:58 6 Q. Well, did any of those investigations that you're citing  
04:58 7 refer to cost cutting in connection with catastrophic process  
04:58 8 safety events?

04:58 9 A. No, not those.

04:58 10 Q. So then it would be fair to say that you had not read  
04:58 11 about that subject as of today, in February 2013?

04:58 12 A. I don't recall reading publications based on cost cutting  
04:58 13 as you're describing, no.

04:58 14 Q. Well, let me see if you agree with what the document says  
04:58 15 in that respect. Do you or do you not, as the president of BP  
04:59 16 or the chief executive officer, agree with this statement:  
04:59 17 "Excessive cost cutting and a focus on short-term results are  
04:59 18 frequently symptomatic of such cultures"?

04:59 19 A. This is in relation to a document I have never seen about  
04:59 20 *Cadiz, Valdez, Torrey Canyon*. I have no idea. I can't add  
04:59 21 anything to that.

04:59 22 Q. Even though that's a BP-published statement long before  
04:59 23 2010, you don't have any comment about whether that has meaning  
04:59 24 or not?

04:59 25 A. I don't know who put this together, for what reason,

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04:59 1 whether it was ever published, or anything. I don't know  
04:59 2 anything about the document.

04:59 3 Q. Let me ask you about learning lessons from past disasters.  
04:59 4 It's true, and you would agree, that a fundamental foundation  
04:59 5 of process safety and risk management is learning lessons from  
05:00 6 past events?

05:00 7 A. I think any safety system incorporates learning, yes.

05:00 8 Q. Not only learning lessons, but implementing processes and  
05:00 9 procedures as a result of those lessons. You would agree that  
05:00 10 that is an appropriate step to take, wouldn't you?

05:00 11 A. In general, yes.

05:00 12 Q. For example, one of the examples of that would be airline  
05:00 13 crashes where there are tremendous resources brought to bear to  
05:00 14 study what happened and why it happened so further catastrophes  
05:00 15 can be prevented, correct?

05:00 16 A. Yes. Investigations, yes.

05:00 17 Q. And there may be frequently operational error or pilot  
05:00 18 error, which tells you what happened; but the real goal is to  
05:00 19 find out why it happened. Isn't that true?

05:00 20 A. Well, I'm not a transportation investigation expert.

05:00 21 Q. Well, from a process safety standpoint, strictly referring  
05:00 22 to the oil and gas business, you would not want to just  
05:01 23 determine what happened; you would want to determine why it  
05:01 24 happened in order to learn a lesson so that you could prevent a  
05:01 25 future disaster. Isn't that correct?

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05:01 1 A. I think you would like to understand the causes of the  
05:01 2 accident.

05:01 3 Q. And disasters that you learn lessons from don't just have  
05:01 4 to be your own company's disasters; they can be disasters  
05:01 5 outside the company. True?

05:01 6 A. Again, a hypothetical. I guess potentially, yes.

05:01 7 Q. So the operational causes of disasters may be different  
05:01 8 from one to the other, but the why of disasters may be the  
05:01 9 same. True?

05:01 10 A. Purely hypothetical. I don't know.

05:01 11 Q. Management failures, for example, may be the root cause of  
05:01 12 a process safety disaster, while the operational causes of the  
05:01 13 disaster may be different from one to the other; isn't that  
05:01 14 true?

05:01 15 A. Again, it's purely hypothetical.

05:01 16 Q. Well, it may be hypothetical. I'm asking you whether  
05:02 17 that's true or not.

05:02 18 A. Well, I'm not an expert. I think failures in any areas  
05:02 19 can cause problems.

05:02 20 Q. You will agree, though, that from a process safety  
05:02 21 perspective, it's important to learn lessons from other  
05:02 22 disasters, whether they be inside or outside of the company,  
05:02 23 correct?

05:02 24 A. I think it's important to share lessons, to try to learn  
05:02 25 from others, yes. I think sharing lessons across industry is

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05:02 1 good, yes.

05:02 2 Q. And since this disaster in the Gulf of Mexico on the  
05:02 3 Macondo, that's exactly what BP has been repeatedly saying,  
05:02 4 hasn't it, that we are going to learn our lessons, that we are  
05:02 5 learning, or we have learned our lessons from this disaster?

05:02 6 A. Well, I think we have been very clear since the start that  
05:02 7 we would try to learn from this and try to make sure that we  
05:02 8 did everything we can to minimize it ever happening again, both  
05:03 9 for ourselves and the industry across the world.

05:03 10 Q. That's not -- that mantra that we have heard since the  
05:03 11 date of the *Horizon* is not the first time BP has said the same  
05:03 12 thing, is it?

05:03 13 A. Well, I wouldn't call it a mantra. It is something that  
05:03 14 we were dedicated to do and I think we are doing.

05:03 15 Q. Let me ask you -- talk to you about OMS. You know what  
05:03 16 I'm talking about?

05:03 17 A. I do.

05:03 18 Q. You used the term earlier, correct?

05:03 19 A. Yes.

05:03 20 Q. In 2010, BP had a safety management system, didn't it?

05:03 21 A. Yes.

05:03 22 Q. It had a safety management system that included a key  
05:03 23 component of process safety, didn't it?

05:03 24 A. Our operating management system includes process safety,  
05:03 25 yes.

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05:03 1 Q. Did it include as a key and major component process  
05:03 2 safety?

05:03 3 A. Yes. Yes.

05:03 4 Q. It had a safety management system designed and created to  
05:04 5 prevent and avoid a major process safety disaster just like the  
05:04 6 one that occurred on the Macondo, didn't it?

05:04 7 A. Yes. The safety management system has risk assessment,  
05:04 8 risk understanding, processes, procedures, yes.

05:04 9 Q. And the blowout occurred in 2010, correct?

05:04 10 A. Yes.

05:04 11 Q. And the very system that BP had that was designed to  
05:04 12 prevent what happened on April 20, 2010, was not implemented on  
05:04 13 the *Deepwater Horizon*, was it, Mr. McKay?

05:04 14 A. I don't agree with that. It was.

05:04 15 Q. You don't?

05:04 16 A. I entirely don't agree with it. It was implemented. The  
05:04 17 operating management system that we have utilizes our own  
05:04 18 safety systems for our own facilities and recognizes and  
05:04 19 utilizes contractors' safety management systems for their  
05:04 20 facilities. So it entirely did. It was consistent with OMS,  
05:04 21 and it was approved within OMS, yes, absolutely.

05:04 22 Q. 3145. Do you recall being asked in your deposition this  
05:05 23 question:

05:05 24 "QUESTION: So if I were going to ask you if OMS had  
05:05 25 been implemented on third-party rigs, such as Transocean's

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05:05 1       *Deepwater Horizon*, as of April 19, 2010, do you know --  
05:05 2       well, first of all, on April 19, 2010, did you know one  
05:05 3       way or the other?"

05:05 4               What was your answer?

05:05 5   A.   Should I read it?

05:05 6   Q.   Well, I will read it. You tell me whether or not I read  
05:05 7   it correctly.

05:05 8               "ANSWER: Well, OMS implemented on someone else's rig  
05:05 9   the -- the parts of OMS that are implemented on a -- on  
05:05 10   a -- as I understand it, on a contractor's rig, they --  
05:05 11   they run their safety system, so their operating systems  
05:05 12   are theirs. OMS contemplates how to select contractors,  
05:05 13   judge contractors, understand their safety systems and  
05:05 14   management processes around safety, but the -- but the rig  
05:05 15   doesn't implement our OMS."

05:05 16   A.   That's exactly correct. And that's consistent with what I  
05:05 17   just said, that our operating management system recognizes and  
05:06 18   utilizes our procedures and practices on our owned facilities  
05:06 19   and recognizes and utilizes contractors' systems on their own  
05:06 20   facilities, yes. And that is what OMS is.

05:06 21   Q.   Just so I'm clear on this, it is your testimony here today  
05:06 22   before the Court that OMS had been implemented and was in  
05:06 23   effect on the *Deepwater Horizon* on April 20, 2010. Yes or no?

05:06 24   A.   Our OMS was implemented in the Gulf of Mexico drilling  
05:06 25   function and it was implemented across that drilling function,

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05:06 1 which included the safety management system of Transocean, and  
05:06 2 it was recognized and utilized as part of the OMS  
05:06 3 implementation, yes.

05:06 4 Q. I want to rephrase the question, because I'm not asking  
05:06 5 you across the Gulf of Mexico. I'm talking about the  
05:07 6 *Deepwater Horizon*. So I'm going to try it again.

05:07 7 Was OMS implemented, in force and effect on the  
05:07 8 *Deepwater Horizon* on April 20, 2010? Yes or no?

05:07 9 A. It's not "yes" or "no" question. The operating management  
05:07 10 system was in effect for the drilling of the Macondo well.

05:07 11 That operating management system uses our processes,  
05:07 12 procedures, and standards for the things that we own and  
05:07 13 operate; and it uses the contractors' safety management system  
05:07 14 as part of the overall OMS process as part of that process.

05:07 15 So yes, it was. It was in place. And it was the  
05:07 16 safety management system of Transocean that owned the rig that  
05:07 17 was utilized.

05:07 18 Q. Then I guess you would agree that OMS should have been in  
05:07 19 full force and effect on the *Deepwater Horizon* on April 20,  
05:08 20 because it was?

05:08 21 A. What I'm saying -- you keep saying "on the  
05:08 22 *Deepwater Horizon*," and I just want to be very clear. And let  
05:08 23 me say it one more time. The BP operating management system  
05:08 24 utilizes our standards and procedures for the activities we  
05:08 25 conduct. It also recognizes and utilizes and is part of OMS to



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05:08 1 utilize a contractor's safety management system, in this case  
05:08 2 Transocean's, on their rig for conducting the construction and  
05:08 3 implementation of the well.

05:08 4 Q. So it should not have been a secret to anybody at BP who  
05:08 5 knew anything about safety at BP that OMS was in effect on the  
05:08 6 rig, right?

05:08 7 A. You keep saying "OMS effective on the rig." I'm saying  
05:08 8 the OMS system contemplates using SMS, the contractor's safety  
05:08 9 management system, on the rig.

05:08 10 THE COURT: I think we are quibbling now about words  
05:09 11 here, but I think I understand what the witness is saying. I  
05:09 12 don't know if you do.

05:09 13 BY MR. CUNNINGHAM:

05:09 14 Q. You would agree then that OMS --

05:09 15 THE COURT: I think the witness is saying that the  
05:09 16 OMS applies to BP's part of the responsibility, and they depend  
05:09 17 on the Transocean safety system for what Transocean does on the  
05:09 18 rig.

05:09 19 Is that essentially right?

05:09 20 THE WITNESS: Yes. And that is compliant with --

05:09 21 THE COURT: We are quibbling about whether that means  
05:09 22 OMS is in effect on the rig or not, but I understand the  
05:09 23 difference.

05:09 24 BY MR. CUNNINGHAM:

05:09 25 Q. Then you are saying that BP relies on Transocean's safety

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05:09 1 management system for process safety on the rig?

05:09 2 A. Yes.

05:09 3 Q. Do you know whether or not Transocean's safety management  
05:09 4 system even covers process safety on the rig?

05:09 5 A. As far as I understand it, loss of the primary containment  
05:10 6 is the big process safety risk on that rig drilling in water.  
05:10 7 And I think it does cover that, yes.

05:10 8 Q. You weren't heavily involved in safety at BP, correct?

05:10 9 A. I haven't been over the last several years.

05:10 10 Q. So you would expect the people that were heavily involved  
05:10 11 in safety, such as those on the group operating risk committee,  
05:10 12 would understand how, whether, and why OMS was or was not  
05:10 13 applied at a given location, wouldn't you?

05:10 14 A. I think in the group -- in the GORC, as you describe it,  
05:10 15 in the group operating risk committee, I think they are  
05:10 16 interested in how OMS is being applied across the world, yeah.

05:10 17 Q. Tell us, if you would, who at BP had the ultimate  
05:10 18 responsibility in the area of safety to monitor operations in  
05:10 19 the U.S. on behalf of BP and be sure that BP did what it was  
05:10 20 supposed to do?

05:11 21 A. To monitor operations?

05:11 22 Q. Yes, sir.

05:11 23 A. Well, in our organization the line, or what we call the  
05:11 24 operating businesses, are responsible for conducting safe and  
05:11 25 reliable operations, so they would be responsible for safety.

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05:11 1 Then they have various assurance mechanisms, their own, as well  
05:11 2 as we have the safety and operations risk group, which is a  
05:11 3 corporate group, which looks at -- you know, helps with  
05:11 4 standards, advice, escalation, if there are issues.

05:11 5 So when you say "monitor," I'm not sure exactly what  
05:11 6 you mean.

05:11 7 Q. Well, monitor, for example, to assure that BP was living  
05:11 8 up to its own standards in the U.S.

05:11 9 A. Well, there would be several different ways. One, the  
05:11 10 operating organization is responsible for that, and they would  
05:11 11 have some assurance in their organization. The safety and  
05:11 12 operation risk group would have mechanisms to understand  
05:11 13 whether things are improving or continuing to improve. And we  
05:12 14 have an audit group that looks at compliance with OMS and other  
05:12 15 things.

05:12 16 Q. Was there a person responsible for that? Overall, a  
05:12 17 person in the U.S.? Ultimate responsibility?

05:12 18 A. Well, we are not organized by the U.S. for operations; we  
05:12 19 are organized by function. The E&P segment is a global  
05:12 20 function, so there's not a U.S. head for that. There would be  
05:12 21 a head of drilling. There would be a head of Gulf of Mexico,  
05:12 22 those kind of things.

05:12 23 Q. Exhibit 45393. What is this, Mr. McKay?

05:12 24 A. It says "Sustainability Report 2006."

05:12 25 Q. It's a BP report?

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05:12 1 A. Yes.

05:12 2 Q. Let's look at page 9. This is a section within that  
05:12 3 report that deals with safety, correct?

05:12 4 A. Yes.

05:13 5 MR. REGAN: Your Honor, I object to this document  
05:13 6 again in terms of its references to items that have been  
05:13 7 expressly held to be outside the scope of this trial.  
05:13 8 Mr. Cunningham has highlighted sections on there, and this  
05:13 9 is --

05:13 10 MR. CUNNINGHAM: Let's skip to the bottom.

05:13 11 MR. REGAN: I don't know what the bottom -- which are  
05:13 12 you talking about?

05:13 13 MR. CUNNINGHAM: The bottom of this page.

05:13 14 Go up to the third paragraph on the right.

05:13 15 MR. REGAN: I have the same objection.

05:13 16 MR. CUNNINGHAM: It's a defense exhibit.

05:13 17 MR. REGAN: It's a BP corporate document.

05:13 18 BY MR. CUNNINGHAM:

05:13 19 Q. Let me ask you, in this section on safety --

05:13 20 THE COURT: Wait. What is this document?

05:13 21 MR. CUNNINGHAM: It's a defense exhibit, a BP  
05:13 22 document, Your Honor. It's their annual report, their  
05:13 23 sustainability report, and it's a page out of that.

05:13 24 THE COURT: From what year?

05:13 25 MR. CUNNINGHAM: 2006.

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05:13 1           **MR. REGAN:** Your Honor, my objection is that this  
05:13 2 section of this report is expressly tied to the prior incident  
05:13 3 that this Court has ruled is outside the scope of this trial.  
05:14 4 Whether we take one sentence of it or the whole page -- if we  
05:14 5 were to look at the whole page outside the presence of the  
05:14 6 witness, we would see that. So I object to the use of it.

05:14 7           **THE COURT:** No, I don't think it is. So I overrule  
05:14 8 the objection.

05:14 9           Go ahead.

05:14 10 **BY MR. CUNNINGHAM:**

05:14 11 **Q.** Let me ask you whether or not I'm reading this correctly,  
05:14 12 Mr. McKay. "In the U.S. we expanded the responsibilities of  
05:14 13 the chairman and president of BP America, Inc., to include  
05:14 14 monitoring of our U.S. operations to ensure compliance with  
05:14 15 regulatory and company standards."

05:14 16           Did I read that correctly?

05:14 17 **A.** Yes.

05:14 18 **Q.** Was that one of the responsibilities, in fact, of the  
05:14 19 position once you assumed it at BP --

05:14 20 **A.** No. No. No. It was made exceptionally clear before I  
05:14 21 took that position that the line -- the operating businesses  
05:14 22 were going to be responsible for safety and compliance with  
05:14 23 regulatory and safety standards. That was made explicitly  
05:14 24 clear. Delegations of authority and accountabilities were  
05:15 25 arranged that way, and that was explicitly clear.

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05:15 1 Q. So when BP says in this document that the chairman and  
05:15 2 president of BP --

05:15 3 A. That was 2006. I took over in February of 2009.

05:15 4 Q. So did they change that responsibility?

05:15 5 A. Yes. Yes.

05:15 6 Q. So you no longer had any responsibility for safety?

05:15 7 A. No, I did not, other than being on the executive team and  
05:15 8 chiming in with comments and advice if I could.

05:15 9 Q. Now, did you know in April of 2010 whether or not OMS had  
05:15 10 been implemented on your contractor-owned rigs?

05:15 11 A. Well, again back to -- OMS incorporates and allows the  
05:15 12 usage of the safety management system of the contractors on  
05:15 13 their rigs. Those are generally mobile fleets that work around  
05:15 14 the world and for different operators.

05:15 15 Q. Do you recall testifying to Congress, Mr. McKay, in May of  
05:16 16 2010?

05:16 17 A. Yes.

05:16 18 MR. CUNNINGHAM: 7346, cover page, please.

05:16 19 BY MR. CUNNINGHAM:

05:16 20 Q. Did you testify -- let's look at page 2915. Were you  
05:16 21 asked this by a member of Congress -- and I don't recall which  
05:16 22 one it was, but . . .

05:16 23 "QUESTION: My question to you is: Why hasn't BP  
05:16 24 been able to change its corporate culture and end this  
05:16 25 pattern of accidents?

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05:16 1 "ANSWER: We are changing this company. We have put  
05:16 2 in management systems that are covering the world in a  
05:16 3 consistent and rigorous way."

05:16 4 Did you give that testimony?

05:16 5 A. Probably.

05:16 6 Q. What management systems were you talking about that you  
05:16 7 had put in?

05:16 8 you talking about that you had put in?

05:16 9 A. In that case, OMS, operating management system.

05:17 10 Q. 2916. Did you also testify that:

05:17 11 "ANSWER: Our operating management system is as good  
05:17 12 as anyone."

05:17 13 A. I did, yes.

05:17 14 Q. And that you had no deficiencies in your operating  
05:17 15 management system?

05:17 16 A. Yes.

05:17 17 Q. Do you know, since you had no responsibility or very  
05:17 18 little responsibility for safety, as I think I understood you  
05:17 19 to say earlier, why you would be aware that OMS applied on a  
05:17 20 drilling rig in the Gulf and executives who had specific  
05:17 21 responsibilities for safety would say that it didn't?

05:17 22 A. Well, I'm generally aware of OMS. We all went through OMS  
05:17 23 training when we started implementing it. I'm generally aware  
05:17 24 of what OMS applies to and doesn't. I'm not an expert in it.  
05:18 25 But I knew at this point in time how OMS worked with

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05:18 1 contractors.

05:18 2 Q. Well, but you weren't responsible for safety, I understood  
05:18 3 you to say?

05:18 4 A. No, I wasn't responsible for any of the line businesses in  
05:18 5 the U.S.; but I was, as chief representative, doing my best to  
05:18 6 represent the reality and what we do within those businesses.

05:18 7 Q. You know Mr. John Baxter, correct?

05:18 8 A. Yes.

05:18 9 Q. He holds a high position at BP, correct?

05:18 10 A. Yes.

05:18 11 Q. On the group operating risk committee, correct?

05:18 12 A. Yes.

05:18 13 Q. You know Pat O'Bryan?

05:18 14 A. I do.

05:18 15 Q. He holds a high position at BP?

05:18 16 A. He is no longer at BP.

05:18 17 Q. He's no longer at BP. He did hold a high position,  
05:18 18 correct?

05:18 19 A. He did.

05:18 20 Q. He was on the *Deepwater Horizon*?

05:18 21 A. Yes.

05:18 22 Q. On the night the explosion occurred, wasn't he?

05:18 23 A. That's correct, yes.

05:18 24 Q. All right. Let's talk about root cause investigation,

05:18 25 Mr. McKay. You testified multiple times to Congress, didn't



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05:19 1 you?

05:19 2 A. I did.

05:19 3 Q. About the *Deepwater Horizon* event?

05:19 4 A. Yes.

05:19 5 Q. You gave both oral testimony and you gave a written  
05:19 6 statement each time you testified, correct?

05:19 7 A. I think each time we did a written, yes.

05:19 8 Q. 7364. Is this a written statement that you gave to  
05:19 9 Congress as part of your testimony?

05:19 10 A. Yes. It looks like it, yes. Presumably that's the final.  
05:19 11 I don't know.

05:19 12 Q. Each time you testified, you gave a written statement that  
05:19 13 was similar in many respects but may have some changes  
05:19 14 depending on what had occurred in the interim?

05:19 15 A. Correct.

05:19 16 Q. Is that correct?

05:19 17 A. That's right.

05:19 18 Q. You repeatedly stated to Congress in your written  
05:19 19 statement that BP wanted to know what happened and why it  
05:19 20 happened and wanted to take learnings from the incident, didn't  
05:19 21 you?

05:19 22 A. Yes.

05:19 23 Q. 2917. "BP's investigation into the cause of this accident  
05:20 24 is being led by a senior BP executive from outside the affected  
05:20 25 business. The team has more than 40 people. The investigation

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05:20 1 is ongoing and has not yet reached conclusions about incident  
05:20 2 cause. We intend to share the results of our findings so that  
05:20 3 our industry and our regulators can benefit from the lessons  
05:20 4 learned."

05:20 5 Is that what you said in your statement?

05:20 6 A. Yes.

05:20 7 Q. That would be important to do, to share so lessons could  
05:20 8 be learned throughout the industry, correct?

05:20 9 A. Yes, I agree.

05:20 10 Q. 2918. You noted that investigations take time and in  
05:20 11 order to ensure that the root cause of the failure is fully  
05:20 12 understood, right?

05:20 13 A. I see that, yes.

05:20 14 Q. Without me having to go through each of the statements you  
05:20 15 gave, you said that virtually every time you gave a statement,  
05:21 16 didn't you?

05:21 17 A. I did, and I think it was in relation -- I think I said  
05:21 18 also in the testimony, both written and verbally, about that,  
05:21 19 pertaining to the fire that happened on the rig and why some of  
05:21 20 the emergency systems didn't shut the well in. So it was  
05:21 21 bulleted, I thought, in most of these.

05:21 22 Q. I'm sure we will see that in your direct examination, but  
05:21 23 I want to be sure I understand what you are saying.

05:21 24 You are saying that you are not talking about typical  
05:21 25 root cause such as that involved in your incident investigation

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05:21 1 requirements. You were talking about something different?

05:21 2 A. Well, I'm not a root cause specialist and I don't know  
05:21 3 what *typical* is. But what I was intending to -- and I think I  
05:21 4 said clearly throughout my testimony -- is that we were trying  
05:21 5 to find out why the fire and explosion happened on the rig and  
05:21 6 why the emergency system didn't shut the well in.

05:21 7 Q. Well, isn't that what everybody was trying to find out?  
05:21 8 Was there something else you would have been trying to find  
05:22 9 out?

05:22 10 A. No, that's what we were trying to find out. That's how,  
05:22 11 as I understand it, the investigation that we -- that I  
05:22 12 mentioned in the prior comment was doing.

05:22 13 Q. But you knew -- at the time that you gave your testimony  
05:22 14 and repeatedly referred to finding the root cause of the  
05:22 15 investigation, you knew process safety was not an objective of  
05:22 16 the BP internal investigation, didn't you?

05:22 17 A. I think, yes. Loss of primary containment was an  
05:22 18 objective of the investigation and the understanding of that.

05:22 19 Q. So you thought process safety was an objective of the  
05:22 20 investigation?

05:22 21 A. The loss of primary containment is a process safety  
05:22 22 failure. And that's -- the well control, the well blowing out  
05:22 23 is a process safety failure.

05:22 24 Q. Did you believe that systemic causes were part of the root  
05:22 25 cause of an event such as this?

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05:22 1 A. Well, as I understand it, system causes and the causes  
05:22 2 that were on the -- in terms of causing the fire and explosion  
05:22 3 were part of the Bly investigation.

05:23 4 Q. Right. But my question is: Did you understand that there  
05:23 5 were systemic causes that were considered by BP's own documents  
05:23 6 as root causes?

05:23 7 A. In the Bly investigation?

05:23 8 Q. No, in BP's investigative requirements.

05:23 9 A. Oh. Well, I wasn't familiar with all the requirements of  
05:23 10 the investigations. I'm more familiar now, but I wasn't  
05:23 11 familiar then with the detail of the requirements.

05:23 12 Q. Were you familiar with the fact -- when you talked about  
05:23 13 finding the root causes so lessons could be learned, were you  
05:23 14 familiar with the fact that BP was not investigating  
05:23 15 management-related causes?

05:23 16 A. Well, I was -- I was not involved in the scoping and  
05:23 17 scaling of the investigation, so I was not aware of the  
05:23 18 boundaries of that investigation and what it was supposed to do  
05:23 19 and not supposed to do. I knew that it was trying to find out  
05:23 20 the cause of the fire and explosion on the rig.

05:23 21 Q. So does that mean you were not aware whether or not BP was  
05:24 22 investigating management-related causes?

05:24 23 A. I wasn't involved and aware that the report was designed  
05:24 24 to -- I wasn't involved in the scope and the scale or the  
05:24 25 limits of the report, no. So I don't know -- on that

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05:24 1 particular day, I don't think I was; but I don't know for sure.

05:24 2 Q. How about on any of the days you testified about root  
05:24 3 cause?

05:24 4 A. No. I wasn't really involved in any sort of, you know,  
05:24 5 where the report starts and ends. That was an independent  
05:24 6 investigation by Bly.

05:24 7 Q. Did you even know whether or not management-related causes  
05:24 8 were a standard part of the BP investigation?

05:24 9 A. I was not familiar with our investigation protocols, no.

05:24 10 Q. Do you think that if you hoped to have lessons learned  
05:24 11 from a disaster like this, that BP should do a full and  
05:24 12 complete investigation?

05:24 13 A. Well, I think -- I believe and BP believes the  
05:25 14 investigation was a complete investigation. It looked at the  
05:25 15 causes of what happened. It, you know, had 50 internal and  
05:25 16 external experts working on it for months. It was a  
05:25 17 substantial report and investigation. And the  
05:25 18 recommendations -- 26 recommendations came out of it. We are  
05:25 19 implementing all of those. I think it was a substantial  
05:25 20 investigation.

05:25 21 Q. Do you believe that BP should do a full and complete  
05:25 22 investigation to include management-related causes after a  
05:25 23 disaster such as this?

05:25 24 A. I think the investigation that was done here is a good  
05:25 25 investigation. We are using that to change what we have

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05:25 1 done -- what we are doing in drilling going forward with those  
05:25 2 recommendations.

05:25 3 I would also say that we have done more than the Bly  
05:25 4 report. As you may know, we have reorganized and gone to a  
05:25 5 more functional organization setup, a stronger safety and  
05:26 6 operational risk organization. OMS continues to go through its  
05:26 7 improvement cycle. So I don't know -- I think we have learned  
05:26 8 what we can from the accident and we are trying to put those  
05:26 9 things into practice right now.

05:26 10 Q. Do you believe that BP should have done an investigation  
05:26 11 that included management-related causes?

05:26 12 A. I'm not a risk -- an investigation expert, so I can't  
05:26 13 opine on whether we should or shouldn't. I know what has been  
05:26 14 done and how we are trying to use it.

05:26 15 Q. All right. If we looked at management-related causes,  
05:26 16 that would include a lot of people at BP, wouldn't it?

05:26 17 A. And other places, other companies, and lots of different  
05:26 18 people, I would presume.

05:26 19 Q. 2673. Is this the board of directors that the SEAC  
05:26 20 committee is part of?

05:27 21 A. Yes. At a point in time, yes.

05:27 22 Q. 2672. Is this the safety, environment and ethics  
05:27 23 assurance committee of the board?

05:27 24 A. Yes. In the recent past, yes.

05:27 25 Q. 2674. Is this the executive management, which included

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05:27 1 Tony Hayward, Andy Inglis, and also included you?

05:27 2 A. Yes. At a point in time, yeah.

05:27 3 Q. Well, did it include you on April 20, 2010?

05:27 4 A. Yes.

05:27 5 Q. And the group operating risk committee is a committee of  
05:27 6 the executive management; is that correct?

05:27 7 A. Well, it's not -- I wasn't on it. It's not the entire  
05:27 8 team.

05:27 9 Q. I understand, but it is a committee that --

05:27 10 A. It's part of that.

05:27 11 Q. -- that includes executives, correct?

05:27 12 A. Yes.

05:28 13 Q. 2675. Is this the membership and the group operating risk  
05:28 14 committee?

05:28 15 A. Yes, at that point in time.

05:28 16 Q. Mr. Bly on the left and Mr. Baxter on the right, correct?

05:28 17 A. Yes.

05:28 18 Q. At the time of the blowout, who was the highest-level  
05:28 19 executive with group-wide responsibility for safety?

05:28 20 A. Well, responsibility for safety, the operating  
05:28 21 organizations are responsible for safety. So in the  
05:28 22 exploration and production area would have been Andy Inglis.  
05:28 23 And in the R&M, refining and marketing, would have been Iain  
05:28 24 Conn. Mark Bly heads a safety and operations group that was a  
05:28 25 corporate group to help set standards and help support the

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05:28 1 businesses. But the compliance, the safety, the delivery of  
05:28 2 safe operations is through what we call the line, the operating  
05:28 3 businesses.

05:28 4 Q. Well, overall safety, global, group head of safety and  
05:29 5 operations, Mark Bly. He was not the top executive?

05:29 6 A. Well, he was head of the safety and operations group that  
05:29 7 was in the corporation that, in effect, helps the businesses,  
05:29 8 supports the businesses, audits the businesses. The businesses  
05:29 9 themselves are responsible for safety, delivery of safe  
10 operations.

05:29 11 Q. But he audited and supported those groups --

05:29 12 A. Yes.

05:29 13 Q. -- on the subject of safety?

05:29 14 A. Yes. Yes.

05:29 15 Q. And who was it that was appointed by Tony Hayward to  
16 conduct the investigation?

05:29 17 A. Mark Bly.

05:29 18 Q. A member of the group operating risk committee, correct?

05:29 19 A. That's correct.

05:29 20 Q. Do you think that if you hoped to have an objective and  
21 unbiased investigation, that you appoint the head -- group head  
22 of safety who is on the very committee responsible for safety?

05:30 23 A. As I said, I don't consider Mark as responsible for  
05:30 24 safety. The businesses were responsible and accountable for  
05:30 25 delivery of safety. So I think Mark was head of an objective



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05:30 1 piece of the corporation that looked at safety.

05:30 2 Q. The group operating risk committee were the highest level  
05:30 3 executives at BP who had concentrated responsibility for  
05:30 4 safety, weren't they?

05:30 5 A. Yes. They were reviewing safety. That's right, yeah.

05:30 6 Q. After Tony Hayward, a member of the committee, appointed  
05:30 7 Mark Bly, a member of the committee, to conduct the  
05:30 8 investigation, Mark Bly elected not to investigate management  
05:30 9 causes, didn't he?

05:30 10 A. Again, I wasn't involved in who set the limits on what was  
05:30 11 looked at and what wasn't, so I don't know if Mark made that  
05:30 12 decision or what -- well, I don't know if that's accurate to  
05:30 13 start with; but I don't know who made those decisions.

05:30 14 Q. So you don't know if it's accurate that he and Tony  
05:31 15 Hayward decided not to investigate management causes?

05:31 16 A. I wasn't involved in whether that was a decision made or  
05:31 17 not.

05:31 18 Q. You do know that after he completed and submitted his  
05:31 19 report -- which, by the way, you have read, right?

05:31 20 A. I have.

05:31 21 Q. And you know it makes no mention whatsoever of any  
05:31 22 management causes, does it?

05:31 23 A. I don't think in the way you are using it, no.

05:31 24 Q. Is there one sentence of criticism of anybody on that  
05:31 25 committee or any of the executives that we just looked at or

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05:31 1 anybody on the board and the safety committee of the board? Is  
05:31 2 there one sentence of criticism about any of those individuals  
05:31 3 contained in the Bly report?

05:31 4 A. No, I don't think so.

05:31 5 Q. In fact, after the Bly report was completed, Mr. Bly got  
05:32 6 promoted, didn't he?

05:32 7 A. Well, I don't think he got promoted. The organization he  
05:32 8 was running was expanded.

05:32 9 Q. 2747. Didn't Mr. Bly get promoted to executive vice  
05:32 10 president for safety and operational risk after he finished his  
05:32 11 report?

05:32 12 A. Honestly, I don't know if that's a promotion. He was head  
05:32 13 of what was called *safety and operations*. And that piece of  
05:32 14 the organization was strengthened and people were added to it  
05:32 15 and he was still head of it, renamed safety and operational  
05:32 16 risk. I think he may have already been an EVP, an executive  
05:32 17 vice president. I'm not sure.

05:32 18 Q. It didn't indicate he was an executive vice president, I  
05:33 19 don't think, in the GORC --

05:33 20 A. It may not have. I don't know if he was promoted or not.

05:33 21 Q. You don't know if he got promoted or not?

05:33 22 A. No.

05:33 23 Q. You were president and chairman of BP America at the time  
05:33 24 of the blowout, right?

05:33 25 A. I was.

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05:33 1 Q. So we know you got promoted?

05:33 2 A. I got promoted this January, yes.

05:33 3 Q. You are now basically number two, aren't you, behind  
05:33 4 Mr. Dudley?

05:33 5 A. I head the upstream exploration and production. I  
05:33 6 wouldn't necessarily say I'm number two. There's a CEO of  
05:33 7 refining and marketing segment. No, I wouldn't say it that  
05:33 8 way.

05:33 9 Q. In addition to no mention of BP management in the Bly  
05:33 10 report, there's plenty of blame laid on Transocean and  
05:33 11 Halliburton, isn't there?

05:33 12 A. The Bly report and the investigation had -- came up with  
05:33 13 eight key factors which involved ourselves, involved  
05:33 14 Transocean, involved Halliburton. I don't think it was trying  
05:34 15 to blame. I think it was an investigation to try to understand  
05:34 16 what happened, and I think it's laid out fairly clearly.

05:34 17 Q. What is laid out is blaming what happened on rig-level  
05:34 18 errors, isn't it?

05:34 19 A. Well, I don't agree with your characterization. It came  
05:34 20 up with key factors and things that the investigation team  
05:34 21 thought were causal; and those included mechanical issues,  
05:34 22 human judgment. It included operational implementation, all of  
05:34 23 those things.

05:34 24 Q. They also did not -- do not include any mention of  
05:34 25 management errors, do they?

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05:34 1 A. No, I don't recall.

05:34 2 Q. But they do fault rig-level personnel, don't they?

05:34 3 A. I think the way that the investigation was done, it says  
05:34 4 that there were some misinterpretations and mistakes made.

05:35 5 Q. So when BP recently pled guilty to 11 felonies, who was it  
05:35 6 that BP claimed to be the actors that caused the 11 felonies,  
05:35 7 the 11 deaths?

05:35 8 A. The actors? I don't understand what you mean.

05:35 9 Q. The individuals who caused the 11 deaths that BP pled  
05:35 10 guilty to.

05:35 11 A. Our plea agreement with the U.S. government noted the  
05:35 12 misinterpretation of one of the negative pressure tests as a  
05:35 13 cause, among others; and that was an agreement we made with the  
05:35 14 U.S. government.

05:35 15 Q. Exhibit 52673. You have seen the guilty plea agreement?

05:35 16 A. I have.

05:35 17 Q. You have seen the Exhibit A to that, which is the  
05:36 18 allocution of facts that's on page 14 of 56?

05:36 19 A. Yes, I have.

05:36 20 Q. Let's look at that page.

05:36 21 **MR. REGAN:** Your Honor, I object to asking the  
05:36 22 witness to walk through this plea agreement. It's in evidence.  
05:36 23 Your Honor can review it. It's a legal agreement between BP  
05:36 24 and the government.

05:36 25 **THE COURT:** We have walked through a lot of things

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05:36 1 that are in evidence that I can read, but I think it's fair for  
05:36 2 him to ask the witness questions about it.

05:36 3 **MR. CUNNINGHAM:** Pull out that bottom paragraph  
05:36 4 first, if you would.

05:36 5 **BY MR. CUNNINGHAM:**

05:36 6 **Q.** You said you had read this, Mr. McKay?

05:36 7 **A.** I have, yes.

05:36 8 **Q.** "BP's responsibility as the leaseholder and operator of  
05:36 9 the Macondo well and Transocean's responsibility as the rig  
05:36 10 owner imposed on each a duty to ensure that the negative  
05:36 11 pressure test performed prior to temporarily abandoning the  
05:36 12 well was done safely in accordance with the standard of care  
05:36 13 applicable in the deepwater oil exploration industry.

05:37 14 "On the night of the explosion, BP had two well-site  
05:37 15 leaders who were BP's employees, agents, and highest-ranking  
05:37 16 representatives on the rig. The well-site leaders were  
05:37 17 responsible for supervising the negative pressure test."

05:37 18 Did I read that correctly?

05:37 19 **A.** Yes.

05:37 20 **Q.** Next page, top.

05:37 21 "On or about April 20, 2010, between approximately  
05:37 22 5:00 and 8:00 p.m., the negative pressure test performed on the  
05:37 23 Macondo well provided multiple indications that the wellbore  
05:37 24 was not secure. BP's well-site leaders negligently supervised  
05:37 25 the negative pressure test during this time, failed to alert

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05:37 1 engineers on the shore of these indications, and along with  
05:37 2 others, ultimately deemed the negative pressure test a success,  
05:37 3 all in violation of the applicable duty of care. The negligent  
05:37 4 conduct of BP's well-site leaders is attributable to BP."

05:38 5 Did I read that correctly?

05:38 6 A. Yes.

05:38 7 Q. If we go throughout this Exhibit A, which is the factual  
05:38 8 allocution, the only actors mentioned as causing the 11 deaths  
05:38 9 are BP's two well-site leaders; isn't that true?

05:38 10 A. I think -- I would have to read the whole thing; but I  
05:38 11 think they are mentioned in relation to the negative pressure  
05:38 12 test, which was one of the causes that's mentioned in here as  
05:38 13 one of the causes.

05:38 14 Q. You're referring to other actors, other contractors as  
05:38 15 being mentioned in here, like Transocean?

05:38 16 A. It could be. And it says among others, in terms of --  
05:38 17 somewhere in there, among others -- and it was one of the  
05:38 18 causes. So all I'm trying to say is I'm not -- I'm not saying  
05:38 19 that it would be limited to what you just said.

05:38 20 Q. Is there anybody else, any other individual, any other  
05:39 21 specific job description mentioned in BP's guilty plea other  
05:39 22 than the well-site leaders, the two well-site leaders who have  
05:39 23 now been indicted?

05:39 24 MR. REGAN: Objection, Your Honor. That has been  
05:39 25 expressly ruled outside the scope of this trial, mention of

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05:39 1 indictments.

05:39 2 MR. CUNNINGHAM: I didn't know that.

05:39 3 THE COURT: I didn't know that either.

05:39 4 MR. REGAN: I believe it should be, Your Honor.

05:39 5 THE COURT: It's been mentioned, and it's public  
05:39 6 knowledge. So let's go on. We all know what we are talking  
05:39 7 about. The fact that someone has been indicted is not evidence  
05:39 8 of anything. But in the context of the questioning, I don't  
05:39 9 think it's improper. Go ahead.

05:39 10 BY MR. CUNNINGHAM:

05:39 11 Q. Isn't that correct, it's the well-site leaders that BP  
05:39 12 pled guilty to?

05:39 13 A. Can I just -- what I'm trying to say is that the cause was  
05:39 14 mentioned as a cause, which implies other causes. And among  
05:40 15 others is mentioned in terms of -- in this case contractors as  
05:40 16 well as BP.

05:40 17 So what I'm saying is I'm not necessarily -- my view  
05:40 18 doesn't limit everything to those two individuals in terms of  
05:40 19 this plea agreement and the way it's written.

05:40 20 Q. One group of people that's not mentioned in the allocution  
05:40 21 is any BP management, is it, as being responsible for anything  
05:40 22 that happened on April 20?

05:40 23 A. That is not written in there; that's true.

05:40 24 Q. There is, along with the allocution, an order, correct,  
05:40 25 that BP agreed to as part of its plea agreement, right?

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05:40 1 A. Yes.

05:40 2 MR. CUNNINGHAM: Pull that up. That's page 20 of 56.

05:40 3 BY MR. CUNNINGHAM:

05:40 4 Q. But there's something different about the order, because  
05:40 5 the order is what BP agrees that it will do going forward;  
05:40 6 isn't that true?

05:40 7 A. Roughly, yes. That's -- yes. That's what we have agreed  
05:41 8 to as part of our obligations, yes.

05:41 9 Q. If we look at the first page of the order, one of the  
05:41 10 things that BP agrees to do is to institute process safety  
05:41 11 activities, correct?

05:41 12 A. We have agreed to have a process safety monitor, yes.

05:41 13 Q. The duties of that monitor would be to review, evaluate,  
05:41 14 and provide recommendations for the improvement of BP's process  
05:41 15 safety and risk management procedures, correct?

05:41 16 A. Yes.

05:41 17 Q. That is not an action that could have been undertaken by  
05:41 18 anybody at BP but management?

05:41 19 A. No, I don't agree with that.

05:41 20 Q. You don't? You think the well-site leaders could have  
05:41 21 reviewed, evaluated, and provided recommendations for improving  
05:41 22 BP's process safety and risk management?

05:41 23 A. Yes. I think that there are a lot of people involved with  
05:41 24 the drilling and construction and implementation of the well  
05:41 25 procedure. The loss of primary containment was the process



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05:41 1 safety failure so that the blowout is the process safety  
05:42 2 failure.

05:42 3 Q. According to you?

05:42 4 A. I'm no expert, you are correct. But that's -- yes, I  
05:42 5 think that's -- yeah, that's my opinion. That's BP's opinion.

05:42 6 Q. But what is agreed to by BP in this order in connection  
05:42 7 with the guilty plea are actions in the area of process safety  
05:42 8 that represent correction of management failures; isn't that  
05:42 9 true?

05:42 10 A. No, I -- no, I don't think that's true.

05:42 11 Q. You think that this represents failures of men on the rig  
05:42 12 that they could have corrected to prevent this event?

05:42 13 A. I think what -- my view is governed by what the  
05:42 14 investigation said, which said there were key factors that  
05:42 15 failed -- all of them failed, unfortunately. And this -- and  
05:42 16 our plea agreement has agreed to have a process safety monitor  
05:42 17 to help us make recommendations to improve our process safety  
05:43 18 and risk management procedures. So I don't draw the conclusion  
05:43 19 that you're drawing.

05:43 20 Q. Page 8. As part of the order, you also agreed, did you  
05:43 21 not -- must be page -- excuse me, page 27 of 56.

05:43 22 Also agreed to institute safety and environmental  
05:43 23 management audits, management systems audits, didn't you?

05:43 24 A. Safety and environmental management systems audits. Yes,  
05:43 25 we do agree to that. And that generally encompasses, I think

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05:43 1 in this -- this is for the drilling rigs themselves.

05:43 2 Q. Undertaking safety and environmental management systems  
05:44 3 audits is a function that would be instituted by management and  
05:44 4 not by a well-site leader, isn't it?

05:44 5 A. Well, yes, it probably would be executed by that and done  
05:44 6 by an auditing function of the company, which would be -- and  
05:44 7 probably get input from well-site leaders, yeah.

05:44 8 Q. That represents a correction in this order, a correction  
05:44 9 of a management failure, doesn't it?

05:44 10 A. No. Not necessarily, no.

05:44 11 Q. Let's go to the bottom of this page, back to the bottom of  
05:44 12 page 8.

05:44 13 You also agree to operational oversight regarding  
05:44 14 third-party verification of the blowout preventers, correct?

05:44 15 A. Yes.

05:44 16 Q. That could only be undertaken by management, correct?

05:44 17 A. Well, you're using the term *management*. When you drill a  
05:45 18 well, you have a lot of people involved with the system, the  
05:45 19 contractors, your own engineers, your own operations people. I  
05:45 20 think in this case it would be probably engineers that are  
05:45 21 familiar and working on the blowout preventer areas that would  
05:45 22 be working with the third-party verifiers. So I don't know if  
05:45 23 you call that management.

05:45 24 Q. Do you call it management?

05:45 25 A. I call them engineers.

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05:45 1 Q. Turn to the next page. Deepwater well control competency  
05:45 2 assessments. Cement design, at the bottom. Cement design and  
05:45 3 competency. These are actions that are corrective actions that  
05:45 4 management would take, not the men on the rig; isn't that true?

05:45 5 A. The cement design and competency would generally be done  
05:45 6 and understood by engineers that I don't think generally would  
05:46 7 be well-site leaders, but they would be engineers and  
05:46 8 operations people.

05:46 9 Q. So it would not be upper-level management involved in  
10 that?

05:46 11 A. In cement design of wells, no, not generally.

05:46 12 Q. How about the next page, page 10? "Houston monitoring  
05:46 13 center: The defendants shall maintain a real-time drilling  
05:46 14 operations monitoring center at its Houston office or other  
05:46 15 appropriate location."

05:46 16 Going down: "The HMC shall monitor such data for all  
05:46 17 defendant-owned or contracted rigs conducting drilling with a  
05:46 18 subsea BOP installed on the wellhead."

05:46 19 Establishing a Houston monitoring system would be an  
05:46 20 action taken by management, wouldn't it, Mr. McKay?

05:46 21 A. The Houston monitoring center will be where the engineers  
05:46 22 and the supervisors of the well-site leaders and folks like  
05:46 23 that would look at well control monitoring. You know, I guess  
05:47 24 it's according to where you call management, but this would  
05:47 25 still generally be engineers working on this.

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05:47 1 Q. So we can't even agree that it would be a management  
05:47 2 decision as opposed to a line-level decision to establish the  
05:47 3 Houston monitoring center?

05:47 4 A. Well, the establishment and the agreement of the entire  
05:47 5 agreement was a management decision.

05:47 6 MR. CUNNINGHAM: Your Honor, I think I'm very close  
05:47 7 to being through. I don't know if you would give me an  
05:47 8 opportunity to have any time in the morning if I think of a few  
05:47 9 questions overnight that I missed.

05:47 10 MR. REGAN: I think he has done a thorough job,  
05:47 11 Your Honor.

05:48 12 MR. CUNNINGHAM: I appreciate the endorsement.

05:48 13 THE COURT: Why don't you confer with your cohorts  
05:48 14 there for a minute and see if they have any others. I would  
05:48 15 like to break at a logical point here.

05:49 16 MR. CUNNINGHAM: No further questions, Your Honor.

05:49 17 THE COURT: How many people did it take to decide  
05:49 18 that?

05:49 19 I guess this is a good time to recess. We will  
05:49 20 recess -- let me just ask -- well, I'm not going to go any  
05:49 21 further today in testimony, but I'm just trying to see. Is  
05:49 22 anybody else on this side of the table planning to ask  
05:49 23 Mr. McKay questions tomorrow?

05:49 24 MR. UNDERHILL: Not the United States, Your Honor.

05:49 25 MR. KANNER: We might have a few questions,

05:49 1 Your Honor, but I would like to talk to my client tonight if I  
05:49 2 could.

05:49 3 **THE COURT:** How about Alabama?

05:49 4 **MR. MAZE:** Only one question that we may ask just for  
05:49 5 impeachment purposes, and we are checking on that now.

05:49 6 **THE COURT:** Whatever you two have will be very short  
05:49 7 tomorrow?

05:49 8 **MR. MAZE:** Yes, sir.

05:49 9 **MR. KANNER:** Very short.

05:49 10 **THE COURT:** Are you all going to question Mr. McKay  
05:49 11 now, Transocean and Halliburton? Just trying to get some sense  
05:49 12 for tomorrow.

05:50 13 **MR. MILLER:** Kerry Miller for Transocean. During the  
05:50 14 break I met with BP and the PSC. We would like to propose to  
05:50 15 the Court that when an adverse party calls an employee that the  
05:50 16 employer actually take the witness before the other defendants  
05:50 17 go. So we propose to be somewhat out of order based upon  
05:50 18 the --

05:50 19 **MR. REGAN:** What we would propose, Your Honor, is  
05:50 20 that we could do a short direct. To the extent that the  
05:50 21 contractors have questions, they could ask those questions. We  
05:50 22 could have a very few --

05:50 23 **THE COURT:** This is my question. Usually what we ask  
05:50 24 is, do you plan to do a direct of Mr. McKay now while he is  
05:50 25 here, or do you plan to call him back again in your case?

05:50 1           **MR. REGAN:** We plan to finish Mr. McKay.

05:50 2           **THE COURT:** So it's okay with you if we proceed as  
05:50 3 Mr. Miller suggests?

05:50 4           **MR. REGAN:** Right. We'll do a short direct. Any  
05:50 5 questions from the contractors, they can go. We can have a  
05:50 6 brief redirect as our witness, and also to the extent that any  
05:50 7 more redirect questions --

05:50 8           **THE COURT:** I'm assuming we will be able to finish  
05:50 9 Mr. McKay fairly early tomorrow morning. Am I overly  
05:51 10 optimistic on that? When you say a "brief direct," how long is  
05:51 11 your brief direct?

05:51 12           **MR. REGAN:** I think it would be less than a half an  
05:51 13 hour.

05:51 14           **THE COURT:** So maybe we are talking about an hour,  
05:51 15 hour and a half total?

05:51 16           **MR. MILLER:** I have about 10 minutes, Your Honor.

05:51 17           **MR. GODWIN:** About 10 or 15 for Halliburton, Judge.

05:51 18           **THE COURT:** Who is the next witness for the plaintiff  
05:51 19 going to be tomorrow?

05:51 20           **MR. CUNNINGHAM:** We're going to play about a  
05:51 21 20-minute clip of Mr. Haywood's deposition video clip and then  
05:51 22 about a 10-minute clip of Mr. Lacy's deposition.

05:51 23           **THE COURT:** After that, who is the witness?

05:51 24           **MR. UNDERHILL:** Huffman would live.

05:51 25           **THE COURT:** Who is that?

05:51 1 MR. UNDERHILL: Dr. Alan Huffman.

05:51 2 THE COURT: Huffman?

05:51 3 MR. UNDERHILL: Correct, Your Honor.

05:51 4 THE COURT: How long do you guess he will take? I'm  
05:51 5 just trying to get a sense of who else everybody needs to plan  
05:51 6 for tomorrow, including myself.

05:51 7 MR. UNDERHILL: Your Honor, I would say for  
05:51 8 Dr. Huffman it would be equal to or less than Mr. Cunningham's  
05:51 9 examination of Dr. Bea, but probably less.

05:52 10 THE COURT: I will just make these comments now.  
05:52 11 When we broke this afternoon when Mr. Brock asked for  
05:52 12 15 minutes so he could decide how much more cross he had --

05:52 13 MR. BROCK: I shortened it substantially.

05:52 14 THE COURT: You did, and I appreciate that.

05:52 15 But I started doing some math, and I will just  
05:52 16 point it out to everybody now. Everyone has told me for a long  
05:52 17 time now that this is going to be a three-month trial, even  
05:52 18 though I told you all we ought to be able to try it in two  
05:52 19 months. Now I did the math. If we exclude Fridays, Saturdays,  
05:52 20 and Sundays, which is the plan, and a couple other holidays  
05:52 21 around Easter, we only had 53 trial days, including today.  
05:52 22 53 trial days, even though we are working from 8:00 to 6:00.  
05:53 23 You all have 53 experts listed, including Mr. Bea, who  
05:53 24 testified today.

05:53 25 I don't know how many fact witnesses the parties

05:53 1 plan to call beyond the depositions. I recognize there are a  
05:53 2 lot of fact depositions that have been submitted.

05:53 3 But somebody -- you all need to think about how  
05:53 4 many of these experts are really going to be called and how  
05:53 5 long they are going to take, because I really want to finish  
05:53 6 this trial by the end of May.

05:53 7 At your request, the lawyers' request, I did not  
05:53 8 put strict time limits on everybody in this trial, but I am  
05:53 9 committed to finishing this thing by the end of May. So just  
05:53 10 keep that in mind.

05:53 11 **MR. UNDERHILL:** I don't know if it's a request or a  
05:53 12 suggestion, Your Honor. Mike Underhill on behalf of the  
05:53 13 United States.

05:53 14 I suspect that the percipient witnesses are  
05:54 15 probably going to go a lot faster than the experts. It could  
05:54 16 be long. Mr. Bly might be the exception to that. I suspect he  
05:54 17 might be taking some time.

05:54 18 The plaintiffs collectively have disclosed our  
05:54 19 expert witnesses. I think we are going to call all of them.  
05:54 20 If we drop one, then that's maybe even better.

05:54 21 There's a whole slew of experts on the defense  
05:54 22 side, especially our friends and colleagues over at BP. What  
05:54 23 would help all of us, and I think Your Honor, in terms of  
05:54 24 budgeting time, especially early up in the plaintiffs' and, for  
05:54 25 that matter, Transocean's part of the case, if the BP



05:54 1 defendants, or other defendants as well, know that they are  
05:54 2 going to not call expert witnesses -- and I can think of two  
05:54 3 they are probably not going to call -- I won't name them in  
05:54 4 court, but I can think of a few at least -- that would help us  
05:54 5 all to budget out.

05:54 6 **THE COURT:** Have you all exchanged -- because I have  
05:54 7 a list, a spreadsheet of each party's experts and the order in  
05:55 8 which they plan to be called. Although when you tell me  
05:55 9 Dr. Huffman is going to be called tomorrow, that's already out  
05:55 10 of order, because he was number 10 on my list of 11.

05:55 11 **MR. UNDERHILL:** Your Honor, I don't want to rat  
05:55 12 Judge Shushan out, but I think we -- I'm going to rat  
05:55 13 Judge Shushan out. Actually, I think we did submit an amended  
05:55 14 list a couple weeks ago.

05:55 15 **THE COURT:** This was supposedly the last list that I  
05:55 16 was given. Have these lists been exchanged with each other  
05:55 17 among the parties? They are? So none of this is secret.

05:55 18 Without talking about the names or the order  
05:55 19 right now, the combination of PSC, U.S. and the States, I have  
05:55 20 a list of 11 different experts. Transocean has four,  
05:55 21 Halliburton has eight, BP alone has 23, Cameron has four, and  
05:56 22 then M-I has three. So you're right, BP is the biggest culprit  
05:56 23 here in terms of number of witnesses. Maybe Mr. Brock and his  
05:56 24 team can let everyone know within a reasonable time whether  
05:56 25 they really plan to call all of these 23 people.

05:56 1           **MR. BROCK:** Your Honor, on our list we have a number  
05:56 2 of witnesses who are employees of BP, but were involved in the  
05:56 3 internal investigation and have subject matter expertise.  
05:56 4 There is some overlap with that expertise in our expert lineup.  
05:56 5 We do not expect we are going to call 23 experts. But it's a  
05:56 6 trial, and we would like to have the opportunity to evaluate as  
05:56 7 we go. We'll do something reasonable on that.

05:56 8           **THE COURT:** Okay. The reason I wanted to know for my  
05:56 9 own sake, and of course you all would, too, the order that  
05:56 10 these experts are going to be called, some reasonable advance  
05:57 11 notice so I can read those expert reports and the motions in  
05:57 12 limine and all of that -- *Daubert* motions -- so I can be  
05:57 13 conversant with that before the expert takes the stand.

05:57 14                       Does anybody envision any other expert  
05:57 15 testifying tomorrow other than Dr. Huffman?

05:57 16           **MR. BRIAN:** Your Honor, when do they expect to get to  
05:57 17 Mark Bly tomorrow?

05:57 18           **THE COURT:** Is he going to follow Huffman? So it's  
05:57 19 possible.

05:57 20           **MR. BRIAN:** How long would he be on direct?

05:57 21           **THE COURT:** Bly or Huffman?

05:57 22           **MR. BRIAN:** Bly.

05:57 23           **MR. STERBCOW:** A good two hours.

05:57 24           **MR. UNDERHILL:** I would say the United States  
05:57 25 probably about equal, Your Honor. Just so Your Honor knows, we

05:57 1 are not -- we understand the Court's desire -- let's call it an  
05:57 2 order to move things along. Paul Sterbcow and I have worked to  
05:58 3 coordinate our exams so that I don't intend to do what he is  
05:58 4 doing. We tried to divide it up in accordance with the  
05:58 5 interests of our clients. And what we propose to do for the  
05:58 6 rest of -- as you can see, today we asked no questions of  
05:58 7 Mr. McKay.

05:58 8 **THE COURT:** I appreciate that. I didn't mean by my  
05:58 9 comments earlier today that I was prohibiting counsel for each  
05:58 10 party from asking, questioning any particular witness. I just  
05:58 11 meant that where your interests are clearly aligned perfectly,  
05:58 12 it seems like you all could agree that one lawyer would take  
05:58 13 that witness. But anyway, we'll see how it works out.

05:58 14 **MR. UNDERHILL:** We definitely don't plan -- we plan  
05:58 15 to coordinate to the extent, if we each plan to do a witness,  
05:58 16 to make sure that our areas of questioning are not duplicative,  
05:58 17 because we know what's going to happen when we try to do that  
05:58 18 with Your Honor. It's not going to last too long.

05:59 19 **THE COURT:** Anybody have anything else?

05:59 20 Have a good evening. We'll see everybody at  
05:59 21 8:00 a.m.

05:59 22 **THE DEPUTY CLERK:** All rise.

05:59 23 (Proceedings adjourned.)

05:59 24 \* \* \*

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled matter.

*s/ Toni Doyle Tusa*  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter

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<p><b>8</b></p> <p>80 percent [1] 524/21  8093.1.1 [1] 441/19  820 [1] 423/23  866 [1] 432/22  8:00 a.m [2] 482/8 569/21  8:00 p.m [1] 555/22  8:00 to [1] 565/22</p>		
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